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PROCEEDINGS AND DEBATES OF THE 102^{d} CONGRESS, FIRST SESSION

SENATE—*Wednesday, October 30, 1991*

(Legislative day of Tuesday, October 29, 1991)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by BOB GRAHAM, a Senator from the State of Florida.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

And he shall judge among many people, and rebuke strong nations afar off; and they shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up a sword against nation, neither shall they learn war any more.—Micah 4:3.

God of peace, justice, and righteousness, we pray for the meeting in Madrid. Grant to each representative the desire, the wisdom, and the courage to make a strong stand for peace in the Middle East as they negotiate a struggle 4,000 years old. Help those who seek peace to acknowledge the limitations of human efforts at their best and to recognize the reality that God alone can bring peace. Despite their diversity in religious beliefs, give them grace to look to the God of Abraham who reigns in righteousness.

We thank You, Father in Heaven, for the untiring efforts of Secretary Baker. We pray Your protection upon him, his staff, and every participant against evil intentions of terrorists who are prepared to prevent peace at any cost. Cover the meetings with Your grace and love.

We pray in the name of Jesus, Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 30, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BOB GRAHAM, a Senator from the State of Florida, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

Mr. MITCHELL. Mr. President, I ask unanimous consent that I may be permitted to use as much of my leader time as I may consume.

The ACTING PRESIDENT pro tempore. The Senator has that right. The Senator from Maine, the majority leader.

SCHEDULE

Mr. MITCHELL. Mr. President, today during the period for morning business, two Senators are to be recognized to address the Senate for 10 minutes each. When the period for morning business closes at 12 noon today, the Senate will resume consideration of S. 1745, the civil rights bill, at which time the bill will be considered under the terms of a unanimous-consent agreement entered late last night and printed on page 2 of today's Calendar of Business.

In view of the agreement and the time limitations contained in that agreement, Senators should be aware that the votes on amendments could occur in fairly rapid succession and that four rollcall votes are possible.

Upon disposition of the civil rights bill, it is my intention to bring up the conference report accompanying H.R. 2686, the Interior appropriations bill.

Once that conference report is before the Senate, Senators are again notified—I am now notifying them and they therefore should be aware—that rollcall votes are possible relative to any amendments which may be offered to amendments in disagreement to the conference report.

Therefore, Mr. President, during today's session Senators can expect a number of rollcall votes to occur relative to the civil rights bill and to the Interior appropriations conference report.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon, with Senators BOREN and LEVIN permitted to speak therein for up to 10 minutes each.

The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank the Chair.

CONGRESSIONAL REFORM

Mr. BOREN. Mr. President, I am continuing today a series of speeches that I pledged to make on the floor, coming to the floor each and every week until Congress begins to move in a meaningful way toward reform of this institution, which is so badly needed.

All of us from time to time reflect about those things that give meaning and purpose to our lives. I think most of us, when we really sit back and think about what we want to do with our lives, come to the conclusion that it is very important, if one is to feel satisfied and productive in individual life, to be a part of something that is bigger than one's self. That is certainly true for those of us who have the privilege of serving in the U.S. Senate.

We cannot walk into this Chamber without a realization that we are part of an institution and a political process set forth in our Constitution that has served this country so well for so long, that is a cause more important than the political success of any individual

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• This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

or the personal success of any individual that is a part of this institution. We have a tradition in this Chamber of writing in the desk drawers of the desks that are all around this floor. If you pull open the drawers of any desk, you will find chiseled inside the names of those Senators that have used these desks in the past.

I have been privileged since I have been a Member of the Senate, to use a desk in which, when I opened the drawer, I found the name of Harry Truman inside. I have a desk now in which, when I open it, I find the name of T.P. Gore, the first Senator from my State at the time of statehood, the only totally blind Senator to ever serve in this Chamber; the name of Richard Russell, great leader of the Senate, after whom the Russell Building was named because of his devotion to this institution, to its vitality. There are the names of Clay and Webster and Calhoun. There are the names of other Presidents of the United States that have served in this body. There are the names of LaFollette and Taft and Humphrey and other great Senators of both parties who have made contributions to this institution for many years.

Mr. President, what a privilege it is to be a part of a cause and a process, the representation of the American people, the holding together of a sense of community and the sense of social fabric in this country, a cause far more important than the personal interests of any of us.

The circumstances we now face call upon us to have a renewed sense of loyalty to that constitutional process, a renewed sense of our duty as trustees of this institution to keep it strong and great.

Over the last few years and, even more, over the last few weeks, events have taken place which have obviously, if we are to believe the public opinion polls—and I say to my colleagues if we would go home and talk to the people themselves—shaken the confidence of the American people in this institution. The warning signs are clear for all of us to see, if we would simply heed them.

I can quote a letter I received from one of my constituents from Muskogee, OK, a couple weeks ago. I come, after reading that letter, to a full understanding of the depth of the concern of people in this country about the wellbeing of this institution. I want to share with my colleagues a few of the comments made by my constituent and fellow citizen from Muskogee. He said:

> I can tell you for a fact that "mainstream America," the ones who are paying the bills, are disgusted with the Government and its actions. I am in a position to hear people from most all walks of life, political persuasion and occupations and the one thing nearly all agree on is, "I am disgusted with this Government, all of it, and things need changing, drastically in Washington."
>
> We are well aware of the timeworn proposed remedy, "vote the rascals out," but this just isn't possible with the great advantage an incumbent has for reelection. (A condition brought about by elected officials in their own self-interest.)

We need to listen to these warning signs and signs of discontent across the country. The people are not wrong to have these feelings. They have been echoed by editorial writers across this country. The New York Times just this Monday, for example, in an editorial entitled "Congress Spiraling Downward," said the following:

> It's scarcely news that Americans are disenchanted with Congress and politicians generally. It is news when two-thirds of the people think that politicians are corrupt.
>
> According to a New York Times/CBS News Poll taken after the House banking scandal and the Senate's embarrassing Clarence Thomas hearings, only 29 percent of Americans say they like the way Congress is handling its job. More devastating was the response when people were asked whether politicians generally were "financially corrupt" or "honest." Only 34 percent said: honest.
>
> The need to restore integrity to political life is obvious. And the best place to begin is at the top, with a massive overhaul of Congress's odious system of campaign financing. The honesty question wasn't aimed specifically at members of the House and Senate. But there's little doubt that the sense of self-indulgence Congress conveys is a huge factor.
>
> If the polls are right, the public would welcome almost any reasonable alternative to business as usual. If Congressmen genuinely care about their institution, and not just themselves, they have no choice but serious reform.

Mr. President, several of us in this Chamber have joined together to make a proposal just as we did in 1947 when the Monroney-LaFollette committee was created, a committee of limited duration which operated without a huge paid staff with the voluntary help of citizens who wanted to contribute something to their country.

It is time for us once again to make such an effort, to look at a major overhaul and reform of this institution so that we can hand it on to the next generation as it was given to us, strong, and meaningful, committed to solving the real problems of this Nation, committed to getting America ready to meet the challenges of the next century, committed to handing on a heritage to the generation that will follow us that will not be diminished but enhanced because of our own sacrifices. I want to thank and commend 15 Members of the Senate who have joined together in making this proposal.

I had a very good conversation this past week with Chairman WENDELL FORD, a Senator from Kentucky, chairman of the Rules Committee, who has assured me that within the constraints of time—because it will be difficult this fall to have more than perhaps an introductory hearing on this subject—that in a timely fashion the Rules Committee will allow hearings and seriously look at the proposal which we made.

I want to name the other Senators who have joined with Senator DOMENICI and myself, and with Congressman HAMILTON and Congressman GRADISON on the House side, in bringing this major proposal to reform Congress. They include Senators SIMON, SEYMOUR, CHAFEE, GRASSLEY, LUGAR, NUNN, LOTT, KOHL, MCCAIN, SPECTER, GRAHAM of Florida, REID, and PRYOR.

I thank those Senators for joining with us in this effort and I hope many others in this body will join in cosponsoring our proposal. Sixty-one Congressmen have now sponsored it on the House side. Yesterday, 20 freshmen Members of the House called a meeting and held a press conference to urge the Speaker to act on that side.

There are already those who have devoted themselves to making improvements in this institution, and their efforts should not go unnoticed.

I want to call attention specifically to the efforts of Chairman FORD, chairman of the Rules Committee, who has worked long and hard to reduce the costs of Congress and to make Congress more efficient. For example, because of his efforts and the initiative he has taken as chairman of the Rules Committee to reduce the mass mailing cost by Members of Congress, this year those costs will be under $10 million, whereas in 1986 the cost for Senate mass mailing and official mail exceeded $35 million. It is movement in the right direction. He deserves credit for moving us in the right direction.

Now it is my hope that all of us on both sides of the aisle in the U.S. Senate can join together and have effective action to look at a major overhaul of this institution, and do it with our colleagues in the House and not wait. We must not wait any longer. Those of us who care about this institution, those of us who came here and ran for office, because we wanted to make a difference in this country, because we wanted to contribute whatever we could to making this country better, to strengthen our economy, provide educational opportunities for our children, and for protecting the national security of our country, those of us who came here wanting to be part of an institution where we could make a contribution must be part now of an effort to recraft, rebuild, and revitalize this institution so that we will have the opportunity to weigh in on the major problems that are confronting us.

I see the distinguished President pro tempore of the Senate has just come on the floor. For years, for a decade, he has been the historian of this Senate as no other Member has, and he has called for meaningful and comprehensive campaign finance reform.

I just quoted that letter from the constituent of mine saying we must have change, saying it is unfair, because Members of Congress under the current campaign system the way we finance our campaigns have an advantage to stay in office. I just quoted the New York Times editorial on the need for campaign finance reform. The distinguished Senator from West Virginia when he was majority leader called for a record number of votes trying to end filibusters so we could have acted several years ago. The current majority leader of the Senate, the Senator from Maine, has continued that effort in a meaningful way.

Could I ask unanimous consent for 1 additional minute, to conclude, from my colleague from Michigan?

Mr. LEVIN. Mr. President, I am happy to yield to my friend, the Senator from Oklahoma, an additional 3 minutes.

Mr. BOREN. Mr. President, I thank my colleague. We must not wait. The Senate has passed S. 3, a campaign finance reform measure that is now pending in the House. We must not allow this Congress to end without action on the other side of the Capitol so that early next year we can get together, House and Senate together, and work out a compromise measure.

The distinguished minority leader is on the floor, Senator DOLE. He has indicated a great desire to try to fashion a bipartisan compromise after action in the House. It is time for us to move when the average Senate winner of a campaign spends $3.8 million getting elected. When the political action committees give 77 percent of all their millions of dollars of contributions to incumbents, when incumbents have an 8-to-1 spending advantage in campaigns, it is time for campaign finance reform. We want to restore the confidence and trust of the American people in this institution. We must move on this issue among others to show that we really mean business about the reform. We must not rest until we get action.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. BOREN. Yes.

Mr. BYRD. Mr. President, when you go to the Scriptures, you find support for what the Senator is saying. The Scriptures say a love of money is the root of all evil. That applies here.

When we think about the time that Senators have to spend running all over this country, raising campaign funds for the next election, to pay off the debt for the last election, if they want to remain in public service, it takes them away from the Senate, and it takes them away from the committees.

The Senate has lost its soul. It is not like it was when I came here 33 years ago. We do not have the debates that we used to have. We do not go into matters on this floor like we used to when I first came here. The reason is the money chase. Members cannot stay here and do their work. Raising campaign funds is a full-time job.

I thank the Senator for his continuing contributions to the effort to make the Senate the body that it once was. To do that we have to get rid of this campaign financing evil. The love of money applies in politics as well. It is the root of all evil.

Mr. BOREN. Mr. President, I thank my distinguished colleague. As I say, he is the historian of the Senate, and in many ways is the conscience of the Senate.

I say again to my colleagues who are listening, join with us in the reform effort. Join with us in cosponsoring the concurrent resolution.

I say to my colleagues in the House, please pass campaign finance reform before the year is over. We are the trustees of this institution. If we do not take care of it, no one else will.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized for 10 minutes.

Mr. LEVIN. Mr. President, I am happy to yield to my friend, the Senator from Kansas, the Republican leader, Mr. DOLE.

Mr. DOLE. I will take about 3 minutes. I thank the Senator. I appreciate it.

Mr. President, I want to speak a minute on the Madrid talks that are underway.

MADRID TALKS BEGIN

Mr. DOLE. Mr. President, the cliche says that a picture is worth a thousand words. If that is so, the pictures today from Madrid—pictures of Arabs and Israelis, together around a table—those pictures speak eloquently of the historic nature of these talks.

For more than four decades, the nations and people of that region have lived with war, and violence, and hatred, and suspicion. Today, they begin to talk about peace.

President Bush's opening remarks struck exactly the right note; or, to be more precise, exactly the right two notes: hopeful, but realistic.

The President stressed that this is a unique opportunity; the kind of opportunity that another American President, in another era, talking about another situation, called the last, best hope for peace. If these talks finally fail, a unique chance for real peace, at a unique point in world history, will be lost.

He put the monkey squarely on the backs of the delegations and delegates gathered in Madrid. It is up to them to put aside prejudice and propaganda, and sincerely explore the possibilities for peace. It is up to them to give peace a chance. The fate of their children and grandchildren is in their hands.

The President stressed that the goal of this Conference must be a real peace, not short-term, Band-Aid palliatives. A real peace means binding treaties, formal diplomatic relations, mutually beneficial economic relations. A real peace means security for Israel, and for all the other nations of the region. A real peace means justice for the Palestinians, and all the other people of the region.

President Bush reminded everyone, too, that successful negotiations require not just posturing and propaganda, but real give and take. Compromise. Giving something to get something. All sides have to give. All sides have to get. Otherwise these talks will not work, and there will be no peace for anyone.

Finally, the President talked frankly about the tough tasks ahead. Today is a day of great hope; but it must also be a day for realism and determination. These talks will not be easy. They will not be quick. They will not produce peace tomorrow, or next week, or next month.

This is a marathon, not a sprint. And we all better be ready to go the full 26 miles of this marathon—and then be ready to go the extra mile for peace.

I am convinced President Bush is ready. Ready to provide the same kind of steady, sure leadership that catalyzed this Conference. Ready to do that for as long as it takes.

I hope the delegations and delegates in Madrid are ready. I hope they brought plenty of luggage, because they are going to be at it for a while.

And I hope the Congress is ready, too. Ready to back the President in this great effort at peace—just as we did earlier this year in a time of war. Ready to let him do his job, as President, without the "benefit"—and that is in quotes—of incessant second-guessing, and Monday morning quarterbacking. And without allowing ourselves to become a lobbyist for any side, against our own President, if things do not go quite right.

Mr. President, this is a historic and hopeful day. I know every Senator joins me in congratulating President Bush on the diplomacy which has brought us to this point, and on his fine speech. And I know that every Senator joins me in challenging all of those gathered in Madrid to live up to the critical responsibility that history has placed on them, and to make these talks a success.

STATUS OF THE HIGHWAY BILL AND UNEMPLOYMENT BENEFITS

Mr. DOLE. Mr. President, there are no holds on the Republican side on the so-called highway bill. There was some indication that somebody is holding it on this side, and they cannot go to conference. There are no holds on this side.

Second, I confirm that there have been some preliminary discussions on working out some of the unemployment benefits, something that would be paid for. It does not have to be any precise plan. Whether it is anybody's plan, if it is paid for, I think it is something we can all look at with some encouragement. And, hopefully, if that can be resolved yet this week, it would be good news for America's unemployed, and I think it would indicate that the President was right when he said, "Send me a bill that you can pay for, and I will be prepared to sign it."

There have been no negotiations to date. There have been a lot of preliminary discussions and small meetings. I do not know the details, but I can indicate that at least there is some hope that this matter may be resolved very quickly.

Mr. President, I thank the Senator from Michigan, and yield the floor.

EXTENSION OF MORNING BUSINESS

Mr. LEVIN. Mr. President, I understand that I have been given 10 minutes, and I ask unanimous consent that I continue to be allowed 10 minutes as in morning business.

Mr. DOLE. I would be happy to yield some of my leader time.

The PRESIDING OFFICER. Morning business will be extended as necessary to provide the Senator from Michigan 10 minutes during morning business.

THE ISSUE OF RACE

Mr. LEVIN. Mr. President, since its founding, our Nation has struggled with the issues of race. Just down the hall from here in the old Supreme Court chamber, Justice Tanney ruled that Dred Scott was not a person within the meaning of our Constitution. We have come a long way since then, but we still have a long way to go.

I live in a city divided by race in a country still bedeviled by racial stereotypes and fears, and people willing to exploit them. Americans watch as Los Angeles cops assault a black American with nightsticks and racial epithets. Marion Barry blames his ills on a racist plot. David Duke inflames racial fears and resentments in his campaign to become a Governor. Al Sharpton is a different kind of opportunist using the same kind of rhetoric. Wielding gasoline and matches, they express shock at the fire and sadness at the ashes, and some people even believe them.

Meanwhile, people of good will struggle to advance the unity of the Nation. The issue we face is how to live together, how to overcome discrimination without discriminating against other Americans, and how to assist the victims of bigotry without creating other victims.

One way we have sought to do that is to distinguish between quotas and affirmative action. Most Americans, of all races, oppose quotas for a number of reasons, not the least of which is that Americans basically oppose privilege and preference. This country was born with a distaste for one person having unearned privileges over another. We are, as a result, as democratic as any country in the world.

But we also are aware that we must correct the continuing after-effects of prejudice and discrimination by reaching out affirmatively to their victims. The balance between acting affirmatively while avoiding preferences is particularly difficult to maintain in tough economic times, when the pie is shrinking and opportunities are fewer for all.

This economic situation is ripe for those who are willing to exploit old racial fears and hatreds for political purposes. David Duke is doing that as we meet today. But anyone who uses race for political gain, even if less crassly than David Duke, helps to foster the atmosphere in which the David Dukes can operate.

I am afraid the earlier debate surrounding this civil rights bill has contributed to that. It helped create the political environment in which a David Duke could prosper. By simplistically labeling the civil rights bill a quota bill, President Bush did a disservice to America. The President now says it is no longer a quota bill. But it never was a quota bill—never. Never. The bill's chief sponsor, Senator DANFORTH, says this new compromise bill is not substantially different from the bill the President called a quota bill.

To listen to the White House, one would have thought this civil rights bill was a quota bill and nothing but. That charge was wrong on two counts.

First, because the bill never provided for quotas. Even its opponents had to acknowledge that. Instead, they argued the bill might lead employers to adopt quotas. But the bill's sponsors never intended it that way and said so publicly and repeatedly. Intent is critical in statutory construction as well as in political affairs. The sponsors explicitly, month after month, said this bill was not intended to produce quotas and in fact was antithetical to quotas.

The second reason the quota charge was wrong was that it ignored the other widely supported civil rights protections in the bill. The disputed language was but one part of the bill whose other provisions are aimed principally at giving ethnic minorities and religious minorities and women the remedies for discrimination which are available to racial minorities.

Why should an Italian-American discriminated against because of his name receive a lesser remedy than a black-American discriminated against because of his race? Why should a Jewish-American discriminated against because of her religion receive less of a remedy than an Asian-American discriminated against because of her race? They should not, and the bill begins to remedy these wrongs.

It also corrects many other injustices in ways that have broad support. For instance, a recent Supreme Court opinion held that the 19th century statute barring employment discrimination applied only to hiring and not to discrimination on the job. This bill overturns that overly narrow interpretation of the law. It will also give women claiming to be discriminated against because of their sex the same right to a jury trial as someone claiming to be discriminated against because of race.

Why then was a bill that had so many such provisions enjoying broad public support wrongly labeled by the White House a quota bill? And why was a bill whose supporters explicitly rejected any intent to allow quotas erroneously labeled as a quota bill? The answer is clear and disturbing: for political gain.

Anyone has a right to express a difference of opinion on an issue. If the President believed one provision of the bill would result in quotas, he had the right to say so. But instead of debating the specific provision, the President labeled the entire bill a quota bill for political purposes. It was the simplistic labeling—quota bill and the constant harping on that label for political gain which was so harmful.

By characterizing the whole bill as a quota bill because of one debatable provision, racial fears and resentments were exploited for political benefit. The decision to use race as a wedge issue is an ugly decision. Some of the President's men saw quotas as a realignment issue. If people believed the Democrats were for quotas, they thought, it might help Republicans. But the Nation pays the price of racial politics. When the race issue which has faced this Nation since its inception is exploited for political purposes, the Nation is hurt. Long after the elections are over, the resentment remains.

A few weeks ago I voted against Clarence Thomas for a number of reasons which I keenly felt. But one of the aspects of his background that appealed to me—and I indicated this at the time—was his willingness, as a conservative, to tell conservative audiences some things they did not want to hear. As much as Thomas opposed both affirmative action and quotas, he warned conservatives against harping on them because of the damage they do to the country. For instance, in a 1988 speech to a conservative organization, Judge Thomas said "Think * * * of the tone you set for the entire community when you ceaselessly attack affirmative action or quotas." Regardless of how one feels about Clarence Thomas, these words ring true.

Most of us learned long ago not to challenge other people's motives and intent. Few of us are pure. But on this issue, we must scrutinize each other's intentions, and even our own. The first rule learned by new doctors is: Do no harm. The first rule that American politicians of any political party should accept is: Do not use racial fears for political gain. Our leaders must not use the explicit or implicit language or symbols of racial division. When we do, the negative message seeps down to American streets and neighborhoods.

Our President, particularly, must set the tone. I hope that when the President signs this civil rights bill, he will put more than a new law on the books. I hope he will set a new standard for political campaigns. I hope he will make clear that his administration and his campaign will not use racial wedge issues.

I hope he will follow the lead of Republicans like JACK DANFORTH who have courageously warned the country that using race issues politically is an explosive mixture for our Nation and that a party cannot hope to gain at the country's expense.

Our Nation is indeed one nation indivisible. But our people can be divided by demagogues like Al Sharpton and David Duke. We need to bring Americans together. Challenges such as the increasing financial squeeze on middle-class Americans, the loss of jobs to unfair foreign trade practices, crime, poor schools, and unaffordable health care cannot be solved by a divided nation. These problems do not just affect one group in society; they affect us all. And we need to work together to solve them. The solutions are even harder to achieve when divisions are sown purposely for the selfish gain of individuals or factions.

We continue to grope our way to racial harmony and equality. Hard as we try, we make mistakes. We are not always perfectly logical in trying to remedy past injustices, but the effort is surely worth it. We are much stronger as a people when we work to increase our tolerance and respect for each other, to perfect our unique American pluralism, and to reject the efforts of those who would divide us.

I thank the chair, and again I thank the Republican leader, and yield the floor.

JEWISH HERITAGE TOUR

Mr. SPECTER. Mr. President, recently, a group of congregants from the Washington Hebrew Congregation of Washington, DC, ventured on a Jewish heritage tour of Eastern Europe and the Soviet Union. Their purpose was to examine the remnants of Jewish culture and the status of Jewish communities as they confront uncertainty and change in that part of the world.

The welfare of Jewish life in Eastern Europe and the Soviet Union is of a special interest to me because it is a part of my own heritage. My parents came to America from Russia to escape virulent anti-Semitism. My father came here in 1911 from a small village, Batchkurina, fleeing oppression from the czar. My mother came from an area of Russia-Poland—the territory has been traded back and forth—at the age of 5 in hope of a life free of persecution.

I believe it is important that the issue of anti-Semitism and future of Jewish life in Eastern Europe and the Soviet Union be carefully monitored. Although we can rejoice over the demise of communism in the region, it is imperative to remember the nefarious pasts of nationalistic movements in these countries. Accordingly, I am pleased to share the attached letter submitted by Mr. Herb Ascherman which eloquently summarizes the findings of the Jewish heritage factfinding tour and alerts us to the challenges still faced by Jewish communities almost five decades after the Holocaust.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEAR SENATOR SPECTER: Thank you for kindly inviting us to share with you our experiences from our recent trip to Eastern Europe and the Soviet Union.

As you know, before World War II, hundreds of Jewish communities existed in the cities and villages of Eastern Europe and the Soviet Union. The Jews of Eastern Europe had their own vernacular language, Yiddish; their own theater, literature, and music. They raised up scholars, artisans and artists of the highest caliber. These communities founded and maintained communal and charitable organizations and religious academies. For generations the Jews of Eastern Europe preserved and transmitted to their children a rich religious heritage and a vibrant culture.

During the Holocaust, all of this changed. Six million Jewish men, women and children were murdered. Hundreds of Jewish communities were completely destroyed. Jewish culture nearly vanished. Only a handful of Jews remain in Poland, Czechoslovakia and Hungary. Of the larger Jewish community in the Soviet Union, thousands have emigrated to the U.S., to Israel, and to other countries.

This past summer, Rabbi Joseph Weinberg of Washington Hebrew Congregation in Washington, D.C., led a small group of his congregants on a Jewish heritage tour of Eastern Europe and the Soviet Union. There we found two disquieting, but related phenomena: the memory of Jewish life in Eastern Europe and of the Holocaust is being systematically erased; and antisemitism continues to exist in these countries, and may grow as the economic and political situation of these countries becomes more difficult.

Poland, in particular, has done little to acknowledge the destruction of its Jewish community in the Holocaust or the complicity of many of its citizens in the Nazi atrocities. At the Auschwitz-Birkenau concentration camp, the movie which introduces the tour of the camp makes no mention of the fact that Birkenau was built specifically for the extermination of Jews. At numerous sites in Poland where Jewish communities were wiped out, the monument, if there was one at all, indicated that "Poles" were killed rather than Jews. Where the Jewish nature of the victims was noted, the complicity of the local population was passed over.

The truth that Jews were killed in the Holocaust because they were Jews is glossed over. Worse, the thousand-year history of Jews in Eastern Europe, the flourishing culture and the many contributions of Eastern European Jews to their countries of residence, is completely ignored. One can walk through towns and villages which had prosperous Jewish communities before the war, and not know that Jews had ever been there.

As Americans, the open existence of antisemitism which we experienced in these countries shocked us. Incredibly, this poison is found most often in the very countries with the fewest Jews, most notably in Poland, where approximately 5,000 Jews remain from a prewar population of 3.3 million. Synagogues are defaced, and valuable religious objects are stolen. Swastikas mar the monument in Warsaw marking the place where Jews were loaded into boxcars for the trip to the concentration camps. Several members of our group were personally confronted with antisemitic remarks or actions during our trip.

For example, when we visited the few remaining remnants of the Warsaw ghetto, located in the midst of a residential district, people came out of their houses to glare at us. Later, in a fine Warsaw restaurant, the pianist entertaining evening diners stopped in the middle of a song at the sight of us and began to play "Hava Nagila", a Jewish folksong. Whispers of "Jude! Jude!" and angry stares followed us to our table.

Our guide at Auschwitz was a very articulate and well-educated young lady. She told us that the Poles "never really liked the Jews, but we didn't want to murder them." In Prague, Czechoslovakia, the thirty-five year old leader of the Jewish Federation asked us to send Hebrew books and history books, and radiated enthusiasm about rebuilding a Jewish community for his young children. When asked privately how he could be so positive about the future in the light of the history of his country, he answered simply, "It can never happen again!" His hope for the future, in the shadow of past hatred and destruction, was very moving.

The Jews still living in those countries, of course, face antisemitism every day. In Poland, one of our guides publicly stated that most Poles tried to help Jews in World War II, in the Warsaw Ghetto, and that there was little antisemitism there today. Privately he told one of our group that he had changed his Jewish name for a Polish one, and he expressed fear for his safety because his great-grandmother was Jewish.

Through our discussions with Jewish community leaders in each country we learned that, while antisemitism exists in all of them, there are differences from place to place. In Poland, the elderly leaders of the Jewish community told us that only age kept them from attempting to leave. However, in Hungary the Jewish community is vital and striving to grow. In Czechoslovakia, there is hope. And in the Soviet Union there is hope mixed with fear. Some of the people we spoke with in the Soviet Union are willing to wait, to see if the emergence of democracy and pluralism would make a viable Jewish community possible. Others are convinced that they must leave in order to give the children the opportunities for higher education and better jobs that are closed to them in Russia.

The tremendous changes that have taken place in Eastern Europe may lead to greater freedom and opportunity for all the citizens of those nations. However, the period of transition is a difficult one. The Jews in Eastern Europe know that historically, times of high unemployment, economic unrest, and political upheaval have led to heightened antisemitism and scapegoating of the Jewish community.

The best way to fight antisemitism, or any bigotry, is through education, through understanding. Without a thorough reconstruction of Jewish memory in Poland, for example, the people of Eastern Europe will never be able to understand what was lost. Nor will they be able to come to terms with their part in its destruction. The most meaningful acknowledgement of the history of Jewish suffering in Eastern Europe, however, is not erecting more memorials to the dead. It is the support of a living Judaism. The Jews of Eastern Europe are now trying to reclaim their heritage and educate themselves about their tradition. The spark of Jewish life in Eastern Europe must be carefully nurtured, and protected from the winds of antisemitism which may sweep that region in this time of change. If it is allowed to die, then Hitler will have won. The loss of this rich religious and cultural heritage would impoverish us all.

Signed:

Herbert Ascherman, Dorothy Ascherman, Rabbi Arik Ascerman, Mr. Paul Mason, Rabbi Einat Ramon, Dr. Robert B. Wagner, Alane Youngentoub, Gene Youngentoub, Dr. Dolph Zeller.

BOSTON'S MAYOR RAY FLYNN

Mr. KENNEDY. Mr. President, the August 26, 1991, issue of City & State magazine contains an impressive article praising Mayor Ray Flynn of Boston for his numerous accomplishments.

Like many other cities, Boston has been confronted over the past decade with numerous economic and social challenges. Mayor Flynn has spent the past 8 years as mayor successfully guiding Boston through these trying times. Much of his success can be attributed to his personal dedication to the people of the city and his perceptive understanding of their needs and aspirations. His roots run deep in Boston, and he is an effective, respected and compassionate leader on the wide range of issues that matter to the people.

Mayor Flynn's outstanding ability and his enduring commitment to public service have been recognized not only by the citizens of Boston, but also by his colleagues in city halls across the country. He currently serves as President of the U.S. Conference of Mayors, where he is an eloquent spokesman for all the Nation's cities.

I believe that all of us in Congress will be interested in this important article on Mayor Flynn, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From City & State magazine, Apr. 26, 1991]

WHERE IS FLYNN? HE'S EVERYWHERE!

(By Ellen Perlman)

WASHINGTON.—Looking for Raymond L. Flynn, mayor of Boston?

Don't start at City Hall.

Try the basketball courts at a neighborhood park. Or a hearing room on Capitol Hill. Or a high school.

An Irish pub. The scene of a fire. A marathon. A conference somewhere in the United States.

Since Mr. Flynn, 52, seems capable of functioning on only four to six hours of sleep a night, he has the stamina to go just about everywhere. And so he does.

In June, he was on stage conducting the San Diego Pops, flailing a baton in a stunt that sent gales of laughter through a crowd of mayors gathered for their annual meeting.

In early August he was in Hyannis, Mass., with a group of mayors planning a march on Washington. They seek to prevent federal cuts of urban and children's programs.

This fall in particular, he needs all the hours the days and nights offer. He is carrying out dual roles: president of the U.S. Conference of Mayors and two-term mayor of Boston on the re-election trail.

His popularity remains high among most of Boston's electorate, and observers say it is unlikely he'll be defeated in the fall election.

Mr. Flynn is running on his eight-year record. When his administration took charge in 1984, he set out to end a 10-year series of budget deficits. He has produced a balanced budget for the last six years.

The mayor is credited with easing racial tensions in the city, integrating public housing, getting developers to contribute to housing for the homeless as a condition for building, and elevating the city's bond rating from one of the lowest in the country to a relatively healthy. A by two major rating agencies. That means five upgrades in six years.

"He has done an excellent job of managing the city's resources," said J. Chester Johnson, president of Government Finance Associates Inc., financial advisers to Boston and other cities and counties.

"Overall, he's done a good job," agreed Samuel R. Tyler, executive director of the Boston Municipal Research Bureau, a business-supported watchdog agency. "In the earlier years it was easier to do that. Lately, it's been tougher, but he's made the decisions necessary to maintain a surplus."

More recently, he took on reform of the public school system.

"Public education is in a shambles," the mayor said. "The school system has failed the kids."

Few in the city disagree that the current school board has created an environment fraught with racial tension and internal bickering. But many were against Mr. Flynn's drive to change to a seven-member board appointed by the mayor from a 15-member elected body.

"If there is going to be true education reform, (board members) can't just be 'yes' people for the mayor, they can't just be an extension of the mayor's City Hall family," said Joyce Ferrisbough, president of the Black Political Task Force, a 13-year-old political action group.

Some say the mayor's desire for an appointed school board was a power play good for beefing up his resume. But others say he must be sincere about reform. Otherwise, he'd be crazy to take on the high-risk responsibility for what has been an intractable problem.

"It's something other mayors in the past have not wanted to do," Mr. Tyler said. "He's willing to be held accountable."

"People said it was a power grab," agreed Ellen Guiney, the mayor's education adviser, "but it's very risky and I admire him for it."

The general public, minorities, state legislators—all will be scrutinizing Mr. Flynn's actions as well as the school board's performance.

So why, Ray?

He said he couldn't stomach the deterioration anymore: "If we don't succeed, I'm going to be severely criticized, no question about it. The easiest thing in the world is to turn around, walk away and see the school system continue to fail. I couldn't do that any longer."

School board members simply were issuing their positions as stepping stones to higher political offices, said Mr. Flynn, who has a master's degree in education from Harvard University in Cambridge, Mass.

Ms. Guiney suggests a more personal reason for tackling the problem.

SON OF A LONGSHOREMAN

The son of a longshoreman father and scrubwoman mother, Mr. Flynn deeply believes education gives poor children opportunities. He carries that concern to the national arena. One of two new committees created under his direction at the U.S. Conference of Mayors is aimed at education and family. The other deals with communications.

Conference members are thrilled to have such a high-visibility, indefatigable advocate for cities as president of their group, particularly in the year leading up to a presidential election.

"He'll breathe fire into this organization," maintained Mike Brown, conference spokesman.

He hasn't wasted much time, either. The conference dispatched a Flynn-signed letter to President George Bush Aug. 4 asking for the opportunity "to brief you" on the cities' priorities. The mayors want urban issues highlighted on the presidential campaign trail.

"We can't allow candidates for president every four years to give the so-called urban agenda pitch and walk away, never to hear from them again," Mr. Flynn said.

But the mayors said the same thing during the 1988 presidential campaign, to no avail. Willie Horton eclipsed the debate on urban issues. The electorate chose a president whose forte is foreign affairs.

In the ensuing years, city problems have escalated.

Mr. Flynn talks wistfully of the days of yore when powerful mayors such as New York's John V. Lindsay and Chicago's Richard J. Daley carried clout in Washington—clout that needs to be revived.

"When they spoke, their voices were listened to and usually responded to with support from federal officials on down. The mayors' goal is to make sure strong voices for urban America cannot be ignored," Mr. Flynn said.

HEAVY ON THE NATIONAL SCENE

Even before he stepped into the conference's presidential role, the mayor was in overdrive on the national scene. He made trip after trip in Washington to castigate members of Congress for not doing enough for the cities on drugs, homelessness, crime, jobs, education.

When everyone else's workday ends, the former Providence College basketball star from Irish Catholic South Boston often can be found on a bar stool hoisting a Guiness with the working man or singing melancholy Irish ballads by the piano into the night.

He's also familiar with the dawn, when he has been known to run the quiet streets and find a different shift of constituents to converse with.

This very public officeholder has been praised and condemned for his affinity for press coverage.

"Mr. Flynn, as we know, is a media kind of mayor. He attracts the national press," said J. Thomas Cochran, executive director of the U.S. Conference of Mayors.

That tendency can be a powerful tool for getting out the organization's and the major's agenda.

But the local media, at least, often are irked if they get drawn into what they call publicity ploys—such as when the major turns up at the scene of a fire and helps pull people out of buildings while cameras click.

They've called him "media-hungry," accused him of pursuing the press "like a heat-seeking missile," claimed he has toiled over the weekends to generate news coverage for a Monday (usually a slow news day).

Democratic Councilman Tom M. Menino laughs at the criticism.

"Ray Flynn has probably the best political instincts in the city," he said.

Few in city politics question the mayor's concern for Boston and its residents. Most praise his financial management of a city that, granted, went through boom years and high growth but has maintained its financial balance even as the economy has soured in recent years and state aid has vaporized.

The mayor has made some tough choices. He directed, for instance, that youth programs be spared the budget ax while some administrative departments were cut more than 20%.

Along the way, he has brought his constituency into the process, spelling out that effective financial management will save Boston, not rampant spending and not preservation of every program, said Mr. Johnson.

When the revenue runs out, the spending stops according to mayoral directive.

"I don't know how many times I've heard him say, 'I won't spend money I don't have,'" remarked Barbara S. Gottschalk, director of the budget and program evaluation office.

Mr. Flynn's administration has been commended for establishing an office of capital planning and producing a five-year capital plan. He has had business leaders conduct a review of city government management.

In the mid-1980s, the city has put into place a performance-based management review system. Reports on departments' effectiveness come out quarterly and annually.

Of the 1,428 criteria evaluated in fiscal 1990, about 65% "met or exceeded the promised level of service," according to the most recent annual report.

Mr. Tyler said such accountability is something not many cities have. He hopes Boston government will further the effort with even stronger measurement standards.

DEALING WITH URBAN WOES

Like any big-city mayor, Mr. Flynn still has plenty of urban ailments to deal with—crime, a police force frequently in trouble, racial tension that endures, poor schools, and persistent drug, hunger and homelessness problems. But by most measures, Boston has come a long way under Mr. Flynn's leadership.

In June, he tantalized the press with the notion that some mayor or other should run for president and then suggested he wouldn't be the worst qualified.

He has since backed off, since dallying with presidential politics may not be the wisest thing they do so close to a mayoral election.

Besides, he'd have to get up pretty early in the morning to visit all the neighborhoods in America.

Yet, with all that energy, several political observers warn not to count Mr. Flynn out of the national political scene. It's obvious that the hoop-shooting marathoner out of blue-collar Boston is tempted to go for the glory.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,419th day that Terry Anderson has been held captive in Lebanon.

TRIBUTE TO DR. HATTIE BESSENT FOR 16 YEARS OF PLACING MINORITY NURSE INTERNS ON CAPITOL HILL

Mr. INOUYE Mr. President, I rise in tribute today to Hattie Bessent, Ed.D, R.N., deputy executive director of the Ethnic and Racial Minority Fellowship Programs at the American Nurses' Association [ANA].

As the director of the ANA's Minority Fellowship Programs, which assist nurses working on their doctorates in mental health disciplines, Dr. Bessent has successfully negotiated for approximately $3.5 million to sustain two important fellowship programs.

Speaking of Dr. Bessent's work, Dean Gloria Smith of the Wayne State University School of Nursing has said that "Dr. Bessent is a visionary who has used her extraordinary talents to create an outstanding legacy for minority nurses. Through her work, she has developed a cadre of highly qualified specialists and researchers in mental health and the behavioral sciences who are particularly dedicated to working with ethnic racial minority populations and communities." Dr. Bessent's programs have assisted more than 225 nurses from the Asian, black, Native American, and Hispanic communities. Funds provided by the ANA Minority Fellowship Programs enabled the minority nurses to receive doctoral training in the behavioral sciences and in clinical psychiatric nursing programs.

Dr. Bessent's efforts have been far-reaching and extensive. She is often called upon by her colleagues in the university academy, for her expertise in administrative issues, research and methodology trends, and in developing minority content in nursing curricula. She serves the academy and minority nurse fellows in another vital way by recruiting potential faculty for schools of nursing and for the 50 State nursing associations. When funds were available, she also helped nurses working on their baccalaureate and master's degrees in a variety of nursing specialties.

Dr. Bessent's accomplishments to date have been most impressive. Her work for the ANA's Fellowship Programs began in 1977 with two Federal grants; since then she has received approximately $3.56 million from the National Institute of Mental Health for periodic renewals of the grants program. In late 1983, the ANA Baccalaureate Completion Scholarship Fund was established as a 5-year initiative and placed under the aegis of the Minority Nurse Fellowship Programs.

Dr. Bessent has also obtained considerable financial support for her fellowship programs from the private sector. For example, in both 1985 and 1988, the W.K. Kellogg Foundation approved 3-year grants to provide leadership training for minority women in mental health-related fields. In 1985 Dr. Bessent also assumed directorship of the Allstate Nursing Scholarship for American Indian and Alaska Natives, which previously had been administered by the American Indian/Alaska Native Nurses' Association. The Allstate Foundation has been funding the program since 1975.

Presently, Dr. Bessent is administering three grant programs funded by both the private and public sectors, all of which support and further the education advancement of our Nation's minority communities.

Mr. President, since 1975, 225 black, Native American, Asian, Hispanic, and Native Hawaiian nurses have received fellowship support through ANA programs for their doctoral training in the behavioral sciences and clinical psychiatric nursing. They have matriculated at more than 50 institutions of higher learning across our Nation, including schools in Hawaii and Puerto Rico. Further, 125 of the nurses have earned doctorates and are actively teaching, conducting research, and providing clinical services for our Nation's minority populations.

One of Dr. Bessent's finest accomplishments has been the development of the Minority Legislative Fellowship Programs on Capitol Hill. Since 1977, the Legislative Internship Program has given 57 minority nurses a firsthand experience in understanding the relationship between our Federal health care policies and the political process.

The innovative Legislative Internship Program allows the participants to directly observe the relationship between our Federal health care policies and the political process. They are prepared to be involved actively in the legislative process as individuals and as members of various nursing organizations.

My office has hosted a number of minority nurse interns, and I can attest that the individuals selected by Dr. Bessent have consistently demonstrated enthusiasm, professionalism, and outstanding leadership capabilities. They have contributed important insights into the value of our Nation's Federal health policies to those who are most in need. As many of us know, Dr. Bessent works tirelessly with agencies to give her interns a full appreciation of the legislative and administrative processes. Dr. Bessent's students are a tribute to her own compassion and dedication.

Hattie's activities are not limited to Capitol Hill nor to the Federal Government. She also participates in numerous site visits to nearly 50 universities across the Nation where her nurse fellows have been enrolled. Her site visits have in turn served as recruiting trips for new applicants and provided her with opportunities to consult on such diverse topics as minority content in nursing curriculums, administration and management curriculums, assertiveness training, and the importance of networking and mentoring. She also provides an important job placement service, identifying prospective employees for a wide range of accredited schools of nursing and the 50 State Nurses' Associations, and publishes four monographs, and a newsletter publicizing the successes of the Minority Fellowship Program. The newsletter and monographs are sent to all accredited schools of nursing throughout the country.

Dr. Bessent is a highly respected leader in the fields of psychiatric nursing and educational psychology. As an educator, she has lectured on cultural aspects of the delivery of mental health services, and conducted research in the mental health aspects of the development of young children in longitudinal studies. She has taught diverse courses in the mental health of the young, personality development, approaches to mental health therapy, curriculum development and nursing research. She has also participated in numerous conferences addressing the delivery of mental health services to minority patients and discussing nursing and minority cultures.

Further, Dr. Bessent has accomplished a series of firsts for herself, for people of her race, and for her profession. She was the first black nurse to head a hospital psychiatric unit in her hometown; the first black person to work at Vero Beach Hospital as a laboratory and x-ray technician; the first black person in the South to receive a Federal career teachers grant; the first black nurse in Florida to receive a doctorate; the first black person to receive a diploma as a mental health consultant from Tulane University; and the first black nurse in the South to receive a fellowship from the American Council on Education for an administrative internship.

Dr. Bessent was the first black nurse in the South to be inducted as a member of Phi Delta Kappa; Sigma Theta Tau, for nurses; Phi Lambda Theta, for educators, and Phi Delta Kappa. Dr. Bessent is also a member of Delta Sigma Theta Sorority. She was the first black woman and nurse to become a faculty member of the University of Florida at Gainesville; the first black woman to receive tenure in the Florida State University system; and the first black person to become dean of the Graduate School of Nursing at Vanderbilt University.

She was appointed by President Carter as the only black member of the Presidential Task Force for a Friendship Treaty to China, and served as the only black nurse on the Presidential Commission on Mental Health. She was also invited to participate in conferences in New Zealand and Egypt where she presented papers discussing her work on homelessness and runaway youth. Today she is the only black professional nurse deputy executive director on the staff of the American Nurses' Association.

Among her other honors are the Meritorious Distinguished Alumna Award, the highest award given an alumnus, from Florida A&M University in 1980, which also awarded her the first honorary doctorate it had ever conferred on a woman. Dr. Bessent is listed in "Who's Who Among Black Americans," and "Contemporary Minority Leaders in Nursing." He latest article, "Postdoctoral Leadership Training for Women of Color" was published in the September–October, 1989 issue of the Journal of Professional Nursing.

In citing the work of Dr. Bessent, Dr. Beverly Malone, a former minority fellow and current dean of North Carolina's Agricultural and Technical State University School of Nursing says, "Dr. Bessent creates an environment that facilitates and supports the strengths of minority nurses. She is a humanitarian, an able administrator, and an incredible fundraiser. She is a fighting spirit with a clear sense of mission, whose work has broken many barriers and made the nursing profession a broader and more diverse place for many people to stand." She has dedicated her entire professional life to assisting others, be it patients, families, or nurses.

Mr. President, I am pleased today to honor Dr. Hattie Bessent and her minority fellowship recipients and to commend Dr. Bessent's sincere efforts on behalf of our Nation's citizens. She has been an outstanding role model for both her professional colleagues and for future generations of minority students. She has displayed impressive expertise and knowledge of the legislative process and demonstrated the positive long-term consequences of being actively involved in the political process. Her legislative internships have enabled many leaders of tomorrow to assist actively in bettering the health care of our citizens. Very few can match her accomplishments and dedication.

RESURRECTING THE MIDDLE EAST PEACE PROCESS

Mr. LEAHY. Mr. President, the peace treaty signed by Egypt and Israel 13 years ago was a historic event, and an act of great political courage. President Carter staked his personal reputation on the success or failure of those negotiations, as did President Sadat and Prime Minister Begin. Despite great opposition within their own countries, they embraced a unique opportunity for peace that had long eluded them.

History recounts how fleeting these opportunities are, and how often they are lost for lack of courage or initiative, lost perhaps forever.

The Middle East peace conference is one of these historic times.

Despite our great hopes and expectations, the Camp David accords did not signal the beginning of a comprehensive peace between Arabs and Israelis. Over the years the Middle East peace process has come to represent little more than the memory of Camp David. The intifada was the latest manifestation of how little peace was left in the process.

Suddenly, all of that has changed. The Soviet Union is no longer a super power. Iraq's military might has been crippled, as has the myth of Arab unity. Regional conflicts around the globe are ending. And this week, Arabs and Israelis will take the first tentative step toward each other across a bridge spanning a chasm formed by half a century of hatred and distrust.

President Bush and President Gorbachev have opened the Middle East Peace Conference in Madrid, culminating a marathon effort in diplomacy by Secretary Baker. It is a historic opportunity for solving what is unquestionably the most dangerous regional conflict of all. The outcome of this Conference has enormous stakes for the entire world.

President Bush and Secretary Baker deserve to be commended for their skillful diplomacy and their stubborn perseverance in overcoming obstacle after obstacle to reach this point. Now, it is up to Israel and the Arab parties themselves to take advantage of an opportunity so hard won and so easily lost.

Mr. President, the Middle East is a safer place today because of the military defeat of Iraq. But it is all too clear that Iraq's defeat did not bring peace to the Middle East.

It would be unforgivable if after the United States sent half a million men and women into war to defeat Iraq, and after all the dramatic changes in the world that have created this opportunity for peace, we and the Arabs and Israelis did not do everything possible to get a constructive dialog started which might lead to real peace.

That is why I supported delaying action on the Israeli loan guarantee issue. President Bush said he needed to defer debate on that issue to make this historic Peace Conference possible. Congress heeded his request.

Our expectations must be kept at a realistic level. If this process is to succeed, it will be long and arduous, requiring patience and determination from all participants. We cannot become so discouraged that we abandon this cause, for this chance may not come again in our lifetime. It is important that we persevere.

The formal Conference will be difficult. That is to be expected. Each side will restate extreme positions, that are as familiar to us today as they have proved irreconcilable in the past. But the real test will be whether the parties can proceed to discussion of underlying interests. Face to face negotiations with the Arab parties has been sought by Israel for more than 40 years, with United States encouragement and backing.

As Prime Minister Shamir said, "we have to begin because * * * without negotiations, we will never get peace."

My best wishes go to President Bush, to Secretary Baker, to Prime Minister Shamir, and all the other participants in the Peace Conference. All sides have shown restraint just in getting this far. They must keep in their minds a larger vision of what peace—real peace—could mean to this region.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

CIVIL RIGHTS ACT OF 1991

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will resume consideration of S. 1745, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Danforth/Kennedy amendment No. 1274, in the nature of a substitute.

(2) Grassley modified amendment No. 1287 (to amendment No. 1274), to establish the Office of Senate Fair Employment Practices in order to protect the right of Senate employees, with respect to Senate employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age or disability.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New Hampshire is recognized for purposes of offering an amendment. There will be 30 minutes of debate equally divided and controlled in the normal form.

The Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I thank the Chair.

I believe it would be proper to wait until the managers have arrived rather than do this in their absence.

I make a parliamentary inquiry. If I should declare the absence of a quorum, will we still have 30 minutes equally divided from the time the debate starts?

The ACTING PRESIDENT pro tempore. There will be 30 minutes equally divided when the debate commences, which will occur at such time as the Senator offers the amendment.

Mr. RUDMAN. I thank the Chair.

In light of that, I think it would be good to have the managers and possibly the majority leader here, so I will suggest the absence of a quorum.

Mr. ROBB. Mr. President, will the Senator withhold?

Mr. RUDMAN. I withhold.

Mr. ROBB. Mr. President, if not out of order at this point, I would like to address the Senate on the bill itself in the absence of the managers before we get started on the amendment to be offered by the Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I certainly have no objection to that. The majority leader has set the order up for 12 o'clock. Obviously, people are not quite ready. I do not know how long the Senator desires to speak, but I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Virginia is recognized.

Mr. ROBB. Thank you, Mr. President, and I thank my friend and colleague from New Hampshire.

Mr. President, I rise in support of the Civil Rights Act of 1991. I am, of course, pleased that the President has now agreed to support the bill, that he has now acknowledged that the bill does not require quotas. I am glad that we have been spared a repeat of last year's acrimonious debate. And I am pleased that we will not have to go another year with remedies for employment discrimination severely weakened.

Sadly, those remedies are still needed. Great challenges still face religious, racial, and ethnic minorities and women in our society. Human nature has not yet advanced to the point at which individuals are measured by their humanity and not their gender or skin color. Achieving such a society requires the full measure of intellectual creativity and resources of every Member of this body and, indeed, all Americans.

That is why it is especially unfortunate that the President and the Congress have been distracted from that challenge by the fuss over this one relatively modest bill. For all of the heat generated by the bill, it is not a breakthrough; indeed, it is largely restorative in nature. This act restores the civil rights remedies which were taken away in the late 1980's by the new majority on the Supreme Court, and it gives to women, religious minorities, and the disabled the right to sue for damages when they have been intentionally discriminated against.

The President's current position on the bill, while certainly welcome, merely confirms what most informed observers of the debate knew all along—and that is that quotas were largely irrelevant. Any legitimate concerns about quotas were resolved, in my view, before the civil rights bill ever reached the floor of the Senate. In fact, if I thought the Civil Rights Act was really a quota bill, I would have strongly opposed it because I believe that mathematical formulas are counterproductive and demeaning.

I hope that the stake has been driven through the quota issue once and for all. It arose because opponents didn't like a bill which increased the number eligible for damages, but they simply couldn't come out and defend a system with the existing inequities. So they began talking more and more about quotas. They took an issue of employment law, which is fundamentally an issue of employers versus employees, and turned it into an issue of worker against worker. An issue involving employee suits against employers was twisted into an issue of black workers taking the jobs of white workers. And in doing so, opponents found an issue that worked politically.

Mr. President, even the House's addition of language explicitly forbidding quotas wasn't enough to placate those opponents, and much of the American public to this day thinks the proponents of this bill are trying to push quotas.

So where did this quota argument come from? It came out of a section of the bill which involves so-called disparate impact cases. These cases are brought when an employer hires disproportionate numbers of white or male applicants from the qualified applicant pool. In the landmark case of Griggs versus Duke Power, a unanimous Supreme Court found that the civil rights laws prohibited employer practices which had the effect of discriminating and were not justified by business necessity. Under Griggs, an employer's requirement that employees have a high school diploma to shovel coal, a practice which disproportionately screened out black applicants, was struck down as unrelated to business necessity. Griggs, then, had nothing to do with giving minority groups preferential treatment; it had to do with removing discriminatory barriers which were unrelated to job performance.

This act seeks to lift an unreasonable burden from the backs of women, religious minorities, and the disabled. In 1989, the Supreme Court unilaterally disposed of 18 years of case law when it overturned Griggs in the case of Wards Cove Packing versus Atonio, and shifted the burden to employees of proving that discriminatory practices are not significantly related to a legitimate business objective. Clearly, that burden is virtually impossible to meet.

There has been something of a consensus from the beginning that we needed to return to the old Griggs standard. That is to say, when a disparate impact is shown, and an employment practice can be identified as responsible for that impact, the burden shifts to the employer to show why the employment practice is justified by business necessity.

The problem was that Griggs was not a tightly written opinion. It contained at least six different articulations of the "business necessity" standard. So the opponents chose the definition most favorable to employers; the proponents adopted the one most favorable to employees. When the civil rights bill was first introduced in February 1990, it was argued—plausibly, in my judgment—that the standard adopted did more than merely restore Griggs and was so tough that a few employers might throw up their hands and resort to quotas in order to avoid litigation.

But that problem was dealt with in May of 1990 when I joined Senator DANFORTH and several other Senators in suggesting to Senator KENNEDY language which sought to restore the Griggs standard. Senator KENNEDY agreed to make the changes, and long before the bill even hit the Senate floor, the legitimate quota issue was resolved.

Why, then, was such a flap created about quotas? In part, because the quota bill charge was accepted by the media as a focus of debate without examination of its accuracy. As commentator Michael Kinsley has pointed out, "Not one television or newspaper discussion in 20 on the quotas controversy has troubled to point out that Bush's alternative bill would also shift the burden of proof to the employers." Nor is it often pointed out that the Griggs decision, which was the law for almost two decades, placed the burden of proof on the employer.

A perfect illustration of the problem appeared in this morning's Washington Post. In an op-ed column entitled, "It Was a Surrender to Quotas," Rowland Evans and Robert Novak make the same mistake many others have made. They say: "Exposure of up to $300,000 in damages will require employers to avoid lawsuits by establishing quotas for racial minorities."

Well this just isn't accurate. First of all, the damages section applies to individual cases of intentional discrimination—where the statistical makeup of the workforce is irrelevant. Second, even if damages were somehow linked to quotas, that would argue that the bill would result in quotas for women, the disabled, and religious minorities, not racial minorities, as stated in the column. Racial minorities may sue for unlimited damages now, with or without this bill.

When the issue is so racially charged as quotas, we have an even greater responsibility to get the basic facts right.

In a sense, the President and Congress have been in heated agreement about the problem we were trying to solve. And the heat was generated by the emphasis on differences between our plans rather than the broad commonalities, on argument rather than agreement, and on partisanship rather than policy.

The underlying substantive debate, all along, was not about disparate impact or quotas but about damages in cases of intentional discrimination. Should women be allowed to sue employers in cases of intentional discrimination, the way minorities currently can? That prospect is what had employers up in arms. Not quotas, but damages. I happen to support giving women, disabled Americans, and religious minorities the same scope of remedies available to those who suffer racial discrimination, and will support such subsequent legislation when it is offered. The current hierarchy of remedies simply makes no sense. Under existing law, a black woman can sue for damages for racial discrimination, but if she suffers gender discrimination, she's out of luck. Discrimination is wrong, and is not more or less so depending upon the demographics of its victim.

Earlier this month, the public's consciousness was raised dramatically on the issue of sexual harassment. To the extent that anything good came of that unfortunate episode, it was that with the help of Senators WIRTH and MIKULSKI and others, the focus returned to the true essence of the bill: Whether women, religious minorities, and disabled Americans should be treated equally under the law. And, now, we have a bill. It is not a perfect bill by any means. It does not give women equal remedies. But it moves in the right direction, and the divisive language of quotas is, at least for the moment, behind us.

The passage of this legislation is important: It strikes out at discrimination in meaningful ways. But clearly, greater challenges lie ahead. We're going to have to be able to capitalize on the new willingness of both sides to move forward, to mount what Martin Luther King called the second phase of the civil rights revolution, which unites people of all colors and empowers them to realize their full human potential.

This bill is a springboard to greater achievements. It is not an end; it is but a beginning upon the long road to a society in which people are defined not by gender or race, but solely on their capabilities. I look forward to working with Senators KENNEDY, HATCH, DANFORTH, WIRTH, MUKULSKI, and others in going forth with this important task.

Mr. President, I thank you. I thank my colleague from New Hampshire for allowing me this particular time.

I yield the floor.

If no current Senator is seeking recognition, I suggest the absence of a quorum.

Mr. RUDMAN. Will the Senator withhold?

Mr. ROBB. The Senator does withhold.

The PRESIDING OFFICER (Mr. GORE). The Senator from New Hampshire is recognized.

Mr. RUDMAN. Mr. President, it is my understanding, under the previous order, we will now have 30 minutes for debate on the amendment which I am about to offer.

The PRESIDING OFFICER. The Senator is correct.

Mr. RUDMAN. I have checked with the majority leader and it is his wish that we proceed. Senator DANFORTH, I see, is on the floor. Senator GRASSLEY, who is on the floor, is a cosponsor of the amendment now pending.

AMENDMENT NO. 1290 TO AMENDMENT NO. 1287

(Purpose: To require the President or a Member of the Senate to reimburse the appropriate Federal account for any payment made on their behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made)

Mr. RUDMAN. So, with that, Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. RUDMAN] proposes an amendment numbered 1290 to amendment No. 1287.

At the end of the pending amendment, add the following:

SEC. . PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on their behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

Mr. RUDMAN. Mr. President, before I address this particular amendment, in light of the very interesting and full debate of the underlying constitutional issue, this morning I would just like to read into the RECORD from the Federalist, Madison No. 51, the following statement:

> * * * In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of others. * * * It is equally evident that the members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. * * * But the great security against a grad-

> ual concentration of the several powers in the same department consists of giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of the attack.

No one has ever said it better and no one ever will, on the doctrine of separation of powers and particularly as we are concerned with the speech and debate clause.

My amendment is a very simple amendment. It provides that the President and Members of this body shall reimburse the Federal Government for any payments made to an individual where the President or the Senator was found guilty of engaging in discrimination or sexual harassment. If the President or a Member of this body discriminates against someone on the basis of race or sex or engages in sexual harassment, should the American taxpayer be forced to pay the tab? That is the issue before us. The underlying Grassley-Mitchell amendment, although it attempts to put Members of the Senate and the President in the same position as the average taxpayer, nonetheless fails by requiring the final bill to be paid by the taxpayer.

Last night the majority leader argued that the pending amendment may be unconstitutional, and I assume he was referring to the immunity clauses of the Constitution. But, of course, the underlying amendment is obviously unconstitutional, so, at very best, it is a matter of degree. I would say that the real question is, if we are going to roll the dice on this constitutional question as I expect we are going to, should we roll the dice at the taxpayers' expense or should we roll the dice at our own expense? This amendment ensures that we roll the dice on our own expense.

Last night, in an exchange with my distinguished friend from Maine, the majority leader, he mentioned the fact that companies pay damage awards, not individuals. Of course, that is a neat shorthand, but it just defies practicality. In my State, as I suspect in his and most of our States, many businesses are sole proprietorships, small family corporations, small partnerships employing a few hundred people or less. And if there is a judgment it comes out of the pocket of the owners of that business. As a matter of fact, if a judgment were held against a major U.S. corporation, it eventually comes out of the pockets of the owners; that is, the stockholders. So, obviously, to say that if a Member of this body is involved in discriminating against a person because of gender, national origin, or age, that somehow the taxpayer should reimburse us for our misdeeds and mischief defies any logic.

Of course, the argument was also made that when the head of a Federal agency is sued with a successful outcome by plaintiff, then, in that event, the Federal Government pays. That is true. But, of course, if the Secretary of Defense is named in an action because of something that some subordinate did, 20,000 people removed from the Secretary, it is unlikely and it just does not happen that the Secretary is aware of the event complained of, and, thus, the Federal Government properly pays the resulting judgment.

Let me make it clear that in this amendment if a staff member or a committee director or one of the supervisors of the various service departments discriminates, then the Federal Government will, in fact, pay. That is the corporate model. But if a Member of the Senate is guilty of discrimination over the small number of people that we employ, then we in fact should be liable. I hope that this amendment serves the interests of making sure that we truly have some leverage here, and that we are really going to attempt to obey these laws. The best way to obey these laws is to have the threat out there that, if you do not obey the laws, it is your pocketbook that will reimburse plaintiff, not that of the already overburdened American taxpayer.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from New Hampshire has 9 minutes remaining; 15 minutes in opposition will be controlled by the majority leader.

Mr. RUDMAN. I thank the Chair and I presently yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. RUDMAN. I yield 5 minutes to my distinguished colleague from Maine.

The PRESIDING OFFICER. The distinguished senior Senator from Maine.

Mr. RUDMAN. I am surrounded by my colleagues from Maine this morning.

Mr. COHEN. Mr. President, a journalist turned novelist, Allen Drury, wrote some years ago:

> (T)he Senators of the United States, so human, so certain and so confused, so noble and so petty, so statesmanlike and so expedient, so wonderfully representative of their own human, likeable, certain, confused, noble, petty, statesmanlike, expedient country, will of necessity play a great and vital part. That they and their colleagues in the House will play it as the country would is certain, for here on the Hill, in a way that is the wonder and strength of America, they are the country.

He was writing about a time and place which may no longer reflect the country. We are supposed to mirror the people that we represent. And yet, according to the polls that were cited by my colleague and friend from New Hampshire last evening, that no longer seems to be the case. There is great discontent in this land. There is great anger and frustration because people see their dreams evaporating. They see the chance for their children to have a better opportunity for the future disappearing and they see their prosperity shrinking.

Part of that is due to the perception of what takes place here in Washington, the check-kiting, the restaurant tabs over in the House, the Thomas hearings here in the Senate. They are symbols of something that the American people feel has gone terribly wrong.

Basically, I think, it is because we in public office from the Presidency to the House of Representatives, and perhaps even down to the State level, have not been honest with the American people. We have held out false promises. We have told them that they could prosper while plundering their savings, they could achieve success without discipline and sacrifice, and all we needed to do was to take the shackles off the entrepreneurs in this country, to deregulate our economy. Let the economic Darwinian forces loose from the Government cages and all would be well.

And, what we have witnessed has been the S&L scandal, the Ivan Boeskys, the Mike Milkens, and others, who have walked away with millions while we prayed at the altar of mammon. Now we are in dire economic straits, and we are not sure there is a way out. There is, of course, but it is one that is going to come with pain and sacrifice and the deferral of gratification, and the restoration of a sense of a commonweal or the common good. But that is going to require that we level with the American people and we deal with them candidly and no more campaign spins and that we let them, above all, know that we are in this ship of state that is taking on water right along with them.

That brings me to the point of accountability. The purpose of the amendment offered by my colleague from New Hampshire is to establish accountability. Under the amendment as written, there is no penalty imposed on a Member who engages in wrongdoing. It is another form of congressional immunity, as such. So, for us to stand here in the Senate saying we are finally going to take action which reduces this privileged palace to ordinary human dimensions, that makes every Member of the Senate and the President subject to the same rules and regulations, obligations, and responsibilities that the average American businessman and businesswoman is subject to, is simply not accurate. It is not accurate and it is not a fair representation. Because, if we engage in wrongdoing, if we discriminate based upon race or sex or some other factors, if we engage in harassment, we do not have to pay. We just send the bill to Uncle Sam.

Now, that is something I think the American people will not see as an honest attempt to reduce office holders to a level of equality.

So, if we are going to attempt to tell the American people we are with them, that we are going to remove privileges, that we are not going to act in a way that is inconsistent with the rules and obligations that they have to respond to, it seems to me we have to insist that when we do wrong we have to be held accountable in a fashion comparable to that of the average citizen.

There is no equal accountability under the Grassley amendment as written. Perhaps political accountability, in that if we were to engage in such conduct, the voters would throw us out of office the next time. But that seems to me to be little consolation to the American people for us to say that if a judgment is awarded—be it $50,000, $100,000, $150,000—to just send the bill to Nicholas Brady and he will take care of it, and dock the American people for the costs.

I hope that my colleagues will join the Senator from New Hampshire and support this amendment.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. MITCHELL. Mr. President, I yield myself such time as I may use. Does the Senator from Iowa want some time? I will yield 5 minutes to the Senator from Iowa now.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise in opposition to this amendment. I think it is a very difficult amendment to speak against from the standpoint of the way the Senator from New Hampshire approaches it, because he wants to make it look like we are being inconsistent.

The Senator from Maine just spoke about consistency, asserting that there will not be any accountability. What is very important about our amendment, Mr. President, the Grassley-Mitchell amendment, is that we are totally consistent—totally consistent. That is the basis of the amendment: that employees of the Senate who are harmed will receive fairness and equity as employees of the Federal Government, the same treatment employees in the Defense Department or employees in any other department of our Government receive.

The Grassley-Mitchell compromise is designed to ensure that employees of the Senate who have their civil rights violated have the same remedies for that discrimination as employees in the Federal sector and the private sector. There is not some new approach carved out in our legislation just to protect Senators or to treat us differently than any other people in a like situation in the Federal Government.

These remedies of Government employees that I speak of include the right to secure and to collect judgments against their employing institution for acts of discrimination by officers or fellow employees of the institution. Employees of the Senate should have rights equivalent to employees in the Federal sector and the private sector who are already covered by title VII. An employee of the Federal sector who is discriminated against by a fellow officer of the Federal Government has, under existing law and under the language of the pending bill, a cause of action against the employing institution—an agency or an arm of the Federal Government. When a person wins a money judgment against any Federal agency, the judgment is paid out of the Federal Treasury. The United States Code has specific provisions for the appropriation of necessary amounts from the Treasury in these cases where there has been discrimination for awards, settlements, interest, and costs assessed against an employee of the Federal Government.

On this issue, I see no reason why the Senate should be treated any differently than any other arm of the Government of the United States. So from that standpoint, I tell the senior Senator from Maine, there is total consistency on the part of our amendment. Employees must be assured, Mr. President, of the certainty of their ability to collect a judgment against their employer in the event they are damaged by an employer in violation of a law. Consequently, the Grassley-Mitchell compromise tracks the existing civil rights laws in allowing judgments against the Senate for acts of its employees which violate the civil rights laws and then allowing the payment to be appropriated from the Treasury.

It may be that a disproportionate number of the Members of the Senate are blessed with the financial means to pay large damage awards. That is not true of all Members of the Senate. It is not true of most officers and employees of the Senate. It is not true of most people who are employed anywhere in the Federal Government who could likewise have a charge of discrimination filed against them. To ensure that victims of discrimination within the Senate have the same ability to be compensated for their losses as employees in the Federal and private sector, we must grant these employees the right to recover.

As my colleagues know, I am not a Senator who is quick to reach into the Federal purse and spend the taxpayers' money. I do not believe that allowing employees of the Senate to collect judgments from the Treasury for discriminatory acts against them by individual Senators will place a significant burden on the public fisc. Perhaps the proponents of the Rudman amendment expect individual Senators to be successfully sued for discriminatory employment practices on a regular basis. I think it is more likely to be a rare occurrence, because I am confident that Senators currently conduct themselves in conformity with the law, and I know they will continue to do so.

If there really is a problem with allowing money judgments to be collected against the Senate, than perhaps we should question the wisdom of allowing actions for money damages generally. The pending bill significantly expands the availability of money damages, compensatory and punitive, as a remedy for violations of the civil rights laws. It would allow plaintiffs to collect judgments from the Treasury for discriminatory acts by officers and employees of the Federal Government. If a Senator is truly concerned about the burden on the taxpayer, I urge him to abrogate the liability of the taxpayers for discriminatory conduct throughout the Federal Government, not just in the Senate,

The fact is, Mr. President, that the taxpayers always bear the costs of discrimination. They may bear the cost through the expenditure of public funds in payment of a judgment against the United States, or in increased prices of the products of private defendants who are financially exposed to judgments under the civil rights laws. If we enact compensatory and punitive damages as a remedy for violations of the civil rights laws, we are effectively concluding that the cost of discrimination should be primarily borne by the party most capable of keeping such conduct from recurring. In order to ensure that the Senate is an institution devoid of discrimination, we must require the Senate to pay for any discrimination it tolerates on the part of its Members, officers, or employees. I urge my colleagues to protect the rights of employees of the Senate by voting against this amendment

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. RUDMAN. How much time would the Senator like?

Mr. CHAFEE. Two minutes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I rise in support of the amendment of the distinguished Senator from New Hampshire. Let us just take an example. Let us say there is a gender discrimination case that is brought by a woman complainant or a sexual harassment case. She brings her complaint. She goes through the steps and is awarded compensatory damages. She collects from the Federal Government. There is no waiting around for her. She collects.

That was one of the points that was raised last night: Should she have to wait until the Senator comes up with the money? No. She collects. She collects from the Federal Government.

The point we are discussing now is whether the Senator who is judged directly responsible should reimburse the

Federal Government. This is different. But the distinguished majority leader last night made a splendid case, as he always does. He is extremely persuasive, and he pointed out that we are proceeding in a different fashion, and he did not want to hear any further talk about being exactly like the private sector. So we accept that.

In other words, in a way this is the Mitchell amendment, if I might say. I am not sure he would agree with that. So we are providing here that the Senator who is responsible, and indeed he has to be directly responsible, reimburses the Federal Government. What is the matter with that? Should the taxpayers pay for the transgressions of a Senator? Of course not. And those who vote against the amendment of the distinguished Senator from New Hampshire are saying let the taxpayers pay the burden.

I might say, we are not exactly an underprivileged class around here. Last I knew, everybody was getting paid $125,000 a year. So we are not picking on some poor, penniless Senator.

So, Mr. President, I do hope—I know my time has expired—I do hope all my colleagues will support this very worthwhile amendment.

The PRESIDING OFFICER. The Senator's time has expired. The majority leader.

Mr. MITCHELL. Mr. President, this amendment can be summed up in two words. It is a poison pill amendment, poison pill intended to kill the underlying amendment and to have no provisions affecting Senators or Senate employees.

The Senator from New Hampshire has been very open, very aggressive, very persuasive in his arguments against any efforts to subject Senators or Senate employees to this type of provision. Having failed to have it declared unconstitutional, he now comes up with an amendment which will be politically embarrassing for a Senator to vote against in the hopes that he can so burden this provision with an unpalatable amendment that the Senate will then vote the whole provision down.

I understand, accept, and respect his position, but I say to my other colleagues who spoke who, with such piety, have told us why we have to get the Senators involved, this is the height of inconsistency, the height of inconsistency to say you are going to support this amendment because you want more coverage for Senators when the obvious purpose of this amendment is to kill any coverage for Senators. That is what this is. It is being offered by the same Senator who told us last night that there should not be any coverage; that it was unconstitutional. Having failed in that effort, now he comes forward with a poison pill.

And we have Senators here saying they are for more coverage for Senators when the whole objective of this is to have no coverage for Senators. I think if the American people can see through anything they can see through this transparency.

Second, Mr. President, we are told that there is no accountability. Well, section 219 of this Grassley-Mitchell amendment reaffirms rule XLII of the Standing Rules of the Senate. A Senator found guilty may be expelled from the Senate. That possibility exists. A Senator may be censured. A Senator may be subject to other disciplinary action. I say that is accountability. Are Senators here unconcerned about the possibility of being censured, or punished, or expelled from the Senate? Is that not something of accountability? I think it is. I respectfully disagree.

Third, this amendment, according to the Senator from New Hampshire himself, sets up two completely different standards. If the Senator is the subject of the action, he or she must repay any judgment. If any other Senate employee is the subject of such action, he or she need not. And but for the president every single member of the executive branch is permitted to have the Government make the payment and is not required to reimburse it.

Well, if it is good for the Senators and the President, why is not it good for everybody else? Why the double standard? We have heard a lot of talk about treating everybody the same. Yet we now heard an argument in favor of creating a double standard.

Now, Mr. President, let us be clear on this. Most of these cases involve back pay. That is what we are dealing with. Back pay, pay that is already paid by the Government. An American citizen listening to this debate might think that the Senator from New Hampshire, the Senator from Maine, and the Senator from Rhode Island pay their staffs themselves. Everybody knows they do not do that. The Government pays their staffs. And so if the Government is paying their staffs, and an action involves back pay of a person, what is wrong with the Government making that payment? We have yet to hear that. Perhaps these Senators in their zeal to be treated in a certain way will now volunteer.

Mr. COHEN. Will the Senator yield?

Mr. MITCHELL. They will now volunteer to pay their own staff salaries and thereby relieve the taxpayers of that burden. That is the logical extension of the argument being made here, and they can demonstrate that this is not just rhetoric; they are serious about this. They are going to pay their staff salaries. Just as they do not want the Government to pay if there is back pay, they can pay their staff salaries now.

Is the Senator rising to volunteer?

Mr. COHEN. Will the Senator yield? What I want to ask the Senator, my friend, does the Government pay for harassment of an employee? While the Senator confined it simply to back pay, this includes also the prospect of harassment. I do not think it is fair for Senators to say, well, let us just stick the taxpayer with the bill for a judgment for sexual harassment.

Mr. MITCHELL. And as we all know the overwhelming majority of suits brought under these laws have been back pay suits. Harassment suits are a rarity, so we ought not to be legislating on the rarity and ignoring the rule.

Mr. COHEN. That may very well change.

Mr. MITCHELL. Now, Mr. President, I have a couple more points I would like to make.

First off, let us make it clear that with respect to the private sector, title VII provisions of the 1964 Civil Rights Act prohibiting discrimination do not apply to companies with 15 employees. The Americans With Disabilities Act provisions do not apply to companies employing less than 25 persons. So all of this talk about how somebody out there in the private sector is going to get stuck with this, pay it himself, if the Senators are having the Government do it, it does not apply to the majority of companies because they are exempted from the provision of these laws based upon size.

Mr. President, I am going to repeat—I want to reserve a little bit of time to close—I want to repeat, this is obvious. This is a poison pill amendment. A Senator who does not want any coverage of Senators whatsoever, a Senator who wants to accept the argument made by the Senator from New Hampshire last evening that there should not be any coverage of Senators whatsoever, ought to vote for this amendment because that is the purpose of this.

It is plainly and obviously intended to defeat the majority effort and to have no coverage of Senators whatsoever. And that is the point of view that as a rationale, a force of argument—and in fact 22 Senators voted with the Senator from New Hampshire last night—those 22 Senators would be consistent in voting for this amendment. But those Senators who profess to want Senate coverage and who make all these statements about it ought to be more and then vote for this amendment, they are in fact saying one thing and doing another, because this is an effort, clear, unmistakable, to kill the underlying provision, to accomplish today what the Senator from New Hampshire could not accomplish last night.

I respect him for his openness about this. He does not want this provision. He has said no. But that is different from the other arguments which have been made which have not been to kill the thing but somehow to improve it. This is the kind of improvement that will produce a corpse of this provision, and that is what Senator GRASSLEY and I do not want.

Mr. President, I reserve the remainder of my time.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I compliment the esteemed majority leader. I knew him as a Federal judge. I knew him as a U.S. Federal District Attorney. He has demonstrated advocacy of a remarkable fashion, because I do not think he really believes what he just said. And I say that with respect.

Mr. MITCHELL. That kind of respect I can use less of.

Mr. RUDMAN. Mr. President, let me just make a couple of points. Obviously, the majority leader understands that the Senate is presently covered by all of these bills. We have a process. My amendment is a new way to handle it. And my objection has never been to having these rights available.

My objection is a very narrow one, and one which someday soon will be constitutionally upheld I believe, and that is that we ought not to have cases go to Federal courts. That is my only argument with this. The rest of this is fine. We ought to do exactly what was in one of the original proposals with all of the in-house appeals, judgments, and so forth.

There is no question in my mind that that is the position that is held by many here, although I would say that there has been some concern expressed.

Finally, I would only make this observation. It is true that I want this to fall constitutionally. The majority leader is absolutely correct. There is no question that my amendment might aid in doing that. I agree with him. And that certainly, as I said in my statement, was one of my reasons for offering it.

But my overriding reason for offering it is simply this. If we are going to roll the dice constitutionally, let us roll it on our own pocketbooks. Let us not roll it on the taxpayer's. That is why I am offering it. It will either rise or fall. But if it should rise, then I believe we should be in error. I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader has 2 minutes 20 seconds.

Mr. MITCHELL. Mr. President, I have 2 minutes left. Although I am reluctant to do so because of the incisiveness of his argument in opposition to me, I will yield 30 seconds to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I thank the majority leader.

I just want to say once again he has demonstrated this extraordinary ability to present a brilliant case on behalf of terrible facts and situation.

Let me just say, he has characterized this as a poison pen. I voted against the Rudman amendment last evening. I want to see something take place, but I want to see something fair take place, and I do not think the taxpayers should bear the freight.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, it is a poison pill amendment. The author has acknowledged he does not want this thing to pass. Those are not my words; those are his. So, if a Senator votes for this, he is voting to kill any provision as contained in the Grassley-Mitchell amendment. It is not often that the author of the amendment and the principal opponent agree on that. So if the Senator from Rhode Island casts a vote for this amendment, he is in effect saying he does not want any coverage for Senators.

That is what the vote is saying.

Mr. CHAFEE. That is the way the Senator characterized it.

Mr. MITCHELL. As opposed to what the speech is saying because that is the obvious intent, it is the stated intent, it is the acknowledged intent of the author of the amendment.

Mr. President, I just want to repeat, we have a very serious problem. We are trying to accomplish coverage of Senators and their employees to provide protection for the employees similar to that accorded to other persons under law and to do it in a manner consistent with the Constitution.

Now, obviously this is a middle ground. Senator RUDMAN is coming at this provision from one side. As soon as we dispose of this amendment, Senator NICKLES is going to come at it from the other side. We are seeing an effort to defeat this coverage from both sides. I say, Mr. President, that the best thing we can do is to adopt the Grassley-Mitchell amendment.

It is fair and responsible way to deal with the serious problem. It provides protection to the employees in a manner that is consistent with the Constitution.

I will say that any Senator who votes for this amendment is saying by that vote that he or she does not want any coverage of Senate employees, period. He is trying to kill it. And he will kill it if this is adopted.

I urge my colleagues not to adopt the amendment.

Mr. DURENBERGER. Mr. President, I oppose the amendment that extends the liability for violations of our civil rights laws to individual Senators. I think it is an unprincipled amendment that constitutes bad policy, and therefore, I urge my colleagues to vote against it.

The Rudman amendment, which is a second degree amendment to the Grassley civil rights congressional coverage amendment, makes individual Senators liable for violations of our civil rights laws. Under the Rudman proposal, a Senator that intentionally discriminates against a Senate employee would be personally liable to that employee.

Because the underlying Grassley amendment provides for compensatory damages, as well as traditional title VII remedies such as back pay, the Rudman proposal is far reaching, indeed. And it results in a truly ironic outcome where Senators will be required to live up to responsibilities that we do not impose on the private sector.

The Grassley amendment is designed to require the U.S. Congress to live by the same civil rights laws that the rest of the country must live with. I have stated time and again that I support efforts to make Congress comply with legislation that applies to the private sector, and that is why I am cosponsoring the Grassley initiative.

But in the private sector, supervisors, managers, principals, and coworkers are almost never personally liable for their discriminatory conduct in the workplace. Instead, persons forming a business incorporate under the laws of the State where the business is located. The result is that victim of discrimination sue their corporations, and not individual supervisors.

Mr. President, under the Rudman amendment, we would expose individual Senators to liability, even though Senate staffers are U.S. Government employees—Senate employees. Senators do not pay the salaries of Senate staffers, and Senators should not be considered the employers of Senate staffers.

I will vote against this amendment, and urge my colleagues to join me.

Mr. WOFFORD. Mr. President, as I indicated last night in my statement on the amendment of the Senator from Oklahoma, I feel strongly that if an individual Senator violates our civil rights laws, the money to right that wrong should not come out of the pocket of the American public. I strongly object to the provision in the amendment offered by the distinguished majority leader and the Senator from Iowa which says that if a Senate employee sues for employment discrimination and wins, the taxpayers may foot the bill.

I support the amendment of the Senator from New Hampshire.

Mr. WARNER. Mr. President, late last evening, I actively participated in the debate of the issues raised by Senator RUDMAN as objections to Senator GRASSLEY's amendment. While I support the Grassley amendment, I was concerned by the provision which would have imposed a financial risk on the taxpayers to foot the bill for monetary damage awards adjudicated against a Senator who is found, after due process, to have violated the law. And further, what would happen in the event an injured party, who prevails in establishing entitlement to damages, is unable to collect should a Senator be financially insolvent

Senator RUDMAN has modified his amendment to directly address my concerns. Senator RUDMAN'S amendment now ensures that a prevailing injured party will be able to collect an adjudicated claim.

Mr. MITCHELL. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER (Mr. ADAMS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I move to lay the Rudman amendment on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Iowa to lay on the table the amendment (No. 1290) offered by the Senator from New Hampshire to amendment No. 1287.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The result was announced—yeas 22, nays 75, as follows:

[Rollcall Vote No. 236 Leg.]

YEAS—22

Akaka
Boren
Bradley
Burdick
Cochran
Cranston
Durenberger
Gore
Grassley
Hatfield
Inouye
Johnston
Kennedy
Lautenberg
Lieberman
Lott
Mitchell
Nunn
Pryor
Sarbanes
Sasser
Simon

NAYS—75

Adams
Baucus
Bentsen
Biden
Bingaman
Bond
Breaux
Brown
Bryan
Bumpers
Burns
Byrd
Chafee
Coats
Cohen
Conrad
Craig
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Exon
Ford
Fowler
Garn
Glenn
Gorton
Graham
Gramm
Hatch
Heflin
Helms
Hollings
Jeffords
Kassebaum
Kasten
Kerry
Kohl
Leahy
Levin
Lugar
Mack
McCain
McConnell
Metzenbaum
Mikulski
Moynihan
Murkowski
Nickles
Packwood
Pell
Pressler
Reid
Riegle
Robb
Rockefeller
Roth
Rudman
Sanford
Seymour
Shelby
Simpson
Smith
Specter
Stevens
Symms
Thurmond
Wallop
Warner
Wellstone
Wirth

NOT VOTING—3

Harkin
Kerrey
Wofford

So the motion to lay on the table the amendment (No. 1290) was rejected.

AMENDMENT NO. 1290 TO AMENDMENT NO. 1287

The PRESIDING OFFICER. The question now occurs upon the amendment of Senator RUDMAN.

AMENDMENT NO. 1290, AS MODIFIED

Mr. RUDMAN. Mr. President, before final action on this amendment, I have discussed this with the majority leader and with the distinguished Senator from Iowa. One of the Members of the Senate made a very good suggestion on grammar in this amendment. And if the parties would like to look at line 6 of the amendment, it says "made on their behalf."

I have a modification here which inserts the words "made on his or her behalf," which makes it much more specific in nature.

I ask unanimous consent that I be allowed to modify the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is so modified.

The amendment (No. 1290), as modified, is as follows:

At the end of the pending amendment, add the following:

SEC. . PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on his or her behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

Mr. RUDMAN. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from New Hampshire [Mr. RUDMAN].

The amendment (No. 1290), as modified, was agreed to.

The PRESIDING OFFICER. Under the previous order of the Senate, the Senator from Oklahoma [Mr. NICKLES] is recognized to offer an amendment.

AMENDMENT NO. 1291 TO AMENDMENT NO. 1287

(Purpose: To allow employees of the United States Senate to have access to jury trials and punitive damages on the same basis as such rights and remedies are available to employees in the private sector)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself and Mr. SPECTER, proposes an amendment numbered 1291 to amendment No. 1287.

Mr. NICKLES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(a) on page 14, line 9, after "compensatory" add "or punitive";

(b) on page 14, beginning on line 19, strike "The hearing board shall have no authority to award punitive damages.";

(c) on page 14, line 21, redesignate subsection "(i)" as subsection "(j)" and insert after subsection "(h)" the following new subsection:

"(i) Notwithstanding any other provision of this act, a Senate employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.";

(d) on page 17, beginning on line 5, strike all of paragraph (3); and

(e) on page 17, beginning on line 13, strike all through page 19, line 3, and insert the following in lieu thereof:

"SEC. 209. CIVIL ACTION BY EMPLOYEE OR APPLICANT FOR EMPLOYMENT FOR REDRESS OF GRIEVANCES; TIME FOR BRINGING OF ACTION.

"(a) Within thirty days of receipt of the decision of a hearing board, or of the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board, on a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap or disability, brought pursuant to this title, or after one hundred and eighty days from the filing of a formal complaint with the Office or the notice of appeal with the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board until such time as final action may be taken by the hearing board, an employee or applicant for employment, if aggrieved by the final disposition of his or her complaint, or by the failure to take final action on his or her complaint, may file a civil action as provided in 42 U.S.C. 2000e–5, in which civil action the Senate or an employing authority of the Senate that employs the employee shall be the defendant.

"(b) The provisions of 42 U.S.C. 2000e–5(f)(3)–(5), 2003e–5(g), 2000e–5(h), and 2000e–5(j), as applicable, shall govern civil actions brought hereunder. The remedies and jury trial rights made available to private complainants and executive branch employees under section 5 of this Act shall be equally available to any Senate employee bringing an action under this section.

"(c) Notwithstanding any other provision of this act, in a civil action a Senate employee or an executive branch employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.".

The PRESIDING OFFICER. The Senator from Oklahoma is recognized, and under the previous order, the time allocated is 30 minutes equally divided between the Senator from Oklahoma and the designee or the majority leader, at his preference.

The Senator from Oklahoma is recognized for up to 15 minutes to dispose of his amendment.

Mr. NICKLES. Mr. President, the amendment that I offer this morning on behalf of myself and Senator SPECTER would fill a couple of voids where under the amendment that we have before us by Senator MITCHELL and Senator GRASSLEY. The Mitchell-Grassley amendment exempts Congress from two vital sections of the underlying bill. If we pass this amendment we will have exempted the Senate from jury trials, and we will have exempted the Senate from punitive damages.

I asked the question, Why, last night, in debate, and frankly, I do not think we were really given a good answer. I will ask that question again later. But I might start this debate by again looking at the Federalist Papers, No. 57 written by James Madison.

I heard my colleague, Senator RUDMAN, today quoting the Federalist Papers, issues 1 and 2, dealing with separation of powers also written by James Madison. I will read. He said, talking about the House of Representatives:

> * * * restraining them from oppressive measures, that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of society?

He goes on and says:

> I answer: the genius of the whole system; the nature of just and constitutional laws; and, above all, the vigilant and manly spirit which actuates the people of America—a spirit which nourishes freedom, and in return is nourished by it.
>
> If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate anything but liberty.

In other words, it is Madison who not only talked about separation of powers, but also said it is inconceivable that the Congress would pass a law on the people, the masses, and exclude themselves.

Mr. President, last night I had an amendment that would have included several laws that Congress has excluded itself from for decades. Some people believed my amendment was reaching too far. My good friend and colleague Senator HATCH said my amendment should be taken care of on another bill or another vehicle. I understand that. I understand the concerns of some people that this might enter into some areas that might hurt the compromise.

But now we are talking about the civil rights bill that we have before us. The bill does a couple of things in the private sector that the Mitchell-Grassley amendment does provide for the Senate. It says under title VII that cases of unintentional discrimination are going to be decided by jury trials. We have not had jury trials in title VII cases before in the private sector in America. We do now under this compromise bill, but we do not for the Senate. And I might mention, as drafted, the Mitchell-Grassley amendment does not do it for the executive branch either. The executive branch agreed they should be covered and so should we. I will submit a letter for the record from the White House on this subject. If jury trials expansion is such a needed benefit we should have it apply to the Senate as well as on the private sector.

Also, the amendment that we have before us provides for compensatory damages for employees of the Senate, but it does not provide for punitive damages. As my colleagues are aware from the debate that has transpired over the last several days, if not the last 2 years, one of the big debates was whether or not we are going to have jury trials for these discrimination cases and whether or not we are going to have punitive damages.

I will just compliment the majority leader, who insisted on the expansion and was successful. So now the private sector is going to be subjected to jury trials. They are going to be subjected to punitive damages. Well, if they are, why are we not?

Why in the world do you want to pick up a headline tomorrow that says the Senate exempts itself again? Because that is exactly what we are doing.

Some people have said, the Senate did not exempt itself. We have judicial review in the Mitchell-Grassley amendment which goes directly to the circuit court of appeals. However, it bypasses the district court, the lower level court. Therefore, it bypasses jury trials and forbids punitive damages. My amendment would correct that inequity.

I do not go in and rewrite the structure. The mechanisms of the Mitchell-Grassley proposal prior to judicial review remain the same. My amendment only applies to the Senate and administration similar to the Mitchell-Grassley amendment. I do not touch the House, as some people have mentioned. However, I believe the Congress as a whole should live under it.

But I have tried to make my amendment applicable to the amendment before us. There is no constitutional argument that can be raised against this amendment. Several of my colleagues raised the constitutional argument last night, I think quite incorrectly so. They attempted to expand the speech and debate clause to say that the Congress is exempt from any laws that it passes. This is not what Madison says; that is not what the Constitution says. And that is not constitutional. And, frankly, I believe it is inappropriate to raise it now because, in the amendment that is offered by Senator MITCHELL and Senator GRASSLEY, there is judicial review.

I have judicial review, except I seek to provide the same judicial review for the Senate that the bill provides for the rest of the private sector. A judicial review that individuals may go to the district court, have trial by jury, and be awarded punitive damages if they succeed. That is what the rest of America is going to have under title VII. If that is so good for the rest of America, let us have it apply to the Senate as well. And if punitive damages are good for the business community then they should be good for the Senate.

And so, again, I compliment my friend and colleague, Senator GRASSLEY, because he has fought for the right of full judicial review. He did not get all that he sought in the negotiations. The majority leader mentioned there is a lot of give and take. Unfortunately, this was given. And so the rest of the Nation will have jury trials and punitive damages in cases of intentional discrimination but the Senate will not.

So if we do not pass my amendment, we are saying the Senate again is above the law. The Senate will be covered by the same law. We are not going to have the same procedures and remedies as everybody else. I have not attempted to change the internal enforcement mechanism through the hearing review panel and the Ethics Committee. I am simply ensuring that a complainant in the Senate has the same right to go to a district court and have a jury trial just like every other American instead of just to the appellate court for review. I think that is only fair. I do not think the Senate should exempt itself as we have done under the so-called Mitchell-Grassley amendment.

Mr. President, I reserve the remainder of my time.

Mr. MITCHELL. Mr. President, I yield 3 minutes to Senator DOLE.

Mr. DOLE. Mr. President, just let me address this issue as I understand it. I do not quarrel with the distinguished Senator from Oklahoma. I know the effort he has made and will continue to make on this issue. I do not think this will be the last debate on how we ought to be covered, how broad we ought to be covered, and under what rules we ought to be covered.

But the facts are, in this particular case, these issues were addressed and an agreement was reached between the majority leader and the distinguished Senator from Iowa [Mr. GRASSLEY]. And many of us, on the basis of that modification, who had some questions about the original Grassley approach, said, "OK, I will support the Grassley approach, as modified by the distinguished Senator from Maine, Senator MITCHELL." That is precisely where we are.

I am not going to debate the merits or demerits of the arguments of the Senator from Oklahoma, because I think he makes some good points. But we did make an agreement here just last night. Just last night we made an agreement. And now we want to change the agreement. We want to go back and say, well, we did not mean what we voted on last night even though we all understood what Senator MITCHELL and Senator GRASSLEY had in mind. Senator GRASSLEY gave up some things he did not want to give up. He backed away from a couple of things. But in the final analysis, my view is the Grassley amendment, as modified, will pass by a wide margin.

And, so, without quarreling with my friend from Oklahoma, Senator NICKLES, I just say we have made an agreement. We are going to revisit this issue. This is not the last time we are going to talk about coverage of Congress. I see this amendment as something that has already been talked about. We have already had a discussion of it. We have agreed that we are going to support the Grassley amendment, as modified, and that is precisely where the Republican leader comes from. So I am going to vote against the amendment of the Senator from Oklahoma.

Mr. MITCHELL. I yield 3 minutes to the Senator from Utah.

Mr. HATCH. Mr. President, I understand what is going on here. Many Members of this body get a little bit tired of us imposing what really have been onerous and burdensome laws on everybody else but ourselves. I think that is a concern that needs to be articulated around here.

But I will tell you what I am concerned about more than anything else. We have fought this battle for 2 years. We finally have a bill that I think has a broad consensus on the floor. It is going to be a monumental civil rights bill that is going to do a lot of good for a lot of people and, for the first time, protect women in this society in the cases of sexual harassment. And I have to say that these amendments break the deal.

Now, I happen to agree with the distinguished Senator. I still think it may be unconstitutional, but I happen to agree with what the distinguished Senator from Oklahoma is trying to do. But I will be honest with you. It may break the deal and it may put the civil rights bill down. Now, that is what I am concerned about.

And I think there is a higher goal here. Yes, it is difficult to justify why the Congress has to exempt itself from these laws. On the other hand, this is a political body, and the people out there who are subject to these laws are not political people. They do not have people at their heels every step of the way in this society. And they do not have to deal with a lot of the dirty things that go on in politics. But, we have taken a major step in the Grassley amendment in covering the Senate, with a right of judicial appeal to the Federal appellate courts. That represents a compromise. And that is why this amendment does break the deal. It may very well cause us the loss of this bill, which for the first time in the history of this country provides a Federal civil right to women to recover damages for harassment.

Now, to me, that is a higher goal, that is a higher aim. It is what we ought to do. And even though I may agree with the distinguished Senator from Oklahoma in part on what he is trying to do—and I was the one who started all this back in the committee. I said, if we are going to impose this on everybody else, we ought to impose it on ourselves. But the more I get into it and the more I recognize our responsibility, the more I recognize the bill itself is in jeopardy. And I do not want to kill this bill after all the time and effort and pain that everybody on both sides have been through and the good faith efforts that we have gone through.

This bill is important. It is not only important because it resolves 2 years of conflict and difficulty, it is important because it is right.

I do not agree with every aspect of the bill, but it is a very fine compromise under the circumstances. And I ask my colleagues to vote against this amendment because I think we have to defeat it or I think there is a deal breaker here that I cannot tolerate because I made the deal along with others. And I have worked as hard as anybody could possibly work, not just myself but all of us who have brought this deal to pass. And it is right. It is the right thing to do.

I ask my colleagues to vote against this amendment.

The PRESIDING OFFICER. The time remaining to the Senator has expired.

Mr. MITCHELL. Mr. President I yield 2 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise in opposition to the amendment suggested by the Senator from Oklahoma. During these negotiations, there were two very important principles that I sought in similar legislation over the last 3 years that I wanted to maintain, and they are maintained in this compromise. Anybody who supports this compromise but still thinks well of the efforts of Senator NICKLES does not have to take a back seat to anybody else. We are sticking by the basic principles that are elementary to what we are trying to accomplish here.

No. 1 was that there be no exemptions as far as Senate employees are concerned. Everybody is covered. That is the case with this amendment.

The second one, the one that the Nickles amendment deals with, is a principle that I wanted to establish—access to the courthouse for an aggrieved party. Why? Because access to the courthouse is one of those ways that we ensure fairness. The impartial arbiter of the judiciary should be present as a remedy for Senate employees who may be treated unfairly.

I know there are several ways of getting fairness through the courthouse, and the Senator from Oklahoma suggests one of those, one that I backed originally. But it is not the only way of getting fairness. We have that in the Grassley-Mitchell compromise through an appeal process to the Federal circuit court.

I hope my friends who are supporting this amendment, my compromise, will realize we have not compromised that basic principle of judicial review. If the amendment of the Senator from Oklahoma is adopted, this will be in jeopardy. So I hope my colleagues will support the compromise and vote against the Nickles amendment.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

If no one yields time, the time is charged equally to both sides.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Oklahoma has 6 minutes and 50 seconds. The majority leader has 7 minutes and 30 seconds. Time continues to run.

Mr. NICKLES. Mr. President, let me just address a couple of things very briefly in response to some of the comments made by some of my colleagues. I heard somebody say they have questions on the constitutionality. Frankly, my amendment is just as constitutional as the Mitchell-Grassley amendment. Both have judicial review. There is no question about my amendment being unconstitutional as compared to the Mitchell-Grassley amendment. It is just as constitutional, and I happen to think both of them are constitutional.

Again, those people who are trying to draw, in the speech and debate clause by saying that Congress should be immune from any legislation they pass are totally wrong.

Yes, we have the freedom to speak on the floor, we have the freedom to legislate, but that does not mean we should be exempt from legislation. We happen to have other laws that pertain to us, like paying taxes. I think we have other laws, that should also apply to Congress. We should not be exempt. That is exactly what Madison said in the Federalist Papers, No. 57; who also talked about separation of powers. So there is no constitutional argument on this amendment.

I have heard my colleagues say the bill will be in jeopardy if we pass this amendment. Why, because we put Congress under jury trials and punitive damages just like the rest of the country?

Mr. FORD. The Senate.

Mr. NICKLES. The Senator is correct, because my amendment would put the Senate under jury trials and put the Senate liable for punitive damages? We did that for the rest of the country. Why would that jeopardize this bill? what about the employer who is trying to survive?

I read where the company, Upjohn, just lost $127 million before a jury. Most of that was punitive damages. We say we have caps on punitive damages. But I have heard a lot of Senators say next year they are going to come up with an amendment and take the cap off punitive damages.

That is why this amendment needs to be agreed to because a lot of my colleagues seem to think there is no cost to litigation. If we do not agree to this amendment, colleagues can remove a cap on punitive damages without any thought. Why have a cap?

Maybe, if it applies to the Senate, we will realize there is a potential liability there. And so we need to have this amendment apply to the Senate just like it applies to the private sector.

The Mitchell-Grassley amendment has compensatory damages in it. Why not have punitive damages in it? There is no reason not to have punitive damages in it? There is no reason not to have punitive damages and, since we have judicial review, there is no reason in the world why we would not allow our employees to have a jury trial and punitive damages, just like all other Americans. There is no reason to exempt the Senate in these two areas.

Mr. FORD addressed the Chair.

Mr. NICKLES. No reason whatsoever.

Mr. FORD. Will the Senator yield for a question?

Mr. NICKLES. I will not yield. I am almost out of time. I inquire how much time I have.

The PRESIDING OFFICER. Three minutes and twelve seconds.

Mr. FORD. May I have 12 seconds to ask you a question?

Mr. NICKLES. If the Senator will withhold, Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Oklahoma has 3 minutes; the majority leader has 7 minutes. Time is running equally.

The Senator from Oklahoma has 2 minutes remaining.

Mr. NICKLES. Mr. President, I heard the majority leader state last night that my amendment was the most unconstitutional thing he has seen. I would just like to inform him, under Chief Justice Burger, Justice Powell, and now-Chief Justice Rehnquist said the "Congress could, of course, make * * * remedies available to its staff employees—and to other congressional employees—but has not done so."

We have the right. We have the capability to make these laws apply to the Senate. The Constitution does not prohibit us in any way, shape, or form from having these laws apply to the Senate.

The major changes that are made under the compromise civil rights bill that we have before us today are jury trials and punitive damages. That is what a lot of people have been opposing this bill for, because they said if we have jury trials and we have punitive damages we will be encouraging litigation—a lot of litigation. I do not want to encourage litigation. I also do not want any discrimination. And I want people who are guilty of discrimination to be punished. But I do not want a lot of frivolous lawsuits in the process and I do not know what the exact result will be, but my guess is it is going to be a lot of litigation, because of jury trials and because of punitive damages.

And if that is the result, let us make sure Congress is included so people will realize at least we have to live under the same laws. If jury trials encourage litigation, let us put ourselves in the same basket as everybody else in America.

And if punitive damages are onerous, let us make sure we have that same liability as everybody else in America. If not, we are treating ourselves as some type of a special class. I do not think that is right. If we do not do it, then there is going to be a measure next year that is going to say let us take the caps off punitive damages, let us sock it to them.

Mr. President, I ask unanimous consent for an additional minute.

The PRESIDING OFFICER. Is there objection to the additional minute? Without objection, it is so ordered.

Mr. NICKLES. Mr. President, instead of having caps on punitive damages as we do on the underlying bill, let us take the cap off because it will not cost us anything. If we are also subject to punitive damages maybe there will be some cognizance of the cost of the law we place on the rest of America.

Mr. President, George Orwell said it well in "Animal Farm" (1945). He said, "All animals are equal, but some animals are more equal than others."

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, this is essentially the same issue that we decided yesterday. The Senate, by a 61 to 38 vote, rejected the amendment of the Senator from Oklahoma, and this is essentially the same provision with a few modifications. Instead of attempting to impose executive branch enforcement on the legislative branch and have broad judicial oversight over the legislative branch, the combination of which was plainly unconstitutional, obviously unconstitutional, part of that has been dropped but the essence of it has been retained.

Mr. President, why does this make the provision unconstitutional? The first amendment offered by the Senator from Oklahoma yesterday was written as though the constitutional separation of powers did not exist. It would have provided for massive executive branch enforcement of laws over the legislative branch and the broadest possible scope of judicial branch oversight over legislative affairs.

Mr. NICKLES. Will the Senator yield?

Mr. MITCHELL. The Senator would not yield because of limited time. Senator FORD may like to speak on my time. I thank the Senator.

Mr. President, the question becomes how much, if any, executive enforcement and judicial oversight over legislative branch activities makes it unconstitutional. The Senator from New Hampshire took the position that any—any—such enforcement oversight by another branch of Government makes the provision unconstitutional. By adding additional judicial oversight, substantial additional judicial oversight, so that instead of having a limited right of appeal in the circuit court of appeals, a person would now have a de novo trial, a full trial from the start in Federal district court plus an appeal to circuit court. It makes much more likely a finding of unconstitutionality. These are all matters of degree and the more legislative submission to executive enforcement and judicial oversight that a provision includes, the more likely it is to be found unconstitutional.

So, Mr. President, for that reason the amendment offered yesterday was obviously and blatantly unconstitutional. This amendment, if added to the provision, makes it much more likely to be found unconstitutional than the Grassley amendment.

Again, we have heard a lot of talk about treating everybody equally, but really this is an effort to kill the Grassley provision and to kill this bill, which would eliminate any prospect of Senate employees receiving protection of laws.

This is a case of trying to kill a bill by saying one thing and doing another. That is really what we have here. All of the persons involved in the bill—the Senator from Utah, the Republican leader—all involved in these negotiations have said this is a killer amendment, it breaks the deal, it brings the whole bill down, and the bill will include the Grassley provisions which provide protection of laws.

So the effect of this will be the opposite of the stated intention. In the name of providing more coverage, it will provide no coverage. It is a way of avoiding any oversight, any protection of laws on Senators.

I say that the Grassley amendment as now drafted is a fair and responsible way to address a serious problem to provide reasonable protection of law to Senate employees and to do it in a manner that has the best chance of being ruled constitutional. This provision, if adopted, brings down the whole bill, including the Grassley amendment, which provides that protection, therefore, leaving without any protection beyond that which exists in current law all of the employees of the Senate.

Finally, Mr. President, I want to say the Senators have just voted—I ask all Senators to pay attention to this—Senators have just voted to impose personal liability on themselves in all such matters. They should now understand that this amendment would subject them to punitive damages in connection with such personal liability.

This amendment, if adopted, when combined with the previous amendment, would subject every Member of the Senate to personal liability for any judgment under the applicable laws and to unlimited punitive damages in addition thereto. That is a matter for each Senator to decide for himself or herself what they want to do.

For myself, I believe that the Grassley amendment now pending is a fair and responsible way to address this problem. This amendment kills the Grassley amendment. This amendment kills the bill and, therefore, Mr. President, I hope that my colleagues will join in rejecting this amendment.

Mr. NICKLES. Will the Senator yield?

Mr. MITCHELL. Do I have any time left, Mr. President?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NICKLES. Will the Senator yield for 1 minute for a question?

Mr. FORD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATFIELD. Mr. President, over the past 24 hours, the Senate has considered a number of meritorious amendments to the Danforth Civil Rights Act. I have listened with great interest to the persuasive arguments made by my colleagues on this floor. The amendments under discussion seek to impose various acts of Congress on the Senate.

At first blush, an amendment that would require the Senate to live under the same laws that it enacts speaks great fairness. And, if the constitutional objections can be overcome, I could support such a concept. I am in favor of providing all Senate employees with the same rights and protections that are enjoyed by those in the private sector.

But we must be ever mindful of the fragile package that is now in our care. A number of Senators—including this Senator—have spent a significant amount of time over the past year nurturing a viable civil rights bill. After a tremendous effort by Senators on both sides of the aisle as well as the officials in the White House, including the President, we now have reached a historic compromise in this issue that has been so divisive in the past.

As one of the seven original cosponsors of the underlying civil rights bills, I have a keen appreciation for the value of the delicate compromise that was reached last week. My concern is that the controversial amendments that have been offered endanger this compromise, and thus endanger the ultimate passage of the civil rights bill that we have worked so hard for.

It is out of this concern for the underlying legislation that I have voted against each proffered amendment. I want to make clear that my votes against these amendments should not be taken as opposition to the principles behind them. As one who has been intimately involved in the progress of this legislation from its inception, my priority must remain with its passage. I, therefore, must oppose proposals that endanger passage of this bill.

I ask unanimous consent that my statement appear in the RECORD immediately prior to the vote on the Nickles amendment.

The PRESIDING OFFICER. The Senator from Oklahoma has 21 seconds remaining.

Mr. NICKLES. Mr. President, there is no reason not to have Congress included under punitive damages when we do the rest of America. I happen to own a part of a business and we just subjected them to punitive damages. Why do we not do Congress the same way? We just subjected every business in America to jury trials. Why do we not do Congress the same way? It only is fair.

I ask unanimous consent that a letter from the White House be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, October 30, 1991.

Hon. DON NICKLES,
U.S. Senate, Washington, DC.

DEAR DON: I strongly support your efforts to amend the Mitchell-Grassley amendment to S. 1745 so that Congressional employees receive the full benefit of the new civil rights bill. Your amendment, and your amendment alone, would make available to Congressional employees the same remedial scheme being made available to all other employees under the bill: the right to have a court decide charges of discrimination and the right to trial by jury and capped compensatory and punitive damages in cases where the bill will make those remedies available to other employees.

I agree with you that Congressional employees should not be confined to an internal Congressional forum such as the Ethics Committee for redress of violations of their civil rights. That approach, which was incorporated into the Americans with Disabilities Act, allows the Congress, unlike any other employer in this country, to be the judge of its own compliance with the civil rights laws. Thus, Congress effectively preserves its exempt status while purporting to eliminate it. Allowing limited review of Ethics Committee decisions by the courts, as Mitchell-Grassley proposes, likewise does not correct the problem. That approach also does not give Congressional employees the same protection of their civil rights as other employees. Instead, Congress should take the opportunity offered by the Civil Rights Act of 1991 to adopt your amendment and thus set an important precedent by imposing on itself in full the same remedial regime that it is imposing on the rest of the country.

I also support your inclusion in your amendment of language eliminating the recently inserted exemption of the Executive branch from punitive damages. That exemption was not added with the agreement of the Administration or at the Administration's request, and we oppose it. Finally, I would like to make clear for the record that, contrary to what some have said, I have absolutely no objection to providing White House employees the identical protections, remedies, and procedural rights the bill would give private sector employees.

Let me know if there is anything further I can do to assist you in this important matter.

Sincerely,

GEORGE BUSH.

The PRESIDING OFFICER. The time has expired.

Mr. HATCH. Mr. President, reluctantly I have to move to table the amendment of the distinguished Senator from Oklahoma, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 1291. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON], the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The PRESIDING OFFICER (Ms. MIKULSKI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 42, as follows:

[Rollcall Vote No. 237 Leg.]

YEAS—54

Akaka
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Breaux
Bryan
Burdick
Byrd
Chafee
Cochran
Conrad
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Exon
Ford
Garn
Glenn
Gore
Grassley
Hatch
Hatfield
Inouye
Jeffords
Johnston
Kennedy
Kerry
Lautenberg
Levin
Metzenbaum
Mitchell
Moynihan
Nunn
Pell
Reid
Riegle
Robb
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Stevens
Thurmond
Warner

NAYS—42

Adams
Bond
Brown
Bumpers
Burns
Coats
Cohen
Craig
D'Amato
Domenici
Durenberger
Fowler
Gorton
Graham
Gramm

Heflin
Helms
Hollings
Kassebaum
Kasten
Kohl
Leahy
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Mikulski
Murkowski
Nickles
Packwood
Pressler
Pryor
Seymour
Simon
Smith
Specter
Symms
Wallop
Wellstone
Wirth

NOT VOTING—4

Cranston
Harkin
Kerrey
Wofford

So the motion to lay on the table the amendment (No. 1291) was agreed to.

Mr. MITCHELL. Madam President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1287, AS MODIFIED

Mr. HARKIN. Mr. President, last week, President Bush excoriated the Congress for its failure to follow the same civil rights laws that it imposes on everyone else, including the executive branch and the private sector.

The President is flat wrong when he says that the Congress has exempted itself from the rights and protections available under existing civil rights laws. Section 509 of the Americans with Disabilities Act explicitly applies the rights and protections provided under the ADA, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 to employment by the U.S. Senate, the House of Representatives, and the instrumentalities of the Congress.

President Bush is correct when he states that Senate and House employees alleging discrimination do not have a private right of action, that is the right to file a complaint in Federal court. In the Senate, complaints are currently heard by the Ethics Committee and in the House complaints are heard by the Office of Fair Employment Practices.

Last year, Senator GRASSLEY and I were unsuccessful in our attempt to secure judicial review for congressional employees. I am pleased that this deficiency will be remedied with the passage of the Civil Rights Act of 1991.

President Bush, during his speech demanding the Congress submit to the laws that are imposed on the executive branch, stated that people who work for Congress ought to have the same legal remedies—including the right to file a complaint in Federal district court—as those who work everywhere else, including the executive branch and the private sector.

As chair of the Subcommittee on Disability policy and the chief sponsor of the ADA, I agree with President Bush's conclusion that individuals, including people with disabilities, enjoy a private right of action against the executive branch for violations of our Nation's civil rights laws, including section 504 of the Rehabilitation Act of 1973.

The Congress could not have made the law clearer when it amended section 504 in 1978 to make it applicable to Federal agency conduct. Prior to 1978, the law only applied to recipients of Federal aid. In 1978, the Congress also added a procedures section to the law and made it clear that the same procedures that applied to actions by recipients of Federal aid—including a private right of action—also applied to actions by the Federal agencies themselves.

In light of the President's statement recognizing that individuals with disabilities have a private right of action against an executive agency under section 504, I find it incredible that his Justice Department is now arguing before the Ninth Circuit Court of Appeals the exact opposite; that is, people with disabilities do not have the right to pursue their complaint of discrimination in Federal district court against the Social Security Administration or any other executive agency or department under section 504.

The case, J.L. versus Social Security Administration, was brought by people with mental disabilities who could not get the help that they needed from the Social Security Administration to apply for Social Security benefits. Their disabilities, which made them eligible for benefits, also made them incapable of persisting through the complex and demanding application process. They appealed to the Social Security Administration for help and then filed this lawsuit.

The Social Security Administration's response, through their lawyers in the Justice Department was: you don't have the right to sue us in court to remedy the alleged discrimination.

President Bush cannot have it both ways. He's either for civil rights for people with disabilities or he isn't. He either believes that people with disabilities have the legal remedy to file a lawsuit against an executive agency or he doesn't. The Justice Department is not some rogue agency that can act contrary to the will of the President.

The President has spoken—individuals with disabilities have a private right of action against executive departments to address complaints of discrimination. The President must now insist that his Justice Department change its position in J.L. versus Social Security Administration and admit that individuals with disabilities may bring suit in Federal court against executive agencies under section 504 to remedy all forms of discrimination.

A separate question has been raised regarding the existence of a private right of action for employees of the General Accounting Office under the ADA.

When Congress passed the Americans With Disabilities Act, we made it clear that the various instrumentalities of Congress were to create procedures that would allow disabled employees to pursue remedies in cases of alleged discrimination based on a disability. One of the instrumentalities of Congress under the ADA is the U.S. General Accounting Office. Section 509(c)(5) of the ADA states that "nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act." This reference to enforcement procedures at GAO was clearly intended to include a private right of private action for GAO employees.

In 1980, when Congress passed the GAO Personnel Act creating a separate personnel management system for GAO, the rights and remedies of the Rehabilitation Act were specifically incorporated into the GAO system. The GAO Personnel Act applies the Rehabilitation Act, as well as other statutes that prohibit employment discrimination in the Federal Government, to GAO.

Public Law 96-191 states that nothing in this act shall be construed to abolish or diminish any right or remedy granted to employees or applicants for employment in the General Accounting Office by sections 501 and 505 of the Rehabilitation Act of 1973. Section 505 provides for a private right of action.

GAO Regulations (4 CFR 28.100) state that an employee or applicant alleging discrimination based upon a handicapping condition may file suit in Federal district court.

In sum, disabled employees at GAO have the same rights and remedies as disabled employees in the rest of the Federal Government. The only difference between GAO, as a legislative branch agency, and other executive branch agencies is that after the 1980 GAO Personnel Act, the responsibility for oversight and administrative adjudication of complaints rests with a board, which is independent of the executive branch.

Mr. DURENBERGER. Mr. President, I rise in support of the Grassley amendment that extends coverage of the Danforth civil rights bill to Congress. This amendment constitutes an important step toward restoring the public faith in our Government institutions, and that is why I am cosponsoring the amendment.

The Grassley amendment is really quite simple. It states that the U.S. Senate shall be subject to our civil rights laws that prohibit discrimination in the workplace.

Mr. President, title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, sex, national origin, and religion. Every employer in America that has over 15 employees is subject to title VII. Businesses, large and small alike, must conform their conduct to the requirements of the law. They cannot refuse to hire or promote individuals on the basis of immutable characteristics such as race, gender, or ethnicity.

American companies have to live by this law and every other law that we pass in this body. My question to my colleagues is this: Why doesn't the U.S. Senate have to live by the same laws that everyone else does? There is no reasonable answer to that question.

These past few weeks, during the Thomas Supreme Court nomination hearings, many of my constituents in Minnesota were outraged that the Senate Judiciary Committee did not appear to take seriously Anita Hill's charge of sexual harassment. Whether true or not, the public has the perception that we in the Senate are out of touch with reality. We live and work in a plastic bubble, immune from the problems and concerns of ordinary people.

Minnesotans who I met with personally regarding the Thomas nomination and who wrote letters that I personally read, told me that they were tired of watching Congress legislate and operate in a vacuum. They believe that we pass laws here in Washington, DC, but do not understand their concerns back home.

I should add that business feels the same way. Many companies believe that Congress keeps placing new mandates on them, raising their taxes, increasing their regulatory compliance procedures, bleeding them dry—with the accompanying effect of decreasing their global competitiveness. These businesses believe that we in Congress do not know what its like to run a business, and yet we constantly tell them how to do it.

Mr. President, I believe that concern of ordinary citizens—of employees and employers—that the Congress is out of touch with reality, demands that we pass the Grassley amendment.

I would like to digress for a moment to illustrate my point. Sexual harassment is a serious problem for American women in the workplace. In 1985, there were 4,280 sexual harassment charges filed with the Equal Employment Opportunity Commission [EEOC], and this increased to 5,572 in 1990. That was a 30-percent increase in sexual harassment charges over the last 5 years. This is merely indicative of the general increase in the number of charges filed at the EEOC. For instance, in 1990, there were almost 82,000 discrimination charges at the EEOC; that number climbed to 89,000 claims, an almost 9-percent increase, over the last 10 years.

Some might say that this general upward trend does not indicate an increase in discrimination. Instead, the data suggests that either people are simply reporting discrimination more often, whereas in the past, they suffered silently. Others might argue that many of these claims were frivolous, and just because there was an increase in discrimination claims does not prove that there actually was discrimination occurring.

Mr. President, the data is subject to different interpretations, and yet it highlights my point. Employees who suffer from discrimination want a Congress that understands their problems, and businesses that may suffer from frivolous claims want a Congress that understands their concerns. When we exempt the Senate from the mandates that we impose on the rest of the country, we simply underscore the perception that we are out of touch with reality. Instead, we accent the public's belief that Senators think themselves to be above the law. And that fuels anger and resentment in Minnesota and everywhere else.

We need to understand what is going on outside the Washington Beltway. America is upset with us. Our only hope of restoring their confidence is to stop bickering with each other about where a comma or punctuation mark is located in a bill, to pass sensible legislation such as the Danforth civil rights bill, and to start applying the laws that apply to the rest of the country to ourselves. That is the only way we are going to restore the public trust.

Mr. MITCHELL. Madam President, have the yeas and nays been requested on the Grassley amendment?

The PRESIDING OFFICER. They have not been.

Mr. MITCHELL. Madam President, it is my understanding that a rollcall vote will not be necessary on the amendment, and if that is the case, I ask that we proceed to dispose of that amendment.

Mr. RUDMAN. Madam President, I have thought about this. I have just been asked about it. I am going to, reluctantly, not ask for the yeas and nays, in the interest of moving this along. I just want the RECORD to show that I would vote "no."

The PRESIDING OFFICER. The RECORD shall so reflect.

The question is on the Grassley amendment, as modified.

The amendment (No. 1287), as modified, was agreed to.

Mr. MITCHELL. Madam President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Madam President, with respect to this amendment, I want to recognize the contribution of Senator GLENN. The internal Senate procedures set forth in the Grassley amendment just adopted by the Senate were drawn, I am advised, from S. 1165, legislation previously introduced by Senator GLENN. It is our hope that they will provide a fair, responsible method for making available to all Senate employees protections against discrimination which are available to others and do it in a manner consistent with our Constitution.

I thank all concerned with this matter, particularly the Senator from Iowa, for his willingness to reach agreement on the matter, and I thank my colleagues for their cooperation.

I am going to ask the managers of the bill, Senator KENNEDY and Senator HATCH, to inform the Senate of the current status of the legislation, and when we might expect final action, so that Members of the Senate can prepare their schedules accordingly.

Mr. HATCH. Madam President, for the benefit of all of our colleagues, we will now proceed with the Warner-Mikulski amendment, which should not require a rollcall vote, and which should be accepted. Immediately following that, we will hopefully go to the McCain amendment, which also should not require a rollcall vote. I believe both of these should be relatively short.

As I understand it, Senator BROWN is not going to offer his amendment, so that does away with Senator KENNEDY's second-degree amendment. Senator WARNER is not going to call up with his prospective application amendment, if I am correct.

Mr. WARNER. Madam President, I will speak about it at the appropriate time.

Mr. HATCH. Then Senator KENNEDY's second-degree amendment will not be considered, if that is so.

Then we have a number of technical amendments, and I think final passage; do I state that correctly?

Mr. CHAFEE. Madam President, it is hard to hear. May we have order?

The PRESIDING OFFICER. The Senator is right. The Chair will now go into a very strict observance of the Senate rules. The Chair will ask these Senators to my right to please take their seats. The Chair will ask the Senators all to take their seats, and the Chair will ask the Senator from Utah to speak loudly into his microphone.

Mr. HATCH. Madam President, after the Warner and McCain amendments and a number of technical amendments, I think we will go to 30 minutes of final debate on final passage. At least that is my understanding, unless the Senator from Massachusetts believes otherwise. We hope to be able to dispose of this within the next hour, I would say, at most.

I would also state, Madam President, that I would have voted for Senator GRASSLEY's amendment had the Senate had a rollcall rather than a voice vote. While concerns I had about its constitutionality led me to vote for Senator RUDMAN's measure last night, with that having failed, I would certainly support Senator GRASSLEY's congressional coverage amendment.

Mr. KENNEDY. Madam President, the Senator from Utah has stated this correctly. I think, in terms of time, we are talking about approximately an hour before final passage. It certainly should not be much more than that. Hopefully, we will try to finish in less than an hour. But in terms of people making their plans, I think an hour is about what we are talking about.

So, Madam President, I see both the Senator from Arizona and the Senator from Virginia are on the floor. We are glad to deal with their amendments in whatever order they desire.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I thank the managers of the bill and the staffs. They have been exceedingly helpful to this Senator as I have tried to pursue my analysis of this bill. Based on conversation with both managers, I notify them that I shall not bring up the amendment recited on page 2 of the consent in the matter of Warner—prospective application.

Mr. KENNEDY. May we have order? The Senator is entitled to be heard. This is an extremely important amendment, which will affect tens of thousands of Americans. It is important, and the Senator is entitled to be heard.

The PRESIDING OFFICER. The Chair will ask all Senators to take their seats, including those who will participate in this debate. The Senator is right. The Chair would like to have voluntary cooperation.

The Senator from Virginia may proceed.

Mr. WARNER. I thank my distinguished colleague from Massachusetts.

Madam President, I further inform the Senate and the managers that I shall not pursue amendment 1285 at the desk. Rather, I shall now send to the desk a new amendment covering the issue of the coverage of Government employees.

AMENDMENT NO. 1292

(Purpose: To clarify that Federal employees may recover damages for intentional employment discrimination and to allow damages for intentional discrimination under the Rehabilitation Act of 1973)

Mr. WARNER. Madam President, I send an amendment to the desk on behalf of the distinguished Presiding Officer, Ms. MIKULSKI of Maryland, Mr. STEVENS, Mr. ROBB, Mr. WIRTH, Mr. KENNEDY, Mr. SARBANES, and Mr. ADAMS, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself and Ms. MIKULSKI, Mr. STEVENS, Mr. ROBB, Mr. WIRTH, Mr. KENNEDY, Mr. SARBANES, and Mr. ADAMS, proposes an amendment numbered 1292.

Mr. WARNER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 5, insert "or 717" after "706."

On page 4, line 10, strike "or 704" and insert "704, or 717".

On page 4, line 23, insert ", and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1))," respectively before "against a".

On page 4, line 25, insert "section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or" before "section 102".

On page 4, line 25, strike "Act" and insert "Americans with Disabilities Act of 1990".

On page 5, line 10, insert "or regulations implementing section 501 of the Rehabilitation Act of 1973" before ", damages".

On page 4, line 20, insert "or 717" after "706".

Mr. WARNER. Madam President, the reading of the amendment itself would not, I think, be of particular interest to the Members because it is drawn in a very technical way to cover a very, very important problem. While drawn technically, it is in no sense a technical amendment. As the distinguished Senator from Massachusetts said, it affects several million Americans now working for the Federal Government.

A number of our colleagues have approached me concerning the impact of the Federal employee amendment, which I am sponsoring, and I mentioned the sponsors. Yesterday I discussed the intent of the legislation and, at this point in the RECORD, Madam President, I ask unanimous consent that the remarks that I made yesterday in relation to this amendment be printed in the RECORD so that there is a continuity by those desiring to study the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. WARNER. Mr. President, I support the efforts of the distinguished majority leader, Republican leader, and others who tried to put this together. We are dealing with one of the most important things, in my brief tenure in the Senate. I wish we had more time to devote to it because I think the debate has been constructive tonight. But I want to pick up on this note that the taxpayer has to pick up the bill.

What is the alternative? I find it unsatisfactory. But what is the alternative to a Senator, married, three children, trying to get through school, maintain two residences? Does he in fact, absent some private resources, have any funds with which to pay the fine?

Mr. RUDMAN. Of course, under the way this legislation is presently constructed, the judgment would be presented to the Treasurer of the United States through the Senate disbursing office. And not only for the $20,000 award but for all reasonable attorney's fees.

Mr. WARNER. For the attorney's fees.

Mr. RUDMAN. Which, these days, seem to be somewhat unreasonable reasonable attorney's fees. So you get a bill for maybe $25,000 or $23,000 paid for by the Treasury for a sexual harassment case, a blatant case, international discrimination based on race.

That is fine but I do not think the taxpayers ought to pay for it.

Mr. WARNER. Mr. President, I find that unsatisfactory. What is the alternative? The Senator has no funds.

Mr. RUDMAN. I have an alternative.

Mr. WARNER. Just bear with me. The Senator has no funds. Is it fair for the employee? In fact, if you work for a Senator who simply does not have the funds—and what we have is published, given some brackets, between which you cannot figure out between the haves and have-nots—is it fair to the employees, of those who are published as a matter of record having limited funds? What are you doing to those employees?

Really, what you are saying, if you put up the amendment, to strike that provision, you are in effect saving 50 State legislatures the burden of facing term limitation. It will be a bailout around here of a wholesale nature.

Mr. RUDMAN. Something that has not been mentioned here in this debate I think probably ought to be mentioned. Up until this moment the President, the Congress, and all of the State governments, Governors and county executives and so forth, are exempt for their policymaking positions.

This repeals that.

Mr. WARNER. Can the Senator from New Hampshire be on his time? He tends to be slightly elongated on occasion.

Mr. President, it is of the utmost importance. We are up here making great speeches and great press about the taxpayers, when in fact, practically speaking, the employees have no recourse—if you strike out that and make it a personal liability—in those instances where the Senator comes here of limited means.

I should like to pose that question to my colleague. What happens to the employee of a Senator of published limited means?

Mr. CHAFEE. Well, I hardly think when we are discussing Senators of the United States, that we are talking about a deprived class.

Mr. WARNER. Mr. President, if you had a judgment of $50,000 imposed on a Senator who, together with his family is living on this salary, I question whether that Senator could have the $50,000 to pay the judgment.

Mr. CHAFEE. If he had a judgment rendered against him for any other incident, whether it was an automobile accident or a contract dispute or whatever it was, he would manage to come up with the money.

Mr. WARNER. Mr. President, I do not find that a satisfactory answer to a serious question.

Mr. CHAFEE. No; it was a question of can he pay? He ought to behave himself.

Mr. WARNER. Mr. President, let us not make a mockery out of this bill. This is serious business. We are talking about the rights of our employees, and I am saying those employees who seek employment with a Senator of limited means would have no other recourse for their—

Mr. CHAFEE. He is dealing with an individual who is on the payroll of the U.S. Government and receiving a check totaling $125,000 a year.

There is a perfect chance to withhold. I could not see a better chance to attach those wages, that salary, to get the compensatory damages that are awarded.

So I am not going to shed crocodile tears over some Senator who cannot pay a judgment that he should pay when it is found that he has sexually harassed an employee.

Mr. WARNER. Mr. President, I made my point within my time. I think we should try as best we can to fashion a bill to reach the goals of the distinguished Senator from Iowa, now joined with the majority leader and Republican leader, to solve this question, and not put forth these amendments, which I think in a less serious way will challenge the efforts by our leadership.

Mr. WARNER. Today, as the amendment is brought up, I then add to extend to Federal employees the same civil rights protections provided under the legislation for private sector employees. I would like to briefly share what the amendment will actually do.

Currently, in the Federal Government women, ethnic and religious minorities, and employees with disabilities have ready access to due process in matters of job discrimination. They have 30 days to report a discrimination case to the local agency equal employment opportunity officer, that is, an EEO officer, who then initiates an investigation.

I understand the process can be quite lengthy, but a formal complaint will be filed if the EEO officer concurs with the employee, and, in most cases, mediation takes place within the agency. If the employee disagrees with the findings of his or her local EEO representative, the employee may take the case to the full Equal Employment Opportunity Commission, EEOC, for review.

The EEOC then examines the case and will potentially represent the employee in dealing with the offending agency. Agencies are not required to comply with the EEOC recommendation, but it is in the best interest of all to cooperate. Cases may be further appealed to an EEOC judge in extreme cases.

The employee is also entitled to take his or her case to Federal district court. When the case goes into the Federal judiciary, the EEOC no longer plays an active role.

The heart of the matter, as in the underlying bill, is the manner in which the employees are compensated in cases of intentional discrimination.

Remedies available under present law include:

One, reinstatement; two, back pay; three, restoration of benefits; and, four, public notice.

My amendment would add to the list of remedies compensatory damages including those covering pain and suffering, and that is a very important subject.

I believe that Federal employees who may happen to be women, disabled, or members of ethnic or religious minorities should—I underline should—be provided the same protections under the law as are currently provided in cases of racial discrimination. That is the goal of this amendment and those who support me in accomplishing this end.

It is my hope that all of our colleagues will be able to join in this important effort for the career employees of our Federal Government. I would be remiss if I did not acknowledge the continuing support of the American Federation of Government Employees, particularly their representative, a very able professional, Beth Moten. In addition, Mr. John Chambers, of Senator DANFORTH's staff, and Ms. Carolyn Osolinik, of Senator KENNEDY's staff.

This is a joint endeavor on behalf of 3 million employees by those who assisted in the preparation of this amendment.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Colorado [Mr. WIRTH].

Mr. WIRTH. Thank you, Mr. President. I thank the distinguished Senator from Virginia for his good work on this subject, and I am pleased to join him in supporting this important amendment. Many of us have been deeply concerned, Mr. President, and my own feelings have been on the record and elsewhere, about what has gone on in the last month, about the fact that I believe we are in this society, and despite our espoused goal of treating everybody in equitable fashion, we have not yet reached that goal. We have very many significant problems remaining in this bill related to women, and I understand how we got to this point. I hope we redress that, and I look forward to working with the distinguished chairman of the full committee in this coming early 1992 to address those problems.

We have reached, or are taking care of, some other problems in this legislation, and one of those is the treatment of Federal employees. We know that Federal employees have also been treated as second-class citizens, not given the same rights, not given the same redress, not given the same remedies as other individuals in this society.

I think the amendment, which I am pleased to cosponsor with the distinguished Senator from Virginia, and others, redresses that problem. Anita Hill, for example, in the EEOC would not have had any redress. Had all these allegations come forward and been proven, even she would not have had redress as a Federal employee in the early 1980's, nor would she have any today. This amendment focuses on that particular problem, the problem of Federal employees and their ability to achieve a remedy when discrimination in various forms is proven.

The point is, it is an important remedy, an important amendment. And, as you know, Mr. President, the Denver metropolitan area has the largest concentration of Federal employees outside the Washington, DC, area. We have an extraordinary, dedicated, and able work force there. I am a strong supporter of career service. I think we often treat them much too shabbily and do not give them the credit for dedication and the job they are doing, and I think that this amendment goes back to that question and to assuring them there are many of us here who feel very strongly that they should be treated equitably and treated fairly and not treated with the back of the hand or as second-class citizens.

Once again, I thank the distinguished senior Senator from Virginia.

Mr. President, I rise today to discuss what I consider to be a gaping hole in the Civil Rights Restoration Act before us today—a hole so large that I question if we can in fact term this piece of legislation a civil rights bill. By passing this bill, we will be taking the first and necessary step to restoring some civil rights for some groups. But it also will codify a premise that goes against the very grain of our Nation—it will say that we believe people should be treated separate and unequal.

During the past couple of weeks, a great deal of attention has been given to sexual harassment in the workplace—attention that is warranted. It was my hope that all this attention would have raised the awareness of the Members of this body and encouraged them to right a wrong that exists in the bill we are debating. But instead, we find ourselves in the outrageous position of having to compromise the women of this country to reach a compromise on the civil rights bill.

I commend the efforts of the Senator from Missouri in his persistence in bringing a civil rights bill to the floor. I also commend him for attempting to fill the void in our laws that prohibit women and the disabled who have been discriminated against from gaining compensatory and punitive damages. If we took an impromptu nationwide poll, I think that we would find that most people are shocked to learn that women and the disabled are separate from the rest of the population in that they have no remedies for being discriminated against. So I am pleased that we are finally making progress on that front.

However, I think some people will be perplexed that now, while we are trying to establish some equity in our laws, we turn around and create a new injustice. Now that remedies are finally available for women and the disabled, we are going to impose limits on their extent. Of course, no one else is limited, except for one slice of the population, which is singled out to be treated as second-class citizens and deserving only second-class remedies. In all honesty, I do find it unfathomable that this is the course we have chosen to head into the 21st century.

Two weeks ago, the entire Nation watched and saw what can happen to women who step forward to recall painfully humiliating experiences of sexual harassment. And now, this legislation reinforces that message that if you do come forward in these instances, you will be further compromised by the law.

Are there caps in the law for racial discrimination? No.

Are there caps in the law for discrimination based on country of origin? No.

Are there caps in the law for discrimination based on religious convictions? No.

But there are caps in this bill for cases of gender-based discrimination and sexual harassment.

Clearly we are being unfair and unjust to impose caps on these kinds of discrimination cases. This action contradicts the very cornerstone of civil rights, the guiding principle of our country—and that is equality. It took us 125 years to provide women with the remedies afforded to others—I can only hope that it does not take 125 more years to remove the limits we have imposed.

It is a matter of simple fairness to provide women and the disabled with the same remedies that the law provides to victims of other forms of discrimination. But now, in the name of civil rights, women and the disabled who are discriminated against in the workplace can take their cases to the courts, where they will be discriminated against again. That does seem ironic, does it not?

I think women in this country are sick of this kind of treatment. During the Thomas hearings, we supposedly had a national teach-in on sexual harassment. Unfortunately, with this legislation, we see yet another case of the male-dominated machinery of Washington not making the grade.

When we fought for civil rights 30 years ago, when women began entering the workplace rapidly 20 years ago, who could have imagined that we would ever again consider legislation that confers civil rights to one segment of society, only to deny them to another segment of society?

The situation is unfortunate and frankly, incomprehensible. Mark Twain told us, "Always do right. This will gratify some people, and astonish the rest." We had the opportunity to do so. Sadly, we have gained only the gratitude of the White House and astonished no one.

We have moved forward—we are making some progress in bringing the Nation together to protect civil rights. The White House has finally come to where we have been all along—knowing that the civil rights bill is not a quota bill, it is a fair employment bill. However, President Bush has made it clear—no caps, no bill. I am still waiting for him to explain to the American public why he believes that women should take the back seat and continue to receive unequal treatment under our Nation's laws. But that explanation will come at another time.

I do see some progress in his thinking. The good news is that President Bush now seems to understand that women, along with the rest of the country, are in fact protected by the seventh amendment of the Constitution and have a right to a jury trial. My hope is that we have laid aside the misguided idea of denying women from having a jury determine whether or not they have been wronged.

I hope that we can also lay aside the fallacious arguments for why we must include caps on damages for a select majority of our population. This is not an issue about runaway liability claims or even overall tort reform, as some have suggested.

I think the point has to be made in response to opponents' claims that without caps, there would be a litigation bonanza. Let us take a look at history—in the last 10 years there has been an average of six discrimination cases a year in which settlements came about. That is six cases a year. Not quite a litigation bonanza. This claim is pure rhetorical flourish.

Civil rights cases are not the cases that add to this country's litigation explosion. First of all, only six cases in the last 10 years have been awarded damages of more than $200,000. Two-thirds of the 69 cases over the last 10 years where claimants received punitive and compensatory damages were for less than $50,000. Discrimination cases are not the hotbed of outrageous awards.

Further, if we are going to address the issue of runaway liability, let us address it across the board—not on the backs of women. If the real concern is that lawsuits have gotten out of control, let us confront the real issue and consider product liability reform or malpractice reform where the big dollar suits are won. The big awards we all hear so much about are not going to the individuals who have been discriminated against at work.

Others have claimed that small businesses would be devastated by allowing women to sue for damages. How many small businesses have gone under since racial or religious discrimination suits could be filed? Why do people believe that women are going to bring frivolous suits to the courts and drive businesses under? I would like to remind businessowners that claimants win suits when they have been wronged by their employer. The simple solution is to treat your employees fairly, giving them no need to bring a case against you.

Another point worth raising is that under existing law, businesses with fewer than 15 employees—50 percent of the businesses in the United States—are already exempt from antidiscrimination measures.

So this injustice will not be dealt with in this bill. The White House said no civil rights bill will be signed into law that treats women fairly, so offering the amendment we proposed earlier would be a deal-buster. Because our efforts to ensure equitable damages would have prevented any progress in restoring civil rights, we have decided to pursue other avenues to achieve this goal.

I will work with the majority leader and others to bring legislation to the floor early next year that will right this wrong. I believe our responsibility to the country is to enact laws that treat all people fairly and we must continue to pursue that course.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maryland [Ms. MIKULSKI].

CHANGE OF VOTE

Ms. MIKULSKI. Mr. President, I do want to speak in behalf of the Warner-Mikulski - Stevens - Robb - Wirth - Kennedy - Sarbanes - Adams amendment. But before I do, I want to bring to the Senate's attention on the rollcall vote No. 236 on the Rudman amendment No. 1290, I inadvertently voted in the affirmative. I ask unanimous consent that my vote be changed and that I be recorded in the negative on this vote, and I will note, Mr. President, that this change will not affect the outcome.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MIKULSKI. Thank you, Mr. President.

(The foregoing tally has been corrected to reflect the above change.)

AMENDMENT NO. 1292

Ms. MIKULSKI. Mr. President, I am happy to join my colleague, Senator WARNER, from Virginia, in offering this amendment on parity for Federal employees. This amendment will make it possible for a jury to award compensatory damages to Federal employees who are victims of intentional discrimination or harassment. It is time to get rid of double standards in Government. It is time to provide Government employees the same protection that other employees in the private sector have. If you suffer from sexual harassment, it is just as humiliating whether it is in a Federal agency or a major company. If you are a victim of racial discrimination, it hurts and stings just as much whether you work at a corporation or, again, at a Government agency.

Mr. President, we have to establish new standards of behavior in our country, from all streets to the U.S. Congress. I believe this legislation does that. For too long Federal employees have had to suffer silently. This amendment will begin to change that. I thank the managers for considering this amendment.

I will vote in the affirmative, and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Chair recognizes the Senator from Massachusetts [Mr. KENNEDY].

Mr. WARNER. Will the distinguished manager yield for a minute?

Mr. KENNEDY. I yield.

Mr. WARNER. I acknowledge the support the Senator from Virginia has received from the distinguished Senator from Maryland [Ms. MIKULSKI] in the preparation and the presentation of this amendment. Likewise, to the distinguished Senator from Colorado [Mr. WIRTH]. Mr. WIRTH was fully prepared to take the leadership on this amendment and was working in parallel with the Senator from Virginia. I received recognition and moved forward with the amendment, and, of course, in the spirit of cooperation, he fully joined in supporting it. I thank the Chair and I thank the manager.

Mr. KENNEDY. Mr. President, as the Senator from Virginia has pointed out, this is a worthwhile amendment. It is completely consistent with the spirit and the letter of the Danforth-Kennedy amendment itself. On page 5 of the legislation, in the section defining the right to punitive damages, the substitute states, "A complaining party may recover punitive damages under this section against a respondent (other than a government, a government agency of a political subdivision)."

Clearly, it was our intent that the limitation on the award of punitive damages would apply to Federal, State, and local governments. It would not have made any sense to interpret this provision otherwise. This provision certainly suggests that Federal employees are entitled to compensatory damages.

But the value of this particular amendment is that it makes this intent specific. I think it is extremely useful for it to be unambiguous that Federal employees are entitled to receive compensatory damages. That is what this amendment does. It is completely consistent with the legislation and the intention of those that support the legislation. It is, I think, very useful and important.

I express our appreciation to all of those who have been involved in fashioning the amendment and hope that the Senate would accept it.

(Ms. MIKULSKI assumed the chair.)

Mr. HATCH. Madam President, I want to compliment you and the distinguished Senator from Virginia for the work you have done on this, as well as others including Senator GLENN.

We have no objection on this side.

Mr. WARNER. I thank the managers for their statements and ask that the amendment be adopted.

Mr. KENNEDY. Madam President, I think there was a time agreement. I yield back the remainder of my time.

Mr. HATCH. I yield back our time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (No. 1292) was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1293 TO AMENDMENT NO. 1274

(Purpose: To ensure an accurate representation to the American people of the applicability of various legislation to the Congress)

Mr. McCAIN. Madam President, I have an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. McCAIN] proposes an amendment numbered 1293 to Amendment No. 1274.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of the amdt., add:

SEC. REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this amendment are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

Mr. McCAIN. Madam President, I will be very brief. I would like to express my appreciation to the managers of the bill and also to the chairman and ranking member of the Rules Committee for accepting this amendment. I think it is important. I appreciate the cooperation I have gotten from them and their staffs.

Madam President, this amendment requires that every report accompanying a bill or joint resolution reported by a Senate committee, except the Budget or Appropriations Committees, contain a section listing how, where, and to what extent the legislation applies to Congress.

It is fairly straightforward. I think that the American people, as well as the Members of this body, have the right to know how that legislation, when passed, if at all, applies to the Congress of the United States.

The public has expressed their rage over the imperial Congress, a Congress that maintains one set of rules for itself, and another set for the remainder of society.

The American people must be told what laws do and do not apply to the Congress. The public can then express its opinion on whether the Congress' actions are right or wrong. In fact, in my view, the public must be the final arbiter on this issue. However, the public cannot make an intelligent decision if it does not have the facts.

Madam President, my amendment will give the public the facts. It will also ensure that in the future we do not forget our obligation to apply the laws of the land to ourselves. With the acceptance of my amendment, the public will from this point forth be able to make a more informed, intelligent decision on this issue.

We are constituted as a "government of the people," not above the people. And the people will not tolerate forever our preservation of the "last plantation" in America.

Madam President, by adopting my amendment, the Senate is taking an important step to restore its reputation and be forthcoming with those who have elected us.

Although I am very pleased that the Senate has adopted the Grassley-Mitchell amendment which will apply the civil rights protections to the Senate—which I wholeheartedly support—unless we change the system under which we operate, the issue will not be fully resolved.

There are still many major labor, health, and safety standards which we do not apply to ourselves. Further, if it becomes necessary for the Congress to pass yet more civil rights legislation in the future, will that legislation then apply to the Senate? As I stated, the system needs to be changed. My amendment does exactly that.

If the American people do not mind that the Senate is legally committing them to standards from which we, in Congress, are excused, then we have nothing to change. If, however, the American people believe in equality for all as written in the Constitution by the Founding Fathers, I suspect that they will not long tolerate our perpetuation of this practice.

Madam President, it is my understanding that the Rules Committee has no objection to my amendment and that it has been accepted by both sides.

Madam President, last I want to thank those involved with the civil rights bill, Senator HATCH, Senator KENNEDY, and most especially, Senator DANFORTH, for all their efforts to pass this bill and for accepting this amendment. This is an important step in the right direction for the Senate.

I would close by saying, Madam President, that we have heard a lot of debate, very informed debate and very eloquent debate in my view, on what is constitutional, what is not constitutional; to what degree the legislative branch under which we work should be held accountable to the executive branch in the form of what kind of enforcement can be made.

I think it is important for us to recognize one basic fact: that when we pass these laws throughout the years, there has been no effort on the part of this body and the other body to put in place mechanisms so that we could enforce these laws on ourselves. Clearly, we could devise mechanisms which would have preserved the separation between the legislative and executive branch and at the same time enforce those laws on the Congress of the United States.

Madam President, I do not know any citizen of this country that wants to violate the Constitution, that wants to see the separation between the Executive and the legislative branch eroded. But I do see an overwhelming majority of the American people that want us to follow the same rules and regulations upon which they have to live on a day-to-day basis, Madam President, and we have made no effort, no effort, to set up either an appeals process, or grievance process, or inspections in the case of some laws like OSHA. We have done nothing, thereby creating a situation where our employees and our working conditions and our rules and regulations are far different from that of the average American.

One of my colleagues came up to me and said, "I want to be able to fire my employees because, otherwise, I cannot operate in an efficient fashion." I am sure that anyone who runs an organization or a business probably wants to have the same privilege or ability to do so. The fact is, our employees deserve the same rights and benefits that any other citizen of this country does.

So I think it is important that we point out the reality here. It is not a question of separation of powers. And we can make sure that that separation of powers is not violated, and we can do so by proving to the American people that we are willing to set up mechanisms so that the laws of the land are enforced on us as well as others.

So, Madam President, this amendment that I have simply indicates, as part of any piece of legislation, whether it applies to the Congress of the United States. And, if so, in what way. It is very simple.

I am grateful that the Chairman and the ranking member have accepted it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, the Senator from Arizona discussed this amendment with us yesterday. We are prepared to accept the amendment.

As I understand the amendment of the Senator from Arizona, it would require that each committee report on a bill other than an appropriations bill contain a listing of the bills that apply to Congress and an evaluation of the impact such provisions will have on the Congress. Clearly, the American people have a right to know whether laws that Congress adopts are applicable to the Congress itself.

The Senator, as I understand it, is offering the amendment in the form of statutory language enacted by the Senate as an exercise of its rulemaking power. With that understanding, I am prepared to accept the amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I commend the distinguished Senator from Arizona for his amendment. This side has no objections to it. Therefore we urge the amendment.

Mr. KENNEDY. I am prepared to yield back the remainder of time.

The PRESIDING OFFICER. There is time remaining on the amendment.

Mr. HATCH. I am prepared to yield back the remainder as well.

Mr. KENNEDY. I wonder if we are getting to the point where we only then have the 30 minutes?

Are the technical amendments outside of the time agreements?

The PRESIDING OFFICER. The technical amendments are outside of the time agreements, Senator.

Mr. KENNEDY. So we do not have a time limitation on that.

The PRESIDING OFFICER. The Senator is correct on his assessment.

Mr. HATCH. If we have time left, the distinguished Senator from New Mexico would like 4 minutes.

Mr. MCCAIN. I yield the remainder of my time to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, during the last 24 hours a number of us have had an opportunity to discuss the issue at hand, not the underlying main bill but rather what should and what should not be applied to the Senate of the United States with reference to laws that we have passed that create regulatory schemes for our people or cause causes of action in the workplace.

I argued last night against the Nickles amendment, and I supported Senator RUDMAN's amendment, and I supported Senator RUDMAN's constitutional challenge last night. So I do not want anyone to misunderstand my position or my approach.

Frankly, I believe the time has come to divide the U.S. Senate into at least two institutions for purposes of the subject we have been discussing. One is the U.S. Senate, the Senators, and all those who serve the Senators in policy-making or policy-related positions. And I believe that is the U.S. Senate. And I believe that entity—that institution—it would have to be more aptly be defined than I did in that rather simple definition—but I think that is the Senate that we are talking about in the Constitution. I believe that is the Senate that deserves consideration with reference to the rules, regulations, and other laws of the land because we are separate, distinct, independent from the executive and the judiciary.

But all the rest, all of those people that we hire to maintain this Senate, those who take part in the Capitol improvements, those who are part of making sure we are served the food we need around here, who take care of the tourists, all those in my opinion are really not part of the Senate. They are employees of the Senate. And I see no problem, and I hope soon we will look at all of the laws and say—as to those people and the activities that surround them, the buildings that they occupy—they should be treated just like all Americans and all those who are working for businesses across this land. I believe that that distinction could be made and drawn and done easily.

And then, it seems to me, we could talk about the Senate, a much smaller entity, a much smaller institution. Our employees in our respective States, those in our offices, those on the committees and the like. I believe as to them we should be very, very zealous, and watch out for interference in our independence from any commissions, any institutions that are executive, and any activities that are judicial. Because I believe the Framers of this Constitution, when they said there shall be three, the Executive, the legislative, and the judicial, they really had in mind that neither of the others would interfere; neither would interfere with the other.

So the President would not have any right to send emissaries over to our offices to see if we were violating a law or not; we would have to do that ourselves. So, second, I think after we break it into two parts we should apply the laws of the land to the part that is not really "the Senate" but rather employees of that institution we call the Senate. And then we ought to apply as many of the remaining laws as possible, but apply them in a way that is consistent with our—that is "the Senate"—managing the various laws, the various applications of the laws internally to the Senate.

With that it seems I am prepared to go to my home State and explain the way I have voted. Because I would like us to be subject to the laws but I do not think we have been approaching it in a way that is consistent with our remaining independent, our remaining the coequal body, coequal with the President of the United States. I think we are violating that, and I believe the amendment we are debating today that we just agreed to on voice vote will fall. The Supreme Court will determine it invalid for the very reasons I have been discussing. You clearly cannot put the courts into our day-by-day business. Clearly you cannot have Senators and Representatives and the President and some of his people subject to the rules and regulations for the other as prescribed in that amendment.

I thank the Senator for yielding 4 minutes to me and I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Arizona has expired. The Senator from Utah.

Mr. HATCH. Madam President, on Senator KENNEDY's time I yield 3 minutes to the distinguished Senator from Vermont.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. JEFFORDS. Madam President, I hope today is the last day we will discuss the issues raised by this bill. It has consumed an enormous amount of time and energy. For almost 2 years, we have wrestled with some complex but unquestionably important issues. It is time to put these issues behind us.

I hope, by the end of today, we will have no more need to debate terms like "business necessity" and "disparate impact." I hope we can do this because the broader issues of equal opportunity and demand for our attention to those issues, is ended.

For all the symbolic, emotional, and actual importance of this bill, it is nothing more than a backstop. Minorities and women will prosper in our society only if they can grow and learn and work as full members of our society.

Our best answers to inequal opportunity are not juries or damages, but programs like WIC and Head Start and chapter 1 and Pell grants and JTPA. These programs, and the far greater efforts made by States and towns and private citizens are what will bring us to the colorblind society we crave.

But we are not there yet. And until we are, it would be the cruelest of ironies for the Federal Government to help secure the health, the education, and the training of a disadvantaged person, to make him or her qualified for a job, only to have that job denied by some misguided employer.

The Government has an obligation to guarantee a workplace free from discrimination, whether that workplace is in Vermont or the U.S. Senate. We cannot tolerate for a second overt acts of race or sex or religious discrimination that stain our country.

How can we speak with any moral authority to other countries of the world, fraught with ethnic and racial tensions, if we ourselves have not made every effort to stamp out those divisions in our own country?

Of course, we cannot. We owe it to ourselves as much as to others to create a more just society.

If some good came out of the confirmation of Justice Thomas, it is that sexual harassment has come to be better understood. And I hope that some similar good may come out of our debate on the civil rights bill.

I hope that employers, their interest piqued by the real and imaginary consequences of this legislation, will give some attention to their hiring practices, their promotion practices, and their complaint procedures. I hope they will spend some time doing this, even if their only motivation is to guard against the dire and unfounded warnings of their trade association.

I hope that Congress will move on to the more important business of ensuring that more and more women and minorities are ready to take on jobs in the decades to come.

If ever there were a business necessity, it is that these nontraditional workers be ready to step into more and more demanding positions. Equal justice and economic imperatives demand nothing less.

I yield the floor and the remainder of my time.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I rise in support of the Danforth-Kennedy-Dole amendment on civil rights. I am pleased we have been able to bridge the remaining gap toward a consensus on the civil rights bill.

From the very beginning, I have believed that the Supreme Court decisions which are the subject of this legislation should be reversed. I have also supported expanding the remedies available under title VII of the Civil Rights Act, particularly with respect to sexual harassment.

These are positions I have steadfastly maintained since this issue first arose 2 years ago. Yet I have also held firm to the view that, in restoring the law, we must be careful not to swing the pendulum too far in the other direction—to encourage more litigation rather than to reply on the courts only as an avenue of last resort.

When the Senate last debated this issue a year ago, I said I did not know whether the bill then considered would lead to hiring quotas. I now believe that, if this amendment is adopted, the issue can finally be put to rest. Employers will not be forced to adopt quotas in order to protect themselves.

Having been the subject of so much legal wrangling, the definition of business necessity is now left undefined. Instead of creating new legal terms in anticipation of every possible future circumstance, we have left the interpretation to the courts. While not ideal, this represents a significant improvement over earlier versions of the legislation.

For example, one version last year defined business necessity as "essential to effective job performance," a standard so difficult to prove employers might well have adopted quotas. By contrast, the legal effect of the amendment at hand will be much the same as the compromise language Senator GORTON and I offered last year.

However, there is much more to this legislation than the reversal of the Ward's Cove case. For the first time, we are opening virtually every employer in America to lawsuits for compensatory and punitive damages—including damages for pain and suffering—when they are accused of discrimination. I remain troubled by the potential consequences of this step, which Congress declined to take when it first enacted the Civil Rights Act in 1964.

As a practical matter, additional damages and jury trials will lead to further delays for legitimate victims of discrimination. Our Federal courts are already overburdened, and under the Speedy Trial Act, the backlog of criminal cases, by necessity, takes precedence. Civil jury trials, including title VII cases, are often dropped to the bottom of the docket.

Currently, I am told that it takes anywhere from 1 to 3 years to get to trial in Federal court, depending on the jurisdiction. Given these conditions, I have heard estimates that it may take 5 years or longer to complete a jury trial under this bill. Justice delayed, as we know, is justice denied.

Practical considerations aside, I also question whether these remedies will accomplish the goals we intend. I fear we may be creating false hopes among those who believe this legislation will provide new job opportunities for minorities, women, and other disadvantaged groups. In fact, the opposite may be true.

Right now, the vast majority of title VII cases are discriminatory firing suits. That is, more people sue to keep their jobs than to break down barriers for new jobs. According to a recent article in the Stanford Law Review, the number of such firing suits increases during periods of economic decline, as workers fight to hold on to their jobs.

From an economic perspective, by increasing damage awards, we increase the potential cost of hiring minorities and women in the eyes of employers. According to the authors, "Such suits actually provide employers with a disincentive—perhaps even a net disincentive—to hire minorities and women." I am afraid, particularly in these economic times, companies will react by hiring fewer employees, or simply moving elsewhere.

I hope this will not be the case. I also hope this legislation will not, by increasing the threat of litigation, heighten the tensions that already exist in the workplace. If next year we consider removing restrictions on damages altogether, perhaps at the same time we will look further into alternative means of dispute resolution or even direct our attention toward broader litigation reform.

Mr. President, let me commend Senator DOLE, Senator DANFORTH, and Senator KENNEDY, among others, for their tireless and good faith efforts toward reaching an agreement. As I said, this issue, in particular, has been the subject of an especially bitter and divisive debate. I am heartened by the fact that all sides were able to come together. My final hope is that the bipartisan spirit of cooperation, which this amendment represents, will continue in the days to come.

The PRESIDING OFFICER. The Chair wishes to apprise that the time of the Senator from Arizona has expired. The Senator from Massachusetts controls 5 minutes and 9 seconds.

Mr. KENNEDY. Mr. President, I yield to the Senator from Connecticut.

The PRESIDING OFFICER. The distinguished Senator from the State of Connecticut.

Mr. DODD. Madam President, I thank the Chair and I thank the distinguished floor manager of the legislation.

Madam President, I rise today in support of S. 1745, the Civil Rights Act of 1991. I want to commend my colleagues Senators DANFORTH and KENNEDY for their tireless efforts in bringing this bill to the floor and hopefully ensure all Americans that the U.S. Senate is dedicated to protecting the civil rights of all of our citizens.

I particularly commend Senator DANFORTH, Madam President, who has toiled literally for weeks on end to bring us to this point. When the history of this legislation is finally written and how it came to pass, there is no doubt in this Senator's mind that the senior Senator from Missouri will rightfully deserve tremendous credit for having reversed these earlier Supreme Court decisions which have set back the clock for those who are trying to guarantee their rights, particularly in the employment sector.

Clearly, one of the most important responsibilities of Government is the guarantee of freedom, equality, justice, and opportunity under the law. Racism and sexism are contrary, as we all know, to our basic ideals and have no place in this Nation. But the reality for all too many of our citizens has been otherwise.

Madam President, I strongly support this legislation because I believe it is Congress' duty to ensure that the rights of equality and opportunity remain steadfast in our law. Despite our best efforts to end the sanction of race and sex discrimination in the workplace, including passage of the 1964 Civil Rights Act and in particular title VII of that act, many of our fellow citizens, particularly those who are minority or female, have encountered obstacles rather than opportunity.

Congress has demonstrated its intent to guarantee equal rights in the workplace through the adoption of the Civil Rights Act of 1964, title VII of that act and section 1981 of the Civil Rights Act of 1866. When we passed the Fair Housing Acts, we thought we would rid this Nation of discrimination in housing. However, on October 21 of this year, the Fed announced the results of a study that showed that black and Hispanic mortgage loan applicants were two to three times as likely to be denied loan approval for home loans as white applicants. In my home State of Connecticut, the Institute for Social Inquiry at the University of Connecticut recently conducted a poll that found that 44 percent of women interviewed said they had been sexually harassed in the workplace.

Unquestionably, much progress has been made. But obviously, much work is left to be done. That is precisely why we are here today.

Despite the good intentions of past Congresses and Presidents, the Supreme Court in its 1989 term cast a shadow on this Nation's commitment to civil rights while reneging on our commitment to provide equal protection under the law. The decisions handed down by the Supreme Court, in five cases, stripped our historic civil rights laws of much of their enforceability. The Court's decisions have made it considerably more difficult for victims of discrimination and sexual harassment in the workplace to win their cases. As a result, millions of hardworking Americans have lost protection under section 1981 and title VII.

For example, in Wards Cove Packing Co. versus Atonio, the Supreme Court overturned an 18-year precedent set by the Griggs versus Duke Power Co. decision regarding the burden of proof in cases alleging discrimination based upon the disparate impact of business hiring of minorities.

Before the Wards Cove ruling, the Court had established a simple and logical rule, once the plaintiff had developed a prima facie case of discrimination, it was up to the defendant to prove that the hiring practices in question had a business necessity. The rule made perfect sense since such information in uniquely within the defendant's knowledge. Now, however, the Court expects the plaintiff to both develop the prima facie case and prove that a hiring practice was discriminatory and not a matter of business necessity.

By shifting the burden of proof from the defendant to the plaintiff, the Supreme Court made an already difficult task an impossible one for the plaintiff. The proof of that statement is clearly reflected in the fact that cases decided in favor of the plaintiff before Wards Cove have already been appealed and reversed in favor of the defendant.

Section 8 of the Civil Rights Act of 1991 restores the force and effect of the Griggs decision by reaffirming that the plaintiff, in order to prove his case, need only show that the hiring practices of the company in question were not job related to the position in question and consistent with business necessity or that there was a less discriminatory alternative to the hiring practice and the employer refused to adopt it.

Second, in Patterson versus McLean Union, the Supreme Court ruled that section 1881 of the Civil Rights Act of 1866 prohibits racial discrimination in hiring but not in posthiring employment. Section 4 of the Civil Rights Act of 1991 overturns Patterson and extends section 1981 coverage to on-the-job victims of racial discrimination, sexual harassment, and religious bigotry.

Third, in Martin versus Wilks, the Supreme Court's decision discourages the use of consent decrees to settle a job discrimination suit by allowing endless challenges to such decrees. Consent decrees have in the past worked to resolve many discrimination cases. However, as a result of this ruling, employers will not elect to enter into a consent decree if by resolving one problem they create another. To protect the use of consent decrees, section 11 of the Civil Rights Act of 1991 requires that notices be given to persons who may be adversely affected by a court order. An individual would be given a reasonable opportunity to challenge the court order after which time subsequent law suits would be barred.

Madam President, the events of the last several weeks have indeed opened our eyes to the plight of women in the workforce. As I previously indicated, in my State alone, 44 percent of women polled in a recent study reported being sexually harassed. I am happy to see we will pass a bill that begins to address this problem by putting real teeth in title VII of the Civil Rights Act of 1964.

I am also pleased to see that the Civil Rights Act of 1991 has addressed problems raised by the Court in the Price Waterhouse and Lorance decisions. In Price Waterhouse versus Hopkins, the Court ruled that an employment decisions motivated only in part by prejudice does not violate title VII if the employer can show that the same decision would have been made for nondiscriminatory reasons. S. 1745 overturns the Price Warehouse decision thus making any reliance on prejudice illegal.

In Lorance versus AT&T Technologies, the Court ruled that the statute of limitations for challenging discriminatory seniority plans begins to run when the plan is adopted rather than when the plan is applied to harm an employee. This ruling would bar most employees from bringing suit for discriminatory promotion practices. By overturning Lorance, the Civil Rights Act of 1991 would permit a person to challenge discriminatory employment practices when they harm them.

Those decisions represented an unprecedented retreat on the part of the Supreme Court from the enforcement of antidiscrimination laws. I, therefore, stand here today ready to pick up the ball where the Supreme Court dropped it and champion the causes of justice, equality, and opportunity for all Americans who only desire the chance to succeed and contribute to this great land.

The civil rights laws we are restoring prohibit discrimination on the basis of race, sex, color, and national origin and all other forms of illegal discrimination in the workplace. We as Americans have made it abundantly clear that we will not tolerate discriminatory treatment of others on the basis of race or sex. Because there is obviously great consensus on this principle, I must ask why is there opposition to the Civil Rights Act of 1991?

Chief among the opponents of this legislation, until just last week, was the President who argued that the Civil Rights Act of 1991 went significantly beyond the original goals of equality, settlement, and reconciliation found in title VII and section 1981 and would cause employers to adopt surreptitious quotas or abandon legitimate hiring and promotion devices in order to protect themselves from the allegation of discriminatory hiring practices.

The President also charged that the Civil Rights Act of 1991 skewed the burden of proof so significantly toward the plaintiff in both disparate impact and treatment cases that defendants would never be able to defend against these cases.

And, finally, the President argued that if we award damages to women who are victims of discrimination or sexual harassment in the workplace we will encourage lawyers to counsel their clients to sue for damages rather than reconcile their differences with their employer, causing a litigation boom for lawyers but little progress for women in the workplace.

The President's acquiescence to minor changes in these three areas suggests that his problems have been more political than substantive. I believe all of these charges were never supported by the evidence. First, this bill is not and never was a quota bill. It merely restores the balance intended by the Griggs decision in employment discrimination suits; second, there is no evidence that indicates lawyers will be any more apt to bring these very difficult employment discrimination lawsuits; and finally, I believe there is no real difference between the sting of race discrimination and the sting of sex discrimination.

It makes good common sense to permit women to sue for damages when employers intentionally discriminate, especially when, currently, the only legal remedy is to put the woman right back into the hostile environment. This bill provides women with an alternative.

Madam President, I will conclude my remarks by saying that I supported in principle many of the amendments that have been offered throughout the consideration of this bill. Senator McCONNELL's amendment on capping attorneys' fees and the Wirth-Durenberger amendment on uncapping damages, while desperately needed and ones that I philosophically support, would have made it virtually impossible to get a civil rights bill passed into law. I am happy to see that the Mitchell-Grassley compromise on congressional coverage has been attached to this bill. It is long overdue and one that I called for many years ago and would like to see become law.

I want to reiterate that I have supported every major piece of Federal civil rights legislation brought before Congress in my 16 years in Washington, including the extension of the Voting Rights Act, the Fair Housing Acts, the Grove City Act and bills creating the formation of the Civil Rights Commission.

Further, I have long expressed my support for laws designed to combat the evil of discrimination in public accommodations, housing, and the workplace. I believe that we must not forget the past no matter how painful. Because I believe that equality and opportunity are enduring hallmarks of this Nation, I think we must stop the erosion of these rights.

Madam President, I agree with the goal of the Civil Rights Act of 1991. And I strongly believe that it is imperative that we restore the full force and effectiveness of our Nation's civil rights laws to millions of minorities and women. The Supreme Court's decisions of the 1989 term have meant justice delayed. That is, in effect, 2 years of justice denied for millions of Americans. We cannot let this continue. I therefore stand ready to support and vote for S. 1745, the Civil Rights Act of 1991 and encourage all of my colleagues to do the same.

Mr. HARKIN. Madam President, I rise in support of S. 1745, the Civil Rights Act of 1991, as modified by Senator DANFORTH, Senator KENNEDY, and the administration.

S. 1745, as modified, is a good bill. It overturns several Supreme Court decisions that have cut back dramatically on the scope and effectiveness of civil rights protections. It expands and improves remedies to compensate victims of intentional gender discrimination, including sexual harassment. The bill also includes remedies to compensate people with disabilities for intentional discrimination under the Americans With Disabilities Act.

Is S. 1745 a perfect bill or the bill I would have crafted? No. For one thing, although the remedies for women and people with disabilities are an improvement over current law, I would have preferred that there be no cap on the amount of damages available to women and people with disabilities since we currently do not have caps for racial minorities under section 1981. Congress should not allow women and people with disabilities to be second-class citizens when it comes to remedying the effects of intentional discrimination. When the harm is the same, the available remedies should be parallel.

However, I support S. 1745 because on balance the positive aspects of the bill outweigh its shortcomings.

I am pleased President Bush finally accepted the civil rights bill. I only wish the President would have been willing to negotiate in good faith 2 years ago instead of stonewalling so he could use the quota strategy for short-term political gain. Pitting race against race is not only offensive, but it is bad for our country. I believe that Mr. Bush's handlers were sensing that the quota strategy was no longer paying political dividends. Whatever the reason, I am glad the compromise was reached. I just hope he will never use race again for shortsighted political ends.

We need a civil rights bill now because the unfortunate truth is that discrimination in the workplace is still pervasive in our country.

The serious problem of sexual harassment in the workplace gained heightened attention during the Thomas hearings. Under current law, there are no effective means of deterring such harassment. This is because under current law, women may not recover compensatory and punitive damages.

Ellen Vargyas of the National Women's Law Center framed the issue regarding the impact of sexual harassment and other forms of intentional gender discrimination as follows: "Who should bear the nonwage costs of intentional, illegal discrimination: the perpetrator of the discrimination or the victim? Under current title VII law, it is the victim."

Witness after witness in hearings in both the House and the Senate made the same point—under current law a woman can be the victim of "sustained, vicious, and brutal harassment" (see *Zabkowicz* v. *West Bend Co.*, 589 F. Supp. 780, 784 (E.D. Wis. 1984)), suffer serious emotional and other health problems, and still receive nothing more than limited back pay. The bill addresses this inequity.

Several recent reports document the disparities in earnings between Afro-Americans and white Americans and the continued prevalence of discrimination in the workplace.

In August 1991 the Bureau of the Census released a report entitled: "The Black Population in the United States: March 1990 and 1989." The wage gap between blacks and whites offers a painful illustration of the effects of discrimination in the workplace. Black men make 69 percent of the earnings of white men, $15,320 versus $22,160. Black women suffer from multiple discrimination. Black women receive only 52 percent of white men's earnings, $11,520 versus $22,160.

Unfortunately, the evidence is that a college education does not help close the gap between blacks and whites in any significant way. The Census Bureau report showed that white men with 4 years of college education had median earnings of $41,090; black men with comparable education had median earnings of only $31,380, 76 percent of the earnings of white men; and black women with a comparable education had median earnings of only $26,730, 65 percent of the earnings of white men.

A study by the Urban Institute on Discrimination in the Workplace concluded that job discrimination against black men is "widespread and entrenched." The study sent matched pairs of white and black men to compete for the same jobs—men with the same qualifications and similar abilities. The study found that white applicants were three times as likely to receive a job offer and almost three times as likely to advance in the hiring process.

Fifteen percent of the white applicants received job offers, compared to 5 percent of the blacks. In addition, white men advanced in the hiring process 20 percent of the time, compared to only 7 percent for black men.

Other findings of the study showed that black applicants were treated rudely or unfavorably in 50 percent of their employment efforts, while white men received unfavorable treatment in 27 percent of their job searches.

A second recent report indicates that the problem of discrimination is not limited to entry into the work force but also is prevalent in the area of promotions. On August 8, 1991, the Department of Labor released a report entitled: "Report of the Glass Ceiling." The report found that among 94 large employers analyzed by the Department, women were 37 percent of 147,000 employees and minorities were 16 percent. But only 17 percent of women and 6 percent of minorities held any management job, and only 6.6 percent of women and 2.6 percent of minorities were at the executive level. Minorities are working at lower levels in the corporate structure than women.

The report identified some of the barriers to advancement: the manner in which job openings are advertised or lack thereof; the use of executive search firms which often do not include women and minorities in those recommended; the lack of access for women and minorities to training and development programs; and a lack of knowledge at the top levels of corporations regarding equal employment opportunity responsibilities and evaluation.

All companies reviewed had different methods of developing personnel. But, according to Secretary Martin, "they all had one thing in common—they didn't make these opportunities as available to minorities and women."

These studies document the urgent need to enact a civil rights bill that sends the clear message that discrimination in the workplace will not be tolerated. S. 1745, as modified, will accomplish this objective.

I have been asked whether the compromise worked out with the administration weakens the Danforth bill. On reviewing the modifications, I am struck by the fact that the changes, including those relating to the so-called quota issue, are cosmetic rather than substantive in nature.

With respect to proving disparate impact discrimination, the modified version of S. 1745 accomplishes the very same purposes and includes the same policies that were included in last year's civil rights bill, this year's House version of the bill, and S. 1745, as originally introduced. The modified version of S. 1745 is not a quota bill, nor were any of its predecessors.

Numerous Republican Senators joined by Senate Democrats concluded that these bills were not quota bills. The Civil Rights Commission appointed by President Bush told us repeatedly that these bills were not quota bills. Religious organizations that traditionally oppose any bill that could be construed as requiring quotas, told us that these bills were not quota bills. The Business Roundtable told us that the House bill was not a quota bill.

All these individuals and groups were and are right. Every version of the civil rights bill was designed to accomplish the same objective—restore the policy in the Griggs decision and overturn the Wards Cove decision.

Let me explain why this is the case. In 1971 the Supreme Court handed down its unanimous decision in Griggs versus Duke Power. In Griggs the Court held that title VII requires "the removal of * * * unnecessary barriers to employment where the barriers operate invidiously to discriminate * * * the touchstone is business necessity." The Court also invalidated job qualification standards because they did not "bear a manifest relationship to the employment in question."

For 18 years the country lived under the Griggs standard and no one ever claimed that Griggs required quotas. In fact, during the debate over the civil rights bill, the administration consistently endorsed the Griggs standard and supported legislation to restore it.

In 1989, the Wards Cove decision overturned Griggs.

The intent of S. 1745 was to restore the protections that existed prior to Wards Cove by reinstating the Griggs rule. Senator DANFORTH accomplished this by using language from the Griggs case and by using language from the recently enacted Americans with Disabilities Act.

The ADA is landmark civil rights legislation designed to ensure equal opportunity for people with disabilities. I am proud to have been the chief sponsor of the ADA.

The ADA and its accompanying legislative and regulatory history embrace Griggs and reject Wards Cove. This point is clear from the language included in the legislation, the legislative history accompanying the ADA, and recently reaffirmed in the conference report accompanying the Civil Rights Act of 1990 (H. Conf. Rpt. No. 101-856 at page 20).

Specifically, the ADA states that discrimination includes "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity."

The language included in the ADA is an amalgam of three sets of regulations implementing sections 501, 503, and 504 of the Rehabilitation Act of 1973 and court cases such as *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 308 (5th Cir. 1981).

The basis for the regulations and the court decisions is the Griggs decision. When the then Department of Health, Education, and Welfare issued the first set of regulations implementing section 504, it explained that the requirement that selection criteria must be job-related "is an application of the principle established under title VII of the Civil Rights Act of 1964 in Griggs versus Duke Power Company."

The Prewitt case, which is cited to in the House Judiciary report accompanying the ADA, states that "the EEOC regulations [implementing section 501 of the Rehabilitation Act] adopt a Griggs-type approach in the disparate impact handicap discrimination context."

The analysis prepared by the EEOC accompanying the final regulations implementing title I of the ADA correctly states that the "concept of 'business necessity' has the same meaning as the concept of 'business necessity' under section 504 of the Rehabilitation Act of 1973."

S. 1745, as originally introduced, included the language from the ADA and the Griggs decision. It stated that: "The term 'required by business necessity' means in the case of employment practices that are used as qualification standards, employment tests, or other selection criteria, the challenged practice must bear a manifest relationship to the employment in question."

Under the compromise, an unlawful employment practice based on disparate impact is established if a complaining party demonstrates that an employer uses a particular employment practice that causes a disparate impact and the employer fails to demonstrate that the challenged practice is "job related for the position in question and consistent with business necessity." This is the language from the ADA.

The compromise deletes the definition of the term "business necessity" ("manifest relationship to the employment in question", which comes directly from the Griggs case). Instead, the legislation specifies that the purpose of the act is to "codify the concepts of 'business necessity' and 'job-related' enunciated by the Supreme Court in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971) and in the other Supreme Court decisions prior to *Wards*

Cove Packing Co. v. *Atonio*, 490 U.S. 642 (1989)."

In sum, instead of specifically incorporating the language from Griggs in the definition of "business necessity", the compromise incorporates the concepts of Griggs. This is a cosmetic change that has no substantive significance.

With respect to disparate impact discrimination, when S. 1745 becomes law, title VII and the ADA will be parallel to the same extent that title VII and section 504 where parallel prior to Wards Cove. I use the modifier "to the same extent" because the method of proving disparate impact under ADA and section 504 may differ in certain circumstances from title VII with respect to the use of statistics. As noted in the analysis to the final regulations under section 504, because the small number of disabled persons taking tests may make statistically showings of disparate impact difficult, "once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related." 42 Fed. Reg. 22688,89 (May 4, 1977).

In sum, none of the civil rights bills were quota bills. They all had the same intent—to restore the standards in Griggs. The American people are probably asking themselves why the President characterized the previous civil rights bills, including S. 1745, as introduced, as quota bills when they simply reinstated the Griggs rule and no one ever raised the quota argument under Griggs?

The initial decision by President Bush and his handlers to raise the specter of quotas is not a new political ploy. The same strategy was used back in 1964 during the debate on the historic Civil Rights Act of 1964.

In the course of the debate Senator Hubert Humphrey, the floor manager of the bill, stated: "The bill cannot be attacked on its merits. Instead, bogeymen and hobgoblins [such as quotas] have been raised to frighten well-meaning Americans."

Mr. Bush and his handlers used quotas in 1990 and 1991 to frighten well-meaning Americans, in much the same way he frightened Texans when he opposed the civil rights bill of 1964 during his campaign for the Senate. This very same strategy is now the centerpiece of the David Duke campaign in Louisiana.

I find this strategy morally offensive. And I am pleased to note that several other Senators from both sides of the aisle agree with me.

I believe that using race for short-term political gain is bad for our country. Pitting race against race and sex against sex does not make America stronger; nor does it make us more competitive in the international arena. Using race as a wedge issue saps our collective will to improve our Nation's economic and social well being and to hire and promote the best and the brightest.

When I was growing up in a small town in Iowa, I remember starting each school day by reciting the "Pledge of Allegiance." "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

In my town, these words rang true. We always thought of ourselves as one nation, one community, and one extended family.

The role of the President is to find ways to bring the American family together, not to divide us for political gain.

We are one extended family.

We find our strength in our diversity.

We do not pit one American against another American.

We give each member of our family an opportunity to maximize his or her potential. When arbitrary barriers get in the way, we work together to remove them. When one member of the family succeeds, the whole family is proud.

This is my vision of the American family.

To this point, my remarks have focused on the need for enacting this bill and the quota red-herring. The remainder of my time will focus on the relationship between S. 1745 and the ADA.

I am pleased that the managers of the bill recognized that the applicable sections of the Civil Rights Act of 1991 should be applied consistently to the ADA. Section 5 of S. 1745 provides that an unlawful employment practice is established when a plaintiff demonstrates that a protected class status was a motivating factor for an employment practice. This policy is comparable to the standard already adopted under the ADA. (See for example, Sen. Rpt. No. 101–116 at page 45; H. Rpt. No. 101–485, Part 2, at 85–86.)

Other sections of the Civil Rights Act of 1991, which amend section 706 of title VII, are explicitly incorporated into the ADA through section 107(a) of the ADA.

Section 5 of S. 1745 states explicitly that damages are available under the ADA for all cases of unlawful intentional discrimination; that is, not an employment practice that is unlawful because of its disparate impact, or for violations of the reasonable accommodation provision in section 102(b)(5) of the ADA.

Causes of action for disparate impact are limited to section 102(b)(3)(A) and part of section 102(b)(6) of the ADA except for practices intended to screen out individuals with disabilities.

Section 1977A(a)(3) provides that damages are not available if the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

As the chief drafter of this provision, it is my intent that a demonstration of good faith efforts must include objective evidence that the process of determining the appropriate reasonable accommodation has been conscientiously complied with by the covered entity. This process is described in the Senate report accompanying the ADA (S. Rpt. 101–116) at pages 34–35 and the analysis accompanying the final regulations implementing title I of the ADA promulgated by the EEOC (56 Fed. Reg. 35748–49 (July 26, 1991)).

The legal mandate that the reasonable accommodation provides the individual with a disability an "equally effective opportunity" means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. (See analysis by the EEOC accompanying the regulation implementing title I of the ADA (56 Fed. Reg. 35748 (July 26, 1991)).

In closing, the Civil Rights Act of 1991 codifies simple justice. It will help make the promise of "liberty and justice for all" a reality for all Americans.

I am proud to be a cosponsor of S. 1745 and I urge my colleagues to vote for passage without weakening amendments.

The PRESIDING OFFICER. The Chair apprises the managers of the bill that all time has expired on this amendment.

Mr. HATCH. Madam President, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the McCain amendment.

The amendment (No. 1293) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

Mr. SYMMS. Madam President, who controls the time?

The PRESIDING OFFICER. The managers of the bill.

Mr. HATCH. Madam President, I believe the Senator from Idaho would like to ask unanimous consent to take 3 minutes.

Mr. SYMMS. I ask unanimous consent that I might have 2 minutes to speak on the bill.

Mr. HATCH. In addition to the time we have left on the bill.

The PRESIDING OFFICER. Without objection, the Senator may proceed.

Mr. SYMMS. I thank the distinguished Chair.

I will just briefly state that I will be voting against this bill, and I will do so with heavy heart because I know that many of my colleagues have worked at great lengths to achieve the compromise legislation that is before the Senate today.

I think some explanation needs to be stated that when Washington, DC, finally reaches a compromise, what that really means to the small business people in America, to the workers in America, to the taxpayers in America, is: "here they go again in Washington." Now it is going to be harder to do business, more difficult to show a bottom line, more difficult to have capital invested in this country and, overall, more difficult to maintain our sense of competitiveness.

We have worked long and hard in this country, Madam President, to reach the place that we are at today. Yet, what this bill will do, no matter what is said about it, is that it will place more burdens on the backs of the American people, more bureaucracy, and more risks. They will not only be held liable for backpay and allowances to people, but they will be held liable to add substantial payments for damages if they are assessed against them.

So it is small wonder sometimes, Madam President, as I look at the political situation, to see how we seem to have a shrinking number of those of us on this side of the aisle. When I hear the responses from the majority leader and from the chairman of the committee, Senator KENNEDY and others, that when the President finally did agree to a compromise, it is as though, well, they finally saw the light, and it is reported that way to the bulk of the American people outside the beltway.

Small business is the backbone of America. It hires the people who work, live, and produce in this country and they look upon Washington, DC, with great dismay. They have seen us increase their taxes since 1988. They have seen minimum wages go up since 1988. They have seen a $40 billion, $50 billion per year Clean Air Act passed since 1988, and now they see this added to it, along with more and more regulations, more taxes. And on top of it, they see their Government borrowing $1 billion a day and they wonder when the end is coming. When will the people in Washington wake up and recognize that what is needed to better race relations in America are good jobs, good economic opportunities and a good workplace.

So, as I say, I am not happy about being put in a position to have to vote in opposition to this bill, but I would prefer to see the law have stayed the same.

This is a very complicated piece of legislation. I know my friend from Missouri and others have worked tirelessly to achieve this point. But I think in the end what will happen is it is going to be a tougher place to do business. The deficit will get a little bigger. In addition to the Clean Air Act, in addition to new OSHA inspectors running around the country fining people so they can raise revenue to meet the budget deficit of last year, they have to see a continuation of bigger and bigger Government with which to deal.

Mr. President, through the years I have served in this Senate, I have tried to live by the well-worn, much-abused cliche: "If it ain't broke, don't fix it." For this reason I must oppose the so-called compromise.

S. 1745 seeks to overturn several recent Supreme Court decisions affecting the way civil rights are handled in our courts. Wards Cove Packing Co. versus Atonio is the decision that has attracted the lion's share of public attention. In Wards Cove, the Court ruled that a plaintiff must do more than merely show a statistical disparity in order to claim discrimination. It also allowed defendants to claim a business necessity defense.

The compromise also overturns Price Waterhouse versus Hopkins, which states that an employer can avoid a discrimination suit if the plaintiff would not have been picked for the job absent the discrimination.

I believe these decisions to be moderate and based on sound principles. They simply seek to ensure a sense of balance and common sense in our civil rights laws. These decisions are wholly consistent with the legislative intent of relevant civil rights laws and with the Constitution's guarantees, and should not be overturned.

Mr. President, the American worker today is protected from civil rights abuses by 20 years of court precedent. The Equal Employment Opportunity Commission takes the lead in protecting civil rights under title VII of the Civil Rights Act of 1964. In the past 10 years, the EEOC has dramatically increased the number of complaints and lawsuits filed. It has more than doubled the level of damages collected over previous years. These are hardly the figures of a civil rights system under fire, hardly the sign of a system that will collapse without this legislation, as some here would have us believe. Clearly the system works.

Yet, this legislation will throw these precedents and working systems out the window. Established precedent will be replaced by untested standards. The EEOC's method of redress will be replaced by a tort system with huge damage awards. I fail to see the need or the wisdom in doing this.

Currently, there are incentives in place for a quick settlement. This system enables the employee to seek redress and get back to work. But under S. 1745, huge monetary award amounts are encouraged through jury trials, eliminating any incentive for the plaintiff and defendant to settle early. And with legal and expert fees allowed, there is no incentive for the lawyer to settle either. So, what we have here is an invitation to long, drawn out court battles over huge stakes, replacing the current system of solving the problem and getting people back to work.

I also question the wisdom of substituting title VII's current structure with tort law. The tort system is infamous for its snail pace and unfairness. It is irresponsible for us to complain about the backlog in the Federal courts and add to it unnecessarily at the same time. If our crime bill works, as I hope and prey it does, our courts will be inundated with new criminal cases while our streets are being cleaned up.

The April 1990 Report of the Federal Courts Study Commission stated that the "recent surge of Federal criminal trials * * * is preventing Federal judges in major metropolitan areas from scheduling civil trials, especially civil jury trials, of which there is a rapidly growing backlog." In such an environment, it is questionable at best to replace the working title VII structure with one that will significantly increase jury trials and litigation.

Another provision of this bill which is totally unprecedented and quite troubling is section 11, which prevents constitutional challenges to discrimination which results from civil rights judgments. Put simply, reverse discrimination cases are virtually outlawed.

This provision strikes at the very heart of the motto "Every man can have his day in court." People who may be harmed by a decision, people whose civil rights are violated because of someone else's actions, have no recourse. They are bound by a decision in which they had no voice, but which affects them drastically.

If this legislation passes, an employer can say to an honest American worker, "I don't care if you're qualified. I don't care if you are more qualified than the next guy. Because of the color of your skin, you cannot work here. And there is nothing legally you can do about it."

That is ugly. That is wrong. It violates the very premise of civil rights. As Justice Brennan wrote, "The goal of title VII was not some socially acceptable 'bottom line' but rather fair employment opportunities for each and every individual."

This is a very sensitive issue. People in our country are worried that their rights will be denied by such court action. Many feel their jobs are on the line. Reverse discrimination is an area where precedent is still being established, the limits to rights are still being explored. It is wrong for Congress to step in and make such cases impossible before the courts have had a chance to fairly settle the issue.

This compromise would also destroy the commonsense balance between civil rights and business interests which Wards Cove established. The compromise proposal states that a practice must be "job related for the position in question and consistent with business necessity" to be legal. I agree with Wards Cove in saying this is too restrictive.

This bill is telling the people of our Nation that education and skills beyond the bare necessity for completing a job are unimportant. An employer would be prohibited from taking them into consideration.

Writing on this subject, Secretary of Education Lamar Alexander pointed out that our global competitiveness depends on a better educated work force. Workers must have the skills to adapt to a rapidly changing work environment. He wrote that in spite of global economic reality, legislation such as this "appears to say that employers will not be able to require entry-level employees to have the skills and knowledge necessary to perform functions other than those required by the exact job for which they are being considered. In effect, the bill seems to require that employers hire as if every job is a changeless and dead-end job."

What Wards Cove seeks to do, and what American business needs, is to establish a balanced approach to civil rights where business can obtain a qualified and flexible work force and rights are protected at the same time.

Civil rights are protected in this country. Workable remedies are available for those whose rights are denied. The legal area of civil rights continues to grow on its 20 years of precedent and evolve to meet the civil rights needs of this Nation.

New legislation is unnecessary and will have a dramatic impact on the effectiveness of our court system. Once again, "if it ain't broke, don't fix it."

I yield the floor.

Mr. HATCH addressed the Chair.

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senator from Washington be recognized for 6 minutes outside of the agreed times.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ADAMS. Madam President, I intend to vote in favor of the Danforth-Kennedy substitute civil rights bill. I am disappointed that this bill contains flaws that will need to be addressed at a future date. Frankly, this bill is better than having no bill at all, but it could have been much better.

We passed a much better civil rights bill with bipartisan support in both Houses last year. We came within one vote of overriding the President's veto.

The current compromise version is the best we are going to get this year. Those of us who believe in our hearts that civil rights remain the great unfinished agenda in our society will be back to fight on at a later date.

During these recent weeks of negotiations with the White House, I have on several occasions reflected on that day when we came within one vote of passing that better effort at restoring civil rights standards eroded by recent Supreme Court decisions. David Duke, the former grand wizard of the Ku Klux Klan, sat smirking in the gallery above this floor on the day we failed to put the divisive politics of race behind us. Now Mr. Duke stands nominated as the candidate of the Republican Party for the governorship of Louisiana. And while President Bush has finally stopped shouting "quota" whenever the subject of a civil rights bill is raised, Mr. Duke is still reading from last year's script. Some have suggested that David Duke's political success helped convince Mr. Bush's advisors that it was time to get serious about passing civil rights legislation this year. Whatever the cause, President Bush finally came to the table, and this bill is the result.

I am extremely disappointed that the bill falls short in redressing discrimination against women. The bill says that discrimination on the basis of sex is less important than other forms of discrimination.

Under this bill, women of color would be forced to abandon their sex discrimination claims and use claims based on race or national origin to bypass the caps on damages.

Under this bill, compensation for damages as a result of sexual harassment or discrimination are capped.

By capping damages, we relegate women's discrimination cases to second class status in the American legal system. Just imagine the howl of anguish from the business community if we sought to cap damages a corporation could recover in civil litigation.

There will come a day when this institution recognizes that sexual harassment cases should be taken as seriously as corporate litigation. An administration that professes its concern about the glass ceiling that prevents women from advancing in their careers should not be insisting on legislation to limit a woman's right to be fully compensated in a successful lawsuit.

I will be an original cosponsor of the effort to remove the caps on damages for sexual harassment cases. If the President vetos that bill, he can spend some of his domestic travel time in 1992 explaining why plaintiffs in sexual harassment cases don't deserve full access to the courthouse.

Madam President, the overwhelming majority of my colleagues who have expressed their support for this compromise stated that we will return the burden of proof in discrimination cases to the standard enunciated in Griggs versus Duke Power Co. Both the findings and the purposes sections of the bill suggest that to be the case.

I find it troubling to read in the final sentence of this substitute bill the following language:

> Notwithstanding any other provision of this act, nothing in this act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

This little amendment represents special interest legislating at its worst.

And who is the beneficiary of this inside deal? There is only one disparate impact case that meets this definition: Wards Cove Packing Co. versus Atonio. So we are legislating a return to the Griggs standard for every case except Wards Cove. Is that fair? It most certainly is not.

This bit of legislative mischief is proof that the Wards Cove Packing Co. has friends in high places. For the past 2 years, Wards Cove had its lobbyists at work pushing this amendment. Now the corporate interest is legislatively protected at the expense of the individuals who brought the case.

Yesterday, I received a letter from Frank Atonio, one of those original plaintiffs. Mr. Atonio states:

> Like other nonwhites at Wards Cove Packing Co., I worked in racially segregated jobs, was housed in racially segregated bunkhouses and was fed in racially segregated mess halls. A number of us brought the case to redress the injury caused by racial discrimination. But we now see the original injury compounded by a new injury—one caused by a special exemption obviously designed to make it hard for us to redress the racial discrimination.

He goes on to ask:

> I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage. I would appreciate your asking the sponsors, both Republican and Democrat, how they can justify this special exemption.

Madam President, I do not have a good explanation for Frank Atonio and the other Wards Cove plaintiffs. I would certainly welcome hearing from any other Member of the Senate who does.

Unlike Wards Cove Packing Co., Frank Atonio did not have the money to hire a Washington, DC, lobbyist to look out for his interests. But I feel compelled to speak today on his behalf, and I ask unanimous consent that his letter, and an accompanying letter from the attorney who has handled the case over all these years be placed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ADAMS. It is my hope that our colleagues in the other body will take a close look at the one sentence that turns the Civil Rights Act of 1991 into the Wards Cove Relief Act. I hope they will insist that section 22(b) be deleted in conference. Wards Cove Packing Co.

should play by the same rules as every other litigant under the law we are passing today. In my view, that is what equal justice under law is all about.

I thank the Chairman.

EXHIBIT 1

OCTOBER 28, 1991.

Re Danforth-Kennedy Civil Rights Act of 1991.

Senator BROCK ADAMS,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: I am the Frank Atonio of Wards Cove Packing Co. v. Atonio.

I am writing out of a deep concern about a section in the Civil Rights Act of 1991 which excludes our case from coverage.

It says the Act shall not apply "to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

I am told no other case in the country besides ours meets these criteria, so no other case in the country is excluded from coverage.

I am told this provision was added at the insistence of Senators Murkowski and Stevens, the two senators from Alaska where Wards Cove Packing Company has its operations. I am also told Wards Cove Packing Company has done a great deal of lobbying in Washington, D.C. to get this provision.

Like other non-whites at Wards Cove Packing Company, I worked in racially segregated jobs, was housed in racially segregated bunkhouses and was fed in racially segregated messhalls. A number of us brought the case to redress the injury caused by racial discrimination. But we now see the original injury compounded by a new injury—one caused by a special exemption obviously designed to make it hard for us redress the racial discrimination.

The Civil Rights Act of 1991 was drafted inpart to overrule the Supreme Court decision in our case. It says,

The Congress finds that—

* * * * *

(2) the decision of the Supreme Court in Wards Cove Packing Company v. Atonio, 490 U.S. 624 (1989) has weakened the scope and effectiveness of Federal civil rights protections. . . .

* * * * *

The purposes of this Act are—

* * * * *

(2) to codify the concepts of "business necessity" and "job relatedness" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and the other Supreme Court decisions prior to Wards Cove Packing Company v. Atonio, 490 U.S. 642 (1989).

I do not see how a law which was designed to overturn the Supreme Court decision in our case can exclude only our case from coverage. I would appreciate your asking the sponsors (both Republican and Democratic) how they can justify this special exemption.

We have been fighting our case for seventeen and one half years. It was nearing a conclusion when the Supreme Court decided to use it to overturn well established law. We now see new roadblocks raised, which place a just resolution farther in the future.

Few workers in the country are as economically disadvantaged as non-white migrant, seasonal workers, a group which comprises the class in our case. Yet the special exemption in the bill will now make it harder for us than anyone else to prove discrimination against our former employer.

I would appreciate your doing everything in your power to fight this provision.

Yours truly,
FRANK (PETERS) ATONIO.

NORTHWEST LABOR AND
EMPLOYMENT LAW OFFICE,
Seattle, WA, October 28, 1991.

Re Danforth-Kennedy Civil Rights Act of 1991.

Senator BROCK ADAMS,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: I am an attorney for the plaintiffs in Wards Cove Packing Co. v. Atonio.

I am writing about §22(b) of the pending Civil Rights Act of 1991, which reads, "Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

The clear aim of this provision is to exclude Wards Cove from coverage, despite the fact the bill was designed in part to overrule the Supreme Court decision in Wards Cove.

The provision apparently has its genesis in an amendment Senator Murkowski offered to the Civil Rights Act of 1990. He wrote at the time:

"During Senate consideration of S. 2104, the Civil Rights Act of 1990, I intend to offer an amendment that will inject a much needed element of fairness into the bill.

"As presently drafted, Section 15 of S. 2104 would apply retroactively to all cases pending on June 5, 1990, regardless of the age of the case. My amendment will limit the retroactive application of S. 2104 to disparate impact cases for which a complaint was filed after March 1, 1975.

"To the best of my knowledge, Wards Cove Packing v. Antonio is the only case that falls within this classification." (Emphasis added.)

For your convenience, I am attaching a copy of Senator Murkowski's July 11, 1990 letter to his colleagues.

Similarly, a question and answer sheet Senator Murkowski circulated at the time says:

Q. Why does the amendment use a March 1, 1975 date?

A. *The date is keyed to the date the final complaint was filed in the Wards Cove case.* (Emphasis added.)

For your convenience, I am attaching a copy of the question and answer sheet.

Senator Murkowski later added the words "and for which an initial decision was rendered after October 30, 1983" to the amendment to ensure only Wards Cove would be affected. The initial decision on the merits after trial in Wards Cove was filed on November 4, 1983.

Clearly, the provision operates as a piece of special legislation for Wards Cove Packing Company, a firm which apparently financed a wide-scale lobbying effort for the provision.

I have three principal concerns about this provision.

First, the provision undermines precisely the ideas of fairness and equality the civil rights bill is at least partially intended to restore. It tells people an act designed to ensure evenhanded treatment can still be bent for the benefit of special interests.

Even if the civil rights bill could accommodate special rules for individual employers, Wards Cove Packing Company would be a poor candidate for such special treatment.

The Alaska salmon canning industry has had a long history of racial discrimination. Wards Cove Packing Company itself has received some of the sharpest criticism from individual Supreme Court justices in any discrimination case in memory.

Justice Stevens, writing in dissent for four justices in the case, wrote:

"Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines—*bear an unsettling resemblance to aspects of a plantation economy.*" *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 644 n. 4 (1989). (Emphasis added.)

Similarly, Justice Blackmun, wrote:

"The salmon industry as described by this record *takes us back to a kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation* * * *. This industry has long been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there." *Id.* at 662. (Emphasis added.)

The Court of Appeals also found Wards Cove Packing Company's practices vulnerable to challenge under Title VII, writing,

"Race labelling is pervasive at the salmon canneries, where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouse.'" *Atonio* v. *Wards Cove Packing Co.*, 827 F.2d 439, 447 (9th Cir. 1987). And other lawsuits involving racial discrimination in the Alaska salmon industry have resulted in broad findings of liability.[1]

Placing Wards Cove Packing Company beyond the reach of the civil rights bill would be an affront to the minority workers—many from Washington—whom the Alaska salmon industry has long confined to menial and low paying jobs.

Second, Wards Cove is an ongoing case which ought not be decided on the basis of special legislation urged by an individual employer. An appeal in the case is currently pending before the Ninth Circuit.

When the case is finally decided, it should be decided on the same rules which apply to other cases.

The civil rights bill—including the disparate impact section—was designed to at least partially restore civil rights law to the settled condition it held for years before the Supreme Court's October 1988 term. Given the concern for continuity, an amendment which would permit a special exemption for only one case is markedly out of place.

I am told Wards Cove Packing Company based much of its lobbying effort on the fact it has spent large sums in defending the case. But these costs are being largely defrayed by insurers, whose liability for them is a matter of public record.

Third, the provision raises grave constitutional questions. Because it represents an effort by legislators to dictate the outcome of a single case by exempting the case from rules of general application, it violates the separation of powers. Because it singles out the Wards Cove plaintiffs for disfavored treatment without any overriding governmental interest, it is vulnerable to an equal protection challenge. And it implicates some of the concerns which underlie the prohibition against bills of attainder.

I would appreciate any efforts you can make to ensure this provision is deleted from the civil rights bill.

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[1] *Domingo* v. *New England Fish Co.*, 727 F.2d 1429 (9th Cir. 1984), *modified*, 742 F.2d 520 (1984); *Carpenter* v. *Nefco-Fidalgo Packing Co.*, C74-407R (W.D. Wash. May 20, 1982) (order on liability).

Thank you for your attention to this.

Yours very truly,

ABRAHAM A. ARDITI.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Utah.

Mr. HATCH. I thank the Chair. I ask unanimous consent that the distinguished Senator from Rhode Island be granted 5 minutes and then we go into the last 30 minutes before the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, we still have to deal with the technical amendments before we go into the 30 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, it is with considerable relief, and a considerable sense of hope, that I and the other sponsors of S. 1745 see this legislation come before the Senate.

In 1989 the Supreme Court handed down a series of decisions interpreting employment discrimination statutes in what might at best be described as a stingy, cramped manner. At worst the Court threw logic and precedent out the window.

These decisions, as has been noted by most involved in this debate, turn on the very technical, very dry, and not-very-exciting terms and tools used in employment discrimination cases.

It is not the stuff that makes hearts pound. I think we all recognize that. But, nonetheless, these technical points that seem to be no more than an exercise in semantics are very important in ensuring that employees receive fair opportunity and fair treatment in the workplace, and fairness in the workplace is important to all Americans.

Last year, the Senate attempted to change the Court's decisions through civil rights legislation. I supported that. But after a year, that effort broke down amidst a great deal of hard feelings.

Thus, back in October 1990, after the veto override vote in the 1990 Civil Rights Act, the group of those you might call moderate Republicans who voted to override the veto were not in a very cheery mood. So about seven Senators put our heads together last November and thought about crafting a bill that might navigate the rocks and shoals of the legislative process, one that might not be everything to everyone, but one that might become law, thus repairing the damage done by the Court in its 1989 employment discrimination decision.

After much negotiation, this has culminated in the bill before us today. I agree with my friend and colleague, Senator DANFORTH, when he says that race is one issue that we must not allow to divide our Nation. Discrimination based upon race or gender or religion is arguably not the same as it was in the fifties and the sixties. I think we do recognize the discrimination still exists, but in many ways, this discrimination is far more subtle, far more difficult to define.

These forms of discrimination are just as serious as the old version. And we should address them. But not from any political party's point of view, and they should not be used for political gain.

There are many to credit for the compromise we have reached. One of the three individuals is clearly Senator DANFORTH. He has been the moving force behind this effort. The respect accorded to him was shown in the amount of attention that this bill has gotten right from the start.

Another individual is Senator KENNEDY. He has acted in great good faith throughout these discussions. He did not have to do so. I know there are provisions in this bill that he might not have crafted in the same way.

The third individual who deserves credit is the President. I am not talking about the administration, some undefinable group. But I am talking about the President of the United States, George Bush. He said from Day 1 that he wanted a bill, and he struck to his pledge. He did not have to countenance this bill, but he has done so, apparently against the wishes of some of his advisers.

Also, I think the group that helped move this along, the so-called moderate Republicans, deserve some measure of credit, and obvisously they have done this with great help from both sides.

So in closing, Mr. President, I am delighted that today we are crossing this barrier, crossing the Rubicon, and I am delighted that this bill's passage is coming to pass.

I want to thank the Chair.

Mr. HATCH. Mr. President, I have time to take care of some of these technical amendments.

AMENDMENT NO. 1294 TO AMENDMENT NO. 1274

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. JEFFORDS, for himself, Mr. MITCHELL, and Mr. DOLE, proposes an amendment numbered 1294.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. .—Section 1205 of Public Law 101-628 is amended in subsection (a) by.

(1) striking "Three" in paragraph (4) and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

Mr. HATCH. Mr. President, this is an amendment for and on behalf of Senator JEFFORDS, and it is a technical amendment that we are adding to the bill at this time. It has been cleared on both sides, to the best of my knowledge.

Mr. JEFFORDS. Mr. President, the purpose of this amendment is to amend the Civil War Sites Study Act of 1990 to provide for the appointment of two additional members to the Civil War Sites Advisory Commission authorized pursuant to section 1205 et seq. of the act. (Public Law 101-628, 16 U.S.C. 1a-5 note). This corrects an oversight in the appointment authority of the original legislation establishing the Commission. The amendment is technical and noncontroversial, and I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1294) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1295

(Purpose: To clarify that the limitation on damages for intentional employment discrimination applies with respect to each complaining party)

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of myself, Senator KENNEDY, and Senator DANFORTH, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. KENNEDY, and Mr. DANFORTH, proposes an amendment numbered 1295.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, line 14, insert ", for each complaining party" after "exceed".

Mr. HATCH. Mr. President, this is a technical amendment to clarify one of the aspects of the bill with regard to complaining parties that we think clarifies the bill appropriately.

It has been cleared by both sides. I believe it is acceptable to all concerned.

Mr. KENNEDY. Mr. President, this amendment is designed to make clear that the limitations on damage contained in section 5 apply to each complaining party, not to all parties in a single case.

The amount of damages that a victim can recover should not depend on whether that victim files her own lawsuit or joins with other similarly situated victims in a single case. Rather, the amount of damages should depend on the injury the victim has suffered, subject to the caps. This amendment ensures that the remedy provided in the substitute is available to each individual who has been subjected to abuse.

I urge my colleagues to vote in favor of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 1295) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. KENNEDY. Mr. President, I have a unanimous-consent request that I am going to make on behalf of the majority leader. I understand that this request is not objected to by the minority.

Mr. President, I ask unanimous consent that immediately following the final disposition of S. 1745, the Finance Committee be discharged from further consideration of Senate Resolution 201, to express the sense of the Senate regarding the enforcement of the oilseeds GATT panel ruling against the European Community, and that the Senate proceed to its immediate consideration; that no amendments be in order to the resolution; that there be 20 minutes equally divided and controlled in the usual form between Senator DANFORTH and a designee of the majority leader; and that the rollcall vote which will be requested be stacked to occur immediately following the first rollcall vote that is taken in consideration of the conference report to accompany the Interior appropriations bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I now ask unanimous consent that it be in order to request the yeas and nays on the adoption of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

CIVIL RIGHTS ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. KENNEDY. Mr. President, for the benefit of the Members, there is a final technical amendment which we expect will be cleared momentarily. We will then begin final statements on the legislation, for a period not to exceed 30 minutes, and then move to disposition of the legislation.

Mr. HATCH. Mr. President, I believe the minority leader——

Mr. DOLE. Mr. President, I would be happy to use 5 minutes of my leader time while we are waiting for clearance on that potential amendment.

The PRESIDING OFFICER. The Chair recognizes the Republican leader.

CIVIL RIGHTS COMPROMISE

Mr. DOLE. Mr. President, for nearly 2 years, President Bush has consistently expressed his willingness to accept a fair and responsible civil rights compromise.

Today, with this historic civil rights agreement, President Bush has delivered on his promise.

From day one, President Bush has been leading the charge for responsible civil rights legislation, not the grab-bag approach advocated by the beltway interest groups and the lawyers' lobby.

When the Patterson and Lorance cases were first decided in 1989, the President immediately proposed remedial legislation.

Last year the President took his civil rights commitment one step further by proposing legislation overturning four of the 1989 Supreme Court decisions and shifting the burden of proof to the employer in disparate impact cases.

This year, the President's efforts culminated with the introduction of the only pending civil rights bill that establishes a monetary remedy specifically for sexual harassment—up to $150,000.

By any standard, the President's civil rights initiative is fair, responsible, comprehensive.

It deserved to be passed last year, and it still deserves to be passed today.

THE COMPROMISE AGREEMENT

Now, there are some in the liberal media who are predictably claiming that the administration somehow gave up too much in the negotiations preceding the final compromise.

This claim is categorically false.

Throughout the negotiations, the administration had two main objectives: First, to ensure that the compromise was drafted in a way that would not force employers to resort to quotas; and second, to ensure that all damage remedies were reasonably capped.

On both counts, the administration has succeeded.

THE COMPROMISE—WARDS COVE

The compromise resolves all of the so-called Wards Cove issues, including the meaning of the term "business necessity."

For nearly 2 years, business necessity has been at the eye of the civil rights storm.

After endless hours of debate, we have finally come up with an acceptable business necessity definition.

Unlike H.R. 1 and the original version of S. 1745, the compromise does not change the "business necessity" standard as it has been defined by the Supreme Court in Griggs versus Duke Power and in subsequent Supreme Court cases.

This standard is intended to be broad and flexible enough to ensure that employers can adopt employment practices that serve a legitimate business goal.

If the business necessity standard is too tough to satisfy—like the standard in H.R. 1 and in the original version of S. 1745—rational employers would have been forced to adopt quotas in order to avoid time-consuming and expensive litigation and, I might add, endless litigation.

Fortunately, the compromise agreement defines the term "business necessity" in a way that reflects the flexible principle outlined by the Supreme Court in Griggs, in New York Transit Authority versus Beazer, and in other Supreme Court cases.

THE COMPROMISE—DAMAGES

The compromise also makes compensatory and punitive damages available for the first time in cases involving intentional discrimination, including sexual harassment.

These damages are capped, setting an important precedent for tort reform.

The caps range from a low-tier of $50,000 for businesses with 16 to 100 employees, to a high-tier of $300,000 for businesses with more than 500 employees.

Ninety-eight percent of all businesses fall within the low tier, which is much lower than the $150,000 cap contained in the President's bill.

With these caps, the incentive for frivolous lawsuits should be significantly reduced.

ONLY WAY OUT OF QUAGMIRE

Mr. President, this compromise is not perfect. It will not satisfy everyone.

But it is the best we can do under the circumstances.

The compromise may not be all things to all people, but it is the only way out of the civil rights quagmire—without producing quotas.

I want to thank my distinguished colleague from Utah, Senator HATCH, for his steadfast commitment—over the past 2 years—to fashioning a bill that will promote equal opportunity, not equal results.

I also want to congratulate my distinguished colleague from Missouri, Senator DANFORTH, who has worked tirelessly to get us where we are today.

Senator DANFORTH's leadership has been the engine driving the compromise effort.

Today, the engine has finally arrived in the station.

Mr. President, I ask unanimous consent that a section-by-section analysis representing the views of the administration, myself, and Senators BURNS, COCHRAN, GARN, GORTON, GRASSLEY, HATCH, MACK, MCCAIN, MCCONNELL, MURKOWSKI, SIMPSON, SEYMOUR, and THURMOND, be reprinted in the RECORD immediately after my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION 1. SHORT TITLE

The legislation may be cited as the "Civil Rights Act of 1991."

SECTION 2. FINDINGS

The Congress finds that this legislation is necessary to provide additional protections and remedies against unlawful discrimination in the workplace. The Congress also finds that by placing the burden on plaintiffs to prove lack of business necessity for employment practices that have a disparate impact, rather than by placing the burden on defendants to prove the business necessity of such employment practices, the Supreme Court's decision in *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights laws.

SECTION 3. PURPOSES

The purposes of this Act are to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace, to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.* and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*, to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964, and to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

SECTION 4. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS

Under 42 U.S.C. 1981, persons of all races have the same right "to make and enforce contracts." In *Patterson* v. *McLean Credit Union*, 109 S. Ct. 2363 (1989), the Supreme Court held: "The most obvious feature of the provision is the restriction of its scope to forbidding discrimination in the 'mak[ing] and enforce[ment]' of contracts alone. Where an alleged act of discrimination does not involve the impairment of one of these specific rights, [sec.] 1981 provides no relief."

As written, therefore, section 1981 provides insufficient protection against racial discrimination in the context of contracts. In particular, it provides no relief for discrimination in the performance of contracts (as contrasted with the making and enforcement of contracts). Section 1981, as amended by this Act, will provide a remedy for individuals who are subjected to discriminatory performance of their employment contracts (through racial harassment, for example) or are dismissed or denied promotions because of race. In addition, the discriminatory infringement of contractual rights that do not involve employment will be made actionable under section 1981. This will, for example, create a remedy for a black child who is admitted to a private school as required pursuant to section 1981, but is then subjected to discriminatory treatment in the performance of the contract once he or she is attending the school.

In addition to overruling the *Patterson* decision, this Section of the Act codifies the holding of *Runyon* v. *McCrary*, 427 U.S. 160 (1976), under which section 1981 prohibits private, as well as governmental, discrimination.

SECTION 5. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

Section 5 makes available compensatory and punitive damages in cases involving intentional discrimination brought under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. It sets an important precedent in tort reform by setting caps on those damages, including pecuniary losses that have not yet occurred as of the time the charge is filed, as well as all emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, whenever they occur. Punitive damages are also capped, and are to be awarded only in extraordinarily egregious cases. The damages contemplated in this section are to be available in cases challenging unlawful affirmative action plans, quotas, and other preferences.

SECTION 6. ATTORNEY'S FEES

Section 6 amends 42 U.S.C. 1988 to authorize the award of attorney fees to prevailing parties in cases brought under the new statute (created by Section 5) authorizing damages awards.

SECTION 7. DEFINITIONS

Section 3 adds definitions as those already in Title VII.

SECTION 8. BURDEN OF PROOF IN DISPARATE IMPACT CASES

In *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), the Supreme Court ruled that Title VII of the Civil Rights Act of 1964 prohibits hiring and promotion practices that unintentionally but disproportionately exclude persons of a particular race, color, religion, sex, or national origin unless these practices are justified by "business necessity." Law suits challenging such practices are called "disparate impact" cases, in contrast to "disparate treatment" cases brought to challenge intentional discrimination.

In a series of cases decided in subsequent years, the Supreme Court refined and clarified the doctrine of disparate impact. In 1988, the Court greatly expanded the scope of the doctrine's coverage by applying it to subjective hiring and promotion practices (the Court had previously applied it only in cases involving objective criteria such as diploma requirements and height-and-weight requirements). Justice O'Connor took this occasion to explain with great care both the reasons for the expansion and the need to be clear about the evidentiary standards that would operate to prevent the expansion of disparate impact doctrine from leading to quotas. In the course of her discussion, she pointed out:

"(T)he inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. . . . (E)xtending disparate impact analysis to subjective employment practices has the potential to create a Hobson's choice for employers and thus to lead in practice to perverse results. If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met." *Watson* v. *Fort Worth Bank & Trust Co.*, 108 S. Ct. 2777, 2787-2788 (1988) (plurality opinion).

The following year, in *Wards Cove Packing Co.* v. *Atonio*, 109 S. Ct. 2115, 2126 (1989), the Court considered whether the plaintiff or the defendant had the burden of proof on the issue of business necessity. This question had not been unambiguously resolved by the Supreme Court. The courts of appeals were divided on the issue. Compare, e.g., *Burwell* v. *Eastern Air Lines*, 633 F.2d 361, 369-372 (4th Cir.) (en banc), cert. denied, 450 U.S. 965 (1980), with *Coker* v. *Boeing Co.*, 662 F.2d 975, 991 (3d Cir. 1981) (en banc). Resolving an ambiguity in the prior law, the Court placed the burden on the plaintiff. See also *Board of Trustees* v. *Sweeney*, 439 U.S. 24 (1978) (per curiam) (resolving similar ambiguity in disparate treatment cases by placing the burden of proof on plaintiffs).

Under this Act, a complaining party makes out a prima facie case of disparate impact when he or she identifies a particular selection practice and demonstrates that the practice has caused a disparate impact on the basis of race, color, religion, sex, or national origin. The burden of proof then shifts to the respondent to demonstrate that the practice is justified by business necessity. It is then open to the complaining party to rebut that defense by demonstrating the availability of an alternative selection practice, comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and that the respondent refuses to adopt such alternative.

The burden-of-proof issue that *Wards Cove* resolved in favor of defendants is resolved by this Act in favor of plaintiffs. *Wards Cove* is thereby overruled. As the narrow title of the Section and its plain language show, however, on all other issues this Act leaves existing law undisturbed.

The requirement of particularity

The bill leaves unchanged the longstanding requirement that a plaintiff identify the particular practice which he or she is challenging in a disparate impact case.

The history of prior legislation introduced on this subject accords with this interpretation. This important issue, often referred to as the "cumulation" issue, has also been referred to be a number of other names: "group of practices"; multiple practices"; "particularity"; "aggregation"; and "causation."

Both S. 2104 and H.R. 4000 (from the 101st Congress), the original bills addressing this issue, would have permitted a plaintiff to sue simply by demonstrating that "a group of employment practices [defined in both bills as "a combination of employment practices that produce one or more employment decisions"] results in disparate impact." For good measure, these bills also specified that "if a complaining party demonstrates that a group of employment practices results in disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact."

This language was modified in several subsequent versions to attempt to address the objection that it would permit suit on simple proof that an employer's bottom line numbers were wrong, and hence lead employers concerned about litigation to engage in quota hiring. In all subsequent versions that passed, however, three central features were retained.

First, all the bills that passed specifically allowed plaintiffs to bring disparate impact suits in some circumstances without isolating a simple employment practice that led to the disparate impact. See H.R. 4000, as passed by less than two-thirds of the House of Representatives in 1990, which permitted suit under some circumstances on the basis of a "group of practices"; S. 2014 as vetoed by President Bush in 1990 (same); H.R. 1 as passed by less than two-thirds of the House of Representatives (same).

Second, all these bills contained a provision generally requiring the plaintiff to identify which specific practice or practices resulted in the disparate impact, but with a gigantic exception relieving the plaintiff of that obligation if he or she could not meet it, after diligent effort, from records or other information of the respondent reasonably available through discovery or otherwise. See H.R. 4000, as passed by less than two-thirds of the House of Representatives in 1990 ("(i) except as provided in clause (iii), if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; . . . (iii) if the court finds that the complaining party can identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact—(I) the complaining party shall be required to demonstrate which specific practice or practices contributed to the disparate impact; and (II) the respondent shall be required to demonstrate business necessity only as to the specific practice or practices demonstrated by the complaining party to have contributed to the disparate impact;"); S. 2104 as vetoed by President Bush in 1990 ("(i) except as provided in clause (iii), if a complaining party demonstrates that a group of employment practices results in a disparate impact, such party shall not be required to demonstrate which specific practice or practices within the group results in such disparate impact; . . . (iii) the complaining party shall be required to demonstrate which specific practice or practices are responsible for the disparate impact in all cases unless the court finds after discovery (I) that the respondent has destroyed, concealed or refused to produce existing records that are necessary to make this showing, or (II) that the respondent failed to keep such records; and except where the court makes such a finding, the respondent shall be required to demonstrate business necessity only as to those specific practices demonstrated by the complaining party to have been responsible in whole or in significant part for the disparate impact;") H.R. 1 as passed by less than two-thirds of the House of Representatives ("(B) If a complaining party demonstrates that a disparate impact results from a group of employment practices, such party shall be required after discovery to demonstrate which specific practice or practices within the group results in disparate impact unless the court finds that the complaining party after diligent effort cannot identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact.").

Finally, all of these bills used some word other than "cause" in describing the relationship between the challenged practice(s) and the disparate impact. See H.R. 4000 as passed by less than two-thirds of the House of Representatives in 1990 (a complaining party may prevail by "demonstrat[ing] that a group of employment practices *results in* a disparate impact" although if he or she "can identify, from records or information reasonably available (through discovery or otherwise) which specific practice of practices *contributed* to the disparate impact" he or she must do so); S. 2104 as vetoed by President Bush in 1990 (a complaining party may prevail by "demonstrat[ing] that a group of employment practices *results in* a disparate impact", except that the complaining party "shall be required to demonstrate which specific practice or practices *are responsible* for the disparate impact" unless he or she cannot do so from the respondent's records); H.R. 1 as passed by less than two-thirds of the House in 1991 (same as H.R. 4000).

The Attorney General memorandum that accompanied President Bush's veto message of S. 2104 in 1990 specifically referenced these three features of the bill as the first argument in explaining why it had to be vetoed because it would lead to quotas. Nevertheless, the House of Representatives retained all three features in this year's H.R. 1, which contributed to continued stalemate as the Administration continued to threaten veto on the ground that the legislation would lead to quotas and the House was unable to muster a two-thirds majority in favor of the bill.

S. 1745 as introduced this year by Senator Danforth began to move away from this approach, although they were not addressed in a satisfactory manner in that bill. It required a complaining party to demonstrate that "a particular employment practice or particular employment practices (or decisionmaking process . . .) *cause[d]* a disparate impact." It also required a complaining party to demonstrate "that *each particular* employment practice causes, *in whole or in significant part*, the disparate impact" unless "the complaining party [could] demonstrate . . . that the elements of a respondent's decisionmaking process are not capable of separation for analysis" in which case "the decisionmaking process may be analyzed as one employment practice."

As finally agreed to, S. 1745 retains none of the three problematic features. It *always* requires the complaining party to demonstrate "that the respondent uses *a particular* employment practice that *causes* disparate impact." Language permitting challenge to multiple practices, or to a practice that only causes "a significant part" of the disparate impact has been eliminated. Likewise, there is no language exonerating the complaining party of the obligation to demonstrate that a particular employment practice caused the disparity if he or she cannot do so from records or other information reasonably available from the respondent.

This codification of the *Wards Cove* "particularity" requirement is consistent with every Supreme Court decision on disparate impact. In *no* Supreme Court disparate impact case has a plaintiff ever been permitted to go forward without identifying a particular practice that caused a disparate impact. All the Supreme Court cases focused on the impact of particular hiring practices, and plaintiffs have always targeted these specific practices. *See Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971) (high school diploma and written test); *Albemarle Paper Co.* v. *Moody*, 442 U.S. 405 (1975) (employment tests and seniority systems); *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977) (height and weight requirements); *New York City Transit Authority* v. *Beazer*, 440 U.S. 568 (1979) (exclusion of methadone users); *Connecticut* v. *Teal*, 457 U.S. 440 (1982) (scored written test); *Watson* v. *Fort Worth Bank & Trust Co.*, *108 S. Ct. 2777 (1988) (subjective supervisory judgments)*.

Justice O'Connor's plurality opinion in the *Watson* case, for example, is a full and accurate restatement of the law regarding particularity. Justice O'Connor stated (108 S. Ct. at 2788):

"The plaintiff must begin by identifying the specific employment practice that is challenged. Although this has been relatively easy to do in challenges to standardized tests, it may sometimes be more difficult when subjective selection criteria are at issue. Especially in cases where an employer combines subjective criteria with the use of more rigid standardized rules or tests, the plaintiff is in our view responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities."

Justice O'Connor then went on to explain that "[o]nce the employment practice at issue has been identified, causation must be proved; that is, the plaintiff must offer statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs or promotions because of their membership in a protected group." *Id.* at 2788–89.

Significantly, Justice Blackmun, who was joined by Justices Brennan and Marshall in a concurring opinion in Watson, did not dissent from Justice O'Connor's formulation of the particularity requirement. Although Justice O'Connor's opinion on the particularity issue was quite detailed and explicit, Justice Blackmun's opinion hardly addressed that issue at all. He merely noted in a footnote at the end of his opinion (108 S. Ct. at 2797, n. 10) that "the requirement that a plaintiff in a disparate-impact case specify the employment practice responsible for the statistical disparity" cannot "be turned around to shield from liability an employer whose selection process is so poorly defined that no specific criterion can be identified with any certainty, let alone be connected to the disparate effect." Thus, Justices Blackmun, Brennan and Marshall expressly recognized "the requirement that a plaintiff in a disparate-impact case specify the employment practice responsible for the statistical disparity." These Justices would only have dispensed with that requirement if the employer's selection process was "so poorly defined" that identification of a specific selection criterion with any certainty was impossible.

The particularity requirement is only fair. For a plaintiff to be allowed simply to point to a racial imbalance, and then require the employer to justify every element of his selection practice, would be grossly unfair, and would turn Title VII into a powerful engine for racial quotas.[1]

This particularity requirement is not unduly burdensome. Where a decisionmaking process includes particular, functionally-integrated elements which are components of the same test, those elements may be analyzed as one employment practice. For instance, a 100-question intelligence test may be challenged and defended as a whole; it is not necessary for the plaintiff to show which particular questions have a disparate impact. This is the principle for which the Dothard case is cited in the agreed-upon legislative history. There, the combination of height and weight was used as a single test to measure strength.

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[1] It should also be noted that in 1982 the Supreme Court held in Connecticut versus Teal that an employer cannot justify a particular practice that has a disparate impact simply by pointing to a racially balanced bottom line. So it would make no sense at all if a plaintiff could point to a racially unbalanced bottom line without identifying a particular practice.

Finally, the phrase "not capable of separation for analysis" means precisely that. It does not apply when the process of separation is merely difficult or may entail some expense—for example, where a multiple regression analysis might be necessary in order to separate the elements. It also does not apply in situations where records were not kept or have been destroyed. In such circumstances, the elements obviously are separable.

Senator Kennedy's *post hoc* suggestion at p. 15,233 of volume 137 of the October 25, 1991 daily edition of the Congressional Record that situations of this type are meant to be covered by this language is accordingly inconsistent with the language he purports to be construing. The example offered by Senator Kennedy also clearly is not included in the "exclusive legislative history" on the *Wards Cove* issues first incorporated into an interpretive memorandum agreed to that day by Senators Danforth, Kennedy and Dole before Senator Kennedy made his floor speech, and now made the exclusive legislative history by statutory provision. See sec. 8(b) of this bill.

In sum, the particularity provision of the compromise bill does exactly what the President has insisted all along that it do. It leaves the *Wards Cove* case law (which is the same as *Griggs* and all other Supreme Court cases) in place, and requires that plaintiffs identify the particular practice they are challenging.

The defendant's evidentiary standard: Job relatedness and business necessity

The bill embodies longstanding concepts of job-relatedness and business necessity and rejects proposed innovations. In short, it represents an affirmation of existing law, including *Wards Cove*.

For almost two years and through numerous legislative attempts and proposals, Congress sought to define business necessity; this bill rejects and displaces the following legislative proposals:

S. 2104 as introduced (Kennedy):

"(o) The term 'required by business necessity' means essential to effective job performance," Rejected.

S. 2104 as passed by the Senate on 7/18/90:

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115 (1989))." Rejected.

House Amendment to S. 2104 (passed by House 8/3/90):

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

Conference Report on S. 2104 (vetoed by the President):

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection such as tests, recruitment, evaluations, or requirements of education, experience, knowledge, skill, ability or physical characteristics, or practices primarily related to a measure of job performance, the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of other employment decisions, not involving employment selection practices as covered by subparagraph (A) (such as, but not limited to, a plant closing or bankruptcy), or that involve rules relating to methadone, alcohol or tobacco use, the practice or group of practices must bear a significant relationship to a manifest business objective of the employer.

"(2) In deciding whether the standards described in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The court may receive such evidence as statistical reports, validation studies, expert testimony, performance evaluations, written records or notes related to the practice or decision, testimony of individuals with knowledge of the practice or decision involved, other evidence relevant to the employment decision, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

H.R. 1 as introduced (Brooks):

"(o)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices involving selection (such as hiring, assignment, transfer, promotion, training, apprenticeship, referral, retention, or membership in a labor organization), the practice or group of practices must bear a significant relationship to successful performance of the job; or

"(B) in the case of employment practices that do not involve selection, the practice or group of practices must bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The defendant may offer as evidence statistical reports, validation studies, expert testimony, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(3) This subsection is meant to codify the meaning of 'business necessity' as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (109 S.Ct. 2115(1989))." Rejected.

H.R. 1 as amended and passed by the House (Brooks-Fish):

"(o)(1) The term 'required by business necessity' means the practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance.

"(2) Paragraph (1) is meant to codify the meaning of, and the type and sufficiency of evidence required to prove, 'business necessity" as used in *Griggs* v. *Duke Power Co.* (401 U.S. 424 (1971)) and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co., Inc.* v. *Atonio* (490 U.S. 642 (1989))."

"(p) The term 'requirements for effective job performance' may include, in addition to effective performance of the actual work activities, factors which bear on such performance, such as attendance, punctuality, and not engaging in misconduct or insubordination." Rejected.

S. 1208 (Danforth):

"(o) The term 'required by business necessity' means—

"(1) in the case of employment practices involving selection, that the practice or group of practices bears a manifest relationship to requirements for effective job performance; and

"(2) in the case of other employment decisions not involving employment selection practices as described in paragraph (1), the practice or group of practices bears a manifest relationship to a legitimate business objective of the employer.

"(p) The term 'requirements for effective job performance' includes—

"(1) the ability to perform competently the actual work activities lawfully required by the employer for an employment position; and

"(2) any other lawful requirement that is important to the performance of the job, including factors such as punctuality, attendance, a willingness to avoid engaging in misconduct or insubordination, not having a work history demonstrating unreasonable job turnover, and not engaging in conduct or activity that improperly interferes with the performance of work by others." Rejected.

S. 1408 (Danforth):

"(n) The term 'required by business necessity' means—

"(1) in the case of employment practices that are used as job qualifications or used to measure the ability to perform the job, the challenged practice must bear a manifest relationship to the employment in question.

"(2) in the case of employment practices not described in (1) above, the challenged practice must bear a manifest relationship to a legitimate business objective of the employer.

"(o) The term 'employment in question' means—

"(1) the performance of actual work activities required by the employer for a job or class of jobs; or

"(2) any requirement related to behavior that is important to the job, but may not comprise actual work activities." Rejected.

S. 1745 as introduced (Danforth):

"(n) The term 'the employment in question' means—

"(1) the performance of actual work activities required by the employer for a job or class of jobs; or

"(2) any behavior that is important to the job, but may not comprise actual work activities.

"(o) The term 'required by business necessity' means—

"(1) in the case of employment practices that are used as qualification standards, employment tests, or other selection criteria, the challenged practice must bear a manifest relationship to the employment in question; and

"(2) in the case of employment practices not described in paragraph (1), the challenged practice must bear a manifest relationship to a legitimate business objective of the employer." Rejected.

All of these prior versions were rejected.

In the place of these definitions of business necessity, the compromise bill says that the challenged practice must be *"job-related for the position in question and consistent with business necessity."* Since neither term is defined in the bill, the "Purposes" section is controlling.

In its original "Purposes" clause, S. 1745 said in pertinent part that the "purposes of this Act are . . . to overrule the proof burdens and meaning of business necessity in *Wards Cove Packing Co.* v. *Atonio* and to codify the proof burdens and the meaning of business necessity used in *Griggs* v. *Duke Power Co.* . . ." By contrast, the compromise bill's "Purposes" clause says that "[t]he purposes of this Act are—. . . to codify the concepts of 'business necessity' and 'job-related' enunciated by the Supreme Court in *Griggs* v. *Duke Power Co.*, and in the other Supreme Court decisions prior to *Wards Cove Packing Co.* v. *Atonio*." Thus, the bill is no longer designed to overrule the meaning of business necessity in *Wards Cove*. (Attorney General Thornburgh's October 22, 1990 Memorandum to the President had objected, at 5–6, to a provision of S. 1204 that would have overruled Wards Cove's "treatment of business necessity as a defense.") Instead, the bill seeks to codify the meaning of "business necessity" in *Griggs* and other pre-*Wards Cove* cases—a meaning which is fully consistent with the use of the concept in *Wards Cove*.

The relevant Supreme Court decisional law which is to be codified can be summarized as follows. *Griggs* said: ". . . any given requirement must have a manifest relationship to the employment in question." 401 U.S. at 432. There is no two-tier definition, no subdefinition of the term "employment in question." The Court also said in *Griggs*: "Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins." *Id.* at 436.

As explained in the Attorney General's letter of June 21, 1991 to Senator Danforth, and again in the Attorney General's October 22, 1990 Memorandum to the President, this is the consistent standard applied by the Supreme Court. As the Attorney General stated to Senator Danforth, "an unbroken line of Supreme Court cases confirms" that the operative standard was "'manifest relationship to the employment in question.'" The Court has used this phrase in *Albermarle Paper Co.* v. *Moody*, 422 U.S. at 425 (1975); *Dothard* v. *Rawlinson*, 433 U.S. at 329 (1977); *New York Transit Authority* v. *Beazer*, 440 U.S. at 587 n.31 (1979); *Connecticut* v. *Teal*, 457 U.S. at 446 (1982) (a Justice Brennan opinion); and *Watson* v. *Ft. Worth Bank and Trust*, 108 S.Ct. at 1790 (O'Connor plurality opinion for four Justices). Even Justice Stevens' dissent in *Wards Cove*, joined by Justices Brennan, Marshall, and Blackmun, cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. at 2129, 2130 n.14.

Particularly significant among prior cases is the Supreme Court's 1979 decision in *New York City Transit Authority* v. *Breazer* 440 U.S. 568 (1979). This decision was well known to all sides in the negotiations and debates over the present bill. The *Beazer* case involved a challenge to the New York Transit Authority's blanket no-drug rule, as it applied to methadone users seeking non-safety sensitive jobs. A lower court had found a Title VII disparate impact violation. The Supreme Court, however, reversed: "At best, the [plaintiffs'] statistical showing is weak; even if it is capable of establishing a prima facie case of discrimination, it is assuredly rebutted by [the employer's] demonstration that its narcotics rule (and the rule's application to methadone users) is 'job related. . . .'" The Court noted that the parties agreed "that [the employer's] legitimate employment goals of safety and efficiency require the exclusion of all users of illegal narcotics. . . . Finally, the District court noted that those goals are significantly served by—even if they do not require—[the employer's] rule as it applies to all methadone users, including those who are seeking employment in on-safety-sensitive positions. The record thus demonstrates that [the employer's] rule bears a 'manifest relationship to the employment in question.'" *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 432. *Id.* at 587, n. 31.

The Supreme Court's formulation in *Wards Cove* of the appropriate evidentiary standard defendants must meet is not only based upon that in *Beazer*, but is nearly identical with it. By removing the language in the purposes clause stating the bill overruled *Wards Cove* with respect "to the meaning of business necessity," by substituting the language in the compromise purposes section referring to Supreme Court decisions prior to *Wards Cove*, and by removing the definitions of business necessity or job-related and any definition of "employment in question," the present bill has codified the "business necessity" test employed in *Beazer* and reiterated in *Wards Cove*.

The language in the bill is thus plainly not intended to make that test more onerous for employers to satisfy than it had been under current law.

Furthermore, "job related for the position in question" is to be read broadly, to include any legitimate business purpose, even those that may not be strictly required for the actual day-to-day activities of an entry level job. Rather, this is a flexible concept that encompasses more than actual performance of actual work activities or behavior important to the job. See *Washington* v. *Davis*, 426 U.S. 229, 249–251 (1976). Thus, those purposes may include requirements for promotability to other jobs. There has never been any suggestion in the language or holdings of pre-Wards Cove cases that such purposes are not legitimately considered. Even Justice Stevens' *dissent* in *Wards Cove* stated the definition of business necessity quite broadly—it is required only that the challenged practice "serves a valid business purpose." 490 U.S. at 665.

Alternative practices with less adverse effect

The bill provides that a complaining party may establish that an employment practice has an unlawful disparate impact if he demonstrates the existence of an "alternative employment practice and the respondent refuses to adopt such alternative employment practice," where that demonstration is "in accordance with the law as it existed on June 4, 1989," i.e., the day before *Wards Cove* was decided.

The standards outlined in *Albemarle Paper Co.*, and *Watson* should apply.

The Supreme Court indicated in *Albemarle* that plaintiffs can prevail if they "persuade the factfinder that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate [hiring] interest[s]; by so demonstrating, [plaintiffs] would prove the defendants were using their tests merely as a 'pretext' for discrimination." Any alternative practices which plaintiffs propose must be equally effective in achieving the employer's legitimate business goals. As was pointed out in *Watson:* "Factors such as the cost or other burdens of proposed alternative selection devices are relevant in determining whether they would be equally as effective as the challenged practice in serving the employer's legitimate goals." 108 S. Ct., at 2790. In making these judgments, the judiciary should bear carefully in mind the fact that "[c]ourts are generally less competent than employers to restructure business practices, and unless mandated to do so by Congress they should not attempt it." *Furnco Construction Corp.* v. *Waters*, 438 U.S. 567, 578 (1978).

Therefore, unless the proposed practice is comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, the plaintiff should not prevail.

SECTION 9. DISCRIMINATORY USE OF TEST SCORES

Section 9 means exactly what it says: race-norming or any other discriminatory adjustment of scores or cutoff points of any employment related test is illegal. This means, for instance, that discriminatory use of the Generalized Aptitude Test Battery (GATB) by the Department of Labor's and state employment agencies' is illegal. It also means that race-norming may not be ordered by a court as part of the remedy in *any* case, nor may it be approved by a court as a part of a consent decree, when done because of the disparate impact of those test scores. Seen *Bridgeport Guardians, Inc.* v. *City of Bridgeport*, 933 F.2d 1140 (2d Cir. 1991).

It is important to note, too, that this section in no way be interpreted to discourage employers from using tests. Frequently tests are good predictors and helpful tools for employers to use. Indeed, Title VII contains a provision specifically designed to protect the use of tests. See 42 U.S.C. 2000e–2(h). Rather, the section intends only to ban the discriminatory adjustment of test scores or cutoffs.

SECTION 10. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES

Section 10 of the bill addresses the holding in *Price Waterhouse* v. *Hopkins*, S. Ct. 1775 (1989), in which the Court ruled in favor of the woman who alleged that she had been denied partnership by her accounting firm on account of her sex. The Court there faced a case in which the plaintiff alleged that her gender had supplied part of the motivation of her rejection for partnership. The Court held that once she had established by direct evidence that sex played a substantial part in the decision, the employer could still defeat liability by showing that it would have reached the same decision had sex not been considered.

Section 10 allows the employer to be held liable if discrimination was a motivating factor in causing the harm suffered by the complainant. Thus, such discrimination need not have been the sole cause of the final decision.

The provision also makes clear that if an employer establishes that it would have taken the same employment action absent consideration of race, sex, color, religion, or national origin, the complainant is not entitled to reinstatement, backpay, or damages.

It should also be stressed that this provision is equally applicable to cases involving challenges to unlawful affirmative action plans, quotas, and other preferences.

SECTION 11. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT DECREE JUDGMENTS OR ORDERS.

In *Hansberry* v. *Lee*, 311 U.S. 32, 40–41 (1940) (citations omitted), the Supreme Court held: "It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statutes of the United States . . . prescribe, . . . and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require."

In *Hansberry*, Carl Hansberry and his family, who were black, were seeking to challenge a racial covenant prohibiting the sale of land to blacks. One of the owners who wanted the covenant enforced argued that the Hansberrys could not litigate the validity of the convenant because that question has previously been adjudicated, and the convenant sustained, in an earlier lawsuit, although the Hansberrys were not parties in that lawsuit. The Illinois court had ruled that the Hansberrys' challenge was barred, but the Supreme court found that this ruling violated due process and allowed the challenge.

In *Martin* v. *Wilks*, 109 S. Ct. 2180 (1989), the Court confronted a similar argument. That case involved a claim by Robert Wilks and other white fire fighters that the City of Birmingham had discriminated against them by refusing to promote them because of their race. The City argued that their challenge was barred because the City's promotion process had been sanctioned in a consent decree entered in an earlier case between the City and a class of black plaintiffs, of which Wilks and the white fire fighters were aware, but in which they were not parties. The Court rejected this argument. Instead, it concluded that the Federal Rules of Civil Procedures required that persons seeking to bind outsiders to the results of litigation have a duty to join them as parties, see Fed. R. Civ. P. 19, unless the court certified a class of defendants adequately represented by a named defendant, see Fed. R. Civ. P. 23. The Court specifically rejected the defendants' argument that a different rule should obtain in civil rights litigation.

Under specified conditions, Section 11 of the bill would preclude certain challenges to employment practices specifically required by court orders or judgments entered in Title VII cases. This Section would bar such challenges by any person who was an employee, former employee, or applicant for employment during the notice period and who, prior to the entry of the judgment or order, received notice of the judgment in sufficient detail to apprise that person that the judgment or order would likely affect that person's interests and legal rights; of the relief in the proposed judgment; that a reasonable opportunity was available to that person to challenge the judgment or order by future date certain; and that the person would likely be barred from challenging the proposed judgment after that date. The intent of this section is to protect valid decrees from subsequent attack by individuals who were fully apprised of their interest in litigation and given an opportunity to participate, but who declined that opportunity.

In particular, the phrase "actual notice . . . appris[ing] such person that such judgment or order might adversely affect the interests and legal rights of such person," means of course that the notice itself must make clear that potential adverse effect. And this, in turn, means also that the discriminatory practice at issue must be clearly a part of the judgment or order. Otherwise, it cannot credibly be asserted that the potential plaintiff was given adequate notice. Thus, where it is only by later judicial gloss or by the earlier parties' implementation of the judgment or order that the allegedly discriminatory practice becomes clear, Section 11 would not bar a subsequent challenge. Moreover, the adverse effect on the person barred must be a likely or probable one, not a mere possibility. Otherwise, people would be encouraged to rush into court to defend against any remote risk to their rights, thus unnecessarily complicating litigation. Finally, the notice must include notice of the fact that the person must assert his or her rights or lose them. Otherwise, it will be insufficient to apprise the individual "that such judgment or order might adversely affect" his or her interests.

"Adequate representation" requires that the person enjoy a privity of interest with the later party. This is because in Section 11 both "(n)(1)(B)(i)" and "(n)(1)(B)(ii)" must be construed with "(n)(2)(D)" so that people's due process rights are not jeopardized. And the Supreme Court has stated clearly: "It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore never had an opportunity to be heard." *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 327 n.7 (1979).

SECTION 12. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT

Section 12 extends the protections of Title VII and the ADA extraterritorially. It adopts the same language as the ADEA to achieve this end.

In addition, the section makes clear that employers are not required to take actions otherwise prohibited by law in a foreign place of business.

SECTION 13. EDUCATION AND OUTREACH

Section 13 provides for certain educational and outreach activities by the EEOC. These activities are to be carried out in a completely nonpreferential manner.

SECTION 14. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Section 14 overrules the holding in *Lorance* v. *AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989), in which female employees challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority system with the intention of altering their contractual rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for plaintiffs to file their complaint began to run when the employer adopted the allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which plaintiffs suffered the diminution in employment status about which they complained.

The rule adopted by the Court is contrary to the position that had been taken by the Department of Justice and the EEOC. It shields existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. At that time, the controversy between an employer and an employee can be focused more sharply.

In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary, as well as unfocused, litigation. Employees will be forced either to challenge the system before they have suffered harm or to remain forever silent. Given such a choice, employees who are unlikely ever to suffer harm from the seniority system may nonetheless feel that they must file a charge as a precautionary measure—an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to.

Finally, the *Lorance* rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only within 180 (or 300) days after becoming subject to a seniority system would be unfair to both employers and employees. The rule fails to protect seniority systems from delayed challenge, since so long as employees are being hired someone will be able to sue. And, while this rule would give every employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the challenge was sufficiently focused and before it was clear that a challenge was necessary. Finally, most employees would be reluctant to begin their jobs by suing the employers.

Section 14 is not intended to disturb the settled law that disparate impact challenges may not be brought against seniority systems. See *TWA* v. *Hardison*, 432 U.S. 63, 82 (1977); *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 65, 69 (1982; *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 (1982).

SECTION 15. AUTHORIZING AWARD OF EXPERT FEES

Section 15 authorizes the recovery of a reasonable expert witness fee by prevailing parties. See *West Virginia University Hospitals, Inc.* v. *Casey*, No. 89-994 (U.S. Sup. Ct. Mar. 19, 1991); cf. *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.* 482 U.S. 437 (1987). The provision is intended to allow recovery for work done in preparation of trial as well as after trial has begun.

In exercising its discretion, the court should ensure that fees are kept within reasonable bounds. Fees should never exceed the amount actually paid to the expert, or the going rate for such work, whichever is lower.

SECTION 16. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

Section 16 extends the period for filing a complaint against the Federal government pursuant to Title VII from 30 days to 90 days. It also authorizes the payment of interest to compensate for delay in the payment of a judgment according to the same rules that govern such payments in actions against private parties.

SECTION 17. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

This section generally conforms procedures for filing charges under the ADEA with those used for other portions of Title VII. In particular, it provides that the EEOC shall notify individuals who have filed charges of the dismissal or completion of the Commission's proceedings with respect to those charges, and allows those individuals to file suit from 60 days after filing the charge until the expiration of 90 days after completion of those proceedings. This avoids the problems created by current law, which imposes a statute of limitations on the filing of suit regardless of whether the EEOC has completed its action on an individual's charge.

SECTION 18. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED

Section 18 specifies that nothing in the amendments made by this Act shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law. Thus, this legislation makes no change in this area to Title VII of the Civil Rights Act of 1964, which states:

"It shall be an unlawful employment practice for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a).

This legislation does not purport to resolve the question of the legality under Title VII of affirmative action programs that grant preferential treatment to some on the basis of race, color, religion, sex or national origin, and thus "tend to deprive" other "individual[s] of employment opportunities . . . on the basis of race, color, religion, sex, or national origin." In particular, this legislation should in no way be seen as expressing approval or disapproval of *United Steelworkers* v. *Weber*, 443 U.S. 193 (1979), or *Johnson* v. *Transportation Agency* 480 U.S. 616 (1987), or any other judicial decision affecting court-ordered remedies, affirmative action, or conciliation agreements.

SECTION 20. ALTERNATIVE MEANS OF DISPUTE RESOLUTION

This provision encourages the use of alternative means of dispute resolution, including binding arbitration, where the parties knowingly and voluntarily elect to use these methods.

In light of the litigation crisis facing this country and the increasing sophistication and reliability of alternatives to litigation, there is no reason to disfavor the use of such forums. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 111 S. Ct. 1647 (1991).

SECTION 21. SEVERABILITY

Section 21 states that if a provision of this Act is found invalid, that finding will not affect the remainder of the Act.

SECTION 22. EFFECTIVE DATE

Section 22 specifies that the Act and the amendments made by the Act take effect upon enactment. Accordingly, they will not apply to cases arising before the effective date of the Act. See *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988); *cf. Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 110 S. Ct. 1570 (1990) (declining to resolve conflict between *Georgetown University Hospital* and *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974)). At the request of the Senators from Alaska, section 22(b) specifically points out that nothing in the Act will apply retroactively to the Wards Cove Packing Company, an Alaska company that spent 24 years defending against a disparate impact challenge.

Mr. HATCH. Mr. President, I asked Senator GRASSLEY about this amendment, and he just wants to look at it. I think it will be in fine shape and it will be all right. So I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I have been tied up in other matters during the debate on this bill, but I want to express my support for the Civil Rights Act of 1991. I know it has been a difficult process to bring it to this point, and I congratulate all on both sides of the aisle who have worked hard and long to move the bill to this stage.

This bill, for the first time, makes it clear that victims, of intentional discrimination on the basis of sex, religion, or disability are entitled to compensatory and punitive damages, as are victims of intentional job discrimination on the basis of race, under current law.

I do, however, have serious constitutional reservations about one part of this bill—those provisions that extend coverage of certain antidiscrimination acts to employment by the Senate. While I believe it is important for victims of discrimination to have a procedure under which they may seek redress, I believe—as I indicated by voting for the Rudman amendment—that judicial appellate review as the final step of the process is not constitutional. I strongly believe in the doctrine of the separation of powers, and I believe that such judicial review is an unconstitutional intrusion into the internal affairs of the Senate. But if coverage of these antidiscrimination laws is to be extended to the Senate, I also believe it should be extended to the judicial branch.

They employ people. Why should it not be extended to the judicial branch? Is there anyone who believes that sexual harassment has never occurred, never occurs, or never will occur in the judicial branch?

I also wish to make clear that if a rollcall vote had been taken on the Grassley-Mitchell amendment, I would have voted in favor of the amendment.

I yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is considering S. 1745, and at this moment the Danforth amendment is pending.

Mr. BUMPERS. Mr. President, I want to make a few comments about this legislation, which has had such a tortuous beginning and ending, and to say that when I reflect on what has happened in civil rights in this country over the past 3 decades it has been just short of monumental.

We talk about all these bloodless revolutions that have taken place in Eastern Europe, and we are all immensely gratified by them. But I have a tendency to believe that the revolution that has occurred in this country which was also bloodless, was even greater. But over the past 30 years it has lost some of its steam and its momentum, and while there has been no legal turning back of the clock, there has been a growing indifference in the area of civil rights.

There is an old expression that lovers can stand hatred and contempt better than they can stand indifference.

And so it is altogether proper that the Senate is considering this bill. I am very pleased that the President has agreed to it, and I am hopeful that the House will soon also sign off on it. It is a pretty dramatic and complex bill and is something of an experiment. This bill does indeed carry us further in the civil rights arena than most people would have dared believe we would go a year or two ago.

When the President continued to oppose this legislation, saying that it was a quota bill, I think he was referring to the provision in the bill that allows people to show that there is a disparate impact; in other words, that a business has a smaller proportion of minority employees than are represented in the applicant pool and that therefore businesses would hire by quotas so they could not be fairly charged with discrimination.

I prefer to believe that if there is anything about this bill that would make it lead to quotas, it is the fear, the inordinate fear of the business community in this country of the damage provisions, both compensatory and punitive which have been added to civil rights for the first time. It was often said during the rather acrimonious debate last year, and much less acrimonious debate this year, that this bill simply reversed five Supreme Court decisions. Mr. President, it does much more than that. It provides compensatory and punitive damages in cases of intentional discrimination under title VII of the Civil Rights Act. This is an immensely complex bill. Do not let anybody kid you. This is a complex bill.

Now, I am frank to tell you that last summer, when Senator DANFORTH and some people on this side of the aisle were negotiating, there were four Democrats appointed by the majority leader who played a role in these negotiations and I was one of them. But the role I played, mostly in negotiating what we hoped would be a compromise that President Bush would sign off on, was primarily in trying to negotiate damage provisions. As I said then and repeat now, the quota aspect of this bill, if there is one, is the inordinate fear of the business community of compensatory and punitive damages. I always believed that was the reason they might hire by quota, so that they could not ever be fairly accused of intentionally discriminating and face punitive damages.

It has been said to the press and perhaps on the floor that the Senator from Massachusetts and the majority leader, Senator MITCHELL, will introduce a bill to take all the caps or limits off the damage provisions once the President has signed this bill. It goes without saying that I think that is a mistake.

Now I know that there are perhaps a majority of people on this side of the aisle that will support unlimited damages. I want to point out that this bill is even more liberal with respect to damages than the one I negotiated back in July. We had agreed on $50,000 combined compensatory and punitive damages for employers with 100 employees or less, and $100,000 combined compensatory and punitive damages for employers with 100 to 500 employees, and $300,000 combined for every company that had more than 500 employees.

As you now know, we have a fourth category which adds $100,000 combined damages for employers with 100 to 200, $200,000 for those between 200 and 500, and $300,000 for all of those over 500 employees. It is also true that you have to allege and prove intentional, malicious, willful discrimination in order to receive those damages under this bill, and certainly that is as it should be. It is a heavy burden for plaintiffs.

Mr. President, the job of the U.S. Senate is to craft legislation on civil rights that is strong enough to dissuade people from discriminating against their employees on the basis of race, sex, disability, or religious belief but not so liberal that it literally promotes litigation. That is a very delicate, difficult balance to achieve.

But I want to say this, that one of the reasons I strongly support the caps on the damage provisions in this bill, and the reason I will resist the proposal of the Senator from Massachusetts to remove it, is because I have been both a country lawyer and a small businessman. And I confess that as a country lawyer, I filed lawsuits that did not have an awful lot of merit but that I knew had settlement value. Any honest trial lawyer worth his salt will tell you he has done that. Some might deny it, but I promise you they have all done it. And I can only tell you that as a small businessman—when I was a small hardware, furniture, appliance manufacturer, a lawsuit againsts me for $50,000 in punitive damages would have made me go ballistic because I did not have $50,000 nor any place to lay my hands on such a sum.

So, here is what I think we ought to do. We ought to allow this bill to go into effect and see what happens. Let us wait and see if it generates a spate of litigation. Let us see if we have case after case after case of small business people being sued for the maximum punitive and compensatory damages allowable under this bill for settlement purposes, and small business people saying to their lawyers, "See what's the least amount you can get me out of this for, no matter the merit or lack of merit."

Take the hypothetical case of John Jones who has worked all of his life to build a business. Let us assume, for easy figuring, that John is in a very competitive business and has 100 employees. His two sons have joined him in his business and John hopes that those two sons will be successful and carry on the business that he has so laboriously and tediously put together with determination and hard work.

Let us assume that John fires an employee—a woman, a member of a racial minority, a religious minority, or disabled person—and let us assume further, incidentally, that John Jones believes with all of his heart, with no malice, no vengeance, that that employee is being discharged because that employee is not carrying his or her weight.

So the first thing John knows he has been sued for reinstatement, backpay, and $50,000 in compensatory and punitive damages.

That is a lot of money because let's assume John has set aside $250,000 as a nestegg for retirement. I can tell you if things are like they used to be 20 years ago when I practiced law, John is going to tell his lawyers: See if you can settle this thing for $10,000. Or see if you can settle it for $20,000, or whatever. Because he knows if he has to go to the mat, he is going to be out $20,000 in attorney's fees. And even if he wins, he is out $20,000 in attorney's fees.

Second case, same situation but no caps on the damage provisions in the bill. Let us assume that January, February of next year the U.S. Congress elects to adopt the provision that the Senator from Massachusetts says he is going to offer. I have no doubt it will come out of his committee. Assume the same situation, only this time the fired employee sues for $5 million in compensatory and punitive damages because there are no limits on punitive damages.

So here is John Jones who has worked a lifetime to build a business, and I can tell you he can't stand the thought of being exposed to a runaway jury. Therein lies one of the real problems in this whole thing. Everybody worries about a runaway jury.

Recently, a woman sued Texaco and got $20 million, virtually all of it in punitive damages. So what do you think John Jones says to his lawyers this time when it is a $5 million allegation for compensatory and punitive damages? This time he says to his lawyer, see what is the least you can get me out of this for. And the plaintiff's attorney comes back and says they are dead serious. He says, "We think this was willful, malicious discrimination. We want the whole $5 million."

At that point John has to make a judgment. Make an offer of say $100,000. Or should he offer $200,000 which takes his life savings but it might save the business for his sons. Or does he go to the mat and say I am going to fight this thing until the last dog dies?

Let us assume he takes the latter alternative and says, "I am going to fight it out with them. I am not guilty and I believe in our judicial system." So he says, "I am going to court," knowing he is probably going to be out $50,000 to $100,000 in attorney's fees. And then let us assume a judgment of $500,000 is rendered against him for punitive damages.

Now, John has some more choices. He can take bankruptcy and try to reorganize his business, or he can fold his tent. In this situation, the plaintiff probably will not be able to collect the judgment and in addition 99 other people are put out of work. Add to the scenarios that this is a little town of 2,000 people in Arkansas, which is the population of my hometown. We do not have anybody that employees 100 people, but if we did, we would revere that employer and cherish him and we would die 1,000 deaths if this happened to him and we lost 100 jobs in this little community.

Somebody might say, "Senator, do you realize that if you are female and black, or a racial minority, you can sue under the old section 1981 post-Civil War statute and you are not limited by any damage caps for punitive damages?"

Yes, I know that. You can sue under the old section 1981 or 1866, but bear in mind that that law covers only contractual relationships between plaintiff and the defendant. Section 1981 is not hiring and firing and job promotion as title VII of the Civil Rights Act is.

So my answer to that is this: Section 1981 is still the law and minority women and minority men can sue for unlimited damages where a contractural relationship has been breached for racial reasons. And now we have added very substantial compensatory and punitive damages for all women—black and white—all religious minorities, and all people with disabilities. That is a very substantial gain for the women of this Nation.

I will wrap these comments up, Mr. President, by saying that this has been a terrible day in the U.S. Senate; a terrible night last night, continued into today. A lot of mischievous things have happened here, a lot of things which the majority leader correctly called transparent efforts to maybe kill the bill.

Everybody has been going through a mea culpa, saying the U.S. Senate has a lot of work in front of it to reestablish its credibilty with the American people after the Clarence Thomas hearings, and I agree with that. Much was made during the hearings of the fact that the U.S. Senate and the U.S. House of Representatives impose these laws on other people but they do not impose them on themselves.

As I stated on the floor last evening, since I have been chairman of the Small Business Committee, I have held many hearings about the kinds of regulatory burdens we put on small business. Legislation like this, make no mistake about it, terrifies the small business community. The same is true of parental leave and all the others.

Mr. President, the amemdments we considered last night and today were as follows: First, is the Senate going to be covered by the civil rights bill? Yes. I voted for the Grassley amendment. Second, are Senators going to be subject to the same $50,000 in punitive damages? Yes. I voted yes. Third, is the Senator himself going to be required to pick up the tab rather than the taxpayers being required to pick up the tab if he intentionally discriminates? Yes. And I voted yes, though I'm not a wealthy man. As chairman of the Small Business Committee, I do not see that I could have voted differently, that is, to impose these burdens on others, and not ourselves.

Mr. President, I am not a constitutional scholar, but I revere that document. I probably have gotten into more political trouble back home by voting for things that were very popular at the moment but, in my opinion, unconstitutional. I have taken the oath we take when you put your left hand on the Bible and hold up your right hand and say "I will preserve, protect, and defend the Constitution of the United States," have always taken that oath very seriously. Today I was deeply troubled about the constitutionality of the Senate making itself subject to laws which are enforced by the judicial and executive branches of Government.

James Madison, in all of his wisdom, Ben Franklin and others, very carefully crafted that doctrine of the separation of powers in three branches of Government to make sure that there would be these checks and balances on each branch of Government, so one branch could not impose its will on another.

So if the Grassley amendment stands up, we could be in this very strange position of Members of the Senate having, for example, a lot of lawsuits filed against them in an election year by employees for embarrassment purposes, and I am not saying this is likely, but possible. Innocent as one might be that could be very embarrassing. Those suits may have no merit, and might be totally politically motivated. But it could happen.

Then you jump through all the hoops that the Grassley amendment requires to make sure you're complying with the law, but that wouldn't keep you from being sued.

Let us assume you lose at the first stage of a claim, and you appeal to the court of appeals where 80 percent of the judges may have been appointed by either George Bush or Ronald Reagan, and if you are a Democratic Senator, you are at the mercy of a Republican-appointed judge.

We heard the Senator from New Hampshire [Mr. RUDMAN] and the majority leader, Mr. MITCHELL, last night make these points much better than I have, discussing the constitutionality of this whole matter of the Senate being covered, and the separation of powers.

It was really troublesome for me to vote for some of those things because I do think they are constitutionally suspect. I don't feel absolutely certain that what we are doing here is unconstitutional and so I voted for the Senate being subjected to this law, and I am willing to let the Supreme Court test it, which it will certainly do very shortly.

In conclusion, Mr. President, I think Members of the U.S. Senate have a duty to stand up and say that they abhor discrimination against racial minorities, against women, the disabled, religious minorities, or anybody else. I am not at all sure that we have not let our guard down of late. And in times of economic distress, people tend to let racism rise. We can see what is happening in Louisiana. You do not have to be a rocket scientist to figure it out.

So with a twinge in my stomach, I intend to vote for this whole bill because I believe it is the right thing to do and I believe the Senators of this body should stand up and say: Businessmen, if this does not work out, if this turns out to be an abomination, we will come back and try our best to rectify it. It is not designed to punish you. It is designed to dissuade people from discriminating. It is not designed to encourage litigation. It is not designed to make people think they can get something for nothing. Hubert Humphrey used to say it is not ever going to be a good place for any of us to live until it is a good place for all of us to live. Here is a way we can remind ourselves where we have been coming from in the last 30 years and saying we are not going to turn back.

I yield the floor, Mr. President.

Mr. KASTEN. Mr. President, I rise today in strong support of the compromise civil rights legislation of 1991.

All Americans—blacks and whites, women and men, religious minorities, the disabled—deserve equal job opportunities. It pleases me a great deal that this body, the U.S. Senate, has chosen to lay aside partisan debate—and has chosen instead to reach a compromise that will help preserve equal rights for all.

Last year, we started out with a civil rights bill that was simply a grab-bag for the legal profession. This compromise legislation, unlike the bill passed on the House side, is a responsible measure which will combat discrimination effectively without entangling small businesses in endless litigation.

Mr. President, the compromise bill has many of the same components as the President's civil rights bill, S. 611, of which I am a cosponsor.

The bill addresses what has come to be known as the glass ceiling issue. It seeks to eliminate the artificial barriers which have served to block the advancement of qualified women and minorities in the workplace. The bill will establish a Glass Ceiling Commission, which is to be provided with the resources and powers to examine those practices and policies in corporate America which impede the advancement of women and minorities. The Commission will prepare a report for the President and Congress—due 15 months after enactment—examining the reasons for the existence of the glass ceiling and making recommendations with respect to policies which would eliminate it.

Another component of this compromise legislation is that it extends the coverage of civil rights legislation to Congress itself. Last year I, and 25 other Senators, voted in favor of Senator GRASSLEY'S amendment, which would have provided congressional coverage at that time. Unfortunately, that amendment failed. The legislation makes sure that Congress does not exempt itself from civil rights protections which the rest of the country is expected to comply with.

This bill will go a long way in helping to ensure equal opportunity for women, minorities, and all Americans. I applaud the untiring efforts by the President, Senator DANFORTH and Senator DOLE and others in reaching this compromise.

I think it is also important to point out that the only way Americans can truly enjoy equality and empowerment is through fair and equal job opportunities. That is why we have to complete our civil rights agenda for this year by enacting a strong progrowth economic package.

Today, we pass a valuable civil rights bill. The next step is to create a thriving, job-creating economy, so that all Americans will have a prosperity in which to share. I hope that my colleagues will put aside their partisan differences—just as they have on the civil rights bill—as we confront this essential economic task.

Mr. HATFIELD. Mr. President, once again, the Senate has squarely before it the enormously complex and emotional issue of civil rights. Unlike previous occasions, we meet today on the basis of a bipartisan agreement. Let me start by commending my colleague from Missouri, Senator DANFORTH, for his exceptional commitment to this issue.

This body has spent the better part of the last 2 years closely scrutinizing and at times intensely debating the issue of civil rights. We now come together in a spirit of bipartisan achievement. As one of the original seven cosponsors of this legislation, I have had the privilege of working with Senator DANFORTH and can therefore say with authority that, were it not for his expertise and undying patience, this important victory might well have eluded us once again.

As a Republican, I am especially proud to have played a part in this effort, an effort that is certainly in the best tradition of the party of Lincoln. One year ago, I supported the Civil Rights Act of 1990, a bill similar in many ways to the bill before the Senate today. My colleagues will recall the intense 11th hour negotiations championed by Senator DANFORTH that came so near to an agreement. Unfortunately, this legislation was prevented from becoming the law of the land by a single dissenting vote in this body.

In the aftermath of that vote, I was pleased to join with a number of Republican Senators, led by Senator DANFORTH, to fashion a civil rights bill that could become law. In this effort, we started from and built upon the unsuccessful legislation from a year ago. After a great many meetings, phone conferences—after a great number of letters and memos—after a seemingly infinite number of drafts of bill language—and after introducing on this floor seven separate bills and one significant substitute amendment, here we are at the home stretch. After intense last-minute negotiations, both the administration and a solid coalition of bipartisan Senators now support the compromise.

There is much to be encouraged about. First, we have a President who has demonstrated a strong commitment to civil rights. He has repeatedly expressed his desire to sign a civil rights bill, and has even submitted his own proposal for that purpose. He has announced his enthusiastic support for the compromise now before the Senate. Second, the House of Representatives is a body no less committed to the cause of civil rights. Earlier this year, that body passed its own rather progressive civil rights bill.

The time has come at last for the Senate to act. Being what could be called moderate Republicans, we have attempted to initiate this action by proposing what we regard as a balanced and fair civil rights bill. It continues to be our view that it is in the best interests of the Nation will be best served if we resolve the complex and sensitive issues here in the Senate, rather than allowing them to be used as mud in 1992 elections.

The purpose of this legislation is quite narrow. We are here to restore the proper application of the Federal civil rights law to a number of specific areas. Over the past several years, the Supreme Court has misinterpreted congressional intent in a number of areas of civil rights law. This legislation corrects these misinterpretations by fine tuning the Civil Rights Act of 1964. We must not allow the important purpose of this legislation to be obscured or diluted by other issues, no matter how compelling these other issues might be. Too much has been invested in this legislation to allow it to torn asunder by special interests more interested in fracturing debate than passing meaningful legislation.

Each year, more women and minorities seek to enter and continue successfully in the competitive American work force. It is our responsibility to see that they can do so on an equal basis with all others, as free of the ugly obstacles of discrimination as it is in our power to legislate.

Although many would argue otherwise, discrimination still exists in America. In my own State of Oregon, a disturbing level of discrimination and racial hatred is daily bubbling to the surface. In fact, Oregon streets saw 323 such racial incidents in 1989.

Acts of discrimination are unacceptable in our society, especially in the workplace. Yet discrimination lives on, most often in subtle form. Last week, my colleague from Maine, Senator COHEN, referred to a recent study conducted by the Urban Institute. That study concluded that significant number of black job applicants did not get as far in the job application process as their equally qualified white counterpart. This study does not necessarily indicate intentional discrimination. It does, however, indicate a lack of fairness for minorities who seek employment. This unfairness, whether intentional or not, must be rooted out of our system.

Other statistics are equally disturbing: While black men represent only 3.5 percent of college students, they make up 46 percent of the prison population. It is not surprising that black males stand a 1-in-23 chance of being murdered by age 25. Blacks are three times as likely to be poor and twice as likely to be unemployed. Some have even predicted that black will not catch up with whites in economic terms until sometime in the 22d century.

Mr. President, civil rights legislation is one of the most difficult issues to come before the Senate. The ultratechnical legalisms often confuse lawyer and nonlawyer alike. It is also difficult because the goal is really outside the reach of any legislative body. Our true goal is to end discrimination. Unfortunately, discrimination is most often hidden away, deep in the back of the mind, a place quite correctly beyond the grasp of this or any other legislative body.

But in the face of this discouraging act, we must not give up. While it is beyond our power to end discrimination in this country, it is no less incumbent upon us to ensure that the laws of the United States offer no comfort to those who engage in discriminatory practices. We must remember that we are always in the right when we seek to ensure fundamental principles of fairness for all citizens. Let us recommit ourselves to these fundamentals that are the right of all citizens, but sadly are not yet enjoyed by all.

In my 24 years in the Senate, I have played an active role in the passage of hundreds—and possibly thousands—of pieces of legislation. These have ranged from little known initiatives to those of great value; from the most obscure resolutions to the most hard fought and socially significant acts of Congress.

I count this act, the Civil Rights Act of 1991, among the most important, not because it will send a tidal wave of social change rolling across this country, it will not. This legislation is significant because it reaffirms and builds upon the commitment of this Government to enact laws that promote the principles of fairness and morality.

As citizens of the United States, we are blessed by many things. The birth of this Nation resembles a gift from our Creator. We are blessed with vast lands rich in natural resources. From the beginning, we have benefited from a population of abundant talent, diversity, and interest. We were also blessed in the timing of our creation: Those who established this Nation benefited equally from the vivid lessons of history and from the examples of their contemporaries. In the New World, they sought to create a nation founded on the highest principles of the human race and springing from the will of the people. We are daily benefactors of this worthy creation whose value is far beyond our comprehension.

As Senators, we are elected to carry on this tradition. Thus, we operate at our highest calling when we seek to further the causes of fairness and morality. In reaching a compromise on the Civil Rights Act of 1991, we reaffirm these grand objectives that were the cornerstones of the Emancipation Proclamation, the post-Civil War Reconstruction amendments, and the Civil Rights Act of 1964. Just as nature abhors a vacuum, so too does democracy abhor injustices, injustices such as racial discrimination.

It is time for this body to act to stop discrimination where it can be detected. All Americans deserve a fair chance at employment. In every instance, the most qualified applicant should be hired.

Observers should note what we say here today: Merit should be the measurement, not considerations that are irrelevant to getting the job done. Such a policy makes good business sense and is fair. And this is just what our legislation establishes.

I ask unanimous consent that an article from the Wall Street Journal of May 15, 1991, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, May 15, 1991]

RACIAL BIAS AGAINST BLACK JOB SEEKERS REMAINS PERVASIVE, BROAD STUDY FINDS

(By David Wessel)

WASHINGTON.—After sending carefully selected pairs of young black and white men to apply for 476 entry-level jobs, researchers at the Urban Institute found that the blacks were three times as likely as whites to face discrimination.

The findings, released yesterday by the Washington think tank, demonstrate that racial discrimination in employment is still widespread in the U.S. 27 years after it was outlawed. One of the researchers, economist Raymond Struyk, called the study "the strongest evidence ever developed on the extent of racial discrimination in hiring." It comes amid a heated debate between Congress and the White House over revamping civil rights laws.

In about three-quarters of the job openings, the researchers found no discrimination, but they took little comfort from that. In one of every five cases, the black man didn't get as far as his equally qualified white counterpart. The black didn't get an application form when the white did, or he didn't get an interview or job offer.

EXTRA OBSTACLES

"We think 20% is a substantial rate of discrimination," Mr. Struyk said. "If you think of a young man going from firm to firm looking for work, that's a one-in-five chance. You add these things up, and they can get pretty discouraging."

In only 7% of the cases, the black men advanced further than their white counterparts, a finding that led the researchers to conclude that so-called reverse discrimination isn't as widespread as some critics of civil rights law and affirmative action programs suggest.

Overall, 15% of the white applicants were offered a job when their black counterpart wasn't, and only 5% of the blacks were offered a job when their white counterpart wasn't. In an additional 13% of the cases, both men were offered the job.

The research borrows a technique long used to investigate discrimination in housing, but only lately used in employment. The Lawyers Committee for Civil Rights Under Law, based here, recently used two pairs of testers to support allegations that a local employment agency discriminates against blacks.

The new Urban Institute study, however, was far broader. Ten pairs of men between 19 and 24 years old were dispatched to respond to randomly chosen help-wanted ads published last summer in the Washington Post and Chicago Tribune. The men were paired to be similar in appearance and manner. One team, for instance, consisted of a 6-foot-4-inch bearded white and a 6-foot-2-inch bearded black. Each team memorized similar biographies and practiced interviews to minimize differences. Nearly all the help-wanted ads were for retail, hotel, restaurant or other service jobs.

WORSE IN WASHINGTON

Blacks fared worse than whites far more often in Washington than in Chicago, surprising the researchers. Whites were offered jobs when their black counterparts weren't in 19% of the cases in Washington, but in only 10% of the Chicago cases. "It's really a puzzle," said Margery Turner, another of the researchers.

The differences between the cities were particularly acute in comparing face-to-face interview experiences. The researchers found that in Washington far more blacks than whites—60% vs. 16%—were somehow treated less favorably in interviews than counterparts. They had to wait longer, had a shorter interview or reported discouraging comments from interviewers, the majority of whom were white. But in Chicago, roughly the same proportion—42% of whites and 37% of blacks—were treated unfavorably.

Blacks were more likely to encounter discrimination in white-collar jobs and sales jobs. The researchers found no difference between suburban and urban employers or between employers in predominantly white and predominantly black neighborhoods.

Mr. GORE. Mr. President, I rise today in support of the civil rights bill now before the Senate. And, I welcome the President's support of this legislation. It is my hope that what we are seeing now is an end to the divisive politics of race and that we have heard the word "quota" for the last time from the White House.

This bill represents the tireless effort to protect the civil rights of all Americans. These are issues I care about deeply, and I am pleased negotiations have produced a bill which will pass the Senate, which the President will sign, and which, as law, will make a critical difference in the lives of millions of Americans.

President Bush has taken too long to relinquish this issue as a political weapon, and though it may be now that it is only for political reasons that he's agreed to this bill—preparing in fact to claim this Democratic victory as his own—the fact is, whether you think President Bush caved in or led forward, there is a bipartisan consensus on this civil rights bill and, for the American people that's what's important.

For too long, the politics of division have poisoned our national debate. For too long, every effort at progress, every attempt to move forward was blocked by this White House. They told the business roundtable to fold up their negotiations and go home. They told this Senate to forget about a bill. They told one of our colleagues, a Republican who has struggled hard to find agreement, that they would not agree.

Let us all hope that those days are behind us now. Let us all hope that President Bush has decided it's more important to make progress than to play politics; more important to move forward than slip back.

Mr. President, I come from the South. We've seen this politics of division for generations. Whenever economic hard times threaten middle-income families or working families, those who don't want to find the economic answers, those who don't want to do the hard work to change the situation, just start yelling race. It's dangerous political game that threatens to rip apart the very fabric of our Nation.

So today, I stand here optimistic but—based on the track record of this administration—not convinced that we've seen the last of this brand of politics. Certainly, the need for us to move forward to confront the economic pressures facing middle-income and working families is clear. And as compelling is the need for us to move forward together, as one Nation.

Mr. President, this legislation addresses critical issues.

During the 1988-89 term, the U.S. Supreme Court handed down decisions in a series of cases which severely curtailed the rights of minorities and women in the workplace and made it harder for them to fight discrimination. This bill recognizes that those decisions were flawed, that we shouldn't be weakening Americans as they fight discrimination, and it provides additional Federal remedies to address sexual harassment in the workplace.

This bill restores protections against racial and ethnic discrimination which were struck down by these rulings. For example, the Court ruled that the statute which gives each of us the right to "make and enforce contracts" does not apply to workers after they are hired. In other words, if you're a woman or a minority, you're protected from discrimination during the hiring process but you're not protected—from discrimination or harassment—once you're on the job. This bill makes it clear that employees are entitled to a work environment that is free from harassment and discrimination.

In another case, the Court said a business did not have to prove that job requirements were in fact connected to the job to be done. They placed that burden on the employee—leaving with the worker the virtually impossible task of proving that a prospective employer was making an unreasonable requirement and, in the process, discriminating against someone seeking employment. This bill restores this burden of proof to the employer, so that the employer will be required to show that a practice is necessary to business.

Across this Nation, as a result of the Court's rulings, Americans are no longer able to seek redress when they experience legitimate instances of job discrimination. This bill restores protections against some of the most offensive instances of discrimination based on race and sex.

I would have preferred if this bill did not include caps on damages for sexual harassment, and I understand we will address this issue with separate legislation very soon. No one could witness the vast outpouring from women around this country during Prof. Anita Hill's testimony and not be moved by the evidence that sexual harassment is all too common, all too real, for far too many women. By the thousands, women were calling their representatives—in some cases, sharing stories that had never been told—to send a clear, strong message: Sexual harassment is real, it occurs far too often and women are entitled to protection and redress when they are its victims. We cannot shut out or shortchange their voices.

But Mr. President, make no mistake about it, this is a good bill, a much-needed bill. And it is not and never was a quota bill—it is a civil rights bill. At long last we have finally been able to return to standards that have been in practice for almost two decades until a supposedly nonactivist Supreme Court dismantled them.

We have the chance here to open a new era of unity and cooperation; to renew our commitment to opportunity and progress or to turn back, to turn to the politics of desperation and division in a cynical exercise to win votes that will mean we'll lose our way. Unfortunately, as a nation we're not free from racism and bigotry. We have made progress, and throughout our history, we have demonstrated that when people of good will join together we can defeat ignorance and hate and fear. There is still much work to be done and much is at stake.

As we grapple with our economic problems, the deficit, healing the environment, educating our children, and providing jobs and health care for Americans, we must not be misled by a mean-spirited cynicism that will distract and divide us. Instead, we must work together and move forward together to realize our dreams.

Mr. SIMPSON. Mr. President, I am pleased to speak in support of the Civil Rights Act of 1991, as amended by the Danforth compromise amendment.

This compromise legislation will improve the ability of civil rights plaintiffs to make their cases in disparate impact suits, because it will reverse the Supreme Court's ruling in Wards Cove versus Atonio on the matter of burdens of proof. However, the compromise bill wisely avoids the pitfalls of earlier versions of the bill, which made unwise and unnecessary changes to other aspects of disparate impact law. This is a sensible resolution of the disparate impact issue, because it preserves the right of plaintiffs to make their case without creating adverse side effects in the workplace—such as quota based hiring.

This bill will also overturn two Supreme Court decisions which almost everyone agrees needed revision: First, the Lorance case, regarding discriminatory seniority systems; and second, the Patterson case, which limited the right of plaintiffs to sue to remedy racial discrimination under 42 U.S.C. 1981. This is another beneficial expansion of our civil rights laws for plaintiffs.

Finally, this compromise bill creates a new monetary remedy for the victims of sexual harassment and other forms of intentional discrimination. Such a remedy does not exist in current law. Let there be no mistake about how broad, sweeping, and generous this portion of the bill is. I strongly endorse the concept of monetary relief for intentional discrimination. I cautiously endorse this specific remedy, because it opens the door to jury trials and compensatory and punitive damages, instead of the traditional labor-law remedy: Back pay, or double back pay. However, in the spirit of compromise, I find this provision acceptable.

However, I will be watching this section closely as lawsuits are filed to exercise this new legal right. I am hopeful that we will achieve an appropriate balance here: Victims of sexual harassment and of other forms of intentional discrimination should have meaningful remedies; however, trial lawyers should not benefit inordinately from this section by charging large contingency fees and needlessly prolonging litigation. If I find that the victims of mistreatment in the workplace are benefiting much less than the lawyers who are bringing their cases, then I will be back to reexamine the damages section.

Finally, Mr. President, let me pay tribute to the three parties who made this legislation a reality: Senator JACK DANFORTH, my lovely friend, for his tireless efforts to reach a bipartisan compromise; President Bush, John Sununu, and Boyden Gray, for their steady courage to criticize poor proposals and to endorse appropriate proposals; and my friend, Senator KENNEDY, for his pragmatic approach to meaningful reform of our civil rights law.

The good-faith efforts of these three parties have produced for us all a bipartisan civil rights law. Civil rights laws have some of the most dramatic effects on our society as any that Congress passes, and I believe such laws should always be bipartisan. I am pleased that one party is no longer trying to jam a civil rights law down another party's throat, and that this civil rights law will continue in the fine American tradition of bipartisan consensus.

Mr. President, I urge the adoption of the legislation.

INTERPRETATIVE MEMORANDUM

Mr. DANFORTH. Mr. President, I am pleased that Senator KENNEDY has agreed with almost all of the original cosponsors, interpretative memorandum. I understand that he questions only the discussion in our memorandum that the original cosponsors, who are the authors of the effective date provision, do not intend for the bill to have any retroactive effect or application.

My review of Supreme Court case law supports my reading that in the absence of an explicit provision to the contrary, no new legislation is applied retroactively. Rather, new statutes are to be given prospective application only, unless Congress explicitly directs otherwise, which we have not done in this instance. Support for this proposition is derived from Justice Scalia's concurring opinion in *Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 110 S.Ct 1570, 1579 (1990), and the unanimous opinion of the Supreme Court in *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 208 (1988), and the numerous cases cited by Justice Kennedy in Bowen.

I acknowledge that there appear to be two cases that do not adhere to this principle but instead support retroactive application of new statutes in the absence of "manifest injustice." *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974); *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969). The sponsors disapprove of these cases.

Our intention in drafting the effective date provision was to adhere to the principle followed by the vast majority of Supreme Court cases and exemplified by Bowen and Justice Scalia's concurrence in Bonjorno.

Subsection 22(b), regarding certain disparate impact cases, is intended only to provide additional assurance that the provisions of the bill will not be applied to certain cases that fit the provisions of that subsection. It should not be read in derogation of the sponsors' intention not to provide for retroactive effect or application as expressed in subsection 22(a) of the bill.

There being no objection, the memorandum was ordered to be printed in the RECORD as follows:

SPONSORS' INTERPRETATIVE MEMORANDUM ON ISSUES OTHER THAN WARDS COVE—BUSINESS NECESSITY/CUMULATION/ALTERNATIVE BUSINESS PRACTICE

This Interpretive Memorandum is intended to reflect the intent of all of the original cosponsors to S. 1745 with respect to those issues not addressed by the Interpretive Memorandum introduced into the record at S 15276 on October 25, 1991.

SECTION 1: SHORT TITLE

This legislation may be referred to as the "Civil Rights Act of 1991."

SECTION 4: PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS

Section 4 fills the gap in the broad statutory protection against intentional racial and ethnic discrimination covered by section 1981, 42 U.S.C. 1981 (Section 1977 of the Revised Statutes) that was created by the Supreme Court decision in *Patterson* v. *McLean Credit Union*, 491 U.S. 164 (1989). Section 4 reinstates the prohibition of discrimination during the performance of the contract and restores protection from racial and ethnic discrimination to the millions of individuals employed by firms with fewer than 15 employees. The list set forth in subsection (b) is illustrative only, and should be given broad construction to allow a remedy for any act of intentional discrimination committed in the making or the performance of a contract. Section 4 also overturns *Patterson* in contractual relationships other than employment, and nothing in the amended language should be construed to limit it to the employment context.

Section 4 also codifies the holding of *Runyon* v. *McCrary*, 427 U.S. 160 (1976), reaffirmed in *Patterson*, that section 1981 prohibits private, as well as governmental, discrimination.

SECTION 5: DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

1. The Need for Damages

Current civil rights laws permit the recovery of unlimited compensatory and punitive damages in cases of intentional race and ethnic discrimination. [See notes regarding Sec. 4 overturning *Patterson* v. *McLean Credit Union* with regard to restoring the prohibition against all racial and ethnic discrimination in the making and enforcement of contracts.] No similar remedy exists in cases of intentional gender, religion, or disability discrimination.

Under 42 U.S.C. 1981, victims of intentional racial and ethnic discrimination are entitled not only to equitable relief, but also to compensatory damages. Further, in egregious cases, punitive damages may also be awarded. *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 460 (1975); *see also Patterson* v. *McLean Credit Union*, 491 U.S. , 109 S.Ct. 2375 n.4. By contrast, under Title VII and the Americans with Disabilities Act (ADA) victims of intentional gender, religious or disability discrimination may receive only injunctive relief, reinstatement or hiring, and up to two years backpay. Neither Title VII nor the ADA permit awards of compensatory or punitive damages no matter how egregious the discrimination is in a particular case. (See section 706(g), 42 U.S.C. sec. 2000e-5(g)).

S. 1745 creates a new provision, to be codified in section 1981A in Title 42 of the U.S. Code. Section 1981A authorizes the award of compensatory and punitive damages in cases of intentional employment discrimination against persons within the protected categories of Title VII and the Americans with Disabilities Act.

In order to assure that a complaining party does not obtain duplicative damage awards against a single respondent under both section 1981 and section 1981A, the provision limits section 1981A damage awards to a complaining party who "cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981)." The complaining party need not prove that he or she does not have a cause of action under section 1981 in order to recover damages in the section 1981A action.

Moreover, this provision does not prevent a person from challenging discrimination which causes demonstrably different harms under each of the statutes. For example, a woman who suffers both race and sex harassment, and is injured in different ways by each, may challenge the race discrimination under section 1981 and the sex discrimination under section 1981A, and if proven, may recover under both. The court should, of course, ensure that she does not receive duplicate awards for the same harm.

Section 1977A(b)(4) (42 U.S.C. section 1981A(b)(4)) makes clear that nothing in section 1977A should be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes, 42 U.S.C. 1981. The new damages provision thus does not limit either the amount of damages available in section 1981 actions, or the circumstances under which a person may bring suit under this section. For example, the bill does not affect the holding of the Supreme Court in *Saint Francis College* v. *Al-Khazraji*, 481 U.S. 604 (1987), that section 1981 was intended to protect from discrimination "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." Indeed, that discrimination is national origin discrimination prohibited by Title VII as well.

Claims asserted under this new section are commenced with the timely filing of a charge of discrimination with the EEOC and/or state or local fair employment agency. The investigation and conciliation functions of the fair employment agencies normally applicable to such charges will continue to be applied. Only after the agency has completed its functions and/or released the complaining party to pursue independent legal action by issuance of a Notice of Right to Sue will the plaintiff be empowered to file a lawsuit in federal district court. In this regard the bill does not alter existing law.

In addition to the above-cited restrictions, the following limitations also are placed on the damages available to each individual complaining party for each cause of action brought under section 1981A:

Such damages cannot include backpay, the interest thereon, frontpay, or any other relief authorized under Title VII;

The amount of nonpecuniary damages, future pecuniary damages and punitive damages shall not exceed $50,000 for employers with 100 employees or less, $100,000 for employers with more than 100 employees and fewer than 201 employees, $200,000 for employers with more than 200 and fewer than 501 employees, and $300,000 for employers with more than 500 employees;

While compensatory damages may be awarded against federal, state and local government agencies, punitive damages may not; and

Where a discriminatory practice involves the provision of a reasonable accommodation under the Americans with Disabilities Act, no compensatory or punitive damages may be awarded where the covered entity demonstrates good faith efforts to make the reasonable accommodation.

It is the intention of the sponsors of this legislation to make the perpetrators of intentional discrimination liable for the nonwage economic consequences of that discrimination up to the full extent of the stated limitations.

2. Jury Awards

The bill clarifies that as to claims for which compensatory or punitive damages are sought, any party may demand a trial by jury. Because compensatory and punitive damages may not be sought with regard to claims based on the disparate impact theory under the rules set forth in proposed section 703(k), a jury trial would not be available for such claims.

Claims which involve a demand for damages (and a consequent right to a jury trial) may be brought in the same action as claims brought using the disparate impact theory under the rules set forth in proposed section 703(k). The courts shall continue to exercise their discretion in the handling of such hybrid actions as they have in handling the many hybrid actions brought under Title VII/section 1981 in the past.

Judges currently serve as an adequate check on the discretion of juries to award damages. Consistent with the requirements of the Seventh Amendment, they can and do reduce awards which are excessive in light of a defendant's discriminatory conduct or a plaintiff's resulting loss.

In addition, the bill specifically provides that the jury shall not be informed of the existence or amount of the caps on damage awards. Thus, no pressure, upward or downward, will be exerted on the amount of jury awards by the existence of the statutory limitations.

SECTION 8: BURDEN OF PROOF IN DISPARATE IMPACT CASES

Under section 703(k)(1), a disparate impact suit is brought in three stages. The legislation is not intended to alter the definition of the term of art "disparate impact" as it has been developed by the courts since 1971. Initially, the plaintiff has the burden of providing a prima facie case. *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 425 (1975). A prima facie case is established when a plaintiff identifies a specific employment practice and demonstrates that the practice causes a disparate impact, except as described below.

Our intention with respect to the "business necessity" issue is reflected at S15272 of the Congressional Record on October 25, 1991.

The bill requires a complaining party to demonstrate that a particular employment practice *causes* a disparate impact. By use of the "cause," the bill should not be read to require a plaintiff "to eliminate all alternative explanatory hypotheses for a disparate impact." See *Allen* v. *Seidman*, 881 F.2d 375, 380 (7th Cir. 1989). For example, if an employment test creates a disparate impact on the basis of race, a plaintiff would not be required to prove that a disadvantaged background was not an alternative, possible hypothesis for the disparate impact.

Our intention with respect to the "cumulation" issue is reflected at S15276 of the Congressional Record on October 25, 1991.

With respect to the need for specificity, there is one exception to the requirement that a complaining party identify each practice that causes a disparate impact. In order to invoke that exception, the complaining party must "demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation of analysis", and in that instance "the decision-making process may be analyzed as one employment practice."

For example, if employment decision-makers cannot reconstruct the basis for their employment decisions, because uncontrolled discretion is given to a respondent's employment decision-makers, then the decision-making process may be treated as one employment practice and need not be identified by the complaining party as discrete practices. See *Sledge* v. *J.P. Stevens & Co.*, 52 EPD para. 39,537 (E.D.N.C. Nov. 30, 1989). Similarly, if a complaining party proves to a judge that it is impossible for whatever reason to reconstruct how practices were used in a decisionmaking process, then the decisionmaking process is incapable of separation for analysis and may be treated as one employment practice and challenged and defended as such.

Our intention with respect to the "alternative practices" issue is reflected at S15276 of the Congressional Record on October 25, 1991.

SECTION 9: PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES

Section 9 amends section 703 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2, by adding a new subsection (l) to ban the practice of "race-norming" and other practices used to alter or adjust the scores of job-applicants on employment-related tests used by an employer to select or promote employees. The language of the section is broad and is designed to prohibit any action taken to adjust test scores, use different cutoff scores for selection or promotion, or otherwise adjust or alter in any way the results of employment-related tests on the basis of race, color, religion, sex, or national origin.

By its terms, the provision applies only to those tests that are "employment related." Therefore, this section has no effect in disparate impact suits that raise the issue of whether or not a test is, in fact, employment related. The prohibitions of this section only become applicable once a test is determined to be employment related.

Section 9 does not purport to affect how an employer or other respondent uses accurately reported test scores, or to require that test scores be used at all.

SECTION 14: EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Legislation is needed to address the problems created by the Supreme Court's decision in *Lorance* v. *AT&T Technologies, Inc.* 109 S.Ct. 2261 (1989). The plaintiffs in *Lorance* alleged that a seniority rule governing layoffs had been adopted for the purpose of discriminating against women. The seniority rule was first adopted in 1979. The seniority rule was not applied until the fall of 1982, when the company invoked it to lay off Lorance and the other plaintiffs. The plaintiffs promptly filed Title VII charges with the EEOC, asserting that the rule applied to them in 1982 had been motivated by discrimination.

A majority of the court held that the plaintiffs' claims were time barred because the statute of limitations begins to run when the seniority rule was adopted, not when it is applied to the complaining party. The unfairness of this rule is apparent. The holding in this case would require employees seeking to protect their interests to challenge immediately any new rule or practice that might conceivably be applied to adversely affect them in the future.

Under section 14, the limitation period begins to run on the later of the date when an alleged discriminatory seniority system is adopted, when an individual becomes subject to a seniority system, or when an individual aggrieved is injured by the application of the seniority system.

Unfortunately, some lower courts have begun to apply the "*Lorance* rationale" outside of the context of seniority systems, for example to bar challenges to allegedly discriminatory promotion policies unless the challenge is made at the time the policies are adopted, rather than when they were applied to deny a promotion to the claimant. *Davis* v. *Boeing Helicopter Co.* (E.D. Pa. October 24, 1989). It has also been applied to bar a challenge under the Age Discrimination in Employment Act to a suit challenging application of an early retirement plan. *EEOC* v. *City Colleges of Chicago*, No. 90–3162 (7th Cir. Sept 16, 1991). This legislation should be interpreted as disapproving the extension of this decision rule to contexts outside of seniority systems.

This legislation should not be interpreted to affect the sound rulings of the Supreme Court regarding "continuing violations" theory under Title VII. See *Delaware State College* v. *Ricks*, 449 U.S. 250 (1980).

SECTION 21: SEVERABILITY

Section 21 expresses the sponsors' intention that, in the event that any section, subsection, or provision of the Act, any amendment made by the Act, or any application of a section, subsection, or provision of the Act to any person or in any circumstances is held invalid, the remainder of the Act, of the amendments made by the Act, or the application of such provision to other persons and in other circumstances shall not be affected.

SECTION 22: EFFECTIVE DATE

The bill provides that, unless otherwise specified, the provisions of this legislation shall take effect upon enactment and shall not apply retroactively.

John C. Danforth, William S. Cohen, Mark O. Hatfield, Arlen Specter, John H. Chafee, Dave Durenberger, James M. Jeffords.

Mr. KENNEDY. Mr. President, as the principal Democratic sponsor of the Danforth-Kennedy substitute amendment, I want to state my agreement with the views set forth in Senator DANFORTH's interpretive memorandum.

I would also like to state, however, my understanding with regard to the bill's effective date. Section 22 of the bill states that "[e]xcept as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment." Section 22(b) provides that nothing in the act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

It will be up to the courts to determine the extent to which the bill will apply to cases and claims that are pending on the date of enactment. Ordinarily, courts in such cases apply newly enacted procedures and remedies to pending cases. That was the Supreme Court's holding in *Bradley* v. *Richmond School Bd.*, 416 U.S. 696 (1974).

And where a new rule is merely a restoration of a prior rule that had been changed by the courts, the newly restored rule is often applied retroactively, as was the case with the Civil Rights Restoration Act of 1988. That is what the courts have held in *Leake* v. *Long Island Jewish Medical Center*, 695 F. Supp. 1414 (E.D.N.Y. 1988), aff'd, 869 F.2d 130 (2d. Cir. 1989), *Ayers* v. *Allain*, 893 F.2d 732 (5th Cir. 1990), and *Bonner* v. *Arizona Department of Corrections*, 714 F. Supp. 420 (D. Ariz. 1989). But see *DeVargas* v. *Mason & Hanger-Silas Mason Co., Inc.*, 911 F.2d 1377 (10th Cir. 1990). It was with that understanding that I agreed to be the principal Democratic sponsor of the Danforth-Kennedy substitute.

I would also like to state my views on the relationship between S. 1745 and the Americans with Disabilities Act of 1990 [ADA].

Section 10 of S. 1745 provides that an unlawful employment practice is established when a plaintiff demonstrates that a protected class status was a motivating factor for an employment practice. This policy is comparable to the standard already adopted under the ADA. (See e.g., Sen. Rpt. No. 101–116 at page 45; H. Rpt. No. 101–485, Part 2, at 85–86.)

Other sections of the Civil Rights Act of 1991, which amend section 706 of title VII, are explicitly incorporated into the ADA through section 107(a) of the ADA.

Section 5 of S. 1745 states explicitly that damages are available under the ADA for all cases of unlawful intentional discrimination; that is, not an employment practice that is unlawful because of its disparate impact, or for violations of the reasonable accommodation provision in section 102(b)(5) of the ADA.

Causes of action for disparate impact are limited to section 102(b)(3)(A) and part of section 102(b)(6) of the ADA—except for practices intended to screen out individuals with disabilities.

Section 1977A(a)(3) provides that damages are not available if the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

It is my intent that a demonstration of good faith efforts must include objective evidence that the process of determining the appropriate reasonable accommodation has been conscientiously complied with by the covered entity. This process is described in the Senate Report accompanying the ADA (S. Rpt. 101–116) at pages 34–35 and the analysis accompanying the final regulations implementing title I of the ADA promulgated by the EEOC (56 Fed. Reg. 35748–49 (July 26, 1991)).

The legal mandate that the reasonable accommodation provides the individual with a disability an "equally effective opportunity" means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. (See analysis by the EEOC accompanying the regulation implementing title I of the ADA (56 Fed. Reg. 35748 (July 26, 1991)).

Mr. KOHL. Mr. President, I rise in support of the Danforth-Kennedy substitute to the Civil Rights Act of 1991. After more than a year of opposition by the President—often including volatile political rhetoric on quotas—we now have a bipartisan civil rights bill that is substantially similar to what was first introduced over a year and a half ago. The sad truth is that while scores of individuals suffer from discrimination in the workplace, politics plays a controlling role in the President's strategy.

It is painfully obvious that the 1992 election cycle has begun. In recent months the civil rights debate has been extremely misleading, focusing on issues meant to distract rather than inform. But make no mistake, this proposal—the Danforth-Kennedy compromise—addresses substantive issues.

Mr. President, for nearly three decades title VII of the Civil Rights Act has been the cornerstone of protection against employment discrimination. However, in the past few years the protection provided by title VII was eroded by several Supreme Court decisions. This bipartisan measure before the Senate properly reverses or modifies those decisions and, in addition, enables victims of intentional discrimination based on sex, religion, or disability to be compensated for bias on the job. This is a bill against discrimination and a bill against sexual harassment.

Before the 1989 Supreme Court case of Wards Cove Packing, Inc. versus Atonio, the burden of proof in a "disparate impact" discrimination case, a case where the business practices in question are fair in form, but discriminatory in practice, rested with the employer. In Wards Cove, the Court shifted the burden to the employee. This bill returns to pre-Wards Cove law, and places the burden of proof on the employer.

Under this proposal employers must justify work rules if the employee shows that the rules have a disparate impact on women and minorities. That is what the Supreme Court held in Griggs. That is what we are trying to return to. Chief Justice Burger—who wrote the unanimous Griggs decision said that civil rights laws prohibit not only overt discrimination, but also "practices that are fair in form but discriminatory in operation." In other words, victims of insidious employers, as well as those who are hurt by outright bigots, should have the same remedy in court.

To this end, the substitute requires that job practices with disparate impact must be "job related for the position in question and consistent with business necessity." Although "business necessity" is not defined in the substitute, the substitute does reference business necessity concepts as they are discussed in Griggs.

In addition to addressing the burden of proof issue, the substitute also makes compensatory and punitive damages available in cases of intentional employment discrimination. It bears repeating that these damages are available only in intentional discrimination cases, not in disparate impact cases. Compensatory damages include such things as medical costs, emotional pain or suffering, future pecuniary losses, and mental anguish. And punitive damages are available only if an employee demonstrates that the employer engaged in discriminatory practice with malice or reckless indifference to the employee's federally protected rights.

The issue of damages is one of the more controversial areas addressed in this legislation. The compromise language of the substitute establishes a four-tiered structure limiting awards, depending on the number of employees at a particular firm. Total pain and suffering, future pecuniary losses, and punitive damages are capped at $50,000 for companies with 100 employees or fewer. For companies with 101 to 200 employees damages are limited to $100,000. Firms which employ between 201 and 500 employees face a maximum of $200,000 in damages. And companies with more than 500 employees are limited to $500,000 damages.

Mr. President, with most compromises, few parties are completely satisfied with the end product. That is the case here. Those business interests fearful of large damage awards argued forcefully for lower dollar limits. And those advocating the interests of discrimination victims, and in particular women, sought to eliminate damage caps all together. Neither side thinks the compromise language is perfect, but it is a vast improvement over current law and its passage is long overdue. It should have become law long ago, and probably would have, had the issue not become embroiled in an ugly game of partisan politics.

Nevertheless, even if we enact this important legislation—and in light of President Bush's change of heart, enactment seems certain—job equality will not suddenly come to pass. Recent studies have indicated as much, suggesting that it will take decades for anything close to income parity for women and minorities. Congress cannot simply wield a magic wand and change the way our country views the problem of discrimination.

Why is this so? I believe it is because of fear. Fear that fuels prejudice. At a time when the economic pie grows smaller and smaller, many people do not want to share their piece with others. Especially with others they perceive to be different, or weak, or minorities.

This fear takes many forms. It is unequal pay for equal work. It is the glass ceiling encountered by women and minorities in corporate America. It is a vote cast for a candidate who runs on an unspoken platform of racism.

Sadly, the Civil Rights Act will not eliminate this fear. We cannot legislate against fear. We cannot legislate against immorality, and we cannot legislate against hatred. But we can pass laws which punish those who act on these fears by discriminating. We can say to those who choose to treat women and minorities as second-class workers that there is a severe cost for such actions. And we can send a message to the majority of Americans—yes, women and minorities combined are the majority—that in the eyes of the law they are equal.

Thank you, Mr. President.

Mr. DECONCINI. Mr. President, I have an issue of utmost concern to Hispanic and other minority constituents in Arizona concerning national origin discrimination and the application of title 42, United States Code, section 1981, the Federal statute guaranteeing equal rights under the law. Section 1981 does not specifically prohibit either national origin discrimination or racial discrimination.

The Supreme Court, in its 1976 decision Runyon versus McCrary, interpreted section 1981 to prohibit all racial discrimination in the making of private as well as public contracts, including employment contracts. In Saint Francis College versus Al-Khazarahi, a 1987 decision of the Supreme Court, section 1981 was construed to extend to discrimination based on "ancestry or ethnic characteristics," both of which are part of the accepted meaning of "national origin."

The Court in St. Francis College demonstrated that when Congress enacted this statute it intended to protect from discrimination a wide variety of groups that were then considered racial groups but are now considered national origin or ethnic minority groups. Characterictics that identify national origin groups are ethnic characteristics such as language, speech accent, culture, ancestry, birthplace, and certain physical characteristics.

Since that St. Francis College decision confirming the coverage of national origin groups within section 1981, there has been some confusion among courts applying this precedent. I would like to reaffirm my understanding that Congress originally intended and continues to intend that section 1981 cover and apply to what are now known as national origin groups. Furthermore, to state a valid cause of action under section 1981, it should be sufficient for a complaining party to allege discrimination based solely on national origin, rather than racial discrimination.

Congress needs to clearly recognize that section 1981 prohibits intentional national origin discrimination as well as racial discrimination in accordance with the St. Francis College decision. National origin groups such as Hispanics and racial groups such as native Americans and Asian-Americans have suffered from institutional segregation and discrimination, and were intended to be covered under section 1981.

AMENDMENT ON DISCRIMINATION TESTERS

Mr. SIMPSON. Mr. President, I would like to clarify my position on an amendment which I had intended to offer to S. 1745 which would place limits on discrimination testers.

I had intended to offer an amendment to this legislation which would have established certain rules for persons who pose as job applicants solely to test whether that employer might be discriminating. My amendment would not prevent such testing programs—as many in the business community advocate—but rather would only prohibit these discrimination testers from misrepresenting their education, experience, or other qualifications when applying for the job vacancy.

There have been two programs that I am aware of where spurious job applicants have lied about their credentials in order to test whether employers are discriminating: First, in a 1989 urban institute study; and second, in a case pending in Federal district court here in Washington: Fair Employment Council versus BMC Marketing Corporation, my concern over these testing programs is that, if the testers are allowed to lie about their credentials, then the employers might not be rejecting the minority applicants because of a discriminatory motive, but rather because the employer did not find their representation of their credentials credible. Some reviewers of the Urban Institute study observed that it was the educational difference of the job applicants—not a discriminatory motive on the part of the tested employers—which caused any disparities in hiring.

I am very concerned about false positives in the employment discrimination areas. As we have just seen from the Clarence Thomas hearings, the mere allegation of discrimination or harassment can have devastating effects. I simply want to avoid a situation where an employer is unfairly charged with discriminating, when in fact he or she was making a valid choice of employees based on education, experience or other qualifications.

Mr. President, it simply is not fair to employers to decide whether they have discriminated based on job applicants who have lied about their résumés.

Let me place in the RECORD the copy of my initial amendment on testers, and the EEOC's response to that amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

On page 19, following line 23, insert the following new section:

SEC. 15A. PROHIBITION ON FRAUD OR MISREPRESENTATION BY PERSONS TESTING THE EXISTENCE OF EMPLOYMENT DISCRIMINATION.

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8) is amended by inserting at the end the following new subsection:

"(f)(1) In any program conducted, utilized, or approved by the Commission that is designed to test the existence of unlawful employment practices in section 703, no purported prospective employee may use fraud or misrepresentation when presenting the education, experience, or other qualifications of the prospective employee in an attempt to apply for a job vacancy.

"(2)(A) No charge filed by or on behalf of a person who uses fraud or misrepresentation in presenting qualifications as described in paragraph (1) shall be valid. The Commission shall dismiss such a charge and take no further action based upon such a charge.

"(B) The Chairman of the Commission shall take an action covered by subchapter II of chapter 75 of title 5, United States Code, against any officer or employee of the Commission who takes any action pursuant to the charge described in paragraph (2) knowing that the purported prospective employee used fraud or misrepresentation in an attempt to apply for a job vacancy.

"(3) No civil action brought in Federal court by or on behalf of a person who uses fraud or misrepresentation in presenting qualifications as described in paragraph (1) shall be valid. The court before which the civil action is brought shall dismiss the action.".

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Washington, DC.

Hon. ALAN SIMPSON,
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR SIMPSON: I have been asked by a member of your staff to comment on a proposed amendment to the Civil Rights Act of 1991 that would prohibit misrepresentation by persons testing the existence of employment discrimination. It is my experience that unlawful hiring discrimination is still quite prevalent in the United States and that it is a particularly difficult type of discrimination to detect. It is my view, and it has long been my position, that testing for discriminatory hiring practices by persons who apply for employment, but who do not intend to accept employment, is one powerful weapon that is available in the battle against hiring discrimination. On November 20, 1990, I approved an EEOC policy guidance setting forth the EEOC's position that "testers" have standing to file charges under title VII of the Civil Rights Act of 1964. However, this does not mean EEOC can utilize Agency employees as testers.

Because I fear that a prohibition against misrepresentation by "testers" will effectively preclude their use, I do not favor such a prohibition.

Sincerely,

EVAN J. KEMP, Jr.,
Chairman.

Mr. SIMPSON. Frankly, I am quite astounded by the reply from Chairman Evan Kemp, someone whom I have the highest respect for, and with whom I agree on nearly every other civil rights issue. In essence, Chairman Kemp is saying that, unless we allow testers to lie about their credentials, the testing program cannot be operated. That is surely disturbing news to any employer.

In my mind, that is no answer at all. If we cannot run a fair testing program with a minimal amount of deceit—and mind you, I am already accepting the deceit that the testers practice when they assert they are actually interested in employment—then we should not run testing programs at all. However, I do not believe such a serious level of deceit is necessary. I believe a fair testing program is possible which would utilize testers who are presenting their own resumes. I would have no objection to such a program.

Nonetheless, given my great respect for the EEOC, I then proposed a compromise amendment which did two reasonable things: First, ordered a GAO report on the reliability of testing programs which depended on testers misrepresenting their age, experience, or other qualifications; and second, suspended any EEOC final action on charges based on tester data until GAO reported to Congress. This amendment did not bar EEOC from accepting or investigating tester-based charges, nor did it prevent EEOC from moving forward to final action on such a case once the 6 months was up—no matter what the GAO found.

I now place in the RECORD a copy of that amendment, and the EEOC's rejection of that proposal as well.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Insert at the appropriate place the following new section:

SEC. . STUDY ON MISREPRESENTATION BY PERSONS TESTING THE EXISTENCE OF EMPLOYMENT DISCRIMINATION.

(a) REPORT.—(1) The Comptroller General shall conduct a study on the reliability of any program designed to test the existence of unlawful employment practices described in section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) which utilizes purported prospective employees who misrepresent their education, experience, or other qualifications.

(2) The report referred to in paragraph (1) shall be submitted within 180 days after the date of enactment of this Act to the Committees on the Judiciary of the Senate and House of Representatives, to the Committee on Labor and Human Resources of the Senate, and to the Committee on Education and Labor of the House of Representatives.

(b) ACTIONS OF COMMISSION.—The Equal Employment Opportunity Commission shall issue no right to sue letter based on charges of discrimination which rely on data developed by any program described in subsection (a) before the report described in such subsection has been delivered to the appropriate committees of Congress.

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Washington, DC, October 29, 1991.

Hon. ALAN SIMPSON,
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR SIMPSON: I have been asked by a member of your staff to comment on a proposed amendment to the Civil Rights Act of 1991 that would authorize a study on misrepresentation by persons testing the existence of employment discrimination. I have no objection to the Comptroller General conducting a study on the reliability of a program designed to test the existence of unlawful employment practices under Title VII.

However, I do not favor the proposal prohibiting the Commission from issuing a finding of discrimination or a right to sue letter in the interim.

Sincerely,

EVAN J. KEMP, Jr.,
Chairman.

Mr. SIMPSON. Needless to say, Mr. President, I find EEOC's position on this proposal to be quite remarkable. What EEOC is saying then is that it wants to be able to give plaintiffs who base their charges on tester data the right to sue in Federal court—even before we know whether tester programs founded on misrepresentation are reliable indicators of discrimination. Mr. President, there are serious adverse consequences for defendants in such cases: The most egregious of those adverse consequences are terribly heavy legal fees.

Let me insert in the RECORD at this point a letter from the Center for Individual Rights, which is representing the defendant in the suit in Federal district court based on tester data: BMC Marketing Corp. This small, five-person company has incurred legal fees that exceed $85,000 thus far—and the court has not yet even ruled on the defendant's motion to dismiss.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CENTER FOR INDIVIDUAL RIGHTS,
Washington, DC, October 18, 1991.

Hon. ALAN K. SIMPSON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SIMPSON: I am very pleased to learn of your interest in the issue of whether federal courts should be willing to recognize race discrimination claims brought by "testers" (i.e., persons who apply for employment with false resumes and with no intent to accept a job, but instead are being paid to look for and discover instances of employment discrimination). The issue is one of exceptional importance to all employers and is in particular need of Congressional scrutiny in light of the Equal Employment Opportunity Commission's recent and, to my mind, wholly untenable decision to accept employment discrimination charges from "testers."

The Center for Individual Rights ("CIR") is currently involved in one of the few federal cases raising the issue of whether testers should indeed be granted standing in the employment discrimination context: *Fair Employment Council, et al.* v. *BMC Marketing Corporation.* CIR is representing the defendant in the case, BMC, and we have filed a motion to have the plaintiff's lawsuit dismissed. We believe that a ruling in our favor will have a major impact in deterring individuals and groups from concocting these types of abusive lawsuits in the future and we anticipate that our motion will be argued and decided early next year.

To help familiarize you and your staff with the underlying merits of the litigation, I have taken the liberty of enclosing a copy of the brief which we filed in support of our motion to have the case dismissed. It sets out our arguments in detail and there is no need to dwell on them in this letter. However, the "hidden" financial aspects and inequities of the litigation are a different matter. The case has generated substantial costs to our client and you may find a word or two about them to be useful to your general understanding of the problems posed by allowing "tester" suits.

First, you should know that BMC is a small, female-owned, job referral agency which is faring quite poorly in the midst of the current economic recession. In fact, BMC was nearly bankrupt at the time that the Fair Employment Council's lawsuit was filed. BMC's principals did not have the financial resources to hire any attorney—let alone one skilled in the intricacies of federal civil rights litigation—to defend the company in court against the charges made against it and were it not for CIR's involvement,[1] it is likely that the lawsuit would have driven the company completely out of business.[2]

Second, you should know that the plaintiffs in the suit, which consist of two black "testers" as well as the organization which trained and paid them to apply for jobs through BMC, the Fair Employment Council ("FEC") of Greater Washington, are not similarly disadvantaged. Needless to say, the two phoney job testers are not having to foot the bill for any expenses generated in the case and as for the FEC, it is having a bevy of lawyers at Arnold & Porter, one of Washington's largest and most powerful firms, provide it will all of the free legal services it requires.

In addition to these inequities in size and manpower, there is the matter of our client's legal bills. Shortly after agreeing to defend BMC, the Center allocated $40,000 of its total operating budget to this one case. (As a public interest law firm, we are, of course, providing our legal services to BMC on a *pro bono* basis.) As our legal strategy was (and remains) to get the lawsuit dismissed early on in the proceeding, we believed that this sum would be more than adequate to achieve that goal. We also believed, and BMC agreed, that we should hire the law firm of Paul, Hastings, Janofsky & Walker to provide us with "of counsel" assistance in the case.[3]

Unfortunately, things did not turn out exactly as planned. The case against our clients was filed in the U.S. District Court for the District of Columbia on May 2 of this year. In the short five months time since then, BMC has already run up legal fees and costs for Paul, Hastings' services in excess of $85,000. This is a staggering sum of money, especially if one considers that our motion to dismiss has yet to be argued and that, if it is denied, BMC may have to face a full-blown trial on the merits.

The monetary predicament BMC finds itself in sets a sobering example to other employers who may be similarly targeted by the FEC in the future. Indeed for many of these struggling companies, the only rational option may be to settle the discrimination claims which have been alleged against their companies rather than fight them out in court. If only for this reason, the fact that "testers" are able to present themselves to unsuspecting employment agencies as legitimate job seekers and then force them to spend tens of thousands of dollars in legal fees defending concocted legal claims of racial discrimination is truly unconscionable.

I hope you may be able to do something about this sad state of affairs and trust that you or the members of your staff will not hestiate to contact me if I can provide you with additional information or be of any other assistance to you as regards this important subject.

Thank you very much.

Yours truly,

MICHAEL P. MCDONALD,
President and General Counsel.

Mr. SIMPSON. Mr. President, these legal fees are outrageous. I think no employer should be subject to such fees where the whole basis for the suit—a finding of discrimination based on testers who lie about their résumés—has not yet even been proven "reliable."

Mr. President, the managers of this bill have told me they wish to avoid amendments which would cause a conference with the House on this bill. Quite frankly, I fail to see how a 6-month delay in the processing of cases based on tester data would cause a conference. However, in deference to my colleagues, I will save this amendment for yet another day. Nonetheless, let me make it clear that my resolve on this issue has not changed one whit.

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[1] CIR is a two-attorney law firm with an annual operating budget of $450,000. Information on CIR also accompanies this letter.

[2] BMC's franchisor, Snelling and Snelling, is able to afford legal counsel however it is not yet a party to the litigation and, in any event, both it and BMC's insurer have notified BMC that they will not pay for any costs it incurs in defending this lawsuit.

[3] Paul, Hastings has litigation and employment law experience which CIR lacks, and, in addition, generously agreed to provide us with substantial amounts of *pro bono* services of its own in connection with the normal, billable legal services which it performed on BMC's behalf.

U.S. employers are only asking for fairness from the Government, and from the laws which we apply to business. Fraud, misrepresentation, lying, and deceit are fundamentally unfair. I will work hard to change our policy on this matter during the remainder of this Congress.

Mr. BROWN. Mr. President, earlier this week we voted unanimously to approve a Senate resolution which condemned sexual harassment and pledged to consider appropriate changes in the laws of the United States and the rules of the Senate. We should not forget this commitment.

Mr. KENNEDY. I agree with the Senator from Colorado. This resolution cannot represent a conclusion of our efforts in this area. The only conclusion that one can reach from reading the newspapers and the letters to the editor is that the attention of the Nation has been focused on this issue, and on the terrible consequences to individuals who are subjected to sexual harassment in the course of their efforts to work, to earn a living, and to contribute to our economy and society.

Mr. BROWN. The issue of sexual harassment in the workplace is one of paramount concern. The EEOC has developed guidelines and regulations relating to sexual harassment in the workplace. I intended to offer an amendment to this bill which would codify our prohibitions on sexual harassment. We need to expand our efforts to ensure this type of behavior does not occur in the workplace.

Mr. KENNEDY. Sexual harassment is a very important issue, and the Senate should carefully consider whether additional changes to the law, such as eliminating the caps on damages in this bill, are required in order to safeguard the rights of our citizens in the workplace. I oppose the caps on damages for sex discrimination. I will work to have those caps eliminated expeditiously, and I hope the Senator from Colorado will join me. I would suggest that it would be appropriate for the Senate to hold hearings on the state of the law regarding this very serious problem.

Mr. BROWN. These hearings can provide a valuable step forward on the important issue of sexual harassment, and the Senator from Massachusetts is to be commended for taking the lead in this matter.

Mr. DECONCINI. I commend Senator KENNEDY for his leadership in the area of civil rights and would like to know if it is also his understanding that the Supreme Court's holding in St. Francis College versus Al-khazraji is a correct interpretation of section 1981?

Mr. KENNEDY. Yes, I believe the decision is a correct interpretation of section 1981.

Mr. DECONCINI. Is there anything in the substitute to S. 1745 that would affect in any way the Court's holding in this case?

Mr. KENNEDY. No, the bill does not in any way repeal the St. Francis College decision. The discrimination described by the court in St. Francis College is, in effect, national origin discrimination, which is the term used in title VII of the Civil Rights Act to identify this particular type of discrimination.

Mr. DECONCINI. Is it the Senator's understanding that "national origin discrimination" is discrimination based upon characteristics common to a specific ethnic group, such as ancestry, culture, linguistic characteristics—including language and speech accent—physical characteristics, and birthplace?

Mr. KENNEDY. Yes, that is my understanding.

Mr. DECONCINI. Consistent with this interpretation, would the Senator agree that Congress intended that, to state a cause of action under section 1981, it is sufficient to allege discrimination based solely upon national origin.

Mr. KENNEDY. Yes, I agree.

Mr. DECONCINI. I thank the Senator. I also have another matter that I would like to discuss. This is the issue of workplace rules which require the speaking of only one language. Many of my constituents have brought to my attention an increasing problem with nonjob related discipline and termination of people for speaking languages other than English in the workplace. Is the Senator aware of the EEOC regulations dealing with this problem?

Mr. KENNEDY. Yes, the EEOC promulgated such regulations in 1980.

Mr. DECONCINI. These regulations reflect the fact that the primary language of an individual is often an essential national origin characteristic. Does the Senator agree that these regulations found in 29 CFR 16067.7 provide a sound and effective method for dealing with this problem?

Mr. KENNEDY. Yes, I agree that this regulation has worked well during the past 11 years it has been in effect.

Mr. DECONCINI. Does the substitute to S. 1745 in any way adversely affect the EEOC regulation on language use in the workplace.

Mr. KENNEDY. No, it does not.

Mr. DECONCINI. Therefore, if S. 1745 is passed and signed into law by the President, the EEOC regulations would be consistent with title VII as amended by S. 1745.

Mr. KENNEDY. That is correct.

Mr. DECONCINI. I would like to thank my distinguished colleague from Massachusetts. That is all I have.

Mr. LEAHY. Mr. President, I rise today to speak about a matter of crucial importance to the American people, the Civil Rights Act of 1991.

The United States was founded on the fundamental principles that all men and women are created equal; that they are endowed with the inalienable right to prosper through hard work and ingenuity.

However, the sobering fact is that for many citizens, the promise of equal opportunity—a centerpiece of our democracy—remains illusory. The Civil Rights Act of 1991 is an effort to vindicate this founding principle. It is an effort to adjust the reality of life in the United States today to accord with the history lessons our children are taught daily in school.

REVERSAL OF RECENT SUPREME COURT CASES

The act overturns several recent Supreme Court cases which, taken together, severely erode protections that have benefited Americans for decades.

The act restores to the employer the burden of justifying employment practices that have a discriminatory impact on minority hiring. This bill returns the law of disparate impact and in particular business necessity to the condition it was in from 1971 until the Supreme Court's 1989 decision in Wards Cove Packing versus Atonio.

By overturning Martin versus Wilks and by limiting challenges to consent decrees, the act also creates incentives to settle civil rights cases and provides a measure of finality to complicated litigation.

Furthermore, the act reinvigorates section 1981 of the Civil Rights Act of 1866, a law which, prior to the Supreme Court's 1989 decision in Patterson versus McLean Credit Union, had been used effectively since the 19th century to combat racial discrimination The Patterson decision drastically limited section 1981's application to circumstances involving only the formation and enforcement of contracts. The Civil Rights Act of 1991 returns the originally intended broad scope of this statute.

The act also restores protections for American workers employed in American companies abroad and allows workers to challenge discriminatory seniority plans that are applied against them.

STRENGTHENING REMEDIES FOR INTENTIONAL DISCRIMINATION

The Civil Rights Act of 1991 puts teeth into the sanctions faced by employers who purposefully and intentionally discriminate against their employees. For the first time, women and the disabled could recover damages and have jury trials for claims of intentional discrimination. But even this bill does not do enough to protect the women of this Nation.

Violations of fundamental civil rights must be taken seriously in our society. Too often, victims of discrimination end up as victims of the process. It is the person who harasses, who refuses to hire, who passes over a proven employee's promotion, who is the wrongdoer. And it is high time that Federal civil rights law recognized this by offering meaningful remedies.

Under existing civil rights laws, the best a woman who is intentionally harassed in the workplace can hope for from our legal system is a court order saying that her boss should stop. If her boss starts to harass her again, the only thing she can do is go back to court to get yet another order telling her boss to behave. Still without the improvements of the Civil Rights Act of 1991, there would be no penalty for the employer, no adequate compensation for the victim.

If a woman were forced to quit her job as a result of intentional harassment, the best she could hope for from current civil rights laws is backpay and reinstatement to a job that her employer may already have made unbearable. She would not be entitled to recover for the damage to her professional career or for the psychological and physical trauma she may have suffered. Nor would her boss be subject to any sort of punitive damages to deter misconduct. Thus, faced with little change of any meaningful recovery, and confronted by the very real prospect of an assault on her character, women too often fail to speak out.

The same is true for the disabled, who are too often the target of intentional discrimination.

Contrast our civil rights laws with those protecting property rights. If I back into someone else's car in the parking lot outside, I can be brought to court and forced to explain my conduct before a jury. If the jury so decides, I can be required to compensate the owner of the car for damages, even if I did not act intentionally. If I acted maliciously, I can be subjected to punitive damages or even criminal penalties.

This is the norm. This is how our judicial system works for most legal claims.

But it is not how the system works for civil rights. If, for example, an employer intentionally harasses or otherwise persecutes an employee solely on account of race, the current civil rights laws cannot require the employer to compensate that person fully for the damage he has caused, no matter how great or how real. Nor can the employer be forced to pay punitive damages no matter how outrageous his conduct has been. By overturning the Supreme Court's decision in Patterson versus McLean Credit Union, the Civil Rights Act of 1991 would remedy this injustice.

The penalties for civil rights violations—for depriving citizens of the fundamental principles of equality and fairness on which this Nation was founded—should not be inferior to legal claims for breaching a contract, violating the Sherman Act, or infringing a copyright. This bill goes a long way toward setting this priority straight and recognizing the importance of protecting all Americans from discrimination by providing a meaningful legal remedy.

This act achieves these significant ends while recognizing the danger of unnecessarily shackling free enterprise. In the careful wording of its provisions, this act takes into account employers' legitimate interests in minimizing the threat of litigation and governmental intrusion into their businesses.

A WORTHWHILE COMPROMISE

While I believe this was the best bill we could get the President to sign, I, like many of my colleagues, do not believe that passage of this legislation ends the necessity for further reform in the area of civil rights. Like others, I believe that the inequity of placing limits on damages for those discriminated against on the basis of sex or disability, but not for those discriminated against on the basis of race, will need to be addressed in future legislation. However, I recognize that the current bill, as amended by the Danforth-Kenney substitute, is the product of an extremely hard-fought compromise. Senators KENNEDY, DANFORTH, and others have worked painstakingly to craft legislation that the administration would not veto.

You build a house brick by brick. In 1990, I was proud to cosponsor legislation introduced by Senators KENNEDY and JEFFORDS that would have advanced the cause of civil rights in the workplace. President Bush vetoed this proposal, dismissing it as a quota bill. He similarly promised to veto as quota bills two other compromise proposals and the unamended version of this bill, S. 1745. Now, finally, President Bush has agreed that the Danforth-Kennedy substitute is not quota legislation. I agree that this bill is not a quota bill. In my estimation, neither were its predecessors—all were compromise measures sponsored by Members of the President's party. But I am pleased that the President has seen the light and agreed to support this much-needed legislation.

While this bill is not the final chapter in providing for civil rights in this Nation, it is a large and profoundly important step. Passage of this bill is something all Americans should be proud to have achieved together.

CONCLUSION

Finally, I would like to emphasize that I hope this compromise means an end to the game of exploiting racial tensions for political advantage. I hope that the compromise reached with the administration represents a new spirit of cooperation between Congress and the White House in solving the important domestic problems this country faces.

Mr. DURENBERGER. Mr. President, before we vote on this civil rights legislation, I want to take a moment to commend the distinguished senior Senator from Missouri [Mr. DANFORTH] for his courage, his dedication, his commitment, and his effort on behalf of civil rights.

For the past 2 years, JACK DANFORTH has been on a mission. He has refused to back down in his effort to bring equity and fairness into the workplace, to right wrongs and to craft remedies that ensure that every American, no matter their race, color, creed, or sex, does not suffer employment discrimination.

He has battled our President and many others in his effort to see this bill become law. He has engaged in months of arduous negotiations with those on the left and those on the right to try to reach a workable compromise.

One of my colleagues on the Senate Labor Committee also deserves more recognition than he has received. Senator JIM JEFFORDS championed the original bill in committee. He worked to improve it in markup, and he has never skipped a beat at 100 meetings over the last 18 months to try to reconcile our many views.

Mr. President, I am pleased to cosponsor this civil rights bill and hope that when we pass the bill, a period of sharp division in our country will end. This legislation overturns several 1989 Supreme Court decisions that narrowed the scope of laws protecting minorities and women in the workplace.

This has been a long journey through what has become familiar terrain for many of us—and those of us who have been involved in this struggle pray that it will not require revisiting for some time to come.

The most controversy in this debate has centered on what the term "business necessity" means in the context of the civil rights bill. I would like to clarify this Senator's view of the meaning of the term "business necessity" as that term is used in the pending Danforth-Kennedy civil rights bill.

The Danforth-Kennedy bill uses the phrase "job-related and consistent with business necessity." As ranking member of the Disability Policy Subcommittee, and an original cosponsor of the Americans With Disabilities Act, I am quite familiar with the derivation of this phrase. This phrase was taken directly from the Americans with Disabilities Act.

The ADA codified the standards contained in the 1973 Rehabilitation Act, which in turn borrowed the disparate impact analysis adopted by the Supreme Court in Griggs versus Duke Power.

In fact, in the House Judiciary Committee Report on the ADA, the report made clear that the term "job-related" referred to the Griggs job-performance standard, because the committee cited a Rehabilitation Act circuit court case, Prewitt versus U.S. Postal Service. That case stated that the Rehabilitation Act adopted a "Griggs-type approach in the disparate impact handicap discrimination context. [The law] require[s] Federal agencies not to use any selection criterion that 'screen out or tends to screen out qualified handicapped persons' unless the criterion * * * is shown to be 'job-related for the position in question.'"

Accordingly, Mr. President, it seems clear to this Senator that the phrase "job-related" as used in the Danforth-Kennedy bill comes directly from the ADA—and the ADA and Rehabilitation Act both adopted the Griggs job-performance standard.

Using the language of the Americans With Disabilities Act should put to rest any charges that this bill will lead to quotas. Everyone agrees that the ADA is not a quota bill; placing the same ADA language in the Danforth-Kennedy bill does not transform this bill into a quota bill.

Mr. President, this civil rights legislation is the second major revision to the landmark Civil Rights Act of 1964. Among other things, the 1964 act prohibits discrimination in places of public accommodation, in schools, and in the workplace. The first major revision occurred in 1972, when Congress addressed the fact that title VII of the Civil Rights Act did not cover Federal employees. In order to rectify this inadequacy, Congress enacted section 717 of title VII and included Federal employees within the purview of title VII.

But since 1972, it has become painfully clear that there remains another shortfall in the original 1964 bill. The 1964 act provided equitable remedies for discrimination based on race, sex, religion, and national origin, but it failed to provide for jury trials with compensatory and punitive damages. Because Federal courts allowed racial minorities to sue under section 1981 of the Civil Rights Act of 1966, victims of sexual harassment and gender discrimination had little relief available, other than an order reinstating them to their job.

Mr. President, the bill that we are considering in the Senate closes this gigantic loophole in our discrimination laws. It is one of the most important reasons that we are amending title VII of the Civil Rights Act of 1964. Many individuals during the recent nomination hearings concerning Clarence Thomas wondered why, if Anita Hill's charges were true, she did not come forward with her sexual harassment claim while she was an employee at the Equal Employment Opportunity Commission.

One possible explanation why any person who claims to be victimized by sexual harassment may not come forward is that, although they suffer great emotional trauma, their only remedy is reinstatement, possibly back pay, and a court injunction ordering the employer to cease such conduct in the future. This is hardly the type of remedy that makes victims whole for their injury, and does not serve as an effective deterrent toward future unlawful conduct.

Mr. President, the Danforth bill, of which I am a cosponsor, places caps on damages based on company size. For employers with fewer than 100 employees, compensatory, "pain and suffering," and punitive damages are capped at $50,000. For employers with between 100 and 200 employees, damages are capped at $100,000; for employers with more than 200 and fewer than 500 employees, damages are capped at $200,000, and for employers with more than 500 employees, damages are capped at $300,000.

Mr. President, although these amounts are considerable, I believe that there should be no distinction between the remedies that are available for sex discrimination and the remedies available for discrimination on the basis of race. As I indicated yesterday, I intended to offer an amendment that would have provided equity in remedies for all forms of discrimination.

But in the name of temporary compromise, in the name of getting this civil rights bill to become law, I have withdrawn that amendment. But that amendment will be back before the Senate on another day, and I will not cease to fight to remedy this inequity.

Mr. President, I urge my colleagues to vote for this bill. This measure represents an important victory in the fight against discrimination in the workplace and I hope that we can put this painful period behind us.

• Mr. KERREY. Mr. President, I rise today to express my support for the civil rights compromise, a culmination of the tireless and diligent efforts of my colleagues Senator DANFORTH and Senator KENNEDY. This legislation is just that—a compromise. It does not satisfy everyone, but I believe it will go a long way toward redressing serious civil rights problems that have arisen in the wake of recent Supreme Court decisions.

The Civil Rights Act is designed principally to restore important rights which existed under Federal law prior to a series of Supreme Court cases in the late 1980's. Restoring these safeguards against discrimination, in my judgment, is extremely important.

The goal of this legislation is to enhance the employment opportunities of minorities and women by permitting victims of discrimination to challenge unfair employment practices. Under this legislation, employers may not implement employment practices that are not job related or consistent with business necessity. In addition, victims of intentional discrimination will be provided with suitable remedies, particularly the collection of damage awards.

I believe that this bill will move us in the direction of a society where all people are treated with equal concern and respect. Individuals eager to find personal satisfaction through their achievements in employment should not be prevented from pursuing their goals simply because of the color of their skin, their sex, their religion, or their disability status.

The civil rights bill is important legislation and therefore I support it. However, I do not believe this legislation by itself will resolve the major issues affecting minorities or women. What minorities and women need in addition to technical legislation regarding litigation processes is for our Nation to address seriously the conditions which are at the root of so many of our social problems. These concerns include the need for adequate health care, decent housing, good education, effective job programs, and responsible city infrastructures. Our Nation must confront an array of social obstacles facing minorities and women in addition to protecting their rights to litigate.

Nonetheless, this legislation takes an important step in embracing and advancing the fundamental rights upon which our Nation was established by promoting equal access in employment. Sadly, civil rights has recently been mischaracterized as an extension of special protections for selective groups. The need to enact this bill demonstrates the hurdles we have yet to jump through to secure equality for all Americans.

The civil rights bill will encourage employers to examine their present policies and make required changes, and it will enable minority groups and women to seek redress when discrimination occurs.

I extend my commitment to this legislation and other measures which guarantee to all Americans equal protection under law.•

Mr. WALLOP. Mr. President, for nearly 2 years now, we have been trying to reach an agreement on civil rights legislation. Now that a compromise has been fashioned, our divisiveness has reached a new level and we are in a quandary as to who are the winners and who are the losers. I am not one for rash predictions, Mr. President, but I hazard a guess that the losers in this battle will be our Nation's small businesses.

I commend the Senator from Missouri [Mr. DANFORTH] for his efforts to modify the damages allowed under this bill. I remain concerned, however, that this bill does not provide adequate protections for those companies which might be subjected to economically devastating lawsuits.

It was originally my intent to offer an amendment to allow a judge to reduce damages awarded by a jury if the amount of the award would be a de facto bankrupting of the company. But I was discouraged from offering my amendment by those who worked hard to forge this fragile compromise. Yet their reasons for deterring me from offering my amendment are even more frail than the final proposal.

My amendment was criticized for favoring economics over justice and civil rights. That is simply not the case. I believe no employer, no matter how small, should be allowed to discriminate.

Yet just as we did with family leave legislation, the unemployment compensation package and a host of other bills, we have failed to measure both their economically useful and economically destructive aspects and modify them where practical.

My amendment was about job creation, economic growth, and competitiveness, the very issues about which several Members of this body have been pontificating. It is unfortunate that their swagger was not as convincing as the decibel level of their disputations.

The Danforth proposal would permit plaintiffs to recover unlimited damages for out-of-pocket costs as well as pecuniary damages, damages for pain and suffering and punitive damages, up to certain limits. This remedy would be in addition to the existing remedies of back pay. Moreover, S. 1745 places no cap on monetary damages for past harm, except in bias cases based on statistical comparisons. When faced with possible jury awards, attorneys' fees, discovery costs, not to mention court costs, bankruptcy is just around the corner for the average small business owner with an average taxable income of $25,000 a year.

The caps on damages contained in this bill therefore offer no real solution. Small businesses will simply not be able to survive the legal fees, much less the damages from the flood of litigation this measure invites. This bill paves just one more avenue to legal antics where no one benefits but the attorneys.

So I say to my colleagues that, by its very nature, this bill continues to foster an already antientrepreneurial environment in this country. The adverse impact will most strongly be felt by the small businesses, particularly those in my home State of Wyoming which happens to have the largest per capita percentage of small employers in the country.

It is not the large corporations such as AT&T and General Motors which will have to deal with the resentments and frustrations of stagnant incomes which may arise as a result of this legislation. It is the entrepreneurs and the job creators—those in the low- and middle-income brackets.

Yes, lawsuits can and should be used to deter wrongdoing. But where the civil rights of individuals are paramount, so, too, is the right to economic prosperity.

The United States stands alone as the most litigious society in the world. And who pays? We all do. We pay in higher insurance rates, and higher grocery prices. The list goes on. And the cost to business is staggering, putting them at a severe competitive disadvantage.

U.S. companies spend more than $20 billion a year on litigation, not including the cost of settlements and judgments. Civil cases cost on the average of $80,000 for small businesses, often forcing them to cover these costs by cutting into budgets otherwise earmarked for sales or product development.

The unavoidable result is a significant drop in business earnings, followed by a precipitous decline in employment and few entrepreneurs capable of applying the kind of cost-benefit analysis that lends discipline to various aspects of their business.

Over the last few years, we have been consumed by the prospects of making inroads in the global marketplace. But this legislation is the anthithesis of any competitive spirit we take pride in as Americans. It does not promote equal opportunity and job creation. It promotes authority over economic and competitive interests.

In the "Economic Analysis of Law," Judge Richard Posner, tells us that "one of the most tenacious fallacies about the economics of law is that it is about money. On the contrary, it is about resource use, money being merely a claim on resources." But it is mobile resources that gravitate to the most valuable and cost-effective uses.

And if voluntary exchanges are permitted through competitive market forces, we can reasonably predict an increase in efficiency and employment opportunities. Yet this bill erects another barrier to the most efficient paths for achieving those goals.

Mr. President, I agree there is more to justice than economics, but there is also much to be said for what a society must sacrifice for the ideals of justice. As Judge Posner has pointed out, "justice is not independent of its price." And that price is much too high for the small businesses of this country.

There is one last point which needs to be made about today's decision. There is a myth afoot that our civil rights are endangered absent the passage of this legislation. The reality is that individual rights have not diminished since the court decisions which we would now overturn. Our Nation remains the bastion of civil rights in a world that acknowledges such rights all too begrudgingly. Our rights continue, with or without this legislation. In fact, this bill leads us down the path of diminishing our rights. It moves us away from our common law heritage to a system more akin to the continental, roman law. One result is to prejudge the accused as guilty and force them to prove their innocence in court. This is a dangerous reversal of our rights. I would recommend my colleagues read an article by Gordon Crovitz from today's Wall Street Journal which discusses the dangers of substituting political necessity for legal principles. I ask that this article be printed at this point in the RECORD

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Oct. 30, 1991]

BUSH'S QUOTA BILL: (DUBIOUS) POLITICS TRUMPS LEGAL PRINCIPLE

(By L. Gordon Crovitz)

Liberals always thought the key to racial and sexual equality is lawyers litigating for punitive damages, but President Bush at least used to complain about a "lawyers' bonanza." Maybe Mr. Bush thinks that enriching lawyers with a quota bill will reverse the recession for one industry, even if it's at the legal-fees-by-the-hour expense of all other businesses.

Not quite all other businesses. Senators understand the terrifying implications of the law they wrote well enough to deny their employees the right to sue them. Mr. Bush, despite his brave words about making congressmen abide by the law, gave them a pass here.

Senators yesterday devised ways to avoid the jury trials they plan for others. The George Mitchell-Charles Grassley compromise would let Senate workers appeal from internal procedures to a federal appeals court, but unlike private-sector workers they couldn't get jury trials or punitive damages.

Senators tried to justify their exemptions by invoking separation of powers, but the Constitution lists all the immunities: Congressmen can't be arrested while at or going to or from Capitol Hill (except arrests for treason, felony and breach of the peace), and they can't be sued for what they say on the floor of the Senate or House. There is no immunity for discrimination or sexual harassment. The first private-sector employer sued under this bill should bring an equal-protection clause defense arguing that it's been singled out as a defendant for not being Congress.

One reason Congress is so edgy about being sued is that this bill has little to do with what most Americans consider discrimination—international discrimination. The entire debate instead is about the lawyers' invention of disparate-impact analysis, which starts with the assumption that there is "discrimination" unless every job filled by every employer perfectly reflects—no less and no more—the available labor pool of women, blacks, Greek-Americans, Jews, Aleuts.

The Supreme Court tried in cases such as *Wards Cove v. Atonio* to avoid this hyperlitigious world by crafting clear defenses for employers. The justices ruled that plaintiffs must identify seemingly objective job requirements such as tests or educational requirements that excluded them. Plaintiffs would then have to prove that these factors have no significant relation to any "business necessity" of the employer. The civil-rights bill blessed by Mr. Bush reverses the burden of proof, adding insult to lawsuit by refusing to define business necessity.

This non-definition definition hints at the mischief of this bill, which ensures years of costly lawsuits as judges try to fathom what Congress meant by a bill that intentionally doesn't say what it means. The following section, entitled "Exclusive Legislative History" (even though Ted Kennedy immediately went to the floor of the Senate to give his own interpretation), is supposed to guide judges as they in effect write the law:

"The terms 'business necessity' and 'job related' are intended to reflect the concepts enunciated by the Supreme Court in *Griggs v. Duke Power Co.* and in other Supreme Court decisions prior to *Wards Cove v. Atonio.*" Under this non-standard the justices could simply re-adopt the constitutional protections they gave defendants. After all, they thought much of *Wards Cove* was simply a continuation of their *Griggs* analysis of disparate-impact cases. It was in a case decided before *Wards Cove* that the court insisted that "the ultimate of proof" must remain "with the plaintiff at all times."

No law can amend the Constitution to deprive parties of the due process so the provision depriving third parties of the right to challenge consent decrees likely remains unconstitutional. The bill also gives the justices a new reason to declare punitive damages unconstitutional. Damages for sexual harrassment would increase with the irrelevancy of the size of the workforce, not with the heinousness of the offense. Harassment remains undefined.

Why did Mr. Bush cave? He must know that labor lawyers today are advising clients to avoid litigation by hiring by the numbers. The likeliest explanation is politics. There's probably no better motive for inserting politics into law than for a Republican president to twist the law in ways he thinks will appeal to blacks, but does Mr. Bush think it's good politics to sacrifice legal principle for supposed racial ends? Judging by recent flipflops by the White House, the answer is yes. The quota bill is the latest tea leaf that for this administration, racial politics trumps law:

Mr. Bush this month instructed Solicitor General Kenneth Starr to withdraw a key argument in a brief he'd submitted to the Supreme Court. The question in *U.S.* v. *Mabus* is how much spending Mississippi must do to attract applicants to historically black public universities. Mr. Starr said the State needs to do more, but that separate but equal is a dead doctrine. "The idea is to end duplication, not to ensure it by ensuring that separate schools are in fact equal," he wrote.

Mr. Starr, who helped craft Dan Quayle's civil-justice reform proposals, warned about the litigation nightmare if the justices insist on precisely equal spending. He said this would invite "enormous and endlessly litigious undertaking to ensure that there are no longer any spending disparities."

This brief was filed in July, but in September a group of black college administrators lobbied Mr. Bush to disavow this legal argument. He sent the word to Mr. Starr, who on Oct. 10 filed a rare, perhaps unprecedented, withdrawal with the Supreme Court. "The time has now come to eliminate those disparities" in spending, Mr. Starr wrote. "Suggestions to the contrary in our opening brief," a footnote explained, "no longer reflect the position of the U.S." Team-player Starr, who often speaks of the importance of the unitary executive branch, quietly went along with this order from the boss.

Months before Lamar Alexander took over at the Education Department, the agency's top civil-rights official, Michael Williams, declared race-specific scholarships unconstitutional. One of Secretary Alexander's first acts was to put on deep freeze this legal opinion by a politically incorrect black lawyer.

Mr. Williams' legal analysis was a routine application of the 1978 Bakke decision and other cases prohibiting race-linked policies except to remedy specific past discrimination. Yet Mr. Alexander announced that race-based scholarships could continue while Mr. Williams' opinion was under review. No word on when, or if, a final decision will be reached.

Liberals in Congress bear the chief responsibility for the litigation madhouse this bill creates, but David Duke is likelier to make Mr. Bush bear the political costs. Clarence Thomas proved that all blacks do not bow before the interest groups that insisted on this bill. It's doubtful that anyone thinks better of Mr. Bush for breaking his no-new-quota pledge.

It won't take long for resourceful lawyers to pump this lawsuit cow for all the cash it's worth. Expect years of divisive cases pushing this bill's peculiar definition of discrimination. After all this, at least no one will be able to argue that litigation leads to harmony.

Mr. KERRY. Mr. President, the struggle to enact this civil rights bill has been, as the columnist Ellen Goodman recently wrote, a classic example of why Americans hate politics. For 2 years, we have argued about this bill, exchanged partisan charges about it, wrestled with the language, and debated every paragraph. Despite this, most Americans outside the Beltway do not understand what the bill is really all about. It is not that the issues dealt with are unimportant; they are very important. But they are not the issues that most American families deal with on a daily basis. Back in my State, most people can't afford to worry about suing their bosses—they just want to keep their jobs.

There is cause for celebration, nevertheless, in the fact that we finally have a bill that Congress will pass and that the President will sign. The bill will help clarify, as a matter of law, where we draw the line between illegal race or sex discrimination and the legitimate judgment of an employer that one candidate happens to be more qualified for a particular job than another candidate.

As a result, employers will clearly be prohibited from creating irrelevant job qualifications that effectively screen out women or minorities. In other words, employers will not be able to require that a janitor have a high school diploma if that is not needed to do the work and the requirement makes it less likely that a woman or a minority will be hired. It is this provision that, until last Thursday, President Bush said would lead to quotas. Now, he acknowledges what has been true all along, which is that it will not lead to quotas. After 2 years of divisive rhetoric, the President has finally admitted that Senator KENNEDY and Senator DANFORTH were right and that he was wrong, and for that we should be very grateful.

Obviously, this is not a perfect bill; it is a compromise bill. It will not make the law fully clear or fully just or fully fair. It will narrow, but not remove, the distinction in remedies available to those who suffer from discrimination on the basis of gender or religion as opposed to race. The fight to establish complete equity in the law must, unfortunately, wait until next year.

But although the bill is not perfect, there is no question that it will provide women and minorities with a far greater degree of protection than would continued stalemate under current law. I salute those who worked so hard to forge this compromise; I believe it is an important step forward for our country and that it will be viewed as one of the significant achievements of this Congress.

I wish to offer my sincere commendation and appreciation to the distinguished senior Senator from my State, Senator KENNEDY, the senior Senator from Missouri, Senator DANFORTH, and other Senators who labored long and diligently with the objective of crafting a worthwhile bill that could become law despite the inflexible stance taken by President Bush. The enactment of this bill will serve as a much more fitting tribute to their perseverance and commitment than my words, but I must express my compliments nonetheless.

Mr. MURKOWSKI. Mr. President, I rise today in support of the compromise reached on S. 1745, the Civil Rights Act of 1991. I commend the President and Senator DANFORTH on their efforts to reach a compromise that we call can support. I personally met with the President on more than one occasion to discuss this legislation and I know how committed he is to enacting meaningful civil rights legislation.

Mr. President, everyone in this body agrees with the goals of S. 1745. We all agree that discrimination, in any form, is unacceptable. As a free society, we can never rest until every individual is given an equal opportunity—that is what the American dream is all about. The compromise that has been reached represents a consensus on the best way to achieve this goal. I was pleased to join in this effort by adding my name to the compromise's list of cosponsors.

Most importantly, the compromise is no quota bill. Quotas do great harm to the cause of civil rights. They are demeaning to minorities and a source of animosity for everyone. In addition, questions about the retroactive application of this legislation have been addressed. Retroactivity is fundamentally unfair. Parties that begin litigation under one set of rules should not have the rules changed on them in the middle of the game.

Wards Cove Packing, a large employer in my State, has spent over 20 years and $2 million in legal fees proving itself innocent of employment discrimination. In eight separate decisions, no court has ever found this company guilty of discriminatory hiring practices.

The now famous Wards Cove litigation began in 1971, almost a generation ago. When the district court and the appeals court first considered this case, they decided it under the prevailing Griggs versus Duke Power Company standard. Both courts found Wards Cove innocent. Both courts even assigned Wards Cove the complete burden of proof and still found Wards Cove innocent. The case went to the Supreme Court which remanded it. In January of this year, the district court issued its remand decision. The district court found no reason to change its prior conclusions about Wards Cove's innocence stating: "The court * * * finds that the defendants hired individuals * * * based on their qualifications, and not upon their race."

After 20 years and eight losing decisions, the plaintiffs' attorney has filed yet another appeal, now seeking his ninth decision. The plaintiffs have had their day in court. This case is over. The only argument left to the plaintiffs is that Congress is changing the law and that this case, which has already been decided under Griggs, should be retired.

After 20 years of litigation, Wards Cove would like to decline the honor of relitigating this case. Regardless of whether we in Congress think the law is being changed, the plaintiffs' attorney is determined to force Wards Cove to litigate that issue. And if the plaintiffs' attorney can convince the court we are changing this law, Wards Cove will be forced into still more litigation in which its 1971 employment practices will be judged by standards first created in 1991. And if the court finds Wards Cove guilty under the standards the court says we are now establishing, Wards Cove will be in the very curious position of being found innocent under the Griggs standard the legislation seeks to restore but guilty under the standards the court says we have actually established.

Mr. President, the Wards Cove case is not still pending because there are outstanding issues on the merits. The case is not pending because the plaintiffs have been denied their day in court. The case is pending only because the plaintiffs' attorney wants to keep it alive. In three separate briefs, the plaintiffs' attorney has argued the case should be kept open and litigated based on the pending civil rights legislation. In fact, this was the plaintiffs' attorney's lead argument before the district court on remand.

The brief filed in support of the plaintiffs' attorney's most recent appeal again argues a decision should be deferred until Congress passes this law at which time the case can be retried. The brief states "Barring special circumstances, courts apply amendments which go into effect while a case is pending."

Mr. President, this case is a special circumstance. But it is not a special circumstance justifying relitigation. It is a special circumstance which justifies the inclusion of language in this bill, which I authored, allowing this case to go to closure regardless of how a court may interpret the effective date provisions of S. 1745.

I have been informed by the sponsors of this legislation that their intent is that the bill not apply retroactively. I strongly support this intent.

The inclusion of language regarding this case should not be interpreted as a precedent for any other case. Nor should it be viewed as creating an implication regarding whether or not this legislation applies retroactively generally. It is to be interpreted as a congressional determination that regardless of how the general retroactivity issue is resolved, the Wards Cove case is one in which it is clear that this legislation should not apply retroactively.

Mr. LAUTENBERG. Mr. President, employees of the U.S. Senate should have the same civil rights as their counterparts in the private sector. And as an employer, the Senate and Senator should abide by the same standards of nondiscrimination that apply to employers in the private sector.

Yet, Mr. President, we need to take account of things about the Senate which are unique and different from the private sector as we apply these standards. The Senate is part of a separate branch of Government. It is a political body, often in conflict with the other branches of Government. Senators in some ways have less flexibility than private sector employers to respond to discrimination complaints. In examining proposals to extend the civil rights laws to the Senate I was guided by my desire to hold the Senate to the same standard of behavior that we apply to the private sector, while recognizing the uniqueness of this institution. For that reason, I opposed amendments that would open the door to political abuse. I opposed amendments that would violate the constitutional concept of the separation of powers. And I opposed amendments that did not take account of the inability of Senators to protect themselves against personal liability by incorporating under our Nation's laws like private businesses.

The Grassley-Mitchell amendment to S. 1745, the Civil Rights Act of 1991, developed in a bipartisan manner, was designed to ensure equal application of the civil rights laws to the Senate. This amendment provides victims of discrimination access to our judicial system, by allowing them to have a U.S. appeals court review or the decision obtained in the Senate. I did not believe that the judicial review contained in this amendment was unconstitutional. Accordingly, I voted against a constitutional point of order against the Grassley-Mitchell amendment raised by Senator RUDMAN.

However, it is important that the constitutional separation of powers be maintained. I believe that unlimited review of the legislative branch by the judicial branch is unconstitutional and will likely breed political abuse. As everyone knows, Federal district judges are political appointees and have to go through a Senate confirmation process. A Senator who voted against the nomination of a district judge may have to face that same judge in a trial someday. The Nickles amendment, No. 1287, which provided for a totally new trial in Federal court, along with the threat of punitive damages, for which Senators could be personally liable, crossed the constitutional line. For that reason, I voted to table this amendment.

On the matter of personal liability for discrimination by Senators, I voted to table the Rudman amendment because Senators do not have the protections that incorporated organizations do against any type of lawsuit. This tabling motion failed and the amendment was adopted. Under our laws, business owners can shield themselves from personal liability by incorporating, but Senators would not be eligible for this type of protection. Therefore, Senators would be personally liable for compensatory damages in relation to a discriminatory action conducted personally by a U.S. Senator. Officers in private companies are not personally liable for similar damages.

Political abuse can also arise when political appointees in the executive branch enforce rules in the legislative branch. I support the application of all labor and safety laws to the Senate in the same way as they are applied to the private sector. I urge the Senate Rules Committee to move forward and establish internal labor and safety regulations. I don't believe, however, that political appointees of executive branch agencies should investigate and enforce work rules within the Senate. I voted to table the Nickles amendment, No. 1284, because there is a great potential for political abuse if Republican political employees were investigating Democratic politicians or vice versa. We should not allow politics to become part of the enforcement of our Nation's labor and safety laws in the U.S. Senate.

So, Mr. President, while the Grassley-Mitchell amendment provided a slightly different mechanism for resolving discrimination complaints, it established the same standard of behavior for the Senate, and provided employees with the same rights, as apply to the private sector.

Mr. RIEGLE. Mr. President, I rise in support of the Civil Rights Act of 1991. This bill is urgently needed to protect all Americans from discrimination in the workplace.

The Senate should act to reserve civil rights protections that were eroded by a series of Supreme Court decisions that overturned long-standing law. These decisions mark a retreat from the course we have set in our fight for equal opportunity. I believe that Congress has the duty to return the law to its previous standing and tighten it where appropriate.

The Senate has worked for well over a year to develop a proposal that can become law. Last year, Congress agreed to over 25 changes in the bill requested by the President in order to reach a compromise. That compromise passed the Senate three times with widespread support, yet the President vetoed the bill. The Senate failed by just one vote to overturn that veto.

The bill before the Senate today will receive support from Members of both parties, just as last year's bill did. This indicates agreement in Congress and outside, that employment practices that only have the effect of excluding individuals on the basis of race, color, religion, or sex should be eliminated.

Further, the consensus reflects the understanding that individuals should be protected from intentional discrimination and that those who do discriminate in employment should face severe penalties.

The timing of Senate debate on this bill is also appropriate in light of the national debate on sexual harassment in the workplace because the Civil Rights Act toughens penalties for sexual harassment in employment. Unfortunately, these penalties are limited by caps on the amount a victim of intentional sex discrimination can recover. I believe the bill ought to be modified to remove those caps. Tougher sanctions are needed to help eliminate discriminatory actions that make it difficult for women to reach their full potential at work.

Apparently, the President will support this civil rights bill. While there are some differences between the bill before the Senate today and the bill that was passed by the Senate last year, it is substantially the same. The bill overturns the same Supreme Court decisions that would have been overturned in the bill passed last year. The President was wrong to call the bill passed by the Senate last year a quota bill—it was not a quota bill. It is a disgrace that the President vetoed the civil rights act last year and that it took so long for the President to support legislation that will protect civil rights in the workplace.

We must do more to root out discrimination in our society. While we have made a great deal of progress over the past three decades, much work must be done to ensure that each and every citizen has equal opportunity. As chairman of the Banking, Housing, and Urban Affairs Committee, I have had the opportunity to hold hearings on the plight of the black male in America. These hearings vividly illustrate the fact that significant barriers remain to many within our country. Dramatic testimony reconfirmed that minorities often face deep-rooted discrimination and prejudice in our society. The hearings also showed that when those barriers are removed, and people are given a chance, they succeed.

Women have also enjoyed tremendous success and have taken advantage of greater opportunity in the work force. In 1950, 34 percent of women worked, last year, 58 percent of women in America worked. With the increase in women in the work force, we have unleashed a great deal of talent. I strongly believe that we would benefit from even greater participation by women in politics, in business, in manufacturing, or in any other field in which women want to work.

Unfortunately, like the progress we have made in opening opportunity for racial and religious minorities, the progress our society has made with regard to women has also been limited. In many cases there is a glass ceiling that prevents women from rising beyond a certain level. The hearings recently held by the Judiciary Committee, and Professor Hill's testimony, brought foorward a deep concern about difficulties that many women face in the workplace.

Discrimination that keeps talented citizens out of jobs wastes a great deal of our economic strength. We cannot afford to continue to allow prejudice to divide our Nation; we must work as a team in order to compete in the global economy. We have never faced tougher competition from abroad. Tens of thousands of high-paying jobs have moved overseas over the last 10 years. We need to keep these jobs here at home and create new jobs if we are going to have a society in which our children have greater opportunity than we have.

This bill will help us become more competitive because when we fight for equal opportunity, we free talent and ability that had previously been underused. The Senate should pass this legislation, and it must also begin to develop a plan that continues to expand opportunity for all of our people.

This means that we must guarantee that each and every citizen has the opportunity to obtain a top-notch education. We must pass legislation to ensure that all Americans have access to high-quality and affordable health care. And we must develop a sound economic plan that creates new jobs and new opportunities for every citizen.

I am also pleased that this legislation includes a compromise that provides civil rights protections to Senate employees, while protecting the separation of powers as laid out in our Constitution.

Mr. President, America is known as the land of opportunity. Every person deserves the right to have that opportunity on an equal basis. We must provide added protection to workers. When the Senate votes on the civil rights bill, I will vote in favor of it.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KENNEDY). Without objection, it is so ordered.

Mr. DIXON. Mr. President, as an original cosponsor of the substitute to S. 1745, the Civil Rights Act of 1991, I want to acknowledge the perserverance of Senators DANFORTH, KENNEDY, and many others who developed the compromise that we have before us today.

This subtitle ends a 2-year dispute with the President over civil rights. I am pleased that this amendment maintains the core of the original proposal—that it still effectively overturns a series of ill-conceived Supreme Court decisions that impaired enforcement of what, until now, had been considered well-settled workplace antidiscrimination law.

Among other major provisions, the bill:

First, returns to the employer the burden of proving business necessity in disparate impact cases; and

Second, for the first time, establishes compensatory and punitive damages in cases of intentional discrimination against the disabled and women.

Mr. President, I have heard from a number of Illinoisans who have expressed concern about the caps on damages in the bill. I understand these concerns, and it is true that having damage limitations in cases of intentional discrimination against the disabled and women, but not against minorities, is in itself discriminatory.

I have stood against discrimination in all its forms throughout my career, and I am opposed to a dual system of remedies in cases involving intentional discrimination. In fact, during the 101st Congress, I cosponsored S. 2104, the Civil Rights Act of 1990, when it had no caps on punitive damages for women.

However, the political reality today is such that if we really want a civil rights bill, the only way to get it is to accept the damage limitations. That is the only way to get this bill signed by the President.

The distinguished majority leader has given this body assurance that the limitation on damages issue will be addressed in legislation next year. I welcome the opportunity to debate the issue.

Mr. President, I generally support adding discrimination protection for congressional and executive branch employees in the workplace. The President has publicly stated his support for congressional coverage, and I believe that he would also want coverage for his employees. I understand that an amendment on this issue has been adopted.

I call on my colleagues to join me and vote for S. 1745.

I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DIXON). Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, yesterday I expressed my appreciation to a number of staff people who have done outstanding work in bringing this bill about, and I would like to add to that list today the following individuals: Dennis Shea, who has worked with Senator DOLE on this matter, has been tireless. He has pursued the difficult job of reaching a compromise between the advocates of the legislation and the White House, and it was largely because of his efforts that we were able to put together the agreement of last Thursday; Jeff Blattner, Carolyn Osolinik, and Mary Dent, with Senator KENNEDY, were tough but flexible, if necessary, in order to bring the bill about; Mark Disler and Sharon Prost, with Senator HATCH, similarly were very effective representatives of Senator HATCH, very competent; and Anita Jensen, with Senator MITCHELL, also was a major participant.

This, as has been pointed out many times, has been complicated legislation, has involved many months, years even, of effort involving a lot of people. It is fitting to express the appreciation of those Senators who have been involved for the excellent staff work that has been done.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The distinguished Senator from Missouri suggests the absence of a quorum.

The distinguished Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, we are waiting for the last two technical amendments for clearance. As I understand, we still have 30 minutes for general remarks. I think I will save the Senate's time by making what very brief concluding remarks I have at this time.

Mr. President, this bill is a resounding victory for civil rights. The action we will make is all the more satisfying because it involves a welcome restoration of the bipartisan coalition in Congress and between Congress and the administration that has been responsible for so much of the historic progress we have made in the past half century.

Civil rights has always been the unfinished business of America, and it will continue to be our unfinished business for many years to come. For much of our history, the noble promises of the American Revolution, the Declaration of Independence, and the Constitution were not available to all of our citizens.

A century ago, we fought a Civil War to resolve our differences over slavery. In our own time, when the legislative and executive branches of Government were too slow in their responses to injustice, the modern civil rights movement was born. And for a time, the Supreme Court became the conscience of the country.

But Congress and the administration took up the challenge in the 1960's. The Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 are among the most important measures that any Congress at any time in our history has ever passed.

They laid the groundwork for what has been called the second American Revolution, the revolution of civil rights.

The two most important characteristics of that revolution are that it is a peaceful revolution, and it is a continuing revolution.

The measure we will soon pass is in the best of that tradition. I commend all those who have brought us safely to this day, especially our colleague from Missouri, Senator DANFORTH. He has been a profile in courage throughout the many months of this difficult and painful and profoundly important debate.

Because of his leadership, and because of the tireless efforts of many others, we have succeeded in taking the next great step on civil rights.

We were tested, and we were not found wanting. We hesitated, but we did not turn back. The action we are taking is the latest milestone in America's unique and continuing journey to justice.

I also want to pay tribute to Members of my staff whose long hours and hard work have made so much difference to our efforts.

Jeff Blattner's outstanding work is well known to many of us on the Judiciary Committee. Throughout the past 2 years leading to this successful vote, beginning with the day the Ward's Cove case was decided in 1989, he mastered all of the complex details of these issues and the many intricate versions of this legislation. In doing so, he never lost sight of the fundamental goals we are trying to achieve, and the Nation is in his debt.

Carolyn Osolinik was equally impressive in her ability to reach out to those on both sides of the aisle and to deal effectively with widely divergent groups around the country. Through her skillful work, we were able to narrow our differences, and extract the maximum consensus on these intricate issues that mean so much to millions of our fellow citizens.

In addition, Mary Dent and Mike Frazier deserve great credit for their excellent work and their skill in helping us to reach this compromise.

I commend all of them for their invaluable assistance. Their work was indispensable, and far above and beyond the call of duty. They have served the Senate well, and they have advanced the cause of civil rights.

I would also like to thank Laverne Walker, Annie Rossetti, and Amy Reginelli for their efforts.

I also want to extend my appreciation to Senator DANFORTH'S staff. I know he has mentioned them, but I too want to express my appreciation to Jonathan Chambers and Peter Leibold. They have been enormously talented and creative in trying to find common ground in these areas.

On Senator METZENBAUM'S staff I'd like to note the efforts of Jim Brudney and Greg Watchman. Senator METZENBAUM was very involved in fashioning this legislation and in initiating his own proposals, in the early days following the Supreme Court's decisions. He has worked very closely with all of those on our Human Resources Committee involved with this legislation.

For Senator JEFFORDS, who is also on the Labor and Human Resources Committee and was the prime sponsor in the early days of our consideration of this issue. Mark Powden and Reg Jones, both members of Senator JEFFORDS staff, were enormously helpful;

I would also like to express our appreciation to the minority leader and Dennis Shea;

To Senator MITCHELL, and Anita Jensen, who worked very closely with all of us;

To Senator HATCH, and Mark Kisler and Sharon Prost; and to Senator CHAFEE, and Amy Dunathan.

Again, I extend my appreciation to the leader, Senator MITCHELL, whose constant assistance has helped bring this issue to the Senate last year, during the veto override effort and during the effort to ensure that the conference report would reflect the considered judgment of this institution, he kept after this issue and kept it on the agenda.

We tested his patience with 2 or 3 days of continuing quorum calls when we were attempting to find a common ground. It is never easy when he has as many responsibilities as he has in wide areas of public policy. He was extremely patient with all of those who were involved. At the critical moments when we needed the strong, firm, guiding hand of a leader, he worked his will. This legislation certainly would not have been where it is today if it had not been for his very strong support.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent to speak for 10 minutes without charging it to the pending bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I rise in support of S. 1745, the Civil Rights Act of 1991.

I commend Senator DANFORTH and Senator KENNEDY for their persistent efforts to reach agreement with the administration on the compromise civil rights legislation before us.

I want to express particular gratitude to my friend, the senior Senator from Massachusetts, for his leadership, diligence, and commitment to the cause of civil rights. In a public service career spanning almost 3 decades, Senator KENNEDY has worked continually to assure that every American received the equal opportunity and equal justice guaranteed by the Constitution.

Mr. President, passage of the Civil Rights Act of 1991 is essential to halt the erosion of equal job opportunity and antidiscrimination protection for working men and women caused by recent Supreme Court decisions.

S. 1745 also strengthens the ability of women and minorities to vigorously challenge discrimination and harassment in the workplace, and thereby be assured of equal employment opportunity.

This bill overrules the Supreme Court's decision in Wards Cove Packing Co. versus Atonio, and restores the right to challenge discriminatory workplace practices by reestablishing the precedent set 20 years ago by the Griggs versus Duke Power Co. decision. The bill affirms the right of an employee to challenge an employment practice with a disparate impact under title VII of the Civil Rights Act of 1964. The bill also codifies the procedures for adjudicating disparate impact cases.

In addition, S. 1745 reverses other recent Supreme Court rulings which have diminished an employee's protection and right to redress under title VII. The combined effect of this legislation will be to better protect workers from discriminatory seniority systems, mixed motive discrimination, and discrimination and harassment on the job, as well as in hiring.

Mr. President, along with recovering ground lost in the past few years as a result of adverse court decisions, the Civil Rights Act of 1991 extends civil rights remedies to victims of intentional discrimination based on gender, religious belief, or disability. For the first time, women, religious minorities, and the disabled who suffer intentional discrimination will be able to receive compensatory and punitive damages.

Unfortunately, this new protection falls short of fulfilling the promise of fairness, justice, and equality of opportunity we extend to other Americans under the 1964 Civil Rights Act. I understand the need for cooperation and compromise in the legislative process. However, I regret the inclusion of statutory caps on damages for some victims of intentional discrimination.

Mr. President, I had intended to join Senators WIRTH, DURENBERGER, and MIKULSKI in offering an amendment to eliminate the limitation on damages for sex-based and religious discrimination. The amendment will not be offered to this bill in order to preserve administration support for the bipartisan agreement. Instead, legislation to ensure that all Americans have the necessary legal remedies to protect against discrimination in the workplace must be considered at another time.

Under current law, racial minorities have the right to seek compensatory and punitive damages for employment discrimination without caps on recovery. Women, disabled workers, and certain religious minorities deserve equal treatment when faced with intentional discrimination and harassment. It is a matter of simple equity.

The bill currently provides for a four-tiered system which would cap punitive damages for intentional discrimination suffered by women, people with disabilities, and certain religious minorities. Further, these caps on compensatory and punitive damages are based upon the size of the employer's work force, not the maliciousness or pervasiveness of the discriminatory practice.

What message do we send to the women, disabled, and religious minorities who are victims of intentional discrimination or harassment by establishing arbitrary limits on damages? What signals are we sending to employers and the American people by providing these people second-class protection compared to that extended employees discriminated against on the basis of race or national origin? By differentiating in remedies, we continue to deny fair and equal treatment to the same working men and women this bill seeks to protect from discriminatory practices. The next step forward in the civil rights struggle must be the correction of this inequity.

Mr. President, S. 1745 symbolizes the progress our Nation has made, and the setbacks we have encountered, in safeguarding civil rights and providing equal opportunity since 1964. The bill under consideration enables all Americans to enforce their right to equal job opportunity in a workplace free of harassment and discrimination. Yet, to echo what Senator KENNEDY said earlier in the debate, civil rights remains the unfinished business of America.

Mr. President, S. 1745, despite its limitations, is a significant step forward in protecting civil rights. The bill reverses the retreat from equal opportunity evident since 1988, and establishes bipartisan dialogue for continued progress towards the goal of equality and justice. I urge my colleagues to support the Civil Rights Act of 1991.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I thank the Senator from Hawaii for his remarks, and I thank Senators KENNEDY and DANFORTH for their leadership on this bill.

Mr. President, from the apartment where Sheila, my wife, and I live, early in the morning—when I get time—I run down toward the Washington Monument, and then beyond that to the Lincoln Memorial, where Dr. Martin Luther King, Jr., in 1963, gave his "I Have A Dream" speech. And I turn around as I am running, and I see before me the Capitol and then the Supreme Court—the Supreme Court, which for years and years and years I believed helped translate Dr. King's dreams into reality.

In 1989 in the Wards Cove decision, the Supreme Court, sadly but truly—sounded a retreat. As a result of that, a bill was introduced last year, the 1990 Civil Rights Act, which only returned to us the law of the land prior to some of the 1989 Supreme Court decisions, which really overturned 25 years of peoples' history in the struggle to end discrimination and end the struggle for racial equality.

Now with this law that will be enacted by the Senate tonight, we take an important step forward, an important step forward for racial minorities, and I believe for others as well. I join with the Senator from Hawaii and many others in saying that we have yet more to do. It does not seem fair that there are caps when it comes to monetary damages for victims of discrimination who are women or people with disabilities. It does not seem fair at all. Whatever side we were on in the nomination process, we all felt the pain of what happened when allegations were raised about sexual harassment. We all felt the pain of what happened when Anita Hill came here. And then I think it was a disgrace that, not too long thereafter, three women said they would not testify before one of our committees here in the Senate, because they were concerned about what kind of treatment they might get, what might happen to a woman when she steps forward with those kinds of questions and those kinds of allegations.

So we have to do more. But I want to say on the floor of the U.S. Senate tonight that I am in a positive mood; I am not in a negative mood. And I think this act, this piece of legislation that so many have labored so hard on—Senator DANFORTH being right there in the lead—does take us in the right direction. I hope no longer will we have a politics of dividing people by race. I hope no longer will we ever see the Willie Horton-type of ads. And I believe that this act, most important of all, sends a powerful message that here in the United States of America, we will tell those who would discriminate against racial minorities, or women, or those with disabilities, that they will not be able to violate the civil rights of our citizens with impunity.

And we also send the message to those who are the victims of discrimination that they will have a remedy through the law of our land.

One more time, Mr. President, let me emphasize that it is appealing to the best instincts of America to talk about the importance of pluralism, the importance of opportunity, the importance of fairness, the importance of ending discrimination.

Let me say one more time that in our country the spirit of discrimination must be eliminated. We have yet a long ways to go. But we have taken an important step in the right direction.

Certainly there will be Senators, and I will be one of them, who immediately will introduce legislation to take off those caps when it comes to damage suits. And I think that absolutely has to be done, absolutely has to be done. But I am glad that we are going to pass this legislation. I am glad that we passed the Civil Rights Act.

I think it is important for our country. And, yes, I do not think it ends it, but at least puts one battle behind us as we move forward and we fight other fights that have to be made.

There are many people who still do not have jobs. We are in a recession. And there are many children who are hungry. And there are many children who do not receive an adequate education. And there are many people who are struggling in their communities. And there is so much we need to do yet to end discrimination by age, race, and gender. But as Dr. Martin Luther King, Jr., said so well, "Although the arc of the universe is long, it always bends towards justice." I think also those words represent the spirit of Senator Hubert Humphrey, from my State of Minnesota.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Minnesota yields the floor.

The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I suggest that we use some of the time to get some of the statements over before the half-hour begins and maybe we can waive that time at the end. I would like to make a few comments about the bill and about what has really happened, and perhaps get those out of the way at this point. We still have at least, I think, one if not two technical amendments that probably will have to be placed in this bill before we finally have our final vote.

But, Mr. President, I would like to tell my colleagues on both sides of the aisle that this bill is a good bill. It has been a very difficult process for the last 2 years, especially for us on the Labor Committee because there have been wide shifts in viewpoint. There have been great disparities in approach here.

Frankly, the White House, in my opinion, has been right in calling the original bill a quota bill and most of the other bills up to the current bill quota bills. The business necessity test of earlier revisions was so difficult for any employer to meet that it would have caused the cost of litigation in this area to escalate so rapidly that business people would have had no alternative other than to go to quotas, Mr. President. The language of this compromise makes dramatic changes in this language. Prior versions of this language are what has been the principal objection of the White House during the intervening years. This prior language is no longer in this bill.

In the process, Senator DANFORTH and I tried to resolve this last year, as everybody will recall. I worked at it day and night with Bill Coleman, former Secretary of Transportation. We could not come up with the language that was acceptable to the White House, with the full understanding that I would not support the compromise if the White House did not. I had taken that position from the beginning.

But I have to tell you that when Senator DANFORTH got into it, he did a terrific job, particularly in the past week, in bringing the parties together and in trying to accommodate and reach certain language that people could accept. I want to pay him special tribute for the efforts that he has made. I watched him during the Thomas hearings give day and night to his friend Judge Thomas, our friend really. He did do a tremendous job in helping Judge Thomas become confirmed and now a Member of the Supreme Court of the United States of America, with the formal swearing in this next Friday.

But he also has given an inordinate amount of time to this particular issue as well. I want to thank him for it personally because without his excellent leadership, and without his ability to try and bring both sides together, I do not think this would have come to pass. So I want to pay special tribute to him at this time.

But there have been a lot of colleagues on both sides of the aisle who have been working on this for over a 2-year period to get the civil rights bill to the broad consensus that it is in today.

I express my appreciation especially to President Bush. There has never been a doubt in my mind, having met with him on numerous occasions concerning this particular bill, that he wanted a civil rights bill. He wanted to support it, but he did want it to avoid quotas and, of course, he felt strongly that it should not be a litigation bonanza for lawyers. He has some difficulties with certain other provisions as well. The final and recent changes to this bill have been significant enough to lead to his support.

I think without President Bush we would not be here today either. He deserves major, major credit.

Certainly Senator KENNEDY has been willing to accommodate and try to resolve these problems, certainly more this year than at any other time. And I can personally attest to that. Without him it would not have happened. And even as late as late yesterday we had to make some changes that literally were necessary in order to accommodate people around here, and I have to say Senator KENNEDY was reasonable in helping to make those changes.

The language has been extremely crucial and important. Employment law is one of the most difficult areas in all law in our country, and what appears to be the smallest words to those not skilled or not experienced in this area actually happen to be very, very important words to make a difference between making or breaking many of the businesses in our country and, I might add, providing jobs for many employees in our country.

So we have to take these concerns into account so that everybody can benefit at the same time that we try to institute the greatest forms of civil rights that we can.

I think by standing firm on principle President Bush showed courage, and I think that the President took a courageous stand against this bill in its earlier forms. I think he also took a difficult step of vetoing the prior bill that deserved to be vetoed. It took courage on the part of various Members of the Senate to sustain that veto as well, because nobody wants to be against the civil rights bill.

Nobody does in my opinion. I do not see any reason for anybody to want to be against a true civil rights bill. But in any event, he not only vetoed the earlier bill, and was sustained, but he was willing to continue negotiation for a compromise. I think in the process President Bush has protected the American people, and in particular all of the employers in this country, and I might add employees as well, from, for my thinking, the inevitable and widespread adoption of quotas that would have occurred had this bill been passed and the veto overridden in its prior form. I believe that his willingness to take a strong stand on previous very objectionable legislation is what ultimately led to this strong and fair civil rights bill we can all support today.

Yesterday I explained in detail the changes in the disparate impact provisions of the bill and why the President can now accept its provisions. At the same time, we have overturned the Patterson versus McLean case, to cover racial discrimination in terms and conditions of contracts under section 1981. All postcontract matters will now be covered by the racial provisions of section 1981, and that is a good step. President Bush has been willing to overturn Patterson versus McLean from the beginning, and so have all of us. We have also long been willing to overturn the Lorrance case to make it easier to challenge the intentional discrimination seniority systems and to provide for damages under title VII for sexual harassment cases. And these are major civil rights advances in my opinion.

I think it is important to point out that the President basically got his language with regard to the definition of business necessity and other issues involving disparate impact and got rid of what he considered to be the quota aspects of the bill. He got language that is important on particularity, that we think goes a long way to solving some of the problems he has raised in the past. He gave in on damages to a certain degree because that was not nearly as important as those other two matters. He wanted a $150,000 limit. We go to as high as $300,000 lid on damages for cases of intentional discrimination. And I felt that that was a reasonable compromise on his part.

The area where he gave in that I had the most difficulty with is in allowing the transfer of the burden of proof to be shifted to the defendant employer. So, once the disparate impact statistical analysis is made and the particular practice causing that impact identified, a prima facie case is joined and the employer must come forward and meet the burden not only of production, what the employer also had to do, but the burden of persuasion as well. The President has agreed on the burden shift issue, and that, I think, was a concession that can be justified.

Mr. President, I have to say that this has been an arduous and difficult process. Again, I thank the President of the United States and I thank Senator DANFORTH for the leadership that he has provided. I thank Senator KENNEDY, without whom in his usual way, without his ability to negotiate and compromise, this matter would never have been brought to this floor and to the position we are in. I thank Senator DOLE, who in his own inimitable way really brought the parties together and helped to bring the White House on board, and I think did a terrific job as minority leader. I thank Senator MITCHELL, who of course is majority leader, and is very skilled in these areas and many times sat us down to try to see if we could resolve some of these conflicts and problems, and did so with distinction and with ability.

I also want to especially thank and praise Senator GORTON who played a key role in this entire process. He has consistently shown a remarkable grasp of very difficult and technical legal issues and assisted so many others who tried to come to grips with these issues. Senator GORTON was pivotal in helping to lead the fight against earlier objectionable versions of this bill—a fight which has led to this successful compromise we can all support.

I also think that it is very appropriate to praise some other key Senators, including Senators SPECTER, JEFFORDS, KASSEBAUM, DURENBERGER, CHAFEE, COHEN, and RUDMAN. And there are others. And also I thank the excellent staff people that we have on Capitol Hill for the long, hard hours that they have worked throughout these few years, and certainly over these last number of months.

On Senator DANFORTH's staff, Peter Liebold and John Chambers did terrific work for Senator DANFORTH and everybody here and they deserve a lot of credit.

On Senator KENNEDY's staff, there are others, but I want to particularly mention Jeff Blattner, Carolyn Oslenick, and Mary Dent who always work hard in these areas and without whom we would not have come this far.

On Senator DOLE's staff, you cannot say enough good about Dennis Shea, who was a principal catalyst among staff members in helping to bring this about.

There are others, of course. On Senator MITCHELL's staff, Anita Jensen who worked hard on this and did a very good job. And on my own staff, I want to especially thank Mark Dislen, Miller Baker, and Sharon Prost. They are fine lawyers who worked long and hard on this effort.

But again I would like to praise the President. John Sununu has been in this battle from the beginning and when it came time to make some tough decisions at the end he was willing to make them and I have to say he did a very good job.

Dick Thornburgh did a very good job on this bill until the time he left the Attorney General's Office. He was extremely articulate on this and helped all of us to understand it better. I felt he did a very good job.

Boyden Gray has taken a lot of abuse by some people here in the Senate from time to time, but I have to tell you I have great admiration for Boyden Gray.

Nelson Lund, Nick Wise and, of course, Lee Liberman, from the White House and Justice Department and who have worked very hard on this bill and were constructive all through this, and most particularly in helping us in our recent efforts toward a compromise.

There are others I am sure I missed, and I feel badly about that.

Let me just say this. We now have a bill. I think the five principals at least believe that it is an excellent bill, that it is going to make a difference in this country that is going to really help people in a civil rights sense, in a true civil rights sense, and for the first time is going to bring rights to women that they have not had in the past. It is a terrific bill. It has taken a lot of effort, a lot of good thinking, and it has taken a lot of compromise and hard work on the part of everybody concerned.

But there are a number of other principals as well. But in these last few weeks, certainly two leaders in this body have been Senator KENNEDY, and Senator DANFORTH. And I hope I have been able to play a constructive role as well, at least I intended to.

Mr. President, this is an important bill. I hope every Senator will consider voting for this bill. I think that with what we have worked out and the way things have gone, there is reason for every Senator on this floor to vote for this bill. I know not all will, and we have already had a couple who have announced they will not. But I believe this bill deserves this kind of support, and I hope it will have overwhelming support because civil rights bills deserve it.

When we propound these bills in the future, I hope we will propound them in a way that brings people together rather than divides them. I think if we do that, if we put the same type of spirit of compromise and willingness to sit down and work things out together at the outset on these bills, we would not have to have 2 years of hard fighting and infighting to get it to the point where we have it today.

This is the end result of a number of compromises, a number of major changes, a number of rewrites in the bill, a number of substitutes. But this last substitute is a terrific substitute. It is a major improvement from earlier versions. And I encourage all Members of the Senate to vote for it. I think it is the right thing to do. I think you will be proud of having voted for it. And, yes, even though some of our constituents out there still are a little wary of it and do not quite understand, I think over the long run the thing that makes this country the greatest country in the world is because of moral virtues, the fact that we do not want people to be treated less than equal in this country, we do not want people to lack civil rights.

I agree with Senator KENNEDY. This is a large step, but it is only one of many in a continuing process of trying to bring equality to everybody in our society and equal opportunity to everybody as well.

Mr. President, I have spoken long enough on this and, of course, I have said enough throughout the years on it—some acceptable and some not—to some of my colleagues. But the fact is I believe in this bill. I believe in what we have done. I believe it deserves the support of all us.

And with that, I yield the floor.

Mr. KENNEDY. Mr. President, I want to thank my colleague and friend from Utah for his generous references. As friends on our Human Resources Committee know, we have areas in which we agree on and areas in which we differ on. I am delighted that in the closing hours of this extremely important piece of legislation, we have been able to work together for its successful passage.

I am very grateful for all of his comments and for his help and assistance in bringing us to this time, which I hope will be very soon.

Mr. DANFORTH. Mr. President, I guess what we are trying to do now is to do our closing statements before the close and I get these technical amendments back and adopt them and then move on and pass the bill.

So I will make my closing statement at this point, trusting that eventually the two technical amendments will arrive. It is so characteristic of the bill that we have been waiting around for a couple of hours for amendments that could not conceivably take more than 10 minutes to draft. But that has been the nature of this odyssey that we have been involved in for the past nearly 2 years in trying to deal with the legislation. So it will be done.

The expectation is that we will end up seeing somewhere around 80 or more votes in the Senate for this bill. I do not know how many people will end up voting for it, but there is a lot of speculation that it could be 80, 85 votes for the bill. That is unbelievable. One week ago I never would have guessed that there was any chance that we would get anything like that. We were fighting for 67. And then the logjam broke and we ended up with what we have today, a bill that has been cosponsored by, among others, Senator KENNEDY and Senator HATCH.

Senator HATCH described it as a terrific bill. The President has signed on, and not just with grudging agreement with the bill but really enthusiastic support for it. The President last Friday was very enthusiastic about the bill.

Some Senators have expressed reservations about this point or that in it. For something this complicated, that is not unusual. What is unusual is that something that has been this hard fought will receive this kind and has received this kind of enthusiastic support.

Everybody is claiming victory—Democrats, Republicans, liberals, conservatives—in passing this bill. I think that everybody is right to claim victory because this is a victory, it is a victory for our country.

So often in the last year and a half we have been focusing on issues that are so narrow that in order to describe them it took so much time that the audience went to sleep. We got involved in endless debates on the narrowest of points, important points, but very narrow points. A single word could become the answer to passing the bill or not passing the bill. And we got involved for hours on end debating words, debating word formulations, trying to find the right combination of words in the Griggs case, arguing about "significant" and "substantial" and "manifest" and other words. What is the meaning of "accumulation"? That was something that we were hung up on as recently as yesterday. That has been the nature of the debate.

But there is a bigger principle that is involved that is much more important than any of the narrow points that so focused our attention, and the bigger principle has to do with forming and reforming a national consensus on the issue of equal treatment for American people. And that, really, is the basic principle that is involved here.

There is no doubt in my mind that there is a consensus among the American people on issues of equality. On the basic question of civil rights, Americans overwhelmingly want other Americans to be treated fairly, not to be discriminated against and not to be discriminated for on the basis of race or religion or gender or national origin. But these questions, particularly the question of race, are so close to the surface of the American psyche that it is very easy, at least temporarily, to cause to ignite bursts of passion, and to do it politically, and we have seen that.

I had a desk a few years ago in the Senate; when I first took this desk I opened up the lid and we have the names of Senators who have previously used the desk, and I saw "Bilbo, Mississippi." There are people like that even today, politicians who get support at least for a temporary period of time by playing the race issue. And there are incidents. I read about it in the newspaper very often, episodes of Ku Klux Klan marches in my State, or the painting of swastikas at the Jewish community center in St. Louis County.

It still goes on. Not to the extent that it did when I was a boy. I did not grow up in the Deep South, but I grew up in the St. Louis area in a very segregated society, segregated as a matter of law. We had a dual school system and blacks could not go to white movie theaters and the baseball stadium was segregated. Baseball teams were segregated in those days. That was what I knew when I was a boy and when I was a teenager growing up in St. Louis.

How times have changed and how the American people have embraced that change. Not only legal changes have occurred, but changes in attitude have occurred. But there are always the little reversions to the past. There are always the nasty little episodes that crop up. And, it seems to me, that the mission of all of us has to be to keep moving forward, to keep progress moving ahead, as a matter of law and as a matter of public attitude.

That is why it is important to speak out when we see an episode of bigotry or racism. And that is why it is important, when there is a reversion, not to let the clock be turned back for long but to turn it forward again.

So what was wrong in 1989 was not simply that the Supreme Court wrongly decided a half a dozen cases, some of them dealing with technical issues such as how to define business necessity. What was wrong was that in the year 1989 the Supreme Court chose to turn the clock back, and that can never happen in civil rights; it can never be allowed to happen.

So it seems to me that our job is twofold. One, to make sure that what Senator KENNEDY has said is true, namely that the business of civil rights must always be unfinished business; and, second, to make sure that those of us who have any kind of public platform must be voices that appeal to the best in the American people and not to the worst instincts that are occasionally played to for political purposes.

So the great victory in this legislation is not so much a legalistic victory, changing the law. The great victory is that by an overwhelming majority we are going to pass this in the U.S. Senate and it will be agreed to in the House and the President will sign it. The great victory is reconstituting a consensus politically, in this country, that had been threatened. That is the great victory in this legislation.

This is momentous legislation. It is not momentous because of the details. It is momentous because it plays a part in what must be the continuing drama of life in our country.

I want to close, Mr. President, by just a short personal word. The last 2 months of my life in the Senate, beginning right after the Labor Day recess, have certainly been the most interesting 2 months of my 15 years in the Senate. And they have been the most challenging 2 months. And they have been exciting, and they have been trying. And some days really trying.

Throughout this time I know that I have not always been the most pleasant or jovial of Senators, and I recognize that. This, apparently, is the season for recognizing yourself, so I do recognize that. And I do want to express my appreciation for the tolerance and the kindness and the generosity of people who work with me in my office—my staff people—and particularly of my colleagues in the Senate during these last 2 months. I have been something of a pest, but my period of pestiness will not last forever.

I yield the floor.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Utah.

Mr. HATCH. I am glad to hear from Senator DANFORTH that that period of pestiness will not last forever. Since we are all baring our souls, I know I have gotten on a lot of nerves for the last month or so, and I have not wanted to or meant to.

But I really respect the people in the Senate who worked so hard on this bill. It really is a monumental bill. It is the type of bill we can all be proud of and I think will do a lot of good. We are right at the end of the process. We are just checking on the last few amendments and if we can get those approved on both sides—and we think we are almost there—we will wind this up and have a vote. So we tell our colleagues we hope within the next 5 or 10 minutes we can proceed to a vote.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, we have gotten down to the last two technical amendments, and there was a third, but we could not get approval on that.

AMENDMENT NO. 1296 TO AMENDMENT NO. 1274

(Purpose: To provide for an expedited review by the Supreme Court of any decision concerning the constitutionality of certain provisions)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] for himself and Mr. DOLE, proposes an amendment numbered 1296.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the title entitled "Government Employee Rights", add the following new section:

SEC. . INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 209 and section 220, any member of the Senate may intervene as a matter of right in any proceeding under section 209 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 209 or section 220, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 209 or 220.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

Mr. DOLE. Mr. President, this amendment has two purposes.

First, it requires the court of appeals for the Federal circuit to examine the constitutionality of the judicial review provisions contained in the congressional coverage section of the Danforth-Kennedy substitute.

Second, the amendment directs the Supreme Court to review—on an expedited basis—the court of appeals decision on constitutionality.

Last night, the Senate considered a constitutional point of order that claimed that the judicial review provisions in the congressional coverage section violate the constitutional principle commonly known as separation of powers.

Although the Senate overwhelmingly rejected the point of order, there are still some lingering doubts as to the constitutionality of these provisions.

These doubts should be resolved by the best arbiter of constitutional issues, the Supreme Court itself, and as quickly as possible.

Mr. President, there is precedent for fast-track review of constitutional issues by the Supreme Court.

In 1989, Congress passed the Flag Protection Act, which contained an identical provision directing the Supreme Court to review the constitutionality of that statute on an expedited basis.

The Supreme Court—in the United States versus Eichman decision—followed Congress' fast-track directive, but ultimately struck down the Flag Protection Act as violating the first amendment.

Mr. President, I fully support the congressional coverage provisions of the Grassley-Mitchell amendment. But if Congress is to live under these provisions, we need to determine—as quickly as possible—whether they are, in fact, constitutional.

Mr. HATCH. This amendment is a technical amendment that helps to resolve issues with regard to intervention and expedited review of certain appeals. I believe that it is acceptable to both sides of the aisle and to all Members of the Senate, or at least as far as I know.

The PRESIDING OFFICER. Is there further debate?

Mr. KENNEDY. Mr. President, we have no objection.

Mr. HATCH. I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1296) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1297

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of the majority leader, Senator MITCHELL, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. MITCHELL, proposes an amendment numbered 1297.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert in section 209(a) after the phrase "section 208(d)", the following: ", or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 208(d)(2)(B),".

Mr. HATCH. Mr. President, this technical amendment has also been approved by the appropriate parties, and I believe it is acceptable to both sides of the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. KENNEDY. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1297) was agreed to.

Mr. HATCH. I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, we are now down to the final few minutes of this debate, and we are awaiting the majority leader to come to the floor and make his final comments and then I think we can vote.

Have the yeas and nays been ordered on the bill?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. HATCH. Then I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, has the substitute been accepted?

The PRESIDING OFFICER. The substitute has not been agreed to.

Mr. HATCH. I urge adoption of the substitute.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the amendment in the nature of a substitute, as amended.

The amendment (No. 1274) in the nature of a substitute, as amended, was agreed to.

Mr. HATCH. I move to reconsider the vote.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator GLENN be recognized to address the Senate for 3 minutes, and that, following his remarks, I be recognized to address the Senate for 3 minutes, and that, following my remarks, the Senate proceed to vote on the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I thank the majority leader very much for his consideration.

Mr. President, I rise to express my support for the Civil Rights Act of 1991. I cosponsored a similar measure in the last Congress, because, frankly, I am outraged that the Supreme Court in its wisdom has seen fit to overrule laws which provide protections against discrimination in the workplace.

I have long been an antidiscrimination advocate. I am opposed to discrimination against women, minorities, the handicapped, the aged. I oppose discrimination in all forums: private industry, government, and Congress, which I will discuss later in more detail.

The Civil Rights Act provides for the award of compensatory and punitive damages to women and minorities who have experienced discrimination in the workplace. The message to employers is simply that workplace discrimination is against the law and will not be tolerated.

The Civil Rights Act of 1991 would reverse the Supreme Court's 1989 decision in Wards Cove versus Atonio and restore the Court's decision in Griggs versus Duke Power Co. In Griggs, the Supreme Court held that practices which disproportionately exclude qualified women and minorities for the workplace are unlawful unless they serve a business necessity.

The definition of "business necessity," which caused heated controversy in the last Congress, is the same language which was passed in the ADA. Specifically, the bill provides that, in determining whether to hire an individual, the qualification standards, employment tests, or other selection criteria used by an employer must bear a "manifest relationship to the employment in question."

For example, height requirements for police officers tend to screen out women candidates because women naturally tend to be shorter. Therefore, such requirements are permissible only if they enable the police department to select better officers—a business necessity for public safety.

Congress has already granted similar relief to handicapped Americans in the Americans with Disabilities Act. I see no reason that women and minorities should not also be afforded these protections. With the ADA, Congress has started to address the problem of workplace discrimination. Let's not stop short of full protections for all Americans who are subjected to workplace discrimination.

Last year, the President commended the ADA as landmark legislation that "embodies what must be at the heart of all civil rights struggles." Earlier this year, the President said the ADA standard should not be applied to the Civil Rights Act.

I don't understand this, Mr. President. Both bills prohibit employment practices that have a disparate impact on members of protected classes. There is no reason to give different levels of protection to persons with disabilities than to persons who suffer discrimination based on their race, sex, religious beliefs, national origin, or color.

The debate over the Civil Rights Act is not a debate over legal technicalities. It is a fundamental debate about whether we—Congress and the administration—are committed to making equal job opportunity a reality. I am committed to that cause.

Last week, the Governmental Affairs Committee, which I chair, heard from two current and two former Federal employees who had been victims of discrimination in the workplace. Their stories were compelling and revealing. I commended them at the hearing, and I commend them here on the floor of the Senate for filing complaints and testing the system. Where and when that system is found wanting or ineffectual, we must move to improve it.

Discrimination is a cancer that we must work at removing and, if we cannot remove it from our hearts and minds, then we must at least make it illegal in the workplace—even if the workplace is on Capitol Hill.

Mr. President, one of the complaints I have heard from many business leaders in my State of Ohio is that Congress doesn't police itself; that we make laws for the rest of the country, but, we don't apply those laws to ourselves. This clearly smacks of a double standard.

Discrimination in the workplace is wrong and we should say so in the most forceful manner possible. If it is wrong in a plant in Cleveland, it is wrong in an office in the Hart Senate Office Building. And if the worker in Cleveland has a remedy—and he or she does—then, the worker in the Senate should also have a remedy.

In 1977, the late Senator Lee Metcalf and I joined in holding a series of hearings on the problem of employment discrimination by the U.S. Senate. At that time, there were only a handful of minorities and women who held professional positions among U.S. Senate staff.

As junior Senators, we took on an issue that was regarded as a taboo subject. The testimony from that hearing was truly startling. There were horror stories about Senators imposing unnecessary and ridiculous dress codes for women employees, flatly refusing to hire minority group members, and even conditioning jobs on water signs of the zodiac.

I especially remember the poignant testimony of the late and great Clarence Mitchell, who was the chief lobbyist for the National Association for the Advancement of Colored People. He not only testified about rampant racial discrimination in Senate offices, but he also told us of Senate offices and facilities—public facilities—from which he was banned because he was a black man.

These hearings led to the introduction of legislation which I developed.

That legislation proposed to establish an in-house body to hear and decide allegations of employment discrimination in the Senate.

In 1978, I attempted to attach this legislation as an amendment to the Humphrey-Hawkins economic package. That amendment was filibustered and then tabled in an emotional debate in which its opponents attacked the proposal as being totally without merit. Those opponents, many of whom are now supporting this measure, threatened to defeat or delay the entire Humphrey-Hawkins bill had this measure passed.

Throughout the years, I have maintained an interest in this cause and attempted—unsuccessfully—to advance it. In 1980, I reintroduced the bill and, later as Chairman of the Governmental Affairs Committee, proceeded to hold hearings.

In 1989, I reintroduced a new and improved version of the bill, and again held hearings in the Governmental Affairs Committee. The committee heard from many witnesses who discussed the legislation from an objective and substantive viewpoint. The Department of Labor and the Equal Employment Opportunity Commission each gave testimony which proved helpful to us.

The staff of the Governmental Affairs Committee worked diligently to receive input from the Senators on the committee. Unfortunately, we failed to get a consensus on the bill. However, much of the legislation which I had introduced and worked on was included in the Americans With Disabilities Act. For the first time, Senate employees had a defined avenue to travel if they had grievances. While Senate employees still lagged behind other public and private sector employees, with the ADA, we had made a start.

During the hearings which were held in my committee on September 14, 1989, I learned some startling facts about the labor force on Capitol Hill. I am not referring to the legislative assistants or the professional committee staff. Rather, I am talking about the window washers, the painters, the day workers, the cashiers, the groundskeepers, the plumbers and all the other workers who keep this place operating. They have expectations and should have the same protections that others in the private sector doing similar jobs have.

The American people look at us and say that we, Congress, make the rules but we do not play the game. We apply those rules to everyone else but we will not apply them to ourselves. That is harsh criticism, Mr. President, but it is true. After today, I am hopeful that it will no longer be true, at least in the area of civil rights.

Mr. President, what we are doing today is very much worth the effort. I am going to vote for this. But it deals with the narrow area of civil rights and important as those are, there are other areas that have not been addressed as well.

I believe the late Senator Ervin was right when he said of the exemptions passed by Congress: "It's a little like a doctor prescribing medicine for a patient that he himself would not take."

So I am not concerned about who gets credit for these things, whether it is my friend from Vermont, Mr. LEAHY, who has worked hard on this issue and I am sure he, too, takes a measure of satisfaction as the Senate moves, ever so slowly, forward toward addressing this issue.

The Grassley-Mitchell amendment before us today is similar to legislation which I introduced on June 13, 1989. Compare some of these things. We look at some of the things proposed in the past. We are very gradually catching up. Maybe we are going to pass some of these things.

After we finish comparing all these things and hoping to get them through, we should be passing things that will also address OSHA, address the other parts that we have not covered yet. But this is a good step forward.

Both my bill and the Grassley-Mitchell amendment would establish an office of in-house review for aggrieved congressional employees, the Grassley amendment limited to Senate employees.

Both would establish a tiered procedure which would include counseling and mediation, and an opportunity for filing a formal complaint as well as for a hearing before an in-house review panel. One key difference is the availability of judicial review.

The Grassley-Mitchell amendment would provide a Senate employee who does not receive satisfaction through the in-house procedure to petition for review by the U.S. Court of Appeals for the Federal Circuit.

Last night, the Senate voted down a point of order against the Grassley amendment because this provision was felt to be violative of the U.S. Constitution. My bill does not include the provision for this reason. However, I voted against the point of order because I support the precepts of the bill, obviously, and would like to see us legislate these rights to our employees.

Further similarities between my bill and the Grassley amendment include the available remedies. Both measures provide injunctive relief, costs and attorney fees, as well as reinstatement and back pay.

Both measures provide exemptions for political affiliation and place of residence.

My bill did not provide for coverage of presidential appointees. The Grassley amendment provides for such coverage.

Finally, the bills differ in the scope of coverage. The Grassley amendment would provide for coverage only under the 1964 Civil Rights Act, section 15 of the Age Discrimination in Employment Act of 1967, and for handicap or disability as defined by section 501 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

I support the Grassley amendment, but I believe that we should go further. The statutes cited in the Grassley amendment are all well and good. But, we need to extend the protections into other areas as well.

In addition to the statutes in the Grassley amendment, my bill would extend coverage also under the Fair Labor Standards Act and the Occupational Safety and Health Act of 1970.

I will continue my efforts to make sure that we provide a full range of protections for congressional employees.

Mr. President, I believe it was Bobby Kennedy who said, "It's remarkable what can be accomplished when it doesn't matter who gets the credit". I cannot vouch for the correctness of the quote. However, I can certainly vouch for the appropriateness of the sentiment. I do not care if the Senate passes my bill, Senator LEAHY's bill, or an amendment to the Civil Rights Act of 1991. I just hope we can put in place a process that allows a victim of sexual, racial, age, physical disability or any other type of discrimination, regardless of where they work, to have their complaint fairly heard and fairly judged.

I say in closing, with the time restraints we have here, the people, real, live flesh-and-blood employees on Capitol Hill, hurt no less from discrimination that other Americans, and they deserve to be treated fairly.

This bill addresses only part of the problem but it is a good start, a big first step which we must continue until discrimination, particularly on Capitol Hill, is no more.

I urge adoption of this bill.

Mr. MITCHELL. Mr. President, I commend Senator GLENN for the leadership which he has provided in the area of protection of Senate employees against discrimination. It was his pioneering legislation that was the framework within which the Grassley-Mitchell amendment was developed. And the internal procedures contained now in this bill are largely drawn from Senator GLENN's earlier legislation.

Mr. President, many other Senators deserve credit for the important step which the Senate is about to take, a step that is enormously significant, both in terms of the right that it will provide for wrongs which occur in our society, but almost as important for an end to divisiveness and division, at least we hope for some time, that has so tragically dominated this bill and this issue over the past 2 years.

Among those who deserve credit are the Senator from Utah, Senator HATCH, Senator DOLE, that group of Republican Senators who stood with Senator DANFORTH to forge this compromise and, of course, Senator MIKULSKI, Senator METZENBAUM, Senator BOREN, who contributed significantly on our side.

But I think in the final analysis we all recognize that two men are primarily responsible for this significant action. They are Senator KENNEDY, whose determination and leadership and perseverance over this difficult 2-year period, over all of the ups and downs that have occurred on this bill, has led us to this point. He has been an articulate, effective spokesman for the people whose rights will be vindicated by this legislation. And he has not wavered or sagged or grown weary in this effort to get us to this point.

I think even he would acknowledge that despite his enormous efforts he would not have been able to get us to this point were it not for the leadership of Senator DANFORTH. With determination, with conviction, and with an unshakeable commitment to the goal of society free of discrimination, Senator DANFORTH stepped in at the crucial moment and provided the leadership that has made this legislation possible.

They deserve the gratitude of their colleagues, and the gratitude of all Americans, not just those living today in our society, but those for years to come who will enjoy a society with less discrimination, with fewer racial divisions than would otherwise have been the case.

This is an important time. We owe a great debt of gratitude to many Senators, most especially Senators KENNEDY and DANFORTH for their leadership. I commend them and I think them.

Mr. President, I urge all Senators to vote for this important bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

On the question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 238 Leg.]

YEAS—93

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Bradley
Breaux
Brown
Bryan
Bumpers
Burdick
Burns
Byrd
Chafee
Cochran
Cohen
Conrad
Craig
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Gorton
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Heflin
Hollings
Inouye
Jeffords
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Robb
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Seymour
Shelby
Simon
Simpson
Specter
Stevens
Thurmond
Warner
Wellstone
Wirth

NAYS—5

Coats
Helms
Smith
Symms
Wallop

NOT VOTING—2

Kerrey
Wofford

So the bill (S. 1745), as amended, was passed as follows:

S. 1745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

SEC. 101. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.".

SEC. 102. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e-2 or 2000e-3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT.—In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 or regulations implementing section 501 of the Rehabilitation Act of 1973, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.—

"(1) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.—Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

"(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

"(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.—If a complaining party seeks compensatory or punitive damages under this section—

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(d) DEFINITIONS.—As used in this section:

"(1) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(2) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice' means the discrimination described in paragraph (1), or the disparate treatment or the violation described in paragraph (2), of subsection (a).

SEC. 103. ATTORNEY'S FEES.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting ", 1981A" after "1981".

SEC. 104. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 717.".

SEC. 105. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

(a) Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

"(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

"(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

"(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative employment practice'.

"(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

(b) No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act that relates to Wards Cove—Business necessity/cumulation/alternative business practice.

SEC. 106. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by section 105) is further amended by adding at the end the following new subsection:

"(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.".

SEC. 107. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 105 and 106) is further amended by adding at the end the following new subsection:

"(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A) and indenting accordingly; and

(3) by adding at the end the following new subparagraph:

"(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m); and

"(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).".

SEC. 108. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 105, 106, and 107 of this title) is further amended by adding at the end the following new subsection:

"(n)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

"(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

"(II) a reasonable opportunity to present objections to such judgment or order; or

"(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

"(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

"(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 109. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) are each amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.".

(b) EXEMPTION.—

(1) CIVIL RIGHTS ACT OF 1964.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) is amended—

(A) by inserting "(a)" after "SEC. 702."; and

(B) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control,

of the employer and the corporation.".

(2) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) COVERED ENTITIES IN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

"(2) CONTROL OF CORPORATION.—

"(A) PRESUMPTION.—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(B) EXCEPTION.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(C) DETERMINATION.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control,

of the employer and the corporation.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 110. TECHNICAL ASSISTANCE TRAINING INSTITUTE.

(a) TECHNICAL ASSISTANCE.—Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4) is amended by adding at the end the following new subsection:

"(j)(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

"(2) An employer or other entity covered under this title shall not be excused from compliance with the requirements of this title because of any failure to receive technical assistance under this subsection.

"(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 111. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraph:

"(2) In exercising its powers under this title, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

"(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

"(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this title or such law, as the case may be.".

SEC. 112. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.".

SEC. 113. AUTHORIZING AWARD OF EXPERT FEES.

(a) REVISED STATUTES.—Section 722 of the Revised Statutes is amended—

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

"(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of sections 1977 or 1977A of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney's fee.".

(b) CIVIL RIGHTS ACT OF 1964.—Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 114. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.".

SEC. 115. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking paragraph (2);

(2) by striking the paragraph designation in paragraph (1);

(3) by striking "Sections 6 and" and inserting "Section"; and

(4) by adding at the end the following:

"If a charge filed with the Commission under this Act is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) against the respondent named in the charge within 90 days after the date of the receipt of such notice.".

SEC. 116. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this title shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

SEC. 117. COVERAGE OF HOUSE OF REPRESENTATIVES AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(b) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this title and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 301(c)(1).

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII for the Civil Rights Act of 1964 (42 U.S.C. 2000e-16).

SEC. 118. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

TITLE II—GLASS CEILING

SEC. 201. SHORT TITLE.

This title may be cited as the "Glass Ceiling Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" undertaken by the Department of Labor, including the release of the report entitled "Report on the Glass Ceiling Initiative", has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the management and decisionmaking levels in the United States work force;

(B) the underrepresentation of women and minorities in line functions in the United States work force;

(C) the lack of access for qualified women and minorities to credential-building developmental opportunities; and

(D) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which management and decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to management and decisionmaking positions;

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities; and

(8) employment quotas based on race, sex, national origin, religious belief, or disability—

(A) are antithetical to the historical commitment of the Nation to the principle of equality of opportunity; and

(B) do not serve any legitimate business or social purpose.

(b) PURPOSE.—The purpose of this title is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills management and decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

SEC. 203. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this title as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to management and decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, including—

(A) six individuals appointed by the President;

(B) six individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold management or decisionmaking positions in corporations or other business entities recognized as leaders on issues relating to equal employment opportunity; and

(C) possess academic expertise or other recognized ability regarding employment issues.

(3) BALANCE.—In making the appointments under subparagraphs (A) and (B) of paragraph (1), each appointing authority shall seek to include an appropriate balance of appointees from among the groups of appointees described in subparagraphs (A), (B), and (C) of paragraph (2).

(c) CHAIRPERSON.—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) TERM OF OFFICE.—Members shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code; and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 204. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO MANAGEMENT AND DECISIONMAKING POSITIONS IN BUSINESS.

(a) ADVANCEMENT STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to management and decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to management and decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which management and decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to management and decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to management and decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to management and decisionmaking positions in business.

(b) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the management and decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume management and decisionmaking positions;

(C) compensation programs and reward structures utilized to reward and retain key employees; and

(D) the use of enforcement (including such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(c) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to management and decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 205. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) IN GENERAL.—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "Frances Perkins-Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to management and decisionmaking positions.

(d) BUSINESS.—For the purposes of this section, the term "business" includes—

(1)(A) a corporation, including nonprofit corporations;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in subparagraphs (A) through (D);

(2) an education referral program, a training program, such as an apprenticeship or management training program or a similar program; and

(3) a joint program formed by a combination of any entities discribed in paragraph 1 or 2.

SEC. 206. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

(a) INDIVIDUAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 204 and 205, the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 208. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) TECHNICAL ASSISTANCE.—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title. The sums shall remain available until expended, without fiscal year limitation.

SEC. 210. TERMINATION.

(a) COMMISSION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

(b) AWARD.—The authority to make awards under section 205 shall terminate 4 years after the date of the enactment of this Act.

TITLE III—GOVERNMENT EMPLOYEE RIGHTS

SEC. 301. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) SHORT TITLE.—This title may be cited as the "Government Employee Rights Act of 1991".

(b) PURPOSE.—The purpose of this title is to provide procedures to protect the right of Senate and other government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) DEFINITIONS.—For purposes of this title:

(1) SENATE EMPLOYEE.—The term "Senate employee" or "employee" means—

(A) any employee whose pay is disbursed by the Secretary of the Senate;

(B) any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;

(C) any applicant for a position that will last 90 days or more and that is to be occupied by an individual described in subparagraph (A) or (B); or

(D) any individual who was formerly an employee described in subparagraph (A) or (B) and whose claim of a violation arises out of the individual's Senate employment.

(2) HEAD OF EMPLOYING OFFICE.—The term "head of employing office" means the individual who has final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the Senate employment of an employee.

(3) VIOLATION.—The term "violation" means a practice that violates section 302 of this title.

SEC. 302. DISCRIMINATORY PRACTICES PROHIBITED.

All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102–104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–14).

SEC. 303. ESTABLISHMENT OF OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES.

(a) IN GENERAL.—There is established, as an office of the Senate, the Office of Senate Fair Employment Practices (referred to in this title as the "Office"), which shall—

(1) administer the processes set forth in sections 305 through 307;

(2) implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader. The appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed. A Director may be reappointed at the termination of any term of service. The President pro tempore, upon the joint recommendation of the Majority Leader in consultation with the Minority Leader, may remove the Director at any time.

(2) SALARY.—The President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader, shall establish the rate of pay for the Director. The salary of the Director may not be reduced during the employment of the Director and shall be increased at the same time and in the same manner as fixed statutory salary rates within the Senate are adjusted as a result of annual comparability increases.

(3) ANNUAL BUDGET.—The Director shall submit an annual budget request for the Office to the Committee on Appropriations.

(4) APPOINTMENT OF DIRECTOR.—The first Director shall be appointed and begin service within 90 days after the date of enactment of this Act, and thereafter the Director shall be appointed and begin service within 30 days after the beginning of the session of the Congress immediately following the termination of a Director's term of service or within 60 days after a vacancy occurs in the position.

(c) STAFF OF THE OFFICE.—

(1) APPOINTMENT.—The Director may appoint and fix the compensation of such additional staff, including hearing officers, as are necessary to carry out the purposes of this title.

(2) DETAILEES.—The Director may, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, use on a reimbursable or nonreimbursable basis the services of any such department or agency, including the services of members or personnel of the General Accounting Office Personnel Appeals Board.

(3) CONSULTANTS.—In carrying out the functions of the Office, the Director may procure the temporary (not to exceed 1 year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) EXPENSES OF THE OFFICE.—In fiscal year 1992, the expenses of the Office shall be paid out of the Contingent Fund of the Senate from the appropriation account Miscellaneous Items. Beginning in fiscal year 1993, and for each fiscal year thereafter, there is authorized to be appropriated for the expenses of the Office such sums as shall be necessary to carry out its functions. In all cases, expenses shall be paid out of the Contingent Fund of the Senate upon vouchers approved by the Director, except that a voucher shall not be required for—

(1) the disbursement of salaries of employees who are paid at an annual rate;

(2) the payment of expenses for telecommunications services provided by the Telecommunications Department, Sergeant at Arms, United States Senate;

(3) the payment of expenses for stationery supplies purchased through the Keeper of the Stationery, United States Senate;

(4) the payment of expenses for postage to the Postmaster, United States Senate; and

(5) the payment of metered charges on copying equipment provided by the Sergeant at Arms, United States Senate.

The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out this title. Expenses of the Office shall include authorized travel for personnel of the Office.

(e) Rules of the Office.—The Director shall adopt rules governing the procedures of the Office, including the procedures of hearing boards, which rules shall be submitted to the President pro tempore for publication in the Congressional Record. The rules may be amended in the same manner. The Director may consult with the Chairman of the Administrative Conference of the United States on the adoption of rules.

(f) Representation by the Senate Legal Counsel.—For the purpose of representation by the Senate Legal Counsel, the Office shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978 (2 U.S.C. 288, et seq.).

SEC. 304. SENATE PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The Senate procedure for consideration of alleged violations consists of 4 steps as follows:

(1) Step I, counseling, as set forth in section 305.

(2) Step II, mediation, as set forth in section 306.

(3) Step III, formal complaint and hearing by a hearing board, as set forth in section 307.

(4) Step IV, review of a hearing board decision, as set forth in section 308 or 309.

SEC. 305. STEP I: COUNSELING.

(a) In General.—A Senate employee alleging a violation may request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the alleged violation forming the basis of the request for counseling occurred. No request for counseling may be made until 10 days after the first Director begins service pursuant to section 303(b)(4).

(b) Period of Counseling.—The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

(c) Employees of the Architect of the Capitol and Capitol Police.—In the case of an employee of the Architect of the Capitol or an employee who is a member of the Capitol Police, the Director may refer the employee to the Architect of the Capitol or the Capitol Police Board for resolution of the employee's complaint through the internal grievance procedures of the Architect of the Capitol or the Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.

SEC. 306. STEP II: MEDIATION.

(a) In General.—Not later than 15 days after the end of the counseling period, the employee may file a request for mediation with the Office. Mediation may include the Office, the employee, and the employing office in a process involving meetings with the parties separately or jointly for the purpose of resolving the dispute between the employee and the employing office.

(b) Mediation Period.—The mediation period shall be 30 days beginning on the date the request for mediation is received and may be extended for an additional 30 days at the discretion of the Office. The Office shall notify the employee and the head of the employing office when the mediation period has ended.

SEC. 307. STEP III: FORMAL COMPLAINT AND HEARING.

(a) Formal Complaint and Request for Hearing.—Not later than 30 days after receipt by the employee of notice from the Office of the end of the mediation period, the Senate employee may file a formal complaint with the Office. No complaint may be filed unless the employee has made a timely request for counseling and has completed the procedures set forth in sections 305 and 306.

(b) Hearing Board.—A board of 3 independent hearing officers (referred to in this title as "hearing board"), who are not Senators or officers or employees of the Senate, chosen by the Director (one of whom shall be designated by the Director as the presiding hearing officer) shall be assigned to consider each complaint filed under this section. The Director shall appoint hearing officers after considering any candidates who are recommended to the Director by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters. A hearing board shall act by majority vote.

(c) Dismissal of Frivolous Claims.—Prior to a hearing under subsection (d), a hearing board may dismiss any claim that it finds to be frivolous.

(d) Hearing.—A hearing shall be conducted—

(1) in closed session on the record by a hearing board;

(2) no later than 30 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 60 days the time for conducting a hearing; and

(3) except as specifically provided in this title and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code.

(e) Discovery.—Reasonable prehearing discovery may be permitted at the discretion of the hearing board.

(f) Subpoena.—

(1) Authorization.—A hearing board may authorize subpoenas, which shall be issued by the presiding hearing officer on behalf of the hearing board, for the attendance of witnesses at proceedings of the hearing board and for the production of correspondence, books, papers, documents, and other records.

(2) Objections.—If a witness refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with the proceedings of a hearing board, the hearing board shall rule on the objection. At the request of the witness, the employee, or employing office, or on its own initiative, the hearing board may refer the objection to the Select Committee on Ethics for a ruling.

(3) Enforcement.—The Select Committee on Ethics may make to the Senate any recommendations by report or resolution, including recommendations for criminal or civil enforcement by or on behalf of the Office, which the Select Committee on Ethics may consider appropriate with respect to—

(A) the failure or refusal of any person to appear in proceedings under this or to produce records in obedience to a subpoena or order of the hearing board; or

(B) the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under this section.

For purposes of section 1365 of title 28, United States Code, the Office shall be deemed to be a committee of the Senate.

(g) Decision.—The hearing board shall issue a written decision as expeditiously as possible, but in no case more than 45 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the employee and the employing office. The decision shall state the issues raised by the complaint, describe the evidence in the record, and contain a determination as to whether a violation has occurred.

(h) Remedies.—If the hearing board determines that a violation has occurred, it shall order such remedies as would be appropriate if awarded under section 706 (g) and (k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5 (g) and (k)), and may also order the award of such compensatory damages as would be appropriate if awarded under section 1977 and section 1977A (a) and (b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981A (a) and (b)(2)). In the case of a determination that a violation based on age has occurred, the hearing board shall order such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)). Any order requiring the payment of money must be approved by a Senate resolution reported by the Committee on Rules and Administration. The hearing board shall have no authority to award punitive damages.

(i) Precedent and Interpretations.—Hearing boards shall be guided by judicial decisions under statutes referred to in section 302 and subsection (h) of this section, as well as the precedents developed by the Select Committee on Ethics under section 308, and other Senate precedents.

SEC. 308. REVIEW BY THE SELECT COMMITTEE ON ETHICS.

(a) In General.—An employee or the head of an employing office may request that the Select Committee on Ethics (referred to in this section as the "Committee"), or such other entity as the Senate may designate, review a decision under section 307, including any decision following a remand under subsection (c), by filing a request for review with the Office not later than 10 days after the receipt of the decision of a hearing board. The Office, at the discretion of the Director, on its own initiative and for good cause, may file a request for review by the Committee of a decision of a hearing board not later than 5 days after the time for the employee or employing office to file a request for review has expired. The Office shall transmit a copy of any request for review to the Committee and notify the interested parties of the filing of the request for review.

(b) Review.—Review under this section shall be based on the record of the hearing board. The Committee shall adopt and publish in the Congressional Record procedures for requests for review under this section.

(c) Remand.—Within the time for a decision under subsection (d), the Committee may remand a decision no more than one time to the hearing board for the purpose of supplementing the record or for further consideration.

(d) FINAL DECISION.—

(1) HEARING BOARD.—If no timely request for review is filed under subsection (a), the Office shall enter as a final decision, the decision of the hearing board.

(2) SELECT COMMITTEE ON ETHICS.—

(A) If the Committee does not remand under subsection (c), it shall transmit a written final decision to the Office for entry in the records of the Office. The Committee shall transmit the decision not later than 60 calendar days during which the Senate is in session after the filing of a request for review under subsection (a). The Committee may extend for 15 calendar days during which the Senate is in session the period for transmission to the Office of a final decision.

(B) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, unless a majority of the Committee votes to reverse or remand the decision of the hearing board within the time for transmission to the Office of a final decision.

(C) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, if the Committee, in its discretion, decides not to review, pursuant to a request for review under subsection (a), a decision of the hearing board, and notifies the interested parties of such decision.

(3) ENTRY OF A FINAL DECISION.—The entry of a final decision in the records of the Office shall constitute a final decision for purposes of judicial review under section 309.

(e) STATEMENT OF REASONS.—Any decision of the Committee under subsection (c) or subsection (d)(2)(A) shall contain a written statement of the reasons for the Committee's decision.

SEC. 309. JUDICIAL REVIEW.

(a) IN GENERAL.—Any Senate employee aggrieved by a final decision under section 308(d), or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 308(d)(2)(B), may petition for review by the United States Court of Appeals for the Federal Circuit.

(b) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that—

(1) with respect to section 2344 of title 28, United States Code, service of the petition shall be on the Senate Legal Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, United States Code, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 308(d);

(4) the Office shall be an "agency" as that term is used in chapter 158 of title 28, United States Code; and

(5) the Office shall be the respondent in any proceeding under this section.

(c) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. The record on review shall include the record before the hearing board, the decision of the hearing board, and the decision, if any, of the Select Committee on Ethics.

(d) ATTORNEY'S FEES.—If an employee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

SEC. 310. RESOLUTION OF COMPLAINT.

If, after a formal complaint is filed under section 307, the employee and the head of the employing office resolve the issues involved, the employee may dismiss the complaint or the parties may enter into a written agreement, subject to the approval of the Director.

SEC. 311. COSTS OF ATTENDING HEARINGS.

Subject to the approval of the Director, an employee with respect to whom a hearing is held under this title may be reimbursed for actual and reasonable costs of attending proceedings under sections 307 and 308, consistent with Senate travel regulations. Senate Resolution 259, agreed to August 5, 1987 (100th Congress, 1st Session), shall apply to witnesses appearing in proceedings before a hearing board.

SEC. 312. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any employee by any Member, officer, or employee of the Senate, or by the Architect of the Capitol, or anyone employed by the Architect of the Capitol, as the case may be, because of the exercise of a right under this title constitutes an unlawful employment practice, which may be remedied in the same manner under this title as is a violation.

SEC. 313. CONFIDENTIALITY.

(a) COUNSELING.—All counseling shall be strictly confidential except that the Office and the employee may agree to notify the head of the employing office of the allegations.

(b) MEDIATION.—All mediation shall be strictly confidential.

(c) HEARINGS.—Except as provided in subsection (d), the hearings, deliberations, and decisions of the hearing board and the Select Committee on Ethics shall be confidential.

(d) FINAL DECISION OF SELECT COMMITTEE ON ETHICS.—The final decision of the Select Committee on Ethics under section 308 shall be made public if the decision is in favor of the complaining Senate employee or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee on Ethics may decide to release any other decision at its discretion. In the absence of a proceeding under section 308, a decision of the hearing board that is favorable to the employee shall be made public.

(e) RELEASE OF RECORDS FOR JUDICIAL REVIEW.—The records and decisions of hearing boards, and the decisions of the Select Committee on Ethics, may be made public if required for the purpose of judicial review under section 309.

SEC. 314. EXERCISE OF RULEMAKING POWER.

The provisions of this title, except for sections 309, 320, 321, and 322, are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. Notwithstanding any other provision of law, except as provided in section 309, enforcement and adjudication with respect to the discriminatory practices prohibited by section 302, and arising out of Senate employment, shall be within the exclusive jurisdiction of the United States Senate.

SEC. 315. TECHNICAL AND CONFORMING AMENDMENTS.

Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) through (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (2) and (3), respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking "(2) and (6)(A)" and inserting "(2)(A)", as redesignated by subparagraph (B) of this paragraph; and

(ii) by striking "(3), (4), (5), (6)(B), and (6)(C)" and inserting "(2)"; and

(2) in subsection (c)(2), by inserting ", except for the employees who are defined as Senate employees, in section 201(c)(1) of the Civil Rights Act of 1991)" after "shall apply exclusively".

SEC. 316. POLITICAL AFFILIATION AND PLACE OF RESIDENCE.

(a) IN GENERAL.—It shall not be a violation with respect to an employee described in subsection (b) to consider the—

(1) party affiliation;

(2) domicile; or

(3) political compatibility with the employing office,

of such an employee with respect to employment decisions.

(b) DEFINITION.—For purposes of this section, the term "employee" means—

(1) an employee on the staff of the Senate leadership;

(2) an employee on the staff of a committee or subcommittee;

(3) an employee on the staff of a Member of the Senate;

(4) an officer or employee of the Senate elected by the Senate or appointed by a Member, other than those described in paragraphs (1) through (3); or

(5) an applicant for a position that is to be occupied by an individual described in paragraphs (1) through (4).

SEC. 317. OTHER REVIEW.

No Senate employee may commence a judicial proceeding to redress discriminatory practices prohibited under section 302 of this title, except as provided in this title.

SEC. 318. OTHER INSTRUMENTALITIES OF THE CONGRESS.

It is the sense of the Senate that legislation should be enacted to provide the same or comparable rights and remedies as are provided under this title to employees of instrumentalities of the Congress not provided with such rights and remedies.

SEC. 319. RULE XLII OF THE STANDING RULES OF THE SENATE.

(a) REAFFIRMATION.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(b) AUTHORITY TO DISCIPLINE.—Notwithstanding any provision of this title, including any provision authorizing orders for remedies to Senate employees to redress employment discrimination, the Select Committee on Ethics shall retain full power, in accordance with its authority under Senate Resolution 338, 88th Congress, as amended, with respect to disciplinary action against a Member, officer, or employee of the Senate for a violation of Rule XLII.

SEC. 320. COVERAGE OF PRESIDENTIAL APPOINTEES.

(a) IN GENERAL.—

(1) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any Presidential appointee may file a complaint alleging a violation with the Equal Employment Opportunity Commission, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(ii) not made consistent with required procedures; or

(iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) ATTORNEY'S FEES.—If the presidential appointee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(b) PRESIDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 302 but does not include any individual—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or

(3) who is a member of the uniformed services.

SEC. 321. COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES.

(a) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any individual referred to in subsection (a) may file a complaint alleging a violation with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(c) JUDICIAL REVIEW.—Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(d) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) ATTORNEY'S FEES.—If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

SEC. 322. SEVERABILITY.

Notwithstanding section 401 of this Act, if any provision of section 309 or 320(a)(3) is invalidated, both sections 309 and 320(a)(3) shall have no force and effect.

SEC. 323. PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on his or her behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

SEC. 324. REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this section are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

SEC. 325. INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 309 and section 320, any Member of the Senate may intervene as a matter of right in any proceeding under section 309 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 309 or section 320, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may by taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 309 or 320.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

TITLE IV—GENERAL PROVISIONS

SEC. 401. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 402. EFFECTIVE DATE.

Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

TITLE V—CIVIL WAR SITES ADVISORY COMMISSION

SEC. 501. CIVIL WAR SITES ADVISORY COMMISSION.

Section 1205 of Public Law 101-628 is amended in subsection (a) by—

(1) striking "Three" in paragraph (4) and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ENFORCEMENT OF OILSEEDS GATT PANEL RULING

The PRESIDING OFFICER. Under the previous order, the Finance Committee is discharged from further consideration of Senate Resolution 201.

The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 201) to express the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will proceed to its immediate consideration.

The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, this is a sense-of-the-Senate resolution. Its purpose is to urge the administration to pursue the legal remedies available to our country under section 301 of the Trade Act. The facts are, in brief, as follows:

In December 1987, the American Soybean Association filed a 301 petition with the U.S. Trade Representative relating to subsidies on oilseeds and animal feed proteins by the European Community.

In December 1989, the GATT dispute settlement panel found in favor of the Soybean Association against the European Community.

In June 1991, the European Community Council of Ministers agreed that by October 31, 1991, it would comply with the GATT finding. However, the Commission of the European Community the following month announced a program of subsidies which would be approximately twice the world market price for oil seeds.

And therefore this sense-of-the-Senate resolution provides that if by October 31, 1991 the European Community Council of Ministers has not adopted a new oilseeds regime that is fully in conformity with its GATT obligations, the United States Trade Representative should immediately take action under section 301 to compensate for the trade losses caused by the European Community's failure to comply with the GATT panel ruling; and that the actions taken by the USTR should remain in full force and effect until such time as the European Community brings its oilseeds regime into conformity with its GATT obligations.

Mr. GRASSLEY. Mr. President, farmers are tired with the European Community's stonewalling on the reform of their oilseeds regime. Even before the GATT ruling in 1989, stating that the EC program violated international trade rules, the EC had continued to tell our representatives that a new system would be implemented soon. In fact, I do not believe that any neutral observer would be convinced that the EC has made a good faith effort to reform their oilseeds regime.

I am pleased to be a cosponsor of this resolution. It appears that Iowa may be the Nation's leader in the production of soybeans this year, which is America's most utilized oilseed. Exports are an important component of the price received by soybean farmers, and the EC's $12 billion export war chest easily dwarfs the $1 billion the United States is able to tap into for export assistance.

The EC has recently made moves to alter their Oilseeds Program. However, alter is a long way from reform. The changes they would make would likely result in paying EC farmers twice the world price for oilseeds. Clearly, this market-distorting plan will continue to encourage the overproduction and export of oilseeds and their byproducts. Right now, the EC program costs U.S. producers on the order of $2 billion a year in lost sales. This program is illegal, it should be abandoned immediately, and this resolution is an appropriate way for the United States to speak to this issue.

Mr. BAUCUS. Mr. President, I rise in strong support of this resolution.

EC oilseed subsidies are one manifestation of the EC's broad system of agricultural subsidies. Unfortunately, EC action in the oilseed sector is symptomatic of intransigence that threatens to undermine the Uruguay round of GATT negotiations.

In December 1989, a GATT dispute resolution panel directed the EC to reform its Oilseed Subsidy Program. The EC accepted this panel ruling in January 1990. Despite accepting the panel decision, the EC has done little to implement its international obligations.

The United States can no longer afford to tolerate EC footdragging. EC subsidies to oilseed producers will cost American farmers at least $2 billion a year in lost sales. This monetary loss translates directly into lost jobs.

U.S. credibility is at stake in our continuing dispute with the EC over oilseed subsidies. The EC promised last summer to reform its oilseed subsidy program by October 31, 1991. However, an EC plan to implement this promise continues to provide an unacceptable level of subsidization.

It is time for the Congress to send Europe a strong message: Either the EC lives up to its multilateral obligations and reforms its oilseed subsidies, or the United States takes unilateral action under section 301.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered on this resolution.

Mr. DANFORTH. Mr. President, I yield a minute to the Senator from Missouri.

Mr. BOND. Mr. President, I thank my colleague.

Mr. President, I rise in strong support of the resolution offered by my distinguished colleague from Missouri, Senator DANFORTH, and Senator PRYOR and others. This resolution expresses the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

Mr. President, I would like to stand up here today and tell you that everything is just fine with the American Soybean industry, but frankly, it is not. Plain and simple: The Europeans continue to drag their feet on reform of their oilseed regime. The EC's proposal to reform its oilseed subsidy system falls short of instituting any meaningful reforms.

While the European Community [EC] has expanded its oilseed exports, U.S. exports have fallen, domestic stocks have risen and prices for both oilseeds and oil have dropped. The ability of the EC to produce and export oilseeds is entirely dependent on subsidies. It is time the administration recognize that the EC has no intention of complying with its GATT commitments to reform its GATT illegal oilseed subsidy regime. It is clear to me and the Nation's soybean farmers that nothing less than certain retaliation against EC exports to the United States will convince the EC that the United States is completely serious. We will accept nothing less than the EC reforming its oilseed subsidy regime as it is required to do as a GATT signatory.

As the resolution indicates, the American Soybean Association [ASA] representing all U.S. soybean farmers, filed a section 301 petition against the EC in December 1987. The petition charged that the EC was impairing its duty-free bindings on soybeans and soybean meal by providing lucrative subsidies to growers and processors of EC-origin soybeans, rapeseed, and sunflower seed. The ASA petition was accepted by the Reagan administration in January 1988 and actively pursued through the GATT and in consultations with the EC.

In January 1989 the GATT Council of Ministers adopted a report of a dispute settlement panel that had considered the merits of the charges contained in the American Soybean Association's section 301 petition. The GATT Dispute Settlement Panel ruled that EC subsidies are a violation of GATT trading rules. As my colleague from Missouri pointed out, the EC accepted the results of the dispute settlement panel when it was presented to the GATT Council in January 1989. In so doing the EC agreed to bring its oilseed regime into compliance with the GATT and to eliminate the impairment of its duty-free bindings. Tomorrow will be October 31, 1991, Halloween, and the EC continues to play tricks with their oilseed policies.

Soon, it will be 4 years since the ASA's section 301 petition was filled with USTR and 2 years since the EC's oilseed regime was found to be GATT-Illegal. Yet, the EC has yet to take action to come into compliance. Quite the opposite has occurred in fact. In 1986–87 marketing year, the time when ASA filed its petition, the EC produced a total of 6.9 million metric tons [MMT] of oilseeds. This year, the EC is expected to produce over 12 MMT of oilseeds, the largest crop in its history.

The EC budgeted the equivalent of $9 billion in 1990–91 to pay the cost of its subsidies for the production of oilseeds, protein crops, and olive oil, directly affecting demand in Europe for United States soybeans and soybean meal. That's almost as much as the United States spent in fiscal year 1991 on all domestic farm income and price supports. This year the EC is expected to export well over 1 MMT of highly subsidized rapeseed oil to markets previously supplied with U.S. soybeans and soybean oil.

It is important to consider the extent of the EC's subsidies. Here in the United States we guarantee our soybean farmers $4.92 for each bushel of soybeans they grow and 8½ cents per pound for each pound of sunflower seed and rapeseed they grow. That is below the cost of production for many farmers and well below the normal market price for those crops. In Europe farmers receive the excess of $12 to $15 per bushel for all of their soybeans and almost 20 cents per pound for each pound of rapeseed and sunflower seed they grow. By reimbursing EC oilseed processors for the higher price they must pay EC farmers for oilseeds, the EC is able to sell at a cost lower than the EC processors can purchase U.S. soybeans. United States soybeans and soybean meal simply cannot compete in the European market with EC-origin oilseeds. I ask my colleagues, what would be the reaction from the EC if we adopted their policy for oilseeds and applied it to wine? Without question they would retaliate.

This summer the EC promised U.S. Trade Representative Carla Hills and Secretary of Agriculture Ed Madigan that it would adopt a new Oilseeds Program that complied with the GATT panel's ruling by October 31 of this year. In August the EC's proposed oilseed plan was unveiled. The EC's plan for compliance with the December 1989, GATT panel's ruling merely continues the excessive oilseed subsidies of the past.

Mr. President, I am fed up with the EC's continued uncompromising position on the oilseeds case as well as with just about every other agricultural issue. The EC has had 2 years to make acceptable reforms. In the meantime, U.S. soybean farmers and processors are losing at least $1.5 billion annually in sales to the EC. It is my view that the EC will keep on stealing our soybean farmers' and processors' market in Europe if we do not retaliate.

Our soybean farmers and soybean processors should not have to wait any longer for the EC to act on the oilseeds issue. They have waited far too long already. The way to get ahead of the EC is to get behind the American producer. The administration must retaliate against the EC by taking action under section 301 to impose prohibitive import duties on no less than $1.5 billion in EC exports to the United States. Through such retaliation the United States will make the EC pay an economic price for its failure to make acceptable reforms and provide a reason for the EC to compete fairly. I urge my colleagues to support this resolution.

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. FOWLER. Mr. President, I yield time to myself.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I will be uncharacteristically brief. Both Senators from Missouri stated the case for this resolution. They have my support. I hope my colleagues will join in the passage.

Mr. DURENBERGER. Mr. President, I join the distinguished senior Senator from Missouri [Mr. DANFORTH] in urging all of my colleagues to support this resolution affirming our rights under the GATT in relation to the unfair European Community trade subsidy policies as applied to soybeans.

Mr. President, for more than 5 years, the United States has been engaged in on-again, off-again, negotiations with all of the world's major trading nations at the Uruguay round of the GATT. Last December, our trade representatives walked out of the negotiations because the European Community refused to budge on the onerous and distorting agriculture subsidy policies that have cost American farmers billions of dollars in lost sales. At that time, I commended the administration for holding firm against the EC.

But Mr. President, even if we do ultimately achieve a breakthrough at the Uruguay round, the question remains how any commitments under the GATT will be enforced. The history of the oilseeds case clearly demonstrates that the current enforcement regime is unworkable.

Four years ago, the American Soybeans Association filed a section 301 petition charging that the European Community's production and processing subsidies on oilseeds and animal feed proteins were inconsistent with GATT and nullified the EC's duty-free bindings granted to the United States in 1962. After more than a year of fruitless negotiations, the U.S. Trade Representative took the dispute to a GATT Council dispute settlement panel.

In December 1989 the GATT panel found that the EC's oilseeds subsidies violated the GATT. Although the EC accepted the GATT panel ruling and committed to reforming its oilseeds regime, so far the EC has failed to live up to its commitment. The new oilseeds regime proposed by the Commission of the EC continues to provide unacceptably high subsidies for oilseeds, guaranteeing EC producers a return of approximately twice the world market price for oilseeds, and continues to impair the benefit of the duty-free bindings granted to the United States nearly 30 years ago.

Mr. President, it is estimated that the EC's existing oilseeds subsidy policy has cost the U.S. soybean farmer at least $1.5 to $2 billion a year in lost sales. This is intolerable.

This resolution sends a clear and direct signal to the EC, and all of our trading partners. The United States will no longer tolerate endless promises of reform and market access, followed by nothing but empty gestures and the same old subsidy-as-usual policy. We must exercise our rights under the GATT and under section 301 to remedy this fundamental inequity that our soybean farmers continue to face.

Mr. GRASSLEY. Mr. President, farmers are tired with the European Community's stonewalling on the reform of their oilseeds regime. Even before the GATT ruling in 1989, stating that the EC program violated international trade rules, the EC has continued to tell our representatives that a new system would be implemented soon. In fact, I do not believe that any neutral observer would be convinced that the EC has made a good faith effort to reform their oilseeds regime.

I am pleased to be a cosponsor of this resolution. It appears that Iowa may be the Nation's leader in the production of soybeans this year, which is America's most utilized oilseed. Exports are an important component of the price received by soybean farmers, and the EC's $12 billion export war chest easily dwarfs the $1 billion the United States is able to tap into for export assistance.

The EC has recently made moves to alter their oilseeds program. However, alter is a long way from reform. The changes they would make would likely result in paying EC farmers twice the world price for oilseeds. Clearly, this market-distorting plan will continue to encourage the overproduction and export of oilseeds and their byproducts. Right now, the EC program costs U.S. producers on the order of $2 billion a year in lost sales. This program is illegal, it should be abandoned immediately, and this resolution is an appropriate way for the United States to speak to this issue.

Mr. WELLSTONE. Mr. President, I join as cosponsor to this resolution out of a determination to ensure that trade agreements serve their intended purpose: To bring nations into compliance with rules of free and fair trade, and to end damaging, trade-distorting practices, especially in the agricultural realm.

On the eve of what some say may be breakthroughs in Uruguay round agricultural trade negotiations under the auspices of GATT, I want to express my commitment to seeing that U.S. agricultural producers are not harmed by other countries' noncompliance with present GATT rules, nor by deals cut in ongoing negotiations which will leave our producers at an unfair competitive disadvantage.

The facts in this oilseeds case are quite clear. I joined many of my colleagues last April in writing to the President on the matter. Although the European Community has altered its oilseeds policy, the Community still is not in compliance with its GATT obligations.

Minnesota is the No. 3 soybean producing State in the country. Oil crop sales generate about $1 billion in annual sales for Minnesota producers. I want to send a clear signal that in this sector, as in others, Europe must comply with GATT panel rulings. I also want to send a signal that this Senate is paying close attention to agricultural trade matters, and will not stand for measures that harm our producers.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. Mr. President, I yield back the remainder of my time.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the vote on Senate Resolution 201 occur immediately; that immediately upon disposition of that resolution the Senate proceed to the conference report on H.R. 2686, the Interior appropriation bill; and that the vote on the conference report occur immediately thereafter without any intervening action or debate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, let me say that there will now be two rollcall votes, one on Senate Resolution 201, to be followed immediately by a vote on the conference report on the Interior appropriations bill. That second vote will be the last rollcall vote this evening. We will then deal with the amendments in disagreement tomorrow.

I have been discussing this with the distinguished chairman of the Appropriations Committee, and following consultation with the Republican leader, I hope to propound a proposed agreement to govern that bill tomorrow, or some portions of that bill, and other matters that will be discussed tomorrow.

VOTE

The PRESIDING OFFICER. The question is on agreeing to Senate Resolution 201. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—97

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Bradley
Breaux
Brown
Bryan
Bumpers
Burdick
Burns
Byrd
Chafee
Coats
Cochran
Cohen
Conrad
Craig
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Gorton
Graham
Gramm
Grassley
Hatch
Hatfield
Heflin
Helms
Hollings
Inouye
Jeffords
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Robb
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Seymour
Shelby
Simon
Simpson
Smith
Specter
Stevens
Symms
Thurmond
Wallop
Warner
Wellstone
Wirth

NAYS—0

NOT VOTING—3

Harkin
Kerrey
Wofford

So the resolution (S. Res. 201) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 201

Whereas in 1962, the European Community agreed to duty-free bindings on imports of oilseeds and oilcakes, including those exported from the United States;

Whereas in December 1987, the American Soybean Association filed a section 301 petition with the United States Trade Representative charging that the European Community's production and processing subsidies on oilseeds and animal feed proteins were inconsistent with the General Agreement on Tariffs and Trade (GATT), and nullified and impaired the European Community's duty-free bindings granted to the United States in 1962;

Whereas in May 1988, after consultations failed to result in a satisfactory resolution of this dispute, the United States Trade Representative requested the GATT Council of Representatives to establish a dispute settlement panel to consider the matter;

Whereas in July 1988, the United States Trade Representative determined that the rights of the United States under the GATT were being denied by the European Community's oilseeds subsidies;

Whereas in December 1989, the GATT dispute settlement panel found that the European Community's oilseeds subsidies were inconsistent with its GATT obligations regarding national treatment, and nullified and impaired the benefit of the duty-free bindings granted to the United States in 1962;

Whereas in January 1990, the European Community accepted the GATT panel ruling and committed to reforming its oilseeds regime to bring it into conformity with its GATT obligations beginning in the 1991 crop year;

Whereas in June 1991, the European Community Council of Ministers agreed that it would adopt by October 31, 1991, a new oilseeds regime that would bring the European Community into conformity with its GATT obligations;

Whereas the new oilseeds regime proposed by the Commission of the European Community would continue to provide unacceptably high subsidies for oilseeds, guaranteeing European Community producers a return of approximately twice the world market price for oilseeds, and would continue to nullify and impair the benefit of the duty-free bindings granted to the United States in 1962; and

Whereas the European Community's existing oilseeds regime is seriously injuring the United States economy and is estimated to cost United States farm interests at least $2 billion annually in lost sales: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) if by October 31, 1991, the European Community Council of Ministers has not adopted a new oilseeds regime that is fully in conformity with its GATT obligations, the United States Trade Representative should immediately take action under section 301 to compensate for the trade losses caused by the European Community's failure to comply with the GATT panel ruling; and

(2) the actions taken by the United States Trade Representative under section 301 should remain in full force and effect until such time as the European Community brings its oilseeds regime into conformity with its GATT obligations.

Mr. FORD. Mr. President, I ask unanimous consent that I be listed as a cosponsor on Senate Resolution 201.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1992—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the conference report on H.R. 2686 which the clerk will report.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2686) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 17, 1991.)

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The President pro tempore is recognized.

Mr. BYRD. I thank the Chair. Mr. President, the Senate will vote shortly on the adoption of the conference report on the Interior appropriations bill. No amendments in disagreement will be taken up this evening. There are one or two or three, I assume, amendments in disagreement. There will be one or more rollcall votes in connection with those amendments in disagreement tomorrow.

I shall put my statement concerning the conference report in the RECORD by unanimous consent and, to accommodate Members, as I have already indicated and as the majority leader has indicated, the vote on the conference report will occur tonight. It has to be voted up or down before we can get to the amendments in disagreement. If it is voted down, we will not get to it. If it is voted up, then we will get to them on tomorrow.

I believe the majority leader has indicated and Senator HELMS has indicated that he will be ready to go on his NEA amendment tomorrow, which he hopes to add to an amendment in disagreement. So there will be no further action on this conference report tonight. However, Senators may stay, if they wish, and talk on the conference report and the amendments. I know of one Senator who will want to do that.

Mr. President, I bring before the Senate today the conference report on H.R. 2686, the fiscal year 1992 Department of the Interior and related agencies appropriation bill.

The allocations for the Interior Subcommittee total $13.102 billion in budget authority and $12.050 billion in outlays. This bill is right at its allocation with respect to outlays, as scored by the Congressional Budget Office. Because of scoring differences between CBO and the Office of Management and Budget on firefighting and various other programs, the conferees have had to report a bill which is substantially below the CBO ceiling for budget authority in order that the bill would comply with the OMB scoring limits.

Mr. President, reaching our outlay target was not an easy task. Despite a series of painful reductions and eliminations of specific projects before the conferees, it was still necessary to include an across-the-board reduction of 1.26 percent in order to stay within the budget authority and outlays allocations.

I repeat that no outlays remain available, so any amendment for additional spending would not be in order under section 602(b) of the Budget Act.

This bill has been the subject of a great deal of scrutiny. Most Members have a direct interest in projects in the bill which affect their States, as well as in policy issues involving public lands, energy, and the arts.

The conferees on this bill met on four different days. Those formal discussions were preceded by 21 days of preconference negotiations. The bill passed by the Senate had 226 numbered amendments that had to be resolved. Moreover, the discrete differences addressed by the conferees totaled some 1,900 items. The conference agreement, by its nature, is a compromise. It will not satisfy all Members in every respect. However, it is time to complete action on this bill.

Given the numerous differences which I have noted, the lengthy period of time which it has taken to bring this conference agreement to the Senate, and the fact that we are already 1 month into the fiscal year, I urge my colleagues to avoid further disagreement with the House and to expedite the transmittal of this fiscal year 1992 Department of the Interior and related agencies appropriation bill to the President.

This Interior bill was difficult to fashion, given the tight budgetary constraints. The 602(b) outlay allocation for the subcommittee is $213 million less than the amount proposed by the President. New outlays in this bill are down some 8.1 percent below the CBO baseline for fiscal year 1992. So, this bill is fiscally responsible.

Mr. President, Senator NICKLES and I have worked well and closely together in protecting the Senate positions during this conference. I believe that the bill represents a bipartisan package. Every member of the Senate expressed an interest in at least one project or program in this bill. There is not enough money available to satisfy all of the more than 3,000 requests received by the Senate subcommittee and the many other requests that were proposed in the House.

I would like to call attention to some items of interest in the conference agreement.

The conferees funded fully the administration's request for presuppression activities related to firefighting on Federal lands, and established new emergency firefighting accounts to deal with the actual emergencies that occur once fires begin to burn. The tragic experience recently in Oakland and Berkeley, CA, brought to the forefront the devastations possible as a result of continued severe drought and pest infestation in the West.

Consistent with the position passed in the Senate by a vote of 60 to 38, no increase in the grazing fee is recommended in this appropriation bill. The managers did include report language encouraging the authorizing committees to take action to resolve this matter and other contentious public lands policy issues.

With respect to the National Endowment for the Arts, the conferees reinforce the directions provided under the authorizing statute for the NEA. These provisions state directly that obscenity is without artistic merit and should not be funded.

Total funding in the bill for land acquisition and State assistance is $321.4 million. This amount is $20.2 million below the fiscal year 1991 appropriation and $28.8 million below the President's request for fiscal year 1992.

Total funding for construction in the Bureau of Land Management, the Fish and Wildlife Service, the Park Service, and the Forest Service, amounts to $680.2 million. This total is $24.7 million above the fiscal year 1991 appropriation for these same construction accounts. So, in total, for land acquisition and construction accounts in these four agencies, we are essentially at last year's level.

Elsewhere, for Indian construction related to education, health clinics, and basic services, the conferees have recommended a total of $484 million, which is an increase of $340.7 million over the budget request.

With respect to other program and policy issues under the jurisdiction of the subcommittee, I offer the following highlights.

All House-passed bill language related to Outer Continental Shelf oil and gas leasing moratoria is retained.

Significant operating increases and facility construction funds are provided to address the most critical health and safety needs for our native American population.

A reduction of nearly $37 million is taken in the timber road construction program. This decrease is about 20 percent below the similarly funded programs last year.

And, lastly, no specific legislative protection is included regarding timber harvest and the spotted owl in the Pacific Northwest. Nor does this bill modify the Endangered Species Act in any way.

Mr. President, I would also like at this point to clarify or correct several items addressed in the Statement of the Managers.

With respect to Indian programs in the Bureau of Indian Affairs, on page 46 of the statement contained in House report 102-256, the managers outlined the program for new Indian school construction. In the printing of the statement, under item No. 1, the fiscal year is omitted. The statement should reference the fiscal year 1992 priority list.

The managers agreed to provide $12,500,000 in essential tribal services. On page 42 of the statement, the managers discuss that tribes receiving restorations of $100,000 or more of fiscal year 1991 add-ons are not eligible for the essential tribal services money provided in fiscal year 1992. The intention of the managers is not to treat tribes receiving restorations differently than tribes whose fiscal year 1991 add-ons were continued in the President's fiscal year 1992 request. Thus, the managers intend that tribes retaining $100,000 or more of fiscal year 1991 add-ons, whether through the fiscal year 1992 budget request or congressional restoration, would not be eligible for essential tribal services funding in fiscal year 1992.

With respect to the land acquisition program of the Bureau of Land Management, the Statement of the Managers, on page 13, mistakenly, identifies an allowance of $750,000 for a Central Pacific Railroad parcel in Utah. Those funds are actually for the Central Valley Wetlands in California. No funds were provided in this bill for the former project.

Also, in the Forest Service land acquisition program, an amount of $3,499,000 is included for the Toiyabe National Forest. Of that amount, $1,000,000 is intended for the purchase of the fiberboard parcel and it would be my hope that the Congress will complete the purchase of the other parcel; Hope Valley, next year.

The managers have included no funds in the National Park Service construction account for the planning of the Denali southside visitor facilities because the Service has provided information indicating that the environmental impact statement associated with this project will not be completed in fiscal year 1992. This environmental impact statement is to be completed, within available funds, as expeditiously as possible and in no case later than November 1, 1992. The Service is expected to provide the Committees on Appropriations with a quarterly progress report on the efforts to complete the environmental impact statement for the southside visitor facilities.

Also in the National Park Service construction account, the conference agreement includes funding for several projects which, although not owned by the Park Service, are to be accomplished using the Secretary's authorities under the Historic Sites Act of 1935. Among others these projects include: Lane and Fisk Colleges, Montpelier, the New Jersey Urban History Project, Penn Center, and Kennicott. By including funding for these specific projects in this appropriation bill, the Congress has determined that these projects, all of which are on the National Register of Historic Places, are nationally significant properties.

Mr. President, I would like to clarify that the general reduction of $1,625,000 proposed for Fish and Wildlife Service research in the conference agreement should be applied on a pro rata basis to all projects or activities within the $85,588,000 provided for research.

Elsewhere, the Statement of the Managers on page 76 under item 7 reiterates the requirement for a December 1, 1991, report related the a generic heat exchanger facility. That report should be provided in the form of a public assessment document which should be made generally available.

Mr. President, in closing I would like to note that it has been my pleasure to work with Senator NICKLES throughout this appropriations cycle and especially in negotiating with the House conferees on the conference report before the Senate today. This is our first year working together as a team on the Interior bill and I appreciate the insights and help that Senator NICKLES has offered as the ranking member. In addition to this being Senator NICKLES' first time through as a manager of the Interior bill, this was also the first year on the Appropriations Committee for his staff, Cherie Cooper, and I commend both of them for their efforts and thoroughness.

In summary, Mr. President, I am not entirely happy with the conference agreement as modified by the House and sent to the Senate. But it is time to send this bill to the President. Any further disagreement with the proposals before us now will only further delay this important bill. Such disagreement may open the bill to even further disagreements in the House. For example, the grazing issue conceivably could be revived in the House if we return an amendment in disagreement.

Mr. President, one of the modifications adopted by the House affected the Hardwoods Training and Flexible Manufacturing Center in Mercer County, WV. This project was characterized in the other body as benefiting just West Virginia. I would like to clarify that this is not the case. The center will benefit the entire hardwoods industry, which exists throughout Appalachia. The proposed training and flexible manufacturing center seeks to provide greater domestic processing of the hardwood resources of this country. Far too many of this Nation's timber resources are exported and processed abroad. Many small timber companies are unable to process their resources as a result of insufficient capital to invest in the necessary processing equipment. The proposed center would allow for use by industry, on a time-shared basis, of equipment that will allow them to manufacture products rather than having to export the product for processing elsewhere. This would retain the economic benefit in the domestic market.

So, I urge the Senate to adopt the conference report and amendments thereto as proposed by the House.

I will yield to Senator NICKLES for any remarks he cares to make.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I am pleased to support the chairman's remarks and his introduction of the conference committee report for the fiscal year 1992 Interior appropriations bill. I want to thank the chairman for his efforts in bringing the conference report to the Senate floor. Senator BYRD had made my first year as ranking member on this subcommittee much easier by providing me assistant and guidance through the process. I wish to express my sincere appreciation for Senator BYRD's help in the process. It is with his leadership that we are able to present a fine, balanced product with attentive consideration to the member requests.

A tremendous amount of work and energy has gone into putting this bill together this year. There were 226 amendments in the Interior bill and approximately 2,000 items of difference between the House and Senate bills. I am told that we have set records of longevity while working our way to the conclusion of the conference report that we submit to you today. We have faced challenges such as a moratorium on mining patents, compromises of energy-related matters, the setting of timber sale program levels, grazing fee increases, the National Endowment for the Arts amendments and others.

The conference report is within the 602(b) allocations of $13.102 billion for budget authority and $12.05 billion for outlays. The budget authority in this conference report has increased only by 1.2 percent over the fiscal year 1991 appropriation. Outlays have increased by 1 percent. The conference material before you presents the meshing of the priorities from both Houses, attention to agency needs, and consideration for Member requests. The decisions that are being made in this bill are not just for fiscal year 1992. Our recommendations, while at the allocation limits, carefully balance appropriations and revenue generation impacts in fiscal year 1992 and in future years. The conference committee's recommendations will contribute to a balanced Federal budget while continuing to provide the expected Government services.

During our conference deliberations, deep concerns have been expressed over the changing uses of public lands and its resources. Such shifts have drastic effects on local rural communities and economies and on the funding of local governments. While keeping within our limitations, the conferees have recognized the importance of programs to employment, the economies, the infrastructure, and the social fabric of many rural communities. I believe we have been able to produce a bill which is acceptable to the administration.

Mr. President, again I wish to thank the chairman with whom I have worked very closely. I wish to express my appreciation to Senator BYRD's staff: Charlie Estes, Sue Masica, Rusty Mathews, Carla Burzyk, and Ellen Donaldson. The Senator from West Virginia and his staff have made this a bipartisan effort which makes the task certainly much easier and achievable.

Mr. DURENBERGER. Mr. President, I rise in support of the conference report on the Interior and related agencies appropriations bill. I am thankful for the number of Minnesota projects that were funded in this bill, especially given the fiscal constraints under which the Appropriations Committee was working.

I would like, however, to reiterate my commitment to two projects that I addressed in a colloquy with my colleague from Oklahoma, Senator NICKLES, in September. Specifically, they are the Grand Portage Visitors Center and the Upper Mississippi River Environmental Education Center.

The Grand Portage Visitors Center received planning money by the full Appropriations Committee in 1986 and 1990. This project is now ready for construction, and I want to remind the committee that I will be seeking funding for this worthy project again next year.

Second, regarding the Upper Mississippi River Environmental Education Center. I want to remind the committee of my interest in this project, as evidenced by my introduction of S. 1048, a bill authorizing appropriations for this project. I hope to enact this legislation in a timely fashion and would appreciate the committee's consideration of this project at that time.

Thank you, Mr. President. I yield the floor.

Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 2686, the Interior appropriations bill and has found that the bill is under its 602(b) budget authority allocation by $210 million and under its 602(b) outlay allocation by $1 million.

I compliment the distinguished manager of the bill Senator BYRD, and the distinguished ranking member of the Interior Subcommittee, Senator NICKLES on all of their hard work.

Mr. President, I have a table prepared by the Budget Committee which shows the official scoring of the Interior appropriations bill and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 2686, INTERIOR SUBCOMMITTEE—SPENDING TOTALS

[Conference; in billions of dollars]

Bill summary	Budget authority	Outlays
H.R. 2686:		
New BA and outlays	12.3	7.9
Enacted to date	.7	4.2
Adjustment to conform mandatory programs to resolution assumptions		
Scorekeeping adjustments	0	0
Bill total	13.0	12.1
Senate 602(b) allocation	13.2	12.1
Total difference	−.2	
Discretionary:		
Domestic	12.9	12.0
Senate 602(b)	13.1	12.1
Difference	−.2	
International	0	0
Senate 602(b)	0	0
Difference	0	0
Defense	0	0
Senate 602(b)	0	0
Difference	0	0
Total Discretionary spending	12.9	12.0
Mandatory spending	.1	.1
Mandatory allocation	.1	.1
Difference	0	0
Discretionary total above (+) or below (−):		
President's request	.8	−.2
House-passed bill	−.4	−.1
Senate-passed bill	−.1	−.1

Mr. ADAMS. Mr. President, I rise to support the conference report on H.R. 2686, the Interior and related agencies appropriations bill for 1992.

I want to thank Chairman BYRD and the conferees for their hard work under particularly difficult circumstances this year. I want to especially thank them for appropriations very important to my home State of Washington.

Included was $10.169 million for the Mount St. Helens Volcanic Monument. These funds are critical to allow construction to keep pace with overwhelming increases in visitation and to protect the monument's unique resources and ongoing research programs. This appropriation will match a bold and substantial offer by Cowlitz County of an additional $500,000 to keep construction of the project on schedule.

Mr. President, I also want to thank the committee for providing $1.6 million for the purchase of McGlynn Island for the Swinomish Tribe. The land acquisition will protect a pristine island for generations to come. I also thank the committee for including $125,000 for the Makah Tribal Fisheries program in my State.

I am especially pleased with the increases in BLM resource management funds for the Lake Creek project near Odessa, WA. These funds are needed to restore important wetlands and provide public access, recreational, and educational programs. My request was for $400,000 and I understand a significant portion of the general increases are to be used for the Lake Creek project.

There are numerous other requests the conferees honored. I will not go into each request here, but just let me say I appreciate the cooperation and evenhandedness displayed in crafting this bill.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 4, as follows:

[Rollcall Vote No. 240 Leg.]

YEAS—93

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Bradley
Breaux
Bryan
Bumpers
Burdick
Burns
Byrd
Chafee
Coats
Cochran
Cohen
Conrad
Craig
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Gorton
Graham
Gramm
Grassley
Hatch
Hatfield
Heflin
Hollings
Inouye
Jeffords
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Robb
Rockefeller
Rudman
Sanford
Sarbanes
Sasser
Seymour
Shelby
Simon
Simpson
Specter
Stevens
Symms
Thurmond
Wallop
Warner
Wellstone
Wirth

NAYS—4

Brown
Helms
Roth
Smith

NOT VOTING—3

Harkin
Kerrey
Wofford

So the conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, this request has been cleared with Senator NICKLES, my colleague on the Appropriations Subcommittee on the Department of the Interior. It has his approval.

I ask unanimous consent that the Senate concur en bloc with the amendments of the House to the amendments of the Senate with the exception of amendments Nos. 164, 167, and 191.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendments of the House to the amendments of the Senate agreed to en bloc are as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 1 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$538,940,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 6 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the date named in said amendment, insert "October 1, 1992".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken by said amendment, amended to read as follows:

EMERGENCY DEPARTMENT OF THE INTERIOR FIREFIGHTING FUND

For the purpose of establishing an "Emergency Department of the Interior Firefighting Fund" in the Treasury of the United States to be available only for emergency rehabilitation and wildfire suppression activities of the Department of the Interior, $100,869,000, to remain available until expended: *Provided*, That all funds available under this head are hereby designated by Congress to be "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That hereafter, beginning in fiscal year 1993, and in each year thereafter, only amount for emergency rehabilitation and wildfire suppression activities that are in excess of the average of such costs for the previous ten years shall be considered "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, and such amounts shall hereafter be so designated.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$90,274,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 16 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided*, That none of the funds in this Act may be expended to reintroduce wolves in Yellowstone National Park and Central Idaho".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 18 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$114,895,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 19 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken by said amendment, insert "of which $400,000 shall be available for expenses to carry out the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g) and of which $13,000,000 for Walnut Creek NWR, IA shall be made available on September 30, 1992."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 24 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$100,117,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 26 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

"NORTH AMERICAN WETLANDS CONSERVATION FUND

"For expenses necessary to carry out the provisions of the North American Wetlands Conservation Act, P.L. 101–233, in fiscal year 1992 and thereafter, amounts above $1,000,000 received under section 6 of the Migratory Bird Treaty Act (16 U.S.C. 707) as penalties or fines or from forfeitures of property or collateral, but not to exceed $12,000,000, to remain available until expended.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 32 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken, amended to read as follows: ": *Provided further*, That hereafter appropriations for maintenance and improvement of roads within the boundary of the Cuyahoga Valley National Recreation Area shall be available for such purposes without regard to whether title to such road rights-of-way is in the United States: *Provided further*, That notwithstanding any other provision of law, hereafter the National Park Service may make road improvements for the purpose of public safety on Route 25 in New River Gorge National River between the towns of Glen Jean and Thurmond".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 33 to the aforesaid bill, and concur therein with an amendment as follows: ": *Provided further*, That of the funds provided herein, $65,000 is available for a cooperative agreement with the Susan LaFlesche Picotte Center".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 34 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the number "fifteen" in said amendment insert "ten".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 37 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$23,090,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 39 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$275,801,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 40 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$8,440,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 41 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken, amended to read as follows: ": *Provided further*, That of the funds provided under this heading, $1,400,000 shall be available for site acquisition and site preparation for the Lincoln Center in Springfield, Illinois: *Provided further*, That up to $376,000 of the funds provided under this head, to be derived from the Historic Preservation Fund, established by the Historic Preservation Act of 1966 (80 Stat. 915), as amended (16 U.S.C. 470), shall be available until expended for emergency stabilization of the Kennicott, Alaska copper mine, such funds to be transferred to the Alaska State Historic Preservation Office".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 52 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: ": *Provided further*, That Federal funds available to the National Park Service may be used for improvements to the National Park Service rail excursion line between milepost 132.7 and 120.55 located in Northeastern Pennsylvania".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 55 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$590,054,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 63 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$176,690,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 64 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$101,682,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 65 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$111,100,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 68 to the aforesaid bill, and concur therein with amendments as follows: In lieu of the matter stricken by said amendment, insert: ": *Provided*, That of the funds herein provided up to $22,000,000 may be used for the emergency program authorized by Section 410 of Public Law 95–87, as amended, of which no more than 20 percent shall be used for emergency reclamation projects in any one State and funds for federally administered emergency reclamation projects under this proviso shall not exceed $15,000,000: *Provided further*, That 23 full-time equivalent positions are to be maintained in the Anthracite Reclamation Program at the Wilkes-Barre Field Office".

On page 26 beginning on line 9 of the House engrossed bill, H.R. 2686, strike: "of which, notwithstanding any other provision of law, the following amounts shall be available to carry out the various provisions of section 402(g) of Public Law 95–87, as amended (30 U.S.C. 1232(g))".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 69 to the aforesaid bill, and concur therein with an amendment as follows: After the word "*Provided*" in said amendment, insert "*further*".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 76 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$75,912,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 86 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment: "*Provided further*, That until such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation, nor shall any funds be used to take land into trust within the boundaries of the original Cherokee territory in Oklahoma without the consent of the Cherokee Nation".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 87 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: ": *Provided further*, That the Task Force on Bureau of Indian Affairs Reorganization shall continue activities under its charter as adopted and amended on April 17, 1991: *Provided further*, That any reorganization proposal shall not be implemented until the Task Force has reviewed it and recommended its implementation to the Secretary and such proposal has been submitted to and approved by the Committees on Appropriations, except that the Bureau may submit a reorganization proposal related only to management improvements, along with Task Force comments or recommendations to the Committees on Appropriations for review and disposition by the Committees".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 89 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided further*, That within available funds $100,000 is available to lease space in a facility to be constructed by the Nez Perce Tribe in Lapwai, Idaho: *Provided further*, That the Bureau of Indian Affairs will incorporate General Services Administration Market Survey findings into the final lease agreement: *Provided further*, That notwithstanding any other provision of law, $150,000 shall be provided to the Blackfeet Tribe for a model trust department pilot program".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 105 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert ": *Provided further*, That $2,000,000 shall be available on an ex gratia basis for the relocation and resettlement of the people of Rongelap on Rongelap Atoll: *Provided further*, That such funds shall remain available for deposit into a Rongelap Resettlement Trust Fund to be used by the people of Rongelap under the terms and conditions as set forth in a trust agreement or amendment thereto approved by the Rongelap Local Government Council subject only to the disapproval of the Secretary of the Interior: *Provided further*, That the Government of the Republic of the Marshall Islands and the Rongelap Local Government Council shall provide for the creation of the Rongelap resettlement Trust Fund to assist in the resettlement of Rongelap Atoll by the people of Rongelap, and the employment of the manager of the Rongelap fund established pursuant to the Section 177 Agreement (pursuant to Section 177 of Public Law 99-239) as trustee and manager of the Rongelap Resettlement Trust Fund, or, should the manager of the Rongelap fund not be acceptable to the people of Rongelap, another United States investment manager with substantial experience in the administration of trusts and with funds under management in excess of $250,000,000, subject only to the disapproval of the Secretary of the Interior: *Provided further*, That such funds shall be available only for costs directly associated with the resettlement of Rongelap by the people of Rongelap and for projects on Mejatto: *Provided further*, That the Secretary may approve expenditures of up to $500,000 in fiscal year 1992 for projects on Mejatto benefiting the people of Rongelap presently residing on the island of Mejatto: *Provided further*, That after fiscal year 1992, such projects on Majatto benefitting the people of Rongelap may be funded only from the interest and earnings generated by the trust fund corpus: *Provided further*, That such fund and the earnings and distribution therefrom shall not be subject to any form of Federal, State or local taxation: *Provided further*, That the Governments of the United States and the Trust Territory of the Pacific Islands shall not be liable in any cause of action in law or equity from the administration and distribution of the trust funds".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 108 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$24,044,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 109 to the aforesaid bill, and concur therein with a amendment as follows: In lieu of the matter stricken and inserted by said amendment, insert "$2,190,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 124 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

SEC. 117. Section 105 of Public Law 100–675 is hereby amended by adding the following new subsection:

"(c) AUTHORITY TO DISBURSE INTEREST INCOME FROM THE SAN LUIS REY TRIBAL DEVELOPMENT FUND.—Until the final settlement agreement is completed, the Secretary is authorized and directed, pursuant to such terms and conditions deemed appropriate by the Secretary, to disburse to the San Luis Rey Indian Water Authority, hereinafter referred to as the 'Authority', funds from the interest income which has accrued to the San Luis Rey Tribal Development Fund, hereinafter referred to as the 'Fund'. The funds shall be used only to assist the Authority in its professional development to administer the San Luis Rey Indian Water Settlement, and in the Authority's participation and facilitation of the final water rights settlement agreement of the five mission bands, subject to the terms of the Memorandum of Understanding Between the Band and the Department dated August 17, 1991."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 126 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the first section number named in said amendment, insert "118".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 127 to the aforesaid bill, and concur therein with amendments as follows: In lieu of the matter proposed by said amendment, insert:

SEC. 119. None of the funds appropriated in the Energy and Water Development Appropriations Act, 1992 (Public Law 102–104 shall be used to implement the proposed rule for the Army Corps of Engineers amending regulations on "ability to pay" (33 CFR Part 241), published in the Federal Register, vol. 56, No. 114, on Thursday, June 13, 1991.

SEC. 120. (a) The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992 (H.R. 2608), is amended as follows:

(1) The third paragraph in title I (under the headings "Justice Assistance" and "Office of Justice Programs" within amounts for the Department of Justice) is amended by striking out the period at the end and inserting in lieu thereof ": *Provided*, That of the $76,000,000 appropriated herein, $4,000,000 shall be derived from deobligated funds previously awarded under part B and subparts I and II of part C of title II of said Act.".

(2) The paragraph in title I under the heading "Salaries and Expenses" under the heading "Federal Communications Commission" is amended by striking out "For total obligations" and inserting in lieu thereof "For necessary expenses".

(3) The paragraph in title IV under the heading "Payment to the Legal Services Corporation" under the heading "Legal Services Corporation" is amended by inserting ", coordinated through the national Legal Services Corporation office," in the proviso after "such Institutes".

(b) The amendments made by subsection (a) shall take effect as if included in the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act, 1992, on the date of the enactment of such Act.

On page 91, line 7 of the House engrossed bill, H.R. 2686, strike "22" and insert "15".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 129 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$184,107,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 131 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert: ": *Provided further*, That a grant of $550,000 shall be available to Berkeley County, South Carolina.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 133 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert: ": *Provided further*, That $5,000,000 shall be available for necessary expenses of the Forest Legacy Program, as authorized by section 1217 of Public Law 101–624, the Food, Agriculture, Conservation and Trade Act of 1990: *Provided further*, That the Forest Service shall not, under authority provided by this section, enter into any commitment to fund the purchase of interests in lands, the purchase of which would exceed the level of appropriations provided by this section."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 133 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert: ": *Provided further*, That timber volume authorized or scheduled for sale during fiscal year 1991, but which remains unsold at the end of fiscal year 1991 shall be offered for sale during fiscal year 1992 in addition to the fiscal year 1992 timber sale volume to the extent possible: *Provided further*, That within available funds, up to $238,000 shall be available for a cooperative agreement with Alabama A&M University".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 142 to the aforesaid bill, and concur therein with an amendment as follows: Restore the matter stricken by said amendment, amended to read as follows:

EMERGENCY FOREST SERVICE FIREFIGHTING FUND

For the purpose of establishing an "Emergency Forest Service Firefighting Fund" in the Treasury of the United States to be available only for emergency rehabilitation and wildfire suppression activities of the Forest Service, $112,000,000, to remain available until expended: *Provided*, That all funds available under this head are hereby designated by Congress to "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That hereafter, beginning in fiscal year 1993, and in each year thereafter, only amounts for emergency rehabilitation and wildfire suppression activities that are in excess of the average of such costs for the previous ten years shall be considered "emergency requirements" pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, and such amounts shall hereafter be so designated.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 144 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum stricken and inserted by said amendment, insert: "$82,089,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 157 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken by said amendment, insert:

None of the funds made available to the Forest Service in this act shall be expended for the purposes of administering a special use authorization permitting land use and occupancy and surface disturbing activities for any project to be constructed on Rock Creek, Madera County, California, until a study has been completed and submitted to the Congress by the Forest Service in consultation with the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the California State Water Resources Control Board, the California Department of Fish and Game and other interested public parties regarding the project's potential cumulative impacts on the environment, together with a finding that there will be no substantial adverse impact on the environment. Findings from the study must be presented at no less than three public meetings.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 163 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed in said amendment, insert:

As a pilot effort, for the purpose of achieving ecologically defensible management practices, the Kaibab and Dixie National Forests are authorized to apply the value or a reasonable portion of the value of timber removed under a stewardship end result contract as an offset against the cost of stewardship services received including, but not limited to, site preparation, replanting, silviculture programs, recreation, wildlife habitat enhancement, and other multiple-use enhancements on selected projects. Timber removed shall count toward meeting the Congressional expectations for the annual timber harvest.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 165 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken and inserted by said amendment, insert:

"The first paragraph under this head in Public Law 101-512, is amended by striking the phrase "$150,000,000 on October 1, 1991, $225,000,000 on October 1, 1992" and inserting "$100,000,000 on October 1, 1991, $275,000,000 on October 1, 1992".

"Notwithstanding the issuance date for the fifth general request for proposals under this head in Public Law 101–512, such request for proposals shall be issued not later than July 6, 1992, and notwithstanding the proviso under this head in Public Law 101–512 regarding the time interval for selection of proposals resulting from such solicitation, project proposals resulting from the fifth general request for proposals shall be selected not later than ten months after the issuance date of the fifth general request for proposals: *Provided*, That hereafter the fifth general request for proposals".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 175 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert: ": *Provided further*, That the funds provided under this head in fiscal year 1991 for the purchase of supercomputer time needed for Fossil Energy programmatic purposes shall be provided as a grant to the University of Nevada-Las Vegas: *Provided further*, That disbursement pursuant to such a grant shall be made only upon the actual use of such supercomputer time upon request by Fossil Energy and receipt by Fossil Energy of the products therefrom".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 179 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter stricken and inserted by said amendment, insert: "Monies received as investment income on the principal amount in the Great Plains Project Trust at the Norwest Bank of North Dakota, in such sums as are earned as of October 1, 1991, shall be deposited in this account and immediately transferred to the General Fund of the Treasury, Monies received as revenue sharing from the operation of the Great Plains Gasification Plant shall be immediately transferred to the General Fund of the Treasury: *Provided*, That the Department of Energy shall not agree to modifications to the Great Plains Project Trust Agreement, dated October 31, 1988, that are not consistent with the following criteria: (1) for the purposes of financing a sulfur control technology project using Government contributions from the Trust, the cost of such project shall not include costs of plant downtime or outages; (2) upon modification of the Trust Agreement the Department shall immediately transfer $20,000,000 from the Reserve Account to the Environmental Account, both established pursuant to section 2(b) of the Trust Agreement, and shall provide a loan from the Reserve Account for 40 percent of the remaining project costs after the disbursement of funds from the Environmental Account in an amount not to exceed $30,000,000 and at the rate of interest specified in sections 1 and 7(b) of the Trust Agreement; (3) no disbursements for construction shall be made from either the Reserve Account or from funds which have been transferred to the Environmental Account from the Reserve Account prior to receipt by Dakota Gasification Company of an amended Permit to Construct from the North Dakota State Department of Health; (4) the Government contribution from the Reserve Account shall be disbursed on a concurrent and proportional basis with the contribution from the Dakota Gasification Company; (5) repayment of any loan shall be from revenues not already due the Government as part of the Asset Purchase Agreement, dated October 7, 1988, and at least in proportion to the Government contribution to the costs of the project net of the disbursement from the Environmental Account, for any increased revenues or profits realized as a result of the sulfur control project; and (6) such contributions from the Reserve Account, including funds to be transferred to the Environmental Account, shall be made available contingent upon a finding by the Secretary, in the form of a report to Congress submitted not later than March 1, 1992, that such planned project modifications are cost effective and are expected to meet such environmental emissions requirements as may exist.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 180 to the aforesaid bill, and concur therein with amendments as follows: In lieu of the matter stricken and inserted by said amendment, insert: "$225,300,000 to remain available until expended: *Provided*, That notwithstanding any other provision of law, revenues received from use and operation of Naval Petroleum Reserves Numbered 1, 2, and 3 and the Naval Oil Shale Reserves and estimated to total $523,000,000 for fiscal year 1992 shall be retained and used for the specific purpose of offsetting costs incurred by the Department in carrying out naval petroleum and oil shale reserve activities: *Provided further*, That the sum herein appropriated shall be reduced as such revenues are received so as to result in a final fiscal year 1992 appropriation estimated at not more than $0".

On page 64, lines 22 and 23 of the House engrossed bill, H.R. 2686, strike: ", to remain available until expended".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 185 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum named in said amendment, insert "$3,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 190 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$15,100,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 193 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$137,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 195 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum named in said amendment, insert "$1,449,871,000, of which $5,000,000 shall be available on September 30, 1992 and shall remain available until expended for the Morris K. Udall Scholarship Foundation subject to the passage of authorizing legislation".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 196 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$301,311,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 201 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$26,172,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 214 to the aforesaid bill, and concur therein with an amendment as follows; In lieu of the matter stricken and inserted by said amendment, insert "$1,000,000 for the dissertation fellowship program and $5,700,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 218 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$5,126,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 219 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$11,005,000".

Resolved, That the House recede from its disagreeement to the amendment of the Senate numbered 222 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert:

SEC. 318. With the exception of budget authority for "Miscellaneous payments to Indians", Bureau of Indian Affairs, Department of the Interior; "Salaries and expenses", National Indian Gaming Commission, Department of the Interior; "Payment to the Institute", Institute of American Indian and Alaska Native Culture and Arts Development; "Salaries and expenses", Woodrow Wilson International Center for Scholars; "Salaries and expenses" and "National capital arts and cultural affairs", Commission on Fine Arts; "Salaries and expenses", Advisory Council on Historic Preservation; "Salaries and expenses", National Capital Planning Commission; "Salaries and expenses", Franklin Delano Roosevelt Memorial Commission; and "Salaries and expenses" and "Public development", Pennsylvania Avenue Development Corporation, each amount of budget authority for the fiscal year ending September 30, 1992, provided in this Act, for payments not required by law is hereby reduced by 1.26 per centum: Provided, That such reductions shall be applied ratably to each account, program, activity, and project provided for in this Act.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 224 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter inserted by said amendment, insert:

SEC. 319. LAND TRANSFER AND CONVEYANCE, PEASE AIR FORCE BASE, NEW HAMPSHIRE.

(a) TRANSFER BY THE AIR FORCE.—Notwithstanding any other provision of law, the Secretary of the Air Force shall transfer to the Department of the Interior a parcel of real property located west of McIntyre Road at the site of former Pease Air Force Base, New Hampshire: *Provided*, That the Secretary of the Air Force shall retain responsibility for any hazardous substances which may be found on the property so transferred.

(b) ESTABLISHMENT OF NATIONAL WILDLIFE REFUGE.—Except as provided in subsection (c), the Secretary of the Interior shall designate the parcel of land transferred under subsection (a) as an area in the National Wildlife Refuge System under the authority of section 4 of the Act of October 15, 1966 (16 U.S.C. 688dd).

(c) CONVEYANCE TO STATE OF NEW HAMPSHIRE.—

(1) CONVEYANCE.—Subject to paragraphs (2) through (5), the Secretary of the Interior shall convey to the State of New Hampshire, without consideration, all right, title, and interest of the United States in and to a parcel of real property consisting of not more than 100 acres that is a part of the real property transferred to the Secretary under subsection (a) and that the Secretary determines to be suitable for use as a cemetery.

(2) CONDITION OF CONVEYANCE.—The conveyance under paragraph (1) shall be subject to the condition that the State of New Hampshire use the property conveyed under that paragraph only for the purpose of establishing and operating a state cemetery for veterans.

(3) REVERSION—If the Secretary determines at any time that the State of New Hampshire is not complying with the condition specified in paragraph (2), all right, title, and interest in and to the property conveyed pursuant to paragraph (1), including any improvements thereon, shall revert to the United States and the United States shall have the right of immediate entry thereon.

(4) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the parcel of real property to be conveyed under paragraph (1) shall be determined by a survey that is satisfactory to the Secretary.

(5) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require any additional terms or conditions in connection with the conveyance under this subsection that the Secretary determines appropriate to protect the interests of the United States.

(d) The purposes for which this national wildlife refuge is established are—

(1) to encourage the natural diversity of plant, fish and wildlife species within the refuge, and to provide for their conservation and management;

(2) to protect species listed as endangered or threatened, or identified as candidates for listing pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(3) to preserve and enhance the water quality of aquatic habitat within the refuge; and

(4) to fulfill the international treaty obligations of the United States relating to fish and wildlife.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 226 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the matter proposed by said amendment, insert:

SEC. 320. Amend section 12(d)(2) of Public Law 94-204 (the Act of January 2, 1976) as follows:

(a) In the second sentence of the first proviso, following the words "public purposes" insert a period. Following the period add the following: "An area encompassing approximately sixty-two acres and depicted on the map entitled 'Native Heritage Park Proposal' and on file with the Secretary shall be managed".

(b) At the end of this section, add a new proviso: ": Provided further, That to the extent necessary, any and all conveyance documents executed concerning the conveyance of the lands referred to in this proviso shall be deemed amended accordingly to conform to this proviso".

Resolved, That the House insist on its disagreement to the amendments of the Senate numbered 130 and 167 to the aforesaid bill.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendments en bloc were just agreed to.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 2:44 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 1823. An act to amend the Veterans' Benefit and Services Act of 1988 to authorize the Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System.

The enrolled bill was subsequently signed by President pro tempore [Mr. BYRD].

EXECUTIVE REPORTS OF COMMITTEES

The following executive report of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Delbert Leon Spurlock, Jr., of California, to be Deputy Secretary of Labor.

(The above nomination was reported with the recommendation that the nomination be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment and an amended preamble:

S.J. Res. 133. Joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MACK:

S. 1892. A bill to amend title 11 of the United States Code to establish a priority for the payment of claims for retiree health benefits in liquidation cases under chapters 7 and 11; to the Committee on the Judiciary.

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 1893. A bill to adjust the boundaries of the Targhee National Forest, to authorize a land exchange involving the Kaniksu National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 1894. A bill to amend the Trade Act of 1974 to provide trade adjustment assistance during the implementation and phase-in of the North American Free Trade Agreement, and for other purposes; to the Committee on Finance.

By Mr. BREAUX (for himself and Mr. FORD):

S. 1895. A bill to direct the Administrator of the Federal Aviation Administration to publish routes on flight charts to safely guide pilots operating under visual flight rules through, and in close proximity to, terminal control areas and airport radar service areas; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 1896. A bill to provide funding for the resolution of failed thrifts and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DOMENICI:

S. 1897. A bill to improve supervision and regulation of Government sponsored enterprises; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DASCHLE (for himself, Mr. PRESSLER, Mr. INOUYE, Mr. MCCAIN, Mr. SIMON, Mr. BURDICK, and Mr. MURKOWSKI):

S.J. Res. 222. Joint resolution to designate 1992 as the "Year of Reconciliation Between American Indians and non-Indians"; to the Committee on the Judiciary.

By Mr. COATS:

S.J. Res. 223. Joint resolution to designate "National Stay in School Awareness Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MACK:

S. 1892. A bill to amend title 11 of the United States Code to establish a priority for the payment of claims for retiree health benefits in liquidation cases under chapters 7 and 11; to the Committee on the Judiciary.

PRIORITY OF CLAIMS FOR RETIREE HEALTH BENEFITS

• Mr. MACK. Mr. President, I rise today to introduce legislation which will establish a much-needed priority for health care benefits of retirees, and families of retirees, whose former employers face liquidation under the Federal Bankruptcy Code.

In my home State of Florida, many retirees of Eastern Airlines will face extreme hardships due to the loss of medical benefits resulting from Eastern bankruptcy. Many of these retirees are under the age of 65 and therefore do not qualify for Medicare coverage, and they will essentially have no health insurance in December, when the current funds are estimated to expire.

Additionally, some retirees will be denied health insurance at that time due to pre-existing conditions. Eastern Airlines retirees are not alone in this plight. The retirees of a number of other corporations will face similar circumstances in the future unless Congress acts now to address this critical situation.

As my colleagues will recall, Congress enacted the Retiree Benefits Bankruptcy Act of 1988 following the collapse of LTV and thereby protected retirees whose employers were involved in chapter 11 reorganization proceedings. However, Public Law 100-334 did not go far enough by providing for retirees whose former employers eventually found themselves in liquidation.

My bill will amend chapters 7 and 11 of the Bankruptcy Code to establish a new priority for the health care benefits which retirees have always counted on. There would be a limitation of an aggregate amount totaling up to $10,000 multiplied by the relevant number of former employees. This will enable a bankruptcy judge to utilize wide latitude in approving health insurance plans for retirees, their spouses and children. A judge would also be able to take into consideration the unique needs of retirees who are ineligible to qualify for Medicare.

It is essential that this same new judicial latitude for the prioritization of the health care needs of retirees be provided to employees of corporations facing chapter 11 cases involving plans which provide for liquidation, and my bill does just that.

The protections provided under this bill will not disrupt the balance within the Bankruptcy Code under section 1114 between retiree needs and the immediate needs of successful reorganization. This legislation will establish a new priority for retiree health benefit claims where reorganization does not succeed without limiting any priority treatment of such claims in either in successful or unsuccessful reorganizations under other provisions of the law, including section 1114. For example, any retiree benefits in the Eastern Airlines bankruptcy case which may be entitled to administrative expense treatment will continue to be entitled to this if this bill becomes law.

Some might argue that there is not a contractual agreement between a corporation and its retirees regarding continued health care benefits should the corporation end up in bankruptcy proceedings. However, I believe it is essential that judges, at the very least, be given the latitude of granting a priority for the payment of claims for retiree health care benefits in cases involving chapter 7 and chapter 11 bankruptcy. The consequences of the loss of these benefits will, in many cases, lead to financial devastation for thousands of retirees, spouses, and dependents. Some estimates show that as many as 30 million Americans have no health insurance coverage whatsoever. Clearly, it makes no sense for Congress to statutorily prevent retiree medical benefits from being paid as a result of bankruptcy proceedings. I strongly urge my colleagues to join me in this effort.•

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 1893. A bill to adjust the boundaries of the Targhee National Forest, to authorize a land exchange involving the Kaniksu National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

IDAHO LAND EXCHANGE ACT OF 1991

• Mr. CRAIG. Mr. President, I am very pleased to introduce this legislation today along with my colleague from Idaho, Senator STEVE SYMMS.

The Idaho Land Exchange Act of 1991 will facilitate the exchange of lands between the Forest Service—USDA and the University of Idaho in Bonner County, and the Forest Service—USDA and the State of Idaho in Fremont County.

In Bonner County, the University of Idaho will gain ownership of the 35.27-acre Clark Fork Field Campus from the Kaniksu National Forest in exchange for 40 acres of university-owned property.

The Clark Fork Field Campus is the site of an old ranger station abandoned by the Forest Service in 1974. The buildings deteriorated into a state of disrepair. In 1980 the Forest Service was at a point of razing the buildings and reverting the site to forest. The university came forward with a proposal to rehabilitate the buildings and grounds, and to use them as a research and continuing education facility. The Forest Service granted this use under a Granger-Thye permit which is still in effect. Since 1980, the university has invested more than $200,000 in maintenance and capital investment to bring the site back to a condition superior to its condition when abandoned in 1974. The university's programs at this campus have proven popular and have been quite successful. There has been strong support from the local community.

This legislation enables the exchange by requiring that only land value be considered when equalizing the value of the exchanged tracts. The value of the buildings and improvements, which accrue to the Forest Service under the conditions of the permit, will not be considered in the appraisal. In other words, this bill recognizes that the current value of the buildings and improvements is the direct result of expenditures by the university, which should not be required to pay for them a second time. An exchange is desirable because the university wishes to make further improvements and expand its programs at Clark Fork, but is unwilling to do so if title remains with the Forest Service. That is understandable. Years of discussion between the Forest Service and the university have failed to find a method to effect the exchange which does not unduly penalize the university. Consequently, I have decided to offer this bill.

All other procedures normally required by law or regulation to implement a land exchange will be carried out as usual. This legislation will expand the national forest proclamation boundary to include the 40 acre tract to be exchanged by the university.

The bill also facilitates future exchanges between the Targhee National Forest and the State of Idaho in Fremont County by expanding the proclamation boundary of the national forest. No private lands are included in the expansion—only lands of the Idaho Department of Parks and Recreation.•

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 1894. A bill to amend the Trade Act of 1974 to provide trade adjustment assistance during the implementation and phase-in of the North American Free Trade Agreement, and for other purposes; to the Committee on Finance.

NAFTA WORKER ADJUSTMENT ASSISTANCE ACT

• Mr. ROTH. Mr. President, during the debate on the extension of fast-track authority earlier this year the United States free trade negotiations with Mexico served as a focal point for those opposed to the extension. In response to the strong concerns that were raised over these free trade talks the President submitted an action plan on May 1. I rise today, along with my distinguished colleague, Senator MOYNIHAN, to introduce the NAFTA Worker Adjustment Assistance Act, which is designed to address one of the key commitments made in the President's action plan—the commitment to provide "a worker adjustment program that is adequately funded and that ensures that workers who may lose their jobs as a result of an FTA with Mexico will receive prompt, comprehensive, and effective services."

Mr. President, it is important, in my view, that we not wait for the North American Free Trade Agreement to be submitted to Congress before devising such a worker adjustment program. Now is the time to begin the process of stimulating discussion on the key issues involved, and to build the consensus that will be needed to meet the commitment made in the May 1 action plan. The legislation we are introducing today will move this process forward.

The NAFTA Worker Adjustment Assistance Act is built on the premise that the current Trade Adjustment Assistance [TAA] Program should form the basis of any special program for workers affected by an FTA with Mexico for two important reasons. First, it has been an effective and positive program which has strong support at the State and worker level. This was recently underscored by several witnesses during hearings before the Committees on Finance and Ways and Means.

Second, but not any less important, is the fact that Congress has made itself very clear since creating TAA in 1962 that providing special adjustment assistance programs for trade-impacted workers should go hand-in-hand with major trade liberalization action on the part of our Government. This remains just as true, if not more true, today.

There is no question that the launching of the North American free trade negotiations is a major trade liberalizing initiative. In fact, it is unprecedented in many ways. Above all, it will be the first time the United States has ever negotiated a comprehensive free trade agreement with a major developing country which is also a top trader with the United States. Mexico is, in fact, our third largest trading partner. While I believe these negotiations hold great economic promise for the United States, it is clear at the same time that difficult, structural change will also occur.

By building on the current TAA program, I believe we can provide the type of help that workers affected by such structural change will need. The NAFTA Adjustment Assistance Act accomplishes this by creating a special rule under TAA to ensure that workers who may be dislocated by free trade with Mexico will be eligible for the full range of TAA benefits. The special rule accomplishes this by expanding TAA eligibility to workers dislocated because a United States plant has moved to Mexico to take advantage of the free trade agreement. Moreover, the bill provides for an expedited procedure for automatically certifying the workers affected by such a plant relocation if the company relocating was subject to the advanced notification requirements under the Worker Adjustment and Retraining Notification Act.

In addition to expanding TAA's eligibility coverage to include workers impacted by production shifts to Mexico, the legislation raises the current $80 million cap on training to $100 million. This aim to account for the increase in training that may be needed as a result of dislocation caused by NAFTA.

Other changes are made to improve the general operation of the current TAA program. These changes, including greater emphasis on early and effective reemployment services such as job search assistance, are based on recent studies and testimony before Congress. Another change is to create greater followup of workers participating in the TAA program to gauge more accurately the effectiveness of the services being provided.

One important reason for moving ahead now to devise an effective worker adjustment program in relation to NAFTA is the need to provide new funding. I believe that the main beneficiaries of a free trade agreement with Mexico should be willing to help the workers who will be hurt by it by supporting a temporary, de minimus uniform import fee at the border. A negotiated small border fee would allow both sides to afford special worker adjustment programs, and would be, in my view, much more preferable to other funding alternatives such as imposing some new form of permanent payroll or other tax.

Under the NAFTA Worker Adjustment Assistance Act, the President is directed to seek agreement with Mexico on the imposition of this type of small border fee. As I stated to Ambassador Hills in a letter this past August, the ability to impose a small adjustment fee should be an important negotiating objective with our Mexican counterparts. Other Members of Congress are now starting to raise this idea, and I hope that such support will grow.

For some time now, I have supported pursuing this approach for funding U.S. trade-related worker adjustment needs. In the 1988 Omnibus Trade Act, for example, I authored a provision requiring the President to seek multilateral agreement in the GATT along these very lines. This provision, I might add, was strongly endorsed by my colleagues on both sides of the aisle. We should now take advantage of the opportunity presented by the NAFTA talks to negotiate such a fee with Mexico. This should be much less difficult than accomplishing the same goal with well over 100 countries. It could, in fact, help pave the way for future agreement in this area on a plurilateral and multilateral basis.

Mr. President, as I stated earlier, my intention in introducing this legislation is to stimulate serious discussion early on how to provide effective adjustment assistance to workers who may be dislocated by free trade with Mexico, and how to pay for it. It is a focused bill which aims to address the specific worker adjustment needs under a North American Free Trade Agreement, while making some general improvements to the broader operation of the TAA program.

I view this legislation as an important starting point. I believe that the results of the recently-launched GAO investigation on TAA and other worker adjustment assistance programs, such as title III of the Job Training and Partnership Act, will shed additional light on possible improvements to these programs. I do not believe, however, that we should wait for the investigation to be completed before moving forward.

Along with my statement is a section-by-section summary of the bill, that I ask unanimous consent to have printed in the RECORD. I look forward to working with my colleagues in addressing what I believe to be an essential part of the NAFTA negotiations.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION SUMMARY OF THE NORTH AMERICAN FREE TRADE AGREEMENT WORKER ADJUSTMENT ASSISTANCE ACT

Section 1. Short Title.—The NAFTA Worker Adjustment Assistance Act.

Section 2. Eligibility of Workers Affected by NAFTA.—Creates a special transitional rule under the current Trade Adjustment Assistance (TAA) program to ensure adequate coverage for workers dislocated because of the implementation and operation of a North American Free Trade Agreement. This is accomplished by allowing workers to be eligible for TAA if the Secretary of Labor determines that a free trade agreement with Mexico has "contributed importantly" to a shift in U.S. production in Mexico. Based on the provisions of the Worker Adjustment and Retraining Notification Act (WARN), workers are provided automatic certification under TAA 10 days after the Department of Labor receives notice under WARN if the Secretary has determined that there has been a shift in production to Mexico and that NAFTA contributed importantly to such shift. The special rule is effective 30 days after the United States enters into a North American Free Trade Agreement until the agreement is fully phased in.

Section 3. General Changes to Title II of the Trade Act of 1974.—Miscellaneous changes are made to the existing TAA program to improve its general operation. Greater emphasis is placed on early and effective provision of reemployment services such as job search assistance. The current training cap of $80 million is raised to $100 million to account for any possible increase in workers dislocated due to NAFTA. Additional provisions call upon the Department of Labor to work with each State in establishing a standardized reporting system to help determine the effectiveness of the TAA program.

Section 4. Funding for NAFTA Adjustment Assistance.—Directs the President to seek agreement with Mexico on a small uniform import fee sufficient to cover the additional costs of the NAFTA Worker Adjustment Assistance Act. In the event the President fails to garner such agreement, a certain portion of the tariff revenue on imports from Mexico will be allocated for the same purpose as the import fee. Further funding is provided by any future tariff revenue that may be collected as a result of implementation of special safeguard provisions under the North American Free Trade Agreement.

Section 5. Trade Adjustment Assistance Fund.—Creates a Trade Adjustment Assistance Fund to which the funds from Section 4 would be allocated. The Fund is designed to cover the additional expenses under the Act.

Section 6. Reauthorization of TAA.—Reauthorizes the TAA program for five more years.•

• Mr. MOYNIHAN. Mr. President, I am most pleased to join with my colleague on the Finance Committee, Senator ROTH, in introducing a trade adjustment bill that would respond to the impact on United States workers of the proposed free trade agreement with Mexico. Senator ROTH and I have worked closely through the years to keep the trade adjustment program going despite opposition from successive administrations. We will do so again in this instance. We are asked to believe that the Bush administration finally has the message on trade adjustment when it comes to the Mexico FTA. I'm still skeptical. But the bill we introduce today is a good start—and I emphasize start—at making it clear that American workers cannot be left out of this process. Whether it has been multilateral GATT negotiations or bilateral free trade agreements we have failed in our commitments to individual workers who pay the price for general trade liberalization. The Mexico FTA now gives us another opportunity to institute a free trade adjustment program.

My involvement here goes back 30 years, when I first came to Washington with the Kennedy administration as an Assistant Secretary of Labor. One of my first tasks was to negotiate, with Hickman Price of the Commerce Department and Mike Blumenthal of the State Department, the Long Term Cotton Textile Agreement in 1962. This was one of the things we had to have in place to get on with the Kennedy round of GATT trade negotiations. The other was trade adjustment assistance. TAA as we call it. American labor made a modest and fair request. If some American workers were to lose their jobs for the overall benefit of the economy, then a program should be provided to help them get a new one.

Trade adjustment assistance was conceived by David MacDonald, then president of the United Steel Workers, as part of his work on the 1954 Presidential Commission on Foreign Economic Policy. During a decade in which the U.S. economy was so dominant and so robust, the idea of compensating workers in exchange for their support of the trade negotiations didn't seem radical. It certainly was affordable. Still it took 8 years and a Democratic administration to enact it in the Trade Expansion Act of 1962.

Since economic growth continued to climb in the 1960's, and the impact of global trade on the U.S. economy was modest, demands for trade adjustment assistance were light.

As the Nixon and then the Ford administrations launched the Tokyo round of GATT negotiations, a renewed commitment to trade adjustment assistance was made.

The Trade Act of 1974 not only was the law which first provided fast-track negotiating authority to a President, it also reauthorized the trade adjustment assistance program. This was part of an explicit agreement with American labor for their support of the Tokyo round. The TAA program initiated by President Kennedy was reaffirmed by President Ford. The Tokyo round proceeded.

I began my Senate service in 1977, and was appointed to the Committee on Finance which handles trade and tax matters. The first trade bill I voted upon—and I voted for it—was the Trade Agreements Act of 1979. The law to implement the results of the Tokyo round. If anyone had told me then that we would abandon our commitment to trade adjustment assistance, I'm not sure I would have voted the same way.

But, of a sudden, we did just that. The Reagan administration took office in 1981 with a doctrinal opposition to the trade adjustment assistance program. They claimed it was too expensive and did not achieve its intended purpose. I suspect some of the criticisms were true. But, instead of seeking its reform, the administration sought its abolition. The Omnibus Budget Reconciliation Act of 1981 was passed and trade adjustment assistance was killed. Spending on the program plummeted to $103 million, down from $1.5 billion the year before.

Nothing much has changed in the last decade. We have been able to keep the trade adjustment assistance program staggering along, and made some good reforms to it in the Trade Act of 1988, but by and large the administration has killed it. If the administrators of a program are instructed to fight its existence, one can't really expect success.

The commitments we kept to American labor through the Kennedy, Johnson, Nixon, Ford and Carter administrations were abrogated by the Reagan administration. This hostile policy has been continued by the Bush administration. Can it be any wonder then that the American labor movement has turned against the trade negotiation process?

Mr. President, I continue to have the strongest reservations about the free trade agreement with Mexico—the first free trade agreement we are being asked to consider with a country that isn't free. But if such an agreement is negotiated and is passed by the Congress, it ought only happen if the administration shows a new approach to the elemental issue of worker adjustment. Our bill will begin the debate on how this will be achieved.•

By Mr. BREAUX (for himself and Mr. FORD):

S. 1895. A bill to direct the Administrator of the Federal Aviation Administration to publish routes on flight charts to safely guide pilots operating under visual flight rules through, and in close proximity to, terminal control areas and airport radar service areas; to the Committee on Commerce, Science, and Transportation.

VISUAL FLIGHT RULE DEPARTURE AND ARRIVAL ROUTES

• Mr. BREAUX. Mr. President, it is time we put in place a system that should actually work in preventing mid-air collisions. Too often we see news reports of collisions and near-collisions between commercial aircraft and private aircraft around congested airports. In August 1986, an AeroMexico DC–9 collided with a Piper Archer aircraft at 6,400 feet above the Los Angeles area in Cerritos, CA. Earlier in 1978, a Pacific South-West Airlines Boeing 727 and a Cessna 172 collided over San Diego.

The Federal Aviation Administration establishes terminal control areas

[TCAs] and airport radar service areas [ARSAs] to reduce the midair collision potential in congested airspace that surrounds an airport with a high density or significant level of air traffic. In general, TCA's and ARSA's are airspace in which all aircraft, i.e., air carriers, general aviation, and military, must communicate with air traffic control for separation and traffic information services. Also, all aircraft must be equipped with automatic altitude reporting transponders which activate ground radar conflict alert and airborne TCA's systems.

Of course, pilots must recognize when they are approaching airspace which requires avoidance or directives from air traffic control. The FAA publishes charts that depict the lateral and vertical dimensions of TCA's and ARSA's to assist pilots in circumnavigating those areas or contacting air traffic control prior to entering.

Mr. President, a major problem with TCA's is that in some areas the boundaries of forbidden zones are too difficult to figure out. For example, in mountainous terrains, TCA's, according to the AOPA Pilot magazine, may be shaped like "jig-saw puzzles of slivers, slices, and chunks of airspace that make compliance difficult for even experienced pilots.

I understand, Mr. President, that a TCA system was in place at the Los Angeles area airport when the 1986 collision occurred over Cerritos. Experts argue that had a San Diego TCA been in effect in 1978, that accident still would have occurred. We accept the FAA's assertion that TCA's have reduced the annual conflicts between aircraft, but there is still a problem with TCA's. Airline pilots still list mid-air collisions as their main safety concern. While good statistics may mean that fewer lives are lost, one collision over any time period is still one collision too many.

We are introducing a bill today, Mr. President, that will provide pilots invaluable additional assistance in their efforts to avoid mid-air collisions. This bill requires the FAA to make it possible for pilots to rely less on TCA charts that tell a pilot "where he/she may not fly" by publishing optional use, visual flight rules charts that indicate "where he/she can fly" safely when coming into or leaving a high-traffic terminal area. No longer would "a pilot be forced to concentrate on interpreting a TCA chart when he should be scanning the skies for traffic." The FAA would provide charts with preplanned routings: The pilot would just follow lines and altitudes on the chart to safely navigate the maze around a congested airport. The proposed visual flight rules arrival chart concept is similar to the idea of the already-in-use standard instrument departure chart.

Mr. President, the original version of this bill, H.R. 3243, was introduced by Congressman JIM INHOFE in August of this year. The House bill has 139 cosponsors. We are hopeful that our Senate colleagues will immediately recognize the value of this legislation, and will support us in securing its enactment.●

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 1896. A bill to provide funding for the resolution of failed thrifts and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

RESOLUTION TRUST CORPORATION

● Mr. RIEGLE. Mr. President, the administration requested today that I join Senator GARN in introducing their bill for the refinancing and restructuring of the Resolution Trust Corporation. We are introducing this bill at the request of the administration. Issues relating to the RTC must be addressed in the near future and the Banking Committee held 2 days of hearings last week to consider these matters. In the past, the Congress rejected the administration's request for a blank check for the RTC to deal with thrift resolutions because it wanted to keep closer oversight of how that agency was operating. Even the administration has now admitted that the RTC structure they originally requested needs reform. I plan to work with members of the committee to develop legislation to both refinance and reform the RTC this session.●

● Mr. GARN. Mr. President, today I join with the chairman of the Senate Banking Committee, Senator RIEGLE, to introduce, by request, the administration's bill for the refinancing and restructuring of the Resolution Trust Corporation. This bill was sent to the Senate on September 27, 1991, and would provide the funding necessary to continue, and hopefully complete, the process of closing down the failed savings and loans and keeping the funds of insured depositors safe and sound.

I hope that the Congress will take prompt action to provide the RTC with the resources it needs to get on with its job. While depositors are not at risk from delay, taxpayers are.

It should be no surprise to anyone here that additional funds are needed. When we provided the RTC with funding this spring, after a delay of several months, Congress explicitly rejected the administration's request for full funding to end the job and instead provided only enough funds to last into the fall. We all knew that by the end of September the RTC would be running out of funds. This was not what the administration wanted, since they asked for full funding, but this is what the Congress determined to do.

Since it was Congress that decided that the RTC would run out of funds, it is the duty of the Congress to act now, promptly, to provide the funds that we all knew back in the spring would be needed to finish the job.

Mr. President, I am a veteran of this process. That is why I may be more worried than others. I recall 5 years back, in 1986, a condition not unlike the present one. The attention of the Banking Committee was focused on major banking reform legislation. At the same time, however, the agency tasked with closing down insolvent savings and loans was out of money.

The Senate did the responsible thing and adopted legislation to recapitalize the Federal Savings and Loan Insurance Corporation, FSLIC, but that legislation, down until the last minute, became entangled in irrelevant issues and did not become law. FSLIC's funding crisis was allowed to grow worse. The savings and loan problem turned into the traumatic catastrophe from which the country has not yet emerged.

As then, so today I am concerned that the pursuit of irrelevant issues may keep the Congress from timely enactment of funding legislation.

Mr. President, lack of reform at the RTC will not serve as an excuse for inaction today. During hearings on the RTC this year before the Senate Banking Committee there have been calls from all quarters for someone to take charge of the RTC, to make decisions, to move the process forward. We have all urged that someone of stature, and with strong managerial experience in the private sector, be put in charge.

Despite all of the gloom-spreaders who thought that no such person could be found willing to take the job, the Board of Directors of the RTC earlier this month named Albert Casey, former head of American Airlines, as the new Chief Executive Officer of the RTC. It seems to me that the appointment of Albert Casey silences the critics who thought that no one of stature and experience could be found. Moreover, Mr. Casey, as CEO of the RTC, has been given enhanced powers to conduct the business of the RTC.

Mr. President, I believe that there is still time this fall to provide the funding required to let the RTC finish the job it has started. Whether we like the operation or not, we had better let the RTC finish it and close the suture rather than let the open wound fester.

There is no time left, however, for legislation that causes a major bureaucratic restructuring at the RTC, that moves boxes around as a substitute for action. The clock has run out for us to dabble in legislation that creates new hoops for the RTC to jump through, or that weighs the RTC down with new programs to administer. And there is no time left to pursue the agendas of those who would impose new special interest claims on the taxpayers' assets managed by the RTC.

The RTC has been slow to get on with its job. Everyone knows that. But now, just as the RTC is getting up a head of steam, is no time for a demonstration of just how slow the Congress can be to do what everyone knows must be done. No one wants to provide more funding for the RTC. We all wish that we could just stop where we are. But we have an obligation to millions of depositors. We cannot stop where we are, for the business of the RTC is to make good the Federal Government's obligations to protect the insured depositors of this country. No one wants to fail in that duty.

I applaud the steps taken by the administration and the RTC already to improve operations. While more needs to be done, more has been done since earlier this year when I shared with my colleagues a reluctance to give the RTC all the funds it sought without reforming its operations. I believe that this bill will make additional reforms that will speed up the process of closing down dead savings and loans and disposing of assets.

It is worth noting that this bill was worked out by both the Treasury Department and the FDIC and enjoys the strong support of former FDIC Chairman William Seidman.

Perhaps there are further changes that can be made at the edges, but I believe this to be a very positive bill, a strong effort. The administration has done its part. The administration has asked for resources, made important reforms and asked for authority to make others. The RTC stands ready to use those resources to get the job done.

It is now our turn to provide those resources. It will only be the Congress to blame if we leave off work this year with an unfunded RTC, left with no alternative but to give forbearance to dead savings and loans that should have been liquidated years ago, and which would have been liquidated but for lack of resources for the regulators to do so. We must not let that happen.

Mr. President, I ask unanimous consent that the text of the bill, along with a section-by-section analysis and other explanatory materials, together with statements by Deputy Treasury Secretary John Robson and former FDIC Chairman William Seidman, be included in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—RESOLUTION TRUST CORPORATION REFINANCING

SECTION 101. SHORT TITLE.

This title may be cited as the "Resolution Trust Corporation Refinancing Act of 1991".

SEC. 102. FUNDING FOR RESOLUTION OF FAILED THRIFTS.

Section 21A(i)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(i)(2)) is amended by striking "$30,000,000,000" and inserting instead "$110,000,000,000".

SEC. 103. RTC WORKING CAPITAL BORROWING LIMIT.

Section 21A(j)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(j)(1)) is amended to read as follows:

"(1) IN GENERAL.—The total amount of outstanding obligations of the Corporation may not exceed the lesser of—

"(A) $160,000,000,000; or

"(B) the amount that is equal to the Corporation's estimate of the fair market value of assets held by the Corporation.".

SEC. 104. APPOINTMENT BY DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

Section 11(c)(6)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(6)(B)) is amended—

(a) in clause (i)—

(1) by striking "3-year"; and

(2) by inserting "and ending September 30, 1993" after "1989"; and

(b) in clause (ii), by striking "3-year".

SEC. 105. EXTENSION OF RESOLUTION TRUST CORPORATION DUTY.

Section 21A(b)(3)(A)(ii)(II) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(3)(A)(ii)(II)) is amended—

(a) by striking "within the 3-year" and inserting instead "during the"; and

(b) by inserting "and ending September 30, 1993" after "Act".

TITLE II—RESTRUCTURING OF THE OVERSIGHT BOARD AND THE RESOLUTION TRUST CORPORATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Resolution Trust Corporation Restructuring Act of 1991".

SEC. 202. ACCOUNTABILITY OF OVERSIGHT BOARD.

Section 21A(a)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(2)) is amended—

(a) by striking "and be accountable for"; and

(b) by inserting "and shall be accountable for the duties assigned to the Oversight Board by this Act" after "(hereinafter referred to in this section as the 'Corporation')".

SEC. 203. RESTRUCTURING OF OVERSIGHT BOARD.

Section 21A(a)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1441(a)(3)) is amended—

(a) in subparagraph (A), by striking "5 members" and inserting "5 voting members and 2 non-voting members. The non-voting members shall be the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the chief executive officer of the Corporation. The voting members shall be"; and

(b) in subparagraph (E) by striking "3 members" and inserting instead "3 voting members".

SEC. 204. OVERSIGHT BOARD DUTIES AND AUTHORITIES.

Section 21A(a)(6) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(6)) is amended—

(a) by amending subparagraph (A) to read as follows:

"(A) To review overall strategies, policies, and goals established by the Corporation for its activities. After consultation with the Corporation, the Oversight Board may require the modification of any such overall strategies, policies, and goals. Overall strategies, policies, and goals shall include such items as—

"(i) overall strategies, policies, and goals for case resolutions, the management and disposition of assets, the use of private contractors, and the use of notes, guarantees or other obligations by the Corporation;

"(ii) overall financial goals, plans, and budgets; and

"(iii) restructuring agreements described in subsection (b)(11)(B).";

(b) in subparagraph (B), by inserting "financial plans, budgets, and" after "implementation";

(c) by amending subparagraph (C) to read as follows:

"(C) To review all rules, regulations, standards, policies, principles, procedures, guidelines, and statements that may be adopted or announced by the Corporation. After consultation with the Corporation, the Oversight Board may require the modification of any such rules, regulations, standards, policies, principles, procedures, guidelines, or statements that it deems materially inconsistent with overall strategies, policies, or goals established by or for the Corporation, or with the policies or purposes of applicable law, or with the efficient and economical discharge of the Corporation's duties, or with sound police policy. In all cases, the rules, regulations, standards, policies, principles, procedures, guidelines, and statements relating to the Corporation's powers and activities as a conservator or receiver shall be consistent with the Federal Deposit Insurance Act. The provisions of this subparagraph shall not apply to internal administrative policies and procedures (including but not limited to such matters as personnel practices, divisions and organization of staffing, delegations of authority, and practices respecting day-to-day administration of the Corporation's affairs) and determinations or actions described in paragraph (8) of this subsection."; and

(d) by adding at the end thereof the following new subparagraph:

"(K) To appoint (and at any time to remove) a person as chief executive officer of the Corporation, to appoint a person as a member of the Board of Directors of the Corporation pursuant to subsection (b)(8)(A)(iii) of this section, and to appoint the successors to each.".

SEC. 205. LIMITATION OF OVERSIGHT BOARD AUTHORITY.

Section 21A(a)(8)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(8)(A)) is amended—

(a) by striking "(i) involving" and inserting instead "involving (i)"; and

(b) by striking "provide general policies and procedures" and inserting instead "review overall strategies, policies, and goals established by the Corporation".

SEC. 206. DUTIES OF THE RESOLUTION TRUST CORPORATION.

Section 21A(b)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(3)) is amended—

(a) by redesignating subparagraph (D) as subparagraph (E); and

(b) by inserting after subparagraph (C) the following new subparagraph:

"(D) To develop and establish overall strategies, policies, and goals for the Corporation, subject to review by the Oversight Board pursuant to subsection (a)(6)(A) of this section.".

SEC. 207. MANAGEMENT OF THE RESOLUTION TRUST CORPORATION.

Section 21A(b)(1)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(1)(C)) is amended to read as follows:

"(C) MANAGEMENT BY BOARD OF DIRECTORS.—The Corporation shall be managed by or under the direction of its Board of Directors.".

SEC. 208. RESTRUCTURING OF THE RESOLUTION TRUST CORPORATION BOARD OF DIRECTORS.

Section 21A(b)(8) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(8)) is amended—

(a) by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—Except as provided in subsection (m), the Board of Directors of the Corporation shall consist of—

"(i) the members of the Board of Directors of the Federal Deposit Insurance Corporation;

"(ii) the chief executive officer of the Corporation; and

"(iii) one other person appointed by the Oversight Board after consultation with the Corporation, whose term of office shall be determined by the Oversight Board."; and

(b) by amending subparagraph (B) to read as follows:

(B) CHAIRPERSON.—The Corporation's chief executive officer shall serve as the Chairperson of the Board of Directors of the Corporation.".

SEC. 209. STAFF OF THE RESOLUTION TRUST CORPORATION; CHIEF EXECUTIVE OFFICER.

Section 21A(b)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)) is amended—

(a) in subparagraph (A), by striking "Unless the Oversight Board exercises its authority under subsection (m), the" and inserting instead "The";

(b) in subparagraph (B), by amending clause (i) to read as follows:

"(i) FDIC.—The Corporation shall use employees (selected by the Corporation) of the Federal Deposit Insurance Corporation and the Federal Deposit Insurance Corporation shall provide such personnel to the Corporation for its use. Notwithstanding the foregoing, the Federal Deposit Insurance Corporation need not provide to the Corporation any employee of the Federal Deposit Insurance Corporation who was employed by the Federal Deposit Insurance Corporation on the date of enactment of the Resolution Trust Corporation Restructuring Act of 1991 and who had not theretofore been provided to the Corporation by the Federal Deposit Insurance Corporation. In addition to persons otherwise employed by the Federal Deposit Insurance Corporation, the Federal Deposit Insurance Corporation shall employ, and shall provide to the Corporation, such persons as the Corporation may request from time to time. Federal Deposit Insurance Corporation employees provided to the Corporation shall be subject to the direction and control of the Corporation and any of them may be returned to the Federal Deposit Insurance Corporation at any time by the Corporation in the discretion of the Corporation. The Corporation shall reimburse the Federal Deposit Insurance Corporation for the actual costs incurred in providing such employees. Any permanent employee of the Federal Deposit Insurance Corporation who was performing services on behalf of the Corporation immediately prior to the enactment of the Resolution Trust Corporation Restructuring Act of 1991 shall continue to be provided to the Corporation after enactment unless the chief executive officer determines the services of any such employee to be unnecessary, in which case such employee shall be returned to a similar position performing services on behalf of the Federal Deposit Insurance Corporation. In any ensuing reduction-in-force or reorganization within the Federal Deposit Insurance Corporation, any such employee shall compete with the same rights as any other Federal Deposit Insurance Corporation employee. The Corporation may use administrative services of the Federal Deposit Insurance Corporation and, if it does so, shall reimburse the Federal Deposit Insurance Corporation for the actual costs of providing such services."; and

(c) by adding at the end thereof the following new subparagraph:

"(C) CHIEF EXECUTIVE OFFICER.—The Corporation shall have a chief executive officer appointed by, and removable at any time by, the Oversight Board. The chief executive officer shall be an employee of the Federal Deposit Insurance Corporation provided to the Corporation for that purpose and shall receive such compensation and benefits as the Corporation's Board of Directors may determine from time to time in accordance with the laws and regulations applicable to the personnel practices of the Federal Deposit Insurance Corporation. The Corporation shall define such chief executive officer's duties and authorities in such manner, and the Corporation's Board of Directors shall provide the chief executive officer with such powers, as shall be adequate for the chief executive officer's efficient management and administration of the Corporation's day-today affairs. Among such duties, authorities, and powers shall be the duty, authority, and power, subject to the ultimate direction of the Corporation's Board of Directors (and subject to the exercise by the Oversight Board of its powers, duties, and authorities with respect to the Corporation):

"(i) To specify the duties, authorities, and powers of other officers of the Corporation and the duties, authorities, and powers of other persons, including employees of the Federal Deposit Insurance Corporation, acting on behalf of the Corporation.

"(ii) To make and modify staffing plans and organizational and management structures of the Corporation to most of the goals of this Act and other applicable laws.

"(iii) To direct all aspects of the Corporation's operations in a manner consistent with general practices of the private sector and with this Act and other applicable law.

"(iv) To modify and implement existing standards, policies, principles, procedures, guidelines, and statements in order to optimize the Corporation's performance, including but not limited to its performance in the disposition of assets.

"(v) To develop, adopt, and implement new standards, policies, principles, procedures, guidelines, and statements in order to optimize the Corporation's performance, including but not limited to its performance in the disposition of assets.

"(vi) To set and adjust the compensation and benefits of persons (other than the chief executive officer) acting on behalf of the Corporation in accordance with laws and regulations applicable to the personnel practices of the Federal Deposit Insurance Corporation.

"(vii) To choose employees of the Federal Deposit Insurance Corporation to be provided to the Corporation by the Federal Deposit Insurance Corporation, to request that the Federal Deposit Insurance Corporation employ specified persons for that purpose, and to return at any time to the Federal Deposit Insurance Corporation any such employee so provided.".

SEC. 210. RIGHTS OF EMPLOYEES UPON SUNSET.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended—

(a) in section 404(9)—

(1) by striking "section 21A(m)" and inserting instead "section 21A(o)";

(2) by striking "of such Corporation shall be transferred to" and inserting instead "of the Federal Deposit Insurance Corporation assigned to the Resolution Trust Corporation shall be reassigned to a position within"; and

(3) by striking "of this subsection" and inserting instead "of this section"; and

(b) in section 404(2)—

(1) by inserting "grade," after "status, tenure,"; and

(2) by inserting "or, if the employee is a temporary employee, separated in accordance with the terms of the appointment" after "cause".

SEC. 211. CONFORMING AND TECHNICAL AMENDMENTS.

Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended—

(a) in subsection (a)—

(1) in paragraph (9), by inserting "voting" after "preclude a";

(2) in paragraph (10)—

(A) by striking "establish and review the general policy of" and inserting instead "review overall strategies, policies, and goals established by"; and

(B) by striking "standards, policies, and procedures necessary to carry out" and inserting instead "matters as pertain to";

(b) in subsection (b)—

(1) in paragraph (3), by striking "and through the Federal Deposit Insurance Corporation (or any replacement authorized pursuant to subsection (m))";

(2) in paragraph (10)—

(A) by amending subparagraph (B) to read as follows:

"(B) To provide for a chief executive officer to be appointed by the Oversight Board."; and

(B) in subparagraph (N), by deleting "on behalf of the Federal Deposit Insurance Corporation, acting as exclusive manager"; and

(3) in paragraph (12)—

(A) in subparagraph (A), by amending the last sentence to read "The Corporation may establish overall strategies, policies, and goals for its activities and may issue such rules, regulations, standards, policies, principles, procedures, guidelines, and statements as the Corporation considers necessary or appropriate to carry out its duties."; and

(B) by amending subparagraph (B) to read as follows:

"(B) REVIEW ETC.—Such overall strategies, policies, and goals, and such rules, regulations, standards, policies, principles, procedures, guidelines, and statements—

"(i) shall be provided by the Corporation to the Oversight Board promptly or prior to publication or announcement to the extent practicable;

"(ii) shall be subject to the review of the Oversight Board as provided in subsection (a)(6)(A) (with respect to overall strategies, policies, and goals) or subsection (a)(6)(C) (with respect to rules, regulations, standards, policies, principles, procedures, guidelines, and statements); and

"(iii) shall be promulgated pursuant to subchapter II of chapter 5 of title 5, United States Code.";

(c) in subsection (m)—

(1) in paragraph (1)—

(A) by striking "Notwithstanding any other provision of law, the Oversight Board has the ultimate authority to supervise the Corporation and is ultimately accountable for the administration of the Corporation."; and

(B) by striking "Federal Deposit Insurance Corporation (or any replacement) from its position as exclusive manager of the Corporation and from all of its responsibilities and authorities to act for the Corporation," and inserting instead "entire Board of Directors of the Corporation"; and

(2) in paragraph (3), by striking "Federal Deposit Insurance" and inserting "entire Board of Directors of the"; and

(d) by amending subsection (n) to read as follows:

"(n) OPERATION OF CORPORATION AFTER EXERCISE OF POWERS UNDER SUBSECTION (m).—If the Oversight Board exercises authority under subsection (m), the Oversight Board shall—

"(1) select a new Board of Directors and a new chief executive officer for the Corporation; and

"(2) provide to Congress, not later than 60 days before the removal of the Board of Directors of the Corporation, the identity of the new Board of Directors and the new chief executive officer selected pursuant to paragraph (1).".

SECTION BY SECTION ANALYSIS

To provide funding for the resolution of failed thrifts and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes.

TITLE I

Section 101 provides that this title may be cited as the "Resolution Trust Corporation Refinancing Act of 1991."

Section 102 would amend section 21A(i)(2) of the Federal Home Loan Bank Act to provide the Resolution Trust Corporation (RTC) with the $80 billion in additional loss funds to complete the resolution of failed thrifts.

Section 103 would amend section 21A(j)(1) of the Federal Home Loan Bank Act to enable the RTC to borrow necessary working capital funds from the Federal Financing Bank for the purpose of acquiring and carrying the assets of failed institutions. Both loss funds and working capital are necessary to resolve failed thrifts and protect depositors.

Section 104 would amend section 11(c)(6)(B) of the Federal Deposit Insurance Act to extend until September 30, 1993, the period during which the Office of Thrift Supervision (OTS) must appoint RTC as conservator or receiver of failed thrifts.

Section 105 is a conforming amendment to section 21A(b)(3)(A) of the Federal Home Loan Bank to extend until September 30, 1993, the period during which the RTC has the duty to act conservator or receiver of failed thrifts.

TITLE II

Section 201 provides that this title may be cited as the "Resolution Trust Corporation Restructuring Act of 1991."

Section 202 would limit the accountability of the Oversight Board (Board) to the performance of its duties as specified in section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a).

Section 203 would revise the composition of the Board by adding, as nonvoting members, the Chairman of the Federal Deposit Insurance Corporation (FDIC) and the Chief Executive Officer (CEO) of the Resolution Trust Corporation (RTC).

Section 204 would amend section 21A of the Federal Home Loan Bank Act to authorize the RTC to develop and establish overall goals and policies and to authorize the Board to review and require modification of the goals and policies established by the RTC. Under this section, the Board would review RTC financial plans and budgets, policies, procedures, guidelines, rules and regulations and require their modification if the Board determines them to be materially inconsistent with the RTC's overall goals and policies, applicable law, the efficient discharge of the RTC's duties, or sound public policy. The Board would not have authority to require modification of RTC internal administrative policies or procedures, personnel, delegations of authority, or case-specific matters.

This section also would require RTC conservator and receivership policies to be consistent with those of the FDIC.

This section also authorizes the Board to appoint a CEO of the RTC and another private member to the RTC Board of Directors.

Section 205 makes conforming changes consistent with section 204.

Section 206 would transfer to the RTC, subject to Board review, authority to develop overall strategies, policies and goals.

Section 207 would transfer exclusive RTC management from the FDIC to the RTC Board of Directors.

Section 208 would restructure the RTC Board of Directors to include the Board of Directors of the FDIC, the CEO of the RTC, and one member selected by the Oversight Board in consultation with the RTC Board of Directors whose term is determined by the Oversight Board.

Section 209 would restructure RTC personnel provisions to provide (1) that RTC operations would be conducted by FDIC employees subject to the direction and supervision of the RTC, (2) that FDIC employees assigned to the RTC on the date of enactment may be reassigned to a similar position in the FDIC at any time, (3) that the RTC would fully reimburse FDIC for all costs associated with such employees, and (4) in the event of a reduction-in-force, FDIC employees assigned to the RTC and reassigned to the FDIC would have the same rights as other FDIC employees.

This section also would authorize the Board to appoint the CEO and to remove the CEO at any time. The CEO would be an employee of the FDIC, with compensation determined by the RTC Board in accordance with FDIC personnel practices. This section also provides the CEO with board executive authority.

Section 210 would clarify that FDIC employees assigned to the RTC at the time of RTC's termination are guaranteed positions within the FDIC in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

Section 211 would authorize the Board to remove the RTC Board of Directors for cause (as specified in FIRREA) and to appoint a new RTC Board of Directors. This section also makes several technical and conforming amendments.

THE SECRETARY OF THE TREASURY,
Washington, DC, September 27, 1991.

Hon. DAN QUAYLE,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed herewith are the Administration's legislative proposal to refinance the Resolution Trust Corporation and to restructure the Oversight Board and the Resolution Trust Corporation, and an analysis of the proposal.

The Administration strongly urges that the draft bill promptly be enacted by the Congress.

Title I of the draft bill, the "Resolution Trust Corporation Refinancing Act of 1991," would provide an additional appropriation of $80 billion in loss funds necessary for the Resolution Trust Corporation (RTC) to complete the resolution of failed thrifts, adjust the FIRREA note cap to allow RTC to borrow up to $160 billion, and extend for one year the period of time that the Office of Thrift Supervision (OTS) may transfer insolvent thrifts to the RTC for resolution.

To date, the Congress has provided $80 billion in loss funds for depositor protection: $50 billion in FIRREA and $30 billion in the RTC Funding Act of 1991. The RTC estimates that it will complete the resolution of approximately 569 thrifts by the end of the current fiscal year, and that by the end of October or shortly thereafter it will have used all the funds provided by the Congress. The Administration's request for an additional $80 billion is based on the conservative assumption that all thrifts currently designated by OTS as Group IV, IIIC, and IIIB would require resolution by the RTC. The Administration therefore asks that Congress provide the RTC with sufficient funds to complete these resolutions, which is estimated to require up to $80 billion.

By the end of this fiscal year, RTC expects to have $70 billion in working capital borrowings outstanding, an amount well within the borrowing limitation set by FIRREA. However, during 1992, RTC could exceed the $125 billion note cap limit, and we estimate that working capital needs could peak at $160 billion by mid-1993. After that time, we expect that the outstanding balances will begin to decline. Because both loss funds and working capital funds are required to complete resolutions, it is imperative that loss fund authorizations be matched with adequate working capital borrowings. Therefore, the Administration requests that Congress authorize RTC borrowing of $160 billion. Without such authority, the RTC may be forced to dump assets at fire-sale prices simply to stay under the current borrowing limit.

When enacted, FIRREA provided what was then estimated to be an adequate period of time—three years—during which OTS might appoint the RTC as conservator or receiver of thrift institutions then considered likely to fail. After August 8, 1992, when this appointment authority expires, conservator and receiver appointments would be made to the Federal Deposit Insurance Corporation, which manages the Savings Association Insurance Fund (SAIF). The Administration's proposal would extend that period to September 30, 1993, to accommodate the greater-that-anticipated number of savings institutions expected to fail.

RTC was designed to resolve the insolvent sector of the thrift industry. The intent of FIRREA was that SAIF would begin with a healthy industry. The Administration requests that Congress extend the period of time within which OTS may transfer thrifts to the RTC. This will allow orderly resolution of the remaining insolvent thrifts, enable SAIF to begin functioning with a clean slate as intended by the Congress, and remove any incentives to prematurely place institutions in conservatorship that might otherwise merge in the private sector.

In summary, title I will permit the RTC to complete its mission of resolving failed savings institutions that, by the end of this fiscal year, will have protected nearly 20 million deposit accounts. Prompt enactment of title I by the Congress will permit the uninterrupted fulfillment of the Government's commitment to depositors at the least cost to taxpayers.

Title II of the draft bill, the "Resolution Trust Corporation Restructuring Act of 1991," would transfer exclusive RTC management from the FDIC to the RTC Board, and authorize the Oversight Board to appoint and remove a chief executive officer (CEO) of the RTC who would have broad authority over the day to day operations. In addition, it would revise the composition of the Oversight Board by adding, as nonvoting members, the Chairman of the FDIC and the CEO of the RTC. This title will enhance the abilities of the Board and the RTC to effectively and efficiently fulfill their intended missions.

An identical proposal has been transmitted to the Speaker of the House of Representatives.

Sincerely,

NICHOLAS F. BRADY.

STATEMENT OF HON. JOHN E. ROBSON, DEPUTY SECRETARY OF THE TREASURY

Chairman Dixon and members of the Subcommittee, I am pleased to respond to your request to discuss the Administration's proposal to restructure the RTC. Accompanying me is Peter Monroe, President of the Oversight Board.

The Administration's restructuring proposal is contained in the RTC Refinancing and Restructuring Act of 1991, which Secretary Brady submitted on behalf of the Administration to the Speaker of the House and President of the Senate on September 27, with a request for its prompt consideration. It has been introduced in the Senate.

The RTC Refinancing and Restructuring Act of 1991 would provide $80 billion in loss funds, which we estimate will be sufficient to complete the unprecedented jobs of the savings and loan cleanup and the protection of insured depositors. It would provide additional working capital by raising the obligation limitation to $160 billion, and it would extend to September 30, 1993, the Office of Thrift Supervision's authority to transfer insolvent thrists to the RTC for closure.

To create the framework for our discussion of restructuring, I think it important to review the RTC's progress to date—where it stands in an effort that must, by law, end in 1996.

At September 30 this year the RTC had saved the accounts of over 18 million depositors in thrifts in 44 states. The average balance of those 18 million accounts in just over $9,000. Because it has kept depositors' accounts whole and done so without delay RTC has helped avert a crisis of confidence in our banking system.

At September 30 the RTC had seized 660 thrifts and had resolved 563 of them—one every 33 hours. It plans during fiscal year 1992 to resolve a total of 233 institutions, if it promptly receives the funds it needs to continue its work.

My point is that the RTC is within sight of completing the task of closing insolvent institutions and removing them from the thrift industry.

The great task now confronting the RTC is the disposition of a huge amount of hard-to-sell assets—the investments of hundreds of defunct S&Ls. Even here there is progress to report. As of August 31, 1991, the RTC had seized $341 billion of assets. The net book value of sales and principal collections totaled $182 billion, leaving $159 billion of assets in inventory.

Recognizing that the RTC has ended the phase during which its mission has mainly been resolution of institutions, and entered the phase of its short life during which it must concentrate on the position of assets, the Oversight Board in June began with former FDIC Chairman Seidman a search for a new full-time Chief Executive Officer to run the RTC.

We were able to recruit a highly qualified individual, and last Thursday the FDIC, in its capacity under FIRREA as exclusive manager of the RTC, appointed as RTC CEO a seasoned business executive with a record of outstanding achievement in managing complex organizations. I am delighted that Albert V. Casey will appear here today in this new capacity.

With the appointment of Mr. Casey as CEO and the delegation to him of sufficient powers to run the RTC effectively, the Administration believes it has taken the most important single action necessary to solve the operational problems that have plagued the RTC's asset disposition efforts.

Some argue, however, that the RTC's problems stem not from operations or management but from its structure, notably the dual board structure created by FIRREA. We do not agree, neither does the Chairman of the RTC National Advisory Board, Philip Searle, who stated before this Subcommittee on June 19 that the structure is not the cause of RTC's operational problems.

Simply put, the current structure makes the RTC Board responsible for operations, and the Oversight Board responsible for funding, policy, and evaluation. The Administration believes that the logic of this division of responsibility remains valid for several reasons:

First is the RTC's control over a tremendous expenditure of public funds. An operational agency that can spend up to $160 billion in taxpayer dollars, and borrow as much as $160 billion more, should have independent oversight by the Administration which is responsible for the national budget. This need was recognized in the cases of the Chrysler and Lockheed loan guarantees. In both instances Congress created an oversight board to monitor the use of public monies.

Second is the need to permit the RTC—its CEO and Board—to focus wholly on their giant operational task, while permitting the separate Oversight Board to monitor overall policy, performance and financial matters.

Third is the need for political accountability. To entrust the cleanup to an indpendent board dominated by private sector members would be bad public policy. Retaining a separate Oversight Board maintains the linkage of the cleanup to the Administration.

The necessity of an independent oversight entity has been consistently stated by the General Accounting Office. Before the House Banking Committee on February 20, the Comptroller General said:

"I think you need an oversight board to monitor how the operation is going . . . I don't think just having GAO and auditors coming in [is enough], I think you need an oversight board with . . . staff monitoring that."

Most recently, in letters to Senator Garn and Congressman Wylie on October 8, the GAO reiterated its views on the structure of the cleanup. I have attached a copy of this letter and ask that it be included in the record. It should be useful to the Subcommittee because it makes three important points that are directly relevant to today's discussion: first, it calls for a strong CEO; second, it calls for "strong oversight by an entity independent of the day-to-day operations of the RTC;" third, it asks that any restructuring be done in such a manner as to minimize disruption.

The retructuring contained in the Administration's proposed RTC Refinancing Act of 1991, in combination with the appointment of a new Chief Executive Office for the RTC, fulfills each of these objectives. It creates a strong CEO with statutory powers to manage the RTC; it provides for independent oversight by retaining the Oversight Board and more sharply defining its powers to cover essential oversight actions and to keep it out of operations; and by building on the existing structure and providing protection for RTC employees, it will not result in disruption in an effort that is now in mid-course and making substantial progress.

The proposal is the result of a collaboration between the Oversight Board and Chairman Seidman. Both believe that it makes useful changes in the current structure without impeding the growing momentum of the cleanup effort. Mr. Casey is of course familiar with the current structure and with our proposal and feels confident he can work within either.

Against this background let me now review the main elements of the proposal.

First, it places political accountability for the cleanup squarely in the Oversight Board. Mr. Chairman, at the full Committee's June 11 hearing you expressed frustration with an apparent lack of accountability when you asked the Comptroller General "can you not get someone in here we can blame later?" I would observe that Congress has so far had no trouble blaming the Administration and the Oversight Board. But this proposal makes it clear that political responsibility for the cleanup rests with the Board. That is partly because under the proposal the CEO is hired and fired by the Board.

As Bill Seidman has pointed out, the Oversight Board in this proposal becomes much more like a corporate board with the power to remove the CEO, and the power to review and modify, but not to establish, policies for the RTC. This last point is important. The Oversight Board now has the power to initiate policies for the RTC. Under our proposal, the Board may only review and modify RTC policies. And such Board review is after-the-fact. It does not slow RTC or require advance approval of its policies.

Second, it creates, as I said earlier, a strong CEO giving him full powers in law to operate the RTC. This, Mr. Chairman should respond to your bill, S. 1425, requiring appointment of a strong CEO, and your letter to the Washington Post on August 1 in which you call for RTC leadership by an experienced CEO. As you asked, our proposal gives him the authority to make decisions and make the RTC work.

In addition to the grant of managerial powers, our proposal gives the CEO more authority than currently by making him Chairman of the RTC Board. You may well ask why it is necessary to retain the RTC Board. As Bill Seidman has pointed out, the structure we propose retains the RTC Board as the body responsible for management of operations, much like the operating committees that exist in many corporations. When you consider the magnitude of the decisions the RTC CEO must regularly make, you can understand the desirability for a group of experienced individuals to help with them. This operational role is similar to that which the RTC Board now plays.

Our proposal does not call for Senate confirmation of the CEO. We do not believe this is necessary because he reports to the Oversight Board which consists of five officers confirmed by the Senate. We do not believe it is desirable because it would create delay. We now have a full qualified CEO in place. Under our proposal he can continue to serve in the new structure without interruption but with enhanced powers. To require confirmation would almost certainly have the effect of inhibiting his decision-making.

Third, the proposal improves coordination and communication between the operating and oversight function by making the CEO a member of the Oversight Board. In addition the FDIC Chairman is made a member of the Board in recognition of the fact that the FDIC will continue to supply personnel and support for the RTC, a temporary agency.

Fourth, our proposal will free the FDIC from the FIRREA-mandated responsibility of exclusive manager of the RTC and permit it to concentrate on the banking industry.

However, the proposal retains a relationship between FDIC and RTC in which all RTC personnel are maintained as FDIC employees. This arrangement avoids the creation of a permanent RTC bureaucracy and looks forward to the termination of the RTC in 1996 by providing for the return of nontemporary RTC employees to the FDIC. Thus the proposal avoids creating a situation in which FDIC employees currently detailed to the RTC will want to leave the RTC now.

Fifth, the proposal avoids disruption. It builds on the current structure. It makes a real improvement in RTC's operations but avoids creating havoc in an enterprise that is well under way.

Finally, the proposal retains the oversight function that the Administration strongly believes must continue to be an essential component of the cleanup structure.

Mr. Chairman, we believe we have fashioned, in cooperation with Bill Seidman, a proposal which responds, in the ways I have outlined above, to the concerns you and other members of Congress have expressed. It is a proposal that at the same time meets the criteria we and the General Accounting Office have established.

As Senator Garn and others have acknowledged, it would be counterproductive to enact a structure neither the Administration nor RTC want or believe is suitable to the task.

There will be other witnesses today who have had considerable experience in government organization. So have I, and with major private sector organizations as well. These witnesses, based on past statements, may make the point that the current structure seems clumsy and that our proposal does not go far enough. I have watched this organization closely since its inception. Certainly there have been problems: not to have expected problems in an undertaking of this magnitude and complexity would have been unrealistic. But organizational structures which perhaps meet academic criteria may not fill the real needs of an organization in the political context in which it operates, an organization that is moreover well down the path toward fulfilling its mission within a relatively short time frame. As the GAO points out in the attached letter, "careful attention must be given to avoiding changes or delays that would be counterproductive to the progress RTC is making in improving both its operations and asset disposition strategies."

In conclusion, Mr. Chairman and subcommittee members, I ask for your support for a restructuring proposal which we believe improves RTC operations and responds to Congressional concerns. On behalf of the Administration I express the earnest hope that the Committee will move quickly to report our refunding request and with it, our reorganization proposal. I look forward to responding to your questions.

GENERAL ACCOUNTING OFFICE,
Washington, DC, October 8, 1991.

Hon. JAKE GARN,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

DEAR SENATOR GARN: Thank you for your letter requesting our views on streamlining and restructuring RTC. Last February, in testimony before the House Committee on Banking, Finance and Urban Affairs we raised the need to consider separating the leadership of FDIC and RTC because of the formidable tasks facing both agencies. We said it was time to consider a Chief Executive Officer (CEO) for RTC. In testimony on September 12, 1991, the Administration agreed that a separate CEO is needed for RTC.

As you know, a variety of proposals have been advanced by different parties aimed at restructuring RTC. We believe there are at least two organizational concepts we would like to see included in any restructuring proposal enacted by Congress.

The first is identifying a CEO responsible for the day-to-day operations of RTC. As I mentioned, this concept has been supported by the Administration in testimony and is already embodied in the proposals put forward to date. This individual should be skilled in the business of asset management and disposition and have sufficient latitude to direct RTC in meeting the challenges it faces. It is also important that sthe CEO build a strong top management team because one person cannot effectively run an organization as large and diverse as RTC.

The second concept is the need for strong oversight by an entity independent of the day-to-day operations of the RTC. Special attention is needed because of the magnitude of both the overall operations of RTC and the funding required. An oversight board meets this criteria and could help assure that the effort does not get off track.

In closing, let me emphasize that in pursuing restructuring, careful attention needs to be given to avoiding changes or delays that would be counterproductive to the progress RTC is making in improving both its operations and asset disposition strategies.

Sincerely yours,
GASTON L. GIANNI, Jr.,
Associate Director,
Federal Management Issues.

TESTIMONY OF L. WILLIAM SEIDMAN ON RTC STRUCTURE ISSUES

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you in my new role as a private citizen and to give you my views on the Administration's proposal for restructure of the RTC.

I can summarize by saying that the RTC restructure proposal, which was jointly drafted by the Administration and the FDIC-RTC, is an important and desirable step forward in the administration of the S&L clean-up process.

Briefly, it makes the following changes:

(1) It creates a RTC CEO who chairs the RTC Board and is a member of the RTC Oversight Board;

(2) It removes the Independent FDIC Board from its responsibility as "exclusive manager" of the operations of the RTC;

(3) It provides the RTC Oversight Board with the power to appoint and remove both the new RTC CEO and the reconstituted RTC Board;

(4) It reduces the activities of the RTC Oversight Board to those normally associated with "oversight" and places powers normally associated with a CEO in that position.

Two questions may be asked about this restructure:

(1) Does it change enough to achieve the desired efficiency?

(2) Does it change too much and thus set back the progress currently being made by the RTC?

The answer to the first question is "yes". The restructure will bring about the desired improvement in operations to the RTC because it:

(1) Creates a real chief executive officer—a position that does not exist today:

(2) Eliminates the dual independent boards. The RTC Board will no longer be independent. It will be the equivalent of an operating board of the RTC Oversight Board subject to removal at their request;

(3) Provides oversight by the RTC Oversight Board but removes the problem currently existing with respect to separating day to day operations from overall management;

(4) Coordinates the RTC and its Oversight Board by putting the CEO and FDIC Chairman on both boards, thus substantially eliminating the potential for conflict.

In summary it does what is necessary to improve the structure. With clear lines of authority, it provides a more efficient basis for operation.

The answer to the second question is "no". The new structure will not cause delays or slow the RTC clean-up because it:

(1) Makes no changes in personnel except to create the new CEO position and perhaps to cut back on the size of the Oversight Board staff commensurate with its reduced duties. This will improve efficiency immediately.

(2) Allows the CEO to begin operation at once with full authority and responsibility and with separate RTC personnel already in place.

(3) Keeps the Oversight Board to deal with funding issues and over-all coordination in the area of administration policies. At the same time it cuts back the Board's operational duties and most importantly, the time required from the very busy Board members.

(4) Requires nothing to be put "on hold" since the new CEO will be acting as an RTC employee and consultant to the Oversight Board until the law is put in place.

In summary, there should be no loss of momentum at the RTC with the new structure, and there will be considerable gain in efficiency.

I believe the RTC is ready to go forward on its own—independent of the FDIC, which certainly has more than enough to do in its own areas of responsibility. The change will allow immediately improved efficiency for both the RTC and the FDIC.

Thank you for your attention.●

By Mr. DOMENICI:

S. 1897. A bill to improve supervision and regulation of Government sponsored enterprises; to the Committee on Banking, Housing and Urban Affairs.

GOVERNMENT SPONSORED ENTERPRISE REGULATOR ACT OF 1991

● Mr. DOMENICI. Mr. President, I am here on the floor today to introduce a bill that will establish an independent division at the Treasury Department to monitor the safety and soundness of six Government sponsored enterprises [GSE].

While none of the GSE's currently needed a bailout, it is not too far fetched to imagine one of these $400 billion entities failing. Currently, we only loosely monitor GSE's for safety and soundness.

We need to better watch GSE's to ensure that the taxpayer is not faced with the tab for another savings and loan crisis. It is the comparison to the saving and loan crisis, and the fear of unexpected costs in the billions, that has initiated the need for this legislation.

BUDGET

I am not introducing this bill out of context. The Budget Enforcement Act of 1990 requires the committees of jurisdiction to report out legislation by September 15, 1991, to strengthen the safety and soundness of GSE's.

In the last year's budget summit it became apparent that GSE's shared similar budget characteristics to deposit insurance. The Government's liability commitment with deposit insurance is an unanticipated costs and not easily projected in the budget—until the costs come due. Under the current system, GSE's would operate in the same manner.

GSE's are a hidden contingent liability. They are offbudget entities which are not included in the deficit or the budget, yet they carry with them the status of implied Government backing.

While it is unclear how implied backing is financially defined, the market has taken the view that if GSE's get into financial trouble, Uncle Sam's deep pockets would bail them out.

While these entities are financially solvent today, they need to be watched more closely so the taxpayers are not blind-sided with unexpected costs.

HOUSE BILL

While I have problems with the House Banking Committee's passed bill, at least the committee meet the September 15 reporting deadline as required in the Budget Act. The Senate Banking Committee hasn't even scheduled a markup.

I find it troubling that the House bill places the GSE regulator for Fannie Mae and Freddie Mac at HUD.

HUD does not have the technical expertise or the understanding of finance to properly implement a safety and soundness program for companies with assets worth more than $700 billion.

HUD recently released regulations that focused almost entirely on housing, when the focus was supposed to be financial soundness. The regulations are 50 pages long, in which 47 pages focus on housing and 3 on safety and soundness.

These regulations are worrisome—especially if they are a preview of what HUD would be like as a safety and soundness regulator. For example, HUD wants Fannie Mae and Feddie Mac to pool inner-city mortgages regardless if the requirement would weaken credit standards and erode soundness.

HUD will be tempted to change the mission of GSE's to promote housing, regardless if it means making bad business decisions.

The House bill will take these successful entities, tie their hands through their public policy mission, and make them unprofitable. I hope the Senate bill does not proceed in this direction.

We don't want to cause financial problems by developing legislation that threatens safety and soundness. The need for this legislation was prompted by the potential future exposure GSE's present to the taxpayer, not the need to change their public policy mission.

REGULATORY STRUCTURE

The most important aspect of this legislation is to establish a regulatory structure that will be able to anticipate and prevent future financial problems. The House bill, which places HUD as the regulator, is a flawed approach.

I am proposing here to place the GSE regulator at Treasury because it has the technical expertise and understanding of finance to implement stress tests and capital requirements.

The GSE department at Treasury will have a narrow mission of evaluating safety and soundness. Program regulation will be maintained with program experts at HUD for Fannie Mae and Freddie Mac, the Federal Housing Finance Board for the Federal Home Loan Bank System, the Farm Credit Administration for the Farm Credit System and Farmer Mac, and the Education Department for Sallie Mae.

Before the program regulator can issue regulations, the GSE department will evaluate the regulations to determine if they are consistent with ensuring safety and soundness. The GSE department will only be able to withhold approval for regulations if the regulations threaten soundness.

The GSE department at Treasury will focus on protecting the taxpayer, not expanding the public policy mission. The Treasury will be more inclined to make difficult decisions that conflict with the GSE mission than program regulators.

The proposal ensures that one voice is speaking, accountable, and reporting to Congress on the financial soundness of all GSE's and the status of the secondary market.

There is not need to create an intrusive regulator. These GSE's need to be monitored and watched closely, but we don't need to change them fundamentally.

CAPITAL

While I have problems with the House bill on their regulatory structure and housing title, the bill is heading in the right direction on increasing capital requirements and the development of stress tests.

While seven different studies indicate Fannie Mae and Freddie Mac do not pose an imminent threat to taxpayers, all the studies emphasize that their capital levels are low relative to risk.

The time to require GSE's to increase capital is when they are healthy. Once an entity shows stress, requiring them to increase capital only makes matters worse. We need to establish capital requirements now while these companies appear to be strong.

While the focus of the Treasury report is on capital levels, there are other indicators a regulator should look at including management risk, operational risk, and internal controls.

THE NEED TO ACT

If the GSE's are so profitable, what's the big deal or the need for legislation? Because it wasn't always so, and may not always be.

While the GSE's have been very profitable the last few years, as recently as 1985, Fannie Mae was losing enormous amounts of money and was in serious trouble. In fact, Fannie Mae was losing nearly a million dollars a day in the early 1980's and on a market-value basis was clearly insolvent. Essentially, Fannie Mae rolled the dice and bet on interest rate changes and won.

More recently, the Farm Credit System had to be bailed out after it followed a policy of mispricing its portfolio. It was not as lucky as Fannie Mae.

The Treasury contracted with Standard and Poor's [S&P] to provide ratings of GSE's absent any Federal backing. Fannie Mae rated at A− and Farm Credit System rated BB, which are low or below investment grade ratings. Profit level doesn't always correlate into strength to absorb downturns or unexpected losses.

While these companies are profitable today and we are not responding to a financial crisis, there is exposure to the taxpayer in the future. Leaving them unregulated and unmonitored would be irresponsible.

In concluding, we need to recognize how unique these Government chartered entities are. Most would think GSE's are oxymorons because they are Government creations fulfilling a public purpose, while earning profits. I think this combination is great, and we need to ensure that they keep on growing and remain financially sound.•

By Mr. DASCHLE (for himself, Mr. PRESSLER, Mr. INOUYE, Mr. MCCAIN, Mr. SIMON, Mr. BURDICK, and Mr. MURKOWSKI):

S.J. Res. 222. Joint resolution to designate 1992 as the "Year of Reconciliation Between American Indians and non-Indians"; to the Committee on the Judiciary.

YEAR OF RECONCILIATION BETWEEN AMERICAN INDIANS AND NON-INDIANS

Mr. DASCHLE. Mr. President, 500 years ago some of our forefathers first set foot upon this continent. The quincentennial anniversary of the arrival of Christopher Columbus celebrates that event.

But 500 years ago, Mr. President, the forefathers of others among us had already been on this continent for thousands of years. It was their home.

The 500 years from then until now have chronicled the taking of a continent by one people from another. It is history that cannot be reversed. It is history that has seen the emergence of a wonderful, proud, and powerful nation in the world most of us call new.

But for those who do not call this continent new, for the American Indian, it has been a very different history. Their ranks have been decimated by the diseases of the new worlders; their lands have been taken and their cultures virtually destroyed. The wrongs have been many, yet through such adversity, native American languages, customs, and traditional values of fortitude, bravery, generosity, and wisdom have endured. These tools of survival are now supplying new strength, determination, and hope for a generation preparing to embrace the 21st century.

In South Dakota, where these wrongs and resentments are so sharply etched, we are fortunate indeed to have one Indian journalist and one Governor willing to take a chance. Tim Giago, the publisher of the Lakota Times, has gone from Pine Ridge, SD, to Harvard University and back again on the strength of his mind and the power of his pen. He has built the most respected news organization in Indian country. His thinking about Indian issues and the problems that divide his community from non-Indian America command attention from coast to coast.

In 1990, Mr. Giago conceived a modest idea that has begun an important process in my State. Why, he asked our Governor, should we not begin our second 100 years as a State with a year of reconciliation between Indian and non-Indian peoples? Nobody pretended the designation of a year of reconciliation would change our world in South Dakota. But Governor George Mickelson agreed it might at least begin to develop the trust, the respect, and understanding without which progress between peoples cannot be made.

Mr. Giago and the Governor were right. There have been setbacks and shouting matches. But the year of reconciliation in South Dakota has become a century of reconciliation. We have committed ourselves to finding in our second 100 years the understanding and justice between American Indians and non-Indians that too often eluded us during the century just passed.

This year Tim Giago asked our Governor and our congressional delegation the same question that led to South Dakota's reconciliation program—1992 is the 500th anniversary of the discovery of America by Christopher Columbus. Why not try nationwide to see whether a year of reconciliation might help kick off the second 500 years since Columbus more positively for Indians than the first?

Congressman TIM JOHNSON'S reply was "yes." He has already introduced in the House of Representatives the joint resolution we offer today.

Senator LARRY PRESSLER'S reply was "yes." He has spoken often in this Chamber of the history and problems of the Lakota Sioux and is the coauthor of this joint resolution.

My Chairman and vice-chairman of the Select Committee on Indian Affairs, Senator DANIEL INOUYE and Senator JOHN MCCAIN, agree as well. Their efforts on behalf of American Indian people are well known in this Chamber, and the strength their names lend to our joint resolution is deeply appreciated.

This joint resolution designates 1992 as the "Year of Reconciliation Between American Indians and non-Indians." I hope and expect it will receive the unanimous support of my colleagues and ask unanimous consent that the full text of the resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 222

Whereas 1992 will be recognized as the quincentennial anniversary of the arrival of Christopher Columbus to this continent;

Whereas this 500th anniversary offers an opportunity for the United States to honor the indigenous peoples of this continent;

Whereas strife between American Indian and non-Indian cultures is of grave concern to the people of the United States;

Whereas in the past, improvement in cultural understanding has been achieved by individuals who have striven to understand the differences between cultures and to educate others;

Whereas a national effort to develop trust and respect between American Indians and non-Indians must include participation from the private and public sectors, churches and church associations, the Federal Government, Tribal governments and State governments, individuals, communities, and community organizations;

Whereas mutual trust and respect provides a sound basis for constructive change, given a shared commitment to achieving the goals of equal opportunity, social justice and economic prosperity; and

Whereas the celebration of our cultural differences can lead to a new respect for American Indians and their culture among non-Indians: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1992 is designated as the "Year of Reconciliation Between American Indians and non-Indians". The President is authorized and requested to issue a proclamation calling upon the people of the United States, both Indian and non-Indian, to lay aside fears and mistrust of one another, to build friendships, to join together and take part in shared cultural activities, and to strive towards mutual respect and understanding.

ADDITIONAL COSPONSORS

S. 20

At the request of Mr. ROTH, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 20, a bill to provide for the establishment and evaluation of performance standards and goals for expenditures in the Federal budget, and for other purposes.

S. 152

At the request of Mr. COATS, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 152, a bill to amend the Internal Revenue Code of 1986 to increase the personal exemption to $4,000.

S. 359

At the request of Mr. BOREN, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 359, a bill to amend the Internal Revenue Code of 1986 to provide that charitable contributions of appreciated property will not be treated as an item of tax preference.

S. 581

At the request of Mr. BOREN, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 581, a bill to amend the Internal Revenue Code of 1986 to provide for a permanent extension of the targeted jobs credit, and for other purposes.

S. 747

At the request of Mr. PRYOR, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 747, a bill to amend the Internal Revenue Code of 1986 to clarify portions of the Code relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 844

At the request of Mr. DOMENICI, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 844, a bill to provide for the minting and circulation of one dollar coins.

S. 1401

At the request of Mr. PRESSLER, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1401, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for amounts paid by a health care professional as interest on student loans if the professional agrees to practice medicine for at least 2 years in a rural community.

S. 1505

At the request of Mr. DECONCINI, the names of the Senator from California

[Mr. CRANSTON] and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1505, a bill to amend the law relating to the Martin Luther King, Jr. Federal Holiday Commission.

S. 1533

At the request of Mr. BRYAN, the name of the Senator from Hawaii[Mr. AKAKA] was added as a cosponsor of S. 1533, a bill to establish a statute of limitations for private rights of action arising from a violation of the Securities Exchange Act of 1934.

S. 1606

At the request of Mr. DURENBERGER, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1606, a bill to establish a demonstration program that encourages State educational agencies to assist teachers, parents, and communities in establishing new public schools, and for other purposes.

S. 1623

At the request of Mr. DECONCINI, the names of the Senator from Rhode Island [Mr. PELL], and the Senator from California [Mr. SEYMOUR] were added as cosponsors of S. 1623, a bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

S. 1650

At the request of Mr. KERRY, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1650, a bill to revise the national flood insurance program to provide for mitigation of potential flood damages and management of coastal erosion, ensure the financial soundness of the program, and increase compliance with the mandatory purchase requirement, and for other purposes.

S. 1673

At the request of Mr. HEFLIN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1673, a bill to improve the Federal justices and judges survivors' annuities program, and for other purposes.

S. 1738

At the request of Mr. DASCHLE, the names of the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of S. 1738, a bill to prohibit imports into the United States of meat products from the European Community until certain unfair trade barriers are removed, and for other purposes.

S. 1741

At the request of Mr. ROBB, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1741, a bill to provide for approval of a license for telephone communications between the United States and Vietnam.

S. 1786

At the request of Mr. BAUCUS, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 1786, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment.

S. 1810

At the request of Mr. ROCKEFELLER, the names of the Senator from Montana [Mr. BAUCUS], the Senator from Alabama [Mr. HEFLIN], the Senator from Connecticut [Mr. DODD], the Senator from Illinois [Mr. SIMON], the Senator from California [Mr. CRANSTON], and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the Medicare program, and for other purposes.

SENATE JOINT RESOLUTION 195

At the request of Mr. DECONCINI, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of Senate Joint Resolution 195, a joint resolution providing that the United States should support the Armenian people to achieve freedom and independence.

SENATE JOINT RESOLUTION 206

At the request of Mr. RIEGLE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of Senate Joint Resolution 206, a joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day."

SENATE JOINT RESOLUTION 211

At the request of Mr. D'AMATO, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Joint Resolution 211, a joint resolution designating October 1991 as "Italian-American Heritage and Culture Month."

SENATE JOINT RESOLUTION 217

At the request of Mr. HATFIELD, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Texas [Mr. GRAMM], the Senator from Virginia [Mr. WARNER], the Senator from Texas [Mr. BENTSEN], the Senator from South Carolina [Mr. THURMOND], the Senator from Utah [Mr. HATCH], the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Dakota [Mr. CONRAD], the Senator from Arkansas [Mr. BUMPERS], the Senator from Colorado [Mr. BROWN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 217, a joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian."

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. BOREN, the names of the Senator from Oklahoma [Mr. NICKLES], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE RESOLUTION 201

At the request of Mr. FORD, his name was added as a cosponsor of Senate Resolution 201, a resolution to express the sense of the Senate regarding enforcement of the oilseeds GATT panel ruling against the European Community.

At the request of Mr. DANFORTH, the names of the Senator from Michigan [Mr. LEVIN], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Wisconsin [Mr. KASTEN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Florida [Mr. MACK], and the Senator from Nebraska [Mr. EXON] were added as cosponsors of Senate Resolution 201, supra.

SENATE RESOLUTION 204

At the request of Mr. D'AMATO, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of Senate Resolution 204, a resolution expressing the sense of the Senate that the United States should pursue discussions at the upcoming Middle East Peace Conference regarding the Syrian connection to terrorism.

SENATE RESOLUTION 207

At the request of Mr. ROTH, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of Senate Resolution 207, a resolution expressing the sense of the Senate regarding the recommendations of the United Nations study group on international arms sales.

AMENDMENT NO. 1287

At the request of Mr. GRASSLEY the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of Amendment No. 1287 proposed to S. 1745, a bill to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

AMENDMENTS SUBMITTED

CIVIL RIGHTS ACT OF 1991

RUDMAN AMENDMENT NO. 1290

Mr. RUDMAN proposed an amendment to amendment No. 1287 proposed by Mr. GRASSLEY to the bill (S. 1745) to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes, as follows:

At the end of the pending amendment, add the following:

SEC. . PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made by their behalf out of such account for an unfair employment practice judgment committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

NICKLES AMENDMENT NO. 1291

Mr. NICKLES proposed an amendment to amendment No. 1287 proposed by Mr. GRASSLEY to the bill S. 1745, supra, as follows:

(a) on page 14, line 9, after "compensatory" add "or punitive";

(b) on page 14, beginning on line 19, strike "The hearing board shall have no authority to award punitive damages.";

(c) on page 14, line 21, redesignate subsection "(i)" as subsection "(j)" and insert after subsection "(h)" the following new subsection:

(i) Notwithstanding any other provision of this act, a Senate employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.";

(d) on page 17, beginning on line 5, strike all of paragraph (3); and

(e) on page 17, beginning on line 13, strike all through page 19, line 3, and insert the following in lieu thereof;

"SEC. 209. CIVIL ACTION BY EMPLOYEE OR APPLICANT FOR EMPLOYMENT FOR REDRESS OF GRIEVANCES; TIME FOR BRINGING OF ACTION.

"(a) Within thirty days of receipt of the decision of a hearing board, or of the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board, on a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap or disability, brought pursuant to this title, or after one hundred and eighty days from the filing of a formal complaint with the Office or the notice of appeal with the Select Committee on Ethics (or such other entity as the Senate may designate) upon an appeal from a decision or order of a hearing board until such time as final action may be taken by the hearing board, an employee or applicant for employment, if aggrieved by the final disposition of his or her complaint, or by the failure to take final action on his or her complaint, may file a civil action as provided in 42 U.S.C. 2000e–5, in which civil action the Senate or an employing authority of the Senate that employs the employee shall be the defendant.

"(b) The provisions of 42 U.S.C. 2000e–5(f)(3)–(5), 2000e–5(g), 2000e–5(h), and 2000e–5(j), as applicable, shall govern civil actions brought hereunder. The remedies and jury trial rights made available to private complainants and executive branch employees under section 5 of this Act shall be equally available to any Senate employee bringing an action under this section.

"(c) Notwithstanding any other provision of this act, in a civil action a Senate employee or an executive branch employee may be awarded punitive damages on the same terms and conditions as such damages may be awarded to an aggrieved individual in the private sector.".

WARNER (AND OTHERS) AMENDMENT NO. 1292

Mr. WARNER (for himself, Ms. MIKULSKI, Mr. STEVENS, Mr. ROBB, Mr. WIRTH, Mr. KENNEDY, Mr. SARBANES, and Mr. ADAMS) proposed an amendment to the bill S. 1745, supra, as follows:

On page 4, line 5, insert "or 717" after "706".

On page 4, line 10, strike "or 704" and insert "704, or 717".

On page 4, line 23, insert ", and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1))," respectively, before "against a".

On page 4, line 25, insert "section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or" before "section 102".

On page 4, line 25, strike "Act" and insert "Americans with Disabilities Act of 1990".

On page 5, line 10, insert "or regulations implementing section 501 of the Rehabilitation Act of 1973" before ", damages".

On page 4, line 20, insert "or 717" after "706".

McCAIN AMENDMENT NO. 1293

Mr. McCAIN proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At the end of the amdt., add:

SEC. . REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this amendment are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

JEFFORDS (AND OTHERS) AMENDMENT NO. 1294

Mr. HATCH (for Mr. JEFFORDS, for himself, Mr. MITCHELL, and Mr. DOLE) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At the appropriate place insert the following:

SEC. . Section 1205 of Public Law 101–628 is amended in subsection (a) by—

(1) striking "Three" in paragraph (4)— and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

HATCH (AND KENNEDY) AMENDMENT NO. 1295

Mr. HATCH (for himself and Mr. KENNEDY) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

On page 6, line 14, insert ", for each complaining party" after "exceed".

HATCH (AND DOLE) AMENDMENT NO. 1296

Mr. HATCH (for himself and Mr. DOLE) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

At end of the title entitled "Government Employee Rights", add the following new section:

SEC. . INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 209 and section 220, any member of the Senate may intervene as a matter of right in any proceeding under section 209 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 209 or section 220, the Unied States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may by taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 209 or 220.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

MITCHELL AMENDMENT NO. 1297

Mr. HATCH (for Mr. MITCHELL) proposed an amendment to amendment No. 1274 proposed by Mr. DANFORTH to the bill S. 1745, supra, as follows:

Insert in section 209(a) after the phrase "section 208(d)", the following: ", or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 208(d)(2)(B),".

NOTICES OF HEARINGS

SELECT COMMITTEE ON POW/MIA AFFAIRS

Mr. KERRY. Mr. President, the Select Committee on POW/MIA Affairs, pursuant to discussions in previous organizational meetings, has scheduled initial hearings on November 5, 6, and 7 to examine the process of investigation of POW/MIA's currently in place, and to determine whether or not live Americans are being held against their will in Southeast Asia. The hearings will begin at 9:30 a.m., and will take place in room 216 of the Hart Senate Office Building. For additional information, please call 224-2306.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that the Subcommittee on Public Lands, National Parks and Forests has added an additional bill to the hearing agenda for the subcommittee hearing scheduled for Thursday, November 7, 1991. The additional measure to be considered is S. 1770, a bill to convey certain surplus real property located in the Black Hills National forest to the Black Hills Workshop and Training Center, and for other purposes.

The hearing will take place on Thursday, November 7, 1991, beginning at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

For additional information concerning the hearing, please contact David Brooks of the subcommittee staff at (202) 224-9863.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 30, at 2 p.m. to hold a hearing entitled, "Consolidating Free-Market Democracy in the Former Soviet Union."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Foreign Relations Committee be authorized to meet during the session of the Senate on Wednesday, October 30, at 10 a.m. to hold a hearing on U.S. security policy in East Asia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate Committee on Agriculture, Nutrition, and Forestry, be allowed to meet during the session of the Senate on Wednesday, October 30, 1991, at 10 a.m., in SR-332, to hold a hearing regarding agricultural and food assistance for the U.S.S.R.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Wednesday, October 30, 1991, at 9 a.m. Senator LIEBERMAN will chair a full committee hearing that will examine the small business credit crunch problem.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 30, at 3:30 p.m. to receive a closed briefing on the administration plan for military assistance to Jordan.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

SMALL BUSINESS ACCESS TO CREDIT

• Mr. BUMPERS. Mr. President, today more than any other time since I have been in the Senate, the most difficult issue facing most small business owners is access to credit. Year in and year out, availability of credit at a reasonable cost is identified by business owners as their chief obstacle. Today, however, for a variety of reasons, credit has become a bottleneck in the economy. With our economy in the doldrums at best, businesses with good credit histories and promising futures find that their usual sources of capital have virtually dried up.

The chief mission of the Small Business Administration since 1953 has been and remains to attempt to bridge the credit gap—to help smooth or make amends for defects in the market economy which make capital inordinately difficult for smaller firms. Over the years, Congress has crafted many programs to fit specific types of economic growth problems. These include both direct and guaranteed loans, as well true equity venture capital. By all accounts, one of SBA's most successful business expansion programs has been the Certified Development Company Program, also known as the section 504 loan program.

Under section 504 of the Small Business Investment Act of 1958, SBA guarantee repayment of a small business debenture—a long-term loan for 10 or 15 years—which finances not more than 40 percent of the cost of a business expansion or acquisition. The loan is secured by real estate, machinery, or capital equipment, so the taxpayer's position is fairly secure. The small business gets a favorable interest rate, just slightly over the Treasury's cost of money, for 40 percent of the projected and a long payout period. Fifty percent of the project is financed by a conventional lender such as a bank, and the Government agrees to take a second position on the mortgage. The remaining 10 percent must be provided by equity from the business.

According to SBA, the 504 program enjoys a loan currency rate in excess of 95 percent, and its actual losses have been minuscule. The program has been in existence for slightly over 10 years and has provided over $2 billion in financing to small business.

Mr. President, an article concerning this program recently appeared in the ABA Banking Journal, and I ask that it be reprinted in the CONGRESSIONAL RECORD at the conclusion of my remarks. Given the difficulty which businesses everywhere face in finding capital, they should well consider this and other SBA programs.

The article follows:

[From the ABA Banking Journal, Oct. 1991]

AN ANSWER TO THE CREDIT CRUNCH?

(By Scott Davis and Kent Moon)

In the search for profitable assets, many banks investigate the small business market—where they often find skepticism.

Small businesses frequently complain that banks only want their deposits and transaction fees, ignoring the "little guy's" credit needs. They feel that small firms get hit first when funds tighten and are the last to be relieved when the business picks up.

The Small Business Administration's 504 guaranteed loan program addresses this dilemma by providing a source of long-term credit at reasonable terms. Participating banks gain profitable, quality assets that also help demonstrate compliance with the Community Reinvestment Act.

504 BASICS

Congress created the 504 program in 1980 to provide long-term financing of fixed-assets for healthy, expanding small businesses. Only ownerusers qualify. The program is administered through certified development companies (CDCs) licensed by SBA. These nonprofit organizations can be sponsored either by private interests or by state and local governments. There are more than 400 CDCs across the country.

Originally, Congress targeted 504 to assist expanding businesses—proven to be the source of the vast majority of new jobs. More recently, the program has been amended to expand assistance to exporters, manufacturers, rural firms, minority-owned firms, and others.

Most projects must either create or save one job for every $35,000 of 504 financing although alternative policy objectives can be met instead. For example the job standard can be waived if the project is part of the lender's CRA effort.

CREDIT STRUCTURE

The 504 program offers borrowers access to 90 percent financing for the purchase of fixed assets. Qualifying transactions could include buying land and constructing a building on the land; buying an existing building; and buying major equipment.

A typical 504 project looks like this:

(1) A private-sector lender provides at least 50 percent of the project's cost.

(2) SBA guarantees debentures that can provide up to 40 percent of the project cost. The agency's lien is subordinate to the lender's.

(3) The borrower contributes 10 percent in new equity.

Program financing is available in 10 or 20 year maturities. Real estate is usually financed with the 20-year term. The maximum amount of the portion funded through the 504 debentures can be as high as $1 million. The practical minimum loan is $75,000.

Certified development companies generally maintain a staff of experienced 504 lending officers.

Bankers familiar with this program often initiate 504 loan requests by calling their local CDC loan officer. Once the development company's staff finishes an initial screening to determine project eligibility and borrower creditworthiness, the lender and the CDC loan officer agree on a project financing structure. Next, staff present the loan to the CDC's board, while the bank handles its own credit review. The bank's commitment is generally conditioned on approval of the 504 application.

Unlike the SBA 7(a) program, in which the lender completes all SBA documentation, the 504 package is completed by CDC staff. SBA guarantees repayment of 504 debentures issued by the development company and thus must approve each transaction. SBA's turnaround time runs from two to three weeks, and is often quicker.

When a project involves new construction, the lender making the 50% first mortgage usually provides the other 40% up front once SBA issues its approval. When construction is completed, the proceeds of the sale of the debenture serve as permanent takeout financing for the 40% share.

Once the debenture is sold, the development company services the 504 portion of the transaction and the bank services its part. The borrower makes two monthly payments: one to the bank and the other to Colson Services Corp., the 504 program's servicing agent.

FINANCIAL DETAILS

Upfront fees from all parties in the transaction total 2⅞% and are financed as part of the debenture issuance. Most "soft" costs, such as appraisals, environmental audits, soil tests, interim financing fees, interim interest, and closing costs can also be included in the 504 project financing.

The 504 debentures have a prepayment penalty for the first half of the loan term. During the first year, the penalty is approximately 100% of the interest rate multiplied by the principle balance. The penalty declines in even increments, falling to zero by the loan's midpoint.

There are no fee or rate restrictions on the bank's portion of the financing. The bank rate can be viable or fixed. If a 20-year 504 loan is involved, the bank must provide a 10-year term on its portion. If a 10-year 504 loan is used to finance equipment, the bank must provide a 7-year term.

The SBA-guaranteed debentures that fund the government portion of the program are pooled and certificates in each pool are frequently purchased by institutional investors. Citicorp and Merrill Lynch currently act as underwriters for the program and sell a pool of 20-year 504 debentures each month. Ten-year debentures are pooled and sold quarterly.

Since 1980 this program has provided over $3 billion in long-term fixed-asset financing to approximately 13,000 borrowers. With a loss rate of approximately 2.5%, the program is generally considered a strong performer among federally backed business credit programs.

SECONDARY MARKET FOR BANKS

Because of the quality of these loans, the advantage of a first lien, and the SBA guarantee behind 40% of the total borrowing, banks have generally held 504 loans in portfolio. However, the program's growth has been limited due to the lack of a secondary market into which banks can sell their 504 program loans when that option would be attractive.

Salt Lake City's Zions First National Bank has responded by developing a new program to buy, pool, and sell qualifying 504 first mortgages. Zions, $3 billion in assets, is one of the largest SBA 7(a) loan poolers and is an active SBA lender.

Zions is currently working with the National Association of Development Companies and a network of participating certified development companies to locate and buy new or existing 504 first mortgages. These loans are purchased at the outstanding principle and interest amount, with Zions paying a negotiated premium to the selling bank.

The major criteria for Zion's purchases:

(1) The small business must be at least two years old.

(2) The loan must meet all 504 program regulatory requirements.

(3) Existing first mortgages must be current and have a favorable history.

(4) Loans must have a variable interest rate that adjusts at least quarterly.

(5) Loans should be secured by multi-purpose real estate located in counties with a population of 20,000 or greater.

Zions performs an independent underwriting review of all loans presented for purchase. The first pool is expected to be sold later this year.

GETTING STARTED

The 504 program offers numerous advantages for both lender and borrower. Lenders find they can finance more projects than through conventional financing techniques. This enables them to spread their capital among more borrowers.

For the borrower, access to 90% financing is often the key to making a project move forward. Many small business owners cannot afford the 25% to 30% down payments required by conventional real estate underwriting criteria. Further, the debentures, as government-guaranteed instruments, carry lower rates than private corporate bonds. This advantage is passed along to borrowers. In recent months, rates, including up-front fees, have been between 9.6% and 9.9%.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Senator and Mrs. Moynihan to participate in a program in England sponsored by Oxford University on November 29, 1991.

The committee has determined that participation by Senator and Mrs. Moynihan in this program, at the expense of Oxford University is in the interest of the Senate and the United States.•

HEROES LUNCHEON

• Mr. DECONCINI. Mr. President, I rise to recognize the fine efforts of Arizona's four living recipients of the Congressional Medal of Honor, who each year pay tribute to children who have courageously confronted serious illness. Now in its fourth year, the Phoenix Children's Hospital Heroes Luncheon will honor six courageous young people at a touching ceremony on November 15. I wish to join with Arizona's Medal of Honor recipients in recognizing the extraordinary valor in battling illness displayed by these youngsters.

Richard W. "Richie" Baker, of Mesa, AZ, is a 12-year-old who is battling acute lymphoblastic leukemia while maintaining his enthusiasm for life as a junior high school student.

Lee Brietenstine, of Tempe, AZ, is an exceptional 12-year-old who has endured numerous illnesses, including asthma, bronchiectasis, and eosinophilic gastroenteritis. Through all of this, he has stayed in school and has participated in sports.

David Dalton, 13 years old, is happy and talkative even after undergoing two neurosurgeries. This teenager from Mesa, AZ, shows us how to face life's difficulties with courage.

Lindsey "Lin" Doolittle, is a joyous 6-year-old from Chandler, AZ, who always has a hug and smile for family and friends. She has struggled with heart problems and undergone numerous surgeries, but remains full of fun and love.

Ashleigh Johnson, 6 years old, has had numerous neurologic, orthopedic, and feeding difficulties throughout her life. This special first-grader from Phoenix, AZ, continues to demonstrate her positive attitude and willingness to tackle all obstacles.

Penny Sutton, 14 years old, from Casa Grande, AZ, has been dealing with kidney failure since age 9. Despite her body's rejection of three kidney transplants and having to undergo dialysis, she is determined to keep smiling.

I want to commend these young people for the example they have set for us all. Life has many challenges, many difficulties, that must be faced. Courage, determination, and a positive attitude make it possible to meet and overcome those difficulties. Although young in years, these children are ahead of many adults, in realizing those truths. My best wishes accompany each child as they go forward.•

SOVIET JEWISH REFUSENIK CASE: EVGENY PISAREVSKY

• Mr. WALLOP. Mr. President, the democratic reforms that have swept through Eastern Europe in the last 2 years and the continuing evolution of events in the Soviet Union have given hope to Soviet Jews who have tried for years to emigrate. And anticipation of long-sought family reunification went up a notch in May of this year when the Supreme Soviet adopted legislation liberalizing Soviet emigration regulations. The number of Soviet refugees to the United States actually increased in the weeks following the August coup. But promises and numbers do not shroud the fact that in 1991, the vast majority of Soviet refugee applicants to the United States have been members of historically persecuted groups: Soviet Jews, Evangelical Christians, Ukrainian Catholics, and Ukrainian Orthodox. In St. Petersburg, a city of 120,000 Jews, Jews from all professions and classes—even Jewish visitors from abroad—report a rise in anti-Semitic confrontation in stores, in buses, and on the subway.

Evgeny Pisarevsky, a Soviet Jewish refusenik, serves as a reminder to us all that promises for less burdensome exit procedures in the republics of the former U.S.S.R. must be backed with substantive action. Evgeny, a computer engineer, ended his sensitive work with the Soviet company, Impulse Scientific Production Association, in 1978. He and his family waited 10 years from that date before applying for permission to emigrate. Yet in 1988 Evgeny was still considered a security risk. Thus began the long, frustrating process of applying and reapplying for permission to leave the Soviet Union. Evgeny's son, Vladimir, received an exit visa in August 1989, but 2 months later found that he, along with his parents, would be unable to emigrate permanently until 1995. He used his exit visa immediately and left for the United States. Irina Pisarevsky, the wife of Evgeny, visited Vladimir in New York in November 1990 on a tourist visa. Meanwhile, the Ministry of Defense once again refused to lift Evgeny's secrecy classification. Today, this family must cope not only with forced separation, but must live with the reality of rising anti-Semitism in the Russian Republic. Vladimir and Irina cannot help but feel that Evgeny, an active member of the Leningrad Jewish community, is in danger.

Let us remember Evgeny Pisarevsky and over 350 Jewish refuseniks like him, who remain captives of an arcane, discriminating system. Soviet Jews will be unable to celebrate the momentous changes sweeping across the European continent as long as families like Evgeny Pisarevsky's are separated against their will. And until the fundamental human right to emigrate is respected, democracy will not have arrived, fully, to the republics of the former U.S.S.R.

RAM'S HORN AWARD HONOREES DONNA AND RONALD TAYLOR

• Mr. D'AMATO. Mr. President, I rise today to recognize two outstanding people, Donna and Ronald Taylor. The Taylors are this year's Ram's Horn Award honorees at the Fall Horticulture Ball on Saturday, November 2, at the Radisson Plaza Hotal in Melville, NY.

Although they live in Goodrich, MI, they are renowned throughout the nursery industry. The Taylors began their alliance and their horticulture careers at SUNY, Farmingdale. Donna and Ron met at Farmingdale. They both had been encouraged to attend Farmingdale by former graduates of the school because of their interest and great love for horticulture. For both Donna and Ron had expressed a very early interest in horticulture.

At the age of 14 Ron became interested in gardening through the influence of a French gentleman who taught him the basics of planting, digging trees, tieing, pruning, and more. Donna became interested in gardening through her father and also through the 4-H club. During high school in New Jersey, Donna worked at Duke Gardens Foundation as a tour guide of the gardens. At the same time, Ron was working at Mill Creek Nursery.

Both Donna and Ron have expressed an interest in horticulture at a very young age and followed through to the present. They were married in 1968, after graduating from SUNY at Farmingdale. They moved to Maryland and both built careers in the nursery business. In 1979, they had a son, Brad. Presently, Donna and Ron both work for Frank's Nursery and Crafts, Inc.•

THE MADRID PEACE CONFERENCE

• Mr. KASTEN. Mr. President, I rise today to applaud the efforts of President Bush and Secretary of State James Baker in trying to mediate a true and lasting peace in the Middle East. Today's historic meeting of Egyptians, Israelis, Jordanians, Lebanese, Palestinians, Syrians, Soviets, and Americans is a real breakthrough in the quest for peace.

The world has undergone a major transformation in the past 2½ years. Attitudes and rules of the past are no longer applicable today. What seemed impossible a year ago is now in sight. The success of the U.S.-led allied forces in the Persian Gulf war has created a window of opportunity for all parties in this tragic conflict to settle their differences peacefully, at the negotiating table—not on the battlefield.

Since Israeli independence, Arabs and Israelis have fought wars for nearly 40 years. Wars in 1948, 1956, 1967, 1973, and 1982 have prevented any possibility for settling the Middle East conflict. But today marks a watershed in Israeli-Arab relations. Both parties will be meeting to discuss arrangements for peace—not the logistics of a ceasefire. This is very significant.

President Bush and Secretary of State James Baker both deserve our congratulations for accomplishing a task that—only a few months ago—seemed out of reach.•

COMMENCEMENT OF THE MIDDLE EAST PEACE CONFERENCE

• Mr. D'AMATO. Mr. President, in Madrid today, Israel, Syria, Egypt, Jordan, Lebanon, and the Palestinians begin talks aimed at achieving a long-sought peace in the Middle East. I commend the President for his wisdom and perseverance in inaugurating these historic talks.

In a region where generations of youth have been swallowed by war and deprivation, the only choice is peace. But peace must not be illusory; peace must be lasting. And, in the end, peace must be fair and secure.

We must realize that in these negotiations, Israel is pitted against all the Arab nations combined. This has not changed for the five decades of her existence. If Israel is required to make concessions, then fairness dictates that the Arabs must also. Israel's borders must be secure. Her existence must be recognized by all Arab States. The Arab economic boycott waged against her must immediately end. And the continual acts of Arab terrorism aimed at innocent Israeli men, women, and children, must cease.

Let us not forget that those nations sitting across the table from Israel have started five wars seeking her extermination. To Israel's north lies Syria, which has repeatedly invaded Israel and waged a proxy war of terrorism, killing Israel's children as well as Americans for years. Syria has been an unrelenting enemy. Will the Demon of Damascus now end the carnage and agree to a true and lasting peace?

Israel's northern neighbor Lebanon is now a mere province of Syria and serves as an extended base for its terror campaign against Israel. Recent attacks on Israeli soldiers in Lebanon show a clear reluctance to make peace with Israel. Can we believe that the murderous Lebanese factions—united only in their hatred of Israel—be reigned in?

To the east lies Jordan, who steadfastly backed Iraq in the Persian Gulf war. Her refusal to abide by the United Nations weapons embargo against Iraq was a flagrant disregard for United States troops in time of war. Can we expect Jordan to treat Israel any better?

The Palestinians, for their part, have murdered over 800 of their own in the intifada, simply because they wanted to make peace with Israel. How will they treat Israel?

In the end, we must recognize that peace is not one-sided. It is multidimensional. Each party must realize that their contribution to the process must not be a mere token, but a series of fair and secure concessions dedicated toward peace. Anything less is simply a recipe for Israel's destruction.•

THE CONGRESSIONAL CALL TO CONSCIENCE

• Mr. D'AMATO. Mr. President, I rise today to urge my colleagues to participate in the Congressional Call to Conscience for Soviet Jews. Through the Call to Conscience, the Senate recognizes the continuing plight of Soviet refuseniks.

One such tragic story that has been brought to my attention involves Gennady (Haskel) Weinstein. Gennady, a former physician, has been refused permission to emigrate to Israel.

In July 1988, Gennady was falsely accused of murder and held for 5 months before he was allowed to see a lawyer. Gennady, who had been working in a state dispensary as a physician and narcotic specialist, allegedly murdered a drug addict. Gennady, under severe physical and mental torture, confessed to this crime to protect his family from police harassment.

After 6 months of detention, Gennady's trial finally began in January 1989. During the trial the police charade began to fall apart, as many of the witnesses testified that Gennady did not commit the murder. The court ordered the case to be reinvestigated, and Gennady was released in July 1989.

Gennady was again arrested in December 1989, and kept in prison for 18 months as the police conducted the second investigation. In prison he was repeatedly subjected to physical and mental abuse. Gennady was released a second time on May 28, 1991, when the court decided that the case should be investigated for a third time.

Finally, in September 1991, the police dropped all the charges against Gennady, but he was forced to sign a restraining order not to leave the district.

Since that time he has unsuccessfully sought emigration to Israel, but the Soviet Government has denied all of Gennady's pleas based on the illegal restraining order. I urge my fellow Senators to lend their support to this worthy cause, and to let the Soviet Union know that we will not stand for the continuing abuses against Soviet Jews.•

EXECUTIVE SESSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination reported today by the Committee on Labor and Human Resources, Delbert L. Spurlock, Jr., to be Deputy Secretary of Labor.

I ask unanimous consent that the nominee be confirmed, that any statement appear in the RECORD as if read, that the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF LABOR

Delbert L. Spurlock, Jr., to be Deputy Secretary of Labor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

FRANK M. JOHNSON, JR. UNITED STATES COURTHOUSE

AND THE

EWING T. KERR UNITED STATES COURTHOUSE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of the following bills: The Frank M. Johnson, Jr. courthouse bill and the Ewing T. Kerr courthouse bill; that the Senate proceed to their immediate consideration en bloc, that they be deemed read a third time and passed, that the motions to reconsider be laid upon the table, and any statements in relation to these bills be inserted in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (S. 1467) to designate the U.S. Courthouse located at 15 Lee Street in Montgomery, AL, as the "Frank M. Johnson, Jr. United States Courthouse."

TO NAME THE U.S. COURTHOUSE IN MONTGOMERY, AL, IN HONOR OF JUDGE FRANK M. JOHNSON, JR.

Mr. HEFLIN. Mr. President, U.S. Court of Appeals Judge Frank M. Johnson, Jr., is one of our Nation's most respected and distinguished jurists. It is particularly appropriate today to recognize him on the occasion of his 73d birthday by the adoption of S. 1467, a bill which will name the U.S. Courthouse in Montgomery, AL, in his honor.

Judge Johnson was born in Winston County, AL, and attended public schools all of his life, graduating from the University of Alabama Law School in 1943. He married the lovely Ruth Jenkins in 1938, and 53 years later they remain devoted to each other. During World War II, Judge Johnson saw combat action in Normandy, France, and across into Germany, where he was wounded twice on the field of battle and later was decorated for gallantry. He was discharged as a captain and returned to the general practice of law with the firm of Curtis, Maddox, and Johnson in Jasper, AL, and in 1953 he was named the U.S. attorney for the Northern District of Alabama. In 1955, President Dwight D. Eisenhower appointed Frank Johnson to the U.S. District Court for the Middle District of Alabama where he served until 1979, at which time President Jimmy Carter nominated him to be a U.S. circuit judge for the fifth circuit. The fifth circuit subsequently became the eleventh circuit in 1981; Judge Johnson continues to serve in this courthouse as a U.S. Court of Appeals judge for the eleventh circuit.

Judge Johnson's career is one of entire devotion to the rule of law and justice. He has been very active, serving in a number of professional capacities within the judicial branch of the Federal Government. Judge Johnson's honors are almost too numerous to mention, but they include Honorary Doctorates of Law from Notre Dame University, Princeton University, the University of Alabama, Boston University, Yale University, Tuskegee University, and Mercer University. Two biographies have been written about Judge Johnson: One entitled "Judge Frank M. Johnson, Jr.," by Robert F. Kennedy, Jr.; and "Judge Frank Johnson and Human Rights in Alabama," by Dr. Tinsley E. Yarbrough.

It is entirely fitting, in my judgment, to name the U.S. Courthouse in Montgomery in honor of Frank M. Johnson, Jr., for numerous reasons. The genesis of the whole civil rights movement began in Montgomery, AL, and it was during that early period of Judge Johnson's tenure on the district bench in Montgomery that cases came before him in his second floor courtroom in the U.S. Courthouse. During his 24-year tenure on the district bench, Judge Johnson rendered decisions in such cases as Gomillion versus Lightfoot, U.S. versus U.S. Klans, Reynolds versus Sims, Lee versus Macon County Board of Education, Wyatt versus Aderholt, and Craig versus Alabama State University. These cases are landmarks in areas of the law in desegregation, voting rights, reapportionment, prisoner, and mental health rights.

Judge Johnson's courtroom has been a living symbol of decency and fairness to all who come before his bench. It is from this courthouse that the term "rule of law" came to have true meaning; it is from this courthouse that the term "equal protection of the law" became a reality; and it is from this courthouse that the phrase "equal justice under law" was dispensed despite threats to his personal life. On June 11, 1974, Princeton University, in awarding Judge Johnson an honorary doctor of laws degree, said:

> In the heat of the long battle for civil rights, equal employment, and freedom of speech, his courtroom has been a sanctuary of integrity, fairness, and decency, where constitutional principle has guided difficult decisions. Neither fear nor prejudice, ignorance nor ignoble opposition can undermine his stern devotion to equal protection for all citizens under the law of the land.

S. 1467 will name the U.S. Courthouse in Montgomery, AL, in honor of this distinguished U.S. court of appeals judge for the eleventh circuit, Frank M. Johnson, Jr. The Frank M. Johnson, Jr. U.S. Courthouse will continue to serve as a landmark symbol of freedom and hope for all who are struggling for fairness and justice. I urge my colleagues to join me in passing this important legislation honoring this distinguished jurist.

So the bill (S. 1467) was deemed read a third time and passed, as follows:

S. 1467

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States Courthouse located at 15 Lee Street in Montgomery, Alabama, shall be known and designated as the "Frank M. Johnson, Jr. United States Courthouse".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States Courthouse referred to in section 1 shall be deemed to be a reference to the "Frank M. Johnson, Jr. United States Courthouse".

The PRESIDING OFFICER. The clerk will report the second bill.

The legislative clerk read as follows:

A bill (S. 1899) to designate the U.S. Courthouse located at 111 South Wolcott in Casper, WY, as the "Ewing T. Kerr United States Courthouse."

So the bill, was deemed read a third time and passed, as follows:

S. 1899

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) Ewing T. Kerr has dedicated 64 years of his life to the practice of law in the State of Wyoming;

(2) over a period of 36 years, as a Federal district judge, Ewing T. Kerr has embodied the spirit of public service and has been dedicated to upholding the law of the land; and

(3) Ewing T. Kerr deserves recognition, honor, and gratitude.

SEC. 2. DESIGNATION.

The United States Courthouse located at 111 South Wolcott in Casper, Wyoming, is designated as the "Ewing T. Kerr United States Courthouse".

SEC. 3. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the United States Courthouse referred to in section 1 is deemed to be a reference to the Ewing T. Kerr United States Courthouse.

WAIVER OF CERTAIN RECOVERY REQUIREMENTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 285, S. 1891, regarding the construction or remodeling of facilities.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1891) to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes.

The PRESIDING OFFICER. Is their objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1891

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF CERTAIN RECOVERY REQUIREMENTS.

Section 2713(d) of the Public Health Service Act (42 U.S.C. 300aaa-12(d)) is amended by striking out "(a)(2)" and inserting in lieu thereof "(a)".

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDIAN EMPLOYMENT, TRAINING, AND RELATED SERVICES DEMONSTRATION ACT

Mr. MITCHELL. Mr. President I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 273, S. 1530, regarding employment and related services provided by Indian tribes.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1530) to authorize the integration of employment, training, and related services provided by Indian tribes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Employment, Training and Related Services Demonstration Act of 1991".

SEC. 2. STATEMENT OF PURPOSE.

The purposes of this Act are to demonstrate how Indian tribal governments can integrate the employment, training and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of self-determination.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) INDIAN TRIBE.—The terms "Indian tribe" or "tribe" shall have the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act.

(2) INDIAN.—The term "Indian" shall have the same meaning as in section 4(d) of the Indian Self-Determination and Education Assistance Act.

(3) SECRETARY.—Except where otherwise provided, the term "Secretary" means the Secretary of the Interior.

SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.

The Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to consolidate, in accordance with such plan, its federally funded employment, training and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

SEC. 5. PROGRAMS AFFECTED.

The programs that may be integrated in a demonstration project under any such plan referred to in section 4 shall include, but are not limited to, programs authorized under the Job Training Partnership Act, the job opportunities and basic skills program under the Family Support Act of 1988, vocational education programs under the Carl D. Perkins Vocational Educational Act, and programs administered by the Secretary generally referred to as the "tribal work experience program" and the "employment assistance program".

SEC. 6. PLAN REQUIREMENTS.

For a plan to be acceptable pursuant to section 4, it shall—

(1) identify the programs to be integrated;

(2) be consistent with the purposes of this Act authorizing the services to be integrated in a demonstration project;

(3) describe a comprehensive strategy which identifies the full range of potential employment opportunities on and near the tribal government's service area, and the education, training and related services to be provided to assist Indian workers to access those employment opportunities;

(4) describe the way in which services are to be integrated and delivered and the results expected from the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the tribal gov-

ernment believes need to be waived in order to implement its plan; and

(8) be approved by the governing body of the affected tribe.

SEC. 7. PLAN REVIEW.

Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal department providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal departmental regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision law, the Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by such tribal government or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the purposes of this Act. Notwithstanding any other provision of law, the affected Secretary shall also have the authority to waive any statutory provisions so identified. Further, in carrying out their responsibilities under this section, the Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, and Secretary of Education shall interpret Federal laws in a manner that will facilitate the accomplishment of the purposes of this Act.

SEC. 8. PLAN APPROVAL.

Within 90 days of the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or disapproval of the plan. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval.

SEC. 9. JOB CREATION ACTIVITIES AUTHORIZED.

The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall tribal economic development strategy which has a reasonable likelihood of success.

SEC. 10. PRIVATE SECTOR TRAINING PLACEMENTS.

Notwithstanding any other provision of law, a tribal government participating in a demonstration program under this Act is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and to guarantee permanent employment to the participants upon satisfactory completion of the training period.

SEC. 11. FEDERAL RESPONSIBILITIES.

Within 180 days following the date of enactment of this Act, the Secretary of the Interior, the Secretary of Labor, the Secretary of Health and Human Services and the Secretary of Education shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this Act. The lead agency for a demonstration program under this Act shall be the Office of Tribal Services in the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—

(1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;

(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;

(3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and

(4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

SEC. 12. NO REDUCTION IN AMOUNTS.

In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this Act.

SEC. 13. INTERAGENCY FUND TRANSFERS AUTHORIZED.

The Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, as appropriate, is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this Act.

SEC. 14. FISCAL ACCOUNTABILITY.

Nothing in this Act shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984.

SEC. 15. FUNDS AUTHORIZED FOR TRAINING RELATED TO INDIAN ROAD CONSTRUCTION.

In expending moneys allocated for Indian road construction programs, the Secretary of the Interior shall expend an amount equal to one quarter of one percent of the amount so allocated to train Indians for employment on road construction projects. Such training may include literacy programs and other educational programs determined by a tribal government to be necessary.

SEC. 16. REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION.

Within one year of the date of enactment of this Act, the Secretary shall submit a report to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives on the implementation of the demonstration program authorized in this Act. Such report shall identify statutory barriers to the ability of tribal governments to more effectively integrate their employment, training, and related services in a manner consistent with the purposes of this Act.

SEC. 17. LABOR MARKET INFORMATION ON THE INDIAN WORK FORCE.

(a) REPORT.—The Secretary, in consultation with the Secretary of Labor, shall, in a consistent and reliable manner, develop, maintain and publish, not less than biennially, a report on the population, by gender, eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs Service area, and tribal level for the—

(1) total service population;

(2) the service population under age 16 and over 64;

(3) the population available for work, including those not considered to be actively seeking work;

(4) the employed population, including those employed with annual earnings below the poverty line; and

(5) the numbers employed in private sector positions and in public sector positions.

(b) INDIAN DEMOGRAPHIC INFORMATION.—The Secretary, in consultation with the Bureau of the Census of the Department of Commerce, and the National Center for Native American Studies and Policy Development authorized by Public Law 101–301, shall prepare a report on the need for comprehensive, accurate and periodically updated information on the size and characteristics of the American Indian and Alaska Native population throughout the entire United States. This report shall include the need for information, together with the cost of acquiring such information, on the characteristics and need for education, health, housing, job training, and other basic needs of such population, and shall take into consideration the need for this information by Indian tribes and organizations serving Indians in nonreservation areas. The report shall be submitted to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than 12 months after the date of enactment of this Act.

SEC. 18. ASSIGNMENT OF FEDERAL PERSONNEL TO STATE INDIAN ECONOMIC DEVELOPMENT PROGRAMS.

Any State with an economic development program targeted to Indian tribes shall be eligible to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of the Intergovernmental Personnel Act of 1970, may deem appropriate to help ensure the success of such program.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

So the bill (S. 1530), was passed.

The title was amended so as to read: "An Act to authorize the integration of employment, training, and related services provided by Indian tribal governments."

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ZUNI RIVER WATERSHED ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 257, S. 1350, the Zuni River Watershed Act of 1991.

The PRESIDING OFFICER. The bill will be stated by title. The assistant legislative clerk read as follows:

> A bill (S. 1350) to formulate a plan for the management of natural and cultural resources on the Zuni Indian Reservation, on the lands of the Ramah Band of the Navajo Tribe, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Zuni River Watershed Act of 1991".

SEC. 2. FINDINGS.

Congress finds that—

(1) over the past century, extensive damage has occurred in the Zuni River watershed, including—

(A) severe erosion of agricultural and grazing lands;

(B) reduced productivity of renewable resources;

(C) loss of nonrenewable resources; and

(D) loss of water;

(2) the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation includes—

(A) Federal land;

(B) State land;

(C) Zuni Indian Trust land;

(D) Navajo Indian Tribal Trust and fee land;

(E) Ramah Band of the Navajo Tribe of Indians Trust land;

(F) individual Indian allotment lands; and

(G) private land;

(3) the Department of Agriculture, the Bureau of Indian Affairs, the Zuni Indian Tribe, the Ramah Band of the Navajo Tribe of Indians, and the Navajo Nation agree that corrective measures are required to prevent continued degradation of natural and cultural resources throughout the Zuni River watershed;

(4) with the passage of the Zuni Land Conservation Act of 1990 (Public Law 101–486), the Zuni Indian Tribe has the ability to take these corrective measures within the Zuni Indian Reservation;

(5) the implementation of a watershed management plan within the Zuni Indian Reservation will be ineffective without the implementation of a corresponding plan for the management of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation;

(6) most of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation is within the Cibola National Forest or Indian Trust lands;

(7) the Secretary of Agriculture, acting through the Chief of the Forest Service and the Chief of the Soil Conservation Service, the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, and the Tribes, have the technical expertise to formulate a plan for the management of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation on Federal, State, Indian, and private lands;

(8) an effective watershed management plan for the Zuni River watershed requires voluntary cooperation among the—

(A) Soil Conservation Service;

(B) Forest Service;

(C) Bureau of Indian Affairs;

(D) Zuni Indian Tribe;

(E) Ramah Band of the Navajo Tribe of Indians;

(F) Navajo Nation;

(G) State of New Mexico; and

(H) private landowners; and

(9) all persons living within the Zuni River watershed will benefit from a cooperative effort to rehabilitate and manage the watershed.

SEC. 3. STUDY, PLAN, AND REPORT.

(a) STUDY AND PLAN.—

(1) IN GENERAL.—The Secretary of Agriculture, acting through the Chief of the Soil Conservation Service and the Chief of the Forest Service, the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, and the Tribes, shall—

(A) conduct a study of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation, as depicted on the map entitled "Zuni River Watershed", which shall be on file and available for public inspection in the—

(i) New Mexico State Office of the Soil Conservation Service;

(ii) Albuquerque Area Office of the Bureau of Indian Affairs; and

(iii) tribal offices; and

(B) prepare a plan for watershed protection and rehabilitation on both public and private lands.

(2) PLAN COMPONENTS.—The plan required by paragraph (1)(B) shall include—

(A) a watershed survey describing current natural and cultural resource conditions;

(B) recommendations for watershed protection and rehabilitation on both public and private lands;

(C) management guidelines for maintaining and improving the natural and cultural resource base on both public and private lands;

(D) a system for monitoring natural and cultural resource conditions that can be coordinated with the system developed by the Zuni Indian Tribe;

(E) proposals for voluntary cooperative programs, that implement and administer the plan required by paragraph (1)(B), among—

(i) the Department of Agriculture;

(ii) the Department of the Interior;

(iii) the Zuni Indian Tribe;

(iv) the Ramah Band of the Navajo Tribe of Indians;

(v) the Navajo Nation;

(vi) the State of New Mexico;

(vii) private landowners within the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation; and

(viii) other public or private agencies;

(F) a project plan that—

(i) outlines tasks necessary to implement the plan required by paragraph (1)(B);

(ii) recommends completion dates; and

(iii) estimates the costs of the tasks; and

(G) a monitoring plan that—

(i) outlines tasks for monitoring and maintaining the watershed; and

(ii) estimates the annual cost of performing the tasks.

(b) REPORT.—Not later than 4 years after the date that funds are made available for the study and the preparation of the plan as required by subsection (a)(1), the Secretary of Agriculture, the Secretary of the Interior, and the Tribes shall submit to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives a written report containing—

(1) the full text of the study and the plan; and

(2) an executive summary of the study and the plan.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1350), as amended, was passed.

The title was amended so as to read: "An Act to formulate a plan for the management of natural and cultural resources on the Zuni Indian reservation, on the lands of the Ramah Band of the Navajo Tribe of Indians, and the Navajo Nation, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes.".

Mr. BINGAMAN. Mr. President, I am pleased the Senate has passed S. 1350, which will bring together as partners the people who live and work within the Zuni River Watershed to formulate a plan for the management of natural and cultural resources on lands within the watershed.

For decades, the people of Zuni Pueblo, and others living and working within the watershed of the Zuni River, have watched both their land and their history erode away. Every year, topsoil, washed down from the mountains and mesas, is swept off by the spring runoff and floods. During these floods expanding arroyos also threaten the archaeology of the area. Nearly 2,000 archaeological sites within the Zuni Reservation alone have been damaged as a result of this erosion.

The destructive erosion of the Zuni River watershed goes back to the era of historic logging and overgrazing fostered by previous Government policies and decisions. Since that time, land management practices have changed, but the people living within the watershed are left with a legacy of barren landscapes and the continuing threat of erosion and flood.

This bill takes positive action. Its enactment will produce a plan for the management of the watershed which not only will prevent further degradation, but also will identify what can be done to rehabilitate these lands. It will foster voluntary cooperation among the Zuni Indian Pueblo, the Ramah Band of the Navajo tribe of Indians, the Navajo Nation, the State of New Mexico, the Soil Conservation Service, the Forest Service, the Bureau of Indian Affairs, and private landowners. All people within the Zuni River watershed should benefit from this cooperative planning effort to restore these affected lands.

The Zuni watershed bill reflects a comprehensive approach to resource management and fosters resource partnerships to accomplish this. It encourages land managers to look beyond administrative boundaries to tackle the problem of an entire watershed in trouble. It provides an opportunity for strong, dynamic partnerships between everyone affected by the watershed's degradation—Indian governments, land management agencies, and private landowners. The result will be the conservation of the natural and cultural resources in the watershed, and new and lasting partnerships for resource management.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURE INDEFINITELY POSTPONED—S. 962

Mr. MITCHELL. Mr. President, I ask unanimous consent that Calendar No. 246, S. 962, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

SALUTE TO DENNIS SHEA

Mr. DOLE. Mr. President, during the past few weeks, there have been more than a few shots taken at Senate staffers. But, as we all know, the vast majority of the men and women who work in our office are outstanding and hard-working public servants.

Tonight, I want to briefly salute one of the best.

Dennis Shea has been legal counsel in my office since November 1988. In that time, he has handled a vast array of issues, with integrity and intelligence—tough issues, such as banking, S&L's, campaign finance reform, constitutional law, and crime.

His special passion, however, has been civil rights. With the exception of Senator DANFORTH, I would venture to say that no one has worked harder—not only during the past months—but throughout the past years—to reach the historic compromise which we passed earlier this evening.

Dennis knew this legislation backward and forward. He knew where the sticking points were, and he was always seeking ways to find a middle ground. Throughout the negotiations of the past few days, he was either on the phone with a Senator or White House staff, or personally working with Senators and other staffers to get the job done.

The passage of this legislation marks Dennis' final assignment in my office. He is returning to his home in New York, where he is considering a run for Congress.

And if I know anything about Dennis—about his energy, his intelligence, and his desire to serve the people—then I would not be at all surprised if he returns to Washington in January 1993 as a U.S. Congressman.

THE CIVIL RIGHTS BILL

Mr. MITCHELL. Mr. President, I want to add to the statement I made earlier commending a number of people for their contribution to the civil rights bill. I mentioned a large number of Senators including Senator DOLE, Senator HATCH, Senator KENNEDY, Senator DANFORTH, and I should have mentioned Senator JEFFORDS who was one of the key figures in this entire effort and without whose patience, perseverance, and persistence this result would not have been achieved. I commend Senator JEFFORDS for his constructive role in that process as well as several other Senators that I mentioned at the time.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, in accordance with Senate Resolution 82, 102d Congress, appoints the Senator from Wisconsin [Mr. KOHL] to the Select Committee on POW-MIA, vice the Senator from Arizona [Mr. DECONCINI].

The Chair, on behalf of the President pro tempore, pursuant to Public Law 99–498, appoints Dr. William C. Hiss, of Maine, to the Advisory Committee on Student Financial Assistance.

NATIONAL ENERGY POLICY ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 106, S. 1220, the National Energy Policy Act.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. I object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I now move to proceed to the consideration of Calendar No. 106, S. 1220, and I send to the desk a cloture motion on the motion to proceed to the bill.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 1220, a bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation and for other purposes:

Bennett Johnston, David Boren, Lloyd Bentsen, Daniel Inouye, Kent Conrad, John Breaux, Jeff Bingaman, Malcolm Wallop, Pete V. Domenici, Larry Craig, Steve Symms, Don Nickles, Richard Shelby, Alan Simpson, Trent Lott, Orrin Hatch.

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. MITCHELL. Mr. President, accordingly, under the rules, a vote will occur on the cloture motion on the motion to proceed to the bill 1 hour after the Senate convenes on Friday unless agreement is reached as to a different time. I will discuss the matter tomorrow with the distinguished Republican leader and with several interested Senators, Senator WALLOP, Senator JOHNSTON, Senator BAUCUS, and several others, to see if they have any interest in reaching an agreement on a specific time on Friday. But as of now, if there is no agreement, the vote will occur 1 hour following the convening of the Senate on Friday.

Mr. President, unless the distinguished Republican leader has anything further.

Mr. DOLE. I would just say I hope maybe by sometime tomorrow or early Friday we might agree to have the vote Tuesday evening. I understand right now there is objection to that on the cloture vote.

We can keep trying, I guess.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, if there is no further business, and the distinguished Republican leader has nothing further, I now ask unanimous consent that Senator CRANSTON be recognized to address the Senate for up to 7 minutes and that following the completion of his remarks, Senator GORTON be recognized to address the Senate for such period of time as he may choose, and that Senator GORTON's remarks, which relate to the Interior appropriations conference report, be placed in the RECORD following the remarks of Senators BYRD and NICKLES on that subject, and that upon the completion of Senator GORTON's remarks the Senate stand in recess under the order.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHINA'S DANGEROUS NUCLEAR TRADE CONTINUES UNCHECKED

Mr. CRANSTON. Mr. President, on October 16, the following headline appeared in the Washington Times over a news story "Chinese Build Reactor for Iranian Program." The first paragraph states:

> The Chinese Government is building a nuclear research reactor in Iran that is part of an Iranian secret weapons program, according to Bush administration officials.

This morning, the following headline appeared over an article in the Washington Post: "Officials Say Iran is Seeking Nuclear Weapons Capability. China Sale of Equipment Worth Millions Cited." The first paragraph reads, in part:

> * * * Iran is aggressively seeking to develop a nuclear weapon and China has provided Iran with equipment capable of making some fissile material for such a weapon, according to Bush administration officials.

These officials remain anonymous. A man who has not remained anonymous is Deputy President Ataollah Mohajerani, of Iran, who, in an interview distributed by the official Iranian news agency, said:

> Because the enemy—

Clearly meaning Israel—

> because the enemy has nuclear facilities, the Muslim states too should be equipped with the same capacity.
>
> Mohajerani, who normally is responsible for legal and parliamentary affairs but occasionally speaks for Iranian President Ali Akbar Hashemi Rafsanjani on foreign policy matters, said, "Muslims should strive to go ahead."

And he said:

> "I am not talking about one Muslim country, but rather the entirety of Muslim states. * * * We witnessed the destruction of Iraq's nuclear devices" by parties that he said have no business interfering in such matters.

Meaning, obviously, Israel.

Mr. President, I today, as chairman of the Subcommittee on East Asian and Pacific Affairs, conducted a hearing that primarily delved into these matters. We had a witness from the State Department and the Department of Defense, and I heard from others. After being briefed today by State and Defense Department officials, my concerns about press reports that Iran is developing a nuclear weapons capability with Chinese assistance have been greatly intensified.

I am deeply troubled that the administration has not done enough on its own and with other nations to discourage Chinese proliferation activities.

We did not get straight answers from the administration in the past about Chinese involvement in the export of weapons of mass destruction.

The administration owes the Congress and the American people an explanation about why only last June the State Department told the Senate that the Chinese were not aiding Iran in the nuclear area.

Secretary Baker should either not go to Beijing on his impending trip to Asia or should go for the primary purpose of making plain that China's proliferation policy is unacceptable and will lead to United States actions that the Chinese will regret.

I am unsatisfied with the administration's meager assurances provided at this morning's hearing, which I chaired in the East Asian and Pacific Affairs Subcommittee, that, although it is concerned about reports of weapons and nuclear technology transfers by China, it finds that China has been "somewhat cooperative" in controlling weapons proliferation.

Frankly, I find it difficult to understand what "somewhat cooperative" means in this very vital, dangerous matter.

Assistant Secretary of State Richard Solomon cited China's pledge to sign the Nuclear Non-Proliferation Treaty and its decision to refrain from sales it had been contemplating as evidence of cooperation. The administration reasserted its position that it possesses a "broad range of tools" to discourage China from transferring weapons technology. Secretary Solomon reiterated that the United States policy of engagement with China is the "only realistic way to deal with these issues."

Mr. President, I am not convinced that the United States is doing what it can—and there are many things it could do—to prevent China from peddling lethal materials and weapons. The consequences of further inaction will be very, very grievous.

According to today's news reports, China has plans to sell Iran millions of dollars worth of calutron equipment used in the manufacture of highly enriched uranium—a primary component of nuclear weapons. Proliferation experts have questioned this sale, stating that calutron devices are not normally part of a civilian nuclear energy program. Even administration officials have questioned the sale, stating that it appears at odds with China's supposed cooperative stance on nuclear proliferation matters.

Chinese willingness to help the Iranians acquire nuclear weapons capability would exacerbate the underlying tensions in the region and works at cross purposes with our efforts to bring a real and comprehensive peace to the Middle East. The Madrid conference, an important step forward in the peace process—symbolized by the olive branches waved by Palestinian delegates—is overshadowed by this symbol of enmity, the specter of an Islamic bomb. Revelations about Iran's quest for nuclear weapons capability serve as a sharp reminder that there are many sources of instability in the Middle East. China's role in supplying equipment to the Iranians threatens to open up an era of nuclear brinkmanship.

Today's discussion also indicates that the administration's most-favored-nation policy for China has not worked to improve Chinese proliferation policy. The administration has told Congress over and over again that it is opposed to placing conditions on the renewal of China's most-favored-nation trade status because conditions would "hold our single most powerful instrument for promoting reform hostage to the reactions of the hard liners in Beijing." Well, Mr. President, just how far has the "single most powerful instrument" gotten us in weapons proliferation control? All the way to Iran, perhaps.

Today's reports and hearing reaffirm my view that new international methods for controlling proliferation are necessary. This morning I proposed that it is time to consider the creation of a Conference on Security and Cooperation in Asia to examine intraregional developments that are causing extraregional problems such as nuclear weapons proliferation.

I believe we need a much stronger international regime that will be capable of doing more than the preset, obviously failing, regime is doing to prevent nuclear proliferation. Whatever the vehicle, the United States must take an active leadership role within the international community in controlling renegade states.

Let me finally say, Mr. President, the story is not yet told. The bottom line is not yet written on whether or not China will get most-favored-nation status. And perhaps these revelations will cause some second thinking on that subject.

I ask unanimous consent that the Washington Times and Washington Post articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Times, Oct. 16, 1991]

CHINESE BUILD REACTOR FOR IRANIAN PROGRAM

(By Bill Gertz)

The reactor site was photographed by a U.S. intelligence satellite last month in the early stages of construction at an unspecified location in western Iran, said officials who spoke on condition of anonymity.

"It's a research reactor that almost certainly will be used to build nuclear weapons," said one official familiar with intelligence reports.

Another official said China's involvement in the Iranian reactor program is a further indication that Beijing is not heeding U.S. calls to limit the proliferation of nuclear technology to the unstable region.

Technicians affiliated with the China Nuclear Energy Industry Corp., a quasi-government company, are reportedly involved in the Iranian reactor program, this official said. The firm markets nuclear technology and low-enriched uranium.

The Chinese also are building a reactor in Algeria that is believed by U.S. intelligence officials to be part of a covert nuclear weapons program.

In September, the chief of Iran's Atomic Energy Organization, Reza Amrollahi, said Iran would have several nuclear power plants within 10 years. He has denied Iran "is capable of making atomic bombs."

Few details are known about Iran's drive to build a nuclear bomb. But the National Intelligence Council, an analytical arm of the office of the CIA director, issued a major interagency report in June that stated Iran is one of three developing nations building a nuclear bomb.

Algeria and Iraq also are engaged in nuclear arms programs.

A spokeswoman for the State Department's Near East and South Asia bureau declined to comment on the construction of the Iranian reactor because it would involve "sensitive intelligence sources and methods."

"We have made clear our concerns about Iran's commitment to its Nuclear Non-proliferation [Treaty] obligations," the spokeswoman said. Iran is a signatory of the treaty.

The State Department, as a matter of broad policy, is trying to halt the spread of nuclear weapons to the Middle East, including Iran, she said.

At a meeting of the International Atomic Energy Agency in Vienna last month, Mr. Amrollahi said Iran would complete construction of a nuclear facility at Bushehr, in southwestern Iran on the Persian Gulf coast, which was left unfinished by German companies.

In addition to nuclear cooperation, Iran also has sought to purchase Chinese M-11 ballistic missiles.

[From the Washington Post]

OFFICIALS SAY IRAN IS SEEKING NUCLEAR WEAPONS CAPABILITY

(By R. Jeffrey Smith)

The Chinese Government is building a nuclear research reactor in Iran that is part of an Iranian secret weapons program, according to Bush administration officials.

The U.S. intelligence community has recently concluded that Iran is aggressively seeking to develop a nuclear weapon and that China has provided Iran with equipment capable of making some fissile material for such a weapon, according to Bush administration officials.

Discovery of the Chinese sale to Iran comes amid disclosures of an unexpectedly advanced nuclear weapons program in neighboring Iraq. Some U.S. analysts now suspect that Iran may be seeking to do what Iraq has been blocked from doing and build a nuclear weapon that can be brandished in the Middle East.

As recently as June, U.S. officials said there was no evidence that China was assisting any effort by Iran to make nuclear weapons. Administration officials said their new concern about Iran's intentions was heightened last week when a senior Iranian official expressed interest in building a nuclear arsenal to match that believed held by Israel.

In an interview distributed by the official Iranian news agency, deputy president Ataollah Mohajerani said that "because the enemy has nuclear facilities, the Muslim states too should be equipped with the same capacity."

Mohajerani, who normally is responsible for legal and parliamentary affairs but occasionally speaks for Iranian President Ali Akbar Hashemi Rafsanjani on foreign policy matters, said "Muslims should strive to go ahead" because nuclear weapons can enable countries to achieve a military superiority over potential enemies.

"I am not talking about one Muslim country, but rather the entirety of Muslim states," he said, noting that "we witnessed the destruction of Iraq's nuclear devices" by parties that he said have no business interfering in such matters.

U.S. officials said the remarks may represent a significant statement of Iranian intentions. "Iran is trying to do things on the cutting edge of nuclear technology that they would not find interesting if they did not have weapons in mind," said one official, adding that the Iranian program is still believed to be at an earlier stage of development than was Iraq's program before the start of the Persian Gulf War last January.

While declining to provide details, the official said the U.S. intelligence community had concluded after a review that Iran is seeking "much more [technology] than would be needed" to develop a civilian nuclear power network, which Iranian officials routinely have claimed is their sole objective.

"They have tremendous social needs, and they are a major exporter of oil, yet they are spending all this money on nuclear-related equipment," the official said. "It doesn't make any sense."

In addition to evidence of nuclear cooperation between Iran and China, administration officials site recent efforts by Iran, so far unsuccessful, to obtain nuclear-related technology from Brazil. A U.S. government analyst, speaking on condition he not be named, said 90 percent of what Iran is seeking from foreign suppliers can be used equally for nuclear weapons and civilian power, providing a ready "cover" for the weapons-related work. Officials said the Iranian shopping list includes nuclear fuel, equipment for handling and processing fissile materials, and nuclear reactors to replace those destroyed in the 1980–88 war with Iraq.

China signed an agreement in June 1990 to provide what it described as a "micro-nuclear reactor" for installation at Esfahan in central Iran. It also has provided training for Iranian nuclear engineers and sent delegations of scientists to Iran, a U.S. government source said.

But the Iranian purchase from China that recently caught U.S. attention involved calutron equipment worth millions of dollars, according to government officials. The equipment is considered capable of producing highly enriched uranium—a vital component of nuclear weapons—through a process of electromagnetic isotope separation.

Officials described the equipment as similar to the calutron devices discovered in Iraq last summer during international inspections there. Iraq had been preparing secretly to operate hundreds of the relatively crude devices, leading U.N. experts to estimate that the Baghdad regime could have produced a single nuclear weapon in 12 to 18 months.

The quality of Chinese-made equipment sold to Iran was not sufficient to produce even a single bomb's-worth of enriched uranium, U.S. officials said. But they said the sale amounts to a significant transfer of technology that Iran could readily duplicate.

"You would not use calutrons for a civilian nuclear power program," said Leonard S. Spector, a nuclear proliferation expert at the Carnegie Endowment for International Peace here. "What's disturbing is that the recipient can take such a device and advance rapidly without extensive foreign assistance" in producing a sufficient quantity of enriched uranium for a single bomb.

Several officials said that China's sale of the calutron equipment appeared at odds with routine assurances by Beijing that it neither encourages nor participates in nuclear proliferation, nor provides assistance to other countries in developing nuclear weapons. They said the sale appeared to grow out of the close Iranian-Chinese ties developed during the mid-1980s, when government-affiliated corporations run by family members of senior Chinese leaders made huge profits by selling to both sides during the Iran-Iraq war.

The PRESIDING OFFICER. Under the previous order the Chair recognizes the Senator from Washington [Mr. GORTON].

RELIEF FOR THE NORTHWEST

Mr. GORTON. Mr. President, 2 weeks ago this Senator offered an amendment to the Interior appropriations bill while it was being considered by the conferees from the House and Senate. That amendment represented the end game in a several-week-long effort to produce short-term relief for the distressed timber-based communities of the Pacific Northwest. At the beginning of that period, my good friend and thoughtful House colleague representing the Sixth District of Washington, NORM DICKS, with my help, and that of Senator HATFIELD, attempted to draft a well-balanced amendment for interim relief that would have protected the northern spotted owl, left old-growth forests virtually untouched and raised the 2-year supply of timber in the pipeline by approximately 3 billion board feet. That attempt failed, primarily because of the influence of the environmental lobby with key Members of the House of Representatives. My last ditch attempt consisted of one paragraph from the Dicks amendment, which also was struck down for no reason other than that the environmental organizations oppose every amendment that attempts to address the spotted owl/old growth crisis in any kind of balanced fashion.

Mr. President, national environmental organizations unleashed their full artillery on two amendments even though they would have fully protected the spotted owl and practically every old growth tree. They even went so far as to take out a full-page advertisement in Roll Call, a Capitol Hill newspaper, claiming that this Senator was threatening to cut down the last stick of old growth in the Pacific Northwest. That, Mr. President, is categorically false. But it does illustrate the fact that these groups have a new agenda and lack any respect for the truth.

This new agenda does not involve just spotted owls and old growth forests. Apparently, the new objective of these critics is the destruction of the entire timber-based, rural economy of the Pacific Northwest and, with it, the lives of hard-working families. Mr. President, they have gone too far.

The original amendment that Congressman DICKS and I began work on would have implemented last year's Jack Ward Thomas Report on all Federal forestlands in the States of Oregon and Washington. That report is not popular in timber country. But, as much as I have criticized the recommendations of the Thomas Report as affording more protection for the spotted owl than is necessary for their survival, its application for 1 year would have brought next year's timber sale program on Forest Service land to approximately 2.6 billion board feet. This would have meant greater stability for timber communities and the survival of thousands of jobs there. While I do not accept the Thomas Report as an appropriate, long-term solution, and never will, I would have accepted it during the interim in order both to protect the owl and to keep rural, Northwest communities reasonably viable.

The amendment also was designed to lift guidelines issued illegally by the

Fish and Wildlife Service that imposed onerous restrictions on State and private landowners. In place of those guidelines, the amendment would have protected a 70-acre circle around each owl nest site and activity center of a pair of northern spotted owls on State and private lands, a level of protection the Fish and Wildlife Service accepted as sufficient on those nonfederal lands. This provision of the amendment was critical to my constituents in the state of Washington. Because of the location of spotted owls and the method employed in the Thomas Report for protecting those owls, the implementation of the Thomas Report would result in far greater benefit to the people of Oregon than of Washington. This second paragraph was designed to help those who rely on State and private timber and thus would have benefited the people of Washington more than Oregon because of our different land mix.

The amendment also would have expedited Forest Service administrative appeals, without in any way diminishing the right to appeal. Another provision would have directed the recovery team for the northern spotted owl to seek to limit as far as possible the loss of employment resulting from the implementation of a recovery plan for the owl.

Mr. President, the Dicks amendment embodied five very simple and reasonable objectives:

First, it would have protected the northern spotted owl with the most restrictive scientific plan to date;

Second, it would have protected practically every old-growth tree in the Pacific Northwest;

Third, it would have freed last year's Federal sales program from injunctions and protected thousands of jobs;

Fourth, it would have hastened a much-needed review of the Forest Service's administrative appeals process and revoked the existing process until a more efficient one is in place; and

Fifth, it would have freed thousands of acres of State and private, non-old-growth forestland from illegally imposed restrictions.

Mr. President, I cannot offer enough praise to Congressman NORM DICKS. He worked long and hard to bring this effort to fruition and his leadership kept us headed in the right direction. Without NORM, we would not have come as close as we did. The people of Washington should thank Congressman DICKS. He is a leader and a statesman who has the interests of both the Pacific Northwest region and the Nation in mind, not just those of his own district.

This amendment did not fail because of the involvement of Congressman DICKS. It failed despite his hard work. The Congressman received personal assurances of support from the Speaker of the House. The Speaker wanted a short-term amendment to the appropriations bill, or so we had heard. But when Congressman DICKS reported to the influential chairman of the House Interior Committee, the House Agriculture Committee and the Subcommittee of the Merchant Marine and Fisheries Committee on Wildlife Conservation, those chairmen strongly opposed any amendment to the Interior appropriations bill and the support of the Speaker evaporated. Mr. DICKS was left in the unenviable position of being both supported and opposed by his own party, when the Speaker failed to help and the Congressman was left hanging high and dry.

We were told that the House chairmen were prepared to move forward on authorizing legislation on this subject. Although this assertion only helped to frustrate our attempts to obtain some short-term relief on the appropriations bill, it is reassuring to hear that these chairmen have rededicated themselves to a comprehensive, long-term solution to this very difficult problem—this year, because it is during this year—now—that relief is necessary.

While his own party in the House was busy frustrating his efforts, back home Congressman DICKS was the target of an unfavorable editorial in the Portland Oregonian. The Oregonian criticized Mr. DICKS on the grounds that it was a "run around the committees that ought to be working on [a] long-term bill." We will soon see how effective the Oregonian is in causing that result.

Congressman DICKS was criticized by yet another quarter in Oregon: The Oregon timber industry. That industry was opposed to any amendment that would impede any perceived progress being made in convening the Endangered Species Committee, the so-called God Squad. The concern centered on the fact that the Bureau of Land Management, which manages no forest land in Washington but thousands of acres in Oregon, has successfully convened a God Squad in accordance with the Endangered Species Act. If Congress had implemented the Thomas Report on Federal lands and provided management pursuant to that report was sufficient for compliance with the Endangered Species Act, none of the BLM's timber sales during that period could be submitted to the God Squad. We got the message loud and clear that the Oregon timber industry was more interested in the risky possibility that the God Squad would rule in its favor than it was in an amendment that would boost significantly the overall supply of timber in Oregon and Washington. This opposition was regrettable, since the implementation of the Thomas Report—at the core of the amendment—would have benefited both States, but primarily Oregon.

In the end, however, this opposition hardly mattered since a preemptive veto was imposed by the chairmen of influential House committees and the national environmental organizations. In light of all of this opposition, Congressman DICKS had no choice but to withdraw the amendment and abandon a sinking ship.

Despite growing hostility to the amendment, I felt the need to offer separately the provision that lifted the illegal regulations plaguing non-Federal landowners. Congressman DICKS enthusiastically supported this effort. The provision for State and private lands, standing alone, had little to do with Oregon, very little to do with spotted owls and nothing at all to do with old growth forests. This amendment should have avoided every source of opposition we heard to the larger amendment. That assumption proved false, however, when I offered it in conference. Much to our surprise, the chairman of the House Interior Appropriations Subcommittee strongly opposed the amendment. The chairman of the Senate Agriculture Committee forwarded a letter of opposition to the chairman of the Senate Appropriations Committee. And, despite the overwhelming assistance this amendment would provide to working families in the State of Washington, the amendment was actively opposed by the senior Senator from my State.

Even this small, innocuous amendment failed. During the debate in the conference committee, however, the distinguished chairman of the Senate Appropriations Committee gave a much-welcome statement of support for our cause. Chairman BYRD told us, in no uncertain terms, that he understood the plight of working people and said that he would vote for the relief proposed in both amendments as a part of general authorizing legislation, even though he felt constrained to bow to the objections of committee chairmen to an appropriations rider. The chairman referred to his own constituents in the coal industry who suffered, and continue to suffer, and he expressed his sympathy. I thank the distinguished chairman and hope that his support will help bring this issue to a successful conclusion some day in the future.

I would also like to thank the senior Senator from Oregon [Mr. HATFIELD]. Senator HATFIELD was involved throughout the negotiations on the Dicks amendment and he supported the idea of an appropriations amendment in order to provide short-term relief to his constituents in Oregon timber communities.

As I have said, Mr. President, the issue is not spotted owls or old growth. Even a minor amendment that would have left both old growth and the owl protected was the subject of intense opposition from national environmental organizations and their backers in Congress. No, this issue is about a slow, methodical, and well-financed effort to lock up every acre of Federal land and now, it would seem, State and private land as well.

Richard Larson, in the Seattle Times of Sunday, October 6, published a graph labeled "Land Withdrawn from Timber Harvest." The graph illustrates precisely the trend to which I refer. In the State of Washington, the Federal land base consists of 10.3 million acres. Prior to 1980, nearly 3 million acres, or 28 percent, were set aside in national parks and wilderness areas. After 1980, more than 1 million acres, or 10 percent, were placed off-limits in national parks, monuments, and wilderness areas.

The National Forest Management Act of 1976 resulted in the withdrawal of 3.1 million acres from traditional multiple use, including timber harvest. This was the largest single removal ever at 30 percent. Forest Service planning pursuant to the National Forest Management Act also resulted in the removal of another 967,000 acres from timber production in Washington.

In 1990, along came the northern spotted owl and the Thomas Report. That report recommended that the Federal Government protect an additional 997,000 acres in Washington for the northern spotted owl and the Forest Service obliged. Finally, the latest designation of critical habitat by the Fish and Wildlife Service would withdraw an additional 164,000 acres. Although Larson's chart does not illustrate the effects of Judge Dwyer's injunction, his decision set aside 66,000 acres more.

The chart shows the total Federal land base in Washington to be 10.3 million acres. Admittedly, this is somewhat misleading because some of the acres removed for national parks and wilderness areas are not commercial forests. But no more than 50 or 60 percent of this land—or 2.4 million acres—consists of rocks, meadows, and ice. After removing 2.4 million acres from both the total Federal land base in Washington and those acres designated as national parks and wilderness, the total Federal commercial forest land base in Washington is 7.9 million acres and of that total, 6.9 million acres is currently off limits.

When all is said and done, only 1 million acres, a mere 12.5 percent of Federal commercial forests in the State of Washington, are available for timber harvest in that State. If this trend continues, the remaining 12.5 percent will soon be locked up as well.

Mr. President, I am frustrated by the inability of this Congress to solve the spotted owl/old growth problem. I am frustrated by the inability to provide even short-term relief. The most innocuous and reasonable amendment cannot gain the support of the environmental organizations. Mr. President, I suspect that even an amendment that set aside all 7.9 million acres of Federal land in Washington State and one that preserved the status quo of injunctions, land set-asides, economic dislocation, and human suffering would not be enough. The groups apparently will not be satisfied until all public forests in the States of Washington and Oregon, State as well as Federal, are shut down and with them the communities that depend on public forests for their sustenance. As long as the centralized, urban, service-based, economy that supports their membership is thriving, they will continue to advocate policies that devastate rural communities that are out-of-sight, out-of-mind.

Perhaps my suspicion that the objective of this intense opposition is not the protection only of the owl or old growth, and is instead aimed at a complete and methodical removal of the entire public forest land base is in error. But it can easily be tested. I have one question, one challenge for the environmental organizations and their representatives in Congress: I challenge these groups to point specifically to the areas of public forest land that they will permit, with certainty, to be cut and managed for timber production now and for the indefinite future. If they cannot make such a commitment, they bear the total responsibility for the drastic consequences—the destruction of tens of thousands of jobs and lives, and of dozens of vibrant communities.

Worldwide demand for wood products will not abate. In fact, researchers predict a steady rise in worldwide demand. If consumers do not buy their wood products from this country, then simple international economics tells us they will go elsewhere, where the environmental laws are less stringent than they are in the Northwest. If you think the South American rainforests are being overcut now, wait until world demand shifts from our trees to theirs.

The result of the policies that have led to this dead end will be devastated lives, lost opportunities, a worse national trade deficit, and a degraded world environment. This is an unacceptable result, and one that all Northwest Members of Congress must fight against.

Thank you, Mr. President. I ask unanimous consent that the Seattle Times article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Seattle Times, Oct. 6, 1991]

FROM TIMBER TOWNS, A CRY FOR COMPASSION

(By Richard W. Larsen)

It was a loud cry of human pain, but you probably didn't hear it or pay much attention to it.

Carol Owens explained how the anguish of prolonged unemployment and uncertainty about the future can damage even the most resilient psyche in people of all ages—especially the children.

"Children are the barometers of the problem," explained Owens, director of human services for Clallam County. She told of behavioral changes, dropoffs in schoolwork, and other symptoms.

In families that may once have had only minor problems, "there's more violence, more substance abuse. . ." Owens added.

When the fathers are thrown out of work, there's not only loss of the paycheck, but Mom, Dad and kids usually are stripped of medical insurance. Other speakers described other pain, especially the plunge of local economies and the financial crises hitting schools and county government.

If that epidemic of distress were hitting thousands of men, women and children and the major businesses in one of our metropolitan areas, it would be the hearttugging top story on television and in the rest of the news media.

But all this went without much news play: It was just another description of what's happening to people living away from the media centers—in small towns such as Forks, Raymond, Darrington, Hoquiam.

It all came in testimony during a recent hearing in Olympia conducted by the U.S. Fish and Wildlife Service. Topic: Effects of reducing timber harvests to meet the habitat needs of the spotted owl.

For all kinds of social/psychological reasons, the cries from people in Washington's timber communities haven't caught the attention of many people in urban areas. (On the day of that testimony in Olympia, the top story in Seattle and Tacoma was the financial trouble of Frederick & Nelson.)

In part, it's a symptom of the political and social segregation that has developed between rural and urban Washington. And, because it's complicated and seems to drone on and on, the issue of the spotted owl and timber becomes only a monotonous, background hum in the daily life of most of the state.

The spotted owl rides high on a wide tide of environmental concerns. As one of the witnesses told the federal panel at Olympia, there's a bias among those who, without facts, assume that thousands of acres of Washington forestlands—especially federal forests—are being laid waste by mindless, excessive tree cutting.

During the past century, in fact, the bulk of all federal landholdings across the state have been withdrawn from timber harvest. Data collected by the Northwest Forestry Association portray the chronology of forest preservation in the state:

[Graph not reproducible in the Record.]

During the 1930s Congress created the national parks—Mount Rainier and Olympic—and national recreation areas such as the North Cascades. In all, nearly 3 million Washington acres went into preservation status, including much of the state's commercial-forest base.

During and after the 1970s came the wilderness-area setasides on other federal lands—the scenic Alpine Lakes, Glacier Peak, Mount Baker, the vast Pasayten, and many others. Another 1-million-plus acres.

New planning that came out of the National Forest Management Act of 1976 produced the biggest-ever removal of federal forestlands from traditional multiple use that included timber harvest—about 3.1 million acres.

As part of that new planning, another 967,000 acres was to be managed for primary uses other than timber production. (The subtotal so far is 78 percent of the original federal forestland in the state.)

The Northern Spotted Owl conservation areas recommended by the Interagency Scientific Committee (ISC) increased the setasides by 997,000 acres.

And the newest critical-habitat designation for the spotted owl would withdraw an additional 164,000 acres.

That adds up to 9.3 million acres withdrawn from the original 10.3-million-acre federal forestland base. So, noted one women, timber-dependent communities find themselves struggling to exist on a residual fraction of the total federal forestland . . . and are told they must give up more.

A logger's wife drilled this Seattle writer with a question: "Why is there no compassion for us?" She protested the media's villainization of the timber worker: "We're people who care about the environment. We live here."

At the very least, she lectured me, someone should write it into the record that millions of acres of Washington forests and mountains stand preserved—a vast, rich habitat for hundreds of species of wild animals and birds, offering recreation and scenic opportunity for everyone in the state . . . forever.

OK. There it is.

Mr. GORTON. I yield the floor.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9:30 on Thursday, October 31; that immediately following the prayer the Journal of the proceedings be approved to date; that the time for the two leaders be reserved for their use later in the day; that there be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein, that Senator BOREN be recognized for up to 15 minutes, and Senator DURENBERGER for up to 10 minutes; that at 10 a.m. the Senate resume consideration of the motion to proceed to S. 1220, the energy bill, with the time from 10 a.m. to 1 p.m. to be equally divided and controlled between Senators JOHNSTON and BAUCUS; that at 1 p.m. the Senate resume consideration of the amendments in disagreement to H.R. 2686, and that Senator HELMS be recognized at that time to offer an amendment relative to the NEA and obscene material on which there be 90 minutes of debate equally divided in the usual form with amendments in order thereto, and that at the conclusion or yielding back of the time the Senate vote on or in relation to Senator HELMS' amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 9:30 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until 9:30 a.m.

Thereupon, the Senate, at 7:22 p.m., recessed until Thursday, October 31, 1991, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate October, 30, 1991:

DEPARTMENT OF LABOR

DELBERT LEON SPURLOCK, JR., OF CALIFORNIA, TO BE DEPUTY SECRETARY OF LABOR.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

HOUSE OF REPRESENTATIVES—*Wednesday, October 30, 1991*

The House met at 11:00 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We are conscious, O loving God, of these momentous times when the realities that we have lived with for so long are no longer evident and there is change all about. At such a time we are deeply aware that we are responsible to see the vision of the new realities and to be accountable for our leadership. We know that to whom much has been given will much be required. We pray O God, that we will be steadfast in our beliefs, faithful in the works of peace, and diligent in bringing understanding among the nations. This is our earnest prayer. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New York [Mr. WALSH] come forward and lead the House in the Pledge of Allegiance?

Mr. WALSH led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1532. An act to revise and extend the programs under the Abandoned Infants Assistance Act of 1988, and for other purposes; and

S. 1579. An act to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes.

VETERANS' COMPENSATION RATE AMENDMENTS OF 1991

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1046) to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Compensation Rate Amendments of 1991".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. DISABILITY COMPENSATION.

(a) 3.7-PERCENT INCREASE.—Section 1114 is amended—

(1) by striking out "$80" in subsection (a) and inserting in lieu thereof "$83";

(2) by striking out "$151" in subsection (b) and inserting in lieu thereof "$157";

(3) by striking out "$231" in subsection (c) and inserting in lieu thereof "$240";

(4) by striking out "$330" in subsection (d) and inserting in lieu thereof "$342";

(5) by striking out "$470" in subsection (e) and inserting in lieu thereof "$487";

(6) by striking out "$592" in subsection (f) and inserting in lieu thereof "$614";

(7) by striking out "$748" in subsection (g) and inserting in lieu thereof "$776";

(8) by striking out "$865" in subsection (h) and inserting in lieu thereof "$897";

(9) by striking out "$974" in subsection (i) and inserting in lieu thereof "$1,010";

(10) by striking out "$1,620" in subsection (j) and inserting in lieu thereof "$1,680";

(11) in subsection (k)—

(A) by striking out "$66" both places it appears and inserting in lieu thereof "$68"; and

(B) by striking out "$2,014" and "$2,823" and inserting in lieu thereof "$2,089" and "2,927", respectively;

(12) by striking out "$2,014" in subsection (l) and inserting in lieu thereof "$2,089";

(13) by striking out "$2,220" in subsection (m) and inserting in lieu thereof "$2,302";

(14) by striking out "$2,526" in subsection (n) and inserting in lieu thereof "$2,619";

(15) by striking out "$2,823" each place it appears in subsections (o) and (p) inserting in lieu thereof "$2,927";

(16) by striking out "$1,212" and "$1,805" in subsection (r) and inserting in lieu thereof "$1,257" and "$1,872", respectively; and

(17) by striking out "$1,812" in subsection (s) and inserting in lieu thereof "$1,879".

(b) SPECIAL RULE.—The Secretary of Veterans Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 3. ADDITIONAL COMPENSATION FOR DEPENDENTS.

Section 1115(l) is amended—

(1) by striking out "$96" in clause (A) and inserting in lieu thereof "$100";

(2) by striking out "$163" and "$50" in clause (B) and inserting in lieu thereof "$169" and "$52", respectively;

(3) by striking out "$67" and "$50" in clause (C) and inserting in lieu thereof "$69" and "$52", respectively;

(4) by striking out "$77" in clause (D) and inserting in lieu thereof "$80";

(5) by striking out "$178" in clause (E) and inserting in lieu thereof "$185"; and

(6) by striking out "$149" in clause (F) and inserting in lieu thereof "$155".

SEC. 4. CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.

Section 1162 is amended by striking out "$436" and inserting in lieu thereof "$452".

SEC. 5. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.

Section 1311 is amended—

(1) by striking out the table in subsection (a) and inserting in lieu thereof the following:

"Pay grade	Monthly rate	Pay grade ..	Monthly rate
E–1	$616	W–4	$884
E–2	635	O–1	780
E–3	652	O–2	805
E–4	693	O–3	862
E–5	711	O–4	912
E–6	727	O–5	1,005
E–7	762	O–6	1,134
E–8	805	O–7	1,225
E–9	[1]841	O–8	1,343
W–1	780	O–9	1,440
W–2	811	O–10	[2]1,580
W–3	835		

"[1] If the veterans served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $907.

"[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,693.";

(2) by striking out "$68" in subsection (b) and inserting in lieu thereof "$71";

(3) by striking out "$178" in subsection (c) and inserting in lieu thereof "$185"; and

(4) by striking out "$87" in subsection (d) and inserting in lieu thereof "$90".

SEC. 6. DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

(a) DIC FOR ORPHAN CHILDREN.—Section 1313(a) is amended—

(1) by striking out "$299" in clause (1) and inserting in lieu thereof "$310";

(2) by striking out "$431" in clause (2) and inserting in lieu thereof "$447";

(3) by striking out "$557" in clause (3) and inserting in lieu thereof "$578"; and

(4) by striking out "$557" and "$110" in clause (4) and inserting in lieu thereof "$578" and "$114", respectively.

(b) SUPPLEMENTAL DIC FOR DISABLED ADULT CHILDREN.—Section 1314 is amended—

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

(1) by striking out "$178" in subsection (a) and inserting in lieu thereof "$185";

(2) by striking out "$299" in subsection (b) and inserting in lieu thereof "$310"; and

(3) by striking out "$151" in subsection (c) and inserting in lieu thereof "$157".

SEC. 7. EFFECTIVE DATE FOR RATE INCREASES.

The amendments made by this Act shall take effect on December 1, 1991.

Mr. MONTGOMERY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The SPEAKER. Without objection, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 1 hour.

There was no objection.

GENERAL LEAVE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material in H.R. 1046 and the Senate amendment thereto.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. MONTGOMERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to be able to take action on H.R. 1046 as amended by the other body.

This bill would provide a 3.7-percent cost-of-living adjustment in rates of disability compensation for service-disabled veterans and dependency and indemnity compensation for their survivors.

The gentleman from Ohio [Mr. APPLEGATE], who chairs the subcommittee, and to whom I will yield in a moment, will further explain the bill. I want to thank the gentleman from Arizona [Mr. STUMP] for assisting us in bringing this bill forward.

Let me say, Mr. Speaker, we had a problem last year. This is the cost-of-living increase for service-connected veterans. We did not finish it last year. It took 3 months before we were able to pass the legislation.

I want to thank the Senate Veterans' Affairs Committee for their timely action. This COLA increase bill will be either in the December or January checks for our veterans and it will be 3.7 percent.

Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. APPLEGATE], chairman of the Subcommittee on Compensation, Pensions and Insurance.

Mr. APPLEGATE. Mr. Speaker, I thank the distinguished gentleman for yielding time to me.

Mr. Speaker, as Chairman MONTGOMERY has indicated, H.R. 1046, as amended, would provide a 3.7-percent COLA in the rates of disability compensation—including the so-called K award—and DIC. The increased rates will become effective on December 1 and, for the first time in several years, veterans should see this increase reflected in their January 1 checks. The measure was first passed by the House on July 29, reflecting a slightly higher COLA which was based on earlier estimates of what the change in the Consumer Price Index would be. We know now that the actual change in the CPI from September 30, 1990, to September 30 of this year indicates a need for a 3.7-percent increase in these benefits. The Senate acted on Monday to further amend and pass the bill with the new rate.

Mr. Speaker, this is what our veterans wanted to see this year; this is what they deserve. I am very pleased to see a clean and timely COLA bill being cleared for the President before the end of October.

I want to applaud Chairman MONTGOMERY's excellent leadership and tireless efforts in urging early consideration of this clean COLA bill, along with the strong bipartisan efforts of the committee's ranking minority member, Mr. BOB STUMP. I also want to thank Chairman ALAN CRANSTON and Senator ARLEN SPECTER, on the Senate side, for taking this very timely action. Their efforts in breaking the COLA bill free should be applauded.

I urge the President and the Secretary of Veterans Affairs to act quickly and approve and implement this important bill.

Mr. MONTGOMERY. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Speaker, I rise in support of the Veterans' Compensation Rate Amendments of 1991—H.R. 1046 with the Senate amendment.

I am pleased that the other body has acted in a responsible way by passing a clean COLA bill.

I wish to recognize Senator ALAN CRANSTON and ARLEN SPECTER for their efforts in achieving this goal.

This action assures our Nation's disabled veterans of receiving their cost-of-living adjustment on time. They deserve no less.

I want to take this opportunity to thank the chairman for his king remarks and to congratulate him for his very capable leadership.

Appreciation is also extended to DOUG APPLEGATE, the chairman of the Subcommittee on Compensation, Pension and Insurance, for his efforts on behalf of our Nation's service-connected disabled veterans.

I urge my colleagues to support H.R. 1046, with the Senate Amendment.

Mr. MONTGOMERY. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I am pleased to rise in support of H.R. 1046, a measure to increase the rates of disability compensation for veterans.

I would like to commend the gentleman from Ohio [Mr. APPLEGATE] for introducing this important measure, and the distinguished chairman of the Veterans' Committee, the gentleman from Mississippi [Mr. MONTGOMERY], and the ranking minority member, the gentleman from Arizona [Mr. STUMP] for their unceasing efforts on behalf of our Nation's veterans.

H.R. 1046 as amended by the Senate authorizes a 3.7-percent cost-of-living adjustment [COLA] which will take effect December 1, 1991, for disabled veterans as well as families of veterans who died from service-connected injuries. This increase will be reflected in the January 1, 1992 payment.

Mr. Speaker, the veterans COLA has been delayed for the past 3 years. Immediate passage of this measure is imperative. According to the Department of Veterans Affairs, it requires nearly 10 weeks of preparation time to make the needed adjustments in its rate tables and computer programs. It's time to send a clear message to our Nation's veterans that Congress acknowledges their diligence and dedication. Let us not permit any delay in approving this year's VA COLA.

Accordingly, I urge my colleagues to fully support this worthwhile measure.

Mr. MONTGOMERY. Mr. Speaker, I have at the desk the blue sheets explaining the legislation, if Members would like to see them.

Mr. Speaker, I yield back the balance of my time.

The Senate amendment was agreed to.

A motion to reconsider was laid on the table.

ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. HOYER. Mr. Speaker, I offer a privileged resolution (H. Res. 265) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 265

Resolved, That the following named Members be, and they are hereby, elected to the following standing committees of the House of Representatives: Committee on House Administration: Dale Kildee, Michigan. Committee on Merchant Marine and Fisheries: Martin Lancaster, North Carolina.

The resolution was agreed to.

A motion to reconsider was laid on the table.

CONGRESS SCORES VICTORY IN FIGHT FOR KIDS

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, while President Bush was once again overseas, here at home Congress scored its first victory in the new fight for kids. The House yesterday won one for America's children.

We finally began the debate over our country's priorities and declared the welfare of America's kids a national emergency, America's families an endangered species.

The gloves are off, Mr. President. When it comes to protecting the children of America, bare knuckle brawling is legal. Expect to see more budget brawls over kids' issues. Kids' advocates in Congress are going to become more aggressive.

The amendment the House passed yesterday secures funds for a core group of successful programs crucial to the health and well-being of children—Head Start, WIC, and childhood immunization.

And it will serve as a test for President Bush to see if he understands what havoc his economy, his programs, and his administration has brought upon the children of America.

The President wants kids in his campaign brochures, but not in the Federal budget. The President wants kids in his speeches, but not in the Federal budget.

These core programs—WIC, Head Start, and childhood immunization—work. Everybody, from President Bush to Fortune 500 CEO's, knows and says they do. Finally, Congress put its money where its mouth is. Let's see if President Bush will do the same.

□ 1115

THE DEMOCRATS' "HOUSE UPON THE HILL" IS UNAFFECTED BY LOW GROWTH

(Mr. PETRI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PETRI. Mr. Speaker, as the President pointed out last week, the Democrat-controlled Congress is very adept at exempting itself from the mandated regulations under which it places the rest of the Nation. Unlike the rest of the Nation, Congress' employees do not have access to the courts under the Civil Rights Act. Congress also exempted itself from the Equal Pay Act, the Occupational Safety and Health Administration [OSHA] and the Fair Labor Standards Act.

My colleagues, it should also be remembered that the Democrat-controlled Congress is also very adept at not acting on problems where it is unaffected. I am specifically talking about the problem of economic growth. Parts of this country are in recession, in others growth is slower than it should be and everywhere growth is slower than it could be if the Democrats that control this institution would act to address the causes of low growth rather than satisfying themselves with addressing only its effects. However, in one part of this Nation things are just fine: That place is the plantation the Democrats have built for themselves here. Here in the Democrats' "House upon the hill" the economy is fine. No one is unemployed and growth continues apace and the only thing which hinders it is the speed with which the Democrats can write the checks to spend the taxpayers' money.

Here in the Democrats' "House upon the hill," it is forgotten that because they do not have to compete to stay in business that America's industries must do so. The Democrats think that the American economy can simultaneously bear the regulatory burdens from which they exempt themselves and the indifference with which they treat the subject of economic growth. The American people are beginning to understand these circumstances are no longer endurable and when they do, they will justifiably inflict a higher unemployment rate upon Congress than Congress through its inaction has inflicted upon them.

PRESIDENT BUSH MUST HEED CRIES OF THE AMERICAN PEOPLE

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, 2 days ago the Bridgeport Post ran a story titled "Current Downturn Tops Great Depression." The story cites figures showing Connecticut's economy has lost over 90,000 jobs since 1989, and that job loss has accelerated in the past year, with no sign of slowing down. Over 40,000 Connecticut residents lost their jobs between January and August of this year.

In the meantime, President Bush continues to push a capital gains tax cut for the wealthy, that would benefit the top 1 percent, while providing nothing for middle-class families who need relief.

The President is now traveling out of the country for a few weeks. But before he left he said that we cannot afford to provide middle-class families with tax relief. He has also said that we can't afford an extension of unemployment insurance, and then proceeded to veto two proposals to provide jobless benefits to our long-term unemployed.

Mr. Speaker, the American people have been urging the President to deal with the economy. To focus on our problems. Unemployment continues to rise and wages continue to drop. Someone should tell the President to heed the cries of the American people.

PROPOSED LEGISLATION TO BENEFIT ECONOMY

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, the American people want jobs, not welfare. They want Congress to pass legislation to give them jobs, not an unemployment check. Why does the Democrat leadership only bring legislation to the floor that harms our economy. Where is the legislation that will help stimulate our economy?

Mr. Speaker, we Republicans have proposed and introduced legislation that offers real solutions to the problems our economy is experiencing. President Bush has a domestic agenda that is designed to stimulate our economy. The Democrats refuse to allow our legislation to come to the floor for a vote. It seems that the Democrats should now realize that their approach to the domestic agenda has just continued to harm the economy.

Why are the Democrats scared to give the Republican domestic agenda a chance. We want to increase the economic growth in our country. We want to pass legislation that will create jobs. We want to help the unemployed in our country get a job, not prop them up with a crutch.

It is time for us to get serious. It is time for the Democrat leadership to bring legislation to the floor that offers solid solutions that will increase the economic growth in our country.

SOVIETS SEEK DEMOCRACY, BUT AMERICANS GET PROPAGANDA

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, even Mr. Greenspan is ducking 55-mile-per-hour winds. The Commerce Department said that the economy is getting better. If that is the case, why do 10 percent of the American people get food stamps? Why are cities and States going bankrupt?

Mr. Speaker, why are there 2,000 Americans every single day getting laid off?

Mr. Speaker, I say that either everything is getting better or they are smoking dope over at the Commerce Department, and I am telling the Congress that I think it is time to pass the bottle at the Commerce Department.

What is amazing me is that while the Soviets are seeking democracy, Americans at election time are starting to get propaganda.

Let me say one last thing. With 2,000 layoffs every single day, it is time for Congress to right the unemployment compensation wrong in our country.

AMERICANS WANT CONGRESS TO CUT THE GAMES AND GET TO WORK

(Mr. WALSH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALSH. Mr. Speaker, today I rise to talk about the economy—along with everyone else. My comments, however, will be different from those who come to this well to either blast the President or the leadership of Congress.

I rarely do the 1 minute exercise held almost daily in the House, unless I discuss a piece of legislation I've introduced, or mention a particular event in my home district. I'd just as soon miss this moment of glory. People didn't elect us for this.

My purpose in coming to Congress wasn't to play games but to talk and act on the issues of concern to the people I represent. Rather than wasting time, why can't we have an hour debate, equally divided, to discuss a major piece of legislation to get the economy moving. That's what I hear from the people at home. Cut the games and get down to work; quit the whining and get to the voting.

The first idea we should discuss is getting the transportation bill out, and getting the construction industry going.

This won't make the nightly news because it isn't vicious or mean spirited. That's the trouble around here. We have a dirigible-sized problem on our hands and so far only hot air for solutions. Let's get to work and stop the nonsense.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. McNulty). Our guests in the gallery are reminded that we are delighted to have them here, but they are to refrain from responding either positively or negatively to any statements made on the floor.

NO MASK FOR THE FEDERAL DEFICIT ON HALLOWEEN

(Mr. HOAGLAND asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. HOAGLAND. Mr. Speaker, I say to my colleagues that as Halloween approaches, one of the goblins that will not go away is the Federal deficit. We are awakened almost daily by headlines like "Greenspan Notes Weak Recovery" and "U.S. Budget Deficit Shackles Bush's Economic Policy Makers." and so forth.

Since 1980, Mr. Speaker, the deficit has gone from $72 billion to $277 billion in 1990, almost a fourfold increase. The Congressional Budget Office estimates that once the 5-year deficit reduction agreement expires, the deficit will again reach $300 billion by the year 2001.

In January of this year the President sent us a budget with a deficit of $281 billion. Now this deficit will escalate our national debt to $5.1 trillion and require every taxpayer each year to pay $1,500 for the $200 billion we owe this fiscal year in interest payments.

Mr. Speaker, the deficit is the goblin that gobbles up our resources. I call on the administration, when it sends us its budget next January, to change course and send us a budget without a deficit.

DEMOCRATS' TAX POLICY SCHIZOPHRENIA

(Mr. CHANDLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHANDLER. Mr. Speaker, when will the Democratic Party's schizophrenic tax policies come to an end?

Last week, the Democrats in Congress announced their plan to cut taxes.

This from the party that last year demanded a tax increase be included in the 1990 budget agreement.

In fact, they went so far as to tell President Bush that his deficit reduction package was dead if it didn't include a tax increase.

They got their tax increase.

But even that wasn't enough. They wanted more from working Americans.

This summer, it was the "Nickel for America" Program, a whopping increase in the gasoline tax.

I called it the Nickel from America.

That scheme became a major embarrassment for Democrats when Americans rallied behind Republican efforts to kill the tax hike.

But, the schizophrenia continues with Democrats now calling for tax cuts.

This is nothing more than a political charade.

If the Democrats are serious about cutting taxes, why have they opposed a cut in the capital gains tax for the past 3 years, why did they demand a tax increase in last year's budget agreement, and why did they come up with an ill-conceived hike in the gas tax last summer.

Their schizophrenia on the issue of taxes, leads me to ask this question: "What direction will the Democrats take next week?"

A FEW BILLIONS FOR THE UNEMPLOYED, NOT BANKERS

(Mr. OWENS of New York asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of New York, Mr. Speaker, unemployment benefits for working people have been condemned by the administration as a threat to the budget and a threat to the economy. Today, however, at the request of the administration, in legislation called banking reform, we are being asked to make another $25 billion contribution to the commercial banks. They call it a loan. It is nothing but a bailout. A Treasury loan is really a bailout, just like a bailout of the savings and loans. There is only one U.S. Treasury.

There is no money for the unemployed because the bankers and their rich friends have stolen billions. The capital for new manufacturing equipment and the capital for new manufacturing materials is gone, so we cannot create jobs in the private sector. The public dollars for new schools and the public dollars for highways is gone. It has gone down the drain. The bankers and their rich cronies have taken it. We cannot create jobs in the private sector or the public sector because the Reagan deregulated bankers and their rich cronies have stolen our Nation's capital funds.

Mr. Speaker, instead of $25 billion for the bankers today, we ought to pass just a few billion dollars for unemployment benefits.

POLITICAL SCHIZOPHRENIA—A SERIOUS PROBLEM

(Mr. HENRY asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker, we have a crisis in the House, a mental health crisis. Amidst all the problems with the Sergeant at Arms' office, amidst all the reports of unpaid food service bills, and with all the fiasco on the hearing on the Clarence Thomas confirmation, it now becomes apparent that there is a mental health crisis in the Democratic leadership.

Why do I say that? Clearly we have political schizophrenia between their leaders. Just last week the Democratic chairman of the Finance Committee in the Senate suggested a tax cut to prime the pump, while at the same time the Democratic chairman of the House Ways and Means Committee was proposing a new tax on every existing new job in America.

Who speaks for the Democratic Party? Mr. Speaker, I submit it has a serious problem of political schizophrenia.

SETTING THE RECORD STRAIGHT ON LOUISIANA'S DAVID DUKE

(Mr. FROST asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, it is time to set the record straight about the Republican nominee for Governor in Louisiana, David Duke.

President Bush and other national Republicans have gone to great lengths to deny political paternity for Mr. Duke who has been elected to the Louisiana Legislature as a Republican and who calls himself a Republican.

As much as the Republicans deny responsibility for David Duke, the truth is that he is the legitimate son of the illegitimate policies of Ronald Reagan and George Bush.

It was Ronald Reagan who made a career out of wailing against welfare programs and it was George Bush who interjected racism into the 1988 Presidential Campaign with his use of the Willie Horton ads and it's George Bush who has spent 2 years campaigning on the bogus issue of racial quotas.

Mr. Speaker, David Duke is today repeating those themes so richly developed by Ronald Reagan and George Bush before him. David Duke is indeed the legitimate political son of Reagan and Bush.

□ 1130

AMERICA NEEDS SIMPLIFIED TAX AND REGULATORY SYSTEM

(Mr. SANTORUM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SANTORUM. Mr. Speaker, I am here to join my Republican colleagues to talk about a progrowth package. The people at the Shop 'N Save when I am home tell me that they want a progrowth package to help create jobs.

What I understand here in Washington is that there is a misunderstanding between the Republicans and the Democrats as to what creating jobs means. Well, let me try my best to explain that.

What I have seen from progrowth packages from the Democrats is to create Federal jobs here in Washington. That is not exactly what I see the American people wanting from the Congress. Progrowth is not about increasing bureaucracy and Federal jobs here in Washington. Believe it or not, there is an economy outside the beltway where people really care about working in the private sector to improve themselves and their opportunities.

Progrowth does not mean Government spending. Progrowth means people want the money themselves to spend on things that they would like to spend it on.

Economic growth results when savings and investments increase, when there is a reduction in taxes so people can spend their own money, and the overall tax and regulatory system is simplified.

The American public understands it. I hope Members on the Democratic side of the aisle get the point.

THANK YOU, ATLANTA BRAVES; YOU HAVE DONE US PROUD

(Mr. JONES of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES of Georgia. Mr. Speaker, yesterday in Atlanta a crowd approaching 1 million people turned out to express their gratitude to America's winners, the Atlanta Braves. It is true that the Minnesota Twins were leading the World Series four games to three when the season ran out and we saw the Twins, the champions of indoor baseball. They won the rings.

But think about what the Braves won. They came from last in their division to win the championship in a stretch drive that staggered the imagination. Then they came from behind to beat a fine Pittsburgh team to win the National League pennant in a championship series that some said was the best baseball they had ever seen, until they saw the 1991 World Series.

But the most important thing the Braves won was the enduring love, admiration and respect of a city, a State, and baseball fans throughout the country. They showed a generation of youngsters how to persevere when the chips are down and how to be gracious in victory.

Mr. Speaker, when all of us here are long gone and other voices cheer future heroes, the Braves' name will be spoken by those who love baseball and those who love life. Thank you, Atlanta Braves; you have done us proud.

REBUILDING KUWAIT PROVIDES EXPORT OPPORTUNITY FOR UNITED STATES SMALL BUSINESSES

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, 8 months ago Kuwait was liberated from the brutal occupation of Iraqi military forces. Since that time, some progress has been made in rebuilding this wartorn country, but much remains to be done.

The rebuilding of Kuwait provides the United States with the opportunity to show the world the importance of small business not only in our national economy, but also in the global economy.

Given the chance, small businesses will create thousands of new jobs for Americans through contracts with Kuwait. We must make sure that smaller American firms have an equal shot at the estimated $20 to 25 billion in contracts that will be available as Kuwait rebuilds.

By encouraging small businesses to invest time, capital, and energy in competing for contracts in Kuwait, we are helping not only to rebuild Kuwait; but also to revitalize our own flagging economy and to provide jobs for our Nation's unemployed.

In our deliberations we must recognize the importance of small-business exports to the U.S. economy. I remind my colleagues: It's easy to say that you are all for small business. But it's how you vote that really counts.

MAKE EMERGENCY FUNDS AVAILABLE FOR LOW INCOME ENERGY ASSISTANCE PROGRAM

(Mr. SIKORSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SIKORSKI. Mr. Speaker, yesterday the Minnesota wind chill plunged to 5 above zero. Meanwhile, in just one of my counties, 5,400 families were facing fuel shutoffs. Families with kids, facing a winter where 5 above will be a heat wave, and 25 below will be too regular.

Speaking for them, I rise to urge our conferees to support strong appropriations for the Low Income Home Energy Assistance Program. First send a message to Brenda Reese, a single mother of three who told me of having to choose to feed her kids or heat her home. Send a message to thousands of others in Minnesota, and hundreds of thousands in America, who are pleading with us for help. And send a message to President Bush.

The administration wants to cut the Home Energy Assistance Program by one-half and protect Mideast oil, but they deny oil to freezing American families.

Mr. Speaker, I urge the President to make funds available. If he needs more convincing, I invite him to Minnesota to spend a few subzero nights without heat.

TURKEY, A STRONG AND DEMOCRATIC ALLY OF THE UNITED STATES

(Mr. INHOFE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INHOFE. Mr. Speaker, just last Sunday, October 20, in a fine example of democracy in action, 25 million people went to the polls in the Republic of Turkey.

In a region that is surrounded by the likes of Iran, Iraq, and Syria, as well as the unstable Soviet Republics, I believe Turkey stands out as an example of democracy and free market principles. If Turkey's Soviet Republic neighbors can follow it's example as they begin to rebuild and establish themselves, think how much better, safer, and more productive that region, and indeed the world, will be.

Turkey is a great friend of the United States. The best kind of friend. The kind of friend that comes to your aid when it is against his or her interest. We saw a very vivid example of this when they were of such key critical assistance during the Persian Gulf conflict.

But less well-known to many Americans are the numerous ways this frontline NATO ally time and time again has demonstrated its friendship, support, and strong spirit of partnership with the United States.

During the Korean war, almost 30,000 Turks served alongside their American comrades in arms.

In 1958, Turkey allowed the use of bases in Turkey to support the United States peacekeeping intervention in Lebanon.

During the 1967 Arab-Israeli War, Turkey permitted the United States to use its communications stations in Turkey.

During the 1973 war, Turkey was the only NATO ally in the eastern Mediterranean to allow refueling of the United States Sixth Fleet vessels. Greece did not.

Turkey recognized the State of Israel in 1949 and has maintained official diplomatic relations with Israel ever since. Until the Camp David accords, Turkey was the only Islamic nation that recognized Israel.

And so, Mr. Speaker, let us pause during these unsettled times and remember who our consistent reliable friends are. Certainly Turkey is high on the list.

CAMBODIAN KILLING FIELDS MUST NOT BE ALLOWED TO RETURN

(Mr. ATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ATKINS. Mr. Speaker, on October 23 the United States signed a Cambodian peace agreement. I am hopeful that these accords will give that strife torn nation the relief it so desperately needs. But there is, Mr. Speaker, I am sorry to say, still cause to be worried. These accords are predicated on the good will and fair play of the Khmer Rouge. The accords make no mention of the Khmer Rouge genocide and they are silent on the suffering and agony the Khmer Rouge left in their wake.

Yet, within weeks the Khmer Rouge will return in safety and diginity to Phnom Penh. Where, I ask, is the proof that the Khmer Rouge have changed their ways?

Last week it was reported that as many as 22 leaders of the Site 8 refugee camp in Thailand were removed forcibly by the Khmer Rouge to jungle outposts within Cambodia. Refugees are being warned that the United Nations cannot protect them.

Mr. Speaker, when the Security Council of the United Nations planned a modest rebuke of the Khmer Rouge last week, China protested, and the United States refused to condemn China's decision. No statement or resolution was ever issued by the Security Council.

The Cambodian peace accords cannot work unless the United States is willing to give assurances to the Cambodian people that we will not stand by silently while the Khmer Rouge bring back the killing fields.

INTRODUCTION OF LEGISLATION TO REPEAL PRESIDENT'S AUTHORITY TO FORGIVE FOREIGN DEBTS

(Mr. JAMES asked the was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JAMES. Mr. Speaker, during yesterday's debate, I could not help but notice the references to debt forgiveness; Member after Member blasted President Bush for canceling debt owed to us by other nations.

We noted that the President forgave $6.7 billion for Egypt, $1 billion each for Bolivia and Bangladesh, and $678 million for nearly a dozen other nations.

No one noted yesterday that the President has the authority to forgive only those debts that Congress has authorized him to forgive. Over the years, Congress has given him too much authority, and he has used it.

Today, I am introducing a bill to repeal the President's authority to forgive foreign debts. I invite other Members to join me as cosponsors.

When the President forgives foreign debts, those debts don't vanish into thin air. Instead, the debts are placed on the backs of the American taxpayers.

We are in a recession. The last thing we need to be doing is sending more foreign aid overseas, or forgiving the debts of other nations. Let's put America first.

THE SCARIEST THING THIS HALLOWEEN

(Mr. SARPALIUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SARPALIUS. Mr. Speaker, the scariest thing this Halloween is the American economy. Like vampires, the Reagan-Bush team has sucked the life out of the middle-class people. Oh, they will tell you it was Congress, and they will blame it on the Democrats. But let us look at the facts.

The average income of the top 1 percent increased by 122 percent, while the average income of the bottom 20 percent declined by 10 percent.

What has happened to the middle-class people? Today in every working day there are 2,200 Americans who will lose their jobs.

□ 1140

Now more than ever, a husband and wife have to work to make ends meet. Ten years ago there were more young Americans that owned homes than today. And even if the economy was to have a sudden takeoff and grow by 3.6 percent, Americans would have the lowest annual growth rate since World War II.

Mr. Speaker, tomorrow is Halloween, but the rich have all the candy while the middle-to-poor people are holding an empty bag.

THE LUXURY TAX DEBACLE

(Mr. MOORHEAD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOORHEAD. Mr. Speaker, today marks the seventh day until the first anniversary of the 1990 budget summit agreement. Few on this side of the aisle would question the economic debacle that this accord has created. Yet one of the most notorious and most crippling of all the provisions was the implementation of a new luxury tax.

This misguided concept which was designed to soak the rich has instead left all Americans wet. Instead of paying the luxury tax on automobiles, those that could afford them just are not buying the cars. Not only has it been a job destroyer, it is a revenue casualty. We were told it would reduce the deficit, yet the revenue losses continue to mount every day.

A Temple, Barker & Sloane study predicted that the Federal Government and State governments would lose over $135 million in 1991 alone solely as a result of the luxury tax on automobiles.

Reduced auto sales of $1.3 billion will translate into reduced dealership income tax payment of $26 million, lost customs duties of $22.5 million, lost gas guzzler revenues of $22.5 million, and lost State sales tax revenues of $64.5 million. Additionally, these estimates do not include the cost of enforcing the tax, paying unemployment benefits to the thousands of workers losing their jobs, or reduced tax payments by workers out of jobs.

Mr. Speaker, it it time to commit to an economic course which will put Americans back to work.

MIDDLE EAST PEACE CONFERENCE

(Mr. OWENS of Utah asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of Utah. Mr. Speaker, at 4:30 a.m. this morning I sat riveted to CNN to witness the opening of the Middle East Peace Conference in Madrid.

For me today is truly a momentous day as it is for millions of people all over the world, especially those living in what is undoubtedly the world's most volatile and dangerous area, the Middle East.

I am strongly optimistic that the convening of the Peace Conference will be the dawn of a new age of peace, compromise, and national mutual respect and recognition.

I know that some will say that we have been here before, that openings have closed, that rejectionists hold the balance of power, that the parties do not truly want peace.

That is why I have introduced, along with the gentleman from California [Mr. LEVINE) and the gentleman from New York [Mr. GILMAN] House Concurrent Resolution 226, to commend the participants in the Middle East Peace Conference and to restate Congress' commitment to seeing this process through.

America has a strong and vital interest in the Middle East. Let there be no question about the determination of this body and the American people to achieve a just and lasting peace in the Middle East.

Mr. Speaker, I strongly urge my colleagues to support this important resolution and to help send a timely and meaningful message to the world.

THE COST OF THE OCTOBER SURPRISE

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, after the Iran Contra hearings, the special prosecutor, Mr. Walsh, went to work and he spent $40 million of the taxpayers' money. What did he accomplish with that $40 million?

Ollie North, Colonel North, a national hero, was convicted, but his conviction was appealed and overturned. Admiral Poindexter's is likely to be reversed as well. Three people have gotten some probationary time, and that cost the taxpayers of the country $40 million.

So what are the Democrats going to do now? They are going to have a committee called the October surprise Committee that is going to deal with whether or not Ronald Reagan had something to do with holding the hostages prior to his election back in 1982, so that he could take political advantage of it.

I have been in on two hearings about this with Democrats on the Committee on Foreign affairs. I met with former President Bani Sadr of Iran; the man cannot be trusted. He wants to sell his book. I have met with Richard Aught, who is an adviser to Ronald Reagan. There is no basis at all for that investigation, and yet they are going to go again and spend millions and millions of dollars of taxpayers' money on a witch hunt.

I say to my colleagues on the Democrat side, do not waste any more money.

ECONOMIC ALARM CLOCK IS TICKING

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute.)

Mr. APPLEGATE. Mr. Speaker, I would like to congratulate the President for his peace initiatives, bringing people together who have been warring for centuries. I think it is a major accomplishment. And we in this House all pray that peace will be the result.

Meanwhile back at the ranch the economy continues to decline. This morning I heard there are 3 million more people on food stamps this year than before. Unemployment continues to rise. More people are running out of benefits and more people have less health care. Meanwhile, the President's big-business and rich friends are leaving the country for greener profits.

I guess they have not heard about trickledown philosophy. There is profit, but no jobs.

I am saying this, that the American people are mad as hell and they are not going to take it any more. Their alarm clock is ringing right now, and I think it is time that we listened to that clock. It is time that both the Congress and the President of the United States wake up and do something for the American people. Time is running out.

IRAN'S NUCLEAR THREAT

(Mr. OXLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, despite the optimism emanating from Madrid, there is ominous news coming from the Mideast.

United States intelligence officials have concluded that Iran is actively pursuing a nuclear weapons program. An Iranian official has openly expressed Iran's desire to develop an atomic weapon, and Iran has sought to obtain nuclear technology beyond that necessary for peaceful purposes.

These revelations come at a time when neighboring Iraq has been found to have a sophisticated nuclear weapons program. U.N. inspectors believe that when the Persian Gulf war was launched. Baghdad was perhaps only 12 months from producing its first atomic weapon. Iraq had tested a surface-to-surface missile capable of carrying an atomic device, and had the blueprint for an A-bomb small enough to be delivered by missile. In addition, Iraq has begun to manufacture lithium-6, a substance uniquely used in production of the H-bomb.

I recall that during debate on the Persian Gulf war, opponents of the authorization to use force ridiculed the President's assertion that Saddam was nearing nuclear capability. Now we know that had we not acted to neutralize Iraq as a military threat, Saddam would be on the verge of possessing his first atomic weapon.

I commend the President and the United Nations for their persistence in ferreting out clandestine weapons programs. However, the lesson of the day is that the United States must maintain its vigilance and strategic strength.

TRUE COLORS

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, President Lyndon Johnson once said that:

> Until justice is blind to color, until education is unaware of race, until opportunity is unconcerned with the color of men's skins, emancipation will be a proclamation, but not a fact.

Mr. Speaker, LBJ's words are as true today as they were in 1968. We have tried to overcome racism in our laws. But its ugly undercurrents are still with us, affecting the daily lives of people in the most basic of ways. Diane Sawyer of ABC's "Prime Time Live" has reminded us in graphic detail of how this is so.

"Prime Time Live" took two friends who seemed equal by every available measure but one, the color of their skin. One white, and one black they set out in an experiment that found discrimination against the black man in his job search, apartment hunting, car buying, and even as he tried to hail a cab.

Mr. Speaker, my distinguished colleague from Georgia, Mr. LEWIS, and I are hosting a screening of "True Colors" for our colleagues today in room 2222 Rayburn at 1 p.m. "True Colors" opened my eyes to the fact that we have much work ahead to make Lincoln's decree of emancipation a fact. I urge my colleagues to join us this afternoon to see that for themselves.

ECONOMIC RESURGENCE AND JOBS CREATION ACT

(Mr. ZELIFF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ZELIFF. Mr. Speaker, on Monday our Task Force on Tax Policy and Job Creation held a hearing on H.R. 2359, the Economic Resurgence and Jobs Creation Act.

Economists and business leaders from across America testified that the restoration of the 5-percent investment tax credit, coupled with cutting the capital gains tax rate to 15 percent, is the simplest, quickest, most straightforward way to stimulate our faltering economy and put America back to work again.

Witnesses at the hearing suggested strongly that reinstatement of the investment tax credit would help spur the sluggish economy by encouraging new investment and should be part of any economic growth package considered by Congress this year.

Mr. Speaker, I am proud to be joined by 70 of my colleagues in cosponsoring this important growth legislation. The U.S. Chamber, National Federation of Independent Business, and the Heritage Foundation are among the many organizations and businesses that testified in support of my bill.

The passage of the investment tax credit and the reduction of the capital gains tax rate will stimulate job creation and get our economy moving again. The goal of our tax policy should be the creation of good, high-paying jobs.

I urge my colleagues to get moving and stop playing games with our future. Let us pass a progrowth bill.

CHANGING PRESIDENT BUSH'S OPPOSITION TO A CIVIL RIGHTS BILL

(Mr. DURBIN asked and was given permission to address the House for 1 minute.)

Mr. DURBIN. Mr. Speaker, we can credit two very different people with changing George Bush's opposition to the civil rights bill: Prof. Anita Hill and David Duke.

Anita Hill's courageous testimony before the Senate Judiciary Committee made it clear that the sexual discrimination which is prohibited by this bill is real. The shabby treatment which Professor Hill received from Republican strategists created a backlash among women across the Nation which President Bush cannot ignore.

And now the emergence of Republican David Duke as America's leading bigot causes real pain for the President's party. Remember, it was the same David Duke who cheered the President's veto of the last civil rights bill, the same David Duke who claims to feel at home with the party of Willie Horton ads and quota bashing. Clearly, the President sees this new civil rights bill as a much-needed break from the bitter legacy of the Willie Horton ads.

So in the end, this new civil rights bill turns out to be a Republican quota bill. The President hopes it gives the Republicans just the right quota of cover to try and persuade America's women that he cares, and just enough distance to put the sound of David Duke's goosestepping racism out of Republican earshot.

WHO PAID THE PRICE?

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, our friends, the Kuwaitis, have caused some questions to be asked about the contract awards in Kuwait after the wake of Desert Storm. Now that the hurrahs are over and the thank yous to the United States for our gallant leadership in saving Kuwait, we hope it is not business as usual.

The latest round is awarding a $134 million contract set-aside for American businesses to clear mines and other explosives to the American subsidiary of a German firm. The firm, MBB of Munich, was able to get its subsidiary, CMS, certified as American by incorporating it in Delaware. And a wholly owned, all American company, USA Technology, reported that its bid was even $8 million lower than CMS's $134 million.

Strange award, which causes us to ask for a report, a full report of all of the contracts awarded by Kuwait over the past year so we can learn first hand and accurately where the benefits are going from that most unfortunate destruction of a nation for which the Americans gave their all to save.

SUPPORT BCCI REFORM AMENDMENT TO THE BANKING BILL

(Mr. KANJORSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KANJORSKI. Mr. Speaker, today the House is going to be taking up H.R. 6, the omnibus banking bill. I would call my colleagues' attention to an amendment that has been brought about by the BCCI hearings in the House Committee on Banking, Finance and Urban Affairs. It is a reform amendment to address three major problems, major problems of conflicts of interest, the failure to disclose ownership and insider control in dealing.

On the conflict of interest, a number of the participants in the BCCI scandal wore too many hats and served too many masters. Outside legal counsel and accountants are supposed to offer independent, disinterested advice. Instead, they controlled and served as part of the board of directors and gave away their independence and caused conflict of interest by allowing these counsel and these accountants to receive compensation.

My amendment would disallow any outside counsel or accountant from receiving compensation from a depository institution or holding company and serve on the board of directors.

Two, the disclosure of the failure to disclose ownership. We heard testimony that "We did not know." The board of directors of First American Bank claimed that they did not know who really owned the institution, and we even received testimony that the ownership was withheld from them.

My amendment would require disclosure.

Finally, insider control. We would allow or require that the control of the board of directors of financial institutions and their holding companies be made up of a majority of outside directors, not inside employees of the banks or those that are dependent on their incomes from that depository institution or their holding companies.

ECONOMIC GROWTH AND JOB CREATION LEGISLATION

(Mr. SHAW asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. SHAW. Mr. Speaker, like many in the House, I have been deeply concerned that Congress has not done enough toward economic growth and job creation. It would not be too far off the mark to state that we have done nothing meaningful.

Experts estimate that in the housing and real estate construction areas alone, close to 500,000 net jobs were lost from June 1990 to July 1991. Additionally, the Washington Post reported recently that housing starts this year have fallen to their lowest level since 1946.

In addition to the capital gains and passive loss issues, two other related problems also pose serious impediments to a sustained, meaningful economic recovery. One is the lack of available financing options for real property workouts. The second is the trouble commercial lenders have experienced in disposing of properties in their other real estate owned accounts. Yesterday I introduced three bills to address these problems.

The first of my bills represents nothing new. I have combined the President's capital gains proposal with the passive loss legislation introduced in the House by my colleagues MIKE ANDREWS and BILL THOMAS. These are two sound proposals that I firmly believe are necessary for stable property values and a reasonably sound real estate industry.

My second piece of legislation is aimed at easing the burden imposed by current law on taxpayers seeking to work out troubled real estate loans with their lenders. This bill would restore to section 108 of the Internal Revenue Code a provision allowing a solvent taxpayer, in the case of real property business indebtedness, to elect to exclude discharge of indebtedness income if the taxpayer reduces the basis of other real estate the taxpayer owns.

The third bill I introduced would amend the at risk rules in IRC section 465 to clarify that financing provided by a lending institution will qualify as an amount at risk regardless of whether the financing is recourse or nonrecourse. Current law restricts options available to banks in disposing of the tremendous volume of their OREO properties.

I urge my colleagues to join me in supporting and passing this much needed legislation.

U.S. ROLE IN HAITI

(Mr. RANGEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RANGEL. Mr. Speaker, I take this opportunity to congratulate the President of the United States for recognizing the crisis that exists in Haiti and calling upon the Organization of American States to get involved to restore the democratic President to his position that had been taken away by a violent, lawless, ruthless army.

As a result of his efforts, the embargoes have taken place. Soon oil will be missing completely in Haiti, and there is an extreme shortage of food and medicine. And as usual, the poorest of the poorest nation in this hemisphere are feeling the crunch.

What we have to do is to implore that the executive branch open up its doors as well as its heart to the many Haitians that find themselves leaving, some on the high seas, others in the United States in fear of deportation. For years we have said that Haitians were different, not because of color, but because the asylum they sought was for economic reasons. I think it is abundantly clear that as difficult as it is to distinguish economic fear from political fear, the Haitians now live in fear of both, and that we should relax our laws and give them safe haven.

TEMPORARY TAXES

(Mr. JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of Texas. Mr. Speaker, some of our colleagues do not seem to know the definition of temporary.

Last week we extended through the end of the century a temporary 2.5-cent increase in the gasoline tax. The gasoline tax extension was a back-door tax hike, plain and simple.

Now the liberals want to extend a temporary tax on Federal unemployment on America's businesses. This too is a tax increase, and believe it or not, has been extended each year since 1976.

When is Congress going to be honest with the American people? There is no such thing as a temporary tax because we just keep extending them.

Mr. Speaker, I got elected to this office primarily because people are fed up with taxes. That means temporary taxes, permanent taxes, any kind of taxes.

☐ 1200

What Americans do want is an honest effort to balance this Federal budget and get our economy moving again.

LET'S PASS CAMPAIGN FINANCE REFORM

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, everyone on Capitol Hill is worried about the terrible image Congress seems to have now and about our abysmal poll ratings. A recent Gallop poll showed the approval rating for Congress at a virtually nonexistent 18 percent.

There is plenty of blame to go around. Certainly the hearings for confirmation in the other body and certainly the check writing problems in this Chamber are part of the cause, but rather than talking about why, let us talk about ways that we might be able to regain some of the confidence that the public has lost in us.

I would suggest we can do that very quickly by passing tough campaign finance reform. We will have an opportunity later this month to tackle that issue. There will be a bill sponsored by the gentleman from Connecticut [Mr. GEJDENSON] which will limit campaign spending, limit the amount of special interest money which can enter a campaign, eliminate some of the soft money which the New York Times called sewer money, and basically move into public financing in an exploratory way.

Mr. Speaker, rather than wringing our hands and crying and bemoaning our fate, let us do something. Let us pass campaign reform and then prove to the public that Congress is worthy of their confidence.

THE INDEPENDENT SOCIALIST

(Mr. CUNNINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CUNNINGHAM. Mr. Speaker, several times I have heard Members lambaste Mr. David Duke, trying to tie him in with Ronald Reagan. What does that say for the quality of the Democrat who is running against him on November 5? Someone who has been indicted several times, fired from his job and has a reputation for less than honorable conduct.

I would like to draw attention to another alignment. On our monitor in the House, we have Republican votes and Democrat votes and there is an independent. There is no independent in the Congress. The man ran as a Socialist. He is a Socialist. The Soviet Union is rejecting what the Democrats are protecting, but it is put up there as independent because they know the votes tie in with the Socialist Party.

I would ask the leadership to change this discrepancy. All Republican monitors will have an overlay that says Republican, Democrat, "Socialist."

I am proud of both the Democratic Party and the Republican Party, however, for coming up with a civil rights bill that will actually help people and not destroy business. My appreciation goes to the other side of the aisle.

I also would mention that true colors did not happen in the South. It happened in the most liberal democratic State of the Union.

MIDEAST PEACE TALKS—A POSITIVE STEP

(Mrs. BYRON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BYRON. Mr. Speaker, on Monday I presented a poster-sized copy of our Constitution to the Smithburg High School in Washington County. We talked about how fortunate they are to live in America and how many other nations and regions of the world strive for what we have enjoyed for over 200 years. I told the students they need to look no further than up the hill from where they live, because they live at the foot of the Catoctin Mountains, the home of Camp David.

They are too young to remember the bold steps that were taken by Anwar Sadat, who stated in 1978 that he would be willing to go to the Knesset in an effort to seek peace. They are too young to remember the bold steps taken the next week by Menachem Begin, who invited him to Israel to begin the peace process.

The students are too young to remember the Camp David talks in 1978.

As new peace talks begin today in Madrid, I am hopeful that progress once again will be made. The talks will be the next big step forward in bringing peace to that region. All parties are willing to build on the progress that was made and that can only be achieved by bringing everyone together. I believe that the peoples of the Middle East, as participants, and the rest of the world, as eager onlookers can only benefit from face-to-face dialog. It is truly preferable than face-to-face combat. And as our young Americans live in an everchanging world and they look beyond our shores, but secure in the knowledge that our Constitution is still young.

PRESIDENT'S PEACE EFFORTS HELP DOMESTIC AMERICA

(Mr. SCHIFF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHIFF. Mr. Speaker, today an historic peace conference has begun in Madrid, Spain, involving the major participants in the Middle East. The conference was opened by our own President of the United States and the President of the Soviet Union.

I hear the question asked, why is the President of the United States going to Madrid to work on matters overseas? Why does he not stay concerned about matters which affect Americans?

Affect Americans? Why, just this year more than half a million American servicemen and servicewomen were called upon to go over to the Middle East. Why? Because Saddam Hussein had violated international law and had threatened the vital interests of the United States.

We have never been immune to matters happening overseas since the founding of our Republic. I believe that if the President of the United States can help bring about a permanent lasting peace in the Middle East, that will help Americans, too.

REMEMBERING THE HOME FRONT

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, as we move toward adjournment, the Congress is trying to deal with unemployment insurance, tax cuts for the middle class, health care, energy, banking issues, education, campaign finance, and many other issues. But where will President Bush be in the days ahead? South Korea, Japan, Australia, Rome, Singapore, and the Netherlands.

Last month alone the President met with 21 leaders of foreign countries, ranging from Micronesia to Lichtenstein, but only three meetings with Cabinet Secretaries dealing with domestic issues, two of those meetings aboard Air Force one en route to political events.

To deal with domestic issues, we need a partnership with the President. It would help if the President stayed home. The economy is hurting, people are hurting. We know foreign policy is exciting, but domestic policy is where the critical needs of this country are.

TERRORISTS OPERATING WITH IMPUNITY IN PERU

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, I recently returned from a brief weekend mission to Peru and Colombia with Congressmen TORRICELLI, RANGEL, and SOLARZ to review those governments' efforts to control international trafficking in narcotics. It was a sobering and somewhat discouraging experience because it became clear in a hurry that those groups engaged in the drug trade control resources and resort to inhuman tactics of terrorism that make it extremely difficult for the legitimate governments to counter.

One of the most frightening and extreme of these groups is the Sendero Luminoso—the shinning path—guerrillas operating almost with impunity in Peru. Their alignment with the drug trade as well as their efforts to undermine the legitimate government entities in Peru have resulted in a rampage of brutality that has not been seen in Peru since the time of the Incas.

I wish to call your attention to Extensions of Remarks today which highlights the history of the Sendero Luminoso and provides vivid examples of the brutality of this group. Some of the examples of torture and murder are difficult to read but it is imperative that everyone be aware of the extremes this group is willing to go to carry out its terrorism campaign.

THE PRESIDENT'S DOMESTIC AGENDA

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER of California. Mr. Speaker, last March following the successful liberation of Kuwait, President Bush stood at this second lecturn right here and looked out and told us that he would like to have the Congress within 100 days get to his desk a crime bill and a highway bill.

Well, we have seen that we spent about 150 days in this place saying that President Bush had no domestic agenda. We have finally gotten to the point where we now have worked out a highway and a crime bill and we hope it will finally get down to the President's desk. But there are a lot of other things the President has asked for. We have heard this constant cry, "No domestic agenda." We hear people saying that we have a Republican recession.

□ 1210

The fact of the matter is 3 years ago President Bush called for an economic growth package, one which would be designed to stimulate the economy, create jobs and opportunity.

I hope very much, Mr. Speaker, that we can get this house together and respond to that plea which the President has made for the past 3 years.

PERMISSION FOR SUBCOMMITTEE ON POLICY RESEARCH AND INSURANCE OF COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS TO SIT TOMORROW DURING THE 5-MINUTE RULE

Mr. ERDREICH. Mr. Speaker, I ask unanimous consent that the Subcommittee on Policy Research and Insurance of the Committee on Banking, Finance and Urban Affairs be permitted to sit on Thursday, October 31, 1991, to consider the resolution of the troubled insurance companies.

Mr. Speaker, I have discussed this with the ranking minority member, the gentleman from northeast [Mr. BEREUTER], who concurs in this request.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from Alabama?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 6, FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 264 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 264

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the house resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against consideration of the bill are hereby waived. After a period of general debate, which shall be confined to the bill and which shall not exceed one hour and forty-five minutes with one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs, and with forty-five minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the Committee of the Whole shall rise without motion. No amendment to the bill shall be in order except as subsequently determined by the House.

The SPEAKER pro tempore. The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from California [Mr. DREIER] pending which I yield myself such time as I may consume. During the course of the debate on House Resolution 264, all time yielded will be for the purpose of debate only.

Mr. Speaker, I will be brief. House Resolution 264 was reported by the Committee on Rules yesterday evening in order to expedite the consideration of H.R. 6, the Financial Institutions Safety and Consumer Choice Act. House Resolution 264 only provides for 1 hour and 45 minutes of general debate on the banking bill; the Committee on Rules anticipates that it will report another rule today which will provide for additional general debate time and which will provide for the consideration of H.R. 6 by amendment.

Therefore, Mr. Speaker, House Resolution 264 will enable the House to begin consideration of this most complex and important legislation prior to the time that the Committee on Rules has worked out the details of the consideration of the bill and amendments thereto. The rule provides that all points of order against the consideration of H.R. 6 are waived, and provides that the 1 hour and 45 minutes of general debate time shall be divided as follows: One hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking; and 45 minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture. The rule also provides that after the general debate provided for in this resolution has been completed, that the Committee of the Whole shall rise without motion. Finally, Mr. Speaker, the rule provides that no amendment to the bill shall be in order except as subsequently determined by the House. As I said, it is anticipated that a rule providing for such consideration of amendments will be reported by the Committee on Rules later today.

I urge adoption of House Resolution 264.

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 264, which provides for general debate only on H.R. 6, the Financial Institutions Safety and Consumer Choice Act of 1991. My support for this rule, however, is accompanied by a twinge of reluctance because we are asking Members to speak on specific provisions of the bill without knowing what amendments will be made in order. Nor do we know whether H.R. 6, as reported by the Committee on Banking, Finance and Urban Affairs, will be the original bill for purposes of amendment.

However, we sat through over 7 hours of testimony in the Committee on Rules yesterday and, if that is any indication of how long it will take to make our way through this legislation, I feel this unusual procedure is justified.

Mr. Speaker, I am concerned about the way in which H.R. 6 was brought before the Committee on Rules. Both Chairman GONZALEZ and Chairman DINGELL have requested that their so-called compromise agreement be included as original text to H.R. 6. This is rather peculiar, considering that the Dingell-Gonzalez substitute was not voted on in either the Committee on Banking, Finance and Urban Affairs or the Committee on Energy and Commerce. In addition, other than the sponsors of the amendment, not one member who testified before the Committee on Rules was privy to the negotiation process.

Remarkably, the justification for the Dingell-Gonzalez prohibition against mixing commerce and banking is, according to the Committee on Energy and Commerce report, rooted in the British Parliament's charter of the Bank of England in 1694, as well as the charter of the First Bank of the United States in 1791, and the National Banking Act of 1864.

In contrast, Mr. Speaker, H.R. 6, as originally reported by the Committee on Banking, Finance and Urban Affairs, is designed to address the realities of today's global financial marketplace. One reality is that the marketplace is skewed against commercial banks, which are unable to compete with the numerous nonbanking entities that offer many of the same types of financial products and services.

Another reality is that the United States remains one of the few industrialized countries that require a strict separation between commerce and banking. Yet commercial firms in this country are allowed to affiliate with banks. It is this lopsided arrangement that the Dingell-Gonzalez substitute seeks to protect.

It is an arrangement that permits Ford Motor Co.—a commercial entity—to own one of the largest federally insured savings and loans in First Nationwide Bank. It is an arrangement that permits American Express—a commercial entity—to own Boston Safe Deposit and Trust, an FDIC-insured bank. It is an arrangement that permits Sears—a commercial firm—to own Greenwood Trust, which is also an FDIC-insured institution.

Mr. Speaker, the Dingell-Gonzalez substitute ignores these realities. It is simply an attempt to turn back the clock to the days when banking was the scorn of the Catholic Church. The implications to the taxpayers are enormous. Commercial banks desperately need access to new sources of capital if we hope to return the industry to good health and prevent another taxpayer bailout. But nearly three-quarters of that domestic capital is in the hands of commercial firms.

Ironically, foreign ownership of U.S. banking assets has risen dramatically since the late 1970's and passage of the Dingell-Gonzalez substitute will virtually guarantee that U.S. banks will continue to look overseas in their search for new capital. The Dingell-Gonzalez substitute will also impose onerous and duplicative regulatory barriers to prevent banks from competing with other financial services providers.

Today, two of the top four originators of home mortgages are nonbanks. Four of the top five lenders of consumer credit are nonbanks. Six of the top ten credit card issuers are nonbanks. Passage of the Dingell-Gonzalez substitute will ensure that the banks' best customers will continue to abandon the banking system, leaving behind the unprofitable activities and exacerbating the demise of the industry.

Let me emphasize, Mr. Speaker, that there are no parallels between the legislation we are debating today and the 1982 legislation that gave savings and loans new powers. The 1982 law permitted savings and loans to undertake risky investments using insured deposits. H.R. 6 does not grant any new powers to commercial banks. It merely allows banks to affiliate, through a highly capitalized holding company, with a separately capitalized securities subsidiary that will have no access to insured deposits. It must stand on its own.

Mr. Speaker, I hope as we continue in the Committee on Rules we will be able to get a fair rule for tomorrow so that these issues can be adequately debated. I support this rule.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. I thank the gentleman for yielding.

Mr. Speaker, I have proposed two amendments for this particular bill. The Committee on Rules has not ruled at this point. I wanted to briefly discuss an element of this particular bill that I think is very important.

I had a bill that would try to incentivize the creation of community development corporations in communities that are really depressed economically. That bill was not basically put in here, but the committee addressed itself to CDC incentives by allowing those CDC's to get a discount break on their insurance premiums, and that is good.

□ 1220

Mr. Speaker, in that regard I do not think I could offer my technical bill which called for grants that would buy down interest rates in economically depressed communities. It would not give grants for the direct activity of the loan or the economic development. That would buy down the interest rate after a bank or group of banks have qualified an individual who is willing to make a commitment. That is good policy.

So, in any regard, not being able to affect the policy, I have submitted an amendment calling for a study by the Secretary of HUD and/or the Secretary of the Treasury that would look at the community development corporation, banks, and private banks and consortium banks who would take it upon themselves to energize and reinvest in low income communities, and the tool of being able to buy down interest rates being the incentive. I think it would be a good policy. It could be coupled with the President's enterprise zone philosophy. I think it would work.

The second amendment, my colleagues, I think is very important, and I think this bill is weak without it. One thing we should have learned from the savings and loan fiasco is, when we took the shackles off, everybody was making deals, and everybody started making money, and there was a lot of fraud in the savings and loan collapse. The Traficant amendment would call for a complete disclosure of every board director, chief executive officer, anybody in an important position in the bank who is going to handle money, make loans, make investments or who could rip off the bank.

Now the bottom line is we insure the American taxpayers, our banks, and I think it is realistic for us to have an amendment that says those key people must disclose to us their stock holdings and their financial information. In addition, when they have a relationship from the past employment, past investment or family relationship that appears to be a conflict of interest, they speak to that conflict of interest with an affidavit and assure our regulators that there exists no conflict, that we have regulators, not colluders.

I think these are very important. I think overall Congress should be careful about taking the shackles off the banks. The last time we took the shackles off we started putting a lot of taxpayers' dollars up to it. They are saying it will be $1½ trillion to bail out, before it is over, the savings and loans. I am saying we should have some basic protection to make sure the people involved with these banks do not swing with the money, and let me say this in closing:

When there is money in the vault, there is larceny in the heart, and it is good to have a little safeguard to make sure the larceny in the heart is subdued a little bit before we start bailing out the banks.

Mr. DREIER of California. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Ohio [Mr. WYLIE], ranking member of the full Committee on Banking, Finance and Urban Affairs, who is offering at least two of the most important amendments that we hope to be considering tomorrow.

Mr. WYLIE. Mr. Speaker, I thank the gentleman from California [Mr. DREIER] very much for his generous yielding to me of this time, and I thought I would take some time right now because we are going to be limited in debate a little later on. But I do rise in support of this rule.

Mr. Speaker, I do think we need to move ahead on this important legislation as quickly as possible. We need to recapitalize the bank insurance fund. The reserve in that fund is dangerously low. It is now at $2.2 billion and we have been told by Mr. Seidman in his swan song that the bank insurance fund is likely to be at zero level by the end of this year if we do nothing. The bill increases the credit limit to $30 billion from $5 billion, so that $25 billion will be made available immediately to go into this fund. It is absolutely essential that we pass this particular provision of the bill to avoid a taxpayer bailout. All of the money going into this fund will be paid for by the banks with no taxpayer money involved.

Second, we need to provide a mechanism for early intervention of a failing bank, which this bill also does. We need to provide deposit insurance reform, and I am going to be offering an amendment to strike the provision or to modify the provision on multiple accounts. This legislation does very little in the way of deposit insurance reform. My amendment will simply state and say, as was said in the original legislation which came from Treasury, that a depositor would be insured up to $100,000 on a personal savings or checking account and $100,000 on an IRA account in one institution. So, a depositor could be insured up to $200,000 in one institution.

The multiple account arrangement has caused many abuses in the system. Under the present law, through this loophole, a family of four, for instance, could have $1.4 million insured in one institution. My amendment will still cover 97 percent of all Americans with a deposit in the bank, so it would affect less than 3 percent, and those are the wealthiest of the sophisticated depositors. I think that is a big loophole that we ought to close.

Mr. Speaker, I offered an amendment back in 1982, when the savings and loan bill was on the floor, to provide 3 percent net worth for savings and loan. That amendment was defeated pretty much along party lines. All of us who voted for that amendment speak with pride about that amendment because, if that had passed in 1982, we would not be in the savings and loan mess we are in today.

Now I think the multiple account amendment is that kind of an amendment. We do allow 3 years for transition in the amendment so that it would coincide with the end of the so-called too-big-to-fail doctrine.

We also would hope that the body would adopt an amendment which would allow commercial firms to buy failing banks. If a commercial firm puts private capital money into a failing bank, then that means that the bank will not fail and we would not have the exposure to the Federal Deposit Insurance Corporation fund that we might otherwise have. I think that is a very important amendment.

I hope that title III, which is the interstate banking provision, will stay in the bill. Some of us will be offering what is called an opt-out amendment so that the State can vote to opt out of interstate branching and banking if it so desires. I think it is important that banks be allowed to operate across State lines. I think it could diversify the risks. I think it could insulate agricultural sectors and oil sectors from some of the declines we have seen in Texas and New England which have caused a lot of exposure to our banking system. In Ohio we have had interstate branching and banking for many years now, and it has worked very well. We have what is probably the strongest of all of the banking States in the country in part because we got into the interstate banking business early. It can also affect the economies of scale. We have auditing, accounting and examining reforms in our bill which were recommended by GAO.

Mr. Speaker, I happen to think that the bill which was reported out of the House Committee on Banking, Finance and Urban Affairs was a superior bill, and I hope that we can come to a bill, when we vote it out of this House sometime on Friday, which comes fairly close to the Committee on Banking, Finance and Urban Affairs bill.

Mr. SLATTERY. Mr. Speaker, will the gentleman yield?

The SPEAKER pro tempore. (Mr. MCNULTY). The time of the gentleman from Ohio [Mr. WYLIE] has expired.

Mr. DREIER of California. Mr. Speaker, I yield 2 additional minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. I yield to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, I thank the gentleman from Ohio [Mr. WYLIE], my friend, for yielding, and I just want to say to the gentleman that we may disagree on some parts of this bill, but the one thing I want to say is that I think the gentleman is offering a very constructive amendment with regard to the issue of deposit insurance reform, and I would just call to my colleagues' attention that there are a number of banks across this country, especially in smaller communities, that are very troubled about the prospect of some changes in this area. I understand that, but I would urge my colleagues also to take into consideration, as the gentlemen from Ohio [Mr. WYLIE] has suggested, that that is the reality of the taxpayers in effect insuring deposits up to $1.4 million in an individual bank for one family of four, and I would just observe that a year from now, when we are dealing with a growing problem in our banks in this country, and dealing with the prospect, that we are going to have to do something beyond FDIC insurance to deal with this problem. It is going to be extremely difficult to go to the taxpayers in this country, or anybody else, and ask them to step up and help deal with this problem when we are talking about help covering deposits in excess of a million dollars in a bank.

So, Mr. Speaker, I just really hope, in spite of the opposition from some banking interests in this country, that our colleagues will listen carefully to the gentleman from Ohio [Mr. WYLIE] and listen to what his arguments are with respect to the need for deposit insurance reform.

☐ 1230

If we finish our work on this legislation, or if not, if we have not enacted some deposit insurance reform, as the gentleman has suggested, I think we would make a bad mistake.

I conclude by urging also that my colleagues take a hard look at the amendment the gentleman from New York [Mr. SCHUMER], the gentleman from California [Mr. CAMPBELL], the gentlewoman from New Jersey [Mrs. ROUKEMA], and I will be offering dealing with core banks, because it also in my judgment provides some general fundamental reforms that I believe are desperately needed.

Mr. WYLIE. Mr. Speaker, I thank the gentleman for his very significant support. I feel very strongly about this amendment. It is the right thing to do, and I think it will be important to the enactment of the legislation.

Mr. FROST. Mr. Speaker, for the purposes of debate only, I yield 5 minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Speaker, it indeed is a pleasure to participate in this debate on this historic legislation that the House is beginning today to debate and consider.

We must be mindful of the fact that this really is a very important moment in the history of banking legislation in this Nation, because if prior experience over the past 150 years serves us right, the decisions we make involving banking structure this week are likely to guide the structure of the industry for the next 10 or 15 years, perhaps longer, if we are successful, because we must remember that accompanying this legislation is a request for $70 billion in borrowing authority to take care of failed banks which are clearly on the rise. And if we are not successful in drafting this legislation, the FDIC will be back here next year or the year after requesting additional tens of billions of dollars for a banking industry that is under stress. So it is very, very important that we do this job right.

In the Banking Committee, since we passed FIRREA whenever it was, 1 or 2 years ago, we have been able to focus on bank structure reform, and in that process we have had an opportunity to hear from economists around the country—Bob Litan, for instance, from the Brookings Institution; Jim Brumbaugh, formerly of Stanford; Jim Barth, from Auburn; and other nationwide experts who have told us what our banking structure ought to be. We have had an opportunity to hear from the regulators in hearings, from Bill Seidman and others who were involved on a daily basis in the regulation of the banking structure. We have heard testimony from every kind of industry representative. We have had an opportunity to review GAO reports which discuss the strengths and weaknesses of our current structure and, of course, the lengthy and extensive reports submitted by the Treasury Department recommending this legislation.

What do the experts tell us? The experts tell us, first of all, that there is an authentic problem in the banking system, that bank failures before 1970, were at the rate of less than 25 a year; beginning in the 1970's, they got well into the double digits, and beginning in about 1984, bank failures were in the triple digits, 200 or 300 a year, each year from then into the present.

The experts tell us that this is the case because of declining market share. This is the case because of a number of other systemic problems that have been imposed upon the industry that in many respects are not the fault of the industry. Let us enumerate some of those briefly. Why is the banking system under such stress today? Let us enumerate them briefly.

First, they have lost many of their best customers. Many of the large corporations in America are now issuing their own paper. They do not go to their friendly commercial banker for a loan.

Second, the securitization of mortgage and other instruments has narrowed the profit margin for banks in the mortgage and auto loan business.

Third, they have lost many of their customers permanently to money market accounts and to mutual accounts that do not have nearly the overhead that a full-scale bank structure does. As a result, the banks have been chasing less creditworthy customers, and because of overcapacity in the banking industry, they have made many, many bad loans that we will hear about in the debates on this bill later today and tomorrow.

Now, given these problems, what are the solutions? There is general agreement among the experts that we need to do three things. First, we need to relieve the banking industry from outdated government regulations, from Depression-era statutes that are constricting the industry from being successful. The most prominent of those, of course, are the regulations on interstate branching. We are the only country in the Western World basically that denies its national banks access to the full national market. Liberalizing the interstate branching requirements is an idea whose time has come and gone. We should have done it years ago. It has been 58 years since we amended the McFadden Act which restricts national banks and prevents them from branching outside their State of origin.

The second recommendation is to allow banks to participate safely in other, more profitable activities, and there are other, more profitable activities out there, activities that are today more profitable in the banking business that the banks can successfully and safely participate in.

The Banking Committee developed a structure of holding companies that insulate and insure deposits from these non-banking activities. Why not strengthen the banking industry, strengthen banks by giving them the opportunity to participate?

Third, we should give them access to capital. Eighty percent of America's capital is off limits to investment in the banking industry. We have major corporations throughout America that have enormous liquid reserves—General Motors, AT&T, IBM, Ford, companies that have billions of dollars in liquid reserves. Why not, in a safe and careful way through a series of holding companies, allow them to invest in America's banking industry?

The SPEAKER pro tempore (Mr. MCNULTY). The time of the gentleman from Nebraska [Mr. HOAGLAND] has expired.

Mr. DREIER of California. Mr. Speaker, I yield an additional 3 minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Speaker, let me indicate that another source of strength for a distressed banking industry would be to allow access to America's capital. Why not? Let us say Citicorp is under stress. What is the solution? Citicorp sells $600 million worth of stock to a Saudi prince because Federal law prohibits these corporations, that I named earlier, from investing. Is that good policy? I do not think it is.

Now, we will be confronted today and tomorrow with a choice, a choice between a title IV that is drafted by the Banking Committee, which I believe is important because it will strengthen the industry, and also a title IV drafted by the chairmen of two of the most prominent committees, which I believe does not advance these goals and would be a mistake to adopt.

The practical results are that we have a title in one instance that tilts toward the bank, and we have an alternative proposal that tilts toward the other direction. It would be my thought that because of the confusion, because of the fact that very, very many thoughtful people are drawing such opposing conclusions and making such opposing recommendations, let us simply strike title IV. Let us simply leave current law in place in the whole area of new products for banks, commercial ownership of banks, to allow us to continue to try to work out a solution of the problem.

Mr. DREIER of California. Mr. Speaker, will the gentleman yield?

Mr. HOAGLAND. I am glad to yield to the gentleman from California.

Mr. DREIER of California. Mr. Speaker, I thank my friend for yielding.

I take this time really to congratulate the gentleman for his fine statement and also to get to the gut of what it is we are discussing here, and that is that we have this so-called Dingell-Gonzalez compromise which has come forward. I understand that in the Banking Committee there were a number of aspects of the so-called compromise that were voted on.

I was wondering if my friend could tell us, and share with our colleagues, the outcome of those votes that were cast in the Banking Committee.

Mr. HOAGLAND. Mr. Speaker, some of the essential elements of the Dingell-Gonzalez agreement are stiff firewalls involving securities and insurance activities by national banks. Many of those specific firewalls, or some of those specific firewalls, I should say, were specifically voted on and rejected by the Banking Committee.

Mr. DREIER of California. Mr. Speaker, let me ask my friend another question, if he would continue to yield.

As we look at the question of whether or not we are going to allow commercial firms to engage in the ownership of these financial institutions, is it not true that if we do not allow that, these institutions will continue to look to foreign investors as potential owners?

□ 1240

Mr. HOAGLAND. Mr. Speaker, it is my view that that will happen. Also those institutions will continue to weaken, and some of them will fail. So why not let corporate America invest in banks, rather than have those funds be drawn from the bank insurance fund, and perhaps ultimately from the taxpayer.

Mr. DREIER of California. Mr. Speaker, if the gentleman will yield further, we have the threat of both the U.S. taxpayer being further responsible and further foreign investment in U.S. financial institutions.

Mr. HOAGLAND. Mr. Speaker, absolutely. Let us make available the 80 percent of corporate capital that is currently off limits.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Louisiana [Mr. BAKER], a member of the Committee on Banking, Finance and Urban Affairs.

Mr. BAKER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the rule we now have before us is obviously not one of controversy, but is the first step in a lengthy process in consideration of House banking reform measures. Regrettably, we do not now know at this moment whether in fact the work product of the House Committee on Banking, Finance and Urban Affairs will be the document from which consideration will now proceed. It may well be that the Dingell-Gonzalez compromise becomes the product from which all amendments will then be considered.

Regrettably, we do not now know if the House banking substance report will even be an amendment in order to the Dingell-Gonzalez compromise if it then becomes the document from which proceedings will be considered.

Mr. Speaker, it is extremely important that the work product of the House Committee on Banking, Finance and Urban Affairs at least be considered on this House floor. Not that everyone here will agree with every provision that is included in it, but it is the beginning point of an extraordinarily important reform process.

It goes beyond the question of whether bank officers and directors will simply find themselves making more profit. It even goes beyond the question of whether or not our domestic economy will recover and we can create jobs through small business.

It goes beyond that point to the question of who is going to pay for the disappointments of the past decade. Will it be the taxpayers of this country, or will it be the banking industry itself as it recovers, grows and prospers, and provides the premiums and dollars necessary to pay off the failures and losses of institutions around this country.

It is no secret that the problems that began in the Southwest are now commonplace in the Northeast, that no section of our domestic economy is exempt from banking difficulties. If we are to address this issue on a rational basis, the bill as reported by the House Committee on Banking, Finance and Urban Affairs must be considered on this House floor. We must give Members a chance to understand the vast magnitude and scope of the issues we dealt with, and the fact the committee dealt with these over a period of weeks, not simply minutes or hours or even days.

After a very large number of controversial votes, the work product of the House Committee on Banking, Finance and Urban Affairs deserves to be heard on this floor.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I rise in support of the rule and the process that brings us here today to consider the rule on the banking reform legislation which has been requested by the administration.

Mr. Speaker, it has often been said in debate concerning the banks that they have to be modernized and brought into the new integrated financial marketplace. I believe that this is true. To date that has happened only in regulatory or a court procedure in the last decade.

Although the Committee on Banking, Finance and Urban Affairs and other committees in this Congress have been striving to have those issues brought to the floor enacted by Congress and represented in law. The motivation and goal today, is to finally accomplish in 1991, that which has alluded us the past decade. As we do that, of course, I think we find that very often the jurisdiction of committees is also becoming somewhat integrated. That should not be a big surprise.

Clearly the Committee on Banking, Finance and Urban Affairs, the Committee on Energy and Commerce, the two major committees, and two other committees, the Committee on Agriculture and the Committee on the Judiciary, have roles to play in this process.

What has happened with the agreement between the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Michigan [Mr. DINGELL] is exactly the process that is provided in the House. When committees have varying differences concerning legislation, the leadership comes together and try to work them out in areas where they have various and shared responsibilities. That is essentially what has happened in this bill.

Mr. Speaker, clearly I would advise and request the Committee on Rules to make in order the major amendments which give Members an option to vote on issues that are of consequence. But I would also point out that one of our major responsibilities in the argument is correct and limit the risks to the deposit system.

The administration and others are seeking to use the failures of banks, the losses of banks in the past, and to the deposit insurance system, which, of course, have been so evident with regard to the S&L's, they are using this problem as a basis to expand the powers and activities of banks and financial institutions in yet new areas of risk. They advocate bank involvement in areas where they have not been involved.

Mr. Speaker, I am very concerned about this policy path, a philosophy or theory that espouses and favors free enterprise, but declines to practice it to absorb the risk. I hope our deposit insurance and our banking system will not be expected to insure the activities that are not directly related to banks and to the protection of deposits which the system was set up for in the first place.

We cannot carry the free enterprise system on the backs of the bank or S&L deposit insurance system—the privatization of profit and the socialization of risk by the U.S. taxpayers.

Mr. DREIER of California. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Pennsylvania [Mr. RIDGE], a hard-working member of the Committee on Banking, Finance and Urban Affairs.

Mr. RIDGE. Mr. Speaker, when this bill started off in the House, it had some warts but overall it was a good bill. It recognized that we needed a whole new world for banks, that the fast-moving markets required an update in the way this Government views banks and financial intermediation. Despite the skeptics' doubts, the House Banking Committee produced a bill that increased supervisory powers where necessary and prudent, introduced market discipline, and removed outdated laws that only gave competitors of banks an advantage over banks themselves. When we finished with the bill and reported it out, we knew we had a hard road but we were generally pleased.

Since then, however, it has been all downhill. Today, I must state for the record that the direction of this bill, in combination with a recession that will not quit, will almost certainly force a taxpayer bailout of banks in the next 2 or 3 years. I wish it were otherwise. I wish unemployment claims were dropping and housing starts and real estate values were rising. But they are not. Unemployment claims continue to rise, housing starts and durable goods orders are flat, and real estate markets are not recovering—in fact, we fear further losses in California. As long as the recession continues, we know that more banks will fail.

This alone is cause for alarm. But now here comes the banking bill where the momentum is clearly in favor of isolating the bank charter while forcing more regulation at every corner. The momentum is not for modest product and service reforms, but for stripping away existing authority! The momentum is not for regulation where it is most needed, but regulation for its own sake. We are going backward, partly because we're fighting the last war, the S&L war, and partly because the opponents of the bill have divided and conquered. I can sum up these factors by saying the bill is a product of paranoia.

I want to specifically address the issue of fighting the last war. Some have said that the Banking Committee's reform bill would lead to a replay of the S&L situation. It is vastly different. The thrift industry operated without separately capitalized affiliates and holding companies, without firewalls keeping insured funds from risky activities, and without adequate regulatory early intervention, three policies the Banking Committee included in strong measures.

While this underlying framework is still in the bill, I regret it has been severely weakened by last minute changes by our own chairman, changes that nullified weeks of work and will only harm the banking industry. Once Wall Street fully digests the direction of this bill, investors will begin taking their dollars elsewhere. Investors will correctly perceive that Congress cannot deal with the bank charter obsolescence in a meaningful way, that Congress does not understand the principle of diversification of risk, and that Congress is dooming a bank charter to extinction. And there only two classes of people with money for the industry: investors and taxpayers. When the investors go, only you-know-who is left. And what will we do when the taxpayers come to us? Tell them to get an appointment with Mr. DINGELL?

There is hope. Perhaps we will find a way to win floor votes that will greatly improve the bill. The bill also has important parts that will allow interstate branching, will cut way back on the too-big-to-fail syndrome, and encourage banks to greenline distressed neighborhoods, a problem illustrated by the just-released Federal Reserve report on mortgage rejection rates.

FLOYD FLAKE and I have worked on the Bank Enterprise Act and we know it will make a radical difference in the way banks operate in underserved areas.

But overall, unless we make improvements this week, I think someday the banking reform bill will be recognized for what it truly is: A colossal policy failure and another indication that the Congress is unable to understand markets and make them work for the benefit of consumers and taxpayers alike. It will be another indication that congressional action erodes our national competitiveness in a world that rewards efficiency and innovation. It will be another indication that our national treasure, the earning power of working Americans, is taxed not for investment in jobs or education or infrastructure but for filling the black hole of economic and political incompetence.

□ 1250

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Kentucky [Mr. HUBBARD].

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentleman from Kentucky [Mr. HUBBARD].

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. HUBBARD] is recognized for 4 minutes.

Mr. HUBBARD. Mr. Speaker, I urge my colleagues to oppose the Wylie amendment to restrict deposit insurance coverage. This is the third time this issue has been debated, and we defeated it in subcommittee and in the full Banking Committee.

What do the New York Times, the Washington Post, the American Association of Retired Persons, the U.S. Chamber of Commerce, and the National Association of Home Builders have in common? Each opposes new restrictions on existing deposit insurance coverage.

Their opposition is based on the fact that to reduce deposit insurance is ineffective at best. At worst, it would be a mistake that would result in significant, nationwide harm to our already fragile economy.

Consider, if you will, the following quotes: "I don't think changing the amount of deposit insurance will make a big difference as to what the liability is that the Federal Government is looking at," said Comptroller General Charles Bowsher. Restricting coverage would cause nothing more than an inefficient shuffling of funds between institutions—without reducing the risk to the deposit insurance funds.

In an article entitled "Banking Reform Proposals Are Already Rattling The System and Making The Credit Crunch Worse," the Wall Street Journal noted:

> Even the chance of change is prompting many businesses and individuals to reduce the amount of deposits they are holding . . . Some small banks say the departure of their largest deposits is crimping their ability to make loans—and, as a result, hindering the economic recovery.

That's why U.S. Chamber of Commerce President Richard Lesher wrote in a recent letter:

> Restricting the number of accounts covered by deposit insurance or simply cutting back federal deposit insurance guarantees would make the banking industry far less viable than it is today.

Mr. WYLIE of Ohio said there are many abuses in the system. I challenge my friend from Ohio to name one bank that's failed because of multiple accounts.

Jerry Knight in last Sunday's Washington Post wrote an article about the banking industry problems:

> The banking industry is in trouble because of a series of ill-fated decisions over the last decade to lend money to Third World countries, corporate takeover artists and real estate developers who ended up not being able to repay their loans. Those bad loans have caused nearly 1,000 banks to fail, left hundreds more on the brink of failure and badly eroded the capital reserves of another 2,000 banks.

It's universally agreed that the banking industry is not in trouble because of multiple accounts. It's in trouble because of ill-fated decisions to lend money to Third World countries, corporate takeover artists, and real estate developers who cannot repay their loans.

What will happen if you restrict multiple accounts? Many will take their money out of the banking system entirely, which means less money for loans to small business and consumers, and will add to our economic problems. My constituents in western Kentucky will possibly consider moving their money to banks that might be considered too big to fail, and let me add there are no too-big-to-fail banks in western Kentucky.

Let me conclude by sharing a portion of an editorial from the Washington Post entitled "Don't Cut Deposit Insurance":

> While many things need to be changed in the American banking system, the basic system of deposit insurance is not one of them. As Congress goes to work on the banking bill this week, it would be wise to leave deposit insurance alone. The purpose of this bill is to produce stronger and more stable banks. Cutting back the insurance of depositors would do just the opposite.

I urge my colleagues to vote against the Wylie amendment to restrict multiple accounts.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. WYLIE], the distinguished ranking member.

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding time to me.

One, my amendment would only take effect now at the end or termination of the so-called too-big-to-fail doctrine. That was one of the arguments the gentleman used in the committee in opposition to mine; that money would flow to the too-big-to-fail institutions. They are terminated in 3 years. That is the same time my amendment would take effect.

Maybe multiple accounts did not cause savings and loans to fail, but they contributed to the huge bailout problems when depositors were paid off. And that is one of the conclusions of the study that was done by the Treasury Department.

This seems like deja vu all over again, may I say, Mr. Speaker. Back in 1982, when I offered the net worth amendment, which would require savings and loans to have 3-percent net worth, the U.S. League opposed it. The first gentleman on the floor to oppose my amendment was the gentleman from Kentucky. He prevailed then.

I hope that he does not today.

Mr. FROST. Mr. Speaker, for purposes of general debate, I yield 2 minutes to the gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Speaker, let me thank the gentleman from Texas for yielding time to me.

Members have come to the floor and indicated, if we pass this bill in one form or the other, we are going to induce a bank bailout.

My colleagues, make no mistake about it, we are already involved in a bank bailout. No matter what version of this bill passes, contained in any version will be a $70 billion loan from Treasury to the bank insurance fund, to the FDIC. And if we think the banks will have it within their power or wealth to pay that back, we are dead wrong.

Pending before the Committee on Rules is an amendment which I offered yesterday. It would provide an option for the House to vote for a narrow bill versus a broad bill. A narrow bill would do only two things: It would provide for the $70 billion loan, some meager deposit insurance reform, and it would also provide for some regulatory reform. That is all.

Let us do no more. Let us not expand the powers of the banks. Let us wait for the insurance fund to become healthy, for the banks to become more healthy, and let us talk about giving them additional powers.

Until that happens, I think it is unwise to move on. However, if the House rejects that and states that now is the time to do the broad bill, a couple of things should happen.

No. 1, title IV, which is the agreement between the gentleman from Michigan [Mr. DINGELL] and the gentleman from Texas [Mr. GONZALEZ], is a must. Why do the big banks oppose title IV? Because it is too tough on them. That is why. They want their cake and eat it, too. They want no powers and invest in what they want without oversight by this Congress.

So if we do the broad banking bill, we need the title IV.

Also we talked about deposit insurance. The gentleman from Kentucky just indicated, do not tamper with deposit insurance. My colleagues, what is going on is ludicrous. We have zero dollars in the banking insurance fund and $3 billion on deposit which the taxpayers of this country are liable for.

He says, "Don't tamper with deposit insurance." A family of four in this country today under the current law can have up to $1.4 million in one bank and have it all totally insured by the taxpayers.

□ 1300

I think we should at least support the Wylie-Gonzalez approach which spreads the risk and says "OK, taxpayers, it is $200,000 per bank and we will spread it around."

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Speaker, let me just say at the outset that what is good for the goose is good for the gander. Let me take a couple of minutes and talk about banking, insurance, and consumers.

Under current law, insurance companies can own banks and they can market to their insurance policyholders banking products all over the country, under current law. Under current law State-chartered banks can own insurance subsidiaries and they can sell insurance products to their banking customers throughout the country, without impediment. It is sort of a two-way street, a mirror image, one of the other. That is good for competition and it is good for consumers.

The legislation coming to us under the revised version of title IV, this bill would say on the one hand that we are going to continue to allow insurance companies to own banks and to market those banking products to their customers, but we are going to greatly curtail the right of State-chartered banks to own insurance companies and market insurance products across the country to their banks and customers. Well, if it is good for the goose, ladies and gentlemen, it is good for the gander.

In terms of what is good for consumers, the status quo is good for consumers. I will be offering, with a number of my colleagues, an amendment to title IV that does several things. First, it makes it perfectly clear that any State that wants to sell insurance in another State, any bank that wants to sell insurance in another State, one has to be licensed to do that. Second, that other State can pass a law and say "No, you cannot sell within our borders."

Third, any State's banks that may want to export powers—that may want to export insurance powers—they have to sell those same powers, the same insurance powers, in their own State. Any State that wants to export their banking powers to another State has to have a reciprocal arrangement. The other has to be able to sell in the would-be exporting State. If we do not want illegal tie-ins to prevail; "I am a bank, and in order to buy my banking products you will have to buy my insurance products," that is illegal. That is made punishable by law.

I would ask Members for the support of this law.

Mr. FROST. Mr. Speaker, for the purposes of debate only, I yield 2 minutes to the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL of North Carolina. Mr. Speaker, I thank the gentleman for yielding time to me.

I intend to take some time later in general debate, but I saw that this discussion was going on here and I just want to make one point at this time, if I may. There is a broadly held misunderstanding that what the committee has done regarding banks is something like what was done with the savings and loan industry when they got in trouble during the 1980's. This has been written several places, several Members have mentioned it, and I just wanted to make it clear that this is a very bad misunderstanding.

When the savings and loans got into deep trouble in the 1980's their capital requirements were reduced. At the very same time, they were allowed to go into commercial lending, such as junk bonds, direct investment in real estate, and at the very same time supervision and regulation was reduced.

Now, this proved to be an absolute recipe for disaster. The committee learned from this experience, and in the banking bill before the House the committee on Banking, Finance and

Urban Affairs has done precisely the opposite. Capital requirements have been increased, not reduced, as they were with the savings and loans. We improve and expand regulation and supervision, not reduce it, as was done with the savings and loans, and we do not allow—in the version of the Committee on Banking, Finance and Urban Affairs—expanded activities with taxpayer-insured funds. Frankly, I am not even sure we are going to get to consider what is really the version of the Committee on Banking, Finance and Urban Affairs. The new activities that would be allowed would be in separately capitalized affiliates of banks.

Mr. DREIER of California. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina [Mr. NEAL].

Mr. Speaker, will the gentleman yield?

Mr. NEAL of North Carolina. Mr. Speaker, I thank the gentleman for yielding time to me, and I am delighted to yield back to the gentleman from California.

Mr. DREIER of California. Mr. Speaker, I appreciate my friend yielding. I simply wanted to ask him if he could tell us if he was, first of all, a part of this so-called Dingell-Gonzalez compromise which we saw negotiated and it came before our Committee on Rules. As I said in my opening statement, I have yet to find anyone, other than Chairman DINGELL and Chairman GONZALEZ and a lot of staff people in this place, who was part of that negotiating process.

Mr. NEAL of North Carolina. I must say to the gentleman that this is a most unusual situation. Most elements of the so-called Dingell-Gonzalez compromise, and I say "so-called compromise" because there is no compromise involved. It is a creation of the Committee on Energy and Commerce, which our chairman chose to accede to. That is the only way I can see it.

Many of the main provisions of that document were brought up during both the subcommittee considerations of this bill and the full committee considerations, and were rejected by very substantial votes.

Mr. DREIER of California. So, in other words, am I to understand correctly, then, that many of the provisions in the compromise were overwhelmingly defeated when those aspects came up for votes in the Committee on Banking, Finance and Urban Affairs?

Mr. NEAL of North Carolina. Yes, sir, that is absolutely correct.

Mr. DREIER of California. Mr. Speaker, I would like to ask my friend how is it possible that this could be part of a compromise, then.

Mr. NEAL of North Carolina. I must say, I do not see it as a compromise. I must tell the gentleman that I have the highest regard in the world for Chairman GONZALEZ and Chairman DINGELL.

Mr. DREIER of California. I do, too.

Mr. NEAL of North Carolina. But this document is not a compromise. This is a provision of the Committee on Energy and Commerce. I understand that the Committee on Rules may make it a part of the document that we will be considering, and it may be that we will yield to what reality most people say exists, and that is that we cannot pass meaningful reform at this time.

If that is true, I must say that it is a real shame. Every major study, every major series of hearings on this subject in our subcommittee has come to the same conclusion, that if we are not going to have a taxpayer bailout of the banking system somewhere down the line, this industry must be allowed to make a living.

The product of the Committee on Banking, Finance and Urban Affairs, which passed the subcommittee, as I recall, unanimously, over 30 votes to nothing, passed with a majority in the full committee, opened up new diversification and opportunity, and would allow for this industry to thrive in the modern world.

All of this will be cast by the wayside if we adopt the Dingell-Gonzalez approach.

Mr. DREIER of California. Mr. Speaker, if I could ask my friend, is it correct to assume, as we heard up at the Committee on Rules yesterday, that this Dingell-Gonzalez compromise is really based on the 1964 Bank of England Charter, the 1791 establishment of the Bank of the United States under Thomas Jefferson, and the 1864 laws?

Mr. NEAL of North Carolina. I am afraid I do not know about the entire history of it, but it is not the product of the Committee on Banking, Finance and Urban Affairs, I will say that.

Mr. DREIER of California. I see. I thank my good friend for responding to the question.

Mr. Speaker, I am happy to yield 2 minutes to the gentleman from California [Mr. RIGGS], a very hard-working member of the Committee on Banking, Finance and Urban Affairs.

Mr. RIGGS. Mr. Speaker, I thank the gentleman from California for yielding time to me, and for his nice comments and his hard work on this rule.

I am not certain whether I support the rule or not, because quite frankly, the rule is evolving upstairs as we have this debate now. But I just want to go on the record as saying, as one member of the Committee on Banking, Finance and Urban Affairs who worked hard on this bill that we marked up that I think it is a fine product. Unfortunately, I do not like the efforts that have occurred since to dilute and water down this bill. I am far too afraid that when we finally get a bill out here on the floor I am not even going to recognize it, and I think I probably speak for the rest of my colleagues on the Committee on Banking, Finance and Urban Affairs as well.

What we did in this committee was good legislation. We sought to recapitalize the BIF by increasing bank premiums, putting premiums on a risk-based basis.

□ 1310

We were willing; we were going to adopt certain new title I safety and soundness requirements requiring early intervention on the part of Federal regulators, doing away with this idea of forbearance which was one of the contributing causes of the savings and loan problems, and, yes, granting certain new powers, expanded powers to the American banking industry, not the least of which is interstate banking and branching.

So in terms of where we go from here, for any of my colleagues who are listening to this debate back in their offices, I know that they are going to be weighing a number of amendments on this bill, but let me just say that let us at all cost retain the interstate banking and branching provisions. We are going to have an opt-out amendment which will actually give the States the ability to opt out of that system, so hopefully that will allay the concerns that Members might have in that area.

Although I did not think this was going to be possible, I think some of the legislation, frankly, that is going to be coming before us, particularly the Dingell-Gonzalez amendments to title IV, would actually make a marginal situation worse, so I am standing up today during this early debate on the rule going on the record as saying that I am going to support the motion to strike title IV, to go with the existing law, because, frankly, it is a better arrangement than what we get from the muddled mess that has been produced now through this hybrid compromise between the Committee on Banking, Finance and Urban Affairs and the Committee on Energy and Commerce.

I also want to say that I am going to support my ranking Republican member on the Committee on Banking, Finance and Urban Affairs and his provisions to make deposit insurance reforms to put some restrictions on deposit insurance. For me, it has been a real troubling issue to struggle with. But I am going to support that, because I think, again, it is a necessary precaution to take at this point in our country's juncture.

Mr. DREIER of California. Mr. Speaker, will the gentleman yield?

Mr. RIGGS. I am happy to yield to the gentleman from California.

Mr. DREIER of California. Mr. Speaker, I thank my friend for his contribution. He raises a very good point, that being that we do not know whether or not those amendments will be able to be considered, and that is something that I hope the Committee on Rules will grant today when we bring up the rule. There is an opportunity for all of those amendments to which the gentleman referred to be considered here.

Mr. RIGGS. I thank the gentleman. I know my time is expired. If I might just comment that, frankly, there is so much confusion around all of these issues, all of these amendments that are swirling now, that I hope that we can get as broad or as open a rule as possible.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I have listened to much of the debate on the rule, which I strongly support. There is, however, one little part of this discussion that I want to point out.

Several of my colleagues have said that they want to strike title IV. Title IV is a very important piece of this legislation. I am sure that everybody in this House has been receiving messages and telephone calls from the big banks in their districts and in their States and so have I.

And I am sure that all of us have been receiving all kinds of phone calls from the insurance companies in our districts. I think that, as a Congress, we have the responsibility to try to do what we can for both of these industries. By removing title IV, we would, in fact, be saying to the insurance industry that, "We do not care about you. We are not going to try to keep you from becoming more and more insolvent." Believe me, we are having more insurance insolvencies than we have had probably in the last 20 or 30 years.

What we are saying to those insurance companies is, "No, we are not going to be concerned about you. We are going to give all of your business over to the banks. We are going to let them underwrite, we are going to let them do tie-ins, we are going to let them do all kinds of different things."

I do not think that is what this Congress is all about. I think that we have a responsibility to the American people to make sure all of our major industries are, in fact, kept intact; are, in fact, as profitable as can possibly be. That is why I am totally against anybody trying to take out title IV when it comes to the general debate for the passage of amendments on this piece of legislation.

Let me just remind you very quickly, how some of us seem to forget about what the traditional business is of banking. It is about being depositories of moneys, it is about loans. Basically that is it.

Over the years we have allowed other forms of transactions to come into the banking industry, and I think some of that was good, but by and large, some of it has helped us to be in the position we are today where you have more banks failing than we have had in years, 127 this year. In the last 10 years, over 1,100 banks have failed.

If you give them insurance, more are going to fail.

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am incorporating in the RECORD at this point the statement of administration policy.

Mr. Speaker, I urge support of this rule.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, October 29, 1991.

STATEMENT OF ADMINISTRATION POLICY

H.R. 6—FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

The Administration strongly supports H.R. 6 as reported by the Committee on Banking, Finance and Urban Affairs, and with the amendments described below. However, if the Energy and Commerce Committee amendment or a similar amendment to Title IV is adopted, or the interstate branching provisions are substantially weakened, the President's senior advisers would recommend a veto.

H.R. 6, as reported by the Banking Committee, is comprehensive legislation designed to create a safer, more competitive banking system. H.R. 6 recapitalizes the bank deposit insurance fund, sets clear standards for prompt corrective action by regulators to resolve troubled banks, and permits banks to reduce risk by diversifying their activities across more product lines and more geographic areas. It also greatly enhances the franchise value of banks and greatly expands the ability of banks to attract voluntary private capital into the industry, thereby increasing the capacity of banks to absorb losses ahead of the taxpayer. The administration strongly supports all of these efforts, though certain modifications would make H.R. 6 even more effective in strengthening the banking system and reducing taxpayer risk.

Four other House Committees—Energy and Commerce, Ways and Means, Judiciary, and Agriculture—have considered H.R. 6 and recommended amendments to the Banking Committee's bill. The Administration supports the Ways and Means amendment and parts of the Agriculture amendment. The Administration is concerned, however, that the Judiciary Committee's amendment to the bill's anti-tying provisions is unnecessary and could result in overly restrictive regulation of commercial practices.

The Energy and Commerce Committee has recommended a substitute to Title IV, the provisions that would otherwise increase the value of a bank franchise and attract private capital into the industry to absorb losses ahead of the taxpayer. (A slightly modified version is likely to be substituted for the Energy and Commerce Committee amendment for Rules Committee consideration, but there are no significant differences between the two versions.) As set forth below, the Administration strongly opposes both the Energy and Commerce substitute and the slightly modified compromise substitute as anticompetitive amendments that will weaken the banking system, impede the economic recovery, and increase taxpayer exposure to deposit insurance fund losses.

Amendments supported by the administration

While the Administration strongly supports H.R. 6 as reported by the House Banking Committee, the following modifications would substantially strengthen the bill:

Limiting deposit insurance coverage for individuals to $100,000 per person per bank, with a separate $100,000 in coverage for retirement accounts. This will reduce taxpayer exposure by limiting protection to average depositors.

Providing limited flexibility in the "firewall" provisions that will allow regulators to make technical adjustments to promote safety, soundness, and competitiveness.

Providing greater flexibility for bank regulators to avoid the premature shutdown of a weak bank that has clear prospects for recovery.

Eliminating provisions described below that increase the deficit for "pay-as-you-go" purposes by more than $1 billion over four years.

Eliminating the provision that deems the President to have designated the emergency loan guarantee for Rhode Island as an "emergency requirement." This provision violates last year's budget agreement.

Providing flexibility for regulators, in consultation with the administration, to protect against systemic risk in the banking system, with costs borne by the banking industry.

Eliminating provisions that reduce the regulatory authority of the Office of the Comptroller of the Currency, e.g., enforcement and the resolution of troubled but insolvent institutions.

Opposition to Energy and Commerce amendment

The Administration strongly opposes the Energy and Commerce Committee amendment or the slightly modified compromise amendment that is likely to be offered as a substitute to Title IV. For the following reasons, these substitutes will make banks weaker and less likely to provide credit in good times and bad; hamstring the ability of U.S. banks to compete with Japanese and European competitors; and increase the likelihood that taxpayers will pay for bank losses:

The amendment prohibits diversified companies from owning banks, which will stop new capital from voluntarily flowing into banks to absorb losses ahead of the taxpayer. Commercial firms should at least be able to purchase failing banks where taxpayer savings are immediate and substantial.

The amendment imposes unworkable "firewalls" unrelated to safety and soundness, which penalize banks to protect securities firms from competition.

The amendment requires the Securities and Exchange Commission to regulate the same firewalls as the Federal Reserve. This would undermine functional regulation and lead to regulatory gridlock, confusion, and increased costs.

The amendment takes away riskless and profitable insurance activities of banks, even where permitted by State law.

If the Energy and Commerce amendment or the slightly modified compromise amendment is adopted, the Administration would strongly support a motion to strike Title IV from the legislation. Current law is far more likely to keep banks stronger, safer, and more competitive.

Other amendments opposed by the administration

The Administration also strongly opposes all of the following amendments:

Amendments to strike or weaken the interstate branching provisions, especially one that would (1) prohibit interstate branching unless each State "opted in" by statute and (2) subject national banks to State banking laws for the first time. Such changes would be worse than preserving current law.

An amendment to expand the Community Reinvestment Act to impose onerous new requirements that would impede interstate branching and new financial activities for banks.

A "core bank" amendment with overly stringent lending limitations to one borrower and a form of interest rate controls because it could choke off credit to the economy.

An amendment that requires deposit insurance losses not paid for by the industry to be funded in a deficit neutral manner. This amendment violates last year's budget agreement, which recognized that currently outstanding deposit insurance liabilities should not be subject to pay-as-you-go requirements.

The Agriculture Committee amendment that requires an interstate branch to make a fixed amount of loans in rural areas or risk branch closure. This Government allocation of credit would discourage banks from opening branches in distressed rural areas that need credit.

An amendment that requires the Federal Deposit Insurance Corporation to begin a new housing subsidy program funded by banks. This expense would be shifted to taxpayers because it would require a pay-as-you-go offset.

Amendments that stop banks by statute from making specific kinds of business loans involving highly leveraged transactions, or that stop securities affiliates from underwriting or dealing in high yield bonds.

Scoring for purposes of pay-as-you-go

H.R. 6 would increase direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA). A budget point of order applies in both the House and the Senate against any bill that is not fully offset under CBO scoring. If, contrary to the Administration's recommendation, the House waives any such point of order that applies against H.R. 6, the effects of enactment of this legislation would be included in a look back pay-as-you-go sequester report at the end of the congressional session.

OMB's preliminary scoring estimates of this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If H.R. 6 were enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending will be issued in monthly reports transmitted to the Congress.

ESTIMATES FOR PAY-AS-YOU-GO [1]

[Dollars in millions]

	1992	1993	1994	1995	1992–95
Outlays:					
Rhode Island loan guarantee	+70				+70
Receipts:					
Credit for distressed communities lending and deposit gathering		−266	−319	−358	−943
Lifeline banking		−7	−9	−11	−27
Net deficit increase (+) or decrease (−)	+70	+273	+328	+369	+1,040

[1] The bill's "too big to fail" provisions would decrease outlays, but it is not possible to estimate the size of the decrease. Similarly, estimates of the pay-as-you-go impact of the bill's provisions on passed through insurance are not available at this time.

The above estimate does not take into account anticipated floor amendments.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FROST. Mr. Speaker, I have no further requests for time. I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2508, INTERNATIONAL COOPERATION ACT OF 1991, AND AGAINST CONSIDERATION OF CONFERENCE REPORT

Mr. HALL of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 232 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 232

Waiving all points of order against the conference report on the bill (H.R. 2508) to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that Act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act and to redesignate that Act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes, and against the consideration of such conference report.

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 2508) to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that Act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act and to redesignate that Act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes. All points of order against the conference report and against its consideration for failure to comply with the provisions of clauses 3 and 4 of rule XXVIII are hereby waived.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. HALL] is recognized for 1 hour.

Mr. HALL of Ohio. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from New York [Mr. SOLOMON], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, House Resolution 232 is the rule providing for the consideration of the conference report on H.R. 2508, the International Cooperation Act of 1991.

The rule also waives all points of order against the conference report, and against its consideration, for failure to comply with the provisions of clause 3 of rule XXVIII and clause 4 of rule XXVIII.

Mr. Speaker, clause 3 of rule XXVIII pertains to the requirements of scope. This waiver is necessary principally because of the dramatic events the world witnessed in the Soviet Union last August. Conferees decided to drop all provisions pertaining to the Soviet Union after the Soviet system changed, and to defer action until a later date.

The waiver of clause 4 of rule XXVIII pertains to germaneness. This waiver is necessary because nongermane provisions having to do with international development and finance were added to the bill.

Mr. Speaker, H.R. 2508, also known as the foreign aid authorization bill, contains many comprehensive revisions to our foreign assistance programs. The bill authorizes development assistance, foreign military financing, and economic support assistance for fiscal year 1992 and 1993.

As chairman of the Select Committee on Hunger, I am particularly pleased with a number of provisions. I would like to commend Chairman FASCELL and ranking minority member, Representative BROOMFIELD for shepherding many of the provisions from my Freedom From Want Act through the conference. In section 1401 of the conference report, we were successful in establishing food as a human right. Section 1403 includes language to reform and restructure the U.N. response to international disasters.

In addition, the conference report includes important waiver on assistance to Ethiopia, which are necessary to provide economic and food assistance to a country with a history of famine. Language is also retained urging the Agency for International Development [AID] to allocate $275 million for child survival programs, $135 million for basic education activities, and $12 million for programs to reduce vitamin A and other micronutrient deficiencies. We know these programs work by offering the world's poorest people a chance to climb out of poverty.

I am also pleased that the conference report requires information to be provided in AID's congressional presentation documents regarding the administration's specific actions—including funding—to implement the World Summit for Children and the World Declaration on Education for All.

Finally, I commend my colleagues on the conference for retaining our language on conventional arms control. The many provisions in chapter 5 of title II, concerning the arms transfers restraint policy, will hopefully lead to a more peaceful and settled world.

Mr. Speaker, this is a good bill, one which can help alleviate poverty and suffering among people. This rule passed in a voice vote in the House Rules Committee. I urge my colleagues to adopt it.

□ 1320

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to this rule, and I do so because of the general principle I try to adhere to in opposing rules that contain waivers of points of order against scope and germaneness.

The issuance of these kinds of waivers has become a bad habit around here, Mr. Speaker, and for the most part it is not an appropriate way to do business. It is one of the major reasons why we run deficits each year, and this year certainly is no exception. I think the deficit this year is already approaching $370 billion.

Nevertheless, I have no desire to obstruct the work of Congress from going forward. Although I am personally opposed to this rule, Members should feel free to vote on it any way they wish in the event that we do have a recorded vote.

Mr. Speaker, it should be noted that the authorization for programs contained in this conference report is nearly $91 million above the figure that was passed by the House last June. It is higher than what we passed, and it is about $190 million above the figure that was passed by the Senate in July.

So Members should realize that the waiver against scope contained in this rule serves to excuse the fact that this conference report contains a higher authorization for spending than was passed by either House of Congress.

So if Members are back in your offices, they ought to listen to this.

The rule also excuses the fact that this conference report contains a $12 billion—not million, but $12 billion—authorization for the International Monetary Fund and other multilateral development agencies. That authorization has not been passed by either House in any form this year. So once again the normal legislative process is being short circuited by this rule. My colleagues, that is not a good way to do business.

All of that having been said, Mr. Speaker, the rule does not serve to single out for special protection any other provisions in the conference report. Nothing else in the rule is being hidden, and you can take it from me, that is the truth.

Indeed, the problems in this conference report are well known. There are no secrets in it, and there is no secret as to why the President has every intention of vetoing this legislation if and when it reaches his desk.

So I will devote the rest of my remarks to some of the problems contained in the conference report itself, and why I intend to vote against the rule and the conference report.

First, I would point out to Members that the administration is concerned—as I am concerned—about what has been done with the family planning issue. This conference report contains a $20 million earmark in support of the U.N. Fund for Population Activities, an agency which has been implicated in supporting the coercive family planning policies and practices in China.

Mr. Speaker, the conference report also contains a provision that repeals the so-called Mexico City policy, which prohibits United States aid from being provided to organizations that advocate abortion as a form of birth control or family planning.

Both the earmark for UNFPA and the provision repealing the Mexico City policy should be repugnant to every single Member of this House, regardless of one's personal position on the abortion question.

There is no way United States funds—which are fungible—should be used directly or indirectly to support social oppression in China, of which coercive family planning policies are a prominent feature. And there is no way we should give the slightest countenance to the notion that abortion is an acceptable form of birth control—at home or abroad.

Second, there is the issue of cargo preference, a requirement that foreign aid recipients use a portion of that assistance to purchase U.S. commodities which are then shipped on U.S.-flag vessels. I happen to be a supporter of this concept, and I have worked in past years for its enactment, as I will this time. But I am duty bound to advise Members on both sides of the aisle that the expanded requirements contained in this conference report are totally unacceptable to the administration and will prompt a veto.

Third, and most importantly, there is the issue of arms sales. I would call this to the attention of every Member of this House because this is changing American policy as far as arms sales are concerned. There is a provision in this conference report which was added by the other body, not by our own good people over here. It moves our foreign military sales program sharply in the direction of becoming a grant program. I call this to everyone's attention, particularly those Members who have been wailing about aid going overseas.

In other words, our arms sales program will become a giveaway program.

Indeed, the sponsor in the other body of this particular provision wants to see all foreign military sales phased out over a period of 4 years and be replaced by a program which is exclusively grants.

And just as surely as summer follows spring, we can expect each and every nation that has outstanding debts for past military purchases to apply for foregiveness of those debts the moment this program becomes exclusively grants.

Mr. Speaker, this provision will prompt a veto. The time has come to tell the rest of the world that the gravy train is over. It is over. We are a debtor nation. We should not be moving the military sales program in the direction of grants. We should be going the other way. We should only be making items available through cash sales or loan programs that must be repaid, and they must never, never be forgiven.

The other day, the majority leader, the gentleman from Missouri [Mr. GEPHARDT], made reference to the extraordinary sacrifices the American people have borne over these last 40 years. In the context of the debate here today, I would like to endorse the remarks of the gentleman from Missouri [Mr. GEPHARDT].

America has paid a tremendous price these past 40 years in protecting other countries from the malignant virus of communism. We have made a singularly awesome expenditure of money, energy and resources to contain and subdue the Soviet Communist system.

Mr. Speaker, so intensive and prolonged was this effort that even such a great leader as President Eisenhower feared for the very survival of our own democratic institutions.

Well, the time has come to tell the rest of the world to grow up, that Uncle Sam is not picking up the tab anymore. When the IMF funding is folded into this conference report, we are looking at a $37 billion giveaway.

Mr. Speaker, that is $37 billion, a $37 billion monstrosity.

Where in the world is the money coming from?

Mr. Speaker, none of what I have just talked about includes a dollar of aid to the former Soviet Union, and that aid package could equal or exceed all of this giveaway I am talking about here today. I would not be a bit surprised to see a bill come on this floor to have $40 billion going to the former Soviet Union.

Mr. Speaker, there has been a lot of partisan rhetoric coming from your side of the aisle lately, accusing President Bush of being more interested in helping foreigners than he is in helping Americans.

Members of this House, and especially those on the Democratic side of the aisle, now is the time to put your vote and your money where your mouth is.

The other day the new chief deputy whip on the majority side, our good friend, the gentleman from Georgia [Mr. LEWIS], for whom I have the greatest respect, said on this floor, "Come home, America. Come home, America."

Mr. Speaker, that was good advice then and it is even better advice today.

□ 1330

Come home, America; come home, Democrats; 232 of you, almost all of you, 90 percent of you, voted last Thursday to appropriate half of this foreign aid giveaway.

So I say to the 232 Democrats, either vote down this $37 billion giveaway today or knock off your criticism of President Bush.

Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I think the American people are basically upset with Congress because they are trying to figure out our priorities. Our national debt is over $4 trillion; our deficits annually, some say next year may be half a trillion dollars.

Mr. Speaker, we are cutting housing, education, everything you can think of. Let me tell you like it is: We have a foreign aid bill that comes back from conference that put the little cut that we made on this House floor back in, waives all points of germaneness and gives $5,000 a year to every man, woman, and child in Israel—$3 billion, and you want to talk about the way Congress really is? Congress will pass this because AIPAC may target it.

Now let us tell it like it is: $3 billion for Israel, $2.1 billion for Egypt, money for everybody, and we are broke. I cannot justify that, folks.

Now, I had passed an amendment, supposedly, in the authorizing committee, and the authorizing bill has never become law. The appropriation bills become law.

Let us tell it like it is. It called for a study that if we took $3 billion from this pork-barrel account overseas and put it to our domestic use, what would the impact be on both our foreign accounts and our domestic affairs?

From what I understand, evidently the staff was voted out because no Members know anything about it.

Folks, let me tell you what: If we can provide $5,000 a year for every man, woman, and child, every citizen of Israel, we can provide money for jobs, housing, education, and health care in America.

If we could find $2.1 billion for Egypt and forgive a $7 billion loan to Egypt, we can provide unemployment compensation for Americans who are out of work.

Now, that is just the way it is. I have nothing against the rule except if the rule is defeated, there is no bill, and I do not want to see the bill passed.

I am mentioning this to Members of Congress, if you want to know why the American people are fed up, they are tired of this rap. There is $2.5 million in this bill for a public relations account to sell the American people on continuing the foreign aid program.

Well, maybe you can fool some of the people some of the time, but you cannot fool all of the people all of the time.

Mr. Speaker, I am against $12 billion in money that was never authorized for an International Monetary Fund to help people overseas.

I am sick and tired of housing guarantees overseas, I am sick and tired of grants overseas. I ask for a "no" vote on the rule and a "no" vote on the bill.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise today in strong opposition to the Rule due to two provisions in the conference report. The first provision to which I am opposed would authorize $20 million for the U.N. Population Fund [UNFPA].

As I have stated before in this Chamber, UNFPA continues to be a strong supporter of China's population control program, which is widely known to utilize coercive abortions as one of its methods. In spite of evidence that forced abortion and involuntary sterilization are widely used to enforce China's one-child policy, Nafis Sadik, the executive director of the U.N. Population Fund has repeatedly stated publicly that China's program is totally voluntary. Mr. Speaker, this statement is made in the face of mountains of evidence that China's population control officials do indeed employ coercive and involuntary abortions and sterilization to enforce their policies.

Nafis Sadik went even further to praise China's program on April 11 of this year in making the following statement:

> China has every reason to feel proud of and pleased with its remarkable achievements made in its family planning policy and control of its population growth over the past 10 years.

Sadik also told China's official news agency of her organization's plans to increase its free aid to China.

Mr. Speaker, the second provision to which I am opposed is the one that would overturn the Mexico City policy. In effect since 1984, this vital policy restricts U.S. population funds from going to any foreign nongovernmental organization which performs or actively promotes abortion as a method of family planning. Overturning this policy would allow Federal funds to go to organizations which actively promote abortion—both coercive and voluntary—as a method of family planning.

I think it is important to note that abortion as a method of birth control is legal in only 13 out of 126 nations classified as less developed by the United Nations according to a 1984 U.N. study.

Finally, it is vital that proponents of overturning this policy recognize that the Mexico City policy has not reduced U.S. support for international family planning by even one penny. Every dollar that has been withheld from the U.N. Population Fund or other organizations which have refused to sign the Mexico City contract clauses has, in turn, been redirected to other family planning providers in the developing world.

I intend to vote "no" on this rule and on the conference report and encourage my colleagues to do likewise.

Mr. HALL of Ohio. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio [Mr. PEASE].

Mr. PEASE. I thank the gentleman for yielding.

Mr. Speaker, I support the rule that is before us, but I will oppose the conference report when it comes before the body.

I do this with genuine reluctance and regret, and I do not urge others to follow my suit. I merely want to explain to my colleagues why it is that I have opposed foreign aid authorizations and appropriations over the last couple of years and why I will have to oppose this conference report today.

Mr. Speaker, as I say, I do so with real regret because I believe in foreign aid. If anything, I think we in the United States do not spend enough for foreign aid, not that we spend too much.

Additionally, I am a former member of the Committee on Foreign Affairs, and I still feel considerable loyalty to the committee.

Finally, I have the utmost respect for the chairman, the gentleman from Florida [Mr. FASCELL], a very dear friend of mine.

So I rise reluctantly, but oppose the conference report I must, just, as I say, as I have opposed other foreign aid bills for authorizations and appropriations in the last few years.

I do so basically because there is too much money in the bill going to too few countries. And of the money which is going to our friends overseas, too much of that aid is military aid, not enough is development aid.

The total under this bill for each year of a 2-year authorization period is $12.5 billion. Of that amount, $3 billion is for Israel, $2.1 billion is for Egypt, $690 million is for Turkey, and $350 million is for Greece.

□ 1340

Mr. Speaker, I look at those figures, and I see that almost half of all of our foreign aid goes to just four countries.

The aid to Israel reflects a commitment which this Nation has long had to the nurturing and protection of the State of Israel, and I support that commitment. Indeed, this week, with the peace conference starting in Madrid, we ought to be particularly aware of that commitment. But it appears to me the foreign aid policy of the United States is on automatic pilot regarding

Israel. There is no evidence that the committee has discussed and decided that too much is going to Israel, or too little is going to Israel, or just about the right amount.

Egypt is getting $2.1 billion essentially because of a pattern started by President Carter to reward Egypt for its signing a peace treaty with Israel. But it looks to me now, after 11 or 12 years, that this aid to Egypt is going to go on in perpetuity.

Mr. Speaker, the evidence suggests that there is an inability on the part of the committee to break out of a rut. Two dollars for Egypt for every $3 for Israel. How can we justify one-sixth of our total foreign aid each year going to Egypt year after year after year, when other countries have similar and more pressing developmental needs, when Egypt was accused just recently by Amnesty International of having a security apparatus that, "routinely tortures, beats, and abuses its prisoners"?

Turkey is getting $690 million. Apparently that started many years ago because Turkey was on the border with our enemy, the Soviet Union, but where is the threat now from the Soviet Union? Why are we continuing to provide large amounts of aid to Turkey?

Apparently, Greece is getting money simply because it is next to Turkey, and is rival. Turkey is getting money, so Greece must get money. That has been true for years and years.

Again, Mr. Speaker, I think the committee is in a rut. These four countries consume $6.2 billion—just barely under half of all of our foreign aid—and most of the aid they do get is military aid at a time when we are trying to cut down on armed conflict around the world. In contrast, only $1.46 billion goes to 25 of the poorest countries in the world.

Mr. Speaker, something is seriously out of whack.

Mr. SOLOMON. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin [Mr. ROTH], a distinguished member of the Committee on Foreign Affairs, and a classmate of mine.

Mr. ROTH. Mr. Speaker, I thank my good friend, the gentleman from New York [Mr. SOLOMON], for yielding this time to me.

Mr. Speaker, I say to my colleagues, "If you have any questions as to why the American people are so incensed with Congress, and so determined to impose term limitations, and so outraged, here is the answer."

Look at this bill. Congress, in my opinion, is really thumbing its nose at American public opinion, and then we have Congressmen on Capitol Hill who wring their hands and ask: Why is the public so upset with Congress today? Let us review some provisions of this bill.

Mr. Speaker, this bill, in essence, borrows $25 billion—saddles our children with the additional $25 billion debt, and takes the money and sends it overseas. There isn't a Congressman in this Chamber who can stand in this Chamber and claim that the majority of the American people are for this bill. In fact, the only people for this bill are the foreign aid establishment and those Members of Congress who will vote for this bill.

Mr. Speaker, it is ironic that the opposition party bashes President Bush for concentrating on foreign affairs and then at the same time their foreign aid bill here today increases the deficit by $25 billion. The majority party does not mind selling our Nation into financial servitude.

Let us look at just a few of the items in this bill, and I say to my colleagues, "Ask yourself if you really want to vote for it."

There is $1 billion to AID without any allocation even though that agency is under investigation for waste, mismanagement, and corruption. Nearly $3 billion goes to so-called development assistance in other countries. Translated that means public works projects, but here at home we cannot find the money to fix and repair our roads and our bridges. Eight million goes to new guaranteed housing loans, not for Americans, understand, because they are not eligible. But these are guaranteed loans for people in Portugal, Morocco, Tunisia, Chile, Indonesia, and India. We have homeless right here in our streets in America. We have farm families losing their farms. But the Democrat leaders in this House want the American taxpayers to cosign another $800 million in guarantees for these countries and to have the American taxpayer, when these defaults arise, to pick up the tab, but no American need apply. If one is a small businessman in South American or Asia, the Democrat leaders in Congress have a program for them, too. That foreign aid bill is $132 million in guaranteed small business loans. Never mind that small businesses here in America are struggling to stay alive in the midst of a severe credit crunch. If one is a foreign business owner, the Democrat leaders in Congress are coming to their rescue.

If those foreign aid programs are not ample here are a few additional examples. Twenty million dollars for police training overseas while here American citizens cannot walk the streets in our Nation's Capital. Scholarship program for Cyprus while American kids cannot afford college. Twenty million dollars for unnamed private groups in the Middle East to foster pluralism, as if the Middle East needed more of that, and a half a million dollars to pay for an architect to design an International University of the Americas somewhere south of the border.

Mr. Speaker, page after page of this bill has more examples like this, but here is the most outrageous example of all. I have the bill, page 274. This bill actually authorizes $2½ million in grants to sell our own people on the benefits of foreign aid. That is right, $2½ million to attempt to brainwash our own people. The people are so incensed with this legislation that we are going to spend money to get them to agree with us. I say to my colleagues, "Shame on you. Nothing could better underscore how out of touch the Democrat leaders are with the mood of the American public."

As my colleagues know, if Brezhnev came back to the Soviet Union, he would be totally out of step. But this Congress is just as out of step, just like Brezhnev would be if he came back to the Soviet Union today.

Now let me tell my colleagues what is not in this foreign aid bill. This bill, when it was here on the floor, I had mentioned to this House that in AID we had $8.8 billion in this pipeline as much as 10 years. Congress pushes so much money into the pipeline that they can't spend it fast enough overseas.

GAO came in and said after 2 years it should be deauthorized. I offered an amendment. After 3 years my amendment read that it should be deauthorized. We had 216 Members in this House vote for the amendment, but what happened in conference? What happened in conference? Our conferees, most of them, did not even speak up for it. I thought we had a fiduciary duty. If one is a conferee, he or she is supposed to speak up for amendments that are passed here in the House. But obviously nobody pays attention to that. We did not have a single conferee appointed to the conference committee that voted for this amendment. Why?

Mr. Speaker, we cannot keep playing games. We all want to work together, but I in good conscience cannot say that I am going to stand for whatever the leadership does. I do not care what the consequences are. Things have got to change in this body, and things have got to change with this bill if we have any intellectual integrity.

My colleagues know what the problem is with this Congress on all these issues. We must be frank, candid, and forthright with each other. These subtle manipulations poison the process. The conferees tore up the House provision, so the one provision which would have actually saved the American taxpayer money was pulled from the bill in conference.

Mr. Speaker, the American people are outraged for a good reasons. Ever since the House voted on my amendment in June, people have written me from all across the country. I have stacks of letters here which I brought along in case Members would like to review the letters.

A woman in Turlock, CA, urges Congress to stop trying to buy our friends with foreign aid.

A woman in Naples, FL, wants to remind Congress that it is our money Congress is giving away.

Mr. Speaker, it is all right here in these letters.

□ 1350

A man in Columbus, GA, asks: "Is it better to be buddy-buddy with foreign countries at the expense of the working people in this country?"

A woman in Chicago writes: "No more loans or foreign aid! The American people have had it with our government."

A veteran in Harlingen, TX, says: "I am sick of our national lifeblood being squandered on international schemes."

A Florida native who is working in Costa Rica writes: "The U.S. aid policy in this area of the world is a total failure."

It is all right here in these letters. These are from our constituents.

Finally, a Greensboro, NC, gentleman says: "I can't understand so-called intelligent people continuing to vote for foreign aid."

There are the voices of ordinary Americans speaking, I say to my friends.

Mr. Speaker, they have a clear message to this House, and we should pay attention to what these people are saying.

The SPEAKER pro tempore (Mr. NCNULTY). The time of the gentleman from Wisconsin [Mr. ROTH] has expired.

Mr. SOLOMON. Mr. Speaker, I will yield my last remaining minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Speaker, I will try to hold it to 30 seconds.

Mr. TAYLOR of Mississippi. Mr. Speaker, will the gentleman yield?

Mr. ROTH. Mr. Speaker, my colleagues will hear those quotes again next year, during the campaign. It is time for America to take care of its own people and its own problems first for a change.

After a CNN program, an elderly couple from Pennsylvania stopped in my office, the woman said to me: "I can't see how our Congress can give money overseas when we have all these problems at home."

And the husband said, "Well, it isn't our Congress. This is Congress' special interest."

Mr. Speaker, I say to the Members, let us make Congress the people's Congress again. I hope the Members remember this when they vote today.

Mr. TAYLOR of Mississippi. Mr. Speaker, will the gentleman yield?

Mr. ROTH. I am happy to yield if I have some time left.

Mr. TAYLOR of Mississippi. Mr. Speaker, I would like to commend the gentleman for his desire to see intellectual integrity. I would like to point out to the gentleman that although this agreement is for $92 million more than what the House passed earlier this year, it is still $24 million less than the President of the United States requested in his budget.

Mr. ROTH. Mr. Speaker, I will take back the balance of my time.

The President of the United States is not asking for this legislation.

Mr. TAYLOR of Mississippi. So what do we have? Let us just really lay it on the line.

The SPEAKER pro tempore. The time of the gentleman from Wisconsin [Mr. ROTH] has expired.

Mr. HALL of Ohio. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. APPLEGATE].

Mr. APPLEGATE. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in support of the rule just so I can vote against the bill.

I have heard a lot of these arguments, and when I look at this thing, I find that people are mad as hell about what is going on here in Congress, and they say they are not going to take it any more. We remember that network show that had those words in it.

The people are worried about the economy, they are worried about jobs, they are worried about our industries, they are worried about farms, and they are worried about the savings and loans and the banks and everything else going bankrupt. And they are just plain sick and tired of seeing their tax dollars going overseas while they are back here hurting.

I do not mind giving foreign aid to other countries of the world, but if we are sick, how are we going to do it? A doctor will treat a sick patient, but if that doctor is sick himself, how is that doctor going to take care of him? You figure it out.

People in many of these nations, the hungry children, the pregnant women, the unemployed and the sick, never get to see a single dollar of these tax dollars that we send over, and in many instances, because they do not always ask for an accounting, the money goes into Swiss banks. But a lot of this money does not go back, just like it does not get back to the people who made it in America. I think this is wrong.

This administration and other administrations have been mesmerized by foreign countries. Whenever there is a problem here and they cannot face the music, they run overseas and try to make good book with the people over there and get good headlines. Then they come back and say, "We are going to send them more money, we are going to send them more business, and we are going to send them more jobs," while we have 9 million people in this country unemployed, with 3 million who are out of benefits. They are looking for help from us, and the President has the guts to veto an extension bill to give them unemployment benefits. What kind of sense does this make? How do we think the people perceive us?

In my district, I have the highest unemployment area in the State of Ohio, I believe. We are losing steel jobs, coal jobs, and manufacturing jobs. What do they end up with? They say, "Oh, yes, we have all these people working." But they are working at minimum wage jobs, and what do they get? They get minimum wage. That is all they get, and they do not get any benefits. They do not get any pensions, and they do not get any health care. They want to know who is going to take care of them when they are sick. Then they see the money going overseas to other countries of the world.

Mr. Speaker, the American people are demanding of their elected officials that they give them better treatment.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I rise in opposition to this bill, and I thank the gentleman from New York [Mr. SOLOMON] for giving me this time.

The main reason for my opposition is the fact that we have a national debt in this country that amounts to over $4 trillion. This has been mentioned many times on this floor in the last several years. On top of that, or added to that will be losses of over $1 billion a day during this fiscal year that we are in which started on October 1. We are spending money that we do not have, and if we do not stop it, it is going to cause an economic collapse or, at the very least, severe economic problems for this country.

I have great sympathy for all those people overseas who are having problems, but we can be their friends without having to buy their friendship. The American people, as several speakers have mentioned today, are strongly opposed to this bill.

In addition, one of the worst parts of this bill is a $12 billion increase for the International Monetary Fund, the U.S. share of the International Monetary Fund.

B.J. Cutler, the foreign affairs columnist for Scripps-Howard, said in a column about a month ago that most of this $12 billion would go as loans for Russia. In his column he said this:

> The plan, which won't be spelled out to the public, goes like this: For "humanitarian reasons" the Soviet people must be aided. So the International Monetary Fund and the World Bank will make massive loans to Moscow. But most of the money will be recycled to repay banks in London, Paris, Frankfurt, Tokyo, etc.

This is B.J. Cutler, the foreign affairs columnist for Scripps-Howard, and he is no right-wing conservative. He says further in this column: "To be blunt, the scheme consists of shifting the cost of bankers' blunders to American and foreign taxpayers, which they wouldn't tolerate if they knew about it."

Mr. Speaker, my people do not want to help bail out big banks in London, Paris, Frankfurt, and Tokyo.

The proponents of this bill say that it has no budgetary impact. This is true only if you believe in accounting gimmicks and smoke-and-mirrors-type arguments.

For our $12 billion investment, we will get preferred drawing rights [PDR's] in the IMF and world banks. But these assets are backed up by the shakiest loans in the world—loans to severely depressed, underdeveloped, Third World nations. No other country in the world would buy these assets from us if times get tough for the United States and we needed to sell them.

Pat Buchanan, the syndicated columnist and TV commentator, said in a recent column:

> Someday, an American Congress will say to the IMF and World Banks: We are not guaranteeing any higher loan levels than present. On that day, the game will be over. One Third World nation after another will default. The IMF will come to the U.S. Treasury for payment. The Treasury will have to borrow to pay, and pile that borrowing on top of the U.S. national debt. And our children will work decades to pay it off.

Mr. Speaker, the people do not want us to pass this bill. We cannot afford it. We should defeat this foreign aid authorization today.

The SPEAKER pro tempore. The time of the gentleman from Tennessee [Mr. DUNCAN] has expired.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina [Mr. VALENTINE].

Mr. VALENTINE. Mr. Speaker, I appreciate the gentleman's yielding this time to me.

Mr. Speaker, I was sitting in my office attempting to enlighten myself about the banking legislation which we will be confronted with later on this week, when I began to listen to the debate preceding this foreign aid authorization bill, and I could not sit still any longer. I would like to associate myself with the remarks made by the distinguished gentleman who spoke one or two speakers back, in which he stated again that the American people are sick and tired of this type of antics on the part of the U.S. Congress.

It is not the pay raise that sticks in their craw, it is not the checks, the problems with the Sergeant at Arms, it is not the problem with the dining room and these other things; it is the audacity, the ridiculousness of the intelligent men and women in this body who continually, year in and year out, ignore the wishes of the hard-pressed taxpayers in the United States of America by sending their dollars overseas by the bales and the billions when there are needs that exist here at home that cannot be met. I have spoken on this subject before. One time I was in the well recently and a distinguished leader from this side of the aisle, high up in the leadership, stood up and said in effect, "The gentleman from North Carolina hasn't been here long enough to understand. As you stay around here, you will understand the need for this."

□ 1400

That is ridiculous. Those Members who are watching me in your offices, come on up, and let us finally do something about this. Humanitarian aid, OK. Communism is on the wane. This bill includes billions of dollars more than was authorized by this body or the other body.

Mr. Speaker, I rise in opposition to H.R. 2508, the foreign operations authorization conference report. I do not believe that we can continue to spend taxpayer dollars on programs for which we have little or no concrete information.

Every year, we are asked to spend billions on foreign programs in far-flung areas of the globe. Mr. Speaker, if we are going to continue to spend these huge sums, let us at least know more about where our money goes.

Earlier this month, I introduced the Foreign Aid Reporting Reform Act. This legislation requires the President to submit to the Congress, a single, integrated report containing detailed information on what we spend our money on, how much of it we spend, and why we will spend it on particular programs. In addition, the report would have to include proposed termination dates for each foreign aid program.

We can no longer afford to consider foreign aid as an entitlement program that grows ever larger even as our ability to afford it shrinks. Mr. Speaker, it is long past time for accountability and responsibility in our foreign aid program.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, according to an article in Policy Review magazine that is out for this fall, if you take $1 billion in Federal spending, what you can do with that $1 billion is provide $3,000 of tax relief to 333,000 American households.

This bill spends over the next year both in money for foreign aid and in money to the World Bank or the IMF $25 billion. That means that there are 8.3 million American households that are not going to receive $3,000 in tax relief as a result of the money that is being spent in the bill.

Well, maybe that means that what we have to do is sort out the priorities here. Is the spending in this bill more important than giving 8.3 million American households a $3,000 tax break? My guess is that if you ask the American people whether or not tax breaks for American households are more important than foreign aid, every one of them would say that tax breaks are more important.

Then when we heard what the money was being spent for, my guess is that the view would be overwhelming. For example, do they really believe that we ought to spend $2.76 billion for the construction of projects in other countries? If we are going to spend money for projects, at least it ought to be here. My guess is what they would prefer is a tax break for themselves.

Do Americans really want to spend $600 million to do family planning and another $40 million for contraceptives in other countries? My guess is that if they had their choice, they would rather have the money in their own pockets.

Do Americans really want to spend $170 million for microenterprises in Africa and Asia? My guess is if they had a choice they would prefer to have the money in their own pockets.

Or how about $30 million for a scholarship program in Cyprus, or how about $20 million to foster pluralism in the Middle East, or $20 million for law enforcement in the Caribbean? Or how about this, $2.5 million to convince Americans of how great foreign aid is.

My guess is that Americans would prefer to have the money in their own pockets, rather than television ads telling them how great foreign aid is. My guess is that Americans, if given the choice, would much rather get the tax breaks, get the tax cuts.

American families are burdened today because they do not have enough money to spend for themselves. Yet what this Congress is going to do is decide there is $25 billion in money over the next few months that we can pour out of this country into foreign countries, instead of giving the American people a tax break.

Mr. Speaker, I would say that what we ought to do is give those 8.3 million American households a tax break, rather than spending the money this way. They would much prefer to have their taxes cut than spent on foreign aid.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Mississippi [Mr. TAYLOR].

Mr. TAYLOR of Mississippi. Mr. Speaker, I also rise in opposition to the bill. I understand some Members of the other party are getting very sanctimonious about this, but I would remind them that the President of the United States, who is of their party, has recommended that we spent actually $24 million more than this bill provides for.

I would like to say that I appeal to the common sense of the people of America. The $3.1 billion for Israel is three times more money than the State of Mississippi will get from the Federal Government this year. The $2 billion for Egypt is almost twice as much money as the State of Mississippi will get this year.

I think it just gets back to common sense. We will borrow $100 billion from foreign nations to run our Nation this year. Does it make any sense at all to borrow $100 billion, and then give away $25 billion over the next 2 years in foreign aid? The answer is that it does not. By the time we pay that $100 billion back, it will cost us about $250 billion, by the time we pay the interest.

Mr. Speaker, I think the citizens of the Nation, both Republican and Democrat, as well as those who have no party affiliation, will be best served by keeping this money at home.

Mr. SOLOMON. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I do not particularly relish bashing Democrats or trying to tar them all with one feather. I used to be a Democrat. But I become so provoked when I see President Bush being disrespectfully bashed on this floor.

Last Wednesday, the Democrat majority in this House conducted a special order which lasted all night. An all night vigil was held to show solidarity with unemployed people in America, people who do need our genuine help.

One Democrat spokesman after another paraded to the well all night and denounced George Bush for caring more about people in foreign countries than he does about Americans. They said, "Come home, America." They said, "Come home, Mr. President."

Do you know what happened? A few hours later, 232 Democrats turned around and voted for a continuing resolution that contained half of the foreign aid funding for this bill which is on the floor right now.

Now the issue before us is here again, only this time the Democrat majority cannot hide behind the reasoning that at least a continuing resolution had to pass. That is the excuse used the other day.

There is no compelling justification for passing this bill, Mr. Speaker. Even if it does, we all know it is going to be vetoed before the ink is even dry.

The conference report this rule makes in order is an exercise in futility, and every Member of this House knows that. The real question is, are the same Democrats who denounced President Bush for giving too much attention to foreigners willing to turn around and vote for a $37 billion giveaway here, right now?

The American people are waiting for the answer. I will see to it that they get the answer, because I am going to call for a vote, and we are going to let the American people know who is for this mother of all giveaways.

Mr. Speaker, I yield back the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. KOSTMAYER].

Mr. KOSTMAYER. Mr. Speaker, this bill, if you lay it side by side with the President's request, agrees with what the President asks for about 90 percent. This is essentially the administration's foreign policy proposal for the next fiscal year, except that it is $25 million below the administration's request. President Bush wanted $25 million more for foreign aid.

In addition, the total comprises less than 1 percent of the total budget of the United States.

Mr. Speaker, I want to commend the gentleman from Florida [Mr. FASCELL], who is not looking for votes here, but is looking to do the right thing, which is why he enjoys, I think, so much respect.

Mr. Speaker, let me speak about two provisions of the bill. The UNFPA gets $20 million. That is the United Nations Population Fund. That is less than half of what they got in 1985, when they got $46 million for family planning.

There are five conditions on those funds: No money for abortion, no money to China, all United States aid into a separate account, the money can be used for contraceptives only, no training, no clinics, no counseling, and finally our Ambassador at the United Nations gets a veto over each of those projects. It is important that we restore the voluntary family planning funds.

Second, the bill repeals the Mexico City policy. The Mexico City policy is the policy that says we will not give any family planning funds to any organization which uses its own funds, not our funds, for abortion. It repeals that, and retains, of course, the restrictions on abortion.

Mr. Speaker, let me finally say that these funds, these very modest funds for voluntary family planning, are especially important. The world's population is growing by about 90 million people per year. That is another country the size of Mexico every year.

☐ 1410

Almost all of those people are born on the poorest parts of the planet: In Asia, Africa, and Latin America. This will help to relieve the tremendous population growth in the world for a very modest amount of money.

John XXIII once said, "In a world of want, there can be no peace." So long as we have this kind of suffering and deprivation and poverty we are not going to be able to stabilize unstable regions of the world. We are not going to be able to build strong economic democratic systems in the world.

Mr. Speaker, I rise in support of the rule, in support of the bill and in especially strong support of those provisions which restore voluntary family planning.

Mr. HALL of Ohio. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. HALL of Ohio. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 227, nays 191, answered "present" 1, not voting 14, as follows:

[Roll No. 353]

YEAS—227

Abercrombie
Ackerman
Alexander
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Applegate
Aspin
Atkins
AuCoin
Bacchus
Beilenson
Bennett
Berman
Bevill
Bilbray
Boehlert
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown
Bustamante
Byron
Campbell (CO)
Cardin
Carper
Chapman
Clay
Clement
Coleman (TX)
Collins (IL)
Collins (MI)
Conyers
Cox (IL)
Coyne
Cramer
Darden
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dixon
Dooley
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Eckart
Edwards (CA)
Edwards (TX)
Engel
Espy
Evans
Ewing
Fascell
Fazio
Feighan
Flake
Foglietta
Ford (TN)
Frank (MA)
Frost
Gallo
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gilman
Gonzalez
Gordon
Green
Guarini
Hall (OH)
Hamilton
Hatcher
Hayes (IL)
Hayes (LA)
Hertel
Hoagland
Hochbrueckner
Horn
Horton
Houghton
Hoyer
Johnson (SD)
Johnston
Jones (GA)
Kanjorski
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McHugh
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moody
Moran
Morella
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (UT)
Pallone
Panetta
Parker
Pastor
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickle
Price
Rangel
Ravenel
Reed
Richardson
Roe
Roemer
Rose
Rostenkowski
Roybal
Russo
Sabo
Sangmeister
Sarpalius
Sawyer
Saxton
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Sisisky
Skaggs
Slaughter (NY)
Smith (FL)
Smith (IA)
Snowe
Solarz
Spratt
Staggers
Stallings
Stark
Studds
Swett
Swift
Synar
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traxler
Unsoeld
Vento
Visclosky
Washington
Waters
Waxman
Weiss
Wheat
Whitten
Williams
Wise
Wolpe
Wyden
Yates
Yatron

NAYS—191

Allard
Anthony
Archer
Armey
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Bentley
Bereuter

Bilirakis
Bliley
Boehner
Broomfield
Bruce
Bryant
Bunning
Burton
Callahan
Camp
Campbell (CA)
Carr
Chandler
Clinger
Coble
Coleman (MO)
Combest
Condit
Cooper
Costello
Coughlin
Cox (CA)
Crane
Cunningham
Dannemeyer
Davis
DeLay
Dickinson
Donnelly
Doolittle
Dornan (CA)
Dreier
Duncan
Early
Emerson
English
Erdreich
Fawell
Fields
Fish
Ford (MI)
Franks (CT)
Gallegly
Gekas
Gilchrest
Gillmor
Gingrich
Goodling
Goss
Gradison
Grandy
Gunderson
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hefley
Hefner
Henry

Hobson
Holloway
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (TX)
Jones (NC)
Jontz
Kaptur
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Leach
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McDade
McEwen
McGrath
McMillan (NC)
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morrison
Myers
Neal (NC)
Nichols
Nussle
Owens (NY)
Oxley
Packard
Paxon
Petri
Pickett
Poshard
Pursell
Quillen

Rahall
Ramstad
Ray
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Sanders
Santorum
Savage
Schaefer
Schiff
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Skelton
Slattery
Smith (NJ)
Smith (OR)
Smith (TX)
Solomon
Spence
Stearns
Stenholm
Stump
Sundquist
Tallon
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (WY)
Traficant
Upton
Valentine
Vander Jagt
Volkmer
Vucanovich
Walker
Walsh
Weber
Weldon
Wilson
Wolf
Wylie
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Porter

NOT VOTING—14

Boxer
Dingell
Edwards (OK)
Glickman
Hall (TX)

Herger
Hopkins
Jefferson
Matsui
Rowland

Slaughter (VA)
Stokes
Tanner
Young (AK)

□ 1431

Mr. BRYANT changed his vote from "yea" to "nay."

Ms. OAKAR and Ms. WATERS changed their vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 371

Mr. CLEMENT. Mr. Speaker, I ask unanimous consent that my name be removed from the list of cosponsors of H.R. 371.

The SPEAKER pro tempore (Mr. McNULTY). Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

CONFERENCE REPORT ON H.R. 2508, INTERNATIONAL COOPERATION ACT OF 1991

Mr. FASCELL. Mr. Speaker, pursuant to House Resolution 232, I call up the conference report on the bill (H.R. 2508) to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act to redesignate that act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Friday, September 27, 1991, page 24488.)

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 2508, the International Cooperation Act of 1991. This conference report before the House today is virtually the same as when it passed the House, except for further revisions on the availability of military assistance, and, of course, the IMF section which was added on in the other body and which our colleague, the gentlewoman from Ohio [Ms. OAKAR], will take time to explain to the members on the conference.

The question that is before the Members is whether the administration supports foreign aid. I have heard a lot of rhetoric here today, but let us make it clear that while the administration may not support this particular bill, they certainly support the request for foreign aid assistance, to support the bilateral and multilateral efforts of this Government to do some things around this world which we all believe have a high priority.

Let me express my appreciation to my colleagues, on both sides of the aisle, in the committee who served on the conference and who served in the committee originally when the bill came out last June 20 and was adopted by the House on a vote of 274 to 138. As far as the President's request is concerned, we are slightly below the President's request, and the conference report is also below last year's foreign aid appropriations.

In a general conceptual sense, I will tell my colleagues we are trying to make the transition from military assistance to economic assistance, and we have been doing this for some time now.

How fast we can make that transition, frankly, depends on the kind of position that the administration can take with respect to the request for military assistance which they continue to make in this legislation.

I express my appreciation to the members of the conference committee from other committees—from Agriculture; the Committee on Banking, Finance and Urban Affairs; the Committee on Energy and Commerce; the Committee on the Judiciary; the Committee on Merchant Marine and Fisheries; the Committee on Public Works and Transportation; and the Committee on Ways and Means. I take this time to express my appreciation to those Members from other committees, on both sides of the aisle, who helped us put together a conference report which comes to you not that substantially different from the House-passed bill.

We did not get everything we wanted but we did what a conference committee is supposed to do, and that is to bring back the best we could get. We worked very diligently with the other body, and the administration, to try to bring a bill back that would be acceptable.

Whether or not in the final analysis the bill is ultimately acceptable, of course, is up to the President. I have heard all kinds of discussions about why he is going to veto this bill, and I would just simply say to my colleagues that the quickest way to clear that matter up is to send it to the President and let us find out exactly what it is that is objectionable, and then maybe the House and the Congress can address these issues.

□ 1440

I want to tell my colleagues we are within the ceilings established by the Budget Enforcement Act, and that we are making some very important changes and clarifications in the foreign aid legislation. When we started this job, we tried to rewrite the entire Foreign Assistance Act in order to modernize it. The other body was not prepared to deal with a complete rewrite, but we made a good start. For the first time in 5 years, we had the kind of cooperation in the other body that made it possible to bring the conference report back to my colleagues.

Now, for those who are so dead set against supporting anything with regard to foreign assistance, let me point out that the continuing resolutions has already passed; so if you are against the concept of spending the money for foreign aid, voting against this bill is like locking the door after the horse is gone.

Let me just say if we are going to do anything by way of authorization and policy decisions in the Congress, unless you want to leave everything up to the appropriators and the administration, you had better take a good look at the authorizing process. This bill represents a genuine effort on our part to give all of us an opportunity, not only to express our opinions for or against, but to have some impact on the policy determinations.

I wish the world were different. It is changing very fast, but the facts are that foreign aid remains very important, and the President would not be supporting foreign assistance and neither would this Congress if we all did not realize that it is very important to the American people to have the ability to have some impact with other nations and to do the things that are important to us:

One. The peace process. The President of the United States now is in Madrid with Gorbachev, in order to do what? To see if we cannot help bring about a peaceful settlement and resolution to the Middle East situation that has defied everybody for the last 40 years.

Now, is that worth some money to the American people? I say yes. Our security is tied up in this bill, the security of the people of the United States, not the people on the moon. When we enter as a country into bilateral relations with the people of another country for common security, I want you to know that the decision is made because in the judgment of the executive branch and the Congress, it is important to enter into those arrangements with other people for the security of the United States.

Now, you can take issue with that judgment if you like. It is a free country, but that is the principle behind it.

Now, there is one more principle I want to expound upon briefly. Yes, we have needs in this country, here at home, and they need to be taken care of. I have supported legislation, as many of us have, to do those things that are required; but do not think that the rest of the world does not have an economic impact on the United States. Over 600,000 jobs in this country come from our ability to export. Our companies are doing everything they know how to be competitive. In order to help open markets for our products, we are trying to help other people to help themselves so that we can increase our capability to export. What we are doing, is fundamentally to help our own people to have the jobs and to be able to produce so that we can sell and we can exist and we can do it in safety.

Make no mistakes about the fact that this program costs less than 1 percent of the entire Federal budget. It is 0.0085725 of the entire GNP of the United States. Furthermore, virtually all of the military aid in this bill, and 70 percent of the economic assistance, is used to purchase U.S. goods and services. I do not think that is a bad deal.

We are not buying friends. We are insuring our own security. We are insuring our own economic capability and in the process we are helping other peoples to achieve and be part of the democratic process.

The whole world has changed and part of it is because the people of the United States have never taken themselves out of this world.

Yes, we have priorities here at home, and yes, we need to take care of them, but we have sense enough to know that we can take 1 percent of that budget dollar and help ourselves and our friends get the security and the economic base that will make a better life for all of us.

When you consider that two-thirds of the people of the world tonight go hungry, uneducated, unclothed, without proper medical attention, our problems dwarf in the process. What we do to help other people comes back to us many-fold. We are not wasting the taxpayer's money. We are helping the taxpayers of this country by trying to make other people productive, stable, and peaceful, so that they can deal with us in a sensible and reasonable way. That is true whether it is in Latin America, whether it is in Africa, whether it is in Europe, the Middle East, or wherever it is.

It is only shortsightedness that would say to the American people that the course of wisdom would be to take this tiny part of the budget and put it someplace else, if you could.

The truth of the matter is, that under the budget agreement you cannot take the money and put it anyplace else. So I would hope my friends would support this conference report.

We have had a good effort here on both sides of the aisle, and in both Houses of the Congress. We have worked with the administration. We have not solved all the differences.

That is what the democratic process is all about. There are 535 of us here, 435 in this body. I wish I could wave a magic wand and get everybody to vote the way I wanted them to vote. We are doing our best under the democratic process to formulate something that the President says would be a useful tool, if we can resolve it in a form that is acceptable to him, while we try to represent our constituents in the process.

So Mr. Speaker, I hope my colleagues will support this conference report and get it to the President's desk.

The major provisions of this conference report are:

PROVISIONS OF THE CONFERENCE REPORT

ECONOMIC ASSISTANCE

Updates foreign assistance purposes to focus on four basic objectives: poverty alleviation, broad-based economic growth, sustainable resource management, and promotion of democracy and human rights.

Revises Foreign Assistance Act to remove outdated and unnecessary conditions and restrictions.

Reverses the Mexico City policy to permit nongovernmental and international organizations to receive AID funding to carry out family planning programs, as long as they use no AID funds to support abortion.

Authorizes up to $20 million for the UN Population Fund, if U.S. funds are kept in a separate account and are not used for any activities in the People's Republic of China.

Authorizes $4.6 billion for development assistance and $7.7 billion for security assistance.

Requires AID to devoted greater resources to evolution of programs and policies.

Creates a PVO Center and a University Center to focus AID's programs that involve U.S. private voluntary groups and universities.

Requires greater resources to support microenterprise and poverty lending in developing countries.

Applies cargo preference to 75% of ESF cash transfers, phased in over a four year period.

MILITARY ASSISTANCE

Requires the President to: establish standards for financed commercial sales as stringent as those currently applied to financed government-to-government sales; include additional information on coproduction agreements into existing quarterly reporting requirements on arms transfers; and include an analysis of the economic costs and benefits of arms sales in the annual report to Congress on such sales and transfers.

Establishes the policy guidelines for U.S. military assistance programs and foreign military sales programs; the continuation of the International Military Education and Training program; and the provision of U.S. contributions and participation in Peacekeeping Operations.

Restricts loan authority to no more than 60% of financing credits per each country.

Eliminates redundant purposes and policies and updates statute consistent with post-Cold War world objectives.

Establishes an important new initiative calling for the implementation of a multinational arms transfer and control regime toward the Middle East and Persian Gulf regions.

NARCOTICS ASSISTANCE

Streamlines current law, provides increased flexibility, and fully funds President's request.

EUROPE

Expands the SEED authorities and assistance from just Poland and Hungary to all the countries of Eastern Europe, including Lithuania, Estonia, and Latvia.

Authorizes $415 million in assistance for Eastern Europe and the Baltic states.

Authorizes $500 million in FMF (Foreign Military Financing) assistance and $190 million in ESF (Economic Support Funds) for Turkey, and $350 million in FMF assistance to Greece.

Authorizes $22.5 million in ESF for the International Fund for Ireland.

MIDDLE EAST

Authorizes $1.2 billion in ESF and $1.8 billion in FMF assistance for Israel.

Authorizes $815 million in ESF and $1.3 billion in FMF assistance for Egypt.

Authorizes up to $10 million for democratic initiatives in the Middle East, up to $16 million for economic assistance for the West Bank and Gaza, $10 million for cooperative development projects and research between the United States and Israel in Eastern Europe and developing countries, $10 million for Lebanon, and $7 million for scientific and technological cooperation between Israel and Arab states.

Requires an annual report on steps Arab states are taking to promote peace and stability in the Middle East and to settle the Arab-Israeli conflict.

LATIN AMERICA

Prohibits lethal assistance to Guatemala and conditions economic assistance on human rights improvements.

Authorizes $25 million for assistance to refugees and displaced persons in Central America.

Authorizes $25 million for assistance to combat cholera in Latin America.

Authorizes $275 million in ESF and $118 million in FMF for the Andean countries as part of the effort to stemming narcotics trafficking.

Extends the U.S. economic embargo of Cuba to the foreign subsidiaries of U.S. companies.

ENTERPRISE FOR THE AMERICAS

Provides authority for the President's Enterprise for the Americas Initiative to reduce the foreign assistance debt of countries in Latin America and to use the remaining annual interest payments for activities to protect the environment and promote child survival.

ASIA AND THE PACIFIC

Maintains the requirement permitting assistance for Pakistan only if the President certifies that Pakistan does not possess a nuclear explosive device.

Authorizes $20 million in economic assistance through international relief agencies and U.S.. PVOs for humanitarian and development assistance for Cambodian civilians and provides that additional funds may be made available if there is a settlement of the Cambodian conflict acceptable to the United States.

Contains an expression of congressional concern about human rights abuses in India.

AFRICA

Authorizes $1 billion for the Development Fund for Africa for each of the fiscal years 1992 and 1993.

Provides for increased assistance to disadvantaged South Africans.

Provides for assistance for recovery and food security in the Horn of Africa.

PEACE CORPS

Authorizes $200 million for the Peace Corps, of which up to $6 million may be used for business development programs in the Soviet Union or successor entities.

MULTILATERAL DEVELOPMENT BANKS

Authorizes a U.S. quota increase for the IMF.

Sets forth criteria and conditions for Soviet access to IMF resources.

EXPORT-IMPORT BANK

Provides the President a national interest waiver for restrictions on financing of U.S. exports to the Soviet Union.

Mr. Speaker, as I have previously stated, H.R. 2508 represents the second serious attempt by the House of Representatives to rewrite the basic authorities and policy guidelines of both the Foreign Assistance Act of 1961 and the Arms Export Control Act of 1968. Title II of this conference report governs the conduct and provision of U.S. security assistance, and which includes many of the provisions that were contained in H.R. 2655, as well as certain provisions requested by the administration and the private sector, and new initiatives that were undertaken by the Committee on Foreign Affairs, specifically, a new initiative for the implementation of a U.S. policy of restraint on arms sales and transfers to the nations of the Middle East and Persian Gulf region.

It is on this last provision that I intend to focus my remarks. At the outset, let me say that this provision represents a basic consensus among the members of the Committee on Foreign Affairs and the Committee on Foreign Relations in consultation with representatives from the administration to develop a realistic arms transfer restraint policy toward the Middle East and the Persian Gulf regions. One of the many lessons of Operations Desert Shield and Desert Storm must be that the business as usual approach of the 1980's toward arms sales and transfers to the Middle East and the Persian Gulf must not be repeated in the 1990's.

In this regard, chapter 5 of title II of the conference report addresses United States and global arms transfers to the Middle East and Persian Gulf region by calling for the negotiated establishment of a multilateral arms transfer and control regime toward the Middle East and Persian Gulf by the five permanent members of the United Nations Security Council.

In so doing, the conference report cites a number of findings which demonstrate the urgent need for the establishment of such a regime and mandates that the President continue those negotiations that were initiated under his direction with the other permanent members of the United Nations Security Council in the President's May 29 announcement. The conference report also specifies that in the process of these continuing negotiations, the President should propose to the other permanent members of the Security Council the adoption of a temporary moratorium on the transfer of major military equipment to the Middle East and Persian Gulf until such time that a multilateral arms transfer and control regime is concluded.

The conference report also incorporates the provisions of the House bill which describe the purpose of such a regime and further clarifies that particular provision in calling for the achievement of greater transparency among arms suppliers through advanced notification of both agreement to transfer and actual transfer of conventional major military equipment through the adoption of common and comprehensive control guidelines on the transfer of conventional major military equipment.

The conference report notes that the committee of conference's belief that the President has undertaken good faith efforts to convene multilateral negotiations among the permanent five members of the United Nations in seeking to establish the arms supplier regime described in section 282 of the conference report. In this regard, the conference report commends the President for his efforts and specifies that the requirements of chapter 5 of title II are consistent with the practices of preconsultation, consultation and advanced notification requirements that are currently associated with U.S. arms sales worldwide.

Clearly, no more pressing issue in international affairs exists than that of the current situation in the Middle East and the Persian Gulf. The conference report addresses that pressing problem in calling for the adoption of higher and more rigorous standards on United States and multinational arms transfers to the Middle East and Persian Gulf region. The conference report is aimed at winning the peace and stimulating a climate for greater arms control in the Middle East and Persian Gulf region through arms restraint now versus the business of arms sales as usual.

The conference report has forged a consensus that stipulates that it is high time to stop the business as usual approach to solving the problem of peace in the Middle East and Persian Gulf regions. We have decided that the business as usual approach in selling arms to everyone serves no one's interests. That is why the conference report clearly states that future conventional arms transfers to the Middle East and the Persian Gulf should be controlled by a multilateral restraint policy.

While some in the executive branch may argue that the committee is tinkering at the edges of Presidential prerogative, and that current law is sufficient to bring arms control and peace to the Middle East and the Persian Gulf, the committee of conference would respond that Congress does have the responsibility to help set policy guidelines and pass laws, and to seek the President's support for them. The committee of conference recognizes that arms transfers are an important tool and element of our foreign policy apparatus and reiterates its belief in higher and more rigorous standards on U.S. transfers to the Middle East and the Persian Gulf.

The conference report reasserts the necessity of continued U.S. leadership in seeking to bring about peace in the Middle East and the Persian Gulf in the years ahead. It is a congressional response to a daunting problem, that if given the chance, might work in bringing greater arms control and as such enhance the prospects for peace in the Middle East and Persian Gulf. I would also like to point out that this exact provision was adopted in its entirety by the House when it approved the conference report on H.R. 1415, the foreign Relations Authorization Act, fiscal year 1992 and 1993 on October 8.

Mr. Speaker, I would also like to include at this point in the record additional language regarding the enterprise for the Americas initiative that was omitted from the joint statement of managers accompanying the conference report:

EXPORT-IMPORT BANK DEBT REDUCTION

The Senate amendment (sec. 771) authorizes the President to sell to any eligible purchaser any loan or portion of a loan of an eligible country that was made pursuant to the Export-Import Bank Act of 1945. After the payment for the loan has been received, the President may sell, reduce or cancel the Export-Import Bank debt involved in the transaction. The President is authorized to establish the terms and conditions of the transaction. Instructions regarding the notification of the Export-Import Bank of the transaction are specified.

The Senate amendment (sec. 772) directs that proceeds from the transaction authorized in section 771 be deposited in an account created for the repayment of such loans. Section 773 of the Senate amendment defines an eligible purchaser as an entity who presents plans to the Agency for International Development for using the loan only for purposes of a debt-for-child development swap, a debt-for-development swap, debt-for-education swap, debt-for-environment swap or debt-for-nature swap. Section 774 of the Senate amendment instructs that the Administrator of the Agency for International Development, in consultation with interested non-governmental organizations, shall identify activities that use natural resources on a sustainable basis and promulgate environmental standards in review of proposed activities. The standards must identify and prohibit the sale of credits in support of activities which involve substantial threats to the environment.

Section 775 of the Senate amendment instructs that prior to an Export-Import Bank debt reduction transaction, the Agency for International Development shall consult with debtor countries which will receive the benefit of the debt reduction regarding, among other things, the amount of the loan to be reduced.

The House bill has no comparable provisions.

The conference substitute (sec. 821) contains provisions substantially similar to the Senate amendment. However, references to the Agency for International Development were not included in the substitute. In addition, the requirement to identify eligible activities for Export-Import Bank debt reduction has not been included in the substitute. In addition, the conference substitute combines the terms "debt-for-development" into a single term—"debt-for development." This was done because the term "debt-for-development" was earlier defined to include debt-for-child development" and "debt-for-education."

Finally, the conference substitute contains a set of eligibility criteria for nations to attain before they can qualify for Export-Import Bank debt reduction benefits under the Enterprise for the Americas Initiative. These criteria are to be applied separately from the criteria nations must meet in order to qualify for benefits under the Multilateral Investment Fund.

The committee of conference believes the reduction of Export-Import Bank debt reduction can be of substantial benefit for qualifying nations of the Western Hemisphere mired in official debt payments. In an effort to provide relief for qualifying nations, the reduction of Export-Import Bank debt should be undertaken as quickly as possible. In addition, to provide further relief for qualifying nations, the committee of conferees urges the Administration to urge other creditor nations to reduce the amount of their official debt held by Latin American and Caribbean nations.

The committee of conferees is concerned about potential adverse environmental impacts resulting from equity investments funded by Export-Import Bank credits used in debt-for-equity swaps. To ensure the environmental integrity of such projects, the process by which the Treasury Department consults with interested non-governmental organizations to formulate standards for review of proposed World Bank projects that may have adverse impacts on wetlands, tropical moist forests and savannah regions should serve as a model for the development of guidelines for review of projects to be funded by debt-for-equity swaps of Export-Import Bank debt.

PARTICIPATION OF THE INTER-AMERICAN DEVELOPMENT BANK

The Senate amendment (sec. 722) mandates that the Secretary of Treasury, in consultation with other U.S. agencies, work closely with the Inter-American Development Bank (IDB) in the implementation of the IDB's investment sector reform programs and to coordinate U.S. bilateral assistance programs with IDB investment reform programs. The Senate amendment also requires that the Secretary of Treasury prepare and transmit a report to the Speaker of the House and the Chairman of the Committee on Foreign relations, within six months of the date of enactment, providing details of the specific investment sector reform programs undertaken by the IDB and of ways in which U.S. bilateral programs have complemented those reform efforts.

The House bill contains no comparable provision.

The conference substitute (sec. 831) is similar to the Senate amendment, except that it drops references to consultation with other agencies and provides for the report to be transmitted to the Chairman of the House Banking, Finance and Urban Affairs Committee.

ENTERPRISE FOR THE AMERICAS INVESTMENT FUND

The Senate Amendment (sec. 723) amended Chapter 4 of part II of the Foreign Assistance Act of 1961 to add a new section to that Act (sec. 539) establishing the Enterprise for the Americas Investment Fund.

This amendment (sec. 539(a)) authorizes $100 million annually in appropriations for fiscal years 1992-96 as the U.S. contributions to the new fund.

It (sec. 539(b)) also authorizes the Secretary of Treasury to contribute $500 million to the Enterprise for the Americas Fund subject to the following conditions: that an agreement has been negotiated establishing the terms and conditions under which the Fund will operate, that two additional donors have agreed to contribute at least $500 million to the Fund, that the agreement has been transmitted to the Congress under procedures established pursuant to sec. 634A of the Foreign Assistance Act of 1961, and that a biannual report of the activities of the Fund be prepared and submitted to the Congress by the IDB.

Further, it (sec. 539(c)) sets forth the principal purposes for which U.S. assistance will be provided to the Fund for disbursement to eligible countries. Assistance from the Fund is to be provided for technical assistance in connection with domestic constraints to investment, for human capital development, and for private enterprise development.

In addition, the Senate amendment (sec. 539(d)) gives the Secretary of the Treasury one year to meet the conditions set forth in this section.

The House bill contains no comparable provision.

The conference substitute (sec. 832) deletes reference to the Foreign Assistance Act and instead amends the Inter-American Development Bank Act to add a new section (sec. 37) to that Act establishing the Enterprise for the Americas Investment Fund.

Sec. 37(a) of the conference substitute is identical to the Senate amendment (sec. 539(a)).

Sec. 37(b) of the conference substitute is similar to sec. 539(b) of the Senate amendment but deletes reference to Sec. 634A of the Foreign Assistance Act of 1961 as it pertains to the submission of the agreement establishing the IDB Fund to the Congress for review. It provides for the agreement to be transmitted to the Chairman of the House Banking, Finance and Urban Affairs Committee rather than the Speaker of the House. It also provides for the IDB to prepare and make public an annual report on the operations of the IDB Fund.

Sec. 37(c) of the conference substitute is similar to sec. 539(c) of the Senate amendment. In addition, the conference substitute adds a fourth purpose for the IDB Fund: to support the development and strengthening of host country capabilities for ensuring the environmental soundness of investment activities. It also requires that no more than 40 percent of the annual disbursements from the Multilateral Investment Fund can be used for any single use authorized in subsection (d).

While recognizing the need to use disbursements from the Enterprise for the Americans Investment Fund to allow nations to reform their investment regimes, the committee of conference also believes that substantial disbursements from the Fund should be used to address social problems generated in the context of such investment reforms. In particular, the committee of conference wishes to state clearly its belief that, in addition to re-training assistance, substantial disbursements from the Fund should be for the purpose of designing social safety nets, including assistance for food, housing and other social needs which may occur with the implementation of investment reforms.

Sec. 37(d) of the conference substitute is similar to sec. 539(d) of the Senate amendment, with a change in the time period within which the Secretary of the Treasury must meet the conditions set forth in the section from one to two years.

The conference substitute (sec 37(e) mandates that the Secretary of the Treasury instruct the U.S. representative to the Fund to vote against any activities of the Fund that may have a significant adverse impact upon the environment.

The conference substitute (sec. 37(f)) sets forth the eligibility criteria which must be met for a country to receive U.S. monies from the IDB Fund: It must be a Latin American or Caribbean country; have concluded various agreements with the IMF, World Bank, IDB and private creditors, as indicators that appropriate economic policies are being pursued; have a democratically elected government; not have a government which harbors or sponsors international terrorists; be cooperating on narcotics matters; and have a government (including its military and security forces) which respects human rights.

The conference substitute (sec. 37(g)) provides for the President to make eligibility determinations subject to the criteria specified in sec. 37(f).

The committee of conference has agreed to eligibility criteria that determine which countries may receive disbursements of United States assistance from the Enterprise for the Americas Investment Fund. However, concern was voiced by some members of the conference that some of these criteria could adversely affect on-going efforts to obtain contributions and finalize negotiations to establish the Fund on a multilateral basis. If the eligibility criteria agreed to during the conference prove to be an obstacle to the

the successful completion of such negotiations, the committee of conference has agreed to seek to alter expeditiously these criteria, through legislative action by the Senate Committee on Foreign Relations and the House Committee on Banking, Finance and Urban Affairs.

The committee of conference believes, as a general proposition, that nations seeking to use the resources of the Enterprise for the Americas Investment Fund should have reached agreement with their commercial creditors concerning any outstanding issues related to the repayment of commercial debt. However, the committee of conference expects that this requirement be applied in a balanced manner. In particular, the committee of conference believes that, if this requirement is used unfairly as bargaining leverage by commercial creditors against a debtor country, the President should not deny such country access to the Fund solely because an agreement between such country and its commercial creditors has not been concluded.

□ 1450

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wish to commend the chairman of the Foreign Affairs Committee, the gentleman from Florida, DANTE FASCELL, for his persistent efforts to move this legislation forward.

Also, I would like to recognize the fine work of Senator PAUL SARBANES and Senator MITCH MCCONNELL on this legislation. It is a credit to their efforts that we reached even this point in the process with the foreign aid bill.

For the first time in years, the House and Senate have moved far down the road toward enacting a Foreign Aid Authorization Act. In fact, a new authorization act is needed to correct the many deficiencies of the current law.

U.S. foreign aid programs often fail to realize their goals due to political obstacles and administrative difficulties. They are plagued by micromanagement, legislative restrictions, and competing objectives imposed by Congress.

The core provisions of this conference report would go a long way toward remedying this situation. If enacted, this bill would provide considerably more flexibility for the executive branch and make possible a more effective U.S. foreign aid program.

Unfortunately, several provisions have been included in the conference report which are considered veto items by the White House. It is clear, therefore, that this bill will not be enacted in its current form.

It is, indeed, disappointing that so many months of effort on this important piece of legislation may ultimately come to naught. Due to a few, controversial issues that probably don't even belong in this legislation, it will certainly be vetoed by the President if passed by the House today.

On the vast majority of issues in this conference report, compromise and cooperation have replaced the partisanship and rancor of the process in previous years. The overall result is a bill that would continue the tradition of American assistance to the world's poor, while promoting U.S. commercial, trade, and strategic interests in an everchanging world.

On the issues which are subject to Presidential veto, however, I recognize that many House Members have strong views. The conference committee worked long and hard in attempting to satisfy all parties, but in the end this simply proved to be impossible.

I hope that, after the President's veto, we can quickly pass a new bill that he can sign. Then we will be able to move ahead to enact legislation which meets the real objectives of U.S. foreign aid—easing human suffering, protecting the environment, promoting economic development, and strengthening democracy overseas.

Mr. Speaker, I would like to submit for the RECORD at this point a copy of a letter that I received from Deputy Secretary of State Lawrence Eagleburger on October 2 explaining why the administration is likely to veto this bill. I would also like to quote a portion of this letter:

> As the Conference Report on H.R. 2508, the International Cooperation Act of 1991, comes to the floor, I would like to express the administration's strong opposition to its passage. In its current form, the President's senior advisors will recommend a veto.

The complete text of the letter referred to is as follows:

THE DEPUTY SECRETARY OF STATE,
Washington, DC, October 2, 1991.

Hon. WILLIAM S. BROOMFIELD,
House of Representatives.

DEAR MR. BROOMFIELD: As the Conference Report on H.R. 2508, the International Cooperation Act of 1991, comes to the floor, I would like to express the Administration's strong opposition to its passage. In its current form, the President's senior advisors will recommend a veto.

In response to the dramatic changes in the world and congressional interest in foreign aid reform, the Administration submitted to Congress a major rewrite of the nation's outdated foreign assistance legislation. The importance of this legislation was underscored by the President in his April 12th letter to Congress.

Since submitting the legislation, the failed coup in the Soviet Union has provided an urgent example of the importance of reform. We need, now more than ever, new legislation that provides the flexibility to respond to rapidly changing events and a cooperative consultative process that enables us to face the challenges ahead.

The Conference Report does contain a number of provisions that attempt to restore some of the elements of administrative simplicity, flexibility, accountability and clarity of purpose that the Foreign Assistance Act originally possessed, and that the President asked the Congress to restore. The bill also contains several provisions needed to address particular problems that we have encountered in administering our foreign aid programs, and the authorization of the IMF quota increase is also a very important authority.

However, the Conference Report does not provide for a major reform of foreign assistance. The current bill still retains unnecessary earmarks, functional accounts, micromanagement, and country-specific provisions which would seriously restrict our ability to conduct foreign policy and pursue the national interest, and which more reflect the business-as-usual approach of the past decade than the new direction sought by the President.

I must emphasize the Administration's strong opposition to provisions on Mexico City Policy and the earmarking of funds for the UNFPA that contradict the Administration's anti-abortion policy. The President has made it clear that such provisions will trigger a veto.

Other provisions would also result in our recommending a veto of the bill. These include:

The cargo preference provision. This provision would greatly expand current cargo preference requirements and would establish unacceptable new restrictions on furnishing assistance from the Economic Support Funds account. This would sharply reduce the usefulness of such assistance for achieving important foreign policy objectives and is fundamentally inconsistent with the President's objective of making foreign aid a more useful tool of foreign policy. It would intrude government controls into U.S. commercial exports, and it would adversely affect U.S. exports that must be transported by sea.

The restrictions on Foreign Military Financing. These provisions would unacceptably hinder the President's flexibility to make FMF allocation decisions. Given budgetary restraints, the practical effect of this provision would be to eliminate a great number of small FMF country programs by effectively limiting FMF to just a few large country programs.

Further, the Administration strongly objects to the provision on exports to Cuba. As the President recently made clear, we are committed to placing the strongest appropriate pressure on Cuba to embrace reform. However, this provision would place U.S.-owned, foreign-based corporate subsidiaries in the untenable position of choosing to violate U.S. law or a host country's law. These firms should not be punished because of the "catch 22" in this provision.

A number of other provisions are equally troubling and objectionable to the Administration. In several cases, the bill would, in fact, impose brand new restrictions—for instance, the requirement to terminate assistance to countries that provide military equipment to countries supporting terrorism (section 412, enacting what would become new section 691(a)(7) of the Foreign Assistance Act), the provisions on projects in China and Tibet (section 941, et seq.), and expanded restrictive language on contacts with the PLO (section 612)—that though they may appear benign, could vastly exacerbate difficulties in administering our foreign aid programs and conducting foreign policy.

Additionally, I am particularly disappointed with several of the provisions applicable to our anti-narcotics programs. Nowhere was the need to eliminate micromanagement more important than with respect to the exceedingly cumbersome certification and reporting requirements under these programs. The new bill, however, would make these requirements even more difficult to administer, and would fail to establish procedures on recertification adequate to response quickly and decisively in the event of unanticipated events.

The Administration continues to be opposed to provisions that would micromanage

> our efforts to negotiate a regime on Middle East arms sales, and that purport to direct the President how to proceed in diplomatic negotiations. The President has taken the initiative in calling for discussions among major conventional arms suppliers to the Middle East, and progress is being made. While the senior advisors would not recommend a veto over the current language, any significant negative change to the provision would change the senior advisors' position.
>
> In conclusion, the President made clear his strong interest in foreign aid reform in his letter of April 12, 1991, on the International Cooperation Act of 1991 in April. However, the Conference Report, in its current form, is unacceptably flawed. If modifications were made to address the concerns described in this letter, I believe that this legislation would represent a positive step towards foreign assistance legislation that will meet the challenges of the 1990's and beyond. If not, for the reasons outlined above, the President's senior advisors will recommend a veto.
>
> Sincerely,
>
> LAWRENCE S. EAGLEBURGER.

Mr. Speaker, if the modifications were made to address the concerns described in this letter, I believe that this legislation would represent a positive step toward foreign assistance legislation that will meet the challenges of the 1990's and beyond. If not, for the reasons outlined above, the President's senior advisors will recommend a veto.

Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, having devoted considerable time and effort to this legislation, this Member would ordinarily very much like to see a foreign aid bill enacted. This Member supports the authorization process, a process that through no fault of either the distinguished chairman, Mr. FASCELL, or the distinguished ranking member, Mr. BROOMFIELD, has broken down in the Foreign Affairs Committee in recent years. But we know with absolute certainty that in its current form H.R. 2508 will provoke a veto—and it should be vetoed. I urge my colleagues to vote "no" on the conference report.

The conference report retains one particular provision—section 124—that is fundamentally at odds with the interest of U.S. exporters, other American businesses, and farmers. I refer, of course, to the new, ill-advised, and onerous cargo preference requirements of this bill championed by the gentleman from New Jersey, [Mr. TORRICELLI].

In an atmosphere of increasing global competitiveness, this provision would expand cargo preference requirements to include, for the first time, U.S. commercial exports to countries that already buy significant amounts from the United States, thereby insuring in many cases that our exports are priced out of the export competition because of the high cost of required shipping on U.S. flag ships. Is this the way to help American business compete abroad? Absolutely not. It is another large, indirect subsidy to marine interests that hurts our production and export base and all the people employed in it. It is primarily for this reason that I will vote to oppose this conference report.

As we know, the President's advisers have stated and recommended that the anticompetitive cargo preference provision is a veto item. In a September 13, 1991, letter from Deputy Secretary Eagleburger, the State Department explained its opposition to the cargo preference provisions by saying:

> These provisions would greatly expand current cargo preference requirements and would establish drastic new restrictions on furnishing assistance from the ESF account; would sharply reduce the usefulness of such assistance for achieving important foreign policy objectives and are fundamentally inconsistent with the President's objective of making foreign aid a more useful tool of foreign policy.

A veto would be especially regrettable, Mr. Speaker, because there is so much of value in H.R. 2508. The conference report provides much needed flexibility in the U.S. foreign assistance program, and provides important policy guidance in many critical areas of U.S. foreign policy.

In particular, this Member commends the conferees for including in the conference report the House-passed provisions on U.S. assistance policies in the Horn of Africa—sections 1063-1068. This language sets forth a comprehensive relief and humanitarian assistance policy in a region that has seen all too much suffering.

In addition, provisions related to U.S. policies toward the Horn of Africa in multilateral development banks are now also included in the bill. These provisions were not offered earlier in the House, but have been incorporated in the section addressed by conferees from the House Committee on Banking, Finance and Urban Affairs.

There is also important policy language governing U.S. policy toward the emerging democracies of Eastern and Central Europe. This Member would note, for example, the authorization of a new program, to be based in the Czech and Slovak Federal Republic, that will address the public health aspects of environmental degradation.

But none of the valuable parts of this legislation will be enacted so long as a very few veto items—items such as the cargo preference provisions—remain. After the Presidential veto that we know is coming if we approve this conference report, this Member would urge this body to address the few outstanding issues and pass a bill that the President can sign. I urge all of my colleagues to vote "no" on this conference report especially those from agricultural Great Lakes, and industrial States. I urge my colleagues to avoid the wasted effort of sending this authorization bill to the President for the promised and highly appropriate veto.

Mr. BROOMFIELD. Mr. Speaker, I yield 30 seconds to the gentleman from Missouri [Mr. EMERSON].

Mr. EMERSON. Mr. Speaker, I thank the ranking minority member for yielding time to me.

Mr. Speaker, I wanted to associate myself with the remarks of the gentleman from Nebraska relating to cargo preference so that I would not be redundant and repeat his message. It was a good message. He stated the case well.

Mr. Speaker, if we're going to vote on the Mexico City policy and UNFPA funding, we can at least get the facts straight. Both of these policies have been the subject of a great deal of misinformation, it seems.

For instance, some folks would tell you that the Mexico City policy means that the United States doesn't support family planning. This charge is false. Mexico City has been in effect since 1984, and it has not reduced family planning by one penny. In fact, the United States remains the world leader in family planning assistance.

Some folks would tell you that Mexico City means that the United States is interfering in how other governments run their countries. This, too, is false. The Mexico City policy is based on a voluntary agreement. The contract is simple: In order to accept U.S. taxpayer dollars, the PVO or NGO may not "perform or actively promote abortion as a method of family planning." And do you know, that of the hundreds of PVO's and NGO's that provide family planning assistance, only two have refused to accept U.S. funds because they would rather perform and actively promote abortion as a means of family planning? Only two.

Some folks would tell you that we can give the UNFPA and still oppose China's oppressive policy of forced abortion and forced sterilization; that as long as United States taxpayer dollars are kept in a separate account, we won't be supporting China's reproductive oppression. This statement, my friends, requires a quantum leap in logic. Plainly and simply, money is fungible, and if we give the UNFPA funding for certain approved activities, our money will free up more of the UNFPA's own money to spend in China. China's policy isn't pro choice; China's policy is mandatory abortion.

These are the facts. Overturning Mexico City won't add a dime to the amount of family planning assistance given by the United States. Funding the UNFPA will assist China in its coercive abortion policy. I will vote against this conference report as it now stands, and I urge my colleagues to do the same.

Mr. FASCELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. I thank the chairman for yielding.

Mr. Speaker, I rise in strong support of the conference report to H.R. 2508, the International Cooperation Act of 1991. I particularly would like to commend the conferees for their hard work and often thankless work on this bill, particularly Chairman FASCELL and those conferees who stood up for the poor overseas through the family planning aspects of this bill, for the working people here in the United States, based on the necessity for restriction on military assistance and the ability of this bill to look out for those in the Third World.

I would also like to express appreciation to Chairwoman OAKAR for her hard work on the multilateral development sections.

Mr. Speaker, briefly, I would like to point out three provisions of the multilateral section that I originally introduced in subcommittee and which are now included in this bill. Collectively, these provisions will encourage greater economic and social accountability from nations who are members of the multilateral development banks.

The first provision addresses the burgeoning problem of excessive military spending. It requires that the U.S. Executive Director urge the International Monetary Fund to develop criteria to determine whether a nation seeking a loan is engaged in excessive military spending. The Executive Director must present a report outlining this criteria to the Secretary of the Treasury who, in turn, will report these findings to Congress within 1 year.

At the recent IMF-World Bank Conference in Thailand, the impact of military spending on the national economies was a major topic of discussion. Both the IMF and the World Bank stated that massive military spending has hindered the world's ability to care for its vulnerable citizens. Furthermore, the IMF reports that external financing and weapons expenditures are directly linked.

In order to break this destructive link, the United States, as the largest shareholder in the fund, must take a leadership role in implementing arms reduction criteria as a condition of IMF loan approval.

The second provision imposes further accountability on countries seeking IMF lending by requiring the U.S. Executive Director to oppose any loan to a country engaged in a pattern of gross human rights violations.

In 1990 alone, human rights abuses continued or worsened in over 140 nations. More than 100 governments still condone torture and in some cases employ extrajudicial executions. This amendment, therefore, is both appropriate and necessary as a condition for the U.S. vote on loan approval.

My third amendment adds equity to the programs within the Enterprise for the Americas Initiative's multilateral investment fund. It requires that no more than 40 percent of the total amount allocated for the fund be spent on any one program. In this way, human capital development will not be ignored for private investment projects. Environmental protection will not be overshadowed by investment initiatives.

Mr. Speaker, there has not been a foreign aid authorization bill in 6 years. There has not been an IMF quota bill in 8 years. This is the best opportunity we've had in the last decade to help put the IMF on the right course, so that it may meet the dramatic changes taking place around the globe.

I urge the adoption of this bill.

□ 1500

Mr. BROOMFIELD. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. GILMAN], a member of the Committee on Foreign Affairs.

Mr. GILMAN. Mr. Speaker, I rise to express my support for the conference report on H.R. 2508, and I commend the distinguished chairman of our Foreign Affairs Committee, the gentleman from Florida [Mr. FASCELL], as well as the distinguished ranking Republican member of our committee, Mr. BROOMFIELD, for their outstanding work on this measure throughout the conference. While the conferees did not satisfy everyone with our final product, we certainly did the best we possibly could arriving in at a consensus with the other body.

This conference report authorizes a total of $12.5 billion in foreign aid funds for each of fiscal years 1992 and 1993. This authorization was slightly below the administration's request. Overall, the conference report shifts some funds away from security assistance and toward development assistance.

Development assistance accounts are authorized at $4.7 billion, while military assistance accounts are trimmed by $452.5 from the initial request to $7.8 billion.

I believe this conference report goes far in providing increased flexibility for the administration in the execution of our foreign aid program. It eliminates most earmarks in deference to the Senate passed bills which authorized set ceilings for specific terms within the legislation.

Mr. Speaker, this conference report on the International Cooperation Act provides several country and regional specific authorizations for some of our most important programs and important allies, including Eastern Europe, the Baltic States, Greece, Turkey, Egypt, and Israel. These authorizations also include Cyprus, Ireland, the Southern Pacific Region, Nepal, and funds for the Development Fund for Africa. These are some of our most critical foreign assistance programs, and in considering this measure let us bear in mind that, if we do not want to once again relinquish the body's role in the foreign aid process to the appropriators, it is important that we adopt this conference report in support of our Nation's security interests and in the interests of the security of other nations.

Mr. Speaker, I urge my colleagues to fully support this vital measure for economic security and refugee assistance.

Mr. FASCELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, during the course of the next hour or so we are going to hear the arguments for voting in favor of this conference report. I want to confine my remarks to the Africa portion of the bill as chairman of the Subcommittee on Africa.

The bill in the conference report in its present form increases the Development Fund for Africa to $1 billion. It establishes an Africa Center on Conflict Resolution. It increases authorization for the Southern Africa Development Coordinating Conference also known as SADCC to about $75 million. It authorizes disaster relief for the whole of Africa, something which the gentleman from Nebraska [Mr. BEREUTER], my friend, pioneered in the committee. It offered aid to the disadvantaged in South Africa up to the amount of $80 million through PVO's and NGO's. It increases funds for AIDS prevention, a measure pushed by the gentleman from Indiana [Mr. BURTON]. It authorizes emergency assistance to Liberia. It puts restrictions on aid to countries violating human rights and establishes a democracy fund to assist emerging democracies in Africa.

Mr. Speaker, I have heard the argument about foreign aid and high unemployment. I was pleased about 2 Fridays ago with the largest employer in my district who said to a group of community people that DYMALLY's presence on the Committee on Foreign Affairs is important to us because we do a lot of business with foreign countries, and there are a number of jobs, 30,000 jobs, that it provides the district which comes from relationships with foreign countries. So, there is some relationship. We do not live in an isolated community in the United States. There is a direct relationship between the jobs here and our relationships with foreign countries.

As I traveled across the African continent, Mr. Speaker, I was impressed with the gratitude of these nations for the assistance that we render, most of which, most of which, goes to the poor. We give very, very little assistance to those who are building monuments. Most of this money goes to the poor, and I join with the chairman of this committee, the gentleman from Florida [Mr. FASCELL], in asking for an aye vote even with the threat of a veto because it is the only way to know what the President is going to do if we send the bill to him.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, it is a shame that this good bill gets weighted down with abortion language. There are many things in this bill that ought to be supported. Foreign aid is something that is an essential part of our foreign policy. But injecting into this bill a repeal of the Kemp-Kasten amendment, which says that money should not go to the U.N. Fund for Population Assistance so long as it supports the China coercive abortion policy, means I cannot support it.

I thought that proabortion forces were in love with the word "choice." I thought choice meant something to them. Well, the Chinese program is just the opposite of choice. It is coercion. It forces families to have only one child, and, if they dare get pregnant again, they are coerced into an abortion.

Mr. Speaker, that is a fact. That has been found by our U.S. Court of Appeals. That has been found by the Census Bureau, by the Agency for International Development.

I ask my colleagues, "Why would you want to get in bed with a coercive program like that, especially if you believe in choice, especially if you believe in human rights and human dignity?"

Coerced abortion is barbaric. But they say, "We're going to fence that money off from the United Nations."—Nonsense. That is creative bookkeeping. We heard a lot about that last night on funding for the Presidential elections. Money, as my colleagues know, is fungible, so that is nonsense. I cannot support this bill because it provides money for the U.N. Fund for Population Assistance which holds up the most barbaric program in the world as a role model for other countries.

Please.

So, I reject this bill. It is a shame. I hope all of these inappropriate provisions come out when it is vetoed and we can vote for a decent bill for foreign aid where and as it is needed.

Mr. FASCELL. Mr. Speaker, I yield 1 minute to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Speaker, I rise in strong support of this conference report which authorizes $12.5 billion in foreign assistance programs for fiscal year 1992. I commend Chairman FASCELL, Mr. BROOMFIELD, and all the members of the committee for their efforts in bringing this important conference report to the floor.

The conference report before us would overturn the administration's misguided policy of denying international family planning funds to nongovernmental organizations that use their own funds to support abortion or abortion-related services. This Mexico City policy has not achieved its goal of reducing the number of abortions around the world, but rather, has increased the number of health complications facing women in the developing world by preventing health professionals from providing the full range of medical options and information to their patients. We must not allow the administration to endanger effective family planning services with this unrealistic policy.

International family planning organizations, including the International Planned Parenthood Federation, Family Planning International Assistance, and Planned Parenthood Federation of America, which receive Federal funding offer neutral services and information to women about their legal and medical options. These groups do not promote abortion but provide full and accurate health information to women. For the sake of the health and wellbeing of women around the world, we must allow these groups to do their important work.

Mr. Speaker, as chair of the Congressional Working Group on China, I would also like to alert the body to several important items in the bill regarding the People's Republic of China. Given the level of congressional concern over China's export of sensitive weapons technology to developing countries in volatile regions of the world—a concern that was expressed by Members of this body during the recent debate on most-favored-nation status for China—I am pleased that this conference report prohibits sales of military equipment to China if there is credible evidence that such equipment has been transferred to Algeria, Iran, Iraq, Libya, or Pakistan. This provision, coupled with the weapons proliferation provisions included in the President's veto message of last year's Export Administration Act, will enhance the administration's ability to negotiate an end to transfers of sensitive and unsafeguarded weapons technology by the Chinese Government.

Thanks to the efforts of Congressman JOHN MILLER of Washington, the conference report also contains language that establishes a code of conduct for United States joint ventures in China and Tibet. Principles to be followed by joint venture participants range from prohibitions on the use of forced or convict labor to guarantees of freedom of assembly and expression in the workplace. The provision also directs American companies to raise with Chinese authorities the cases of Chinese prisoners of conscience who have been detained, arrested, or convicted since March 1989 for the nonviolent expression of their beliefs. It is very important that we make every effort to gain the release of prodemocracy demonstrators imprisoned in China. American business investors in China, because of their economic relationship with the Chinese Government, are in a unique position to help gain the release of these prisoners and I am pleased that the committee has encouraged them to do so.

In closing, I would like briefly to return to the contentious issue of family planning. It is important to point out to Members that this conference report prohibits any money authorized for the U.N. Population Fund to be allocated for China because of concern about coercive family planning practices in that country. In addition to a restriction on the use of United States funds, the conference report goes further—it requires the UNPF to return all funds appropriated by the United States if the fund's contribution to China exceeds a specified amount. These provisions make very clear our opposition to coercive family planning in China. Therefore, any effort by the administration to convey an impression that this conference report contains funding for forced abortions in China has no merit whatsoever.

Mr. Speaker, in addition to the provisions that I have mentioned, this conference report contains important language on weapons proliferation in the Middle East, a subject that is central to our current efforts in Madrid to forge a lasting peace in that volatile region of the world. For all of these reasons, I urge my colleagues to vote for passage of the conference report and to send a strong message to the White House that we believe this legislation is essential and should be signed into law.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Florida [Mr. IRELAND].

Mr. IRELAND. Mr. Speaker, today I rise to point out a few problems I have with the conference agreement on the Foreign Assistance Authorization Act of 1991, H.R. 2508, and the handling of unliquidated obligations by AID.

Under this agreement, the Agency for International Development will receive $483 million per year for 1992 and 1993. Let me tell you a little bit about AID. This is an agency that spends its time promoting centralized government control and government interference in the economic activity of developing countries. In short, this is an agency that spends U.S. money to promote Socialist principles. When are we going to wake up? Socialism is dead and dying everywhere except in the universities and Federal Government agencies of the United States.

Last year Congress passed legislation designed to bring some discipline and accountability to old or expired appropriations. This is now known as section 1405 and 1406 of Public Law 101-510. I sponsored this bill because I found that Federal agencies had M accounts and merged surplus funds, which at one time had been appropriated for a specific use, which had not been spent for so long they were no longer tied to their original purpose. These funds had been merged into a $100 billion fund—sometimes referred to as "the honey pot." In effect, Government agencies were using these M accounts as their own private pool of money—their own private slush fund beyond the purview of Congress. And AID has been one of the worst abusers of the M accounts.

In fact, an AID employee, William T. Burns, warned his bosses about the lack of controls over M accounts. When they did not respond, he embezzled $1.4 million from these accounts. He is still in prison for this offense.

AID has now received a 1-year exemption from Public Law 101-510, the law holding their spending of public funds accountable. I am concerned about this exemption for several reasons. Reports issued by the GAO show that AID has funds in excess of $8.8 billion, that's $8.8 billion, sitting in its merged account fund that have not been spent. With the exemption they have received, they do not have to account for this money, where it is going, or how it is being used, for another year. And IG reports indicate that the bookkeeping at AID is in total disarray.

Furthermore, AID is now receiving no-year appropriations. This may be a move to try to circumvent laws holding them accountable for the funds they spend. I'm not sure, so I have asked the GAO to investigate this practice.

Mr. Speaker, I include at this point my letter to the Comptroller General of the General Accounting Office, as follows:

HOUSE OF REPRESENTATIVES,
Washington, DC, October 24, 1991.

Hon. CHARLES A. BOWSHER,
Comptroller General, U.S. General Accounting Office, Washington, DC.

DEAR CHARLES: I am writing in further reference to my letter of November 30, 1990, requesting that your office monitor the implementation of Sections 1405 and 1406 of the FY 1991 defense authorization bill—provisions that close and audit the "Merged Surplus" and "M" accounts of the Department of Defense and other agencies.

I would like to broaden the scope of that request to include the Agency for International Development (AID) and special exemptions granted to other agencies as well.

Renewed concern over the handling of these accounts arises for several reasons.

First, reports issued by your office (NSIAD-91-123 and 91-238) indicate that obligated but unspent money in AID's "pipeline" amounted to $8.8 billion as of September 30, 1990—over $420 million of which was obligated in FY 1984 or prior years, and those amounts are continuing to grow. Second, AID was exempted from the requirements of Section 1405 of the defense authorization act for 1991 by Presidential Determination as provided for under 22 USC 2393(a) until September 30, 1992. Third, AID now receives "no-year" appropriations, which are not covered by Section 1405 of the law. And fourth, I understand that other agencies have either been granted or are seeking special exemptions from Section 1405.

I have several questions.

To what extent are AID's "no-year" appropriations being obligated during their initial period of availability? Are those totals included in the $8.8 billion "pipeline" figure noted above? What other agencies receive "no-year" appropriations? Are "no-year" appropriations consistent with sound financial management practices and Section 8 of Article I of the Constitution? Should "no-year" appropriations be abolished altogether, or are they needed under some circumstances? What happens when AID's one-year exemption from Section 1405 expires in September 1992? What is AID doing to prepare for that eventuality? What other agencies have received or are requesting exemptions from the requirements of Section 1405? Are all such exemptions justified and appropriate?

Charles, your office has carefully documented numerous abuses of the "M" accounts in the past, and AID has been the source of some of the most serious ones. For that reason, I think it is particularly important to monitor implementation of Section 1405 at AID. I hope you will help me obtain the kind of information I need to get a clear picture of how that is being done and to determine whether any "fine tuning" of the legislation might be in order to close any remaining loopholes.

Your cooperation and assistance in these matters is always appreciated.

Kind regards.

Sincerely,

——— ———.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, October 25, 1991.

Hon. ANDY IRELAND,
House of Representatives

DEAR MR. IRELAND: We have received your letter dated October 24, 1991, requesting GAO to monitor the implementation of Section 1405 of the FY 1991 defense authorization bill as it pertains to the Agency for International Development.

We have forwarded your request to our National Security and International Affairs Division. Staff from that Division will be in touch with your office if they have any questions.

Sincerely yours,
RICHARD P. ROSCOE,
Legislative Advisor.

Mr. Speaker, can we explain to taxpayers why a government agency should not be held accountable for how it is spending their money? I can't.

The House is being asked to vote for a $25 billion foreign assistance program at a time when we do not have the money to help our own people here at home. What will we get for this money? I am concerned that AID cannot tell us either.

Before we vote on an expensive foreign aid bill, let's make sure we know where the money is going, and how it is being spent.

Mr. BROOMFIELD. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New Jersey [Mr. SMITH].

Mr. SMITH of New Jersey. Mr. Speaker, I thank my good friend, the gentleman from Michigan, for yielding me this time.

Mr. Speaker, I rise to ask Members to vote "no" on the foreign assistance conference report because it reverses two fundamentally sound and extremely important prolife policies.

The conference report guts the Kemp-Kasten anticoercion law and repeals the Mexico City policy.

If passed, this legislation will be vetoed by the President.

Language in the report provides up to $20 million to the U.N. Population Fund—the only organization that the President has determined to be in violation of U.S. law. The Kemp-Kasten anticoercion law prohibits funding to any organization that is found to be supporting or comanaging a coercive population control program.

The clear intent of Kemp-Kasten is to absolutely insist—by putting our money where our mouth is—that population control organizations support only voluntary family planning measures while penalizing those organizations that embrace forced abortion and other forms of coercion.

Each year since the law's enactment in 1985, the U.N. Population Fund has lost its funding because if failed the test and violated U.S. law. The U.S. Agency for International Development has determined that "the kind of quality of assistance provided by UNFPA contributed significantly to China's ability to manage and implement a population program in which coercion was pervasive."

AID further states that:

> The quality and substantial amount of UNFPA management assistance in China has a significant impact on the establishment and maintenance of an effective demographic information system and the ability to formulate [these] targets, monitor compliance and enforce China's one-child policy.

Now the proabortionists in Congress who often drone on about the choice to kill a baby by abortion want to abolish the Kemp-Kasten anticoercion law and in the process rig the standard for eligibility for foreign assistance funds.

They want to scrap the most important law on the books against coercion and forced abortion.

They want to rewrite the law in such a way that the U.N. Population Fund can't lose.

The U.N. Population Fund language in this report, Mr. Speaker, is a sham. It is a fraud. Frankly, I am deeply disappointed with the games being played here with the lives of Chinese women and their babies. While we debate this issue here in Washington, the U.N. Population Fund is hard at work in China, working side by side with the population extremists in Beijing.

I respectfully submit that congressional accommodation with an organization that supports and applauds the Chinese Government in its cruel experiment to exterminate a large segment of the next generation by means of forced abortion and forced sterilization is an outrage.

Since 1979, it is estimated that over 120 million babies have been slaughtered by the state—approximately 90 percent of those abortions were the result of coercion. The U.N. response? Scads of praise and support, awards for excellence, and grants totaling over $100 million.

In defending the U.N. Population Fund's odious role in China, Dr. Nafis Sadik, executive director of the fund, said:

> * * * the UNFPA firmly believes, and so does the Government of the People's Republic of China, that their program is a totally voluntary program. The implementation of the policy [in China] and the acceptance of the policy is purely voluntary.

This, Mr. Speaker, is a whitewash of crimes against humanity.

And Mr. Speaker, the U.N.'s Director of Population Activities not only defends China's barbaric policies, but she cites it as a model program for other countries. During an exclusive interview with XINHUA—China's official news agency—on April 11, 1991, Sadik went even further in her praise of China's program.

> China has every reason to feel proud of and pleased with its remarkable achievements made in its family planning policy and control of its population growth over the past 10 years. Now the country could offer its experiences and special experts to help other countries.

Mr. Speaker, rather than expose China's flagrant violations of human rights and mass murder, Sadik and the U.N. Population Fund want to export China's shame.

Let's not join the chorus of those who regard life as cheap and disposable—especially when it's the lives of Chinese women and their kids living in a faraway land.

As food for thought, I submit to Members that if UNFPA were supporting and comanaging a coercive population control program in another country—and that country just happened to be the United States, not China—and the pain and the humiliation and the loss of life were imposed on American mothers and their infants, the bookkeeping exercises, segregation of funds and lipservice contained in this bill would be regarded with contempt.

Chinese women aren't second class citizens. Chinese babies are worthy of our respect—our love and protection. Not poison shots.

The conference report trivializes the nightmare of forced abortion in China and the U.N. Population Fund's complicity in these heinous crimes.

Mr. Speaker, the conference report also reverses the Mexico City policy—a policy first announced in 1984 to separate abortion from family planning in the award of U.S. funds to population control organizations.

Reversal of Mexico City would be a big mistake and will lead to U.S. taxpayer subsidies to organizations that promote abortion as a method of family planning.

Under the Mexico City policy, Members should be aware that the United States remains the leading donor of population aid—providing approximately 45 percent of all international family planning assistance. The Mexico City policy has not reduced family planning funds by even a penny. According to U.S. A.I.D. the number of NGO's that have agreed to abide by the Mexico City clause has grown from about 300 NGO's to approximately 400. There are more providers than we have the funds to give.

Preservation of the Mexico City policy gives Congress and the President the opportunity to promote family planning worldwide while refusing to blur the distinction between birth control and abortion. Abortion isn't a family planning method—abortion kills children. Abortion methods chemically poison or dismember the helpless child in the womb. Abortion is not a method of family planning.

I strongly urge a "no" vote on the conference report.

Mr. FASCELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Idaho [Mr. STALLINGS].

Mr. STALLINGS. Mr. Speaker, I rise today to explain my decision to vote against the conference report on H.R. 2508, the foreign assistance authorization bill.

When we first considered this bill in June, I voted against the inclusion of funds for the U.N. Population Fund. I also voted against the amendment blocking efforts to keep the Mexico City policy in place. Mr. Speaker, I cast these votes because of my belief in the sanctity of life, and because I do not believe that U.S. taxpayers' money should be spent to provide abortions, either directly or indirectly, whether here at home or abroad.

My position did not carry the day. Nevertheless, I supported final passage of H.R. 2508. I did so because it seemed a good bill that channeled assistance to friends and allies in ways that serve our interests. I was also willing to support the bill because I hoped the objectionable abortion provisions would be removed by the conference committee, which was aware that they would likely prompt a veto.

Mr. Speaker, since the conference committee has not seen fit to remove these provisions, I must oppose the conference report.

The Mexico City policy provides that no United States funds are to be made available to foreign, nongovernmental organizations which perform or promote abortion as a method of family planning. The conference report would eliminate this policy, which has been in effect since 1984. In addition, the report would authorize $20 million for the U.N. Population Fund, despite continuing indications that the UNFPA may be supporting China's coercive population control program. Mr. Speaker, abortion is not an acceptable method of family planning, and United States funds should certainly not be expended to promote it as such.

My belief in the sanctity of life compels me to oppose this bill at this juncture. If it were not for the provisions I have mentioned, I could continue to support H.R. 2508. I am disappointed that the conferees have not seen fit to remove these provisions despite the knowledge that they will prompt a veto. If we reject this report today, and are presented with a bill identical to the one before us except for the absence of these provisions, I will again support it. But until these provisions are removed I am unable to offer it the support which I believe it otherwise deserves.

Mr. FASCELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana [Mr. VISCLOSKY].

Mr. VISCLOSKY. Mr. Speaker, I rise in support of the conference report for H.R. 2508.

I would especially like to highlight a provision in the conference report, which I proposed in June, to help American workers and companies benefit from the rebuilding of Kuwait.

Section 616 of the conference report expresses the sense of the Congress that: First, United States businesses engaged in rebuilding Kuwait should, to the maximum extent possible, use United States subcontractors and available United States goods and services; and second, the Department of Commerce should monitor and encourage the implementation of this policy.

By supporting the conference report for H.R. 2508—and the use of American subcontractors in the rebuilding of Kuwait—we can send a strong message of support to all American workers and companies.

Indeed, an article in yesterday's Washington Post with the headline "U.S. Firms Angered by Kuwait Contract Award" illustrates only part of the problem. This article details how a wholly owned United States subsidiary of a German conglomerate has won a $134 million contract set aside for American businesses.

Unfortunately, prime contractors—including the U.S. Corps of Engineers—are not required to source their subcontracted products or services from U.S. companies. The subcontracting provision contained in the conference report would send a powerful message to U.S. contractors that they should use American goods and services.

128 of my colleagues in the House have cosponsored an identical resolution—House Resolution 167—I introduced on June 5. This Kuwait subcontracting provision is also supported by the American Iron and Steel Institute, the Steel Service Center Institute, the United Steelworkers of America, Inland Steel Industries, LTV Corp. and Steel Co., and the Committee on Pipe and Tube Imports. Of course, using American subcontractors and United States goods and services to rebuild Kuwait would benefit a wide variety of other American companies and workers.

Without America's help, Kuwait might still be the 19th province of Iraq. We must now work to ensure that the United States gets the lion's share of the rebuilding contracts, and that American contractors use all available United States goods and services in order to help stimulate our stagnant economy and put unemployed Americans back to work.

Mr. FASCELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN of Michigan. Mr. Speaker, as one Member who managed the Population Program of AID for several years, let me make a couple of points clear. Those years were from 1977 to 1981.

Coerced abortions are repugnant. American policy is in favor of voluntary family planning. We enforced it to the letter. The UNFPA is not funding abortions of any kind, period.

No. 2, in terms of the Mexico City policy, what it said was that an organization cannot use any of its own moneys even if it is for activities legal in their own country. That does not make sense. We should fence our monies in to make sure they are used for purposes consistent with American law. We have done that, and all this bill does is to say that American money shall be used to carry out purposes that are consistent with our policy.

Mr. Speaker, for this reason and others, I urge that we support this conference report.

Mr. FASCELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Kentucky [Mr. HUBBARD].

Mr. HUBBARD. Mr. Speaker, I oppose the conference report on H.R. 2508, the International Cooperation Act of 1991, for one major reason. If the U.S. Congress cannot authorize Federal funds for critical, immediate needs of our own people here in the United States, pray tell how can we continue to send more and more billions of tax dollars to dozens of foreign countries?

Why not think about our own homeless, our unemployed, our veterans who don't have proper health care and benefits, our Social Security recipients who are hoping for a decent cost-of-living increase in January, and the needs of our cities and counties? We no longer have revenue sharing for our cities and counties. Congress outlawed that years ago, but we continue to send more and more money to foreign countries.

On behalf of 545,000 people in western Kentucky whom I represent, this Member of Congress urges my colleagues to vote No along with me on final passage and thereby say No as to the continuation of the billions of dollars our Nation, deep in debt, sends to foreign countries.

□ 1520

Mr. BROOMFIELD. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Kansas [Mrs. MEYERS].

Mrs. MEYERS of Kansas. Mr. Speaker, this bill does away with the Mexico City policy, and it is high time. The Mexico City policy is the international gag rule. It says that no money shall flow to any family planning organization that mentions the word "abortion" for any reason. I do not care how sick the woman is. I do not care if she is starving. No matter what the circumstances are, except to save the life of the mother and in case of rape and incest.

But if she is ill, if it is a serious malformed fetus, if there is any medical reason at all why a physician should suggest that the pregnancy be terminated, the physician cannot mention it to that woman.

Now, that is wrong, and there are a number of family planning organizations that simply will not deal under those circumstances. I can understand that. They should not.

This is not an argument about abortion, it is an argument about family planning. We sometimes forget. We talk about abstracts and we talk in rhetoric, but consider Bangladesh, Mr. Speaker. It has a population of 118 million and a growth rate of 3 percent. In 24 years the population will double.

Can you imagine the population of the United States trying to fit into an area the size of Bangladesh? That will be the case if we do not make every effort to curb population growth.

Just in the time since we last debated this issue on the floor of the House, that country's population has increased by more than 1 million people. One million more people living in grinding poverty and utter misery.

In debating these issues, we forget that a woman in Africa has a 1 in 21 chance of dying from a pregnancy-related cause. If that ratio were applied to this House, 21 Members would have died.

Mr. Speaker, this policy withholds needed medical advice from women. Real women are dying because the Mexico City policy deprives them of access to the health care they need. Vote yes.

Mr. FASCELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, while I steadfastly support the right of women to abortions and am in strong agreement with the provisions in this bill which reverses the Reagan administration's cruel and misguided policy prohibiting funding to organizations which offer abortion as an alternative, I cannot support this bill.

There are two reasons. We have 5 million children who are hungry in this country, 2 million people sleeping out on the street, and have a problem with appropriating $2 billion to Egypt and $3 billion to Israel. Let us take care of some of the problems that we have at home first.

Second of all, and perhaps more importantly, the IMF. There are millions of people in the Third World who are starving. Unfortunately, the IMF is not the vehicle which effectively deals with those problems.

As Pope John Paul II said so eloquently in his recent visit to Brazil, the foreign debt of a country may not be financed through the hunger and misery of its people. The people, yes, the IMF no.

The SPEAKER pro tempore (Mr. ECKART). The gentleman from Florida [Mr. FASCELL] has 9½ minutes remaining, and the gentleman from Michigan [Mr. BROOMFIELD] has 7½ minutes remaining.

Mr. FASCELL. Mr. Speaker, I yield 5 minutes to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I rise, as a representative of the Committee on Banking, in support of the titles of the conference report—House Report 102-225—on the foreign aid authorization bill—H.R. 2805—that deal with international financial institutions: title VIII, on the enterprise for the Americas initiative, and title XIII, on international financial institutions.

BACKGROUND ON BANKING COMMITTEE PARTICIPATION IN CONFERENCE

House jurisdiction over multilateral banks and other international financial institutions resides in the Banking Committee. On the working level, the relevant Subcommittee on International Development, Trade, Finance and Monetary Policy, which I chair. In the Senate, however, jurisdiction over these institutions is different, because when Senator Fulbright moved from the chairmanship of the Senate Banking Committee to the chairmanship of the Foreign Relations Committee, he took cojurisdiction over these activities with him.

Thus, when the Senate passed its version of foreign aid authorization—S. 1435—on July 26, it contained capital increases for the International Monetary Fund and three other multilateral development institutions—the Asian Development Bank, the African Development Fund, and the multilateral investment fund administered by the Inter-American Development Bank—that are part of the core jurisdiction of the House Banking Committee.

On Thursday afternoon, September 12, our committee was informed that a conference had been scheduled for Monday, September 16 on the two foreign aid authorization bills—H.R. 2508 and S. 1435—and that the House Banking Committee was expected to participate pursuant to this short notice.

My subcommittee had already—in the regular order—scheduled markup for September 25 on a composite international financial institutions bill on which we had been working since January. Nevertheless, to accommodate the Senate, we telescoped the subcommittee's preparations and offered our proposal to the Foreign Aid Conference on September 17.

HOUSE CONTRIBUTIONS ON INTERNATIONAL FINANCE

The results of the subcommittee's effort were as follows: We offered the Senate an 8 title bill, containing 46 sections. The Senate accepted 39 sections as offered, accepted an additional 2 sections as modified, and accepted the remaining 5 on the basis of comparable provisions in their own bill. The conference did not reject any of the sections of our bill.

A week later, our subcommittee markup was conducted, as scheduled, on September 25. At that time, a dozen amendments were added to our subcommittee print. The resulting bill was introduced the next day—September 26—as H.R. 3428. Of the 12 additional amendments offered in subcommittee, 9 were accepted into the conference bill that was filed on September 27.

For purposes of comparison, the international financial titles of the Senate bill originally contained four capital increases, plus two floor amendments. As supplemented by the House bill, titles VIII and XIII of the conference bill now contain five capital increases—including the International Finance Corporation—and major initiatives for all of the international financial institutions in such areas as: Alleviation of poverty and legal barriers, debt reduction, environmental protection, energy efficiency, export promotion, and important management tools to make multilateral financial institutions more effective and efficient, including the establishment of offices of inspector general.

CONVENIENCE OF CONSIDERING A SINGLE PACKAGE

While we expect that the banking committee will continue to bring forward H.R. 3428 in the regular order, this conference report permits the House to deal expeditiously with bilateral and multilateral international financial matters at one time and in a single package.

Grouping the two pieces of legislation also offers a useful overview. Authorizations for existing international financial institutions, as scored for budget purposes, total $1.130 billion. The administration has also requested $500 million over a 5-year period to launch the Enterprise for the Americas Program, and that sum is included. These sums compare to a total cost for the bill of about $12.5 billion. The President's request for additional funds for the Enterprise for the Americas initiative places the international financial proportion of the bill at about 13 percent. Conventionally, international financial institutions account for about 10 percent of the U.S. foreign assistance effort.

The IMF is treated separately, because it is a liquid, interest-bearing asset—like a checking account—that is not scored for budget purposes. The international financial institutions are thus a modest, but central, element of this Nation's foreign economic strategy.

ROLE OF THE INTERNATIONAL FINANCIAL INSTITUTIONS

The IMF and other international financial institutions supported in this bill have been a bulwark of international stability for the past 4½ decades. As Members know, this has been an era of repeated petroleum shocks, of serious debt crises, of drought and poverty, regional wars, and, in the past two years, the dissolving of empires, and, a hopeful transition toward democratic government and market-oriented economies.

Under these turbulent and unexpected circumstances, the International Monetary Fund, the World Bank and the regional development banks have done a remarkable job in helping to maintain financial stability for both debtor and creditor nations, developing and industrial countries.

These financial institutions specialize in market-opening measures. For example, during a recent 2-year period—1986–88—23 out of the 24 IMF structural adjustment loans contained conditions designed to liberalize trade, such as reductions of tariffs, quotas, and currency controls.

As a direct result, international trade has been one of the outstanding successes of the the post-World War II era. As Stanley Fischer, former chief economist of the IMF, and now a professor at MIT, recently observed:

> Trade has grown more rapidly than output almost every year since (1946). The credit for (this growth) must be shared between the GATT and the steady decline in restrictions on international payments ("A Retrospective on the Bretton Woods System," panel discussion at Bretton Woods, October 1991).

Since the United States is the world's leading exporter, these developments are manifestly in the best interests of American businesses and American workers. Since the end of 1985, U.S. merchandise exports have increased 80 percent to $390 billion. The Commerce Department estimates that those export sales support more than 7 million jobs, and accounted for 40 percent of last year's economic growth. Indeed, without exports, the current recession might be a depression.

SUMMARY

To sum up, Treasury Department witnesses appeared before our subcommittee on several occasions and requested the capital increases as a part of the President's program and foreign economic policy.

For the reasons the administration presented, and, on the basis of our subcommittee's own research, I am pleased to support titles VIII and XIII of the conference report as in the best interests of this country.

I would especially like to commend Chairman FASCELL, and the ranking minority members of the Foreign Affairs Committee, as well as the majority members of our Subcommittee on International Development, Trade, Finance and Monetary Policy, who contributed significantly to our subcommittee bill—H.R. 3428—and to this conference report. I would also like to recognize the leading minority members of the International Subcommittee, Mr. LEACH and Mr. BEREUTER, for their responsible approach to this area, and their concrete suggestions that have been incorporated into this legislation.

REBUTTAL TO REPUBLICAN OPPONENTS OF THE RULE

Mr. Speaker, unfortunately, the words "foreign" and "international" seem to bring out the worse in some of our Members.

As a result, members of the Republican leadership of this body have made some of the most wildly inaccurate and misleading statements that I have ever heard on the floor of the House of Representatives about the capital increases proposed by the Bush administration for international financial institutions.

I was particularly surprised by the gentlemen on the other side of the aisle who misrepresented that the Democratic leadership was proposing these capital increases and that the President did not favor them.

Exactly the opposite is true. The Treasury Department appeared at the public sessions of the Subcommittee on International Development, Trade, and Finance on three occasions to request these capital increases as part of the President's Foreign Policy Program. In fact, the Republican administration negotiated these increases with other nations, and shaped them to the administration's satisfaction before they were ever presented to Congress. I will, by unanimous consent, include at the end of these remarks a letter from Secretary of the Treasury Brady requesting the enactment of this legislation.

I was appalled when several members of the opposition party misrepresented that the budget cost of this bill was two and even three times what it actually is. This kind of knowing misrepresentation of the facts is beneath the dignity of this institution. It debases the quality of public debate. It makes it more difficult to work out honest differences of opinion involved with complex and sensitive legislation.

The facts about the administration's capital increases, as are spelled out more fully in my formal statement, are that the international financial institution provisions of H.R. 2508 would add $1.6 billion to the budget deficit. That is a tiny fraction of the total foreign aid package.

The increase in the IMF quota does not even impact the budget, because our contribution buys a liquid asset, that can be drawn down by the United States at any time, and that earned a return of $628 million annually for the past 11 years. For this reason, the IMF quota increase was specifically exempted from the bipartisan budget summit agreement. I ask unanimous consent that a table, provided by the Treasury Department, which demonstrates those returns on the U.S. investment in the IMF, be included in the record following my statement.

The most valuable benefit of the international financial institutions to American businesses and American workers is that their entire rationale is to open up trade and investment worldwide. This helps both the debtor and the creditor countries; the developing and industrialized worlds.

International trade is one of the outstanding success stories of the post-World War II era. Trade has increased faster than output in nearly every year since 1946.

The primary beneficiary of these developments is the United States of America, which is the world's largest exporter.

Since 1985, U.S. merchandise exports have increased 80 percent, from $215 to $390 billion. The administration informed us that these export sales support 7 million jobs, and in 1990, accounted for 40 percent of all domestic growth. Without these exports, the recession of the past year would be a depression.

To sum up, the Bush administration has requested capital increases for the IMF and other international financial institutions as being in the best interests of the Nation. I hope the members of the President's party do not make it too difficult for this body to advance the President's legislation.

Mr. Speaker, I include for the RECORD a letter from the Secretary of the Treasury, as well as a chart concerning estimated gains and losses associated with U.S. transactions with the International Monetary Fund, and an excerpt from the National Advisory Council Report.

THE SECRETARY OF THE TREASURY,
Washington, DC, October 2, 1991.

Hon. MARY ROSE OAKAR,
Chair, Subcommittee on International Development, Finance, Trade and Monetary Policy, Committee on Banking, Finance and Urban Affairs, House of Representatives, Washington, DC.

DEAR MARY ROSE: I want to thank you for supporting legislation that would permit the United States to participate in the increase in resources of the International Monetary Fund (IMF). The Administration strongly supports the IMF quota increase.

At this time of historic global change, the IMF is playing a pivotal role in the movement toward free markets and democracy. The Fund is at the forefront of international efforts to assist East European countries in restructuring their economies. It is promoting reforms in developing countries in support of the U.S.-led international debt strategy. In Africa, Fund concessional resources are supporting growth-oriented adjustment and the alleviation of poverty. We are also asking the Fund and the World Bank to play a critical role in supporting economic reform in the Baltic states, as well as the Soviet Union and the republics.

The United States has encouraged the Fund to take the lead in addressing these developments in the international economy. If the Fund is to meet these challenges over the medium-term, we must ensure it has sufficient resources. Our support for the IMF is extremely cost-effective. The quota increase will not add to the budget deficit since no net budgetary outlays result from use of the U.S. quota. In addition, our resources are leveraged since every dollar provided the Fund is matched by four from others.

Thank you again for your support. Passage of this legislation is crucial to U.S. efforts to maintain the open, growing international economy on which our prosperity increasingly depends.

Sincerely,

NICK BRADY.

ESTIMATED GAINS AND LOSSES ASSOCIATED WITH U.S. TRANSACTIONS UNDER U.S. QUOTA AND U.S. LOANS TO IMF

[Millions of dollars]

IMF fiscal year ending April 30	Cumulative net Treasury Debt (−) or Cash (+) position arising from—			Borrowing cost (−) or reduction (+) from column (3) (4)	Interest received by United States on loans to IMF (5)	Remuneration received by United States from IMF (6)	Valuation gains (+) or losses (−) on U.S. reserve position (7)	Total net gains (+) or losses (−) (8)
	IMF ending April 30 (1)	Transactions under U.S. quota (2)	U.S. loans to IMF (3)					
1980	1,418	0	1,418	189	0	0	(45)	144
1981	1.540	(462)	1,078	125	16	22	(143)	20
1982	(850)	(967)	(1,817)	(246)	88	216	(204)	(146)
1983	(3,960)	(1,568)	(5,528)	(499)	131	345	(234)	(257)
1984	(5,335)	(1,485)	(6,820)	(611)	160	504	(246)	(193)
1985	(5,292)	(1,265)	(6,557)	(597)	171	660	(725)	(491)
1986	(7,306)	(1,229)	(8,535)	(594)	132	614	2,528	2,680
1987	(6,256)	(892)	(7,148)	(399)	86	478	2,653	2,818
1988	(4,989)	(475)	(5,464)	(317)	63	424	600	770
1989	(2,267)	(171)	(2,438)	(185)	33	439	629	916
1990	(2,977)	0	(2,977)	(233)	12	529	57	365
1991	(4,614)	(3)	(4,617)	(334)	1	393	851	911
Total period	....	....	....	(3,701)	893	4,624	5,721	7,537
Annual average	(3,407)	(710)	(4,117)	(308)	74	385	477	628

EXCERPT FROM THE NATIONAL ADVISORY COUNCIL REPORT

Dramatic progress has been made under the U.S.-led international debt strategy. IMF support, in cooperation with debtor countries, commercial banks, the World Bank, and creditor governments, has been critical to successes achieved thus far.

Eight countries—Mexico, Costa Rica, the Philippines, Morocco, Venezuela, Chile, Uruguay, and Nigeria—have reached agreements with commercial banks on packages including debt/debt service reduction. These countries account for almost half of the total commercial bank debt of the major debtors.

Argentina, Brazil, Bolivia, and Poland are at various stages of their discussions with commercial banks.

Many of these countries are key allies and close friends of the United States.

□ 1530

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, there is a grave flaw in this conference report regarding aid to the Soviet Union. A few months ago, this House passed the Kyl amendment by a vote of 374 to 41. In doing so, we set 10 conditions that would have to be fulfilled before direct aid, other than humanitarian or technical assistance, could be given to the Soviet Union. Substantially the same amendment, offered by Senator PRESSLER, was adopted by voice vote in the Senate.

Instead of yielding to the expressed will of both Houses, which is what conferees are supposed to do, the conferees simply decided to substitute their own judgment for that of the overwhelming majority of both Houses, and dropped the entire Kyl-Pressler amendment out of the bill.

Now it is true that since the House initially passed H.R. 2508, that a coup has taken place and failed, the Baltics have been recognized as independent, and that several conditions of the Kyl amendment have been met—but not all of them, and not what may be the most important one.

That condition states that before this country starts sending over wheelbarrows full of money to the Soviet Union, that steps must be taken on their part. They must substantially reduce their military spending. The Kyl amendment provides that before we give this aid, the Soviet Union must adopt a defense budget which brings down their military spending to a proportion of their economy approximating United States levels.

Even today, in spite of the enormous changes that have taken place in the Soviet Union, their military-industrial complex keeps grinding out weapons that are at this very moment aimed at the United States and our allies. The Soviet Union still spends an enormous proportion of their resources to keep their weapons factories open and to maintain their Armed Forces. Mr. Speaker, this has to stop.

What is left of the Central Government of the Soviet Union is perfectly capable of taking immediate steps to stop wasting their resources in this way. Both Houses of Congress have overwhelmingly voted to insist that such a step be taken before we provide aid to that country. Since our conferees haven't listened, we must insist once again, send this bill back to conference, and insist our conferees comply with the expressed will of the overwhelming majority of both Houses.

I would also like to note another key feature of the Kyl amendment which must be maintained. Whatever aid the Kyl amendment keeps from the central Soviet Government can, and will, be provided to democratically elected governments of the republics. This is also consistent with an amendment I offered to this bill, which the House also adopted. The Kyl amendment does not prevent us from lending a helping hand to the people of Russia and other democracies emerging from Soviet tyranny. It merely insists that the central Soviet Government, if it wants our aid, no longer waste its resources on weapons and military equipment aimed at the United States.

Mr. Speaker, let's tell the conferees that we haven't changed our minds, that we were right when we voted 374–41 for the Kyl amendment, and that our conferees are not allowed to disregard with impunity the expressed will of this House. I ask my colleagues to vote down this conference report and make the conferees go back and do it right.

Mr. FASCELL. Mr. Speaker, I yield 2 minutes to the distinguish gentleman from Connecticut [Mr. GEJDENSON].

Mr. GEJDENSON. Mr. Speaker, first I would like to say that we need to focus on where the money from our budget gets spent. We are spending about $140 billion of our taxpayers' money subsidizing Western Europe and Japan through our commitment to NATO. Those are the wealthiest countries in the world.

It hurts our economy, and that is where we ought to get some cooperation in this House, to join the administration on the issue of reducing our military assistance to countries like West Germany, who now have as their neighbors Poland that just had a reelection. And Latvia, Lithuania, Estonia, and all the republics that are seeking freedom.

In this bill we do some things that are good for American industry, and it is the kind of thing that helps us reach into foreign markets.

One of the things that we have been talking about is that the growth in our economy, the little bit that has occurred, has been in the area of exports. And in this bill under the jurisdiction of the committee that I chair, the Subcommittee on International Economic Policy and Trade, we have several sections that deal with capital projects, which provide funds to help American companies get a piece of the action of what is going on around the world, to help foreign governments start to use American contractors so that American workers can have jobs.

We have OPIC to guarantee American investment as it goes overseas, to bring those American projects in the pipeline. The best way to get American trucks and tractors and parts used across the globe is as American management establishes itself globally.

The one thing we see with the Japanese, when a Honda plant is in the United States, what it really does it brings in Japanese parts and assembles them. We need to make sure that there are American products being made across the globe, going into those countries. We have got that in this bill.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, just a couple of points. First of all, some people have said that this is the administration's bill. Just a little bit of a point here, this is not the administration's foreign aid bill. The administration is going to veto this bill. Anybody that wants to read the administration's statement on this bill will find the President is going to veto this foreign aid bill if it gets to him. This is not the administration's foreign aid bill. This is the congressional foreign aid bill.

This is what Congress wants to spend. This is the choices that we make.

Understand, that is what this is all about, choices. We are choosing to spend money here.

The question is when we choose to spend money, what is the downside of that? The downside of it is that we are lifting the money out of the pockets of American working people in order to spend it for foreign aid. How much are we lifting out? For every billion dollars we spend, 333,000 American families do not get a $3,000 tax cut.

In this particular instance the amount of money in this bill could give 8.3 million American households a $3,000 tax cut. How much is that? That is 40 congressional districts across the country that could get a $3,000 tax cut in every household in those congressional districts. That is all the congressional districts in Pennsylvania and all of the congressional districts in the State of New Jersey combined, could get a $3,000 tax cut, if in fact we did not spend the money in this bill.

My guess is that all of the households in Pennsylvania and all of the households in New Jersey would prefer to have $3,000 in their pocket rather than spend it on the foreign aid bill. My guess is that if you polled America and asked them whether or not they would prefer to spend money for foreign aid or whether or not they would prefer to have $3,000 in their pockets, every one of these people would say, "I think I would probably prefer to have the $3,000 in my pocket."

That is the choice we are making here, $3,000 of tax cut for Americans or spending on foreign aid.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Speaker, while I am not in agreement with several significant aspects of this legislation—most particularly the cargo preference provisions—I did want to indicate support for its commonsense changes called for in the Mexico City doctrine and to speak in favor of those provisions in the International Cooperation Act of 1991 conference report which authorize U.S. contributions to the International Monetary Fund [IMF] and certain multilateral development banks [MDB]. These authorizations have been requested by the administration and are the result of long international negotiations where the administration has effectively advanced U.S. interests. Because of U.S. leadership, international financial institutions are becoming more tuned to environmental protection, poverty alleviation, market promotion, and efficiency.

I also want to praise the leadership of the Chair of the Banking Subcommittee on International Development, Trade, Finance and Monetary Policy, Ms. OAKAR, whose leadership was instrumental in getting these complex and sometimes controversial programs to the House floor. This is her first year as chair of the International Development Subcommittee which has jurisdiction over the international financial institutions. If she is successful in shepherding these provisions into law, it will be a remarkable legislative performance plus a great international service.

At a time when the United States is looking for ways to maximize scarce resources, we need to look to multilateral institutions as vehicles for increased export opportunities for American companies as well as stabilizing forces in the international economy. In States like Iowa, exports have become the mainstay of our economic existence. Roughly one in every four new jobs created between 1987 and 1989 were export generated. This statistic makes the United States participation in organizations like the IMF increasingly vital. The fund's presence and influence in market reform in Mexico alone has contributed to the doubling of United States exports to that country between 1986 and 1989.

We witnessed during the last 2 years the remarkable work of the IMF and its quick and effective response to the gulf crisis helping countries offset higher oil import costs. Furthermore, the IMF committed $12 billion to certain less developed countries which had completed agreements under the auspices of the U.S. Brady debt plan. Finally, the IMF is virtually the only financial institution capable of entering into Eastern Europe and initiating economic restructuring efforts. Debt reduction negotiations with official creditors, like the Polish model, are predicated on there being an IMF arrangement in place.

Today we have word of the 12 remaining Soviet Republics agreeing to pay off the $68 billion in external debt owed by the Soviet Government. this news, coupled with the recent creation of a $30 million technical assistance trust fund for the Soviets, will shore up that country's creditworthiness in the international marketplace. The IMF and World Bank will soon begin to send technical advisors into the U.S.S.R. to help and train Soviets in the design of macroeconomic policy. Without an international organization like the IMF, global cooperation and response to financial crises would be arduous and less effective.

The United States holds a 19-percent voting share in the IMF, making us the largest and most influential shareholder. Japan, soon to be in the No. 2 position, will only hold a 6-percent share. At modest budget cost to the United States, our participation in the IMF is a cost-effective way of ensuring our voice in the global marketplace. For every $1 the United States contributes to the fund, it is matched by $4 contributed from other countries.

Another important international initiative is a capital increase for the International Finance Corporation [IFC]. In June 1991, the negotiations for a $1 billion capital increase for the corporation were completed. A provision in the conference report would have the U.S. share of the capital increase be $250 million. The IFC has become an increasingly important member of the World Bank group, especially in terms of U.S. foreign interests. The IFC's expertise lies in foreign investment, capital market development, and privatization. By financing sound private sector projects without government guarantees, the IFC successfully lends and invests on a long-term basis. The Congress should support this institution and its promotion of private-sector led growth.

Another key initiative included in the conference report authorization package is the Enterprise for the Americas Initiative [EAI]. Perhaps the most comprehensive and thoughtful approach to Latin America this century surpassing even the widely heralded Alliance for Progress, it has been heartily welcomed by Latin American and Caribbean leaders. The provision of EAI under the Banking Committee's jurisdiction deals with a special investment fund to be managed by the Inter-American Development Bank [IDB].

This investment fund will be multilateral in nature and capitalized at $1.5 billion. The United States and Japan together will contribute $1 billion with other countries' resources to be committed soon after. Attesting to Latin confidence in the EAI, Argentina, Brazil, Mexico, and Venezuela have agreed to contribute to the fund as well. France, Italy, Spain, and Canada have agreed to participate in unspecified amounts.

The fund will act as a financing mechanism for training programs and technical assistance in the area of investment reform. Because lack of private investment in Latin America is the single most critical barrier to sustained economic growth, we need this multilateral fund to repatriate capital and restore investor confidence.

The EAI language included in this conference report also allows for the reduction, sale, and/or cancellation of Export-Import Bank loans owed to the United States by EAI-eligible countries. This debt reduction will facilitate debt-for-equity and debt-for-development swaps which are creative financing tools for keeping resources in-country. This debt reduction will result in a very modest budget cost yet will produce great benefits to the recipient countries.

Finally, this legislation authorizes the United States continued participation in various multilateral development institutions. We are authorizing the United States contribution to the Asian Development Bank's special capital increase to achieve voting parity with Japan. The United States will pay in $51 million to purchase additional shares, and will hold $374 million in callable shares—for a total of $425 million over 2 years. Also included is the United States contribution to the African development fund replenishment. The conference report agrees that the United States will pay in $135 million annually for 3 years. We hold an 11.8 percent share in the institution and have a great interest in ensuring that the fund becomes a more effective and productive development institution.

These authorizations are critical components of U.S. foreign economic policy. In order to create market opportunities and leverage our foreign aid dollars, we must increasingly rely on these global financial organizations. We have a strong voice in each one of these bodies and we need to maintain all the means at our disposal to encourage the development of economic conditions that will be favorable to U.S. interests.

In short, Mr. Speaker, the international development features of this bill have the strong support of the administration. Cargo preference, on the other hand, is a very different matter.

Section 124 of this conference report—the cargo preference provision—is a veto item because it would be bad law—bad for U.S. exports, bad for U.S. workers who are not employed in the maritime industry, and bad for National Security which depends in large part on the President having the flexibility he needs to respond to events in a rapidly changing world.

Section 124 is special interest legislation in its most cynical form. It will help a few at the expense of many.

Mr. Speaker, cargo preference pits farmers and manufacturers against transporters. In the short term it appears good for American seafarers, but if the past is a guide, U.S. subsidies have weakened rather than strengthened the U.S. Merchant Marine. To the degree subsidies may be justified, they ought to be paid directly out of general revenues, not indirectly and disproportionately by the American farmer. It's time this Congress stops putting one American worker against another.

Finally, from the perspective of a member of the conference committee representing both the Foreign Affairs and Banking Committees, I must register the deepest dismay at a process which resulted in a formal conference where definitive compromises were arrived at and then learning that outside public purview, without minority participation, the majority leadership had changed directions. Without reconvening the conference, without notifying the minority, the majority chose to play political games with the legislative process as well as profoundly serious legislation. In one instance—Mexico City—I might well have supported changes if a proper vote had been taken in conference, but in all instances I object strenuously to the arrogance of power reflected in the process. Accordingly, as much as I support the brunt of this legislation, I cannot vote for it. In America, after all, process is our most important product.

Mr. BROOMFIELD. Mr. Speaker, I yield 1½ minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, Congress borrowed last year $60 billion from Social Security. This year Congress will borrow $100 billion from Social Security. In addition to that, Congress will borrow a total of $300 billion next year to finance our debt.

That money will come from overseas. Then we take that $300 billion and we provide $170 billion to NATO and other countries for the defense of Japan and Germany. Then we provide $25 billion in the form of foreign aid in development funds for people overseas.

Is there any wonder why we are bankrupt?

The bottom line is, we give the aid to countries overseas. They turn around and buy the products from Japan and Germany. We are paying interest to Japan and Germany on the money we borrowed and we have given away in foreign aid.

If this all makes any sense, someone try and explain it to me. I do not understand it. And this is not an easy vote. A "no" vote is a hand vote here.

If one votes "no," one might have a lot of people trying to beat them the next time out of the chute in that election.

Mr. BROOMFIELD. Mr. Speaker, I yield the balance of my time to the distinguished gentleman from California [Mr. LAGOMARSINO], a member of the Committee on Foreign Affairs.

Mr. LAGOMARSINO. Mr. Speaker, as a senior member of the Foreign Affairs Committee and one of the House conferees on this foreign aid measure, I rise in opposition to this flawed legislation which, if passed in its current form, will be vetoed by the President. I would strongly support such a veto.

First, I object to the very unorthodox procedure used to craft this conference report. The House and Senate conferees formally agreed to a number of key provisions—like dropping the Mexico City policy repeal. Yet, after the conference, the House and Senate chairmen unilaterally changed this and other provisions without the consent or notification of the other conferees. This is wrong and is a very bad precedent to set.

Second, while I know that the committee worked very hard in crafting an acceptable foreign aid bill, there are a couple of key items that would trigger a Presidential veto. Unlike other measures, the foreign aid bill is never popular here in Congress. While there are very serious national security reasons for foreign aid, we all know it is difficult to effectively explain these to constituents focused on their own domestic concerns. Therefore, more so than with other legislation, Congress must work closely with the administration if we are to enact a foreign aid bill. Congress, particularly the conference committee on this bill, has not done that. It's almost as if Congress has chosen specifically to pick a fight with the President—a fight Congress cannot win. I fear that all of our other hard and, in many cases, productive work has been turned into a waste of time.

This conference report can be easily fixed. The contentious items are few: UNFPA and Mexico City, cargo preference, military aid financing, Middle East arms sales, and Cuba sanctions. Congress, rather than getting a good compromise and many good provisions like Middle East funds, American enterprise program will get nothing. More importantly, during these very unstable times around the globe when the United States needs to play a strong leadership role to ensure future stability and our own national security, we are ignoring that responsibility and putting partisan politics above good national policy.

While I have these serious objections to the conference report, I do want to point out that some positive changes have taken place. For the first time in over a decade, the Western Hemisphere portion of the bill is not mired in controversy. In fact, we did not even have any amendments on this title in the House. A great deal of credit for this new spirit of cooperation goes to the chairman of the subcommittee, BOB TORRICELLI of New Jersey. It has been a very refreshing experience to work with Mr. TORRICELLI and I look forward to continuing our cooperative relationship.

I urge my colleagues to reject this flawed conference report, which will be vetoed anyway, and instead urge its modification into a more acceptable form that can be enacted into law.

□ 1540

Mr. FASCELL. Mr. Speaker, I yield the remaining amount of my time to the gentleman from Florida [Mr. SMITH].

The SPEAKER pro tempore. The gentleman from Florida [Mr. SMITH] is recognized for 2½ minutes.

Mr. SMITH of Florida. I thank the gentleman for yielding. I would have to say after 8 years on the Committee on Foreign Affairs before I went to the Committee on Appropriations I was proud to be a member of the Committee on Foreign Affairs because of the chairman, and also because of the other members who worked very hard on one of the most difficult issues in this Congress. Foreign aid has never been popular. Foreign aid has never been easy. Once again, this bill has been caught up in a maelstrom of other political and domestic political issues. That is the problem. This bill always winds up to be somebody's bad tarbaby, and it is wrong, because the President, as everybody knows, is interested in foreign aid.

It is wrong because if those Members who have any institutional memory at all reach back, and those of you out there listening to us reach back, you will remember that the biggest amount of foreign aid we ever gave, almost, up until now was the Marshall plan. The Marshall plan was foreign aid. It rebuilt the whole continent of Europe, but it also enabled this country to become the greatest power on Earth; to ship our goods, to find new markets, to raise the standard of living in other places so that ultimately they could buy from us, trade with us, and make this country's economy even stronger. That is what foreign aid does. That is why the President wants this built.

Oh, yes, they will say that the President is going to veto it. He is only going to veto it because it is a good threat to turn a domestic political turn on this bill. This House has already voted for foreign aid. A CR passed this House a short time ago giving foreign aid until the end of March of next year. This is an authorization bill. I am a member of the Committee on Appropriations. I plead with the gentleman to vote for this authorization bill. The chairman of this committee and the others on this committee have worked hard to craft a good bill to put restrictions and other items in place that are currently not in the CR.

Why would the Members of this body want unfettered, unbridled spending of money without this authorization bill? This chairman has worked for 36 years in this House to do right by the policy of this country overseas. He is one of the finest men I know, and it is a disgrace that the gentleman would reject him and Mr. HAMILTON and Mr. BERMAN and all the others in this place who labor on authorization committees because of domestic politics.

And this business about tax cuts is so absurd. The gentleman from Pennsylvania is fast and loose with that money, but you see, the difference is he will tell you that the rich deserve a tax cut because he has on this floor a capital gains tax cut that comes out of the middle class. It is only a middle-class tax cut that is somehow supposed to come out of foreign aid.

Vote for this bill. It is the right thing to do. It is the best thing for America.

Mr. RAMSTAD. Mr. Speaker, today I rise in opposition to the conference report and in favor of restricting aid to Jordan. As it stands now, the Foreign Aid Authorization Act, H.R. 2508, would allow Jordan to receive direct United States economic assistance.

Despite our resounding victory over Iraq in late February, no one can forget the Scud missiles raining down upon innocent civilians in Israel. Jordan allowed this terror to pass through its skies and did not condemn it.

Jordan also continued its unconditional support of Saddam Hussein and violated the United Nations' trade embargo against Iraq.

I cosponsored a House resolution expressing the sense of Congress that the United States suspend all assistance to Jordan. I am surprised and extremely disappointed that in spite of Jordan's reckless and lawless behavior during the gulf war, the House and Senate conferees dropped the Housed-passed provision restricting aid to Jordan.

Mr. Speaker, the families and loved-ones of the 254 young Americans who perished during the Persian Gulf war will not forget that Jordan actively supported the terror of Saddam Hussein.

Mr. Speaker, the innocent survivors of Scud missile attacks in Israel will not forget that Jordan failed to condemn or stop the brutal attacks on civilians in Tel Aviv.

Mr. Speaker, the Congress of the United States should not forget that Jordan was a party to the naked and brutal aggression that cost the lives of many thousands of people. Providing Jordan with economic assistance is an assault upon the ideals that made the gulf war victory possible.

Today, the House of Representatives should reject the conference report that would allow Jordan to continue to receive United States aid. Then, I truly hope the conferees will once again reconsider denying Jordan direct economic assistance.

Mr. Speaker, I strongly urge my colleagues to defeat this conference report so that the restrictions on Jordan can be put back into the bill.

Mr. LIGHTFOOT. Mr. Speaker, I rise today in opposition to this conference report. Although foreign assistance is an essential tool for promoting U.S. foreign policy and furthering our own domestic priorities, this legislation contains provisions which I believe undermine our Nation's best interests.

Last summer, when the House passed this bill I supported it because it promotes economic growth, assists United States allies such as Israel and the Baltic States, and advances United States ideals and values in the international community. I had hoped the controversial family planning and cargo preference requirements would be removed in conference but they weren't. If they had been removed, we would have a bill that would not only gather the support of the House, but the President as well. Now we are faced with a bill certain to be vetoed.

Many of the provisions in this bill bother me. One of them is the cargo preference language which I cannot support. If enacted, this provision would require countries receiving economic support funds [ESF] from the United States to ship goods under U.S. vessels which, on average, cost nearly $30 more per ton than foreign ships. If cargo preference laws are extended, it would adversely affect the competitiveness of U.S. agriculture, which is one segment of our economy that is extremely competitive and contributes significantly to reducing our trade deficit.

Mr. Speaker, the farmers in my home State of Iowa take a great deal of pride in their work. They work hard for their income, and extending cargo preference to commercial agricultural exports is a mistake that will make the Iowa farmer uncompetitive. It will have a tremendously negative impact on the entire U.S. agricultural industry and our balance of trade.

I also have concerns about the provisions in this bill that provide as much as $20 million to the United Nations Population Fund [UNFPA] and the repeal of the Mexico City policy. It is widely known the UNFPA supports the horrendous family planning policies of the People's Republic of China. China's population control program often utilizes family planning practices such as coercive abortion and involuntary sterilization. This is offensive and morally wrong, and the United States should not support such policies which run contrary to fundamental human rights.

Furthermore, the repeal of the Mexico City policy will allow U.S. assistance funds to go to countries that promote abortion as a viable family planning practice. I do not believe the United States should reduce its commitment to family planning assistance, but we must not support programs that lead to abortion on demand.

Mr. Speaker, I cannot support this legislation for it shows a blatant disregard for American farmers' competitiveness and perpetuates human rights abuses in countries around the world.

Mr. MOODY. Mr. Speaker, I rise in support of the foreign aid authorization bill and I urge my colleagues to join me in voting for this bill.

Let me just say first that this bill contains two provisions that I strongly oppose.

First, the bill would require an increase in the requirements for cargo preference and, thereby, decrease the portion of international trade for which the Great Lakes can compete. Despite our repeated efforts, the Lakes still are not served by U.S. bottoms. The more trade we set aside for U.S. bottoms, the more we unfairly exclude the Great Lakes.

Second, the bill takes a pass on one of the most important issues pending in Congress: United States military aid to El Salvador. Last year, strong majorities in both the House and Senate approved a 50-percent cut in U.S. military aid. The President restored 100 percent of the aid, however, by selectively applying the provisions of the law. We need to revise those provisions and, at a minimum, ensure that Congress must ratify any Presidential certification. Majorities in both houses clearly support this step and yet we have taken no action.

But, despite these two concerns, I am voting for this conference report because I strongly support the provisions in this bill that would restore the United States commitment to family planning. This is the first foreign aid authorization bill Congress has passed that includes languages to overturn the Mexico City policy which has resulted in U.S. defunding of International Planned Parenthood Federation [IPPF], and to restore funding to the United Nations Population Fund [UNFPA].

The world's population will exceed 6 billion by the year 2000, the majority of this growth will be in developing countries that are already struggling to provide desperately needed resources. More importantly, research has revealed that one-half of the women of reproduction age in the developing world want to control the spacing and the size of their families but lack the means or ability to gain access to family planning. Voluntary family planning saves lives, promotes the well-being of women and children, and it prevents abortions.

Providing quality population assistance requires more than just funding. It also requires a commitment to helping those countries most in need. The U.S. AID has a good population program that does provide family planning assistance to many countries in the develoing world. However, there are many countries that AID does not serve which are served by either UNFPA or IPPF or both. If we would like more impact for our U.S. dollars we need to restore our funding to UNFPA and IPPF.

It is important to emphasize that if this legislation is enacted that U.S. dollars will still not be used for abortions. The bill does not alter existing statutory prohibitions against funding abortions abroad. It does not even allow U.S. funds to provide information about abortion. Overturning the Mexico City policy would merely allow private family planning programs in the world's poorest countries to comply with their own law, using their own funds, while accepting desperately needed U.S. support for family planning. I consider this an extension of the effort to make sure women in this Nation are guaranteed the right to be fully informed of their rights. Overturning the Mexico City policy is the equivalent of our fight against the gag rule here in the United States.

The concern that funding UNFPA will have an effect on China's population program is completely unnecessary. No money will go to China if we fund UNFPA and there has never been any evidence that UNFPA provides support for coercive activities in China or anywhere in the world. UNFPA only promotes maternal and child health, contraception production and availability, women's income generating projects, education, and research, and training in China and elsewhere.

Passing this legislation means that the United States will improve its leadership role in family planning by providing quality comprehensive voluntary family planning assistance to many more countries than we are currently serving. Please vote for the foreign aid authorization bill because of the crucial population assistance that it provides.

Mr. KLECZKA. Mr. Speaker, many of the provisions in H.R. 2508 have my support, including those extending aid to the Baltic nations and financing the international population programs. However, I must reluctantly oppose the Foreign Aid Authorization Act of Fiscal Year 1992 because of section 124, which expands cargo preference.

Section 124 imposes cargo preference on U.S. exports to nations receiving cash transfer assistance, up to 75 percent of the cash transfer amount. Although supporters insist this buy American provisions is good for our businesses, don't be fooled. Cash transfer countries already import eight times as much from the United States, approximately $16 billion in 1990, as the proposed fiscal year 1992 cash transfer $2 billion.

Much worse, though, is the requirement that 50 percent of all cash transfer purchases be shipped on U.S. flag vessels. If enacted, this requirement would place the Great Lakes maritime industry at a tremendous competitive disadvantage, because few ocean-going U.S. flag vessels use Great Lakes ports. No new maritime jobs in the Great Lakes region would be created by this bill. The bill, for the first time, expands cargo preference to commercial exports.

For an idea of how tremendously harmful expanded cargo preference would be in the Great Lakes, it is useful to examine the consequences in our region of cargo preference and the Public Law 480 Food for Peace Program.

For years, a significant amount of food aid products was shipped from the Port of Milwaukee, under awards won from the U.S. Department of Agriculture [USDA] through competitive bidding. Milwaukee had a particularly good year in Public Law 480 shipments in 1985, exporting nearly 175,000 tons of food aid destined for developing countries. However, over the strong objections of myself and other Representatives from the Midwest, Congress raised cargo preference on these shipments from 50 to 75 percent that year. This single action effectively shut out the Port of Milwaukee from the food aid program. On the 75 percent, where Milwaukee was a low bidder, the law forced cargoes to be diverted to non-Lakes ports, at great cost to the taxpayers, to meet the U.S. flag requirement. Of the 25 percent remaining, the cargoes were too small in most cases to be economical in our Great Lakes-St. Lawrence Seaway system.

The Port of Milwaukee gained back some of the food aid trade under terms of a 4-year

Great Lakes set-aside approved by Congress in 1985. Milwaukee won 71,200 tons of food aid shipments competitively in 1989 because of this provision. But Great Lakes food aid shipments plummeted to zero in 1990 after the set-aside expired, because the 75 percent cargo preference requirement was still in effect.

In 1990, Congress again amended cargo preference to give the Great Lakes a fair break in Public Law 480 competition. I am pleased the Port of Milwaukee is beginning to win back some of this valuable business, with about 20,000 tons this year. This is, however, only a faint shadow of the once-thriving food aid business in our port.

Ironically, Great Lakes ports are situated in America's heartland, where the fields and factories producing many of the goods shipped overseas are located. Yet, these ports are virtually locked out of the business of transporting these goods because of cargo preference laws. In fact, many of the goods produced in Great Lakes States are sent across the Nation and shipped from other ports, simply to comply with cargo preference requirements. This makes no sense, economically or otherwise, and must be stopped.

Experience shows the Great Lakes have been hurt under cargo preference. The losses will only increase if the proposed expansion of cargo preference to commercial goods is enacted. Accordingly, I cannot support legislation which includes this provision.

Mr. RAHALL. Mr. Speaker, I am in strong opposition to the foreign aid authorization bill. This bill authorizes the sending of $25 billion in aid to foreign countries while people all over America are suffering. I feel that it is time someone stood up for Americans and opposed giving money away until the needs of our own people are met.

Today, as we consider allowing this tremendous amount of money to be sent overseas, I feel the need to reiterate how Americans, especially those in my district in southern West Virginia, have needs that are not being addressed by this body. Needs such as health care, education, jobs, extended unemployment benefits, infrastructure, clean water, safety, and a healthy environment. These are basic needs. We cannot even begin to address the more far-reaching problems of this country until these basic needs are met.

Mr. Speaker, we are about to try for the third time to get the President to approve an extension of jobless benefits for desperate families. He has already vetoed it twice because he says it busts the budget. I would rather bust the budget over unemployment benefits than over foreign aid any day.

Furthermore, as we are all aware, the health care system in this country is not meeting the needs of our constituents. The infant mortality rate in some rural and urban areas rivals that of third world nations, the same third world nations to which we are proposing to send billions of dollars in aid. Childhood diseases such as the measles, which can be easily controlled through immunization, are reaching near epidemic proportions. The reason for this is that parents cannot afford to take their children for routine doctor visits. Honest, hardworking Americans, your constituents and mine, cannot afford basic health insurance. This is a tragedy. We should not stand for it while their tax dollars are sent to help other countries.

The American education system is also falling apart. We are constantly hearing how the standardized test scores of U.S. students are at an all time low. The adult literacy rate is similarly floundering. What serious steps are being taken to reverse these trends? Sending tremendous sums of money overseas is going to do nothing to improve the competitiveness of this country. It won't raise SAT scores nor will it help those who have been pushed through the system without learning to read, to improve their lives.

Jobs are another precious commodity in this country. How long can we expect the American people to sit idly by while we give away their jobs to Mexico. We also expect them to watch as we send to foreign lands funds which could be spent on much needed job retraining programs. There are needs which are not being met in this country,

Why are we ignoring them?

We ignore these needs as our country literally falls apart around us. Our roads and bridges are crumbling. Yet last week, many of us were fighting for so-called pork projects to improve the highway systems in our areas. Building roads to transport food stuffs or to meet the energy and commerce needs of different areas of the country are not pork projects. These are things which benefit all of us. We wouldn't have to fight so hard to improve the infrastructure of this country if we weren't spending so much on other countries.

Another aspect of our failing infrastructure is the difficulty many communities have in getting water projects completed. Smaller communities can't afford to meet all the water quality standards which have been laid out for them. This doesn't mean that we should pull back on the standards, but we should find ways to help communities meet these standards.

Phasing out the grant programs for much needed water projects was a goal set by this administration and which Congress allowed to happen last fiscal year. Desperately needed flood control or waste water treatment projects are not being completed or even started because towns don't have the tax base available to pay interest and principal on loans they must obtain in order to meet what has been designated as their share. These communities are forced to suffer without these projects. At the same time, here we are considering sending $25 billion to other countries so that they can have their water or food needs met. What about the needs of Americans?

Not only is infrastructure suffering, but the basic safety needs of Americans are suffering too. Crime is at an alltime high. The United States has the highest incarceration rate of the developed world. What are we doing to meet this need? While we just passed one of the toughest crime bills in years, there is so much more which needs to be done. Local law enforcement agencies need better training and better equipment. Drug treatment programs, which help people out of their addictions which perpetuate this terrible problem and also lead to more crime, need more support. We need to understand why people turn to crime and spend more of our money on preventing it. It is not enough to simply load up our jails and prisons. This does not solve the problem. Yet, while we are not able to adequately address the problem of crime in this country, we propose to send $25 billion to foreign lands.

Finally, we must address the needs of our environment. The air we breathe and the water we drink is precious and we must treat it so. We shouldn't waste our natural resources. We should research ways to conserve them. Sending money away will not help preserve our resources, it will do nothing to answer this need.

To sum up, let me say, crime is up, test scores are down. Unemployment is up, the country's infrastructure is crumbling. The health care system is falling apart and the environment is suffering.

Mr. Speaker, are we going to choose to answer the basic needs of our citizens by sending $25 billion to other countries? Not I. I will vote for the people of West Virginia and against this foreign aid authorization.

Mrs. LOWEY of New York. Mr. Speaker, I rise today in support of the foreign aid authorization conference report. This bill includes a number of important provisions, but I want to commend the conference committee for two provisions that will have a profound impact on women's lives.

The first would reverse the Mexico City policy. That policy is, in effect, an international gag rule, which bans U.S. aid to family planning agencies which use funds from other sources for abortion counseling and services. The second would provide $20 million for the U.N. fund for population assistance, which provides contraceptives and contraceptive counseling to women in developing countries. It has been 5 years since the United States has contributed to this important work, and it is well past time to resume our support.

Why is access to family planning so important? Family planning helps couples choose when to start a family and allows women at risk of health problems to delay childbirth. This reduces infant mortality and helps bring exponential population growth under control which threatens the ability of developing nations to move forward. In spite of their importance, family planning programs have not been able to fulfill their potential for dramatic improvements in women's reproductive health. Surveys show that more than 500 million married women worldwide want contraceptive methods but cannot obtain them. The Worldwatch Institute reports that a mere $1.50 invested per woman per year would enable most nations to reduce maternal deaths by more than 60 percent. Considering the payback—saving women's lives, this is a minuscule investment.

As a world leader we can and should be part of international efforts to improve health and curb population growth by sharing our resources with those in need and by enacting policies which do not put unfair strings on what international agencies can do with their own funds.

Yet our President has chosen to ignore this important opportunity and the will of Congress on this point. He has vowed to veto this bill due in part to the family planning provisions. Despite the efforts of the conferees to achieve a compromise on these issues, the administration continues to threaten a veto.

Our best chance of persuading him not to veto this bill is to show strong support for the conference report. If he sees that his veto will not be sustained, I would hope the President would face reality and sign the bill. I urge all of my colleagues to vote yes on this conference report.

Mr. DORGAN of North Dakota. Mr. Speaker, the world has witnessed breathtaking changes in world politics in the past few years. The dismantling of the Berlin Wall has foreshadowed the collapse of the Warsaw Pact and the emergence of democratic forces in the Soviet Union. The strength of these new realities was sufficient to prevent a rightist coup from returning the Soviet Union to totalitarian rule by the Communist Party and the Soviet military intelligence establishment. The breakdown of the cold war order also permitted an unprecedented degree of cooperation between the United States and the Soviet Union at the United Nations during the Persian Gulf war.

Less evident from network news reports, is the stirring of grassroots movements and the establishment of democratic governments in nations across the Third World. From Central America and the cone of South America to the Horn of Africa and South Africa the voice of the people is being heard in remarkable ways. People are demanding and getting an end to authoritarian rule. They have been less successful in reversing pressure from the outside to fight poverty with structural adjustment and the drug trade with military aid.

Yet I fear that our Government has not yet recognized the importance of these profound changes. Our military budget is hovering near $300 billion, despite a radical reduction in the Soviet threat and sharp increase in our own federal deficit—another kind of threat to national security. Our foreign aid program remains the captive of security assistance, which is often mistakenly provided as an antidote to drug trafficking. And our Government supports the harsh structural adjustment campaigns of international financial organizations even though they often wreak havoc on the poor without actually improving a nation's economic performance.

I am also troubled that some of these same failures seem to have surfaced in the conference report on the International Cooperation Act of 1991—the foreign aid bill. I regret this because I voted for the bill in the House last summer.

POSITIVE FEATURES

The House adopted a Bereuter-Dorgan-Wheat amendment to incorporate the essential provisions of our bill, the Horn of Africa Recovery and Food Security Act. This legislation provided a comprehensive approach to relief, conflict resolution, and development for this troubled region of Africa.

The Horn chapter broke new ground by emphasizing the role of grassroots organizations in bringing about relief, reconciliation, and recovery. It barred security aid to the region and set stringent tests which Horn governments must meet in order to qualify for bilateral U.S. economic aid. Instead, it funneled development aid through private and international organizations with solid track records of working with the poor and the powerless.

The bill also includes my amendment to prohibit bilateral military aid in cases where it might impede the achievement of critical development goals such as poverty alleviation, economic growth, and democracy. A related amendment required coordination to ensure that economic assistance provided to countries took account of our security program in the same nation. The thrust of this amendment was to stop the pernicious trend of disrupting and further inproverishing developing nations with misguided and excessive amounts of military aid.

As the chairman of the International Task Force of the Hunger Committee, I deeply appreciate the cooperation of Chairman DANTE FASCELL and ranking minority member BILL BROOMFIELD and others in agreeing to these amendments. I would also note the committee's assistance in accepting Hunger Committee Chairman TONY HALL'S amendment on the right to food.

Overall, the bill contained some very positive measures. It set forth an innovative and progressive framework for aid which explicitly targeted poverty reduction and food security. It marshalled resources to carry out these goals in the form of programs to promote agriculture, nutrition, health, education, and women in development—to name but a few. It provided critical aid for Israel and Egypt, who both played instrumental roles in winning the Persian Gulf war. At the same time, it contained a needed ban on arms sales and transfers to the Middle East.

TROUBLING CHANGES

Consequently, I was disconcerted to see some of the changes which emerged from the conference—just after the summer's events which put the nail in the coffin of the cold war.

First, the conference reverted to its old way of boosting military aid above the House level. I simply can't understand or justify a $74 million increase in military aid at a time when security threats to ourselves and our allies are diminishing in the wake of the Warsaw pact collapse, dramatic progress on arms control, and the failure of the military coup in the Soviet Union.

Indeed, the overall spending in the bill is nearly $100 million over the House level. In the face of a $400 billion deficit, I must oppose this change.

If an increase were in order, it should be for food aid—which is authorized in another bill. Despite the strides we have made in fighting hunger, the World Bank estimates that the world now has 950 million chronically malnourished people—or twice as many as 10 years ago. Even then, I would only advocate an increase if offset by security aid cuts.

Some will argue that the cold war is not the issue, but the drug war is. In other words, we need military aid to help recipient governments put the screws to drug lords. In rebuttal, I call to my colleagues' attention a rivetting article. "Unholy Alliance: Latin American Militaries and the War on Drugs."

Author Tina Rosenberg, a fellow with the Overseas Development Council, argues persuasively that military aid does not advance the war on drugs but does create the unwanted side effects of militarization, reduced democracy, and human rights abuses. She points out that Andean governments have resisted the military strategy of fighting the drug war. Unfortunately, they have been forced to accept military aid as a precondition for receiving economic aid. Moreover, Rosenberg contends that military aid is "* * * often does not go to fight drugs, but into what for most Latin America militaries is a much higher priority: fighting guerrillas. So we are back full circle to focusing on leftist threats to established governments—whatever the record the human rights record of either side. Even worse, we have a strategy that curtails instead of promoting economic development.

I might point out my amendment to ban military aid wherever it would undercut development goals was weakened in the conference. The bill language was dropped in favor of report language, which has less punch in bringing the administration into line with congressional intent. I believe the stronger message would have helped to advance development and curb such practices as the militarization of the drug war, which has not manacled the drug lords, but which has fostered human rights abuses.

I also believe it unwise to drop the House ban on arms sales and transfers to the Middle East. We have been learning to our chagrin and alarm how close Iraq came to producing nuclear weapons with the active collaboration of western firms. Just having put American lives and treasure on the line in the Persian Gulf war, we of all nations ought to lead the charge to curb weapons proliferation in the tinder box of the Persian Gulf. That's certainly a key way to help the Madrid Peace Conference bear some tangible fruit.

My other major misgiving about the conference report is the inclusion of a $12 billion quota increase for the International Monetary Fund, which the House did not have in its bill. The provision has not been the subject of hearings, let alone consideration on the House floor. This doubles the size of our foreign aid bill at a time when we should be doing more with less. Instead, we may be doing less with more. Here's why.

For one thing, we can expect defaults in the billions. The Soviet Union, now an associate member of the IMF, has a foreign debt of $60 billion. It may become a full member and qualify for IMF and World Bank aid. It's not clear whether the Soviets, now nearly bereft of gold holdings, will be able to meet debt service requirements of $10 billion coming due by year's end.

This raises the specter that IMF funds will be used to pay off these bad debts to commercial banks as the precondition for the banks to advance new loans. Richard Feinberg, vice president of the Overseas Development Council, has properly criticized this house of cards aid program. He is quoted in a Hobart Rowen column in the Washington Post as asking:

"Why should United States taxpayers pump money into the Soviet Union"—via United States contributions to the IMF and World Bank—"simply to recycle that money to German banks?"

It is a timely and very expensive question. And I am worried that the conference report may provide exactly the wrong answer.

There's another reason to oppose this enormous quota increase without the benefit of hearings, debate, and amendments. Call it structural adjustment. This is the wrenching process by which developing nations are obliged to cut essential social programs, to eliminate trade barriers, and devalue currencies in order to obtain IMF and World Bank assistance in creating growth-through-export economies.

A recent foreign policy article, "Development: the Market is Not Enough," shows why this IMF/World Bank strategy is domed to failure. It is impractical due to growing protectionism and increased substitution for raw material exports on the part of developed nations. It also creates adverse ecological impacts and hurts the poorest in developing nations. Even worse, it doesn't work. The authors document that the World Bank's own findings showed that, after structural adjustment programs, 15 African countries were worse off in a number of economic categories.

Reform is not the issue. Many developing nations must reform their economic policies and many have done so without the strictures of the IMF. But there are no shortcuts to development, as the authors point out. Ecological sustainability, local participation, and poverty alleviation must be part of the process.

My final concern is the expansion of cargo preference which requires that 50 percent of goods purchased with U.S. aid be shipped on U.S.-flag vessels. I have no objection to the goal of this provision, which is to protect the American maritime industry. But the practical result of the requirement is perverse: it does not help the maritime industry but it does hurt American farmers, exporters, and the poorest of the poor.

This result occurs because cargo preference has proven totally ineffective in stimulating the American maritime industry. After years of this shipping requirement our commercial fleet is in worse shape than it's ever been. Instead of this unwieldy subsidy via foreign aid, we should provide direct incentives through the transportation budget. As it is, we end up forcing poor nations to double their shipping costs for U.S. goods, which means they get fewer of the resources they need from our aid programs. It also means fewer farm products and other commodities are exported because shipping costs eat into the amounts left for product purchases. So this measure is a killer for farmers and other exporters of American goods. In a word, it is anticompetitive and self-defeating.

THE RIGHT KIND OF AID

So I again say that we should do more with less and not the reverse. We should focus our efforts on aid that works. On food for the hungry in creative "food for work," "food for health," and "food for work" programs. On development programs which involve local people in the causes of universal immunization, literacy, and food security. On security aid to a well-defined list of key allies who can demonstrate compliance with the tests of human rights and democracy.

I understand that many of the problems which I have alluded to result from the old order thinking of an administration that portends to want a new world order. Without leadership from the President, Congress itself cannot be expected to rewrite the foreign aid bill.

Nevertheless, I want to see this country fashion the right kind of foreign aid. This conference report contains many provisions which meet that test. However, it has slipped away from the House position on key issues which compel me to oppose it in its present form.

Mr. CONDIT. Mr. Speaker, I rise today to explain why I will be voting against the conference report on foreign assistance authorization for fiscal year 1992 and fiscal year 1993.

Mr. Speaker, the United States is in the midst of a serious recession. The Federal deficit has reached an all-time high. Millions of Americans cannot afford health insurance. Our school system is underfunded to the point that we have fallen far behind other countries in scholastic achievement. We rely on foreign technology instead of supporting American businesses. The unemployment rate continues to rise while drugs and crime continue to run rampant in our cities. It is absolutely imperative that we begin to rebuild America by reinvesting in America.

While certain foreign aid requests seem reasonable, it has become increasingly evident that domestic economic realities force Congress to base further foreign military aid upon well thought out criteria which recognizes American interests in a specific region. Financial obligations must only be pledged with American international economic constraints.

Clearly, these factors were not considered when drafting this conference report. For example, the agreement authorizes $2.1 billion in aid to Egypt for fiscal year 1992 and the same amount for fiscal year 1993, which includes $1.3 billion in military aid and $815 million in economic aid. This enormous financial commitment cannot be made when children in the United States are growing up undernourished and undereducated, when families are forced to endure inadequate housing and health care, and when this body has to debate for weeks, a simple extension of unemployment benefits.

It is our responsibility, as elected representatives of the people, to carefully scrutinize where and how American tax dollars are spent. I am convinced that the people of this Nation want their hard-earned money to stay right here in the United States, rather than be given away to governments in the Middle East, Latin America, or Eastern Europe.

We simply can no longer afford to grant extended funds to foreign countries. Americans are facing tough economic challenges. Let us ease their burden by voting against this foreign assistance authorization. America's future depends on it.

Mrs. MORELLA. Mr. Speaker, I rise in support of the conference report on the foreign aid authorization bill. Unfortunately, some Members are arguing that the conference report should be defeated because of several international family planning provisions that could lead to a Presidential veto. I urge my colleagues to again demonstrate their support for these critical provisions, and to urge the President to sign the bill.

Overpopulation is one of the most critical environmental problems facing the world today. Voluntary family planning assistance is absolutely critical to population control. What we do in this decade will determine the population growth for the next century.

I urge all of my colleagues who are concerned about the quality of life of future generations to vote for the conference report. It is a vote that will go a long way toward determining the condition of the world that our children and grandchildren will inherit from us.

Mr. ALEXANDER. Mr. Speaker, I rise in opposition to H.R. 2508.

I do not argue with the validity of the programs contained in the bill.

My argument is with priorities. America should come first!

America has so many unmet needs. Middle-class families all across this country are scrimping to send their children to college, in fact, just to make ends meet.

Our roads and bridges are crumbling.

School districts are just getting by or even closing down early because they have reached the end of their fiscal rope.

People are going without health care because they can't afford it.

Why can't the Federal Government adequately address these issues?

A lack of funds, we are told. If that is the problem, I cannot vote to send almost $25 billion overseas.

I fully realize that we are members of the global community and that we must participate with our partners in that community.

But, I see needs unmet in this Nation, and, for me, America and her people take top priority.

I do not apologize for that position.

If our Government was able to meet its obligations to our own citizens, things would be different.

But, those obligation aren't being met.

Until the Federal Government begins to keep its promise to Americans, I cannot vote to continue this level of foreign aid.

I am not an isolationist, but I am a realist. The people in my district need help in improving the economy and the overall quality of life. But, they are being told they must do without.

There isn't enough money.

For me, it is a matter of priorities—either address the needs at home or those abroad.

And, Mr. Speaker, the whole question of writing off debt owed to America by foreign countries is an issue which is troubling to the extreme.

Time and again, I have read that the administration has written off millions and millions of dollars in debt, only to be replaced by new loans which, I am sure, will be written off when they come due.

It is intolerable, in my view, to write off this foreign debt while telling American taxpayers that the cupboard is bare and that their needs can't be met.

The administration tells Arkansas farmers who lost their wheat crop that we can't afford disaster assistance for floods, but, at the same time, it forgives millions in foreign debt.

That is wrong.

America pays a big share of the defense costs for some of our most formidable foreign competitors—Germany and Japan—providing them free security so that they can beat our socks off in the world market.

They take the money and better educate and train their people, provide more assistance to business and industry, maintain a quality infrastructure and do more research and development.

Their standard of living improves.

Ours deteriorates.

It is, Mr. Speaker, a matter of priorities.

I was one of the authors of the Brooke-Alexander amendment which required a cutoff of aid when a foreign country defaulted in its debt to America.

But, the Reagan administration and now the Bush administration restructured many of these loans to circumvent the time requirement and the intent of Congress.

Again, Mr. Speaker, I am well aware that a good case can be made for each and every item in this bill.

I do not argue with their validity.

I do argue with the priorities.

And, with tight budgets and unmet needs at home, my priorities are here in America.

Mr. POSHARD. Mr. Speaker, I rise in opposition to the conference report on H.R. 2508, the foreign assistance authorization for fiscal years 1992 and 1993.

I do so not out of any hostility toward our friends and allies in foreign lands. I am perfectly aware of the role the United States plays as a leader on human rights, economic development and democracy.

But I am seriously concerned with our ability to maintain that position if we fail to address very serious needs here at home. I simply believe we must invest in our domestic resources and more aggressively and effectively meet our domestic challenges, before we can entertain any notion of further foreign assistance.

This bill authorizes $12.5 billion in each fiscal year to address a host of concerns around the world. In times of plenty, if our budget were in order, if 37 million Americans had health care, and without double-digit unemployment in southern Illinois, I might be inclined to view this bill more favorably. But not today. Not when communities in my district go without loans and grants to build sewer systems or make basic improvements to other public facilities. Not when our prisons are operating at twice the safe population level. And not when the opportunity for the next generation of Americans to find meaningful work and support their families is seriously endangered by our budget deficits and trade policies.

I urge my colleagues to turn their eyes toward the men, women and children of this country, and urge them to invest here in America first. Only when we are secure in our own homes and communities can we honestly influence events in the rest of the world.

Mr. PORTER. Mr. Speaker, I would like to commend Mr. FASCELL and Mr. BROOMFIELD and members of the committee for their fine work in shepherding this bill, which contains an incredible number of very difficult and complex issues, through the House and conference.

Several provisions in this bill are worthy of special mention. The authorizers have again included $15 million for bicommunal projects and programs to bring the people of Cyprus together. This August, during his visit to Greece, the President indicated his renewed commitment to rectifying the abominable division of the island which has existed since the Turkish invasion of 1974. Bicommunal projects are an important way to get the necessary dialog going between the two sides who have been separated for 17 years and, I believe these projects are an important part of the solution to the division of the island.

I am also very pleased that the conference has been sensitive to the complex situation in the Eastern Mediterranean and maintained the 7:10 ratio in funding between Greece and Turkey, both of which were stalwart allies during the gulf war.

The committee has again fully funded the economic and military assistance accounts for our strongest and most dependable ally in the Middle East, Israel. In the face of the immigration of hundreds of thousands of immigrants from the Soviet Union, Ethiopia, and elsewhere to Israel this funding is increasingly important and I commend the committee for supplying these much needed funds to help the Israelis meet their economic and defense needs.

I also want to thank the committee for breaking new ground on population issues in this bill. The committee included three provisions that are a strong indication that Congress recognizes the horrible consequences, both environmentally and in human terms, of population growth that is out of control.

First, the committee authorized $300 million for population-related programs. This is a substantial increase over last year and will go far in providing family planning services and commodities to women who want to have control over the size of their families and the spacing of their pregnancies, but who never had the capability to do that before.

The bill also provides $20 million to the U.N. Fund for Population Activities [UNFPA]. After years of debate between the administration and those of us here in the Congress who support family planning, we have finally reached an agreement on how the United States can participate in the world's most comprehensive family planning effort, UNFPA, while ensuring that no funds, in any way, could possibly be used for any activity even remotely associated with abortion related services. I am very pleased that this issue has been worked out and I commend all of the members of the committee for willingness to persevere and find a compromise.

Finally, I strongly support inclusion of the provision overturning the Mexico City policy, which has hampered United States family planning efforts around the world since 1984. There is a crying need for family planning services in developing nations that is going unmet because this policy has been in place. Removing Mexico City, sometimes known as the international gag rule policy, simply allows nongovernmental organizations operating abroad to explain to women all of the options that are available to them, including abortion, without forfeiting United States support. Removing this roadblock will allow the United States to give family planning the attention it demands in the nations with the greatest need.

Mr. Speaker, I thank the gentleman for giving me time and again I commend Messrs. FASCELL and BROOMFIELD for their fine work.

Mr. GRADISON. Mr. Speaker, I rise in opposition to H.R. 2508, the International Cooperation Act of 1991.

In 1985, after 4 years of wrangling, the Congress finally enacted a foreign aid authorization bill that the President could sign. There was considerable discussion then that passage of that bill might auger a new period in which the Congress and the President would be able to examine and adjust, perhaps even reform, the U.S. foreign assistance program on a normal legislative schedule.

Unfortunately, that has not been the case. The 1985 legislation has proven to be an aberration. Over the past 6 years, Congress has resumed a pattern of burdensome micromanagement and excessive earmarks that have largely been responsible for the eventual defeat of foreign assistance authorization bills. There was a time, a mere 2 years ago, when the debate on the foreign assistance program centered on the issue of reform. While some progress has been made in revising the U.S. foreign assistance program, much more needs to be done. The President made that case clearly in his letter of April 12, 1991.

Although the House version of H.R. 2508 did not squarely address the reform issue and contained provisions with which I disagreed, I voted to send the bill to conference in the hope that it could be salvaged. My hope was misplaced.

The conference report on H.R. 2508 retains provisions effectively overturning the Mexico City policy as well as earmarking funds for the U.N. Population Fund [UNFPA] that are unacceptable to the President. The conferees were well aware that these provisions would cause the President to veto the bill.

Of added concern, the conferees adopted provisions on cargo preference that are worse, in my view, than those contained in the House version of H.R. 2508. The expansion of cargo preference requirements will reduce the beneficial effects of foreign assistance by requiring recipient countries to spend more on shipping costs by using U.S. bottoms. Extending cargo preference to commercial sales would further harm the competitiveness of American exports, particularly in the agricultural sector. In addition, the cargo preference provisions of H.R. 2508 violate the long-standing compromise on this issue that was reached in the 1985 farm bill. The conferees were also aware that these provisions would cause the President to veto the bill.

Beyond these two significant policy issues, I concur with many of the observations made by Under Secretary Lawrence Eagleburger in his letter of October 2, 1991. In several areas, particularly the provisions in the bill on our antinarcotics programs, the micromanagement of policy is excessive.

I also concur with Secretary Eagleburger's expression of concern about title II, chapter 5—specifically section 282—which attempts to establish the parameters for American policy in pursuing an arms control regime in the Middle East. The President has taken the initiative in this area and the administration reports that progress is being made. The proper response of Congress for now, in my view, should be to be supportive of the administration's efforts and not attempt to micromanage the early stages of our diplomatic initiatives.

From a budgetary perspective, although the bill is within the cap established under the Budget Enforcement Act, I am disappointed that the Roth amendment, adopted by the House, concerning the cancellation of authority to obligate funds that have remained unused after 3 years, except in the cases of long-term construction projects or in the event of unforeseen delays in the completion of projects, was dropped in conference. In my view, we should empty the pipeline of old funding in an effort to reduce the deficit.

I am also disappointed and concerned with the attempt in H.R. 2508 to undercut the credit reform provisions of the budget agreement. In 1990, Congress made substantial progress in addressing the proper budgetary treatment of Federal credit programs thereby putting Federal credit programs on an equal footing with noncredit activities. The Federal Credit Reform Act of 1990, a part of the budget agreement, provided that budget authority for the subsidy value of credit programs would have to be provided for through the appropriations process. It was expected that this would mean direct appropriations.

Section 117 of H.R. 2508 violates the spirit, if not the letter, of the Federal Credit Reform Act. Section 117 permits the Overseas Private Investment Corporation [OPIC] to transfer up to $18.3 million from its noncredit revolving fund to pay for certain estimated subsidy costs and for other purposes—$1.5 million for the subsidy cost of OPIC's loan guarantee program; $4.8 million for its direct loan program; and $12 million to pay for credit-related administrative expenses. By subjecting the authority to spending authority provided in advance in appropriations acts, the provision is worded very cleverly. The language technically avoids violating the Budget Enforcement Act, and permits OPIC to carry out its activities in a manner which was not intended by the Federal Credit Reform Act.

There are two effects of section 117. First, H.R. 2508 would effectively authorize OPIC to defund its reserves against expected losses in its noncredit programs. Admittedly, OPIC's noncredit revolving fund traditionally has had a positive balance, but it is poor program management to allow reserves against losses to be drained for this purpose.

The second effect of section 117 is that it saves the Committee on Foreign Affairs $18.3 million in budget authority that could then be used elsewhere under the international affairs discretionary spending cap. The OPIC provisions remind me of the budgetary legerdemain that all too often has passed for fiscal policy around here. The zenith of the use of "blue smoke and mirrors" was under Gramm-Rudman-Hollings, but I see many signs of efforts to game the new budget agreement.

These provisions are bad public policy which, in their own limited way, further undermine the budget agreement and continue the erosion of fiscal discipline necessary if we are ever to get out from under the deficit problem.

Mr. Speaker, in conclusion, I would also like to express my exasperation with a comparatively minor, yet important, provision of the bill. Section 713 concerns Haitian sugar cane harvesters in the Dominican Republic. I agree completely with the forceful statement of American policy in section 713(a) to encourage the Government of the Dominican Republic to improve repect for internationally recognized standards of human rights in the treatment of Haitian laborers employed in the sugar industry in the Dominican Republic.

I also agree strongly with the provisions of section 713(b) which withholds a portion of the economic support assistance provided to the Dominican Republic in fiscal year 1992 and fiscal year 1993 until the President reports to the Congress on the steps taken by the Dominican Republic to comply with the human rights, labor, and other standards listed in section 713(a).

However, section 713(c), which holds out the prospect that the United States might increase the sugar quota of the Dominican Republic in fiscal year 1992 and fiscal year 1993, if significant progress on the treatment of Haitian harvesters is made, is another example of the general misunderstanding of the operation of the United States sugar program. No one in this House should be confused about this issue.

This subsection of the bill is an empty promise. Any increase in the allocation of the sugar quota to the Dominican Republic for this purpose would be discriminatory and a clear violation of our obligations under the General Agreement on Tariffs and Trade [GATT]. We have enough problems with other parties to the GATT already as a result of our sugar policy. This subsection adds to those problems by creating the impression that the United States is not prepared to fulfill its obligations under the agreement. I agree with the intent of section 713 and I am prepared to support efforts to improve conditions for Haitian harvesters in the Dominican Republic, but this option simply is not available.

For all of these reasons, both major and minor, I urge my colleagues to defeat this conference report.

Mr. FALEOMAVAEGA. Mr. Speaker, I rise in strong support for the House and Senate conference report which increases our foreign assistance program to the South Pacific from $9.25 million to $19.25 million.

Mr. Speaker, the United States over the past 3 years has exported over $1 billion in goods to the South Pacific region. But in return, the United States is making no effort to assist a region that has been a strong supporter of the United States since the end of World War II.

As world populations increase and food supplies continue to diminish, the South Pacific region whose oceans contain over 25 percent of the world's food resources, will become one of the most strategic areas in the world.

It is definitely in our interests to be a little more sensitive to the modest needs of a region which contains some of the least developed countries on the face of this earth.

Is it unreasonable to ask for an extra $10 million to provide for the needs of all the women and children of 13 separate island countries?

Mr. Speaker, I say it is not unreasonable for us to ask the United States to stand by our friends who have stood with us since World War II, and despite their poverty, continue to conduct some of the most democratic governments ever known to man.

Mr. Speaker, let me conclude by saying that the goodwill that the United States has always enjoyed with residents of the South Pacific region is quickly diminishing. When compared to what we are giving to some of the countries who have constantly undermined the interests of the United States, this request is indeed modest.

I am sure that many of my colleagues will agree with me that it is time to take care of our friends while we can still call them friends.

Mr. HORTON. Mr. Speaker, for what I believe is the first during my long tenure in Congress, today I voted against the annual foreign aid authorization bill. I voted in opposition to H.R. 2508, the conference report to accompany the Foreign Assistance Authorization Act for Fiscal Years 1992 and 1993, which failed to pass the House of Representatives this evening by a vote of 159 to 262.

My vote against H.R. 2508 was cast in protest to the delay in final action of H.R. 3543, the dire emergency supplemental appropriations bill passed by the House yesterday. The dire emergency supplemental would provide much needed Federal funds for the areas of my congressional district which suffered a devastating ice storm earlier this year.

H.R. 3543 could also provide assistance to farmers in my district who suffered crop loss as a result of natural phenomenon. Without the funds in this bill, some of these farmers may not be able to continue to operate through the next growing season.

Some of my colleagues in the House have criticized the President, commenting that he is more interested in foreign policy than what is occurring to Americans right here at home. I do not believe this is true. I know that President Bush is very concerned about the welfare of our ice storm victims because I spoke with him personally about the situation. I called upon the Congress to expedite final action of the dire emergency supplemental appropriations for fiscal year 1991 and for the President to sign the measure into law at the earliest possible date.

Mr. LEVIN of Michigan. Mr. Speaker, I want to applaud Chairman FASCELL and the Foreign Affairs Committee for recognizing the importance of the export promotion programs of the International Trade Administration.

I understand that concerns have been raised about the bill's allocation of funds for these programs, and I would hope that these matters are resolved in a manner that allows the most efficient use of these limited resources.

The end of the cold war has focused many American companies on new business opportunities abroad. But while exports could mean the difference between success and failure for a wide range of U.S. industries, many small- and medium-sized businesses lack the contacts, language skills and resources to venture into new foreign markets. That's where strong export-promotion programs can make the difference.

The ITA this year announced a series of new programs for Eastern Europe in which the U.S. Government acts as a facilitator for American businesses seeking export opportunities. The American Business Center in Warsaw provides technical business services and temporary office space to the U.S. business community. The ITA also funds private sector consortia of American businesses that provide promotional, marketing, and trade services to members doing business in Eastern Europe.

I introduced legislation last year to create pilot programs—called U.S. Commercial Centers—that were similar to the ITA initiatives. I will soon introduce similar legislation, with a focus on the Baltic Republics.

We must continue to bolster and expand the export-promotion programs of the ITA. Any such funding is an investment in our future.

Mr. SKAGGS. Mr. Speaker, I'd like to express my strong support for two provisions in the foreign aid reauthorization bill that will restore the United States role as a responsible world partner in international family planning efforts.

The conference report before us today prohibits the administration from continuing to implement the so-called Mexico City policy, which has had the effect of blocking funding U.S. funding for major international family planning organizations. It also provides $20 million for the U.N. Population Fund.

Addressing the effects of rapid world population growth on the global environment and resource supply is one of the greatest challenges facing the world community. The Earth's population, now approximately 5.2 billion, rose in 1989 an estimated 87.5 million, maintaining a growth rate that could double the number of human beings on the planet by the year 2025.

As the world's population increases, so, too, does the strain on the world's already diminishing natural resources. As a world leader, the United States has a responsibility to lead the world in addressing one of the most serious threats to decent human subsistence on this planet.

For those of my colleagues who may see this vote as a proabortion vote, let me make one thing very, very clear.

These provisions are intended to reduce the numbers of abortions worldwide. The only way to prevent abortions is to reduce unwanted pregnancies. And to do that, we need to dramatically increase funding for family planning information and services both here and abroad. The conference report takes an important first step in that direction.

I urge my colleagues to support the conference report's provisions on international family planning. Let's bring the United States back to the international table.

If you oppose abortions you must support universal access to voluntary family planning. Anything less is just plain hypocritical.

Ms. SLAUGHTER of New York. Mr. Speaker, I will vote no on the conference report on H.R. 2508, the foreign assistance authorization for fiscal year 1992 and 1993.

I do so because I cannot support additional foreign aid when the Federal Government is not meeting its domestic emergency needs. Virtually every community in my district is still desperately waiting for disaster assistance promised to them in March to help them cope with the ravages of a devastating ice storm.

Mr. HUTTO. Mr. Chairman, I rise to voice my strong opposition to H.R. 2508, the foreign assistance authorization for the fiscal years of 1992 and 1993.

As you know, included in H.R. 2508 are provisions which prohibit the further implementation of the Mexico City policy. The Mexico City policy, which prohibits international family planning funds from going to private organizations which support abortion, has stood as a representation of the American value for life in international activities. Prior to the adoption of this policy, U.S. money had been used by a number of groups to promote abortion as a means of family planning throughout the world. Recipients of this money were free to use U.S. money to promote any method of family planning with virtually no regulation.

I believe that through the Mexico City policy the United States exhibits a great deal of strength in terms of leading the world to accountable and moral family planning programs. Furthermore, by not permitting U.S. funding for abortions, we have the opportunity to encourage foreign nations and family planning organizations to utilize alternatives to abortions or other forms of birth control.

Although opponents argue that international family planning assistance is reduced by the Mexico City policy, only a few organizations have been denied assistance. The remaining funds are then provided to other eligible organizations. Thus, the funding has not been reduced. It is also interesting to note that opponents of the policy assert that eliminating the Mexico City policy will decrease the need for abortions. I disagree. In fact, the United States experienced a dramatic increase in abortions after abortion was legalized.

In the past, there have been a number of attempts to overturn the Mexico City policy. However, the Congress and the President have justifiably rejected these efforts. At a time when Americans are increasingly disturbed by United States dollars being provided to foreign countries, I do not believe it is proper to discontinue the Mexico City policy. Specifically, taxpayer dollars should not be used to subsidize abortions in other nations. In addition, our current budget deficit and national economic conditions demand that we maintain accountability of our foreign expenditures. Therefore, Mr. Speaker, I will oppose H.R. 2508 and urge my colleagues to do so as well.

Mr. LENT. Mr. Speaker, I rise to express my reluctant opposition to the conference report on the fiscal years 1992 and 1993 Foreign Assistance Authorization bill, H.R. 2508. In considering my vote today, I had to weigh my longstanding support for the foreign aid programs contained in this bill, particularly with respect to the State of Israel, and my opposition to its endorsement of coercive abortion policies and the use of abortion as a means of birth control.

This has been a difficult dilemma for me to resolve. I have long believed that the United States should aggressively provide assistance to the nations with whom we have maintained special ties. I also recognize that with the collapse of communism now all but complete, we have entirely new obligations to nurture democracy in the countries where it is struggling to take hold.

Furthermore, Mr. Speaker, I am particularly aware of our special responsibility to Israel as it absorbs hundreds of thousands of refugees from repression and intolerance in the Soviet Union, Ethiopia, and other countries. As my colleagues know, I worked for years to win the freedom of persecuted refuseniks and their families in the hope that one day all Soviet Jews would have the right to emigrate. With this goal largely realized, the final phase of our efforts on this issue should be to assist the immigrants in their transition to a new and better life in the Jewish State.

Israel remains our true friend and ally in the Middle East, the region's bastion of democracy. I want to make it clear that I will continue to vigorously support prompt passage of economic and military assistance for the State of Israel, including the Israeli Government's recent request for loan guarantees.

Mr. Speaker, I would also like to take a moment to express my support for section 124 of this legislation. This section retains the cash transfer reform provision—previously passed by both Houses—that is intended to encourage foreign governments that receive cash aid to buy American goods and services.

I have always believed that the American people are entitled to see that the tax dollars that go to foreign countries return in the form of purchases of U.S. goods and services. Not only will the U.S. merchant marine be helped from the implementation of this provision, but countless American manufacturers and farmers will also reap the benefits. No longer will aid recipients take American cash aid and go to Argentina to buy grain, or Germany to buy trucks, or France to buy tractors. Under this provision, these countries will buy American.

Mr. Speaker, that is my dilemma today. As strongly as I value our friendship with Israel and the need for cash transfer reform, I cannot vote in favor of legislation that places little value on the sanctity of human life. By lending legitimacy to organizations and groups promoting, performing, and coercing abortions, this measure would betray the trust of American taxpayers and irreparably tarnish all of the worthy goals of our foreign aid programs.

I am compelled to express my unalterable opposition to two provisions of the conference agreement intended to change U.S. policy concerning abortion. First, the measure would allow up to $20 million from American taxpayers to go to the United Nations Population Fund which continues to operate in the People's Republic of China, the home of the most heinous and most widespread coercive abortion policy ever devised. Second, it would repeal the Mexico City policy which for years has safeguarded U.S. taxpayer's from subsidizing those organizations around the world that seek to promote abortion as a family planning tool.

Mr. Speaker, President Bush has indicated that he will veto this bill in order to prevent the pro-abortion provisions from being implemented. Consequently, I hope that we will not waste valuable time and effort in a meaningless political exercise. Let's send the President a foreign aid bill that protects America's interests and the sanctity of human life.

Mr. FASCELL. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 159, nays 262, not voting 12, as follows:

[Roll No. 354]

YEAS—159

Abercrombie
Ackerman
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Aspin
Atkins
AuCoin
Bacchus
Beilenson
Berman
Boehlert
Bonior
Borski
Brewster
Brown
Bustamante
Campbell (CA)
Cardin
Carper
Carr
Chandler
Cox (IL)
Coyne
de la Garza
DeLauro
Dellums
Dicks
Dingell
Dixon
Downey
Dwyer
Dymally
Eckart
Edwards (CA)
Engel
Evans
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Frank (MA)
Frost
Gallo
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Gonzalez
Gordon
Green
Hall (OH)
Hamilton
Hertel
Hoagland
Hochbrueckner
Houghton
Hoyer
Johnson (CT)
Johnson (SD)
Johnston
Jones (GA)
Kennedy
Kennelly
Kolbe
Kopetski
Kostmayer
Lancaster
Lantos
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lowey (NY)
Machtley
Markey
Martinez
McCurdy
McDermott
McHugh
McMillen (MD)
McNulty
Meyers
Miller (WA)
Mineta
Mink
Molinari
Moody
Moran
Morella
Mrazek
Nagle
Oakar
Olin
Olver
Owens (NY)
Owens (UT)
Pallone
Panetta
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Pickle
Porter
Price
Rangel
Ravenel
Reed
Richardson
Riggs
Rose
Rostenkowski
Roukema
Roybal
Sabo
Sawyer
Saxton
Scheuer
Schiff
Schroeder
Schumer
Serrano
Shays
Sikorski
Sisisky
Skaggs
Skeen
Smith (FL)
Smith (IA)
Smith (TX)
Snowe
Solarz
Stokes
Studds
Swett
Swift
Synar
Torres
Torricelli
Towns
Unsoeld
Vento
Visclosky
Waxman
Weiss
Wheat
Wise
Wolpe
Wyden
Yates
Yatron
Young (AK)
Zimmer

NAYS—262

Alexander
Allard
Anderson
Annunzio
Anthony
Applegate
Archer
Armey
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Bennett
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Boucher
Brooks
Broomfield
Browder
Bruce
Bryant
Bunning
Burton
Byron
Callahan
Camp
Campbell (CO)
Chapman
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Costello
Coughlin
Cox (CA)
Cramer
Crane
Cunningham
Dannemeyer
Darden
Davis
DeFazio
DeLay
Derrick
Dickinson
Donnelly
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Dreier
Duncan
Durbin
Early
Edwards (TX)
Emerson
English
Erdreich
Espy
Ewing
Fawell
Fields
Ford (MI)
Ford (TN)
Franks (CT)
Gallegly
Gaydos
Gekas
Geren
Gillmor
Gingrich
Goodling
Goss
Gradison
Grandy
Guarini
Gunderson
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hobson
Holloway
Horn
Horton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (TX)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kildee
Kleczka
Klug
Kolter
Kyl
LaFalce
Lagomarsino
LaRocco
Laughlin
Leach
Lehman (CA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Long
Lowery (CA)
Luken
Manton
Marlenee
Martin
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McDade
McEwen
McMillan (NC)
Mfume
Michel
Miller (CA)
Miller (OH)
Moakley
Mollohan
Montgomery
Moorhead
Morrison
Murphy
Murtha
Myers
Natcher
Neal (MA)
Neal (NC)
Nichols
Nowak
Nussle
Oberstar
Obey
Ortiz
Orton
Oxley
Packard
Parker
Patterson
Paxon
Pease
Perkins
Peterson (MN)
Petri
Pickett
Poshard
Pursell
Quillen
Rahall
Ramstad
Ray
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Russo
Sanders
Sangmeister
Santorum
Sarpalius
Savage
Schaefer
Schulze
Sensenbrenner
Sharp
Shaw
Shuster
Skelton
Slattery
Slaughter (NY)
Smith (NJ)
Smith (OR)
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stump
Sundquist
Tallon
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Thornton
Traficant
Traxler
Upton
Valentine
Vander Jagt
Volkmer
Vucanovich
Walker
Walsh
Washington
Waters
Weber
Weldon
Whitten
Williams
Wilson
Wolf
Wylie
Young (FL)
Zeliff

NOT VOTING—12

Boxer
Edwards (OK)
Glickman
Hall (TX)
Hopkins
Jefferson
Lloyd
Matsui
McGrath
Rowland
Slaughter (VA)
Tanner

□ 1607

The Clerk announced the following pairs:

On this vote:

Mr. Glickman for, with Mr. Tanner against.

Mr. Jefferson for, with Mrs. Lloyd against.

Messrs. REGULA, HORTON, ESPY, ANNUNZIO, HAYES of Illinois, and MANTON, Mrs. COLLINS of Illinois, and Mr. SPRATT changed their vote from "yea" to "nay."

Mr. DIXON changed his vote from "nay" to "yea."

So the conference report was not agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

OMNIBUS EXPORT AMENDMENTS ACT OF 1991

The SPEAKER pro tempore (Mr. ECKART). Pursuant to House Resolution 259 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3489.

The Chair requests the gentleman from Missouri [Mr. VOLKMER] to assume the chair temporarily.

□ 1609

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3489) to reauthorize the Export Administration Act of 1979, and for other purposes, with Mr. VOLKMER, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on Tuesday, October 29, 1991, all time for general debate had expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the reported bill shall be considered by titles as an original bill for the purpose of amendment and each title is considered as read.

Consideration of all amendments to said substitute, including amendments en bloc made in order by House Resolution 259, shall not exceed 5½ hours.

It shall be in order to consider amendments en bloc offered by the gentleman from Wisconsin [Mr. ASPIN], or his designee printed in the CONGRESSIONAL RECORD prior to their consideration. Said amendments en bloc shall not be subject to a demand for a division of the question. Debate on said amendments en bloc and all amendments thereto shall not exceed 30 minutes.

□ 1610

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. VOLKMER). The Chair announces that consistent with the Speaker's announced policy of January 3, 1991, and due to the fact that House Resolution 259 adopted by the House governing consideration of the pending bill permits only 5½ hours of overall consideration of amendments—including time consumed by record votes—the Chair will insist that Members respond on record votes within the 15-minute minimum time period permitted by the rule.

There will only be 15 minutes on a vote.

The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Export Amendments Act of 1991".

(b) TABLE OF CONTENTS.—

TITLE I—EXPORT ADMINISTRATION ACT AMENDMENTS

Sec. 101. Short title; reference.
Sec. 102. Types of licenses; control list.
Sec. 103. Exports to COCOM.

Sec. 104. Reexports and supercomputer exports.
Sec. 105. Statement of policy toward countries representing a lesser strategic threat.
Sec. 106. East-West decontrol.
Sec. 107. Commodity jurisdiction.
Sec. 108. Controls on telecommunications.
Sec. 109. Exports subject to national discretion and favorable consideration.
Sec. 110. Statement of policy for general exception cases.
Sec. 111. Control list review.
Sec. 112. Unilateral controls.
Sec. 113. Trade shows.
Sec. 114. Exports of related technical data.
Sec. 115. Indexing procedures.
Sec. 116. Negotiations with other countries; Department of Commerce representative.
Sec. 117. Removal of section 5(k) designation.
Sec. 118. Notification of COCOM actions.
Sec. 119. Terrorist countries.
Sec. 120. Criminal and civil penalties.
Sec. 121. Policy toward countries receiving licensing benefits.
Sec. 122. Enforcement authority.
Sec. 123. Judicial and administrative review.
Sec. 124. Policy toward the People's Republic of China.
Sec. 125. Export of satellites for launch by People's Republic of China.
Sec. 126. Exports to the Soviet Union.
Sec. 127. Authorization of appropriations.
Sec. 128. Extension of the Act.
Sec. 129. Technical amendments.

TITLE II—EXPORT PROMOTION

Sec. 201. United States and Foreign Commercial Service.
Sec. 202. Qualifications for market development cooperative program.
Sec. 203. Country reports on trade practices.
Sec. 204. Report on export policy.
Sec. 205. Trade Policy Coordinating Committee.
Sec. 206. Report on export promotion.
Sec. 207. Export promotion authorization.

TITLE III—NUCLEAR NONPROLIFERATION

Sec. 301. Short title.
Sec. 302. Purpose.
Sec. 303. Restrictions on nuclear exports.
Sec. 304. Negotiations.
Sec. 305. Reports to Congress.

TITLE IV—ECONOMIC COOPERATION PROJECTS IN CHINA AND TIBET

Sec. 401. Statement of principles.
Sec. 402. Registration requirement.
Sec. 403. Reporting requirement.
Sec. 404. Definitions.
Sec. 405. Enforcement of current law.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Soviet military assistance to Cuba.
Sec. 502. Attacks against Israelis and illegal activities in the United States.

The CHAIRMAN pro tempore. Are there any amendments to section 1?

PARLIAMENTARY INQUIRY

Mr. GEJDENSON. Mr. Speaker, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. GEJDENSON. Mr. Chairman, I think the House was not in order at the time, and I am afraid some of my colleagues will miss an opportunity to have a chance to vote on these amendments.

What the Chair stated, if I am correct, is that the 15 minutes will not be extended and that every Member is expected to be here within that 15 minutes. Because of the way the rule was fashioned, there will not be the normal courtesy of giving Members a few additional minutes to come to the floor.

So I would hope the Members in the Chamber and the Members in their offices would give us some assistance, make sure they get here on time, or they will lose the opportunity to vote.

The CHAIRMAN pro tempore. The Chair would state that while he is in the chair when the 15 minutes runs out, it will not matter if a Member has made a phone call to the cloakroom and is only 1 minute away, the Chair is going to announce the vote at the end of the 15 minutes.

Are there any amendments to section 1? If not, the Clerk will designate title I.

The text of title I is as follows:

TITLE I—EXPORT ADMINISTRATION ACT AMENDMENTS

SEC. 101. SHORT TITLE; REFERENCE.

(a) Short Title.—This title may be cited as the "Export Administration Act Amendments of 1991".

(b) Reference to the Export Administration Act of 1979.—Except as otherwise specifically provided, whenever in this title a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following).

SEC. 102. TYPES OF LICENSES; CONTROL LIST.

(a) Types of Licenses.—Section 4(a)(2) (50 U.S.C. App. 2403(a)(2)) is amended—

(1) in subparagraph (A)—

(A) in the first sentence by striking "in countries" and all that follows through "China"; and

(B) in the second sentence by striking "controlled countries" and inserting "an unauthorized use or consignee"; and

(2) in subparagraph (B) in the first sentence by striking "are located in countries other than controlled countries (except the People's Republic of China),".

(b) Control List.—Section 4(b) (50 U.S.C. App. 2403(b)) is amended by adding at the end the following: "Not later than 6 months after the date of the enactment of the Export Administration Act Amendments of 1991, the Secretary shall modify each item on the control list as necessary to specify with particularity the performance and other identifying characteristics of any technical data that is subject to export controls under section 5, export controls under section 6, or export controls pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.".

SEC. 103. EXPORTS TO COCOM.

Section 5(a)(4) (50 U.S.C. App. 2404(a)(4)) is amended—

(1) in subparagraph (A) by striking "No" and inserting "Subject to subparagraphs (C) and (D), no"; and

(2) by adding at the end the following:

"(C) Notwithstanding any other provision of law (except for section 6(l) of this Act), but subject to subparagraph (D), no authority or permission may, effective not later than December 31, 1991, be required under this Act for the export or reexport of goods or technology to or from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement with the Coordinating Committee or pursuant to an agreement described in subsection (k)(1).

"(D)(i) Notwithstanding subparagraph (C), the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the Secretary of Energy, may require authority or permission to export or reexport goods or technology, which are otherwise eligible for export or re-export under subparagraph (C), in the case of—

"(I) exports to such unreliable end users as the Secretary may specify by regulation; or

"(II) any reexport to a country other than a country described in subparagraph (A) of goods or technology identified under subparagraph (B).

"(ii) Notwithstanding subparagraph (C), the Secretary may require authority or permission to export or reexport goods or technology pursuant to special multilateral control arrangements agreed to unanimously by the Coordinating Committee, if all countries in which the goods or technology are produced agree to equivalent measurement parameters, performance capabilities, and licensing and other requirements. The Secretary shall notify the Congress at least 30 days before the United States proposes such control arrangements to the Coordinating Committee, and not more than 30 days after such control arrangements are agreed to by the Coordinating Committee.

"(iii) If the Secretary, in consultation with the Secretary of State, determines that a country referred to in subparagraph (A) is engaging in a pattern and practice of noncompliance with the agreement of the Coordinating Committee or other applicable agreement, the Secretary shall, during the period in which that determination is in effect, and to the extent determined by the Secretary, require authority or permission to export or reexport goods or technology to that country, and to reexport goods or technology from that country. Any such determination shall not take effect until 30 days after the Secretary of State notifies the Coordinating Committee of the determination and requests the cooperation of the Coordinating Committee in imposing comparable export controls. The Secretary shall review each determination made under this clause at least once in each 1-year period for the purpose of determining whether the country involved continues to engage in a pattern and practice of noncompliance with the applicable agreement. In making a determination under this clause, the Secretary shall consider whether the country involved has adopted the following measures:

"(I) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

"(II) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end users;

"(III) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

"(IV) a system of export control documentation to verify the movement of goods and technology; and

"(V) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee or other applicable agreement.

The provisions of section 10(o) apply to exports for which licenses are required under this section.".

SEC. 104. REEXPORTS AND SUPERCOMPUTER EXPORTS.

(a) Reexports of Technology.—Section 5(a)(5) is amended—

(1) in subparagraph (A) by striking "(B)" and inserting "(C)";

(2) in subparagraph (B)—

(A) by redesignating such subparagraph as subparagraph (C); and

(B) by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)"; and

(3) by inserting after subparagraph (A) the following:

"(B) Except as provided in subparagraph (C), no authority or permission may be required under this section to reexport technology subject to the jurisdiction of the United States from any country when the technology to be reexported is incorporated in other technology and—

"(i) the value of the technology subject to the jurisdiction of the United States that is incorporated in that other technology and, at the time of the reexport, would, if exported from the United States, require a validated license, is 25 percent or less of the total value of that other technology; or

"(ii) the export to a controlled country of the technology subject to the jurisdiction of the United States would require only notification of the participating governments of the Coordinating Committee.".

(b) SUPERCOMPUTER EXPORTS AND REEXPORTS.—Section 5(a) (50 U.S.C. 2404(a)) is amended by adding at the end the following:

"(7)(A) With respect to the definition of 'supercomputer' under paragraph (6)(A), the Secretary shall, not later than 6 months after the date of the enactment of the Export Administration Act Amendments of 1991, publish in the Federal Register a performance-based indexing system in order to ensure that such definition and all controls and security safeguard procedures on supercomputer exports and reexports are commensurate with technological advances in the supercomputer industry. Such indexing system shall be based upon a provision that for destinations in any country (other than a controlled country) that is a party to and, as determined by the President, is adhering to, the Treaty on the Non-Proliferation of Nuclear Weapons (done at Washington, London, and Moscow on July 1, 1968) or the Treaty for the Prohibition of Nuclear Weapons in Latin America (done at Mexico on February 14, 1967), no security safeguard procedures may be required in connection with any export or reexport of a supercomputer with a theoretical peak performance at or below approximately 25 percent of the theoretical peak performance of the average of the two most powerful supercomputers currently available commercially in the United States or elsewhere.

"(B) Before publishing the performance-based indexing system under subparagraph (A), the Secretary shall seek the views of the appropriate technical advisory committees appointed under subsection (h) and other interested parties. Not later than 2 weeks after publication of such system in the Federal Register, the Secretary shall submit a written report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, that includes—

"(i) the text of the Federal Register notice,

"(ii) a summary of the views expressed by the technical advisory committees and other interested parties with respect to the performance-based indexing system, and

"(iii) a description of how the performance-based indexing system addresses the views of the technical advisory committees and other interested parties.

"(C) For purposes of this paragraph, the term 'security safeguard procedures' means procedures that are required by the Department of Commerce, as a condition of an authorization to export or reexport a supercomputer, primarily to restrict access to and resale of such supercomputer.".

SEC. 105. STATEMENT OF POLICY TOWARD COUNTRIES REPRESENTING A LESSER STRATEGIC THREAT.

(a) IN GENERAL.—Section 5(b)(2) (50 U.S.C. App. 2404(b)(2)) is amended to read as follows:

"(2)(A) It is the policy of the United States that licensing treatment of a country on the list of controlled countries maintained by the President pursuant to paragraph (1) should be revised in any case in which that country—

"(i) represents a lesser strategic threat; and

"(ii) accomplishes the following:

"(I) implements an effective export control system, including enactment of legislation controlling shipment to controlled countries of goods and technology subject to controls under agreement of the group known as the Coordinating Committee to such countries and imposing effective penalties to deter violation of its export controls;

"(II) adopts technology security arrangements, including end-use assurances and on-site inspection and verification; and

"(III) terminates governmental policies and intelligence cooperation with other controlled countries relating to illegal acquisition and diversion of controlled technology.

"(B) The revision of controls necessary to implement the policy set forth in subparagraph (A) shall include the following:

"(i) When the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines that any country agreed to in the Coordinating Committee High Level Meeting of June 6 and 7, 1990, any other country that the Coordinating Committee may designate, or any other country, has taken the necessary steps to implement the criteria set forth in subparagraph (A), the Secretary of State should propose the adoption by the Coordinating Committee of the special procedure for favorable consideration of exports to such country.

"(ii) The Secretary, in consultation with the Secretary of State and the Secretary of Defense, shall annually review the performance of any country proposed for favorable consideration under clause (i) in implementing the criteria set forth in subparagraph (A) and, to the extent that such performance indicates appropriate use and protection from diversion of controlled technology, the Secretary of State should propose the adoption by the Coordinating Committee of more favorable licensing treatment of such country or, if security concerns increase, more restrictive controls on technology exports to such country.

"(iii) When, in addition to progress on the criteria set forth in subparagraph (A), a country takes steps to reduce its offensive military capabilities and end its military and intelligence cooperation with the Soviet Union or any successor confederation or entity, including withdrawal of Soviet military forces, the President should seek agreement of the Coordinating Committee to remove the country from the list of controlled countries and propose licensing treatment of such country by the Coordinating Committee as a free world or cooperating country destination.

"(C) The Secretary should provide the greatest possible technical assistance to countries undertaking the measures described in subparagraph (A).

"(D) The Secretary of State shall, within 30 days after the date of the enactment of this subparagraph, seek agreement of the Coordinating Committee to immediately remove Poland, Hungary, and Czechoslovakia from the list of controlled countries for purposes of exports of items on the Industrial List of the Coordinating Committee, and propose licensing treatment of such countries by the Coordinating Committee as free world destinations for purposes of such exports.

"(E) The Secretary of State shall—

"(i) within 30 days after the date of the enactment of this subparagraph, seek agreement of the Coordinating Committee to immediately provide to Latvia, Lithuania, and Estonia the same licensing treatment, for exports of telecommunications equipment and telecommunications technology, that was provided for such exports to Poland, Hungary, and Czechoslovakia as of September 1, 1990; and

"(ii) seek agreement of the Coordinating Committee, as soon as Latvia, Lithuania, or Estonia satisfies the conditions set forth in subparagraph (A), to immediately provide to such country the same licensing treatment, for exports of goods or technology on the control list, that was provided for such exports to Poland, Hungary, and Czechoslovakia as of September 2, 1991.

"(F)(i) The President shall, within 120 days after the date of the enactment of this subparagraph, determine whether Latvia, Lithuania, and Estonia should be removed from the list of controlled countries. At the time of making this determination, the President shall issue a report to the Congress providing a complete rationale for the determination and identifying what conditions, if any, should be met before any such country should be removed from the list of controlled countries.

"(ii) Should the President determine that Latvia, Lithuania, or Estonia should be removed from the list of controlled countries, the Secretary of State shall propose to the Coordinating Committee, within 30 days after the President's determination, that such country immediately be removed from the list of controlled countries.

"(G)(i) Within 9 months after the date of the enactment of this subparagraph, the President shall determine whether the Soviet Union or any successor confederation or entity should be removed from the list of controlled countries. At the time of making such determination, the President shall issue a report to the Congress providing a complete rationale for the determination.

"(ii) Should the President determine that the Soviet Union or any successor confederation or entity should be removed from the list of controlled countries, the Secretary of State shall propose to the Coordinating Committee, within 30 days after the President's determination, that the Soviet Union, or such confederation or entity, immediately be removed from the list of controlled countries.

"(H) Nothing in this Act shall prohibit the President from—

"(i) providing to the independent state of Armenia, formerly known as a republic of the Soviet Union, the same licensing treatment, for the export of telecommunications equipment and telecommunications technology, that was provided for such exports to Poland, Hungary, and Czechoslovakia as of September 1, 1990; or

"(ii) seeking agreement of the Coordinating Committee, as soon as Armenia satisfies the conditions set forth in subparagraph (A), to provide to such country the same licensing treatment for exports of goods and technology on the control list, that is provided to Latvia, Lithuania, and Estonia under subparagraph (E)(ii).

The President shall submit to the Congress, not later than 90 days after the date of the enactment of this subparagraph, a report on whether Armenia has effectively achieved political independence from the Soviet Union, whether Armenia has been provided the licensing treatment referred to in clause (i), whether the agreement of the Coordinating Committee referred to in clause (ii) has been sought, and any other matters that the President considers appropriate. Such report shall contain a complete rationale for the matters addressed in the report.".

(b) EXPORTS FOR CIVIL END USE.—Section 5(b) is amended by adding at the end the following:

"(4)(A) All license applications under this section for the export of goods or technology shall be given a presumption of approval if such exports are intended for a civil end use.

"(B) A determination under subparagraph (A) of whether goods or technology are intended for a civil end use shall be based on the following criteria:

"(i) Whether the stated end use is civil.

"(ii) Whether the civil application of the goods or technology is well established in countries other than controlled countries.

"(iii) Whether the goods or technology proposed for export are reasonable in quantity and quality for the proposed end use.

"(iv) Whether there is a significant risk of diversion to an unauthorized use or consignee.

"(v) Whether the government of the country in which the end use will occur has provided to the United States Government assurances that the proposed export will be used only for the stated end use.

"(C) Requirements for the redesign, reengineering, or substantial modification of standard product models or configurations, and similar requirements shall not be imposed under this Act before any license application is approved for the export of goods or technology subject to control by the Coordinating Committee that is intended for civil end uses, unless the Coordinating Committee agrees to such requirements.".

SEC. 106. EAST-WEST DECONTROL.

Section 5(c)(5) (50 U.S.C. App. 2401(c)(5)) is amended—

(1) in subparagraph (A)—

(A) by striking "Not later than 6 months after the date of the enactment of this paragraph" and inserting "Not later than 6 months after the date of the enactment of the Export Administration Act Amendments of 1991"; and

(B) in clause (i) by striking all that follows "technology" the first place it appears and inserting "the licensing of which under this section has been eliminated by regulations promulgated to implement the agreements reached in the Coordinating Committee High Level Meetings of June 6 and 7, 1990, and May 23, 1991."; and

(2) by striking subparagraph (B) and inserting the following:

"(B) The Secretary shall issue regulations implementing fully the agreements reached in the Coordinating Committee High Level Meetings of June 6 and 7, 1990, and May 23, 1991, relating to removal of controls, national discretion, and favorable consideration of export licenses, and shall provide the licensing treatment prescribed in those agreements for goods and technology in accordance with the levels of technology specified in those agreements.

"(C) Not later than 90 days after the date of the enactment of this subparagraph, the Secretary of State shall seek the approval of the Coordinating Committee for the following: that no authority or permission may be required to export to any country computers at a level of technology the export of which to the People's Republic of China on the 60th day after the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, or at a higher level of technology.

"(D) Not later than April 1, 1992, the Secretary, in consultation with the Secretary of Defense and the Secretary of State, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives describing the implementation of the agreements reached in the Coordinating Committee High Level Meetings of June 6 and 7, 1990, and May 23, 1991. Such report shall include descriptions of—

"(i) the status of implementing the 'Core List' provided for in the agreements and a description of the criteria used in developing the Core List,

"(ii) the status of implementing the special procedure for countries representing a lesser strategic threat provided for in the agreements,

"(iii) the status of implementing the national discretion and favorable consideration procedures contained in the agreements,

"(iv) the status of implementing a license-free zone among the governments participating in the Coordinating Committee, including a common standard of enforcement, and

"(v) the strategic justification for and impact of the agreements as they relate to the military capabilities and technology acquisition efforts of controlled countries, including the Soviet Union or any successor confederation or entity.

"(E) In the case of goods and technology from which export controls have been removed under subparagraph (A), export controls under this section may thereafter be imposed on such goods or technology only if such controls are agreed to by the participating governments of the Coordinating Committee.".

SEC. 107. COMMODITY JURISDICTION.

(a) IN GENERAL.—Section 17 (50 U.S.C. App. 2416) is amended by adding at the end the following new subsection:

"(g) COMMODITY JURISDICTION.—(1) Notwithstanding any other provision of law, no item may be included on both the control list and the United States Munitions List, after the publication of the lists required under paragraph (6) and the resolution of any dispute with respect to such lists under paragraph (7).

"(2) Notwithstanding any other provision of law—

"(A) an item agreed for control on the International Munitions List of the group known as the Coordinating Committee shall be subject to control under the Arms Export Control Act and not under this Act; and

"(B) except as provided in paragraphs (3) and (4), an item not agreed for control on the International Munitions List of the Coordinating Committee shall be subject to control under this Act and not under the Arms Export Control Act.

"(3) An item described in paragraph (5) that is not on the International Munitions List may be subject to control under the Arms Export Control Act—

"(A)(i) for a period of 9 months after the date on which the United States proposes to the Coordinating Committee that the item be added to the International Munitions List, and

"(ii) for an additional 9-month period, but only if negotiations in the Coordinating Committee to add the item to the International Munitions List are continuing; or

"(B) if the Secretary of State, in consultation with the Secretary, so determines, except that if the Secretary disagrees with the Secretary of State with respect to such item, the item may be subject to control under the Arms Export Control Act only if the disagreement is resolved by the 2 Secretaries or by the President pursuant to the procedures set forth in subparagraphs (B) and (C) of paragraph (7).

"(4) An item that is not on the International Munitions List may be subject to control under the Arms Export Control Act if the President—

"(A) determines that extraordinary circumstances exist affecting the national security of the United States, which require that the item be controlled under the Arms Export Control Act;

"(B) proposes to the Coordinating Committee that the item be added to the International Munitions List, and

"(C) within 10 days after making the determination under subparagraph (A), submits a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, describing in detail the reasons for the determination, in appropriate classified form, as necessary.

"(5) An item referred to in paragraph (3) is an item that—

"(A) is specially designed, developed, configured, adapted, or modified for military or intelligence application;

"(B) does not have significant civil applications; and

"(C) is not a component the performance capacity and function of which are essentially equivalent to those used for civil applications.

"(6)(A)(i) Within 3 months after the date of the enactment of this subsection, the Secretary shall publish the control list and the Secretary of State shall publish the United States Munitions List, with all revisions that have been made in accordance with this subsection.

"(ii) Within 3 months after the date of the enactment of this subsection, the Secretary of State shall publish in a separate list those items remaining subject to control under the Arms Export Control Act under paragraph (3).

"(B) If either the Secretary or the Secretary of State fails to publish a revised list in accordance with subparagraph (A)(i), there shall be excluded from the list of the Secretary that did not so publish a revised list, any item included on the list of the Secretary that did so publish a revised list.

"(7)(A) Whenever—

"(i) the Secretary or the Secretary of State receives a request to determine whether an item is subject to control under this Act or the Arms Export Control Act,

"(ii) either Secretary finds that an item is included on both the control list and the United States Munitions List,

"(iii) an item appearing on the list of one Secretary under paragraph (6)(A)(i) is considered by the other Secretary to be under the jurisdiction of that other Secretary, or

"(iv) the Secretary disagrees with the inclusion of an item on the list published under paragraph (6)(A)(ii),

the Secretary or the Secretary of State (as the case may be) shall refer the matter and any relevant information to the other Secretary.

"(B) The 2 Secretaries shall have a period of 15 days following the referral of a matter under subparagraph (A) to resolve any differences with respect to the matter involved.

"(C) If the 2 Secretaries fail to resolve such differences within that 15-day period, either Secretary may refer the matter to the President who, within 15 days after receiving the referral, shall notify the Secretaries of his determination on the matter in dispute.

"(D) In the event that either the Secretary or the Secretary of State does not respond to a referral under subparagraph (A) by the other Secretary, the Secretary that did not so respond shall be deemed to concur with the other Secretary on the matter involved.

"(8)(A) Notwithstanding any other provision of this subsection, all mass market computer software (including software with encryption capabilities) shall be subject to control under this Act and not under the Arms Export Control Act.

"(B) As used in this paragraph, the term 'mass market computer software' means computer software that is generally available to the public by being—

"(i) sold from stock at retail selling points by means of—

"(I) over the counter transactions,

"(II) mail order transactions, or

"(III) telephone transactions; and

"(ii) designed for installation by the user without further substantial support by the supplier.".

(b) TREATMENT OF MUNITIONS LIST FOR PURPOSES OF CERTAIN STATUTES.—

(1) IN GENERAL.—Notwithstanding the amendment made by subsection (a), references in the following provisions of law to the United States Munitions List or items on the United States Munitions List, or to the Arms Export Control Act shall, after the enactment of this Act, be deemed to refer to the United States Munitions List, or the Arms Export Control Act, as in effect on May 1, 1990:

(A) Section 40 of the Arms Export Control Act (22 U.S.C. 2780).

(B) Section 902(a) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991.

(C) Section 317 of the Comprehensive Anti-Apartheid Act of 1986.

(2) SUNSET PROVISION.—The provisions of this subsection shall terminate on June 30, 1993.

SEC. 108. CONTROLS ON TELECOMMUNICATIONS.

(a) IN GENERAL.—Section 5(c) (50 U.S.C. App. 2404(c)) is amended by adding at the end the following:

"(8)(A) The Secretary of State shall, within 30 days after the date of the enactment of this paragraph, propose to the Coordinating Committee that exports of telecommunications equipment and telecommunications technology for civil end use to the Soviet Union, or any successor confederation or entity, immediately be given the following treatment: that such exports require not more than notification of the Coordinating Committee if the export of such equipment and technology to the People's Republic of China on the 60th day after the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee.

"(B) For purposes of this paragraph and subparagraphs (E) and (H) of subsection (b)(2)—

"(i) the term 'telecommunications equipment' means all equipment used in the transmission or receipt of either voice or data information, including equipment used in the transmission of analog or digital information; and

"(ii) the term 'telecommunications technology' means technology related to telecommunications equipment.".

(b) REPORT.—The President shall study the national security implications of the transfer of telecommunications equipment and telecommunications technology to controlled countries under the Export Administration Act of 1979 and, not later than 1 year after the date of the enactment of this Act, shall submit to the Speaker of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the study, in classified form, as appropriate.

SEC. 109. EXPORTS SUBJECT TO NATIONAL DISCRETION AND FAVORABLE CONSIDERATION.

(a) LICENSING.—Section 5(e) (50 U.S.C. App. 2404(e)) is amended by adding at the end the following:

"(7) In implementing the national discretion and favorable consideration procedures agreed to by the Coordinating Committee, the Secretary shall consider the actions of other participating governments in the Coordinating Committee in approving or denying export licenses that are subject to such procedures and shall seek to ensure that United States exports are not placed at a competitive disadvantage.".

(b) IN GENERAL.—Section 10 (50 U.S.C. App. 2409) is amended by adding at the end the following:

"(p) EXPORTS SUBJECT TO NATIONAL DISCRETION.—In each instance in which an export license application is submitted to the Secretary for the export of goods or technology subject to the national discretion procedures of the Coordinating Committee, the Secretary shall formally issue or deny a license within 15 days after a properly completed application has been submitted under this section.

"(q) EXPORTS SUBJECT TO FAVORABLE CONSIDERATION.—In each instance in which an export license application is submitted to the Secretary for the export of goods or technology subject to the favorable consideration procedures of the Coordinating Committee or subject to special national discretion procedures requiring 30 days advance notification to the Coordinating Committee, the Secretary shall formally deny the license or it shall be forwarded for review to the Coordinating Committee within 15 days after a properly completed application has been submitted under this section, unless the Secretary notifies the applicant that additional time will be required to conduct a prelicense investigation. In any case the Secretary shall deny the license or forward the application to the Coordinating Committee within 45 days after a properly completed application has been submitted.".

(c) CONFORMING AMENDMENT.—Section 10(e)(2)(A) (50 U.S.C. App. 2409(e)(2)(A)) is amended by striking "Except" and inserting the following: "For general exception cases controlled under section 5 of this Act and except".

SEC. 110. STATEMENT OF POLICY FOR GENERAL EXCEPTION CASES.

Section 3 (50 U.S.C. App. 2402) is amended by striking paragraph (15) and inserting the following:

"(15) It is the policy of the United States—

"(A) in considering the submission of cases to the group known as the Coordinating Committee on behalf of United States exporters, including general exception cases, to ensure consistency in the treatment of exporters from the United States and from other countries participating in the Coordinating Committee, and to support democracy, free enterprise, and economic development in Eastern Europe and the Soviet Union or any successor confederation or entity; and

"(B) to provide specific guidelines to United States exporters, through the publication of regulations, public notices, and advisory opinions, with respect to goods, sectors, and end users eligible for general exceptions referred to in subparagraph (A), and to fully and promptly notify United States exporters of all agreements and decisions adopted by the Coordinating Committee with respect to such exceptions.".

SEC. 111. CONTROL LIST REVIEW.

(a) IN GENERAL.—Section 5(c) (50 U.S.C. App. 2404(c)) is amended—

(1) in paragraph (1), by inserting before the period at the end of the second sentence the following: "and shall reflect multilateral control agreements reached by the group known as the Coordinating Committee"; and

(2) by striking paragraph (3) and inserting the following:

"(3) The Secretary shall review all goods and technology on the control list at least once each year in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section. This review shall consider proposals for removing controls on exports and other changes in policy arising from applying the indexing procedures set forth in subsection (g), and shall serve as a basis for United States proposals for revision of the International Industrial List maintained by the Coordinating Committee. To this end, the United States shall seek to ensure that the Coordinating Committee reviews each item on its list at least once every 2 years and the Secretary shall conduct a periodic review of each item on the control list for national security reasons so as to achieve the same 2-year review cycle. In any case in which the Coordinating Committee has failed to review an entry on the International Industrial List within 2 years, the Secretary of State shall, based upon United States review of its comparable entry, propose a review by the Coordinating Committee of that entry. Before beginning each periodic review, which may not exceed 180 days in length, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected parties. The Secretary shall further assess, as part of each review, the availability from sources outside the United States, of goods and technology comparable to those subject to export controls imposed under this section. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. In the case of national security controls implemented in cooperation with the Coordinating Committee, such revisions in the list shall be made consistent with the scope of controls agreed to in the Coordinating Committee and shall be made effective no later than the effective date agreed to by the Coordinating Committee. The provisions of this paragraph apply to revisions in the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.".

(b) SUNSET OF CONTROL LIST.—Section 5(c) (50 U.S.C. App. 2404(c)) is amended by adding at the end the following new paragraph:

"(9)(A) Notwithstanding any other provision of this section, as of September 30, 1992, and as of the end of each 2-year period occurring thereafter—

"(i) all controls on the export of goods and technology to any country other than a controlled country shall terminate, after consultation with the Coordinating Committee, as appropriate, and

"(ii) there shall be included in a United States proposal to the Coordinating Committee the termination of all controls on the export of goods and technology to any controlled country,

unless a determination is made with respect to such controls under subparagraph (B).

"(B) Clause (i) or (ii) of subparagraph (A) shall not apply to a good or technology only if the Secretary determines that the good or technology shall be subject to export controls under this section on the basis of the policy set forth in section 3(2)(A). In determining whether a good or technology would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States, the Secretary shall consult with the Secretary of Defense.

"(C) The form of a determination by the Secretary under subparagraph (B) with respect to goods or technology may be either—

"(i) a separate determination with respect to a particular good or technology, or

"(ii) a determination with respect to the technological parameters descriptive of categories of goods or technology.

The Secretary shall publish each such determination in the Federal Register.

"(D) Not later than November 1, 1992, and not later than the end of each 2-year period occurring thereafter, the Secretary of State shall submit a proposal to the Coordinating Committee to terminate controls applicable to the export of all goods or technology to which subparagraph (A)(ii) applies.

"(E) Not later than 30 days after the date on which the Coordinating Committee makes a decision concerning a proposal made by the United States under subparagraph (D), the Secretary shall publish in the Federal Register those changes in export controls resulting from such decision.

"(F) Before the effective date established by the Coordinating Committee for implementing a decision described in subparagraph (E), the Secretary shall publish those changes in the regulations issued under this Act that are necessary to implement such decision.

"(G) Not later than the effective date established by the Coordinating Committee for imple-

menting a decision described in subparagraph (E), the Secretary shall cease to require authority or permission to export any goods or technology for which the Coordinating Committee has ceased to require authority or permission to export under such decision, and shall implement any other changes in export controls that are necessary to carry out such decision.".

SEC. 112. UNILATERAL CONTROLS.

Section 5(c)(6) (50 U.S.C. App. 2404(e)(6)) is amended by adding at the end the following:

"(C) For purposes of this paragraph, an export control shall be considered to be unilaterally maintained by the United States if it is a restriction, condition, or interpretation imposed by the Secretary upon any goods or technology, or upon any license application for the export of any goods or technology, that is not imposed or implemented in similar circumstances by other participating governments of the Coordinating Committee, or that is not otherwise specifically permitted by this Act.

"(D) The Secretary shall seek to ensure that no new unilateral controls are created.".

SEC. 113. TRADE SHOWS.

Section 5(e)(6) (50 U.S.C. App. 2404(e)) is amended to read as follows:

"(6) Consistent with multilateral control arrangements, an application for a license for the export to a controlled country of any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show, shall carry a presumption of approval if—

"(A) the United States exporter retains title to the good, and complies with any safeguard requirement imposed by the Secretary, during the entire period in which the good is in the controlled country; and

"(B) the exporter removes the good from the controlled country within a reasonable period of time after the conclusion of the trade show or demonstration, as defined in regulations issued by the Secretary.".

SEC. 114. EXPORTS OF RELATED TECHNICAL DATA.

Section 5(e) (50 U.S.C. App. 2404(e)) is amended by adding at the end the following new paragraph:

"(8) Any general or validated license authorizing the export of any goods or technology shall also authorize the export of operation technical data related to such goods or technology, whether or not such data is specifically referenced in the license or license application, if the technical level of the data does not exceed the minimum level necessary to install, repair, maintain, inspect, operate, or use the goods or technology.".

SEC. 115. INDEXING PROCEDURES.

Section 5(g) (50 U.S.C. App. 2404(g)) is amended to read as follows:

"(g) INDEXING.—(1) In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, the Secretary shall, not later than 6 months after the date of the enactment of the Export Administration Act Amendments of 1991, establish, in response to recommendations of technical advisory committees under paragraph (2), indexing procedures which provide for increases in the performance levels of goods or technology described in paragraph (2)(A) that are subject to any such licensing requirements. Such indexing procedures shall emphasize the technical specifications of goods or technology below which no authority or permission to export is required as compared to the most technologically advanced commercially available version of the same or equivalent goods or technology. With respect to goods or technology referred to in the preceding sentence which no longer meet the performance levels increased pursuant to such procedures—

"(A) the removal of controls on exports of such goods or technology to controlled countries shall be incorporated into United States proposals to the Coordinating Committee, and

"(B) controls under this section on exports of such goods or technology to countries other than controlled countries shall be removed, after consultations with the Coordinating Committee, as appropriate,

unless—

"(i) the Secretary, after consultation with the Secretary of Defense and the heads of other appropriate executive departments (as defined in section 101 of title 5, United States Code), issues a determination that removal of controls on the goods or technology will permit exports that will be detrimental to the national security of the United States; and

"(ii) the Secretary reports that determination in writing, together with a description of the specific anticipated impact on the national security of the United States, to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

The Secretary shall also consider, where appropriate, eliminating site visitation requirements for goods and technology from which export controls have been removed under this subsection.

"(2)(A) In carrying out this subsection, the Secretary shall direct the technical advisory committees appointed under subsection (h) to recommend indexing procedures for goods or technology—

"(i) which are eligible for export under a distribution license,

"(ii) which are eligible for favorable consideration under the rules of the Coordinating Committee,

"(iii) below which exports require only notification of the governments participating in the Coordinating Committee, and

"(iv) below which no authority or permission to export may be required under this section.

The technical advisory committees shall submit their recommendations for indexing procedures, as they are made, to the Secretary, who shall determine, within 30 days after each submission, or within 45 days after a submission in the event of an objection by the head of any other executive department, whether to accept the procedures or to refer the procedures back to the appropriate technical advisory committee for further consideration.

"(B) The proposals referred to in paragraph (1)(A) shall be made at the next meeting of the Coordinating Committee, at which list review is conducted, that is held after the procedures under this subsection are applied to the goods or technology involved.".

SEC. 116. NEGOTIATIONS WITH OTHER COUNTRIES; DEPARTMENT OF COMMERCE REPRESENTATIVE.

Section 5(k) (50 U.S.C. App. 2404(k)) is amended—

(1) by inserting "(l)" after "(k)";

(2) in the last sentence by striking "(b)(2)" and inserting "(a)(4)"; and

(3) by adding at the end the following:

"(2) The Secretary shall undertake a review of, and report to the Congress not later than 6 months after the date of the enactment of this paragraph on, the goods and technology available from newly industrialized countries to determine if such goods and technology are of such sophistication that they warrant multilateral export controls. If the Secretary determines that such multilateral controls are warranted, the Secretary of State shall propose to the Coordinating Committee to initiate negotiations with such newly industrialized countries to reach agreements with them under paragraph (1) or to obtain their participation in the Coordinating Committee.

"(3) Whenever—

"(A) the Secretary is authorized to make a decision or determination under this Act that affects exports from the United States to controlled countries,

"(B) the Secretary makes such a determination, and

"(C) such determination is final except that the approval of the Coordinating Committee is required,

the Secretary of State shall, within 7 days after receiving that determination from the Secretary, submit to the Coordinating Committee a United States proposal that would have the effect of applying that determination to exports to controlled countries.

"(4) The Secretary, or an officer or employee of the Department of Commerce designated by the Secretary, shall be a member of the permanent United States delegation to the Coordinating Committee.".

SEC. 117. REMOVAL OF SECTION 5(k) DESIGNATION.

Section 5(k)(1) (as amended by section 116 of this Act) is amended by adding at the end the following: "If any country accorded the treatment authorized by the preceding sentence fails to maintain export restrictions comparable in practice to those maintained by the Coordinating Committee, as determined by the Secretary, in consultation with the Secretary of State and the Secretary of Defense, the Secretary shall restrict or terminate such treatment of that country.".

SEC. 118. NOTIFICATION OF COCOM ACTIONS.

Section 5 (50 U.S.C. App. 2404) is amended by adding at the end the following new subsection:

"(r) PUBLICATION OF COCOM ACTIONS.—(1) Within 90 days after the date of the enactment of this subsection, the Secretary shall publish the full text of the 3 International Lists of the group known as the Coordinating Committee, together with all notes and understandings concerning such lists that are agreed to by the Coordinating Committee. The Secretary shall update the publication under the preceding sentence at least once in each 1-year period occurring thereafter.

"(2) The Secretary shall publish—

"(A) the full text of any agreements of the Coordinating Committee affecting the International Lists, together with all notes, understandings, and other aspects of such agreements, all revisions to such texts, and the proposals of the United States to revise the International Lists that are submitted to the Coordinating Committee before negotiations on these proposals begin (except for classified information contained in the justification for such proposals),

"(B) subject to the limitations set forth in section 12(c), decisions on requests for general exceptions to the Industrial List of the Coordinating Committee, and

"(C) other decisions made by the Coordinating Committee, to the maximum extent possible.

Such publication shall be made within 30 days after the agreements are reached, negotiations on the proposals begin, or the decisions are made, as the case may be. The publication of a particular matter need not be made under subparagraph (A), (B), or (C) to the extent that the Secretary makes a written finding to the Congress that to publish that matter would be contrary to national or international security, would abridge the confidentiality of the decision-making processes of the Coordinating Committee, or would otherwise be inconsistent with the obligations of the United States to the Coordinating Committee.".

SEC. 119. TERRORIST COUNTRIES.

Section 6(j) (50 U.S.C. App. 2405(j)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1)(A) No export of goods or technology described in subparagraph (B) may be made to any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism.

"(B) The goods or technology referred to in subparagraph (A) are—

"(i) any goods or technology the export of which is controlled under this Act pursuant to the Missile Technology Control Regime, or controlled under this Act pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, and

"(ii) any goods or technology that, as determined and maintained on a list established by the Secretary for purposes of this Act, would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability,

other than goods or technology that the President determines will be used only for humanitarian purposes. A validated license shall be required for the export under this paragraph of any such goods or technology that will be used only for humanitarian purposes.

"(C)(i) No export of goods or technology the export of which is controlled under section 5 may be made to any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism, unless the Secretary of State determines that such export would not make a significant contribution to the military potential of such country, including its military logistics capability, or enhance the ability of such country to support acts of international terrorism.

"(ii) Every 30 days after the date of the enactment of this subparagraph, the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, of all determinations made under clause (i), during the preceding 30-day period, regarding contributions to the military potential of a country or enhancement of the ability of a country to support acts of international terrorism.

"(iii) The prohibitions contained in clause (i) do not apply with respect to any transaction subject to the reporting requirements under title V of the National Security Act of 1947, relating to congressional oversight of intelligence activities."; and

(2) by adding at the end the following:

"(5) The President may waive the prohibitions contained in subparagraph (A) with respect to a specific transaction if—

"(A) the President determines that the transaction is essential to the national security interests of the United States; and

"(B) not less than 15 days prior to the proposed transaction, the President—

"(i) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the proposed transaction; and

"(ii) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

"(I) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

"(II) a description of the items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction;

"(III) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

"(IV) the date on which the proposed transaction is expected to occur; and

"(V) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in clause (ii) of subparagraph (B) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

"(6) The Secretary of State shall propose to the group known as the Coordinating Committee, to the Australia Group, to the countries participating in the Missile Technology Control Regime, and to the Nuclear Suppliers Group, that each such group adopt those controls that are imposed by this subsection on exports of goods or technology subject to control by such group. The Secretary of State shall continue to make such proposals until such export controls are so adopted.

"(7) The provisions of this subsection do not affect any other provision of law to the extent such other provision imposes greater restrictions on exports to which this subsection applies than are imposed under this subsection.".

SEC. 120. CRIMINAL AND CIVIL PENALTIES.

(a) Criminal Penalties.—Section 11(b) (50 U.S.C. App. 2410(b)) is amended—

(1) in paragraphs (1) and (2)—

(A) by striking "five times" each place it appears and inserting "10 times";

(B) by striking "$1,000,000" each place it appears and inserting "$2,000,000"; and

(C) by striking "$250,000" each place it appears and inserting "$500,000"; and

(2) in paragraph (2) by striking "5 years" and inserting "10 years".

(b) Civil Penalties.—Section 11(c)(1) (50 U.S.C. App. 2410(c)(1)) is amended—

(1) by inserting ", foreign policy controls under section 6 of this Act," after "section 5 of this Act"; and

(2) by striking "$100,000" and inserting "$250,000, and the civil penalty for each violation of any regulation under section 8(a) may not exceed $50,000".

(c) Referral of Antiboycott Violations.—Section 11 (50 U.S.C. App. 2410) is amended by adding at the end the following:

"(j) Referral to Attorney General of Possible Antiboycott Violation.—The Secretary shall promptly inform the Attorney General of any information within the possession of the Department of Commerce relating to a possible violation under subsection (a) or (b) of the regulations issued under section 8 of this Act.".

SEC. 121. POLICY TOWARD COUNTRIES RECEIVING LICENSING BENEFITS.

Section 11A (50 U.S.C. App. 2410a) is amended—

(1) in subsection (a)(1), by inserting after "Committee," the following: "pursuant to an agreement to restrict exports negotiated in accordance with section 5(k)(1), or pursuant to an export control system maintained by a controlled country that is receiving expanded licensing benefits from the Coordinating Committee because of its recognition as a lesser strategic threat as described in section 5(b)(2),"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "and" after the comma at the end;

(B) in paragraph (2), by striking the period and inserting ", and"; and

(C) by adding after paragraph (2) the following new paragraph:

"(3) the revocation by the Secretary of any validated export license previously issued for export by or to that foreign person, notwithstanding any other provision of law, and entry by the Secretary of an order denying all export privileges to that foreign person.

The Secretary shall publish any order under paragraph (3) in the Federal Register.".

SEC. 122. ENFORCEMENT AUTHORITY.

(a) Forfeiture of Seized Items.—Section 12(a)(3) (50 U.S.C. App. 2411(a)(3)) is amended by adding at the end the following:

"(C) All goods or technology lawfully seized under this paragraph by authorized officers or employees of the Department of Commerce shall be forfeited to the United States. Those provisions of law relating to—

"(i) the seizure, summary and judicial forfeiture, and condemnation of property for violations of the customs laws,

"(ii) the disposition of such property or the proceeds from the sale thereof,

"(iii) the remission or mitigation of such forfeitures, and

"(iv) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subparagraph, insofar as applicable and not inconsistent with this Act; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subparagraph by the Secretary or such officers and employees of the Department of Commerce as may be authorized or designated for that purpose by the Secretary, or, upon the request of the Secretary, by any other agency that has authority to manage and dispose of seized property.".

(b) Investigative Operations.—Section 12(a) is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following:

"(8)(A) With respect to any undercover investigative operation conducted by the Office of Export Enforcement of the Department of Commerce (hereinafter in this paragraph referred to as 'OEE') necessary for the detection and prosecution of violations of this Act—

"(i) funds made available for export enforcement under this Act may be used to purchase property, buildings, and other facilities, and to lease space within the United States, without regard to sections 1341 and 3324 of title 31, United States Code, the third undesignated paragraph under the heading 'Miscellaneous' of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22), and subsections (a) and (c) of section 304, and section 305, of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a) and (c) and 255);

"(ii) funds made available for export enforcement under this Act may be used to establish or to acquire proprietary corporations or business entities as part of an OEE undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to section 9102 of title 31, United States Code;

"(iii) funds made available for export enforcement under this Act and the proceeds from OEE undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and

"(iv) the proceeds from OEE undercover operations may be used to offset necessary and reasonable expenses incurred in such operations without regard to the provisions of section 3302 of title 31, United States Code;

if the Director of OEE (or an officer or employee designated by the Director) certifies, in writing, that any action authorized by clause (i), (ii), (iii), or (iv) is necessary for the conduct of the undercover operation.

"(B) If a corporation or business entity established or acquired as part of an OEE undercover operation with a net value of more than $50,000 is to be liquidated, sold, or otherwise disposed of, OEE shall report the circumstances to the Secretary and the Comptroller General, as much in advance of such disposition as the Director of OEE or his or her designee determines is practicable. The proceeds of the liquidation, sale, or other disposition, after obligations incurred by the corporation or business enterprise are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(C) As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under this paragraph are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

"(D)(i) The Director of OEE shall conduct a detailed financial audit of each undercover investigative operation which is closed and shall submit the results of the audit in writing to the Secretary. Not later than 180 days after an OEE undercover operation is closed, the Director of OEE shall submit to the Congress a report on the results of the audit.

"(ii) The Director of OEE shall also submit as part of the annual report submitted by the Secretary under section 14 a report to the Congress specifying—

"(I) the number of OEE undercover investigative operations pending as of the end of the period for which such report is submitted;

"(II) the number of OEE undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

"(III) the number of OEE undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

"(E) For purposes of subparagraph (D)—

"(i) the term 'closed' refers to the earliest point in time at which all criminal proceedings (other than appeals) are concluded, or covert activities are concluded, whichever occurs later;

"(ii) the terms 'undercover investigative operation' and 'undercover operation' mean any undercover investigative operation conducted by OEE—

"(I) in which the gross receipts (excluding interest earned) exceed $50,000, or expenditures (other than expenditures for salaries of employees) exceed $150,000, and

"(II) which is exempt from section 3302 or 9102 of title 31, United States Code,

except that subclauses (I) and (II) shall not apply with respect to the report to the Congress required by clause (ii) of subparagraph (D); and

"(iii) the term 'employees' means employees, as defined in section 2105 of title 5, United States Code, of the Department of Commerce.".

SEC. 123. JUDICIAL AND ADMINISTRATIVE REVIEW.

(a) JUDICIAL REVIEW.—Section 13(a) (50 U.S.C. App. 2412(a)) is amended to read as follows:

"SEC. 13. (a) APPLICABILITY.—

"(1) EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE.—Except as expressly provided in this Act, sections 551, 553 through 559, and 701 through 706 of title 5, United States Code, do not apply to the functions exercised under this Act.

"(2) JUDICIAL REVIEW.—A final agency action under this Act may be reviewed by appeal to the United States Court of Appeals for the District of Columbia Circuit, to the extent provided in this paragraph. The court's review in any such appeal shall be limited to determining whether—

"(A) a regulation—

"(i) fails to take an action compelled by this Act,

"(ii) takes an action prohibited by this Act, or

"(iii) otherwise violates the express terms of this Act;

"(B) an agency action violates the express terms of this Act;

"(C) an agency action violates the express terms of an agency regulation establishing time requirements or other procedural requirements of a non-discretionary nature;

"(D) the issuance of regulations compelled by this Act complies with time restrictions imposed by this Act;

"(E) license decisions are made and appeals thereof are concluded in compliance with time restrictions imposed by this Act;

"(F) classifications and advisory opinions are issued in compliance with time restrictions imposed by this Act;

"(G) foreign availability determinations are in compliance with time restrictions imposed by this Act; or

"(H) the United States has complied with the requirements of section 5(f) after a foreign availability determination has been rendered.".

(b) ADMINISTRATIVE REVIEW.—(1) Section 13(e) is amended to read as follows:

"(e) APPEALS FROM LICENSING AND CLASSIFICATION ACTIONS.—(1) For purposes of this subsection, the term 'administrative action' means any action taken by the Secretary under this Act or regulations issued under this Act with respect to a particular person, other than an action under section 11, 11A, or 12.

"(2) Any person aggrieved by an administrative action may appeal such action to an administrative law judge within 45 days after receiving notification of such action. The administrative law judge shall, within 90 days after such appeal is filed, determine whether the administrative action was taken in violation of this Act or regulations issued under this Act and issue any order that is necessary or appropriate to carry out such determination. Such order shall be binding upon the Secretary unless and until vacated or modified under paragraph (3). Such order may be stayed by the administrative law judge or the Secretary pending the filing and determination of an appeal under paragraph (3).

"(3) Any person aggrieved by a decision of the administrative law judge under paragraph (2) may appeal such decision to the Secretary within 45 days after receiving notification of such decision. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after such appeal is filed. Except as provided in subsection (a), the Secretary's decision under this paragraph shall be final and not subject to judicial review. The authority of the Secretary under this paragraph may not be delegated to any other officer or employee.

"(4) Subject to the limitations of section 12(c), final decisions of administrative law judges and the Secretary under this subsection shall be published in the Federal Register within 15 days after they are rendered.

"(5) Except as provided in this subsection, proceedings under this subsection shall be conducted in accordance with sections 554 (notwithstanding subsection (a)(4) of such section), 556, and 557 of title 5, United States Code.

"(6) The Secretary shall issue such regulations as are necessary to carry out this subsection.

"(7) The rights granted by this subection do not abridge any other rights provided by the law.".

(2) The amendment made by this subsection shall take effect 120 days after the date of the enactment of this Act. Regulations implementing the amendment made by this subsection shall be promulgated no later than such effective date.

SEC. 124. POLICY TOWARD THE PEOPLE'S REPUBLIC OF CHINA.

(a) FINDINGS AND POLICY.—The Congress finds that—

(1) the United States and the group known as the Coordinating Committee have granted special licensing preferences in favor of exports to the People's Republic of China compared to other controlled countries under the Export Administration Act of 1979, based upon a consensus that the People's Republic of China posed a reduced national security threat;

(2) the United States policy of differentiating the People's Republic of China from other controlled countries was also intended to encourage emerging democratization and economic reform in that country; and

(3) the assumptions underlying past policy must be reevaluated in light of massive abuses of human rights by the Government of the People's Republic of China and evidence that the Chinese Government has assisted in the proliferation of missiles and nuclear technology to politically volatile areas of the world.

It is therefore the policy of the United States that export licensing preferences for the People's Republic of China should be eliminated, applications for distribution licenses and comprehensive operations licenses under section 4(a)(2) of the Export Administration Act of 1979 should be denied, and access to dual-use goods and technology representing proliferation concerns should be restricted.

(b) ACTION TO LIBERALIZE TREATMENT.—Section 5(b) (50 U.S.C. App. 2404(b)), as amended by the preceding provisions of this Act, is further amended by adding at the end the following:

"(5) If the President determines that licensing treatment for the People's Republic of China should be liberalized compared to other controlled countries, no action to so liberalize such treatment should be taken until 30 days after the President reports such determination to the Congress stating the justification for the change in policy.".

(c) PROLIFERATION CONCERNS REGARDING THE PEOPLE'S REPUBLIC OF CHINA.—Section 6 (50 U.S.C. App. 2405), is amended by adding at the end the following:

"(s) PROLIFERATION CONCERNS REGARDING THE PEOPLE'S REPUBLIC OF CHINA.—(1) Requests for authority or permission to export goods or technology to the People's Republic of China which are controlled under this section, pursuant to multilateral arrangements to control proliferation of chemical weapons and missile technology, should be denied in the absence of adequate assurances regarding appropriate end use and nontransfer of goods or technology to a country or project of concern.

"(2) In order to discourage proliferation, by the People's Republic of China, that is described in paragraph (1), the Secretary of State should seek the cooperation of other governments involved in multilateral control arrangements to restrict exports of goods and technology described in paragraph (1), in harmonizing treatment of exports to the People's Republic of China with control efforts of the United States.

"(3) The policy set forth in paragraph (1) shall remain in effect unless the President determines and reports to the Congress that the People's Republic of China has ceased to act in a manner inconsistent with multilateral efforts to control proliferation of chemical weapons and missile technology.".

SEC. 125. EXPORT OF SATELLITES FOR LAUNCH BY PEOPLE'S REPUBLIC OF CHINA.

(a) PROHIBITION.—Notwithstanding any other provision of law, no satellite of United States origin that is intended for launch from a launch vehicle owned by the People's Republic of China may be exported from the United States.

(b) WAIVER.—The prohibition contained in subsection (a) may be waived by the President on a case-by-case basis upon certification by the United States Trade Representative that the People's Republic of China is, with regard to the respective satellite, or components or technology related thereto, for which the export license request is pending, in full compliance with the Memorandum of Agreement Between the Government of the United States of America and the Government of the People's Republic of China Regarding International Trade in Commercial Launch Services.

SEC. 126. EXPORTS TO THE SOVIET UNION.

It is the sense of the Congress that no exports to the Soviet Union, or any successor confederation or entity, that would otherwise be permitted by virtue of the amendments made by this title should be made if the Soviet Union, or any successor confederation or entity, takes action to restrict the emigration of Jews from the Soviet Union or such successor confederation or entity.

SEC. 127. AUTHORIZATION OF APPROPRIATIONS.

Section 18(b) (50 U.S.C. App. 2417(b)) is amended to read as follows:

"(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

"(1) $41,500,000 for the fiscal year 1992, of which $150,000 shall be available only for the representation of the Secretary or the Secretary's designee at the Coordinating Committee under section 5(k)(4); and

"(2) such additional amounts for the fiscal year 1992 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.".

SEC. 128. EXTENSION OF THE ACT.

Section 20 (50 U.S.C. App. 2419) is amended by striking "September 30, 1990" and inserting "March 1, 1993".

SEC. 129. TECHNICAL AMENDMENTS.

(a) SECTION 5.—Section 5(f) (50 U.S.C. App. 2404(f)) is amended—

(1) in paragraph (2)(A) by striking "(k)" and inserting "(k)(1)"; and

(2) in paragraph (10) by striking "subsections (f) and" and inserting "subsection".

(b) SECTION 6.—Section 6 (50 U.S.C. App. 2405) is amended as follows:

(1) Subsection (h)(3) is amended in the last sentence by striking "(l)" and inserting "(n)".

(2) Subsection (k) is amended in paragraphs (1), (2), and (3) by striking "section 5(b)(2)(C)" and inserting "subclauses (I) through (V) of section 5(a)(4)(D)(iii)".

(3) Subsection (m)(1)(A) is amended by striking "(l)" and inserting "(n)".

(4) Subsection (q) is amended—

(A) in the first sentence of paragraph (1) by striking "(m)" and inserting "(o)"; and

(B) in paragraph (2) by striking "6(o)(1)" and inserting "6(q)(1)".

(c) SECTION 11A.—Section 11A(k)(3) (50 U.S.C. App. 2410A(k)(3)) is amended—

(1) by striking "(3)" and inserting "(2)"; and

(2) by striking "paragraph (2)" and inserting "paragraph (1)".

(d) SECTION 16.—Section 16 (50 U.S.C. App. 2415) is amended by striking "As used" and inserting "Except as otherwise provided, as used".

The CHAIRMAN pro tempore. Are there any amendments to title I?

AMENDMENT OFFERED BY MR. SOLARZ

Mr. SOLARZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLARZ: Page 65, insert the following after line 17:

SEC. 130. ROLE OF PRIVATE SECTOR IN MONITORING EXPORTS.

(a) ANALYSIS AND EVALUATION.—The Secretary of Commerce, in consultation with all appropriate departments and agencies of the United States, shall analyze and evaluate the potential role of private sector firms in supplementing the information available to the Government for the purpose of licensing and monitoring exports of sensitive technology under the Export Administration Act of 1979.

(b) REPORT.—The Secretary of Commerce shall report to the Congress its analysis and evaluation under subsection (a) not later than 180 days after the date of the enactment of this Act. This report shall include, among other things—

(1) statistics bearing on the frequency with which prelicensing and post-shipment inspections are made of overseas purchasers of sensitive technologies for the 3-year period ending on the date of the enactment of this Act, as well as an overall assessment of the effectiveness of the present licensing system in preventing and detecting prohibited exports;

(2) the costs and benefits to the Government of encouraging the submission of supplementary information by private firms described in subsection (a) to be considered in connection with the export licensing process; and

(3) the design and structure of a mechanism by which private inspection firms might be certified for the purpose of providing information to assist the Government in reaching and monitoring export licensing decisions.

Mr. SOLARZ (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SOLARZ. Mr. Chairman, I believe this is a noncontroversial amendment which is not opposed by the Department of Commerce and which I believe is supported by the chairman and also my very good friend, the distinguished ranking minority member of the International Economic Policy and Trade Subcommittee, the gentleman from Connecticut [Mr. GEJDENSON], and the gentleman from Wisconsin [Mr. ROTH].

What the amendment does is to require that the Department of Commerce, in consultation with other appropriate agencies of the Government, submit a report within 6 months about the potential role of private sector firms in supplementing the information available to the United States Government when it makes decisions about the licensing and the monitoring of sensitive technology exports.

Specifically, Mr. Chairman, the administration is being asked to study the merit of setting up a system where private inspection companies would be certified by the Department of Commerce as being qualified to carry out either prelicensing investigations or postshipment monitoring for private exporters.

For example, if the United States company wanted to export a potentially sensitive item to a foreign company, the exporter could hire one of the certified private inspection firms to investigate the foreign company to make sure that the company was legitimate and not serving as a front for, say, the Iraqi nuclear program.

The proposal to be studied is completely voluntary, meaning that no company would be required to hire private inspection firms for any purpose. What is contemplated here is not the privatization of this function by the Department of Commerce but, rather, the possibility of having the work of the Department of Commerce supplemented by private firms. It is simply a study, but one which I think will enable us to make some judgments about whether this particular option is worth pursuing.

Mr. GEJDENSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, while I have some questions about this approach, I have no question that the concept ought to be studied. I think what Mr. SOLARZ brings before us is an approach we used, frankly, in other parts of the Government in the way it operates, and there is certainly nothing wrong with directing that this be examined. It would certainly give entrepreneurs an opportunity to take advantage of a rapidly changing situation and might provide some assistance to the Government in a sort of preclearance, a bonded operation, almost, on some of these very technical areas.

So, Mr. Chairman, I think it is well worth examining, and I would commend the gentleman from New York [Mr. SOLARZ] for bringing this matter to our attention.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. I thank the gentleman for yielding.

Mr. Chairman, I join with what the chairman of the subcommittee has mentioned. We have looked at this amendment. It is a good amendment, it is well drawn. It is a sophisticated approach, as we expect from the gentleman from New York [Mr. SOLARZ].

The CHAIRMAN pro tempore. Is there further discussion on the amendment?

If not, the question is on the amendment offered by the gentleman from New York [Mr. SOLARZ].

The amendment was agreed to.

Mr. WOLPE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong support of H.R. 3489, the Export Administration Act, and want to pay tribute to the gentleman from Connecticut for his superb leadership in advancing this legislation.

I would like to take this time to highlight provisions in title III, relating to nuclear exports, that I introduced during consideration of this legislation in the Foreign Affairs Committee. These provisions were based upon legislation that Mr. MARKEY, Mr. SOLOMON, Mr. STARK, and I introduced earlier and that now enjoys very broad bipartisan cosponsorship. I want to express my appreciation, in particular, to Mr. MARKEY and to his staff for their leadership in this effort.

Mr. Chairman, one lesson is painfully clear from the war with Iraq: Many years of shortsighted United States nuclear nonproliferation policy helped create the monster, Saddam Hussein, that we committed half a million Americans to contain.

Recent reports indicate that over 450 Western companies helped build Hussein's nuclear arsenal—missiles, bombs, poison gas, and precision artillery. And if that news were not enough, today's Washington Post reveals that Iran is aggressively pursuing nuclear weapons capability, eager to replace Iraq as the region's nuclear bully. But neither the United States nor our Western allies have yet faced up to our collective responsibility for this tragedy.

Saddam Hussein has taught us that in the absence of an effective nonproliferation regime, being a party to the Nuclear Non-Proliferation Treaty is no longer enough. We need effective nuclear export controls, a more effective international safeguards regime—and we need them now, before the next Saddam is successful.

Under current law, we condition exports of nuclear fuel or nuclear reactors on a requirement for full-scope international safeguards and a formal nuclear cooperation agreement, but we allow exports of nuclear components, dual-use items on the nuclear referral list, and nuclear technology transfers without any of the same requirements.

Mr. Speaker, that's a loophole big enough to drive a nuclear weapon through. Yet, we continue to take a see-no-evil, hear-no-evil approach to exports of these highly sensitive dual-use items. How else can we explain the fact that within the last 5 years the United States reportedly approved licenses for exports of computers, precision electric and photographic equipment to the Iraqi Atomic Energy Commission? How else can we explain all of the European companies whose products are turning up in the IAEA inspection of Iraq's covert nuclear program?

These shortcomings in U.S. law and policy can be rectified by provisions included in this act. The legislation would:

Require full-scope IAEA safeguards and nuclear cooperation agreements as a condition of all U.S. nuclear-related exports;

Call for negotiations to make the Nuclear Suppliers Group a more effective multilateral exports regime and the IAEA a more powerful safeguards regime;

Phase out the use of highly enriched, bomb grade uranium;

Provide for sanctions against individuals, companies, or countries which contribute to the irresponsible distribution of nuclear weapons and technology.

I should note that this legislation—although an important step—is a compromise. To accommodate the administration we made key modifications in our original provisions. Yet the administration is still not wholly satisfied. The administration and some commercial interests continue to argue that stringent export requirements and tough sanctions will impede legitimate commerce.

Mr. Chairman, let's be perfectly clear on one point. There will be some inconveniences to some commercial interests. But we cannot put the narrow interest of certain industries above our national and international interest in stopping trade in deadly nuclear commerce. And that is precisely what the administration is asking us to do. I will not accept that. The Congress will not accept that. The American people will not accept that.

These arguments of the administration have a familiar ring. In 1978, when the Nuclear Non-Proliferation Act was being considered, opponents of the law argued that it was futile unilateralism. In 1983, when we introduced many of the provisions contained here, we were dismissed by critics in the administration and in the nuclear industry as interfering with their effort to be a reliable supplier of nonsensitive nuclear technologies. In light of the lessons of Iraq, the bankruptcy of such criticisms should be apparent to all.

Recent history has shown not that we have moved too aggressively to stop the spread of nuclear weapons, but that we have not moved aggressively enough. With this legislation, we will begin to correct the mistakes of the past, and prevent the mistakes of the future.

Saddam Hussein has shown us that there are few obstacles in the path of a determined proliferator. We must take immediate, concerted action to block this well-marked path to nuclear weapons and other weapons of mass destruction. Otherwise, it is a path that will certainly lead to another Saddam.

Mr. Chairman, I urge swift passage of the Export Administration Act.

□ 1620

AMENDMENT OFFERED BY MR. WYDEN

Mr. WYDEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WYDEN:

Page 27, line 25, strike "including" and all that follows through line 2 on page 28 and insert the following:

"including—

"(I) equipment used in the transmission of analog or digital information, and

"(II) all components and accessories related to equipment described in subclause (I), such as installation, measuring, or testing equipment, switching and control systems, computer hardware and application-specific software required for data communications, and spare parts; and".

Mr. WYDEN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. WYDEN. Mr. Chairman, I want to be brief, but I want to commend the gentleman from Connecticut [Mr. GEJDENSON] and also the gentleman from Wisconsin [Mr. ROTH], our colleagues, on this legislation.

Mr. Chairman and colleagues, this amendment would say very simply that in the telecommunications section, where we are doing some particularly important work to allow telecommunications systems to be sold to the Soviet Union, that under this amendment it would be possible to sell buyers the entire system. Unfortunately, as it is set up right now, it would only sell part of a system, and I think that we all know since buyers traditionally buy the entire system from one company rather than picking and choosing different parts from various providers, American companies could not even get to the table and make an offer as it relates to selling telecommunications.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. WYDEN. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, the amendment of the gentleman from Oregon [Mr. WYDEN] makes a lot of sense. It puts it together in a package rather than a fragmented licensing process. It certainly is consistent with everything we try to do in our bill.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. WYDEN. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I agree with the gentleman from Connecticut [Mr. GEJDENSON]. This amendment is a good amendment. It clarifies telecommunications, and it is something that I think is needed in this bill.

Mr. Chairman, we accept this amendment on this side.

Mr. WYDEN. Mr. Chairman, this is the same amendment that was offered the last time we considered this legislation, and it passed by more than 300 votes. I would hope my colleagues would support it on a bipartisan basis.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Oregon [Mr. WYDEN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SOLOMON

Mr. SOLOMON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLOMON: Page 62, line 21: Delete "(a)".

Page 63: Strike lines 1 through 11.

Mr. SOLOMON. Mr. Chairman, I will try not to use the 5 minutes. I have to go to a Committee on Rules meeting on the banking bill, my colleagues.

Mr. Chairman, I rise today to offer an amendment that is vitally important to the success of our commercial launch industry. My amendment would prohibit, without exception, the export of American satellites for launch on Chinese boosters.

Back in 1984, Congress passed the Commercial Space Launch Act to encourage American companies to make major investments in the offering of commercial satellite launch services. As a result, three aerospace companies—McDonnell Douglas, General Dynamics, and Martin Marietta—invested over $500 million to develop their own unmanned booster rockets for commercial launches.

But China has also responded to the potential global demand and developed its own so-called long march booster—totally subsidized by the Communist government. How can we then turn around and allow the Chinese to dump their launch services on the market for next to nothing and cripple our own launch industry?

Clearly, this is unfair trade.

The Communist Chinese Government is seeking a viable space program to enhance its own credibility and international prestige. But how can we sit back and reward their efforts when they continue to promote nuclear proliferation and ignore basic human rights issues?

Mr. Speaker, my amendment to prohibit the export of American satellites for launch on Chinese boosters was overwhelmingly passed by the House on June 6, 1990 by a vote of 393 to 15. Since then, provisions have been added that would allow the President to waive the restriction if China abides by its memorandum of understanding with the United States.

But China has publicly repudiated this understanding and continues to make a mockery of the international market by offering to launch for half the going price. It is clear that the only way to protect our access to space and to give our companies a fair shot at the market is to quit being a party to the heavily subsidized Chinese launch program.

The fundamental question is why should we reward the only remaining Communist government of any consequence? A Communist government which exports nuclear and biological weapons and which mows down its own people. The answer is that we should not.

This amendment is offered in the spirit of section 124 of the bill, a section which states:

The assumptions underlying past policy, must be re-evaluated in light of massive abuses of human rights by the government of the People's Republic of China and evidence that the Chinese government has assisted in the proliferation of missiles and nuclear technology to politically volatile areas of the world.

I need only refer you to today's Washington Post which details the activities between China and Iran in assisting Iran to complete their nuclear capability.

I urge adoption of the amendment.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. Mr. Chairman, if the gentleman from Connecticut is going to accept my amendment, I yield to him.

Mr. GEJDENSON. Mr. Chairman, I think the gentleman from New York [Mr. SOLOMON] shows in this instance a rare bit of clarity in purpose, and I would be privileged to join with the gentleman in accepting his amendment.

Mr. SOLOMON. Just goes to show, I say to the gentleman, "You can't beat SAM and JERRY."

Mr. MCMILLEN of Maryland. Mr. Chairman, I applaud the efforts of the gentleman from New York for his foresight in offering this amendment. Mr. Chairman, the People's Republic of China has been undercutting our domestic commercial launch industry for quite some time now. The Chinese have been subsidizing their fledgling launch industry—to be sure, this has put the rest of the world at a competitive disadvantage. In 1989, the United States and the People's Republic of China came to agreement that permitted the export of four United States-made satellites for launch on China's long march booster by the year 1994. This was in exchange for an agreement that the People's Republic of China would not unfairly undercut prevailing, fair world prices for commercial launch services.

Evidence surfaced that, in fact, the Chinese were continuing to market their launch services at below cost levels, further, intelligence sources revealed that the People's Republic of China was violating standing agreements about technology transfer to developing countries.

Mr. Chairman, under these circumstances, there is no reason that the United States should—permit the export of United States-origin satellites for launch by the Chinese. They have violated a formal trade pact, prompting the White House to issue a May 1991 order to halt satellite exports to the People's Republic of China.

The well-crafted Solomon amendment merely makes this directive of the White House a legally respected statute. To reiterate our concern, yesterday Mr. SOLOMON and I initiated a letter to Ambassador Carla Hills—U.S. Trade Representative—asking her to not budge on the Americans' insistence this unfair trade ploy cease. This amendment by my friend from New York merely adds additional firepower to our intentions and for this reason, I ask for its immediate passage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SOLOMON].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I ask unanimous consent that my amendment be offered at this point in time.

The CHAIRMAN pro tempore (Mr. VOLKMER). Is the gentleman's amendment to title I?

Mr. TRAFICANT. No, Mr. Chairman, but I ask unanimous consent that it be allowed at this time.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT: Page 69, insert the following after line 3:

(D)(i) The effects on the international economic competitiveness of the United States of formal and informal trade barriers.

(ii) The effects on the international economic competitiveness of the United States of subsidies by foreign countries to their domestic industries.

(iii) The efforts of the Department of Commerce to reduce trade barriers.

Mr. TRAFICANT. Mr. Chairman, under the section where the Commerce Department performs studies, my amendment would ask them to study and report to the Congress what effects formal and informal trade barriers are having, how they are having an effect on our trade and exports, how subsidies in foreign countries where foreign companies are subsidizing industry are having an effect on our exports and industry and how trade barriers basically are hurting our economy.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, this is an excellent amendment. We would be very happy to accept this amendment. We all need to make sure we fulfill our responsibilities.

Mr. TRAFICANT. I appreciate that.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, we have looked at the amendment. We have no objections to the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

□ 1630

AMENDMENT OFFERED BY MR. MAVROULES

Mr. MAVROULES. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore (Mr. VOLKMER). The Chair will inquire, are these the amendments en bloc?

Mr. MAVROULES. Yes, the amendments en bloc.

The CHAIRMAN pro tempore. The Clerk will report the en bloc amendments.

The Clerk read as follows:

Amendment offered by Mr. MAVROULES: Page 17, strike lines 19 and 20 and insert the following:

"(iv) Whether civil and noncivil uses of the goods or technology are reasonably distinguishable or there is a significant risk of diversion of the goods or technology to an unauthorized use or consignee.

Page 17, insert the following after line 24:

"(C) The presumption created by subparagraph (A) may be overcome by overriding national security concerns.

Page 18, line 1, strike "(C)" and insert "(D)".

Page 34, lines 4 and 5, strike "the Secretary determines" and insert "it is determined".

Page 34, line 7, strike "In" and all that follows through line 12.

Page 34, line 13, strike "by the Secretary".

The CHAIRMAN pro tempore. After reviewing the amendment and the rule, the Chair notes that this amendment does not appear to be the amendment provided for in the rule.

Does the gentleman from Massachusetts [Mr. MAVROULES] ask unanimous consent to offer this amendment in lieu of the en bloc amendments?

Mr. MAVROULES. Yes. Mr. Chairman, I ask unanimous consent that the amendment at the desk be substituted for the amendments printed in the RECORD of Monday.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Massachusetts?

Mr. HUNTER. Mr. Chairman, reserving the right to object, I am not going to object but I wanted to ask the gentleman, since I have two amendments which are relevant to the amendment which the gentleman is offering, if the second amendment will preclude the amendment of the gentleman from California from being offered. I intend to withdraw one amendment of my four amendments as a result of the amendment the gentleman is offering. I want to establish that point before we proceed.

Mr. MAVROULES. Mr. Chairman, if the gentleman will yield, I am informed, and this is my judgment, that that would not preclude the gentleman from offering his amendment.

Mr. HUNTER. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Massachusetts?

Mr. KYL. Mr. Chairman, reserving the right to object, I, too, will not object, but I want to verify this same point. With respect to the sunset provisions and the sunset of control list which begins on page 33, if this amendment offered by the gentleman from Massachusetts is accepted, then the gentleman from California would still be able to move his amendment which would strike the sunset provision altogether; is that correct?

Mr. MAVROULES. Mr. Chairman, if the gentleman will yield, that is correct.

Mr. KYL. Then, Mr. Chairman, I do not object, and I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MAVROULES. Mr. Chairman, the amendment I am offering goes part way to preserving the role of the Secretary of Defense in the export control process. What is the proper or improper role, is subject to some considerable contention. We have the bill before us today, which would erode the Defense Secretary's authority in some ways. We have several amendments that would increase his authority. The amendment I am offering is the result of an agreement reached earlier today between members of both the Armed Services and Foreign Affairs Committees. It's a compromise. It doesn't do everything I would like to do. But it will make a modest improvement in the bill before us, and allow me to support the bill on final passage.

My amendment, quite simply preserves some of the authority of the Defense Secretary that would otherwise be eroded by this bill.

Mr. Chairman, let me try to put all this into some perspective.

A decade ago, the media erupted with reports of our loose controls on exports and flood of high-technology items going to the Soviet bloc. Richard Perle, who was then Assistant Secretary of Defense, led a campaign to tighten the controls.

At the center of the issue was the fact that the Commerce Department was simply ill-equipped to handle export controls. Commerce's mission is to boost export. The goal of blocking sales to potential enemies is in direct conflict with Commerce's export promotion mission. So, we tightened controls chiefly by making the Pentagon a major player in reviewing export licenses.

Not surprisingly, a new problem erupted. The Pentagon would sometimes study a license application to death. By the time it got around to OK a license, foreign purchasers had wearied and bought from another country. Or, at least that became the popular impression as a new set of horror stories about the evils of the Pentagon review process became daily dinner table talk in the export business.

The pendulum swung. The concerns of the export industry culminated last year in legislation to dramatically revise the Export Administration Act so as to drastically reduce the authority of the Pentagon. I was concerned last year that that bill was an overreaction. So, was the administration. President Bush vetoed that bill.

Today, we have before us a modified version of that bill. Fortunately, key provisions eroding the Pentagon role have been removed. But not all of them. On behalf of the Armed Services Committee, I have introduced this amendment to preserve much of the current authority of the Secretary of Defense.

Mr. Chairman, there is a natural tension between the export promotion drives of the Commerce Department and the national security concerns of the Defense Department. There is nothing wrong with that tension. It's natural and normal. The license review structure we set up a decade ago required that these two agencies work out their tension and find a rational middle ground.

Many exporters concluded that this did not happen. In reviewing the horror stories about Pentagon delays, I have come to two conclusions.

First, the problem of Pentagon delays has been grossly exaggerated. One of the most common anecdotes about a Pentagon delay turns out not even to involve the Pentagon at all.

Second, and perhaps most important, the Pentagon has heard the angry shouts from the exporters—in large measure because the anger has been echoed by friends of the exporters in the Executive Office Building. As a result, the Pentagon has become sensitized—some might even say gunshy—when it comes to the issue of long delays and bureaucratic obstacles.

In sum, I think many if not most of the legitimate gripes of the industry have been addressed. Their ire has not gone unheard.

In sum, I fear that reducing the role of the Pentagon will take us back to the bad old days. New horror stories will emerge about high-technology sales to Third World countries that end up in conflict with us.

The export industry will not win if that is the case, for it will become the focus of public fury.

Mr. Chairman, already, under the current statutes, we have found an excessive volume of questionable exports were approved for Iraq by the Commerce Department. This is because the focus of the tightening up pursued by Richard Perle a decade ago was sales to the Soviet bloc, not to pesky Third World dictators. The Pentagon says its sales to Moscow was boosted, but its role in sales to Baghdad was largely unchanged.

Today, Mr. Chairman, our chief concern is not high-technology sales to

Eastern Europe or the former Soviet Union. It is what we sell to any number of Third World nations with a burning desire to become regional superpowers. If anything, Mr. Chairman, I think we need to tighten our controls over sales to the Third World.

We have spent the last several years pushing our allies in Europe to tighten their export controls. We have been plagued with allies who have strong commerce ministries and weak or even nonexistent inputs from their defense ministries.

That's now changed. In the wake of our own Iran-Contra scandal, almost every European country has had its own arms export scandal—scandals that are sparking reform. In fact, this is one of the real benefits of Iran-Contra. All across Europe, enterprising reporters have searched for arms export scandals in their own countries. And they have found them—in France, Germany, Italy, Austria, Sweden, Belgium, Spain, the Netherlands, and elsewhere.

In Austria, a former chancellor and two of his ministers are under indictment for permitting artillery sales to Iran even after we showed them photos of their artillery pieces in Iran. These scandals paved the way for reform. Just last year, Germany drastically revised its laws to cut down on the voluminous exports that have frankly hurt us.

Mr. Chairman, our exporters have been angry at lost sales. Justifiably so. Now, we are finally getting others to tighten their export controls. This is not the time to loosen our own.

Mr. Chairman, under existing law we have been selling items we shouldn't to Iraq. This is not the time to loosen our controls.

The House Armed Services Committee has fashioned what I can only call modest amendments. All we are proposing is to hold the line. I urge my colleagues to support this amendment. It is the least we should do.

The CHAIRMAN pro tempore. The time of the gentleman from Massachusetts [Mr. Mavroules] has expired.

(On request of Mr. Bereuter, and by unanimous consent, Mr. Mavroules was allowed to proceed for 2 additional minutes.)

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. MAVROULES. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, as I read the import of part of the gentleman's amendment, it seems to me that the 2-year review of the list now has moved exclusively from the responsibility of the Secretary of Commerce to a generic description which would seem to me to involve the Secretary of Defense, and I assume that is the gentleman's contention.

Mr. MAVROULES. That is correct.

Mr. BEREUTER. I understand the gentleman's motivation, but I do recall the situation a few years ago when we had a gentleman in the Defense Department by the name of Richard Perle. During that period of time he seemed to influence the Defense Department to keep anything, including potentially, lunch buckets, from being exported—to the substantial detriment of our export base.

□ 1640

I am wondering if the gentleman could give me his idea of what kind of role, what kind of action, he would expect the Defense Department to take in the course of the review provided by his amendment. Will we see the extreme kind of situation in the Defense Department that we had some years ago?

I know what the gentleman is trying to accomplish. If the review is not abused, I think it is important on the matter of dual use technology.

Mr. MAVROULES. Mr. Speaker, reclaiming my time, I think my friend makes a very good point. The bottom line is I am trying to eliminate the erosion of the support that the Secretary of Defense needs for purposes of national security. I think we both agree to that.

Mr. BEREUTER. Mr. Chairman, if the gentleman will yield further, I assume the gentleman is not contemplating that the Defense Department is going to go back to the Perle-ized version of review?

Mr. MAVROULES. Mr. Chairman, reclaiming my time, no. Absolutely not. One thing we must realize is eventually this will go to the President. You will be surprised the decisions being made at the administration level. Regardless of what the Secretary of Commerce or the Secretary may recommend, ultimately on the hard decisions, they are all made at the Presidential level.

Mr. GEJDENSON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to put this in a little bit of context. I have the greatest respect and admiration for my friend, the gentleman from Massachusetts [Mr. Mavroules]. Frankly, had it been any other individual, I think it would have been next to impossible for us to come to an agreement.

But I think we need to take a look at the recent history as we look at this and many other amendments.

The American sale of dual-sale technology that went into Iraq went there because it was national policy directed from the White House. When one examines the number of items that got through, there is no question that there was not a failure in the process by which we do our licensing. It was a conscious decision of American foreign policy, as it ought to be. Whether you agree with it or disagree with it, the President and the Secretary of State have to have their prerogatives.

The important thing for us is that when we take a look at the sales and the licensing, we must understand where there are problems and where there are not problems. The single greatest problem we faced over the last decade is that items that did not threaten American security, where there was no danger that American technology would aid our adversaries, got tied up in a bureaucratic nightmare that often lasts for years.

The example I used on the floor the other day of a company that spent 2½ years going between the agencies of Defense, Commerce, and State, just to find out who was supposed to listen to them, was an actual case history.

In this instance, we are willing, because of our confidence in the gentleman from Massachusetts [Mr. Mavroules], to give some room for the Department of Defense to continue its role in reviewing the areas where it needs to review. But what we have got to remember is the Secretary of Commerce works for the President of the United States. He is a loyal American. The Secretary of State follows the instructions of the President of the United States.

What we have to make sure is when we draft this document, we recognize several things. First, the Berlin Wall was fallen. It is a different world out there. Our greatest threat today is economic.

Second, that we do not create a bureaucratic nightmare that the Executive cannot handle.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to make it clear as far as this Member is concerned the comments of the chairman are not partisan. It is a bipartisan description of what really happened during that period of time.

Last night, during the course of general debate, we had several Members talk about the egregious kind of examples that took place with respect to exports to Iraq.

The chairman is exactly right. In most of the instances brought up, as far as I know, that was the policy of the administration to permit those exports. That was not a hole in our process. Admittedly, there are some defects in that process, but that was an intentional export under existing policy at that time.

So those so-called horror stories were not horror stories at all. It was simply a change in policy because Iraq, after all, was in opposition to Iran. The conscious decision was to export those dual-use items to Iraq.

So I think the chairman has given a good indication of what really did happen and why all of these egregious examples were not egregious examples at all, but were policy being implemented.

Mr. GEJDENSON. Mr. Chairman, reclaiming my time, I think we might have had the same mistake in almost any administration. Any Executive taking these actions might have had the same inclinations. But there is no question that what the gentleman points to is we need to deal with real problems, and not try to deal with problems that did not exist.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, this amendment appears to be a workable compromise of a very difficult issue that we have been wrestling with for a long time. The determination of the civilian end use is critical to the granting of presumption of approval for certain approved countries. It provides for the President to determine who will conduct the 2-year review of the control list. I believe this is a step forward in drafting a bill that can be approved with bipartisan support for this reason.

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from California.

Mr. EDWARDS of California. Mr. Chairman, I thank the chairman for yielding.

Mr. Chairman, I rise also in favor of the amendment. Those of us who represent Silicon Valley had a great deal of trouble insofar as export licenses are concerned, where they have been unnecessarily held up. I believe a study made several years ago indicated that we lost in our balance of trade somewhere between $4 and $5 billion because of our export licensing.

Mr. Chairman, debate over export controls inevitably focuses on the threat to national security. While it is clear that we must prevent certain dangerous technologies from falling into the wrong hands, too often controls jeopardize security by hampering the ability of American manufacturers to compete in the world market.

H.R. 3489 gives the United States the ability to respond to rapidly changing international realities. But more important, it responds to the needs of American industry. I commend my colleagues on the Foreign Affairs Committee for bringing this important legislation to the floor and for their hard work and insight.

Throughout the decades of the cold war, our primary objective was to secure peace and promote democracy in the Eastern Bloc. We now have the opportunity to take that policy to its rational conclusion: To help those nations make the difficult transition to the free market, a task that our economic allies and competitors have already undertaken.

As a Representative from Silicon Valley, I am very concerned that unilateral export controls are preventing American high-technology products from reaching lucrative markets. In its most immediate application, this bill would help foster an export-led recovery by making available American technologies in the world marketplace. These products are readily available not only from our military allies, but from non-Cocom countries who have not agreed to abide by multilateral controls, countries such as China, Taiwan, and South Korea.

This legislation eliminates the assumption that any given technology has a dual use or will be used in a military or other unauthorized application. It reaffirms our policy, stated in Congress and in the White House, that license applications should be granted for items that are intended for civilian end use.

For many years, the licensing process was one of delay and uncertainty. In addition to opening markets abroad, this legislation would limit unwieldy bureaucratic procedures, minimize administrative infighting, and remove controls on exports and reexports to and from our Cocom allies.

Since the Export Administration Act expired on September 30, 1990, the White House has acted without statutory authority to impose export controls on American manufacturers. I urge my colleagues to support a rational and predictable trade policy and pass H.R. 3489.

Mr. KYL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to compliment the gentleman from Connecticut [Mr. GEJDENSON] and the gentleman from Massachusetts [Mr. MAVROULES] for working out a compromise with the House Armed Services amendment. I think it is worthy of support, and I will support it.

In view of the comments by the gentleman from Connecticut, however, I am constrained to make a couple of remarks.

First of all, the compromise does not deal with an important area that ought to be dealt with, and that has to do with commodity jurisdiction. Second, the question that was raised as a matter of parliamentary inquiry had to do with the sunsetting provision, and, as I think we are all aware, there will be an amendment by the gentleman from California [Mr. HUNTER] later that is designed to simply strike the sunset language.

This compromise improves that language considerably, but the gentleman from California [Mr. HUNTER] will be offering to sunset it, which I think is probably a better overall solution.

I would like to make two other comments, one relating to commodity jurisdiction, and one relating to the comments of the gentleman from Connecticut [Mr. GEJDENSON].

The item that we do not deal with in this compromise, but was a subject of the House Committee on Armed Services amendment originally, would have tried to resolve the issue of commodity jurisdiction in the bill under which the goods and technologies that presently appear on the munitions control list, but do not appear on the international munitions list established by Cocom, would be removed.

I think this would have two very serious effects. First, it would restrict the ability of the United States to unilaterally control the export of any defense item if that item or technology is not agreed to by Cocom, which operates on a unanimous consensus basis.

What this means is that theoretically if the Italians want to make night vision goggles, take that off the list to facilitate the sale of Italian night vision goggles, then we could not control the export of U.S. made goggles under the existing procedures in this bill.

I think we should have dealt with that pursuant to the original amendment of the Committee on Armed Services.

Among the technologies that would automatically fall off of the U.S. munitions control list if this provision is adopted, and I presume it will be, are stealth technology, jet engine hot sections, space vehicles, antisubmarine warfare technology, composite materials, night vision technology, inertial navigation systems, global protection positioning systems, receivers, and Navy nuclear propulsion technology.

These are very important items which I think ought to remain under the jurisdiction of the President of the United States and not some other country, and therefore I think we ought to have dealt with it under the amendment.

Mr. Chairman, my second point relates directly to what the gentleman from Connecticut [Mr. GEJDENSON] just said.

Mr. Chairman, the gentleman has made the point and the gentleman from Nebraska [Mr. BEREUTER] concurred in the point that really the horror stories that have been adduced here are not really horror stories at all because, after all, we were trying to defeat Iran at the time and therefore it was administration policy to provide all of these technical things to Iraq at that time.

I think that that misses the point. I think the gentleman from Connecticut [Mr. GEJDENSON] and others on that side of the aisle have been just as critical as some of us on this side of the aisle of the position of the administration in providing all of that high tech equipment to Iraq.

The question I would ask is do we oppose that policy or not? Did we think it was a good idea for the White House to send all of that stuff to Iraq or not?

If we think it is a wonderful idea, then we can say what the gentleman from Connecticut [Mr. GEJDENSON] just said. But if we think it was a bad idea, in other words, if we disagree with the White House position that all of that equipment should not have been sent to Iraq, then what we should do is to move away from the situation which this bill promotes, which is that Commerce, which has a built-in conflict of interest have because it wants to open up these sales, remove the situation where Commerce has the predominant role, and put the Department of Defense back in the loop, which, after all, it the department that has the best expertise with respect to the decision on whether or not this would negatively impact national security.

□ 1650

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, let me just say, this is an issue that involves profit, which is why I am amazed that the gentleman from California, who has been so vociferous on this floor in trying to lead a cause for peaceful settlements around the world, is supportive of this bill.

This bill puts profits ahead of the export of technologies that can be used to help blow up the world. That is what this is all about.

Now, we have got a compromise here which I am going to vote for the compromise because it is better than what we have. But to compromise and weaken a system that has already allowed people all over this world to build weapons, some of mass destruction, is terrible.

We are heading down a highway by loosening the restrictions in the name of profit against international security arrangements. We are putting profit first.

The CHAIRMAN pro tempore. (Mr. VOLKMER). The time of the gentleman from Arizona [Mr. KYL] has expired.

(On request of Mr. KASICH, and by unanimous consent, Mr. KYL was allowed to proceed for 2 additional minutes.)

Mr. KASICH. Mr. Chairman, if the gentleman will continue to yield, we are weakening the current system. The current system stinks. What we did with Iraq was terrible. What Glaspie did with Iraq was terrible. What the State Department did with Iraq was terrible.

My question is, who else are we arming at the present time? Who else cares we are selling sophisticated technologies that can be converted into weapons systems.

Yesterday it was Iraq. Tomorrow it may be Pakistan. The day after may be Brazil. Brazil has gone from a net importer of technologies and defense technologies to a net exporter of technologies.

The world is in trouble. We better wake up to the fact that companies want to make money. If in the process of making money they arm somebody, they do not seem to worry about it.

I do. I respect what the gentleman from Massachusetts is trying to do, but overall we are weakening. We are weakening the current regimen of stopping the flow of technologies to countries who have leaders who want to use those technologies to blow up the world, and it has got to stop.

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Massachusetts.

Mr. MAVROULES. Mr. Chairman, I agree with what the gentleman is saying. But let us get one thing straight. We are not the only country in the world. Other countries are getting smarter. They are getting better. They are getting bigger.

If we do not compete in that market, we are going to be drowned. What we are doing with this amendment is giving back to the Secretary of Defense some of the power that would have been taken out by the bill.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, I want to compliment the gentleman in giving him back some of the power. He not only ought to have all the power that he currently has but that power ought to be expanded, because what the world is experiencing is the dissemination of high technology items that can be used to develop sophisticated weapons, both conventional and strategic, that can be used to blow up entire sections of the world.

We have to stop it.

The CHAIRMAN pro tempore. The time of the gentleman from Arizona [Mr. KYL] has again expired.

(On request of Mr. KASICH, and by unanimous consent, Mr. KYL was allowed to proceed for 2 additional minutes.)

Mr. KASICH. Mr. Chairman, if the gentleman will continue to yield, the net effect of the bill of the gentleman from Connecticut [Mr. GEJDENSON], with the amendment of the gentleman from Massachusetts [Mr. MAVROULES], is to weaken the current situation. And the current situation is too weak as it is, because this current situation allows the businesses of this world, the arms merchants of this world, not just the arms merchants but those people who make systems that can be used to help the arms merchants, be able to put profit ahead of international security.

Saddam Hussein was literally months from having a missile system that was conventional, that had guidance systems in it, that could be exported that countries like us and our allies export to him. He was months away from having a nuclear device that could have been put on that missile.

The gentleman from Massachusetts says, "If we don't sell it, our allies will."

If we are a superpower like the President of the United States says that we are, then we ought to use our leverage as a superpower to not only pressure our allies to stop the flow of technologies that can be used to blow up the world, but the United States ought to use its leverage against our enemies who went to export technologies to blow up the world. This is not political.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, Let me just say first of all, I would hope the gentleman would read the bill. What the bill does is it does change some things. It makes it more difficult to export even dual-use items to countries that are on the terrorist list. It makes it next to impossible to ship items to nuclear power plants in countries that are not part of a nuclear nonproliferation agreement, and it makes it more difficult to send these items to countries that have reliable end users in these countries.

The CHAIRMAN pro tempore. The time of the gentleman from Arizona [Mr. KYL] has again expired.

All time on this amendment will expire at 5:03.

(On request of Mr. KASICH, and by unanimous consent, Mr. KYL was allowed to proceed for 1 additional minute.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, why I feel so passionately about this is because I think we are talking about the future of the world. The gentleman from Connecticut says that one will not be allowed to ship any kind of devices to countries that do not let inspectors in. Does the gentleman know that North Korea has signed on to the Nonproliferation Treaty? Does the gentleman know that inspectors go into North Korea, and they have no confidence at all that the North Koreans are not building a nuclear bomb. In fact, defectors from North Korea have said that the North Koreans are absolutely trying to build a nuclear bomb. The Nuclear Nonproliferation Treaty does not mean anything in terms of restricting the bad actors in this world to develop systems.

Mr. GEJDENSON. Mr. Chairman, if the gentleman will continue to yield, North Korea is not on the list.

Mr. KASICH. Mr. Chairman, it is on the list today. We did not have Iraq on the list. We have Iraq on the list. We do not know who is next going to be on the list. We do not know who all the potential enemies are.

What we do know is, it is possible for leaders around the world to acquire sophisticated technologies that they could use to develop systems of destruction. It should be stopped.

Mr. BARNARD. Mr. Chairman, I rise in support of the Mavroules amendment offered on behalf of the Armed Services Committee to strengthen the role of the Defense Department in the export administration process.

The Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, which I chair, engaged in a far-reaching investigation of sales licensed by the Commerce Department of dual use items to Iraq from 1985 to 1990. In September 1990, the subcommittee held a hearing on this subject, and we heard from Government witnesses and others regarding problems arising from these sales. The subcommittee had become concerned over reports that sales to Iraq from United States companies had contributed to that country's ability to wage war with missiles, and nuclear, biological, and chemical weapons.

The subcommittee prepared a comprehensive report on the subject. The report, entitled "Strengthening the Export Licensing System"—House Report, 102–137, dated July 2, 1991—was adopted by the full Government Operations Committee. It analyzes what is wrong with the system and makes numerous recommendations on how the Export Administration system might be improved.

Mr. Chairman, we discovered that there is a great deal wrong with the export licensing system now in place. One of the major problems we found is that the system is run by the Commerce Department, intent on sales to anyone who can pay, and the State Department, intent on not offending any of our so-called allies. The Defense Department is given only a minor role, but it is only DOD which objected to many sales to Iraq. The Defense Department deserves a greater role in export administration and the Armed Services Committee amendment would do this. I urge my colleagues to support this amendment. It also supports the major conclusions of the very comprehensive report adopted by the Government Operations Committee.

Mr. MORAN. Mr. Chairman, I rise to strike the requisite number of words, and I rise in support of this amendment specifically and in support of H.R. 3489 generally.

The fact is, it does bring a much greater degree of rationality and reason to the U.S. technology export laws.

For too long, manufacturers and marketers of high technology products in the United States have been forced to battle with export control laws that have been either confusing at their best or much too restrictive at their worst. Throughout the 1980's, while the Department of Defense battled with the Department of Commerce, and the White House battled with Congress, U.S. manufacturers of high technology were practically forbidden from marketing their goods abroad at a time when many of our allies were.

This legislation will bring some semblance of consistency to our export laws by requiring the rationalization of commercial and munitions control lists and by clearly defining the jurisdiction of the Departments of Defense and Commerce in making export recommendations. Furthermore, this legislation contains significant export promotion provisions that would strengthen U.S. industry's ability to export at a time when our economy desperately need it. This legislation doesn't give away the store of U.S. technology, nor will it allow for Third World terrorist nations to produce nuclear weapons. It will allow American companies to participate in the global technology market.

In Northern Virginia and across this Nation we have many, many companies that could benefit immensely from a coherent, organized set of export control laws. The Omnibus Export Amendments of 1991 will provide that guidance.

□ 1700

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. MORAN. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, I would just like to close by again commending the gentleman from Massachusetts for his efforts in reaching agreement on this amendment and say what we have here before us is a bill that recognizes that the Berlin Wall has come down, that there are certain technologies we need to protect, that there are certain technologies that are generally available that we need to have out there competing and on the cutting edge to make sure we have an economy left to lead the world with. We need to make sure that this process does not tie manufacturers in such knots that they always opt to go to Japan, Germany, France, or England rather than come to the United States.

Half of what this bill does is deal with trade between the United States and our Western allies. We are not going far from what the administration wants except for in one area, and that is we are tougher than the administration wants on terrorist countries and on nuclear nonproliferation. Those are the two big disagreements with the administration.

We have a bill here that recognizes national security but also recognizes that our national security is based on economic viability.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. MORAN. I yield to the gentleman from Arizona.

Mr. KYL. Mr. Chairman, I want to make it clear to our colleagues with respect to the amendment which is the subject of our discussion, we are all in agreement and Members should not be put off by our disagreement on other matters, and should all vote aye on this amendment. I just want to make that point clear, and I thank the gentleman for yielding.

Mr. MORAN. I thank the gentleman and I yield back the balance of my time.

The CHAIRMAN pro tempore. (Mr. VOLKMER). The question is on the amendment offered by the gentleman from Massachusetts [Mr. MAVROULES].

The amendment was agreed to.

Mr. HORTON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to engage the chairman of the subcommittee, the gentleman from Connecticut [Mr. GEJDENSON], in a colloquy.

Mr. Chairman, on June 6, 1990 we discussed the problem that was created with respect to the Export Administration Act by a decision of the U.S. Court of Appeals for the Ninth Circuit in *Spawr Optical Research, Inc.* v. *United States*, 864 F.2d 1467 (1988). The problem is that since this judicial decision there is no longer a clear nationwide rule governing the burden of proof the U.S. Government must sustain in criminal prosecutions under the Export Administration Act. In that colloguy on June 6, 1990, it was agreed that the court of appeals for the ninth circuit had misapprehended the Export Administration Act requirement that the U.S. Government must prove that the exported item was, in fact, listed by the Secretary of Commerce on the commodity control list, thus creating the legal requirement to obtain a validated license prior to export.

In your position as chairman of the Subcommittee on International Economic Policy and Trade of the House Committee on Foreign Affairs, is this your understanding of the law.

Mr. GEJDENSON. If the gentleman will yield, that is correct.

Mr. MCCANDLESS. Mr. Chairman will the gentleman yield?

Mr. HORTON. I yield to the gentleman from California.

Mr. MCCANDLESS. I would like to add that Federal courts in the first and eighth circuits have issued decisions which enunciate the legally correct interpretation of the Export Administration Act. For example, in *United States* v. *Gregg*, 829 F.2d 1430, 1437 (8th Cir. 1987) the eighth circuit clearly stated "when the case gets to court, all the government needs to prove is that the item exported appears on the munitions list or the commodity control list, as the case may be, and that the defendant knowingly and willfully exported it, with the necessary intent and knowledge, and without an appropriate license." The same rule applies in the first circuit. *United States* v. *Moller-Butcher*, 560 F. Supp. 552–553 (D. Mass. 1983).

In an earlier colloquy, Chairman GEJDENSON made it explicitly clear that these cases have properly interpreted the Export Administration Act. He stated that the report on H.R. 4653 makes it explicitly clear that it was and is Congress' intent to require the Government to [prove] in criminal prosecutions under the act, that the commodity in question was in fact listed on the commodity control list. If a commodity was not listed, it would not be a crime under the act to export it without a license. Mr. Chairman, is this still the gentleman's understanding of the law.

Mr. GEJDENSON. Mr. Chairman, if the gentleman from New York will yield; yes, it is.

Mr. HORTON. Finally, as I did in our earlier colloquy on this issue I would like to note that the ninth circuit has issued yet another decision which aggravates the problem. On September 14, 1990, the Court of Appeals for the Ninth Circuit in a case styled United States versus Mandel, reaffirmed the Spawr decision as the controlling precedent governing the burden of proof the U.S. Government must prove in criminal prosecutions under the Export Administration Act.

Under the Spawr decision, the ninth circuit held that the U.S. Government need not prove beyond a reasonable doubt that the commodity in issue had been listed on the commodity control list and therefore was subject to the export licensing requirement. Mandel reaffirms the Spawr holding and explicitly reiterates that judges and juries must accept without question the U.S. Government's allegation that the Secretary of Commerce had listed the commodity on the commodity control list prior to the export of the commodity.

We cannot continue to allow the proliferation of the Spawr decision to wreak havoc on our export trade and the free exchange of technical and scientific ideas. It is clear that the lack of a uniform national standard concerning the burden of proof in criminal prosecutions under the Export Administration Act adversely impacts the dissemination of scientific information, creates a chilling effect on the free exchange of ideas, and impairs our export trade. I have been contacted by scientists and exporters who urge Congress to clarify this matter and to reestablish a uniform nationwide rule. I reiterate that the Optical Society of America believes that the Spawr decision has created an intolerable situation and urges Congress to establish a uniform national rule, namely the Gregg rule, and to repudiate the misinterpretation of the law by the ninth circuit in the Spawr decision.

Subsequent to our colloquy in this matter, Congress passed legislation which would have extended the Export Administration Act with amendments not germane to this problem. The President vetoed this legislation for reasons that, again, are not germane to this problem. The status quo ante under the Export Administration Act is now maintained by Executive order.

Whether the Export Administration Act is kept in force by Executive order or extended legislatively, the problem remains that the ninth circuit has misapprehended that law. In the interval since our earlier colloquy it has come to my attention that yet another case has been decided by a Federal district court in the ninth circuit in which the Spawr case and the Mandel case are treated as the law of the circuit. I refer here to *United States* v. *Adelkadar Helmy* at 712 F. Supp. 1423 (E.D. Calif. 1989). Does the gentleman from Connecticut join us in the desire to see the ninth circuit remedy the problem created by the Spawr case?

Mr. GEJDENSON. Mr. Chairman, I join the gentleman from New York and the gentleman from California in calling on the ninth circuit to reverse itself and thereby join in the uniform national rule established by the Gregg and Moller-Butcher cases which correctly interpret the intent of Congress.

AMENDMENT OFFERED BY MR. MC EWEN

Mr. MCEWEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MCEWEN: Page 63, strike lines 17 through 19, and insert the following:

any successor confederation or entity—

(1) takes action to restrict the emigration of Jews from the Soviet Union or such successor confederation or entity;

(2) has not been freely and democratically chosen or is not moving toward a free society and a free market;

(3) is providing military or economic assistance (including subsidized trade arrangements) to Cuba, Vietnam, Angola, North Korea, or any organization in any country which seeks the violent overthrow of a democratically elected government; or

(4) devotes more than 15 percent of its annual expenditures to military activities, including weapons procurement, unless the President reports to the Congress that such defense expenditures are justified by extraordinary defense or security requirements.

Mr. MCEWEN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. MCEWEN. Mr. Chairman, section 126 of this bill states that no exports regulated by this act would be permitted to the Soviet Union or successor states if the Soviet Union takes action to restrict the emigration of Jews from the Soviet Union. I support that condition, but I also support three additional suggestions to the export of sensitive technologies to the Soviet Union.

These conditions are: First, that the government has been democratically elected and is moving toward a free market and free society;

Second, that no foreign aid of any kind is being sent to Cuba, Vietnam, Angola or North Korea; and

Third, that defense expenditures have been reduced to 15 percent or less of their budget.

It is in the best interest of the Soviet people, and the American taxpayer, that these conditions are met before high technology items are sold to the Soviet Union.

Although it will be some time before economic and political stability returns to the Soviet Union, we do have an opportunity to encourage positive changes in Soviet military and foreign policy, along with free market and democratic reforms in the Republics.

During this time of crisis in the Soviet Union, one thing is clear: the United States Congress must place itself firmly in the corner of the reformers in that country.

Nearly all reformers have called for an end to Soviet foreign aid, and also to significant reductions in the military expenditures of the Soviet Central Government. Such action would also be in the national interest of the United States. Therefore, those are two of the conditions that this amendment would recommend on high technology exports to the Soviet Union.

High technology exports should also be prohibited to governments, either the central or republic authorities, which are not democratically elected and proceeding directly toward a free market and free society. High technology will not be able to rescue the failed Socialist economy of the Soviet Union. Major reform will.

It is evident that significant foreign credit will be requested by the Soviet Union in order to fund imports. It is also likely that they will not be able to meet the payment schedules on billions of dollars of loans from Western European banks. In this economic climate, high technology exports, which will likely be financed by some combination of private and public credit offers, should only be made if governments are well on their way toward significant economic and political reform.

Support this amendment and stand with the brave reformers in the Soviet Union.

Stand with Boris Yeltsin who calls for cutting Soviet defense spending, ending aid to countries like Cuba, and making significant free market and democratic reforms. Those are the conditions in this amendment, and those are conditions every one of us should support.

□ 1710

MODIFICATION TO AMENDMENT OFFERED BY MR. DURBIN

Mr. DURBIN. Mr. Chairman, I would like to support the gentleman's amendment, and I think he is on the right track, but I would like to suggest to him that he consider adding another clause which would say as follows; that the Soviet Union also "agrees to expeditiously withdraw all Soviet troops from the Baltic nations of Lithuania, Latvia, and Estonia."

Mr. MCEWEN. Mr. Chairman, I think the gentleman has made an excellent suggestion.

Mr. Chairman, I ask unanimous consent that that be included in our amendment.

The CHAIRMAN pro tempore (Mr. Volkmer). Is the modification in writing?

Mr. DURBIN. Mr. Chairman, it is in writing.

The CHAIRMAN pro tempore. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. Durbin: At the end of the McEwen amendment add the following new paragraph:

(5) agrees to expeditiously withdraw all Soviet troops from the Baltic nations of Lithuania, Latvia and Estonia.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN pro tempore. The amendment is modified by the modification.

The text of the amendment, as modified, is as follows:

Page 63, strike lines 17 through 19, and insert the following:

any successor confederation or entity—

(1) takes action to restrict the emigration of Jews from the Soviet Union or such successor confederation or entity;

(2) has not been freely and democratically chosen or is not moving toward a free society and a free market;

(3) is providing military or economic assistance (including subsidized trade arrangements) to Cuba, Vietnam, Angola, North Korea, or any organization in any country which seeks the violent overthrow of a democratically elected government; or

(4) devotes more than 15 percent of its annual expenditures to military activities, including weapons procurement, unless the President reports to the Congress that such defense expenditures are justified by extradordinary defense or security requirements,

(5) agrees to expeditiously withdraw all Soviet troops from the Baltic nations of Lithuania, Latvia, and Estonia.

Mr. GEJDENSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I recognize the intent of the gentleman in the well is sincere, and I certainly support much of his intent, and I would say that was an excellent addition by the gentleman from Illinois.

What troubles me is I remember sitting at a conference, frankly, with, and I think it was the gentleman from Florida, from the other body, the junior Senator from the other body, and he wanted to take away any of the seed assistance to an Eastern European country that traded with Nicaragua, controlled by the Sandinistas. I said to the gentleman, "Well, what would happen if suddenly the Sandinistas were no longer in control of Nicaragua, and what if Violeta Chamorro won the election, and the Polish Government had trade with Nicaragua? We would have to take away any support providing for this growing democracy in Poland." So it seems to me that the most difficult section of this is that section 3, and that is that it gets very hard to distinguish between trade and aid.

If you take a newly free country like Lithuania, which it is my understanding is manufacturing bolts and nails and things, and they used to go all over the Soviet empire. Frankly, Lithuanians do not have a lot of economic options, and if we find that the Lithuanians are trading with the Vietnamese or the North Koreans and somehow somebody argues that, it just complicates the matter.

If the gentleman would accept an amendment striking section 3, then, you know, I think he would have broad support in the Congress, and it is just that when you put these things in, then you end up complicating life so much, although the intent may be very good.

These countries do not have a lot of economic relationships with the West, because the goods they make in general cannot compete in the West. They are new democracies in many instances.

I agree with the gentleman that we have got democratic governments, and let us not put hurdles in front of these democratic governments in Poland, Czechoslovakia, Hungary, Lithuania, and all of these countries, Latvia, Estonia, and hopefully as the Baltic republics become democratic, let us give them some time for the transition. Let us not kill them as they are trying to move toward democracy.

AMENDMENT OFFERED BY MR. GEJDENSON TO THE AMENDMENT, OFFERED BY MR. MCEWEN, AS MODIFIED

Mr. GEJDENSON. Mr. Chairman, I offer an amendment to the amendment, as modified, which I believe would strike lines 7 through 11.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Gejdenson to the amendment offered by Mr. McEwen, as modified: Strike lines 7 through 11.

Line 6, add "or" after the semicolon.

Line 12, strike "(4)" and insert "(3)".

Mr. BILBRAY. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I am happy to yield to the gentleman from Nevada.

Mr. BILBRAY. Mr. Chairman, I would like to ask the gentleman, in that I am concerned about two areas that we have worked on in the committee: First of all, the Soviet Union has no way of knowing what percentage of their assets go into their manufacturing of military equipment. They are so confused, and they have no way of knowing.

Who determines at what point they reach 15 percent of their gross national product into defense? Are we going to be looking to our Defense Department to determine that when we have no way of really ascertaining that?

Second, is there a hold-in period for as they emerge toward these democracies?

Right now, as I understand it, most of the technology that we want to sell to the now successors to the Soviet empire is to help them get their production going to be able to distribute food and actual materials throughout their country. It may well be that by the gentleman's definition that some of these republics do not have freely democratically elected governments at the present time, but are certainly evolving toward that.

Do we prohibit sales to those entities during this transformation period?

Mr. McEWEN. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I am happy to yield to the gentleman from Ohio.

Mr. McEWEN. Mr. Chairman, if I may respond, let me just simply say that this has been worked out with the majority. Section 108 would make it mandatory. I have introduced this amendment to section 126 which is a sense-of-the-Congress for precisely the reasons that the gentleman mentioned, that it is so extremely difficult to calculate.

The verbiage that I have used in my amendment comes from the reformers in the Soviet Union. I was privileged to meet with Mr. Gibbons in the first meeting that Boris Pankin, the new Foreign Minister for the Soviet Union, had, and he began the meeting by saying how excited he was that his first meeting as Foreign Minister was with Americans, and we discussed Cuba.

He said that he felt that aid to Cuba for the purpose of revolution was immoral, and the first thing he was going to do was to recommend their no longer doing it.

So everything that I have here are suggestions as to where they want to go to help them. They are placed in this position of the U.S. Congress as a sense in support of those statements which they have publicly made to reduce these defense expenditures and send aid to these other countries.

Mr. GEJDENSON. Reclaiming my time just for one second, let us take a look whether it is the Ukraine, the Baltic States, whether they are in some kind of economic union or not, they are tying to survive. We are not giving them any assistance. We do not have the money here. Everybody recognizes that. They are selling nails to Cuba.

If they need to subsidize the shipment to get the nails there or something, leave them alone. Let these countries get on their feet before you start kicking them.

Mr. McEWEN. If the gentleman will yield further, the gentleman has a misunderstanding, I think, and I think it can be immediately corrected.

If I may read the amendment, it says, "providing military or economic assistance." It does not say trade. It says military or economic assistance to any organization that seeks the violent overthrow of a democratically elected government.

If the United States of America cannot stand against these poor countries being involved in the violent overthrow of democratic governments, then I submit that our foreign-aid program is a little too liberal.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I am happy to yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, as I understand this, this is a sense-of-Congress resolution, and it expresses what we hope will occur, and since it is nonbinding, just a sense-of-the-Congress resolution, it does not bind the executive branch and is merely a statement to add to our wish list, and I recommend that we accept the amendment.

Mr. HOUGHTON. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I am happy to yield to the gentleman from New York.

Mr. HOUGHTON. Mr. Chairman, I do not disagree with that. I think we ought to face reality here, and the reality is that if we want to trade with the Soviet Union that we are not going to be able to, because we are never going to be able to meet these particular conditions.

□ 1720

What happens to our businesses that want to trade is they really dry up, because in the real world this is not going to affect the English or the Germans or the Japanese. They are going to trade, and once again they are going to take our markets away from us.

So I am sorry that this is even the intent of Congress.

Mr. MCEWEN. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Ohio.

Mr. MCEWEN. Mr. Chairman, the language says, "Any organization or country that seeks the violent overthrow of democratically elected governments."

We are in the process of defending freedom and democracy in the world. They are asking for access to unique technology for that purpose, and merely stating that are opposed to using it for that purpose is certainly not overly demanding on our part, in my judgment.

Mr. GEJDENSON. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. VOLKMER). The question is on the amendment offered by the gentleman from Connecticut [Mr. GEJDENSON] to the amendment offered by the gentleman from Ohio [Mr. MCEWEN], as modified.

The amendment to the amendment, as modified, was agreed to.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio, as amended, as modified.

The amendment, as amended, as modified, was agreed to.

Mr. MILLER of Washington. Mr. Chairman, I move to strike the last word.

I would like to engage in a colloquy with the ranking member on a subject that is of importance to businesses in my district, and that is the export of medical equipment for humanitarian purposes.

Section 119 amends 6(j) of the act regarding countries supporting international terrorism. It contains a provision allowing an exception for "humanitarian purposes." Is it your understanding that medical equipment, as described in section 5(g) of the act would fall under this exception?

Mr. ROTH. Mr. Chairman, if the gentleman will yield, yes, all medical instrumentation and computers that are integral to the functioning of medical equipment would fall into the exception from foreign policy controls under this provision. By integral I mean that the specific equipment in question requires a computer to function properly and as intended. Various types of medical equipment can operate with any number of different computers. This amendment would allow to be licensed only medical instrumentation commonly sold to the United States, or other free world customers, purchasing the same or similar equipment. It would not, for example, allow a supercomputer to be licensed because it is attached to a magnetic resonance imager. But, it would allow that computer which is ordinarily and customarily used in conjunction with MRI equipment to be eligible for an individual validated license. Similarly, it would not allow instrumentation to be licensed to any and all end-users, but it would allow, for example, such instrumentation that is necessary and appropriate to fetal or heart monitoring to be eligible for license to bona fide medical institutions.

Mr. MILLER of Washington. Could computer associated with medical instruments be used for nonmedical purposes, thwarting the effect of the U.S. foreign policy export controls?

Mr. ROTH. That would be an extraordinarily expensive and inefficient means of obtaining the computers. The items in question, without associated medical equipment, could be purchased directly from our allies in Europe or Asia for a fraction of the cost of obtaining them from United States companies.

Because medical instrumentation and the integral computers would only be exported as medical equipment and because the items themselves could be purchased from the competitors of United States companies in Europe and Asia, the only logical explanation for their sale is that those products are needed for legitimate medical purposes. Under these particular circumstances, humanitarian concerns dictate that the export be permitted.

Mr. MILLER of Washington. Mr. Chairman, I want to thank my colleague, the gentleman from Wisconsin. I appreciate this responses.

Mr. Chairman, I support H.R. 3489, the Omnibus Export Act of 1991. This act brings timely and important improvements to our export control laws by acknowledging the enormous changes that have taken place throughout the world since we last considered our export control laws. This is very important: Last year U.S. exports were responsible for 88 percent of the increase in our GNP. This is an act that will help our exporters bring growth back to our economy.

For our exporters to continue to compete, U.S. laws must catch up with rapid changes throughout the world. Our export control laws must reflect the failed coup in the Soviet Union this past August. This act begins to make those changes. For instance, the act liberalizes export controls to Eastern Europe, the Baltics, and the Soviet Union.

This act recognizes other dangers in our world. For instance, the bill tightens export controls for terrorist countries, such as Iran, Syria, Iraq, and Libya. The act also includes a provision I offered in committee, establishing a set of human rights principles for United States companies operating in China.

But for all this act's merits, we should remember that this is a short-term effort. Its intent is to help our exporters now while we prepare to comprehensively rewrite our export control laws. The result is a slightly schizophrenic act. On the one hand, this act liberalizes exports to the Soviet Union and former Eastern bloc countries. On the other, it restricts exports to the Middle East and other dangerous regions.

Moreover, the act wants to make our export controls multilateral, and succeeds at this on an East-West basis, but fails on a North-South basis. This contradiction is a result of history: Our export controls were built around the cold war.

But the cold war is ending. While the end of the cold war does not end the need for export controls, it does mean that our export controls must be reshaped from top to bottom. Cocom, the major multilateral export control mechanism designed for East-West controls, is rapidly losing its relevance. Congress and the administration must strive to establish effective multilateral export control regimes for the new world order.

This act contains a provision that I worked on in subcommittee establishing a time line for decontrolling the Baltic countries of Lithuania, Latvia, and Estonia. First, within 30 days after enactment of the act, the United States must ask Cocom to give the Baltics the status that Poland, Hungary, and Czechoslovakia had as of September 1990. That is, liberalization of telecommunications equipment and technology. Second, the Baltics will be even further decontrolled once they meet these three conditions: Implement an effective export control system; adopt arrangements for end-use assurances and onsite inspection and verification; and terminate intelligence cooperation with other controlled countries; for example, the remaining Soviet Union. Third, the act further directs the administration to provide technical assistance to aid the Baltics' in meeting these three conditions. Finally, 120 days after enactment of the act, the President must determine whether Latvia, Lithuania, and Estonia should be removed completely from the list of controlled countries.

We must move quickly to allow greater exports to the Baltics, both to help those countries, and to help our exporters. Without modern telecommunications equipment, it will be difficult for other United States, Baltic, and foreign companies to do business. If a company cannot call an employee in Lithuania, or send a fax from Latvia, or communicate to Estonia, they will not be able to do business in today's world. Without such business, the Baltics cannot hope to achieve the economic reform they are striving for. And in today's highly competitive world, we cannot penalize our exporters merely because it took us too long to change our export laws.

Some have urged caution in allowing exports to the Baltics and Eastern European countries. They are apparently worried that these countries will turn over technology to the Central Government of the Soviet Union. However, these countries are more likely to exercise care than our other European allies. The Baltics are more suspicious of the Soviet Union and rogue countries than we are ourselves.

Liberalizing our export controls to these countries will contribute to further democratization and free-market reforms there. Many have argued that we cannot afford to give aid to these countries. But allowing our exporters to do business in these countries is aid we can afford. It costs the taxpayers nothing, and, in fact, helps the American taxpayer. It helps American exporters who are the engine driving the U.S. economy.

This act also includes a provision I offered during the Foreign Affairs Committee's work on the act. My provision establishes a set of human rights principles for United States companies operating in China. The principles include asking U.S. companies not to use goods produced by forced labor and asking U.S. companies to raise the issue of political prisoners in their contacts. The United States has the power to have a positive influence on events in China. My amendment does this by enlisting the powerful tool of United States businesses in the struggle for freedom and democracy in China. My amendment is based on legislation I introduced and is cosponsored by, among others, the cochairs of the congressional human rights caucus, Mr. LANTOS and Mr. PORTER.

Mr. Chairman, I am pleased to have helped keep language in the bill regarding mass-market software in the act. This language stipulates that mass-marketed software is to be moved off the munitions list to the commodity list, which is overseen by the Commerce Department.

This language benefits our software exporters because the Commerce Department must approve or deny export applications within 30 days. As a munitions item, overseen by the State Department, a decision on a license often takes much, much longer.

A software feature known as encryption is at the heart of this language. Encryption is an increasingly popular software feature which scrambles the contents of a computer file for everyone but the designated user. Under present law, software with an encryption feature is treated as a munitions item. Mr. Chairman, I could leave the floor now and be back within an hour having purchased and sent overseas, to any country in the world, via a computer modem, encryption software.

When a munitions item can be purchased at any retail software outlet anywhere in the country, by anyone, and transferred by phone anywhere in the world, then it clearly has become futile to consider this software a munitions item. Without helping national security, we are doing great harm to our exporters.

Mass-marketed software, by its very nature, is widely available and difficult, if not impossible, to control. This is a case where our export controls have become anachronistic. The language in this bill cures this problem.

Mr. Chairman, this is a good act, worthy of passage. But, for the sake of our economy, we must soon revisit this issue in a comprehensive manner. Fortunately, we have in the chairman of the subcommittee, Mr. GEJDENSON, and the ranking Republican, Mr. ROTH, leadership up to the task. Washington is the most trade dependent State in the Union; 1 in every 5 jobs is trade related. Washington State will be depending on our subcommittee's good work.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Washington. Yes, I am happy to yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, I rise because I think this whole issue raises a very good point. What the gentleman from Washington was concerned about was the type of computer that we were going to export and the fact that this computer had to be used for medical research and was not applicable for using to develop ballistic missiles.

The interesting point about this is that there was a company in Chicago that exported a super computer to Brazil. Brazil used a super computer to produce a ballistic missile. Brazil is the fourth largest arms exporter in the world. We suspect they could have been involved in exporting this deadly technology to Iraq.

The comment I wanted to make to the gentleman from Washington is that the gentleman from California [Mr. HUNTER] is going to be offering an amendment that will allow the Secretary of Defense to weigh in on these issues. Clearly, the Secretary of Defense is not going to veto the shipment of a computer that is connected to an MRI scanner that is clearly only to be used in the area of health technologies, but the Secretary of Defense may want to weigh in against the super computer that we may want to ship to Brazil.

The danger in this legislation is when you do not make the Secretary of Defense paramount as the arbiter of these decisions.

In terms of the gentleman from Wisconsin, I applaud him for his efforts to allow health-related computers to move forward.

I also applaud him for his ability to let me use some of his time to promote something that I think the gentleman understands I feel so strongly about.

Mr. MILLER of Washington. Mr. Chairman, I thank the gentleman for his comments.

I think much of the debate here, I have to say, reflects frustration with things that have gone on in the past. In the case of medical instruments, as members of the subcommittee know, going back several years, there were cases where the administration through the Defense Department——

The CHAIRMAN pro tempore. The time of the gentleman from Washington has expired.

(At the request of Mr. GEJDENSON, and by unanimous consent, Mr. MILLER of Washington was allowed to proceed for 2 additional minutes.)

Mr. MILLER of Washington. There were cases, Mr. Chairman, where the administration through the Defense Department did hold up and delay fetal heart monitors, so as we deal with these issues we are trying to correct and trying to see that those errors and difficulties of the past do not reoccur.

Mr. Chairman, I thank the House and my colleagues for their indulgence.

Mr. GEJDENSON. Mr. Chairman, I would just like to say in the remainder of my time here, I want to thank the gentleman from Washington [Mr. MILLER] for his work in this and so many other areas that he has been helpful with on the committee.

AMENDMENT OFFERED BY MR. HUNTER

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HUNTER: Page 48, insert the following after line 15 and redesignate succeeding sections, and references thereto, accordingly:

SEC. 120. REVIEW OF LICENSES.

(a) AUTHORITY OF SECRETARY DEFINED.—

(1) AUTHORITY.—The Secretary of Defense is authorized to review any proposed export of any goods or technology under the Export Administration Act of 1979 to any country, and to recommend to the President that such export be disapproved whenever the Secretary of Defense determines that the export of such goods or technology could make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any country.

(2) DEPARTMENT OF DEFENSE TECHNOLOGY REVIEW LIST.—The Secretary of Defense shall determine categories of transactions which will be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). The Secretary of Defense shall submit this determination to the Secretary of Commerce in the form of a list, which shall be referred to as the "Department of Defense Technology Review List". Whenever a license or other authority is requested for the export of any item on such list, the Secretary of Commerce shall refer the application to the Secretary of Defense. The Secretary of Commerce may not issue any license or other authority pursuant to such request before the expiration of the pe-

riod within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary of Commerce pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

(A) recommend to the President and the Secretary of Commerce that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would provide detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Secretary of Commerce that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary of Commerce that the export of goods or technology be approved.

(3) TIME PERIODS FOR ACTION.—The Secretary of Commerce shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this section, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in section 10 of the Export Administration Act of 1979.

(4) RESOLUTION TO DISAGREEMENTS.—Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary of Commerce shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under paragraph (2) within the 20-day period specified in the 5th sentence of such paragraph, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary of Commerce that he approves or disapproves the export, the Secretary of Commerce shall approve or deny the request for a license or other authority to export without such recommendation or notification.

(5) REVISION OF LIST.—The Secretary of Defense shall revise the Secretary of Defense Technology Review List as often as the Secretary of Defense determines is necessary.

Mr. HUNTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUNTER. Mr. Chairman, I think that the debate that we are having and the amendments that we are going to be voting on here shortly, including this amendment, are every bit as important as the amendment that we vote on with respect to the armed services bill.

When we talk about technology transfer, never has there been a time in our history when we can more truthfully say that this is a matter of life and death.

Let me just compliment my two friends, the gentleman from Arizona [Mr. KYL] and the gentleman from Ohio [Mr. KASICH], because those two gentlemen stood on this floor with me over a year ago before the invasion by Saddam Hussein of Kuwait, and they said to me that there was a flow of American technology into the wrong hands, that this was dangerous to the United States and that we had to change the way we did things.

Very shortly after that, we heard many, many people talking about the importance of selling overseas and the fact that you have to be aggressive and, yes, we make a few mistakes, but let us let the Commerce Department make the decisions as to what we should sell and what we should not sell.

Mr. Chairman, that has been an unmitigated disaster. All of the attempts of the other side to rehabilitate the Commerce Department and the decisions that they have made, and I am referring to the Committee on Government Operations report, which is devastating for the Commerce Department. I am referring to such groups that I never thought I would be working in conjunction with, like the Wisconsin Group on Arms Control.

Our young men and women in Desert Storm went into harm's way and the harm was created by American technology that was delivered most often with the blessing of the Commerce Department into the hands of people who aimed it at 19- and 20-year-old American kids. The record again is devastating in its implications.

The facts are, the Commerce Department has the job of selling. That job is inherently in conflict with the job of the Secretary of Defense, which is the job of defending, defending not only the people of this country, but defending the young men and women who wear the uniform of the United States.

Now, let me quote a few things from the Government Operations Report, chaired by the fine gentleman from Georgia [Mr. BARNARD].

> While it is not possible to prove that Commerce's bias to promote exports contributed to the skull furnace near disaster * * *

The skull furnace, my friends, was a system that we sold Iraq with the approval of the Commerce Department, which was utilized in the nuclear program by Saddam Hussein.

The committee goes on:

> The committee believes it would be naive to attribute Commerce's decision to permit the sale to a simple lack of coordination.
>
> It is likely that Commerce's mission to promote exports clouded the agency's ability to perform its secondary mission. That is the mission to deny sales in cases where a likely but not quite proven threat to U.S. security existed.

Now, let me quote the words of the president of Consarc, Mr. Roberts, who said,

> We are being encouraged by the Commerce Department in Washington and by the U.S. embassy in Baghdad to go get this order. We are being told to go out and sell. The feeling we got from our Government is that this is business and we should be going after it.

□ 1730

Now, I want to be fair to the Commerce Department. I talked with them a few minutes ago. They said, "You know, we did run that by Defense." And, you know, Defense is going to say, in fact maybe Mr. GEJDENSON is going to show their response, it says Defense did clear this. You know, it is funny, they did clear it. We got a sign-off on Defense and the sheet that came from Commerce. But you know how Commerce described this transfer of electronics and skull furnaces to be used in the nuclear program for Saddam Hussein. Get ready:

> It is for use in furnace systems sold to the Republic of Iraq for development work in materials science technology and the production of medical prostheses.

Now, I think that reflects either the incredible naivete or a desire to mislead or just horrible negligence on the part of Commerce.

Now, it is possible that Defense then got this request to sign off on this thing and they saw "medical prostheses" and they signed off. But the record is so full that that explanation withers as you go down through the pages of the Committee on Government Operations' report.

They go on:

> Commerce's poor coordination and institutional bias to promote exports likely combined in the case of Iraq to allow the sale of technologies that may have helped the aggressor nation's missile and nuclear, chemical, and biological weapons development program. Defense tried hard to prevent these sales from going through, but was ignored or overruled.

Now, I go to another case, Mr. Chairman.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has expired.

(By unanimous consent, Mr. HUNTER was allowed to proceed for 5 additional minutes.)

Mr. HUNTER. Mr. Chairman, I go to the case of the Scud missile program. Two export licenses that were issued on January 20 and February 10, 1988.

Do you know who those went to? A big $1.4 million sale; no money was involved here, to speak of. They went directly to the Iraqi Scud missile program. And they went over the objection, according to the Committee on Government Operations report, of Defense.

So the record is replete, Mr. Chairman and my colleagues, with instances where Commerce did not act in the total interest of the United States of America, not simply because they were negligent and sometimes, I think, because they wanted to sell aggressively, and other times because they just did not have the military expertise to understand what was important.

Let me finish here, and then I will yield to my friend, the gentleman from Ohio [Mr. KASICH], who has done such a great job here.

The point here is we are talking about expertise.

Now, who has expertise if you have a certain computer or some type of a machine tool, who has expertise on whether or not that is an item that can be used in warfare? It is not the people who are salesmen in the Department of Commerce; it is the people who are in the Department of Defense who understand warfare.

The problem is, as we give more and more of this control to the Department of Commerce, we are phasing out the people who might be able to catch something, who might be able to say, "Wait a minute, that is not a prosthesis. These guys are going to use this thing in a very deadly way."

You have to have the ability of the Department of Defense to act proactively.

Do you know what our problem is? Our problem is that the Department of Defense has to kind of hover around the Department of Commerce, they have to fish, and if they get some information, they might go out and be able to stop an airplane before it leaves the airport. We are always running out on these cliffhangers and trying to grab onto something before it leaves the station.

Now let me offer my amendment.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. I thank the gentleman for yielding.

Mr. Chairman, let me make one point: I say to the gentleman from California, the argument against all the Iraqi examples is that they are going to say that Iraq is now listed as a terrorist state and, therefore, the restrictions are tough.

Well, my concern is not just with Iraq. Let us take Brazil: The Commerce Department approved the sale of two major components for ballistic missile technology, large motor rocket castings, and also this supercomputer. We sold this stuff to Brazil. Commerce said fine.

So DOD did not object to this sale. So what happens?

Well, we give these two technologies to Brazil, they develop ballistic missile technology. They have now become the fourth largest exporter of arms in the world, and I say to the gentleman from California that they exported astro tube battlefield missiles to Iraq in 1980; they were involved in the development of the Iraqi air-to-air missile.

You see, we just cannot focus on what we know clearly is terrorist nations today. The Brazilian Government is a major exporter of these weapons of destruction around the world. And if Commerce approves the sale to Brazil because they are not on the terrorist list or the enemies list, that does not mean that we are not arming somebody who then arms somebody else.

Brazil now has an indigenous arms business that they are using to make profit to put powerful weapons in the hands of our potential enemies. That is a big problem.

Mr. HUNTER. I thank the gentleman. He hit the nail right on the head.

Let me explain my amendment very briefly, and I will yield to the gentleman from New York.

Springboarding off of what the gentleman from Ohio said, the arms network today is just that, it is a network. The Secretary of Defense, in order to act proactively, responsibly for this Nation, has to be able to reach out and pull something in at any given time, even if it is going through a friendly country.

If there is a phony front in some friendly country and we are seeing our adversaries sucking high technology out of the United States in a circuitous manner, he has to be able to stop it. This amendment says that the Secretary of Defense has got the right to create a list of technologies and countries that he wants to review. It is a list. The Secretary of Commerce has to give him that information.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has again expired.

(By unanimous consent, Mr. HUNTER was allowed to proceed for 2 additional minutes.)

Mr. HUNTER. The Secretary of Commerce then must refer any application that is on that list, covered by that list, to Secretary of Defense. He just has to send it over to him, I tell my friend from Ohio. He sends it over. The Secretary of Defense, within 20 days, recommends approval or disapproval. So we are not talking about 6 months or 1 year; within 20 days.

Now, what if he recommends disapproval? If he recommends disapproval and if he differs with the Secretary of Commerce, you have the Secretary of Defense saying that this could accrue to the detriment of our young men and women in uniform, then it goes to the President and the President has 20 days.

So you have a very quick process. You give the Secretary of Defense, who is charged with defending this country, the right to stop technology transfer in its tracks.

Mr. Chairman, I yield to the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. I thank the gentleman for yielding.

Mr. Chairman, I want to say to the gentleman from California that there were 23 countries that shipped material to Iraq. I am now told we sold certain kinds of supercomputers to the Chinese, who have become one of the largest exporters in the world.

What the gentleman is saying is let the Secretary of Defense reach out and touch somebody when there is potential military significance. And if it slows down the process, let us not put profit first.

Mr. HUNTER. I thank the gentleman and thank him for supporting the Kasich-Kyl-Waxman-Hunter amendment.

Mr. Chairman, I yield to the gentleman from Georgia [Mr. BARNARD].

Mr. BARNARD. I thank the gentleman for yielding.

Let me say, Mr. Chairman and members of the committee, the subcommittee of which I am the chairman, the Subcommittee on Commerce, Consumer, and Monetary Affairs of the Committee on Government Operations, did a very extensive study on export controls. I might say, and I do not want to go through all of the findings and recommendations, let me just say frankly this amendment is strongly needed in this process. Customs is not capable of doing it in and of themselves. It is quite political, and the Department of Defense needs this. This bill needs this particular amendment if we are going to be interested in the defense of our country.

□ 1740

Mr. Chairman, I think that is proven in my report, which I certainly would commit for the reading of people all over this House. This is a very important bill, and I think this amendment will make a fine contribution toward it being more perfect.

Mr. HUNTER. Mr. Chairman, let me say I thank the gentleman from Georgia [Mr. BARNARD]. He did a lot for the country when he put that report together in illuminating the traffic that culminates in this enormous arsenal in the Middle East.

Mr. RITTER. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Pennsylvania.

Mr. RITTER. Mr. Chairman, I thank the gentleman from California [Mr. HUNTER] for yielding, and I want to rise in support of his amendment.

Mr. Chairman, I support the Department of Defense reviewing export license applications. This is their area of expertise. But I want to make it clear that dual use items mean only those items that are subject to national security control.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has expired.

Mr. HUNTER. Mr. Chairman, I ask unanimous consent to proceed for 1 additional minute.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. GEJDENSON. Mr. Chairman, I am not going to object, but the gentleman's side has already had 15 minutes on this amendment, and I think for those people watching the debate it would make sense that, while we extend, and I do not want to cut people off, that we give each side a chance to response in several tranches, and then give the other side a chance.

Mr. HUNTER. Mr. Chairman, I thank the gentleman from Connecticut [Mr. GEJDENSON], but we are just wrapping up this last speaker, and we will go right to the gentleman.

(By unanimous consent, Mr. HUNTER was allowed to proceed for 1 additional minute.)

Mr. RITTER. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Pennsylvania.

Mr. RITTER. Mr. Chairman, I thank the gentleman from California [Mr. HUNTER], and it is my understanding that items such as heavy trucks, and tractors and diesel engines, which are subject only to foreign policy controls, would not now, because of his amendment, be placed under Department of Defense review as dual use items.

Is that correct?

Mr. HUNTER. Mr. Chairman, it would seem to me that the Secretary of Defense is going to be interested in what would largely be high-technology items that have a militarily critical dual use, and in my estimation those vehicles the gentleman speaks about would not fall under it, but of course this is an area that would lie under the discretion of the Secretary of Defense. It would be my thought that that would not be included.

Mr. GEJDENSON. Mr. Chairman, I rise in opposition to the amendment of the gentleman from California [Mr. HUNTER].

Listen to what my friend just said. We are putting it all in the discretion of the Secretary of Defense. I say to my colleagues, "Get ready to shut down the exports in your State, put them on the shelf. Tell the customers to go to Germany, France, or England because they've got all the same products."

Now let us put Iraq out of the picture for one moment. Why did Iraq get all that it wanted? Because the President of the United States, wanted them to get them. Do not blame the Commerce Department for what was national policy. The Secretary of defense, the Secretary of Commerce, and the Secretary of State all responded to the President. The President of the United States wanted to protect Saddam Hussein's life, and that was the policy of the United States of America.

Mr. Chairman, I will not yield for a while. I would like to make my statement.

Mr. Chairman, we have gone through this. We had a gentleman at the Commerce Department lose his job because he came forward and told the truth. A gentleman from the Commerce Department came to our committee and said that in a meeting in the White House he asked the administration to stop exports of dual use technology to the Iraqis. He said he was overruled by directions that clearly came from the administration through a number of individuals associated with Defense, and State, and the White House itself. The next day the gentleman resigned his high position at the Commerce Department. We have not heard from him since, but we did not believe that. That was not enough for us. We demanded the files, and we wrangled with State, and Commerce, and Defense for some time, and finally we got the documents, and, while those documents are secret, any Member of this Congress ought to be able to read them because they very clearly state that the Commerce Department, and I understand on more than one occasion, but in this one instance in particular, came to the President's people and said, "Let's stop the export of this dangerous technology to the Iraqis." Not a Commerce Department unpatriotically trying to shill for business, not trying to make profit, a Commerce Department official, Mr. Kloske, who lost his job because he spoke out, came forward and said to stop these sales. And he was stopped because of a policy of this administration.

Mr. Chairman, I do not want to argue that insane policy today, but do not blame the Commerce Department.

Now, as for the bill, and, no, I will not yield at this time. I will be happy to do so in a few moments. But let us get straight where DOD looks. The gentleman from Pennsylvania [Mr. RITTER] is concerned about his trucks and whether his trucks can be sold around the world. Note, America does not hold a monopoly on trucks, although trucks can be used in military actions. The author of the amendment as well as the Secretary of Defense could take a look at that.

Well, let us take a look. The Secretary of Defense under our bill can look at all missile tech items, can look at all chemical weapons items, all nuclear items, and all items going to terrorist countries. We are tougher than the administration. The committee that I work with, Republicans and Democrats alike, are frightened to death about nuclear proliferation, missile technology proliferation and chemical proliferation, and this administration vetoed this bill last time because of the chemical weapons penalties that were in the bill as American troops were in the deserts, possibly facing Iraqi chemicals. This bill puts together the strongest attack on the proliferation of missile technology and nuclear technology that we have ever had in this country.

But what we plead for is that we do not destroy the economy of the United States in an attempt to fight some ghost, a ghost that is frankly developed by the internecine warfare of three agencies.

Let me tell my colleagues about the skull furnaces. My chief of staff got a call from the Defense Department, said, "Hey, we've got these skull furnaces going off to Iraq. Do you mind if we stop the sale?"

Well, my chief of staff checked with me. I said, "You could stop peanut butter going to Iraq and we'd be happy about it."

Defense stayed quiet.

Now let us take a look at what happened. The skull furnaces did not get to Iraq, and why? Because we are working with a team effort here. The President leads the team effort, and even the administration figured out it was a mistake.

Now let us take a look at Defense's involvement numerically.

The CHAIRMAN. The time of the gentleman from Connecticut [Mr. GEJDENSON] has expired.

(On request of Mr. MILLER of Washington and by unanimous consent, Mr. GEJDENSON was allowed to proceed for 3 additional minutes.)

Mr. GEJDENSON. Mr. Chairman, I will just use a minute of it and then get some others to speak, and I hope we have some real debate here.

DOD reviewed dual use equipment going to Iraq, 1985 to 1990. DOD reviewed 487 licenses. Four hundred seventy six were approved. Eleven there were disagreement on. DOD saw them and said, "Well, we're not sure." Commerce says, "Well, we think it's OK." DOD sent none of them up in the system.

Iraq was national policy. Six of us were on the floor with many others trying to stop the export of grain to Iraq 6 days before it invaded Kuwait. We did not have a crystal ball. We knew that Saddam Hussein was a bloodthirsty murderer when he killed the Kurds, when he trained terrorists. That is not the debate here. The Commerce Department did its job. It ought not be condemned for it. We have a process that lets Defense get involved where Defense needs to. We make it tighter on terrorist countries, tighter on nuclear, tighter on missile technology, and tighter on chemical.

Mr. Chairman, I would hope that, having accepted the amendment of the gentleman from Massachusetts [Mr. MAVROULES] which gives DOD adequate access to all the information; Mr. MAVROULES would not have done it if it did not do the job, that we do not need the Hunter amendment.

I plead with my colleagues. Do not shut down the American economy further than it is. Reject this bad amendment.

Mr. MILLER of Washington. Mr. Chairman, will the gentleman yield for a question?

Mr. GEJDENSON. I yield to the gentleman from Washington.

Mr. MILLER of Washington. Mr. Chairman, there has been a lot of discussion of this furnace, and this was a proposed export of a high temperature furnace that had both civilian and military uses. It is my understanding, is it not, and I ask the gentleman, that at the time of the proposed export these furnaces no longer required an export license because a decision had been made to stop requiring licenses for that technology? Is that correct?

Mr. GEJDENSON. That is correct.

Mr. MILLER of Washington. And that the agencies who approved the decision to stop requiring a license for the export of that technology included the Defense Department and the Joint Chiefs of Staff; is that correct?

Mr. GEJDENSON. That is correct.

□ 1750

Mr. MILLER of Washington. OK.

Mr. Chairman, the stopping of licenses for this technology was approved by Cocom, but even though the furnace did not need a license, related computer equipment needed a license. Is that not correct?

Mr. GEJDENSON. Yes, that is correct.

Mr. MILLER of Washington. In fact, two license applications were made for related equipment, a Compaq Deskpro 286 computer and a Herco vertical spindle machine. Is that not correct?

Mr. GEJDENSON. That is correct.

Mr. MILLER of Washington. Both applications clearly indicated they were to be used in Iraq as part of the operation of a furnace system, is that not correct?

Mr. GEJDENSON. Yes.

Mr. MILLER of Washington. Is it not true that on June 26, 1989, and on January 31, 1990, the Defense Department approved these licenses?

Mr. GEJDENSON. Yes, that is correct.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. GEJDENSON] has again expired.

(At the request of Mr. HUNTER and by unanimous consent, Mr. GEJDENSON was allowed to proceed for 2 additional minutes.)

Mr. GEJDENSON. I yield to the gentleman from Washington [Mr. MILLER].

Mr. MILLER of Washington. Mr. Chairman, so the Defense Department participated in ending the license requirement for the furnaces, and then approved related computer and machine tool equipment for Iraq. Is that not correct?

Mr. GEJDENSON. That is correct.

Mr. MILLER of Washington. Mr. Chairman, the reason I bring this up, and I do this reluctantly, but this issue has been raised, so we have to bring it up. I bring it up because there seems in this debate to be an assumption by the proponents of this amendment that somehow if we change the system so that the Defense Department has more responsibility, that this will solve a problem that is very serious, that this will have created a terrible mistake that was made by our country.

I would suggest that the mistake was made not because of the Commerce Department bureaucrats, and not even because of Defense Department bureaucrats. The mistake was made because, unfortunately, back in the days before Saddam Hussein invaded Kuwait, the mistake was made because there was a policy in the administration to support the export of certain equipment to Iraq.

That is a fact. The question is where do we go from here? What I am suggesting is the way to stop those mistakes is to have an administration that learns from the lessons of the past, and which is diligent about giving direction to both the Commerce Department and Defense Department.

The way to stop those mistakes is not just to create layers of bureaucracy when it comes to the export of dual use technology.

The CHAIRMAN. The time of the gentleman from Connecticut [Mr. GEJDENSON] has again expired.

Mr. MILLER of Washington. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the way to correct that mistake is not to create an additional layer of bureaucracy among Government departments on all dual use technology. The way to correct that mistake is to have an administration in the future that is on top of the issue. But to start creating these layers of bureaucracy on dual use technology, when much of this claim has nothing to do with nuclear furnaces, much of this dual use technology has to do with products you can go down to Radio Shack and buy. We are talking about some of the most basic computer technological products that our companies are trying to sell, create, and maintain markets for overseas. You are darn right they are worried about delay, because the shelf life on some of these products is no more than 6 months before a new generation takes over.

So if our companies are going to have a market, they have got to be able to sell products. If we are going to stop military equipment that can be used for military purposes from getting to terrorist regimes like Saddam Hussein, you have got to have somebody at the top telling the people, "Don't let it happen."

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Washington. I am happy to yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, I thank my friend for yielding and wish to ask him a question just to follow up.

If you want to have a good administration policy, is it not in our interest to have some experts, not just at the top, but at the bottom, who know the difference between a nuclear missile system and a nuclear weapons program, and a medical prosthesis, which is what the Commerce Department put on the application for the computer equipment that was going to go with the skull furnace?

I have one other question for the gentleman: the Defense Security Technology Administration was the entity, and that is the Department of Defense Technology Administration, the agency that put the hold on the skull furnaces, and in fact they were not shipped.

My question to the gentleman from Washington [Mr. MILLER] is, do you not want to have some people who have some real defense know-how and can look at a computer, look at a skull furnace, and say we think that is weapons related, and stop it?

Mr. MILLER of Washington. Mr. Chairman, reclaiming my time, that is why you have a consultation process that involves Commerce and Defense, and that is why you have a process that allows this to be kicked upstairs to the policy and national security groups.

Mr. HUNTER. Mr. Chairman, if the gentleman will yield further, could I further inquire of the gentleman from Washington [Mr. MILLER] if it is so that you want to have consultation, according to the committee report from the Committee on Government Operations on this, I understand that the gentleman who is the president of the company that sold the skull furnaces says that in written and verbal statements he said to Commerce, "Hey, this stuff can be used in a nuclear program." He said that to them.

Yet when they sent this thing up to Defense to review, they marked on it, for Defense's review, "This is for a medical prosthesis."

Mr. Chairman, I would ask, does that not indicate that at least the information they forward was somewhat incomplete?

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Washington. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, let me make a point. I do not think that anybody could argue that the Commerce Department, who has an Office of Export Administration, I would say to my friend, whom I have the highest respect for, that the Commerce Department has a vested interest in exporting things.

The Department of Defense, we are having an argument now where somebody is actually trying to make the point that the Commerce Department is more concerned about national security than the Department of Defense. That is patently absurd. The Department of Defense is more interested in stopping the spread of technology that impacts on America's defense than the Commerce Department is.

Now, let me say another thing. The gentleman from Connecticut [Mr. GEJDENSON] makes a point that we made a terrible mistake there. I maintain the problem of the exporting of technology, not just to Iraq but to Brazil as well, is not a Republican or Democrat issue. I think that Republicans and Democrats are equally guilty.

What the gentleman proposes in his amendment is to weaken the current system of controls. That is what I object to.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Washington. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, I would be happy to have a Democratic President to be equally wrong. We have not had a Democratic President in a long time. We cannot take all of the blame equally. We have had 4 years out of the last 24 years.

As far as the role of the Department of Defense, as soon as that gulf war was over, the Defense Department was here with a $1.6 billion arms sale to Egypt. They had multiple sales ready to go into Kuwait and all these countries.

I would not say the Defense Department is the barrier for weapons around the globe. They have been the main salespeople.

The CHAIRMAN. The time of the gentleman from Washington [Mr. MILLER] has again expired.

(At the request of Mr. KASICH and by unanimous consent, Mr. MILLER of Washington was allowed to proceed for 2 additional minutes.)

Mr. MILLER of Washington. I yield to the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. The purpose of this bill, of course, is to remove the bureaucracy and the delay that the Department of Defense has imposed. That is why you are out here. Now you are saying the Department of Defense does not want to impose any restrictions.

Your bill not only implies, but explicitly states that DOD has been dragging its feet on letting these technologies be able to get out there into the international marketplace. That is why you are here. DOD has been objecting.

Have they objected at all times? Of course, they have not objected at all times.

I think the current system is terrible. I think we ought to strengthen the current system. We ought to slow it down. What the gentleman from Connecticut [Mr. GEJDENSON] is doing is weakening the current system and placing more power in a Commerce Department that inherently wants to ship more technology overseas.

What the gentleman from California [Mr. HUNTER] has in his amendment is to say that if the Department of Defense objects, then they have a right to take that objection to the President and the President has the right to decide.

Who could be against that? All we are trying to say is we ought to slow down the spread of technologies throughout the world. We ought to slow them down, because hurrying them up is creating so many of the problems around the world.

We are all guilty in this, but it is time for us to confess our sins and fix the current system.

Mr. BILBRAY. Mr. Chairman, I move to strike the requisite number of words.

□ 1800

In January 1987, when I came to Congress, I was appointed to the Committee on Foreign Affairs and sat on the Subcommittee on International Economic Policy and Trade which the gentleman from Connecticut now chairs.

For 2 years, I heard discussions on this particular matter. In fact, at the end of my 2 years, after serving on that committee and on the conference committee on a potential trade bill, I asked the Academy of Sciences to do a report or had it put in the RECORD to have them do a report, which they did. It was of great concern to me in getting off the Iraqi situation, which we all know was a fiasco, was the fact that American businessmen were being impeded in their trying to do business throughout the world.

It started with Motorola coming to us that had tried for almost 2 years to sell cellular telephones to the People's Republic of China to the point that the Chinese Government was saying, "If we don't get a permit from the Department of Defense shortly, we are going to take our business to Japan."

They did get that permit shortly thereafter at the pushing of this committee. To seismographic equipment that was being sent to Romania that was held up by the Department of Defense to the point where they finally, the Romanians canceled the order and bought from another Western European country; to other equipment like computers that were sold to East Germany but had a part broken down. We had testimony from the companies that because the DOD, which previously approved the sale of the particular computer, had not approved the part within the computer, would not approve the shipment of the part to fix the computer, that the East Germans ceased doing business with the American company and put on their unreliable source of repairs and, therefore, did not do any further business with the American company.

It went on and on. It was like a nightmare to this new Member of Congress coming in.

We went to the conference committee that year with some radical changes, much like what has been proposed in this bill. But lo and behold what happened was the infamous Toshiba affair, which we all remember, where the Japanese shipped high technology from the Toshiba Co. to the Russians that allowed the Russians to redo their submarine propeller drive and made it virtually undetectable to American equipment.

When we got into conference, the emotions were running high, and these provisions were virtually emasculated that the committee had proposed.

When we questioned, though, the Department of Defense, whether or not that we would have been able to stop the same sort of technology transfer, in reality we would not have been able to. It was admitted. One of the reasons we would not have been able to was because Toshiba actually lied on their applications on what they were shipping. They actually said it was agricultural planting or milling equipment that went there.

If the same type of equipment had gone through our process and lying and fraud was created, we cannot stop that sort of thing. The liars, the cheats, the people that ship things out, lying to us, they slip through the process. What we have begun to hamper is genuine American businessmen that want to compete worldwide. Believe me, Members that are out there watching this on television in their offices or wherever else they may be, listen to this: Talk to your businessmen that try to compete worldwide.

The Mavroules amendment has been a good amendment. It has certainly brought the process back within the scope of the Department of Defense to look at.

Having served on both the Committee on Armed Services, which I serve on now, and the Committee on Foreign Affairs, it gives me a pretty good perspective of the problem. I know that the present Speaker told me, when I got this appointment, that he wished all people that served on the Committee on Armed Services would serve a couple of years on the Committee on Foreign Afairs. And people on Foreign Affairs would serve a couple of years on the Committee on Armed Services, because I think they would get a broader view of the whole situation.

When one is on the Committee on Armed Services, which my colleague from California is, and my colleague from Ohio and the gentleman from Arizona [Mr. KYL], one gets a very narrow view. And I think a very parochial view.

I think when one serves on the Committee on Foreign Affairs, which many of my colleagues do here, one gets a broader view and understands this problem in a different light.

I think, having looked at it both ways, of what it is doing to American businessmen, because believe me, the same computers that we could not get the part over into East Germany were sold by the French or the British or the West Germans to the East Germans; the seismograph equipment was shipped into Romania by another company. And believe me, the Japanese were just foaming at the mouth to sell those cellular telephones to the People's Republic of China. It went on and on and on.

I think that the system is broken and, gentlemen, it is broken. We have got to correct the situation. I think this bill is an excellent bill, the Mavroules amendment that corrects any problems that we should have.

If we fall back and accept the Hunter amendment, we will go back to the status quo. We are going to hurt American business. We will not allow them to compete.

I think it is a bad, bad amendment.

Mr. HOUGHTON. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, I have a feeling we are sort of missing the point here, that we can give all these patriotic speeches about medical prosthesis and special furnaces and the terrible things that have happened to Iraq, but what is happening to the jobs in this country? They are being taken away by other countries.

Some interesting quotes. I would like to quote something. This is from the GAO report of June of 1989.

> Commerce and DOD generally agree on how to respond to license applications that they have reviewed.

Furthermore it says, that Commerce in many instances—because of concerns over potential diversion or unacceptable nuclear uses, that DOD recommends to be approved—stopped those.

One other quote, and this is from the famous Government Operations Report of July 2 of this year.

> The underlying cause behind the inefficiency is that too many government agencies are involved in the licensing process.

So while we wave our hands and we talk about Iraq and we bring up all these tremendous patriotic issues, the business person who is trying to create the jobs to bring this country back into some semblance of balance is being hurt.

If there is a critical issue of defense, it is easily solvable. There is an Interagency Council headed by the National Security Group, and that will then be bumped up to the President. The Department of Defense at any time can request that.

All this whole process is doing, and I am speaking against the Hunter amendment, is to allow the Secretary of Commerce to take products off the control list. That will help business. It will help America. It will help create more jobs.

If there is any critical national defense issue which comes into focus, it can be reached very easily through this Interagency Council and will be bumped directly to the President.

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. HOUGHTON. I yield to the gentleman from Massachusetts.

Mr. MAVROULES. Mr. Chairman, just for a matter of conversation, I think what the gentleman has stated makes an awful lot of sense. I made an agreement with the committee. We worked on it now for about 2 days, which I think protects the interests of DOD, at least in my judgment. It protects it and protects it quite well.

The question is, and I think the gentleman makes a businessman's point of view, which is extremely important, which I tried to articulate before but we did not have enough time, is that we are not alone in this world. We are not the champions of the world anymore. We are not the heavyweight champions any more. We might think we are. Maybe militarily we are, but we are not in the field of technology.

If we have not given the opportunity, or at least given to our business people in this country the opportunity to ship their goods, other countries will get them from someplace else. The gentleman knows that and I know that.

At least let us give a playing field to those who operate in this country.

With regard to the amendment of the gentleman from California [Mr. HUNTER] and the amendment the gentleman from Arizona [Mr. KYL] is going to be offering, I do believe the agreement that I have reached on behalf of the Committee on Armed Services covers the major points and protects the integrity of DOD, in my judgment.

On the one hand we have that. On the other hand we give a level playing field to the businessmen of our country to ship their goods.

Ultimately, and it was a shame that we had to bring it out tonight, ultimately the decision is made by the President of the United States. And that ought not to be a token conversation on this floor at this time when our President is in the Middle East trying to bring peace to that part of the world.

I would suggest very strongly, these amendments are not helping and I do not take a back step to any Member when it comes to the national security of our country. This is the wrong time and the wrong place.

□ 1810

If indeed we can work it out, we work it out in conference. That is where we ought to work it out. That is all I am asking. I ask that in behalf of the Armed Services Committee because we reached an agreement, and also to tell the gentleman that I certainly agree with his statement and thank him.

The CHAIRMAN. The time of the gentleman from New York [Mr. HOUGHTON] has expired.

(By unanimous consent Mr. HOUGHTON was allowed to proceed for 2 additional minutes.)

Mr. HOUGHTON. Mr. Chairman, I agree with the gentleman from Massachusetts. It is a fine intellectual argument for us to stand here and talk about what the Secretary of Defense and the Secretary of Commerce can do. But the people who are going to get crushed are the American businessmen because the gentleman is absolutely correct. In the real world, those products, those services are going to go to the country, irrespective of what we want. And furthermore, I do not accept the proposition that because you are the Secretary of Commerce you are less of a patriot than the Secretary of Defense.

Mr. KYL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to speak in support of the Hunter amendment and try to clarify some things that have been brought up here.

The first point was made by the gentleman from Nevada [Mr. BILBRAY] and he made some very good points about delay, and we are all concerned about delay. This bill does some things about that. I just want to make it clear that the Hunter amendment does not build in any delay. As a matter of fact, it provides for an expedited procedure.

The Secretary of Defense would have only 20 days to object to any item on his list, and the President would have to resolve any dispute within a further 20 days. So clearly there is an acceleration of dispute resolution in the Hunter amendment. That is a good feature of the amendment.

Second, with regard to the question of the furnace, I serve on the Government Operations Committee as well as the Armed Service Committee, and the Government Operations Committee has issued a report, Mr. Chairman, which answers a lot of these questions. I would like to quote carefully from the Government Operations Committee in a couple of key respects.

The first is with respect to the sale of the furnace that we have heard about. What are the facts? I quote from the report of July of this year of the Government Operations Committee:

> Commerce appears to have made two mistakes—both of which cast doubt on the wisdom of allowing the agency to continue as the principal licensing authority for dual-use goods.

This is not the Armed Services Committee speaking, this is the Government Operations Committee. I continue:

> First, Commerce failed to provide DOD with a key piece of information; namely, that two other items were to be sold with the furnaces: computer control units and machining lathes. Second, Commerce ignored, for whatever reasons, CONSARC's warnings that the skull furnace had nuclear fabrication capabilities and thus failed to notify appropriate intelligence and Defense agencies of the proposed sale.

That is what the Government Operations Committee says was wrong with the sale of the furnace, and they go on. Let me complete these points. That is why the committee goes on in its report to detail case after case after case of situations where the Commerce Department never notified the Defense Department.

The Department of Defense cannot object if it does not know, and my colleague from Connecticut correctly criticized the administration for a policy which allowed all of the equipment to go to Iraq, and then I think left dangling the answer to the issue, which is that until the Defense Department knows about these things the Defense Department cannot raise the red flag to the administration and, therefore, the administration may well make some bad decisions.

The key is to let the Defense Department in on the process, and all the Hunter amendment does, my colleagues, is to say that the Secretary of Defense can send over a list and say if anything shows up that is on this list, would you let me know, and the Commerce Department has to let him know. And then he has only 20 days to decide if he likes it or not. If he says "I do not think this is a good idea," if Commerce goes along, fine. If they say we still think it should be exported, then the President has 20 days to resolve the issue.

I would just refer my colleagues to this July Government Operations Committee report, because time after time, machine tools, lasers, some computer equipment, quartz crystals, and in many other situations the Government Operations Committee concludes that the Commerce Department failed to refer the applications to any other Government agency.

I read the conclusion of the Government Operations Committee report:

> It is likely that Commerce's mission to promote exports clouded the agency's ability to perform its secondary mission to deny sales in cases where a likely but not quite proven threat to U.S. security existed.

That is why we believe the Department of Defense at least ought to be told. That is all the Hunter amendment provides. And in the event it disagrees with the Department of Commerce, we ought to have the right to let the President decide.

As my colleague from California said, who can disagree with the proposition that the President of the U.S. ought to decide?

Finally, a headline, June 20, Chicago Tribune, "Study: Commerce Department Aided Iraqi Arms Buildup." This is a newspaper article which goes on to point out the fact in other instances where the "Commerce Department approved some of the technology sales without consulting the Defense, State or Energy Departments," and this study is prepared by the Nuclear Arms Control Project of Wisconsin, an affiliate of the University of Wisconsin Law School, so not just the Government Operations Committee, but this prestigious study as well as indicated that the Department of Commerce needs a second opinion. In this case we are suggesting it be the Department of Defense.

Mr. HOUGHTON. Mr. Chairman, will the gentleman yield?

Mr. KYL. I am happy to yield to my friend, the gentleman from New York.

Mr. HOUGHTON. Mr. Chairman, I thank the gentleman for yielding. He is very eloquent.

But I would like to ask the gentleman a question. Has the Department of Defense requested this amendment?

Mr. KYL. To my friend from New York I would say I have no idea what the Department of Defense's position on the Hunter amendment is. I would refer that question to the gentleman from California.

The CHAIRMAN. The time of the gentleman from Arizona [Mr. KYL] has expired.

(On request of Mr. KASICH and by unanimous consent, Mr. KYL was allowed to proceed for 2 additional minutes.)

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to my colleague, the gentleman from California, the author of the amendment.

Mr. HUNTER. Mr. Chairman, let me answer my friend. The Department of Defense has not issued any letter or official statements on this. But let me just say to my friend, as a guy who is the world's greatest expert on his own opinion, I have talked with the Department of Defense. They are dangerously upset with the idea that they cannot participate and have been left out of important decisions with respect to technology being transferred, and the people who work in DTSA, and who are concerned with keeping deadly technology that can be used against the men and women in uniform of the United States who have that job in the Department of Defense like this amendment.

The gentleman cannot say who has the official imprimatur stamped on their letterhead. I think that is irrelevant. I think the things that have occurred since this country went into the gulf war and saw American technology facing young American men and women should make a case to everybody here that I think would lower the importance to the gentleman from New York of having some certificate stamped on a piece of paper from DOD saying the President wants this, Cheney wants this.

My position and my opinion, after having dealt with them and worked with them on this is darn right.

Mr. KYL. To reclaim my time to make a point, I think we ought to get away from jurisdictional turf battles, does Commerce like it, does Defense like it, does Foreign Affairs like it, does Armed Services like it. What is right for America is the key. We have to stop a willy-nilly process here which gives key technology to people who should not have it, and all the Hunter amendment does is say let the Secretary of Defense know about it, and if he and Commerce cannot agree, let the President decide.

Who can disagree with that proposition?

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, I happened to talk to the Department of Defense officials who objected to the Gejdenson legislation. I do not have it in a letter. I talked to them on the phone. The gentleman from Massachusetts [Mr. MAVROULES] came over here to negotiate something the DOD has not even reviewed, and that we are not happy with.

The CHAIRMAN. The time of the gentleman from Arizona [Mr. KYL] has again expired.

(On request of Mr. KASICH and by unanimous consent, Mr. KYL was allowed to proceed for 1 additional minute.)

Mr. KASICH. If the gentleman will continue to yield, the point of this thing is that even within DOD there is a bureaucracy. In fact, I have been fighting the DOD bureaucracy for 9 years, and a lot of what they do out at the DOD is not very smart.

The bottom line is they are more directed toward stopping the flow of technology than the Commerce Department. We ought to fix this problem.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, just to answer the gentleman's question, I just talked with members of the administration outside. The administration's position, as given to me, was they want to strike the entire section, so they are a little bit worried about cleaning this thing up and making it acceptable. That is the information that I was just given.

Mr. KYL. I urge my colleagues to vote "yes" on the Hunter amendment.

Mr. GIBBONS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is hard to talk about this subject without getting very patriotic and wrapping ourselves in the flag and defending soldiers who have given their lives on the battlefield. I know that, but there is a limit to what we can do about the spread of technology. I think that the Committee on Foreign Affairs, under the gentleman from Connecticut [Mr. GEJDENSON], as the subcommittee chairman, has done a fine job in laying out the basic ground rules.

That does not mean that no important technology will ever escape here again. We are not the masters of technology in this world. Our technology is good, but we certainly do not have a monopoly on technology.

All of the industrialized countries manufacture, develop, research this kind of material. That does not mean that because they do it we ought to go out helter-skelter and scatter our goods and technology all over the world just to make a buck.

☐ 1820

That is the feeling that the members of the Committee on Foreign Affairs have had. They have put together a careful piece of legislation. It has been fortified by the Mavroules amendment. I do not think we can do any better than that.

I would encourage the Members, my fellow Members, to vote against the Hunter amendment. It is overreaching, and it will cause more harm than it does good in the whole process. So let us remember we do not have a monopoly on technology. Some of it is going to escape. But we do have a need to go out and sell our goods around the world, and if we put the Hunter restrictions upon it, we are going to end up not getting the legitimate contracts out there.

That is what we have got to worry about today. The cold war is over, thank God. Most of our problems in this area are behind us.

I hope that the day will come when we will see the end of exports of arms around the world and the tools that make arms, but we are not going to do it by acting unilaterally, by putting excessive restraints upon the American business community as regulated by this piece of legislation. This piece of legislation is a good piece of legislation. It does a good job in controlling the reckless spread of lethal technology. We should not try to go further than that.

I think that if the Defense Department wanted to go further than that, we would all get a call from the Defense Department saying that we need to do something about this bill that the Committee on Foreign Affairs has brought to us. None of us have gotten those kinds of calls.

The gentleman from California [Mr. HUNTER] is acting out of his own patriotic fervor, and I do not criticize him at all for doing that. But I think he is exceeding the grasp that we need to levy upon the export of our goods, and I urge the Members to support the committee bill as it stands and as it has been amended by the gentleman from Massachusetts [Mr. MAVROULES].

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I am happy to yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, I would like to thank my distinguished friend, the gentleman from Florida, for his support on these efforts.

A lot has been talked about the study for the Committee on Government Operations. The study also states that the greatest complication comes from the multiplicity of agencies involved in the decisionmaking. That is in that study. It says it slows down the licensing, and it does not help controls, frankly, and in this study from the National Academy of Sciences, which it included the No. 2 from the Arms Control Agency, they frankly argue against the Hunter amendment, as my friend from Florida does, as my friend, the gentleman from Massachusetts [Mr. MAVROULES], does, and let us defeat the Hunter amendment. Let us take care of the bill that takes care of our national security concerns and does not tie American industry in knots.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Barnard-Hunter amendment. I want to congratulate my colleagues.

It is in fact the Barnard-Hunter amendment, and I want to thank my colleague from Georgia who is the distinguished chairman of the Commerce, Consumer and Monetary Affairs Subcommittee on which I served for 2 years.

It is not casually that my colleague from Georgia sponsors this amendment. His subcommittee worked for a period of years to look into the very facts that are being discussed on the floor today.

In particular, we have been discussing some examples, the example of the very near fatal shipment of skull furnaces to Iraq and, frankly, I think some of the facts we have heard on the floor have been wrong to the extent we can make better decisions when we understand what are the facts, and I would like to read into the RECORD from the testimony in our hearings, the testimony of Stephen Bryen, who was one of several witnesses who all testified to the same end in our committee hearings. He says:

> By way of background, Mr. Chairman, during the Reagan administration, from 1981 until 1988, when I left the Pentagon, I served as Deputy Under Secretary of Defense for Trade Security Policy and also I had the responsibility to be Director of the Defense Technology Security Administration. I was keenly involved in a large number of cases, some of which have come to the surface since the Iraqi invasion of Kuwait.
>
> In fact, I spent a lot of my time trying to oppose the transfer of some of the strategic technologies which ended up in Iraq. I would like to comment on that if I may in the next few minutes.
>
> I would like to begin first with the furnace story, these so-called skull furnaces which were proposed to be exported by a company in Rancocas, NJ, to Baghdad. All analysis now, including the President's, show these were furnaces intended to be used for nuclear weapons development.
>
> I first learned about the furnaces from a reporter in Philadelphia, Mark Fazlollah, who called me on the phone to tell me that he had some information about this pending transaction and needed some help with it. He had seen my name in a magazine article and felt that I might be of some assistance to him.
>
> What I did was to arrange a meeting in my office between the reporter and staff people from my old agency at the Defense Department in order to do a preliminary scrub on this proposed export. The rest of the story really was the effort of the Defense Department, having learned of the furnaces, and they learned it through me and through this reporter from Philadelphia, the rest of the story was the effort by the Defense Department which went right down to the wire, as Mr. Milhollin made clear. The goods were due to be shipped out of the country on July 20 of this year and I think the decision from the White House to block them came around July 19, just at the very last minute as an Iraqi freighter was heading for Baltimore harbor.
>
> The Pentagon had to fight a terrific internal battle to convince the other agencies, and particularly the Department of Commerce, of the strategic importance of this sale and to intervene against it. The Commerce Department, until the bitter end, wanted to see the export go forward.
>
> Since then, I have had the opportunity to look at some of the papers that the company has provided concerning its dialogue with the Commerce Department over a 1-year period concerning this export. There are some very revealing incidents that are reported by the company that I think the committee should be aware of.
>
> There were at least two occasions with two different officials of the Commerce department who met at the company headquarters in New Jersey, where the company explained in clear terms that the furnaces in question had nuclear application and could be employed for nuclear work without modification. I am quoting almost exactly a memoranda of conversation that the company has provided.
>
> And yet, despite these interventions by the company, the Commerce Department appears to have conducted no investigation or sought any outside expert opinion as to the nature of these furnaces or the danger that they might or might not pose.
>
> The furnaces case is not an isolated incident. I regret to say that it is just one more case among many that I was involved in over the period of time that I worked in the Defense Department.
>
> The Pentagon, when it was consulted, was able to provide concrete information to Commerce Department officials about the intended end-use, the strategic risks and the dangers implicit in certain exports and where exports were permitted to take place in any case information disregarded.

Mr. Chairman, those are the facts. That is the record.

This is not a question about which agency is more patriotic. It is a question about mission. The mission of the Department of Commerce is to promote exports, an important American goal. The mission of the Department of Defense is to protect our national security, likewise an important American goal.

We cannot take good patriotic Americans and tell them simultaneously to walk north and walk south.

The Barnard-Hunter amendment, in a 20-day period, no more, will permit the Department of Defense to consult. This is a very responsible amendment, but more than that, it is a very important amendment for our national security.

I urge my colleagues to support it.

The CHAIRMAN. The time of the gentleman from California [Mr. COX] has expired.

(At the request of Mr. HUNTER and by unanimous consent, Mr. COX of California was allowed to proceed for 2 additional minutes.)

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I am happy to yield to the gentleman from California.

□ 1830

Mr. HUNTER. Mr. Chairman, if the gentleman will yield, I want to thank the gentleman. I want to thank the chairman of the Government Operations Committee, the gentleman from Georgia [Mr. BARNARD], for what I think perhaps may have been the most important report issued this year by any committee.

The opposition to the Barnard-Hunter amendment that the gentleman from California speaks about is reiterated again and again. "Why wait an additional 20 days."

Well, I guess I would ask anybody who bases their opposition to the amendment on that premise that 20 days is too long, I would ask what are the lives of American soldiers and sailors worth? This is not a game. This information and this technology that literally has been caught at the airport on a number of occasions because we do not have a secure discipline of stopping technology transfers is a technology that could destroy many, many Americans. This is a very, very critical situation.

So I guess I would ask those people, is 20 days worth 10, or 15, or 25, or 50 National Guardsmen or reservists in the Middle East? Is it worth putting away a situation or forestalling a situation when a Third World country, a terrorist country, is going to acquire at least a crude nuclear weapon? Why is 20 days now so important, and why is it so important to push the Secretary of Defense out of the process?

The gentleman from California [Mr. COX] has pointed this out. The opposition to the Secretary of Defense being involved in the process is not because he is not stopping anything. It is because when we have had technology stopped and when we have had opposition because there is a dual use that creates a military danger, more times——

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has expired.

Mr. HUNTER. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of of the gentleman from California?

Mr. GEJDENSON. Mr. Chairman, reserving the right to object, I will not object, but may I just ask this of the author of the amendment, because we are trying to balance out time here: We have other Members who have amendments to this bill and I do not want to preclude them. Could we maybe do 8 minutes on each side? Is that enough for the gentleman?

Mr. HUNTER. Mr. Chairman, that is fine.

Mr. GEJDENSON. Mr. Chairman, I ask unanimous consent that further debate on the amendment be limited to 8 minutes, controlled by the author of the amendment, which he could distribute, 4 minutes for him, and 4 minutes for us.

Mr HUNTER. Mr. Chairman, I would be happy to do that.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. HUNTER. Mr. Chairman, I yield such time as he may consume to the gentleman from Georgia [Mr. BARNARD].

Mr. BARNARD. Mr. Chairman, I thank the gentleman for yielding to me.

Let me say that I want to compliment the committee on what they have done. Unfortunately, one of the recommendations that was made, that we establish an independent agency for export administration, if we had an independent agency handling this process it would be much more efficient, an agency consisting of the Commerce Department, the Bureau of Export Administration, the Treasury Office of Foreign Assets, the State Department Office of Defense Trade Council, the Defense Technology Security Administration, the Energy Office of Arms Control, the Nuclear Regulatory Commission. If we had an independent agency handling these export licenses, it would be a much better system. Unfortunately, we do not have that.

I am hoping in future legislation that we will consider it, but in the absence of that, Mr. Chairman, we do need this amendment, because this is the most serious aspect of export licensing.

Nobody is more probusiness than I am. I think that our industries ought to be unleashed, but I have seen what happened in Iraq and what we did.

This report did not come out timely because it was not timely to expose all of this to the American public at a time when Desert Storm was in operation.

But finally the Commerce Department came forth and helped us expose all this information.

This is evidence that we need to make some corrections.

Again I want to say that this is a modest proposal that needs the support of this Congress.

Mr. HUNTER. Mr. Chairman, I thank the distinguished gentleman and I thank him for his coauthorship of the amendment.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Florida [Mr. BENNETT], the chairman of the Sea Power Subcommittee, and then I would like to let my colleagues know that I will yield to the gentleman from California [Mr. CUNNINGHAM].

Mr. BENNETT. Mr. Chairman and Members of Congress, it seems to me that we have here today something very essential with regard to the security of our country and of the world and of the future.

I do not have any technical information to bring to you, but I want to bring to you my conviction that anything we can do to make it more difficult to sell arms abroad will be a good thing to do for our country at this time.

I think certainly our country cannot be underrated as a country. We can produce other things in which we can compete in the world, but for our country to go into this situation today where the world is turning toward peace and turning toward a permanent situation in which we can look for some future for the world and for mankind, it is a great mistake for us to try to make it easier to sell arms abroad.

Therefore, Mr. Chairman, I strongly support any amendment which would give the Department of Defense greater authority to provide for our security in this matter.

Mr. GEJDENSON. Mr. Speaker, I just say the Berlin wall is down. This does not deal with arms. It deals with dual-use technology.

I say to my friend, the gentleman from Florida, for whom I have the greatest respect, this is not a weapons amendment. This is a commercial amendment.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. LEVINE].

Mr. LEVINE of California. Mr. Chairman, I thank my friend for yielding this time to me.

Mr. Chairman, I am just here to express the reason why I support the balance that the committee has struck on this amendment. I do believe we are dealing here with trying to effect a delicate balance. We clearly are dealing with two legitimate countervailing concerns. On the one hand, we have the concerns and the objectives of the author of the amendment which are clearly legitimate, and in fact there have been some I believe serious mistakes made in terms of the oversight of the administration with regard to these issues in the past, but that is not the issue today.

The issue today is how do we strike a balance that will not hamstring American competitiveness and American business in dealing with the key high-technology issues of the future without in some fashion compromising our security, and that is the balance that the subcommittee has struck.

The subcommittee has already required that the DOD oversee all exports that go to Iran, Iraq, Syria, Libya, all proliferation items, licenses that are now reviewed by the Pentagon include all missile tech licenses, nuclear licenses, chemical and biological precursors, all items going to these terrorist countries; but if we go further than that, we will end up essentially being like the little boy trying to stick his finger in the dike, when the genie is already out of the bottle. We will find that it is our competitors from both Europe and Asia who will be making the sales to free world countries where there are no significant national security considerations. It is that balance that has been struck that on the one hand will enhance our competitiveness, and on the other hand will continue to keep the DOD in the game where DOD ought to be in the game.

Mr. Chairman, I commend the subcommittee for having struck the balance that they have and I strongly support the balance that the subcommittee has in this legislation, and I oppose the amendment.

Mr. GEJDENSON. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. JOHNSTON].

Mr. JOHNSTON of Florida. Mr. Chairman, many of you know my district. I represent the south end of Palm Beach County, IBM, Motorola, Pratt & Whitney, Seamans, little mom and pop operations like that.

Now, this is corporate America. These are not leftwing pinko commie consortiums, and these companies more than anything else want to guard the national security of the United States, but let me tell you, these companies are getting their lunch eaten by the Japanese in large part because they cannot get exporting licenses. We are not talking about 20 days. We are talking about 2½ years.

Now, this bill is excellent. During a period of a cold war, I do not see why we give the DOD any more authority or responsibility than they have. They blew it.

I strongly urge that you defeat the Hunter amendment. There has been a lot of work put on this bill, and I strongly urge that you vote for the bill on final passage.

The CHAIRMAN. The gentleman from California [Mr. HUNTER] is recognized for 1 minute to close.

Mr. HUNTER. Mr. Chairman and my colleagues, you just had a chance to vote a number of months ago to win the gulf war. You have got a chance today to vote to prevent another one.

This amendment is a very reasonable amendment. I want to thank the gentleman from Georgia [Mr. BARNARD], and all the Members on the other side who spoke in favor of this, because it is a reasonable amendment. It gives the Secretary of Defense 20 days when he requests an item to be looked at. If he does not like the idea that it is going to be transferred to another country, this particular technology, he then can refer it to the President of the United States if he differs with the Secretary of Commerce. That is a reasonable thing. The lives of our young men and women are worth 20 days.

□ 1840

Let us not make the same mistake that we made about 2 years ago before this gulf war when we forgot about the fact that we have an incredible flow of high technology going to adversaries, that are going to be taking that technology back to the men and women in uniform who serve this country.

Vote "yes" on the Barnard-Hunter amendment.

Mr. MINETA. Mr. Chairman, I rise in opposition to the amendment.

The Omnibus Export Amendments of 1991 strikes a balance between national security concerns with trade and economic opportunity.

The amendment on the floor, however, fails to recognize that the cold war is over.

By enhancing the role of the Department of Defense to review export licenses, the amendment will add to the bureaucratic gridlock and redtape that confront U.S. exporters.

Mr. Chairman, economic priorities are changing throughout the world. So must ours.

Many U.S. industries, including the critical high-technology and electronics industries, are losing ground in the competitive contest against our trading partners.

If we do not create an atmosphere that allows these industries to compete, we will face the very real prospect of being left at the post while our competitors race toward the future.

I strongly urge my colleagues to oppose the amendment.

The CHAIRMAN pro tempore (Mr. DURBIN). All time has expired. The question is on the amendment offered by the gentleman from California [Mr. HUNTER].

The question was taken, and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. HUNTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 189, noes 217, not voting 27, as follows:

[Roll No. 355]

AYES—189

Abercrombie
Andrews (ME)
Andrews (NJ)
Applegate
Archer
Armey
Aspin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bilirakis
Bliley
Boehner
Broomfield
Bruce
Bunning
Burton
Byron
Callahan
Camp
Carr
Chandler
Clement
Coble
Coleman (MO)
Combest
Costello
Cox (CA)
Cox (IL)
Crane
Cunningham
Dannemeyer
Darden
DeLay
Dickinson
Doolittle
Dorgan (ND)
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Edwards (TX)
Emerson
Evans
Ewing
Fawell
Franks (CT)
Gallegly
Gallo
Gaydos
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goss
Gradison
Hall (TX)
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Hubbard
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
James
Jenkins
Johnson (SD)
Johnson (TX)
Jones (GA)
Kaptur
Kasich
Kennedy
Kildee
Klug
Kyl
Lagomarsino
Laughlin
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McDade
McEwen
McMillan (NC)
Michel
Miller (OH)
Molinari
Mollohan
Moody
Moorhead
Murtha
Myers
Neal (NC)
Nichols
Nussle
Oxley
Packard
Pallone
Parker
Patterson
Paxon
Payne (VA)
Peterson (MN)
Pickett
Porter
Poshard
Pursell
Quillen
Ravenel
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Santorum
Sarpalius
Saxton
Schaefer
Schiff
Schroeder
Schulze
Sensenbrenner
Shaw
Sisisky
Skeen
Skelton
Smith (NJ)
Smith (OR)
Snowe
Solomon
Spence
Stearns
Stenholm
Stump
Sundquist
Tallon
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Torricelli
Traficant
Upton
Vander Jagt
Vucanovich
Walker
Walsh
Waxman
Weldon
Wilson
Wolf
Wylie
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—217

Alexander
Allard
Anderson
Andrews (TX)
Annunzio
Anthony
Atkins
AuCoin
Bereuter
Berman
Bevill
Bilbray
Boehlert
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Bryant
Bustamante
Campbell (CA)
Campbell (CO)
Cardin
Carper
Chapman
Clay
Clinger
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Cooper
Coughlin
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dooley
Downey
Durbin
Dwyer
Dymally
Early
Edwards (CA)
Engel
English
Erdreich
Espy
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Gejdenson
Geren
Gibbons
Gonzalez
Gordon
Grandy
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Henry
Hertel
Horn
Horton
Houghton
Hoyer
Huckaby
Jacobs
Johnson (CT)
Johnston
Jones (NC)
Jontz
Kanjorski
Kennelly
Kleczka
Kolbe
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Leach
Lehman (CA)
Levin (MI)
Levine (CA)
Lewis (GA)

Long
Lowey (NY)
Luken
Manton
Markey
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Mink
Moakley
Montgomery
Moran
Morella
Morrison
Murphy
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Panetta
Pastor
Payne (NJ)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Petri
Pickle
Price
Rahall
Ramstad
Ray
Reed
Richardson
Roe
Roemer
Rose
Rostenkowski
Roth
Roukema
Roybal
Russo
Sabo
Sanders
Sangmeister
Savage
Serrano
Sharp
Shays
Sikorski
Skaggs
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
Staggers
Stallings
Stark
Stokes
Studds
Swett
Swift
Synar
Thornton
Torres
Towns
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Washington
Waters
Weber
Weiss
Wheat
Whitten
Wise
Wolpe
Wyden
Yates
Yatron

NOT VOTING—27

Ackerman
Boxer
Brown
Davis
Eckart
Fields
Gephardt
Glickman
Goodling
Hopkins
Jefferson
Lehman (FL)
Lent
Lloyd
Martinez
Mrazek
Rangel
Rowland
Sawyer
Scheuer
Schumer
Shuster
Slaughter (VA)
Smith (TX)
Tanner
Traxler
Williams

□ 1900

Messrs. LEHMAN of California, WEBER, PANETTA, and VENTO, Ms. WATERS, and Mr. SLATTERY changed their vote from "aye" to "no."

Messrs. BEILENSON, ABERCROMBIE, and HOAGLAND, and Ms. KAPTUR changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments to title I?

AMENDMENT OFFERED BY MR. KYL

Mr. KYL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KYL: Page 21, strike line 8 and all that follows through page 25, line 20, and insert the following:

"(g) COMMODITY JURISDICTION.—Notwithstanding any other provision of law, no item may be included on both the control list and the United States Munition List after the publication of the lists required under paragraph (4) and the resolution of any dispute with respect to such lists under paragraph (5).

"(2) Notwithstanding any other provision of law—

"(A) an item agreed for control on the International Munitions List of the group known as the Coordinating Committee shall be subject to control under the Arms Export Control Act and not under this Act; and

"(B) except as provided in paragraph (3), an item not agreed for control on the International Munitions List of the Coordinating Committee shall be subject to control under this Act and not under the Arms Export Control Act.

"(3)(A) The President shall identify those items which are included on the United States Munitions List and are not included on the International Munitions List of the group known as the Coordinating Committee.

"(B) The President shall conduct a case-by-case review of each item identified under subparagraph (A) for the purpose of assessing the national security implications of removing such item from the United States Munitions List for purposes of control of the item under this Act. If the President determines that, pursuant to such review, the removal of such item from the United States Munitions List would have a detrimental effect on the national security of the United States, the item shall be controlled under the Arms Export Control Act and not under this Act. If the President does not make a determination under the preceding sentence with respect to the item, the item shall be subject to control under this Act and not the Arms Export Control Act.

"(C) Within 10 days after making a determination under the second sentence of subparagraph (B), the President shall submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate that determination, together with a report describing in detail the reasons for the determination, in appropriate classified form, as necessary. As soon thereafter as is practicable, the President shall propose to the Coordinating Committee that the item to which the determination relates be added to the International Munitions List.

"(4)(A) Within 6 months after the date of the enactment of this subsection, the Secretary shall publish the control list and the Secretary of State shall publish the United States Munitions List, with all revisions that have been made in accordance with this subsection.

"(B) Within 6 months after the date of the enactment of this subsection, the Secretary of State shall publish in a separate list those items remaining subject to control under the Arms Export Control Act under paragraph (3).

"(5)(A) whenever—

"(i) the Secretary or the Secretary of State receives a request to determine whether an item is subject to control under this Act or the Arms Export Control Act,

"(ii) either Secretary finds that an item is included on both the control list and the United States Munitions List, or

"(iii) an item appearing on the list of one Secretary under paragraph (4)(a) is considered by the other Secretary to be under the jurisdiction of that other Secretary,

the Secretary or the Secretary of State (as the case may be) shall refer the matter and any relevant information to the other Secretary.

"(B) The 2 Secretaries shall have a period of 15 days following the referral of a matter under subparagraph (A) to resolve any differences with respect to the matter involved.

"(C) If the 2 Secretaries fail to resolve such differences within that 15-day period, either Secretary may refer the matter to the President who, within 15 days after receiving the referral, shall notify the Secretaries of his determination on the matter in dispute.

Mr. KYL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. KYL. Mr. Chairman, I would like to briefly explain what this amendment does, and then briefly yield to the gentleman from Massachusetts [Mr. MAVROULES], and then make a few arguments on its behalf.

This is one of the portions of the amendment that would have been offered as part of the Committee on Armed Services amendment, but was withdrawn in favor of the compromise worked out with the gentleman from Connecticut [Mr. GEJDENSON].

Mr. Chairman, this provision amends section 107 of the bill. Section 107 deals with commodity jurisdiction.

Under the bill, this provision of the bill would require that the President remove all goods and technologies that presently appear on the U.S. munitions control list, but do not appear on the international munitions list established by Cocom. Effectively, here is what that means: that even though the United States may want to have an item controlled, if that item does not appear on the Cocom list because one of the Cocom countries has objected to its inclusion on the list, the President would be required to move it from our munitions list. No other country would be subject to that same limitation.

Mr. Chairman, I would like to read just a list of the technologies that would automatically be eliminated from our munitions list if this section of the bill is not amended. This is a list of technologies which will no longer be subject to control by the U.S. Government as being on our munitions list, unless section 107 of the bill is amended pursuant to my amendment.

Here are the technologies that would no longer be on our list: Stealth technology, space vehicles, antisubmarine warfare technology, jet engine hot sections, composite materials, night vision technology, inertial navigation systems, the global positioning system receivers, naval nuclear propulsion technology, submersibles, frequency hopping radios, intelligence collection technologies, and others.

Mr. Chairman, the point is that we list certain of these technologies because we understand they have significant national security applications in other countries.

Ordinarily Cocom would go along with such technologies. But for one reason or another, we cannot get the unanimous consent which is required of Cocom to put these particular items on the Cocom list.

As a result, under the bill they would automatically be eliminated from the U.S. munitions control list. My amendment simply allows the President to keep these items on our list and not let one other country in Cocom dictate to us what is on our list.

I might tell Members that Japan is one of the Cocom countries. If Japan said that it wanted to sell some of these things and refused to allow it to be on the Cocom list, automatically these items would not be subject to our control under our munitions list.

That is why the original Armed Services Committee amendment would strike part of this provision of the bill.

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. KYL. Mr. Chairman, I yield to the gentleman from Massachusetts.

Mr. MAVROULES. Mr. Chairman, I want to thank my friend, the gentleman from Arizona, for yielding just so that I may clarify my own personal position on this matter.

This amendment was part of the en bloc amendment which I was to present to the committee this afternoon. After further review and negotiation with the Committee on Foreign Affairs, and especially with the gentleman from Connecticut [Mr. GEJDENSON], we agreed to protect the DOD's part of this overall bill.

In so doing, we had agreed at that time to withdraw this particular part of the amendment. So I want to clarify my position. Before I do, I would like to thank and express my appreciation to the gentleman from Arizona [Mr. KYL] for his very, very cooperative manner, not only today, but also in the conference we are working together in with the other side.

Mr. Chairman, given those set of circumstances, so that I can retain my own personal integrity on the matter, I cannot support the gentleman from Arizona [Mr. KYL] on ths matter, because I did agree to withdraw it from the original agreement.

Mr. Chairman, I appreciate the opportunity to clarify my position.

Mr. KYL. Mr. Chairman, reclaiming my time, I thank the gentleman for his comments.

Mr. Chairman, I just want to close by reiterating that all this amendment does is preserve the existing law which gives the President of the United States the authority to decide what is on this list, and not one other country, any other country that belongs to Cocom. Those decisions ought to belong to the United States of America, not other countries.

Mr. Chairman, one final point: I read a list of technologies that currently would be taken from the list. We should consider the fact there is future technology developing all the time. As these future technological items are placed on this munitions list, whether or not they are on the Cocom list, we may have a reason to protect them. All my amendment does is give the United States the ability to provide that protection.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, I want to compliment the gentleman from Arizona [Mr. KYL] on his amendment.

The CHAIRMAN. The time of the gentleman from Arizona [Mr. KYL] has expired.

(At the request of Mr. HUNTER and by unanimous consent, Mr. KYL was allowed to proceed for 3 additional minutes.)

Mr. KYL. Mr. Chairman, I yield to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would ask the gentleman from Arizona, is it the case that he basically has two lists? He has a list called the munitions list, and the State Department and Department of Defense oversee this list. On that list are included things right now like stealth technology, jet engine hot sections, space vehicles, antisubmarine warfare technology, and other technologies that are very critical to the national defense. And then the gentleman also has the commodity control list, or the Commerce list, which is controlled by Commerce.

□ 1910

Would it not be a fair statement that the State Department and DOD munitions list is a much more critical list for purposes of national security than the Commerce list?

Mr. KYL. That is correct. That is why this is so critical. These are not the run-of-the-mill things that we have been talking about in the past. These are the most sensitive crown-jewel technologies.

Under the bill, the only way that the President could override, in effect, the decision of some other country is if he finds, quoting now, "extraordinary circumstances which affect national security."

Our amendment simply allows the President to do this if he finds a detrimental effect on national security. It is an important difference between my amendment and the bill that we are considering.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, what we are trying to do in this bill is to say that if somebody else in the world wants to sell something that is potentially dangerous, rather than the rest of the world working to stop that country from selling something that is potentially dangerous, what the bill says is that we all ought to sell the product that is potentially dangerous. It goes in exactly the wrong direction.

Rather than using the leverage of the world to stop the spread of these technologies that are dangerous and rather than us making an effort to say that we are going to stop the greedy people, the greedy profiteers from selling these things, we give into them. It is exactly the wrong way for the world to go.

That is why we should support the Kyl amendment. The Kyl amendment is nearly as important as the Hunter amendment. I hope that we will have the guts to approve this thing and not to resort to a very distorted logic.

Mr. KYL. Mr. Chairman, I urge my colleagues to support the amendment.

Mr. GEJDENSON. Mr. Chairman, I move to strike the last word, and I rise in opposition to this amendment.

I know it is unintentional, but my colleague did not accurately reflect the legislation. My colleague said if there is a technology that we have that other nations do not have, then it is not protected.

Let me read from the bill, page 22, line 20:

> An item that is not on the International Munitions list may be subject to control under the Arms Export Control Act if the President determines that extraordinary circumstances exist affecting the national security of the United States which require that the item be controlled under the Arms Export Control Act.

If the President wants it controlled, it is controlled. We have given the President of the United States the discretion to control the technology.

The problem with the gentleman's amendment is that this is a munition. Word-Perfect is a munition and WordStar is a munition. And we can just shut it all down and have this nonsensical confusion in the bureaucracy or we can, as the committee's draft does, give the President of the United States the authority to determine those things he needs to protect. It is simply, factually not true that under the bill, as the committee has brought it to the floor, that the President could not protect jet engine hot technology, stealth technology, fire technology, sonar technology.

The President can snap his fingers and protect all of that.

Mr. ORTON. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Utah.

Mr. ORTON. Mr. Chairman, my friend from Arizona indicates that we are talking about the crown jewels of our national security, inherently dangerous items which would be sold overseas.

This, my colleagues, is produced in my district. This is a munition. I would suggest that most all of us in our offices have this munition. Not only is this munition in each of our offices, I was recently in Riyadh, Saudi Arabia. I walked into a storefront retailer of software, and that storefront retailer, for $10 and a computer disk, will copy this or any other mass-marketed software and hand it to one, in violation of U.S. copyright laws, in violation of intellectual property laws, in violation of our own export controls.

If the purpose is to prevent this type of mass-marketed product, which is inherently dangerous, which is a crown jewel of national security, it is not working.

Anyone with a telephone and a modem can transfer this outside of the United States. The bill that we have crafted in the committee adequately protects real security items by giving to the President the discretion to price those items on the security list.

Otherwise they will be dealt with in Commerce.

Mr. GEJDENSON. Mr. Chairman, I ask unanimous consent to conclude debate after 7½ minutes on each side. The gentleman from Arizona [Mr. KYL] will control the time on his side, and I will control the time on my side.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. KYL. Mr. Chairman, if the gentleman will continue to yield, the gentleman, I think, somewhat misrepresents my position. I thought that I had quite clearly quoted both from the bill and from my amendment what the standard is for the President to determine whether or not it was on the list or not.

I did quote that, and the difference is this. Under the gentleman's bill, the President would have to find extraordinary circumstances which affect national security in order to preserve one of these items on the bill. That is the language the gentleman quoted.

What the amendment says is that the President, if the President determines that pursuant to such reviews the removal of such item from the U.S. munitions list would have a detrimental effect on the national security of the United States, then the item shall be controlled under the Arms Export Control Act. And that is the difference between the two bills.

I did not mislead my colleague when I quoted from both provisions. The point is the President ought not to have to meet some kind of extraordinary finding if he determines that something is detrimental to national security. He ought to be able to keep it on the list.

To the point of my colleague that holds up the software, all I can say and all any of us can say on this House floor with respect to any software that may be on that list is, as my friend from Connecticut knows, the only reason that software would be on the list is because of encryption capabilities. And we cannot talk about it any more than that.

So I do not think we ought to hold up a box and say we can find this anyplace in the world. We all, those of us in the area, understand why that would be on the list.

Mr. GEJDENSON. Mr. Chairman, reclaiming my time, I would just say what the gentleman points out, however, is correct. Any of this software from a $1,000 computer can be sent anywhere in the world without any Government agency having an opportunity to review it.

The CHAIRMAN. The time of the gentleman from Connecticut [Mr. GEJDENSON] has expired.

The time now begins on the agreed-upon 7½ minutes for each side.

Mr. KYL. Mr. Chairman, I yield myself such time as I may consume.

I will just summarize what this provision does. Under the bill, the only way that the President can preserve an item on our munitions list is by meeting a finding of extraordinary circumstances affecting national security. Why would we object to a different standard which is, if the President finds that the removal of such an item from our munitions list would have a detrimental effect on national security? It is a finding by the President of the United States, and the only reason that one of these items would be removed from the list is if some other country in Cocom decides that it wants to disagree with us or for whatever its own personal reasons might be, not include an item on the list or to remove an item from the Cocom list, then the United States would have to follow suit.

But none of the other countries in Cocom would have to do the same, if we removed the item from the list.

□ 1920

So it is a totally unilateral process here. I do not know why we are tying the hands of the United States.

If Cocom has agreed that an item should be on the Cocom list, it can remain on the munitions list. If for any reason a country decides an item cannot be on the Cocom list, should that be binding on the United States of America, unless the President meets this test of extraordinary circumstances affecting national security? I think it ought to be enough if the President finds a detrimental effect on national security.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, let me just say to my colleague, have we gone absolutely crazy here with this legislation? Stealth technology is something that the President of the United States should hold very closely to his chest and we should enact legislation that allows him to control it even more closely than he does. The idea of giving other countries veto power over our technology and the security with which we hold it is absolutely incredible.

The Kyl amendment should pass with a vote of every Member of this House of Representatives.

Antisubmarine warfare technology, that is what stands between us and the strategic power of the Soviet Union. And if that goes down, that is what stands between us and unsafe sealanes that feed this maritime nation with commerce.

The idea of having antisubmarine warfare slip to a level of the lowest common denominator is incredible. Members of this House should vote for the Kyl amendment. It is a simple, straightforward amendment. It does absolutely no damage to the commercial interests of this country.

I thank the gentleman for yielding.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the other gentleman from California.

Mr. COX of California. Mr. Chairman, I thank my colleague from Arizona for yielding.

I would like to point out that unlike the last amendment that we just considered and voted upon, this amendment is supported by the administration. We have just been informed specifically of the support of the Departments of State and Commerce. Furthermore, I have here a statement of administration policy.

Mr. GEJDENSON. Does the gentleman have a letter to that effect? Because every indication we have had is that the Department of Commerce does not support such an amendment.

Mr. COX of California. I will not yield to the gentleman, but I heard his question, nonetheless, and I will respond to it.

I am reading now from the statement of administration policy on H.R. 3489. "The administration opposes a number of provisions in H.R. 3489 that dictate internal executive branch procedures and decision processes." These include the provisions in section 107 on commodity jurisdiction. The Kyl amendment redresses these problems. It does have the support of the administration and the relevant Cabinet departments, and I think the Members should consider that when they vote on this amendment.

I urge an "aye" vote on the Kyl amendment. I think it is a very, very sound provision.

Mr. KYL. I thank my friend and just reiterate that the administration has objected to this provision in the bill. My amendment would fix this provision of the bill, and I urge my colleagues to support this important amendment.

Mr. GEJDENSON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just say the gentleman interprets the administration letter and concern about some aspects of the bill as support for this amendment. That is not correct. The amendment is a major troublesome amendment. It would make and keep items of the nature of Word Perfect II and other similar software programs as munitions.

I would hope we defeat the amendment.

Mr. KYL. Mr. Chairman, I yield myself such time as I may consume and would just conclude by saying I want to state officials of the State and Commerce Departments have said they are in support of my amendment. In any event, we have explicit language in the letter of the administration specifically objecting to section 107 of the bill, which is the section that my amendment addresses.

I urge support for my amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. GEJDENSON. Mr. Chairman, I yield back the balance of my time.

Mr. OWENS of Utah. Mr. Chairman, I rise in strong opposition to the amendment offered by my friend from Arizona, Mr. KYL. This amendment would severely weaken the provision currently contained in the bill that allows for simpler export of mass market software with encryption capabilities.

Mr. Chairman, two Utah-based companies, Novell and Word Perfect, are seeking to compete in the international market. Their programs are readily available abroad and it surely serves no useful national security purpose to complicate export licenses for these programs. Anybody with a personal computer and a modem can transfer these programs anyway, and it is my understanding that many of these mass market software programs are available in stores all over the world.

While my friend from Arizona is well-intentioned, his amendment undermines a carefully negotiated agreement between the Foreign Affairs and Armed Services Committees, respectively. As a member of the Intelligence Committee, I understand the challenges facing our national security agencies. This is an amendment that does nothing to enhance our national security interests but harms our exporters.

So let our companies compete in the market. As it is it's tough enough to gain and keep a market share. U.S. exporters don't need additional burdens, if anything they need our help to overcome subsidies, cheap labor, and other unfair trade practices of foreign companies.

I urge my colleagues to oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona [Mr. KYL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. KYL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 223, noes 180, not voting 30, as follows:

[Roll No. 356]

AYES—223

Allard
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Archer
Armey
Aspin
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Broomfield
Browder
Bryant
Bunning
Burton
Byron
Callahan
Camp
Campbell (CA)
Campbell (CO)
Chandler
Chapman
Clement
Clinger
Coleman (MO)
Combest
Condit
Cooper
Costello
Coughlin
Cox (CA)
Cox (IL)
Crane
Cunningham
Dannemeyer
Darden
Davis
de la Garza
DeLay
Dellums
Dickinson
Doolittle
Dorgan (ND)
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Edwards (TX)
Emerson
English
Evans
Ewing
Fawell
Fields
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goss
Gradison
Grandy
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Hastert
Hayes (LA)
Hefley
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Horton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
James
Johnson (CT)
Johnson (TX)
Jones (NC)
Kasich
Kildee
Klug
Kolbe
Kolter
Kyl
Lagomarsino
Lancaster
Laughlin
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Long
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCloskey
McCollum
McCrery
McEwen
McGrath
McMillan (NC)
McNulty
Meyers
Michel
Miller (OH)
Molinari
Montgomery
Moorhead
Morrison
Myers
Neal (NC)
Nichols
Nussle
Olin
Oxley
Packard
Pallone
Parker
Patterson
Paxon
Payne (VA)
Peterson (MN)
Pickett
Pickle
Porter
Pursell
Quillen
Ravenel
Ray
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Sangmeister
Santorum
Sarpalius
Saxton
Schaefer
Schiff
Schulze
Sensenbrenner
Sharp
Shaw
Shays
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stenholm
Stump
Sundquist
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Upton
Vander Jagt
Volkmer
Vucanovich
Walker
Waxman
Weldon
Wilson
Wolf
Wylie
Yatron
Young (FL)
Zeliff
Zimmer

NOES—180

Abercrombie
Ackerman
Alexander
Anderson
Annunzio
Anthony
Atkins
AuCoin
Bacchus
Berman
Boehlert
Bonior
Borski
Boucher
Brewster
Brooks
Bruce
Bustamante
Cardin
Carper
Carr
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Conyers
Coyne
Cramer
DeFazio
DeLauro
Derrick
Dicks
Dingell
Dixon
Donnelly
Dooley
Downey
Durbin
Dymally
Early
Eckart
Engel
Erdreich
Espy
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Frank (MA)
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Green
Guarini
Harris
Hatcher
Hayes (IL)
Hefner
Henry
Hertel
Horn
Houghton
Hoyer
Jacobs
Johnson (SD)
Johnston
Jones (GA)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kopetski
Kostmayer
LaFalce
Lantos
LaRocco
Leach
Lehman (CA)
Levin (MI)
Levine (CA)
Lewis (GA)
Lowey (NY)
Luken
Manton
Markey
Matsui
Mavroules
Mazzoli
McCurdy
McDermott
McHugh
McMillen (MD)
Mfume
Miller (CA)
Miller (WA)
Mineta
Mink
Moakley
Mollohan
Moody
Moran
Morella
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Oberstar
Obey
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Panetta
Pastor
Payne (NJ)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Petri
Poshard
Price
Rahall
Ramstad
Rangel
Reed
Richardson
Roe
Rose
Rostenkowski
Roukema
Roybal
Russo
Sabo
Sanders
Sawyer
Schroeder
Serrano
Sikorski
Skaggs
Slaughter (NY)
Smith (IA)
Solarz
Stark
Stokes
Studds
Swett
Swift
Synar
Tallon
Thornton
Torres
Torricelli
Towns
Traficant
Unsoeld
Vento
Visclosky
Walsh
Washington
Waters
Weber
Weiss
Wheat
Whitten
Wise
Wolpe
Wyden
Yates

NOT VOTING—30

Boxer
Brown
Coble
Dwyer
Edwards (CA)
Ford (TN)
Glickman
Goodling
Hopkins
Ireland
Jefferson
Jenkins
Kleczka
Lehman (FL)
Lent
Lloyd
Martinez
McDade
Mrazek
Rowland
Savage
Scheuer
Schumer
Shuster
Slaughter (VA)
Tanner
Traxler
Valentine
Williams
Young (AK)

☐ 1946

Ms. SLAUGHTER of New York, and Messrs. JACOBS, RAMSTAD, ERDREICH, CRAMER, HARRIS, STOKES, ENGEL, AUCOIN, and TALLON changed their vote from "aye" to "no."

Messrs. STAGGERS, VOLKMER, SMITH of Florida, McCLOSKEY, CONDIT, APPLEGATE, and ANDREWS of Texas changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ORTON

Mr. ORTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ORTON: Page 51, line 1 strike "technology" and insert "tangible items."

☐ 1950

Mr. ORTON. Mr. Chairman, the entire amendment has been read. It is a fairly simple amendment which simply changes wording. It substitutes for the word "technology," it substitutes the term "tangible items."

Let me explain to you the purpose of this particular amendment. Under current law, current Export Administration Act, it states the following in section 11(g) of the act in referring to the property subject to forfeiture for a violation of this act. And let me give you an example.

A particular manufacturer may transfer or sell property through a U.S. distributor. That U.S. distributor could, perhaps, in violation of this act, attempt to transport or sell particular property subject to restriction under the act outside the United States. If in fact that is the case and those items in violation of the act are seized, those items are forfeited. In the current wording of the act, the items that are subject to forfeiture are goods or tangible items. That is the wording of the existing act.

Now under the provisions of the act as drafted, the language of items subject to forfeiture are "all goods or technology lawfully seized."

What the act that is proposed does in this particular provision is change the wording of the existing law which is "tangible items," changes that wording to "technology."

What my amendment would do is change back to existing law, delete the term "technology" and substitute the term "tangible items."

Now the reason that I am attempting to do this, Mr. Chairman, is quite simple. In the example I gave you, this software is manufactured and sold in my district. If this software were sold through a U.S. distributor, since it is currently on the munitions list, if this software were sold through a U.S. distributor and in violation of this act were sold overseas, and that distributor's items were seized under the act and forfeited, I believe the intent of the committee, the intent and, clearly, current law is that it is the goods and tangible items that could be seized and forfeited.

Therefore, all of the products that are attempted to be shipped overseas in violation of the act could be seized and forfeited. My amendment does nothing to change that. What I am concerned about is that under this current wording of the proposed bill which says "technology," technology is not adequately defined in the proposed bill and "technology" could be interpreted to go beyond tangible items to intangible items.

What is the intangible item in this example that we would be concerned about? The intangible item would be the intellectual property rights, it would be the copyright on the software itself. Certainly we do not intend to seize intangible copyrights which could then invalidate all of the other marketing agreements and invalidate the manufacturers' opportunity to sell that product.

So my amendment would simply substitute the term "technology" in this section of the bill.

In many other sections of the bill we refer to "goods and technology." I do not have a concern in any other area of the bill because we may in fact in other areas of the bill want to extent these restrictions to all types of technology, even intangible technology. But I do not believe that forfeiture should extend to the intangible technology.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. ORTON. I yield to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. I thank the gentleman for yielding.

Mr. Chairman, I understand the gentleman's statement, I believe, and let me just reiterate in a simple question to him what I believe he said. That box of software, if illegally exported, could be seized under the language that the gentleman is proposing, reinstating, the existing law.

Mr. ORTON. The gentleman is correct.

Mr. BEREUTER. There is no doubt about that.

Mr. ORTON. But the underlying intellectual property rights owned by the corporation which developed that software could not be seized.

The CHAIRMAN. The time of the gentleman from Utah [Mr. ORTON] has expired.

(On request of Mr. BEREUTER and by unanimous consent, Mr. ORTON was allowed to proceed for 1 additional minute.)

Mr. BEREUTER. Mr. Chairman, will the gentleman continue to yield?

Mr. ORTON. I yield to the gentleman from Nebraska.

Mr. BEREUTER. My understanding is consistent with this explanation, since there is no intent as I understand it for our regulators, our enforcement agencies, to seize intellectual property rights. Therefore, I understand now there should be no objection to the gentleman's amendment.

Mr. ORTON. I thank the gentleman.

Mr. GEJDENSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to one again commend the gentleman from Nebraska [Mr. BEREUTER] and the gentleman from Utah [Mr. ORTON], the author of the amendment, for the excellent work they have done to resolve both the national security concerns but also the commercial concerns.

What we have to learn to balance here is the interests of the country both from an economic point of view and from a security point of view. It does no good to take actions that fundamentally undercut the economic stability of the Nation and do not achieve the goals that we are seeking when it comes to protecting technology.

Now we saw what happened in the case of Iraq. Once the President of the United States made a determination—and I do not need to go back to the statement from the State Department—we had shipped things that we would have never shipped to Iraq, once the Reagan administration took Iraq off the terrorist list. They did that for a reason. They took Iraq off the terrorist list so that they could ship those dual use items.

We ought not shoot ourselves in the foot misinterpreting what happened in Iraq when it comes to issues like this kind of technology, this software that, as was indicated earlier, I could send anywhere in the country simply with a $1,000 PC, probably less than that today, using a PC sitting here on the floor we could send this anywhere in the world.

So when we are dealing with these kinds of items, it seems clear to me that we ought not try to set up regulations that are unworkable, that are counterproductive and hurt the economy of the country.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. I thank the gentleman for yielding.

Mr. Chairman, due to the fact that we have only 1 hour and 40 minutes left and some very serious amendments that yet face us, let me congratulate the gentleman from Utah [Mr. ORTON] and the gentleman from Nebraska [Mr. BEREUTER] for the work they have done. We have reviewed this amendment. I think it is a good amendment. We have no objection on this side to the amendment.

Mr. GEJDENSON. Mr. Chairman, I urge support of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Utah [Mr. ORTON].

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to title I?

AMENDMENTS OFFERED BY MR. GEJDENSON

Mr. GEJDENSON. Mr. Chairman, I offer several technical amendments.

The Clerk read as follows:

Amendments offered by Mr. GEJDENSON: Page 65, insert the following after line 2:

(3) Subsection (1)(3)(B) is amended by striking "the government of which" and all that follows through "terrorism" and inserting "whose government is determined for purposes of subsection (j) to be a government that has repeatedly provided support for acts of international terrorism".

Page 65, line 3, strike "(3) Subsection (m)(1)(A)" and insert "(4) Subsection (n)(1)(A)".

Page 65, line 4, strike "(n)" and insert "(o)".

Page 65, line 5, strike "(4) Subsection (q)" and insert "(5) Subsection (r)".

Page 61, line 21, strike "(s)" and insert "(t)".

Page 64, line 23, strike "(n)" and insert "(o)".

Page 65, line 7, strike "(o)" and insert "(p)".

Page 65, strike lines 8 and 9 and insert the following:

(B) in paragraph (2) by striking "6(o)(1)" and inserting "6(r)(1)".

Page 33, line 15, strike ", as of September" and all that follows through "thereafter" on line 16.

Page 33, line 17, insert the following after "(i)": "as of September 30, 1992, and as of the end of each 2-year period occurring thereafter,".

Page 33, line 24, insert "in accordance with subparagraph (D)," after "country,".

Page 32, lines 3 and 4, strike "for national security reasons" and insert "under this section".

In Sec. 119, strike clause (1)(C)(iii) and insert in its place:

"(D) The prohibitions contained in subparagraphs (A) and (C) do not apply with respect to any transaction subject to the reporting requirements under title V of the National Security Act of 1947, relating to congressional oversight of intelligence activities."

Page 74, strike lines 19 through 26 and insert the following:

"(ii) in the judgment of the Secretary of Commerce, is likely to be diverted for use in a nuclear production or utilization facility, or for research on, or for the design, development, or fabrication of or other use in, any nuclear explosive device.

Page 80, strike lines 5 through 13 and insert the following:

"(6) For purposes of this subsection, the term 'nonnuclear-weapon state' means any nation that is not a nuclear-weapon state within the meaning of the Treaty on the Non-Proliferation of Nuclear Weapons.

□ 2000

Mr. GEJDENSON. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to considering the amendments en bloc?

There was no objection.

Mr. GEJDENSON. Mr. Chairman, we are having a conference at this point with our colleagues on the minority.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I would just ask of the gentleman from Connecticut [Mr. GEJDENSON] if he can assure us that these are technical amendments.

Mr. GEJDENSON. Mr. Chairman, these amendments are technical in nature, and I assure the gentleman from Wisconsin [Mr. ROTH] that they do not substantively change the provisions of the bill.

Mr. ROTH. Mr. Chairman, with that we have no objections to the amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Connecticut [Mr. GEJDENSON].

The amendments were agreed to.

AMENDMENT OFFERED BY MR. GEJDENSON

Mr. GEJDENSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GEJDENSON: Page 58, strike line 4 and all that follows through page 59, line 11, and insert the following:

(b) ADMINISTRATIVE REVIEW.—(1) Section 10(1)(1) (50 U.S.C. App. 2409(1)(1)) is amended by striking "10" and inserting "30".

(2) Section 13(e) is amended—

(A) by striking "(e) APPEALS FROM LICENSE DENIALS.—" and inserting "(e) APPEALS FROM LICENSING AND CLASSIFICATION ACTIONS.—(1)"; and

(B) by adding at the end the following:

"(2) Within 30 days after the issuance of a classification decision under section 10(1)(1), or within 30 days after the failure to issue such a classification decision in response to a request for such a decision, any United States person aggrieved by such decision or failure may file an administrative appeal thereof to the Secretary pursuant to regulations issued by the Secretary. Such administrative appeal shall be decided within 30 days after the filing of the administrative appeal.

"(3) Within 30 days after the issuance of a decision under paragraph (2) pursuant to an administrative appeal or within 30 days after the failure to issue such decision, any United States person aggrieved by such decision or failure may file an appeal thereof to an administrative law judge, but only on issues regarding classification decisions pursuant to section 10(1)(1) including, but not limited to, decisions of whether an item is covered by any general or specific note, or is eligible for a general license. The administrative law judge may not review determinations as to the reliability of an end user or the nature of an end use or end user. The administrative law judge shall, within 90 days after such appeal is filed, issue his or her decision and issue any order that is necessary or appropriate to carry out such decision. Such order shall be binding upon the Secretary unless and until vacated or modified under paragraph (4). Such order may be stayed by the administrative law judge or the Secretary pending the filing and determination of an appeal under paragraph (4).

"(4) Any United States person aggrieved by a decision of the administrative law judge under paragraph (2) may appeal such decision to the Secretary within 45 days after receiving notification of such decision. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after such appeal is filed. Except as provided in subsection (a), the Secretary's decision under this paragraph shall be final and not subject to judicial review. The authority of the Secretary under this paragraph may not be delegated to an officer or employee of the Bureau of Export Administration.

Page 59, line 12, strike "(4)" and insert "(5)".

Page 59, line 16, strike "(5)" and insert "(6)".

Page 59, line 20, strike "(6)" and insert "(7)".

Page 59, line 22, strike "(7)" and insert "(8)".

Mr. GEJDENSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. GEJDENSON. Mr. Chairman, I think that this is a noncontroversial amendment. I believe the gentleman from Wisconsin [Mr. ROTH] would not have any objection to it.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I wonder if the gentleman from Connecticut [Mr. GEJDENSON] would just in a capsule form tell us what it is.

Mr. GEJDENSON. Mr. Chairman, the amendment that I am offering has been accepted by the Commerce Department. The amendment would establish a more reasonable time frame for the pursuit of administrative appeals allowing for delegation authority by the Secretary of Commerce to other officials within the Commerce Department. It narrows the scope of what may be appealed, and for that reason we think it will be far more workable.

Mr. ROTH. Mr. Chairman, with that, this is pretty well as we had discussed it before, and all people have agreed to it before, and we have no objections on that from our side of the aisle.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut [Mr. GEJDENSON].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. GEJDENSON

Mr. GEJDENSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GEJDENSON: Page 48, insert the following after line 15 and redesignate succeeding sections, and references thereto, accordingly:

SEC. 120. EXPORTS OF NATURAL GAS.

Section 7(d) (50 U.S.C. App. 2406(d)) is amended—

(1) in the subsection caption by inserting "AND NATURAL GAS" after "OIL"

(2) in paragraph (1)—

(A) by inserting "or natural gas" after "crude oil" each place it appears;

(B) by inserting ", in whole or in part," after "transported"; and

(C) by inserting ", in the case of crude oil," after "such exchange"; and

(3) in paragraph (2)—

(A) in the matter preceding subparagraph (A) by inserting "or natural gas" after "Crude oil"; and

(B) in subparagraph (A)—

(i) in the matter preceding clause (i) by inserting "or natural gas" after "crude oil";

(ii) in clause (i) by inserting "or natural gas" after "petroleum";

(iii) in clause (ii) by inserting after "(ii)" the following: "in the case of crude oil"; and

(iv) in clause (iii) by inserting "or natural gas" after "crude oil".

Mr. GEJDENSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. GEJDENSON. Mr. Chairman, this bill, which primarily deals with the controls on high technology and the divisions between items that are considered munitions and those that are not, also deals with short supply. Traditionally it has had a provision in the bill referred to often as the McKinney provision which prohibits the sale of Alaskan crude oil outside the United States of America.

As we have seen in recent years, Mr. Chairman, our supplies of crude oil get disrupted almost on a regular basis. As a matter of fact, not just twice in recent years with the oil embargoes in the fall of the Shah of Iran, but as the Iraqis moved into Kuwait. Part of what mobilized and energized this administration to move over half a million men from the United States and our bases in Europe to the Middle East and put them in harm's way was the West's dependence, and particularly American dependence, on foreign energy supplies.

Additionally, this country faces a new and tougher clean air bill that the vast majority of Americans support. The need for cleaner fuels is clear for the future of this country.

So, for those reasons I am offering an amendment that would include natural gas with the prohibition on the export of oil from the Alaskan fields. The United States ought not be exporting to Japan or other Pacific rim countries a valuable clean energy fuel that we have, that we ought to use the portions of the existing Alaskan pipelines to bring that gas down to the lower 48 States. Americans ought not be held hostage for short-term profits, profits that would liquefy and sell our natural gas overseas.

How many times must we go through these crises before we recognize we need a serious energy policy? Not one simply of using our own resources efficiently, but developing alternative fuels, increasing conservation and indeed, yes, in some instances exploration. But it seems to me that Members of Congress ought not step forward and ask that we drill in ANWR and other pristine areas of this continent while we are not utilizing efficiently our own energy resources.

Now there are those who would argue that we need to do this in a broader bill, that we need to do this in a context of a larger energy package. I would hope that we can have some energy package, but I have been in this Congress since the first day of the Reagan administration, and through Reagan and Bush we have seen no energy policy. We have seen only an attempt to further exploit those resources that are precious and scarce.

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Americans ought not be sent across the globe as mercenary soldiers while we have our own resources that we are underutilizing, resources that exist today.

Following the 1970's energy crisis America joined with the Canadians to establish a pipeline to bring that energy from Alaska through Canada to the lower 48 States.

Mr. Chairman, natural gas is clean, it is available, and we ought to use it. We ought not take the short-term approach of selling this gas to Japan.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, this really does not deal with high technology. The gentleman from Connecticut [Mr. GEJDENSON] has been eminently fair with this body. We only have about an hour and a half left on amendments. We have some very important amendments yet to be addressed.

I wonder if I could ask the gentleman from Connecticut [Mr. GEJDENSON] to put this amendment aside, let us have hearings on this, and bring it back, in fairness to other Members who have amendments dealing with high technology? Would the gentleman from Connecticut [Mr. GEJDENSON] be so fair?

Mr. GEJDENSON. Mr. Chairman, reclaiming my time, I may be receptive to the proposal of the gentleman from Wisconsin [Mr. ROTH]. It certainly does make some sense. Part of the reason I bring this here today is to raise the issue.

Mr. Chairman, before doing so, some other Members are on their feet. I think we would like to hear from them.

Mr. SHARP. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Indiana, someone who has spent a considerable amount of time on this issue.

Mr. SHARP. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I regret that I have to rise to oppose the amendment of the gentleman from Connecticut [Mr. GEJDENSON] at this point. First, it is a surprise amendment with no notice to the Members here in the House. It really has potentially great significance for our energy markets and our world economic trade.

Second, it does have an enormous superficial appeal, because most of us want to see our domestic energy resources utilized.

The CHAIRMAN. The time of the gentleman from Connecticut [Mr. GEJDENSON] has expired.

(At the request of Mr. SHARP and by unanimous consent, Mr. GEJDENSON was allowed to proceed for 5 additional minutes.)

Mr. GEJDENSON. I yield to the gentleman from Indiana.

Mr. SHARP. Mr. Chairman, I realize this has superficial appeal and that many of us worked very hard in the 1970's to get a law in place that would expedite procedures to build a major pipeline out of Alaska through Canada down to the United States market. Indeed, all of those legal provisions are in place.

But as events would have it, it became horrendously expensive. As a result, there is no prospect at the moment and no prospect in the near future that a pipeline will be built.

I might add there is no need for us to rush to worry about the question of export of this natural gas either, because the fact that the business consortium that would like to hatch a deal with the Japanese or somebody else have run into enormous difficulties. It is another high cost proposition, since it requires investment in major facilities, major tankers. So it is not likely to happen overnight either.

We need to have a far more careful examination whether we want to do this.

Finally, if I could just add, the way the amendment is drafted, it clearly violates the Canadian Free-Trade Agreement, because it would prevent us from exporting that gas right across the border into Canada.

Mr. Chairman, we had a very special relationship with Canada, especially on this question, because the Canadians back in the 1970's went ahead and built pipelines out of Alberta to the United States as the prebuild, the part of the section of this pipeline, under the condition that they would have the opportunity to buy and sell our gas.

Mr. Chairman, this really violates a number of things. I understand it is a serious question with many Members and we need to examine it seriously, but we do not need to rush. Rushing I think will make a big mistake for the national interest.

Mr. GEJDENSON. Mr. Chairman, if I could ask the gentleman from Indiana [Mr. SHARP] one question, it seems to me the largest portion of this pipeline is already in place. The danger that I see is that in Alaska, they will make precipitous decisions to capitalize the liquefaction process and start shipping that. They will stop moving the money toward the liquefaction facility, and that would preclude then bringing the natural gas that we at some point may need to the lower 48.

Does the gentleman from Indiana [Mr. SHARP] feel that we have some time before that road is crossed?

Mr. SHARP. Mr. Chairman, if the gentleman will yield further, I think we do. I think we ought to have very extensive hearings. Because the section of pipeline yet to be built is over the most difficult terrain and it is very high cost. It may yet become an economic investment.

But the other big change in the market is that Canada had calculated that they would need almost all of their own gas supplies. Of course, as our own gas industry has learned to their horror, Canada was more than willing to export because of their surpluses.

The point being that the price of natural gas in the United States and Canada and even on the world market probably will not sustain the investments in either direction for some time to come.

Mr. WOLPE. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Michigan.

Mr. WOLPE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I understand that the gentleman in the well does not plan to move this issue through to resolution this evening, but I want to express my personal appreciation for the gentleman raising this subjection at this time.

As the gentleman from Connecticut [Mr. GEJDENSON] noted, since 1979 exports of Alaskan crude oil have been prohibited by provisions in the Export Administration Act. In my judgment this prohibition has increased American energy security, protected job losses in the wartime and related shipping industries, and saves billions of dollars for west coast consumers at the pump.

What the Gejdenson amendment, what the amendment of the gentleman from Connecticut [Mr. GEJDENSON] would do, is essentially apply the same restrictions. It would yield great benefits to our economy, to our consumers, and to our environment, through Alaskan natural gas.

Mr. Chairman, the proven North Slope reserves of natural gas amount to approximately 15 percent of American gas reserves. American consumers during the early 1970's learned all too well the price of dependency on foreign energy supplies. It makes no sense to export critical U.S. natural gas to Japan and the Pacific rim when we need this energy here at home.

Mr. Chairman, how can we propose to send one of our most precious natural resources overseas, as the gentleman in the well has suggested, to our international competitors, when we just sent hundreds of thousands of young Americans to the Middle East to risk their lives for oil.

In my judgment, the Gejdenson amendment would also help to protect America's environment. We will need greater supplies of cleaner fuels, especially natural gas, in coming years. I think we should preserve this critical supply of clean fuel, and not increase our reliance upon imported supplies of less clean fuel, such as crude oil.

So I would hope that this suggestion that is being made this evening will be given very serious consideration at the hearing that have been indicated will be coming down the road, and that they will really focus upon the implications of this amendment in depth.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to say that I echo the comments of the gentleman from Indiana [Mr. SHARP]. I think this does have a superficial appeal when you first hear it, but there are a lot of ramifications where you just do not know, or at least I do not know at this point standing here tonight.

I understand there were no hearings held on this issue, is that correct?

Mr. GEJDENSON. Mr. Chairman, there have been some hearings held in another committee that I had jurisdiction on that has jurisdiction on it as well. We have held none this year.

The CHAIRMAN. The time of the gentleman from Connecticut [Mr. GEJDENSON] has again expired.

(At the request of Mr. LAGOMARSINO and by unanimous consent, Mr. GEJDENSON was allowed to proceed for 2 additional minutes.)

Mr. GEJDENSON. I yield to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Chairman, it seems to me, without knowing more about this, it is just ill advised to take up this amendment at this time. I would oppose it, and regret that the gentleman from Alaska [Mr. YOUNG] is not here, because we are talking about something in his State.

As I understand it, companies have made investments based on the present law, and they should at least be allowed to be heard in a hearing before we take this action which I deem to be precipitous.

Mr. GIBBONS. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Florida.

Mr. GIBBONS. Mr. Chairman, I would hope that the gentleman from Connecticut [Mr. GEJDENSON] would not press this amendment, because it comes as a surprise to me, and I guess it does to most of the other Members of the House.

Mr. Chairman, I am persuaded by the argument that the gentleman from Indiana [Mr. SHARP] makes over here. I do not know exactly what this does. I know the gentleman is the chairman of the United States-Canadian group, and he would not deliberately violate our agreement with them.

Mr. Chairman, there is a lot to this. I do not think it is a very urgent matter. It is not within my jurisdiction at all over here. I would hope that we would just take our time with this, and I hope the gentleman from Connecticut [Mr. GEJDENSON] would either withdraw his amendment or just not press it.

Mr. GEJDENSON. Mr. Chairman, I thank the gentleman from Florida [Mr. GIBBONS] for his kind words. The gentleman is correct, I will not press this amendment at this point. But I would like to give notice to all those interested, that the committee does plan to hold hearings on this subject and I do think that it is a critical issue that we not allow this valuable resource to be sold off to the Pacific rim when it may be vital to both our environmental policy under bills like the clean air bill and also our own national security.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

Are there further amendments to title I?

AMENDMENT OFFERED BY MR. HUNTER

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HUNTER: Page 31, line 14, strike "paragraph (3)" and insert "paragraphs (2) and (3)".

Page 31, insert the following after line 15:

"(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary may, within 20 days after notifying the Secretary of Defense of the Secretary's determination, refer the matter to the President for resolution. The Secretary shall notify the Secretary of Defense of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary to notify the President or the Secretary of Defense (or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary of Defense regarding the inclusion of such items on the list.".

Page 31, line 16, insert "(A)" after "(3)".

Page 32, line 22, strike "The" and all that follows through "made." on line 24.

Page 33, line 10, strike the quotation marks and second period.

Page 33, insert the following after line 10:

"(B) The concurrence of the Secretary of Defense is required before any revision in the list is made under subparagraph (A). If the Secretary and the Secretary of Defense are unable to concur on any such revision, as determined by the Secretary, the Secretary may, within 20 days after notifying the Secretary of Defense of the Secretary's determination, refer the matter to the President for resolution. The Secretary shall notify the Secretary of Defense of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the revision of the list.

Failure of the Secretary to notify the President or the Secretary of Defense, or failure of the President to notify the Secretary, in accordance with this subparagraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary of Defense regarding the revision of the list.".

Page 31, line 7, strike "(a) In General.—".

Page 33, strike line 11 and all that follows through page 35, line 22.

Mr. HUNTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

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Mr. HUNTER. Mr. Chairman, this amendment goes to the balancing of the process of controlling technology transfer. It is very simple. I think it is very fair and very balanced.

It says simply that we have reduced the controlled list by 50 percent. We have pared it down over the years. A number of people who wanted to sell more and who felt outmoded items were on the list have said, let us cut it down. We have cut it down.

The administration has worked long and diligently, and it is now about half as big as it was.

This is a list which has dual-use items on it. That means items that could be used by civilian commerce and items that could be used in national security or national defense.

All the Hunter amendment does is say this: If we are going to add an item to the list or take an item from the list, since it is a dual-use item that affects both defense and commerce, the Secretary of Defense and the Secretary of Commerce shall both have the right to concur in that item being added or taken away.

Let us say they have an argument and the Defense Secretary said this is something that is critical to national security and could be used against the country if it falls into the wrong hands. And the Secretary of Commerce says, "I disagree. I think it is something we should sell commercially and I don't think that the security risk is that great." Then they take it to the President.

The President has 20 days to come down on the side of either Commerce or Defense. It does not add a lot of time. It adds a balance to the process. What it does is it gives both gentlemen or gentlewomen, whoever the Secretary of Defense or Secretary of Commerce happens to be, it gives them a right to work in their area of expertise, whether it is commerce or national security, in analyzing each item and seeing if there is something inherent in that item that is going to accrue to the detriment of national security in this country or not.

I think this is a well-balanced amendment.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, again I want to rise in support. I think the House cast a great vote on the last amendment, which was designed to tighten this whole process up.

On the original Hunter amendment, which I think was distorted in its description of being overkill, although we got almost 190 votes for that amendment, I think there was some misunderstanding.

Let us have no misunderstanding on what the gentleman from California [Mr. Hunter] is trying to do on this amendment. He is basically saying that if there is an effort to remove items from the control list that restricts the sale of certain items because they have military application, the Secretary of Defense ought to participate in that process. The Secretary of Defense ought to express his or her concern about the fact that some of these items have military application.

This is not an overkill. This is a very reasonable amendment. I ask the Members on both sides of the aisle who supported the previous amendment offered by the gentleman from Arizona that was designed to tighten this up, come to the floor again and vote to further tighten this bill by supporting the Hunter amendment.

It makes good sense. It gets the Secretary of Defense, who has a very real interest in national and global security issues, in the loop and does not permit just the Secretary of Commerce from making this very critical decision.

The list has already been reduced. If it is going to be reduced any further, then the Secretary of Defense ought to be a player in this. It is a very reasonable amendment.

I would plead with the House to, again, accept this kind of an amendment, not because we want to support the gentleman from California, [Duncan Hunter], because he is a Republican, or the administration or anything else. It is good public policy.

I ask for my colleagues' support.

Mr. HUNTER. Mr. Chairman, I thank the gentleman.

Let me just say one other thing before I wrap up my remarks. This is something that liberals and conservatives can agree on. Gary Milhollin, of the Wisconsin Project on Nuclear Arms Control, says that this provision is very important and says that the current provision that is in the bill right now that is being presented to the House misses the emerging North-South dimension of trade security policy.

And when he says the North-South dimension, he is talking about the Third World acquisition of military technology.

Under the present regimen that we are voting on and the present bill, all technology transfer and the entire control list, as of September 30, 1992, to all non-Communist countries, and that includes many Third World countries, are going to be eliminated from the list, unless they are specifically reinstated by the Secretary of Commerce.

The CHAIRMAN. The time of the gentleman from California [Mr. Hunter] has expired.

(By unanimous consent, Mr. Hunter was allowed to proceed for 30 additional seconds.)

Mr. HUNTER. Mr. Chairman, very simply, this is an amendment that gives the Secretary of Defense equal footing with the Secretary of Commerce in concurring or objecting with the addition or the subtraction of items from this list. It has already been whittled down very substantially. If there is a dispute, it goes to the President of the United States. He resolves it in 20 days.

Mr. KYL. Mr. Chairman, I rise in support of the amendment.

I want to clarify something. I realize this is complex, but I urge my colleagues' indulgence on this.

Right now in the law there is a conflict. That conflict results in more time being taken to issue these licenses, make these determinations, than is necessary.

My colleague, the gentleman from Nevada [Mr. Bilbray] spoke earlier about some problems that some of his constituents had had in getting these licenses issued promptly.

We are trying to speed this process up. One of the things that this Hunter amendment does is to erase an ambiguity in the law and thereby make it clear what the lines of authority are. And what it does is to give both Defense and Commerce equal authority.

Here is the conflict: Under the law one section says that the Secretary of Defense has the authority to add items to this control list. In a later provision of the law it says that the Secretary of Commerce has the authority to modify the list, and he is not required to get any concurrence from any other agency. So we have a built-in conflict in the law.

That conflict is one of the things that result in delays in people getting licenses.

One of the nice things that this Hunter amendment does is to eliminate that confusion, makes it real clear. It says:

> Whether you are adding to the list, whether you are modifying the list, whether you are deleting from the list, no matter what you are doing, both the State Department and the Commerce Department have an equal say in this.

They work together on it. And if they have some kind of a dispute that cannot be resolved, then the ultimate decider is the President of the United States.

Another good feature of it is that only 20 days can elapse before the President has to make his decision.

So what we are trying to do is speed up the process, eliminate the ambiguities, and try to get these licenses issued in a timely fashion.

The other good thing that the Hunter amendment does was explained earlier by the propounder of the amendment. That is, that it eliminates this sunset provision which otherwise is going to require a great deal of work. It is going to create a great deal of confusion. It is a new provision in the law.

I think it is fraught with difficulties. I think it creates problems that we simply do not need under the current regime.

I urge support for the Hunter amendment because it is going to clear up a very difficult area of conflict right now and simply put both Commerce and Defense on an equal footing, not give either one of them the advantage. I urge support for the Hunter amendment.

Mr. ROTH. Mr. Chairman, I rise in opposition to the amendment.

It pains me to say this, because the gentleman from California [Mr. HUNTER] is my good friend. But this amendment just is not practical.

I mean, stop to analyze it for a minute.

We have got some 2,000 agencies here in Washington, and we are going to make Commerce and Defense equal. And if there is a disagreement, the President is going to have 20 days to decide the disagreement. What is the President of the United States, a babysitter?

The President is going to, every time there is a disagreement, the President is going to resolve this disagreement. It is so totally impractical.

The President is on his way to Madrid, and staff says, "But you can't go to Madrid today. You have to resolve this issue between Commerce and State or between Commerce and Defense."

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This amendment gives the Defense Department a hammerlock over export licenses, and we know what the history of that is. It is just not going to work. It would require a duplicate licensing bureaucracy in the Defense Department.

Until a few years ago they had the Civil War scavenger caps on the control list. They have everything on that control list. If they have a question, they just put it on the control list.

I am for protecting our national defense, but by the same token, we have to be somewhat practical. We are living in a fast world, and not even the administration would want this amendment. We cannot have everybody having a veto over what is going to be exported, or else we will just have gridlock in the entire system, and that is what is happening now.

Mr. HUNTER. Mr. Chairman, will my friend yield for a second?

Mr. ROTH. I am happy to yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, I thank my friend for yielding.

I would just like to ask the gentleman a question. If the items are on the list because they have a security implication, that is they could be dangerous if they are used against us, what is wrong with letting the guy who is in charge of security and has the security experts, the Secretary of Defense, render a position and have the position in balance with the Secretary of Commerce? What is wrong with that?

Mr. ROTH. Let me answer that by saying that if we have items on the list that are only the items that the gentleman is addressing on the control list I would say fine. But we do not have that. We have everything including the kitchen sink on that control list, and that is the problem. We cannot get items off that control list. And that is precisely the problem we have.

We have to be practical with the control list and we are not doing it. Under this amendment we are asking the President of the United States to take on housekeeping duties that not even the CEO of a Fortune 500 company would consider doing. It is impractical and I think it is unfair to the President of the United States to make him a babysitter, and I cannot go along with this amendment.

Mr. MURPHY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is no wonder that our balance of trade falls far behind that of other nations when we add layers of bureaucracy onto the sale of America's goods and products. Let us be realistic.

The President of the United States appoints both the Secretary of Commerce and the Secretary of Defense. There is no need to run through layers of bureaucracy if one of those Secretaries decides that some item may be added or removed from the list. It takes a simple phone call.

If the Secretary of Defense is really concerned with what is good or not good for the country, it just takes a simple phone call for him to call Mr. Sununu or somebody else at the White House, or call the Secretary of Commerce himself and say, "Look, I have some reservations. Let's talk about this."

Why run this through one bureaucratic agency after another before a product can be added or subtracted from the list? Be reasonable. Both Secretaries are appointed by the administration. The administration is responsible. One Secretary is enough.

Let us move on with this measure and let us move on with American commerce.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I thank the gentleman for yielding and I want to commend him for his remarks.

Mr. Chairman, I have listened patiently here to a variety of arguments that have been raised on the amendments by my respected colleagues, and I love them, and I like their zeal. But the world has changed and national security is threatened by our own economic difficulties and economic security, and I think we have in this legislation given the kind of protection we need against the shipment or export of sensitive technology.

The Secretary of Defense has an ability to impact this process, and the gentleman is absolutely right. This is an unnecessary bureaucratic step that simply delays the legitimate export of our products abroad, and I thank the gentleman for his statement.

Mr. MURPHY. I could not agree with the gentleman from Nebraska more. Our major enemy today is the economic situation of our country.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, as I understand, under this amendment as proposed by the gentleman from California, even if I want to sell a nondefense item to a buyer in England I would have to get approval?

Mr. MURPHY. It is my understanding that that is what the amendment would do. It would go back over to the Department of Defense.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY. I am glad to yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, no; this amendment is being totally misconstrued. What this says is this: We have a control list. On the control list are items that have both a military use and a civilian use, so there are items that we are kind of worried about, because if the wrong people get the item they might use it in a bad way against us in places like the Middle East.

Let me just answer the gentleman's question. So we have this list, and the list has been cut in half by negotiations. We have a lot of items that we thought were extraneous off the list. Now that we have this list and it has military application and civilian application we are simply saying let us let the Secretary of Defense, who knows about military applications, participate in deciding if we are going to increase the control list or going to add to the control list or take items off the control list. Let us let him participate.

Mr. MURPHY. I would like to reclaim the balance of my time.

Mr. HUNTER. The items already on the list are not going to be affected.

Mr. MURPHY. We understand that, except what it does is put on another layer of bureaucracy.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, even if the sale is to one of our friendly allies or NATO allies or anything, then we still have to go through this process?

Mr. MURPHY. They would run it through the Secretary of Defense. The whole Department of Defense, not the Secretary's desk. If it were one desk, I would not object, but it is not one desk. It is a series of bureaucratic levels in the bureaucracy.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. MURPHY. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, bank cards were tied up from being sent to London. We had an American company that wanted to send 50,000 bank cards to London. Under this kind of provision they wanted to have 50,000 background checks on people in England.

They decontrolled machine tools at a time when nobody wanted to buy those machine tools anymore. We now have the Defense Department saying they want to buy Japanese machine tools because American machine tool makers do not make the quality they want anymore.

We are trying to set up a process here that is not much different than the one that exists presently. If we accepted the gentleman's amendment, and this is a very complicated area, we will have a more complicated export law now than when the Berlin Wall was standing. It is counter intuitive. It makes no sense at all.

Mr. KASICH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me speak to this issue of America's inability to have economic growth because we are somehow restricting exports.

First of all, we are asking under the Hunter amendment to make a decision about whether an item has military use in a period of 40 days. That is what we are asking for. We are not asking to hold it up for 4 years, but 40 days.

This idea somehow that we ought to put profit ahead of international security is bogus. We have this technology spreading throughout this world, putting sophisticated technology in the hands of Third World dictators who want to use that technology to develop weapons that they want to use to fight wars.

I cannot believe that this House, who is concerned about our defense budget, and let me tell Members what I mean by this, we are trying to struggle to put a defense budget together to meet the threat, and we are trying to do it in a rational way under the leadership of our chairman, the gentleman from Wisconsin, Mr. LES ASPIN.

As Members know, what we are doing is trying to defend our enemies and defend the threat, while at the same time allowing technology to be spread across this world that will empower tinhorn dictators to threaten the security of the United States and their neighbors. You want us to put a defense budget together that restricts the amount of resources we spend on this country to defend ourselves, while at the same time you want to let the flow of technology go across the world to empower the very people that we are protecting ourselves against, and it is absolutely a bogus argument to say that somehow we are shutting down exports because we see something that has a military application and we want to hold back the reins. We do not want that technology that could give somebody a military capability to flow out of here without slowing it down, and that is the problem with this bill.

Come on, folks, this is a new day in America. JACK MURTHA is trying to design an appropriation bill that defends the threat.

□ 2040

How can he define the threats against a moving target of a President of a country that is interested in building weapons of mass destruction? So we have to support the Hunter amendment. This is not overregulation or overkill. This is putting peace ahead of profit, and I think we should put peace ahead of profit and not let people dictate the movement of this House so that the military-industrial complex will get their way again.

Support the Hunter amendment.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. KASICH. I am happy to yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, it is interesting. All we are doing here is saying let us let the Secretary of Defense in an area where you have items that have a defense capability, let us let him share in the determination as to whether or not they should be on the list or not.

The other side says no, that is ridiculous, let us let Commerce analyze these things from a defense perspective, and they will decide if there is a national security problem. That makes no sense at all. They are trying to shove the Secretary of Defense out of the way.

You know, it is interesting, the same debate 2 years ago before the Persian Gulf situation, and the other side got up and talked about old gym socks and all these old things that were not being transferred. When our people got to the Middle East, they did not meet gym socks. They met a lot of high-technology equipment that had gotten through this network, because we did not have an effective system to stop it.

This is a very well balanced amendment, very reasonable. It just says let us let the Secretary of Defense share in the determination with the Secretary of Commerce.

What is wrong with that?

Mr. KASICH. The reason why people do not want the Secretary of Defense to weigh into this debate is because the Secretary of Defense may put national security ahead of some company's profits. Do you know what, in a changing world, and the threat is not like the Soviet threat of the past, it is the emerging threat. It is the Third World countries that are trying to build very powerful weapons. That is the threat.

If we let technology flow throughout the world, we are going to empower Third World countries to act against the United States and their friends, and the reason why they do not want the Secretary of Defense in this fight is he may put national security ahead of profits, and you now what, I think we ought to put global security ahead of profitmaking.

We learned that lesson. Eisenhower warned us about it, and we ought to enact the Hunter amendment.

Ms. OAKAR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, what the gentleman is asking us to do that I just heard is to trust the Secretary of Defense and the Secretary of Commerce.

I want to tell you a little story about that, because I used to chair a subcommittee that had oversight over something called the Defense Production Act. That act is the act that says that in a time of crisis, do we have the industrial base to produce our own defense equipment, in other words, to be able to protect ourselves?

We asked in our legislation for a simple list of necessary items that we felt were inherently dependent on production in the United States of America. The fact is they were very reluctant to say that.

Meanwhile, we saw Japan being able to bid on defense contracts to protect our country, getting those contracts, billions of dollars, let me tell you. We saw all kinds of memorandums of understanding that were signed off without really congressional oversight that was necessary in which we gave thousands of jobs away to other countries.

What we are now saying is what happens if we have products to sell that produce jobs in our own country?

I want to tell you this one quick story about not the current Secretary of Defense or the current Secretary of Commerce but during the Reagan administration. Here is the scenario that happened: We were told in a report they made that our country did not have to produce metal fasteners for our defense products. Now, you know, there are over 100,000 metal fasteners in a typical small-size airplane, and my region of the country used to be the metal-fastener capital of the world.

So they put out this report indicating that we, in a time of crisis, could go to Japan, to Germany, to Canada, to other countries and import those metal fasteners, that we should not have to produce those in the United States of America.

My friends, something that simple, but so necessary to our defense strategy. So I asked for a GAO report on their report. Do you know what they did? Because they did not want the American people to know the answer, and I obviously cannot say the answer publicly, they stampled it "Confidential." They stamped it "Confidential" because they did not want the American people to know the answer as to whether or not in a time of crisis we could have the leisure, the leisure to import metal fasteners from Japan.

I say it is a two-way street. We subcontract all of the way down the line to foreign countries. Is it not about time that the American people be able to produce products in this global economy without having these levels of bureaucracy on reasonable items? I think it is imperative that we defeat this amendment, because more than anything it is symbolic of what is wrong in this philosophy, and that is it is about time we take care of our own people and let our economy take off by producing our jobs and letting our people fairly compete.

If you put all of these levels on our business community and our labor community, you will not see a job left in America, and you will not see an industrial base left in America.

So I hope that we follow the chairman's leadership on this and defeat the Hunter amendment.

Mr. HOUGHTON. Mr. Chairman, I move to strike the requisite number of words.

I would like to just talk for 1 minute, Mr. Chairman, about this issue of profits as contrasted to security.

I mean, it almost seems as if the pyromaniacs are posing as the firefighters here. They are accusing the people who are trying to create jobs in the United States, as contrasted to other countries, and that is our responsibility, as being less patriotic, and I resent that. I think it is wrong. I do not think it has anything to do with the issue.

The provision in this bill has nothing to do with that issue. It only is what is on the list.

Really, it is a matter of attitude. The President, if he wants to decide anything, can decide it.

We are really in two wars. We have done pretty well militarily, and that is the military aspect. The other war is the economic war, and we are not doing very well there.

The attitude of this Government has to change. Since 1945, the last person into the President's office has been either the Secretary of the Treasury, the Secretary of Defense, or the Secretary of State, never the Secretary of Commerce.

We are asking for the attitude change to be put in the hands of somebody who can fight that economic war, and it is not unpatriotic.

Mr. HUNTER. Mr. Chairman, I ask unanimous consent to proceed for 1 minute.

The CHAIRMAN. Without objection, the gentleman from California [Mr. HUNTER] will be recognized for 1 minute.

There was no objection.

Mr. HUNTER. Mr. Chairman, we are going to move this amendment quickly, but I just wanted to say to my colleagues that we have really gotten off track here.

We are talking about a list that several years ago we said we have to cut down, and we have to get it down so we have a manageable number of items. We did that. We cut this list of controlled items in half, and we said, now, what is left we are really going to manage well; we are really going to take care of it. All we are saying is with this list of items that have a military capability as well as a commercial capability, we are going to let the Secretary of Defense share with the Secretary of Commerce the responsibility for adding or subtracting items from the list. If they do not agree, the President makes the decision.

Now, when we had this debate several years ago, all the Members that wanted to cut the list down said:

> By gosh, if we cut this list down, we are really going to concentrate on what we have left, because that really will be militarily critical technology.

So let us let the guy that knows about the military, the Secretary of Defense, just share 50/50 with the Secretary of Commerce in deciding whether an item is listed or taken off the list.

Mr. MILLER of Washington. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think we all know we are trying to balance competing concerns, interests in national security with interests in American business, staying competitive.

But my distinguished colleague from Ohio, for whom I have the greatest respect, earlier talked with great alarm about technology going all around the world, that this bill would allow technology from the United States to flow around the world.

☐ 2050

Mr. Chairman, let us think about that. Is that bad?

I mean, technology is where the United States has had the lead. Technology is becoming more and more important in the world economy. It is becoming more and more important in export.

What we have got to realize is that this munitions list, poorly named, not only included traditionally many products having dual civilian and military use that were very complex, but also included products such as a Microsoft electronic mail system here, the Word Perfect has been mentioned.

Now, what you have to understand about the changing world economy is that these products are not only used by millions of people today, these products constantly change. American companies that produce them realize that they may only have an edge for 1 year, 9 months, or 6 months, so when you talk about adding another layer of bureaucracy, you say 20 or 40 days, but of course once something goes to a Department and they keep it 60 or 90 days, not every business can bring a lawsuit to compel them to obey the deadline. When you start talking about 20, 60, or 90 days, you are talking about whether American business is going to be able to compete with our competitors, Britain, Japan, Germany, in entering new markets.

If American business is going to have technology and be a leader in technology 10 and 15 years after we finish this debate, they have got to make sales in these markets. They have got to have customers.

So we are trying to draw a balance. We are trying to set up a process where Commerce and Defense and the administration are involved in drawing up a munitions list. We are trying to make sure that that munitions list does not, as it did in the past, include a lot of items you could get at Radio Shack.

We are trying to make sure that when an item is either about to go on or go off that munitions list, particularly a new product, that there is not a lengthy delay.

We want to have national security. We want to have peace. We want to have business. We want to have a strong economy. We do not want to have a situation where we create a bureaucracy which overrides all those interests.

So Mr. Chairman, I urge support for the committee bill and defeat of the Hunter amendment.

Mr. HUNTER. Mr. Chairman, I ask unanimous consent to proceed for 1 minute to respond.

The CHAIRMAN. Without objection, the gentleman from California is recognized for 1 minute.

There was no objection.

Mr. HUNTER. Mr. Chairman, let me just respond to my friend. I just want to make sure that my friend realizes that we are not talking about all the commodities that are sold in the world. We are only talking about commodities that have a military use. We are saying that if they have a military use and we are going to take them off the list, we want the Secretary of Defense to share in that decision.

The other thing is that the Hunter amendment says you have got 20 days. If the Secretary of Defense does not want an item coming off the list, he has got 20 days to object, and if he cannot get together with the Secretary of Commerce, they take it to the Office of the President and the Office of the President has 20 days to make a decision. That is not 60, 90, or 120 days.

Once again, we have cut that list down to half of what it was, and we all agreed the items that are left are very critical items.

This is not a burden on the American business people. It simply is not.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I am happy to yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, nobody is talking about restricting credit cards and nobody is talking about restricting telephones. That is not what we are interested in.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has expired.

Mr. HUNTER. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. SMITH of Florida. Reserving the right to object, Mr. Chairman, I am not going to object this time, but I have an amendment, too. We have a finite amount of time to debate all these amendments.

Mr. HUNTER. Mr. Chairman, this is our last speaker.

Mr. SMITH of Florida. The gentleman has debated a number of amendments a significant number of times. I want everybody to be able to participate in the debate, but the gentlewoman from Miami, FL, and myself and others have an interest in an amendment that we also feel is important and we would like to be able to get to it before we are excluded by time.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from California [Mr. HUNTER] is recognized for 2 minutes.

Mr. HUNTER. Mr. Chairman, I appreciate the gentleman's concern. This is our last speaker, and I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, I certainly appreciate the gentleman's concern and respect it.

It is not our intent to do that. It is our intent to restrict the quick sale of equipment that can have military use around the world. We do not want to talk about cards that have hollow phones on them for Christmas. We are not talking about credit cards. We are talking about clear technology that can be used to make big weapons. That is why the gentleman's amendment deserves to be supported. To distort it is not fair to him and we ought to slow down the sales of this stuff. We ought to include the Secretary of Defense in the decisionmaking. That is not an unreasonable request to make.

Mr. GIBBONS. Mr. Chairman, I move to strike the requisite number of words. I will be brief, because I know everybody is getting tired.

Mr. Chairman, this is just a case of the gentleman from California [Mr. HUNTER] trying to run the executive branch. The President did not ask for this. If he did, he would have let Congress know about it and he would have taken some position on it.

All we are talking about here is a simple list. I am sure the Secretary of Defense has a copy of the list. I am sure when the Secretary of Commerce gets ready to delete items from the list, the Secretary of Defense knows about it, and if he has got any objection he calls up the Secretary of Commerce on the phone and says, "Hey, Mr. Secretary, I think you ought to drop that."

And if he cannot get it dropped, he will just go to the President himself and get it dropped or get a Presidential decision about it being dropped.

We do not need to tell the President of the United States, who has not asked for the amendment of the gentleman from California [Mr. HUNTER], how to run his office or how to run his branch of Government. What we really are objecting to here is the over-bureaucratization of this whole process. If we pass the Hunter amendment, the Secretary of Defense will set up a bureaucracy over there to do all of this. They will feel greatly put upon if they do not turn down about two-thirds of what the Secretary of Commerce suggests and we will go through all of that.

Let them handle it informally, as they do now. Let the President run the executive branch.

Mr. GEJDENSON. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, let us get something straight here. We are not talking about weapons in this amendment. Weapons are dealt with completely differently.

We are talking about bank cards. We are talking about telephones. We are talking about software. We are talking about computers.

Now, if you think America is going to stay strong with yesterday's technology, then take a look at what the Defense Department says about purchasing machine tools. The Defense Department does not want to buy American machine tools anymore. Yes, Mr. Chairman, the Secretary of Defense said, "Don't sell those machine tools overseas because we still give away our technology."

And yes, we handcuffed American machine tool companies. We told them they could not sell overseas because they could give away our military edge.

Well, the good news is out, I say to the gentleman from California [Mr. HUNTER]. We cannot give away that edge anymore because we do not have it. The edge in machine tools is now in Japan. The Defense Department prefers Japanese machine tools.

OK. We have done in the machine tool business. Let us see if we can do it to software. Let us see if we can tie this system up, because let me tell you, Mr. Perle is gone, but somebody is gong to replace him and they are going to find out that that software in the bag of the gentleman from Washington [Mr. MILLER] could potentially have some military application. Where? Maybe it could have an application in East Germany—— Oh, East Germany is not here anymore. They might have a hard time getting it to Europe, we believe, but we could send it over a line.

Now, if the Russians want to invade the Germans who are giving them economic aid today, let us remember that the Russians have got to go through the Ukraine, the Baltic States, and Poland, but that is going to be easier than the nightmare you are setting up for American industry.

Saddam Hussein did not get his technology because of a failure in the Commerce Department. The talk at the door about stop it from getting to Saddam Hussein is frankly dishonest. The hardware and software that got to Saddam Hussein got there because President Bush wanted him to have it. The letter on the floor indicates it was national policy to aid and abet the survival of Saddam Hussein. Do not leave at the door of the Commerce Department what was policy from the White House.

Now, this is a great game here. We have lost the Soviet Empire as an adversary, so we have got to find a place to be tough. The bill is tougher than the administration or the gentleman's amendment. To terrorist countries, we send nothing.

□ 2100

To nuclear facilities in countries that do not accept nuclear nonproliferation, we send them nothing.

The question is what do we sell to England? What do we sell France?

Now, the easy vote here may be, "Oh, it is too complicated, let's go with the Secretary of Defense." How many people go on the unemployment lines? How many companies close their doors in America and move to Europe because of your amendment? How many more Americans lose their mortgages, their homes and pull their kids out of school before we figure out it is enough?

Now, there is a balance between coming up with rational security, and we have that in this bill. This bill has adequate security, more than the administration has.

What we need to make sure is that we do not devastate our own capabilities, worried about the Soviets coming over to get us.

We have got prohibitions against terrorist countries in the bill. It is not a debate, it does not take the Secretary of Defense; it bars those sales. It bars sales to unreliable end users.

Mr. Chairman, I yield to the gentleman from Massachusetts [Mr. MAVROULES] with whom we resolved all of these issues at the beginning of the day.

Mr. MAVROULES. I want to thank the gentleman for yielding.

Mr. Chairman, I was listening to this debate in the office, and I must reiterate for those who are here and those who might be listening and watching this debate, when this bill came on the floor we had reached agreement that we, being the Committee on Armed Services—and I represented the chairman—with the Committee on Foreign Affairs, we reached agreement on those problems that we thought were very important to our committee.

What is happening here all of a sudden—and I give Mr. KYL credit—he came in the back door and he won his amendment. I am not going to argue about that point.

But once there is an honor system within this House, there is an honor system within this House. When you reach agreement, you bring it to the floor, you vote on it and that agreement passes, then we ought to honor it. there is an integrity issue here this evening.

The point is, under the agreement which we reached, let no one kid you, nobody, we give plenty of cover to the Secretary of Defense, absolutely plenty of cover to the Secretary of Defense.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from California [Mr. HUNTER].

The CHAIRMAN. The time of the gentleman from Connecticut [Mr. GEJDENSON] has expired.

Mr. MAVROULES. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. MAVROULES. I yield to the gentleman from California.

Mr. HUNTER. I thank the gentleman for yielding.

Let me remind my friend that he brought the amendment from the Committee on Armed Services, he wanted me to take a look at it along with the gentleman from Arizona [Mr. KYL] and the gentleman from Ohio [Mr. KASICH]. We did that. We said, "What do you think?" We said, "We have four amendments here. Your amendment takes care of what we think is one of them, and we still want to offer the other three."

The gentleman from Massachusetts said that is fine.

Mr. MAVROULES. Let me reclaim my time so that I can make a correction. During that discussion that you and I had, it was my impression that there would be two amendments, one by Mr. KYL and one by you. All of a sudden, we have ended up with three or four amendments. that was the agreement that I agreed to.

Mr. HUNTER. Let me just ask my friend if he had a misimpression. I said I would withdraw one amendment, not that I would offer one.

Let me say further that was not—at least it was apparent to me—that the agreement that the gentleman entered into as a representative of the Committee on Armed Services was not the full agreement, because the chairman of the committee voted in fact for the first Hunter amendment that was offered.

Mr. MAVROULES. And the chairman of the committee has made many mistakes before.

Mr. HUNTER. Let us give him another opportunity.

Mr. KYL. Mr. Chairman, will the gentleman yield to me?

Mr. MAVROULES. I yield to the gentleman from Arizona [Mr. KYL].

Mr. KYL. I think I can clear this up. The gentleman from Massachusetts will recall that two different people, one was me, asked, in a reservation of the right to object, on whether or not we would have the right to offer this particular amendment, and we are assured by the parliamentarian and by the gentleman that this particular amendment could be offered. So we should all understand that it was always contemplated that this amendment would in fact be offered.

Mr. MAVROULES. As a matter of fact, any amendment could be offered, but I thought we had an agreement. Now let us put that aside for a moment, let us just put it aside.

The gentleman from Arizona personally was very effective in coming forth with his amendment, and he carried the House. No argument, no argument whatsoever. I did not support him. Although I believe in what he was doing and what he was saying, I could not support him because I had an agreement with the chairman of the subcommittee.

The point is now that we have given to the Secretary of Defense more than enough cover, more than enough cover.

You know, we have to think of the business people in our country. We are no longer the champion, the heavyweight champ of the world. If you believe that, you are mistaken.

There are other countries throughout the world who have good high technology. If they do not get it from the United States, if we do not help our own people, they will buy it from other countries.

In the meantime, we have given the cover that we requested. We have agreed to, they have agreed to. I do not know why we are trying to come in the back door now so that the Secretary of Defense has the sole power within 20 days to make a recommendation.

In my judgment, it is wrong. It is going overboard, in my opinion.

Mr. KYL. Mr. Chairman, will the gentleman yield briefly?

Mr. HUNTER. That is not what the amendment says.

Mr. MAVROULES. I yield to the gentleman from Arizona.

Mr. KYL. I thank the gentleman for yielding further.

No, it does not say that. There is exactly equal authority between the Department of Defense and Commerce. Because the gentleman said there is a matter of honor here, I just want to make it very clear that from the very beginning it was clear, from our parliamentary request, that this amendment was going to be offered.

So I would hope the gentleman would appreciate that that was never in doubt.

Mr. MAVROULES. It is my understanding that it was the other one that Mr. HUNTER offered before and was defeated. This is a second amendment.

However, bottom line, when Mr. GEJDENSON got up before and he articulated for the House and all those who might be listening or who are listening and watching the action on the floor, the responsibility ultimately is not Commerce, it is not Defense, it is the President of the United States. That ultimately is the power as to whether or not an export is going to take place. That is the bottom line.

My goodness, they certainly have enough coverage here. I do not know why we have to overkill.

Mr. HUNTER. Mr. Chairman, will the gentleman yield just briefly?

Mr. MAVROULES. I yield to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. I thank the gentleman for yielding further.

Mr. Chairman, I just want to ask the gentleman to yield me 1 minute to close debate for my amendment and let us have a vote on it. I want to assure the gentleman that what I related to him was my understanding of our deal.

Mr. MAVROULES. I will yield 30 seconds to the gentleman so that I can close debate.

Mr. HUNTER. That is fine.

Mr. MAVROULES. Go ahead.

Mr. HUNTER. I say to my friend that we had this debate several years ago. And having had that debate and talking about how important it was to sell overseas and how we really have a pretty good security system and to have that absolutely revealed as a sham in the Persian Gulf war, with all of this equipment coming back at American young people, should change this House in the sense that we should realize we have to change things, we have to give the Secretary of Defense more power. All he is doing in this amendment is sharing the power with the Secretary of Commerce.

The CHAIRMAN. The time of the gentleman, the 30 seconds, has expired.

The gentleman from Massachusetts has 30 seconds remaining.

(On request of Mr. GEJDENSON and by unanimous consent, Mr. MAVROULES was allowed to proceed for 1 additional minute.)

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield to me?

Mr. MAVROULES. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman from California: This provision has been in law since 1988. Can the gentleman give me one example where the Secretary of Defense has had a problem?

Mr. HUNTER. If the gentleman will yield, I can give an example of missile systems that were sent to Iraq.

Mr. GEJDENSON. No, no, no, that is not the issue here. The gentleman is confusing the issue.

What came off the list since 1988, when this has been law, that has troubled the Secretary of Defense?

Mr. HUNTER. Furnaces came off the list, and that was the first item that the gentleman talked about.

Mr. GEJDENSON. The Secretary of Defense agreed to the furnaces coming off the list. It is, frankly, not accurate. The Joint Chiefs of Staff agreed to it.

Mr. HUNTER. If I might tell, remind the gentleman he is the guy that said that the furnaces came off the list.

Mr. GEJDENSON. It was agreed to by the Secretary of Defense and the Joint Chiefs of Staff. How much inclusion do you want?

Mr. MAVROULES. Mr. Chairman, may I reclaim my time? These gentlemen have been fighting all afternoon. Let me just finish it off here.

The CHAIRMAN. The House will suspend. The gentleman from Massachusetts has the time, he has 30 seconds remaining.

Mr. MAVROULES. Mr. Chairman, I think both the gentlemen have talked out quite frankly, and I think they have done a good job. I am going to finish it off.

Mr. Chairman, you really want to make some changes in this House? Let us not refer to Commerce, let us not refer to DOD; let us refer and be accurate and change some attitudes within the administration, whether it be Democrat or Republican. That is where you are going to make a change. And until you make that change, this will not be effective. Your amendments are not going to be effective, whatever we are doing here today will be effective. You change attitudes.

Mr. MINETA. Mr. Chairman, I rise in oppostion to the amendment.

The only reason for controlling dual-use technology is to prevent the technology from being put to military use—not to prevent it from being put to civilian use.

Overbroad and unilateral export controls by the United States serve only to harm industry.

The Omnibus Export Amendments of 1991 provides for a presumption of approval for items to be exported. Yet, the bill continues to give the Department of Defense the opportunity to weigh-in if there is the potential for diversion of a technology. The bill continues to give DOD the ability to hold up a license if they deem necessary.

By further enhancing the role of the Department of Defense beyond the provisions of the bill, the amendment fails to recognize the need to change United States export control policy to respond to the political reforms on Eastern Europe and what used to be the Soviet Union.

It is time to follow the advice of the recent National Academy of Sciences report, "Finding Common Ground," and replace the denial regime that has existed for more than 40 years with an approval regime based on mutually agreed and verifiable end-use conditions.

I strongly urge my colleagues to oppose the amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from California [Mr. HUNTER].

The question was taken, and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HUNTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 135, noes 270, not voting 28, as follows:

[Roll No. 357]

AYES—135

Andrews (ME)
Armey
Aspin
Bacchus
Baker
Ballenger
Barnard
Barton
Bateman
Beilenson
Bennett
Bentley
Bilirakis
Bliley
Boehner
Broomfield
Bunning
Burton
Byron
Callahan
Coble
Coleman (MO)
Combest
Condit
Costello
Cox (CA)
Crane
Cunningham
Dannemeyer
Darden
Davis
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Edwards (TX)
Emerson
Evans
Ewing
Fawell
Gallegly
Gekas
Gilman
Gingrich
Goss
Gradison
Hall (TX)
Hancock
Hansen
Hastert
Hefley
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Hunter
Hutto
Hyde
Inhofe
Ireland
James
Johnson (TX)
Kaptur
Kasich
Kyl
Lagomarsino
Lancaster
Laughlin
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McEwen
McMillan (NC)
Michel
Miller (OH)
Molinari
Moorhead
Myers
Oxley
Packard
Pallone
Panetta
Patterson
Paxon
Payne (VA)
Peterson (MN)
Rhodes
Riggs
Ritter
Rogers
Rohrabacher
Ros-Lehtinen
Sangmeister
Schaefer
Schiff
Shaw
Sisisky
Skeen
Slattery
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stenholm
Stump
Tallon
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Torricelli
Vander Jagt
Vucanovich
Walker
Waxman
Weldon
Wilson
Wolf
Wylie
Young (FL)

NOES—270

Abercrombie
Ackerman
Alexander
Allard
Anderson
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Atkins
AuCoin
Barrett
Bereuter
Berman
Bevill
Bilbray
Boehlert
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Bruce
Bryant
Bustamante
Camp
Campbell (CA)
Campbell (CO)
Cardin
Carper
Carr
Chandler
Chapman
Clay
Clement
Clinger
Coleman (TX)
Collins (IL)
Collins (MI)
Conyers
Cooper
Coughlin
Cox (IL)
Coyne
Cramer
de la Garza
DeFazio
DeLauro
DeLay
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dooley
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Engel
English
Erdreich
Espy
Fascell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Franks (CT)
Frost
Gallo
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gonzalez
Gordon
Grandy
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Hammerschmidt
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Henry
Hertel
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Jacobs
Jenkins
Johnson (CT)
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kennedy
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
LaFalce
Lantos
LaRocco
Leach
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Mink
Moakley
Mollohan
Moody
Moran
Morella
Morrison
Murtha
Nagle
Natcher
Neal (MA)
Neal (NC)
Nichols
Nowak
Nussle
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Parker
Pastor
Payne (NJ)
Pease
Penny
Perkins
Peterson (FL)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Rangel
Ravenel
Ray
Reed
Regula
Richardson
Ridge
Rinaldo
Roberts
Roe
Roemer
Rose
Roth
Roukema
Roybal
Russo
Sabo
Sanders
Santorum
Sawyer
Saxton
Schroeder
Sensenbrenner
Serrano
Sharp
Shays
Sikorski
Skaggs
Skelton
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)

Smith (OR)
Solarz
Spratt
Staggers
Stallings
Stark
Stokes
Studds
Sundquist
Swett
Swift
Synar
Thornton
Torres
Towns
Traficant
Unsoeld
Upton
Valentine
Vento
Visclosky
Volkmer
Walsh
Washington
Waters
Weiss
Wheat
Whitten
Wise
Wolpe
Wyden
Yates
Yatron
Young (AK)
Zeliff
Zimmer

NOT VOTING—28

Boxer
Brown
Dorgan (ND)
Edwards (CA)
Glickman
Goodling
Hopkins
Jefferson
Lent
Lloyd
McDade
Montgomery
Mrazek
Murphy
Pelosi
Rostenkowski
Rowland
Sarpalius
Savage
Scheuer
Schulze
Schumer
Shuster
Slaughter (VA)
Tanner
Traxler
Weber
Williams

□ 2127

Mr. HOAGLAND and Mr. EWING changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. BROOMFIELD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take the floor at this time to indicate that, when we return to the full House I will offer a straight motion to recommit this bill to the Committee on Foreign Affairs.

This does not mean that I am against reforming our export laws. Far from it. I believe that we need fundamental changes in our export control system.

The problem with this bill is that it does not represent a comprehensive change in the current law. Instead, it is a partial, piecemeal approach that would not result in any real benefit.

Industry is not united behind this bill. This is because although it would liberalize East-West trade, it would also add sweeping new unilateral controls on exports to certain Third World countries.

The administration is strongly opposed. In fact, the Statement of Administration Policy identifies three major items that would result in a Presidential veto. These include: Liberalized exports of telecommunications equipment to the Soviet Union; a new, unilateral nuclear control program; and removal of controls on commercial computer software.

In addition, the administration has stated its opposition to several other provisions. Subject to the order of the House of Representatives, I ask that the Statement of Administration Policy be made part of the RECORD at this point.

The issues addressed by this bill are big issues that deserve serious consideration. They need to be thought out again by the Committee on Foreign Affairs.

Failure to act realistically at this time will simply mean that Congress has again failed to make a meaningful input into this process. Export controls will continue in effect under Executive order.

We need to do a better job, one that will lay a basis for future changes. I urge Members to join me in opposing this bill.

Mr. Chairman, I include a copy of the Statement of Administration Policy for the RECORD.

STATEMENT OF ADMINISTRATION POLICY

The Administration supports enactment of legislation renewing the Export Administration Act, and will continue to work with Congress to craft a mutually satisfactory bill. It is essential that such legislation provide flexibility if the United States is to continue its role as a leader in a changing world. This is particularly important as we work to strengthen non-proliferation export controls and shape the response of the Coordinating Committee on Multilateral Export Controls (COCOM) to the changes in the Soviet Union and Eastern Europe.

However, H.R. 3489 contains several seriously objectionable provisions. If they are retained in a bill presented to the President, his senior advisers would recommend he veto it. These include:

Controls on Telecommunications (section 108), which are intended to require the United States to propose to COCOM that certain controls on telecommunications technology exported to the Soviet Union be removed. The intent of this provision is to undo control levels the United States and its COCOM partners recently agreed are necessary to protect critical security interests. At a time of great turmoil and unpredictability in the Soviet Union, there must be flexibility to determine the control levels that will satisfy continuing national security concerns while supporting the democratization movement in that country.

Nuclear controls (Title III), which would effectively block nuclear safety cooperation with certain East European countries, the Soviet Union, and Mexico, and would limit nuclear-related dual-use exports to U.S. friends, such as Israel. It would also impose sanctions against foreign nations for carrying out nuclear commerce that is fully compatible with existing multilateral nuclear control regimes. Title III would undermine multilateral efforts to control dual-use exports to nuclear-related end-users and would weaken, rather than strengthen, International Atomic Energy Agency (IAEA) safeguards.

Section 107, which includes a provision that prohibits controlling mass market software with encryption under the Arms Export Control Act. This provision is of particular national security concern and would micromanage a vitally important Executive branch process.

The Administration also opposes a number of provisions in H.R. 3489 that dictate internal Executive branch procedures and decision processes. (The Administration would oppose any similar amendments.) These include provisions on: exports of satellites for launch by the PRC (section 125), commodity jurisdiction (section 107), terrorist countries (section 119), exports to Eastern Europe (section 105), items intended for civil end-use (section 105(b)), the Commerce Department representative to COCOM (section 116), supercomputers (section 104(b)), and control list review (section 111). These provisions interfere with the President's ability to conduct foreign policy or enter into international agreements, and in some instances are incompatible with important national security interests.

In addition, the Administration opposes, as disruptive and unnecessary: section 123(b), which would create the right to appeal export licensing and commodity classification decisions to an Administrative Law Judge; and earmarking of the International Trade Administration (ITA) appropriation authorization, which would further limit funds for export promotion programs (section 206). Further, the Administration strongly opposes Title IV, relating to economic cooperation projects in China and Tibet, which will undermine our efforts to seek Chinese cooperation and willingness to address our concerns and develop procedures for investigating allegations of prison labor exports.

The Administration also opposes those provisions which intrude on the President's constitutional authority by purporting to mandate or restrict negotiations with foreign governments or countries.

SCORING FOR THE PURPOSE OF PAYGO AND DISCRETIONARY CAPS

H.R. 3489 would increase receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. OMB's preliminary scoring estimates of this bill are presented in the table below. Final scoring of this proposal may deviate from this estimate. If H.R. 3489 is enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA. The cumulative effects of all legislation on direct spending and revenue will be issued in monthly reports transmitted to Congress.

Estimates for pay-as-you-go

[Receipts in millions of dollars]

1992	1.9
1993	2.9
1994	2.9
1995	2.9
1991-95	10.6

□ 2130

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding to me. I rise to support the gentleman's motion to recommit.

Mr. Chairman, I rise in support of the motion to recommit H.R. 3489 by the distinguished ranking Republican member of our committee, the distinguished gentleman from Michigan [Mr. BROOMFIELD] and for his work on the export administration authorization bill. I would also like to associate myself with the comments made by our distinguished ranking Republican member in acknowledging the good efforts of Chairman GEJDENSEN and Ranking Republican Member ROTH, the two principal members of the Subcommittee on International Economic Policy and Trade.

We are all aware of the need to make American business more competitive. Some of our Members have already pointed out the need to remove as many impediments as possible to U.S. business competing in the emerging world market. The emerging Democracies of Eastern Europe represent fertile, untapped resources for our business community.

It is clear that the political sea-change in Eastern Europe has necessitated the need to reduce the list of controlled items to the nations of Eastern Europe.

Simultaneously, other concerns have developed over the last few years, particularly those noted most eloquently by the gentleman from

Michigan—namely the need to prevent the proliferation of technologies of mass destruction. For 4 years I have reminded our colleagues of the need to combat the scourge of chemical weapons in the Middle East, and only now, have I been assured that some strong legislation may be considered by the Ways and Means Committee.

The realities of Iraq's nuclear program speak to the issue of the spread of nuclear technology.

As on many other issues, the Congress and the administration do not agree on precisely how to adapt our export control laws. I believe we must work closely with our Cocom allies to reconcile any differences we may have, either between branches of our Government, or within that important technology control regime.

Mr. Chairman, as Mr. BROOMFIELD has enumerated, the President has threatened a veto of this bill on three separate provisions. Since it is highly doubtful these issues will be resolved this evening, let me join with my colleague, the gentleman from Michigan, in calling for a recommittal of the export control laws. The prospects for this bill are not good, accordingly, Mr. Chairman I must urge our colleagues to oppose it.

Mr. GEJDENSON. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Mr. Chairman, I have the greatest respect for the gentleman from Michigan. American industry is for this bill, as it originally came out of committee: the American Aerospace Industry, American Business Conference, the American Electronic Association, the AFL-CIO, the Computer Communication Industry, the Computer Business Industry.

This is a prowork, probusiness bill that takes care of national security. It ought to pass.

The CHAIRMAN. Are there other amendments to title I?

If not, the Clerk will designate title II.

The text of title II is as follows:

TITLE II—EXPORT PROMOTION

SEC. 201. UNITED STATES AND FOREIGN COMMERCIAL SERVICE.

(a) Minister-Counselors.—Section 2301(d)(1) of the Export Enhancement Act of 1988 (15 U.S.C. 4721(d)(1)) is amended in the first sentence by striking "8" and inserting "20".

(b) Report on Training.—The Secretary of Commerce shall, not later than 6 months after the date of the enactment of this Act, submit to the Congress a report on the adequacy of the training of officers and employees of the United States and Foreign Commercial Service in the following areas: writing of commercial reports, language skills, cultural awareness, and public speaking.

(c) Use of Personal Services.—The following offices of the International Trade Administration in the Department of Commerce may acquire personal services by contract to assist such offices in their export promotion programs and in their automation efforts: the Office of Trade Development, the Office of International Economic Policy, and the Office of the United States and Foreign Commercial Service.

(d) Increase in Commercial Service Officers in Certain Countries.—The Secretary of Commerce shall increase the number of Commercial Service Officers in Taiwan, Japan, and Canada by 3 over the number of such officers assigned to each of such countries in calendar year 1989.

SEC. 202. MARKET DEVELOPMENT COOPERATIVE PROGRAM.

(a) Qualifications for Program.—Section 2303(c)(2) of the Export Enhancement Act of 1988 (15 U.S.C. 4723(c)(2)) is amended by striking "and computer data bases" and inserting "computer data bases, and methods of distribution of goods and services".

(b) Reports on the Program.—Section 2303 of the Export Enhancement Act of 1988 (15 U.S.C. 4723(c)(2)) is amended by adding at the end the following:

"(e) Reports to Congress.—The Secretary of Commerce shall report every 6 months to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the progress the Department of Commerce has made in implementing the Market Development Cooperator Program.".

SEC. 203. COUNTRY REPORTS ON TRADE PRACTICES.

Section 2202 of the Export Enhancement Act of 1988 (15 U.S.C. 4711) is amended in the first sentence by striking "January" and inserting "May".

SEC. 204. REPORT ON EXPORT POLICY.

(a) In General.—The Secretary of Commerce shall submit to the Congress, not later than May 31 of each year, a report on the international economic position of the United States and shall, not later than June 30 of each year, appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives to testify on issues addressed in such report.

(b) Contents.—(1) Each report under subsection (a) shall address the following:

(A) The state of United States international economic competitiveness, focusing, in particular, on Department of Commerce efforts to—

(i) encourage research and development of technologies and products deemed critical for industrial leadership;

(ii) promote investment in and improved manufacturing processes for such technologies and products; and

(iii) increase United States industrial exports of products using the technologies described in clause (i) to those markets where the United States Government has sought to reduce barriers to exports.

(B) The current Department of Commerce export development strategy, including the implementation of the United States and Foreign Commerce Service Strategic Review and the activities of the Trade Promotion Coordinating Committee.

(C) Other specific Department of Commerce recommendations to improve the United States balance of trade.

(2) The first report provided under this section shall also address Government export financing programs and actions planned or underway to improve them.

(3) Portions of each report under this section may be based upon relevant reports and testimony produced by the Department of Commerce or other agencies, but the policy views shall be those of the Secretary of Commerce.

SEC. 205. TRADE PROMOTION COORDINATING COMMITTEE.

(a) Establishment and Purpose.—The President shall establish the Trade Promotion Coordinating Committee (hereinafter in this section referred to as "TPCC") which shall be chaired by the Secretary of Commerce. The purpose of the TPCC shall be to unify and streamline international trade promotion activities of the United States Government.

(b) Duties.—The TPCC shall be responsible for the following activities:

(1) The collection, analysis, and dissemination to United States businesses of information on foreign markets for United States goods and services.

(2) Providing to United States businesses information on export financing.

(3) Representing United States business interests with foreign governments, international banks, and other international organizations.

(4) Providing to United States businesses information on potential joint venture partners in foreign countries.

(5) Counseling United States businesses on foreign standards, testing, and certification requirements and procedures.

(6) Coordinating international trade events, including trade shows and trade missions.

(7) Identifying trade agents and distributors in foreign countries to distribute United States goods and services abroad.

(c) Membership.—Members of the TPCC shall include representatives of the Departments of Commerce, State, Treasury, and Agriculture, the Office of the United States Trade Representative, the Small Business Administration, the Trade and Development Program, the Overseas Private Investment Corporation, and the Export-Import Bank of the United States. Representatives of other departments or agencies may be included in TPCC as necessary, at the discretion of the Chair.

(d) Report to Congress.—The Comptroller General of the United States shall prepare and submit to the Congress, not later than June 30, 1992, a report analyzing the ability of the TPCC to carry out its duties under subsection (b), and describing what additional resources, if any, the TPCC needs to carry out such duties effectively.

SEC. 206. REPORT ON EXPORT PROMOTION.

The Comptroller General shall, not later than June 30, 1992, prepare and transmit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report that analyzes the—

(1) progress made in strengthening coordination of Federal export promotion efforts,

(2) efforts made to improve coordination of Federal export promotion activities with the States,

(3) efforts made to improve export promotion coordination and cooperation with private industry groups, and

(4) adequacy of Federal, State, and private sector export financing programs.

SEC. 207. EXPORT PROMOTION AUTHORIZATION.

Section 202 of the Export Administration Amendments Act of 1985 (15 U.S.C. 4052) is amended to read as follows:

"SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of Commerce—

"(1) to carry out export promotion programs, $166,000,000 for the fiscal year 1992; and

"(2) to carry out section 2303 of the Omnibus Trade and Competitiveness Act of 1988, $5,000,000 for fiscal year 1992.".

The CHAIRMAN. Are there amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—NUCLEAR NONPROLIFERATION

SEC. 301. SHORT TITLE.

This title may be cited as the "Nuclear Proliferation Prevention Act of 1991".

SEC. 302. PURPOSE.

It is the purpose of this title to strengthen both domestic and international controls over the transfer of facilities, materials, equipment, *and technology which may contribute to nuclear proliferation by—*

(1) prohibiting all nuclear commerce (except that authorized under general license) by the United States with non-nuclear-weapon states which do not maintain international safeguards on all of their nuclear facilities and in cases in which there is no agreement for nuclear cooperation under which such commerce would be conducted;

(2) restricting United States exports of weapons-useable, highly enriched uranium;

(3) mandating negotiation of a multilateral mechanism for assuring that no facilities, materials, equipment, or technology which may contribute to nuclear proliferation are transferred by any nation or group of nations to any non-nuclear-weapon state which does not maintain international safeguards on all its nuclear facilities, that exports of highly enriched uranium are curtailed, and that all nuclear commerce is halted with those non-nuclear-weapon states which pose significant threats to regional or global peace and security;

(4) assuring that meaningful and appropriate trade sanctions are imposed by the United States on any foreign entity that engages in nuclear trade in contravention of the principles described in this section, and on any nation or group of nations which does not subscribe to such principles; and

(5) providing for the United States to enter into negotiations with other nations and groups of nations to improve significantly the effectiveness of the safeguards of the International Atomic Energy Agency.

SEC. 303. RESTRICTIONS ON NUCLEAR EXPORTS.

(a) RESTRICTIONS.—Chapter 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2151 and following) is amended by adding at the end the following:

"SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.—

"a. (1) In addition to any other requirement of this Act, none of the following actions may be taken until the conditions set forth in paragraph (2) are met:

"(A) Issuing a license required under the Export Administration Act of 1979 for the export of any item or related technical data which, as determined under section 309(c) of the Nuclear Non-Proliferation Act of 1978, could be of significance for nuclear explosive purposes, if the item or technical data—

"(i) is intended for use in connection with the physical construction, operation, or maintenance of a nuclear production or utilization facility, or

"(ii) is intended for an unreliable end user, as specified on a list developed and maintained by the Secretary of Commerce, so that the export would result in a likelihood of diversion of the item or technical data for use in a production or utilization facility, or for research on, or for the design, development, or fabrication of or other use in, any nuclear explosive device.

"(B) Issuing a license under section 109b. for the export of any component, substance, or item that is subject to such license requirement under such section.

"(C) Approval by the United States, as required under the Export Administration Act of 1979 or section 109b.(3), of the retransfer of any item, technical data, component, or substance described in subparagraph (A) or (B).

"(D) Authorizing, as required by section 57b.(2), any person to engage, directly or indirectly, in the production of special nuclear material.

"(2) The conditions referred to in paragraph (1) are the following:

"(A) If the export, retransfer, or activity involves a non-nuclear-weapon state, such state—

"(i) maintains International Atomic Energy Agency safeguards on all its peaceful nuclear activities, or

"(ii) is a party to—

"(I) a regional agreement providing for International Atomic Energy Agency safeguards on all of its peaceful nuclear activities, or

"(II) a regional, bilateral, or multilateral agreement providing for safeguards, that are verified by the International Atomic Energy Agency, on all of its peaceful nuclear activities, and such safeguards are certified by the President to the Congress to be substantially equivalent or superior to the safeguards regime implemented by the International Atomic Energy Agency for nations which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

"(B) An agreement for cooperation arranged pursuant to section 123 is in effect which governs nuclear activities in the recipient nation.

"(3) Nothing in this subsection shall preclude an export, retransfer, or activity for which a general license or general authorization has been granted by the Commission, the Department of Commerce, or the Department of Energy.

"(4) The condition referred to in paragraph (2)(B) shall not apply for a period of 24 months after the effective date of this section to any nation which, within 6 months after such effective date, has entered into, or has initiated negotiations to enter into, an agreement for cooperation with the United States.

"(5) The President may waive any condition required by paragraph (2) (except as provided in clause (iii)) for an export, retransfer, or activity—

"(A) if the President determines that—

"(i) the export, retransfer, or activity involves radiation protection or health physics, decontamination, or other assistance needed solely to prevent or correct imminent radiological hazards that pose a danger to the public health or safety at an operating nuclear reactor;

"(ii) the export, retransfer, or activity is essential for the achievement of United States nuclear nonproliferation objectives and the export, retransfer, or activity would not result in any material contribution to the ability of the recipient nation to acquire a nuclear explosive device; or

"(iii) only in the case of a waiver of the condition required by paragraph (2)(B), the export, retransfer, or activity is so remote or inconsequential from the standpoint of nuclear proliferation as to make the application of the condition required by paragraph (2)(B) unnecessary;

"(B) the government of the recipient nation has provided a guaranty to the United States Government that the item, technical data, component, or substance described in paragraph (1) (A) or (B), or the special nuclear material described in paragraph (1)(D), will be used only for peaceful purposes;

"(C) if the item, technical data, component, or substance described in paragraph (1) (A) or (B) is used in a production or utilization facility, or if the special nuclear material described in paragraph (1)(D) is produced or used in a production or utilization facility, the government of the recipient nation has provided a guaranty to the United States Government that such facility is under safeguards described in paragraph (2)(A) (i) or (ii), and adequate physical security will be maintained in the facility so that the item, technical data, component, substance, or special nuclear material will not be used for nuclear explosive purposes;

"(D) the government of the recipient country has provided a guaranty to the United States Government that the prior approval of the United States Government will be obtained for any retransfer of the item, technical data, component, or substance described in paragraph (1) (A) or (B) or the special nuclear material described in paragraph (1)(D);

"(E) the United States has the right to require the return of the item, technical data, component, or substance described in paragraph (1) (A) or (B), or the special nuclear material described in paragraph (1)(D), if the recipient country detonates a nuclear explosive device or if the production or utilization facility described in subparagraph (C) ceases to be under safeguards described in paragraph (2)(A) (i) or (ii); and

"(F)(i) before the waiver takes effect, the President submits the proposed waiver, together with a report containing the reasons for the waiver, to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

"(ii) a period of 30 days of continuous session (as defined in section 130g. of this Act) has elapsed and the Congress has not, during that 30-day period, adopted a joint resolution, which is thereafter enacted into law, stating in substance that it does not favor the waiver.

Any such proposed waiver shall be considered pursuant to the procedures set forth in section 130i. of this Act, except that for purposes of such section each reference to an agreement for cooperation submitted under section 123 of this Act shall be deemed to be a reference to the waiver under this paragraph.

"(6) For purposes of this subsection—

"(A) the term 'non-nuclear-weapon state' means any nation that is not a nuclear-weapon state within the meaning of the Treaty on the Non-Proliferation of Nuclear Weapons; and

"(B) the term 'unreliable end user' means an end user with respect to whom there is clear and convincing evidence of prior or potential diversions by that end user to prohibited end uses.

"b. (1) The Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—

"(A) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;

"(B) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

"(C) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

"(2) As used in this subsection—

"(A) the term 'alternative nuclear reactor fuel or target' means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;

"(B) the term 'highly enriched uranium' means uranium enriched to 20 percent or more in the isotope U-235; and

"(C) a fuel or target 'can be used' in a nuclear research or test reactor if—

"(i) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and

"(ii) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.

"c. The President shall, as soon as possible after the enactment of this section, undertake negotiations with those foreign nations which participate in the Nuclear Suppliers Group to—

"(1) establish a list of those facilities, materials, equipment, and technology of significance for nuclear explosive purposes which, when they are intended or likely to be diverted for a nuclear end use, may not be transferred to any non-nuclear-weapon state unless such state—

"(A) maintains International Atomic Energy Agency safeguards on all its nuclear facilities, or

"(B) is a party to—

"(I) a regional agreement providing for International Atomic Energy Agency safeguards on all of its peaceful nuclear activities, or

"(II) a regional, bilateral, or multilateral agreement providing for safeguards that are verified by the International Atomic Energy Agency on all of its peaceful nuclear activities, and such safeguards are substantially equivalent or superior to the safeguards regime implemented by the International Atomic Energy Agency for nations which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons;

"(2) prohibit the export of uranium enriched to greater than 20 percent or more in the isotope U-235 under conditions less stringent than those set forth in subsection b.;

"(3) with respect to those non-nuclear-weapon states which are determined to pose significant threats to regional or global peace and security—

"(A) terminate all exports to such states of any item or related technical data which could be of significance for nuclear explosive purposes and—

"(i) is intended for use in a nuclear production or utilization facility, or

"(ii) is likely to be diverted for use in such a facility, or for research on, or for the design, development, or fabrication of or other use in, any nuclear explosive device;

"(B) terminate all exports to such states of any component, substance, or item which is determined to be especially relevant from the standpoint of export control because of its significance for nuclear explosive purposes;

"(C) terminate all retransfers to such states of any item, technical data, component, or substance described in subparagraph (A) or (B);

"(D) terminate all authorizations for any person to engage, directly or indirectly, in the production of special nuclear material in such states;

"(E) terminate all exports or retransfers to such states of any production or utilization facility or of any source material or special nuclear material; and

"(F) refuse to negotiate any proposed agreement for cooperation or approve any subsequent arrangement with such states; and

"(4) institute appropriate procedures for that Group under which the participating nations may raise and satisfactorily resolve questions related to any proposed export, retransfer, or activity which, if authorized, might be inconsistent with the principles set forth in paragraphs (1) through (3).

For purposes of this subsection, the term non-nuclear-weapon state has the meaning given that term in subsection a.(6).

"d. (1) Subject to paragraphs (2) through (6), if the President determines that a foreign person, after the date of the enactment of this section, knowingly—

"(A) exports, transfers, or otherwise engages in the trade of any nuclear facilities, materials, equipment, or technology in contravention of measures adopted pursuant to paragraphs (1) through (3) of subsection c.;

"(B) conspires to or attempts to engage in such export, transfer, or trade, or

"(C) facilitates such export, transfer, or trade by any other person,

then the President shall, for a period of not less than 2 years, prohibit the export from the United States to such person of all nuclear facilities, materials, equipment, and technology.

"(2) Paragraph (1) does not apply to any export, transfer, or trading activity that is authorized by the laws of a nation participating in the Nuclear Suppliers Group and adhering to all measures adopted pursuant to paragraphs (1) through (3) of subsection c., if such authorization is not obtained by misrepresentation or fraud.

"(3) Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if a nation participating in the Nuclear Suppliers Group is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of a nation participating in the Nuclear Suppliers Group to be innocent of wrongdoing with respect to such acts.

"(4) Upon the request of any person, an agency or official responsible for carrying out any measure adopted pursuant to paragraphs (1) through (3) of subsection c. may, in consultation with the Secretary of State and the Secretary of Defense, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

"(5) Not later than 15 days before imposing sanctions under this subsection, the President shall notify the Congress of the actions to be taken.

"(6) The President shall not be required to apply or maintain sanctions under this subsection to—

"(A) spare parts;

"(B) component parts, but not finished products, essential to United States products or production;

"(C) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available; or

"(D) medical or other humanitarian items.

"(7) For purposes of this subsection—

"(A) the term 'foreign person' means any person other than a United States person;

"(B) the term 'United States person' has the meaning given that term in section 16 of the Export Administration Act of 1979;

"(C)(i) the term 'person' means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

"(ii) in the case of countries where it may be impossible to identify a specific governmental entity referred to in clause (i), the term 'person' means all activities of that government relating to the development or production of any nuclear facilities, materials, equipment, or technology; and

"(D) the term 'otherwise engaged in the trade of' means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

"e. (1) If the President determines that any foreign nation or group of nations, whether or not participating in the Nuclear Suppliers Group has, on or after the effective date of this section, permitted any nuclear-related export, retransfer, or activity which would contravene any prohibition, restriction, or other measure adopted by the Nuclear Suppliers Group, including, but not limited to, any measure adopted pursuant to paragraphs (1) through (3) of subsection c., the President shall immediately take one or more of the actions described in paragraph (2), depending upon the degree of proliferation risk associated with the act by the nation or group of nations involved.

"(2) The actions referred to in paragraph (1) are to—

"(A) terminate some or all nuclear-related exports, retransfers, authorizations, and activities to, for, in, or with the foreign nation or group of nations,

"(B) terminate some or all assistance to that nation or group of nations under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products,

"(C) terminate—

"(i) some or all sales to that nation or group of nations under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and

"(ii) some or all licenses for the export to that nation or group of nations of any item on the United States Munitions List,

"(D) terminate some or all foreign military financing for that nation or group of nations under the Arms Export Control Act, and

"(E) use the authorities of section 6 of the Export Administration Act of 1979 to prohibit some or all exports to that nation or group of nations of other goods and technology (excluding food and other agricultural commodities and products).

"(3) Not later than 15 days before taking the actions required under paragraph (2), the President shall notify the Congress of the actions to be taken.

"(4) The President may waive the imposition of any sanction under paragraph (2) if—

"(A) the President determines that to impose the sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or would have a serious adverse effect on vital United States interests;

"(B) before the waiver takes effect, the President submits that determination, together with a report containing the reasons for the determination, to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

"(C) a period of 60 days of continuous session (as defined in section 130g. of this Act) has elapsed and the Congress has not, during that 60-day period, adopted a joint resolution, which is thereafter enacted into law, stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130i. of this Act, except that for purposes of such section each reference to a proposed agreement for cooperation submitted under section 123 of this Act shall be deemed to be a reference to the determination submitted under this paragraph.".

(b) CLERICAL AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 is amended by adding at the end of the items relating to chapter 11 the following:

"Sec. 134. Further restrictions on exports.".

SEC. 304. NEGOTIATIONS.

Section 203 of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3243) is amended—

(1) by inserting "(a)" after "SEC. 203."; and

(2) by adding at the end the following:

"(b) In order to improve significantly the effectiveness of the safeguards of the IAEA, the United States shall seek to negotiate with other nations and groups of nations, including the IAEA Board of Governors and the Nuclear Suppliers Group, to—

"(1) improve the access of the IAEA within nuclear facilities that are capable of producing, processing, or fabricating weapons-capable nuclear materials;

"(2) facilitate the exercise by the IAEA of its right to conduct special inspections of facilities

capable of producing, processing, or fabricating weapons-capable nuclear materials, including those facilities in which nuclear materials may not yet have been introduced or have not been declared to the IAEA;

"(3)(A) facilitate the IAEA's efforts to meet and to maintain its own goals for detecting the diversion of nuclear materials and equipment, giving particular attention to facilities in which there are bulk quantities of plutonium; and

"(B) if it is not technically feasible for the IAEA to meet those detection goals in a particular facility, require the IAEA to declare publicly that it is unable to do so;

"(4) apply the IAEA's mandatory safeguards to tritium and natural uranium concentrate and increase the scope of such safeguards on heavy water; and

"(5) provide the IAEA the additional funds, technical assistance, and political support necessary to carry out this subsection.

"(c) The President shall report to the Speaker of the House of Representatives and the President of the Senate—

"(1) within 6 months after the date of the enactment of this subsection, on the steps he has taken to implement subsection (b), and

"(2) annually thereafter, on the progress that has been made and the obstacles that have been encountered in seeking to meet the objectives set forth in subsection (b).".

SEC. 305. REPORTS TO CONGRESS.

Section 601(a) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)) is amended—

(1) in paragraph (4) by striking "and" after the semicolon;

(2) in paragraph (5) by striking the period and inserting a semicolon; and

(3) by adding after paragraph (5) the following:

"(6) a summary and analysis of the particular arrangements made by the IAEA for the application of safeguards on specific nuclear materials and equipment;

"(7) a summary and analysis of the results of individual inspections by the IAEA of nuclear materials and equipment subject to IAEA safeguards, including measurements of materials subject to such safeguards;

"(8) an analysis of the problems encountered by the IAEA in the implementation of safeguards, such as failures of IAEA safeguards equipment and lack of cooperation by operators of nuclear facilities and recipient nations, including those problems set forth in the Safeguards Implementation Report of the IAEA; and

"(9) a description of the implementation of nuclear and nuclear-related dual-use export controls in the preceding calendar year, including a description of—

"(A) each transaction for which—

"(i) a determination was made under section 134a.(1)(A) of the 1954 Act that the controlled item or technical data was not—

"(I) intended for use in a nuclear production or utilization facility, or

"(II) intended for an unreliable end user, as described in section 134a.(1)(A)(ii) of the 1954 Act;

"(ii) an export license was issued under section 109b. of the 1954 Act;

"(iii) approvals were issued under the Export Administration Act of 1979, or section 109b.(3) of the 1954 Act, for the retransfer of any item, technical data, component, or substance to which section 134a. of the 1954 Act applies; or

"(iv) authorizations were made as required by section 57b.(2) of the 1954 Act to engage, directly or indirectly, in the production of special nuclear material;

"(B) each instance in which a waiver of a condition was made under section 134a.(5) of the 1954 Act; and

"(C) each instance in which a sanction has been imposed under subsection d. or e. of section 134 of the 1954 Act, a sanction has not been imposed by reason of paragraph (3) or (6) of subsection d. of such section, or a waiver of a sanction has been made under subsection e.(4) of such section.

Portions of the information required by paragraph (9) may be submitted in classified form, as necessary. Any such information that may not be published or disclosed under section 12(c)(1) of the Export Administration Act of 1979 shall be submitted in classified form.".

Mr. SCHUMER. Mr. Chairman, I rise in strong support of this bill and especially its title III provisions to inhibit the scourge of nuclear proliferation. I commend my colleagues Mr. GEJDENSON, WOLPE, MARKEY, FASCELL, BROOMFIELD, and ROTH, and their staffs, for their great effort on this important bill. I would also like to thank them for incorporating, during committee consideration, the legislative provisions of my bill H.R. 3527, the Bomb-Grade Uranium Export Restriction Act of 1991. I submit the "Findings" section of that bill—which was not included in the bill before us—to be printed at this point in the RECORD.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bomb-Grade Uranium Export Restriction Act of 1991".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Highly enriched uranium exported for civilian research purposes readily can be utilized to make nuclear weapons, if diverted for such purposes or intercepted by terrorists.

(2) It has been the stated policy of the United States since 1978 to reduce exports of highly enriched uranium to the maximum extent possible in order to reduce this risk.

(3) At least one foreign reactor operator has applied for a United States export of highly enriched uranium fuel despite the fact that the reactor can use non-weapons-grade, low-enriched uranium.

(4) The Reduced Enrichment Research and Test Reactor (RERTR) Program, created in 1978, has developed high-density low-enriched uranium fuels that have enabled the United States to reduce exports of highly enriched uranium from six hundred kilograms annually to less than one hundred fifty kilograms annually.

(5) Remaining annual United States exports of highly enriched uranium are still sufficient for at least five nuclear weapons if diverted for such purposes.

(6) The RERTR Program is likely to develop low-enriched uranium fuels and targets capable of replacing remaining exports of weapons-grade uranium within approximately five years, if adequately funded during that time, which would allow the United States to terminate all exports of highly enriched uranium.

(7) Long-standing United States nuclear nonproliferation policy dictates the United States should export highly enriched uranium only if a low-enriched alternative does not exist, the recipient has committed to convert to such an alternative when it does become available, and the United States is actively developing such an alternative.

Mr. Chairman, if there is one lesson we should have learned from Iraq, it is just how potent and dangerous bomb-grade uranium is. A mere 20 to 40 pounds is all that stood between Saddam Hussein and a nuclear weapon, according to a U.N. report released last week. We can only imagine how differently the gulf war might have gone if Saddam had obtained this small cache of explosive material.

The lesson from Iraq is clear: bomb-grade uranium is not steel, it's not corn, it's not Wheaties—it is not a routine commodity that should be shipped willy-nilly thousands of miles around the world where it is vulnerable to diversion or interception by terrorists.

Incredibly, Mr. Chairman, despite this object lesson, the United States remains the world's No. 1 exporter of bomb-grade uranium, shipping more than 250 pounds overseas every year, for use as fuel in research reactors. That's enough bomb-grade uranium for at least six nuclear weapons annually, if diverted for such purposes.

Mr. Chairman, let there be no doubt in anyone's mine as to whether this material can be fabricated into a nuclear weapon. Manhattan Project physicist Luis Alvarez gave a chilling assessment of the threat in his 1987 memoirs, writing: "With modern weapons-grade uranium, the background neutron rate is so low that terrorists, if they had such material, would have a good chance of setting off a high-yield explosion simply by dripping one half of the material onto the other half. Most people seem unaware that if separated [bomb-grade uranium] is at hand it's a trivial job to set off a nuclear explosion * * * even a high school kid could make a bomb in short order."

Mr. Chairman, some will claim the dangers of such commerce can be eliminated by requiring physical security measures. Certainly, such measures can mitigate the threat in the short term, but does anyone believe they are 100 percent foolproof? Didn't we learn from the Marine barracks in Lebanon and from a Pan Am flight over Lockerbie that physical protection measures can be defeated? Mr. Chairman, this bill makes clear, once and for all, that bomb-grade uranium is simply too dangerous to continue shipping overseas for nonmilitary purposes.

This is not a new idea. As early as 1978, the United States recognized that civilian commerce in bomb-grade uranium should be phased out. Throughout the 1980's, we developed alternate, nonweapons-usable fuels, and managed to reduce bomb-grade exports by 80 percent, from 1,500 pounds annually down to the current level. But several years ago, the progress stopped. Development of alternate fuels halted. And every year, since the administration has tried to shutter the program that converts overseas reactors to safer fuels, only to be rebuffed by Congress.

Mr. Chairman, the bill now before us would jump start the Alternate Fuel Program and put into law what was, until recently, longstanding policy of both Democratic and Republican administrations—banning bomb-grade exports unless three conditions are met:

First, no alternate fuel is available;

Second, the reactor operator has committed to use alternate fuel when it does become available; and

Third, the United States is actively developing alternate fuel.

Under these provisions, Mr. Chairman, the United States should be able to phase out all exports of bomb-grade uranium within 5 years. Such a historic step will go a long way toward making the United States—and the rest of the world—less vulnerable to the next Saddam who comes along.

REMAINDER OF TITLE III

I would like to turn for a few moments to the rest of title III. Mr. Chairman, as the principal authors of this section will agree, title III is not a panacea for the problem of nuclear proliferation. Rather, it is a first step, intended to take lessons from our past mistakes, and to close loopholes that actually have been used by countries to proliferate.

From Iraq, which acquired its massive nuclear weapons program while remaining a member in good standing of the Nuclear Non-Proliferation Treaty and submitting to international "safeguards" inspections—we learned that today's safeguards are not worth the paper they are written on. In response, the bill directs the President to push for meaningful improvements at the International Atomic Energy Agency, including provisions for "snap" inspections of facilities that may not even have been declared to the Agency.

From Pakistan, which successfully developed a nuclear bomb relying mainly on equipment and technology supplied from European companies—which went largely unpunished—we learned that meaningful sanctions against outlaw companies are needed as an effective deterrent to further proliferation. Accordingly, this bill for the first time imposes sanctions on foreign companies and countries that violate international nuclear export controls.

Finally, to prevent any further U.S. contribution to nuclear proliferation, the bill bans U.S. exports of nuclear technology, nuclear components, and dual-use items intended for nuclear end-use to any country that fails to submit to international inspections on all its nuclear facilities. Hopefully, this baseline requirement will serve as an example to the world's other nuclear suppliers.

As I said, Mr. Chairman, this bill is only a first step. Much of it merely directs the President to negotiate improved safeguards and international export control standards. Congress will be watching very closely in the months after its enactment to see what progress the President and his State Department are making to meet the mandates of this bill. If progress is slow or nonexistent, you can be sure we will be back with legislation that leaves the President much less discretion to decide which sanctions to impose and which exports to restrict.

In closing, Mr. Chairman, I again congratulate the authors of title III and Mr. GEJDENSON for their fine work and dedication in shepherding this legislation through committee to the floor.

The CHAIRMAN. Are there amendments to title III?

If not, the Clerk will designate title IV.

The text of title IV is as follows:

TITLE IV—ECONOMIC COOPERATION PROJECTS IN CHINA AND TIBET

SEC. 401. STATEMENT OF PRINCIPLES.

(a) PURPOSE.—It is the purpose of this title to create principles governing the conduct of United States economic cooperation projects in the People's Republic of China and Tibet.

(b) PRINCIPLES.—It is the sense of the Congress that any United States economic cooperation project in the People's Republic of China or Tibet should adhere to the following principles:

(1) Seek to ensure that decisions concerning employment in the United States economic cooperation project do not entail discrimination based on sex, religion, ethnic or national background, political belief, nonviolent political activity, or political party membership.

(2) Ensure, through consultation with relevant government authorities where appropriate, that methods of production used in the United States economic cooperation project do not pose an unnecessary physical danger to workers, to neighboring populations and property, and to the surrounding environment.

(3) Ensure that no convict or forced labor under penal sanctions is knowingly used in the United States economic cooperation project.

(4) Ensure that no goods that are mined, produced, or manufactured, in whole or in part, by convict or forced labor under penal sanctions are knowingly used in the United States economic cooperation project.

(5) Undertake to protect freedom of assembly and association among the employees of the United States economic cooperation project, and to foster positive and constructive consultation between employees and management of the United States economic cooperation project.

(6) Promote the training of employees of the United States economic cooperation project, in particular the training of Chinese employees in managerial positions in the principles of market-oriented business management.

(7) Undertake to protect freedom of expression for the employees of the United States economic cooperation project, including the freedom to seek, receive, and impart information and ideas of all kinds.

(8) Discourage compulsory political indoctrination on the premises of the operations of the United States economic cooperation project.

(9) Attempt to raise with the relevant agencies of the Chinese Government those individuals detained, arrested, or convicted since March 1989 solely for nonviolent expression of their political views, and to urge the officials concerned to release publicly a list of the names of those individuals.

(c) PROMOTION OF PRINCIPLES TO OTHER NATIONS.—The Secretary of State shall forward a copy of the principles set forth in subsection (b) to the member nations of the Organization for Economic Cooperation and Development and encourage them to promote principles similar to these principles.

SEC. 402. REGISTRATION REQUIREMENT.

(a) IN GENERAL.—The United States parent company of each United States economic cooperation project in the People's Republic of China or Tibet shall register with the Secretary of State and indicate whether the United States economic cooperation project will implement the principles set forth in section 401(b). No fee shall be required for registration under this subsection.

(b) EFFECTIVE DATE.—The registration requirement of subsection (a) shall take effect 6 months after the date of the enactment of this Act.

SEC. 403. REPORTING REQUIREMENT.

(a) REPORT.—The United States parent company of each United States economic cooperation project in the People's Republic of China or Tibet shall report to the Department of State describing the United States economic cooperation project's adherence to the principles set forth in section 401(b). The United States parent company providing such report shall do so by completing and submitting a reporting form furnished by the Department of State. The first report shall be submitted not later than 1 year after the date on which the United States economic cooperation project registers under section 402 and not later than the end of each 1-year period occurring thereafter.

(b) REVIEW OF REPORT.—The Secretary of State shall review each report submitted under subsection (a) and determine whether the United States economic cooperation project which is the subject of the report is adhering to the principles. In order to verify the information submitted, the Secretary may request additional information from the United States parent company submitting the report and from other sources.

(c) ANNUAL REPORT.—The Secretary of State shall submit to the Congress and to the Secretariat of the Organization for Economic Cooperation and Development a report describing the level of adherence to the principles by United States economic cooperation projects subject to the reporting requirement of subsection (a). Such report shall be submitted not later than 2 years after the date of the enactment of this Act and not later than the end of each 1-year period occurring thereafter.

(d) ASSISTANCE FROM PRIVATE PARTIES.—The Secretary of State may use funds otherwise available to the Secretary for such purposes to enter into contracts with one or more private organizations or individuals to assist the Secretary in carrying out this section.

SEC. 404. DEFINITIONS.

For purposes of this title—

(1) the terms "adhere to the principles", "adhering to the principles" and "adherence to the principles" mean—

(A) agreeing to implement the principles set forth in section 401(b);

(B) implementing those principles by taking good faith measures with respect to each such principle; and

(C) reporting accurately to the Department of State on the measures taken to implement those principles;

(2) the term "United States economic cooperation project" means—

(A) an enterprise legally incorporated in the People's Republic of China or Tibet—

(i) which is either—

(I) a wholly owned subsidiary of a corporation, partnership, or other business association organized under the laws of the United States; or

(II) a joint venture undertaken by 2 or more persons, at least 1 of which is a wholly owned subsidiary of a corporation, partnership, or other business association organized under the laws of the United States; and

(ii) which employs more than 50 individuals in the People's Republic of China or Tibet; or

(B) a branch office or representative office of a corporation, partnership, or other business association organized under the laws of the United States, which employs more than 25 employees in the People's Republic of China or Tibet;

(3) the term "United States parent company of a United States economic cooperation project" is a corporation, partnership, or other business association organized under the laws of the United States, of which—

(A) the United States economic cooperation project, or (in the case of a United States economic cooperation project that is a joint venture) 1 of the persons undertaking such project, is a wholly owned subsidiary; or

(B) the United States economic cooperation project is a branch office or representative office; and

(4) the term "organized under the laws of the United States" means organized under the laws of the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

SEC. 405. ENFORCEMENT OF CURRENT LAW.

Beginning 3 months after the date of the enactment of this Act, and every 12 months thereafter, the Secretary of State shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing—

(1) enforcement procedures with respect to the implementation of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307);

(2) steps taken to investigate which goods, wares, articles, or merchandise are mined, produced, or manufactured, in whole or in part, by convict labor or forced labor in the People's Republic of China and Tibet; and

(3) the results of such investigations.

The CHAIRMAN. Are there amendments to title IV?

If not, the Clerk will designate title V.

The text of title V is as follows:

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. SOVIET MILITARY ASSISTANCE TO CUBA.

It is the sense of the Congress that—

(1) continuing Soviet military assistance provided to Cuba remains a serious problem in United States-Soviet relations; and

(2) the Soviet Union or any successor confederation or entity should, in reexamining its relationship with Cuba, cease military assistance to the Castro regime and take all other possible steps to further the policies of Glasnost and Perestroika by adopting policies supporting the political, economic, and human rights of the Cuban people.

SEC. 502. ATTACKS AGAINST ISRAELIS AND ILLEGAL ACTIVITIES IN THE UNITED STATES.

(a) REPORT ON IMPACT OF ATTACKS AGAINST ISRAELIS ON PEACE EFFORTS.—Not later than 60 days after the date of the enactment of this Act, the President shall submit to the Congress an analysis of the impact on efforts to achieve peace in the Middle East of the following recent attacks against Israelis:

(1) On May 28, 1989, an attack by the Popular Front for the Liberation of Palestine and the Palestine Liberation Front, both PLO-affiliated organizations, in which a one-year-old Israeli was injured by a Katyusha rocket.

(2) On August 7, 1989, a rocket attack on the settlement of Maoz Haim by members of the PLO-affiliated Popular Front for the Liberation of Palestine.

(3) On September 6, 1989, a rocket attack by the PLO-affiliated Popular Front for the Liberation of Palestine aimed at Kibbutz Tel-Katzir that fell on Kibbutz Sha'ar Hagolan.

(4) On October 7, 1989, an attempted raid on Kibbutz Misgav-Am by a squad of terrorists armed with machine guns and anti-tank missiles from the PLO-aligned Palestine Liberation Front.

(5) On January 26, 1990, an attack on an Israeli Army patrol by at least three terrorists of the PLO-affiliated Democratic Front for the Liberation of Palestine headed for Kibbutz Misgav-Am.

(6) On February 4, 1990, an unprovoked ambush by the Popular Front for the Liberation of Palestine-General Command on an Israeli tour bus in Egypt that killed 9 and wounded 15 Israelis.

(7) On April 13, 1990, an attempted infiltration into northern Israel by boat by four terrorists of Yasser Arafat's Al-Fatah, equipped with machine guns and grenades.

(b) REPORT ON ILLEGAL ACTIVITIES IN THE UNITED STATES.—Not later than 60 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report, based on information available to the Director—

(1) outlining illegal activities being undertaken in the United States by the Palestine Liberation Organization or on behalf of the Palestine Liberation Organization, including such activities as illegal drug trafficking, money laundering, weapons purchases, and arms shipments;

(2) estimating the amount of funds associated with such activities; and

(3) describing the extent to which members of the Executive Committee of the Palestine Liberation Organization, the Central Council of the Palestine Liberation Organization, and the Palestine National Council are aware of or are involved in such illegal activities.

Information contained in the report required by this subsection, including information based on reports of foreign law enforcement agencies, shall protect intelligence sources and methods and may be classified to the extent necessary, consistent with existing law, to prevent the public disclosure of such information.

AMENDMENT OFFERED BY MR. SMITH OF FLORIDA

Mr. SMITH of Florida. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Florida: Add the following at the end of title V:

SEC. 503. PROHIBITION ON CERTAIN TRANSACTIONS BETWEEN CERTAIN UNITED STATES SUBSIDIARIES AND CUBA.

Notwithstanding any other provision of law, no license may be issued for any transaction described in section 515.559 of title 31, Code of Federal Regulations, as in effect on July 1, 1989.

Mr. SMITH of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Florida [Mr. SMITH] for 5 minutes in support of his amendment.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield for a parliamentary inquiry.

Mr. SMITH of Florida. Mr. Chairman, I will not yield for a parliamentary inquiry.

The CHAIRMAN. The Chair recognizes the gentleman from Florida.

Mr. SMITH of Florida. Mr. Chairman, this is probably the only bipartisan amendment we are going to get this evening. We are seeking to restore the law as it was when the original law was passed in 1960 by the gentleman from Florida [Mr. FASCELL], chairman of the Committee on Foreign Affairs. This closes the loophole that has existed in the law for a number of years that should not be there, especially now.

It allows, under the Trading with the Enemy Act, only one of the four countries listed, Cuba, to be serviced by foreign subsidies of United States corporations who last year sold over 700 million dollars' worth of goods by virtue of taking advantage of this loophole. This needs to stop.

The gentleman from Florida knew what he was doing back then. Since the time that the loophole was opening up, Castro has been able to hold on longer and longer by virtue of the fact that he was being supplied these foreign goods.

The interesting thing is that much of the foreign goods are being shipped but never get to the Cuban people. I will give my colleagues an idea of what we are talking about.

Seagram's liquor, they do not have the money, nor do they have the capability to buy it as average Cubans. Airconditioning, it goes to the tourist hotels, but it does not go to the average Cuban. Assorted soft drinks, which they cannot buy in their own stores. Naphtha, which may press Castro's fatigues in the dry cleaning store but never gets to the average Cuban. And 4-door GM sedans which come out of Canada but which never wind up being driven by average Cubans.

This is the right thing to do. Let us close the door once and for all and get rid of the last Communist dictator on the face of the Earth and in our own hemisphere. This is absolutely right.

Ms. ROS-LEHTINEN. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Florida. I yield to the gentlewoman from Florida.

Ms. ROS-LEHTINEN. Mr. Chairman, despite a long-standing United States trade embargo, American companies have increased trade with Cuba through their foreign subsidiaries, and this has helped Fidel Castro survive catastrophic losses. The Department of the Treasury indicates that trade with Cuba by over 190 United States subsidiaries increased from $332 million in 1989 to $705 million in 1990.

In 1963, the original language of the Trading with the Enemy Act prohibited all United States subsidiaries to trade with Cuba. Due to the illegal seizure and nationalization of all United States properties in Cuba and other hostile actions, the United States initiated a series of actions which implemented the embargo. Embargo sanctions included: a freeze on Cuban assets in the United States; prohibitions on imports and exports; and the ending of financial and transportation-related transactions.

In 1975, however, a loophole in the embargo allowed trade through U.S. subsidiaries. The erroneous Cuba assets control regulations allows subsidiaries of United States corporations to apply with the Office of Foreign Assets Control, in the Department of the Treasury, for a license to trade with Cuba. Ironically, of the four countries that the United States has a trade embargo with, under the Trading with the Enemy Act, Cambodia, Vietnam, North Korea, and Cuba—only Cuba benefits from the subsidiary trade loophole. Does this make sense?

Just where did these ridiculous gestures of goodwill and diplomatic efforts get us? Castro became a major player in the international terrorist network and the international drug network. And, Castro was instrumental in destabilizing governments in this hemisphere, and other areas throughout the world. For years and countless dollars, the United States has worked to correct the damages that Castro has created.

The U.S. Congress has overwhelmingly supported ending this trade loophole to stop this practice since 1989. Last year, the United States Senate passed the Mack amendment with a 87 to 13 vote, which aimed at tightening the Cuba assets control regulations by eliminating the subsidiary loophole and returning to the original language and intent of the embargo. This is nothing new. Time and time again, Members of Congress have spoken loudly to correct this horrible loophole that was created.

If raising the ante has worked in other countries, why can't it work for Cuba? We must raise the stakes and make it more expensive than Castro can afford.

The United States should also encourage those trading nations used by U.S. subsidiaries to assist in this effort. The Department of Treasury lists 21 nations used by United States subsidiaries to conduct trade with Cuba, primarily Switzerland, Argentina, England, and Canada. Each one of these nations gains very little from either direct trade, or by allowing subsidiary trade, with Cuba. Castro's regime, with an external debt owed to Western creditors at an estimated $7 billion, has never been a worthwhile investment or trading partner. It would stand to reason that our allies would not want to risk their very substantial economic relationship with the United States and would be willing to cooperate with our efforts to eliminate Cuba's tyrannical dictatorship.

In the interest of human rights and ensuring security of the Western Hemisphere, we must reinforce the message. For the first time in many years, the fall of Castro is a reality.

The moment has come to further isolate the inhumane regime of Fidel Castro. In a hemisphere of almost all freely elected democratic leaders, Castro remains a fossil, a leftover dinosaur who is ruthless in his treatment of anyone who would dare to speak out for democracy, for human rights, for freedom, and for liberty.

How can we allow this loophole to remain open? How can we stand silently as U.S. companies use a technicality to get around the embargo? We have the ability, we have the tool, to stop propping up Castro in power. We can do it and we can do it today.

Please help in bringing democracy to my native homeland.

Mr. GOSS. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Florida. I yield to the gentleman from Florida.

Mr. GOSS. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise in support of the amendment offered by my colleagues from Florida, and I commend them on their tireless efforts to bring this motion to the floor.

As democracy takes hold throughout our hemisphere, and the world, Castro's repressive totalitarian regime 90 miles off our coast remains a lonely throwback to an obsolete economic and political system. This amendment is about taking responsible, economic steps toward ensuring that this regime doesn't last a day longer than it has to, and more importantly, to ensure that any crutch holding it up isn't American made.

With the previous steady stream of Soviet aid slowing to a trickle, Castro's regime is becoming increasingly isolated from international trading partners. Who will he turn to now? Will he turn to the Chinese hardliners? Or, perhaps the North Koreans?

The United States has rightly been committed to making sure that he can't turn to the United States or U.S. corporations since 1961, and this amendment will go a long way toward shoring up and reaffirming this effort to economically isolate Castro. By prohibiting United States firms from allowing their subsidiaries abroad to trade with Cuba, we do two things: We deprive Cuba a great source of hard currency, and we get a little closer to the day where the United States and a Cuba without Castro at the helm can begin a prosperous economic relationship. I urge my colleagues to support this amendment.

Mr. ROHRABACHER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Florida. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, the most brutal and resilient dictatorships left in the world, outside of Africa and the Middle East, can be counted on our fingers: China, Burma, Afghanistan, North Korea, Serbia, Vietnam, Laos, and, of course, Cuba.

The agony continues in Cuba because Castro continues to rule. Castro's communism has wrought severe damage and evil in this hemisphere and in Africa. The time for Castro to pass from the scene in Cuba has come. The democratization of Latin America which occurred during the Reagan administration and the collapse of communism in Eastern Europe and the Soviet Union has left Castro isolated.

Conditions are worsening in Cuba, and Castro is beginning to feel the heat. Castro's barter arrangements with his former Communist conspirators are no longer possible. He can't get cheap oil from the Soviet Union and he can't trade his sugar to Czechoslovakia for Semtex.

Let's give courage to our friends in Mexico and Venezuela to not give in to Castro's demand for oil because of his threats of terrorism. Let's not allow what the Vietcong termed "the Third Current of Revolution," namely resources from the West that sustain tyranny in Cuba.

Let's not let the loophole, which enables foreign subsidiaries of United States firms to engage in trade with Cuba, keep Castro in power longer than necessary. We must cut it off every foreign currency earner Castro has.

Castro is the head of the Communist snake in Cuba. We must cut it off—now. Support the amendment of the gentlewoman from Florida.

Mr. SMITH of Florida. Mr. Chairman, reclaiming my time, I just want the Members of this House to know that this does not create any problem for any country where there is a host country law that conflicts with ours. I urge my colleagues to vote for the amendment.

Mr. GUARINI. Mr. Chairman, along with my distinguished colleagues Mr. SMITH of Florida and Ms. ROS-LEHTINEN of Florida, I rise in support of our amendment to prohibit foreign subsidiaries of United States firms from trading with Cuba.

Currently, the United States enforces an embargo on all trade with Cuba. Some countries are getting around this embargo by routing their goods through their foreign subsidiaries. If we are serious about ensuring that Fidel Castro will not be a threat to our national security and will not violate human rights, we must close this gaping loophole in our export laws.

With the former Communist regimes of the Soviet Union and the Eastern bloc cutting back on their exports to Cuba, more and more United States companies are taking advantage of this loophole. This is not an activity that the U.S. Government should encourage. Rather, we should block all efforts to aid the Cuban regime as long as Fidel Castro maintains his iron grip on the freedoms of Cuban citizens. This includes doing business with his government.

Just as we should not be giving trade preferences or aid to the Soviets while they are aiding Castro, we should not allow subsidiaries of United States firms to trade with the Cuban regime. It is outrageous to think that American companies are able to thwart the clear intent of Congress on trade with Cuba by sneaking in through the back door using their foreign subsidiaries.

Mr. Chairman, perhaps these United States firms do not realize the role they are playing in propping up the tyrannical regime of Fidel Castro. With the loss of many Soviet and East European suppliers, Castro is relying more than ever on trade with foreign subsidiaries of United States firms. Since the exports are coming from foreign countries, we have no way of monitoring what kinds of high technology may be falling into Castro's hands. This is a risk we cannot afford to take.

Fidel Castro's military-oriented economy has lowered the standard of living of the Cuban people. As everyone knows, he has no regard for internationally accepted human rights standards or the promotion of democratic values, and has instigated guerrilla activities in Latin America and other parts of the world for years. Mr. Castro allows no freedom of the press, no religious activities, no workers' rights, and no criticism of his regime.

The Cuban people who live under this despot yearn for freedom. They endure harsh prison sentences merely for seeking the same fundamental human rights that people in most nations take for granted. Each year, thousands of Cubans risk their lives crossing by boat or on home-made rafts to Florida to escape this ruthless dictator, while millions more continue their daily drudgery, working for a failed system.

We must learn a lesson from history. This same man is far more desperate today than he was in the 1960's. He is cornered, he has ruined the economy, and he is increasingly isolated in a world that has all but abandoned a fatally flawed Communist ideology.

Over the past few years, we have watched one Communist government after another being swept aside, giving rise to democracy, freedom, human rights, and economic opportunity. Eastern Europe is now free. The Baltic States are free. The Soviet Union is collapsing into loosely associated republics with newfound rights and economic opportunities for their citizens.

But, unfortunately for the Cuban people, Fidel Castro stubbornly clings to his repressive Communist ideology. Cubans are no closer to true freedom today than they were in 1960, and Mr. Castro, a die-hard Marxist, is trying to keep it that way.

Mr. Chairman, every day that this tyrant stays in power, thousands of innocent Cubans languish in prison for no crime other than the desire to be free. Millions more suffer under the yoke of totalitarianism. If Congress does not seize every opportunity to effect change in Cuba, the pain and suffering of an entire country will be on our hands.

As long as this ruthless dictator clings to his repressive and outdated ideology, we must not assist him in any way, and we certainly must not permit American firms to assist him. For this simple reason, I implore all of my colleagues to support this vital amendment.

Mr. BUSTAMANTE. Mr. Chairman, I rise in support of this amendment.

If we are truly sincere in our commitment to impose an effective trade embargo against Fidel Castro's Cuba, then the Smith-Ros-Lehtinen amendment deserves our support.

America has imposed trade embargoes against four countries under the Trading With the Enemy Act: North Korea, Vietnam, Cambodia, and Cuba. But only Cuba benefits from a loophole that allows foreign subsidiaries of United States companies to engage in trade with Cuba.

We were unwavering in our resolve to defeat communism in the Soviet Union. Our resolve should be no less steadfast when it comes to fighting tyranny in Cuba. This amendment restores consistency in our policy with Cuba, and I urge its support.

Mr. ENGEL. Mr. Chairman, I rise in strong support of the Smith amendment. According to press reports, trade between foreign subsidiaries of American companies more than doubled in 1990, jumping from $332 million in 1989 to $705 million in 1990.

At a time when Soviet and Eastern European subsidies to Cuba are ending, and the Cuban economy is experiencing tremendous problems, the United States must not open up a loophole in its embargo. The embargo, combined with the inherent inefficiency of the Cuban command economy, have brought Castro's economy to its knees. If we do not pass the Smith amendment and the activities of foreign subsidiaries of American companies are not subject to our embargo of Cuba, this loophole will let Castro off the hook.

Castro is not someone the United States wants to let off the hook. His human rights record is atrocious and has been the target of criticism of human rights monitors for years. His abuse of psychiatry is well-documented and the results of the recent Communist Party Congress in Cuba gave no indication that Castro has any desire to change his dictatorial ways.

Other countries that we embargo, such as Cambodia, Laos, and North Korea, are not allowed to trade with foreign subsidiaries of American companies. I strongly believe that Cuba should be treated in a manner consistent with our treatment of these other outlaw nations and urge my colleagues to support the Smith amendment.

Mr. RAMSTAD. Mr. Chairman, among the many anticompetitive effects of this amendment, it puts subsidiaries of U.S. companies right smack in the middle between the laws of two countries. On the one hand, we are saying that our foreign subsidiaries cannot do this business. On the other hand, the foreign country where they are located is saying it's OK.

Moreover, this amendment would indeed force subsidiaries of U.S. companies to choose between the law of their host country and the law of the United States. Despite what has been suggested in a "Dear Colleague" letter you may have seen, there is a substantial conflict of laws problem posed by this amendment.

In addition, the Canadian Government's blocking law, which has been specifically designed to prevent application of this amendment to U.S. subsidiaries operating in Canada, makes a violation of that law an indictable offense, complete with penalties of up to 5 years in jail and $10,000 in fines.

The Canadian Government, Switzerland, the European Community, and the United Kingdom have all made clear to the United States Government their strongest objections to this provision. The amendment constitutes a violation of their sovereign right to control the actions of companies doing business within their borders.

If some other country were to try to impose its will on businesses operating inside our borders, this body would know no limits to its outrage. That is exactly the principle at stake here.

The President last year vetoed this bill with this provision, and he objected then that this provision constitutes an extraterritorial application of U.S. law that forces foreign subsidiaries of U.S. companies to choose between violation of U.S. or host country laws.

I urge my colleagues to vote down this well-intentioned but misguided provision. It will not hurt Fidel Castro. It will not hurt communism. It will only hurt the competitiveness of United States companies. We have been talking all evening about the need to eliminate barriers to trade. This amendment would have the opposite effect. I urge a "no" vote.

Mr. BEREUTER. Mr. Chairman, this Member wants Members to be informed about problems the Smith amendment causes foreign subsidiaries of U.S. companies before they cast their vote on it. The Smith amendment would prohibit such foreign subsidiaries of United States firms from obtaining a license to trade with Cuba. While this amendment may sound like a great opportunity to cause Fidel Castro difficulties, it will harm U.S. businesses and Members should be aware of that fact.

American experience with unilateral sanctions shows that they almost inevitably backfire against U.S. interests, often against U.S. agriculture. We saw it happen when President Carter imposed the grain trade embargo on the Soviet Union in 1980. All we did then was to sacrifice market share to foreign competitors. Now, we are being asked to sacrifice additional market share for U.S. business' foreign subsidiaries through this amendment.

Cuba can sell its sugar through foreign-owned firms and certainly do so to the exclusion of United States subsidiaries. If foreign subsidiaries of United States companies are denied the opportunity to compete for this business, our foreign competitors will once again be happy to step in and replace us in that share of Cuban business. That may be what Members desire, but they ought to do it with eyes wide open. However, in commodities trade, the implications go much further than just a ban on business transactions with Cuba. The mere chance that Cuban products could be part of a string of commodities transactions forces United States traders out of the marketplace altogether.

Furthermore, the Smith amendment would also place U.S. companies in the untenable position of having to choose between two countries' laws. U.S. subsidiaries operating overseas are subject to their host country's laws. For example, last year Canada adopted a blocking law that forbids United States companies operating in Canada from honoring a provision such as the Smith amendment. In addition, the Canadian Wheat Board has the authority to require United States companies operating in Canada to ship wheat to Cuba. The United Kingdom and France have similar laws to this Canadian measure. As another example, a refusal to trade with Cuba by an American subsidiary doing business in Switzerland would similarly violate Switzerland's constitutional neutrality.

In addition, the administration has indicated its strong opposition to the Smith amendment. In a recent letter to the congressional leadership, Deputy Secretary of State Lawrence Eagleburger made the following statement:

> The Administration strongly objects to the provision on exports to Cuba. As the President recently made clear, we are committed to placing the strongest appropriate pressure on Cuba to embrace reform. However, this provision would place U.S. owned, foreign-based corporate subsidiaries in the untenable position of choosing to violate U.S. law or a host country's law. These firms should not be punished because of the "catch 22" of this provision.

The feel-good but draconian approach against Cuba proposed by the Smith amendment will only hurt United States businesses in the international marketplace at a time when Congress has been urging United States companies to be more competitive in the face of global competition. Members should focus on whether the adoption is really effective in its intended impact on Cuba or only hurts United States businesses, and whether it is, therefore, good or bad public policy. This Member will vote "no" on the Smith amendment and suggests, without much hope, that his colleagues will also vote against the Smith amendment.

AMENDMENT OFFERED BY MR. GEJDENSON TO THE AMENDMENT OFFERED BY MR. SMITH OF FLORIDA

Mr. GEJDENSON. Mr. Chairman, I offer an amendment to the amendment, and I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

The text of the amendment is as follows:

Amendment offered by Mr. GEJDENSON to the amendment offered by Mr. SMITH of Florida: In the text proposed to be inserted by the amendment, strike the period at the end and insert following: ", unless a license may be issued for such transaction if undertaken by a firm organized under the laws of any of the States of the United States, except that the prohibition contained in this section—

(1) shall not apply to a foreign subsidiary or affiliate to whom section 515.559 of title 31, Code of Federal Regulations applies to the extent such prohibition is inconsistent with the laws of the country in which the foreign subsidiary or affiliate is located; and

(2) shall apply only with respect to the export or import activities of such a foreign subsidiary or affiliate in the interstate or foreign commerce of the United States.

Mr. GEJDENSON. Mr. Chairman, this amendment simply says, if we have a law in Canada, that for a Canadian company that cannot comply with the boycott, we cannot force that Canadian company to be in conflict of both American law and Canadian law.

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Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Nebraska.

Ms. ROS-LEHTINEN. Mr. Chairman, I object. I object.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. GEJDENSON to the amendment offered by Mr. SMITH of Florida: In the text proposed to be inserted by the amendment, strike the period at the end and insert following: ", unless a license may be issued for such transaction if undertaken by a firm organized under the laws of any of the States of the United States except that the prohibition contained in this section—

(1) shall not apply to a foreign subsidiary or affiliate to whom section 515.559 of title 31, Code of Federal Regulations applies to the extent such prohibition is inconsistent with the laws of the country in which the foreign subsidiary or affiliate is located; and

(2) shall apply only with respect to the export or import activities of such a foreign subsidiary or affiliate in the interstate or foreign commerce of the United States.

Mr. GEJDENSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. GEJDENSON. Mr. Chairman, I yield to the gentleman from Nebraska.

Mr. WALKER. Regular order, Mr. Chairman.

The CHAIRMAN. All time has expired. The question is on the amendment offered by the gentleman from Connecticut [Mr. GEJDENSON] to the amendment offered by the gentleman from Florida [Mr. SMITH].

The Chair will state the Chair did not hear an objection earlier to dispensing with reading.

Ms. ROS-LEHTINEN. Mr. Chairman, I objected at various times.

The CHAIRMAN. However, as soon as it was called to the Chair's attention that the gentlewoman from Florida had objected in a timely fashion the Clerk read the amendment in its entirety.

The question is on the amendment offered by the gentleman from Connecticut [Mr. GEJDENSON] to the amendment offered by the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Chairman, I ask unanimous consent to speak out of order for 30 seconds.

The CHAIRMAN. Under the rule, all time has expired.

Mr. SMITH of Florida. Mr. Chairman, I ask unanimous consent to speak out of order for 30 seconds.

Mr. BEREUTER. Mr. Chairman, reserving the right to object, under my reservation I want to say to the gentleman from Florida [Mr. SMITH] that this gentleman, as a matter of comity, did not offer an amendment which I could have offered as member of the committee and precluded the gentleman from offering his amendment. But I did want to put that in the RECORD.

The CHAIRMAN. The gentleman from Nebraska must suspend.

Under the rule adopted by the House, the House established the time for consideration of all amendments to this measure. The Committee cannot extend that time and the time has now expired.

However, the Committee will proceed with votes on the amendments that have been offered. The limitation was on the consideration of amendments and debate on amendments, and the Committee will now proceed with the vote on the amendment offered by the gentleman from Connecticut [Mr. GEJDENSON].

Mr. GEJDENSON. Mr. Chairman, could I ask a parliamentary inquiry?

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Connecticut [Mr. GEJDENSON] to the amendment offered by the gentleman from Florida [Mr. SMITH].

The amendment to the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. SMITH].

The amendment was agreed to.

Mr. KOLBE. Mr. Chairman, I rise in support of H.R. 3489—the reauthorization of the Export Administration Act, which significantly reduces the controls on exports to the newly democratizing East European countries and to a lesser extent, the Soviet Union. Its passage is ever more important today now that the cold war is over and the Berlin Wall has come down.

I supported the bill when it came before the House last year and will support it again today in an effort to provide our industries with export opportunities that will bring money and jobs into the United States.

Commercial and national security interests today are probably more closely entwined than they have been at any other time since the end of World War II. Economic health and one's ability to trade competitively in the world market may be the single most important component of anyone's national security. The new war internationally—at least at present—is economic. The weapons are products, services, and finances. That is why I feel strongly about the rules and regulations under which we operate. They must work for us—not against us.

In the past, our export control policy has placed undue burdens on industry. The result has been confusion, delays, and lost sales. While adequate safeguards are essential to our national security interests, they should not be carried to such an extreme as to become an impediment to American competitiveness. The law should help remove barriers not place more in the path of industry. I believe this legislation does that.

Briefly, the bill recognizes the worldwide movement to democracy and free enterprise. It will allow goods and technology to flow to Poland, Hungary, Czechoslovakia, the Baltics and what used to be the Soviet Union, that have been restricted in the past. I would point out that this legislation presents us with a unique opportunity to provide assistance to the Soviet Union without costing American taxpayers a penny.

H.R. 3489 makes it easier to export goods and technology to our NATO allies and terminates the requirement for re-export licenses for same countries. It puts safeguards in place to prohibit sales to Iran, Iraq, Syria, and Libya. It restricts the sale of nuclear equipment and technology to safeguarded nuclear facilities.

H.R. 3489 limits bureaucratic infighting and inefficiency by distinguishing between dual use items controlled by the Department of Commerce and munitions controlled by the Department of State. It also includes a process for resolving disputes, with the President the final arbiter. This is important when businesses have lost untold millions because of turf battles, bureaucratic red tape and unjustified restrictions. In my book, this is not the way to gain a competitive edge.

If the equipment is out there and accessible, why should we restrict our industries from being the ones to close the sale? The relaxation of our export control laws will mean more jobs for the Americans and fewer going to the Japanese and other producers of advanced technology.

The time is now, not tomorrow, to make it easier for American companies who provide our foreign exchange to compete effectively in the new world. Let's let exports continue to lead the way out of our recession. Let us pass this legislation to advance American's industrial opportunities beyond our own shores.

Mr. MINETA. Mr. Chairman, I rise today in strong support of Omnibus Export Amendments of 1991.

As a Representative from Silicon Valley, I am fully aware of the need to create an export control system that balances national security concerns with trade and economic opportunity.

The competitive position of U.S. industry, especially the U.S. high-technology industry, will depend on our ability to adapt export policy to reflect the political climate in Eastern Europe, the Baltics, and what used to be the Soviet Union.

The future of U.S. industry also depends on our ability to streamline a problematic U.S. export control policy.

The current export control system has become a model of inefficiency and bureaucratic wrangling for high-technology exporters.

Export license approvals for U.S. manufacturers take as long as 120 days. This time lag is unacceptable in high-technology industries that can witness the next generation of technology in as little as 6 months.

Of particular importance to electronics add aerospace industries is language in the Omnibus Export Amendments of 1991 that defines defense articles and technologies, and provides for a balanced commodity jurisdiction process within the executive branch. Currently, there are no clear standards to determine which agency has jurisdiction over items that fall between the commercial and munitions lists. Nor does a clear process to resolve disputes between agencies exist.

By distinguishing between dual-use items and munitions, the omnibus export amendments will limit bureaucratic disputes and simplify the decision-making process. By providing for indexing procedures, this bill also recognizes the rapid advancement of high-technology exports.

The Omnibus Export Amendments of 1991 will liberalize the system of export controls but still will allow for sufficient protection of U.S. national security. It recognizes the need to rebuilt the Baltics and Eastern European countries trying to make a successful transition to democracy.

Mr. Chairman, the Omnibus Export Amendments of 1991 will give U.S. industry the chance to go toe-to-toe with challengers in a fair fight.

Mr. MILLER of Washington. Mr. Chairman, I rise tonight in support of H.R. 3489, the Omnibus Export Act of 1991. This act brings timely and important improvements to our export control laws by acknowledging the enormous changes that have taken place throughout the world since we last considered our export control laws. This is very important: last year U.S. exports were responsible for 88 percent of the increase in our GNP. This is an act that will help our exporters bring growth back to our economy.

For our exporters to continue to compete, U.S. laws must catch up with rapid changes throughout the world. Our export control laws must reflect the failed coup in the Soviet Union this past August. This act begins to make those changes. For instance, the act liberalizes export controls to Eastern Europe, the Baltics, and the Soviet Union.

This act recognizes other dangers in our world. For instance, the bill tightens export controls for terrorist countries, such as Iran, Syria, Iraq, and Libya. The act also includes a provision I offered in committee, establishing a set of human rights principles for U.S. companies operating in China.

But for all this act's merits, we should remember that this is a short-term effort. Its intent is to help us now while we prepare to comprehensively rewrite our export control laws. The result is a slightly schizophrenic act. On the one hand, this act liberalizes exports to the Soviet Union and former Eastern bloc countries. On the other, it restricts exports to the Middle East and other dangerous regions.

Moreover, the act wants to make our export controls multilateral, and succeeds at this on an East-West basis, but fails on a North-South basis. This contradiction is a result of history: Our export controls were built around the cold war.

But the cold war has faded. While the fading of the cold war does not end the need for export controls, it does mean that our export controls must be reshaped from top to bottom. Cocom, the major multilateral export control mechanism designed for East-West controls, is rapidly losing its relevance. Congress and the administration must strive to establish effective multilateral export control regimes for the new world order. I believe a new, long-term approach is needed.

This act contains a provision that I worked on in subcommittee establishing a time-line for decontrolling the Baltic countries of Lithuania, Latvia, and Estonia. First, within 30 days after enactment of the act, the United States must ask Cocom to give the Baltics the status that Poland, Hungary, and Czechoslovakia had as of September 1990. That is, liberalization of telecommunications equipment and technology. second, the Baltics will be even further decontrolled once they meet these three conditions: First, implement an effective export control system; Second, adopt arrangements for end-use assurances and on-site inspection and verification; and third, terminate intelligence cooperation with other controlled countries; for instance, the remaining Soviet Union. Third, the act further directs the administration to provide technical assistance to aid the Baltics' in meeting these three conditions. Finally, 120 days after enactment of the act, the President must determine whether Latvia, Lithuania, and Estonia should be removed completely from the list of controlled countries.

We must move quickly to allow greater exports to the Baltics, both to help those countries, and to help our exporters. Without modern telecommunications equipment, it will be difficult for other United States, Baltic, and foreign countries to do business. If a company cannot call an employee in Lithuania, or send a fax from Latvia, or communicate to Estonia, they will not be able to do business in today's world. Without such business, the Baltics cannot hope to achieve the economic reform they are striving for. And in today's highly competitive world, we cannot penalize our exporters merely because it took us too long to change our export laws.

Some have urged caution in allowing exports to the Baltics and Eastern European countries. They are apparently worried that these countries will turn over technology to the Central Government of the Soviet Union. However, these countries are more likely to exercise care than our other European allies. The Baltics are more suspicious of the Soviet Union and rogue countries than we are ourselves.

Liberalizing our export controls to these countries will contribute to further democratization and free-market reforms there. Many have argued that we cannot afford to give aid to these countries. But allowing our exporters to do business in these countries is aid we can afford. It costs the taxpayers nothing, and, in fact, helps the American taxpayer. It helps American exporters who are the engine driving the U.S. economy.

This act also includes a provision I offered during the Foreign Affairs Committee's work on the act. My provision establishes a set of human rights principles for U.S. companies operating in China. The principles include asking U.S. companies not to use goods produced by forced labor and asking U.S. companies to raise the issue of political prisoners in their contacts. The United States has the power to influence positively events in China. My amendment does this by enlisting the powerful tool of U.S. businesses in the struggle for freedom and democracy in China. My amendment is based on legislation I introduced and is cosponsored by, among others, the cochairs of the Congressional Human Rights Caucus, Mr. LANTOS and Mr. PORTER.

Mr. Chairman, I am pleased to have helped keep the Levine language regarding mass-market software in the act. The Levine language stipulates that mass-marketed software is to be moved off the munitions list to the commodity list, which is overseen by the Commerce Department.

The Levine language benefits our software exporters because the Commerce Department must approve or deny export applications within 30 days. As a munitions item, overseen by the State Department, a decision on a license often takes much, much longer.

A software feature known as encryption is at the heart of the Levine language. Encryption is an increasingly popular software feature which scrambles the contents of a computer file for everyone but the designated user. Under present law, software with an encryption feature is treated as a munitions item.

Mr. Chairman, I could leave the floor now and be back within an hour having purchased and sent overseas, to any country in the world, via a computer modem, encryption software.

When a munitions item can be purchased at any retail software outlet anywhere in the country, by anyone, and transferred by phone anywhere in the world, then it clearly has become futile to consider this software a munitions item. Without helping national security, we are doing great harm to our exporters.

Mass-marketed software, by its very nature, is widely available and difficult, if not impossible, to control. This is a case where our export controls have become anachronistic. The Levine language cures this problem.

Mr. Chairman, this is a good act, worthy of passage. But for the sake of our economy, we must soon revisit this issue in a comprehensive manner. Fortunately, we have in the chairman of the subcommittee, Mr. GEJDENSON, and the ranking Republican, Mr. ROTH, leadership up to the task. Washington State is the most trade-dependent in the Union; one in every five jobs is trade related. Washington State will be depending on our subcommittee's good work in the future.

Mr. ENGEL. Mr. Chairman, I rise in strong support of H.R. 3489, which reauthorizes the Export Administration Act. The threats that the United States now faces are very different than the ones we faced the last time the Export Administration Act was reauthorized. The bill we have before us today changes the focus of our export control policy away from what once was the Soviet Union and concentrates more on threats from terrorist nations like Iraq and Syria.

I believe this is entirely appropriate. The Soviet Union and its former satellites in Eastern Europe are now potential markets for many American products. We cannot forget, however, that these are also potential markets for our trade competitors and that getting in on the ground floor could have dramatic positive effects on our exports in the future. While there are aspects of this bill which I feel do not go far enough in relaxing our trade laws, it is a step forward and will allow American companies to help us out of the recession we are currently experiencing.

There are particular sections of this bill which I believe are of particular importance.

First, terrorist nations: Section 119 dealing with the export of items that are of use to both civilian and military end users to terrorist countries is intended to ensure that acquisition of militarily valuable dual-use items by terrorist countries is a thing of the past. Iraq's ability to obtain dual-use items virtually up to the day Saddam Hussein invaded Kuwait should never be repeated and many of us on the Foreign Affairs Committee are concerned that the administration is currently adopting a policy toward Syria that looks like its policy toward Iraq before the gulf war.

On September 1 of this year the administration changed its dual-use export policy toward Syria, making it easier for Syria to obtain these items, which can be used for military purposes. While Syria is a key player in the upcoming regional peace conference, this should not blind us to the fact that Syria remains on the State Department's list of countries supporting terrorism. It makes no sense to send a terrorist country items that could be useful militarily. Section 119 is not as strong as I would like it to be, but it does make it more difficult to send these items to Syria.

At the subcommittee level, I offered an amendment, which was unanimously adopted, directing the administration to urge our allies to adopt similar restrictions on exports to terrorist nations. This provision will not only strengthen U.S. sanctions, it will also help to ensure that our exporters are not frozen out of markets open to their international competitors.

Second, in addition, I authored the provisions in the bill concerning indexing of technologically obsolescent products. When a product is no longer on the cutting edge of technology it generally becomes less important to control its export. In the past, the administration has left items on the control list that were of no concern for national security reasons. The indexing provisions I offered to this bill will correct this problem and allow American manufacturers to export items as soon as their export poses no threat to our national security.

Mr. DICKS. Mr. Chairman, I want to commend the chairman and the members of the Foreign Affairs Committee for the excellent work they have done on this legislation. These amendments are a critical step in recognizing that the nations of Eastern Europe stand at the threshold of becoming constructive partners in the world market economy. Achieving this potential, and avoiding economic stagnation that could undercut the revolutionary collapse of Communist dictatorship, will depend on a reassessment of the balance between security risks associated with trade of high technology, and the mutual economic benefits that increased exports of such technologies can provide both to these nations and to the United States.

I am especially pleased that the committee has included as Title III of this bill, the Nuclear Proliferation Prevention Act of 1991. As a cosponsor of this legislation, I also want to commend the hard work performed by the gentleman from Massachusetts, Mr. MARKEY, and the gentleman from Michigan [Mr. WOLPE] in developing this balanced approach to a more aggressive fight against nuclear proliferation.

The courageous efforts of U.N. inspectors affiliated with the International Atomic Energy Agency to uncover the unsettling progress that Iraq had made toward developing a nuclear weapons capability are an inspiration to all of us. But the difficulties they have faced, and the fact that Iraq was able to get so close to acquiring nuclear weapons under the current antiproliferation regime, is a clear illustration that international controls of technologies that could be used to develop nuclear weapons need to be strengthened.

Iraq is not alone as a nation with the deadly potential combination of a renegade regime and the financial resources to acquire such weapons capability. North Korea is increasingly a focus of proliferation concerns. And it is also resisting efforts to apply inspections of its developments. Pakistan has been a continuing concern, and has in fact been subject to specific restrictions on foreign assistance provided by the United States based on its nuclear program. Reports in today's Washington Post highlight the ongoing efforts of Iran to develop this capability. Finally, Libya and Syria have both expressed interest in developing such capabilities. And the list goes on.

This concern has produced a reevaluation of the necessity for a limited strategic missile defense system, and a growing consensus that meeting the third nation threat should be the focus of our strategic defense research efforts. But while strategic defenses may play a role in countering what could be a new and unprecedentedly dangerous international arena, efforts to make certain that rogue nations do not acquire these capabilities through export controls is even more important.

Enacting the Nuclear Proliferation Prevention Act is an important first step toward this goal. It will apply to nuclear components, nuclear technology transfers, highly enriched uranium and dual use nuclear materials and technologies—the same controls that currently apply only to exports of nuclear fuel and facilities. Specifically, such exports would be banned to countries that have not placed all of their nuclear facilities under international safeguards and concluded nuclear cooperation agreements with the United States. This will provide a strong incentive for nations, including those in Eastern Europe, to conclude nuclear cooperation agreements.

It also directs the President to negotiate with the nuclear supplier group nations to adopt similar controls and to terminate all nuclear trade with nations seen as major security threats. This is critical if the restrictions we are placing on our own exports are to be effective. And I reject the argument that by taking a strong stand ourselves we will somehow undercut these negotiations.

Finally, the legislation places real sanctions on any nation or group of nations that engage in nuclear-related exports in contravention of any prohibition, restriction or other measure adopted by the nuclear suppliers group. These sanctions, which could include ending all nuclear trade, cutting off all nonhumanitarian foreign assistance, or terminating arms sales, will for the first time provide real incentives for others not to simply look the other way when firms seek to go for the quick profit over international safety and security.

The President would retain authority to waive specific restrictions, but only after findings that it does not undermine nonproliferation policy, and only after notification and review by Congress.

Curbing proliferation of weapons of mass destruction could well be the most important international security issue of the next decade. This act is an important first step that complements arms control efforts which can reduce the incentive to develop these weapons. It demonstrates that we are serious about the issue, and willing to back up our rhetoric with real action.

Ms. PELOSI. Mr. Chairman, today the House is considering the reauthorization of the Export Administration Act. I support this bill and support the provisions in this bill that seek to improve U.S. export controls. I believe, however, that this legislation does not go far enough in reforming U.S. export policy.

For this reason, I am introducing the Nonproliferation And Export Control Act Of 1991. This legislation would provide for a more thorough review in the export of dual-use items.

Dual-use items are those items that are primarily designed for civilian uses, but can be instrumental in the design and construction of weapons of mass destruction. Examples are; very high speed computers, electronic components, high-tech ovens and more. It is these dual-use items that played an instrumental role in Iraq's ability to advance their weapons programs beyond our estimates.

Under current U.S. law, the Department of Commerce has the sole responsibility on approving dual-use export licenses. Since the Department of Commerce is responsible for promoting U.S. trade, it is contradictory to also require them to restrict goods on the basis that they may have military significance.

My legislation would require the Commerce Department to consult with experts in the State Department and the Department of Defense on the granting of dual-use export licenses. This more thorough review would only apply to countries of concern—countries that do not have a bilateral or multilateral agreement with the United States on the item in question.

The Senate passed Export Administration Act contains language requiring increased review of U.S. export licenses for biological, chemical and missile dual-use items. My bill includes these items, but also adds dual-use nuclear goods to the list of items that would be subject to increased review.

Mr. Chairman, the United States must ensure that expert and thorough review is made on export decisions that have very real implications for our national security.

I urge my colleagues to support this reasonable and logical change in U.S. export policy by cosponsoring my bill, the Nonproliferation and Export Control Act.

Mr. SMITH of Florida. Mr. Chairman, I—along with the gentlewoman from Florida and the gentleman from New Jersey—offer this amendment to prohibit foreign subsidiaries of United States companies from trading with Cuba.

This amendment seeks to return the embargo on Cuba to its original language of 1961—its principal author then was the present chairman of the Foreign Affairs Committee. It would give the Office of Foreign Assets Control [OFAC] in the Treasury Department the enforcement power originally intended.

This amendment is especially timely, since the trade of subsidiaries of United States firms with Cuba has reached a whopping $705 million for 1 year—1990—an increase of 112 percent over the previous year. Any cutback in this trade would hasten Castro's demise.

The issue we are addressing here is the closing of a loophole to an embargo that has been in place since 1961.

The Trading With the Enemy Act includes four countries that have full United States trade embargoes: North Korea, Vietnam, Cambodia, and Cuba. Of these, Cuba is the only country to which a loophole enabling trade with foreign subsidiaries of United States firms was offered. The loophole resulted from an effort during the Ford administration to provide Cuba with an incentive to improve its relationship with the United States by allowing foreign subsidiaries of United States firms to apply for a license with OFAC to trade with Cuba.

But, during the ensuing years, Cuba continued its hardline, anti-United States policies. In 1976 it began to send troops to Angola. In 1978, it increased its military aid to the Sandinistas. These are hardly attempts to take advantage of a unilateral gesture by the United States to improve bilateral relations.

Worse, the past decade has seen only a further hardening of Cuba's totalitarian hardline and may be summed up with the phrase Castro is so apt to repeat these days, "Socialism or death." The loophole without question no longer serves any legitimate foreign policy purpose. Our amendment recognizes that and takes the adequate measure of closing the loophole.

Our amendment would not prevent any foreign subsidiary of a United States-based company from obtaining a license to trade with Cuba from its host country. All we are seeking is a consistent policy: United States-based firms are not allowed by United States law to trade with Cuba. Foreign subsidiaries of these firms also should not be allowed under United States law to trade with Cuba.

Mr. Speaker, there is a simple solution to the so-called Catch-22 these subsidiaries will experience if our amendment should pass: Don't trade with Cuba. Stop propping up an entrenched dictator of 32 years. But I would like my colleagues to understand something very clearly: No foreign country can force any company on its soil to trade with Cuba. Canada can't do it. Great Britain can't do it. To suggest otherwise is just plain wrong.

Only North Korea, China, and Vietnam remain Cuba's Communist brethren. Castro's revolution is at an historical low. His former allies have practically abandoned him, and the Soviets are about to end their economic subsidization. The Cuban people in record numbers are escaping the island's political persecution and economic misery in handmade rafts. As international communism breathes its last breaths, we should not try to keep it afloat in the Caribbean.

Some may argue that the ultimate beneficiaries of this subsidiary trade are the Cuban people. Denying the people of Cuba these goods are benefits of trade, they argue, hurts the very people we want to free. With all due respect, do these people have any idea of the absolutely miserable conditions that the majority of the Cuban people are now enduring? If you want some indication, just consider that this year alone the U.S. Coast Guard has already picked up more than 2,000 Cubans off the shores of Florida escaping their homeland in flimsy homemade rafts. And those are the ones that were lucky enough to make it.

Such an argument is irrelevant anyway. This amendment is consistent with the provisions of the embargo under American law. That embargo and this amendment seek to penalize the dictatorial Castro government, not the people that it subjugates.

The following goods constitute part of the trade we oppose via the amendment. The Cuban people certainly have no access to these goods:

Seagram's assorted liquors: The average Cuban has trouble enough getting Cuban rum, which is now rationed. Only the party elite or tourists can buy Chivas Regal.

Air-conditioning provided by the Carrier Corp. Dollar-toting western tourists and party bigwigs benefit—not the Cuban people.

Assorted soft drinks from the Del Monte Corp.

Naphtha, a chemical used for dry cleaning, is imported by Dow Chemical and then re-imported into Cuba. It may be used to press Fidel's fatigues, but certainly is not used by people who cannot even get laundry detergent.

A four-door GM sedan from General Motors Switzerland is for the use of the Permanent Mission of Cuba to the United Nations in Geneva.

Let us send this strong message to Castro. We certainly came close in may, 1990, when the House Foreign Affairs Committee unanimously passed this same subsidiary amendment as part of the fiscal year 1990–91 State Department authorization bill. The House Foreign Affairs Committee has also convincingly passed other pieces of Cuba-related legislation this year.

The subsidiaries may conduct their trade elsewhere in the international market. A free and independent Cuba would provide them better opportunity tomorrow. A free Cuba also will remember who traded with Castro today. That is why we should protect future trade by plugging up the loophole that allows subsidiaries to trade with Castro.

I urge my colleagues to support this amendment.

Mr. FIELDS. Mr. Chairman, I rise today in support of comments that I heard expressed by the Congresswoman from Kansas [Mrs. MEYERS], about a funding limit in title II for the Commerce Department's International Trade Administration. In short, title II includes a $5 million earmark for a program called the Market Development Cooperator Program.

I would not comment on the merits of that program. However, I do want to point out that the Commerce Department's appropriations bill, already passed by the Congress and signed by the President, did not include any funds for this program. This means that ITA will be forced to cut $5 million from its base export promotion programs.

I, for one, am surprised that the Congress is interested in restricting ITA's programs at a time when exports are the only thing that have been driving the economy.

Recently, I attended a national export seminar in Houston where Secretary Mosbacher highlighted the many resources and programs available through the Department of Commerce for small- and medium-sized businesses interested in exporting. This is just one way the International Trade Administration is helping people with exporting. If we lower ITA's spending today, ITA may not be able to continue to offer some of these valuable services I heard about at this seminar.

Countless times I hear from business men and women in my district that the United States does not do enough to help American firms export their products. I have heard this from large companies, but in particular I hear if from the smaller companies who really are the ones that need the assistance.

And, Mr. Chairman, I note that I have heard it in this Chamber time after time that our competitors spend several times as much as the United States does to help its manufacturing and service companies get their products onto shelves overseas.

Mr. Chairman, $5 million means a lot in an agency the size of the International Trade Administration. And it means a lot to the businesses—especially small businesses—who need help in exporting their products.

I—and I think the American business community would agree—believe that we need more staff in ITA's Foreign Commercial Offices overseas. The Congress has agreed with this and given the United States and Foreign Commercial Service almost $3 million in fiscal year 1992 to increase staff in the Far East—such as Japan and Taiwan—in Eastern Europe and the Soviet Union, and In Latin America. This increase will be negated, wiped out, by this $5 million earmark.

I would also like to see ITA's domestic offices, 47 of them all across the United States, and its foreign commercial offices have the technological capability to transmit trade data and information back and forth, to give trade leads to U.S. companies looking for new markets. The Congress has agreed with this and has given the United States and Foreign Commercial Service several million dollars to outfit each office with computer systems to give them access to the National Trade Data Bank. This increase will be negated, wiped out, by the $5 million earmark.

Mr. Chairman, I urge our colleague, the distinguished chairman of the Foreign Affairs Subcommittee on Trade, to think again on the merits of this remark. This is a time when we should be giving more money to the agency that provides the principal support for small businesses across the country who are trying to export.

To cut the International Trade Administration now would be wrong.

Mr. FEIGHAN. Mr. Chairman, I want to commend our subcommittee chairman, Mr. Gejdenson, our ranking minority member, Mr. Roth, as well as the other minority members of the committee in working to put together an excellent bill.

H.R. 3489 strikes the appropriate balance between national security concerns and improving America's ability to compete in a global marketplace. I think our success in finding that balance can be measured in the overwhelming support that we had for the earlier version of this bill which passed overwhelmingly in the House last fall.

As the gentleman from Connecticut noted, those items that were on the President's veto list have either been revised or taken up in other legislation, and other obsolete provisions have simply been removed—all in an effort to make sure that we produce a consensus document that will become law.

Let me just highlight a few aspects of the bill that go right to the heart of the debate over making America more competitive, yet ensuring our national security.

First, we call for the establishment of a license-free zone among our Cocom allies. This reform reflects two primary changes in the international landscape: First, we must realize that the basis for Cocom—keeping sensitive technology out of the hands of the Soviets and the Eastern bloc—has largely been overtaken by events, the Soviet coup being the latest example of those changes. Second, we face a dramatically different situation in Europe with the movement to a unified market by 1992.

These changes call for a dramatic reevaluation of our export controls to these countries. The bill before us represents a major step in retooling our export control regime so that it focuses more on problem countries and less on those countries who are now our closest allies and trading partners. The result will be vastly expanded trade opportunities without compromising safeguards that protect our national security.

In similar fashion, the bill takes into account the changes that have taken place in Eastern Europe and the Soviet Union. Embedded in this bill is the philosophy that the free flow of ideas is the engine of democracy. And that every fax machine, every telephone system and every home computer that we export assists the transformation of these former Communist states into more responsive, more representative democracies.

This bill represents a win-win situation for us—by opening doors for U.S. exports; by protecting our national security; and by putting U.S. technology in the service of the democratic revolutions that continue to unfold across the globe.

I urge my colleagues to support H.R. 3489.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Bonior) having assumed the chair, Mr. Thornton, Chairman of the Committee of the Whole House on the State of the Union reported that that Committee, having had under consideration the bill (H.R. 3489) to reauthorize the Export Administration Act of 1979, and for other purposes, pursuant to House Resolution 259, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. BROOMFIELD

Mr. BROOMFIELD. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. BROOMFIELD. Yes, I am, in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Broomfield moves to recommit the bill, H.R. 3489, to the Committee on Foreign Affairs.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. FIELDS. Mr. Speaker, I was unavoidably detained. Had I been here, I would have voted in favor of the Hunter amendment (Sec. 120. Review of licenses) to H.R. 3489, the Export Administration Act reauthorization.

PERSONAL EXPLANATION

Mr. GOODLING. Mr. Speaker, I was unavoidably detained and was unable to vote on several amendments pertaining to H.R. 2508, the reauthorization of the Export Administration Act.

Had I been present, I would have voted as follows: Rollcall No. 355, "yea"; rollcall No. 356, "yea"; rollcall No. 357, "yea."

AUTHORIZING THE CLERK TO MAKE CORRECTION IN ENGROSSMENT OF H.R. 3489, OMNIBUS EXPORT AMENDMENTS ACT OF 1991

Mr. GEJDENSON. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 3489, the Clerk be authorized to make technical and conforming changes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

GENERAL LEAVE

Mr. GEJDENSON. Mr. Speaker, I ask unanimous consent that all Members may have 3 legislative days in which to revise and extend their remarks on H.R. 3489, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Without objection, the vote on the motion to suspend the rules and pass H.R. 2454 will be postponed until tomorrow.

There was no objection.

□ 2150

FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

The SPEAKER pro tempore (Mr. Bonior). Pursuant to House Resolution 264 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 6.

The Chair designates the gentleman from Michigan [Mr. Carr] as Chairman of the Committee of the Whole and requests the gentleman from Oregon [Mr. AuCoin] to assume the chair temporarily.

□ 2151

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, with Mr. AUCOIN (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Texas [Mr. GONZALEZ] will be recognized for 30 minutes, the gentleman from Ohio [Mr. WYLIE] will be recognized for 30 minutes, the gentleman from Texas [Mr. DE LA GARZA] will be recognized for 22½ minutes, and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 22½ minutes.

The Chair recognizes the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Chairman, I yield myself 12 minutes.

Mr. Chairman, H.R. 6 strengthens the entire financial community. It opens new markets for commercial banks. It provides new regulatory approaches and it establishes protections for the public and the deposit insurance funds.

H.R. 6 gives the banking industry its long-sought flexibility. In return, H.R. 6 demands that the banks and their regulators adhere to a strong set of safeguards that ensure that the institutions will operate in a safe and sound manner and in a manner that reduces the risk of future raids on the U.S. Treasury by the industry.

The real test on this floor over the next 2 days will be whether the Members of this House will let the banking industry grab new powers and run, or whether we, as representatives of the people, will demand safeguards for the public and for the billions of dollars of the public's funds that could be placed at risk.

Mr. Chairman, the special interests are hard at work, spreading confusion, creating doubt, and seeking every possible advantage as we near a vote on the biggest single banking bill to come before this Congress since the 1930's.

I hope that the Members of the House will be able to cut through these special pleadings and exhibit the courage to place the interests of the public up front.

The American Bankers Association wants the industry flexibility provided in H.R. 6. It just doesn't like the idea that its banks should be required to pay attention to something called public responsibility. Flexibility without responsibility is a fast and straight route to financial disaster.

It is not surprising that the ABA wants only the benefits. That's their job—to walk up here and demand the maximum for their dues-paying members. Congress' job, I hope, is regarded differently.

It is very unfortunate, Mr. Chairman, that the Bush administration told the banking industry earlier this year that it could create subsidiaries to deal in securities without requiring any statutory firewalls to separate insured deposits from volatile securities activities. The administration suggested that the Federal Reserve could worry about this later, not the Congress.

Mr. Chairman, the Banking Committee rejected this new emergence of laissez-faire and constructed a series of high, tight and solid walls between the insured banks and the securities operations. The Energy and Commerce Committee added an identical set of firewalls on the securities side and the combined approach provides the American public, the deposit insurance funds and, most of all, the U.S. Treasury with the maximum protections.

It is these protections that have now sent the ABA and its big banks into a near panic and a massive lobbying campaign. The industry says public protections are just too onerous and too costly. So, "forget the public or drop the idea of securities subsidiaries" is the message from the industry and the administration. That's why we'll be seeing those amendments to strike titles from H.R. 6. If its not their ballgame, their rules, and their umpires, the industry just says "forget it"—well, at least forget the safeguards.

There is another big force behind the strike-the-title advocates—a desire to preserve special treatment for banks that have slipped around the Glass-Steagall prohibitions through regulatory loopholes and laxness. H.R. 6 would sweep all those operations—approved by the Office of the Comptroller of the Currency and the Federal Reserve Board—under regulation and behind firewalls. The ABA and the banks operating under these loopholes are trying to hide the true reasons behind their later and much-ballyhooed support for striking title IV.

So, my colleagues, watch out for those benign reasons being peddled for striking title IV. The real reasons are, first, a hope that the safeguards can be defeated in some future securities powers bill; and second, an effort to preserve special treatment for some big operators who used loopholes to escape Glass-Steagall. The effort to strike has special interest written all over it.

In the 1980's, the savings and loan industry was up here on Capitol Hill with many of the same messages. "Give us lots of new powers, don't mess with regulation, and we'll make lots of profits and everyone will live happily ever after" was the theme of the U.S. Savings and Loan League and its bigger members. President Reagan was delighted with the idea and when the deregulation bill was signed at the White House, he declared it a jackpot for the American people.

That jackpot is now costing the taxpayers between $500 billion and $750 billion. And we'll have the same wonderful reverse jackpots if we let banks operate securities subsidiaries and enter other nonbanking activities without firewalls and other protections. If we don't vote safeguards, as contained in the joint Banking Committee-Energy and Commerce Committee proposal, then the only question remaining will be the size of President Bush's banking jackpot. The American people really can't afford too many of these Presidential jackpots. They're bankrupting the country.

Mr. Chairman, we need to deal with the issues now, not postpone the hard decisions. The proponents of so-called narrow bills may forget that these measures leave many present activites—volatile activites—unregulated. While much of the discussion has revolved around title IV and the securities powers, H.R. 6 deals with a broad set of issues and among other things:

First, refinances the Bank Insurance Fund [BIF]—allowing $30 billion of borrowings from the U.S. Treasury to keep the bank deposit insurance system solvent.

Second, installs an early intervention regulatory system which requires regulators to take action when the condition of a bank deteriorates—no more regulatory wishful thinking and wringing of hands while the costs rise for the insurance fund and the taxpayers.

Third, provides uniform accounting standards and greatly improved internal controls of banks—a major step for safety and soundness.

Fourth, upgrades regulation of foreign banks operating in the United States no more free-wheeling entities like BCCI and BNL allowed to launder money and engage in other criminal activity.

Fifth, requires that resolutions of failed institutions be carried out at the least cost to the taxpayers.

Sixth, allows banks to extend their operations interstate in an effort to stabilize the industry and provide access to new markets.

Seventh, establishes criteria for the use of the Federal Reserve discount window, preventing secret and expensive bailouts of banks at the taxpayers' expense.

Mr. Chairman, four other committees, in addition to Banking, have worked on sections of this bill through sequential referrals. The energy and Commerce Committee, under the leadership of Chairman JOHN DINGELL, worked with us closely to develop the compromise on title IV. JOHN DINGELL's cooperation was magnificent and the compromise is a strong public interest plank in this legislation.

I also want to thank the other committees that worked on parts of the bill—Judiciary, Ways and Means, and

Agriculture. They are all part of the successful effort to bring this legislation to the floor.

In closing, Mr. Chairman, I want to remind the Members of the House that the banking industry—now knocking on our doors for new benefits—will almost certainly be up here next year asking for a major multi-billion dollar bailout of banks. Some in the industry are in bad shape and there is little chance that we will be able to escape taxpayer-financed bank bailouts down the road.

When the bank bailout legislation arrives on Capitol Hill and becomes headlines across the Nation, Members are going to be asked how they voted on H.R. 6. Did they insist on safeguards for the insurance funds? Or did they vote the ABA line and let deregulation go forward without protections? The questions will be asked—that is a certainty. No Member will escape scrutiny or the spotlight when the taxpayers learn they will be forced to reach into their pockets again—this time to help out the banks.

Congress accepted the savings and loan industry's demand a decade ago for new powers without crafting a stronger regulatory structure or demanding safeguards for the American public. The result was a financial disaster that is costing the taxpayers from $500 billion to $750 billion.

The lobbyists for the American Bankers Association and the big banks are singing the identical song today "deregulation without safeguards". They are asking the House of Representatives to roll the dice once more with the public's money on the table.

Mr. Chairman, I hope the Members of this House will resist the temptation to accept the gamble. There is already one tombstone in the financial graveyard marked Garn-St Germain. There's room for another if the Congress is foolish enough to eliminate regulatory protections in H.R. 6.

□ 2200

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I favor H.R. 6, the bill which was reported from the Banking Committee that was a comprehensive reform and modernization banking bill, which I thought the Banking Committee had really done a splendid job on.

For nearly a decade now, Congress and our committee has been struggling with some major issues which we addressed in that bill. With bipartisan support and with administration support, we reported out a comprehensive bill, which as I say, I thought was a good bill.

Secretary Brady submitted the administration's legislative recommendations back in March and we had reported the bill out of the Banking Committee by July 4. We acted on it promptly and in good fashion.

The bill as reported out of the Energy and Commerce Committee was changed in some very serious aspects in title IV, and subsequently was changed by the Dingell-Gonzalez compromise, and deletes key provisions of the bill which I thought were critical to the Banking Committee bill, and adds very cumbersome firewalls and negates much of the good work which I thought we had done in the Banking Committee to give banks more flexibility in financial transactions and by that process would strengthen their place in the financial world.

I regret that the Dingell-Gonzalez compromise will be made in order as original text so that we will not get a vote on title IV as we reported out of our Banking Committee.

Having said that, what this bill does in other aspects is that it recapitalizes the bank insurance fund, which has to be capitalized. The bank insurance fund desperately needs more funds. It is estimated there is about $2.2 billion in the fund right now, and by the end of the year that will be zero, and if we do not recapitalize it, the taxpayers are going to have to come forward for another bailout. This bill would allow for $25 billion in recapitalization.

Beyond that, H.R. 6 makes key reforms that are much needed so that we will not repeat some of the mistakes of the past. For example, H.R. 6 will authorize early intervention procedures for the regulators if a bank is in trouble, annual exams by the regulators, annual outside audits for banks, market value disclosure of bank assets, and elimination of the too-big-to-fail policy after 1994.

With respect to some of these reforms which were contained in an amendment which was sponsored by the gentleman from Texas [Mr. GONZALEZ] and myself and also supported by the gentleman from Georgia [Mr. BARNARD] who I see here on the floor, the Comptroller General of the United States, Mr. Bowsher sent me a letter today and he said,

> I want to emphasize the importance of the accounting and auditing reforms contained in H.R. 6, title I. As you know, these safety and soundness reforms were sponsored by you and Chairman Gonzalez and added by unanimous vote to the bill. Our studies of failed banks have shown repeatedly that weak internal controls contribute significantly to bank failures.

So we need those provisions that are in the bill.

Also we would limit Federal Reserve discount window lending and require the FED to share losses with the FDIC.

We limit brokered deposits to level 1 and level 2 institutions.

□ 2210

That is an improvement as far as deposit insurance coverage is concerned. We have no deposit insurance coverage for foreign deposits. Risk-based deposit insurance assessments are provided for banks. The FDIC has veto authority over risky State bank activities. Insured State banks and their subsidiaries cannot underwrite insurance. I think all of these reforms in titles III and IV of H.R. 6 could provide the means for greater stability and flexibility and profitability in our banking system.

Title III will permit nationwide banking and branching in 3 years. I strongly support title III of our bill. I believe that if we had nationwide banking throughout the 1980's, we might not now be facing the need to recapitalize the bank insurance fund. And I say this seriously. Banks and thrifts would have been able to diversify their risks. They would have been insulated from regional economic problems in Texas and New England. My own home State of Ohio was one of the first States to permit nationwide banking. Currently, Ohio has one of the strongest and healthiest banking systems of any of the States. By permitting banks to expand interstate by branching, it is estimated that billions of dollars can be saved through the elimination of duplicative costs.

Currently, all bank expansion is conducted through separate corporate entities. Each bank has to have its own board of directors, back-office operations, overhead, paperwork requirements, and so forth. Branching is easier and less costly. Moreover, it makes it easier for the consumer to take advantage of nationwide banking.

Chairman GONZALEZ and I have filed an amendment to limit the number of insured accounts an individual can have at any one institution. Under our amendment, an individual could have two insured accounts per institution, one a regular savings or checking account and one a $100,000 IRA account. This is a very important amendment, and I hope that we can have this adopted.

When the Treasury Department proposed this bill, this was part of their recommendations for deposit insurance changes. Regrettably, this was struck from our bill.

Deposit insurance was created to protect the small saver, not the rich investor. In 1933, deposit insurance coverage was $2,500. Now it is $100,000, a fourfold increase when adjusted for inflation, in deposit insurance coverage. Ninety-seven percent of America will not be affected by permitting only $200,000 of Federal deposit insurance coverage at any one institution.

Mr. Chairman, in conclusion, this bill reforms the banking system. I emphasize the word "reform." This bill is truly an improvement over the present law. I do hope that we can make some changes, as I suggested a little earlier, in title IV. I hope that before the end of the day on Friday we can pass a good banking bill.

Mr. Chairman, I reserve the balance of my time.

Mr. GONZALEZ. Mr. Chairman, I yield 8 minutes to the gentleman from Georgia [Mr. BARNARD].

Mr. BARNARD. I thank the chairman very much for yielding this time to me.

I do appreciate that at this particular hour of the evening, as we discuss a very, very important piece of legislation that comes before us.

Mr. Chairman and Members of the House, I am very pleased with the product of the House Banking Committee. We worked long and hard. The product that we produced came after 18 months of study of the deposit insurance industry and the financial services marketplace.

And as we proceeded to pass the six titles of the bill, we came out at the end with a positive vote of the committee, thinking that we had done a pretty good job. Unfortunately, since we have passed our bill, certain provisions of it, referred to the Committee on Energy and Commerce, have been drastically changed.

We expected that when we came to the floor with H.R. 6 that we would have a reason to be supporting our bill and, hopefully, in opposition to the amendments against it from the Committee on Energy and Commerce.

But lo and behold, we did not have that opportunity. A compromise was worked out in the meantime. Mr. GONZALEZ, Mr. DINGELL, Mr. MARKEY, Mrs. COLLINS and the staffs of both committees got together and they reached an agreement about the House Banking Committee bill and the Energy and Commerce bill.

The Banking Committee passed out a brochure this morning which I think is very interesting. It itemizes the differences between the Committee on Energy and Commerce and the Committee on Banking, Finance and Urban Affairs, and then it indicated what the decisions of the agreement were.

In those instances, Members of Congress, those instances which were somewhat different, I would like to indicate to you that in not one instance where there was a difference of opinion did the Banking Committee's proposal prevail.

Now, I want to say that again because I want to be understood: In not one instance where there was a difference did the House Committee on Banking, Finance and Urban Affairs prevail. In every instance where there was a difference of opinion, the compromise included the language of the Committee on Energy and Commerce.

Consequently, the hard work that had been devoted to the banking bill has now gone down the drain. We will not even be able to offer title IV of the House Banking Committee as an amendment to the original language which will be the agreement worked out by the very distinguished people, very capable people, people for whom I have a lot of respect, but unfortunately their agreement did not come back to the Committee on Banking, Finance and Urban Affairs for approval, not did it go back to the Committee on Energy and Commerce for approval.

Now, my friends, as hard as I have worked for structural reforms, which I think have been reasonable, I have not in one instance given banks any more powers, not in one instance have I promoted or suggested that banks have additional powers. But, my friends, for banks to survive in this environment, they have got to be profitable, they have got to have strong capital. That is what we tried to do in title IV, provide them profitability, provide them an opportunity to make it.

Since that is not going to be possible under the bill that will come before us, I very reluctantly, very reluctantly will introduce amendments to strike title IV.

You are going to hear a lot about that. The chairman of the committee has already referred to that, that this is no way to go, it is a copout, that we will not get our way so therefore we want to withdraw it.

That is not the reason. The reason is that a narrow bill is the best for us at this time. I do not think that many of us are real comfortable with these issues at the present time. It is better to deal with those areas in which there is general agreement: BIF recapitalization, early intervention, least-cost resolution, and the other titles which our distinguished chairman spoke about. Those are very important. Titles V and VI are very importation to this bill. But where the reform process has gone astray with, I might say, great assist from the media, is in the search for the causes for bank failures.

We have a tremendous number of explanations: Oil prices, bad regulation, bad accounting, brokered deposits, fraud, and, finally, the old standby when all of these other explanations fail.

So, my friends, in this environment, I think it is only best that we step back and take another look at what we are doing because what we are doing today is turning the clock back with title IV.

Yes, I do not know why, but it seems that some in Congress are offended because the fact is the Federal Reserve saw fit to interpret the Bank Holding Company Act, especially paragraphs 23 and 28, which prevent bank holding companies, by friends, not banks, but bank holding companies to do those things closely related to banking.

So, when the Federal Reserve permits some bank holding companies to underwrite mutual funds and to underwrite commercial paper, underwrite municipal revenue bonds, all of a sudden we are aghast because of the fact that these profits are now coming in. All of that is reversed in title IV.

□ 2220

We not only stretch higher and bigger and more fierce firewalls, but we are saying, "Oh, no, you can't do that which the regulators have already permitted you to do. That's bad."

But I want my colleagues to know that there is not a single bank that is owned by a bank holding company yet that has these powers that have gone under. So, what we have done; we have not been reckless. We are not just giving away the store with the financial services holding company, but we are permitting the banking industry for once in many, many years to address the real financial services marketplace.

What does it look like today? The financial services marketplace today is more than just commercial loans. Where is the best credits going today? It is going to the investment houses. It is going to the underwriting of commercial paper. That is nothing more than a commercial loan. It is going into underwriting of corporate debt, which is nothing more than a commercial loan, and yet banks cannot reach it.

So, my colleagues, I will just close by saying that now is not the time to move backwards. If we want another bank bailout, let us move backwards. Let us restrict them more and more and more, but, if we will give them an opportunity to make a profit, they will attract private capital, and we will not have to subsidize a banking industry, and that is what it is with government guaranteed taxpayers deposit insurance. We need to wean the banks away from it, as well as our customers, and I thank the gentleman from Texas [Mr. GONZALEZ] very much for this time.

Mr. WYLIE. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I thank the gentleman from Ohio [Mr. WYLIE] for yielding, and let me just say that by background to the House that this is a very extraordinary bill brought before the House in an unusual way, and I stress the background of banking legislation, particularly this legislation, reflects on the committees of jurisdiction.

Mr. Chairman, the Committee on Banking, Finance and Urban Affairs in particular is kind of a refereeing committee, as is the Committee on Energy and Commerce. As the bill came out of the Committee on Banking, Finance and Urban Affairs, we were, quite frankly, as a committee, a little too generous, in my opinion, to the powers we grant America's commercial banks, and it is one of the reasons this gentleman voted against the bill. Particularly I thought it was a mistake that we integrated commerce and banking, something that was unprecedented in the history of this century. When the bill went over to the Committee on Energy and Commerce, the Committee on Energy and Commerce corrected one of the errors that I thought was in the Committee on Banking, Finance and Urban Affairs' bill, but then it went a little bit too far, and it in effect had the end result of taking the American commercial banking industry actually backwards, taking away powers that currently existed and, in the guise of repealing Glass-Steagall, has produced a Glass-Steagall son that in some ways is more powerful than Glass-Steagall itself.

So, Mr. Chairman, it is my own personal view that, as we look at this in a congressional setting, that given the fact that somewhat extraordinarily the Committee on Rules did not even allow the Committee on Banking, Finance and Urban Affairs to offer their amendment at least for an up or down vote, that this Congress would be wise simply to say that neither the Committee on Banking, Finance and Urban Affairs, nor the Committee on Energy and Commerce's approach is the appropriate one at this time and that we ought to vote in effect to simply recuse judgment on title IV and eliminate it.

Now, coming back to the rest of the bill, it is this gentleman's judgment that, as we move toward consolidation in banking, move toward interstate banking, with or without legislation, one of the great problems is: Is it going to be with or without adequate capital to protect the taxpayer? so, I will be offering an amendment that will increase capital standards in those situations where interstate banking occurs and possibly in the event that Glass-Steagall reform takes place and title IV is kept for banks that want to enter into the investment banking business. I would hope that the Congress would look sympathetically on this kind of approach because in my judgment, unless we pay closer attention to capital, we are going to have a system in which there will be many larger American banks, more thinly capitalized, and instead of a too-big-to-fail system, we are going to have a much-too-big-to-fails system with the taxpayer put in even more grievous jeopardy.

Mr. GONZALEZ. Mr. Chairman, I yield 6 minutes to the gentleman from Kentucky [Mr. HUBBARD], a distinguished member of the Committee on Banking, Finance and Urban Affairs.

Mr. HUBBARD. Mr. Chairman, I would first like to thank Chairman GONZALEZ for allowing me the time to give my remarks. While we may not happen to agree on every issue, your exhaustive efforts in bringing this bill to the floor in an expedient manner are to be commended.

The bill we consider today, tomorrow and Friday—the Financial Institutions Safety and Consumer Choice Act of 1991, H.R. 6—has been called the most significant piece of legislation affecting our Nation's financial services industry since the Great Depression. Indeed, in the 17 years I have been a member of this body, no legislation considered on the floor of the House of Representatives has proposed changes in the way American financial institutions are operated and regulated to the extent that H.R. 6 does.

However, rather than reviewing the countless changes embodied in this legislation, I believe it is of the utmost importance that we take note of one area of current law that H.R. 6 does not make significant changes to—the level of deposit insurance coverage.

At the outset, I would note that the absence of significant changes to current deposit insurance coverage cannot be attributed to a lack of effort by opponents of current law. This legislation, as originally proposed, would have restricted deposit insurance coverage. However, these provisions were stricken from the bill by an amendment I offered during subcommittee markup. Subsequent attempts to alter current deposit insurance coverage were repeatedly—and, I would emphasize, overwhelming—defeated 4 times by my colleagues on the House Banking Committee.

There is a simple reason why a significant majority of my colleagues on the House Banking Committee have rejected changes in this area—altering deposit insurance coverage is bad public policy.

The fact of the matter is the reduction of deposit insurance coverage would be ineffective at best. At worst, it would be a tragic mistake that would result in significant, nationwide harm to our already fragile economy. Nonetheless, amendments may be offered during floor consideration of H.R. 6 that would restrict deposit insurance coverage.

I urge my colleagues to oppose any such amendment for three reasons: First, any such amendment will not reduce losses experienced by the Federal deposit insurance funds; second, any such amendment will heighten public anxiety; and third, it will destabilize financial institutions and be detrimental to the American economy.

I urge my colleagues to oppose the Wylie amendment to restrict deposit insurance coverage.

What do the New York Times, the Washington Post, the American Association of Retired Persons, the U.S. Chamber of Commerce, and the National Association of Home Builders have in common? Each opposes new restrictions on existing deposit insurance coverage.

Their opposition is based on the fact that to reduce deposit insurance is ineffective at best. At worst, it would be a mistake that would result in significant, nationwide harm to our already fragile economy.

Consider, if you will, the following quotes:

"I don't think changing the amount of deposit insurance will make a big difference as to what the liability is that the Federal Government is looking at," said Comptroller General Charles Bowsher. Restricting coverage would cause nothing more than an inefficient shuffling of funds between institutions—without reducing the risk to the deposit insurance funds.

In an article entitled "Banking Reform Proposals Are Already Rattling The System and Making The Credit Crunch Worse," the Wall Street Journal noted:

> Even the chance of change is prompting many businesses and individuals to reduce the amount of deposits they are holding * * * Some small banks say the departure of their largest deposits is crimping their ability to make loans—and, as a result, hindering the economic recovery.

What's why U.S. Chamber of Commerce President Richard Lesher wrote in a recent letter:

> Restricting the number of accounts covered by deposit insurance or simply cutting back federal deposit insurance guarantees would make the banking industry far less viable than it is today.

I challenge my colleagues to name one bank that's failed because of multiple accounts.

Jerry Knight in last Sunday's Washington Post wrote an article about the banking industry problems:

> The banking industry is in trouble because of a series of ill-fated decisions over the last decade to lend money to Third World countries, corporate takeover artists and real estate developers who ended up not being able to repay their loans. Those bad loans have caused nearly 1,000 banks to fail, left hundreds more on the brink of failure and badly eroded the capital reserves of another 2,000 banks.

It's universally agreed that the banking industry is not in trouble because of multiple accounts. It's in trouble because of ill-fated decisions to lend money to Third World countries, corporate takeover artists and real estate developers who cannot repay their loans.

What will happen if you restrict multiple accounts? Many will take their money out of the banking system entirely, which means less money for loans to small business and consumers, and will add to our economic problems. My constituents in western Kentucky will possibly consider moving their money to banks that might be considered too big to fail, and let me add there are no too-big-to-fail banks in western Kentucky.

Let me conclude by sharing a portion of an editorial from the Washington Post entitled "Don't Cut Deposit Insurance":

> While many things need to be changed in the American banking system, the basic system of deposit insurance is not one of them. As Congress goes to work on the banking bill this week, it would be wise to leave deposit insurance alone. The purpose of this bill is to produce stronger and more stable banks.

> Cutting back the insurance of depositors would do just the opposite.

I again urge my colleagues to vote against the Wylie amendment to restrict multiple accounts.

□ 2230

Mr. LEACH. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from North Carolina [Mr. McMILLAN], one of the leading authorities on financial issues in the House.

Mr. McMILLAN of North Carolina. Mr. Chairman, as a former member of the Banking Committee, I am no stranger to the subject of banking reform. And in my former life as investment banker and the financial officer of a major corporation, I know firsthand the critical role banks play in financing U.S. business growth, particularly the needs of small- and medium-sized businesses, as well as providing consumer services. To best meet these needs it is crucial at this point in time to create a national environment, like that which exists in my State of North Carolina, where strong diversified financial services providers compete statewide and nationally.

North Carolina offers a perfect example of the advantages of competitive financial services resulting from functional and geographical diversification. North Carolina has a long history of intrastate branching, which subsequently led to regional interstate branching. As larger banks grew more competitive and profitable in this regulatory climate, smaller independent banks not only survived, but new independents started up and thrived. Strong diversified banks meant more competitive choice for consumers and business.

North Carolina's State-chartered banks have the power to underwrite and sell insurance. They have limited securities powers and do a hefty discount brokerage business, private capital placements, mergers and acquisitions, and municipal underwriting. Yet, independent insurers and securities firms have flourished in the middle of the largest regional banks in the nation.

That is the issue before us today—the future competitiveness and effectiveness of U.S. financial institutions.

Competitiveness means the capacity to attract adequate capital in public markets to enable banks and financial institutions to finance domestic business growth, while at the same time providing broader consumer services.

Competitiveness means allowing other businesses to invest in failing banks to meet tighter capital standards.

Competitiveness means being able to logically respond to business and consumer needs without artificial legal barriers which do little other than protect someone else's turf.

Competitiveness means being able to diversify those risks inherent in banking—geographically and economically.

Competitiveness means the ability to attract stronger management.

Finally, competitiveness means enabling financial service providers to create more diversified entities competing directly with one another across the country, rather than through a multiplicity of units protected by arbitrary geographic and functional lines.

The proposal made to Congress by the administration earlier this year and H.R. 6 were designed to enhance competitiveness by reforming America's financial services. That reform would create a national financial services marketplace similar to that which has excelled in my State of North Carolina for years. It was this competitive strength which allowed North Carolina banks to rescue troubled banks in other States which did not allow such geographic and functional diversification, most notably in the cases of NCNB's acquisition of First Republic in Texas and First Union's acquisition of South East Bank in Florida.

Mr. Chairman, this legislation, although badly weakened, is a step in the right direction. It strengthens regulation and the insurance fund, and allows interstate branching. But the Dingell-Gonzalez compromise falls short in expanding insurance-securities powers in title IV, actually weakening current law. In addition, the Rinaldo amendment will allow commercial investment in failing banks should be approved to protect the American taxpayer.

Mr. Chairman, North Carolina does not have some magical secret which has allowed its financial services market to thrive while others fail. Rather, the experience of North Carolina shows that the fewer barriers to competition, the more likely it is that banks will deliver consumers the greatest choice of financial services at the lowest prices, and at the lowest risk to the taxpayer.

I urge my colleagues to support this crucial legislation, if properly amended.

The CHAIRMAN. The Chair would announce that the rule gives control of the time to the ranking minority member. Without objection, control of the time will be transferred to the gentleman from Iowa [Mr. LEACH].

There was no objection.

Mr. LEACH. Mr. Chairman, I yield 1 minute to the distinguished gentlewoman from New Jersey [Mrs. ROUKEMA], one of the most thoughtful Members of this body, and particularly of the Committee on Banking, Finance and Urban Affairs.

Mrs. ROUKEMA. Mr. Chairman, I rise in support of H.R. 6 the Financial Institutions Safety and Consumer Choice Act of 1991.

I want to commend the Treasury Department, and Secretary Brady, for working so long and hard on the development of basic banking reform and for keeping the process moving forward.

I also want to congratulate the chairman of the Banking Committee for his perseverance and persistence in seeking this final debate on this banking reform bill.

PURPOSE OF BANKING REFORM

Mr. Chairman, up until recent years, our Nation's banking system has been a safe and reliable place to keep the hard-earned savings of the American people. The banking laws of the 1930's have served the system well, and depositors have slept well knowing their money was secure.

However, as we witnessed in the savings and loan crisis, times have changed and, for the first time in almost 50 years, record numbers of bank failures have occurred exposing the American taxpayer, who is already overwhelmed with the cost of the S&L bailout, to substantial losses through the Federal deposit insurance guarantee.

As Secretary Brady stated in submitting the administration's banking proposal earlier this year:

> A sound, competitive banking system is critical to the Nation's economic vitality and the financial well-being of our citizens.
>
> But, the federal safety net has been overextended, and the taxpayers are now exposed to substantial losses through federal deposit insurance. * * * In the end, the most effective way to minimize taxpayer exposure is through a strong, competitive, well-capitalized banking system.

This, my colleagues, means that real banking reform must be adopted by the Congress. And, real banking reform means that:

Deposit insurance reforms must restrain excessive bank risk, and insurance premiums should be assessed on risk;

There must be better supervision;

There must be better incentives to maintain strong capital positions;

There must be increased market discipline;

There must be direct restrictions on excessively risky activities; and,

Where practical, there must be incentives to assist bank competitiveness and profitability.

Financial services modernization, with appropriate safeguards, will make banking organizations stronger, better capitalized, and less likely to create costly failures for the deposit insurance fund and the taxpayer.

H.R. 6 accomplishes this by addressing four fundamental goals.

THE FOUR FUNDAMENTAL REFORMS

1. BIF RECAPITALIZATION

The BIF is currently at its lowest level in history as a percentage of insured deposits—approximately $4 billion. It was predicted that the BIF could become insolvent by the end of 1991 if bank failures continued at their current rate or if a few additional failures the size of the Bank of New England took place.

H.R. 6 authorizes the FDIC to borrow up to $30 billion from the Treasury to be repaid by increases in deposit insurance premiums. It authorizes short-term borrowing from Federal Financing Bank with funds secured by assets taken over from failed banks and removes the cap on insurance premiums the FDIC can charge to replenish the BIF. Current rate is $.23 per $100.

2. BASIC DEPOSIT INSURANCE REFORM

In addition to higher capital requirements for banks, as established by the Basel Accords, the legislation:

Rolls back the doctrine of "too-big-to-fail" by prohibiting the payment of uninsured accounts over $100,000.

Authorizes risk-based premiums.

Limits pass-through deposit insurance for pension funds to only the highest capitalized banks.

Limits brokered deposits to only the highest capitalized banks.

Prohibits the FDIC from covering foreign deposits after 1992.

3. STREAMLINED REGULATORY SYSTEM

The Administration felt that a streamlined, efficient regulatory system would further supplement market discipline and apply prompt, decisive corrective action to weak and unsound institutions.

Although the Financial Institutions Subcommittee created a special task force to come up with a new regulatory scheme, the committee could not agree on any new regulatory structure.

However, the bill does adopt several regulatory measures designed to strengthen the ability of the Federal regulators to act promptly when trouble develops. It does this by:

Requiring annual on-site examinations and reforms auditing standards;

Mandating prompt corrective actions for problem banks;

Requiring early intervention with failing banks;

Limiting direct investment of insured deposits and limits risky State powers;

Granting additional powers to monitor activities of foreign banks in this country.

In the wake of the Bank of New England and BCCI scandals, these have become more important.

4. RESTORING COMPETITIVENESS

The administration argued that nationwide banking and branching would make banks safer through diversification and more efficient through substantially reduced operating costs.

The administration also felt that commercial and financial firms must be allowed to affiliate and that banks should be permitted to engage in the full range of financial services—securities, insurance—as long as it was outside the bank itself and not covered by the Federal safety net.

H.R. 6 permits highly capitalized banks to diversify into new powers such as securities and insurance subject to strict firewalls such as the creation of separately capitalized financial services holding companies, restrictions on loans to affiliates and underwriting of affiliate securities, and restrictions on cross marketing and tie-ins.

I have always supported the repeal of Glass-Steagall so long as adequate fireballs were developed to protect insured deposits. This legislation accomplishes that. It is a shame that the banks don't see it that way and are complaining that the firewalls established to protect the deposit insurance fund and the taxpayer are too tough. But just let me remind my colleagues that it was precisely our failure to err on the side of toughness which gave us the S&L debacle.

Insurance activities were restricted to the sales of insurance by the bank in towns of 5,000 or less and existing activities were rolled back. Now, I have felt that insurance sales are not a threat to the deposit insurance fund and should not be restricted. However, insurance underwriting is risky and should only be done through a separate affiliate, if at all.

Finally, the bill authorizes interstate banking and branching within 3 years. I support this effort.

SUMMARY

Overall, I believe H.R. 6 represents a strong effort to effect banking reform.

It is regrettable that of all the positive reform initiatives contained in this bill, most of which meet the original intent of this legislation—to recapitalize the BIF; reduce taxpayer exposure; and to make deposit insurance reforms—that the industry, the administration, and many of the Members of this body are now opposing the bill based on three provisions, including:

The elimination of the mixing of banking and commerce.

The adoption of additional firewalls on securities activities, and

The additional restrictions on insurance activities.

Mr. Chairman, my colleagues should realize that too much work went into this bill and too much is at stake with the future of the Nation's banking industry to turn down this legislation now.

I urge passage of H.R. 6.

Mr. LEACH. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Florida [Mr. MCCOLLUM], one of the distinguished leaders of this Congress in financial matters.

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, it has been indeed a pleasure working with the gentleman from Iowa [Mr. LEACH] and other Members, including the gentleman from Texas [Mr. GONZALEZ], on this bill in this committee. A lot of hours have been put into this matter, and many words will go under the bridge, I suppose, in the next few days about it.

But I think the perspective that I would like to bring to this tonight is where we were and what we were trying to do, and what I think all of us wanted to do with this.

Mr. Chairman, I think there were really two things. One of them was to replenish the Deposit Insurance Fund, which we do in this bill by expanding the borrowing capacity to some $70 billion, which we all hope is never needed, and we do it without taxpayer funds being used. We do it with a guarantee program involving bank contributions to this fund.

The second thing we were trying to do, which I think is the onerous burden of all of this, is to expand the competitive position of banks to allow capital to come into those institutions at a greater amount than it has been, to make those institutions in this Nation, that are so important to the functioning and well-being of our country, sound in a way that will not require in the future the contribution of American taxpayers into failing institutions, as has tragically occurred with our savings and loans.

Mr. Chairman, when we put it in perspective, I think it is important to contrast the status of commercial banks today with the status of savings and loans. They are not comparable institutions. They have not been. We do not have the same kind of threat to the commercial banking world that we had to the thrift industry, because the thrift industry was never designed to compete in the world's marketplace and to compete in today's age.

Commercial banks have been designed that way, and as a general rule, are quite healthy today, but they are threatened, and are going to continue to be threatened, unless we do something about it, which is what the bill is about.

For example, in terms of today's modern competition, we can look back in 1960 and be reminded of the fact that the value of banks' industrial loans was nearly 10 times that of commercial paper outstanding in this country.

Today, at least by 1989, and I think still today, the ratio is roughly equal. The same amount of money is involved in an industry financing itself with respect to commercial paper as it is with loans.

□ 2240

Banks today need to be assisted in the sense of broadening the base and going out into the future. Title IV of the bill we drafted was designed to do that, to expand that, to have a financial holding company, and then above that, to have a diversified holding company, to let industry come in to be able to own banks with firewalls and so forth.

Unfortunately, the compromise version of the Committee on Energy and Commerce not only destroys the symmetry that the Committee on Banking, Finance and Urban Affairs creates in this area, they have indeed set up a situation in which virtually the existing structure of the banking community would be adversely affected and we would not see the kind of competition increase. Instead, in my judgment, it would decline.

Sadly, I do support the efforts of the gentleman from Georgia that we will make to strike title IV from this bill.

That leaves us with interstate branching. I urge my colleagues to sustain that against the attacks that will occur on it. It is important, and it will not threaten the small banks, as some of them fear. It will allow for banks to diversify the regions in which they operate and hopefully bring more stability into the entire process by doing that.

I think that is exceedingly important.

In addition to that, we will have an opportunity, I hope, after the debate over title IV is completed or perhaps even in the first title of the bill before that, to vote on a very narrow area where failed banks can be acquired by commercial institutions, when they are failed or failing. It seems to me that is a sensible approach, although it is a small approach that does protect the taxpayer. We do not have to get into that situation we might otherwise go into.

All in all, I think the bill is moving in the right direction in terms of what we were attempting to do, but it is going to wind up, in my judgment, being a much narrower bill, much more specific bill, but I hope when it is finished here on the floor in the next 2 days, it will be a good bill.

I urge my colleagues to consider it in that light.

Mr. LEACH. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from California [Mr. MCCANDLESS], one of the most prescient observers of finance on the west coast.

Mr. MCCANDLESS. Mr. Chairman, can you imagine running a business in 1991 the same way that you did in 1936?

Yet, as we head into the 21st century, our banks must operate under laws that were passed during the Depression.

Fifty-five years ago, when people looked for a place to invest their savings, they basically had two choices—a savings account or the stock market.

Today, there are literally hundreds of alternatives, many of which banks cannot offer because of Depression era laws.

The world has changed since then. Advances in technology, changes in lifestyles, and many new financial products and services make the marketplace of the 1990's very different from that of the 1930's.

As a result of outdated laws, our banking system has become weak, inefficient, and uncompetitive, especially when it comes to competing in the international market.

In FIRREA, we asked the Treasury Department to review our banking laws and make recommendations on how they could be improved and strengthened.

As a result, Treasury proposed legislation that had six major objectives:

First, to maintain the solvency of the FDIC;

Second, to make the regulatory structure more effective;

Third, to allow banks to attract domestic capital;

Fourth, to allow banks to diversify their products and geographic location;

Fifth, to reform the deposit insurance system; and

Sixth, to increase consumer choice and convenience.

The Banking Committee's version of H.R. 6 retained most of those objectives. While I was disappointed by the lack of real deposit insurance reform, the Banking Committee produced a bill worthy of support.

The bill would strengthen the Bank Insurance Fund, create a more effective regulatory structure, and provide financial institutions with the opportunity to better serve their customers and compete in the world economy.

Banks that are financially healthy should be able to offer their customers additional financial services, provided that those services are offered through a separate subsidiary so that federally insured deposits are not at risk.

Some have attempted to characterize this as deregulation. Nothing could be further from the truth.

Strengthening the regulatory structure, modernizing financial services, and moving more risky activities out of a bank and into a separately capitalized subsidiary, is not deregulation.

One of the lessons we learned from the S&L crisis is that financial institutions should be diversified.

Because strict Federal laws limited the activities of S&L's to making long-term fixed-rate mortgages, S&L's could not keep pace with outside economic pressures, such as high interest rates, falling real estate prices, and weaknesses in regional economies.

Diversification of assets and location would have greatly reduced the number of failures and the cost of the S&L crisis.

The importance of having a diverse market was demonstrated by the recent failure of the Bank of New England.

By only having branches in New England, the bank was not able to withstand the effects of a weak regional economy, and failed.

Had the bank been geographically diversified, it would have been better able to withstand a regional economic downturn.

The same was true of financial institutions in the Southwest which were heavily dependent on the oil industry boom of the late 1970's.

When it comes to interstate banking and branching, there seems to be a tremendous fear of the unknown.

In the spirit of Halloween, some community banks see interstate banking as a bogey-man that can only be killed by driving a stake through the heart of this bill.

Such a view is unfortunate and extremely short-sighted.

In my State of California, small community banks are competing head-to-head with large banks, and are doing quite well.

The secret of their success is, in reality, no secret.

Most small community banks offer a level of customer service that is unmatched by the larger banks.

When you foster competition, the marketplace will provide the highest level of consumer choice.

Another lesson we have learned from the S&L crisis is that financial institutions must increase their capital.

Depression era laws lock 80 percent of our Nation's available capital out of our financial institutions.

The Banking Committee version of the bill addresses that problem.

In contrast, the Energy and Commerce version will mean that our financial institutions will not have access to adequate domestic capital, and that they will have to continue to rely on foreign investment.

Many of us in Congress have strongly advocated and worked for fundamental banking reform legislation for several years.

Unfortunately, in the past, the legislation has been derailed by special interests. We cannot afford to squander the opportunity that we now have to produce comprehensive reform legislation.

We have three options: First, we can turn the hands of time back to the 1930's; second, we can continue to do nothing except watch an increasing number of financial institutions collapse; or third, we can reform the system and enable it to meet the needs of the 21st century.

Of the three, the first is impossible, the second is irresponsible, and the third is essential.

Because they have not kept pace with the times, our current laws have brought our financial industry to the brink of disaster. The status quo of the Energy and Commerce bill will push them over the edge.

We need real banking reform and restructuring. We need the Banking Committee bill.

Mr. LEACH. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana [Mr. BAKER], the extraordinary new leader of the South.

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding time to me.

I am very concerned that our economy does not provide an opportunity for every American to have a decent and profitable job. Many of us in the Congress have spent many hours concerning ourselves with how we can encourage domestic economic recovery. Small businesses in the United States were responsible for over 89 percent of employment opportunities, but yet small businesses today are being told that credit for business purposes is simply not available.

The reason is not a mystery. Higher regulatory standards, a slowing economy makes lenders very cautious about expanding their business scope. In fact, many are now shrinking in order to meet new regulatory requirments.

What is the solution to our domestic economic problems and providing opportunities for new employment and making our banks once again the sources of credit for business purposes? We simply have to find a way for our banks to survive in today's marketplace.

The current regulatory quagmire ensures that banks will not succeed in the future.

Banks now face even tougher competition from nonbank, nontraditional lending sources. For instance, many large corporations who were once the most significant customers of commercial banking activity now sell their own commercial paper, and the banks have lost the revenue from those transactions. We simply have to find a way to replace the lost revenue that reasonable and sound banking practices must engage in.

If we do allow a broader base of business activity, it does not correspondingly mean that taxpayers should be responsible for the risk associated for those new busines ventures. We must limit taxpayer exposure through the Federal Deposit Insurance Fund to only those essential banking services that make our financial system sound and safe for each of us.

Simply expanding the scope of business activity while limiting taxpayer exposure is not enough. For some we must find new ways to spread the risk geographically. For many, in my region of the country, who are limited to the oil patch and their lending practices, if they had the opportunity to engage in financial activities in other regions of the country perhaps they would have not found themselves in a condition of insolvency.

Finally, that may not be the last step. Commercial ownership of financial institutions should not be precluded. We simply cannot find ways for banks to sell stock in a depressed economy. We simply cannot tell banks who are struggling to increase their retained earnings, make more profit in a market which simply will not allow it. Commercial ownership of banking institutions is the way to bring new capital into financial institutions that are troubled rather than continuing to return to the taxpayer.

Outside investors can protect taxpayers from losses. The bill as reported unfortunately by the Committee on Rules tonight does not allow progressive reform of our banking industry. It says to the banking community of 1992, "You cannot engage in activities you engaged in in 1991. We are going to raise your regulatory requirements. We are going to add to the number of regulators who will be looking over your shoulders. We are going to increase your costs to do business. We are going to say you must engage in more community and social service activities and spend dollars and perhaps extend credit where you know loans will not be repaid."

□ 2250

Unfortunately, the bill we will have before us tomorrow, purported to be the solution to our Nation's economic problems, may well be responsible for even greater financial difficulty in the coming months. It may well result in making the credit crunch of 1991 look like cereal. We will find ourselves in financial jeopardy, going back one more time to the taxpayers for additional dollars and pointing the finger at each other saying, "How is this possible?" It is simply a fact of life. Congress cannot properly legislate and we certainly should not make it illegal.

Mr. LEACH. Mr. Chairman, I yield 1½ minutes to the thoughtful gentleman from California [Mr. CAMPBELL], who may well be one of the standard bearers for the Republican Party in the not too distant future.

Mr. CAMPBELL of California. Mr. Chairman, I thank my colleague for his kind words.

Mr. Chairman, in the bill we will consider tomorrow, one critical point is important and worth consideration. Let us not stampede the depositors. Consumer confidence right now in the United States is at a very serious ebb. We just saw that reported.

I am concerned that if we touch the level of insurance on depositors we might stampede depositors out of the system at a time when we cannot afford a further shrinking of the capital available to investment in our country. Therefore, I rise to urge opposition to the amendment to be offered by my colleague and friend, the gentleman from Ohio, [Mr. WYLIE] the ranking member for whom I have the highest esteem. If we remove the $100,000 per deposit insurance and instead make it $100,000 per deposit per institution, we will set off a fear in depositors' minds that Congress is messing around with deposit insurance. And who are we uncovering, who are we exposing by this action? Someone who is both wealthy and stupid, wealthy enough to have a more than a $100,000 account, and stupid not to figure out that all you have to do is put each $100,000 account in a different bank.

This is a serious mistake. It could result in an erosion of consumer confidence at a critical time, and I urge my colleagues to oppose it.

Mr. LEACH. Mr. Chairman, I yield myself such time as I may consume.

In these last few seconds, Mr. Chairman, I simply would like on behalf of the distinguished ranking member, the gentleman from Ohio [Mr. WYLIE] to extend our appreciation to the majority and say that the gentleman from Texas [Mr. GONZALEZ] in our judgment is frankly the fairest chairman that I can conceive of working with. Also, as this may be the last principal bill that the gentleman from Georgia [Mr. BARNARD] works with, I would like to say that we will miss him. DOUG has been one of the truly fine lights in the House Committee on Banking, Finance and Urban Affairs and one of the distinguished Members that all of us have enjoyed working with for all of his time here.

Mr. Chairman, I yield back the balance of my time.

Mr. GONZALEZ. Mr. Chairman, I yield my remaining 4½ minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I rise in support of H.R. 6 as it is presented to the House this evening. I ask Members to carefully consider in the days ahead the amendments that will be offered on this floor.

Frankly, I think the issue that we have today is one of crisis. It is one of great concern for the American people and the American economy. Basically it hearkens back to the problems with the deposit insurance system and the commitment that was made some 50 years ago to try and meet the needs and to insure the deposits of people across this country.

That deposit insurance system today, in my judgment, has been turned on its head. That which was intended to protect depositors has been used as a basic insurance tool for whole segments of our economy and for the largest of the largest banks. Clearly during the decade of the 1980's there were a series of things that led to this: the lack of adequate regulation, the dearth of commercial industrial property that makes up the portfolios of banks. There are a lot of things the Congress can do in terms of public policy, in terms of trying to gain back the control that the regulators have had over the banks and try to set the banks on a policy path that is profitable.

But what we cannot do is we cannot legislate, we cannot legislate or regulate away the problems that are inherent in banking portfolios as we stand here today in 1991. Those problems are a combination of tax and policy issues that simply are going to be with us for some time.

What the Committee on Banking, Finance and Urban Affairs tried to do, and I think tried valiantly to do, and has finally succeeded in an agreement that we have before us in H.R. 6, is to try and gain back some real regulatory reforms to deal with the problems of "too big to fail," to deal with the problem of least cost resolution, and to of course provide the borrowing authority for the bank insurance fund, some $70 million in borrowing authority so we will be able to meet the needs. That is important.

First of all I want to suggest that the process that has been followed here is exactly the process that has been followed throughout the tradition of this House when one or more committees, in this case four committees were working on a bill and the leaders of those committees, in this case the gentleman from Texas, Mr. GONZALEZ, and the gentleman from Michigan, Mr. DINGELL, of the leading or two principal committees met and resolved differences that they had where there was shared jurisdiction.

We are quick to point out the integration of the financial marketplace. We should also recognize the integration of our jurisdiction that occurs during these circumstances. What they did is came before us and ironed out their differences in a way that I think is satisfactory.

Quite candidly, I think that much of what the administration has proposed as solution here is sort of the consequence of chasing rainbows and looking for the pot of gold at the end of that rainbow.

Does anyone believe that if banks are not going to be profitable that somehow we are going to be able to get businesses to buy banks to put their money in these banks so that they can lose it? I do not believe that, and I do not believe that the combination of commerce and banking, for that reason, will work. If they are a profitable entity, they can put out stock and raise money on that basis. That is what call the marketplace, the free enterprise system. It works. A lot of people give speeches about it, but apparently they do not like to practice what they theorize about.

Does anyone really believe that we can merge our way out of this particular issue? I do not. I do not see anyone buying these franchises. We tried that with the S&L's, and it failed, and surely it would fail in this particular instance.

I know the grass always looks greener on the other side of the fence. So if banks are not making money in banking, perhaps they can make money in insurance and other types of activities. But clearly these areas which are losing money in some instances in 1990 are not likely to turn around and help the banks pull themselves out. No, my friends, there is no magic in this, and I would hope that we would uphold the version of the bill as it has been presented to us, and work hard in the days ahead to resolve and address this problem.

Mr. Chairman, I want to urge my colleagues to pay close attention to the amendments and the debate during our consideration of H.R. 6 in the days ahead. The legislation currently under consideration by the House could well affect the lives of virtually every American for well into the 21st century by determining how financial services will be provided to the American people as well as setting in place the foundation for a financially solvent deposit insurance fund. The House will have to consider and vote on amendments that will determine the basic direction under which the reforms in H.R. 6 will proceed.

The House will have to determine what new services, if any, a bank may offer; what firewalls will be in place to protect the deposit insurance fund and the American taxpayer; what the appropriate role for the State will be with the implementing interstate branching; and who may own a bank. These decisions are crucial and I urge all Members to carefully consider the ramifications of our actions.

As a member of the House Banking Committee, I voted against reporting H.R. 6 from the committee. I believed that when considered in total, the measure went too far in deregulating our financial services industry without adequately protecting the bank deposit insurance fund and the American taxpayer from a major future bail-out of the fund.

In my view, the major flaw of the administration's legislation was that it failed to come to grips with the reality of the marketplace. The proposal continued the policy path of private gain and profit with the public, the taxpayer, bearing the risk. The President offered a deregulation solution for the banks in the hopes that they would grow out of the problems. Mr. Speaker, that is simply chasing rainbows. The Bush administration urges a policy that would facilitate megabank mergers, combined with new and riskier activities for banks. Those policies, combined with the merger of commerce and banking would, for all practical purposes, stretch the bank deposit insurance safety net to cover all the assets and the new activities. With the bank insurance fund already running on empty, the failure of banks owned by businesses will leave the taxpayers at risk with even bigger bills to pay. There is no pot of gold at the end of this rainbow, only an I.O.U. that will unfortunately be another bill sent the taxpayer. The way the Bush administration behaves the free enterprise system apparently is only to be used as a rhetorical flashpoint in speeches and not to be seriously practiced.

They apparently like free enterprise in theory but not in practice. Amendments which hopefully will be made in order under the rule will provide the House with a voice in restoring a level of protection for the deposit insurance fund and assuring that the fund and the American taxpayer will be insulated, to the greatest extent possible, against the reality of today's and tomorrow's marketplace and the exercise of the new powers by financial institutions.

Of particular importance, I would like to call to the attention of my colleagues two amendments. The first is the bipartisan amendment that I, Congressman BEREUTER and nine other Democrats and Republicans of the Banking Committee will offer on interstate branching and interstate banking, a major compromise.

As my colleagues may be aware, H.R. 6, in its current version, provides for nationwide interstate branching with no role for the State government. Efforts in the committee by myself and other members to provide for an appropriate State role were not accepted. Following the committee's action, the supporters of a State role worked to develop a compromise approach. The bipartisan consensus amendment is the result of that effort.

The Vento-Bereuter amendment recognizes that savings for banks may be realized through interstate branching. However, the amendment importantly recognizes that branching is not a panacea as others may claim and that interstate branching does pose risks to he insurance fund, the institution, and the States and local communities and to the consumer through unfettered interstate branching.

To address these issues, the consensus Vento-Bereuter amendment restores an appropriate voice into the decisionmaking process by permitting States to opt out of any nationwide interstate branching system as well as setting responsible conditions for a bank to branch in that State.

In addition, the consensus amendment establishes a concentration limit and would prohibit acquisitions that would exceed that concentration levels. In light of the serious concerns that we all have regarding the "too big to fail" policy, the modest restrictions in our amendment are warranted. At the national level, the concentration limit in our proposed amendment and in the Senate bill is 10 percent of all insured deposits. Based on the latest information available to my office if that standard would have be in place, Citicorp, Bankamerica, Chase Manhattan could have all merged together and formed one bank. At the State level the threshold is 30 percent. That threshold only applies to acquisitions, not growth, and can be waived by the State. This concentration concern is real with the advent of interstate banking and branching. Numerous mega-mergers have been advanced and when this measure becomes law that trend will accelerate. Frankly, some guidelines and thresholds are necessary, hence, the concentration limits of Vento-Bereuter.

The issue of interstate branching is more than a regulator's turf fight. It is more than a big bank versus small bank debate. The decision that Congress makes on interstate branching will affect how financial services are provided to many of our constituents. The consensus proposal is a balanced approach that best meets the needs of the banks and the local communities. I hope that my colleagues will support this approach.

In addition, I would like to express my strong support for the work of Chairman GONZALEZ and Chairman DINGELL. The package that they have presented the committee does set in place safeguards that were sorely lacking in the banking version of H.R. 6. The incorporation of this agreement is crucial to protecting the insurance fund and the taxpayer.

Mr. Chairman, Congress must act to stop the hemorrhage of the bank insurance fund. Any action should include meaningful reforms to the deposit insurance fund, elimination of "too big to fail" loophole and restoration of the deposit insurance fund to its original purpose of protecting the deposits of the average working American family. The improved opportunity for bank profitability must be accompanied by strong regulatory authority to insure that the insurance fund and the taxpayer are not left holding the bag for new or old megabanks. Finally, Congress must reinstall the free enterprise mentality in the financial world so that decisions are made on the basis of market discipline and private risk rather than assuming that the Government will pay for bad business decisions.

Mr. BUSTAMANTE. Mr. Chairman. I have had many calls come into my office regarding the provisions of H.R. 6. The most resounding comments I have heard are support for title III of the bill, to permit interstate banking and branching.

Interstate banking is not a controversial issue. For some years now Texas, along with 47 other States, has permitted interstate banking. Interstate branching is new in its name, however I believe that it is only an extension of interstate branching.

Interstate branching will allow multi-state banks to operate more efficiently. The need for duplicate boards of directors, computers, and audits will be eliminated, saving the industry and its customers billions of dollars. I believe interstate branching will allow banks to serve their customers more effectively through greater efficiency. Therefore, I support the provision of title III of H.R. 6 and I urge you to join me.

The CHAIRMAN. Under the rule, all time of the Committee on Banking, Finance and Urban Affairs has expired.

Under the rule, the chairman and ranking member of the Committee on Agriculture will equally divide 45 minutes. The Chair observes that the chairman and ranking minority member of the Committee on Agriculture are not present, and thus the time of the Committee on Agriculture designated under the rule is considered as yielded back.

All time for general debate under the rule has expired.

Under the rule, the Committee rises.

☐ 2300

Accordingly the Committee rose; and the Speaker pro tempore (Mr. PARKER) having assumed the chair, Mr. CARR, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in general debate on H.R. 6, the bill just considered.

The SPEAKER pro tempore. (Mr. PARKER). Is there objection to the request of the gentleman from Texas?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H.R. 6, FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 102–281) on the resolution (H. Res. 266) providing for the further consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, which was referred to the House Calendar and ordered to be printed.

NAVY BABIES

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute, to revise and extend his remarks and to include extraneous material.)

Mr. DORNAN of California. Mr. Speaker, one of the issues that the U.S. military is very loath to discuss is the rising rate of pregnancy in the military of unmarried young enlisted people and officers, I might add. It is servicewide, but the Navy is particularly resistant to really facing up to this.

I hope the conferees on the Defense bill between the House and the Senate will leave in the Senate language about a serious commission forming to determine just what happened during the gulf war in this one very unreported area.

The sole exception of good reporting was an article by Alecia Swasy, a front-page story in the Wall Street Journal of October 3.

Here are just the subheadlines:

Although sex aboard ships is taboo, births indicate rule is widely flouted. Life on board the "Love Boat."

The U.S.S. *Acadia*, 16 percent of all Navy women who go to sea end up pregnant.

Hanky-panky—hetero and homo—is a problem. Propinquity breeds romance.

Now, the statistics from the U.S.S. *Opportune* are particularly interesting and the U.S.S. *Yellowstone*.

Mr. Speaker, I hope we will have a serious commission on this serious problem. These are pregnancies, not abortions.

Mr. Speaker, I include the Wall Street Journal article as follows:

NAVY BABIES: SHIPBOARD PREGNANCIES FORCE THE MANLY NAVY TO COPE WITH MOMS—ALTHOUGH SEX ABOARD SHIPS IS TABOO, BIRTHS INDICATE RULE IS WIDELY FLOUTED—LIFE ON BOARD THE "LOVE BOAT"

(By Alecia Swasy)

SAN DIEGO, CA.—Dressed in a crisp white uniform trimmed in navy blue, Kathleen is the picture of Navy spit and polish. Except for one thing: She's wearing maternity issue because she's eight months pregnant.

While the 25-year-old petty officer from Boston, who asked that her last name not be used, is happy about the birth of her first child later this month, the Navy doesn't share her joy. Kathleen got pregnant while deployed on the U.S.S. Acadia during the Persian Gulf War.

Kathleen was one of 36 Navy women who returned home pregnant from their tour on the Acadia. The ship was dubbed "The Love Boat" in a newspaper cartoon, which showed women sailors saluting the rabbits who had sacrificed their lives as pregnancy testers during the war, and the nickname was picked up by the national media.

But to the Navy, the spate of births coming roughly nine months after the war isn't funny. Women today make up 30% of the Navy's crews, a figure that is expected to rise to 50% by 1996. And despite the Navy's strict rules against "fraternization," about 16% of the 8,600 Navy women on ship duty get pregnant each year.

"Hanky-panky—hetero and homo—is a problem," says Charles Moskos, a military sociologist at Northwestern University. "Propinquity breeds romance." Yet nobody in the macho military world "really wants to look at it," he says.

Although all branches of the military—indeed, most places where men and women work together—are crucibles for office romance, the Navy throws the sexes together in tight quarters for months at a time. Life on the floating factories is often described as drudgery. During the day, sailors jobs keep them busy, but at night there's little to do. Sailors say the food on board is so bad they call hamburgers "sliders" because they're so greasy. On some ships, sailors sleep in huge rooms stacked with tiny berths.

SIDE BY SIDE

On the Acadia, about 360 of the ship's 1,250 crew were women. Some, like Kathleen, processed paperwork, while others worked alongside men in every function, making pipes, repairing equipment and working in the foundry. Women are still not allowed on combat ships or submarines.

Although men and women used separate bunks and bathrooms on different decks of the Acadia, they ate, watched television and played cards together. And while the bunks themselves are only two feet wide and offer little privacy, there's a maze of places to hide on board.

To the Navy, a pregnant sailor represents the loss of a trained worker, sometimes in an extremely technical position, as well as a potential health problem. Once a woman's pregnancy is known, she is quickly dispatched to a job on shore. The Navy used to routinely discharge pregnant women, but now, after a six-week paid maternity leave, they are expected to come back to work. Four months after giving birth, they are expected to resume their sea duty, which typically totals three years. Many ask for discharges instead, and because it's a volunteer force, most get them.

The military's record on sex issues has long been spotty. Fifteen years after women were first admitted to West Point and the Naval Academy in Annapolis, complaints of sexual harassment still crop up. Enforcement of "no fraternization" rules isn't consistent. The military's stand against letting homosexuals serve has been challenged repeatedly in court. So far, it has prevailed.

But even more than the other branches of the military, the Navy has resisted confronting women's issues and the management of a co-ed fleet, asserts Rep. Patricia Schroeder of Colorado. "It takes very strong women to go into the Navy. They're not getting any support." Rep. Schroeder also says Navy women feel they have "to have sex or you get labeled as a lesbian. So women are damned if they do and damned if they don't."

WOMEN'S PROBLEMS

In a report on women in the Navy, which was prepared in 1987 and updated last year, the service acknowledged major problems in its handling of women's issues. The report said Navy women complained about sexual harassment, rape ("seriously underreported") and lack of day care.

Yet even some women have doubts about whether motherhood and the military mix. Some privately fear the soft image of motherhood makes others take women less seriously as sailors. "Motherhood is natural, but there's a time and place for it," says Commander Darlene Iskra, the first woman commander of a naval ship, the U.S.S. *Opportune*, a rescue and salvage ship that patrolled the Mediterranean during the war. Another woman gets angry about the pregnancies. "If one female does something wrong, we all get labeled," says Kathleen Smith, a 24-year-old ensign from Buffalo assigned to the U.S.S. *Yellowstone*.

Sailors are allowed to date each other, but sex on ships is considered "detrimental to good order and discipline," says Lt. Commander Maureen Davidovich, who works on women's policy issues for the Navy. Acknowledging that many sailors will have sex somewhere, the Navy has begun offering more sex education classes and free birth-control pills and condoms. Yet the Navy report said women sailors complained of long waits to see gynecologists or to get contraception. And some women told the Navy that the pills they got were dispensed beyond their expiration date.

To enforce the no-sex rules aboard ship, watches include checks of dark corners and locked rooms. Shay Holliday is a 21-year-old sailor on board the USN *Joshua Humphreys*, an oiler that provided fuel and moved cargo in the Gulf. Men and women aboard the *Joshua Humphreys* are allowed to visit each other's private rooms until 11 p.m. But last year Ms. Holliday and her boyfriend, a civilian mariner assigned to the military sealift command, returned to her stateroom after an evening of drinking in port. "I was very drunk and he was too," she says. "And we got caught."

Her penalty for the tryst was stiff: She was restricted to the ship for a week and lost $200 in pay. In August, Ms. Holliday and her boyfriend were married.

Navy rules say that anyone who is caught in physical contact with another sailor must be punished. Sailors can lose a stripe or get kicked out of the service. Two male officers on shore duty at an East Coast base last year were fined $30,000 because of "inappropriate relations" with enlisted women, according to the Navy. But depending on the commanding officer, the sanctions can vary widely. "If they look the other way when grab-assing is going on, they'll look the other way when more serious things go on," says Ms. Iskra, the U.S.S. *Opportune's* commander.

Because of the rules, many women sailors say they try to avoid romantic relationships with people on the same ship. "I won't date somebody I work with," says Nancy Murray, an electronics technician on the *Yellowstone*. Twenty of the ship's 479 women came home pregnant from the Gulf.

Others say women have to guard against becoming targets of shipboard scuttlebutt about who's sleeping with whom. "Rumors spread like wildfire," says Monique Code, Petty Officer, 3rd Class, on the *Yellowstone*. "People get labeled as being easy."

Kathleen's relationship with her now-husband, Ed, on board ship was strictly platonic, she says during an interview surrounded by two fidgeting Navy public affairs officers and her supervisor. She sits with arms folded and answers briefly.

The Navy says most wartime pregnancies began on shore, and that's where Kathleen says hers began—on liberty in Dubai in the United Arab Emirates. When her pregnancy was revealed, she was immediately reassigned to shore duty in March. "I got on my hands and knees and begged to stay" on the ship, she says. But even though her pregnancy wouldn't seem to interfere with her shipboard job as a personnel clerk, her plea was rejected. She was sent to San Diego, where she works in the same kind of job. Ed, a 29-year-old boiler repairman and nine-year Navy veteran, stayed with the ship. The *Acadia* docked a month later.

Couples were common on the *Acadia*, Kathleen says; at least four planned to marry after the war. Indeed, statistics indicate Navy marriages have been commonplace: Dr. Moskos says three-quarters of the married women in the Navy are married to Navy men.

Some sailors suspect that some women get pregnant just to escape the drudgery of Navy life. But Kathleen says leaving the ship was traumatic. "It really upset me to see the ship come in and I wasn't on it," she says, recalling how she stood on the pier watching the *Acadia* dock in San Diego last April.

Kathleen plans to remain in the Navy after her baby is born, at least until her tour of duty is up in 1993. But that's not easy to do. Carolyn Judah, a 28-year-old electronics specialist on the *Joshua Humphreys* who is a single mother, had to leave her two-year-old daughter with friends for three months during the war. "The separation is real difficult," she says, describing herself as "lucky" to be able to call home once a month.

Meantime, Kathleen is trying to adhere to the Navy's rules on pregnancy, which are spelled out in a 35-page manual called "Management of Pregnant Servicewomen." "During the last three months of pregnancy, the servicewomen shall be allowed to rest 20 minutes every four hours," says the manual. "Sitting in a chair with feet up is acceptable."

THE FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. KLECZKA] is recognized for 5 minutes.

Mr. KLECZKA. Mr. Speaker, I remained in the Chamber tonight hoping to get some time on our side of the aisle on the banking rule or on the 1-hour debate that we had allotted, but because of the numerous Members who wanted to speak, the chairman did try to accommodate my request and was unable to do so, so I take this opportunity, which is rare, indeed, because I am one who thinks that after the House adjourns, it is time for Members to go home and to return fresh tomorrow and start a new day. But I think that this issue is so important that I beg the indulgence of our Speaker tonight and those who are in the Chamber to allot me 5 minutes so I can state my views on what is transpiring here on probably the most important bill we are going to face this session, and that is the banking bill, H.R. 6.

We started debate tonight at 10 p.m. when most Members, after a long day in the Chamber, were headed home, and so basically those who were allotted time under the 1 hour given to the Committee on Banking, Finance and Urban Affairs, were Banking members sitting in the Chamber who have listened to this issue ad nauseam for the last 3, 4, 5, 6 months, and the people who we want to convince and to convey our opinions to are the ones who actually went home. That is a real travesty.

However, tomorrow under the rule that was just filed, we will get more debate time and hopefully more of the Members will stick around to listen to those of us on the Committee on Banking, Finance and Urban Affairs, the Committee on Energy and Commerce, the Committee on Agriculture and other committees who dealt with this bill, to give their ideas of what is transpiring.

You will be told over the next 2 or 3 days that if we do not pass this bill in the form that the administration wants us to pass it, that we will promote a bank crisis. I will tell you today, and I told my caucus earlier this morning, and I will repeat this every time I get to a microphone, my friends, whether or not we pass this bill, the banking crisis is upon us. Whether or not we pass this bill tomorrow or the next day, the FDIC, the bank insurance fund, is broke. That is a fact we cannot change at this point.

So know full well that no matter what form this bill passes, we are already involved in a bank crisis.

We are further told by our regulators that some 300 banks per year are failing, and based on the banks that have failed today, the money that we are providing, the $70 billion Treasury loan will not be sufficient to handle the problem.

In fact, we are told that this $70 billion loan will not last the entire year 1992, and this Congress will have to come back and provide more money to it.

Well, what does that sound like to you? That sounds like something we have been going through since 1985. It is called the savings and loan bailout or crisis, and that goes back 10 years ago when this Congress deregulated the S&L's, raised deposit insurance, laid off many regulators, and then we found out that the whole S&L industry was going down the tubes.

We appropriated back, I think in 1985 or 1986 some $10.8 billion. We came back earlier this year, we came back in the spring of this year and appropriated another $40 billion, and before we leave there on Thanksgiving we are asked to appropriate another $80 billion.

So for those who say that this problem is nothing like the S&L's, they are wrong. They are wrong. I say to you it is history revisited. It is a carbon copy.

Whether or not we pass this bill tonight, it is not going to change the fact that there is a bank crisis upon us, that the fund is broke, and that the $70 billion we are going to appropriate or loan from Treasury is going to be insufficient.

We are also told that the banks are going to pay this back. Well, my friends, let me tell you that unless we double or triple the current assessment on their premiums for deposit insurance, they are not going to pay it back. In fact, the provision provides that they have 15 years, the banks have 15 years to pay it back. They are asking for 30. But even over the 15 or 30, they are not going to pay it back.

Who is going to actually foot the bill? It is the taxpayers. Let us not kid ourselves about that whatsoever.

I approach the Committee on Rules and asked that we be permitted to vote on a narrow bill, a narrow bill which would do two or three things, No. 1, recapitalize the bank insurance fund, provide some regulatory changes like early intervention for banks which are failing and provide some meager, meager changes in the deposit insurance system. The Committee on Rules, in their wisdom, or lack thereof, chose not to permit that amendment. So the House of Representatives will not have the option of going a narrow bill or a broad bill.

The die, my friends, has been cast, and the only option that we will have in the coming days will be to debate a broad bill, a broad bill which, in my estimation, vastly expands the powers of the banks.

□ 2310

I say, Mr. Speaker, that is asking for trouble, although there are ways, I think, that we could avert that trouble, if in fact we do some things, the first of which is to support the Gonzalez-Dingell substitute for compromise on title IV. Title IV deals with the new powers of banks.

We find now that the industry for the most part is violently, vehemently opposed to title IV. Why? Because it does not give them the powers they ask for? No, it does.

What they are objecting to is that it is too tough. It is too tough, and so there will be attempts on the floor to pull that title out of the bill.

The administration, I should add, also opposes it.

Well, Mr. Speaker, let me say that if we do pull title IV out, we have before us an empty shell because at that point we have current law which is a hodgepodge, which is helter-skelter, giving up powers to the major banks of this country and some 35 major banks have the power already, but it is not given to the banks by the legislature. It is given by the regulators and the courts, and that is the most serious mistake.

INTRODUCTION OF CONSTITUTIONAL AMENDMENT TO GUARANTEE ALL AMERICANS ACCESS TO HEALTH CARE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. STARK] is recognized for 5 minutes.

Mr. STARK. Mr. Speaker, I am today introducing a constitutional amendment to require that all Americans be guaranteed access to health care.

This bill will help give force of law to the President's State of the Union Address where he said that "Good health care is every American's right."

I believe that good health care ought to be every American's right—but clearly that is just a dream today. This year, over 60 million Americans will be without health insurance sometime during the year. Between 30 and 40 million Americans are without health insurance today. And we know from many detailed studies that those without health insurance are more reluctant to seek medical help when they need it. Their health and the health of their children suffers. For example, according to a just-published study of nearly 600,000 patients nationwide, the uninsured enter a hospital much sicker than insured people of the same age, sex, and race, and they were 44 to 124 percent more likely to die during their stay.

The idea of a free nation founded for life, liberty and the pursuit of happiness must seem like a mockery to those who are denied health care because of lack of money.

Actually, there is one group of Americans who already have a constitutional right to health care. Under the eighth amendment, it is unconstitutional to deny prisoners medical care, for that would be considered cruel and unusual punishment. In my county, it is easier for a prisoner to get a medical checkup than it is for a poor person on MediCal or a person without health insurance.

It is time that we ended this perverse situation: Honest, law-abiding citizens should have at least the level of access to health care that we provide prisoners in our society.

This amendment is difficult to draft in a way that answers all questions: What level of health care do we guarantee? For example, there is basic primary care to keep a cold from becoming pneumonia. And then there is a heart-lung transplant. Do we guarantee heroic measures of preserving life to everyone, or do we accept limits as the State of Oregon has proposed for its Medicaid patients? Do we cover preventive health care, maintenance of the chronically ill, or do we just cover acute care needs? Who is to ensure the delivery of care? Who is to pay for it and how?

Basically, this constitutional amendment is offered to advance the debate and to force the development of implementing legislation. Thus it contains a provision making it effective 5 years after ratification. This will give us time to pass the implementing legislation and to put the necessary programs in place. Passage of the amendment will place the legal pressure on us to come together as a society and adopt implementing legislation.

We are the only industrialized nation other than South Africa that fails to ensure its citizens health care. This is the year 1991. You want a lesson in humility? Go read Chancellor Bismarck's debates in the German Parliament in which he offered a health plan for all Germans in the early 1880's—including eyeglasses and eye care. Obviously, Germany is a highly competitive economic society and from their example—and the example of other industrialized nations—it is clear that we can provide health insurance to our citizens without threatening the economic competitiveness of our industries.

Indeed, a national program—as Medicare is now showing—can impose cost controls that our current hodge-podge system cannot. A comprehensive national health care program is the best way to slow the rate of health inflation and make our society more competitive—and our work force healthier and more productive.

Each year we consider a number of constitutional amendments—to restrict flag-burning, to make English the official language of the Nation, to give President's line-item vetoes, et cetera. Surely this amendment is of more importance to a greater number of American people than almost any other we can consider.

Hippocrates told us that wise men consider health the greatest of human blessings. One hundred and twenty years ago a British Prime Minister said that the "health of the people is really the foundation upon which all their happiness and all their powers as a state depend." It is time we acted on these basic truths, time that we end the shame of leaving so many of our citizens uninsured, and time that we move forward to implement the right to health care.

H.J. RES. —

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right of citizens of the United States to medical care shall be guaranteed.

"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SEC. 3. This amendment shall take effect five years after the date of ratification.".

NLRB JURISDICTION OVER JOHNSTON ISLAND

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Hawaii [Mrs. MINK] is recognized for 5 minutes.

Mrs. MINK. Mr. Speaker, today I have introduced legislation to correct an unfair situation for the civilian workers on Johnston Atoll. My bill would require the National Labor Relations Board to assert jurisdiction in a labor dispute which occurs on this atoll.

Johnston Atoll is an unincorporated territory of the United States, located 171 miles southwest of the Hawaiian Islands. This atoll is used for the sole purpose of housing a Department of Defense chemical weapons incinerator, where over 1,000 military and civilian employees work with hazardous material and under potentially dangerous conditions.

Some 425 of these workers are employed by a private contractor which maintains and operates the chemical disposal system for the Department of Defense. These workers are isolated on a remote island, work with highly toxic and radioactive materials, yet have no ability to organize as a bargaining unit and seek to protect their rights as workers.

In a recent petition before the National Labor Relations Board 185 employees of the civilian contractor were denied recognition as a bargaining unit by the Board. Despite the Board's acknowledgment that they have statutory jurisdiction over the atoll, the Board turned its back on the Johnston Atoll workers, and effect, denied them the same rights provided to other U.S. workers.

Mr. Speaker, the workers on Johnston Atoll are U.S. citizens, they are employed in what is probably the most hazardous line of work, the disposal of chemical weapons, which provides a service necessary for arms reduction in the United States and the world. And yet these workers are not guaranteed the right to stand up for safe working conditions, decent wages, and adequate health benefits.

The tradition of labor law in our country has been to balance the rights of the workers with the needs of employers. Under the current situation there is no balance for the Johnston Atoll workers. They have no recognized unit to voice their concerns, no one to listen, and no way to remedy unfair and harmful working conditions.

The one entity established by the Congress to protect them has declined to examine their situation. And unlike other employees in the United States, the Johnston Atoll workers have no State or local agencies to turn to and no courts to hear their appeal.

Mr. Speaker, this is a situation that we cannot and must not allow to continue. The workers on Johnston island are entitled to the same protections assured to all other U.S. workers. I urge my colleagues to rectify this blatant violation of justice and support this bill.

DOMESTIC VIOLENCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington [Mr. MCDERMOTT] is recognized for 60 minutes.

Mr. McDERMOTT. Mr. Speaker, October is Domestic Violence Awareness Month. During this month, communities all over the Nation have taken time to recognize the widespread and painful problem of domestic violence and to speak out about it. I welcome the opportunity to discuss this issue here and to promote understanding of the special nature of this problem and efforts we can undertake to address it. The most important thing we can do is to talk about this issue, because it is a silent epidemic, a hidden catastrophe, that often makes women too fearful, ashamed, and isolated to tell anyone about it.

I have cosponsored H.R. 1502, the Violence Against Women Act, introduced in the House by the gentlewoman from California [Mrs. BOXER], and I commend her for her leadership on this issue. This bill is a comprehensive proposal to improve our law enforcement and judicial efforts to prevent and to prosecute all types of violence against women. The bill also provides critical support for battered women's shelters and for education efforts to combat the plague of violence against women. I also want to commend the Congresswoman from Maryland [Mrs. MORELLA] for her important work on other reforms to help victims of violence.

Such legislation is urgently needed because domestic violence is occurring in epidemic proportions across the country. The facts are shocking: In the United States, a woman is more likely to be assaulted, injured, raped, or killed by a male partner than by any other type of assailant. Each year, an estimated 3 to 4 million women are battered by their husbands or partners. FBI data indicate that 34 percent of female homicide victims are killed by their husbands or boyfriends; other research has put this figure as high as 50 percent.

The prevalence of domestic violence places an increasing burden on our criminal justice system to protect women and to prosecute abusers. I will leave it to others better qualified than I to discuss the reforms needed in our criminal justice system. But because battering often results in serious injury, it affects our public health system as well, and I want to say a few words about the role health care professionals must play in stopping this kind of violence.

I suspect that most people would be surprised to learn that domestic violence results in more injury to women than auto accidents, rape, and muggings combined. Battering accounts for roughly one-third of hospital emergency room admissions for women. A study in my district, in Seattle, found that families in which domestic violence occurs visit physicians eight times more often than the general population; visit emergency rooms six times more often; and use six times the prescription drugs of the general population. Women who are abused by their partners are under enormous stress, and suffer debilitating stress-related disorders as well as physical injury.

Yet, our health professionals often have little or no training to recognize violence as a cause of injury, and therefore are unable to offer the guidance, referral, or understanding that could help women begin the process of stopping abuse. One study indicates that perhaps as few as 5 percent of the injuries to adult women patients resulting from domestic violence are identified correctly by medical personnel.

The emergency room or the doctor's office can be an effective point of intervention to prevent further injury or death caused by battering. Health care professionals—our doctors, nurses, social workers, and others—need to be trained to recognize, treat, and refer their patients who have been battered so that we can curb this epidemic of violence against women.

Equally disturbing to me are the effects of domestic violence that extend beyond the physical injury its victims endure. Domestic violence is associated with substance abuse, severe psychological trauma, and suicide among its victims. It happens more often than we can imagine during pregnancy. In just one hospital emergency department, 21 percent of pregnant women had been battered and these women had twice as many miscarriages as nonbattered women. It is associated with child abuse as well: Children in homes where domestic violence occurs are physically abused or seriously neglected at a rate 1,500 percent higher than the national average in the general population. It is a factor in homelessness. The Children's Defense Fund reports that "studies of homeless families in communities throughout the nation consistently find that between 25 and 50 percent of these families left home to escape domestic violence." Domestic violence has profound impacts on our society that we have only recently begun to recognize.

Many myths about domestic violence must be dispelled if we are to understand its pernicious consequences. Many men and some women respond to stories of domestic violence with some form of an obvious question: "Why does she put up with the abuse? If it's so bad, why doesn't she just leave?" Survivors of violence can answer this question much better than I, but here are a few explanations.

First of all, you must understand the very real threat to their lives these women face. Battered women often face the greatest danger when they do try to leave. Some research indicates that women who leave are at a 75-percent greater risk of being killed by their batterer than those who stay. Think about that for a moment: Women who leave must face the prospect of being killed.

Many women do try to leave. In one study of over 6,000 women living in shelters in Texas, the battered woman had, on average, contacted 5 different sources of help prior to leaving the home. Women who want to leave have a difficult time because they often lack the resources and the support systems to do so. In my city of Seattle, I am told that one shelter turns away five to six women for each one it can admit. Additionally, if the woman has children, she may not be able to support them financially. Sometimes these women have been completely isolated by their partners, so that they do not have access to bank accounts, to transportation, to family or friends, or to any form of independence. Sometimes they are effectively held prisoners in their own homes.

Another myth we must eliminate is our tendency to think of domestic violence as a problem confined to low-income groups. The fact is that it occurs among all races and socioeconomic groups. We also tend to think it occurs among women who are somehow weak or passive, who invite abuse, or who are too submissive to fight back. There is no stereotypical victim of domestic violence. It could happen to anyone.

In my State of Washington and my district, we have developed model programs and innovative approaches to addressing this crisis. We have shelters that offer comprehensive services, but there are not enough of them. We have made important reforms in our criminal justice system, but our courts are overwhelmed. We have developed protocols for health care professionals, but they are not widely implemented. This summer, the Washington State Domestic Violence Task Force issued its final report and recommendations. It noted the extraordinary progress that has been made in recent years. But, the report concluded: "The Task Force members were reminded again what their vast experience with domestic violence had already taught them—domestic violence is deeply rooted in social institutions as well as in family life * * * to end domestic violence, we must work with all parts of the system."

A cold, conspiratorial silence has long surrounded not only domestic violence but all forms of assault and harassment against women. The walls of that fortress of silence are starting to come down. It is imperative to understand that the abuse women suffer is real, it is widespread, it is personally devastating, and it is against the law. There is no excuse for it, ever. Domestic violence represents a serious threat to the health and well-being of millions of American women. We must work actively to replace that threat with the promise of safety and well-being that is the fundamental right of all Americans, both men and women.

I thank my colleagues for joining me in this special order, and I urge them to support efforts to combat all forms of violence against women.

Ms. SLAUGHTER of New York. Mr. Speaker, tonight, during this special order on domestic violence, Members of Congress are reaffirming their commitment to help families overcome an epidemic of violence that causes more injuries in the home than any other problem.

Indeed, every day, in every major city in the country, calls for help from victims of domestic violence are going unanswered. Last year alone an estimated 250,000 spouses were turned away from shelters because of lack of space.

The pressing need to make the public aware of this problem is something that is very much on my mind these days. Earlier this year, I stood on the floor of the House of Representatives and introduced a resolution, which the House passed, designating October as National Domestic Violence Awareness Month.

And this past Friday in Canandaigua, NY, I participated in a vigil conducted by dedicated volunteers who work for the House of Hope, a nonprofit group started by the Saint Mary's Church in Canandaigua.

Mr. Speaker, for the past 6 years these volunteers have addressed the needs of scores of battered spouses and their children. They have provided food, clothing, counseling, peer support, as well as medical assistance and job referrals. For many families trying to escape a life of violence, these efforts have meant the difference between hope and despair.

While I am proud to have participated in this vigil, I am also saddened that such efforts are still necessary—not only in Canandaigua, but in every community across the Nation. The heartbreaking reality is that nearly 4 million Americans—mostly women—will be injured and an estimated 4,000 will die as a result of domestic violence this year.

And, with the holidays fast approaching, the problems are going to get worse. Every year around Christmas time, the added pressures on families too often turn the holiday season into a nightmare of anger, abuse and violence. During the 6 weeks between Thanksgiving and New Years' Day, an estimated 450,000 spouses will be abused in their own homes. Each week during this 6-week period 30 spouses will be killed.

To meet this growing problem, I have joined my colleagues in the House in cosponsoring important new legislation, the Violence Against Women Act, that would provide additional protections for victims of domestic violence, promote the arrest of abusive spouses and provide more money for battered women's shelters.

This new legislation seeks to deter abusers from learning the whereabouts of a fleeing victim and creates Federal penalties for spouse abusers who cross State lines to continue their abuse. It also authorizes $25 million for prosecutors and courts to develop special spouse abuse units. And the bill would triple funding for shelters for abused spouses.

Many Americans do not want to think about the problem of domestic violence. They are convinced it cannot happen in their homes. They prefer not to think about what might be happening next door or down the block. In addition, many abusers are sadly unaware of their own violent behavior. Many are able to convince themselves that the abuse that their families must endure each day is not all that serious.

And yet the situation is not entirely bleak. Many families have persevered and overcome the daily threat of violence in their lives. Husbands and wives have successfully grappled with and controlled abusive behavior, breaking a pattern of violence that often is passed down from one generation to the next. These domestic victories deserve our recognition and support.

In addition, we also must commend the hard work and invaluable achievements of the thousands of volunteers who support and protect local families subjected to abuse.

Standing here together tonight we affirm every American's right to live a life free of abuse and violence. And by committing ourselves to help the victims of domestic violence, we commit ourselves to undoing the cycle of violence that has become a part of so many American families.

Mr. DINGELL. Mr. Speaker, during the month of October, we focus our national attention on one of the most pernicious forms of abuse, domestic violence. The single largest cause of injury to women in this country is abuse by the men they live with and often love. The National Coalition Against Domestic Violence reports that a woman is battered by her husband or boyfriend every 15 seconds, making domestic violence America's most common—but least reported—crime.

It is a social problem that belongs in the social domain. It is no longer considered a private problem that affects only the victim and the family. The violence spills over onto the streets and into our schools. It is time to recognize the needs of the victims, and their family members. Many women feel confined to their homes, fearing widespread crime on our streets. At least home should be a safe haven. Yet for victims of domestic violence, the home is often the most dangerous place of all. Each year 3 to 4 million American women are battered by their husbands or partners and 4,000 women are beaten to death.

The United States is today making a concerted public effort to help battered women, but this issue is still surrounded by myths. Only about 10 percent of domestic violence cases result in arrests, even though there are grounds for arrest in well over half of the cases. Paradoxically, 75 to 80 percent of battered women who go to trial for killing their abusers in self-defense are convicted and sentenced to jail terms of up to 10 or 15 years. If women are to gain the strength and courage to break away from domestic violence they must have faith that the law that is there to protect them, not their abusers.

Congress is becoming acutely aware of this serious problem. Several pieces of legislation have been introduced in the 102d Congress, designed to increase public awareness of the magnitude of the problem and enhance law enforcement and prevention efforts. October is Domestic Violence Awareness Month. We, in Congress, must prove our commitment to breaking down the barriers in dealing with cases of domestic violence and show women that we do care.

Mr. SIKORSKI. Mr. Speaker, behind the welcome mats and front doors of the homes in too many of our neighborhoods is the painful and frightening reality of domestic violence. For thousands of families across our Nation, home is not where the heart is, home is where the hurt is.

Domestic violence is a serious problem in America. It is a problem that has tremendous personal costs—indeed a cost too many have paid with their lives.

In Minnesota this past summer, the cost of domestic violence has been high. Fourteen women and children died from domestic violence. Last year, domestic abuse contributed to the deaths of 22 Minnesotans and in 1989, 18 deaths. It is estimated that between 25 to 37 percent of Minnesota women experience battering. Some believe even that horrendous number underestimates the problem because domestic violence often goes unreported. Currently, 52 of 87 Minnesota counties have no State funded battered women's advocacy programs within the county. Existing shelters and programs lack funding to assist all those who seek help. The most recent statistics report about 65 percent of the total number of shelter requests in Minnesota are denied because of lack of space.

Statistics can be impersonal—and this is a very personal issue. The bottom line is domestic abuse is real, it is here, and it hurts. Combating this widespread problem is not only possible, it is absolutely critical for our families.

That's why I have joined my friend and colleague Congresswoman BARBARA BOXER of California in sponsoring the Violence Against Women Act. This bill will help address the rising tide of violence against women in America. It creates interstate enforcement of State-protective orders for battered women, and provides Federal grants to encourage States to employ mandatory arrest procedures against abusive spouses and partners. The Violence Against Women Act also provides assistance for battered women's shelters. This is the first bill to deal with violence against women in a comprehensive manner at the Federal level. It is needed legislation addressing the tragedy of domestic abuse.

Domestic abuse must be addressed head on. We cannot slam the doors on the victims of domestic abuse. We cannot pull the welcome mat out from under their feet. We must work together to make sure home sweet home also means home safe home.

Ms. NORTON. Mr. Speaker, we have an epidemic of domestic violence in our country. We cannot go on this way. Domestic violence remains one of those dirty little secrets that we try to sweep under the rug hoping that maybe, just maybe, it will go away by itself.

Far from going away, the rate of assaults against women increased 60 percent between 1984 and 1987. One out of every four children has been sexually abused by the age of 18. In 1989 there were 94,504 rapes reported to local authorities—approximately 1 every 6 minutes. One in seven married women will be a victim of sexual assault by their husbands. Sixty percent of all rapes are committed by acquaintances.

Here, in the Nation's Capital, we have only two shelters where victims of domestic violence can turn for help—My Sister's Place and Her Space, a part of House of Ruth. My Sister's Place reported 1,500 hotline calls last year. Both shelters must turn away approximately 10 women per week due to overcrowding.

The District government has taken steps to combat domestic violence. Although there is presently no recordkeeping system, a mandatory arrest law passed the City Council last year. Because of this law, the police department will be required to keep records of domestic violence beginning in January 1992. This law also requires that police make an arrest where they have probable cause of domestic violence and can identify a perpetrator. Under the previous law, the police were only encouraged to make an arrest.

Amazingly, former Surgeon General C. Everett Koop identified violence against women by their partners as the No. 1 health problem for women in the United States. Domestic abuse causes more injuries to women than automobile accidents, muggings, and rapes combined. Physical injuries sustained in domestic violence are at least as serious as those sustained in 90 percent of all violent felonies and, often, the emotional and psychological abuse that domestic violence victims experience is even more costly.

The cost, Mr. Speaker, is not only to the victims. On a national scale, domestic violence costs employers $3 to $5 billion attributable to worker absenteeism every year. Medical costs related to domestic abuse are estimated at $100 million per year.

It is time we stop talking about this national disgrace and take action. Our women and children need our help. Some of them will not survive without it.

Mrs. BOXER. Mr. Speaker, it is my pleasure to join my colleagues in this special order to promote understanding of the pervasive and brutal crime of domestic violence.

Each year, an estimated 3 to 4 million women are battered by their husbands or partners; 2,000 to 4,000 women are beaten to death. Approximately 20 percent of all female emergency room patients are abused women.

Domestic violence is not merely a spat or a lover's quarrel resulting in a push or a shove. It is physical violence which results in serious physical injury. In fact, one-third of all spouse abuse cases would be categorized as "felonious assaults" if reported to the police.

I believe that we, as a society, must change our perception of domestic violence which encourages people to view it as private and insignificant. As the statistics show, it is neither. That is why I have authored the Violence Against Women Act in the House.

If enacted, the Violence Against Women Act would take several important steps to help both the victims and survivors of domestic violence. My bill would make it a Federal crime for an abuser to cross State lines to continue the abuse, would require all States to enforce any restraining order that a woman receives to protect her from the abuser, and would offer incentives to States to implement policies mandating the arrest and prosecution of spouse abusers.

In addition, the Violence Against Women Act provides funding to educate State and Federal judges on domestic violence and its effect on women and their families, and it more than triples existing funding for battered women's shelters and the services which they provide.

Domestic violence is a serious problem with immense consequences for the health and well-being of American women. I am proud to join in this effort to bring attention to the issue, and hope that the House will move quickly to pass the Violence Against Women Act in the coming session of Congress.

Mr. TOWNS. Mr. Speaker, today I join my colleagues in commemorating October as Domestic Violence Awareness Month. Domestic violence is believed to be the most common, yet least reported, crime in our Nation. An estimated 3 to 4 million American women are beaten each year by their husbands or partners. Every 18 seconds in the United States a woman is battered. This amounts to 200 women being battered every hour. Two-thirds of all married women are battered at least once, while a quarter of them are battered severely. National Crime Survey data show that once a woman is victimized by domestic violence, her risk of being victimized again is high. During a 6-month time period following an incident of domestic violence, approximately 32 percent of women are victimized again.

Domestic violence occurs among all races and socioeconomic groups. There is no typical batterer. Ninety percent of abusers do not have criminal records but are generally law abiding outside the home. Battering is not a small illness that can be diagnosed, but rather a learned behavioral choice. Many batterers grew up in homes where their mother was abused by their father, or where they or a sibling were physically abused.

Regardless of whether children are physically abused, the emotional effects of witnessing domestic violence are very similar to the psychological trauma associated with being a victim of child abuse. Each year, an estimated minimum of 3.3 million children witness domestic violence. Witnessing domestic violence as a child has been identified as the most common risk factor for becoming a batterer in adulthood. Children may also receive injuries indirectly when household items are thrown or weapons are used. Older children may be hurt while trying to protect their mother. In addition, children from violent homes have high risks of alcohol/drug abuse and juvenile delinquency.

Domestic violence is seen by many as a private matter between couples, one in which outsiders hesitate to become involved. Unfortunately, this perception permeated our criminal justice system where traditionally the response has been nonintervention unless severe injury or death was involved. Yet without effective early intervention domestic violence can escalate in severity and lead to death. FBI data indicates that 30 percent of female homicide victims are killed by their husbands or boyfriends.

It is an abomination for me to state that there are more dog shelters in the United States than there are shelters for battered women. The most critical function of shelter programs is to provide crisis intervention and safety provision for battered women and their children. Most programs are inadequately funded and must turn away as many women as they report.

I am just astounded to tell you that there is only one statute on the books at the Federal level which relates to domestic violence. it provides grant moneys to women's shelters and so is a very important one, but this one law is not enough. Designating October as Domestic Violence Awareness Month rightfully focuses the attention of Congress and the country on domestic violence as the serious social, health, and criminal problem that it is.

I am proud to say that I am a cosponsor of H.R. 1502, the Violence Against Women Act. This legislation does three things: First, it makes life outside the home safe for women; second, it makes life inside the home safer; and third, it protects women's rights by making sex crimes a violation of Federal civil rights. In addition, I am a cosponsor of H.R. 2334, the Domestic Violence Prevention Act of 1991. This legislation provides grants: First, to States to assist in developing effective law enforcement and prosecution strategies to combat domestic violence; and second, to public or private nonprofit entitles to use in public information campaigns. This bill also provides victims of domestic violence with shelter and related assistance such as food, medical care, counseling, and legal assistance. I would urge my colleagues to give their full support to these legislative initiatives in an effort to combat the serious social problem of domestic violence.

Mrs. MORELLA. Mr. Speaker, 3 to 4 million American women will be battered this year not by unknown assailants but by the men who love them. Many of these women will return to live in homes of terror. Three to four thousand of them will die at the hands of their batterers. About 3.3 million children will watch their fathers batter their mothers.

Domestic violence is at epidemic proportions in the United States. It is a legal issue, a public health issue, a women's issue, and a children's issue.

Domestic violence affects all of us—no matter what our race, our ethnic background, our economic status, or our education. Battered women are blue-collar women who drive trucks and schoolbuses. They are white-collar women who carry briefcases into courtrooms, boardrooms, and schools. They are women who live in neighborhoods considered nice and in neighborhoods considered not-so-nice. They live in cities, in suburbs, and in rural areas.

For too long this country has regarded domestic violence as a private matter, to be handled at home and certainly not to be handled as a criminal matter by the police and the courts. Today, we are finally beginning to recognize domestic violence for what it is—a brutal criminal act.

There are many theories about batterers and why they resort to violence. These include career and economic stress, violence on TV and in the movies, poor socialization, and sexism in our society. Whatever the causes, battering continues because too many people—relatives, friends, neighbors, law enforcement personnel, district attorneys, and judges—have looked the other way.

Domestic violence is a means of establishing control over another human being through fear and intimidation. Generally, battering is physical, but it also includes emotional, economic, and sexual abuse and the kind of isolation experienced by prisoners-of-war and hostages.

"Why don't battered women just leave?" The question is asked over and over. Many women do leave their abusers. Yet, according to the National Woman Abuse Prevention project, battered women face the greatest danger when they try to leave and are often threatened with physical harm or with death. Most battered women are financially dependent on their abusive spouses and fear losing their homes and fear homelessness. Many battered women believe the abuse is their fault and that it is better to keep the family together no matter what.

We know that children growing up in battered homes are battered themselves, if not physically then certainly emotionally. We know that boys in these homes often grow up to become batterers themselves. These boys learn to cope through aggressive behavior and learn to use violence in school and on the streets to solve their problems. Girls who grow up in violent homes learn to cope through passive indifference and often resort to drug and alcohol abuse, pregnancy, and suicide.

October is "National Domestic Violence Awareness Month," a time to reflect on how we can put an end to terrorism in our homes. There are now 16 domestic violence bills before this Congress. These bills cover judicial and legal issues, public awareness and education programs, funding for shelter and long-term housing, and child custody.

Under our Constitution, the States have primary responsibility for family and criminal matters, and of course, domestic violence issues. However, the Federal Government, by allocating funds for prevention programs, training programs, and housing, and by focusing national attention on violence in the family can do a great deal to assist State governments.

I would like to take a few moments to tell you about the progress my State, Maryland, has made against domestic violence and how proud I am of the work of our Governor, William Donald Schaefer, who has made Maryland a national model.

With the support and assistance of the Governor, the Maryland General Assembly passed two bills this spring that will have long-term effects on the lives of women and children in our State. Maryland judges will be able to consider evidence of spousal abuse when determining child custody cases. And Maryland juries will now be able to hear a battered women's history of abuse and the effects of battering in a criminal trial. Maryland—and only four other States—by statue guarantee battered women a fair trial.

Because of the Governor's sense of justice and humanity, 10 formerly battered incarcerated women now lead productive lives and many others have new hope. Last winter, I invited Governor Schaefer to visit Maryland's prison for women at Jessup to meet with women who had killed their abusers and who were serving life terms. Because of his compassion, open-mindedness, and concern for the women of our State, Governor Schaefer came to Jessup and listened to five women tell of their journey to prison and of their lives of abuse, shame, isolation, and terror. He asked many questions. When he left the prison, he ordered a review of the cases and several others. A month later, in late February, Governor Schaefer commuted the sentences of eight women and this summer he released two others.

In addition, the Governor has mandated a statewide prevention and public awareness programs for adults and children and has ordered a review of orders of protection and law enforcement policies that relate to domestic violence.

I look at my State and the people who are working to end domestic violence: Nancy Nowak on the Governor's staff; Lorraine Chase and Sharon Grosfeld with the Maryland Network Against Domestic Violence; Judge Rosalyn Bell with the Maryland Court of Special Appeals; July Wolfer and Lesley Boyd Ford with the House of Ruth; Kathy Shulman and Phil Lee with the Public Justice Center; Angela Lee with the Unity Group; and Cindy Anderson and Nancy Schoenke with public and private groups in Montgomery County, MD. I know, one day, we can put an end to violence in our homes. Working together, Federal and State governments and public and private advocacy groups, we have already accomplished a great deal.

Still, there is more that needs to be done.

I have introduced 4 of the 16 domestic violence bills now before this Congress. House Concurrent Resolution 89, the "Fair Trial Bill," urges State courts to allow battered women to present evidence of their abuse or expert testimony about their battering in criminal cases. Only five States currently allow women charged with killing or assaulting their mates to present a history of prior abuse.

H.R. 1251, the Domestic Violence Housing Act, would provide $5 million in section 8 certificates and vouchers for transitional or long-term rental housing to families displaced by domestic violence.

H.R. 1252, the Battered Women's Testimony Act of 1991, would authorize funds to assist indigent women in presenting expert testimony about spousal abuse.

H.R. 1253, the Judicial Training Act, would provide funds to carry out research on state judicial decisions regarding child custody cases involving domestic violence and provides for the development of training programs for state court personnel on the impact of domestic violence and children.

As one of 29 women in the House of Representatives, I feel a special responsibility to work on issues that are crucial to the lives of women. I pledge to make the passage of domestic violence legislation a legislative priority.

We have come a long way from the days of the rule of thumb when it was acceptable for a man to beat his wife with a stick, as long as it was no wider than this thumb. But, we have a long way to go before all American homes are places of love and comfort, not places of terror and death.

Mr. MAZZOLI. Mr. Speaker, I am privileged to take part in this special order which seeks to focus attention on the tragedy of domestic violence in this country. The gentlewoman from New York is to be commended for spearheading the effort to pass House Joint Resolution 241, designating the month of October as "National Domestic Violence Awareness Month."

When confronted with the statistics on domestic violence, we have to accept that many men, women, children, and American families are affected by this terrible form of antifamily behavior.

My district in Louisville and Jefferson County, KY, is actively responding to the tragedy of domestic violence. In Louisville and Jefferson County, domestic violence is recognized as a community problem. Thus, the response is community in nature and scope.

For example, earlier this year, Jefferson County Judge-Executive David Armstrong opened the Jefferson County Office for Women. Examining the issue of domestic violence was the first task given the office's advisory committee. That examination is enabling the Jefferson County Office for Women to work to protect women from domestic violence, as well as to assist them with improving their economic status.

Judge Armstrong and city of Louisville Mayor Jerry Abramson, with the support of their police chiefs, have acknowledged the important role of law enforcement in combating domestic violence. Jefferson County Police Chief Leon Jones and Louisville Police Chief Douglas Hamilton have instituted domestic violence policies that make reporting cases a priority. Ultimately, it will make arrests and convictions more possible.

Furthermore, Commonwealth's Attorney Ernest Jasmin and Jefferson County Attorney Michael Conliffe, both advisory committee members, have been instrumental in the treatment and prosecution of domestic violence as a crime. This is clearly evidenced by the initiation of a no drop policy which states that prosecutors are not allowed to recommend dismissing cases or to plea bargain without the approval of the domestic violence unit chief.

Finally, Louisville and Jefferson County have a record of providing advocacy and support for women and children who have been battered. Its center for women and families offers comprehensive services for victims, including shelter, counseling, crisis telephone lines, and a public education campaign.

Mr. Speaker, while the efforts to help the victims of domestic violence greatly need to be expanded, I am proud to hold Louisville and Jefferson County up as a national model of cooperative effort to attack this grave problem. I am committed to working with my colleagues to enact legislation to address this issue.

Mr. ROEMER. Mr. Speaker, there are millions of Americans whose lives are devastated each and every day by those whom they love. These victims are women, and they suffer from a form of abuse we call domestic violence. To assist their struggle, October is now designated "Domestic Violence Awareness Month." it is our hope that increased awareness of this crime will help curb this abuse that plagues society.

According to statistics from the Congressional Caucus for Women's Issues, 3 to 4 million women are battered each year. What is even more alarming is that these women are more likely to be assaulted, raped, and even killed by their male partner than by any other assailant. For them, home is not a place of safety and comfort. Home is a prison of abuse.

Domestic violence is not characterized by infrequent or minor incidents of distress. It is a progression of increasingly violent assault that is both physical and psychological. And despite their suffering, most women remain with their persecutors for numerous reasons. They fear reprisal. They fear the loss of their family and home. And they fear the loss of employment and financial security.

The murder of Lisa Bianco of Elkhart, IN, in 1989, at the hand of her then ex-husband, is not an unfamiliar tragedy to us. Lisa did everything that a victim of domestic violence should. She notified the police when harmed, instructed her children on how to react, and confronted her anguish by working as a counsellor and program coordinator at the local women's shelter. But on March 4, 1989, she was bludgeoned to death by her ex-husband after he received an 8-hour pass from the Indiana Department of Corrections, who failed to inform her of his release.

Unlike other crimes, domestic violence has no methodology and there is no systematic way of helping its victims. Since many women view their abuse as a private matter, domestic violence is underreported. Furthermore, many victims continue to profess their love for their spouse. And as in Lisa Bianco's case, even if all the suggested precautions are followed, there is no guarantee that their lives will be saved. But abused women must be given the opportunity to help themselves.

In 1987, 375,000 battered women were helped at existing shelters and safe-houses. However, 40 percent of all women seeking help in that same year were turned away because the programs were greatly underfunded. Since then, the statistics have not receded.

In Indiana, there are 23 shelters for battered women which helped over 500 women in the past year. YWCA's throughout much of northern Indiana provide crisis intervention programs. These and other similar programs provide food, clothing, and shelter for up to 30 days so that brave women can put their lives back together.

It is my hope, Mr. Speaker, that these shelters will continue to provide the necessary assistance to the large and most overlooked group of victims in our country—women suffering from domestic violence.

GENERAL LEAVE

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that all Members be permitted 5 legislative days in which to extend their remarks and to include therein extraneous material on the special order tonight by the gentleman from Washington [Mr. McDERMOTT].

The SPEAKER pro tempore (Mr. PARKER). Is there objection to the request of the gentleman from Texas?

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. JEFFERSON (at the request of Mr. GEPHARDT), for today, on account of death in family.

Mr. TANNER (at the request of Mr. GEPHARDT), for Tuesday, October 29 and the balance of week, on account of family business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. NICHOLS) and to include extraneous matter:)

Mr. LIVINGSTON, for 5 minutes each day, on Nov. 4 and 5.

Mr. McCOLLUM, for 5 minutes, on October 31.

Mr. DELAY, for 60 minutes each day, on November 5, 6, 7, 8, 12, 13, 14, 15, 18, 19, 20, 21, and 22.

Mrs. BENTLEY, for 60 minutes, on November 1.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous matter:)

Mr. KLECZKA, for 5 minutes, today.
Mr. MORAN, for 5 minutes, today.
Mr. COYNE, for 5 minutes, today.
Mr. STARK, for 5 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mrs. MINK, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. SCHUMER in the House today on title III, H.R. 3489.

(The following Members (at the request of Mr. NICHOLS) and to include extraneous matter:)

Mr. CAMPBELL of California.
Mr. GOODLING.
Mr. PURSELL.
Mr. LAGOMARSINO, in two instances.
Mr. MACHTLEY.
Mr. McGRATH.
Ms. ROS-LEHTINEN, in five instances.
Mr. BEREUTER.
Mr. GALLEGLY.
Mr. SCHULZE.
Mr. CUNNINGHAM.
Mr. DANNEMEYER.
Mr. LIGHTFOOT.
Mr. PACKARD.
Ms. SNOWE.
Mrs. BENTLEY.
Mr. WELDON.
Mr. HORTON.
Mr. MILLER of Washington.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. JACOBS.
Mr. DYMALLY.
Mr. KOLTER.
Mr. HAMILTON.
Mrs. BOXER.
Mr. ACKERMAN.
Mr. RANGEL.
Mr. SCHUMER.
Mr. COYNE.
Mr. TOWNS.
Mr. EDWARDS of California.
Mr. CLAY.
Mr. BERMAN.
Mrs. MINK.
Mr. LEVINE of California.

Mr. BORSKI.
Mr. FEIGHAN.
Mrs. KENNELLY.
Mr. DWYER of New Jersey.
Ms. PELOSI.
Ms. NORTON.
Mr. MCMILLEN of Maryland.
Mr. SIKORSKI in two instances.
Mr. DINGELL in two instances.
Ms. DELAURO.
Mr. ATKINS.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1823. An act to amend the Veterans' Benefit and Services Act of 1988 to authorize the Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 12 minutes p.m.), the House adjourned until tomorrow, Thursday, October 31, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2268. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-96, "District of Columbia Commission on Baseball Act of 1991," and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

2269. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-95, "Residential Property Tax Relief Act of 1977 Application Deadline and Free Clinic Assistance Program Act of 1986 Extension Temporary Amendment Act of 1991," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

2270. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-93, "Closing of Glover Archbold Parkway, N.W., Temporary Act of 1991," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

2271. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-94, "Uniform Law on Notarial Acts Amendment Act of 1991," and report, pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

2272. A letter from the Secretary of Education, transmitting a copy of Final Regulations—Education of the Handicapped Act Amendments of 1990, Public Law 101-476, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

2273. A letter from the Acting Director, Defense Security Assistance Agency, transmitting the Department of the Navy's proposed lease of defense articles to Denmark (Transmittal No. 02-92), pursuant to 22 U.S.C. 2796a(a); to the Committee on Foreign Affairs.

2274. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notification of the Department of the Air Force's proposed Letter(s) of Offer and Acceptance [LOA] to Germany for defense articles and services (transmittal No. 92-07), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2275. A letter from the Assistant Director, National Science Foundation, transmitting a report on activities under the Freedom of Information Act during calendar year 1990, pursuant to 5 U.S.C. 552(a); to the Committee on Government Operations.

2276. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2277. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2278. A letter from the Secretary of Interior, transmitting a copy of the Onshore Oil and Gas Leasing Report, fiscal year 1990, pursuant to 30 U.S.C. 226 note; to the Committee on Interior and Insular Affairs.

2279. A letter from the Assistant Secretary (Civil Works), Department of the Army, transmitting the views of the Secretary of the Army on a post authorization change report dated April 1990, revised July 1990, on Alenaio Stream, Hilo, HI; to the Committee on Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ROSTENKOWSKI: Committee on Ways and Means. H.R. 3624. A bill to amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the United States International Trade Commission (Rept. 102-279). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 1537. A bill to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code; with an amendment (Rept. 102-280). Referred to the Committee of the Whole House on the State of the Union.

Mr. FROST: Committee on Rules. House Resolution 266. Resolution providing for the further consideration of H.R. 266, a bill to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes (Rept. 102-281). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BEVILL:

H.R. 3665. A bill to establish the Little River Canyon National Preserve in the State of Alabama; to the Committee on Interior and Insular Affairs.

By Mr. BROOKS:

H.R. 3666. A bill to amend title 28, United States Code, to provide for an additional place of holding court for the Eastern District of Texas; to the Committee on the Judiciary.

By Ms. DELAURO (for herself, Mrs. KENNELLY, Mr. GEJDENSON, Mrs. JOHNSON of Connecticut, Mr. SHAYS, and Mr. FRANKS of Connecticut):

H.R. 3667. A bill relating to the taxation of certain disability benefits received by former police officers or firefighters; to the Committee on Ways and Means.

By Mr. JAMES:

H.R. 3668. A bill to remove the President's authority to grant debt forgiveness to foreign countries; jointly, to the Committees on Foreign Affairs, Appropriations, and Agriculture.

By Mr. LEVINE of California (for himself and Mr. TORRICELLI):

H.R. 3669. A bill to provide for the transfer of certain military assistance funds allocated for El Salvador for fiscal year 1992 to the Demobilization and Transition Fund; to the Committees on Appropriations and Foreign Affairs.

By Mr. MAZZOLI:

H.R. 3670. A bill to make certain technical corrections relating to the immigration laws; to the Committee on the Judiciary.

By Mrs. MINK:

H.R. 3671. A bill to amend the National Labor Relations Act to require the National Labor Relations Board to assert jurisdiction in a labor dispute which occurs on Johnston Atoll, an unincorporated territory of the United States; to the Committee on Education and Labor.

H.R. 3672. A bill to provide reasonable fees to labor representatives that represent nonmember employees; to the Committee on Post Office and Civil Service.

By Mr. PACKARD (for himself, Mr. BOUCHER, Mr. RIGGS, Mr. CUNNINGHAM, Mr. ROHRABACHER, Mr. GALLEGLY, Mr. WALKER, Mr. BOEHLERT, Mr. LEWIS of Florida, and Mr. LOWERY of California):

H.R. 3673. A bill to authorize a research program through the National Science Foundation on the treatment of contaminated water through membrane processes; to the Committee on Science, Space, and Technology.

By Mr. PACKARD (for himself, Mr. RIGGS, Mr. CUNNINGHAM, Mr. LOWERY of California, Mr. DORNAN of California, Mr. DANNEMEYER, Mr. HUNTER, Mr. HERGER, Mr. GALLEGLY, and Mr. ROHRABACHER):

H.R. 3674. A bill to authorize the Secretary of the Army and the Administrator of the Environmental Protection Agency to conduct certain water reclamation projects, and for other purposes; jointly, to the Committees on Interior and Insular Affairs and Public Works and Transportation.

By Ms. PELOSI:

H.R. 3675. A bill to amend the Export Administration Act of 1979 with respect to dual-use items and enforcement, and for other purposes; to the Committee on Foreign Affairs.

By Mr. SCHULZE (for himself, Mr. ARCHER, Mr. SANTORUM, Mrs. JOHNSON of

Connecticut, Mr. GUARINI, Mr. PARKER, and Mr. CHANDLER):

H.R. 3676. A bill to prevent pension plans from becoming unable to pay benefits as they come due during bankruptcy cases; jointly, to the Committees on Education and Labor, the Judiciary, and Ways and Means.

By Ms. SNOWE (for herself, Mrs. KENNELLY, Mrs. JOHNSON of Connecticut, Mrs. MORELLA, Mr. BOEHLERT, Mrs. SCHROEDER, Mrs. MINK, and Mr. SUNDQUIST):

H.R. 3677. A bill to increase access of State child support enforcement agencies to certain financial information of noncustodial parents, and to encourage States to improve their enforcement of child support obligations; jointly, to the Committees on Banking, Finance and Urban Affairs and Ways and Means.

By Mr. WALKER:

H.R. 3678. A bill to provide incentives for work, savings, and investments in order to stimulate economic growth, job creation, and opportunity; jointly, to the Committees on Ways and Means, Banking, Finance and Urban Affairs, and the Judiciary.

By Mr. WISE (for himself and Mr. SYNAR):

H.R. 3679. A bill to declare as the policy of the United States cooperation with Western Hemisphere countries on energy issues, and for other purposes; to the Committee on Foreign Affairs.

By Mr. HOYER:

H. Res. 265. Resolution designating majority membership on certain standing committees of the House; considered and agreed to.

By Mr. STARK:

H.J. Res. 366. Joint resolution proposing an amendment to the Constitution of the United States guaranteeing access to medical care to all citizens of the United States; to the Committee on the Judiciary.

By Mr. ROHRABACHER (for himself, Mr. ARMEY, Mr. CUNNINGHAM, Mr. SUNDQUIST, Mr. GILMAN, Mr. DUNCAN, Mr. HANCOCK, Mr. RITTER, Mr. CRANE, Mr. GALLEGLY, Mr. HUNTER, Mr. HERGER, Mr. MOORHEAD, and Mr. SOLOMON):

H. Con. Res. 228. Concurrent resolution concerning an international memorial to the victims of communism; to the Committee on House Administration.

By Mr. TAUZIN (for himself and Mr. FIELDS):

H. Con. Res. 229. Concurrent resolution to ensure that full restitution and reimbursement is made to the United States Coast Guard for its costs in the response to the oil-spill in the Arabian Gulf; and to instruct the United Nations to earmark a percentage of the moneys collected for the United Nations Compensation Fund toward Arabian Gulf oil-spill and Kuwaite oil well spill cleanup and environmental restoration; jointly, to the Committees on Foreign Affairs and Merchant Marine and Fisheries.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

305. By the SPEAKER: Memorial of the General Assembly of the State of Illinois, relative to drought aid; to the Committee on Agriculture.

306. Also, memorial of the Assembly of the State of California, relative to Federal labor laws; to the Committee on Education and Labor.

307. Also, memorial of the Assembly of the State of California, relative to Mifepristone (RU-486); to the Committee on Energy and Commerce.

308. Also, memorial of the Assembly of the State of California, relative to breast cancer research; to the Committee on Energy and Commerce.

309. Also, memorial of the Assembly of the State of California, relative to war reparations; to the Committee on Foreign Affairs.

310. Also, memorial of the Assembly of the State of California, relative to funding for programs for immigrants; to the Committee on the Judiciary.

311. Also, a memorial of the Assembly of the State of California, relative to reproductive rights; jointly, to the Committees on Armed Services, the District of Columbia, Foreign Affairs, Energy and Commerce, Interior and Insular Affairs, the Judiciary, and Post Office and Civil Service.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 50: Mr. BEILENSON, Mr. EVANS, Mr. FROST, Mr. HAYES of Illinois, Mr. LEVINE of California, Mr. SANDERS, Mr. MARKEY, Mr. SAVAGE, and Mr. STOKES.

H.R. 123: Mr. THOMAS of Georgia and Mr. ANDERSON.

H.R. 394: Mr. RINALDO.

H.R. 840: Mr. HALL of Texas.

H.R. 888: Mr. KLECZKA.

H.R. 945: Mr. GILCHREST, Mr. TOWNS, Mr. LIPINSKI, Mr. PERKINS, Mr. SAXTON, Mr. HUTTO, Mr. STAGGERS, Mr. LAROCCO, Mrs. LOWEY of New York, and Mr. NUSSLE.

H.R. 951: Mr. PAYNE of Virginia and Mr. NEAL of North Carolina.

H.R. 1147: Ms. LONG.

H.R. 1168: Mr. SLAUGHTER of Virginia.

H.R. 1241: Mr. DURBIN and Mr. NUSSLE.

H.R. 1318: Mr. GILLMOR.

H.R. 1430: Mr. GONZALEZ.

H.R. 1473: Mr. PETERSON of Florida, Mr. HOAGLAND, and Mr. SHAW.

H.R. 1527: Mr. VISCLOSKY.

H.R. 1618: Mr. BERMAN, Mr. LEWIS of Florida, Mr. LUKEN, Mr. SPRATT, Mr. WAXMAN, Mr. DOOLITTLE, Mr. DAVIS, Mr. JOHNSTON of Florida, Mr. PURSELL, Mr. ANDREWS of Maine, Mr. STALLINGS, Mr. SENSENBRENNER, Mr. LANTOS, Mr. ENGEL, Mr. OLVER, Mr. PAYNE of New Jersey, Mr. MORRISON, Mr. PETERSON of Florida, Mr. HUTTO, Mr. HERGER, Mr. CONYERS, Mr. CHAPMAN, and Mr. HATCHER.

H.R. 1900: Mr. DREIER of California.

H.R. 1970: Mr. GALLO, Mr. TALLON, and Mr. GEPHARDT.

H.R. 2059: Mr. BONIOR.

H.R. 2385: Mr. HAMILTON.

H.R. 2464: Mr. JOHNSON of Texas and Mrs. BRYON.

H.R. 2495: Mr. FISH.

H.R. 2565: Mr. MACHTLEY.

H.R. 2624: Mr. KOPETSKI.

H.R. 2693: Mr. HOBSON, Mr. SWETT, and Mr. LIPINSKI.

H.R. 2766: Mr. BOEHNER, Mr. JOHNSON of South Dakota, Mr. PETRI, and Mr. PETERSON of Minnesota.

H.R. 3070: Mr. ANDERSON and Mr. GILCHREST.

H.R. 3082: Mr. McDERMOTT, Mr. BOUCHER, Mr. HORTON, Mr. WOLF, Mr. WILSON, Mr. JONTZ, Mr. SISISKY, Mr. BACCHUS, Mr. LEVIN of Michigan, Mr. LANCASTER, Mr. LEWIS of Florida, Mrs. COLLINS of Illinois, Mr. DOWNEY, Mr. SABO, and Mr. ROE.

H.R. 3185: Mr. BARNARD.

H.R. 3198: Mr. PAYNE of Virginia, Mr. McCRERY, Mr. BOUCHER, Mr. VALENTINE, Mr. BALLENGER, Mr. JONES of North Carolina, Mr. McCOLLUM, Mr. DICKINSON, Mr. NEAL of North Carolina, Mr. PETERSON of Florida, Mr. HAMMERSCHMIDT, Mr. VOLKMER, Mr. HATCHER, Mr. CLEMENT, Mr. HARRIS, Mr. PETERSON of Minnesota, Mr. LEWIS of California, Mr. SABO, Mr. PARKER, Mr. BROWDER, Mr. ERDREICH, Mr. CHAPMAN and Mr. JEFFERSON.

H.R. 3216: Mr. LAROCCO.

H.R. 3222: Mr. MCNULTY, Mr. MRAZEK, Mr. LIPINSKI, Mr. EDWARDS of California, Mr. RIDGE, Mr. RAHALL, Mr. PERKINS, Mr. WOLF, Mr. EDWARDS of Texas, Mr. DWYER of New Jersey, Mr. LEHMAN of Florida, and Mr. SPENCE.

H.R. 3242: Mrs. LLOYD, Mr. FAWELL, Mr. BOEHNER, Mr. OWENS of Utah, Mr. SCHAEFER, Mr. HERGER, and Mr. DELAY.

H.R. 3281: Mr. DORNAN of California.

H.R. 3319: Mr. KOSTMAYER, Ms. NORTON, Mr. FISH, Mr. FRANK of Massachusetts, Mr. TOWNS, Ms. SNOWE, Mr. FALEOMAVAEGA, Mr. DAVIS, and Mr. JEFFERSON.

H.R. 3349: Mr. HERGER and Mr. LAGOMARSINO.

H.R. 3420: Mr. RICHARDSON, Mr. AUCOIN, Mr. GORDON, Mr. BOEHLERT, Mr. OWENS of Utah, Mr. PETERSON of Minnesota, Mr. THOMAS of Wyoming, Mr. JONES of North Carolina, and Mr. EVANS.

H.R. 3463: Mr. MILLER of Washington.

H.R. 3501: Mr. STARK and Mr. DANNEMEYER.

H.R. 3506: Mrs. MORELLA, Mr. HENRY, Mr. HORTON, Mr. JEFFERSON, and Mr. WILSON.

H.R. 3518: Mr. ECKART and Mr. INHOFE.

H.R. 3550: Mr. ANDREWS of Texas, Mr. LANCASTER, Mr. DWYER of New Jersey, Mr. EDWARDS of Texas, and Mr. JEFFERSON.

H.R. 3595: Mr. RAVENEL, Mr. ANDREWS of Texas, Mr. HENRY, Mr. LIPINSKI, Mr. MILLER of Ohio, Mr. JACOBS, Mr. NOWAK, Mr. VOLKMER, Mr. EDWARDS of Texas, Mr. CLAY, and Ms. KAPTUR.

H.J. Res. 125: Mr. FRANKS of Connecticut, Mr. NEAL of North Carolina, Mr. BORSKI, Mr. ZIMMER, Mr. LANTOS, Mr. LEWIS of Georgia, Mr. DE LUGO, Mr. SLATTERY, Mr. DICKS, Mr. CRAMER, Mr. DIXON, Mr. BREWSTER, Mr. JACOBS, Mr. MOORHEAD, Mr. ROWLAND, Mr. SCHUMER, Mr. SISISKY, Mr. PORTER, Mr. ANDREWS of Maine, Mr. RAHALL, Mr. GEREN of Texas, and Mr. ANDERSON.

H.J. Res. 140: Mr. HENRY and Mr. NUSSLE.

H.J. Res. 177: Mr. KLUG, Mr. LEHMAN of California, Mr. BUNNING, and Mr. LEWIS of Florida.

H.J. Res. 198: Mr. NOWAK, Mr. BENNETT, Mr. PAYNE of Virginia, Mr. WAXMAN, Mr. DURBIN, Mr. MOORHEAD, Mr. SUNDQUIST, and Mr. GIBBONS.

H.J. Res. 293: Mr. NICHOLS, Mr. CALLAHAN, Mr. FISH, and Mr. CRAMER.

H.J. Res. 321: Mr. BENNETT, Mr. GREEN of New York, Mr. HOYER, Ms. KAPTUR, Mr. KLECZKA, Mr. RITTER, Mr. SERRANO, Mr. VENTO, Mr. WOLF, Mr. VOLKMER, Mr. WOLPE, Mr. HARRIS, Mr. DYMALLY, and Mrs. BENTLEY.

H.J. Res. 326: Mr. BILBRAY, Mr. CRAMER, Mr. PAXON, Mr. ANDREWS of New Jersey, Mr. MILLER of Washington, Mr. DOWNEY, MR. FRANK of Massachusetts. Mr. JONES of Georgia, Mr. PARKER, Mr. JONES of Georgia, Mr. CRANE, Mrs. VUCANOVICH, Mrs. KENNELLY, and Mr. HAYES of Louisiana.

H.J. Res. 351: Mr. HAMILTON.

H.J. Res. 356: Mr. LANCASTER, Mr. McGRATH, Mr. LEHMAN of Florida, and Mr. WALSH.

H.J. Res. 362: Mr. KOSTMAYER, Mr. JENKINS, Ms. KAPTUR, Mr. LEWIS of Georgia, Mr. YATRON, and Mr. BUSTAMANTE.

H. Con. Res. 188: Mr. Fish, Mr. Berman, Mr. Smith of New Jersey, Mrs. Lowey of New York, Mr. Solarz, and Mr. Miller of Washington.

H. Con. Res. 218: Mr. Sensenbrenner, Mr. Lewis of Florida, Mr. Goss, Mr. Ballenger, Mr. Klug, Mr. Stump, Mr. Riggs, Mr. Ewing, Mr. Ramstad, and Mr. Santorum.

H. Con. Res. 224: Mr. Hyde, Mr. Lehman of Florida, Mr. Riggs, Mr. Jefferson, and Mr. Ritter.

H. Res. 257: Mr. Espy, Mr. Durbin, Mr. Peterson of Minnesota, Mr. Hatcher, Mr. Thornton, Mr. Spence, Mr. Bennett, Mr. Jefferson, Mr. Camp, Mr. Thomas of Georgia, Mr. Hammerschmidt, Mr. McDade, and Mr. LaRocco.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 371: Mr. Clement.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

128. By the SPEAKER: Petition of the Legislature of Rockland County, New City, NY, relative to funds for research in mental illness; to the Committee on Energy and Commerce.

129. Also, petition of American Foreign Service Association, Washington, DC, relative to the Association's comments on the 9th Annual Report on Implementation of the Foreign Service Act of 1980, as required by section 2402 of the act; jointly, to the Committees on Post Office and Civil Service and Foreign Affairs.

EXTENSIONS OF REMARKS

BURDEN OF ILLEGAL IMMIGRATION DUMPED ON STATE AND LOCAL GOVERNMENTS

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. GALLEGLY. Mr. Speaker, the problem of illegal immigration to the United States has reached crisis proportions. While there is no exact figure on the number of aliens who enter illegally each year and who currently reside in this country, in 1990 alone 1.2 million illegal aliens were apprehended at the border; and the Immigration and Naturalization Service estimates that for every one illegal apprehended by the Border Patrol, another two or three escape arrest. Thus, after several years of apparent decline, the number of arrests of illegals is soaring toward the pre-1986 level of 1.8 million a year—1986 was the year the Immigration and Naturalization Act was enacted and amnesty was granted to millions of illegals. Though estimates vary, some 200,000 to 300,000 illegal aliens settle permanently in this country each year. Most experts estimate that at least 4 million illegals currently reside in the United States; over one-half can be found in southern California alone.

This resurgent tide of illegal immigrants across our borders is creating severe economic, social, and law enforcement problems in many communities, adding to the welfare and unemployment rolls and straining the already tight budgets of State and local governments. Illegal aliens are using social services at the expense of eligible needy Americans—including those immigrants and their families who went through the process of entering this country legally—at a very high cost to this country's taxpayers. For instance, a study by the Center for Immigration Studies has estimated that U.S. taxpayers paid at least $5.4 billion in direct benefits to illegal aliens last year—excluding the costs of such often abused programs as Social Security, Medicare, food stamps, and unemployment compensation, as well as the costs of police, fire, courts, transportation, and other public services.

While it is true that those illegals who find employment pay taxes, their contribution in taxation does not come close to offsetting the costs to government in benefits and services that they utilize. For instance, according to Los Angeles County, during fiscal year 1990–91 illegal immigrants paid $137.6 million to the county in taxes, but they cost the county $413.8 million in services, a net loss of $276.2 million. Included in that cost is $203.1 million for health care services, $15.2 million for welfare services, and $95.6 million for judicial services.

The fact that the Congress has been unwilling to address this problem attests to the widespread ignorance among many Members who simply have not been confronted with demands for reform from angry constituents and for additional funds from exasperated mayors and county officials. Mr. Speaker, the people in my district are understandably upset that their elected officials seem unable to do something about the illegals that have invaded their communities. The State of California is overwhelmed by the burden of added costs of illegal immigration. This is not a racial problem; it is a matter of dollars and cents. And unless the Federal Government either radically changes its immigration policies or comes up with the funds to enable State and local governments to better cope with this problem, I foresee disaster, not merely in greater unemployment, added taxation, the forced cessation of essential services, or all three, but also in the form of a resurgence of xenophobia and antipathy toward all immigrants, legal as well as illegal.

I have tried to address the issue of illegal immigration with a series of bills which address various causes and aspects of the problem—inadequate Border Patrol and other Federal resources, documents fraud, lack of Federal enforcement and insufficient penalties, the need for programs by our neighbors to stop smuggling and harboring of illegals, the transportation of undocumented day workers, the attraction of generous welfare benefits, and automatic birthright citizenship for illegal aliens. At the same time I strongly support the efforts by this administration to negotiate a North American free trade agreement which should improve the economic conditions in Mexico and create jobs for citizens of both our countries.

Mr. Speaker, I wish to call the attention of my colleagues to a recent column by Robert J. Caldwell of the Copley News Service which presents a true picture of the crisis of illegal immigration and states clearly the case for taking immediate remedial action. I hope that all Members of the House will read this item carefully so that there will be a better understanding of what is happening and what is at stake in California, in the border States and throughout many areas of this country.

Mr. Speaker, I ask unanimous consent that the complete text of Mr. Caldwell's article be printed in the RECORD as it appeared in the Oxnard Press-Courier of October 1, 1991.

IMMIGRATION LOAD DUMPED ON STATE, LOCAL GOVERNMENTS

(By Robert J. Caldwell)

A frustrated Gov. Pete Wilson blamed much of California's budget crisis last spring on ballooning bills for education, Medi-Cal, welfare, and corrections. Each category, said the governor, had been significantly inflated by the heavy flow of immigration—legal and illegal—into California during the 1980s.

Wilson then put the responsibility for this where it belongs. The federal government has been generous in accepting legal immigrants and refugees. But it is failing to compensate state and local governments adequately for immigration-related costs. What is more, the federal government is failing to control illegal immigration across the U.S.-Mexico border.

Lest his complaints be misconstrued, or used as ammunition for nativist immigrant bashing, Wilson added the appropriate caveats. Immigration, including some illegal immigration, is not without benefits. Most immigrants, legal and illegal, work hard and contribute to America's economy. Immigrants pay taxes—even those here illegally pay some taxes. And the great bulk of immigrants, including those who come illegally, are well-motivated people seeking America's promise of opportunity and freedom.

Still, there is mounting evidence that too much immigration too fast is piling unsustainable burdens on state and local governments. This is especially true in California, home to half of all illegal immigrants in the United States and nearly a third of all refugees and legal immigrants.

To buttress Gov. Wilson's complaints, California's Department of Finance compiled the following:

Some 1.6 million legal foreign immigrants came to California during the 1980s.

An estimated 200,000 refugees originally resettled in other states subsequently migrated to California over the past decade.

California experienced an estimated net increase of 1 million illegal immigrants during the 1980s. About 85 percent of these immigrants are believed to be Hispanic; another 10 percent are Asian.

State officials estimate that one-third of all refugees admitted to the United States come to California and begin receiving public assistance within their first four months of residency.

The federal government's immigration and refugee policies have added $1.3 billion in mandated expenditures for California during the 1991–92 fiscal year alone. State-funded Medi-Cal services for pregnancy and emergency care for illegal immigrants will cost an estimated $395 million this year. Another $356 million in federal reimbursements will be needed.

The immigrant tide's budgetary impact is not limited to state government. Cities and counties with large, and growing, immigrant populations are hurting as well.

For example, Los Angeles County and its county and city school districts are currently paying an estimated $1.16 billion per year for services to illegal immigrants alone, according to Michael Antonovich, chairman of the Los Angeles County Board of Supervisors. The burden of educating immigrant children contributed substantially to the Los Angeles Unified School District's $274 million deficit this year.

No one, it seems, has a precise figure for San Diego County's immigration-related costs. But county officials estimate that the amnesty granted to many illegal immigrants in 1986 to date has cost up to $30 million in services. Most of this has gone unreimbursed by the federal government.

San Diego County's medical programs ran up a $7 million bill during 1989–90 for services to undocumented immigrants.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Among costs that are particularly relevant for San Diego County are refugee resettlement expenditures. In 1985, the federal government provided about $6,000 per refugee. This year, federal reimbursement is roughly $3,000 per refugee. Adjusted for inflation, this represents a two-thirds reduction in federal reimbursement.

Understandably, state and local officials are turning anew to the federal government for help. Wilson has threatened to sue Washington to obtain additional funds for state and local services to immigrants. While Wilson waits for an answer from Washington, the state is reimbursing counties for only 70 percent of their immigration-related expenditures.

San Diego County Supervisor John MacDonald led a large delegation of local officials to Washington last week to lobby Congress and the Bush administration for full reimbursement of immigration costs.

Although California's case is the most urgent, MacDonald's lobbying effort was endorsed by officials from 22 states. Florida, Texas, New York, and New Jersey also bear heavy immigration expenditures.

But however meritorious, requests for more money from Washington undoubtedly will prove a hard sell. With the federal budget deficit expected to jump from $270 billion this year to at least $350 billion in 1992, Congress will be hard pressed to find any additional funds for state and local governments.

Meanwhile, the immigration problem continues to grow.

Between 4.2 million and 4.5 million immigrants are residing illegally in the United States, according to David Simcox, executive director of the Center for Immigration Studies in Washington. This permanent population is conservatively estimated to grow by about 300,000 each year.

About half to two-thirds of these illegal migrants are believed to be from Mexico. Moreover, recent research is documenting the changing nature of migration from Mexico. Mexican immigrants who once came to the United States to work temporarily now come increasingly to stay. Once established, they bring their families.

The cost to taxpayers of undocumented immigration is variously estimated. Simcox puts it at about $5 billion to $6 billion a year. The Federation for American Immigration Reform (FAIR), a group favoring sharp reductions in both legal and illegal immigration, calculates the figure at approximately $13.5 billion.

If the federal government cannot reimburse state and local governments for these costs, it should adjust its immigration policies accordingly. At the very least, it must mount a more credible effort to limit illegal immigration across the United States-Mexican border.

Wilson argues that the 2,000-mile long border with Mexico "makes a fiction of the immigration law." He has a point, at least given the currently half-hearted efforts at border enforcement. About half of all illegal immigration into the United States occurs along a 14-mile stretch of the border between San Diegc and Tijuana. Yet, on any given night, the U.S. Border Patrol has fewer than 150 agents along this sector, crossed nightly by several thousand undocumented immigrants.

Stronger fences, a border access road, lights, and electronic sensors all help. But the Border Patrol is still routinely overwhelmed.

Alan Nelson, who served as commissioner of the Immigration and Naturalization Service (INS) from 1982–89, recommends beefing up the Border Patrol. But he believes the best hope for curtailing illegal immigration lies in more effective enforcement of existing legal sanctions against employers who knowingly hire illegal immigrants.

"There is no question that most illegal aliens come to this country to better themselves and get jobs. If we can dry up the job market, that is our best deterrent. And (employer) sanctions are absolutely key. Every president since Truman advocated them and we finally got them in 1986 (in the Immigration Reform and Control Act).

"They (sanctions) are not perfect, but they worked well at the beginning and they certainly have the potential," Nelson said last week. But he charges that the INS has relaxed its enforcement of employer sanctions since the late 1980s.

"We need to be more aggressive in educating employers about the law," Nelson said. He also urged systematic efforts to recruit unemployed Americans to fill the entry-level jobs that often go to undocumented immigrants.

As yet, Congress and the Bush administration show little stomach for revisiting the wrenching immigration debate that produced IRCA in 1986. But doing nothing leaves hard-pressed state and local governments, notably California and counties such as Los Angeles and San Diego, holding the bill for Washington's failure to act.

BLANCA ROSA INSTALLED AS PRESIDENT OF CUBAN-AMERICAN CERTIFIED PUBLIC ACCOUNTANTS

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it is my great pleasure to recognize Blanca Rosa Ortega who was recently installed as president of the Cuban-American Certified Public Accountants [CPA's] Association.

Ms. Ortega previously served as president-elect, 1990–91, of this association which was established in 1980. The association is a nonprofit organization of CPA's united in common heritage and interests, and sharing a commitment to the highest standards of professional and ethical conduct. The association provides CPA's of Cuban ancestry with continuing professional education, a forum for interaction with CPA's and other professionals, and an opportunity to participate in various community projects. Among the community projects with the association has sponsored are free tax return preparation for the underprivileged, funding of scholarships for students of Cuban ancestry, a voter registration drive, and a Christmas toy drive.

As the association's new president, Ms. Ortega brings a broad educational and professional background to this important position. In addition to having her own CPA practice, she has served as professor of accounting and international business at Miami-Dade Community College South Campus for the last 15 years. During the summer, she teaches international business in Aix-en-Provence, France. Ms. Ortega has a masters of science degree in management with a concentration on accounting from Florida International University.

Ms. Ortega is a member of both the American and Florida Institute of CPA's, the Cuban American National Foundation, the American Accounting Association, the Florida Association of Accounting Educators, the National Association of Cuban-American Educators, a number of other professional and community organizations.

Her many achievements include serving as past chairperson of the Florida Institute of CPA's committee on relations with colleagues and universities. In 1987, on the Outstanding Women's Day, she was honored by CAMACOL for a devoted service and outstanding contributions to the economic development of the community. She is listed in "Who's Who in the South and the Southwest" and "Who's Who in Florida's Latin Community."

I would like to take this opportunity to salute Blanca Rosa Ortega and the other board members who will serve this fine organization during 1991–92. They include Teresita Miglio, Armando Vizcaino, Issac Matz, Juan Godoy, Jesus Maceda, Frank Carballo, Pablo R. Llerena, Jose R. Travieso, and Linda Smukler-Soriano.

TRIBUTE TO DR. EDWARD GUINN

HON. PETE GEREN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. GEREN of Texas. Mr. Speaker, on Thursday, October 24, I had the privilege to honor an outstanding member of my community, Dr. Edward Guinn. Dr. Guinn has served my community as a caring physician, public servant, and leading role model for Tarrant County's many young Afro-Americans.

The most striking characteristic that Dr. Guinn has demonstrated throughout his life is that of a trend setter and educator. Dr. Guinn comes from a long line of men and women who were committed to educating those around them, and he has continued in that tradition by teaching our community a thing or two about staying one step ahead in health care.

Always searching for ways to improve health care services to the people of Tarrant County, Guinn used his position as a Fort Worth city councilman to introduce the city to its first ambulance services. Understanding that the quality of emergency medical services available to a community often determines life or death for many citizens, he was one of the first in Tarrant County to support "911" emergency services.

Dr. Guinn has committed his life to ensuring that all Tarrant County citizens have access to quality health care services, but along the way, he never lost sight of the very special needs of those in his own minority community. After completing his time on the city council, he turned his energies toward improving health care services to the economically disadvantaged. Ever mindful of the future, he continues to dedicate much of his time to recruiting promising young minorities for careers in the health care field.

At the ceremony honoring his lifetime of achievements, the Fort Worth Star-Telegram quoted Dr. Guinn as saying, "When I look back at the magnitude of the problem, I realize how little I've done."

When we look back at Dr. Guinn's life, however, we can only see how much he has done.

TRIBUTE TO JOHN AND REGINA SWEENEY

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. FEIGHAN. Mr. Speaker, I rise today to pay tribute to two of northeast Ohio's finest people, John and Regina Sweeney. On Friday, John and Jean will receive the Henry Miller Busch Award for distinguished service to the Cleveland Chapter of Americans for Democratic Action.

My friendship with John and Jean began during my statehouse days with John in the early 1970's. We had a saying in Columbus that if you wanted to know which side was going to win a vote, all you had to do was find out which way the Speaker of the House voted. If you wanted to find out which side was right—which side was just—find out how John Sweeney voted.

What a wonderful irony it is that John and Jean will receive this award at the Roosevelt Day Dinner—for they have carried on the legacy of Franklin and Eleanor Roosevelt.

The Roosevelts came to the White House at a time when the reputation of the Government was at its lowest, when materialism reigned over humanitarianism, when self-interest was more important than interest in others. They were dark days indeed.

In his 1936 inauguration address, Franklin Delano Roosevelt made an impassioned plea to the American people—a call to action:

> We face the arduous days that lie before us in the warm courage of the national unity; with the clear consciousness of seeking old and precious moral values; with the clean satisfaction that comes from the stem performance of duty by old and young alike.

John and Jean took this call seriously and set out to answer it to the best of their abilities.

They stood at the forefront of the struggle for racial equality even before it was fashionable. They stood against the Vietnam war even as President Johnson and other Democrats saw a victory light at the end of the tunnel. In 1980, they warned of nightfall as Ronald Reagan proclaimed that it was "morning in America."

Through the years, John and Jean have fought for causes long before these causes were popular and long after the press lights and microphones had been turned off.

To figure out Jean and John, you need look no further than their choices in Presidential candidates. In the 1950's they backed Adlai Stevenson; in 1968—Eugene McCarthy, 1972—George McGovern, 1976—Mo Udall, 1980—Ted Kennedy, 1988—Bruce Babbit.

Not one of these candidates actually won, but that's not what mattered to the Sweeneys. What mattered was that these candidates stood for equality, conscience, and justice. What mattered was that these people represented the very best ideals that the Democratic Party could offer. Whether they won or not, they stood not for what was popular—but for what was right.

Their fundamental desire to make life better for others finds its root in their lives at home. Not only have John and Jean been married for 42 years, but they have raised 10 wonderful children—Jack, Mary, Cecile, Rosemary, Frank, Regina, Margaret, Julie, Terese, and Jim. All 10 have gone on to careers in fields such as medicine, government, law, and teaching.

This Friday, we have the opportunity to thank Jean and John for all that they have done. To thank them for crying out for justice when no one appeared to be listening. To thank them for giving so much of their time and energy while asking for so little in return. And to thank for their friendship, always unconditional and enduring. Congratulations on this well-deserved honor.

SELECTED QUESTIONS ON HEALTH CARE FROM THE WIRTHLIN GROUP'S NATIONAL QUORUM

HON. TOM CAMPBELL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. CAMPBELL of California. Mr. Speaker, it is vital that Congress act soon to authorize the Food and Drug Administration to conduct faster reviews of potentially life-saving therapies. I was interested to learn recently just how widespread this view is among the American public.

A survey, conducted by the Wirthlin Group, a public opinion research firm, has found that 75 percent of Americans believe a person should have the choice to use promising therapies for treating incurable illnesses such as cancer, AIDS, or Alzheimer's disease even if they are not yet approved by the FDA. Moreover, 88 percent of those in favor of such choice would want that freedom even if the drug had serious but reversible side effects. By illness, the respondents favored the choice of taking unapproved therapies as follows: patients with AIDS, 97 percent; cancer, 96 percent; Alzheimer's disease, 91 percent; diabetes, 84 percent; heart disease, 84 percent; and arthritis, 78 percent.

It is just plain common sense, Mr. Speaker: If you are suffering from a terminal or seriously debilitating illness, you will most likely be willing to take on greater risks in choosing to use promising, yet unproven, therapies. Under the current system for approving drugs and biologics, many people are dying while the FDA deliberates over whether promising therapies are both safe and effective, a process which can take as long as 12 years.

H.R. 2872, the Access to Life-Saving Therapies Act would authorize the FDA to grant an expedited approval to drugs and biologics that could help those with a life-threatening disease such as AIDS, Alzheimer's, cancer, and heart disease. Mr. Speaker, I urge my colleagues to weigh the significance of the Wirthlin Group study, and to cosponsor H.R. 2872.

I am submitting for the RECORD selected questions on health care from the Wirthlin Group's National Quorum:

SELECTED QUESTIONS ON HEALTH CARE FROM THE WIRTHLIN GROUP'S NATIONAL QUORUM, AUGUST AND SEPTEMBER, 1991

THE NATIONAL QUORUM

The National Quorum is a monthly opinion poll of approximately 1,000 adult Americans, conducted by The Wirthlin Group, a nationaly public opinion research firm headquartered in McLean, Virginia. The Quorum covers a variety of topics including the National outlook, health care, nutrition, the environment, and the S&L crisis. Every topic is not included every month.

METHODOLOGY

Quorum results are weighted by ethnicity and education to adjust for variations in the sample and more accurately reflect the population.

Quorum has a margin of sampling error of ± 3 percent. This means that, in theory, in 96 cases out of 100, Quorum results will differ by no more than three percentage points in either direction from what would have been obtained by seeking out all American adults.

In August and September 1991, the National Quorum contained a series of questions on health care issues, including questions on the terminally ill.

SUMMARY OF FINDINGS

Eighty-eight percent of Americans agree with the statement that life-sustaining medical treatment should be withheld or withdrawn from terminally-ill patients, provided that is what the patient wants or the family wants if the patient is unable to express his or her wishes.

Seventy-nine percent of Americans take the position that a person with a fatal and incurable disease should have the choice. In consultation with his or her physician, of using drugs while they are under review by the FDA. By contrast, only 19 percent take the position that patients should not be allowed to use a promising experimental drug unless it has been approved by the FDA.

Among those who believe the decision to use an experimental drug with fatal diseases should rest with patient and physician, there is nearly universal consent that cancer (96 percent), AIDS (97 percent) and Alzheimer's Disease (78 percent) fall into this category. Majorities also believe that such diseases as diabetes (84 percent), heart disease (84 percent), and arthritis (78 percent) should fall into this category. Nearly all (88 percent) of those who believe that choice should rest with the individual and physician say that choice should be available, even if serious but reversible side effects were known to be a risk associated with an unapproved drug.

FROM THE AUGUST NATIONAL QUORUM

Life sustaining medical treatment should be withheld or withdrawn from terminally ill patients, provided that is what the patients want or what the family wants if the patients are not able to express their wishes.

	Percent
Agree strongly	70
Agree somewhat	18
Agree total (net)	88
Disagree somewhat	5
Disagree strongly	5
Disagree total	10
Not sure	3
Refused	0

FROM THE SEPTEMBER NATIONAL QUORUM

If an individual has a fatal disease, for which there is no cure, and a drug that has been tested and shows promise in treating the disease is under review by the Food and Drug Administration, do you think—patients, in consultation with their doctors, should be allowed to make the decision about whether or not to try the drug before the FDA makes a decision about whether or not to approve it (79 percent) or—patients should not be allowed to use the drug unless it has been approved by the Food and Drug Administration (19 percent), don't know/refused (do not read) (2 percent).

For the same drug and the same fatal incurable disease, some people might suffer a serious side effect that is reversible once they stop the drug. Do you think the decision is still up to the patient and the doctor or do you think the government should NOT allow the use of the drug unless it has been approved by the Food and Drug Administration:

Still up to the patient and doctor (88 percent).

Should not be allowed unless approved by the FDA (10 percent).

Don't know/refused (do not read) (1 percent).

And which of the following diseases would you put in that category? In other words, if a promising drug for cancer, AIDS, alzheimer's, diabetes, arthritis, or heart disease was being evaluated but was not yet approved by the FDA, do you think individuals, in consultation with their doctors, should be allowed to try it?

And how about for—

	Percent
A. Cancer:	
Yes, allow to try	96
No, not allowed to try	4
Don't know refused (do not read)	1
B. Aids:	
Yes, allow to try	97
No, not allowed to try	2
Don't know refused (do not read)	1
C. Alzheimer's disease:	
Yes, allow to try	91
No, not allowed to try	8
Don't know refused (do not read)	0
D. Diabetes:	
Yes, allow to try	84
No, not allowed to try	16
Don't know refused (do not read)	1
E. Arthritis:	
Yes, allow to try	78
No, not allowed to try	21
Don't know refused (do not read)	1
F. Heart disease:	
Yes, allow to try	84
No, not allowed to try	15
Don't know refused (do not read)	1

SALUTE TO DAVID FLEMING

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. GALLEGLY. Mr. Speaker, I rise today to honor a truly outstanding individual, David W. Fleming, for his invaluable contributions to the San Fernando Valley.

David Fleming is a highly successful business law attorney whose record of leadership and achievement is truly nothing short of extraordinary. Over the past 31 years, he has donated more than 12,000 hours of his time and has raised or donated more than $5 million to scores of Valley charities and civic organizations. Despite heavy demands on his time, he has chaired or served on more than 50 community boards and bodies, a record of accomplishment that he continues to increase.

I am pleased to share with my colleagues some of David's most important accomplishments.

As chairman of Los Angeles County's Blue Ribbon Children's Services Planning Commission, he overcame heavy bureaucratic opposition and persuaded the board of supervisors to create the children's planning council. The council, on which he serves, is composed of business, education, government, and social leaders and will, for the first time, plan and coordinate the spending of more than $4 billion each year through 1,200 different programs to help children in need. Because of his efforts, it is estimated that some 50,000 needy Valley children will soon, for the first time, receive help for abuse, neglect, mental and physical health, hunger, poverty relief, and juvenile crime prevention—without the need for new taxes.

As chairman of Valley Presbyterian Hospital, he has raised millions of dollars to expand the facility by 50 percent and to build the largest neonatal and pediatric intensive care unit in northern Los Angeles County.

As chairman of the Valley Industry and Commerce Association for the past 2 years, he greatly expanded VICA's size and scope, established its new education foundation and helped make VICA a potent political force for business and industry in the Valley.

As capital campaign chair for the school of education at California State University, Northridge, he is working on raising funds for the new $29 million business and education center.

In addition, he now serves as an officer or director of the Boy Scouts of America's Western Council, the United Way, the Valley Interfaith Council, the Valley Cultural Foundation, the 2000 Partnership, VICA, and Valley Presbyterian Hospital. He has also served dozens of other organizations, including Big Brothers, the Los Angeles Olympic Organizing Committee, the YMCA, the National Conference of Christians and Jews, the Red Cross, and the March of Dimes.

In recognition of David Fleming's long and successful record of service, he will be presented this week with the Fernando Award, given annually to the Valley's most outstanding individual. It is an honor that is long overdue.

Mr. Speaker, I ask my colleagues to join me in saluting David W. Fleming for his outstanding and selfless community service to the San Fernando Valley.

LUIS MARIO COMMENDED FOR HIS BOOK "CIENCIA Y ARTE DEL VERSO CASTELLANO"

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, "Ciencia y Arte del Verso Castellano," a book written by Mr. Luis Mario, is an informative work of art which focuses on Spanish literature as interpreted by one of the modern world's most respected poets.

Luis Mario, an expert in Spanish literature as well as a master of the language, shares with us the beauty of rhyme within poetry. He quotes Mr. Octavio Paz by stating that although rhyme is not essential to poetry, it is an important part of Castilian poetry.

He speaks also of the beauty which words create when used in verse and how this has affected the advancement of the Spanish language, and he demonstrates how metaphors—the use of words, which describe objects to characterize a feeling or a thought—are used to create beauty in poetry. He also speaks of the ability to create images with words as one of a poet's greatest attributes. Mr. Mario portrays one element in each chapter of his book, and with each one he brings his readers closer to understanding the structure and composition of poetry.

It is certainly appropriate, as we approach the quincentennial of the discovery of this area of our world, that Mr. Mario has presented us with his work "Ciencia y Arte del Verso Castellano." His book is a tribute to the first European language that was spoken in America. I commend this great work of literature to all.

TRIBUTE TO DR. MARION "JACK" BROOKS

HON. PETE GEREN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. GEREN of Texas. Mr. Speaker, on Thursday, October 24, I had the privilege of honoring one of my community's finest leaders, Dr. Marion "Jack" Brooks. Dr. Brooks has dedicated his life to bringing a better life to the minority citizens of Tarrant County, as a physician, as a public official, and as leader on civil rights.

Chester Bowles once said, "Government is too big and important to be left to the politicians." Dr. Brooks personifies that statement in his tireless efforts to improve the quality of public services available to Tarrant County's minority community. Here are just a few of the achievements for which he will be remembered.

As the Tarrant County minority community was struggling in 1951 to find trained minority physicians, Dr. Brooks established his medical practice to give them the best health care available. When he discovered that the minority citizens of Tarrant County deserved much more from the local government services than they were receiving, he became one of the first African-Americans to be appointed to community boards and commissions.

When so many in his minority community could not make the long and expensive trip in 1963 to march with Dr. Martin Luther King on Washington, Dr. Brooks organized his own march—on Austin, TX. While others took the message of civil rights to the Federal Government, he made sure our State officials heard the message loud and clear.

Dr. Brooks also took this message to local officials when he cofounded the Tarrant County Precinct Workers Council in the 1960's, a grassroots caucus on civil rights that maintains its political power even today.

Dr. Brooks is a great American and a proud American. At the ceremony held in his honor on Thursday, he told of an encounter with a French soldier during World War II. When asked about his allegiance to his country, he told the soldier, "I would rather be a lamppost in Dime Box, TX, than the Prime Minister of France."

We are thankful he is a doctor in Fort Worth.

SYRIAN TERRORISM

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. FEIGHAN. Mr. Speaker, last week I introduced a resolution concerning the Syrian connection to terrorism. Since 1979, successive administrations have determined that Syria is a state sponsor of international terrorism. Syria has been linked directly and indirectly to a series of terrorist attacks against Americans and other civilians, plays host to notorious terrorist organizations; and allows Syrian-controlled territory in Lebanon to be used as safe haven and training bases for international terrorists.

A few weeks ago, I had the opportunity to meet with several families of American victims of terrorism—families of victims of the Pan Am flight 103 bombing, the Marine barracks bombing, the parents of Navy diver, Robert Dean Stethem who was killed during the 1985 terrorist hijacking of TWA flight 847.

These families of victims are victims themselves. Tragedy has touched each and every one of them and they continue to search for some resolution, some measure of justice, to allow them to move on with their lives. They have put their trust in the U.S. Government to pursue these terrorists and to bring them to justice for the murder of their children.

Unfortunately, the wheels of justice in these cases don't seem to move. And to some of these families they appear to be moving in the wrong direction. The recent efforts by the Bush administration to seek better ties with Syria is a case in point. It is inexplicable to Pan Am 103 families that we would cozy up to a dictator like Hafez Assad, who continues to harbor international terrorists that have been linked to the December 1988 bombing. The families fear that the Libyan "triggermen" will soon be indicted and the investigation will end—never identifying the intellectual authors of this brutal and heinous act.

House Resolution 260 calls upon the administration to raise the issue of terrorism with the Syrians at the Madrid Peace Conference. It calls upon Syria to renounce terrorism, to end its support for terrorist groups, and to dismantle terrorist training bases under Syrian control.

I ask my colleagues to join me in this effort to strengthen our counterterrorism policy and move the wheels of justice in the right direction.

A copy of the resolution follows:

H. RES. 260

Whereas since December 1979 Syria has been determined to be a country supporting international terrorism under section 6(j) of the Export Administration Act of 1979;

Whereas Syria has been directly linked to the attempted bombing in 1986 of an El Al flight from London to Israel through its paid agent Nezar Hindawi;

Whereas Syria continues to sponsor the activities of Ahmed Jabril, a Syrian-born military officer and leader of the Popular Front for the Liberation of Palestine-General Command, who has been strongly linked, along with his Syrian sponsors, with the 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland, which resulted in the death of 270 people, including 188 Americans;

Whereas Syria has supported Abu Nidal, the man responsible for the simultaneous attacks on the Rome and Vienna airports in 1985, numerous assassinations of international officials as well as American citizens;

Whereas Syria participation in the drug trade out of Lebanon provides up to 20 percent of the hashish that enters the United States market and with Lebanon's prime growing areas under Syrian control, 40 percent of its opiate production is exported to the United States; and

Whereas these activities provide Syria with massive profits, reportedly as high as $1,000,000,000 a year, thereby enhancing Syria's ability to sponsor terrorism: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) it should be the policy of the United States to pursue discussions regarding Syria and terrorism at the Middle East peace conference in Madrid, Spain, in October and November of 1991;

(2) Syria should, in this regard, completely renounce all forms of terrorism;

(3) Syria should cease all support of terrorism including financial, military, economic, and political aid to all terrorist groups; and

(4) Syria should close all terrorist training bases on Syrian territory and Syrian-controlled Lebanese territory, particularly that of the Bekaa Valley.

RONNIE C. DAVIS RIDGLE

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. DYMALLY. Mr. Speaker, a young man whom I witnessed growing up as a young adult in junior and senior high school, then as a leader on his college campus, recently passed away after a long illness.

Ronnie Ridgle, as we called him, was the son of the first staffer, Dr. Louise Ridgle White, whom I hired after I was elected to the California Assembly in 1962.

Ronnie was recently buried in Los Angeles. His obituary captures his contributions during his very productive and young life. He will be missed by both his family and friends.

May God bless him, and may he rest in peace.

OBITUARY

Ronnie C. Davis Ridgle, a practicing attorney, and the first African-American elected as President of the Student Body at the University of California, Irvine, died September 30, 1991 at his San Francisco home after a lengthy illness.

Ronn earned his BA degree from the University of California, Irvine, where he opened doors for and recruited other African-American students to the campus. He went on to earn his Juris Dictorate in Law from the University of California at Davis, California.

He was born in England, Arkansas, and moved to Los Angeles, California, with his family when he was four years old. He attended elementary, junior and senior high school in Los Angeles.

Ronn was baptized at Zion Hill Baptist Church, Los Angeles, CA, where he was extremely active in youth development programs. As a young adult he became involved with the political and social issues of our times. As a college student he served on the Advisory Council to the Governor of the State of California and continued this interest in issues as a practicing attorney. He was a world traveler who enjoyed the love of people and the beauty of life.

Ronn was a member of the State Bar of California, the Lawyers Club of San Francisco, The Charles Houston Bar Association and the U.S. Supreme Court Bar.

Ronn was well liked by and loved by his family and friends. He leaves to cherish his memory a loving mother, Dr. Louise R. White of Washington, DC; grandmother, Mrs. Hattie M. Houston, Los Angeles; aunts: Mrs. Lilli Bryant, Los Angeles; Mrs. Genevieve Greene and Mrs. Rosie Pender, Memphis, TN; a great uncle, Mr. Eugene Dotson, a host of relatives and friends.

TRIBUTE TO DONALD W. WYATT

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize Donald W. Wyatt upon his retirement after nearly 19 years of service as U.S. marshal for Rhode Island. Donald Wyatt has been and continues to be an active and outstanding citizen on both the State and local level.

During his tenure as U.S. marshal, Donald Wyatt served on several committees, studying topics ranging from the Marshals Service Bicentennial to the northeast jail crisis. Over the same period of time he received three awards for sustained superior service as well as a director's award for his involvement with the Witness Security Program.

Donald Wyatt's involvement with politics has been profound. A resident of Warwick, he was the chairman of the commission which drafted the city's charter. Additionally, he chaired the Warwick Young Republicans, as well as the Warwick Republican City Committee. On the state level, Donald Wyatt served as then Gov. JOHN H. CHAFEE'S chief of staff for 6 years and as a staff assistant for Senator CHAFEE for 2 years.

Beyond the political spectrum, Donald Wyatt has been influential in the church as well. For 15 years, Donald Wyatt served as executive secretary for the Diocese of Providence Catholic Youth Organization. Winning awards, such as the CYO Youth Congress plaque, the

Catholic Young Adult Award, and the Catholic Broadcasters St. Gabriel Award, is further testament to Donald Wyatt's dedication.

Donald Wyatt is a member of the board of directors of Justice Assistance, the Circus Fans of America, the Circus Historical Society, the Rhode Island Historical Society, the Warwick Historical Society, and the Warwick Museum. In his retirement, Donald Wyatt is continuing his positive influence by writing commentaries on contemporary affairs, while simultaneously working on a novel.

Donald Wyatt deserves recognition and congratulations for his successful career. His contributions to the lives of many Rhode Islanders are countless, and his tireless participation stands as a model to all citizens. I extend my best wishes to Donald Wyatt in all of his future endeavors.

THE BIG WINNERS OF FREE TRADE

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. BEREUTER. Mr. Speaker, this Member would ask to insert into the RECORD excerpts from an editorial from the October 25, 1991, Journal of Commerce, entitled "The Big Winners of Free Trade." Reduced tariffs, he contends, are bringing little, if any, reduction in retail prices. I commend this editorial to my colleagues.

THE BIG WINNERS OF FREE TRADE

(By Charles Bremer)

It has long been an article of faith in the world of international trade that anything that restricts the flow of imports into a market must be inefficient, expensive and inherently evil.

Tariffs on imports are blamed for nearly all of the failings of the free enterprise system. They are blamed for wasteful production, extravagant use of human and financial capital, reduced potential for exports, artificially inflated exchange rates and—the most often cited bugaboo—increased cost to the consumer.

Over and over again in editorials, monographs from academia, press releases and congressional testimony, pundits say that imports tariffs end up costing American consumers billions and billions of dollars annually. Remove these barriers to imports, they argue, and consumers will reap a windfall.

U.S. import tariffs clearly are an addition to the price of an imported product. Should it not follow that lower tariffs mean lower prices for consumers? It should, but it doesn't. Here are some examples of what happens in the real world.

On Sept. 1, 1985, the U.S.-Israel free-trade agreement went into effect and the cost of a woman's bathing suit imported from Israel suddenly dropped 22%. Was the retail selling price of those bathing suits reduced after Sept. 1? It was not. Well, if the consumer didn't put the 22% savings in her pocket, into whose pocket did it go? Importers pocketed the difference.

That consumers do not automatically gain from a lower tariff is the rule, rather than the exception. Last November, when Czechoslovakia received most-favored-nation tariff status—the standard low-tariff treatment for U.S. imports—the tariff on a six-pack of Pilsner Urquell beer was cut 88%; the tariff on a Supraphon compact disc of the music of Bohuslav Martinu was reduced 89% and the tariff on a set of Bohemia crystal champagne flutes was slashed from 60% to 14% ad valorem.

But last month, nearly a year after their import duties plummeted, there was no change in the retail prices of the Czechoslovakian beer, compact disks or stemware. Someone benefited, but it wasn't Mr. or Mrs. Consumer.

And this is nothing new. Twelve years ago, at the conclusion of the Tokyo Round of multilateral trade negotiations, the United States, ever eager to demonstrate its magnanimity and leadership in international trade, cut its import tariffs across the board. When I told a colleague in New York who imported large quantities of low-priced Chinese textile commodities that tariffs on the products he imported would be cut 25%, I remember him saying—these are his exact words—"Wow, are we gonna make money now!"

I know a man in New York who imports goods from the Soviet Union. He calls at least once a month to ask if I know exactly when the Soviet Union will be granted most-favored-nation status and thus receive the rather large tariff reductions that Czechoslovakia received last year.

I know this man and his company well enough to understand that they are eager to place big orders with their Soviet supplier for delivery immediately after most-favored-nation treatment goes into effect. I am sure they have absolutely no intention of passing any of this windfall on to their customers.

None of this is meant as an indictment of those two gentlemen in New York or anyone else who profits—and profits handsomely—from importing. That's capitalism at work. It is what defines us as a nation and as a society and is no cause for complaint.

What is cause for complaint is the notion that the United States is somehow best served by throwing open its doors to all imports without exception and without controls.

MIAMI'S FESTIVAL OF FAITH

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, His Excellency Edward A. McCarthy, Archbishop of Miami, and the Archdiocese of Miami, will celebrate a festival of faith, December 4–9, 1991, at the Miami Beach Convention Center. For these 6 days, thousands of Catholics and others will experience and observe the marvelous things that are being made available in living the faith out fully. The event, which is free and open to all people, will help build enthusiasm for the faith and renew pride as preparation for next year's fifth centennial observance of the arrival of Christianity to the Western Hemisphere.

The weeklong festival of faith will be marked by a hall of permanent exhibits from the Vatican Museum and Library, historical exhibits, Old and New Testament journeys with the Jewish and ecumenical communities, and a picture of the services of the Archdiocese of Miami and their involvement in the south Florida community. This will be connected by prayer and reflection through hundreds of workshops, in many languages, dealing with every phase of spiritual journey. Evangelization is the calling.

Mr. Speaker, this is the first time in history of this young diocese that they are gathering a high diversity of south Florida's multicultural, multilingual peoples for prayer, reflection, and to pause and thank God for being with us. I would like to praise Archbishop Edward McCarthy for his faith and his leadership in promoting the festival of faith. I would also like to recognize and commend Father Patrick H. O'Neill, festival director; Bishop Augustin P. Roman, Auxiliary Bishop of Miami; and Rev. Gerard LaCerra, Chancellor of the Archdiocese, for their untiring work toward making this festival a success.

Mr. Speaker, I ask my colleagues to join me in offering best wishes to the Archdiocese of Miami as they commemorate their faith and celebrate their history, its people and ministries.

NATIONAL HONOR

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. CLAY. Mr. Speaker, I would like to call to the attention of my colleagues that the Wydown Middle School of Clayton, MO, has been recognized as one of five schools in the St. Louis area by the Department of Education for excellence and to the fact that Miss Aliceia Smith, a student from this institution, was selected to accompany Mr. Jere Hochman, principal of Wydown Middle School, to Washington to accept this award at the White House on September 25, 1991.

This exceptional award is a great honor for the Greater St. Louis area and is a district honor for Miss Smith to have been selected to participate in this event.

I am pleased to share with you an article that appeared in the St. Louis Post Dispatch on September 26, 1991.

[From the St. Louis Post Dispatch, Sept. 26, 1991]

MISS SMITH GOES TO WASHINGTON TO ACCEPT WYDOWN MIDDLE SCHOOL'S EXCELLENCE AWARD

(By Carolyn Bower)

Aliceia Smith, an eighth-grader at Wydown Middle School in Clayton, traveled to Washington this week to pick up an award for educational excellence.

Smith's name was drawn at random from a glass bowl containing names of 120 students beginning their third year at the school, said Jere Hochman, principal at the school.

"We decided to take a student along, because our students are the reason we will be in Washington," Hochman said. Smith, 13, lives in St. Louis.

Wydown is one of five schools in the St. Louis area that the U.S. Department of Education recognized for excellence.

Also getting awards at the White House for educational excellence will be administrators from Westminster Christian Academy in Creve Coeur, Cor Jesu Academy in the Affton area of south St. Louis County, Nerinx Hall High School in Webster Groves and Villa Duchesne High School in Frontenac.

"Our kids are energetic and hard-working," Hochman said. "Our teachers make us a blue-ribbon school. Our parents are supportive and have high expectations."

This is the second time Wydown Middle School has won the distinction, Hochman said.

But Wydown has become a different school since it won the award in 1985, Hochman said.

In the last five years, Wydown went from a two-year junior high school to a three-year middle school with 501 students. The school's building and curricula underwent major changes.

Smith's brown eyes shine when she talks about science and chemistry, some of her favorite courses at school. Smith wants to become a pediatric surgeon some day, because she likes children.

She particularly enjoyed a project teaching students about earthquakes. Students built boxes with balloons hooked by tubes to a pump. They covered the balloons with sand.

They pumped up the balloons, then measured cracks that formed in the sand to determine what type of earthquake had taken place.

Smith also spoke highly of a project to learn about politics. Students assumed the roles of senators and other government officials.

Smith, Hochman and Marilyn McWhorter, a teacher at Wydown, arrived in Washington Monday, visited congressmen Tuesday and went to the White House Wednesday.

SAN JOSE COMPANY WINS MALCOLM BALDRIGE AWARD

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. EDWARDS of California. Mr. Speaker, it is a pleasure to share with my colleagues the news that Solectron Corp. of San Jose, CA, has been selected as a 1991 winner of the Malcolm Baldrige National Quality Award. Solectron, a circuit board manufacturer for such companies as Apple Computer and Hewlett-Packard, is the first bay area winner since the inception of the prestigous award in 1987.

The award is given, not for specific products or services, but for a company's method for assuring quality in those goods and services. Under the rigorous application process, candidates are evaluated on leadership, information and analysis, strategic quality planning, human resources utilization, quality results and customer satisfaction. Solectron has proven its excellence in each of these areas of quality assurance.

As our economy becomes more competitive and international in scope, American companies must strive to maintain responsiveness and provide the highest level of quality to consumers. Mr. Speaker, I proudly present Solectron to my colleagues as a fine example of such commitment to quality.

TRIBUTE TO MS. DORI PYE

HON. HOWARD L. BERMAN

OF CALIFORNIA

HON. HENRY A. WAXMAN

OF CALIFORNIA

HON. MEL LEVINE

OF CALIFORNIA

HON. ANTHONY C. BEILENSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. BERMAN. Mr. Speaker, we rise today to express our admiration and pay tribute to a dear and valued friend, Ms. Dori Pye. Dori will be recognized by the City of Hope as this year's recipient of the prestigious "Spirit of Life" honor for her compassionate care and dedicated service to the community.

Dori's years of service have touched and enhanced the lives of many. As president of the Los Angeles Business Council, Dori has represented economic and commercial interests throughout Los Angeles, in Sacramento, and in Washington DC. Dori's savvy and organizational skills have helped establish the semiannual Westwood Art Show, the Urban Beautification Awards Program, which annually recognized outstanding construction and landscaping projects throughout the area, and she is responsible for the creation of the Leadership L.A. project, which uses intensive seminars on important community issues to prepare businessmen and businesswomen in assuming leadership roles in the community.

Throughout her entire lifetime, Dori has tirelessly and selflessly served her fellow citizens. She has always been a trailblazer. Dori Pye was the first woman chamber of commerce manager in the United States and the first chamber manager in the city of Los Angeles to achieve accreditation status for the chamber. She is the second woman in the Nation to have been awarded certified chamber executive status [CCE] by the National Association of Chamber of Commerce Executives. Dori has distinguished herself as a successful businesswoman working tirelessly to improve the well-being of her community.

Dori has been a major force in the success of numerous boards and advisory commissions, including board of commissioners/housing authority, LA International Airport Area Advisory Committee, art council/Loyola Marymount, and P.A.T.H. [People Assisting the Homeless].

Dori's outstanding community involvement, continuing support and commitment to humanitarian cause has allowed her to touch many lives. We ask our colleagues to join in saluting Dori Pye, an invaluable member of our community.

CHILD SUPPORT ENFORCEMENT IMPROVEMENT ACT OF 1991

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Ms. SNOWE. Mr. Speaker, most American parents agree that they have a moral, if not legal, responsibility to support their dependent children—even if the parents are not in the same household. In reality, however, of the 10 million women in 1990 living with children whose father was absent from the home, only 50 percent received child support awards.

Unfortunately, in too many cases, being awarded child support is not nearly the same as actually receiving child support payments. In fact, one-quarter of women awarded child support received no money at all, and another one-quarter received only partial payment.

Compounding the lack of monetary child support, medical support is awarded and provided even less frequently—even though it is crucial that children have access to health care, regardless of their parents' status. This absence of medical support for children in one-parent families endangers the child's health and frequently results in higher Medicaid costs.

Today I am introducing legislation to strengthen and improve child support enforcement mechanisms. First, my bill would require that, within 30 days of a court order for medical support, the noncustodial parent would have to provide proof that the child has been put on his or her insurance policy. If not, that parent would then be liable for the costs of all necessary medical services for the child.

In addition, my bill would increase access to financial institutions by State child support enforcement agencies when setting a child support award. Currently, a State child support agency can access financial institutions only after a court has determined a support award. However, in order to determine the most accurate award, the agency must first have access to these financial institutions. By holding harmless such institutions and credit reporting agencies, for disclosing information to authorized child support enforcement agencies, my bill means that a parent's full resources will now be evaluated.

My bill also expands the opportunities for a State child support agency to access a delinquent parent's IRS tax intecept refund check, one of the more simple and effective child support enforcement mechanisms.

Further, my legislation responds to the complaint that employers, who withhold wages of employees owing child support, often delay the transfer of the garnished wages in order to collect interest on the money or to aid a noncustodial parent owing the support. They are able to do so with impunity because there is no penalty for this practice. My legislation would require employers to turn over garnished wages to State child support enforcement agencies within 10 days or incur a $1,000 fine.

Finally, this bill establishes a national network to locate parents owing child support. The network would be developed by the Federal Office of Child Support Enforcement and would build on the comprehensive statewide child support enforcement computer systems which States are required to develop by 1994.

It is sad but true that many parents are not fulfilling their responsibilities to the children they bring into the world. It is my hope that when child support has been awarded, this legislation will help ensure that children do not suffer simply because child support laws aren't adequately enforced.

INTRODUCTION OF LEGISLATION TO PROMOTE THE DEVELOPMENT OF ALTERNATIVE WATER SOURCES

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. PACKARD. Mr. Speaker, I ask that my remarks be submitted for the RECORD.

Today, Mr. Speaker, I, along with several of my colleagues, introduced legislation that would promote the development of new technologies for increasing the Nation's dwindling supply of clean water.

The two bills, known as the "Clean Water Package" commit the Federal Government to studying major water recycling and desalination projects. By studying comprehensive wastewater reclamation and desalination technology, we hope to refine technology to improve our water supply.

The quality and quantity of our Nation's water supply is increasingly threatened by pollution, drought and saltwater intrusion. Many communities have existing water supplies which contain contaminants that pose a significant health risk.

The two companion pieces of legislation make up a comprehensive package of solutions to California's serious water shortage problems. The Desalination Technology Act of 1991 establishes a desalination research program under the National Science Foundation for the development of efficient and cost-effective ways to remove salts and other impurities from water. My distinguished colleagues, Congressmen BOUCHER, RIGGS, LOWERY, CUNNINGHAM, ROHRABACHER, GALLEGLY, WALKER, BOEHLERT, and LEWIS of Florida, join me in introducing this legislation.

The Wastewater Reclamation Act of 1991 authorizes the study, design and construction of a regional water reclamation and reuse system for southern California. Reclamation refers to the process of treating previously used water in order to recycle it for agricultural, municipal, and recreational uses. Congressmen RIGGS, CUNNINGHAM, LOWERY, DORNAN, DANNEMEYER, HUNTER, HERGER, GALLEGLY, and ROHRABACHER join me in introducing this important bill.

The Desalination Technology Act and Wastewater Reclamation Act combine to provide an effective, viable solution to the water problems which threaten not only California and the Southwest, but the Nation as well.

Since water is a limited resource, we must not only concentrate on conservation of freshwater supplies, but seek alternative technologies which allow us to reuse wastewater and convert saltwater into a usable supply. Our plan is to incorporate this legislation into the Clean Water Act, which will be reauthorized next year.

Our critical need to develop alternative water sources prompted the introduction of this package of legislation. It provides, in part, a solution to a dire situation. I ask my colleagues to cosponsor this legislation and support this effort.

Thank you.

LIMITED TAX RELIEF FOR POLICE OFFICERS AND FIREFIGHTERS

HON. BARBARA B. KENNELLY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mrs. KENNELLY. Mr. Speaker, I rise today to join my colleague from Connecticut, Representative ROSA DELAURO, in introducing legislation which would provide limited tax relief to police officers and firefighters who have become disabled because of heart disease or hypertension. This bill would not provide permanent tax relief for the disability benefits received by these employees; employees who often serve our cities and towns in the most hazardous of conditions. Rather, the bill would provide tax relief only for benefits received during 1989, 1990, and 1991.

These benefits were paid to police officers and firefighters who became disabled or died as a result of heart disease or hypertension. The municipalities that paid the benefits believed, in good faith, that the benefits were not taxable. The municipalities did not, therefore, report them as taxable income to the recipients or IRS. The disabled retirees and widows who received the benefits also believed, of course, that the benefits were not taxable.

Now IRS has ruled that the benefits are taxable because of an inadvertent technical flaw in the State statute under which the benefits are paid. IRS is seeking back taxes, penalty, and interest for 1989, 1990, and 1991 from these disabled workers or their widows. These are people caught in a technical mistake, not of their own making, who can ill afford the financial hardship the IRS ruling will cause. The technical mistake in the State statute can be fixed by 1992 so that future benefits will be indisputably tax exempt. This bill will give justified and fair tax relief to disabled police officers, firefighters, and their widows for the prior years over which they had no control. I urge my colleague's support.

THE 35TH ANNIVERSARY OF HUNGARIAN REVOLUTION

HON. BERNARD J. DWYER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. DWYER of New Jersey. Mr. Speaker, as we know, in October of 1956, a student demonstration in Budapest started the Hungarian Revolution. The revolution was crushed by the Soviets within a matter of days and the aftermath for the participants involved in the uprising proved to be brutal.

It is estimated that 150,000 people were deported. Even today, the fate of many of these people can only be surmised. Many other freedom fighters were left no choice but to leave Hungary if they wanted to live.

As they were primarily students, the Hungarians who left were young people, some as young as 14 years of age. The choice they made was an extremely difficult one because they left their homes and their families. It is hard to conceive of our children or grandchildren in this same situation, forced to go to foreign countries in order to escape death.

Fortunately, many of these young men and women came to America. They began new lives in a land of freedom. And, because they were mostly alone, they gravitated to clubs where the newly arrived Hungarians could meet others in the same circumstances and maintain their ties with their rich cultural heritage.

In my congressional district one such club is the Hungarian American Athletic Club [HAAC]. Affectionately known throughout New Jersey as the HAAC's, the club has been a magnet for Hungarian Americans in central New Jersey. It was a haven for the freedom fighters who escaped the retribution of the Soviet Army. Over the years it has become a social club, continually meeting the needs of its members. It is a place where Hungarian Americans can maintain friendships and enjoy the activities sponsored by the HAAC's. And, it is still a place of refuge where Hungarian Americans can share in a common history, one which is not always a happy one; but one of which everyone can be proud.

Last Sunday, October 27, 1991, the Hungarian freedom fighters gathered at the HAAC to commemorate the 35th anniversary of the 1956 revolution. More than 200 people attended and New Jersey Governor Florio signed a proclamation marking October 23 as a historically significant day. Mr. Speaker, we are a richer nation for the contributions of Hungarian Americans and it is appropriate to share with them in the commemoration of their valiant struggle, which has certainly been a forerunner to the democratic change which has swept Eastern Europe.

U.S. POSTAL SERVICE MIAMI DIVISION HONORS THOSE WHO SERVED IN OPERATION DESERT STORM

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it is my great pleasure to recognize the Miami division of the U.S. Postal Service which is honoring 77 of its employees who served in the Persian Gulf during Operation Desert Shield and Operation Desert Storm. The ceremony will take place on November 10, 1991 at the new South Florida Mail Processing Center in Pembroke Pines.

The 77 employees were among the more than 500,000 U.S. soldiers, sailors, and airmen who answered their country's call to duty by fighting for freedom in the Persian Gulf. These 77 Miami area postal workers were also among more than 2,500 postal employees nationwide who were members of military reserve units which served in the Persian Gulf.

The ceremony will begin with honor guards from American Legion Post No. 22 and National Guard Explorer Post No. 62, followed by the singing of the national anthem by Leon Gliatta, a retired postal employee and veteran from Miami. Miami Division Postmaster James Walton and two air force captains from Homestead Air Force Base, Glenn Lawson and Anthony Cerbins, are scheduled to speak. As part of the ceremony, each veteran will receive a first day cover of the stamp honoring those who served in Operation Desert Shield and Desert Storm which was issued by the U.S. Postal Service on July 2. There will also be a special ceremony for one of the veterans who passed away since returning from the Persian Gulf, Bonnie Olsen. The speech for a fallen comrade will be recited as taps are played in her memory.

I would also like to take this opportunity to thank those Miami area postal employees who served our Nation in the Persian Gulf. They include Robin Anderson, Luis T. Andrade, Robert G. Banks, Johnny F. Barber, Sylvester L. Barnes, Victor Binando, Joann Blake, John M. Boland, Willie F. Bradshaw, Carl E. Bullard, Andrew Canizares, Jerry G. Chapman, Joseph A. Cofelice, Louis C. Cooper, Stuart G. Coote, Paul V. Danyi, Michael Diaz, Thomas R. Dickie, Alan S. Dixon, Judy A. Evans-Goa, Giraldo Fernandez-Guerra, Paul V. Foote, Lolito U. Gapud, James A. Genna, James T. Glass, Robert L. Gooden, Edward B. Graham, Willie L. Hamilton, Jr., Donald Hammond, Vonnie L. Harps, Bruce K. Hayes, Gene V. Hayes, Ronald C. Hill, Curtis Hinson, Jr., James Hudson, Jennifer K. Hunter, Atilio Jarquin, Darryl K. Johnson, Gerald M. Jones, Michelle Y. Kunzig, Robert W. Long, Marc W. Malavasic, Ronald B. Mann, Charles S. McBride, Terrence F. McGrath, Carol E. Monday, Johnny D. Niedzwiedzki, Raul Oliverarivera, Bonnie Olsen, Terry L. Overly, Ana M. Pagan Vigay, Jimmie L. Persons, Jr., Jimmy L. Phinazee, Jesus O. Rizo, Bobby G. Roberts, Wrenford O. Rogers, Robert T. Ryan, Naomi R. Sandell, Beverly J. Sanders, Michael E. Sheely, John L. Simpson, Carlton Smith, Glenn R. Spear, Warren L. Steele, Sebron A. Thomas III, Billy J. Thornton, Orlando L. Torres, Joe Walker, Deloris M. Watson, Jackie R. Watson, James N. Watson, David E. Webb, Nathaniel White, Theodore Williams, Michael T. Woods, William T. Young, and John J. Zielsdorff.

VIOLENCE IN YUGOSLAVIA

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. SIKORSKI. Mr. Speaker, since June, the world has been watching the growing horror and bewilderment as the violence in Yugoslavia has exploded. Despite the efforts of the European Community to broker 10 cease-fire agreements between the Republic of Croatia and the Yugoslavian Army, we continue to witness the destruction of historic cities, and the slaughter of innocent men, women, and children. The savagery and deep-rooted hatred that has marked this conflict have clearly demonstrated that the price of American indifference and indecisiveness will be the continued destruction of human life.

I would like to take the opportunity to commend my colleagues, the gentleman from Pennsylvania [Mr. KANJORSKI], and the gentleman from Wisconsin [Mr. KLECZKA] for the timely and critically important resolution that they recently introduced in this body. This resolution is particularly helpful because it states unequivocally that the United States will not associate itself with any group that continues to perpetuate the fighting. The importance of this resolution—and the reason I am pleased to be one of its cosponsors—is that while it refuses to take sides in the underlying ethnic dispute in this crisis, it offers the Bush administration concrete options for taking decisive action against the perpetrators of this bloodletting. The resolution correctly points out that the United States is uniquely positioned to influence the United Nations and the various international financial institutions to level meaningful sanctions against aggressive and expansionist forces.

It is unbelievable that the United States administration can stand aside as the Yugoslavian Army systematically reduces the cities of Dubrovnik and Vukovar to rubble. I find it equally incomprehensible that the administration is apparently unmoved by the sight of humanitarian aid workers falling prey to snipers and mortar attacks as they attempt to rush food and medicine to the beleaguered cities. How many innocent civilians have to die? How many cities have to be devastated by artillery barrages? How many ambulances and humanitarian workers have to be strafed before President Bush decides that this crisis is worthy of his attention? While we should applaud the efforts of the European Community to broker an agreement, it is clear that the United States must play a much more creative and energetic role in this crisis.

It has been extremely sobering to watch the disintegration of Yugoslavia. It has been even more painful to watch the central government attempt to squeeze the life out of the Croatian Republic. We should not attempt to render judgment on the conflicting national and ethnic claims that swirl around this conflict. However, we have both a right and responsibility to demand that a peaceful settlement is pursued and fundamental human rights are protected. The price of America's silence has already been too high.

EDWARD SEGAL, GRAND CHANCELLOR OF THE PENNSYLVANIA KNIGHTS OF PYTHIAS

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. BORSKI. Mr. Speaker, I rise today to honor Edward Segal, who will be honored by the Pennsylvania Knights of Pythias on November 2.

Mr. Speaker, the Order Knights of Pythias, to which Edward Segal gives his time and talent, was founded in Washington, DC in 1864. Established during the Civil War, it was hoped the Knights of Pythias might help to heal the wounds and allay the hatred of the war's conflict.

Edward Segal has dedicated his life to the service of others through the three cornerstones of Pythianism, which are friendship, charity, and benevolence. Edward has served as chairman of Kinkora Pythian Home for the Aged and has supported public awareness needs in safety poster, public speaking, and essay contests.

Edward Segal is a former police officer, deputy sheriff, and is presently a private investigator. He is an active citizen in his community and is dedicated to the principles of his religion.

All of this, plus many other contributions, led his peers to select Edward Segal as the grand chancellor of $10,000 members of the Pennsylvania Knights of Pythias.

On November 2, the Barbarossa Lodge No. 133 of the Knights of Pythias will honor Edward Segal for his service. I join the Barbarossa Lodge and all of Edward's friends in tribute to him.

A SALUTE TO THE HIGHLAND GUARD FLAG TEAM

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. MAZZOLI. Mr. Speaker, I commend to the attention of my colleagues an article from the Courier-Journal of October 16, 1991, concerning the Highland Guard Unit from the American Legion Highland Post 201 of Louisville, KY.

The ceremony of "posting the flag"—putting the flag on display—has been perfected to such an extent by the Highland Post Guard Unit that this flag team captured the national American Legion title in the flag posting competition which took place over the Labor Day weekend. In the process, the Highland Post team beat out 13 competing teams from around the Nation.

The pride that the Highland Post Guard Unit demonstrates in putting "Old Glory" on display brings distinction to Louisville and Jefferson County, and illustrates the true meaning of the word "patriotism." Many who have seen this troop perform have said that their performance brings tears to the eyes of those who honor and respect the American flag.

I salute the members of the Highland Post Guard Unit: Mr. Russ Stone, Mr. Brent Bosler, Mr. Pat Conway, Mrs. Elaine Conway, and Mr. Roger Ballard.

Mr. Speaker, I place the Courier article in the RECORD at this point for the pleasure of my colleagues.

[From the Courier-Journal, Oct. 16, 1991]

LEGION SALUTES HIGHLAND FLAG TEAM

(By Martha Elson)

In its quest to "foster and perpetuate one hundred percent Americanism," as its constitution says, the American Legion places heavy emphasis on proper display and respect for the flag.

Posting the flag—the ceremony of putting it on display—isn't just a routine duty among Legionnaires. It's practically an art form, and it's given rise to colorful national competitions in which uniformed units try to outshine, outmarch and out-maneuver each other in carefully choreographed routines.

Over the Labor Day weekend, the five-member Highland Guard unit from Highland

Post 201, 2919 Bardstown Road, captured the national American Legion title in Phoenix, Ariz., beating 13 competitors.

"They're awesome, I tell you, if you ever see them perform," said Sue Wilcox of Jeffersontown, who makes sure everyone's epaulets are on straight and otherwise helps prepare them for competition. "These guys stand out wherever they go."

"I like putting on a show," said guard member Brent Bosler of Jeffersontown, who is also a musician in a local band. "What better way to do it than with flags?"

Guard member Russ Stone of Oldham County, a Vietnam veteran and Purple Heart recipient, said the unit's members knew they had done well at the national competition when the audience gave them a standing ovation after their final salute to the judges.

I even brought tears to one commander's eyes, said guard captain Pat Conway of Jeffersontown, also a Vietnam vet.

The guard wore attention-grabbing, full-dress Scottish army uniforms, complete with kilts. Each uniform cost about $1,000 and was authentic to the last detail.

The second-place finisher was an all-female team in Minuteman dress from Ames, Iowa.

A banner draped across the front of the Highland post announces the victory, and a celebration party is planned.

The Highland post also won national color-guard titles in 1983 and 1984 with a larger group that wore trousers instead of kilts and used the name of The Highlanders. The post's original color-guard unit was formed in about 1948.

The current unit won a plaque, a flag and $300 for the post, which underwrites the group's expenses.

"Quite naturally, I'm thrilled to death with it," said Highland post adjutant Les Brown, a past color-guard member and a World War II veteran.

The members of the Highland Guard are in their 30s and 40s. They march in local parades, such as the Fourth of July Defenders of Freedom parade in St. Matthews and the St. Patrick's Day parade in Louisville. They also post colors during opening ceremonies at events such as the annual tractor pull at the fairgrounds, and they serve as a firing squad at funerals.

"To have a group like this, to work year-round, to represent the post, makes us all proud," Brown said.

Guard member Stone, an electrician who has been a member of the unit for four years, also plays pipes and drums in the Louisville Pipe Band. Conway is a General Electric Co. employee who has been a guard member for 12 years.

The other members are his wife, Elaine Conway, an office manager for a printing company, who also has served 12 years; Roger Ballard of Buechel, a coffee salesman and another 12-year member; and Bosler. Bosler is marching in the footsteps of his father, who was a member of a Highland color guard in the 1950s.

As a video of a performance illustrates, the current guard executes a high-stepping, no-nonsense routine that requires grace, precision, poise—and the strength and agility to toss heavy rifles back and forth without clobbering each other.

"We never get too close," said Elaine Conway.

Brown said it's their military precision that makes them champions.

Elaine Conway said the Highland Guard is the only competitive American Legion group in the state.

Competitors are docked for such infractions as lint on uniforms, boot heels slightly apart or rifles held at the wrong angle.

Wilcox said it takes "total dedication," and Conway said people sometimes drop out of the group when they find out how much time and effort it takes. They are not paid by the post, and they donate any money they're paid to perform to the post or charity.

But despite the demands, the members of the group say it gives them a chance to represent America and honor their country.

Until Desert Storm, Roger Ballard said, he thought "patriotism was kind of slipping away." But, he said, "it's very important to keep it up."

POLISH-AMERICAN HERITAGE MONTH

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. DINGELL. Mr. Speaker, late last month the House approved Senate Joint Resolution 125 which designated this October as "Polish-American Heritage Month." This resolution was signed into law, Public Law 102–115, by the President on October 3.

As a cosponsor of this resolution and as a proud Polish-American, I know that this resolution is very much appreciated by the millions of Polish-Americans who have helped to build our Nation. From hometowns from coast to coast, and throughout my home State of Michigan, the contributions of ethnic Poles deserve the recognition which is being given to them this month.

Over the past couple of years, Polish-Americans have felt a particular sense of pride as Poland led the democratic reform movement in Eastern Europe. Last week's Parliamentary elections are only the latest example of bold steps that Polish people have taken to ensure that our native homeland might find the opportunities that can only be afforded through democracy and a free market economy.

Mr. Speaker, the road that lies ahead for Poland is not a smooth one. There are many challenges that lie ahead, including the formation of a ruling coalition that can deal effectively to complete Poland's reform efforts. As the process goes forward, I urge all Polish people on both sides of the Atlantic to continue their faith in the principles that have delivered them from the grip of communism, and to personally dedicate themselves to supporting this transformation in the most effective possible manner.

FEES FOR UNION REPRESENTATION OF FEDERAL WORKERS

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mrs. MINK. Mr. Speaker, it was my privilege today to introduce a bill long overdue across this land to remedy an unfairness endured by labor organizations that serve as exclusive representatives of Federal workers.

I refer to title V of the United States Code relating to Government organizations and employees—section 7114, on representation rights and duties.

Mr. Speaker, the civil service has a number of labor unions recognized as exclusive representatives of employees in clear and appropriate units as determined by the Federal Labor Relations Authority.

These unions are some of the proudest and most revered in the labor movement, fully knowledgeable, and capable of representing the best interests of its Government worker members. They are entitled to act for, and negotiate collective bargaining agreements covering all of their employees in a unit, without discrimination and without regard to labor organization membership.

What has occurred, however, is that thousands of nonunion member employees of civil service units have literally taken advantage of union representation services without charge or payment. In the meantime, actual union membership, which can be only a small proportion of the total workers in a particular trade, have supported the facilities, personnel, and services of the union through their membership dues month after month, year after year.

Mr. Speaker, it is only fair that these nonunion recipients of union representation be required to pay for such services. And that is the purpose of my legislation, that "in cases in which an exclusive representative represents a nonmember employee, such employee shall be required to pay such representative a reasonable fee as determined by the—Federal Labor Relations—Authority."

In order for all segments of our civil service to be fairly and effectively protected under the terms of title V of Labor-Management Relations in the Federal service, such payments for services is unquestionably necessary for this system to survive. It is unfair that nonmembers are allowed to drain the capacities of exclusive unions so everyone suffers. It is shortsighted that such a policy would be allowed to slowly but inexorably bleed the labor unions dedicated to the welfare, security, and benefit of Federal employees.

I urge my fellow members to apply common sense and fair play to this matter, and support this bill to require reasonable fees from nonunion members who utilize union services.

MIDDLE SCHOOL CHIEF CITES TEAM EFFORTS

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. LEVINE of California. Mr. Speaker, I rise today to salute Ilene Straus, principal of Lincoln Middle School in Santa Monica. Ms. Straus was recently named outstanding secondary school principal for the State of California. This is a truly remarkable achievement, particularly because she was given the task, as principal, of turning a traditional junior high school into a reconfigured middle school without additional budget or staffing privileges. Because of her commitment to parental involvement, the community and the school are now part of one another. Every month 50 to 75 visitors come to Lincoln to observe middle school education at its finest.

Ms. Straus has moved Lincoln Middle School into the forefront of educational change in California. She has sought out and obtained free counseling for students from outside community agencies. She has succeeded in involving corporations such as Gillette-Papermate, which provides Lincoln with not only money, but human resources as well as including a pilot math tutoring program. Throughout her endeavors, she has enjoyed the support of her husband Joe, and her two children Julie and Andrew.

As a tribute to Ms. Straus, I would like to include in the RECORD the following article on her stellar accomplishments from the Santa Monica Evening Outlook of June 2, 1991. I ask that my colleagues join me in honoring Ilene Straus for a job well done.

SANTA MONICA'S LINCOLN MIDDLE SCHOOL

Principal Ilene Straus knew she created something good at Santa Monica's Lincoln Middle School, but she always insisted on sharing the credit for turning around the once troubled facility.

This week, however, Straus had trouble downplaying her efforts after being named the Outstanding Secondary School Principal for the State of California, an award given annually by the National Association of Secondary School Principals.

Still, she said the award was not all her doing.

"It's really this community, the parents, the kids and the school district all working together that made Lincoln what it is today," said Straus as she toured her campus commons during lunch hour Friday. "Everybody here shares in the success of this place."

She admits the award caught her off-guard.

"The truth is, you get nominated for awards all the time, but you never really except to win them."

Humble as she may be, the award is a coup for the 9,000-student Santa Monica-Malibu Unified School District. Straus, 41 was selected from a field of several hundred principals of middle schools and high schools to represent the state at a national conference—the Symposium for Excellence—in Washington, D.C., next fall.

This is the eigth year of the program, which selects the outstanding principal from each of the 50 states, the District of Columbia, Puerto Rico and American Samoa.

Criteria for being selected the outstanding principal include: Anticipating emerging problems and acts in an effective way to resolve them; working to improve the educational program and student achievement; creating a positive school climate that reflects high morale; moving actively to implement to goals and objectives of the school; and working to have the community involved in the life of the school and using the community resources for students.

"I'm really proud of that list," Straus said. "It shows the kind of place Lincoln has become."

When she arrived at Lincoln five years ago from the Lennox school district, things were not good at the 925-student school

There was a graffiti problem, its image was not the best and it was struggling amid a transition from a junior high—grades seven through nine—to a middle school—grades six through eight.

District officials credit Straus with turning Lincoln into a national model for middle schools.

The campus is clean, clear of graffiti and efficient.

Student test scores have risen dramatically. Each month about 100 educators from across the country visit the school to see what makes it tick.

"We've turned this place into a model," said Straus, who lives in West Los Angeles. "Everyone wants to know how we've done it. We've done it with hard work. And we've done it in time when education has been under the gun. We've really succeeded against the odds."

Though a national award may not mean a lot to her students, they have a great respect for Straus.

"She's very encouraging and always has something good to say," sand Glenda Tistaert, an eighth-grader.

"She talks to us and makes us feel good about ourselves," said Bonnie Gregory, also in eighth grade. "She's like a kid."

Lev Ginsburg, an eighth-grader, said Straus "get the job done."

"She's the kind of person who will step in and settle problems," he said. "And she gets to know everyone here. There are no blank faces, she knows us all."

Straus said she has no intention of moving on now that she has won national recognition for her work.

She says she loves her school and Santa Monica.

"This age group is by far the most challenging and most rewarding to work with," she said.

"Raging hormones can make life very interesting. Every day is something new. It's never the same thing twice, never boring. This job is by far the best of my career. I've never been happier with my life and my work."

BACARDI IMPORTS HONORED AS 1 OF TOP 10 HISPANIC BUSINESSES

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it is my great pleasure to recognize Bacardi Imports, Inc., which was recently selected as 1 of the 10 most important Hispanic businesses in Dade County by the Greater Miami Chamber of Commerce and the Hispanic Heritage Council.

Along with the other businesses, Bacardi Imports was presented with this award at the Omni International Hotel at a luncheon honoring these distinguished firms. The businesses were selected from a list of the 100 most important Hispanic firms in the United States which was published in Hispanic Business magazine.

Greater Miami Chamber of Commerce President-elect Carlos Arboleya said that these firms were selected for their efforts for the Hispanic community and for their contribution to the economic development of Dade County.

Accepting the award for Bacardi Imports was Executive Vice President Steve Naclerio, who said he was very proud of all his firms's employees who had worked so hard to make it one of the most important businesses in Dade County.

I would like to take this opportunity to thank Bacardi Imports for the contributions it has made to the economy of south Florida, providing economic opportunity and development for the people of the Miami area.

THE FAIRNESS TO POLICE AND FIREFIGHTERS BILL

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Ms. DELAURO. Mr. Speaker, today, I am joined by the other Members of the Connecticut delegation in introducing a bill to protect certain retired police and firefighters from punitive action by the Internal Revenue Service [IRS]. My bill will stop unfair, retroactive prosecution of these retirees, and save hundreds of families from the possibility of financial ruin.

The IRS proceedings stem from an internal ruling that benefits paid to police and firefighters under, Connecticut's heart and hypertension statutes are not workers' compensation benefits and are therefore taxable. This decision contradicts the intent of the statutes and threatens over 1,000 unknowing Connecticut retirees or their widows with potentially devastating back taxes, interest, and penalties. The members of the Connecticut delegation find this unacceptable treatment for those who risked their leves every day to protect us and keep us safe in our homes.

Retirees who are receiving these benefits were never informed by their employers that their benefits were taxable and acted accordingly. Twenty years after the law was written, the IRS decided in July 1991, that the State's law is not in fact worker's compensation.

Connecticut cities have been ordered to submit to the IRS their complete heart and hypertension records as far back as 1988. Both present and past recipients are in danger of being held liable for thousands of dollars of back taxes and interest. If the retirees cannot pay these taxes, the IRS will levy penalties against them.

The Fairness to Police and Firefighters Act only asks what is fair: It instructs the IRS to end all retroactive prosecution of these retirees. The Connecticut State Legislature is working on altering the statute to satisfy the IRS, so this bill does not address the tax status of future payments. We are hopeful the IRS will see the injustice in retroactive proceedings and allow Congress the Opportunity to correct it.

I am happy to have the entire Connecticut delegation as original cosponsors.

REPORTS FROM THE THAI-CAMBODIAN BORDER

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. ATKINS. Mr. Speaker, I rise today to share with my colleagues several recent reports from the Thai-Cambodian border. Many of you have seen the news reports about the refugee camp known as Site 8, where the

Khmer Rouge military removed the civilian administrators from the camp and threatened to force the camp's population to return to malaria infested jungles within Cambodia. This news should not surprise us—we should know better than to believe that the Khmer Rouge have changed their ways. These eyewitness reports from the border tell a story of terror and cruelty that is being relived this day by the Cambodian people.

[October 14, 1991]

REPORT OF SUSAN B. WALKER, REGIONAL DIRECTOR OF HANDICAP INTERNATIONAL

On September 30 the civilian Khmer Administration of Site 8 camp (UNBRO camp with 43,000 refugees under Khmer Rouge administration) was invited to Khao Din (inside Cambodia) for a meeting with the DK leaders. They did not return and on Thursday, October 3 a five person (4 men, one woman) Khmer Rouge military administration came to the camp and announced that they were the new admin and that the old admin had been re-assigned to new jobs. Several wives of the old admin tried to see their husbands to no avail. Many relatives of the old admin reported to the International Organizations working in Site 8 camp that this was not a voluntary move.

On Monday, October 7 the new KR "Admin" met with UNBRO/CICR and told them that this change in Admin was a routine change and that the old Admin had new jobs. They also announced that Site 8 would be moving to the interior of Cambodia during the dry season. When questioned when this would be they replied "November or December". In the afternoon the new KR military Admin (three out of five are high ranking KR military) called approximately 50 Khmer leaders in the camp (section leaders, heads of associations, head of hospital, etc.) for a three hour meeting and announced that the camp would be moving by the end of October. In order to prepare for the move they wanted 40 leaders in the camp to go into Cambodia, perhaps as soon as the next day (October 8). They were told that they would not be "forced" to go, but it was their duty as leaders in the camp to go and if they did not they would be considered traitors . . . In a subsequent meeting on Saturday morning (October 12) they were told that the list has been expanded to 200 persons and that they WOULD MOVE (again "voluntarily") on October 15. The 200 received a typewritten note from the new "Admin" this morning to say that the date had been delayed until October 20. To date none of the 200 have volunteered to go. There are confirmed reports of 200 KR military in the camp. The UN, ICRC and NGOs have received written requests for protection which cover more than 300 persons.

The people in the camp are understandably terrified and say that if KR military came to get them during the night, they would have to go because they are too afraid to say no. There are many reports of doctrinaire KR statements being made (i.e. do not read foreign literature because "it is the base of foreign ideologies and is not in the interest of our people and nation", etc.). The International Organizations have instituted a night-time expatriate presence in Site 8 since Monday, October 7 (date approximative, not confirmed), which seems to have provided some reassurance to the Khmer in the camp, which is superficial because two or three expatriates cannot really provide protection in case the KR military decides to move people out at night. It does however reassure the Khmer that the int'l community is doing all it can to resolve the situation.

There have been a number of demarches made by the U.N. (cf. attached press statement made by the U.N. Secretary General's Special Representative, Shah A.M.S. KIBRIA on October 12) and diplomatic front with high ranking Thai officials with intentions in the near future to contact PERM 6, UN Secretary General, SNC and DK representatives to try and prevent this tragedy from happening. There have also been numerous presse reports (cf. attached) which are now appearing daily since October 9. Nine NGO representatives (including Handicap International and MSF) also met with the United States Ambassador to Thailand on Saturday, October 12 to relay our concerns. Several NGO Representatives (including Handicap International) will be meeting the British Ambassador to Thailand tomorrow, October 15 for the same purpose.

In my twelve years of working with the Khmer on the border (since December, 1979), this is the worst human rights situation I have witnessed in a UN administered camp. This is tragic given the fact that peace is within grasp and the peace accords are due to be signed in Paris on October 23. Will this be a case of "peace at all costs" . . .? If the Khmer Rouge succeed in moving the population of Site 8, this will be a clear violation of the spirit and letter of the Paris Peace Accords. Do not be fooled by the continuous announcements that these moves will be "voluntary"—they certainly will not be but, given their tragic and painful memories of past experience with the Khmer Rouge between 1975–1978, they are too terrified to say no unless they are guaranteed international protection and given assurances that the KR will not have access to them if they refuse.

It is the responsibility of the international community, particularly the UN Secretary General, the PERM 5 and the Royal Thai Government, to prevent this tragedy from happening. It would be a sad commentary on all the efforts made by the UN and the PERM 5 to have forced repatriation occur on the eve of the signing of the Paris Peace Accords.

The UN/ICRC/NGOs are unanimous in their conviction that this situation is extremely serious. If the population of Site 8 is moved to the interior of Cambodia, it will be to zones which are malaria infested, riddled with mines, lacking food and medicines and many people will certainly die as a result.

There is an urgency to pursue the following strategy:

1. The PERM 5 and UN Secretary General must make every effort to prevent this from occurring by urging the Thai Government to do everything in its power to stop any movements from Site 8 and other camps until it is safe for the refugees to return under an organized UNHCR repatriation plan. Demarches must also be made with the DK and SNC to pressure them to abandon these plans for premature and unsafe movement.

2. The Thai military should "seal off" Site 8 camp to prevent involuntary movements and provide protection.

3. The ICRC and UNBRO should be granted permission to transfer those who have requested protection and desperately wish to be moved to another camp, to be transferred to another UN camp along the border (preferably Khao I Dang which is not under any Khmer Administration and is safer at night than border camps which are subject to bandit attacks and easily accessible by KR should they desire to reach those who have "deserted" their ranks . . .).

Conclusion: It is paramount that the international community react strongly and swiftly now to prevent another human tragedy from occurring and to prevent the demise of the Paris Peace Accords only nine days before they are due to be signed on October 23, 1991.

[October 21, 1991]

REPORT OF SUSAN B. WALKER, REGIONAL DIRECTOR OF HANDICAP INTERNATIONAL

SITE 8, THAILAND.—I am writing this in the truck on the way back from Site 8 which I just left a few minutes ago. Having spent several hours there speaking with Khmer, international organizations and NGOs, I continue to find the situation very alarming with the camp population still afraid that they will be forced to move to Phnom Preuk inside Cambodia—an area which is strewn with thousands of mines, malaria infested, lacking food or any kind of medical care (except for the KR military).

One Khmer said to me yesterday that a person who has recently been inside Cambodia was quoted as saying, "The Khmer Rouge treat people like dogs, like animals—there are many, many children and even men and women dying of malaria and mines in these zones."

This morning at 0600h a woman arrived walking to the Cama Hospital at Site 8 carrying her baby who was critically ill with malaria and practically comatose. When questioned as to where she came from she replied that she had left her village in the interior at 2200h last night and walked alone carrying her baby through the night for eight hours to reach Site 8 because she thought her baby would die. They have been transferred to Kid where hopefully the baby can be saved. (NB: the KR trucks which used to transport critically ill patients from the interior have stopped coming since the change in administration three weeks ago. I also heard today that Khmer are being charged 500 baht per family to transport the patients.)

Another Khmer with whom I spoke this morning said they (this person and several friends) had just returned from Phnom Preuk where they had spent several days to "check out the situation before moving because it was inevitable the camp population would be forced to move back eventually, if not at the announced dates of October 20–23." These persons came back saying they would never move their families back because: "The situation is very bad. Even though there are three tractors clearing land, it is still full of mines. It is in the jungle and there are millions of mosquitos and no medicines. There is not enough food and not even enough water (NB: and we are approaching the end of the rainy season in Thailand/Cambodia). Only those who live near the river have enough water, but the river is one kilometer away. And the river is very small so during the dry season, it may not have very much water."

Those of us in the field have been very pleased with the international outcry at the detention of the former Site 8 administration and the threats of forced repatriation of Site 8 by the end of October. The Thai foreign minister, the UN Secretary General, the Perm 5 countries plus many embassies in Bangkok, the UN Secretary General's special representatives in New York and Bangkok, UNHCR, UNBRO, ICRC and many NGOs have all made strong statements or demarches against this violation of the spirit and letter of the draft Paris Peace Accords. But our fear, and more importantly the fears of the

Khmer in Site 8 (and other camps), has not subsided.

Due to international pressure the threatened moves have hopefully been delayed until at least October 23. However, I have not spoken to anyone yet (int'l organizations, NGOs or KHMER themselves) who believes the DK leaders have changed their minds about moving the camp.

The Paris Peace Accords will inevitably be signed on October 23, in spite of the violation of the draft accords which occurred on October 3 when the elected administration and some section leaders of Site 8 camp were detained against their will in Cambodia (in spite of denials from DK leadership) and replaced by a military administration. There have even been reports that some of the old administration do not have enough food and one is sick even though the official line is that they are fine, they have new jobs and this was just a routine change. Khieu Samphan announced in the presse on October 17 that, "they went of their own free will to settle inside Cambodia and to have lands for their families. . . . All the committee members can return to the camp whenever they want to. No one has been detained by the democratic Kampuchea Party." As one Khmer said to me this morning at site 8, laughing in the Asian way, "But, we have not yet seen them. . . ."

The signing of the Paris Peace Accords on October 23 will be a historic, welcomed and long-awaited occasion for the 8 million Cambodians and 350,000 KHMER refugees waiting on the Thai-Cambodian border to return home one day. The Perm 5 and other national, the int'l community through the United Nations, the Khmer parties themselves and all participants who have made this historic event come to pass two days from now are to be lauded for their efforts. We can only implore you to make certain that all parties adhere to the terms of the accord which provide for, inter alia, that the UN Sec. General will facilitate the repatriation in safety and dignity of the Cambodian refugees and displaced persons in accordance with the guidelines and principles on repatriation set forth in annexe 4 of the Paris peace agreements.

We in the field urge the international community to:

1. Continue to ensure that the principles outlined in annex 4 of the Paris Peace Accords are adhered to, until such time as all 350,000 Cambodians on the border can return home safely, with informed free choice as to location of their return and of their own free will.

2. Urge that the Royal Thai government seal off Site 8 camp to prevent any forced movements, particularly at night. (Although the DPPU is doing an exemplary job with the staff they have, to date there has been no increase in Thai military presence around the camp and armed Khmer Rouge soldiers continue to enter Site 8 at night.)

3. Urge the Royal Thai government to reopen Khao I Dang, the only camp along the border not under Khmer administration, for the transfer of protection cases. To date, only a few persons have been moved as protection cases and these to Site 2.

4. Ensure that expatriate night presence at Site 8 can continue to be provided, although admittedly this only provides reassurance to the Khmer population of 43,000 in the camp and not real protection.

On behalf of the Khmer who continue to be frightened and request protection, but are reassured by the international response to date, Akun Charan (Merci Beaucoup en Khmer). The international community must prevent their being forced back to "killing fields" after October 23.

[October 30, 1991]

REPORT OF THE COALITION FOR PEACE AND RECONCILIATION IN CAMBODIA

For the good news . . . It has been two weeks since our last faxed ALERT Update. The dates announced by the new administration of Site 8 for the return of the 200 community leaders to the 'zones' has come and gone. The threat of the entire camp population being moved over the border on October 20–23 did not occur. There is no doubt international pressure helped to at least postpone these events. These events would have seriously jeopardized the peace accords themselves.

Statements and words of deep concern were expressed by the Thai Foreign Minister, the UN Secretary General, the UN Special Representatives for Cambodia in Bangkok and New York, the Representatives of the Permanent 5 members of the Security Council, the Co-ordinating Committee of the Paris International Conference on Cambodia (PICC). Many donor country embassy officials also expressed concern, as well as officials of the international organizations (ICRC, UNBRO, UNHCR), human rights organizations and numerous NGOs. Many private individuals concerned about the fate of the Khmer people in this peace process have written or made private interventions. The media has been invaluable in bringing the threat to the world's attention.

The people of Site 8 are becoming aware of the world wide concern for them and their right to a freedom of choice as per the Paris Peace Accords. The international organizations and the relief workers of the NGO community are trying various means (video and audio cassettes, pamphlets and flyers, loud speaker announcements, etc.) to disseminate repatriation information to the population.

The UNHCR has begun its pre-registration campaign in Site 8. In the pre-registration process heads of households are interviewed so as to ascertain where they would like to return to in Cambodia once the official repatriation process begins. Initial results show the great majority of people interviewed so far are choosing their villages of origin, and return with the UN, as opposed to the Khmer Rouge recommended areas.

Night presence has been established in Site 8. At the moment only field staff of UNBRO, UNHCR and ICRC have permission of the Thai authorities to do so. This is demanding a lot of an already overworked UN field staff. Permission has been requested by UNBRO to the Thai Authorities to allow NGO relief workers to assist in this effort. International night presence has been found to be a great moral support to the camp population. It is acknowledged it would take more than moral support to prevent a forced repatriation in the middle of the night.

For the bad news . . . Despite assurances (in a statement issued on October 17, 1991) by Khieu Samphan and Son Sen, the Khmer Rouge representatives on the Cambodian Supreme National Council that "All the Committee members (the 16 detained administrators) can return to the camp whenever they want to. No one has been detained by the Democratic Kampuchea party"; only 4 of the 16 men have since returned to Site 8. It was reported that the 4 were sent back to Site 8 to pack their belongings and gather their families to return to the 'zones'. It has also been reported that 5 of the 16 are seriously ill, at least one man with cerebral malaria.

Despite assurances in the same statement that "the Democratic Kampuchea Party fully respects the principles of free choice . . . and voluntary repatriation," relief workers still report a climate of fear existing in the camp. Camp residents say the planned push back has only been postponed for the time being. There continues to be reports of Khmer Rouge soldiers moving in and out of the camp, persistent reports of "armed elements". Camp residents still get visits at night to 'discuss' repatriation plans. In oral and written announcements in camp, people are encouraged to spy on their neighbors and report "enemy agents and puppets spreading false propaganda" to the police, in a chilling replica of tactics of the past.

The community leaders in Site 8 are being strongly encouraged to return to the zones with the hope the camp population would follow. Although there were no 'volunteers' among the original 200 leaders invited to 'inspect land plots' in Cambodia, another 20 people reportedly have gone. Only 3 protection cases have been granted permission to go to another UNBRO-assisted encampment, out of a few hundred persons who have requested protection in the camp or transfer to another camp. Permission has not yet been granted. Khao I Dang, the only UNHCR camp along the border (UNHCR camps are administered by the UN; UNBRO camps are administered by the Cambodian factions), would be the best option. Trucked transfers of people continue to occur at night time, reportedly of patients who were brought in to Site 8 from the interior, and upon being discharged are returning. While the Khmer administration assures these are people who leave on their own free will, the UN has requested the opportunity to interview them in the day light.

The Thai government along with the Cambodian SNC and UNHCR have worked out the details of the declaration, "memorandum of understanding", regarding repatriation of the border population. This tri-partite agreement was due to be signed in Paris on October 24, but the parties failed to sign at that time. The signing of the memorandum has been postponed until next month in Phnom Penh.

Indeed all of the political factions along the border are refining their efforts at encouraging and enticing 'their' people to return to their zones in order to build up a support base for the upcoming elections. While not as dramatic as those of the Khmer Rouge, their alternative repatriation plans are not to be ignored.

In summary, despite continuous statements to the contrary, or that these moves will be "voluntary", the Khmer Rouge have not changed their plans, but rather only postponed them. We encourage you to maintain pressure, and even consider whom you would contact if you get a call/fax in the middle of the night that any camp along the border is being moved. We thank you for continuing to press immediately for the following:

1. Safe return of the 16 civilian administrators back to Site 8

2. Increased security in and around the camp, sealing it off to prevent ANY night movements out of the camp

3. Permission to transfer those people who have requested protection and transfer from Site 8 to another UN camp along the border (preferably to Khao I Dang which is administered by the UNHCR)

4. Assurance of continued night presence by expatriate staff in the camp

5. Guaranteed freedom of choice concerning destination and method of repatriation

under conditions and into areas deemed safe by UNHCR, as outlined in annexe 4 of the Paris peace accords

WATERGATE

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. JACOBS. Mr. Speaker, one person's leak is another person's expose of a coverup. Watergate comes to mind.

REMARKS OF MR. PETER ZSCHIESCHE AT THE LAUNCH OF THE AOE-7 SHIP

HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. CUNNINGHAM. Mr. Speaker, I rise today to share with my colleagues the remarks of Mr. Peter Zschiesche, business representative of the International Association of Machinists, District 50, Local 389 and the chairman of the Seven Union Coordinating Committee, at the occasion of the launch of the AOE-7 ship. On September 28, at the NASSCO shipyard in San Diego, this latest addition to the U.S. Navy was launched.

NASSCO is the last remaining shipyard on the west coast. It has a dedicated, quality work force and produces some of the best ships in the world. This is because of a partnership between management and labor and a commitment to excellence.

Mr. Speaker, I believe Peter Zschiesche's remarks on our maritime industry bear repeating. We are losing a bit more of our shipbuilding capability each year. It's not because we can't compete—it's because our competitors subsidize their shipbuilders.

I urge my colleagues to read Mr. Zschiesche's call to arms and to join me in supporting legislation to restore the shipbuilding industry to its traditional prominence.

SEVEN UNIONS SPEECH FOR THE AOE-7 LAUNCH AT NASSCO, SEPTEMBER 28, 1991

Welcome to all of you from our seven unions at NASSCO, an employee-owned shipyard. Bienvenidos de la parte de los siete sindicatos. La yarda es su yarda. Here at NASSCO we are carpenters, electricians, ironworkers, machinists, operating engineers, painters and teamsters. As NASSCO's production shipyard workers we live our working hours with this AOE-7 as it becomes another great addition to our U.S. Navy.

We, as well as the non-represented employees at NASSCO, are a very diverse group of people who have come to work at one of the last remaining shipyards in America. We have come from all regions of our vast country, including our own Southwest both north and south of our border with Mexico. We also have a long history of coming from Europe and a more recent history of coming from Southeast Asia and the Philippines.

We have come here to apply and develop a wide range of skills in our trades and to exert great endurance in overcoming the hazards and hardships that typify shipbuilding and ship repair.

Together we are survivors in a tough industry during tough times in America's basic industries. I question whether many of our leaders in industry and government want to keep our industries alive. But I know we and the rest of the American labor movement are in the forefront of the struggle to preserve these great creators of wealth that have made our country strong.

Above all, we advocate being tough on unfair trade which under the guise of so-called "free trade" has undermined the very existence of many basic American industries, including shipbuilding.

Look at our situation in shipbuilding. American shipyard workers make less than most shipyard workers in Europe and Japan, but they produce the majority of commercial worldwide shipping while we produce virtually none. How can this be? The answer is their government support their shipbuilding industries through such things as research and development funds, low interest loans, and export financing. Our government abandoned its support of American shipbuilding unilaterally in 1981 as part of its "free trade" policy. The problem is no one else followed this policy!

We need new trade policies that recognize the reality of unfairness in trade and deal with them. We need a share of the world commercial shipbuilding market if we are to survive as shipbuilders and shipyard workers into the 21st century. We must become advocates not of "free" trade but of "fair" trade.

Here in San Diego we need better support from state and local officials who also control our future through policies affecting our rent, parking, zoning and other regulations.

We are not second class citizens of America or of San Diego or on our waterfront. Our skills and endurance testify to that. So does the first class ship we launch today. The AOE-7. She and we will survive, will be strong, will be part of America's future. Thank you y gracias.

PETER M. ZSCHIESCHE,
Chair,
Seven Union Coordinating Committee.

WELCOME DR. KUAN

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. LEVINE of California. Mr. Speaker, I rise today to recognize one of the beacons for democracy and freedom in China, Dr. John C. Kuan, who I had the honor of meeting last year when I visited Taipei. Dr. Kuan is one of the world's preeminent experts on the subject of Chinese American relations, and on the unification of China. He is currently in the United States as a visiting scholar at Stanford University's Hoover Institution, and on Sunday will be speaking to the Asia Study Center at Cal State University in Los Angeles.

Dr. Kuan is one of those rare individuals who has made his mark as a scholar, a political leader, and in the business world.

Currently, he is the chairman of the board of the Broadcasting Corp. of China, the principal television network in the Republic of China on Taiwan, and is chairman of the Democracy Foundation, a group of business leaders and scholars, which is dedicated to promoting freedom and democracy in a reunited China. In addition, he is also acting chairman of the Asia and World Institute, where he has conducted extensive research on the issue of the politically and economically divided China.

Prior to his current appointments, Dr. Kuan, who a graduate of the National Chengchi University and Tuft's Fletcher School of Law and Diplomacy, was assistant professor at the Graduate School of East Asian Studies at the National Chengchi University, and associate professor at the National Taiwan University. In those positions, he distinguished himself as an author and as an intellectual leader. He has published dozens of works on Chinese politics and international relations, and is one of the key influences on the thinking of his countrymen.

In addition to his illustrious career in academics, Dr. Kuan has been active in the political leadership of his country. He has been the chairman of the Taipei City Committee, and the Taiwan Provincial Committee of the Kuomintang, as well as Deputy Secretary General of the Kuomintang Central Committee.

Mr. Speaker, I ask my colleagues to join me welcoming Dr. Kuan to the United States, and in recognizing his many accomplishments.

FOUR TEACHERS RECOGNIZED FOR HEROISM

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. SCHUMER. Mr. Speaker, I rise today to pay tribute to four teachers, Martin Schwartzfarb, Marc Slazman, Jess Barnett, and Cindy Fields, who by their courageous actions helped to save another's life. On May 2, 1990, when their fellow teacher Judith Sherman was under attack at her school by a man armed with a knife, these four heroic individuals intervened on her behalf.

On that afternoon, as Ms. Sherman was leaving the school building an unknown assailant approached her, grabbed her face, and hit her. When she screamed for help, these four persons came to her rescue. At first, Mr. Schwartzfarb tried to pull the attacker away from Ms. Sherman, but he was thrown against a wall and suffered a broken leg. A few moments later, the other three succeeded in chasing the assailant away and thereby preventing him from causing further injury to Ms. Sherman.

Mr. Speaker, these four teachers offered their assistance to save the life of a colleague even when it meant risking serious injury to themselves.

All too often now, people who witness the commission of crimes will stand by and do nothing. But these people did not take the safe course. They did not simply watch or run away. They acted. And because they acted Judith Sherman is alive today. I am glad to take this opportunity to recognize their heroism.

ON THE OCCASION OF THE DESIGNATION OF SAN ANTONIO AS AN AMERICA 2000 COMMUNITY

HON. LAMAR S. SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. SMITH of Texas. Mr. Speaker, today San Antonio is officially adopting President Bush's six national education goals as their own and will be named an America 2000 community.

Adoption of the President's national educational goals shows San Antonio has a strong commitment to its future.

San Antonio already has a solid educational foundation with its public and private schools, colleges and universities. We also have a tradition of volunteers who have shown an active interest in education.

Education is the single, most important opportunity we can offer each citizen.

To do my part to promote education, I have been appointed to the San Antonio Coalition for Education board. As part of my duties, I plan to provide educational materials in history and civics for students and teachers to use in the classroom.

Great strides can be made toward improving San Antonio's educational offerings and the quality of life for all of us who live there.

POLICE OFFICERS' MEMORIAL DEDICATION

HON. RAYMOND J. McGRATH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. McGRATH. Mr. Speaker, on October 15, 1991, a memorial was dedicated in Washington, DC. Alongside the monuments to brave members of the armed services and Americans who have made historic contributions to freedom, science, medicine or the arts, this memorial is a tribute police officers who have given their lives defending our local communities.

Police forces throughout our Nation are a fixture in every neighborhood. From the one man sheriff departments in tiny towns in Middle America to the huge forces in our most populous cities, police officers are dedicated public servants who literally risk their lives for the protection of our families and property every day. Some have made the supreme sacrifice so that we may enjoy a safe, secure neighborhood.

No one can argue that our society can live safely without effective police protection. While we count on police to defend our lives and property, they are asked to play other roles depending upon a given situation. Our police officers are routinely thrust into the role of social worker, mediator, marriage counselor and community leader. Any of these are the thankless tasks which officers accept not merely because it has become part of the job, but because police officers care about their work and the people they protect. Certainly, police officers receive accolades for acts of bravery and important arrests. However, while dangerous arrests or shootouts often make headline news, much of a police officer's work involves potentially perilous encounters which end peacefully yet, take a demanding physical and psychological toll. Violent domestic arguments, bar fights, or traffic violators on dark roads all are conceivably life threatening confrontations which officers face nearly every workday. Throughout these mental ordeals our police officers continue to act with courtesy and professionalism.

Many times, police officers often are subjects of lengthy tirades by law-abiding citizens who may have been stopped for speeding or other lesser violations of the law. "You should be out catching the real criminals," irate people often tell officers. Actually, if we took more care to obey minor laws, our police officers would have more time to spend on dangerous criminals.

Each year, police officers are killed in the performance of their duty and more are seriously injured. Yet, despite the risks, our police continue to face the daily dangers of the job with the same determination and vigilance. On October 15, 1991, our Nation dedicated a memorial to the officers who have fallen in the line of duty. Many of these men and women have families who live in the very neighborhood where they worked and were well known and respected by the community. We can be proud of these valiant public servants who have given much of themselves for the benefit of others. We owe those who have fallen a debt of gratitude for their service, and their families have earned our deepest sympathies.

EDWARD M. HEETER, BUTLER COUNTY VETERAN OF THE YEAR

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. KOLTER. Mr. Speaker, I rise today to give recognition to Edward M. Heeter of Petrolia, PA, who has been chosen as the 1991 Butler County Veteran of the Year.

Ed Heeter is a veteran of the U.S. Army who served in the Signal Corps from December 1962 to December 1965. He has served in a wide variety of leadership positions for the American Legion from his local post to the national organization.

For 11 years he served as adjutant for his American Legion Post 218 in Petrolia. During those 11 years, he also held the office of post service office and chaired several post committees. For 12 years he has served as chairman for the Petrolia Valley Memorial Day Services.

Ed has served for five terms as Butler County adjutant and was Butler County commander for 2 years. He was elected Butler County Council 1st vice commander as well as Butler County Council judge advocate. His service to veterans of Butler County has also included his participation on many county committees.

Ed has served the American Legion 26th District faithfully over the years as a member of several district committees. He has the distinction of having served district deputy commander for 8 years, district commander in 1989 and 1990, and is presently serving as district 26 adjutant.

In the State of Pennsylvania Ed has served in various leadership roles. He has served as vice chairman of the Keystone Boys State Committee as well as vice chairman of the Legion Auxiliary Committee. He was an aide to department commander Ray Lenz and also served as western section membership chairman.

His service hasn't stopped there, however, as he has also been active at the national level as a member of the National Law and Order Committee, National Veterans Rehabilitation Committee, National Congressional Legislative Committee for the 4th Congressional District and the National American Legion Vietnam Veterans Study.

He and his wife Linda, married for 25 years, are proud parents of three boys who have blessed them with two lovely grandchildren. Wife Linda, sons Edward, Jr., Dale, and John and grandchildren Kayla and Cody share a great deal of enthusiasm for the many years Ed has spent in service to the American Legion organization and members in Butler County and throughout the Nation.

Ed presently serves as a regional representative of the Governor's Veterans Outreach and Assistance Center where he is able to assist veterans in the Western Pennsylvania area to obtain the assistance and recognition which they so richly deserve.

This man has had the distinction of being chosen as Butler County Legionnaire of the year in 1985 and now 6 years later will be given the honor of being named Butler County Veteran of the Year. I ask my colleagues here today to join me in saluting a man whose entire adult life has been spent serving his fellow veterans. Congratulations and best wishes to the 1991 Butler County Veteran of the Year, my good friend and fellow veteran, Ed Heeter.

HONORING MIKE SEWELL

HON. DAVID E. PRICE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. PRICE. Mr. Speaker, I rise today to recognize a young man in my district of whom I am very proud, Mike Sewell. Mike is a 21-year-old with Down syndrome whose accomplishments, I believe, merit our recognition.

October has been designated as National Down Syndrome Awareness Month through the leadership of our colleague, Representative NICHOLAS MAVROULES. This month provides a national forum to increase public awareness about Down syndrome and to highlight programs that help individuals with Down syndrome succeed in public schools and the work force. Mike Sewell is an example that these programs work. He is a true role model for others whose lives are affected by Down syndrome.

Mike is a Cary High School student who works part time at McDonald's in Cary, NC. He is employed through the McJobs Program which aims to train and mainstream people with disabilities into the competitive work force. The program works closely with State vocational rehabilitation agencies in providing one-on-one job coaching for disabled employees, as well as sensitivity training for the rest of the staff. Many Americans may even have seen Mike, because he starred in McDonald's national commercial which premiered during the 1991 Super Bowl. He received an award for his achievements in June from Louis H. Sullivan, Secretary of Health and Human Services. To top it off, he received the honor of presenting President Bush with a 3-foot bronze sculpture on behalf of McDonald's and Ronald McDonald Children's Charities to mark the 25th anniversary of the President's Committee on Mental Retardation.

Mike is doing far more than making his dreams and the dreams of his family come true—he is providing hope and encouragement for all individuals and families affected by Down syndrome. He is also showing legislators, business people, and teachers that individuals with Down syndrome can contribute enormously to our society. I want to commend Mike for helping us understand that.

I and my fellow North Carolinians are very proud of Mike—keep up the hard work.

CURRENT POLICY TOWARD EL SALVADOR

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. LEVINE of California. Mr. Speaker, current policy toward El Salvador is being shaped by two countervailing forces: on the one hand, the United States should seek to foster progress in the ongoing peace negotiations between the Salvadoran Government and the FMLN rebels. On the other hand, we are compelled to express our outrage over continued human rights violations by the Salvadoran Government and the complete inability of the Salvadoran judicial system to work effectively.

Today, I introduce a bill with Congressman TORRICELLI which attempts to reconcile these two divergent objectives. The legislation has two provisions. First, it mandates an immediate transfer of $10 million from Salvador's military assistance account into the "Demobilization and Transition Fund." And second, it requires that 50 percent of what is left of this year's military assistance be transferred into the "Demobilization and Transition Fund" if the two army officers convicted at the Jesuit trial are granted a specialized pardon or amnesty. By specialized I mean a pardon or amnesty that is not the result of a negotiated agreement between the Government and the rebels.

I believe this legislation is valuable for a few key reasons. First, it does not reduce that actual aid level to El Salvador. It transfers military assistance into the Peace Fund and therefore could not upset the peace process. Second, it registers the Congress' indignation over the slow pace of human rights developments. Third, it demonstrates to all Central American countries that human rights is a preeminent factor in U.S. foreign policy considerations.

In terms of this last consideration, the perception in El Salvador can only be the opposite. One of the conditions applicable to fiscal year 1991 funding provided for a suspension in assistance if the Salvadoran Government fails to conduct a thorough and professional investigation into the murders of the Jesuit priests. No set of circumstances could justify a good faith certification that this condition has been met. Yet, the aid was allowed to flow unhindered.

This is why our bill contains the provision transferring $10 million immediately. We are implementing an action that should have taken place a while ago. The fiscal year 1992 foreign operations bill includes a similar provision.

At this point, I would like to shift gears a little and directly address the peace process—which appears to offer new possibilities for a negotiated setlement to the civil war. Just last month in New York, the Government and the rebels signed a landmark political agreement which sets a framework to address the issues that have divided the nation. The agreement creates a National Commission for the Consolidation of Peace, or COPAZ, which is comprised of officials from a cross section of Salvadoran political life, including both rebel and army officials. The COPAZ mandate is vital: implement the negotiated agreements arrived at by the Government and the rebels.

U.N. General Secretary Perez de Cuellar and his chief aide on the Salvador negotiations, Alvero de Soto are to be commended for the diligence and diplomatic prowess they have displayed. It is unlikely that the process would have advanced as far as it has had it not been for the involvement of the United Nations.

There is, however, another, more ominous side to the story. Huge obstacles to peace still remain. The creation of COPAZ is a positive step yet a relatively easy one in comparison to the issues the Commission must resolve—such hard nuts to crack as the structural and force level changes in the Salvadoran military; the nature and composition of a new civilian police force; judicial reform; and a multitude of economic and social questions. These discussions will test the desires of the parties for peace and the strength of the peace process itself.

The United States, Cuba, Nicaragua, Vietnam, and the Soviet Union have a special moral obligation for ending the conflict in El Salvador because it is these nations which have provided the parties with the means to carry out the armed conflict.

I would like to turn briefly to the question of fiscal year 1992 funding for Salvador and the outcome of the Jesuit trial.

Currently, a continuing resolution is working its way through the Congress. That CR contains military assistance for El Salvador. As you are aware, the conditions under which the aid may or may not be spent are contained in a letter from Deputy Secretary Eagleburger to congressional leaders. In essence, the letter extends the conditions that applied to the fiscal year 1991 assistance to the aid included in the CR. This is a huge disappointment, these same conditions proved to be totally ineffective in fiscal year 1991.

In an effort to deter Congress from adding new and well-deserved conditions on this military assistance, the administration argued that any changes in the Salvador aid program would send the wrong message to the Government and could upset the peace process. This argument is nothing more than a red herring to stymie congressional action. We have seen the administration use this tactic before. For example, to squelch debate on human rights abuses in China, Syria, and now, once again, in El Salvador.

I reject their argument and the policy course it implies. The administration has it backwards. By not adding new conditions we are sending the wrong message. The conduct of the Salvadoran military and Government in relation to the Jesuit trial is outrageous and unacceptable, also an accurate description of the trial itself. Six of the eight soldiers implicated in the murder of the Jesuit priests, their housekeeper, and her daughter, were acquitted even though they admitted their involvement. Testimony was perjured, withheld, and destroyed; the military employed intimidation tactics on the judge and jury; and strong evidence suggests that officers higher ranking than those convicted were involved. Everything wrong with the Salvadoran judicial system was manifest at this trial.

Despite this travesty of justice, there may be one bright spot to the Jesuit trial. The guilty verdict fell upon the man most responsible and upon a major participant—Col. Guillermo Benavides and Lt. Yushi Mendoza. Such convictions begin to lift the veil of immunity protecting military officers involved in gross human rights violations, and are a welcome sign. It is this progress that Congressman TORRICELLI and I are seeking to preserve.

United States policy in Central America must stand for respect for human rights, the predominance of civilian over military authority, and economic and social opportunity for all classes of society. Until these objectives are achieved, there will not be a durable peace in El Salvador.

ON THE OCCASION OF LEONARD ALEXANDER RECEIVING THE 1991 BEN E. NORDMAN AWARD

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. LAGOMARSINO. Mr. Speaker, I rise today to congratulate Mr. Leonard Alexander on his selection as the recipient of the 1991 Ben E. Nordman Award. This prestigious honor is bestowed on a Ventura County attorney during the Ventura County Bar Association's annual dinner.

The late Ben E. Nordman endowed an annual award to inspire his fellow attorneys toward service by honoring a lawyer whose community and charitable activities merit public recognition, and Leonard Alexander's certainly do.

Leonard graduated from the University of California at Los Angeles School of Law in 1961 and was admitted to the California Bar in 1962. He joined the Ventura County Bar Association in 1963 and has been a member ever since. He also is a past president of the

Conejo Valley Bar Association. Mr. Alexander is currently a principal in the firm of Cohen, Alexander, & Clayton.

Mr. Speaker, while Leonard is indeed a successful attorney, it is his commitment to the community which really sets him apart from the crowd. He has worked literally thousands of hours with dozens of organizations including United Way of Ventura County, Conejo Valley Art Museum, Oakleaf Music Festival, Thousand Oaks Library Foundation, Conejo Valley Community Conscience, California State Bar Child Custody Committee, Westlake Rotary Club, and the California Lutheran University Community Leaders Club, to name but a few.

Additionally, despite his many commitments, Leonard has served as a judge pro tem on the Ventura County Superior Court for over a decade.

As you can see, Mr. Speaker, Leonard Alexander is a very special individual, and I again congratulate him on receiving this honor and wish him the very best in everything he does.

INTRODUCTION OF LEGISLATION REGARDING BANKRUPTCY OF COMPANIES AND EMPLOYEE PROTECTION

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. SCHULZE. Mr. Speaker, today, I am introducing legislation to protect employees and prevent companies that declared bankruptcy from failing to contribute to their underfunded pension plans. A recent court ruling could permit some companies that have filed for bankruptcy to repay only a fraction of their pension liabilities. As a result, the Pension Benefit Guaranty Corporation would be responsible for the remaining shortfall, even when a company has funds available for pension obligations.

The PBGC already faces a $2 billion deficit and, as a result, the pension benefits of our retirees are in jeopardy. This court decision could very well lead to an S&L crisis in the pension arena.

Under current law, underfunded pension plans may not receive preferential treatment over other creditors' claims. The law essentially says that pensions are not as important as other corporate liabilities. Clearly, priorities need to be reestablished. Pension promises made to employees must be honored.

Furthermore, companies that declare chapter 11 in order to reorganize and rid themselves of debt, may enjoy a competitive advantage over other companies that have long been struggling to meet their pension obligations.

Mr. Speaker, my bill will make companies accountable to their employees and will make pension funding a financial priority.

SORRY AND SYMPATHY FOR MEMBERS OF OCALA'S FIRST BAPTIST CHURCH

HON. CLIFF STEARNS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. STEARNS. Mr. Speaker, I would like to share with my colleagues my profound sense of grief and distress about a senseless disaster that happened last Thursday morning in my hometown of Ocala, FL.

The historic First Baptist Church of Ocala was totally destroyed by a fire presumed to be set by an arsonist. This fire took almost 4 hours to control and caused more than $4 million in damage.

This disaster was only the latest in a string of 22 church fires throughout the State of Florida.

The First Baptist Church was founded in 1850, under the leadership of the Rev. Isaac Newton. It was a little white house located where the Marion County Courthouse currently stands. In the 1880's the church moved to a larger facility two blocks east of its original location to where the Sovereign Building is now located. It moved to its current location, on Third Street, in 1926. The building on Third Street had a majestic Greek revival architectural style, was graced with four soaring Ionic columns and had peaceful sanctuary that welcomed anyone into the House of the Lord with open arms.

More than 3,200 of my fellow Marion Countians call First Baptist Church their spiritual home. But while the fire destroyed the building, it did not destroy the church. This church is more, much more, than just the brick, wood, and glass that makes up a building. The church is also the people that make up the congregation and the memories that flow from that collective body of believers. It's the baptisms, weddings, funerals, and worship services that make the soul of the church.

It is hard to salvage any good from such a tragedy, however this fire has brought the congregation of First Baptist Church much closer together. It has also brought out impressive volunteer spirit in the Ocala area as well as an outpouring a prayer and physical support for First Baptist Church members.

UNITED STATES FIRMS ANGERED BY KUWAITI CONTRACT AWARD

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mrs. BENTLEY. Mr. Speaker, as mentioned in my 1-minute this morning concerning Kuwaiti contract awards, I am submitting an article from the Washington Post to clarify this situation.

U.S. FIRMS ANGERED BY KUWAITI CONTRACT AWARD

(By Stuart Auerbach)

A wholly owned U.S. subsidiary of a German conglomerate has won a $134 million contract set aside for American businesses to clear mines and other explosives from a wide swath of Kuwait, triggering complaints from American-owned competitors.

Bush administration and industry sources said the hotly contested contract went to Conventional Munitions Systems (CMS) of Tampa, an ammunitions manufacturer and developer of new weapons systems that is owned by Messerschmitt-Boelkow-Bloh GmbH (MBB) of Munich.

Acting after competing companies raised questions about a German-owned company bidding on a contract specifically reserved for U.S. firms, the Commerce Department certified CMS as an American company on the basis of its incorporation in Delaware and its promise to use 86 percent American workers and equipment on the job.

Although no challenges are being mounted so far against CMS being awarded the lucrative contract, some losing competitors staged a last-minute attack on the German-owned company. They alleged that Germany was a free rider, not joining the rest of America's Western allies in the Desert Storm battles and that the German owners of CMS sold equipment and technology to Iraq's chemical, biological and nuclear efforts. These allegations have been denied.

One company, USA Technology, said its bid was $8 million lower than CMS's $134 million winning tender, leading to questions that the German-owned company won the contract because the Kuwait government owns a substantial share of Daimler-Benz AG, the company that ultimately owns MBB. While Kuwaiti officials disclosed the winning bids, the others were not released.±

"It's a very disconcerting thing, particularly for a wholly owned American company," said Ed Alber, director of marketing communications for Olin Ordinance of St. Petersburg, Fla., believed to be the runner-up for the contract.

Rep. Dana Rohrabacher (R-Calif.) echoed that opinion in an August letter to Kuwaiti Ambassador Saud Nasir Al-Sabah that stated: "Any contract awarded to CMS would be seen by many in Congress as an award to a German firm" that "would be contrary to the understanding that truly American-owned firms would share substantially in the Kuwait recovery and reconstruction."

The allegations that CMS's parent company sold technology and advanced equipment to Iraq's chemical, biological and nuclear weapons programs originated in German press reports. They gained wider circulation as part of a Senate Foreign Relations Committee report in January, "Weapon Sales to Iraq," and in a paper, "The Poison Gas Connection," commissioned last year by the Simon Wiesenthal Center in Los Angeles. But formal charges never have been filed against MBB by the German or U.S. Governments.

CMS officials, many of them retired U.S. Army officers, staunchly defended their company, insisting that it is American and pointing to the record of CMS and its parent, MBB, in speeding ordnance to U.S. forces during the Persian Gulf War.

The Commerce Department reported that CMS delivered 440 Patriot missile warheads to the U.S. military ahead of schedule and manufactured warheads for the Maverick missiles.

MBB also was involved in getting Patriot missiles to Saudi Arabia by rushing needed metal parts for the warheads to the U.S. manufacturer on a few days' notice at the request of the Pentagon. "Without those parts, the Patriot could not have been used as much as it was," said Fred Dibella, director of planning and public affairs at CMS.

A retired Army colonel, Dibella expressed "a certain sensitivity" to charges that his company is not American and that it is part of a conglomerate that helped Iraqi President Saddam Hussein develop chemical, biological and potentially nuclear weapons.

"We have been the target . . . of unfair and inaccurate changes," said Dibella.

Among the companies fighting hardest in Washington for the contract was USA Technology of Kensington, a consortium of some of the most active American contractors in the Mideast. It is backed by a planning board heavily weighted with former high-ranking military officials, intelligence agency officials and former diplomats.

The companies include Brown & Root International Inc., Haliburton-NUS Environmental Corp., Military Professional Resources Inc, and Sandia National Laboratories.

Charles Brown, a retired U.S. Army lieutenant general, is project director for USA Technology. He is chairman of the American-Arab Affairs Council and former director of the Defense Security Assistance Agency, which sells military hardware to friendly nations. Members of the planning board include Roger T. Castonguay, a former assistant director of the FBI who dealt with bomb disposal; Ray Cline, former CIA deputy director of intelligence; and former CIA director William Colby.

A small firm based in Chantilly, Va., UXB International Inc., also lost its bid for the contract.

If the Kuwaiti government thought it would get a return from the contract because it owns part of Daimler-Benz, it is in for a surprise, however. When MBB founded CMS in 1988, it decided to plow back any profits into the Tampa-based company. Dibella said it was a deliberate decision by the German owners to help share the burden of American defense efforts.

PROTECTING PRIVATE PENSIONS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, October 30, 1991, into the CONGRESSIONAL RECORD:

PROTECTING PRIVATE PENSIONS

When the Executive Life Insurance Co. of California was seized by state regulators in April, 1991, I was immediately contacted by a large number of Hoosier pension holders who saw a threat to the safety of their pensions. That incident, as well as many conversations with both current workers and retirees in Indiana, has impressed upon me how fearful they are that they will either lose their pension or see it sharply reduced. They view their pension as a reward for hard work that will provide them financial security, and become frightened when they learn that their pension may not be there when they retire.

Employers are not required by law to provide pensions, and many businesses choose not to set up retirement plans for their workers or act to curb existing plans to save money. Thus, the private pension represents only a small portion of the money received by retirees. Today, just 27 percent of individuals over age 65 receive private pension benefits, and private pensions represent 7 percent of total income received by retirees. Only 46 percent of current workers are covered by a private pension plan.

TYPES OF PENSIONS

Private pensions are of two types. The more traditional pension plan is a defined benefit plan, under which a company guarantees its workers a set monthly pension benefit based on earnings and years of service. Under a defined contribution plan, an interest-bearing account is established for each employee into which both he and his employer contribute. The employee is not guaranteed a set monthly benefit, but receives whatever funds are available in his account upon retirement. Of those covered by private pension plans, about two-thirds are covered by a defined benefit plan, one-third is covered by defined contribution plans, and some are covered by both.

In recent years, employers have shifted from defined benefit to defined contribution plans. All defined benefits plans are insured by the Federal Government, and are thus heavily regulated and costly for employers. Defined contribution plans are not federally insured and are less complicated and costly for employers.

Career employees tend to favor defined benefit plans, which provide them with more predictable and larger benefits. Employees who often change jobs fare better under defined contribution plans. In defined benefit plans, investment decisions and risks lie with employers, while in defined contribution plans, they lie with employees. Because employees have little say over the management of defined benefit pension funds, most concerns have centered on this type of plan.

CONCERNS

First, concerns have been raised about whether companies manage pension funds responsibly. During the 1980's, a favorable investment climate allowed many companies to build up surpluses in their pension funds. Companies are not allowed to use pension funds for non-pension purposes unless they terminate the plans completely. Since 1980, more than 2,000 companies have terminated such "overfunded" pension plans, recapturing nearly $21 billion in pension assets. Most of these terminations occurred before 1985.

Upon terminating a pension program, companies must meet their current pension obligations by purchasing annuities from insurance companies. They are then free to use the excess funds for their own purposes. Frequently, these companies establish a successor pension plan, but it is sometimes less generous than the original plan.

In an effort to curb pension plan terminations, Congress recently raised the excise tax companies must pay on recaptured pension funds from 15 percent to 50 percent and changed tax rules to discourage the buildup of large surpluses.

Second, the soundness of the government fund which insures defined benefit plans has been questioned. Companies which have these plans are required to pay premiums to the Pension Benefit Guaranty Corporation [PBGC], which steps in to pay pension benefits should companies be unable to. Most companies with defined benefit plans have sufficient assets to cover their obligations. However, the PBGC's liabilities increased by 20 percent in 1990, while its total assets increased by only 2.5 percent. Last year, the PBGC paid $372 million to 112,500 retirees. The fund has a long-term deficit of $1.8 billion, although its cash flow is sufficient to meet current obligations. In an effort to shore up the PBGC fund, Congress last year substantially increased the required premiums. Still, potential liabilities in large pension plans in the steel and airline industries, for example, could suddenly further increase the PBGC's deficit.

Third, many retirees whose terminated pension plans have been converted into annuities are facing uncertainty because of instability in the insurance industry. For example, it is uncertain whether Executive Life will be able to make full payments to its annuity holders. The PBGC only guarantees company pension plans, not the annuities that companies purchase upon terminating a plan. Although States do have their own guarantee funds for annuities sold by insurance companies, there are limitations in their coverage.

Fourth, unlike many other forms of retirement income, such as Social Security, most pensioners do not receive yearly benefit increases for inflation. Only 1 in 4 company pension checks was so indexed during the last 1980's, and only 9 percent of private companies have a formal plan for any increases. Furthermore, these increases are often insufficient to keep pace with inflation. During the 1970's, pension benefit increases offset about one-third of price increases. Fortunately, other sources of income for retirees have enabled overall retiree income to outpace inflation.

OUTLOOK

My sense is that the health of the private pension system will come under increasing scrutiny. I believe Congress should ensure that plans are monitored more closely to protect the integrity of the private pension system for current and future retirees. Congress must also be concerned about the large number of Americans who have no private pension coverage at all, and the relative insignificance of pensions as a source of retirement income. These trends point towards an increasing burden on the Social Security system and a threat to the well-being of older Americans.

SCHROEDER AMENDMENT HAD RIGHT PRIORITIES

HON. TIMOTHY J. PENNY

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. PENNY. Mr. Speaker, yesterday during the debate on the dire emergency supplemental appropriations bill, H.R. 3543, Mrs. SCHROEDER, chair of the Committee on Children, Youth, and Families, offered an amendment to add $1.39 billion to the bill. I could not support the amendment because it, like all the other items in the bill, had no financing mechanism or offsets attached. Although I did not vote for Mrs. SCHROEDER's amendment nor in favor of the entire bill, I want to state in the strongest possible terms that the priorities set forward in her amendment are correct.

The future of our children is at risk if we do not provide the most basic of their health, nutritional, and educational needs. Increased funding for childhood immunization, Women, Infants and Children and Head Start is not simply a nice thing to do, it is critical. These programs save lives and provide the foundation for healthy growth and development.

I believe these programs should be fully funded—and fully funded today—not 5 years from now. But, I believe we have to be honest about how we would pay for these programs and not mortgage our children's future in the process. I, for one, would support a tax increase that would pay for immediate full funding of these very programs—immunization, Women, Infants and Children, and Head Start.

As the Chilean poet Gabriela Mistral has stated so poignantly:

> Many things we need can wait, the child cannot. Now is the time his bones are being formed, his blood is being made, his mind is being developed. To him we cannot say tomorrow, his name is today.

IN RECOGNITION OF OFFICER ALBERT H. McCANN

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. WELDON. Mr. Speaker, I rise today in recognition of Officer Albert H. McCann. Officer McCann devoted his 28-year law enforcement career to the Lansdowne Police Department in Delaware County, PA. His 28 years of service and contribution to the community began on May 23, 1963.

On November 6, 1991, a small intimate retirement dinner will be held in Officer McCann's honor to celebrate his most distinguished career.

Officer McCann will be missed by his friends and coworkers at the Lansdowne Police Department. The Lansdowne community has been fortunate to have such a dedicated public servant serving their needs.

Law enforcement officers are an invaluable part of our communities. Police officers devote their lives to the safety of the public. They respond to crisis and emergencies with the speed and diligence to protect our citizens, streets, and property from those who do not respect the law.

I commend the work of Officer McCann and his fellow law enforcement officers across the country.

THE ACHIEVEMENTS OF RABBI LEVI MEIER

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. LEVINE of California. Mr. Speaker, on November 21, 1991, the Wagner Program of the University of Judaism will be honoring Rabbi Levi Meier, head of the chaplaincy department at Cedars-Sinai Medical Center.

Rabbi Meier has earned this tremendous honor through his exemplary work as both a spiritual leader and a clinical psychologist. This year marks his 20th year as an ordained rabbi and his 13th year as chaplain at Cedars-Sinai Medical Center. Holding a Ph.D. degree in psychology from the University of Southern California and an M.A. in Jewish philosophy at Yeshiva University, Rabbi Meier has skillfully blended his unique skills to serve his community for two decades.

Qualified to counsel individuals, couples, and families as they deal with such problems as illness, aging, and death, Rabbi Meier has never failed to lend a hand to those in need. The entire Meier family is involved with Rabbi Meier's work and have offered their own significant contributions to the community.

In addition to his work as rabbi and psychologist, Rabbi Meier is also nationally and internationally recognized as a scholar who has written numerous articles, studies and books on religion and psychology. His latest book is entitled "Jewish Values and Jungian Psychology," and he is the special issues editor of the Journal of Psychology and Judaism.

The Wagner Program deserves to be commended for paying tribute to the remarkable achievements of Rabbi Meier. The Wagner Program has made its own contribution as an umbrella organization of volunteers and professionals who provide various public services to the Los Angeles community. It is appropriate that such a distinguished program is honoring such an outstanding individual.

TRIBUTE TO JACK YOHE

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. OBERSTAR. Mr. Speaker, I rise today to pay tribute to Mr. Jack Yohe on his retirement from public service after more than 30 years. After several years as a journalist, Mr. Yohe began his career in public service working for the late Congressman Francis Walter in 1961. Two years later, he began his distinguished career with the Civil Aeronautics Board [CAB] where he worked until his retirement from Federal service in 1982. Mr. Yohe is presently director of the Allentown Bethlehem Easton International Airport [ABE International]. He has held this position since 1984 and will retire at the end of this year.

Mr. Yohe began his career with the CAB as its director of information. In this position, Mr. Yohe was responsible for distributing information on CAB actions and arranging press conferences which assured the public review of CAB activities and policies. Mr. Yohe then became the director of the office of consumer affairs. In this capacity, Mr. Yohe made great strides at developing the office and making the public aware of its existence. Under his leadership, the volume of consumer complaints processed by CAB rose from fewer than 5,000 a year before the office was created, to 15,000 a year.

As director of the Office of Civil Aeronautics Board, Mr. Yohe established a reputation for outspoken frankness in the consumers interest whether dealing with air carriers or the CAB itself. The Office of Consumer Affairs was so successful that the CAB expanded the authority of the office and Mr. Yohe became the director of its successor office, the Office of Consumer Advocate. With Jack Yohe at its helm, the newly created Office acted as a party in CAB formal proceedings as an advocate of the public. In a 1975 evaluation of Federal Government offices handling consumer complaints, the CAB's consumer office received the highest evaluation of the 15 agencies studied.

Jack Yohe's effectiveness while working for the CAB can best be illustrated by looking at just some of the many honors he was awarded during his tenure. These honors include an award for Meritorious Service, the Washington Aero Club's Distinguished Service Award, and the Aviation/Space Writers Association award for outstanding service in public communications. In 1976, the Chairman of the CAB nominated Mr. Yohe for the National Civil Service League Career Service Award.

Upon return to his native Lehigh Valley, Mr. Yohe turned his talents to ABE International Airport. Since Mr. Yohe took over as director of ABE International in 1984, airport use has grown over 105 percent and the number of airlines serving the airport has more than doubled. Under Mr. Yohe's guidance, the Federal Aviation Administration has provided ABE International with more than $25 million in entitlements and discretionary grants. This includes an FAA agreement to build a $6.7 million free-standing air traffic control tower which will greatly enhance the airport's air traffic services. In addition, firm plans are in place for nearly $100 million more in other airport capital improvements which will enable the airport to be prepared to meet the challenges of the 21st century. With the future of the airport assured, Mr. Yohe has chosen to retire at the end of the year to spend more time with his family and friends.

Mr. Speaker, I rise with great pride to express my thanks to Jack Yohe for his life-long dedication to public service. He leaves a legacy of hard work and accomplishments that will continue to benefit both the traveling public and the Lehigh Valley community for many years to come. I would like to take this opportunity on the occasion of his retirement to wish him and his family all the health and happiness they deserve.

IN HONOR OF ANDREW RASEVIC

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mrs. BENTLEY. Mr. Speaker. George Santayana said those who cannot remember the past are doomed to repeat it. This seems to be the case in the Balkans, as a new generation of ethnic hatred and strife, distanced from the events of the Second World War, has reared its ugly head.

It was with great pleasure then, that an article was brought to my attention, written by Andrew Rasevic, a young American of Yugoslav descent, which was published in his school paper, the Sidwell Friends School Horizon.

Young Mr. Rasevic demonstrates an informed and nonbiased knowledge of the situation in Yugoslavia. Perhaps with young scholars like himself, there is a ray of hope for the future of the peoples of both the United States and of Yugoslavia.

I have included a copy of his article for inclusion in the RECORD.

INTENSE NATIONALISM FUELS CIVIL WAR IN YUGOSLAVIA

(By Andrew Rasevic)

The conflicts between Croatians and Serbs are deeply rooted. In 1941, Adolf Hitler and Benito Mussolini conquered Yugoslavia. They created the independent state of Croatia. The Croats decimated the Serbs living in Croatia at the time. These unspeakable crimes continue to be denied by the Croatians, although numerous credible documents contradict them. Along with the customary socio-economic and political problems, it is their bloody history that has scarred both peoples that fuels their civil war today.

In all civil wars, all parties involved believe that they are right. The civil war in Yugoslavia is no exception. In April and May of 1990, Croatia held its first multi-party free election. The Croatian Democratic Union won a majority in Parliament. They then elected the Croatian Democratic Union president, Frunjo Tudjman, the president of Croatia. With Tudjman's election, nationalism in Croatia soared. They resurrected the old Croatian flag, a Croatian Interior Ministry strengthened the republican force, and in May 1991, a national guard was formed to serve as the republic's army. On June 25, 1991, Croatia declared its independence from Yugoslavia.

Serbs constitute 12% of the population in Croatia. As the feelings of nationalism rose, the Serbs became increasingly fearful of the possibility that the actions taken by Croats towards the Serbs during World War II might be repeated. To the horror of the Serbs, their fears were not far from reality. Masses of the Serbs were released from their jobs in government factories, local television stations were prohibited from airing anything opposing the new government in Croatia, Serbs were prevented from publishing in Cyrillic alphabet, and Serbian Orthodox churches were frequently being defaced. Croatia's Serbs drafted a plan for cultural autonomy. Following this, they demanded political autonomy in areas where Serbs constituted a majority. The Croatian government refused to accept this. Since then, Serbs have refuse to recognize the new Croatian government.

Already over one thousand people have died due to the fighting in Croatia. However, the repercussions of the civil war in Yugoslavia extend far beyond its local boundaries. A powerful civil war could be a trauma shaking the very foundations of European stability. Each element of unrest in Yugoslavia heightens separatism throughout the Balkans. In the 1975 Helsinki Final Act, and later on in the 1990 Paris Charter, the principles believed to play key roles in defining a new or at least improved "world order" were documented. Euro-Atlantic states defined the meaning of European security by classifying the free movement of people and the unassailability of post-World War II borders. If the signatories to the Paris charter decide that its principles can be enforced only selectively, then the notion of Europe living freely under the same norms becomes useless.

As history teaches, in civil war, there are neither victors nor vanquished. Extreme nationalistic passions, which presently fuel the antagonisms among various ethnic groups in Yugoslavia, blind many people from reality. Charges and countercharges do not contribute to a constructive dialogue. The present turmoil—if reason is to prevail—must give in to a brighter vision of a peaceful tomorrow. But there cannot be such a tomorrow without a tenable settlement. The only hope for the settlement of the situation in Yugoslavia is negotiation. However, negotiation must be with an open mind, a willingness to listen, and a fervent desire to resolve the current problems. Only then will negotiations solve what fighting cannot. Those who have family and friends on both sides of the war watch with an attentive eye and feelings of despair and helplessness. It is our hope that the negotiation will take place as soon as possible to prevent further useless bloodshed.

HISTORY OF THE SENDERO LUMINOSO GUERRILLAS OF PERU

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. LAGOMARSINO. Mr. Speaker, I am placing in the RECORD today reports which describe the history of the Sendero Luminoso guerrillas—the shining path—which carries out a campaign of terrorism and murder in Peru. The activities described in these reports are not easily read and demonstrate a callous brutality that has not been seen in Peru since the days of the Incas.

I urge my colleagues to consider carefully the tactics employed by the Sendero Luminoso and reflect on what the Peruvian Government should be doing to counter the campaign of death and destruction by these guerrillas and what the United States should be doing to help:

SENDERO LUMINOSO—SHINING PATH

DANGEROUS AND UNPREDICTABLE

Peru's Sendero Luminoso (Shining Path) is an extremely dangerous and unpredictable terrorist and insurgency group. Its declared aim is to destroy existing Peruvian institutions and replace them with an Indian-based peasant revolutionary regime, inspired in part by Mao Zedong's Cultural Revolution in China.

Sendero intimidates the populace by executing—frequently in gruesome ways—civilians who have government ties, and others it considers ideological enemies. It aggressively conducts political indoctrinations in areas it controls and, since 1987, has developed ties to narcotic traffickers and to the peasant coca-growers whom it seeks to protect. Although initially operating as a guerrilla force in the rural areas, Sendero has added urban terrorism as a complement to its rural "people's war" insurgency.

Estimates of total numbers of people killed since May 1980—when Sendero began its violent campaign—reach almost 15,000, with nearly 2,000 killed last year.

BACKGROUND

Sendero began as a movement in the late 1960s at the National University at San Cristobal of Huamanga in Ayacucho, a colonial-era provincial capital high in the Andes, 230 miles southeast of Lima. Abimael Guzman Reynoso, its founder who is called "President Gonzalo" by his followers, was philosophy professor at the University and a leader of the pro-Chinese faction within Peru's Communist Party. In 1970, he and his faction took the name "Shining Path of Jose Carlos Mariategui," the founder of the Communist Party in Peru in the 1920s. Sendero went underground in 1978 and, two years later, launched its first violent attack—on a rural polling station on May 17, 1980, burning all the ballot boxes. Sendero's anti-democratic nature was particularly apparent in this first attack since the 1980 election marked the return to civilian rule in Peru after twelve years of military dictatorship.

Estimates of the number of Sendero militants range up to 5,000, with many more supporters. Although Sendero focuses its appeal on the disadvantaged ethnic-Indian segment of Peru's population, it has successfully recruited among the sons and daughters of the middle and upper classes as well. It also seeks to recruit 13–15-year-olds as armed militants since they can be more easily propagandized into supporting with unmitigating violence Sendero's cause.

IDEOLOGY

Looking to Mao Zedong for inspiration, Sendero considers its philosophy as the fullest development of "scientific communist thought," and seeks to establish through violent revolution a "People's Republic of New Democracy" in Peru. It deeply distrusts Soviet and Cuban "revisionism," and has dubbed the Soviets "social imperialists."

Sendero also distrusts Nicaragua, North Korea and virtually all other communist regimes. It denounces Deng Xiaoping's "revisionism" in China, viewing instead the deposed "Gang of Four" as heroes of the Cultural Revolution. Sendero leader Guzman, according to documents for the group's Fourth Plenum of the Central Committee, also labelled Libya's Mu'ammar Qadhafi "a fake."

Sendero's goal is to destroy not only the government, but also the social order. It claims to champion the disadvantaged Indian peasants, but shows no remorse in killing those who, in its view, display a "petit rural bourgeoisie" mentality. Sendero also implements a strict moral code—including no smoking or drinking—and despite aiding narcotic traffickers and coca-growers, it is known to have executed those under its control found using drugs themselves.

STRATEGY AND TACTICS

Sendero has attempted to terrorize the population through violence, and has murdered government officials, parliamentarians, judges, political activists, journalists, development workers (both foreign and native), professors, teachers, peasants, and occasionally tourists. In 1988 alone, it killed 17 provincial mayors. It has attacked government buildings and foreign embassies. Following the shooting of two Parliamentary deputies in May of this year (one attack apparently criminally motivated), over 20 Parliamentary deputies from two different political parties publicly announced that they had received death threats or attempts on their lives, indicating the extent to which public officials have been threatened by the terrorist violence.

RURAL AND URBAN

Similar to Mao's doctrine of encircling the cities from the countryside, Sendero sees the rural areas as the principal theater for its armed attacks. Urban subversion and terrorism, however, have become increasingly important to its strategy. In a July 1988 interview (the first the secretive Sendero leader had given since 1979), Guzman stated that Sendero must be prepared for what he characterized as the final assault—the taking of the cities. Other documents from early 1988 also indicate that Sendero was stressing urban subversion and terrorism as a complement to its rural warfare.

This new urban emphasis, however, was dealt a severe, but not crippling, blow when Osman Morote Barrionuevo, believed to be in-command, was arrested in Lima and convicted later in 1988. Other recent setbacks were the early August arrests in Lima of 29 Sendero members which, according to the Peruvian Interior Minister, dismantled a major subversive network, and the arrest later in the month of Samuel Vidal Espinoza, a Sendero leader who was charged with several crimes including the murder of Rodrigo Franco, a high ranking government official.

In addition to terrorism, Sendero's urban strategy includes seeking to infiltrate trade unions, student organizations and leftist political parties. It has also been responsible for armed strikes in several rural areas in 1989 and a one-day general strike in July which paralyzed transportation in much of Lima.

ECONOMIC SABOTAGE

Sendero also pursues a campaign of economic sabotage and in 1988 alone was responsible for estimates of losses as high as $2.65 billion. It is responsible for numerous blackouts and brownouts in Lima and other areas of Peru through its systematic bombing of electric pylons. This campaign culminated when Sendero blacked out Lima as well as many interior departments for a total of 21 days during the month of August.

Sendero has attacked rural development programs, killing government engineers who were working to upgrade rural facilities. Examples included the December 1987 attack on the office of the government irrigation project in Ayacucho, in which it killed three engineers, including the head of the Cachi River irrigation project. The project, which Sendero had vowed to block, would irrigate 34,000 acres of farmland and provide 25,000 kilowatts of electricity to the region. In June 1988, Sendero executed as American USAID contract employee and a Peruvian colleague near Quicha Baja who were working on a local agricultural project. In December 1988, it killed two French and two Peruvian engineers working on a rural assistance project in the south central department of Apurimac, and also that month, attacked a development project run by the European Economic Community. The EEC recalled its aid employees because of that attack, and in January of this year, the Dutch government withdrew its development workers from the countryside because of the threat of Sendero attacks.

Although these development programs would aid the rural populations whose interests Sendero claims to defend, Sendero attacks them in order to undermine the established government and to present to the peasantry no hope for improvement until Sendero authority is established. In the words of Guzman quoted at Sendero's Fourth Plenum of the Central Committee, "Our policy is to raze to the ground, to leave nothing * * * In a war, what you can't use or carry off, you destroy, you burn."

ANTI-ELECTION CAMPAIGN

Sendero appears to have launched a campaign against the upcoming municipal elections in November and the general elections in April 1990. During the summer months, Sendero terrorists selectively assassinated over a score of political leaders to include local mayors, party representatives and candidates. Through lethal intimidation, Sendero poses a potential threat to Peru's democratic system as the constitution calls for a cancellation of the vote count if 30 percent of the electorate are prevented from casting their ballots.

THE COCA CONNECTION

Sendero guerrillas have become increasingly active in Upper Huallaga Valley, the locale of most of Peru's illegal coca production, and have become a threat to the Peruvian government's U.S.-assisted drug eradication, crop substitution, and interdiction efforts. Attacks by both traffickers and Sendero guerrillas have increased substantially in 1989, forcing the suspension of some of these operations for six months.

Sendero reportedly acts as an intermediary between the peasant growers and the drug traffickers, winning higher prices for the growers, taking a cut of the profits, and providing protection. In a police raid on a suspected drug target in the town of Uchiza in February of this year, 45 kilos of cocaine paste were seized and eight suspects arrested. Two were Sendero members.

Sendero's involvement in drugs became increasingly apparent since 1987 when, in June of that year, the director of Brazil's Narcotics Division stated publicly that Sendero was involved with the traffickers operating on the Brazilian border and received large amounts of money from them.

Sendero, which now dominates dozens of villages in the region and is influential in several larger towns, has publicly stated that the government's anti-narcotics operations are a cover for "imperialist expansion"—a convenient ideological rationale for attacking them. Sendero is organizing coca growers to protest the anti-drug operations, and a pro-Sendero newsweekly has contributed to Sendero's disinformation campaign by reporting that crop eradication herbicides were poisoning children, several of whom, the newsweekly claimed, have already died. The poisoning claims are untrue and except for a one-time application test, herbicides have not been used in the crop eradication efforts.

VIOLENCE BY THE PERUVIAN TERRORIST GROUP—SENDERO LUMINOSO

THE EARLY SENDERO

1. Some chroniclers of the Sendero Luminoso (SL) suggest that SL brutality is a recent development and largely a response to military and police violence. Our studies of the early behavior of Sendero Luminoso suggest otherwise.

2. The first victim of SL violence was Benigno Medina, the owner of a small ranch in the Ayacucho department village of Ayzarca. On Christmas Eve, 1980, 30 terrorists entered Ayzarca and detained Medina. He was dragged into the community's church. His family, including his son and two daughters, were held in a nearby building. Medina was stripped and staked out, chest upwards, on the dirt floor of the chapel. The terrorists, led by Lima physician Eduardo Mata, cut off Medina's ears and slit his tongue, tip to back. They then emasculated him, amputating his penis and testicles. A daughter described in recent press interviews the experience of listening to their father's cries of agony while he bled to death on the floor of the church.

3. A Catholic priest who has served in the Apurimac/Ayacucho area for the past 20 years described to Poloff in some detail accounts he has collected from peasants fleeing to his parish from SL violence in the north of Apurimac and Ayacucho departments during the first three years of terrorist violence, 1980–83. The father opined that from the beginning these terrorists were bestial in the treatment of their enemies.

4. According to this priest, SL had a particularly effective method of dealing with peasants who refused to cooperate or who were captured fleeing from towns controlled by the terrorists. The entire community was convoked to the town square. The captured renegade was brought before the assembled peasants for a people's trial. Convicted, he was stripped and tied to a post in the square. A sharp knife was produced. Each member of the community, adults and children, were forced to go forward and cut a piece of flesh from the victim. According to the testimony of peasants who have spoken to this priest, it often took as long as an hour for the victim to die from blood loss or shock.

5. While there is little question now of the brutality of SL, during the early years of SL violence such reports rarely appeared in public accounts. Political section contacts in the legal left explain that during those first four or five years the Peruvian left refused to criticize SL, believing that these accounts of torture were invented or exaggerated by the police and army.

Thus, claims of SL brutality were suppressed or ignored, even in the conservative press. According to our Marxist friends, SL violence has always been characterized by its brutality, it is just that in the past three or four years the legal left has finally stopped apologizing for the terrorists whose rhetoric at least, closely matched their own.

THE MEANINGS OF DEATH

6. Some Peruvian cultural anthropologists theorize that there are symbolic meanings in the methods of execution used by SL. Beheading or garroting is often used by the terrorists. Inca emperor Atahualpa was garroted by Pizarro in 1533. These social scientists conclude that SL is attempting to create a cultural tie between the peasants of the twentieth century, their forefathers, and their common oppressor: the White, European elite. When Jose Gabriel Tupac Amaru's revolution (he of MRTA fame) against the Spanish was crushed in 1781, the Spanish staked members of his family in the Cuzco Plaza de Armas and tortured them to death. Tupac Amaru was quartered and beheaded. Parts of his body were scattered to the far corners of the once inca empire. Thus the origin of SL's people trials and public executions.

7. Whether or not SL killers consciously make any of these anthropological links, it is certainly true that the peasant of the sierra derives meaning from SL brutality. A priest who has lived and worked in the sierra of Junin Department for more than a decade explains that the peasants do not so much decry the inhumanity of SL brutality. What they fear, claims this priest, is the mutilation of the corpse. In that regard the Catholic teaching of the literal corporal resurrection matches traditional Indian beliefs that the same body laid into the earth will be resurrected to immortality. Witness Atahualpa's terror that he would be burned at the stake as an infidel and thus accepted a Christian baptism from Valverde (and subsequent strangulation) so his corpse could be preserved.

8. Our Junin priest as well as Protestant missionaries from Junin note that following SL public executions it is common for the terrorists to order that the bodies of victims not be touched or moved for at least 24 hours. A common element among these killings in Junin during the past two years is corpses left in the sun amidst rooting swine and hungry dogs fighting over the human remains. This type of defilement of corpses horrifies these Indians.

9. The May killing of Australian Sister McCormack in Huasahuasi, Junin is a case in point. Remarkable in that incident is the account of a 13-year-old girl who defied the terrorists, took holy water from the church and anointed the nun's body, then covered it

with the mantle from the altar. Even so, the Sister's body was unmoved for 24 hours from the spot in the town square where she was shot to death.

DESENSITIZING THE CHILDREN

10. Guzman promised that his revolution would create a river of blood in Peru and that victory would occur when the people "crossed the river of blood to the other side." The evidence suggests that SL starts training its cadre from a very early age that nothing has meaning, not even life, beyond the party and the revolution.

11. In January 1990 SL intercepted a bus traveling between Andahuaylas and Abanca, Apurimac Department. There were two young French tourists aboard, a man and a woman. Poloff spoke with a Peruvian nun who was a passenger on the bus. She stated that the two were shot once through the head by the leader of the SL column, the only member of the group over 16. The French male appeared not to be dead, despite the head wound. The column leader selected the apparent youngest member of the group. The witness guessed his age to be 13. The lad picked up the largest rock he could heft, walked over to the still living victim, and repeatedly struck the man over the head with the small boulder until the skull was completely crushed.

12. 1990/91 reports from the Ene/Tambo River Valley of SL brutality against the Ashaninka Indians and local colonists are terrifying in their brutality. Tongues cut from adults and force-fed to their children. Gasoline poured over living victims and then set afire. A 14-year-old child struck on the head with a machete, shot, stabbed, and dumped in the river only to survive and be treated by Blue Venture medics.

13. The killers of Sister McCormack in May 1991 and Sister Maria Rivas in September 1990 (also in Junin department) were both females in their early teens. According to witnesses, the two were the youngest members of the invading SL columns. In May 1991 an SL column comprised almost entirely of 14 to 16 year olds killed four women and five of their children in Ayacucho. The victims were beaten and stabbed to death for having participated in a program to provide milk to infants in a rural Ayacucho feeding program.

AN ALMANAC OF BRUTALITY

14. In addition to the incidents noted above, we repeat several accounts of recent SL violence which we believe illustrate the brutal nature of that violence.

On May 31, 1989 environmental reporter Barbara D'Achille was captured by terrorists in Huancavelica Department. She was stripped naked, stoned to death, then shot.

Sometime in June or July 1989 police in Junin department found the body of a fellow officer killed by SL. The terrorists had cut off his lower jaw. They had slit open his stomach and chest, emptied it of its organs, and had then, one at a time, squatted over the man and defecated into his chest cavity. When his fellow officers found him, the corpse was filled with human feces.

On November 22, 1989 two tourists (an Australian and a New Zealander) were taken from a bus traveling between Ayacucho and Nazca. Both were shot to death and tortured. It is not clear whether the torture preceded or followed the killing. The young woman was so badly slashed in the chest and stomach that her torso had to be bound to hold her entrails so her body could be moved.

On November 27, 1989 U.S. reporter Todd Smith was beaten, burned, and garroted. His body was so badly brutalized that a close friend was initially unable to make a positive id.

On August 22, 1990 two Mormon missionaries were killed in Huancayo City. One of the youths had a knife driven through his neck and between his spine.

On May 23, 1991 the 29 year old mayor of Pachacamac was traveling with his wife and two of his four children. His car was intercepted by an SL assassination team. His wife and children were taken from the car. Two of the terrorists physically held his children's heads up and forced them to watch as the other killers machine-gunned their father and then exploded a large dynamite charge placed in his lap. It is common for SL to dynamite the corpses of its victims.

15. Though the brutality is exaggerated, SL killers appear calm and dispassionate as they dispense "popular justice." There are few accounts of raging violence, uncontrolled blood lust, or rampaging troops randomly slaughtering their victims. Perhaps the single most frightening aspect of Sendero Luminoso violence is that what these terrorists do, they apparently do for ideological reasons.

BRUTES IN A BRUTAL LAND

16. The terrorists, of course, are not the only players in Peru who commit brutalities. This cable is not intended to justify the violence of other groups as a reaction to SL violence. Nor is it our purpose here to prove that SL is more violent than other Peruvian "players," though that certainly is the opinion of almost all who study this issue. Rather, our single hope is to present a stark contrast to SL's propaganda effort to describe itself as a popular revolution, and to deny the occasional portrayal in the foreign press of SL as the "robin hood" of Latin America.

17. The truth is otherwise. Sendero Luminoso is a lusus which ranks high in the pantheon of history's real and fictional monsters.

EMERGENCY DEPARTMENT OVERCROWDING THREATENS EVERY AMERICAN'S ACCESS TO MEDICAL CARE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. RANGEL. Mr. Speaker, Articles in two September issues of the Annals of Emergency Medicine and the Journal of the American Medical Association [JAMA] presented alarming new evidence that hospital and emergency department [ED] overcrowding threatens every American's access to medical care.

Increasing numbers of patients are entering ED's. And they often wait hours before seeing a doctor. The study published in the Annals of Emergency Medicine found that three-fourths of responding hospitals reported increases in ED visits. Mean holding times for admitted patients were 3.5 hours for a floor bed and 2.9 hours for an intensive care unit bed. Half of all hospitals responding reported maximum waits of 10 or more hours for floor beds, and 7 hours for ICU beds.

The JAMA survey also shows that patients must wait hours before receiving treatment and that some patients actually leave the ED in frustration before being treated.

Emergency departments function as America's health care safety net. As the above articles indicate, this safety net is being undermined by an increase in patient visits without a concurrent increase in funding. Emergency departments are designed for quick evaluation, treatment, and disposition of large numbers of patients. They were never intended to be holding units for patients in need of immediate hospitalization and ongoing care.

In addition to causing long waits for care, ED overcrowding threatens our ability to respond quickly to time-sensitive emergencies such as heart attacks or trauma injuries. An overcrowded emergency room often must divert ambulances to other hospitals. Some ambulances are diverted several times before reaching an admitting hospital. This delay of treatment can mean life or death to someone with a dire emergency. Also, the more time an ambulance must spend looking for a hospital, the fewer people it can serve.

This phenomenon is not limited to the inner cities, nor is it solely caused by the uninsured seeking care in the ED. Causes of overcrowding vary from region to region. Yet the effect is always the same. No matter who you are, or what your income is, ED overcrowding in your area means you will have to wait for proper emergency care.

Emergency physicians and other health care workers are becoming frustrated as the number of patients filling our ED's increases. In 1980, visits to hospital emergency departments totaled 82 million. In 1989, the total number of visits was 90 million. These physicians are truly on the front lines of our Nation's critical health care system.

The American College of Emergency Physicians [ACEP] first brought this issue to my attention last year. As a result, I have formed the Emergency Room Crisis Caucus and have asked the General Accounting Office to conduct a national survey to study the issue. As one of the aforementioned studies points out, no national survey comparing the difficulties facing emergency departments in cities across the United States has yet been performed. I hope the GAO survey will be able to provide the needed data in order for Congress to take appropriate action.

Solutions to this crisis cannot come soon enough. As potential patients in the ED, we all should be concerned. Timely emergency care may not be there when we seek it and need it the most. It is up to the Congress to address this pressing issue.

OPERATIONS AND ACTIVITIES OF THE NATIONAL ENDOWMENT FOR THE ARTS

HON. BARBARA BOXER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mrs. BOXER. Mr. Speaker, on Monday, October 28, 1991, the Subcommittee on Government Activities and Transportation, which I chair, conducted a field hearing in our continuing review of the operations and activities of the National Endowment for the Arts, primarily an examination of the effect of last year's decency standards on grant applications. The subcommittee was fortunate to have received testimony from distinguished writer E.L. Doctorow, which was presented by actor Christopher Reeve, representing the Creative Coalition. I strongly urge each and every one of my colleagues to read this remarkable statement. The text of Mr. Doctorow's statement follows:

TESTIMONY OF E.L. DOCTOROW BEFORE THE NEA OVERSIGHT HEARING

To the Honorable members of the Subcommittee: I'm a working writer. I pay attention to words, to what they mean, and to the meanings beneath their meaning. Underneath this question before you today as to what conditions if any to attach to NEA's grant giving charter, is a very simple principle, simple but apparently elusive or beyond the tolerance of those who are so quickly and sweetly outraged, those who would punish all voices not in harmony with their own—the crucial idea that we must protect the speech of those we are least comfortable with. There is no First Amendment principle involved in protecting the speech of those we agree with, those whose hands we want to shake because they represent our own beliefs and convictions. The principle emerges in the conflict and contention with ideas that offend us and with expression perceived to be in monumentally bad taste. At that juncture we define ourselves as a civilization that is free and proud and democratic, with trust in the national community's powers of judgement and analysis, and in its ability to discourse against and finally discard ideas that are foul, destructive, malevolent or even simply foolish—or we are fearful and constrictive and craven and without pride in the natural self-cleansing powers of a free society through which all ideas flow. Those who would limit artists in any way, in any medium, I call craven. Those who have not the courage of their country's constitutional convictions I call cowardly.

Now you may say, and it has been said, this is not a question of defending speech by refusing him or her a grant; the artist can say anything he damn pleases—but if its obscene, overtly sexual, pornographic or generally indecent by the usual standards, the artist cannot reasonably expect us to pay for his art. This is solely a question of whether the government should pay for works of art that violate community standards of taste and decorum. This is a question of using hard earned tax dollars to support the artist who mocks, sickens, or otherwise offends the people who provide those tax dollars. That's all.

Of course that isn't all. In the first place as citizens we regularly see our tax dollars funding programs and policies and forms of speech we abhor—as for example when our taxes pay for police and sanitation services for rallies or parades of groups we oppose. We even see our tax dollars going to subsidize criminal enterprise such as the S and L scandals. Why do we get so righteous about our tax dollars where artists are concerned? The U.S. government taxes its citizens on behalf of multitudes of services and functions it performs, some of them noble, some of them stupid, some of them destructive and shortsighted, some of them quite murderous—but in any event a hefty percentage of them in the face of the disapproval at any given time of a large segment of the tax paying public.

But this question always arises where artists are involved. Why? I suspect it is because those who would censor, those who would preen in umbrage, have no belief in the value to society of *any* kind of art, obscene or otherwise, unless it is from another age, with the artists themselves conveniently dead and gone. I suspect that behind this whole question of tax dollars is that practical man's vision of the painter the writer the dancer the composer as a marginal member of society—that politician's gut sense of the artist as a luxury the society sometimes cannot and should not afford, who may in this or that instance do something worthwhile in an impractical sort of way, but who in most instances is something of a fraud—a sort of self indulgent, self-aggrandizing deadbeat who performs no labor of any consequence, who produces nothing that provides light or heat or calories or that does not get anyone fast from one place to another, but is nevertheless always making big claims for himself. I speak of the latent underlying jealousy we have for elevated expression that is personal, uninvited, powerful, that almost automatic anger we have for a kind of witness and truth-telling that does not proceed from and is not endorsed or accredited by church, or corporation, or family, or other governing institution of our society.

This prejudice is profoundly in the American grain, and like all our prejudices it resists rational argument. Not all artists are good artists, very few are in fact great, but the work of independent witness, that often self-destructive power of curiosity, the willingness to articulate that which many may feel but no one dares to say, the blundering, struggling effort to connect the visible to the invisible, to find the secret meanings of places and things, to release the spirit from the clay—that rude, stubborn squawking self-appointed voice singing the unsingable—who we are, what we are becoming—is through all our regions, and states, and cities and schools and workshops and studios a natural resource as critical to us and our identity and our survival as our oil, our coal, our timber.

To put restrictions on speech funded with tax dollars is itself to speak a certain way, the way of pre-emptive state speech, it is to begin to create a realm of approved speech, an orthodoxy of discourse. To limit, rule, draw bounds around speech is to legislate, *de facto*, more speech to some than to others. And it is automatically to privilege the speech of those who would deny it to others. That is the truth that is lost in the current debate in Congress. The righteous desire to tell artists what they may and may not say is the instinct to monopolize a natural resource.

This is not an isolated issue you have before you about the workings of a minor government agency. It arises in a widening context in which, for example, this administration has gotten a judicial ruling that does not permit doctors in public funded birth control clinics to mention the word *abortion*, a context in which the President has supported a constitutional amendment to limit free speech where the flag is concerned—the first President in our history to advocate a retrenchment in the Bill of Rights—a context that includes an exponential rise in the number of books banned from school libraries around the country, a context in which a self-declared Neo-Nazi and former Ku Klux Klan leader has wide public support in his campaign for a governorship—a context, in short, and I say this knowing the courtesies of bi-partisan inquiry may make you wince here, of racial and gender and ethnic divisiveness that proceeds directly from the ideas and values of the extreme right element of our two political parties. I ask you to consider this context—I ask you to consider these items I've mentioned as creeping increments of an official culture. I ask you to acknowledge as you think about our sinful artists that the agenda of the extreme right, just one element of our political spectrum, is what governs current political discourse—the questions we ask, the issues we raise, the problems we define—as it has for the past dozen years or so. This issue we discuss here is created by an extreme conservatism as it wishes to organize our lives illiberally, on one mold, as a uniculture—a conservatism that has from its genuine but quite paranoid soul decided that there is no hope for this country except as all other political constituencies conform to its righteous ways. And so we have odd patterns of thought. College professors who object to racist inflammatory speech on their campuses are derided for being politically correct; at the same time artists applying to the NEA are subject to the criteria of political correctness. It is irrelevant that community standards are violated by racist speech; but it is by upholding community standards that artists are denied grants. All this is quite odd. On the other hand the conservative movement has never let the true meaning of words interfere with its political intentions. Our President speaks for civil rights, but has repeatedly vetoed legislation that would relieve the inequities of racism. He reveres the environment but prevents laws from being enacted that would save it from despoliation. It's all very odd—and if you think I am wandering too far afield here, I remind you that we need every artist we have, every witness, just because things have become so odd, just because people in power don't mean what they say, because our public debate is so degraded, our political discourse so subject to intimidation and flim flam, do we need these strange people who go their own way, these artists. We need them. First we need to stake them to a few months work, if they're good. And then we need to leave them alone.

I point out to you if you haven't already heard, the disbelief of the American people upon learning that in a week in which a man with a gun committed another one of our indigenous mass murders in a public place—twenty-three people dead, a new record—the Congress refused in its grimjawed patriotic righteousness to pass a bill banning the sale of semi-automatic weapons. I want to point out to you the perception on the part of some of us of the ludicrousness of worrying at length about an artist's nudity or naughty words while granting murderous free expression to any maniac who happens to have the price of a gun and decides to walk into a restaurant and kill everyone he sees.

I'm a working writer and I dare call myself an artist. I do not feel marginal to this society but rather deeply involved in its practical working life. My work provides employment to others—editors, typesetters, publishers, binders, newspaper critics, booksellers, teachers, movie actors and directors, and set designers and videotape store managers. Painters provide employment for printmakers, publishers, gallery owners and workers, art critics, TV documentarians, museum curators and museum guards. The work of artists in every medium provides jobs and stimulates the economy. The NEA has generally funded younger writers at the beginning of their careers—so that they too, presumably will be in a position one day to generate jobs for others. All artists are, economically speaking, small businessmen. Perhaps we should be testifying before the Small Business Bureau.

But in any event I ask you not to accept the strange alarmed right wing vision of things—it's bad not only for artists, it's bad for us all. Any legislative condition put on artists' speech, no matter how intemperate or moderate, no matter how vague or how specific, means you publish a dictionary with certain words deleted from the language, it means you lay out a palette with certain colors struck from the spectrum. Do you really want to do this? Does the Congress in its wisdom really believe that bleeping out words, blacking out images, and erasing portions of the tape is what is needed to save this republic?

I would venture to remind you by way of conclusion that if you give to Comstockery a little piece of your democratic or republican soul, it will next year demand a bigger piece. As politicians who know history you know that to appease this demon is to make it only more powerful and more voracious. It won't ever stop unless you stand up to it. For that reason I urge you not to choose between more or less onerous grant-conditioning language. It is all censorship and I say to hell with it—it's nothing any decent American should stand for. Give the NEA back its original charter in which there is no language requiring of artists political conformity in any guise. And you'll be able to go home to your families, and especially to your children, knowing you've done them, and your country, a great service.

Thank you.

KANSAS CITY'S METROPOLITAN ENERGY CENTER: 10 YEARS OF OUTSTANDING SERVICE

HON. ALAN WHEAT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. WHEAT. Mr. Speaker, it is a great pleasure to bring to the attention of my colleagues the outstanding contributions made to the greater Kansas City community by the Metropolitan Energy Center.

This month, the Metropolitan Energy Center celebrates its 10th anniversary of service to the people of Kansas City. Founded in response to the energy crisis of the late 1970's, the center is one of the last independent, nonprofit, community-based energy agencies in the country.

Whether in times of energy uncertainty or in times of relative stability, the mission of the Metropolitan Energy Center has remained the same—to "involve people individually and collectively in the management and control of their energy use."

Today, under the skilled guidance of Executive Director Peter Dreyfuss, the center continues to play a vital role in the promotion of sound energy policies and the provision of a comprehensive range of services related to energy conservation and improvement of the environment.

These services include an information hotline, demonstration projects to test new energy-efficiency applications, residential weatherization, and in-home energy audits. A hallmark of the center's 10-year history has been its ability to foster effective private-public partnerships that work to the benefit of the entire community.

The Metropolitan Energy Center estimates that the greater Kansas City area spends more than $2 billion each year on energy. Each dollar saved through the efforts of the center is a dollar that can be used to help the local economy grow stronger.

At its 10th anniversary celebration on October 14, 1991, the center honored several individuals and organizations for their efforts to promote efficient energy use and improve the quality of the greater Kansas City environment. Recognized for their contributions were:

H. Bruce Hughes, who donated his expertise as an engineer to save local nonprofit agencies thousands of dollars through energy efficiency improvements.

Ray Gordon, who audited all of the homes weatherized under the center's Project Warmth campaign, which has helped more than 300 low-income families stay warmer in the winter and reduce their utility bills.

Hallmark Cards, Inc., and the Hall Family Foundation for 10 years of financial and volunteer support of the center's programs.

Kansas City Southern Industries, for a longstanding commitment to the center and to improving the quality of life of Kansas Citians.

The Village Presbyterian Church, for its commitment to aid low-income families in reducing their energy costs through weatherization.

I am pleased to join the center in commending the spirit of community involvement demonstration by these individuals and organizations. Through their generous donation of time and resources, they are working with the center to create a better future for the metropolitan area.

On the 10th anniversary of the Metropolitan Energy Center, I am proud to express my appreciation for all the assistance it has provided in making our community more energy efficient. As we prepare to face the economic and social challenges of a new century, it is my hope that the Metropolitan Energy Center will continue to play a key role in developing sound energy policy for the future.

PITTSBURGH CELEBRATES THE 25TH ANNIVERSARY OF THE INTERNATIONAL POETRY FORUM

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. COYNE. Mr. Speaker, I want to join in celebrating the 25th anniversary of Pittsburgh's International Poetry Forum.

Pittsburgh is a city of many proud traditions which reflect the artistic and cultural achievements and interests of our community. The International Poetry Forum is one such tradition.

Over the past 25 years, the citizens of Pittsburgh have enjoyed presentations of some of the world's great poetry at our community's International Poetry Forum. For this pleasure, we express our gratitude to Sam Hazo, a man who had labored with love over the years to make the International Poetry Forum a success.

At the 25th anniversary gala held recently in Pittsburgh, a number of outstanding performers presented some of the great poetic works created in the United States and abroad. Anne Jackson and Eli Wallach performed a dramatic reading from Tennessee Williams' "Summer and Smoke," and Michael York presented "A Thousand and One Nights." Opera singers Maria Alsatti and Michael Fiacco were among the many other performing guests at this year's forum.

One of the speakers at Pittsburgh's recent International Poetry Forum was William J. Byron, S.J., president of the Catholic University of America. In his remarks, Father Byron notes the vital role played by poetry in the life of Pittsburgh and cities everywhere. I believe Father Byron is correct in stressing the important contribution of poetry to the conversation of the city. It is often through poetic expression that we see best reflected the true beauty and energy of our Nation's urban centers. I would ask unanimous consent that the remarks of Father Byron be printed in the RECORD immediately after my statement.

The International Poetry Forum celebrates human creativity and our ability to communicate through words and imagery. Mr. Speaker, I want to commend Sam Hazo and everyone else associated with the International Poetry Forum, and wish them continued success in their efforts on behalf of this forum.

Poetry and the City

(By William J. Byron, S.J.)

Although I have a famous poet's name—Byron—I am not a poet. I write essays occasionally, never verse. And although I was born in this city's Magee Hospital, I am not a Pittsburgher. I grew up in Philadelphia. I have, however, both roots and friends here in Pittsburgh. Sam Hazo is one of those friends. I admire his poetry and welcome the opportunity to join in the celebration of the international influence, over 25 productive years, of Sam Hazo's Pittsburgh-based poetry forum.

Pittsburgh, like any city anywhere in the world, needs poetry. Few cities recognize the need. Pittsburgh is fortunate to have the poetic eye of Sam Hazo overseeing the way its citizens search for meaning in their lives; it also has in him a citizen-poet who makes this city a more human place through the gift of poetry.

My spiritual forebearer, Saint Ignatius of Loyola, founder of the Jesuits, advised his early companions to establish colleges in locations where they could hear and participate in "the conversation of the city." (Duquesne's location would be ideal in the view of Ignatius.) I like that phrase, "the conversation of the city." Every city has an ongoing conversation, a rhythm of words, a tuck and point of ideas an ordered exchange of thought sometimes, but much more often a random, occasionally loud, even shrill conversation without, as the saying goes, "rhyme or reason."

There is reason and, depending on form and fashion, also rhyme in the poetic contribution to the "conversation of the city." That is why the city needs poetry that is creative. It is characterized by intensity of meaning. It is better, of course, spoken aloud than silently read. And no matter how free the form, it is conveyed in disciplined measures. It has beginning and end with structured meaning somewhere in between. It has reason and imagination. It has those essential immaterial realities every city needs.

Chesterton once remarked that London is a riddle; Paris is an explanation. In the life of any city there are many riddles to which poetry may well serve as explanation. Through poetry, citizens can get at the meaning of things and events in a unique way. Those who recite or read poetry aloud can feel the meaning and communicate the feeling.

What happens in a theater on a stage is what Otto Ludwig saw as the marriage of two arts—acting and poetry. They unite to produce the drama. What happens on the streets and in the homes and workplaces of a city deserves the label of unexpressed, even unrecognizable "poetry in persons." Meanings there remain hidden and mute until the poet produces the poem.

At the same time, within these streets, homes, and workplaces, there are human beings who are dull of spirit, hard of heart, leading value-vacant lives—sleep-walking, so to speak, in a world they cannot see or understand as beautiful and challenging. They need not a physician, but a poet. "Both socially and individually it is with us as it is with our cities," wrote Robert Bolt 40 years ago, "an accelerating flight to periphery, leaving a center which is empty when the hours of business are over." The poet can help to fill that empty center.

I read Robert Twombly's biography of Frank Lloyd Wright last summer and was impressed to learn that in 1990 an article in Architectural Review noted that "Few architects have given us more poetic translations of material into structure than Frank Lloyd Wright." The biographer went on to make the following points:

"The twentieth century in America opened amidst a wave of national self-scrutiny. The muck that had given a protective covering to the economic and social misery caused by industrialization and corporate consolidation was being raked away. Protest and reform swept the land and drifted into literature, where the social realism of Stephen Crane, Jack London, and Theodore Dreiser exposed the brutalization of working people, and into painting, where John Sloan, Robert Henri, and others depicted the seamier side of urban life."

Twombly omits mention of poets (Carl Sandburg's "Chicago Poems" did not appear in Poetry magazine until 1914) but goes on to say that Wright's work was "considered 'reformist' since everything about [it] implied discontent with the architectural and social status quo."

Discontents, poetically conveyed, need articulation in our cities today. The yearnings of the human spirit, poetically framed, need expression in our midst. We are back where we were as this century began—in need of self-scrutiny aided by the clarifying insights poetry can deliver to human minds and hearts. That unity—unity of minds and hearts—is the goal of those who work for justice as they hope for peace. It is time to remind policy-makers who pursue those goals in our cities, nations, and the international community, that to ignore the poets is to risk losing their way. It is also time to encourage the poets not to give up on the city, as unresponsive and unpromising a that troubled social reality may appear to be.

And, of course, it is time to say thanks to Sam Hazo for his poetry and patient persistence. It will please him, I know, for me to leave you with these lines I like from Robert Frost. They speak to me of Sam's poetic persistence and serve as a measure of our debt to him.

> Our very life depends on everything's Recurring till we answer from within. The thousandth time may prove the charm.

A thousand thanks, Sam, for your answers from within. May you long continue to serve both city and citizens so generously and so well.

BUSINESSES AND SCHOOLS: INVESTMENT IN EDUCATION

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. GOODLING. Mr. Speaker, as we move closer-and-closer to the global economy of the next century, or schools and educational systems will play an increasingly important role in ensuring that our youth have attained a level of academic achievement sufficient to equip this Nation to be a competitive player in that economy. Seen in the context of our Nation's role in the global marketplace, the goal that our students be first in the world in mathematics and science by the year 2000 is truly a national goal and every citizen has a role to play in meeting that challenge. The task of educational reform cannot be left solely to school administrators or to government policymakers, but must be confronted by every one of us that has a stake in the economic future of this Nation.

Acknowledging its interest in our country's economic future, the business community has recognized the importance of quality in our schools and has made a tremendous investment in education. According to the October 21, 1991, issue of Fortune magazine, 24 percent of Fortune industrial 500 and service 500 companies donated at least $1 million to education programs and school reform in the past year. The Fortune article also indicated that, not only are these top tier businesses giving financial support, but employees at every level of the company hierarchy are giving generously of their time as well.

One hundred and thirty two of the most promising school-business partnerships were highlighted by Fortune and these programs dealt with topics as diverse as student-parent communication, dropout prevention, mathematics and science education, literacy, English as a second language, teacher development, and job preparation, to name a few. The concept of schools and businesses working in partnership to improve our schools and the quality of education we provide is one that was embodied in a bill I introduced, H.R. 2495, the Teacher Leadership Act of 1991. That bill included a model program called Business Partnerships for Classroom Leadership which was designed to foster relationships between schools and local businesses to bring new expertise into the classroom and to enable teachers to apply their skills in a practical setting through internship opportunities.

In reviewing the numerous exemplary programs included on the Fortune list, I was pleased to note the investment in education by two firms with a substantial presence in my district. Caterpillar sponsors a program with the Urban League that exposes high school students to the possibilities for business careers and offers summer jobs and college scholarships. Employees of Electronic Data Systems receive time off from work to volunteer as mentors and tutors in their community schools and the company also trains volunteers and teachers in positive parenting and child abuse prevention.

Too often business organizations are unjustly accused of having a single-minded profit motive and of exhibiting a lack of regard for some of the larger social problems that affect this Nation. The Fortune article highlighted for me the tremendous commitment to education, both in terms of money, and in terms of time, that many of our largest businesses have made. Each of these companies deserves our applause.

A TRIBUTE TO LETTY WICKLIFFE

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. PURSELL. Mr. Speaker, every once in a while, a community pauses to recognize those residents who have added to the fabric and quality of life in a significant and longlasting way.

One such individual in Ann Arbor, MI, is Letty Wickliffe, whose mother was a native Ann Arborite and whose father was a former slave and Civil War veteran.

Letty was born on January 25, 1902, in Ann Arbor. Her productive adult years have earned her the rightful title of respected community leader.

Undaunted by sometimes overt, and other times subtle, racial prejudice in Ann Arbor, Letty emerged as an energetic and dynamic leader whose words and actions matched her commitment to a truly harmonious city.

Letty's Ann Arbor neighborhood is a model area where diversity flourishes. Many city leaders have sought Letty's leadership on issues ranging from education—(she holds a degree in education from the University of Michigan)—to community activities, recreation, housing, and city services. Letty has had a positive impact on these issues and many others.

More importantly, Letty Wickliffe has had an impact on the people of here neighborhood, her city, and her political party—she is a lifelong Republican. There are few people who have come in contact with Letty and not come away feeling as though she genuinely cared about them, celebrating their successes and soothing their disappointments.

Letty Wickliffe is unique—a true believer in the "can do spirit" and one who has never hesitated to roll up her sleeves and get a job done.

Earlier this year, Letty was featured in a video depicting the lives of three prominant black women of Ann Arbor. To this tribute I add my own, and ask my colleagues to join me in recognizing the achievements of this grand lady.

IN HONOR OF DON HENLEY AND THE WALDEN WOODS PROJECT

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. ACKERMAN. Mr. Speaker, I rise today to honor the efforts to preserve a sacred site in America. Walden Woods in Concord, MA, the land made famous by Henry David Thoreau in the American classic "Walden," has always been renowned as a land where nature's beauty could help one find inner peace. But in early 1990, Walden Woods was in danger of being developed.

In April of 1990, recording artist Don Henley and several of my Massachusetts colleagues took action to prevent construction on this pristine land. Henley founded the Walden Woods project, an organization whose objective is to acquire and preserve areas of Walden Woods which are in danger of being leveled for commercial development. The land will eventually be turned over to a local land trust for public access.

The Walden Woods project's fundraising efforts kicked off on April 24 and 25, 1990, with Henley and various other entertainers participating in two benefit concerts at the Worcester Centrum in Massachusetts. With the help of the Trust for Public Land, the Walden Woods project acquired 25 acres where condominiums were to have been constructed. This purchase, which took place only 8 months after the Walden Woods project's inception, totaled over $3.5 million. The Commonwealth of Massachusetts then contributed $500,000 to purchase the development rights for the adjoining 25 acres, thus preserving a total of 50 acres of this historic site.

While the mission was to preserve land, the Walden Woods project has not ignored the needs of the people who were counting on the condominiums. An alternate site has been found for the construction of units for low- and moderate-income families. The Walden Woods project is in the process of buying this land which will be turned over to the town of Concord and State housing authorities.

Yet a business development, Concord Office Park, is still set for construction on Brister's Hill, an 18-acre site only 700 yards from Thoreau's cabin. For more than a year, Henley and others have tried to negotiate with the owner of Concord Office Park to preserve this important piece of American history.

This past summer Henley raised close to $300,000 from his North American concert tour; with the assistance of Pollack Media Group, Henley enlisted the aid of several radio stations around the country to auction off tickets for his concerts. Most recently he has compiled a book entitled "Heaven Is Under Our Feet: A Book For Walden Woods," featuring 67 chapters, including ones by Senator EDWARD KENNEDY, former President Jimmy Carter, Senator JOHN KERRY, Congressman CHET ATKINS, Jack Nicholson, Robert Redford, Janet Jackson, and many others. Five dollars from each copy sold will go directly towards the project.

Of the $7 million or so needed, over $1.5 million has been raised. The Walden Woods project hopes to eventually link the newly protected land into the existing trail system around the pond. A series of tasteful interpretive markers throughout the trail system would promote understanding and respect for Thoreau's life and work, and would provide an opportunity for visitors to the Walden area to learn more about the environment which shaped the thoughts of one of America's greatest authors.

Don Henley's personal involvement and dedication in this important endeavor should be an inspiration to everyone. While celebrities often lend their names to causes, Don Henley has given his time, money, and compassion to this project and is largely responsible for its success to date. He has shown that we as individuals can make a difference when we come together for a worthy cause.

I ask my colleagues to join me in honoring Don Henley and his cochairmen, Michael Kennedy and former Senator Paul Tsongas, and the project director, Kathi Ro Anderson, for their efforts in the Walden Woods project. His recent concert series, which opened in New York City's Madison Square Garden this month, has helped to support these honorable attempts to preserve Walden Woods. I am glad my hometown was able to assist this noble effort.

INTRODUCTION OF THE WESTERN HEMISPHERE ENERGY SECURITY PROMOTION ACT

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 30, 1991

Mr. SYNAR. Mr. Speaker, I'm pleased to join with my good friend and distinguished colleague from West Virginia, Mr. WISE, in introducing H.R. 3679, the Western Hemisphere Energy Security Promotion Act.

Those of us on the Energy and Power Subcommittee have spent many months working to develop a comprehensive energy policy for the United States. One of our most crucial goals is to reduce this Nation's heavy dependence on unstable foreign suppliers of oil, and particularly those from the Persian Gulf. Clearly, we all agreed than enhancing our long-term energy security means doing more to increase and diversify our domestic resource base. In this respect, I have sponsored my own bills and strongly supported other proposals to increase domestic oil production in the lower-48, increase our production and use of natural gas and alternative fuels, and a variety of other measures to promote U.S. self-reliance. But even if we are successful in those efforts, the United States will continue to be dependent on imports to some degree. As a result, it is critically important that, to the extent we do import foreign oil, we rely increasingly on more stable sources. Otherwise, we are simply setting ourselves up for one supply threat after another in the years ahead.

This legislation is designed to address that problem, and its purpose is very simple: It enunciates our general policy goal of enhancing U.S. long-term energy security by enhancing the overall production capabilities and security within our hemisphere. Let me re-emphasize that the goal is not to displace U.S. oil with oil from other Western Hemisphere countries. To the contrary, our hope is that increased reliance on more stable supplies of oil from the Western Hemisphere—particularly Venezuela and Mexico—will displace those supplies we currently import from less stable regions. We can accomplish that goal by making sure that U.S. policies give proper consideration to the need for continued development of production capabilities in this hemisphere.

As my colleagues may know, in January 1990, I traveled with other members of my subcommittee to Venezuela, at the invitation of the Venezuelan Energy Ministry. During that visit, we had an opportunity to discuss Venezuela's energy potential, Western Hemisphere energy security matters generally, and related issues such as increased opportunities for energy industry investment and expansion. I was greatly encouraged by those discussions and by their mutual desire to work closely with the United States on cooperative energy security efforts. We will all gain through closer cooperation in this area, and I look forward to working in the months ahead with other Members who share our goal of promoting a more energy-secure Western Hemisphere.

I invite our colleagues to join us in the support of this goal and this legislation.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, October 31, 1991, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

NOVEMBER 1

9:30 a.m.
Joint Economic
To hold hearings to examine the employment-unemployment situation for October.
SD-628

NOVEMBER 4

2:00 p.m.
Judiciary
To hold hearings on pending nominations.
SR-332

NOVEMBER 5

10:00 a.m.

Commerce, Science, and Transportation

To hold oversight hearings on the Office of Barter and Countertrade, Department of Commerce.

SR-253

NOVEMBER 7

9:30 a.m.

Energy and Natural Resources

Public Lands, National Parks and Forests Subcommittee

To hold hearings on S. 461, designating segments of the Lamprey River in New Hampshire for potential addition to the National Wild and Scenic Rivers System, S. 606, designating segments of the Allegheny River in Pennsylvania as a component of the National Wild and Scenic Rivers System, S. 1230 and H.R. 990, to authorize additional funds for land acquisition at Monocacy National Battlefield, Maryland, S. 1552, designating the White Clay Creek in Delaware and Pennsylvania for potential addition to the National Wild and Scenic Rivers System, S. 1660, to authorize funds for implementation of the development plan for a segment of Pennsylvania Avenue in the District of Columbia, and S. 1772 and H.R. 2370, to alter the boundaries of the Stones River National Battlefield, Tennessee.

SD-366

10:00 a.m.

Commerce, Science, and Transportation

Foreign Commerce and Tourism Subcommittee

To hold hearings to examine U.S. trade with eastern Europe and the Soviet Union.

SR-253

NOVEMBER 8

9:30 a.m.

Governmental Affairs

Oversight of Government Management Subcommittee

To hold hearings to examine whether the Federal Government's purchasing practices are environmentally conscious.

SD-342

NOVEMBER 12

10:00 a.m.

Commerce, Science, and Transportation

To hold hearings to examine competitiveness in the U.S. computer software industry.

SR-253

Select on Indian Affairs

To hold hearings on S. 538, to restore Federal recognition of, and assistance to, the Miami Nation of Indiana.

SR-485

NOVEMBER 14

9:30 a.m.

Governmental Affairs

Oversight of Government Management Subcommittee

To hold hearings on how the Federal Government can improve its message to the public on child health and nutrition.

SD-342

NOVEMBER 15

9:30 a.m.

Select on Indian Affairs

To hold hearings on S. 1607, to provide for the settlement of the water rights claims of the Northern Cheyenne Tribe.

SR-485

NOVEMBER 19

10:00 a.m.

Commerce, Science, and Transportation

To hold oversight hearings on title 5 of Public Law 100-418, authorizing the President to conduct a study on the effect of foreign mergers, acquisitions, and takeovers on U.S. national security.

SR-253

NOVEMBER 20

10:00 a.m.

Select on Indian Affairs

To hold oversight hearings on Federal court review of tribal court rulings in actions arising under the Indian Civil Rights Act.

SR-485

POSTPONEMENTS

NOVEMBER 6

10:00 a.m.

Select on Indian Affairs

To hold hearings on S. 538, to restore Federal recognition of, and assistance to, the Miami Nation of Indiana.

SR-485

HOUSE OF REPRESENTATIVES—*Thursday, October 31, 1991*

The House met at 10 a.m.

The Dr. James R. Ray, European director, Baptist International Missions, Inc., Chattanooga, TN, offered the following prayer:

Our Father, as we assemble today in this place to assume the duties set before us, we acknowledge our need of your guidance. We are reminded that it is Your providence that has allowed us this sacred trust of leadership. We remember the words of Jeremiah the prophet when he said to his country, "truth is perished."

May we not forget, Lord, our sacred duty to keep truth from perishing in our country. Give us wisdom and guidance. Teach us to lean upon You, and not upon ourselves. Help us to keep our own hearts right so that we might govern right.

We lift our prayers to Thee for peace in the world and peace in our hearts through Jesus Christ your son. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

Mr. SPEAKER. Will the gentleman from New Hampshire [Mr. SWETT] come forward and lead the House in the Pledge of Allegiance.

Mr. SWETT led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1350. An act to formulate a plan for the management of natural and cultural resources on the Zuni Indian reservation, on the lands of the Ramah Band of the Navajo Tribe of Indians, and the Navajo Nation, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes;

S. 1467. An act to designate the U.S. courthouse located at 15 Lee Street in Montgomery, AL, as the "Frank M. Johnson, Jr. United States Courthouse";

S. 1530. An act to authorize the integration of employment, training, and related services provided by Indian tribal governments;

S. 1889. An act to designate the U.S. courthouse located at 111 South Wolcott in Casper, WY, as the "Ewing T. Kerr United States Courthouse"; and

S. 1891. An act to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes.

THE REVEREND DR. JAMES R. RAY

(Mr. RAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RAY. Mr. Speaker, I rise to introduce my youngest brother James Ray to my colleagues and to express my appreciation for this opportunity of delivering this morning's invocation.

I want to share my pride with you on the accomplishments of my brother. We both came from proud but humble beginnings. Our parents were third generation Georgia farmers, and we were both born on a 200-acre, two-horse farm in rural Crawford County, GA. We have not forgotten from whence we came.

Our religious roots began in the Little Union Primitive Baptist Church in our home county. Our mother was one of the strongest Christians that I have ever known and any success in our lives must be attributed to her love, guidance, and firm discipline.

James came to know the Lord as a very young person during a revival which was conducted by Ed Beck, a young preacher who was the captain of the Kentucky Wildcats basketball team at the University of Kentucky in the early sixties. Ed was also our brother-in-law.

James entered Tennessee Temple University in Chattanooga and earned his way through college. He worked at night in the bleaching and dyeing division of a woolen mill and preached at small churches in the Tennessee mountains on Sundays.

He met his wife Mary at school, and they have two children and two grandchildren.

He received graduate degrees from Luther Rice Seminary and Trinity Theological Seminary.

After pastoring in churches in Tennessee, Illinois, and Alabama, he became interested in the mission field and after prayerful consideration made the decision to devote his life to mission work.

He chose the Baptist International Missions in Tennessee which was just beginning to experience limited success in establishing foreign missions.

BIM tested its candidates very thoroughly by requiring that once they were accepted, it was necessary for them to work for 1 year or more in churches around the United States building up commitments of financial assistance and pledges.

Once adequate assistance was assured to sustain the candidate in a foreign land for a period of time, an assignment was made.

They are sent to a community with a challenge to build a church from the ground up by raising the necessary funding while preaching the Baptist faith.

His first mission assignment was Brisbane, Australia, and he later established a mission in Corby, England.

In 1979, he was appointed European director of the Baptist International Mission, and today he is director over 125 missionaries in 15 European countries. He is actively working in all of Europe, which is his assignment.

He and his mission board are heavily involved in Eastern Europe and have found that the Christian religion is alive and strong in Eastern Europe even after decades of Communist suppression.

A revival in Romania in July brought out 5,000 to 10,000 people each evening during the week, and over 1,000 were converted.

Mr. Speaker, I say to my colleagues that I appreciate the privilege of introducing my brother, the Reverend Dr. James Ray.

Jimmy and Mary selected Baptist International Missions in 1969 to fulfill his call to missionary service. They were sent to Australia where Jimmy preached in 100 churches in 7½ months. While there, they built the Life Gate Baptist Church of Brisbane, Queensland, and established a Bible college. Four years later, with a church building program underway and a sizable congregation established, Jimmy and Mary moved to England where he started the Life Gate Baptist Church in Corby, Northamptonshire.

Jimmy assumed the role of European director in 1979, but he still considers himself a missionary. He has traveled hundreds of thousands of miles in Europe and America, and has seen scores of young people become missionaries within the Baptist International Missions' umbrella.

As European director, my brother oversees the work of missionaries in 15 European countries including some in the Eastern European bloc. In July of this year, the mission held a revival in Romania which attracted over 6,000 attendees with over 1,000 converting.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Baptist International Missions is an extremely devoted organization whose influence and teaching spreads across the world. It was formed in 1960, and now is represented in 65 countries by over 1,000 missionaries.

The missionaries of the Baptist International Mission are a very devoted group. For instance, their subsistence support comes strictly from commitments they can obtain from churches and the community in which they live. In addition, support for the worldwide mission organization is very widespread with assistance coming from over 8,000 independent Baptist churches.

NO ACTION ON PRESIDENT'S DOMESTIC AGENDA

(Mr. GILLMOR asked and was given permission to address the House for 1 minute to revise and extend his remarks.)

Mr. GILLMOR. Mr. Speaker, over the last few weeks, we have been inundated with legislative proposals and rhetoric and press conferences about reviving our sluggish economy. However, I should point out that based on figures released this week, the economy did begin to grow again in the most recent quarter. Indeed, it grew at the reasonably healthy rate of 2.4 percent. Some of the proposals which have been made have a great deal of merit, such as capital gains tax cut and expanded tax breaks for savings. Some of this rhetoric has finally prompted some Members of Congress to think about taking action, including leaders in the House and Senate.

This recent flurry of activity has come from both sides of the aisle. What really needs to be pointed out, though, Mr. Speaker, is that these proposals need to be openly debated in this House. The President proposed several growth incentive measures in his budget last February—there has been no congressional debate, and no congressional action, on these proposals. The President proposed his domestic agenda months ago. The ruling party of this Congress is to blame for failing to enact growth initiatives, and for not helping to bring about economic recovery.

PRESIDENT SHOULD SIGN EXTENDED UNEMPLOYMENT INSURANCE

(Mr. BUSTAMANTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BUSTAMANTE. Mr. Speaker, last month, construction declined, industrial production flattened, auto sales went down, steel production fell, and consumer confidence in the economy eroded. During this same time period, President Bush met with leaders of 21 foreign countries, including Micronesia and Lichtenstein, and only three meetings with Cabinet Secretaries on domestic issues.

When the House passed legislation to extend unemployment benefits last month, President Bush was meeting with Peruvian President Albert Fujimori. A few days later when the Senate debated and voted on an unemployment benefits bill, the President was at the U.N. meeting with leaders of Norway, the Marshall Islands, Micronesia, Iceland, Cambodia, Venezuela, and Lebanon.

Last week, the big three auto makers reported record losses. This week Federal Reserve Chairman Alan Greenspan said the "economy turn demonstrably sluggish." And yesterday it was reported that new home sales plunged almost 13 percent, even though interest rates are at their lowest levels in 15 years. These are not signs of a healthy economy.

The President deserves our support for a successful outcome in the Middle East peace talks in Madrid, and he is to be commended for getting the Madrid conference off to a good start. But now is time to take care of our own, and he can do that by signing an extended unemployment insurance that Congress will be sending to him in the next few days or weeks.

TIME TO HALT TRASHING OF AMERICA

(Mr. PAXON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PAXON. Mr. Speaker, as a result of a USDA decision in July, Canadian garbage is now allowed to flow unrestricted into our Nation.

In September, the USDA agreed to my request to conduct a full, substantive, and technical review of their July decision.

Well, Mr. Speaker, their report is in, and unfortunately, it raises more questions than it answers.

The USDA outlines 21 plant pests introduced into Canada and not known to occur in our Nation. They also specify serious animal diseases, and this is but a preliminary study, and yet they say Canada can still send more trash, completely unaddressed, the risk to public safety from millions of tons of uninspected Canadian garbage; for example, no control over inclusion of toxic or hazardous wastes.

To all this, the USDA says, "no risk."

Well, Mr. Speaker, western New Yorkers know differently, and we want action from our Government.

Along with my colleagues, the gentleman from New York [Mr. MARTIN] and the gentleman from New York [Mr. WALSH] and Senator D'AMATO, we have introduced legislation to again regulate Canadian solid waste imports.

Mr. Speaker, it is time to halt the trashing of America, and do it now.

THE SLUGGISH ECONOMY

(Mr. WISE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WISE. Mr. Speaker, one of my colleagues on the other side of the aisle asked a good question just a couple minutes ago about why has there not been economic growth. I might point to the fact that during the last 10 years in which this country has been under a Republican administration, and particularly under President Bush's leadership, the result has been not jobs gained, but jobs lost; 300,000 jobs less than when the President raised his hand on the steps of the Capitol just 3 short years ago, 300,000 jobs less in this country than there were then.

□ 1010

Growth record, seven-tenths of 1 percent in the first 2 years of his administration, an all-time low.

But the folks at home do not need statistics, they know, they know that they cannot get a mortgage, they are having trouble making car payments; they know they are worried about whether or not to make out the tuition check; they know they do not want to buy something that is going to be expensive, because of what it may mean for the future.

What do they have to look forward to for relief? Well, President Bush has been meeting, all right, on the issue; he met with 21 world leaders while he has had three meetings on the economy.

Perhaps the answer is, if you are really concerned, maybe if you go to Rome next week or next month, you can talk to him, catch him in Singapore, perhaps in Japan when he is visiting there.

The answer is we have got to come home, we have got to take care of our own.

WE CAN UPHOLD CIVIL RIGHTS WITHOUT DESTROYING SMALL BUSINESS

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, yesterday, the other body overwhelmingly approved a civil rights bill that will not force smaller businesses into adopting quotas and that provides reasonable caps on damage awards in discrimination suits.

This is good news for both employers and employees.

I have said from the beginning of the civil rights debate that we need to restore the balance in these cases that has been skewed by a string of Supreme Court rulings.

My concern is in assuring that balance is indeed restored, not simply skewed in the other direction.

I hope that we in this body will also have the opportunity to vote for a reasonable civil rights package that will not force quotas or bankrupt smaller firms with unrealistic damage awards.

Such a bill would be a triumph for civil rights and for small business.

If such a bill is enacted, those of us who voted against the quota bill will have done much more than simply say that we're for small business.

We will have cast votes that really count.

INTRODUCTION OF COMMUNITY HEALTH CARE ACT OF 1991

(Mr. JOHNSTON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSTON of Florida. Mr. Speaker, in 1965, when we passed the Medicare and Medicaid Programs, we believed that the United States had finally created a system of universal health care. We were wrong.

Today, we share the dubious distinction with South Africa of being one of two industrialized countries without a universal health insurance system. The current piecemeal system of health insurance is far too confusing and fraught with loopholes that often leave the ill without adequate care. We have reached an impasse, and comprehensive reform is now vital to the economic, social, and moral health of our country.

Today, I am introducing the Community Health Care Act of 1991. This legislation creates a partnership between Federal, State, and local government for the provision of universal health insurance. This is a national program with State and local flexibility. Our solution to the health care crisis must be comprehensive; however, it must also be rooted in a local administration which is knowledgeable of local resources and conditions.

My plan is a variation of the single-payer proposal. It includes limited cost sharing and it encourages partnerships with private insurance companies. The Community Health Care Act has the potential to facilitate a broad consensus. I hope you will join me in finally giving Americans the dignity of a universal health insurance program.

THE BECK DECISION AND THE WORKERS' POLITICAL RIGHTS ACT

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, Thomas Jefferson once said "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." These words ring truer than ever today.

Under the National Labor Relations Act, the Railway Labor Act, and the Federal Election Campaign Act we are compelling workers to furnish contributions of money for the propagation of opinions which they disbelieve. Jefferson called that tyranny. I agree. In 1988, the U.S. Supreme Court also agreed in the decision of Beck versus Communication Workers of America.

As we take up campaign finance reform, let's use this opportunity to right this wrong. Let us support the political rights of workers. Let us incorporate the Supreme Court's Beck decision into any campaign finance reform that we take up.

My bill, H.R. 2915, the Workers' Political Rights Act, would do just that, allowing union dues payers to get a reduction in dues equal to that portion of their dues which go to political purposes. Without such protection, any campaign finance proposals would be far off the mark and I would oppose them.

SOLUTION SHOULD HELP ALL AMERICANS

(Mr. DOOLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOOLEY. Mr. Speaker. President Bush finally awakened to the need to ensure equal rights for all Americans and supported the civil rights bills.

Let's hope he will also come to the realization that millions of unemployed Americans who have exhausted their jobless benefits need some help.

An extension of exhausted benefits would be a sure-fire boost to these families and for our stalled economy.

Congress says yes, the American people say yes, but to date our President says "no." Instead, he talks in vague terms about a growth package.

Let us be serious. Let us work for a benefits extension that provides assistance to hard-working Americans today, not the false promises of a trickle-down recovery months from now.

Americans suffering in this recession deserve at least that from President Bush and from this Congress.

BUDGET SUMMIT AGREEMENT PRODUCES LARGEST TAX INCREASE IN HISTORY AND BIGGEST DEFICIT IN HISTORY

(Mr. DOOLITTLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOOLITTLE. Mr. Speaker, today marks the 6th day until the first anniversary of the infamous 1990 budget summit agreement. This budget summit agreement approved the largest tax increase in our history. Ironically, this year will produce, as well, the biggest annual budget deficit in our history.

Indeed, during the first 2 years of this 5-year agreement, we have already exceeded the total deficit projections for the entire 5-year period covered by the 1990 budget summit agreement.

This agreement has been a miserable failure. Real economic growth has now been negative for the past 3 consecutive quarters.

The projected recovery is expected to be so sluggish that it could result in a permanent decline in the American standard of living.

The cumulative loss in the real gross national product by 1996 will exceed $8,000 for every man, woman, and child in this country.

Mr. Speaker, we need to undo the failed budget deal of 1990. We need to cut taxes across the board, now, before Congress adjourns this year.

TIME TO PUT THE GHOSTS OF THE PAST BEHIND US—CONGRESS SHOULD FOLLOW THE SAME REGULATION AS OTHER AMERICANS

(Mr. SWETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SWETT. Mr. Speaker, today is Halloween. But the scariest thing that is facing Congress is not the ghosts and goblins that come out tonight, but the fear of applying to ourselves the same laws and regulations that we impose on everyone else.

Congress adopted legislation to protect employees against discrimination, assure the health and safety of workers, and prevent sexual harassment—and then Congress exempted itself from these requirements. Many of us who are new to this institution have been horrified to find this situation.

There is a valid constitutional argument involving the separation of powers that makes it inappropriate for executive branch agencies to have jurisdiction over the legislative branch. But there are creative ways to deal with that problem, and it is time for creativity.

Mr. Speaker, we in the Congress must observe the same laws and regulations that govern other Americans. Employee protections should be applied to our own employees, and we should take that action immediately.

It is time that we drive a stake through the heart of the notion that we in Congress are above the law.

HEARTY CONGRATULATIONS TO WAMU ON THEIR 30TH ANNIVERSARY FROM MEMBERS THROUGHOUT THE COUNTRY

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER of California. Mr. Speaker, I take the well because I am very concerned, in fact I was distressed, at three speeches that I heard delivered here in the last week; two came from that side of the aisle and one from this side of the aisle.

I am not concerned about the content of the speeches, but it is the lack of geographic diversity of those who spoke here.

We heard from the Delegate from the District of Columbia, ELEANOR HOLMES NORTON, we heard from the gentleman from Virginia [Mr. MORAN], representing northern Virginia, and the gentlewoman from Maryland [Mrs. MORELLA]. They were congratulating WAMU on their 30th anniversary.

Mr. Speaker, I want you to know that there are Members from throughout the country who, when here in Washington, DC, happen to enjoy "Morning Edition," "All Things Considered," "Fred Fiske," and other programs. In fact, I can tell you that my colleague from California [Mr. DYMALLY], our colleagues from New York, Mr. RANGEL, and Mrs. LOWEY, have told me repeatedly of the fact that they would want to congratulate WAMU on their 30th anniversary.

□ 1020

So, Mr. Speaker, I am happy to say that it is not just Representatives from the metropolitan area who want to join in extending hearty congratulations to WAMU, 88.5, National Public Radio.

RUN, MARIO, RUN

(Mr. FOGLIETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOGLIETTA. Mr. Speaker, I rise today to urge Mario Cuomo to run for President of the United States of America.

At this time, America needs a President who is concerned about the problems of Americans. Our Senate race in Pennsylvania teaches us that the American people are profoundly concerned about basic family needs: obtaining quality health care, getting their children a good education, keeping their job, making ends meet.

We have a lot of good Democratic candidates, but none can articulate the issues confronting the family of America better than Mario Cuomo.

Yes, the State of New York has serious fiscal problems, the same fiscal problems facing all States and cities in our Nation.

I believe the root of these fiscal problems are the policies set in this city—by the President, but also by this Congress.

I am confident, Mario, that the people of New York can survive another 9 months as you run for President, but I doubt and am not confident that the people of the United States can survive another 4 years under the policies of George Bush.

Run, Mario, run.

THANKS TO MARIO CUOMO, NEW YORK IS THE TAX-AND-SPEND CAPITAL OF THE UNITED STATES

(Mr. LENT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LENT. Mr. Speaker, as this is the year before a Presidential election, we can again see the traditional political rumblings coming from the capital of my home State of New York. The midnight oil is burning in the Governor's mansion in Albany as its occupant reflects on the election of 1992.

But, while the Governor is busy pondering campaign themes, the people of my Long Island district must deal with the devastating effects of his 10 years in office. My constituents must cope with their oppressive tax burden—ranked the highest in the Nation—which supports ever increasing levels of State spending. Thanks to Mario Cuomo, New York has gained the distinction of being ranked No. 1 as the tax-and-spend capital of the United States.

But it is getting even worse. On Long Island, large increases in local taxes are on the way to make up for the Governor's unconscionable cuts in funding for education. For the record, Mr. Speaker, school officials in my district have informed me that Governor Cuomo has cut $240 million in aid to Long Island school districts this year.

Mr. Speaker, while I wish Governor Cuomo well in his quadrennial quest for peace of mind and career fulfillment, it is my hope that he will find some time to reflect on Long Island's need for relief from his oppressive taxes.

IT'S TIME TO TAKE A STAND ON ILLEGAL TRADE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, top officials of the U.S. Trade Office are former employees of foreign companies. Now they are not clerks either. They are top decisionmaking officials. In fact, U.S. Trade Representative Carla Hills herself is a former employee of a foreign company.

Now tell me, with trade representatives like this, who fights illegal trade? Who fights illegal dumping? Who fights illegal subsidies taking our jobs, wrecking our economy? Evidently nobody.

Mr. Speaker, it is trick and treat over at the Trade Office. I think it is time for Democrats to start speaking out. No one is against free trade, but when we have a Trade Office that will turn their back on illegal trade taking our jobs, then Democrats are hypocrites talking about tax cuts.

Mr. Speaker, it is time for the Democrats to lay some ground rules here and take a stand on illegal trade before every job we have is overseas.

THE ACTIVITIES OF "HIS CORP."

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute.)

Mr. DANNEMEYER Mr. Speaker, how may times have you gone to rent a video from a family video rental store only to be surprised or shocked by the language, sex, or violence contained in the film? If you are like the average person, you probably shut the movie off and admit the movie's promoters hoodwinked you again.

Leah Duet, owner of HIS Corp., in Escondido, CA, has solved this problem. Ms. Duet has made a business out of sanitizing some of Hollywood's more popular movies. Granted, many films in Hollywood are not salvageable for decent people, but Ms. Duet does her best to give American families good entertainment in a wholesome context.

Mr. Speaker, this commitment has my support. In a day and age when the family and religion have become whipping boys for most of Hollywood, the work of Leah Duet and others like her should be encouraged.

WE MUST MAKE THE CORRECT DECISION ON BANK REFORM LEGISLATION

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, today, tomorrow, and part of next week we will be debating and trying to settle the issue of bank reform. There will be basically two versions before the House. Both versions tighten supervision of banks to be sure that we can identify the failing banks early enough to solve the problem, both bills tighten capital standards to make our banks more solvent, and both deal with the recapitalization of the bank insurance fund and of the Federal Deposit Insurance Corporation [FDIC] both of which protect deposits in failed banks.

The main difference in the two versions will come in the type of additional powers to be granted to the commercial banks. One lets the banks into total interstate banking, totally into the securities industry—and we well remember what happened in 1987 on Wall Street—into the insurance industry, and we know now that many insurers around the country are failing leaving beneficiaries and pension plans at risk.

Mr. Speaker, we certainly want to be sure that commercial banks can compete in this new day and age, but at the same time, if we have to err, Mr. Speaker, we certainly do not want to err on the side of incaution. We need to proceed cautiously to protect depositors as well as making sure that our banks can compete.

PORTUGUESE CITIZENS SHOULD BE ABLE TO VISIT OUR COUNTRY WITHOUT A TOURIST VISA

(Mr. MACHTLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MACHTLEY. Mr. Speaker, this February we will celebrate the 200th year of our diplomatic relations with the country of Portugal, yet on September 13, when a list was published extending the names of countries whose citizens we permit to visit this country without a tourist visa, three countries were conspicuously absent from this list: Greece, Ireland, and Portugal.

Mr. Speaker, there are some 1,200,000 Portuguese in this country. Unfortunately our State Department creates a presumption that anyone visiting this country is going to stay in this country, and so those people who go to get a tourist visa are often denied a right to visit their relatives and friends in this country because they cannot show a family, a job or other financial responsibility in their home host country. This is unfair.

Portugal has been a long-time friend of the United States. It is a member of NATO, a member of the Economic European Community. We have bases and enormous economic ties with Portugal. I believe we are discriminating against these three countries who have been excluded.

Mr. Speaker, today I am filing a bill which will act as a test pilot program to include the Portuguese community within this test pilot program to permit their citizens to visit their family and friends in this country without a tourist visa. I would urge my colleagues to cosponsor this to end this discrimination.

WE MUST PROTECT OUR BANKING INDUSTRY

(Mrs. PATTERSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. PATTERSON. Mr. Speaker, trick or treat. It is Halloween, and today Congress has a scary task ahead of us. Today, we will be asked to vote on legislation to reform the Nation's financial industry.

Many people will remind us that the banking industry is not the savings and loan industry. That's absolutely true. But our fundamental concerns with these issues should be the same.

We must protect the depositors. We must protect the taxpayers. And finally, we must protect the safety and soundness of our banking industry.

When the Banking Committee first began to debate these issues, I expressed my opposition to the too-big-to-fail philosophy. Uninsured deposits, foreign or domestic, should not be protected at a cost to the bank insurance fund.

We must safeguard against the flight of deposits from our banks. Go home my friends. Go home and listen to your constituents. They want to know that their money is safe. We are experiencing a crisis—a crisis of economics and a crisis of confidence.

Radically altering the deposit insurance system would shake the confidence of Wall Street and Main Street. A loss of deposits would simply mean that the banks would have even less money to loan individuals and small businesses. We would take this country out of the credit crunch and thrust it into the credit vise.

We must make sure that the regulators not only have the authority, but exercise their authority, to shut down a failing bank before it sinks into the black hole of insolvency.

Mr. Speaker, we may disagree on the bill and the amendments we will debate, but in considering this, I urge my colleagues to listen to the folks back home, not the lobbyists in Washington.

□ 1030

JOB CREATION IS GOAL FOR AMERICAN WORKERS

(Mr. KOLBE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOLBE. Mr. Speaker, Americans want jobs, not unemployment checks.

While this Congress has fiddled around, trying to get an unemployment compensation bill adopted that will somehow, magically, not have to be paid for by anyone, the economy has continued to sputter along. Better than it was a few months ago, perhaps, but not good.

What is needed is a stimulus to the economy. What is needed is capital, savings, investment—money that can create new jobs and make old jobs more productive. That is the only way we stay competitive with the rest of the world and keep our engine of economic growth going. Businesses—small and large, established companies and new, entrepreneurial endeavors—that is where jobs are going to be created, not by Government.

What I have just described is not a very novel prescription. It is called free market economics. If this Congress has forgotten what that means, just ask the people of Eastern Europe. Better yet, ask one of the thousands of craftsmen put out of work because Congress last year decided to tax the expensive cars and boats they used to build and service and sell.

We can differ about what we should be doing to create jobs, but we ought not to differ on the objective. Let us get off the kick about handouts. Let us give American workers a hand up.

AMERICAN FAMILIES FALLING BEHIND UNDER REPUBLICAN ADMINISTRATIONS

(Mr. SARPALIUS asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. SARPALIUS. Mr. Speaker, in today's Washington Post there is a column by George Will. It spells out what Republican Presidential domination has done to this Nation's economy. I would just like to point out some of the highlights of Mr. Will's column.

He said that the wages of average workers today are below what they were in 1979. He talks about the fact that one of the biggest business in this country today is the day care business, because today in this country nearly all of our middle-aged American families have to have both husband and wife working to survive. They are twice as many working mothers with children today than there were 30 years ago. In the 1950's a middle-class family only spent about a tenth of their income on mortgage payments. Today they have to spend over half of their income on mortgage payments.

Mr. Speaker, tonight when we see children knocking on our doors, let us remember that 20.6 percent of those children or 1 out of 5 live in poverty.

Mr. Speaker, the scariest thing is that trickle-down economics clearly does not work. What makes it even more scarier is that there are Republicans who think that voodoo economics does.

GROWTH MEASURES HELD HOSTAGE

(Mr. HERGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HERGER. Mr. Speaker, nearly 3 years ago, President Bush called on Congress to enact measures to stimulate economic growth and create jobs. He called for creation of a family savings plan, enterprise zones in areas of economic distress, and negotiation of free trade agreements to expand American exports. He urged cutting capital gains taxes to stimulate more job creating investment.

Was the Democratic leadership of the Congress listening? Apparently not. This is the most charitable explanation for their inaction on programs to end the recession and put Americans back to work.

Mr. Speaker, it is time to start listening. Let's roll up our sleeves and begin consideration of the economic growth incentives that President Bush called on us to enact almost 3 years ago.

WHAT'S THE PRESIDENT'S RESPONSE?

(Mr. PRICE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PRICE. Mr. Speaker, as our Nation's economy continues to decline, Americans are waiting for President Bush's response.

So far, our President has created fewer jobs in his first term than any other President in 50 years. Under his watch, we've lost more jobs and had the slowest GNP growth of any postwar administration. Real disposable income has fallen since he took office. The wages of the average American worker are now 9 percent less than in 1979.

What's the President's response? He met with leaders of 21 foreign countries last month, including Micronesia and Liechtenstein, but only found time for three meetings with Cabinet Secretaries to discuss domestic issues.

If he needs evidence that more attention is needed, President Bush ought to come down to North Carolina. We're better off than most States, but our people are struggling. A few recent headlines tell the story: "20-year-old furniture firm closes stores." "US Air asking employees to take pay cuts." "Retail and auto sales declining."

Democrats are pushing for economic growth legislation—like the unemployment compensation bill, the highway bill, middle-income tax cut bill—to ease the burden of the recession on Americans. And we're taking steps to ease other burdens on the middle class, like a student loan bill that helps more middle-class kids go to college.

Meanwhile, what's the President's response? The Nation is waiting to find out.

THE REPUBLICAN AGENDA TO STIMULATE THE ECONOMY

(Mr. RIGGS asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. RIGGS. Mr. Speaker, I will be glad to tell the Members on the other side what the President's response is.

Mr. Speaker, the American people want Congress to start doing something to help the economy. But the Democrat leadership is set on addressing measures that only provide short term solutions to the plight of the unemployed. What are the Democrats waiting for? Why will they not bring to the floor legislation to help stimulate the economy?

The Democrats are finding it easy to blame President Bush for being soft on the domestic agenda. But President Bush has many domestic and economic policies that specifically will help our economy. The Republicans want to give our citizens jobs, not unemployment checks. We do not want to see people on welfare, we want to do something to get our constituents off welfare. We want to pass legislation to help people get back on their feet, not keep them begging on their knees.

When are the Democrats going to bring legislative issues to the floor to help the economy. Republicans want to pass capital gains reductions, a family savings plan, a permanent R&E tax credit, enterprise zones, and other such legislation to help our economy.

I hope the Democrat leadership will stop blocking our effort to create jobs. It is time for the Democrats to quit dragging their feet and start addressing resolutions to the very real problems the people in America are experiencing.

SIGNIFICANT TRENDS SEEN IN PENNSYLVANIA SENATORIAL RACE

(Mr. HOAGLAND asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. HOAGLAND. Mr. Speaker, we received the news today in the local newspapers that the appointed Senator, HARRIS WOFFORD, has now pulled even with former Attorney General Richard Thornburgh in the race for Senator Heinz' Senate seat in Pennsylvania. This is remarkable news, given the percentages that have been made up in that election race. What does this surprising news mean?

It means that the American people want this administration to work with Congress in addressing the very serious domestic needs of our Nation. It means that people want effective health care reform. It means that people want reasonable benefits for those who are unemployed because of the recession, to carry them through until they can find another job. It means that they want the budget balanced.

With the exception of the Clean Air Act and the child care legislation, the President has vetoed virtually every attempt we have made here in Congress to deal with our domestic problems. There have been over 20 vetoes of domestic legislation. "No, no, no, no," is all we hear from the White House.

Mr. Speaker, we need to get together on a nonpartisan basis and work out these problems.

CONGRESSIONAL EXEMPTION FROM LABOR, CIVIL RIGHTS, AND OTHER LAWS

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BENNETT. Mr. Speaker, in passing its version of the new civil rights bill yesterday, the Senate included a provision allowing Senate staffers to take job-related grievances to court. While I applaud those efforts, the legislation truly does not go far enough. It establishes an unnecessary bureaucracy that employees must navigate before seeking judicial remedy—the first course of action for some in the private sector. In addition, it only protects staffers under the Civil Rights Act; ignoring the many other laws which are applied to the private sector and should apply to Congress.

It was said during debate on the Senate floor yesterday that exceptions from such laws should be allowed on the basis that Members in both bodies are granted immunity by the speech and debate clause of the U.S. Constitution. While this is true for floor debate, it should not be the basis for exemptions from the very laws that we expect every other American to adhere to. We do not use the speech and debate clause to exempt ourselves from laws prohibiting thievery, rape, and murder. Why should we allow such an exemption for important legislation like the Equal Employment Opportunity Act, the Fair Labor Standards Act and the Freedom of Information Act? I urge my colleagues to consider this important question and act in the most fair and responsible manner as we confront this important issue.

On October 11, I introduced H.R. 3555, a brief and important bill, which eliminates the whole controversy of exempting Congress from the litany of laws this body does not follow. Further, it eliminates all the perks and privileges and does so in a practical way by seeing to it that we do not get privileges not allowed to the public.

My bill has been referred to the Committees on Government Operation, House Administration, and Education and Labor. It is my hope that one of those committees will act promptly and report out the bill. That would allow us to take this issue to conference with the Senate on the civil rights bill.

I submit a copy of H.R. 3555 for the RECORD.

H.R. 3555

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. From the date of enactment of this legislation Members of the U.S. House of

Representatives and of the U.S. Senate are no longer exempted from the laws of the United States, including, but not limited to, the following: The Americans with Disabilities Act, Title VII of the 1964 Civil Rights Act, The Equal Employment Opportunity Act, Occupational Safety and Health Act, Fair Labor Standards Act and Freedom of Information Act.

SEC. 2. From the date of the enactment of this legislation it shall be illegal to furnish, at the expense of the U.S. government, any Member of the U.S. House of Representatives or of the U.S. Senate any of the following items free or at reduced costs: medicine, hospital care, ambulance services, meals, flowers, plants, pictures, picture frames, haircuts, or other items, services, or privileges, except official office expenses, such as office supplies and stationery.

□ 1040

UNEMPLOYMENT COMPENSATION

(Mr. LEWIS of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Georgia. Mr. Speaker, I find little comfort that the President has suddenly discovered, at long last, that there are unemployed persons needing help.

I find little comfort, Mr. Speaker, that the President is just now hearing the loud clangling calls of distress that have been the headlines of our newspapers and television stations—for weeks.

In last Saturday's edition of the Atlanta Constitution, the President was quoted as saying, "People are hurting." Where have you been Mr. President? Did you not realize the affect that your two vetoes would have on Americans who have depleted their unemployment compensation benefits—in many cases by no fault of their own? There have been layoffs, Mr. President, and there will be more. Ask Citicorp, ask IBM, and ask Ford Motor Co.

If you need further proof Mr. President, come home to America, come to Georgia. We have some 78,000 Georgians that should be eligible for benefits. There are people in Georgia who had to sell their homes to supplement their unemployment benefits just to live. The local media reports that the job market is so tight that people can't even get in for interviews.

Mr. Speaker, there are approximately 98,000 of America's 24 million working families that are now headed by parents who have both lost their jobs.

Please, give these folks some comfort and sign the unemployment compensation benefits package. The American worker deserve your attention.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MCNULTY). Members are reminded to address their remarks to the Chair.

PROPOSED MILK STANDARDS GOOD FOR CONSUMERS

(Mr. TRAXLER asked and was given permission to address the House for 1 minute and to revise and extend is remarks.)

Mr. TRAXLER. Mr. Speaker, an ad in the Washington Post this morning really got my attention. The more I think about it the more I think it represents almost the epitome of misleading advertising. We should look at this ad for what it really is. It's the final futile attempt by the Milk Industry Foundation to cling to old, poorly conceived standards that use as their basis that the quality of milk from the poorest producing cow should be the standard. This means that all progress in breeding, feeding, and management since the standards were established should be ignored.

Milk as it comes from the cow has been enhanced by technology for years. It is cooled faster, kept cleaner, separated better than ever before. Dairymen, producers of the high-quality product, have been leaders in continually struggling for improved standards.

The standards which are proposed in a bill soon to reach the floor have been in effect in California for over 25 years. They are strongly supported by the California consumer because they require all processors to meet the same high standard. Competition by processor and retailers for market share can not be done at consumer expense through lower product quality.

CAMPAIGN REFORM: DO NOT SUBSIDIZE THE STATUS QUO

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, the Democrat campaign reform package allows candidates to spend $600,000—up to $200,000 of it from the taxpayer plus postal subsidies. This legislation makes a mockery of reform. It merely subsidizes the status quo.

Mr. Speaker, I'm a reluctant convert to the idea of spending caps. On television during the last election I saw commercial after commercial depicting candidates as criminals and liars. No wonder the American people think politicians are dishonorable—we have spent millions of dollars selling them on the idea. These ads are created by marketing people whose skills translate easily to electing candidates. They rarely have personal ties to the States where they operate and they don't care what their advertising does to public faith in democracy.

Mr. Speaker, if we are going to have spending caps, let us have caps with a bite—I suggest a maximum of $250,000. The Democrat's $600,000 cap does nothing but sanction business as usual—$10,000 union PAC contributions plus taxpayers kicking in up to $170 million for negative ads.

Mr. Speaker, think about it—Americans will pay the cost of negative ads that convince them not to vote or participate in government. Small wonder we have a $350 billion deficit with this kind of thinking.

SUPPORT RICHARDSON-SARPALIUS-SLATTERY AMENDMENT ON HOUSE BANKING BILL

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, along with the gentleman from Texas [Mr. SARPALIUS] and the gentleman from Kansas [Mr. SLATTERY], I will be offering an amendment that would permit out-of-State banks to open branches in a State only, and I repeat only, if that State passes a law specifically allowing them to do so. This is called the opt-in approach.

States could choose to allow interstate branching at any time by enacting such a law. If a State does opt in, incoming branches would be subject to any requirements, conditions, or limitations that may be established under State law. Consumers are supporting this provision.

Mr. Speaker, in one of the descriptions of the amendment it states that our amendment strikes the Community Reinvestment Act evaluation. This is simply a drafting error. It is not the case. This is being corrected. All Members should know that our amendment gets unanimous support from your small banks, consumer groups, and many others.

LIMIT DEPOSIT INSURANCE TO $100,000 PER PERSON PER INSTITUTION

(Mr. VALENTINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VALENTINE. Mr. Speaker, it is my understanding that later on today or later this week or next week as the House considers banking reform there will be an amendment offered which will limit deposit insurance to $100,000 per person.

Right now a family of four can arrange its deposits in a single institution so as to insure up to $1.4 million.

This insurance was not instituted to protect millionaires, but to protect small investors by assuring that their deposits would be safe in friendly insured banks.

Mr. Speaker, the banking industry will oppose this legislation. There are many, many of whom are good friends of mine, who will say this is not the time to send the wrong message. But I suggest to Members that there can be no meaningful bank reform, there can be no meaningful bank reform that will provide any kind of shield or any protection for the taxpayers in this country without reform which brings severe limitations on federally insured accounts.

DO NOT LIMIT DEPOSIT INSURANCE

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUBBARD. Mr. Speaker, multiple insured accounts are not the problem with failing banks today. There is not one bank in this Nation that has failed because of multiple insured accounts. It only affects 3 percent of those accounts

Imagine the headlines across America in the news media this week or next if we do limit deposit insurance accounts. The headlines will be "The House Cuts Deposit Insurance At Banks." There will be a run on the banks for their money. There will be a credit crunch at the banks. The economy will suffer.

The main reasons banks fail are bad loans to Third World countries, unwise corporate takeovers, and terrible loans and investments in real estate.

I would also urge Members as we go into House bill 6, the banking bill, to reject title IV. It was not written by the Committee on Banking, Finance and Urban Affairs, nor the Committee on Energy and Commerce.

I would urge Members to vote against title IV because it will definitely cripple the banks' ability to attract capital, and that, Mr. Speaker, will make your banks unable to continue to loan money to your constituents, including small businesses.

Mr. Speaker, if bank bashing is what is popular in your district, then title IV today under House bill 6 should be your vehicle. But I would urge Members to consider the fact that we are going to make banks less competitive and less capable of attracting capital if we pass House bill 6's title IV.

Mr. Speaker, again, look closely at title IV. I urge Members to vote no on title IV.

Mr. DREIER of California. Mr. Speaker, I ask unanimous consent that the gentleman from Kentucky [Mr. HUBBARD] be given an additional minute to continue with his argument.

Mr. FROST. Mr. Speaker, I object.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman is entitled to only 1 minute. The House does not extend 1-minute speeches.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 6, FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 266 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 266

Resolved, That during the further consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, a period of general debate shall be in order. After this general debate, which shall be confined to the bill and the amendments made in order by this resolution and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, the bill shall be considered for amendment under the five-minute rule. When the Committee of the Whole resumes its sitting on H.R. 6 on the next legislative day, an additional period of general debate shall be in order, to be confined to the bill and the amendments made in order by this resolution and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs. After this period of general debate, the Committee will resume consideration of the bill under the five-minute rule in the manner specified by this resolution. In lieu of the amendments now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text entitled "Committee Print, October 30, 1991" as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered as having been read, and all points of order against said substitute are hereby waived. No amendment to said substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Said amendments shall be considered in the order and manner specified in the report and shall be considered as having been read. Said amendments shall be debatable for the period specified in the report, equally divided and controlled by the proponent and a Member opposed thereto. Said amendments shall be debatable for the period specified in the report, equally divided and controlled by the proponent and a Member opposed thereto. Said amendments shall not be subject to amendment except as specified in the report of the Committee on Rules. Where the report of the Committee on Rules specifies consideration of amendments en bloc, then said amendments shall be so considered, and such amendments en bloc shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. It shall be in order at any time for the chairman of the Committee on Banking, Finance and Urban Affairs to offer amendments en bloc consisting of amendments, and modifications in the text of any amendment which are germane thereto, printed in the report of the Committee on Rules. Such amendments en bloc, except for any modifications, shall be considered as having been read and shall be debatable for not to exceed twenty minutes, equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs. All points of order against the amendments en bloc are hereby waived. The original proponents of the amendments en bloc shall have permission to insert statements in the Congressional Record immediately before disposition of the amendments en bloc. Such amendments en bloc shall not be subject to amendment, or to a demand for a division of the question in the House or in the Committee of the Whole. If both amendments numbered 8 and 9 are adopted, only the latter amendment which is adopted shall be considered as finally adopted and reported back to the House. All points of order against the amendments in the report of the Committee on Rules are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House, and any member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1050

The SPEAKER pro tempore. (Mr. MCNULTY). The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from California [Mr. DREIER], pending which I yield myself such time as I may consume. Any time yielded during debate on House Resolution 266 is for the purpose of debate only.

Mr. Speaker, House Resolution 266 provides for the further consideration of H.R. 6, the Financial Institutions Safety and Consumer Choice Act. As Members know, the House adopted House Resolution 264 yesterday and conducted 1 hour of general debate on the bill last night. House Resolution 266 makes in order the text for the consideration of the bill for amendment, additional general debate time, and for the consideration of amendments to H.R. 6.

Mr. Speaker, the Committee on Rules, faced with the enormous difficulty of not only structuring a rule and deciding which among the 78 amendments proposed to the committee should be included in the rule, but also with the necessity of preparing a text that would serve as an amendment vehicle for H.R. 6, has devised a rule which will allow the issues contained in this bill to be fully aired and debated. While some amendments proposed to the committee were not ultimately included for consideration, the committee feels that the recommended rule will allow the House to debate the major issues relating to banking and banking reform and will allow the House to work its will on a comprehensive bill.

Mr. Speaker, House Resolution 266 provides for 2 additional hours of general debate on the bill. The first hour, which is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, shall be in order on the first legislative day the bill is considered. The rule also provides for 1 additional hour of general debate on the bill, to be equally divided and controlled by the chairman and ranking minority member of the Banking Committee when the Committee of the Whole resumes its sitting on H.R. 6 on the next legislative day.

After general debate on the first and second legislative days, the rule provides that the bill shall be considered for amendment under the 5-minute rule in the manner specified in the resolution. House Resolution 266 also provides that in lieu of the amendments now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text entitled "Committee Print, October 30, 1991" as an original bill for the purpose of amendment under the 5-minute rule. The rule also provides that the substitute shall be considered as having been read and waives all points of order against it. The text of the substitute, except for title IV, consists of the texts of the versions of the bill reported by the committees of jurisdiction. Title IV of the substitute, however, contains the text of that title drafted by the chairmen of the Committees on Banking and Energy and Commerce. The Committee on Rules recommends this substitute text for consideration as the amendment vehicle in order to simplify the consideration of a complex legislative package.

Mr. Speaker, the rule provides that no amendment to the substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. If I may, I would like to take a few minutes to explain the amendment procedure which we will follow over the next 3 legislative days.

First, the rule provides that the amendments shall be considered in the order and manner specified in the report, that they shall be considered as having been read, and waives all points of order against the amendments in the report. The amendments will be debated under the time limitations detailed in the report and such debate time is to be equally divided and controlled by the proponent and a Member opposed and will not be subject to amendment except as specified in the Rules Committee report.

The rule further provides that the Vento and Richardson amendments to title III of the bill, relating to interstate branch banking, will be considered under king-of-the-hill procedures. King-of-the-hill provides that only the last amendment adopted will be reported back to the House.

The rules also provides that the chairman of the Banking Committee may, at any time, offer amendments en bloc, consisting of amendments which are printed in the report and germane modifications to those amendments. The en bloc amendments, except for any modifications thereto, shall be considered as having been read and shall be debatable for not to exceed 20 minutes, equally divided and controlled by the chairman and ranking minority member of the Banking Committee. The rule waives all points of order against the en bloc amendments and provides that they shall not be subject to amendment, or to a demand for a division of the question in the House or the Committee of the Whole. In addition, the rule provides that the original proponents of the en bloc amendments shall be permitted to insert statements in the CONGRESSIONAL RECORD immediately before disposition of the en bloc amendments.

Finally, Mr. Speaker, the rule provides that at the conclusion of the consideration of the bill for amendment, the committee shall rise and report the bill to the House, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. Speaker, in order to clearly define the debate on the complex issues contained in H.R. 6, the debate on the various titles of the bill will be considered on specific days. Today, following general debate, it is anticipated that title I, safety and soundness, and title IV, financial services modernization, will be considered. Tomorrow, Friday, following the second additional hour of general debate, title III, nationwide banking and branching, will be considered. On Monday, it is anticipated that title II, regulatory improvement, and title V, Federal deposit insurance reform, will be considered. And, as provided in the rule, the en bloc amendments which may be offered by the chairman of the Banking Committee, will be eligible for consideration at any time.

Mr. Speaker, H.R. 6 represents the work of five committees of the House and represents the first major restructuring of the banking industry since the Great Depression. The bill seeks to provide not only a recapitalization of the bank insurance fund, but also to reform the Federal Deposit Insurance system and to ensure, in these times of fiscal uncertainties, the safety and soundness of our Nation's banks. The bill proposes major changes in the way banks do business and the types of business they conduct. H.R. 6 is a bill of major importance and deserves the full attention of the House and its Members. The Committee on Rules has structured a rule which the Committee believes will allow Members the opportunity to make important decisions about the future direction of the banking industry in our country. I urge adoption of the rule in order that the House may proceed to the consideration of this most important legislation.

□ 1100

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong opposition to House Resolution 266, which provides for the consideration of an extraordinarily perverted version of H.R. 6, which used to be known, by the now misleading moniker, as the Financial Institutions Safety and Consumer Choice Act of 1991. The leadership is taking Halloween a little too seriously when it has to disguise protectionist legislation as banking reform.

This rule, Mr. Speaker, is an affront to the legislative process, to the House committee system, and to my Banking Committee colleagues—on both sides of the aisle—who have toiled for nearly a decade to update our Nation's financial laws and regulations. It also continues the trend of shutting most Republican Members out of the amendment process.

Mr. Speaker, after a decade of exhaustive hearings on the issues of structural reform, deposit insurance reform, and regulatory reform, the Banking Committee reported out a landmark bill, H.R. 6, this past June 28. The 32-to-20 vote showed that there was a strong, bipartisan consensus that H.R. 6 was the vehicle that would allow our banking system to leap out of the 19th century—that is right, the 19th century—and into the direction of the 21st century as we approach the millennium.

The Energy and Commerce Committee, on the other hand, has really not undertaken the same type of comprehensive review of these issues. But in fairness, that committee did report out a bill by a vote of their entire committee on September 25.

The problem, Mr. Speaker, is that the bill, made in order by this rule, is neither the one adopted by the Banking Committee nor the one approved by the Energy and Commerce Committee. Rather, it incorporates a so-called compromise agreed to by only four-tenths of 1 percent of all of the Members of the House. The bill made in order by this rule was not voted on in either the Banking Committee or the Energy and Commerce Committee.

Mr. Speaker, I hold in my hand the committee print of the bill. We were in session late last night, and I suspect that my colleagues on the Rules Committee probably have not had time in the last 10 hours to read it, and frankly I have not either.

Furthermore, this rule structures the bill and the amendments to guarantee that we will be faced with a choice between supporting a bill that turns back the clock on financial market innovation, or killing the bill outright. Under both scenarios, Mr. Speaker, the taxpayers lose because they will have to shoulder the financial burden of cleaning up a tattered banking industry.

Imagine, if you will, Mr. Speaker, a scenario whereby the House is considering a comprehensive health care industry reform bill, and we are presented with a compromise agreement that would require all doctors to utilize the medical techniques of bloodletting. In many respects, the Dingell-Gonzalez substitute is similar in that it would require the banking industry to operate under an ancient set of rules and procedures.

For example, to justify the prohibition against mixing commerce and banking, they reach back to the British Parliament's charter of the Bank of England in 1694. There are two ironies in this, Mr. Speaker. First, it is that same Bank of England that now advocates affiliations between commercial firms and banks, something that virtually every other industrialized country permits.

Second, banking and commerce already mix, albeit on a one-way street. Ford Motor Co., General Electric, American Express, and Sears all have FDIC-insured subsidiaries. But the more than 9,000 banks are precluded from accessing billions of dollars in capital held by commercial firms.

The H.R. 6 this rule makes in order is the Freddie Kruger of banking legislation. It will increase foreign ownership of U.S. banking assets because our banks will have few domestic sources of capital to restore their profitability. It will prohibit banks from taking advantage of new innovations in the development of financial products and services, insuring that more banks will fail.

And what does the industry get in return? It gets a duplicative set of regulators, more paperwork reporting requirements, and higher insurance premiums. Mr. Speaker, the Glass-Steagall Act was progressive legislation compared to the Dingell-Gonzalez bill, which is highly regressive, blatantly protectionist, and anticonsumer.

This rule is a perversion of the legislative process, and it lacks basic fairness to Republican Members who deserve to have their amendments considered by the full House. Therefore, I strongly urge a no vote on this rule. Let's come back with an open rule.

Some people are opposed to that. I believe though that we should allow the Members of this House to work their will.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Georgia [Mr. BARNARD], the senior member of the Committee on Banking, Finance and Urban Affairs and chairman of the Banking Committee Caucus of Democrats.

Mr. BARNARD. Mr. Speaker, I thank the gentleman from Texas for permitting me to have this time.

If the gentleman would permit me to indulge him in several questions, I would appreciate it very much.

I would ask the gentleman from Texas [Mr. FROST], can he explain to me the justification of the Rules Committee in not permitting an amendment in order to consider the House Committee on Banking, Finance and Urban Affairs' version of title IV?

Mr. FROST. Mr. Speaker, will the gentleman yield?

Mr. BARNARD. I yield to the gentleman from Texas.

Mr. FROST. Mr. Speaker, in response to the gentleman I would say the decision was made by the Rules Committee in consultation with the Democratic leadership of the House. The decision was made to make the compromise agreement agreed to by the chairs of the two committees, the gentleman from Texas [Mr. GONZALEZ], and the gentleman from Michigan [Mr. DINGELL], the original text in order to simplify consideration of this very controversial legislation.

I cannot fully respond as to why once that decision was made then it would not be possible at a later point to substitute the original text as reported by the Committee on Banking, Finance and Urban Affairs. It was simply my understanding that it was a decision made to streamline consideration of this legislation and to place as original text an agreement made by the chairman of the two committees of original jurisdiction.

Mr. BARNARD. Let me just say then that I really think in consideration of that the rights of the House Committee on Banking, Finance and Urban Affairs have been tremendously violated. We considered this legislation for 5 months. We had adequate hearings. We spent time, we deliberated, we debated, and we came out with a 30-to-20 vote on this legislation.

When I talk about that, the leadership comes back and says yes, but the majority of Democrats did not vote for the bill. Let me say that is irrelevant. The relevancy is that out of 51 members of the Banking Committee there were 30 votes who voted for it. It is a committee of jurisdiction. It is a committee of legislation. It ought to be recognized. And I think it is dastardly, and I hate to say this about my leadership, but it is dastardly that they have violated the rights of that many Democrats as well as all of the Republicans on the Banking Committee.

Mr. DREIER of California. Mr. Speaker, will the gentleman yield?

Mr. BARNARD. I yield to the gentleman from California.

Mr. DREIER of California. Mr. Speaker, I thank my friend for yielding. I would like to associate myself with his remarks and underscore the fact that the gentleman is the chairman of the Democratic Banking Caucus Working Group. Could he explain what that is?

Mr. BARNARD. The gentleman is correct, that is what it is.

Mr. DREIER of California. I have explained it correctly?

Mr. BARNARD. The problem is even the Democratic Caucus did not have time to consider and vote on this proposed compromise. We did have a briefing.

Mr. DREIER of California. Mr. Speaker, I ask my friend, has he read this overnight?

Mr. BARNARD. No. I had to be on the floor last night until about 11 o'clock, so I did not do so. I did not have the ability to read that.

Mr. DREIER of California. I wanted to make sure, because the gentleman is very expert on these issues, and I assumed he might have had a chance overnight to read it.

Mr. BARNARD. Mr. Speaker, I want to say that except for this the Rules Committee I think has done a good job. They have been very selective in the amendments that have been selected to be offered, and they are for the most part the most appropriate amendments to be considered in light of what the bill does.

□ 1110

I think an open rule, with all due respect to my friend, the gentleman from California, an open rule would be a disaster, and I will compliment the gentleman.

But I will have to say that I feel a real disservice has been done to the committee process of this House when a legitimate committee of jurisdiction is absolutely ignored.

Mr. DREIER of California. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. WYLIE], the very hard-working ranking member of the Committee on Banking, Finance and Urban Affairs who has toiled for many decades on this matter.

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding me this time and for the compliment, and I would return the compliment to the very hard-working young man in the Rules Committee, who has also been a member of the Banking Committee at one time, and a distinguished member at that.

Mr. Speaker, I express opposition to the rule with some regret. I say regret, because I know that the committee chairman, the gentleman from Massachusetts [Mr. MOAKLEY] and the gentleman from Texas [Mr. FROST] worked diligently to bring this important legislation to the floor today, and we do need to act on it expeditiously, in my judgment, and the Rules Committee was very courteous to me when I appeared before them.

My primary opposition stems from the fact that we were not able to get a vote on the Banking Committee title IV. It is the same regret that the gentleman from Georgia [Mr. BARNARD] expressed a little while ago. I still think title IV, as reported out by the Banking Committee, is much better than the Dingell-Gonzalez arrangement, which was made in order as part of the original text. No committee consideration was ever given to the Dingell-Gonzalez title IV.

This procedure does not lend itself to bipartisanship. The politics of this bill are difficult enough as it is.

I appreciate the committee making in order an amendment to be offered by the gentleman from Texas [Mr. GONZALEZ] and myself on the insurance of multiple accounts.

We appreciate the making in order of a failing bank amendment. Although I think it should more properly have been made in order in title IV, it was made in order in title IV, which muddies up the issue to some extent in this Member's opinion.

There were two amendments I wanted to offer to modify the very restrictive firewalls in Dingell-Gonzalez, which were not made in order, and yet an amendment by the gentleman from Massachusetts [Mr. NEAL] which calls for duplicative and expensive reporting requirements, which will also be very expensive, was made in order.

An amendment by the gentlewoman from California [Ms. WATERS] to cap fees banks can charge for 2 years was made in order.

Price control by any other name would smell as sweet.

A Kennedy amendment requiring the use of racial testers to investigate charges of discrimination in lending practices was made in order.

Another amendment to give $500,000 deposit insurance coverage to nonprofit organizations, which could include a Member's campaign fund, was made in order. Give us a break, Mr. Speaker.

Another amendment would extend Federal health insurance coverage to former employees of failed savings and loans and banks.

What about steelworkers? What about textile workers or airline employees?

This amendment should never have been made in order.

The gentleman from Kansas [Mr. ROBERTS] wanted to make in order an amendment to give some relief to small banks to moderate the impact of the Community Reinvestment Act. It was not made in order.

As a matter of principle, I do not like the language with reference to the en bloc amendments, although the chairman, the gentleman from Texas [Mr. GONZALEZ] did consult me and withdrew three suggested en bloc amendments which I found particularly objectionable.

My real beef is with the procedure. It is not very democratic to small "d". The will of the clear majority of the Banking Committee has been frustrated, and I plan to vote "no" on the rule.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Speaker, I thank the gentleman from Texas for yielding me this time.

Mr. Speaker, I rise in strong opposition to this rule and in fact if the rule is not defeated, strong opposition to this entire piece of legislation.

Mr. Speaker, welcome, the American people and Members of this Congress, welcome to the S&L bailout part 2. This time instead of bailing out the S&L industry, we are going to be asked to the potential of $30 billion—and most people expect it will be more down the road—to start bailing out the commercial banks.

Mr. Speaker, I offered a very simple amendment to this complex piece of legislation, and I said, "What happens if the banks are not able to raise the money themselves and it is the Treasury and the American people who have to come up with this $30 billion?"

I asked two questions. No. 1, a very simple question, who is going to be paying this $30 billion when they dump it into the deficit? It is going to be the elderly, the working people and the poor, or are we going to build into this legislation a mechanism to say that the wealthiest people in this country whose incomes have soared over the last decade, whose tax burden has declined, that maybe they should pick up the burden and not the middle class and not the working poor of this country. That did not get into this rule.

So you have got $30 billion on liability. Nobody knows who is going to pick up the burden, but I have got a hunch that it is the same people who are going to pick up the $500 billion for the S&L's.

I would like, if I might, to ask the distinguished gentleman from Texas a question.

I would like to ask the gentleman from Texas [Mr. FROST] am I right that we are talking about a potential of $30 billion to be fostered on the taxpayers?

Mr. FROST. Mr. Speaker, if the gentleman will yield, I say to the gentleman from Vermont [Mr. SANDERS] that I cannot answer questions about the substantive provisions of the bill. The gentleman will have to ask that to a member of the committee as to the exact dollar amount of obligation that the taxpayers will face.

Mr. SANDERS. Maybe I can ask this of the gentleman from Texas [Mr. FROST].

Is it not a bit strange that when in fact we are talking about a $30 billion taxpayer liability that this bill does not answer the question as to who is going to pick it up?

Mr. FROST. I say to the gentleman from Vermont [Mr. SANDERS] that he is entitled to his opinion, to his view. The committee did try to structure a fair rule that would enjoin the major issues that were before the Congress. The gentleman obviously feels strongly about this matter.

Mr. SANDERS. I surely do.

Mr. FROST. I assume the gentleman will then vote against the bill on final passage.

Mr. SANDERS. I surely will.

Mr. Speaker, two issues: No. 1, the payback must be pay-as-you-go so that we do not stretch it out over 30 years and add tens of billions of dollars in interest payments.

No. 2, the wealthiest people of this country must finally start to pay their fair share of taxes, not the working people, to bail out the commercial banks.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the very distinguished and thoughtful gentleman from New York [Mr. LENT], a member of the Committee on Energy and Commerce.

Mr. LENT. Mr. Speaker, I rise in opposition to this rule and strongly oppose it, because our request to have an amendment on the important issue of failed or failing banks made in order as submitted to title I was denied by the Rules Committee. The amendment which was filed with the Rules Committee last Friday by the gentleman from Massachusetts [Mr. FRANK] and the gentleman from New Jersey [Mr. RINALDO], the gentleman from Ohio [Mr. WYLIE], the gentleman from Georgia [Mr. BARNARD] and myself amended a certain provision of the Federal Deposit Insurance Act. The amendment provides that a financial services holding company could acquire a failed or failing bank only with the prior approval of the Federal Reserve Board and subject to a determination by the FDIC that that acquisition satisfies the FDIC obligation to an institution's insured depositors at the least possible cost to the Deposit Insurance Fund. So these matters are properly addressed in title I.

What the Rules Committee did, apparently, was to reassign this amendment to title IV, which deals with a completely different statute, so we are not now dealing with a law concerning diversified holding companies which was taken out by the Energy and Commerce Committee. Those provisions were completely removed from title IV.

The amendment deals with the obligations and authority of the FDIC under a completely different statute.

I think the rule confuses the issues most unnecessarily. It is a difficult bill to understand to begin with, but it is really muddled up as a result of the way the rule is drawn.

So Mr. Speaker, I urge my colleagues to vote against the rule.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I thank the gentleman very much for yielding me this time.

Mr. Speaker, I rise in support of the rule, with the intention at this point of dispelling some of the mistaken notions which have already been put out here on the floor this morning and which I expect will be heard on a continuous basis in the course of the day.

This whole question of whether or not Commerce should be merged with Banking is one that has basically been accepted in terms of a separation created for the history of our country.

□ 1120

In fact, if you look across the globe, there is no country in the world which even remotely approximates what is being proposed by the administration in terms of taking down this distinction between allowing, for example, an IBM to purchase Citicorp, to have the built-in conflicts of interest, to have the potential for self-dealing, to have real questions raised with regard to credit allocation which would be so difficult to monitor out in the real world marketplace.

Now, these are not issues, however, that have escaped the attention and the analysis of some of the most distinguished people in our country.

Let me begin by giving you some of their comments. Let us begin with Chairman Paul Volcker, chairman of the Fed, for many years, one of the most distinguished Americans. Here is what he has to say on that subject:

> Where the line should continue to be drawn is between banking and commerce. Fuzzy as that distinction may be at the margin, the overriding public policy interest remains strong.

Let us talk about Gerald Corrigan, president of the Federal Reserve Bank of New York. Here is what he has to say on the issue:

> The potential benefits strike me as remote at best and illusory at worst.

Charles Bowsher, head of the GAO:

> I think you're setting yourself up for mega-bailouts down the road.

If you allow for the destruction of this commerce/banking separation.

Remember this is on the heels of an already $200 billion bailout of the S&L's, heading toward three-quarters of a trillion before the end of this decade.

Let me go on. Henry Kaufman, one of the most distinguished economic observers in our country. Here is what he has to say:

> Merging banking and commerce ultimately puts in jeopardy the fundamental economic democracy of this country and undermines the crucial need for independent deposit institutions exercising objective credit judgments.

Let me move on to the former Council of Economic Advisers chief, Herbert Stein, Richard Nixon's top economic adviser. Let me tell you what he has to say about the subject.

> There is little reason to think that non-financial businesses will be more willing to put capital in banks than the ordinary investor would, unless the non-financial business sees an opportunity to gain from the connection something other than the return on equity. This opportunity is likely to mean some form of self-dealing that is illegitimate.

And finally, just to go to the other side of the aisle, Ralph Nader agreeing with Paul Volcker, agreeing with Herb Stein:

> Letting commercial firms buy banks creates an irresistible temptation for conflicts of interest and self-dealing.

Mr. Speaker, this is an historic issue. The gentleman from California points out that for 297 years this Anglo-Saxon tradition has been accepted inside of our country, and I would hope that we could, in fact, resist this temptation to not help banks grow their way out of trouble but, in fact, grow their way into trouble by associating with corporations in this country who do not have the expertise to be able to manage the banks any better than the bankers themselves have done over the last decade.

Mr. DREIER of California. Mr. Speaker, let me yield myself such time as I may consume in order to simply respond to my friend from Massachusetts by saying it is apparent that Herb Stein, Ralph Nader, Gerald Corrigan, Paul Volcker and Henry Kaufman all had the opportunity to vote on this, but tragically the members of the Committee on Energy and Commerce and the members of the Committee on Banking, Finance and Urban Affairs did not have that opportunity.

Mr. BARNARD. Mr. Speaker, will the gentleman yield?

Mr. DREIER of California. I yield to the gentleman from Georgia.

Mr. BARNARD. I thank the gentleman for yielding.

Mr. Speaker, I simply would like to say that those who rely upon Paul Volcker, Gerald Corrigan and Herb Stein as far as this issue is concerned, do they disagree with what they have done on their provisions in the bank holding company bill to permit bank holding companies to get investment powers? All of them have been very supportive. Therefore, it came out of the Federal Reserve that bank holding companies could underwrite various things.

Now, all of a sudden, I say to the gentleman from Massachusetts [Mr. MARKEY] those are the things which the Committee on Energy and Commerce have stricken from the bill. If you put so much reliance in the veracity and the support of Paul Volcker, you have ignored Paul Volcker and Gerald Corrigan in permitting bank holding companies to get into allied fields.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska [Mr. BEREUTER], the ranking member of the Subcommittee on Policy Research and Insurance.

Mr. BEREUTER. Mr. Speaker, while I oppose the rule, I would begin by expressing my most sincere appreciation for making in order the Vento-Bereuter interstate branching opt-out amendment which now has broad, bipartisan support. However, during Rules Committee consideration of H.R. 6, this Member also filed an important, badly needed amendment to amend the Federal Deposit Insurance Act to clarify the liability of depository institutions and other lenders, as well as the liability of the FDIC and RTC, to pay for costs associated with hazardous waste cleanup.

The amendment was a more limited version of H.R. 1450, a measure introduced by the gentleman from New York, Mr. JOHN LAFALCE, and which as of today, has an incredible 268 cosponsors.

This Member was disappointed to learn that despite the overwhelming support in this body for clarifying the liability of affected parties, such as lenders, under Superfund and other environmental cleanup statutes, the Rules Committee elected not to make the amendment in order for consideration during the debate on H.R. 6.

For the last two Congresses, lender liability has been covered extensively in numerous hearings held by the Small Business, Energy and Commerce and Banking Committees. Action is long overdue and H.R. 6 would have been one appropriate place to at least partially address the issue.

Today, this Member would like to urge the relevant committees of jurisdiction to act soon to clarify the liability for cleanup under the Superfund law.

In 1980, as Congress debated Superfund legislation, it determined generally that owners and operators of property should be liable for a release or threatened release of hazardous materials in the environment where a response action was necessary. As in the case of lenders, Congress further determined that parties who held indicia of ownership should not be liable if that indicia was primarily related to protecting a security interest. In other words, if you have a relationship to a piece of property not in order to own or operate it, but primarily to use it as collateral for another obligation, then no liability should be attached.

However, conflicting court opinions have substantially clouded the issue—and made lenders wary of extending credit to individuals and businesses.

Many of us have received letters from constituents stating that it has been the very threat of potential liability for cleanup costs that has forced lenders to stop lending to businesses and farmers.

As a Member representing a rural constituency, I can attest to the problems facing small banks, as well as the farmers and agribusinesses seeking to borrow money. Uncertain of their liability, small banks are now resorting to costly environmental site examinations to protect themselves from liability.

In addition, FDIC has indicated that it is entirely possible that a bank that may have originally held only a 10-percent participation in a syndicated loan would be responsible for 100 percent of the cleanup costs if that bank is the only lender still operating.

It is also disturbing to read Federal Reserve and FDIC surveys showing that some lenders have stopped making loans to certain types of small businesses, such as dry cleaners and gasoline stations, that are often associated with environmental problems. Or that fiduciaries have withdrawn from estates, solely because they may be liable for contaminated property in their holdings—even though they had no specific knowledge of the nature of the property when they assumed the trust.

With the lengthy list of cosponsors of the LaFalce legislation and the great amount of interest in the issue generated in recent committee hearings, it is clear that the issue of lender liability deserves full House consideration.

Mr. Speaker, this Member urges timely action to—once and for all—move legislation to resolve the question of liability. Instead of fostering a climate in which lenders are willing partners in overall efforts to clean up the environment by loaning necessary funds, the uncertainty of lender liability is denying the financial resources to those businesses that need them most.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. McCANDLESS], another hardworking member of the Committee on Banking, Finance and Urban Affairs, who represents the magnificent desert of California.

Mr. McCANDLESS. Mr. Speaker, I thank the gentleman for yielding time and for his kind words.

Mr. Speaker, I rise in opposition to the rule.

Mr. Speaker, the patient before us needs major surgery—and all we are doing is applying Band-Aids.

The Treasury Department sent us a comprehensive proposal to reform our financial industry and to enable our banks to compete in the world markets.

The legislation before us is a mere shadow of what was proposed.

Comprehensive regulatory restructuring is out.

The ability of banks to attract desperately needed domestic capital is out.

Major reform of the deposit insurance system is out.

Restructuring of financial services is out.

Allowing banks to diversify their geographic location is greatly watered down.

All that is left are the Band-Aids.

This isn't banking reform—it's a formula for disaster.

Mr. Speaker, the rule should be defeated.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. I thank the gentleman from Texas for yielding to me.

Mr. Speaker, I am going to vote for this rule. It was an extraordinarily difficult job that the Committee on Rules had put upon it. There are no perfect solutions to this sort of thing, but it does seem to me that we have a rule which structures the debate in a way that all the major questions would be posed.

□ 1130

And if they are not answered, it will not be the fault of the Committee on Rules. It will be the fault of a certain tentativeness that still exists in the body.

I wanted to use this opportunity, Mr. Speaker, because there is a limited amount of debate time under the rule to address some of the general issues that are here. I have to say that I find myself on a different side from some of the people with whom I am usually on line here, and I have to confess, Mr. Speaker, that, while I think my attendance record has been a pretty good one, I think I was absent the day we decided that being a good liberal meant protecting the securities industry against the competition because I think that is part of what we are talking about here. I have generally sided with, and will continue to side with, the view that consumers are entitled to protections against various forms of commercial practice.

Mr. Speaker, I have an amendment myself today that I think is fairly widely supported that would create an affordable housing program under the FDIC. I would be working hard for the amendment of the gentleman from Massachusetts [Mr. KENNEDY], my colleague, for tougher rules, and, regarding Community Reinvestment Home Mortgage Disclosure Act enforcement, not changing, as I understand it, the substance. I think where we are talking about disclosure, where we are talking about various forms of consumer protection, we should be very tough.

The major questions that come before us though and the various disputes about title 4 are on the question of consumer versus industry. No one is proposing, to my knowledge, allowing anybody to do something that somebody cannot already do. No one is talking about letting the banks do something that is not already being done.

So, what we have here I think is somewhat misperceived by some of my friends as a difference between the consumers somehow and various forms of commercial entities. In fact, what we have got, as I see, is a horizontal fight. We have got the banks, the insurance companies, the securities industries, all of which would like not to have much competition from the other, or many of which would. And the attitude, I must say, of the securities industry here reminds me, if I may quote a former Senator who was chairman of the Commerce Committee, and I am sure that I may, former Senator Maguson, who said, after being chairman of the Commerce Committee, he thought all any business in America wanted from Government was a reasonable advantage over the competition.

I think it is important that we protect the consumer, but I do not understand why it is liberal doctrine to protect Ma and Pa Salomon, or Merrill Lynch, or the securities industries. I think competition is a useful thing. Some of us do feel that other entities than banks should be able to get into the banking business. That is why I support the failed bank amendment and that banks can usefully get into some other business.

But the point we ought to make clear is this: No one is talking about relaxing any of the rules under which any of those activities take place. In fact, this legislation would, and I think in a relatively uncontroversial way, and certainly the broad consensus, tighten the rules. I want there to be tightened rules on the way various of these businesses are conducted, but once we have tightened the rules, and put in the regulatory upgrades and the consumer safeguards, I do not understand why it became good liberal doctrine that entities A, B, and C should be allowed to do this, but not X, Y, and Z.

Mr. Speaker, it seems to me all we have got is an anticompetitive situation. The securities industry was very eager to be protected against competition. I understand that it is a natural human reaction. Even incumbents sometimes feel that way. But it does not seem to me that it rises to the level of principle that has been put forward here.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New Jersey [Mr. RINALDO] who is going to be offering one of the most important amendments in this bill.

Mr. RINALDO. Mr. Speaker, there are a number of reasons why this rule should not be adopted. The key one, however, is the forced shifting of my amendment to allow commercial firms to purchase failed and failing banks from title I to title IV.

H.R. 6, as passed by the Banking Committee, created a diversified holding company structure that would have allowed commercial firms to buy banks. That provision was included in title IV.

The Rules Committee has made the Dingell-Gonzalez substitute, which was never considered by either committee, the base text for today's debate. Their title IV has no mention of the diversified holding company and does not allow any commercial firm to buy a bank.

My amendment is an effort to save taxpayers money. It was drafted to amend title I. It mentioned the least cost resolution provision of the Federal Deposit Insurance Act to allow commercial firms to buy a failed or failing bank only if the FDIC ruled that it was the least costly way to deal with a specific failed or failing bank.

There is no reason to link my efforts to save taxpayers dollars to the section dealing with bank powers. My amendment does not grant any bank any new powers.

It is designed to reduce the cost of dealing with the 200 plus failed banks that the FDIC will have to resolve each year for the next few years. Placing it in title IV is unnecessary and unfair.

I urge the defeat of this rule.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2½ minutes to the gentleman from Texas [Mr. DE LA GARZA], the chairman of the Committee on Agriculture.

Mr. DE LA GARZA. Mr. Speaker, H.R. 6 was sequentially referred to the Committee on Agriculture for consideration of matters within our jurisdiction under rule X. As far as it is relevant to this bill, the committee's jurisdiction is over extensions of agricultural credit; rural economic development; and agriculture generally.

Mr. Speaker, it became clear very early that this bill, as reported by the Banking Committee, held ominous consequences for rural America. We recognize that the Banking Committee has the greatest expertise over the general aspects of banking policy. But the House has specifically and deliberately charged the Committee on Agriculture with jurisdiction over agricultural credit and over rural development—and we take our responsibility seriously.

Mr. Speaker, many of my colleagues will oppose H.R. 6 on its merits because they believe that it is not good bank regulatory policy. In the Committee on Agriculture, we recognized and documented the great concerns that many experts on rural development had regarding the failure of the bill to reflect the interrelationship between banking policy and the particular needs and structure of the rural economy.

Mr. Speaker, I have the greatest respect for the members of the Committee on Rules and for its chairman and I am grateful for the fact that they acted to help resolve some of the technical concerns in the Banking Committee's bill that were in our jurisdiction.

I will oppose the bill H.R. 6 for many reasons, but also because two amendments adopted by the Committee on Agriculture intended to mitigate what we believe are glaring problems with the bill were not made in order.

Mr. Speaker, I am saddened that the Rules Committee—in recommending this rule—has completely ignored the expertise of the Committee on Agriculture in the area of rural economic development. One amendment in particular represents a modest step to ensure that the new powers granted by the bill to allow big banks to open interstate branches don't suck capital out of rural economies. The Agriculture Committee's amendment modifies regulatory review of interstate branch provisions of the Banking Committee's bill to require that regulators scrutinize the community lending activities of an interstate branch upon a finding that local deposits are not being loaned locally.

The other amendment of the Committee on Agriculture not made in order relates to the clarification of passthrough of deposit insurance for funds of futures market customers. Mr. Speaker, our committee has jurisdiction over the regulation of futures markets and adopted our amendment out of concern that the Banking Committee's provisions could have unintended consequences on futures markets. Yet the Rules Committee has prevented the House from even clarifying this matter.

Mr. Speaker, I am very concerned that the Rules Committee has not even allowed the House the opportunity to consider our modest amendments. Something is wrong here. The banking bill is obviously being considered in some kind of vacuum and the concerns, interests, and needs for rural America are specifically being laid aside.

Mr. DREIER of California. Mr. Speaker, I would like to associate myself with the remarks of the distinguished gentleman from Texas [Mr. DE LA GARZA], the chairman of the Committee on Agriculture.

Mr. Speaker, I yield 2 minutes to the gentleman from Tucson, AZ, Mr. KOLBE.

Mr. KOLBE. Mr. Speaker, I rise today to oppose the rule and speak out against title IV as it has been made in order by the Rules Committee.

Out-of-date laws designed to protect banks from competition have become barriers—barriers that impede banks from adapting to changed market conditions and providing consumers with the products and services they need.

These barriers have hampered our ability to compete in global markets and have unleveled the playing field for providers of financial services. Clearly there is reason to overhaul an outdated system, thus the reason for my support of H.R. 6, as reported by the House Banking Committee.

My support for H.R. 6, as reported by the House Banking Committee, stems from concerns that the so-called Dingell-Gonzalez compromise would inflict anticompetitive and punitive restrictions on banks that would eventually trick the taxpayer into paying for future bank bailouts by exacerbating the credit crunch and the recession. Let me explain.

In most industries, companies diversify to avoid having the inevitable cyclical downturns in a single market sector destroy the profitability of an entire corporation. Banking, however, is a regulated industry in which banks must get permission from their regulator before embarking on a new enterprise. Current law does not allow banks to engage in any business activities that are not reasonably related to banking, and as such they are trapped in an industry which is contracting in size.

Yet, competitors of banks—financial services industries, securities firms, mutual funds, insurance companies—all operate without similar restrictions against diversification. They have adapted to the changing economic environment more rapidly and, in many cases, more successfully.

Under current law, companies like Sears, JCPenny, Montgomery Ward, American Express, and many others already own FDIC insured banks. Fortune 500 companies hold $719 billion in capital that could be used to shore up our banking system. If strong firewalls, reporting requirements, and capital standards are all in place—as I believe H.R. 6, as reported by the Banking Committee provides—then banks should be allowed to diversify and expand into related businesses just as nonfinancial holding companies should be allowed to acquire banks. Citicorp, the United States' largest bank should not have to turn to a Saudi Prince in order to raise new capital.

For me one of the strongest incentives for supporting this provision from the Banking Committee is the hope that corporate America will see the opportunity to acquire troubled banks, cheaply, reorganize and recapitalize them, and bring new and better management techniques to the banks to make them profitable.

Existing restrictions on interstate banking and branching should also be lifted. H.R. 6, as reported out by the Banking Committee, eliminates these restrictions. Under current law, a California bank may open a branch in Birmingham, England, but not in Birmingham, AL. These restrictions just don't cut it in the 1990's. Interstate branching increases geographic diversity and reduces vulnerability to regional economic downturns.

Arizona is a good example of this; had we not had interstate banking, many of our banks would have failed in the recent near collapse of real estate values.

The objective of interstate banking and branching is to increase competitiveness and choice. Consumers benefit from greater access to banking services and a broader range of products. And greater profits and increased capital improve the safety and soundness of our banks.

If title IV remains in H.R. 6, Congress will have done little to promote fair competition, strengthen the banking system, encourage new entrants into the financial services market, or develop the level playing field so often touted on both sides of the issue.

□ 1140

Mr. FROST. Mr. Speaker, we have very little time left, and for purposes of debate only, I yield 2 minutes to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Speaker, I rarely oppose rules. I certainly oppose this one.

Later this evening American children all over our country are going to go trick or treating, but we are not waiting for nightfall to start the trick or treating right here in Congress. We are going to give a great treat to our friends in the insurance industry. We are saying to them, we are going to protect you from competition, and here is how we are going to do it. We are going to continue to allow State-chartered insurance companies that own banks to market those banking products to their insurance policyholders all over the world. However, if you happen to be a State-chartered bank that owns an insurance company and want to market your insurance products to your banking customers across America, we are going to greatly curtail that activity to the extent that we can.

Well, that may be a treat for the insurance companies. It is not a treat for consumers. The trick, I say to my friends, is on consumers.

I oppose this rule. Later today I will join the gentleman from Georgia [Mr. BARNARD], the gentleman from Nebraska [Mr. HOAGLAND], and others in offering an amendment to strike title IV. I wish we did not have to do that, but we need to do it.

The principal reason why banks are failing today, Mr. Speaker, is because much of their traditional business has been siphoned off by other offerers of financial services. They tell us:

> Don't get your car loans now from a bank. Get them from Chrysler, Ford, or GMC Financial. Don't get your home loans from banks, get them from Sears. Don't get your multipurpose credit cards from banks, get them from Prudential, AT&T, USAA, or somebody else. If you need a business loan, go and see your underwriter, but don't see a bank.

How we can say that this legislation in some way is going to revive the banking industry blows my mind.

Here we are with an industry that is failing, that is in trouble, and we are going to load them down. We are going to load them down with additional regulation and supervision, some of it needed, while we further restrict the ability of banks to compete fairly with the insurance industry and with the securities industry. If this makes sense, I will eat the rest of this microphone.

Mr. Speaker, we should defeat this rule. If we do not defeat the rule, by any standard we must strike title IV.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, this rule is not really hard to understand. It is just hard to believe.

We are in the middle of a banking crisis like we have never seen in this country before, and what does the Congress suggest with the adoption of this rule? Certainly we all believe tough, strong, careful, fair-minded regulation is important. But what do bankers tell us? There is duplication of regulation, there are unnecessary audits, and it costs money. It costs taxpayers money.

What do we do with this proposed plan? We add regulators; we add regulation. Certainly everyone has a different opinion about bank powers. Should they do things tomorrow that they cannot do today? Should they take on new risks? That is certainly a reasonable area for debate.

But under the current plan as proposed, banks will not be able to do tomorrow what they can do today. We are taking away their areas of economic activity. All of us agree that money is the problem. Everybody needs money. I need money, banks need money. The question is, where do we get the money? Do we allow banks to make a profit? Not if we limit their area of economic activity.

What will we do if banks continue to fail? Under this plan we come back to the taxpayers and say, "Give us more money." Taxpayers are going to love this.

Let me say that the gentleman from California who spoke so eloquently earlier was absolutely right. This legislation takes the bank law of England from 1694 and makes it the Bank of America's law for 1992, except that it strikes the progressive provisions.

I think that if we adopt the plan that has been proposed by the Rules Committee without consideration of the hard work of the Committee on Banking, Finance and Urban Affairs of this House and proceed to exclude carefully the well-thought-out amendments offered by Members on this House floor, we are not simply doing ourselves a disservice, we are not simply doing the banks of this country a disservice, we are going to be robbing the taxpayers of this country without any justification.

Mr. Speaker, it is senseless, it is useless, and I hope that the Members will join together and vote against this rule. Let us come back next week. Let us try to do something that is not only reasonable but that is right.

Mr. FROST. Mr. Speaker, I would inquire as to the amount of time remaining on each side.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from California [Mr. DREIER] has 8½ minutes remaining, and the gentleman from Texas [Mr. FROST] has 3½ minutes remaining.

Mr. DREIER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Dodge City, KS, Mr. ROBERTS, who tried diligently to get one of the most important CRA amendments incorporated.

Mr. ROBERTS. Mr. Speaker, how appropriate it is that on Halloween, the day when things that go bump in the night prowl the earth, the House Rules Committee has now reported this rule on H.R. 6. I have respect for the gentleman from Texas [Mr. FROST] and the chairman of the committee, the gentleman from Massachusetts [Mr. MOAKLEY], but with this rule the committee has proven they are not playing fair; they are in fact playing politics.

I offered an amendment to H.R. 6 to exempt the small community banks from reporting the requirements of the Community Reinvestment Act. The purpose of my amendment was simple. It was to reduce the everexpanding regulatory and paperwork burden that is strangling our small banks.

What kind of a report are we talking about? This is just an example. This is only 2 inches thick. Most of them are 5 or 10 inches thick. This is not a form, it is a book report that should not be required of our small community banks.

My attempt was not outside the committee. Mr. KANJORSKI had offered a similar amendment in the Financial Institutions Subcommittee and it passed. We finally have a chance to reduce rather than add to the unnecessary Government red tape. But, the rules committee won't even let it come to a vote.

Now, my attempt was not made outside the committee. The gentleman from Pennsylvania [Mr. KANJORSKI] had offered a similar amendment that the Financial Institutions Subcommittee had passed with no opposition. We finally have a chance to reduce rather than add to the unnecessary Government red tape, but the Rules Committee will not even let it come to a vote.

Mr. Speaker, I realize the need for antidiscrimination protection in our banking law. I am not asking that we protect any institution engaging in these practices. All banks regardless of size are required to comply with the Equal Credit Opportunity Act which prohibits that kind of discrimination on the basis of race, color, sex, age, religion, marital status, or national origin. If discrimination is the problem let's strengthen enforcement of the Equal Credit Opportunity Act and focus our efforts and scarce Federal resources where the incidence of discrimination is the highest. I submit that this is not on Main Street America in the community banks of this country. But we are pointing the gun at our large money-center banks, the BCCI scandal, and S&L crooks, and we are shooting small banks in the process.

My amendment is less controversial than the one offered by the gentleman from Pennsylvania [Mr. KANJORSKI]. His amendment, however, was dropped. It was dropped in full committee in exchange for dropping an amendment offered by the gentleman from Massachusetts [Mr. KENNEDY] to broaden CRA authority and requirements.

Ms. OAKAR. Mr. Speaker, will the gentleman yield?

The SPEAKER pro tempore. The time of the gentleman from Kansas [Mr. ROBERTS] has expired.

Mr. DREIER of California. Mr. Speaker, I yield 1 additional minute to my friend, the gentleman from Kansas [Mr. ROBERTS].

Mr. ROBERTS. Mr. Speaker, I thank the gentleman for the time. I will try to yield to my friend and to the gentlewoman from Ohio [Ms. OAKAR] as soon as I finish my statement.

Months later we finally get this to the floor, and Halloween is here. It is Halloween, and the Democrat treat is that the Kennedy amendment expanding this authority is back and made in order. The trick, the razor blade in the apple for the small community banks, is that that relief for small banks has disappeared.

Let me repeat again that this is not a report for a bank that is discriminating. This is a report only if you expand the bank and you are going to buy another one. I have over 200 banks in my district.

Mr. KENNEDY. Mr. Speaker, will the gentleman yield?

Mr. ROBERTS. I will yield just as soon as I finish my statement. I had a conversation with the gentleman earlier.

Mr. Speaker, the gentleman's amendment was made in order; my amendment was not. The difference is that probably my amendment would have passed and his amendment will not have passed. This is unnecessary paperwork. It was a reasonable step forward.

Mr. Speaker, the only reason it was denied again was on a partisan vote in the Rules Committee, and I do not think that is fair.

Mr. KENNEDY. Mr. Speaker, will the gentleman yield?

The SPEAKER pro tempore. The time of the gentleman from Kansas [Mr. ROBERTS] has expired.

□ 1150

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, as we proceed in this debate today, I hope that Members will listen to the advice and the comments of one of the most efficient and best bank managers in America. His name is Crosby Kemper. Mr. Kemper runs one of the five banks in the country today that has been given a grade of A by Bank Watch, which is a very reputable banking service that looks at banks all over this country. Let me just share with you what Mr. Kemper says about the issues before us.

He was asked in an article which appeared in the Bankers Magazine, the September-October edition of this year, what do you think is the real problem? Let me share with you what he said.

Mr. Kemper said:

> I think the issue is credit. But the tragedy is that the CEO's, especially those running our major banks, know nothing about it.

He went on to say that they broke all the rules that a trained banker should have adhered to.

Then Mr. Kemper was asked what sort of approach would you advise bankers to take? This is a conservative Republican banker that runs a $4 billion institution in the Midwest, one of the five best banks in the country today.

Do you know what he said? He said:

> Every banker should know how to lend money properly. The problem is that not many bankers know how.

Then Mr. Kemper was asked what do you think the need for restructuring the banking industry is, and specifically the Bush reform plan?

This is what he had to say. He said:

> It is hard to imagine the bank managers of some of these money center banks having the ability to underwrite stocks. They have shown no real judgment so far. For these banks to have expanded powers is outlandish. Such a move would make the junk bond problem look like tiddly-winks.

Now, this is not some liberal Democrat social observer. This is a conservative Republican banker in the Midwest who runs a $4 billion institution, saying that if we pass this legislation, we make a terrible mistake for the taxpayers of this country, for the consumers, and indeed for the banking industry.

Mr. Speaker, I hope we listen today.

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am always saddened to have to disagree with my friend from Kansas City, Mr. Kemper, but I believe he is clearly very wrong on this issue.

Mr. Speaker, I yield 2 minutes to my friend, the gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, I rise in opposition to the rule. I am a member of one of the committees that has partial jurisdiction over this legislation, the Committee on Energy and Commerce. I am also a member of the subcommittees that have jurisdiction, the Subcommittee on Telecommunications and Finance, and the Subcommittee on Commerce, Consumer Protection, and Competitiveness. I have attended numerous subcommittee hearings and markups as well as full committee hearings and markups on this issue. I have had dozens of meetings in my congressional district with small, medium sized, and large bankers. I have had several full-blown advisory meetings on this legislation.

As a consequence of those meetings and all that study and work, I have developed three amendments, grassroots amendments, commonsense amendments, amendments that would have passed by voice vote and probably unanimous consent had I been allowed to offer them.

I took them to the Committee on Rules to have them made in order for the simple reason that they were not within jurisdiction of the Committee on Energy and Commerce. Not one of those amendments was made in order.

One of those amendments would have allowed a study to coordinate the audit activities of the various regulatory bodies over our banks. Some of my small banks in Texas have been audited six times in the last year. That is six times in 1 year, not one time in 6 years. We ought to be able to bring some coordination to that.

Another amendment would have allowed the local tax appraisal on a property to be used for a 2-year period in order to move the property off the RTC rolls and back into the private sector. At the end of that 2-year period, we would determine whether to allow that procedure to continue in effect for more time.

That one amendment would have probably resulted in somewhere between $80 million and $100 million worth of property being transferred back in private hands in Texas this year alone. It was not made in order.

Finally, I had an amendment that would have required a study to use private market-based insurance for our deposits above $100,000. As we all know, the FDIC guarantees up to $100,000, but above that, there is no guarantee. However, because of the too big to fail process, the taxpayer has in fact guaranteed all deposits, whether they are $100,000 or more.

This amendment would have allowed the small banks to retain some of the funds that were going to the large banks because they would have all been playing on a level playing field.

Mr. Speaker, not one of those amendments was made in order. For that reason, I would hope that we would defeat this rule, go back to the Committee on Rules, and get a rule that allows a lot of amendments.

This is the most extensive change in banking laws since the Great Depression. We do not need to pass it through the House in 1 day.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from California [Mr. DREIER] has 3½ minutes remaining, and the gentleman from Texas [Mr. FROST] has 1½ minutes remaining.

Mr. FROST. Mr. Speaker, I yield 30 seconds to the gentlewoman from Ohio [Ms. OAKAR] for purposes of debate only.

Ms. OAKAR. Mr. Speaker, I wanted to clarify what I thought was a misrepresentation about community reinvestment in the Kanjorski amendment. The Kanjorski amendment was not dropped, it was soundly defeated by the full Committee on Banking, Finance and Urban Affairs.

In terms of community reinvestment, I think we ought to note what it is. Community reinvestment simply says that where banks are located, where they make all their money, they have an obligation in part to lend to people who live in that community. If banks were more conscious of where they came from, we would not have the crisis that we have today in America.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentlewoman from Ohio [Ms. KAPTUR], a former member of the Committee on Banking, Finance and Urban Affairs.

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from California for yielding.

Mr. Speaker, I rise in strong opposition to this rule. I believe this rule gives the big banks of this country the right to put both their hands into the taxpayers' pockets of our country. The savings and loans already have one hand in the other pocket, and now it will be two.

How does it do that? By giving the FDIC new authority for a line of credit to the U.S. Treasury for the commercial banks.

What is a line of credit? It is a blank check. I am truly dismayed that this bill, or any bill that has come through the Committee on Banking, Finance and Urban Affairs in the past 9 years, has never come up with a different solution to finance this problem other than going back to the taxpayers of the United States. It is wrong.

Mr. Speaker, if you are for the American people, who did not cause this problem in the first place, you will vote against the rule and for a pay-as-you-go provision in this bill that is fair to the taxpayers of our country.

Mr. Speaker, I include the following article from last Sunday's Washington Post for the RECORD.

BUTTRESSING THE BIG BANKS—EXPERTS SAY TAB COULD HIT $200 BILLION, AND TAXPAYERS MAY HAVE TO HELP

(By Jerry Knight)

America's largest banks are in bigger trouble than government officials and the banks themselves have publicly admitted, and many congressional and private banking experts question whether the industry will be able to solve its problems without direct help from taxpayers.

Congress this week will vote on the Bush administration's request to arrange a huge loan to the Federal Deposit Insurance Corp. to pay for bank failures.

The banking industry is supposed to pay back the money—with interest—so that ordinary taxpayers never feel the bite. But congressional Democrats and many banking economists fear that U.S. banking is simply too weak to repay the money.

The unprecedented loan from the U.S. Treasury is only one part of what Cleveland State University economist Edwin Hill believes will be a $200 billion investment needed to restore the health of the banking industry.

The banking industry's trouble is concentrated in 158 large banks, each with assets of more than $1 billion, according to Hill and economist Roger Vaughan, who are researching the industry for a book on the future of American finance to be published by The Washington Post. "We're dealing with a group of crippled giants," said Hill. Those big banks alone will need to raise at least $64 billion in new capital to operate safely, Hill and Vaughan calculate. The rest of the country's banks will need another $56 billion, the economists concluded after a massive computer analysis of the balance sheets for every one of the country's more than 12,000 banks.

In addition, they say, the banks will also be called on to put up more than $50 billion to repay depositors in failed banks, and an additional $30 billion to rebuild the federal government's bank insurance fund. The economists estimates exceed the FDIC projection that bank failures will cost at least $30 billion and as much as $44 billion. The FDIC is seeking congressional authority to borrow as much as $70 billion to cover operating expenses.

The banking industry is in trouble because of a series of ill-fated decisions over the last decade to lend money to Third World countries, corporate takeover artists and real estate developers who ended up not being able to repay their loans. Those bad loans have caused nearly 1,000 banks to fail, left hundreds more on the brink of failure and badly eroded the capital reserves of another 2,000 banks.

Mr. DREIER of California. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. BENNETT].

Mr. BENNETT. Mr. Speaker, I am very much concerned about this legislation. I think the rule should be more adaptive to amendments. The things that concern me are, No. 1, the taxpayers are going to be standing behind the guarantee of entirely too much money in these accounts. We ought to tighten up much more than this legislation allows.

Second, I do not think interstate banking all over the United States is in the public interest, for very good reasons: Because people in a community can tell the bank that it is unwise to do certain sorts of things and they cannot really do that when it is on an interstate basis.

The next thing is bankholding companies and private concerns in banks are mixed up in a situation in this legislation which I think is dangerous to the health of the bank.

Finally, I could add the fact that I think we should have had a better answer to international banking than we do under this rule.

The things I have referred to, the guarantee of the Federal Government out of the little taxpayers of our country for these money lenders seems to me to be a mistake. And interstate banking seems to me to be a mistake, as well as having the bankholding and other companies involved in things that are in a conflict of interest situation.

Mr. DREIER of California. Mr. Speaker, I yield such time as he may consume to the gentleman from Alabama [Mr. ERDREICH], the chairman of the Subcommittee on Policy Research and Insurance of the Committee on Banking, Finance and Urban Affairs.

Mr. ERDREICH. Mr. Speaker, in taking up the issue of comprehensive banking reform the House is reviewing the work of many committees. As a member of the Banking Committee I know firsthand that this work has been long and arduous, with each committee addressing its concerns about the system of financial services that will be available to Americans for years to come.

I have participated in this debate, have offered amendments in the Banking Committee markup and have analyzed the results of this process. I would prefer the bill that the Banking Committee has reported to the House. The Banking Committee's version of the bill would provide for a more thorough restructuring of financial services. A restructuring critical to the ability of all our financial institutions—whether they are banks, insurance companies, real estate firms, or securities firms—to meet the needs of all citizens to keep us competitive in a rapidly changing marketplace.

This general debate and the debate that will follow on the amendments to H.R. 6 are important to continuing the process of forging appropriate language to meet the competitive needs, capital needs, and service needs of the country. I am hopeful that this body can agree to meet these needs in a substantive and meaningful way. In my view, this means providing a system whereby all financial service institutions will be equal, without protecting one industry at the expense of another.

I intend to support positions that will provide this parity—whether they be equal capital provisions or provisions providing for equal consumer provisions to all financial service organizations. Appropriate, effective safeguards protecting unwary consumers from financial fraud must be a part of this process, but firewalls that are unrealistic or unworkable should not be imposed.

Finally, Mr. Speaker, I urge all my colleagues to consider the full impact of the amendments that this body will adopt, and, before either voting for or against this bill, consider whether or not there has been true reform of financial services or the dismantling of one industry at the gain of others.

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have been asked to close this debate. I will do so by simply saying that we really have a couple of choices here. Are we going to shift back to the banking law as the Bank of England established it in 1694, or are we going to do nothing? The committees with jurisdiction over this, the Committee on Banking, Finance and Urban Affairs, and the Committee on Energy and Commerce, have never had a chance to consider this bill. This rule is clearly unfair, not only to Members on this side, but to Members on the other side of the aisle as well.

Mr. Speaker, I urge a no vote on this rule.

Mr. Speaker, I yield back the balance of my time.

☐ 1200

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

This piece of legislation is truly one of the most complicated, controversial pieces of legislation this Congress has had to deal with in years. The Committee on Rules had devoted a great deal of time and energy in trying to structure a fair rule, one that permits the major issues to be joined on their merits.

I urge adoption of this rule.

Mr. DELAY. Mr. Speaker, I rise in opposition to this rule.

The reason we are here today is because Congress voted, more than 40 years ago, to guarantee deposits of up to $2,500 of small savers in banks and thrifts to prevent runs on the financial institutions. There was merit in the policy to insure the savings of depositors.

Most depositors kept only small amounts of money in the bank to handle regular transactions. Further, technology severely limited their choice of banks to a small geographic area. Because the accounts were so small they had little incentive to monitor the state of the financial industry and compare their bank's relative status and health. These depositors would only react if they heard rumors that the bank was in trouble, which would lead to a run on the bank.

However, over time, subsequent legislation drastically expanded that coverage. Current deposit insurance coverage of $100,000 per account is more than four times higher than the initial level, and that's after adjusting for inflation.

Additionally, improvements in transportation and telecommunications technology have increased consumers' banking options by orders of magnitude. Many investors now move their capital nationwide and even globally.

Federally guaranteed deposit insurance has evolved from a policy of insuring the savings of depositors to guaranteeing the capital of rate-sensitive investors.

Banks, and other financial institutions, have been in serious trouble in recent years. The Congress is now being asked to make good on its promise to guarantee deposits. As we know, for the Congress to meet its obligation, we must reach deep into the pockets of taxpayers or, to be more precise, future taxpayers.

The bill before us today does not correct this problem of taxpayer exposure. In fact, this legislation actually expands deposit insurance coverage which will increase future taxpayer exposure.

Currently, a family of four can have federally insured accounts totaling $1,400,000 at each financial institution. This bill allows for pass-through insurance coverage. Thus, each person would be able to receive even more coverage in $100,000 increments.

Thomas Garrott, president of the National Bank of Commerce, has correctly identified that federally guaranteed deposit insurance destroyed the natural immunities of the free-market system. In the winter 1991 edition of Regulation, he further points out that:

> The causes most often cited [for the collapse of the S&L industry] are fraud, disintermediation, speculative lending practices, and inept regulatory supervision. In reality, however, these were merely viruses that found a receptive breeding ground in an industry already susceptible to infection as a result of unrestrained deposit insurance abuse.

I oppose this rule on H.R. 6 because it does not allow for amendments to address this serious problem. At the very least, this Congress should be allowed to have a clear vote on the issue of deposit insurance so that the American people will know which Members want to increase taxpayer exposure to future liabilities.

I offered two amendments on deposit insurance which the Rules Committee did not make in order under this rule.

Under my first amendment, deposit insurance coverage would be restricted to $100,000 per individual in aggregate on a nationwide basis. Each person would be able to determine which accounts they want insured up to a limit of $100,000 total. More than 94 percent of all depositors would not be affected by my amendment because they have total deposits of less than $100,000.

The second amendment I offered would have lowered the limit to $40,000 in aggregate. More than 80 percent of current depositors have less than $40,000 in total deposits and thus would not be affected.

Taxpayer guaranteed deposit insurance removes the natural market incentives for banks to make careful decisions. Rate-sensitive investors move their capital through brokers to financial institutions offering the highest rates. The safety and soundness of the institution are not part of the consideration. These investors seek a return on their investments equivalent to the returns achieved in the stock markets without any of the associated risk.

I firmly believe that if individuals want to invest their capital risk-free, they can purchase Government securities. However, if they seek a higher return on their investment, they must accept the risk. Interest rates are a normal function of risk in a market economy.

Mr. Speaker, I ask my colleagues to oppose this rule on H.R. 6 so that the House may have the opportunity to vote on serious reform to deposit insurance.

Mr. FROST. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. McNULTY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

Pending that, Mr. Speaker, I ask unanimous consent that the vote by the yeas and nays on the motion to suspend the rules and pass the bill, H.R. 2454, be reduced to 5 minutes to follow this vote.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 210, nays 208, not voting 15, as follows:

[Roll No. 358]

YEAS—210

Abercrombie
Ackerman
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Aspin
Atkins
AuCoin
Bacchus
Barnard
Beilenson
Berman
Bevill
Bilbray
Bonior
Borski
Boucher
Brewster
Brooks
Bruce
Bryant
Bustamante
Byron
Cardin
Carr
Chapman
Clay
Clement
Clinger
Collins (IL)
Collins (MI)
Conyers
Cooper
Cox (IL)
Coyne
Darden
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dooley
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Early
Edwards (CA)
Edwards (TX)
Engel
Espy
Evans
Fascell
Fazio
Feighan
Flake
Foglietta
Ford (TN)
Frank (MA)
Frost
Gejdenson
Gephardt
Geren
Gibbons
Glickman
Gonzalez
Gordon
Guarini
Hall (OH)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hertel
Hoagland
Hochbrueckner
Horn
Houghton
Hoyer
Huckaby
Jefferson
Johnson (CT)
Johnson (SD)
Johnston
Jones (NC)
Jontz
Kanjorski
Kennedy
Kennelly
Kildee
Kopetski
Kostmayer
LaFalce
Lantos
LaRocco
Laughlin
Leach
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McDermott
McHugh
McNulty
Meyers
Mfume
Michel
Miller (CA)
Mineta
Mink
Moakley
Montgomery
Moran
Mrazek
Murtha
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Oberstar
Obey
Olver
Ortiz
Orton
Owens (UT)
Pallone
Panetta
Parker

Pastor
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickle
Rangel
Ray
Reed
Richardson
Roe
Roemer
Rostenkowski
Roybal
Russo
Sarpalius
Sawyer
Saxton
Scheuer
Schroeder
Schumer
Serrano
Sharp
Shays
Sikorski
Sisisky
Skaggs
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
Staggers
Stark
Stenholm
Stokes
Studds
Swett
Swift
Synar
Tauzin
Torres
Torricelli
Towns
Traxler
Unsoeld
Vento
Visclosky
Volkmer
Washington
Waters
Waxman
Weiss
Wheat
Whitten
Williams
Wise
Wolpe
Wyden
Yates

NAYS—208

Alexander
Allard
Anthony
Applegate
Archer
Armey
Baker
Ballenger
Barrett
Barton
Bateman
Bennett
Bentley
Bereuter
Bliley
Boehlert
Boehner
Broomfield
Browder
Burton
Callahan
Camp
Campbell (CO)
Carper
Chandler
Coble
Coleman (MO)
Coleman (TX)
Combest
Condit
Costello
Coughlin
Cox (CA)
Cramer
Crane
Cunningham
Dannemeyer
Davis
DeLay
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Eckart
Edwards (OK)
Emerson
English
Erdreich
Ewing
Fawell
Fields
Fish
Franks (CT)
Gallegly
Gallo
Gaydos
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Goss
Gradison
Grandy
Green
Gunderson
Hall (TX)
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Hefner
Henry
Herger
Hobson
Holloway
Horton
Hubbard
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (TX)
Jones (GA)
Kaptur
Kasich
Kleczka
Klug
Kolbe
Kolter
Kyl
Lagomarsino
Lancaster
Lehman (CA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McMillan (NC)
McMillen (MD)
Miller (OH)
Miller (WA)
Molinari
Mollohan
Moody
Moorhead
Morella
Morrison
Murphy
Myers
Neal (NC)
Nichols
Nussle
Olin
Owens (NY)
Oxley
Packard
Patterson
Paxon
Payne (VA)
Petri
Pickett
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Ravenel
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Sanders
Sangmeister
Santorum
Schaefer
Schiff
Schulze
Sensenbrenner
Shaw
Shuster
Skeen
Skelton
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stallings
Stearns
Stump
Sundquist
Tallon
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Thornton
Traficant
Upton
Valentine
Vander Jagt
Vucanovich
Walker
Walsh
Weber
Weldon
Wilson
Wolf
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—15

Bilirakis
Boxer
Brown
Bunning
Campbell (CA)
Ford (MI)
Hopkins
Lloyd
Payne (NJ)
Rose
Rowland
Sabo
Savage
Slaughter (VA)
Tanner

☐ 1221

Messrs. JACOBS, HEFNER, and CONDIT changed their vote from "yea" to "nay."

Messrs. LAROCCO, PASTOR, DICKS, VOLKMER, and HOUGHTON changed their vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REINSTATEMENT OF GENERAL DEBATE TIME TO COMMITTEE ON AGRICULTURE ON H.R. 6, FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

Mr. FROST. Mr. Speaker, I ask unanimous consent that at the conclusion of consideration of amendments to H.R. 6 in the Committee of the Whole today the period of general debate allocated to the Committee on Agriculture by H.R. 264 and not consumed on yesterday be allocated to that committee.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. FROST. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks during debate on House Resolution 266, the resolution just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERIC DRUG ENFORCEMENT ACT OF 1991

The SPEAKER. The unfinished business is the question of suspending the rules and passing the bill, H.R. 2454, as amended.

The Clerk read the title of the bill.

The SPEAKER. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the bill, H.R. 2454, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 413, nays 0, not voting 20, as follows:

[Roll No. 359]

YEAS—413

Abercrombie
Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bliley
Boehlert
Boehner
Bonior
Borski
Boucher
Brooks
Broomfield
Browder
Bruce
Bryant
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CO)
Cardin
Carr
Chandler
Chapman
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Costello
Coughlin
Cox (CA)
Cox (IL)
Coyne
Cramer
Crane
Cunningham
Dannemeyer
Darden
Davis
de la Garza
DeFazio
DeLauro
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Derrick
Dickinson
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Dingell
Dixon
Donnelly
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Emerson
Engel
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Espy
Evans
Ewing
Fascell
Fawell
Fazio
Feighan
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Foglietta
Ford (TN)
Frank (MA)
Franks (CT)
Frost
Gallegly
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Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
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Green
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Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
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Hastert
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Hayes (IL)
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Hefley
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Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
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McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
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Miller (CA)
Miller (OH)
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Mineta
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Moakley
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Mollohan
Montgomery
Moody
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Moran
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Neal (MA)
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Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
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Poshard
Price
Quillen
Rahall

Ramstad
Rangel
Ravenel
Ray
Reed
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rostenkowski
Roth
Roukema
Roybal
Russo
Sabo
Sanders
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stokes
Studds
Stump
Sundquist
Swett
Swift
Synar
Tallon
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Washington
Waters
Waxman
Weber
Weiss
Weldon
Wheat
Williams
Wilson
Wise
Wolf
Wolpe
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—0

NOT VOTING—20

Bilirakis
Boxer
Brewster
Brown
Bunning
Campbell (CA)
Carper
Ford (MI)
Gekas
Hopkins
Lloyd
Payne (NJ)
Pursell
Rose
Rowland
Savage
Slaughter (VA)
Solarz
Tanner
Whitten

□ 1234

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PRIVILEGES OF THE HOUSE—RETURNING TO THE SENATE S. 320, OMNIBUS EXPORT AMENDMENTS ACT OF 1991

Mr. ROSTENKOWSKI. Mr. Speaker, I rise to a question of the privileges of the House, and I offer a privileged resolution (H. Res. 267) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 267

Resolved, That the bill of the Senate (S. 320) entitled the "Omnibus Export Amendments Act of 1991", in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill be respectfully returned to the Senate with a message communicating this resolution.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 1 hour.

GENERAL LEAVE

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the resolution now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ROSTENKOWSKI. Mr. Speaker, House Resolution 267 returns to the Senate the bill, S. 320, because it contravenes the constitutional requirement that revenue measures originate in the House of Representatives.

In addition to reauthorizing the Export Administration Act of 1979, S. 320 contains a number of provisions which impose, or authorize the imposition of, a ban on imports into the United States. Among the provisions containing import sanctions are those relating to certain practices by Iraq, the proliferation and use of chemical and biological weapons, and the transfer of missile technology. These changes in our tariff laws constitute a revenue measure in the constitutional sense, because they would have a direct effect on customs revenues.

While the House, by adopting this resolution, will preserve its prerogative to originate revenue matters, I want to make it clear to all Members that our action does not constitute a rejection of the Senate bill on its merits. The House has passed its own bill, H.R. 3489, reauthorizing the Export Administration Act. In addition, H.R. 1415, a bill containing broad nontrade sanctions authority for the proliferation of chemical and biological weapons was signed into law on October 28. Finally, another bill, H.R. 3409, which does contain import sanctions, is pending before the Committee on Ways and Means. We are awaiting certain assurances from the Senate before taking action on that bill.

Thus, Mr. Speaker, our action today is intended solely to protect the constitutional prerogative of the House. It makes it clear to the Senate that the appropriate procedure for dealing with tariff matters that affect revenues is for the House to act first on a revenue bill and the Senate to add its amendments and seek a conference.

Mr. ROSTENKOWSKI. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to consider was laid on the table.

FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

The SPEAKER pro tempore. Pursuant to House Resolution 264 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 6.

□ 1239

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, with Mr. CARR in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, October 30, 1991, all time for general debate had expired.

Pursuant to the order of the House of today, general debate designated for the Committee on Agriculture will begin after consideration of any amendments offered today.

Pursuant to House Resolution 266, the gentleman from Michigan [Mr. DINGELL] will be recognized for 30 minutes and the gentleman from New York [Mr. LENT] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I ask unanimous consent that the gentleman from Massachusetts [Mr. MARKEY] may control the time on my behalf.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The CHAIRMAN. The gentleman from Massachusetts [Mr. MARKEY] is recognized for 30 minutes.

□ 1240

Mr. MARKEY. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. DINGELL], the chairman of the full Committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, we stand here in the House of Representatives in the same place we did in 1982, when the Garn-St Germain bill was before us. The same people downtown who presented us the Garn-St Germain bill have presented us the basic legislation which lies before us.

The House has before it proposals which attack the deficiencies of the bill sent up to us and which attack the visible deficiencies of Garn-St Germain. The same people who were pushing that legislation in the earlier days are pushing similar legislation today. I refer to the big bankers, the big bankers who have so mismanaged their affairs through bad loans and are now in serious difficulty. They seek to use that as the excuse to tell the Congress how it is we should restructure the American banking system.

They seek to use that as the mechanism to justify their restructuring the banking system. I would remind my colleagues about the panic of 1837 and the 1929 crash. In each instance, a massive calamity came about because of abuses similar to ones that the banks would be permitted to perpetrate under the administration's legislation.

There are safeguards in the Gonzalez-Dingell legislation, there are firewalls in that legislation. They are strong, and they will prevent abuses.

We have to do the bank insurance fund refinancing that is necessary, but we also have to see to it that there is no longer the massive exposure that the people downtown, the banking regulators, and the same people who gave us the collapse of the savings and loan system, would perpetrate upon the House and the Nation today.

The gentleman from Texas [Mr. GONZALEZ] and I have arrived at an understanding, settling the disputes between our two committees. That is a part of the basic structure of the legislation. I urge my colleagues to support the bill.

Mr. Chairman, I urge my colleagues to vote against the motion to strike those firewalls, those safeguards, and those protections against abuses by the banks.

The banks, remember, in 1929, brought about the most serious economic collapse in the recent history of the United States. They did it because they abused the banking system and their securities powers.

Mr. Chairman, money can be made in banking. It can be made by following simple, sensible rules of accountability. To evade those rules is to invite disaster.

In New York and elsewhere massive abuses occurred in bad loans to dictators and Third World countries, and in bad loans for mergers and acquisitions, where neither the principal nor the interest could be repaid.

The members of the Committee on Energy and Commerce and the Committee on Banking, Finance and Urban Affairs have worked hard.

The distinguished gentleman from Massachusetts [Mr. MARKEY] and the distinguished gentlewoman from Illinois [Mrs. COLLINS] have performed prodigiously with their subcommittees.

The bank insurance fund is now near zero. Approximately, 1,000 banks failed between 1934 and 1981. But under the kind of deregulation and unsound banking practices which occurred under the previous administration and this one, over 1,000 banks have failed in a period of 10 years. They failed because of the attitudes of the regulators, who have said that, if this legislation does not pass in its present form, they will proceed administratively and in the courts to emancipate the banks to do the same thing that the savings and loans did in the time following enactment of Garn-St Germain.

Mr. Chairman, I urge my colleagues to preserve functional regulation. I urge them to see to it that we have real separation between risky activities and insured deposits.

You know, today is Halloween, "trick or treat." You are going to see a lot of promises of treats; you are going to get a lot of tricks from the bankers.

They, the big banks, want to be emancipated. The small banks have different feelings.

If you want to look after small banks, if you want to look after depositors and taxpayers and investors, vote with us.

Mr. LENT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bill has raised many important questions about the issue of banking and commerce. This debate will continue later today as we move forward with a bipartisan amendment sponsored by the gentleman from Massachusetts [Mr. FRANK] and the gentleman from New Jersey [Mr. RINALDO] to which would permit commercial companies to save the taxpayers money by acquiring failed and failing banks.

I want to use my time today to address this important amendment, which emanated from the minority on the Committee on Energy and Commerce. This is a good amendment, one which my minority colleagues on the Committee on Energy and Commerce feel very deeply about.

Briefly, this amendment would authorize commercial firms to acquire failing banks. Any acquisition under this provision must represent the least costly alternative to the taxpayer as determined by the FDIC. The amendment requires any bank acquired by a commercial firm to be brought up to and maintained at level 1 capital or else be divested by the commercial firm.

I submit to you that to merely recapitalize the bank insurance fund, without exploring additional sources of capital that might prevent future bank failures, is an irresponsible act. We can debate whether the banking system as a whole needs capital, but there can be very little argument that a bank that is failing or has failed needs capital. The question that we need to ask ourselves then, as architects of public policy, is, Where is this money going to come from?

I think the answer is very clear. The money is not going to come from the financial services industry; 200 bank failures a year prove that. Foreign investors have it, but I think turning the American banking system into branches of foreign banks is bad public policy. Failed or failing banks are hardly in a position to raise capital in our stock and bond markets. That leaves just two alternatives: Allowing commercial companies to invest in failing banks, or forcing the American taxpayer to reach deep into his pocket to bail the banks out.

One question which opponents will raise today is: "Why would a commercial company want to acquire a failed or failing bank?"

The commercial firms that may buy banks are firms that have a history of financial services—consumer finance in particular. In this group are:

Sears, for example, which has provided credit to its millions of customers for many years;

Ford Motor Corp., which has a long history of providing auto loans;

American Express, which is primarily known for its credit card; and

Household International, whose household finance has provided credit to consumer since the 1800's.

I could add other firms that own and operate so-called nonbank banks, too—Like J.C. Penny; Aetna Life & Casualty; General Electric Chrysler; John Hancock, and Montgomery Ward.

A question that is often asked is: "Why would a bank owned by a commercial company make loans to competitors of that commercial company?"

First, let's remember that under the terms of this amendment, the bank will be prohibited from lending to its affiliated companies—that means its commerical parent and any of the commercial company's subsidiaries. If the bank can not legally lend to its affiliates, what choice do they have, if they want to run a profitable banking business, but to lend to unrelated companies, including their competitors?

We know that banks today compete with each other; they lend to each other as well. Banks compete with securities firms, but they are substantial leaders to the securities industry.

Most importantly, alternative sources of credit are just too numerous, with 12,000 banks, 6,000 insurance companies, 9,000 securities firms, 3,000 mutual funds in this Nation today.

☐ 1250

So, if a competitor could not get a loan from one bank, it could easily go to another credit provider.

So, Mr. Chairman, the main point I want to make in summing up is that American banking is in trouble. President Bush provided the leadership by sending Congress a far-sighted and far-reaching overhaul of an ailing industry. It is up to us to display the courage to enact his plan and to take America into the 21st century.

I say to my colleagues, "If you want to continue to stick it to the taxpayer, or want to increase the influence of foreign banks on the availability of credit to American consumers and business, then you ought to vote against the amendment to be offered by the gentleman from Massachusetts and the gentleman from New Jersey. Some may call doing that bank reform. I would call it poor public policy."

So, Mr. Chairman, if we want to maintain America's competitive edge in the world, we can only achieve this by embarking on this bold new program. The risks have been held to the barest minimum, but the rewards are limitless.

Mr. NEAL of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. LENT. Mr. Chairman, I yield to the gentleman, but just for a very brief comment.

Mr. NEAL of North Carolina. Mr. Chairman, I appreciate the gentleman from New York yielding to me.

Mr. Chairman, the distinguished chairman of the Committee on Energy and Commerce pointed out that the bank had made some bad loans to dictators, and I would like to know how in this title IV that what they have in mind there is going to stop any loans to dictators. Could someone please help me with that?

Mr. LENT. Reclaiming my time, Mr. Chairman, there will be an opportunity at the appropriate time to debate the motion to strike title IV. I may very well join the distinguished gentleman on the other side of the aisle when that time comes.

Mr. Chairman, I reserve the balance of my time.

Mr. MARKEY. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Chairman, I thank the gentleman from Massachusetts [Mr. MARKEY] for yielding, and, before I talk about what we did in subcommittee, I want to commend both the full committee chairman, the gentleman from Texas [Mr. GONZALEZ], and the gentleman from Michigan [Mr. DINGELL], for their leadership in bringing about the compromise that we are debating at this time. I believe that their hard work and their understanding of the issue that is before us today has resulted in legislation that all of us can be proud of as Americans and, certainly, as leaders of the people who have sent us to these Halls of Congress to represent them and their interests.

As my colleagues know, this compromise avoids the kind of deregulation ideas that the decade-old Garn-St Germain bill contains, which has led us into the S&L fiasco we find ourselves in today. That action has cost taxpayers hundreds of billions of dollars already, and I am sure none of us want to see that kind of bailout become necessary in the banking industry. Instead, this compromise conditions expanded powers on careful regulation and strong consumer protection that require disclosure when products are not federally insured.

Now I think that is important because many consumers seem to believe that all products are to be federally insured. That is absolutely not the case, and we must have disclosures to make sure that we understand that important fact.

Title IV reaffirms that we do not want our constituents, or any other American who is going to a bank for a loan to have to be faced with tie-ins. Tie-ins are when a person seeks a loan and the bank says, "Well, in order for you to get this loan, you'll have to get your insurance through us." That is the restriction that we have in our piece of legislation.

Now I do not want my colleagues to make the mistake of thinking that by merely expanding banking powers we are going to improve the banks' financial health. We have found that is simply not the case; and when it comes down to insurance, we know that is not the case.

All of us are aware that we have experienced a number of insurance failures in the past 2 or 3 years. A big one was Executive Life, that had some 300,000 policyholders who have been affected. Of those policyholders who had annuities, they are only being paid 70 percent on their money. And then there was the insolvency of the Mutual Benefit Insurance Co. that added new troubles. I believe that these are the kinds of risks from insurance that will be heaped upon banks. Banks already have their troubles, and I do not see any need to exacerbate them by allowing them to underwrite insurance.

On the other hand, Mr. Chairman, our compromise protects depositors, policyholders and, ultimately the taxpayers from paying out billions of dollars for deregulated mistakes that we have seen in the past. Further, we are not interested in protecting the insurance and securities industries from any kind of competition, as some have claimed.

The Consumer Federation of America supports our position. There is plenty of competition in the industry. In fact, insurance failures were the direct result of all the competition that we have seen there.

The single limitation we have placed on banking insurance activities prohibits out-of-State banks from coming into my colleagues' States to sell insurance without their State's approval. The Federal Reserve Board opposed the Delaware law that would permit such sales because they said it would threaten the financial soundness of banks, and surely none of us want to do that.

The Energy and Commerce Committee's Subcommittee on Commerce, Consumer Protection, and Competitiveness, which I chair, has jurisdiction over insurance. The legislation was referred to the subcommittee to review the insurance provisions of the bill. Despite a short timeframe, the subcommittee reviewed these issues carefully. While we made certain changes to the bill with respect to the insurance powers of banks, we retained most of the work done in the Banking Committee.

The traditional business of banking—serving as a depository and loan institution—has for the most part been separate from the business of insurance. However, some banks are eager to be permitted to engage in the business of insurance, including underwriting, as an additional source of revenue. Our committee's action and the compromise reflect a cautious approach.

Our experience in examining the insurance industry tells us that expanding bank powers to include insurance underwriting may just add new risks to a bank's bottom line, thus adversely affecting safety and soundness. Expansion of bank powers does not address the problems which have caused the banking crisis, particularly when one considers the potentially risky nature of insurance underwriting.

In Illinois, we have had 27 bank failures since 1980. These failures include Cosmopolitan National Bank of Chicago, which failed this year with assets of $121.4 million. The total assets of the 27 banks had $695 million in assets. In addition, others did not fail, but were pumped up with FDIC funds. That included Continental Illinois Bank in 1984, that had $30 billion in assets at the time. I doubt that allowing them to sell insurance would have made a difference.

We were also concerned about the impact of expanded banking powers on the insurance industry and its millions of policyholders nationwide. The Subcommittee on Commerce, Consumer Protection, and Competitiveness and the Oversight and Investigations Subcommittee have conducted many hearings on the current solvency problems in the insurance industry. Insolvencies that were once unheard of in the insurance industry are on the rise.

Indeed, I'm sure most of us have heard from constituents who have been affected by the recent insurance company failures, particularly those affected by the failure of Executive Life, where annuitants are currently receiving reduced benefits. At the same time, the committee's extensive hearings have revealed serious inadequacies in the current system of insurance solvency regulation.

Even if expansion of banking powers into insurance underwriting were desirable, now hardly seems the right time to do so. This is one of the reasons the Commerce Committee—and the compromise—rejected the commercial ownership of banks and the diversified holding company concept.

While allowing banks to sell insurance generally raises less risks than underwriting, the committee wanted to make sure that consumer protection issues were addressed. For example, we protected consumer confidentiality. We also prevented undue pressure in the sale of financial services. We did this by prohibiting banks from soliciting the sale of insurance products required as part of a loan prior to a written loan commitment. The compromise between the two committees generally maintains these important protections, with modifications to conform to the agreement to delete the diversified holding company.

In addition, recent court and regulatory decisions have often expanded the ability of banks to sell insurance without a clear concern for congressional intent. The committee felt it was important to speak clearly on this matter so that public policy is rightfully made here in the Congress, rather than through the regulators or the courts. Let me note here that if we strike title IV, then Congress will effectively abdicate its responsibility in this area to appointed regulators and judges.

More specifically, the Commerce Committee bill, and the compromise, support the rights of States to make their own decisions with regard to insurance sales by State banks within their borders. The committee bill and the compromise provides States the opportunity to speak clearly about whether out-of-State banks can sell insurance within their borders. The bill and the compromise establish the appropriate parameters of insurance sales by national banks in small towns.

Let me speak briefly on the issue of commercial ownership of banks, a major difference between the two reported bills. By maintaining the long tradition of the separation of banking and commerce, the Commerce Committee also maintained the separation of banking and insurance underwriting, for the policy reasons I discussed earlier. The compromise maintains this important separation.

But, more broadly, let me emphasize my grave concerns with the very concept of a commercial holding company owning a bank. History teaches us that the potential for abuse and large scale scandal is just too great. As we've seen just recently with the BCCI and Salomon Brothers scandals, the regulators have a hard time even dealing with current complicated corporate structures. It will be that much more difficult with a so-called diversified holding company.

Let me emphasize that the Commerce Committee's bill, and the substitute, reflects a compromise on the insurance powers of banks. It allows certain powers beyond those permitted by the Commerce Committee when it last considered this bill in 1988. However, it clearly prohibits the unlimited expansion of insurance powers proposed by the administration.

Now I know there are some who are unhappy with the overall compromise. They are now urging that we completely strip the bill of title IV, which addresses these issues. I find this position highly ironic.

Many of us would have preferred a narrow bill to begin with. However, when the decision was made to proceed with a broad bill, both the Commerce Committee and the Banking Committee spent much time examining this issue in good faith.

Some who are unhappy with the results of our deliberations would now strike the product of our hard work. I think now is the time to decide the issue of bank powers.

The issue of bank powers came up in 1988. It came back again this year. In fact, it will keep coming back until it has been adequately dealt with. Now is the time to resolve the issue of bank powers, especially since the two committees with jurisdictional interest have come to a fair and reasonable agreement.

In addition, we should all be very careful before we support another financial deregulation package. The compromise is not such a package. Rather, it is a balanced approach designed to ensure the safety and soundness of banks. But if we fail to support the compromise, those who want unchecked financial deregulation will either succeed in achieving their goals through pliant regulators, or they'll be back next year or the year after. We should have learned some painful lessons from the savings and loan debacle.

Let me close by addressing an issue which, while not under the Commerce Subcommittee's jurisdiction, is of great concern to me and to my district. Last week, the Federal Reserve Board released a study of bank mortgage lending practices which showed that mortgage lenders reject black applicants far more often than whites. In Chicago, 23.6 percent of mortgage applications from blacks were denied, compared to only 7.3 percent from whites and an overall denial rate of 9.9 percent. And this difference cannot be explained by income level, as white borrowers in the lowest income category had their mortgage applications approved more often than black applicants in the highest income category.

Congressman JOE KENNEDY will offer an amendment to strengthen the enforcement of antidiscrimination-in-lending laws. I will strongly support that important amendment, and I urge my colleagues to do the same.

In summary, I think that the banks want nothing less than total deregulation, which I do not think they are entitled to. They want to use the same arguments that were used by the S&L's some 10 years ago, and look where they got us. The S&L's were wrong and so are the banks.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from North Carolina [Mr. MCMILLAN], the ranking member of the Subcommittee on Commerce, Consumer Protection, and Competitiveness.

Mr. MCMILLAN of North Carolina. Mr. Chairman, when the administration came to Congress with their original proposal, they sought to reform America's financial system by addressing the inadequacies of our banks, and in a speech I made last night in general debate I pointed out that North Carolina is a perfect example of what we are talking about. We have had intrabranch banking, we have had insurance powers, we have had the maximum allowable securities powers under the law for all of the post-World War II period and produced one of the strongest banking systems in the United States, enabling it to move into troubled banks in other States and pull them out. Unfortunately, the Dingell-Gonzalez agreement on title 4 misses too many opportunities to enhance the strength and competitiveness of our banking system at potentially great cost to both consumers and taxpayers. Desirable goals of limited bank sales of insurance where States allow it only, new sources of capital for banks, more competition and assessable capital formation for business through security underwriting and sales and parity between State and national banks are all issues which have a direct benefit for consumers and taxpayers. These are the means by which competition among strong institutions is created, and competition means lower prices and greater choice for the consumers who use those services, as well as discipline for the system.

What we have in section IV actually reduces the insurance powers of State and national banks in comparison with current law. Currently, national banks may sell insurance statewide from a bank domiciled in a town of 5,000 or fewer residents. The Dingell-Gonzalez agreement limits sales to individuals who reside or are employed in the town itself or own property located in the town.

Currently, national banks may underwrite and sell title insurance. The Dingell-Gonzalez agreement eliminates that option, preserving it for lawyers.

Currently, a State-chartered bank can sell insurance within that State and to other States that authorize the sale of insurance. The Dingell-Gonzalez agreement would prohibit State banks from selling insurance in other States unless expressly authorized to do so by legislative action.

The issue here is not risk. None of the alternatives that we have before us would allow banks to get into the underwriting of insurance.

The version of the Committee on Banking, Finance and Urban Affairs of both insurance and securities provisions would have been far superior to what we have before us today. Current law is better than the Dingell-Gonzalez agreement.

Unfortunately, these important issues cannot be addressed in detail given the amendments ruled in order today. One of the few ways, the only way perhaps, we have before us to improve our banking system in this respect is to vote yes on the Barnard-Hoagland motion to strike title 4, and to revisit it at a later date and do a credible job on it.

Mr. MARKEY. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker and colleagues, first let me praise the gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Michigan [Mr. DINGELL] and the gentleman from Texas [Mr. GONZALEZ] for their excellent work on this legislation. I think all the Members know that the financial issues that this bill presents are complicated, they are technical, they are arcane, they are hard for Members to absorb.

□ 1300

Mr. Chairman, I would submit that the one issue that our constituents care about the most is fighting financial fraud. That is what we hear at our town meetings. That is what we hear about when we go home and our constituents ask, "What are you going to do about fighting the kind of ripoffs and the kind of deceptive deals that were engineered in the 1980's with junk bonds and with speculative real estate deals that so often drained our economies and our communities dry?"

I am here to say to my colleagues that title IV, above everything else, is about fighting fraud. If we are serious about fighting the kind of financial fraud that we saw in the 1980's, we have got to support title IV and oppose striking it.

We learned recently that the head of the Resolution Trust Corporation said that 40 percent of the S&L problem was due to fraud and illegality. Our constituents would read about it constantly. They read about how insured deposits were being used for vacation trips, for homes, and for every manner of spending.

Title IV is the first comprehensive effort in any financial bill to deal with financial fraud. For example, for the first time accountants would be required to report fraud to Government regulators.

I think all of our colleagues know that talking about accounting is a little bit like discussing prolonged root canal work. The auditors, the accountants are the very first line of defense in terms of fighting financial fraud. As just one example, the judge in the Keating case said, "Where are the auditors? Why didn't they report this kind of thing?" Under this legislation, if we keep title IV, we will have a chance to make sure that in the future people like Charles Keating's auditors would have to report financial fraud, and then we would have the kind of tools to fight the kind of financial abuse that we saw in the 1980's.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey [Mr. RINALDO], the ranking member of the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce.

Mr. RINALDO. Mr. Chairman, the driving force behind H.R. 6 is the need to recapitalize the bank insurance fund. Over 200 banks a year have been failing. The FDIC says they will need to borrow over $9 billion from the Treasury in 1992 alone to bail them out.

As more banks fail, more and more money will have to be poured into the fund. With each infusion of taxpayer dollars, confidence in the financial services sector is damaged and the banks become weaker.

We must explore every alternative to resolving this situation. Later in the debate, I will offer an amendment that would allow commercial corporations to purchase failed and failing banks. Despite all the technical talk, my amendment has one simple purpose—to save the taxpayers money.

Mr. Chairman, I offered this amendment in the subcommittee, and I offered it in the full Committee. I am proud that the gentleman from Massachusetts [Mr. FRANK] and the gentleman from Georgia [Mr. BARNARD] from the majority side of the Committee on Banking, Finance and Urban Affairs are strongly supporting and pushing this amendment.

Mr. Chairman, we can debate whether the banking system as a whole needs capital, but there can be little argument that a bank that is failing or has failed needs capital. The question that we need to ask ourselves then, as architects of public policy is, "Where is this money going to come from?"

It is not likely to come from the financial sector of our economy. It is the weakness of the banking and thrift industries that have us here in the first place. Institutions trying to meet new and higher capital standards, increased oversight, and more cautious loan underwriting standards are not going to be able to pull themselves and their weak and dying brothers out of trouble. Neither bank earnings nor the very limited support they can find in the debt and equity markets can adequately address the capital needs of failed and failing institutions.

Is the capital going to come from outside our borders? Foreign investors do have the capital. As of 1990, they controlled almost 23 percent of the U.S. banking market. Foreign financial institutions have had a field day buying up American banks, while their potential competitors in American commerce had to sit back and watch helplessly as target after target fell. To refuse to allow American commercial companies to become more actively involved in banking means the role of foreign banks will increase. I think increasing the influence of foreign banks on the availability of credit to American consumers and business is poor public policy. Let's free up American interests to compete with them. Let us stop discriminating against American investors within our own national boundaries.

If capital cannot be raised from within the banking industry or through equity or subordinated debt, and foreign investment is not desirable, there are only two alternatives left. Either the bank is allowed to fail and the taxpayer takes the hit, or Congress must allow commercial investment. With 80 percent of the capital in the United States in commercial enterprises, I will offer this amendment clearly convinced that corporate America is the best place to look for desperately needed new bank capital.

To be allowed to acquire a bank, the amendment requires the commercial firm to take all of the bank's poor and nonperforming loans and properties. The acquiring company cannot cherry pick only the good assets, and that is a more strict requirement than is currently imposed by the FDIC when banks, not commercial companies, acquire failing banks, or by the Resolution Trust Corporation when thrifts are acquired. Under current law and practice, when a failing bank is acquired, the purchaser is often allowed to pick and choose the assets it will take as part of its agreement with the regulator. The undesirable assets are what the Government gets stuck with, so it comes as no great surprise when it cannot sell them. That cannot happen under our amendment.

Furthermore, the failing bank amendment prohibits Federal assistance in the acquisition of the bank. The commercial company will not be helped by some massive infusion of capital in the form of taxpayer dollars. In short, the commercial company is going to take the whole company and position its risk capital in between the bank and the taxpayers. This is exactly what we want. The infusion of commercial capital will reduce the exposure of the bank insurance fund. Instead of a failed entity that must be liquidated, the institution will now be an operating business, paying premiums into the deposit insurance fund, and taxes on its profits into the Treasury.

In addition to contributing to resolving the banking crisis, this amendment also will remove one of the inequities of H.R. 6 as currently written. As the result of changes to the Banking Act contained in the bill, banks will be able to purchase securities firms. But without this amendment to allow commercial firms to acquire failed or failing banks, large securities firms, almost all of which have some commercial enterprises within their corporate structures, will be prohibited from acquiring banks. Those securities firms that want to improve the product mix of financial services that they can offer the public by acquiring a bank should be able to do so, but the price they must pay for the two way street is they must contribute to the resolution of the banking crisis. By limiting them to acquiring failed or failing banks, the tremendous private financial resources of Wall Street will help restore banks to financial health and in that way we will help bring an end to the credit crunch and make loans readily available to our constituents again.

The amendment offered today is banking reform, not banking deregulation. To meet the concerns expressed by some, this amendment has been written to include the most severe restrictions on bank conflicts of interest. When the commercial company acquires the bank, it is subject to all of the firewalls and other prudential limitations contained in the remainder of the bill. H.R. 6 contains new levels of examination and enforcement authority to both the bank and securities regulators. It also creates private rights of action. And H.R. 6 does not reduce existing antitrust or antifraud protection in any way.

The prohibition on commerce and banking was not part of the legislative revolution of the New Deal. Until passage of the Bank Holding Company Act of 1956, there were no restrictions at all on commercial firms owning any number of banks. In 1956, commercial firms could still own one bank, and it was not until 1970 that one-bank holding companies came under the Bank Holding Company Act which prohibited commerce/banking. Trying to stop the interaction of commerce and banking is like passing legislation against bad weather. Since 1970, every legal contortion from regulatory definitions that somehow conclude that selling computer systems is not commerce, to the creation of something called a nonbank bank, have been used to allow the natural synergy of business and financial service to grow despite its legal restriction. Limited purpose banks are owned today by J.C. Penney, Aetna Life and Casualty, American Express, Chrysler, General Electric, John Hancock, Montgomery Ward, and scores of other nonbank organizations. Mr. Chairman, there is undoubtedly enough interaction of commerce and banking permitted under our existing law to allow us to make use of it to help resolve the banking crisis, and minimize the demand on our constituents by substituting commercial investment in failing banks for the alternative of bailing them out with taxpayer dollars. I urge all of my colleagues to vote for the amendment.

Mr. MARKEY. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, we are on the eve of a major bill here, and I hope we will not make a major mistake. I hope we will not repeat the S&L crisis all over again.

We have major problems in the banking system as it is presently defined. We have had banks make bad investments time after time after time with their insured deposits. The problem is not that the banks are not getting enough new industries; the problem is that the banks do not know how to handle what they are in right now. The reason is simple. If you are given free money, insured deposits, and you can invest them in just about any risky activity you want, you are going to get into trouble.

That is what happened with the S&L's in 1982. That is what is about to happen in this body again unless we take corrective action. There are two ways to take that action. The first is on the compromise Gonzalez-Dingell amendment. It is not my preferred way, but if we strike it, we will let the deregulators deregulate it as they did with the S&L's and as they did willy-nilly with the banking industry, and we pay the price.

I would argue that the only real reform on the floor today is the core bank proposal. Core bank says once and for all that you cannot use insured deposits in any risky type of activity. Core bank says that insured deposits ought to be used for the purpose that Hoover and Roosevelt originated them, to help the average person be sure their money is safe in an institution, not to tell these large institutions that they can do everything they want with insured deposits.

Core banking does not affect almost all the banks in this country, because they are little banks and good banks and they have stuck to their knitting. They have made mortgages, small business loans, and things banks traditionally do.

□ 1310

But the large money center banks are weak. They are weak not because there are too many restrictions on them, but because the market does not give an adequate test for them. You cannot regulate, you cannot put a regulator looking over the shoulder of a bank for each loan. They will mess up. But if you tell them for risky activities they must get their money where every other American industry gets its money, from the marketplace, and thus they have to have someone look over their shoulders before they give them that money, we can have safety and soundness.

Mr. Chairman, core banking will protect the depositor. Core banking will help the banks. It is the only real reform that learns the lessons from the savings and loan crisis.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from North Carolina [Mr. NEAL], the chairman of the Subcommittee on Domestic Monetary Policy of the Committee on Banking, Finance and Urban Affairs.

Mr. NEAL of North Carolina. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the first point is it is absolutely absurd to compare what our bill does with banks to what was done with the savings and loans. What happened with the savings and loans in the early 1980's, when they had problems, was this: Their capital was reduced; supervision and regulation were reduced at the same time they were allowed, with taxpayer-insured funds, into new activities like junk bonds and direct investment in real estate.

Our bill does exactly the opposite for banks. It increases capital requirements. It increases regulation and supervision. It would not allow new activities with insured funds.

So it is simply a terrible misstatement to say that what we are doing is anything like what was done with the savings and loans.

Now, as to this idea that somehow without title IV this is a fat cat bankers bill as someone said earlier. I ask this question: Why is an activity that a bank could do a fat cat activity and not a fat cat activity if it is done by an investment banker? This title IV offered by the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Michigan [Mr. DINGELL] takes banks out of Government securities, something they have done for years, which lowers the price for local governments and so on, but it lets investment bankers do it. It takes banks out of mutual funds and discount brokerage, essentially risk-free endeavors, and lets investment banks do them.

So why are these fat cat activities for banks, but not fat cat activities for investment bankers? That is an absurd idea.

Mr. Chairman, this is all about taking something away from one industry and giving it to another for anti-competitive reasons. It is a narrow special interest approach and should be defeated. Defeat title IV.

Mr. MARKEY. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. GONZALEZ], the chairman of the full Committee on Banking, Finance and Urban Affairs.

Mr. GONZALEZ. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, some have suggested that striking title IV would leave everything status quo—no new powers and, thus, no need for new safeguards. Unfortunately, Mr. Chairman, this isn't the situation we face. Some of the biggest of the big bank race horses are out of the barn through loopholes and loose interpretations of the Glass-Steagall prohibitions. The regulators have already taken the barn door off its hinges and we need to construct the public-interest fences or face financial disasters down the road.

Striking title IV—eliminating the protections provided by the Banking and Energy and Commerce Committees—protects some of the big names of banking. Little wonder that the lobbyists have been crowding the halls, clogging the phone lines, filling the mail bags, and buying huge multipage advertisements.

Let me just mention familiar names of some of the corporations that benefit from a strike of the safeguards—corporations that have slipped around Glass-Steagall through the benevolence of the regulators and formed so-called section 20 securities subsidiaries: Bankers Trust, Chase Manhattan, Barnett Banks, Chemical Bank, Citicorp, First Chicago, J.P. Morgan, First Interstate, C&S Sovran, Banc One, NCNB, Marine-Midland, Manufacturers Hanover, and Fleet/Norstar.

And other similar multi-billion dollar corporations around the Nation who are pleading they just can't afford to abide by public safeguards of title IV. If we strike title IV, these corporations stay out of the mainstream of regulation. That, my colleagues, is what is behind much of the furor over title IV.

Mr. Chairman, the battle over title IV is a real test of where Congress stands vis-a-vis the public interest and the interest of big banking corporations.

Designating the amendment to this title as just "striking title IV" seems too mundane—too low key in light of its impact. In the interest of accuracy and in recognition of its far-reaching nature, I think we should rename the amendment as the "Big Bank Holding Company Protection Act of 1991." That is much more majestic.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. OXLEY], a member of the Committee on Energy and Commerce.

Mr. OXLEY. Mr. Chairman, this bill will be long debated for at least a couple of days. I would like to speak directly about the Rinaldo amendment that has been referred to before, essentially whether commercial entities can purchase failed or failing banks.

Mr. Chairman, all we have to do is look at the recent history of what has happened in the area of banks that are in trouble to instruct us as to what might happen should this occur again. New Hampshire, as many Members know, had some very serious difficulties with their banks. Many of their banks were just recently purchased over the last few weeks by Irish banks, so we have foreign ownership now of many of the largest banks in New England.

In Ohio we have had problems in the past with S&L's. In the case of Ohio we had a major corporation purchase several savings and loans, and essentially kept their doors open, kept them loaning money to people who wanted to buy homes during that very difficult period, because that corporation had deep pockets. It had the kind of capital that could keep these institutions open.

Mr. Chairman, essentially we are looking at who can provide the capital infusion for these institutions. If we are looking at the banks and we limit the universe as to who can purchase failed or failing banks, we are going to be looking a long, long time.

Mr. Chairman, I would suggest that this is an excellent opportunity to take the monkey off the back of the taxpayers and allow those commercial enterprises under the Bank Holding Company Act to purchase those banks. Some people say well, they will not be interested in buying these banks. How do we know, unless we give them the opportunity to do so. That is all we are asking, is in the marketplace when you have a sale of a failing bank, allow that commercial enterprise to at least bid on it, and make them purchase the whole enchilada here, not to just cherry-pick off the best loans.

Mr. Chairman, I think this is good public policy. Let us support the Rinaldo amendment.

Mr. MARKEY. Mr. Chairman, could the Chair update us as to the time remaining on both sides?

The CHAIRMAN pro tempore (Mr. HAYES of Illinois). The gentleman from Massachusetts [Mr. MARKEY] has 13 minutes remaining, and the gentleman from New York [Mr. LENT] has 11½ minutes remaining.

Mr. MARKEY. Mr. Chairman, I yield 1 minute to the gentleman from Vermont [Mr. SANDERS], a member of the Committee on Banking, Finance and Urban Affairs.

Mr. SANDERS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think the Dingell-Gonzalez approach offers the taxpayers some protection, and I intend to support that. I think that the concept of the gentleman from New York [Mr. SCHUMER] of core banking makes some sense, and I intend to vote for that as well. But I am going to tell you why I am going to vote against the entire legislation, unless somebody can answer me a simple question: As the only independent in this body, I have a simple question for my Democratic and Republican friends. Title I, section 101, puts the taxpayers on the line for $30 billion. Many economists think it will end up being a lot more than that.

Now, I ask a question: When we asked the other day for $1.5 billion for children, people were jumping up and down saying we cannot add to the deficit. Now, my understanding is this bill dumps another $30 billion into the deficit. Will somebody suggest to me if I am wrong on that? Am I wrong? If it dumps another $30 billion into the deficit, will anyone suggest to me I am wrong in suggesting that this bill is going to fall on the working people and poor people of this country who are going to be forced to pay it out?

Mr. Chairman, vote no.

□ 1320

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. HOAGLAND], a member of the Committee on Banking, Finance and Urban Affairs.

Mr. HOAGLAND. Mr. Speaker, under the rule that we adopted just a moment ago, we are basically going to have two options with respect to the issues of the proper powers of banks in the area of securities and insurance and also the commercial ownership of banks issue.

I have prepared this makeshift chart here in my office to try and stress the severity of the bank failure problem in America today.

We can see, beginning with about 1985, both the number of failed banks and the number of banks on the problem list have significantly increased. As far as the failed list is concerned, the small banks have a disproportionately large number to the failed banks. There has been some rhetoric about large banks. Small banks, unit banks, fail at a greater percentage rate.

It is for this reason that the FDIC is running out of money, and they are asking for $70 billion to loan to the fund so that this problem can continue to be dealt with.

We have spent a year hearing experts, economists, regulators, Chairman Seidman, others who really understand the industry well. Their basic message was, "We need to strengthen the industry, allow it to become more profitable so that there will not be as many failures and so the taxpayers can be protected."

The truth of the matter is, so many of us are concerned with the agreement between these two chairmen because it tends to weaken banks, not strengthen banks. The experts we talked to start from here, have prescriptions that go from here to here to here. Paul Volcker goes this far, does not agree with commercial ownership. Bob Light from the Brookings Institute, all the way to here with respect to commercial ownership. Everybody is at a different spot somewhere along the scale.

The message is the same. Let us strengthen the industry.

The proposal offered to us by these two gentleman goes the other direction and weakens the industry. It is not a wise prescription.

I would suggest we strike title IV.

Mr. MARKEY. Mr. Chairman, I yield 4 minutes to the gentleman from Kansas [Mr. SLATTERY}.

Mr. SLATTERY. Mr. Chairman, there seems to be a great deal of confusion as to exactly what this legislation does with respect to the rollback of existing powers that banks have. Let me just observe that with the Dingell-Gonzalez compromise before us, municipal securities can continue to be underwritten and marketed inside the bank. This is different from the language contained in the Committee on Energy and Commerce bill.

There is going to be a lot of bad information spread across the country that we are still voting on the Committee on Energy and Commerce bill. We are not.

Certain private placements can continue to be underwritten and marketed inside the bank with this compromise. All Government securities can continue to be marketed inside the bank under this compromise, and banks can sell securities, including mutual funds, inside the bank.

An exception, the so-called Lincoln lobby debt exception, prohibits only the sale of the bank's, or its parent's own stock and bonds.

I would submit that makes perfect sense. The 39 big banks with so-called section 20 underwriting subsidiaries are now, by Federal Reserve Board orders, required to have those affiliates registered and regulated by the SEC under existing law. The Fed's orders also impose firewalls, similar to those in our bill.

Our bill, however, would not allow the regulators to administratively repeal these protections, although we would allow them to modify the firewalls to respond to current marketing conditions.

Currently, however—and keep this in mind—the Fed is in the process of acting to undo a number of their own firewalls. I would just point out, what we are attempting to do with this legislation is to prevent the Fed and the SEC from rolling back, from lowering their own firewalls.

I would also observe that after January 1, 1993, all banks have to move out of their bank any securities activities except the ones that I have just mentioned. They do not have to move into holding companies as some have suggested. They merely have to establish a subsidiary.

So let us keep the facts straight under this compromise proposal.

Mr. ECKART. Mr. Chairman, will the gentleman yield?

Mr. SLATTERY. I yield to the gentleman from Ohio.

Mr. ECKART. Mr. Chairman, one of the points the gentleman from Kansas raised is what would happen if we struck one of the provisions of title IV known as the Lincoln lobby debt exception. For those who do not remember what the Lincoln Savings and Loan was, let me remind my colleagues that it was the financial institution owned by the gentleman by the name of Charles Keating who, in the process of taking depositors' money in through his Lincoln Savings and Loan lobby, duped thousands of investors into buying his financial institution's own securities under the guise of savings.

Strike title IV and we will encourage financial institutions such as that of Charles Keating to continue to rip off investors.

I think the point the gentleman made in his remarks should not be lost upon us. If we believe that folks like Charles Keating and the Lincoln Savings and Loan should be allowed to perpetuate the kinds of activities that visited difficulties both on people in this institution and on financial institutions all across this Nation, then repeal title IV. If we think that Charles Keating and his cutsy-dutsy little tellers ought to be able to induce widows and children into putting their money into allegedly secured investments, when the reality was that they were not, then go along and repeal title IV.

The fact of the matter is that the gentleman from Kansas is correct. We close the Charles Keating loophole. We end the Lincoln lobby debt and prohibit institutions from posing as legitimate debt, not as an investment, protect the taxpayers, protect the legitimate saver, and keep title IV in the bill. Let us not let Charles Keating get what he tried so hard to get in a different way.

Mr. SLATTERY. Reclaiming my time, I thank the gentleman for his remarks. He is absolutely correct.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. RITTER], a member of the Committee on Energy and Commerce.

Mr. RITTER. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, in 1933 the Members of this body launched a great experiment called the New Deal. They had faced the stock market crash of 1929, and the coming of the Great Depression, and they knew that difficult times called for bold solutions.

They fashioned three pieces of legislation: The Banking Act, the Securities Act, and the Home Owners Loan Act that reshaped the landscape of American financial services.

These were not pieces of legislation that enshrined the way business had always been done. Rather, they cut through the traditional approaches to Government's role in regulation. They recognized that a system of regulation must be flexible enough to address the problems of the time in which it is called upon to act.

The Members of this body in 1933, were men and women of great vision. Were they here today, I believe they would call upon us to come up with bold solutions to the problems of our time. And they would laugh, scoff at the idea that we should address the economic and financial problems of our country in the 1990's with legislative solutions designed to meet the challenges of the 1930's or the 1950's or the 1970's.

There can be no serious economic progress, in the crucial financial sector of this economy, until the large pool of failed and failing banks has been eliminated.

The legislation before us today will not do the job. Simply stated, if we do not resolve the failed and failing banks situation, we play havoc with our financial services industry in this country. We keep them from engaging in their proper role of ensuring economic growth in the United States.

I ask my colleagues to look very carefully at the Rinaldo amendment, which does not go near far enough but at least is some positive solution to bringing additional capital, that is not taxpayer-generated capital, to solving this banking crisis.

□ 1330

Mr. MARKEY. Mr. Chairman, I yield myself 1 minute.

I would just like to make one clarification, because there is the ongoing point that is made on behalf of the bankers in the country that they were forced into all these bad loans, they were forced because they were not allowed to get out into the securities business, which is even more dangerous than the banking practices which they had engaged in.

Let me just for the record state that when those big city bankers in 1979, 1980, 1981, and 1982 were loaning all of that money to Third World countries, they were getting their pictures on the front covers of Forbes and Fortune as the financial geniuses of our time. When they were loaning money out for all these LBO's in 1984, 1985, and 1986 they were getting their pictures on the cover of Fortune and Forbes as the geniuses of our time. When they were loaning money to Donald Trump on his word for commercial real estate and for the Trump Casino, they were the geniuses of our time.

Now they tell us they were forced into doing this. We want all of those awards back, because they told us that they were the banking geniuses of our time.

Mr. LENT. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FISH], a member of the Committee on the Judiciary.

Mr. FISH. Mr. Chairman, I thank my friend for yielding time to me.

Mr. Chairman, for months, bankers, financiers, insurers, consumers, and the Treasury have put forth proposals for the reform of the U.S. financial sector.

H.R. 6 and the package of amendments embody both astute and meddlesome approaches to reform.

The commendable goal of this historic legislation is twofold: The modernization of banking and the protection of deposition and the taxpayer. Unfortunately we may have before us today too broad a vehicle to realize this goal. With the lingering nightmare of what occurred after FIRREA in mind, the legislative process should seek to avoid opening new roads to imprudent financial adventure.

There are sound and obvious reasons for prompt regulatory response to banking ills, recapitalization of the bank insurance fund, and revised deposit insurance reporting, all of which are contained in title I. These provisions strive for greater responsibility for money borrowed from the taxpayer. Likewise, title II's regulation of foreign bank operations and their conduct in the United States is an important and timely step.

Title III is a sober approach to greater bank operating efficiency. Allowing nationwide banking and branching will result in wider choices for the financial consumer. The choice left to the States to opt out not participate in an interstate system would be a positive additional protection of States rights.

Bankers, insurers, the securities industry, and three committees of the Congress have all labored to shape the outcome of issues contained in title IV, sometimes to their own favor, but for the most part after great efforts at compromise. Title IV needed revision but showed promise as it was reported out of the Banking Committee.

Even that version raised concerns over the concentration of too much economic power. Would the consolidation of banking with commerce, securities or insurance hurt the average consumer and greatly increase the likelihood of anticompetitive activities? I too have strong reservations about removing existing barriers between commerce and banking. I am thankful it is no longer in the bill before us.

We have in article IV an opportunity to choose whether commercial banks should have statutory authority to get into investment banking. But, if they are allowed to get into the securities industry, we must make sure there are clear and workable safeguards against anticompetitive arrangements. The shape of title IV's provisions in this area are an awkward attempt. The far preferable language in the Judiciary Committee's amendment should be considered at a later date. It would make it clear that the Federal antitrust laws would apply to commercial banks offering two or more products as a package sale.

Important and better regulation is clearly the course taken in title V for Federal deposit insurance reform. I am pleased that the title retains savings bank life insurance activities in my State of New York which has a long, popular, and sound tradition in this area.

Title VI is also a sound work product and I applaud the requirement of the GAO to report to Congress within a year on the effects of mandatory cashing of Government checks.

Mr. MARKEY. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART. Mr. Chairman, the amendment to strike title IV is being advertised as the kind of deregulation that will allow banks to grow out of their problems. But this goes much further. What you are really doing is supporting desupervision.

Have we not learned our lessons? Go back a month or two to the Salomon Brothers investigations, and listen a moment to what one of the Nation's preeminent regulators had to say. When asked how long it would take to determine what happened when you get to the bottom of the Salomon Brothers scandal, his answer? "Give us 6, maybe 9 months, and maybe we can tell you." These are the so-called regulators that proponents of this amendment would have us rely on to protect taxpayers from another mega-bailout.

My colleagues, that is what we can expect from current law without the protections of title IV. Somehow we are led to believe that Cole Porter-like "anything goes" deregulation somehow will stem the tide of failures and bad loans that has brought the Members that chart that my colleague from Nebraska showed. But the rising tide of bank failures only underscores one thing, that run-amok deregulation of the savings and loan industry and the banking industry is not the answer to our problem.

Without title IV, this banking bill is going to end up in the same kind of train wreck we have seen in the BCCI scandal, the Salomon Brothers scandal and the savings and loan industry. This is not, indeed, deregulation, but this is, as I mentioned, desupervision. It would give the Charles Keatings of this world through the front door what they could not buy through the back door. It gives to the State of Delaware a very special exemption that allows one State to dictate insurance sales practices and policies to the balance of the 49 other States. They get through the front door what we could not, through regulation, give them in the back door.

Ladies and gentlemen, this bill and striking title IV is a banker's dream. It is a lot like the final scene in the Frank Capra classic "It's a Wonderful Life" where James Stewart was standing in his home on Christmas eve, James Stewart thought he was wiped out, the evil corporate banker having, unfortunately, purloined his big investment, but was rescued by thousands of little investors who came in to save their friend and their neighborhood bank. The free-wheeling go-go bankers of the 1980's have effectively purloined a much bigger sum and no deregulation is going to rescue millions of taxpayers from paying the price for their excesses.

The reality of the matter is that title IV is the one thing that protects the U.S. taxpayers from disasters like those of the savings and loan industry, ensures real regulation, and guarantees that all of us do not have to explain away today's votes like we have been explaining away the votes on savings and loans for the past 10 years. Gonzalez-Dingell is the only thing keeping this bill from becoming another Garn-St Germain.

Save title IV, protect the taxpayers, and for once, let us do the right thing.

Mr. LENT. Mr. Chairman, here to save Jimmy Stewart, I am pleased to yield 2½ minutes to the gentleman from Ohio [Mr. WYLIE], the ranking member of the Committee on Banking, Finance and Urban Affairs.

Mr. WYLIE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I have stated a little earlier that I was disappointed that the Rules Committee made in order the Dingell-Gonzalez title IV provision in this bill and did not in effect make title IV as it came out of the Banking Committee the original text.

I would point out that none of the members of the Committee on Banking, Finance and Urban Affairs or of the Committee on Energy and Commerce had any input in the legislation except for two, and those were the two chairmen. I have great admiration and respect for both chairmen, but I think that nearly one-fourth of the House considered H.R. 6 in the Banking Committee and in the Committee on Energy and Commerce.

We had a long debate on that provision in our bill, which would impose greater restrictions on allowing banks to become involved in investment banking and in insurance. The gentleman from Ohio indicated that if we go back and strike this title IV, that we are back in the savings and loan situation all over again.

I respectfully disagree. In the case of the savings and loans, they were not required to have 3 percent capital, which these banks are. Also, in the case of the savings and loan industry, through State chartering mechanisms, they were allowed to invest much of their capital in enterprises which banks cannot invest in, like junk bonds, direct investments in real estate, and so forth. So there is no analogy, I submit, to the savings and loan situation and Charles Keating. That is a scare tactic, at best.

I am suggesting that we strike title IV as we now know it and go with the amendment that will be offered by Mr. RINALDO and Mr. FRANK, which will allow commercial enterprises to buy the failing banks. I think by this process that we can save the taxpayers a lot of money.

I might point out that the commercial enterprise has to buy the banks, warts and all. It has to buy good assets as well as bad assets, and that will save the taxpayers a lot of money in the long run.

Again I thank the gentleman for yielding.

Mr. MARKEY. Mr. Chairman, could I once again inquire as to how much time is remaining?

The CHAIRMAN pro tempore. (Mr. HAYES of Illinois). The gentleman from Massachusetts [Mr. MARKEY] has 4 minutes remaining and the gentleman from New York [Mr. LENT] has 4 minutes remaining.

Mr. MARKEY. Mr. Chairman, it is my understanding that will be the prerogative of the majority to complete debate on this issue.

The CHAIRMAN pro tempore. The gentleman is correct.

Mr. MARKEY. I reserve the balance of my time, Mr. Chairman.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia [Mr. BLILEY], a member of the Committee on Energy and Commerce.

Mr. BLILEY. Mr. Chairman, I thank the gentleman for yielding the time.

First let me say to my colleagues who are not here on the floor, Mr. Chairman, that the process we have today is simply outrageous. We have has several committees, many Members on both sides of the aisle put many hours into working on this legislation. And then we have two Members, two chairmen go off in a room and make a compromise.

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There is nothing wrong with that, but then to take that vehicle and make that the underlying text rather than the product that had been the work of the Committee on Banking, Finance and Urban Affairs for a number of years, that is wrong.

Now, I would remind my colleagues also that in the mid-1980's, the then Reagan administration came with a plan to infuse capital into the savings and loan FSLIC, and we had a lot of discussion. They asked for $15 billion, and we had an onrush to Washington of representatives of the S&L industry saying, "Oh, no, we do not need that much. They are going to put too heavy a burden on us," and we only did $5 billion.

Well, deja vu, here we are again, and let us not second-guess. We need to help our banking industry. We need to make it more competitive.

As my good friend, the gentleman from Georgia, said, it is like the Fram ad, "You can pay me now or you can pay me later."

We can either allow the banks to raise their own capital or, in a short, very short, time, we will be voting the taxpayers' money.

Mr. Chairman, we need also to seriously consider and to vote for the Rinaldo-Frank amendment. We need to allow commercial enterprises to put up their capital, not go to the taxpayers to put up their tax dollars to rescue banks if the need comes. That is very important.

Mr. NEAL of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. BLILEY. I am happy to yield to the gentleman from North Carolina.

Mr. NEAL of North Carolina. Mr. Chairman, I thank the gentleman for yielding.

It was said earlier, a few minutes ago, that under this title IV substitute that banks could still offer mutual funds. I believe there is a little kicker in that, though, and that is that, as I understand the provision, and I wonder if the gentleman, the chairman of the subcommittee, would listen and tell me if I am right or not, that they could not offer a mutual fund that had a stock in it that the bank had ever loaned any money to. So let us say it was a mutual fund like the S&P 500, had 500 stocks, and the only way they could offer that mutual fund would be to make sure that in none of those 500 stocks was there any loan, so obviously it would make it totally impossible, so that is giving with one hand and taking it away with the other.

With Government securities and with each transaction, there has to be a certification written in hand that the person knows it is not a bank deposit. So, again, it is giving with one hand and taking away with the other.

You could not possibly do that as a practical matter. So all of this is just sort of a little joke.

Mr. BLILEY. Reclaiming my time, I thank the gentleman.

The gentleman has hit on a very important part. This bill, as it currently exists, rolls the clock back. It does not help the banks. It hurts the banks, and all you are doing is putting in more capital, and, believe me, ladies and gentlemen, colleagues, we will be back, and the bill will be considerably higher.

Mr. MARKEY. Mr. Chairman, I yield myself 4 minutes, the remainder of my time.

Mr. Chairman, let us lay out what this debate is all about. For the last several months, it was characterized as a jurisdictional debate between the Committee on Banking, Finance and Urban Affairs and the Committee on Energy and Commerce. That fight no longer exists.

The chairman of the Committee on Banking, Finance and Urban Affairs and the chairman of the Committee on Energy and Commerce have resolved their difference. There is no dispute between the two committees on jurisdiction.

The fight is now over substance, a historic debate now, between the forces of deregulation and the forces of prudential regulation that allows for the banking industry to engage in activities which are legitimate and an important part of the economic fabric of our country, but while protecting the depositors, the investors, and the taxpayers of our country.

In 1982 Garn-St Germain passed this body, a historic mistake. It allowed for the deregulation of the S&L industry with no supervision, with no firewalls, with no protection for taxpayers, and in the 1990's, we are going to pay $500 billion of taxpayers' money to bail that problem out.

Do you wonder why we are not going to have any education programs in the 1990's, Head Start, health care, transportation? It is because $500 billion that should have gone to the young people in our country, to the elderly, to the working people in our country is going to go to bail out the S&L industry, and now we are asked to deregulate the banking industry, not that it has not already been deregulated.

Because instead of coming to us and asking us for a Garn-St Germain for the banking industry as they did for the S&L's, they went to the Federal Reserve, they went to the Federal court, they went to the States, and they took down Glass-Steagall so that the banks could get out into these activities but without an accompanying set of safeguards, of protections, of firewalls to protect the depositors, to protect the taxpayers.

Today now we are asked here on the floor to vote a $70 billion line of credit from the Federal Government, from the taxpayers, to the commercial bankers.

We fund all of breast cancer with $77 million. One in nine women in this country is going to be hit with the tragedy of breast cancer; 1 in 4, the projections are, by the year 2000; $77 million for the women of this country. For the bankers $70 billion; $500 billion for the S&L industry.

This is a historic moment. We do not want to tie the hands of the banks. We want them to go out there and to be competitive, but we want to ensure that we do not repeat the 1980's.

The discretionary spending that was supposed to be there for the working-class people in our country is gone. It is going to the bankers. It is going to the S&L's.

Let us make sure, for God sakes, in the 1990's, that we do not allow them to go out and gamble away our future of the next decade as they did our last. That is what this historic debate is all about. That is what this divide is all about.

It is not jurisdiction any longer. It is substance. It is historic.

I urge all of my colleagues, as they view this Dingell-Gonzalez safeguards protection, to understand that this will be the historic moment. This will be the Garn-St Germain vote of the 1990's. This is what will be looked back to as we decide year after year how many more billions we will have to give the commercial banks.

Mr. LAFALCE. Mr. Chairman, our financial services are in serious trouble. Banks are failing at record rates, putting the bank insurance fund under serious pressure and necessitating a substantial recapitalization. Technology has changed the shape of financial products and services, leaving banks behind in a world where domestic and foreign bank and nonbank competitors offer a fuller and more desired array of financial products to individual and corporate consumers. As a result, the banking industry holds an ever smaller portion of this country's financial assets. Yet the industry is underwritten by a deposit insurance guarantee that ultimately can make taxpayers culpable for industry failures. The result is an industry under siege and the American taxpayer at risk.

Moreover, we too often forget the linkage between the lending the community relies upon for its growth and the health of the industry which provides it. The primary role of banks is to keep the flow of credit going to our local communities—for housing, for innovation, for corporate expansion, for consumer lending, for a full array of parties and products and projects that keep the economy moving. If banks are not profitable, if they are not sound, if they are under stress, they cannot lend—they must simply strike a defensive position and do their utmost to safeguard their resources.

That posture is bad for the industry, for the community, and for the country. Lending necessarily suffers and credit for businesses and consumers dries up. We have already seen a significant tightening of credit. If we do not respond intelligently to problems in our financial services sector, the situation could well worsen. The current severe credit crunch will not abate unless the banking industry is given new competitive opportunities.

Ultimately, renewed economic growth in this country will depend substantially on the strength and quality of our financial services sector. Reform of that sector is critical if that growth is to be achieved. Congress must choose a solution to the problems of the commercial banking sector that will put the banking industry—and the economy—back on its feet.

The bill passed by the House Banking Committee would do that. While the Gonzalez-Dingell compromise also takes some important steps toward serious structural reform—most notably the repeal of Glass-Steagall—that compromise has some serious flaws that must be corrected.

The U.S. banking industry badly needs new capital. That capital can only come from a limited number of sources, and if insufficient capital is forthcoming, the taxpayer will have to make up the difference. The Banking Committee vehicle would permit commercial firm investment; the compromise would not. By totally precluding commercial firms from investing in the banking industry we are eliminating the largest potential source of capital in this country. Surely it is preferable to have domestic commercial firms invest in the U.S. banking industry with appropriate controls than to rely on foreign investment or taxpayer money.

Changes in the financial services business have crippled the competitiveness of American banks. A task force which I chaired on the international competitiveness of U.S. financial institutions found that U.S. banks are no longer global players and are increasingly being outpaced by foreign competition at home as well as abroad. There are no longer American banks among the top 20 global players. Yet the compromise would prohibit U.S. banks from adapting to new competitive challenges.

Although the Banking Committee bill would repeal the outmoded and anticompetitive Glass-Steagall Act, the compromise would impose unnecessary and burdensome controls on bank securities affiliates. Some of these controls address legitimate safety and soundness concerns. But others are no more than cross-marketing restrictions that arbitrarily disadvantage banks and their affiliates.

Neither the industry nor the American taxpayer can afford a reform that will in fact place new restrictions on the banking industry while giving it insufficient opportunities to improve competitiveness and profitability. Nor can we afford to put off a serious effort at structural reform. Whatever its flaws, the Dingell-Gonzalez compromise, like the Banking Committee bill, has taken a historic step—the repeal of the outdated Glass-Steagall Act. This reflects a general appreciation of the fact that the banking industry as we have traditionally known it is a dinosaur and must change to survive. This is an extremely significant change and we should not lose the opportunity it affords to press for progressive reform.

There are those who are pressing for Congress to drop entirely any effort to move comprehensive reform in the short term and focus narrowly on a recapitalization of the bank insurance fund. Recapitalizing the fund without otherwise making provision for the development of a safer and more profitable industry will only be throwing good money after bad.

We cannot fix the banking industry's problems by simply throwing money at them. If we try to do so, I believe the American taxpayer may ultimately be at risk for yet another bailout.

Mr. HOLLOWAY. Mr. Chairman, I rise today to say that banking reform legislation is very needed. However, I have mixed feelings about the different parts of this complex bill. I am convinced that whatever the outcome of this bill we must ensure that American banks bear the cost of their own recapitalization. This bill would do just that. We simply cannot risk another savings and loan crash.

Further, I feel very strongly about the failed-or-failing amendment which would allow commercial firms to acquire a bank that has failed or is in danger of failing.

It just makes sense to let a solid, commercial parent absorb the troubled bank. In doing so, the commercial firm must purchase all the assets of the failed banks. The firm must also acquire the bank with no assistance from the FDIC which lowers the cost to the taxpayer. Finally, the bank may not extend any credit or purchase any assets from a commercial affiliate.

Mr. Chairman, we have an obligation to protect the American taxpayer. This is a perfect opportunity to do just that by allowing the financial risk to be assumed by someone other than the taxpayer.

Finally, I am in favor of the option amendment which would permit interstate branching only in States that specifically allow it.

Mr. BOUCHER. Mr. Chairman, as reported by the Committee on Energy and Commerce, H.R. 6 added a new section 4(n)(4)(A)(viii) to the Bank Holding Company Act that generally prohibited a bank from extending credit to the issuer of any security being underwritten by its securities affiliate until 90 days after the end of the underwriting period. Section 4(n)(4)(G), however, created certain exceptions to this prohibition. In order to qualify for one of these exceptions, any credit extended would have to comply with regulations to be prescribed by the Federal Reserve Board that would be designed to "prevent any insured depository institution from engaging in any coercive or unfair practice to induce any person to use the underwriting, distributing, or placing services of a securities affiliate." If an insured depository institution were a significant participant in a credit facility, and a securites affiliate were a significant participant in the underwriting, the securities affiliate and the issuer would have to certify to the SEC that "the issuer had not been subjected, as an inducement to such issuer's election to use the underwriting or placement services of such securities affiliate, to any coercive or unfair practice or conditioning of such facility in violation of the regulations—to be prescribed by the Board." Section 4(n)(4)(A)(viii), and the exceptions in section 4(n)(4)(G), have now been adopted as part of title IV of H.R. 6.

The Energy and Commerce Committee's report on H.R. 6 states that:

> The purpose of section 4(n)(4)(A)(viii) is to remove a conflict of interest that could lead an insured depository institution either to assume large credit risks or to impose a tying arrangement on borrowers for the benefit of its securities affiliate. This conflict arises from the availability of insured deposits to support the underwriting activities of the securities affiliate. A depository institution could condition the availability of credit on the borrower's use of the securities affiliate.

This description of the purpose of section 4(n)(4)(A)(viii) is consistent with my understanding of the provision. In my view, the exceptions to the general prohibition should be designed to ensure that any excepted transactions are not inconsistent with this basic purpose. Simply put, the terms of the exceptions should ensure that banks are not using excepted transactions to impose tying arrangements on borrowers for the benefit of securities affiliates, or as the Energy and Commerce Committee report suggests in another place, otherwise to "coerce potential borrowers into using the underwriting services of a securities affiliate."

Certain language in the Energy and Commerce Committee report arguably departs from this view and conditions the availability of the exception on satisfaction of a standard that is considerably more stringent than a traditional tying standard, or any standard suggested by the commonly understood meaning of coercion. In particular, the Energy and Commerce Committee report suggests that impermissible coercion could result from "any communication that might reasonably be construed as an indication to a borrower—or, by the same token, to an issuer of securities underwritten by a securities affiliate—that the decision by the insured depository institution to provide or continue to provide a credit facility will be influenced by the borrower's—or issuer's—willingness to use the services of the securities affiliate * * *."

A traditional tying standard, as reflected in section 106 of the Bank Holding Company Act Amendments of 1970, makes the existence of a condition or requirement that a borrower obtain some additional service from a bank or affiliate a predicate for any violation. The language in the Energy and Commerce Committee report on coercion suggests a standard much broader, and more stringent, than a condition or requirement standard. Moreover, Webster's defines "coercion" as "restrain[ing] or dominat[ing] by force;" "compell[ing] to an act or choice;" or "enforc[ing] or bring[ing] about by force or threat." Those definitions suggest a standard that is a far cry from any "communication that might reasonably be construed as an indication * * * that the [bank's] decision * * * will be influenced by the borrower's (or issuer's) willingness to use the services of the securities affiliate * * *."

A standard for coercion as broad and as vague as the one suggested in the Energy and Commerce Committee report could have two unfortunate effects. It could chill communications between banks and their customers, and it could narrow the exception to the point of irrelevance. I believe that either of these effects would be undesirable from the perspective of both banking organizations and borrower/issuers. In my view, Federal Reserve Board should focus on the basic antitying purpose of section 4(n)(4)(A)(viii) in adopting regulations to implement the exceptions. At a minimum, the Federal Reserve Board should not adopt the Energy and Commerce Committee report's overbroad and vague standard for coercion and, instead, should focus on the commonly understood meaning of the term. Especially under circumstances in which we will be asking issuers—and securities affiliates—to certify that the Board's regulations have not been violated, I think it is crucial that the standards be clear and easy to apply.

Mr. HOUGHTON. Mr. Chairman, there are a variety of issues being woven in and out of this debate: Recapitalization, better supervision, and more disciplined deposit insurance. Now we all have different views on them.

But there is one absolute common goal shared by all: To strengthen the banking system. This to me means not to intellectualize as to what might be.

Here is what we face. One of every eight banks is losing money. Profits are down. We know what's happening with the bank insurance fund.

So in brief we have to decide what is reality, not what we might like it to be. Two things are needed: An infusion of new capital, and how do we do that? We allow the weak to join the strong.

The second is we allow financial systems to meet head-on banks from other countries—not located in London or Tokyo but in New York and Los Angeles. We want our banks to win against theirs. It's as simple as that.

The Dingell-Gonzalez language stops that process in its tracks. The system is dealt a punishing blow.

So why do this—when our objective is to help, not hurt. This is the real world. Defeat the Gonzalez-Dingell language.

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The CHAIRMAN pro tempore (Mr. HAYES of Illinois). Pursuant to House Resolution 266, the amendment in the nature of a substitute consisting of the text entitled "Committee Print, October 30, 1991," is considered as an original bill for the purpose of amendment and is considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 6

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Institutions Safety and Consumer Choice Act of 1991".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—SAFETY AND SOUNDNESS

Sec. 100. Short title.

Subtitle A—Deposit Insurance Funds

Sec. 101. Funding for the Federal Deposit Insurance Funds.
Sec. 102. Limitation on outstanding borrowing.
Sec. 103. Repayment schedule.
Sec. 104. Borrowing for BIF from BIF members.

Subtitle B—Supervisory Reforms

Sec. 111. Improved examinations.
Sec. 112. Independent annual audits of insured depository institutions.
Sec. 113. Assessments required to cover costs of examinations.
Sec. 114. Application to FDIC required for insurance.
Sec. 115. Regulatory requirements study.

Subtitle C—Accounting Reforms

Sec. 121. Accounting objectives, standards, and requirements.
Sec. 122. Small business loan data required in reports of condition.

Subtitle D—Prompt Regulatory Action

Sec. 131. Prompt regulatory action.
Sec. 132. Appointment of conservator or receiver for insured State depository institutions.

Subtitle E—Least-Cost Resolution

Sec. 141. Least-cost resolution.
Sec. 142. Limitation on use of liquidity lending for deposit insurance fund purposes.
Sec. 143. No assistance to troubled institution without removing management and repudiating shareholders claims.

Subtitle F—Federal Insurance for State Chartered Depository Institutions

Sec. 151. Short title.
Sec. 152. Federal deposit insurance required for State chartered banks, savings associations, and credit unions.

TITLE II—REGULATORY IMPROVEMENT

Subtitle A—Regulation of Foreign Banks

Sec. 201. Short title.
Sec. 202. Regulation of foreign bank operations.
Sec. 203. Conduct and coordination of examinations.
Sec. 204. Supervision of the representative offices of foreign banks.
Sec. 205. Reporting of stock loans.
Sec. 206. Cooperation with foreign supervisors.
Sec. 207. Approval required for acquisition by foreign banks of shares of United States banks.
Sec. 208. Penalties.
Sec. 209. Powers of agencies respecting applications, examinations, and other proceedings.
Sec. 210. Clarification of managerial standards in Bank Holding Company Act of 1956.

Subtitle B—Customer and Consumer Provisions

Sec. 221. Paperwork reduction and improvements in administration of Community Reinvestment Act of 1977.
Sec. 222. Additional factor in assessing majority-owned institution's record of meeting community credit needs.
Sec. 223. Enforcement of Equal Credit Opportunity Act.
Sec. 224. Fair housing reporting.
Sec. 225. Regulatory burden study.
Sec. 226. Notice of safeguard exception.
Sec. 227. Prohibition on deceptive practices relating to electronic fund transfers from accounts.
Sec. 228. Deposits at nonproprietary automated teller machines.
Sec. 229. Notice of branch closure.

Subtitle C—Bank Enterprise Act

Sec. 231. Short title.
Sec. 232. Reduced assessment rate for deposits attributable to lifeline accounts.
Sec. 233. Assessment credits for qualifying activities relating to distressed communities.
Sec. 234. Financial services for distressed communities.
Sec. 235. Community development organizations.

TITLE III—NATIONWIDE BANKING AND BRANCHING

Sec. 301. Nationwide banking.
Sec. 302. Interstate branching by national banks.
Sec. 303. Interstate consolidation or merger of national banks or State banks with national banks.
Sec. 304. Interstate branching by State banks.
Sec. 305. Interstate branching and banking by foreign banks.
Sec. 306. Interstate acquisitions by savings and loan holding companies.
Sec. 307. State-by-State CRA evaluations of depository institutions with interstate branches.
Sec. 308. Prohibition against deposit production offices.
Sec. 309. Restatement of existing law.
Sec. 310. Visitorial powers.

TITLE IV—FINANCIAL SERVICES MODERNIZATION

Subtitle A—Amendments to Federal Banking Laws

CHAPTER 1—FINANCIAL SERVICES HOLDING COMPANIES

Sec. 401. Financial services holding companies.
Sec. 402. Acquisition of banks.
Sec. 403. Interests in nonbanking organizations.
Sec. 404. Registration and enforcement.
Sec. 405. Reservation of rights to states; preemption of anti-affiliation provisions.
Sec. 406. Penalties.
Sec. 407. Conforming amendments to section 11.
Sec. 408. Application of the limitations on tying arrangements and insider lending to financial services holding companies.

Sec. 409. Provisions exempting financial services holding companies from the Savings and Loan Holding Company Act.
Sec. 410. Cease and desist authority.
Sec. 411. Effective date.

CHAPTER 2—DEPOSITORY INSTITUTION CONVERSIONS

Sec. 421. Failing thrift conversions to SAIF-insured national bank.
Sec. 422. Qtl-qualified national banks resulting from conversion of savings associations.
Sec. 423. Mergers and acquisitions of insured depository institutions during conversion moratorium.
Sec. 424. Mergers, consolidations, and other acquisitions authorized.
Sec. 425. Acquisition of thrift institutions by certain companies which control banks and are not treated as holding companies.

CHAPTER 3—FINANCIAL ACTIVITIES OF NATIONAL BANKS

Sec. 431. Securities activities of national banks.
Sec. 432. Insurance activities of national banks.
Sec. 433. Amendments to sections 23a and 23b of the Federal Reserve Act.
Sec. 434. Customer disclosure.
Sec. 435. Bankers' banks.

CHAPTER 4—NONBANKING ACTIVITIES OF FOREIGN BANKS IN THE UNITED STATES

Sec. 441. Amendments to the International Banking Act of 1978.

Subtitle B—Amendments to Federal Securities Laws

CHAPTER 1—REGULATION OF SECURITIES ACTIVITIES OF DEPOSITORY INSTITUTIONS

PART I—BROKER-DEALER PROVISIONS

Sec. 451. Definition of broker.
Sec. 452. Definition of dealer.
Sec. 453. Power to exempt from the definitions of broker and dealer.
Sec. 454. Requirement that banks falling within the definitions of broker or dealer place their securities activities in a separate corporate entity.
Sec. 455. Provisions relating to broker-dealers affiliated with depository institutions.
Sec. 456. Broker/dealer disclosure with respect to fiduciary purchases in underwritten securities.

PART II—BANK-INVESTMENT COMPANY ACTIVITIES

Sec. 461. Custody of investment company assets by affiliated banks.
Sec. 462. Affiliated persons and transactions.
Sec. 463. Prohibition of controlling interest in investment company.
Sec. 464. Borrowing from an affiliated bank.
Sec. 465. Independent directors.
Sec. 466. Prohibition against use of a bank's name by an affiliated mutual fund.
Sec. 467. Definition of broker.
Sec. 468. Definition of dealer.
Sec. 469. Treatment of bank common trust funds.
Sec. 470. Purchase of investment company securities as fiduciary.
Sec. 471. Common trust fund conversions.
Sec. 472. Extension of credit for purchase of investment company securities.
Sec. 473. Access to nonpublic information.
Sec. 474. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
Sec. 475. Bank and insurance pooled investment vehicles.
Sec. 476. Definition of broker.
Sec. 477. Definition of dealer.

PART III—EFFECTIVE DATE

Sec. 480. Effective date.

CHAPTER 2—ADMINISTRATION OF SECURITIES LAWS WITH RESPECT TO SECURITIES OF DEPOSITORY INSTITUTIONS

PART I—AMENDMENTS TO THE SECURITIES ACT OF 1933

Sec. 481. Exemption to permit transition to holding company structures.

PART II—REPORT AND AUDIT REQUIREMENTS

Sec. 487. Reports and audit requirements.

Subtitle C—General Provisions

Sec. 491. Report on resources for implementation.
Sec. 492. Study of effectiveness of customer and investor protection firewalls.
Sec. 493. Securities registration and reporting study.

TITLE V—FEDERAL DEPOSIT INSURANCE REFORM

Subtitle A—Activities

Sec. 501. Limitations on brokered deposits and deposit solicitations.
Sec. 502. Risk-based assessments.
Sec. 503. Restrictions on insured State bank activities.
Sec. 504. Restrictions on real estate lending.
Sec. 505. Capital standards and interest rate risk.
Sec. 506. Transition rule.
Sec. 507. FDIC back-up enforcement authority.

Subtitle B—Coverage

Sec. 511. Deposit and pass-through insurance.
Sec. 512. Foreign deposits.
Sec. 513. Penalty for false assessment reports.

Subtitle C—Demonstration Project and Studies

Sec. 521. Feasibility study on authorizing insured and uninsured deposit accounts.
Sec. 522. Private reinsurance study.

Subtitle D—Credit Unions

Sec. 524. Liquidations of federally insured State credit unions.

TITLE VI—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

Sec. 601. Findings and purpose.
Sec. 602. Definitions.
Sec. 603. Bilateral netting.
Sec. 604. Clearing organization netting.
Sec. 605. Preemption.
Sec. 606. Relationship to other payment systems.

Subtitle B—Right to Financial Privacy Act of 1978

Sec. 611. Amendments to the Right to Financial Privacy Act of 1978.

Subtitle C—Final Settlement Payment Procedure

Sec. 621. Final settlement payment procedure.

Subtitle D—Miscellaneous Committees, Studies, and Reports

Sec. 631. Commission on the thrift industry.
Sec. 632. Bank Insurance Fund Advisory Committee.
Sec. 633. Amendments relating to Federal Reserve Board reserve requirements.
Sec. 634. Depository Institutions Reform Advisory Committee.
Sec. 635. Report on Government check cashing.
Sec. 636. Permanent authorization of Credit Standards Board.

Subtitle E—Utilization of Private Sector

Sec. 641. Utilization of private sector.
Sec. 642. Reporting.
Sec. 643. Requirement to minimize payments for legal services.

Subtitle F—Emergency Assistance for Rhode Island

Sec. 651. Emergency loan guarantee.

Subtitle G—Qualified Thrift Lender Test Improvements

Sec. 661. Short title.
Sec. 662. Adjustment of compliance periods for purposes of qualified thrift lender test.
Sec. 663. Increase in amount of liquid assets excludable from portfolio assets.
Sec. 664. Additional investments included in definition of qualified thrift assets.
Sec. 665. Prudent diversification of assets.
Sec. 666. Consumer lending by Federal savings associations.

Subtitle H—Prohibition on Entering Secrecy Agreements and Protective Orders

Sec. 671. Prohibition on entering into secrecy agreements and protective orders.

Subtitle I—Establishment of Capital Standard Requirement

Sec. 681. Capital standards.

Subtitle J—References in Federal Law

Sec. 691. References in Federal law.
Sec. 692. Severability.

TITLE I—SAFETY AND SOUNDNESS

SEC. 100. SHORT TITLE.

This title may be cited as the "Federal Deposit Insurance Corporation Improvement Act of 1991".

Subtitle A—Deposit Insurance Funds

SEC. 101. FUNDING FOR THE FEDERAL DEPOSIT INSURANCE FUNDS.

Section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)) is amended by striking "$5,000,000,000" and inserting "$30,000,000,000".

SEC. 102. LIMITATION ON OUTSTANDING BORROWING.

(a) IN GENERAL.—Section 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1825(c)) is amended by striking paragraphs (5) and (6) and inserting the following new paragraphs:

"(5) MAXIMUM AMOUNT LIMITATION ON OUTSTANDING OBLIGATIONS.—Notwithstanding any other provisions of this Act, the aggregate amount of obligations of the Bank Insurance Fund or Savings Association Insurance Fund, respectively, outstanding at any time may not exceed the sum of—

"(A) the amount of cash or the equivalent of cash held by the Bank Insurance Fund or Savings Association Insurance Fund, respectively;

"(B) the amount which is equal to 90 percent of the Corporation's estimate of the fair market value of assets held by the Bank Insurance Fund or the Savings Association Insurance Fund, respectively, other than assets described in subparagraph (A); and

"(C) the total of the amounts authorized to be borrowed from the Secretary of the Treasury pursuant to section 14(a).

"(6) OBLIGATION DEFINED.—For purposes of paragraph (5), the term 'obligation' includes—

"(A) any guarantee issued by the Corporation;

"(B) any amount borrowed pursuant to section 14; and

"(C) any other obligation for which the Corporation has a direct or contingent liability to pay any amount.".

(b) GAO REPORTS.—

(1) QUARTERLY REPORTING.—The Comptroller General of the United States shall submit a report each calendar quarter on the Federal Deposit Insurance Corporation's compliance with section 15(c)(5) of the Federal Deposit Insurance Act for the preceding quarter to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) ANALYSES TO BE INCLUDED.—Each report submitted under paragraph (1) shall include—

(A) an analysis of the performance of the Federal Deposit Insurance Corporation in meeting any repayment schedule under section 14(c) of the Federal Deposit Insurance Act (as added by section 103 of this Act); and

(B) an analysis of the actual recovery on asset sales compared to the estimated fair market value of the assets as determined for the purposes of section 15(c)(5)(B) of such Act.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1825(c)) is amended by striking paragraph (7).

SEC. 103. REPAYMENT SCHEDULE.

(a) IN GENERAL.—Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended by adding at the end the following new subsection:

"(c) REPAYMENT SCHEDULES REQUIRED FOR ANY BORROWING.—

"(1) IN GENERAL.—No amount may be provided by the Secretary of the Treasury to the Corporation under subsection (a) unless an agreement is in effect between the Secretary and the Corporation which—

"(A) provides a schedule for the repayment of the outstanding amount of any borrowing under such subsection; and

"(B) demonstrates that income to the Corporation from assessments under this Act will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

"(2) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary of the Treasury and the Corporation shall—

"(A) consult with the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement described in paragraph (1) relating to repayment, including terms relating to any emergency special assessment under section 7(b)(7); and

"(B) submit a copy of each repayment schedule agreement entered into under paragraph (1) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under subsection (a).".

(b) EMERGENCY SPECIAL ASSESSMENTS.—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively, and by inserting after paragraph (6) the following new paragraph:

"(7) EMERGENCY SPECIAL ASSESSMENTS.—In addition to the assessments imposed on insured depository institutions under other provisions of this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment—

"(A) is necessary—

"(i) to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under section 14(a) in accordance with the repayment schedule in effect under section 14(c) during the period with respect to which such assessment is imposed;

"(ii) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from Bank Insurance Fund members under section 14(d); or

"(iii) for any other purpose the Corporation may deem necessary; and

"(B) is allocated between Bank Insurance Fund members and Savings Association Insurance Fund members in amounts which reflect the degree to which the proceeds of the amounts borrowed are to be used for the benefit of the respective insurance funds.".

SEC. 104. BORROWING FOR BIF FROM BIF MEMBERS.

Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended by inserting after subsection (c) (as added by section 103 of this subtitle) the following new subsection:

"(d) BORROWING FOR BIF FROM BIF MEMBERS.—

"(1) BORROWING AUTHORITY.—The Corporation may issue obligations to Bank Insurance Fund members, and may borrow from Bank Insurance Fund members and give security for any amount borrowed, and may pay interest on (and any redemption premium with respect to) any such obligation or amount to the extent—

"(A) the proceeds of any such obligation or amount are used by the Corporation solely for purposes of carrying out the Corporation's functions with respect to the Bank Insurance Fund; and

"(B) the terms of the obligation or instrument limit the liability of the Corporation or the Bank Insurance Fund for the payment of interest and the repayment of principal to the amount which is equal to the amount of assessment income received by the Fund from assessments under section 7.

"(2) LIMITATIONS ON BORROWING.—

"(A) APPLICABILITY OF PUBLIC DEBT LIMIT.—For purposes of the public debt limit established in section 3101(b) of title 31, United States Code, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an obligation to which such limit applies.

"(B) APPLICABILITY OF FDIC BORROWING LIMIT.—For purposes of the dollar amount limitation established in section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)), any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an amount borrowed from the Treasury under such section.

"(C) INTEREST RATE LIMIT.—The rate of interest payable in connection with any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall not exceed an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

"(D) OBLIGATIONS TO BE HELD ONLY BY BIF MEMBERS.—The terms of any obligation issued by the Corporation under paragraph (1) shall provide that the obligation will be valid only if held by a Bank Insurance Fund Member.

"(3) LIABILITY OF BIF.—Any obligation issued or amount borrowed under paragraph (1) shall be a liability of the Bank Insurance Fund.

"(4) TERMS AND CONDITIONS.—Subject to paragraphs (1) and (2), the Corporation shall establish the terms and conditions for obligations issued or amounts borrowed under paragraph (1), including interest rates and terms to maturity.

"(5) INVESTMENT BY BIF MEMBERS.—

"(A) AUTHORITY TO INVEST.—Subject to subparagraph (B) and notwithstanding any other provision of Federal law or the law of any State, any Bank Insurance Fund member may purchase and hold for investment any obligation issued by the Corporation under paragraph (1) without limitation, other than any limitation the appropriate Federal banking agency may impose specifically with respect to such obligations.

"(B) INVESTMENT ONLY FROM CAPITAL AND RETAINED EARNINGS.—Any Bank Insurance Fund member may purchase obligations or make loans to the Corporation under paragraph (1) only to the extent the purchase money or the money loaned is derived from the member's capital or retained earnings.

"(6) ACCOUNTING TREATMENT.—In accounting for any investment in an obligation purchased from, or any loan made to, the Corporation for purposes of determining compliance with any capital standard and preparing any report required pursuant to section 7(a), the amount of such investment or loan shall be treated as an asset.".

Subtitle B—Supervisory Reforms

SEC. 111. IMPROVED EXAMINATIONS.

(a) ANNUAL EXAMINATIONS.—

(1) IN GENERAL.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by inserting after subsection (c) the following new subsection:

"(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

"(1) IN GENERAL.—Each insured depository institution (other than an institution for which a conservator or receiver has been appointed) shall be examined at least once during each 12-month period (beginning on the date on which the most recent examination of such institution ended) by the appropriate Federal banking agency in an on-site examination unless the institution has been examined by the Corporation during such period in an on-site examination.

"(2) ACCEPTANCE OF STATE ON-SITE EXAMINATIONS.—Notwithstanding paragraph (1), the appropriate Federal banking agency or the Corporation may accept an examination report on any insured depository institution which is based on an on-site examination by the appropriate State bank supervisor.".

(2) EFFECTIVE DATE.—Section 10(d) of the Federal Deposit Insurance Act (as added by paragraph (1) of this subsection) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

(3) TRANSITION RULE.—During the period beginning after the end of the period described in paragraph (2) and ending on December 31, 1993, section 10(d) of the Federal Deposit Insurance Act shall be applied by substituting "18-month" for "12-month" with respect to any insured depository institution other than—

(A) an institution which received a composite CAMEL rating of 3, 4, or 5 under the

Uniform Financial Institutions Rating System (or a comparable rating under an equivalent rating system) during the most recent examination of such institution; or

(B) an institution for which a notice or application has been received by the appropriate Federal banking agency under section 7(j) or 18(c) of the Federal Deposit Insurance Act during the 12-month period beginning on the date on which the most recent examination ended.

(b) Examination Improvement Program.—

(1) In general.—The appropriate Federal banking agencies, acting through the Federal Financial Institutions Examination Council, shall each establish a comparable examination improvement program which meets the requirements of paragraph (2).

(2) Requirements.—An examination improvement program meets the requirements of this paragraph if, under the program, the agency is required—

(A) to periodically review the organization and training of the staff of the agency who are responsible for conducting examinations of insured depository institutions and to make such improvements as the agency determines to be appropriate to ensure frequent, objective, and thorough examinations of such institutions; and

(B) to increase the number of examiners, supervisors, and other individuals employed by the agency in connection with conducting or supervising examinations of insured depository institutions to the extent necessary to ensure frequent, objective, and thorough examinations of such institutions.

(c) Definition Relating to State Bank Supervisors.—

(1) In general.—Section 3(r) of the Federal Deposit Insurance Act (12 U.S.C. 1813(r)) is amended to read as follows:

"(r) State Bank Supervisor.—

"(1) In general.—The term 'State bank supervisor' means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.

"(2) Interstate application.—The State bank supervisors of more than 1 State may be the appropriate State bank supervisor for any insured depository institution.".

(2) Technical and conforming amendment.—Section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) is amended to read as follows:

"(s) Definitions Relating to Foreign Banks and Branches.—

"(1) Foreign bank.—The term 'foreign bank' has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978.

"(2) Federal branch.—The term 'Federal branch' has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978.

"(3) Insured branch.—The term 'insured branch' means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978) of a foreign bank any deposits in which are insured pursuant to this Act.".

SEC. 112. INDEPENDENT ANNUAL AUDITS OF INSURED DEPOSITORY INSTITUTIONS.

(a) In General.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

"(a) Annual Report on Financial Condition and Management.—

"(1) Report required.—Each insured depository institution shall submit an annual report to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State).

"(2) Contents of report.—Any annual report required under paragraph (1) shall contain—

"(A) the information required to be provided by—

"(i) the institution's management under subsection (b); and

"(ii) an independent public accountant under subsections (c) and (d); and

"(B) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the financial condition and management of the institution.

"(3) Public availability.—Any annual report required under paragraph (1) shall be available for public inspection.

"(b) Management Responsibility for Financial Statements and Internal Controls.—Each insured depository institution shall prepare—

"(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

"(2) a report signed by the chief executive officer and the chief accounting or financial officer of the institution which contains—

"(A) a statement of the management's responsibilities for—

"(i) preparing financial statements;

"(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

"(iii) complying with the laws and regulations relating to safety and soundness which are designated by the Corporation or the appropriate Federal banking agency; and

"(B) an assessment, as of the end of the institution's most recent fiscal year, of—

"(i) the effectiveness of such internal control structure and procedures; and

"(ii) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency.

"(c) Internal Control Evaluation and Reporting Requirements for Independent Public Accountants.—

"(1) In general.—With respect to any internal control report required by subsection (b)(2) of any institution, the institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in such report.

"(2) Attestation requirements.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

"(d) Annual Independent Audits of Financial Statements.—

"(1) Audits required.—The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 37.

"(2) Scope of audit.—In connection with any audit under this subsection, the independent public accountant shall determine and report whether the financial statements of the institution—

"(A) are presented fairly in accordance with generally accepted accounting principles; and

"(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

"(3) Requirements for insured subsidiaries of holding companies.—The requirements for an independent audit under subsection (d) may be satisfied for insured depository institutions that are subsidiaries of a holding company by an independent audit of the holding company.

"(e) Detecting and Reporting Violations of Laws and Regulations.—

"(1) In general.—An independent public accountant shall apply procedures agreed upon by the Corporation to objectively determine the extent of the compliance of any insured depository institution or depository institution holding company with laws and regulations designated by the Corporation, in consultation with the appropriate Federal banking agencies.

"(2) Attestation requirements.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

"(f) Form and Content of Reports and Auditing Standards.—

"(1) In general.—The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

"(2) Consultation.—The Corporation shall consult with the other appropriate Federal banking agencies in implementing this subsection.

"(g) Improved Accountability.—

"(1) Independent audit committee.—

"(A) Establishment.—Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, and who satisfy any specific requirements the Corporation may establish.

"(B) Duties.—An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections (b)(2), (c), and (d).

"(C) Criteria applicable to committees of large insured depository institutions.—In the case of each insured depository institution which the Corporation determines to be a large institution, the audit committee required by subparagraph (A) shall—

"(i) include members with banking or related financial management expertise;

"(ii) have access to the committee's own outside counsel; and

"(iii) not include any large customers of the institution.

"(2) Review of quarterly reports of large insured depository institutions.—

"(A) In general.—In the case of any insured depository institution which the Corporation has determined to be a large institution, the Corporation may require the independent public accountant retained by such institution to perform reviews of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

"(B) Report to audit committee.—The independent public accountant referred to in subparagraph (A) shall provide the audit committee of the insured depository institution with reports on the reviews under such subparagraph and the audit committee shall provide such reports to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor.

"(C) LIMITATION ON NOTICE.—Reports provided under subparagraph (B) shall be only for the information and use of the insured depository institution, the Corporation, any appropriate Federal banking agency, and any State bank supervisor which received the report.

"(3) QUALIFICATIONS OF INDEPENDENT PUBLIC ACCOUNTANTS.—

"(A) IN GENERAL.—All audit services required by this section shall be performed only by an independent public accountant who—

"(i) has agreed to provide related working papers, policies, and procedures to the Corporation, an appropriate Federal banking agency, and any State bank supervisor, if requested; and

"(ii) has received a peer review that meets guidelines acceptable to the Corporation.

"(B) REPORTS ON PEER REVIEWS.—Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

"(4) ENFORCEMENT ACTIONS.—

"(A) IN GENERAL.—In addition to any authority contained in section 8, the Corporation or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section.

"(B) JOINT RULEMAKING.—The appropriate Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

"(5) NOTICE BY ACCOUNTANT OF TERMINATION OF SERVICES.—Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the institution shall promptly notify the Corporation pursuant to such rules as the Corporation shall prescribe.

"(h) EXCHANGE OF REPORTS AND INFORMATION.—

"(1) REPORT TO THE INDEPENDENT AUDITOR.—

"(A) IN GENERAL.—Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by the institution.

"(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided under paragraph (1), each insured depository institution shall provide the auditor with—

"(i) a copy of any supervisory memorandum of understanding with such institution and any written agreement between such institution and any appropriate Federal banking agency or any appropriate State bank supervisor which is in effect during the period covered by the audit; and

"(ii) a report of—

"(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 8;

"(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

"(III) any assessment of any civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

"(2) REPORTS TO BANKING AGENCIES.—

"(A) INDEPENDENT AUDITOR REPORTS.—Each insured depository institution shall provide to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report within 15 days of receipt of any such report, qualification, or letter from the institution's independent auditors.

"(B) NOTICE OF CHANGE OF AUDITOR.—Each insured depository institution shall provide written notification to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor of the resignation or dismissal of the institution's independent auditor or the engagement of a new independent auditor by the institution, including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.

"(i) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—Except with respect to any audit requirements established under or pursuant to subsection (d), the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

"(1) services and functions comparable to those required under this section are provided at the holding company level; and

"(2) either—

"(A) the institution has total assets, as of the beginning of such fiscal year, of less than $5,000,000,000; or

"(B) the institution—

"(i) has total assets, as of the beginning of such fiscal year, of more than $5,000,000,000 and less than $9,000,000,000; and

"(ii) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

"(j) EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

"(1) $150,000,000; or

"(2) such amount (in excess of $150,000,000) as the Corporation may prescribe by regulation.".

(b) EFFECTIVE DATE.—The requirements established by the amendment made by subsection (a) shall apply with respect to fiscal years of insured depository institutions which begin after December 31, 1992.

SEC. 113. ASSESSMENTS REQUIRED TO COVER COSTS OF EXAMINATIONS.

(a) IN GENERAL.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) (as added by section 111(a)(1) of this subtitle) the following new subsection:

"(e) EXAMINATION FEES.—

"(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) may be assessed by the Corporation against the institution in proportion to the assets or resources of the institution.

"(2) EXAMINATION OF AFFILIATES.—The cost of conducting any examination of any affiliate of any insured depository institution under subsection (b)(4) may be assessed by the Corporation against each affiliate which is examined in proportion to the assets or resources held by the affiliate on the date of the examination.

"(3) ASSESSMENT AGAINST DEPOSITORY INSTITUTION IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

"(A) IN GENERAL.—Subject to subparagraph (B), if any affiliate of any insured depository institution—

"(i) refuses to pay any assessment under paragraph (2); or

"(ii) fails to pay any such assessment before the end of the 60-day period beginning on the date the affiliate receives notice of the assessment,

the Corporation may assess such cost against, and collect such cost from, the depository institution.

"(B) AFFILIATE OF MORE THAN 1 DEPOSITORY INSTITUTION.—If any affiliate referred to in subparagraph (A) is an affiliate of more than 1 insured depository institution, the assessment under subparagraph (A) may be assessed against the depository institutions in such proportions as the Corporation determines to be appropriate.

"(4) CIVIL MONEY PENALTY FOR AFFILIATE'S REFUSAL TO COOPERATE.—

"(A) PENALTY IMPOSED.—If any affiliate of any insured depository institution—

"(i) refuses to permit an examiner appointed by the Board of Directors under subsection (b)(1) to conduct an examination; or

"(ii) refuses to provide any information required to be disclosed in the course of any examination,

the depository institution shall forfeit and pay a penalty of not more than $5,000 for each day that any such refusal continues.

"(B) ASSESSMENT AND COLLECTION.—Any penalty imposed under subparagraph (A) shall be assessed and collected by the Corporation in the manner provided in section 8(i)(2).

"(5) DEPOSITS OF EXAMINATION ASSESSMENT.—Amounts received by the Corporation under this subsection (other than paragraph (4)) may be deposited in the manner provided in section 13.".

(b) EXAMINATIONS OF APPLICANTS FOR DEPOSIT INSURANCE.—Section 10(b)(2)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(2)(B)) is amended to read as follows:

"(B) any depository institution which files an application with the Corporation to become an insured depository institution;".

(c) TECHNICAL AND CONFORMING AMENDMENT.—

(1) Section 7(b)(10) of the Federal Deposit Insurance Act (as so redesignated by section 103(b) of this Act) is amended by inserting "or section 10(e)" after "under this section".

(2) Section 10(b)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(4)(A)) is amended by striking "insured" each place such term appears.

SEC. 114. APPLICATION TO FDIC REQUIRED FOR INSURANCE.

(a) IN GENERAL.—Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815(a)) is amended by striking all that precedes subsection (b) and inserting the following:

"SEC. 5. DEPOSIT INSURANCE.

"(a) APPLICATION TO CORPORATION REQUIRED.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any depository institution which is engaged in the business of receiving deposits other than trust funds (as defined in section 3(p)), upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution.

"(2) INTERIM DEPOSITORY INSTITUTIONS.—In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open for business, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency.

"(3) APPLICATION AND APPROVAL NOT REQUIRED IN CASES OF CONTINUED INSURANCE.—Paragraph (1) shall not apply in the case of any depository institution whose insured status is continued pursuant to section 4.

"(4) REVIEW REQUIREMENTS.—In reviewing any application under this subsection, the Board of Directors shall consider the factors described in section 6 in determining whether to approve the application for insurance.

"(5) NOTICE OF DENIAL OF APPLICATION FOR INSURANCE.—If the Board of Directors votes to deny any application for insurance by any depository institution, the Board of Directors shall promptly notify the appropriate Federal banking agency and, in the case of any State depository institution, the appropriate State banking supervisor of the denial of such application, giving specific reasons in writing for the Board of Directors' determination with reference to the factors described in section 6.

"(6) NONDELEGATION REQUIREMENT.—The authority of the Board of Directors to make any determination to deny any application under this subsection may not be delegated by the Board of Directors.".

(b) CONTINUATION OF INSURANCE UPON BECOMING A MEMBER BANK.—Section 4(b) of the Federal Deposit Insurance Act (12 U.S.C. 1814(b)) is amended to read as follows:

"(b) CONTINUATION OF INSURANCE UPON BECOMING A MEMBER BANK.—In the case of an insured bank which is admitted to membership in the Federal Reserve System or an insured State bank which is converted into a national member bank, the bank shall continue as an insured bank.".

SEC. 115. REGULATORY REQUIREMENTS STUDY.

(a) STUDY REQUIRED.—The Federal Deposit Insurance Corporation shall conduct a study to determine—

(1) ways to reduce and streamline regulatory requirements imposed by Federal banking agencies, particularly for small community depository institutions; and

(2) which, if any, regulatory requirements may be waived for such institutions without endangering the safety and soundness of the institutions.

(b) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Federal Deposit Insurance Corporation shall submit a report to the Congress and the other appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act) containing the Corporation's findings and conclusions under the study conducted pursuant to subsection (a) and any recommendations for legislative or administrative action the Corporation may determine to be appropriate.

(c) IMPLEMENTATION.—The Federal Deposit Insurance Corporation and other appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act), acting through the Federal Financial Institutions Examination Council, shall implement any recommendation for administrative action made by the Corporation pursuant to subsection (b).

Subtitle C—Accounting Reforms

SEC. 121. ACCOUNTING OBJECTIVES, STANDARDS, AND REQUIREMENTS.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 36 (as added by section 112 of this title) the following new section:

"SEC. 37. ACCOUNTING OBJECTIVES, STANDARDS, AND REQUIREMENTS.

"(a) IN GENERAL.—

"(1) OBJECTIVES.—Accounting principles applicable to reports or statements required to be filed with Federal banking agencies by insured depository institutions should—

"(A) result in financial statements and reports of condition that accurately reflect the capital of such institutions;

"(B) facilitate effective supervision of the institutions; and

"(C) facilitate prompt regulatory action to resolve the institutions at the least cost to the insurance funds.

"(2) STANDARDS.—

"(A) UNIFORM ACCOUNTING PRINCIPLES CONSISTENT WITH GAAP.—Subject to the requirements of this Act and any other provision of Federal law, the accounting principles applicable to reports or statements required to be filed with Federal banking agencies by all insured depository institutions shall be uniform and consistent with generally accepted accounting principles.

"(B) STRINGENCY.—If the appropriate Federal banking agency or the Corporation determines that the application of any generally accepted accounting principle to any insured depository institution is inconsistent with the objectives described in paragraph (1), the agency or the Corporation may, with respect to reports or statements required to be filed with such agency or Corporation, prescribe an accounting principle which is applicable to such institutions which is no less stringent than generally accepted accounting principles.

"(3) REVIEW AND IMPLEMENTATION OF ACCOUNTING PRINCIPLES REQUIRED.—Before the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, each appropriate Federal banking agency shall take the following actions:

"(A) REVIEW OF ACCOUNTING PRINCIPLES.—Review—

"(i) all accounting principles used by depository institutions with respect to reports or statements required to be filed with a Federal banking agency;

"(ii) all requirements established by the agency with respect to such accounting procedures; and

"(iii) the procedures and format for reports to the agency, including reports of condition.

"(B) MODIFICATION OF NONCOMPLYING PRINCIPLES.—Modify or eliminate any accounting principle or reporting requirement of that Federal banking agency which the agency determines fails to comply with the objectives and standards established under paragraphs (1) and (2).

"(C) INCLUSION OF 'OFF BALANCE SHEET' ITEMS.—Develop and prescribe regulations which require that all assets and liabilities, including contingent assets and liabilities, of insured depository institutions be reported in, or otherwise taken into account in the preparation of any balance sheet, financial statement, report of condition, or other report of such institution, required to be filed with a Federal banking agency.

"(D) MARKET VALUE DISCLOSURE.—Develop jointly with the other appropriate Federal banking agencies a method for insured depository institutions to provide supplemental disclosure of the estimated fair market value of assets and liabilities, to the extent feasible and practicable, in any balance sheet, financial statement, report of condition, or other report of any insured depository institution required to be filed with a Federal banking agency.

"(b) UNIFORM ACCOUNTING OF CAPITAL STANDARDS.—

"(1) IN GENERAL.—Each appropriate Federal banking agency shall maintain uniform accounting standards to be used for determining compliance with statutory or regulatory requirements of insured depository institutions.

"(2) TRANSITION PROVISION.—Any standards in effect on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991 under section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall continue in effect after such date of enactment until amended by the appropriate Federal banking agency under paragraph (1).

"(c) REPORTS TO BANKING COMMITTEES.—

"(1) ANNUAL REPORTS REQUIRED.—Each appropriate Federal banking agency shall annually submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing a description of any difference between any accounting or capital standard used by such agency and any accounting or capital standard used by any other agency.

"(2) EXPLANATION OF REASONS FOR DISCREPANCY.—Each report submitted under paragraph (1) shall contain an explanation of the reasons for any discrepancy between any accounting or capital standard used by such agency and any accounting or capital standard used by any other agency.

"(3) PUBLICATION.—Each report under this subsection shall be published in the Federal Register.".

(b) REPEAL OF PROVISION SUPERSEDED BY SUBSECTION (a) AMENDMENTS.—Section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833d) is hereby repealed.

SEC. 122. SMALL BUSINESS LOAN DATA REQUIRED IN REPORTS OF CONDITION.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following new paragraph:

"(9) SMALL BUSINESS AND SMALL FARM LOAN DATA.—

"(A) IN GENERAL.—In the report of condition required under paragraph (3) for the 4th quarter of each calendar year, each insured depository institution shall include information indicating the total number and aggregate dollar amount of the institution's outstanding loans in each of the following categories:

"(i) Commercial loans to small businesses.

"(ii) Commercial mortgage loans to small businesses.

"(B) REPORTING CATEGORIES.—The information required by subparagraph (A) shall be listed separately for each of the following small business categories:

"(i) Businesses which were in existence for less than a year at the time the reported loans were made.

"(ii) Businesses with annual sales of $100,000 or less.

"(iii) Businesses with annual sales of more than $100,000 but not more than $250,000.

"(iv) Businesses with annual sales of more than $250,000 but not more than $1,000,000.

"(v) Businesses with annual sales of more than $1,000,000 but not more than $20,000,000.

"(C) MINORITY-OWNED BUSINESS CATEGORY.—The information required by subparagraphs (A) and (B) shall be further itemized for minority-owned small businesses.

"(D) CHARGE-OFFS AND INTEREST AND FEE INCOME.—Any report of condition referred to in subparagraph (A) shall indicate the insured depository institution's net charge-offs and the interest and fee income for commercial loans to small businesses and for commercial mortgage loans to small businesses, listed separately for each of the following small business categories:

"(i) Businesses with annual sales of $250,000 or less.

"(ii) Businesses with annual sales of more than $250,000.

"(E) AGRICULTURAL LOANS TO SMALL FARMS.—Any report of condition referred to in subparagraph (A) shall indicate the total number and aggregate dollar amount of the insured depository institution's outstanding agricultural loans to small farms.

"(F) DEFINITIONS.—For purposes of this paragraph—

"(i) SMALL BUSINESS.—The term 'small business' means an enterprise with annual sales of $20,000,000 or less.

"(ii) SMALL FARM.—The term 'small farm' means a farm business with annual sales of $500,000 or less.

"(iii) COMMERCIAL LOAN.—The term 'commercial loan' means a loan that is reportable as a commercial and industrial loan in the reports of condition submitted pursuant to this subsection.

"(iv) COMMERCIAL MORTGAGE LOAN.—The term 'commercial mortgage loan' means a loan that is reportable as a real estate loan secured by nonfarm nonresidential properties in the reports of condition submitted pursuant to this subsection.

"(v) AGRICULTURAL LOAN.—The term 'agricultural loan' means a loan that is reportable as a loan to finance agricultural production and other loans to farmers in the reports of condition submitted pursuant to this subsection.

"(G) EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—The requirements of this paragraph shall not apply to any insured depository institution which has total assets, as of the most recent full fiscal year of such institution, of $100,000,000 or less.".

Subtitle D—Prompt Regulatory Action

SEC. 131. PROMPT REGULATORY ACTION.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 37 (as added by section 121 of this title) the following new section:

"SEC. 38. PROMPT REGULATORY ACTION.

"(a) ESTABLISHMENT AND IMPLEMENTATION REQUIRED.—

"(1) IN GENERAL.—Each appropriate Federal banking agency and the Corporation (acting in the Corporation's capacity as the insurer of depository institutions under this Act) shall establish a prompt regulatory action system which meets the requirements of this section, including the establishment of any standards, minimum capital requirements, deadlines for the submission and review of plans, and other classifications required to implement this section.

"(2) DOCUMENTATION OF DETERMINATION.—In complying with this section, the agency and the Corporation shall document in writing the facts and assumptions and any other conclusion underlying any determination to take any specific action and any determination not to take any other action authorized under this section.

"(3) DEADLINE FOR REGULATIONS.—Each appropriate Federal banking agency and the Corporation (with respect to regulations required to be prescribed under this section by the Corporation other than as an appropriate Federal banking agency) shall, after notice and opportunity for comment, prescribe final regulations under paragraph (1) not later than 180 days after the date of enactment of this Act and such regulations shall take effect not later than 270 days after such date of enactment.

"(b) DEFINITIONS.—For purposes of this section—

"(1) CAPITAL DISTRIBUTION.—The term 'capital distribution' means any of the following:

"(A) A dividend or other distribution in cash or in kind made with respect to any shares or other ownership interest of any insured depository institution, except a dividend consisting only of shares of the institution or any amount paid on the deposits of a mutual savings bank or a mutual savings association that is determined by the appropriate Federal banking agency not to constitute a dividend.

"(B) A payment made by an insured depository institution to repurchase, redeem, retire, or otherwise acquire any of the institution's shares, including any extension of credit made to finance an affiliate's acquisition of such shares.

"(C) A transaction that the appropriate Federal banking agency or the Corporation determines by order or regulation to be in substance the distribution of capital.

"(2) COMPENSATION.—The term 'compensation' means any payment of money or provision of any other thing of current or potential value in connection with employment.

"(3) CRITICAL CAPITAL LEVEL.—The term 'critical capital level' means a ratio of tier 1 capital to total assets of 2 percent.

"(4) EXECUTIVE OFFICER.—The term 'executive officer' shall have the same meaning as provided in section 22(h) of the Federal Reserve Act.

"(5) LEVEL 1 DEPOSITORY INSTITUTION.—The term 'level 1 depository institution' means any insured depository institution which—

"(A) maintains a risk-based capital ratio that is significantly in excess of the required minimum ratio;

"(B) maintains tier 1 capital that is significantly in excess of the required minimum for tier 1 capital; and

"(C) maintains capital that meets or exceeds the required minimum ratio for each other relevant capital measure.

"(6) LEVEL 2 DEPOSITORY INSTITUTION.—The term 'level 2 depository institution' means any insured depository which—

"(A) maintains capital in an amount that meets or exceeds the required minimum ratio for each relevant capital measure; and

"(B) is not a level 1 depository institution.

"(7) LEVEL 3 DEPOSITORY INSTITUTION.—The term 'level 3 depository institution' means any insured depository institution which—

"(A) is not in compliance with all currently applicable capital standards; and

"(B) is not a level 4 or level 5 depository institution.

"(8) LEVEL 4 DEPOSITORY INSTITUTION.—The term 'level 4 depository institution' means any insured depository institution which maintains capital in an amount which—

"(A) is significantly less than the required minimum ratio for any relevant capital measure; and

"(B) exceeds the critical capital level.

"(9) LEVEL 5 DEPOSITORY INSTITUTION.—The term 'level 5 depository institution' means any insured depository institution which maintains capital in an amount which is less than or equal to the critical capital level.

"(10) LEVERAGE LIMIT.—The term 'leverage limit' means the leverage limit established by the appropriate Federal banking agency.

"(11) OTHER DEFINITIONS RELATING TO CAPITAL MEASURES.—The terms 'total assets', 'tier 1 capital', and 'tier 2 capital' have the meaning given to such terms by the appropriate Federal banking agencies.

"(12) REQUIRED MINIMUM RATIO.—The 'required minimum ratio' means the minimum acceptable capital level adopted by the appropriate Federal banking agency by regulation or guideline with respect to each relevant capital measure.

"(13) RISK-BASED CAPITAL RATIO.—The term 'risk-based capital ratio' means the risk-based capital standard established by the appropriate Federal banking agency.

"(14) SUBORDINATED DEBT.—The term 'subordinated debt' means debt subordinated to the claims of depositors or general creditors.

"(15) UNDERCAPITALIZED DEPOSITORY INSTITUTION.—The term 'undercapitalized depository institution' means any level 3, level 4, or level 5 depository institution.

"(c) CAPITAL MEASURES AND RECLASSIFICATIONS OF LEVELS.—

"(1) CAPITAL AND LEVERAGE LIMIT REQUIREMENTS.—

"(A) IN GENERAL.—Any capital measure prescribed by any appropriate Federal banking agency for purposes of this section shall include at a minimum—

"(i) a tier 1 capital to assets ratio;

"(ii) a risk-based capital ratio; and

"(iii) a leverage limit.

"(B) INTEREST RATE AND OTHER MARKET RISKS.—In establishing any risk-based capital standard for purposes of this section, the appropriate Federal banking agencies shall take into account interest rate risk and other market risks.

"(2) MINIMUM CAPITAL RATIOS FOR INSTITUTIONS IN EACH LEVEL.—Consistent with the purposes of this section, each appropriate Federal banking agency shall establish, by regulation, the applicable minimum capital ratios for each relevant capital measure for the insured depository institutions in each level of depository institutions defined in subsection (a).

"(3) OTHER CAPITAL MEASURES.—An appropriate Federal banking agency may, by regulation or guideline, establish any additional relevant capital measure consistent with the purposes of this section.

"(4) CONSULTATION.—In prescribing any regulation under paragraph (2), each appropriate Federal banking agency shall consult with the Corporation.

"(5) RECLASSIFICATION OF UNSAFE OR UNSOUND INSTITUTIONS.—If the appropriate Federal banking agency or the Corporation determines that any insured depository institution is in an unsafe and unsound condition or is operating in a manner which poses a risk to any deposit insurance fund, the agency or the Corporation shall reclassify such institution as a depository institution of an appropriate level for purposes of this section.

"(d) STANDARDS FOR SAFETY AND SOUNDNESS.—

"(1) OPERATIONAL AND MANAGERIAL STANDARDS.—The appropriate Federal banking agencies, in consultation with the Credit Standards Advisory Committee, shall establish operational and managerial standards for all insured depository institutions and depository institution holding companies, including standards relating to the following subjects:

"(A) Internal controls, information systems, and internal audit systems in accordance with section 36.

"(B) Loan documentation requirements.

"(C) Underwriting standards.

"(D) Interest rate exposure.

"(E) Asset growth.

"(2) ASSET AND EARNINGS STANDARDS.—The appropriate Federal banking agencies shall establish standards governing the asset quality and earnings of any insured depository institution or depository institution holding company which shall include—

"(A) a maximum classified loans to capital ratio; and

"(B) an earnings standard for such institutions and companies which require such institutions and companies to maintain earnings sufficient to absorb losses of the institution or company without impairing the capital of the institution or holding company.

"(3) REQUIRED ACTION FOR FAILURE TO COMPLY WITH STANDARDS.—

"(A) CORRECTIVE ACTION PLAN.—In addition to any other action which the appropriate Federal banking agency may take, the agency shall require any insured depository institution or depository institution holding company which fails to meet any standard established pursuant to paragraph (1) or (2) to submit a corrective action plan for correcting any deficiency of the institution or company with respect to such standard to the agency not later than 30 days after the institution is notified by the agency of such failure.

"(B) FAILURE TO COMPLY.—If any insured depository institution or depository institution holding company fails to submit a corrective action plan which meets the appropriate Federal banking agency's approval or fails to comply with the corrective action plan, the agency shall issue an order requiring such corrective action and impose such restrictions as the agency determines to be appropriate.

"(C) RESTRICTIONS WHICH MAY BE INCLUDED IN ORDER.—Any order issued under subparagraph (B) to any insured depository institution or depository institution holding company may include the following restrictions:

"(i) RESTRICTING ASSET GROWTH.—Subject to subparagraph (E), prohibiting any increase in total assets of the institution.

"(ii) RESTRICTING INTEREST RATES PAID.—Restricting the interest rates the institution pays on deposits accepted after the date of the order, including any renewal or rollover of any deposit held on such date.

"(iii) REQUIRING AN INCREASE IN CAPITAL.—Requiring the institution or company to increase the amount of capital of the institution or company.

"(D) ORDER REQUIRED FOR CERTAIN INSTITUTIONS.—The appropriate Federal banking agency shall issue an order under subparagraph (B) imposing at least 1 of the restrictions described in subparagraph (C) on an insured depository institution if—

"(i) the insured depository institution fails to meet any operational and managerial standard established pursuant to paragraph (1) or asset and earnings standard established pursuant to paragraph (2); and

"(ii) the institution—

"(I) has been chartered as a depository institution for less than 2 years;

"(II) has undergone a change in control within the 2 years preceding the date on which the institution first failed to meet a standard described in clause (i); or

"(III) has experienced extraordinary growth (as defined by the agency) during the 18-month period ending on the date on which the institution first failed to meet a standard described in clause (i).

"(E) LIMITED GROWTH EXCEPTION.—Any order issued by any appropriate Federal banking agency under subparagraph (B) which prohibits any increase in the total assets of any insured depository institution in accordance with subparagraph (C)(i) may permit the institution to increase assets in an amount not to exceed the amount of net interest credited to the institution's deposit liabilities if—

"(i) the institution obtains the agency's written approval;

"(ii) any increase in assets is accompanied by an increase in tier 1 capital of a percentage (of such capital) which is not less than the leverage ratio applicable to the institution; and

"(iii) any increase in assets is invested in low-risk assets.

"(4) PROCEDURES.—Each appropriate Federal banking agency shall establish requirements and procedures for the preparation and submission of corrective action plans under paragraph (3) to the agency and shall require the agency to review and to approve or disapprove such plan before the end of the 60-day period beginning on the date such plan is received.

"(e) CAPITAL DISTRIBUTIONS RESTRICTED.—

"(1) IN GENERAL.—An insured depository institution shall make no capital distribution if the institution would not meet all currently applicable capital standards after making the distribution.

"(2) EXCEPTION.—Notwithstanding paragraph (1), any appropriate Federal banking agency, after consultation with the Corporation, may approve a capital distribution by any insured depository institution which would, but for this subparagraph, be prohibited under paragraph (1), if the agency makes a prior written determination that the distribution will enhance the ability of the institution to satisfy capital standards and the institution submits a capital restoration plan in accordance with subsection (f)(1) which is approved by the agency.

"(f) PROVISIONS APPLICABLE TO UNDERCAPITALIZED DEPOSITORY INSTITUTIONS.—

"(1) CAPITAL RESTORATION PLAN REQUIRED.—

"(A) IN GENERAL.—Any undercapitalized depository institution shall submit a capital restoration plan to the appropriate Federal banking agency before the end of the period prescribed by the agency under subparagraph (C).

"(B) CONTENTS OF PLAN.—The capital restoration plan shall—

"(i) specify how the insured depository institution will satisfy all applicable capital standards, without increasing the risk (including credit risk, interest rate risk, and other types of risk) to which the institution is exposed;

"(ii) specify the types and levels of activities in which the institution will engage; and

"(iii) contain such other information as the appropriate Federal banking agency may require.

"(C) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—Each appropriate Federal banking agency shall establish deadlines that—

"(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 45 days after the institution is first classified as an undercapitalized depository institution;

"(ii) require the agency to approve or disapprove any capital restoration plan expeditiously and generally not later than 60 days after the plan is submitted; and

"(iii) require the agency to submit a copy of any plan approved by the agency to the Corporation before the end of the 45-day period beginning on the date such approval is granted.

"(2) ASSET GROWTH RESTRICTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall prohibit any asset growth by any undercapitalized depository institution.

"(B) LIMITED GROWTH EXCEPTION.—The appropriate Federal banking agency may permit an undercapitalized depository institution to increase assets in an amount not to exceed the amount of net interest credited to the institution's deposit liabilities if—

"(i) the institution obtains the agency's written approval;

"(ii) any increase in assets is accompanied by an increase in tier 1 capital of a percentage (of such capital) which is not less than the leverage ratio applicable to the institution; and

"(iii) any increase in assets is invested in low-risk assets.

"(3) CAPITAL PLAN GUARANTEE.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall not approve a capital restoration plan under this subsection unless each company having control of the insured depository institution guarantees in writing the institution's compliance with the plan until the institution has satisfied all applicable capital standards for each of 12 consecutive months, and provides appropriate written assurances of continued performance.

"(B) AGGREGATE LIABILITY.—The aggregate amount of liability for any company under subparagraph (A) with respect to any insured depository institution shall not exceed the amount which is necessary (or would have been necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with a plan under this subsection.

"(C) NO EFFECT ON SECURITIES EXCHANGE ACT REQUIREMENTS.—Nothing in this section shall be interpreted to supersede, or in any way limit or condition compliance by brokers, dealers, government securities brokers, and government securities dealers with the financial responsibility requirements of the Securities Exchange Act of 1934 and the rules, regulations, and orders thereunder.

"(4) EXAMINATION RATINGS TAKEN INTO ACCOUNT.—In reviewing any capital restoration plan submitted under this section with respect to any insured depository institution, the appropriate Federal banking agency may take into account the CAMEL ratings of such institution under the Uniform Financial Institutions Rating System (or any equivalent rating under a comparable system).

"(g) PROVISIONS APPLICABLE TO LEVEL 4 AND LEVEL 5 DEPOSITORY INSTITUTIONS AND INSTITUTIONS THAT FAIL TO SUBMIT OR IMPLEMENT CAPITAL RESTORATION PLANS.—

"(1) SCOPE OF APPLICATION.—This subsection shall apply to—

"(A) any level 4 or level 5 depository institution; and

"(B) any undercapitalized depository institution which—

"(i) fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (f)(1)(C); or "(ii) fails in any material respect to implement a capital restoration plan approved by the agency.

"(2) AGENCY ACTIONS REQUIRED.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall carry out the purpose of this section by issuing an order which imposes 1 or more of the actions described in paragraph (3) with respect to any institution described in paragraph (1).

"(B) SUBSECTION (h) ACTIONS AUTHORIZED.—In addition to actions described in paragraph (3), any appropriate Federal banking agency may issue an order which imposes, with respect to any institution described in paragraph (1), any restriction applicable under subsection (h) to any level 5 depository institution.

"(3) SPECIFIC ACTIONS AUTHORIZED.—The actions described in this paragraph with respect to any insured depository institution described in paragraph (1) are the following:

"(A) REQUIRING SALE OF SHARES OR OBLIGATIONS.—

"(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will satisfy capital standards after the sale.

"(ii) Requiring that instruments sold under clause (i) be voting shares.

"(B) RESTRICTING INTEREST RATES PAID.—Restricting the interest rates the institution pays on deposits accepted after the date of the order, including any renewal or rollover of any deposit held on such date.

"(C) PROHIBITING PAYMENT OF BONUSES TO EXECUTIVE OFFICERS.—Prohibiting the payment of any bonus to any executive officer.

"(D) PROHIBITING PAYMENT OF EXCESSIVE COMPENSATION TO EXECUTIVE OFFICERS.—Prohibiting the payment of compensation to any executive officer at a rate exceeding that officer's average rate of compensation during the 12 calendar months preceding the calendar month in which the institution ceased to comply with capital standards.

"(E) REQUIRING FDIC APPROVAL FOR NEW BRANCHES.—Requiring the institution to obtain the approval of the Corporation before establishing or acquiring any new branch.

"(F) PROHIBITING DEPOSITS FROM CORRESPONDENT BANKS.—Prohibiting the acceptance by the institution of deposits from correspondent depository institutions, including renewals and rollovers of prior deposits.

"(G) RESTRICTING OTHER ACTIVITIES.—Prohibiting any other activity of the institution which the agency finds is detrimental, or is likely to be detrimental, to the institution's financial condition.

"(H) REQUIRING A NEW ELECTION OF DIRECTORS.—Requiring a new election for the institution's board of directors or any member of the board of directors.

"(h) ADDITIONAL PROVISIONS APPLICABLE TO LEVEL 5 DEPOSITORY INSTITUTIONS.—

"(1) LIMITATIONS ON PAYMENTS ON SUBORDINATED DEBT.—

"(A) IN GENERAL.—An insured depository institution shall make no payment of principal or interest on the institution's subordinated debt unless, after making the payment, the institution would have capital in an amount which is equal to or greater than the critical capital level applicable with respect to such institution.

"(B) LIMITED EXEMPTION FOR CERTAIN SUBORDINATED DEBT.—Until January 1, 1996, subparagraph (A) shall not apply with respect to any subordinated debt that is—

"(i) outstanding on January 1, 1991; and

"(ii) not extended or otherwise renegotiated after such date.

"(2) CONSERVATORSHIP OR OTHER ACTION REQUIRED.—

"(A) IN GENERAL.—Before the end of the 120-day period beginning on the date the capital of any insured depository institution ceases to equal or exceed the critical capital level specified under subsection (b)(3), the appropriate Federal banking agency shall, notwithstanding any provision of any State law, appoint a conservator or receiver for the institution under this Act or any other applicable Federal law.

"(B) OTHER ACTION.—Notwithstanding the requirement under subparagraph (A) to appoint a conservator or receiver for any institution described in such subparagraph, the appropriate Federal banking agency shall take any other action described in subsection (g)(3) which the agency determines to be appropriate in lieu of such appointment if the agency—

"(i) determines in writing, with the concurrence of the Corporation, that such action would better achieve the purposes of this section; and

"(ii) documents that such action would protect the appropriate deposit insurance fund more than the immediate appointment of a conservator or receiver for such institution.

"(C) PERIODIC REDETERMINATIONS REQUIRED.—Any determination by any appropriate Federal banking agency under subparagraph (B) to take any action with respect to an insured depository institution in lieu of the appointment of a conservator or receiver shall cease to be effective not later than the end of the 90-day period beginning on the date such determination is made and a conservator or receiver shall be appointed for such institution pursuant to subparagraph (A) unless the agency makes a new determination under subparagraph (B) at the end of the effective period of the prior determination.

"(D) APPOINTMENT OF RECEIVER REQUIRED IF OTHER ACTION FAILS TO RESTORE CAPITAL.—In the case of any institution referred to in subparagraph (A) for which a receiver has not been appointed and notwithstanding any provision of the law of any State, the appropriate Federal banking agency shall appoint a receiver for such institution as follows:

"(i) If the capital of such institution does not exceed the critical capital level at the end of the 6-month period beginning on the date action is first taken by the agency under subparagraph (A) or (B), a receiver shall be appointed at the end of such period.

"(ii) If the capital of such institution exceeds the critical capital level at the end of the 6-month period but fails to exceed such level at the end of any of the 3 months immediately following the end of that period, a receiver shall be appointed.

"(E) ACQUISITION BY ANOTHER INSURED DEPOSITORY INSTITUTION.—Notwithstanding the requirement under subparagraph (A) to appoint a conservator or receiver for any insured depository institution described in such subparagraph and subject to section 13, the appropriate Federal banking agency may require the insured depository institution to be acquired (as defined in section 13(f)(8)(B)) by another insured depository institution which offers to acquire such institution if the agency determines, with the concurrence of the Corporation, that such acquisition would resolve the capital problems of the institution in a manner that is least costly to the affected deposit insurance fund and the taxpayer.

"(i) RESTRICTING ACTIVITIES OF LEVEL 5 DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—In addition to any other action authorized or required under this section, the Corporation shall, by regulation or order, restrict the activities of any level 5 depository institution.

"(2) MINIMUM RESTRICTIONS.—Regulations and orders prescribed or issued by the Corporation under paragraph (1) with respect to any institution described in such paragraph shall prohibit, at a minimum, the following activities by any such institution without the Corporation's prior written approval:

"(A) Any material transaction other than in the usual course of business, including any investment, expansion, acquisition, or other similar action with respect to which the institution is required to provide notice to the appropriate Federal banking agency.

"(B) Any highly leveraged transaction.

"(C) Any amendment to any charter or bylaws other than to the extent necessary to carry out any other requirement of any law, regulation, or order.

"(D) Any material change in accounting methods.

"(E) Any covered transaction (as defined in section 23A(b) of the Federal Reserve Act).

"(F) Payment of excessive compensation or bonuses.

"(G) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds.

"(H) Any other limitation on activities which will carry out the purposes of this section.

"(3) TERMINATION OF AFFILIATIONS.—The appropriate Federal banking agency or the Corporation may require any level 5 depository institution or any depository institution holding company which controls such institution to terminate any affiliation with any affiliate of such institution (other than an affiliate which is an insured depository institution) if the agency or the Corporation determines that the affiliate—

"(A) is in danger of default;

"(B) poses a significant risk to the liquidity or solvency of the insured depository institution or any insured depository institution subsidiary of such company; or

"(C) is likely to cause a significant dissipation of such institution's or subsidiary's assets or earnings.

"(4) CONSULTATION WITH OTHER FUNCTIONAL REGULATORS.—Before the agency or Corporation makes a determination under paragraph (3) with respect to an affiliate that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the agency or Corporation shall consult with the Securities and Exchange Commission and, in the case of any other affiliate which is subject to any financial responsibility or capital requirement, any other functional regulator (as defined in section 2(s) of the Bank Holding Company Act of 1956) of such affiliate with respect to the proposed determination of the agency or the Corporation and actions pursuant to such determination.

"(j) REVIEW REQUIRED IF INSURANCE FUND INCURS LOSS.—

"(1) IN GENERAL.—If any insurance fund or the Resolution Trust Corporation incurs a loss with respect to an insured depository institution on or after the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, the Inspector General of the Corporation shall—

"(A) review the regulatory supervision of the institution (including the implementation of this section) and ascertain why there was a loss to the fund;

"(B) transmit a written report to the appropriate Federal banking agency, the Corporation, and, in the case of a State depository institution, the appropriate State bank supervisor on the results of the review under subparagraph (A), including recommendations for preventing any such loss in the future; and

"(C) provide a copy of the report to—

"(i) the Comptroller General of the United States; and

"(ii) the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) LOSS INCURRED.—For purposes of this subsection, any insurance fund incurs a loss with respect to an insured depository institution—

"(A) if the Corporation provides any assistance under section 13(c) with respect to that institution; or

"(B) if the Corporation is appointed receiver for the institution.

"(3) DEADLINE FOR REPORT.—The Inspector General of the Corporation shall comply with paragraph (1) expeditiously, and in any event as follows:

"(A) If the institution is described in paragraph (2)(A), before the end of the 18-month period beginning when the assistance is provided unless the assistance is fully repaid before the end of that period.

"(B) If the institution is described in paragraph (2)(B), before the end of the 12-month period beginning on the date the receiver is appointed for the institution.

"(4) PUBLIC DISCLOSURE REQUIRED.—The Corporation shall disclose any report under paragraph (1)(B) upon request under section 552 of title 5, United States Code, without excising—

"(A) any portion of the report under section 552(b)(5); or

"(B) any information about the insured depository institution under paragraph (4) or (8) of section 552(b).

"(5) GAO REVIEW.—The Comptroller General of the United States shall annually—

"(A) review reports made under paragraph (1)(B) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section); and

"(B) audit 1 or more of those reports.

"(6) APPLICABILITY.—This subsection shall not apply with respect to any assistance provided under section 13(c), or the appointment of any receiver, before the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991.

"(k) NEW CAPITAL PLAN NOT REQUIRED FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e), (f), (g), (h), and (i) shall not apply before July 1, 1994, with respect to any insured savings association if—

"(1) before the end of the 30-day period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, the savings association has submitted a plan meeting the requirements of section 5(t)(6) of the Home Owners' Loan Act;

"(2) the Director of the Office of Thrift Supervision approves or does not disapprove that plan;

"(3) the plan remains in effect; and

"(4) the savings association remains in compliance with the plan.".

(b) CONSERVATORSHIP AND RECEIVERSHIP AUTHORITY.—

(1) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR STATE BANKS.—Section 11(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(5)) is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) In the case of any undercapitalized depository institution (as defined in section 38(b))—

"(i) failure to submit a capital restoration plan acceptable to the appropriate Federal banking agency within the time prescribed under section 38(f)(1)(C); or

"(ii) failure to implement a capital restoration plan submitted and accepted under section 38(f)(1)(C).".

(2) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR FOR NATIONAL BANKS.—Section 203(a) of the Bank Conservation Act (12 U.S.C. 203(a)) is amended—

(A) by striking "or" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(9) in the case of a bank not in compliance with all currently applicable capital standards, the bank fails—

"(A) to submit a capital restoration plan acceptable to the Comptroller of the Currency within the time prescribed under section 38(f)(1)(C) of the Federal Deposit Insurance Act; or

"(B) to implement a capital restoration plan submitted and accepted under section 38(f)(1)(C).".

(3) ADDITIONAL GROUNDS FOR APPOINTING RECEIVER FOR NATIONAL BANKS.—The Comptroller of the Currency may appoint a receiver for any national bank which is not in compliance with all currently applicable capital standards if the bank—

(A) fails to submit a capital restoration plan acceptable to the Comptroller within the time prescribed under section 38(f)(1)(C) of the Federal Deposit Insurance Act; or

(B) fails to implement a capital restoration plan submitted and accepted under section 38(f)(1)(C) of the Federal Deposit Insurance Act.

(4) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR FEDERAL SAVINGS ASSOCIATIONS.—Section 5(d)(2)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)(A)) is amended—

(A) by striking "or" at the end of clause (vii);

(B) by striking the period at the end of clause (viii) and inserting a semicolon; and

(C) by adding at the end the following new clause:

"(ix) with respect to an association not in compliance with all currently applicable capital standards prescribed by the Director—

"(I) failure to submit a capital restoration plan acceptable to the Director within the time prescribed under section 38(f)(1)(C); or

"(II) failure to implement a capital restoration plan submitted and accepted under section 38(f)(1)(C).".

SEC. 132. APPOINTMENT OF CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—Section 11(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(4)) is amended to read as follows:

"(4) APPOINTMENT OF THE CORPORATION BY THE CORPORATION.—

"(A) IN GENERAL.—Except as otherwise provided in section 21A of the Federal Home Loan Bank Act and notwithstanding any other provision of Federal law or the law or the constitution of any State, the Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State bank supervisor (if any), if the Board of Directors determines that—

"(i) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

"(ii) the appointment is necessary to reduce—

"(I) the risk that the affected deposit insurance fund would incur a loss with respect to the insured depository institution, or

"(II) any loss that the affected deposit insurance fund is expected to incur with respect to that institution.

"(B) NONDELEGATION.—The Board of Directors shall not delegate any action under this paragraph.".

(b) AMENDMENT RELATING TO APPLICABLE GROUND.—Section 11(c)(5)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(5)(B)) is amended to read as follows:

"(B) A finding by the Corporation that—

"(i) a conservator, receiver, or other legal custodian has been appointed for the institution;

"(ii) the institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 days; and

"(iii) 1 or more of the depositors in the institution is unable to withdraw any amount of any insured deposit.".

Subtitle E—Least-Cost Resolution

SEC. 141. LEAST-COST RESOLUTION.

(a) LEAST-COST RESOLUTIONS REQUIRED.—

(1) IN GENERAL.—Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) is amended—

(A) by redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (6), (7), (8), (9) and (10), respectively;

(B) by redesignating subparagraph (B) of paragraph (4) as paragraph (5); and

(C) by amending paragraph (4) (as amended by subparagraph (B) of this paragraph) to read as follows:

"(4) LEAST-COST RESOLUTION REQUIRED.—

"(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Corporation may not exercise any authority under this section with respect to any insured depository institution unless—

"(i) the Corporation determines that the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and

"(ii) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the affected deposit insurance fund of all possible methods for meeting the Corporation's obligation under this section.

"(B) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible cost to the affected deposit insurance fund, the Corporation shall comply with the following provisions:

"(i) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

"(I) evaluate alternatives on a present-value basis, using a realistic discount rate;

"(II) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

"(III) retain the documentation for not less than 5 years.

"(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the affected deposit insurance fund.

"(C) TIME OF DETERMINATION.—

"(i) GENERAL RULE.—For purposes of this subsection, the determination of the costs of providing any assistance under paragraph (1) or (2) or any other provision of this section with respect to any depository institution shall be made as of the date on which the Corporation makes the determination to provide such assistance to the institution under this section.

"(ii) RULE FOR LIQUIDATIONS.—For purposes of this subsection, the determination of the costs of liquidation of any depository institution shall be made as of the earliest of—

"(I) the date on which a conservator is appointed for such institution;

"(II) the date on which a receiver is appointed for such institution; or

"(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to such institution.

"(D) LIQUIDATION COSTS.—In determining the cost of liquidating any depository institution for the purpose of comparing the costs under subparagraph (A) (with respect to such institution), the amount of such cost may not exceed the amount which is equal to the sum of the insured deposits of such institution as of the earliest of the dates described in subparagraph (C), minus the present value of the total net amount the Corporation reasonably expects to receive from the disposition of the assets of such institution in connection with such liquidation.

"(E) DEPOSIT INSURANCE FUNDS AVAILABLE FOR INTENDED PURPOSE ONLY.—

"(i) IN GENERAL.—After December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, the Corporation may not take any action, directly or indirectly, with respect to any insured depository institution that would have the effect of increasing losses to any insurance fund by protecting—

"(I) depositors for more than the insured portion of deposits (determined without regard to whether such institution is liquidated); or

"(II) creditors other than depositors.

"(ii) DEADLINE FOR REGULATIONS.—The Corporation shall prescribe regulations to implement clause (i) not later than January 1, 1994, and the regulations shall take effect not later than January 1, 1995.

"(iii) PURCHASE AND ASSUMPTION TRANSACTIONS.—No provision of this subparagraph shall be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution for which the Corporation has been appointed conservator or receiver to acquire uninsured deposit liabilities of such institution so long as the insurance fund does not incur any loss with respect to such deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

"(F) DISCRETIONARY DETERMINATIONS.—Any determination which the Corporation may make under this paragraph shall be made in the sole discretion of the Corporation.".

(2) ANNUAL GAO COMPLIANCE AUDIT.—The Comptroller General of the United States shall annually audit the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to determine the extent to which such corporations are complying with section 13(c)(4) of the Federal Deposit Insurance Act.

(3) CLARIFICATION OF MANNER OF APPLICATION TO THE RTC.—Section 21A(b)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(4)) is amended—

(A) by striking "POWERS.—Except as" and inserting "POWERS.—

"(A) IN GENERAL.—Except as"; and

(B) by adding at the end the following new subparagraph:

"(B) MANNER OF APPLICATION OF LEAST-COST RESOLUTION.—For purposes of applying section 13(c)(4) of the Federal Deposit Insurance Act to the Corporation under subparagraph (A), the Corporation shall be treated as the affected deposit insurance fund.".

(b) SECURED CLAIMS IN EXCESS OF VALUE OF COLLATERAL.—Section 11(d)(5)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(5)(D)) is amended to read as follows:

"(D) AUTHORITY TO DISALLOW CLAIMS.—

"(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

"(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—

"(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the institution; and

"(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the institution.

"(iii) Exception.—No provision of this paragraph shall apply with respect to—

"(I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any institution described in paragraph (3)(A); or

"(II) any security interest in the assets of the institution securing any such extension of credit.".

(c) DATA COLLECTIONS.—Section 7(a)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(8)) is amended to read as follows:

"(8) DATA COLLECTIONS.—In addition to or in connection with any other report required under this subsection, the Corporation shall take such action as may be necessary to ensure that—

"(A) each insured depository institution maintains; and

"(B) the Corporation receives on a regular basis from such institution,

information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution.".

(d) INDUSTRY IMPACT ANALYSIS REQUIRED.—

(1) IN GENERAL.—Section 11(h) of the Federal Deposit Insurance Act (12 U.S.C. 1821(h)) is amended by adding at the end the following new paragraph:

"(4) FINANCIAL SERVICES INDUSTRY IMPACT ANALYSIS.—After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 13 in connection with the resolution of such institution, the Corporation shall—

"(A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and

"(B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.".

(2) CLERICAL AMENDMENT.—The heading for section 11(h) of the Federal Deposit Insurance Act (12 U.S.C. 1821(h) is amended by striking "LIQUIDATION" and inserting "RESOLUTION".

(e) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) is amended by redesignating paragraphs (8), (9), and (10) (as so redesignated by subsection (a)(1)(A) of this section), as paragraphs (9), (10), and (11), respectively, and by inserting after paragraph (7) the following new paragraph:

"(8) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

"(A) IN GENERAL.—Subject to the least-cost provisions of paragraph (4), the Corporation shall consider providing direct financial assistance under this section for depository institutions before the appointment of a conservator or receiver for such institution only under the following circumstances:

"(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

"(I) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased; and

"(II) it is unlikely that the institution can meet all currently applicable capital standards without assistance.

"(ii) OTHER CRITERIA.—The depository institution meets the following criteria:

"(I) The appropriate Federal banking agency and the Corporation have determined that, during such period of time preceding the date of such determination as the agency or the Corporation considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

"(II) The institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

"(B) PUBLIC DISCLOSURE.—Any determination under this paragraph to provide assistance under this section shall be made in writing and published in the Federal Register.".

(f) DEFINITIONS.—Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended by adding at the end the following new paragraphs:

"(3) UNINSURED DEPOSITS.—The term 'uninsured deposit' means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

"(4) PREFERRED DEPOSITS.—The term 'preferred deposits' means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.".

SEC. 142. LIMITATION ON USE OF LIQUIDITY LENDING FOR DEPOSIT INSURANCE FUND PURPOSES.

(a) REDESIGNATION OF SECTION 10(b) OF THE FEDERAL RESERVE ACT.—The Federal Reserve Act is amended by redesignating section 10(b) (12 U.S.C. 347b) as section 10B.

(b) LIMITATION ON LIQUIDITY LENDING FOR DEPOSIT INSURANCE PURPOSES.—Section 10B of the Federal Reserve Act (as so redesignated by subsection (a) of this section) is amended—

(1) by striking "Any Federal Reserve bank" and inserting "(a) IN GENERAL.—Any Federal Reserve bank"; and

(2) by adding at the end the following new subsection:

"(b) LIMITATIONS ON ADVANCES.—

"(1) LIMITATION ON EXTENDED PERIODS.—Except as provided in paragraph (2), no advances to any undercapitalized depository institution by any Federal Reserve bank under this section may be outstanding for more than 60 days in any 120-day period.

"(2) VIABILITY EXCEPTION.—

"(A) IN GENERAL.—If—

"(i) the head of the appropriate Federal banking agency certifies in advance in writing to the Federal Reserve bank that any depository institution is a viable depository institution; or

"(ii) the Board conducts an examination of any depository institution and the Chairman of the Board certifies in writing to the Federal Reserve bank that the institution is a viable depository institution,

the limitation contained in paragraph (1) shall not apply during the 60-day period beginning on the date such certification is received.

"(B) EXTENSIONS OF PERIOD.—The 60-day period may be extended for additional 60-day periods upon receipt by the Federal Reserve bank of additional written certifications under subparagraph (A) with respect to each such additional period.

"(C) AUTHORITY TO ISSUE A CERTIFICATE OF VIABILITY MAY NOT BE DELEGATED.—The authority of the head of any agency to issue a written certification of viability under this paragraph may not be delegated to any other person.

"(D) EXTENDED ADVANCES SUBJECT TO PARAGRAPH (3).—Notwithstanding paragraph (1), an undercapitalized institution which does not have a certificate of viability in effect under this paragraph may have advances outstanding for more than 60 days in any 120-day period if the Board elects to treat—

"(i) such institution as a level 5 depository institution under paragraph (3); and

"(ii) any such advance as an advance described in subparagraph (A)(i) of paragraph (3).

"(3) ADVANCES TO LEVEL 5 DEPOSITORY INSTITUTIONS.—

"(A) LIABILITY FOR INCREASED COSTS.—Notwithstanding any other provision of this section, if—

"(i) in the case of any level 5 depository institution (as defined in section 38 of the Federal Deposit Insurance Act)—

"(I) any advance under this section to such institution is outstanding without payment having been demanded as of the end of the 5-day period beginning on the date the institution becomes a level 5 depository institution; or

"(II) any new advance is made to such institution under this section after the end of such period; and

"(ii) after the end of such 5-day period, any deposit insurance fund in the Federal Deposit Insurance Corporation incurs costs in excess of the cost of liquidating such institution as of the end of such period,

the excess cost shall be an obligation of the Board to the affected deposit insurance fund, without regard to the terms of the advance or any collateral pledged to secure the advance.

"(B) LIMITATION ON EXCESS COST.—The liability of the Board under subparagraph (A) for the amount of any excess cost described in such subparagraph shall not exceed the amount of the loss the Board or any Federal Reserve bank would have realized on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A) as if such increased advances had not been secured.

"(C) SEMIANNUAL ASSESSMENTS ON FEDERAL RESERVE BANKS TO PAY OBLIGATION.—The amount of any liability of the Board to the Federal Deposit Insurance Corporation shall be paid by the Board from the proceeds of semiannual assessments which the Board may impose on the net earnings of the Federal Reserve banks.

"(4) NO OBLIGATION TO MAKE ADVANCES.—A Federal Reserve bank shall have no obligation to make, increase, renew, or extend any advance or discount under this Act to any depository institution.

"(5) PERMISSIBLE ADVANCES TO AVOID SYSTEMIC RISK.—

"(A) IN GENERAL.—Notwithstanding any other provision of this section, any Federal Reserve bank may make advances to an undercapitalized depository institution under this section if the Secretary of the Treasury determines in writing, upon the recommendation of the Board, that the advances are necessary to prevent a severe adverse effect on a regional or the national economy.

"(B) LIABILITY FOR INCREASED COST.—To the extent that any advance pursuant to a determination of the Secretary of the Treasury under subparagraph (A) to any depository institution causes any deposit insurance fund in the Federal Deposit Insurance Corporation to incur costs in excess of the cost of liquidating such institution as of the first day of such advance, such excess cost shall be an obligation of the United States.

"(C) NOTICE.—The Secretary of the Treasury shall provide a written notice of each determination under subparagraph (A) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate and each notice shall contain a description of the basis for the determination.

"(6) DEFINITIONS.—

"(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate federal banking agency' has the meaning given such term in section 3(q) of the Federal Deposit Insurance Act.

"(B) CRITICAL CAPITAL LEVEL.—The term 'critical capital level' has the same meaning given to such term in section 38 of the Federal Deposit Insurance Act.

"(C) DEPOSITORY INSTITUTION.—The term 'depository institution' has the meaning given to such term in section 19(b)(1)(A).

"(D) UNDERCAPITALIZED DEPOSITORY INSTITUTION.—The term 'undercapitalized depository institution' means any depository institution which—

"(i) is not in compliance with all currently applicable capital standards; or

"(ii) has a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution.

"(E) VIABLE DEPOSITORY INSTITUTION.—The term 'viable depository institution' means any depository institution which the appropriate Federal banking agency or the Board determines, giving due regard to the economic conditions and circumstances in the marketplace in which the institution operates, has capital in excess of the critical capital level and is not expected to fall below the critical capital level or be placed in conservatorship or receivership.".

(c) CONFORMING AMENDMENT.—Section 11 of the Federal Reserve Act is amended by adding the following new subsection:

"(n) To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this Act.".

(d) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

SEC. 143. NO ASSISTANCE TO TROUBLED INSTITUTION WITHOUT REMOVING MANAGEMENT AND REPUDIATING SHAREHOLDERS CLAIMS.

Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) is amended by inserting after paragraph (11) (as so redesignated by section 141(e) of this title) the following new paragraph:

"(12) ACTIONS REQUIRED IF ASSISTANCE IS PROVIDED.—

"(A) IN GENERAL.—Upon providing any assistance under this subsection to or on behalf of any insured depository institution and in addition to any other action or condition the Corporation may take or impose, the Corporation shall—

"(i) remove the board of directors of such institution; and

"(ii) treat the claim of any shareholder against the institution with respect to any share or other capital investment of such shareholder in the institution as if such institution had been closed.

"(B) PREEMPTION OF STATE LAW.—The requirements of this paragraph, and the duty of the Corporation to carry out such requirements, shall preempt any right of any shareholder in any insured depository institution under the law of any State.

"(C) WAIVER AUTHORITY.—

"(i) IN GENERAL.—The Corporation may waive the requirements of subparagraph (A)(i) for any person upon a written finding that such waiver would lessen the risk to the Corporation posed by the insured depository institution provided assistance.

"(ii) AUTHORITY LIMITED TO BOARD OF DIRECTORS.—The authority to waive the requirements of subparagraph (A)(i) may not be delegated by the Board of Directors.

"(iii) PUBLICATION OF WAIVER.—The Board of Directors shall publish a notice in the Federal Register of any waiver granted under this subparagraph and any amendment made by the Board to any such waiver.".

Subtitle F—Federal Insurance for State Chartered Depository Institutions

SEC. 151. SHORT TITLE.

This subtitle may be cited as the "Uniform Depositor Protection Act of 1991".

SEC. 152. FEDERAL DEPOSIT INSURANCE REQUIRED FOR STATE CHARTERED BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) IN GENERAL.—After the end of the 2-year period beginning on the date of the enactment of this Act, no State depository institution or State credit union may accept deposits unless such depository institution or credit union is an insured depository institution or an insured credit union, as the case may be.

(b) DEFINITIONS.—For purposes of this section—

(1) STATE DEPOSITORY INSTITUTION.—The term "State depository institution" has the meaning given to such term by section 3(c)(5) of the Federal Deposit Insurance Act.

(2) STATE CREDIT UNION.—The term "State credit union"—

(A) has the meaning given to such term by section 101(6) of the Federal Credit Union Act; and

(B) includes—

(i) any corporate credit union; and

(ii) any member of the Central Liquidity Facility (as such terms are defined in section 302 of the Federal Credit Union Act).

(3) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given to such term by section 3(c)(2) of the Federal Deposit Insurance Act.

(4) INSURED CREDIT UNION.—The term "insured credit union" has the meaning given to such term by section 101(7) of the Federal Credit Union Act.

TITLE II—REGULATORY IMPROVEMENT

Subtitle A—Regulation of Foreign Banks

SEC. 201. SHORT TITLE.

This subtitle may be cited as the "Foreign Bank Supervision Enhancement Act of 1991".

SEC. 202. REGULATION OF FOREIGN BANK OPERATIONS.

(a) ESTABLISHMENT AND TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by striking subsection (d) and inserting the following new subsections:

"(d) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

"(1) PRIOR APPROVAL REQUIRED.—No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without the prior approval of the Board.

"(2) STANDARDS FOR APPROVAL.—In acting on any application under paragraph (1), the Board may take into account—

"(A) whether the foreign bank engages directly in the business of banking outside the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country;

"(B) whether the appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch, agency or commercial lending company in the United States by the foreign bank;

"(C) the financial and managerial resources of the foreign bank, including the bank's experience and capacity to engage in international banking;

"(D) whether the foreign bank has provided the Board with adequate assurances that the bank will make available to the Board such information on the operations or activities of the foreign bank and any affiliate of the bank that the Board deems necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956, and other applicable Federal law; and

"(E) whether the foreign bank and the United States affiliates of the bank are in compliance with applicable United States law.

"(3) ESTABLISHMENT OF CONDITIONS.—Consistent with the standards for approval in paragraph (2), the Board may impose such conditions on its approval under this subsection as it deems necessary.

"(e) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

"(1) STANDARDS FOR TERMINATION.—The Board, after notice and opportunity for hearing and notice to any appropriate State bank supervisor, may order a foreign bank that operates a State branch or agency or commercial lending company subsidiary in the United States to terminate the activities of such branch, agency, or subsidiary if the Board finds that—

"(A) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

"(B) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this Act, the Bank Holding Company Act of 1956, or the Federal Deposit Insurance Act.

"(2) DISCRETION TO DENY HEARING.—The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

"(3) EFFECTIVE DATE OF TERMINATION ORDER.—An order issued under paragraph (1) shall take effect before the end of the 120-day period beginning on the date such order is issued unless the Board extends such period.

"(4) COMPLIANCE WITH STATE AND FEDERAL LAW.—Any foreign bank required to terminate activities conducted at offices or subsidiaries in the United States pursuant to this subsection shall comply with the requirements of applicable Federal and State law with respect to procedures for the closure or dissolution of such offices or subsidiaries.

"(5) RECOMMENDATION TO AGENCY FOR TERMINATION OF A FEDERAL BRANCH OR AGENCY.—The Board may transmit to the Comptroller of the Currency a recommendation that the license of any Federal branch or Federal agency of a foreign bank be terminated in accordance with section 4(i) if the Board has reasonable cause to believe that such foreign bank or any affiliate of such foreign bank has engaged in conduct for which the activities of any State branch or agency may be terminated under paragraph (1).

"(6) ENFORCEMENT OF ORDERS.—

"(A) IN GENERAL.—In the case of contumacy of any office or subsidiary of the foreign bank against which the Board or, in the case of an order issued under section 4(i), the Comptroller of the Currency has issued an order under paragraph (1) or a refusal by such office or subsidiary to comply with such order, the Board or the Comptroller of the Currency may invoke the aid of the district court of the United States within the jurisdiction of which the office or subsidiary is located.

"(B) COURT ORDER.—Any court referred to in subparagraph (A) may issue an order requiring compliance with an order issued under paragraph (1).

"(f) JUDICIAL REVIEW.—

"(1) JURISDICTION OF UNITED STATES COURTS OF APPEALS.—Any foreign bank—

"(A) whose application under subsection (d) or section 10(a) has been disapproved by the Board;

"(B) against which the Board has issued an order under subsection (e) or section 10(b); or

"(C) against which the Comptroller of the Currency has issued an order under section 4(i) of this Act,

may obtain a review of such order in the United States court of appeals for any circuit in which such foreign bank operates a branch, agency, or commercial lending company that has been required by such order to terminate its activities, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a petition for review in the court before the end of the 30-day period beginning on the date the order was issued.

"(2) SCOPE OF JUDICIAL REVIEW.—Section 706 of title 5, United States Code, (other than paragraph (2)(F) of such section) shall apply with respect to any review under paragraph (1).

"(g) CONSULTATION WITH STATE BANK SUPERVISOR.—The Board shall request and consider any views of the appropriate State bank supervisor with respect to any application or action under subsection (d) or (e).".

(b) STANDARDS FOR APPROVAL OF FEDERAL BRANCHES AND AGENCIES.—Section 4(a) of the International Banking Act of 1978 (12 U.S.C. 3102(a)) is amended—

(1) by striking "(a) Except as provided in section 5," and inserting "(a) ESTABLISHMENT AND OPERATION OF FEDERAL BRANCHES AND AGENCIES.—

"(1) INITIAL FEDERAL BRANCH OR AGENCY.—Except as provided in section 5,"; and

(2) by adding at the end the following new paragraph:

"(2) BOARD CONDITIONS REQUIRED TO BE INCLUDED.—In considering any application for approval under this subsection, the Comptroller of the Currency shall include any condition imposed by the Board under section 7(d)(3) as a condition for the approval of such application by the agency.".

(c) STANDARDS FOR APPROVAL OF ADDITIONAL FEDERAL BRANCHES AND AGENCIES.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by striking "(h) A foreign bank" and inserting "(h) ADDITIONAL BRANCHES OR AGENCIES.—

"(1) APPROVAL OF AGENCY REQUIRED.—A foreign bank"; and

(3) by adding at the end the following new paragraph:

"(2) NOTICE TO AND COMMENT BY BOARD.—The Comptroller of the Currency shall provide the Board with notice and an opportunity for comment on any application to establish an additional Federal branch or Federal agency under this subsection.".

(d) DISAPPROVAL FOR FAILURE TO AGREE TO PROVIDE NECESSARY INFORMATION.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by striking "(c) The Board shall" and inserting "(c) FACTORS FOR CONSIDERATION BY BOARD.—

"(1) COMPETITIVE FACTORS.—The Board shall";

(3) by striking "In every case" and inserting "(2) BANKING AND COMMUNITY FACTORS.—In every case";

(4) by striking "community to be served. Notwithstanding any other provision of law" and inserting "community to be served.

"(4) TREATMENT OF CERTAIN BANK STOCK LOANS.— Notwithstanding any other provision of law"; and

(5) by inserting after paragraph (2) (as so designated by paragraph (3) of this subsection) the following new paragraph:

"(3) SUPERVISORY FACTORS.—The Board shall disapprove any application under this section by any company if—

"(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this Act; or

"(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.".

(e) CONFORMING AMENDMENTS.—

(1) AFFILIATE DEFINED.—Section 1(b)(13) of the International Banking Act of 1978 (12 U.S.C. 3101(13)) is amended by inserting "'affiliate,'" after "the terms" the 1st place such term appears.

(2) DEFINITIONS.—Section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)) is amended—

(A) by striking "and" at the end of paragraph (13);

(B) by striking the period at the end of paragraph (14) and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

"(15) the term 'representative office' means any office of a foreign bank which is located in any State and is not a Federal branch, Federal agency, State branch, State agency, or subsidiary of a foreign bank;

"(16) the term 'office' means any branch, agency, or representative office; and

"(17) the term 'State bank supervisor' has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.".

SEC. 203. CONDUCT AND COORDINATION OF EXAMINATIONS.

(a) AUTHORITY OF BOARD TO CONDUCT AND COORDINATE EXAMINATIONS.—Section 7(c) of the International Banking Act of 1978 (12 U.S.C. 3105(b)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) EXAMINATION OF BRANCHES, AGENCIES, AND AFFILIATES.—

"(A) IN GENERAL.—The Board may examine each branch or agency of a foreign bank, each commercial lending company or bank controlled by 1 or more foreign banks or 1 or more foreign companies that control a foreign bank, and other office or affiliate of a foreign bank conducting business in any State.

"(B) COORDINATION OF EXAMINATIONS.—

"(i) IN GENERAL.—The Board shall coordinate examinations under this paragraph with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State bank supervisors to the extent such coordination is possible.

"(ii) SIMULTANEOUS EXAMINATIONS.—The Board may request simultaneous examinations of each office of a foreign bank and each affiliate of such bank operating in the United States.

"(C) ANNUAL ON-SITE EXAMINATION.—Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination."; and

(2) in paragraph (2), by inserting "REPORTING REQUIREMENTS.—" before "Each branch".

(b) COORDINATION OF EXAMINATIONS.—Section 4(b) of the International Banking Act of 1978 (12 U.S.C. 3102(b)) is amended by adding at the end thereof the following new sentence: "The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 7(c)(1) and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section.".

(c) PARTICIPATION IN COORDINATED EXAMINATIONS.—

(1) IN GENERAL.—Section 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) EXAMINATION OF INSURED STATE BRANCHES.—The Board of Directors shall—

"(A) coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 7(c)(1) of the International Banking Act of 1978; and

"(B) to the extent possible, participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under such section.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Paragraph (6) of section 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) (as so redesignated under paragraph (1) of this subsection) by striking "or (4)" and inserting "(4), or (5)".

SEC. 204. SUPERVISION OF THE REPRESENTATIVE OFFICES OF FOREIGN BANKS.

Section 10 of the International Banking Act of 1978 (12 U.S.C. 3107) is amended to read as follows:

"SEC. 10. REPRESENTATIVE OFFICES.

"(a) PRIOR APPROVAL TO ESTABLISH REPRESENTATIVE OFFICES.—

"(1) IN GENERAL.—No foreign bank may establish a representative office without the prior approval of the Board.

"(2) STANDARDS FOR APPROVAL.—In acting on any application under this paragraph to establish a representative office, the Board shall take into account the standards contained in section 7(d)(2) and may impose any additional requirements that the Board determines to be necessary to carry out the purposes of this Act.

"(b) TERMINATION OF REPRESENTATIVE OFFICES.—The Board may order the termination of the activities of a representative office of a foreign bank on the basis of the standards, procedures, and requirements applicable under paragraphs (1), (2), and (3) of section 7(d) with respect to branches and agencies.

"(c) EXAMINATIONS.—The Board may make examinations of each representative office of a foreign bank, the cost of which shall be assessed against and paid by such foreign bank.

"(d) COMPLIANCE WITH STATE LAW.—This Act does not authorize the establishment of a representative office in any State in contravention of State law.".

SEC. 205. REPORTING OF STOCK LOANS.

Section 7(j)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(9)) is amended to read as follows:

"(9) REPORTING OF STOCK LOANS.—

"(A) REPORT REQUIRED.—Any financial institution and any affiliate of any financial institution that has credit outstanding to any person or group of persons which is secured, directly or indirectly, by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for such insured depository institution if the extensions of credit by the financial institution and such institution's affiliates, in the aggregate, are secured, directly or indirectly, by 25 percent or more of any class of shares of the same insured depository institution.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) FINANCIAL INSTITUTION.—The term 'financial institution' means any insured depository institution and any foreign bank that is subject to the provisions of the Bank Holding Company Act of 1956 by virtue of section 8(a) of the International Banking Act of 1978.

"(ii) CREDIT OUTSTANDING.—The term 'credit outstanding' includes—

"(I) any loan or extension of credit,

"(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

"(III) any other type of transaction that extends credit or financing to the person or group of persons.

"(iii) GROUP OF PERSONS.—The term 'group of persons' includes any number of persons that the financial institution reasonably believes—

"(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

"(II) have made, or propose to make, a joint filing under section 13 of the Securities Exchange Act of 1934 regarding ownership of the shares of the same insured depository institution.

"(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the financial institution or any of its affiliates as principal shall be included in the calculation of the number of shares in which the financial institution or its affiliates has a security interest for purposes of subparagraph (A).

"(D) REPORT REQUIREMENTS.—

"(i) TIMING OF REPORT.—The report required under this paragraph shall be a consolidated report on behalf of the financial institution and all affiliates of the institution, and shall be filed in writing within 30 days of the date on which the financial institution or any such affiliate first believes that the security for any outstanding credit consists of 25 percent or more of any class of shares of an insured depository institution.

"(ii) CONTENT OF REPORT.—The report under this paragraph shall indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the financial institution and any affiliate of such institution.

"(iii) COPY TO OTHER AGENCIES.—A copy of any report under this paragraph shall be filed with the appropriate Federal banking agency for the financial institution (if other than the agency receiving the report under this paragraph).

"(iv) OTHER INFORMATION.—Each appropriate Federal banking agency may require any additional information necessary to carry out the agency's supervisory responsibilities.

"(E) EXCEPTIONS.—

"(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a financial institution and the affiliates of such institution shall not be required to report a transaction under this paragraph if the person or group of persons referred to in such subparagraph has disclosed the amount borrowed from such institution or affiliate and the security interest of the institution or affiliate to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956, section 10 of the Home Owners' Loan Act, or any other application filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

"(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a financial institution and any affiliate of such institution shall not be required to report a transaction involving—

"(I) a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more; or

"(II) stock issued by a newly chartered bank before the bank's opening.".

SEC. 206. COOPERATION WITH FOREIGN SUPERVISORS.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following new section:

"SEC. 15. COOPERATION WITH FOREIGN SUPERVISORS.

"(a) DISCLOSURE OF SUPERVISORY INFORMATION TO FOREIGN SUPERVISORS.—Notwithstanding any other provision of law, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if the Board, Comptroller, Corporation, or Director determines that such disclosure is appropriate and will not prejudice the interests of the United States.

"(b) REQUIREMENT OF CONFIDENTIALITY.—Before making any disclosure of any information to a foreign authority, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision shall obtain, to the extent necessary, the agreement of such foreign authority to maintain the confidentiality of such information to the extent possible under applicable law.".

SEC. 207. APPROVAL REQUIRED FOR ACQUISITION BY FOREIGN BANKS OF SHARES OF UNITED STATES BANKS.

Section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) is amended by striking "thereto" and all that follows through the period and inserting "to such provisions.".

SEC. 208. PENALTIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by inserting after section 15 (as added by section 206 of this subtitle) the following new section:

"SEC. 16. PENALTIES.

"(a) CIVIL MONEY PENALTY.—

"(1) IN GENERAL.—Any foreign bank, and any office or subsidiary of a foreign bank, that violates, and any individual who participates in a violation of, any provision of this Act, or any regulation prescribed or order issued under this Act, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

"(2) ASSESSMENT PROCEDURES.—Any penalty imposed under paragraph (1) may be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), (H), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section), and any such assessments shall be subject to the provisions of such section.

"(3) HEARING PROCEDURE.—Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this section.

"(4) DISBURSEMENT.—All penalties collected under authority of this section shall be deposited into the Treasury.

"(5) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes taking any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(6) REGULATIONS.—The Board and the Comptroller of the Currency shall each prescribe regulations establishing such procedures as may be necessary to carry out this section.

"(b) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a foreign bank, or any office or subsidiary of a foreign bank (including a separation caused by the termination of a location in the United States), shall not affect the jurisdiction or authority of the Board or the Comptroller of the Currency to issue any notice or to proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be an institution-affiliated party with respect to such foreign bank or such office or subsidiary of a foreign bank (whether such date occurs on, before, or after the date of the enactment of the Foreign Bank Supervision Enhancement Act of 1991).

"(c) PENALTY FOR FAILURE TO MAKE REPORTS.—

"(1) FIRST TIER.—Any foreign bank, or any office or subsidiary of a foreign bank, that—

"(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such error—

"(i) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board or the Comptroller of the Currency under this Act, within the period of time specified by the agency; or

"(ii) submits or publishes any false or misleading report or information; or

"(B) inadvertently transmits or publishes any report that is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The foreign bank, or the office or subsidiary of a foreign bank, shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

"(2) SECOND TIER.—Any foreign bank, or any office or subsidiary of a foreign bank, that—

"(A) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board or the Comptroller of the Currency pursuant to this Act, within the time period specified by such agency; or

"(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

"(3) THIRD TIER.—Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board or the Comptroller of the Currency may, in the Board's or Comptroller's discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such foreign bank, or such office or subsidiary of a foreign bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

"(4) ASSESSMENT OF PENALTIES.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subsection (a)(2) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

"(5) HEARING PROCEDURE.—Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.".

SEC. 209. POWERS OF AGENCIES RESPECTING APPLICATIONS, EXAMINATIONS, AND OTHER PROCEEDINGS.

Section 13(b) of the International Banking Act of 1978 (12 U.S.C. 3108(b)) is amended—

(1) by striking "(b) In addition to" and inserting "(b) ENFORCEMENT.—

"(1) IN GENERAL.—In addition to";

(2) by adding at the end the following new paragraphs:

"(2) AUTHORITY TO ADMINISTER OATHS; SUBPOENA POWER.—In the course of, or in connection with, an application, examination, investigation, or other proceeding under this Act, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, as the case may be, any member of the Board or of the Board of Directors of the Corporation, and any designated representative of the Board, Comptroller, or Corporation (including any person designated to conduct any hearing under this Act) may—

"(A) administer oaths and affirmations and take or cause to be taken depositions; and

"(B) issue, revoke, quash, or modify any subpoena, including any subpoena requiring the attendance and testimony of a witness or any subpoenas duces tecum.

"(3) ADMINISTRATIVE ASPECTS OF SUBPOENAS.—

"(A) ATTENDANCE AND PRODUCTION AT DESIGNATED SITE.—The attendance of any witness and the production of any document pursuant to a subpoena under paragraph (2) may be required at the place designated in the subpoena from any place in any State (as defined in section 3(a)(3) of the Federal Deposit Insurance Act) or other place subject to the jurisdiction of the United States.

"(B) SERVICE OF SUBPOENA.—Service of a subpoena issued under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation may by regulation or otherwise provide.

"(C) FEES AND TRAVEL EXPENSES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

"(4) CONTUMACY OR REFUSAL.—

"(A) IN GENERAL.—In the case of contumacy of any person issued a subpoena under this subsection or a refusal by such person to comply with such subpoena, the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation, or any other party to proceedings in connection with which subpoena was issued may invoke the aid of—

"(i) the United States District Court for the District of Columbia, or

"(ii) any district court of the United States within the jurisdiction of which the proceeding is being conducted or the witness resides or carries on business.

"(B) COURT ORDER.—Any court referred to in subparagraph (A) may issue an order requiring compliance with a subpoena issued under this subsection.

"(5) EXPENSES AND FEES.—Any court having jurisdiction of any proceeding instituted under this subsection may allow any party to such proceeding such reasonable expenses and attorneys' fees as the court deems just and proper.

"(6) CRIMINAL PENALTY.—Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records in accordance with any subpoena under this subsection shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both. Each day during which any such failure or refusal continues shall be treated as a separate offense.".

SEC. 210. CLARIFICATION OF MANAGERIAL STANDARDS IN BANK HOLDING COMPANY ACT OF 1956.

Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) (as amended by section 202(d) of this subtitle) is amended by adding at the end the following new paragraph:

"(5) MANAGERIAL RESOURCES.—Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.".

Subtitle B—Customer and Consumer Provisions

SEC. 221. PAPERWORK REDUCTION AND IMPROVEMENTS IN ADMINISTRATION OF COMMUNITY REINVESTMENT ACT OF 1977.

(a) REPORT TO CONGRESS.—

(1) IN GENERAL.—Before the end of the 120-day period beginning on the date of the enactment of this Act, each appropriate Federal banking agency shall submit to the Banking, Finance and Urban Affairs Committee of the House of Representatives and the Banking, Housing, and Urban Affairs Committee of the Senate a report containing the following:

(A) Identification of the documentation deemed by each agency to be necessary to properly carry out examinations under the Community Reinvestment Act of 1977.

(B) Recommendations for steps to reduce paperwork required of insured depository institutions in connection with examinations for compliance with the Community Reinvestment Act of 1977.

(C) Recommendations for improvements in the administration and enforcement of the Community Reinvestment Act of 1977.

(2) CONSIDERATIONS.—

(A) ASSET SIZE.—In preparing the recommendations for the report under paragraph (1), the appropriate Federal banking agency shall take into consideration the asset size of insured depository institutions and the administrative resources available to such institutions in developing recommendations for reduction of paperwork.

(B) CONSISTENCY OF RECOMMENDATION WITH PURPOSES OF THE ACT.—The recommendations for reduced paperwork contained in the report under paragraph (1) shall be consistent with the purposes of the Community Reinvestment Act of 1977 and the responsibility of the appropriate Federal banking agency to properly evaluate each insured depository institution performance under the Act.

(b) GAO STUDY AND RECOMMENDATIONS FOR IMPROVEMENTS AND COST SAVINGS.—

(1) REQUIRED.—The Comptroller General of the United States shall conduct a study of the examination processes used by the appropriate Federal banking agencies to evaluate the compliance with the Community Reinvestment Act of 1977.

(2) FACTORS TO BE CONSIDERED.—The study conducted under paragraph (1) shall include the following analyses:

(A) An analysis of the documentation required of insured depository institutions by each appropriate Federal banking agency in carrying out such examinations referred to in paragraph (1).

(B) An analysis of to what extent, if any, such documentation may vary according to the asset size of insured depository institutions.

(C) An analysis of the cost of such documentation based on a representative sample of various insured depository institutions by asset size.

(D) An analysis of the effect of such documentation on the costs to the agency in carrying out an examination under section 804 of the Community Reinvestment Act of 1977.

(E) An analysis of the number of—

(i) applications which have been filed by insured depository institutions which are subject to evaluation under provisions of the Community Reinvestment Act of 1977;

(ii) such applications which have been subject to formal protests;

(iii) such protests which have been granted public hearings by each of the banking agencies; and

(iv) such applications which have been denied on the grounds of unsatisfactory performance under the Community Reinvestment Act of 1977.

(F) An analysis of the time required to process applications subject to evaluation under the Community Reinvestment Act of 1977.

(G) An analysis of the methods utilized by each banking agency in processing protests filed under the Community Reinvestment Act of 1977.

(H) An analysis of the rating systems used by each appropriate Federal banking agency under the Community Reinvestment Act of 1977, together with a detailed description of any inconsistencies between the rating systems used by each such agency and the weight given the ratings in processing and evaluating protests filed under such Act.

(I) An analysis of the factors considered in evaluating the performance of credit card banks and other nontraditional institutions under the Community Reinvestment Act of 1977.

(3) REPORT.—Before the end of the 120-day period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report containing the findings and conclusions made by the Comptroller General in connection with the study required under paragraph (1).

(4) RECOMMENDATIONS.—The report submitted under paragraph (3) shall contain any recommendations for legislative or administrative action the Comptroller General may determine to be appropriate, including any legislative recommendations relating to—

(A) proposals to make administration and enforcement of the the Community Reinvestment Act of 1977 more effective and consistent with the purposes of the Act; and

(B) proposals to reduce costs associated with examinations under, and the enforcement of, such Act.

(c) DEFINITIONS.—For purposes of this section—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act.

(2) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given to such term in section 3(c)(2) of the Federal Deposit Insurance Act.

SEC. 222. ADDITIONAL FACTOR IN ASSESSING MAJORITY-OWNED INSTITUTION'S RECORD OF MEETING COMMUNITY CREDIT NEEDS.

Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended—

(1) by inserting before the first sentence the following: "(a) IN GENERAL.—"; and

(2) by adding at the end the following new subsection:

"(b) MAJORITY-OWNED INSTITUTIONS.—In assessing and taking into account, under subsection (a), the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency shall consider and give credit for capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions that help meet the credit needs of local communities in which such institutions and credit unions are chartered.".

SEC. 223. ENFORCEMENT OF EQUAL CREDIT OPPORTUNITY ACT.

(a) PATTERN OR PRACTICE.—Section 706(g) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(g)) is amended by adding at the end the following new sentence: "Each agency referred to in paragraphs (1), (2), and (3) of section 704(a) shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a). Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 701(a).".

(b) DAMAGES.—Section 706(h) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(h)) is amended by inserting "actual and punitive damages and" after "including".

(c) NOTICE TO HUD.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following new subsection:

"(k) NOTICE TO HUD OF VIOLATIONS.—Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a)—

"(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this title has occurred;

"(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act; and

"(3) does not refer the matter to the Attorney General pursuant to subsection (g),

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.".

SEC. 224. FAIR HOUSING REPORTING.

Effective 1 year after the date of the enactment of this Act, no Federal agency shall require any institution for which the agency is the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) to prepare, file, or maintain any form for the purpose of collection, analysis, or maintenance of appropriate data to further the purposes of, or to fulfill the requirements of, the Fair Housing Act, other than a form for data collection, analysis, or maintenance prescribed pursuant to the Home Mortgage Disclosure Act.

SEC. 225. REGULATORY BURDEN STUDY.

(a) IN GENERAL.—The Secretary of the Treasury and the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) shall each conduct a review of all laws primarily under their respective jurisdictions and all regulations prescribed by them (except with respect to the Internal Revenue Code of 1986, and all regulations, rules, and orders issued thereunder) with respect to such laws to determine whether such laws and regulations adversely affect the capital position and profitability of insured depository institutions.

(b) ADDITIONAL REVIEW REQUIRED.—The review required by subsection (a) shall include an evaluation to determine whether such laws and regulations impose duplicative paperwork and compliance requirements.

(c) REPORT REQUIRED.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, and the head of each appropriate Federal banking agency shall each submit a report to the Congress containing—

(1) a description of the laws and regulations that should be revised, simplified, repealed, or rescinded in order to enhance the capitalization and profitability of insured depository institutions without adversely affecting safety and soundness and consumer protection;

(2) to the extent practicable, an analysis of the costs and benefits of such laws and regulations, including those pertaining to corporate applications and filings and other reporting and recordkeeping requirements;

(3) an analysis of the cost impact and effect on safety and soundness of reducing the number of items to be reported on reports of condition of depository institutions with assets of less than $50,000,000; and

(4) an evaluation of the appropriateness of terminating recordkeeping and reporting requirements not directly related to safety and soundness.

SEC. 226. NOTICE OF SAFEGUARD EXCEPTION.

Section 604(f)(2) of the Expedited Funds Availability Act (12 U.S.C. 4003(f)(2)) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) After a depository institution has provided notice as required under subparagraphs (A), (B) and (C), no further notice shall be required until the earlier of 1 year after notice has been provided or such other time as the exception for which the notice was provided ceases to apply.".

SEC. 227. PROHIBITION ON DECEPTIVE PRACTICES RELATING TO ELECTRONIC FUND TRANSFERS FROM ACCOUNTS.

(a) IN GENERAL.—Section 907 of the Electronic Fund Transfer Act (15 U.S.C. 1693e) is amended by adding at the end the following new subsection:

"(c) PROHIBITION ON CERTAIN DECEPTIVE PRACTICES INVOLVING PREAUTHORIZED TRANSFERS FROM ACCOUNTS.—

"(1) IN GENERAL.—No preauthorized electronic fund transfer, or any other electronic fund transfer, from any consumer's account may be made on the basis of any endorsement, deposit, transfer, or other form of negotiation of any check by the consumer.

"(2) NO PROVISION OF ANY CHECK MAY CONSTITUTE AUTHORIZATION OF CONSUMER.—No provision contained on any check which is received by a receiving depository institution and is endorsed, deposited, transferred, or otherwise negotiated by any consumer may be treated as constituting the authorization of the consumer to make any preauthorized electronic fund transfer, or any other electronic fund transfer, from the consumer's account.

"(3) REGULATIONS.—The Board shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

"(4) CHECK DEFINED.—For purposes of this subsection, the term 'check' has the meaning given to such term in section 602(7) of the Expedited Funds Availability Act.

"(5) RECEIVING DEPOSITORY INSTITUTION.—For purposes of this subsection, the term 'receiving depository institution' has the meaning given to such term in section 602(20) of the Expedited Funds Availability Act.".

(b) SCOPE OF APPLICATION.—The amendment made by subsection (a) shall apply with respect to any electronic fund transfer on or after the date of the enactment of this Act without regard to the date of the endorsement, deposit, transfer, or other form of negotiation of the check which, but for the enactment of such amendment, would constitute the authorization of the consumer to make any such transfer.

SEC. 228. DEPOSITS AT NONPROPRIETARY AUTOMATED TELLER MACHINES.

(a) IN GENERAL.—Section 603(e) of the Expedited Funds Availability Act (12 U.S.C. 4002(e)) is amended by striking paragraphs (1)(C) and (2).

(b) CONFORMING AMENDMENTS.—The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.) is amended—

(1) in section 603(e) (12 U.S.C. 4002(e))—

(A) by striking the heading for paragraph (1) and inserting the following:

"(1) NONPROPRIETARY ATM.—"; and

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(2) in section 604(a)(2) (12 U.S.C. 4003(a)(2)) by striking "and (2)".

SEC. 229. NOTICE OF BRANCH CLOSURE.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after section 38 (as added by section 131 of this Act) the following new section:

"SEC. 39. NOTICE OF BRANCH CLOSURE.

"(a) NOTICE TO APPROPRIATE FEDERAL BANKING AGENCY.—

"(1) IN GENERAL.—An insured depository institution which proposes to close any branch shall submit a notice of the proposed closing to the appropriate Federal banking agency not later than the first day of the 90-day period ending on the date proposed for the closing.

"(2) CONTENTS OF NOTICE.—A notice under paragraph (1) shall include—

"(A) a detailed statement of the reasons for the decision to close the branch; and

"(B) statistical or other information in support of such reasons.

"(b) NOTICE TO CUSTOMERS.—

"(1) IN GENERAL.—An insured depository institution which proposes to close a branch shall provide notice of the proposed closing to its customers.

"(2) CONTENTS OF NOTICE.—Notice under paragraph (1) shall consist of—

"(A) posting of a notice in a conspicuous manner on the premises of the branch proposed to be closed during not less than the 30-day period ending on the date proposed for that closing; and

"(B) inclusion of a notice in—

"(i) at least one of any regular account statements mailed to customers of the branch proposed to be closed, or

"(ii) in a separate mailing,

by not later than the beginning of the 90-day period ending on the date proposed for that closing.

"(c) ADOPTION OF POLICIES.—

"(1) IN GENERAL.—Each insured depository institution shall adopt policies for closings of branches of the institution.

"(2) CONTENTS OF POLICIES.—Policies adopted under this subsection by an insured depository institution may include, among other matters, the following:

"(A) IDENTIFICATION OF CANDIDATES FOR CLOSING.—A requirement that in identifying branches as candidates for closing, consideration shall be given to profitability and growth potential as indicated by, at a minimum—

"(i) deposit level and mix;

"(ii) loan level and mix;

"(iii) trends in deposits and loans;

"(iv) operating income;

"(v) operating expense and size of staff; and

"(vi) transaction volume and mix;

except that in the case of a closure of an automated teller machine, only clauses (v) and (vi) need be considered.

"(B) MARKET EVALUATION.—A requirement that in evaluating whether to close a branch, the institution shall assess the market demographics of, and the availability of competitive financial services to, the immediate market area of the branch, including assessment of—

"(i) economic trends and forecasts for the immediate market area;

"(ii) the overall coverage of the general market area of the branch, including by other branches of the institution;

"(iii) other financial institutions that serve that general market area, including locations of branches of such other institutions; and

"(iv) except in the case of a closing of an automatic teller machine, general deposit and loan trends—

"(I) at other branches of the depository institution, and

"(II) if available, at locations of competitor depository institutions that serve the general market area of the branch.

"(C) ASSESSMENT OF IMPACT.—A requirement that the following measures shall be taken to assess the impact of any decision to close a branch:

"(i) Determination of whether alternative actions could be taken to improve the profitability of the branch to make it viable on a long-term basis.

"(ii) Forecast the resulting—

"(I) account runoff, and

"(II) operating costs savings, including those resulting from reductions in staff and occupancy costs.

"(iii) Consider the impacts, if any, on surrounding neighborhoods and the actions that can be taken to minimize those impacts, including, at a minimum, by evaluation and financial consideration of other service alternatives for the market area of the branch, including—

"(I) other nearby branches, and

"(II) any appropriate changes in facilities where customers' accounts would be moved.

"(D) REVIEW AND APPROVAL.—Requiring the following reviews and approvals for all proposed branch closings:

"(i) Initiation of any such proposal by the appropriate executive officer responsible for the affected community.

"(ii) Review and approval of any recommendation of such an action by—

"(I) a regional executive officer,

"(II) the appropriate branch group manager,

"(III) the branch officer responsible for compliance with requirements of the Community Reinvestment Act of 1977,

"(IV) the officer of the institution responsible for compliance with requirements of the Community Reinvestment Act of 1977,

"(V) appropriate executive management of the institution, and

"(VI) the Board of Directors of the institution.

"(E) NOTIFICATION TO CUSTOMERS.—Compliance with the following notification procedures for all branch closings:

"(i) Making every effort before the closing to assure that those affected by the closing, including neighborhood and political groups, are given ample and appropriate notice of the proposed closing, including by posting notice of the closing in the branch lobby and at each drive-in and automatic teller machine of the branch at least 30 days before the effective date of the action.

"(ii) Except in the case of a closing of an automatic teller machine, provision of a written notice to all account holders and safe deposit box customers at the branch at least 30 days before the effective date of the action, which includes—

"(I) the effective date of the action,

"(II) the branch to which accounts will be transferred,

"(III) the location of other nearby facilities of the institution, and

"(IV) a telephone number which customers may use to obtain further information about the action.

"(F) DOCUMENTATION.—The following documentation requirements:

"(i) Maintenance of all written analyses and decision approvals related to the closing (including all customer complaints about the closing that are submitted in writing) by the officer of the institution responsible for compliance with requirements of the Community Reinvestment Act of 1977, for a period of at least 2 years after the effective date of the closing.

"(ii) Indication in all written analyses related to the closing of whether the neighborhood surrounding the branch is a low- to moderate-income area.

"(iii) Maintenance by the branch officer responsible for compliance with requirements of the Community Reinvestment Act of 1977 of all customer complaints about the closing that are submitted in writing.

"(3) BRANCH DEFINED.—For purposes of this subsection, the term 'branch' includes an automatic teller machine.".

Subtitle C—Bank Enterprise Act

SEC. 231. SHORT TITLE.

This subtitle may be cited as the "Bank Enterprise Act of 1991".

SEC. 232. REDUCED ASSESSMENT RATE FOR DEPOSITS ATTRIBUTABLE TO LIFELINE ACCOUNTS.

(a) QUALIFICATION OF LIFELINE ACCOUNTS BY FEDERAL RESERVE BOARD.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall establish minimum requirements for accounts providing basic transaction services for consumers at insured depository institutions in order for such accounts to qualify as lifeline accounts for purposes of this section and section 7(b)(10) of the Federal Deposit Insurance Act.

(2) FACTORS TO BE CONSIDERED.—In determining the minimum requirements under paragraph (1) for lifeline accounts at insured depository institutions, the Board and the Corporation shall consider the following factors:

(A) Whether the account is available to provide basic transaction services for individuals who maintain a balance of less than $1,000 or such other amount which the Board may determine to be appropriate.

(B) Whether any service charges or fees to which the account is subject, if any, for routine transactions do not exceed a minimal amount.

(C) Whether any minimum balance or minimum opening requirement to which the account is subject, if any, is not more than a minimal amount.

(D) Whether checks, negotiable orders of withdrawal, or similar instruments for making payments or other transfers to third parties may be drawn on the account.

(E) Whether the depositor is permitted to make more than a minimal number of withdrawals from the account each month by any means described in subparagraph (D) or any other means.

(F) Whether a monthly statement itemizing all transactions for the monthly reporting period is made available to the depositor with respect to such account or a passbook is provided in which all transactions with respect to such account are recorded.

(G) Whether depositors are permitted access to tellers at the institution for conducting transactions with respect to such account.

(H) Whether other account relationships with the institution are required in order to open any such account.

(I) Whether individuals are required to meet any prerequisite which discriminates against low-income individuals in order to open such account.

(J) Such other factors as the Board may determine to be appropriate.

(3) DEFINITIONS.—For purposes of this subsection—

(A) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(B) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given to such term in section 3(c)(2) of the Federal Deposit Insurance Act.

(C) LIFELINE ACCOUNT.—The term "lifeline account" means any transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) which meets the minimum requirements established by the Board under this subsection.

(b) REDUCED ASSESSMENT RATES FOR LIFELINE ACCOUNT DEPOSITS.—

(1) REPORTING LIFELINE ACCOUNT DEPOSITS.—Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) (as amended by sections 122 and 141 of this Act) is amended by redesignating paragraphs (6), (7), (8), and (9) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) LIFELINE ACCOUNT DEPOSITS.—In the reports of condition required to be reported under this subsection, the deposits in lifeline accounts (as defined in section 232(a)(3)(C) of the Bank Enterprise Act of 1991) shall be reported separately.".

(2) ASSESSMENT RATES APPLICABLE TO LIFELINE DEPOSITS.—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by redesignating paragraph (10) (as so redesignated by section 103(b) of this Act) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

"(10) ASSESSMENT RATE FOR LIFELINE ACCOUNT DEPOSITS.—Notwithstanding any other provision of this subsection, that portion of the average assessment base of any insured depository institution which is attributable to deposits in lifeline accounts (as reported in the institution's reports of condition pursuant to subsection (a)(6)) shall be subject to assessment at the assessment rate of 1/2 the maximum rate.".

(3) ASSESSMENT PROCEDURE.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended—

(A) by striking subclause (II) of clause (i) and inserting the following new subclause:

"(II) such Bank Insurance Fund member's average assessment base for the immediately preceding semiannual period (minus any amount taken into account under clause (iii) with respect to lifeline account deposits); and"; and

(B) by striking subclause (II) of clause (ii) and inserting the following new subclause:

"(II) such Savings Association Insurance Fund member's average assessment base for the immediately preceding semiannual period (minus any amount taken into account under clause (iii) with respect to lifeline account deposits); and"; and

(C) by adding at the end the following new clause:

"(iii) the semiannual assessment due from any Bank Insurance Fund member or Savings Association Insurance Fund member with respect to lifeline account deposits for any semiannual assessment period shall be the product of—

"(I) ½ the assessment rate applicable with respect to such deposits pursuant to paragraph (10) during that semiannual assessment period; and

"(II) the portion of such member's average assessment base for the immediately preceding semiannual period which is attributable to deposits in lifeline accounts (as reported in the institution's reports of condition pursuant to subsection (a)(6)).".

SEC. 233. ASSESSMENT CREDITS FOR QUALIFYING ACTIVITIES RELATING TO DISTRESSED COMMUNITIES.

(a) DETERMINATION OF CREDITS FOR INCREASES IN COMMUNITY ENTERPRISE ACTIVITIES.—

(1) IN GENERAL.—The Community Enterprise Assessment Credit Board established under subsection (d) shall issue guidelines for insured depository institutions eligible under this subsection for any community enterprise assessment credit with respect to any semiannual period. Such guidelines shall—

(A) designate the eligibility requirements for any institution meeting applicable capital standards to receive an assessment credit under section 7(d)(4) of the Federal Deposit Insurance Act; and

(B) determine the community enterprise assessment credit available to any eligible institution under paragraph (3).

(2) QUALIFYING ACTIVITIES.—An insured depository institution shall be eligible for any community enterprise assessment credit for any semiannual period for—

(A) any increase during such period in the amount of the assets of the institution which consist of loans and other financial assistance provided for low- and moderate-income persons in distressed communities, or enterprises involved with such neighborhoods, which the Board determines are qualified to be taken into account for purposes of this subsection; and

(B) any increase during such period in the amount of the deposits accepted from persons domiciled in the distressed community, at any office of the institution (including any branch) located in any qualified distressed community, and any increase in loans and other extensions of credit made within that community, during the semiannual period, except that in no case shall the credit for increased deposits at any institution or branch exceed the credit for increased loan activity by the bank or branch in the distressed community.

(3) AMOUNT OF ASSESSMENT CREDIT.—The amount of any community enterprise assessment credit available under section 7(d)(4) for any insured depository institution for any semiannual period shall be the amount which is equal to 5 percent, in the case of an institution which does not meet the community development organization requirements under section 235, and 15 percent, in the case of an institution which meets such requirements, (or any percentage designated under paragraph (5)) of the sum of—

(A) the amounts of assets described in paragraph (2)(A); and

(B) the amounts of deposits, loans, and other extensions of credit described in paragraph (2)(B).

(4) DETERMINATION OF QUALIFIED LOANS AND OTHER FINANCIAL ASSISTANCE.—Except as provided in paragraph (6), the types of loans and other financial assistance which the Board may determine to be qualified to be taken into account under paragraph (2)(A) for purposes of the community enterprise assessment credit, may include the following:

(A) Loans insured or guaranteed by the Secretary of Housing and Urban Development, the Secretary of the Department of Veterans Affairs, the Administrator of the Small Business Administration, and the Secretary of Agriculture.

(B) Loans or financing provided in connection with activities assisted by the Administrator of the Small Business Administration or any small business investment company and investments in small business investment companies.

(C) Loans or financing provided in connection with any neighborhood housing service program assisted under the Neighborhood Reinvestment Corporation Act.

(D) Loans or financing provided in connection with any activities assisted under the community development block grant program under title I of the Housing and Community Development Act of 1974.

(E) Loans or financing provided in connection with activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act.

(F) Loans or financing provided in connection with a homeownership program assisted under title III of the United States Housing Act of 1937 or subtitle B or C of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(G) Financial assistance provided through community development corporations.

(H) Federal and State programs providing interest rate assistance for homeowners.

(I) Extensions of credit to nonprofit developers or purchasers of low-income housing and small business developments.

(J) In the case of members of any Federal home loan bank, participation in the community investment fund program established by the Federal home loan banks.

(K) Conventional mortgages targeted to low- or moderate-income persons.

(5) ADJUSTMENT OF PERCENTAGE.—The Board may increase or decrease the percentage referred to in paragraph (3) for determining the amount of any community enterprise assessment credit pursuant to such paragraph, except that the percentage established for insured depository institutions which meet the community development organization requirements under section 235 shall not be less than 3 times the amount of the percentage applicable for insured depository institutions which do not meet such requirements.

(6) CERTAIN INVESTMENTS NOT ELIGIBLE TO BE TAKEN INTO ACCOUNT.—Investments by any insured depository institution in loans and securities that are not the result of originations by the institution shall not be taken into account for purposes of determining the amount of any credit pursuant to this subsection.

(b) QUALIFIED DISTRESSED COMMUNITY DEFINED.—

(1) IN GENERAL.—For purposes of this section, the term "qualified distressed community" means any neighborhood or community which—

(A) meets the minimum area requirements under paragraph (3) and the eligibility requirements of paragraph (4); and

(B) is designated as a distressed community by any insured depository institution in accordance with paragraph (2) and such designation is not disapproved under such paragraph.

(2) DESIGNATION REQUIREMENTS.—

(A) NOTICE OF DESIGNATION.—

(i) NOTICE TO AGENCY.—Upon designating an area as a qualified distressed community, an insured depository institution shall notify the appropriate Federal banking agency of the designation.

(ii) PUBLIC NOTICE.—Upon the effective date of any designation of an area as a qualified distressed community, an insured depository institution shall publish a notice of such designation in major newspapers and other community publications which serve such area.

(B) AGENCY DUTIES RELATING TO DESIGNATIONS.—

(i) PROVIDING INFORMATION.—At the request of any insured depository institution, the appropriate Federal banking agency shall provide to the institution appropriate information to assist the institution to identify and designate a qualified distressed community.

(ii) PERIOD FOR DISAPPROVAL.—Any notice received by the appropriate Federal banking agency from any insured depository institution under subparagraph (A)(i) shall take effect at the end of the 90-day period beginning on the date such notice is received unless written notice of the approval or disapproval of the application by the agency is provided to the institution before the end of such period.

(3) MINIMUM AREA REQUIREMENTS.—For purposes of this subsection, an area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of 1 unit of general local government;

(B) the boundary of the area is contiguous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000, if any portion of such area is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000, in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(4) ELIGIBILITY REQUIREMENTS.—For purposes of this subsection, an area meets the requirements of this paragraph if at least 2 of the following criteria are met:

(A) INCOME.—At least 70 percent of the families and unrelated individuals residing in the area have incomes of less than 80 percent of the median income of the area.

(B) POVERTY.—At least 20 percent of the residents residing in the area have incomes which are less than the national poverty level (as determined pursuant to criteria established by the Director of the Office of Management and Budget).

(C) UNEMPLOYMENT.—The unemployment rate for the area is one and one-half times greater than the national average (as determined by the Bureau of Labor Statistic's most recent figures).

(c) ASSESSMENT CREDIT PROVIDED.—

(1) IN GENERAL.—Section 7(d) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)) amended—

(A) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively; and

(B) by inserting after paragraph (3) the following new paragraphs:

"(4) COMMUNITY ENTERPRISE ASSESSMENT CREDITS.—Notwithstanding paragraphs (2)(A) and (3)(A) and in addition to any assessment credit authorized under paragraph (2)(B) or (3)(B), the Corporation shall allow an assessment credit for any semiannual assessment period to any Bank Insurance Fund member or Savings Association Insurance Fund member satisfying the requirements of the Community Enterprise Assessment Credit Board under section 233(a)(1) of the Bank Enterprise Act of 1991 in the amount determined by such Board through regulation for such period pursuant to such section.

"(5) MAXIMUM AMOUNT OF CREDIT.—The total amount of assessment credits allowed under this subsection (including community enterprise assessment credits pursuant to paragraph (4)) for any insured depository institution for any semiannual period shall not exceed the amount which is equal to 20 percent, in the case of an institution which does not meet the community development organization requirements under section 235 of the Bank Enterprise Act of 1991, and 50 percent, in the case of an institution which meets such requirements, of the assessment imposed on such institution for the semiannual period.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 7(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)) is amended by inserting "(other than credits allowed pursuant to paragraph (4))" after "amount to be credited".

(B) Subparagraph (B) of section 7(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)) is amended by inserting "(taking into account any assessment credit allowed pursuant to paragraph (4))" after "should be reduced".

(d) COMMUNITY ENTERPRISE ASSESSMENT CREDIT BOARD.—

(1) ESTABLISHMENT.—There is hereby established the "Community Enterprise Assessment Credit Board".

(2) NUMBER AND APPOINTMENT.—The Board shall be composed of 5 members as follows:

(A) The Secretary of the Treasury or a designee of the Secretary.

(B) The Secretary of Housing and Urban Development or a designee of the Secretary.

(C) The Chairperson of the Federal Deposit Insurance Corporation or a designee of the Chairperson.

(D) 2 individuals appointed by the President from among individuals who represent community organizations.

(3) TERMS.—

(A) APPOINTED MEMBERS.—Each appointed member shall be appointed for a term of 5 years.

(B) INTERIM APPOINTMENT.—Any member appointed to fill a vacancy occurring before the expiration of the term to which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(C) CONTINUATION OF SERVICE.—Each appointed member may continue to serve after the expiration of the period to which such member was appointed until a successor has been appointed.

(4) CHAIRPERSON.—The Secretary of the Treasury shall serve as the Chairperson of the Board.

(5) NO PAY.—No members of the Commission may receive any pay for service on the Board.

(6) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(7) MEETINGS.—The Board shall meet at the call of the Chairperson or a majority of the Board's members.

(e) DUTIES OF THE BOARD.—

(1) PROCEDURE FOR DETERMINING COMMUNITY ENTERPRISE ASSESSMENT CREDITS.—The Board shall establish procedures for accepting and considering applications by insured depository institutions under subsection (a)(1) for community enterprise assessment credits and making determinations with respect to such applications.

(2) NOTICE TO FDIC.—The Board shall notify the applicant and the Federal Deposit Insurance Corporation of any determination of the Board with respect to any application referred to in paragraph (1) in sufficient time for the Corporation to include the amount of such credit in the computation made for purposes of the notification required under paragraph section 7(d)(1)(B).

(f) DEFINITIONS.—For purposes of this section—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act.

(2) BOARD.—The term "Board" means the Community Enterprise Assessment Credit Board established under the amendment made by subsection (d).

(3) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given to such term in section 3(c)(2) of the Federal Deposit Insurance Act.

SEC. 234. DISTRESSED COMMUNITIES LACKING INSURANCE SERVICES.

(a) IN GENERAL.—With the approval of the appropriate Federal banking agency, any insured depository institution which is located in (or maintains a branch located in) a qualified distressed community may sell insurance to the extent—

(1) the insurance sales activities are confined to that community; and

(2) the insurance is sold only to residents of the community or individuals employed within such community.

(b) CERTAIN ACTIVITIES PROHIBITED IN CONNECTION WITH INSURANCE ACTIVITIES.—No insured depository institution which sells insurance pursuant to subsection (a) may—

(1) assume or guarantee the payment of any premium on any insurance policy issued through the agency of the institution by the insurance company for which the institution is acting as agent; or

(2) guarantee the truth of any statement made by an insurance customer in filing such customer's application for insurance.

(c) AGENCY DETERMINATION OF UNAVAILABILITY OF INSURANCE SERVICES.—

(1) IN GENERAL.—The appropriate Federal banking agency may approve an application by an insured depository institution to sell insurance under subsection (a) in any qualified distressed community only if such agency—

(A) provides notice to the appropriate insurance regulatory authority of the application;

(B) considers any recommendation submitted by such authority with respect to such application; and

(C) concludes, after proceedings in accordance with section 8(h) of the Federal Deposit Insurance Act, that the availability of insurance agents providing competitively priced products in the community is inadequate.

(2) RECOMMENDATIONS OF APPROPRIATE INSURANCE REGULATORY AUTHORITY.—If the conclusion of the appropriate Federal banking agency with respect to any application under subparagraph (A) is inconsistent with any recommendation of the appropriate insurance regulatory authority under such subparagraph, the agency shall include a written explanation of the agency's reasons for the inconsistency in the record of such proceeding and transmit a copy of such explanation to the authority.

(d) APPLICABILITY OF CONSUMER PROTECTION PROVISIONS.—Section 4(n) of the Financial Services Holding Company Act of 1991 and section 106(b) of the Bank Holding Company Act Amendments of 1970 shall apply to the insurance sales activities of any insured depository institution under this subsection in the same manner and to the same extent such sections apply to insurance activities of an insured depository institution subsidiary of a financial services holding company.

(e) COORDINATION WITH STATE LAW.—

(1) IN GENERAL.—This section shall not alter or affect the laws of any State relating to insurance activities of insured depository institutions within such State except to the extent that any such law is inconsistent with any provision of this section.

(2) EFFECT OF INCONSISTENCY.—This section shall supersede any provision of the law of any State which is inconsistent with any provision of this section.

(f) DEFINITIONS.—For purposes of this section—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act.

(2) QUALIFIED DISTRESSED COMMUNITY.—The term "qualified distressed community" has the meaning given to such term in section 233(b).

SEC. 235. COMMUNITY DEVELOPMENT ORGANIZATIONS.

(a) COMMUNITY DEVELOPMENT ORGANIZATIONS DESCRIBED.—For purposes of this subtitle, any insured depository institution shall be treated as meeting the community development organization requirements of this section if—

(1) the institution—

(A) is a community development bank, or controls any community development bank, which meets the requirements of subsection (b);

(B) controls any community development corporation, or maintains any community development unit within the institution, which meets the requirements of subsection (c);

(C) invests in any community development credit union which meets the requirements established by the National Credit Union Administration Board for community development credit unions; or

(D) invests in a community development organization jointly controlled by two or more institutions;

(2) except in the case of an institution which is a community development bank, the amount of the capital invested, in the form of debt or equity, by the institution in the community development organization referred to in paragraph (1) (or, in the case of any community development unit, the amount which the institution irrevocably makes available to such unit for the purposes described in paragraph (3)) is not less than the greater of—

(A) ½ of 1 percent of the capital, as defined by generally accepted accounting principles, of the institution; or

(B) the sum of the amounts invested in such community development organization; and

(3) the community development organization provides loans for residential mortgages, home improvement, and community development and other financial services, other than financing for the purchase of automobiles or extension of credit under any open-end credit plan (as defined in section 103(i) of the Truth in Lending Act), to low- and moderate-income persons, nonprofit organizations, and small businesses located in qualified distressed communities in a manner consistent with the intent of this subtitle.

(b) COMMUNITY DEVELOPMENT BANK REQUIREMENTS.—A community development bank meets the requirements of this subsection if—

(1) the community development bank has a 15-member advisory board designated as the "Community Investment Board" and consisting entirely of community leaders who—

(A) shall be appointed initially by the board of directors of the community development bank and thereafter by the Community Investment Board from nominations received from the community; and

(B) are appointed for a single term of 2 years, except that, of the initial members appointed to the Community Investment Board, ⅓ shall be appointed for a term of 8 months, ⅓ shall be appointed for a term of 16 months, and ⅓ shall be appointed for a term of 24 months, as designated by the board of directors of the community development bank at the time of the appointment;

(2) ⅓ of the members of the community development bank's board of directors are appointed from among individuals nominated by the Community Investment Board; and

(3) the bylaws of the community development bank require that the board of directors of the bank meet with the Community Investment Board at least once every 3 months.

(c) COMMUNITY DEVELOPMENT CORPORATION REQUIREMENTS.—Any community development corporation, or community development unit within any insured depository institution meets the requirements of this subsection if the corporation or unit provides the same or greater, as determined by the appropriate Federal banking agency, community participation in the activities of such corporation or unit as would be provided by a Community Investment Board under subsection (b) if such corporation or unit were a community development bank.

(d) ADEQUATE DISPERSAL REQUIREMENT.—The appropriate Federal banking agency may approve the establishment of a community development organization under this subtitle only upon finding that the distressed community is not adequately served by an existing community development organization.

(e) DEFINITIONS.—For purposes of this section—

(1) COMMUNITY DEVELOPMENT BANK.—The term "community development bank" means any depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act).

(2) COMMUNITY DEVELOPMENT ORGANIZATION.—The term "community development organization" means any community development bank, community development corporation, community development unit within any insured depository institution, or community development credit union.

(3) LOW- AND MODERATE-INCOME PERSONS.—The term "low- and moderate-income persons" has the meaning given such term in section 102(a)(20) of the Housing and Community Development Act of 1974.

(4) NONPROFIT ORGANIZATION; SMALL BUSINESS.—The terms "nonprofit organization" and "small business" have the meanings given to such terms by regulations which the appropriate Federal banking agency shall prescribe for purposes of this section.

(5) QUALIFIED DISTRESSED COMMUNITY.—The term "qualified distressed community" has the meaning given to such term in section 233(b).

TITLE III—NATIONWIDE BANKING AND BRANCHING

SEC. 301. NATIONWIDE BANKING.

(a) INTERSTATE ACQUISITIONS.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended to read as follows:

"(d) INTERSTATE ACQUISITIONS AND BRANCHING.—

"(1) IN GENERAL.—The Board may approve an application under this section by a bank holding company or foreign bank to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional insured depository institution or bank holding company located in any State.

"(2) STATE LAW.—Any acquisition described in paragraph (1) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of—

"(A) the location or size of the acquiring company, foreign bank, or subsidiary of such company or foreign bank;

"(B) the number of insured depository institution subsidiaries of such company or foreign bank; or

"(C) any other factor that, directly or indirectly, has the effect of prohibiting or limiting the acquisition of shares or control of an insured depository institution or bank holding company located in that State by an out-of-State bank holding company or foreign bank if such factor is not applied with similar effect in the case of acquisitions of insured depository institutions or bank holding companies located in such State by bank holding companies located in the State.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect at the end of the 3-year period beginning on the date of the enactment of this Act.

SEC. 302. INTERSTATE BRANCHING BY NATIONAL BANKS.

(a) LOCATION OF BRANCHES.—Section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) in paragraph (2), by striking the 1st period and inserting "; and"; and

(3) by inserting after paragraph (2) the following new paragraph: "(3) at an initial location within any State in which a bank holding company having the same home State as the national bank could acquire a bank pursuant to section 3 of the Bank Holding Company Act of 1956 or at an initial location within any State in which a State bank chartered in the home State of the national bank could establish a branch, and, after the establishment of a branch at an initial location in the State, to the extent permitted in paragraphs (1) and (2) for national banks located in the State.".

(b) APPLICATION OF LAW OF HOST STATE.—Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended by redesignating subsections (f), (g), and (h) as subsections (g), (h), and (i), respectively, and by inserting after subsection (e) the following new subsection:

"(f) Application of Law of Host State.—

"(1) FILING REQUIREMENTS FOR ESTABLISHMENT OF BRANCH.—

"(A) IN GENERAL.—Any State, other than the home State of a national bank, may require any national bank which is establishing a branch within such host State to comply with filing requirements that are not discriminatory in nature and have a similar effect as those that are otherwise imposed on a corporation in another State that is not engaged in the business of banking and seeks to engage in business in the host State.

"(B) FAILURE TO COMPLY.—The host State may prohibit any national bank the principal place of business of which is located in another State from establishing or operating a branch within the host State if the bank or any branch of such bank fails to comply with the filing requirements.

"(2) COMPLIANCE WITH STATE LAW AFTER ESTABLISHMENT.—

"(A) IN GENERAL.—Upon the establishment of a branch of a national bank in a host State, the branch shall be subject to the law of the host State in the same manner and to the same extent as a national bank the principal place of business of which is located in such State.

"(B) RULE OF CONSTRUCTION FOR SUBPARAGRAPH (A).—Subparagraph (A) shall not be construed as affecting the authority of the host State to tax any branch referred to in such subparagraph (A).".

(c) DEFINITIONS.—

(1) BRANCH.—Subsection (g) of section 5155 of the Revised Statutes (as so redesignated by subsection (b) of this section) is amended to read as follows:

"(g) BRANCH DEFINED.—For purposes of this section, the term 'branch' means any office, agency, or other place of business located in any State at which deposits are received, checks paid, or money lent.".

(2) OTHER DEFINITIONS.—Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended by adding after subsection (i) (as so redesignated by subsection (b) of this section) the following new subsections:

"(j) HOME STATE DEFINED.—For purposes of this section, the term 'home State' means—

"(1) in the case of any national bank, the State in which the principal place of business of such bank is located; and

"(2) in the case of a bank holding company, the State in which the total deposits of all bank subsidiaries of such company is the largest.

"(k) STATE DEFINED.—For purposes of this section, the term 'State' has the meaning given to such term in section 3(a)(3) of the Federal Deposit Insurance Act.

"(l) HOST STATE DEFINED.—For purposes of this section, the term 'host State' is the State in which a bank establishes or maintains a branch other than the home State of such bank.".

SEC. 303. INTERSTATE CONSOLIDATION OR MERGER OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.

(a) CONSOLIDATION OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.—Subsection (a) of the 1st section of the Act entitled "An Act To provide for the consolidation of national banking associations." and approved November 7, 1918 (12 U.S.C. 215) is amended by inserting "or in any other State" after "located in the same State".

(b) MERGER OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.—Section 2(a) of the Act entitled "An Act To provide for the consolidation of national banking associations." and approved November 7, 1918 (12 U.S.C. 215a(a)) is amended by inserting "or in any other State" after "located within the same State".

(c) DEFINITIONS.—Section 3(4) of the Act entitled "An Act To provide for the consolidation of national banking associations." and approved November 7, 1918 (12 U.S.C. 215b(4)) is amended by striking ", located within the same State,".

(d) RETENTION OF BRANCHES FOLLOWING MERGER OR CONSOLIDATION WITH NATIONAL BANKS.—Section 5155(b)(2) of the Revised Statutes (12 U.S.C. 36(b)(2)) is amended to read as follows:

"(2) RESULTING NATIONAL BANKS.—

"(A) RETENTION OF EXISTING BRANCHES.—A national bank resulting from the consolidation of a national bank (under whose charter such consolidation is effected) with any other bank may retain and operate as a branch any office which, immediately before such consolidation, was in operation as an office or branch of any bank participating in the consolidation if the Comptroller of the Currency approves the continued operation of such office or branch as a branch after the consolidation.

"(B) CONDITIONS FOR APPROVAL.—The Comptroller of the Currency may not grant approval under subparagraph (A) for the retention of any office or branch of any bank participating in the consolidation referred to in such subparagraph if, in a situation identical to that of the resulting national bank, any State bank which were to result from the consolidation of a State bank with any other bank would be prohibited by the law of the host State from retaining and operating as a branch, after such consolidation, any office or branch which is identically situated and was operated as an office or branch of the State bank immediately before the consolidation.".

SEC. 304. INTERSTATE BRANCHING BY STATE BANKS.

(a) IN GENERAL.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by inserting after paragraph (2) the following new paragraphs:

"(3) STATE LAW.—

"(A) LIMIT ON AUTHORITY OF STATE TO EXCLUDE.—Except as otherwise provided in this subsection, no State may prohibit any insured bank chartered by another State, and engaged in a banking business in another State, from establishing and maintaining 1 or more branches within the State.

"(B) AUTHORITY OF HOST STATE TO MAINTAIN FILING REQUIREMENTS.—

"(i) IN GENERAL.—A host State may require any insured bank chartered by another State which is establishing a branch within the host State to comply with filing requirements that are not discriminatory in nature and have a similar effect as requirements that are otherwise imposed on a corporation in another State that is not engaged in the business of banking and seeks to engage in business in the host State.

"(ii) FAILURE TO COMPLY.—The host State may prohibit any State bank the principal office of which is located in another State from establishing or operating a branch within the host State if the bank or any branch of such bank fails to comply with the filing requirements.

"(C) COMPLIANCE WITH STATE LAW AFTER ESTABLISHMENT.—

"(i) IN GENERAL.—Upon the establishment of a branch of a State bank in a host State, the branch shall be subject to the law of the host State in the same manner and to the same extent as a State bank chartered by, or organized under the laws of, such State.

"(ii) RULE OF CONSTRUCTION FOR CLAUSE (i).—Clause (i) shall not be construed as affecting the authority of the host State to tax any branch referred to in such clause.

"(4) LOCATION OF BRANCHES.—

"(A) IN GENERAL.—Any insured State bank may, if authorized by the law of the State in which the bank is chartered, establish and maintain—

"(i) a branch at an initial location within any other State in which a bank holding company, whose principal place of operations is the same State in which the insured bank is chartered, could acquire an additional bank pursuant to section 3 of the Bank Holding Company Act of 1956; and

"(ii) additional branches at locations within any State in which the bank has established an initial branch pursuant to clause (i), to the extent permitted for insured State banks located in such State under the law of such State (and for purposes of applying such law, the initial branch of the out-of-State insured bank in such State shall be treated as the head office of such bank in such State).

"(B) PRINCIPAL PLACE OF OPERATIONS DEFINED.—For purposes of this paragraph, the term 'principal place of operations' means the State in which the total deposits of all bank subsidiaries of such company are largest.

"(5) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection shall limit in any way the right of a State to determine the authority of State banks chartered in that State to establish and maintain branches, or to supervise, regulate, and examine State banks chartered by that State.

"(6) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches pursuant to paragraph (4) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(7) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) HOST STATE EXAMINATIONS OF BRANCHES IN STATE.—A host State bank supervisor may examine branches established in the host State by banks chartered by another State for the purpose of determining compliance with the applicable law of the host State and to ensure that the activities of the branch are conducted in a manner not inconsistent with sound banking principles and do not constitute a serious risk to the safe and sound operation of the branch.

"(B) HOST STATE ENFORCEMENT OF STATE LAW TO IN-STATE BRANCHES OF OUT-OF-STATE BANKS.—If any appropriate State bank supervisor of any host State determines that an in-State branch of an out-of-State bank violated the applicable law of the host State or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such State bank supervisor may undertake such enforcement actions or proceedings as would be permitted under host State law if the branch were deemed to be a bank chartered by that host State.

"(C) COOPERATIVE AGREEMENTS.—The State bank authorities from 1 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State-chartered banks including cooperative agreements relating to the coordination of examinations and joint participation in examinations, to the extent the participation by a host State bank supervisor in the examination of a branch of an out-of-State bank is limited to the purposes described in subparagraph (A).".

(b) HOST STATE DEFINED.—Section 3(a) of the Federal Deposit Insurance Act (12 U.S.C. 1813a)) is amended by adding at the end the following new paragraph:

"(8) HOST STATE DEFINED.—For purposes of this subsection a 'host State' is the State in which a depository institution establishes or maintains a branch other than the State in which the depository institution is chartered and engaging in banking business.".

SEC. 305. INTERSTATE BRANCHING AND BANKING BY FOREIGN BANKS.

(a) ESTABLISHMENT AND OPERATION OF FEDERAL BRANCHES AND AGENCIES.—Section 4(a) of the International Banking Act of 1978 (12 U.S.C. 3102(a)) (as amended by section 202(b) of this Act) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by striking paragraph (1) and inserting the following new paragraphs:

"(1) INITIAL FEDERAL BRANCH OR FEDERAL AGENCY.—

"(A) IN GENERAL.—A foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller of the Currency, establish and operate a Federal branch or Federal agency at an initial location in any State in which it is not operating a branch or agency pursuant to State law.

"(B) TRANSITION RULE.—Notwithstanding subparagraph (A), during the 3-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Comptroller of the Currency may only authorize the establishment under such subparagraph of a branch or agency by a foreign bank, as the case may be, if such establishment is not prohibited by the law of the relevant State.

"(2) ADDITIONAL BRANCHES AND AGENCIES.—A foreign bank which engages directly in a banking business outside the United States may establish and operate additional Federal branches or Federal agencies in any State in accordance with the provisions of subsection (h).".

(b) ESTABLISHMENT OF FEDERAL BRANCHES OR AGENCIES IN ADDITIONAL STATE.—Section 4(h)(1) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) (as amended by section 202(c) of this title) is amended—

(1) by striking "in the State in which such branch or agency is located";

(2) by inserting "or the initial branch of a national bank in a host State" after "the principal office of such national bank"; and

(3) by adding at the end the following sentence: "For purposes of section 5155(c) of the Revised Statutes, the home State of a foreign bank shall be the bank's home State as determined under section 5.".

(c) ESTABLISHMENT AND OPERATION OF OFFICES OF FOREIGN BANKS.—Section 5(a) of the International Banking Act of 1978 (12 U.S.C. 3103(a)) is amended to read as follows:

"(a) LIMITATIONS.—

"(1) PARITY OF TREATMENT WITH BANK HOLDING COMPANIES.—No foreign bank may establish or operate a State branch in any State outside such bank's home State unless a bank holding company, the principal place of operations, of which (under section 3 of the Bank Holding Company Act of 1956) is in the same State as the home State of the foreign bank, would be permitted to acquire a bank in such other State.

"(2) FEDERAL AND STATE APPROVAL GENERALLY.—No foreign bank may directly or indirectly establish or operate a State branch, State agency, or commercial lending company subsidiary outside of the foreign bank's home State unless the establishment and operation of such branch, agency, or company is approved by the Board pursuant to section 7 and the State bank supervisor of the State in which the new branch, agency, or company is to be located.

"(3) STATE LAW.—

"(A) LIMIT ON AUTHORITY OF STATE TO EXCLUDE.—Notwithstanding paragraph (2), after the end of the 3-year period beginning on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, no State shall prohibit a foreign bank having a State branch or State agency licensed by another State and engaged in a banking business in that other State, from establishing and maintaining 1 or more branches or agencies of that foreign bank within the State after approval from the State bank supervisor of such other State and the Board.

"(B) AUTHORITY OF HOST STATE TO MAINTAIN CERTAIN REQUIREMENTS.—The establishment, operation, and supervision of any branches or agencies referred to in subparagraph (A) shall be conducted in accordance with and be subject to the provisions applicable to an interstate branch of a State bank under section 18(d) of the Federal Deposit Insurance Act as if the branch in such other State were an insured State bank located in such other State.

"(4) FOREIGN BANKS TREATED AS HOLDING COMPANIES FOR PURPOSES OF CERTAIN ACQUISITIONS.—

"(A) IN GENERAL.—A foreign bank may not, directly or indirectly, acquire more than 5 percent of the voting shares of, or all or substantially all of the assets of, a bank holding company or bank located outside of the foreign bank's home State without the approval of the Board under section 3 of the Bank Holding Company Act of 1956.

"(B) APPLICABILITY OF BANK HOLDING COMPANY ACT OF 1956.—For purposes of subparagraph (A), section 3 of the Bank Holding Company Act of 1956 shall apply to a foreign bank or company referred to in such subparagraph as if the foreign bank or company were a bank holding company located in the foreign bank's home State.

"(5) INTERSTATE BRANCHES OR AGENCIES OF FOREIGN BANKS.—Notwithstanding paragraph (1) and section 4(h), a foreign bank may, with the approval of the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside of the foreign bank's home State if—

"(A) the establishment and operation of a branch or agency is expressly permitted by the State in which it is to be established; and

"(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act.".

SEC. 306. INTERSTATE ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.

Section 10(e)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(3)) is amended to read as follows:

"(3) INTERSTATE ACQUISITIONS.—

"(A) IN GENERAL.—The Director may approve an application under this subsection for a savings and loan holding company or a foreign bank to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all the assets of any additional savings association located in any State.

"(B) STATE LAWS.—Any acquisition described in subparagraph (A) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of—

"(i) the location or size of the acquiring company, foreign bank, or any subsidiary of such company or foreign bank;

"(ii) the number of insured depository institution subsidiaries of the company or foreign bank; or

"(iii) any other factor that, directly or indirectly, has the effect of prohibiting or limiting the acquisition of shares or control of a savings association or savings and loan holding company located in that State by an out-of-State savings and loan holding company or foreign bank if such factor is not applied without similar effect in the case of acquisitions of savings associations by savings and loan holding companies located in that State.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) STATE.—The term 'State' has the meaning given to such term in section 3(a)(3) of the Federal Deposit Insurance Act.

"(ii) FOREIGN BANK.—The term 'foreign bank' has meaning given to such term in section 1(b)(7) of the International Banking Act.".

SEC. 307. STATE-BY-STATE CRA EVALUATIONS OF DEPOSITORY INSTITUTIONS WITH INTERSTATE BRANCHES.

Section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906) is amended by adding the following new subsection:

"(d) INSTITUTIONS WITH INTERSTATE BRANCHES.—

"(1) STATE-BY-STATE EVALUATION.—In the case of a regulated financial institution which maintains 1 or more domestic branches located outside the State in which the institution's principal place of business is located (hereafter in this subsection referred to as the 'home State'), the appropriate Federal financial supervisory agency shall prepare—

"(A) a written evaluation of the entire institution's record of performance under this Act, as required by subsections (a), (b), and (c) of this section; and

"(B) for each State in which the institution maintains 1 or more domestic branches (including the institution's home State), a separate written evaluation of the institution's record of performance within such State under this Act, as required by subparagraphs (A) and (B) of subsection (b)(1) of this section.

"(2) CONTENT OF STATE LEVEL EVALUATION.—A written evaluation prepared pursuant to paragraph (1)(B) of this subsection shall report the information required by such paragraph separately for each metropolitan area (as defined by the appropriate Federal financial supervisory agency) in which the regulated financial institution maintains 1 or more domestic branch offices and separately for the nonmetropolitan portion of the State if the institution maintains 1 or more domestic branch offices in such nonmetropolitan area.".

SEC. 308. PROHIBITION AGAINST DEPOSIT PRODUCTION OFFICES.

(a) REGULATIONS.—Before the end of the 120-day period beginning on the date of the enactment of this Act, the appropriate Federal banking agency shall prescribe regulations which prohibit any person from using any authority to engage in interstate branching pursuant to this title or any amendment made by this title to any other provision of law primarily for the purpose of deposit production.

(b) GUIDELINES FOR MEETING CREDIT NEEDS.—Regulations issued under subsection (a) shall include guidelines to ensure that each interstate branch meets the credit needs of the community and market area in which the branch operates.

(c) LIMITATION ON OUT-OF-STATE LOANS.—

(1) LIMITATION.—Regulations issued under subsection (a) shall require that if the percentage of outstanding loans made by an interstate branch to borrowers located in the host State of, or market area served by, the branch is less than half the average of such percentage for all Federal depository institutions and State depository institutions having their principal place of operations in the host State or that market area—

(A) the appropriate Federal banking agency for the branch shall review the loan portfolio of the branch and determine whether the branch is reasonably meeting the credit needs of the community and market area in which the branch operates; and

(B) if the agency determines that the branch is not reasonably meeting those needs—

(i) the branch shall be closed, and

(ii) the person which established the branch may not open a new branch in that State unless the person provides reasonable assurances to the satisfaction of the appropriate Federal banking agency that the new branch will reasonably meet the credit needs of the community and market area in which the new branch will operate.

(2) CONSIDERATIONS.—In making a determination under paragraph (1)(A) regarding an interstate branch, the appropriate Federal banking agency shall consider—

(A) whether the branch was acquired as part of the purchase of a failed or failing depository institution;

(B) whether the branch has a higher concentration of commercial and credit card lending; and

(C) the ratings received by the branch in evaluations under the Community Reinvestment Act of 1977.

(d) APPLICATION.—This section shall not apply to any interstate branch acquired before June 25, 1991, as part of any consolidation or merger of depository institutions.

(e) DEFINITIONS.—For the purposes of this section—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the meaning that term has in section 3 of the Federal Deposit Insurance Act.

(2) BRANCH.—The term "branch" means any office, agency, or other place of business located in any State at which deposits are received, checks paid, or money lent.

(3) FEDERAL DEPOSITORY INSTITUTIONS AND STATE DEPOSITORY INSTITUTION.—Each of the terms "Federal depository institution" and "State depository institution" has the meaning given that term in section 3 of the Federal Deposit Insurance Act.

(4) HOST STATE DEFINED.—The term "host State" means the State in which a bank establishes or maintains a branch, other than—

(A) the State in which the bank is chartered and engaging in banking business, or

(B) in the case of—

(i) a national bank, the State in which the principal place of business of such association is located, and

(ii) a bank holding company, the State in which the total deposits of all bank subsidiaries of such company is the largest,

as applicable under the amendments made by this title.

(5) INTERSTATE BRANCH.—The term "interstate branch" means a branch established pursuant to the authority referred to in subsection (a).

(6) PRINCIPAL PLACE OF OPERATIONS.—The term "principal place of operations" means the State in which the total deposits of all bank subsidiaries of a person are largest.

(7) STATE DEFINED.—The term "State" has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.

SEC. 309. RESTATEMENT OF EXISTING LAW.

No provision of this title and no amendment made by this title to any other provision of law shall be construed as affecting in any way the right of any State, or any political subdivision of any State, to impose or maintain a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax in accordance with section 3124 of title 31, United States Code.

SEC. 310. VISITORIAL POWERS.

Section 5240 of the Revised Statutes (12 U.S.C. 481 et seq.) is amended—

(1) by inserting before the 6th undesignated paragraph (12 U.S.C. 484) the following new paragraph heading:

"(6) VISITORIAL POWERS.—";

(2) by moving the left margins of subparagraphs (A) and (B) of paragraph (6) (as so designated by the amendment made by paragraph (1) of this section) 4 ems to the right; and

(3) by inserting after subparagraph (B) of such paragraph the following new subparagraph:

"(C) STATE VISITATIONS AUTHORIZED FOR TAX COMPLIANCE PURPOSES.—Notwithstanding subparagraph (A), any lawfully authorized auditor, examiner, or other representative acting on behalf of any State agency charged with the administration and collection of taxes imposed by a State or any political subdivision of a State may review at reasonable times those books and records of any Federal depository institution (as defined in section 3(c)(4) of the Federal Deposit Insurance Act) or any Federal credit union (as defined in section 101(1) of the Federal Credit Union Act) which are reasonably necessary to ensure compliance with the tax laws of the State or political subdivision.".

TITLE IV—FINANCIAL SERVICES MODERNIZATION

Subtitle A—Amendments to Federal Banking Laws

CHAPTER 1—FINANCIAL SERVICES HOLDING COMPANIES

SEC. 401. FINANCIAL SERVICES HOLDING COMPANIES.

(a) DEFINITIONS AMENDED.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) by striking subsection (a)(1) and inserting the following:

"(a) TERMS RELATING TO CONTROL OF INSURED DEPOSITORY INSTITUTIONS.—

"(1) FINANCIAL SERVICES HOLDING COMPANY.—The term 'financial services holding company' means any company which controls any bank.";

(2) in the second sentence of subsection (a)(5)(A), by inserting a period after "thereto" and striking all that follows through the end of the sentence;

(3) by amending subsection (f) to read as follows:

"(f) BANKING AGENCIES.—

"(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act.

"(2) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System."; and

(4) by inserting after subsection (m) the following new subsections:

"(n) SECURITIES AFFILIATE.—The term 'securities affiliate' means any company which—

"(1) is controlled by a financial services holding company; and

"(2) is engaged in the United States in activities which would not be permitted by section 4(c) for any subsidiary of a financial services holding company but for section 4(c)(15).

"(o) FOREIGN BANK.—The term 'foreign bank' has the meaning given to such term in section 1(b)(7) of the International Banking Act of 1978.

"(p) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given to such term in section 3(c)(2) of the Federal Deposit Insurance Act.

"(q) LEVEL 1 DEPOSITORY INSTITUTION AND LEVEL 2 DEPOSITORY INSTITUTION.—The terms 'level 1 depository institution' and 'level 2 depository institution' have the meaning given to such terms in section 38 of the Federal Deposit Insurance Act.

"(r) LEVEL 1 FINANCIAL SERVICES HOLDING COMPANY.—The term 'level 1 financial services holding company' means any financial services holding company not less than 80 percent of the banking assets of which are held by level 1 depository institution subsidiaries and any other banking assets of which are held by level 2 depository institution subsidiaries.

"(s) FUNCTIONAL REGULATOR.—The term 'functional regulator' means any Federal agency or State supervisory authority that has supervisory authority over activities of any company which is a financial services holding company or any subsidiary of any such company (other than an insured depository institution).

"(t) NEW FINANCIAL ACTIVITY.—The term 'new financial activity' means any activity described in section 4(c)(8) or 4(c)(15) other than any activity that the Board has determined (by regulation or order that is in effect on December 31, 1992) to be so closely related to banking as to be a proper incident thereto.

"(u) QUALIFIED FINANCIAL ACTIVITY.—The term 'qualified financial activity' means any activity described in section 4(c)(8) or 4(c)(15).

"(v) FINANCIAL AFFILIATE.—The term 'financial affiliate' means any subsidiary of a financial services holding company (other than an insured depository institution) that is engaged in the United States in qualified financial activities.".

(b) CONFORMING AMENDMENTS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) in subsection (c)(2)(J), by striking "to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance" and inserting "to cause such corporation to cease to be a Savings Association Insurance Fund member and become a Bank Insurance Fund member (as defined in section 7(l) of the Federal Deposit Insurance Act)";

(2) in subsection (h)(5), by striking "bank" the 1st place such term appears and inserting "insured depository institution"; and

(3) by striking "bank holding company" each place such term appears (other than in subsection (b)) and inserting "financial services holding company".

SEC. 402. ACQUISITION OF BANKS.

(a) AMENDMENTS TO APPLICATION PROCESS.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following new paragraph: "(3) for any financial services holding company to acquire ownership or control of any voting shares of any insured depository institution or financial services holding company, if, after such acquisition, such company will own or control more than 5 percent of the voting shares of such institution or company;";

(B) by inserting before "Notwithstanding the foregoing" the following new sentence: "No insured depository institution (other than a foreign bank operating an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act) may become a financial services holding company.";

(C) by adding at the end the following new sentence: "Notwithstanding paragraph (1), any company that was a bank holding company on December 31, 1992, under this Act (as in effect on such date) shall be a financial services holding company as of January 1, 1993, without further approval by the Board."; and

(D)(i) by striking "or" at the end of subparagraph (A);

(ii) in subparagraph (B), by striking the 1st period and inserting "; or"; and

(iii) by inserting after subparagraph (B) the following new subparagraph:

"(C) the acquisition, by a company, of control of a bank in a reorganization in which a person or group of persons exchange their shares of the bank for shares of a newly formed financial services holding company and receive after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if—

"(i) immediately following the acquisition, the bank is a level 1 or level 2 depository institution;

"(ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization; and

"(iii) the company provides 30 days prior notice to the Board.";

(2) in subsection (b)—

(A) by striking the 1st sentence and inserting the following new sentence: "Upon receiving an application under this section from any company to acquire any interest in an insured depository institution, the Board shall give notice to any other appropriate Federal banking agency with respect to such institution and, in the case of a State depository institution, to the appropriate State bank supervisor in order to obtain the views and recommendations of such other agency and such supervisor."; and

(B) in the 3d sentence, by striking "disapproves" and inserting "recommends disapproval of";

(3) in paragraph (1) of subsection (c) (as so redesignated by section 202(d) of this Act)—

(A) by striking ", or" at the end of subparagraph (A) (as so redesignated) and inserting a semicolon;

(B) by striking the period at the end of subparagraph (B) (as so redesignated) and inserting "; or"; and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) any acquisition, merger, or consolidation if the Board determines that the insured depository institution to be acquired or any other insured depository institution controlled by the company involved in the proposal is engaging in any unsafe and unsound practice or, upon consummation of the transaction, would be in an unsafe and unsound condition."; and

(4) by redesignating subsection (d) (as amended by section 301(a) of this Act) and subsections (e) through (g) as subsections (e) through (h), respectively, and inserting after subsection (c) the following new subsections:

"(d) EXPEDITED PROCEDURES FOR ACQUISITION OF ADDITIONAL INSURED DEPOSITORY INSTITUTIONS BY LEVEL 1 FINANCIAL SERVICES HOLDING COMPANIES.—

"(1) PROCEDURES.—

"(A) NOTICE TO OTHER AGENCIES.—Upon receiving a complete application under this section from a level 1 financial services holding company to acquire an insured depository institution, the Board shall notify any other appropriate Federal banking agency and any appropriate State bank supervisor in the manner provided in subsection (b).

"(B) PERIOD FOR REVIEW.—Notwithstanding subsection (b)(1), any views and recommendations of any other appropriate Federal banking agency and any appropriate State bank supervisor which received notice from the Board pursuant to subparagraph (A) with respect to any application described in such subparagraph shall be submitted by such agency or supervisor to the Board before the end of the 21-day period beginning on the date such notice was received.

"(C) LIMITED PERIOD FOR DISAPPROVAL.—If the Board fails to approve or disapprove any application described in subparagraph (A) before the end of the 45-day period beginning on the date a complete application is submitted to the Board, the application shall be deemed to have been approved.

"(D) ADJUSTMENT OF PERIOD.—If, in connection with any application described in subparagraph (A), the Board—

"(i) determines that an emergency exists which requires expeditious action;

"(ii) determines that immediate action must be taken to prevent the probable failure of an insured depository institution; or "(iii) is advised by the Federal Deposit Insurance Corporation or the appropriate State bank supervisor that an insured depository institution is in danger of default (as defined in section 3(x)(2) of the Federal Deposit Insurance Act),

the Board may waive or reduce the length of the 45-day notice period referred to in subparagraph (C) with respect to such application.

"(2) EXTENSION OF TIME FOR NOTICE AND HEARING.—

"(A) IN GENERAL.—The 45-day period referred to in paragraph (1)(C) may be extended if any other appropriate Federal banking agency or any appropriate State bank supervisor recommends in writing that the Board disapprove an application described in paragraph (1)(A).

"(B) REVIEW PERIOD AND PROCEDURES.—If any other appropriate Federal banking agency or any appropriate State bank supervisor recommends in writing that the Board disapprove an application described in paragraph (1)(A), the Board shall follow the review period and procedures for notice and hearing contained in subsection (b)(1).".

(b) CONFORMING AMENDMENTS.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) (as amended by subsection (a)), is amended—

(1) by striking "bank holding company" each place such term appears (other than the last sentence of subsection (a) (as added by this section) or where such term appears in the term "Bank Holding Company Act Amendments of 1970") and inserting "financial services holding company";

(2) in subsection (a)(2), by striking "causes a bank" and inserting instead "causes an insured depository institution"; and

(3) in subsection (a)(4)—

(A) by striking "other than a bank" and inserting "other than an insured depository institution"; and

(B) by striking "assets of a bank" and inserting instead "assets of an insured depository institution";

(4) in provision (a)(A), by striking "acquired by a bank" and inserting "acquired by an insured depository institution"; and

(5) in provision (a)(B), by striking "in a bank" and inserting "in an insured depository institution".

SEC. 403. INTERESTS IN NONBANKING ORGANIZATIONS.

(a) INTERESTS IN NONBANKING ORGANIZATIONS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(1) in subsection (a), by striking the last 2 sentences;

(2) in subsection (a)(2)—

(A) by striking "or in the case of a company which has been continuously" and all that follows through "December 31, 1980," and inserting "or in the case of a company that becomes a financial services holding company as a result of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, after December 31, 1992";

(B) by striking "unsound banking practices; and in the case of any such company" and all that follows through "this sentence." and inserting "unsound banking practices."; and

(C) by striking the last sentence;

(3) in subsection (a)(2)(A)—

(A) by striking "of banking or"; and

(B) by striking "subsidiaries, and" and inserting "subsidiaries and, in the case of a foreign bank, the business of banking, if such business is otherwise permitted through a branch or agency (as defined in section 1(b) of the International Banking Act of 1978); and"; and

(4) in subsection (a)(2)(B), by striking "those permitted under" and all that follows through "under such paragraph" and inserting the following: "those permitted under subsection (c)(8) or (c)(15) in accordance with subsection (i) or (k), subject to all the conditions specified in this section or in any regulation prescribed or order issued by the Board under this section";

(5) subject to subsection (c) of this section, by striking paragraph (8) of subsection (c) and inserting the following new paragraph:

"(8) shares of any company the activities of which the Board, after due notice and opportunity for comment, has determined (by order or regulation) to be of a financial nature (in accordance with subsection (i));";

(6) by striking "or" at the end of subsection (c)(13);

(7) by striking the period at the end of subsection (c)(14) and inserting "; or";

(8) by inserting after paragraph (14) of subsection (c) the following new paragraph:

"(15) shares of any company engaged in—

"(A) underwriting, distributing, or dealing in securities;

"(B) organizing, sponsoring, controlling, or promoting any registered investment company pursuant to the Investment Company Act of 1940;

"(C) securities brokerage, private placement, or investment advisory activities; or

"(D) other activities that require such company to register with the Securities and Exchange Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser.";

(9) by striking the last 2 sentences of subsection (c); and

(10) by striking subsection (i) and inserting the following new subsections:

"(i) ACTIVITIES OF A FINANCIAL NATURE.—

"(1) ACTIVITIES APPROVED BEFORE JANUARY 1, 1993.—Any activity that the Board has determined (by regulation or order that is in effect on December 31, 1992) to be so closely related to banking as to be a proper incident thereto shall be deemed to be an activity of a financial nature for purposes of subsection (c)(8).

"(2) CONTINUATION OF PRIOR ACTIVITIES WITHOUT ADDITIONAL APPROVAL.—In the case of any bank holding company which becomes a financial services holding company on January 1, 1993, as a result of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, no approval under subsection (c)(8) shall be required, by reason of the enactment of such Act, in order for—

"(A) such holding company or any company any shares of which are held by the holding company to continue to engage, after December 31, 1992, in any activity described in paragraph (1) which was commenced by the holding company or such company before such date pursuant to an approval in effect on such date; or

"(B) the holding company to continue to retain, after December 31, 1992, any shares of any company engaged in any activity described in paragraph (1) if the holding company lawfully acquired the shares, or the company commenced the activity, before such date pursuant to an approval that is in effect on such date.

"(3) SECURITIES ACTIVITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (2), the following activities shall not be activities of a financial nature for purposes of subsection (c)(8):

"(i) Underwriting, dealing in, or acting as principal in the placement of, securities that a national bank may not underwrite or deal in under section 5136 of the Revised Statutes.

"(ii) Securities activities which are described in subsection (c)(15) and are not described in paragraph (1).

"(B) TRANSITION RULE.—Notwithstanding subparagraph (A), any financial services holding company that receives the approval of the Board to underwrite and deal in securities described in subparagraph (A) may continue to engage in such activities pursuant to subsection (c)(8) for a period not to exceed 3 years beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, subject to any condition or limitation imposed by the Board.

"(4) REAL ESTATE ACTIVITIES.—

"(A) IN GENERAL.—Real estate investment, management, or development and the purchase and sale of real estate as principal or broker shall not be activities of a financial nature for purposes of subsection (c)(8).

"(B) CONTINUATION OF PRIOR ACTIVITIES.—Notwithstanding subparagraph (A), any activity described in such subparagraph that the Board has determined, before May 3, 1991, by a regulation or order that is in effect on December 31, 1992, to be so closely related to banking as to be a proper incident thereto may continue to be treated by the Board as an activity of a financial nature for purposes of subsection (c)(8).

"(5) LIMITATION ON INSURANCE ACTIVITIES WITHIN THE HOLDING COMPANY.—Providing insurance as a principal, agent, or broker shall not be deemed to be an activity of a financial nature, and no financial services holding company may permit any thrift institution or insured institution (as defined in subsections (i) and (j) of section 2, respectively), subsidiary of such company (other than a bank), or any subsidiary of any such institution, to provide insurance as a principal, agent, or broker, except—

"(A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a financial services holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor;

"(B) in the case of a finance company which is a subsidiary of a financial services holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extension of credit and, during the period beginning on October 15, 1982, and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made;

"(C) any insurance agency activity in a place that—

"(i) has a population not exceeding 5,000 (as shown by the last preceding decennial census); or "(ii) the financial services holding company, after notice and opportunity for a hearing, demonstrates it has inadequate insurance agency facilities;

"(D) any insurance agency activity which was engaged in by the financial services holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including—

"(i) sales of insurance at new locations of the same financial services holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the financial services holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the financial services holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the financial services holding company or any of its subsidiaries on or before May 1, 1982; and

"(ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition);

"(E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell—

"(i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the financial services holding company or any of its subsidiaries; and

"(ii) group insurance that protects the employees of the financial services holding company or any of its subsidiaries;

"(F) any insurance agency activity engaged in by a financial services holding company, or any of its subsidiaries, which financial services holding company has total assets of $50,000,000 or less, except that such a financial services holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or

"(G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a financial services holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971.

"(6) INSURANCE ACTIVITIES OF BANK SUBSIDIARIES OF HOLDING COMPANIES.—

"(A) IN GENERAL.—No financial services holding company may permit any bank subsidiary of such company, or any subsidiary of such bank, to provide insurance as a principal, agent or broker beyond the borders of the State in which the subsidiary bank is chartered unless such insurance activities in the nonchartering State are specifically authorized by the statutes of that State, by language to that effect and not merely by implication.

"(B) CONTINUATION OF PRIOR ACTIVITIES.—Notwithstanding subparagraph (A) or paragraph (5), any financial services holding company (or any successor of such company), or any bank subsidiary of a financial services holding company (and any subsidiary of any such bank subsidiary) may continue insurance activities otherwise prohibited by subparagraph (A) on an interstate basis—

"(i) so long as those coverages insure against the same types of risks, or are otherwise functionally equivalent to, coverages provided on or before June 1, 1991;

"(ii) to the extent that those activities were lawful and not the subject of legal challenge on that date; and

"(iii) subject to State regulation and control.

"(7) NONBANK ACTIVITIES OF SAVINGS ASSOCIATION SUBSIDIARIES.—

"(A) ACTIVITIES ALLOWED.—Notwithstanding any other provision of this section (other than paragraph (5) and subsection (f)), any qualified savings association and any subsidiary of any such association which is acquired by any financial services holding company after June 1, 1991, may engage in any activity, after such acquisition, in which any Federal savings association or any subsidiary of any Federal savings association may engage in accordance with the Home Owners' Loan Act and regulations prescribed pursuant to such Act.

"(B) QUALIFIED SAVINGS ASSOCIATION DEFINED.—For purposes of subparagraph (A), the term 'qualified savings association' means any savings association which—

"(i) was chartered or organized as a savings association before June 1, 1991;

"(ii) had, immediately before the acquisition of such association by the financial services holding company referred to in subparagraph (A), a ratio of tier 1 capital to total assets of 2 percent or less; and

"(iii) will become a level 1 or level 2 depository institution as a result of such acquisition.

"(8) NOTICE OF NEW DETERMINATIONS.—Whenever the Board makes a determination under subsection (c)(8) that any activity is an activity of a financial nature, the Board shall publish in the Federal Register, not later than 7 days after such determination is made, the regulation or order by which such determination has been made and a description of the activity.

"(j) PROVISIONS APPLICABLE TO HOLDING COMPANIES WITH SECURITIES AFFILIATES.—

"(1) TRANSFER OF NEW SECURITIES ACTIVITIES OUT OF DEPOSITORY INSTITUTION.—Any financial services holding company that controls or acquires control of a securities affiliate shall not, after the end of the 1-year period beginning on the date of the acquisition, permit any insured depository institution subsidiary of such holding company to engage, directly or indirectly, in the United States in activities described in any subparagraph of subsection (c)(15) except to the extent that such activities—

"(A) are specifically authorized by statute for a national bank or authorized by a regulation prescribed or an order, interpretation, or approval issued by the Comptroller of the Currency pursuant to that statute before the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991; and

"(B) do not involve the underwriting or distributing by any national bank of securities backed by or representing an interest in mortgages or other assets originated or purchased by the national bank or any affiliate of the bank.

"(2) SECURITIES ACTIVITIES INVOLVING STATE OR MUNICIPAL OBLIGATIONS.—Notwithstanding paragraph (1), a financial services holding company which controls or acquires control of a securities affiliate shall—

"(A) not permit, after the end of the 1-year period beginning on the date of the acquisition, an insured depository institution subsidiary of such company to underwrite or deal in obligations issued by any State or any political subdivision of any State; and

"(B) permit the activities described in subparagraph (A) to be conducted only by a securities affiliate in accordance with subsection (c)(15).

"(3) BROKER-DEALER ACTIVITIES.—Notwithstanding paragraph (1), effective January 1, 1993, a financial services holding company which controls or acquires control of a securities affiliate shall not permit an insured depository institution subsidiary of such company to operate as a broker or dealer that is required to register under the Securities Exchange Act of 1934.

"(4) CERTAIN INVESTMENT COMPANY SECURITIES.—Notwithstanding paragraph (1), effective January 1, 1993, a financial services holding company which controls or acquires control of a securities affiliate shall not permit an insured depository institution subsidiary of such company to sponsor, organize, promote, or control, or to underwrite the securities, shares, or units of participation issued by, a registered investment company containing assets described in section 408 of the Internal Revenue Code (26 U.S.C. 408).

"(5) AGENCIES OF FOREIGN BANKS SUBJECT TO THIS SUBSECTION.—For purposes of this section, a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank (as the terms 'branch', 'agency', and 'commercial lending company' are defined in section 1 of the International Banking Act of 1978) shall be treated as a bank.

"(k) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

"(1) GENERAL NOTICE PROCEDURE.—

"(A) NOTICE REQUIREMENT.—No financial services holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in qualified financial activities without providing the Board with written notice of the proposed transaction or activity at least 45 days before the transaction or activity is proposed to occur or commence.

"(B) CONTENTS OF NOTICE.—The notice submitted to the Board shall contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice.

"(C) PROCEDURE FOR AGENCY ACTION.—

"(i) NOTICE OF DISAPPROVAL.—Any notice filed under this subsection shall be deemed to be approved by the Board unless, before the end of the 45-day period beginning on the date the Board receives a complete notice under subparagraph (A), the Board issues an order disapproving the transaction or activity and setting forth the reasons for disapproval.

"(ii) EXTENSION OF PERIOD.—The Board may extend the 45-day period referred to in clause (i) for an additional 45 days.

"(D) APPROVAL BEFORE END OF PERIOD.—

"(i) IN GENERAL.—Any transaction or activity may commence before the expiration of any period for disapproval established under this paragraph if the Board issues a written notice of approval.

"(ii) SHORTER PERIODS BY REGULATION.—The Board may prescribe regulations which provide for no notice under this paragraph or for a shorter notice period with respect to particular activities or transactions, except that the Board may not provide for no notice with respect to activities or transactions described in subsection (c)(15).

"(E) EXTENSION OF PERIOD.—In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) that has not been previously approved by order or regulation, the Board may extend the notice period under this subsection for an additional 90 days.

"(2) GENERAL STANDARDS FOR REVIEW.—

"(A) CRITERIA.—In connection with a notice under this subsection, the Board may consider the following criteria:

"(i) The managerial resources of the companies involved.

"(ii) The adequacy of the companies financial resources, including capital, giving consideration to the financial resources and capital of others engaged in similar activities.

"(iii) Any material adverse effect on the safety and soundness or financial condition of any insured depository institution affiliate.

"(iv) Whether, in the case of notice for approval involving activities under subsection (c)(8) or (c)(15), performance of the activity by a financial services holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

"(B) REQUIREMENTS FOR DISAPPROVAL.—The Board shall not approve any proposed transaction under this subsection if the Board determines that any insured depository institution subsidiary of the financial services holding company is engaging in any unsafe and unsound practice or is in an unsafe and unsound condition.

"(l) ADDITIONAL CAPITAL REQUIREMENTS FOR NEW FINANCIAL ACTIVITIES.—The Board shall disapprove a notice to engage in, or acquire or retain the shares of a company engaged in, a new financial activity unless the company filing the notice is a level 1 financial services holding company.

"(m) MAINTENANCE OF HIGHER CAPITAL.—

"(1) CAPITAL MUST BE PROMPTLY RESTORED.—Any financial services holding company that engages, directly or through any subsidiary, in any new financial activity, and that ceases to qualify as a level 1 financial services holding company, shall before the end of the 60-day period beginning on the date such company ceases to qualify as a level 1 financial services holding company—

"(A) restore the capital of insured depository institution subsidiaries of such company in an amount sufficient for such company to requalify as a level 1 financial services holding company; or

"(B) submit a capital plan to the Board that will restore the relevant capital measures to the level necessary to requalify as a level 1 financial services holding company.

"(2) FAILURE TO RESTORE CAPITAL OR IMPLEMENT A CAPITAL PLAN.—If a holding company described in paragraph (1) fails to take the actions described in subparagraphs (A) or (B) of paragraph (1) or if the capital plan submitted under paragraph (1) is not approved by the Board or if the company fails to implement the capital plan, the holding company shall—

"(A) divest any interest in all insured depository institution subsidiaries that do not meet all currently applicable capital standards; or

"(B) terminate all new financial activities and divest any interest in any subsidiary engaged in any such activity.

"(3) ESTABLISHMENT AND IMPLEMENTATION REQUIRED.—

"(A) IN GENERAL.—The Board shall prescribe regulations to carry out the requirements of this section, including the establishment of capital standards and minimum capital requirements for financial services holding companies and deadlines for submission and review of plans.

"(B) DEADLINE FOR REGULATIONS.—The Board shall, after notice and opportunity for comment, prescribe final regulations under subparagraph (A) which regulations shall be final not later than January 1, 1993.

"(C) COORDINATION WITH THE FEDERAL DEPOSIT INSURANCE ACT.—The Board and the appropriate Federal banking agencies shall coordinate the application of this subsection with the provisions of sections 5(e) and 38 of the Federal Deposit Insurance Act.

"(4) NOTICE TO OTHER FUNCTIONAL REGULATORS.—Before any holding company is required, pursuant to paragraph (2) of this subsection, to divest any interest in, or terminate any activities of, a company that is required to register with the Securities and Exchange Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board shall provide timely notice to the Securities and Exchange Commission and, in the case of any other company which is subject to any financial responsibility or capital requirements, any functional regulator of such company.

"(n) LIMITATIONS ON ACTIVITIES OF FINANCIAL SERVICES HOLDING COMPANIES.—

"(1) CONSUMER PROTECTION PROVISIONS.—

"(A) DISCLOSURE BY INSURED DEPOSITORY INSTITUTION WITH RESPECT TO SECURITIES ACTIVITIES OF AFFILIATE.—No insured depository institution controlled by a financial services holding company, and no subsidiary of such insured depository institution, shall offer to any customer an opinion on the value of, or the advisability of purchasing or selling, any security or other product or service of which a securities affiliate of such financial services holding company is an underwriter or which such securities affiliate sells, or offers for sale, or in which such securities affiliate makes a market, unless the insured depository institution or subsidiary provides a 1-time written notice to the customer in accordance with such requirements as the Board may, in consultation with the Securities and Exchange Commission, prescribe by regulation, stating—

"(i) that the securities affiliate is an affiliate of the insured depository institution or subsidiary;

"(ii) that the securities affiliate—

"(I) is not an insured depository institution; and

"(II) is a separate corporate entity with respect to any insured depository institution (or any subsidiary of such institution) which is an affiliate of such securities affiliate;

"(iii) that the securities or other products or services underwritten, sold, offered, or recommended by the securities affiliate—

"(I) are not deposits which are federally insured by the Federal Deposit Insurance Corporation;

"(II) are not instruments which are guaranteed as to either principal or interest by an insured depository institution affiliate of such subsidiary; and

"(III) are not otherwise obligations of any insured depository institution; and

"(iv) if applicable, that the securities affiliate underwrote or makes a market in the securities.

"(B) CUSTOMER ACKNOWLEDGMENT OF DISCLOSURE.—

"(i) IN GENERAL.—Whenever any insured depository institution or subsidiary of an insured depository institution is required under subparagraph (A), to make disclosures to a customer, such insured depository institution, or subsidiary, or affiliate, as the case may be, shall obtain a written acknowledgment of receipt by the customer of such disclosures, including the date of receipt and the customer's name, address, and account number.

"(ii) SPECIAL RULE FOR ACCREDITED INVESTORS.—In the case of any customer who is, or meets the requirements for, an accredited investor (as defined in section 2(15) of the Securities Act of 1933)—

"(I) the acknowledgment of the receipt of any disclosure described in clause (i) shall be obtained pursuant to such clause by the insured depository institution or securities affiliate referred to in such clause at the time any account is opened by such customer; and

"(II) the institution or the securities affiliate shall not be required to obtain such an acknowledgment from such customer pursuant to clause (i) in connection with any subsequent transaction with respect to such account.

"(C) DISCLOSURES OF CONFIDENTIAL CUSTOMER INFORMATION PROHIBITED.—

"(i) IN GENERAL.—No insured depository institution subsidiary of a financial services holding company may disclose, directly or indirectly, any confidential customer information to any person (as defined in section 1 of title 1, United States Code), including any other affiliate, without the prior written consent of the customer. For purposes of this subparagraph, the term 'affiliate' includes a separately identifiable department or division of an insured depository institution that is registered as an investment adviser pursuant to the Investment Advisers Act of 1940.

"(ii) RECORDS OF CUSTOMER CONSENT.—Whenever any insured depository institution obtains the prior written consent of a customer for purposes of clause (i), such company shall—

"(I) obtain an acknowledgment of such consent by the customer, including the date the consent was acknowledged and the customer's name, address, and any applicable account number;

"(II) obtain such consent separately from any other authorization or consent of the customer;

"(III) inform the customer that the consent is not required as a condition for the performance of services for the customer; and

"(IV) maintain records of compliance with subclauses (I), (II), and (III).

"(iii) CUSTOMER DEFINED.—

"(I) IN GENERAL.—For purposes of this subparagraph, the term 'customer' means any person who, after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, establishes a deposit, trust, or credit relationship with an insured depository institution or purchases any service or financial product from such institution.

"(II) TREATMENT OF CERTAIN DEPOSITS.—Any renewal of an account in an insured depository institution and any rollover of a deposit in any such account shall be treated as the establishment of a new deposit relationship for purposes of subclause (I).

"(D) CONFIDENTIAL CUSTOMER INFORMATION DEFINED.—For purposes of subparagraph (C), the term 'confidential customer information' means financial information regarding any specific individual which has been derived from any record of any insured depository institution and pertains to the individual's relationship with the institution.

"(E) CERTAIN INFORMATION NOT INCLUDED IN DEFINITION.—Notwithstanding subparagraphs (C) and (D), the term 'confidential customer information' shall not include—

"(i) any information obtainable from an unaffiliated credit bureau or similar entity or information obtainable in the ordinary course of business from any other unaffiliated entity;

"(ii) any information provided to any credit bureau or similar entity in the ordinary course of business;

"(iii) any information obtainable in connection with insurance—

"(I) which is limited to assuring the repayment of the outstanding balance due on an extension of credit in the event of the death, disability, or involuntary unemployment of the debtor;

"(II) on real or personal property obtained by or on behalf of an insured depository institution in the event a debtor has failed to provide reasonable evidence of required insurance in accordance with an extension of credit; or

"(III) to assure the repayment of outstanding balances due in connection with an extension of credit in the event of the loss or damage to property used as collateral on such extension of credit;

"(iv) any information provided—

"(I) to any appropriate Federal regulatory agency; or

"(II) in accordance with the Right to Financial Privacy Act of 1978 to any Government authority (as defined in section 1101(3) of such Act); and

"(v) financial information the use of which (by an insured depository institution, any affiliate of such institution, or any agent of or contractor with such institution or affiliate) is limited to the performance of—

"(I) any function which is necessary to maintain a customer's existing deposit, trust, or credit account with the institution, including the collection of any amount due the institution by the customer with respect to any such account; or

"(II) due diligence evaluations in connection with the purchase or sale of loan assets or servicing rights.

"(F) DISCLOSURE OF CUSTOMER INFORMATION.—In addition to any requirement or limitation contained in this section, the Board may prescribe regulations limiting disclosures of nonpublic customer information from any insured depository institution to any affiliate of such institution, including an evaluation of the creditworthiness of an issuer or other customer of that insured depository institution or any subsidiary or financial or insurance affiliate of such institution.

"(2) CUSTOMER'S SIGNED STATEMENT RELATING TO UNINSURED DEPOSITS.—

"(A) IN GENERAL.—In addition to any disclosure required under paragraph (1), in connection with—

"(i) any sale of any instrument or financial product by any insured depository institution, or any affiliate of such institution, that does not constitute an insured deposit;

"(ii) any acceptance of a deposit by such institution or affiliate that is not an insured deposit; or

"(iii) any other transaction which results in the acquisition of any such obligation, instrument, or product from the institution or affiliate,

the institution or affiliate shall obtain from the purchaser, depositor, or acquirer, before the completion of the sale, deposit, or transaction, a separate statement, signed and dated by such person, which contains the following declaration in not less than 18-point bold-face type: 'I understand that this is not an insured deposit. The United States Government does not guarantee it. If [*name of institution or affiliate*] fails, I know that I may lose some or all of my money.'.

"(B) EXCEPTION.—The provisions of this paragraph shall not apply with respect to any transaction—

"(i) effected by a broker or dealer registered under the Securities Exchange Act of 1934;

"(ii) involving an insurance activity of any affiliate of an insured depository institution which is not itself an insured depository institution or a subsidiary of such institution if the transaction—

"(I) is not engaged in on the premises of any insured depository institution (including any branch) or any subsidiary of such institution;

"(II) is not engaged in by the affiliate in connection with any joint marketing activities between the affiliate and any such institution or subsidiary; and

"(III) does not otherwise involve any such insured depository institution or subsidiary; or

"(iii) consisting of any loan or other extension of credit by the insured depository institution or affiliate.

"(3) REGULATIONS RELATING TO MISLEADING AND DECEPTIVE PRACTICES.—The appropriate Federal banking agencies shall prescribe regulations jointly to prohibit any insured depository institution from employing any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the institution or the Federal Government is responsible for the activities of an affiliate of the institution, stands behind the affiliate's credit, guarantees any returns on securities or insurance products sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate.

"(4) REQUIREMENTS APPLICABLE IN THE CASE OF FINANCIAL SERVICES HOLDING COMPANIES WITH SECURITIES AFFILIATES.—

"(A) CERTAIN FINANCIAL TRANSACTIONS OF INSURED DEPOSITORY INSTITUTIONS PROHIBITED.—Notwithstanding any provision of subparagraph (E), no insured depository institution subsidiary of a financial services holding company may directly or indirectly engage in any of the following with respect to its securities affiliate:

"(i) Except as provided in subparagraph (C), extend credit to such securities affiliate.

"(ii) Issue a guaranty, acceptance, or letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to or for the benefit of such securities affiliate.

"(iii) Purchase for the insured depository institution's own account, or for the account of any subsidiary of the institution, any financial asset of such securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

"(iv) Purchase for the insured depository institution's own account, or for the account of any subsidiary of the institution, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such securities affiliate is an underwriter or a member of the selling group, or which such securities affiliate otherwise places, until—

"(I) in the case of an underwriting, 60 days after the end of the underwriting period; or

"(II) in the case of a placement, 60 days after completion of the placement.

"(v) Purchase for a customer account in which the insured depository institution or its subsidiary, acting as fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such securities affiliate is an underwriter or a member of the selling group or which such securities affiliate otherwise places until—

"(I) in the case of an underwriting, 90 days after the end of the underwriting period; or

"(II) in the case of a placement, 90 days after completion of the placement.

The provisions of this clause (v) apply whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the insured depository institution or subsidiary to act in such capacity, unless such purchase is permitted by State law, is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship, and is effectuated by endorsement by the creator of the trust of a separate document that discloses (in accordance with regulations prescribed by the Board) any conflict of interest that an insured depository institution may have in making such purchase. Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred to in the preceding sentence is incapable of providing the authorization or effectuating an endorsement referred to in such sentence, every beneficiary of such trust or instrument shall provide such authorization or effectuate such endorsement.

"(vi) Extend credit to any investment company which is sponsored, organized, controlled, promoted, or advised by such securities affiliate or the depository institution (including a separately identifiable department or division thereof) or any subsidiary of such institution, except as permitted by regulations prescribed by the Commission pursuant to section 18(f)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-18(f)(3)).

"(vii) Extend credit, or arrange for the extension of credit, or issue a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to an issuer of securities for which the securities affiliate is underwriting or placing any security for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities.

"(viii) Extend credit to a customer of a securities affiliate for the purpose of repaying, in whole or in part, credit extended to such customer by the securities affiliate.

"(ix) Except as provided in subparagraph (G), extend credit, arrange for the extension of credit, or issue a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to or for the benefit of the issuer of any security of which such securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places, until—

"(I) in the case of an underwriting, 90 days after the end of the underwriting period; or

"(II) in the case of a placement, 90 days after completion of the placement.

"(x) Except as provided in subparagraph (F), sell any financial asset of the depository institution or a subsidiary thereof to such securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

"(B) CERTAIN FINANCIAL TRANSACTIONS OF HOLDING COMPANIES AND SUBSIDIARIES DURING DISTRIBUTIONS PROHIBITED.—No financial services holding company and no subsidiary of a financial services holding company (other than a securities affiliate) may, directly or indirectly, extend credit or arrange for the extension of credit to any person, if such credit is secured by, or is used to purchase, any security that is the subject of a distribution or placement in which a securities affiliate of such financial services holding company participates as an underwriter or member of the selling group or which the securities affiliate otherwise places (other than securities issued by an open-end investment company or unit investment trust or securities of the United States or any agency of the United States or securities on which principal and interest are fully guaranteed by the United States or any such agency) until 30 days after the end of the period in which such security is the subject of such distribution or placement.

"(C) EXCEPTION FOR INTRADAY EXTENSIONS OF CREDIT IN CONNECTION WITH CLEARING GOVERNMENT SECURITIES.—Subparagraph (A)(i) shall not apply with respect to any extension of credit which is made for the purchase or sale of any securities of the United States or any agency of the United States or any securities on which the principal and interest are fully guaranteed by the United States or any such agency, if—

"(i) the extension of credit is to be repaid on the same calendar day;

"(ii) the extension of credit is incidental to the clearing of transactions in those securities through such institution or any subsidiary; and

"(iii) both the principal of, and the interest on, the extension of credit are fully secured, on a market value basis, by securities of the United States or any agency of the United States or securities on which the principal and interest are fully guaranteed by the United States or any such agency.

"(D) PROHIBITIONS ON DISCRIMINATORY CREDIT TREATMENT.—

"(i) IN GENERAL.—No insured depository institution subsidiary of a financial services holding company shall—

"(I) extend or deny credit or services (including clearing services), or vary the terms or conditions thereof, if the effect of such action would be to treat an unaffiliated entity less favorably than any of such institution's affiliates, unless the extension of credit or denial is based on objective criteria and is consistent with sound business practices; or

"(II) extend or deny credit or services or vary the terms or conditions for any such credit or services with the intent of creating a competitive advantage for any of the institution's affiliates.

"(ii) MONITORING OF CLEARING SERVICES REQUIRED.—The Board shall monitor, on at least an annual basis, the availability of United States Government securities clearing services to companies that are brokers and dealers registered under the Securities Exchange Act of 1934 and not affiliated with an insured depository institution, and the price, terms, and conditions of such services.

"(iii) REQUIREMENTS IF CLEARING SERVICES BECOME UNAVAILABLE.—If the Board determines that the services described in clause (ii) have, or are likely to become, unavailable, or are available at prices, terms, or conditions that do not generally permit brokers and dealers that are not affiliated with an insured depository institution a reasonable opportunity to compete in the United States Government securities market, the Board shall—

"(I) require insured depository institutions to offer such services at reasonable prices, terms, and conditions to unaffiliated registered brokers and dealers;

"(II) provide such companies direct access to the wire transfer system for the purpose of clearing these securities under terms and conditions that protect the Reserve Bank from loss associated with the clearing credit;

"(III) take such other action as the Board determines to be appropriate to permit registered brokers and dealers that are not affiliated with an insured depository institution to obtain clearing services at reasonable prices, terms, and conditions; or

"(IV) propose legislation to the Congress to prevent or remedy the unavailability of such services.

"(E) REVIEW OF INTRAHOLDING COMPANY TRANSFERS.—

"(i) NOTICE REQUIRED.—No financial services holding company and, subject to subparagraph (A), no subsidiary of a financial services holding company (other than a securities affiliate) may extend credit (not otherwise prohibited under this Act) to, transfer financial assets to, or make an equity investment in, any securities affiliate without prior notice to the Board in accordance with regulations prescribed by the Board.

"(ii) PROHIBITION ON CERTAIN TRANSACTIONS.—The Board may prohibit any transaction described in clause (i) if the Board determines that such transaction would affect the financial resources of the financial services holding company to such an extent that the transaction would be likely to significantly impair or diminish the ability of the financial services holding company to take any action necessary to comply with any capital, financial, or regulatory requirement applicable to any insured depository institution subsidiary of such company.

"(iii) EQUITY INVESTMENTS PROHIBITED.—Notwithstanding any other provision of law, no insured depository institution may make an equity investment in its securities affiliate.

"(F) ASSET PURCHASES FROM AFFILIATED BANK, INSURED INSTITUTION, OR SUBSIDIARY THEREOF.—

"(i) IN GENERAL.—An insured depository institution may, notwithstanding subparagraph (A)(x) of this paragraph but subject to section 23B of the Federal Reserve Act, sell any asset of such institution or any subsidiary of such institution for the purpose of including such asset in a pool of assets for the purpose of issuing asset-backed securities if—

"(I) those securities are rated as investment grade by at least 1 unaffiliated, nationally recognized statistical rating organization;

"(II) those securities are issued or guaranteed by a government sponsored enterprise which the Board has determined by regulation to be permissible for purposes of this subclause;

"(III) those securities represent interests in securities described in subclause (II) of this clause;

"(IV) the price at which an equity security or the yield at which a debt security to be distributed to the public by the securities affiliate is established at a price no higher, or yield no lower, than that recommended by a qualified independent underwriter which has also participated in the preparation of the registration statement and the prospectus, offering circular, or similar document; or

"(V) those securities would not be the subject of a public offering and would be sold only to accredited investors, as defined in the Securities Act of 1933.

"(ii) REGULATIONS.—The Board, after consultation with the Commission, shall prescribe such regulations as may be necessary to ensure that transactions described in clause (i) comply with the requirements of this subparagraph.

"(iii) ASSET DEFINED.—For purposes of this subparagraph, the term 'asset' means any note, draft, acceptance, loan, lease, receivable, other obligation, or pools of any such obligations.

"(iv) QUALIFIED INDEPENDENT UNDERWRITER.—For purposes of this subparagraph, the term 'qualified independent underwriter' shall be defined by regulation prescribed by the Securities and Exchange Commission.

"(G) EXCEPTIONS TO CREDIT FACILITY LIMITATIONS.—

"(i) TIMING WINDOW AND PROCEDURAL COMPLIANCE EXCEPTIONS.—Notwithstanding subparagraph (A)(ix), an insured depository institution may provide a credit facility described in such subparagraph to an issuer described in such subparagraph if—

"(I) the credit facility was entered into at least 60 days before the commencement of the underwriting or placement, unless such credit facility had been entered into in anticipation of such underwriting or placement;

"(II) the credit facility is a renewal or extension, on the same or substantially the same terms and conditions, of a credit facility entered into by the institution with the same issuer not less than 2 years before the beginning of such 60-day period, and the securities affiliate of the insured depository institution is not a significant participant in the underwriting or placement (as such term is defined by rule or regulation of the Commission); or

"(III) the credit facility is extended in accordance with the requirements of clauses (ii) and (iii) of this subparagraph (G) and the depository institution and holding company are in compliance with clauses (iv), (v), and (vi) of this subparagraph.

"(ii) REGULATIONS TO PREVENT UNFAIR OR COERCIVE PRACTICES AND SUBSIDIES.—A credit facility complies with the requirements of this clause if the credit facility is in compliance with such regulations as the Board shall prescribe, after consultation with the Commission—

"(I) to prevent any insured depository institution from engaging in any coercive or unfair practice to induce any person to use the underwriting, distributing, or placing services of a securities affiliate; and

"(II) to prevent any insured depository institution from subsidizing the terms of the credit facility as an inducement to any person to use such services, or conditioning the provision of such credit facility on the use of such services.

"(iii) ARM'S LENGTH; NONDISCRIMINATION; APPROVAL BY MANAGEMENT..—A credit facility complies with the requirements of this clause if—

"(I) the insured depository institution determines the terms and conditions of such credit facility objectively on the basis of the same credit standards that the insured depository institution applies to extensions of credit facilities to a similarly-situated borrower whose securities are not underwritten or placed by any securities affiliate of the insured depository institution;

"(II) the terms and conditions of such credit facility (including credit standards, prices, maturities, interest rates, collateral, and amounts) do not discriminate in favor of an issuer described in subparagraph (A)(viii) and would, in good faith, be offered to, or would apply to, a similarly-situated borrower whose securities are not underwritten or placed by any securities affiliate of the insured depository institution;

"(III) senior management and, in the case of a significant credit facility, executive management, of the insured depository institution has approved, in writing, the specific terms and conditions of the credit facility; and

"(IV) if the insured depository institution is a significant participant in a credit facility that is extended during the period covered by subparagraph (A)(viii), or during the 60-day period preceding the commencement of the underwriting or placement, and a securities affiliate is a significant participant in the underwriting or placement (as such term is defined by rule or regulation of the Commission), the securities affiliate and the issuer certify to the Commission, in accordance with regulations prescribed by the Commission, that the issuer has not been subjected, as an inducement to such issuer's election to use the underwriting or placement services of such securities affiliate, to any coercive or unfair practice or conditioning of such facility in violation of the regulations prescribed by the Board under clause (ii) of this subparagraph, and that such securities affiliate and the issuer, respectively, do not know that the issuer obtained any subsidy on any such facility in violation of the regulations prescribed by the Board under such clause.

"(iv) MANAGEMENT PROCEDURES REQUIRED.—The board of directors of any financial services holding company that has a securities affiliate shall establish policies and procedures to ensure that the insured depository institution is aware when a credit facility would fall within the proscriptive time periods established by subparagraph (A)(viii).

"(v) REPORTS AND RECORDS CONCERNING CREDIT FACILITIES.—Each insured depository institution and each securities affiliate controlled by the financial services holding company shall maintain segregated records of all such credit facilities and related transactions in accordance with such regulations concerning format and other matters as the Board shall prescribe in consultation with the Commission. Such regulations shall be reasonably designed to require the insured depository institution and securities affiliate to maintain such records as are necessary to demonstrate, and to facilitate the determination by the Board and the Commission of, compliance with the requirements of this subparagraph (G). An insured depository institution shall provide to the Board and the Commission—

"(I) prompt notice concerning each significant credit facility subject to this subparagraph;

"(II) an annual report of all such credit facilities (together with the date, amount, and material terms) within 90 days following the end of the institution's fiscal year; and

"(III) such additional information as the Board or the Commission may request concerning any such credit facility.

Notwithstanding any other provision of law, neither the Board nor the Commission shall be compelled to disclose any information required to be kept or reported under this clause (v). Nothing in this clause shall authorize the Board or the Commission to withhold information from Congress, or to prevent the Board or the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the Board or the Commission. For purposes of section 552 of title 5, United States Code, this clause shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(vi) REVIEW BY BOARD OF DIRECTORS.—The board of directors of each financial services holding company controlling a securities affiliate and the board or directors of each insured depository institution subsidiary of such a holding company shall—

"(I) review, no less frequently than annually, the holding company's procedures for compliance with the conditions of this subparagraph (G) for their continued appropriateness;

"(II) determine, no less frequently than quarterly, that all significant credit facilities entered into by the insured depository institution which are made in reliance on the provisions of clause (i)(II) of this subparagraph (G) were effected in compliance with such provisions; and

"(III) promptly notify the Board and the Commission of any transactions that are not in compliance with the conditions of this subparagraph (G).

"(vii) REGULATIONS.—The Board shall have the authority, in consultation with the Commission, to make such regulations as may be necessary or appropriate to implement the provisions of this subparagraph and may define the terms used herein, including (without limitation) the terms 'senior management', 'executive management', 'significant credit facility', and 'significant participant in a credit facility'. If the Commission comments in writing on a proposed regulation of the Board under this subparagraph (G) that has been published for comment, the Board shall respond in writing to such written comment before adopting such regulation. The Board shall, at the request of the Commission, publish such comment and response in the Federal Register at the time of publishing the adopted regulation. The Board and the Commission shall prescribe regulations under this subparagraph not later than October 1, 1992.

"(viii) DEFINITIONS.—As used in this subparagraph, the term 'credit facility' means an extension of credit, arrangement for the extension of credit, or issuance of a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit.

"(H) DEFINITIONS.—For purposes of this paragraph the term 'insured depository institution' includes any subsidiary of the insured depository institution, other than an entity required to register with the Commission.

"(5) PROHIBITION ON RECIPROCAL ARRANGEMENTS WITHIN THE HOLDING COMPANY.—No affiliate of a financial services holding company shall engage in any transaction or reciprocal arrangement for the purpose of evading any restriction or limitation imposed under this section.

"(6) INTERLOCKING DIRECTORS, MANAGEMENT OFFICIALS, AND EMPLOYEES PROHIBITED.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), no financial services holding company may allow any director, management official, or employee of any securities affiliate controlled by such financial services holding company to serve at the same time as a director, management official, or employee of any insured depository institution subsidiary of such holding company or any subsidiary of any such institution.

"(B) BOARD AUTHORITY TO EXEMPT FROM SUBPARAGRAPH (A).—

"(i) IN GENERAL.—The Board may, by order or regulation issued after consultation with the Commission, grant exemptions from subparagraph (A) of this subsection.

"(ii) FACTORS TO BE CONSIDERED.—In determining whether to grant an exemption under clause (i), the Board shall consider—

"(I) the size of the financial services holding companies involved and the size of the depository institution subsidiaries and securities affiliate involved;

"(II) any burdens imposed by the application of subparagraph (A);

"(III) the safety and soundness of the depository institution subsidiaries and the securities affiliates of such financial services holding companies; and

"(IV) other appropriate factors, including unfair competition in securities activities and the improper exchange of confidential customer information.

"(iii) EXCEPTION FOR CERTAIN SMALL FINANCIAL SERVICES HOLDING COMPANIES.—

"(I) IN GENERAL.—The Board shall grant, by regulation, an exemption under clause (i) to allow a director, management official, or employee of any securities affiliate subsidiary of any financial services holding company the total banking assets of which do not exceed $500,000,000 to serve at the same time as a director, management official, or employee of any insured depository institution subsidiary of the company, or any subsidiary of such institution.

"(II) ANNUAL ADJUSTMENT FOR INFLATION.—The dollar amount of assets referred to in subparagraph (B)(i) shall be adjusted for inflation by the Board at the end of each calendar year beginning after December 31, 1991.

"(C) EXCEPTION FOR CERTAIN BACK OFFICE OPERATIONS.—Subparagraph (A) shall not apply to any employee, other than an officer or director, employed by the financial services holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions, including the receipt or transmittal of electronic transfers, if such functions are performed—

"(i) in an office or other facility which is not open to the general public; and

"(ii) in a manner which is consistent with the requirements of this section as determined by the Board after consultation with the Commission.

"(D) MANAGEMENT OFFICIAL DEFINED.—The term 'management official' includes any officer and any employee with management functions (including a branch manager), any trustee of a business organization under the control of trustees (such as a mutual savings bank), and any person who has a representative or nominee serving in any such capacity.

"(7) PROHIBITION ON FAVORING CAPTIVE AGENTS.—

"(A) IN GENERAL.—An insured depository institution subsidiary of a financial services holding company may not, directly or indirectly—

"(i) require, as a condition to the sale of any product or the provision of any service, that a customer acquire or renew insurance through a particular insurance agent or broker;

"(ii) solicit the sale of insurance that is required under any loan or extension of credit unless the customer has been advised, in writing, of the antitying provisions of section 106 of the Bank Holding Company Act Amendments of 1970;

"(iii) solicit or permit any subsidiary, or any department or agent of such institution or subsidiary, which engages in any insurance activity to solicit, directly or indirectly, any customer of such institution or subsidiary to provide any insurance required under the terms of any loan or extension of credit (to such customer by such institution or subsidiary) before such customer has received a written commitment from such institution or subsidiary with respect to such loan or other extension of credit;

"(iv) in connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy solely because such policy has been issued or underwritten by any person who is not an affiliate of such subsidiary;

"(v) unless otherwise authorized by any applicable Federal or State law, require any debtor, insurer, broker, or agent to pay a separate charge in connection with the handling of a contract that requires insurance; or

"(vi) impose any requirement on any insurance agent who is not affiliated with the insured depository institution subsidiary that is not imposed on any affiliate of such subsidiary.

"(B) INSURANCE DEFINED.—For purposes of this paragraph, the term 'insurance' does not include insurance placed on real or personal property by a creditor in the event a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit instrument.

"(8) AUTHORITY TO MODIFY AND IMPOSE ADDITIONAL SAFEGUARDS.—

"(A) IN GENERAL.—In order to preserve the safety and soundness of insured depository institution subsidiaries of financial services holding companies, and to ensure that the activities of any financial service holding company and any subsidiary of any such company (other than an insured depository institution subsidiary) are conducted without the support of insured depository institution affiliates, the Board—

"(i) may, by regulation or order, adopt additional limitations or restrictions on any extension of credit or financial assistance or any transaction which has the effect of providing financial assistance by any insured depository institution subsidiary of any financial services holding company to, or for the benefit of, any affiliate of such institution which is engaged in any new financial activity or any customer of such affiliate; and

"(ii) after consulting with and considering the views of the Commission, may modify by regulation any limitation on the activities of financial services holding companies and their affiliates contained in this subsection.

"(B) STANDARDS.—Any authority under subparagraph (A)(i) shall be exercised only after taking into account potential adverse effects of any extension of credit or other transaction referred to in such subparagraph, including unfair competition, conflicts of interest, and unsafe banking practices. Any exercise of authority under subparagraph (A)(ii) to modify any limitation on activities contained in this subsection shall be exercised only if the Board, after consulting with and considering the views of the Commission, concludes that modifying such limitation is necessary to achieve a purpose of this Act, is consistent with the purposes of this section, the public interest, and the protection of investors, and would not be likely to result in any adverse effects, including unfair competition, conflicts of interest, unsafe banking practices, or undue risks to the Federal deposit insurance funds.

"(9) DIVESTITURE FOR CONTINUING COURSE OF MISCONDUCT.—

"(A) NOTICE OF PRELIMINARY DETERMINATION.—

"(i) PRELIMINARY FINDING.—In addition to any other regulatory and supervisory authority of the Board, if the Board has reason to believe that a financial services holding company which controls a securities affiliate, or any subsidiary of such financial services holding company, has engaged in a continuing course of conduct involving a violation of this subsection, or regulations prescribed or orders issued by the Board pursuant to this subsection, the Board may make an initial determination that the financial services holding company shall be required to terminate such company's control of either (I) the insured depository institutions or the subsidiaries of such insured depository institutions, or (II) the securities affiliates, at the election of such company.

"(ii) NOTICE.—The Board shall notify any financial services holding company with respect to which a preliminary determination is made under clause (i) of this subparagraph of such determination before the end of the 3-day period beginning on the date on which the determination is made.

"(iii) CONTENTS OF NOTICE.—Any notice under clause (ii) of this subparagraph shall contain a statement of the basis for the Board's determination.

"(B) HEARING AND FINAL ORDER.—

"(i) REQUEST FOR HEARING.—Any financial services holding company which receives a notice under subparagraph (A)(ii) of this paragraph may request, at any time before the end of the 30-day period beginning on the date of the receipt of such notice, a hearing before the Board.

"(ii) ADJUDICATORY PROCEDURE AND FINAL ORDERS.—Any proceeding under this paragraph shall be conducted in accordance with section 8(h) of the Federal Deposit Insurance Act.

"(C) FAILURE TO REQUEST REVIEW.—If any financial services holding company which receives a notice under subparagraph (A)(ii) of this paragraph fails to request an agency hearing under subparagraph (B)(i) of this paragraph, such financial services holding company shall be deemed to have consented to the issuance of a final order affirming the initial determination without the necessity of the hearing provided for in this subsection.

"(D) DIVESTMENT WITHIN TIME SPECIFIED IN ORDER.—If any order issued by the Board under this paragraph becomes final and the order affirms the initial determination of the Board under subparagraph (A)(i), the financial services holding company shall make the election and terminate control as required by such order by the end of the period specified in such order.

"(10) DEFINITION.—For purposes of this subsection (n), the term 'Commission' means the Securities and Exchange Commission.

"(o) EXCEPTION FOR CERTAIN NONBANKING INVESTMENTS.—

"(1) IN GENERAL.—Notwithstanding subsection (a), a financial services holding company may own or control shares of any company engaged in activities not authorized pursuant to this section if—

"(A) the shares were acquired before September 30, 1991, the company on such date was an affiliate of an entity that is registered with the Securities and Exchange Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, and the aggregate investment in all such shares does not exceed 5 percent of the financial services holding company's capital and surplus on a consolidated basis; or

"(B) the shares are acquired and held by a securities affiliate as part of a bona fide underwriting or investment banking activity if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis consistent with the nature of such investment banking activity.

"(2) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—

"(A) PARAGRAPH (1)(A) EXEMPTION.—If the exemption established under paragraph (1)(A) ceases to apply to any financial services holding company, the company shall divest ownership and control of all of the shares of the company engaged in activities not authorized pursuant to this section within 180 days after the date on which such exemption ceases to apply.

"(B) PARAGRAPH (1)(B) EXEMPTION.—If the exemption established under paragraph (1)(B) ceases to apply to any financial services holding company, the company shall divest ownership and control of such shares within 15 days after the date on which such exemption ceases to apply.".

(b) CONFORMING AMENDMENTS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) (as amended by subsection (a)) is amended—

(1) by striking "bank holding company" each place such term appears and inserting "financial services holding company";

(2) in subsection (c)(1)(A), by striking "banking subsidiary" each place such term appears and inserting "insured depository institution subsidiary";

(3) in subparagraphs (C) and (D) of subsection (c)(1), by striking "banking subsidiaries" each place such term appears and inserting "insured depository institution subsidiaries"; and

(4) in subsection (c)(4), by striking "acquired by a bank" and inserting "acquired by an insured depository institution".

(c) RULE OF CONSTRUCTION RELATING TO SECTION 4(c)(8) AMENDMENTS.—The amendments made by section (a) with respect to the removal of subparagraphs (A) through (G) from section 4(c)(8) of the Bank Holding Company Act to section 4(i)(5) of the Financial Services Holding Company Act—

(1) may not be construed as making any substantive change in the meaning of any provision of any such subparagraph (as in effect on the day before the effective date of such amendments); and

(2) shall not affect any regulation prescribed, order issued, or any action taken be-

fore the effective date of such amendments pursuant to any such subparagraph (as in effect on the day before such date).

SEC. 404. REGISTRATION AND ENFORCEMENT.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended to read as follows:

"SEC. 5. REGISTRATION AND ENFORCEMENT.

"(a) REGISTRATION OF FINANCIAL SERVICES HOLDING COMPANY.—

"(1) FILING PERIOD.—Within 180 days after becoming a financial services holding company, each financial services holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the holding company and the subsidiaries of such company, and related matters, as the Board may determine to be appropriate to carry out the purposes of this Act.

"(2) EXTENSION OF FILING PERIOD.—The Board may, in the Board's discretion, extend the time within which a financial services holding company shall register and file the requisite information.

"(b) REGULATIONS AND ORDERS.—

"(1) IN GENERAL.—The Board may prescribe such regulations and issue such orders as may be necessary to enable the the Board to administer and carry out the purposes of this Act and prevent evasions of the Act.

"(2) IMPLEMENTING REGULATIONS.—The initial regulations which are necessary to implement this section after the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 shall be proposed and prescribed by the Board and shall be published in final form before January 1, 1993.

"(c) RECORDS AND REPORTS.—

"(1) REPORTS OF FINANCIAL SERVICES HOLDING COMPANY AND INSURED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—The Board may require any financial services holding company and any insured depository institution subsidiary of such company to file reports under oath with the Board to keep the Board informed as to whether such holding company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

"(B) CONSULTATION.—With regard to any insured depository institution subsidiary of a financial services holding company, the Board shall consult with and, to the extent possible, use reports obtained by, any other appropriate Federal banking agency for such institution.

"(2) REPORTS OF FINANCIAL SERVICES HOLDING COMPANIES AND SUBSIDIARIES.—

"(A) IN GENERAL.—The Board may require a financial services holding company, and any subsidiary of such company (other than an insured depository institution), to file reports with the Board if the Board reasonably believes that the activities or financial condition of such holding company or subsidiary is likely to have a material impact on the financial or operational condition of any insured depository institution subsidiary of the company (or any subsidiary of the institution).

"(B) REGULATORY EFFICIENCY.— The Board shall consult with and, to the extent possible, use reports obtained by, any other functional regulator of any financial services holding company or subsidiary referred to in subparagraph (A) to obtain the necessary information. In the case of a subsidiary which is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board shall comply with paragraph (5).

"(3) RECIPROCAL ACCESS.—

"(A) FUNCTIONAL REGULATOR.—The Board may provide access, on a reciprocal basis, for any other functional regulator of any financial affiliate of a financial services holding company, to any report (other than a report of examination) obtained by the Board under this subsection with respect to any financial services holding company subsidiary (including any insured depository institution subsidiary of any such company), if the other functional regulator reasonably believes that the activities or financial condition of such insured depository institution or financial services holding company is likely to have a material impact on the financial or operational condition of the financial affiliate.

"(B) OTHER BANKING AGENCY.—The Board may provide access on a reciprocal basis for any other appropriate Federal banking agency for an insured depository institution to any report (other than a report of examination) obtained by the Board under this subsection with respect to any affiliate of the insured depository institution, if such agency believes that the activities or financial condition of such affiliate is likely to have a material impact on the insured depository institution.

"(4) INFORMATION COORDINATION BETWEEN THE BOARD AND THE SEC.—The Board and the Securities and Exchange Commission shall adopt procedures to coordinate and provide for the cooperative exchange of information regarding entities under their respective jurisdiction as may be necessary to effectuate their regulatory responsibilities under this Act and the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934). By January 1, 1993, the Board and the Securities and Exchange Commission shall report to Congress regarding the procedures adopted pursuant to this paragraph.

"(5) OBTAINING INFORMATION THROUGH SEC.—

"(A) BOARD REQUEST.—The Board may request the Commission to provide such information as may be reasonably necessary for the Board to conduct its supervisory responsibilities regarding an affiliate that is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser.

"(B) COMMISSION RESPONSE.—In response to a request from the Board, the Commission shall use reasonable diligence to provide promptly to the Board such of the requested information regarding an affiliate referred to in subparagraph (A) as the Commission has available.

"(C) ADDITIONAL INFORMATION.—If the Board needs additional information regarding an affiliate referred to in subparagraph (A), the Board shall then request the Commission to obtain such information, through examinations or otherwise.

"(D) PROVISION OF ADDITIONAL INFORMATION.—In response to a request from the Board for additional information regarding an affiliate referred to in subparagraph (A), the Commission shall use reasonable diligence to obtain such information, including, if necessary, by conducting an examination of the affiliate, and shall promptly provide to the Board such of the requested information as it has obtained.

"(E) BOARD ACTION.—If the Commission does not comply with a request by the Board under this paragraph with respect to an affiliate referred to in subparagraph (A), the Board may obtain such information from the affiliate.

"(6) RESTRICTION ON DISCLOSURE.—Any reports obtained from the Board, any appropriate Federal banking agency, or other functional regulator under this subsection shall not be disclosed to the public by the recipient agency or other regulator and shall not be disclosed to any other governmental agency except as otherwise permitted by law. Reports obtained under this subsection may be used only to carry out the purposes of this subsection or as otherwise permitted by law.

"(d) EXAMINATIONS.—

"(1) GENERAL EXAMINATIONS.—

"(A) HOLDING COMPANIES.—The Board may conduct examinations, including on-site examinations, of any financial services holding company, any insured depository institution subsidiary of such holding company, any subsidiary of such insured depository institution, and any other subsidiary of such financial services holding company.

"(B) CONSULTATION WITH OTHER AGENCIES.—When appropriate, the Board shall, in conducting an examination consult with, and to the extent possible, use any report of examination made by any other appropriate Federal banking agency, any appropriate State bank supervisor, or any other functional regulator with respect to any holding company, affiliate, or subsidiary referred to in subparagraph (A).

"(C) COST OF EXAMINATIONS.—The cost of any examination under this paragraph of any financial services holding company and any subsidiary of such holding company shall be assessed against, and paid by, the financial services holding company.

"(D) NOTICE TO SEC.—Before beginning any examination of any broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board shall notify the Commission of the examination and the Commission may accompany the Board and conduct its own examination.

"(2) FIREWALL EXAMINATIONS.—

"(A) FIREWALL EXAMINING AUTHORITY.—The Commission and each firewall examining authority shall have the authority, for the purposes of determining compliance with section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934, to conduct examinations in accordance with this paragraph, including on-site examinations, of any financial services holding company, any insured depository institution subsidiary of such holding company, any subsidiary of such insured depository institution, and any other subsidiary of such financial services holding company.

"(B) COORDINATION OF EXAMINATIONS—

"(i) IN GENERAL.—In order to avoid unnecessary regulatory duplication and undue regulatory burdens, the Board and the Commission shall, to the maximum extent practicable, coordinate examinations conducted for the purposes of determining compliance with section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934.

"(ii) FACTORS TO BE CONSIDERED.—In coordinating examinations pursuant to clause (i), the Board and the Commission shall consider—

"(I) the establishment of procedures for the sharing and use of information;

"(II) the minimum scope and frequency of such examinations; and

"(III) such additional procedures as the Board and the Commission determine will facilitate the administration and enforcement of section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934.

"(iii) MINIMUM EXAMINATION REQUIREMENTS.—

"(I) HOLDING COMPANIES WITH SECURITIES AFFILIATES.—An examination of each financial services holding company that has an affiliate that is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, each insured depository institution subsidiary of such company, and each subsidiary of such institution for the purposes of determining compliance with section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934 shall be conducted at least once during each 12-month period (beginning on the date on which the most recent examination of such company or subsidiary ended).

"(II) SECURITIES AFFILIATES.—An examination of each affiliate (of a holding campany described in subclause (I)) that is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser for the purposes of determining compliance with section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934 shall be conducted at least once each year by any general examining authority or firewall examining authority.

"(C) COOPERATION BETWEEN GENERAL EXAMINING AUTHORITY AND FIREWALL EXAMINING AUTHORITY.—The general examining authority with respect to any entity which is subject to section 4(n) of this Act or section 15D of the Securities Exchange Act of 1934 shall cooperate with each firewall examining authority for such entity to the maximum extent practicable with respect to the sharing and use of information and conducting examinations.

"(D) NOTICE OF SEPARATE FIREWALL EXAMS.—Whenever a firewall examining authority intends to conduct an examination of an entity for the purposes of determining compliance with section 4(n) of this Act or section 15D of the Securities Exchange Act of 1934, such firewall examining authority shall provide timely notice of such examination to each general examining authority for such entity and the general examining authority may accompany the firewall examining authority and conduct its own examination.

"(E) CONSULTATION WITH OTHER AGENCIES.—When appropriate, the firewall examining authority for any entity shall, in conducting an examination under subparagraph (A), consult with, and to the extent possible, use any reports or records of any general examining authority for such entity, any appropriate State bank supervisor, any State securities commission, or any other functional regulator.

"(F) COST OF EXAMINATIONS.—The cost of all or any part of any examination of any financial services holding company or any subsidiary of such holding company which is conducted by any firewall examining authority (with respect to such company or subsidiary) under this paragraph for the purposes of determining compliance with section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934 shall be assessed against, and paid by, any affiliate of such company or subsidiary for which such authority is the general examining authority.

"(3) PROMPT NOTICE OF RESULTS.—Each general examining authority shall promptly inform each firewall examining authority, and each firewall examining authority shall promptly inform each general examining authority, of the results of any examination concerning compliance with section 4(n) of this Act or section 15D of the Securities Exchange Act of 1934.

"(4) DEFINITIONS.—As used in this subsection—

"(A) with respect to a financial services holding company that has an affiliate that is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser; an insured depository institution subsidiary of such a financial services holding company; or a subsidiary of such an insured depository institution—

"(i) the Board and each appropriate Federal banking agency is a 'general examining authority'; and

"(ii) the Commission, and each securities self-regulatory organization of which such affiliate is a member, is a 'firewall examining authority';

"(B) with respect to any affiliate of a financial services holding company that is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser—

"(i) the Commission, the Board, and each securities self-regulatory organization of which such affiliate is a member, is a 'general examining authority'; and

"(ii) each appropriate Federal banking agency (other than the Board) is the 'firewall examining authority';

"(C) the term 'Commission' means the Securities and Exchange Commission; and

"(D) the term 'securities self-regulatory organization' means a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or a securities association registered under section 15A of such Act.

"(e) TRANSFER OF RECORDS.—No agency or department transferring records pursuant to this section shall be deemed to have waived any privilege applicable to those records under law.

"(f) CEASE AND DESIST AUTHORITY; TERMINATION OF ACTIVITIES OR OWNERSHIP OR CONTROL OF NONBANK SUBSIDIARIES CONSTITUTING SERIOUS RISK.—

"(1) IN GENERAL.—In addition to any other authority of the Board, the Board may take any action described in paragraph (2) if the Board has reasonable cause to believe that any financial services holding company or any subsidiary of a financial services holding company (other than an insured depository institution), is engaged in activities in such a manner as to constitute a serious risk to the financial safety, soundness, or stability of any insured depository institution affiliate.

"(2) ACTIONS AUTHORIZED UNDER PARAGRAPH (1).—

"(A) CEASE AND DESIST FROM FINANCIAL ACTIVITIES.—Subject to paragraph (1) and in addition to any authority of the Board under section 8 of the Federal Deposit Insurance Act, the Board may issue a notice and institute proceedings under section 8(b) of the Federal Deposit Insurance Act or issue a temporary order under section 8(c) of such Act requiring any company described in paragraph (1) that is engaged in qualified financial activities and that is not a registered broker or dealer affiliate to—

"(i) cease and desist from such activity; and

"(ii) take affirmative action to prevent significant dissipation of assets or earnings of an insured depository institution affiliate.

"(B) ORDER TO INCREASE CAPITAL.—Subject to paragraph (1) and in addition to any authority of the Board under section 8 of the Federal Deposit Insurance Act, the Board may issue a notice and institute proceedings under section 8(b) of the Federal Deposit Insurance Act or issue a temporary order under section 8(c) of such Act requiring any financial services holding company described in paragraph (1) to increase the capital of such company.

"(C) TERMINATION OF AFFILIATION.—

"(i) AUTHORITY TO ISSUE ORDER.—If any company described in paragraph (1) fails to comply with any order issued pursuant to subparagraph (A) or (B), the Board (after due notice and opportunity for hearing in accordance with section 8(h) of the Federal Deposit Insurance Act and after considering the views of the appropriate Federal banking agency for the insured depository institution subsidiary of such company and any appropriate State bank supervisor, in the case of a State depository institution) may order such company to terminate (within 120 days, or such longer period as the Board may direct in unusual circumstances) the ownership or control of either (I) the insured depository institution, or (II) any affiliate described in paragraph (1) (other than an insured depository institution), at the election of such holding company, by sale to any third party or by distribution of the shares of the affiliate to the shareholders of the financial services holding company.

"(ii) TERMINATION ORDERS FOR BROKER-DEALER AFFILIATES.—If the Board makes the finding described in paragraph (1) with respect to an affiliate that is a registered broker or dealer, the Board (after due notice and opportunity for a hearing in accordance with section 8(h) of the Federal Deposit Insurance Act and after considering the views of the Securities and Exchange Commission) may order the holding company to terminate the ownership or control of such broker or dealer in the same time periods and by the same methods as is required for an order under clause (i).

"(iii) PRO RATA DISTRIBUTION.—Any distribution of shares under clause (i) shall be made pro rata with respect to all of the shareholders of the distributing, and no financial services holding company may make any charge to its shareholders arising out of such a distribution.

"(3) ENFORCEMENT OF ORDERS.—The Board may apply to the United States district court within the jurisdiction of which the principal office of any financial services holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance with such order, but no court shall have jurisdiction to effect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order, except as provided in section 9.

"(g) ENFORCEMENT COORDINATION.—

"(1) ENFORCEMENT COORDINATION REQUIRED.—

"(A) IN GENERAL.—The Commission and the Board shall use reasonable efforts to coordinate enforcement proceedings involving financial services holding companies, insured depository institution affiliates, and securities affiliates for violations of the requirements of section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934.

"(B) NOTICE OF VIOLATION REQUIREMENT.—The Board and the Commission—

"(i) shall each inform the other of any violation or suspected violation of any requirement of section 4(n) of this Act and section 15D of the Securities Exchange Act of 1934; and

"(ii) may recommend such enforcement action with respect to any such violation as the Board or the Commission, as the case may be, determines to be appropriate.

"(C) PROCEEDINGS; COPIES OF ORDERS.—To facilitate the coordination of the enforcement proceedings referred to in subparagraph (A), the Commission shall file with the Board a notice before the commencement of any such proceeding and a copy of any order entered after such proceeding by the Commission for any such violation, and the Board shall file with the Commission a notice before the commencement of any such proceeding and a copy of any order entered after such proceeding by the Board for any such violation.

"(2) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this section shall be construed to limit any authority of the Board or the Commission under any other law.

"(h) ADMINISTRATIVE PROVISIONS.—

"(1) AUTHORITY TO ADMINISTER OATHS; SUBPOENA POWER.—In the course of, or in connection with, an application, examination, investigation, or other proceeding under this Act, the Board or any member or designated representative of the Board, including any person designated to conduct any hearing under this Act, may—

"(A) administer oaths and affirmations and take or cause to be taken depositions; and

"(B) issue, revoke, quash, or modify any subpoena, including any subpoena requiring the attendance and testimony of a witness or any subpoenas duces tecum.

"(2) ADMINISTRATIVE ASPECTS OF SUBPOENAS.—

"(A) ATTENDANCE AND PRODUCTION AT DESIGNATED SITE.—The attendance of any witness and the production of any document pursuant to a subpoena under paragraph (1) may be required at the place designated in the subpoena from any place in any State (as defined in section 3(a)(3) of the Federal Deposit Insurance Act) or other place subject to the jurisdiction of the United States.

"(B) SERVICE OF SUBPOENA.—Subject to subparagraph (C)(ii), service of a subpoena issued under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may provide.

"(C) SUBPOENAS ISSUED TO PERSONS WITHOUT THE UNITED STATES.—

"(i) BOARD APPROVAL REQUIRED.—A subpoena issued under paragraph (1) may be served on a person who is not to be found in the United States only if the subpoena has been issued by, or with the prior approval of, the Board.

"(ii) SERVICE OF SUBPOENA.—A subpoena issued under paragraph (1) may be served upon any person who is not found within the territorial jurisdiction of any court in the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country.

"(3) CONTUMACY OR REFUSAL.—

"(A) IN GENERAL.—In the case of contumacy of any person issued a subpoena under this subsection or a refusal by such person to comply with such subpoena, the Board or any other party to proceedings in connection with which such subpoena was issued may invoke the aid of—

"(i) the United States District Court for the District of Columbia, or

"(ii) any district court of the United States within the jurisdiction of which the proceeding is being conducted or the witness resides or carries on business.

"(B) COURT ORDER.—Any court referred to in subparagraph (A) may issue an order requiring compliance with a subpoena issued under this subsection.

"(4) EXPENSES AND FEES.—Any court having jurisdiction of any proceeding instituted under this subsection may allow any party to such proceeding such reasonable expenses and attorneys' fees as the court deems just and proper.

"(5) CRIMINAL PENALTY.—Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records in accordance with any subpoena under this subsection shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

"(6) REGULATIONS.—The Board may prescribe regulations to carry out the purposes of this subsection.

"(i) REPORT TO THE CONGRESS; RECOMMENDATIONS.—

"(1) REPORT.—The Board's annual report to the Congress shall include the results of the administration of this Act.

"(2) DIFFICULTIES AND RECOMMENDATIONS.—The report under paragraph (1) shall include—

"(A) a description of any substantial difficulties which have been encountered in carrying out the purposes of this Act; and

"(B) such recommendations for legislative action as the Board may determine to be appropriate.

"(j) DEFINITIONS.—As used in this section—

"(1) the term 'registered securities affiliate' means a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser that is registered with the Commission and that is a subsidiary of a financial services holding company; and

"(2) the term 'Commission' means the Securities and Exchange Commission.".

SEC. 405. RESERVATION OF RIGHTS TO STATES; PREEMPTION OF ANTI-AFFILIATION PROVISIONS.

Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended to read as follows:

"SEC. 7. RESERVATION OF RIGHTS TO STATES; ANTI-AFFILIATION PROVISIONS.

"(a) RESERVATION OF RIGHTS.—No provision of this Act shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, insured depository institutions, financial services holding companies, and subsidiaries thereof.

"(b) PREEMPTION OF STATE LAW.—

"(1) IN GENERAL.—Notwithstanding subsection (a), no provision of law of any State, including any provision relating to the business of banking (including any law relating to savings associations), real estate, insurance, securities, finance, retail or other law regulating the provisions of financial or other services, shall prevent or impede or shall be interpreted or applied by any administrative, executive, or judicial authority for the purpose of, or in a manner which has the effect of, preventing or impeding—

"(A) any insured depository institution, any affiliate of such institution, or any representative of the institution or affiliate from being acquired, owned or controlled by, or from being affiliated in any manner with, any company which is or becomes a financial services holding company or with any affiliate of such company because of—

"(i) the types of activities engaged in, directly or indirectly, by the insured depository institution, any affiliate of the institution, or any representative of the institution or affiliate; or

"(ii) the types of activities engaged in, directly or indirectly, by the company, any affiliate of the company, or any representative of the company or affiliate;

"(B) any company which is or becomes a financial services holding company, any affiliate of such company, or any representative of the company or affiliate, from acquiring, owning, or controlling or being affiliated in any way with any insured depository institution or any affiliate of any such institution because of—

"(i) the types of activities engaged in, directly or indirectly, by the company, any affiliate of the company, or any representative of the company or affiliate; or

"(ii) the types of activities engaged in, directly or indirectly, by the insured depository institution, any affiliate of the institution, or any representative of the institution or affiliate; or

"(C) any insured depository institution, any affiliate of any such institution, or any representative of any such institution or affiliate from offering or marketing products or services of any financial services holding company of which such institution is an affiliate or any other affiliate of such company or from having the products or services of the insured depository institution offered or marketed by any affiliate of such institution or by any representative of such company or affiliate, except—

"(i) with regard to offering and marketing insurance in accordance with section 4(c)(8) and paragraphs (5) and (6) of section 4(i); and

"(ii) when the preemption of such State law would permit the offering, marketing, or sale of insurance products or services by an insured depository institution or any subsidiary of such institution if such activity would otherwise be prohibited by operation of State law.

"(2) NO PREEMPTION OF CERTAIN STATE CONSUMER PROTECTION LAWS.—Paragraph (1)(C) shall not exempt any company which is or becomes a financial services holding company, any affiliate of such company, or any representative of any such company or affiliate from complying with, or shall annul, alter, or affect the application of, the laws of any State relating to the examination, supervision, or regulation of providers of financial services or the protection of consumers, except to the extent that the intent, purpose, or effect of any such law is inconsistent with this subsection or with the purposes of this Act and then only to the extent of the inconsistency.

"(3) NO PREEMPTION OF CERTAIN STATE INSURANCE LAWS.—Paragraph (1)(C) shall not annul, alter, or affect the application of the laws of any State insofar as such laws relate to the conduct of insurance activities by a financial services holding company.

"(4) CONSISTENT LAWS NOT AFFECTED.—Notwithstanding any other provision of this subsection, a State shall not be preempted from enforcing any State law that prohibits any ownership, control, or activity that is prohibited by this Act.

"(5) INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this subsection, the term 'insured depository institution' includes a branch, agency, or commercial lending company subsidiary of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978).".

SEC. 406. PENALTIES.

Section 8 of the Bank Holding Company Act of 1956 (12 U.S.C. 1847) is amended—

(1) by striking "bank holding company" wherever such term appears and inserting "financial services holding company";

(2) in subsection (a)(2), by striking "profit significantly" and inserting "obtain anything of value";

(3) in section (a)(2), by striking "Every officer, director, agent" and all that follows; and

(4) in subsection (b)(1), by striking "forfeit and".

SEC. 407. CONFORMING AMENDMENTS TO SECTION 11.

Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is amended—

(1) by striking "bank holding company" each place such term appears and inserting "financial services holding company"; and

(2) in subsection (b)(1), by striking "failure of a bank" and inserting "failure of an insured depository institution".

SEC. 408. APPLICATION OF THE LIMITATIONS ON TYING ARRANGEMENTS AND INSIDER LENDING TO FINANCIAL SERVICES HOLDING COMPANIES.

(a) Definitions.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971) is amended by striking "bank holding company" and inserting "financial services holding company".

(b) Certain Tying Arrangements Prohibited.—Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

"(2)(A) Except as provided in subparagraph (B), a financial services holding company and any subsidiary (other than a bank) of such holding company shall not, in any manner, extend credit, lease, or sell property of any kind, furnish any service, or fix or vary the consideration for any such credit, service, product, or other activity, on the condition that or subject to the requirement that the customer obtain credit, property, or service from an affiliated bank.

"(B) A financial services holding company and any subsidiary (other than a bank) of such holding company may vary the consideration—

"(i) for any extension of credit, lease or sale of property of any kind, or the furnishing of any service on the condition that or subject to the requirement that the customer obtain some credit, property, or service from an affiliated bank if the products or services offered to and obtained by the customer are also separately available to such customer on substantially the same terms, including interest rate, collateral, and cost, as those prevailing at the time for comparable transactions that are not subject to such conditions or requirements; or

"(ii) for any loan, discount, deposit, or trust service on the condition that or subject to the requirement that the customer obtain a loan, discount, deposit or trust service from an affiliated bank if such products or services described in this subparagraph are also separately available to such customer.

"(C) The Board may prescribe such regulations to carry out the purposes of this paragraph which may include such restrictions or limitations with respect to subparagraph (B) as the Board determines to be appropriate in the public interest.".

(c) Insider Loans.—Subparagraphs (C) and (D) of section 22(h)(6) of the Federal Reserve Act (12 U.S.C. 375b(6)) are amended by striking "bank holding company" each place such term appears and inserting "financial services holding company".

SEC. 409. PROVISIONS EXEMPTING FINANCIAL SERVICES HOLDING COMPANIES FROM THE SAVINGS AND LOAN HOLDING COMPANY ACT.

Section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)) is amended—

(1) in paragraph (1), by striking subparagraph (D) and inserting the following new subparagraph:

"(D) Savings and loan holding company defined.—

"(i) In general.—Except as provided in clause (ii), the term 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

"(ii) Certain companies excluded.—The term 'savings and loan holding company' does not include—

"(I) any company which is a financial services holding company which is registered under and subject to the Bank Holding Company Act of 1956, other than a company described in section 4(f) of such Act; or

"(II) any subsidiary of any company described in subclause (I)."; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) Exemption for financial services holding companies.—This section shall not apply to—

"(A) any company that is a financial services holding company which is registered under and subject to the provisions of the Bank Holding Company Act of 1956, other than any company described in section 4(f) of such Act; or

"(B) any subsidiary of any company described in subparagraph (A) which is not a savings association.".

SEC. 410. CEASE AND DESIST AUTHORITY.

Section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)) is amended by striking "bank holding company" each place such term appears and inserting "financial services holding company.".

SEC. 411. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b), the amendments made by this subtitle shall take effect on January 1, 1993.

(b) Certain Amendments Effective Immediately.—The amendments made by sections 408 and 409 shall take effect on the date of enactment of this Act.

CHAPTER 2—DEPOSITORY INSTITUTION CONVERSIONS

SEC. 421. FAILING THRIFT CONVERSIONS TO SAIF-INSURED NATIONAL BANK.

Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended by adding at the end the following new subsection:

"(s) Treatment of SAIF-Insured National Banks.—

"(1) In general.—Notwithstanding any other provision of law, a national bank that is a Savings Association Insurance Fund member (including any savings association applying for conversion to a national bank charter) upon application shall be deemed to be a savings association for the purpose of this section if the Director determines that—

"(A) the national bank resulted (or will result) from the conversion of a savings association which, at the time the control of such association was acquired—

"(i) was in danger of default (as defined in section 3(x)(2) of the Federal Deposit Insurance Act); or

"(ii) was under the control of a conservator or receiver appointed for such savings association; or

"(B) the national bank has acquired more than an insignificant portion of the assets of a savings association described in clauses (i) or (ii) of subparagraph (A),

and after the conversion or acquisition the bank is a level 1 or level 2 depository institution (as defined in section 38 of the Federal Deposit Insurance Act).

"(2) Rule of construction.—No provision of this section shall be construed as affecting—

"(A) the power of any national bank described in paragraph (1) to engage in any activity in the same manner and to the same extent as any national bank which is not subject to this section; or

"(B) the authority of any national bank described in paragraph (1) to be an affiliate of any company of which a savings association may be an affiliate under this section.".

SEC. 422. QTL-QUALIFIED NATIONAL BANKS RESULTING FROM CONVERSION OF SAVINGS ASSOCIATIONS.

Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended by inserting after subsection (s) (as added by section 421 of this subtitle) the following new subsection:

"(t) Treatment of QTL-Qualified National Banks Resulting From Savings Associations.—Notwithstanding any other provision of law, any national bank which—

"(1) meets the requirements for a qualified thrift lender under subsection (m);

"(2) resulted from the conversion of a savings association subsidiary of a savings and loan holding company; and

"(3) is a level 1 or level 2 depository institution,

shall be deemed to be a savings association for purposes of this section.".

SEC. 423. MERGERS AND ACQUISITIONS OF INSURED DEPOSITORY INSTITUTIONS DURING CONVERSION MORATORIUM.

(a) In General.—Section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)) is amended to read as follows:

"(3) Optional conversions subject to special rules on deposit insurance payments.—

"(A) Conversions allowed.—

"(i) In general.—Notwithstanding paragraph (2)(A) and subject to the requirements of this paragraph, any insured depository institution may participate in a transaction described in clause (ii), (iii), or (iv) of paragraph (2)(B) with the prior written approval of the responsible agency under section 18(c)(2).

"(ii) Holding company subsidiaries.—If, in connection with any transaction referred to in clause (i), the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the prior written approval of the Board shall be required for such transaction in addition to the approval of any agency referred to clause (i).

"(B) Assessments on deposits attributable to former depository institution.—

"(i) Assessments by SAIF.—In the case of any acquiring, assuming, or resulting depository institution which is a Bank Insurance Fund member, that portion of the average assessment base of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction) shall—

"(I) be subject to assessment at the assessment rate applicable under section 7 for Savings Association Insurance Fund members;

"(II) not be taken into account for purposes of any assessment under section 7 for Bank Insurance Fund members; and

"(III) be treated as deposits which are insured by the Savings Association Insurance Fund.

"(ii) ASSESSMENTS BY BIF.—In the case of any acquiring, assuming, or resulting depository institution which is a Savings Association Insurance Fund member, that portion of the average assessment base of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction) shall—

"(I) be subject to assessment at the assessment rate applicable under section 7 for Bank Insurance Fund members;

"(II) not be taken into account for purposes of any assessment under section 7 for Savings Association Insurance Fund members; and

"(III) be treated as deposits which are insured by the Bank Insurance Fund.

"(C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period by any acquiring, assuming, or resulting depository institution in connection with a transaction under subparagraph (A) is the amount which is equal to the sum of—

"(i) the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction);

"(ii) the total of the amounts determined under clause (iii) for semiannual periods preceding the semiannual period for which the determination is being made under this subparagraph; and

"(iii) the amount by which the sum of the amounts described in clauses (i) and (ii) would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the annual rate of growth of deposits of the acquiring, assuming, or resulting depository institution minus the amount of any deposits acquired through the acquisition, in whole or in part, of another insured depository institution.

"(D) DEPOSIT OF ASSESSMENT.—That portion of any assessment under section 7 which—

"(i) is determined in accordance with subparagraph (B)(i) shall be deposited in the Savings Association Insurance Fund; and

"(ii) is determined in accordance with subparagraph (B)(ii) shall be deposited in the Bank Insurance Fund.

"(E) CONDITIONS FOR APPROVAL, GENERALLY.—

"(i) FACTORS TO BE CONSIDERED; APPROVAL PROCESS.—In reviewing any application for a proposed transaction under subparagraph (A), the responsible agency (and, in the event the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the Board) shall follow the procedures and consider the factors set forth in section 18(c).

"(ii) INFORMATION REQUIRED.—An application to engage in any transaction under this paragraph shall contain such information relating to the factors to be considered for approval as the responsible agency or Board may require, by regulation or by specific request, in connection with any particular application.

"(iii) NO TRANSFER OF DEPOSIT INSURANCE PERMITTED.—This paragraph shall not be construed as authorizing transactions which result in the transfer of any insured depository institution's Federal deposit insurance from 1 Federal deposit insurance fund to the other Federal deposit insurance fund.

"(iv) MINIMUM CAPITAL.—The responsible agency, and the appropriate Federal banking agency for any depository institution holding company, shall disapprove any application for any transaction under this paragraph unless each such agency determines that the acquiring, assuming, or resulting depository institution, and any depository institution holding company which controls such institution, will meet all applicable capital requirements upon consummation of the transaction.

"(F) CERTAIN INTERSTATE TRANSACTIONS.—The Board may not approve any transaction under subparagraph (A) in which the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company unless the Board determines that the transaction would comply with the requirements of section 3(d) of the Bank Holding Company Act of 1956 if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction were a State bank which the bank holding company was applying to acquire.

"(G) EXPEDITED APPROVAL OF ACQUISITIONS.—

"(i) IN GENERAL.—Any application by a State nonmember insured bank to acquire another insured depository institution which is required to be filed with the Corporation by subparagraph (A) or any other applicable law or regulation shall be approved or disapproved in writing by the Corporation before the end of the 60-day period beginning on the date such application is filed with the Corporation.

"(ii) EXTENSIONS OF PERIOD.—The period for approval or disapproval referred to in clause (i) may be extended for an additional 30-day period if the Corporation determines that—

"(I) an applicant has not furnished all of the information required to be submitted; or

"(II) in the Corporation's judgment, any material information submitted is substantially inaccurate or incomplete.

"(H) ALLOCATION OF COSTS IN EVENT OF DEFAULT.—If any acquiring, assuming, or resulting depository institution is in default or danger of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such acquiring, assuming, or resulting depository institution assessed by the Bank Insurance Fund and the Savings Association Insurance Fund, respectively, under subparagraph (B).

"(I) SUBSEQUENT APPROVAL OF CONVERSION TRANSACTION.—This paragraph shall cease to apply if—

"(i) after the end of the 5-year period referred to in paragraph (2)(A), the Corporation approves an application by any acquiring, assuming, or resulting depository institution to treat the transaction described in subparagraph (A) as a conversion transaction; and

"(ii) the acquiring, assuming, or resulting depository institution pays the amount of any exit and entrance fee assessed by the Corporation under subparagraph (E) of paragraph (2) with respect to such transaction.

"(J) ACQUIRING, ASSUMING, OR RESULTING DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term 'acquiring, assuming, or resulting depository institution' means any insured depository institution which—

"(i) results from any transaction described in paragraph (2)(B)(ii) and approved under this paragraph;

"(ii) in connection with a transaction described in paragraph (2)(B)(iii) and approved under this paragraph, assumes any liability to pay deposits of another insured depository institution; or

"(iii) in connection with a transaction described in paragraph (2)(B)(iv) and approved under this paragraph, acquires assets from any insured depository institution in consideration of the assumption of liability for any deposits of such institution.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) to section 5(d)(3)(C) of the Federal Deposit Insurance Act shall apply with respect to semiannual periods beginning after the date of the enactment of this Act.

SEC. 424. MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.

(a) FEDERAL SAVINGS ASSOCIATIONS.—Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended by inserting after subsection (t) (as added by section 422 of this title) the following new subsection:

"(u) MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.—

"(1) IN GENERAL.—Subject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act, any Federal savings association may acquire or be acquired by any insured depository institution.

"(2) EXPEDITED APPROVAL OF ACQUISITIONS.—

"(A) IN GENERAL.—Any application by a savings association to acquire or be acquired by another insured depository institution which is required to be filed with the Director under section 5(d)(3) of the Federal Deposit Insurance Act or any other applicable law or regulation shall be approved or disapproved in writing by the Director before the end of the 60-day period beginning on the date such application is filed with the agency.

"(B) EXTENSION OF PERIOD.—The period for approval or disapproval referred to in subparagraph (A) may be extended for an additional 30-day period if the Director determines that—

"(i) an applicant has not furnished all of the information required to be submitted; or

"(ii) in the Director's judgment, any material information submitted is substantially inaccurate or incomplete.

"(3) ACQUIRE DEFINED.—For purposes of this subsection, the term 'acquire' has the meaning given to such term in section 13(f)(8)(B) of the Federal Deposit Insurance Act.

"(4) REGULATIONS.—

"(A) REQUIRED.—The Director shall prescribe such regulations as may be necessary to carry out paragraph (1).

"(B) EFFECTIVE DATE.—The regulations required under subparagraph (A) shall—

"(i) be prescribed in final form before the end of the 90-day period beginning on the date of the enactment of this subsection; and

"(ii) take effect before the end of the 120-day period beginning on such date.".

(b) NATIONAL BANKS.—Chapter 1 of title LXII of the Revised Statutes of the United

States (12 U.S.C. 5133 et seq.) is amended by adding at the end the following new section:

"SEC. 5156A. MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.

"(a) In General.—Subject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act, any national bank may acquire or be acquired by any insured depository institution.

"(b) Expedited Approval of Acquisitions.—

"(1) In general.—Any application by a national bank to acquire or be acquired by another insured depository institution which is required to be filed with the Comptroller of the Currency by section 5(d)(3) of the Federal Deposit Insurance Act or any other applicable law or regulation shall be approved or disapproved in writing by the agency before the end of the 60-day period beginning on the date such application is filed with the agency.

"(2) Extensions of period.—The period for approval or disapproval referred to in paragraph (1) may be extended for an additional 30-day period if the Comptroller of the Currency determines that—

"(A) an applicant has not furnished all of the information required to be submitted; or

"(B) in the Comptroller's judgment, any material information submitted is substantially inaccurate or incomplete.

"(c) Acquire Defined.—For purposes of this section, the term 'acquire' has the meaning given to such term in section 13(f)(8)(B) of the Federal Deposit Insurance Act.".

SEC. 425. ACQUISITION OF THRIFT INSTITUTIONS BY CERTAIN COMPANIES WHICH CONTROL BANKS AND ARE NOT TREATED AS HOLDING COMPANIES.

(a) In General.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended by adding at the end the following new paragraph:

"(14) Savings association acquisitions.—For purposes of paragraph (2)(A), an insured institution is described in this paragraph if control of the insured institution, or more than 5 percent of the shares of the insured institution, is acquired by a company described in paragraph (1) of this subsection in connection with a transaction—

"(A) which involves the insured institution and a bank controlled by the company;

"(B) which is approved under section 5(d)(3) of the Federal Deposit Insurance Act by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act); and

"(C) in which a bank controlled by such company is the acquiring, assuming, or resulting depository institution (as defined in section 5(d)(3)(I) of the Federal Deposit Insurance Act).".

(b) Exceptions to Certain Limitations on Bank Activities To Facilitate Acquisitions.—Section 4(f)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(3)) is amended by adding at the end the following new subparagraph:

"(D) Exceptions for paragraph (14) mergers.—If any company described in paragraph (1) acquires control of any insured institution, or more than 5 percent of the shares of any insured institution, pursuant to a transaction described in paragraph (14)—

"(i) subparagraph (B)(i) shall not apply so as to prohibit the bank which is the acquiring, assuming, or resulting depository institution (as defined in section 5(d)(3)(I) of the Federal Deposit Insurance Act) in connection with such transaction from engaging in any activity in which the insured institution was engaged before the date of such transaction to the extent that—

"(I) the activity is permissible for bank holding companies under subsection (c)(8); and

"(II) the bank is not both accepting demand deposits that the depositor may withdraw by check or similar means for payment to third parties or others and engaging in the business of making commercial loans as a result of engaging in such activity; and

"(ii) subparagraph (B)(iv) shall not apply to an increase in the assets of the bank controlled by such company as a result of the transaction referred to in paragraph (14) during the 1-year period beginning on the date of such transaction.".

(c) Technical Amendments.—Clauses (i) and (ii)(VIII) of section 4(f)(2)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(2)(A)) are amended by striking "(10) or (12)" and inserting "(10), (12), or (14)".

CHAPTER 3—FINANCIAL ACTIVITIES OF NATIONAL BANKS

SEC. 431. SECURITIES ACTIVITIES OF NATIONAL BANKS.

(a) In General.—The paragraph designated the "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) is amended by adding at the end the following: "Notwithstanding any other provision of law (including this section), a national bank shall not, in the United States and pursuant to any express or incidental power, underwrite, distribute, or sell securities backed by, or representing interests in, a pool of assets originated or purchased by the bank or any affiliate of the bank, and the bank shall not continue to engage in such activity pursuant to any order issued by the Comptroller of the Currency. A national bank shall not sponsor, organize, promote, or control an investment company registered under the Investment Company Act of 1940. A national bank shall not engage in the United States in any securities activity except to the extent that such activity is specifically authorized by statute, or authorized by a regulation prescribed by, or an order, interpretation, or approval issued by, the Comptroller of the Currency pursuant to such statute, on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, and does not involve the underwriting or distributing by any national bank of securities backed by or representing an interest in mortgages or other assets originated or purchased by the national bank or any affiliate of the bank. No subsidiary of a national bank may engage in any activity in which a national bank may not engage.".

(b) Repeal of Provisions of the Banking Act of 1933.—Effective January 1, 1993, sections 20 and 32 of the Banking Act of 1933 (12 U.S.C. 377 and 78, respectively) are hereby repealed.

(c) Conforming Amendments.—The 20th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by inserting after the word "stock" the following: "and with respect to sponsoring, organizing, promoting, or controlling of an investment company registered under the Investment Company Act of 1940".

SEC. 432. INSURANCE ACTIVITIES OF NATIONAL BANKS.

(a) Limited Insurance Activities for National Banks Located in Small Towns.—In addition to the powers now vested by law in national banks organized under the laws of the United States, any national bank that is located in a place that has a population not exceeding 5,000 (as shown by the preceding decennial census) may engage in insurance sales and insurance solicitation activities if—

(1) the sales and solicitation activities are confined to that place of 5,000 or less and the adjacent rural unincorporated areas closest to that place; and

(2) the insurance is sold only to—

(A) individuals who are residents of, or are employed in, any place (including any unincorporated rural area) in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census);

(B) persons—

(i) who are engaged in business in any place in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census) and have a principal business office in any such place; or

(ii) whose principal headquarters is located in any such place,

with respect to employees (including owner-employees) who reside in or are principally employed in such place, real property located in such place, personal property which is principally used in such place, or services provided by persons located in such place; and

(C) any other person if the insurance is issued with respect to—

(i) real property located in any place in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census); or

(ii) personal property which is principally used in such place.

(b) Certain Activities Prohibited in Connection With Insurance Activities.—No national bank which sells insurance pursuant to subsection (a) may—

(1) assume or guarantee the payment of any premium on any insurance policy issued through the agency of the bank by the insurance company for which the bank is acting as agent; or

(2) guarantee the truth of any statement made by an insurance customer in filing such customer's application for insurance.

(c) Limitation on Title Insurance Activities.—No national bank may engage, directly or through a subsidiary, in any activity involving the underwriting or sale of title insurance other than title insurance agency activities in which such bank was actively and lawfully engaged, directly or through a subsidiary, as of June 1, 1991.

(d) Repeal.—

(1) In general.—To the extent the paragraph described in paragraph (2) is in effect on the day before the date of the enactment of this Act (whether as a paragraph of the Act described in such paragraph or as a provision of any other law), such paragraph shall cease to be effective as of such date of enactment.

(2) Paragraph described.—The paragraph described in this paragraph is the paragraph contained in the Act entitled "An Act to amend certain sections of the Act entitled 'Federal reserve Act' approved December twenty-third, nineteen hundred and thirteen' and approved September 7, 1916 (39 Stat. 753; omitted from the United States Code) which—

(A) relates to the authority of national banks in small communities to act as insurance agents and real estate brokers; and

(B) begins "That in addition to the powers now vested by law in national banking associations".

SEC. 433. AMENDMENTS TO SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT.

(a) Section 23A.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

"(5) NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No financial services holding company may permit any insured depository institution subsidiary to engage in any covered transaction if the amount of the covered transaction is equal to or greater than the amount which is equal to 5 percent of the capital stock and surplus of the institution unless notice is provided not less than 5 days before such transaction is engaged in to the Board and the appropriate Federal banking agency for the insured depository institution.";

(2) in subsection (b)(1)(D), by striking clause (ii) and inserting the following new clause:

"(ii) any investment company, commodity pool, or other company engaged in substantially the same activities as an investment company or commodity pool with respect to which a member bank or any affiliate of the member bank is an investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940) or a commodity trading advisor (as defined in section 2(a)(1)(A) of the Commodity Exchange Act) or for which such bank or affiliate performs activities which are substantially equivalent to those provided by an investment adviser or commodity trading advisor; and";

(3) in subsection (b)(2)(A), by inserting "and of which the member bank owns at least 80 percent of the voting stock" after "member bank";

(4) in subsection (b)(5), by inserting "principally engaged in deposit taking or lending activities" after "trust company";

(5) by striking "or" at the end of subsection (b)(7)(D);

(6) in subsection (b)(7)(E) by inserting "to, or" after "standby letter of credit,";

(7) in subsection (b)(7), by inserting after subparagraph (E) the following new subparagraphs:

"(F) the assumption by a member bank of a liability of any affiliate whether directly or through the transfer of such liability, or the shares of such affiliate, to the member bank affiliate;

"(G) a loan or extension of credit to any company, or the issuance of or participation in a standby letter of credit, asset purchase agreement, indemnification, guarantee, insurance or other facility with any company, the purpose of which is to enhance the marketability of securities or other obligations or assets (other than securities that a member bank may underwrite pursuant to section 5136 of the Revised Statutes) that are underwritten or distributed by the affiliate, unless there is substantial participation by other lenders in such loan, extension of credit, letter of credit, agreement, indemnification, guarantee, insurance or other facility; or

"(H) any other financial arrangement that is determined by the Board by regulation to be substantially equivalent to a transaction described in this paragraph;";

(8) in subsection (c)(1)—

(A) by inserting "to, or" after "letter of credit issued"; and

(B) by striking "at the time of the transaction";

(9) in subsection (c)(4)—

(A) by inserting "the member bank or" after "issued by"; and

(B) by inserting "to, or" after "letter of credit"; and

(10) in subsection (d)(5), by inserting "to the extent that the company provides services solely to affiliated member banks" before the semicolon;

(b) SECTION 23B.—

(1) Section 23B(a)(2)(E) of the Federal Reserve Act (12 U.S.C. 371c-1(a)(2)(E)) is amended—

(A) in clause (i), by striking ", or" and inserting instead a semicolon;

(B) in clause (ii), by striking the period and inserting instead "; or"; and

(C) by inserting at the end thereof the following new clause:

"(iii) if the third party is a customer of an affiliate (as defined in section 2 of the Bank Holding Company Act of 1956).".

(2) Section 23B(b)(2) of the Federal Reserve Act (12 U.S.C. 371c-1(b)(2)) is amended by inserting "officers, directors, or employees of" after "of the bank or".

SEC. 434. CUSTOMER DISCLOSURE.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(o) CUSTOMER DISCLOSURE REGARDING SECURITIES, INSURANCE, AND OTHER NONBANKING PRODUCTS.—

"(1) PRODUCTS OFFERED, RECOMMENDED OR SOLD BY DEPOSITORY INSTITUTIONS.—An insured depository institution shall prominently disclose in writing to the institution's customers pursuant to regulations prescribed by the appropriate Federal banking agency, that securities or insurance products offered, recommended, or sold by the insured depository institution are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by the insured depository institution or an affiliated insured depository institution, and are not otherwise an obligation of an insured depository institution, unless such is the case.

"(2) PRODUCTS OFFERED, RECOMMENDED, OR SOLD ON BANK PREMISES OR THROUGH JOINT MARKETING ACTIVITIES.—An insured depository institution shall not permit securities or insurance products to be offered, recommended, or sold on the premises of the institution or to customers of the institution as part of joint marketing activities with any other person, unless that person prominently discloses in writing, in addition to the disclosures required in paragraph (1), that such person is not an insured depository institution and is separate from the insured depository institution.

"(3) CUSTOMER'S SIGNED STATEMENT RELATING TO UNINSURED DEPOSITS.—

"(A) REQUIREMENTS.—In connection with—

"(i) any sale of any instrument or financial product by any insured depository institution, or any affiliate of such institution, which does not constitute an insured deposit;

"(ii) any acceptance of a deposit by such institution or affiliate which is not an insured deposit; or

"(iii) any other transaction which results in the acquisition of any such obligation, instrument, or product from the institution or affiliate,

the institution or affiliate shall obtain from the purchaser, depositor, or acquirer, before the completion of the sale, deposit, or transaction, a separate statement, signed and dated by such person, which contains the following declaration in not less than 18-point boldface type: 'I understand that this is not an insured deposit. The United States Government does not guarantee it. If [name of institution or affiliate] fails, I know that I may lose some or all of my money.'.

"(B) EXCEPTION.—The provisions of this paragraph shall not apply with respect to any transaction—

"(i) effected by a broker or dealer registered under the Securities Exchange Act of 1934;

"(ii) involving an insurance activity of any affiliate of an insured depository institution which is not itself an insured depository institution or a subsidiary of such institution if the transaction—

"(I) is not engaged in on the premises of any insured depository institution (including any branch) or any subsidiary of such institution;

"(II) is not engaged in by the affiliate in connection with any joint marketing activities between the affiliate and any such institution or subsidiary; and

"(III) does not otherwise involve any such insured depository institution or subsidiary; or

"(iii) consisting of any loan or other extension of credit by the insured depository institution or affiliate.

"(4) REGULATIONS.—The appropriate Federal banking agencies, with respect to insured depository institutions and financial services holding companies, and the Securities and Exchange Commission, with respect to persons registered with such Commission, may adopt regulations implementing this subsection.".

SEC. 435. BANKERS' BANKS.

(a) ACQUISITION OF INTERESTS.—The paragraph designated the "Seventh." of section 5136 of the Revised Statutes (12 U.S.C. 24 Seventh.) (as amended by section 431 of this Act) is amended by inserting "or depository institution holding companies" after "providing services for other depository institutions".

(b) ISSUANCE OF CERTIFICATE.—Section 5169(b)(1) of the Revised Statutes (12 U.S.C. 27(b)(1)) is amended by inserting "or depository institution holding companies" after "other depository institutions" the 2d place such term appears.

CHAPTER 4—NONBANKING ACTIVITIES OF FOREIGN BANKS IN THE UNITED STATES

SEC. 441. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) TREATMENT OF FOREIGN BANKS.—Section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) (as amended by section 207) is amended to read as follows:

"(a) TREATMENT OF FOREIGN BANKS AS HOLDING COMPANIES.—

"(1) IN GENERAL.—Except as otherwise provided in this section, any foreign bank which—

"(A) maintains a branch or agency in the United States; or

"(B) directly or indirectly owns or controls a commercial lending company organized under State law,

shall be subject to the Bank Holding Company Act of 1956 and sections 105 and 106 of the Bank Holding Company Act Amendments of 1970 in the same manner and to the same extent as a financial services holding company.

"(2) TREATMENT OF FOREIGN BANK HOLDING COMPANIES.—Any company that directly or indirectly owns or controls a foreign bank described in paragraph (1) shall be subject to the Bank Holding Company Act of 1956 in the same manner and to the same extent as a company that owns or controls a financial services holding company.

"(3) COMPARABLE CAPITAL AND OTHER FINANCIAL REQUIREMENTS.—

"(A) DETERMINATION REQUIRED.—In reviewing any notice under section 4 of the Bank Holding Company Act of 1956 by any foreign bank or company controlling a foreign bank to which this section applies, the Board shall disapprove the notice unless the Board determines that the financial resources of such bank or company, including the capital level under section 38 of the Federal Deposit Insurance Act, are comparable to those of a domestic financial services holding company that would be permitted to engage in such activities.

"(B) CRITERIA FOR DETERMINATION.—In making the determination in subparagraph (A), the Board shall—

"(i) take into account differences in domestic and foreign accounting standards; and

"(ii) assure that competitive comparability between domestic and foreign banks is maintained.".

(b) AUTHORITY TO TERMINATE GRANDFATHERED STATUS OF ACTIVITIES NOW PERMISSIBLE UNDER THE BANK HOLDING COMPANY ACT OF 1956.—Section 8(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3106(c)(1)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this paragraph or any other provision of law, the Board shall terminate any authority conferred under this subsection on any foreign bank or company with respect to an affiliate engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States upon a finding by the Board that such business has been authorized by statute as a permissible activity for financial services holding companies in the United States.".

Subtitle B—Amendments to Federal Securities Laws

CHAPTER 1—REGULATION OF SECURITIES ACTIVITIES OF DEPOSITORY INSTITUTIONS

PART I—BROKER-DEALER PROVISIONS

SEC. 451. DEFINITION OF BROKER.

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

"(4)(A) The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

"(B) A bank shall not be deemed to be a 'broker' because it engages in one or more of the following activities:

"(i) fiduciary activities (including effecting transactions in the course of such fiduciary activities) permissible for national banks under the first section of the Act of September 28, 1962 (12 U.S.C. 92a), or for State banks under relevant State trust law, except that a bank shall be deemed a broker if, in the conduct of such fiduciary activities, it—

"(I) publicly solicits brokerage business; or

"(II) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (excluding fees calculated as percentage of assets under management); or

"(ii) effects transactions in exempted securities, commercial paper, bankers' acceptances, or commercial bills.".

SEC. 452. DEFINITION OF DEALER.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

"(5)(A) The term 'dealer' means any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.

"(B) Such term does not include—

"(i) any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business; or

"(ii) any bank insofar as the bank (I) buys and sells commercial paper, bankers' acceptances, or commercial bills, or exempted securities; or (II) buys and sells securities for investment purposes for the bank or for accounts in which the bank, acting as trustee, is authorized to determine the securities to be purchased or sold.".

SEC. 453. POWER TO EXEMPT FROM THE DEFINITIONS OF BROKER AND DEALER.

Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following:

"(e) The Commission, by rule, regulation, or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or class of persons from the definitions of 'broker' or 'dealer,' if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this title.".

SEC. 454. REQUIREMENT THAT BANKS FALLING WITHIN THE DEFINITIONS OF BROKER OR DEALER PLACE THEIR SECURITIES ACTIVITIES IN A SEPARATE CORPORATE ENTITY.

Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is amended to read as follows:

"SEC. 15. (a)(1) It shall be unlawful for any broker or dealer that is either a person other than a natural person or a natural person not associated with a broker or dealer that is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

"(2) It shall be unlawful for any bank to act as a broker or dealer, except in the course of an exclusively intrastate business. This subsection shall not preclude a subsidiary of a bank that is registered in accordance with subsection (b) from acting as a broker or dealer to any extent otherwise permissible by Federal banking law.

"(3) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraphs (1) and (2) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.".

SEC. 455. PROVISIONS RELATING TO BROKER-DEALERS AFFILIATED WITH DEPOSITORY INSTITUTIONS.

The Securities Exchange Act of 1934 is amended by inserting after section 15C (15 U.S.C. 78o-5) the following new section:

"PROVISIONS RELATING TO CERTAIN BROKER-DEALERS AFFILIATED WITH FINANCIAL SERVICES HOLDING COMPANIES

"Sec. 15D. (a) DEFINITIONS.—As used in this section—

"(1) the terms 'financial services holding company', 'insured depository institution', 'Board', 'control', 'subsidiary', and 'securities affiliate', have the meanings provided by section 2 of the Bank Holding Company Act of 1956; and

"(2) the term 'affiliated insured depository institution or subsidiary thereof' means, with respect to any securities affiliate that is controlled by a financial services holding company, an insured depository institution that is controlled by such financial services holding company, or a subsidiary of such insured depository institution.

"(b) CONSUMER PROTECTION PROVISIONS.—

"(1) DISCLOSURES BY BANK-AFFILIATED BROKER-DEALERS REGARDING FEDERAL DEPOSIT INSURANCE.—

"(A) GENERAL REQUIREMENT.—Each registered broker or dealer that is an affiliate of an insured depository institution shall provide notice to its customers of the inapplicability of Federal deposit insurance with respect to securities or other financial products recommended, offered, or sold by such broker or dealer to such customers in accordance with regulations which the Commission, in consultation with the Board of Governors of the Federal Reserve System, shall prescribe in accordance with this subsection and consistent with the public interest and the protection of investors.

"(B) CONTENTS OF DISCLOSURES.—The notice required under subparagraph (A) shall be designed to inform customers of a broker or dealer—

"(i) that the registered broker or dealer—

"(I) is not an insured depository institution; and

"(II) is a separate corporate entity with respect to any insured depository institution affiliate of such broker or dealer;

"(ii) whether the securities or other financial products underwritten, sold, offered, or recommended by the registered broker or dealer—

"(I) are deposits which are insured by the Federal Deposit Insurance Corporation;

"(II) are instruments which are guaranteed either as to principal or interest by any insured depository institution affiliate of such broker or dealer;

"(III) are otherwise obligations of any insured depository institution; and

"(iii) whether or not any insured depository institution that is an affiliate of such broker or dealer is permitted under applicable law to extend credit, arrange for the extension of credit, or issue a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to or for the benefit of an issuer of any security that the broker or dealer sells or offers for sale; and

"(iv) such additional information as the Commission deems to be necessary to carry out the purposes of this subsection.

"(C) TIME AND MANNER OF DISCLOSURE.—The regulations prescribed by the Commission under this subsection shall specify a time and manner by which the notice required by this subsection shall be provided to customers that the Commission determines will effectively inform customers concerning the inapplicability of Federal deposit insurance.

"(D) USE OF ADDITIONAL LANGUAGES.—The regulations prescribed by the Commission under this paragraph shall specify when, under which circumstances, and by what means and procedures the notice required under this paragraph shall be made available in languages other than English.

"(2) DISCLOSURES OF CONFIDENTIAL CUSTOMER INFORMATION PROHIBITED.—

"(A) IN GENERAL.—No securities affiliate may disclose, directly or indirectly, any confidential customer information to any person (as defined in section 1 of title 1, United States Code), without the prior written consent of the customer.

"(B) RECORDS OF CUSTOMER CONSENT.—Whenever any securities affiliate obtains the prior written consent of a customer for purposes of subparagraph (A), such affiliate shall—

"(i) obtain an acknowledgment of such consent by the customer, including the date the consent was acknowledged and the customer's name, address, and any applicable account number;

"(ii) obtain such consent separately from any other authorization or consent of the customer;

"(iii) inform the customer that the consent is not required as a condition for the performance of services for the customer; and

"(iv) maintain records of compliance with clauses (i), (ii), and (iii).

"(C) CUSTOMER DEFINED.—For purposes of this paragraph, the term 'customer' means any person who, after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, establishes a securities account, investment advisory relationship, or other relationship in connection with securities transactions with, or purchases any service or financial product from, such securities affiliate.

"(D) CONFIDENTIAL CUSTOMER INFORMATION DEFINED.—For purposes of subparagraph (C), the term 'confidential customer information' means financial information regarding any specific individual which has been derived from any record of any securities affiliate and pertains to the individual's relationship with the securities affiliate.

"(E) CERTAIN INFORMATION NOT INCLUDED IN DEFINITION.—Notwithstanding subparagraphs (C) and (D), the term 'confidential customer information' shall not include—

"(i) any information obtainable from an unaffiliated credit bureau or similar entity or information obtainable in the ordinary course of business from any other unaffiliated entity;

"(ii) any information provided to any credit bureau or similar entity in the ordinary course of business;

"(iii) any information obtainable in connection with insurance—

"(I) which is limited to assuring the repayment of the outstanding balance due on an extension of credit in the event of the death, disability, or involuntary unemployment of the debtor;

"(II) on real or personal property obtained by or on behalf of a securities affiliate in the event a debtor has failed to provide reasonable evidence of required insurance in accordance with an extension of credit; or

"(III) to assure the repayment of outstanding balances due in connection with an extension of credit in the event of the loss or damage to property used as collateral on such extension of credit; and

"(iv) any information provided—

"(I) to the Securities and Exchange Commission, an appropriate regulatory agency, or a self-regulatory organization; or

"(II) in accordance with the Right to Financial Privacy Act of 1978 to any Government authority (as defined in section 1101(3) of such Act).

"(F) DISCLOSURE OF CUSTOMER INFORMATION.—In addition to any requirement or limitation contained in this section, the Commission may prescribe regulations limiting disclosures of nonpublic customer information from any securities affiliate to any affiliate of such securities affiliate, including an evaluation of the creditworthiness of an issuer or other customer of that securities affiliate or any subsidiary or affiliate of such securities affiliate.

"(3) LIMITATIONS ON ADVERTISEMENT.—The Commission shall prescribe regulations to prohibit any securities affiliate from employing any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that an affiliated insured depository institution or the Federal Government is responsible for the activities of the securities affiliate, stands behind the affiliate's credit, guarantees any returns on securities sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate.

"(c) REQUIREMENTS APPLICABLE IN THE CASE OF FINANCIAL SERVICES HOLDING COMPANIES WITH SECURITIES AFFILIATES.—

"(1) CERTAIN FINANCIAL TRANSACTIONS OF INSURED DEPOSITORY INSTITUTIONS PROHIBITED.—Notwithstanding any provision of paragraph (5), a securities affiliate may not directly or indirectly engage in any of the following:

"(A) Except as provided in paragraph (3), knowingly obtain, receive, or enjoy the beneficial use of credit from an affiliated insured depository institution.

"(B) Knowingly obtain, receive, or enjoy the beneficial use of a guaranty, acceptance, or letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an affiliated insured depository institution.

"(C) Sell to an affiliated insured depository institution, for its own account, or for the account of any subsidiary of the institution, any financial asset of the securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

"(D) Sell to an affiliated insured depository institution, for its own account, or for the account of any subsidiary of the institution, any security (other than securities issued by an open-end investment company or a unit investment trust) of which the securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places, until—

"(i) in the case of an underwriting, 60 days after the end of the underwriting period; or

"(ii) in the case of a placement, 60 days after completion of the placement.

"(E) Knowingly sell to a customer account for which an affiliated insured depository institution or its subsidiary, acting as fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which the securities affiliate is an underwriter or a member of the selling group or which the securities affiliate otherwise places until—

"(i) in the case of an underwriting, 90 days after the end of the underwriting period; or

"(ii) in the case of a placement, 90 days after completion of the placement.

The requirements of this subparagraph (E) apply whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the insured depository institution or subsidiary to act in such capacity, unless such purchase is permitted by State law, is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship, and is effectuated by endorsement by the creator of the trust of a separate document that discloses (in accordance with regulations prescribed by the Board) any conflict of interest that an insured depository institution may have in making such purchase. Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred to in the preceding sentence is incapable of providing the authorization or effectuating an endorsement referred to in such sentence every beneficiary of such trust or instrument shall provide such authorization or effectuate such endorsement.

"(F) Arrange for the extension of credit from an affiliated insured depository institution to any investment company which is sponsored, organized, controlled, promoted, or advised by the securities affiliate, except as permitted by regulations prescribed by the Commission pursuant to section 18(f)(3) of the Investment Company Act of 1940.

"(G) Arrange for the extension of credit, or arrange for the issuance or entry into of a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an affiliated insured depository institution to an issuer of securities for which the securities affiliate is underwriting or placing any security for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities.

"(H) Arrange for the extension of credit to a customer of the securities affiliate for the purpose of repaying, in whole or in part, credit extended to such customer by such securities affiliate.

"(I) Except as permitted under section 4(n)(4)(G) of the Bank Holding Company Act of 1956, arrange for the extension of credit from, or arrange for the issuance or entry into of a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an affiliated insured depository institution to or for the benefit of the issuer of any security of which the securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places, until—

"(i) in the case of an underwriting, 90 days after the end of the underwriting period; or

"(ii) in the case of a placement, 90 days after completion of the placement.

"(J) Except as provided in paragraph (5), purchase any financial asset of an affiliated depository institution or a subsidiary thereof that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

"(2) CERTAIN FINANCIAL TRANSACTIONS OF HOLDING COMPANIES AND SUBSIDIARIES DURING DISTRIBUTIONS PROHIBITED.—No securities affiliate may, directly or indirectly, arrange for the extension of credit from any affiliated financial services holding company or subsidiary of a financial services holding company to any person, if such credit is secured by, or is used to purchase, any security that is the subject of a distribution or placement in which a securities affiliate of such holding company participates as an underwriter or member of the selling group or which the securities affiliate otherwise places (other than securities issued by an open-end investment company or a unit investment trust or securities of the United States or any agency of the United States or securities on which the principal and interest are fully guaranteed by the United States or any such agency) until 30 days after the end of the period in which such security is the subject of such distribution or placement.

"(3) EXCEPTION FOR INTRADAY EXTENSIONS OF CREDIT IN CONNECTION WITH CLEARING GOVERNMENT SECURITIES.—Paragraph (1)(A) shall not apply with respect to any extension of credit which is made for the purchase or sale of any securities of the United States or any agency of the United States or any securities on which the principal and interest are fully guaranteed by the United States or any such agency, if—

"(A) the extension of credit is to be repaid on the same calendar day;

"(B) the extension of credit is incidental to the clearing of transactions in those securities through such institution or any subsidiary; and

"(C) both the principal of, and the interest on, the extension of credit are fully secured, on a market value basis, by securities of the United States or any agency of the United States or securities on which the principal and interest are fully guaranteed by the United States or any such agency.

"(4) PROHIBITIONS ON DISCRIMINATORY CREDIT TREATMENT.—No securities affiliate knowingly shall obtain or arrange for an extension of credit or services that would violate section 4(n)(4)(D) of the Bank Holding Company Act of 1956.

"(5) ASSET PURCHASES FROM AFFILIATED INSURED INSTITUTION OR SUBSIDIARY THEREOF.—

"(A) IN GENERAL.—A securities affiliate may, notwithstanding paragraph (1)(J) of this paragraph but subject to section 23B of the Federal Reserve Act, purchase any asset of an affiliated insured depository institution for the purpose of including such asset in a pool of assets for the purpose of issuing asset-backed securities if—

"(i) those securities are rated as investment grade by at least 1 unaffiliated, nationally recognized statistical rating organization;

"(ii) those securities are issued or guaranteed by a government sponsored enterprise determined by the Board for purposes of section 4(n)(4)(F)(i)(II) of the Bank Holding Company Act of 1956;

"(iii) those securities represent interests in securities described in clause (ii) of this subparagraph;

"(iv) the price at which an equity security or the yield at which a debt security to be distributed to the public is established at a price no higher, or yield no lower, than that recommended by a qualified independent underwriter which has also participated in the preparation of the registration statement and the prospectus, offering circular, or similar document; or

"(v) those securities would not be the subject of a public offering and would be sold only to accredited investors, as defined in the Securities Act of 1933.

"(B) REGULATIONS.—The Commission, after consultation with the Board of Governors of the Federal Reserve System, shall prescribe such regulations as may be necessary to ensure that transactions described in subparagraph (A) comply with the requirements of this subsection.

"(C) ASSET DEFINED.—For purposes of this paragraph, the term 'asset' means any note, draft, acceptance, loan, lease, receivable, other obligation, or pools of any such obligations.

"(D) QUALIFIED INDEPENDENT UNDERWRITER.—For purposes of this paragraph, the term 'qualified independent underwriter' shall be defined by regulation prescribed by the Securities and Exchange Commission.

"(6) DEFINITIONS.—For purposes of this subsection, the term 'insured depository institution' includes any subsidiary of the institution, other than an entity required to register with the Securities and Exchange Commission.

"(d) TRANSACTIONS ON BANK PREMISES.—

"(1) PROHIBITION.—No insured depository institution may permit any evidence of indebtedness of, or ownership interest in, such insured depository institution or any affiliate of such insured depository institution to be sold or offered for sale to the general public in any part of any office (other than an office that is not located within any State) of such insured depository institution that is commonly accessible to the general public for the purpose of accepting deposits.

"(2) EXCEPTIONS.—

"(A) REGISTERED BROKERS AND DEALERS.—This subsection shall not apply to transactions in shares of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) that are affiliated with the bank, if such transactions are effected by or through a broker or dealer registered under this Act and are conducted in accordance with such rules, regulations, or orders as the Commission may prescribe consistent with the public interest, the protection of investors, and the purposes of this subsection.

"(B) DEPOSITS, CERTAIN MEANS OF PAYMENT TO THIRD PARTIES AND CERTAIN OTHER INSTRUMENTS.—This subsection shall not apply to any evidence of indebtedness or ownership interest that—

"(i) is a deposit in an insured depository institution; or

"(ii) constitutes a means of payment to a third party, such as a traveler's check, cashier's check, teller's check or money order.

"(e) PROHIBITION ON RECIPROCAL ARRANGEMENTS WITHIN THE HOLDING COMPANY.—No securities affiliate of a financial services holding company shall engage in any transactions or reciprocal arrangements for the purpose of evading any restriction or limitation imposed under this section.

"(f) INTERLOCKING DIRECTORS, MANAGEMENT OFFICIALS, AND EMPLOYEES PROHIBITED.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no securities affiliate controlled by a financial services holding company may allow any director, management official, or employee of such affiliate to serve at the same time as a director, management official, or employee of any insured depository institution subsidiary of such holding company or any subsidiary of any such institution.

"(2) SEC AUTHORITY TO EXEMPT FROM PARAGRAPH (1).—

"(A) IN GENERAL.—The Commission may, by order or regulation issued after consultation with the Board of Governors of the Federal Reserve System, grant exemptions from paragraph (1) of this subsection.

"(B) FACTORS TO BE CONSIDERED.—In determining whether to grant an exemption under subparagraph (A), the Commission shall consider—

"(i) the size of the financial services holding companies involved and the size of the depository institution subsidiaries and securities affiliate involved;

"(ii) any burdens imposed by the application of paragraph (1);

"(iii) the safety and soundness of the depository institution subsidiaries and the securities affiliates of such financial services holding companies; and

"(iv) other appropriate factors, including unfair competition in securities activities and the improper exchange of confidential customer information.

"(C) EXCEPTION FOR CERTAIN SMALL FINANCIAL SERVICES HOLDING COMPANIES.—

"(i) IN GENERAL.—The Commission shall grant, by regulation, an exemption under clause (i) to allow a director, management official, or employee of any securities affiliate subsidiary of any financial services holding company the total banking assets of which do not exceed $500,000,000 to serve at the same time as a director, management official, or employee of any insured depository institution subsidiary of the company, or any subsidiary of such institution.

"(ii) ANNUAL ADJUSTMENT FOR INFLATION.—The dollar amount of assets referred to in subparagraph (B)(i) shall be adjusted for inflation by the Commission at the end of each calendar year beginning after December 31, 1991.

"(3) EXCEPTION FOR CERTAIN BACK OFFICE OPERATIONS.—Paragraph (1) shall not apply to any employee, other than an officer or director, employed by the financial services holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions, including the receipt or transmittal of electronic transfers, if such functions are performed—

"(A) in an office or other facility which is not open to the general public; and

"(B) in a manner which is consistent with the requirements of this section as determined by the Commission after consultation with the Board of Governors of the Federal Reserve System.

"(4) MANAGEMENT OFFICIAL DEFINED.—The term 'management official' includes any officer and any employee with management functions (including a branch manager), any trustee of a business organization under the control of trustees (such as a mutual savings bank), and any person who has a representative or nominee serving in any such capacity.

"(g) AUTHORITY TO MODIFY AND IMPOSE ADDITIONAL SAFEGUARDS.—

"(1) IN GENERAL.—In order to maintain investor protection and to ensure that the activities of any securities affiliate are conducted without the support of insured depository institution affiliates, the Commission—

"(A) may, by regulation or order, adopt additional limitations or restrictions on arranging or accepting any extension of credit or financial assistance or any transaction which has the effect of providing financial assistance by any insured depository institution subsidiary of any financial services holding company to, or for the benefit of, a securities affiliate or any customer of such affiliate; and

"(B) after consulting with and considering the views of the Board of Governors of the Federal Reserve Board, may modify by regulation any limitation on the activities of a securities affiliate of a financial services holding companies contained in this section.

"(2) STANDARDS.—Any authority under paragraph (1)(A) shall be exercised only after taking into account potential adverse effects of any extension of credit or other transaction referred to in such subparagraph, including unfair competition, conflicts of interest, and unsafe banking practices. Any exercise of authority under paragraph (1)(B) to modify any limitation on activities contained in this section shall be exercised only if the Commission, after consulting with and considering the views of the Board of Governors of the Federal Reserve System, concludes that modifying such limitation is necessary to achieve a purpose of this Act, is consistent with the purposes of this section, the public interest, and the protection of investors, and would not be likely to result in any adverse effects, including unfair competition, conflicts of interest, unsafe banking practices, preservation of the safety and soundness of insured depository institutions, or undue risks to the Federal deposit insurance funds.

"(h) DIVESTITURE FOR CONTINUING COURSE OF MISCONDUCT.—

"(1) NOTICE OF PRELIMINARY DETERMINATION.—

"(A) PRELIMINARY FINDING.—In addition to any other regulatory and supervisory authority of the Commission, if the Commission has reason to believe that a financial services holding company which controls a securities affiliate or such securities affiliate has engaged in a continuing course of conduct involving a violation of this section or regulations prescribed or orders issued by the Commission pursuant to this section, the Commission may make an initial determination that the financial services holding company shall be required to terminate such company's control of either (i) the securities affiliate or (ii) the insured depository institution affiliate, at the option of such company.

"(B) NOTICE.—The Commission shall notify any financial services holding company with respect to which a preliminary determination is made under subparagraph (A) of such determination before the end of the 3-day period beginning on the date on which the determination is made.

"(C) CONTENTS OF NOTICE.—Any notice under subparagraph (B) shall contain a statement of the basis for the Commission's determination.

"(2) HEARING AND FINAL ORDER.—

"(A) REQUEST FOR HEARING.—Any financial services holding company which receives a notice under paragraph (1)(B) of this subsection may request, at any time before the end of the 30-day period beginning on the date of the receipt of such notice, a hearing before the Commission.

"(B) ADJUDICATORY PROCEDURE AND FINAL ORDERS.—Any proceeding under this paragraph shall be conducted in accordance with section 554 of title 5, United States Code, and all other provisions of subchapter II of chapter 5 of such title which are applicable with respect to any adjudication required to be determined on a record after opportunity for agency hearing.

"(3) FAILURE TO REQUEST REVIEW.—If any financial services holding company which receives a notice under paragraph (1)(B) of this subsection fails to request an agency hearing under paragraph (2)(A) of this subsection, such financial services holding company shall be deemed to have consented to the issuance of a final order affirming the initial finding without the necessity of the hearing provided for in this subsection.

"(4) DIVESTMENT WITHIN TIME SPECIFIED IN ORDER.—If any order issued by the Commission under this subsection becomes final and the order affirms the initial finding, the financial services holding company shall make the election and terminate control as required by such order by the end of the period specified in the order.".

SEC. 456. BROKER/DEALER DISCLOSURE WITH RESPECT TO FIDUCIARY PURCHASES IN UNDERWRITTEN SECURITIES.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

"(h) DISCLOSURE WITH RESPECT TO FIDUCIARY PURCHASES IN UNDERWRITTEN SECURITIES.—

"(1) RESTRICTION.—No broker or dealer may purchase, for a customer account in which the broker or dealer, acting as fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such broker or dealer or affiliate thereof is an underwriter or a member of the selling group or which the broker, dealer, or affiliate otherwise places until—

"(A) in the case of an underwriting, 90 days after the end of the underwriting period; or

"(B) in the case of a placement, 90 days after the completion of the placement.

"(2) APPLICATION OF RESTRICTION.—The provisions of paragraph (1) apply whether or not such purchase is authorized by any trust agreement or any other insturment authorizing the broker or dealer to act in a fiduciary capacity, unless such purchase—

"(A) is permitted by State law;

"(B) is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship; and

"(C) is effectuated by endorsement, by the creator of the fiduciary relationship, of a separate document that discloses (in accordance with regulations prescribed by the Commission) any conflict of interest that the broker or dealer may have in making such purchase.

"(3) SPECIAL RULE IN CASE OF INCAPACITATED CREATOR OF TRUST.—Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred to in paragraph (2) is incapable of providing the authorization referred to in paragraph (2)(B) or effectuating an endorsement referred to in paragraph (2)(C), every beneficiary of such trust or instrument shall provide such authorization or effectuate such endorsement.".

PART II—BANK-INVESTMENT COMPANY ACTIVITIES

SEC. 461. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANKS.

(a) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(f)) is amended—

(1) by redesignating clauses (1), (2), and (3) of the first sentence as clauses (A), (B), and (C), respectively;

(2) by designating the five sentences of such section as paragraphs (1) through (5), respectively;

(3) by adding at the end thereof the following new paragraph:

"(6) Notwithstanding paragraph (1)(A) of this subsection, if a bank described in such paragraph, or an affiliated person thereof, is an affiliated person of the registered management company, such bank may not serve as custodian under this subsection unless permitted by such rules, regulations, or orders as the Commission prescribes consistent with the protection of investors.".

(b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(a)(1)) is amended by inserting after "bank" the following: "that is not an affiliated person of such principal underwriter or depositor and is not an affiliated person of an affiliated person of such principal underwriter or depositor, unless permitted by such rules, regulations, or orders as the Commission prescribes consistent with the protection of investors".

(c) AMENDMENT TO SECTION 36(a) OF THE INVESTMENT COMPANY ACT OF 1940.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-35(a)) is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting "; or"; and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) as a custodian.".

SEC. 462. AFFILIATED PERSONS AND TRANSACTIONS.

(a) AFFILIATED PERSONS.—Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)) is amended—

(1) in subparagraph (E), by striking "thereof; and" and inserting in lieu thereof "thereof;"; and

(2) by striking the period at the end of clause (F) and inserting the following: "; and (G) if such other person is an investment company, any person or class of persons which the Commission by rule, regulation, or order determines to be an affiliated person by reason of having had, at any time since the beginning of the last two completed fiscal years of such investment company, a material business or professional relationship with such investment company or with any person that is a principal underwriter for, or promoter or sponsor of, such investment company or any affiliated person (as described in clauses (A) through (F) of this paragraph) of such company. For purposes of clause (G), a material business or professional relationship means a relationship arising from material extensions of credit or other material borrowing and such other relationships as the Commission, by rule, regulation, or order, determines to be within the intent of this definition, consistent with the public interest and the protection of investors.".

(b) PURCHASES OR ACQUISITIONS DURING UNDERWRITING.—Section 10(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(f)) is amended by—

(1) inserting "(1)" immediately before "a principal underwriter" the first place it appears; and

(2) inserting after "for the issuer" the following: "; or (2) the proceeds of which will be used to retire any part of an indebtedness owed to a bank or an insured depository institution (as such term is defined in section 3(c)(2) of the Federal Deposit Insurance Act) where the bank, an insured depository institution, or an affiliated person thereof is an affiliated person of such registered company".

SEC. 463. PROHIBITION OF CONTROLLING INTEREST IN INVESTMENT COMPANY.

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a-15) is amended by adding at the end the following new subsection:

"(g) PROHIBITION OF CONTROLLING INTEREST IN INVESTMENT COMPANY.—If any investment adviser to a registered investment company, or an affiliated person of such investment adviser, also holds shares of the investment company in a fiduciary capacity, that investment adviser or affiliated person may own, directly or indirectly, a controlling interest in such registered investment company only—

"(1) if it passes through to the beneficial owners of the shares, including any person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof, the power to vote the shares of the investment company;

"(2) if it votes the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

"(3) as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.”.

SEC. 464. BORROWING FROM AN AFFILIATED BANK.

Section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)) is amended by adding at the end thereof the following new paragraph:

“(3) Notwithstanding the provisions of paragraph (1) of this subsection, it shall be unlawful for any registered investment company to borrow from any bank or insured depository institution (as such term is defined in section 3(c)(2) of the Federal Deposit Insurance Act) if such bank, insured depository institution, or any affiliated person thereof is an affiliated person of such company, except that the Commission may, by rule, regulation, or order, permit such borrowing which the Commission finds to be in the public interest and consistent with the protection of investors.”.

SEC. 465. INDEPENDENT DIRECTORS.

(a) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) in clause (v), by striking out “1934 or any affiliated person of such a broker or dealer, and” and inserting in lieu thereof: “1934 or any person that, at any time during the last 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to, the investment company or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such a broker, dealer, or person,”;

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

“(vi) any employee of any bank or insured depository institution (as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act) that acts as custodian or transfer agent for such company, and”.

(b) BANK HOLDING COMPANIES.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking “bank, except” and inserting in lieu thereof: “bank (together with its subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries), as those terms are defined in the Bank Holding Company Act of 1956, except”.

SEC. 466. PROHIBITION AGAINST USE OF A BANK'S NAME BY AN AFFILIATED MUTUAL FUND.

Section 35(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(d)) is amended by inserting after the first sentence thereof the following: “It shall be deceptive and misleading for any registered investment company which has as an investment adviser or distributor, a bank, or an insured depository institution (as such term is defined in section 3(c)(2) of the Federal Deposit Insurance Act) or affiliated person thereof, to adopt, as part of the name, title, or logo of such company, or of any security of which it is the issuer, any word or design which is the same as or similar to, or a variation of, the name, title, or logo of such bank or insured depository institution.”.

SEC. 467. DEFINITION OF BROKER.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:

“(6) ‘Broker’ has the same meaning as in the Securities Exchange Act of 1934, but does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.”.

SEC. 468. DEFINITION OF DEALER.

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:

“(11) ‘Dealer’ has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.”.

SEC. 469. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking “or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian” and inserting “or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ‘investment company’ under section 3(c)(3) of the Investment Company Act of 1940”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii) is amended to read as follows:

“(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ‘investment company’ under section 3(c)(3) of the Investment Company Act of 1940;”.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended by striking the period at the end and inserting the following: “, if—

“(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

“(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

“(i) advertised; or

“(ii) offered for sale to the general public; and

“(C) such fund is not charged any fees or expenses that, when added to any other compensation charged by the bank to a participant account, would exceed the total amount of compensation that would have been charged to such participant account if no assets of the account had been invested in interests in the fund.”.

SEC. 470. PURCHASE OF INVESTMENT COMPANY SECURITIES AS FIDUCIARY.

Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17) is amended by inserting at the end thereof the following new subsection:

“(k) PURCHASE OF INVESTMENT COMPANY SECURITIES AS FIDUCIARY.—

“(1) IN GENERAL.—If any financial services holding company, bank, insured depository institution (as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act), or affiliated person thereof organizes, sponsors, controls, promotes, or provides investment advice to a registered investment company, or underwrites the securities issued by a registered investment company, it shall be unlawful for such financial services holding company, such bank, such insured depository institution, or such affiliated person thereof, or any person delegated investment authority by a bank or an insured depository institution to exercise discretion over fiduciary accounts to purchase as fiduciary any securities issued by such investment company, unless any investment advisory or similar fee attributable to the fiduciary assets invested in securities of such investment company is waived.

“(2) EXCEPTIONS.—The prohibition provided in paragraph (1) shall not apply if—

“(A) such purchase is required by court order;

“(B) in the case of a discretionary account immediately revocable upon notice to the fiduciary, the beneficiary of such account has first received full disclosure of such information as required pursuant to paragraph (3) of this subsection; or

“(C) in all other cases, the beneficiary or beneficiaries of the fiduciary account has first received full disclosure of such information as required pursuant to paragraph (3) of this subsection and has granted prior, written consent.

“(3) DISCLOSURE RULES.—The Commission shall, after consultation with the appropriate Federal banking agency, prescribe by rule, regulation, or order, the manner, form, and content of the information required to be disclosed under paragraph (2), as the Commission determines to be necessary or appropriate in the public interest and for the protection of investors.”.

SEC. 471. COMMON TRUST FUND CONVERSIONS.

Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-19) is amended by inserting at the end thereof the following new subsection:

“(l) COMMON TRUST FUND CONVERSIONS.—

“(1) IN GENERAL.—It shall be unlawful for any financial services holding company, bank, insured depository institution (as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act), or affiliated person thereof to convert any common trust fund or similar fund maintained by it into a registered investment company organized, sponsored, promoted, controlled, or advised, or the securities of which are underwritten, by such a financial services holding company, such bank, such depository institution, or such affiliated person thereof, unless any investment advisory or similar fee owed to any of the foregoing as a result of the discretionary investment of fiduciary assets in securities of such investment company is waived.

“(2) EXCEPTION.—The prohibition provided in paragraph (1) shall not apply where—

“(A) such conversion is required by court order;

“(B) in the case of a discretionary account immediately revocable upon notice to the fiduciary, the beneficiary of such account has first received full disclosure of such information as required pursuant to paragraph (3) of this subsection; or

“(C) in all other cases, the beneficiary or beneficiaries of the fiduciary account has first received full disclosure of such information as required pursuant to paragraph (3) of this subsection and has granted prior, written consent.

“(3) DISCLOSURE RULES.—The Commission shall, after consultation with the appropriate Federal banking agency, prescribe by rule, regulation, or order, the manner, form, and content of the information required to be disclosed under paragraph (2), as the Commission determines to be necessary or appropriate in the public interest and for the protection of investors.”.

SEC. 472. EXTENSION OF CREDIT FOR PURCHASE OF INVESTMENT COMPANY SECURITIES.

Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17) is amended by adding at the end thereof the following new subsection:

“(m) EXTENSIONS OF CREDIT FOR PURCHASES OF SECURITIES.—It shall be unlawful for any financial services holding company, bank, or insured depository institution (as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act) that is, or is an affiliated person of, a person that organizes, sponsors, promotes, controls, or provides investment advice to, a registered open-end investment company or unit investment trust, or underwrites the securities issued by such company or trust, directly or indirectly, to extend credit or to arrange for the extension of credit to any person—

"(1) for the purchase of securities issued by such company or trust; or

"(2) on any security issued by such company or trust, unless (A) the security was purchased by such person pursuant to a plan for the automatic reinvestment of the dividends of such company or trust, or (B) such person has owned the security for more than 30 days or for such other period as the Commission may prescribe by rule or regulation in the public interest and consistent with the protection of investors.".

SEC. 473. ACCESS TO NONPUBLIC INFORMATION.

Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17) is amended by inserting at the end thereof the following new subsection:

"(n) ACCESS TO NONPUBLIC INFORMATION.—

"(1) ACCESS RESTRICTION.—It shall be unlawful for any financial services holding company, bank, insured depository institution (as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act), or affiliated person thereof, that acts as investment adviser to a registered investment company to provide any employee or agent providing investment advisory services to such investment company with access to any nonpublic information concerning—

"(A) the identity of any customer of such financial services holding company, bank, or insured depository institution; or

"(B) any relationship arising from material extensions of credit or other material borrowings between any customer and such financial services holding company, bank, or insured depository institution.

"(2) RULEMAKING REQUIRED.—The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to ensure compliance with this subsection.".

SEC. 474. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)) is amended—

(1) by striking subparagraph (A) and inserting the following: "(A) a bank, except that the term 'investment adviser' includes any bank to the extent that such bank acts as an investment adviser to a registered investment company unless, as permitted by Commission rule, regulation, or order, the bank performs such services through a separately identifiable department or division of the bank, in which case the department or division and not the bank shall be deemed the investment adviser;"; and

(2) by adding at the end thereof the following: "For purposes of clause (A) of this paragraph, the term 'separately identifiable department or division of a bank' means a unit that—

"(i) is under the direct supervision of an officer or officers designated by the directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(ii) separately maintains in, or can readily extract from, such unit's own facilities or the facilities of the bank, all of the records relating to such investment adviser activities, and such records are so maintained or otherwise accessible as to permit independent examination thereof.".

SEC. 475. BANK AND INSURANCE POOLED INVESTMENT VEHICLES.

(a) The Securities and Exchange Commission shall examine—

(1) in consultation with the Secretary of Labor, the appropriate treatment of bank collective investment funds and separate accounts under the securities laws and the Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.); and

(2) the appropriate treatment of common trust funds under the securities laws.

(b) Not later than one year after the date of enactment of this Act, the Securities and Exchange Commission shall transmit to the Congress a final report which shall contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Commission deems advisable.

SEC. 476. DEFINITION OF BROKER.

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as follows:

"(3) 'Broker' has the same meaning as in the Securities Exchange Act of 1934.".

SEC. 477. DEFINITION OF DEALER.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:

"(7) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

PART III—EFFECTIVE DATE

SEC. 480. EFFECTIVE DATE.

The amendments made by this chapter shall take effect on January 1, 1993.

CHAPTER 2—ADMINISTRATION OF SECURITIES LAWS WITH RESPECT TO SECURITIES OF DEPOSITORY INSTITUTIONS

PART I—AMENDMENTS TO THE SECURITIES ACT OF 1933

SEC. 481. EXEMPTION TO PERMIT TRANSITION TO HOLDING COMPANY STRUCTURES.

Section 3(a)(9) of the Securities Act of 1933 (15 U.S.C. 77c(a)(9)) is amended to read as follows:

"(9) Except with respect to a security exchanged in a case under title 11 of the United States Code—

"(A) any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange; or

"(B) any security issued or exchanged in connection with a transaction solely involving exchanges or substitutions of securities as part of a reorganization of a corporation into a holding company, if—

"(i) as part of the reorganization, the security holders exchange their securities of the corporation for securities of a newly formed holding company with no significant assets other than securities of the corporation and its existing subsidiaries, and receive securities of the same class evidencing the same proportional share or debt interests in the holding company as they held in the corporation prior to the transaction, except for changes resulting from lawful elimination of fractional interests and the exercise of dissenting shareholder rights under applicable law;

"(ii) the rights and interests of security holders in the holding company are substantially the same as those in the corporation prior to the transaction other than as may be required by law; and

"(iii) the holding company has substantially the same assets and liabilities as the corporation had prior to the transaction.".

PART II—REPORT AND AUDIT REQUIREMENTS

SEC. 487. REPORTS AND AUDIT REQUIREMENTS.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by inserting after section 13 (15 U.S.C. 78m) the following new section:

"FRAUD DETECTION AND DISCLOSURE

"SEC. 13A. (a) AUDIT REQUIREMENTS.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with methods prescribed by the Commission, the following—

"(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

"(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

"(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern over the ensuing fiscal year.

"(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—(1) If, in the course of conducting any audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with methods prescribed by the Commission—

"(A)(i) determine whether it is likely that an illegal act has occurred, and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

"(B) as soon as practicable inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

"(2)(A) If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

"(i) any such illegal act has a material effect on the financial statements of the issuer,

"(ii) senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to such illegal act, and "(iii) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement,

the independent public accountant shall as soon as practicable and directly report its conclusions to the board of directors.

"(B) An issuer whose board of directors has received a report pursuant to this paragraph shall inform the Commission by notice within one business day of receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished the Commission. If the independent public accountant making such report shall fail to receive a copy of such notice within the required one-business-day period, the independent public accountant shall—

"(i) resign from the engagement; or

"(ii) furnish to the Commission a copy of its report (or the documentation of any oral report given) within the next business day following such failure to receive notice.

"(C) An independent public accountant electing resignation shall, within the one business day following a failure by an issuer to notify the Commission under subparagraph (B), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

"(c) Auditor Liability Limitation.—No independent public accountant shall be liable in any manner to any person for any finding, conclusion, report, or statement made in connection with subsection (b) of this section, including any rules promulgated pursuant thereto, if such finding, conclusion, report, or statement is made in good faith, based upon the independent public accountant's compliance with such subsections or rules (or both). With respect to subsection (b), the limitation on liability provided by this subsection shall not be effective with respect to any finding, conclusion, report, or statement made with respect to fiscal years beginning on or after January 1, 1996.

"(d) Preservation of Existing Authority.—Nothing in this section shall be construed to limit or otherwise affect the authority of the Commission under this title.

"(e) Definitions.—As used in this section, the term 'illegal act' means any action or omission to act that violates any law, or any rule or regulation having the force of law.".

(b) Effective Dates.—As to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K (17 CFR 229.302(a)) of the Securities and Exchange Commission, the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1992. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1993.

Subtitle C—General Provisions

SEC. 491. REPORT ON RESOURCES FOR IMPLEMENTATION.

The Chairman of the Securities and Exchange Commission and the Chairman of the Board of Governors of the Federal Reserve shall, on April 15, 1992, and annually for the 5 succeeding years, each submit to the Congress and the President a report stating, to the best of each such Chairman's knowledge and belief, whether or not their respective agencies have the manpower, funding, and other resources necessary—

(1) to oversee the anticipated financial activities of holding companies, insured depository institutions, and securities affiliates to be overseen by them, respectively, pursuant to this Act (and the amendments made by this Act); and

(2) to enforce the statutes and regulations within their respective jurisdictions that are applicable to such activities.

The report shall identify, in reasonable detail, any deficiencies in such staffing, funding, or other resources, and the steps being taken to correct such deficiencies. Within 30 days after receiving such report, the President shall transmit to the Congress a statement by the President identifying any areas in which the President disagrees with the conclusions of the report.

SEC. 492. STUDY OF EFFECTIVENESS OF CUSTOMER AND INVESTOR PROTECTION FIREWALLS.

(a) Study Required.—The Securities and Exchange Commission and the Board of Governors of the Federal Reserve System shall jointly conduct a study of the limitations on activities of financial services holding companies and their affiliates contained in the amendments made by this title.

(b) Factors to Consider.—As part of the study under subsection (a), the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System shall assess—

(1) the extent that financial services holding companies have engaged in financial activities through securities affiliates;

(2) the policies and procedures used by financial services holding companies and their affiliates to comply with limitations on activities of financial services holding companies and their affiliates described in subsection (a);

(3) the extent of compliance with such limitations;

(4) the burden of compliance with such limitations for the persons subject to such limitations, including foregone business opportunities; and

(5) the burden of examination, investigation, and compliance with such limitations on the Securities and Exchange Commission and the Board of Governors of the Federal Reserve.

(c) Report to Congress.—By January 1, 1995, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System shall jointly submit a report to Congress on the findings and conclusions made with respect to the study under subsection (a), together with any recommendation for any legislative or administrative action that such agencies may determine to be appropriate.

SEC. 493. SECURITIES REGISTRATION AND REPORTING STUDY.

(a) Study Required.—The Securities and Exchange Commission and the Board of Governors of the Federal Reserve System shall conduct a study of the continuing need for, and operation of, sections 3(a)(2) and 3(a)(5) of the Securities Act of 1933 and section 12(i) of the Securities Exchange Act of 1934 in the light of changes in the organization and operation of insured depository institutions as a consequence of the enactment of this Act. Such study shall include an analysis of—

(1) any reduction in the number of insured depository institutions to which such section 12(i) applies;

(2) the costs of continuing to have separate administration and enforcement of reporting and disclosure provisions under the authority of such section 12(i);

(3) any deviations in the regulations prescribed to enforce such reporting and disclosure requirements;

(4) any differences in enforcement or accounting practices occurring as a result of the operations of any of such sections; and

(5) such other factors as the Commission and the Board consider to be relevant to the consideration of whether to repeal or significantly amend such sections.

(b) Date for Report.—The Commission and the Board shall submit to the Congress a report on the study conducted under subsection (a) not later than January 1, 1995. Such report shall include, in addition to a discussion of each of the issues required to be analyzed under subsection (a), such recommendations for legislation as the Commission and the Board consider appropriate.

TITLE V—FEDERAL DEPOSIT INSURANCE REFORM

Subtitle A—Activities

SEC. 501. LIMITATIONS ON BROKERED DEPOSITS AND DEPOSIT SOLICITATIONS.

(a) In General.—Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended—

(1) in subsection (c), by striking "an insured depository institution" and inserting "any level 1 or level 2 depository institution";

(2) by striking subsection (e) and inserting the following new subsection:

"(e) Additional Restrictions.—The Corporation may, by regulation or order, impose—

"(1) such additional restrictions on the acceptance of brokered deposits by any troubled institution as the Corporation may determine to be appropriate; and

"(2) such restrictions or limitations as the Corporation may determine to be appropriate on the acceptance, renewal, or rollover of funds obtained, directly or indirectly, through any deposit broker by any insured depository institution which the Corporation determines—

"(A) has suffered a material decline in capital so as to constitute a threat to the institution's solvency;

"(B) has knowingly or willfully violated any cease and desist order issued to the institution by the appropriate Federal banking agency, or any written agreement entered into between the institution and such agency, which relates to the safety or soundness of the institution; or

"(C) has failed to comply with any applicable reporting or notification requirements imposed by the Corporation with respect to the acceptance of brokered deposits by an insured depository institution.";

(3) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and inserting after subsection (e) (as amended by paragraph (2) of this section) the following new subsection:

"(f) Deposit Solicitation Restricted.—An insured depository institution which does not meet the institution's applicable minimum capital requirements, or an employee of any such institution, shall not engage, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on comparable deposits offered by other insured depository institutions in such institution's normal market areas.";

(4) in paragraph (4)(A) of subsection (g) (as so redesignated by paragraph (3) of this subsection) by striking "exclusively"; and

(5) by striking subsection (h) (as so redesignated by paragraph (3) of this subsection) and inserting the following new subsection:

"(h) Troubled Institution Defined.—For purposes of this section, the term 'troubled institution' means any insured depository institution which—

"(1) does not meet the minimum capital requirements applicable with respect to such institution;

"(2) based on the most recent report of condition, report of examination, or inspection of such institution, has been assigned a CAMEL composite rating of 4 or 5 under the Uniform Financial Institutions Rating System or an equivalent rating under a comparable system; or

"(3) has been informed in writing by the appropriate Federal banking agency that, on the basis of the institution's financial condition, the institution has been designated a 'troubled institution' for purposes of this section.".

(b) CLERICAL AMENDMENT.—The heading for section 29 of the Federal Deposit Insurance Corporation is amended to read as follows:

"SEC. 29. BROKERED DEPOSITS AND DEPOSIT SOLICITATIONS.".

SEC. 502. RISK-BASED ASSESSMENTS.

(a) ASSESSMENT RATES.—

(1) MAXIMUM RATE.—Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)) is amended—

(A) in clause (i), by striking "the greater of 0.15 percent or"; and

(B) by inserting after clause (iii), the following new clause:

"(iv) Until the Corporation establishes a risk-based assessment system pursuant to paragraph (8), the annual assessment rate for Bank Insurance Fund members shall not be less than 0.15 percent.".

(2) USE OF ESTIMATES AND PROJECTIONS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) USE OF ESTIMATES AND PROJECTIONS.—

"(i) AUTHORITY TO COMPUTE RATES.—The Corporation may make and use such estimates and projections as may be appropriate for computing assessment rates to be paid by Bank Insurance Fund members and Savings Association Insurance Fund members.

"(ii) AUTHORITY TO SET RATES.—The Corporation may—

"(I) set any assessment rate for Bank Insurance Fund members; and

"(II) after December 31, 1997, set any assessment rate for Savings Association Insurance Fund members.".

(3) REVISION OF ASSESSMENT BASE.—Section 7(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)) is amended to read as follows:

"(3) AVERAGE ASSESSMENT BASE.—The average assessment base for any insured depository institution for any semiannual period shall be the average of such depository institution's assessment base for each of the following 2 dates:

"(A) the 1st of the 2 dates falling within such semiannual period for which the depository institution is required to submit reports of condition pursuant to subsection (a)(3) (hereafter in this section referred to as 'reports of condition'); and

"(B) the 2nd of the 2 dates falling within the semiannual period immediately preceding such semiannual period for which the depository institution is required to submit reports of condition.".

(b) RISK-BASED ASSESSMENTS.—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) (as amended by this section and sections 103(b) and 232(b)(2) of this Act) is amended by redesignating paragraphs (8), (9), (10), and (11) as paragraphs (9), (10), (11), and (12) and by inserting after paragraph (7) (as added by section 103(b) of this Act) the following new paragraph:

"(8) RISK-BASED ASSESSMENTS.—

"(A) IN GENERAL.—Subject to paragraph (1), the Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

"(B) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term 'risk-based assessment system' means a system under which the assessment rate determined for each insured depository institution is based on the risk that the institution poses to the appropriate deposit insurance fund.

"(C) PROVISIONS APPLICABLE TO ESTABLISHMENT OF SYSTEM.—In establishing a risk-based assessment system, the Board of Directors may use the following criteria:

"(i) The ratio of capital to assets of the insured depository institution, all members of the appropriate deposit insurance fund, or any group of such members.

"(ii) The activities conducted by the insured depository institution, all members of the appropriate deposit insurance fund, or any group of such members.

"(iii) The assets and liabilities of the insured depository institution, all members of the appropriate deposit insurance fund, or any group of such members.

"(iv) Such other circumstances, conditions, activities or risk factors which the Board of Directors determines to be appropriate.".

(c) REGULATIONS.—

(1) IN GENERAL.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall prescribe the final regulations required by section 7(b)(8) of the Federal Deposit Insurance Act (as added by subsection (b) of this section).

(2) EFFECTIVE DATE.—Such regulations shall take effect before the end of the 12-month period beginning on the date such regulations are published in final form.

(d) MORTGAGE LENDING SAFEGUARDS.—

(1) ANALYSIS.—Before the end of the 12-month period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall analyze the impact of such system on the following categories of lending:

(A) Single family mortgages.

(B) Single family mortgages located in low- and moderate-income census tracts.

(C) Nonconforming single family mortgages.

(D) Multifamily mortgages.

(E) Construction lending for—

(i) single family homes;

(ii) single family homes located in low- and moderate-income census tracts;

(iii) nonconforming single family homes; and

(iv) multifamily homes.

(F) Small business loans.

(2) REPORT.—Before the issuance of final regulations implementing the risk-based assessment system established pursuant to the amendments made by subsection (b), the Board of Directors of the Federal Deposit Insurance Corporation shall submit to the Congress a report describing the findings of the analysis required under paragraph (1).

(e) PUBLIC HEARING.—Before the issuance of final regulations implementing the risk-based assessment system established pursuant to the amendments made by subsection (b), the Board of Directors of the Federal Deposit Insurance Corporation shall hold at least 1 public hearing regarding that system.

(f) 2-YEAR REVIEW.—Before the end of the 2-year period beginning on the effective date of final regulations implementing the risk-based assessment system established pursuant to the amendments made by subsection (b), the Board of Directors of the Federal Deposit Insurance Corporation shall—

(1) using data collected from examinations of insured depository institutions, analyze the impact of the risk-based assessment system on the categories of lending described in subsection (d)(1); and

(2) submit to the Congress a report on the findings of that analysis, including recommendations for any legislation needed to ensure that the risk-based assessment system does not have an inequitable impact on those categories of lending.

SEC. 503. RESTRICTIONS ON INSURED STATE BANK ACTIVITIES.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 23 the following new section:

"SEC. 24. ACTIVITIES OF INSURED STATE BANKS.

"(a) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

"(1) the Corporation has determined that the activity would pose no significant risk to the appropriate deposit insurance fund; and

"(2) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

"(b) INSURANCE UNDERWRITING.—Notwithstanding subsection (a), an insured State bank may not engage in insurance underwriting except to the extent that activity is permissible for national banks.

"(c) EQUITY INVESTMENTS BY INSURED STATE BANKS.—

"(1) IN GENERAL.—An insured State bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank.

"(2) EXCEPTION FOR CERTAIN SUBSIDIARIES.—Paragraph (1) shall not prohibit an insured State bank from acquiring or retaining an equity investment in a subsidiary of which the insured State bank is a majority owner.

"(3) EXCEPTION FOR QUALIFIED HOUSING PROJECTS.—

"(A) EXCEPTION.—Notwithstanding any other provision of this subsection, an insured State bank may invest as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project.

"(B) LIMITATION.—The aggregate of the investments of any insured State bank pursuant to this paragraph shall not exceed 2 percent of the total assets of the bank.

"(C) QUALIFIED HOUSING PROJECT DEFINED.—As used in this paragraph—

"(i) QUALIFIED HOUSING PROJECT.—The term 'qualified housing project' means residential real estate that is intended to primarily benefit lower income people throughout the period of the investment.

"(ii) LOWER INCOME.—The term 'lower income' means income that less than or equal to the median income based on statistics from State or Federal sources.

"(4) TRANSITION RULE.—

"(A) IN GENERAL.—The Corporation shall require any insured State bank to divest any equity investment the retention of which is not permissible under this subsection as quickly as can be prudently done, and in any event before the end of the 5-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

"(B) Treatment of noncompliance during divestment.—With respect to any equity investment held by any insured State bank on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 which was lawfully acquired before such date, the bank shall be deemed not to be in violation of the prohibition in this subsection on retaining such investment so long as the bank complies with the applicable requirements established by the Corporation for divesting such investments.

"(d) Subsidiaries of Insured State Banks.—

"(1) In general.—After the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

"(A) the Corporation has determined that the activity poses no significant risk to the appropriate deposit insurance fund; and

"(B) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

"(2) Securities and insurance underwriting prohibited.—

"(A) Prohibition.—Notwithstanding paragraph (1) and any provision of the Financial Institutions Safety and Consumer Choice Act of 1991, no subsidiary of an insured State bank may engage in securities or insurance underwriting except to the extent such activities are permissible for national banks.

"(B) Exception.—Subparagraph (A) does not apply to a subsidiary of an insured State bank if—

"(i) the insured State bank was required, before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under State law; and

"(ii) control of the insured State bank has not changed since that date.

"(e) Savings Bank Life Insurance.—

"(1) In general.—No provision of this Act or the Financial Institutions Safety and Consumer Choice Act of 1991 shall be construed as prohibiting or impairing the sale or underwriting of savings bank life insurance, or the ownership of stock in a savings bank life insurance company, by any insured bank which—

"(A) is located in the Commonwealth of Massachusetts or the State of New York or Connecticut; and

"(B) meets the consumer disclosure requirements under section 18(k) with respect to such insurance.

"(2) FDIC finding and action regarding risk.—

"(A) Finding.—Before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Corporation shall make a finding whether savings bank life insurance activities of insured banks pose or may pose any significant risk to the insurance fund of which such banks are members.

"(B) Actions.—

"(i) In general.—The Corporation shall, pursuant to any finding made under subparagraph (A), take appropriate actions to address any risk that exists or may subsequently develop with respect to insured banks described in paragraph (1)(A).

"(ii) Authorized actions.—Actions the Corporation may take under this subparagraph include requiring the modification, suspension, or termination of insurance activities conducted by any insured bank if the Corporation finds that the activities pose a significant risk to any insured bank described in paragraph (1)(A) or to the insurance fund of which such bank is a member.

"(f) Currently Permitted Equity Investments.—

"(1) In general.—An insured State bank shall not acquire or retain, directly or indirectly, any equity investment of a type or in an amount that is not permissible for a national bank.

"(2) Exception.—Notwithstanding paragraph (1) or any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks, an insured State bank in a State which permits investments described in paragraph (1) as of September 30, 1991, may invest not more than 10 percent of the bank's total assets in—

"(A) common or preferred stock listed on a national securities exchange (except that not more than 0.5 percent of the bank's total assets may be invested in common or preferred stock of any 1 company); or

"(B) shares of an investment company registered under the Investment Company Act of 1940.

"(3) Notice of paragraph (2) activities.—An insured State bank may only engage in any investment activity pursuant to paragraph (2) if—

"(A) the insured State bank has filed a 1-time notice with the Corporation of the bank's intent to acquire or retain such investments; and

"(B) pursuant to such notice, the Corporation has not determined, within 60 days of receiving such notice, that acquiring or retaining such investments poses a significant risk to the Bank Insurance Fund.

"(5) Divestiture of investments.—The Corporation may require divestiture by an insured State bank of any investment permitted under this subsection if the Corporation determines that such investment will have an adverse effect on the safety and soundness of such bank.

"(6) FDIC findings and action regarding risk.—

"(A) Finding.—Before the end of the 1-year period beginning on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Corporation shall make a finding whether such equity investments by insured State banks pose or may pose any significant risk to the insurance fund of which such banks are members.

"(B) Actions.—

"(i) In general.—The Corporation shall, pursuant to any finding made under subparagraph (A), take appropriate actions to address any risk that exists or may subsequently develop with respect to insured banks described in paragraph (1).

"(ii) Authorized actions.—Actions the Corporation may take under this subparagraph include requiring the modification, suspension, or termination of such equity investments conducted by any insured State bank if the Corporation finds that the activities pose a significant risk to any insured bank described in paragraph (1) or to the insurance fund of which such bank is a member.

"(g) Determinations.—The Corporation shall make determinations under this section by regulation or order.

"(h) Activity Defined.—For purposes of this section, the term 'activity' includes acquiring or retaining any investment.

"(i) Other Authority Not Affected.—This section shall not be construed as limiting the authority of any appropriate Federal banking agency or any State supervisory authority to impose more stringent restrictions.".

(b) Technical and Conforming Amendment.—The 13th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 330) is amended by striking ": *Provided, however,* That no Federal reserve bank" and inserting ", except that the Board of Governors of the Federal Reserve System may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 24 of the Federal Deposit Insurance Act. No Federal reserve bank".

SEC. 504. RESTRICTIONS ON REAL ESTATE LENDING.

(a) Restrictions on Real Estate Lending Established.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 39 (as added by section 229 of this Act) the following new section:

"SEC. 40. REAL ESTATE LENDING.

"(a) Uniform Regulations.—The appropriate Federal banking agencies shall jointly adopt uniform regulations prescribing standards for loans or extensions of credit by insured depository institutions that are—

"(1) secured by liens on, interests in, or liens on interests in unimproved real estate, or

"(2) made for the purpose of financing the construction of a building or buildings or other improvements to real estate.

"(b) Standards.—

"(1) Criteria.—In prescribing standards pursuant to subsection (a) for loans or extensions of credit described in such subsection, the agencies shall consider—

"(A) the risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund, as the case may be, by such loans or extensions of credit;

"(B) the safe and sound operation of insured depository institutions; and

"(C) the availability of credit.

"(2) Variations permitted.—In prescribing the standards referred to in paragraph (1), the agencies may jointly provide for differentiations among insured depository institutions and among types of loans to such extent and in such manner as may be—

"(A) required by Federal law;

"(B) warranted on the basis of risk to the deposit insurance funds; or

"(C) warranted on the basis of the safety and soundness of the institutions.".

(b) Effective Date.—The regulations prescribed pursuant to the amendment made by subsection (a) shall take effect before the end of the 12-month period beginning on the date of the enactment of this Act.

SEC. 505. CAPITAL STANDARDS AND INTEREST RATE RISK.

(a) In General.—The appropriate Federal banking agencies shall develop a system to monitor interest rate risk and to adjust risk-based capital standards to reflect interest rate risk.

(b) Implementing Regulations.—In order to implement the system required under subsection (a), the appropriate Federal banking agencies shall prescribe regulations in final form before the end of the 1-year period beginning on the date of the enactment of this Act. Such regulations shall take effect before the end of the 2-year period beginning on such date of enactment.

SEC. 506. TRANSITION RULE.

Section 5(t)(5)(D) of the Home Owners Loan Act (12 U.S.C. 1464(t)(5)(D)) is amended by striking "for a national bank," and inserting "for a national bank or if such impermissible activities were commenced after April 12, 1989, and before August 9, 1989, by a savings association with assets of less than $400,000,000 and were made in residential real estate or land held for development as residential real estate,".

SEC. 507. FDIC BACK-UP ENFORCEMENT AUTHORITY.

Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended to read as follows:

"(t) AUTHORITY OF BOARD TO TAKE ENFORCEMENT ACTION AGAINST INSURED DEPOSITORY INSTITUTIONS AND INSTITUTION-AFFILIATED PARTIES.—

"(1) AUTHORITY TO RECOMMEND THAT APPROPRIATE FEDERAL BANKING AGENCY TAKE ENFORCEMENT ACTION.—The Corporation, based on an examination of an insured depository institution by the Corporation or the appropriate Federal banking agency or on other information, may recommend that the appropriate Federal banking agency take any enforcement action authorized under this section or section 7(j) or 18(j) with respect to any insured depository institution or any institution-affiliated party.

"(2) AUTHORITY OF BOARD TO DIRECT ENFORCEMENT ACTION BE TAKEN IF APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—

"(A) IN GENERAL.—If the appropriate Federal banking agency fails to take the recommended action, or to provide an acceptable plan for addressing the concerns of the Corporation set forth in the Corporation's recommendation, before the end of the 60-day period beginning on the date of the receipt of the formal recommendation from the Corporation, the Board of Directors may direct the Corporation to take such action if the Board of Directors determines that—

"(i) the insured depository institution is in an unsafe or unsound condition;

"(ii) failure to take the recommended action will result in continuance of unsafe or unsound practices in conducting the business of the insured depository institution; or

"(iii) the violation or threatened violation, or threatened practices or omission, or continuation of practices, or omissions may cause, or is likely to cause, a risk of loss to the appropriate insurance fund, or may prejudice the interests of depositors of the institution.

"(B) ENFORCEMENT POWERS.—In the exercise of any authority under this subsection at the direction of the Board of Directors—

"(i) the Corporation shall have the same powers with respect to any insured depository institution and any subsidiary or affiliate of the institution as the appropriate Federal banking agency has with respect to such institution, subsidiary, or affiliate; and

"(ii) the institution and any subsidiary or affiliate of the institution shall have the same duties and obligations with respect to the Corporation as the institution, subsidiary, or affiliate has with respect to the appropriate Federal banking agency.

"(3) EFFECT OF EXIGENT CIRCUMSTANCES.—

"(A) AUTHORITY TO ACT.—Notwithstanding paragraphs (1) and (2), the Board of Directors may direct the Corporation to exercise the Corporation's authority under this subsection before the end of the 60-day period described in paragraph (2)(A) in exigent circumstances after notifying the appropriate Federal banking agency.

"(B) AGREEMENT ON EXIGENT CIRCUMSTANCES.—The Board of Directors shall, by agreement with the other appropriate Federal banking agencies, establish and publish a description of the exigent circumstances under which the Board of Directors may direct the Corporation to act under this subsection without regard to the 60-day period described in paragraph (2)(A).

"(4) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS.—

"(A) SUBMISSION OF REQUESTS.—Whenever a regional office or regional bank of an appropriate Federal banking agency submits a request for a formal investigation or enforcement action, such regional office or regional bank shall concurrently submit the request to the head of the appropriate Federal banking agency and the Corporation.

"(B) AGENCIES REQUIRED TO REPORT ON REQUESTS.—Each appropriate Federal banking agency shall report semiannually to the Corporation the status or disposition of all such requests, including the reasons for the appropriate Federal banking agency's decision to either approve or deny all such requests.

"(5) NONDELEGATION.—The authority of the Board of Directors to make any determination or to direct the Corporation to take any action under this subsection may not be delegated.".

Subtitle B—Coverage

SEC. 511. DEPOSIT AND PASS-THROUGH INSURANCE.

(a) EXCLUSION OF CERTAIN OBLIGATIONS FROM DEPOSIT INSURANCE COVERAGE.—

(1) IN GENERAL.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended by adding at the end the following new paragraph:

"(8) CERTAIN INVESTMENT CONTRACTS NOT TREATED AS INSURED DEPOSITS.—

"(A) IN GENERAL.—A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) BENEFIT-RESPONSIVE WITHDRAWALS OR TRANSFERS.—The term 'benefit-responsive withdrawals or transfers' means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

"(ii) EMPLOYEE BENEFIT PLAN.—The term 'employee benefit plan'—

"(I) has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974; and

"(II) includes any plan described in section 401(d) of the Internal Revenue Code of 1986.".

(2) EXCLUSION OF OBLIGATIONS FROM TREATMENT AS DEPOSITS FOR OTHER PURPOSES.—Section 7(b)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(6)) is amended—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) any liability of the insured depository institution which is not treated as an insured deposit pursuant to section 11(a)(8).".

(b) INSURANCE OF DEPOSITS.—

(1) INSURED AMOUNTS PAYABLE.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) (as amended by subsection (a)(1) of this section) is amended by striking "(a)(1)" and all that follows through paragraph (1) and inserting the following:

"(a) DEPOSIT INSURANCE.—

"(1) INSURED AMOUNTS PAYABLE.—

"(A) IN GENERAL.—The Corporation shall insure the deposits of all insured depository institutions as provided in this Act.

"(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount due to any depositor at an insured depository institution shall not exceed $100,000 as determined in accordance with subparagraphs (C) and (D).

"(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in section 7(i)(1).

"(D) COVERAGE ON PRO RATA OR 'PASS-THROUGH' BASIS.—

"(i) IN GENERAL.—Except as provided in clause (ii), for the purpose of determining the amount of insurance due under subparagraph (B), the Corporation shall provide deposit insurance coverage with respect to deposits accepted by any insured depository institution on a pro rata or 'pass-through' basis to a participant in or beneficiary of an employee benefit plan (as defined in section 11(a)(8)(B)(ii)), including any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

"(ii) EXCEPTION.—After the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Corporation shall not provide insurance coverage on a pro rata or 'pass-through' basis pursuant to clause (i) with respect to deposits accepted by any insured depository institution which, at the time such deposits are accepted, may not accept brokered deposits under section 29.

"(iii) COVERAGE UNDER CERTAIN CIRCUMSTANCES.—Clause (ii) shall not apply with respect to any deposit accepted by an insured depository institution described in such clause if, at the time the deposit is accepted—

"(I) the institution meets each applicable capital standard; and

"(II) the depositor receives a written statement from the institution that such deposits at such institution are eligible for insurance coverage on a pro rata or 'pass-through' basis.".

(2) CERTAIN RETIREMENT ACCOUNTS.—Section 11(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(3)) is amended to read as follows:

"(3) CERTAIN RETIREMENT ACCOUNTS.—

"(A) IN GENERAL.—Notwithstanding any limitation in this Act relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

"(i) any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986;

"(ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of such Code; and

"(iii) any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act, and any plan described in section 401(d) of the Internal Revenue Code of 1986, to the extent that participants and beneficiaries under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed $100,000 per participant per insured depository institution.

"(B) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.".

(3) CERTAIN TRUST FUNDS.—Section 7(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)) is amended to read as follows:

"(i) INSURANCE OF TRUST FUNDS.—

"(1) IN GENERAL.—Trust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed $100,000 for each trust estate.

"(2) INTERBANK DEPOSITS.—Trust funds described in paragraph (1) which are deposited by the fiduciary depository institution in another insured depository institution shall be similarly insured to the fiduciary depository institution according to the trust estates represented.

"(3) REGULATIONS.—The Board of Directors may prescribe such regulations as may be necessary to clarify the insurance coverage under this subsection and to prescribe the manner of reporting and depositing such trust funds.".

(4) EXPANDED COVERAGE BY REGULATION.—

(A) REVIEW OF COVERAGE.—For the purpose of prescribing regulations, during the 1-year period beginning on the date of the enactment of this Act, the Board of Directors shall review the capacities and rights in which deposit accounts are maintained and for which deposit insurance coverage is provided by the Corporation.

(B) REGULATIONS.—After the end of the 1-year period referred to in subparagraph (A), the Board of Directors may prescribe regulations that provide for separate insurance coverage for the different capacities and rights in which deposit accounts are maintained if a determination is made by the Board of Directors that such separate insurance coverage is consistent with—

(i) the purpose of protecting small depositors and limiting the undue expansion of deposit insurance coverage; and

(ii) the insurance provisions of the Federal Deposit Insurance Act.

(C) DELAYED EFFECTIVE DATE FOR REGULATIONS.—No regulation prescribed under subparagraph (B) may take effect before the 2-year period beginning on the date of the enactment of this Act.

(5) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended by striking "(m)(1)" and all that follows through paragraph (1) and inserting the following:

"(m) INSURED DEPOSIT.—

"(1) IN GENERAL.—Subject to paragraph (2), the term 'insured deposit' means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 7(i) and 11(a).".

(B) Section 11(a)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(2)(A)) is amended by striking "his deposit shall be insured" and inserting "such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed $100,000 per account".

(C) The 2d subparagraph of section 11(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(2)) is amended by striking "(b)" and inserting "(B)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) and paragraphs (2) and (3) of subsection (b) shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

(2) APPLICATION TO TIME DEPOSITS.—

(A) CERTAIN DEPOSITS EXCLUDED.—Except with respect to the amendment referred to in paragraph (3), the amendments made by subsections (a) and (b) shall not apply to any time deposit which—

(i) was made before the date of enactment of this Act; and

(ii) matures after the end of the 2-year period referred to in paragraph (1).

(B) ROLLOVERS AND RENEWALS TREATED AS NEW DEPOSIT.—Any renewal or rollover of a time deposit described in subparagraph (A) after the date of the enactment of this Act shall be treated as a new deposit which is not described in such subparagraph.

(3) EFFECTIVE DATE FOR AMENDMENT RELATING TO CERTAIN EMPLOYEE PLANS.—

(A) Section 11(a)(1)(B) of the Federal Deposit Insurance Act (as amended by subsection (b)(1) of this section) shall take effect on the earlier of—

(i) the date of the enactment of this Act; or

(ii) January 1, 1992.

(B) Section 11(a)(3)(A) of the Federal Deposit Insurance Act (as amended by subsection (b)(2) of this section) shall take effect on the earlier of the dates described in clauses (i) and (ii) of subparagraph (A) with respect to plans described in clause (ii) of such section.

(d) INFORMATIONAL STUDY.—

(1) IN GENERAL.—The Federal Deposit Insurance Corporation, in conjunction with such consultants and technical experts as the Corporation determines to be appropriate, shall conduct a study of the cost and feasibility of tracking the insured and uninsured deposits of any individual and the exposure, under any Act of Congress or any regulation of any appropriate Federal banking agency, of the Federal Government with respect to all insured depository institutions.

(2) ANALYSIS OF COSTS AND BENEFITS.—The study under paragraph (1) shall include detailed, technical analysis of the costs and benefits associated with the least expensive way to implement the system.

(3) SPECIFIC FACTORS TO BE STUDIED.—As part of the study under paragraph (1), the Corporation shall investigate, review, and evaluate—

(A) the data systems that would be required to track deposits in all insured depository institutions;

(B) the reporting burdens of such tracking on individual depository institutions;

(C) the systems which exist or which would be required to be developed to aggregate such data on an accurate basis;

(D) the implications such tracking would have for individual privacy; and

(E) the manner in which systems would be administered and enforced.

(4) FEDERAL RESERVE BOARD SURVEY.—As part of the informational study required under paragraph (1), the Board of Governors of the Federal Reserve System shall conduct, in conjunction with other Federal departments and agencies as necessary, a survey of the ownership of deposits held by individuals including the dollar amount of deposits held, the type of deposit accounts held, and the type of financial institutions in which the deposit accounts are held.

(5) ANALYSIS BY FDIC.—The results of the survey under paragraph (4) shall be provided to the Federal Deposit Insurance Corporation before the end of the 1-year period beginning on the date of the enactment of this Act for analysis and inclusion in the informational study.

(6) REPORT TO CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report containing a detailed statement of findings made and conclusions drawn from the study conducted under this section, including such recommendations for administrative and legislative action as the Corporation determines to be appropriate.

SEC. 512. FOREIGN DEPOSITS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 40 (as added by section 504 of this title) the following new section:

"SEC. 41. PAYMENTS ON FOREIGN DEPOSITS PROHIBITED.

"Notwithstanding any other provision of law, the Corporation, the Board of Governors of the Federal Reserve System, the Resolution Trust Corporation, any other agency, department, and instrumentality of the United States, and any corporation owned or controlled by the United States may not, directly or indirectly, make any payment or provide any assistance, guarantee, or transfer under this Act or any other provision of law in connection with any insured depository institution which would have the direct or indirect effect of satisfying, in whole or in part, any claim against the institution for obligations of the institution which would constitute deposits as defined in section 3(l) but for subparagraphs (A) and (B) of section 3(l)(5).".

SEC. 513. PENALTY FOR FALSE ASSESSMENT REPORTS.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 7(c) of the Federal Deposit Insurance Act (12 U.S.C. 1817(c)) is amended by adding at the end the following new paragraph:

"(5) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT.—

"(A) FIRST TIER.—Any insured depository institution which—

"(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit the certified statement under paragraph (1) or (2) within the period of time required under paragraph (1) or (2) or submits a false or misleading certified statement; or

"(ii) submits the statement at a time which is minimally after the time required in such paragraph,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false and misleading information is not corrected. The institution shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

"(B) SECOND TIER.—Any insured depository institution which fails to submit the certified statement under paragraph (1) or (2) within the period of time required under paragraph (1) or (2) or submits a false or misleading certified statement in a manner not described in subparagraph (A) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false and misleading information is not corrected.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or with reckless disregard for the accuracy of any certified statement described in paragraph (1) or (2) submits a false or misleading certified statement under paragraph (1) or (2), the Corporation may assess a penalty of not more than $1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

"(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

"(E) HEARING.—Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 8(h) shall apply to any proceeding under this subparagraph.".

(b) INSURED CREDIT UNIONS.—Section 202(d)(2) of the Federal Credit Union Act (12 U.S.C. 1782(d)(2)) is amended to read as follows:

"(2) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT OR TO PAY DEPOSIT OR PREMIUM.—

"(A) FIRST TIER.—Any insured credit union which—

"(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement under such subsection; or

"(ii) submits the statement at a time which is minimally after the time required, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false and misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

"(B) SECOND TIER.—Any insured credit union which—

"(i) fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement in a manner not described in subparagraph (A); or

"(ii) fails or refuses to pay any deposit or premium for insurance required under this title,

shall be subject to a penalty of not more than $20,000 for each day during which such failure continues, such false and misleading information is not corrected, or such deposit or premium is not paid.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or with reckless disregard for the accuracy of any certified statement under subsection (b)(1) or submits a false or misleading certified statement under such subsection, the Corporation may assess a penalty of not more than $1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

"(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in section 206(k)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

"(E) HEARING.—Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 206(j) shall apply to any proceeding under this subparagraph.

"(F) SPECIAL RULE FOR DISPUTED PAYMENTS.—No penalty may be assessed for the failure of any insured credit union to pay any deposit or premium for insurance if—

"(i) the failure is due to a dispute between the credit union and the Board over the amount of the deposit or premium which is due from the credit union; and

"(ii) the credit union deposits security satisfactory to the Board for payment of the deposit or insurance premium upon final determination of the dispute.".

Subtitle C—Demonstration Project and Studies

SEC. 521. FEASIBILITY STUDY ON AUTHORIZING INSURED AND UNINSURED DEPOSIT ACCOUNTS.

(a) STUDY REQUIRED.—The Federal Deposit Insurance Corporation shall study the feasibility of authorizing insured depository institutions to offer both insured and uninsured deposit accounts to customers.

(b) FACTORS TO CONSIDER.—In conducting the study required under subsection (a), the Corporation shall consider the following factors:

(1) The risk a 2-window deposit system would pose to the deposit insurance system.

(2) The disclosure standards which would be necessary to prevent customer confusion over the insured status of deposits and fraudulent or misleading practices with respect to such insured status.

(3) The extent to which accounting standards would have to be revised or changed.

(4) The manner in which a 2-window deposit plan could be implemented with the least disruption to the stability of, and the confidence of consumers in, the banking system.

(c) REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Corporation shall submit a report to the Congress containing the Corporation's findings and conclusions with respect to the study under subsection (a) and any recommendations for legislative or administrative action the Corporation may determine to be appropriate.

SEC. 522. PRIVATE REINSURANCE STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Board of Directors of the Federal Deposit Insurance Corporation, in consultation with the Secretary of the Treasury and individuals from the private sector with expertise in private insurance, private reinsurance, depository institutions, or economics, shall conduct a study of the feasibility of establishing a private reinsurance system.

(2) PROJECT.—The study conducted under this subsection shall include a demonstration project consisting of a simulation, by a sample of private reinsurers and insured depository institutions, of the activities required for a private reinsurance system, including—

(A) establishment of a pricing structure for risk-based premiums;

(B) formulation of insurance or reinsurance contracts; and

(C) identification and collection of information necessary to evaluate and monitor the risks in insured depository institutions.

(3) ACTUAL REINSURANCE TRANSACTIONS.—The Federal Deposit Insurance Corporation may engage in actual reinsurance transactions as part of a demonstration project conducted under paragraph (2).

(b) REPORT.—

(1) IN GENERAL.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report on the study conducted under this section.

(2) CONTENTS.—The report under this subsection shall include—

(A) an analysis and review of the project conducted under subsection (a)(2);

(B) conclusions regarding the feasibility of a private reinsurance system;

(C) recommendations regarding whether—

(i) such a system should be restricted to depository institutions over a certain asset size;

(ii) similar systems are feasible for depository institutions or groups of depository institutions of a lesser asset size; and

(iii) public policy goals can be satisfied by such systems; and

(D) recommendations for administrative and legislative action that may be necessary to establish such systems.

Subtitle D—Credit Unions

SEC. 531. LIQUIDATIONS OF FEDERALLY INSURED STATE CREDIT UNIONS.

(a) AUTHORITY TO LIQUIDATE.—Section 207(a)(1) of the Federal Credit Union Act (12 U.S.C. 1787(a)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

"(B) APPOINTMENT OF THE BOARD BY THE BOARD.—Notwithstanding any other provision of this Act, any other Federal law, or the law or constitution of any State, the Board may appoint itself as the liquidating agent of any State credit union insured under this title, and close such credit union, if the Board determines that the credit union is insolvent or bankrupt.

"(C) NOTICE AND APPROVAL OF STATE OFFICIAL.—

"(i) IN GENERAL.—The authority conferred by subparagraph (B) with respect to any State credit union shall be exercised only with the written approval of the State official having jurisdiction over such credit union that the grounds specified for such exercise exist.

"(ii) EXCEPTION.—If the approval of the State official having jurisdiction over any State credit union referred to in clause (i) has not been received within 30 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State's written reasons, if any, for withholding approval, then the Board may proceed without State approval only by unanimous vote of the Board.".

(b) Technical Amendments.—

(1) Subparagraph (D) of section 207(a)(1) of the Federal Credit Union Act (12 U.S.C. 1787(a)(1)), as so redesignated by subsection (a) of this section, is amended in the first sentence by striking "(b)" and inserting "(j)".

(2) Section 207(a)(1)(A) of the Federal Credit Union Act (12 U.S.C. 1787(a)(1)(A)) is amended by striking "himself" and inserting "itself".

TITLE VI—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

SEC. 601. FINDINGS AND PURPOSE.

The Congress finds that—

(1) many financial institutions engage daily in thousands of transactions with other financial institutions directly and through clearing organizations;

(2) the efficient processing of such transactions is essential to a smoothly functioning economy;

(3) such transactions can be processed most efficiently if, consistent with applicable contractual terms, obligations among financial institutions are netted;

(4) such netting procedures would reduce the systemic risk within the banking system and financial markets; and

(5) the effectiveness of such netting procedures can be assured only if they are recognized as valid and legally binding in the event of the closing of a financial institution participating in the netting procedures.

SEC. 602. DEFINITIONS.

For purposes of this subtitle—

(1) Broker or dealer.—The term 'broker or dealer' means any company that is registered or licensed under Federal or State law to engage in the business of brokering, underwriting, or dealing in securities in the United States.

(2) Clearing organization.—The term "clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) that provides clearing, netting, or settlement services for its members and—

(i) in which all members other than the clearing organization itself are financial institutions or other clearing organizations; or

(ii) which is registered as a clearing agency under the Securities Exchange Act of 1934; or

(B) that performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act.

(3) Covered clearing obligation.—The term "covered clearing obligation" means an obligation of a member of a clearing organization to make payment to another member of a clearing organization, subject to a netting contract.

(4) Covered contractual payment entitlement.—The term "covered contractual payment entitlement" means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of a clearing organization of a covered clearing obligation.

(5) Covered contractual payment obligation.—The term "covered contractual payment obligation" means—

(A) an obligation of a financial institution to make payment, subject to a netting contract to another financial institution; and

(B) a covered clearing obligation.

(6) Depository institution.—The term "depository institution" means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act (other than clause (vii));

(B) a branch or agency as defined in section 1(b) of the International Banking Act of 1978;

(C) a corporation chartered under section 25(a) of the Federal Reserve Act; or

(D) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

(7) Failed financial institution.—The term "failed financial institution" means a financial institution that—

(A) fails to satisfy a covered contractual payment obligation when due;

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

(8) Failed member.—The term "failed member" means any member that—

(A) fails to satisfy a covered clearing obligation when due,

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings, or

(C) has generally ceased to meet its obligations when due.

(9) Financial institution.—The term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

(10) Futures commission merchant.—The term 'futures commission merchant' means a company that is registered or licensed under Federal law to engage in the business of selling futures and options in commodities.

(11) Member.—The term "member" means a member of or participant in a clearing organization, and includes the clearing organization.

(12) Net entitlement.—The term "net entitlement" means the amount by which the covered contractual payment entitlements of a financial institution or member exceeds the covered contractual payment obligations of the institution or member after netting under a netting contract.

(13) Net obligation.—The term "net obligation" means the amount by which the covered contractual payment obligations of a financial institution or member exceeds the covered contractual payment entitlements of the institution or member after netting under a netting contract.

(14) Netting contract.—

(A) In general.—The term "netting contract"—

(i) means a contract or agreement between 2 or more financial institutions or members, that—

(I) is governed by the laws of the United States, any State, or any political subdivision of any State, and

(II) provides for netting present or future payment obligations or payment entitlements (including liquidation or close-out values relating to the obligations or entitlements) among the parties to the agreement; and

(ii) includes the rules of a clearing organization.

(B) Invalid contracts not included.—The term "netting contract" does not include any contract or agreement that is invalid under or precluded by Federal commodities law.

SEC. 603. BILATERAL NETTING.

(a) General Rule.—Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.

(b) Limitation on Obligation To Make Payment.—The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its net obligation to such other financial institution, and no such obligation shall exist if there is no net obligation.

(c) Limitation on Right To Receive Payment.—The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net entitlement with respect to such other financial institution, and no such right shall exist if there is no net entitlement.

(d) Payment of Net Entitlement of Failed Financial Institution.—The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Effectiveness Notwithstanding Status as Financial Institution.—This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

SEC. 604. CLEARING ORGANIZATION NETTING.

(a) General Netting Rule.—Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.

(b) Limitation of Obligation To Make Payment.—The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

(c) Limitation on Right To Receive Payment.—The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

(d) Entitlement of Failed Members.—The net entitlement, if any, of any failed member of a clearing organization shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

(e) OBLIGATIONS OF FAILED MEMBERS.—The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

(f) LIMITATION ON CLAIMS FOR ENTITLEMENT.—A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

(g) EFFECTIVENESS NOTWITHSTANDING STATUS AS MEMBER.—This section shall be given effect notwithstanding that a member is a failed member.

SEC. 605. PREEMPTION.

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of otherwise enforceable netting contracts in accordance with sections 603 and 604.

SEC. 606. RELATIONSHIP TO OTHER PAYMENTS SYSTEMS.

This subtitle shall have no effect by implication or otherwise on the validity or legal enforceability of a netting arrangement of any payment system which is not subject to this subtitle.

Subtitle B—Right to Financial Privacy Act of 1978

SEC. 611. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 is amended—

(1) in section 1112(f)(2) (12 U.S.C. 3412(f)(2))—

(A) by inserting "for civil actions under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or for forfeiture under sections 981 or 982 of title 18, United States Code" after "purposes"; and

(B) by adding at the end the following new sentence: "No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law.";

(2) in section 1113(h)(1)(A) (12 U.S.C. 3413(h)(1)(A)), by striking "the financial institution in possession of such records" and inserting "a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer)";

(3) in section 1113(h)(4) (12 U.S.C. 3413(h)(4)) by striking "the financial institution in possession of such records" and inserting "a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer)"; and

(4) in section 1113(l) (12 U.S.C. 3413(l)), by adding after paragraph (2) the following new sentence:

"No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law.".

Subtitle C—Final Settlement Payment Procedure

SEC. 621. FINAL SETTLEMENT PAYMENT PROCEDURE.

Section 11(d)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended to read as follows:

"(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

"(A) IN GENERAL.—The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determinations of claims and review of such determination.

"(B) FINAL SETTLEMENT PAYMENT PROCEDURE.—

"(i) IN GENERAL.—In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

"(ii) FINAL SETTLEMENT PAYMENT.—For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

"(iii) FINAL SETTLEMENT PAYMENT RATE.—For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

"(iv) CORPORATION AUTHORITY.—The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.".

Subtitle D—Miscellaneous Committees, Studies, and Reports

SEC. 631. COMMISSION ON THE THRIFT INDUSTRY.

(a) ESTABLISHMENT OF COMMISSION.—There is hereby established a Commission to be known as the Commission on the Thrift Industry (hereinafter in this section referred to as the "Commission").

(b) MEMBERSHIP OF COMMISSION.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 8 members appointed not later than 90 days after the date of the enactment of this Act. The members shall be appointed as follows:

(A) 2 citizens of the United States, appointed by the President.

(B) 2 citizens of the United States, appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate.

(C) 1 citizen of the United States, appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(D) 2 citizens of the United States, appointed by the Speaker of the House of Representatives upon the recommendation of the majority leader of the House of Representatives.

(E) 1 citizen of the United States, appointed by the Speaker of the House of Representatives upon the recommendation of the minority leader of the House of Representatives.

(2) ADDITIONAL QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Commission who are appointed under any subparagraph of paragraph (1) other than subparagraph (A) and are not Members of the Congress shall be appointed from among individuals who are specially qualified to serve on the Commission by virtue of their education, training, or experience.

(B) LIMITATION.—Of the total number of the members of the Commission who are described in subparagraph (A), not more than 2 such members may be, at the time of any such member's appointment and during any such member's service on the Commission—

(i) a director, officer, or employee of any Federal or State agency or instrumentality with supervisory or regulatory authority over any savings association;

(ii) a director, officer, employee, or agent of any trade association which represents any savings association; and

(iii) a director, officer, employee, or agent of any consumer organizations.

(3) TERMS.—Members shall be appointed for the life of the Commission.

(4) CHAIRPERSON.—The Commission shall elect a Chairperson from among the members of the Commission.

(5) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(6) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

(7) VACANCIES.—No vacancy on the Commission shall affect the powers of the Commission and any such vacancy shall be filled in the manner in which the original appointment was made.

(8) COMPENSATION AND EXPENSES.—

(A) NO BASIC PAY.—Except as provided in subparagraph (B), members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(B) PER DIEM AND TRAVEL EXPENSES.—Members of the Commission who are appointed from among private citizens of the United States may be allowed travel expenses, including per diem, in lieu of substance, as authorized by law for persons serving intermittently in the government service to the extent that funds are available for such expenses.

(9) MEETINGS.—The Commission shall meet at the call of the Chairperson or a majority of the members.

(c) FUNCTIONS OF COMMISSION.—

(1) CONTENTS AND SPECIFIC RECOMMENDATIONS.—The Commission shall conduct an investigation and evaluation of and shall report and make recommendations on the future status of the thrift industry.

(2) ISSUES TO BE CONSIDERED.—Pursuant to its responsibilities under this section the Commission shall consider the following issues:

(A) The continued economic viability of savings associations, including the impact of the regulatory limits on safety and soundness.

(B) Obstacles and issues related to the conversion of savings associations to banks.

(C) The appropriateness and viability of a separate system of depository institutions dedicated to financing housing production.

(D) The appropriate role of community based financial institutions.

(E) The effectiveness and impact of the Qualified Thrift Lender Test.

(F) The status and role of the regional Federal home loan banks.

(G) The commercial ownership of savings associations.

(H) The merger of the Bank Insurance Fund and Savings Association Insurance Fund within the context of savings association conversion to bank status.

(I) The merger of regulators and regulations.

(J) The service provided to low- and moderate-income consumers and neighborhoods.

(K) The impact on the construction and sale of affordable housing.

(3) Final report.—

(A) Report required.—Not later than the end of the 2-year period beginning on the date of the enactment of this Act, the Commission shall submit to the President, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing and Urban Affairs of the Senate, a final report which contains a detailed statement of the findings and conclusions of the Commission, including such recommendations for administrative and legislative action as the Commission determines to be appropriate.

(B) Majority vote.—A recommendation may be made by the Commission to the President and to the Congress only if it is adopted by a majority vote of the members of the Commission.

(C) Additional, dissenting, and supplemental views.—The report required under subparagraph (A) shall contain any additional, dissenting, or supplemental views of any member of the Commission.

(d) Powers of Commission.—

(1) Hearings.—The Commission may hold such hearings and sit and act at such times and places as the Commission may find advisable.

(2) Rules and regulations.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of operations, organizations, and personnel.

(3) Assistance from federal agencies.—

(A) Information.—The Commission may request from the head of any Federal agency or instrumentality such information as the Commission may require for the purpose of this section. Each such agency or instrumentality shall furnish such information to the Commission, upon request made by the Chairperson of the Commission.

(B) Administrative support services and personnel.—Upon request of the Chairperson of the Commission, the head of any Federal agency or instrumentality shall, to the extent possible and subject to the discretion of such head—

(i) make any of the facilities and services of such agency or instrumentality available to the Commission; and

(ii) detail any of the personnel of such agency or instrumentality to the Commission, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this section, except that any expenses of the Commission incurred under this clause shall be subject to the limitation on total expenses set forth in subsection (e)(2).

(4) Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(5) Contracting.—The Commission may, to such extent and in such amounts as provided in advance in appropriation Acts, enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this section, subject to the limitation on total expenses set forth in subsection (e)(2).

(6) Staff.—

(A) In general.—Subject to such rules and regulations as may be adopted by the Commission and the limitation on total expenses set forth in subsection (e)(2), the Chairperson of the Commission may appoint, terminate, and fix the compensation of an executive director and such additional staff as the Chairperson deems advisable to assist the Commission.

(B) Pay rates.—Individuals appointed under subparagraph (A) may be paid at rates not to exceed a rate equal to the maximum rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(C) Certain provisions of title 5, United States Code, not applicable.—Appointments may be made under subparagraph (A) without regard to—

(i) provisions of title 5, United States Code, concerning appointments in the competitive service, and

(ii) provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law relating to number, classification, and General Schedule rates.

(7) Advisory committee.—The Commission shall be considered an advisory committee under the Federal Advisory Committee Act.

(e) Expenses of Commission.—

(1) In general.—Any expense of the Commission shall be paid from such funds as may be available to the Secretary of the Treasury.

(2) Limitation.—The total expenses of the Commission shall not exceed $500,000.

(3) GAO audit.—Prior to the termination of the Commission pursuant to subsection (f), the Comptroller General of the United States shall conduct an audit of the financial books and record of the Commission to determine that the limitation on expenses under paragraph (2) has not been exceeded, and shall include its determination in an opinion to be included in the report of the Commission.

(f) Termination of Commission.—The Commission shall cease to exist on the date that is 30 days after the date on which the Commission submits the report required under subsection (c)(3).

SEC. 632. BANK INSURANCE FUND ADVISORY COMMITTEE.

(a) Establishment.—There is hereby established the Bank Insurance Fund Advisory Committee (hereinafter in this section referred to as the "Committee").

(b) Membership.—The Committee shall consist of 12 members, appointed as follows:

(1) 1 member shall be elected from each administrative district of the Federal Deposit Insurance Corporation (hereinafter in this section referred to as the "Corporation") by banks headquartered in that district from among individuals residing therein who are officers of banks that are Bank Insurance Fund members.

(2) 4 members appointed by the Corporation from among individuals who shall represent the public interest.

(c) Vacancies.—Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made.

(d) Pay and Expenses.—Members of the Committee shall serve without pay, but each member shall be reimbursed, in such manner as the Corporation shall prescribe by regulation, for expenses incurred in connection with attendance of such members at meetings of the Committee.

(e) Terms.—Members shall be appointed or elected for terms of 1 year.

(f) Authority of the Committee.—The Committee may—

(1) select its Chairperson, Vice Chairperson, and Secretary,

(2) adopt methods of procedure,

(3) confer with the Board of Directors on general and specific business conditions and regulatory and other matters affecting banks that are members of the Bank Insurance Fund, and

(4) request information and make recommendations with respect to matters within the jurisdiction of the Corporation and specifically with regard to the sources and uses of funds raised under sections 7 and 14 of the Federal Deposit Insurance Act.

(g) Meetings.—The Committee shall meet 4 times each year, and more frequently if requested by the Corporation.

(h) Reports.—The Committee shall submit by March 31 of each year a written report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate. Such report shall describe the activities of the Committee for the preceding year and contain such recommendations as the Committee considers appropriate.

(i) Provision of Staff and Other Resources.—The Corporation shall provide the Committee with the use of such resources, including staff, as the Committee reasonably shall require to carry out its duties, including the preparation and submission of reports to the Congress, under this section.

(j) Federal Advisory Committee Act Does not Apply.—The Federal Advisory Committee Act shall not apply to the Committee.

SEC. 633. AMENDMENTS RELATING TO FEDERAL RESERVE BOARD RESERVE REQUIREMENTS.

(a) Study on Payment of Imputed Earnings on Sterile Reserves to Insurance Funds.—The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the National Credit Union Administration shall jointly—

(1) conduct a study on the feasibility of assessing Federal Reserve banks an amount equal to the imputed earnings on reserves held at such bank by insured depository institutions under section 19(b) of the Federal Reserve Act; and

(2) assess the likely beneficial and adverse effects such an assessment would have on the Federal reserve banks, the deposit insurance funds, the insured depository institutions, and the Federal payment system, including a comparison of the effects on each such subject of the study.

(b) Report to Congress.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the National Credit Union Administration shall jointly submit a report to the Congress on the findings and conclusions made with respect to the study under subsection (a), together with any recommendation for any legislative or administrative action which such agencies may determine to be appropriate.

(c) Report of Dissenting Views.—Any agency described in subsections (a) and (b) which does not concur in the findings, conclusions, or recommendations referred to in subsection (b) or has additional findings, conclusions, or recommendations which were not included in the report may submit a report to the Congress describing—

(1) the reasons why the agency does not concur in the findings, conclusions, or recommendations referred to in subsection (b); and

(2) such additional findings, conclusions, or recommendations.

SEC. 634. DEPOSITORY INSTITUTIONS REFORM ADVISORY COMMITTEE.

(a) PURPOSE.—The purpose of this section is to establish a committee—

(1) to study the current system of regulation and supervision of financial institutions; and

(2) to make recommendations to—

(A) improve the system's ability to ensure the safe and sound operation of depository institutions; and

(B) minimize losses to the deposit insurance funds.

(b) ESTABLISHMENT.—There is hereby established the Depository Institutions Reform Advisory Committee (hereafter in this section referred to as the "Committee").

(c) MEMBERSHIP.—

(1) APPOINTMENT.—Subject to paragraphs (2) and (3), the Committee shall consist of 16 members as follows:

(A) 4 members of the public appointed by the Speaker of the House of Representatives.

(B) 4 members of the public appointed by the Majority Leader of the Senate.

(C) 8 members of the public appointed by the President, 1 of whom shall be designated by the President to be the Chairperson of the Committee.

(2) QUALIFICATION OF MEMBERS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), members of the Committee shall be appointed from among individuals who are citizens of the United States and are specially qualified to serve on the Committee by virtue of their education, training, or experience with the depository institutions industry.

(B) INELIGIBILITY OF INDIVIDUALS HOLDING CERTAIN POSITIONS.—No individual may be appointed to the Committee who—

(i) holds any position to which such individual was appointed by the President; or

(ii) is an institution-affiliated party (as defined in section 3 of the Federal Depository Insurance Act) with respect to any depository institution.

(C) CONSUMERS AND ACADEMICS.—At least 2 of the members appointed under paragraph (1)(A), 2 of the members appointed under paragraph (1)(B), and 2 of the members appointed under paragraph (1)(C) shall be appointed from among individuals who are representatives of consumer organizations or who hold teaching positions at postsecondary educational institutions.

(3) POLITICAL AFFILIATION.—Not more than 8 members of the Committee shall be members of the same political party.

(4) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed for expenses incurred in connection with attendance of such members at meetings of the Committee.

(5) MEETINGS.—The Committee shall meet, not less frequently than monthly, at the call of the Chairperson or a majority of the members.

(d) RESOURCES AND STAFF.—The Federal Deposit Insurance Corporation shall provide the Committee with all resources, including staff, offices, or equipment, as the Committee may require to carry out its duties.

(e) INFORMATION.—

(1) IN GENERAL.—The Committee may secure directly from any appropriate Federal banking agency or the Securities and Exchange Commission any information that the Committee deems necessary to enable it to carry out this section.

(2) AVAILABILITY UPON REQUEST OF CHAIRPERSON.—Upon request of the Chairperson of the Committee, the head of an appropriate Federal banking agency or of the Securities and Exchange Commission shall furnish the information to the Committee unless specifically prohibited by law.

(f) CONFLICT-OF-INTEREST AND CONFIDENTIALITY GUIDELINES.—The Committee shall prescribe guidelines to avoid—

(1) conflicts of interest with respect to the disclosure to, and use or release by, members of the Committee of any information relating to any depository or other financial institution or appropriate Federal banking agency; and

(2) the release of nonpublic information relating to depository or other financial institutions to which members may have access.

(g) DEFINITIONS.—For purposes of this section, any term used in this section which is defined in section 3 of the Federal Deposit Insurance Act shall have the meaning given such term in such section, except that the term "depository institution" includes any depository institution holding company (as defined in such section).

(h) DUTIES OF THE COMMITTEE.—

(1) IN GENERAL.—The Committee shall study and include in the report required under subsection (i) recommendations for changes in the regulation and supervision of depository institutions in order to ensure their safety and soundness and to minimize losses to the deposit insurance funds.

(2) EVALUATION OF SPECIFIC FACTORS.—The study shall include an evaluation of the ability of the appropriate Federal banking agencies to—

(A) identify risks associated with new or existing complex activities or products of depository institutions;

(B) identify and monitor transactions between a depository institution and its affiliates, and to assess and control potential risks arising from these transactions;

(C) attract and retain supervisory, examiner, and legal staff with the qualifications, training, and experience necessary to ensure safe and sound depository institutions;

(D) detect and control conflicts of interest arising in depository institutions;

(E) anticipate and rapidly respond to changes in the depository institutions environment; and

(F) improve operations by using private contractors to assist with examinations or other aspects of supervision.

(i) FINAL REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Committee shall submit to the President, each House of Congress, each appropriate Federal banking agency, and the Securities and Exchange Commission a report containing the findings of the Committee and such recommendations as the Committee may determine to be appropriate, including any specific proposal for legislative or administrative action.

(j) TERMINATION.—The Committee shall cease to exist as of the end of the 60-day period beginning on the date on which the Committee submits the final report under subsection (i).

SEC. 635. REPORT ON GOVERNMENT CHECK CASHING.

Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report on the effects, on insured depository institutions that serve client bases that have a disproportionately high number of persons that receive Federal Government checks, of requiring those institutions to cash those checks.

SEC. 636. PERMANENT AUTHORIZATION OF CREDIT STANDARDS BOARD.

(a) IN GENERAL.—Section 1205 of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 note) is amended by adding at the end the following new subsection:

"(f) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act shall not apply with respect to the Committee.".

Subtitle E—Utilization of Private Sector

SEC. 641. UTILIZATION OF PRIVATE SECTOR.

Section 11(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(2)) is amended by adding at the end the following new subparagraph:

"(K) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services is practicable and efficient.".

SEC. 642. REPORTING.

Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by adding at the end the following new subsection:

"(h) ADDITIONAL REPORTS.—

"(1) In addition to the reports required under subsections (a), (b), and (c), the Corporation shall submit to Congress not later than April 30 and October 31 of each year, a semiannual report on the activities and efforts of the Corporation for the 6-month period ending on the last day of the month prior to the month in which such report is required to be submitted.

"(2) CONTENTS OF REPORT.—Each semiannual report required under this subsection shall include the following information with respect to the Corporation's assets and liabilities and the assets and liabilities of institutions for which the Corporation serves as a conservator or receiver:

"(A) A statement of the total book value of all assets held or managed by the Corporation at the beginning and end of the reporting period.

"(B) A statement of the total book value of such assets which are under contract to be managed by private persons and entities at the beginning and end of the reporting period.

"(C) The number of employees of the Corporation at the beginning and end of the reporting period.

"(D) The total amounts expended on employee wages, salaries, and overhead, during the reporting period which are attributable to—

"(i) contracting with, supervising, or reviewing the performance of private contractors, or

"(ii) managing or disposing of such assets.

"(E) A statement of the total amount expended on private contractors for the management of such assets.

"(F) A statement of the efforts of the Corporation to maximize the efficient utilization of the resources of the private sector during the reporting period and in future reporting periods and a description of the policies and procedures adopted to ensure adequate competition and fair and consistent treatment of qualified third parties seeking to provide services to the Corporation.".

SEC. 643. REQUIREMENT TO MINIMIZE PAYMENTS FOR LEGAL SERVICES.

The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall adopt and follow procedures with respect to contracts for legal, accounting, and investment banking services to assure that, to the extent reasonably practicable—

(1) the costs of such services are minimized, and

(2) there is a sufficiently representative distribution—

(A) geographically, and

(B) in terms of size of firms providing such service and contracts awarded for such services.

Subtitle F—Emergency Assistance for Rhode Island

SEC. 651. EMERGENCY LOAN GUARANTEE.

(a) IN GENERAL.—

(1) PROVISION FOR GUARANTEE.—Subject to the loan collateral conditions established under paragraph (2) and the terms and conditions established in accordance with paragraph (3), the Secretary of the Treasury shall guarantee the repayment of any amount not to exceed $180,000,000 borrowed by the State of Rhode Island and Providence Plantations (hereafter in this section referred to as the "State of Rhode Island"), or the Depositors Economic Protection Corporation established by such State, to expedite the repayment of depositors at State-chartered banks and credit unions in receivership in such State and facilitate the resolution of such receiverships.

(2) LOAN COLLATERAL REQUIRED AS CONDITION FOR GUARANTEE.—The Secretary of the Treasury may not guarantee the repayment of any amount under paragraph (1) unless the amount of any loan for which the guarantee is sought is fully secured as follows:

(A) Any revenue from the State sales tax which is dedicated to the Depositors Economic Protection Corporation under the law of the State of Rhode Island in excess of the amount necessary to pay principal and interest on any obligation of the State or the Corporation issued before the date of the enactment of this Act for the purpose described in paragraph (1) is irrevocably dedicated to the payment of the principal of, and the interest on, the loan for which the guarantee is sought.

(B) Assets held or controlled by the Depositors Economic Protection Corporation, and the proceeds from the sale of such assets, are irrevocably pledged as collateral in an amount sufficient to fully amortize any portion of the loan which is not secured under subparagraph (A).

(3) ADDITIONAL TERMS AND CONDITIONS.—Except as provided in paragraph (2), the terms and conditions for any loan guarantee under paragraph (1) shall be established by mutual agreement of the Secretary of the Treasury and the duly authorized representative of the State of Rhode Island.

(b) APPROPRIATION OF AMOUNTS.—There are hereby appropriated to the Secretary of the Treasury such sums as may be necessary for any fiscal year to meet the obligation of the United States under subsection (a)(1).

(c) DESIGNATION OF PROVISIONS AS EMERGENCY REQUIREMENTS.—Each provision of this section is hereby designated as an emergency requirement for purposes of sections 252(e) and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985, and the President is hereby deemed to have designated each such provision as an emergency requirement for purposes of such section.

Subtitle G—Qualified Thrift Lender Test Improvements

SEC. 661. SHORT TITLE.

This subtitle may be cited as the "Qualified Thrift Lender Reform Act of 1991".

SEC. 662. ADJUSTMENT OF COMPLIANCE PERIODS FOR PURPOSES OF QUALIFIED THRIFT LENDER TEST.

Section 10(m)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)(B)) (as in effect on July 1, 1991) is amended to read as follows:

"(B) the savings association's qualified thrift investments continue to equal or exceed 70 percent of the savings association's portfolio assets on a monthly average basis in 9 out of every 12 months.".

SEC. 663. INCREASE IN AMOUNT OF LIQUID ASSETS EXCLUDABLE FROM PORTFOLIO ASSETS.

Section 10(m)(4)(B)(iii) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(B)(iii)) (as in effect on July 1, 1991) is amended by striking "10 percent" and inserting "20 percent".

SEC. 664. ADDITIONAL INVESTMENTS INCLUDED IN DEFINITION OF QUALIFIED THRIFT ASSETS.

Section 10(m)(4)(C) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)) (as in effect on July 1, 1991) is amended—

(1) by adding at the end of clause (ii) the following new subclause:

"(VI) Shares of stock issued by any Federal home loan bank."; and

(2) by adding at the end of clause (iii) the following new subclause:

"(VII) Shares of stock issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.".

SEC. 665. PRUDENT DIVERSIFICATION OF ASSETS.

(a) IN GENERAL.—Section 10(m)(4)(C)(iii)(VI) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(iii)(VI)) (as in effect on July 1, 1991) is amended by striking "5 percent" and inserting "10 percent".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 10(m)(4)(C)(iv) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(iv)) (as in effect on July 1, 1991) is amended by striking "15 percent" and inserting "20 percent".

SEC. 666. CONSUMER LENDING BY FEDERAL SAVINGS ASSOCIATIONS.

The 2d sentence of section 5(c)(2)(D) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(2)(D)) is amended by striking "30 percent" and inserting "35 percent".

Subtitle H—Prohibition on Entering Secrecy Agreements and Protective Orders

SEC. 671. PROHIBITION ON ENTERING INTO SECRECY AGREEMENTS AND PROTECTIVE ORDERS.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following new subsection:

"(s) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.".

Subtitle I—Establishment of Capital Standard Requirement

SEC. 681. CAPITAL STANDARDS.

Federal banking regulatory agencies shall establish minimum capital standards at least equal to the minimum capital requirements under all international accords to which the United States has agreed on capital standards for financial institutions.

Subtitle J—References in Federal Law

SEC. 691. REFERENCES IN FEDERAL LAW.

(a) BANK HOLDING COMPANY.—After December 31, 1992, any reference in any Federal law to a bank holding company shall be deemed to be a reference to a financial services holding company.

(b) BANK HOLDING COMPANY ACT OF 1956.—Any reference in any Federal law to the Bank Holding Company Act of 1956 shall be deemed to be a reference to the Diversified and Financial Services Holding Company Act of 1991.

(c) ACT NOT TO AFFECT APPLICATION OF INTERNAL REVENUE CODE.—Subsections (a) and (b) shall not apply for purposes of the Internal Revenue Code of 1986, and any reference in such Code to a bank holding company shall not include any bank holding company—

(1) which (directly or indirectly) engages in any activity or holds shares in any company if the engaging in such activity or holding of such shares would not be permitted under the Bank Holding Company Act of 1956 as in effect on the day before the date of the enactment of this Act, or

(2) any shares in which are held by any person if the holding of such shares by such person would not be permitted under such Act as so in effect.

SEC. 692. SEVERABILITY.

If any provision of this Act, or any application of any provision of this Act to any person or circumstance, is held invalid, the remainder of the Act, and the application of any remaining provision of the Act to any other person or circumstance, shall not be affected by such holding.

The CHAIRMAN pro tempore. No amendment to said substitute is in order except those amendments printed in House Report 102-281. Said amendments shall be considered in the order and manner specified in said report and shall be considered as read. Debate time specified for each amendment shall be equally divided and controlled by the proponent of the amendment and a Member opposed thereto. Said amendments shall not be subject to amendment, except as specified in House Report 102-281.

Where House Report 102-281 specifies consideration of amendments en bloc, said amendments shall be so considered and shall not be subject to a demand for a division of the question.

It is in order at any time for the chairman of the Committee on Banking, Finance and Urban Affairs to offer amendments en bloc consisting of amendments, and modifications in the text of any amendments which are germane thereto, printed in House Report 102-281. Said amendments en bloc shall be considered as read and shall be debatable for 20 minutes, equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs. The original proponents of the amendments en bloc shall have permission to insert statements in the CONGRESSIONAL RECORD immediately before disposition of the amendments en bloc. Said amendments en bloc shall not be subject to amendment or to a demand for a division of the question.

If amendments numbered 8 and 9 are both adopted, only the latter amendment adopted will be considered as finally adopted and reported back to the House.

The Chair will announce the number of the amendment made in order by House Resolution 266 in order to give notice to the Committee of the Whole as to the order of recognition.

AMENDMENTS EN BLOC OFFERED BY MR. GONZALEZ

Mr. GONZALEZ. Mr. Chairman, pursuant to the rule, I offer amendments en bloc.

The CHAIRMAN pro tempore. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. GONZALEZ:

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE LAFALCE OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 73, after line 6, insert the following new subparagraph:

"(F) TREATMENT OF PROFITABLE INSTITUTIONS.—Notwithstanding the provisions of subparagraph (D), the appropriate Federal banking agency may continue to take such other action which the agency determines to be appropriate in lieu of such appointment if the agency determines, with the concurrence of the Corporation, that—

"(i) the insured depository institution is in compliance with an approved capital restoration plan which requires consistent improvement in its capital position;

"(2) the insured depository institution is profitable or has an upward trend in earnings the agency projects as sustainable; and

"(3) the insured depository institution is reducing the ratio of nonperforming assets to total assets.".

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16. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE JOHNSON OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 105, line 25, before the period insert the following: "or that such person complied with the applicable laws, rules, supervisory directives, and orders, and did not engage in any insider dealing, speculative practice, or other abusive activity while serving on the board of directors or any other management position in the institution."

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17. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE KANJORSKI OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 108, after line 2, insert the following new subtitle (and conform the table of contents accordingly):

Subtitle G—Management and Conflict of Interest Reforms

SEC. 161. SHORT TITLE.

This subtitle may be cited as the "Management and Conflict of Interest Reform Amendments of 1991".

SEC. 162. DEFINITIONS.

(a) Section 202 of the Depository Institution Management Interlocks Act (12 U.S.C. 3201) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) the term 'depository institution' means a commercial bank, a foreign bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union;";

(2) in paragraph (5), by striking "and";

(3) in paragraph (6), by striking the period and inserting "; and"; and

(4) by adding at the end the following:

"(7) the term 'outside counsel' means any individual who is not a full-time employee of the depository institution or depository holding company and who receives compensation, either directly or through a law firm, partnership, or corporation, for legal services or advice rendered to the depository institution or depository holding company or any of its subsidiaries, affiliates, or holding companies;

"(8) the term 'outside accountant' means any individual who is not a full-time employee of the depository institution or depository holding company and who receives compensation, either directly or through an accounting firm, partnership, or corporation, for accounting services or advice rendered to the depository institution or any of its subsidiaries. affiliates, or holding companies;

"(9) the term 'outside director' means an individual who is a member of the board of directors who is not an employee or officer with management functions of either the depository institution or depository holding company, or any of its subsidiaries, affiliates, or holding companies; and

"(10) the term 'control' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956 for bank holding companies and section 10(a)(2) of the Home Owners' Loan Act for savings and loan holding companies.".

(b) Section 207(2) of the Depository Institution Management Interlocks Act (12 U.S.C. 3206(2)) is amended to read as follows:

"(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, foreign banks, and bank holding companies,".

SEC. 163. DUAL SERVICE OF OUTSIDE COUNSEL AND ACCOUNTANTS ON BOARD OF DIRECTORS PROHIBITED.

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) is amended by adding at the end the following new section:

"SEC. 211. DUAL SERVICE OF OUTSIDE COUNSEL AND ACCOUNTANTS ON BOARD OF DIRECTORS PROHIBITED.

"No individual who is an outside counsel or outside accountant of a depository institution or a depository holding company may serve as a member of the board of directors of that depository institution or depository holding company or any of its subsidiaries, affiliates, or holding companies.".

SEC. 164. OWNERSHIP DISCLOSURES TO BOARD OF DIRECTORS.

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) (as amended by this subtitle) is amended by adding at the end the following new section:

"SEC. 212. OWNERSHIP DISCLOSURES TO BOARD OF DIRECTORS.

"Not less than once each calendar year each depository institution and depository holding company shall provide to each member of its board of directors, and to each member of the board of directors of any depository institution or depository holding company it controls, a list of the names and principal places of business of each individual or company which directly or indirectly owns, controls, or has power to vote 5 percent or more of any class of voting securities of the depository institution or depository holding company, and such other information as the appropriate Federal depository institutions regulatory agency shall prescribe by regulation.".

SEC. 165. CHANGE IN CONTROL DISCLOSURES TO BOARD OF DIRECTORS.

The Depository Institute Management Interlocks Act (12 U.S.C. 3201 et seq.) (as amended by this subtitle) is amended by adding at the end the following new section:

"SEC. 213. CHANGE IN CONTROL DISCLOSURES TO BOARD OF DIRECTORS.

"Each depository institution and depository holding company shall provide to each member of its board of directors, and to each member of the board of directors of any depository institution or depository holding company it controls, with notice of any proposed change in control of the parent depository institution or depository holding company. Such notice shall contain such information as the appropriate Federal depository institutions regulatory agency of the parent depository institution or depository holding company shall prescribe by regulation.".

SEC. 166. BOARD OF DIRECTORS CONTROL BY OUTSIDE DIRECTORS.

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) (as amended by this subtitle) is amended by adding at the end the following new section;

"SEC. 214. BOARD OF DIRECTORS CONTROL BY OUTSIDE DIRECTORS.

"A majority of the voting members of the board of directors of each depository institution and each depository holding company shall be outside directors.".

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18. THE AMENDMENTS EN BLOC TO BE OFFERED BY REPRESENTATIVE RIDGE OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 164, beginning on line 21, strike, subparagraphs (A) and (B) through page 165, line 18 and insert the following:

(A) any increase during such period in the amount of new originations of qualified loans and other financial assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neighborhoods, which the Board determines are qualified to be taken into account for purposes of this subsection; and

(B) any increase during such period in the amount of deposits accepted from persons domiciled in the distressed community, at any office of the institution (including any branch) located in any qualified distressed community, and any increase during such period in the amount of new originations of loans and other financial assistance made within that community, except that in no case shall the credit for increased deposits at any institution or branch exceed the credit for increased loan and other financial assistance by the bank or branch in the distressed community.

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19. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 477, after line 25, insert the following new subtitle:

Subtitle E—FDIC Property Disposition

SEC. 541. FDIC AFFORDABLE HOUSING PROGRAM.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after section 41 (as added by section 512 of this Act) the following new section:

"SEC. 42. FDIC AFFORDABLE HOUSING PROGRAM.

"(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after section 41 (as added by section 512 of this Act) the following new section:

"SEC. 42. FDIC AFFORDABLE HOUSING PROGRAM.

"(a) Purpose.—The purpose of this section is to provide homeownership and rental housing opportunities for very low-income, low-income, and moderate-income families.

"(b) Limitations on Applicability of Program.—

"(1) Duration of program.—The provisions of this section shall be effective, subject to the provisions of paragraph (2), only during the 3-year period beginning 180 days after the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

"(2) Fiscal limitations.—

"(A) In general.—During the period in which the provisions of this section are effective (as provided in paragraph (1)), such provisions shall apply only during the period beginning on the commencement date under subparagraph (B) and ending (if applicable) on the termination date under subparagraph (C).

"(B) Commencement date.—For purposes of this paragraph, the commencement date shall be the day during the period referred to in paragraph (1) on which sufficient amounts are first determined to be available to compensate the Corporation for any losses resulting from the sale of properties under this section. For purposes of this subparagraph, such losses shall be the amount equal to the sum of any affordable housing discounts reasonably anticipated to accrue during the period in which the program under this section is effective. If the determination under the first sentence of this subparagraph is made before the commencement of the period referred to in paragraph (1), the commencement date shall be considered to be the first day of the period referred to in paragraph (1).

"(C) Termination date.—For purposes of this paragraph, the termination date shall be the day during the period referred to in paragraph (1) on which the sum of the affordable housing discounts for eligible residential properties transferred under this section by the Corporation first exceeds $30,000,000, as determined by the Corporation.

"(D) Other definitions.—For purposes of this paragraph—

"(i) the term 'affordable housing discount' means, with respect to any eligible residential property transferred under this section by the Corporation, the difference (if any) between the realizable disposition value of the property and the actual sale price of the property under this section; and

"(ii) the term 'realizable disposition value' means the estimated sale price that the Corporation reasonably would be able to obtain upon the sale of a property by the Corporation under the provisions of this Act, not including this section, and any other applicable laws, as determined by the Corporation taking into consideration such factors as the Corporation considers appropriate, including the actual sale prices of properties disposed of by the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act and the prices of other properties sold under similar programs.

"(3) Existing contracts.—The provisions of this section shall not apply to any eligible residential property that is subject to an agreement entered into by the Corporation before the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 providing for any other disposition of the property.

"(c) Rules Governing Disposition of Eligible Single Family Properties.—

"(1) Notice to clearinghouses.—Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

"(2) Offers to sell single family properties to nonprofit organizations, public agencies, and qualifying households.—During the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to—

"(A) qualifying households; or

"(B) public agencies or nonprofit organizations that agree to (i) make the property available for occupancy by and maintain it as affordable for low-income families for the remaining useful life of such property, or (ii) make the property available for purchase by such families.

The restrictions described in clause (i) of subparagraph (B) shall be contained in the deed or other recorded instrument. If, upon the expiration of such 180-day period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to low-income families.

"(3) Recapture of profits from resale of single family properties.—Except as provided in paragraph (5), if any eligible single family property sold to a qualifying household is resold by the qualifying household during the 2-year period beginning upon initial acquisition by the household, the Corporation shall recapture the percentage provided in paragraph (4) of the amount of any proceeds from the resale that exceeds the sum of (A) the original sale price for the acquisition of the property of the qualifying household, (B) the costs of any improvements to the property made after the date of the acquisition, and (C) any closing costs in connection with the acquisition.

"(4) Percentage of profit recaptured.—The percentage of excess proceeds recaptured under paragraph (3) shall be as follows:

"(A) First year.—In the case of any resale occurring during the 1-year period beginning upon initial acquisition by the qualifying household, 75 percent of the amount of such excess proceeds.

"(B) Second year.—In the case of any resale occurring during the 1-year period beginning 1 year after initial acquisition by the qualifying household, 50 percent of the amount of such excess proceeds.

"(5) Exception to recapture requirement.—The Corporation may in its discretion waive the applicability to any qualifying household of the requirement under paragraph (3) and the requirements relating to residency of a qualifying household under subsections (o)(12)(B) and (C). The Corporation may grant such a waiver only for good cause shown, including any necessary relocation of the qualifying household.".

"(6) Exception to avoid displacement of existing residents.—Notwithstanding the first sentence of paragraph (2), during the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation may sell the property to the household residing in the property, but only if (A) such household was residing in the property at the time notice regarding the property was provided to clearinghouses under paragraph (1), (B) such sale is necessary to avoid the displacement of, and unnecessary hardship to, the resident household, and (C) the resident household intends to occupy the property as a principal residence.".

"(d) Rules Governing Disposition of Eligible Multifamily Housing Properties.—

"(1) Notice to clearinghouses.—Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to eligible multifamily housing properties for purposes of inspection.

"(2) Expression of serious interest.—Qualifying multifamily purchasers may give written notice of serious interest in a property during a period ending 90 days after the time the Corporation provides notice under paragraph (1), or until the Corporation determines that a property is ready for sale, whichever occurs first. The notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

"(3) Notice of readiness for sale.—Upon determining that a property is ready for sale, the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

"(4) Offers by qualifying multifamily purchasers.—A qualifying multifamily purchaser receiving notice in accordance with paragraph (3) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase the property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation.

"(5) Extension of restricted offer periods.—The Corporation may provide notice to clearinghouses regarding, and offer for sale under the provisions of paragraphs (1) through (4), any eligible multifamily housing property—

"(A) in which no qualifying multifamily purchaser has expressed serious interest during the period referred to in paragraph (2), or

"(B) for which no qualifying multifamily purchaser has made a bona fide offer before the expiration of the period referred to in paragraph (4),

except that the Corporation may, in the discretion of the Corporation, alter the duration of the periods referred to in paragraphs (2) and (4) in offering any property for sale under this paragraph.

"(6) Sale of multifamily properties to other purchasers.—

"(A) TIMING.—If, upon the expiration of the period referred to in paragraph (2), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

"(B) LIMITATION ON COMBINATION SALES.—The Corporation may not sell in combination with other properties any property for which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

"(C) EXPIRATION OF OFFER PERIOD.—If, upon the expiration of the period referred to in paragraph (4), no qualifying multifamily purchaser has made an offer to purchase a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

"(7) LOW-INCOME OCCUPANCY REQUIREMENTS.—

"(A) SINGLE BUILDING PROPERTIES.—With respect to any property consisting of a single building or structure purchased by a qualifying multifamily purchaser under paragraph (4)—

"(i) not less than 35 percent of the dwelling units in the building or structure shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the building or structure in which the units are located; and

"(ii) not less than 20 percent of the dwelling units in the building or structure shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the building or structure in which the units are located.

"(B) AGGREGATION REQUIREMENTS FOR MULTISTRUCTURE PURCHASES.—With respect to any purchase under paragraph (4) by a qualifying multifamily purchaser property involving a property consisting of more than one building or structure or involving more than one property as a part of the same negotiation—

"(i) not less than 40 percent of the aggregate number of dwelling units in all of the buildings or structures of the properties purchased shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the building or structure in which the units are located;

"(ii) not less than 20 percent of the aggregate number of dwelling units in all of the buildings or structures of the properties shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the building or structure in which the units are located; and

"(iii) not less than 10 percent of the dwelling units in each separate building or structure of each property purchased shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the building or structure in which the units are located.

The requirements of this paragraph shall be contained in the deed or other recorded instrument.

"(8) EXEMPTIONS.—

"(A) CONTINUED OCCUPANCY OF CURRENT RESIDENTS.—No purchaser of an eligible multifamily property may terminate the occupancy of any person residing in the property on the date of purchase for purposes of the meeting low-income occupancy requirement applicable to the property under paragraph (7). The purchaser shall be considered to be in compliance with this subsection if each newly vacant dwelling unit is reserved for low-income occupancy until the low-income occupancy requirement is met.

"(B) FINANCIAL INFEASIBILITY.—The Secretary or the State housing finance agency for the State in which an eligible multifamily housing property is located may temporarily reduce the low-income occupancy requirements applicable to the property under paragraph (7), if the Secretary or such agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return low-income occupancy to the level required under paragraph (7), and the Secretary or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

"(e) RENT LIMITATIONS.—

"(1) IN GENERAL.—With respect to properties under paragraph (2), rents charged to tenants for units made available for occupancy by very low-income families shall not exceed 30 percent of the income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

"(2) APPLICABILITY.—The rent limitations under this subsection shall apply to any eligible single family property sold pursuant to subsection (c)(2)(B)(i) and to any eligible multifamily housing property sold pursuant to subsection (d).

"(f) PREFERENCES FOR SALES.—

"(1) IN GENERAL.—In selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income and low-income families and would retain such affordability for the longest term.

"(2) MULTISTRUCTURE PURCHASES.—The Corporation shall give preference, among substantially similar offers made under subsection (d)(4) to purchase an eligible multifamily housing property consisting of more than one building or to purchase more than one such property as a part of the same negotiation, to offers made by purchasers who agree to maintain low-income occupancy in each separate building or structure of each such property purchased in compliance with the levels required for properties under subsection (d)(7)(A).

"(3) DEFINITION OF SUBSTANTIALLY SIMILAR OFFERS.—For purposes of this subsection, a given offer to purchase eligible multifamily housing property or combinations of eligible residential properties shall be considered to be substantially similar to another offer if the purchase price under such given offer is not less than 85 percent and not greater than 115 percent of the purchase price under the other offer.

"(g) FINANCING SALES.—

"(1) ASSISTANCE BY CORPORATION.—

"(A) SALE PRICE.—The Corporation may sell eligible single family property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum sale price. The Corporation shall establish a market value for each eligible multifamily housing property and shall sell such property at the net realizable market value, except that the Corporation may agree to sell eligible multifamily housing property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of the property and enable a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to such property under subsection (d)(7).

"(B) PURCHASE LOAN.—The Corporation may provide a loan at market interest rates to any purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide the loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (i) a low-income family to purchase an eligible single family property under subsection (c), or (ii) a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to the purchase of an eligible residential property under subsection (c) or (d). The Corporation shall provide loans under this subparagraph in a form permitting sale or transfer of the loan to a subsequent holder.

"(2) ASSISTANCE BY HUD.—The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959, the United States Housing Act of 1937, title IV of the Stewart B. McKinney Homeless Assistance Act, and the National Housing Act to enable any organization or individual to purchase eligible residential property.

"(3) ASSISTANCE BY FMHA.—The Secretary of Agriculture shall take such action as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 to enable any organization or individual to purchase eligible residential property.

"(4) EXCEPTION TO DISPOSITION RULES.—Notwithstanding the requirements under paragraphs (1), (2), (3), (4), (6), and (8) of subsection (d), the Corporation may provide for the disposition of eligible multifamily housing properties as necessary to facilitate purchase of such properties for use in connection with section 202 of the Housing Act of 1959.

"(5) BULK ACQUISITIONS UNDER HOME INVESTMENT PARTNERSHIPS ACT.—

"(A) PURCHASE PRICE.—In providing for bulk acquisition of eligible single family properties by participating jurisdictions for inclusion in affordable housing activities under title II of the Cranston-Gonzalez National Affordable Housing Act, the Corporation shall agree to an amount to be paid for acquisition of such properties. The acquisition price shall include discounts for bulk purchase and for holding of the property such that the acquisition price for each property shall not exceed the fair market value of the property, as valued individually.

"(B) EXEMPTIONS.—To the extent necessary to facilitate sale of properties under this paragraph, the requirements of subsections (c), (f), and (g)(1) shall not apply to such transactions and properties involved in such transactions.

"(C) INVENTORIES.—To facilitate acquisitions by such participating jurisdictions, the Corporation shall provide the participating jurisdictions with inventories of eligible single family properties not less than 4 times each year.

"(h) Rules Governing Disposition of Eligible Condominium Property.—

"(1) Notice to clearinghouses.—Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to purchasers described in subparagraphs (A) through (D) of paragraph (2). The Corporation shall allow such purchasers reasonable access to an eligible condominium property for purposes of inspection.

"(2) Offers to sell.—During the 180-day period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation may offer to sell the property, at the discretion of the Corporation, to 1 or more of the following purchasers:

"(A) Qualifying households.

"(B) Nonprofit organizations.

"(C) Public agencies.

"(D) For-profit entities.

"(3) Low-income occupancy requirements.—

"(A) In general.—Except as provided in subparagraph (B), any nonprofit organization, public agency, or for-profit entity that purchases an eligible condominium property shall (i) make the property available for occupancy by and maintain it as affordable for low-income families for the remaining useful life of the property, or (ii) make the property available for purchase by such families. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

"(B) Multiple-unit purchases.—If any nonprofit organization, public agency, or for-profit entity purchases more than 1 eligible condominium property as a part of the same negotiation or purchase, the Corporation may (in the discretion of the Corporation) waive the requirement under subparagraph (A) and provide instead that not less than 35 percent of all eligible condominium properties purchased shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or (ii) made available for purchase by such families. The restriction described clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

"(C) Sale to other purchasers.—If, upon the expiration of the 180-day period referred to in paragraph (2), no purchaser described in subparagraphs (A) through (D) of paragraph (2) has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any other purchaser.

"(i) Coordination With Other Programs.—

"(1) Use of secondary market agencies.—In the disposition of eligible residential properties, the Corporation (in consultation with the Secretary) shall explore opportunities to work with secondary market entities to provide housing for low- and moderate-income families.

"(2) Credit enhancement.—With respect to such properties, the Secretary may, consistent with statutory authorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk-sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for low- and moderate-income families.

"(3) National affordable housing act.—The Corporation shall coordinate the disposition of eligible residential property under this section with appropriate programs and provisions of, and amendments made by, the Cranston-Gonzalez National Affordable Housing Act, including titles II and IV of such Act.

"(j) Exemption for Certain Transactions With Insured Depository Institutions.—The provisions of this section shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 3), including any sale in connection with a transfer of all or substantially all of the assets of a closed insured depository institution (including such property) to another insured depository institution.

"(k) Exception for Sales to Nonprofit Organizations and Public Agencies.—

"(1) Suspension of offer periods.—With respect to any eligible residential property, the Corporation may (in the discretion of the Corporation) suspend any of the requirements of paragraphs (1) and (2) of subsection (c) and paragraphs (1) through (4) of subsection (d), as applicable, but only to the extent that during the duration of the suspension the Corporation negotiates the sale of the property to a nonprofit organization or public agency. If the property is not sold pursuant to such negotiations, the requirements of any provisions suspended shall apply upon the termination of the suspension. Any time period referred to in such subsection shall toll for the duration of any suspension under this paragraph.

"(2) Use restrictions.—Any eligible single family property sold under this subsection shall be made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or made available for purchase by such families. Eligible multifamily housing properties sold under this subsection shall comply with the low-income occupancy requirements under subsection (d)(7).

"(l) Liability Provisions.—

"(1) In general.—The provisions of this section, or any failure by the Corporation to comply with such provisions, may not be used by any person to attack or defeat any title to property after it is conveyed by the Corporation.

"(2) Low-income occupancy.—The low-income occupancy requirements under subsections (c) and (d) shall be judicially enforceable against purchasers of property under this section and their successors in interest by affected very low- and low-income families, State housing finance agencies, and any agency, corporation, or authority of the United States. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

"(3) Clearinghouses.—A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this section.

"(4) Corporation.—The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver, or any claimant against such an institution, because the disposition of assets of the institution under this section affects the amount of return from the assets.

"(m) Affordable Housing Program Office.—The Corporation shall establish an Affordable Housing Program Office within the Corporation to carry out the provisions of this section and shall dedicate certain staff of the Corporation to the office.

"(n) Report.—In the annual report submitted by the Secretary to the Congress under section 8 of the Department of Housing and Urban Development Act, the Secretary shall include a detailed description of any activities under this section, including recommendations for any additional authority the Secretary considers necessary to implement the provisions of this section.

"(o) Definitions.—For purposes of this section:

"(1) Clearinghouse.—The term 'clearinghouse' means—

"(A) the State housing finance agency for the State in which an eligible residential property is located;

"(B) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board; and

"(C) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968) that the Corporation determines has the capacity to act as a clearinghouse for information.

"(2) Corporation.—The term 'Corporation' means the Federal Deposit Insurance Corporation acting in its corporate capacity or its capacity as receiver.

"(3) Eligible condominium property.—The term 'eligible condominium property' means a condominium unit, as such term is defined in section 604 of the Housing and Community Development Act of 1980—

"(A) to which such Corporation acquires title; and

"(B) that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (without regard to any increase of such amount for high cost areas).

"(4) Eligible multifamily housing property.—The term 'eligible multifamily housing property' means a property consisting of more than 4 dwelling units—

"(A) to which the Corporation acquires title; and

"(B) that has an appraised value that does not exceed the applicable dollar amount set forth in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures (without regard to any increase of such amount for high-cost areas).

"(5) Eligible residential property.—The term 'eligible residential property' includes eligible single family properties and eligible multifamily housing properties.

"(6) Eligible single family property.—The term 'eligible single family property' means a 1- to 4-family residence (including a manufactured home)—

"(A) to which the Corporation acquires title; and

"(B) that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (without regard to any increase of such amount for high-cost areas).

"(7) Income.—The term 'income' shall have the meaning given the term in section 3(b) of the United States Housing Act of 1937.

"(8) Low-income families.—The term 'low-income families' means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

"(9) NET REALIZABLE MARKET VALUE.—The term 'net realizable market value' means a price below the market value that takes into account (A) any reductions in holding costs resulting from the expedited sale of a property, including foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (B) the avoidance, if applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

"(10) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means a private organization (including a limited equity cooperative)—

"(A) no part of the earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

"(B) that is approved by the Corporation as to financial responsibility.

"(11) PUBLIC AGENCY.—The term 'public agency' means any Federal, State, local, or other governmental entity, and includes any public housing agency.

"(12) QUALIFYING HOUSEHOLD.—The term 'qualifying household' means a household—

"(A) who intends to occupy eligible single family property as a principal residence;

"(B) who agrees to occupy the property as a principal residence for not less than 12 months (except as provided in subsection (c)(5));

"(C) who certifies in writing that the household intends to occupy the property as a principal residence for not less than 12 months (except as provided in subsection (c)(5)); and

"(D) whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

"(13) QUALIFYING MULTIFAMILY PURCHASER.—The term 'qualifying multifamily purchaser' means—

"(A) a public agency;

"(B) a nonprofit organization; or

"(C) a for-profit entity, which makes a commitment (for itself or any related entity) to comply with the low-income occupancy requirements under subsection (d)(7) for any eligible multifamily housing property for which an offer to purchase is made during or after the periods specified under subsection (d).

"(14) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(15) STATE HOUSING FINANCE AGENCY.—The term 'State housing finance agency' means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout the State.

"(16) VERY LOW-INCOME FAMILIES.—The term 'very low-income families' means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.".

(b) COORDINATION.—The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall consult and coordinate with each other in carrying out their respective responsibilities under the affordable housing programs under section 42 of the Federal Deposit Insurance Act and section 21A(c) of the Federal Home Loan Bank Act. Such corporations shall develop any procedures, and may enter into any agreements, necessary to provide for the coordinated, efficient, and effective operation of such programs.

(c) CONFORMING AMENDMENTS.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended—

(A) in paragraph (2)(B), in the matter preceding clause (i), by inserting "(subject to the provisions of section 42)" before the comma; and

(B) in paragraph (2)(E), by inserting "(subject to the provisions of section 42)" before the first comma.

"(2) HOUSING ACT OF 1959.—Section 202(h)(2) of the Housing Act of 1959 (12 U.S.C. 1701q(h)(2)), as amended by section 801(a) of the Cranston-Gonzalez National Affordable Housing Act, is amended by inserting "or from the Federal Deposit Insurance Corporation under section 42 of the Federal Deposit Insurance Act" after "Federal Home Loan Bank Act".

Page 5, in the table of contents, strike the item relating to section 524 and insert the following new items:

Sec. 531. Liquidations of federally insured State credit unions.

SUBTITLE E—FDIC PROPERTY DISPOSITION

Sec. 541. FDIC affordable housing program.

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23. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAMPBELL OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 447, line 7, strike the closing quotation marks and the second period.

Page 447, after line 7, insert the following new paragraph:

"(3) LOAN EVALUATION STANDARD.—No Federal financial regulatory agency shall adversely evaluate an investment or a loan made by a federally insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property.".

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21. THE AMENDMENTS EN BLOC TO BE OFFERED BY REPRESENTATIVE REED OF RHODE ISLAND OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 515, beginning on line 15, strike "Subject to the loan collateral conditions established under paragraph (2) and the terms and conditions established in accordance with paragraph (3)" and insert "Subject to the terms and conditions established by or under this subsection".

Page 516, strike line 10 and all that follows through page 517, line 8, and insert the following:

(A) A first lien on assets held or controlled by the Depositors Economic Protection Corporation and the proceeds from the sale of such assets, are irrevocably pledged to the extent necessary to provide collateral for the guarantee.

(B) If the lien and assets described in subparagraph (A) are insufficient to fully secure the guarantee, then a first lien on any assets held or controlled by the State of Rhode Island or any instrumentality of the State of Rhode Island and the proceeds from the sale of such assets, are irrevocably pledged to the extent necessary to provide collateral for the guarantee.

(C) If the liens and assets described in subparagraphs (A) and (B) are insufficient to fully secure the guarantee, then any revenue from the State sales tax which is dedicated to the Depositors Economic Protection Corporation under the law of the State of Rhode Island in excess of the amount necessary to pay principal and interest on any obligation of the State or the Corporation issued before the date of the loan, is irrevocably dedicated to the extent necessary to provide collateral for the guarantee.

(3) GUARANTEE FEES.—The Secretary may assess and collect with respect to loans guaranteed under this subsection an annual guarantee fee computed daily at a rate which may not exceed one-half of 1 percent of the outstanding principal amount of the guaranteed loan.

(4) PLEDGE OF CERTAIN INCOME FOR REPAYMENT.—The Secretary may not guarantee under this section the repayment of any loan proposed to be made to the Depositors Economic Protection Corporation unless, for each fiscal year of the Depositors Economic Protection Corporation, all rents, issues, profits, products, proceeds, revenues, and other income (including insurance proceeds and condemnation awards) received by the Corporation from, or attributable to, the assets pledged to the United States in accordance with this subsection, in excess of the amount necessary to pay the interest, or principal and interest, on any loan to the Corporation guaranteed under paragraph (1) that is payable in such fiscal year, are irrevocably pledged to be deposited into a sinking fund or defeasance fund maintained by the Corporation and are irrevocably pledged and dedicated to the repayment of the principal of such guaranteed loan in the inverse order of the maturity of such principal installments.

(5) INVESTMENT GRADE RATING.—The Secretary may not guarantee under this section the repayment of any loan proposed to be made to the Depositors Economic Protection Corporation unless—

(A) each such proposed loan has received from a nationally recognized statistical rating organization a rating (for purposes of which the collateral securing the guarantee is considered to be securing the loan) of either the highest investment grade rating or not less than 1 less than the highest investment grade rating; or

(B) if no such rating is issued, the Secretary determines that the collateral securing the guarantee is sufficient so as to pose no risk of loss to the Federal government.

(6) TERMS.—

(A) IN GENERAL.—The guarantee provided for in this subsection shall be with respect to a loan which—

(i) is made not more than 1 year after the date of enactment of this Act;

(ii) will mature not later than 10 years after the date of such loan; and

(iii) is scheduled to be repaid in equal installments of principal during the last 5 years of the repayment term of such loan.

(B) AUTHORITY TO VARY TIME PERIODS.—The Secretary and the duly authorized representative of the State of Rhode Island may, by mutual agreement, modify any durational requirement specified in subparagraph (A).

(7) ADDITIONAL TERMS AND CONDITIONS.—Except as otherwise provided in this subsection, the terms and conditions of any loan guarantee under this section shall be established by mutual agreement of the Secretary of the Treasury and the duly authorized representative of the State of Rhode Island.

The CHAIRMAN (Mr. CARR). The gentleman from Texas [Mr. GONZALEZ] is recognized for 10 minutes.

Mr. GONZALEZ. Mr. Chairman, I yield myself such time as I may consume.

I would like to offer seven amendments en bloc which have been cleared by the minority and which I believe are not controversial.

From title I, amendment No. 1 offered by Mr. LaFalce, to provide flexibility in the requirement that regulators close an institution when it reaches the 2-percent capital level. Also in title I, amendment No. 16 by Mr. Johnson of Texas to allow FDIC to waive the requirement that directors of a troubled bank be removed. And finally from title I, amendment No. 17 by Mr. Kanjorski to prohibit individuals whose employment depends on the bank from also serving as bank directors.

From title II, amendment No. 18 offered by Mr. Ridge to clarify his Bank Enterprise Act proposal.

From title V, amendment No. 19 offered by Mr. Frank to create an affordable housing program for FDIC. Also from title V, amendment No. 23 by Mr. Campbell of California to prohibit bank examiners from discriminating against real estate loans.

From title VI, amendment No. 21 offered by Mr. Reed of Rhode Island to change the loan guarantees in this bill so that they are no longer direct-spending provisions.

These amendments improve this legislation and I urge their adoption.

The CHAIRMAN. The gentleman from Ohio [Mr. Wylie] is recognized for 10 minutes.

Mr. WYLIE. Mr. Chairman, we on this side accept the en bloc amendments, and want to commend the chairman for his cooperation in submitting the amendments to us ahead of time. We did have three amendments which we regarded as controversial, which the chairman agreed to delete from the en bloc amendments.

As has been mentioned, there are seven of the so-called en bloc amendments. One by the gentleman from Texas [Mr. Johnson] was alluded to and would clarify the FDIC's waiver authority in cases where H.R. 6 requires that a board of directors must be removed after the FDIC grants a bank assistance. This clarifies a provision which the chairman and I put in the banking bill in its original form and I think from that standpoint is procedural.

I also support the amendment of the gentleman from Pennsylvania [Mr. Kanjorski] which remedies a serious problem that we discovered in the BCCI hearings. During these hearings, we learned a tremendous amount of conflict of interest existed between the lawyers for the bank in their role as directors of the bank. What this amendment would do is to say that a person cannot serve both as counsel and as a member of the board of directors.

The Ridge amendment would correct a pay-go problem with the Bank Enterprise Act.

The gentleman from California [Mr. Campbell] and the gentleman from Virginia [Mr. Moran] both have separate amendments dealing with the credit crunch, and I am concerned that the credit crunch is a real problem. I think what their amendments do, in effect, is to express the will of Congress that we are concerned about as it applies to real estate evaluations. I think basically that is what it does.

The LaFalce amendment, we had a chance to look at. It is a good amendment and it gives the regulators greater flexibility in dealing with problem institutions. I might say that the administration just indicated support for this amendment. I commend the gentleman for offering it.

Lastly, the gentleman from Rhode Island [Mr. Reed] and the gentleman from Rhode Island [Mr. Machtley] have an amendment to try to solve the problems concerning Federal assistance for the Rhode Island deposit insurance fund. The collapse of this fund has caused great pain in that State. This amendment corrects some administrative concerns early on and allows for a loan guarantee arrangement which we think is desirable.

So with that, Mr. Chairman, I have no objection to the en bloc amendments.

Mr. Chairman, I reserve the balance of my time.

Mr. GONZALEZ. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. LaFalce] for purposes of a colloquy.

Mr. LaFALCE. Mr. Chairman, I sincerely appreciate the support of the gentleman from Texas for my amendment and the support of the gentleman from Ohio [Mr. Wylie] also on the early intervention issue.

It is my understanding that my amendment is incorporated in the en bloc amendments with the technical changes that we have agreed to.

My amendment is designed to achieve two important critical goals: First, to save the taxpayer money by giving the regulators discretion not to close institutions when options less expensive to the taxpayer are available, and second, to closely circumscribe regulatory discretion to ensure that only institutions that are viable are permitted to remain open.

Mr. Chairman, before I yield, if I may on a personal note unrelated to the amendment, I would like to take this opportunity to thank the gentleman from Texas for his efforts to craft a compromise, not just on this amendment, but on the whole issue of banking reform. No compromise will ever please everyone, but the very fact of any compromise in this contentious issue is an achievement in itself. I know the gentleman made his best effort.

Mr. GONZALEZ. Mr. Chairman, if the gentleman will yield, I want to thank the gentleman very sincerely. The gentleman is the chairman of the Committee on Small Business, so he knows whereof he speaks when he talks about crafting compromises.

I would like to say with reference to this that I want to thank the gentleman, too, for getting together with the staffs and ironing out small technical differences in our requirement for prompt action by the regulators.

I think what we have is a very much-improved version of title I.

Mr. LaFALCE. Mr. Chairman, I thank the gentleman.

Mr. WYLIE. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I neglected to mention in the list amendment No. 19 offered by the gentleman from Massachusetts [Mr. Frank] and myself, which establishes an affordable housing disposition program for the FDIC, similar to that of the RTC. This creates a demonstration program for 3 years and it caps at $30 million the amount of money that the FDIC can lose on the sale of property under the programs during that period to time. I think that is an important amendment. It is also included in the en bloc amendments, and I did not hear the chairman mention it. I wanted to be sure that it was mentioned.

I would like to clarify several aspects of the proposed FDIC Affordable Housing Disposition Program. As I have already discussed, this program would sunset after 3 years, and would have a cost limitation of $30 million for the 3 years. The $30 million would be the limit on the amount of losses which could be realized by the FDIC on the sale of properties in the program. A loss would be assessed on the difference between the realizable disposition value of a property and the final sales price on the property. Realizable disposition value would be, as determined by the FDIC, the estimated sale price on a property that the FDIC could reasonably be expected to obtain if the property were sold outside the program. It is the intent of this amendment that the FDIC use the appraised value of a property as the realizable disposition value of a property unless the FDIC can develop a more accurate method of valuing properties in the program. Moreover, part of the assessment of losses should include any special holding costs attributable to the Affordable Housing Program, such as where a property is held for a longer period to time than would occur if the property were sold outside the program. It is also not expected that the FDIC should have to develop any valuation system which is overly administratively burdensome and costly.

Moreover, I believe there may be some technical issues concerning how certain requirements of this program will operate in conjunction with certain requirements of the HOPE Single Family and HOPE Multifamily Housing Programs. I would like to facilitate the purchase of eligible properties under the FDIC Affordable Housing Program to the maximum extent possible for use in conjunction with these HOPE programs. I hope to address these technical issues at conference.

For the information of my colleagues, the FDIC Affordable Housing Program would be similar to the RTC Affordable Housing Program with the following significant characteristics:

First, single-family and multifamily properties. Eligible single-family and multifamily properties could not exceed the appraised value limit set for properties in the RTC Affordable Housing Program. This limit corresponds to the FHA single-family and multifamily insurance limits—without regard to high cost areas. For example, the appraised value of single-family properties in the FDIC Affordable Housing Program could not exceed $67,500.

Second, limitation on the program. The FDIC Affordable Housing Program would sunset after 3 years. The program would have a cost limitation of $30 million for the 3 years. This means the FDIC Affordable Housing Program will cease after 3 years or when the $30 million cap is reached, whichever occurs first. The $30 million would be the limit on the amount of losses which could be realized by the FDIC on the sale of properties in the program. A loss would be assessed on the difference between the realizable disposition value of a property and the final sales price on the property. Realizable disposition value would be, as determined by the FDIC, the estimated sale price of a property that the FDIC could reasonably be expected to obtain if the property were sold outside the program. It is intended that the FDIC use the appraised value of a property as the realizable disposition value of a property until a better valuation system is developed.

Third, implementation date. The FDIC would be required to implement the Affordable Housing Program within 6 months of enactment, subject to a determination that there are sufficient funds to compensate the FDIC for any losses resulting from the sale of properties under this program.

Fourth, right of first refusal. The right of first refusal in the single family component of the program would be 6 months, as compared with the 3 month right of first refusal under the single family component of the RTC Affordable Housing Program.

Fifth, multifamily properties—aggregation rule. This amendment would also revise the RTC aggregation rule for purposes of the FDIC Affordable Housing Program. Aggregation means that the purchaser of more than one multifamily project can aggregate the low-income occupancy requirements among the buildings purchased, as opposed to meeting the requirements on a building-by-building basis. This amendment would, among other things, provide a preference for purchasers who do not aggregate, and require for all multistructure purchases that at least 10 percent of the dwelling units in each building be reserved for low-income families.

Sixth, bulk transactions under HOME. This amendment would provide for bulk transactions to participating jurisdictions under the HOME Program.

Seventh, liability. This amendment would provide that the FDIC is not liable to any depositor, creditor, or shareholder of a failed institution in receivership, or claimant against the institution, because the disposition of assets of the institution under this amendment affects the amount of return from the assets.

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Mr. GONZALEZ. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. KANJORSKI] for the purposes of a colloquy.

Mr. KANJORSKI. I thank the chairman for yielding this time to me; and since our time on the en bloc amendment is severely limited, I will insert the full text of my statement on my amendment at the end of these remarks.

Mr. Chairman, I would like to congratulate the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Ohio [Mr. WYLIE] for recognizing that the BCCI hearings held by the committee and put forth by the gentleman from Texas were done for two purposes: First, to find what happened, and, second, to see what we could do to further legislation to ensure that this does not happen again.

This amendment we have put together accomplishes three things. First, it recognizes that activities such as those at BCCI and First American occurred because there were gross, monumental conflicts of interest, where attorneys were not only representing the bank in their capacity as private individual attorneys to give advice, but they were also members of the board and in fact chairman and president of First American. It raised the question of what information would flow to the stockholders and to the regulators and to the other directors of the board that these individuals picked up in their private representation of the real owners of BCCI.

We close that loophole by declaring that to be a conflict of interest and barring outside legal counsel and outside accountants from serving on boards. We close the loophole, and do so for all banks and all financial institutions, including foreign banks doing business in the United States.

The second problem we resolve with this amendment is that never again will a board of directors appear before a congressional committee as First American's board did and tell us that they do not know who owns their bank. It was almost insulting to the committee, to the American people and even to those members of that board of directors, that they did not know who owned them, who put them there, who controlled the bank, because there was no information or disclosure required under our laws to indicate who the actual owners of the financial institution or their various holding companies are.

The amendment closes that loophole.

Third and finally, we disallow insider control of banks in this country. No longer will the majority of a board of directors be allowed to be management employees of the bank whose judgment is affected by their employment status. Instead we require that a majority of the board of directors be made up of outside directors.

These are just a few of the lessons we learned from our hearings on BCCI, but they are among the most important lessons of that experience.

I congratulate the ranking minority member, the gentleman from Ohio [Mr. WYLIE] for seizing upon this amendment and agreeing that it will close these loopholes. I congratulate my chairman, the gentleman from Texas [Mr. GONZALEZ] for a job well done in holding the BCCI hearings.

Mr. Chairman, I urge my colleagues to support the en bloc amendments because by adopting them we can truly say we have had some reform of the conflict-of-interest questions, disclosure of ownership questions, and insider dealing questions that we discovered in our recent hearings on the sordid BCCI scandal.

Mr. Chairman, I appreciate the support of the chairman of the committee, the gentleman from Texas [Mr. GONZALEZ], and the ranking Republican, the gentleman from Ohio [Mr. WYLIE] for this important amendment to eliminate three major problems brought out in the Bank of Credit and Commerce International [BCCI] scandal. Their leadership has been instrumental in our committee's investigation of BCCI.

When the President announced his savings and loan reform plan in 1989 his watchwords were "never again." The same watchwords apply to the BCCI scandal, which is why I offer this amendment to title I of H.R. 6, to implement three important BCCI related management and conflict-of-interest reforms.

The first problem this amendment solves is the conflict-of-interest problem. A number of the participants in the BCCI scandal wore too many hats and served too many masters.

Clark Clifford and Bob Altman were like the "Cat in the Hat." One moment they wore the hats of chairman and president of First American, the next moment they wore the hats of advisers to BCCI, then they switched back to their hats as board members of First American or one of its many holding companies. Their conflicts of interest were monumental.

Outside legal counsel and accountants are supposed to offer independent, disinterested advice. They cannot do so if they also serve on the board of directors. My amendment guarantees their independence and prevents conflicts of interest by prohibiting outside counsel and accountants who receive compensation from a depository institution or holding company from serving on its board of directors.

Under the BCCI reform amendment, never again will an individual who is supposed to be providing independent legal or accounting advice be allowed to also sit on the board of directors. New York University law professor, Stephen Gillers, has said of this practice:

> A lawyer's judgment is clouded by his participation on the board. Lawyers see a seat on the board of directors as a way of keeping business. It means they are less likely to be fired as counsel. That's why they do it.

My BCCI reform amendment will prevent this gross conflict of interest.

I should note, Mr. Chairman, that my amendment does not prohibit outside counsel or accountants from sitting in on board of directors meetings, or from participating in discussions at board of directors meetings. My amendment does not even prevent them from being paid as professionals for their attendance at board meetings. It simply says that they should not vote at board meetings. We want their advice at board meetings to be truly independent, dispassionate and objective, and not clouded by other fiduciary responsibilities or relationships.

It is my understanding, Mr. Chairman, that the code of ethics for accountants already bars them from serving on the boards of institutions they audit.

The second problem my BCCI amendment solves is the "We didn't know" problem. The board of directors of First American claimed not to know who really owned the institution and even testified that this information was deliberately withheld from them. They were the original "Hear no evil, see no evil, speak no evil" gang. It is intolerable that First American's board did not know BCCI controlled their bank, did not know who owned their bank, and did not know why they did so much business with BCCI.

Under the BCCI reform amendment, never again will the board of directors of a bank or bank-holding company be able to claim as First American's did that they did not know who owned or controlled them. My amendment requires that the names of major stockholders of financial institutions and holding companies be provided to boards of directors. It also requires that directors be notified of any proposed change in control of either their institution, or any holding company which controls it.

The third problem my BCCI reform amendment addresses is the problem of insider control. First American and its board of directors were insulated from BCCI by multiple layers of holding companies in which bank insiders Clifford and Altman controlled, and in some cases were, a majority of the board. Just as a financial institution should have independent, outside legal, and accounting advice, it should also be controlled by individuals whose livelihood and employment is not dependent on the institution. My amendment prohibits insiders from controlling a board of directors.

Under the BCCI reform amendment, never again will bank insiders like Clifford and Altman be able to control a bank or bank-holding company board. At the Banking Committee's BCCI hearing Chairman GONZALEZ summed up the situation aptly when he declared, "all too many directors bring to the table only one thing—a huge rubber stamp with one word 'yes' for all management decisions." Banks have boards of directors in order to provide shareholders with an independent review of management decisions. That independence is thwarted if management has a majority of votes on the board. My BCCI reform amendment requires that a majority of each board be made up of nonmanagement individuals.

Mr. Chairman, this package of management and conflict-of-interest reform amendments has been put together with the support of the bipartisan leadership of the House Banking Committee and I urge its adoption.

Mr. WYLIE. Mr. Chairman, I yield 3 minutes to the gentleman from Rhode Island [Mr. MACHTLEY].

Mr. MACHTLEY. I thank the gentleman for yielding to me.

I would like to take this opportunity to thank the gentleman from Ohio [Mr. WYLIE], the ranking minority, Republican member, and I thank, as well, the chairman, the gentleman from Texas [Mr. GONZALEZ].

They have been superlative in working in a bipartisan manner, looking at our State of Rhode Island, where, with the efforts of my colleague, JACK REED, and myself, trying to solve what has been a most extraordinarily difficult problem.

In our State of Rhode Island, we had on January 1, 45 State credit unions and banks closed. This was because State bank and credit unions had a State-affiliated insurance program which was no longer solvent.

This affected almost 294,000 accounts in our State, $1.3 billion of assets were frozen.

Some 10 months later, we still have the bulk of these people without their money. This is perhaps the worst banking crisis in terms of the duration and the magnitude of States' population that has ever occurred in the United States.

We, at the Federal level, have been trying to help our State work its way out of this problem with the enormous help of the Committee on Banking, Finance and Urban Affairs, the gentleman from Rhode Island [Mr. REED] and I working together in a bipartisan way. We have an amendment, a technical amendment to the bank bill which provides a $180 million loan guarantee for our State.

Our State was one of the 13 original colonies. We have been here for a long time. We intend to work our way out of this problem ourselves to pay to our depositors the moneys which are owed. But we need a Federal guarantee, as Chrysler and New York did, so that we, in fact, can go to the bank and borrow money at a cheaper interest rate.

I suppose if there is such a thing as an economic Third World state, perhaps Rhode Island might fall into it. I have constituents come up to me on any given day and tell me problems of tuition moneys which are frozen, life savings which are frozen, elderly who have actually contemplated suicide because of the crisis.

I urge my colleagues to vote for not only this amendment but the other technical amendments, which are en bloc. Our States and communities need some assistance. This is, in fact, a most important resolution. Although Rhode Island may not have a strong political delegation in numbers, I think we have worked out a strong bipartisan amendment which will appeal to common sense and, I hope, your compassion.

Mr. GONZALEZ. Mr. Chairman, I yield 2½ minutes to the gentleman from Rhode Island [Mr. REED] and I want to thank the gentleman for his total support. The RECORD should show that he gave us the vote on the rule. I want to thank him very much.

Mr. REED. Mr. Chairman, I want to thank the chairman, the gentleman from Texas [Mr. GONZALEZ]. The people of Rhode Island are deeply grateful for what the gentleman has done. He has made their cause his own cause. He witnessed their suffering, he came forward to Rhode Island and gave them help, for which I thank the gentleman.

I would also like to thank the ranking minority member of the Committee on Banking, Finance, and Urban Affairs, the gentleman from Ohio [Mr. WYLIE], for his strong support, and I thank my colleague, the gentleman from Rhode Island [Mr. MACHTLEY], for his efforts to help Rhode Island. Also I would like to thank the gentleman from Kentucky [Mr. HUBBARD], the gentleman from Massachusetts [Mr. FRANK], and the gentleman from Wisconsin [Mr. KLECZKA], who helped us move this important measure along.

Mr. Chairman, the amendment today makes technical corrections to the Federal Loan Guarantee Program for Rhode Island. It will allow the State more flexibility and will ensure that there is no significant risk to the Federal Government.

On January 1 of this year, our Governor closed 45 banks and credit unions when the State's private insurance fund failed; 11 months later, 13 institutions are still closed, holding nearly $1 billion in deposits, with 125,000 accounts.

Mr. Chairman, our actions here today can bring some relief to hard-working families in Rhode Island who have never failed to support and defend this great country. In the face of crisis, the people of Rhode Island are struggling to raise their families, to educate their families. Our seniors are facing the uncertainty of old age, plagued by the turmoil of this great financial crisis.

Today we must stand with them. They deserve our total, absolute support as they struggle to work themselves out of this great crisis.

Mr. Chairman, I urge all of my colleagues to support this measure, to support Rhode Island, to help us move forward again.

Today the House continues consideration of H.R. 6, the Financial Institutions Safety and Consumer Act of 1991. The purpose of this comprehensive bill is to ensure the safety and soundness of our financial system in this country. Included in this bill is section 651 of title VI, authorizing $180 million in Federal loan guarantees to my State of Rhode Island.

This provision is the result of 10 months of work on the part of the Rhode Island congressional delegation, Chairman GONZALEZ, Representative HUBBARD, Representative FRANK, Representative KLECZKA, and others on the Banking Committee who recognized the urgent need of my State.

On January 1, 1991, the Governor of Rhode Island declared a banking emergency and closed 45 credit unions and banks when the State's private insurance fund, RISDIC, failed. This action froze over 350,000 personal accounts and $1.7 billion in deposits. Almost 11 months later, 13 institutions remain closed holding close to $1 billion in frozen deposits.

Never before has such a large percentage of a State's population been affected by a banking crisis, not even during the Great Depression.

The State has assumed responsibility for this crisis, and has taken the initial necessary steps to return savings to the depositors. However, this crisis is taking place within the context of a devastating regional recession, and the State needs assistance in fulfilling its obligations.

This credit union debacle has exacerbated the State's fiscal crisis. Last year, the State faced the highest percentage deficit of any State in the country and balanced its budget through a series of drastic cutbacks and deferments. This fiscal year, the State will face an estimated $30 to $40 million revenue shortfall and could face a deficit of $200 million by fiscal year 1993. Between January 1, 1990 and January 1, 1991, Rhode Island lost nearly 10,000 jobs. Today, Rhode Island's unemployment rate has reached 9.6 percent. There was a 56-percent increase in the number of bankruptcies filed between March 1990 and March 1991. In the past 2 years, Rhode Island has fallen to 48th among the 50 States and the District of Columbia in job growth.

In this unmatched economic situation, it is incumbent that the Federal Government stand behind Rhode Island as it squarely faces these daunting challenges.

The hard-working citizens of Rhode Island have never been a burden to the Federal Government. They have paid their dues. They have contributed $107 million to bail out the Nation's failed thrifts, even though not one penny has been used to bail out a failed Rhode Island thrift. The Federal Government has assisted Chrysler and New York City in their time of need, and the people of Rhode Island are now asking the Government not to turn its back; they are asking for assistance at no cost to the taxpayer which will help the State fulfill its responsibilities.

However, the most compelling need for Federal assistance is not in the above statistics, but in the human suffering behind these statistics. My office continues to receive hundreds of pleas for assistance, and in many cases, the problems grow worse as weeks pass without access to deposits and people are not able to get on with their lives.

One of my constituents is a small grocery store owner who has all of his business receipts tied up in one of the closed credit unions. He is now struggling to meet his payroll, and may be forced to close his business. Another is 100 percent disabled and now, without access to his savings, supports himself and his family on the $393 he receives each month. He received food stamps for 1 month, after which he was deemed no longer eligible due to the total amount of his assets—assets which are still frozen in a closed financial institution and inaccessible.

There are many, many more desperate situations. Thousands of senior citizens, citizens who have put their trust in their neighborhood institution for many years, have arrived at their golden years only to find that they have been denied access to their lifesavings.

Students who have been saving for their futures have had to now put their dreams on hold.

Section 651 was included by Chairman GONZALEZ in response to hearings held in Washington, chaired by Representative HUBBARD, and a hearing held in Rhode Island by Chairman GONZALEZ and the Banking Committee which was attended by hundreds of depositors. Chairman GONZALEZ, Representative FRANK, Representative KLECZKA, and Representative MACHTLEY were present at the Rhode Island hearing and can tell of the pain and anguish of those in the audience and of the witnesses who spoke so eloquently of their frustration and hardships. Loan guarantee assistance was later passed unanimously by voice vote during the markup of H.R. 6 in the Banking Committee. The Senate Banking Committee followed with similar legislation.

The amendment which I offer today with my colleague from Rhode Island, Mr. MACHTLEY, includes technical changes to clarify our original intent that these Federal loan guarantees will pose no significant financial risk to the Government and will provide increased flexibility for the State. These changes will give the State the authority to pledge State assets as collateral to secure the guarantee in addition to existing authority to pledge assets of the Depositors Economic Protection Corporation [Depco] and revenue from the increased State sales tax. It will also require that the loans secured by the guarantee receive an investment grade rating of AAA, highest, or AA, next highest, or receive an assessment from the Secretary of the Treasury that the borrowing is fully collateralized.

On behalf of myself and the people of Rhode Island, I would like to once again thank Chairman GONZALEZ for his leadership and work on behalf of our small State. At a time when Rhode Islanders were desperately searching for assistance, Chairman GONZALEZ came forward and offered hope to hundreds of thousands of depositors. His immediate recognition of the magnitude of this crisis and the need for a Federal response is proof of his unyielding dedication to working Americans and their families. His understanding, compassion, and wisdom are forever indelibly inscribed in the hearts of Rhode Islanders.

I would also like to thank the members and staff of the House Banking, Rules, and Budget Committees for their assistance with this amendment and for recognizing the crisis situation which persists in Rhode Island. In particular, Rick Maurano, Kelsey Meeks, and Ed Brigham were indispensable. I would also like to thank my staff, particularly Ronnie Kovner, for their extraordinary effort.

In closing, let us not forget that our actions here today are in response to the demands of thousands of hard-working Rhode Islanders who have never hesitated to support and defend this great country. In the face of crisis, they are struggling to raise families; they are toiling to educate their children; some are facing the uncertainty of old age plagued by the disquieting turmoil of these financial failures. All of them depend on us.

They ask now, through their Representatives in this House, that our Federal Government stand with them in this hour of crisis. They are worthy of no less. I ask you to support this amendment and to support H.R. 6, as so amended.

Mr. GONZALEZ. Mr. Chairman, I yield the balance of our time to the gentleman from Massachusetts [Mr. FRANK].

The CHAIRMAN. The gentleman from Massachusetts [Mr. FRANK] is recognized for 1½ minutes.

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the chairman, particularly for his leadership in this portion of the bill. I was delighted to join him and my Rhode Island colleagues in a hearing which, characteristically of the chairman's dedication, we had on Memorial Day weekend in Rhode Island on this question of the bank and credit union situation. It is to the credit of the chairman and the ranking minority member and the two Members from Rhode Island that we have come up with, I think, a very reasonable solution to a tough problem.

So I am delighted that that is in here.

I am also grateful to the chairman and the ranking minority member because we also have in here, consistent with the budget agreement, a proposal to make affordable housing available. The FDIC has become a landlord and will become a landlord of even more residential housing, a matter in which they do not have a great deal of expertise.

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We have built on the model that we have with the Resolution Trust Corporation, and we believe that out of this that there will become a movement toward some low-income housing in particular, and this is something that all of us on the committee have talked to the ranking minority members of both the full committee, and the Housing Subcommittee, and the chairman, and others. We have pointed out that with the important goals of home ownership one of the best ways to do it is to take these vacant properties that are now owned by the Federal Government. This is something that the Secretary of HUD cares about. This is probably the best and most efficient way to do that goal of low-income home ownership.

So, I am very grateful for my friends on the other side and the leadership of the chairman for including this.

Mr. JOHNSON of Texas. Mr. Chairman, I have an amendment to H.R. 6, the Deposit Insurance and Regulatory Reform Act.

Section 141(e) of H.R. 6 requires that before an institution can receive FDIC approval for open assistance, the FDIC must determine that the board of directors of the troubled institution has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

Section 143 of the bill, however, requires that the FDIC remove the board of directors of any institution upon receiving open assistance. This section does allow the FDIC to give individual members of the board of directors a waiver from the automatic removal provisions, if it can be shown that such a waiver would lessen the risk to the corporation posed by the insured depository institution receiving assistance.

Unfortunately, by limiting the scope of the waiver to proving only that an individual director will lessen the risk to the FDIC, H.R. 6 provides no incentive to Federal regulators to retain knowledgeable, competent, and honest bank directors. If a board must be certified as competent and honest to get open assistance in the first place, then it only makes sense that this criterion should also be used when considering a waiver to allow board members to remain in their positions.

My concern is shaped by the events that occurred in the Southwest. In many instances, despite the best efforts of competent officers to keep their banks solvent, their institutions failed, not because of mismanagement, but simply due to the magnitude of the depression that hit the Southwest in the 1980's.

The desire of many Federal bank supervisors to clean house when they took over an institution, often didn't separate the good from the bad. Instead, many smart, honest bank officers—those who knew their institution best—were turned out, without regard to their ability to facilitate the resolution process.

We now see other parts of the country, especially the Northeast, facing an experience similar to the one that befell my home State of Texas. I am hopeful that my amendment will, in the future, give the FDIC better guidance in keeping qualified bank officers in positions where they can help resolve an institution, and thus save the taxpayers' and depositors' money.

Let me be clear—this amendment does not provide an automatic waiver to this section. The FDIC would still have broad authority to deny anyone a waiver from the removal provision.

Anyone who has been involved in any illegal or obviously unsafe practice should not be allowed to continue to manage or direct bank functions. My amendment simply asks the Federal regulators to take into account the actions of responsible and honest bank directors. It will not weaken Congress' intent to keep unfit persons out of our financial institutions.

Mr. WYLIE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendments en bloc offered by the gentleman from Texas [Mr. GONZALEZ].

The amendments en bloc were agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 102-281.

Mr. NEAL of Massachusetts. Mr. Chairman, I have an amendment at the desk, and I ask that it now be considered.

The CHAIRMAN. Is the gentleman from Massachusetts the designee of the gentleman from New York [Mr. SCHUMER]?

Mr. NEAL of Massachusetts. Pardon?

The CHAIRMAN. The rule makes in order amendment No. 2 to be offered by the gentleman from New York [Mr. SCHUMER]. Is the gentleman the designee?

Mr. NEAL of Massachusetts. No, I am not.

My understanding was, Mr. Chairman, that my amendment was up next. That is what I was told earlier.

The CHAIRMAN. The Chair's information is that it is now in order to consider amendment No. 2.

Mr. WYLIE. That is correct, Mr. Chairman. That is according to the rule.

PARLIAMENTARY INQUIRY

Mr. GONZALEZ. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. GONZALEZ. Mr. Chairman, I believe my impression under this rule is that we have to complete title I, and this is the last amendment for title I.

The CHAIRMAN. The Chair would advise the gentleman from Texas [Mr. GONZALEZ], the chairman of the Committee on Banking, Finance and Urban Affairs, that the bill is considered as read for amendment at any point, and the Chair is constrained to follow the order of amendments as they were printed in the report, according to the rule. The only amendment in order right now is amendment No. 2, and that is to be offered by the gentleman from New York [Mr. SCHUMER] or his designee.

Mr. GONZALEZ. Mr. Chairman, I ask unanimous consent that the gentleman from Massachusetts [Mr. NEAL] be recognized on his amendment out of order.

The CHAIRMAN. The Chair would advise the gentleman from Texas [Mr. GONZALEZ] that such unanimous-consent requests can be made only in the House, that the Committee of the Whole, even by unanimous consent, cannot so modify such a rule of the House.

AMENDMENT OFFERED BY MR. SCHUMER

Mr. SCHUMER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SCHUMER:

Page 330, after line 5, insert the following new section (and redesignate the succeeding section and conform the table of contents accordingly):

SEC. 411. RESTRICTIONS ON ACTIVITIES OF INSURED DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 38 (as added by section 131 of this Act) the following new section:

"SEC. 39 ACTIVITIES OF INSURED DEPOSITORY INSTITUTIONS.

"(a) FLOATING INTEREST RATE CAP ON DEPOSITS.—

"(1) LEVEL 3, 4, AND 5 INSTITUTIONS.—No insured depository institution that is a level 3, 4, or 5 depository institution under section 38(b) may offer or pay a rate of interest on any deposit accepted by such institution which exceeds 105 percent of the prevailing rate of interest on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, of comparable maturity at the time such deposit is accepted, as determined in accordance with paragraph (4).

"(2) LEVEL 1 AND LEVEL 2 INSTITUTIONS.—No insured depository institution that is a level 1 or level 2 depository institution under section 38(b) may offer or pay a rate of interest on any deposit accepted by such institution which exceed 105 percent of the greater of—

"(A) the prevailing rate of interest on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, of comparable maturity at the time such deposit is accepted, as determined in accordance with paragraph (4), or

"(B) the average of the rates of interest on a group of securities described in paragraph (3), as determined in accordance with paragraph (4).

"(3) GROUP OF SECURITIES DESCRIBED.—For purposes of paragraph (2)(B), a group of securities is described in this paragraph if—

"(A) 50 percent of such group consists of securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, which are of comparable maturity at the time the deposit is accepted by such institution;

"(B) 25 percent of the group consists of commercial paper or debt securities which—

"(i) have received the highest investment grade rating by at least 1 independent and nationally recognized statistical rating organization, and

"(ii) are of comparable maturity at the time the deposit is accepted by such institution; and

"(C) 25 percent of the group consists of obligations of any investment company (as such term is defined in section 3(a) of the Investment Company Act of 1940) that is treated as a money market fund for purposes of regulations issued by the Securities and Exchange Commission under that Act.

"(4) DETERMINATION OF MAXIMUM RATE.—The Corporation shall—

"(A) prescribe, by regulation, procedures for determining the maximum rates of interest payable on deposits for purposes of paragraph (1), including—

"(i) a procedure for determining such rate in case of a deposit the period to maturity of which, at the time of the deposit, is not comparable to the period to maturity of any security referred to in paragraph (1), (2), or (3); and

"(ii) the frequency with which such maximum rate shall be redetermined by the Corporation for purposes of paragraph (1), (2), (3);

"(B) determine, in accordance with subparagraph (A), the maximum rates of interest payable under paragraph (1), (2), or (3) during any period; and

"(C) publish each such rate before the beginning of the period to which maximum rates apply.

"(b) LENDING LIMIT.—

"(1) IN GENERAL.—The aggregate amount of loans and extensions of credit by any insured depository institution to a single borrower (including any affiliate of such institution) which is outstanding at any time may not exceed the amount which is equal to the sum of—

"(A) 15 percent of the amount of tier 1 capital of the institution which does not exceed

$100,000,000, as determined pursuant to the risk-based capital standard applicable to the institution; and

"(B) 6 percent of the amount of tier 1 capital of the institution which exceeds $100,000,000, as determined pursuant to the risk-based capital standard applicable to the institution.

"(2) EXEMPTION FOR INSTITUTIONS WITH TIER 1 CAPITAL OF LESS THAN $100,000,000.—Paragraph (1) shall not apply to any insured depository institution the tier 1 capital of which does not exceed $100,000,000.

"(c) NET EXPOSURE LIMIT.—In accordance with regulations which the Corporation shall prescribe, no insured depository institution may incur or maintain, at any time, any net exposure in connection with any trading activity in an amount which is greater than the amount is equal to 5 percent of the tier 1 equity capital of the institution, as determined pursuant to the risk-based capital standard applicable to the institution.

"(d) WAIVER AUTHORITY FOR PERIODS OF ADVERSE ECONOMIC CONDITIONS.—

"(1) IN GENERAL.—The Corporation may, by regulation or order, waive the application of any provision of this subsection to any insured depository institution if the Corporation determines that—

"(A) the waiver of such provision with respect to such institution is appropriate on the basis of adverse economic conditions (such as recessions, downward market cycles, or a restriction in the availability of credit); and

"(B) the grant of the waiver would pose no substantial risk to the stability of—

"(i) any insured depository institution subject to the waiver; or

"(ii) any deposit insurance fund.

"(2) MAXIMUM WAIVER PERIOD.—

"(A) IN GENERAL.—Any waiver granted pursuant to any regulation prescribed or order issued under paragraph (1) shall cease to apply at the end of the 90-day period beginning on the effective date of the regulation or order.

"(B) NO LIMITATION ON ADDITIONAL WAIVERS.—The Corporation may grant an additional waiver under paragraph (1) after the end of any 90-day period referred to in subparagraph (A) in connection with a prior grant of a waiver if the Corporation makes the determination required under paragraph (1) with respect to the grant of each such additional waiver.

"(e) 8-YEAR TRANSITION PERIOD.—The Corporation shall prescribe regulations establishing a schedule under which—

"(1) the limitations established under this section shall be implemented in such number of phases as the Corporation determines to be practicable and appropriate; and

"(2) full compliance with such limitations shall be required by January 1, 2000.".

The CHAIRMAN. Under the rule, the gentleman from New York [Mr. SCHUMER] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes.

PARLIAMENTARY INQUIRY

Mr. SCHUMER. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. SCHUMER. The point of order, Mr. Chairman, is, as I understood it, we were doing the amendments to title I and then moving on to title IV. This amendment is in title IV. We have not completed the amendments in title I.

Mr. Chairman, this breaks the whole train of what we were trying to do, and so my point of order is: What is going on here?

The CHAIRMAN. The gentleman from New York has stated a parliamentary inquiry, not a point of order.

The Chair is constrained by the rule. The rule makes the bill read for amendment at any point, not by titles, and specifically orders the amendments. The gentleman from New York [Mr. SCHUMER] has amendment No. 2. His amendment is now in order.

Mr. SCHUMER. Mr. Chairman, I ask unanimous consent just so that we could do all of title I together, and then all of title IV together, which is what, as I understood it, was the intent of the Committee on Rules, to first finish title I, the amendments thereto, and then move to title IV.

The CHAIRMAN. As much as the Chair might want to help the gentleman from New York [Mr. SCHUMER], the Committee of the Whole is constrained by the rule, and such a unanimous-consent request is out of order in the Committee of the Whole. It must be made only in the House.

PARLIAMENTARY INQUIRY

Mr. SCHUMER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. SCHUMER. Mr. Chairman, may I ask unanimous consent for the Committee of the Whole to rise? Then we can go into the full House, and then I can ask unanimous consent to do this the way it was intended. Would that be parliamentarily a correct thing to do?

The CHAIRMAN. The gentleman is correct. A motion could be made for the Committee of the Whole to rise, at which point, if adopted, a unanimous-consent request could be made in the House.

Mr. SCHUMER. OK. Mr. Chairman, I move that the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from New York [Mr. SCHUMER].

The motion was rejected.

Mr. SCHUMER. OK; we will debate the amendment in a ridiculous order.

The CHAIRMAN. The Chair recognizes the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, the choices that we are going to make in the next few days are truly monumental. They could determine the success or failure, not only of our banking system, but of our economy and our international competitiveness for years to come. We have a golden opportunity to really change the system and strengthen our entire banking and financial services world.

But to do that, my colleagues, we must address the fundamental weaknesses of the banking system. The basic problem that our banking system and our thrift system has faced, my colleagues, is a simple one. We all know it, and the problem is very simply that insured deposits have been transmogrified. Their original and fundamental purpose, as devised by Hoover and signed into law by Roosevelt, was very simple. It was to protect the depositors so that when the average person put his or her money in a bank, they knew it would be safe. In the late 1970's and throughout the 1980's our financial system experienced deregulation, and we did not change the deposit system, and, as a result, we were insuring, we, the taxpayers of America, were insuring crazy, and risky and wild investments in the S&L industry to an enormous extent, and now in the banking industry, as well.

☐ 1420

We should not be insuring huge bridge loans to LBO's. We should not be insuring equity investments in real estate. We should not be insuring foreign currency trading and trading in the latest scam that has not yet brought banks trouble but will, mark my words, in the next few years, derivatives, which is betting on futures. Yet we do it.

No rational system could ever be designed so that insured deposits should be used for those activities, and yet our system does it. There is only one way to make our banking system sound, and that is to say once and for all that insured deposits should be used for low-risk, traditional banking activities, and then if our large financial institutions wish to invest in high-risk activities, they do not use the depositors' money, they do not use insured dollars, but they go to the markets for money. Our banks are sick and weak, not all of them, but our big banks are, by and large.

The CHAIRMAN. The time of the gentleman from New York [Mr. SCHUMER] has expired.

Mr. SCHUMER. Mr. Chairman, I yield myself 1½ additional minutes.

Mr. Chairman, when they ask for money, they just take the depositors' money and they do not do anything else with it.

Mr. Chairman, the same problem that occurred with the S&L's that cost us $500 billion is now occurring in the banking system. I support the amendment sponsored by our worthy chairmen, Chairman GONZALEZ and Chairman DINGELL, but those are firewalls, and firewalls simply slow the fire down, they do not put it out. Only the core bank will put the fire out, because the core bank is the only amendment on the floor that says we will not do what we did during the S&L crisis, and that is use insured dollars for risky activities.

It is no wonder that both people on the left and right support core bank. ACORN and the National Taxpayers, the Wall Street Journal, Forbes magazine, and then other publications far more liberal, support core bank because they know this is the only answer.

Mr. Chairman, we took some fateful votes in 1980 and 1982 on the S&L crisis. There was only a small minority of Members who were opposed to amendments that basically do the same thing as this bill. Let us not make the same mistake now. Let us learn the lessons of history. Do not let the big banks bamboozle us with false arguments. The only way to prevent the S&L crisis from occurring in our banking system is for the core bank proposal to be enacted into law.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] is recognized for 15 minutes.

Mr. WYLIE. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I know how hard the gentleman from New York [Mr. SCHUMER] has worked on this amendment, and I respect him for that. I respect him for the good judgment he has as a general proposition on banking legislation, but I must oppose this amendment at this time.

We do not know what consequences this amendment might have on the banking system and indeed on our economy as a whole. To quote Paul Volcker, the former Chairman of the Federal Reserve, on including core banking in this banking reform legislation, he says: "So important an issue, in my judgment, cannot adequately and responsibly be resolved as a late attachment to already complicated and needed proposed legislation."

I have just been delivered a letter from the Secretary of the Treasury, Mr. Nicholas Brady, and I will just read it in part, bringing out the best portions of it:

> This amendment, while well-intentioned, is an untested proposal that has not been thoroughly studied. * * *
>
> This amendment would reimpose interest rate controls on all bank deposits—not just insured deposits—and would drastically lower the legal limit on the amount a bank can lend to any one borrower. The proposal, which first emerged less than six months ago, is intended by its proponents to prevent banks from making hundreds of billions of dollars of loans that they currently make. We do not believe that Congress should enact such a proposal at a time when Congress and the Administration are struggling to address the credit crunch that has affected small businesses in many regions of the country.

Now, here is what some other regulators think. Gerald Corrigan, the president of the New York Fed, wrote: "I am very dubious that the approach would provide the desired result." He feels it will cause massive disintermediation of deposits and will seriously hinder credit availability. Mr. Corrigan also questions whether interest rate caps can work.

Timothy Ryan, the Director of the OTS, states: "Although some parts of the core banking proposal may be useful in controlling the risks assumed by depository institutions, I am extremely concerned that it may also have serious unintended consequences."

Robert Clarke, the Comptroller of the Currency, and Paul Volcker are both skeptical and urge caution in this regard.

I think that the core banking proposal takes us into unchartered waters.

Mr. Chairman, I see the gentleman from Iowa [Mr. LEACH] is on his feet, and I yield to him.

Mr. LEACH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, this is the most interesting proposal that has been brought to Congress this year in banking, but despite its great level of interest, it is very dangerous. It would take over $1 trillion out of the banking system at a time when the economy needs more credit. It would impel our larger banks to become more trading institutions than lending institutions. It is good for some of the financial institutions in New York and certainly for the securities industry, but I doubt that it is good for the economy at large or for this country. This Congress should be concerned about the economy and not particular institutions or particular areas where some kinds of banks are predominant.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would just like to clarify a couple of points. In terms of $1 trillion leaving the insured deposit system, I do not know of any estimate under the new numbers that we have here that come that close.

In reference to the point of the gentleman from Iowa, this is not aimed at specific institutions. In fact, most of the larger money-center New York banks are vehemently opposed to this amendment, as the gentleman well knows. Most of the large banks are opposed because they do not want to take the necessary medicine to make them better. But the only thing I say to the gentleman is that we should look at what terrible shape they are in now. Going around and nibbling around the edges is not going to make them better. They need strong medicine, and only core banking provides it.

Mr. WYLIE. Mr. Chairman, I would say in response to the gentleman that when Mr. Lowell Bryan first came before us with his estimate of what the core banking concept might do, he said that the disintermediation might run as a high as $1 trillion. I understand some modifications have been made in the concept since then. I appreciate the fact that these modifications have made, but that just adds to the fact that I think right now it is a little bit premature. I think we need to study the issue a little more, and I think that is the direction in which the gentleman from Iowa [Mr. LEACH] was heading.

Mr. LEACH. Mr. Chairman, if the gentleman will yield further, I appreciate what the gentleman was saying.

Let me make one final comment to clarify what the gentleman has stated. The institutions it would help would in the securities industry in New York and several of the largest banks. But let me go further. What this would do is, it will cause banks to change their lending biases and move away from almost all risks.

One of the great things in our economy today is that we are trying to propel our credit, not retard credit. This is not the time to play with the banking system.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. WYLIE] has expired.

Mr. WYLIE. Mr. Chairman, I yield myself 1 additional minute.

Mr. Chairman, I would say that the National Association of Realtors have just sent me a letter, and they strongly oppose this amendment They believe, as they say in their letter, that there could be as much as $1.5 trillion in disintermediation from the industry's $3.3 trillion in deposits.

The National Association of Home Builders has indicated that they are opposed to the amendment for the same reason, because of the credit crunch that the country is now experiencing, and they are afraid it might have a very harmful and detrimental effect in that regard.

Again, core banking is an idea whose time has not yet come. It has a lot of interesting concepts in it, and as I said, I admire the gentleman from New York for his persistence and the fact that he has gotten into it to the extent that he has. I admire him for being able to get this here on the House floor for debate on this bill today. I think that is a monumental accomplishment in and of itself. But until we know what the prospects are and what the problems are as far as disintermediation and the availability of credit, and so forth, I must oppose the amendment.

Mr. SCHUMER. Mr. Chairman, If the gentleman will yield further, the latest estimates on the distintermediation are $200 million.

The CHAIRMAN. The time of gentleman from Ohio [Mr. WYLIE] has expired.

Mr. SCHUMER. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA], a cosponsor of the amendment.

□ 1430

Mrs. ROUKEMA. Mr. Chairman, I rise in support of this, and I say as one

Member, I have not forgotten the lessons of the 1930's and the savings and loan debacle of recent years.

During the eighties, after we deregulated the S&L's, unlimited interest rates which we authorized led to bidding wars for deposits. Those bidding wars led to riskier and riskier investments.

Larger than normal loans to one borrower led to speculative investments in real estate and other questionable commercial lending which left the thrift industry literally holding the bag.

This core bank amendment tells us that we should not forget the lessons of history. I must say in answer to some Members who have talked loud and long about protecting the depositors, protecting future taxpayers, if we really want to do that, we should understand what the Wall Street Journal understands, that the core banking proposal is the best way to insulate taxpayers against another costly bailout.

Mr. Chairman, I include for the RECORD a Wall Street Journal editorial in support of it where it specifically points out that there is not much blood left in the stone, meaning going to the taxpayers to borrow more money for the insurance fund. It states that this collective abdication is moving us to embrace a radical alternative, that of the core banking bill. The proposal is admittedly not the perfect solution, but it is the only proposal on the table that would do anything about deposit insurance. It is the closest thing to real deposit insurance reform and to protecting taxpayers in the future.

The Wall Street Journal editoral follows:

[From the Wall Street Journal, Aug. 15, 1991]

FREDDY'S BAAACK!—II

Bank of America's takeover of Security Pacific is the banking industry's latest attempt at self-help revival. We wish it luck, but we'd have more faith that such mergers will succeed if we saw anything remotely sensible coming from Washington.

Instead the capital's emerging bank "reform" is what we've called another Freddy's Nightmare, recalling Fernand St Germain, the financial genius behind savings and loan reform in the 1980s. That means some modernization, some new banking powers, and lots of talk about more "capital" and "tough" new regulation. In fact, banks' capital positions are already considerably higher than they were before that worry became fashionable. We need to remember, as William Seidman has stressed, that having regulators take over a sagging bank reduces its value and can increase costs to the taxpayer. And of course, having more examiners look over the shoulders of more lending officers is not going to speed the currently tepid economic recovery.

Worst of all, the "reform" does nothing about overly generous deposit insurance, the central flaw that caused the Savings and Loan Crisis and threatens the banks as well. As the S&L lobby got then-Rep. St Germain to boost deposit insurance to $100,000 in 1980, today the small-bank lobby has squelched any attempt to pare it back—even the modest reform of limiting coverage to one account per individual.

Under Keating Five luminary Donald Riegle, the Senate Banking Committee dismissed deposit-insurance limits out of hand; the House Banking Committee rejected them in an 18–17 vote. The Treasury doesn't seem to care that is modest insurance reforms have been gutted. White House Budget Director Richard Darman, who gives an annual lecture on growing federal "liabilities," doesn't seem to be a player.

Meanwhile the Treasury and Congress plan to bring banks on into the future to shore up the banking insurance fund that now pays off depositors. Treasury is using future bank contributions to the fund to borrow some $70 billion for the fund. There isn't much blood left in this stone. Without basic reform now, the next time the fund is in jeopardy, taxpayers will be the only resort.

This collective abdication is moving us to embrace a radical alternative; New York Representative Chuck Shumer's "core" banking bill. The proposal, which is gaining supporters in Congress, is admittedly not the perfect solution. But it is the only proposal on the table that would do anything about deposit insurance.

Mr. Schumer's bill is a modified version of a plan authored by McKinsey banking expert Lowell Bryan. It would limit the interest rate banks could pay on insured deposits to 105% of the Treasury-bill rate. This would avoid the S&L problem of bankers bidding ever-higher for deposits and then gambling on risky loans. The basic regulation for this "core" bank would be that it could lend only so much to any one customer, forcing banks to diversify their loan portfolio, also good for long-run safety.

Outside this core, though, a bank would have the option of accepting deposits with no interest-rate restriction and no federal insurance. Americans willing to accept a little more risk for a higher return could put their money in the non-core bank, and banks could invest these funds without bank examiners constantly peering over their shoulders. Widows and orphans could stick to the "core." Over time the deposit-insurance safety net would shrink; taxpayer risk and liability would decrease. But meanwhile, the economy would get financed.

We don't like fixing anyone's prices, of course, but people relying on taxpayer subsidies shouldn't complain about some limits on their profit-making potential. And the Schumer bill avoids the old Regulation Q credit-crunch problem by letting the rate float with T-bills. Some sages tell us the Schumer concept is the beginning of credit allocation, but in many ways it's less politically intrusive than the Treasury-Congress plans. The Schumer bill at least lets bankers make their own market judgments within the core-bank limits.

We'd be glad to listen to other ideas. Our own proposal, made before the S&L problem reached crisis stage, was that deposit insurance premiums should vary with ratings of risk, as commercial insurance premiums always do. But so far, the core banking idea looks like the only horse on the track that promises to shrink the taxpayer's deposit-insurance exposure.

Sans Schumer or something else, Washington's banking reform looks like the S&L reform redux, a giant buck-passing operation designed to let everyone in the Beltway say they've done something without having to make any hard decisions. The banking industry's problems won't go away, and taxpayers will be left to pick up the check.

Mr. Chairman, I would like to indicate that the core bank does this in the ways that the gentleman from New York [Mr. SCHUMER] has already outlined, and says that we are not going to do it tomorrow, we are not going to do it next year, but there is a rather precise proposal here for an 8-year phase-in. So when we have these scare tactics about money flowing out in huge numbers from the industry, those are only a scare tactics.

Mr. Chairman, I rise in support of the core-bank proposal offered by the gentleman from New York.

The lessons of the savings and loan debacle and the history of the 1930's has not been lost on this Member. Two of these lessons are addressed by the core-bank proposal.

During the early 1980's after we deregulated the S&L's, unlimited interest rates which we authorized led to bidding wars for deposits and those bidding wars led to riskier and riskier investments.

Larger than normal loans to one borrower led to speculative investments in real estate and other questionable commercial lending which left the thrift industry literally holding the bag.

The old adage, "he who ignors the lessons of history is doomed to repeat them," continues to hold true today. If we don't act now to place some modest control over the banks' unlimited ability to attract deposits at will, we will have failed to reduce taxpayer exposure and to eliminate the incentive to make unsound investment decision.

In this respect, I do not believe this amendment should be considered an alternative to or substitute for, the Treasury bill we are considering. There is a neat fit between the two.

And, this goes directly to the heart of the fundamental reforms we are aiming for—secured deposits, affirming the safety net, and expanding and diversifying financial activities and their investment opportunities.

Let there be no mistake, this concept is not the panecea for our banking problems. There are lots of questions to be asked and concerns to be addressed.

Refinements in the proposal will have to be worked out over the 8-year phase-in for this plan. And I want to stress this phase-in period. We are not talking about the creation of a new system overnight or on the date of enactment.

With that said, the core-bank concept does represent a sensible approach to the basic problems in banking which require restructuring.

We know that there has been a growing pool of insured deposits that are chasing a smaller pool of profitable business. As a result, many banks, in attempting to retain their market share, have been found to be relaxing underwriting standards, taking more risk and increasing the rates they pay for deposits.

This process in turn has backfired for many banks as we have seen with the downturn in the commercial real estate and development market.

The core-bank concept attempts to deal with these problems by removing risky activities from the insured bank and by lowering the incentives for risk taking in the core bank by placing limits on the interests rates which can be offered and amounts one individual can borrow from the institution.

For this Member, floating interest rate caps and reasonable loans to one borrower limits are the areas which need further exploration and discussion. But fundamentally, they are sound concepts which would serve to rein in and tighten the Federal safety net, thus providing more protections for the bank insurance fund and ultimately the taxpayer.

I believe my colleagues will agree that insured deposits should only be used to finance traditional business of banking—personal loans, small business loans and lines of credit, and mortgage lending. Insured deposits should not finance highly speculative lending, equity investments or other activities which should be done outside the Federal safety net.

These are the reasons the Wall Street Journal and Forbes magazine support it.

The core-bank proposal as offered is not perfect. But it is a concept worth our very serious examination.

I urge adoption of this amendment.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. JOHNSON].

Mr. JOHNSON of Texas. Mr. Chairman, as a realtor and close associate of banks in the Texas area, I can say that this proposal looks like to me it does exactly what we do not want to do, and that is put the money where it cannot be lent.

Mr. Chairman, the core bank appears to do little, if anything, to reduce the risk to the FDIC, while it is likely to create tremendous disruptions in lending practices, regulatory oversight, and customer relationships.

The core bank lending limit appears highly likely to further reduce credit ability and make borrowing costs much higher. The potential disruptions for our economy, the financial system, and the banking system, with all the possible inefficiencies and costs, must be carefully examined before such a radical step could be taken.

Mr. Chairman, I think that our chairman and the minority members on this committee have worked hard to put a good banking bill in place, and this would just destroy it.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. JOHNSON of Texas. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for yielding.

Mr. Chairman, I would like the gentleman to answer if he thinks that lending to Brazil is risky, if he thinks that HALT loans are risky, if he thinks doing foreign currency exchange trading is risky?

Mr. JOHNSON of Texas. Sure.

Mr. SCHUMER. Then I would say to the gentleman, he stated it would not reduce risk to the depositors. All those things could not be done with insured deposits under core bank. So how can the gentleman assert so boldly and so baldly that it will not reduce risk to the deposit system if he agrees that those three activities are risky and he knows that core bank will eliminate insured dollars going to those activities?

Mr. JOHNSON of Texas. Mr. Chairman, reclaiming my time, let me say to the gentleman from New York [Mr. SCHUMER], I am not just talking from personal experience. I am quoting from bankers who know the banking business, and these are recommendations from them.

Mr. SCHUMER. Mr. Chairman, if the gentleman will yield further, I understand from the gentleman that big banks do not like this bill. It will make them a lot healthier, too, because they should not be using their money for these activities.

Mr. JOHNSON of Texas. Mr. Chairman, what we need is money out there to be loaned.

Mr. SCHUMER. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. BACCHUS], a member of the committee.

Mr. BACCHUS. Mr. Chairman, for 10 months, I have deliberated with the 50 other members of the Banking Committee about bank reform.

Some of my colleagues on the committee have deliberated on this issue for 10 years, and more.

We need real bank reform.

Reluctantly, regrettably, I have concluded that the bills offered today won't give us the real reform we need.

They won't restore the health and profits and competitiveness of the banking industry.

They won't provide all the protection that depositors need.

They won't protect taxpayers against the possibility of a bank bailout that could rival the scandalous bailout of the savings and loans.

In fact, the financing scheme in each of the proposed bills opens the back door of the Treasury wide to a taxpayer bailout of commercial banks.

The banking industry offered to recapitalize the FDIC themselves.

We ignored them.

We're sneaking through the back door to pick the taxpayers' pockets once again.

The $30 billion in these so-called reform bills is just the beginning.

President Bush will be back to ask for billions more.

Shades of the RTC.

We must limit the risk of the taxpayers of a bank bailout that could cost hundreds of billions of dollars.

It would be wrong to try to limit taxpayer exposure by limiting deposit insurance—without also ending immediately the iniquitous doctrine called too-big-to-fail.

Community Banking and Community decisionmaking must be maintained.

The real reform we need is core banking.

Core banking does not limit deposit insurance.

Core banking limits the insured activities of banks.

Those banks that engage in safe, sound, traditional banking activities would have the same sheltering umbrella of insurance they have always had.

Those banks that want to make risky loans or highly speculative investments could do so—but not on the taxpayers' tab.

Banks do need a level playing field. Yet we shouldn't ask the taxpayers to pay for the balls and the bats.

With core banking, banks would be profitable. Depositors would be protected. The taxpayers' pockets would be much more secure.

Too many of us can't see the forest for the firewalls. Those who think that any of the bills offered today constitute real reform should read the fine print.

Follow the money trail.

See where it leads.

Lock the back door.

Those who want real reform should support core banking.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina [Mr. NEAL].

Mr. NAGLE. Mr. Chairman, I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. NAGLE. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 360]

Abercrombie
Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Armey
Atkins
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Bevill
Bilbray
Bliley
Boehlert
Boehner
Bonior
Borski
Boucher
Brewster
Brooks
Broomfield
Browder
Bruce
Bryant
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CO)
Cardin
Carper
Carr
Chandler
Chapman
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Costello
Coughlin
Cox (CA)
Cox (IL)
Coyne
Cramer
Crane
Cunningham
Dannemeyer
Darden
Davis
de la Garza
DeFazio
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Emerson
Engel
English
Erdreich
Espy
Evans
Ewing
Fascell
Fawell
Fazio
Feighan
Fields
Fish

Flake
Foglietta
Ford (MI)
Ford (TN)
Franks (CT)
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hoagland
Hobson
Hochbrueckner
Holloway
Horn
Houghton
Hoyer
Hubbard
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Long
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Marlenee
Martin
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Morrison
Murtha
Myers
Nagle
Natcher
Neal (MA)
Neal (NC)
Nichols
Nowak
Nussle
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Rangel
Ravenel
Ray
Reed
Regula
Rhodes
Richardson
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Roybal
Russo
Sabo
Sanders
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stenholm
Stokes
Studds
Stump
Sundquist
Swett
Swift
Synar
Tallon
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Waters
Waxman
Weber
Weiss
Weldon
Wheat
Williams
Wilson
Wise
Wolf
Wolpe
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

□ 1458

The CHAIRMAN. Four hundred Members have answered to their names, a quorum is present, and the Committee will resume its business.

□ 1500

The CHAIRMAN. The Chair would advise the Committee that there are 11½ minutes remaining in this particular debate.

At the time of the quorum call, the gentleman from Ohio had yielded 2 minutes to the gentleman from North Carolina [Mr. NEAL].

The gentleman from North Carolina [Mr. NEAL] is recognized for 2 minutes.

Mr. NEAL of North Carolina. Mr. Chairman, this amendment certainly has a superficial appeal. We have a problem with insured deposits. We have got an easy answer, just reduce the amount of insured deposits. Of course, that is exactly what the core banking concept does. If it did not do that, well, there would not be any reason for it. But that is the problem also.

Most estimates I have seen are that this proposal, this core bank proposal, would shrink the banking system by about a third.

Now, we do not know for sure, but we think it would shrink it by $1.5 trillion. Sure, it would reduce deposit insurance, because it would shrink deposits—shrink deposits by $1.5 trillion.

If you like the credit crunch, you will love core banking.

Mr. Chairman, already small business is having an enormous amount of trouble finding money. The banks and regulators, as everyone is hearing, are tightening up. If you take 30 percent of the money out of the banking system, you will have a real credit crunch, a disaster for small business, a disaster for our economy.

Mr. Chairman, if you take a third of the money out of our banking system, you will have a disaster for small business and the economy. And do not forget, Mr. Chairman, that interest-rate ceilings and a limited charter, exactly what core banking is all about, is exactly what the savings and loans had. It did not keep them out of trouble in the 1970's.

This core-banking proposal has a superficial appeal, but, in fact, it is a very far-reaching radical proposal. There have been hardly any hearings on it. It was defeated in subcommittee, defeated in full committee.

The Senate bill calls for a study of this proposal. That is a good idea. It has some appeal, let's study it.

But certainly, let us not adopt something so far-reaching, so radical, without adequate hearings.

It is essential to defeat this core-banking proposal.

Mr. SCHUMER. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. COX].

Mr. COX of Illinois. Mr. Chairman, I rise today to express my strong support for the amendment proposed by the gentleman from New York [Mr. SCHUMER], which creates a core banking system in this legislation.

It seems to me that it is important for all of my colleagues to understand the real reasons that we are where we are today. Those reasons are:

First, bankers have made some bad loans. It is important to keep in mind that it is not solely the fault of the bankers that some of the loans they have made have turned sour. Extensive changes in the national economy—as well as specific changes in tax laws which have affected the value of real estate—are also involved in the increasing number of problem loans of our Nation's banks.

Second, we have the executive branch's regulators who cannot regulate the way we want them to regulate. It is interesting to note that the proposed firewalls in the legislation will be enforced by those same regulators.

Third, we are currently in a recession. This recession has brought to the forefront the problems which could have festered behind the scenes for sometime if the overall economy had not slowed down.

Rather than tinkering around edges of the industry's problems, we must act responsibly by getting to the heart of the problem. For this reason, I am in full support of the core banking proposal. If banks believe they need new powers to restore their profitability, let us allow for it. Let us no longer pretend that regulators can somehow make better choices than responsible business people about how to operate their institutions. And most importantly, let us allow banks to be competitive in the financial services industry again. However, let us not do those things with the taxpayers standing behind the system. A core banking structure will separate safe investments from more profitable, yet riskier activities without making the taxpayers pay the price of failure.

Core banking will minimize taxpayer exposure. It is the most responsible and commonsense action we can take here today. I urge my colleagues to vote for the Schumer amendment.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. LAFALCE].

Mr. LaFALCE. Mr. Chairman, I reluctantly rise to oppose the amendment.

One of the reasons we are here today is to help bring about a modernization of the financial services industry legal infrastructure to bring the U.S. banking laws up to speed with the rest of the world.

The fact of the matter is that the banks in the United Kingdom, the banks in Germany, the banks in Japan, et cetera, have a much broader charter than United States banks, and if we want to become, not remain, but become internationally competitive, we must have charters commensurate with theirs. This goes in the opposite direction.

Second, we must be concerned not only with financial institutions per se, we must be concerned with national and international economies. Right now, we are in a very serious recession. In large part because of failed banking laws and policies, we have a capital crunch. That capital crunch has produced a credit crunch.

There are legitimate concerns, concerns voiced by the banking regulators present and past, Greenspan and Volcker, Taylor and Seidman, et cetera, that this will exacerbate the credit crunch, that it could bring about a disintermediation of $½ trillion, $1 trillion, $1.5 trillion.

The only place you would be able to go for money is not to your local bank, if you are a small businessman, it would be to a GE Capital Credit Corp., but they do not make loans to the small-business community.

We do need limits on the interest rates that undercapitalized banks give. The banking bill provides such restrictions. The banking bill gives the regulators the ability to impose restrictions on undercapitalized institutions.

Do not make this mistake.

Mr. SCHUMER. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, I thank the House for being in order. I think it is very important that you are in order.

I would like you all to just take a moment to think, however you might, where you are right now at this time, what day it is, so you will remember this day. Think about it, whether it is Halloween, the last day of October, it is your spouse's birthday, your children's birthdays, do not forget today, because many of you forgot where you were in 1981, when we made a fatal mistake, when we let the S&L's take the public's money, the insured money, and go and gamble with it. And we are now charging it, billions and billions of dollars, to our children.

This is the only vote you will get that reforms the system, the only vote you will get. Some of you scrambled for the CONGRESSIONAL RECORD to try to see if you voted with Mr. LEACH, or did you not, did you vote with Mr. St Germain, or did you not. Remember where you are now, folks, because you are going to be asked a few months, a few years from now where were you on the day they voted on core banking.

"Did you let the bankers gamble with federally insured money?"

The answer will come in a minute.

□ 1510

Mr. WYLIE. Mr. Chairman, part of the problem, I may say to the gentleman from California, is that in his own State they were permitted 100 percent equity investments if they were a State-chartered S&L.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. RIGGS].

Mr. RIGGS. Mr. Chairman, first of all, in response to the last speaker, my distinguished colleague, I hope all the Members of this body had an opportunity to look at title I of the bill and the increased safety and soundness standards contained in title I; but I rise in opposition to the amendment, not because the idea lacks merit. To the contrary, I am intrigued by the idea, but because the idea is now being promoted as an 11th-hour quick fix panacea, and that is exactly what way it came before the Banking Committee.

This idea in its various forms, core banking, two-tier, two-window banking, has been around for awhile and deserves our serious study and consideration, not at the 11th hour, but before the Banking Committee, which has pledged to study this concept, with witnesses representing the consumer groups and the banking and financial services industries.

Mr. Chairman, I personally would like the idea, which I did not have at the sole hearing that we had on this in the Banking Committee, in the Banking Committee markup, to get some answers to my questions. Can a financial services holding company own both a regulated insured core bank and an unregulated uninsured subsidary? If that is the case, what regulations are we going to impose to protect the integrity of core banking and insure that the deposits flowing into both subsidiaries are not comingled? After all, the idea of core banking is that those deposits can only be invested in the safest and soundest investments.

Mr. Chairman, we will have another opportunity to examine the merits and the impacts of this revolutionary proposal, to think it through properly and to revisit the subject when we go back and look at the overall subject of regulatory restructuring. That is the time to give this consideration. Do not fall prey to the seductive allure of a last-minute fix that could cause tremendous uncertainty, distress, and disintermediation in the financial markets and in the short run would certainly worsen our severe credit crunch across the land.

Mr. SCHUMER. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. MFUME].

Mr. MFUME. Mr. Chairman, I rise in support of the core bank concept as embodied by the Schumer amendment. I urge an aye vote.

Mr. SCHUMER. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. MORAN], a member of the committee.

Mr. MORAN. Mr. Chairman, this amendment is unique among all of the amendments that we will consider in this banking bill. It is unique because there is no special interest that supports this amendment. We will not be met by any high-priced lobbyists on our way onto the floor giving us the thumbs up sign. There is no interest that can benefit from this amendment, but one, and that is the public interest.

It is terribly important to understand that if this amendment passes, we do not need to fight about the Dingell-Gonzalez amendment. Give the banks all the powers they want, because the Federal taxpayer will not be left holding the bag. That is our ultimate responsibility, not to protect any interest, but the public interest.

Yes, it is farreaching, it is radical, but it is the right thing to do.

Mr. SCHUMER. Mr. Chairman, I yield 1½ minutes to the gentleman from Kansas [Mr. SLATTERY], the distinguished cosponsor of the bill.

Mr. SLATTERY. Mr. Chairman, without this amendment, when we finish our work here today the basic banking system will still be in place. We are not going to make fundamental reforms. The system that allows banks to make loans to Brazil, Argentina, and perhaps the Soviet Union with insured deposits, will be in place. We will still have a system that will enable our banks to invest in high-yield risky junk bonds with insured deposits, and we will still have in place a system that will allow our banks to make highly speculative real estate loans with insured deposits, and we will have in place banks that can speculate on the international monetary markets with your insured deposits.

Now, the core-bank proposal offers real reform. It will change all of this and it will say to the big banks in this country that will be affected by this legislation, because the small community banks will not really be affected, but it will say to those big banks that you can do those activities, you can speculate in the monetary markets, you can speculate in real estate, you can speculate in high-yield junk bonds, but you cannot do it with the taxpayers' insured deposits. That is what we are talking about. It is not a radical idea. It is fundamental common sense.

Mr. Chairman, the taxpayers are going to be watching this vote, because their No. 1 concern is to reduce their exposure in the deposit insurance system. This is the only proposal that does that. I strongly urge your support.

Mr. SCHUMER. Mr. Chairman, I yield ½ minute to the gentlewoman from New Jersey [Mrs. ROUKEMA], a distinguished cosponsor of the legislation and a member of the committee.

Mrs. ROUKEMA. Mr. Chairman, our colleagues should understand this is the only piece of business before us that is truly going to protect the taxpayer by insulating deposit insurance and taxpayer money. It will take 8 years, not tomorrow, but 8 years to work out and the disintermediation will not take place to suggest that enormous outflows of money cannot be substantiated. These are purely scare tactics. If disintermediation were the consequence the Wall Street Journal, Barron's, and Forbes would not be endorsing this, nor would the National Taxpayers Association.

Establishment of the core bank concept is the only proposal before us to insulate the deposit insurance fund and protect the taxpayer from future bailouts.

Mr. SCHUMER. Mr. Chairman, I yield myself the remaining time.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. SCHUMER. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I rise on behalf of the gentleman's amendment. I think it makes a great contribution to the bill.

Mr. SCHUMER. Mr. Chairman, why should one be for core bank? There are several reasons. First, it has been argued there would be disintermediation. Yes, there would be some money flowing out of the system, the money that now goes to Brazil, the money that goes to LBO loans, the money that goes to high-flying real estate lending. That money should never have been insured and that is the only money that would flow out of this system under core bank. Money for mortgages, for small businesses, would increase under core bank, because that is what banking should do.

Why should one be for core bank? Because it has broad bipartisan support.

The gentleman from California [Mr. CAMPBELL] and I—he could not be here—worked hard on this bill, along with the gentlewoman from New Jersey and the gentleman from Kansas; but most of all, Mr. Chairman, we should not make the same mistake we made in 1982, with the S&L's, letting them expand into new businesses with the taxpayers' dollars. We all know that is what caused the problem. We can argue about who did it, but that is the cause.

There is only one amendment on the floor today that learns from history. It is a sweeping change indeed, but the banking system is sick and we will be back here for $30 billion and $30 billion and $30 billion and $300 billion unless we reform the system today. Do not put it off. Do not delay. The taxpayers cannot afford it. Only core bank will protect the insured deposit system once and for all.

☐ 1520

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from Utah [Mr. ORTON].

Mr. ORTON. Mr. Chairman, as a supporter of the basic concept of core banking, I reluctantly rise in opposition to this particular motion.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to the core bank concept. I caution my colleagues: Look before you leap. This could exacerbate the credit contraction; their right to the banking system will never be the same, it is turning over on its head. We have not even studied it. Are you prepared to do that? Vote "no."

Mr. Chairman, the core bank idea is an honest, creative way to try and deal with the problem of subsidized deposits that get in the way of market discipline, and therefore contribute to losses for the bank insurance fund.

Another form of poor market discipline is the too-big-to-fail problem, which we addressed in several instances in the underlying bill. We disallowed the coverage of uninsured deposits, and we placed limits on Federal reserve advances to ailing banks.

Some feel we did not go far enough, and given that there are not limits on insured accounts per institution, we need the core bank proposal, which would divide banks into insured core banks and uninsured wholesale banks.

My problem is that Congress does not have a full grasp of what the policy will mean once implemented. Usually when people say "we should have held hearings first," it's a strawman, a disingenuous ploy to stave off the political opposition. But here, with this ambitious amendment, I can say that I for one truly need to hear more, to hear experts from the field, before I vote on a policy that will effect tens and tens of billions of dollars.This is not a political statement. I may someday vote for the core bank proposal. But that will only be after I have become far better educated on the details and ramifications therein. We're talking about a fundamental reorganization of the banks industry, without critical review and assessment.

So the bottom line is I am not ready for this. I am not even sure what questions to ask. I suspect there may be problems with wholesale banks that run into difficulty and then need a government bailout after all. They may be too big to fail even though they have no FDIC coverage. I also don't know what the effect will be on the economy when billions of dollars are transferred from core banks to wholesale banks. I don't know if interest rate caps are needed to prevent speculation or are just a throwback to a more heavily regulated era.

In sum, my colleagues, I am not ready for this. If I cannot explain this with a degree of certainty to my constituents, then I cannot vote for the amendment. I understand that the Banking Committee chairman has pledge hearings. We should proceed on that path.

Mr. WYLIE. Mr. Chairman, I say to the gentleman from Kansas that commercial banks are prohibited by law from investing in junk bonds.

Mr. Chairman, I yield the balance of my time, 1 minute, to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. I thank the gentleman for yielding.

Mr. Chairman and colleagues, make no mistake, this is one of the two or three most critical votes we will cast on this issue.

I agree with the gentleman from Iowa [Mr. LEACH] that this amendment does not have a surface attractiveness. But under scrutiny, it does not stand. That is why neither committee included this amendment in its proposal to this body, not the Committee on Energy and Commerce nor the Committee on Banking, Finance and Urban Affairs.

This Nation used to have core banking. It had core banking in 1929, when you had insured postal stamps, if you wanted to pick that venture.

People with insured postal stamps did not lose a dime in 1929. But the system crashed.

What we tried to do after 1929 was to integrate the entire banking system. And the flaws of this amendment is that it takes us back to 1929.

Do we want to risk that? Do we want to risk, as the gentleman from Kansas [Mr. SLATTERY] said, completely overturning the banking system as we know it? This is not the time, and let us not take that risk today.

Mr. WEISS. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York [Mr. SCHUMER], and I commend him for his attempts to include true deposit insurance reform in this measure. The Schumer amendment constitutes tough love for banks by requiring banks to fund their risky activities through the markets. Most importantly though, this proposal will limit taxpayer exposure and ultimately lower FDIC costs by imposing the most cautious form of early intervention—a strong dosage of failure prevention.

The unintended reality of deposit insurance is that banks play hard and fast with taxpayer-insured deposits in pursuit of high profits. Unfortunately, this system enables a small portion of institutions to overpay for deposits in order to fund their activities, regardless of the risk associated with these activities.

Two alternatives to remedy this situation are limiting the insurance provided to depositors or limiting the way banks use these deposits. In my estimation, limiting government liability at consumer expense is not an appropriate response. Rather, narrower banking practices offer a much fairer option while creating stronger banks and protecting consumers against unsound banking operation.

But the core bank proposal does not eviscerate banks as its opponents would have you believe. The limits under which core banks will operate will still allow insured institutions to make consumer, small- and mid-size business loans and conduct all branch activities. Core banks additionally would be free to affiliate with uninsured institutions, which have far fewer restrictions placed on them. These affiliates could invest in riskier assets and offer higher rates to their customers. In effect, this amendment provides the most unclouded and most sensible distinction between an investor and a depositor.

An uninsured investment company could be set up to perform all underwriting, trading, and investment banking activities. Institutions interested in partaking in these activities would have to raise funds in the marketplace. The core bank proposal takes the Federal training wheels off banks by making them compete for deposits on the strength of their own balance sheet.

By imposing floating interest rate caps, the proposal further ensures that weak banks could not attract new funds on the Government's guarantee. Prudently, it includes a safety valve for the rate caps during times of severe economic hardship. The amendment gives the FDIC the authority to temporarily waive the interest rate limits in cases of regional recessions or harsh market cycles.

Mr. Chairman, we are on the verge of making major reforms to our banking system. Many of these changes are critically needed but it would be unconscionable to expand bank powers without enacting major safeguards to the American taxpayer. I urge my colleagues to support the core bank amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from New York [Mr. SCHUMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SCHUMER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 106, noes 312, answered "present" 1, not voting 14, as follows:

[Roll No. 361]

AYES—106

Ackerman
Andrews (ME)
Annunzio
AuCoin
Bacchus
Beilenson
Bennett
Berman
Bonior
Borski
Bryant
Cardin
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Cox (IL)
Coyne
DeFazio
Dellums
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Eckart
Edwards (CA)
Engel
Foglietta
Ford (MI)
Gejdenson
Gephardt
Glickman
Gonzalez
Hall (OH)
Hall (TX)
Hayes (IL)
Hertel
Hochbrueckner
Horn
Hoyer
Hughes
Jefferson
Johnson (SD)
Jontz
Kaptur
Kennedy
Kennelly
Kildee
Lehman (CA)
Lehman (FL)
Levine (CA)
Lewis (GA)
Lipinski
Lowey (NY)
Markey
Mazzoli
McCloskey
McDermott
Mfume
Miller (CA)
Mineta
Mink
Moran
Neal (MA)
Olver
Owens (NY)
Owens (UT)
Pallone
Panetta
Payne (NJ)
Pelosi
Poshard
Rangel
Regula
Rohrabacher
Rostenkowski
Roukema
Roybal
Russo
Sanders
Sangmeister
Schroeder
Schumer
Serrano
Slattery
Smith (FL)
Stark
Stenholm
Stokes
Studds
Taylor (MS)
Torricelli
Traficant
Visclosky
Washington
Waters
Waxman
Weiss
Wheat
Wolpe
Wyden
Yates
Zimmer

NOES—312

Abercrombie
Alexander
Allard
Anderson
Andrews (NJ)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
Atkins
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Bentley
Bereuter
Bevill
Bilbray
Bliley
Boehlert
Boehner
Boucher
Brewster
Brooks
Broomfield
Browder
Bruce
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CO)
Carper
Carr
Chandler
Chapman
Clement
Clinger
Coble
Coleman (MO)
Combest
Costello
Coughlin
Cox (CA)
Cramer
Crane
Cunningham
Dannemeyer
Darden
Davis
de la Garza
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Dixon
Dooley
Doolittle
Dornan (CA)
Dreier
Duncan
Early
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Espy
Evans
Ewing
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Ford (TN)
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gekas
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Gordon
Goss
Gradison
Grandy
Green
Gunderson
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Holloway
Horton
Houghton
Hubbard
Huckaby
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Kanjorski
Kasich
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
LaRocco
Laughlin
Leach
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Long
Lowery (CA)
Luken
Machtley
Manton
Marlenee
Martin
Martinez
Matsui
Mavroules
McCandless
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Michel
Miller (OH)
Miller (WA)
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal (NC)
Nichols
Nowak
Nussle
Oakar
Oberstar
Obey
Olin
Ortiz
Orton
Oxley
Packard
Parker
Pastor
Patterson
Paxon
Payne (VA)
Pease
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Ramstad
Ravenel
Ray
Reed
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Ros-Lehtinen
Rose
Roth
Sabo
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schulze
Sensenbrenner
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slaughter (NY)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stump
Sundquist
Swett
Swift
Synar
Tallon
Tauzin
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Towns
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Volkmer
Vucanovich
Walker
Walsh
Weber
Weldon
Williams
Wilson
Wise
Wolf
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—14

Bilirakis
Boxer
Brown
Bunning
Campbell (CA)
Dymally
Guarini
Hopkins
Lloyd
Rowland
Savage
Slaughter (VA)
Tanner
Whitten

☐ 1540

Mr. MINETA and Mr. JEFFERSON changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

☐ 1540

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. BARNARD

Mr. BARNARD. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BARNARD: Page 213, beginning on line 1, strike out all of title IV through page 426, line 9, and redesignate the succeeding titles and sections (and references thereto), and conform the table of contents accordingly.

The CHAIRMAN. Under the rule, the gentleman from Georgia [Mr. BARNARD] will be recognized for 20 minutes, and a Member opposed will be recognized for 20 minutes.

The Chair recognizes the gentleman from Georgia [Mr. BARNARD].

PARLIAMENTARY INQUIRY

Mr. BARNARD. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BARNARD. Mr. Chairman, who has the privilege of closing the debate?

The CHAIRMAN. The Chair will inquire, is the gentleman from Texas going to oppose the amendment?

Mr. GONZALEZ. Mr. Chairman, I am in opposition to the amendment.

The CHAIRMAN. The gentleman from Texas [Mr. GONZALEZ], at the appropriate time, will be recognized for 20 minutes and will have the privilege of closing debate.

Mr. BARNARD. Mr. Chairman, I also wish to inform the Members that I am yielding 5 minutes of my time to the ranking minority member of the committee, the gentleman from Ohio [Mr. WYLIE], and he will control those 5 minutes.

The CHAIRMAN. Without objection, the gentleman from Ohio [Mr. WYLIE] will control 5 minutes of the time.

There was no objection.

Mr. BARNARD. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Chairman, let me begin by reminding the Members that the agreement reached by the gentleman from Michigan [Mr. DINGELL] and the gentleman from Texas [Mr. GONZALEZ] has become original text under the rule, and title IV is part of the original text under this agreement. A number of us here are asking today that that title be stricken.

We strongly believe that title IV should be stricken because it is counterproductive and it is going to weaken banks, not strengthen them, it is going to make banks more likely to fail, and it will make the price tag to the taxpayers in the end more costly, not less costly.

Now, in the debate on this motion, we will hear from the opponents a lot of allegations that we are replaying Garn-St Germain, and that we will do that unless this proposal stays in the bill. Let me indicate that that is simply not the case.

We on the Banking Committee were not born in the last century. We worked very, very hard to make a series of regulatory improvements so that we will not relive Garn-St Germain. Let me indicate what some of those regulatory improvements are that are in title I and title II of the bill. It is not the case that we are reliving Garn-St Germain. Here are some of those regulatory improvements:

Annual onsite examinations for banks, which will be required of every bank in the country for the first time in history; prompt corrective action and early intervention for failing bank systems, which requires the regulators to get in there early when there is the first sign of weakness and take a series of mandatory actions; restrictions on broker deposits, which will reduce the insurance fund's exposure to troubled institutions; and risk-based deposit insurance premiums, which will make it costlier for banks to engage in risky activities.

Mr. Chairman, there would be no direct investment of insured deposits in the stock market or in commercial or real estate projects.

Let me emphasize all the things we are doing in title I and title II to strengthen the regulatory system at considerable cost to the banks for safety and soundness purposes so that we will not have a replaying of the S&L crisis. So when Members hear the rhetoric that we are inviting another Garn-St Germain, they should reject it and support this motion to strike title IV.

Mr. GONZALEZ. Mr. Chairman, I rise in opposition to this amendment, and I yield myself such time as I may consume.

Mr. Chairman, this amendment protects some of the biggest of the big banking corporations from proper regulation. Some three dozen of the big holding companies have slipped through the Glass-Steagall Act. They have taken advantage of loose regulatory interpretations and formed so-called section 20 subsidiaries to engage in securities markets. Rulings by the Office of the Comptroller of the Currency have allowed other banks to escape the Glass-Steagall barriers.

All these activities will be brought under the regulatory provisions of title IV, but if the title is stricken, the J.P. Morgans, the Chase Manhattans, the Citicorps, and other big banks would be home free. In addition, of course, the striking of title IV would wipe out an opportunity for the House to set up a rational, safe structure for security powers in place of the hit-and-miss loophole process now being employed by the regulatory agencies.

Title IV contains safeguards for the public and for public moneys. The banks oppose these safeguards. They want benefits without responsibility. The Congress should represent the public and not cave in to this blatant, all-or-nothing demand from the banking industry.

A decade ago an almost identical test was before this House. The House failed that test and voted to let the savings and loan associations expand into these new hazardous activities. The House has a make-up test today. A passing grade requires keeping title IV and public safeguards in this bill.

Mr. Chairman, I reserve the balance of my time.

Mr. BARNARD. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL of North Carolina. Mr. Chairman, we are here today because our country needs a safe, sound, and vigorous banking system. We don't need this banking system for the sake of bankers. We need it for the sake of our whole economy—for small businesses, for consumers, homeowners, savers—everyone.

Mr. Chairman, there are problems with our banks today. Historically, banks made a living by lending to business and consumers. At one time, most of this business was theirs. But things have changed. Big companies now go directly to the market for money; they issue their own commercial paper on Wall Street or go to large nonbank lenders like General Electric [GE] Credit, bypassing the banks. Often consumers also bypass banks. Automobile companies, for example, finance the cars they sell. The largest issuers of credit cards include Sears, American Express, and AT&T. Department and other stores also often offer their own credit cards or other credit.

Consequently, the ability of banks to make money has been severely curtailed. To maintain a healthy, safe, sound banking system, we need to recognize that changes have taken place and to modernize the system accordingly. If we do not, the industry may not be able to pay its own way and ultimately taxpayers may be called upon to make good on the promise of deposit insurance.

When I first arrived here in the mid-1970's, when Henry Reuss was chairman of the Banking Committee, we had long, exhaustive studies of these issues and the publication of the FINE "Financial Institutions in the National Economy report. That had been preceded by the Hunt Committee Report in 1971. Then in the 1980's the Reagan and Bush administration conducted studies. The Federal Reserve and others also have engaged in exhaustive studies.

Almost everyone who has spent time on the subject has come to that conclusion. Again, we need this reform of banking laws not for the banks, but for all of America—for small business, for consumers, for taxpayers, for savers. We need a safe, sound, competitive banking system—to foster a strong economy, to provide jobs for our people, to be able to compete in international trade.

Mr. Chairman, the conclusion of almost everyone who looks at the banking system is that banks should be able to diversify, to increase their opportunities for earnings and to decrease the likelihood of losses and financial difficulties. Banks should be able to diversify geographically and also in terms of products and services. It has been said that banks have been said that banks have engaged in bad real estate loans, loans for leveraged buyouts, and so on. This is all true, but part of the reason they have taken these risks is because of limitations on what banks can do. Since much of their traditional business is now going to others, banks' opportunities to earn and grow have been limited.

If we were talking about any other kind of business, you might ask, "Why do we care? Let the marketplace sort it out." The reason Congress has to worry about the profitability and soundness of banks is that the Federal Government ultimately stands behind the deposit insurance system at banks, savings and loans, and credit unions. If banks can't compete and survive in the marketplace, the taxpayer may wind up paying the bill.

Mr. Chairman, one reform that clearly can help is the expansion of interstate banking and branching. A bank that operates in more than one region can spread its risk. It is less likely to be devastated by a regional recession—as the banks in Texas and New England were—if it also operates in other areas where the economy is stronger. Geographical diversity can lead to real strength. And interstate branching also can lead to much greater efficiency by reducing duplication in bookkeeping, personnel, and other functions.

It has been said that only the big banks want and need to offer new products and services. To some extent that is true. Smaller banks can continue to do what banks have done throughout history and do very well. Many are thriving by doing just that. But the country also needs larger banks if we are going to be fully engaged and competitive in an international economy. If we want to create new opportunities and a better standard of living for our people, then we have to have a number of banks big enough to operate effectively in the international arena—big enough to deal with and compete with other world-class banks and to help finance our exports. Recent testimony in the House Banking Committee indicated that small community banks—probably over 10,000 of the 12,500 banks in business today—provide only about 17 percent of the credit needs of this country. Obviously, we need healthy large banks also.

As I said, Mr. Chairman, almost everyone who studies these issues comes to the same conclusions. Our Financial Institutions Subcommittee, which spent a lot of time and energy on this subject, also came to the same conclusions. We on the subcommittee passed our version of the banking bill, which was essentially the administration's bill. The vote was unanimous, 36 to 0. Democrats, Republicans, liberals, conservatives from all over our country all came to essentially the same conclusion: We need to modernize the system.

But lately the water has been muddied. There has been widespread misunderstanding of what our banking committees have done. The perception has spread that our bill does for banks what Congress and the administration did for the S&L's in the early 1980's. This is a totally incorrect perception.

When the S&L's experienced great difficulties in the early 1980's, their capital requirements were reduced at the same time they were allowed into commercial lending activities like junk bonds and direct investment in real estate—all with insured deposits. At the same time, supervision and regulation of S&L's were greatly curtailed. This proved to be a recipe for disaster.

Mr. Chairman, our Banking Committee learned from the disastrous S&L experience and took precisely the opposite approach with banks.

In our bill, we raise capital requirements and improve capital enforcement. We improve and expand supervision and regulation. We don't allow any expanded activities with insured deposits. New activities can only occur in separately capitalized, separately regulated affiliates.

Mr. Chairman, let me say it again so it will be clear. Our committee learned from our country's disastrous experience with the S&L's and has recommended an entirely different course for the banks.

Now, however, we have a problem with the bill before us. The Banking Committee passed a very good bill. Our bill improved regulation and supervision. It called for early intervention when banks get in trouble. It increased capital requirements. It permitted sound steps toward modernization, geographic diversification, and new products and services.

But, Mr. Chairman, because of parliamentary maneuvering and committee rivalry, title IV of our bill has been replaced with a new creation by Chairmen GONZALEZ and DINGELL. Title IV was the title of our bill dealing with products and services. The Gonzalez-Dingell approach would not only prevent modernization of the banking system in these areas, but would turn the clock back significantly and harmfully. For example, under this approach, certain disclosure requirements that would apply to banks, but not securities firms that may also sell insured products, would essentially put banks out of the Government securities market, a longtime common business for them. This could cost taxpayers more to finance Government debt and expose the Government to a greater risk of manipulation and fraud. Second, banks could not offer mutual funds that included stocks of companies that have borrowed from the bank—essentially taking banks out of the mutual fund business. Third, the compromise prohibits banks from conducting discount brokerage activities within the bank, whether or not the bank is affiliated with a securities firm. Discount brokerage is essentially risk free and provides much needed fee income to banks. Fourth, interstate insurance sales, even in States where the bank is licensed to sell insurance products, would be banned. A number of banks do this today. And fifth, both the sale and underwriting of title insurance is prohibited—a low-risk activity many banks engage in today. In fact, more than 20 percent of U.S. banks now sell insurance products. This looks to me like a cleancut case of a raid by the securities and insurance industries on what banks are doing now, not new products and services, but what banks are already doing and have done for many years. Now, Mr. Chairman, I like and respect all of these industries. Chairmen GONZALEZ and DINGELL are fine men and are among our most capable leaders, but we must vigorously oppose the changes they have made in this bill. If we do not, the taxpayers will pay a high price.

Mr. Chairman, the bill before us allows the banking industry to borrow some money to meet its short-term needs, then provides for bank insurance premiums to be applied to paying back this debt. But if we don't modernize the banking system, don't allow the banking system to make a living and pay its own way, then it will not be too long, I predict, before it will be back seeking taxpayer money. Mr. Chairman, I oppose any attempt to simply provide taxpayer loans to bail out failing banks without necessary reforms.

The Gonzalez-Dingell approach, in my opinion, virtually guarantees that the banking industry will be forced to seek taxpayer money from the Congress within a reasonably short period of time. We simply cannot afford to take that chance. We should delete title IV. We will be far better off without it. The status quo is better than a step backward.

Mr. Chairman it is an absolute tragedy that we can't move ahead with more significant banking reform, like that reported by the Banking Committee, at this time. But if we cannot, we must at the very least defeat this effort to reduce the ability that banks already have to pay their own way.

Mr. Chairman, I would like to briefly comment on several other aspects of this subject.

DEPOSIT INSURANCE

The Bush administration is claiming that it wants to limit deposit insurance, but that Congress won't go along with it on this much needed reform. Here's how the administration wants to limit deposit insurance. It would say that each person could have no more than $100,000 insured in a bank and another $100,000 IRA account insured. What they don't tell you is that under their proposal each individual could have these two $100,000 insured accounts at each of over 12,000 banks, over 14,000 credit unions, and 2,000 savings and loans. Their limitation on deposit insurance would be purely cosmetic.

INTERSTATE BANKING

Another myth regarding this bill is that if interstate banking is allowed, money will flow out of small communities to the big money center banks. This contention is not borne out by facts. My State of North Carolina, for example, has three big regional banks. We also have about 80 small- or medium-sized banks which do very well. Big banks are not taking money out of the small communities. It is the genius of our system that money flows to where it is needed.

THE CORE BANK PLAN

There are very serious problems with the core bank proposal. We now have in this country what some call a credit crunch. Many small businessmen who previously had been able to get loans are being turned down by banks. Regulators are reported to be cracking down, banks are trying to build up their capital, and for these reasons some banks are making fewer loans—even good loans—in this time of recession. The core bank proposal would shrink the size of the banking industry by around 30 percent—somewhere between 25 and 35 percent. Think about it. It already is difficult for small business to borrow money. Under the core proposal we would shrink the pool of funds for small business and consumers by another 25 to 35 percent.

The core bank idea does share a certain appeal, but it would create a massive credit crunch in our country and must not be adopted.

Mr. Chairman, I respectfully urge our colleagues to support the amendment to strike title IV of H.R. 6, resist the core banking proposal, and support the reforms in our bill.

It is shortsighted that we will not be able to achieve more real reform in this bill, Mr. Chairman, and I hope that the House will return to this subject soon.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. LENT], the ranking Republican on the Committee on Energy and Commerce.

Mr. LENT. Mr. Chairman, in my 2 minutes I would like to very quickly make two points. The best argument that can be made in favor of this motion to strike is that it will eliminate all of the confusion over bank powers, firewalls, functional regulation and underwriting, and it will restore current law.

The effect of this motion, if successful, will be to eliminate the controversial Dingell-Gonzalez agreement, which was not considered in any subcommittee, not in any full committee, either in the Committee on Banking, Finance and Urban Affairs, or the Committee on Energy and Commerce. But it was hatched in some smoke-filled room with only one member of the Committee on Banking, Finance and Urban Affairs present, and that was the chairman, the gentleman from Texas [Mr. GONZALEZ]. We learned this from the chairman himself during the Rules Committee consideration.

Oh, yes, Chairman DINGELL had his subcommittee chairman in the room. The gentleman from Massachusetts [Mr. MARKEY] was there. The gentlewoman from Illinois [Mrs. COLLINS] was there. But not one subcommittee chairman, not even a freshman member, from the Committee on Banking, Finance and Urban Affairs was present.

Point No. 2, for those Members who like the insurance provisions in the Dingell-Gonzalez amendment, be advised that the entire text of the Jimmy Hayes amendment proposed at the request of insurance agents will be included in the Republican motion to recommit with instructions. So if you are considering a vote against this motion to strike, think again. You can vote for the motion to strike and then vote in favor of the insurance agents provision.

Mr. BARNARD. Mr. Chairman, I yield 2 minutes to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Chairman, may I pose a question for us to consider: Why does the banking industry make so little money today? There are a number of reasons. Principal among them is that other deliverers of financial services have skimmed off much of the profit from products that were once major profit centers in banks.

Take credit cards for example. We do not have to go to a bank any more to obtain a multipurpose credit card. We can get one from our insurance company, from our auto manufacturer, or from AT&T, our long distance telephone company, to mention but a few.

Take car loans, too. We do not have to go to a bank for a car loan any more. We can go to GMAC Financial, Ford Financial, or to Chrysler Financial.

We do not have to go to a bank for a home mortgage. Many go to Sears, apparently the biggest originator of home mortgages in America today.

Nor do we have to go to a bank for a business loan. We can have an investment banker issue commercial paper or to issue long-term debt for us.

As the result of these encroachments, banks have come to put too many of their eggs in one basket. Too many of their eggs are now in the real estate and commercial lending basket, and as banks' traditional business has dried up, the business of the loans they still can make has risen.

Well, what do we do about it? That is what we are about today. What do we do about this situation.

My fear is if we adopt the bill as it comes to the floor, we do two things: we add to the regulator. Burden and associated costs for banks, and I believe some of that is unavoidable. We also reduce the ability of banks to make money. We further restrict their activities beyond that which is permitted by current law.

By striking this title, by striking title IV, we would set aside for now, the most contentious issue that divides us. There is no consensus on them; instead, there is enormous confusion on those issues.

Let us narrow the scope of this bill to cover those issues on which there is general agreement. Let us extend a line of credit to the FDIC so depositors in prized banks may receive their funds. Let us reform—in a modest, sensible way—deposit insurance. And, finally, let us permit some modest branching of banks across State lines.

To do those three things, to keep this measure relatively simple and straightforward, adopt our motion to strike title IV.

Mr. GONZALEZ. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the reason the commercial banks are in trouble in this country is because they loaned money to Third World countries, because they loaned money on these LBO's that have all caved in, because they loaned money to commercial real estate interests that have built more commercial real estate than this country is going to need for the next 5 years. That is why we have trouble.

Now, they are saying to you now the solution is to let them into the securities industry, that lost itself $160 million last year all alone. They want to get into this business without safeguards, without firewalls, without protections for depositors, for investors, for taxpayers.

We already had a vote on this in 1982 for the savings and loan industry. Plenty of new powers, no safeguards.

The 1990's, we are going to have to pay $500 billion to bail out the S&L's. $500 billion? That is a national health care program for the 38 million people in this country that do not have any health insurance. $500 billion? That provides a good education for every child in our country. $500 billion? That rebuilds the infrastructure of this country. That will provide for the money for unemployment insurance that we need for the millions of people across this country with no job.

They ask you today to repeat the same mistake: new powers with no supervisions, with no regulations, with no firewalls.

We will give them the powers. That is what Dingell-Gonzalez does. We will allow them out with new responsibilities, with new opportunities. But we will make sure that in the end it is not the taxpayers, it is not the depositors, it is not the investors who are going to be left holding the bag, paying the bills. Because before this year is done, 70 billion for the commercial banks, 80 billion more for the S&L's. Do not go down that path.

Mr. BARNARD. Mr. Chairman, I yield 2 minutes to the gentleman from Idaho (Mr. LAROCCO).

Mr. LAROCCO. Mr. Chairman, as a member of the Subcommittee on Financial Institutions of the Committee on Banking, Finance and Urban Affairs, I have an inkling of what the House banking bill is all about. After all, we held 16 long days of hearings and 14 days of markups in subcommittee and full committee. We debated more than 300 amendments. I can tell you what I know about the banking bill: it is not a deregulation bill. It is a bill that responds to the financial realities of the nineties. Think of that. It is a bill that recognizes what goes on in the real world.

Members want to keep banking and commerce separate, but you are too late. Ford Motor Co. owns an FDIC-insured depository, an insurance company, a real estate company, and a mortgage and finance company.

Sears owns an FDIC-insured depository, a securities firm, an insurance company, a real estate company, and a mortgage and finance company.

What about American Express, which owns an FDIC-insured depository, a securities firm, an insurance company, and so on?

Banking. The Committee on Banking, Finance and Urban Affairs tried to deal with the real world. We dealt with safety and soundness provisions, and did a good job. We tried to end too-big-to-fail, and we did. We required early intervention. We set up strict high capital standards.

This bill that we are talking about today in title IV is not warmed over Garn-St Germain. That was not the bill that we reported out of the Committee on Banking, Finance and Urban Affairs. Those are not the goblins and ghoulies of Halloween here.

That bill lowered capital standards. That bill, unlike ours, did not require annual audits, because it did not. The regulators let bad S&L's go on for too long.

It was mentioned in earlier debate that the core banking provisions and that amendment was the only reform package we had today. Do you know what the other reform package was? The House Banking, Finance and Urban Affairs bill, but we did not get a chance to vote on that.

I can tell Members all about the firewalls in the bill of the House Committee on Banking, Finance and Urban Affairs. They were large. I can tell Members about how it takes away the regulators' discretion to ignore bad banking practices.

Mr. Chairman, let me tell Members that that bill was bipartisan. Let us vote for the Barnard-Hoagland motion to strike.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. MCMILLAN].

Mr. MCMILLAN of North Carolina. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the motion of the gentleman from Georgia [Mr. BARNARD] to strike title IV. What we have in title IV actually reduces bank insurance powers under current law, further decreasing competition.

I also have serious concerns about the security portion. Few of us realize that over 80 percent of the underwriting of securities in this country is concentrated in five firms. Although the Dingell-Gonzalez version does allow corporate securities underwriting and sales, which should increase competition and enhance access to capital by small- and medium-sized businesses, the firewalls created are unnecessarily restrictive.

The best defense against abuse and self-dealing is ample competition. Under Dingell-Gonzalez, many banks will choose not to compete, leaving it all in the hands of five underwriters.

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The Committee on Banking, Finance and Urban Affairs' version of both insurance and securities provisions would have been far superior. Current law is our best option at this point.

Accordingly, I urge my colleagues to support the motion to strike title IV.

Mr. GONZALEZ. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. Chairman, I am here today to speak on behalf of what I think is a fine compromise in the Dingell-Gonzalez substitute for this bill. The fact is that this Congress ought to deal with a better understanding of what is taking place on the Committee on Banking, Finance and Urban Affairs and what is taking place with banks in our country.

Ten years ago this country controlled 8 out of the top 10 banks in the world. Today we control 1 out of the top 50, and it is number 26. The fact is that that bank lost $850 million last quarter.

The banks in this country are in trouble, but we have 14,000 banks in the United States. We have more banks in the State of Texas than the entire rest of the world combined.

Yes, banks have found themselves in trouble, but those troubles have been passed right along directly to the American consumer, to the American taxpayer, and through no fault of that taxpayer.

We are now going to be bailing out the savings and loans to the tune of $1 trillion, and we are going to be bailing out the commercial banks, as was recently estimated by Mr. Siedman, to the point of $210 billion in this next year alone.

Let me just say, if we want to do something about building firewalls between what these banks want today and what they had 30 or 40 years ago, when they ran this country into the ground in the Great Depression, if we want to stand up to those institutions and tell them that, yes, they can have more powers, but no, they are not going to be able to break through the firewalls and come through those firewalls with whatever companies they want to have in the banking industry, getting whatever kinds of investments they care to and tell us, as the savings and loans told the people of this country, just give us a few more powers and let us grow out of our problems, if that is what we want to do, then we ought to go back to the banking system as it exists today and let the regulators take control of the banking system. Let the bankers come back in here, a couple years from now, with their new compromises that will again leave the American taxpayers on the hook.

It seems to me if we want to have a good, reasonable compromise on how to gain some more competitiveness in the American banking system, that we will endorse and support the compromise of the gentleman from Texas, Chairman GONZALEZ.

Mr. BARNARD. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from North Carolina [Mr. PRICE].

Mr. PRICE. Mr. Chairman, I rise today to support the Barnard-Hoagland amendment. This amendment would strike title IV, which contains the Gonzalez-Dingell compromise on financial restructuring.

I do so reluctantly, because I believe strongly that this House should legislate on these very important issues. Striking title IV would return us to the status quo, at least temporarily, and the status quo is not satisfactory. What we ought to be voting for is title IV as reported by the Banking Committee. The rule does not permit this, which is why I voted against the rule. And now we are faced with a version of title IV, the Gonzalez-Dingell compromise, which would weaken our banking system dangerously. The status quo needs changing, but this provision would make it worse.

I want to focus my remarks today on the importance of the legislation for the South, and the stakes for the South are tremendous. It is no accident that southern members on the House Banking Committee, both Republicans and Democrats, have been among the strongest supporters of true banking reform legislation, both in 1988 and this year.

By opening up the capital markets to more competition, the House Banking Committee version of title IV would have made it more likely that companies or local governments in the South could deal with financial institutions located in their own States and communities. These institutions know these companies and governments, have a stake in their community, and would help bring needed capital into my region and other regions. The Gonzalez-Dingell compromise, by contrast, would not only fail to do this, but would actually encourage the future concentration of the securities industry.

The House Banking Committee's original provisions to protect abuses from the affiliation between securities firms and banks were more than adequate: Separately capitalized affiliates, tough restrictions on activities between these affiliates, and a prohibition on the use of federally insured deposits to fund these securities activities.

A well-structured reform proposal, in my opinion, would increase competition in all these industries, provide effective and efficient supervision and regulation of all these industries, and provide consumers with more financial choices and lower prices. The Gonzalez-Dingell compromise meets none of these tests.

The Gonzalez-Dingell compromise, though it flies under the banner of reform, is basically designed to protect the securities industry. The securities industry is highly concentrated, much more concentrated than the banking industry. Companies trying to raise capital in securities markets and local governments trying to raise money through revenue bonds to make needed infrastructure improvements have to mainly deal with securities firms with their headquarters in New York.

I ask all of you what is so great about allowing New York firms to make profits on our local communities and then use them to pay exorbitant salaries to the young Gordon Gekko's of the world. I want strong local and regional institutions to be able to compete in this business. They could do so successfully and safely, and they would reinvest in the community and in the region.

We've heard a lot of stories about villains in the banking industry today, seeming to suggest that because of some bad individuals, we should punish an entire industry. If that is our standard, the securities industry deserves some pretty rough treatment considering Ivan Boesky, Mike Millken and others. They clearly do not deserve to be given a safe haven from competition as in the Gonzalez-Dingell compromise.

If people are concerned about community reinvestment, they will support the striking of this title. Unfortunately, for now, this is the only option available to us, to make sure we do not weaken our banking system further. We can and must develop positive provisions to maintain safety and soundness and also to strengthen our communities, our financial system, and our economy. But we must first strike this counterproductive provision.

Mr. GONZALEZ. Mr. Chairman, I yield 2 minutes to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Chairman, I rise in opposition to the Barnard-Hoagland amendment, and at the same time I want to express my great respect and admiration for the gentleman from Georgia [Mr. BARNARD], my colleague and friend, and the gentleman from Nebraska [Mr. HOAGLAND]. The gentleman from Georgia [Mr. BARNARD] is one of the most knowledgeable members of the committee, and I reluctantly oppose the amendment. But I think that there has been a compromise on all parties in order to achieve a common goal.

I do not like all elements of the compromise. I was for diversified holding companies. It is not in there. I wish it were.

The Barnard-Hoagland amendment will delete all provisions of the compromise title IV which was negotiated by Chairmen GONZALEZ and DINGELL, which forms the underlying text under consideration by the House.

The compromise title IV of the bill is a true compromise. Almost by definition, a true compromise means that all parties have had to give up something in order to achieve a higher goal. In the case of this bill, all parties involved had to give up something in order to advance the process of reforming the outdated laws governing our financial system. This is clearly the case for this compromise legislation.

For example, the text of the compromise does not allow the creation of diversified holding companies. I supported that. This is an important provision included in the Banking Committee version of title IV. However, the Energy and Commerce Committee version of title IV would not have allowed banks to engage in any insurance activities. The compromise includes almost all of the Banking Committee provisions regarding the ability of banks to sell insurance. These two examples illustrate that the compromise text of title IV is a true compromise.

It will leave a largely positive mark on the financial industry. The clearly outdated Glass-Steagall provision which has existed for over 50 years is finally repealed by the compromise. This is a clear victory for common sense. Our financial industry has changed dramatically over the last 50 years and it is about time our laws were updated to reflect this important fact. Repealing the Glass-Steagall Act is a strong step in the proper direction.

In addition, the compromise contains an amendment I offered during the full Banking Committee markup which is an important safeguard of taxpayer funds. The provision follows a similar proposal I offered which was accepted in the FIRREA legislation of 1989. Simply stated, the provision will save hundreds of millions of dollars to taxpayers and will permit insured banks and thrifts to combine their operations. This is an important part of title IV since it allows private capital—not taxpayer funds—to be used for banks or thrifts which may experience problems. Clearly, this amendment, which enjoyed unanimous bipartisan support during the full committee markup, is responsible legislation which will protect the taxpayers. Voting to delete title IV would also remove this important provision.

Another positive aspect of the compromise title IV is that it retains most of the so-called firewalls proposed by the Banking Committee. Firewalls are necessry to prevent an unsafe mixing of commerce and banking activities; they are a safeguard of taxpayer money which is backing the deposit insurance system. While I, too, wish the final version of the firewalls would have not modified the firewalls proposed by the Banking Committee, they still provide important protection against losses by the taxpayers.

Moreover, title IV is part of the central effort of this legislation; namely, to bring about true reform of the financial system of our country. For many years, it has been obvious to most members of the Banking Committee that basic reform of the financial system is in order. Our banks are now experiencing difficulty in their competition with foreign banks, primarily because of the fact that more than 20 foreign banks are larger than the largest U.S. banking organization. This means our banks often don't have the ability to provide the amount of funds needed by their international customers at a reasonable rate. Continuing to lose this international competition against our economic competitors would be a vast economic defeat for our economy and our Nation as an international leader.

In addition, it is time to recognize that our financial industry is operating in conditions which are vastly different from the conditions which existed 50 years ago. Today, computers, satellite communications, fax machines, and a host of other technologies as well as new financial products exist which have greatly changed the financial environment. This change has resulted in a much more integrated financial services market which is capable of offering more products to customers. I think consumers have benefitted from many of these changes. As a result, I believe our legislation must reflect these changes and permit the industry to meet the challenges of the future. The compromise represented in title IV is a first step in that direction.

Finally, the compromise reasserts the congressional responsibility to lead in the area of financial services reform. For many years, the regulators and the courts have taken it upon themselves to bring about changes which should have been the result of carefully considered legislated changes supported by elected officials. The courts and the regulators should no longer be permitted to do the work of the Congress.

Mr. GONZALEZ. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong opposition to this amendment. There is an idea floating out there in the ether that if we move to strike title IV, we are being neutral. Well, we are not putting anything in. We are not dealing in any way with it. So, therefore, it is right down the middle. Hogwash.

If we strike title IV, we are weakening this bill to the point of death. If we strike title IV, we are not putting in the moderate protections that the Committee on Banking, Finance and Urban Affairs originally put in. We are putting in no protections at all.

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And the regulators, who have proven to want to deregulate and deregulate, they do not look at the Treasury, the Federal Reserve and the OCC, particularly the Fed. They do not look at the loss to the Treasury. They simply look at the health of the banks, and the health of the banks goes up and down. And they let them into new industries, and for a few years they make profits. And then the plug is pulled and they lose money, and the taxpayer, not the Fed, is left holding the bag.

This deregulation will go on like a frenzy if we strike title IV. Taxpayer dollars will be used for all kinds of new activities.

I have been told we should not strengthen the securities industry in New York. That is right. But let me say something. The securities industry in New York is not insured by the taxpayer. Anyone can pop up and decide to get into the securities industry, and if they fail they lose their money, not your constituents' money.

But when the banks get into these new fields they lose taxpayer money. Unless we have firewalls, we cannot protect the taxpayer.

Do not vote for this amendment or we will cripple this bill so that it will be a travesty.

Mr. GONZALEZ. Mr. Chairman, I yield 2½ minutes to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Chairman, I thank the gentleman for yielding time to me.

I want to also emphasize the fact that striking title IV is not a vote for the status quo. Rather it is a vote to let the unelected regulators and judges decide these issues as they have for the past few years. And believe me, they have not done the best job of it.

If Members want to delegate their powers to the unelected bureaucrats, then vote to strike. But if they want to be responsible Members of Congress, then I urge them to oppose this amendment.

I want to remind my fellow Members that the effect of this amendment will be to eliminate all of the important provisions of title IV. For example, title IV closes a loophole opened by the Comptroller of the Currency who ruled that national banks may sell insurance nationwide from a small town. Title IV clarifies congressional intent by limiting such sales to small towns in the State.

But indeed, there is a legal question as to whether the provision allowing national banks to sell insurance in small towns exists. Without the clarification of this legislation, national banks could lose all of their powers to sell insurance in small towns.

The provisions of the legislation give States the opportunity to decide whether out-of-State banks should be allowed to sell insurance in their State. What could be fairer than that? Yet that provision would also be stricken by this amendment.

Title IV includes important consumer protection when banks sell insurance. In particular, it forbids the solicitation of insurance required by a loan until there is a written loan commitment. It also protects consumer confidentiality.

These crucial consumer protections would be lost if the motion prevails. Further, already consumers have lost some of their confidence in insurance. This has been caused by insurance failures like that of Executive Life and Mutual Benefit Life. As a result of those insolvencies, insurance companies' stocks fell sharply. For example, Aetna by 8 percent, Cigna 3 percent, Conseco 22 percent, Travelers 7 percent. And who was hurt by this? People like Olga Pegelo, who is losing 30 percent of her retirement annuity benefit, John and Jane Q. Public who put their kid's college education money in guaranteed investment accounts, and senior citizens whose pension funds were put into such GIC's.

Now if banks are allowed to get into insurance sales or insurance underwriting and the bank's insurance activities fail, consumers will lose confidence in the banking industry. As Chairman DINGELL points out: banking is not about money, it is about confidence.

And if you support the insurance provisions of the bill, I would not rely on a motion to recommit, because you don't know what else may be in that motion. I doubt it will contain our strong consumer protections.

We are cheating the homeowners who are trying to buy their own homes and save a little money for their kids' college education. We are cheating the senior citizens whose pension funds have been put in insurance. Do we want to do this to our constituents? Do we want to do this to our banking system? The answer is no.

Both the Banking Committee and the Energy and Commerce Committee have spent an untold amount of time prudently examining all of the very important issues contained in title IV regarding financial services. When such a good faith effort has been made by the two committees with primary jurisdictional interest, it is inconceivable to me that anyone would be willing to push all that aside simply because they don't like the results.

The issues raised in title IV were around in 1988, they are here now, and they will be back again in future years until we resolve them. It makes no sense to pass this banking legislation without title IV. Many of us wanted a narrow bill originally but the administration asked us to consider a broad bill. Well now we have a broad bill and those who were originally asking for a broad bill don't like the results. Now that is ironic and unfortunate.

Let me also point out that title IV is supported by a wide variety of groups, from the Consumer Federation of America to the American Insurance Association, from the Independent Bankers Association of America to the Independent Insurance Agents of America.

I urge rejection of the amendment.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I rise in support of the Barnard amendment. But I would stress that the compromise language on title IV wrought by the distinguished chairs of Energy and Commerce and Banking Committees is clearly preferable to the title approved by the Banking Committee. For instance, under the compromise, banking and commerce would remain separated. However, the manner in which this compromise is being brought before this body is a procedural problem of profound proportion. The extensive statutory language contained in this compromise has been under scrutiny for only a couple of days. It is uncertain what changes would be made in the compromise language and if this is the time to make such changes to a fragile banking system. It appears that the compromise approach represents a son of Glass-Steagall, which in some ways would construct more impervious barriers than the original Glass-Steagall wall between commercial banking and investment banking.

Many of the safeguards incorporated in the compromise title IV seem reasonable to this Member.

My opposition to the compromise is derived from the concern that it has not been properly vetoed and that a more narrow bill is now the only banking legislation which can pass this session without risking a Presidential veto.

The most important aspect of this bill at this date is the refurbishment of the troubled FDIC bank fund. Let's not play games with the American public's confidence in the banking system.

I would stress, however, that a compromise decision to strike title IV would not represent a signal for regulators to mount motorcycles of change. In thrashing through these issues, Congress is flashing a yellow, not a green, light for expanding bank powers. Regulatory caution on this subject should be the watchword.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am pleased to support the Gonzalez-Dingell compromise. I urge my colleagues to oppose the amendment to strike its provisions from H.R. 6.

Mr. Chairman, I am particularly interested in the insurance provisions of the compromise. On this score the compromise is very carefully crafted to bar current excesses without overregulating.

Mr. Chairman, there is absolutely nothing in title IV that would in any way limit the ability of my State to allow our banks to sell insurance. And that's very important to me, because Indiana banks have long enjoyed the power to sell insurance. I would strenuously oppose any effort to limit Indiana's freedom to make that decision.

But, by the same token, I must oppose efforts to limit the right of any State that chooses a different path. A State should be free to decide whether it wants banks to sell insurance to its citizens. Some States will say "Yes;" some States will say "No." But all of the States will listen to their citizens and reflect their desires.

Mr. Chairman, the Gonzalez-Dingell compromise protects States rights. Consider the small town exemption that is now found in the National Bank Act. The Comptroller has ruled that a national bank can set up shop in a small town and then sell insurance to customers located anywhere in the State, anywhere in the United States, in fact, to customers located in any place at all.

That doesn't make any sense. Congress enacted the smalltown provision to permit the sale of insurance in small towns. We were concerned that rural residents might not have access to insurance services. But Congress did not intend to allow national banks to sell in big cities.

The Comptroller's ruling just makes the banking laws a game: A national bank can evade the limits on insurance activities just by using a small town as a launching pad to sell to residents of a big city.

Mr. Chairman, that result is the wrong result.

It's not enough to say that we should strike title IV in order to preserve current law. Congress is here to decide whether new laws need to be enacted. When a regulator or court reaches an absurd conclusion, it's up to Congress to act.

Whatever the result of today's debate, I hope we don't come to the day when legislation can be defeated just because it offers a new idea. Let the policies of title IV be debated on their merits. Let the rights of States be upheld.

Mr. Chairman, I urge my colleagues to defeat this amendment.

Mr. BARNARD. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding time to me.

I wish to point out that the current provisions in title IV operate on a very simple and easily understood principle. "If something is broken, let us see if we can make it worse." The current suggestions for governing banks powers in the proposed title IV narrow the scope of activities which a commercial bank may engage in today, so that banks which are operating on razor-thin margins of profit are going to be told that if we adopt this title IV that they have to try to survive, meet higher capital standards, pay more regulatory costs, while they have a smaller field in which to do business.

This is all occurring while nonbank commercial enterprises are conducting bank activities. It is not a surprise that large commercial enterprises who used to go to banks and borrow money now extend their own commercial paper and get their credit needs met through the securities market. They are no longer customers of bank. Yet we heighten the regulatory net. We tell banks they cannot extend products and services, and ironically, we refuse to let commercial enterprises inject their resources into struggling banks. There will be amendment offered to allow commercial enterprises to help weak and sick banks, so we do not have to turn taxpayers and ask one more time, "Please help bail out a struggling institution." What the Banking Committee wanted to do was to allow commercial enterprises to engage and help strong banks get even stronger, and keep them from becoming risky enterprises.

What we have in title IV is not modern, progressive, sound, reasonable economic policy, it is the Bank of England's policy in 1634, except we are taking out the progressive parts.

Let us not adopt title IV as it now stands. Let us adopt the amendment of the gentleman from Georgia, which makes absolute sense. Let us keep our banks alive. Let us come back on another day and adopt a policy that gives free enterprise a chance to work, and keeps our taxpayers from being robbed.

Mr. GONZALEZ. Mr. Chairman, I am delighted to yield 2 minutes to the gentleman from Minnesota [Mr. VENTO], another very distinguished member of the Committee on Banking, Finance and Urban Affairs.

Mr. VENTO. Mr. Chairman, I rise in opposition to the Barnard amendment to strike. This administration wants what every administration wants. They want $70 billion in new borrowing and all the flexibility they can get. They do not want Congress giving the type of direction and leadership that is necessary in terms of how those dollars are to be spent or the policy that govern banks.

One of the major problems is that the House is trying to put some limits on the exposure of the deposit insurance fund, and in this title, we put a number of restrictions and safeguards.

What has gone on for the last 10 years or 15 years is that Congress has not had the ability or the opportunity to legislate in terms of the new powers, and the regulators and the courts have been granting these powers hand over fist without the proper types of controls. The regulators have taken an attitude of hands off. We know all about the revolving door and the types of interests that persist in that phenomena and the difficulty of bringing this bill to the floor for so many years.

Reasonable people can differ about the types of firewalls, the types of safeguards that we have, and obviously the Energy and Commerce Committee and the Committee on Banking, Finance and Urban Affairs differed in terms of their particular provision, and the chairmen of the committees got together and worked out what is a good compromise and brought it to the floor. That is the normal process.

Now we have members of the Banking Committee saying, let us abdicate our responsibility here. Some do not like the outcome of what is in title IV of this bill. They say abandon it. They will leave nothing in place and give the administration the $70 billion they are asking for, and all the flexibility they want without any voice of Congress or the necessary safeguards in law.

That is not why we were elected to Congress, and I would expect that my colleagues were elected to serve here and want to make decisions, not abdicate their responsibility. We are receiving a lot of communication from small bankers and others who have indicated that their interests would be best served if we provided a path of certainty and predictability with regard to regulation in law, not regulations that can be changed. The President provided an example of that just last month when he unilaterally attempted to change the policy of bank forbearance.

□ 1620

He decided that FIRREA is too tough. All of a sudden, the President opts for liberalization in terms of credit, and that is an example of what happens when you get politics and policy mixed together. We need law, not political opinion and regulation.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Chairman, as I stated earlier this week, this bill started off well in the Banking Committee but it has been all downhill since. I am still amazed at the back-room, back-door product that came at the last minute and pretends to be a competitive policy.

Let me say it again: There are only two classes of people with capital for the banking industry. One is called investors, and one is called taxpayers. Once the investment community fully digests the direction of this bill, investors will take their dollars elsewhere. Investors will correctly perceive that Congress cannot deal with the bank charter obsolescence in a meaningful way, that Congress does not understand the principle of "diversification of risk," and that Congress is dooming a bank charter to extinction. When investors go, we'll have to tell our constituents to get out their wallets again.

One way to begin to turn the bill around is to delete title IV, an extremely dangerous title. This title does not undertake the modest product and service reforms of the original H.R. 6, but it strips away existing authority—it removes activities that have not caused losses to the bank insurance fund. In fact, these activities have helped bank profitability. It removes legitimate business from banks and further isolates a bank charter. This title is going to lead to a lot of taxpayers owning a lot of banks and real estate.

Let me list some specifics:

First, the bill rolls back existing insurance powers on a broad level. We're divorcing banking from insurance except in very limited cases. The original bill had a compromise where insurance and banking could mix at the diversified holding company level. Both bankers and insurance people were grumbling. That usually means one has found the right compromise.—Now one party is jumping for joy while the other party cannot believe what has happened.

Second, the bill allows banking and securities activities to mix, but places such restrictive firewalls that few banks will take advantage of the provision.

Third, the bill forces national banks not having a securities affiliate to place mutual fund sales and brokerage activities in a subsidiary, increasing overhead for no practical reason.

Fourth, the bill changes for purely political reasons the grandfather date for State banks, within a holding company, to sell insurance nationwide for purely political reasons, thus harming one institution that has legally established the business.

The Bank Committee established a comprehensive structure that would have allowed for the safe-and-sound diversification of business, leading to improved profitability for the industry. It would have provided adequate protections to ensure that financial services would best service the consumer while not jeopardizing insured deposits. This comprehensive structure was thrown out a back window.

Finally, I will say this again: Unless we strike this provision and make other improvements this week, I think someday this bill will be recognized for what it truly is: A colossal policy failure and another indication that this Congress cannot understand markets and make them work for consumers and taxpayers alike. It will be another indication that congressional action erodes our national competitiveness in a world that rewards only efficiency and innovation. It will be another sign that our national treasure, the earning power of working Americans, is taxed not for investing in jobs, or education, or infrastructure, or reducing the deficit, but rather for filling the black hole of political and economic incompetence.

Mr. GONZALEZ. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Chairman, I rise in strong opposition to the amendment jointly offered by the gentleman from Nebraska and the gentleman from Georgia.

Title IV of H.R. 6 is the product of months of hard work and a spirit of cooperation between the Banking and Energy and Commerce Committees. For the past two decades, bank reform proposals have come through this Congress and died in committee or on the floor. Finally, we have a rational, constructive product which is supported by the chairmen of both the Banking and Energy and Commerce Committees.

The Hoagland-Barnard amendment would destroy this compromise and derail this bill. American depositors and American taxpayers need prudent, reasonable financial reform. Title IV will protect their deposits and prevent another massive taxpayer bailout.

Let's look beyond the rhetoric to the reality of today's banking industry. Regardless of the outcome of this bill, banks are entering the securities business—it is a reality. Maintaining the status quo, and eliminating title IV, means that regulators will continue to chip away at existing law—Glass-Steagall—and we will witness an expansion of bank powers without sufficient oversight.

What is not a reality today is a package of firewalls which:

Will insulate federally insured deposits from traditionally nonbank activities.

Will stand up in the face of economic stress.

Cannot be dismantled by regulators at some future date.

Title IV contains these firewalls:

Federal banking regulators have demonstrated on all too many occasions that they cannot regulate this Nation's banking industry. If they cannot check the Bank of New England, or First Republic how can they possibly monitor even larger banks, with a wide range of financial interests, without strong firewalls? I asked this very question of Secretary Brady, and he could not respond. My colleagues, if the Secretary of the Treasury cannot state unequivocally that Federal regulators can provide effective oversight of much larger banks with expanded powers, then how can this Congress justify the removal of structural safeguards from this bill?

I urge all of my colleagues to oppose this amendment.

Mr. GONZALEZ. Mr. Chairman, I yield 1 minute to the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I just would like to give you the perspective of this amendment from an insurance agent's point of view. And there are a lot of them in this country, hundreds of thousands of them.

If we strike, everybody says that the law remains the same, but there was a court decision, a Delaware court decision, which says that a State bank can buy an insurance agency and do business across State lines. Now, that State bank can be purchased by a Federal bank, and if it is purchased by a Federal bank, it, therefore, follows that the Federal bank can do business across State lines in the insurance industry.

What you are going to do is you are going to allow Federal banks to get involved in the insurance industry in business across this country, thus destroying the livelihood of thousands of insurance agents in the long run.

The only alternative, if this is struck, is to pass the recommittal motion with the Hayes amendment in it. So I think everybody ought to be aware of it.

If you are concerned about the insurance industry and the insurance agents in this country, then you should either vote not to strike or to vote for the recommittal motion with Hayes in it.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Chairman, we are not dealing in this amendment or in this bill with any new bank powers at all. We are not dealing with S&L's. We are not dealing with corruption.

We are dealing with an institution group that needs to be helped, and that is commercial banks, to be more profitable.

What the amendment does is strike out of here the provision that strips out from banking powers their existing powers in the insurance area. No new powers are being stripped out, existing powers are. It creates an unlevel playing field, and we should not be creating that. We should be supporting the gentleman from Georgia [Mr. BARNARD] in not allowing that to happen.

Currently, nonbank-bank holders, companies that own those banks, can do things that banks will not be allowed to do if this provision passes. One thing, for example, banks are primary distributors of major Government securities in this country to the buyers. They do it via telephones in this country, and securities companies would be allowed to continue to sell their securities by telephone and distribute them, but banks would not be.

This is a terrible provision that the Committee on Energy and Commerce has sent over in title IV. If we had the Committee on Banking, Finance and Urban Affairs' version of it, I would be supporting it.

We ought to keep the present playing field. Vote for the Barnard amendment. Strip out this bad bill.

Mr. BARNARD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman and Members of the Committee, let me say that the chairman of our Committee on Banking, Finance and Urban Affairs has received tremendous kudos for the product of the House committee bill which was passed, even in the New York Times. It talks about the House Banking Committee headed by HENRY GONZALEZ, "made a good plan better by adding decisive safeguards."

Yes, the Committee on Banking, Finance and Urban Affairs brought a good fine product to this House, but it is gone. It is gone just by the agreement of three or four chairmen, powerful chairmen, but that is neither here nor there.

What is the substance of where we are right now? No. 1 is, we are not revisiting Garn-St Germain. We are not giving the banks one additional new power.

They talk about special interests, the banks are special interests, that they have sought this bill because of special interests. Do you know why we are here today with this compromise? It is because of special interests.

You pass the Gonzalez-Dingell bill, you are going to be fortifying the interests of this country. They have got all of the good investment powers today, and they want it all, but they will tell you that it is because of the fact that banks are not capable, that they do not want them to have it.

Second, the other special interest is the insurance industry. My friends, will you tell me what risk there is in selling insurance? The States have legislated all over this country for banks to sell insurance. No bank has ever gone under because of insurance. That is the other special interest that is being addressed in this Gonzalez-Dingell bill.

My friends, this compromise is a full step backward. It is a punitive step. It is trying to penalize the banking industry, not trying to make it more profitable.

The bailout is to be paid by whom? Not in this bill is it supposed to be paid for by taxpayers. It is supposed to be paid for by the increased premiums of banks.

Will you tell me that if you make banks less profitable they will be in a better position to pay these premiums?

Banks are in the forecast of paying as much as 40 cents per hundred. It used to be 8 cents per hundred. Now it is 23 cents per hundred. They have taken the cap off of 30 cents a hundred, and the GAO says that we need 40 cents a hundred.

My friends, if we expect banks to pay this bailout, give them the additional opportunities to make more money. Also, give them the additional opportunities to increase their capital base.

We are doing nothing in this bill to enhance the bank holding companies to attract money and increase their capital. Now, my ambition is that we would wean ourselves away from deposit insurance.

Let us let the banks, like other financial entities, depend upon their capital for their risk.

□ 1630

But we are not doing that. We are saying that banks are incapable of doing it, so therefore let us penalize them more. If we do not let banks be profitable, they cannot pay for this and the taxpayers will eventually pay for it. We will return if this amendment is defeated.

Mr. GONZALEZ. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Michigan [Mr. DINGELL], our comrade in arms and the chairman of the Energy and Commerce Committee, to close debate.

Mr. DINGELL. Mr. Chairman, I want to commend my good friend and colleague, the gentleman from Texas [Mr. GONZALEZ] for a superb piece of work in handling the legislation before us.

I want my colleagues to know that this is basically a sound bill and I urge them, with title IV, to support it.

I will tell my colleagues that title IV preserves and reinstalls good and intelligent and strong regulation to prevent possible wrongdoing.

If you do not like the current situation, then you should vote against the amendment offered by the gentleman from Georgia [Mr. BARNARD].

If you liked Garn-St Germain, then by all means you should vote for the Barnard motion to strike, because you are going to see all the consequences which occurred from the adoption of Garn-St Germain transpire with regard to the banks now instead of the savings and loans.

The same people downtown who supported Garn-St Germain and the same people in industry who supported it are actively supporting this motion to strike. Title IV does away with the possibility of substantial evils in the industry. It does not move discount brokerage, mutual funds, government securities, or private placements out of the banks.

The compromise offered by my good friend, the gentleman from Texas and I, is a procommunity banker, prodepositor, proinvestor, and protaxpayer amendment. I would urge my colleagues to support it for that reason.

Title IV has the support of the AFL-CIO, the Consumer Federation of America, and believe it or not, Ralph Nader. I do not want my colleagues to vote against it because of the last supporter.

I will tell you it permits the banks to compete. It permits them to do so with a safety net. The safety net would help the banks. It would also assure that the taxpayers and the investors are protected.

It continues the prohibition against industrial and other commercial firms acquiring banks.

It links the repeal of the Glass-Steagall law separating banking and securities activities to the establishment of strong firewalls and it would assure the integrity not only of banking, but of the securities industry.

It requires tough, functional regulation of new securities powers by giving the securities regulators control over the securities activities of banks, and it preserves to the Federal Reserve Board its current role of an umbrella regulator of the holding company.

I believe that it is important to reject the amendment offered by the gentleman from Georgia because the legislation that we have here before us, title IV, allows regulators to require the divestiture of banks or securities affiliates who repeatedly violate firewall provisions.

Title IV requires regulators to provide annual reports on the adequacy of enforcement and regulatory resources. It also requires auditors to do something that they were never required to do under Garn-St Germain and under current law. It requires auditors to detect and report fraud which they find in the conduct of their activities.

Mr. Chairman, I urge my colleagues to protect this country against another irresponsible bailout. I tell you that title IV is desperately needed to assure that the Government safety net is protected, that taxpayers are protected, and that the corpus of the bank insurance fund is protected. To do otherwise, to vote for the Barnard amendment, is to turn the whole business over to the banks, and, if you want to help the big fat cat banks that brought themselves to this low state, vote for Barnard.

Mr. ROTH. Mr. Chairman, I rise to support this amendment.

The bill we have before us has a life-threatening illness, and removing title IV is the surgery needed to save this bill. We need reform, but title IV is a big step backward.

Our committee worked for months to: Strengthen the deposit insurance system; improve financial services for American businesses and families; inject more competition into our financial markets; and ensure that the United States remains master of its own economic future.

Our original bill made sure we don't simply pour more funds into the deposit insurance fund, without fixing the underlying weakness in our banking system. But what is in the bill now leaves all our work in ashes, and is a prescription for more taxpayer bailouts.

At the final hour, when the House should be voting on our committee's reform bill, we find in our bill a substitute which cuts the heart out of our effort to strengthen our banking system. Title IV meets none of the goals which we have worked for.

I must ask my colleagues: What has become of the integrity of the House, when a year's work by our committee can be thrown out the window by two people meeting in a closed room? The American people know that a vibrant, competitive financial services industry is crucial to the future growth of our economy and the creation of new jobs.

But title IV only creates the illusion of progress, while in reality binding our financial institutions with restrictions, exclusions, and prohibitions which will stifle competition. Title

IV keeps our financial services sector in the age of the horse-and-buggy, while other nations get ready to move into the 21st century.

With the outmoded laws we have today, it is no wonder that none of the world's top banks are American, and that 10 percent of American banking is now foreign controlled.

Title IV also strikes a blow against progressive banking laws such as Wisconsin's, by preventing our State banks from offering services that have been their right for nearly 50 years. My State has shown how progressive banking laws, combined with effective supervision and conservative, sound bank management results in the best-capitalized banks in the Nation.

Wisconsin should be the model we follow, but title IV runs counter to everything that we have accomplished in our State. That is why I support this amendment. We must take this bad compromise out of the bill and move on to enact a true reform measure.

Mr. McMILLEN of Maryland. Mr. Chairman, I urge rejection of this amendment.

Mr. Chairman, I rise in opposition to this amendment. If you strike title IV, you are eliminating one of the major consumer safeguards in the bill—the prohibition against the sale of bank securities in the lobby of such banks. Specifically, I am making reference to section 15D(d) of the committee print.

These provisions are based in large part on legislation which I introduced with Representative SCHUMER earlier this year, H.R. 1023, the Depositor Protection and Fraud Act of 1991.

The origins of the legislation go back to a House Banking Committee hearing held 2 years ago, when I served on that committee. The hearing focussed on the sale of lobby debt, and how many investors purchased high yield bonds under the false assumption that they were federally insured. The example was, of course, Lincoln Savings & Loan.

This was how Charlie Keating ripped of his customers: Selling them worthless securities under the assumption that the securities were federally insured.

The provisions we are enacting today will prevent a repetition of this tragedy by prohibiting the sale in a retail branch of a federally insured bank or S&L of certain specified types of debt or stock of the bank or any affiliate of the bank. This restriction does not apply to shares of certain mutual funds.

I would commend the chairmen of the subcommittee and the full committee for their actions in this area.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia [Mr. BARNARD].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BARNARD. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 200, noes 216, answered "present" 2, not voting 15, as follows:

[Roll No. 362]

AYES—200

Allard
Anderson
Andrews (NJ)
Archer
Armey
Aspin
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Bateman
Bereuter
Bliley
Boehlert
Boehner
Broomfield
Byron
Callahan
Camp
Cardin
Carper
Chandler
Clement
Clinger
Coble
Coleman (MO)
Condit
Coughlin
Cox (CA)
Cox (IL)
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLay
Dickinson
Dooley
Doolittle
Dornan (CA)
Dreier
Edwards (OK)
Emerson
Engel
English
Erdreich
Ewing
Fawell
Fazio
Fields
Flake
Ford (TN)
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gekas
Geren
Gilman
Gingrich
Goodling
Goss
Gradison
Grandy
Green
Gunderson
Hall (OH)
Hamilton
Hansen
Hastert
Hefley
Hefner
Henry
Hoagland
Hobson
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Kasich
Kolbe
Kopetski
Kyl
Lagomarsino
LaRocco
Laughlin
Leach
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Machtley
Martin
Matsui
Mavroules
McCandless
McCollum
McDade
McEwen
McHugh
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Mollohan
Moorhead
Morella
Morrison
Myers
Natcher
Neal (NC)
Nichols
Nowak
Nussle
Olin
Orton
Oxley
Packard
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Price
Pursell
Ravenel
Ray
Rhodes
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Rogers
Rohrabacher
Ros-Lehtinen
Rose
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Santorum
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Slaughter (NY)
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Taylor (NC)
Thomas (CA)
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Thomas (WY)
Upton
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Wylie
Young (AK)
Young (FL)
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NOES—216

Abercrombie
Ackerman
Alexander
Andrews (ME)
Andrews (TX)
Annunzio
Anthony
Applegate
Atkins
Barton
Beilenson
Bennett
Bentley
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Bilbray
Bonior
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Boucher
Brewster
Brooks
Browder
Bruce
Bryant
Burton
Bustamante
Campbell (CO)
Carr
Chapman
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Conyers
Costello
Coyne
Cramer
DeLauro
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Duncan
Durbin
Dwyer
Early
Eckart
Edwards (CA)
Edwards (TX)
Espy
Evans
Fascell
Feighan
Fish
Foglietta
Ford (MI)
Gaydos
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Gephardt
Gibbons
Gilchrest
Gillmor
Glickman
Gonzalez
Gordon
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Hall (TX)
Hammerschmidt
Hancock
Harris
Hatcher
Hayes (IL)
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Hertel
Hochbrueckner
Holloway
Horn
Inhofe
Jacobs
James
Jefferson
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
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Kolter
Kostmayer
LaFalce
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Lantos
Lehman (CA)
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Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Long
Lowey (NY)
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Manton
Markey
Martinez
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McCloskey
McCrery
McCurdy
McDermott
McMillen (MD)
McNulty
Mfume
Miller (CA)
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Montgomery
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Neal (MA)
Oakar
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Obey
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Owens (NY)
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Pastor
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Payne (NJ)
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Ramstad
Rangel
Reed
Regula
Richardson
Rostenkowski
Roukema
Roybal
Russo
Sabo
Sanders
Sangmeister
Sarpalius
Sawyer
Saxton
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Slattery
Smith (FL)
Smith (NJ)
Solarz
Solomon
Stark
Stearns
Stenholm
Stokes
Studds
Sundquist
Swift
Synar
Tauzin
Taylor (MS)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Walsh
Washington
Waters
Waxman
Weiss
Weldon
Wheat
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

ANSWERED "PRESENT"—2

Cooper
McGrath

NOT VOTING—15

Bilirakis
Boxer
Brown
Bunning
Campbell (CA)
Dannemeyer
Dymally
Hopkins
Lloyd
Marlenee
Rowland
Savage
Slaughter (VA)
Tanner
Whitten

□ 1654

The Clerk announced the following pair:

On this vote:

Mr. Marlenee for, with Mrs. Lloyd against.

Mr. DICKS changed his vote from "aye" to "no."

Messrs. GEKAS, McHUGH and HALL of Ohio changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 102-281.

AMENDMENT OFFERED MY MR. RINALDO

Mr. RINALDO. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. RINALDO: Page 330, after line 5, insert the following new section (and redesignate the succeeding section and conform the table of contents accordingly);

SEC. 411. EMERGENCY ACQUISITIONS OF FAILING BANKS BY ANY COMPANY.

(a) FAILED BANK ACQUISITIONS.—Section 13 of the Federal Deposit Insurance Act is amended by adding the following new subsection:

"(1) EMERGENCY ACQUISITIONS OF FAILING INSURED BANKS BY ANY COMPANY.—

"(1) IN GENERAL.—Notwithstanding any provision of law, any company which is engaged in activities, or controls any company engaged in activities, that are not permissible for a financial services holding company pursuant to the Financial Services Holding Company Act may, with the prior approval of the Federal Reserve Board and subject to a determination by the FDIC pursuant to paragraph (5) of this subsection, acquire direct or indirect ownership or control of all of the assets of any insured bank if—

"(A)(i) at the time of the acquisition of control of such bank a receiver or conservator had been appointed;

"(i) such bank is an insured bank that the appropriate Federal banking agency has determined is in default or in danger of default as those terms are described in section 3(x); or

"(iii) such bank is a level 5 depository institution as that term is described in section 38 of the Federal Deposit Insurance Act; and

"(B) such acquisition is effectuated without financial assistance from the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act.

"(2) CAPITAL REQUIREMENTS.—

"(A) IN GENERAL.—The Federal Reserve Board shall not approve any acquisition, merger, or consolidation under this subsection unless the insured bank or banks to be acquired will be level 1 depository institutions, as that term is defined in section 38 of the Federal Deposit Insurance Act, immediately after the acquisition.

"(B) MAINTENANCE OF HIGH CAPITAL/CAPITAL MUST BE PROMPTLY RESTORED.—Any insured bank which is acquired by a company pursuant to paragraph (1) that ceases to qualify as a level 1 depository institution shall before the end of the 60-day period beginning on the date such bank ceases to qualify as a level 1 depository institution—

"(i) restore its capital in an amount sufficient for such bank to requalify as a level 1 depository institution; or

"(ii) submit a capital plan to the Federal Reserve Board will restore the relevant capital measures to the level necessary to requalify as a level 1 depository institution.

"(C) FAILURE TO RESTORE CAPITAL OR IMPLEMENT A CAPITAL PLAN.—If an insured bank described in subparagraph (B) fails to take the actions described in clause (i) or (ii) of subparagraph (B) or if the capital plan submitted under subparagraph (B) is not approved by the Federal Reserve Board or if the insured bank fails to implement the capital plan, the company that acquired the insured bank under paragraph (1) shall divest any interest in all insured depository institution subsidiaries that do not meet all currently applicable capital standards.

"(D) APPLICABILITY TO COMPANIES UNDER PARAGRAPH (1).—If an insured bank to which this section applies fails to fully comply with the requirements of this paragraph, the acquiring company under paragraph (1) shall divest any interest in the insured bank or terminate all activities engaged in which are not permitted for a financial services holding company.

"(E) ESTABLISHMENT AND IMPLEMENTATION REQUIRED.—

"(i) IN GENERAL.—The Federal Reserve Board shall prescribe regulations to carry out the requirements of this section.

"(ii) DEADLINE FOR REGULATIONS.—The Federal Reserve Board shall, after notice and opportunity for comment, prescribe final regulations under clause (i) which regulations shall be final not later than January 1, 1993.

"(iii) COORDINATION WITH AGENCIES.—The Board and the appropriate Federal banking agencies shall coordinate the application of this subsection with the provisions of sections 5(e) and 38 of the Federal Deposit Insurance Act.

"(3) SAFEGUARDS RELATING TO THE INSURED BANK.—

"(A) No insured bank acquired under paragraph (1) shall—

"(i) extend credit in any manner to any affiliate;

"(ii) purchase for its own account financial assets or any securities of any affiliate;

"(iii) issue a guarantee, acceptance, or letter or credit, including an endorsement or standby letter of credit, to any affiliate; or

"(iv) extend credit to any customer of any affiliate except on an arms-length basis in compliance with section 23B of the Federal Reserve Act (12 U.S.C. 371–c–1).

"(B) In addition, the restrictions and limitations in section 4(n) of the Financial Services Holding Company Act shall apply to companies that acquire insured banks under this subsection as if those companies were financial services holding companies.

"(4) REGULATION.—

"(A) STATUS AS A FINANCIAL SERVICES HOLDING COMPANY.—Notwithstanding any other provision of law, a company described in paragraph (1) shall not be treated as a financial services holding company solely by virtue of such company's control of an insured bank as described in paragraph (1), except—

"(i) for purposes of section 3 of the Financial Services Holding Company Act, specifically including, but not limited to, the antitrust requirements under subsection (c)(1) and (2), as well as the further requirement under subsection (c) that the Federal Reserve Board take into consideration the financial and managerial resources and future prospects of the company described in paragraph (1) and the failed or failing bank before approving the acquisition;

"(ii) for purposes of sections 5 and 7 of the Financial Services Holding Company Act; and

"(iii) for purposes of sections 8 and 38 of the Federal Deposit Insurance Act, section 106 of the Bank Holding Company Act Amendments of 1970, and section 22(h) of the Federal Reserve Act.

"(B) NOTICE TO ENGAGE IN PERMISSIBLE NONBANKING ACTIVITIES.—Any company described in paragraph (1) may continue to engage directly or indirectly in nonbanking activities after such acquisition. Such company shall file notice with the Board 30 days after commencement of any new nonbanking activities.

"(5) LEAST COST RESOLUTION DETERMINATION BY THE FDIC.—No company may acquire direct or indirect ownership or control of all of the assets of any insured bank pursuant to paragraph (1), unless the FDIC determines, in its sole discretion, that such acquisition of ownership or control satisfies the FDIC's obligations to an institution's insured depositors at the least possible cost to the deposit insurance fund.".

(b) TECHNICAL AMENDMENT.—Section 4(f)(2)(A)(i) of the Financial Services Holding Company Act, as amended (12 U.S.C. 1843(f)(2)(A)(i)) is amended to read as follows:

"(i) acquired control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection, or a bank pursuant to section 13(1) of the Federal Deposit Insurance Act) after March 5, 1987; or".

The CHAIRMAN. Under the rule, the gentleman from New Jersey [Mr. RINALDO] will be recognized for 20 minutes, and a Member opposed will be recognized for 20 minutes.

Mr. RINALDO. Mr. Chairman, I yield 7 minutes to the gentleman from Massachusetts [Mr. FRANK], and I ask unanimous consent that he be permitted to control that time.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. RINALDO. Mr. Chairman, one of the critical issues that must be resolved in this debate is who will pay for failed banks.

Will it be our constituents, the taxpayers, or will Congress allow private corporations to pick up part of the cost?

In an era of budget restrictions, it would be irresponsible for this House not to utilize every possible alternative to save our constituents' tax dollars.

It no longer makes any sense to separate banking and commerce. As a matter of fact, banking and commerce are not separate.

As a result of the nonbank bank loophole, corporations like Archer-Daniels-Midland, Sears, Chrysler, General Electric, J.C. Penney, and others already own banks.

Furthermore, over the last few years, over 90 failed savings and loans have been sold to commercial corporations. The buyers include such names as Dana Corp. Weyerhaeuser, and Ford.

This is not theory. This is the reality of today's financial system.

There will be no sweetheart loans under my amendment. It totally prohibits a purchased bank from lending to its corporate parent or the parent's other affiliates. This would include issuing or endorsing a guarantee, acceptance, or letter of credit, or purchasing any securities or other financial assets of the parent or its subsidiaries.

The bank would also be forbidden to tie an extension of credit to the purchase of a product or service from the parent.

The law will prohibit conflicts of interest, concentrations of economic power, or other types of self-dealing.

Our financial services industry is in desperate need of capital, management expertise and imagination. Merging two brain-dead banks at the taxpayers' expense merely buys time.

Commercial corporations can supply the new ideas and better management that banks need. Even more important, they can supply capital.

Banks will need literally tens of billions of dollars before this crisis is over. I do not want to sit here next year and create another RTC because we closed off our best source of new capital.

Chairman Richard Breeden of the Securities and Exchange Commission, in a letter dated September 25, states that: "The benefits of permitting commercial firms to invest in banks outweigh any potential disadvantages."

He goes on to say that: "* * * banks would have access to * * * U.S. corporate capital and * * * U.S. corporations would be afforded the same opportunities to invest in banks already afforded to many foreign organizations."

In addition, former FDIC Chairman L. William Seidman endorses this idea. In a letter dated September 24, Chairman Seidman said that:

> The Federal Deposit Insurance Corporation strongly supports provisions to permit commercial firms to acquire failing or failed financial institutions.
>
> * * * new sources of capital will reduce the cost to the Bank Insurance Fund * * * Without this expansion of authority, the FDIC may ultimately find itself with a decreasing number of acquirers willing and able to purchase failed institutions. * * *

My amendment would require the buyer to raise the bank's capital to the highest classification at the time of purchase. The purchaser will not be offered any direct assistance from the FDIC. It also cannot cherry pick the assets. In other words, the purchaser must take the entire bank and its loan portfolio, good loans and bad loans.

The alternative to this amendment is to use tax dollars to close banks that could have been sold to commercial corporations. The FDIC expects several hundred bank failures over the next few years.

If the 96 savings and loans that were sold to commercial corporations had been closed instead, it would have cost the taxpayers over $16 billion.

Of course, capital could come from foreign investors. As of 1990, foreign-owned banks controlled almost 23 percent of our banking market.

Foreign investors have had a field day buying up American banks, while an obsolete law made American corporations sit on the sidelines.

Are we ready to allow foreign interests to increase their influence over the availability of credit to American consumers and businesses?

The question that we must face in this debate is who pays for bank failures. Is it going to be your constituents and neighbors? Or are we going to let corporations buy some of these banks.

Is this House ready to tell the taxpayers, our constituents, that their taxes must go up because we won't let Turner Broadcasting, for example, invest some of its profits in a bank?

Are you ready to tell parents that the money they wanted to use for education is going to the FDIC instead?

Are you ready to cut Social Security COLA's to bail out a bank that Sears would have bought?

The responsible answer is "no." The responsible answer is to amend this bill to allow dead and dying banks to be sold to commercial firms.

The responsible answer is to do everything possible to prevent this entire burden from ending up on the backs of the taxpayers of this country.

And remember, your constituents—the taxpayers—will know how you voted on this one.

□ 1700

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is the gentleman from Massachusetts [Mr. MARKEY] opposed to the amendment?

Mr. MARKEY. I am opposed to the amendment, Mr. Chairman.

The CHAIRMAN. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes.

Mr. MARKEY. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, let me begin by saying to my good friend, the gentleman from New Jersey [Mr. RINALDO], that for 5 years he and I have worked side by side in the Subcommittee on Telecommunications and Finance, and we have up to now been able to work out every issue that we have brought out here to the floor. We have worked together, trying to find a middle ground on every issue so that we can present in this changing global telecommunications and finance marketplace a common American perspective as to how we should deal with that whole range of issues.

On this day the Members have been presented with the first set of differences which we have not been able to reconcile, and it is because there are in fact two distinctly and unfortunately irreconcilable ways of looking at these issues.

This amendment offered by my friend, the gentleman from New Jersey [Mr. RINALDO] is not about saving taxpayers' dollars. In fact, it is nothing more than a backdoor attempt by the administration to allow commercial companies to buy banks. Paul Volcker, Henry Kaufman, and a slue of other experts testified to us that few commercial companies would have any interest in buying failed or fatally ill banks without a substantial dose of Federal assistance.

□ 1710

But assuming commercial companies would be interested, the GAO has warned us that commercial firms would probably be interested for the wrong reasons. Because, "They have an inadequate understanding of the risks involved," a condition which the GAO warns could lead to even greater bailout problems in the future.

The amendment would open the floodgates to commerce entering into banking. More than 1,000 banks with assets of $414 billion are currently on the FDIC problem list. Under this amendment, every one of those banks could be judged by regulators as being in some danger of eventual default, and thus sold to commercial companies. Chrysler, Exxon, you name it, that would be the new banking industry in our country.

Some have argued that because of decisions made previously by regulators, and in some cases Congress, the camel's nose is already under the tent. Already we have commercial companies that are engaging in some form of banking.

Well, let me say to Members if this amendment passes, more than just the camel's nose will be present in the tent. This amendment invites the camel to come in and to make himself at home. We will have a full-blown mixture of commerce and banking before the next 5 years is done.

Mr. Chairman, I reiterate that this is not about saving taxpayers money. This amendment is about getting commerce into banking. It is the foot in the door that will eventually, inevitably, result in a full mixture of these two parts, these two distinct parts of our American economy.

Mr. Chairman, I say to Members that this amendment must be rejected if we are to be consistent with the vote cast within the last half hour, because otherwise there will be no safeguards.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

The Chairman, Oliver Wendell Holmes said the life of the law has not been logic, it has been experience. I now know what law he has been talking about—this one. I think we are in a somewhat inconsistent pattern here, and the opposition of some of my friends to this amendment seems to me to carry it out.

No, I do not think it is inconsistent with support for the last amendment. In fact, as I understand the last provision, the defeat of the amendment of the gentleman from Georgia [Mr. BARNARD], it left intact a set of very strict rules and regulations.

Understand that anybody who buys a bank under this or any other amendment in this bill takes that bank subject to all the rules, regulations, and restrictions that are in the bill. The fact that a particular corporation would buy in a failed bank does not exempt them from all these rules and regulations.

Now, I thought they kind of overregulated a little bit in this last one. But if you think that was efficacious, where is the fear?

People say well, this will be an entering wedge, a camel's nose, all those wonderful anatomical metaphors that come forward. But I had thought that the provisions worked out by the two chairmen were seen as protecting us.

Understand, if you buy a failed bank under this amendment, you are not exempt from anything except the fact that you can buy a bank, having been a commercial corporation, but you are covered by all these rules and regulations. So if Members think these rules and regulations are going to work, I do not understand why they are concerned.

The question is, Why do we want to let the failed banks be sold to these people? The main reason, as far as I am concerned, is we own them, we are stuck with them, and we have to sell them. I would rather sell them to a wide range of bidders, understanding that the bidders are subject to all of the rules and restrictions that everyone else is.

Then some people say no, that would be a mistake because you should not let these people into banking. In other words, the bankers are so smart and have done such a good job and so understand the risks, that we should not let anybody into their turf.

It seems to me some of my friends have the view that the bankers have been unwise, have made risky decisions, and need to be further regulated, and also need to be protected from letting anybody else into their business.

Mr. Chairman, none of my best friends are bankers, but I have a couple of good friends who have been in the business, and it does not seem to me that the bankers are so infallible and so perfect in their approach that no one ought to be allowed to encroach on their turf.

Mr. Chairman, I guess I was absent the day it became the liberal position to protect one group of businesspeople against another group of businesspeople, that the way to protect the consumer was to make sure nobody interfered with Salomon Brothers' monopoly in this area. And now no one could come out and bid on a bank. So when the Bank of New England failed, we should only have bankers bidding on the place, which means a lower price.

It also means under the terms we have the bank comes in and says, "We will do you a favor. We will take this bank off your hands, but we will not lend anybody any money."

They set up some organization in New England called the Recoll Corp. It is death row for borrowers. You put money in it, and it will not come out.

My friend from Massachusetts said people will not want to buy these. That is probably the case. I do not know why anybody is going to be rushing to buy a failed bank. But if there are people, and this is all we are saying, I will not want to make a prediction we are going to have a large number coming in, but if there are corporations that are prepared to bid higher than anybody else for a bank, take all of the assets and all of the liabilities, and pay us more than anybody else, are we, the United States of America, in such great financial shape that we can say no to them? Take your money elsewhere?

Again, this is not a proposal to loosen by any means the terms under which banking is carried out. I was one of the ones who thought this ought to come at this point in the bill after the motion to strike, because it is now clear that anybody who buys a bank under this amendment takes it subject to all of the rules and regulations that have been put in here.

Given that, and given the desirability of minimizing the hit to the Federal Treasury that comes in here, I hope the amendment is adopted.

Mr. Chairman, I reserve the balance of my time.

Mr. MARKEY. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Chairman, I would like to speak in opposition to the amendment. First let me say that no Member of this body is more decent and fair than the gentleman from New Jersey [Mr. RINALDO]. It is one of the reasons it troubles a lot of Members to oppose the gentleman's amendment. But I just have to tell Members that this amendment that we are voting on is not law in virtually any other country in the world.

Mr. Chairman, we live in global financial markets. There are virtually no other countries where this is law. The reason that that is the case is that this amendment is an invitation to self-dealing, conflicts of interest, and anticompetitive tie-ins.

I would like to give Members just one example, because obviously these are complicated issues. Say you had the biggest company in town taking over a failed bank, the principal lender in the town. The company that took it over, in our example, gets into financial trouble. It could not get credit on the merits. But suddenly they get into a situation where they can get help from their own piggybank when they need a favor.

The Rinaldo amendment, to its credit, does try to establish some checks and safeguards. But let me wrap up by saying that Paul Volcker made it very clear that firewalls cannot provide protection in these kinds of situations. Paul Volcker went on to add that this amendment would create regulatory nightmares.

Mr. Chairman, I urge Members to turn down this amendment, an amendment that, insofar as I can tell, would create a situation virtually unprecedented in the Western industrialized world.

Mr. RINALDO. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New York [Mr. LENT], the ranking minority member of the full Committee on Energy and Commerce.

Mr. LENT. Mr. Chairman, the gentleman from Massachusetts [Mr. MARKEY], whom I tried to get the attention of a little while ago, complains that this amendment would open the floodgates to corporations taking over some of our failed or failing banks.

□ 1720

He is worried about America's well-capitalized banks taking over these ailing banks. He is worried about the camel's nose getting even bigger. Those of us who are sponsoring this amendment hope this happens. I frankly am shocked that the gentleman from Massachusetts, being a man of the people, would oppose this amendment. This amendment merely decides the question of who pays the bill for these failing banks. Should banks that have failed or are about to fail be bailed out by these American business people, corporations? Or should they be bailed out by the American taxpayer? That is the question. That is the only question that must be decided on this amendment.

I am proud to sponsor this bipartisan amendment along with my colleagues, Congressmen RINALDO, FRANK, WYLIE, and BARNARD.

To me, the answer to that question is simple. We should never ask the American taxpayer, who is already struggling just to make ends meet, to bear any unnecessary burden, especially one of this magnitude.

All too often, Congress fails to allow markets to solve the problems facing our Nation's economy, substituting in its place expensive Government handouts and bailouts.

This is done in the name of consumer protection. But are we really protecting consumers when we require them to bail out a bank with their tax dollars when a commercial company stands ready to do so without Federal assistance?

Mr. Chairman, this institution has come under great criticism of late, and our constituents are wondering if we are truly protecting their interests. This amendment will prove just were we stand. A vote for the amendment is a vote for the American taxpayer. A vote against the amendment means we're just doing business as usual.

I urge my colleagues to listen to your constituents. Listen to your common sense. Support this amendment and give the American taxpayer a much-needed break.

Mr. WYDEN. Mr. Chairman, I yield 3 minutes to the gentleman from Kansas [Mr. SLATTERY] to speak in opposition.

Mr. SLATTERY. Mr. Chairman, this amendment is clearly a Trojan horse for commercial ownership of banks. I think we are kidding ourselves if we view it in any other way. So for those Members that want commercial ownership of banks, vote for this amendment. For those that have opposed that concept, I urge in the strongest possible terms a vote against this amendment.

Let me share with my colleagues some comments that have been made by some very knowledgeable people about this whole issue of commerce owning banks. Let me share some of their ideas.

Comptroller General Bowsher: "I think you're setting yourself up for mega-bailouts down the road." That is the Comptroller General.

"The potential benefits strike me as remote at best and illusory at worst." That is Gerald Corrigan, President of the Federal Reserve Bank of New York.

Former chairman of the Fed, Paul Volcker: "Where the line should continue to be drawn is between banking and commerce. Fuzzy as that distinction may be at the margin, the overriding public policy interest remains strong."

"Merging banking and commerce ultimately puts in jeopardy the fundamental economic democracy of this country and undermines the crucial need for independent deposit institutions exercising objective credit judgments." Economist Henry Kaufman.

Former CEA head Herbert Stein said, "There is little reason to think that nonfinancial businesses will be more willing to put capital in banks than the ordinary investor would, unless the nonfinancial business sees an opportunity to gain from the connection something other than the return on equity. This opportunity is likely to mean some form of self-dealing that is illegitimate."

Now let us look at what Ralph Nader says, for those that might be influenced by his view. I quote, "Letting commercial firms buy banks creates an irresistible temptation for conflicts of interest and self-dealing."

Mr. Chairman, I think this is a very clear issue. Again, if we want commercial ownership of banks, vote for it. If we are opposed to that, then we should vote against this amendment. I do not think there is any question that if we allow commercial entities to acquire banks, we are going to run into some under-the-table type subsidies, just like we did with the savings and loan situation.

Mr. RINALDO. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. WYLIE], the distinguished ranking minority member of the Committee on Banking, Finance and Urban Affairs.

Mr. WYLIE. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in strong support of the Rinaldo-Frank amendment.

We have heard a lot about camels and horses. I guess the circus is in town. This is the way I would suggest that the opponents of this amendment are talking. This would permit, to get serious about it for a minute then, this would permit commercial firms to buy failed or failing banks. Importantly, no government assistance could be used in these transactions, and the commercial firms which buy the banks would have to buy the banks, warts and all. They would have to take all of their assets.

Make no mistake, this is a save-the-taxpayers'-money amendment.

Consider these important points to this amendment. It would permit $719 billion in new capital from Fortune 500 companies to be available to shore up failed or failing banks. It would boost opportunities to let American capital be used to rescue failing banks, instead of foreign capital.

I say this because recently Citicorp, the United States' largest bank, had to go overseas to raise capital. They had to turn to a Saudi prince to do it, and he is now the largest shareholder in Citicorp.

It will put the United States on a more even footing in international banking markets. We have been told that no other country in the world allows this. Here is a chart showing all of the countries that allow commercial firms to own some banking interests: Canada, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Switzerland, and the United Kingdom.

We are just getting in step with the rest of the world as far as banking and commerce are concerned.

Finally, it will reduce costs to the taxpayers by expanding the opportunity to buy banks. I might add that we should not fear banking and commerce. In fact, it already exists, although the gentleman from Michigan [Mr. DINGELL] will tell Members that it does not.

I received an interesting piece of mail in the mail today. It is from Ford Motor Co., offering me a home equity loan. Because of technology changes, that kind of thing happens all the time. This has in part led to the erosion of the banking franchise.

Ford Motor Co. made 89 percent of its profits last year from financial services, not from selling cars.

I would strongly urge Members to support this amendment. If they want to save the taxpayers money, vote yes.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Chairman, I just had ear surgery on Tuesday, so I cannot hear what everybody is saying very well. And it is tough enough to hear what the gentleman from Massachusetts [Mr. FRANK] says anyway with not only having one-half of your hearing.

But quite frankly, what I did hear from him I thought made a lot of sense. Let me tell my colleagues why.

We are talking about failed banks, banks that have gone under, banks that are worthless, banks that the taxpayers are going to pick up billions of dollars of costs for.

What this amendment would say is that the FDIC could sell those failed banks to commercial interests. Now, the FDIC would no doubt probably give preference to banks buying them because the experience factor would give the FDIC that kind of authority. But without this amendment, the taxpayers of this country will risk incurring billions of dollars of additional losses.

What we are adding is a pool of people of Americans, for the most part, who might want to pick up those assets and who might want to operate a bank under the normal banking rules that this country operates under the rules of the Dingell amendment that was previously passed. Why would we want to foreclose that?

By not adopting this Rinaldo amendment what we are saying to our taxpayers is we are going to intentionally cost you billions of dollars more money. It just does not seem to make any sense to me at all.

□ 1730

I guess my point is that this bill provides I believe $30 billion in taxpayer assistance. The bill provides that the FDIC pick up these failed banks and try to sell them under normal bank operating rules. All the Rinaldo amendment says is that a commercial interest, a nonbanking interest, if it bids for those assets at a competitive price, might just get that contract and might just save the taxpayers billions of dollars.

That makes a lot of sense. I will vote for the amendment.

Mr. WYDEN. Mr. Chairman, I yield 1 minute to the gentleman from Maryland [Mr. MCMILLEN].

Mr. MCMILLEN of Maryland. Mr. Chairman, I rise in opposition to the Rinaldo amendment. Why do commercial enterprises want to buy a failed bank when no one else wants to? Because that is where the money is; the taxpayers' money, that is. As long as you do not reform the deposit insurance system to put market discipline in place, then you risk this public subsidy spilling over to commercial parents, and spilling over into securities and insurance affiliates.

If the Members think the S&L bailout was big, try extending the deposit insurance umbrella throughout the whole American economy to anyone who is connected with a bank.

I do feel banks should be allowed to affiliate with other commercial enterprises, but only if they pay the full price for deposit insurance and do not hold the taxpayer hostage. This amendment is a Pandora's box. I urge the rejection of this amendment.

Mr. WYDEN. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, as this proposal originally stood, the proposal was to allow commercial entities to buy up institutions in banking, the good, the bad, the ugly. As it now stands, the proposal is to allow commercial entities to buy only the bad and the ugly. We should ask ourselves, why would a commercial entity want to buy a bad, ugly bank? What is the purpose? What do they want to gain by buying a bad, ugly bank, one that is failing so badly that nobody else in the banking industry wants to pick it up, nobody else wants to invest in it?

The issue is not whether or not we allow someone else to invest in failing institutions. The question is whether or not we allow commercial entities to own those failing institutions. We ought to ask ourselves what would happen if they did. Is there an increased opportunity for, indeed, some "hanky-panky"? I would suggest yes, I would think so.

Is there a possibility, for example, that one commercial entity might buy a bank that holds the paper on its competitors? What do you do then? What happens, for example, if Chrysler should end up buying a big, bad, ugly, failing banking institution which would drag Chrysler down again? Would we have to bail out the bank, Chrysler, and maybe New York at the same time? I mean, where is this taking us?

The problems this amendment poses for us are beyond our vision, away on the horizon, but you can smell something wrong when you just consider that commercial entities under this amendment would only be buying the bad, the ugly banks that nobody else wants and nobody else wants to invest in. You ought to ask yourselves why would that happen. If you cannot answer it without wondering, if you cannot answer it without really considering that something bad is going to happen, you ought to ask yourself why should we allow it to happen.

Mr. WYDEN. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART. Mr. Chairman, when I was very young, which may or may not have been a long time ago, my parents once said to me, neither borrower nor lender be. Under the Rinaldo amendment we would be letting financial services holding companies be both borrower and lender, and think of the wonderful opportunity that would be. They talk about this amendment as creating synergies. What a wonderful synergy to have the same board of directors figuring out how much money they need to borrow and having their own private pot to go put their hand in and take it. That is what this amendment is all about. What we will have is a unique opportunity for those who bring money in and put money out, but it is the same person that makes that decision. And when Members try to answer the question that my colleague from Louisiana suggested, "Why should this happen," it is so clearly evident to those of us who follow this issue that they simply want the power to bring in funds and to self-deal with those funds in their own economic interest.

How will the companies that own banks value their assets? To suit their bottom line, not necessarily their investors'. Why will they create lines of credit? For their parent companies or the powerful boards of directors that control them. What will they do with loan applications from competing firms or individuals not so lucky to sit on their boards? It doesn't take a genius to figure it out. It may be good business to own a bank, but it is bad business for a commercial enterprise to own its own captive bank. The potential for conflicts of interest and self-dealing here is astounding and flies in the face of all we know about free markets and true competition. This amendment is irresponsible and dangerous and I urge you to oppose the amendment.

Mr. WYDEN. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. GONZALEZ], the distinguished chairman of the Committee on Banking, Finance and Urban Affairs.

Mr. GONZALEZ. Mr. Chairman, I rise in very strong opposition to this amendment, not only because in principle it is wrong, but it has been so cannily crafted. This must have been written by some lawyer over there from American Express or from one of those nonbank banking entities, because at the end of the amendment, if the gentlemen have a copy of it, and I do not believe many of them do, it says:

> (b) TECHNICAL AMENDMENT.—Section 4(f)(2)(A)(i) of the Financial Services Holding Company Act, as amended (12 U.S.C. 1843(f)(2)(A)(i)) is amended to read as follows:
>
> "(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection,".

Members know what that means. It means that these so-called commercial ventures that these gentlemen want to bring in to acquire banks will be exempted from all the regulatory controls of the Bank Holding Act of 1956, and will continue the exemption that such entities as American Express have had.

Mr. RINALDO. Mr. Chairman, will the gentleman yield? Does he want me to answer the question?

Mr. GONZALEZ. I do not have the time. I wish I did.

Mr. RINALDO. I thought the gentleman wanted me to answer the question, and I wanted to be accommodating.

Mr. GONZALEZ. No, I do not have a question. I have analyzed this amendment. I am telling the gentleman that this is a very mischievous amendment, that any Member who votes for it, sight unseen, is going to be making a serious mistake.

Now let me just read from the Bank Holding Co. Act of 1956.

> Whenever a holding company controls both banks and nonbanking businesses, it is apparent that the holding company's nonbanking businesses may thereby occupy a preferred position over that of their competitors in obtaining bank credit. It is also apparent that in critical times the holding company which operates nonbanking businesses may be subject to strong temptation to cause the banks which it controls to make loans to its nonbanking affiliates even though such loans may not at that time be entirely justified in the light of current banking standards.

□1740

Mr. WYDEN. Mr. Chairman, I yield 1 minute to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this is a profound amendment.

What is at stake in the internal combusting of commerce and banking is economic democracy, the question of whether the voice of small businesses and ordinary citizens will be heard in a world of financial conglomeration.

There is simply no issue which jeopardizes the principles of Jeffersonian and Jacksonian democracy more than allowing mammoth commercial enterprises to control banks. Such a conglomeration of economic power would have the effect of concentrating monetary and credit allocation decisions in the very largest multinational corporations, including those headquartered in Tokyo and Frankfurt.

If this radical departure from law and custom is adopted, the Federal safety net will be extended beyond the banking system, with deposit insurance potentially applied to broader reaches of the economy. The market economy will be even more contaminated with taxpayer guarantees. After the S&L debacle it would seem that a prudential Congress would want to limit and isolate the role of such guarantees, not exponentially expand them.

Mr. RINALDO. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. RITTER], a member of the committee.

Mr. RITTER. Mr. Chairman, my colleagues, the gentleman from Ohio [Mr. ECKART] and the chairman of the committee, the gentleman from Texas [Mr. GONZALEZ], have both come into this well and talked about the abusive potential for lending to affiliates.

Well, it says right here in the Rinaldo amendment under the category "Safeguards" that this cannot happen.

All right, this would be illegal, an illegal event under the Rinaldo amendment.

So, please, discount what the gentleman from Ohio and the chairman have just said. The fundamental question remains: Who pays? Who pays? Does the taxpayer pay in the FDIC bailout, or does the private sector pay with some commerce and banking for failed and failing banks? That is the fundamental question.

If my colleagues think that Americans are undertaxed and they want more taxpayer responsibility for bank bailouts, then vote against Rinaldo.

Mr. RINALDO. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, who is the foremost expert in our country on failed banks? Bill Seidman.

Let us see what Bill Seidman has to say in a nutshell. Here is what he had to say about this amendment:

> The Federal Deposit Insurance Corporation strongly supports provisions to permit commercial firms to acquire failing or failed financial institutions. Expanding the range of potential acquirers and introducing new sources of capital will reduce the cost to the Bank Insurance Fund of resolving failed institutions.

That is why I am for this amendment, because I do not believe in taxpayer bailouts. I support the amendment because the failure of the Barnard amendment will see many more bank failures.

The House has turned its back on bank reform, reform that is desperately needed, and this amendment gives us another option instead of the taxpayer bailout.

The bill before us has a life-threatening illness, and removing title IV was the surgery that was needed to save this bill.

PARLIAMENTARY INQUIRY

Mr. WYDEN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. WYDEN. Mr. Chairman, the Rinaldo amendment was rejected in the Committee on Energy and Commerce. I believe I have the right to close.

The CHAIRMAN. The gentleman is correct.

Mr. RINALDO. Mr. Chairman, I yield myself the remainder of my time.

Mr. Chairman, we have heard a lot of technicalities that are designed to obscure the main point—my amendment will save tax dollars.

The point is that some commercial enterprises may believe that they can run a banking business more successfully than the management that ran the previous company into the ground.

Finally, if my amendment is so strict that no corporations choose to buy a bank, then there is absolutely no reason not to vote for it.

The facts are clear. My amendment will save tax dollars. This is not an ill-considered experiment. Already 96 failed S&L's have been sold to corporations. Not one has failed.

If you vote for my amendment, you are voting for lower deficits. You are voting for more money for this country's disadvantaged. You are voting to save tax dollars. You are voting to save the taxpayers—your constituents—from another bank bailout.

It is as simple as that.

Ms. OAKAR. Mr. Chairman, will the gentleman yield?

Mr. RINALDO. I am happy to yield to the gentlewoman from Ohio.

Ms. OAKAR. Mr. Chairman, I compliment the gentleman. I think that we should pass this. It is along the line of the two amendments in the past that I have introduced, one of which has saved millions of dollars for taxpayers.

I think it is the right thing to do. We should have done it a long time ago.

Mr. RINALDO. I thank the gentlewoman.

Mr. DINGELL. Mr. Chairman, this is not the first time this amendment has been seen. It was voted down unanimously by the committee, or not unanimously, but overwhelmingly by the Committee on Energy and Commerce.

Let me just advise you that this is an interesting amendment, and my dear friend from New Jersey is a loyal and a decent follower of the administration. Unfortunately, this amendment is not what he has been told, in fact, it is.

In fact, it would permit a large number of banks to be bought, not just banks which are failing, and not just banks which are failed, but banks which are in level 5 and which are in some capital trouble but which are not in danger of failing.

There are some things that ought to be known. First of all, this amendment would set up two categories of banks. The securities law firewalls on which the House just voted very heavily would not apply to these banks or holding companies under the amendment. This amendment would gut the protection which we have just put in place.

Beyond that, it would set up two categories of banks, one which would be free to engage in certain rascality, and one which would not.

I cannot yield to my dear friend in spite of my affection and respect for him.

The amendment would lead us further down the road toward the formation of a small number of power centers dominating the entire American economy. There is no guarantee that the amendment will bring additional capital to banking.

GAO warns that banking-commerce combinations will be a mecca for bailouts. Current finance-commerce combinations are crippling our current commercial and industrial firms.

The Wall Street Journal 2 weeks ago reported huge losses at nonbanks and finance companies that have dragged down otherwise healthy corporations, and their earnings, and their stock prices.

One corporate parent had to eat almost $2 billion in its corporate finance arm due to bad losses at the real estate and savings and loan operation which it ran.

If you do not believe me that this is unwise, listen to Gerald Corrigan, who says, "I remain opposed to the combination of commercial and banking organizations." Listen to Paul Volcker, who says that the trend toward the combining of banking and business could lead to the combination of a relatively small number of power centers dominating the American economy. This must not be permitted to happen. It would be bad for banking, bad for business, bad for borrowers, and bad for consumers.

This is a bad amendment. It masquerades as being one thing. In point of fact it is something quite different.

Now, I love the gentleman from New Jersey. He is a good friend of the administration, but they are not good friends to him, because they mislead him as to the content of his amendment and what it does.

I would urge the House to reject this unwise amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from New Jersey [Mr. RINALDO].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. RINALDO. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 137, noes 272, answered "present" 1, not voting 23, as follows:

[Roll No. 363]

AYES—137

Allard
Andrews (TX)
Archer
Armey
Atkins
Baker
Ballenger
Barnard
Barton
Bateman
Bliley
Boehner
Broomfield
Callahan
Campbell (CO)
Carper
Chandler
Chapman
Clinger
Coble
Coughlin
Cox (CA)
Crane
Cunningham
DeLay
Dickinson
Dooley
Doolittle
Dornan (CA)
Dreier
Emerson
Erdreich
Fields
Frank (MA)
Franks (CT)
Gallegly
Gallo
Gekas
Gilman
Gingrich
Glickman
Goodling
Goss
Gradison
Green
Hancock
Hansen
Hastert
Hefley
Hoagland
Hobson
Holloway
Houghton
Hughes
Hyde
Inhofe
Ireland
Johnson (SD)
Johnson (TX)
Johnston
Kasich
Klug
Kolbe
Kyl
LaFalce
Lagomarsino
LaRocco
Lent
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Lowery (CA)
Lowey (NY)
Machtley
Martin
McCandless
McCollum
McCrery
McEwen
McGrath
McMillan (NC)
Miller (OH)
Miller (WA)
Molinari
Moorhead
Moran
Morrison
Myers
Neal (NC)
Oakar
Orton
Owens (UT)
Oxley
Packard
Patterson
Paxon
Ravenel
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roe
Rohrabacher

Roth
Santorum
Schiff
Schroeder
Schumer
Sensenbrenner
Shaw
Skelton
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stump
Tallon
Taylor (NC)
Thomas (CA)
Thomas (WY)
Upton
Valentine
Vander Jagt
Vucanovich
Walsh
Weldon
Wilson
Wylie
Yatron
Young (AK)
Zeliff
Zimmer

NOES—272

Abercrombie
Ackerman
Alexander
Anderson
Andrews (ME)
Andrews (NJ)
Annunzio
Anthony
Applegate
Aspin
AuCoin
Bacchus
Barrett
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Boehlert
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Bruce
Bryant
Burton
Bustamante
Byron
Camp
Cardin
Carr
Clay
Clement
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Costello
Cox (IL)
Coyne
Cramer
Darden
Davis
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Duncan
Durbin
Dwyer
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Engel
English
Espy
Evans
Ewing
Fascell
Fawell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Ford (TN)
Frost
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gonzalez
Gordon
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Henry
Herger
Hochbrueckner
Horn
Horton
Hoyer
Hubbard
Huckaby
Hunter
Hutto
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
Kostmayer
Lancaster
Lantos
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lightfoot
Long
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McDermott
McHugh
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moody
Morella
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Nichols
Nowak
Nussle
Oberstar
Obey
Olin
Olver
Ortiz
Owens (NY)
Pallone
Panetta
Parker
Pastor
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Rangel
Ray
Reed
Regula
Richardson
Roberts
Roemer
Rogers
Ros-Lehtinen
Rose
Rostenkowski
Roukema
Roybal
Russo
Sabo
Sanders
Sangmeister
Sarpalius
Sawyer
Saxton
Schaefer
Scheuer
Schulze
Serrano
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Sundquist
Swett
Swift
Synar
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Vento
Visclosky
Volkmer
Washington
Waters
Waxman
Weber
Wheat
Williams
Wise
Wolf
Wolpe
Wyden
Yates

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—23

Bilirakis
Boxer
Brown
Bunning
Campbell (CA)
Conyers
Dannemeyer
Dymally
Hertel
Hopkins
Kaptur
Lloyd
Marlenee
Michel
Rowland
Savage
Sharp
Slaughter (VA)
Tanner
Walker
Weiss
Whitten
Young (FL)

☐ 1807

Mr. FORD of Michigan and Mrs. KENNELLY changed their vote from "aye" to "no."

Mrs. LOWEY of New York and Mr. DOOLEY changed their vote from "no" to "aye."

Mr. COOPER changed his vote from "no" to "present."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. This concludes consideration of amendments for today.

Pursuant to the order of the House of today, it is now in order to begin the period of general debate for the Committee on Agriculture.

Pursuant to House Resolution 264, the gentleman from Texas [Mr. DE LA GARZA] will be recognized for 22½ minutes and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 22½ minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, earlier today, I voted for the rule on this bill. I did so reluctantly. I have great admiration for my friend and colleague, the gentleman from Texas [Mr. GONZALEZ], the distinguished chairman of the Committee on Banking, Finance and Urban Affairs. He has worked long and hard to bring this bill to the House. However, I cannot support the bill.

H.R. 6 has far-reaching implications for our Nation's banking system and our Nation's economic well-being. Nowhere will the impact of this legislation be more deeply and, most likely, more painfully felt than in rural America.

Despite all the rhetoric on how this bill is better for consumers, this bill continues to take us down the road of fewer and fewer banks. This bill severely disadvantages our Nation's rural banks and ignores the banking needs of rural America.

Mr. Chairman, I agree that the time has come for a reexamination and reform of our Nation's banking laws. The S&L crisis has highlighted the weaknesses and failure in our Nation's regulation of financial services.

H.R. 6 attempts to improve the health of our banking system, strengthen Federal oversight, and minimize over the long haul the taxpayers costs involved in restructuring our banking system

But in doing so, this bill ignores the needs of smaller, locally owned banks and the valuable services they provide to our rural communities and American agriculture.

Our rural communities and towns face two problems.

First, we have Federal regulators who frankly don't care about the problems faced by small- and mid-size banks. This bill ignores the fact that Federal banking regulators are effectively strangling the ability of small community banks to operate profitably.

Mr. Chairman, for a moment, let's listen to a small-town banker from Texas who is having to deal with this regulatory mentality. I received a letter from a small banker and this is what he wrote:

> Loss of community banks will greatly affect the opportunity provide banking services adequately throughout the State of Texas. Not even the large cities of Texas will be spared. You will find that more and more control and decisionmaking will be withdrawn from within the boundaries of the State of Texas as both the East and West coast banks control the financial destiny of the State of Texas.

We are told that all of this consolidation and mergers will improve the quality of banking services and lessen its costs.

Trouble is, that's not what is happening in Texas. Let me continue reading from the letter from my friend and how he now has to handle the refinancing of a mortgage loan in Harlingen, TX:

> We find that all of the documentation and papers concerning the loan have been removed from the state of Texas and now reside in North Carolina. As a result, what would normally have been a fairly inexpensive and easy transfer has become costly and difficult for our customer * * * now [we] must wait weeks before the release papers are returned before we can actually perfect our lien. In the past, these transactions were completed within a matter of hours, or a day or two at the most.

The Bush administration regulators keep telling us that "the market will take care of it." Putting small banks out of business is what they really mean.

Just listen to what the Bush administration's regulators have said about banking regulation in recent years:

"Deposit insurance should be abolished. Most banks would be better managed if owned by giant corporations such as IBM." That was said by Richard Breeden, head of the Securities and Exchange Commission.

"I think 130 banks is all America needs, and 12 giant banks could handle most of America's banking today." So said William Taylor, the Chairman of the FDIC.

"Bankers will have to merge, consolidate, or be failed in our new banking environment." These are the words of wisdom offered by Robert Clark, the Comptroller of the Currency.

That brings me to my second major concern about this bill—interstate branch banking.

Yesterday's Wall Street Journal quoted the former Chairman of the FDIC, William Seidman, as saying that 3,000 to 4,000 banks will be closed over the next 5 to 6 years.

Mr. Chairman, can you guess where many of these closures will occur? Most of those closures, I dare say, will be in rural areas—just as they have been in the past.

The bill does nothing to ensure that small, rural communities in States like Texas do not become colonies to the imperial banking powers.

We on the Agriculture Committee are sensitive to the plight of rural America.

H.R. 6, as reported by the House Banking Committee, was sequentially referred to the Committee on Agriculture for consideration of matters within our jurisdiction. That jurisdiction includes: The operation of the Nation's commodities exchanges; the extension of agricultural credit; rural economic development; and the agricultural economy in general.

During our deliberations, the Committee on Agriculture adopted a number of amendments to H.R. 6 that addressed our concerns in an attempt to mitigate the adverse implications of this bill on rural and agricultural lending activities.

The Agriculture Committee was able to reach agreement with Chairman GONZALEZ of the Banking Committee and Chairman DINGELL of the Energy and Commerce Committee on amendments to: Ensure that the bill's provision regarding the enforceability of netting contracts cannot be construed to override provisions of laws regulating commodities markets; ensure that the bill's financial privacy provisions do not hinder the Commodity Futures Trading Commission in the pursuit of its law enforcement agenda; and clarify that deposit insurance assessment credits will apply to loans insured or guaranteed by the Secretary of Agriculture.

These largely technical amendments were included in the Rules Committee print of the bill that is now before the House. I want to thank Chairman GONZALEZ and Chairman DINGELL for their cooperation and their willingness to accommodate these amendments.

Unfortunately, two other amendments approved by the Committee on Agriculture were not included in the Rules Committee print, nor were they made in order under the rule. These amendments attempted to mitigate the adverse effects of the bill on our rural communities and financial market participants.

These amendments would have: Required the monitoring of local lending activities of interstate branches operating in rural areas; and assured the maintenance of the status quo with respect to the pass-through of deposit insurance coverage to omnibus accounts containing the funds of futures market customers.

Unfortunately, the Committee on Agriculture's repeated attempts to work with Chairman GONZALEZ on a possible compromise to resolve these matters were unsuccessful.

As reported by the Committee on Banking, Finance and Urban Affairs, section 308 of H.R. 6 is designed to inhibit banks from using interstate branches as deposit production offices.

Section 308 establishes a standard for local lending by interstate branches and required a review by the appropriate bank regulatory agency of any branch which failed to meet that standard. If the regulator finds that the branch was not reasonably meeting the credit needs of the community, the regulator is required to close the branch.

The Agriculture Committee amendment to section 308 would have expanded the provision to provide for a specific standard to trigger the review for interstate branches opened in rural areas.

The amendment would have allowed for the monitoring of the impact of interstate branching on the availability of loan capital to rural borrowers by out-of-state banks. Without the amendment, these banks will be able to escape this review without showing that they are meeting the credit needs of rural areas.

Members of the Agriculture Committee believe this is a modest requirement for banks to be permitted to open interstate branches in rural areas. It would require no more than that a bank which is granted such a privilege reasonably meet the credit needs of the rural community in which the branch is located.

We believe that this standard would have complemented the Banking Committee's section 308. Our amendment would be a prudent check on the ability of out-of-state banks to use new interstate branching authorities to drain rural areas of the financial resources which are so important to the agricultural economy and to rural development.

Unfortunately, the failure of the Rules Committee to make the amendment in order have deprived the House of the opportunity to vote on this modest but important protection for rural communities and rural residents across the country.

Mr. Chairman, the amendments to H.R. 6 offered by the Committee on Agriculture may be considered relatively minor in the context of the bill's main purposes. However, we believe these amendments are necessary for ensuring that the interests of rural America are heard in this debate.

Mr. Chairman, I am disheartened by the inability of the House to consider these amendments by the Committee on Agriculture.

For these and several other more serious reasons, I must oppose passage of this bill. Between what the Federal regulators want to do and what this bill allows them and the big banks to do, we are writing the death warrant for our Nation's small banks.

Yes, banking law reform is needed.

But this bill falls short. This bill does not create a level playing field that allows the entire banking community a chance to operate and make a profit.

Instead, this bill continues to drain the economic life out of rural America. Our farmers cannot afford to stay in business because we keep cutting the budget for our farm programs. Our children are forced to move to the traffic-congested cities and suburbs to find jobs that rural America doesn't offer.

Now we are effectively closing down our small rural banks. With passage of this bill, we might as well turn off the lights in rural America.

Mr. Chairman, I want bank reform legislation. I want to see our banking industry strong and profitable. But I cannot support H.R. 6. This bill drives a stake into the economic future of rural America.

□ 1820

Mr. Chairman, there are many stories that I can tell the Members about how the regulators are running wild. They are closing banks. I can almost attest to the fact that sometimes it is because they do not like the color of the banker's eyes. They are writing up banks for reasons that one could not imagine. Even the Federal Reserve will not allow two small banks to merge because some customer or some director had a loan at that bank, and it just cost them thousands of dollars to hire a lawyer to have to go and explain what the situation is, and then they say, "Well, we were just mistaken," but they have cost the small bank several thousands of dollars.

The horror stories are there. I do not know about the big cities. I do not have access to that information. I am only telling the Members about the small communities throughout rural America, and I am explaining what the regulators are doing and what the rules and regulations are doing. The quotes I gave the Members from people who have been in control give us an ominous sign of what is to happen.

What happens if the banks of rural America go down? America goes down, because we can rebuild our cities should they be destroyed, but what comes from the land cannot be replaced. Members have heard me say that it all begins where we produce the food and the fiber in this country of ours. There could not be big banks in the big cities, there could not be manufactured items, and there could not be any other things that we produce unless we have the food down there in rural America.

I was asked during the consideration of the farm bill by one of my colleagues from one of the big cities, "Hey, how can I explain to someone in innercity Detroit that I voted for this bill so you can give money to farmers not to plant?"

I said, "Look, I haven't got time to explain that, but all I want you to do is tell the people in Detroit—no farmer, no pickup. That's what you tell the people in Detroit—no farmer, no pickup."

What do you tell the people in the innercity? "No farmer, no food." That is what we are talking about.

Farmers do not have their own resources to do the farming. There has to be some borrowed money, and the farm economy depends in great part on these rural banks in rural America.

With all due respect and with the love, admiration, and respect that I have for the Rules Committee, I say they should have given the Members of the House the opportunity to make the decision, and they should have allowed us these amendments. They say that it was a tough fight but it was within their jurisdiction. Truthfully, I do not know, it may or may not have been, but I think that the House merited at least the opportunity to take a look at these amendments. Otherwise we will be driving another nail in the coffin of rural America, and when rural America goes, everything else goes.

Mr. Chairman, that is the reason why I am not able to support H.R. 6.

Mr. Chairman, I am submitting herewith a more detailed description of the Committee on Agriculture's amendments to H.R. 6, as follows:

AMENDMENTS ADOPTED BY THE COMMITTEE ON AGRICULTURE

PAYMENT SYSTEM RISK REDUCTION

Subtitle A of title VI of H.R. 6, as reported by the Banking Committee, is designed to promote reductions in risks to participants in certain payment systems. It specifies the rules which are to be applied in determining obligations and entitlements under netting contracts in instances where parties to such contracts fail.

The Agriculture Committee has no obligation to the purposes of the provision. However, the committee found that in a number of instances it could have unintended effects that would impinge upon the enforcement of the Commodity Exchange Act—the statute which provides for the regulation of commodity futures trading.

Agriculture Committee Proposal

The amendment adopted by the Agriculture Committee modifies a number of provisions relating to the participation of clearing organizations and their members in netting arrangements. A key provision of the Agriculture Committee's amendment would modify the definition of "netting contract" and stipulate that for purposes of the subtitle's provisions, that term is not to be construed to include any contract that is invalid or precluded by Federal commodities laws. Many of the Committee on Agriculture's improvements to subtitle A of title VI are included in the Rules Committee print of H.R. 6.

CONFIDENTIALITY OF CUSTOMER INFORMATION

The Agriculture Committee is concerned that provisions in title IV of the bill designed to protect and expand the privacy rights of financial services customers would hinder the Commodity Futures Trading Commission in its ability to enforce the Commodity Exchange Act.

Agriculture Committee Proposal

The Committee approved amendments to the bill that would ensure that the CFTC would have proper access to financial records to the same degree as other financial regulatory agencies. Amendments to address the Committee's concerns are included in the Rules Committee print of H.R. 6.

DEPOSIT INSURANCE ASSESSMENT CREDITS FOR LOANS GUARANTEED BY USDA

The Agriculture Committee adopted an amendment designed to address what I believe to have been an oversight in the Banking Committee's version of H.R. 6.

Section 233 allows banks to take credit towards deposit insurance assessment liabilities for making loans under Federal programs designed to assist distressed communities.

The credit is to apply in cases of loans insured or guaranteed by the Secretary of Housing and Urban Development, the Secretary of the Department of Veterans Affairs, and the Administrator of the Small Business Administration. The credit is also to apply to loans insured and guaranteed by the Secretary of Agriculture but only insofar as they relate to housing.

Through the Farmers Home Administration, the Secretary of Agriculture insures and guarantees rural development loans in addition to loans and loan guarantees for housing.

Agriculture Committee Proposal

Because loans such as those made by the Farmers Home Administration are clearly related to the purposes of other lending covered by section 233 of the bill, the Committee on Agriculture adopted an amendment which would allow banks to take credits for such loans. This technical amendment is included in the Rules Committee print of the bill.

INTERSTATE BRANCHES IN RURAL AREAS

As reported by the Committee on Banking, Finance, and Urban Affairs, section 308 of H.R. 6 is designed to inhibit banks from using interstate branches as deposit production offices.

This provision establishes a standard for local lending by interstate branches and requires a review by the appropriate bank regulatory agency of any branch which fails to meet that standard. If the regulator finds that the branch is not reasonably meeting the credit needs of the community, the regulator is required to close the branch.

During our hearings on H.R. 6, the Agriculture Committee found that a great many rural Americans are concerned about the potential adverse impact some of the deregulation initiatives proposed in H.R. 6 could have on rural development and the availability of agricultural credit.

Agriculture Committee Proposal

In response to these concerns, the Agriculture Committee adopted an amendment to title III of the bill. This amendment would expand the provisions of section 308 to provide for a specific standard for interstate branches opened in rural areas. Unfortunately, the amendment was not made in order under the rule.

This amendment is designed to allow for the monitoring of the impact of interstate branching on the availability of loan capital to rural borrowers when out-of-State banks exercise the privilege to locate branch offices in rural areas.

Under the amendment, if an interstate branch located in a rural area is found to have a local loan, including loans for agricultural purposes and for rural development, to deposit ratio of less than 50 percent, the branch would be made subject to the review established under the bill as reported by the Banking Committee. If the regulatory agency finds that the branch is not meeting the credit needs of the community, the branch is to be closed.

Members of the Agriculture Committee believe this is a modest requirement under which banks could be permitted to open interstate branches in rural areas. It requires no more than that a bank which is granted such a privilege reasonably meet the credit needs of the rural community in which the branch is located.

This standard is an appropriate complement to the Banking Committee's amendment that will provide a prudent check on the ability of out-of-State banks to use new interstate branching authorities to drain rural areas of the financial resources which are so important to the agricultural economy and to rural development.

DEPOSIT INSURANCE COVERAGE OF FUTURES CUSTOMER FUNDS

The Agriculture Committee also approved an amendment to ensure the maintenance of the status quo with regard to the deposit insurance coverage of funds owned by futures market customers but deposited along with funds of other customers in omnibus accounts.

It is the Agriculture Committee's understanding that the deposit insurance reform provisions of H.R. 6, as reported by the Banking Committee, were not intended to effect the current treatment of such funds. But the Agriculture Committee is concerned that these provisions could be construed in a manner that would prove to be damaging and unnecessarily costly to the hundreds of thousands of farmers, pension fund managers, and other persons who use the futures markets daily.

The customer protection provisions of the Commodity Exchange Act are very strict. Under the Act, all customer funds deposited with a futures commission merchant must be held in "segregated accounts" to ensure that customer funds are kept safe and identifiable regardless of any changes in the financial conditions of the futures commission merchant.

While customer funds are segregated, efficiency in banking and accounting have led to the current situation under which such funds are deposited in omnibus bank accounts in insured institutions by the futures commission merchants who serve as brokers.

Since each customer's ownership interest in such an omnibus account is clearly traceable, the Federal Deposit Insurance Corporation has used its authority to provide insurance coverage for the benefit of each customer for whose benefit funds are deposited in such an account as if such customer's funds were held in a separate insured account.

While current law does not provide specific guidance to the FDIC regarding the provision of such "pass-through" coverage of deposit insurance, the bill as reported by the Banking Committee amends the Federal Deposit Insurance Act to specify that some types of accounts are specifically eligible for such coverage and some are not.

It is our concern that this treatment of the issue of pass-through coverage of deposit insurance could lead to uncertainty regarding congressional intent.

Agriculture Committee Proposal

While the Agriculture Committee believes that such treatment for futures customer funds would and should apply even without the inclusion of the committee's amendment, the inclusion of the amendment would help to eliminate any margin for error by specifying in the statute that current treatment of futures customer accounts should be extended.

The Agriculture amendment would provide that deposit insurance coverage would extend—as it does under existing practice—to each customer depositor of funds as if the customer's funds were the only funds in the account. This would include funds commingled with those of other customers in an omnibus account.

Coverage would only apply if the covered bank is able to produce clear documentation regarding the identity of, and amount of the deposit attributable to, each beneficial owner of funds maintained in the account.

Mr. Chairman, I do not have any other requests for time. I am informed that the possibility is that the minority does not have requests for time. I do not know if I can do so, but I will relinquish the balance of my time, and if permitted to do so, I will relinquish the time on behalf of the minority.

The CHAIRMAN. The gentleman from Texas [Mr. DE LA GARZA] reserves the balance of his time, and the Chair observes that the ranking minority member of the Committee on Agriculture is not here to claim his time, and, therefore, yields back his time.

Mr. DE LA GARZA. If that be the case, Mr. Chairman, then I will yield back the balance of my time.

The CHAIRMAN. All time has expired.

Without objection, the Committee rises.

There was no objection.

Accordingly, the Committee rose; and the Speaker pro tempore [Mr. CARPER] having assumed the chair, Mr. CARR, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, had come to no resolution thereon.

PERSONAL EXPLANATION

Mr. DANNEMEYER. Mr. Speaker, I was unavoidably absent from the House. Had I been present I would have voted "aye" on rollcall Nos. 362, 363 and "nay" on roll No. 361.

NATIONAL HOME CARE WEEK

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 175) to designate the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I take this time in order to yield to our colleague and friend, the gentleman from California [Mr. PANETTA], the chief sponsor of the joint resolution.

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Mr. PANETTA. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would like to take this opportunity to thank Chairman Sawyer for bringing the resolution to create a National Home Care Week in 1991 and 1992 before the House for consideration. I would also like to thank Mr. RINALDO, the original cosponsor of this bill, the other 226 House Members who have lent their support, and Senator HATCH, who has guided the companion bill through the Senate. Congress has approved similar resolutions for the previous 9 years to recognize the valuable services of home care programs and personnel, and I look forward to Congressional passage once again.

Thousands of home care agencies around the Nation have responded to the need for effective alternatives to our health care delivery system. By providing skilled medical assistance and supportive services to those who can be properly treated outside the hospital or nursing home setting, these agencies respond to the demand for new health care options and conserve tax dollars currently expended on needless placement in these institutions. This valuable concept of care provides a serviceable answer to the needs of our health care system, and offers a comforting, dignified environment for patients.

One of the most critical issues to face our Nation today is the state of our health care system. While the growing elderly population, expected to total well over 30 million by the year 2000, places greater demand on our current system, home care agencies have helped many of the elderly remain at home and in their communities. In addition, home care has proven to be a very suitable setting for many others with chronic, impairing diseases, including the large and growing number of persons suffering from AIDS and related illnesses. Home care creates an atmosphere of greater independence and dignity, and promotes maintenance of health as well as recovery. For this valuable service, home care agencies and persons employed in the home care industry should be properly recognized as well as commended.

As we reevaluate and reform our Nation's health care programs, especially in the vital area of long-term care, it is essential for us to take full notice of the benefits of home care and act to encourage its use. I again thank my colleagues for their support of this important resolution, and look forward to the opportunity to recognize this effective and humane health care alternative during the weeks of December 1, 1991, and November 29, 1992.

Mr. RIDGE. Mr. Speaker, continuing my reservation of objection, I yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in strong support of House Joint Resolution 175, which designates the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week," and I commend the gentleman from California [Mr. PANETTA] the chief sponsor of this resolution.

Home health care has become a vital alternative to institutional care as well as an important element in our Nation's health care system. Since the passage of Federal programs that enable patients to receive in-home care, home care agencies have increased from less than 1,000 to more than 12,000 agencies. The service provided by these agencies has effectively prevented the institutionalization of countless numbers of our older Americans.

Mr. Speaker, our Nation faces a crisis with respect to developing cost-effective, humane, long-term care for our older Americans. More than 2 million persons, age 65 or older, reside in institutions at a cost of more than $15 million. It is estimated that 25 percent of those residents do not require extensive institutionalized care.

The expansion of Federal benefits for home health care, in my opinion is a worthy investment during these times of budget constraints. Home health care can realize a significant savings and provide necessary medical assistance. Home care allows thousands of Americans to maintain independence, dignity, and a lifestyle at home, and be able to meet their health needs.

Accordingly, I urge my colleagues to join with me in supporting this important resolution.

Mr. RIDGE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. PARKER). Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 175

Whereas organized home care services to the elderly and disabled have existed in the United States since the last quarter of the 18th century;

Whereas home care is an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places emphasis on the dignity and independence of the individual receiving these services;

Whereas since the enactment of the medicare home care program, which provides coverage for skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, and home health aide services, the number of home care agencies in the United States providing these services has increased from fewer than 1,275 to more than 12,000; and

Whereas many private and charitable organizations provide these and similar services to millions of individuals each year preventing, postponing, and limiting the need for them to become institutionalized to receive these services: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the weeks beginning December 1, 1991, and November 29, 1992, are each designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such weeks with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

HIRE A VETERAN WEEK

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 280) to designate the week beginning November 10, 1991, as "Hire a Veteran Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so to acknowledge the work of the gentleman from California [Mr. BROWN], the chief sponsor of this resolution, and also to yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I am pleased to rise today in support of House Joint Resolution 280, designating the week of November 20, 1991, as "Hire a Veteran Week." and I commend the gentleman from California [Mr. BROWN], the chief sponsor of this resolution.

The latest statistic from the Department of Labor show that 667,000 veterans are unemployed, and that many are underemployed. This bill is a great way to urge help for those veterans who have served and defended our country in our time of need.

Veterans possess many special qualities and skills which make them ideal candidates for employment. Additionally, veterans bring a wealth of experience to the work environment and serve as valuable sources of information. These veterans maintain high standards of performance to meet the productivity expectations of their employers. Most importantly, they know what team work is all about.

House Joint Resolution 280 will remind employers of the advantages of hiring veterans. This measure will educate employers of the existing programs that encourage the hiring of veterans, such as: tax credits to employers for hiring veterans and employer eligibility for special job training partnership act veterans' funds.

Mr. Speaker, I invite my colleagues and all of our Nation's businesses to join in extending job opportunities to our veterans, as we recognize and appreciate the vital contributions our veterans have made to our society.

Accordingly, I urge my colleagues to support this important resolution.

Mr. RIDGE. Mr. Speaker, further reserving the right of object, I have a very good friend that was severely injured during the Vietnam war, John Fails, who is 100 percent disabled. He lost his eyesight. He is about as good a man as I have ever run across. He is a good vet and a good employee. He normally concludes his remarks with his friends and even with strangers with the expression, "Bet on a vet."

I would just encourage members of the business community, those looking for good employees, to make that wager, because I think the veteran will pay back a lot of dividends.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 280

Whereas the people of the United States have both a deep appreciation and respect for the men and women who serve our Nation in the armed forces;

Whereas, although veterans possess special qualities and skills which make them ideal candidates for employment, many veterans encounter difficulties in securing employment; and

Whereas the Department of Veterans Affairs, the Department of Labor, the Office of Personnel Management, and many State and local governments administer veterans programs and have veterans employment representatives both to ensure that veterans receive the services to which they are entitled and to promote employer interest in hiring veterans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning November 10, 1991, is hereby designated as "Hire a Veterans Week", and the President is authorized and requested to issue a proclamation calling upon employers, labor organizations, veterans organizations, and federal, State, and local governmental agencies to lend their support to the campaign to increase employment of the men and women who have served our Nation in the armed forces.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL PHILANTHROPY DAY

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 140) designating November 19, 1991, as "National Philanthropy Day," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so to acknowledge the work of my friend, the gentleman from Indiana [Mr. BURTON], who is the chief sponsor of this resolution. I know it means a great deal to him that the committee has brought this to the floor. We certainly strongly endorse this effort. I know that the gentleman from Indiana [Mr. BURTON] believes personally in philanthropy himself, and obviously is unavoidably detained, or I am sure he would be here to speak on this.

Mr. RIDGE. Mr. Speaker, having no further requests for time, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 140

Whereas as of 1989 there were more than 800,000 nonprofit philanthropic organizations in the United States;

Whereas such philanthropic organizations employ approximately 6,000,000 individuals, and use the services of approximately 4,500,000 volunteers;

Whereas in 1989 the people of the United States contributed approximately $114,000,000,000 to support such philanthropic organizations;

Whereas philanthropic organizations are responsible for enhancing the quality of life of people throughout the world;

Whereas the people of the United States owe a great debt to the schools, churches, museums, art and music centers, youth groups, hospitals, research institutions, community service institutions, and institutions and organizations which aid and comfort disadvantaged, sick, or elderly individuals; and

Whereas the people of the United States should demonstrate gratitude and support for philanthropic organizations and for the efforts, skills, and resources of individuals who carry out the missions of such organizations: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 19, 1991, is designated as "National Philanthropy Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DUTCH-AMERICAN HERITAGE DAY

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 177) to designate November 16, 1991, as "Dutch-American Heritage Day," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so to acknowledge the sponsorship of this resolution by our colleague, the gentleman from Michigan [Mr. VANDER JAGT]. He is the chief sponsor of this resolution.

Mr. Speaker, having no further requests for time, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 177

Whereas, on November 16, 1776, the batteries at the Dutch port of St. Eustatius fired the 1st salute to the flag of the newly independent United States;

Whereas the firing by the Dutch of the 1st salute to the flag of the United States uplifted the morale and determination of the individuals who were fighting for American independence;

Whereas commemoration of Dutch-American Heritage Day provides an opportunity for approximately 8,000,000 Dutch Americans to celebrate their Dutch roots and the extraordinary contributions their ancestors made to the political, economic, and cultural development of the United States; and

Whereas commemoration of Dutch-American Heritage Day promotes awareness by the people of the United States of the essential role performed by the Dutch people in securing American independence and in aiding the development of the United States for the past 215 years; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 16, 1991, is designated as "Dutch-American Heritage Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on the several joint resolutions just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

ANNUAL REPORTS ON ACTIVITIES UNDER HIGHWAY SAFETY ACT AND NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection referred to the Committee on Energy and Commerce and the Committee on Pubic Works and Transportation.

(For message, see proceedings of the Senate of today, Thursday, October 31, 1991.)

□ 1840

FOUNDATION FOR OCEAN AND COASTAL CONSERVATION IN THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. STUDDS] is recognized for 5 minutes.

Mr. STUDDS. Mr. Speaker, today I am introducing legislation to establish the Foundation for Ocean and Coastal Conservation in the United States [FOCCUS]. The bill, modeled after the National Fish and Wildlife Foundation Act, would create a nonprofit charitable foundation to support activities associated with important coastal and marine resource protection programs—primarily, but not limited to, the National Estuarine Research Reserves System [NERRS] and the National Marine Sanctuaries Program [NMSP].

The National Estuarine Research Reserves System is composed of specially designated estuarine reserves representing a variety of coastal regions and estuary types. These fragile and important areas, located where the saltwater of the ocean meets the freshwater of the land, serve as natural field laboratories where scientists can study both the natural and human processes that occur within estuaries. Estuaries are among the most biologically productive systems on Earth; more than two-thirds of the fish and shellfish that are commercially harvested spend part or all of their lives in estuaries. A total of 19 estuarine reserves have been established along the coasts of the United States and in the Great Lakes. Seven additional reserves are in development.

The National Marine Sanctuaries Program designates discrete coastal, marine and Great Lake areas to promote comprehensive management of their ecological, historical, recreational and esthetic resources. The NMSP is one of the few marine programs which protects whole ecosystems, thereby protecting individual species before they are threatened. To date, nine National Marine Sanctuaries have been designated; six additional areas are in development, and two more are under study. The unique resources currently protected by the sanctuaries program include the coral reefs in Key Largo, FL, endangered and threatened marine mammals in Cordell Bank, CA, and the wreck of the U.S.S. *Monitor* off the coast of North Carolina.

These two programs lack sufficient funding to carry out their responsibilities and the chance that they will get adequate funding decreases as the Federal deficit increases. The proposed fiscal year 1992 appropriations for NERRS and NMSP are about $3.7 million and $5 million respectively, a small fraction of the $1.7 billion National Oceanic and Atmospheric Administration budget, which is increasingly directed toward weather and satellite programs. With these small budgets, NERRS and NMSP must propose and designate new areas for protection, manage established areas, conduct research, help conserve the fragile but vital resources, and run public education and outreach programs. Historically, most of the programs' funds have been consumed by designation and management responsibilities, leaving little money for research, conservation, education, and public outreach.

The purpose of the legislation I am introducing today is to help generate private funds to bolster these activities which should be—but are not always—conducted. Under my legislation, the Foundation would be authorized to receive up to $1 million annually for 5 years. In addition to Federal funding, the Foundation would actively pursue private and corporate donations. State and local governments, private individuals, and nonprofit organizations would be eligible to apply for one-for-one matching grants from the Foundation to carry out specific conservation, research, education, or public outreach projects.

The bill would also establish a board of nine voting members who are not employed by the Federal Government with the Under Secretary of Commerce for Oceans and Atmosphere serving as an ex-officio member to appoint officers, hire employees, and adopt a constitution and by-laws for the Foundation. To help get the Foundation started, the Under Secretary would provide, without reimbursement, office space and administrative support and may provide personnel.

Mr. Speaker, through the work of the Fish and Wildlife Foundation we have seen a relatively small investment go a long way toward protecting our fish and wildlife habitat. Because of the success in generating private matching funds, Federal outlays have increased from $1 million annually to $5 million annually. The Fish and Wildlife Foundation now provides support and funding for more than 135 projects a year with an annual budget of $20 million.

It is my hope that the Foundation for Ocean and Coastal Conservation in the United States will provide a similar stimulus to coastal and marine programs. With Federal dollars growing increasingly scarce, this bill provides an opportunity to stretch our taxpayers' dollars farther by combining them with private matching funds. The result will be more comprehensive programs to protect these invaluable areas for ourselves and for future generations.

Mr. Speaker, this is a good bill and I urge its support.

SCHEDULING OF BUSINESS FOR HALLOWEEN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. SANTORUM] is recognized for 5 minutes.

Mr. SANTORUM. Mr. Speaker, if I may engage in a colloquy with the gentleman from Pennsylvania [Mr. RIDGE]. It is now a quarter of seven here in the East. We got out of session today shortly before 6 o'clock. Does the gentleman from Pennsylvania know why we left early today?

Mr. RIDGE. Mr. Speaker, will the gentleman yield?

Mr. SANTORUM. I yield to the gentleman from Pennsylvania.

Mr. RIDGE. It is my understanding, and I think properly so, that the leadership on both sides of the aisle wanted to accommodate Members and families who live in and around the Washington area to keep the evening free so that Members and families who live in and around the Washington area could go home and enjoy the Halloween evening with their young children at home. I think it is certainly commendable and appropriate that we adjourned for that.

Mr. SANTORUM. Mr. Speaker, I appreciate that.

The question is, we did that in the middle of doing amendments on the banking bill; is that not correct?

Mr. RIDGE. That is correct.

Mr. SANTORUM. As a result, we are going to be in tomorrow at 10 a.m., if I am not mistaken.

Mr. RIDGE. If the gentleman will continue to yield, I think that is what the schedule says.

Mr. SANTORUM. As a result of that, those of whom you or I are in a similar situation who have families outside of the beltway, who have families at home, were not able to spend the evening with their children celebrating trick or treat. Is that not the understanding?

Mr. RIDGE. It is.

I think that the gentleman and I talked a little bit earlier this evening. I am pleased that we were sensitive to the needs of the families here in the Washington community.

Mr. SANTORUM. I concur with the gentleman. I agree we should be.

Mr. RIDGE. The point, in fact, is that there are many of us who have young families at home. We have chosen to go back to our districts every weekend. We have chosen to raise our families in the districts that we represent.

I might add, it is not only the fact that my last flight left at 4:10 to join my kids tonight, but because of this and the unlikelihood of our completing the banking bill tomorrow, we will be back on Monday, if we do not complete it tomorrow, which means not only did we not get home tonight because of trying to accommodate Washington-based families, but we will be back a day earlier.

Certainly they do not have any problem because they are going back home again on Monday night. So while I think that it is well that we accommodate families who live in and around Washington, I would like to think that the leadership on both sides of the aisle and those who are responsible for scheduling have a little bit more empathy and sympathy for those of us who have families at home.

I think the gentleman has a young family at home as well.

Mr. SANTORUM. Mr. Speaker, I do. This, in fact, is the first trick or treat, the first Halloween for my 7-month-old daughter. And she is dressed up as a pumpkin tonight, my wife tells me, and has been handing out candy to friends around the neighborhood.

I just want to tell her, if she happens to be watching me back at home, that I miss her very much and I wish I could be there also and that hopefully that this institution will start to have some sensitivity to families who wish to stay in their districts and live in their districts and to be part of the community, that we also are given consideration on the sensitive times and that, Elizabeth, if you are watching, I love you and thank you for putting up with your daddy.

Mr. RIDGE. If the gentleman would continue to yield, I think it is a dilemma for a lot of Members, Republicans and Democrats alike, those with young families.

I know behind the back rail over the past couple of years, I have heard a lot of us who choose to keep our families at home have these private discussions. So when the gentleman asked me to engage in this colloquy, I was very pleased to do it.

I think it is high time that people in this Chamber understand that not everybody lives in Washington, DC. Some of us by choice choose to live, work, worship back home. And when they go about scheduling things around this town, that they have a little bit more consideration for those of us to choose that particular life-style.

I am delighted that my friends around here are back home with their families. Obviously I am a little upset and disappointed that I cannot be home with mine. But hopefully, in the future, they will have a little more sensitivity to us.

I thank the gentleman for asking me to participate in this colloquy with him.

Mr. SANTORUM. Mr. Speaker, I thank the gentleman for doing so.

TRIBUTE TO MARK LEMKE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. BOEHLERT] is recognized for 5 minutes.

Mr. BOEHLERT. Mr. Speaker, the World Series is now history. The excitement and shouting are over and but a memory lingers.

I have intentionally waited several days to give my colleagues from Minnesota and Georgia the opportunity to take their rightful place in the limelight as we recall with fond memories the fall classic. But now I want to tell my colleagues about the New York connection because I think it is appropriate that all America recognize the very special involvement had in this World Series.

We can recall out at the Hubert Humphrey Stadium in Minnesota people holding up a sign that said, "What is a Lemke?"

Well, I am here to tell my colleagues what a Lemke is. A Lemke is an exciting, talented young athlete from Whitesboro, NY, attended Notre Dame High School, who chased a dream and through grit and determination and hard work he achieved that dream, playing second base for the Atlanta Braves in the World Series.

And all the eyes of the sports people and fans around the world were focused on what was happening in that fall classic.

What did Mark Lemke do? He earned a warm spot in all of our hearts. He not only won game three with that dramatic 12th inning hit, which earned for him the most valuable player award. Then in game four he continued his winning ways and scored the winning run. And he did not rest on his laurels. In game five he continued, setting a World Series record by hitting two triples.

Mark Lemke, day after day, showed up for the job and did it to the best of his ability. And, boy, did his ability shine. He batted .417.

Here is a young man who came to the Atlanta Braves this year in spring training, was not even on the full team roster. As a matter of fact, some people were speculating that maybe Mr. Lemke would be sent back to the minors.

□ 1850

But he would have none of that. You see, this young kid, and he is a fine gentleman, worked hard. He did everything we tell our young people to do. He finely tuned his skills. He was there early. He practice hard. He kept giving it his all. Then in the fall classic came his moment in the limelight, batting .417. People all over were saying, "Who is this kid? Where did he come from?"

I am here to tell you, my colleagues, where he comes from. He comes from beautiful upstate New York, Whitesboro, to be exact. And he is the personification of all that we look for in our young people; a very modest kid, but a very talented kid who worked hard and who displays his skills for all to see.

He did so much for so many in those six of seven games that he played. He did not even start or play in the first game, but boy, he got his chance and he made it.

I will tell you what a Lemke is. A Lemke is a role model for young people, not just young people in age, but young people in spirit. I will tell you this, watch out for next year, because Mark Lemke of the Atlanta Braves has arrived, and he is going to continue to serve as a role model for young people to perform at his trade to the best of his ability, and boy, did he rise up to the occasion.

It is a pleasure to serve as the Representative in Congress for the Lemke family. It is exciting for me as a fan to turn on that TV and see one of our best and brightest young people, one of our most talented young people, excel at America's sport.

So I am here today to tell my colleagues from Minnesota congratulations, you have earned them. I am here to tell the people of Georgia that you should be proud of those Braves. They did a magnificent job. And I am here to encourage young people all across this land to follow the example set by a wonderful, talented young man named Mark Lemke.

Mr. Speaker, I include with my remarks a very moving column written for the Observer-Dispatch of Utica, NY, by a talented sportswriter, Marty Lyons.

AS THE SPOTLIGHT SLOWLY FADES, LEMKE THE MAN IS STILL SHINING

(By Marty Lyons)

"What is a Lemke?"

A sign hanging from a railing at the Metrodome posed the question Sunday night during Game 7 of the World Series.

From all accounts, a Lemke is indigenous to Whitesboro, where it spends its formative years romping in the dirt and grass of local playgrounds.

A Lemke is friendly enough, but corner one on a baseball field and see how it scratches and claws and digs in. A Lemke is usually overshadowed by larger and stronger creatures but every so often gets caught in a spotlight and casts its own long shadow.

Mark Lemke's incredible rise to World Series fame is over, but fans here and in Minnesota will long remember the battle-tested second baseman who brought the Atlanta Braves to the brink of the World's Championship with his clutch hitting and hustle.

What is a Lemke?

He's a 27th-round draft pick who spun his wheel in the Class A bushes for three seasons and didn't hit the big time to stay until his eighth pro season. He's a guy who used baseball mitts broken in by a younger neighbor to forge the reputation as a defensive whiz that carried him to the major leagues. And he's a guy who takes nothing for granted, after reading quotes from his former manager, Russ Nixon, that he would be Atlanta's starting second baseman on opening day in 1989 and then being sent back to the minors.

"He's the original dirt player," said his current manager, Bobby Cox.

In the past week, Lemke rose from the dirt to become a made-for-TV star.

He drove in the winning run in Game 3, scored the winning run in Game 4 and tied a World Series record with two triples in Game 5. He led the Braves with a .417 batting average.

Suddenly, cameras were following him home to tape him opening his front door, just to show he's a regular Mark. CBS sportscaster Pat O'Brien wanted to have breakfast with him at 8 a.m. Lemke politely declined, since he wasn't getting to sleep until 4.

That's another thing we learned about Lemkes. They need their rest.

Lemke was Atlanta's front-runner for Series MVP and still might end up sitting next to David Letterman this week, if Minnesota pitcher Jack Morris, who did win the MVP, can't make it to "Late Night."

The head-spinning ride will slow to a crawl today, with convertibles carrying Lemke and his teammates down Peachtree Street in Atlanta, the sounds of adoration washing over them one last time.

And when the parade is over, what then?

Lemke will probably spend a week or so in Atlanta, his mother, Patricia, said last night. If he follows his form of past years, he'll then spend a couple of weeks visiting his brother and sister in Florida.

"Then he might come home," Patricia Lemke said. "I just don't know. It's very difficult to say."

He might be home for Mark Lemke Day in Whitesboro Nov. 16. If he can't make it, he'll have a reason and likely send his regrets, if the family members, friends and former coaches who have been interviewed in the past week by the nation's media are correct in their character assessments.

A $138,000 annual salary has allowed Lemke to upgrade his wardrobe to include $500 suits, joked friend Al Calogero of New Hartford, but he doesn't "big league" it, a term for players who forget their past in the flush of fame.

Everything Lemke said during his dream week suggested he remained in touch with reality.

"I think the fact that the Series is so magnified makes your contribution seem above the level that you are playing all season long," he said.

And this.

"I just want to say thanks to my family and friends in Utica for their support for the Braves and for myself throughout my career. And to thank them for giving me the opportunity as a youth to play ball."

What is a Lemke?

A pain in the neck to the Minnesota Twins.

A big league ballplayer with spikes planted firmly at home.

IRAN'S NUCLEAR EFFORT

The SPEAKER pro tempore (Mr. PARKER). Under a previous order of the House, the gentleman from Florida [Mr. McCOLLUM] is recognized for 5 minutes.

Mr. McCOLLUM. Mr. Speaker, I rise to bring to the attention of my colleagues two reports published by the House Republican Task Force on Terrorism and Unconventional Warfare, of which I am the chairman. I will include these two reports to be submitted into the RECORD following this statement.

These reports, published in July 1991, address the issue of Iran's nuclear effort. They are especially apropos in lieu of recent media accounts that the People's Republic of China has assisted Iran in the advancement of Iran's nuclear technological capabilities and the fact that this information was adamantly denied by senior administration officials this summer.

Keeping in mind the times at which these reports were released, it is asserted that, "Iran appears to be both nearing rudimentary military nuclear capabilities on its own and to be gaining access to Pakistan's operational nuclear arsenal and mature military nuclear technology at the same time." In addition, "there are indications that an imminent and fairly large cooperative endeavor is being contemplated with the People's Republic of China."

The reports go on to state that:

> * * * in the summer of 1991, Iran is more determined than ever to acquire military capabilities because such strategic capabilities constitute an integral part of Teheran's plans for a greater strategic role and posture in the Persian Gulf. Toward that end, Teheran has embarked on "ambitious and aggressive" plans for "the modernization, diversification and nuclearization of its armed forces. The primary sources for the strategic technologies are Pakistan and North Korea.

In the words of Hashemi-Rafsanjani: "We are determined to complete these major nuclear projects and will do so with the help of God."

I find it of great concern that the information released in these reports, information that is based upon the meticulous research and analysis of public documents, was so easily dismissed by senior officials within the administration. However, what is even more disconcerting is the fact that, as was uncovered several weeks ago by Lally Weymouth of the Washington Post and reported in today's edition of the newspaper, similar evidence was also given to these senior officials this summer by our own intelligence community and was likewise ignored and publicly refuted.

I encourage my colleagues to thoroughly read these documents and am assured that you will find them extremely informative and enlightening.

The articles referred to previously follow:

IRAN'S NUCLEAR EFFORT

(By Yoseff Bodansky and Vaughn S. Forrest)

Iran appears to be both nearing rudimentary military nuclear capabilities on its own, and to be gaining access to Pakistan's operational nuclear arsenal and mature military nuclear technology at the same time. Indeed, since Khomeyni seized power, Teheran has tried to revive and expand the Shah's semi-clandestine nuclear weapons program. Thus, in 1986, Iran began a second and fast track approach to obtaining a nuclear capability through a cooperation agreement with Pakistan according to which Iran would have access both to Pakistan's weapons and technology.

The origins of this project stem from the period when Khomeyni's closest aids began to investigate Iran's military nuclear potential almost immediately after seizing power in February 1979. In May of that same year, Ayatollah Mohammad Beheshti summoned Dr. Freidun Fesharaki, one of Iran's leading nuclear scientists, for an interview in Teheran. Beheshti had with him proposals for the conversion of Iran's nuclear reactors, constructed during the Shah's regime, to the production of nuclear weapons that had been written by Dr. Fesharaki several years before. Beheshti showed Fesharaki the documents and wanted to know if they could still be implemented. "It is your duty to build this bomb for the Islamic Republican Party. Our civilization is in danger and we have to do it," Beheshti stated. He then told Fesharaki that the potential cost of such a project was irrelevant and sent him to the West to recruit Iranian scientists who had escaped during the revolution, whereupon, Fesharaki seems to have defected. (His subsequent career, it should be noted however, would have twists suggesting that his defection may in fact have been faked.)

At the time of Fesharaski's "defection", Iran had 5 reactors in different stages of construction. A 5 megawatt (mw) US-made research reactor was operational at Teheran Polytechnique, later renamed the Amir Kabir College. Two additional 1300 mw (each) reactors were being built by the West German Kraftwerk Union company in Bushehr. (In 1979, one was 75–80% complete and the other 60% complete.) Finally, the French company Framatome had just begun building a 935 mw reactor in Darkhouin. However, by the time the project had begun, the Shah's government had invested more than $1b in the French nuclear program in a contract that would permit Iran virtually free access to French nuclear technologies and to large quantities of military-grade enriched uranium. Nonetheless, by the time of the Khomeyni Revolution, Iran had not received any technology or the uranium.

In the summer of 1982, Teheran approached the Kraftwerk Union company and demanded the resumption of the work on the Bushehr reactors. After 3 years of negotiations, Bonn vetoed the project. However, all this time, construction and technical conditioning work was being carried out via the Fritz Werner company, then already running several armament production facilities in Iran. (Indeed, a German technician was killed when the Iraqi Air Force bombed Bushehr in 1987.) In 1985, Kraftwerk Union arranged for an Argentinean subsidiary to train Iranians and to deliver 20% enriched uranium and nuclear core technology to both Bushehr and the Amir Kabir College. Argentinean support and supplies continued to arrive at least until 1988. Ultimately, in March 1987, Iran informed the International Atomic Energy Agency (IAEA) that it had installed fissionable material in the Bushehr I reactor.

During this time, Iran had also been pursuing alternate means of obtaining nuclear materials. In the Amir Kabir College, scientists were trying to activate 4 US-made laser separators, delivered back in 1978, to produce weapons grade uranium. In Isphahan, a Nuclear Research Institute was opened in 1984 with technical assistance from France and Pakistan. This institute opened the door to Iran's short-cut to the bomb. Further, in February 1986, Pakistan offered to train Iranian nuclear scientists in return for financial support for Pakistan's own nuclear program.

Meanwhile, the Iranian military nuclear program had been accelerating since mid-1985, with Teheran launching an intense recruitment effort of Iranian scientists and students living abroad, as well as of foreign scientists and expert technicians. The Iranians were promised, in addition to a generous salary, a complete amnesty to all members of their extended family; quite an inducement in view of the terror than prevailing in Teheran. The response was sufficiently promising for the Atomic Energy Organization of Iran (AEOI) to run a conference in Bushehr on 14–19 March 1986 about employment prospects and research potential in Iran for interested visitors.

Subsequently, in January 1987, Iran's leading nuclear scientists held a high level meeting in the Amir Kabir College. Dr. Fesharaki returned to Teheran at that time, but denied taking part in the conference despite the fact that others in attendance insisted that he was present in some of the sessions/meetings. Another key visitor to Iran at the time was Dr. Abdus Qadir Khan, the father of the Pakistani bomb. He visited both Teheran and Bushehr to assess the Iranian nuclear potential and to discuss future cooperation with the Iranian leadership. Ayatollah Ali Kamene'i, then Iran's president, took part in the conference and delivered a speech to the participants. "Regarding Atomic energy, we need it now," he declared. "Therefore, we need a tireless effort from all of you brothers in this field. Our nation has always been threatened from outside. The least we can do to face this danger is to let our enemies know that we can defend ourselves. Therefore, every step you take here is in defense of your country and your revolution. With this in mind, you should work hard and at great speed."

Soon afterward, Iran and Pakistan signed an agreement on technical cooperation in military nuclear fields. Two senior Iranian scientists, Sayyid Reza and Hadi Rambashahr, went to Kahuta and were later joined by a few other Iranians to begin organizing a training program. Within a year, over 30 Iranian nuclear specialists had been sent to Pakistan, mainly Kahuta, to join the Pakistani program and receive advanced training. Eventually, all the Iranians became involved in several key aspects of weapons construction, including Plutonium extraction.

In the meantime, Teheran left no doubt about its interest in a comprehensive military program for the development of weapons of mass destruction. On 6 October 1988, Hojjat ol-Islam Ali Akbar Hashemi-Rafsanjani outlined Iran's policy in a speech to officers of the Islamic Revolutionary Guards Corps:

"With regards to chemical, bacteriological, and radiological weapons training, it was made very clear during the war that these weapons are very decisive. It was also made clear that the oral teachings of the world are not very effective when war reaches a serious stage and the world does not respect its own resolutions and closes its eyes to the violations and all the aggressions which are committed in the battlefield.

"We should fully equip ourselves both in the offensive and defensive use of chemical, bacteriological, and radiological weapons. From now on you should make use of the opportunity and perform this task."

Subsequently, there was a corresponding progress in Iran's nuclear technologies capabilities. By 1988, the installations in the Amir Kabir College, most likely the German-Argentinean equipment, were capable of extracting Plutonium, although it was not clear how long it would take to have enough for a bomb. By late-1989, the Pakistanis were helping Iran to optimize a reactor for the extraction of Plutonium and Iran was also expected to become the first importer of Pakistan's new reactor of indigenous (with Chinese assistance) design. Speaking in an exhibition of Chinese electronic equipment in Karachi on 16 January 1991, Munir Ahmad Khan, the Chairman of Pakistan's Atomic Energy Commission, declared that "Pakistan has achieved some extraordinary success in the manufacturing of nuclear fuel and is now manufacturing a nuclear reactor and a power generating reactor." He added that "China's backing for Pakistan's peaceful nuclear efforts is encouraging and praiseworthy." Subsequently, Iran launched an intense program to discover indigenous sources of uranium and on 2 December 1989 announced the discovery of deposits containing 3200 tons of uranium and 4200 tons of molybdenum.

Thus, Iran continues to expand its nuclear cooperation with other Third World countries with emphasis on easy access to US technology. For example, Iran's AEOI signed an atomic cooperation agreement with Mexico on 28 April 1991. Under the agreement, Iranian students and specialists will be sent for advanced studies and exchange work in Mexico while Teheran will finance several projects of the Mexican energy and mining industries.

In addition, the Gulf Crisis further propelled both Teheran and Islamabad to significantly accelerate their military nuclear programs. The Karachi *Nawa-i-Wagt* observed on 25 January 1991 that in view of the Gulf situation, "Pakistan needs credible 'nuclear deterrence' to avoid the dangers of war. . . . in the subcontinent." Islamabad, in this context, is anticipating a major clash with the US over strategic issues, including the Pakistani military nuclear program, as part of America's confrontation with the rise of Islam as a world power. Thus, on 1 February 1991, *Nawa-i-Wagt* warned that "the United States just cannot bear any Arab or Islamic country to develop nuclear capability,'" and toward this end, "the United States is forcing itself on Pakistan's nuclear program."

Iran rallied immediately to Pakistan's banner. The Speaker of the *Majlis*, Hojjat ol-Islam Mehdi Karrubi, arrived in Islamabad in late February to discuss military cooperation, including defense industries and nuclear weapons. Karrubi announced that "no country has the right to come here and make decisions about the future of Islamic countries." He then emphasized "the need to increase cooperation between Pakistan and Iran" because "there is a great need for the defense of this region." Iran then deposited $50m "in revolving funds" in Pakistani banks for the support of special key Pakistani defense programs, especially nuclear related programs.

Thus, Islamabad sees in even tighter cooperation with Teheran the key to its regional strategic posture. On 26 February, the *Nawa-i-Wagt* hailed, the special pacts" between Iran and Pakistan and urged their expansion in view of the current circumstances.

"In Pakistan nuclear education is not available because we have been relying on 'foreign sources.' The doors to these sources have now been closed on Pakistani students. Pakistan's future is linked to nuclear education. It would be beneficial to regional independence and security, if Iran and Pakistan cooperate and conclude major pacts in nuclear education for joint syllabus, joint instructions, and joint laboratories."

Such cooperation is seen as a central component in a comprehensive alliance between the two countries against a common enemy, namely, the US. "The backbone of the superpowers, which are still in the Gulf continuing the political shelling on Iran and Pakistan, cannot be broken. We believe that a closer military cooperation between Iran and Pakistanis is just a matter of time and both countries should pay closer attention to it."

Emboldened by such rhetoric, Iran has surged ahead in its attempts to regain Western nuclear technologies and materiel. Indeed, the Iranian Atomic Energy Organization (IAEO) renewed its requests for assistance from Germany and for the delivery of enriched uranium from France.

Thus, on 29 June 1991, Teheran announced that it "cannot remain indifferent" in view of the German refusal to assist in the completion and activation of the two reactors in Bushehr. Iran was willing to immediately invest the $30m required to update the safety procedures in the reactor as required to meet German regulations. Iran also threatened Germany with legal action in order to recover the $10b Iran claimed to have been lost because of the German delays in completion of Bushehr. In early-July, the IAEO appealed to the Germans to reconsider their position. Teheran was willing to understand Germany's reluctance to provide spares during the war when the Bushehr site was subjected to Iraqi air attacks, but could see no reason for refusal to sell parts now that the war was over.

Late, in July, as part of the great rapprochement with France pending the September visit by President Mitterand to Teheran, Iran suddenly brought up the issue of the enriched uranium purchased by the Shah and demanded that it be delivered to Iran. Iran announced that it was even willing to renew its investment in the "Eurodif" (French nuclear industries) project if this would expedite the delivery of uranium.

At first, the French rejected any possibility for nuclear cooperation. However, with enticing financial arrangements, and with the emergence of a back door approach, namely, the restoration of the existing site in Darkhouin through Pakistani intermediaries, the deal is not completely dead. Reportedly, France is even said to be willing to consider supplying non-military 20% enriched uranium.

Thus, in the summer of 1991, Iran is more determined than ever to acquire military nuclear capabilities because such strategic capabilities constitute an integral part of Teheran's plans for a greater strategic role and posture in the Persian Gulf. Toward that end, Teheran has embarked on "ambitious and aggressive" plans for "the modernization, diversification and nuclearization" of its armed forces. The primary sources for the strategic technologies are Pakistan and North Korea, while the setbacks caused by French and German reluctance to provide nuclear technologies and enriched uranium do not discourage Teheran. "We are determined to complete these major [nuclear] projects and will do so with the help of God," Hashemi-Rafsanjani declared on July 7.

Thus, if Iran's dogged efforts to acquire other strategic capabilities such as chemical and biological weapons, as well as surface-to-surface ballistic missiles, are to serve as indications of the future of Iran's nuclear weapons program, then the world should get used to the idea of Iran as a likely nuclear power.

(This paper may not necessarily reflect the views of all of the Members of the Republican Task Force on Terrorism and Unconventional Warfare. It is intended to provoke discussion and debate.)

TASK FORCE ON TERRORISM AND UNCONVENTIONAL WARFARE, HOUSE REPUBLICAN RESEARCH COMMITTEE, U.S. HOUSE OF REPRESENTATIVES

Washington, DC, July 29, 1991.

IRAN'S NUCLEAR EFFORT—UPDATE

(By Yossef Bodansky and Vaughn Forrest)

(EDITOR'S NOTE.—The following paper is a further elaboration on the recently released Task Force paper dealing with the efforts of the Iranian government to develop nuclear weapons technology. This is intended as a supplement to that paper.)

When Ali Akbar Hashemi-Rafsanjani declared on July 7, 1991 that Iran was "determined to complete these major [nuclear] projects and will do so with the help of God," Iran was actually even closer to realizing its objective than had previously been known. The setbacks caused by French and German reluctance to provide nuclear technologies and enriched uranium motivated Teheran to immediately strike a deal with the People's Republic of China that brought it significantly closer to its dream of a nuclear arsenal. Thus, in retrospect, it seems that the rejection of Iran's approach to France and Germany earlier this summer was actually a last check on them prior to committing to decisive cooperation with the PRC.

The turning point in Iran's quest for nuclear weapons was on 8–9 July during the visit to Teheran by China's premier Li Peng. The original objective of the visit was to conclude a series of military, military-industrial, and economic agreements with Iran totalling about $5b a year. These agreements were signed in Teheran by Li Peng and Hashemi-Rafsanjani.

However, on the eve of the visit, as the reluctance of the West to resurrect the Iranian nuclear program was becoming apparent, Teheran agreed to Islamabad's repeated urgings to rely on the Chinese as the primary, and virtually sole, source for military nuclear technologies. Iranian nuclear experts had been exposed to Chinese military nuclear technologies while working in Pakistan and had grown to like it. Moreover, the Chinese had observed the Iranians at work. Thus, in June, Islamabad urged Beijing to respond favorably to Iranian requests for aid and hailed the benefits and effectiveness of their on-going close cooperation with Iran.

Subsequently, Beijing agreed in principle, but conditioned the final decision on strategic discussions with the Iranian leadership and first-hand thorough inspection of conditions in Iran. Li Peng's visit to Teheran provided an opportunity for meeting both conditions. He held lengthy discussions with Hashemi-Rafsanjani and the Iranian elite about Iran's and the "Muslim Bloc's" regional strategies, and the prospects of close cooperation with Pakistan. Li Peng was then taken to Isfahan to inspect the main military-industrial complexes where Chinese and North Korean experts and technicians were helping to develop Iran's growing missile industry. He talked to the senior Chinese experts on site about their working conditions, their assessment of the Iranian technological capabilities and the overall security of the projects.

Li Peng was apparently satisfied with what he saw, because he subsequently agreed to provide Iran with "the necessary expertise and technology for the completion of an Iranian nuclear reactor." The specific details of this plan are to be completed this summer. The Iranians would like to expedite the program by building on their existing cooperation with the Pakistanis, an arrangement which suits Beijing's interests.

Indeed, so eager was Iran to placate China in this regard that the IRGC Commander, Mohsen Rezai left almost immediately for a high level visit to Pakistan. He met in Islamabad with the President, the Prime Minister and the entire high command "to review issues in the area of defense and ways of consolidating unity between the two countries." The other major aspect of Rezai's visit was that he and "the Iranian military delegation inspected a number of military industries as well as the new weapons Pakistan has manufactured with the help of a number of countries, including China." Teheran presented the visit as a strategic milestone in the effort to rejuvenate the Muslim world.

Although no specific details were provided as to the extent and timing of the Iranian cooperation with the PRC, there are indications that an imminent and fairly large cooperative endeavour is being contemplated. Further, in return for nuclear assistance, Teheran also promised not only not to agitate the Muslims of Xinkiang, where the bulk of the PRC's military nuclear facilities are located, but even to send Mullahs to preach and urge cooperation with Beijing.

Therefore, Iran seems to be on the verge of the final phase of the process of acquiring at the very least a rudimentary military nuclear capability, and possibly even more sophisticated weapons, through direct assistance from the PRC and by gaining access to Pakistan's operational nuclear arsenal and mature military nuclear technology.

(This paper may not necessarily reflect the views of all of the Members of the Republican Task Force on Terrorism and Unconventional Warfare. It is intended to provoke discussion and debate.)

Mr. Speaker, I understand it is your birthday today, and I wish you a happy birthday.

The SPEAKER pro tempore. The Chair appreciates that.

DEMOCRATIC TRICK OR TREAT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. ROHRABACHER] is recognized for 60 minutes.

Mr. ROHRABACHER. Mr. Speaker, it is Halloween, and everyone in this body tries to get in the spirit of the holiday. But we Republicans are disadvantaged because it is the Democratic Party which is the party of tricks and treats. The trick is telling the American public that our tax system is unfairly burdensome on the poor. The treat is the pork and expensive favors that they hand out to every special interest group that comes knocking at their door.

The Democrat gremlins have been claiming over and over and over again that Republican tax policies favor the rich.

Consider this: In 1981, the richest 1 percent of taxpayers paid 18 percent of all taxes. In 1988, after 8 years of Reagan administration, that wealthiest 1 percent paid 27 percent.

Today: The wealthiest 50 percent of taxpayers pay 95 percent of all income tax, and 83 percent of all Social Security taxes.

Republicans believe in lower tax rates for all—which yields higher revenues for the Government.

The ghoulish spenders and taxers on the other side of the aisle are trying to stir class hatred between rich and poor. This yields high deficits, unemployment, and, ironically enough, lower tax receipts.

But let's truly unmask the Democrats' tax charade:

If the tax rates of the last Democratic administration were still in effect:

A family with annual income of $10,000 would pay 134 percent more in taxes.

A family with annual income of $1 million would pay only 62 percent more in taxes. Of course, they would still have their tax loopholes written into the Code by Democrats so their rich buddies in Hollywood and Wall Street would be paying much much less.

Worse than that, the interest rates would be 21 percent, we'd have double digit inflation, and our deficit would be twice as big. Frighteningly, we already are seeing the rise of an eerie spectre: the Ghosts of Halloween Past, if you will. It's none other than Old Man Malaise. Why is he around again?

Well, to the degree that the economy is now in trouble, it can be traced to the power of liberal big spending Democrats to reassert their policies of tax and spend. It started downhill after the liberals regained control of the Senate in 1986, and peaked last November when they put President Bush's back against the wall and forced him to accept a massive tax hike, even on a fragile economy. Now with the country on the skids, one of the Democrats' chief economic hobgoblins, Senator BENSTEN is calling for a tax cut. Surprise. Surprise.

How is this possible?

That's because it doesn't take a fortuneteller to realize what a success the Republican tax cuts of the 1980's were in raising revenue. In fiscal year 1981, tax receipts equaled $599 billion. By fiscal year 1988, they were over $1 trillion. That's a 43-percent increase in revenue fueled by the largest tax cut in history. So Republicans gave us lower taxes, more jobs, and economic growth.

Take that to the pumpkin patch and sell it.

Nevertheless, we have big-spending liberals who claim that increasing the Federal take from $599 billion to over $1 trillion isn't enough. They blame a lack of taxes for our increasing deficit. But if tax receipts have risen sharply, why is the deficit growing at a horrifying rate? It's simple—the powers that be in the U.S. Congress have been giving treats to their friends and supporters at an evermore accelerated pace than our increasing tax revenues. In the last 3 years spending has increased, this at the same time defense spending was shrinking. Until we control spending, the deficit will continue to soar like a witch on a broom.

But Mr. Speaker, I've got a better use for that broom: It's time to sweep the big taxers and spenders out the door. They've done too much damage to our economy. The people are frightened out of their wits, and justifiably so.

The Democrats offer us howls and wailing. Republicans offer policies which encourage real economic growth and higher take-home pay that won't be gobbled up, like so much Halloween candy, by the Federal cookie monster.

We are now witnessing the spectacle of some Democrats, like Senator BENTSEN embracing a tax cut to stimulate growth, while other Democrats are pushing to increase the tax burden on the American people. And the people don't buy the line that somebody else is paying those taxes. They know that in the end the Government will be putting its grasping hands into their bag of candy.

Because of the fairness of the Reagan-Bush tax program real income for all Americans has grown 16.4 percent between 1981 and 1988. During the failed Carter administration, real growth grew a paltry 4.1 percent. That's not a full picture, of course. It takes 2 years for a policy to be put in place and have an impact on any society. That means the Democrats should be judged on the years 1979 to 1983. What a disaster. Even Kevin Phillips can't make that look good. He can only blame it on Reagan.

On a per-person basis, for example, the family incomes of the poorest 20 percent declined 17.4 percent between 1979 and 1983.

Between 1983 and 1989, the poorest 20 percent saw income rise 11.8 percent. The Republican economics.

It's time for the other side to quit tricking the public. Our citizens don't deserve to be needlessly spooked by your liberal gobbledygook. Let's level with the American public and establish a truly fair tax system.

That means lower taxes and lower spending.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mrs. LLOYD (at the request of Mr. GEPHARDT) for today on account of illness.

Mr. SAVAGE (at the request of Mr. GEPHARDT) for today on account of illness.

Mr. BILIRAKIS (at the request of Mr. GEPHARDT) for today, tomorrow, and until 2 p.m. on Monday, November 4 on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SANTORUM) to revise and extend their remarks and include extraneous material:)

Mrs. MORELLA, for 5 minutes, today.

Mr. RIGGS, for 60 minutes, today.

Mr. CRANE, for 5 minutes each day, on November 6 and 7.

Mr. ROHRABACHER, for 60 minutes, today.

Mr. BOEHLERT, for 5 minutes, today.

Mr. SANTORUM, for 5 minutes, today.

(The following Members (at the request of Mr. BERMAN) to revise and extend their remarks and include extraneous material:)

Mr. SKELTON, for 5 minutes each day, today and on November 1.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. STUDDS, for 5 minutes, today.

Mr. MILLER of California, for 60 minutes, on November 6.

Mr. DURBIN, for 60 minutes, on November 6.

Mr. FRANK, for 60 minutes, on November 6.

Ms. DELAURO, for 60 minutes, on November 6.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. SANTORUM) and to include extraneous matter:)

Mr. BROOMFIELD.

Mr. GILMAN.

Mr. GALLO.

Mr. JOHNSON of Texas.

Mr. BILIRAKIS.

Mr. CUNNINGHAM.

Mr. GOODLING.

Mr. HUNTER in three instances.

Mr. FIELDS.

Ms. ROS-LEHTINEN.

Mr. GALLEGLY.

Mr. GEKAS.

Mr. DREIER of California.

Mr. MCEWEN.

Mr. ZIMMER.

Mrs. BENTLEY.

(The following Members (at the request of Mr. BERMAN) and to include extraneous matter:)

Mr. ROEMER.

Mr. ANDREWS of Texas.

Mr. TRAFICANT in five instances.
Mr. MURTHA.
Mr. EDWARDS of California.
Mr. LANTOS.
Mr. DARDEN in two instances.
Ms. KAPTUR.
Mr. RUSSO.
Mr. RANGEL.
Mr. LIPINSKI.
Mr. JACOBS.
Mr. VISCLOSKY.
Ms. PELOSI.
Mr. GUARINI.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1350. An act to formulate a plan for the management of natural and cultural resources on the Zuni Indian reservation, on the lands of the Ramah Band of the Navajo Tribe of Indians, and the Navajo Nation, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 1467. An act to designate the United States Courthouse located at 15 Lee Street in Montgomery, Alabama, as the "Frank M. Johnson, Jr. United States Courthouse"; to the Committee on Public Works and Transportation.

S. 1530. An act to authorize the integration of employment, training, and related services provided by Indian tribal governments; to the Committee on Interior and Insular Affairs.

S. 1889. An act to designate the United States Courthouse located at 111 South Wolcott in Casper, Wyoming, as the "Ewing T. Kerr United States Courthouse"; to the Committee on Public Works and Transportation.

S. 1891. An act to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes; to the Committee on Energy and Commerce.

□ 1900

ADJOURNMENT

Mr. ROHRABACHER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 8 minutes p.m.), the House adjourned until tomorrow, Friday, November 1, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2280. A communication from the President of the United States, transmitting a report on Possible Effects of a Strategic Arms Reduction Agreement on the Trident Program, pursuant to Public Law 101-189, section 1001(a) (103 Stat. 1539); to the Committee on Armed Services.

2281. A communication from the President of the United States, transmitting a report entitled, "Verification of Nuclear Warhead Dismantlement and Special Nuclear Material Controls," pursuant to section 3151 of the National Defense Authorization Act for fiscal year 1991; to the Committee on Armed Services.

2282. A letter from the Assistant Secretary for Indian Affairs, Department of the Interior, transmitting recommendations for amendments to Federal laws relating to native Americans, pursuant to Public Law 101-477, section 106(b) (104 Stat. 1156); to the Committee on Education and Labor.

2283. A letter from the Inspector General, Department of Defense, transmitting copies of the Army Audit Agency reports (Report Numbers NR 92-420 and NR 92-421) on its review of Superfund financial transactions for fiscal year 1990, pursuant to 31 U.S.C. 7501 note; to the Committee on Energy and Commerce.

2284. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notification of the Department of the Navy's proposed Letter(s) of Offer and Acceptance [LOA] to Greece for defense articles and services (Transmittal No. 92-05), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2285. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notification of the Department of the Army's proposed Letter(s) of Offer and Acceptance [LOA] to Greece for defense articles and services (Transmittal No. 92-06), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2286. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notification of the Department of the Navy's proposed Letter(s) of Offer and Acceptance [LOA] to Japan for defense articles and services (Transmittal No. 92-03), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2287. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting copies of the original report of political contributions of William Edwin Ryerson, of Virginia, to be Ambassador to the Republic of Albania, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

2288. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report required by section 701(b)(2)(f) of Public Law 100-204; to the Committee on Foreign Affairs.

2289. A letter from the Comptroller General of the United States, transmitting the results of an audit of the financial statements of the Resolution Trust Corporation for the year ended December 31, 1990; jointly, to the Committees on Banking, Finance and Urban Affairs and Government Operations.

2290. A letter from the Executive Director, Resolution Trust Corporation, transmitting the RTC's Status Report for September 1991 (The 1988-89 FSLIC Assistance Agreements); jointly, to the Committees on Banking, Finance and Urban Affairs and Appropriations.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. RUSSO (for himself, Mr. GUARINI, Ms. PELOSI, and Mr. MILLER of California):

H.R. 3680. A bill to modify the tax and budget priorities of the United States, and for other purposes; jointly, to the Committees on Ways and Means, Government Operations, Science, Space, and Technology, Post Office and Civil Service, Appropriations, Small Business, Banking, Finance and Urban Affairs, Education and Labor, Agriculture, Armed Services, and Energy and Commerce.

By Mr. WYDEN (for himself, Mr. RIDGE, Mr. GEPHARDT, Mr. THOMAS of California, Mr. SAWYER, Mr. CHANDLER, Mr. MCNULTY, Mr. FAZIO, Mr. HOYER, Mr. MARKEY, Mr. ECKART, Mr. FEIGHAN, Mr. HEFNER, Mr. KOSTMAYER, Mr. GONZALEZ, Mr. JEFFERSON, Mr. LAGOMARSINO, Ms. NORTON, Mr. MCMILLEN of Maryland, Mr. MCDADE, Mr. PAYNE of Virginia, Mr. POSHARD, Mr. RAY, Mr. MRAZEK, Mr. TORRICELLI, Mr. NEAL of Massachusetts, Mr. MURPHY, Mr. ORTIZ, Mr. FOGLIETTA, Mrs. BOXER, Mr. VENTO, Mr. CLEMENT, Mr. DE LUGO, Mr. ESPY, Mr. STAGGERS, Mr. SABO, Mr. SCHUMER, Mr. TORRES, Mr. SCHEUER, Mr. EMERSON, Mr. COOPER, Mr. BORSKI, Mr. CONYERS, Mr. SWETT, Mr. DOWNEY, Mrs. LLOYD, Mr. KOLTER, Mr. HOCHBRUECKNER, Mrs. BENTLEY, Mr. HYDE, Mr. OWENS of Utah, Mr. APPLEGATE, Mr. WASHINGTON, and Mr. RANGEL):

H.R. 3681. A bill to amend title 5, United States Code, to make election day a legal public holiday, with such holiday to be known as "Democracy Day"; to the Committee on Post Office and Civil Service.

By Mr. LANTOS:

H.R. 3682. A bill to amend the Internal Revenue Code of 1986 to provide a 3-year extension of the low-income housing credit, and for other purposes; to the Committee on Ways and Means.

H.R. 3683. A bill to establish an Assistant Secretary for Administration of the Department of Housing and Urban Development; to the Committee on Banking, Finance and Urban Affairs.

H.R. 3684. A bill to develop Federal Government performance standards and goals plans, and for other purposes; jointly, to the Committees on Government Operations and Rules.

H.R. 3685. A bill to establish the Office of Management and the Office of the Budget; to the Committee on Government Operations.

By Mr. COBLE:

H.R. 3686. A bill to amend title 28, United States Code, to make changes in the places of holding court in the Eastern District of North Carolina; to the Committee on the Judiciary.

By Mr. DREIER of California:

H.R. 3687. A bill to limit the provision of assistance to the Soviet Union under the Agricultural Trade Development and Assistance Act of 1954; to the Committee on Foreign Affairs.

By Mr. GIBBONS:

H.R. 3688. A bill to amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. JOHNSTON of Florida (for himself and Mrs. BOXER):

H.R. 3689. A bill to amend the Social Security Act to provide for universal access to health benefits through a federally financed insurance program administered by States, and for other purposes; jointly, to the Committees on Energy and Commerce and Ways and Means.

By Mr. MURTHA:

H.R. 3690. A bill to amend title III of the act of March 3, 1933, commonly known as the

Buy American Act, to require Federal agencies to increase domestic procurement in times of economic recession, and for other purposes; to the Committee on Government Operations.

By Mr. PERKINS:

H.R. 3691. A bill directing the Secretary of the Army to develop and implement a plan for modifying the channel bypass element of the Levisa Fork, KY, for the purpose of water quality improvement in and restoration of Pikeville Lake, KY; to the Committee on Public Works and Transportation.

By Mr. SKEEN (for himself, Mr. STALLINGS, Mr. SCHIFF, Mr. YOUNG of Alaska, Mr. DICKINSON, Mr. RHODES, and Mr. KYL):

H.R. 3692. A bill to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, NM, and for other purposes; jointly, to the Committees on Armed Services and Interior and Insular Affairs.

By Mr. STALLINGS (for himself and Mr. LAROCCO):

H.R. 3693. A bill to adjust the boundaries of the Targhee National Forest, to authorize a land exchange involving the Kaniksu National Forest, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. STUDDS (for himself, Mr. JONES of North Carolina, Mr. HERTEL, and Mr. DAVIS):

H.R. 3694. A bill to establish the Foundation for Ocean and Coastal Conservation in the United States, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. ZIMMER:

H.R. 3695. A bill to direct the Secretary of the Interior to conduct a study concerning the designation of the Morris and Delaware and Raritan Navigation Canals in the State of New Jersey as national heritage corridors; to the Committee on Interior and Insular Affairs.

By Mr. HERTEL (for himself and Mr. FASCELL):

H. Con. Res. 230. Concurrent resolution emphasizing the vast extent of environmental damage in the Persian Gulf region and urging expeditious steps by the United Nations to set aside funds to redress environmental and public health losses; to the Committee on Foreign Affairs.

By Mr. ROSTENKOWSKI:

H. Res. 267. Resolution returning to the Senate the bill S. 320; considered and agreed to.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 127: Mr. ANDREWS of New Jersey, Mr. SANGMEISTER, Mr. DELAY, Mr. YATES, and Mr. LEHMAN of California.

H.R. 261: Mr. SYNAR, Mr. YOUNG of Florida, Mr. POSHARD, Mr. GORDON, Mr. FALEOMAVAEGA, Mr. KOLTER, Mr. DOWNEY, and Mr. MORAN.

H.R. 312: Mr. MACHTLEY.

H.R. 430: Mr. MCCOLLUM and Mr. GIBBONS.

H.R. 608: Mr. BUSTAMANTE and Mr. WEBER.

H.R. 609: Mr. BORSKI.

H.R. 786: Mr. MOAKLEY and Ms. SLAUGHTER of New York.

H.R. 911: Mr. KOLBE, Mr. MCDADE, Mr. LEWIS of California, and Mr. OLVER.

H.R. 1063: Mr. BROWN, Mr. ANDREWS of Maine, Mr. CONYERS, Mr. MCCLOSKEY, and Mr. FROST.

H.R. 1240: Ms. NORTON, Mr. LAFALCE, and Mr. DWYER of New Jersey.

H.R. 1270: Mr. LIGHTFOOT, Mrs. LLOYD, Mr. PAYNE of Virginia, Mr. CRAMER, and Mrs. BYRON.

H.R. 1300: Mr. VENTO.

H.R. 1335: Mr. FISH and Mr. ACKERMAN.

H.R. 1389: Mr. SMITH of Florida.

H.R. 1476: Mr. PASTOR.

H.R. 1495: Mr. SLATTERY and Mr. MINETA.

H.R. 1522: Mr. ESPY, Ms. NORTON, Mrs. COLLINS of Illinois, Mr. MINETA, Mr. JOHNSTON of Florida, and Ms. PELOSI.

H.R. 1531: Mr. TORRES, Mr. CHANDLER, and Mr. JONES of Georgia.

H.R. 1546: Mr. CONDIT and Mr. DARDEN.

H.R. 1547: Mr. DARDEN.

H.R. 1633: Mr. JONES of North Carolina, Mr. STALLINGS, and Mr. SHAYS.

H.R. 1800: Mr. DREIER of California.

H.R. 2083: Mr. SCHEUER and Mr. SERRANO.

H.R. 2215: Mr. CLAY, Mr. FISH, Mr. JONES of Georgia, and Mr. WALSH.

H.R. 2257: Mr. GINGRICH.

H.R. 2326: Mr. JOHNSON of South Dakota.

H.R. 2363: Mr. LAGOMARSINO, Mr. MILLER of Washington, Mr. ANDREWS of Texas, Mr. PETERSON of Florida, and Mr. FEIGHAN.

H.R. 2415: Ms. NORTON.

H.R. 2632: Mr. SHAYS, Mr. JEFFERSON, Mr. KOSTMAYER, and Mr. LEVINE of California.

H.R. 2693: Mr. GEREN of Texas and Mr. PACKARD.

H.R. 2721: Mr. MRAZEK.

H.R. 2788: Mr. FIELDS and Mr. CRANE.

H.R. 2840: Ms. NORTON and Mr. LEVIN of Michigan.

H.R. 2862: Mr. MILLER of Washington.

H.R. 2912: Ms. NORTON, Mr. FISH, and Mr. EVANS.

H.R. 2943: Mr. FISH.

H.R. 2966: Mr. RAY, Mr. MAVROULES, Mr. DWYER of New Jersey, Mr. HATCHER, Mr. KLECZKA, and Mr. GUNDERSON.

H.R. 3070: Mr. EDWARDS of Texas, Mr. CARPER, Mr. CAMP, and Mr. VENTO.

H.R. 3084: Mr. ARMEY, Mr. DICKINSON, and Mr. LAGOMARSINO.

H.R. 3098: Mr. MORAN.

H.R. 3164: Mr. KLECZKA, Mr. PETERSON of Florida, Mr. RAHALL, Mr. ENGLISH, and Mr. VALENTINE.

H.R. 3278: Mr. MACHTLEY and Mr. ROE.

H.R. 3286: Mr. ECKART.

H.R. 3344: Mr. LAFALCE.

H.R. 3361: Mrs. JOHNSON of Connecticut.

H.R. 3373: Mr. DOOLEY, Mr. OWENS of Utah, Mr. MARTINEZ, Mr. WOLF, Ms. KAPTUR, Mr. ZELIFF, Mr. RIGGS, and Mrs. JOHNSON of Connecticut.

H.R. 3376: Mr. DANNEMEYER.

H.R. 3429: Mr. FALEOMAVAEGA, Mr. JOHNSTON of Florida, Mr. DWYER of New Jersey, and Mr. DEFAZIO.

H.R. 3443: Mr. SANTORUM.

H.R. 3487: Mr. GINGRICH, Mr. LEWIS of California, Mr. IRELAND, Mr. BAKER, Mr. STEARNS, Mr. ZELIFF, Mr. MACHTLEY, Mr. WYDEN, Mr. BOEHNER, Mr. RAMSTAD, Mr. LIVINGSTON, Mr. REGULA, Mr. HENRY, Ms. SNOWE, Mr. CAMP, Mrs. JOHNSON of Connecticut, Mr. THOMAS of Wyoming, and Mr. BURTON of Indiana.

H.R. 3504: Mr. HORTON, Mr. PETERSON of Florida, Mr. ROGERS, and Mr. JEFFERSON.

H.R. 3510: Mr. SMITH of New Jersey, Mrs. ROUKEMA, and Mr. DWYER of New Jersey.

H.R. 3511: Mr. OWENS of Utah, Mr. REED, Mr. OLVER, Ms. KAPTUR, Mr. ANDREWS of New Jersey, Mr. STALLINGS, Mr. SLATTERY, Mr. KOPETSKI, Mr. PALLONE, Mr. ATKINS, Mr. STARK, Mr. JOHNSON of South Dakota, Mr. MOLLOHAN, Mr. ESPY, Mr. HOAGLAND, and Ms. NORTON.

H.R. 3516: Mrs. VUCANOVICH.

H.R. 3553: Mrs. COLLINS of Michigan.

H.R. 3595: Mr. SISISKY, Mr. WHEAT, Mr. DELLUMS, Mr. PAYNE of New Jersey, Mr. ALEXANDER, Mr. SABO, and Mr. PORTER.

H.R. 3627: Mr. MAVROULES, Mr. HORTON, Mr. GINGRICH, Mr. MONTGOMERY, Mr. DORNAN of California, Mr. RITTER, Mr. RHODES, Mr. LAGOMARSINO, Ms. KAPTUR, and Mr. LANCASTER.

H.J. Res. 152: Mr. VANDER JAGT.

H.J. Res. 177: Mr. KLECZKA, Mr. FIELDS, Mr. LEVINE of California, Mr. WILSON, and Mr. MYERS of Indiana.

H.J. Res. 312: Mr. MILLER of Ohio, Mr. NEAL of Massachusetts, Mr. JOHNSTON of Florida, Mr. VALENTINE, Mr. COLEMAN of Texas, Mr. SHAW, Mr. MOODY, Mr. BREWSTER, Mr. FLAKE, Mr. MILLER of Washington, Mr. RAY, Mr. BERMAN, Mr. MOAKLEY, Mr. SOLARZ, Mr. BARTON of Texas, Mr. THOMAS of California, Mr. BUSTAMANTE, Mr. STUMP, Mrs. MEYERS of Kansas, Mr. CHANDLER, Mrs. BENTLEY, Mr. EVANS, Mr. GINGRICH, Mr. SKELTON, Mr. JONTZ, Mr. LEWIS of California, and Mrs. PATTERSON.

H.J. Res. 318: Mr. MATSUI, Mr. MINETA, Mr. PAXON, Mr. BROWDER, Mr. DE LUGO, Mr. MCGRATH, Mr. KLECZKA, Mr. PASTOR, Mr. ACKERMAN, Mr. MANTON, Mr. SMITH of New Jersey, Mr. FISH, and Mr. DE LA GARZA.

H.J. Res. 343: Mr. ATKINS, Mr. CONYERS, Mr. DWYER of New Jersey, Mr. FASCELL, Mr. HARRIS, Mr. HEFNER, Mr. HUTTO, Mr. IRELAND, Mr. KASICH, Mr. KILDEE, Mr. LEWIS of Georgia, Mr. NOWAK, Mr. OWENS of Utah, Mr. PARKER, Ms. PELOSI, Mr. PRICE, Mr. SCHEUER, Mr. SMITH of New Jersey, Mr. SOLARZ, Mr. STUDDS, Mr. TORRICELLI, Mr. VENTO, and Mr. YATRON.

H.J. Res. 361: Mr. LOWERY of California, Mr. OWENS of Utah, Mr. KILDEE, Mr. NEAL of Massachusetts, Mr. OBERSTAR, Mr. SMITH of Texas, Mr. REGULA, Mr. DEFAZIO, Mr. RAMSTAD, Mr. BILBRAY, Mr. LIPINSKI, Mr. GUARINI, Mr. CLEMENT, Mr. DICKS, Mr. MARTINEZ, Mr. MCGRATH, Mr. VOLKMER, and Mr. EMERSON.

H. Con. Res. 156: Mr. FISH, Mr. FEIGHAN, Mr. SWETT, Mr. BERMAN, Mr. SMITH of New Jersey, Mr. GUARINI, and Mr. VENTO.

H. Con. Res. 192: Mr. SHAYS, Mr. SWETT, Mr. DWYER of New Jersey, Mr. AUCOIN, Mr. NAGLE, Mr. PRICE, Mr. VALENTINE, Mr. CAMPBELL of Colorado, Mr. BUNNING, Mr. BROWN, Mr. BREWSTER, Mr. DICKS, Ms. NORTON, Mr. OLVER, Mr. COOPER, Mr. MILLER of California, Mr. GEJDENSON, Mr. DURBIN, and Mr. COSTELLO.

H. Con. Res. 211: Ms. SLAUGHTER of New York and Mr. MINETA.

H. Con. Res. 218: Mr. HOLLOWAY and Mr. BURTON of Indiana.

H. Con. Res. 226: Mr. SHAYS, Mr. MAVROULES, Ms. ROS-LEHTINEN, Mr. GEJDENSON, Mr. LEHMAN of Florida, Mr. BACCHUS, Mr. ACKERMAN, Mr. MRAZEK, Mr. HORTON, Mr. SIKORSKI, Mr. PAYNE of Virginia, Mr. DWYER of New Jersey, Mr. TORRES, Mr. SCHIFF, Mr. TOWNS, Mr. RAY, and Mr. PALLONE.

H. Con. Res. 227: Mr. SANGMEISTER and Mr. MILLER of California.

H. Res. 41: Mr. SHAYS.

H. Res. 234: Mr. SANGMEISTER.

H. Res. 257: Mr. BREWSTER, Mr. DERRICK, Mr. BOEHNER, Mr. VALENTINE, and Mr. LAGOMARSINO.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

[Omitted from the Record of Oct. 24, 1991]

H.R. 1330: Mr. DERRICK.

SENATE—*Thursday, October 31, 1991*

(Legislative day of Tuesday, October 29, 1991)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. As we reverence the supreme judge and lawgiver of the world, the Senate will be led in prayer by the chaplain, the Reverend Dr. Richard C. Halverson. Dr. Halverson, please.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

God of truth and righteousness, make us wise to discern the divine diagnosis of our condition of economic and cultural decomposition as symptomatic of spiritual and moral bankruptcy. In the word of the prophet Jeremiah, "* * * my people have changed their glory for that which doth not profit. * * * For my people have committed two evils, they have forsaken me the fountain of living waters, and hewed them out cisterns, broken cisterns, that can hold no water."—Jeremiah 2:11,13.

Father in Heaven, give us insight to understand that secularism is godlessness which creates a spiritual vacuum, sucking life out of any system, leaving it a desert—an arid wasteland. We don't need religion, Lord, we need faith in the God of our fathers—the faith that inspired our unprecedented political system with its guaranteed rights endowed by a Creator God and sustained by a living faith. Revive in us that living faith which motivated and guided our Founders. Restore to us their trust in a living, benevolent God, that our personal and national destiny may conform to Your perfect will for us.

In Jesus' name who gave His life for us. Amen.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

There will now be a period for the transaction of morning business not to extend beyond the hour of 10 o'clock with Senators permitted to speak therein. The Senator from Oklahoma [Mr. BOREN] is permitted to speak for up to 15 minutes. The Senator from Minnesota [Mr. DURENBERGER] is permitted to speak for up to 10 minutes.

COMMENDING THE WORLD CHAMPION MINNESOTA TWINS

Mr. DURENBERGER. Mr. President, let me begin by saying that I have a resolution that will not provoke a filibuster, and before the Senate gets down to other business this morning we are pausing to recognize a sterling example of excellence. In about an hour from now, this city will receive the world champions of baseball, the Minnesota Twins, and we can always benefit from an example of guts and skill under pressure around this place.

So much has been said about the series, so much has been said about its drama and its courage and its triumph, the triumph of the underdog against practically all odds. I am reminded of seeing last weekend a church banner in downtown Minneapolis a few blocks from the Metrodome which quoted the 30th verse of the 13th chapter of Luke's Gospel to the effect that the last shall be first. It was sort of a "do not take any sides even in your hometown" salute to two wonderful, very special organizations of young men engaged, in this case, in an athletic endeavor.

My colleague, Senator WELLSTONE, and I want to express our admiration for those people on behalf of the Senate in the resolution which I now send to the desk and ask for its immediate consideration. I ask the clerk to read the resolution.

The PRESIDING OFFICER. The clerk will state the resolution.

The legislative clerk read as follows:

S. RES. 212

Whereas baseball fans around the world have been treated to the most exciting and well-played World Series in history;

Whereas this was the first World Series ever pitting two last-place finishers from the previous year;

Whereas both teams received tremendous support from their cities and from fans around the country and the world;

Whereas the Atlanta Braves showed amazing skill and grit under pressure, both in the series and throughout the season;

Whereas the Minnesota Twins put on a remarkable display of total team baseball, combining outstanding pitching, great defense and timely hitting;

Whereas Twins mainstays Kirby Puckett and Jack Morris performed like the superstars they are and were supported by a succession of different heroes every night;

Whereas the Twins are one of the most respected organizations in professional sports through the good work of owner Carl Pohlad, General Manager Andy McPhail and Manager Tom Kelly; and

Whereas the entire series was conducted with the highest level of athletic skill, personal character and sportsmanship: Now, therefore, be it

Resolved, by the Senate of the United States—

(a) that the Atlanta Braves and the Minnesota Twins be commended for their outstanding play and the credit they have brought to "our national pastime"; and

(b) that the Minnesota Twins are congratulated for being the 1991 World Champions of baseball.

The PRESIDENT pro tempore. Is there objection to the immediate consideration of the resolution? The Chair hears no objection.

The Senator from Minnesota [Mr. DURENBERGER].

Mr. DURENBERGER. Mr. President, before the Chair puts the question before the Senate, I would be pleased to yield to my colleague from Minnesota for his comments on this subject, if I may.

The PRESIDENT pro tempore. The Senator from Minnesota, Mr. WELLSTONE.

Mr. WELLSTONE. I thank the Chair. I thank the senior Senator from Minnesota.

This says it all, Mr. President, "One for The History Books," in the Star Tribune.

I think that the World Series was a metaphor for hope, the two last-place teams playing against one another for the championship. I, too, wish to say to the Atlanta Braves that what I saw were great athletes, what I saw was just tremendous competition. What I saw was excellence on the part of both of these teams. Of course, as a Senator from Minnesota, I am thrilled with the performance of the Minnesota Twins.

Mr. President, I am trying to figure out how not to be Mr. Politician here. I am trying to say something fairly serious to go along with this moment of celebration. So I guess the way I would conclude my remarks is to emphasize that it was wonderful to see such good feeling around the country. I think that was really important.

There was a guy who was sitting right behind me and throughout the whole game, I think it was game 6, 11 innings. He kept saying things like," good hustle, don't swing for the fences, make contact with the ball, way to go, keep determined—nonstop.

And after the game was over I turned to him and I said "You know what? I think you won the game." My point is people were involved. I think the World Series captured the imagination of the people all across the country. And I think it really was a very great event.

Mr. DURENBERGER. Mr. President, I send to the desk a technical amendment to one of the "whereas" provisions of my resolution which adds the

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

name of my very good friend and former associate who is now the President of the Minnesota Twins, Jerry Bell, in the seventh "whereas" of my resolution, and ask that the resolution might be amended in that respect.

The PRESIDENT pro tempore. Is the amendment an amendment to the preamble?

Mr. DURENBERGER. Yes, it is, Mr. President.

The PRESIDENT pro tempore. The amendment would await the adoption of the resolution.

Mr. DURENBERGER. Mr. President, in conclusion let me express my appreciation to the fanship of our colleagues from Georgia. Both Senator NUNN and Senator FOWLER have been the best of baseball fans. But WYCHE FOWLER, if anyone saw him here on either Monday or Tuesday morning of this week saw what we saw in each of seven games, a terrific baseball fan, a person who is tremendously committed to it. I hope that my colleagues from Georgia can support this resolution as well.

There is one young man on that team who is from Edina, MN, sort of the captain of the team, the leader of that team, a person who used to be in the Twins' organization and he is now with the Atlanta Braves, their catcher, Gregg Olson, who certainly ought to get congratulated as well.

I have an article on Gregg Olson from the New York Times that I ask unanimous consent to have printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 26, 1991]

BRAVES' OLSON IS HAVING THE BIG TIME OF HIS LIFE

(By Dave Anderson)

The World Series seldom eludes the gifted players. Ernie Banks and Rod Carew never got there, but the gifted players are usually on baseball's center stage sooner or later. It's something they expect. Just as they never expect to be told someday that they can't hit or pitch anymore.

But the career minor leaguer only dreams about what the World Series must be like.

For eight struggling seasons, Greg Olson dreamed. After six years in the Mets' system, he was signed in November 1988 by his hometown Minnesota Twins and spent the next season with Portland of the Pacific Coast League. He had returned home in September when the Twins needed a catcher. They promoted another minor leaguer.

"Here I am 20 minutes from the Metrodome," he told his parents at the time, "and they bring up somebody else."

The Twins didn't want him after the Mets had to liberate him. Then 29, he gave himself one more year in the minors. Upon joining the Atlanta Braves in 1990, he got his break when one catcher refused to report to the minors and another suddenly retired. And at 31, as the World Series resumes tonight at the Metrodome, he is the Braves' catcher.

"As a kid and as a minor leaguer you always dream about being in a World Series," he said. "But even in my dreams, I never would have imagined catching every game in the World Series like I have. I'm very confident now, not cocky but confident, of going to the Metrodome and winning."

With a victory in either tonight's sixth game or tomorrow night's seventh game, the Braves would complete the most bizarre scenario in World Series history. They would be baseball's best after having been its worst, finishing last in the National League West in 1990 with a 65–97 record.

In enjoying his own scenario, Greg Olson is hitting .333, calling the pitches, blocking curveballs in the dirt, even stealing a base. But the World Series is much more than just baseball. For him, it's as if Crash Davis, the career minor league catcher played by Kevin Costner in "Bull Durham," had suddenly stepped onto baseball's big stage.

Olson has been handed a Minneapolis tailor's business card and told to stop by for a free suit.

When he mentioned missing his waterbed in his Edina, Minn., home, an Atlanta dealer delivered a waterbed to his apartment there. Almost anywhere he goes in Atlanta, he's recognized.

"When I went to pay at a doughnut shop," he said, "the counterman waved me off."

In his World Series diary for the Atlanta Constitution, he mentioned seeing himself on the cover of this week's Sports Illustrated, standing on his head but clutching the ball in his glove after having tagged Dan Gladden in a spectacular first-game collision.

"My wife always keeps me humble," he told his ghostwriter, Jack Wilkinson, "but Lisa even admitted I've made it to the big time now."

Then there's the money. If the Braves win, each player's share will be $110,174. That's tip money for some millionaire free agents, but for Greg Olson, whose salary is $165,000, it's important money for him, his wife and their little son, Ryan.

He'll make more money next year, maybe $400,000, but for him it's more important to have proved he can play. All those years in the minors he had to wonder. Now he knows. So do the Twins.

Like most Minnesota kids, he grew up a Twins fan. Years ago his parents, Bob and Barb, took photos at a Twins Camera Day of little Greg with Rod Carew, Larry Hisle and Frank Quilici.

The Twins decided not to keep him in 1989, but as disappointing as it was at the time, he insists it turned out for the best. If the Twins had kept him, he's probably be Brian Harper's backup. But under his Braves uniform shirt, he wears a T-shirt with a caricature of Kirby Puckett.

"Kirby gave it to me the spring training when I was with the Twins," he said. "It's my favorite 'hit' shirt."

When the Twins won the sixth and seventh games of the 1987 World Series at the Metrodome, Olson was there.

"Bad seats," he said. "There was so much noise, you had to cup your hand to talk to the person next to you."

In tonight's noise, he'll be catching Steve Avery, trying to hit Scott Erickson and having the time of his life.

"I get butterflies but I'm not nervous," he said. "The difference is, I associate butterflies with waiting for the first pitch. I associate nervous with pressure."

And for Greg Olson, pressure isn't being in the World Series. For him, pressure is all those years it took for him to get there.

Mr. DOLE addressed the Chair.

The PRESIDENT pro tempore. The Republican leader is recognized.

Mr. DOLE. I want to congratulate my colleagues from Minnesota on a great series. I think I watched every game. Nobody knew for certain until the last 2 minutes who was going to win. Two great teams. Certainly a well-deserved recognition by the Senators from Minnesota this morning.

Mr. DURENBERGER. Mr. President, I urge adoption of the resolution.

The PRESIDENT pro tempore. The question is on the adoption of the resolution.

The resolution (S. Res. 212) was agreed to.

The PRESIDENT pro tempore. Does the Senator from Minnesota have an amendment?

Mr. DURENBERGER. Yes, Mr. President, I have an amendment in the seventh "whereas" paragraph.

The PRESIDENT pro tempore. Would the Senator send his amendment to the desk?

AMENDMENT NO. 1298

Mr. DURENBERGER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 1298.

Amendment to the preamble:

Amend the seventh paragraph to read as follows:

Whereas the Twins are one of the most respected organizations in professional sports through the good work of Owner Carl Pohlad, General Manager Andy McPhail, President Jerry Bell, and Manager Tom Kelly; and

The PRESIDENT pro tempore. Is there objection to the adoption of the amendment to the preamble? The Chair hears no objection.

The amendment (No. 1298) was agreed to.

The preamble, as amended, was agreed to. The resolution, with its preamble, as amended, reads as follows:

S. RES. 212

Whereas baseball fans around the world have been treated to the most exciting and well-played World Series in history;

Whereas this was the first World Series ever pitting two last-place finishers from the previous year;

Whereas both teams received tremendous support from their cities and from fans around the country and the world;

Whereas the Atlanta Braves showed amazing skill and grit under pressure, both in the series and throughout the season;

Whereas the Minnesota Twins put on a remarkable display of total team baseball, combining outstanding pitching, great defense and timely hitting;

Whereas Twins mainstays Kirby Puckett and Jack Morris performed like the superstars they are and were supported by a succession of different heroes every night;

Whereas the Twins are one of the most respected organizations in professional sports through the good work of Owner Carl Pohlad, General Manager Andy McPhail, President Jerry Bell, and Manager Tom Kelly; and

Whereas the entire series was conducted with the highest level of athletic skill, personal character and sportsmanship; Now therefore, be it

Resolved, by the Senate of the United States—

(a) That the Atlanta Braves and the Minnesota Twins be commended for their outstanding play and the credit they have brought to "our national pastime"; and

(b) That the Minnesota Twins are congratulated for being the 1991 World Champions of baseball.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the resolution, as amended, was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CIVIL RIGHTS BILL

Mr. DOLE. Mr. President, I want to say we finished the civil rights bill last night—which had been very contentious for a long, long time—but by a vote of 93 to 5, which I think is an indication of how the Senate feels about the very serious issues contained in that civil rights measure.

So I think now we should move to see if we cannot find some resolution of unemployment benefits. This may be even more important to many than the passage of the civil rights bill because there are no monetary benefits in the civil rights bill as such.

UNEMPLOYMENT BENEFITS

Mr. DOLE. Mr. President, it seems to me that now it is incumbent upon all of us to see if we cannot sit down and reach some agreement very quickly, hopefully before the week is out, on extension of unemployment benefits. I would say this: Though I have not talked directly with the President, it has been my view from the start that if we can find a program that is paid for and maybe a few other restrictions, then I believe the President will certainly be pleased to sign it. He has indicated that to me a number of times.

We have had an alternative proposal, the so-called Dole proposal, with 6 to 10 weeks of benefits that was paid for. And the important thing is making certain it is paid for—no smoke and mirrors—that it is paid for.

I know the chairman of the Senate Finance Committee, Senator BENTSEN, I know the chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, are looking at options and how to pay for a package.

I am not certain how extensive the package would be. I am only suggesting at this time that it seems to me that ought to be the next challenge that we take up on a bipartisan basis, get it done quickly, get benefits, start benefits flowing to the thousands and thousands of unemployed Americans all across the land.

Mr. President, I reserve the remainder of my leader time.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been suggested and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WIRTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

INTERMODAL SURFACE TRANSPORTATION INFRASTRUCTURE ACT OF 1991

The PRESIDENT pro tempore. The Senator from Colorado [Mr. WIRTH].

Mr. WIRTH. Thank you Mr. President.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2950, the highway bill; that all after the enacting clause be stricken and the text of S. 1204, as amended, be substituted in lieu thereof; that the bill be read a third time and passed; that the motion to reconsider be laid upon the table; that the Senate insist upon its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

The PRESIDENT pro tempore. Is there objection to the request?

There is no objection.

Without objection, it is so ordered.

So the bill (H.R. 2950), as amended, was passed as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Surface Transportation Efficiency Act of 1991".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Secretary defined.

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Sec. 143. National Recreational Trails Funding Program.
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SEC. 3. SECRETARY DEFINED.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

TITLE I

PART A—GENERAL PROVISIONS

SEC. 102. DECLARATION OF POLICY.

(a) Subsection 101(b) of title 23, United States Code, is amended to read as follows:

"(b) DECLARATION OF POLICY.—The National Systems of Interstate and Defense Highways is completed. The principal purpose of Federal highway assistance shall henceforth be to improve the efficiency of the existing surface transportation system.

"It is the policy of the United States to facilitate innovation and competition, energy efficiency, productivity and accountability in transportation modes through Federal and State initiative.

"It is the policy of the United States to increase productivity in the transportation sector of the economy through systematic attention to costs and benefits, pursuing the most efficient allocation of costs and the widest distribution of benefits.".

(b) Subsections 101(d) and 101(e) of title 23, United States Code, are hereby repealed.

(c) The Secretary shall distribute copies of the Declaration of Policy contained in this section to each employee of the Federal Highway Administration, and shall ensure that such Declaration of Policy is posted in all offices of the Federal Highway Administration.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

(A) REPEAL OF FISCAL YEAR 1993 AUTHORIZATION FOR INTERSTATE CONSTRUCTION.—Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by—

(1) inserting "and" after "1991";

(2) striking the coma after 1992" and inserting in lieu thereof a period; and

(3) striking "and the additional sum of $1,400,000,000 for the fiscal year ending September 30, 1993".

(b) AUTHORIZATIONS.—The following sums are authorized to be appropriated out of the Highway Account of the Highway Trust Fund:

(1) SURFACE TRANSPORTATION PROGRAM.—For the Surface Transportation Program $7,330,000,000 for fiscal year 1992, $7,700,000,000 for fiscal year 1993, $8,260,000,000 for fiscal year 1994, $9,250,000,000 for fiscal year 1995, and $12,260,000,000 for fiscal year 1996.

(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For Congestion Mitigation and Air Quality Improvement $1,000,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(3) BRIDGE PROGRAM.—For the Bridge Program $2,350,000,000 for fiscal year 1992, $2,440,000,000 for fiscal year 1993, $2,580,000,000 for fiscal year 1994, $2,820,000,000 for fiscal year 1995, and $3,230,000,000 for fiscal year 1996.

(4) INTERSTATE MAINTENANCE PROGRAM.—For resurfacing, restoring and rehabilitating the National System of Interstate and Defense Highways, $2,530,000,000 for fiscal year 1992, $2,620,000,000 for fiscal year 1993, $2,770,000,000 for fiscal year 1994, $3,020,000,000 for fiscal year 1995, and $3,250,000,000 for fiscal year 1996.

(5) INTERSTATE CONSTRUCTION PROGRAM.—For construction to complete the Interstate System, $1,800,000,000 for fiscal year 1993, 1994, 1995, and 1996: Provided, That section 102(c) of the Federal-Aid Highway Act of 1987, regarding minimum apportionment, is hereby repealed: And provided further, That such sums shall be obligated as if authorized by section 108(b) of the Federal-Aid Highway Act of 1956.

(6) INTERSTATE SUBSTITUTION PROGRAM.—For the Interstate Substitution Program for projects under highway or transit assistance programs $240,000,000 for each of fiscal years 1992, 1993, 1994, and 1995: Provided, That such sum shall be obligated as if authorized by section 103(e)(4)(G) of title 23, United States Code, for highway assistance programs.

(7) FEDERAL LANDS HIGHWAY PROGRAM.—

(A) For Indian reservation roads $200,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(B) For public lands highways $200,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(C) For parkways and park highways $120,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(8) TERRITORIAL HIGHWAY PROGRAM.—For the Territorial Highway Program $15,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(9) NATIONAL MAGNETIC LEVITATION DESIGN PROGRAM.—For the National Magnetic Levitation Design Program $50,000,000 for fiscal year 1992, $75,000,000 for fiscal year 1993, $125,000,000 for fiscal year 1994, $250,000,000 for fiscal year 1995, and $250,000,000 for fiscal year 1996.

(10) FEDERAL HIGHWAY ADMINISTRATION RESEARCH PROGRAMS.—For the purpose of carrying out research as authorized by section 307, the amount of $120,000,000 for each of fiscal years

1992, 1993, 1994, 1995, and 1996: Provided, That such amount shall be made available from within the amount of the deduction authorized pursuant to section 104(a) of title 23, United States Code.

(11) UNIVERSITY TRANSPORTATION CENTERS PROGRAM.—For carrying out the University Transportation Centers Program pursuant to the Urban Mass Transportation Act of 1964, as amended, $5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(12) HIGHWAY USE TAX EVASION PROJECTS.—(A) For highway use tax evasion projects $5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996: Provided, That these sums shall be available until expended and may be allocated to the Internal Revenue Service of States at the discretion of the Secretary: Provided further, That these funds shall be used only to expand efforts to enhance motor fuel tax enforcement, fund additional Internal Revenue Service staff (only for purposes under this paragraph), supplement motor fuel tax examination and criminal investigation, develop automated data processing tolls, evaluate and implement registration and reporting requirements, reimburse State expenses that supplement existing fuel tax compliance efforts, and analyze and implement programs to reduce tax evasion associated with other highway use taxes.

(B) The Secretary shall report on October 1 and April 1 of each year to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives on the expenditure of all funds under this paragraph, including expenses for the hiring of additional staff by any Federal agency and any expenditures for outside consultants.

(13) SAFETY BELT AND MOTORCYCLE HELMET USE.—For the purpose of carrying out programs under section 153 of title 23, United States Code, $45,000,000 for fiscal year 1992, $30,000,000 for fiscal year 1993, and $25,000,000 for fiscal year 1994.

SEC. 104. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total of all obligations for Federal-aid highway programs or State allocations made pursuant to section 143 shall not exceed—

(1) $15,480,000,000 for fiscal year 1992;
(2) $16,721,000,000 for fiscal year 1993;
(3) $18,726,000,000 for fiscal year 1994;
(4) $20,687,000,000 for fiscal year 1995; and
(5) $23,467,000,000 for fiscal year 1996:

Provided, That limitations under this section shall not apply to obligations for emergency relief pursuant to section 125 and obligations for minimum allocation pursuant to section 157.

(b) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 1992, 1993, 1994, 1995 and 1996, the Secretary shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to all the States for such fiscal year.

(c) LIMITATION ON OBLIGATION AUTHORITY.—During the period October 1 through December 31 of each fiscal year 1992, 1993, 1994, 1995, and 1996 no State shall obligate more than 35 per centum of the amount distributed to that State under subsection (b) for that fiscal year, and the total of all State obligations during the period shall not exceed 25 per centum of the total amount distributed to all States under subsection (b) for that fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent unintended lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State:

(2) after August 1 of each of fiscal years 1992, 1993, 1994, 1995 and 1996, revise a distribution of funds made available under subsection (b) for that fiscal year if a State will not obligate the amount distributed to it during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during the fiscal year, first in accordance with paragraph (4) of this subsection and, to the extent further obligation authority is available after distribution of the maximum permitted under paragraph (4), then by distributing the remainder giving priority to those States having large unobligated balances of funds apportioned under section 104 and section 144 of title 23, United States Code; and

(3) not distribute amounts authorized for administrative expenses, the Federal lands highways program, and the National Magnetic Levitation Design Program.

(4)(A) Subject to subparagraph (B), a State which after August 1 and on or before September 30 of fiscal year 1992, 1993, 1994, 1995, or 1996, obligates the amount distributed to such State in such fiscal year under subsection (b) may obligate for Federal-aid highways and highway safety construction on or before September 30 of such fiscal year an additional amount not to exceed 5 per centum of the aggregate amount of funds apportioned or allocated to such State—

(i) under sections 104 and 144; and

(ii) for highway assistance projects under section 103(e)(4), which are not obligated on the date such State completes obligation of the amount so distributed.

(B) LIMITATION.—During the period August 2 through September 30 of each of fiscal years 1992 through 1996, the aggregate amount which may be obligated by all States pursuant to subparagraph (A) shall not exceed 2.5 per centum of the aggregate amount of funds apportioned or allocated to all States—

(i) under sections 104 and 144, and

(ii) for highway assistance projects under section 103(e)(4), which would not be obligated in such fiscal year if the total amount of obligational authority provided by subsection (a) for such fiscal year were utilized.

(C) LIMITATION ON APPLICABILITY.—

(i) Subparagraph (A) shall not apply in a fiscal year to any State which on or after August 1 of that fiscal year has the amount distributed to such State under subsection (b) for such fiscal year reduced under paragraph (d)(2).

(ii) This paragraph does not create obligation authority in addition to that provided by subsection (a), but concerns only redistribution of obligation authority.

SEC. 105. UNOBLIGATED BALANCES.

Unobligated balances of funds apportioned for the primary, secondary and urban systems and the railway-highway crossing and hazard elimination programs may be obligated for the Surface Transportation Program as if they had been apportioned for that program.

SEC. 106. SURFACE TRANSPORTATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Title 23, United States Code, is amended by adding the following new section:

“§133. Surface Transportation Program

“The Secretary shall establish a Surface Transportation Program in accordance with this section.

“(a) ELIGIBILITY.—Projects eligible under the Surface Transportation program shall include—

“(1) construction, reconstruction, rehabilitation, resurfacing, restoration, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and including the seismic retrofit, painting of and application of calcium magnesium acetate on bridges and other elevated structures;

“(2) capital costs for mass transit, passenger rail (including high speed rail), and operating cost for passenger rail for States without Amtrak service as of the date of enactment of this Act, publicly owned intra- or inter-city bus terminals and facilities, and magnetic levitation systems, including expenditures on rights of way and associated facilities, and expenses for contracted passenger rail or magnetic levitation service provided by public or private carriers;

“(3) carpool projects and fringe and corridor parking facilities and programs, and bicycle facilities and programs;

“(4) surface transportation safety improvements and programs, including highway safety improvement projects, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings;

“(5) surface transportation research and development programs;

“(6) capital and operating costs for traffic monitoring, management and control facilities and programs;

“(7) surface transportation planning programs;

“(8) transportation enhancement activities as defined in section 101;

“(9) transportation control measures listed in section 108(f) of the Clean Air Act, as amended;

“(10) incremental costs attributable to the use of alternative fuels by school buses, including purchase and installation of alternative fuel refueling facilities to be used primarily for school bus refueling and conversion of school buses to make them capable of using only an alternative fuel (except that diesel school buses may be converted to run on a combination of diesel and natural gas): Provided, That any conversion using funds authorized by this paragraph comply with the warranty and safety requirements for alternative fuel conversions contained in section 247 of the Clean Air Act Amendments of 1990: Provided further, That for purposes of this paragraph, ‘alternative fuels’ means methanol, ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, ethanol, or other alcohol with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; and electricity; and

“(11) any other purpose approved by the Secretary.

Provided, That projects other than those described in paragraphs (3) and (4) may not be undertaken on roads functionally classified as local or rural minor collector, unless such roads are on a Federal-aid highway system as of January 1, 1991, except as approved by the Secretary. Surface Transportation Program funds may be used—

“(A) as part of a highway construction project, or as a separate effort, to mitigate wetland loss related to highway construction; or

“(B) to contribute to statewide efforts to conserve and restore wetlands adversely affected by highway construction

if such efforts comply with all applicable requirements of and regulations under Federal law, including but not limited to the National Environmental Policy Act, the Endangered Species Act, and the Federal Water Pollution Control Act. These efforts may include the development of statewide wetland conservation plans, and other State or regional efforts to conserve and restore wetlands. Contributions toward these efforts may occur in advance of specific highway construction activity only if the State has a transportation planning process that precludes the use of such efforts to influence the environmental assessment of the highway construction project, the decision relative to the need to construct the highway project, or the selection of the project design or location.

"(b) GENERAL REQUIREMENTS.—

"(1)(A) At least 75 per centum of apportionments and obligation authority made available to a State for the Surface Transportation Program in any year shall be divided between—

"(i) the metropolitan areas of the State with a metropolitan statistical area population of over two hundred and fifty thousand; and

"(ii) the other areas of the State;

in proportion to their relative share of the State's population. The remaining 25 per centum of funds may be programmed in any area of the State.

"(B) Notwithstanding the requirements of subparagraph (A), in any State where—

"(i) greater than 80 per centum of the population of such State is located in one or more metropolitan statistical areas and greater than 80 per centum of the land area of such State is owned by the United States

only 35 per centum of Surface Transportation Program funds shall be divided based on the formula provided in subparagraph (A). The remaining 65 per centum of funds may be programmed in any area of the State.

"(C) The requirements of subparagraph (A) shall not apply to any State which is noncontiguous with the continental United States.

"(2) Programming and expenditure of funds for projects in metropolitan areas shall be consistent with the requirements of section 134, regarding metropolitan planning.

"(3) Programming and expenditure of funds for projects in non-metropolitan areas shall be consistent with the provisions of section 135, regarding statewide planning.

"(4) Of the apportionments made available to a State under this section, each State must assure that no less than 8 per centum of such funds are programmed for transportation enhancement activities, as defined in section 101.

"(5) In the case where a State constructs a facility under this program with a Federal share of 80 per centum and later converts the facility to operation such that the project would originally have been undertaken with a Federal share of 75 per centum, the State shall repay to the United States, with interest, the amount of the difference in the cost to the United States.

"(6) Each State shall assure that funds attributed to metropolitan and nonattainment areas pursuant to paragraph (1) shall be divided among such areas in a fair and equitable manner based on the relative population of such areas, except that the State may divide funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.

"(7) Each State shall assure that funds attributed to attainment and non-metropolitan areas pursuant to paragraph (1) shall be distributed fairly and equitably among those areas.

"(c) ADMINISTRATION.—

"(1) If the Secretary determines that a State or local government has failed to comply substantially with any provision of this section, the Secretary shall notify the State, that, if it fails to take corrective action within sixty days from the receipt of the notification, the Secretary will withhold future payments under this section until the Secretary is satisfied that appropriate corrective action has been taken.

"(2) The Governor of each State shall certify prior to the beginning of each fiscal year that the State will meet all the requirements of this section and shall notify the Secretary of the amount of obligations expected to be incurred for Surface Transportation Program projects during the fiscal year: Provided, That the State may request adjustment to the obligation amounts later in the fiscal year. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the Surface Transportation Program funds expected to be obligated by the State in that fiscal year for projects not subject to review by the Secretary.

"(3) Projects must be designed, constructed, operated and maintained in accordance with State laws, regulations, directives, safety standards, design standards and construction standards.

"(4) Any State may request that the Secretary no longer review and approve design and construction standards for any project other than a project on an Interstate highway or other multilane limited access control highways, except as provided in section 102(b), regarding resurfacing projects. After receiving any such notification the Secretary shall undertake project review as requested by the State.

"(5) The Secretary shall make payments to a State of costs incurred by it for the Surface Transportation program. Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.

"(d) For purposes of paragraph (1)(A)(i) and paragraph (6) of subsection (b), the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(b) APPORTIONMENT.—Section 104(b) of title 23, United States Code, is amended by—

(1) amending paragraph (1) to read as follows:

"(1) SURFACE TRANSPORTATION PROGRAM.—For the Surface Transportation Program, in a manner such that—

"(A) a State's per centum share of all funds allocated or apportioned pursuant to this title for fiscal year 1992 and any fiscal year thereafter, excluding funds apportioned or allocated for the Interstate Construction, Interstate Substitute, Federal Lands Highways, Congestion Mitigation and Air Quality Improvement, Minimum Allocation, National Magnetic Levitation Design, and Emergency Relief programs;

shall be equal to—

"(B) such State's per centum share of all apportionments and allocations received under this title for fiscal years 1987, 1988, 1989, 1990, and 1991, excluding apportionments and allocations received for the Interstate Construction, Interstate Substitute, Federal Lands Highways and Emergency Relief Programs, all apportionments and allocations received for demonstration projects, and the portion of allocations received pursuant to section 157, regarding minimum allocation, that is attributable to apportionments made under the Interstate Construction and Interstate Substitute programs in such years: Provided, That, in calculating a State's per centum share under this subparagraph for the purpose of making apportionments for fiscal years 1992, 1993, 1994, 1995, and 1996, each State shall be deemed to have received one-half of 1 per centum of all funds apportioned for the Interstate Construction Program in fiscal years 1987, 1988, 1989, 1990, and 1991: And provided further, That in any fiscal year no State shall receive a percentage of total apportionments and allocations that is less than 70 per centum of its percentage of total apportionments and allocations for fiscal years 1987, 1988, 1989, 1990, and 1991, except for those States that receive an apportionment for interstate construction of more than $50,000,000 for fiscal year 1992.

"(C) ENERGY CONSERVATION, CONGESTION MITIGATION, AND CLEAN AIR BONUS.—This paragraph shall apply beginning in fiscal year 1993 and shall apply only to those States with one or more metropolitan statistical areas with a population of two hundred fifty thousand or more. The amount of each such State's Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) shall be reduced by multiplying such amount by a factor of 0.9 if the State's vehicle miles of travel per capita is more than 110 per centum of its vehicle miles of travel in the base year. Reductions in apportionments made pursuant to the preceding sentence shall be placed in a Surface Transportation Bonus Fund and shall be used, to the extent such funds are available, to increase the amount of Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) by a factor of 1.1 for each State affected by this paragraph, if such State's vehicle miles of travel per capita is less than 90 per centum of its vehicle miles of travel per capita in the base year. Funds remaining thereafter in the Surface Transportation Bonus Fund, if any, shall be apportioned to the States affected by this paragraph in proportion to each State's share of Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) among all such States prior to any adjustments made pursuant to this paragraph. Funds so apportioned shall be treated as funds pursuant to section 133(b)(1)(A)(i) area treated. For the purposes of this paragraph, the term 'base year' shall mean the year 1990 for fiscal years 1993, 1994, and 1995, and shall mean the year 1995 for fiscal years 1996 and all subsequent fiscal years.

"(D) For purposes of subparagraph (C), the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(2) striking "upon the Federal-aid systems" and inserting in lieu thereof "upon the Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, and the Interstate System";

(3) striking "paragraphs (4) and (5)" and inserting in lieu thereof "subparagraph (5)(A)"; and

(4) striking "and sections 118(c) and 307(d)" and inserting in lieu thereof "and section 307".

(c) FEDERAL SHARE.—Section 120(a) of title 23, United States Code, is amended by striking "Subject to the provisions of subsection (d) of this section, the" and inserting in lieu thereof "The"; by striking ", primary, secondary, or urban funds, on the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system" and inserting instead "Surface Transportation Program funds"; and by inserting "for capital projects that add capacity available to single occupant vehicles, except where the project consists of a high occupancy vehicle facility available to single occupant vehicles at other than peak travel times, and 80 per centum of the cost of construction for other projects", in two places after the words "cost of construction".

(d) GUIDANCE.—The Secretary shall develop and make available to the States guidance on how to determine what portion of any project under section 133 of title 23, United States Code, is eligible for an 80 per centum Federal share.

(e) CONFORMING AMENDMENTS.—The analysis of title 23, United States Code, is amended by striking:

"133. [Repealed Public Law 90–495]."

and inserting in lieu thereof:

"133. Surface Transportation Program.".

SEC. 107. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Section 149 of title 23, United States Code, is amended to read as follows:

"§149. Congestion Mitigation and Air Quality Improvement Program

"The Secretary shall establish a congestion mitigation and air quality improvement program pursuant to the requirements of this section.

"(a) ELIGIBLE PROJECTS.—A project may be funded under the congestion mitigation and air quality improvement program—

"(1) only if guidance issued by the Environmental Protection Agency pursuant to section 108(f) of the Clean Air Act, as amended, shows to the satisfaction of the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the project is likely to contribute to the attainment of any national ambient air quality standard, except in the case where such guidance is not available, only if the project is described in section 108(f) of the Clean Air Act, as amended;

"(2) the project is listed in a State implementation plan that has been approved pursuant to the Clean Air Act, as amended and the project will have air quality benefits; or

"(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project is likely to contribute to the attainment of any national ambient air quality standard, whether through reductions in vehicle miles travelled, fuel consumption, or through other factors; and

"(4) pursuant to this subsection projects which research, develop and test technologies to control highway related emissions which contribute to the nonattainment of any ambient air quality standard or the impairment of visibility within an urbanized area within the State shall be deemed to be eligible projects; and

only if the project does not result in the construction of new capacity available to single occupant vehicles, except where the project consists of a high occupancy vehicle facility available to single occupant vehicles at other than peak travel times.

"(b) DISTRIBUTION OF FUNDS.—Apportionments made under this section shall be made available in nonattainment areas as defined pursuant to the Clean Air Act, as amended, with urbanized area populations over fifty thousand in proportion to the relative share of weighted nonattainment area population as calculated in section 104(b)(2) within the State: Provided, That each State that contains a nonattainment area shall receive a minimum apportionment of one-quarter of 1 per centum of the apportionment made under this section: Provided further, That the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures. Selection of projects for such funds shall be carried out by the metropolitan planning organization for each such area in accordance with the provisions of section 134 of title 23, United States Code.

"(c) FEDERAL SHARE.—The Federal Share payable for a project under this section shall not exceed 80 per centum of the cost of the project.".

(b) APPORTIONMENT.—Section 104(b)(2) is amended to read as follows:

"(2) FOR THE CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—In the ratio which the weighted nonattainment area population of each State bears to the total weighted nonattainment area population of all States, where weighted nonattainment area population shall be calculated by multiplying the population of any nonattainment areas within any State that is in nonattainment for ozone by a factor of—

"(A) 1.0 if the area is classified as a marginal nonattainment area;

"(B) 1.1 if the area is classified as a moderate nonattainment area;

"(C) 1.2 if the area is classified as a serious nonattainment area;

"(D) 1.3 if the area is classified as a severe nonattainment area;

"(E) 1.4 if the area is classified as an extreme nonattainment area;

where the classification of nonattainment areas is that used in the Clean Air Act, as amended, and by further multiplying the population of any non-attainment area by a factor of 1.2 is such area is in nonattainment for carbon monoxide.". Notwithstanding any other provision of this section, any State which is subject to air pollution control measures pursuant to section 184 (related to Interstate Ozone Air Pollution) or section 176A (related to Interstate Transport Commissions) of the Clean Air Act Amendments of 1990 shall receive a minimum of one-tenth of 1 per centum of the total funds apportioned under this section.".

(c) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 149. Truck lanes."

and inserting instead:

"Sec. 149. Congestion Mitigation and Air Quality Improvement Program.".

SEC. 108. BRIDGE PROGRAM.

(a) FEDERAL SHARE.—Section 144(f) of title 23, United States Code, is amended to read as follows:

"(f) The Federal share payable for any project undertaken under this subsection shall be 80 per centum, except for any costs attributable to the expansion of the capacity of any bridge or the construction of any new bridge where such new capacity or new bridge is primarily available to single occupant vehicles, in which case the Federal share payable shall be 75 per centum. In the case where a State constructs a bridge or portion thereof not primarily available to single occupant vehicles pursuant to this section, and later converts the bridge or portion thereof to be primarily available to single occupant vehicles, the State shall repay to the United States, with interest, the amount of the additional cost borne by the United States that would have been borne by the State had the bridge or portion thereof been originally available primarily to single occupant vehicles.".

(b) NEW CAPACITY GUIDANCE.—The Secretary shall develop and make available to the States criteria for determining what share of any project undertaken pursuant to section 144 of title 23, United States Code, is attributable to the expansion of the capacity of a bridge where the new capacity is available to single occupant vehicles.

(c) BRIDGE PAINTING, SEISMIC RETROFIT, AND MAINTENANCE.—Section 144(e) of title 23, United States Code, is amended by adding at the end "Funds apportioned pursuant to this subsection shall be available for the painting and seismic retrofit of, or application of calcium magnesium acetate on, any bridge eligible for assistance under this section.

(d) REPEAL OF DISCRETIONARY BRIDGE PROGRAM.—Section 144(g) of title 23, United States Code, is repealed.

(e) LEVEL OF SERVICE CRITERIA.—The Secretary shall, by January 1, 1992, in consultation with the States, establish level of service criteria for the Bridge Program: Provided, That, notwithstanding the requirements of such criteria or of section 144 of title 23, United States Code, up to 35 per centum of bridge program funds made available to a State in any fiscal year shall be available for expenditure on any public bridge, provided that such expenditure conforms with the bridge management system adopted by the State.

(f) CONFORMING AMENDMENTS.—

(1) The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 144. Highway bridge replacement and rehabilitation program."

and inserting in lieu thereof:

"Sec. 144. Bridge Program."

(2) Section 144 of title 23, United States Code, is amended as follows:

(A) The title is amended to read:

"§ 144. Bridge Program".

(B) Subsection (b) is repealed; and subsection (c) is amended by striking", other than those on any Federal-aid system," and by striking "on and off the Federal-aid system;".

(C) Subsection (e) is amended by striking "(1) Federal-aid system bridges eligible for replacement, (2) Federal-aid system bridges eligible for rehabilitation, (3) off-system bridges eligible for replacement, and (4) off-system bridges eligible for rehabilitation." and inserting instead "(1) Bridges categorized for rehabilitation and (2) bridges categorized for replacement."; and (2) by striking "on the Federal-aid primary system" and inserting instead "under the Surface Transportation Program".

(g) TRANSFER OF FUNDS.—Up to sixty percent of the apportionment of Bridge Program funds are eligible to be transferred to either the Surface Transportation Program or the Interstate Maintenance Program if apportionment of bridge funds exceed bridge funds obligated in the previous year be more than 50 percent. These transferred funds may be programmed in any area of the State and are not subject to the requirements of distribution specified in section 133(b)(1) of title 23, United States Code.

SEC. 109. INTERSTATE MAINTENANCE PROGRAM.

(a) LIMITATION ON NEW CAPACITY.—Section 119(a) of title 23, United States Code, is amended by inserting after the end of the first sentence: "Notwithstanding any other provision of this title, the portion of the cost of any project undertaken pursuant to this section that is attributable to the expansion of the capacity of any Interstate highway or bridge, where such new capacity consists of one or more new travel lanes that are not high-occupancy vehicle lanes or auxiliary lanes, shall not be eligible for funding under this section.".

(b) ADEQUATE MAINTENANCE OF THE INTERSTATE SYSTEM.—Section 119(f)(1) of title 23, United States Code, is amended by inserting at the end of the paragraph "The Secretary must find that the State is adequately maintaining the Interstate System to accept such a certification.".

(c) NON-FEDERAL MATCH REQUIREMENT.—

(1) Section 119(a) of title 23, United States Code, is amended by striking "section 120(c)" and inserting in lieu thereof "section 120(d)".

(2) Section 120(d) of title 23, United States Code, is amended to read as follows:

"(d) INTERSTATE MAINTENANCE.—The Federal share payable on account of any project undertaken for the maintenance of Interstate highways under the provisions of section 119 shall either—

"(1) not exceed 80 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

"(2) not exceed 80 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage of the area of all such lands in such State is of its total *area, except that the Federal share payable on any project shall not exceed 95 per centum of the total cost of the project.*

In any case where a State elects to have the Federal share as provided in paragraph (2), the State must enter into an agreement with the Secretary covering a period of not less than one year, requiring the State to use solely for purposes eligible under this title (other than paying its share of projects undertaken pursuant to this title) during the period covered by the agreement the difference between the State's share as provided in paragraph (2) and what its State's share would be if it elected to pay the share provided in paragraph (1) for all projects subject to the agreement.".

(d) GUIDANCE TO THE STATES.—The Secretary shall develop and make available to the States criteria for determining—

(1) what share of any project funded under section 119 of title 23, United States Code, is attributable to the expansion of the capacity of an Interstate Highway or bridge; and

(2) what constitutes adequate maintenance of the Interstate System for the purposes of section 119(f)(1) of title 23, United States Code.

(e) NON-CHARGEABLE SEGMENTS.—Section 104(b)(5)(B) of title 23, United States Code, is amended by adding "and routes on the Interstate system designated under section 139(a) of this title before January 1, 1984" after the phrase "under sections 103 and 139(c) of this title" each of the two times it appears in the first sentence.

(f) CONFORMING AMENDMENTS.—

(1) NEW TITLE.—The title of section 119 of title 23, United States Code, is amended to read:

"§Sec. 119. Interstate Maintenance Program";

(2) ANALYSIS.—The analysis for chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 119. Interstate System Resurfacing."
and inserting in lieu thereof:

"Sec. 119. Interstate Maintenance Program.".

(3) Section 119 of title 23, United States Code, is amended—

(A) by striking out subsection (c), with regard to reconstruction, and inserting in lieu thereof the following new subsection:

"(c) Activities authorized in subsection (a) may include the reconstruction of bridges, interchanges and over crossings along existing Interstate routes, including the acquisition of right-of-way where necessary, but shall not include the construction of new travel lanes other than high occupancy vehicle lanes or auxiliary lanes.";

(B) by striking out subsection (e), with regard to toll facilities;

(C) by striking out, in subsection (a), ", rehabilitating, and reconstructing" and inserting in lieu thereof "and rehabilitating"; and

(D) in subsection (f)—

(i) by striking "PRIMARY SYSTEM" from the title and inserting in lieu thereof "SURFACE TRANSPORTATION PROGRAM"; and

(ii) by striking "rehabilitating, or reconstructing" and inserting in lieu thereof "or rehabilitating".

(4) APPORTIONMENT.—Section 104(b)(5)(B) of title 23, United States Code, is amended by striking "rehabilitating, and reconstructing" and inserting instead "and rehabilitating".

SEC. 110. INTERSTATE CONSTRUCTION PROGRAM.

(a) MASSACHUSETTS.—Paragraph 104(b)(5)(A) of title 23, United States Code, is amended by striking "upon the approval by Congress, the Secretary shall use the Federal share of such approval estimates in making apportionments for the fiscal year 1993" and inserting in lieu thereof:

"The Secretary shall use the Federal share of the 1991 Interstate Cost Estimate, adjusted to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of interstate construction funds, (ii) previous withdrawals of interstate segments, (iii) previous allocations of Interstate discretionary funds, and (iv) transfers of Interstate construction funds, to make apportionments for fiscal years 1993, 1994, 1995 and 1996 in the ratio in which the Federal share of the estimated cost of completing the Interstate System in a State bears to the Federal share of the sum of the estimated cost of completing the Interstate System in all of the States, except Massachusetts: Provided, That Massachusetts shall be apportioned $100,000,000 for the fiscal years 1993, $800,000,000 for the fiscal year 1994, $800,000,000 for the fiscal year 1995, and $850,000,000 for the fiscal year 1996.".

(b) CONFORMING AMENDMENTS.—Paragraph 104(b)(5)(A) of title 23, United States Code, is further amended by striking "1960 through 1990" the two places it appears and inserting instead "1960 through 1996"; and by striking "1967 through 1990" and inserting instead "1967 through 1996". Unobligated balances of funds allocated for Forest Highways may be obligated for Public Lands highways.

SEC. 111. FEDERAL LANDS HIGHWAYS PROGRAM.

(a) ALLOCATIONS.—Section 202 of title 23, United States Code, is amended as follows:

(1) Subsection (c) is amended by inserting at the end "The secretary shall allocate 66 per centum of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987."; and by inserting after "allocate" the words "34 per centum of".

(2) Subsection (a) is repealed and the following subsections are relettered accordingly.

(b) PROJECTS.—Section 204 of title 23, United States Code, is amended as follows:

(1) Subsection (b) is amended (A) by striking "construction and improvements thereof" and inserting in lieu thereof "planning, research, engineering and construction thereof"; and (B) by inserting at the end "Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways."; and by striking "forest highways and".

(2) Subsection (a) is amended by striking "forest highways,"; and by inserting at the end "Notwithstanding any other provision of this title, no public lands highway project may be undertaken in any State pursuant to this section unless the State concurs in the selection and planning of the project.".

(3) Subsection (c) is amended by striking "on a Federal aid system" and inserting in lieu thereof "eligible for funds apportioned under section 104 or section 144 of this title".

(4) Section 204 of title 23, United States Code, is amended by striking subsection (h) and inserting instead:

"(h) Funds available for each class of Federal lands highways may be available for the following—

"(1) transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development;

"(2) adjacent vehicular parking areas;

"(3) interpretive signage;

"(4) acquisition of necessary scenic easements and scenic or historic sites;

"(5) provision for pedestrians and bicycles;

"(6) construction and reconstruction of roadside rest areas including sanitary and water facilities; and

"(7) other appropriate public road facilities such as visitor centers as determined by the Secretary.

"(i) The Secretary shall transfer to the Secretary of Interior from the appropriation for public land highways amounts as may be needed to cover necessary administrative costs of the Bureau of Land Management in connection with public lands highways.".

(5) Section 205(c) is amended by striking "$15,000" in four places and inserting in lieu thereof "$50,000".

(c) REHABILITATION.—Of the funds authorized to be appropriated pursuant to section 103(b)(7)(B) of this Act, an amount equal to $20,000,000 shall be available for each of fiscal years 1992, 1993, 1994, 1995, and 1996 for continued rehabilitation of federally-owned highways under the Federal lands highway program of title 23, United States Code. Such funds shall remain available until expended.

(d) INDIAN RESERVATION ROADS.—Notwithstanding any other provision of law, funds allocated for Indian reservation roads may be used for the purpose of funding road projects on roads of tribally controlled postsecondary vocational institutions.

(e) INDIAN RESERVATION ROADS PLANNING.—Two percent of funds allocated for Indian reservation roads shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and, as may be appropriate, with a State, local government, or Metropolitan Planning Organization, shall develop a transportation improvement program, that includes all Indian reservation road projects proposed for funding. Projects shall be selected by the Indian tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

(f) CONFORMING AMENDMENTS.—Section 203 of title 23, United States Code, is amended by striking "forest highways" in two places.

SEC. 112. TOLL FACILITIES.

(a) REPEAL OF NATIONAL POLICY.—Section 301 of title 23, United States Code, is hereby repealed. The analysis of chapter 3 of such title is amended by striking out the item relating to section 301.

(b) NEW REQUIREMENTS.—Section 129 of title 23, United States Code, is amended to read as follows:

"§129. Toll facilities

"(a) PROHIBITION.—Tolls may not be imposed on any existing free interstate highway.

"(b) FEDERAL SHARE PAYABLE.—Except as provided in subsection (e), the Federal share payable for any project under this section shall not exceed 35 per centum of the cost of the project for construction of new toll facilities: Provided, That, for the purposes of subsection (d), the Federal share may be increased by a percentage of the remaining cost that is equal to the percentage that unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, in a State are of its total area, and shall not exceed 80 per centum of the cost of the project for rehabilitation of existing toll facilities or conversion of existing free facilities to toll facilities: Provided, That for the purposes of subsection (d) the Federal share may be increased in accordance with the provisions of section 120(a), as amended. A State may loan all or part Federal funds made available pursuant to this section to a public agency constructing a toll facility: Provided, That such loan may be made only after all Federal environmental requirements have been complied with and permits obtained. The amount

loaned shall be subordinated to other debt financing for the facility except for loans made by the State or any other public agency to the agency constructing the facility. Funds loaned pursuant to this section may be obligated for projects eligible under this section. The repayment of any such loan shall commence not less than five years after the facility has opened to traffic. Any such loan shall bear interest at the average rate the State's pooled investment fund earned in the 52 weeks preceding the start of repayment. The term of any such loan shall not exceed 30 years from the time the loan was obligated. Amounts repaid to a State from any loan made under this section may be obligated for any purpose eligible under this title. The Governor of each State making a loan pursuant to this section shall establish procedures and guidelines for making such loans.

"(c) CONSTRUCTION OR CONVERSION OF FACILITIES.—Except as otherwise provided in this section, Federal funds to carry out this title may not be obligated on toll facilities or to convert free facilities to toll facilities. The Secretary may permit Federal participation, on the same basis and in the same manner as participation in projects on free highways under this title, in the construction of any toll highway, bridge, tunnel, or approach thereto, or the conversion of any free highway, bridge, tunnel or approach thereto to a toll facility, upon compliance with the provisions of this subsection, except that no Federal funds may be used to impose tolls on any existing free interstate highway. The highway, bridge, tunnel, or approach thereto must be publicly owned. The appropriate State transportation or highway department or departments must be party to an agreement with the Secretary that provides that—

"(1) all tolls received from the operation of the facility, less the actual cost of operation and maintenance, shall be applied to repayment, including debt service and reasonable return on investment, of the party financing the facility, except for amounts contributed by the United States; and

"(2) after the date of final repayment, revenues from tolls in excess of revenues needed to recover actual costs of operation and maintenance shall be used for any transportation project eligible under this title.

"(d) CONSTRUCTION OF FERRYBOATS AND FERRY APPROACHES.—The Secretary may permit Federal participation under this title in the construction of ferryboats and ferry approaches, whether toll or free, subject to the following conditions:

"(1) It is not feasible to build a bridge, tunnel, or other normal highway structure in lieu of the ferry.

"(2) The operation of the ferry shall not be on a route that is classified as local, as a rural minor collector, or as a route on the Interstate System, except that, in the case of ferry systems that serve such routes and other routes in an integrated system, such ferry may operate throughout the entire service area of the ferry system.

"(3) The ferry shall be publicly owned and operated.

"(4) The operating authority and the amount of fares charged for passage on the ferry shall be under the control of the State, and all revenues shall be applied to actual and necessary costs of operation, maintenance, and repair, including replacement of ferryboats.

"(5) The ferry shall be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between the islands of Maine, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of the ferry operations shall be in any foreign or international waters.

"(6) No ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from a disposition shall be credited to the unprogrammed balance of Surface Transportation Program funds last apportioned to the State. Any amounts credited shall be in addition to other funds then apportioned to the State and shall be available for expenditure in accordance with the provisions of this title.

"(e) CONGESTION PRICING PILOT PROGRAM.—(1) The Secretary shall solicit the participation of State and local governments and public authorities for one or more congestion pricing pilot projects. The Secretary may enter into cooperative agreements with as many as five such State or local governments or public authorities to establish, maintain, and monitor congestion pricing projects.

"(2) Notwithstanding subsection (c), the Federal share payable for such programs shall be 100 per centum. The Secretary shall fund all of the development and other start up costs of such projects, including salaries and expenses, for a period of at least one year, and thereafter until such time that sufficient revenues are being generated by the program to fund its operating costs without Federal participation, except that the Secretary may not fund any project for more than three years.

"(3) Revenues generated by any pilot project under this section must be applied to projects eligible under this title.

"(4) The Secretary shall monitor the effect of such projects for a period of at least ten years, and shall report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives every two years on the effects such programs are having on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs.

"(5) Of the sums made available the Secretary pursuant to section 104(a), not to exceed $25,000,000 shall be made available each fiscal year to carry out the requirements of this subsection.".

(c) EXISTING TOLL FACILITY AGREEMENTS.—At the request of the non-Federal parties to any toll facility agreement reached before October 1, 1991 under (1) section 105 of the Federal-Aid Highway Act of 1978; or (2) section 129 of title 23, United States Code, as in effect immediately prior to the date of enactment of this Act; the Secretary shall allow for the continuance of tolls without repayment of Federal funds, except that revenues collected from such tolls in excess of revenues needed to recover the local share of construction and acquisition costs including debt service and the actual costs of operation and maintenance shall be used for: (1) any transportation project eligible under this title, or (2) costs associated with transportation facilities under the jurisdiction of said non-Federal party, including debt service and costs related to the construction, reconstruction, restoration, repair, operation and maintenance of said facilities.

SEC. 113. METROPOLITAN PLANNING.

(a) NEW REQUIREMENTS.—Section 134 of title 23, United States Code, is amended to read as follows:

"§134. Metropolitan planning

"(a) METROPOLITAN PLANNING ORGANIZATIONS.—A metropolitan planning organization shall be designated for each urbanized area of over fifty thousand in population within any State by agreement among the Governor and the units of general purpose local government. Each metropolitan planning organization shall designate boundaries for a metropolitan area pursuant to subsection (b) and shall carry out the transportation planning process required by this section. Metropolitan planning organizations in existence on or before October 1, 1991 shall be considered as being designated for the purposes of this section. Metropolitan planning organizations that represent portions of multi-State metropolitan areas shall, where feasible, provide for coordinated transportation planning for the entire metropolitan area by adopting a single transportation improvement program for such area. The Governor of any State may enter into such agreements as may be necessary with the Governor of any other State to provide for comprehensive multi-State transportation planning for metropolitan areas that encompass portions of more than one State.

"(b) METROPOLITAN AREA BOUNDARIES.—For the purposes of this title, the boundaries of any metropolitan area shall be determined by the metropolitan planning organization and the Governor. Each metropolitan area shall cover at least the existing urbanized area and the area expected to become urbanized within the forecast period, and may encompass the entire Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area as defined by the Bureau of the Census. For areas designated as nonattainment for ozone or carbon monoxide under the Clean Air Act, as amended, the boundaries of the metropolitan area shall be the boundaries of the nonattainment area, except as otherwise provided by the metropolitan planning organization.

"(c) GENERAL REQUIREMENT FOR PLANNING.—In developing transportation plans and programs pursuant to this section, each metropolitan planning organization shall, at a minimum—

"(1) consider preservation of existing transportation facilities and, where practical, meet transportation needs by using existing transportation facilities more efficiently;

"(2) provide that transportation planning is consistent with applicable Federal, State and local energy conservation programs, goals and objectives;

"(3) consider the need to relieve congestion and prevent congestion from occurring where it does not yet occur;

"(4) conform with the applicable requirements of the Clean Air Act as amended;

"(5) consider the effect of transportation policy decisions on land use and development, and assure that transportation plans and programs are consistent with the provisions of all applicable short- and long-term land use and development plans;

"(6) recommend, where appropriate, the use of innovative financing mechanisms, including value capture, tolls, and congestion pricing to finance projects and programs;

"(7) provide for the programming of expenditure on transportation enhancement activities as required in section 133;

"(8) consider the effects of all transportation projects to be undertaken within the metropolitan area, without regard to whether such projects are publicly funded;

"(9) consider the overall social, economic, and environmental effects of transportation decisions;

"(10) take into account international border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations;

"(11) consider the need for connectivity of roads within the metropolitan area with roads outside the metropolitan area; and

"(12) develop a long range transportation plan.

"(d) Transportation Improvement Program.—

"(1) Development of Program.—The metropolitan planning organization, in cooperation with the State and relevant transit operators, shall develop a transportation improvement program that includes all projects within the metropolitan area proposed for funding pursuant to this title and the Urban Mass Transportation Act, that is consistent with the long range transportation plan developed by the metropolitan planning organization, and that conforms with the applicable State implementation plan developed pursuant to the Clean Air Act, as amended. The program may include a project only if full funding can be reasonably anticipated to be available for such project within the period of time contemplated for its completion. The program shall be updated at least every two years, and shall be approved by the metropolitan planning organization and the Governor.

"(2) Priority of Projects.—The transportation improvement program shall include a priority list of projects and project segments to be carried out within each three-year period after the initial adoption of the transportation improvement program.

"(3) Selection of Projects.—Except as otherwise provided in subsection (e), project selection in metropolitan areas for projects involving Federal participation shall be carried out by the State in cooperation with the metropolitan planning organization, and shall be in conformance with the transportation improvement program for the area.

"(e) Additional Requirements for Areas of Over 250,000 Population.—

"(1) For metropolitan statistical areas of more than two hundred fifty thousand population within any State, transportation plans and programs shall be based on a continuing and comprehensive transportation planning process carried out by a metropolitan planning organization in cooperation with the State and transit operators.

"(2) The planning process shall include a congestion management system that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies. In nonattainment areas for ozone or carbon monoxide, the development of the congestion management system shall be coordinated with the development of the transportation element of the State Implementation Plan required by the Clean Air Act as amended.

"(3) The Secretary shall assure that each metropolitan planning organization is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once per annum. The Secretary may certify a metropolitan planning organization only if it is complying with the requirements of section 134 and other applicable requirements of Federal law. If at any time after October 1, 1992 a metropolitan planning organization is not certified by the Secretary, the obligation authority attributed to the relevant metropolitan area pursuant to section 133(b)(1) shall lapse and be redistributed to other States in accordance with the requirements of section 104(d)(2), regarding redistribution of obligation authority.

"(4) Selection of Projects.—All projects carried out with Federal participation pursuant to this title (excluding projects undertaken pursuant to the Bridge and Interstate Maintenance Programs) or the Urban Mass Transportation Act within the boundaries of a metropolitan area covered under this subsection shall be selected by the metropolitan planning organization and the Governor in conformance with the transportation improvement program for such area and the priorities established therein. Projects undertaken pursuant to the Bridge and Interstate Maintenance Programs shall be selected by the State in cooperation with the metropolitan planning organization and shall be in conformance with the transportation improvement plan for the area.

"(5) The metropolitan planning organization for areas covered under this subsection shall provide for a fair and equitable distribution of funds within the metropolitan area.

"(6) Metropolitan planning organizations for areas covered under this subsection shall provide opportunity for public review of draft transportation plans and programs prior to final approval of such plans and programs.

"(f) Additional Requirements for Nonattainment Areas.—

"(1) Notwithstanding any other provision of law, for areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project is part of an approved congestion management system.

"(2) If, at the end of any three-year planning period established pursuant to subsection (d), a project to be carried out within such period has not been carried out, any changes in emissions of pollutants that contribute to nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, that have been attributed to such project shall be discounted for the purposes of conformity review pursuant to section 176(c) of the Clean Air Act, as amended, (42 U.S.C. 7506(c)) until such time as binding commitments have been made to complete the project by a date certain.

"(3) For the purpose of determining conformity pursuant to section 176(c) of the Clean Air Act, as amended, (42 U.S.C. 7506(c)), the metropolitan planning organization shall take into account emissions expected to result from all projects to be carried out within the metropolitan area, whether such projects are publicly or privately funded.

"(g) Reprogramming of Set Aside Funds.—Any funds set aside pursuant to section 104(f) of this title that are not used for the purpose of carrying out this subsection may be made available by the metropolitan planning organization to the State for the purpose of funding activities under section 135.

"(h) For purposes of subsections (b) and (e), the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(b) 1 Percent Set Aside.—Section 104(f) of title 23, United States Code, is amended by striking in paragraph (1) "one-half per centum" and inserting in lieu thereof "1 per centum"; by striking in paragraph (1) "the Federal-aid systems" and inserting in lieu thereof "programs authorized under this title"; by striking in paragraph (1) all after the fifth comma and inserting in lieu thereof "except that the amount from which such set aside is made shall not include funds authorized to be appropriated for the Interstate Construction and Interstate Substitute programs."; and by striking in paragraph (3) "section 120" and inserting in lieu there of "section 120(j)".

(c) Apportionment Within a State.—Section 104(f)(4) of title 23, United States Code, is amended by striking "and metropolitan area transportation needs" and inserting in lieu thereof "attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable Federal law.".

(d) Conforming Amendments.—

(1) The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 134 Transportation planning in certain urban areas."

and inserting in lieu thereof:

"Sec. 134. Metropolitan Planning.".

(2) Section 104(f)(3) of title 23, United States Code, is amended by striking "designated by the State as being".

SEC. 114. STATEWIDE PLANNING.

(a) New Requirements.—Section 135 of title 23, United States Code, is amended to read as follows:

"§135. Statewide planning

"(a) Management Systems.—Each State shall have a Bridge Management System, a Pavement Management System, a Safety Management System, and a Congestion Management System developed in accordance with regulations prescribed by the Secretary, except that any State that certifies to the satisfaction of the Secretary that no significant congestion exists or is projected to exist within such State shall not be required to have a congestion management system. Systems shall include inventories and use current condition data to identify needs. The Bridge Management System shall include provisions for life-cycle cost analysis where appropriate. The Secretary may withhold project approvals under section 106 and may decline to accept a notice and certification under section 133(c)(2) if a State fails to have approved systems. The regulations shall provide for periodic Federal review of the Management Systems.

"(b) Traffic Monitoring System.—Each State shall have a Traffic Monitoring System to provide statistically based data necessary for pavement management, bridge evaluation, safety management, congestion management, national studies, and other activities under this title. The Secretary shall establish guidelines and requirements for the Traffic Monitoring System.

"(c) State Planning Process.—Each State shall undertake a continuous transportation planning process which shall—

"(1) take into account the results of the management systems required pursuant to subsection (a);

"(2) take into account any Federal, State or local energy use goals, objectives, programs or requirements;

"(3) take into account any valid State or local development or land use plans, programs, or requirements;

"(4) take into account international border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations;

"(5) provide for comprehensive surface transportation planning for non-metropolitan areas through a process that includes consultation with local elected officials with jurisdiction over transportation;

"(6) be consistent with any metropolitan area plan developed pursuant to section 134;

"(7) provide for connectivity between metropolitan areas within the State and with metropolitan areas in other States;

"(8) take into account recreational travel and tourism;

"(9) take into account any State plan developed pursuant to the Federal Water Pollution Control Act; and

"(10) be coordinated with the development of any State implementation plan required under the Clean Air Act, as amended, and provide for compliance with any relevant requirements of such plan and such Act.

"(d) Additional Requirements for States Containing Nonattainment Areas.—Any State

containing an area in nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, shall develop and update at least every two years a long range transportation plan. In addition to the requirements in subsection (c), such plan shall—

"(1) incorporate without amendment the provisions of any metropolitan area plan developed pursuant to section 134; and

"(2) provide for coordination in the development of the State transportation plan required pursuant to this section and the State implementation plan required pursuant to the Clean Air Act, as amended.

"(e) FUNDING.—Funds set aside pursuant to section 307(c)(1) of title 23, United States Code, shall be available to carry out the requirements of this section.".

(b) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 135. Traffic operations improvement programs.".

and inserting in lieu thereof:

"Sec. 135. Statewide Planning.".

SEC. 115. RESEARCH AND DATA COLLECTION.

(a) RESEARCH PROGRAM.—Section 307 of title 23, United States Code, is amended as follows:

(1) NEW REQUIREMENTS.—Subsection (b) is redesignated (b)(1), and the following new paragraphs are added thereafter:

"(2) The highway research program shall include a coordinated long term program of research on Intelligent Vehicle Highway Systems.

"(3) The highway research program shall include a coordinated long term program of research for the development, use and dissemination of performance indicators to measure the performance of the surface transportation system, including indicators for productivity, efficiency, energy use, air quality, congestion, safety, maintenance, and other factors that reflect the overall performance of the surface transportation system.

"(4) The highway research program shall continue those portions of the work of the Strategic Highway Research Program that the Secretary deems to be important.

"(5) The Secretary shall create and administer a transportation research fellowship program to attract qualified students to the field of transportation engineering and research, which shall be known as The Dwight David Eisenhower Transportation Fellowship Program. No less than $2,000,000 per fiscal year of the funds set aside pursuant to section 307 shall be made available to carry out this paragraph.

"(6)(A) The Secretary in cooperation with other appropriate Federal agencies, the Governors of Arizona, California, New Mexico and Texas, and the appropriate representatives of the Republic of Mexico, shall assess the need for transportation infrastructure to facilitate trade between the United States and Mexico. Within 18 months following the date of the enactment of this Act, the Secretary shall report to Congress and the Governors of Arizona, California, New Mexico, and Texas on such transportation infrastructure needs and the associated costs.

"(B) The Secretary in cooperation with other appropriate Federal agencies, the Governors of Maine, New Hampshire, Vermont, New York, Michigan, Minnesota, North Dakota, Montana, Idaho, Washington, and Alaska, and the appropriate representatives from Canada, shall assess the need for transportation infrastructure to facilitate trade between the United States and Canada. Within 18 months following the date of the enactment of this Act the Secretary shall report to Congress and the Governors of Maine, New Hampshire, Vermont, New York, Michigan, Minnesota, North Dakota, Montana, Idaho, Washington, and Alaska on such transportation infrastructure needs and the associated costs.".

(2) Subsection (c) is amended by striking "highway programs and local public transportation systems" and inserting in lieu thereof "transportation programs"; by striking "highway usage" and inserting in lieu thereof "transportation"; and by striking "highways and highway systems" and inserting in lieu thereof "transportation systems".

(b) FEDERAL SHARE FOR STATE RESEARCH ACTIVITIES.—Section 120(j) is amended by striking "85 per centum" and inserting in lieu thereof "80 per centum"; and by striking "exclusive of" and inserting in lieu thereof ", and"

(c) STATE AUTHORITY TO PROGRAM FUNDS.—Section 307(c) of title 23, United States Code, is amended by striking "upon the request of the State highway department, with the approval of the Secretary, with or without State funds," in paragraph (1) and inserting in lieu thereof "by the State highway department only"; by striking "Not to exceed 1½ per centum" and inserting in lieu thereof "Two per centum"; by striking "section 104" and inserting in lieu thereof "sections 104 and 144"; and by repealing paragraphs (2) and (3).

(d) DATA COLLECTION AND ANALYSIS.—

(1) BUREAU OF TRANSPORTATION STATISTICS.—There is established within the Department a Bureau of Transportation Statistics (hereafter referred to as the "Bureau"). The Bureau shall be responsible for—

(A) compiling, analyzing, and publishing a comprehensive set of transportation statistics which should provide timely summary in the form of industrywide aggregates, and multiyear averages, and totals of some similar form which include information on—

(i) productivity in the various portions of the transportation sector,

(ii) traffic flows,

(iii) travel times,

(iv) vehicle weights,

(v) variables influencing traveling behavior including choice of mode,

(vi) travel costs of intracity commuting and intercity trips,

(vii) availability and number of passengers served by mass transit for each mass transit authority,

(viii) frequency of vehicle and transportation facility repairs and other interruptions of service,

(ix) accidents,

(x) collateral damage to the human and natural environment,

(xi) and the condition of the transportation system, all of information which shall be suitable for conducting cost-benefit studies, including comparisons among modes and intermodal transport systems.

(B) The Director of the Bureau of Transportation Statistics, in cooperation with the States, shall pursue a comprehensive, long-term program for the collection and analysis of data relating to the performance of the national transportation system. This effort shall—

(i) be coordinated with the efforts undertaken pursuant to section 307(b)(3) of title 23 to develop performance indicators for the national transportation system;

(ii) assure that data and other information are collected in a manner to maximize the ability to compare data from different regions and time periods; and

(iii) assure that data are quality controlled for accuracy and are disseminated to the States and other interested parties.

(C) promulgating guidelines for the collection of information by the Department required for statistics under this paragraph to assure that the information is accurate, reliable, relevant, and in a form that permits systematic analysis;

(D) coordinating the collection of information by the Department for developing such statistics with related information-gathering activities conducted by other Federal agencies;

(E) Making readily accessible the statistics published under this paragraph; and

(F) identifying missing information of the kind identified under subparagraph (A) (i) through (xi), reviewing these information needs at least annually with the Advisory Council on Transportation Statistics, and making recommendations to the appropriate Department of Transportation research officials concerning extramural and intramural research programs to provide such information.

(2) Nothing in the provisions of paragraph (1) shall authorize the Bureau to require the collection of any data by any other Department, or to establish observation or monitoring programs.

(3) Information compiled by the Bureau of Transportation Statistics shall not be disclosed publicly in a manner that would reveal the personal identity of any individual, consistent with the Privacy Act of 1974 (5 U.S.C. 552a), reveal trade secrets and commercial or financial information provided by any person to be identified with such person.

(4) DIRECTOR OF TRANSPORTATION STATISTICS.—The Bureau shall be under the direction of a Director of Transportation Statistics (hereafter referred to as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate. The term of the Director shall be 4 years. To begin within 180 days of enactment of this Act. The Director shall be a qualified individual with experience in the compilation and analysis of transportation statistics. The Director shall report directly to the Secretary. The Director shall be compensated at the rate provided for at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(5) TRANSPORTATION STATISTICS ANNUAL REPORT.—On January 1, 1992, and each January 1 thereafter, the Director shall submit to the President a Transportation Statistics Annual Report (hereafter referred to as the "Report"). The Report shall include, but not be limited to those items identified in subparagraph (A) (i) through (x). The Report shall also include documentation of the methods used to obtain and assure the quality of the statistics presented in the Report and recommendations in improving transportation statistical information.

(6) CONTINUING PERFORMANCE OF THE FUNCTIONS OF THE DIRECTOR PENDING CONFIRMATION.—An individual who, on the effective date of this Act, is performing any of the functions required by this section to be performed by the Director may continue to perform such functions until such functions are assigned to an individual appointed as the Director under this Act.

(7) ADVISORY COUNCIL ON TRANSPORTATION STATISTICS.—The Director shall appoint an Advisory Council on Transportation Statistics, comprised of no more than 6 private citizens who have expertise in transportation statistics and analysis (except that at least one of such appointees should have expertise in economics) to advise the Director on transportation statistics and analyses, including whether the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information. The Council shall be subject to the provisions of the Federal Advisory Committee Act.

(8) STUDY OF DATA NEEDS.—(A) No later than 1 year after the start of Bureau operations, the Secretary of the Department of Transportation in consultation with the Director of the Bureau and the Assistant Secretary designated as Chief Information Resources Officer, shall enter into an agreement with the National Academy of Sciences for a study, evaluation, and report on the adequacy of the data collection procedures

and capabilities of the Department. No later than 18 months following an agreement, the National Academy of Sciences shall report its findings to the Secretary and the Congress. The report shall include an evaluation of the Department's data collection resources, needs, and requirements, and shall include an assessment and evaluation of the following systems, capabilities, and procedures established by the Department to meet those needs and requirements—

(i) data collection procedures and capabilities;

(ii) data analysis procedures and capabilities;

(iii) the ability of data bases to integrate with one another;

(iv) computer hardware and software capabilities;

(v) management information systems, including the ability of management information systems to integrate with one another;

(vi) Department personnel; and

(vii) the Department's budgetary needs and resources for data collection, including an assessment of the adequacy of the budgetary resources provided to the Department and budgetary resources used by the Department for data collection needs and purposes.

(9) The report shall include recommendations for improving the Department's data collection systems, capabilities, procedures, data collection, and analytical hardware and software, and for improving its management information systems.

(10) FUNDING.—Section 104(a) of title 23, United States Code, is amended by inserting ", data collection, and other programs" after "research"; and by inserting ", and section 303" after "section 307".

(11) ANALYSIS.—The analysis for chapter 3 of title 23, United States Code, is amended by striking:

"Sec. 303. [Repealed. Public Law 97-449].".
and inserting in lieu thereof:

"Sec. 303. Data Collection and Analysis.".

(12) STUDY OF STATE LEVEL OF EFFORT.—(A) Not later than 3 months after the date of enactment of this Act, the Secretary and the Director of the Bureau shall undertake a comprehensive study of the most appropriate and accurate methods of calculating State level of effort in funding surface transportation programs.

(B) Such study shall include collection of data relating to State and local revenue collected and spent on surface transportation programs. Such revenue shall include income from fuel taxes, toll revenues including bridge and ferry tolls, sales taxes, general fund appropriations, property taxes, bonds, administrative fees, taxes on commercial vehicles, and other appropriate State and local revenue sources as the Director of the Bureau deems appropriate.

(C) Not later than 9 months after the date of enactment of this Act, the Secretary and the Director of the Bureau shall provide a written report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives detailing the findings of the study. Such report shall include recommendations on the most appropriate measure of State level of effort in funding surface transportation programs and comprehensive data by State on revenue sources and amounts collected by States and local governments and devoted to surface transportation programs.

(e) FUNDAMENTAL PROPERTY STUDIES.—(1) The Administrator of the Federal Highway Administration (hereafter in this subsection referred to as the "Administrator") is directed to conduct fundamental chemical property and physical property studies of petroleum asphalts and modified asphalts used in highway construction in the United States with the primary emphasis of prediction of pavement performance from the fundamental and rapidly measurable properties of asphalts and modified asphalts.

(2) In carrying out the studies in paragraph (1), the Administrator shall enter into contracts with a non-profit organization with demonstrated expertise in research associated in the above areas in order to undertake the necessary technical and analytical research in coordination with existing programs, including the Strategic Highway Research Program, that evaluate actual performance of asphalts and modified asphalts in roadways.

(3) ACTIVITIES OF STUDIES.—The Administrator in conducting the studies in this subsection shall include the following activities:

(A) fundamental composition studies;

(B) fundamental physical and rheological property studies;

(C) asphalt-aggregate interaction studies;

(D) coordination of composition studies, physical and rheological property studies and asphalt-aggregate interaction studies for the purposes of prediction of pavement performance including refinements of strategic Highway Research Program specifications.

(4) The Administrator, in coordination with a non-profit research organization, shall implement a test strip, the purpose of which shall be to demonstrate and evaluate unique energy and environmental advantages of the use of shale oil modified asphalts under extreme climate conditions. The Administrator shall report to Congress on his findings as required under paragraph (6). Such findings shall include an evaluation of this test strip and legislative recommendations on a national program to support American transportation and energy security requirements. In no event shall this report be submitted after November 30, 1995. For purposes of construction activities related to this test strip the Administrator and the Director of the National Park Service shall make the necessary funds available in equal amounts from the Park and Parklands allocation for the Federal lands highway program.

(5) AUTHORIZATIONS.—The Administrator shall provide at least $3,000,000 for each of fiscal years 1992, 1993, 1994, 1995 and 1996 to carry-out the provisions of paragraph (2).

(6) ANNUAL REPORT TO CONGRESS.—On November 30 of each year, the Administrator shall report to Congress on progress in implementing the provisions of this subsection in the preceding fiscal year. For purposes of fiscal year 1992, the Administrator shall provide a report on proposed activities within one hundred eighty days of enactment of this section.

(f) COLLABORATIVE RESEARCH AND DEVELOPMENT.—Section 307 of title 23, United States Code, is amended by adding subsection (g) as follows:

"(g) COLLABORATIVE RESEARCH AND DEVELOPMENT.—For purposes of encouraging innovative solutions to highway problems, and stimulating the marketing of new technology by private industry, the Secretary is authorized to undertake on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local governments; foreign governments, colleges and universities, corporations, institutions, partnerships, sole proprietorships, and trade associations which are incorporated or established under the laws of any of the States of the United States. In carrying out this section, the Secretary may enter into a cooperative research and development agreement, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a). The average Federal share in these agreements shall not exceed 50 percent except, where there is substantial public interest or benefit, the Secretary may approve a higher Federal level of participation. Cooperative research and development agreements shall recognize all directly related costs to the non-Federal partners including personnel, travel, hardware development, etc. The research, development, or utilization, of any technology pursuant to an agreement under the above provisions, including the terms under which technology may be licensed and the resulting royalties may be distributed, shall be subject to provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended.".

(g) Section 307(c) of title 23, United States Code, is amended by inserting a new paragraph (2) to read as follows:

"(2) In addition to the percentage provided in paragraph (1) of this subsection, not to exceed one-half of one per centum of sums apportioned under sections 104 and 144 shall be available for expenditure upon request of the State Highway Department to rural planning organizations designated by the State as being responsible for assisting the State in carrying out the provisions of section 135 of this title.".

SEC. 116. MAGNETIC LEVITATION TRANSPORTATION.

(a) DECLARATION OF POLICY.—Section 101(c) of title 23, United States Code, is amended to read as follows:

"(c) It is the policy of the United States to establish in the shortest time practicable a United States designed and constructed magnetic levitation transportation technology capable of operating along Federal-aid highway rights-of-way, as part of a national transportation system of the United States.".

(b) NATIONAL MAGNETIC LEVITATION DESIGN PROGRAM.—

(1) MANAGEMENT OF PROGRAM.—(A) There is hereby established a National Magnetic Levitation Design Program to be managed jointly by Secretary and the Assistant Secretary of the Army for Civil Works (hereafter referred to as "the Assistant Secretary"). In carrying out such program, the Secretary and the Assistant Secretary shall consult with appropriate Federal officials, including the Secretary of Energy and the Administrator of the Environmental Protection Agency. The Secretary and the Assistant Secretary shall establish a National Maglev Joint Project Office (hereafter referred to as the "Maglev Project Office") to carry out such program, and shall enter into such arrangements as may be necessary for funding, staffing, office space, and other requirements that will allow the Maglev Project Office to carry out its functions.

(B) STRATEGIC PLAN.—The Secretary and the Assistant Secretary, in consultation with appropriate Federal officials including the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop a national strategic plan for the design and construction of a national magnetic levitation surface transportation system. Such plan shall consider other modes of high speed surface transportation, including high speed rail. The plan shall be completed and transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives within eighteen months of the date of enactment of this Act.

(2) PHASE ONE GRANTS.—(A) Not later than three months after the date of enactment of this Act, any eligible participant may submit to the Maglev Project Office a proposal for research and development of a conceptual design for a maglev system and an application for a grant to carry out that research and development.

(B) Not later than six months after the date of enactment of this Act, the Secretary and the Assistant Secretary shall award grants for one year of research and development to no less than six applicants. If fewer than six complete applications have been received, grants shall be awarded to as many applicants as is practical.

(C) The Secretary and the Assistant Secretary may approve a grant under subparagraph (B) only after consideration of factors relating to the construction and operation of a magnetic levitation system, including the cost-effectiveness, ease of maintenance, safety, limited environmental impact, ability to achieve sustained high speeds, ability to operate along the Interstate highway rights of way, the potential for the guideway design to be a national standard, and the bidder's resources, capabilities, and history of successfully designing and developing systems of similar complexity: Provided, That, the applicant agrees to submit a report to the Maglev Project Office detailing the results of the research and development, and agrees to provide for matching of the phase one grant at a 90 per centum Federal, 10 per centum non-Federal cost share.

(D) For purposes of this section, the term "eligible participant" means United States private businesses, United States public and private education and research organizations, Federal laboratories, and consortia of such businesses, organizations and laboratories.

(3) PHASE TWO GRANTS.—Within three months of receiving the reports under paragraph (2), the Secretary and the Assistant Secretary shall select not more than three participants to receive one-year grants for research and development leading to a final design for a maglev system. The Secretary and the Assistant Secretary may only award grants under this paragraph if they determine that the applicant has demonstrated technical merit for the conceptual design and the potential for further development of such design into a national system, and if the applicant agrees to provide for matching of the phase two grant at a 80 per centum Federal, 20 per centum non-Federal cost share.

(4) PROTOTYPE.—(A) Within six months of receiving the final designs developed under paragraph (3), the Secretary and the Assistant Secretary shall select one design for development into a full scale prototype. Not more than three months after the selection of such design, the Secretary and the Assistant Secretary shall award one prototype construction grant to a State government, local government, organization of State and local governments, consortium of United States private businesses or any combination of these entities for the purpose of constructing a prototype maglev system in accordance with the selected design.

(B) Selection of the grant recipient under this paragraph shall be based on the following factors:

(i) The project shall utilize interstate highway rights-of-way.

(ii) The project shall have sufficient length to allow significant full speed operations between stops.

(iii) No more than 75 per centum of the cost of the project shall be borne by the United States.

(iv) The project shall be constructed and ready for operational testing within three years after the award of the grant.

(v) The project shall provide for the conversion of the prototype to commercial operation after testing and technical evaluation is completed.

(vi) The project shall be located in an area that provides a potential ridership base for future commercial operation.

(vii) The project shall be located in an area that experiences climatic and other environmental conditions that are representative of such conditions in the United States as a whole.

(viii) The project shall be suitable for eventual inclusion in a national magnetic levitation system network.

(c) LICENSING.—

(1) PROPRIETARY RIGHTS.—No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained from a United States business, research, or education entity as a result of activities under this Act shall be disclosed.

(2) COMMERCIAL INFORMATION.—The research, development and use of any technology developed pursuant to an agreement reached pursuant to this section, including the terms under which any technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701–3714). In addition, the Secretary and the Assistant Secretary may require any grant recipient to assure that research and development shall be performed substantially in the United States, and that the products embodying the inventions made under any agreement pursuant to this section or produced through the use of such inventions shall be manufactured substantially in the United States.

(d) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated to carry out this section shall remain available until expended.

(e) REPORTS.—The Secretary and the Assistant Secretary shall provide periodic reports on progress made under this section to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(f) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, the requirements of chapter 1 of title 23, United States Code, shall apply to the provisions of this section.

SEC. 117. ACCESS TO RIGHTS-OF-WAY.

(a) AVAILABILITY OF RIGHTS-OF-WAY.—Subsection 142(g) of title 23, United States Code, is amended to read as follows:

"(g) In any case where sufficient land exists within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, highway and non-highway public mass transit facilities the Secretary shall authorize a State to make such lands and rights-of-way available with or without charge to a publicly or privately owned authority or company for such purposes.".

(b) AVAILABILITY OF AIRSPACE.—Section 156 of title 23, United States Code, is amended by adding before the period at the end of the first sentence the following: ": Provided, That the States may permit governmental use, use by public or private entities for passenger, commuter, or high speed rail, magnetic levitation systems, or other transit, utility use and occupancy where such use or occupancy is necessary for a transportation project allowed under this section, or use for transportation projects eligible for assistance under this title, with or without charge.".

(c) CONFORMING AMENDMENTS.—Section 142 of title 23, United States Code, is amended as follows:

(1) Paragraph (a)(1) is amended by striking "of the Federal-aid systems"; and by striking "project on any Federal-aid system" and inserting in lieu thereof "Surface Transportation Program project or as an Interstate construction project".

(2) Paragraph (a)(2) is repealed.

(3) Subsection (c) is repealed.

(4) Paragraph (e)(2) is repealed.

(5) Subsections (i) and (k) are repealed.

SEC. 118. REPORT ON REIMBURSEMENT FOR SEGMENTS CONSTRUCTED WITHOUT FEDERAL ASSISTANCE.

The Secretary shall update the findings of the report required by section 114 of the Federal-Aid Highway Act of 1956 to determine what amount the United States would pay to the States to reimburse the States for segments incorporated into the Interstate System that were constructed at non-Federal expense. The report required under this section shall be completed by October 1, 1993, and shall be transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

SEC. 119. DISADVANTAGED BUSINESS ENTERPRISES.

(a) CONTINUATION OF CURRENT LAW.—Section 106(c)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended by striking "titles I and III of this Act or obligated under" and inserting instead "the Surface Transportation Efficiency Act of 1991 or obligated under titles I and III of this Act and".

(b) ADJUSTMENT FOR INFLATION.—Section 106(c)(2)(A) of such 1987 Act is amended by striking "14,000,000" and inserting instead "15,370,000".

(c) STUDY.—The Comptroller General of the United States shall conduct a study of the Disadvantaged Business Enterprise program of the Federal Highway Administration (hereafter in this section referred to as the "DBE program"). The study shall include—

(1)(A) a determination of the percentage of disadvantaged business enterprises that have enrolled in the DBE program that have graduated from the DBE program after an enrollment period of 3 years;

(B) a determination of the number of disadvantaged business enterprises that have been enrolled in the DBE program for a period greater than 3 years; and

(C) a determination as to whether the graduation date any of the disadvantaged business enterprises described in subparagraph (B) should be accelerated;

(2) a determination of which State transportation programs meet the requirement under the DBE program for 10 per centum participation by minority-owned businesses and woman-owned businesses by contracting with out of State contractors in lieu of in-State contractors;

(3)(A) a determination as to whether adjustments in the DBE program could be made with respect to—

(i) Federal or State participation in training programs; and

(ii) Meeting capital needs and bonding requirements; and

(B) with respect to subparagraph (A), in the case where adjustments could be made, recommended adjustments that would continue to encourage minority participation in the program and would improve the success rate of the disadvantaged business enterprises;

(4) recommendations for additions and revisions to criteria used to determine the performance and financial capabilities of disadvantaged business enterprises participating under the DBE program; and

(5) a determination of additional costs incurred by the Federal Highway Administration in meeting the requirement for 10 per centum participation, as described in paragraph (2).

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report on the findings of the study described in subsection (a) to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Public Works of the House of Representatives.

SEC. 120. AVAILABILITY OF FUNDS.

(a) Section 118 of title 23, United States Code, is amended to read as follows:

"(a) DATE AVAILABLE FOR OBLIGATION.—Except as otherwise specifically provided, authorizations from the Highway Account of the Highway Trust Fund to carry out this title shall be available for obligation when apportioned or allocated, or on October 1 of the fiscal year for *which they are authorized, whichever first occurs.*

"(b) PERIOD OF AVAILABILITY DISCRETIONARY PROJECTS.—

"(1) INTERSTATE CONSTRUCTION FUNDS.—Funds apportioned or allocated for Interstate Construction in a State shall remain available for obligation in that State until the close of the fiscal year in which they are apportioned or allocated. Sums not obligated by the close of the fiscal year in which they are apportioned or allocated shall be allocated to other States, except Massachusetts, at the discretion of the Secretary. All sums apportioned or allocated on or after October 1, 1994 shall remain available in the State until expended: And provided further, That all sums apportioned or allocated to Massachusetts on or before October 1, 1989 shall remain available until expended.

"(2) OTHER FUNDS.—Except as otherwise specifically provided, funds (other than interstate construction) apportioned or allocated pursuant to this title in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

"(c) ALASKA AND PUERTO RICO.—Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, and other like purposes.

"(d) SET ASIDE FOR INTERSTATE DISCRETIONARY PROJECTS.—

"Before any apportionment is made under section 103(b)(5) for a fiscal year beginning after September 30, 1991 the Secretary shall set aside $200,000,000. Such funds shall be available for obligation by the Secretary under the following priorities:

"(1) FIRST.—For high cost projects which directly contribute to the completion of a segment of the interstate system which is not open to traffic;

"(2) SECOND.—For projects of high cost in relation to a State's total apportionment of funds; and

"(3) THIRD.—For projects with respect to which the Secretary may make payments under section 115 of title 23, United States Code.".

SEC. 121. PROGRAM EFFICIENCIES.

(a) Section 102 of title 23, United States Code, is amended to read as follows:

"§102. Program efficiencies

"(a) STANDARDS.—Except as provided in section 133(c), projects undertaken pursuant to the Surface Transportation Program must be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards. The design and construction standards to be adopted for highways classified as principal arterials and designated as a part of the interim or permanent National Highway System shall be those approved by the Secretary in cooperation with the State highway departments and the American Association of State Highway and Transportation Officials. Any State may request that the Secretary no longer review and approve design and construction standards for any project other than a project on an Interstate highway or other multi-lane limited access control highways, except as provided in subsection (b), regarding resurfacing projects. After receiving any such request the Secretary shall undertake project review only as requested by the State.

"(b) PAVEMENT REHABILITATION PROJECTS.—Notwithstanding any other provision of this title, a State highway or transportation department may approve the design of a pavement rehabilitation project or highway resurfacing project on any project constructed pursuant to this title: Provided, That States comply with the requirements of all other applicable Federal laws and regulations.

"(c) HIGHWAY MAINTENANCE STANDARDS.—Notwithstanding any other provision of this title, a State highway or transportation department may establish maintenance standards for projects constructed pursuant to this title, which shall be subject to annual approval by the Secretary. The Secretary may not withhold project approval pursuant to section 106 if a State is meeting maintenance standards approved by the Secretary under this section.

"(d) HOV PASSENGER REQUIREMENTS.—A State highway or transportation department shall establish the occupancy requirements of vehicles operating in high occupancy vehicle lanes: Provided, That no fewer than two occupants may be required. For the purposes of this title and the Surface Transportation Efficiency Act of 1991, motorcycles and bicycles shall not be considered single occupant vehicles. Nothing in this title or the Surface Transportation Efficiency Act of 1991 shall be construed as altering the provisions or effect of section 163 of the Highway Improvement Act of 1982.

"(e) ENGINEERING COST REIMBURSEMENT.—A State shall refund to the Highway Trust Fund all Federal funds for preliminary engineering for any project if the project has not yet advanced to construction or acquisition of right-of-way within ten years of receipt of such Federal funds.".

(b) HISTORIC AND SCENIC VALUES.—Section 109 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(p) Where a proposed project under sections 103(e)(4), 133, or 144 involves a historic facility or where such project is located in an area of historic or scenic value, the Secretary may approve such project notwithstanding the requirements of subsections (a) and (b) and section 133(c) if such project is designed to standards that allow for the preservation of these values: Provided, That such project is designed with mitigation measures to allow preservation of these values and ensure safe operation of the project.".

(c) DELEGATION OF RESPONSIBILITIES.—Section 302 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(c) At the request of the Governor of any State, the Secretary is authorized to permit the highway or transportation department of a municipality of over 1 million population within the State to perform all such duties and responsibilities regarding projects undertaken within the municipality as are delegated to it that would otherwise be the responsibility of the State highway or transportation department. For purposes of this subsection, the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(d) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 102. Authorizations.".

and inserting in lieu thereof:

"Sec. 102. Program efficiencies.".

SEC. 122. USE OF SAFETY BELTS AND MOTORCYCLE HELMETS.

(a) NEW REQUIREMENTS.—Section 153 of title 23, United States Code, is amended to read as follows:

"§153. Use of safety belts and motorcycle helmets

"(a) STATE LAWS.—

"(1) FISCAL YEAR 1995.—If, at any time in fiscal year 1994 a State does not have in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body;

the State shall expend for highway safety programs 1.5 per centum of the amount apportioned to such State for fiscal year 1995 under section 104(b)(1).

"(2) AFTER FISCAL YEAR 1995.—If, at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) has a safety belt properly fastened about the individual's body;

the State shall expend for highway safety programs 3 per centum of the amount apportioned to such State for the succeeding fiscal year under section 104(b)(1). A State which is required to expend funds for highway safety programs under this subsection shall expend such funds for purposes eligible under section 402; section 152, except repavement; and section 130.

"(3) FEDERAL SHARE.—The Federal share of the cost of any project carried out under this subsection shall be 100 per centum.

"(4) AVAILABILITY.—Notwithstanding the requirements of section 118, funds subject to be set aside under this subsection shall be available only in the year for which they were apportioned, and shall thereafter lapse. For purposes of making expenditures of such funds, a State shall use an amount of the obligation authority distributed for the Surface Transportation Program for the fiscal year in which the set aside apportionments were made equal to the amount required to be expended under this subsection.

"(b) GRANTS TO STATES.—

"(1) STATE ELIGIBILITY.—The Secretary may make grants to a State in accordance with this section if such State has in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

"(2) USE OF GRANTS.—A grant made to a State under this section shall be used to adopt and implement a traffic safety program to carry out the following purposes:

"(A) To educate the public about motorcycle and passenger vehicle safety and motorcycle helmet, safety belt, and child restraint system use and to involve public health education agencies and other related agencies in these efforts.

"(B) To train law enforcement officers in the enforcement of State laws described in paragraph (1).

"(C) To monitor the rate of compliance with State laws described in subsection (a).

"(D) To enforce State laws described in paragraph (1).

"(3) MAINTENANCE OF EFFORT.—A grant may not be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary

may require to ensure that such State will maintain its aggregate expenditures from all other sources for any traffic safety program described in subsection (b) at or above the average level of such expenditures in the State's two fiscal years preceding the date of the enactment of this section.

"(4) FEDERAL SHARE.—A State may not receive a grant under this section in more than three fiscal years. The Federal share payable for a grant under this section shall not exceed—

"(A) in the first fiscal year such State receives a grant, 75 per centum of the cost of implementing in such fiscal year a traffic safety program described in subsection (b);

"(B) in the second fiscal year such State receives a grant, 50 per centum of the cost of implementing in such traffic safety program; and

"(C) in the third fiscal year such State receives a grant, 25 per centum of the cost of implementing in such fiscal year such traffic safety program.

"(5) MAXIMUM AGGREGATE AMOUNT OF GRANTS.—The aggregate amount of grants made to a State under this section shall not exceed 90 per centum of the amount apportioned to such State for fiscal year 1990 under section 402.

"(6) ELIGIBILITY FOR GRANTS.—

"(A) A State is eligible in a fiscal year for a grant under this section only if the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State implements in such fiscal year a traffic safety program described in subsection (b).

"(B) A State is eligible for a grant under this section in a fiscal year succeeding the first fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year—

"(i) has in effect at all times a State law described in paragraph (1)(A) and achieves a rate of compliance with such law of not less than 75 per centum; and

"(ii) has in effect at all times a State law described in paragraph (1)(B) and achieves a rate of compliance with such law of not less than 50 per centum.

"(C) A State is eligible for a grant under this section in a fiscal year succeeding the second fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year—

"(i) has in effect at all times a State law described in paragraph (1)(A) and achieves a rate of compliance with such law of not less than 85 per centum; and

"(ii) has in effect at all times a State law described in paragraph (1)(B) and achieves a rate of compliance with such law of not less than 70 per centum.

"(c) MEASUREMENTS OF RATES OF COMPLIANCE.—For the purposes of subsection (b) (2) and (3), a State shall measure compliance with State laws described in subsection (b)(1) using methods which conform to guidelines to be issued by the Secretary ensuring that such measurements are accurate and representative.

"(d) DEFINITIONS.—For the purposes of this section, the following definitions apply:

"(1) The term 'child restraint system' means a device which is designed for use in a passenger vehicle to restrain, seat, or position a child who weighs 50 pounds or less.

"(2) The term 'motorcycle' means a motor vehicle with motive power which is designed to travel on not more than 3 wheels in contact with the surface.

"(3) The term 'passenger vehicle' means a motor vehicle with motive power which is designed for transporting 10 individuals or less, including the driver, except that such term shall not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

"(4) The term 'safety belt' means—

"(A) with respect to open-body vehicles and convertibles, and occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

"(B) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

"(e) AUTHORITY.—All provisions of chapter 1 of this title that are applicable to Surface Transportation Program funds, other than provisions relating to the apportionment formula, shall apply to funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that sums authorized by this section shall remain available until expended.".

(b) STUDY.—The Secretary shall conduct a study of restrained and unrestrained individuals injured in motor vehicle crashes and of helmeted and non-helmeted motorcyclists injured in motorcycle crashes, collecting and analyzing data from regional trauma systems regarding differences in: The severity of injuries; acute, rehabilitative and long-term medical costs, including the sources of reimbursement and the extent to which these sources cover actual costs; and mortality and morbidity outcomes. Of the amounts authorized to be appropriated for fiscal year 1992 to carry out the requirements of this section, not less than $5,000,000 shall be available until expended to carry out this subsection. The Secretary shall report the results of this study to Congress not later than 40 months after the date of enactment of this Act. Approval by the Secretary of Transportation of the payment of such sums shall establish a contractual obligation of the United States to pay such sums.

(c) REGULATIONS.—Not later than one hundred and eighty days after the date of the enactment of this Act, the Secretary shall issue regulations to carry out section 153 of title 23, United States Code.

(d) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 153. [Repealed.].".

and inserting in lieu thereof:

"Sec. 153. Use of Safety Belts and Motorcycle Helmets.".

SEC. 123. CREDIT FOR NON-FEDERAL SHARE.

(a) ELIGIBILITY.—A State may use as a credit toward the non-Federal matching share requirement for all programs under this Act and title 23, United States Code, those funds that are generated and used by public, quasi-public and private agencies to build, improve, or maintain transportation infrastructure that serves the public purpose of interstate commerce. Such public, quasi-public or private agencies shall have built, improved, or maintained such transportation infrastructure without Federal funds.

(b) MAINTENANCE OF EFFORT.—The credit for any non-Federal share shall not reduce nor replace State monies required to match Federal funds for any program pursuant to this Act or title 23, United States Code. In receiving a credit for non-Federal capital expenditures under this section, a State shall enter into such agreements as the Secretary may require to ensure that such State will maintain its non-Federal transportation capital expenditures at or above the average level of such expenditures for the preceding three fiscal years.

(c) TREATMENT.—Use of such credit for a non-Federal share shall not expose such agencies from which the credit is received to additional liability, additional regulation or additional administrative oversight. When credit is applied from chartered multi-State agencies, such credit shall be applied equally to all charter States. The public, quasi-public, and private agencies from which the credit for which the non-Federal share is calculated shall not be subject to any additional Federal design standards, laws or regulations as a result of providing non-Federal match other than those to which such agency is already subject.

SEC. 124. ACQUISITION OF RIGHTS-OF-WAY.

(a) RIGHT-OF-WAY REVOLVING FUND.—Section 108(c)(3) of title 23, United States Code, is amended by striking out "ten" and inserting in lieu thereof "twenty".

(b) EARLY ACQUISITION OF RIGHTS-OF-WAY.—Section 108 of title 23, United States Code, is further amended by adding subsection (d) as follows:

"(d) EARLY ACQUISITION OF RIGHTS-OF-WAY.—Federal funds may be used to participate in payment of the costs incurred by a State for the acquisition of rights-of-way, acquired in advance of any Federal approval or authorization, which are subsequently incorporated into a project, and the costs incurred by the State for the acquisition of land necessary to preserve environmental and scenic values. The Federal share payable of the costs shall be eligible for reimbursement out of funds apportioned to the State when the rights-of way acquired are incorporated into a project eligible for surface transportation funds, if the State demonstrates to the Secretary and the Secretary finds that—

"(1) any land acquired, and relocation assistance provided complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;

"(2) title VI, of the Civil Rights Act of 1964 has been complied with;

"(3) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and that the acquisition is certified by the Governor as consistent with the State plans prior to the acquisition;

"(4) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this Act;

"(5) the alternative for which the right-of-way is acquired is selected by the State pursuant to regulations to be issued by the Secretary, which provide for the consideration of the environmental impacts of various alternatives;

"(6) prior to the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the right-of-way was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 4(f) of the Department of Transportation Act, section 7 of the Endangered Species Act, and all other applicable environmental laws shall be identified by the Secretary in regulations; and

"(7) prior to the time that the cost incurred by a State is approved for Federal participation, both the Secretary and the Administrator of the Environmental Protection Agency have concurred that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.".

(c) CONFORMING AMENDMENTS.—Section 108 of title 23, United States Code, is further amended—

(1) in subsection (a), by striking out "on any of the Federal-aid highway systems, including the Interstate System," each of the two places it appears;

(2) in subsection (c)(2), by striking "on any Federal-aid system"; and

(3) in subsection (c)(3) by striking "on the Federal-aid system of which such project is to be a part".

SEC. 125. TRANSPORTATION IN PARKLANDS.

(a) IN GENERAL.—Not later than twelve months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of the Interior, shall submit to the Congress a study of alternative transportation modes for use in the National Park System. Such study shall consider the economic and technical feasibility, environmental effects, projected costs and benefits as compared to the costs and benefits of existing transportation systems, and general suitability of transportation modes that would provide efficient and environmentally sound ingress to and egress from National Park lands. Such study shall also consider methods to obtain private capital for the construction of such transportation modes and related infrastructure.

(b) AUTHORIZATION OF APPROPRIATIONS.—From within the sums authorized to be appropriated for subsection 202(d) of title 23, United States Code, $300,000 shall be made available to carry out this section.

SEC. 126. TRAFFIC CONTROL STANDARDS.

The Secretary shall revise the Manual of Uniform Traffic Control Devices to include—

(a) a standard for a minimum level of retroreflectivity that must be maintained for pavement markings and signs, which shall apply to all roads open to public travel;

(b) a standard to define the roads that must have a center line or edge lines or both, provided that in setting such standard the Secretary shall consider the functional classification of roads, traffic volumes, and the number and width of lanes.

SEC. 127. USE OF ASPHALT RUBBER PAVEMENT.

(a) Beginning on the date three years after the date of enactment of this Act, the Secretary of Transportation shall make no grant to any State under title 23 of the United States Code, other than projects or grants for safety where the Secretary determines that the principal purpose of the project is an improvement in safety that will result in a significant reduction in or avoidance of accidents, for any year unless the State shall have submitted to the Secretary a certification that the asphalt pavement laid in the State in such year and financed in whole or part by such grants shall satisfy the minimum utilization requirement for asphalt rubber pavement established by this section. The Secretary may modify the minimum utilization requirement for asphalt rubber pavement during a phase-in period, if the Secretary determines that such phase-in period is necessary to develop production and application facilities for asphalt rubber pavement. Such phase-in period shall not extend beyond the date six years after the date of enactment of this section. The Secretary may increase the minimum utilization requirement for asphalt rubber pavement to be used in federally-assisted highway projects to the extent it is technologically and economically feasible to do so and if an increase is appropriate to assure markets for the reuse and recycling of scrap tires.

(b) The Secretary may set aside the provisions of this section for any three-year period on a determination, made in concurrence with the Administrator of the Environmental Protection Agency with respect to paragraphs (1) and (2), that there is reliable evidence indicating—

(1) that manufacture, application or use of asphalt rubber pavement substantially increases risks to human health or the environment as compared to the risks associated with conventional pavement;

(2) that asphalt rubber pavement cannot be recycled to the same degree as conventional pavement; or

(3) that asphalt rubber pavement does not perform adequately as a material for the construction or surfacing of highways and roads.

(c) Any determination made to set aside the requirements of this section may be renewed for an additional three-year period by the Secretary, with the concurrence of the Administrator with respect to determinations made under subsections (b)(1) and (b)(2). Any determination made with respect to subsection (b)(3) may be made for specific States or regions considering climate, geography and other factors that may be unique to the State or region and that would prevent the adequate performance of asphalt rubber pavement in such State or region.

(d) The minimum utilization requirement for asphalt rubber pavement in federally-assisted highway projects shall be not less than an average of six pounds of rubber derived from scrap tires for each one ton of finished asphalt pavement used in federally-assisted highway projects in the State. The Secretary may grant a State credit toward the minimum utilization requirement for volumes of asphalt rubber pavement used in other road and construction projects and for asphalt rubber pavement containing rubber at rates less than or greater than six pounds per ton: Provided, That the total amount of rubber used in asphalt pavement containing rubber in the State in any year is at least equivalent to the amount that would be used if 100 per centum of the pavement used in federally-assisted highway projects in the State contained six pounds of rubber per ton of finished pavement.

(e) The Secretary shall establish a minimum utilization requirement for asphalt rubber pavement less than the minimum otherwise required by subsection (d) in a particular State, upon the request of such State and with the concurrence of the Administrator of the Environmental Protection Agency, if the Secretary determines that there is not a sufficient quantity of scrap tires available prior to disposal in the State to meet the minimum utilization requirement established by subsection (d) and each of the other recycling and processing uses, including retreading, for which scrap tires are required.

(f) For purposes of this section—

(1) the term "process" means the utilization of tires to reclaim material or energy value;

(2) the term "recycle" means to process scrap tires to produce usable materials other than fuels;

(3) the term "asphalt rubber pavement" means any hot mix asphalt paving mixture which contains rubber derived from scrap tires, is produced using the wet or dry process and is used for a pavement base, surface course, or stress absorbing membrane interlayer;

(4) the term "stress absorbing membrane interlayer" means a process of spray applying asphalt rubber pavement prior to the overlayment of conventional asphalt pavement to reduce reflective cracking and to waterproof the roadway.

(g) The Secretary shall, in cooperation with the Administrator of the Environmental Protection Agency, conduct a program of research to determine—

(1) the public health and environmental risks associated with the production and use of asphalt rubber pavement;

(2) the performance of the asphalt rubber pavement under various climate and use conditions; and

(3) the degree to which asphalt rubber pavement can be recycled.

The research program required by this subsection shall be completed not later than three years after the date of enactment of this Act. The Secretary is authorized to use funds pursuant to sections 103(b) and 115 (making amendments to section 307 of title 23, United States Code) to carry out the research required by this subsection.

SEC. 128. RIGHT-OF-WAY REVOLVING FUND.

Section 108 of title 23, United States Code, is amended—

(a) in subsection (a) by striking out "on any of the Federal-aid highway systems, including the Interstate System" in each of the two places it appears; by striking out "State highway department" in each of the two places it appears and inserting in lieu thereof "State transportation department"; and by inserting "or passenger rail facility" after "road"; and

(b) in subsection (c) by inserting "and passenger rail facilities" after "highways" in paragraph (2); by striking "on any Federal-aid system" in paragraph (2); by striking "State highway department" and inserting in lieu thereof "State transportation department" in paragraph (2); by inserting "or passenger rail facility" after "highway" in each of the two places it appears in paragraph (3); and by striking "on the Federal-aid system of which such project is to be a part" in paragraph (3).

SEC. 129. SCENIC AND HISTORIC HIGHWAYS.

There is hereby created a National Scenic and Historic Byways Program, and an Office of Scenic and Historic Byways within the Federal Highway Administration, which Office shall administer the program. The Office shall provide technical assistance to the States and shall provide grants for the planning, design and development of State scenic byway programs. The Secretary, in consultation with the Secretaries of Agriculture, Interior, and Commerce, and other interested parties, shall establish criteria for roads to be designated as part of an All American Roads program. The Secretary shall designate the roads to be included in the All American Roads program. Roads considered for such designation shall be nominated by the States and Federal agencies. For all State-owned roads nominated by Federal agencies, the State shall concur in the nomination. The sum of $5,000,000 per year is authorized to be appropriated for the purposes of carrying out this section. The Secretary shall establish criteria for allocating such funds to the States.

SEC. 130. NATIONAL HIGHWAY SYSTEM.

(a) Within two years of the date of enactment of this Act, the Secretary shall submit to the Congress a proposal for a National Highway System to provide an interconnected system of principal arterial routes which will serve major population centers, ports, airports, international border crossings, and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel. The National Highway System shall consist of highways on the Interstate System and other specified urban and rural principal arterials, including toll facilities.

(b) During the two year period prior to the submission of the proposed National Highway System to Congress, the interim National Highway System shall consist of the Interstate System and such urban and rural principal arterials (including toll facilities) as designated by each State. Each State shall expend at least 17.5 percent of the amounts authorized by section 103(b)(1) of this Act for each of the fiscal years 1992 and 1993 on such interim National Highway System.

(c) A final National Highway System submitted to Congress by the Secretary shall be designated in accordance with guidelines issued by the Secretary which provide for equitable allocation of mileage among States. The final system shall be designated by each State in consultation with regional and local officials, with

the approval of the Secretary. Ninety days after submission of the proposed National Highway System to Congress, each State shall expend at least 17.5 percent of the amounts authorized by section 103(b)(1) of this Act for each of the fiscal years 1994 through 1996 on the system so designated in the report to Congress or on such system as is modified by an Act of Congress. Amounts authorized by section 103(b)(1) of this Act do not include any amounts transferred to the Surface Transportation Program from the Interstate Maintenance Program, or any other program.

(d) If a State certifies to the Secretary that apportionments required to be spent on the National Highway System pursuant to this section are in excess of amounts needed to adequately maintain the National Highway System routes within the State as determined by the Bridge Management System and Pavement Management System under section 135(a) of title 23, as amended by this Act, the State may transfer up to 20 percent of these amounts for any project eligible under the Surface Transportation Program.

SEC. 131. DEFINITIONS.

(a) NEW DEFINITIONS.—Section 101(a) of title 23, United States Code, is amended adding definitions for "carpool project", "hazard elimination", "magnetic levitation system", "metropolitan area", "open to public travel", "operational improvement", "public authority", "public lands highway", "railway-highway crossing", "reconstruction", and "transportation enhancement activities" as follows:

"The term 'carpool project' means any project to encourage the use of carpools and vanpools, including but not limited to provision of carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

"The term 'hazard elimination' means the correction or elimination of hazardous locations, sections, or elements, including roadside obstacles and unmarked or poorly marked roads which may constitute a danger to motorists, bicyclists or pedestrians.

"The term 'magnetic levitation system' means any facility (including vehicles) using magnetic levitation for transportation of passengers or freight that is capable of operating at high speeds, and capable of operating along Interstate highway rights of way.

"The term 'metropolitan area' means an area so designated pursuant to section 134.

"The term 'open to public travel' means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulations other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

"The term 'operational improvement' means a capital improvement other than (1) a reconstruction project; (2) additional lanes except high occupancy vehicle lanes; (3) interchange and grade separations; or (4) the construction of a new facility on a new location. The term includes the installation of traffic surveillance and control equipment; computerized signal systems; motorist information systems, integrated traffic control systems; incident management programs; transportation demand management facilities, strategies, and programs; high occupancy vehicle preferential treatments including the construction of high occupancy vehicle lanes; and spot geometric and traffic control modifications to alleviate specific bottlenecks and hazards.

"The term 'public authority' means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate or maintain toll or toll-free facilities.

"The term 'public lands highway' means a forest road under the jurisdiction of and maintained by a public authority and open to public travel, or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by, a public authority and open to public travel.

"The term 'railway-highway crossing project' means any project for the elimination of hazards of railway-highway crossings, including the protection or separation of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

"The term 'reconstruction' means the addition of travel lanes and the construction and reconstruction of interchanges and over crossings, including acquisition of right-of-way where necessary.

"The term 'transportation enhancement activities' means, with respect to any project or the area to be served by the project, highway safety improvement projects other than repaving projects, railway-highway crossing projects, provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities including historic railroad facilities and canals, preservation of abandoned railway corridors including the conversion and use thereof for pedestrian or bicycle trails, control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff.".

(b) CONFORMING AMENDMENTS.—

(1) The definition for "highway" is amended by inserting "scenic easements" after "and also includes".

(2) The definitions for "Federal-aid highways", "Federal-aid system", "Federal-aid primary system", "Federal-aid secondary system", "Federal-aid urban system", "forest highway", "project", and "urban area" are repealed.

(3) The definition for "Indian reservation roads" is amended by striking ", including roads on the Federal-aid systems,".

(4) The definition for "park road" is amended by inserting ", including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles," before "that is located in".

SEC. 132. FUNCTIONAL RECLASSIFICATION.

A functional reclassification, which shall be updated periodically, should be undertaken by each State (as that term is defined in section 101 of title 23, United States Code), the United States Virgin Islands, American Samoa, Guam and the Commonwealth of the Northern Mariana Islands, by September 30, 1992, and shall be completed by September 30, 1993 in accordance with guidelines that will be issued by the Secretary. The functional reclassification shall classify all public roads (as that term is defined in section 101 of title 23, United States Code).

SEC. 133. REPEAL OF CERTAIN SECTIONS OF TITLE 23, UNITED STATES CODE.

(a) The following portions of title 23, United States Code, are hereby repealed, including the chapter analyses relating thereto—

(1) section 105, relating to programs;

(2) section 117, relating to certification acceptance;

(3) section 122, relating to bond retirement;

(4) section 126, relating to diversion of funds;

(5) section 137, relating to parking facilities;

(6) section 146, relating to carpools;

(7) section 147, relating to priority primary projects;

(8) section 148, relating to a national recreational highway;

(9) section 150, relating to urban system funds;

(10) section 155, relating to lake access highways;

(11) section 201, relating to authorizations;

(12) section 212, relating to the Inter-American Highway;

(13) section 216, relating to the Darien Gap Highway;

(14) section 309, relating to foreign countries;

(15) section 310, relating to civil defense;

(16) section 311, relating to strategic highway improvements;

(17) section 312, relating to military officers;

(18) section 318, relating to highway relocation; and

(19) section 320, relating to bridges on Federal dams.

SEC. 134. CONFORMING AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 23, UNITED STATES CODE.—Title 23, United States Code, is amended as follows:

(1) Section 103 is amended as follows:

(A) Subsections (a), (b), (c), (d), and (g) are repealed.

(B) Paragraph (e)(1) is amended by striking "All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section.".

(C) Paragraph (e)(4)(B) is amended by striking the last two sentences and inserting instead "Each highway project constructed under this paragraph shall be subject to the provisions of this title applicable to highway projects constructed under the Surface Transportation Program.".

(D) Paragraph (e)(4)(E)(i) is amended by striking "for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year" and by inserting in lieu thereof "until expended".

(E) Paragraphs (e)(4)(H)(i) and (e)(4)(H)(iii) are amended by striking "and 1991" the three places it appears and inserting instead "1991, 1992, 1993, 1994 and 1995".

(F) Subsection (f) is amended to read as follows:

"(f) The Secretary shall have authority to approve in whole or in part the Interstate System, or to require modifications or revisions thereof.".

(2) Section 104 is amended as follows:

(A) Subsection (b)(6) is repealed.

(B) Subsections (c) and (d) are repealed.

(3) Section 106 is amended as follows:

(A) Subsection (a) is amended by striking "117" and inserting instead "133".

(B) Subsection (b) is repealed.

(C) Subsection (d) is amended by striking "on any Federal-aid system".

(4) Section 109 is amended as follows:

(A) Subsection (a) is amended by striking "on any Federal-aid system".

(B) Subsection (c) is repealed.

(C) Subsection (i) is amended by striking "on a Federal-aid system" and "on any Federal-aid system"; and by striking "the Federal-aid system on which such project will be located".

(D) Paragraph (l)(1) is amended by striking "on any Federal-aid system".

(5) Section 112 is amended by striking subsection (f).

(6) Section 113 is amended—

(A) by striking "on the Federal-aid systems, the primary and secondary, as well as their extensions in urban areas, and the Interstate System,";

(B) by striking "upon the Federal-aid systems,"; and

(C) by striking "on any of the Federal-aid systems".

(7) Section 114 is amended as follows:

(A) Subsection (a) is amended by (1) striking "located on a Federal-aid system" and inserting instead "constructed under this chapter" and (2) striking "117" and inserting "133".

(B) Paragraph (b)(3) is amended by striking "located on a Federal-aid system" and inserting instead "under this chapter".

(8) Section 115 is amended as follows:

(A) The title of subsection (a) is amended by striking "URBAN, SECONDARY," and inserting instead "SURFACE TRANSPORTATION PROGRAM,".

(B) Subparagraph (a)(1)(A)(i) is amended by striking "section 104(b)(2), section 104(b)(6)" and inserting instead "section 104(b)(1)".

(C) The title of subsection (b) is amended by striking "AND PRIMARY".

(D) Paragraph (b)(1) is amended (i) by striking "the Federal-aid primary system or"; (ii) by striking "104(b)(1) or"; and (iii) by striking ", as the case may be,".

(9) Section 116 is amended as follows:

(A) Subsection (a) is amended by striking "The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system".

(B) Subsection (b) is amended by striking "on the Federal-aid secondary system, or within a municipality," and inserting instead "within a county or municipality".

(10) Section 120 is amended as follows:

(A) Subsection (c) is amended by striking the last sentence.

(B) Subsection (f) is amended by striking "project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in subsections (a) and (c) of this section" and inserting instead "project on the Interstate System shall not exceed the Federal share payable on a project on that system as provided in subsection (c) of this section and any project off the Interstate System shall not exceed the Federal share payable as provided in subsection (a) of this section".

(C) Subsection (k) is amended by striking "for any Federal-aid system" and inserting instead "under section 104"; by striking ", and 155 of this title and for those priority primary routes under section 147"; and by striking "and for funds allocated under the provisions of section 155".

(D) Subsection (m) is repealed.

(11) Section 121(c) is amended by inserting "For projects obligated under section 106" in two places before the word "No"; and by striking "located on a Federal-aid system".

(12) Section 123 is amended by striking "on any Federal-aid system".

(13) Section 124 is amended by striking "of the Federal-aid systems" and inserting in lieu thereof "public roads or bridges except roads functionally classified as local or rural minor collector".

(14) Section 125 is amended as follows:

(A) Subsection (b) is amended (i) by striking "highways on the Federal-aid highway systems, including the Interstate System" and inserting instead "public roads except roads functionally classified as local or rural minor collector" and (ii) by striking "authorized on the Federal-aid highway systems, including the Interstate System" and inserting instead "authorized on public roads except roads functionally classified as local or as rural minor collector".

(B) Subsection (c) is amended by striking ", whether or not such highways, roads, or trails are on any of the Federal-aid highway systems".

(15) Section 130 is amended by striking subsections (a), (e), (f), and (h), and by renumbering the remaining sections accordingly.

(16) Section 139 is amended as follows:

(A) Subsection (a) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; and (iii) by striking "rehabilitating and reconstructing" and inserting instead "and rehabilitating".

(B) Subsection (b) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; (iii) by striking "rehabilitating and reconstructing" and inserting instead "and rehabilitating"; and (iv) by striking "section" in the last sentence and inserting instead "subsection".

(C) Subsection (c) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; and (iii) by striking "restoration, and reconstruction" and inserting instead "and restoration".

(17) Section 140 is amended as follows:

(A) Subsection (a) is amended by striking "on any of the Federal-aid systems,".

(B) Subsection (c) is amended by striking "104(a)" and inserting instead "104(b)".

(18) Section 141(b) is amended by striking "on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system" and inserting instead "on public roads except roads functionally classified as local or rural minor collector".

(19) Section 152 is amended by striking subsections (d) and (e).

(20) Section 157 is amended as follows:

(A) Subsection (b) is amended (i) by striking "primary, secondary, Interstate, urban" and inserting instead "Interstate, Surface Transportation Program" and (ii) by striking the period at the end of the last sentence and inserting instead "and section 104(a) of the Surface Transportation Efficiency Act of 1991.".

(B) Subsection (d) is amended by striking "154(f) or".

(21) Paragraph (a)(2) of section 158 is amended by striking "104(b)(2), 104(b)(5), and 104(b)(6)" and inserting instead "and 104(b)(5)".

(22) Section 215 is amended as follows:

(A) Clause (2) of subsection (c) is amended by inserting at the beginning "except as provided in section 129".

(B) Subsection (e) is repealed.

(C) Subsection (f) is amended by (1) striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and by (2) striking "and provisions limiting the expenditure of such funds to the Federal-aid systems".

(23) Section 217 is amended as follows:

(A) Subsection (a) is amended by striking ", (2) and (6)", and by striking "paragraphs" and inserting in lieu thereof "paragraph".

(B) Subsection (b) is amended by striking ", (2) and (6)", and by striking "paragraphs" and inserting in lieu thereof "paragraph".

(24) Section 302(b) is amended by striking ", for the construction of projects on the Federal-aid secondary system, financed with secondary funds, and for the maintenance thereof".

(25) Section 304 is amended by striking "the Federal-aid highway systems, including the Interstate System" and inserting instead "Federal-aid highways".

(26) Section 315 is amended by striking "sections 204(d), 205(a), 206(b), 207(b), and 208(c)" and inserting instead "section 205(a)".

(27) Section 317(d) is amended by striking "on a Federal-aid system" and inserting instead "with Federal aid".

(28) Subsection (d) of section 402 is amended (A) by striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and (B) by striking "and provisions limiting the expenditure of such funds to the Federal-aid system".

(29) Subsection (g) of section 408 is amended (A) by striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and (B) by striking "and provisions limiting the expenditure of such funds to Federal-aid systems".

(b) AMENDMENTS TO THE HIGHWAY SAFETY ACT OF 1978.—Subsection (i) of section 209 of the Highway Safety Act of 1978 is amended by (1) striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and by (2) striking "and provisions limiting the expenditure of such funds to the Federal-aid systems".

(c) AMENDMENTS TO THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982.—(1) Section 411 of the Surface Transportation Assistance Act of 1982 is amended as follows:

(A) Subsection (a) is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid primary system highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(B) Subsection (c) is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(C) Subsection (e) is amended by striking "Federal-aid Primary System highways" and "Primary System highways" and inserting instead in two places "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(2) Section 412(a) of the Surface Transportation Assistance Act of 1982 is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(3) Section 416 of the Surface Transportation Assistance Act of 1982 is amended as follows:

(A) Subsection (a) is amended by striking "Federal-aid highway" in two places and inserting instead "highway which was on a Federal-aid system on the date of the enactment of the Surface Transportation Efficiency Act of 1991"; and by striking "Federal-aid Primary System highway" and inserting instead "highway which was on the Federal-aid Primary System on the date of enactment of the Surface Transportation Efficiency Act of 1991".

(B) Subsection (d) is amended by striking "Federal-aid highway" and inserting instead "highway which was on a Federal-aid system on the date of the enactment of the Surface Transportation Efficiency Act of 1991".

(d) AMENDMENTS TO TITLE 42, UNITED STATES CODE.—Section 5122(8)(B) of title 42, United States Code, is amended by striking "any non-Federal-aid street, road or highway" and inserting instead "any street, road or highway not eligible for emergency relief under title 23, United States Code.".

(e) OPERATION LIFESAVER.—Whenever apportionments are made under section 104(a) of title 23, United States Code, the Secretary shall deduct such sums as the Secretary deems necessary, not to be less than $250,000 per fiscal year, for carrying out Operation Lifesaver.

(f) TECHNICAL CORRECTION TO PUBLIC LAW 101–516.—Section 333 of Public Law 101–516 is amended by—

(1) inserting the following after "SEC. 333.":

"Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§159. Revocation or suspension of the driver's license of individuals convicted of drug offenses

"(a)(1)";

(2) by striking the second sentence of such section; and

(3) Section 104 of title 23, United States Code, is amended by inserting subsections (a)(2), (a)(3), (b) and (c) of such section as those subsections existed in title 23, United States Code, immediately prior to enactment of Public Law 101–516.

SEC. 135. RECODIFICATION.

The Secretary shall, by October 1, 1993, prepare a recodification of title 23, United States Code, related Acts and statutes and submit the recodification to the Congress for consideration.

SEC. 136. TIMBER BRIDGE AND TIMBER RESEARCH PROGRAM.

(a) The Secretary of Transportation is hereby authorized to establish a Timber Bridge Construction Discretionary Grant Program.

(1) Of the amount authorized per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 by section 103(b)(3) of the Surface Transportation Efficiency Act of 1991 (relating to the bridge program), $5,000,000 shall be available for obligation at the discretion of the Secretary for such program. The Federal share payable on any bridge construction project carried our under this section shall be 80 per centum of the cost of such construction.

(2) States may submit applications for construction grants in such form as required by the Secretary, who shall select and approve such grants based on the following criteria:

(A) bridge design shall have both initial and long term structural and environmental integrity;

(B) bridge design should utilize timber species native to the State or region;

(C) innovative design should be utilized that has the possibility of increasing knowledge, cost effectiveness, and future use of such design; and

(D) environmental practice for preservative treated timber should be utilized and construction techniques which comply with all environmental regulations.

(b) The Secretary of Transportation is hereby authorized to establish a Program of Research on Wood Use in Transportation Structures.

(1) Of the amount authorized per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 by section 103(b)(10) of the Surface Transportation Efficiency Act of 1991 (relating to Federal Highway Administration Research Programs), $1,000,000 shall be available for obligation at the discretion of the Secretary for such program. The Federal share payable on any research grant shall be 100 per centum.

(2) The Secretary of Transportation, through the Federal Highway Administration, may make grants to, or contract with States, other Federal agencies, universities, private businesses, nonprofit organizations, and any research or engineering entity for research on any one of the following areas:

(A) timber bridge systems which involve development of new, economical bridge systems;

(B) development of engineering design criteria for structural wood products which improve methods for characterizing lumber design properties;

(C) preservative systems which demonstrate new alternatives, and current treatment processes and procedures optimized for environmental quality in the application, use and disposal of treated wood.

(D) alternative transportation system timber structures demonstrating the development of applications for railing, sign, and lighting supports, sound barriers, culverts, retaining walls in highway applications, docks, fresh and salt water marine facilities and railway bridges; and

(E) rehabilitation measures which demonstrate effective, safe, reliable methods for rehabilitating existing structures.

(3) The Secretary, through the Federal Highway Administration, shall assure that the information and technology resulting from research is transferred to State and local transportation departments and other interested parties.

SEC. 137. GROSS VEHICLE WEIGHT RESTRICTION.

(a) The fourth sentence of subsection 127(a) of title 23, is amended by adding after "thereof" the following: ", other than vehicles or combinations subject to subsection (d) of this section,".

(b) GROSS VEHICLE WEIGHT.—Section 127 of title 23, United States Code, is amended by adding a new subsection (d), to read as follows:

"(d)(1) A longer combination vehicle may continue to operate if and only if the Secretary of Transportation determines that the particular longer combination vehicle configuration was authorized by State officials pursuant to State statute or regulation conforming to this section and in actual, continuing lawful operation on or before June 1, 1991, or pursuant to section 335 of Public Law 101–516. All such operations shall continue to be subject to, at the minimum, all State statutes, regulations, limitations and conditions, including, but not limited to routing-specific and configuration-specific designations and all other restrictions, in force on June 1, 1991, except in Wyoming in which additional vehicle configurations not in actual operation on June 1, 1991, may be authorized by State law, unless otherwise directed, not later than the general election date in 1992, provided such vehicle configurations do not exceed 117,000 pounds gross vehicle weight and comply with the single axle, tandem axle, and bridge formula limits set forth in section 127(a) of title 23, United States Code. Nothing in this subsection shall prevent any State from further restricting in any manner or prohibiting the operation of longer combination vehicles otherwise authorized under this subsection, except that such restrictions or prohibitions shall be consistent with the requirements of sections 411, 412, and 416 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311, 2312, and 2316). Any State further restricting or prohibiting the operations of longer combination vehicles shall, within 30 days, advise the Secretary of Transportation of such action and the Secretary shall publish a notice of such action in the Federal Register.

"(2) Within sixty days of the date of enactment of this Act, the Secretary shall publish in the Federal Register a complete list of those State statutes and regulations and of all limitations and conditions, including, but not limited to routing-specific configuration-specific designations and all other restrictions, governing the operation of longer combination vehicles otherwise prohibited under this subsection. No statute or regulation shall be included on the list published by the Secretary merely on the grounds that it authorized, or could have authorized, by permit or otherwise, the operation of longer combination vehicles, not in actual, continuing operation on or before June 1, 1991. Except as modified pursuant to the fourth sentence of paragraph (1) of this subsection, the list shall become final within a further sixty days after publication in the Federal Register. Longer combination vehicles may not operate on the National System of Interstate and Defense Highways except as provided in the list.

"(3) For purposes of this section, a longer combination vehicle is any combination of a truck tractor and two or more trailers or semitrailers which operate on the National System of Interstate and Defense Highways at a gross vehicle weight greater than eighty-thousand pounds.

"(4) Nothing in this subsection shall be construed to allow the operation on any segment of the National System of Interstate and Defense Highways of any commercial motor vehicle combination prohibited under section 411(j) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311(j)).".

(c) Section 141(b) of title 23, United States Code, is amended by adding at the end the following new sentence: "Each State shall also certify that it is enforcing and complying with section 127(d) of this title and section 411(j) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311(j).".

SEC. 138. VEHICLE LENGTH RESTRICTION.

Section 411 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311) is amended by adding at the end the following new subsection:

"(j)(1) No State shall allow by statute, regulation, permit, or any other means, the operation on any segment of the National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary, pursuant to subsection (e) of this section, of any commercial motor vehicle combination with two or more cargo carrying units (not including the truck tractor), whose cargo carrying units exceed, as determined by the Secretary—

"(A) the maximum combination trailer, semitrailer, or other type of length limitation authorized by statute or regulations of that State on or before June 1, 1991; or

"(B) the length of the cargo carrying units of those commercial motor vehicle combinations, by specific configuration, in actual, continuing lawful operation (including continuing seasonal operation) in that State on or before June 1, 1991.

"(2) For purposes of this subsection, the length of the cargo carrying units of a commercial motor vehicle combination is the length measured from the front of the first cargo carrying unit to the rear of the last cargo carrying unit.

"(3) Commercial motor vehicle combinations whose operations in a State are not prohibited under paragraph (1) of this subsection may continue to operate in such State on the highways described in paragraph (1) only if in compliance with, at the minimum, all State statutes, regulations, limitations, and conditions, including but not limited to routing-specific and configuration-specific designations and all other restrictions in force in such State on June 1, 1991. Nothing in this subsection shall prevent any State from further restricting in any manner or prohibiting the operation of any commercial motor vehicle combination subject to this subsection, except that such restrictions or prohibitions shall be consistent with the requirements of this section and of section 412 and section 416 (a) and (b) of this Act. Any State further restricting or prohibiting the operations of commercial motor vehicle combinations shall advise the Secretary within 30 days after such action and the Secretary shall publish a notice of such action in the Federal Register.

"(4) Within 60 days after the date of enactment of this subsection, the Secretary shall publish in the Federal Register a list of length limitations, as determined by the Secretary, applicable to commercial motor vehicle combinations operating in each State on the highways described in paragraph (1). The list shall indicate the applicable State statutes and regulations associated with such length limitations. The list shall become final within 60 days after publication in the Federal Register. Commercial motor vehicle combinations prohibited under para-

graph (1) may not operate on the National System of Interstate and Defense Highways and other Federal-aid Primary System highways as designated by the Secretary. The list may be combined by the Secretary with the list required under section 127(d) of title 23, United States Code.

"(5) Nothing in this subsection shall be construed to allow the operation on any segment of the National System of Interstate and Defense Highways of any longer combination vehicle prohibited under section 127(d) of title 23, United States Code.

"(6) Nothing in this subsection shall be interpreted to affect in any way the operation of commercial motor vehicles having only one cargo carrying unit. Nor shall this subsection be interpreted to affect in any way the operation in a State of commercial motor vehicles with two or more cargo carrying units if such vehicles were in actual, continuing operation (including continuing seasonal operation) in that State on or before June 1, 1991, authorized under State statute, regulation, or lawful State permit.

"(7) As used in this subsection, 'cargo carrying unit' means any portion of a commercial motor vehicle combination (other than the truck tractor) used for the carrying of cargo, including a trailer, semitrailer, or the cargo carrying section of a single unit truck.".

SEC. 138A. NATIONAL MAXIMUM SPEED LIMIT.

(a) Section 141 of title 23, United States Code, is amended by striking subsection (a).

(b) Section 154 of title 23, United States Code, is amended to read as follows:

§154. National maximum speed limit

"(a) SPEED LIMIT—A State shall not have (1) a maximum speed limit on any public highway within its jurisdiction in excess of fifty-five miles per hour other than highways on the Interstate System located outside of an urbanized area, (2) a maximum speed limit on any highway within its jurisdiction on the Interstate System located outside of an urbanized area in excess of sixty-five miles per hour, (3) a maximum speed limit on any highway within its jurisdiction in excess of sixty-five miles per hour located outside of an urbanized area which is; (A) constructed to interstate standards in accordance with section 109(b) and connected to an interstate highway posted at sixty-five miles per hour; (B) a divided four-lane fully controlled access highway designed or constructed to connect to an Interstate highway posted at sixty-five miles per hour and constructed to design and construction standards as determined by the Secretary which provide a facility adequate for a speed limit of sixty-five miles per hour; or (C) constructed to geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and designated by the secretary as part of the Interstate System in accordance with section 139(c) or (4) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using that portion of the highway, if on November 1, 1973, that portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of that vehicle including any load thereon. Clause (4) shall not apply to any portion of a highway, during the time that the condition of the highway, weather, an accident or other condition creates a temporary hazard to the safety of traffic on that portion of a highway.

"(b) SPEED DATA.—Each State shall submit to the Secretary speed-related data as the Secretary determines by rule is necessary for each twelve-month period ending on September 30. The data shall be collected in accordance with criteria to be established by the Secretary and shall include data on citations and travel speeds on public highways with speed limits posted at or above fifty-five miles per hour.

"(c) MOTOR VEHICLE DEFINED.—As used in this section the term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

"(d) CERTIFICATION.—Each State shall certify to the Secretary before January 1 of each year that it is enforcing all speed limits on public highways in accordance with this section. The Secretary shall not approve any project under section 106 in any State which has failed to certify in accordance with this subsection. In preparing a certification under this subsection, the State shall consider the speed-related data it submits to the Secretary under subsection (b).".

SEC. 139. ROAD SEALING ON RESERVATION ROADS.

Section 204(c) of title 23, United States Code, is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend funds apportioned under this section from the Highway Trust Fund for the purpose of road sealing projects.".

SEC. 140. EMERGENCY RELIEF ADVANCES.

The Secretary shall advance emergency relief funds to the State of Washington for the replacement of a bridge on the Interstate System damaged by November 1990, storms notwithstanding the provisions of section 125 of title 23, United States Code: Provided, -That this provision shall be subject to the Federal Share provisions of section 120, title 23, of the United States Code. The State of Washington shall repay such advances to the extent that a final court judgment declares that damage to such bridges was a result of human error.

SEC. 140A. HIGHWAY CONSTRUCTION TRAINING.

Subsection (b) of section 140 of title 23, United States Code is amended by adding at the end thereof: "Notwithstanding any other provision of law, not to exceed one-fourth of 1 per centum of funds apportioned to a State for the Surface Transportation Program or the Bridge Program, may be available to carry out this subsection upon a request by the State highway department.".

SEC. 140B. EROSION CONTROL GUIDELINES.

(a) The Secretary of Transportation shall develop erosion control guidelines for States to follow in carrying out construction projects funded in whole or in part by this Act.

(b) Guidelines developed under subsection (a) shall not preempt any requirement made by or under State law if such requirement is more stringent than the guidelines.

(c) Guidelines developed under subsection (a) shall be consistent with the program of section 319 of the Clean Water Act and section 6217(g) of the Omnibus Budget Reconciliation Act of 1990.

SEC. 140C. INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM.

Chapter 1, of title 23, United States Code is amended by adding the following new section at an appropriate place:

"SEC. . INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM.

"(a) ACTIVITIES.—The Secretary is authorized to engage in activities to inform the domestic highway community of technological innovations abroad that could significantly improve highway transportation in the United States, to promote United States highway transportation expertise internationally, and to increase transfers of United States highway transportation technology to foreign countries. Such activities may include:

"(1) develop, monitor, assess, and domestically disseminate information about foreign highway transportation innovations that could significantly improve highway transportation in the United States;

"(2) research, development, demonstration, training, and other forms of technology transfer and exchange;

"(3) inform other countries about the technical quality of American highway transportation goods and services through participation in trade shows, seminars, expositions and other such activities;

"(4) offer those Federal Highway Administration technical services which cannot be readily obtained from the United States private sector to be incorporated into the proposals of United States firms undertaking foreign highway transportation projects. The costs for assistance shall be recovered under the terms of each project;

"(5) conduct studies to assess the need for or feasibility of highway transportation improvements in countries that are not members of the Organization for Economic Cooperation and Development as of the date of enactment, and in Greece and Turkey.

"(b) COOPERATION.—The Secretary may carry out the authority granted hereby, either independently, or in cooperation with any other branch of the United States Government, State or local agency, authority, association, institution, corporation (profit or nonprofit) foreign government, multi-national institution, or any other organization or person.

"(c) FUNDS.—The funds available to carry out the provisions of this section shall include funds deposited in a special account with the Secretary of the Treasury for such purposes by any cooperating organization or person. The funds shall be available for promotional materials, travel, reception and representation expenses necessary to carry out the activities authorized by this section. Reimbursements for services provided under this section shall be credited to the appropriation concerned.".

SEC. 140D. EDUCATION AND TRAINING PROGRAM.

Chapter 1 of title 23, United States Code, is amended by adding the following new section at an appropriate place.

"SEC. . EDUCATION AND TRAINING PROGRAM.

"(a) AUTHORITY.—The Secretary is authorized to carry out a transportation assistance program that will provide highway and transportation agencies, in (1) urbanized areas of 50,000 to 1,000,000 population and (2) rural areas, access to modern highway technology.

"(b) GRANTS AND CONTRACTS.—The Secretary may make grants and enter into direct contracts for education and training, technical assistance and related support services that will (1) assist rural local transportation agencies to develop and expand their expertise in road and transportation areas; improve roads and bridges; enhance programs for the movement of passengers and freight; and deal effectively with specific road related problems by preparing and providing training packages, manuals, guidelines and technical resource materials; (2) identify, package and deliver usable highway technology to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with road related problems; and (3) establish, in cooperation with State transportation or highway departments and universities (A) urban technical assistance program centers in States with two or more urbanized areas of 50,000 to 1,000,000 population and (B) rural technical assistance program centers. The Secretary shall provide technical and financial support for the centers.".

SEC. 140E. NATIONAL HIGHWAY INSTITUTE.

Section 321 of title 23, United States Code, is amended to read as follows:

"SEC. 321. NATIONAL HIGHWAY INSTITUTE.

"(a) ESTABLISHMENT AND AUTHORITY TO CONDUCT TRAINING.—The Secretary shall establish and operate in the Federal Highway Administration a National Highway Institute hereinafter referred to as the 'Institute'. The Institute shall develop and administer, in cooperation with the State transportation or highway departments, and any national or international entity, training programs of instruction for Federal Highway Administration, State and local transportation and highway department employees, State and local police, public safety and motor vehicle employees, United States citizens and foreign nationals engaged or to be engaged in highway work of interest to the United States. Programs may include, but are not limited to courses in modern developments, techniques, management, and procedures, relating to highway planning, environmental factors, acquisition of rights-of-way, relocation assistance, engineering, safety, construction, maintenance, contract administration, motor carrier activities and inspection. The Secretary shall administer the authority vested in the Secretary by this title or by any other provision of law for the development and conduct of education and training programs relating to highways through the Institute.

"(b) SET ASIDE.—Not to exceed one-fourth of 1 percent of all Surface Transportation Program funds apportioned to a State under this title shall be available for expenditure by the State highway department for payment of not to exceed 75 percent of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

"(c) FEDERAL RESPONSIBILITY.—Education and training of Federal, State and local highway employees authorized by this section shall be provided (1) by the Secretary at no cost to the States and local governments for those subject areas which are a Federal program responsibility; or (2) in any case where education and training are to be paid for under subsection (b) by the State, subject to the approval of the Secretary, through grants and contracts with public and private agencies, institutions, individuals, and the Institute: Provided, That private agencies and individuals shall pay the full cost of any education and training received by them.

"(d) TRAINING FELLOWSHIPS; COOPERATION; COLLECTION OF FEES.—The Institute is authorized, subject to approval of the Secretary, to engage in all phases of contract authority for training purposes authorized by this section including but not limited to the granting of training fellowships. The Institute is also authorized to carry out its authority independently or in cooperation with any other branch of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), or any other national or international entity, or person. The Institute is authorized to establish and collect fees from any entity and place them in a special account for the purpose of this section.

"(e) FUNDS.—The funds required to carry out this section may be from the sums deducted for administration purposes under section 104(a). The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts or agreements made under the authority of this section. The sums provided pursuant to this subsection may be combined or held separate from the fees or memberships collected and be administered by the Secretary as a fund which shall be available until expended.

"(f) DEFINITION.—The term 'national and international entity' as used in this section is defined to mean any government or non-government, public or private, profit or nonprofit body, institution, corporation, agency, association, authority, State, Country, Province, City, County, local jurisdiction, or individual.".

SEC. 140F. USE OF ZEBRA MUSSELS IN INFRASTRUCTURE.

(a) Within 180 days of the date of enactment of this Act, the Secretary of Transportation shall begin studies to determine the feasibility of utilizing zebra mussels, Dreissena polymorpha, in aggregate or other materials used to construct transportation infrastructure. Within three years of the date of enactment of this Act the Secretary shall submit a report to the Congress on the feasibility of utilizing zebra mussels in aggregate or other materials used to construct transportation infrastructure. The Secretary shall continue feasibility studies beyond this date if necessary to determine long-term performance of materials incorporating zebra mussels.

(b) If the studies required under subsection (a) demonstrate the feasibility of using zebra mussels as a construction material, beginning four years after the enactment of this Act, the Secretary of Transportation shall make no grant to any State under title 23 of the United States Code, other than projects or grants that will result in a significant reduction in or avoidance of accidents, for any year unless the State shall have submitted to the Secretary a certification that zebra mussels have been utilized in construction of transportation infrastructure in all applications in which any increase in cost due to using zebra mussels is equal to or less than the cost of disposal of the zebra mussels in conformance with all applicable environmental regulations. The Secretary may establish a phase-in period, not to extend beyond the date seven years after the date of enactment of this Act, if the Secretary determines that such a phase-in period is necessary to establish technology or production facilities for utilizing zebra mussels in transportation infrastructure applications.

(c) The Secretary may set aside the provisions of this section for any three-year period on a determination that there is reliable evidence indicating—

(1) that zebra mussels do not perform satisfactorily as a material for the construction or surfacing of roads or other infrastructure construction applications; or

(2) that utilization of zebra mussels results in increased risk to the safety of motorists, construction workers, or maintenance personnel.

(d) Any determination made to set aside the requirements of this section may be renewed for an additional three-year period by the Secretary. Any determination made with respect to subsection (c) may be made for specific States or regions considering climate, geography, and other factors that may be unique to the State or region.

(e) The Secretary, at the request of a State, may exclude a certain percentage of the federally assisted highways in such State from these requirements, if the Secretary determines that there is not a sufficient volume of zebra mussels in the waters within or contiguous to the State to constitute a nuisance.

SEC. 140G. INFRASTRUCTURE INVESTMENT COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—There is established the Commission to Promote Investment in America's Infrastructure (hereafter referred to as the "Commission").

(b) COMPOSITION.—(1) The Commission shall be composed of seven members appointed as follows:

(A) two members appointed by the Majority Leader of the Senate;

(B) two members appointed by the Speaker of the House of Representatives;

(C) one member appointed by the President of the United States;

(D) one member appointed by the Minority Leader of the Senate; and

(E) one member appointed by the Minority Leader of the House of Representatives.

(2) Individuals appointed to the Commission shall have appropriate backgrounds in finance, construction lending, actuarial disciplines, pensions, and infrastructure policy disciplines.

(c) FUNCTION OF COMMISSION.—It shall be the function of the Commission to conduct a study for the purpose of determining the feasibility and desirability of creating a type of infrastructure security which would permit the investment of pension funds in funds utilized to design, plan, and construct infrastructures in the United States. The Commission can include recommendations as to private sector as well as other recommendations for innovating public policy alternatives to assist infrastructure investment at all levels of government.

(d) REPORT.—Within 180 days following the date of the enactment of this Act, the Commission shall report its findings and recommendations to the Congress and to the President of the United States.

(e) EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem, in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, United States Code.

(f) COMMISSION STAFF.—Subject to such rules and regulations as may be adopted by the Commission, the Chairman may—

(1) appoint and fix compensation of an executive director, a general counsel, and such additional staff as is deemed necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent for the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(g) AUTHORIZATION.—There is authorized to be appropriated for the purposes of carrying out this section such sums as may be necessary for the Commission to carry out its functions.

(h) TERMINATION.—Effective 180 days following the date of submission of the report under subsection (d), this section shall be deemed repealed.

SEC. 140H. REGULATORY INTERPRETATION.

Section 635.410 of title 23, Code of Federal Regulations, and any similar regulation, ruling, or decision shall be applied as if to include coating.

SEC. 140I. CLEAR GASOLINE REQUIREMENT.

No refiner may enter into the common carrier pipeline system any gasoline that would preclude the addition of a legally waivered fuel or fuel additive unless the gasoline contains a legally waivered fuel or fuel additive in a quantity sufficient to meet the requirements of regulations issued pursuant to section 211 of the Clean Air Act (42 U.S.C. 7545).

SEC. 140J. NATIONAL DEFENSE HIGHWAYS.

(a) Upon certification by the Secretary, after consultation with the Secretary of Defense, that a particular highway or portion of such highway, located outside the territory of the United States, is important to the national defense, up

to $20,000,000, as determined by the Secretary, shall be made available for the purposes of this section in fiscal year 1993, 1994, 1995, and 1996, from the Interstate Construction Program funds authorized under section 103(b)(5) of this Act.

(b) Funds made available under this section shall be available only for the reconstruction of any highway or portion thereof certified under subsection (a), and shall remain available until expended.

SEC. 140K. ALLOCATION FORMULA STUDY.

(a) The General Accounting Office in conjunction with the Bureau of Transportation Statistics created pursuant to section 115 of this Act, shall conduct a thorough study and recommend to the Congress within two years after the date of enactment a fair and equitable apportionment formula for the allocation of Federal-aid highway funds that best directs highway funds to the places of greatest need for highway maintenance and enhancement based on the extent of these highway systems, their present use, and increases in their use.

(b) The results of this study shall be presented to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation on or before January 1, 1994, and shall be considered by these committees as they reauthorize the surface transportation program in 1996.

SEC. 140L. STORM WATER PERMIT REQUIREMENTS.

(a) Notwithstanding the requirements of sections 402(p)(2) (B), (C), and (D) of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall not—

(1) require any municipality with a population of less than 100,000 to submit any part I general permit application or individual application (as described in a rulemaking published in the Federal Register on November 16, 1990) for a storm water discharge associated with any airport, powerplant or uncontrolled sanitary landfill owned or operated by the municipality prior to May 18, 1992 or any part II general permit application for such discharge prior to May 18, 1993, unless such permit is required by sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act;

(2) require any municipality with a population of less than 100,000 to submit any permit application for a storm water discharge associated with any industrial activity other than an airport, powerplant or uncontrolled sanitary landfill owned or operated by the municipality prior to October 1, 1992, unless such permit is required pursuant to sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act, and any deadlines established pursuant to regulation or Public Law 102–27 associated with such permit application requirements shall be delayed until after such date;

(3) enforce the requirements of any permit issued to a municipality with a population of 100,000 or greater solely for storm water discharges, other than permits associated with industrial activities owned or operated by the municipality and permits required by sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act, prior to October 1, 1992.

(b) For purposes of this section an uncontrolled sanitary landfill is a landfill or open dump, whether in operation or closed, which does not meet the requirements for run-on and run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(c) This section shall not be interpreted, construed or applied to affect any permit requirement or application deadlines for a storm water discharge established pursuant to sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act or any permit for a storm water discharge associated with an industrial activity not owned or operated by a municipality.

(d) The Administrator shall modify permit application deadlines applicable to storm water discharges associated with industrial activities owned or operated by municipalities with populations of 100,000 or greater to assure that such deadlines are coincident with application deadlines for systemwide permits required for such municipalities and associated with storm water discharges from other than industrial facilities.

SEC. 140M. INVESTIGATION AND REPORT.

(a) The Secretary of Transportation shall conduct an investigation into the feasibility of prescribing rules with respect to multi-lane, limited access, Federal-aid highways to do the following:

(1) Prohibit trucks weighing in excess of 10,000 pounds gross weight from using the furthest left lane.

(2) Restrict all such trucks to the furthest right lane, except that such trucks may use the lane adjacent to the furthest right lane to pass.

(b) In conducting the investigation described in subsection (a), the Secretary of Transportation shall consider innovative ways to separate truck traffic from other vehicle traffic on highways taking into consideration the effect on safety, congestion management, other relevant issues, and the cost of each such innovation.

(c) The Secretary of Transportation shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report setting forth the findings of the study conducted under subsection (a), within one year from the date of enactment of this Act.

SEC. 140N. REPORT ON THE USE OF OXYGENATED FUELS IN CERTAIN CITIES AND METROPOLITAN STATISTICAL AREAS.

Not later than 12 months after the date of the enactment of this Act, the Secretary of Transportation, acting through the Administrator of the Federal Highway Administration, and in consultation with the Administrator of the Environmental Protection Agency, shall submit to the Congress a report on the feasibility and effectiveness of requiring, during the period from October 1 through March 31, in all cities and metropolitan statistical areas (as established by the Office of Management and Budget) with a population of 250,000 or more, the use of oxygenated fuels (with a percentage of 2.7 or greater).

SEC. 140O. YOUTH JOBS HIGHWAY BEAUTIFICATION PROGRAM.

(a) Authority.—A State may use not to exceed 0.2 percent of the amounts appropriated to such State under section 104 of title 23, United States Code, to establish a State program to employ eligible economically disadvantaged individuals during the employment period to perform highway landscaping and beautification activities.

(b) Eligible Economically Disadvantaged Individuals.—To be eligible to be employed under a State program established under subsection (a), an individual shall—

(1) have an income, or be a member of a family with a family income, that is below 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) for and individual or a family of similar size; and

(2) be a resident of the State.

Preference shall be given to individuals meeting the requirements of this subsection who are between the ages of 18 and 20.

(c) Employment Activities.—Individuals may be employed under a State program established under subsection (a) to perform highway landscaping and beautification activities within the State that may include—

(1) activities directed at improving the scenic landscaping at highway rights-of-way and rest areas;

(2) trash pick-up and collection activities along roadsides;

(3) participation in programs related to traveler information (including signage); and

(4) other appropriate activities.

(d) Administration.—

(1) State contribution.—To be eligible to use the amounts referred to in subsection (a) to establish a State program, a State shall agree, with respect to the costs incurred by the State in carrying out such program, to make available (directly or through donations from public or private entities) non-Federal contributions towards such costs in an amount equal to 5 percent of such costs.

(2) Limitation.—A State shall not use in excess of 5 percent of amounts made available to such State under subsection (a) to administer the State program.

(3) Federal oversight.—The State official responsible for administering the program established by the State under subsection (a) shall annually prepare and submit to the Secretary of Transportation a report containing a description of such program, including—

(A) the costs incurred in implementing such program;

(B) the number of individuals employed under such program; and

(C) the types of activities performed by such individuals.

(e) Nondisplacement and Grievance Procedure.—The grievance procedures and nondisplacement requirements contained in sections 176(f) and 177(b) of the National and Community Service Act of 1990 shall apply to State programs established under this section, insofar as they are applicable, except that all references to "this title" in such sections shall be deemed to be a reference to this section.

(f) Employment Preference.—For the purposes of employing individuals pursuant to a program established under subsection (a), each State shall give preference to individuals who were formerly employed by such State, and who suffered loss of employment, within the previous year for reasons other than cause.

SEC. 140P. INTERSTATE TRANSPORTATION AGREEMENTS AND COMPACTS.

Consent and Approval of Congress.—The consent and approval of Congress are hereby given to the several States to negotiate, enter into, and carry out agreements or compacts for the purpose of establishing policies and priorities, including allocation of funds, to resolve interstate highway and bridge problems of regional significance identified by metropolitan planning organizations.

SEC. 140Q. SUBSTITUTE PROJECT.

(a) Approval of Project.—Notwithstanding any other provision of law, upon the request of the Governor of the State of Wisconsin, submitted after consultation with appropriate local government officials, the Secretary may approve substitute highway, bus transit, and light rail transit projects, in lieu of construction of the I–94 E–W Transitway project in Milwaukee and Waukesha Counties, as identified in the 1991 Interstate Cost Estimate.

(b) Eligibility for Federal Assistance.—Upon approval of any substitute highway or transit project or projects under subsection (a), the costs of construction of the eligible transitway project for which such project or projects are substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate submitted to Congress, shall be available to the Secretary to incur obligations under section

103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project or projects.

(c) LIMITATION ON ELIGIBILITY.—If, by October 1, 1993, or two years after the date of enactment of this Act, whichever is later, the Governor of the State of Wisconsin has not submitted a request for a substitute project or projects in lieu of the I-94 E-W Transitway, the Secretary shall not approve such substitution. If, by October 1, 1995, or four years after the date of enactment of this Act, whichever is later, such substitute project or projects are not under construction, or under contract for construction, no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for such project or projects. For the purposes of this subsection, the term "construction" has the same meaning as given to it in section 101, title 23, United States Code, and shall include activities such as preliminary engineering and right-of-way acquisition.

(d) ADMINISTRATIVE PROVISIONS.—

(1) STATUS OF SUBSTITUTE PROJECT OR PROJECTS.—Any substitute project approved under subsection (a) shall be deemed to be a substitute project for the purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) REDUCTION OF UNOBLIGATED INTERSTATE APPORTIONMENT.—Unobligated apportionments for the Interstate System in the State of Wisconsin shall, on the date of approval of any substitute project or projects under subsection (a), be applied toward the Federal share of the costs of such substitute project or projects.

(3) ADMINISTRATION THROUGH FHWA.—The Secretary shall administer this section through the Federal Highway Administration.

(4) FISCAL YEARS 1993 AND 1994 APPORTIONMENTS.—For the purpose of apportioning funds for fiscal years 1993 and 1994 under section 104(b)(5)(A), the Secretary shall consider Wisconsin as having no remaining eligible costs. For the purpose of apportioning funds under section 104(b)(5)(A) of title 23, United States Code, for fiscal year 1995 and subsequent fiscal years, Wisconsin's actual remaining eligible costs shall be used.

(5) FUNDING PROVISIONS FOR SUBSTITUTE PROJECTS.—Notwithstanding any other provision of law, the source of funding for any transit substitute projects approved under subsection (a) shall be the Mass Transit Account of the Highway Trust Fund. All other funding provisions for any approved substitute projects shall be as provided in section 103(e)(4) of title 23, United States Code.

(e) TRANSFER OF APPORTIONMENTS.—Wisconsin may transfer Interstate construction apportionments to its national highway system in amounts equal to or less than the costs for additional work on sections of the Interstate System that have been built with Interstate construction funds and that are open to traffic as shown in the 1991 Interstate cost estimate.

SEC. 140R. MONTANA-CANADA TRADE.

The Secretary shall not withhold funds from the State of Montana on the basis of actions taken by the State of Montana pursuant to a draft memorandum of understanding with the Province of Alberta, Canada, regarding truck transportation between Canada and Shelby, Montana: Provided, That such actions do not include actions not permitted by the State of Montana on or before June 1, 1991.

SEC. 140S. LEVEL OF EFFORT APPORTIONMENT BONUSES.

(a) AMENDMENT TO TITLE 23.—(1) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 159. Level of effort apportionment bonuses

"(a) The Secretary shall, for fiscal years beginning with fiscal year 1993, determine each State's total annual apportionment under sections 133 (relating to the Surface Transportation Program), 144 (relating to the Bridge Program), and 119 (relating to the Interstate Maintenance Program) and shall use that total in calculating the bonus apportionments authorized by this section.

"(b) The Secretary shall, subject to the availability of appropriations, make an apportionment to each State in which the rate of tax on gasoline, as of July 1 preceding the beginning of the fiscal year, exceeds the average rate of tax on gasoline levied by the fifty States and the District of Columbia as of such date, with a bonus apportionment equal to the lesser of—

"(1) five percent of its total annual apportionment under sections 133, 144, and 119 of this title for each of fiscal years 1993, 1994, 1995, and 1996; or

"(2) the percentage by which that State's rate of tax on gasoline exceeds the average rate of tax on gasoline levied by the fifty States and the District of Columbia, multiplied by its total annual apportionment under sections 133, 144, and 119 of this title.

"(c)(1) The Secretary shall, subject to the availability of appropriations, make a bonus apportionment to each State equal to its total annual apportionment under sections 133, 144, and 119 of this title, multiplied by the percentage by which that State's rate of tax on gasoline, as of July 1 preceding the beginning of the fiscal year, exceeds the average rate of tax on gasoline levied by the fifty States and the District of Columbia as of such date, minus an amount which is the product of that total annual apportionment and the percentage by which that State's per capita disposable income exceeds the average per capita disposable income in the fifty States and the District of Columbia, calculated for the calendar year preceding the year in which the fiscal year begins. The bonus apportionment made to any State under this section shall be reduced by any amount provided under subsection (b).

"(2) For purposes of paragraph (1), the per capita disposable income of a State or the District of Columbia for any calendar year is such income as is determined by the Bureau of Economic Analysis of the Department of Commerce.

"(d) If the aggregate apportionments under this section in any fiscal year exceed the authorization of appropriations for such year, there shall be a pro rata reduction for that fiscal year of the apportionments to the extent of such excess.

"(e) The Federal share payable of the costs of projects carried out with apportioned funds under this section may not exceed 80 percent.

"(f) For purposes of this section, the term 'tax on gasoline' means a tax that is—

"(1) imposed by and administered by a State; and

"(2) uniform as to rate and based upon identical transactions in all geographical areas of such State.

"(g) Funds authorized to be appropriated for bonus apportionment under this section shall be available only for projects authorized under chapter 1 of this title, including provisions which provide contract authority.".

(2) The table of sections for chapter 1 of title 23, United States Code, is amended by adding after the item relating to section 158 the following new item:

"159. Level of effort apportionment bonuses.".

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for payment of the bonus apportionments authorized by section 159 of title 23, United States Code, the following amounts for the following fiscal years:

(A) For fiscal year 1993, $390,500,000.
(B) For fiscal year 1994, $943,000,000.
(C) For fiscal year 1995, $1,138,500,000.
(D) For fiscal year 1996, $1,638,500,000.

(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(c) ADDITIONAL DONOR STATE BONUS AMOUNTS.—(1) There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the payment of additional donor State bonus amounts the following amounts for the following fiscal years:

(A) For fiscal year 1993, $390,500,000.
(B) For fiscal year 1994, $943,000,000.
(C) For fiscal year 1995, $1,138,500,000.
(D) For fiscal year 1996, $1,638,500,000.

(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(3)(A) The additional amount provided under this subsection for a fiscal year shall be apportioned only after bonus apportionments under section 159 of title 23, United States Code, to the extent of their availability, have first been made to the States.

(B) The bonus apportionments which are provided under this subsection for a fiscal year shall be apportioned in such a way as to bring each successive State, or States, with the lowest dollar return on dollar projected to be contributed into the Highway Trust Fund for such fiscal year, up to the highest common return on contributed dollar that can be funded with the annual authorizations provided under this subsection.

(C) The additional apportionment under this subsection shall be subject to the provisions of chapter 1 of title 23, United States Code, including provisions which provide contract authority.

(d) OBLIGATION LIMITATIONS.—(1)(A) Notwithstanding section 104 of this Act, for each of the fiscal years 1993, 1994, 1995 and 1996, the Secretary shall distribute among the States the limitations imposed by section 104(a) of this Act by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways (other than sums authorized for section 159 of title 23, United States Code and sums authorized by subsection (c) of this section) which are apportioned or allocated to each State for such fiscal year bear to the total of such sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to all the States for such fiscal year until 100 percent has been distributed.

(B) The Secretary shall distribute the limitation remaining after the distribution in subparagraph (A) among the States entitled to apportionments of sums authorized by section 159 of title 23, United States Code, and sums authorized by subsection (c) of this section, in the ratio which such apportionments and allocations for each such State bear to the total of such apportionments and allocations for all such States.

(2) Whenever the limitation made available for a fiscal year is insufficient to provide 100 percent of the distribution under paragraph (1)(B), then—

(A) 50 percent of such insufficient limitation shall be deducted from the limitation that would be received for section 159 of title 23, United States Code, and

(B) 50 percent of such insufficient limitation shall be deducted from the limitation that would be received under subsection (c) of this section.

(e) INAPPLICABILITY OF OBLIGATION LIMITATION TO EMERGENCY RELIEF.—Limitations in section 104 of this Act shall not apply to obligations for emergency relief pursuant to section 125 of title 23, United States Code.

(f) DEFINITION.—For purposes of this section, the term "State" has the meaning given to such term in section 101 of title 23, United States Code.

SEC. 140T. NATIONAL POLICY FOR INFRASTRUCTURE REUSE.

(a) Study and Report.—(1) Section 307 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) Not later than 12 months after the date of the enactment of the Surface Transportation Efficiency Act of 1991, the Secretary shall conduct a study of methods of facilitating the reuse of industrial manufacturing facilities.

"(2) In conducting the study described in paragraph (1), the Secretary shall consult with the heads of such departments and agencies of the Federal Government as the Secretary determines to be appropriate to ascertain regulatory, technical and other problems or constraints associated with the reuse of industrial manufacturing facilities.

"(3) Upon completion of the study described in paragraph (1), the Secretary shall submit a report to the appropriate committees of Congress on the findings of the study, including a summary of any information submitted to the Secretary by the head of a department or agency pursuant to paragraph (2).

"(4) For fiscal year 1992, an amount not to exceed $200,000 shall be taken out of the administration and research funds authorized by section 104 of this title for the purpose of carrying out the provisions of this subsection.".

(2) Section 104 of title 23, United States Code, is amended by striking "authorized by subsections (a) and (b) of section 307" and inserting "authorized by subsections (a), (b), and (g) of section 307".

SEC. 140U. DECLARATION OF NONNAVIGABILITY OF PORTION OF HUDSON RIVER, NEW YORK.

(a) Declaration of Nonnavigability.—

(1) In general.—Subjection to subsections (b), (c) and (d), the area described in paragraph (2) is declared to be nonnavigable waters of the United States.

(2) Area described.—The area referred to in paragraph (1) is the portion of the Hudson River, New York, described as follows (according to coordinates and bearings in the system used on the Borough Survey, Borough President's Office, New York, New York).

Beginning at a point in the United States Bulkhead Line approved by the Secretary of War, July 31, 1941, having a coordinate of north 1918,003 west 9806,753:

(1) Running thence easterly, on the arc of a circle curving to the left, whose radial line bears north 3°-44′-20″ east, having a radius of 390.00 feet and a central angle of 22°-05′-50″, 150.41 feet to a point of tangency;

(2) Thence north 71°-38′-30″ east, 42.70 feet;

(3) Thence south 11°-05′-40″ east, 33.45 feet;

(4) Thence south 78°-54′-20″ west, 0.50 feet;

(5) Thence south 11°-05′-40″ east, 2.50 feet;

(6) Thence north 78°-54′-20″ east, 0.50 feet;

(7) Thence south 11°-05′-40″ east, 42.40 feet to a point of curvature;

(8) Thence southerly, on the arc of a circle curving to the right, having a radius of 220.00 feet and a central angle of 18°-37′-40″, 83.85 feet to a point of compound curvature;

(9) Thence still southerly, on the arc of a circle curving to the right, having a radius of 150.00 feet and a central angle of 38°-39′-00″, 101.19 feet to another point of compound curvature;

(10) Thence westerly, on the arc of a circle curving to the right, having a radius of 172.05 feet and a central angle of 32°-32′-03″, 97.89 feet to a point of curve intersection;

(11) Thence south 13°-16′-57″ east, 50.86 feet to a point of curve intersection;

(12) Thence westerly, on the arc of a circle curving to the left, whose radial bears north 13°-16′-57″ west, having a radius of 6.00 feet and a central angle of 180°-32′-31″, 18.91 feet to a point of curve intersection;

(13) Thence southerly, on the arc of a circle curving to the left, whose radial line bears north 75°-37′-11″ east, having a radius of 313.40 feet and a central angle of 4°-55′-26″, 26.93 feet to a point of curve intersection;

(14) Thence south 70°-41′-48″ west, 36.60 feet;

(15) Thence north 13°-45′-00″ west, 42.87 feet;

(16) Thence south 76°-15′-00″ west, 15.00 feet;

(17) Thence south 13°-45′-00″ east, 44.33 feet;

(18) Thence south 70°-41′-45″ west, 128.09 feet to a point in the United States Pierhead Line approved by the Secretary of War, 1936;

(19) Thence north 63°-08′-48″ west, along the United States Pierhead Line approved by the Secretary of War, 1936, 114.45 feet to an angle point therein;

(20) Thence north 81°-08′-00″ west, still along the United States Pierhead Line approved by the Secretary of War, 1936, 202.53 feet;

The following three courses being along the lines of George Sollan Park as shown on map prepared by the city of New York, adopted by the Board of Estimate, November 13, 1981, Acc. N° 30071 and lines of property leased to Battery Park City Authority and B. P. C. Development Corp.

(21) Thence north 77°-35′-20″ east, 231.35 feet;

(22) Thence north 12°-24′-40″ west, 33.82 feet;

(23) Thence north 54°-49′-00″ east, 171.52 feet to a point in the United States Bulkhead Line approved by the Secretary of War, July 31, 1941;

(24) Thence north 12°-24′-40″ west, along the United States Bulkhead Line approved by the Secretary of War, July 31, 1941, 62.28 feet to the point or place of beginning.

(b) Determination of Public Interest.—The declaration made in subsection (a)(1) shall not take effect if the Secretary of the Army (acting through the Chief of Engineers), using reasonable discretion, finds—

(1) before the date which is 120 days after the date of the submission to the Secretary of appropriate plans for the proposed project, and

(2) after consultation with local and regional public officials (including local and regional public planning organizations), that the proposed project is not in the public interest.

(c) Limitation on Applicability of Declaration.—

(1) Affected area.—The declaration made in subsection (a)(1) shall apply only to those portions of the area described in subsection (a)(2) which are or will be occupied by permanent structures (including docking facilities) comprising the proposed project.

(2) Application of other laws.—Notwithstanding subsection (a)(1), all activities conducted in the area described in subsection (a)(2) are subject to all Federal statutes and regulations which may otherwise be applicable to such activities, including as may be applicable—

(A) sections 9 and 10 of the Act of March 3, 1899 (33 U.S.C. 401, 403), commonly known as the River and Harbors Appropriation Act of 1899,

(B) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1254), and

(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) Expiration Date.—The declaration made in subsection (a)(1) shall expire—

(1) on the date which is 6 years after the date of enactment of this Act if work on the proposed project to be performed in the area described in subsection (a)(2) is not commenced before that date, and

(2) on the date which is 20 years after the date of the enactment of this Act, for any portion of the area described in subsection (a)(2) which on that date is not bulkheaded, filled, or occupied by a permanent structure (including docking facilities).

(e) Proposed Project Defined.—For purposes of this section, the term "proposed project" means any project for the rehabilitation and development of—

(1) the structure located in the area described in subsection (a)(2) and commonly referred to as Pier A; and

(2) the area surrounding that structure.

SEC. 140V. SENSE OF THE SENATE.

It is the sense of the Senate that the conferees on this Act should consider section 159 of title 23, United States Code as it appears in amendment No. 295 as amended so as to determine each State's total apportionments under section 159 of title 23, United States Code, in a way that reflects each State's total effort for highways as described in amendment No. 334, and including each State's ability to finance its total effort for highways, as measured by its per capita disposable income as compared to the average State per capita disposable income, as well as taking into account the effect of such apportionment formula on energy conservation, energy security, and environmental quality.

PART B—NATIONAL RECREATIONAL TRAILS FUND ACT

SEC. 141. SHORT TITLE.

This part may be cited as the "National Recreational Trails Fund Act of 1991".

SEC. 142. CREATION OF NATIONAL RECREATIONAL TRAILS TRUST FUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9511. NATIONAL RECREATIONAL TRAILS TRUST FUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'National Recreational Trails Trust Fund', consisting of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(6), or section 9602(b).

"(b) Expenditures From Trust Fund.—Amounts in the National Recreational Trails Trust Fund shall be available for making expenditures to carry out the purposes of the National Recreational Trails Fund Act of 1991.".

(b) Deposit of Unrefunded Highway Trust Fund Moneys.—Section 9503(c) of the Internal Revenue Code of 1986 (relating to Highway Trust Fund) is amended by adding at the end thereof the following new paragraph:

"(6) Transfers from the trust fund for nonhighway recreational fuel taxes.—

"(A) Transfer to national recreational trails trust fund.—The Secretary shall annually pay from the Highway Trust Fund into the National Recreational Trails Trust Fund amounts (as determined by the Secretary) equivalent to 0.3 per centum of total Highway Trust Fund receipts, as adjusted by the Secretary pursuant to subparagraph (B).

"(B) Adjustment of percentage.—

"(i) First year.—Within 1 year after the date of enactment of this Act, the Secretary shall, based on studies of nonhighway recreational fuel usage in the various States, adjust the percentage of receipts paid into the National Recreational Trails Trust Fund to correspond to the revenue received from nonhighway recreational fuel taxes.

"(ii) Subsequent years.—Not more frequently than once every 3 years, the Secretary may increase or decrease the percentage established under clause (i) to reflect, in the Secretary's estimation, changes in the amount of revenues received from nonhighway recreational fuel taxes.

"(iii) Amount of adjustment.—The amount of an adjustment in the percentage stated in clause (ii) shall be not more than 10 per centum of that percentage in effect at the time the adjustment is made.

"(iv) Use of data.—The Secretary shall make use of data on off-highway recreational vehicle registrations and use in making adjustments under clauses (i) and (ii).

"(C) DEFINITIONS.—For the purposes of this paragraph—

"(i) NONHIGHWAY RECREATIONAL FUEL TAXES.—The term 'nonhighway recreational fuel taxes' means the taxes under sections 4041, 4081, and 4091 (to the extent attributable to the Highway Trust Fund financing rate) with respect to fuel used as nonhighway recreational fuel.

"(ii) NONHIGHWAY RECREATIONAL FUEL.—The term 'nonhighway recreational fuel' means—

"(I) fuel used in vehicles and equipment on recreational trails or back country terrain, including use in vehicles registered for highway use when used on recreational trails, trail access roads not eligible for funding under title 23, United States Code, or back country terrain; and

"(II) fuel used in campstoves and other outdoor recreational equipment.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

"Sec. 9511. National Recreational Trails Trust Fund.".

SEC. 143. NATIONAL RECREATIONAL TRAILS FUNDING PROGRAM.

(a) IN GENERAL.—The Secretary, using amounts available in the Fund, shall administer a program allocating moneys to the States for the purposes of providing and maintaining recreational trails.

(b) STATEMENT OF INTENT.—Moneys made available under this Act are to be used on trails and trail-related projects which have been planned and developed under the otherwise existing laws, policies and administrative procedures within each State, and which are identified in, or which further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan required by the Land and Water Conservation Fund Act.

(c) STATE ELIGIBILITY.—

(1) TRANSITIONAL PROVISION.—Until the date that is three years after the date of enactment of this Act, a State shall be eligible to receive moneys under this Act only if such State's application proposes to use the moneys as provided in subsection (e).

(2) PERMANENT PROVISION.—On and after the date that is three years after the date of enactment of this Act, a State shall be eligible to receive moneys under this Act only if—

(A) a recreational trail advisory board on which both motorized and nonmotorized recreational trail users are represented exists within the State;

(B) in the case of a State that imposes a tax on nonhighway recreational fuel, the State by law reserves a reasonable estimation of the revenues from that tax for use in providing and maintaining recreational trails;

(C) the Governor of the State has designated the State official or officials who will be responsible for administering moneys received under this Act; and

(D) the State's application proposes to use moneys received under this Act as provided in subsection (e).

(d) ALLOCATION OF MONEYS IN THE FUND.—

(1) ADMINISTRATIVE COSTS.—No more than 3 per centum of the expenditures made annually from the Fund may be used to pay the cost to the Secretary for—

(A) approving applications of States for moneys under this Act;

(B) paying expenses of the National Recreational Trails Advisory Committee;

(C) conducting national surveys of nonhighway recreational fuel consumption by State, for use in making determinations and estimations pursuant to this Act; and, if any such funds remain unexpended, for—

(D) research on methods to accommodate multiple trail uses and increase the compatibility of those uses, information dissemination, technical assistance, and preparation of a national trail plan as required by the National Trails System Act (16 U.S.C. 1241 et al).

(2) ALLOCATION TO STATES.—

(A) AMOUNT.—Amounts in the Fund remaining after payment of the administrative costs described in paragraph (1), shall be allocated and paid to the States annually in the following proportions:

(i) EQUAL AMOUNTS.—50 per centum of such amounts shall be allocated equally among eligible States.

(ii) AMOUNTS PROPORTIONATE TO NONHIGHWAY RECREATIONAL FUEL USE.—50 per centum of such amounts shall be allocated among eligible States in proportion to the amount of nonhighway recreational fuel use during the preceding year in each such State, respectively.

(B) USE OF DATA.—In determining amounts of nonhighway recreational fuel use for the purpose of subparagraph (A)(ii), the Secretary may consider data on off-highway vehicle registrations in each State.

(3) LIMITATION ON OBLIGATIONS.—The provisions of paragraphs (1) and (2) notwithstanding, the total of all obligations for recreational trails under this section shall not exceed—

(A) $30,000,000 for fiscal year 1992;

(B) $50,000,000 for fiscal year 1993;

(C) $54,000,000 for fiscal year 1994;

(D) $56,000,000 for fiscal year 1995;

(E) $56,000,000 for fiscal year 1996;

(e) USE OF ALLOCATED MONEYS.—

(1) PERMISSIBLE USES.—A State may use moneys received under this Act for—

(A) in an amount not exceeding 7 per centum of the amount of moneys received by the State, administrative costs of the State;

(B) in an amount not exceeding 5 per centum of the amount of moneys received by the State, operation of environmental protection and safety education programs relating to the use of recreational trails;

(C) development of urban trail linkages near homes and workplaces;

(D) maintenance of existing recreational trails, including the grooming and maintenance of trails across snow;

(E) restoration of areas damaged by usage of recreational trails and back country terrain;

(F) development of trail-side and trail-head facilities that meet goals identified by the National Recreational Trails Advisory Committee;

(G) provision of features which facilitate the access and use of trails by persons with disabilities;

(H) acquisition of easements for trails, or for trail corridors identified in a State trail plan;

(I) acquisition of fee simple title to property from a willing seller, when the objective of the acquisition cannot be accomplished by acquisition of an easement or by other means;

(J) construction of new trails on State, county, municipal, or private lands, where a recreational need for such construction is shown; and

(K) only as otherwise permissible, and where necessary and required by a State Comprehensive Outdoor Recreation plan, construction of new trails crossing Federal lands, where such construction is approved by the administering agency of the State, and the Federal agency or agencies charged with management of all impacted lands, such approval to be contingent upon compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.).

(2) USE NOT PERMITTED.—A State may not use moneys received under this Act for—

(A) condemnation of any kind of interest in property; or

(B)(i) construction of any recreational trail on National Forest System lands for motorized uses unless such lands:

(I) have been allocated for uses other than wilderness by an approved Forest land and resource management plan or have been released to uses other than wilderness by an Act of Congress, and

(II) such construction is otherwise consistent with the management direction in such approved land and resource management plan;

(ii) construction of any recreational trail on Bureau of Land Management lands for motorized uses unless such lands:

(I) have been allocated for uses other than wilderness by an approved Bureau of Land Management resource management plan or have been released to uses other than wilderness by an Act of Congress, and

(II) such construction is otherwise consistent with the management direction in such approved management plans; and

(C) upgrading, expanding or otherwise facilitating motorized use or access to trails predominantly used by non-motorized trail users and on which, as of May 1, 1991, motorized use is either prohibited or has not occurred.

(3) GRANTS.—

(A) IN GENERAL.—A State may provide moneys received under this Act as grants to private individuals, organizations, city and county governments, and other government entities as approved by the State after considering guidance from the recreational trail advisory board satisfying the requirements of section 143(c)(2)(A), for uses consistent with this section.

(B) COMPLIANCE.—A State that issues such grants under subparagraph (A) shall establish measures to verify that recipients comply with the specified conditions for the use of grant moneys.

(4) ASSURED ACCESS TO FUNDS.—Except as provided under paragraphs (6) and (8)(B), not less than 30 per centum of the moneys received annually by a State under this Act shall be reserved for uses relating to motorized recreation, and not less than 30 per centum of those moneys shall be reserved for uses relating to non-motorized recreation.

(5) DIVERSIFIED TRAIL USE.—

(A) REQUIREMENT.—To the extent practicable and consistent with other requirements of this section, a State shall expend moneys received under this Act in a manner that gives preference to project proposals which—

(i) provide for the greatest number of compatible recreational purposes including, but not limited to, those described under the definition of "recreational trail" in subsection (g)(5); or

(ii) provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use.

This paragraph shall remain effective until such time as a State has allocated not less than 40 per centum of moneys received under this Act in the aforementioned manner.

(B) COMPLIANCE.—The State shall receive guidance for determining compliance with subparagraph (A) from the recreational trail advisory board satisfying the requirements of section 143(c)(2)(A).

(6) SMALL STATE EXCLUSION.—Any State with a total land area of less than three million five hundred thousand acres, and in which nonhighway recreational fuel use accounts for less than 1 per centum of all such fuel use in the United States, shall be exempted from the requirements of paragraph (4) of this subsection

upon application to the Secretary by the State demonstrating that it meets the conditions of this paragraph.

(7) CONTINUING RECREATIONAL USE.—At the option of each State, moneys made available pursuant to this Act may be treated as Land and Water Conservation Fund moneys for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act.

(8) RETURN OF MONEYS NOT EXPENDED.—(A) Except as provided in subparagraph (B), moneys paid to a State that are not expended or dedicated to a specific project within four years after receipt for the purposes stated in this subsection shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (d).

(B) If approved by the State recreational trail advisory board satisfying the requirements of section 143(c)(2)(A), may be exempted from the requirements of paragraph (4) and expended or committed to projects for purposes otherwise stated in this subsection for a period not to extend beyond 4 years after receipt, after which any remaining moneys not expended or dedicated shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (d).

(f) COORDINATION OF ACTIVITIES.—

(1) COOPERATION BY FEDERAL AGENCIES.—Each agency of the United States Government that manages land on which a State proposes to construct or maintain a recreation trail pursuant to this Act is encouraged to cooperate with the State and the Secretary in planning and carrying out the activities described in subsection (e). Nothing in this Act diminishes or in any way alters the land management responsibilities, plans and policies established by such agencies pursuant to other applicable laws.

(2) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition to making available moneys for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the property will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of a State's allocated moneys on private lands must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by those moneys.

(g) DEFINITIONS.—For the purposes of this section—

(1) ELIGIBLE STATE.—The term "eligible State" means a State that meets the requirements stated in subsection (c).

(2) FUND.—The term "Fund" means the National Recreational Trails Trust Fund established by section 9511 of the Internal Revenue Code of 1986.

(3) NONHIGHWAY RECREATIONAL FUEL.—The term "nonhighway recreational fuel" has the meaning stated in section 9503(c)(6)(C)(ii) of the Internal Revenue Code of 1986.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) RECREATIONAL TRAIL.—The term "recreational trail" means a thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or water activity and vehicular travel by motorcycle, four-wheel drive or all-terrain off-road vehicles, without regard to whether it is a "National Recreation Trail" designated under section 4 of the National Trails System Act (16 U.S.C. 1243).

(6) MOTORIZED RECREATION.—The term "motorized recreation" may not include motorized conveyances used by persons with disabilities, such as self-propelled wheelchairs, at the discretion of each State.

SEC. 144. NATIONAL RECREATIONAL TRAILS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established the National Recreational Trails Advisory Committee.

(b) MEMBERS.—There shall be eleven members of the advisory committee, consisting of—

(1) Eight members appointed by the Secretary from nominations submitted by recreational trail user organizations, one each representing the following recreational trail uses:

(A) Hiking,
(B) Cross country skiing,
(C) Off-highway motorcycling,
(D) Snowmobiling,
(E) Horseback riding,
(F) All terrain vehicle riding,
(G) Bicycling,
(H) Four-wheel driving;

(2) an appropriate official of government with a background in science or natural resources management, including any official of State or local government, designated by the Secretary;

(3) one member appointed by the Secretary from nominations submitted by water trail user organizations; and

(4) one member appointed by the Secretary from nominations submitted by hunting and fishing enthusiast organizations.

(c) CHAIRMAN.—The Chair of the advisory committee shall be the government official referenced in subsection (b)(2), who shall serve as a non-voting member.

(d) SUPPORT FOR COMMITTEE ACTION.—Any action, recommendation, or policy of the advisory committee must be supported by at least five of the members appointed under subsection (b)(1).

(e) TERMS.—Members of the advisory committee appointed by the Secretary shall be appointed for terms of three years, except that the members filling five of the eleven positions shall be initially appointed for terms of two years, with subsequent appointments to those positions extending for terms of three years.

(f) DUTIES.—The advisory committee shall meet at least twice annually to—

(1) review utilization of allocated moneys by States;

(2) establish and review criteria for trail-side and trail-head facilities that qualify for funding under this Act; and

(3) make recommendations to the Secretary for changes in Federal policy to advance the purposes of this Act.

(g) ANNUAL REPORT.—The advisory committee shall present to the Secretary an annual report on its activities.

(h) REIMBURSEMENT FOR EXPENSES.—Nongovernmental members of the advisory committee shall serve without pay, but, to the extent funds are available pursuant to section 143(d)(1)(B), shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

(i) REPORT TO CONGRESS.—Not later than four years after the date of enactment of this Act, the Secretary shall prepare and submit to the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives, a study which summarizes the annual reports of the National Recreational Trails Advisory Committee, describes the allocation and utilization of moneys under this Act, and contains recommendations for changes in Federal policy to advance the purposes of this Act.

PART C—INTELLIGENT VEHICLE-HIGHWAY SYSTEMS ACT

SEC. 151. SHORT TITLE.

This Part may be cited as the "Intelligent Vehicle-Highway Systems Act of 1991".

SEC. 152. PURPOSE AND SCOPE.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation (hereinafter referred to in this title as the "Secretary") shall conduct a program to promote and facilitate the implementation of Intelligent Vehicle-Highway Systems as a component of the Nation's surface transportation systems. The goals of such program shall include, but not be limited to—

(1) the widespread implementation of Intelligent Vehicle-Highway Systems to enhance the capacity, efficiency, and safety of the Federal-aid highway system, including as an alternative to additional physical capacity of that system;

(2) the enhancement, through more efficient use of the Federal-aid highway system, of the efforts of the several States to attain air quality goals, as established by the Administrator of the Environmental Protection Agency pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), as amended by Public Law 101–549 (104 t. 2399);

(3) the enhancement of safe and efficient operation of the Nation's highway systems;

(4) the development and promotion of Intelligent Vehicle-Highway Systems and an Intelligent Vehicle-Highway Systems industry in the United States, utilizing authority provided under section 307 of title 23, United States Code;

(5) the reduction of societal, economic, and environmental costs associated with traffic congestion;

(6) the enhancement of United States industrial and economic competitiveness and productivity, by improving the free flow of people and commerce, and by establishing a significant United States presence in an emerging field of technology;

(7) the development of a technology base for Intelligent Vehicle-Highway Systems and the establishment of the capability to perform demonstration experiments, utilizing existing national laboratory capabilities where appropriate; and

(8) the facilitation of the transfer of transportation technology from national laboratories to the private sector.

(b) COORDINATION.—The Secretary shall lead and coordinate an Intelligent Vehicle-Highway Systems program and shall foster its use as a key component of the Nation's surface transportation systems. As appropriate, the Secretary shall consult with the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Director of the National Science Foundation, and the heads of other interested Federal departments and agencies, in carrying out the purposes of this title. The Secretary shall strive to transfer federally owned or patented technology to State and local governments and to the United States private sector. As appropriate, the Secretary shall maximize the involvement of the United States private sector, colleges and universities, and State and local governments in aspects of such programs, including design, conduct (including operations and maintenance), evaluation, and financial or in-kind participation.

(c) STANDARDS.—The Secretary shall develop and implement standards and protocols to promote the widespread use and evaluation of Intelligent Vehicle-Highway Systems technology as a component of the Nation's surface transportation systems. To the extent practicable, such standards and protocols shall promote compatibility among Intelligent Vehicle-Highway Systems technologies implemented throughout the several States. The Secretary is authorized to make use of existing standards-setting organizations as the Secretary determines appropriate.

(d) EVALUATION.—The Secretary shall establish guidelines and requirements for the evaluation of field and related operational tests carried out pursuant to section 155 of this Act.

(e) INFORMATION CLEARINGHOUSE.—The Secretary shall establish a repository for technical and safety data collected as a result of federally sponsored projects pursuant to this title, and shall make such information readily available, upon request, at an appropriate cost to all users, except for proprietary information and data. In carrying out the requirements of this subsection, the Secretary may delegate this responsibility, with continuing oversight by the Secretary, to an appropriate entity not within the Department of Transportation. For the purposes of carrying out the requirements of this subsection, such entity would be eligible for Federal aid, as specified in this title.

SEC. 153. ADVISORY COMMITTEE.

The Secretary is authorized to utilize one or more advisory committees in carrying out his responsibilities under this title. Any advisory committee so utilized shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.), and funding provided for any such committee shall be available from monies appropriated for advisory committees as specified in relevant appropriations Acts, and from funds allocated for research, development, and implementation activities in connection with the Intelligent Vehicle-Highway Systems program under this title.

SEC. 154. STRATEGIC PLAN, IMPLEMENTATION, AND REPORT TO CONGRESS.

(a) STRATEGIC PLAN.—

(1) STRATEGIC PLAN.—Not later than twelve months following the date of the enactment into law of this title, the Secretary shall formulate, and submit to Congress, a strategic plan for the Intelligent Vehicle-Highway Systems program under this title.

(2) SCOPE OF STRATEGIC PLAN.—In preparing such plan, the Secretary shall—

(A) specify the goals, objectives, milestones of such program and how specific projects relate to these, including consideration of the five-, ten-, and twenty-year timeframes for specified goals and objectives;

(B) detail the status and challenges and nontechnical constraints facing the program;

(C) chart a course of action necessary to achieve the program's goals and objectives;

(D) provide for the development of standards and protocols to promote and ensure compatibility in the implementation of Intelligent Vehicle-Highway Systems technologies; and

(E) provide for the accelerated use of advanced technology to reduce traffic congestion along heavily populated and traveled corridors.

(b) IMPLEMENTATION REPORTS.—

(1) IMPLEMENTATION REPORTS.—Not later than twenty-four months after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Congress a report on the implementation of the strategic plan required in subsection (a) of this section.

(2) SCOPE OF IMPLEMENTATION REPORTS.—In preparing such report, the Secretary shall—

(A) analyze the possible and actual accomplishments of Intelligent Vehicle-Highway Systems projects in achieving congestion, safety, environmental, and energy conservation goals, as described in this title;

(B) specify cost-sharing arrangements made, including the scope and nature of Federal investment, in any research, development, or implementation project under such program;

(C) assess non-technical problems and constraints identified as a result of each such implementation project; and

(D) include, if appropriate, any recommendations for legislation or modification to the strategic plan required in subsection (a) of this section.

(c) REPORT TO CONGRESS.—

(1) REPORT TO CONGRESS.—In cooperation with the Attorney General and the Secretary of Commerce, the Secretary shall prepare and submit, within twenty-four months following the date of enactment of this title, a report to Congress addressing the non-technical constraints and barriers to all aspects of the innovation of such program under this title.

(2) SCOPE OF REPORT TO CONGRESS.—In preparing such report, the Secretary shall—

(A) address antitrust, privacy, educational and staffing needs, patent, liability, standards and other constraints, barriers, or concerns relating to such program;

(B) recommend legislation and other administrative action necessary to further the Intelligent Vehicle-Highway Systems program under this title; and

(C) address ways to further promote industry and State and local government involvement in such program.

(3) UPDATE OF REPORT.—Within five years following such date of enactment, the Secretary shall prepare an update of such report.

SEC. 155. TECHNICAL, PLANNING, AND PROJECT ASSISTANCE.

(a) TECHNICAL ASSISTANCE AND INFORMATION.—The Secretary is authorized to provide planning and technical assistance and information to State and local governments seeking to use and evaluate Intelligent Vehicle-Highway Systems technologies. In doing so, the Secretary shall assist State and local officials in developing provisions for implementing areawide traffic management control centers, necessary laws to advance such systems, the infrastructure for such existing and evolving systems, and other necessary activities to carry out the Intelligent Vehicle-Highway Systems program under this title.

(b) PLANNING GRANTS.—Subject to the availability of funds, the Secretary is authorized to make grants for feasibility and planning studies to be conducted by State and local governments. Such grants shall be made at such time, in such amounts, and subject to such conditions as the Secretary may determine.

(c) TRAFFIC MANAGEMENT SYSTEMS.—Any interagency traffic and incident management entity, including independent public authorities or agencies, contracted to a State department of transportation for the implementation of traffic management systems of designated corridors, is eligible to receive Federal transportation funds under this title through the appropriate State department of transportation.

(d) FUNDING OF PROJECTS.—In deciding which projects or operational tests relating to Intelligent Vehicle-Highway Systems to fund utilizing authority provided under section 307 of title 23, United States Code, the Secretary shall—

(1) give the highest priority to those projects that would contribute to the national goals and objectives specified in the Intelligent Vehicle-Highway Systems strategic plan required pursuant to section 154 of this title, minimize the relative percentage of Federal contributions to total project costs, but not including Federal-aid funds;

(2) seek to fund operational tests that advance the current State of knowledge and, where appropriate, build on successes achieved in previously funded work involving such programs; and

(3) require that operational tests utilizing Federal funds pursuant to this Act have a written evaluation of the IVHS technologies investigated and key outcomes of the investigation, consistent with the guidelines developed pursuant to section 152(d) of this Act.

(e) AUTHORITY TO USE FUNDS.—Each State and eligible local entity is authorized to use funds provided under this Act for implementation purposes in connection with the Intelligent Vehicle-Highway Systems Program.

SEC. 156. APPLICATIONS OF TECHNOLOGY.

(a) CONGESTED CORRIDORS PROGRAM.—The Secretary shall designate transportation corridors in which application of Intelligent Vehicle-Highway Systems will have particular benefit and, through financial and technical assistance, shall assist in the implementation of such systems. In designating such corridors, the Secretary shall focus on automatic vehicle identification, electronic toll collection, highway advisory radio, variable message signage, advanced traveler information systems, and other steps that would reduce congestion, enhance safety, and promote a smoother flow of traffic throughout the corridors.

(b) PRIORITIES.—In designating and providing funding for such corridors, the Secretary shall allocate not less than 50 per centum of the funds appropriated pursuant to this section to eligible State or local entities for application in not less than three but not more than ten corridors with the following characteristics:

(1) traffic density (as a measurement of vehicle miles traveled per road mile) at least 1.5 times the national average;

(2) severe or extreme nonattainment for ozone, as determined by the Administrator of the Environmental Protection Agency pursuant to the Clean Air Act, as amended by Public Law 101–549 (104 t. 2399);

(3) a variety of types of transportation facilities, such as highways, bridges, tunnels, toll and non-toll;

(4) inability to significantly expand existing surface transportation facilities;

(5) a significant mix of passenger, public transportation, and commercial motor carrier traffic;

(6) complexity of traffic patterns; and

(7) potential contribution to the implementation of the Secretary's strategic plan developed pursuant to section 154 of this title.

(c) ADDITIONAL FUNDING.—The balance of funds provided under this section shall be allocated to eligible State or local entities for application in corridors with a significant number of the characteristics listed in subsection (a) of this section.

SEC. 157. AUTHORIZATIONS.

(A) CONGESTED CORRIDORS PROGRAM.—For the congested corridors program under section 156, within funds authorized to be deducted pursuant to section 104(a) of title 23, United States Code, there is authorized to be appropriated $150,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(b) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated under this Act shall remain available until expended.

(c) RESERVATION OF FUNDS.—Of the funds provided pursuant to subsection (a) of this section, not less than 5 per centum shall be reserved for innovative, high-risk operational or analytical tests that do not attract substantial non-Federal commitments but are determined by the Secretary as having significant potential to help accomplish long-term goals established by the strategic plan prepared pursuant to section 154 of this Act.

(d) FEDERAL SHARE PAYABLE.—The Federal share payable on account of activities authorized pursuant to this title shall not exceed 80 per centum of the cost. The Secretary may waive this restriction for projects undertaken pursuant to subsection (c) of this section.

SEC. 158. DEFINITIONS.

For the purposes of this part, the term—

(a) "Intelligent Vehicle-Highway Systems" means the development or application of electronics, communications, or information processing, including, but not limited to, advanced traffic management systems, advanced traveler information systems, and advanced vehicle communications systems, used singly or in combination to improve the efficiency and safety of surface transportation systems; and

(b) "corridor" means any major transportation route which includes some contribution of

closely parallel limited access highways, major arterials, or transit lines; and, with regard to traffic incident management, it may also refer to more distant transportation routes that can serve as viable options to each other in the event of traffic incidents.

PART D—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

SEC. 161. RELOCATION ASSISTANCE REGULATIONS RELATING TO THE RURAL ELECTRIFICATION ADMINISTRATION.

Section 213(c) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) is amended by inserting "and the Rural Electrification Administration" after "Tennessee Valley Authority".

TITLE II—HIGHWAY SAFETY

PART A—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AUTHORIZATION

SEC. 201. SHORT TITLE.

This part may be cited as the "National Highway Traffic Safety Administration Authorization Act of 1991".

SEC. 202. DEFINITIONS.

As used in this part, the term—

(1) "bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons;

(2) "multipurpose passenger vehicle" means a motor vehicle with motive power (except a trailer), designed to carry 10 persons or fewer, which is constructed either on a truck chassis or with special features for occasional off-road operation;

(3) "passenger car" means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer), designed for carrying 10 persons or fewer; and

(4) "truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

(a) TRAFFIC AND MOTOR VEHICLE SAFETY PROGRAM.—For the National Highway Traffic Safety Administration to carry out the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), there are authorized to be appropriated $68,722,000 for fiscal year 1992, $71,333,436 for fiscal year 1993, and $74,044,106 for fiscal year 1994.

(b) MOTOR VEHICLE INFORMATION AND COST SAVINGS PROGRAMS.—For the National Highway Traffic Safety Administration to carry out the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), there are authorized to be appropriated $6,485,000 for fiscal year 1992, $6,731,430 for fiscal year 1993, and $6,987,224 for fiscal year 1994.

(c) NATIONAL DRIVER REGISTER ACT.—Section 211(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by striking "and" the second time it appears; and

(2) by inserting immediately before the period at the end the following: ", not to exceed $6,131,000 for fiscal year 1992, not to exceed $6,363,978 for fiscal year 1993, and not to exceed $6,605,809 for fiscal year 1994".

(d) NHTSA HIGHWAY SAFETY PROGRAMS.—For the National Highway Traffic Safety Administration to carry out section 402 of title 23, United States Code, there are authorized to be appropriated, out of the Highway Trust Fund (other than the Mass Transit Account), $126,000,000 for fiscal year 1992, $130,788,000 for fiscal year 1993, $135,757,944 for fiscal year 1994, $140,916,745 for fiscal year 1995, and $146,271,573 for fiscal year 1996.

(e) NHTSA HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—For the National Highway Traffic Safety Administration to carry out section 403 of title 23, United States Code, there are authorized to be appropriated, out of the Highway Trust Fund (other than the Mass Transit Account), $45,869,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996.

SEC. 204. INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

The Secretary shall expend the sums authorized under section 203(e) as the Secretary deems necessary for the purpose of conducting research on intelligent vehicle-highway systems. The Secretary shall develop a strategic plan with specific milestones, goals, and objectives for that research. The research should place particular emphasis on aspects of those systems that will increase safety, and should identify any aspects of the systems that might degrade safety.

SEC. 205. SIDE IMPACT PROTECTION FOR VEHICLES.

(a) AMENDMENT OF FMVSS STANDARD 214.—The Secretary shall, not later than 12 months after the date of enactment of this Act, issue a final rule amending Federal Motor Vehicle Safety Standard 214, published as section 571.214 of title 49, Code of Federal Regulations. The rule shall establish performance criteria for improved head injury protection for occupants of passenger cars in side impact accidents.

(b) EXTENSION TO MULTIPURPOSE PASSENGER VEHICLES.—Not later than 18 months after the date of enactment of this Act, the Secretary shall issue a final rule to extend the applicability of such Standard 214 to multipurpose passenger vehicles, taking into account the performance criteria established by the final rule issued in accordance with subsection (a).

SEC. 206. AUTOMOBILE CRASHWORTHINESS DATA.

(a) STUDY AND INVESTIGATION.—

(1) ARRANGEMENTS WITH NATIONAL ACADEMY OF SCIENCES.—The Secretary shall, within 30 days after the date of enactment of this Act, enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation regarding means of establishing a method for calculating a uniform numerical rating, or series of ratings, which will enable consumers to compare meaningfully the crashworthiness of different passenger car and multipurpose passenger vehicle makes and models.

(2) CONTENTS OF STUDY.—Such study shall include examination of current and proposed crashworthiness tests and testing procedures and shall be directed to determining whether additional objective, accurate, and relevant information regarding the comparative crashworthiness of different passenger car and multipurpose passenger vehicle makes and models reasonably can be provided to consumers by means of a crashworthiness rating rule. Such study shall include examination of at least the following proposed elements of a crashworthiness rating rule:

(A) information on the degree to which different passenger car and multipurpose passenger vehicle makes and models will protect occupants across the range of motor vehicle crash types when in use on public roads;

(B) a repeatable and objective test which is capable of identifying meaningful differences in the degree of crash protection provided occupants by the vehicles tested, with respect to such aspects of crashworthiness as occupant crash protection with and without use of manual seatbelts, fuel system integrity, and other relevant aspects;

(C) ratings which are accurate, simple in form, readily understandable, and of benefit to consumers in making informed decisions in the purchase of automobiles;

(D) dissemination of comparative crashworthiness ratings to consumers either at the time of introduction of a new passenger car or multipurpose passenger vehicle make or model or very soon after such time of introduction; and

(E) the development and dissemination of crashworthiness data at a cost which is reasonably balanced with the benefits of such data to consumers in making informed purchase decisions.

(3) REPORT BY NATIONAL ACADEMY OF SCIENCES.—Any such arrangement shall require the National Academy of Sciences to report to the Secretary and the Congress not later than 19 months after the date of enactment of this Act on the results of such study and investigation, together with its recommendations. The Secretary shall, to the extent permitted by law, furnish to the Academy upon its request any information which the Academy considers necessary to conduct the investigation and study required by this subsection.

(4) PUBLIC COMMENT.—Within 60 days after transmittal of the report of the National Academy of Sciences to the Secretary and the Congress under paragraph (3), the Secretary shall initiate a period (not longer than 90 days) for public comment on implementation of the recommendations of the National Academy of Sciences with respect to a rule promulgated under title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger cars and multipurpose passenger vehicles.

(5) DETERMINATION BY SECRETARY.—Not later than 180 days after the close of the public comment period provided for in paragraph (4) of this subsection, the Secretary shall determine, on the basis of the report of the National Academy of Sciences and the public comments on such report, whether an objectively based system can be established by means of which accurate and relevant information can be derived that reasonably predicts the degree to which different makes and models of passenger cars and multipurpose passenger vehicles provide protection to occupants against the risk of personal injury or death as a result of motor vehicle accidents. The Secretary shall promptly publish the basis of such determination, and shall transmit such determination to the Congress.

(b) RULE ON COMPARATIVE CRASHWORTHINESS RATING SYSTEM.—

(1) PROMULGATION.—If the Secretary determines that the system described in subsection (a)(5) can be established, the Secretary shall, subject to the exception provided in paragraph (2), not later than 3 years after the date of enactment of this Act, promulgate a final rule under section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger cars and multipurpose passenger vehicles. The rule promulgated under such section 201 shall be practicable and shall provide to the public relevant objective information in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger cars and multipurpose passenger vehicles so as to contribute meaningfully to informed purchase decisions.

(2) REVIEW BY CONGRESSIONAL COMMITTEES.—The Secretary shall not promulgate such rule unless—

(A) a period of 60 calendar days has passed after the Secretary has transmitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Rep-

resentatives a summary of the comments received during the period for public comment specified in subsection (a)(4); or

(B) each such committee before the expiration of such 60-day period has transmitted to the Secretary written notice to the effect that such committee has no objection to the promulgation of such rule.

(c) RULE ON PROVIDING CRASHWORTHINESS INFORMATION TO PURCHASERS.—If the Secretary promulgates a rule under subsection (b), not later than 6 months after such promulgation, the Secretary shall by rule establish procedures requiring passenger cars and multipurpose passenger vehicle dealers to make available to prospective passenger car and multipurpose passenger vehicle purchasers information developed by the Secretary and provided to the dealer which contains data comparing the crashworthiness of passenger cars and multipurpose passenger vehicles.

SEC. 207. STANDARDS COMPLIANCE.

Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) is amended by adding at the end the following new subsection:

"(j)(1) The Secretary shall establish a schedule for use in ensuring compliance with each Federal motor vehicle safety standard established under this Act which the Secretary determines is capable of being tested. Such schedule shall ensure that each such standard is the subject of testing and evaluation on a regular, rotating basis.

"(2) The Secretary shall, not later than 6 months after the date of enactment of this subsection, conduct a review of the method for the collection of data regarding accidents related to Federal motor vehicle safety standards established under this Act. The Secretary shall consider the desirability of collecting data in addition to that information collected as of the date of enactment of this subsection, and shall estimate the costs involved in the collection of such additional data, as well as the benefits to safety likely to be derived from such collection. If the Secretary determines that such benefits outweigh the costs of such collection, the Secretary shall collect such additional data and utilize it in determining which motor vehicles should be the subject of testing for compliance with Federal motor vehicle safety standards established under this Act.".

SEC. 208. INVESTIGATION AND PENALTY PROCEDURES.

(a) INVESTIGATION PROCEDURES.—Section 112(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401(a)(1)) is amended by adding at the end the following: "The Secretary shall establish written guidelines and procedures for conducting any inspection or investigation regarding noncompliance with this title or any rules, regulations, or orders issued under this title. Such guidelines and procedures shall indicate timetables for processing of such inspections and investigations to ensure that such processing occurs in an expeditious and thorough manner. In addition, the Secretary shall develop criteria and procedures for use in determining when the results of such an investigation should be considered by the Secretary to be the subject of a civil penalty under section 109 of this title. Nothing in this paragraph shall be construed to limit the ability of the Secretary to exceed any time limitation specified in such timetables where the Secretary determines that additional time is necessary for the processing of any such inspection or investigation.".

(b) CIVIL PENALTY PROCEDURES.—Section 109(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1398(a)) is amended by adding at the end the following: "The Secretary shall establish procedures for determining the manner in which, and the time within which, a determination should be made regarding whether a civil penalty should be imposed under this section. Nothing in this subsection shall be construed to limit the ability of the Secretary to exceed any time limitation specified for making any such determination where the Secretary determines that additional time is necessary for making a determination regarding whether a civil penalty should be imposed under this section.".

SEC. 209. MULTIPURPOSE PASSENGER VEHICLE SAFETY.

(a) FINDINGS.—The Congress finds that—

(1) multipurpose passenger vehicles have become increasingly popular during this decade and are being used increasingly for the transportation of passengers, not property; and

(2) the safety of passengers in multipurpose passenger vehicles has been compromised by the failure to apply to them the Federal motor vehicle safety standards applicable to passenger cars.

(b) CLASSIFICATION REVIEW.—

(1) RULEMAKING PROCEEDING.—In accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms, the Secretary shall, not later than 12 months after the date of enactment of this Act, complete a rulemaking proceeding to review the system of classification of vehicles with a gross vehicle weight under 10,000 pounds to determine if such vehicles should be reclassified.

(2) CLASSIFICATION CONSISTENCY.—Any reclassification pursuant to paragraph (1) shall, to the maximum extent practicable, classify as a passenger car every motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor car or other motor vehicle principally designed for the transport of persons under heading 8703 of the Harmonized Tariff Schedule of the United States. Nothing in this section shall prevent the Secretary from classifying as a passenger car any motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor vehicle for the transport of goods under heading 8704 of such Harmonized Tariff Schedule.

SEC. 210. ROLLOVER PROTECTION.

The Secretary shall, within 12 months after the date of enactment of this Act, complete a rulemaking proceeding to consider establishment of a Federal Motor Vehicle Safety Standard to protect against unreasonable risk of rollover of passenger cars and multipurpose passenger vehicles.

SEC. 211. REAR SEATBELTS.

The Secretary shall expend such portion of the funds authorized to be appropriated under the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), for each of the fiscal years 1992 and 1993, as the Secretary deems necessary for the purpose of disseminating information to consumers regarding the manner in which passenger cars may be retrofitted with lap and shoulder rear seatbelts.

SEC. 212. IMPACT RESISTANCE CAPABILITY OF BUMPERS.

(a) DISCLOSURE OF BUMPER IMPACT CAPABILITY.—The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) is amended by inserting immediately after section 102 the following new subsection:

"DISCLOSURE OF BUMPER IMPACT CAPABILITY

"SEC. 102A. (a) The Secretary shall promulgate, in accordance with the provisions of this section, a regulation establishing passenger motor vehicle bumper system labeling requirements. Such regulation shall apply to passenger motor vehicles manufactured for model years beginning more than 180 days after the date such regulation is promulgated, as provided in subsection (c)(2) of this section.

"(b)(1) The regulation required to be promulgated in subsection (a) of this section shall provide that, before any passenger motor vehicle is offered for sale, the manufacturer shall affix a label to such vehicle, in a format prescribed in such regulation, disclosing an impact speed at which the manufacturer represents that the vehicle meets the applicable damage criteria.

"(2) For purposes of this subsection, the term 'applicable damage criteria' means the damage criteria applicable under section 581.5(c) of title 49, Code of Federal Regulations (as in effect on the date of enactment of this section).

"(c)(1) Not later than 90 days after the date of enactment of this section, the Secretary shall publish in the Federal Register a proposed initial regulation under this section.

"(2) Not later than 180 days after such date of enactment, the Secretary shall promulgate a final initial regulation under this section.

"(d) The Secretary may allow a manufacturer to comply with the labeling requirements of subsection (b) of this section by permitting such manufacturer to make the bumper system impact speed disclosure required in subsection (b) of this section on the label required by section 506 of this Act or section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

"(e) The regulation promulgated under subsection (a) of this section shall provide that the information disclosed under this section be provided to the Secretary at the beginning of the model year for the model involved. As soon as practicable after receiving such information, the Secretary shall furnish and distribute to the public such information in a simple and readily understandable form in order to facilitate comparison among the various types of passenger motor vehicles. The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

"(f) For purposes of this section, the term 'passenger motor vehicle' means any motor vehicle to which the standard under part 581 of title 49, Code of Federal Regulations, is applicable.".

(b) AMENDMENT OF BUMPER STANDARD.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall amend the bumper standard published as part 581 of title 49, Code of Federal Regulations, to ensure that such standard is identical to the bumper standard under such part 581 which was in effect on January 1, 1982. The amended standard shall apply to all passenger cars manufactured after September 1, 1992.

(2) AUTHORITY TO REQUIRE HIGHER STANDARD.—Nothing in this subsection shall be construed to prohibit the Secretary from requiring under such part 581 that passenger car bumpers be capable of resisting impact speeds higher than those specified in the bumper standard in effect under such part 581 on January 1, 1982.

SEC. 213. CHILD BOOSTER SEATS.

(a) IN GENERAL.—In accordance with applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Secretary shall conduct a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard 213, published as section 571.213 of title 49, Code of Federal Regulations, to increase the safety of child booster seats used in passenger cars. The proceeding shall be initiated not later than 30 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

(b) DEFINITION.—As used in this section, the term "child booster seat" has the meaning given the term "booster seat" in section 571.213 of title

49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

SEC. 214. AIRBAG REQUIREMENTS.

(a) AIRBAGS FOR CARS ACQUIRED FOR FEDERAL USE.—The Secretary, in cooperation with the Administrator of General Services and the heads of other appropriate Federal agencies, shall establish a program requiring that all passenger cars acquired after September 30, 1991, for use by the Federal Government be equipped, to the maximum extent practicable, with driver-side airbags and that all passenger cars acquired after September 30, 1993, for use by the Federal Government be equipped, to the maximum extent practicable, with airbags for both the driver and front seat outboard seating positions.

(b) AIRBAGS FOR CERTAIN OTHER VEHICLES.—

(1) DEADLINES FOR INSTALLATION.—Passenger cars, and those trucks, buses, and multipurpose passenger vehicles that have a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, shall, in accordance with the following schedule, be equipped with airbags complying with the occupant crash protection requirements under S4.1.2.1 of Federal Motor Vehicle Safety Standard 208, published as section 571.208 of title 49, Code of Federal Regulations:

(A) All passenger cars manufactured on and after September 1, 1995, shall be so equipped for both the driver and right front seat outboard seating positions.

(B) All such trucks, buses, and multipurpose passenger vehicles manufactured on and after September 1, 1996, and before September 1, 1997, shall, at a minimum, be so equipped for the driver side.

(C) All such trucks, buses, and multipurpose passenger vehicles manufactured on and after September 1, 1997, shall be so equipped for both the driver and right front seat outboard seating positions.

(2) TREATMENT OF AIRBAG REQUIREMENTS.—For purposes of sections 108 through 112, 114, 115, 116, 118, 120, 121, and 151 through 158 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397 through 1401, 1403, 1404, 1405, 1406, 1408, 1409, and 1411 through 1418), the requirements of paragraph (1) of this subsection are deemed to be a Federal motor vehicle safety standard prescribed pursuant to section 103 of that Act (15 U.S.C. 1392).

SEC. 215. STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS.

Part A of title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 et seq.) is amended by adding at the end the following new section:

"STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

"SEC. 304. (a) The Congress finds that—

"(1) State motor vehicle safety inspection programs, when properly administered, can reduce the rate of highway traffic accidents by a significant percentage;

"(2) the 1990 amendments to the Clean Air Act will subject approximately 60 percent of the vehicles in the United States to emissions inspection;

"(3) as States plan to implement the requirement for emissions inspections, there is considerable potential for simultaneously and economically implementing effective motor vehicle safety inspection programs;

"(4) the Secretary, as part of the effort to reduce highway accidents, should make every effort to ensure that the potential for effective State motor vehicle safety inspection programs is realized; and

"(5) the Secretary and the Administrator of the Environmental Protection Agency shall coordinate their efforts so as to ensure maximum coordination of motor vehicle safety inspections and required emissions inspections.

"(b) The Secretary shall, within six months after the date of enactment of this section and every year thereafter, submit a report to Congress detailing the efforts of the Secretary to ensure that State motor vehicle safety inspection programs are implemented in the most effective manner possible. The report shall—

"(1) specify Federal manpower allocations for support of State motor vehicle safety inspection efforts;

"(2) specify allocations and expenditures of Federal funds on such efforts;

"(3) describe the extent and effect of the coordination by the Secretary and the Administrator of the Environmental Protection Agency of their respective efforts regarding motor vehicle safety inspection and required emissions inspections, and of the coordination of State motor vehicle safety inspections and emissions inspections;

"(4) list the States that do not have a periodic safety inspection program for motor vehicles that meets the requirements of Highway Safety Program Standard Number 1 and part 570 of title 49, Code of Federal Regulations; and

"(5) include any data, furnished by the States that do operate such safety inspection programs, that concerns the relative effectiveness of their particular programs.".

SEC. 216. RECALL OF CERTAIN MOTOR VEHICLES.

(a) NOTIFICATION OF DEFECT OR FAILURE TO COMPLY.—Section 153 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1413) is amended by adding at the end the following new subsections:

"(d) If the Secretary determines that a notification sent by a manufacturer pursuant to subsection (c) of this section has not resulted in an adequate number of vehicles or items of equipment being returned for remedy, the Secretary may direct the manufacturer to send a second notification in such manner as the Secretary may by regulation prescribe.

"(e)(1) Any lessor who receives a notification required by section 151 or 152 pertaining to any leased motor vehicle shall send a copy of such notice to the lessee in such manner as the Secretary may by regulation prescribe.

"(2) For purposes of this subsection, the term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of the notification.".

(b) LIMITATION ON SALE OR LEASE OF CERTAIN VEHICLES.—Section 154 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1414) is amended by adding at the end the following:

"(d) If notification is required under section 151 or by an order under section 152(b) and has been furnished by the manufacturer to a dealer of motor vehicles with respect to any new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, such dealer may sell or lease such motor vehicle or item of replacement equipment only if—

"(1) the defect or failure to comply has been remedied in accordance with this section before delivery under such sale or lease; or

"(2) in the case of notification required by an order under section 152(b), enforcement of the order has been restrained in an action to which section 155(a) applies or such order has been set aside in such an action.

Nothing in this subsection shall be construed to prohibit any dealer from offering for sale or lease such vehicle or item of equipment.".

SEC. 217. DARKENED WINDOWS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding on the use of darkened windshields and window glass in passenger cars and multipurpose passenger vehicles, including but not limited to the issues of—

(1) the harmonization of light transmittance requirements for multipurpose passenger vehicles with light transmittance requirements for passenger cars;

(2) performance requirements for light transmittance; and

(3) appropriate levels of light transmittance.

The proceeding shall consider the effects of such issues in the context of the safe operation of passenger cars and multipurpose passenger vehicles, as well as on the hazards to the safety of law enforcement personnel as a result of such use of darkened windshields and window glass.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 6 months after the date of enactment of this Act and completed not later than 18 months after such date of enactment.

SEC. 218. GRANT PROGRAM CONCERNING USE OF SEATBELTS AND CHILD RESTRAINT SYSTEMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§411. Seatbelt and child restraint programs

"(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement seatbelt and child restraint programs which include measures described in this section to foster the increased use of seatbelts and the correct use of child restraint systems. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for seatbelt and child restraint programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the seatbelt and child restraint program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) Subject to subsection (c), the amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) of this section shall equal 20 percent of the amount apportioned to such State for fiscal year 1991 under section 402.

"(e) A State is eligible for a grant under this section if such State—

"(1) has in force and effect a law requiring all front seat occupants of a passenger car to use seatbelts;

(2) has achieved—

"(A) in the year immediately preceding a first-year grant, the lesser of either (i) 70 percent seatbelt use by all front seat occupants of passenger cars in the State or (ii) a rate of seatbelt use by all such occupants that is 20 percentage points higher than the rate achieved in 1990;

"(B) in the year immediately preceding a second-year grant, the lesser of either (i) 80 percent

seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 35 percentage points higher than the rate achieved in 1990; and

"(C) in the year immediately preceding a third-year grant, the lesser of either (i) 90 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 45 percentage points higher than the rate achieved in 1990; and

"(3) has in force and effect an effective program, as determined by the Secretary, for encouraging the correct use of child restraint systems.

"(f) As used in this section, the term 'child restraint system' has the meaning given such term in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

"(g) There are authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, to carry out this section, $10,000,000 for the fiscal year 1991, and $20,000,000 for each of the fiscal years 1992 and 1993.".

(b) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"411. Seatbelt and child restraint programs.".

SEC. 219. METHODS OF REDUCING HEAD INJURIES.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider methods of reducing head injuries in passenger cars and multipurpose passenger vehicles from contact with vehicle interior components, including those in the head impact area as defined in section 571.3(b) of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act, and to revise the Federal motor vehicle safety standards as appropriate.

(b) DEADLINES.—The proceeding required under subsection (a) shall be initiated not less than 60 days after the date of enactment of this Act and completed not later than 2 years after such date of enactment.

SEC. 220. PEDESTRIAN SAFETY.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider the establishment of a standard to minimize pedestrian death and injury, including injury to the head, thorax, and legs, attributable to vehicle components.

(b) Deadlines.—The proceeding required under subsection (a) shall be initiated not later than 6 months after the date of enactment of this Act and completed not later than 2 years after such date of enactment.

SEC. 221. DAYTIME RUNNING LIGHTS.

(a) RULEMAKING PROCEEDING.—Not later than 12 months after the date of enactment of this Act, the Secretary shall complete a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard 108, published as section 571.108 of title 49, Code of Federal Regulations, to authorize passenger cars and multipurpose passenger vehicles to be equipped with daytime running lights, notwithstanding any State law or regulation that affects the use of such lights.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the safety implications of the use of such lights in the United States, including the recommendations of the Secretary concerning whether to require passenger cars and multipurpose passenger vehicles to be equipped with such lights.

SEC. 222. ANTILOCK BRAKE SYSTEMS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding concerning whether to adopt a Federal motor vehicle safety standard requiring antilock brake systems for all passenger cars and multipurpose passenger vehicles manufactured after September 1, 1996.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 223. HEADS-UP DISPLAYS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider the establishment of a standard requiring that passenger cars and multipurpose passenger vehicles shall be equipped with heads-up displays capable of projecting speed, fuel, and other instrument readings on the lower part of the windshield, enabling the driver to check such readings without looking down.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 224. SAFETY BELT DESIGN.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider whether to amend any existing standard applicable to seatbelts, as published under part 571 of title 49, Code of Federal Regulations, for modification of seatbelt design in order to take into account the needs of children and short adults.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 225. CRITERIA FOR STANDARDS.

Any standard established under a proceeding required by section 210, 217, 219, 220, 221, 222, 223, or 224 shall be in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of that Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

SEC. 226. IMPAIRED DRIVING ENFORCEMENT.

(a) SHORT TITLE.—This section may be cited as the "Impaired Driving Prevention Act of 1991".

(b) ESTABLISHMENT OF GRANT PROGRAM.—Chapter 4 of title 23, United States Code, is amended by inserting immediately after section 404 the following new section:

"§405. Impaired driving enforcement programs

"(a) GENERAL AUTHORITY.—Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement impaired driving enforcement programs which include measures, described in this section, to improve the effectiveness of the enforcement of laws to prevent impaired driving. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for impaired driving enforcement programs at or above the average level of such expenditures in its 2 fiscal years preceding the fiscal year in which this section is enacted.

"(c) FEDERAL SHARE.—No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the impaired driving enforcement program adopted by the State pursuant to subsection (a);

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) MAXIMUM AMOUNT OF BASIC GRANTS.—Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

"(e) ELIGIBILITY FOR BASIC GRANTS.—

"(1) GENERAL.—For purposes of this section, a State is eligible for a basic grant if such State—

"(A) provides for a program (funded at the level required under paragraph (2)) to conduct highway checkpoints for the detection and deterrence of persons who operate motor vehicles while under the influence of alcohol or a controlled substance, including the training, manpower, and equipment associated with the conduct of such checkpoints;

"(B) provides for a program (funded at the level required under paragraph (2)) to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance and in effectively prosecuting those persons, and to train personnel in the use of that equipment;

"(C) establishes an expedited driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol which requires that—

"(i) when a law enforcement officer has probable cause under State law to believe a person has committed an alcohol-related traffic offense and such person is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer shall serve such person with a written notice of suspension or revocation of the driver's license of such person and take possession of such driver's license;

"(ii) the notice of suspension or revocation referred to in clause (i) shall provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of a person for operating a motor vehicle while under the influence of alcohol and shall specify any rights of the operator under such procedures;

"(iii) the State shall provide, in the administrative procedures referred to in clause (ii), for due process of law, including the right to an administrative review of a driver's license suspension or revocation within the time period specified in clause (vi);

"(iv) after serving notice and taking possession of a driver's license in accordance with clause (i), the law enforcement officer immediately shall report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this clause;

"(v) in the case of a person who, in any 5-year period beginning after the date of enactment of this section, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—

"(I) shall suspend the driver's license of such person for a period of not less than 90 days if such person is a first offender in such 5-year period; and

"(II) shall suspend the driver's license of such person for a period of not less than 1 year, or revoke such license, if such person is a repeat offender in such 5-year period; and

"(vi) the suspension and revocation referred to under clause (iv) shall take effect not later than 30 days after the day on which the person first received notice of the suspension or revocation in accordance with clause (ii);

"(D) requires that any person with a blood alcohol concentration equal to or greater than the following percentage when operating a motor vehicle shall be deemed to be driving while under the influence of alcohol:

"(i) 0.10 percent for each of the first 3 fiscal years in which a basic grant is received; and

"(ii) 0.08 percent for each of the last 2 fiscal years in which a basic grant is received;

"(E) enacts a statute which provides that—

"(i) any person convicted of a first violation of driving under the influence of alcohol shall receive—

"(I) a mandatory license suspension for a period of not less than 90 days; and

"(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

"(ii) any person convicted of a second violation of driving under the influence of alcohol within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

"(iii) any person convicted of a third or subsequent violation of driving under the influence of alcohol within 5 years after a prior conviction for the same offense shall—

"(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

"(II) have his or her license revoked for not less than 3 years; and

"(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of alcohol shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license; and

"(F) provides for a self-sustaining drunk driving prevention program under which a significant portion of the fines and surcharges collected from persons by reason of their operation of a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

"(2) REQUIRED FUNDING LEVELS.—The funding level for the program described in paragraph (1)(A), and for the program described in paragraph (1)(B), shall be an amount equal to or greater than—

"(A) the average level of expenditures by the State for such program in its 2 fiscal years preceding the date of enactment of this section, plus

"(B) 2.4 percent of the amount apportioned to the State for fiscal year 1989 under section 402 of this title.

"(3) WAIVER FOR REDUCED FATALITIES.—If the rate of alcohol-related fatalities (as defined in the Fatal Accident Reporting System of the National Highway Traffic Safety Administration) in a State decreases by an average of 3 percent per calendar year for the 5 consecutive calendar years prior to the fiscal year for which the State would receive a basic grant under this section, the Secretary may waive for that State the basic grant eligibility requirements of one subparagraph among subparagraphs (A) through (F) of paragraph (1).

"(f) SUPPLEMENTAL GRANT PROGRAM.—

"(1) MANDATORY BLOOD ALCOHOL CONCENTRATION TESTING PROGRAMS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c) of this section, not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in an accident resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense.

"(2) PROGRAM FOR PREVENTING DRIVERS UNDER AGE 21 FROM OBTAINING ALCOHOLIC BEVERAGES.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for and increases its enforcement of an effective system for preventing persons under age 21 from obtaining alcoholic beverages, which may include the issuance of drivers' licenses to persons under age 21 that are easily distinguishable in appearance from drivers' licenses issued to persons 21 years of age and older.

"(3) DRUGGED DRIVING PREVENTION.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State—

"(A) provides for laws concerning drugged driving under which—

"(i) a person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance or combination of controlled substances, or any combination of alcohol and controlled substances;

"(ii) any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath, or urine for the purpose of determining the blood alcohol concentration or the presence of controlled substances in his or her body;

"(iii) the driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than 1 year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person (I) is determined, on the basis of 1 or more chemical tests, to have been under the influence of controlled substances while operating a motor vehicle, or (II) refuses to submit to such a test as proposed by the officer;

"(B) enacts a statute which provides that—

"(i) any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive—

"(I) a mandatory license suspension for a period of not less than 90 days; and

"(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

"(ii) any person convicted of a second violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

"(iii) any person convicted of a third or subsequent violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a prior conviction for the same offense shall—

"(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

"(II) have his or her license revoked for not less than 3 years; and

"(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license;

"(C) provides for an effective system, as determined by the Secretary, for—

"(i) the detection of driving under the influence of controlled substances;

"(ii) the administration of a chemical test or tests to any driver who a law enforcement officer has probable cause to believe has committed a traffic offense relating to controlled substances use; and

"(iii) in instances where such probable cause exists, the prosecution of (I) those who are determined, on the basis of 1 or more chemical tests, to have been operating a motor vehicle while under the influence of controlled substances and (II) those who refuse to submit to such a test as proposed by a law enforcement officer; and

"(D) has in effect two of the following programs:

"(i) an effective educational program, as determined by the Secretary, for the prevention of driving under the influence of controlled substances;

"(ii) an effective program, as determined by the Secretary, for training law enforcement officers to detect driving under the influence of controlled substances; and

"(iii) an effective program, as determined by the Secretary, for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

"(4) BLOOD ALCOHOL CONCENTRATION STANDARD.—For purposes of this section, a State is eligible for a supplemental grant (only for any of the first 3 fiscal years in which a basic grant is received) in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires that any person with a blood alcohol concentration of 0.08 percent or greater when operating a motor vehicle shall be deemed to be driving while under the influence of alcohol.

"(5) UNLAWFUL OPEN CONTAINER AND CONSUMPTION OF ALCOHOL PROGRAMS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State makes unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in *the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except—*

"(A) as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

"(B) as otherwise specifically allowed by such State, with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger areas.

"(6) SUSPENSION OF REGISTRATION AND RETURN OF LICENSE PLATE PROGRAM.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who—

"(A) has been convicted on more than 1 occasion of an alcohol-related traffic offense within any 5-year period after the date of enactment of this section; or

"(B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense.

A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including any family member of the convicted individual, and any co-owner of the motor vehicle, who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

"(7) SUPPLEMENTAL GRANTS AS BEING IN ADDITION TO OTHER GRANTS.—A supplemental grant under this section shall be in addition to any basic grant or any other supplemental grant received by such State.

"(g) EFFECT OF PARTICIPATION IN PROGRAMS UNDER SECTIONS 408 AND 410.—No State may receive a grant under this section for any fiscal year for which that State is a recipient of a grant under section 408 or 410 of this title.

"(h) DEFINITIONS.—As used in this section—

"(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' has the meaning such term has under section 158(c) of this title.

"(2) CONTROLLED SUBSTANCES.—The term 'controlled substances' has the meaning such term has under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

"(3) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning such term has under section 154(b) of this title.

"(4) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term 'open alcoholic beverage container' means any bottle, can, or other receptacle—

"(A) which contains any amount of an alcoholic beverage; and

"(B)(i) which is open or has a broken seal, or

"(ii) the contents of which are partially removed.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $25,000,000 for the fiscal year ending September 30, 1992, and $50,000,000 per fiscal year for the fiscal years ending September 30, 1993, September 30, 1994, September 30, 1995, and September 30, 1996, respectively. Sums authorized by this subsection shall remain available until expended.".

(c) DEADLINES FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue and publish in the Federal Register proposed regulations to implement section 405 of title 23, United States Code (as added by subsection (b) of this section), not later than December 1, 1992. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress before March 1, 1994.

(d) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by inserting immediately after the item relating to section 404 the following new item:

"405. Impaired driving enforcement programs.".

PART B—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM REAUTHORIZATION

SEC. 231. SHORT TITLE.

This part may be cited as the "Motor Carrier Safety Assistance Program Reauthorization Act of 1991". 232.

SEC. 232. MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.

(a) AMENDMENT TO TITLE 23, U.S.C.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§412. Motor carrier safety assistance program

"(a) GRANTS.—The Secretary is authorized to make grants to eligible States for the development or implementation, or both, of programs for—

"(1) the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders; and

"(2) effective enforcement of State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

A State shall be eligible to receive grants under this section only if the State has a plan approved by the Secretary under subsection (b).

"(b) STATE PLANS.—

"(1) SUBMISSION.—The Secretary shall formulate procedures for a State to submit annually a plan where the State agrees to adopt, and to assume responsibility for enforcing—

"(A) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders; and

"(B) State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

"(2) APPROVAL.—Subject to paragraph (3), a State plan submitted under paragraph (1) shall be approved by the Secretary if, in the Secretary's judgment, the plan is adequate to promote the objectives of this section, and the plan—

"(A) designates the State motor vehicle safety agency responsible for administering the plan;

"(B) ensures that the State motor vehicle safety agency and other State or local agencies participating in the plan have or will have the legal authority, resources, and qualified personnel necessary for administering the plan;

"(C) ensures that the State will devote adequate funds for administering the plan;

"(D) provides a right of entry and inspection to carry out the plan and provides that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Inspection Standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles;

"(E) provides that the State motor vehicle safety agency will adopt uniform reporting requirements and use uniform forms for recordkeeping, inspections, and investigations, as may be established and required by the Secretary;

"(F) provides that all required reports be submitted to the State motor vehicle safety agency and that the agency make the reports available to the Secretary, upon request;

"(G) ensures State participation in motor carrier information systems, including data bases containing data and information on drivers, vehicle inspections, driver operating compliance with applicable traffic safety laws and regulations, vehicle safety and compliance reviews, traffic accidents, and the weighing of vehicles;

"(H) ensures that commercial motor vehicle size and weight inspection activities will not diminish the effectiveness of other safety initiatives;

"(I) gives satisfactory assurances that the State will conduct effective activities—

"(i) to remove impaired commercial motor vehicle drivers from our Nation's highways through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment, and to provide an appropriate level of training to its Motor Carrier Safety Assistance Program officers and employees on the recognition of drivers impaired by alcohol or controlled substances;

"(ii) to promote enforcement of the requirements relating to the licensing of commercial motor vehicle drivers, especially including the checking of the status of commercial driver's licenses;

"(iii) to ensure adequate enforcement of State or local traffic safety laws and regulations that affect commercial motor vehicle safety; and

"(iv) to improve enforcement of hazardous materials transportation regulations by encouraging more inspections of shipper facilities affecting highway transportation and more comprehensive inspections of the loads of commercial motor vehicles transporting hazardous materials;

"(J) gives satisfactory assurances that the State will promote—

"(i) effective interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and to provide training on appropriate strategies for carrying out such interdiction activities; and

"(ii) effective use of trained and qualified officers and employees of political subdivisions or local governments, under the supervision and direction of the State motor vehicle safety agency, in the enforcement of regulations affecting commercial motor vehicle safety and hazardous materials transportation safety; and

"(K) seeks to ensure that fines imposed and collected by the State will be reasonable and appropriate and provides that, to the maximum extent practicable, the State will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

"(3) ADDITIONAL PLAN REQUIREMENTS.—

"(A) SAFETY AND DRUG ENFORCEMENT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle safety (including commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), exclusive of Federal funds and State matching funds required to receive Federal funding, will be maintained at a level that does not fall below the estimated average level of such aggregate expenditure for the State's pre-

vious three full fiscal years. In estimating such average level, the Secretary may allow the State to exclude State expenditures for federally sponsored demonstration or pilot projects.

"(B) WEIGHT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle size and weighing activities, exclusive of Federal funds, will be maintained at a level that does not fall below the estimated average level of such aggregate expenditure for the State's previous three full fiscal years. In order to be authorized to use funds under this section to enforce commercial motor vehicle size and weight requirements, a State in its State plan submitted under this subsection shall certify that such size and weight activities will be coupled with an appropriate form of commercial motor vehicle safety inspection and will be directly related to a specific commercial motor vehicle safety problem in that State, in particular that funds for size and weight enforcement activities will be—

"(i) conducted at locations other than fixed weight facilities;

"(ii) used to measure or weigh vehicles at specific geographical locations (such as steep grades or mountainous terrains), where the weight of a vehicle can significantly affect the safe operation of that vehicle; or

"(iii) used at sea ports of entry into and exit from the United States, with a focus on intermodal shipping containers.

"(C) TRAFFIC SAFETY ENFORCEMENT.—The Secretary shall not approve a State plan that provides for funds received under this section to be used to enforce traffic safety regulations applicable to commercial motor vehicles, unless the State certifies in the plan that such traffic safety enforcement will be coupled with an appropriate form of a commercial motor vehicle safety inspection.

"(D) MAINTENANCE OF EFFORT.—The Secretary shall not approve any plan under this section which does not provide that the estimated aggregate expenditure of funds of the State and its political subdivisions, exclusive of Federal funds and State matching funds required to receive Federal funding, for commercial motor vehicle safety programs, including an estimate of expenditure for traffic enforcement activities that were coupled with commercial motor vehicle safety inspections, will be maintained at a level which does not fall below the estimated average level of such expenditure for the State's previous three full fiscal years. In estimating such average level, the Secretary may allow the State to exclude State expenditures for federally sponsored demonstration or pilot programs.

"(3) CONTINUING EVALUATION; WITHDRAWAL OF APPROVAL; JUDICIAL REVIEW.—

"(A) EVALUATION.—The Secretary shall make a continuing evaluation of the manner in which each State is carrying out its State plan, based upon reports submitted by the State motor vehicle safety agency and upon the Secretary's own inspection. A written statement of the evaluation shall be prepared every three years, the first of which shall be completed within three years after the date of enactment of this section.

"(B) WITHDRAWAL OF APPROVAL.—After providing a State with notice and an opportunity to comment, whenever the Secretary finds that a State plan is not being followed, or has become inadequate to ensure the enforcement of—

"(i) Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders, and

"(ii) State or local traffic safety laws and regulations applicable to commercial motor vehicles,

the Secretary shall notify the State that approval of the State plan is being withdrawn and shall specify the Secretary's reasons for such withdrawal. The plan shall cease to be an approved plan upon receipt by the State of the notice of withdrawal, and the Secretary shall permit the State to modify and resubmit the plan in accordance with this subsection.

"(C) JUDICIAL REVIEW.—A State may seek judicial review of notice of withdrawal of approval, pursuant to chapter 7 of title 5, United States Code, in the appropriate United States Court of Appeals. The State may retain jurisdiction in any administrative or judicial enforcement proceeding commenced before the withdrawal of the approval of the State plan, if the issues involved do not directly relate to the reasons for the withdrawal of approval.

"(4) COORDINATION OF SAFETY PLANS.—The State motor vehicle safety agency shall coordinate the plan prepared under this subsection, with the highway safety plan developed under section 402 of this title. Such coordination shall include consultation with the Governor's Highway Safety Representative and representatives of affected industries to promote effective implementation of the purposes of this section.

"(c) FEDERAL SHARE OF COSTS.—By grants authorized under this section, the Secretary shall reimburse a State an amount not to exceed 80 percent of the costs incurred by that State in the development or implementation, or both, of programs as described under subsection (a). In determining such costs incurred by the State, the Secretary shall include in-kind contributions by the State.

"(d) ALLOCATIONS.—

"(1) DEDUCTION FOR ADMINISTRATION.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary may deduct, for administration of this section for that fiscal year, not to exceed 1.25 percent of the funds available for that fiscal year. At least 75 percent of the funds so deducted for administration shall be used for the training of non-Federal employees, and the development of related training materials, to carry out the purposes of this section.

"(2) ALLOCATION CRITERIA.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary, after making the deduction authorized by paragraph (1), shall allocate, among the States with plans approved under subsection (b), the available funds for that fiscal year, pursuant to criteria established by the Secretary; except that the Secretary, in allocating funds available for research, development, and demonstration under subsection (h)(3) or for public education under subsection (h)(4), may designate specific eligible States among which to allocate such funds.

"(e) AVAILABILITY, RELEASE, AND REALLOCATION OF FUNDS.—Funds made available to carry out this section shall remain available for obligation by the Secretary until expended. Allocations to a State shall remain available for expenditure in that State for the fiscal year in which they are allocated and one succeeding fiscal year. Funds not expended by a State during those two fiscal years shall be released to the Secretary for reallocation. Funds made available under part A of title IV of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2301 et seq.) which, as of October 1, 1992, were not obligated shall be available for reallocation and obligation under this section.

"(f) OBLIGATION OF FUNDS.—Approval by the Secretary of a grant to a State under this section shall be deemed a contractual obligation of the United States for payment of the Federal share of the costs incurred by that State in development or implementation, or both, of programs as described under subsection (a).

"(g) PAYMENTS TO STATES.—The Secretary shall make payments to a State of costs incurred by it under this section, as reflected by vouchers submitted by the State. Payments shall not exceed the Federal share of costs incurred as of the date of the vouchers.

"(h) FUNDING.—

"(1) AVAILABILITY.—To incur obligations to carry out the purposes of this section, there shall be available to the Secretary out of the Highway Trust Fund (other than the Mass Transit Account) not to exceed $70,000,000 for fiscal year 1993, $75,000,000 for fiscal year 1994, $80,000,000 for fiscal year 1995, and $85,000,000 for fiscal year 1996.

"(2) ENFORCEMENT.—Of funds made available under this subsection for any fiscal year, not less than $7,500,000 each year shall be used to pay for traffic enforcement activities focused exclusively upon commercial motor vehicle drivers, if such activities are coupled with an appropriate type of inspection for compliance with the commercial motor vehicle safety regulations. Of the funds made available under this subsection for each of fiscal years 1993 and 1994, not less than $1,500,000 shall be used to increase enforcement of the licensing requirements of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) by Motor Carrier Safety Assistance Program officers and employees, specifically including the cost of purchasing equipment for and conducting inspections to check the current status of licenses issued pursuant to that Act.

"(3) RESEARCH AND DEVELOPMENT.—Not less than $500,000 but not more than $2,000,000 of the funds made available under this subsection for any fiscal year shall be available for research, development, and demonstration of technologies, methodologies, analyses, or information systems designed to promote the purposes of this section and which are beneficial to all jurisdictions. Such funds shall be announced publicly and awarded competitively, whenever practicable, to any of the eligible States for up to 100 percent of the State costs, or to other persons as determined by the Secretary. The development of the model program and procedures required under section 6 of the Motor Carrier Safety Assistance Program Reauthorization Act of 1991 shall be funded under this paragraph.

"(4) PUBLIC EDUCATION.—Not less than $350,000 of the funds made available under this subsection for any fiscal year shall be allocated among specified eligible States to help educate the motoring public on how to share the road safely with commercial motor vehicles. In carrying out such education activities, the States shall consult with appropriate industry representatives.

"(i) DEFINITIONS.—As used in this section, the term—

"(1) 'commerce' means—

"(A) trade, traffic, and transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside the United States); and

"(B) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A).

"(2) 'commercial motor vehicle' means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property—

"(A) if the vehicle has a gross vehicle weight rating of 10,001 or more pounds;

"(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

"(C) if the vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) and are transported in a quantity requiring placarding under regulations issued by the Secretary under that Act.

"(3) 'controlled substance' has the meaning such term has under section 102(b) of the Controlled Substances Act (21 U.S.C. 802(b)).

"(4) 'State' means any one of the 50 States, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, or the Virgin Islands.".

(b) AMENDMENT TO SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982.—

(1) ELIGIBLE EXPENDITURES.—Section 402 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302) is amended by adding at the end the following new subsection:

"(e) After the date of enactment of this subsection, a State with a plan approved under subsection (b)(1) of this section may be reimbursed by the Secretary under this part for expenditures in enforcing State or local traffic laws or regulations designed to promote the safe operation and driving of commercial motor vehicles, or for activities described under section 411(b)(2)(I) and (J) of title 23, United States Code, or both.".

(2) FUNDING.—Section 404(a)(2) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304(a)(2)) is amended—

(A) by striking "1988 and" and inserting in lieu thereof "1988,"; and

(B) by inserting immediately before the period at the end the following: ", and $65,000,000 per fiscal year for fiscal year 1992".

(c) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following new item:

"412. Motor carrier safety assistance program."

SEC. 233. NEW FORMULA FOR ALLOCATION OF MCSAP FUNDS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation by regulation shall develop an improved formula and processes for the allocation among eligible States of the funds made available under the Motor Carrier Safety Assistance Program. In conducting such a revision, the Secretary shall take into account ways to provide incentives to States that demonstrate innovative, successful, cost-efficient, or cost-effective programs to promote commercial motor vehicle safety and hazardous materials transportation safety, including traffic safety enforcement and size and weight enforcement activities that are coupled with motor carrier safety inspections; to increase compatibility of State commercial motor vehicle safety and hazardous materials transportation regulations with the Federal safety regulations; and to promote other factors intended to promote effectiveness and efficiency that the Secretary determines appropriate.

SEC. 234. VIOLATIONS OF OUT-OF-SERVICE ORDERS.

(a) FEDERAL REGULATIONS.—Section 12008 of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2707) is amended by adding at the end the following new subsection:

"(g) VIOLATION OF OUT-OF-SERVICE ORDERS.—

"(1) REGULATIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations of out-of-service orders by persons operating commercial motor vehicles.

"(2) MINIMUM REQUIREMENTS.—Regulations issued under paragraph (1) shall, at a minimum, require that—

"(A) any operator of a commercial motor vehicle who is found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 90 days and shall be subject to a civil penalty of not less than $1,000;

"(B) any operator of a commercial motor vehicle who is found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 1 year and not more than 5 years and shall be subject to a civil penalty of not less than $1,000; and

"(C) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be subject to a civil penalty of not more than $10,000.

"(3) DEADLINES.—The regulations required under paragraph (1) shall be developed pursuant to a rulemaking proceeding initiated within 60 days after the date of enactment of this subsection and shall be issued not later than 12 months after such date of enactment.".

(b) STATE REGULATIONS.—Section 12009(a)(21) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2708(a)(21)) is amended by inserting "and (g)(1)" immediately before the period at the end.

SEC. 235. INTRASTATE COMPATIBILITY.

Within 9 months after the date of enactment of this Act, the Secretary of Transportation shall issue final regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety law and regulations with the Federal motor carrier safety regulations under the Motor Carrier Safety Assistance Program. Such guidelines and standards shall, to the extent practicable, allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In the review of State plans and the allocation or granting of funds under section 411 of title 23, United States Code, as added by this part, the Secretary shall ensure that such guidelines and standards are applied uniformly.

SEC. 236. ENFORCEMENT OF BLOOD ALCOHOL CONCENTRATION LIMITS.

Within 3 months after the date of enactment of this Act, the Secretary of Transportation shall consult with representatives of law enforcement organizations and affected industries, and develop within 12 months after such date of enactment a model program and procedures for Motor Carrier Safety Assistance Program officers and employees to enforce the .04 percent blood alcohol concentration limit established by regulation pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

SEC. 237. FHWA POSITIONS.

To help implement the purposes of this part, the Secretary of Transportation in fiscal year 1992 shall employ and maintain thereafter two additional positions at the headquarters of the Federal Highway Administration in excess of the number of employees authorized for fiscal year 1991 for the Federal Highway Administration.

SEC. 238. DRUG FREE TRUCK STOPS.

(a) SHORT TITLE.—This section may be cited as the "Drug Free Truck Stop Act".

(b) FINDINGS.—The Congress finds that—

(1) the illegal use of controlled substances by operators of commercial motor vehicles represents an enormous threat to the safety of all motorists and their passengers on the Nation's roadways; and

(2) as indicated by numerous studies, congressional hearings, and investigations, individuals often use the areas surrounding roadside truckstops and roadside rest areas as sites for the distribution of these controlled substances to the operators of commercial motor vehicles.

(c) AMENDMENT TO CONTROLLED SUBSTANCES ACT.—

(1) IN GENERAL.—In light of the findings in subsection (b), part D of the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by inserting immediately after section 408 the following new section:

"TRANSPORTATION SAFETY OFFENSES

"SEC. 409. (a) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or safety rest area is (except as provided in subsection (b)) subject to—

"(1) twice the maximum punishment authorized by section 401(b); and

"(2) at least twice any term of supervised release authorized by section 401(b) for a first offense.

Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

"(b) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a) have become final is punishable—

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 401(b); and

"(2) at least three times any term of supervised release authorized by section 401(b) for a first offense.

"(c) In the case of any sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) shall not be eligible for parole under chapter 311 of title 18 of the United States Code until the individual has served the minimum sentence required by such subsection.

"(d) For purposes of this section—

"(1) the term 'safety rest area' has the meaning given that term in part 752 of title 23, Code of Federal Regulations, as in effect on the date of enactment of this section; and

"(2) the term 'truck stop' means any facility (including any parking lot appurtenant thereto) that has the capacity to provide fuel or service, or both, to any commercial motor vehicle as defined under section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986, operating in commerce as defined in section 12019(3) of such Act and that is located adjacent to or within 2,500 feet of the Interstate and Defense System or the Federal-Aid Primary System.".

(2) CONFORMING AMENDMENTS.—

(A) CROSS REFERENCE.—Section 401(b) of such Act (21 U.S.C. 841(b)) is amended by inserting "409," immediately before "418," each place it appears.

(B) TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting, immediately after the item relating to section 408, the following:

"Sec. 409. Transportation safety offenses.".

(d) SENTENCING GUIDELINES.—

(1) PROMULGATION OF GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 (28 U.S.C. 994 note), the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant con-

victed of violating section 409 of the Controlled Substances Act, as added by subsection (c), shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(A) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

(B) in no event less than level 26.

(2) IMPLEMENTATION BY SENTENCING COMMISSION.—If the sentencing guidelines are amended after the date of enactment of this Act, the Sentencing Commission shall implement the instruction set forth in paragraph (1) so as to achieve a comparable result.

(3) LIMITATION.—The guidelines referred to in paragraph (2), as promulgated or amended under such paragraph, shall provide that an offense that could be subject to multiple enhancements pursuant to such paragraph is subject to not more than one such enhancement.

SEC. 239. IMPROVED BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES.

(a) RULEMAKING PROCEEDING.—Section 9107 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Public Law 100–690, subtitle B of title IX; 102 Stat. 4530) is amended—

(1) by striking "REPORT ON" in the heading;

(2) by inserting "(a) REPORT.—" immediately before "Not later than"; and

(3) by adding at the end the following new subsection:

"(b) RULEMAKING PROCEEDING.—The Secretary shall initiate a rulemaking proceeding not later than July 1, 1991. Such proceeding shall concern the need to adopt methods for improving braking performance standards for commercial motor vehicles and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to issue as a result of such proceeding regarding improved brake performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceeding required by this subsection not later than April 1, 1992.".

(b) CONFORMING AMENDMENT.—The table of contents contained in section 9101(b) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (102 Stat. 4527) is amended by striking "Report on improved" in the item relating to section 9107 and inserting in lieu thereof "Improved".

SEC. 240. COMPLIANCE REVIEW PRIORITY.

If the Secretary of Transportation identifies a pattern of violations of State or local traffic safety laws or regulations, or commercial motor vehicle safety rules, regulations, standards, or orders, among the drivers of commercial motor vehicles employed by a particular motor carrier, the Secretary or a State representative shall ensure that such motor carrier receives a high priority for a compliance review.

SEC. 241. REPORT ON TRAINING OF DRIVERS.

Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall report to Congress on the effectiveness of the efforts of the private sector to ensure adequate training of entry level drivers of commercial motor vehicles. The report shall include recommendations of the Secretary on the feasibility, desirability, and cost effectiveness of establishing mandatory Federal training requirements for all such entry level drivers. In preparing the report, the Secretary shall solicit the views of interested persons.

PART C—TRANSPORTATION EMPLOYEE TESTING

SEC. 261. SHORT TITLE.

This part may be cited as the "Omnibus Transportation Employee Testing Act of 1991".

SEC. 262. FINDINGS.

The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, trains, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

SEC. 263. TESTING TO ENHANCE AVIATION SAFETY.

(a) IN GENERAL.—Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"SEC. 614. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) TESTING PROGRAM.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall, in the interest of aviation safety, prescribe regulations within 12 months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(3) SUSPENSION; REVOCATION; DISQUALIFICATION; DISMISSAL.—In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, in violation of law or Federal regulation, alcohol or a controlled substance.

"(b) PROHIBITION ON SERVICE.—

"(1) PROHIBITED ACT.—It is unlawful for a person to use, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) EFFECT OF REHABILITATION.—No individual who is determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—Any such individual determined by the Administrator to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section who—

"(A) engaged in such use while on duty;

"(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (c);

"(C) following such determination refuses to undertake such a rehabilitation program; or

"(D) following such determination fails to complete such a rehabilitation program,

shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"(c) PROGRAM FOR REHABILITATION.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (a)(1) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such a program available to all of its employees in addition to those employees referred to in subsection (a)(1). The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a), the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY ADMINISTRATOR.—Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before the date of enactment of this section that govern the use of alcohol and controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(3) INTERNATIONAL OBLIGATIONS.—In prescribing regulations under this section, the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit the use, in violation of law or Federal regulation, of alcohol or a controlled substance by crew members in international civil aviation.

"(f) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Administrator.".

(b) CONFORMING AMENDMENT.—That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end the following:

"Sec. 614. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other laws and regulations.
"(f) Definition.".

SEC. 264. TESTING TO ENHANCE RAILROAD SAFETY.

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end the following:

"(r)(1) In the interest of safety, the Secretary shall, within twelve months after the date of enactment of this subsection, issue rules, regulations, standards, and orders relating to alcohol and drug use in railroad operations. Such regulations shall establish a program which—

"(A) requires railroads to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance;

"(B) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(C) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards, or orders issued under this title.

The Secretary may also issue rules, regulations, standards, and orders, as the Secretary considers appropriate in the interest of safety, requiring railroads to conduct periodic recurring testing of railroad employees responsible for such safety sensitive functions, for use of alcohol or a controlled substance in violation of law or Federal regulation. Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards, and orders governing the use of alcohol and controlled substances in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this subsection, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(ii) establish the minimum list of controlled substances for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this subsection;

"(C) require that all laboratories involved in the controlled substances testing of any employee under this subsection shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(D) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(E) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(F) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(G) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection; and

"(H) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) The Secretary shall issue rules, regulations, standards, or orders setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as determined by the Secretary) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or a controlled substance. Each railroad is encouraged to make such a program available to all of its employees in addition to those employees responsible for safety sensitive functions. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this paragraph shall preclude a railroad from establishing a program under this paragraph in cooperation with any other railroad.

"(4) In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(5) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

SEC. 265. TESTING TO ENHANCE MOTOR CARRIER SAFETY.

(a) AMENDMENT TO COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986.—

(1) IN GENERAL.—The Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) is amended by adding at the end the following new section:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, issue regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such operators for such use in violation of law or Federal regulation.

"(b) TESTING.—

"(1) POST-ACCIDENT TESTING.—In issuing such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) TESTING AS PART OF MEDICAL EXAMINATION.—Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY SECRETARY.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by commercial motor vehicle employees issued before the date of enactment of this section.

"(3) INTERNATIONAL OBLIGATIONS.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(f) APPLICATION OF PENALTIES.—

"(1) EFFECT ON OTHER PENALTIES.—Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this title or any other provision of law.

"(2) DETERMINATION OF SANCTIONS.—The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, in violation of law or Federal regulation, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

(2) CONFORMING AMENDMENT.—The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(b) PILOT TEST PROGRAM.—

(1) DESIGN AND IMPLEMENTATION.—The Secretary shall design within nine months after the date of enactment of this Act, and implement within 15 months after the date of enactment of this Act, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, in violation of law or Federal regulation, alcohol or a controlled substance. The pilot test program shall be administered as part of the Motor Carrier Safety Assistance Program.

(2) SOLICITATION.—The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) SELECTION.—The Secretary shall ensure that the States selected pursuant to this subsection are representative of varying geographical and population characteristics of the Nation and that the selection takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) DURATION; ALTERNATIVE METHODOLOGIES.—The pilot program authorized by this subsection shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) REPORT.—Not later than 30 months after the date of enactment of this Act, the Secretary shall prepare and submit to the Congress a com-

prehensive report setting forth the results of the pilot program conducted under this subsection. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) Funding.—For purposes of carrying out this subsection, there shall be available to the Secretary, $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for fiscal year 1992.

(7) Definition.—For purposes of this subsection, the term "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2716(6)).

SEC. 266. TESTING TO ENHANCE MASS TRANSPORTATION SAFETY.

(a) Definitions.—As used in this section, the term—

(1) "controlled substance" means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined has a risk to transportation safety;

(2) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, territory, district, or possession thereof, or of any foreign country; and

(3) "mass transportation" means all forms of mass transportation except those forms that the Secretary determines are covered adequately, for purposes of employee drug and alcohol testing, by either the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) or the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

(b) Testing Programs.—

(1) In general.—The Secretary shall, in the interest of mass transportation safety, issue regulations within 12 months after the date of enactment of this Act. Such regulations shall establish a program which requires mass transportation operations which are recipients of Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

(2) Post-accident testing.—In issuing such regulations, the Secretary shall require that post-accident testing of such a mass transportation employee be conducted in the case of any accident involving mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(c) Rehabilitation Programs.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of mass transportation employees referred to in subsection (b)(1) who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude a mass transportation operation from establishing a program under this section in cooperation with any other such operation.

(d) Procedures for Testing.—In establishing the program required under subsection (b), the Secretary shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e) Effect on Other Laws and Regulations.—

(1) State and local law and regulations.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to mass transportation employees, or to the general public.

(2) Other regulation issued by Secretary.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by mass transportation employees issued before the date of enactment of this Act.

(3) International obligations.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

(f) Penalties.—

(1) Disqualification.—As the Secretary considers appropriate, the Secretary shall require—

(A) disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) who is determined to have used or to have been impaired by alcohol while on duty; and

(B) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulations.

(2) Effect on other applicable penalties.—Nothing in this section shall be construed to supersede any penalty applicable to a mass transportation employee under any other provision of law.

(g) Ineligibility for Financial Assistance.—A person shall not be eligible for Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, if such person—

(1) is required, under regulations prescribed by the Secretary under this section, to establish a program of alcohol and controlled substances testing; and

(2) fails to establish such a program in accordance with such regulations.

PART D—GENERAL PROVISIONS

SEC. 271. RURAL TOURISM DEVELOPMENT.

(a) Short Title.—This section may be cited as the "Rural Tourism Development Act of 1991".

(b) Rural Tourism Development Foundation.—

(1) Findings.—The Congress finds that increased efforts directed at the promotion of rural tourism will contribute to the economic development of rural America and further the conservation and promotion of natural, scenic, historic, scientific, educational, inspirational, or recreational resources for future generations of Americans and foreign visitors.

(2) Establishment of foundation.—In order to assist the United States Travel and Tourism Administration in the development and promotion of rural tourism, there is established a charitable and nonprofit corporation to be known as the Rural Tourism Development Foundation (hereafter in this section referred to as the "Foundation").

(3) Functions.—The functions of the Foundation shall be the planning, development, and implementation of projects and programs which have the potential to increase travel and tourism export revenues by attracting foreign visitors to rural America. Initially, such projects and programs shall include but not be limited to—

(A) participation in the development and distribution of educational and promotional mate-

rials pertaining to both private and public attractions located in rural areas of the United States, including Federal parks and recreational lands, which can be used by foreign visitors;

(B) development of educational resources to assist in private and public rural tourism development; and

(C) participation in Federal agency outreach efforts to make such resources available to private enterprises, State and local governments, and other persons and entities interested in rural tourism development.

(4) BOARD OF DIRECTORS.—

(A) ESTABLISHMENT.—

(i) COMPOSITION.—The Foundation shall have a Board of Directors (hereafter in this section referred to as the "Board") that—

(I) during its first two years shall consist of nine voting members; and

(II) thereafter shall consist of those nine members plus up to six additional voting members as determined in accordance with the bylaws of the Foundation.

(ii) APPOINTMENT.—

(I) The Under Secretary of Commerce for Travel and Tourism shall, within six months after the date of enactment of this Act, appoint the initial nine voting members of the Board and thereafter shall appoint the successors of each of three such members, as provided by such bylaws.

(II) The voting members of the Board, other than those referred to in subclause (I), shall be appointed in accordance with procedures established by such bylaws.

(iii) QUALIFICATIONS.—The voting members of the Board shall be individuals who are not Federal officers or employees and who have demonstrated an interest in rural tourism development. Of such voting members, at least a majority shall have experience and expertise in tourism trade promotion, at least one shall have experience and expertise in resource conservation, at least one shall have experience and expertise in financial administration in a fiduciary capacity, at least one shall be a representative of an Indian tribe who has experience and expertise in rural tourism on an Indian reservation, at least one shall represent a regional or national organization or association with a major interest in rural tourism development or promotion, and at least one shall be a representative of a State who is responsible for tourism promotion.

(iv) TERMS OF OFFICE.—Voting members of the Board shall each serve a term of six years, except that—

(I) initial terms shall be staggered to assure continuity of administration;

(II) if a person is appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor, that person shall serve only for the remainder of the predecessor's term; and

(III) any such appointment to fill a vacancy shall be made within 60 days after the vacancy occurs.

(B) EX-OFFICIO MEMBERS.—The Under Secretary of Commerce for Travel and Tourism and representatives of Federal agencies with responsibility for Federal recreational sites in rural areas (including the National Park Service, Bureau of Land Management, Forest Service, Corps of Engineers, Bureau of Indian Affairs, Tennessee Valley Authority, and such other Federal agencies as the Board determines appropriate) shall be nonvoting ex-officio members of the Board.

(C) CHAIRMAN; VICE CHAIRMAN.—The Chairman and Vice Chairman of the Board shall be elected by the voting members of the Board for terms of two years.

(D) MEETINGS; QUORUM; OFFICIAL SEAL.—The Board shall meet at the call of the Chairman and there shall be at least two meetings each year. A majority of the voting members of the Board serving at any one time shall constitute a quorum for the transaction of business, and the Foundation shall have an official seal, which shall be judicially noticed. Voting membership on the Board shall not be deemed to be an office within the meaning of the laws of the United States.

(5) COMPENSATION AND EXPENSES.—No compensation shall be paid to the members of the Board for their services as members, but they may be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members out of Foundation funds available to the Board for such purposes.

(6) ACCEPTANCE OF GIFTS, DEVISES, AND BEQUESTS.—

(A) IN GENERAL.—The Foundation is authorized to accept, receive, solicit, hold, administer, and use any gifts, devises, or bequests, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein for the benefit of or in connection with rural tourism, except that the Foundation may not accept any such gift, devise, or bequest which entails any expenditure other than from the resources of the Foundation. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of rural tourism.

(B) GIFTS, DEVISES, AND BEQUESTS FOR BENEFIT OF INDIAN TRIBES.—A gift, devise, or bequest accepted by the Foundation for the benefit of or in connection with rural tourism on Indian reservations, pursuant to the Act of February 14, 1931 (25 U.S.C. 451), shall be maintained in a separate accounting for the benefit of Indian tribes in the development of tourism on Indian reservations.

(7) INVESTMENTS.—Except as otherwise required by the instrument of transfer, the Foundation may sell, lease, invest, reinvest, retain, or otherwise dispose of or deal with any property or income thereof as the Board may from time to time determine. The Foundation shall not engage in any business, nor shall the Foundation make any investment that may not lawfully be made by a trust company in the District of Columbia, except that the Foundation may make any investment authorized by the instrument of transfer and may retain any property accepted by the Foundation.

(8) USE OF FEDERAL SERVICES AND FACILITIES.—The Foundation may use the services and facilities of the Federal Government and such services and facilities may be made available on request to the extent practicable without reimbursement therefor.

(9) PERPETUAL SUCCESSION; LIABILITY OF BOARD MEMBERS.—The Foundation shall have perpetual succession, with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and to be sued in its own name, but the members of the Board shall not be personally liable, except for malfeasance.

(10) CONTRACTUAL POWER.—The Foundation shall have the power to enter into contracts, to execute instruments, and generally to do any and all lawful acts necessary or appropriate to its purposes.

(11) ADMINISTRATION.—

(A) IN GENERAL.—In carrying out the provisions of this section, the Board may adopt bylaws, rules, and regulations necessary for the administration of its functions and may hire officers and employees and contract for any other necessary services. Such officers and employees shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and may be paid without regard to the provisions of chapters 51 and 53 of such title relating to classification and General Schedule pay rates.

(B) VOLUNTARY AND UNCOMPENSATED SERVICES.—The Secretary of Commerce may accept the voluntary and uncompensated services of the Foundation, the Board, and the officers and employees of the Foundation in the performance of the functions authorized under this section, without regard to section 1342 of title 31, United States Code, or the civil service classification laws, rules, or regulations.

(C) TREATMENT AS FEDERAL EMPLOYEE.—Neither an officer or employee hired under subparagraph (A) nor an individual who provides services under subparagraph (B) shall be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(12) EXEMPTION FROM TAXES; CONTRIBUTIONS.—The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of the Board, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of this subsection or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

(13) LIABILITY OF UNITED STATES.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

(14) ANNUAL REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

(15) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for each of fiscal years 1991, 1992, and 1993 not to exceed $500,000 to—

(A) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Rural Tourism Development Foundation by private persons and Federal, State, and local government agencies; and

(B) provide administrative services for the Rural Tourism Development Foundation.

(16) DEFINITIONS.—As used in this section, the term—

(A) "Indian reservation" has the meaning given the term "reservation" in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d));

(B) "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(C) "local government" has the meaning given that term in section 3371(2) of title 5, United States Code; and

(D) "rural tourism" means travel and tourism activities occurring outside of United States Standard Metropolitan Statistical Areas, including activities on Federal recreational sites, on Indian reservations, and in the territories, possessions, and commonwealths of the United States.

(17) ASSISTANCE BY SECRETARY OF COMMERCE.—Section 202(a) of the International

Travel Act of 1961 (22 U.S.C. 2123(a)) is amended—

(A) by striking "and" at the end of paragraph (14);

(B) by striking the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new paragraph:

"(16) may assist the Rural Tourism Development Foundation, established under the Rural Tourism Development Act of 1991, in the development and promotion of rural tourism.".

SEC. 272. EDUCATION AND TRAINING PROGRAM.

Chapter 1 of title 23, United States Code, is amended by adding in an appropriate place the following new section:

"§ Education and Training Program

"(a) AUTHORITY.—The Secretary is authorized to carry out a transportation assistance program that will provide highway and transportation agencies, in (1) urbanized areas of 50,000 to 1,000,000 population and (2) rural areas, access to modern highway technology.

"(b) GRANTS AND CONTRACTS.—The Secretary may make grants and enter into direct contracts for education and training, technical assistance and related support service that will:

"(1) assist rural local transportation agencies to develop and expand their expertise in road and transportation areas, including pavement, bridge and safety management systems; improve roads and bridges; enhance programs for the movement of passengers and freight; and deal effectively with special road related problems by preparing and providing training packages, manuals, guidelines and technical resource materials; and a tourism and recreational travel technical assistance program;

"(2) identify, package and deliver usable highway technology to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with road related problems; and

"(3) establish, in cooperation with State transportation or highway departments and universities (A) urban technical assistance program centers in States with two or more urbanized areas of 50,000 to 1,000,000 population and (B) rural technical assistance program centers: Provided, That not less than four centers shall be designated to provide transportation assistance that may include, but is not necessarily limited to, a 'circuit-rider' program, providing training on intergovernmental transportation planning and project selection, and tourism recreational travel to American Indian tribal governments.

"(c) FUNDS.—The funds required to carry out the provisions of this section shall be taken out of administrative funds authorized by section 104(a). The sum of $8,000,000 per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 shall be set aside from such administrative funds for the purpose of providing technical and financial support for these centers, including up to 100 per centum for services provided to American Indian tribal governments. An additional sum of $5,000,000 for the fiscal year 1992 shall be set aside from such administrative funds to establish and carry out a tourism and recreational travel technical assistance program in non-urbanized areas. Funds to carry out this section shall remain available until expended.".

SEC. 273. COMMERCIAL DRIVERS LICENSE WAIVER.

In addition to the authority which the Department of Transportation granted to States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to farm vehicles contained in volume 53, pages 37313–37316, of the Federal Register (September 26, 1988), such States may extend such waivers to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, and to vehicles used to transport livestock feed, whether or not such vehicles are controlled and operated by a farmer.

SEC. 274. BORDER CROSSING STUDY.

(a) The Secretary of Transportation shall conduct a review of current Federal highways that access border crossings between the United States and Canada in order to:

(1) determine whether or not they are in compliance with current Federal highway regulations and adequately designed for future growth and expansion;

(2) assess their ability to accommodate increased transfer of commerce due to the United States-Canada Free Trade Agreements; and

(3) assess their ability to accommodate increasing tourism-related traffic between the United States and Canada. The review shall specifically address issues related to the alignment of United States and Canadian highways at the border crossings, the development of bicycle paths and pedestrian walkways, potential energy savings to be realized by decreasing truck delays at the border crossings and related parking improvements.

(b) The Secretary shall issue a report of the findings of this review to the Senate Environment and Public Works Committee and the House Public Works Committee within 60 days after the date of enactment of this Act.

TITLE III—FEDERAL TRANSIT ACT OF 1991

SEC. 301. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Federal Transit Act of 1991".

(b) TABLE OF CONTENTS.—

Sec. 301. Short title; table of contents.
Sec. 302. Change of agency name.
Sec. 303. Amendment to short title of the 1964 Act.
Sec. 304. Findings and purposes.
Sec. 305. Commute-to-work benefits.
Sec. 306. Capital grant or loan program.
Sec. 307. Capital grants; technical amendment to provide for early systems work contracts and full funding grant contracts.
Sec. 308. Section 3 program—Allocations.
Sec. 309. Section 3 program—Rail modernization formula.
Sec. 310. Section 3 program—Local share.
Sec. 311. Section 3—Grandfathered jurisdictions.
Sec. 312. Capital grants—Innovative techniques and practices.
Sec. 313. Capital grants—Elderly persons and persons with disabilities.
Sec. 314. Capital grants—Eligible activities.
Sec. 315. Criteria for new starts.
Sec. 316. Advance construction; technical amendment related to interest cost.
Sec. 317. Federal share for ADA and Clean Air Act compliance.
Sec. 318. Capital grants—Deletion of extraneous material.
Sec. 319. Comprehensive transportation strategies.
Sec. 320. Section 9 program—Allocations.
Sec. 321. Section 9 formula grant program—Discretionary transfer of apportionment.
Sec. 322. Section 9 program—Elimination of incentive tier.
Sec. 323. Section 9 program—Energy efficiency.
Sec. 324. Section 9 program—Applicability of safety provisions.
Sec. 325. Section 9 program—Certifications.
Sec. 326. Section 9 program—Program of projects.
Sec. 327. Ferry routes.
Sec. 328. Section 9 program—Continued assistance for commuter rail in southern Florida.
Sec. 329. Section 11—University transportation centers.
Sec. 330. Rulemaking.
Sec. 331. Section 12—Transfer of facilities and equipment.
Sec. 332. Special Procurement.
Sec. 333. Section 16—Elderly persons and persons with disabilities.
Sec. 334. Meal delivery service to homebound persons.
Sec. 335. Section 18—Transfer of facilities and equipment.
Sec. 336. Section 18—Grants to offset Amtrak losses.
Sec. 337. Human resources program support.
Sec. 338. Authorizations.
Sec. 339. Report on safety conditions in mass transit.
Sec. 340. Section 23—Project management oversight.
Sec. 341. Section 26—Planning and research.
Sec. 342. Technical accounting provisions.
Sec. 343. GAO report on charter service regulations.
Sec. 344. GAO study on public transit needs.
Sec. 345. Use of population estimates.
Sec. 346. Section 9B—Technical amendment.
Sec. 347. Use of census data.

SEC. 302. CHANGE OF AGENCY NAME.

(a) IN GENERAL.—The Urban Mass Transportation Administration is hereby redesignated as the "Federal Transit Administration".

(b) CONFORMING AMENDMENTS.—Titles 5 and 49, United States Code, are amended by striking "Urban Mass Transportation Administration" wherever it appears and inserting "Federal Transit Administration".

(c) OTHER REFERENCES.—Any reference in any other provision of law to the "Urban Mass Transportation Administration" shall be deemed to refer instead to the "Federal Transit Administration".

SEC. 303. AMENDMENT TO SHORT TITLE OF THE 1964 ACT.

(a) IN GENERAL.—The Urban Mass Transportation Act of 1964 is amended by striking the first section and inserting the following:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Federal Transit Act'.".

(b) OTHER REFERENCES.—Any reference in any other provision of law to the "Urban Mass Transportation Act of 1964" shall be deemed to refer instead to the "Federal Transit Act".

SEC. 304. FINDINGS AND PURPOSES.

(a) FINDINGS.—Section 2(a) of the Federal Transit Act (hereafter referred to in this Act as the "Act") (49 U.S.C. App. 1601(a)) is amended—

(1) in paragraph (2), by striking "and" after "basis";

(2) in paragraph (3), by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) that significant improvements in public transportation are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country.".

(b) PURPOSES.—Section 2(b) of the Act (49 U.S.C. App. 1601(b)) is amended—

(1) in paragraph (2), by striking "and" after "private";

(2) in paragraph (3), by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) to provide financial assistance to State and local governments and their instrumentalities to help implement national goals relating to mobility for elderly persons, persons with disabilities, and economically disadvantaged persons.".

SEC. 305. COMMUTE-TO-WORK BENEFITS.

(a) Findings.—The Congress finds that—

(1) current Federal policy places commuter transit benefits at a disadvantage compared to drive-to-work benefits;

(2) this Federal policy is inconsistent with important national policy objectives, including the need to conserve energy, reduce reliance on energy imports, lessen congestion, and clean our Nation's air;

(3) commuter transit benefits should be part of a comprehensive solution to national transportation and air pollution problems;

(4) current Federal law allows employers to provide only up to $15 per month in employee benefits for transit or van pools;

(5) the current "cliff provision", which treats an entire commuter transit benefit as taxable income if it exceeds $15 per month, unduly penalizes the most effective employer efforts to change commuter behavior;

(6) employer-provided commuter transit incentives offer many public benefits, including increased access of low-income persons to good jobs, inexpensive reduction of roadway and parking congestion, and cost-effective incentives for timely arrival at work; and

(7) legislation to provide equitable treatment of employer-provided commuter transit benefits has been introduced with bipartisan support in both the Senate and House of Representatives.

(b) Policy.—The Congress strongly supports Federal policy that promotes increased use of employer-provided commuter transit benefits. Such a policy "levels the playing field" between transportation modes and is consistent with important national objectives of energy conservation, reduced reliance on energy imports, lessened congestion, and clean air.

SEC. 306. CAPITAL GRANT OR LOAN PROGRAM.

The heading of section 3 of the Act (49 U.S.C. App. 1602) is amended by striking "DISCRETIONARY" and inserting "CAPITAL".

SEC. 307. CAPITAL GRANTS; TECHNICAL AMENDMENT TO PROVIDE FOR EARLY SYSTEMS WORK CONTRACTS AND FULL FUNDING GRANT CONTRACTS.

Section 3(a)(4) of the Act (49 U.S.C. App. 1602(a)(4)) is amended—

(1) by inserting "(A)" after "(4)";

(2) in the fifth sentence, by inserting "not less than" after "complete";

(3) by adding after the fifth sentence the following:

"(B) The Secretary is authorized to enter into a full funding contract with the applicant, which contract shall—

"(i) establish the terms and conditions of Federal financial participation in a project under this section;

"(ii) establish the maximum amounts of Federal financial assistance for such project; and

"(iii) facilitate timely and efficient management of such project in accordance with Federal law.

"(C) A contract under subparagraph (B) shall obligate an amount of available budget authority specified in law and may include a commitment, contingent upon the future availability of budget authority, to obligate an additional amount or additional amounts from future available budget authority specified in law. The contract shall specify that the contingent commitment does not constitute an obligation of the United States. The future availability of budget authority referred to in the first sentence of this subparagraph shall be amounts specified in law in advance for commitments entered into under subparagraph (B). Any interest and other financing costs of efficiently carrying out the project or a portion thereof shall be considered as a cost of carrying out the project under a full funding contract, except that eligible costs shall not be greater than the costs of the most favorable financing terms reasonably available for the project at the time of borrowing. The total of amounts stipulated in a contract for a fixed guideway project shall be sufficient to complete not less than an operable segment.

"(D) The Secretary is authorized to enter into early systems work agreements with the applicant if a record of decision pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary determines there is reason to believe—

"(i) a full funding contract will be entered into for the project; and

"(ii) the terms of the early systems work agreement will promote ultimate completion of the project more rapidly and at less cost.

The early systems work agreement shall obligate an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of project implementation, including land acquisition, timely procurement of system elements for which specifications are determined, and other activities that the Secretary determines to be appropriate to facilitate efficient, long-term project management. The interest and other financing costs of carrying out the early systems work agreement efficiently shall be considered as a cost of carrying out the agreement, except that eligible costs shall not be greater than the costs of the most favorable financing terms reasonably available for the project at the time of borrowing. If an applicant fails to implement the project for reasons within the applicant's control, the applicant shall repay all Federal payments made under the early systems work agreement plus such reasonable interest and penalty charges as the Secretary may establish in the agreement.";

(4) by inserting "(E)" before "The total estimated";

(5) in the sentence that begins "The total estimated"—

(A) by inserting "and contingent commitments to incur obligations," after "Federal obligations";

(B) by inserting "early systems work agreements and full funding grant contracts," after "all outstanding letters of intent,"; and

(C) by inserting "or 50 percent of the uncommitted cash balance remaining in the mass transit account of the Highway Trust Fund, including amounts received from taxes and interest earned in excess of amounts that have been previously obligated, whichever is greater" after "section 3 of this Act"; and

(6) in the sentence that begins "The total amount covered", by inserting "and contingent commitments included in early systems work agreements and full funding grant contracts" after "by new letters issued,".

SEC. 308. SECTION 3 PROGRAM—ALLOCATIONS.

Section 3(k)(1) of the Act (49 U.S.C. App. 1602(k)(1)) is amended to read as follows:

"(1) In general.—Of the amounts available for grants and loans under this section for fiscal years 1992, 1993, 1994, 1995, and 1996—

"(A) 40 percent shall be available for rail modernization;

"(B) 40 percent shall be available for construction of new fixed guideway systems and extensions to fixed guideway systems; and

"(C) 20 percent shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities.".

SEC. 309. SECTION 3 PROGRAM—RAIL MODERNIZATION FORMULA.

Section 3(k) of the Act (49 U.S.C. App. 1602(k)) is amended by adding at the end the following:

"(3) Rail Modernization Formula.—

"(A) Hold harmless for historic rail systems.—

"(i) In general.—Of the amounts available under paragraph (1)(A), the Secretary shall, in each of fiscal years 1992 through 1996, reserve for grants to historic rail systems $455,000,000 or the amount approved in an appropriations Act, whichever is less.

"(ii) Specific allocations.—The Secretary shall initially allocate—

"(I) 41 percent of the amount reserved in clause (i) to those two historic rail systems with shared responsibility for the operation and preservation of a regional commuter rail line that, taken together, would receive 49 percent under the apportionment formula specified in section 9(b)(2) if such formula was applied, solely for the historic rail systems, to the total amount available for allocation under this paragraph, with 14.63 percent of the amounts so allocated being reserved for the smaller of the two historic rail systems as measured by fixed guideway route miles; and

"(II) an amount equal to 2 percent of the amount reserved in clause (i) to that historic rail system that received funding for rail modernization under this section for only 2 of the 5 fiscal years 1986 through 1990.

"(iii) General allocations.—The Secretary shall allocate all amounts described in clause (i) that remain after making the allocations specified in clause (ii) so that each historic rail system, other than those specified under such clause, receives the higher of—

"(I) an amount that bears the same ratio to the total amount available for allocation under this subparagraph as the total amount of funding for rail modernization activities received during fiscal years 1984 through 1990 by that historic system bears to the total amount of funding for rail modernization received during fiscal years 1984 through 1990 by all historic rail systems, or

"(II) an amount that bears the same ratio to the total amount available for allocation under this subparagraph as the total amount of funding for rail modernization activities received during fiscal years 1988 through 1990 by that historic system bears to the total amount of funding for rail modernization received during fiscal years 1988 through 1990 by all historic rail systems.

The Secretary shall make such fair and equitable adjustments to the amounts received by historic rail systems under this clause as are necessary for the practicable administration of the program. Notwithstanding the allocations that would otherwise result under this clause, an historic rail system shall not receive less than the amount the system would receive if the apportionment formula specified under section 9(b)(2) were applied, solely for the historic rail systems, to the total amount available for allocation under this clause.

"(B) Remainder.—

"(i) Initial allocation.—After reserving amounts for historic rail systems as required by subparagraph (A), the Secretary shall allocate any amounts remaining available under paragraph (1)(A) that exceed the allocations made under subparagraph (A), but that do not exceed $525,000,000, as follows:

"(I) 50 percent shall be allocated among historic rail systems in accordance with the apportionment formula specified under section 9(b)(2); and

"(II) 50 percent shall be allocated among all other eligible systems in accordance with the apportionment formula specified under section 9(b)(2).

"(ii) Second allocation.—Any amounts available under paragraph (1)(A) in excess of the amounts allocated under subparagraph (A) and clause (i) of this subparagraph shall be *made available to all eligible systems in accordance with the apportionment formula specified under section 9(b)(2).*

"(C) APPORTIONMENT.—(i) On October 1 of each fiscal year, the Secretary shall apportion any amounts made available or authorized to be appropriated for that fiscal year (and any fiscal years remaining in the authorization period identified under paragraph (3)) among all eligible systems in accordance with the provisions of this paragraph. The Secretary shall publish apportionments of such authorized amounts on the apportionment date established by the preceding sentence.

"(ii) The Secretary shall apportion any amounts provided or approved for obligation in an appropriations Act to carry out paragraph (3)(A) for any fiscal year in accordance with the provisions of this paragraph not later than the 10th day following the date on which such funds were appropriated or October 1 of such fiscal year, whichever is later. The Secretary shall publish apportionments of such appropriated amounts on the apportionment date established by the preceding sentence.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'historic rail system' includes those rail systems that (I) received funding for rail modernization under this section for at least 2 of the 5 fiscal years 1986 through 1990, and (II) receive in fiscal year 1991 at least 0.5 percent of the total amount of funding made available under section 9(b)(2); and

"(ii) the term 'eligible systems' shall include, for a given fiscal year, all historic rail systems and all other fixed guideway systems placed in revenue service more than 10 years prior to such fiscal year. The term 'eligible system' may include, for a given fiscal year, a fixed guideway system not eligible under the preceding sentence if such system, prior to the beginning of such fiscal year, demonstrates to the satisfaction of the Secretary that the system has modernization needs that cannot be met adequately with amounts received under section 9(b)(2) of this Act. A fixed guideway system shall be considered to be placed in revenue service for purposes of this clause if a minimum operable segment of such system was so placed.".

SEC. 310. SECTION 3 PROGRAM—LOCAL SHARE.

Section 4(a) of the Act is amended by inserting at the end the following new sentence: "The remainder so provided may include the cost of rolling stock previously purchased if the applicant demonstrates to the satisfaction of the Secretary that—

"(1) such purchase was made solely with non-Federal funds;

"(2) such purchase would not have been made except for use on a planned extension that is eligible for assistance under section 3; and

"(3) the rolling stock so purchased is to be used on the extension for which the Federal grant is being requested.".

SEC. 311. SECTION 3—GRANDFATHERED JURISDICTIONS.

Section 3(a)(4) of the Act (49 U.S.C. App. 1602(a)(4)), as amended by section 307 of this title, is amended by adding at the end the following subparagraph:

"(F) All existing letters of intent, full funding agreements and letters of commitment, issued prior to the enactment of the Federal Transit Act of 1991, shall be continued in force.".

SEC. 312. CAPITAL GRANTS—INNOVATIVE TECHNIQUES AND PRACTICES.

Section 3(a)(1) of the Act (49 U.S.C. App. 1602(a)(1)) is amended by inserting before the semicolon the following: ", including grants to States and local public bodies for projects for the deployment of innovative techniques and methods in the management and operation of public transportation services".

SEC. 313. CAPITAL GRANTS—ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

Section 3(a)(1) of the Act (49 U.S.C. App. 1602(a)(1)) is amended by striking subparagraph (E) and inserting the following:

"(E) mass transportation services which are planned, designed, and carried out to meet the special needs of elderly persons and persons with disabilities, with such grants and loans being subject to all of the terms, conditions, requirements, and provisions applicable to grants and loans made under this section; and".

SEC. 314. CAPITAL GRANTS—ELIGIBLE ACTIVITIES.

Section 3(a)(1) of the Act (49 U.S.C. App. 1602(a)(1)) is amended by adding at the end tne following:

"(F) the development of corridors to support fixed guideway systems, including bus service improvements, marketing of bus service, protection of rights-of-way through acquisition, transportation system management improvements such as dedicated bus and high occupancy vehicle lanes and construction of park and ride lots, and any other improvements that the Secretary may determine would result in increased transit usage in the corridor.".

SEC. 315. CRITERIA FOR NEW STARTS.

Section 3(i) of the Act (49 U.S.C. App. 1602(i)) is amended to read as follows:

"(i) NEW START CRITERIA.—

"(1) DETERMINATIONS.—A grant or loan for construction of a new fixed guideway system or extension of any fixed guideway system may not be made under this section unless the Secretary determines that the proposed project—

"(A) is based on the results of an alternatives analysis and preliminary engineering;

"(B) is cost-effective;

"(C) is supported by an acceptable degree of local financial commitment, including evidence of stable and dependable funding sources to construct, maintain, and operate the system or extension.

"(2) CONSIDERATIONS.—In making determinations under this subsection, the Secretary—

"(A) shall consider the direct and indirect costs of relevant alternatives;

"(B) shall account for costs related to such factors as congestion relief, improved mobility, air pollution, noise pollution, congestion, energy consumption, and all associated ancillary and mitigation costs necessary to implement each alternative analyzed; and

"(C) shall identify and consider transit supportive existing land use policies and future patterns, and consider other factors including the degree to which the project increases the mobility of the transit dependent population or promotes economic development, and other factors that the Secretary deems appropriate to carry out the purposes of this Act.

"(3) GUIDELINES.—

"(A) IN GENERAL.—The Secretary shall issue guidelines that set forth the means by which the Secretary shall evaluate cost-effectiveness, results of alternatives analysis, and degree of local financial commitment for the purposes of paragraph (1).

"(B) COST-EFFECTIVENESS.—Cost-effectiveness thresholds shall be adjusted to account for inflation and to reflect differences in local land costs, construction costs, and operating costs.

"(C) FINANCIAL COMMITMENT.—The degree of local financial commitment shall be considered acceptable only if—

"(i) the proposed project plan provides for the availability of contingency funds that the Secretary determines to be reasonable to cover unanticipated cost overruns;

"(ii) each proposed local source of capital and operating funding is stable, reliable, and available within the proposed project timetable; and

"(iii) local resources are available to operate the overall proposed transit system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing transit services in order to operate the proposed project.

"(D) STABILITY ASSESSMENT.—In assessing the stability, reliability, and availability of proposed sources of local funding, the Secretary shall consider—

"(i) existing grant commitments;

"(ii) the degree to which funding sources are dedicated to the purposes proposed; and

"(iii) any debt obligations which exist or are proposed by the recipient for the proposed project or other transit purposes.

"(4) PROJECT ADVANCEMENT.—No project shall be advanced from alternatives analysis to preliminary engineering unless the Secretary finds that the proposed project meets the requirements of this section and there is a reasonable chance that the project will continue to meet these requirements at the conclusion of preliminary engineering.

"(5) EXCEPTIONS.—

"(A) IN GENERAL.—A new fixed guideway system or extension shall not be subject to the requirements of this subsection and the simultaneous evaluation of such projects in more than one corridor in a metropolitan area shall not be limited if (i) the project is located within an extreme or severe nonattainment area and is a transportation control measure, as defined by the Clean Air Act, that is required to carry out an approved State Implementation Plan, or (ii) assistance provided under this section accounts for less than $25,000,000 or less than ⅓ of the total cost of the project or an appropriate program of projects as determined by the Secretary.

"(B) EXPEDITED PROCEDURES.—In the case of a project that is (i) located within a nonattainment area that is not an extreme or severe nonattainment area, (ii) a transportation control measure, as defined in the Clean Air Act, and (iii) required to carry out an approved State Implementation Plan, the simultaneous evaluation of projects in more than one corridor in a metropolitan area shall not be limited and the Secretary shall make determinations under this subsection with expedited procedures that will promote timely implementation of the State Implementation Plan.

"(C) EXCLUSION FOR CERTAIN PROJECTS.—That portion of a project financed with highway funds made available under the Federal-Aid Highway Act of 1991 shall not be subject to the requirements of this subsection.

"(6) PROJECT IMPLEMENTATION.—A project funded pursuant to this subsection shall be implemented by means of a full funding contract.".

SEC. 316. ADVANCE CONSTRUCTION; TECHNICAL AMENDMENT RELATED TO INTEREST COST.

Section 3(l)(2)(B) of the Act (49 U.S.C. App. 1602(l)(2)(B)) is amended by striking all after "greater than" and inserting "the most favorable interest terms reasonably available for the project at the time of borrowing.".

SEC. 317. FEDERAL SHARE FOR ADA AND CLEAN AIR ACT COMPLIANCE.

Section 12 of the Act (49 U.S.C. 1608) is amended by inserting at the end thereof the following new subsection:

"(k) FEDERAL SHARE FOR CERTAIN PROJECTS.—The Federal grant for a project to be assisted under this Act that involves the acquisition of bus-related equipment required by the Clean Air Act or the Americans with Disabilities Act of 1990 shall be 90 percent of the net project cost of such equipment attributable to compliance with such Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs attributable to equipment specified in the preceding sentence.".

SEC. 318. CAPITAL GRANTS—DELETION OF EXTRANEOUS MATERIAL.

Section 4 of the Act (49 U.S.C. App. 1603) is amended—

(1) by inserting at the end of subsection (a) the following: "If the Secretary gives special consideration to projects that include more than the minimum non-Federal share of the net project cost required under this subsection, the Secretary shall give reasonable consideration to differences in the fiscal capacity of State and local governments."; and

(2) by striking subsections (b) through (g) and subsection (i) and redesignating subsection (h) as subsection (b).

SEC. 319. COMPREHENSIVE TRANSPORTATION STRATEGIES.

Section 8 of the Act (49 U.S.C. App. 1607) is amended to read as follows:

"SEC. 8. COMPREHENSIVE TRANSPORTATION STRATEGIES.

"(a) METROPOLITAN TRANSPORTATION STRATEGIES.—

"(1) IN GENERAL.—It is in the national interest to encourage and promote the development of transportation systems that integrate various modes of transportation and efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. The Secretary shall cooperate with State and local officials in metropolitan areas in the development of comprehensive transportation strategies for achieving this objective.

"(2) METROPOLITAN PLANNING ORGANIZATIONS.—

"(A) IN GENERAL.—A metropolitan planning organization shall be designated for each urbanized area of more than 50,000 in population by agreement among the Governor and units of general purpose local government representing at least 75 percent of the affected population, including the central city or cities, as defined by the Bureau of the Census. In those metropolitan areas eligible for designation as transportation management areas in accordance with subparagraph (D), the metropolitan planning organization shall include local elected officials, officials of agencies that administer or operate major modes of transportation in the metropolitan area, (including, at a minimum, all transportation agencies that were included as of June 1, 1991) and appropriate State officials. For purposes of this section, the term 'metropolitan area' shall mean an area for which one metropolitan planning organization is responsible.

"(B) CONTINUING DESIGNATION.—Designations of metropolitan planning organizations, whether made under this or earlier provisions of law, shall remain in effect until revoked by agreement among the Governor and the affected units of general purpose local government, or as otherwise provided under State or local procedures, except that a metropolitan planning organization (i) shall be redesignated within a period of 12 months if the metropolitan area is designated as a transportation management area under subparagraph (D), and (ii) metropolitan planning organizations may be reorganized by agreement among the Governor and units of general purpose local government representing at least 75 percent of the affected population including the central city or cities, as defined by the Bureau of the Census, as appropriate to carry out the provisions of this Act. The Secretary shall establish practicable procedures and timetables that the Secretary determines to be appropriate for metropolitan planning organizations to meet the requirements of subparagraph (A).

"(C) RESPONSIBILITY OF THE GOVERNOR.—When a metropolitan planning organization is designated or reorganized, the Governor shall ensure that the metropolitan planning organization is structured to—

"(i) give balanced assessment to all modes of transportation, including roadway and public transit facilities;

"(ii) give full consideration to the need for mobility of people and goods into and through central cities within the metropolitan area; and

"(iii) otherwise carry out the metropolitan planning organization's responsibilities under Federal law. The Governor shall certify to the Secretary that the requirements of this subparagraph have been met.

"(D) TRANSPORTATION MANAGEMENT AREAS.—The Secretary shall publish and annually update a list of those metropolitan areas that—

"(i) have populations of more than 250,000; or

"(ii) are nonattainment areas under the Clean Air Act (42 U.S.C. 7401 et seq.).

The Secretary shall designate such areas to be transportation management areas. The Secretary may designate additional metropolitan areas to be transportation management areas upon the request of the Governor and the metropolitan planning organization. Such additional metropolitan areas may include ecologically fragile areas of national significance that are expected to be significantly affected by transportation decisions. The designation of a transportation management area shall remain in effect until revoked by the Secretary. The metropolitan planning organization in a transportation management area shall carry out a continuing, cooperative and comprehensive transportation planning and programming process in cooperation with the State and transit operators and have such additional authorities and responsibilities as are specified in this Act.

"(E) TRANSITIONAL PROVISION.—The Secretary shall designate as transportation management areas—

"(i) not less than 20 percent of the metropolitan areas on the list in subparagraph (D) within 1 year after the date of enactment of this section;

"(ii) not less than 40 percent of such areas within 2 years after the date of enactment of this section;

"(iii) not less than 60 percent of such areas within 3 years after the date of enactment of this section;

"(iv) not less than 80 percent of such areas within 4 years after the date of enactment of this section; and

"(v) all such areas thereafter.

To the extent the Secretary deems practicable after taking into account local circumstances, the Secretary shall exceed the percentages required in this subparagraph and give priority to designation of metropolitan areas that have the most severe problems of air quality and traffic congestion. The Secretary shall designate all nonattainment areas that are classified under the Clean Air Act as moderate, serious, severe, or extreme nonattainment areas for ozone or serious nonattainment areas for carbon monoxide within 2 years after the date of enactment of the Federal Transit Act of 1991.

"(3) METROPOLITAN AREA BOUNDARIES.—

"(A) IN GENERAL.—For the purposes of this Act, the boundaries of any metropolitan area shall be determined by agreement between the metropolitan planning organization and the Governor. Each metropolitan area shall include at least the existing urbanized area and the contiguous area that can reasonably be expected to be urbanized within the subsequent 20-year period.

"(B) TREATMENT OF LARGE URBAN AREAS.—More than 1 metropolitan planning organization may be designated within a metropolitan statistical area, as defined by the Bureau of the Census, if—

"(i) more than 1 metropolitan planning organization was designated within such area on January 1, 1991; and

"(ii) the Secretary determines that the size and complexity of the urbanized area make designation of more than 1 metropolitan planning organization appropriate.

If more than 1 metropolitan planning organization has authority within a metropolitan statistical area, appropriate provision, as determined by the Secretary, shall be made to coordinate the metropolitan transportation strategies within such urban area.

"(C) INCLUSION OF CLEAN AIR NONATTAINMENT AREAS.—Any area that—

"(i) is found to be in nonattainment for any transportation-related pollutant under the Clean Air Act; or

"(ii) is determined by the Governor and the metropolitan planning organization to be likely to be significantly affected by air pollution within a reasonable period of time shall be included within the boundaries of the appropriate metropolitan area, as determined by the Governor and the metropolitan planning organization. If more than one metropolitan planning organization has authority within a nonattainment area, appropriate provision, as determined by the Secretary, shall be made to coordinate the metropolitan transportation strategies within such nonattainment area.

"(D) COORDINATION IN MULTI-STATE AREAS.—

"(i) IN GENERAL.—The Secretary shall establish such requirements as the Secretary deems appropriate to encourage Governors and metropolitan planning organizations with responsibility for a portion of a multi-State Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area, as defined by the Bureau of the Census, to provide coordinated transportation planning for the entire Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area.

"(ii) COMPACTS.—The consent of the Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

"(4) DEVELOPMENT OF TRANSPORTATION STRATEGY.—

"(A) IN GENERAL.—Each metropolitan planning organization shall prepare and update periodically, according to a schedule that the Secretary determines to be appropriate, a metropolitan transportation strategy for its metropolitan area as provided in this section. In developing the strategy, the metropolitan planning organization shall consider the environmental, energy, land use, and other regional effects of all transportation projects to be undertaken within the metropolitan area, without regard to funding source.

"(B) PUBLICATION OF STRATEGIES.—A metropolitan transportation strategy shall be—

"(i) published or otherwise made readily available for public review; and

"(ii) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish as appropriate for the publication and submission of metropolitan transportation strategies to carry out this section.

"(C) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In nonattainment areas for transportation-related pollutants, the metropolitan planning organization shall coordinate the development of a metropolitan transportation strategy with the process for development of the transportation measures of the State Implementation Plan required by the Clean Air Act.

"(D) PARTICIPATION BY INTERESTED PARTIES.—Prior to approving a metropolitan trans-

portation strategy, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation and other interested parties with a reasonable opportunity to participate in the development of the strategy, in a manner that the Secretary deems appropriate.

"(E) CERTIFICATION OF COMPLIANCE.—The Secretary shall assure that each metropolitan planning organization is carrying out its responsibilities under applicable provisions of Federal law. The Secretary shall, not less frequently than every 3 years, provide certification to those metropolitan planning organizations that, in the opinion of the Secretary, are carrying out applicable requirements of Federal law. If the Secretary finds, after reasonable notice and opportunity for hearing, that a metropolitan planning organization is not carrying out its responsibilities under applicable provisions of Federal law, the Secretary shall deny certification and, until corrective action satisfactory to the Secretary is taken, may suspend or disapprove in whole or in part the expenditure within the metropolitan area of funds made available under the Federal-Aid Highway Act of 1991 or this Act. The Secretary shall not (i) withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization for determining the feasibility of private enterprise participation in accordance with section 8(e), or (ii) otherwise impede a metropolitan planning organization's implementation of such policies and criteria.

"(5) CONTENTS OF STRATEGY.—A metropolitan transportation strategy under this section shall be in a form that the Secretary determines to be appropriate and shall, at a minimum—

"(A) identify transportation facilities (including but not necessarily limited to major roadways, mass transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions, such as—

"(i) moving goods within the metropolitan area and among distant markets;

"(ii) enabling people to move quickly to and from home, jobs and other destinations; and

"(iii) connecting complementary modes of transportation (such as highways, transit systems, ports, railroads and airlines);

"(B) assess major demands on the metropolitan transportation system, projected over the subsequent 20-year period;

"(C) set forth a long-range strategy for meeting metropolitan area personal mobility and goods transportation needs, including State and local actions to manage travel demand, improve transportation operations and management, increase the efficiency and effectiveness of existing facilities, or provide new transportation capacity; and

"(D) explain how proposed transportation decisions will—

"(i) achieve compliance with applicable requirements of the Clean Air Act, the Clean Water Act, and other environmental and resource conservation laws;

"(ii) further applicable Federal, State and local energy conservation programs, goals and objectives; and

"(iii) affect other important social, economic and environmental objectives of the metropolitan area as reflected in publicly adopted plans, such as those concerning housing, community development, and historic preservation;

"(E) explain—

"(i) the extent to which State and local policies regarding land use and transportation will affect metropolitan-wide mobility; and

"(ii) how proposed transportation decisions will affect future travel demand, growth in vehicle use, mobile source emissions, and land use and development, taking into consideration the provisions of all applicable short-term and long-term land use and development plans;

"(F) include a financial plan that demonstrates how the metropolitan transportation strategy can be implemented, which plan shall indicate resources from all sources that are reasonably expected to be made available to carry out the strategy, and recommend any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls, and congestion pricing;

"(G) project capital investment and other measures necessary to—

"(i) ensure the preservation of the existing metropolitan transportation system, including requirements for operations, resurfacing, restoration and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization and rehabilitation of existing and future public transit facilities; and

"(ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods; and

"(H) indicate as appropriate proposed transportation enhancement activities.

"(6) ABBREVIATED STRATEGIES FOR CERTAIN AREAS.—For metropolitan areas not designated as transportation management areas under paragraph (2)(D), the Secretary may provide for the development of abbreviated metropolitan transportation strategies that the Secretary determines to be appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems, including transportation related air quality problems, in such areas.

"(7) STATEWIDE STRATEGY.—The State shall develop a statewide transportation strategy, in a form acceptable to the Secretary, that shall take into account the transportation needs of areas for which no metropolitan planning organization has been designated.

"(b) TRANSPORTATION IMPROVEMENT PROGRAMS.—

"(1) DEVELOPMENT OF PROGRAMS.—

"(A) IN GENERAL.—The metropolitan planning organization, in cooperation with the State and relevant transit operators, shall develop and submit to the Secretary for review a transportation improvement program for the ensuing period of not less than 3 years and, to the extent practicable, for subsequent periods of not less than 3 years.

"(B) CONTENTS.—The program shall—

"(i) include all projects within the metropolitan area proposed for funding pursuant to the Federal-Aid Highway Act of 1991 and this Act, except as provided in clause (iii);

"(ii) conform with the approved metropolitan transportation strategy and the State Implementation Plan required under the Clean Air Act; and

"(iii) include a project, or an identified phase of a project, only if full funding for such project or project phase can reasonably be anticipated to be available within the period of time contemplated for completion of the project and, in the case of a major project to expand the transportation capacity, an appropriate range of alternatives has been analyzed pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

"(2) PERIODIC REVIEW AND REVISION.—The metropolitan planning organization shall update or reapprove the program not less frequently than annually, except that the Secretary may provide for a less frequent updating for areas that are not designated to be transportation management areas, as the Secretary determines to be appropriate. A metropolitan planning organization may amend the program at any time, if the amendment is consistent with the metropolitan transportation strategy.

"(3) NOTICE AND COMMENT.—Prior to approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

"(4) PRIORITY PROJECTS.—The program shall identify priority projects reflecting projected funding and the objectives of the metropolitan transportation strategy that shall be carried out for each relevant programming period.

"(5) STATE PROGRAMS.—The Governor shall develop and submit to the Secretary, in a form acceptable to the Secretary, a transportation improvement program covering a period of not less than 3 years for areas for which no metropolitan planning organization has been designated and shall include in such program the projects proposed for funding in both metropolitan and nonmetropolitan areas under sections 108 and 109 of the Federal-Aid Highway Act of 1991.

"(c) PROJECT SELECTION WITHIN TRANSPORTATION MANAGEMENT AREAS.—

"(1) APPROVAL OF PROJECTS.—For projects within a transportation management area, the metropolitan planning organization shall submit to the Governor and the Secretary a list of highway and transit projects and activities that the metropolitan planning organization has approved for funding in the ensuing period, which shall not exceed 2 years. The list shall specify for each approved project the programmatic source of Federal assistance available for approval by the metropolitan planning organization. Federal assistance required for the approved projects and activities shall not exceed Federal assistance made available for project selection by the metropolitan planning organization for that period under section 106 of the Federal-Aid Highway Act of 1991 and sections 3 and 9 of this Act. When submitting a list of projects and activities under this paragraph, the metropolitan planning organization shall certify to the Secretary that the list—

"(A) was developed in accordance with a continuing, cooperative and comprehensive planning process that the Secretary has found satisfactory under subsection (a)(4)(E); and

"(B) is consistent with a transportation improvement program that is submitted to the satisfaction of the Secretary under subsection (b)(2).

"(2) REQUIREMENT OF APPROVAL.—Notwithstanding any other provision of law, no project or activity to be carried out with Federal participation pursuant to the Federal-Aid Highway Act of 1991 or this Act may be approved within a transportation management area unless it is included in the list of projects approved by the metropolitan planning organization under paragraph (1).

"(3) EXCEPTIONS.—(A) Paragraph (2) shall not apply to projects or activities that in the determination of the Secretary, are mandated by the Americans with Disabilities Act of 1990.

"(B) Nothing in this section confers on a metropolitan planning organization the authority to intervene in the management of a transportation agency.

"(4) RECAPTURE.—Amounts made available under the Federal-Aid Highway Act of 1991 or this Act for project selection by a metropolitan planning organization in a transportation management area shall remain available for a period of 3 years following the close of the fiscal year for which such funds are made available to the

metropolitan area. The Secretary shall recapture any funds not obligated during such period and reallocate the funds nationally as soon as practicable according to the formula for the program under which the funds were made available. For the purposes of this paragraph, funds shall be considered to be obligated if the funds are reserved to help finance a project for which an application is pending under section 3.

"(5) Transfer of Funds.—Funds made available for a highway project under this Act shall be transferred to and administered by the Federal Highway Administration in accordance with the requirements of the Federal-Aid Highway Act of 1991. Funds made available for a transit project under the Federal-Aid Highway Act of 1991 shall be transferred to and administered by the Secretary in accordance with the requirements of this Act.

"(d) Grants.—

"(1) Eligibility.—The Secretary is authorized to contract for and make grants to States and local public bodies and agencies thereof, or enter into agreements with other Federal departments and agencies, for the planning, engineering, design, and evaluation of public transportation projects, and for other technical studies. Activities assisted under this section may include—

"(A) studies relating to management, operations, capital requirements, and economic feasibility;

"(B) evaluation of previously funded projects; and

"(C) other similar or related activities preliminary to and in preparation for the construction, acquisition or improved operation of mass transportation facilities and equipment.

"(2) Criteria.—A grant, contract or working agreement under this section shall be made in accordance with criteria established by the Secretary.

"(e) Private Enterprise.—The plans and programs required by this section shall encourage to the maximum extent feasible the participation of private enterprise. Where facilities and equipment are to be acquired which are already being used in mass transportation service in the urban areas, the program must provide that they shall be so improved (through modernization, extension, addition, or otherwise) that they will better serve the transportation needs of the area.

"(f) Use for Comprehensive Planning.—

"(1) In general.—The Secretary shall ensure, to the extent practicable, that amounts made available under section 21(c)(1) for the purposes of this section are used to support balanced and comprehensive transportation planning that takes into account the relationships among land use and all transportation modes, without regard to the programmatic source of the planning funds.

"(2) Formula allocation to all metropolitan areas.—The Secretary shall apportion 80 percent of the amounts made available under section 21(c)(1) to States in the ratio that the population in urbanized areas, in each State, bears to the total population in urbanized areas, in all the States as shown by the latest available decennial census, except that no State shall receive less than ½ of 1 percent of the amount apportioned under this paragraph. Such funds shall be allocated to metropolitan planning organizations designated under section 8(a)(2)(A) by a formula, developed by the State in cooperation with metropolitan planning organizations and approved by the Secretary, that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in section 8 of this Act. The State shall make such funds available promptly to eligible metropolitan planning organizations according to procedures approved by the Secretary.

"(3) Supplemental allocation to transportation management areas.—The Secretary shall apportion 20 percent of the amounts made available under section 21(c)(1) to States to supplement allocations under subparagraph (B) for metropolitan planning organizations in transportation management areas. Such funds shall be allocated according to a formula that reflects the additional costs of carrying out planning, programming, and project selection responsibilities under this section in such areas.

"(4) Hold harmless.—The Secretary shall ensure, to the maximum extent practicable, that no metropolitan planning organization is allocated less than the amount it received by administrative formula under section 8 of this Act in fiscal year 1991. To comply with the previous sentence, the Secretary is authorized to make a pro rata reduction in other amounts made available to carry out section 21(c).

"(5) Federal share payable.—The Federal share payable for activities under this paragraph shall be 75 percent except where the Secretary determines that it is in the Federal interest not to require a State or local match.".

SEC. 320. SECTION 9 PROGRAM—ALLOCATIONS.

Section 9(a) of the Act (49 U.S.C. App. 1607a(a)), is amended—

(1) in paragraph (1), by striking "8.64" and inserting "8.90"; and

(2) in paragraph (2), by striking "88.43" and inserting "91.10".

SEC. 321. SECTION 9 FORMULA GRANT PROGRAM—DISCRETIONARY TRANSFER OF APPORTIONMENT.

Section 9 of the Act (49 U.S.C. App. 1607a) is amended—

(1) in subsection (j)(1), by inserting after the first sentence the following: "In a transportation management area designated pursuant to section 8(a)(2)(D), grants for construction projects under this section also shall be available for highway projects if—

"(A) such use is approved by the metropolitan planning organization in accordance with section 8(c) after appropriate notice and opportunity for comment and appeal is provided to affected transit providers; and

"(B) in the determination of the Secretary, appropriate provision is made for investments mandated by the Americans with Disabilities Act of 1990."; and

(2) by adding at the end of subsection (j) the following:

"(3) Grants for construction projects under this section may be available for highway projects only if funds used for the State or local share portion of such highway projects are eligible to fund either highway or transit projects, or, when in the determination of the Secretary there exists under State or local law a sufficient amount of funds from a dedicated source which is available to fund local transit projects.".

SEC. 322. SECTION 9 PROGRAM—ELIMINATION OF INCENTIVE TIER.

Section 9 of the Act (49 U.S.C. App. 1607a) is amended—

(1) in subsection (b)(2), by striking "95.61 per centum of the" and inserting "The";

(2) in subsection (b), by striking paragraph (3);

(3) in subsection (c)(2), by striking "90.8 per centum of the" and inserting "The"; and

(4) by striking subsection (c)(3).

SEC. 323. SECTION 9 PROGRAM—ENERGY EFFICIENCY.

Section 9(b) of the Act (49 U.S.C. 1607a(b)) is amended by adding at the end the following:

"(3) If a designated recipient under this section demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce equipment use but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under paragraph (2)(B) shall not be reduced as a result of such actions.".

SEC. 324. SECTION 9 PROGRAM—APPLICABILITY OF SAFETY PROVISIONS.

Section 9(e)(1) of the Act (49 U.S.C. App. 1607a(e)(1)) is amended in the first sentence by striking "and 19", and inserting "19, and 22".

SEC. 325. SECTION 9 PROGRAM—CERTIFICATIONS.

(a) Annual Submissions.—Section 9(e)(2) of the Act (49 U.S.C. App. 1607a(e)(2)) is amended by inserting after the first sentence the following: "Such certifications and any additional certifications required by law shall be consolidated into a single document to be submitted annually as part of the grant application under this section. The Secretary shall annually publish a list of all required certifications in conjunction with section 9(q).".

(b) Streamlined Procedures.—Section 9(e)(3) of the Act (49 U.S.C. App. 1607a(e)(3)) is amended by adding at the end the following: "The Secretary shall establish streamlined administrative procedures to govern compliance with the certification requirement under subparagraph (B) with respect to track and signal equipment used in ongoing operations.".

SEC. 326. SECTION 9 PROGRAM—PROGRAM OF PROJECTS.

Section 9(f) of the Act (49 U.S.C. App. 1607a(f)) is amended—

(1) at the end of paragraph (3), by striking "and";

(2) at the end of paragraph (4), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(5) assure that the proposed program of projects provides for the maximum feasible coordination of public transportation services assisted under this section with transportation services assisted by other Federal sources.".

SEC. 327. FERRY ROUTES.

Section 9 of the Act (49 U.S.C. App. 1607a) is amended by adding at the end thereof the following new subsection:

"(r) Ferry Services.—A vessel used in ferryboat operations funded under this section that is part of a statewide ferry system may from time to time be operated outside of the urbanized area in which service is provided to accommodate periodic maintenance so long as the mass transportation service funded under this section is not thereby significantly reduced.".

SEC. 328. SECTION 9 PROGRAM—CONTINUED ASSISTANCE FOR COMMUTER RAIL IN SOUTHERN FLORIDA.

Section 329 of the Federal Mass Transportation Act of 1987 (101 Stat. 239) is amended—

(1) in the first sentence, by striking all that follows "year" and inserting a period; and

(2) in the second sentence, by striking all that follows "service" and inserting a period.

SEC. 329. SECTION 11—UNIVERSITY TRANSPORTATION CENTERS.

Section 11 of the Act (49 U.S.C. App. 1607c) is amended—

(1) in the third sentence of subsection (a), by inserting "safety," after "engineering,";

(2) by striking paragraph (7) of subsection (b) and inserting the following:

"(7) Program Coordination.—The Secretary shall provide for coordination of the research, education, training and technology transfer in the research centers, the dissemination of the results of the research, and a clearinghouse between the centers and the transportation industry. The Secretary shall review and evaluate the programs carried out by the grant recipients at least annually.";

(3) by striking paragraph (8) of subsection (b) and inserting the following:

"(8) Administration.—Up to 1 percent of the funds made available from any source to carry out this subsection shall be available to the Sec-

retary for the administrative expenses in connection with the performance of such administrative responsibilities."; and

(4) by adding at the end of subsection (b) the following:

"(11) AVAILABILITY OF RESEARCH FUNDS.—Notwithstanding any other provision of law, funds appropriated or otherwise made available to the Department of Transportation in any Act for the purpose of transportation research may, at the discretion of the Secretary, be made available to one or more of the transportation research centers for the conduct of research compatible with the research conducted in such centers pursuant to authorizations under this Act or from the Highway Trust Fund.

"(12) NATIONAL CENTERS.—To accelerate the involvement and participation of minorities and women in transportation-related professions, particularly in the science, technology, and engineering disciplines, the Secretary shall make grants to colleges or universities to establish three additional National Centers for Transportation Management, Research, and Development. The National Centers shall give special attention to the design, development, and implementation of research, training, and technology transfer activities to increase the number of highly skilled minorities and women in the work force. The Centers shall meet all guidelines and criteria applicable to Centers under this subsection. In awarding the grants, the Secretary shall consider the commitment which the college or university demonstrates to enrollment of minorities and women.".

SEC. 330. RULEMAKING.

Section 12(i) of the Act (49 U.S.C. App. 1608(i)) is amended by adding at the end the following:

"(3) LIMITATION.—The Secretary may not use any other method to propose or implement rules governing activities under this Act except as provided under this subsection.".

SEC. 331. SECTION 12—TRANSFER OF FACILITIES AND EQUIPMENT.

Section 12 of the Act (49 U.S.C. App. 1608) is amended by adding at the end the following:

"(l) TRANSFER OF CAPITAL ASSET.—

"(1) AUTHORIZATION.—If a recipient determines that facilities and equipment acquired with assistance under this Act no longer are needed for their original purposes, the Secretary may authorize the transfer of such assets to any public body to be used for any public purpose, with no further obligation to the Federal Government, on condition that any such facilities (including land) remain in public use for a period of not less than 5 years after the date of the transfer.

"(2) DETERMINATION.—Before authorizing a transfer under paragraph (1) for any public purpose other than mass transportation, the Secretary shall first determine that—

"(A) there are no purposes eligible for assistance under this Act for which the asset should be used;

"(B) the overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

"(C) in the case of facilities (including land), the Secretary determines through an appropriate screening or survey process that there is no interest in acquiring the asset for Federal use.

"(3) DOCUMENTATION.—Where the Secretary finds that a transfer is warranted, the Secretary shall set forth in writing the rationale for the decision that the transfer is appropriate under the standards in paragraph (2).

"(4) RELATION TO OTHER PROVISIONS.—The provisions of this section shall be in addition to and not in lieu of any other provision of law governing use and disposition of facilities and equipment under an assistance agreement.".

SEC. 332. SPECIAL PROCUREMENT.

Section 12 of the Act (49 U.S.C. App. 1608) is amended by adding at the end the following:

"(m) SPECIAL PROCUREMENT INITIATIVES.—

"(1) TURNKEY SYSTEM PROCUREMENTS.—

"(A) IN GENERAL.—In order to advance new technologies and lower the cost of constructing new mass transportation systems, the Secretary may allow the solicitation for a turnkey system project to be funded under this Act to be conditionally awarded before Federal requirements have been met on the project so long as the award is made without prejudice to the implementation of those Federal requirements. Federal financial assistance under this Act may be made available for such a project when the recipient has complied with relevant Federal requirements.

"(B) INITIAL DEMONSTRATION PHASE.—In order to develop regulations applying generally to turnkey system projects, the Secretary is authorized to approve not to exceed 4 projects for an initial demonstration phase. The results of such demonstration projects shall be taken into consideration in the development of the regulations implementing this subsection.

"(C) TURNKEY SYSTEM PROJECT DEFINED.—As used in this subsection, the term 'turnkey system' means a vendor-specific project under which a recipient contracts with a vendor to build a transit system that meets specific performance criteria and which is operated by the vendor for a period of time.

"(2) MULTIYEAR ROLLING STOCK PROCUREMENTS.—

"(A) IN GENERAL.—A recipient procuring rolling stock with Federal financial assistance under this Act may enter into a multiyear agreement for the purchase of such rolling stock and replacement parts pursuant to which the recipient may exercise an option to purchase additional rolling stock or replacement parts for a period not to exceed 5 years from the date of the original contract.

"(B) CONSORTIA.—The Secretary shall permit 2 or more recipients to form a consortium (or otherwise act on a cooperative basis) for purposes of procuring rolling stock in accordance with this paragraph and other Federal procurement requirements.".

SEC. 333. SECTION 16—ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

Section 16 of the Act (49 U.S.C. App. 1612) is amended—

(1) by striking "elderly and handicapped persons" each time the phrase appears and inserting "elderly persons and persons with disabilities";

(2) in subsection (b)(2), by striking "to private nonprofit corporations and associations" and all that follows through "inappropriate," and inserting "to the Governor of each State for allocation to private nonprofit organizations and public bodies approved by the State to coordinate transportation services to elderly persons and persons with disabilities for the specific purpose of assisting such organizations and public bodies to provide transportation services to elderly persons and persons with disabilities,";

(3) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively; and

(4) by inserting after subsection (b) the following:

"(c)(1) Funds made available for purposes of subsection (b) may be used for transportation projects to assist in the provision of transportation services for elderly persons and persons with disabilities which are included in a State program of projects. Such programs shall be submitted annually to the Secretary for approval and shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Federal sources.

"(2) Sums made available for expenditure for purposes of subsection (b) shall be apportioned to the States on the basis of a formula administered by the Secretary which shall take into consideration the number of elderly persons and persons with disabilities in each State.

"(3) Any amounts of a State's apportionment under this subsection that remain available for obligation at the beginning of the 90-day period before the expiration of the period of availability of such amounts shall be available to the Governor for transfer to supplement funds apportioned to the State under section 18(a) or section 9(d).

"(4) The Secretary shall, within 60 days following the enactment of the Federal Transit Act of 1991, promulgate regulations to allow vehicles purchased under this section to be leased to local public bodies and agencies for the purpose of improving transportation services designed to meet the special needs of elderly persons and persons with disabilities.".

SEC. 334. MEAL DELIVERY SERVICE TO HOMEBOUND PERSONS.

Section 16 of the Act (49 U.S.C. App. 1612) is amended by adding at the end the following:

"(g) MEAL DELIVERY SERVICE TO HOMEBOUND PERSONS.—In order to carry out subsection (a), the Secretary shall authorize mass transportation service providers receiving assistance under this section or section 18(a) to coordinate and assist in providing meal delivery service for homebound persons on a regular basis, if the activities authorized do not—

"(1) conflict with the provision of mass transportation services; or

"(2) result in a reduction of service to mass transportation passengers.".

SEC. 335. SECTION 18—TRANSFER OF FACILITIES AND EQUIPMENT.

Section 18 of the Act (49 U.S.C. App. 1614) is amended—

(1) by striking subsection (g) and redesignating subsection (h) as subsection (g); and

(2) by adding at the end the following:

"(h) TRANSFER OF FACILITIES AND EQUIPMENT.—In addition to the transfer authority under section 12(k), in administering this section, the State may transfer facilities and equipment acquired with assistance under this section or section 16(b) to any recipient eligible to receive assistance under this Act if the equipment or facilities continues to be used in accordance with the requirements of this section or section 16(b), as appropriate.".

SEC. 336. SECTION 18—GRANTS TO OFFSET AMTRAK LOSSES.

Section 18 of the Act (49 U.S.C. App. 1614) is amended by adding at the end the following:

"(i) AMTRAK LOSSES.—The amounts apportioned under subsection (a) to Maine, South Dakota, and Oklahoma may be used by such State to offset operating losses incurred by Amtrak in any calendar year as a result of providing passenger rail service to such State on the basis of an application pursuant to section 403 of the Rail Passenger Service Act (45 U.S.C. 563), and in conjunction with cost-sharing under subsection (b) of such section. Not more than 50 percent of a State's share of the operating losses incurred by Amtrak in such State may be offset with funds available under this section.".

SEC. 337. HUMAN RESOURCES PROGRAM SUPPORT.

Section 20 of the Act (49 U.S.C. App. 1616) is amended—

(1) by inserting "(a) IN GENERAL.—" before the first sentence; and

(2) by adding at the end the following:

"(b) USE OF FUNDS.—The Secretary is authorized to retain any funds returned to the Secretary in connection with a grant or contract under subsection (a), and such funds may continue to be used for the purpose of subsection (a).".

SEC. 338. AUTHORIZATIONS.

Section 21 of the Act (49 U.S.C. App. 1617) is amended to read as follows:

"SEC. 21. AUTHORIZATIONS.

"(a) FORMULA GRANT PROGRAMS.—

"(1) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out sections 9B, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, and substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, $1,070,500,000 for the fiscal year 1992, $1,220,000,000 for the fiscal year 1993, $1,300,000,000 for the fiscal year 1994, $1,450,000,000 for the fiscal year 1995, and $1,565,000,000 for the fiscal year 1996, to remain available until expended.

"(2) AUTHORIZED TO BE APPROPRIATED FROM THE TRUST FUND.—In addition to the amounts specified in paragraph (1), there are hereby authorized to be appropriated from the Transit Account of the Highway Trust Fund to carry out sections 9B, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, and substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, $450,000,000 for the fiscal year 1992, $525,000,000 for the fiscal year 1993, $550,000,000 for the fiscal year 1994, $400,000,000 the fiscal year 1995, $300,000,000 for the fiscal year 1996, to remain available until expended.

"(3) FROM GENERAL FUNDS.—In addition to the amounts specified in paragraphs (1) and (2), there are hereby authorized to be appropriated to carry out sections 9, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, and substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, $990,000,000 for the fiscal year 1992, $862,000,000 for the fiscal year 1993, $801,000,000 for the fiscal year 1994, $981,500,000 for the fiscal year 1995, and $1,160,000,000 for the fiscal year 1996, to remain available until expended.

"(b) SECTION 3 DISCRETIONARY AND FORMULA GRANTS.—

"(1) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out section 3 of this Act, $535,000,000 for the fiscal year 1992, $580,000,000 for the fiscal year 1993, $680,000,000 for the fiscal year 1994, $750,000,000 for the fiscal year 1995, and $835,000,000 for the fiscal year 1996, to remain available until expended.

"(2) FROM GENERAL FUNDS.—In addition to the amounts specified in paragraph (1), there are hereby authorized to be appropriated to carry out section 3 of this Act, $775,000,000 for the fiscal year 1992, $780,000,000 for the fiscal year 1993, $798,600,000 for the fiscal year 1994, $828,900,000 for the fiscal year 1995, and $850,400,000 for the fiscal year 1996, to remain available until expended.

"(3) CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant or contract with funds made available under subsection (a)(1) or (b)(1) shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project. Approval by the Secretary of a grant or contract with funds made available under subsection (a)(2), (a)(3) or (b)(2) shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project only to the extent that amounts are provided in advance in appropriations Acts.

"(c) SET-ASIDE FOR PLANNING, PROGRAMMING AND RESEARCH.—Before apportionment in each fiscal year of the funds made available or appropriated under subsection (a), an amount equivalent to 3.0 percent of funds made available or appropriated under subsections (a) and (b), and appropriated under the National Capital Transportation Act of 1969 shall be made available until expended as follows:

"(1) 45 percent of such funds shall be made available for metropolitan planning activities under section 8(f);

"(2) 5 percent of such funds shall be made available to carry out section 18(h);

"(3) 20 percent of such funds shall be made available to carry out the State program under section 26(a); and

"(4) 30 percent of such funds shall be made available to carry out the national program under section 26(b).

"(d) OTHER SET-ASIDES.—Before apportionment in each fiscal year of the funds made available or appropriated under subsection (a), of the funds made available or appropriated under subsections (a) and (b) and appropriated under the National Capital Transportation Act of 1969—

"(1) not to exceed an amount equivalent to 1.22 percent shall be available for administrative expenses to carry out section 12(a) of this Act and shall be available until expended;

"(2) not to exceed an amount equivalent to 1.5 percent shall be available for transportation services to elderly persons and persons with disabilities pursuant to the formula under section 16(b) of this Act, to be available until expended; and

"(3) $5,000,000 shall be available for the purposes of section 11(b) relating to university transportation centers for each of fiscal years 1992 through 1996.

"(e) COMPLETION OF INTERSTATE TRANSFER TRANSIT PROJECTS.—Of the amounts remaining available each year under subsections (a) and (b), after allocation pursuant to subsections (c) and (d), for substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, there shall be available $160,000,000 for fiscal year 1992 and $164,843,000 for fiscal year 1993.

"(f) SET-ASIDE FOR RURAL TRANSPORTATION.—An amount equivalent to 6 percent of the amounts remaining available each year under subsection (a), after allocation pursuant to subsections (c), (d), and (e), shall be available pursuant to the formula under section 18, to remain available until expended.

"(g) SECTION 9 FUNDING.—The funds remaining available each year under subsection (a), after allocation pursuant to subsections (c), (d), (e) and (f), shall be available under section 9.".

SEC. 339. REPORT ON SAFETY CONDITIONS IN MASS TRANSIT.

Section 22 of the Act (49 U.S.C. App. 1618) is amended—

(1) by inserting "(a) IN GENERAL.—" after "SEC. 22."; and

(2) by adding at the end a new subsection as follows:

"(b) REPORT.—The Secretary shall, within 180 days after the date of enactment of this subsection, make a report to Congress to include—

"(1) actions taken to identify and investigate conditions in any facility, equipment, or manner of operation as part of the findings and determinations required of the Secretary in providing grants and loans under this Act;

"(2) actions taken by the Secretary to correct or eliminate any conditions found to create a serious hazard of death or injury as a condition for making funds available through grants and loans under this Act;

"(3) a summary of all passenger-related deaths and injuries resulting from unsafe conditions in any facility, equipment, or manner of operation of such facilities and equipment financed in whole or in part under this Act;

"(4) a summary of all employee-related deaths and injuries resulting from unsafe conditions in any facility, equipment, or manner of operation of such facilities and equipment financed in whole or in part under this Act;

"(5) a summary of all actions taken by the Secretary to correct or eliminate the unsafe conditions to which such deaths and injuries were attributed;

"(6) a summary of those actions taken by the Secretary to alert transit operators of the nature of the unsafe conditions which were found to create a serious hazard of death or injury; and

"(7) recommendations to the Congress by the Secretary of any legislative or administrative actions necessary to ensure that all recipients of funds under this Act will institute the best means available to correct or eliminate hazards of death or injury, including—

"(A) a timetable for instituting actions,

"(B) an estimate of the capital and operating cost to take such actions, and

"(C) minimum standards for establishing and implementing safety plans by recipients of funds under this Act.".

SEC. 340. SECTION 23—PROJECT MANAGEMENT OVERSIGHT.

Section 23(a) of the Act (49 U.S.C. App. 1619(a)) is amended—

(1) by striking paragraphs (1) through (5);

(2) by striking "½ of 1 percent of—" and inserting "¾ of 1 percent of the funds made available for any fiscal year to carry out sections 3, 9, or 18 of this Act, or interstate transfer transit projects under section 103(e)(4) of title 23, United States Code, in effect on September 30, 1991, or a project under the National Capital Transportation Act of 1969 to contract with any person to oversee the construction of any major project under any such section.".

SEC. 341. SECTION 26—PLANNING AND RESEARCH.

The Act is amended by adding at the end the following:

"SEC. 26. PLANNING AND RESEARCH PROGRAM.

"(a) STATE PROGRAM.—The funds made available under section 21(c)(3) shall be available for State programs as follows:

"(1) TRANSIT COOPERATIVE RESEARCH PROGRAM.—50 percent of that amount shall be available for the transit cooperative research program to be administered as follows:

"(A) INDEPENDENT GOVERNING BOARD.—The Secretary shall establish an independent governing board for such program to recommend mass transportation research, development, and technology transfer activities as the Secretary deems appropriate.

"(B) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities as the Secretary determines are appropriate.

"(2) STATE PLANNING AND RESEARCH.—The remaining 50 percent of that amount shall be apportioned to the States for grants and contracts consistent with the purposes of sections 6, 8, 10, 11, and 20 of this Act.

"(A) APPORTIONMENT FORMULA.—Amounts shall be apportioned to the States in the ratio which the population in urbanized areas in each State, bears to the total population in urbanized areas, in all the States as shown by the latest available decennial census, except that no State shall receive less than ½ of 1 percent of the amount apportioned under this section.

"(B) ALLOCATION WITHIN A STATE.—A State may authorize a portion of its funds made available under this subsection to be used to supplement funds available under subsection (a)(1), as the State deems appropriate.

"(b) NATIONAL PROGRAM.—

"(1) IN GENERAL.—The funds made available under section 21(c)(4), shall be available to the Secretary for grants or contracts for the purposes of section 6, 8, 10, 11, or 20 of this Act, as the Secretary deems appropriate.

"(2) COMPLIANCE WITH ADA.—Of the amounts available under paragraph (1), the Secretary shall make available not less than $2,000,000 to provide transit-related technical assistance, demonstration programs, research, public education, and other activities that the Secretary deems appropriate to help transit providers achieve compliance with the Americans with Disabilities Act of 1990. To the extent practicable, the Secretary shall carry out this subsection through contract with a national nonprofit organization serving persons with disabilities with demonstrated capacity to carry out these activities.

"(3) SPECIAL INITIATIVES.—Of the amounts available under paragraph (1), an amount not to exceed 25 percent shall be available to the Secretary for special demonstration initiatives subject to such terms, conditions, requirements, and provisions as the Secretary deems consistent with the requirements of this Act, except that the provisions of section 3(e)(4) shall apply to operational grants funded for purposes of section 6. For nonrenewable grants that do not exceed $100,000, the Secretary shall provide expedited procedures governing compliance with requirements of this Act.

"(4) TECHNOLOGY DEVELOPMENT.—

"(A) PROGRAM.—The Secretary is authorized to undertake a program of transit technology development in coordination with affected entities.

"(B) INDUSTRY TECHNICAL PANEL.—The Secretary shall establish an Industry Technical Panel consisting of representatives of transportation suppliers and operators and others involved in technology development. A majority of the Panel members shall represent the supply industry. The Panel shall assist the Secretary in the identification of priority technology development areas and in establishing guidelines for project development, project cost sharing, and project execution.

"(C) GUIDELINES.—The Secretary shall develop guidelines for cost sharing in technology development projects funded under the section. Such guidelines shall be flexible in nature and reflect the extent of technical risk, market risk, and anticipated supplier benefits and pay back periods.

"(5) SUPPLEMENTARY FUNDS.—The Secretary may use funds appropriated under this subsection to supplement funds available under subsection (a)(1), as the Secretary deems appropriate.

"(6) FEDERAL SHARE.—Where there would be a clear and direct financial benefit to an entity under a grant or contract funded under this subsection or subsection (a)(1), the Secretary shall establish a Federal share consistent with that benefit.".

SEC. 342. TECHNICAL ACCOUNTING PROVISIONS.

Notwithstanding any other provision of law, any funds appropriated before October 1, 1983, under section 6, 10, 11, or 18 of the Act, or section 103(e)(4) of title 23, United States Code, in effect on September 30, 1991, that remain available for expenditure after October 1, 1991, may be transferred to and administered under the most recent appropriation heading for any such section.

SEC. 343. GAO REPORT ON CHARTER SERVICE REGULATIONS.

The Comptroller General of the United States shall submit to the Congress, not later than 12 months after the date of the enactment of the Act, a report evaluating the impact of existing charter service regulations. The report shall—

(1) assess the extent to which the regulations promote or impede the ability of communities to meet the transportation needs of government, civic, and charitable organizations in a cost-effective and efficient manner;

(2) assess the extent to which the regulations promote or impede the ability of communities to carry out economic development activities in a cost-effective and efficient manner;

(3) analyze the extent to which public transit operators and private charter carriers have entered into charter service agreements pursuant to the regulations; and

(4) analyze the extent to which such agreements enable private carriers to profit from the provision of charter service by public transit operators using federally subsidized vehicles.

The report shall also include an assessment of the factors specified in the preceding sentence within the context of not less than three communities selected by the Comptroller General.

SEC. 344. GAO STUDY ON PUBLIC TRANSIT NEEDS.

The Comptroller General of the United States shall, on a biennial basis, submit a report to the Congress evaluating the extent to which the Nation's transit needs are being adequately addressed. The report shall include:

(1) An assessment of the unmet needs for transit, as reflected by the unmet, existing maintenance, and modernization needs of transit systems throughout the Nation.

(2) A 5-year projection of the maintenance and modernization needs that will result from aging of existing equipment and facilities, including the need to overhaul or replace existing bus fleets and rolling stock used on fixed guideway systems.

(3) A 5-year projection of the need to invest in the expansion of existing transit systems to meet changing economic, commuter, and residential patterns.

(4) An estimate of the level of expenditure needed to satisfy the needs identified above.

(5) An examination of existing Federal, State, and local resources as well as private resources that are or can reasonably be expected to be made available to support public transit.

(6) The gap between the level of expenditure estimated under paragraph (4) and the level of resources available to meet such needs identified under paragraph (5).

SEC. 345. USE OF POPULATION ESTIMATES.

(a) URBAN MASS TRANSIT PROGRAM.—Section 5(a) of the Act (49 U.S.C. App. 1604(a)) is amended—

(1) in paragraph (1)(A)(i), by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce";

(2) in paragraph (2)(A)(i)(I), by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce"; and

(3) in paragraph (2)(A)(ii)(I), by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce".

(b) BLOCK GRANTS.—Section 9(d)(1) of the Act (49 U.S.C. App. 1607a(d)(1)) is amended by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce".

(c) FORMULA GRANT PROGRAM FOR AREAS OTHER THAN URBANIZED AREAS.—Section 18(a) of the Act (49 U.S.C. App. 1614(a)) is amended in the second sentence by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce".

SEC. 346. SECTION 9B—TECHNICAL AMENDMENT.

Section 9B(a) of the Act (49 U.S.C. App. 1607a–2(a)) is amended by striking "subsections (b) and (c) of".

SEC. 347. USE OF CENSUS DATA.

For fiscal year 1992, the Secretary of Transportation shall use data from the 1990 Federal census, to the extent practicable, in determining the allocation of funds under sections 9, 16(b)(2), and 18 of the Act. The Secretary of Transportation and the Secretary of Commerce shall coordinate efforts to expedite the availability of census data for such use and to ensure that census data is collected and prepared in a form that is appropriate to the needs of the Department of Transportation. The Secretary of Transportation shall notify, in writing, the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of actions taken pursuant to this subsection not later than 9 months following the date of enactment of this Act.

TITLE IV—PRIVATE PROPERTY RIGHTS

SEC. 401. PRIVATE PROPERTY RIGHTS ACT.

(a) SHORT TITLE.—This section may be cited as the "Private Property Rights Act".

(b) DEFINITIONS.—As Used in this section:

(1) The term "agency" means all executive branch agencies, including any military department of the United States Government, any United States Government corporation, United States Government controlled corporation, or other establishment in the Executive Branch of the United States Government.

(2) The term "taking of private property" means an activity wherein private property is taken such that compensation to the owner of that property is required by the Fifth Amendment to the Constitution of the United States.

(c) PROTECTION OF PRIVATE PROPERTY.—

(1) No regulation promulgated after the date of enactment of this section by any agency shall become effective until the issuing agency is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity, with the goal of minimizing such where possible.

(2) Upon receipt of guidelines proposed by an agency for compliance with the procedures referenced in paragraph (1), the Attorney General shall, in a reasonably expeditous manner, either approve such guidelines, or notify the head of such agency of any revisions or modification necessary to obtain approval.

(d) JUDICIAL REVIEW.—

(1) Judicial review of actions or asserted failures to act pursuant to this section shall be limited to whether the Attorney General has certified the issuing agency is in compliance with Executive Order 12630 or similar procedures, such review to be permitted in the same forum and at the same time as the issued regulations are otherwise subject to judicial review. Only persons adversely affected or grieved by agency action shall have standing to challenge that action as contrary to this section. In no event shall such review include any issue for which the United States Claims Court has jurisdiction.

(2) Nothing in this subsection shall affect any otherwise available judicial review of agency action.

The PRESIDENT pro tempore appointed:

From the Committee on Environment and Public Works only for matters within its jurisdiction: Mr. MOYNIHAN, Mr. BURDICK, Mr. MITCHELL, Mr. LAUTENBERG, Mr. REID, Mr. CHAFEE, Mr. SYMMS, Mr. WARNER, Mr. DURENBERGER.

From the Committee on Commerce, Science, and Transportation only for matters within its jurisdiction: Mr.

HOLLINGS, Mr. EXON, Mr. BRYAN, Mr. DANFORTH, Mr. GORTON.

From the Committee on Banking, Housing, and Urban Affairs only for matters within its jurisdiction: Mr. RIEGLE, Mr. CRANSTON, Mr. SARBANES, Mr. BOND, Mr. D'AMATO.

From the Committee on Finance only for matters within its jurisdiction: Mr. BENTSEN, Mr. MOYNIHAN, Mr. BAUCUS, Mr. PACKWOOD, Mr. DOLE.

From the Committee on Governmental Affairs only for the consideration of the Uniform Relocation Act Amendment: Mr. GLENN, Mr. LEVIN, and Mr. ROTH conferees on the part of the Senate.

NATIONAL ENERGY SECURITY ACT

Mr. WIRTH. Mr. President, I will yield the floor in about 2 minutes. But I wanted to first try to take a couple of minutes to set the scene for the coming cloture vote and discussion about the cloture vote.

The energy bill has been brought to the floor and the attempt now is to proceed to the energy bill. There are a number of us who feel very strongly that it is wrong for us in the Senate to proceed to the energy bill as it is currently constructed. This debate has gone on for some time. As a Member of the Energy Committee, I have been deeply engaged in working on that energy bill, and as the distinguished chairman of the Energy Committee, Senator JOHNSTON, has pointed out on any number of occasions, much of what is in that bill I wrote in terms of energy conservation, natural gas regulation, alternative fuels and so on.

There are many good provisions in the bill. We would have had that bill and those provisions on the floor months ago had it not been for a single title that is enormously controversial. There are many other items in the bill that raise controversy, but the title related to the Arctic National Wildlife Refuge and whether we should be drilling in the Arctic has held up that bill and caused enormous controversy.

A number of us have attempted, on any number of occasions, to provide a compromise, to offer a compromise strategy, for bringing up the energy bill. We have on a number of occassions offered to have the main part of the energy bill come up, to be followed by two separate bills, one a corporate average fuel economy, and one on the Arctic National Wildlife Refuge.

Those could each be treated discretely. Both of those are surrounded by a great deal of controversy and both raise significant issues of committee jurisdiction. I would like to get on with the overall energy policy and have those two controversial elements be dealt with separately. That is what this debate is all about.

There has been a refusal to do this, and that gets us into a very difficult position. Two issues that we feel very strongly about are being badly compromised. We do not believe that considering S. 1220 provides a process under which the Senate ought to be operating, and that is the reason for this procedural issue.

I will be back later to talk about the specifics of these, as will many of my colleagues. But I wanted to take a couple of minutes in morning business to lay out simply that, speaking for myself, we would not have this filibuster, we would not have all of this blood on the floor of the Senate, we would not have all of this controversy, if the very simple compromise process that I have suggested—having this come up as three separate bills—had been agreed to. We have been trying to do that and had no response in a positive way, for which we are sorry.

That offer remains open for all of our colleagues, and I suggest that they might want to speak to the managers of the bill on both sides and see if we can get through this by breaking off those two elements and having them considered separately, and let us work on the overall energy bill.

I yield the floor.

THE ENERGY BILL

Mr. WELLSTONE. Mr. President, I want to reinforce the comments of the Senator for Colorado. I serve on the Energy Committee under the distinguished leadership of Senator JOHNSTON. And as the Senator from Louisiana knows, I have consistently, over the months, taken very serious exception with any number of different provisions of this bill. Shortly, I will be speaking about those provisions.

But even though I think the breadth of my criticism perhaps goes a little bit broader or deeper than that of the Senator from Colorado, we may even have some disagreement about some other provisions. I am in complete agreement with what the Senator had to say, which is that we have tried very hard, Mr. President, to be engaged in, I think, important negotiations so that we can work around consensus. And I believe that what could have happened, and what I hope still will happen, is that certain key provisions—especially the oil drilling in the Arctic National Wildlife Refuge which is so contentious, and the question of fuel efficiency standards—will be separated out. Perhaps, still, we will have the opportunity to work out something like that.

But in the absence of such an agreement, I, too, this morning, will oppose the motion to proceed, and I do not do this lightly, Mr. President. There will probably be very, very few times in the U.S. Senate when I will be speaking against a motion to proceed. But in this particular case, I believe that I have no other choice.

I, too, want to set the stage and the context, so that this debate will not be an acrimonious debate, but a real debate. The U.S. Senate is known for real debates, and one is about to take place.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been noted. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I may speak for 15 minutes in morning business.

The PRESIDENT pro tempore. Is there objection to the request? It would mean morning business would be extended 10 minutes beyond the hour of 10 o'clock.

Mr. CHAFEE. Mr. President, that would extend it to 10 past 10?

The PRESIDENT pro tempore. It would.

Mr. CHAFEE. I have no objection.

The PRESIDENT pro tempore. The Chair also calls attention to the fact that the 10 minutes would come off the 3 hours on the motion to proceed. Is there objection?

The Chair hears no objection.

The Senator from Minnesota [Mr. WELLSTONE] is recognized for 15 minutes.

THE NATIONAL ENERGY SECURITY ACT

Mr. WELLSTONE. Mr. President, I rise to oppose the motion to proceed to S. 1220, and I do so because I believe S. 1220 is so fundamentally flawed that it is not even an acceptable starting point for a rational energy strategy.

To begin with, S. 1220 is not an energy policy. It is a nonenergy policy. It does not address our two most fundamental long-term energy problems: First, our excessive and growing dependence on imported energy, which in turn threatens our national security and also threatens the health of our economy; and, second, the greatest threat to our world environment; namely, the problem of global warming and related climate change that could have devastating impacts on the world.

S. 1220 does not do anything significant to solve either of these problems. It does not, and it cannot, change the fundamental situation with regard to our dependence on imported oil. No matter how hard we try, Mr. President, we cannot legislate geology. If we open up the Arctic National Wildlife Refuge to oil drilling—which is the primary goal of this bill—we will not change the fact that only 3 percent of the world's oil reserves are in the United States, and roughly 65 percent are in the Middle East.

ANWR oil—if it is found in the quantities now predicted—will only add marginally to our domestic production for a short time, perhaps 20 years. At most, it will satisfy only 2 to 3 percent of our total domestic oil consumption at a very high cost—a high economic cost, and even a high environmental cost. But when all is said and done, as the Department of Energy has pointed out, 40 years from now we will be importing twice as much oil and other energy fuels. There simply is no way we can produce our way out of oil dependency by drilling in the Arctic refuge, sensitive areas of the Outer Continental Shelf, or similar lands.

Mr. President, even if we could, it would spell disaster for the global environment. Oil is a fossil fuel, and fossil fuel burning releases carbon dioxide, which is the principal greenhouse gas generated by human beings and the single most important cause of global warming.

(Mr. REID assumed the chair.)

Mr. WELLSTONE. Mr. President, energy use and production account for about 57 percent of the global warming problem. Yet the bill before us, S. 1220, does not even have a finding on global warming, and it does not ask us to do anything serious about it. In fact, it encourages more production and consumption of all fossil fuels—oil, gas, and coal—well into the next century, as well as more nuclear power and nuclear waste.

Mr. President, this is an anachronistic bill, a backward-looking bill based on discredited assumptions of the past; it is a bill that does not deal with the most important problems we face in the future—in fact it does not even recognize their existence. It is not just the foolishness and greed of destroying the Arctic Wildlife Refuge, one of our last truly pristine wilderness areas, this bill is fatally flawed from start to finish. It is conceptually impoverished; it is totally lacking in vision as to what is possible technologically, what is sound economically, what is sensible environmentally, and what is sustainable in the future. Mr. President, this bill would take us down the wrong path to the future, and it deserves no time on the floor of the Senate.

How did it get here? Why are we presented with this monstrosity? Who wants it?

One thing is certain, most of the people of this country do not want this energy bill. This is not the kind of energy bill they want. Every poll and survey and town meeting I know of on the subject indicates that what the people want is a new national energy policy based on conservation, on energy efficiency, and on renewable energy.

Let me illustrate this with just one well-known poll. This is a bipartisan opinion poll on the national energy strategy published on January 11 of this year, just before the Persian Gulf war. In this poll the people were asked, if they could choose their top priority for research and development funding by the Department of Energy, what would it be? My chart shows the results: Nuclear 10 percent, coal and oil 12 percent, renewables and conservation 75 percent.

So 75 percent of the people said we should put the money into renewables and conservation; only 12 percent said we should put it into coal and oil; and even fewer, 10 percent, said we should put it into nuclear power. This is the message that has come through from the American people over and over again.

When the Bush administration set out to develop its national energy strategy, this is exactly what they discovered. The NES Task Force went out and held hearings across the country, at which hundreds of people stepped forward and expressed ideas. And what did they say?

New I quote from the DOE finding from the public hearings:

> People in all parts of the country expressed concern about what energy production and consumption are doing to our air, water, and land. We heard concern about acid rain, urban air pollution, oil spills, the safety of nuclear powerplants, our ability to harmlessly dispose of radioactive wastes, and possible global climate change resulting from the use of fossil fuels. Many were concerned about the need to develop advanced technology to convert and control energy in an environmentally sound way.

That is what the people said in these public hearings. I bet that is what people in the gallery would say. We are concerned about the environment.

> The loudest single message was to increase energy efficiency in every sector of energy use. Energy efficiency was seen as a way to reduce pollution, reduce dependence on imports, and reduce the costs of energy.

But something funny happened to energy policy on its way back to Washington. When energy policy got away from the people, away from the grassroots, and back to the Department of Energy and the White House, something entirely different came out. Virtually all of the proposals—and there were a great many—for efficiency and conservation and renewable energy were stripped off the list of policy options—first by the Department of Energy, then by the White House.

So what happened? Why were all these ideas and proposals cut out?

I believe two fundamental things happened. First, once energy policy got back to Washington, DC it was captured and controlled by the big corporate energy lobbies right here in town. The big oil companies, the auto companies, the big utility interests, and all the big corporate and financial interests that have, or want to have, stakes in the energy business had their say. And low and behold, what started out as a new direction, what the vast majority of the people were calling for, ended up as an energy policy for the special interests, and for the big money that dominates politics in Washington, DC. The national energy strategy became a wish list of all the subsidies and regulatory rollbacks that the big energy corporations could think of.

The second thing that happened was that every proposal had to pass an ideological litmus test. What the public wanted got screened out by Mr. Sununu and Mr. Darman and Mr. Boskin at the White House. In some cases, they barred the door steadfastly refusing to allow anything which might interfere with the free workings of the marketplace into the national energy strategy. Of course, in others, if the proposal supported nuclear power, or oil drilling on public lands, or building big coal combustion demonstration plants, the door was thrown wide open.

Mr. President, what we have before us, I am sorry to say, is no different. This bill is the stepchild of the NES. Or, you can look at it this way: if the national energy strategy is the whole feast, then S. 1220 is the stuffed turkey. It is based on the same premises, and has virtually the same titles, as the bill the President sent up to Congress. It is endorsed by the White House. And it is a highly political, narrowly ideological, special interest bill that does not have much in common with what the people want—in fact its just about the opposite of what the people said they wanted.

I could illustrate that in any number of ways, but I will just point to one set of figures from the estimated budget of S. 1220.

Even if we ignore the $11 billion—and I want to repeat this figure, the $11 billion debt writeoff, and other giveaways CBO does not count, we can see that the titles that cover energy conservation and renewable, titles III to VI, account for only 24 percent of the estimated authorizations, and the titles that are oriented toward more production and use of nuclear and fossil fuels, titles VII to XVI, account for 76 percent of the budget, or three times as much. Now that is exactly the opposite of the priorities that were expressed by people in public hearings. And in fact if you look at the bill, only 2 percent—that is right, 2 percent—is for renewables. That is pittance, and it is an insult to the American people because people have called for much more.

In fact, this energy bill does not make any basic change in the direction of our past energy policies. It is not a balanced bill that will give us the best of both worlds, but a bill that compounds many of our past energy mistakes. It continues down the wrong energy path.

Since 1981, when we began the Reagan/Bush era, energy efficiency and renewable energy efforts have been systematically dismantled. At first, the White House wanted to abolish the Department of Energy altogether, and appointed a dentist to be the first Secretary of Energy to carry out the charge. While he did not manage to dismantle DOE, he cut spending on renewable energy and conservation by 90 percent, including all the commercialization programs.

The 1980's were a lost decade for energy policy. We buried our heads in the sand, and pretended no problem existed because the artificial price of oil came down. We largely abandoned solar and other renewable energy projects and told people to stop conserving.

Will S. 1220 reverse this trend and take us in a different direction?

No, it will not. There is very little in this bill that will save any oil, or lead to the rapid introduction of energy efficient technologies, or develop any new renewable sources. The proponents of the bill claim there are a lot of efficiency and renewable provisions in it. Well, it may look like a lot if you list all the sections and subsections of the bill, but if you look into what's really in there, you will find there is not much substance. Even the Department of Energy's own projections show little energy savings resulting for the voluntary programs, studies, and other window-dressing efficiency provisions of the NES. Yes, there are chapters and titles, but there is really nothing to back this up in terms of solid substance.

But instead of focusing on what is not in this bill, let me briefly turn to the other side of the coin—the industry giveaways which are in this bill. This bill has become a giant Christmas tree of goodies for the special interests, especially the big energy corporations.

There is the $20 billion—let me repeat, the $20 billion ANWR oil giveaway to a few oil companies that my colleague from Colorado, Senator WIRTH, has written and spoken about so eloquently.

There is the writeoff of $11 billion—let me repeat this, $11 billion in debt owed by the nuclear industry to the U.S. Government for past enrichment services.

Then, to compound that mistake, the bill mandates the construction of several new synthetic fuel plants and a so-called advanced nuclear reactor, costing the taxpayers perhaps several billion dollars.

Then there is the PUHCA reform, which is designed to open the way for lots of big corporations to get into the wholesale electric generating business, whether we need the electricity or not. The whole point of this is to encourage the construction of hundreds of new powerplants and this can only be done if the profitability of this kind of investment goes up—and that is what the so-called PUHCA reform is all about. It will not lead to cheaper electricity or more competition in electricity pricing, but just the opposite. I think it amounts to something similar to S&L deregulation, and I think it is dangerously anticonsumer.

That is why consumer groups as well as environmental groups oppose this bill. That is why the National Taxpayers Union is against this bill. That is why many of your smaller electric utilities are against it. Nearly every public interest group I know is against this bill because it is not a public interest bill—it is a special interest bill—of the special interests, by the special interests, and for the special interests.

Mr. President, S. 1220 is a bankrupt energy policy.

This bill promotes high cost, high pollution, highly centralized energy sources that the public doesn't want—is that the direction energy policy should take? Hundreds and hundreds of new coal and nuclear powerplants, with their attendant nuclear wastes and air and water pollution—is that your vision of the future? That is S. 1220's blueprint for our energy future.

No, this is not just a bankrupt policy. This is much worse. This is an energy policy which will bankrupt America. It is a policy which will undermine the competitiveness of America's industry, by pursuing obsolete high-cost energy sources.

Mr. President, recently I met with Amory Lovins, one of the world's leading experts on energy efficiency. He pointed out to me that various studies have already identified 42 Arctic refuges that could be drilled without endangering a single inch of wilderness land, and which could be produced for far less than we will pay for oil from Alaska. These ANWR's are in our homes, in our factories, and in our automobiles—they are developed by improving our energy efficiency.

Even the report which the Office of Technology Assessment released yesterday on U.S. oil vulnerability comes to the same conclusion. According to OTA: "* * * studies over the past decade have consistently shown that energy efficiency is an essential cornerstone to a comprehensive energy policy framework." If we take the path toward solving our energy security problems, "Energy efficiency improvements would dominate the first decade, securing time to allow alternative transportation fuels and alternative, nonfossil sources for electric power generation to develop.* * *"

This is not the path chosen by the NES, or S. 1220. So what should we do?

Since I was a child, I have heard the admonishment many times: "Don't waste good thread on rotten cloth." There have been very few occasions when I have found it more fitting than now. Trying to fix this bill and make it a program which promotes energy efficiency and renewable energy sources, on the floor of the Senate, would be a folly. S. 1220 is a blueprint for an entirely different design. It is fundamentally flawed in its approach and in its content.

I recognize that after a decade of neglect by the White House, there will be an attempt on the part of the administration to put the blame on Congress for failing to produce an energy policy if we do not take action on this legislation. I can only respond by saying that the only thing worse than no energy policy is a bad energy policy, and S. 1220 is unquestionably bad energy policy.

In conclusion I just want to share with my colleagues a few selected comments from the people of Minnesota.

Sister Gabriel Herbers writes from the home of the Good Shepard in St. Paul, MN:

> I am asking again that you work to make the development of a comprehensive national energy strategy emphasizing conservation and efficiency an immediate priority. Also, Senator Wellstone, would you please tell the U.S. Department of the Interior and other related departments to cease all oil and gas leasing plans in Alaska's wilderness and coastlines. This is a burning issue and needs a total commitment—if we are to save any untouched areas in Alaska from demolition. Thank you for your support and God's blessing be with you.

Finally, a letter I received from Adam Spindell and Kathie Cox of West St. Paul, MN. They write:

> Please vote a very loud "no!" on S. 1220, the "Energy Security Act of 1991."
>
> We need a real energy policy. We will eventually run out of oil. We need an energy policy that relies on conservation, alternative fuels and renewable energy sources. We need an energy policy for the long term. We need to be world leaders in developing alternative sources of energy.
>
> How can the Senate reject a bill requiring higher gasoline mileage standards for automobiles and approve a bill permitting the destruction of the Arctic Refuge for oil exploration in the same year? Is this a legislature that is looking out for America's future?
>
> Are the interests of the oil industry so powerful that the Senate will sacrifice an eternity of wilderness so a few very rich men can make a few more dollars?
>
> Please vote "no!," filibuster, use your considerable influence and do whatever you need to in order to defeat S. 1220 the "Energy Security Act of 1991." Encourage your fellow Senators to do the same. Raise a stink.

These are my constituents. To continue:

> Alert the media. Stand up for the environment and the future. The only security this bill affords is the security of continuing a disastrous energy policy. Do your best to let the rest of the nation know this is where we draw the line on letting the oil companies decide what's best for America's future energy needs. Thank you.

I want to say thank you to Sister Gabriel Herbers, Adam Spindell, Kathie Cox, and the many other Minnesotans who have written me about these issues. These are the people whom I was elected to represent in the Senate. And I feel honored to be here on the floor to express their views. While I can take to this floor and express my views on S. 1220, somehow, their words still cut closer to the truth.

Mr. President, I wish to say to my colleagues that today we have the unique opportunity to demonstrate that this is still a government of the people, by the people and for the people by rejecting an energy bill of the special, well-financed, powerful oil interests.

NEW YORK TIMES EDITORIAL ON ROBERT GATES

Mr. BRADLEY. Mr. President, I recently read an excellent editorial in the Friday, October 18, 1991, edition of the New York Times on the nomination of Robert Gates as Director of Central Intelligence. It raises important questions that my colleagues and I should consider as the Senate takes up Mr. Gates' nomination next week.

I ask unanimous consent that a copy of this editorial be inserted in the CONGRESSIONAL RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD as follows:

[From the New York Times, Oct. 18, 1991]

THE ONCE AND FUTURE C.I.A.

These have not been stellar years for the Central Intelligence Agency. Even with the distinguished outsider Judge William Webster in charge, the once-proud agency has, at least to public perception, flunked. Who there anticipated the fall of the Berlin wall, the aggression of Saddam Hussein, the implosion of the Soviet Union?

Nevertheless, President Bush contends he needs an experienced insider and has nominated Robert Gates to be Director of Central Intelligence, a choice the Senate Intelligence Committee votes on today. There are strong reasons to vote no.

Mr. Gates has done his best to dispel the doubts that forced him to withdraw when he was first nominated in 1987. He has seemed contrite and open-minded and cites his broad experience and future vision. But senators would do well to consider at least three criteria.

Whether his past performance shows him to warrant their trust . . . whether he has earned the confidence of agency employees . . . and above all, whether he, an insider, is the right person to lead the agency into uncertain times. On each count, Mr. Gates falls short.

David Boren, the committee chairman, commends Mr. Gates for forthrightness. Yet he overlooks occasions when Mr. Gates helped skew intelligence assessments and was demonstrably blind to illegality. The illegality concerns the Iran-contra scandal. Mr. Gates contends he was "out of the loop" on decisions about what to tell Congress. And he defends his professed ignorance on grounds of deniability—that he was shielding the C.I.A. from involvement. These contentions defy belief.

The testimony of others puts Mr. Gates, on at least two occasions, very much in the loop. He supervised preparation of Director William Casey's deceitful testimony to Congress about the scandal. And one C.I.A. analyst, Charles Allen, says he informed Mr. Gates, before it came to light, of three unforgettable details: Oliver North's involvement, the markup of prices of arms sold surreptitiously to Iran, and diversion of the proceeds into a fund for covert operations. In a telling lapse of his reputedly formidable memory, Mr. Gates could not recall the details when Congress asked two months later.

The second criterion concerns intelligence estimates. Incorrect forecasting should not be disqualifying; estimates can be wrong for the right reasons of political expediency, that's "cooking the books."

The hearings have documented at least three cases of such slanting: a May 1985 estimate on Iran, estimates of Soviet influence in the third world, and assessments of Soviet complicity in the assassination attempt on Pope John Paul II. Mr. Gates has responded to their testimony but not refuted it. He evidently went to great lengths to manipulate the process, because highly reticent career officials testified against him in public. That electrifying development demonstrates how little confidence Mr. Gates enjoys in the agency.

It can be argued that his experience makes him well suited to lead the C.I.A. into the future. As a former Deputy Director and deputy national security adviser, he knows how intelligence assessments are put together and what policy makers need. And he knows the U.S. will not keep spending $30 billion a year on intelligence.

But it is more reasonable to think the agency would be better off with a director unbound by William Casey's dark legacy—the conviction that the agency knows best, a barely concealed contempt for Congress and a belief that anything goes including evading the law. Reshaping the agency wisely depends on casting off the legacy.

Thomas Polgar, a C.I.A. veteran, urged the committee to consider the message that confirmation would send. Would officials wonder whether it was wise for outspoken witnesses to risk their careers by testifying? Would they say to themselves, "Serve faithfully the boss of the moment; never mind integrity? Feel free to mislead the Senate—senators forget easily?

By voting no, senators will vote to remember.

NATIONAL YEAR OF RECONCILIATION

Mr. PRESSLER. Mr. President, with great pride I join in cosponsoring Senate Joint Resolution 222, a resolution which designates 1991 as a "National Year of Reconciliation" between Indians and non-Indians. For too long, relationships between Indians and non-Indians in this country have been based on misconceptions and distrust. It is time to change these attitudes, and a National Year of Reconciliation would be a big step in the right direction.

The movie "Dances With Wolves," which was filmed in my State of South Dakota, has generated great interest in Native American life in the mid-19th century. Events in the latter half of that century dramatically changed the Indian way of life. Reservations were created, buffalo herds were diminished and lives were lost. It was a time of historic confrontation between two clashing cultures which sowed the seeds of present day political disagreements.

Mr. President, last year the governor of South Dakota, George S. Mickelson, proclaimed 1990 as a "Year of Reconciliation" between Indians and non-Indians in South Dakota. In recognition of the success of the "Year of Reconciliation," Governor Mickelson earlier this year proclaimed the next 100 years as a "Century of Reconciliation." These proclamations have produced positive results in our state in the form of increased dialog and a greater willingness of the two cultures to work together toward developing a stronger long-term relationship.

In recognition of the success of South Dakota's Year of Reconciliation, other members of the South Dakota delegation and I have been working with the Indian tribes of South Dakota, the South Dakota Governor's Office, and other interested parties to give this great idea of reconciliation the national attention and exposure it so well deserves.

By introducing this resolution, we do not expect to sweep away the misunderstandings and distrust shaped by centuries of conflict and misunderstandings between Indians and non-Indians. We cannot change that history. But we cannot continue to relive the mistakes of our forefathers. Efforts to reconcile Indian and non-Indian peoples deserve to be recognized by this body. I urge my colleagues' support of this resolution.

TECHNICAL CORRECTIONS TO H.R. 2608 AND REPORT 102-233

Mr. HOLLINGS. Mr. President, I would like to thank Chairman BYRD and Senator NICKLES for including three technical corrections to H.R. 2608, the Fiscal Year 1992 Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act as part of the conference agreement to H.R. 2686, the Interior and Related Agencies Appropriations Act.

The first correction notes that $4 million of the $76 million provided for Justice Assistance is to be derived from funds previously appropriated. This was agreed to by the conferees but inadvertently left out of the final agreement.

The second correction clarifies that the conferees did not intend to place an obligation limitation on the Federal Communications Commission. This change should have been made when the conferees rejected the administration's FCC user fee proposal.

The third correction clarifies the intent of the conferees concerning the awarding of a grant to the National Resource and Training Center under the Legal Services Corporation.

Mr. President, I also would like to point out two errors in the Joint Explanatory Statement of the Committee of Conference to H.R. 2608, the Fiscal Year 1992 Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (Report 102-233).

In the table on page 45 under the National Oceanic and Atmospheric Administration Systems Acquisition "AWIPS/NOAAPORT" should have read $19,778,000 instead of $25,778,000. The "NMC Supercomputer Upgrade" funding line should have read $15 million instead of $9 million. The statement inadvertently reflected the cost of procuring a new supercomputer through a lease purchase agreement, but did not include the cost of operating and maintaining a second NMC supercomputer. The $15 million will allow the lease purchase to proceed, provide for necessary maintenance, and obviate the requirement for a future reprogramming.

In the table on page 63 under the Economic Development Administration the total amount available for EDA Planning Assistance should have read $24,953,000 instead of $25,276,000. District planning assistance will be allocated $17,707,000 instead of $17,708,000 and urban planning assistance will be allocated $2,636,000 instead of $2,958,000.

PLAYGROUND SAFETY

Mr. HARKIN. Mr. President, as my colleagues know I have long advocated the value of investing in our human infrastructure, especially as it relates to prevention. As chairman of the Labor, HHS, and Education Subcommittee, I have a particular interest in any efforts to safeguard the well-being of this Nation's greatest resource—our children.

As a society, we all bear some responsibility for ensuring that our children are allowed to grow and develop in the safest possible environment. Yet according to the U.S. Consumer Product Safety Commission, last year almost a quarter of a million children under age 15 were treated in hospital emergency rooms for injuries sustained on our country's playgrounds. Injuries that occurred on swings or other playground equipment.

Mr. President, I think we all recognize the physical and social benefits that playgrounds have to offer our children. But it is very troubling to learn that playgrounds can also pose a serious threat to children's safety.

Mr. President, according to the American Academy of Orthopedic Surgeons some of the injuries that occur on the playground setting can be prevented by paying greater attention to playground design and maintenance, as well by closer adult supervision.

Recognizing that an ounce of prevention can substantially reduce the number of injuries to children, the American Academy of Orthopedic Surgeons has launched a national public education program—called Play It Safe—to increase public awareness of the problem and to call attention to the guidelines of the U.S. Consumer Product Safety Commission.

While orthopedic surgeons treat a variety of injuries to children and adults, it is important to note that they are also interested in prevention of injuries. I wish to commend the academy for its efforts in this important area. I also want to urge my colleagues to obtain the brochure "Play It Safe: A Guide to Playground Safety," developed by the orthopedic surgeons and share it with your constituents.

MEMBERSHIP IN CLUBS THAT ENGAGE IN DISCRIMINATION

Mr. KENNEDY. Mr. President, the following resolution was adopted by the Labor Committee in executive session on October 30, 1991.

I ask unanimous consent that it be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

COMMITTEE RESOLUTION

Resolved by the Committee on Labor and Human Resources, That it is the sense of the Committee on Labor and Human Resources of the Senate that—

(1) clubs where business is conducted, that by policy or practice intentionally discriminate on the basis of race, color, religion, sex, disability, or national origin, operate to exclude persons, including women and minorities, from business and professional opportunities;

(2) in recent years, awareness has grown that such discrimination is invidious and that membership in such discriminatory clubs may be viewed as a tacit endorsement of the discriminatory practices;

(3) membership in such discriminatory clubs is not compatible with the responsibility required of persons appearing before this Committee seeking confirmation to positions with official duties that may require the interpretation, implementation, or administration of Federal law and the Constitution;

(4) it is inappropriate, for persons who may be nominated in the future to serve in such positions of responsibility, to belong to discriminatory clubs, unless the persons are actively engaged in bona fide efforts to eliminate the discriminatory practices;

(5) membership in discriminatory clubs is an important factor that Senators should consider in evaluating such persons, in conjunction with other factors that may reflect upon the fitness and ability of the nominees; and

(6) so as to promote a consistent policy on this issue in the legislative branch as well, any Senator belonging to such a club should resign from membership in the club in light of this resolution.

SEC. 2. CLUB WHERE BUSINESS IS CONDUCTED.

(a) CHARACTERISTICS.—Except as provided in subsection (b), for purposes of this resolution—

(1) except as provided in paragraph (2), the term "club where business is conducted" means a club—

(A) to which club members bring business clients or professional associates for conferences, meetings, meals, or use of the facilities;

(B) for which club members or the employers of the members deduct due, fees, or payments as business expenses on tax returns;

(C) at which contacts valuable for business purposes, employment and professional advancement are formed; or

(D) that receives payments from nonmembers for meals or services provided by the club; and

(2) a country club, or a club where meals are served, shall be presumed to be a club where business is conducted.

(b) ORGANIZATION.—As used in this resolution, the term "club where business is conducted" shall not include a fraternal, sororal, religious, or ethnic heritage organization.

SEC. 3. TRANSMITTAL.

The Chairman of the Committee on Labor and Human Resources is requested to transmit a copy of this resolution to the President and to all Members of the Senate, for such use as the President and Members determine to be appropriate in considering future nominations.

SEC. 4. EFFECTIVE DATE.

This resolution shall take effect February 1, 1992.

FREE ELECTIONS AND DEMOCRACY IN GUYANA

Mr. KENNEDY. Mr. President, in recent years, we have witnessed the dramatic advance of democracy in Latin America. Last year's elections in Nicaragua demonstrated the irresistible desire for democracy by the people of that country. Last year as well, Patricio Aylwin was inaugurated as President of Chile following that country's first election since 1973. In 1989, the election of Gen. Andres Rodriguez ended Paraguay's 35-year history of dictatorship.

But while democracy is flourishing for many nations in the hemisphere, others continue the struggle for freedom and justice. While recent democratic advances have captured our attention and newspaper headlines, little attention has been given to the ongoing struggle for democracy in Guyana.

A country of less than 800,000 people, geographically located on the northern coast of South America, Guyana is the region's poorest country. As a 1989 World Bank report noted, "Since the mid-1970's, the economy has deteriorated, infrastructure has collapsed, social conditions have worsened, and emigration has accelerated." There are frequent electricity outages, water sources are contaminated, the infant mortality rate has risen dramatically, nutritional needs are not met, homelessness is a growing problem, health facilities are inadequate, medicines to combat disease are often unavailable, and the emigration of doctors, teachers and other educated and skilled Guyanese has resulted in a deteriorating health and educational system.

Poverty has not always been a way of life in Guyana. During the 1960's and early 1970's, Guyana was one of the most economically and socially advanced countries in the region. But in recent years, the social and economic downward spiral has paralleled the decline of democracy.

In 1964, Forbes Burnham became the President of Guyana when his Peoples' National Congress won parliamentary elections—the last free and fair election held in Guyana. Since then, the PNC has remained in power by massively rigged elections. When President Burnham died in 1985, Vice President Desmond Hoyte assumed the Presidency and continued the tradition.

To some extent, the government of President Hoyte has made economic progress compared with the previous regime. His government opened the economy, reached agreement with the IMF and achieved a 4-percent economic growth rate this year. But economic reform cannot succeed in a vacuum. Political reform must accompany it, if Guyana is to succeed and flourish. If Guyana is to get its economy back on track, it must also get its democracy back on track.

In December 1989, I urged President Hoyte to take several steps to assure that the 1990 election would be free and fair, including the establishment of an independent electoral commission, the preparation of an accurate voter registration list, guarantees against ballot tampering and against fraudulent counting of ballots, and the participation of independent international observers. The National Democratic Institute, President Carter's Council of Freely Elected Heads of Government and America's Watch were active in calling for similar reforms.

Developments over the last 2 years have made President Hoyte's intention's unclear at best. He has made some progress, but problems remain. He permitted visits to Guyana by the International Foundation for Electoral Systems and the National Democratic Institute. He also invited a Commonwealth team and President Carter's group to observe the elections. He has also agreed to the counting of ballots at polling sites. A new Chairman, who enjoyed the support of Guyana's opposition parties, was appointed to head the Elections Commission, and President Hoyte promised that a new voter list would be prepared.

But over the past year, the process has slowed, and many believe President Hoyte has no intention of holding a free and fair election. The 1990 election was postponed because President Hoyte claimed it would take several months to complete a new voter registration list. Although they viewed it as a stalling tactic, opposition forces and independent observers went along.

A new list has now been compiled, but an eight-member delegation representing President Carter's Council of Freely Elected Heads of Government, which has just returned from Guyana, has called the list seriously flawed. They believe it will take 2 to 3 months to clean it up. The independent and nonpartisan Electoral Assistance Bureau has also determined that the list is riddled with errors.

In an effort to assure a fair election, President Carter's group, opposition parties, and other independent observers have recommended that the dissolved Parliament be recalled and that a constitutional amendment be adopted to extend the date for elections from the end of December to the end of March. But the Elections Commission, which many believe is still under the control of President Hoyte, has said it will not support an extension and that it can clean up the voter list in 2 weeks—a promise which President Carter's group says is impossible to fulfill.

The list is clearly flawed, and few believe that an election based on it can be viewed as fair. Unless significant improvements are made, President Hoyte will jeopardize what he has accomplished to date. I urge him to heed the recommendations of independent observers and delay elections until the voter list is revised above reproach. In doing so, his government would be demonstrating its genuine commitment to free elections. At a time when so many countries in our hemisphere have succeeded in restoring democracy, the people of Guyana deserve no less.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,420th day that Terry Anderson has been held captive in Lebanon.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

Mr. BOREN. Mr. President, I ask unanimous consent that I might be allowed to proceed for not to exceed 2 minutes as if in morning business with the time to be equally charged to both sides.

The PRESIDING OFFICER. Is there objection? The Senator from Oklahoma is recognized for 2 minutes.

Mr. BOREN. Mr. President, I thank the Chair, and I thank the distinguished floor manager of the bill for allowing me this brief time.

CONGRESSIONAL REFORM

Mr. BOREN. Mr. President, as I indicated yesterday at greater length, I am continuing the policy of speaking at least twice each week on the floor of the Senate until we begin to do something fundamental to reform this institution and to make Congress serve the people more effectively and more efficiently.

This is not a new cause of mine. It dates back several years. Nine years ago, Senator Goldwater and I began our efforts to reform the way that campaigns are financed. In July, I joined with Senator DOMENICI, and on the House side with Congressman HAMILTON and Congressman GRADISON, in a bipartisan effort to call for a major overhaul of this institution.

Congress is in trouble as an institution. All of us realize it. We need another effort, much like that of the Monroney-LaFollette Commission in 1947, to prepare Congress to face the challenges of the next century which are now before us.

Mr. President, as I have indicated, we have submitted Senate Concurrent Resolution 57, which would begin the process of this study for a sweeping overhaul of Congress. I am pleased to announce that Senator NICKLES has now joined as a cosponsor. This brings to 16 the number of Senators that have now cosponsored this resolution calling for the establishment of this Commission, which would be staffed largely by nonpaid volunteers to help us get the job done.

The warning signs are all around. The Former Stockman, a magazine which goes to the agriculture community in 30 States, to the central part of the United States, recently conducted a poll as to how their readers looked at Congress. "Readers are Forthright," it says in the headline, "in Their Criticisms of Congress."

In a poll, they asked several questions about how they viewed Congress. One question was: Do you as a constituent feel that you receive as much attention from Federal legislators as you did when staffs in Washington were not nearly so large, when we had only 2,000 employees back in 1950, as compared to the 12,000 that we now have at this time?

Here is how they answered: Yes, I think I get as much attention as I used to before you built this large congressional bureaucracy, 13 percent; no, 87 percent.

Do you approve of the $159 million being poured into campaigns by political action committees and special interest groups? Yes, 1½ percent; no, 98½ percent.

Mr. President, how long will we wait before we take action to deal with the major problems facing this institution?

I thank the Chair, and I thank my colleagues for allowing me this time.

NATIONAL ENERGY POLICY ACT

MOTION TO PROCEED

The PRESIDING OFFICER. The Senate will now resume consideration of the motion to proceed to S. 1220, the energy bill. The time between now and 1 p.m. this day is to be equally divided and controlled by the senior Senator from Louisiana [Mr. JOHNSTON] and the senior Senator from Montana [Mr. BAUCUS].

Mr. JOHNSTON. Mr. President, I yield myself 20 minutes.

Mr. President, regarding the speech against S. 1220 earlier today, am I to understand that that was not taken out of the time of the opponents of S. 1220?

The PRESIDING OFFICER. That is true.

Mr. JOHNSTON. I wonder if, in the spirit of fairness, the speech of Senator WELLSTONE could be charged against the time of the opponents?

The PRESIDING OFFICER. Under the procedure now, the time between now and 1 o'clock is equally divided. The previous time was under morning business.

Mr. BAUCUS. Mr. President, might I inquire of the Senator from Louisiana, perhaps an alternative suggestion would be to seek consent to extend the time for debate on the bill for another 10 minutes equally divided.

Mr. JOHNSTON. Mr. President, I think Senator BYRD is ready to go. I had assumed that the unanimous consent which was agreed to was to be equally divided. If that is not suitable, it is not suitable.

Mr. President, at long last, we are now ready to consider national energy policy. There is an old Chinese proverb that says that he who does not change direction is liable to end up where he is headed.

Mr. President, we start with a graphic picture of our national energy policy today, dependent upon the Middle East, having to send 300,000 American men and women to the Middle East to risk their lives, some of whom did not come back, on account of oil.

Mr. President, I hope this picture will sear itself into the minds of Americans. I know it is already seared into the minds of Americans, but I hope they will recall what this issue is all about. It is about this country being dependent upon the Middle East, which is about as stable as this oil well, which so far as I know is still burning.

Mr. President, if we are liable to end up where we are headed unless we change policies, it is worthwhile to see what the trends are. I think most everybody in America is familiar with these trends.

The first chart is American petroleum consumption, which is headed straight up. The second chart is American crude oil production, which is headed straight down. Can any American doubt the direction of American energy policy? Can any American doubt if this is not changed, where it ends up? It ends up, as a matter of fact, Mr. President, with the fact that we are dependent now on imports for about 50 percent of our oil. Sixty-four percent of America's balance of payments deficit is now due to oil imports, 64 percent of America's balance of payments deficit is due to oil imports.

Former Secretary of Energy James Schlesinger says that by the year 1995, we will be dependent for two-thirds of our oil on imports. The Department of Energy says it will be some years later. The Office of Technology Assessment said just yesterday that it will be three-fourths sometime within the next two decades.

So, Mr. President, keep in mind these charts: Production down, consumption up.

Now, where that leads us, Mr. President, is from 1991, right here, this is the projected oil import bill. As I mentioned, that oil import bill, which is now at $65 billion in 1991, is projected to go in this direction by the year 2010. This, according to the Department of Energy, Mr. President. Now our balance of payments, I repeat, is 64 percent, caused by imported oil.

Mr. President, I mentioned a moment ago where the trends were in terms of domestic production.

The rotary rigs in operation is, to those of us who are in oil-producing States, the leading indicator of where we are going in oil. You can see where we are right now. This is as of May 1991. We have come down from 4,000 rigs in operation to less than 1,000. That tells you what the future of American oil production is.

On account of that, Mr. President, we have put together a comprehensive national energy strategy which is designed to change the direction in which America is headed. It is designed to be comprehensive, balanced both politically and policywise, because, Mr. President, in some 19 years in the Senate on the Senate Energy Committee, we have found that doing any one thing in energy will not work; You must attack the problem comprehensively.

Accordingly, this bill, S. 1220, with 16 titles, deals with everything from CAFE standards for automobiles—that is the fuel economy of automobiles—to alternative fuels, to renewable energy, energy efficiency, the Arctic National Wildlife Refuge drilling, to advanced nuclear reactor commercialization, to nuclear reactor licensing, to uranium enrichment, to natural gas, to the Outer Continental Shelf, to research and development, demonstration and commercialization activities, and a whole range of technologies from clean coal to solar energy, to coal and electricity, to Public Utility Holding Company Act reform, to the strategic petroleum reserve.

Mr. President, we just heard an amazing speech that says that this bill is nothing but a special interest bill; that the provisions of it that relate to renewable energy, energy efficiency, alternative fuels, do not amount to anything. I submit that these provisions are the most far-reaching provisions on the so-called environmental path—on energy efficiency, on renewables, on alternative fuels—that have ever been presented to Congress. I submit they are not only far-reaching, but they are controversial.

For example, Mr. President, our provisions on energy efficiency have already been opposed by the National Association of Homebuilders because we have strict and far-reaching provisions with respect to standards on buildings. But our friend from Minnesota says energy efficiency counts for nothing, conservation counts for nothing, alternative fuels count for nothing.

Mr. President, that is what we have done for 19 years, nothing, because the opponents always come in and say it is not enough. The opponents always come in and say the only solution is to do something not now being considered, something in terms of taxes or other provisions. This is a comprehensive and balanced policy, and I hope that the Senate will consider it.

We were just told by my friend from Minnesota that we should posit this whole policy on conservation and on renewables. Mr. President, we do a lot in renewables in this bill, and we will discuss that, I hope, fully, and I hope my colleagues will listen to it. But if you look at renewable energy today, you will see why it is we cannot posit our whole policy on renewable energy.

This shows the cumulative Federal support, the number of dollars we have spent on renewable energy from 1978 to 1990. We have spent, counting tax credits, over $8.233 billion on renewable energy; On solar, we have spent $2.151 billion. This is the Department of Energy sources. We have related over here the 1990 energy production in thousands of barrels a day. In other words, what did we get for the $2.151 billion we have invested in solar energy? We got the equivalent of 24,000 barrels a day. That includes 20,000 barrels a day off-grid production. That means, for example, heaters for swimming pools, which do not go into the grid for electricity, are off grid. We count most of that $2.151 billion that is off grid and never goes for the benefit of most people. It goes individually for homes as hot water heaters or swimming pool heaters. In any event, Mr. President, cumulatively in solar energy we have 24,000 barrels a day.

With wind energy we have spent $421 million. That does not count the tax credits given by States, those wind farms in California. That has given us the equivalent of 30,000 barrels a day.

Ethanol, we have spent $3.165 billion. That includes the Federal excise tax exemption of $3.10 billion. That got us the equivalent of 40,000 barrels a day.

Other biofuels, which you can see are the most extensive, we have spent $327 million. That is the equivalent of 200,000 barrels a day. Mr. President, the other biofuels here, the biggest source of renewable energy, happens to be wood chips and paper mills, a very important source of energy. But it is not a great breakthrough.

Geothermal, with $852 million, has given us the equivalent of 100,000 barrels a day.

And ocean systems, where we have spent $217 million, we get zero.

Cumulatively we have spent over $8 billion, and we get the equivalent of 394,000 barrels a day.

The percent of our energy requirement is 1 percent by renewables, or if you wanted to put that in terms of the number of days of a year that renewable energy supplies this country, it is 3.8 days that renewable energy supplies this country.

Mr. President, I want to be understood well. I am a strong proponent of renewable energy. I am a coauthor of Senator DASCHLE's solar energy tax credit, which would be $50 million a year additionally. We have a huge number of initiatives in our bill relating to renewable energy.

Mr. WELLSTONE. Will the Senator yield?

Mr. JOHNSTON. But the point is, Mr. President, you cannot put your whole energy policy on this, because we spent $8.2 billion for it and we are getting less than 1 percent of our energy from nonhydro renewables.

Mr. WELLSTONE. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. WELLSTONE. Is it not true that two-thirds of our energy consumption is in transportation and industry?

Mr. JOHNSTON. Transportation and energy?

Mr. WELLSTONE. Transportation and industry. And is it not true that almost nothing in this piece of legislation calls for required standards? That these standards are voluntary?

The Senator said that there is a great deal for conservation. My question is, given my understanding that two-thirds of energy consumption in this country is centered in transportation and industry, are the standards for these sectors voluntary?

Mr. JOHNSTON. I do not understand. Are you saying "in industry," or transportation "and industry"?

Mr. WELLSTONE. Transportation and industry—"and."

Is it not true—this is why I ask the Senator this question—that there is almost nothing required by way of efficiency standards? That these standards are, in fact, voluntary?

Mr. JOHNSTON. No; that is not correct. There is a whole range of requirements in this bill. If the Senator would listen and study and read the bill, he would understand that.

There is a tremendous amount that is required in this bill, and I will not go into that at this point. I hope that the Senator will let me do so when the time comes and not filibuster on that part of the bill.

Mr. WELLSTONE. I would be pleased to have this discussion with the Senator later on. Since I serve on the distinguished chairman's committee, I certainly have looked at the legislation very carefully, and I do not see the language really saying that, and perhaps this is something we will debate later on.

Mr. JOHNSTON. I certainly hope so, because there are some 30 different initiatives in this bill with respect to energy efficiency. There are also very far-reaching energy conservation provisions. I want to strengthen the CAFE provisions. There are also very strong alternative fuel provisions in this bill.

Mr. President, again, the point of this is just to show that, yes, we need to do these things, but if my colleagues think we are going to build an energy policy only on that, we are likely to end up where we are now, which is only a very small part of our energy provided for by this means.

If I may point out, some of the provisions relating to energy efficiency involve least-cost planning for public utilities so that they must consider that which is the least cost, including conservation. We establish a production tax credit for renewable energy supplies—excuse me, that is what is proposed.

Mr. President, the situation we are in on this bill is this: that we have a comprehensive bill to be considered. We were told by the distinguished Senator from Colorado this morning that this is a great bill, save for one provision; that is, the Arctic National Wildlife Refuge. We are told by the Senator from Minnesota that there is almost nothing redeeming about this bill; that it comes out of the corporate board rooms and is only an attempt to enrich corporate America on the backs of average citizens of this country.

Mr. President, I submit that this bill, which was reported by the Energy Committee by a vote of 17 to 3—only 3 votes against it, Democrats for it by a vote of 8 to 3—is not a special interest bill. To the contrary, it is a balanced bill.

Mr. President, I know full well the emotion and the energy that goes into the question of drilling in the Arctic National Wildlife Refuge. But this Senate and this country and this Congress needs to consider national energy policy and vote on it. I hope that we can approach this energy bill with a spirit of examining every provision on its merits without obfuscation and without disingenuous arguments on both of our sides. I hope we can decide what it is we can agree on. I hope that will include drilling in the Arctic National Wildlife Refuge, but that is only one part of this bill.

I suggest to my colleagues, Mr. President, that we approach the bill from the standpoint of trying first to decide upon what we can agree and try not to get bogged down in the debate on the Arctic National Wildlife Refuge to the exclusion of all of the rest of the bill; rather, that we examine the bill title by title and see what we can agree upon because, Mr. President, I think it is well within the power of the opponents of this bill to consume all of the time between now and Thanksgiving in a whole series of dilatory amendments. I hear rumor there are some 500 amendments circulating out there. I have been here long enough to know that you can use up the time between now and Thanksgiving with these dilatory tactics if you want to.

So I say to the opponents of this bill, if they want to defeat national energy strategy, it is probably within their power to do so. I think the country would be in much worse condition if that is done. I think it is a heavy responsibility to take on the defeat of any part of national energy strategy.

Mr. President, I hope my friends from the opposition will look upon it as opposition to parts of this bill. I hope the spirit that the Senator from Colorado began this morning's business with, which was saying he opposes drilling in the Arctic National Wildlife Refuge but that the rest of the bill is good, I hope we can approach it with that spirit and look at these provisions.

Is it true that our provisions on energy efficiency do nothing at all to improve energy efficiency? I think the Senator from Colorado, Senator WIRTH, who wrote those provisions, would take exception to that.

Is it true that our energy conservation provisions do nothing at all, that nothing is required? I think the Senator from Colorado, who wrote those provisions, would take exception to that.

The PRESIDING OFFICER. The 20 minutes the Senator yielded himself has expired.

Mr. JOHNSTON. I yield an additional 2 minutes.

Mr. President, I think the provisions on alternative fuels which require private fleets to begin phasing in alternative fuel vehicles by 1998 and public vehicles by 1995—requiring alternative fuel vehicles is a very far-reaching and very important provision. I think the Senator from Colorado and others who oppose drilling in the Arctic National Wildlife Refuge would agree that it is far-reaching and very good.

So, Mr. President, what we need to do, I believe, on this bill is start wading through those provisions, put off the fight on ANWR for a while, and let us see if we can agree to the rest and not try to do what I call terrorist activity on the bill; that is, to stop it, to try to clog up all the drains with amendment after amendment, but that we look at that part on which we can agree. I hope, Mr. President, that we can do that.

Mr. WIRTH. Will the Senator yield?

Mr. JOHNSTON. Yes; I will.

Mr. WIRTH. Mr. President, I appreciate the Senator yielding. I have enormous admiration for the job the distinguished Senator from Louisiana has done on this bill. I want to have a broad national energy policy and a strategy coming out of the Senate. I have said that on a number of occasions. The Senator is quite correct; I was deeply involved, with his support, in writing a number of the provisions.

As I have also said on a number of occasions, this comprehensive bill would have been on the floor months ago had it not had appended to it drilling in the Arctic National Wildlife Refuge. That is a huge controversy which many of us believe is wrongheaded, wrongminded, and not good energy policy for the future. It might have been acceptable policy 10 years ago or 20 years ago or 30 years ago. It is not today.

We have said over and over and over again, we would get to this bill quickly if the distinguished chairman of the committee would agree to split off the Arctic. Let us get on with doing this bill. We should all agree that a bill on corporate average fuel economy, a separate bill reported out of the Commerce Committee, ought to be acted upon. Those are the two highly controversial areas. Let us get to those separately, deal with those separately, and go on to a comprehensive bill. That is an offer which we have made over and over and over again.

I thank the distinguished chairman for yielding.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JOHNSTON. I yield myself an additional 2 minutes.

Mr. President, the Senator is not making an offer that the rest of the group would support the 14 other titles of this bill. He is speaking only for himself.

Mr. WIRTH. If the chairman will yield, we have had any number of discussions with the distinguished chairman of the committee. Maybe we have all been talking past each other, but we have said in the clearest terms possible, if the Arctic is a separate bill, if CAFE is a separate bill, then let us go on with the overall energy bill, the other 14 titles. We can move into those other 14 titles and act on those just as we do on any other bill.

There are some Senators who have problems with the nuclear provisions. Let them do amendments. And if the distinguished chairman has a majority, fine. There are problems with other parts. Everybody is going to amend the bill. There are going to be all kinds of amendments to the bill. People have good ideas and bad ideas and we just progress on that.

The two hurdles, the two bookends that are causing the problem are the corporate average fuel economy standards—which I would like to see in the bill but would agree to deal with it separately because it is so controversial—and on the other side the Arctic National Wildlife Refuge, which the Senator from Louisiana would like to have in the bill. Why not compromise and leave that outside so we have the major part of the bill, the whole book shelf which is 14 titles long, and let us get on with that. That is the offer we have made.

The distinguished Senator from Montana has been the leader of our group on this. I would certainly like him on this as well.

I thank the distinguished Senator for yielding.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JOHNSTON. Mr. President, 1 minute.

I would hope—and I know the leaders of the opposition are here—that we could examine those 14 titles first and see what we can agree upon. To do so, Senators surrender no rights. I am not asking Senators to agree to anything unanimous consentwise. I am not asking anyone to give up their right to filibuster. I am not asking anyone to surrender on the nuclear title, or the Public Utility Holding Company Act title, or even energy efficiency. There will be amendments proposed. But why not see what we can agree upon and then when we get to the end of that process, Senators have the right to filibuster, to offer 500 amendments, to do anything.

Mr. WIRTH. Will the Senator yield?

Mr. JOHNSTON. Yes.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WIRTH. Just to explain, if I might—I will come back.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask to use as much time as I consume and that the Chair advise me when I have used 10 minutes.

Mr. President, this morning the Senate begins its debate on energy policy. I, like most of my colleagues, support a strong energy policy that will protect Americans from oil price shocks and provide adequate environmental protection in the decades ahead. I want to underline that point. I know every Senator supports a strong energy policy as we attempt to endeavor to find some way that this country in fact enacts strong energy policy. We need such a policy. The Senate should work to adopt such a policy as soon as it possibly can.

However, the pending legislation, S. 1220, is a seriously flawed and inappropriate starting point for such an energy debate. S. 1220 embraces the false hope that America can produce enough oil to shield itself from the uncertainties of Middle East politics. S. 1220 turns its back on developing technologies that can increase our energy efficiency by creating no new markets for such technologies.

S. 1220 calls for drilling of oil in a pristine area of Alaska. It provides for no mandated improvement in the efficiency of our automobiles—none. It completely restructures the electric utility industry. It shuts out the public during the nuclear licensing process.

It allows many hydroelectric projects to evade the Endangered Species Act. And it provides insignificant, voluntary improvements in efficiency of appliances, lighting, and buildings. We could improve each of these provisions through debate on the Senate floor, and that is what many of us are urging.

But the better course for the Senate and for this country would be to start with a proposal that looks to the future and not to the past. That is the essential problem with this bill. We should be considering an energy policy that reduces, not increases, our dependence on oil. We should be able to declare that the legislation we are considering will provide significant reductions in the gases that contribute to global warming.

Mr. President, we can do better. I and others are prepared to spend the time necessary to address each of the dozens of significant problems presented in S. 1220.

I would prefer to spend my time, however, in supporting legislation that protects the future of this country, one that does not look to the past.

I come to this debate unwillingly. Clearly, the Energy Committee members, particularly its chairman, have devoted a lot of time to this legislation.

But wise and careful energy production—I underline the word production—coupled with careful energy use, should be our goal. S. 1220 is devoid of such a goal. I cannot, therefore, recommend that the Senate initiate a protracted debate on such a reversionary policy.

The energy policy put forth in this legislation is seriously flawed. It is policy that is heavily skewed toward increased energy production, at any cost to the environment and the consumer. It suffers from the tunnel vision of chasing cheap oil while shunning energy conservation and efficiency. It is a policy to deregulate virtually every major energy industry in this country.

The single-minded pursuit of oil for the past decade has made our families and businesses more vulnerable to oil price shocks.

It has reduced our ability to compete with Japan, Germany, and other nations in the world marketplace.

And it has contributed to global warming, air pollution, and other environmental problems.

This so-called comprehensive energy legislation has no broader vision than merely continuing our present policy. It continues to stumble along in the wrong direction.

Some have said that this bill is flawed because it is not balanced with more conservation measures. I disagree. It is flawed because it has no vision of the future.

It fails to take us in a new direction, a direction that leads to increased energy efficiency and development of other energy sources, a direction that leads to greater economic stability, increased international competitiveness and a healthier environment.

The centerpiece of this bill is the panacea of drilling for oil in the Arctic Refuge's wilderness. It is, in reality, only a hope that we will be able to find 200 days' worth of oil—oil that the Office of Technology Assessment has said would provide a short-term and very small benefit to us 10 to 40 years from now.

This bill threatens to destroy a portion of this country's natural heritage with very little in return. The exploration for oil and gas that would follow leasing would change forever a magnificent and wild national treasure.

In exchange for the certainty of that harm, the Nation's major oil companies—not the independents but the majors—would have gained the right to roll the dice, or to flip a coin, on finding oil.

And look where this approach leaves us 10 years from now. We will have made little progress toward greater conservation and more efficient use of energy. We will have made little progress toward development of energy alternatives to oil. And we will have begun to drain the last of our oil to feed our wasteful energy habit.

Opening the wilderness areas of the Arctic Refuge is a quick fix that has more to do with helping big oil than it does with helping the public. The big oil companies reaped more than $40 billion in profits from Prudhoe Bay production between 1969 and 1987.

I reject a policy that, for 6 months of oil—maybe 7 months of oil—would sacrifice what the Interior Department called "the only conservation system unit that protects, in an undisturbed condition, a complete spectrum of the arctic ecosystems in North America."

The oilspill in Prince William Sound taught us that the promise of not having to choose between a wild, natural arctic ecosystem and extensive development is a promise that cannot be kept.

We do have to choose.

Remember that 90 percent of the 1,100-mile northern coastline of Alaska—offshore and onshore—has been devoted to energy exploration and possible development. Only the 110 miles of the Arctic Refuge's coastal plain remains off limits.

We do not have to develop the last and best 10 percent to have a sound energy policy for this Nation.

Our problem with imported oil is its price, not its availability. Most of the world's oil reserves lie in the Persian Gulf. It is instability in this region that produces large shocks in the price of oil.

The United States has only 4 percent of the world's oil reserves and much of what is left is inaccessible and expensive to develop. No matter how hard we try—no matter how much of our natural heritage we destroy—the United States cannot produce its way out of our current vulnerability to oil price increases. It cannot.

During the war with Iraq, Alaskan oil sold for the same price as oil that was imported from the Persian Gulf. Oil from the Arctic Refuge, if there is any, also would sell at the same price as Persian Gulf oil.

Between the last oil crisis and this one we burned most of the oil we had found on Alaska's North Slope. But that oil did nothing to insulate us from skyrocketing prices, and the answer is not one single find.

Our national energy strategy should not abandon domestic oil production, but it should be more focused toward the future.

This country's policy should provide economic incentives to put the oil rigs in Montana, Texas, Oklahoma, and elsewhere around the country back to work extracting known oil reserves.

It is called enhanced recovery. The President's national energy study showed that the amount of additional oil that we can get from enhanced recovery vastly exceeds four or five times the amount that may be found in a very pristine area of northern Alaska; or other strikes in addition, I might add.

We should encourage more thorough exploration and development of the tens of millions of acres already under lease in Alaska. Strikes in some of these areas already have proven to be far more promising than originally thought.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. Mr. President, I yield myself another 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. But the way to protect ourselves from huge, overnight increases in the price of oil—to prepare ourselves now for the future—is to use oil more efficiently and to become less dependent upon it.

This fact is as true in our own lives as it is true for the Nation as a whole.

The less oil we need to run our businesses, drive our cars, and heat our homes, the less we have to spend out of each paycheck for oil price increases that we never will be able to control.

We can use energy more efficiently without compromising our quality of life. Americans need not live in colder homes during winter. We can take advantage of existing and developing technologies that provide us with the heating, appliances, and lighting that we seek but with less energy use.

Our appetite for oil also is costly to the global environment. Energy consumption is the single largest contributor to global warming.

The United States is the leading contributor of greenhouse gases that threaten the Earth's climate. With 5 percent of the world's population, the United States accounts for about 20 percent of the world's global warming emissions. U.S. carbon dioxide emissions originate almost exclusively from burning oil and other fossil fuels.

Yet, while most of the developed countries of the world are seeking to stabilize or reduce greenhouse gas emissions, particularly carbon dioxide, the United States has stood alone as unwilling to commit to fixed targets and dates for reductions.

The Office of Technology Assessment estimates that if no actions are taken, U.S. carbon dioxide emissions will likely rise 50 percent during the next 25 years.

S. 1220, far from producing significant reductions in greenhouse gas emissions, would increase our already heavy reliance on oil and would increase U.S. carbon dioxide emissions.

During the Reagan years, virtually every Federal energy conservation policy was dismantled.

We cannot continue to shun the quickest, cheapest, and most effective energy options in favor of ones that are the most costly to the Nation's economy and environment.

Rather we should weigh our energy options and pick the best buys first.

Energy efficiency is the cheapest and most immediate solution to increased oil prices that we have.

The Japanese, German, Swedish, and other foreign competitors already use half as much energy per capita as we do in the United States. No wonder they are such formidable competitors.

By increasing fuel efficiency by 1.5 miles per gallon per year over 7 years, we could save as much oil as Iraq and Kuwait would have produced.

Let me repeat that.

By increasing fuel efficiency by 1.5 miles per gallon per year over 7 years, we could save as much oil as Iraq and Kuwait would have produced. An increase in fuel economy standards to 40 miles per gallon could save as much as 8 to 9 billion barrels of oil by 2010.

If homes were fully insulated and used the most efficient furnaces and water heaters, the United States could save the equivalent of 16 billion barrels of oil by 2020.

If America's 1 billion light sockets were equipped with high efficiency bulbs, an additional 600 million barrels of oil would be saved.

A sound energy policy is one that plans for the future. It is one that protects our climate and environment and promotes wise energy choices. It is not one that requires drilling in the Arctic Wildlife Refuge.

Finally, Mr. President, as chairman of the Subcommittee on Environmental Protection, I have a very serious jurisdictional objection to the process that has brought us here today. I realize that no one outside the Senate may care about these concerns. But each of us within this institution should care greatly.

S. 1220 in effect amends almost every environmental statute under the jurisdiction of my subcommittee and it amends many other environmental laws under the jurisdiction of the full Environment and Public Works Committee.

But these jurisdictional concerns have been ignored so far in this process.

On February 5, the chairman and ranking Republican member of the Energy Committee wrote to our committee acknowledging that in order to have a balanced program, their comprehensive energy bill, of necessity, contains provisions that cut across jurisdictional lines.

Two weeks later, I and other members of the Environment and Public Works Committee wrote to the leadership of the Energy and Natural Resources Committee to request sequential referral of this legislation, so that we could consider it properly and fully.

To the best of my knowledge, there was never any response to that letter.

On June 24, I renewed our request with the Energy and Natural Resources Committee. Again, there has been no response.

We continue to believe that the most efficient and effective manner for the Senate to develop legislation on energy policy matters would be for S. 1220 to be referred to the Environment and Public Works Committee and other committees of jurisdiction.

Each committee in the Senate has developed an expertise in the subject matters within its jurisdiction. That is the strength of our system, and we should not allow it to be short circuited.

Our committee has expertise in the effects of various energy policy choices on air and water quality and on fisheries and wildlife.

The process we began yesterday, however, forces us to bring our concerns about the environmental effects of this bill to the Senate floor, with no opportunity for careful review.

S. 1220 runs roughshod over the jurisdiction of at least three committees. The Senate should not agree to consider a bill under these circumstances.

If we agree to this, then any committee can argue the need for comprehensive legislation. Any committee could and would use that rationale to report a bill that cuts across every other committee's jurisdiction.

That makes a mockery of the committee process and the Senate rules that none of us should tolerate.

The intrusions into the Environment Committee's jurisdiction are blatant and significant. This legislation amends the 1990 Clean Air Act amendments in several significant respects, including the provisions providing for phaseout of ozone depleting chemicals, requirements that apply to stationary sources modifying their operations, and the motor vehicle fleets requirements.

We do not believe that it is constructive to reopen the Clean Air Act so soon after its enactment. Reauthorization of the Clean Air Act was an extremely arduous and complex task that took 13 years to accomplish. Any effort to amend this act will lead to consideration of scores of other issues.

S. 1220 also amends or affects the application of the Solid Waste Disposal Act, the Clean Water Act, the Oil Pollution Act of 1990, the National Environmental Policy Act, the Endangered Species Act, and the National Wildlife Refuge Administration Act.

While this list is not exhaustive, it is indicative of the complex and controversial nature of this legislation.

I hope that before my colleagues agree to enter into extended debate on this legislation, they will carefully review all of its provisions and determine for themselves whether they are comfortable with opening such a Pandora's box tomorrow.

I urge my colleagues to vote with me tomorrow to reject S. 1220 as the basis for our energy policy. We should start with a vision of the future. Voting "no" on the motion to proceed will help us craft an energy policy that protects our children and grandchildren, not energy industry profits.

I know that some of my colleagues will feel uncomfortable voting "no" on the motion to proceed. Some will undoubtedly argue that the Senate should at least be able to talk about energy policy. I could not agree more. I want to talk about energy policy. I want to vote for constructive energy legislation.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. Mr. President, I yield myself 1 additional minute.

But we have to consider whether S. 1220 is a reasonable starting point or whether it is so flawed that it will be extremely difficult, if not impossible, to improve with floor amendments.

That is the issue. I believe that S. 1200 is so fatally flawed. This legislation gives the energy industry in this country many of the special fixes it has been asking for in the last 20 years. As soon as all prices rise again, as surely they will, this Nation's crippling dependence on oil will become all too apparent, and this legislation will have done nothing to protect us. Our constituents and our children will ask us why we did not act today to protect this country from such vulnerability.

I am voting against the motion to proceed, so that we can begin a debate on energy legislation that will begin to reduce our dependence on foreign oil. I want to debate energy policy, but the issue is how we can feasibly reduce our greenhouse gas emissions, and how we can take other actions to do what our people, our children, and grandchildren want us to do, not go down the road on something that is backward, something that is not visionary, but look toward the future and live up to our constitutional responsibilities as Senators.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute to ask a question of the Senator.

Mr. President, we heard two different descriptions of this bill this morning, one from the Senator from Colorado, who abominates the drilling in the Arctic, but who said that the rest of the bill was excellent. Indeed, he wrote much of it. Another view of it was from the Senator from Minnesota, who said this was an awful, terrible bill, with almost nothing redeeming about it. I wonder what the view of the Senator from Montana is with respect to the rest of the bill. I know well what he thinks about drilling in ANWR.

Mr. BAUCUS. I might ask the Senator if he listened to my statement.

Mr. JOHNSTON. Well, I think what I heard was that he agrees with the Senator from Minnesota.

Mr. BAUCUS. The Senator from Montana frankly believes, and I think the majority of the Members on this side of the aisle believe, that this bill has real problems.

The PRESIDING OFFICER. One minute has expired.

Who yields time? The Senator from Montana and the Senator from Louisiana control time.

Mr. JOHNSTON. I yield 10 minutes to the distinguished Senator from Wyoming.

Mr. WALLOP. Mr. President, I will only have a few brief remarks at this time. Rarely have I heard the type of misinformation and deliberate misstatements concerning legislation as has been engendered on this measure. There will be time to rebut those falsehoods when we actually consider the bill.

What I want to focus on now is the hypocrisy of those who argue that the U.S. Senate should not even consider a national energy policy act.

Are our memories so short or our concern for this Nation so shallow that we do not remember the energy crisis of the 1970's?

Have we forgotten how very vulnerable we are to supply shortages? Have we forgotten the gas lines and the anger in this land when OPEC drove home to us how dependent we are? Have we forgotten, or do we simply not care, that people were shot for cutting in a gas line? Have we forgotten, or do we simply not care, that some people froze to death? Have we forgotten, or do we simply not care, about the rhetoric which swirled through these Chambers when our sons and daughters went to the gulf 1 year ago?

On April 15, 1988, the senior Senator from Colorado addressed the Senate and stated that:

> Reality should force us to recognize that one of the most pressing problems facing this Nation is the need to develop a comprehensive energy policy.

What has changed in 3 years that we no longer need such a policy? Have we found some alchemist's stone, some inexhaustible source of energy?

What is the fear which so drives the opponents of this measure that they seek to prevent rational and reasoned debate? Is the possibility that Congress might actually enact a comprehensive energy policy so frightening that the Senate should not even discuss it? Or is it simply that the lack of an energy policy provides too rich a fodder to forego?

What a dreadful prospect it must be to face a future when opponents cannot give a speech decrying the lack of an energy policy, or when they no longer can accuse the administration of having no domestic policy.

The character of the propaganda against this measure and the special interest groups which write it, speak as eloquently as anything of the poverty of their position: Distortion, innuendo, and outright falsehood fuel their argument. Their unwillingness to have the Senate debate this legislation is understandable for they have no alternative.

The future they offer is as bleak as their vision. It is a future of increasing dependence and insecurity. It is a future where our economy deteriorates, unemployment rises, poverty is rampant. Their future would increase the homeless and cast even heavier burdens on the elderly and those less fortunate. Their future would sap our strength and erode our will. Promises and speeches will bear a bitter fruit as our Nation surrenders its future to sheiks and cartels.

Mr. President, I do not claim that this is a perfect bill nor does the committee and Senator JOHNSTON. There are provisions which I do not like. There were amendments which I offered which were adopted and there were amendments which were defeated. The Senate can and should pass on those amendments. If any Senator does not like the final bill, they can vote against the bill. That is my right as it is for all my colleagues. It is the right of the Senator from Colorado and the Senator from Montana but, by heavens, it is not their right to deny America the ability to debate this policy.

It is their privilege under the rules, but I claim it is not their right.

The position of the senior Senator from Colorado is perplexing. He fully participated in the debate in the Energy Committee; many of the provisions of this bill are his. Look at the renewables, look at the conservation provisions; look at the provisions on natural gas. The fingerprints of the Senator from Colorado are all over this bill, and many of his amendments I supported. They improved the bill. I hope they are enacted and I will defend them against attack, but I do not understand why he and the other opponents would now deny the Senate the opportunity to debate and discuss this measure.

Mr. President, a comprehensive energy policy cannot be one-sided. Conservation is essential. It is critical and I cannot overemphasize that, but conservation does not produce energy.

Conservation extends the life of our supplies. You cannot conserve nothing, you must conserve something. There must be something to conserve. We must have production. Not production at any cost, but we must have production. We should encourage research and development of alternative resources, and any success in that area will also extend the life of our limited energy supplies.

I sincerely hope the day will come when we will no longer rely on fossil fuels. That day is not here, however. The Office of Technology study clearly demonstrates that. In the interim we will continue to rely, especially in the transportation sector, on fossil fuels. The question is whether we should develop our domestic reserves or place our security, our economy, our hopes and dreams in the hands of others.

Let me say to the special interest groups opposing this legislation that their campaign of personal attacks and character smears which you have engaged in will not work. Rather than informed debate, some of these groups accuse anyone who supports any form of domestic production as some form of environmental Iscariot. We have a proud heritage of stewardship of this country and its rich and vibrant heritage. The mountains and lakes, rivers and fields so important to us all should and will be preserved.

Any suggestion that this legislation would desecrate our heritage is simply specious and nothing more than a smoke screen to cover the fact once again that they offer no alternative.

One conservation provision is not an energy policy, Mr. President. It is simply not sufficient to say that there can be no coal production, no oil and gas either offshore or onshore, no hydroelectric and no nuclear. That is not a policy; that is an abrogation of responsibility. There is the disease of the soul which renders our strength into impotence and our wisdom into ignorance

Mr. President, I close my quoting from a statement which the President pro tempore, Senator BYRD, made in the Senate August 6, 1987. I quote:

> As the situation in the Persian Gulf deteriorates and the American military involvement escalates, we are once again, witnessing the disastrous consequences of * * * refusal to develop an energy policy. Once again, Iran appears to be threatening oil supply lines in the Persian Gulf. Just yesterday, Defense Secretary Weinberger told reporters that he did "not know when it—American military buildup in the gulf—will be enough."
>
> Once again, this great Nation, so blessed with energy producing resources is forced to rely upon our military might to secure the very lifeblood of our industrial society—energy.
>
> This is not the first time we have done so. In May 1984, the Ayatollah Khomeini threatened to disrupt the oil supply lines at the Strait of Hormuz. To ensure that oil continued to flow from the strategic area, the United States was forced to rattle the saber.
>
> How often must we be reminded that the national security of the United States rests upon our energy security? In other words, there is no national security if we do not have energy security.
>
> In response to the twin energy crises of the 1970's America undertook the development of an energy policy to ensure that the United States would never again be subjected to the vagaries of that highly unstable region or to international blackmail, as in 1973. Since 1973, there has been a bipartisan effort to set our sights on energy security by merging our technologies genius with our abundant natural resources.
>
> We must have an overall policy; we need a comprehensive national energy policy that will fully develop our massive coal reserves, as well as our oil, gas, and other energy resources.
>
> The United States has the resources and the technology to develop the energy security that would free us from the despots and uncertainties of the Middle East. What we need is the leadership and determination to put in place a long-term, comprehensive, energy policy. There can be no real national security without energy security.

Mr. President, those words were wise then, and they are wise words today. The senior Senator from West Virginia was precisely correct.

The legislation reported by the Energy Committee offers the Senate the opportunity to work its will on whether we will or will not have such a policy. Those who oppose proceeding to this legislation would deny us that.

I urge my colleagues to support the motion to invoke cloture.

I thank the Senator from Louisiana.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Montana [Mr. BAUCUS].

Mr. BAUCUS. I yield 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for up to 10 minutes.

Mr. CHAFEE. Mr. President, I would in starting point out to my distinguished colleague from Wyoming—who I had the pleasure of coming to the

Senate with at the same time in 1977—that in his remarks, he is very stern against those who would object to proceeding. I would gently remind my esteemed colleague that just within the past 2 weeks, he objected to proceeding to the Federal Facilities Act, and indeed we had to go to a cloture motion there, which my good friend voted against.

So I think it depends which day we are talking about. And those of us who do not want to proceed on this are acting just in the same spirit that my good friend from Wyoming acted within the past 2 weeks in connection with the Federal Facilities Act.

Mr. President, today I rise to outline my opposition to proceeding with S. 1220, the National Energy Security Act of 1991. This bill was reported by the Committee on Energy and Natural Resources on June 5 of this year. As ranking member of the Committee on Environment and Public Works, I have expressed strong jurisdictional interest in the bill. In fact, Senators JOHNSTON and WALLOP wrote to me on February 5 of this year to point out that the energy strategy included several provisions that cut across committee jurisdictional lines. Recognizing the environment committee's interest, they requested my views and help refining the bill. Due to the myriad of jurisdictional concerns, I and several members of the Environment Committee, including our chairman, Senator BURDICK, wrote to Senators JOHNSTON and WALLOP on February 20 seeking sequential referral of the original energy package and never received an answer, to the best of my knowledge.

Mr. President, I ask unanimous consent to print in the RECORD those letters.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, February 5, 1991.

Hon. JOHN H. CHAFEE,
Ranking Republican Member, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR JOHN: Earlier today, we introduced the National Energy Security Act of 1991, a copy of which is enclosed. It is a comprehensive energy policy bill that addresses the urgent need to reduce our nation's dependence on imported oil through domestic production and conservation.

Together, the fifteen titles of the bill form a balanced program rather than a collection of unrelated proposals. Of necessity, the package contains provisions that cut across jurisdictional lines. We recognize your Committee's interest in some of these and welcome your views and help in refining them.

Enactment of a national energy policy is long overdue and we intend to move with deliberate speed. Our goal is to mark-up the bill and report it to the Senate in April.

We look forward to your support and active cooperation in helping us in this important endeavor.

Sincerely,

J. BENNETT JOHNSTON,
Chairman.

MALCOLM WALLOP,
Ranking Republican Member.

U.S. SENATE,
February 20, 1991.

Hon. J. BENNETT JOHNSTON,
U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: Thank you for your recent letter seeking our assistance and cooperation in the development of a comprehensive national energy policy. We share your view of the need for such a policy, and we welcome the opportunity to work with you to achieve that objective.

The Committee on Environment and Public Works has, as you have correctly noted, jurisdiction over a number of the matters addressed by S. 341, the National Energy Security Act of 1991. Consequently, we believe that the most efficient and effective manner for us to assist in the development of a national energy policy would be for you to agree to a referral of S. 341, or portions thereof, to the Environment and Public Works Committee so that our members can consider that bill properly and fully.

Section 5101 of S. 341, for instance, limits the New Source Review requirements in the Clean Air Act as they apply to electric utilities. As such, the legislation would amend that Act to re-open the so-called "WEPCO" issue, which the Clean Air Act conferees explicitly agreed in October 1990 to defer to agency action. This issue and other matters relating to air pollution are within the sole jurisdiction of the Environment and Public Works Committee. In addition, we do not believe that it is constructive to re-open the Clean Air Act so soon after enactment of the 1990 Amendments. Reauthorization of the Clean Air Act was an extremely arduous and complex task that took 13 years to accomplish. Any effort to amend this Act will reopen consideration of scores of other issues, including governmental mandates regarding fuel availability.

Subtitle B of Title III of S. 341 would make new requirements applicable to Federal buildings. The sole jurisdiction of the Committee on Environment and Public Works over matters relating to public buildings makes inclusion of these provisions in S. 341 a matter of serious jurisdictional concern.

Subtitle D of Title III of the bill requires the Energy Secretary to promulgate and implement used oil recycling requirements. It also amends the Solid Waste Disposal Act to prohibit the EPA Administrator from listing used oil as a hazardous waste. Both of these matters relate to solid waste of management, including recycling and disposal and, as such, are within the sole jurisdiction of the Committee on Environment and Public Works. The substance of this portion of S. 341 was recently introduced as separate legislation, S. 399. It is important to note that S. 399 was properly referred to the Committee on Environment and Public Works.

The Committee also has sole jurisdiction over matters relating to water pollution, including section 401 of the Clean Water Act, which provides authority for States to certify that projects requiring a Federal license or permit, including hydropower projects, are consistent with State water quality standards and goals. S. 341 would restrict existing authority for State water quality certification of these projects. Issues related to section 401 should and will be considered by the Committee on Environment and Public Works as it develops legislation to reauthorize the Clean Water Act this year.

The Environment and Public Works Committee has sole jurisdiction over matters relating to the U.S. Fish and Wildlife Service, its programs and the management of fish and wildlife resources generally. The single largest responsibility of the U.S. Fish and Wildlife Service is the management of the National Wildlife Refuge System. Approximately one third of the U.S. Fish and Wildlife Service's annual program expenditures are allocated for the management and protection of fish and wildlife within units of the National Wildlife Refuge System, including the Arctic Refuge. Title IX of S. 341 significantly affects the future management of the Arctic National Wildlife Refuge and also affects and amends other laws and programs within the jurisdiction of the Committee on Environment and Public Works. Section 9201 of S. 341, for instance, prevents "further findings or determinations of compatibility by the Secretary [of the Interior and, therefore, the U.S. Fish and Wildlife Service] under the National Wildlife Refuge Administration Act" with respect to activities in 1.5 million acres of the Arctic National Wildlife Refuge.

Units of the National Wildlife Refuge System, including Arctic National Wildlife Refuge, are managed by the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act of 1966 (P.L. 89-669). This Act restricts the uses of refuge areas to those that the U.S. Fish and Wildlife Service determines to be compatible with the major purposes for which a refuge was established. That Act is within the sole jurisdiction of the Environment and Public Works Committee.

Two other bills that address matters relating to the management of the Arctic National Wildlife Refuge, S. 39 and S. 344, already have been referred to this Committee and are under active consideration.

Section 9303 of S. 341 makes the determination that the Department of the Interior's Final Legislative Environmental Impact Statement (LEIS) on the Coastal Plain is adequate and satisfies the legal requirements of the National Environmental Policy Act. The communication from the Secretary of the Interior transmitting this Final LEIS on the Coastal Plain, pursuant to Title X of the Alaska National Interest Lands Conservation Act, was referred solely to the Committee on Environment and Public Works on July 8, 1987. Moreover, it is well established that the National Environmental Policy Act is within the sole jurisdiction of our Committee.

The Committee will be conducting hearings to consider the recommendations and legislation that have been referred to it concerning the future management of the Arctic National Wildlife Refuge's Coastal Plain. The scope of our review, therefore, includes evaluation of the adequacy of the Interior Department's Final LEIS on the Coastal Plain and consideration of S. 39 and S. 344.

The entirety of Title XIII, Nuclear Reactor Licensing, is within the sole jurisdiction of the Committee on Environment and Public Works. Nuclear reactor licensing has always been considered within this Committee's jurisdiction over the non-military environmental regulation of nuclear energy. In prior Congresses, bills that have sought to modify the nuclear licensing process have consistently been referred to the Environment and Public Works Committee.

For the same reason, various provisions of Title XII, Advanced Nuclear Reactor Commercialization, are also within the sole jurisdiction of the Committee and Environment and Public Works. For example, sections 12005(f) and 12006(d) concern the same licensing issues as Title XIII, and are therefore within our Committee's jurisdiction. Other provisions in this title could affect the safety of nuclear facilities, and are therefore also within the jurisdiction of the Committee on Environment and Public Works.

Finally, we note that Title X of S. 341 has provisions that duplicate, override and circumvent the National Environmental Policy Act and the regulations issued pursuant to that Act by the Council on Environmental Quality. These matters, as pointed out above, clearly fall within the sole jurisdiction of this Committee.

For these reasons, we ask that you join with us in consenting to the referral of S. 341 to the Committee on Environment and Public Works.

We look forward to your cooperation with respect to this and other matters of mutual concern.

Sincerely,

John H. Chafee, Dave Durenberger, Quentin N. Burdick, Max Baucus, Frank R. Lautenberg, Bob Graham.

Mr. CHAFEE. Mr. President, this bill has 13 clear-cut instances where the Energy Committee has barged into the jurisdiction of the Environment Committee. I am not solely opposed because of a turf battle, a jurisdictional battle. I am opposed because of the results reached by the Energy Committee: It runs roughshod over environmental protection.

Some instances: Last year, by a vote of 89 to 11, the Senate passed the Clean Air Act, and that Clean Air Act dealt with what we call new source review requirements in the Clean Air Act to electric utilities. As such, the legislation would amend the act to reopen the so-called WEPCO issue. The bill changes that, gets into that matter, reopens it once again.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. CHAFEE. If I might finish, then I will be glad to deal with any questions.

Second, this bill gets into the matter of chlorofluorocarbons, a matter of intense interest to me, a subject we have dealt with in the Environment Committee for many years. There is no question but CFC's are the primary cause of the destruction of the Earth's ozone layer, and just last week news came out that destruction of that ozone layer is proceeding far more rapidly than we previously thought. And this is principal cause of skin cancer and myriad changes in our environment.

So in the Clean Air Act, we provide for an elimination schedule for CFC's in title I of the energy bill. Can you imagine it; they get into this area. They override the schedule for the CFC reduction that was included in the Clean Air Act. And, in addition, this act eliminates the EPA Administrator's authority to accelerate the schedule even further. This represents a major step backward in an effort to phase out the use of CFC's.

Secondly, and in connection with the CFC's, it specifically recommends research on HCFC-22 which is a replacement for CFC's. But this is just the approach we are trying to avoid. If the Federal Government is going to support research on substitutes, we should focus our resources on pure and safe substitutes, not substances with many of the same environmental hazards represented currently by CFC's and included in HCFC's.

These issues including several provisions of title IV relating to fleets and alternative fuels substantively modify the requirements of the Clean Air Act. Time and time again, this bill gets into the Clean Air Act's jurisdiction. We should not reopen the debate on the Clean Air Act. Reauthorization of that act took 13 years, Mr. President.

Where else am I talking about getting into the jurisdiction of a committee which has special knowledge in certain areas? Title VI amends the Solid Waste Disposal Act to prohibit the Administrator of EPA from listing used oil as a hazardous waste. This is solely within the jurisdiction of the Committee on Environment and Public Works.

Next, the National Environmental Policy Act; NEPA is under constant attack in this legislation, most directly in titles V and XI, which deal with hydropower and natural gas. NEPA is considered to be a watershed in the history of environmental legislation. It was enacted in 1970, and it requires a prior analysis of the environmental impact of proposed Federal actions. It functions as nothing less than the environmental conscience of the Federal Government. NEPA is solely within the jurisdiction of the Environment Committee, not of the Energy Committee, where they make changes in how NEPA is applied.

Nuclear reactor licensing; that is not within the area of the Energy Committee. That is an area that belongs in the Environment Committee, where there is expertise. Yet, in title IX of this bill, they have a provision in there to streamline nuclear reactor licensing, which is none of their business.

I would like to turn to title V. Section 5303 authorizes the Secretary of Energy, in consultation with the Secretaries of Interior and Army, to prepare a study of each of the Nation's principal river basins to identify opportunities to increase hydropower production at existing Federal water project facilities.

This impacts the projects operated by the Army Corps of Engineers, an agency which is under the jurisdiction, in this particular area, of the Water Resources Subcommittee of the Environment Committee.

Second, there is no language included in this particular provision dealing with cost sharing. I might say, that is a matter I have personally devoted a tremendous amount of time to, requiring cost sharing before we move ahead with these water resource activities. This says nothing about that.

On the Arctic National Wildlife Refuge, I am not going to develop this. Others will deal with whether we should explore for oil or should not. I have my own strong views on that. I might say that bill significantly reflects the future of the refuge. The status of that wildlife refuge is under the jurisdiction of the Environment Committee.

These are just a few of the jurisdictional concerns that I have, Mr. President. But this is not just a turf battle. The Senate has established committees as repositories of expertise for the purpose of reviewing particular issues. And this procedure has been breached in these instances, as I pointed out. Not just in the instances I pointed out, but in a total of 13 major ones.

In conclusion, let me say this, Mr. President. OMB has scored this legislation as costing $7.5 billion over 5 years. It provides subsidies for the development of coal, the use of coal. It really is the Synfuels Program all over again, something we finally ended after a great deal of strife and difficulty.

Listen to this one, Mr. President. In section 14107, it even provides for research for coal-fired locomotives. Where are we going, Mr. President, under this?

It provides for the development of coal, changing it into methanol. Not only is this incredibly expensive, but there are few ways that we could create more greenhouse gases; namely, carbon dioxide, than through the change of coal into methanol.

So, Mr. President, this bill needs a great deal more work. I believe it should go back to the proper committees, and I will therefore vote against the motion to proceed.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

Mr. President, my friend from Rhode Island said that this is a massive assault on his committee. Many of these provisions really belong in both committees. For example, used oil, the disposal of it, is both an environment and public works problem and it is also an energy problem, because by reconstituting it, putting it back in the refineries, we have a tremendous energy source.

WEPCO, we have already publicly announced that we would not pursue that. CFC's is also to be cured with a technical amendment. That was proposed by the distinguished Senator from Colorado, and it is really only a technical provision. I mean, to say that we deal with CFC's in a massive way is just not correct.

Mr. CHAFEE. Mr. President, will the Senator yield?

Mr. JOHNSTON. Mr. President, I asked the Senator to yield for a question. He would not. So let me finish what I have to say.

Mr. President, as far as ANWR is concerned, the bill on ANWR, we had a discrete bill which was referred to us. We clearly had jurisdiction over that. I understand, if you make it a wildlife refuge, it would be in the EPW Committee. It is shared jurisdiction. As far as scoring is concerned, Mr. President, this bill does yield money for the Treasury. It does not score negatively.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, did I use my total time?

The PRESIDING OFFICER. The Senator's time has expired.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 7 minutes to the Senator from Alaska.

Mr. MURKOWSKI. Might I have 10? Eight?

Mr. JOHNSTON. Try it on 8.

The PRESIDING OFFICER. The Senator from Alaska [Mr. MURKOWSKI] is recognized.

Mr. MURKOWSKI. Mr. President, I think we are seeing an extraordinary situation here. We are debating whether this bill, a comprehensive energy bill, should even be taken up. I am absolutely appalled that my colleagues would take a position opposing the debate on an energy policy for this Nation. Many of my friends have criticized the administration for not having a national energy strategy. If we do not get an energy policy, they are going to have to bear the responsibility. They said time and time again, where is this Nation's energy policy?

Mr. President, this is a comprehensive bill. Make no mistake about it, it represents compromise. Compromise by itself simply dictates a reality that there is give and take in the process. But here we have a situation where clearly the opponents are threatening to kill the bill before it is considered before this body for debate. What an extraordinary, inappropriate set of circumstances for this body. And now we are seeing a petty jurisdictional squabbling on behalf of the Environment and Public Works Committee. If you will notice, most of the Members who have spoken are members of that committee.

Where have we gone in the collective obligation we have to work together, to overcome what obviously is needed in this Nation, and that is to develop a responsible energy policy? We can only do it by proceeding with debate, by proceeding with the amendments, and carrying on in a responsible way. We are like crabs walking down the beach; we are going sideways. It is absolutely incredible, Mr. President.

Let us make no mistake about it. Senator JOHNSTON and Senator WALLOP have worked hard on this bill. It came out of our committee by a vote of 17 to 3. There are responsible Senators who took part in an extraordinary, timely, and extensive debate to develop this energy policy; 17 to 3 is a strong vote out of any committee in the Senate. But here we have the Environment and Public Works Committee saying no, no, no.

What we are seeing here is not an effort to work toward the development of a comprehensive energy bill. We are seeing an effort to simply kill it. Of course, ANWR is the lightning rod.

Mr. President, we are discussing issues that were discussed in the mid-seventies. It is the same situation all over again. And if we had prevailed—when I say "we" I am talking about the opponents—in the late sixties and early seventies, Prudhoe Bay would not have been developed—Prudhoe Bay, the finest oil field in the world. It is not perfect, but it is the finest oil field in the world. We can do better if we are lucky enough to find oil in ANWR, but we will never know unless we have that opportunity.

These are the same issues; whether the caribou will cross the pipeline, whether the moose will cross the pipeline, whether you can build a hot pipeline in permafrost.

This body passed the authorization for that pipeline, and it was developed, and it has been producing 25 percent of the total crude oil that this country has had for the last 15 years. Where would we be today if we did not have that 2 million barrels a day? Instead of importing 7 to 8 million barrels a day, half from OPEC, we would be importing 9 to 10 million barrels of oil per day. Instead of $54 billion of U.S. money going over there and enriching our neighbors, we would be sending $70 to $75 billion.

Do you know what else happened during that period of time that nobody addresses? We brought on the first CAFE standard which increased and led to the current CAFE of about 27.5 miles per gallon. We have saved millions of barrels of oil through CAFE standards. Saving oil consumption through conservation is good policy. We also brought on 2 million barrels a day through the Prudhoe Bay oil fields. Today we are in the same situation. We need conservation, but we also need responsible oil development in this country. The opponents speaking here today say throw it all out. Throw out a comprehensive national energy policy.

What are we doing to this country, Mr. President? This is a jobs issue. We are looking at a decline in our economy. Exploration and development in ANWR could create 735,000 jobs throughout the United States. Do you know what development in ANWR would do to the gross national product of this country. It would increase it $50 billion. How can we in conscience stand here and suggest that this should not be brought before this body? Mr. President, it is absolutely incredible.

Let there be no mistakes about it. You look at the deficit balance of payments, and you clear away the cobwebs, and where is it? Half of it is Japan and the other half is oil. No question about it, Mr. President. The reality is the growth of consumption is not in the United States, it is not in the Pacific rim countries; it is in the Third World.

The Third World is increasing its standard of living. They are going to demand more oil production.

What is going to happen in the United States? I am sure our friends in OPEC are watching this debate with great interest. Here we stand watching this Senate debate on whether or not we are going to increase our domestic oil production or simply abandon efforts to increase production in the most logical place, in the United States, where we might find major discoveries.

What an extraordinary opportunity, because they can simply see that more business is coming from the United States.

The Department of Energy has a very interesting forecast. They say if you find oil in ANWR of the magnitude they expect, the actual imports of this country by the year 2010 or thereabouts will only increase by 1 million barrels a day. But if we do not find oil, as a consequence of the decline in production in this country and the realization that Prudhoe Bay is declining at 10 percent a year, imports will double. Instead of importing 8 million barrels a day, we will be importing 16 million barrels a day.

What does that mean to the economy of this country? What does it mean to the ability of OPEC to hold us hostage? We just fought a war over there and we fought that war against naked aggression. And we also fought it to keep oil flowing to the Western World, make no mistake about it.

My colleagues would have you believe that America's environmental community is absolutely committed to take no prisoners on this debate. That is not true. That is a minority of Americans. It does not represent those who are interested in jobs. It does not represent the attitude of the AFL–CIO that stands behind this legislation; the maritime unions of this country that are dependent for their jobs because the oil flows from my State of Alaska down to California in only U.S. vessels, that are only U.S. crew, that are only built in U.S. shipyards.

Do you know what we are going to do, Mr. President? We are going to bring oil in from OPEC and are going to bring it in foreign ships with foreign crews made in foreign yards. Talk about buy American—it is incredible.

The Jewish Orthodox Union is supporting this legislation. Do you know why? Because they do not want to see America become more dependent on OPEC.

So there are some inconsistencies here, Mr. President, that I think are truly incredible. We are, without any action, considering not taking up for debate the largest single construction project that is identified in North America: 735,000 jobs in 50 States. I am sure the American public wants to hear more about this bill. This should be debated. This bill should be taken up for consideration. It would be a travesty—the worst kind of a travesty—if that did not happen.

The PRESIDING OFFICER. Who yields time? The Senator from Montana [Mr. BAUCUS].

Mr. BAUCUS. Mr. President, I will yield 10 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado [Mr. WIRTH] is recognized for up to 10 minutes.

Mr. WIRTH. I thank the distinguished Senator for yielding. We have had much of this discussion before and we will have more in the future, but in the 10 minutes available to me, Mr. President, I would like to try to do two things. First, is to clearly outline where we are procedurally and why so many of us feel that our rights as Members of the U.S. Senate are not being honored by the procedure under which this bill is being brought up. The second, is to talk about the substance of the Arctic National Wildlife Refuge issue.

Mr. President there are, as we have explained, two very, very contentious issues in this piece of legislation, or related to it. One of those is the corporate average fuel economy issue; the other is the issue of whether we should open up the Arctic National Wildlife Refuge.

On the 14th of September 1990, and then again on the 25th of September 1990, we attempted to bring to the floor legislation to increase corporate average fuel economy, the bill authored by the distinguished junior Senator from Nevada [Mr. BRYAN]. That bill was filibustered under the rules of the U.S. Senate. Under the rules of the Senate, any Member of the Senate can mount a filibuster to talk against a bill, and in order to break that filibuster the opponents have to have 61 votes.

CAFE was filibustered, and that filibuster was supported by many of the people who have spoken against filibustering this bill today. They filibustered CAFE and our ability to bring it up. We had 57 votes, but we could not, under the rules, bring up a CAFE bill. But that is the right—the right to filibuster—that anybody in the U.S. Senate has.

We are, however, under the procedures of this bill, being denied our rights. We cannot get a clear shot at the Arctic Refuge. The provisions to drill Arctic National Wildlife Refuge are part of this overall bill. We cannot filibuster the title related to the Arctic Refuge. It is already in the bill. So the only recourse that we have is to filibuster the whole bill and that is what is going on now.

Many of us do not want to filibuster the whole bill. I have said on any number of occasions I do not want to filibuster the whole bill. I wrote major sections of the bill. I let the distinguished chairman of the committee understand my opposition to the Arctic. There are other parts of the bill that I think make a great deal of sense. Some of those can and should be changed on the floor as well. Let the Senate work its will. But let those of us, Mr. President——

Mr. JOHNSTON. Will the Senator yield?

Mr. WIRTH. I will be happy to discuss this with the distinguished Senator from Louisiana on his time, if he will hold on a minute.

Those of us who believe it is bad policy and fundamentally wrong for us to be drilling in the Arctic National Wildlife Refuge should have the same rights as any other Member of the U.S. Senate to filibuster a bill on the Arctic.

Why should we be denied those rights? We are being denied those under the current procedure. The only choice remaining to us is to filibuster the whole bill.

Mr. President, we have made the offer over and over and over again to separate out the Arctic Refuge provisions and have votes on that particular bill so we have our rights, as the people who are opposed to CAFE exercised theirs before. Let us do that and then get on with the other 14 titles of the bill, most of which I think almost everybody on this floor is going to support.

We are going to have widgets to turn here, and bells and whistles to add there, and some fundamental changes, a lot of different ideas—that is the nature of this institution. But then let us get on with the other 14 titles of the bill. That is only fair.

For those to be arguing that we are opposed to all energy policy by this filibuster is simply flat wrong. We are only asking that we be treated as other Members of the U.S. Senate are treated, and we do not feel that that is happening under the current procedures and the way in which this bill is being brought to the floor.

For those who are not very involved in the rules and procedures of the Senate this may sound obtuse and difficult, and it is. But it is the filibuster rule that allows individuals—originally it was there to provide protection to each State, no matter how small—to allow them to protect themselves. That is what we are attempting to do, is to protect not only what we stand for but to protect a very important National Wildlife Refuge. That procedurally is what this debate is all about.

Now, if I might turn in the time remaining to me, very briefly, to the substance of this issue. We are as a nation—this is where I am coming from on this—we are as a nation overwhelmingly dependent upon oil, and it is time for us to change our ways.

This chart clearly points out our total energy use, and the yellow bars show our use of petroleum. It overwhelms all other energy sources. We know how dependent on oil we are. We ought to change our ways.

If we do not change our ways, Mr. President, here is what the administration projects in terms of current oil imports. Here is where we are today. This is where we are going to be by 2010. Our imports of oil will almost double. We have to change our ways.

If we do not change our ways, the current economic disaster which surrounds us is going to continue. More than 50 percent of our import problem, more than 50 percent of our trade deficit problem, relates to oil. We have this huge amount of American capital going overseas to buy oil because we are so dependent upon oil. And as pointed out here, that is going to get worse. We have to change our ways.

Next, the argument is made that drilling in the Arctic is going to solve our problems. That is preposterous, if we just look at this tiny little blue sliver that is the best estimate—optimistic—about what might be in the Arctic. Is that going to change our whole pattern? Of course not.

The red graphic shows the amount of known reserves in the Middle East. It is overwhelming. The yellow is what we have left in the United States a small fraction of the red. The blue is what comes from the Arctic—a small fraction of the yellow.

If we drill in the Arctic, use all the Arctic oil, then where are we?

We just push off the need to change our ways for another 200 days. We have to change our ways.

Does the Arctic provide an opportunity for us to change our whole energy future by drilling up there? Here is a chart of the administration's own estimates as to what we have. Here is our current policy based on energy oil production available to us. Note this tiny sliver here is the amount coming out of the Arctic. If we do aggressive enhanced oil recovery, this is the next big piece here, and natural gas under current policy is here. Each of those overwhelm any contribution from the Arctic. Is the Arctic going to change our ways? Absolutely not. These are the administration's own numbers, Mr. President. It makes no sense.

If we look at the need we have for energy, if we look at where that energy is coming from, if we look at our increasing dependence on oil, the Arctic does not change the pattern at all. We have to change our ways, Mr. President.

How do we do that? There are a whole variety of things that we can do that are much more enlightened and progressive and look forward out the windshield to the future rather than backward through the rear view mirror on an old oil-dependent economy. All we have to do is start right now and some of this is in the bill.

We are, in the United States extraordinarily wasteful and profligate. This is a chart, Mr. President, that explains units of energy per unit of gross national product. How much gross national product do we get from a unit of energy? We are, in the United States, at 64. The Swiss at 190. The Swiss are much more energy efficient than we are. The Swiss are three times as energy efficient. Granted it is not a perfect parallel. They do not have the transportation problems that we do, but it is instructive and illustrative. The Japanese are 2.5 times as energy efficient as we are. The French are almost twice as energy efficient as we are. The West Germans are more than 50 percent more efficient as we are. The West Germans are more than 50 percent more energy efficient than we are. Canada is the only major country that is more profligate than we are. This illustrates, Mr. President, one of the ways in which we can change our ways.

There are a number of other things in this bill, Mr. President, that allow us to move toward changing our ways. One of those is to move to alternative fuels and alternative fuel vehicles. There are some very good provisions in this legislation to help us to do that.

Another is to move more aggressively to natural gas—and I will be talking about that later in this debate—a resource that we have an abundance of in the United States. Mr. President, if any of the Members of this body stood up in front of their constituents and said to them we have a resource in the United States that is abundant, it is clean, it is domestic, and it is cheap but we are not using it, we would be hooted out of office. But that is just the case. We have a resource in this country—natural gas—which is abundant, which is cheap, which is clean, and domestic, and we are not using it. We have to change our ways.

One issue here, Mr. President, is a procedural one. We are not being treated with the same rights everybody else is. That is all we are asking for.

Second, going to the substance of drilling in the Arctic, drilling in the Arctic is looking out the rear-view mirror. Drilling in the Arctic is continuing our dependence on oil. We have to change our ways in the United States. There are a variety of ways in which we can do that, but adding a tiny bit of oil in the Arctic is not going to do that.

Let me run through this again, Mr. President.

I want to explain to the Senate why we need to reconfigure the energy bill before it comes to the floor. But before I do, let me just briefly state my deep admiration and respect for our distinguished chairman on the Energy Committee, Senator JOHNSTON. The Senator from Louisiana is one of this institution's most accomplished and effective legislators. And he has brought those skills to bear in an incredible effort to craft energy policy for the Nation. He has been absolutely tireless in this pursuit—it has been remarkable.

As the Senator from Louisiana wrote in this morning's Washington Post, there is a great deal of consensus about the vast majority of this bill, on energy efficiency, alternative fuels, natural gas, renewable energy programs. And that is a credit to our chairman. Unfortunately, there is one item in this bill—the title opening up the Arctic for oil exploration—that I cannot accept and about which we obviously disagree. This morning, I want to explain why.

The administration is promoting a very future-oriented arms control policy. Unfortunately, it is still on issues of natural resources, energy and the environment, hopelessly tied to policies of the past.

The Senate is now being asked to consider national energy policy legislation that closely parallels the President's energy proposal. Unfortunately, that legislation is a package built on a premise that I simply reject, that in order to get a meaningful energy policy, we have to agree to open the Arctic National Wildlife Refuge to oil drilling.

The administration has threatened to veto any energy bill that does not open the Arctic National Wildlife Refuge to the oil companies. Chairman JOHNSTON says that the ANWR provisions are a sacred item in the bill. All of us have seen firsthand the enormous lobbying effort going into this issue.

But the argument cannot be made that oil from the Arctic Refuge is going to put us in a strategically more focused and more leveraged situation. If we believe that we can produce our way beyond the ability of Middle Eastern monarchs to run the world oil market, this chart should make it very clear that there is no way in the world that we can do that.

The oil that may be in ANWR would not make a dent in the balance of oil power around the world. The Middle East has 660 billion barrels of oil. U.S. reserves are 26.5 billion barrels, and optimistic projections for the Arctic—an additional 3.2 billion barrels—are a tiny change in world oil power.

The President's own national energy strategy points out that we are going to be importing more oil at the end of his national energy strategy than we are today. Certainly, that is not, at least for any rational analyst, the way to reach energy security.

If we continue to keep our focus on oil, if the drilling of the Arctic Refuge is our answer, we are going to be dependent on the Middle East. That is, in fact, a policy of business as usual.

We have lots of alternatives to drilling in the Arctic Refuge. The administration's own figures show that the potential for increasing U.S. production through further research and promotion of enhanced oil recovery at existing fields dwarfs the contribution that the Arctic might make, if there is oil there at all.

The Arctic National Wildlife Refuge is no panacea; it is no silver bullet. It provides a tiny little bit of oil. An energy strategy that is centered on alternatives to oil such as natural gas and other alternative fuels, and on energy efficiency, is what we should be focused on. That would be good energy policy, good economic policy, and good environmental policy.

Why then, the Arctic? If there is oil there, and if its development follows the pattern of profits that have come out of Prudhoe Bay, the oil companies would eventually be making $6 a barrel after taxes. That means the profit to a handful of major oil companies is going to be $21.6 billion.

That is what this is all about, Mr. President. That is why the American Petroleum Institute has reached out and put the arm on every single energy producer in the country. That is why this enormous effort is going to open up the Arctic Refuge. That is why these companies have unleashed every bit of lobbying effort they possibly could to open up the Arctic, and made this footnote to our energy security the be-all and end-all of this bill.

The Arctic National Wildlife Refuge is a huge, imposing, wild, productive, pristine, and very threatened wilderness. I have been there. It is not just another piece of tundra. When it was selected as a wildlife refuge by President Eisenhower, he had his pick of the entire north slope. He picked this spot, and he was right.

If we turn this wildlife refuge into a huge industrial plant for a 200-day extension of our reliance on oil, how can we say to the Brazilians that they should stop tearing down the Amazon? And how can we take the moral high ground on any international natural resource issues?

Mr. President, the battle for the Arctic reaches much beyond the Arctic Circle. It is a key test of the leadership which we ought to be exercising around the world. If we decide the oil is worth risking these environmental values and our commitments to them, we will be sending a message to the world that we will sacrifice anything for more oil. That is a policy of desperation and blind inertia, not one of national strength. It is also a policy that the Saudis, the Iraqis, and the Iranians are going to love to hear because they are banking on our having just such a policy—oil at any price.

That is, Mr. President, a view of energy policy that, as I hope I have explained, ignores the fact, is mired in the past and presents a view of energy policy that is extremely damaging to our future.

Yet, the administration continues to tell us that the opening of the Arctic National Wildlife Refuge is indispensable to our energy policy. The administration has threatened to veto any bill that does not include a big opening for the Arctic National Wildlife Refuge. The gauntlet has been thrown down.

These statements, Mr. President, have changed this bill from a potential vehicle for building a progressive energy policy for this country to a vehicle for developing the Arctic National Wildlife Refuge.

Mr. President, the purpose of the Senate is to reach consensus. That is why we have rules which are so protective of the rights of every Senator, and even more protective of the rights of a significant minority within the Senate.

The President and his colleagues in the minority have used those rules throughout this Congress. Those pressing civil rights legislation were required to get 60 votes before they could proceed, and Senator KENNEDY and Senator MITCHELL compromised and altered their bill in order to get those votes and move forward.

When the Senate Environment Committee reported a strong Clean Air Act last Congress, those who opposed it did not agree to let it come up and have up or down votes on the floor. No, lead by the Republican leader, they required the Environment Committee to put together 60 votes to proceed, and when the committee could not do that with the bill they reported, the opponents worked with the committee leaders to put together a bill that did satisfy at least 60 Senators.

I oppose opening the Arctic National Wildlife Refuge, and there are many of my colleagues who not only oppose that, but have many other problems with the bill. And we intend to put the question to the Senate: Do you want this bill, or do you want it changed? And if you want it changed, vote with us against cloture on the motion to proceed so that we will have the leverage to seek that change.

That is how the Senate was designed to work. Often, it works against policy proposals I support, and I am stuck with that. There have been 16 cloture votes in this session, and in the overwhelming majority of cases I have voted for cloture. But I would be foolish if I allowed myself to be required to get 60 votes to proceed to things I want, and then failed to insist that things I don't want don't also require 60 votes.

That is not tyranny by the minority, Mr. President: It is how the Senate is supposed to work under its rules. It certainly is less of a burden on the majority than the procedures the President routinely puts us under, requiring us to get 67 votes to overturn his veto.

I am not trying to stop energy policy, any more than Senator DANFORTH was trying to stop civil rights legislation, or than Senator DOLE was trying to stop clean air legislation. I am trying to protect the Arctic Refuge, something I have espoused since 1978.

I have spent hundreds and hundreds of hours on energy policy and hundreds and hundreds of hours trying to perfect S. 1220. I think that legislation has many good things in it on conservation, emphasis on using natural gas, requiring the use of alternative-fueled vehicles, improving energy efficiency. I believe that there is a great consensus in the Senate for such measures. I believe that those issues, if brought independently to the Senate floor, would pass the Senate, would pass the Congress by a very large margin. And yet the Senate has held these issues without action for 5 months because of one issue: the Arctic National Wildlife Refuge. That just does not make any sense.

We are being held hostage, the country is being held hostage, the Senate is being held hostage, our future is being held hostage to the opening up of the Arctic Refuge, a policy that points us in just the wrong direction.

I hope that, in fact, we are victorious in stopping consideration of this bill at this time, so that we can negotiate a package that I can support. These are important issues. The Senate needs to take them up carefully, and not allow itself to be steamrolled by threats of what must be in this bill.

Many positive and progressive measures on energy, Mr. President, could be passed here on the floor of the U.S. Senate, absent the Arctic Refuge. I would hope that that is what we end up doing. But we should not be forced to consider drilling the Arctic Refuge as the price of admission. I urge my colleagues who want to see this bill change to vote with me against cloture on this bill.

Mr. President, I ask unanimous consent that an explanation of the charts I have referred to be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE ARCTIC REFUGE AND ENERGY LEGISLATION

CHART NO. 1—OIL DOMINATES OUR ENERGY PICTURE

Oil accounts for 40 percent of our energy consumption; we are importing 50 percent of the oil we use—more than 7 million barrels of oil per day; U.S. energy bill is $400 billion annually; Natural gas is 23 percent of energy consumption; coal—22 percent; nuclear—7 percent; renewables (primarily hydro)—8 percent.

CHART NO. 2—OIL IMPORTS INCREASING NOW AND IN THE FUTURE

Oil imports have increased 63 percent since the mid-1980's. We now import more than 7 million barrels per day. The costs of imported oil were clear in the Gulf conflict—a recent GAO report found that $420 billion was spent directly and indirectly to protect Gulf oil supplies—a subsidy of $3 per gallon. Our dependence makes us vulnerable—if a despot like Saddam Hussein controls the region, they would control more than 60 percent of the world's oil.

CHART NO. 3—OIL IMPORTS ACCOUNT FOR 54 PERCENT OF TRADE DEFICIT

Oil imports cost $54 billion in 1990; oil imports are 54% of trade deficit, up from 42 percent in 1989 and 33 percent in 1988, and our trade deficit is down because exports are up—imported oil is major piece of trade imbalance.

CHART NO. 4—THE MIDDLE EAST HAS THE OVERWHELMING MAJORITY OF OIL

We can't produce our way to a secure energy future; the Middle East has 660 billion barrels of estimated oil reserves—the U.S. has 25.6 billion barrels; optimistic ANWR forecasts would amount to adding 0.4 percent to world reserves. Our leverage is not as a producer, but as a consumer. We have only 2.8 percent of the world's oil, but we use 25 percent of all oil consumed annually.

CHART NO. 5—ANWR VS. ALTERNATIVES

Drilling the Arctic Refuge will make almost no difference in our long-term production; advanced oil and gas recovery overwhelms even the optimistic forecasts for ANWR production; An aggressive natural gas program would overwhelm ANWR in both the short and long-term—and it would begin weaning us from oil.

CHART NO. 6—THE UNITED STATES USES ENERGY INEFFICIENTLY

We need to use oil—and other energy—more efficiently: The Swiss use energy 3 times more efficiently than we do; The Germans and Japanese are twice as efficient; This chart illustrates the opportunity for efficiency.

CHART NO. 7—COST-EFFECTIVE EFFICIENCY HOLDS ENERGY USE CONSTANT

Cost-effective energy efficiency could hold U.S. energy use virtually constant through 2005; Investments in efficiency creates jobs. 60–80 job are created for each $1 million invested in weatherization. If we took full use of the potential, we could create 6 to 7 million jobs; Efficiency is the best economic, environmental, and energy option at our disposal. Efficiency—in energy and economics—is essential for a competitive economy.

CHART NO. 8—WE ARE USING LESS GAS, MORE OIL

The percentage of our energy coming from oil imports is growing, and that coming from natural gas is shrinking.

CHART NO. 9—WE HAVE LOTS OF GAS TO SUBSTITUTE FOR OIL IMPORTS

We have 70 percent more gas than oil (in terms of the energy content); known reserves would last 50 years at today's rate of use; we can use gas far faster and still have a comfortable future supply; these gas reserve figures are very conservative—low prices have kept us from looking for new gas, and the figures don't count huge volumes of coalbed and tight sands gas.

REFER TO CHART NO. 4—ANWR DOESN'T AFFECT THE BALANCE OF WORLD OIL POWER

If a super giant field is found in ANWR, it would be less than a 0.4 percent addition to world reserves—a bump on the world oil chart.

REFER TO CHART NO. 5—OTHER ALTERNATIVES DWARF ANWR

We can do far more with enhanced production. We can do far more by using natural gas. We can do far more with efficiency (CAFE would yield 2.5 million barrels a day by 2005, and, unlike an oil field, doesn't run out). Opening ANWR is "business as usual." Opening ANWR discredits the commitment to the environment that I believe is essential for an energy policy.

CHART NO. 11—ANWR IS A WINDFALL FOR THE MAJORS, NOT THE U.S.

If there is oil in the Refuge, the oil companies and the State of Alaska are the big winners. The federal government gets little of the take. Billions of dollars of profits for the oil companies. I'm not against profits, but there are many other places to make them, without opening up a major conservation area.

CHART NO. 12—THERE ARE OTHER PLACES FOR THE MAJORS TO GO

The oil companies have just made major new discoveries in the Gulf of Mexico, which they describe as "another Prudhoe Bay." They have major exploration programs in other areas of Alaska and elsewhere in the U.S. and overseas. The only reason for the focus on this area, is that ANWR is the only one they do not have access to.

Mr. President, I thank the distinguished Senator from Montana for yielding me the time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 8 minutes to the distinguished Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for up to 8 minutes.

Mr. CONRAD. I thank the Chair, and I thank the distinguished chairman of the committee as well.

Mr. President, this debate is really about the future of energy policy in our country. Why are we here? We are here because this country confronts a crisis. We are today 50 percent dependent on foreign crude oil. The Office of Technology Assessment issued a study earlier this week that said if we fail to act, we may be headed for 75 percent dependence on foreign crude oil.

I say to my colleagues, when do we act in this country? We have just witnessed a war in which 500,000 young Americans put their lives on the line at least in part because of our energy dependence. Eighteen hundred North Dakotans put their lives on the line. Mr. President, the American people have to be asking: When will we debate and pass an energy policy for this country?

I submit to my colleagues and to the American people that now is the time. We cannot wait. Do we have to have another war? Do we have to face a situation in which another 500,000 young Americans put their lives on the line before we act? Clearly, the answer to that must be no. Clearly, the answer must be that it is time for this Congress and the President to come together on an energy policy that advances this country's national interest, that reduces our dependence and that reduces the economic vulnerability of America.

What is it going to take? What is it going to take before we respond? Europe is on the move. We see Japan on the move. The charts shown on this floor show that we in the United States require more energy to produce the same economic output. That means America is more vulnerable. That means America has a competitive disadvantage. And now is the time to respond.

Mr. President, let us review the situation we face today. This chart that the chairman used earlier is at the center of this debate. This chart shows U.S. petroleum consumption from 1980 through the year 2010. This chart shows U.S. petroleum consumption rising dramatically. And, on the other hand, we see U.S. crude oil production for the same period, 1980 through the year 2010. What does it show? It shows U.S. crude oil production dropping dramatically. That is what we face today.

If we look at our situation, we find that imported oil accounts for half of all the oil that we use. As I said, the Office of Technology Assessment told us this week that if we fail to act, we may be headed to 75 percent dependence in the year 2010.

Over the past year, net oil imports accounted for $49 billion of our trade deficit. This chart shows the trade deficits from July 1990 through June 1991. The energy component is in red. More than half of our trade deficit is accounted for by the energy sector. Domestic production virtually collapsed in the 1980's. Rig utilization is only slightly above alltime lows, and U.S. crude oil production is also plummeting. Furthermore, our consumption of oil is increasing.

We also witnessed in the last decade a dismantling of Federal efforts to promote alternative energy technologies. Funding for these programs was slashed 89 percent between 1981 and 1990. Cheap foreign oil undercuts all market attempts to develop alternative fuels. Finally, the Nation's automakers are backsliding on corporate average fuel economy. What do we face in the future?

Mr. President, I think the story is pretty clear. Of our imports, 54 percent came from OPEC countries.

This chart shows proved petroleum reserves, 1990: The Middle East, which is represented by this part of the pie, has 66 percent of these reserves. What could be more clear? This Nation is dependent for our foreign oil on areas that are extremely vulnerable. In the Middle East crude oil can be produced for as little as $2 a barrel. It does not take an economist to tell you that unless we take action, our national security will be threatened. It is patently irresponsible for policymakers to ignore these threats.

I am the first to say, Mr. President, that I am not happy with all the provisions of this bill. I do not know any member of the Energy Committee or the Senate who would not have written this bill somewhat differently given the opportunity. But I must say, this bill is a good start. For those who say this is simply a production bill, I must differ because this is not simply a production bill. It is a very comprehensive proposal. It contains 16 titles.

Title III extends the authority of the Secretary of Transportation to set corporate average fuel economy standards.

I do want to make clear I do not think section 3 is strong enough given our dependence, given the trends, and given our economic vulnerability. We must do better on conservation. Clearly, in the area of fuel economy, we should have a strong section to make this a fully comprehensive bill. But that does not diminish the other sections of the bill; Title IV enhances the use of alternative fuels through requirements on Federal, State, and private fleets. Title V promotes renewable energy through joint ventures and other incentives. Title VI taps the potential decreases in consumption available through increased energy efficiency. Title VII allows drilling in the coastal plain of the Arctic national Wildlife Refuge.

Mr. President, I want to make clear I have opposed that provision absent a strong provision on conservation, particularly fuel efficiency. But, nonetheless, if it was part of a comprehensive package that included fuel efficiency, I would support title VII.

Titles VIII, IX, and X set up a framework for the possible future use of nuclear power.

Mr. President, I ask for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. Title XI fosters greater production of natural gas. Title XII prohibits oil and gas leasing on parts of the Outer Continental Shelf until the year 2000, and provides impact aid to States. Title XIII directs R&D efforts on a variety of technologies. Title XIV provides for research and development on coal not only for clean coal technologies but also to promote the use of byproducts. Title XV amends the Public Utility Holding Company Act. Title XVI increases the strategic petroleum reserve.

Mr. President, the Department of Energy estimates that this bill will save 6.1 million barrels of oil a day when fully implemented, and that is without an increase in fuel efficiency that I very much hope we adopt.

My estimates are that the CAFE proposal advanced by Chairman JOHNSTON, myself, and Senator AKAKA will save an additional 1 million barrels a day.

Mr. President, who can claim that this bill is not a substantial contribution to lessening the energy dependence on foreign oil for this country? Who can make that argument seriously on this floor?

This chart shows that oil imports by the year 2010, without S. 1220, will be 14.8 million barrels a day. If we proceed with S. 1220, that number will be dramatically reduced to 8.7 million barrels a day. And again, that does not include the savings that we would achieve from a more stringent policy on fuel efficiency that could save an additional 1 million barrels a day.

I say to my colleagues that the Senate must consider this bill. We should work to improve it, certainly, but we should not kill this bill.

The fundamental question before us today is: Will the Congress debate an energy bill? I know the strong opposition to drilling in Alaska. I have opposed that provision myself unless we have an increase in fuel efficiency to provide a balanced bill. But we should debate ANWR later. We should not prevent this Congress from even considering an energy bill.

Mr. President, there is a question all across America whether or not this Congress can respond to the urgent needs of this country. I hope that with respect to energy we answer in the affirmative.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. BAUCUS. Mr. President, I ask unanimous consent that David Sharma, science fellow on assignment to Senator FORD's personal staff, be granted privileges of the floor during the pendency of, and for rollcall votes on, S. 1220, the Energy Security Act of 1991.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. BAUCUS. Mr. President, I yield 7 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada [Mr. BRYAN] is recognized for up to 7 minutes.

Mr. BRYAN. I thank the Chair.

Mr. President, the issue we are debating today affects every aspect of our economy: our international competitiveness, our quality of life, our environment, and indeed ultimately, our ability to survive on the Earth. The type and quantity of energy we use is a crucial element of nearly every activity in which our society is engaged.

The bill before us, S. 1220, largely reflecting the elements of the administration's proposed National Energy Strategy charts the wrong course for our Nation's future. I oppose proceeding to this legislation, not because we do not as a nation need a balanced energy policy—I believe we do.

In that context, Mr. President, let me emphasize that those of us who oppose going forward do so because we are placed in a procedural straitjacket that prevents us from considering separately and independently a bill as to whether or not we should drill in the Arctic National Wildlife Refuge, a bill such as the bill proposed by the Commerce Committee last year and this year represents S. 279 in this session of the Congress, and a bill that can deal with other elements of S. 1220.

My opposition, Mr. President, in going forward is because this bill represents the wrong energy strategy as we look to the dawning of a new century. We can and, indeed, we must do better than recreate and reconstruct the produce and consume mentality that has dominated our energy policy in this country for this century.

During debate over energy policy, many arguments will be advanced in support of and in opposition to various provisions in this complex legislation. But before reaching specifics, I would like to address some observations about energy policy in general, our dependence on oil, and the philosophy that this legislation represents.

Our goal should be a balanced approach—a forward-looking approach—that best protects the interests of consumers, our environment, our national energy security, our technological innovation, our trade balance, and our economy. That, indeed, is a demanding goal but one we must strive to achieve. We should not err for the sake of haste. An outdated energy policy should not be adopted for our future. It cannot meet our future needs.

What we must first recognize, however, is that we cannot produce our way to energy independence using the produce and consume, nonrenewable philosophy of the past.

Unfortunately, the administration's proposal—and many who have taken the floor today and will do so in the coming days ahead—fails to recognize and acknowledge we cannot drill our way out of energy dependence. Whether we open the Arctic National Wildlife Refuge, as some have suggested—indeed this bill proposes—or to drill into the sensitive Outer Continental Shelf, as others have proposed and this bill includes, that will not solve our problems.

The energy policy we adopt should look to, and be designed for, the Nation's needs well into the next century. Indeed, we can seize the opportunity to lead the world in the energy technologies of the next century.

Instead, this legislation is bold with its conventional production industry incentives—oil drilling in the Arctic, development of oil and gas on our sensitive Outer Continental Shelf, and nuclear industry subsidies—but is fainthearted in its innovation and conservation technologies. The bill has conservation and renewable energy window dressing but its real substance is on conventional energy production. Those are not the policies we need for the next century.

Our experience earlier this year in the Persian Gulf vividly displayed the effect of our ever-growing addiction to and dependence on oil. Fundamentally, this bill does little to end that dependence. We simply cannot produce our way out, even with ANWR and greater off coastal exploration. Furthermore, this bill fails to take the largest step which would reduce our dependence on oil—auto fuel efficiency. Forty percent of the oil that we consume in America is consumed by our automobiles, 63 percent in the transportation section.

This legislation does not, Mr. President, have a meaningful CAFE provision. Rather, it would delegate to an administration which last year and this year and continues to evince hostility to improve full economy standards. That was no CAFE provision at all. That does nothing in terms of easing our energy dependence.

Rather, the Commerce Committee, both last year and this year, has processed a piece of legislation, S. 279, that we seek the opportunity to have acted upon and debated upon on the floor, separate and apart in the form of a separate bill before this body. That legislation, Mr. President, would provide a savings permanently of 2.5 million barrels of oil each and every day and build upon the success of the earlier CAFE legislation adopted by the Congress in 1975, which today, each and every day, benefits American energy policy by saving 2.5 million barrels of oil each and every day. That is the kind of approach that we need.

A meaningful improvement in motor vehicle fuel efficiency, such as proposed by the bill which I introduced along with my colleague from Washington, Mr. GORTON, and which is cosponsored by many Members of this body, is technologically achievable and affordable. It would begin to break the stranglehold oil has on our economy and trade balance.

There are other basic policy shortcomings in the bill which we are being asked to consider as well. Let me cite a few examples:

S. 1220 deregulates important segments of the electric utility industry, without adequate consumer safeguards. Its Public Utility Holding Company Act reform does nothing to ensure energy efficiency or take into consideration environmental implications in the electric generating marketplace. Indeed, this provision would undermine State and local least-cost planning and resource management goals—title XV.

S. 1220 deregulates many hydroelectric projects without insuring environmental protection—title V.

The bill seeks to enhance our reliance on nuclear energy—a technology that at best has proven to be expensive and subject to public distrust—by reducing public input into siting and licensing decisions and streamlining the licensing process—titles VIII, IX, and X.

S. 1220 writes off—at the expense of our already burdened taxpayers, a $10 billion utility uranium enrichment debt and commits billions of taxpayer dollars in support of unproven advanced reactor technologies—title X cleanup costs could exceed $20 billion additional.

This bill encourages expansion of oil and gas development in the Outer Continental Shelf, while many State and local governments oppose such development—title XII.

Other committees with relevant jurisdictions will express their views, and we should note, as well, that much of the legislation under the jurisdiction of other committees bears a distinct connection to our energy policy as well. This is certainly true of the auto fuel efficiency standards, which are within the sole jurisdiction of the Commerce Committee. One of the problems with S. 1220 is that it ignores the work of the Commerce Committee, which reported my legislation, S. 279, in April of this year. S. 1220 substitutes its own provisions, which add nothing to current law and will therefore be completely ineffective in promoting conservation in the use of transportation fuel.

Instead of proceeding to S. 1220, we should let the various committees of jurisdiction contribute to the areas within their expertise.

While S. 1220 is an ambitious effort, it fails to chart the best course for us to follow.

We need to begin the transition from the fossil fuel era—and its attendant global warming, pollution, and dependence on foreign oil cartels. In its place we can turn the page on the next century with a new emphasis on energy efficiency, renewable energy technology, and technological competitiveness.

We need to reconsider the basic philosophy represented by this bill. I oppose proceeding to the bill, and I urge my colleagues to reach for a higher goal.

The U.S. Senate will not deal with a more complex and more difficult issue than setting our Nation's energy policy. The arcane aspects of utility regulation, nuclear safety, automotive technology, and the ecosystem of the Arctic tundra are daunting to experts, no less the public.

Yet, in the final analysis, the American public has a very clear idea of what they want out of an energy policy. They want energy at the lowest possible cost; they want to reduce our dependence on foreign oil; they want safe, clean energy sources that minimize environmental risks. Those reasonable and practical desires should be the guideposts with which we navigate through this intricate maze.

These practical common-sense goals set up an easy test to evaluate this legislation:

Does this bill protect the consumer?

It does not. It protects the financial accounts of the special interests. So-called utility reforms throw out State laws which have forced utilities to look at the least costly methods of generating power. The taxpayer is asked to float the costs of uranium enrichment rather than the utilities, which will gain.

Does this bill reduce our dependence on foreign oil?

It does not. This bill continues our dangerous "Saudi Arabian" oil policy, which will continue to hold us hostage to the perils and pitfalls of the most dangerous region on Earth, the Middle East. The bill's weak automobile fuel economy standards will not guarantee the reduction of a single barrel of oil.

Does this bill encourage safe, environmentally sound energy sources?

It does not. The reduction of public input on nuclear licensing flies in the face of insuring communities safety. Opening up of the Arctic National Wildlife Refuge, while providing a boon to the oil companies, promises a minuscule amount of oil at much environmental risk. And once again, by providing a virtually nonexistent automobile fuel economy standard, this bill does little to reduce greenhouse gases and air pollution.

Failing every reasonable test, this bill must be rejected and a new effort begun. Waiting in the wings is a much more constructive approach, one that emphasizes conservation, that puts the interests of the consumer above that of the oil companies and huge utilities. This country needs an effective energy policy for the future—and a few months spent to formulate a more balanced approach is time well spent.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 3 minutes to the Senator from Montana. I am just about running out of time. I am limited.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I thank the chairman and the managers of the bill, Mr. President.

I want to bring to this debate one little thing. We talk about CAFE standards and we talk about ANWR. I want to relate to you a little incident today which I had on an airplane, flying along, with this man who is probably the upper income of America, environmentally aware, and says we should be doing all of these things for the environment, and all these laws, rules, and regulations.

I asked him if he would be willing to pay four times as much for his water bill after next year than he is now. He said, "Yes, because I believe it would be proper in the environment. I am willing to pay for that." And I believe him. Why? Because he can.

But I take the average man out here making $25,000, $30,000, $40,000, and trying to feed three kids, pay for a home and his education and everything else. He cannot. It costs him his job.

In CAFE standards I have yet to have anybody prove to me under present-day technology, or technology that we could even get into the marketplace, but it takes x amount of energy to move y amount of pounds from point A to point B. It just takes that amount of energy. Now we can work on it, and the technology comes on line and we could lower that. Let us talk about the real world.

In the committee we work very hard, the chairman and the ranking member, on this, who both come from States that are environmentally sensitive. But they know we have to move this country forward.

I agree with my colleague from Colorado that compressed natural gas is very important for transportation fuel; clean coal technology, very important to Montana. We have a clean coal clearinghouse technology, and a technology center there that will continue to operate on how we can take this tremendous amount of energy and make it work.

But let us debate this in the real world where we are today. Can we call it a regulatory recession? Some people are reluctant to say that. But I believe in some cases it really is.

We cannot have it two ways. Trade deficit? Sixty-five percent of the trade deficit is directly related to imported energy; 65 percent. Do you want to take that out of there and see what that does for jobs in this country and the overall general economy? It is a tremendous impact.

Mr. President, this debate should be brought to the floor and all titles debated on this floor on their own merits. But let us do it in the real world.

Mr. President, I rise in strong support of S. 1220, the national energy strategy. S. 1220 has its supporters and its detractors. It does because it is a national energy strategy. Many segments of society are affected by provisions in this bill.

We fought a war in the Middle East to stop aggression and to keep the oil flowing. We are importing nearly 50 percent of the oil we use.

S. 1220 has important provisions on energy conservation; on the use of alternative fuels; on the use of electricity and hydropower.

There are provisions on mass transit and the use of natural gas. Provisions on building efficiency standards energy labeling for windows and lamps and showerheads.

It is a comprehensive bill that addresses a wide variety of energy issues. It is not just a CAFE bill or an ANWR bill. Those provisions are in the bill and they are important but they are not the sum and substance of this legislation.

Everyone faces tradeoffs in life. There are consequences to any decision. If the American people want an energy policy, and I believe that they do, then we must take the responsible course and address all forms of energy savings and domestic energy generation available to us. We cannot say that some answers are just out of bounds. The decisions that we make here affect all of us.

Jobs are on the line. We can deepen the recession we are struggling to get out of or we can help move this country forward. Increasingly we are handing over to foreign interests the keys to our own future. It is the responsible course to move toward increased energy independence and this 493-page 16 title bill takes the responsible course and moves us in that direction.

The PRESIDING OFFICER (Mr. SHELBY). Who yields time?

Mr. BAUCUS. Mr. President, I yield 7 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. I thank the Senator from Montana.

Mr. President, on his recent book on the Senate, our beloved Senate President pro tempore, the Senator from West Virginia, has written quite eloquently, I think convincingly, about the importance of the right to filibuster here in the U.S. Senate. This is by and large a majoritarian body. The majority rules. But there are times when the rules of the Senate are wise enough to understand that a passion of a moment that may move a majority in one direction may also threaten timeless national values, national resources, national strengths.

That is why our rules create the right to filibuster, why that filibuster can only be stopped by a supermajority of 60; and why I rise today to object to the motion to proceed to the consideration of S. 1220, because in my opinion, if there was ever a timeless resource and value on the line, it is on the line in the Arctic refuge.

Mr. President, let me speak broadly but sincerely about part of what motivates me here. We are visitors to this planet. Each one of us is here for only a temporary period of time. We are lucky to be here. And as such we have certain obligations. Yes, the good Lord created the Earth and those of us who are here on it, and has given us the opportunity to develop the resources of the planet and live to the best of our capacity. But there are limits.

But there are lengths. There are certain places on this Earth that really ought to be left alone, ought to be left as they were when creation began. I think such a place to draw the line is the Arctic refuge in Alaska. Particularly, when one considers how little will be gained, and how much will be lost by intruding on this untouched wilderness and slashing it for a quick and wrong headed oil fix.

Mr. President, I hope that, by tomorrow, when we vote on this cloture motion, enough Members of the Senate will conclude that any energy policy which includes opening up the Arctic National Wildlife Refuge to oil companies is not only unnecssary, it is unacceptable.

Mr. President, our Nation needs a national energy policy, but we need one that is sound and one that does not do lasting damage to values that will be important long after each one of us has left this Earth. It has to recognize that our present reliance on oil is not a gain. It threatens our economic prosperity, our national security, and our environment.

The basis of an energy policy should be to wean us from oil, to diversify our energy base, to develop those energy resources that we in America have in abundance. In the face of that objective, opening up one of the last great wilderness areas in the world to oil drilling is wrong, it is preposterous.

Mr. President, consider for a moment our present situation. The United States is already the second largest producer of oil in the world. Yet, we are still dependent on foreign supplies of oil. We could drill in every backyard in America, Mr. President, and we would still have to import oil to satisfy our present demand. The problem here is not the supply of oil; it is the demand for oil. And we are demanding too much of it.

The United States has only 25.6 billion barrels of proven oil reserves. The Middle East has 660 billion barrels of oil reserves. To think that we are somehow going to even the score by bringing on line the 3.6 billion barrels—the most optimistic estimate the administration has come up with—from the Arctic refuge, is absurd.

The reality is, so long as we are dependent on oil, we are going to be dependent on foreign oil. The Department of Energy assumes that the oil in the Arctic refuge will be consumed in a period of about 15 years. The average production rate would be approximately 330,000 barrels a day. That equals 2 percent of U.S. production.

In fact, the United States oil imports have been rising by more than 2 percent each year, so that even if the administration is correct—and there might be 3.6 billion barrels of oil underneath the Arctic refuge, which no one can say with absolute certainty—it would not even be enough to offset last year's increase in imports, much less reduce our dependence on foreign oil.

Let us look at it one more way. During the Persian Gulf war, which has been referred to here, the combined shortfall of oil due to Iraq and Kuwait going off line was 4 million barrels a day; 330,000 barrels of oil a day from the refuge in Alaska would clearly not have protected us from a disruption in supply, and certainly it would not have saved us from the skyrocketing oil prices that helped to bring our economy into the recession it is in today.

Mr. President, that is the other profoundly baseless argument that is being used to urge drilling in the refuge—that the availability of Arctic Refuge oil would buffer us from oil price shocks. It is simply not true. Oil is priced on a global scale, and the President's own national energy strategy makes this clear.

We are part of a complex and interdependent world oil and refined petroleum products market. Any increase in the world price of oil brought about by any event, at any place, raises the price of U.S. oil, and the price of oil to our allies and trading partners, regardless of how much of that oil is developed and produced here in the United States.

In other words, one can imagine that if we were 100 percent self-sufficient and relied only on domestic sources of oil, the price of gas for our cars, and heating oil for our homes would still have skyrocketed after Iraq invaded Kuwait.

Mr. President, the White House has said to us, as Senator BRYAN has indicated, it will support no increase in fuel economy for cars. And at the same time, the President is threatening to veto this bill if it does not contain the authority to drill in the Arctic Refuge. That simply does not make sense.

Unfortunately, it does make sense to the people who run the big oil companies because, for their investment, they stand a 30-percent chance of hitting the big lotto jackpot, and that is 3.6 billion barrels of oil, which can make them as much as $20 billion to $40 billion of profits in the years ahead. As with any lotto game: If you don't play, you can't win. That is why big oil wants so badly to play.

The problem is, if big oil plays the Arctic Refuge game, we all lose; we lose this great wilderness area and our chance to work together to have a genuinely balanced energy policy.

A yes vote on cloture tomorrow is a vote for oil dependency, and it is a vote to kill the last great Arctic wilderness in North America.

Mr. President, I urge my colleagues to send a very strong message to the proponents of this bill. Tell them that we want a national energy policy which will deliver us a more secure economy, a greater national security, and a healthier environment. Tell them that we know we must reduce our dependence on oil. Tell them we want serious and meaningful measures which will diversify our energy base. Tell them that we do not buy their arguments about Arctic oil freeing us from dependence or protecting us from oil price shocks. Tell them we are not willing to sacrifice a national wildlife refuge and an ecosystem so rare that it was first set aside by President Eisenhower, just so a handful of oil companies might see if there might be enough economically recoverable oil there. We will not send that message to the rest of the world, that the United States of America is so shortsighted and so misguided that we would sacrifice a natural treasure for an artificial fix. If we vote "no" on cloture tomorrow, we can hope that the proponents of this bill remove the Arctic National Wildlife Refuge from this debate—where it in no way belongs—and we can then move to adopt serious and strong energy policy. I urge my colleagues to vote in favor of the energy policy our country needs by voting "no" on cloture tomorrow.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from Michigan.

Mr. RIEGLE. Mr. President, like others, I have concern about various areas in this bill. There is one part of the bill that I look upon favorably—I want to talk about that in a minute—and that is with respect to the CAFE treatment that is in the bill that has been reported out of the committee.

But I also have some very serious reservations with respect to the ANWR question, and with respect to nuclear relicensing. I will not get into those at this time. But I do want to raise a direct concern of a matter of jurisdiction, and I do so in my capacity as chairman of the Senate Banking Committee.

I have concerns about title XV of this bill, which would substantially amend the Public Utility Holding Company Act of 1935. This is, as those familiar with it know, a securities statute administered by the Securities and Exchange Commission. This statute is within the exclusive jurisdiction of the Senate Banking Committee.

Back on March 20 of this year, Senator GARN, my ranking member, and I wrote to Senators JOHNSTON and WALLOP to request a joint referral to the Banking Committee on title XV. Unfortunately, we did not receive a response to that letter.

Despite that unresolved matter, I believed that the Banking Committee's responsibility for the Public Utility Holding Company Act required us to act, and we did so by conducting hearings on title XV. Those hearings were held on September 17, October 11, and October 21. I must say that while we learned a lot during those hearings, those three hearings by themselves were not sufficient to give the PUHCA amendments of this bill thorough consideration by the Banking Committee.

They were, however, sufficient to convince me that these amendments involve serious substantive questions. I am inclined to think that these amendments may not be ripe for Senate consideration, until we have examined these questions in still greater depth. So I am reserving, at this moment, final judgment on that issue.

But I want my colleagues to know that title XV of this bill raises serious substantive and jurisdictional concerns that we may have to address directly at a later point down the track here.

With respect to the CAFE provisions, S. 1220 requires the Secretary of Transportation to set CAFE standards for 1996 to 2001, and then from 2002 and beyond.

Under the bill as it has been written, the Secretary is required to set those new standards based upon the "maximum feasible standards"—that is a quote—after considering technologies and economic factors such as the goals of keeping the same size mix and interior volume and performance of 1990 vehicles.

I think that is a reasonable approach, balancing the legitimate political interests of the industry and the limits of technology.

Let me tell you what will happen if we try to mandate on the floor a substantial increase in the CAFE standards. We are going to impose a financial burden, and a technical burden. Let us just talk about the financial burden on the industry that it cannot begin to handle. The domestic auto industry in this country is in very serious financial difficulty. Over the last five quarters, they lost nearly $10 billion. We just had loss figures announced for the most recent quarter, and everyone pays attention to that industry. It shows, yes, massive layoffs and that car sales are way down and the financial condition of the industry has been very severely damaged.

If we were to go to something like the Bryan CAFE standards, which presumably would be offered at some point, the best estimate we have is it would cost $70 billion to go out and change the technology to try to meet those arbitrary standards.

Where is the $70 billion going to come from? Is the Government going to provide that money? No. Not a penny is suggested to be provided by the Government. It is supposed to come out of the private sector, the private capital market. The money is not out there to be gotten; the industry cannot get that money. It ought not to be mandated to try to make that scale of investment chasing these fuel economy improvement standards.

Today, in Japan and Germany, gasoline is about three times as expensive as it is here in the United States. Yet, the fleet averages on fuel economy for cars in those countries are about the same as it is here in the United States. If there was some magic answer to get much higher gasoline mileage out of cars today, you would see that being applied in those areas of the world where gasoline prices, being so much higher than here, create a multi-billion-dollar incentive in the marketplace for that technology to be brought on line. It does not exist. We cannot make it exist by putting a line in a law that says, go out and do it, especially when the price tag is $70 billion and the money is not there to be had.

Also, there are two other tradeoffs with fuel economy. One is vehicle size and weight, which relates directly to safety. Smaller cars are less safe than larger cars. Another direct tradeoff is in the area of fuel emissions in terms of what comes out of the tailpipe of the cars. We have mandated very stringent requirements at the Federal Government level in all three areas—safety, fuel emissions, and mileage standards. But these things are interrelated. You cannot do one without having an impact on the other.

As we have moved in all three areas to make the gains that have already been mandated by law, it has cost a very large amount of money, an enormous amount of cost which, in turn, has to make its way into vehicle cost. Cars become more expensive. People are finding them harder to buy because of many of these Government mandates. We do not need any additional CAFE requirements put into this legislation, and I intend to do everything I can to see to it that no more are added beyond what are in the bill now.

I yield the floor and thank the Senator from Montana.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. I ask the Chair how much time remains on each side?

The PRESIDING OFFICER. The Senator from Montana has 19 minutes and 3 seconds, the Senator from Louisiana has 19 minutes and 47 seconds.

Mr. BAUCUS. I thank the Chair and yield to the majority leader.

Mr. MITCHELL. Mr. President, this is a very important subject on which many Senators have spoken and on which many Senators wish to speak.

Several Senators have inquired as to the schedule for the remainder of the day with the view toward wanting an opportunity to address the subject.

Under the previous order, at 1 p.m. the Senate will return to consideration of the Interior appropriations conference report. As soon as action is completed on that matter, the Senate will return to consideration of the energy bill and there will be an unlimited period for debate thereafter today.

I hope that we can finish the Interior bill in a relatively short time. When we do that, there will be no further rollcall votes, this being Halloween and several Senators having young children with whom they want to spend the evening. Those Senators who wish to do so will be able to do so if we finish the Interior bill in time. Those Senators who wish to debate this subject will stay here so long as there is any Senator wanting to address the subject. So Senators can be assured there will be plenty of time later today, once we complete action on the Interior appropriation bill, for further debate on this important measure. I thank my colleagues, and I thank especially the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I yield 5 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 5 minutes.

Mr. KENNEDY. Mr. President, I join in urging the Senate not to take up this legislation at this time, so that we can go back to the drawing board and prepare a more satisfactory energy policy for the Nation. The current measure tilts too heavily in favor of the oil and nuclear power industries, and neglects the energy conservation, energy efficiency, alternative energy, and environmental protection stategies that are equally essential to a balanced and responsible policy.

The unbalanced approach of this legislation is what landed us in this vulnerable situation in the first place. Nuclear waste, global warming, coastal destruction, acid rain—the problems go on and on. Where is the efficiency that our constituents called for during each and every one of the Department of Energy's field hearings on the national energy strategy? Where is the major effort needed to bring more solar and wind power into the electricity grid? Where is the significant improvement in the fuel efficiency of our automobiles? Do not bother looking in this measure, because it is not there.

Two of the most objectionable provisions in this legislation are the proposal to start drilling for oil in the last protected ecosystem of this kind in our hemisphere—the Arctic National Wildlife Refuge—and the incentives for nuclear power. ANWR is an area of spectacular beauty. It supports a wide array of polar bears, caribou, wolves, falcons, owls, and other wildlife, as well as an indigenous tribe that is particularly dependent on the caribou herds. We should preserve this region as a unique link in the ecological chain and as a priceless environmental resource for future generations, not turn it into an oilfield.

With respect to nuclear power, the sweeping changes in the licensing process are designed to make it easier to license new nuclear plants, and to restrict public participation in the process. The bill would severely limit the opportunity for needed inquiries on health and safety issues. Once the first stage of review is over, it would be very difficult to obtain a hearing on new issues that arise, such as emergency evaluation plans, new seismic or environmental data, or accidents that may have occurred at similar plants. The bill would also deprive citizens of access to documents that could help them make their case about problems that have arisen.

In recent years, New England has had extensive experience with the licensing of nuclear powerplants, evacuation plans, health issues, and other safety requirements. We have seen first-hand how important these requirements are, and how quick the administration has been to undercut them. The one-stop shopping approach to nuclear licensing makes a mockery of these profoundly important decisions for communities that will live in the shadow of these plants. Often, there will be no public record, no right to subpoena documents, no right to know whether a nuclear facility—at the critical stage before it begins operation—poses a threat to the health and safety of those who live beside it.

The nuclear lobbyists tell us that there would still be an opportunity for a public hearing on significant new issues before a plant begins operating. What they are referring to is a petition process that already exists, which has granted just 2 of the 321 hearings requested over the last decade.

In addition to restricting public participation in the process, the industry has successfully pushed for more subsidies from the taxpayers. The proposal gives the Department of Energy a blank check to encourage the development of a new generation of so-called advanced nuclear reactors. Since private investors are unlikely to accept the risk, the bill suggests financing 50 percent of the first such reactor with taxpayer money. In addition, the proposal writes off approximately $10 billion in debt owed the U.S. Treasury for uranium enrichment services. As the National Taxpayers Union has said, this legislation calls for an energy policy "based on taxpayer subsidies to energy industry special interests."

Like the nuclear titles, the Outer Continental Shelf management provisions also contain taxpayer financing proposals and one-stop shopping for the industry. Currently, when an oil company purchases an offshore oil lease, it has priority over other firms in exploration and development. But permission to develop is not granted until after three further stages of review. This bill directs the administration to craft new procedures that would do away with further review, and make it more likely that a lease will automatically carry with it full exploration and development rights.

Even worse, the bill would encourage drilling in Outer Continental Shelf areas that have for years received special congressional protection, in recognition of the unique and fragile environment they support. Even President Bush has agreed that it would be unwise to pursue oil and gas development in these areas over the next several years. Yet, the bill would require the President to reopen the question of oil and gas development in all areas that are currently under congressional or administrative moratoria. In Massachusetts, we have worked hard to protect the Georges Bank area that is essential to the survival of the fishing industry, and it would be a mistake for the Senate to undo these protections.

Another troubling aspect of this bill is that it would redirect OCS royalties and fees, which currently go into general revenues of the Federal Treasury, and use them to create a fund to encourage States and communities to sacrifice their coasts to massive oil development.

The bill shows further disregard for the environment by exempting hydroelectric projects smaller than 5 megawatts from Federal licensing requirements. It is the licensing process that triggers review under laws such as the Endangered Species Act and National Environmental Policy Act. If a local project is not required to get a Federal license, the local environment can be irreparably harmed by thoughtless and unnecessary action.

Next, the bill would undermine significant parts of last year's Clean Air Act, by leading to large localized increases in the very pollutants that the act is designed to control. The sulfur and nitrogen oxides that cause acid rain and smog are dangerous pollutants that urgently need reduction as a matter of public health as well as environmental concern. Yet the bill would significantly weaken the Clean Air Act by undoing its requirement that refurbished powerplants control these pollutants to the same level as new plants.

Supporters of this legislation cite a new OTA report on the Nation's oil vulnerability as proof of the need for action. Certainly, the report helps us recognize the dangerous situation we are in, as we become more and more dependent on foreign oil supplies.

But the OTA report is hardly support for this legislation. One of the primary reasons we are now less prepared to cope with foreign oil supply disruptions than we were several years ago is that, over the past decade, we largely abandoned our national efforts to develop renewable fuel sources and undertake serious conservation measures.

It is clear that we must address our increasing energy needs and the related national security dangers. But we do not have to do so at the expense of the environment and public health. We need to redouble our efforts on energy efficiency and energy conservation, rather than rushing into irresponsible new incentives for energy production.

What we need is stronger CAFE standards for vehicles and stronger standards in the building and industrial sectors. From 1995 to 2010, we can save 1 million barrels of oil a day with realistic efficiency standards for industrial motors, at a saving of $7 billion for businesses. Over the same period, we can save nearly 3 million barrels of oil a day with strong standards for lighting products, at a saving of $30 billion for consumers. To enact mandatory standards like this is not micromanagement by Congress. It is the sort of national energy policy we need—good for the economy, good for the environment, good for public health, and good for national security.

Now, some would argue that Congress should leave the details of standard setting to the experts in the agencies. But the administration is unlikely to pursue these important changes. Their track record should give us pause. The Secretary of Energy proposed many worthwhile efficiency measures last year, but these were ultimately dropped from the administration's national energy proposal, under pressure from the White House. Let us also recall the highly successful law enacted in recent years that established efficiency standards for major home appliances. We had to override a veto by President Reagan to get that bill enacted.

Sacrificing the Arctic Refuge and key areas of the Outer Continental Shelf is not the solution to our excessive dependence on oil imports. As the OTA's report explicitly states, even if the Arctic and frontier offshore areas "were opened to exploration and commercial quantities of oil or gas were found, it would be of little relevance in responding to a significant oil import disruption within the next decade." OTA found much greater promise in tapping unrecovered oil in existing fields. The Department of Energy estimates that there are 76 billion barrels of oil in existing wells in the United States which could be recovered without destroying irreplaceable areas like the Arctic.

On the issue of CAFE standards, all of us in the Senate owe a debt of gratitude to Senator BRYAN for the excellent and persuasive analyses he has provided. No one should be misled by the nationwide lobbying campaign designed to block his sensible proposal to achieve large energy savings through substantial increases in automobile fuel efficiency. As Honda announced recently, the new lean burn technology will raise the Civic's fuel economy significantly above last year's model—to 59.5 miles per gallon—and the new model will actually be larger than the old.

There has been much discussion about vehicle size and the purported safety problems associated with higher miles a gallon. But Honda's example helps illustrate the point that carmakers will not have to reduce their fleet size to meet the Bryan standards.

What may be affected is the current alarming trend to produce so-called superhorsepower cars, capable of going from 0 to 60 miles per hour in a few seconds, or reaching speeds well in excess of 100 miles per hour. To the extent that more stringent CAFE standards discourage automakers from building more of these dangerous cars, the Bryan bill will help make cars more safe, not less.

In sum, I recognize that many months of work have gone into this bill. But overall, these proposals would take this country in the wrong direction, to a less satisfactory energy future. That is not the direction America ought to take, and I urge my colleagues to vote against cloture on the motion to proceed.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the distinguished Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 5 minutes.

Mr. ROTH. Mr. President, I rise today to convey my concerns with S. 1220, the National Energy Security Act, and urge my colleagues to vote against the motion to proceed with this legislation.

Mr. President, I do not make it a habit of voting against the efforts of my colleagues on a motion to proceed to legislation, however, in this case I have decided to make an exception. I would like to take this opportunity, in the short time that we have, to outline some of my major concerns with the bill. I hope that these provisions and the reasons for this procedural challenge, as mentioned by my colleagues who have similar concerns, can be redrafted in a more balanced and equitable manner.

One of my major objections with proceeding with this bill is the provision which is related to opening up the coastal plain of the Arctic Refuge to oil and gas development.

Mr. President, I have heard a lot of discussion about how good it would be for our economy if the refuge is drilled. I have also heard a lot of discussion about the revenues to private industry that would result if the area is opened for drilling. I have also heard a lot about the incredible wilderness qualities of the coastal plain.

As stated in the 1002 report, this is the only conservation system that protects in an undisturbed condition a complete spectrum of the Arctic ecosystem in North America. I often wonder which is more important to those who want such drilling to take place.

S. 1220 specifies that the receipts from the leasing of the coastal plain be evenly split between the Federal Government and the State of Alaska. It authorizes the use of the receipts from the Arctic Refuge for new spending programs on energy projects. This is an interesting scenario especially in light of the CBO analysis which states that it considers these lease sales to be asset sales within the definition of the Budget Enforcement Act of 1990, on the basis that both the exclusive right to explore for and extract minerals, and the minerals themselves, are Federal assets. CBO believes that the proposed leases are asset sales, and are thus ineligible to be counted as a deficit reduction.

Section 250(c) 21 of the Balanced Budget and Emergency Deficit Control Act of 1985, defines an asset sale as: "the sale to the public of any asset, whether physical of financial, owned in whole or in part by the United States." Section 257 (e) of that act goes on to state that receipts generated from the sale of such assets cannot be counted for the purposes of deficit reduction.

Despite OMB's assertion, it seems to me clear, Mr. President, that any spending which results from this provision in the bill simply adds to our Federal deficit under the budget rules we have established.

Mr. President, CBO estimates that the costs of the bill will be $9 billion over the 5-year period of the bill. In these hard times, I find it disheartening to see us spend $9 billion in order to harm one of the Nations most precious wildlife refuges. There are better alternatives than this.

To my colleagues, I say that you can vote to support protecting this incredible area and the wealth of wildlife that it contains for this and future generations. But if you vote against that protection, do not be misled: the Federal Government may get as little as 10 percent of these revenues as Alaska will presumably challenge in court the current revenue sharing scenario. And there is no guarantee at all that even a dime of the revenues would help any of the worthy programs that supporters of drilling claim. Even more to the point, if you vote to open the refuge, you are shooting in the dark. We still do not have the full analysis of all the alternatives including other resources that we asked for back in 1980.

Mr. President, we keep hearing about the fact that we are totally dependent upon oil from the Middle East. The assumption that this argument portrays is that opening up the coastal plain would reduce this dependence. This is like saying that a great corn yield in a small State will reduce the world price of corn.

Mr. President, as Jessica Matthews said in recent editorial in the Post:

> If the coastal plain holds the expected amount of oil, it will be a major find but a

minor amount of oil. It would be of major significance to U.S. Producers, but of minor importance to the country.

Mr. President, we cannot buy our way out of Middle Eastern oil supplies by opening up the coastal plain. We must make better use of current existing supplies, conservation, and alternative energy. We must not open up the only conservation system that protects, in an undisturbed condition, a complete spectrum of the Arctic ecosystem in North America for a short supply of oil.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 5 minutes to the distinguished Senator from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD, Mr. President, today, the U.S. Senate has begun a debate over possibly the most important piece of legislation before the Congress in 1991—the national energy strategy. Well before the tragic events in the Middle East underscored the very real dangers of our enormous and still growing dependence on imported oil, that dependence became the source of great concern for me and many of my colleagues.

At the risk of sounding trite, this Nation's energy policies have been running on empty for quite some time now. For the past decade the motto of U.S. energy policy has been, "Don't do today what you can put off until tomorrow." Since the early 1980's we as a nation have gobbled up energy like it was Halloween candy. We have consumed and consumed, and thought virtually nothing of the consequences—until the crisis in the Persian Gulf. That crisis served to underscore the critical importance of reducing this Nation's dependence on foreign sources of petroleum products and on fossil fuels in general.

Reducing this dependence has resulted not only in a question of higher gasoline and heating oil prices, but it has translated into something infinitely more important and personal—the lives of Americans. Three hundred seventy American service personnel lost their lives in the Persian Gulf war in defense of United States access to Kuwaiti oil—a price far to high to pay for a decade of over-consumption and dependence upon petroleum products.

Indeed, the title of the legislation now before us, the National Energy Security Act of 1991 tells the true tale—that the development of a well-balanced national energy package equals the enhancement of our national security. A truly balanced national energy strategy will move our Nation away from its dependence on oil—not just imported oil, but all oil. The prospect of future wars and the loss of human life over this resource must be reduced and eventually eliminated.

The legislation before us now, Mr. President, is an attempt to enhance our national security through the development of a balanced national energy package. S. 1220, however, is not the ideal package I had envisioned as a final national energy strategy. The 16 hearings and 12-or-so markups held on S. 1220 in the Energy and Natural Resources Committee were not enough. If a vote on final passage of this legislation as it stands today were held right now, my vote would be questionable. Nonetheless, I worked diligently with my colleagues in Energy Committee to try to craft a package which balanced energy production with energy efficiency and renewable energy measures, and I plan to work just as hard on the floor to further enhance this bill—much more needs to be done.

For example—a substantial, defensible increase in corporate average fuel economy standards, enhancement of alternative fuels development, increased access to renewable energy technologies, increased efficiency at existing hydroelectric projects—all are priorities I feel must be improved during debate of this legislation.

The task as I see it is quite clear. The security of America and of American lives everywhere depends upon our action or inaction on this legislation. America's future depends on the stewardship of this Nation's energy resources and our unwavering commitment to a balanced energy plan. The U.S. Senate has before it the golden opportunity to change the course of American energy use from a mentality of consume, consume, consume, to one which balances conservation, energy efficiency, and renewable energy development with the wise development of domestic energy resources.

Mr. President, this legislation needs to be debated, and I will support cloture on the motion to proceed to S. 1220.

Mr. President, I come to the floor to speak on behalf of the Energy Committee, as a member of that committee who has not quite made up his mind as to how I would vote if that bill we reported out of that committee were being read for the third time today.

I am not sure because there are things in that bill that I do not agree with. I want to see the renewable energy programs enhanced, as we did in that committee markup. I want to see conservation programs increased and incentives for such conservation programs. I am not happy with the so-called CAFE proposition in this bill. I do not believe that we should penalize the progressives in the automobile industry, as we would be doing if we followed the particular formula in this bill. There are a number of things that I want to see improved in this bill.

But, Mr. President, I cannot conceive of the fact that people will stand on this floor today and say, put off the national energy program or policy until some other time. We should have learned in the seventies that we should have a national energy program, reducing our dependency upon foreign imports. At that time we were importing 38 percent of our consumption and today that has risen to 50 percent. "Put off until some other day a national energy policy." Are we afraid to debate the issues, or are we just disinterested?

Let me contrast that to what happened on this floor a few months ago.

The administration said there is a little Czechoslovakia-like country over there in the Middle East that is being invaded, and we have to stand up today or we will have another Munich or another example of what we experienced before World War II. And, Mr. President, the Republicans on one side and the Democrats on the other side competed on a question of how we can all mobilize ourselves to go to war.

Let me tell you, we went to war only because of oil. We, of course, all give accolades for the precision with which the military was called upon to execute that action. Nevertheless, the thing that welded the allies together was oil. And yet today, this same body says, well, we are not interested in getting a national energy policy until we get a bill out of the energy committee that we can agree with in every title.

There were over 16 hearings and a dozen markup sessions. That committee has worked diligently under the leadership of Senator JOHNSTON and Senator WALLOP. And, as I say, I think we ought to take that bill and work the will of the Senate, debate the issues. I hope we have not reached a point in history when they were afraid to listen to Gallileo because he might say something that contradicted their assumptions. I do not understand this point.

Let me say that when we were willing to vote on the Persian Gulf war—and remember the Democratic resolution could have put us into war sooner than the Republicans—Mr. Bush and the Republicans had a date specific. The Democrats' resolution to go to war was dependent upon certain circumstances, circumstances that took place even the following day, and that is, "if American troops are put into danger." And at that time the Iraqi troops moved up the border.

I am not saying that I am the only right person. I was the only Senator who voted against both of those resolutions for war. And how easy we could mobilize the Senate to go to war to protect oil dependency, and now we have an opportunity to put this Senate on record of taking the first major step for a national energy policy that will reduce our dependency on imported oil, enhance conservation, enhance the renewable sources and get a comprehensive energy package. I am appalled that people do not want to move on this great national need of a national energy policy.

I commend my leadership of the Energy and Natural Resources Committee. They have done an extraordinary job and I think we ought to at least take it from that base and work the will of the Senate on these issues, whether we agree or disagree at this particular moment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. I yield 5 minutes to the distinguished Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized for 5 minutes.

Mr. STEVENS. I thank the Senator from Louisiana. I am pleased to be able to join this colloquy now.

I have heard statements here on the floor from people saying American industry does not have the capital to do the things that would be required by this bill. Maybe we should ask the question, where are America's dollars going? Where is the outflow of our dollars? They are going to the treasuries and banks of the Middle East. The petrodollar era is here again.

We heard about the petrodollar era in the sixties and the seventies, when we went from about 15 to 30 percent in terms of our reliance upon imported oil. Many people have been asleep. They have not been watching the increase in dependence upon foreign oil. We now import 50 percent of our oil. We have no way of getting those dollars back unless we find some way to compete with the other manufacturing and agriculture areas of the world. Unless we increase the sale of our agriculture products and increase the sale of our manufactured products, we'll never bring those dollars back home.

If people want to look at fiscal extremism, they ought to look at what has just been stated on the floor. It has just been stated that oil that is in the ground that has not been discovered is an asset that belongs to the U.S. Government and if it is discovered and sold it is the sale of something that we cannot count as income to the Federal Treasury and any payment of the revenues paid to the State should be considered a loss to the Federal Government. We had that debate once before and the Budget Committee agreed with us that that is a totally fallacious argument.

But the reason I am here today is to say we should not have a filibuster against a bipartisan energy bill. I am surprised so many people are so extremist in their opposition to certain provisions of this bill that they would even block the consideration of developing a new energy policy for the United States. These are the same people that scream at us normally against filibusters. What is this?

Am I hearing right? Are the people that have been lacing into me for years for objecting to a motion to proceed—are they suddenly changing their minds? Are we going to have a new policy now coming from the extreme environmental people in the Senate and the Congress saying we are unwilling even to debate the subject of looking for new oil?

During the Arab embargo in 1973, we imported 36 percent of our oil. There is no question that this bill affects my State and affects it very vitally. We have over 750 miles of Arctic coast along the Arctic Ocean. It is all pristine. It is pristine because it remains as God made it. There are only four places along more than 750 miles of Arctic coastline that have been developed: Three are Native villages, and one is Prudhoe Bay. There is not one other area affected by man. And somehow or other they tell us that one portion that is covered by the 1½ million acres is so pristine we should not disturb it. What do they plan for the rest of the 750 miles?

The people who live in that area, the Eskimos, have come to us and said please help us bring about this development. We need jobs. We need income. We want to send our kids to colleges just like you do. We have no chance of having a cash economy unless our resources are developed.

They live between the Naval Petroleum Reserve No. 4, 25 million acres set aside in western Alaska by President Harding after the Teapot Dome scandal and on the east the huge Arctic National Wildlife Refuge, 18 million acres, and only 1½ million acres of it left open to oil and gas exploration.

This Congress in 1980 passed the Alaska National Interest Lands Conservation Act and, in doing so, it set aside over 100 million acres of land. Only 1.5 million acres of that was left available for oil and gas exploration and development. It was open for oil and gas exploration and development before that act and it remains available now.

I cannot understand an opposition to a balanced bill. We have come out in support of conservation. We believe we can have a new look at our nuclear policy. We have a proposal here, as I said, that affects my State vitally. But it creates 750,000 jobs nationwide and it should be voted on. We should be having some active debate on the floor, not be questioning whether we should take up a vital bill like this.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Mr. President, how much time is remaining?

The PRESIDING OFFICER. There are 6 minutes and 40 seconds remaining to the Senator from Montana.

Mr. JOHNSTON. Mr. President, I yield 1 minute to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I have heard so many untruths and so many palpable assumptions, in 1 minute it is hard to do it. But the one untruth of all I heard was the Senator from Minnesota said that nobody was for this bill.

Mr. President, I ask unanimous consent that a list of the individuals and agencies of America, of States, of businesses, of State organizations, former Presidents, Secretaries of Defense, National Security Advisers, and others, be printed in the RECORD together with supporting documentation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NES SUPPORT

OCTOBER 31, 1991.

President Jimmy Carter.
President Gerald Ford.
Hon. Dick Cheney, Secretary of Defense.
Hon. William K. Reilly, Administrator, Environmental Protection Agency.
Hon. Caspar W. Weinberger, former Secretary of Defense.
Hon. Richard V. Allen, former National Security Advisor.
AFL–CIO Building and Construction Trades Department.
AFL–CIO Marine Engineers' Beneficial Association.
AFL–CIO Maritime Trades Department.
Air-Conditioning and Refrigeration Institute.
Air-Cooled Heat Exchanger Manufacturers Association.
Air Transport Association of America.
Alaska, State of.
Aluminum Association, The.
Alaska, Coalition for American Energy Security.
Allied-Signal Inc.
Amax Coal Industries, Inc.
American Association of Crop Insurers.
American Boiler Manufacturers Association.
American Cement Alliance.
American Coalition for Ethanol.
American Consulting Engineers Council.
American Electronics Association.
American Farm Bureau Federation.
American Foundrymen's Society.
American Gas Association.
American Gear Manufacturers Association.
American Hardware Manufacturers Association.
American Iron and Steel Institute.
American Legion.
American Lighting Association.
American Maritime Congress.
American Mining Congress.
American Nuclear Energy Council.
American Paper Institute.
American Petroleum Institute.
American Pipe Fittings Association, Inc.
American Recreation Coalition.
American Soybean Association.
American Society of Civil Engineers.
American Trucking Association.
ARCO.
Aristech Chemical Co.
Arizona Association of Industries.
Arizona Public Service Co.
Arkansas State Chamber of Commerce.
Armstrong World Industries.
Asea Brown Boveri Inc.
Ash Grove Cement Co.

Associated Builders and Contractors, Inc.
Associated General Contractors of America.
Associated Industries of Florida.
Associated Industries of Massachusetts.
Associated Industries of Missouri.
Associated Oregon Industries.
Associated of Commerce and Industry of New Mexico.
Baker Hughes MWD.
Bakery Equipment Manufacturers Association.
Baltimore Gas & Electric Co.
Bayless, Boland, Bates & Madigan, Inc.
Bechtel Group Inc.
Bob Lawrence & Associates.
Book Manufacturers' Association, Inc.
Burlington Resources.
Business & Industry Assoc. of New Hampshire.
Business and Institutional Furniture Manufacturers Assoc.
Business Council of Alabama.
California Chamber of Commerce.
CENEX.
CertainTeed Corporation.
Chamber of Commerce of United States of America.
Chemical Manufacturers Association.
Chevron Chemical Co.
Chevron Companies, The
Chocolate Manufacturers Association of the U.S.A.
CH2M HILL.
CIPCA.
Citizens for the Environment Action Fund.
Citizens for a Sound Economy.
Clean Coal Technology Coalition.
Coalition to Oppose Energy Taxes.
Coalition of Northeastern Governors.
Coastal Corporation, The
Columbia Gas System.
Composite Can and Tube Institute.
Compressed Gas Association.
Connecticut Business and Industry Association.
Consolidated Natural Gas Company.
Construction Industry Manufacturers Association.
Consumers Power Co.
Copper and Brass Fabricators Council, Inc.
Council of Industrial Boiler Owners.
Delaware State Chamber of Commerce.
Delta Airlines.
Dominion Resources, Inc.
Duke Power Company.
Dupont.
Eastman Kodak Co.
Eaton Corporation.
Electricity Consumers Resource Council.
Electronic Industries Association.
Electronic Transportation Coalition.
Energy Council, The (formerly SW Energy Council).
ENRON Corporation.
ENRON Gas Processing Company.
Entergy Corporation.
Envelope Manufacturers Association of America.
Equipment Manufacturers Institute.
Fire and Emergency Manufacturers and Services Assoc.
Florida Citrus Mutual.
Florida Gas Transmission Co. (ENRON).
Florida Petroleum Council.
Florida Phosphate Council.
Florida Sugar Cane League.
Fluor Corporation.
Forging Industry Association.
Gas Appliance Manufacturers Association.
Gas Research Institute.
General Mills.
General Public Utilities.
Georgia-Pacific, Inc.
Grace, W.R. & Co.
Gypsum Association
Halliburton Company
Hardwood Plywood Manufacturers Association
Highway Users Federation
Hoechst Celanese Corporation
Independent Petroleum Association of America
Independent Power Producers Working Group.
Indiana Manufacturers Association, Inc.
Indiana State Chamber of Commerce.
Industrial Energy Users Forum.
Industrial Safety Equipment Association.
Industry and Commerce Association of South Dakota.
Institute for Interconnecting and Packaging Elec. Circuits.
Institute of Electrical and Electronics Engineers, Inc.
Insulation Contractors Association of America.
Interstate Natural Gas Assoc. of America.
Iowa Assoc. of Business and Industry.
Iowa, Governor of, Hon. Terry E. Branstad.
Kaiser Aluminum and Chemical.
Kansas Chamber of Commerce and Industry.
Kerr-McGee Corporation.
Kitchen Cabinet Manufacturers Assoc.
K-Fuel Partnership.
KN Energy.
Knauf Fiber Glass.
Louisiana Assoc. of Business and Industry.
LP Gas Clean Fuels Coalition.
Lukens Inc.
Maine Chamber of Commerce and Industry.
Maine Public Utilities Commission.
Manville Building Products Corporation.
Martin Marietta Corporation.
Maryland Chamber of Commerce.
MDU Resources Group, Inc.
Metal Treating Institute.
Michigan Manufacturers Assoc.
Mineral Insulation Manufacturers Association.
Morrison Knudsen Corporation.
National Assoc. of Band Instrument Manufacturers.
National Assoc. of Counties.
National Assoc. of Food Equipment Manufacturers.
National Association of Home Builders of the U.S.
National Assoc. of Hosiery Manufacturers.
National Assoc. of Manufacturers.
National Assoc. of Photographic Manufacturers.
National Association of Wheat Growers.
National Cattlemen's Association.
National Coal Assoc.
National Confectioners Assoc. of the U.S.A.
National Conference of State Legislatures.
National Electrical Contractors Association.
National Electrical Manufacturers Assoc.
National Farmers Union.
National Fluid Power Assoc.
National Grange.
National Governors' Association.
National Housewares Manufacturers Assoc.
National Independent Energy Producers.
National Insulation and Abatement Contractors.
National Knitwear Manufacturers Association.
National League of Cities.
National Marine Engineers' Beneficial Association.
National Ocean Industries Assoc.
National Petroleum Refiners Association.
National Pork Producers Council.
National Rural Electric Cooperative Assoc.
National Screw Machine Products Assoc.
National Society of Professional Engineer.
National Steel Corporation.
Natural Gas Alliance for the Generation of Electricity.
Natural Gas Supply Assoc.
Natural Gas Vehicle Coalition.
Nebraska Chamber of Commerce and Industry.
The New England Council Inc.
New York State Electric & Gas Corporation.
Non-Ferrous Founders' Society.
Northern States Power Co.
Occidental Oil and Gas Corporation.
Ohio Manufacturers Assoc.
Orange and Rockland Utilities.
Oryx Energy Co.
Owens-Corning Fiberglass Corporation.
Pacific Gas & Electric Company.
Panhandle Eastern Corporation.
PCPI—The Transformer Assoc.
Petrochemical Energy Group.
Petroleum Marketers Association of America.
Phillips Petroleum Co.
Portland Cement Assoc.
Portland General Electric Co.
Polyisocyanurate Insulation Manufacturers Assoc.
PPG Industries Inc.
Power Tool Institute, Inc.
Powers Petroleum Consultants, Inc.
Process Gas Consumers Group.
PSI Energy, Inc.
Public Lands Council.
Puerto Rico Manufacturers Assoc.
PUHCA Reform Coordinating Committee.
Quaker State Corporation.
Quantum Chemical Co.
RJR Nabisco.
Rubber Manufacturers Association.
Sheet Metal & Air Conditioning Contractors Nat'l. Assoc., Inc.
Siemens Corporation.
Small Motor Manufacturers Assoc.
Southeast Iowa Industrial Coalition.
Society of the Plastics Industries, Inc.
Southern California Gas Company.
Southern Company Services, Inc.
Southern States Energy Board.
Southwest Energy Council.
Sporting Goods Manufacturers Assoc.
Stockwell Rubber Company.
Sumner Rider & Associates.
Sun Company, Inc.
Synthetic Organic Chemical Manufacturers Assoc.
Telecommunications Industry Association.
Texaco Inc.
TIMA, Inc.
Tobacco Associates.
Toy Manufacturers Assoc. of America.
Union Carbide Corporation.
Union Pacific Resources.
U.S. Beet Sugar Association.
U.S. Conference of Mayors.
USX Corporation.
Utility Working Group.
Valley Queen Cheese Factory, Inc.
Valve Manufacturers Association.
Vista Chemical Co.
Washington International Energy Group.
Waterbed Manufacturers Association.
West Virginia Manufacturers Assoc.
Western Governors' Assoc.
Western Legislative Conference.
Westinghouse Electric Corporation.
Wisconsin Manufacturers & Commerce.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, October 16, 1991.

Hon. MALCOLM WALLOP,
U.S. Senate, Washington, DC.

DEAR MALCOLM: As the Senate considers S. 1220, the National Energy Security Act of

1991, I want to let you know of my strong support for swift enactment of this important legislation and my opposition to any attempt to filibuster the bill. S. 1220 contains many sound provisions which build on the base we established last year in the Clean Air Act Amendments and provides the framework for a reliable supply of environmentally sound energy sources, the underpinning of any healthy economy.

S. 1220 establishes a balanced and comprehensive approach to making the U.S. less dependent on unstable supplies of imported energy. The bill would promote development of alternative sources of energy, encourage energy conservation in the transportation and industrial sectors and increase domestic production of conventional energy sources, in part through the ecologically sound development of a small portion of the Arctic National Wildlife Refuge. Finally, the measure would accelerate the development of advanced technologies which could be used domestically and worldwide to minimize the effects of energy production and use on the natural environment.

S. 1220 could accomplish this and more, putting the United States on the road to a sound, environmentally responsible energy policy. Considered as a whole, this legislation can advance environmental protection and improve rational development, diversification and use of energy and stimulate innovation and needed technological breakthroughs. I urge its speedy passage.

Sincerely yours,

WILLIAM K. REILLY.

SECRETARY OF DEFENSE,
Washington, D.C., October 11, 1991.

Hon. MALCOLM WALLOP,
Ranking Republican, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MALCOLM: The Senate will soon consider the National Energy Security Act of 1991 (S. 1220) originated by your Committee. I strongly support Senate passage of the legislation to achieve a balanced, realistic, and comprehensive approach to the Nation's energy needs. America's development, exploitation, and conservation of its vast energy resources in an environmentally sound and economically manner is a top national priority.

The Department of Defense is one of America's major consumers of energy. The effective use of the armed fores depends upon ready access to the energy needed to fuel ships, aircraft, facilities and the other fuel-consuming items that are part of a modern national defense. Our experience in the liberation of Kuwait during Operation DESERT STORM demonstrated the importance of energy to the effective use of our armed forces. Increasing America's energy self-reliance will improve the Department of Defense's ability to rely on America's energy sources in time of need. Implementation of S. 1220 will reduce America's dependence on foreign energy sources, thereby strengthening the Nation's security.

I urge the Senate to pass S. 1220, with the modifications requested by the Administration. The legislation will ensure that America has the energy supplies it needs for the twenty-first century. Your continued leadership in the effort to make America energy-independent is greatly respected and appreciated.

Sincerely,

DICK CHENEY.

SEPTEMBER 30, 1991.

Hon. J. BENNETT JOHNSTON,
U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: During the 1970's, for the first time in history, we confronted a national energy crisis. Instability of supply and rising costs forced us to understand that sound energy policies are critical to the strengths of this nation. Congress and the Executive Branch began working together to develop responsible energy policies, and much was accomplished.

It was during our Administrations that Congress created the Strategic Petroleum Reserve, imposed automobile efficiency standards, set the stage for deregulating natural gas, authorized a host of conservation initiatives and created the Department of Energy.

While we take pride in these and other achievements in the energy field, we also recognize that much remains to be done. A national energy policy cannot be created overnight by one Act of Congress or one Executive Order. Nor can we fashion policy only in response to crisis. Despite past progress, we are still not making the best use of our own energy resources and we continue to waste too much energy. We must do more to develop new energy sources and to ensure that we meet our energy needs through environmentally sound practices.

The need for new initiatives on energy policy is dramatized by our growing dependence on foreign oil, a dependence which jeopardizes our economy and endangers our security.

With the lessons of the Persian Gulf war fresh at hand, now is the time for Congress to address the nation's energy needs. Comprehensive energy legislation such as that pending before the Congress, provides an opportunity to continue progress toward a national energy policy. This opportunity should not be missed.

We urge your prompt consideration of this matter.

JIMMY CARTER.
GERALD R. FORD.

OFFICE OF THE GOVERNOR,
Des Moines, IA, October 29, 1991.

Hon. TOM HARKIN,
Hart Senate Office Building, Washington, DC.

DEAR TOM: You will soon consider S.1220, the National Security Act of 1991, which contains several titles of interest to the State of Iowa.

Legislation titles that deal with speeding up FERC's consideration of interstate pipeline construction, increasing energy efficiency, amending the Public Utility Holding Company Act (PUHCA) of 1935 to facilitate development of independent power, and requiring greater use of alternative fuels will all serve to benefit Iowa's industries, including agriculture, trucking, travel, tourism and manufacturing.

As you are aware, Iowa imports 98% of its energy, which makes our citizens vulnerable to possible energy supply shortages and high costs. Our goals are to create greater diversity in Iowa's energy supply and demand chains, increase competition and improve efficiency in the electric industry.

I understand that there are several possible amendments to the bill, and I hope that, when the debate is concluded, S. 1220 will contain those items of greatest interest to Iowa.

Your consideration is deeply appreciated.

Sincerely,

TERRY E. BRANSTAD.
Governor.

OFFICE OF THE GOVERNOR,
Des Moines, IA, October 29, 1991.

Hon. CHARLES E. GRASSLEY,
Hart Senate Office Building, Washington, DC.

DEAR CHUCK: You will soon consider S. 1220, the National Energy Security Act of 1991, which contains several titles of interest to the State of Iowa.

Legislative titles that deal with speeding up FERC's consideration of interstate pipeline construction, increasing energy efficiency, amending the Public Utility Holding Company Act (PUHCA) of 1935 to facilitate development of independent power, and requiring greater use of alternative fuels will all serve to benefit Iowa's industries, including agriculture, trucking, travel, tourism and manufacturing.

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I understand that there are several possible amendments to the bill, and I hope that, when the debate is concluded, S. 1220 will contain those items of greatest interest to Iowa.

Your consideration is deeply appreciated.

Sincerely,

TERRY E. BRANSTAD,
Governor.

NATIONAL GOVERNORS ASSOCIATION,
September 30, 1991.

Hon. MALCOLM WALLOP,
Ranking Minority Leader, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR WALLOP: As you may be aware, over two years ago the nation's Governors adopted recommendations for a comprehensive national energy policy. This statement, a copy of which is attached, noted in part that "the governors believe that the development of a comprehensive, coherent, and productive national energy policy is imperative as the nation approaches the 1990's" (original italics). The mid-east crisis has made it clear that the enactment of comprehensive national energy legislation is still imperative, and we urge your speedy consideration of S. 341, the National Energy Security Act of 1991.

While we can not make an unqualified endorsement of S. 1220 as reported by the Committee on Energy and Natural Resources, we believe the bill does represent a good start and is the best available vehicle for enacting a comprehensive national energy policy. Moreover, this proposal contains many important recommendations and clearly moves the country in the right direction. Among other provisions of the legislation at least broadly consistent with the Governors' recommendations are measures to increase the use of alternative fuels, promote electric vehicles, improve energy efficiency, promote the development and export of renewable energy technologies, streamline the construction of natural gas pipelines and nuclear power projects, and expand research into the environmentally acceptable use of coal, our most abundant domestic energy resource.

Having said this, we must also report that the current proposal falls short of the Governors' recommendations in several important respects. Frankly, we believe the bill is not aggressive enough with respect to either encouraging energy production or improving energy efficiency and conservation. With respect to energy production, the Governors have endorsed tax incentives for domestic oil and gas exploration and development and enhanced recovery. We endorse equivalent tax incentives for energy conservation and efficiency investments. Neither kind of tax incentive is included in the bill reported by the Committee on Energy and Natural Resources.

With respect to conservation and efficiency, the bill promotes energy efficiency labels for many appliances, but not standards as we have recommended. The most conspicuous shortcoming of the legislation, however, is the absence of a provision to significantly increase the fuel efficiency of motor vehicles. The Governors' view is that our excessive use of oil in the transportation sector is so serious that *all* reasonably available measures should be employed to reduce it, including increases in CAFE standards, enhancement of mass transit, and development of meaningful alternative fuel programs.

While the Governors have not made a recommendation specific to the Arctic National Wildlife Refuge (ANWR), we have agreed that some areas currently off-limits to oil and gas development should be opened up, with appropriate environmental safeguards. Many of us believe that the nation would accept development in ANWR in return for a significant increase in CAFE standards.

We hope you agree that the nation's leadership has what amounts to a moral obligation to address energy in a comprehensive fashion, including not only energy security and adequacy of supply but also conservation, efficiency, and environmental concerns. We also believe the American people are ready to face even the toughest issues and do what is smart, given the right kind of leadership and the perception that our policy is fair. We stand ready to help in any way we can and look forward to working with you in the development of suitable legislation.

Sincerely,

GOV. GEORGE A. SINNER,
Chairman, Committee on Energy and Environment.

GOV. NORMAN H. BANGERTER,
Vice Chairman, Committee on Energy and Environment.

THE SECRETARY OF ENERGY,
Washington, DC, October 22, 1991.

Hon. MALCOLM WALLOP,
U.S. Senate, Washington, DC.

DEAR SENATOR WALLOP: Legislation to enact a National Energy Strategy will soon be brought to the Senate floor. That legislation, S. 1220, lays the foundation for a more efficient, less vulnerable, and environmentally sustainable energy future and deserves immediate and full consideration.

Numerous organizations representing the Nation's governors, State legislators, mayors, and county officials have adopted resolutions calling upon Congress to adopt a comprehensive, balanced national energy policy. In doing so, these organizations have indicated how important such legislation is to the future of the Nation.

Enclosed for your review are copies of resolutions and/or letters of support from the following State and local organizations: Coalition of Northeast Governors; The Energy Council (formerly South/West Energy Council); National Association of Counties; National Conference of State Legislatures; National Governors' Association; National League of Cities; Southern Governors' Association; Southern Legislative Conference; Southern States Energy Board; U.S. Conference of Mayors; Western Governors' Association; Western Legislative Conference.

I call your attention to these resolutions as an indication of the groundswell of support that has developed for the expeditious consideration of comprehensive, balanced energy legislation such as S. 1220.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Ret.).

THE JOINT CONGRESSIONAL/CONEG AD-HOC WORKING GROUP ON ENERGY

As a result of the rapid rise in oil prices following the Iraqi invasion of Kuwait, the Coalition of Northeastern Governors (CONEG) established a joint Congressional/CONEG Ad-Hoc Working Group on energy. The Group's responsibilities will be to advise the CONEG Governors on the: effect of federal energy policies and legislation on the Northeast economy; development of a regional energy policy; creation of a plan for locating a refined petroleum products reserve in the Northeast, and effect of increases in energy prices on the Northeast economy.

The immediate concerns of the Working Group are to work with the Congress and the Department of Energy to: insure that a regional refined product reserve is established in the Northeast; develop procedures for the Secretary's 10 percent set-aside authority from the Strategic Petroleum Reserve, and encourage the development of regional analyses concerning the potential impact on the Northeast region of a worsening of the current situation in the Gulf.

In addition, the Group is also carrying out a survey of the nine CONEG states to assess common energy policies and procedures.

The Group is comprised of 13 members representing the nine CONEG states and Congress, Scott Weiner, President of the Board of Public Utilities, chairs the Working Group. A list of state members is attached. Congressional members are: Representative Boehlert, New York; Representative Markey, Massachusetts; Senator Bradley, New Jersey; and Senator Jeffords, Vermont.

In addition, the CONEG Governors have passed a comprehensive energy policy, a copy of which is attached.

CONEG POLICY—THE DEVELOPMENT OF A NATIONAL ENERGY STRATEGY

The Coalition of Northeastern Governors (CONEG) believes that it is essential to develop a national energy strategy, and supports the Administration's effort to develop such a strategy. The recent Iraqi invasion of Kuwait has again highlighted the vulnerability of the Northeast economy to disruptions in energy supplies and price increases, and there must be a fundamental redirection of national energy policy.

Unwarranted increases in gasoline and home heating oil of more than 20 cents a gallon were reported by consumers and states in our region only days after the beginning of the invasion. The Northeast Governors support strong national leadership to minimize these increases, and join with the President in calling upon oil companies to exercise extreme restraint in energy prices. We support strong action by the Attorney General, the Secretary of Energy, the Federal Trade Commission, and the Commodities Futures Trading Commission to investigate and pursue any companies which appear to be engaging in unjustifiable or illegal pricing practices. Actions by Federal agencies to dampen disruptive speculation in the energy commodity market may be necessary.

The CONEG Governors urge the Administration to act promptly to finalize a national energy strategy that encourages reliable and diverse sources of energy by: providing the vision for sustainable energy future; integrating energy, environmental, and economic policy objectives; expanding the supply, delivery and use of North American energy resources, including natural gas, and the prompt resolution by FERC of outstanding energy issues, including all "open season" natural gas pipeline proposals; making energy efficiency the cornerstone of the Nation's energy policy by aggressively promoting increased efficiency in all sectors; increasing the use of renewable sources of energy by expanding research, development and demonstration of these technologies; assuring adequate funding for emergency preparedness efforts at the state and federal level; providing adequate federal funding for public transportation to encourage greater reliance on high-speed rail and public transit, and to gain the benefits of reduced fuel use and environmental emissions; increasing the Corporate Average Fuel Economy Standards to 40 m.p.g. by 2001; continued strengthening of a working partnership between the states and the federal government.

The Coalition of Northeastern Governors also calls upon the Congress to pass legislation reauthorizing the Strategic Petroleum Reserve (SPR). The Coalition believes that the SPR should be used to bring stability to the market place during major international as well as domestic, disruptions in supply and price. In addition, CONEG calls for the establishment of a Northeast regional product reserve.

The sudden rise in oil prices will place severe hardships on the poor and elderly residents of the Northeast, and will strain the ability of states to meet the fuel assistance needs of their citizens. CONEG is therefore calling upon the Congress to restore federal appropriation levels for the Low-Income Home Energy Assistance Program (LIHEAP) to levels at least comparable to previous peak levels, and to proceed with the budget process in a timely manner to allow states to establish programs prior to the onset of winter. The federal government should establish a contingency fund or other mechanism to permit rapid disbursement of LIHEAP funds in response to winter energy price increases.

Approved August 23, 1990.

POLICY STATEMENT RELATIVE TO SENATE DEBATE OF THE JOHNSTON-WALLOP BILL (S. 1220)

BACKGROUND

In December of 1988 the South/West Energy Council (predecessor to the Energy Council) presented then President-elect George Bush with a National Energy Strategy proposal. The result of a six month project, S/WEC's proposal was billed as a "starting point for federal efforts."

In 1989 the Bush Administration undertook a National Energy development effort. The basis laid by the Administration has been utilized by two leaders in the Senate. Senators J. Bennett Johnston and Malcolm Wallop have proposed the National Energy Security Act of 1991, which was passed by the Senate Energy and Natural Resources Committee on May 23, 1991.

The Johnston-Wallop bill (S1220) is in many ways similar to the S/WEC proposal. In some cases it addresses issues on which the Council has not taken a position (e.g. Public Utilities Holding Companies Act reform); further, it does not address some of the Council's specific proposals (e.g., a Pan American Energy Alliance). However, the Johnston-Wallop bill is a comprehensive piece of legislation which will serve as a useful basis for congressional debate of energy policy legislation. The next logical step in Congressional consideration of such a policy is debate of the Johnston-Wallop bill (S1220) on the floor of the U.S. Senate.

POLICY STATEMENT

The Energy Council urges the U.S. Senate to bring S1220 to the floor for consideration as soon as possible, following the August 1991 recess. The Energy Council has not taken a position on every element of S1220 (e.g. PUHCA). However, the Energy Council finds the Johnston-Wallop bill to be the most comprehensive proposal of federal policy addressing energy, which is so essential to assuring a viable economy, a healthy environment, a strong national defense and sustaining the American way of life. The Energy Council finds S1220 to be an excellent starting point for debate.

DISPOSITION

This policy statement, adopted unanimously by the Energy Council on September 8, 1991 will be distributed to the Majority Leader of the U.S. Senate and the Congressional Delegations of the member states of the Energy Council.

LORI CAMERON,
Secretary.

ENVIRONMENT, ENERGY, AND LAND USE STEERING COMMITTEE RESOLUTION ON NATIONAL ENERGY STRATEGY

Whereas, in July 1989, the President of the United States directed the Secretary of Energy to develop a National Energy Strategy; and

Whereas, the preparation to the National Energy Strategy involved 18 months of extensive effort including the testimony of over 400 witnesses at public hearings held in 46 states; and

Whereas, the National Association of Counties, (NACo) among others urged the Department of Energy to develop a balanced strategy that emphasizes energy conservation, development of alternative fuels and alternative and renewable sources as well as expanding our reliance on domestic fossil fuel reserves; and

Whereas, NACo has long recognized the need for economic incentives to promote the early development of alternative energy sources; and

Whereas, in February, 1991, the Department of Energy finally presented its National Energy Strategy to the Congress and to the public; and

Whereas, the Senate and the House of Representatives are currently working on National Energy Strategy legislation; and

Whereas, the adoption of such legislation will have long range impact on the lives of all Americans represented by local government officials: Therefore, be it

Resolved that the National Association of Counties in conjunction with its 1991 County Platform urges the Congress to include as part of its National Energy Strategy legislative provisions which will steadily diminish our reliance on foreign oil imports by

A. Adoption of the same alternative fuel vehicle fleet requirements as legislated by the Clean Air Act of 1990. The Congress is further requested to include provisions promoting cooperative programs between the Department of Energy, local governments and the private sector to assist in meeting the alternative fuel fleet requirements of the Clean Air Act of 1990.

B. Development and implementation of ethanol and other renewable resource fuels which meet the emissions requirements of the Clean Air thus contributing to the economic stabilization of our agricultural communities. Such fuels should be subject to the same federal gasoline tax as ordinary fuels.

C. That any legislation regarding Corporate Average Fuel Economy (CAFE) ratings carefully balance the need for fuel economy against the impact on vehicle safety.

D. Adoption of legislation supporting additional incentives for research and development of alternative domestic energy sources.

E. Adoption of legislation that decreases reliance on foreign energy imports by encouraging domestic energy production.

Adopted by Environment, Energy and Land Use Steering Committee (unanimous).

JULY 13, 1991.

NATIONAL ENERGY POLICY

The National Conference of State Legislatures urges the federal government to develop, implement and maintain an expansive, integrated, environmentally-sensitive and cost-effective national energy policy.

The primary goals of a national energy policy should be to provide for the most efficient use of energy, to promote reliable sources of domestic energy supplies, to develop a comprehensive energy conservation strategy and to develop and promote the use of alternative, renewable energy sources. A national energy policy should ensure adequate supplies of affordably priced energy. A national energy policy should ensure the use of energy in an efficient and environmentally-sound manner so that the needs of our citizens, economy and national security interests are met. Energy independence shall be the long term goal of the United States. A balanced mix of energy sources is essential to the security and the future economic growth of the United States. It is also imperative that a national energy policy account for the effect of the use of each fuel source on the environment.

PRINCIPLES

Those principles which NCSL believes ought to guide the development and implementation of a national energy policy include: Promotion of the most efficient and economical use of all energy resources; promotion and provision of incentives for the development and optimal use of all energy resources; ensurance that various domestic energy sources are continually developed, maintained and stored to prevent supply emergencies and to preserve the nation's independence; consideration and assessment of environmental costs and benefits for all energy resources, fuels and technologies in rendering legislative, regulatory and market decisions regarding energy production and use; provision of an affordable energy supply for all citizens; specification and balancing of clear lines of local, state and federal regulatory authority; development of both short- and long-term strategies to provide adequate energy supplies, efficient utilization of those supplies and optimum cost effectiveness; promotion of the education of school-age children regarding energy resources, consumption and production and regarding environmental protection, safety and risks in energy production; ensurance of expanded energy research and development and broadening of the citizenry's access to energy-related information; ensurance of participation of state and local officials in the development and implementation of a national energy plan and strategy; avoidance of mandates, particularly unfunded mandates, upon state and local governments in order to effect a national energy policy, and promotion of energy conservation and efficiency and the development and use of alternative energy supplies.

IMPLEMENTATION

The development of environmentally-sound energy conservation and efficient supply and distribution systems requires long range planning, least-cost planning, and sustained efforts. The immediate establishment and implementation of a national energy strategy, as recommended in this document and further discussed and supported in existing NCSL policies, will assure that the future energy needs of American citizens, the United States economy and national security interests are met in an efficient and environmentally-sound manner.

Development of a national energy strategy should have at least these six principal steps: (1) a forecast and assessment of our nation's energy future and its impacts; (2) an evaluation and ranking of short- and long-term energy options available to the nation; (3) an evaluation of possible energy futures which provide greater benefits to our citizens, based upon the options ranked above; (4) development of recommendations for energy options and energy futures that the nation should pursue, with the establishment of national targets or goals; (5) evaluation and recommendation of implementation mechanisms including, but not limited to, incentives, technical assistance, educational programs, regulatory standards or guidelines to achieve the targets or goals; and (6) coordination of federal and state components, responsibilities, and authority.

The U.S. Department of Energy (DOE) should rank the energy options available to the nation. The options should be grouped by end use and not by specific fuels or efficiency improvements. The ranking of each option within a group shall reflect the market and nonmarket costs of energy saved or delivered, the relative degree of uncertainty and risk exposure, and the compatibility of each option with other national goals. Ranking should be periodically revised to reflect changes over time. Any ranking and any energy policy should include the long-term environmental impacts.

In choosing among energy policy alternatives, a cost-benefit approach should be applied in which the full long-term costs of an option in taxes, consumer energy bills, environmental impacts, security risks, and other national goals are weighed against the additional availability or conservation of energy and other long-term benefits it might be expected to generate.

Those measures involving the lowest costs, in terms of public expenditures, revenue losses, costs to consumers, and environmental or other impacts, should be considered first. Energy policy alternatives that would improve our energy security and reliability without imposing significant new costs, while balancing the need for environmental protection, should be implemented. Although the potential costs and benefits of a given proposal can be extremely difficult to estimate, this framework is valuable in setting consistent terms of debate for our various energy policy choices both now and in the future.

An effective national energy policy must include carefully coordinated federal and state components. The responsibility for developing the state components rests principally with the legislatures. Channels of communication between state legislatures and the federal government must be strengthened. In the development of a national energy policy, the federal government shall consult closely with state legislatures, shall devise mechanisms to bring state legislatures as full participants into the energy decision-making process on a continuing basis, and shall ensure the inclusion of representatives of the legislative branch of state government in all state-federal working groups in the energy area.

CONSERVATION AND ENERGY EFFICIENCY

Increased energy efficiency and conservation should be considered as primary sources of energy, since both are practical, cost-efficient and essential for addressing future energy needs. Increased efficiency will decrease our reliance on imported oil, reduce the environmental impacts of fossil fuels, reduce the long-term operating costs of U.S. industries thus improving their competitiveness, slow the depletion of our finite fossil fuels and extend the time we have to make the transition to new and innovative energy technologies. Environmental concerns associated with energy policy choices can be accomplished most effectively by improving the efficiency of this nation's energy use and by making sure that choices among fuels and energy products and services reflect their true environmental costs. This principle shall apply to imported energy as well as domestic energy.

It shall be part of the energy strategy of the United States to promote energy efficiency in a variety of ways including setting or strengthening as technologies improve: Corporate Average Fuel Economy Standards for automobiles; energy efficiency provisions in building codes (including lighting efficiency standards and weatherization); home appliance and heating and cooling unit efficiency standards; waste recycling and reduction standards for industrial manufacturing; standards for conservation in electrical production and supply including cogeneration, and use of alternative energy; and a national transportation policy, emphasizing various forms of mass transit, that promotes energy efficiency. These measures impose costs as well as provide benefits and should be evaluated for adoption along the lines outlined in the implementation section. Programs must be cooperatively developed and implemented by the states and federal government working together as full partners, and should consider incentives to promote and encourage energy efficiency and development of cost-effective energy resources.

Also, the federal government shall promote energy conservation education and fund research into conservation technologies. Federal funding of energy conservation programs, including grants to states, should be enhanced.

The government's leadership role in the purchase and use of new energy efficient technologies and products shall be expanded, and all government-owned buildings shall make use of economical energy conservation programs.

In addition to the energy conservation program called for above, additional policies should be adopted, including the following:

1. Research and Development—Priority should be given to the renewable energy resources for the long-term and to the conservation and conversion from existing fossil fuel resources in the short-term. Basic energy conservation research funded by the government shall include superconductivity studies.

2. Energy from Solid and Liquid Waste—The conversion of solid and liquid waste after all recyclable and reusable materials are removed can make a contribution to our energy supply. A resource recovery program which utilizes the waste stream should be encouraged where economically and environmentally feasible for this purpose provided that problems with air emissions and ash residue are resolved.

3. Architecure—Use and design of innovative building technologies, including building orientation, that enhance conservation and efficient energy usage shall be promoted.

RENEWABLE ENERGY

Renewable energy sources are characterized by a broad range of technologies, costs, efficiencies and environmental concerns. Renewable energy sources include, but are not limited to, geothermal, hydropower, biomass, wind, photovoltaics and solar. Recognizing this spectrum of resources, the federal government should institute a long range, stable Renewable Energy Development Program which identifies and assists renewable energy sources from research and development through demonstration projects and commercialization in a cooperative effort among industry, higher education, and national laboratories.

Renewable energy resource development must be ranked and funded on the basis of factors including energy efficiency, economic competitiveness, environmental impacts, and technological adaptability. Part of this program, and critical to its success, is federal development of alternative technologies that improve renewable energy systems. Also needed is a translation and distribution system for international technical and marketing papers on renewable energy. The U.S. should strive to become a world leader in the use of renewable energy resources.

ENERGY EMERGENCY PREPAREDNESS

The federal government should support and enhance energy emergency preparedness in order to reduce the potential impact of petroleum supply disruptions. Initial efforts should focus on strategies to prevent emergencies from occurring. Such programs shall give consideration to existing state laws and programs, and state and local officials shall be included in the federal planning process.

The national energy emergency preparedness program shall include the following principles: voluntary conservation is preferred to mandatory measures wherever possible; any mandatory response should be phased in, beginning with the least stringent measures, with gasoline rationing reserved for only the most severe shortage; and to minimize undue hardships on states and regions heavily dependent on motor vehicle transportation, rationing allotments and allocation plans should be based on state and regional needs and strategies rather than on national averages. Priority shall be given to home heating needs including home heating oil and propane, provided homes are adequately insulated.

It is essential that emergency response procedures be thoroughly and carefully tested to ensure the coordination and flow of information between energy suppliers, consumers, and federal, state and local governments. Maintenance and operation of the Strategic Petroleum Reserve (SPR) is essential to any national energy emergency preparedness plan. The federal government should fill the SPR to its authorized level. There should be continued refinement of the timely sales process for SPR oil and the continued regular testing of the SPR sales mechanism and physical drawdown capabilities. Where necessary, regional rotating product stocks or other mechanism to ensure regional availability of supplies should be established. Fuel switching capability for large energy users to reduce dependence upon a single fuel source should be encouraged.

CRUDE OIL

The federal government should promote the environmentally-sound production of domestic energy resources in coordination with the conservation and efficient use of energy resources, and the management of energy imports.

The federal government should promote and encourage domestic production of crude oil in an environmentally-sound manner in order to supply United States consumers with a secure source of petroleum, and provide a stabilizing influence to the world price of crude oil. Since domestic production is declining rapidly, the efficient use and conservation of these resources must be encouraged. Also, the extraction and transportation of crude oil must be done only with full safeguards for the protection of the environment. In this regard, the federal government should consider incentives for domestic exploration, maintenance of stripper wells, but excluding other extractions, and technological research for methods of enhanced oil and gas recovery that are environmentally safe and in accordance with state policy.

The federal government should ensure that energy resources are utilized in a manner that recovers the most energy value possible while assuring full protection of the environment. Similarly, it should be the strategy of the United States to alleviate oil dependency by funding research and development to perfect alternative fuels, particularly for the transportation sector and primary modes of personal transportation. Enhanced oil and gas recovery from known reserves should be promoted in an environmentally-sound manner.

The federal government should manage United States imports by diversifying import suppliers, pursuing a Pan American Energy Alliance with Western Hemisphere producing nations, and opening a dialogue with suppliers worldwide.

COAL

Coal is America's leading fossil fuel in reserve. Coal holds the promise of long-term energy security for this nation. Resources of coal can be properly utilized only if we develop a technology to burn coal more cleanly, and efficiently. Because coal consumption produces carbon dioxide, conservation and efficiency must be emphasized. Mined lands should be reclaimed to an environmentally appropriate state.

It should be the goal of the United States to provide continued support for the Clean Coal Technology Program, in partnership with the private sector. Research and technology development in clean coal usage should include work in precombustion, combustion, post-combustion, and coal conversion areas with desulfurization efforts a top priority. The United States should jointly address transboundary environmental problems with its neighbor Canada. A resolution on the issue of acid rain must be reached soon and should take into account the findings of the National Acid Precipitation Assessment Program (NAPAP), the National Academy of Sciences (NAS) and other recent scientific reports. Programs should be designed to reduce the amount of sulfur dioxides by at least 50% and to reduce nitrogen oxides emitted into the air from coal burning. The solution should promote the utilization of clean coal technologies and balance costs to our environment and health with potential impacts upon the economy and costs to electricity consumers.

Since gas generated from coal can be distributed through existing pipeline systems, and since the delivery of coal in a conventional form will require extensive capital investment in plant conversion and rail transportation, coal gasification should be seriously considered as an alternative to the use of coal in a conventional manner.

The effects on local infrastructure needs and the costs of prime farmland protection and land reclamation shall be considered in the development of a national coal program. Financing of activities under the abandoned mine reclamation fund shall be accelerated, and a federal commitment to reclamation shall be strengthened. No federal policy having implications for land development or management should be adopted without accommodating the laws and views of affected states.

NATURAL GAS

It should be part of the strategy of the United States to include the use of clean, efficient natural gas. It should be used in a manner that sustains long-run availability. This should include the co-firing of natural gas with other fuels for efficiency or environmental purposes.

The United States should encourage domestic production of natural gas in an environmentally-sound manner. Further, the federal government should complete price deregulation by 1993 as provided in current law.

The Federal Energy Regulatory Commission should expedite decisions regarding pipeline construction serving the oil-dependent markets and should be encouraged to provide access by interconnecting pipelines to producing areas of this nation. Both producers and users of natural gas benefit from orderly transportation programs which provide competition and reliable supplies of natural gas at the lowest possible cost. The Federal Energy Regulatory Commission should take steps, to the extent the Natural Gas Act and the Natural Gas Policy Act allow, to remove the disincentives for natural gas pipelines to provide voluntary transportation of natural gas for others, and should immediately take such actions as may be necessary to provide final take-or-pay relief in the natural gas marketplace.

The federal government should fund continuing research and evaluation relative to the environmentally-sound production and use of natural gas, in order to conserve energy by improving efficiency and should promote development to alternative vehicular fuels.

NUCLEAR

Nuclear power is an option that should be included in the development of a national energy plan, with the utmost care taken to address concerns regrading plant safety, and the transportation, storage and disposal of nuclear waste.

A federal government program for the long term management of high level radioactive waste, funded by the generators of the waste, should be pursued in a safe, timely and cost-effective manner, with the highest priority given to the safety and technical suitability of storage or disposal sites. Such a program shall be developed in full consultation with all of the affected states. The nuclear power plant licensing process for future plant construction must be improved to ensure both public input and timely decisions, and federally standardized nuclear power plant designs should be established. However, automatic approval of nuclear power plant operating licenses should not be permitted.

It is essential that the Nuclear Regulatory Commission provide strong, centralized, and consistent administration that would improve management of the agency, expedite policy formulation, and help bring about needed reforms in licensing and regulation, that are consistent with the NRC's primary responsibility of ensuring public health and safety. Meaningful and effective state participation in public safety planning and transportation of commercial nuclear waste is necessary.

States should continue to have the right to monitor operating conditions at nuclear power plants, waste storage and disposal facilities, and to exercise regulatory authority where consistent with federal law.

Federal funding should be provided for research in the areas of waste management technologies nuclear fusion, and plant retrofit and life extension.

ELECTRICITY

The federal government should promote energy efficiency and conservation to lower the demand for electricity. The development of sources of electric energy that are sufficient to meet national needs, secure from external threat, reliable in availability and delivery, safe relative to people and the environment, and efficient for use in homes, businesses and industries should be pursued after aggressive efficiency and conservation programs are implemented.

The electricity sector today is marked by tremendous regional diversity, especially with regard to capacity. Fuel usage also varies widely. Implementation of federal legislation that fails to recognize this diversity inevitably penalizes one region or another.

REGULATORY AUTHORITY

State regulatory bodies are close to consumers, utilities, industries, and concerned for state environmental and economic well-being. State regulatory bodies are in the best position to evaluate consumer needs, questions relative to fuel choice, economic development implications, and system reliability. Additionally, the determination as to when and how competitive bidding should be employed in the expansion of electric power generation capacity or to bring on new energy efficiency resources should remain the prerogative of the states through their regulatory commissions and the affected utility companies.

NCSL strongly supports and urges the continuation of the concept of primary state responsibility and final decision authority with state legislative oversight for the approval and siting of all major energy conversion facilities, subject to minimum federal standards established only after the fullest consultation with state governments, both executive and legislative branch.

The Federal Energy Regulatory Commission should ensure that regulation of interstate wholesale markets does not impede state regulation of utility investments. Multi-state cooperation in identifying the economics of and need for additional energy transmission and generation projects shall be encouraged. Least-cost energy planning for electrical generation should be pursued at the state or regional level, wherever applicable. States should have the authority over intrastate transmission practices. There should be no further preemption of state regulatory authority nor shall federal standards be established governing state regulation of utilities. Federal regulators shall ensure full and adequate consultation with state regulators prior to the determination of federal policy.

Our nation must maintain and increase its commitment to energy conservation and efficiency, while maintaining adequate and reliable energy for economic growth. Utilities, investors, equipment manufacturers and consumers should be given legislative and regulatory incentives to promote conservation and efficiency in utility planning, equipment and appliance manufacturing and energy usage practices.

Electricity research and development efforts shall be intensified with regard to energy efficiency, superconductivity, advanced and reasonable environmental controls in power generation, and development of cost-effective renewable supply technologies.

RESEARCH AND DEVELOPMENT

The cornerstone of a national energy policy should include a broad research and development component. The federal government has already committed substantial research funds for clean coal, nuclear research, basic science and related efforts. These research and development efforts ought to be continued. These efforts, however, should be supplemented with increased incentives and federal funding for research and development projects emphasizing emerging technologies, including, but not limited to renewable resources, energy conservation, efficient use of energy, alternative fuels and oil and gas recovery. This enhanced long-term research and development capacity should also be designed to encourage private sector participation with federal and state representatives.

EDUCATION AND INFORMATION

It is essential that the nation, particularly its elementary and secondary school-age children, be made fully aware of energy use and costs, production processes, alternative energy resources and the impact energy usage has on our environment. If we are to eliminate any inefficiencies that exist as a result of current and future energy use, we must have a fully informed public. NCSL recommends that public and private sector education efforts be initiated, expanded and appropriately funded. These efforts should emphasize that significant economic and environmental benefits can be achieved through increased efficiency and conservation.

An essential step in formulating a balanced energy policy is to develop the necessary data and employ analytical methods and models to assess the productivity costs and risks of the various energy choices available to the nation. The Department of Energy, with assistance from the Departments of Defense, Treasury and State, and the Office of Management and Budget, and in conjunction with the states, shall develop this analytic base.

TRANSPORTATION

National transportation strategies must include public policy initiatives directed at broadening the efficient use of our energy resources. These policy initiatives should include, but not necessarily be limited to, incentives and adequate funding for mass transit, high speed rail, magnetic levitation and other emerging transportation technologies. Public-private partnerships should be encouraged.

Annual Meeting 1990.

NATIONAL GOVERNORS' ASSOCIATION

D-50. A COMPREHENSIVE NATIONAL ENERGY POLICY

50.1 Preface

From the time of the Industrial Revolution, energy has been the lifeblood of economic activity and growth. To provide a foundation for continuing economic development, it is important that our changing economy have available the appropriate energy supplies and services. Our energy infrastructure must be sufficiently flexible to adapt to changing needs.

Currently the United States imports more than 40 percent of the oil it consumes, and in 1987 energy imports accounted for almost one-fourth of the nation's balance of trade deficit. Domestic oil production is decreasing and will continue to decline, and by the middle of the next decade, oil imports could rise to 50 percent or more of American oil consumption. In the critical transportation sector alone—where there are virtually no alternatives to petroleum-based fuels—the nation consumes more oil than it produces. The implications for the nation's economy, national security, and balance of trade are enormous. There is also a great risk that foreign policy options will become constrained as the result of our dependence on foreign energy supplies.

Yet America is also blessed with abundant domestic energy resources, including supplies of oil, coal, gas, uranium, and a variety of renewable energy resources, which can help meet our energy needs and reduce levels that must be imported. The nation is also learning to use energy supplies more efficiently. Indeed, since the 1973 oil embargo, the nation's use of energy has decline significantly both per capita and per unit of the GNP, and greater efficiency has been our largest new "source" of energy supply. In particular, the nation's use of nonelectric energy forms has declined appreciably, while its use of electricity has increased significantly, with almost all of the increase provided by coal and nuclear energy.

The Governors believe that the development of a comprehensive, coherent, and productive national energy policy is imperative as the nation approaches the 1990s. This policy should recognize the risks involved in relying heavily on imported energy and should provide for the optimum use of domestic energy resources. It must promote both development of additional domestic energy supplies and increased energy efficiency as consumers meet their needs for energy services. A viable domestic energy supply industry must be maintained. The nation's economy must become more energy efficient in order to compete globally.

50.2 Policy Framework

A comprehensive national energy policy must meet public needs for energy, recognizing the tradeoffs between costs and risks and striving for consistency with other national priorities and goals. The principle goal of our national energy policy should be to provide secure and affordable energy supplies and services that will ensure the health of our economy and our environment. The Governors suggest a national energy policy based on seven guidelines. Energy policy should: Promote the prudent and efficient use of our resources and the pursuit of a long-term least-cost energy strategy to minimize the cost of reliable energy supplies and services; pursue a diverse and flexible energy supply mix that provides for future needs and reflects security and reliability concerns; address environmental concerns; ensure sustained public and private investment in energy research and development; include a well-specified division of regulatory authority between the states and the federal government; provide our citizens with affordable and adequate energy supplies and services, and provide Americans with access to the information they need to make sound energy choices.

50.2.1 Energy Efficiency. Energy efficiency offers a practical means of achieving many of our energy policy goals. Increased efficiency will decrease or reliance on imported oil, reduce the environmental impacts of fossil fuels, enhance the competitiveness of U.S. industries, slow the depletion of our finite fossil fuels, and extend the time we have to make the transition to new and innovative energy technologies.

There are environmental implications associated with energy policy choices. Mounting concerns over ozone pollution, acid deposition, and global warming bring this issue to the forefront. We must recognize and address the short- and long-term environmental impacts of our energy choices and make them environmentally acceptable. The Governors believe addressing these environmental concerns can be accomplished most effectively by improving the efficiency of this nation's energy use and by making sure that choices among fuels and energy products and services reflect their true environmental costs. This principle should apply to imported energy as well as domestic energy.

50.2.2 Energy Emergencies.

It is also imperative that the states and federal government develop strategies for responding to a broad variety of possible energy emergencies. Initial efforts should focus on strategies to prevent emergencies from occurring. Efforts to diversify our energy systems while maximizing our use of cost-effective domestic energy resources are part of this long-term effort. Additional efforts in the interim must focus on planning the response federal and state governments would take if any energy emergency occurs. It is essential that emergency response procedures be well tested to ensure the coordination and flow of information between energy suppliers, consumers, and federal, state, and local governments.

50.2.3 Cost-Effective Energy Services. The Governors reiterate their support for programs to assist those unable to afford a minimal level of energy services. The focus should be on providing energy services in the most cost-effective manner. Permanent solutions such as efficiency improvements should be stressed, recognizing that temporary assistance may be necessary to defray fuel bills. Also job retraining and relocation assistance may be necessary for those in the energy industries who suffer job dislocations as the result of energy policy decisions.

50.2.4 Risk Reduction. The Governors recognize that all energy sources carry some degree of risk—either military, economic, environmental, or social. Options carrying high risk should be compared to alternatives. Then the question becomes whether a premium needs to be paid to reduce the risk. The Governors recognize that some premiums are worth paying. The country may purchase additional energy security and reliability through measures that assure diversified supplies of those energy resources on which we currently depend, including greater domestic production, and by expanding our energy choices through improved energy efficiency and the development of commercially available alternatives.

50.2.5 Information Needs. The Governors also recognize that the strength of the economy is its reliance on the private sector, and that a government has a responsibility to provide consistent, clear policy direction and make rational decisions that can help guide private sector initiatives. Federal, state, and local governments cannot provide credible policy direction or respond properly to the needs of consumers without good information. Thus, an essential step in formulating a balanced energy policy is to develop the necessary data and employ analytical methods and models to assess the productivity costs and risks of the various energy choices available to the nation.

The Governors urge the Department of Energy (DOE), with assistance from the Departments of Defense and State, and in conjunction with the states, to develop this analytic base. DOE should rank the energy options available to the nation. The options should be grouped by end use and not by specific fuels or efficiency improvements. The ranking of each option within a group should reflect the market and nonmarket costs of energy saved or delivered, the relative degree of uncertainty and risk exposure, and the compatibility of each option with other national goals. Because the costs and risks associated with each option change over time, DOE should periodically revise the rankings. The results of this work would provide Congress and federal and state energy policymakers with the information to respond appropriately as the future unfolds, and to take the steps necessary to protect the needs of consumers and the country.

50.2.6 Long-Term Costs. In choosing among energy policy alternatives, including those in this policy, the Governors believe that a cost-benefit approach should be applied in which the full long-term costs of an option in taxes, consumer energy bills, environmental impacts, security risks, and other national goals are weighed against the additional availability or conservation of energy and other long-term benefits it might be expected to generate.

Those measures involving the lowest costs, in terms of public expenditures, revenue losses, costs to consumers, or environmental or other impacts, should be considered first, and indeed, there are measures that would improve our energy security and reliability without imposing significant new costs. Although the potential costs and benefits of a given proposal can be extremely difficult to estimate, this framework is valuable in setting consistent terms of debate for our various energy policy choices, both now and in the future.

50.3 Policy Options

The Governors recognize that while a comprehensive evaluation of energy policy options is needed, *some energy decisions must be made now*. Consistent with the policy framework described herein, the Governors recommend several policy options that are expected to promote additional domestic energy supplies or efficiency. The following recommended options provide a sound beginning for a comprehensive national energy policy. In considering the implementation of these options, specific programs and strategies must be carefully designed to properly balance all of their short- and long-term benefits and costs.

50.3.1 Improving Energy Supply

Encourage exploration and development of the nation's primary energy resources, including oil, gas, coal, uranium, renewable energy resources, and others, to the extent they are competitive in energy markets and consistent with environmental requirements. Consideration should be given to expanding exploration and development in currently restricted areas.

Provide tax incentives for domestic oil and gas exploration and development and enhanced recovery, to encourage new domestic reserve development and avoid premature shut-in of wells. These incentives could include, as examples, a standard investment tax credit on exploration and development expenditures, for stripper well operation and maintenance expenditures, and for secondary or tertiary enhanced recovery project expenditures; expensing of geological and geophysical costs; repeal of the well transfer rule; and elimination of exploration and development expenditures as an alternative minimum tax "preference" item.

Provide tax incentives for coal production, transportation, and utilization which will allow for increased use of coal in an environmentally acceptable manner.

Encourage early resolution of nuclear power issues, consistent with safety and environmental requirements. These issues include plant standardization and timely permitting, consistent regulatory oversight of operations, plant life extension and decommissioning, and waste disposal. States should continue to have the right to monitor operating conditions at nuclear power plants.

Deregulate natural gas wellhead prices upon contract expiration.

Provide open access on the part of consumers and producers to natural gas pipeline capacity, consistent with state and federal regulatory authority regarding by-pass of local distribution companies.

Recognize state responsibility to ensure timely decisions on permitting, siting, and licensing of energy facilities, consistent with state and federal law and health and safety requirements.

Encourage multi-state cooperation in identifying the economics of and need for additional energy transmission and generation projects. Regional energy transmission and generation planning could be further enhanced through improved communication among the appropriate state and federal regulatory agencies, affected utility companies, and any other affected parties.

Allow expanded regional and interregional electricity markets where cost-effective. Further consideration needs to be given to questions of transmission access and local by-pass.

Ensure that regulation of interstate wholesale markets does not impede state regulations of utility investments. States should be free to reflect public interest concerns and least-cost objectives in their regulatory activities.

Shift FERC jurisdiction over intrastate wholesale transactions to individual states or to regional regulatory bodies at the option of the state or states involved.

Provide for full utilization of existing rights of way, including highway rights of way, for energy transmission. The siting of energy transmission facilities must be consistent with state and federal law and safety and environmental requirements.

Encourage fair and mutually beneficial hemispheric energy trade agreements consistent with obligations under international agreements. In addition, the Governors support the barrel-for-barrel trade of Alaskan oil for oil from other countries, except in time of energy emergency.

Provide federal incentives for renewable energy resources equivalent (in terms of cost per unit of energy) to the tax credits and other incentives provided for traditional fossil fuels. These could include tax credits for purchasers, cost sharing and demonstration projects, or like measures.

50.3.2 Improving Energy Utilization

Increase vehicle fuel efficiency through means such as raising the corporate average fuel efficiency standards.

Provide incentives for use of alternative motor fuels and production of alternative motor fuel vehicles, including a variety of early fleet demonstrations, such as conversion of postal vehicles to alternative fuels.

Fully consider the energy implications of alternative transportation strategies and resulting actions in transportation planning.

Provide federal incentives for energy efficiency and conservation improvements equivalent to those provided for fossil fuels and renewable energy resources.

Encourage the energy rating of new and existing building stock and establish standards for major energy-using appliances that generally convey with property.

Work with the housing and construction industries and other private and public organizations to promote improved building design and construction technologies for energy efficient buildings and the protection of indoor air quality.

Expand the government's leadership role in the purchase and use of new energy efficient technologies and products.

Expand energy conservation programs for government-owned buildings.

Encourage energy information programs for the residential, small business, commercial, industrial, agriculture, and government sectors to increase awareness of energy use and conservation; new outreach programs for energy information; and energy education in primary and secondary schools and in vocational/technical schools.

Develop alternative financing programs for energy efficiency improvements in the residential, small business, commercial, industrial, agriculture, and government sectors. Examples could include programs such as revolving loans, third party financing, and mortgages that include financing for efficiency improvements.

Restore federal funding of low-income energy service programs. Within both LIHEAP and weatherization, allow the states maximum flexibility to balance immediate and long-term needs. Regulations should encourage state-by-state innovation in approaches to meet varied needs.

Encourage regulated and unregulated energy suppliers to work with states to develop supplemental programs of financial assistance for low-income households in order to make energy efficiency improvements, and other programs that reduce fuel costs.

50.3.3 Research and Development

Two-thirds of the current DOE research budget is devoted to basic sciences and long-term fusion activities. The remaining third is divided among current and emerging technologies, and is dominated by clean coal and nuclear research. The Governors encourage efforts to emphasize emerging fields and technology transfer in promising areas required to meet immediate and future energy service needs. Priority should be given to research in the following areas:

Petroleum and Natural Gas. Enhanced oil and gas recovery by joint federal-state-private initiatives such as the Geoscience Institute for Oil and Gas Recovery.

Energy Efficiency. Capturing opportunities for cost-effective energy efficiency improvements. Additional federal research, development, and technology transfer activities should include support for resource assessment, applied research in building sciences, transportation systems studies, and other end-user applications.

Coal. The production, transportation, and utilization of coal in an environmentally acceptable manner, with particular emphasis on transportation fuels and electric power generation, including the continuation of the clean coal technology program.

Renewable Resources. Reducing the cost and improving the reliability and efficiency of renewable energy sources, in partnership with the private sector. This should include selective commercialization and implementation assistance aimed at demonstrating promising technologies.

Alternative Fuels. Developing alternative fuels, especially those that may be used in the transportation sector. Demonstration and commercialization of alternative fuels that may be produced and used in a manner consistent with protection of the atmosphere is particularly important.

Nuclear Energy. The development and evaluation of advanced, safe, reactor designs, waste management technology, nuclear fusion, and plant retrofit and life extension.

Increase and better coordinate energy research and development by:

Strengthening the federal-state-private research partnership, and shifting research priorities to ensure a balance between basic and applied research and among fuel types and energy efficiency improvements.

Examining the benefits of removing antitrust barriers to pooled industry research efforts.

Promoting federal funding of research and development in areas in which business and industries are unable to capture the benefits of energy research and development.

Increase the emphasis on timely transfer of research findings and new technologies from the laboratory to factories, builders, and users.

50.3.4 Emergency Preparedness

Fill the strategic petroleum reserve (SPR) to its authorized level and provide flexibility to increase or decrease fill rates in response to changes in oil prices. The Governors recognize the efforts of International Energy Agency member nations to establish comparable stocks and urge the continuation and expansion of this effort as well the continuation of cooperation in designing strategic and diplomatic mechanisms to avoid supply interruptions.

Encourage continued refinement of the timely sales process for SPR oil and the continued regular testing of the SPR sales mechanism and physical drawdown capabilities. The Governors urge the development of a region-by-region analysis of the impact of SPR use on the availability of various fuels. If this analysis indicates that any region of the country would not be assured of the availability of fuels in the event of a drawdown, then states should work closely with the petroleum industry to develop regional rotating product stocks or some other mechanism to ensure regional availability of supplies. Establish regional petroleum reserves (RPR) in import dependent or insular states which cannot be served efficienctly by the SPR.

Ensure a full state, federal, local, international, and private partnership in energy emergency response planning for diverse supply shortage scenarios.

Encourage fuel switching capability for large energy users to reduce dependence upon a single fuel source.

50.4 Funding

The costs and benefits of a national energy program will depend upon which policy options we, as a nation, elect to pursue. The Governors believe that many of the options identified in this policy may be implemented at little or no cost to the federal government. The Governors also recognize that additional federal expenditures may be required to fund adequately other options identified in this policy. In part, these funds could come from a reallocation of existing federal expenditures. The Governors believe that energy should be a national priority.

NATIONAL LEAGUE OF CITIES

Energy Resolution adopted by Energy, Environment and Natural Resources Committee September 1991. Will be considered by full membership at annual meeting, December 1991

NATIONAL ENERGY POLICY

(1) Whereas, the nation's economic and national security depends on adequate energy resources at reasonable prices; and

(2) Whereas, the oil embargoes of the 1970's demonstrated our vulnerability to over-reliance on foreign oil. More recently the Middle East situation highlighted again the need for a national energy policy; and

(3) Whereas, national over-reliance on any single energy resource has the potential to lead to a future "energy crisis,"

(4) Now, therefore, be it resolved that The United States Conference of Mayors supports and urges the U.S. Congress to adopt a comprehensive and balanced national energy policy that reduces dependance on potentially unreliable foreign sources of oil through a balanced program of energy conservation and efficiency improvements, research and development of renewable and alternative energy sources, and increased production and use of domestic energy resources in a manner which protects public health, safety, and the environment.

SOUTHERN GOVERNORS' ASSOCIATION

The Southern Governors' Association supports the phased deregulation of prices paid for new natural gas in order to allow our American free market to balance the supply deficit caused by years of counter-productive federal regulation in the interstate natural gas systems. The best interest of the public can never be served by a regulatory structure which does not provide sufficient supplies to fill demand.

STATEMENT OF POLICY

The Southern Governors offer the following energy policy recommendations to the President and Congress:

1. We demand that Congress establish a National Energy Plan, including near-term and long-term goals and objectives for priority issues.

2. We applaud Congress for acknowledging the critical role that state government must play in the development and implementation of national energy policies. The Southern Governors voice their unified approval of legislation authorizing Governors to establish Regional Energy Advisory Boards.

3. We reiterate our requests to the President and Congress not to abandon any technologies which could assist this nation in bridging the gap between energy supply and demand, or become the basis for energy self-sufficiency.

4. We maintain that federal assistance for state energy conservation and management programs must be continued and expanded. We recommend increasing appropriations for Supplemental Energy Conservation Programs and Energy Extension Service. The Southern Governors support the concept of consolidating energy conservation programs through the State Energy Management and Planning Act. However, proposed funding levels are inadequate, and we suggest that these proposals be abandoned in favor of funding levels which reflect the critical need for adequate planning and management of energy issues at the state level.

5. We commend the President and Congress for their recognition of the need for impact assistance to states which may be adversely affected by accelerated energy production. We support the concept of a revolving fund which can assure the Southern states flexibility to help mitigate the impacts associated with energy development.

F-12. NATIONAL ENERGY POLICY IMPLEMENTATION (1990)

BACKGROUND

The current crisis in the Middle East marks the fourth time since 1973 that American energy producers and consumers have experienced volatile crude oil and products price changes and supply disruptions.

In every instance, such price changes and supply disruptions have occurred as a result of actions taken by one or more crude oil exporting countries in and around the Persian Gulf area.

The United States currently consumes some 17 million barrels per day of crude oil and products, over 50 percent of which is imported into the United States. Reasonable estimates indicate that the level of imports will exceed 65 percent of needs by the year 2000 and overdependence on foreign sources of energy is not in the best interest of the economy of the United States.

In December 1988, the National Governors' Association unanimously adopted a national energy policy statement which advocated a balanced approach to energy efficiency, alternative fuels, expanded production of existing energy sources and environmental protection.

RECOMMENDATIONS

The Southern Governors' Association hereby affirms its support of the principles contained in the National Governors' Association energy policy and urges both the Administration and the Congress to immediately adopt and implement such a policy to reverse the many years of energy policy neglect and drift.

SOUTHERN LEGISLATIVE CONFERENCE,
Atlanta, GA, August 16, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: As Chairman of the Southern Legislative Conference Energy Committee, it is with a sense of great urgency that I forward to you a policy position adopted by the Conference at our annual meeting in New Orleans, Louisiana, July 20-24. The position taken by the Conference reflects, in large part, the consensus of the South and represents a very broad cross-section of southern legislative perspectives on issues critical to both the South as a region and to the nation.

With respect to immediacy of action, our position on a national energy policy is of particular importance, and we urge you to act on our behalf when these issues come before Congress and other agencies of the federal government. A comprehensive national energy policy that reduces dependence on potentially unreliable foreign sources of oil through a balanced program of energy conservation and efficiency improvements, research and development of renewable and alternative energy sources, and increased production and use of domestic energy resources in a manner which protects public health, safety, and the environment is strongly encouraged.

As a member of our southern delegation, I urge you to review this policy position. The Southern Legislative Conference, a legislative tradition in the South since 1947, demonstrates a cohesiveness not found in other regions of our country, and clearly represents the voice of the South.

On behalf of the Conference, I respectfully urge your consideration of, and prompt action on, this policy position and request your support on this issue.

With warm personal regards, I am
Sincerely yours,
DELEGATE JAMES ALMAND,
Virginia Energy Committee Chairman.

SOUTHERN LEGISLATIVE CONFERENCE

5. PROPOSED POLICY POSITION—NATIONAL ENERGY POLICY

Background:

The development and implementation of a comprehensive and balanced national energy policy is crucial in recognizing that the nation's economy and security depends upon adequate energy resources at reasonable prices. The oil embargoes of the 1970s demonstrated our vulnerability to over-reliance on foreign resources. More recently, the Middle East situation further highlighted the need for a more efficient, less vulnerable, and environmentally sustainable energy future—without over-reliance on any single energy resource—to avoid a future "energy-crisis" and the contribution imported oil has made to the excessive trade balance which is adding in excess of 40 percent to the already staggering U.S. trade deficit.

Recommendation:

The Southern Legislative Conference supports and urges the U.S. Congress to adopt a comprehensive national energy policy that reduces dependence on potentially unreliable foreign sources of oil through a balanced program of energy conservation and efficiency improvements, research and development of renewable and alternative energy sources, and increased production and use of domestic energy resources in a manner which protects public health, safety, and the environment.

Adopted by the SLC Energy Committee, July 21, 1991. Sponsored by James Almond, Virginia.

SOUTHERN STATES ENERGY BOARD,
Norcross, GA, September 26, 1991.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: A major component of this nation's energy security is our diversity of energy resources. It is, therefore, important that our country maintain access to all energy sources. Historically, the Southern States Energy Board has supported the use and development of safe nuclear energy as a vital component of the national energy program.

Congress has mandated the United States Department of Energy to identify the most suitable location for a permanent repository for spent nuclear fuel. The safe management of radioactive waste is clearly a matter of national concern, and one that must be addressed with the full cooperation of the federal government and the states. A long term solution that ensures protection of our citizens and the environment requires a spirit of cooperation. The Southern States Energy Board urges adoption of policies to expedite the characterization of a potential disposal site while acknowledging the powers of the potential host state to protect its natural resources.

A national energy strategy should include reform of nuclear plant licensing. Developed over 35 years ago, the current licensing system is inefficient and must be reformed to respond to the needs of the public and the electric utility industry.

A licensing process that resolves all safety issues related to design, construction, and operation of nuclear plants, including emergency preparedness should be established. This process should take place in an open forum to provide for public participation in the design, siting, and certification of a proposed plant.

The Senate has made significant progress in fashioning a bipartisan, comprehensive energy package. You and your colleagues are encouraged to move quickly to bring this legislation up for debate.

Sincerely,

DAVID WALTERS,
Governor of Oklahoma and Chairman, Southern States Energy Board.

SOUTHERN STATES ENERGY BOARD,
Norcross, GA, October 8, 1991.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: As you know, my State of Oklahoma is a major supplier of our domestic energy resources. I am writing to you, however, in my capacity as the Chairman of the Southern States Energy Board, the lead Governor on Energy and Environment for the Southern Governors' Association and as Chairman of the 35 state Interstate Oil and Gas Compact Commission to urge your immediate consideration of legislation to forge a comprehensive, balanced national energy strategy.

It has now been over two years since the debate on a national energy strategy began. In that same period, we have been reminded of our vulnerability in the energy in the energy area, and of our need to develop fully all domestic energy resources while at the same time working to improve energy efficiencies.

As a nation, we must move quickly to act on a comprehensive, balanced plan for ensuring the long-term energy security and, thus, economic vitality of our people. We must look at all forms of energy, fossil (coal, natural gas and oil), nuclear power, renewable energy and conservation to meet our energy needs. The quick fix, piecemeal approach will no longer work in developing our national energy plans.

The Senate Committee on Energy and Natural Resources has made significant progress in fashioning such a bipartisan, comprehensive package. We do not agree with all of the provisions of that bill, but we do feel that the debate must continue on the Senate floor.

We urge expeditious action on a comprehensive, balanced national energy strategy in this session of Congress.

Sincerely,

DAVID WALTERS,
Governor of Oklahoma, and Chairman, Southern States Energy Board.

UNITED STATES CONFERENCE OF MAYORS.

Energy Resolution adopted by full membership June 1991.

NATIONAL ENERGY POLICY

(1) Whereas, the Nation's economic and national security depends on adequate energy resources at reasonable prices; and

(2) Whereas, the oil embargoes of the 1970's demonstrated our vulnerability to over-reliance on foreign oil. More recently the Middle East situation highlighted again the need for a national energy policy; and

(3) Whereas, national over-reliance on any single energy resource has the potential to lead to a future "energy crisis,"

(4) Now, therefore, be it resolved that The United States Conference of Mayors supports and urges the U.S. Congress to adopt a comprehensive and balanced national energy policy that reduces dependence on potentially unreliable foreign sources of oil through a balanced program of energy conservation and efficiency improvements, research and development of renewable and alternative energy sources, and increased production and use of domestic energy resources in a manner which protects public health, safety, and the environment.

STATE OF NORTH DAKOTA
Bismarck, ND, September 30, 1991.

Hon. QUENTIN BURDICK,
U.S. Senator, Washington, DC.

DEAR QUENTIN, Attached is a copy of the Western Governors' Association resolution relative to the National Energy Security Act (NES). Note that I was a cosponsor and feel very strongly about it.

I hope you will be able to support S. 1220 with the modifications suggested by the resolution, e.g., an oil import fee.

Let me know if there is anything I can do.

Sincerely,

GEORGE A. SINNER,
Governor.

WESTERN GOVERNORS' ASSOCIATION,
RESOLUTION 91–004
Rapid City, SD, July 23, 1991.

Sponsors: Governors Sinner and Sullivan.

Subject: The National Energy Security Act of 1991.

A. BACKGROUND

1. The National Energy Security Act of 1991 was introduced in April (as S. 341) by Senators Bennett Johnston (D–LA) and Malcolm Wallop (R–WY) and reported in June 1991 as S. 1220 by the Senate Energy and Natural Resource Committee.

2. S. 1220 provides the legislative framework for a comprehensive, balanced national energy strategy.

3. The National Energy Security Act of 1991 promotes domestic energy development by:

a. Promoting domestic oil and gas development.

b. Promoting increased use of natural gas.

c. Encouraging the use of coal and promoting the development of advanced coal-based technologies.

d. Partially relaxing unnecessary regulatory barriers that impede construction of new natural gas pipeline capacity.

e. Relaxing the economic regulation of the sale of natural gas for use in transportation vehicles.

f. Directing the Department of Energy to establish a program that encourages the use of domestically-produced alternative fuels.

g. Providing government research and development funds to investigate economically viable conservation measures.

h. Reforming the Public Utility Holding Company Act of 1925 to encourage the development of independent electric generating projects.

i. Expanding the authority of the President and Department of Energy to enlarge and fill the Strategic Petroleum Reserve.

j. Authorizing oil and gas exploration and development in the Coastal Plain of the Arctic National Wildlife Refuge (ANWR), considered by the Department of the Interior to be the best onshore prospect in North America for the discovery of substantial amounts of crude oil.

4. Markets are efficient mechanisms to increase conservation and production, and reduce imports.

B. GOVERNORS' POLICY STATEMENT

1. Greater emphasis must be placed upon the development of sound domestic energy self-sufficiency policies, including development of domestic energy supplies, advancement of clean coal technology and aggressive new conservation programs to minimize the dangerous and increasing tendency of increasing imports of foreign energy products.

2. The development of sound, comprehensive energy policy is the preferred option when compared to international military and economic options.

3. A National Energy Strategy must consider state and regional differences and provide for basic consumer protection.

4. Alternative fuels development and energy conservation must play increasingly important roles in our nation's energy future, and the National Energy Strategy must address the need for policy and technology advancements for this energy source.

5. The National Energy Strategy must address the development of a full range of cost-effective alternative energy strategies that would reduce or minimize air pollution and its impacts, particularly in the twenty-five worst urban areas.

6. Conservation and alternative fuels alone cannot meet America's energy needs, but must be supplemented by new domestic supplies of conventional energy resources including oil, natural gas, and coal. This includes development in some areas currently restricted, given sound environmental management.

7. S. 1220, as reported by the Senate Energy and Natural Resources Committee, provides a sound legislative framework to begin the development of a comprehensive and balanced national energy strategy.

8. Other measures not currently a part of S. 1220, such as a guaranteed floor price for oil through an oil import fee, should also be included in the National Energy Strategy, with the bulk of the revenues from such a fee to be used for mass transit. The remainder of the revenues should be used for conservation efforts and research and development on environmental safety programs for energy.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. WGA staff shall transmit copies of this resolution to the Secretary of the U.S. Department of Energy, the western congressional delegation, and to the appropriate congressional committee chairmen and ranking minority members.

2. WGA staff shall closely monitor this legislation and other related energy bills, and to inform governors on policy and program implications for western states.

3. WGA staff shall inform the governors of key debates and decision points for the National Energy Strategy so western governors can actively participate in the development of this strategy.

WESTERN LEGISLATIVE CONFERENCE

PROPOSED RESOLUTION NO. 91–3–U—NATIONAL ENERGY POLICY

(Urging Congress to Adopt a National Energy Policy)

(Introduced by the Environment and Resource Management Committee)

Whereas, increasing dependence on imported energy products and the lack of a national energy policy are jeopardizing the security and economic competitiveness of the United States; and

Whereas, the development of sound, comprehensive energy policy is the preferred option when compared to continued reliance on foreign imports; and

Whereas, cost-effective options exist that could significantly reduce energy demand; and

Whereas, technologies are available today, or can be developed, that would provide new energy supplies or energy savings; and

Whereas, by promoting conservation and efficiency technologies such as solar, wind, geothermal, ethanol and other renewable fuels derived from biomass to first priority status in a national energy policy, the volume of carbon dioxide released into the atmosphere in coming decades could be sharply reduced; and

Whereas, conservation and alternative fuels alone likely will not meet all of the country's energy needs, but must be supplemented by new domestic supplies of oil, natural gas and coal; and

Whereas, domestic oil reserves are being rapidly depleted, and the coastal plain of the Arctic National Wildlife Refuge is expected to contain significant oil reserves;

Now, therefore, be it

Resolved, That the Western Legislative Conference of the Council of State Governments urges the Congress to adopt a national energy policy emphasizing energy conservation and efficiency improvements, research and development of renewable and alternative energy sources and technologies, and increased production of domestic energy resources in a manner that enhances the quality of public health, safety and the environment.

MARITIME TRADES DEPARTMENT,
Washington, DC, October 15, 1991.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP. It is my understanding that the Senate will be taking up S. 1220, the National Energy Security Act of 1991, later this week. On behalf of the Maritime Trades Department, AFL–CIO, I wish to urge your strong support for the measure, keeping intact those sections pertaining to the Arctic National Wildlife Refuge (ANWAR).

Over the last year, the events in the Persian Gulf have served as a stark reminder of America's dangerously high dependence on foreign sources of energy. This drain of petrodollars has dire implications for both our national security and our economy, as billions of dollars continue to flow overseas. S. 1220 takes some important steps in reducing that dependence by implementing a long-range comprehensive energy plan that strikes a balance between productions, conservation and new alternative energy resources.

One key action is the opening of ANWAR to oil exploration and development. All indications suggest that ANWAR holds the promise of dramatic yield potential. Recent advances in drilling technology combined with the positive experience of Prudhoe Bay production offer compelling evidence that careful exploration and development can be carried out without significant risk to the Arctic environment.

In order to derive full benefit from the ANWAR provision, S. 1220 must retain language barring the export of any oil extracted from the refuge. To eliminate this language would strip from the bill the entire rationale for opening ANWAR: energy independence. Because American consumption far outpaces domestic production, every barrel of oil sent abroad would have to be replaced with another barrel, imported from such demonstrably unstable parts of the world as the Persian Gulf.

Additionally, domestic retention of ANWAR oil would boost our economy and national security by providing much-needed support to the U.S.-flag merchant marine and shipyards. Newly built double-hull tankers would add to and replace the domestic trade tanker fleet, of which almost half is even now engaged in the Alaska trade, boosting both shipboard and shoreside employment, with the latter also helping to create and support the infrastructure needed to extract and transport the ANWAR oil. In turn, the Military Sealift Command would enjoy an expanded base of vessels and the trained seafarers needed to man them as a potential sealift resource during such emergencies as Operation Desert Shield/Desert Storm.

S. 1220, with the ANWAR language reported out of committee, offers the nation a realistic and balanced approach to solving its complex and serve energy problems. The MTD urges that you give it your strong support.

Sincerely,

MICHAEL SACCO,
President.

NATIONAL MARINE ENGINEERS'
BENEFICIAL ASSOCIATION,
Washington, DC, October 16, 1991.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP. On behalf of the more than 50,000 members of the National Marine Engineers' Beneficial Association, representing licensed and unlicensed merchant mariners aboard U.S.-flag vessels, I urge you to support S. 1220, the National Energy Security Act of 1991.

We are also strongly in favor of Title VII of S. 1220 which would open up a small portion of the ANWR area to oil exploration and development. ANWR development is extremely important to the future of America's maritime industry and the jobs of those who serve on its ships. ANWR oil offers years of potential cargoes for a fleet that otherwise would shrink alarmingly as Prudhoe Bay output falls off. Not only would S. 1220 provide stringent environmental controls for ANWR development, but the ANWR title also ensures that ANWR oil will be used for domestic consumption only and not for exports—an essential provision.

Our nation will of course, always require some oil imports. But opening the ANWR area and using it to reduce imports, in conjunction with continued efforts to conserve, will enable our nation to keep these imports at prudent levels. Any other course would only diminish seriously our national security and political and economic freedom of action—assets that are vital in an increasingly fragmented and changing world.

America needs a national energy strategy and a plan for action. We wholeheartedly support S. 1220. It is a reasonable and balanced compromise. Above all, it is a prudent and necessary step for our nation's future. The time to act is now, not ten years from now. We strongly urge your support for S. 1220 as a whole and Title VII, ANWR development, in particular.

Sincerely,

C.E. DEFRIES,
President.

AMERICAN MARITIME CONGRESS,
Washington, DC, October 16, 1991.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: On behalf of the American Maritime Congress, an association representing nearly all major U.S.-flag vessel operating companies, I urge you to support S. 1220, the National Energy Security Act of 1991. We also urge you to support Title VII of the Act which authorizes oil exploration and development in the ANWR area.

The National Energy Security Act of 1991 is a balanced, reasonable, and constructive plan to create a national energy policy for the 1990's and beyond. We believe that such a plan is a necessity for our nation. Essential to this plan is oil exploration and development in ANWR. Our country simply cannot afford to lock away an oilfield of this potential magnitude in wilderness forever, particularly when it is clear that development can proceed under careful conditions with minimal harm to the environment.

We support ANWR development as well because it is vital to the U.S.-flag tanker fleet. The Prudhoe Bay area fields are now declining, and, as they do, the U.S.-flag tanker fleet which carries this oil to the rest of the United States will shrink. ANWR oil will offer not only improved energy security but decades of new cargoes for this fleet which otherwise would shrink alarmingly. Delay is also not a prudent alternative. The more ANWR is delayed, the more there will be a gap between Prudhoe Bay's decline and ANWR's startup. Valuable sealift tankers and crews would be lost forever.

In providing for ANWR exploration and development, S. 1220 also explicitly places restrictions on the export of any ANWR oil. We support these restrictions strongly. They make clear that ANWR oil will be for American consumers and American energy security.

We strongly urge you to support S. 1220 when it is considered by the Senate.

Sincerely,

J.P. WALTERS,
Executive Director.

NATIONAL GRANGE,
Washington, DC, October 21, 1991.

Hon. MALCOLM WALLOP,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR WALLOP: The U.S. Senate will soon consider S. 1220, "The National Energy Security Act of 1991". On behalf of the 325,000 farmers and rural residents who are members of the National Grange, I strongly urge you to help establish a comprehensive national energy strategy by supporting this measure.

As a comprehensive energy proposal, all aspects of S. 1220 are important to our total national energy strategy. However, I would like to bring three important provisions to your attention that particularly deserve your support: (1) new CAFE standards that balance the best available fuel saving technologies with other legitimate automotive concerns of consumers; (2) increased use of alternative fuels, such as ethanol; and (3) exploring and developing the oil and natural gas resources of the Arctic National Wildlife Refuge (ANWR) in an environmentally sound manner.

Title III of S. 1220 directs the Secretary of Transportation to adopt new automotive CAFE standards for cars and light weight trucks. This bill would require the Secretary to establish these new standards using the maximum applicable fuel saving technologies while at the same time, balancing the consumers' legitimate concerns with vehicle performance, size and interior space, environmental requirements, and safety.

The National Grange supports adopting new CAFE standards that accommodate the consumers' legitimate automotive concerns. We oppose establishing new arbitrary CAFE standards through the legislative process. Farmers and rural consumers are dependent on their vehicles for transportation as well as hauling and towing. They have legitimate concerns with performances and safety. The CAFE standards established by legislative action would ignore these legitimate concerns in favor of one overriding goal—fuel economy. On the other hand, the regulatory process that is already embodied in this bill would allow our nation to make significant increases in fuel economy while assuring that the legitimate concerns of consumers in general and rural consumers in particular are addressed. The National Grange believes that balancing fuel economy with the consumers' concerns is the proper policy to adopt.

Title IV provides for federal agencies, as well as appropriate states, municipalities, and private fleets of vehicles, to acquire a substantial number of vehicles that use alternative fuels. It also requires the Secretary of Energy to establish a program that will promote the development and use of domestically-produced replacement and alternative fuels, such as ethanol. As our nation seeks to reduce our dependence on imported energy, alternative fuels that are derived from agricultural sources, such as ethanol, will increasingly offer safe, secure, and renewable energy options for our nation. We strongly urge your support for this provision.

Title VII authorizes competitive exploration and production of the oil and gas resources of the Coastal Plain region of the Arctic National Wildlife Refuge (ANWR) in northern Alaska in an environmentally sound manner. Most experts in government and private industry believe that the ANWR, which is located near the famous Prudhoe Bay oil fields, offers the last best chance of finding large deposits of oil and natural gas on land in the United States.

Domestic production of oil in the United States is now down to only seven million barrels of oil per day. This represents a 5.3% decline from last year and a 20% decline since 1986. In addition, our nation's oil imports have jumped from 33% of our oil consumption in 1986 to over 51% of our oil consumption in 1990. Imported oil costs the United States an average of $50 billion a year and accounts for 45% of the United States' annual trade deficits with other nations.

Energy costs, particularly expenses that are related to petroleum products, constitute one of the largest production costs on America's farms. However, cost is not the farmers' only energy related concern. Nature is an unyielding task master. The cycles of production on a farm demand that reliable energy supplies be available when the farmer needs them. Planting, harvesting, and milking are examples of farm activities that cannot be postponed in order to accommodate unreliable foreign energy supplies.

The National Grange supports exploring and developing the ANWR's Coastal Plain in an environmentally sound manner. In addition, over 1,000 Grange chapter across the nation have sent postcards to their Senators asking for their support of the ANWR this year. I strongly urge you to adopt the provisions of S. 1220 that call for developing the oil and gas resources of the ANWR's Coastal Plain in an environmentally sound manner.

At the National Grange's 124th Annual Convention, the delegates adopted several resolutions that called for a comprehensive national energy policy that would include increased conservation, greater use of alternative energy sources (such as ethanol), and continued availability of traditional sources of domestic energy. S. 1220 is the first serious legislative attempt in more than a decade to address our nation's energy problems in a comprehensive manner. As such, S. 1220 in general and Titles III, IV, and VII in particular deserve your strong support.

Thank you for this opportunity to express the views of the National Grange on S. 1220. I would appreciate learning your views on this issue.

Sincerely,

ROBERT E. BARROW,
National Master.

THE AMERICAN LEGION,
Washington, DC, October 24, 1991.

Hon. MALCOLM WALLOP,
Ranking Minority Member, Senate Energy and Natural Resources Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR WALLOP: At the 73rd National Convention of The American Legion, three energy related resolutions were unanimously adopted by the delegates.

Enclosed are copies of those resolutions specifically identifying the Legion's areas of concern. The resolutions seek the development of a national energy strategy and the development of natural resources. They also support oil exploration on the Coastal Plain of the Arctic National Wildlife Refuge in Alaska.

The American Legion appreciates your interest in these vital issues. We urge your consideration of our recommendations.

Sincerely,

PHILIP RIGGIN,
Director, National Legislative Commission.

SEVENTY-THIRD NATIONAL CONVENTION OF THE AMERICAN LEGION, PHOENIX, AR, SEPTEMBER 3, 4, 5, 1991

Resolution No.: 25.
Subject: Development of natural resources.
Committee: National security.

Whereas, the development and proper use of the resources of the nation is essential to the technological advancement of the general welfare, utilizing the material wealth and consequently providing employment and products for a high quality of life; and

Whereas, protection of the environment is also necessary to the long term use of the physical resources yet inordinate concern for such protection as evidenced in the massive publicity and educational programs designed to indoctrinate the public with such concerns is in fact detrimental to technological advancement; and

Whereas, it thus becomes necessary to restrain unbridled environmentalism due to its inhibiting influence on the general welfare and progress of the nation; now, therefore, be it

Resolved, by the American Legion in National Convention assembled in Phoenix, Arizona, September 3, 4, 5, 1991, That The American Legion proposes that the policies of the Nation emphasize the development and use of natural resources with due concern being given to the protection of the environment but not to the detriment of technological progress, and that educational emphasis be placed on the scientific, research and technical areas necessary to the development and progress of the nation.

SEVENTY-THIRD NATIONAL CONVENTION OF THE AMERICAN LEGION, PHOENIX, AR, SEPTEMBER 3, 4, 5, 1991

Resolution No.: 65.
Subject: Oil exploration on the Arctic National Wildlife Refuge coastal plain.
Committee: National security.

Whereas, The American Legion is an organization of War Veterans dedicated to foster and perpetuate one hundred percent Americanism, promote peace, devote efforts to mutual helpfulness, and safeguard the principles of justice, freedom and democracy; and

Whereas, only recently, United States Armed Forces have been employed, in part, to assure availability of oil and gas resources for domestic use; and

Whereas, over 50% of the oil used in the United States is imported from foreign sources; and

Whereas, said foreign sources of oil may be seized by hostile hands or otherwise become unavailable; and

Whereas, no diminution of usage of oil and gas is in the immediate offing; and

Whereas, loss of availability of viable gas and oil supplies in any appreciable amount would result in substantial economic detriment to the health and welfare of the peoples of the United States; and

Whereas, preliminary exploration has shown probable recovery of 1.5 million barrels of oil and gas per day for 20 to 30 years from development of the "Coastal Plain," part of the Arctic National Wildlife Refuge (ANWR), Alaska; and

Whereas, the area of the ANWR contemplated for development approximates 13,000 acres or .08% of ANWR; and

Whereas, the Natives subsisting on the wildlife in the area advocate oil exploration in the Coastal Plain as partial return from the taking by the government of lands historically "owned" by the Natives; and

Whereas, the Natives relying on the area for their subsistence have assured their subsistence will not be adversely affected by careful development; and

Whereas, development of "Prudhoe Bay" for oil and gas under essentially the same environmental conditions has been accomplished commensurate with protection of the environment; and

Whereas, in the interest of National defense, this resource should be developed as quickly as possible; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in Phoenix, Arizona, September 2, 4, 5, 1991, that The American Legion supports and advocates the development of oil and gas resources in the Coastal Plain of the Arctic National Wildlife Refuge (ANWR), Alaska.

SEVENTY-THIRD NATIONAL CONVENTION OF THE AMERICAN LEGION, PHOENIX, AR, SEPTEMBER 3, 4, 5, 1991

Resolution No.: 289.
Subject: National energy strategy.
Committee: National security.

Whereas, as a nation, our continued reliance on foreign sources of energy places our national security interests and economic well-being at risk; and

Whereas, war in the volatile Persian Gulf region has brought into sharp focus our heavy dependence on imported foreign oil which necessitates a re-evaluation of United States long-range energy policy; and

Whereas, during the 1973 oil embargo, the United States embarked on an energy policy that was later abandoned in the early 1980's due to short-sighted decisions and the comparatively cheaper prices of Persian Gulf oil imports; and

Whereas, the United States continues to import nearly 40 percent of its oil while U.S. domestic production has dropped to its lowest level in 24 years thus further compounding our foreign trade deficit at a time when our energy demands continue unabated; and

Whereas, since 1975, The American Legion has taken the lead in adopting and presenting energy-related mandates which have addressed energy conservation and efficiency, energy recovery and development, and alternative sources of energy which collectively form the nucleus of a comprehensive national energy strategy; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in Phoenix, Arizona, September 3, 4, 5, 1991, that The American Legion urges the Administration and the Congress to implement a long-term national energy strategy which calls upon the Federal and State Governments as well as the private and public sectors to work in unison to increase domestic energy sources while reducing energy demands by instituting a broad array of actions including: increasing the efficiency of our transportation system; increasing U.S. petroleum production in an environmentally sensible manner; maintaining adequate strategic reserves; building new nuclear energy plants; further deregulating the natural gas industry; and developing alternative sources of energy; and, be it further

Resolved, that The American Legion also urges the Congress to provide funding for such incentives as individual and corporate tax credits for conversion of oil to natural gas equipment; alternative fuel research and development; design advanced nuclear energy plants; new oil and gas exploration; subsidies for the production of liquid fuels from coal, shale and natural gas; and that a sliding scale oil import fee be developed as a further incentive to reduce our demand for foreign supplies while encouraging the development of domestic sources; and, be it further

Resolved, that The American Legion urges Congress and the industrial sector to accelerate the research, development and production of such alternative fuels as ethanol, methanol, reformulated gasoline, tar sands and oil shale; promotion of solar, geothermal, solid waste recycling, and clean coal technologies; and to reform licensing and regulatory procedures to assist the continued development and deliverability of nuclear energy, hydroelectric, natural gas and oil resources.

SOUTH WEST
ENERGY COUNCILS,
September 13, 1991.

Hon. MALCOLM WALLOP,
Washington, DC.

DEAR SENATOR: Last week the South/West Energy Council held its 1991 Annual Meeting and voted unanimously to adopt the attached policy statement relative to Senate debate of the Johnston-Wallop bill (S1220). It was pleased to propose the policy statement, which was co-authorized by Louisiana Senate President Samuel B. Nunez, Jr., another member of the Executive Committee.

During the Annual Meeting, the Council also changed its name from the South/West Energy Council to the Energy Council. As you know, the Energy Council consists of legislators from nine energy producing states. Also enclosed is a copy of our current Executive Committee Director.

It is important to note that this policy statement was passed unanimously by both the Executive Committee, as well as the full Council. That is, I think, a measure of the significance which we attach to your legislation. We hope this expression of support is helpful in bringing the bill to the Senate floor.

Sincerely,

MICHAEL B. ENZI,
Wyoming House of Representatives,
and Executive Committee Member

POLICY STATEMENT RELATIVE TO SENATE DEBATE OF THE JOHNSTON-WALLOP BILL (S1220)

Background In December of 1988 the South/West Energy Council (predecessor to the Energy Council) presented then President-elect George Bush with a National Energy Strategy proposal. The result of six month project, S/WEC's proposal was billed as a "starting point for federal efforts."

In 1989 the Bush Administration undertook a National Energy Strategy development effort. The basis laid by the Administration has been utilized by two leaders in the Senate. Senators J. Bennett Johnston and Malcolm Wallop have proposed the National Energy Security Act of 1991, which was passed by the Senate Energy and Natural Resources Committee on May 23, 1991.

The Johnston-Wallop bill (S1220) is in many ways similar to the S/WEC proposal. In some cases it addresses issues on which the Council has not taken a position (e.g. Public Utilities Holding Companies Act reform); further, it does not address some of the Council's specific proposals (e.g., a Pan American Energy Alliance). However, the Johnston-Wallop bill is a comprehensive piece of legislation which will serve as a useful basis for congressional debate of energy policy legislation. The next logical step in Congressional consideration of such a policy is debate of the Johnston-Wallop bill (S1220) on the floor of the U.S. Senate.

Policy Statement The Energy Council urges the U.S. Senate to bring S1220 to the floor for consideration as soon as possible, following the August 1991 recess. The Energy Council has not taken a position on every element of S1220 (e.g. PUHCA). However, the Energy Council finds the Johnston-Wallop bill to be the most comprehensive proposal of federal policy addressing energy, which is so essential to assuring a viable economy, a healthy environment, a strong national defense and sustaining the American way of life. The Energy Council finds S1220 to be an excellent starting point for debate.

Disposition This policy statement, adopted unanimously by the Energy Council on September 8, 1991 will be distributed to the Majority Leader of the U.S. Senate and the Congressional Delegations of the member states of the Energy Council.

LORI CAMERON,
Secretary.

MEMBERS OF THE SOUTHWEST ENERGY COUNCIL

	Phone	Fax
Alabama:		
Sen. Ray Campbell	(205) 353–3102	
Sen. Earl F. Hilliard	(205) 731–7777	(205) 324–7589
Rep. Taylor Harper	(205) 242–7662	
Rep. Walter Penry, Jr	(205) 242–7711	
Alaska:		
Sen. Drue Pearce	(907) 562–2038	(907) 561–4194
Rep. Mark Boyer	(907) 465–3466	(907) 465–4565
Rep. Mike Navarre	(907) 262–7842	(907) 262–1881
Arkansas:		
Sen. William Moore, Jr.	(501) 863–8468	(501) 682–3479
Sen. Nick Wilson	(501) 892–4517	(501) 892–8794
Speaker-elect L.L. "Doc" Bryan, Vice-Chairman	(501) 968–1475	(501) 682–3479
Rep. Lipud George	(501) 489–5641	
Colorado:		
Sen. Tilman Bishop	(303) 248–1273	(303) 248–1903
Sen. Pres. Ted Strickland, Chairman	(303) 866–3342	(303) 866–5319
Rep. Lewis H. Entz	(719) 754–3750	
Rep. Scott McInnis	(303) 945–0132	(303) 945–4955
Louisiana:		
Sen. Oswald Decuir	(318) 365–2336	
Sen. Pres. Samuel B. Nunez, Jr.	(504) 279–5551	(504) 278–7495
Rep. John Siracusa	(504) 384–0703	(504) 342–8336
Rep. Arthur Sour, Jr.	(318) 226–9332	
New Mexico:		
Sen. Pres. Manny Aragon	(505) 842–1324	
Sen. Joseph Harvey	(505) 393–6957	
Rep. Richard T. Knowles	(505) 623–1344	
Rep. Robert S. Light	(505) 887–2566	(505) 887–1146
Oklahoma:		
Sen. Larry Dickerson	(918) 647–8606	(405) 521–5507
Sen. Billy Mickle	(405) 924–1151	(405) 924–1154
Rep. Larry Adair	(405) 557–7394	(405) 557–7351
Hse. Spkr. Glen Johnson	(405) 521–2744	(405) 557–7445
Texas:		
Sen. Gene Green	(713) 447–2122	(713) 447–7129
Sen. John T. Montford	(512) 463–0128	(512) 463–0326
Rep. Dan Shelley	(512) 463–0520	(713) 446–4186
Rep. Sylvester Turner	(713) 650–3688	
Wyoming:		
Sen. Terry Guice	(307) 745–8289	
Sen. Pres. Diemer True	(307) 266–0272	
Rep. Barbara Cubin	(307) 234–3482	
Rep. Michael Enzi	(307) 682–4235	(307) 687–0029

Mr. WALLOP. Let me go through a couple of them. One is the Administrator of the Environmental Protection Agency, certainly no patsy to the environment. One is the Secretary of Defense, my former colleague, Dick Cheney, who says the Department of Defense is one of the major consumers of energy, and states the necessity for national security to have this policy.

Here is one from Presidents Carter and Ford. Here is one from the Governor of Iowa to the Senator from Iowa, now campaigning for President, Senator HARKIN.

Here is one from the National Governors Association, the Secretary of Energy, and the Maritime Trades Department of the AFL–CIO; and the MEBA; the American Maritime Congress; the National Grange; the American Legion, and others.

Just out of interest, Mr. President, the number of States in here are the Associated Industries of Arizona, Florida, Massachusetts, Missouri, and Oregon; and the Business Council of Alabama. Interestingly enough, to the Northeastern Senators who are opposing the Coalition of Northeastern Governors as well as the Southwest Energy Council; Florida Citrus Mutual; Florida Gas Transmission Company; Florida Petroleum Council; Florida Phosphate Council; the Florida Sugar Cane League; Indiana, Iowa, Maryland, Michigan; National Association of Counties; National Conference of State Legislatures; and National League of Cities.

Mr. President, this is a bill that has broad public support in America if not in the Senate amongst those conducting their affairs by direction of the environmental community.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. The President, I yield myself a minute and a half.

Mr. President, the previous speaker indicated that former President Jimmy Carter favors this legislation. I would now like to read a letter dated October 15, from President Carter to Senator LIEBERMAN concerning this bill.

To Senator Joseph Lieberman:

I understand that a letter endorsing a national energy policy, signed jointly with President Gerald Ford and dated September 30, 1991, is being used to promote legislation that would open the Arctic National Wildlife Refuge to full scale oil and gas development. This is a totally erroneous and improper interpretation of my support for energy legislation that would make "the best use of our own energy resources" and deplore the fact that "we continue to waste too much energy."

I want it made clear to all concerned that I do not support any legislation that would destroy the integrity of the Wildlife Refuge in order to obtain a relatively miniscule amount of oil, which would be extracted and consumed for just a few years in lieu of imposing much more effective conservation measures in our nation. Just a small increase in the mandated efficiency of automobiles would contribute much more to reduce dependence on imported oil than would the permanent destruction of this precious and irreplaceable resource in Northern Alaska.

My hope is that all members of the House and Senate will refuse to support any legislation that would permit oil or gas exploration in the Arctic National Wildlife Refuge.

Sincerely,

JIMMY CARTER.

Mr. President, I yield 5 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, we have had a very contentious morning and reasonably so. This is an extremely important issue which we are facing today. But I want to let my colleagues know there is an answer to this problem which does not require all the contentious arguments but is a sound policy which will get us to energy independence. I will not vote for the motion to proceed because I feel we could sit down and work it out with this amendment that I have to offer and save the Senate an incredible length of time.

Let me tell my colleagues what this amendment does.

First of the all, I think we all agree that what we are here for is to get this Nation to a point where it can be energy independent, where it does not have to rely upon foreign sources in order to fuel its economy with the fuel that is necessary to do that.

Let me just show my colleagues, for instance, just to pique their interest, something that will work. I have a chart not prepared by Jim Jeffords or his information. It is a chart which came from information from the Department of Energy. I will talk more about that later. But let me show what it does.

This is our current policy up at the top. This is the national energy strategy of the administration. If we go to 1220, it would be 6.1 million barrels per day rather than the 7.1.

This is my bill down here, this green part. This is what the amendment I am offering will do. Notice that this one goes sharply, S. 1220 will stay level, and then shoot up. The only one that goes down and shows that we will be on a path to energy independence is the amendment that I will offer.

Just to give an idea and more credibility—everybody wants to know, is this guy crazy, does he have something here or not?—let me read from Jim McClure—my colleagues all remember Jim McClure, well-respected, conservative ranking Republican on the Energy Committee:

> U.S. energy consumption will grow over the next decade. Two, domestic oil production will continue to decline. Three, our foreign oil dependency will increase. Four, there is some likelihood that there will be a significant supply of disruption before the nineties are over. Five, if there is a disruption, it will have severe consequences on our economy and society.

There is no dispute about these facts.

The last thing that Jim McClure did before he left this body was to endorse my bill that I put in which is now S. 716, which will be modified with this amendment to make it more workable. I think my colleagues will realize that Jim McClure knew what he was doing.

Second, for credibility, let me also let my colleagues know that the Department of Energy adopted a similar concept and prepared their documents, which we will show, and information which they had, and they went down to the White House and fought for this kind of a policy because they knew it was the only one that could get us to energy independence. They lost at the palace gates down there. They were turned down. But that ought to let everyone know there is reason for me to be here to give credibility to this amendment.

Third, the committee took up mine. A majority of the committee endorsed my bill, S. 716. They took it in committee—and I praise them for the consideration they gave it—and they adopted the skeleton, the definitions and the wording and all that, but then they carved out the heart and carved off the muscles and carved out the brain and changed it from a plan of action to a study. I want to make that into a plan of action again, and I will attempt to do that at the first chance.

Who is against it? It does not fight anybody. Whether you are for or against ANWR, this will work. Whether you are for or against Bryan, this will work. Whether you are for or against S. 1220 or any part of it, this amendment will make an energy strategy that will work.

So I do not fight with anybody. Anybody can vote for it except those who believe that the policy we are getting ourselves into, that OPEC and the oil companies say leave it in our hands and we will take care of you, if you want to go with them, yes, you should vote no because, to be honest, they are opposed to it. Why? Because they control the energy of this country. It is the oil companies that own the coal fields. It is the oil companies that own the natural gas. It is all of these that will be qualified to be a domestic source under that.

I will be back later this afternoon to give a more indepth discussion of this option and hope when this bill does come up, if it does, that my colleagues will support it.

I yield the floor.

Mr. JOHNSTON. Mr. President, I yield myself such time as I may require.

Mr. President, what we have seen this morning is the caricature of the Senate, as far as energy national policy is concerned, all over the map. We are told that hydro is the solution and yet when you try to get to hydro, you cannot build it anywhere in the United States.

We are told to go domestic but not coal because coal is too dirty. We are told to go domestic but not oil because we cannot depend on foreign oil and we need to get off oil dependence. We are told to go anywhere except that which is possible for this United States, and especially do not go nuclear.

Mr. President, what we have done in this bill is the only way that this country can put together an effective policy, and that is bring in all the disparate parts and to consider them simultaneously.

What we have done for all these 19 years is to have all these different committees try to put up bits and pieces of an energy policy and it always is beaten and it never works. That is why energy consumption is going up, that is why energy production is going down, and that is why it is going to continue to do so unless we change our way of doing things.

Mr. President, the noted oil economist Henry Schuler just wrote a really excellent piece in which he described America's present energy policy. It is a Saudi Arabian policy. As he points out, Saudi Arabia has unrivaled fuel resources and no prospect of defending itself. The United States has unrivaled defense resources and no prospect of fueling itself.

So the argument goes, I guess by the opponents, why not put the two together? Since they have the fuel and we have the defense, let us have this great marriage, as we did in the war in the gulf. It worked in the war in the gulf. It only cost 24 American lives, or whatever the figure was. That is not much unless you are one of them or one of their families. We bought 20,000 body bags. I am glad we did not need them, but that is what we had at risk.

Mr. President, the problem is we tried that before, three times. Back in the fifties we had a policy called the Baghdad Pact where we were going to have this kind of stituation with Iraq, and we know what happened. We gave them the arms and King Faisal was assassinated in 1958 and taken over by

Saddam Hussein, one of the worst despots in history.

We had that kind of policy with Libya in the 1960's. We gave them unrivaled tanks and guns. Wheelus Air Force Base was the largest Air Force base outside of the United States back in the 1960's and what happened? We were successful in defending Libya against Egypt which was preceived to be the enemy at that time, but we were not successful in defending them against the internal strife that brought Muammar Qadhafi and put him in as probably the second worst or maybe the worst person in the Middle East.

Then we tried it again in the 1970's, Mr. President, with Iran. We had a deal with the Shah of Iran where we gave him tremendous defense resources. We gave him airplanes; we gave him everything he needed. He was the powerhouse of the Middle East. He was, to use Jimmy Carter's words, on that last New Year's Eve before he was deposed, as I recall, "an island of stability in a sea of troubles." Yes, yes, Mr. President, and that is what we had our energy policy connected to—the Shah of Iran and we know what happened.

Is it not interesting those three countries with whom we had this kind of marriage, in three successive decades, we now have an embargo on importing oil from any of them? Our law of this Senate says you cannot get a drop of oil from Iraq, from Libya, or from Iran.

And now, Mr. President, we are told, in effect, by default, that it is OK to do it with Saudi Arabia. Do not get me wrong, I like the Saudis. We did well in our mutual defense with the Saudis in reclaiming the assets stolen by Saddam Hussein.

But Mr. President, how many times does it take us to learn that this Nation must have an energy policy that is made in America and not made in Saudi Arabia or not made in Baghdad or not made in Libya or not made in Iran? It has to be made in America.

And you are going to have to take some things such as nuclear energy, such as energy efficiency, such as alternative fuels, and deal with those issues.

Now, Mr. President, we are told: Do not consider this bill; send it back to all these disparate committees and something will come of it that is good.

We have been waiting for 19 years, Mr. President—19 years. The first energy crisis was almost 19 years ago, and at that time the gross national product went down by 2 percent. We had another one in 1979, and the gross national product went down by even more than that. And we had another one last year, Mr. President, when Americans got killed in the gulf.

It is time for a comprehensive, balanced, effective energy policy, and that is what S. 1220 is, and we ought to debate it in all its parts and consider it on its merits and not have a filibuster to stop the country from having an energy policy.

Mr. President, I ask unanimous consent that the statement by Henry Schuler be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

OIL AND MUNITIONS: AN EXPLOSIVE MIX

(By G. Henry M. Schuler, Director, energy Security Program, Center for strategic and International Studies)

In the aftermath of the Persian Gulf crisis, many pundits and policymakers seem prepared to tie America's energy future to a "special relationship" with Saudi Arabia's al-Saud dynasty. Although the aspiring matchmakers acknowledge that there can never be a formal marriage, they urge a much more public cohabitation than has existed in the past. After all, the argument runs, the mutuality of interests is obvious—Saudi Arabia has unrivalled oil resources but no prospect for defending itself, while the United states has unrivalled military resources but no prospect for fueling itself—so why shouldn't both parties proclaim their commitment. Unfortunately, experience has shown that Middle eastern liaisons based on oil and defense ties eventually break-up in bitter acrimony.

Painful reminders of that axiom came almost like clock work until the most recent decade. The Baghdad Pact could guard the Iraqi throne and Western oil interests against Soviet aggression but not against a popular left leaning revolution that executed King Feisal in 1958. America's Wheelus Air base and Britain's El Adem armor depot could deter Egypt's President Nasser from attempting to seize the Libyan oil fields, but could not stop Lt. Muammar Qadhafi and a handful of Arab nationalists from overthrowing King Idris in 1969. Massive sales of sophisticated arms and large training missions could establish Iran as Washington's surrogate "policeman of the Gulf", but they could not protect the Shah from Islamic militants in 1979.

That alarming recitation makes it clear that U.S. assistance in deflecting external threats—whether through express defense commitments, air bases, prepositioned equipment, joint exercises, state-of-the-art arms sales, training support, or "trip wire" force presence—could not block internal upheaval. In fact, those external defense arrangements provided explosive fuel to be exploited by internal forces intent upon socioeconomic revolution, pan-Arab coup and/or Islamic upheaval. As for their efficacy in assuring U.S. access to Middle eastern oil, one need only observe that the successor governments have been so hostile to the United States that Washington currently bars unrestricted imports from each of the three countries: Iraq, Libya and Iran.

The United States was mercifully spared the demise of a Middle eastern oil friend during the 1980s (unless Egypt's relatively minor exports are enough to qualify the 1981 assassination of Anwar Sadat), but it would be foolhardy to conclude that special relationships linking oil and defense no longer provide tinder for domestic upheaval. While recognizing that precise parallels never exist, especially when separated by several decades, it is useful to examine the dynamics of the situation surrounding the special relationship entered into by the Kingdom of Libya with the United States and Great Britain.

The Libyan monarchy had its origins in the Sanusi Emirate of Cyrenaica, the eastern part of the country, and drew its support from the Sanusiyah Brotherhood of religious revivalists and the noble (saadi) bedouin tribes who represented the ethnically purest Arabs outside the Arabian Peninsula. Helped by Great Power maneuvering in the aftermath of World War II, this narrowly based and inward-looking dynasty was imposed on the more settled, worldly, and politicized people of Tripolitania, the western part of the country. Given that somewhat shaky claim to national legitimacy, every economic and political grievance represented a potential threat to the Sanusi monarchy. Although those grievances arose within Libya, Washington and London could not counsel internal reforms involving political representation, wealth distribution, societal change, dynastic feuding, and governmental corruption without raising palace hackles. Therefore, the monarchy's would-be protectors found it much less discomfiting to attribute the economic and political threats to external forces, specifically to Egyptian aggression and Nasserite subversion, which they could combat financially and militarily.

As if to proclaim the linkage between oil and defense, both Libyan-U.S. relationships had their roots in a July 1954 trip by Prime Minister Mustafa Ben Halim to the United States. Ben Halim spent part of his time in Washington, negotiating a 20 year lease for Wheelus Field, and part of his time in the "oil patch", listening to appeals for legislation that would favor American independent oil companies over the "Seven Sisters". Upon his return to Libya he introduced a Mutual Defense Assistance Agreement and a Petroleum Law that ended Britain's postwar domination of Libya and tied its fortunes more closely to American interests. (A less savory side of the defense-oil linkage was provided when President Eisenhower's Secretary of the Air Force, Harold Talbott, did a little "moonlighting" to assist promoter Wendell Phillips in obtaining concessions.)

During its relatively brief appearance on the world stage, the Libyan monarchy evidenced its general support for American oil interests—corporate and governmental—in many ways. The most prospective concessions went to American companies, to the dismay of BP, CFP and Royal Dutch Shell. Libya's willingness to calculate taxable income on the basis of realized price, rather than posted price, permitted Conoco and Marathon to penetrate the European refining/marketing sector and held down world oil prices. Although Libya joined OPEC, the monarchy's refusal to slow an unprecedentedly rapid growth in production fatally undermined OPEC's first effort to establish quotas in 1965 and met the exploding U.S. demand for low sulfur fuel oil required to meet new environmental legislation.

Libya's oil support was political and strategic as well as economic and commercial. When the Arab exporters imposed an embargo on the United States and other countries during the Six Day War of 1967, Libya nominally complied but rendered the destination restrictions moot by increasing overall production. Then, when Libyan oil workers struck in protest against that subversion of the Arabs' only political "weapon", the government imprisoned over 100 young technocrats. The availability of increased Libyan exports in the Mediterranean also weakened Egypt's attempt to gain leverage by refusing to open the Suez Canal for the transit of tankers from the Persian Gulf.

By 1969, Libya had become Britain's largest supplier and America's largest supplier from outside the Western Hemisphere (Libya exported 3 times as much oil as Saudi Arabia to the U.S.), but Washington and London had few concerns in light of the monarchy's extremely cooperative oil policies. In fact, Britain saw the Libyan oil fields as a "strategic reserve west of Suez" because HMG was confident that King Idris' avoidance of involvement in Middle Eastern politics would leave him on the throne long after the oil monarchs of the Gulf had departed the scene.

On the other side of the equation, the Kingdom's defense links were no less "special" than its oil links. Under the Anglo-Libyan Treaty of Friendship and Alliance, signed in 1953, Britain pledged to defend Libya's borders, to provide internal security assistance, and, in, a secret protocol, to protect the King's personal safety and (at least by implication) his throne. Whitehall backed its pledges with hardware, relocating half of the powerful 10th Armored Division to Cyrenaica when Nasser forced evacuation of Britain's Suez Canal base in 1954. Although the British Army ultimately reduced its troop levels to a mere company that would serve as a sort of "trip wire" while protecting King Idris, most of the armor remained at El Adem close to the Egyptian border. Lest Nasser fail to get that pointed message, British tank crews were deployed to man to prepositioned equipment for several months following the Egyptian inspired overthrow of Iraq's King Feisal in 1958 and regularly flew into El Adem for joint exercises with the Libyan Army throughout the 1960s.

The U.S.-Libyan Mutual Defense Agreement provided for American use of Wheelus Air Base and associated desert bombing ranges until at least the end of 1971. It was not only the sole U.S. air base in the Arab world following the forced evacuation of Dhahran in Saudi Arabia and Nousseur in Morocco, but also the largest base anywhere outside U.S. territory. Beyond its overt mission as a training facility for NATO's tactical fighter bombers and its secret role in SAC's strategic deployment plans, Wheelus offered the only air base for staging troops and equipment to the Middle East. It was not just on paper, for Libya accepted the Eisenhower Doctrine and permitted the use of Wheelus for deploying American forces to Lebanon in 1958. For all intents and purposes, the monarchy thereby fully aligned itself with America's strategic and regional containment policies.

Although air bases, and prepositioned armor would permit relatively rapid deployment of American and British forces, Egypt's Soviet equipped forces were near enough to require a more immediate Libyan defense capability, especially in the aftermath of Nasser's attempted take-over of Yemen. Besides, the sale of military equipment would offset growing expenditures for Libyan oil and spread escalating R&D costs. Accordingly, Washington and London encouraged Libyan aspirations for creating an air-sea-land defense capability and agreed to divide the training responsibilities—and sales proceeds—so that Britain got the navy and the U.S. got the air force while they competed for the contracts associated with a doubling of the ground forces.

Libya's military leaders had relatively modest air and naval ambitions, but their appetite for heavy tanks and sophisticated air defense systems was easily whetted. Anxious to resurrect a rapidly eroding defense industrial base, Britain was determined to win both contracts. With highest level support from HMG, the British Aircraft Corporation won a 1968 contract to sell state-of-the-art air defense systems including Rapier and Thunderbird missiles as well as associated radar and communications equipment. Priced at $365 million, it was not only the biggest international arms sale concluded up to that time, but it also offered high paying jobs in Libya for almost 1000 British "technicians" and tied Libya to an air defense strategy that would require future purchase of almost $1 billion worth of British fighter interceptors. In April 1969, Libya also contracted to purchase 188 Chieftain tanks for $60 million. Because this was Britain's main battle tank with a stabilized 120mm gun not previously available in any offensive Middle Eastern arsenal, Libya was required to pledge that the Chieftains would not be used in any future war with Israel.

Recognizing that an expanded Libyan Army also held the seeds of a coup d'etat, the monarchy and its foreign supporters implemented the classic precautions. The responsibility for internal security was assigned to the Cyrenaican Defense Force (CYDEF), a paramilitary force composed of loyal tribal levies, that would be armed with antitank guns when the Libyan Army got tanks. Key Army and CYDEF commands were held by officers with the most to lose from a coup, those who were linked to King Idris through blood, adoption, or marriage, and who shared in large commissions from arms contracts. The loyalty of junior officers was to be assured by careful vetting and selection from traditionally supportive tribes or families.

In sum everything appeared to be under control as the end of the 1960s was approaching: rising oil revenues would keep the Libyan people happy, and a growing defense capability would keep Nasser at bay.

Unfortunately, oil and defense cooperation provided grist for the mills of those Libyans who were already aggrieved by the monarchy. In fact, the 1968 arms purchases became a sort of paradigm for all of Libya's ills. Large commissions to the King's senior loyalists in the Army epitomized the prevalent corruption and favoritism. The provision for a sizable contingent of technical and English language instructors symbolized a dependence, even subservience, that was cultural as well as professional. The acquisition of an air defense capability at a time when Libya was well outside Israeli aircraft range, demonstrated that the system was focused on some nearby "Arab brother" such as Egypt or Algeria and involved the monarchy in imperialist efforts to "divide and conquer". Worse, the humiliating restrictions on the Chieftain tanks proved that the monarchy had disassociated itself from the struggle to liberate Palestine.

Although many Libyans shared these perceptions, the junior officers in the Libyan Army were affected most strongly. All they needed was a leader who could bring together the threads of Arab nationalism, Muslim revivalism, Palestinian sympathy, bedouin egalitarianism, and foreign resentment * * * and Libya's military build-up provided that as well. Faced with a growing need for junior officers at a time when the best qualified young men gravitated to the petroleum industry, Libyan recruiters lowered their educational standards and adopted a more tolerant view of political correctness. The most significant beneficiary of that leniency was Muammar Qadhafi who was admitted to the Royal Military Academy despite having been thrown out of secondary school for political agitation, and commissioned in 1964 even though he was a known troublemaker while at the Academy. Just 5 years later, he and a handful of fellow officers overthrew the monarchy on September 1, 1969. Thereafter, the special oil and defense relationships came to a precipitous end.

While reiterating that parallels are never exact, a few changes of name and reference point give cause for pause in the rush toward a special relationship with Saudi Arabia, viz: the al-Saud for the al-Sanussi; Nejd for Cyrenaica; Hijaz for Tripolitania; the Wahhabi *ikhwan* for the Sanusiyah *ikhwan*; World War I for World War II; Saudi National Guard for Cyrenaican Defense Force; Saddam Hussein for Gamal Abdul Nasser; Kuwait invasion for Yemen invasion; Dhahran air base for Wheelus; King Khalid Military City for El Adem; Abrams tank for Chieftain; Patriot missile for Rapier. Do all these clever substitutions mean that there will someday be a Saudi Liutenant X as a counterpart for Libya's Lt. Qadhafi? No one can know the answer to that, but it certainly cannot be ruled out. It is at least a risk to be considered by those responsible for plotting the Nation's energy strategy.

Mr. WALLOP. Mr. President, I would make two quick observations. One, it is ironic that the Senator from Vermont [Mr. JEFFORDS] was pleading so hard for his amendment by filibustering the vehicle by which it would become eligible to be considered. Some things are difficult to understand.

Second, in the letter from President Carter, I would just make this point. Nobody has claimed that President Carter was for ANWR. But no one can disclaim, least of all President Carter, the sentence that says, "Comprehensive energy legislation such as that pending before the Congress provides an opportunity to continue progress towards national energy policy."

Mr. GARN. Mr. President, I rise today to offer my strong support for bringing this measure before the Senate. The American people deserve to have a matter of this importance considered and debated by its elected representatives.

If nothing else, the recent war in the Persian Gulf should finally teach us that America must develop a program to increase its ability to supply domestic energy needs and reduce its dependence on foreign energy, primarily oil. If we fail to act now, we have only ourselves to blame.

To understand what we must do requires a brief look at the history of where we have been on the question of energy. At the time of the first Arab oil embargo in the fall of 1973, the average price of a gallon of gas in the United States was 30 cents, roughly the same price consumers paid in 1940. Between 1974 and 1979, the price stabilized at about 60 cents per gallon. Finally, after the Shah of Iran was overthrown in January 1979, the resulting instability in world oil markets caused the retail price of gasoline to jump to about $1.20 per gallon. Today, with the retail price at about $1.15, gasoline costs less per gallon, after inflation, than it did 50 years ago. Gasoline as a percentage of household expenditures is roughly the same as it was in 1947.

In Europe, the average 1991 price of a gallon of gasoline is $3, while in Japan it is about $4 per gallon.

To put the price situation into greater perspective, consider this. Of the known reserves of crude oil in the world in 1990, the Organization of Petroleum Exporting Countries [OPEC] controls 67 percent of the total. Saudi Arabia alone controls 25 percent of known world reserves. The United States controls just 4 percent of known world reserves. The inevitable result of this is that the United States now imports 50 percent of the oil we use.

To me, these figures point out two startling things. Namely, Americans enjoy remarkably low prices compared with the rest of the world, while we remain highly vulnerable to outside, non-American sources. Yet, since the first oil price increase in 1973, through the Persian Gulf war, the Nation has done virtually nothing to wean itself from this grotesque overdependence on Middle Eastern sources of crude oil. This Nation is vulnerable, and increasingly so.

To make matters worse, the U.S. economy putts along daily consuming 40 percent of world's energy production—16 million barrels per day—and as I just said, it produces only a fraction of that amount. I often wonder how many more crises we will have to endure before the Nation collectively wakes up and solves the problem.

I believe the Congress of the United States now has another chance to put into place a long-term national energy policy which will address both the critical need to develop more energy domestically, and to begin a series of conservation measures which will allow us to use that energy more efficiently.

Earlier this year, both President Bush and the Senate Energy Committee, on which I serve, adopted plans to address this important issue. Both the President's national energy strategy and this bill provide an important emphasis on energy production and conservation. According to Energy Secretary Watkins, "this National Energy Strategy lays out for the first time a comprehensive foundation for a cleaner, more efficient and more secure energy future." If implemented, it will decrease the U.S. economy's demand for oil by 3.4 million barrels a day while increasing domestic oil production by 3.8 million barrels a day by the year 2010, according to the Secretary.

By the year 2010, the President's energy strategy proposes to reduce oil imports from an anticipated 65 percent daily dependence to 45 percent daily dependence. This is slightly less oil import dependence than exists in 1991. So, in other words, we are fighting just to keep our dependence on imports from increasing.

Specifically, the bill before us proposes to open up what may be the largest supply of oil in the country's history in the Arctic National Wildlife Refuge [ANWR] of Alaska. Exploration of these oil deposits which are near existing Prudhoe Bay oilfields can be accomplished so that only 1.5 million acres of 19 million acres or 8 percent of the refuge lands are actually explored, and because of tremendous technological improvements in slant drilling methods, only 10,000 acres of land will be subjected to surface impacts. Let me say that again for the benefit of environmental critics. Only 10,000 acres out of ANWR's total of 19 million acres will be impacted, including roads, drill pads, and maintenance facilities.

In 1991, 20 percent of America's daily oil supply comes from existing North Slope fields. Unfortunately, Prudhoe Bay is beginning to experience the inevitable production decline that occurs in all major oilfields. Production there is expected to decline from a current level of 1.7 million barrels per day to about 500,000 barrels per day by the year 2000. If ANWR oil is made available through this legislation, it would be transported through the existing trans-Alaskan pipeline and could extend the production life of Alaskan North-Slope fields up to the year 2030. This is a potentially huge resource which cannot be ignored. Another real issue here is jobs, because in reality we will either import the oil from Saudi Arabia and put their people to work, or we will develop this field in Alaska and put Americans to work.

While the development of this oilfield is important, very important it is only one of many very good provisions in the bill reported by the Senate Energy Committee.

The national energy strategy laid out in S. 1220 calls for the exploration of potentially significant amounts of oil in our coastal waters of the continental United States. The proposal also emphasizes developing America's huge 500 year supply of coal and large quantities of natural gas. It also includes proposals to develop new technologies to improve the recovery rates on existing oilfields in the continental United States.

Significantly, the energy strategy promotes the use of nuclear power as an energy option. Consumers will benefit by new laws governing improved powerplant siting, licensing, and financing of advance nuclear reactor technologies that utilize standardized, modular designs, and passively safe features. The measure proposes to streamline the Nuclear Regulatory Commission's [NRC] regulatory structure that has effectively blocked construction of new nuclear powerplants in the United States since 1978.

Mr. President, I believe S. 1220 address the conservation side of the equation as well. The Johnston-Wallop bill so called, addresses these issues in a very comprehensive way. While there are parts of the bill that I would have written differently, it does combine the essential production elements with important conservation features.

For example, in the long term, the bill decreases energy consumption by far more than it increases energy production. According to the Department of Energy, by 2030, the cumulative increase in primary energy production is 38 quads, while the cumulative consumption savings due to conservation is projected to be 294 quads. This is a significantly higher savings due to conservation than from increased production.

Probably the most controversial conservation measure in front of the Congress today deals with corporate average fuel economy [CAFE] standards for automobiles. I believe the approach the Senate committee bill takes is far preferable to the Bryan bill which would mandate 40 percent improvements by the year 2001 with absolutely no technological basis for doing so. It is much better than the so-called compromise measures which are floating around. These compromises which would increase the mileage requirement by half as much are also arbitrary and lack a scientific basis. We all want better gas mileage in our cars, but let's think long and hard about the right ways to achieve that goal and the consequences of our actions to the American automobile industry and our economy if we make the wrong choice.

Mr. President, I intend to speak to this issue in much more detail when the CAFE title comes before the Senate later on. For now, let me again urge my colleagues to vote to bring this issue before the Senate so the Nation can begin to plan for its future.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1992—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the amendments in disagreement to the Interior Appropriations Act, H.R. 2686.

AMENDMENT IN DISAGREEMENT NO. 130

The PRESIDING OFFICER. The clerk will report the pending amendments in disagreement.

The legislative clerk read as follows:

The House insists upon its disagreement to Senate amendment No. 130.

Mr. WALLOP. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. (Mr. ROCKEFELLER). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPOTTED OWL/OLD GROWTH FORESTS

Mr. HATFIELD. Mr. President, although I represent the State most directly affected by the highly publicized—and now nationalized—controversy over the northern spotted owl and the old growth forests in the Pacific Northwest, I have tried to minimize the number of times that I have used this forum to speak on this subject. Over the years that this debate has raged, I have learned that rhetoric alone does little to heal this festering public policy sore. The more we talk and make accusations of disingenuous and greedy behavior—greedy from either an economic or preservationist perspective—the farther we push ourselves away from a solution.

No longer are spotted owls and old growth forests the stuff of front page headlines only in the Pacific Northwest. This is now big news everywhere—from Portland to Poughkeepsie, Boston to Bakersfield, Tampa to Tucson, and everywhere in between. Everyone—everywhere—wants to save the spotted owl and the old growth forests of the Pacific Northwest. That is fine, but what the lead editorials in the New York Times, the Washington Post, and the San Francisco Chronicle are neglecting to tell their readers is that there is a price to be paid for this action—and they will have to help pay for it.

I bring this message to my Senate colleagues today because we—the Congress—ultimately will be responsible for formulating the public policy which will serve as the final solution to this controversy. Many Members of this body have strong feelings one way or the other about this issue, and that should ensure a debate of only the highest quality. I have high hopes that the discussion, whenever it may arrive, will avoid the sloppiness, simplicity, and single-mindedness that has come to characterize the spotted owl debate to which we all have been exposed through the media over the past several months.

For far too long, the media and many of the participants have turned this into a dirty little drama between the timber industry and the preservation community. You note I do not use environmental community, because this has moved beyond what can be legitimately called environmentalism. This is preservation. While there is no love lost between these two warring factions, this ugly sideshow has obscured the third, and most important element in this controversy—the people—live human beings, blood and guts people, the people of the Pacific Northwest and the people in every other region of this country.

And what do I mean by the word "people?" In my region, it certainly means the mill worker, the logger, the lumber salesman, the carpenter, the cabinetmaker. But it also includes the home owner, the home buyer, the K-mart clerk, the county employee, the retailer, the railroad engineer, the third grade student, the theater owner, the elementary school teacher, the environmentalist, the entrepreneur, and on and on. That is what I mean when I talk about every man, woman and child in my State, as representing the definition of the word "people."

My State's economy and way of life—our culture—are heavily dependent on our Federal forest. State and local governments depend on timber receipt revenues to finance schools and roads, large percentages of rural communities depend on mills for employment, and rural railroad links, the economic lifeblood of those communities, exist solely to ship wood products to market. People who live in urban areas, Portland and portions of the Willamette Valley, who have been insulated from the economics of timber policy, soon may be affected by higher taxes to finance schools and other services, will find fewer jobs in some sectors, and will come to learn that the multiplier effect does not discriminate between urban and rural communities.

And how about the people in other States? Every Member of this body should understand that the outcome of this debate also will affect your State, too. Let us be honest. Your constituents will probably pay more for homes, other types of housing, and remodeling. Lumber prices will increase, more of their Federal taxes will be spent on worker retraining programs and other social services in the Northwest. Increased environmental pressure will be placed on other areas of the country and the world to compensate for fewer wood products being produced in Oregon, Washington, and northern California. No, this is not the localized issue that many of my colleagues have been led to believe.

I understand what the attitude is. This is Federal public land in the Northwest. This is free land. This belongs to all the people. True. But when you take that free land and then apply the Endangered Species Act, the precedent that will be set will apply over private land, all the land, and I can assure you that the approximately 2,000 candidates for endangered species listing, whether they be plants or wildlife, and their ultimate resolutions, will be affected by the precedent set by the spotted owl.

And when the agency of the Federal Government, the U.S. Fish and Wildlife Service, says it is all right to come out with this kind of final policy, to lock up the forests in four northern counties of California, all of western Oregon, all of western Washington and, if they could, British Columbia to protect one endangered species, let me tell you that your site specific application of the Endangered Species Act has much broader implications. When you think an action will only affect a little part of a county in your State it is one thing, but when you transfer the market demand for timber products from the Pacific Northwest to the 13 southern pine States where there are minimal conservation, and reforestation laws on the books—whereas in my State we have one of 50 years standing on private land and State public land, and other public land—that environmental impact is going to be on your small wood lots, on your industrial wood lots, and the flora and fauna that depend on those wood lots. And let me suggest that you ought to review the reforestation policies that are not occurring today in the 13 southern pine States.

Or if that harvest demand transfer is made to Canada, where its reforestation and conservation laws are much less stringent than ours, though they are in the process of improving them. That is why I did not use the word "environmentalist" earlier, because the preservationist has a vision about as far as his nose. If one were a true environmentalist, one would understand this is one globe, one human race occupying this one globe, and that transferring timber harvests from the Northwest to other places on the globe has an impact on all of us.

And let me tell you, as was the case when the head forester of the country of Denmark, at an international conference in the Midwestern States of the United States, said, you are proposing to lock up the timber producing lands in your region equivalent to all of the forest in the Scandinavian countries and West Germany, the major supplies in Europe for wood products. And by this action you are going to increase our burden to help meet the world demand for products. He said, you have a very limited vision of how what you do here is going to impact us in Scandinavia and throughout the whole world.

No, this is not just a little local owl that we are so many miles away from that does not really impact on our thinking. "It is no skin off my nose to vote to lock up forests in the Pacific Northwest," some may say. Well, it may be more than the skin off your nose when you begin to look at the true environmental impact and the true environmental consequences of this action.

Nor are the facts of this issue probably what you have been led to believe, either. I regret very much and resent the image that has taken root in the minds of many that we are on the verge of cutting our last old growth tree. Or that the ancient forests have disappeared. That is sort of the litany. Or that the spotted owl may go extinct in the next year or 2 if we cut even one more Douglas-fir.

The fact is, even before the spotted owl became a major issue, the Forest Service was trying to decide how much old growth to preserve. And while the proposed amount has increased significantly over the last couple of years as a result of further study, the debate has never been if we should save old growth forests. The question is how much?

I would say to my colleagues we have protected permanently 47 percent of the old growth in my State of Oregon already through my legislation on wilderness and wild and scenic rivers and other legislative and administrative withdrawals. Remember the litany about the spotted owl: It can only survive in old growth forests. They said it took 1,700 acres per pair for them to feel comfortable in procreating and surviving. And then it moved up to 2,000 acres per pair, 2,500 acre per pair, 3,000 acres per pair in old growth. That was your first, "science."

When the Forest Service went in to make the first true inventory, it not only found spotted owls in second growth forests far beyond old growth forests, they actually found some northern spotted owls in cutover lands. So maybe the science has been driven by the politics?

Then we got the Jack Ward Thomas report that said we should set-aside 8 million acres of land for the preservation of the owl. Everybody touted this as science. Interestingly, in that report it said we exempt all Indian lands from this requirement. I said, well, there is political science, that is not pure science. Nevertheless the Thomas report became the gospel. It was the salvation for the owl.

Then along comes the Fish and Wildlife Service. It said, "Well, we looked at this thing. We think there should be 4 million more acres set aside." So Thomas is trashed now because why settle for 8 million acres when you can get 11 million? The only thing about this was 3 million of those 4 million were private land set asides. With no compensation provided.

So all of a sudden, as I said, that may be the best thing that can happen to us. Now we can apply that principle of taking to West Virginia private land, we can apply it to all 13 southern pine States, and other States. And then let us see where the cost is as it applies to the private land.

Well, the Fish and Wildlife Service sort of rethought that. Maybe that was not a good way to go. So they reversed that proposal. But, nevertheless, the fact is, a threshold had been crossed in the recommendation of a Federal agency that this should apply to private land.

Now let me emphasize again in Oregon we have a State law requiring reforestation on private land. For every tree we cut, we plant five; we have more trees today in the State of Oregon than we had 20 years ago.

And we, as I say, have already protected 47 percent of our old growth, in Oregon, and we plan to protect some more old growth. But this is not one of those situations where we are considering it purely from how much can we preserve, but how can we balance the economic needs, the human needs, and the environmental needs.

We have 70 communities in my State that have a 1- or 2-mill economy, most small- and medium-sized operators are dependent entirely on a Federal timber supply. You cut that off and you have, in effect, deemed 70 communities in my State to extinction.

Oh, we have an awful lot of simplistic solutions to this problem. And some groups always have a very pat answer. Well, we will get some retraining money and retrain the workers. Retrain the workers. Workers on the average receiving $26,400 a year in the timber industry to be retrained for what? A number of them illiterate, a number of them poorly educated. I do not say this about all, but I am just saying that there are many in that particular industry.

Well, they say, the fastest growing industry in Oregon is the tourist industry. Yes, we retrain them for minimum wage jobs. Oh, that is easy to say because after all, they are just statistics. I wish some of these people who pontificate about this, and that, and the other thing, would get out, as I have done and had to do and wanted to do, and face the mothers and fathers and children who say "What are we to do? Where are we to go?"

This is a people problem. I do not see how anybody in this body can really express deep, deep compassion for the homeless on one hand, but do not address the issue of what caused their homelessness, or how to get them back into homes.

Let me remind you that one of the fastest growing elements in the homeless population today in America is families with children squeezed out into the street, with no homes available. And yet, we can still turn and call ourselves environmentalists when the most energy-efficient, renewable resource with which to build homes is wood. Free solar energy grows the trees. You cut a tree, you plant a tree or plant five. And you have a resource in perpetuity. I listen to some of these people talk about the ancient forests as if God had created these very forests in Genesis I and they never changed until man came along and started cutting.

A Douglas-fir forest, that is an old growth forest, starts in some people's schedule at 200 years of age. And they talk about the ancient forests as if they were the sequoias that grow for thousands of years. The oldest Douglas-fir that you find will maybe reach 700, 750 years. But that is not the whole forest, that is an identifiable tree that you can point to.

So let us assume that 500 years is a good median range of a Douglas-fir, ancient old growth forest. This is 1991. So 1491 becomes a time in which none of us have a recorded record of Oregon or Washington. But we know this, that those forests have been constantly changing over the years because the Indians used to clear cut by burning them, setting fire to those ancient forests in order to provide some underbrush and undergrowth for maintaining the wildlife.

Lightning has struck. We have had pest infestation. At one point here, about 10 years ago, 800,000 acres of pine forests were threatened by the tussock moth. And we have had pine beetles, tussock moths, bark beetles, all of these things that have attacked the forests in huge dimensions. Yet those forests that have been destroyed in these ways, or in forest fires or by whatever method, by cutting and harvesting, have been regrown and regrown and regrown and they will continue to be regrown.

Consequently, let us understand that these are not the forests God created in Genesis I. At the most we can say, on the average, they may be 500 years old, and then there are those which are still coming into old growth status as well.

When I was a very small child, we had the largest forest fire in the history of the State. At high noon, the sun was blotted out and it was dark. The Tillamook Burn. Thousands of acres went up in smoke in a forest fire one hot summer.

Today, that forest has been replanted and regrown and it is now about 60 years old.

In another 150 years, it will be counted as an old growth forest. And that has been going on for hundreds of years upon hundreds of years and will continue on under proper management.

So let us understand what an old growth, ancient forest is. At one time this Nation had the prairie grass of the Midwestern States, and it has been populated. It has been replanted or they have taken other crops. Sure, we had more acres of old growth at one time before we had cities built and farms created.

But are you saying to us we have to turn the clock backwards? We have to return to the campfire along the river bank? Think about it.

We now have a little different attitude from some of my friends from California who were not that much connected to northern California and its spotted owl problems. Now they tell us there is a delta smelt, in the main flow of the Central Valley project water system that has been proposed for listing as a threatened species. Now they are beginning to say, hey, this is serious. Are you cutting off our water? Now you have gone a little far. After all, that spotted owl is up in the trees in Oregon—but this affects us. Or the winter chinook salmon in San Francisco Bay that can threaten a $5 billion shipping industry. Well, maybe that is going a little bit too far.

We have, my friends, 214 potential endangered species listings for salmon alone in the Pacific Northwest. Sixty-two percent of our total energy system in the Northwest is hydroelectrical energy that is created by dams in the Columbia and Snake Rivers.

A recovery program for any one of those fish may mean that we will have to reduce the flow or increase the flow of the river in order to help the downstream migration of juvenile salmon. And I support programs of this kind. Or we may have to drastically reduce commercial harvest of salmon, or close river traffic on the Columbia and Snake Rivers, or take other measures to save these fish. We will do what it takes, but we will balance human needs in the equation. I called a salmon summit to deal with this in the region to get us ahead of the curve.

But what I am saying to you, some of these same people who say let us preserve all the forests, unrelated to people's needs, have begun to say the only ultimate answer is to pull the dams out of the river. Pull the dams out of the river, and replace them with what? Coal-fired powerplants?

I am one of those who has a great commitment to environmental legislation. I can say in all modesty I have authored more environmental legislation in this Congress affecting the State of Oregon than any politician in the history of my State. I have added more wilderness.

How many wild and scenic rivers does your State have?

I have legislated 42 wild and scenic rivers for my State. I think the next highest is about 10 in the lower 48 States. The Columbia River Gorge Act, Hell's Canyon Act, Oregon Dunes, Cascade Head, Yaquina Head, and on and on I could go. Yet by the preservationists in my campaign last year, I was referred to frequently as a pimp of the timber industry because I raised the needs of the people and I reacted negatively toward proposals to lock up the forests for nonuse.

It is interesting, you know they do not talk about conservation anymore. Do you know why? Because the father of conservation was Gifford Pinchot, and Gifford Pinchot defined conservation as "wise utilization."

Today, those who would normally be in the conservation movement, who are calling themselves environmentalists and who I call preservationists, are not interested in any utilization.

I could philosophize a little bit by saying I think it is a value problem. It is not an economic problem, ultimately. It is not an environmental problem, ultimately. It is a value problem. We are putting far more value on animal life than on human life.

Remember that television program, when a person said here is a guinea pig that could be used in medical science research perhaps to save this baby. Which one would you choose? And the person says, "I have trouble with that."

I have trouble with that? Choosing between a guinea pig and a baby?

Well, in a sense that is representative of the value problem we face as a Nation, as a culture. I want to tell you right now, as I have said earlier on this floor, I want to preserve the unique environmental areas of this country, of this world. But if it is going to come between a choice of doing some drilling in ANWR to get our addiction satisfied for oil or sending our troops to the Middle East to fight wars, I am going to drill in ANWR. And after the Persian Gulf, that becomes a very real choice that we have to make.

Again I repeat, 99 Senators voted for war out of 100; and it was an oil war from the beginning to the end.

It is a value problem we face in getting this balance between people's needs and environmental protection. I do not believe they are mutually antagonistic. I think humanity and the environment were meant to live compatibly, wisely. As the Scripture says, with wise stewardship, realizing it was creation, and we cannot divest the Creator of the creation.

I think the more we look at this situation, we have to understand that we have to maintain a healthy ecosystem, protecting the waters that flow through the forests, the habitat for our fisheries. Those are part of the ecosystem.

Let me say we are not a giant wetland out there, we are a forest area, mountains and valleys, riverways, and human beings.

In effect, Mr. President, the debate has never been if we should save old growth forests, but how much should we save?

The more accurate question is actually, "How much old growth is necessary to sustain a healthy forest ecosystem?" Let me tell my colleagues that not only is this the real question, but that it is a fiendishly complicated question. "No problem, ask a scientist," some might say. That is easier said than done. I will wager with my colleagues that if they ask that seemingly simple question to seven different scientists they will hear seven different answers—some wildly so.

The bottom line here is that there are no simple or easy answers to this controversy. Although we all will continue to hear of this or that simple fix, I can assure you that none exists, for if it did, we in the Northwest would have found it by now. Some from outside the region can spout an endless string of familiar sound bite solutions which have a deceiving attractiveness, but offer little real hope.

For example, can we blame all this on log exports from private lands? No, but some have. Can we blame all the job losses in the region to industry automation? No, but some have. Can we blame job losses completely on the spotted owl and shortages of Federal timber? No, but some have. Can we blame timber harvesting on mythical timber barons who live and die only by the results of their profit and loss statements? No, but some have.

But, can we throw off the temptation to look for simple, inhumane solutions and roll up our sleeves and take a realistic look at what the possible answers are? Yes, but only if we recognize and admit that the solutions will be hard to find and that they may be different from what we envisioned originally.

Recently, one of my colleagues from outside the Northwest made a statement on the Senate floor about the spotted owl. Sadly, he repeated the same tired rhetoric that was virtually without substance, if not completely misleading. He talked about jobs lost to industry automation and allegedly poor logging practices on steep coastal slopes.

What he did not say was that 31 sawmills closed in the Pacific Northwest during the first 6 months of this year alone—long after the mill automation heyday came to a close—and that real workers and families are losing a way of life they have always known.

And what he did not say is that virtually every objective study of the economics of the forest products industry in the Northwest has shown that the slimming down of the timber industry, as a result of automation, began in the late 1970's, accelerated during the recession of the early 1980's, and is virtually complete today.

And what he did not say is that notwithstanding automation, employment in Oregon's forest products industry actually increased from a low of 62,000 in 1982 to about 77,000 in 1988—hardly the sign of a dying industry.

And what he did not say is that notwithstanding what the single interest groups say these same studies show that the employment losses in the industry today are directly attributable to the interruption of the supply of national forest timber.

And he did not tell you that the part of Oregon to which he was referring is the most productive timber growing land in the world, and that it also happens to be located in a checkerboard land ownership pattern that makes consistent management a virtual nightmare. It was a good political speech for a targeted constituency, but did little to accurately frame the debate, relieve the strain, or contribute to a solution.

Just 2 weeks ago, the House and Senate conferees met to iron out their differences on the fiscal year 1992 Interior appropriations bill. There was a certain amount of anxiety surrounding that conference due to reports that another temporary, short-term spotted owl amendment would be offered by Members from the Pacific Northwest, ably led by my colleagues from the State of Washington, Senator GORTON and Congressman DICKS, and by my colleagues from Oregon, Senator PACKWOOD and Congressman AUCOIN, and other Congressmen. I do not mean to be exclusive in enumerating homes. Although no amendment was offered, several Senators who sit on the authorizing committees with jurisdiction sent letters to the Interior conferees objecting to such an amendment.

That was good news. We are desperate for action by the authorizing committees. We have had a hearing in the Senate Energy and Natural Resources Committee on Senator PACKWOOD's bill. It will eventually have to go to the Agriculture Committee, another committee of jurisdiction, but that is as far as resolution of this issue has gone. The trouble is that some of these same Senators signed a similar letter last year and the year before. Unfortunately, all these letters have not led to even one bill being reported by an authorizing committee. These letters of warning have been circulating for so long that they are starting to remind me of the old Christmas fruitcake joke. From the negligible results I've seen so far, I'm beginning to wonder if there is really only one letter out there that keeps getting passed around every year around Interior conference time.

But, Mr. President, as we all know, this is no joke. We in the Pacific Northwest stand accused—and many believe we already are convicted—of wasting the Nation's resources. Is this because we are a careless, wasteful, thoughtless crowd? No. It is because we live in a relatively unspoiled part of this country. We have the largest resource problems partly because we have the most resources to use and, therefore, to lose. And when you think about it, that is perhaps the final irony. We have become the Nation's repository of guilt for 200 years of resource exploitation that has scarred and ruined forests and scenic lands throughout the country, especially in the East.

Mr. President, the people of my State want this controversy behind them. We need to heal ourselves of this illness which has inflicted our lives for so long, and to begin planning for our new future. We need thoughtful consideration and investigation into a conundrum of undefined dimensions. We need the insightful deliberation for which the Senate is uniquely suited. If we do not take the time to do this, I can guarantee that this debate will never end. It will outlast us all.

Mr. President, the people of my State and the people of your State, and every single State in this country deserve better.

I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER (Mr. KOHL). The Chair recognizes the Senator from North Carolina.

Mr. HELMS. Mr. President, this day began in a rather glorious way for me. It was 49 years ago today that a young lady became my best friend and roommate. On top of that, I drove out to Bethesda Naval Hospital for the conclusion of 38 radiation treatments and, insofar as they can tell now, I am in good shape. It may be sad news for some of my adversaries, but it seems I am going to be around for awhile.

Then I come to the Senate floor and I discover that, in my absence, there has been a telephone campaign going on which has nothing to do with the merits of an upcoming amendment. Which everybody knows I will offer, a little later on this afternoon, an amendment to put an end to the waste of the taxpayer's money to subsidize and promote sodomy, obscenity, and various other forms of rottenness by the National Endowment for the Arts.

Let me say up front, Mr. President, that I believe I am going to lose as a direct result of the telephone campaign and the deals which were made as part of it. That is all right. I am accustomed to losing, and I am accustomed to winning once in awhile. But let it be said that this will not be the end of this amendment on this issue if my colleagues turn tail and reverse the votes that they have cast in the past to put an end to the reckless irresponsibility of the National Endowment for the Arts.

There are several things underlying the predicament that I find myself in, Mr. President. One is the so-called porn for corn deal struck in the conference between the House and the Senate. Several of my best friends—and I am reluctant to say this—made a deal with Congressman YATES, that if the conference would adopt a watered-down, meaningless amendment with respect to the National Endowment for the Arts, he, Congressman YATES, would go along with the Senate's grazing fee provision which is, of course, important to a lot of my friends.

Mr. President, I have supported the Senators from the Western States time and time again because I think they are right. I believe it is the State of Utah, for example, where two-thirds of the land in the State is owned and/or controlled by the Federal Government. So my friends who have always supported my legislation with respect to the National Endowment for the Arts feel some obligation—and pressure—because, as I say, the telephones have been ringing with the word that Senators must vote to table the amendment this afternoon or risk losing the Senate position on grazing fees.

Now, that is a sad set of circumstances. And some of the Senators are under the impression, the false impression, that if my amendment should pass this afternoon, the House will be able to eliminate the grazing fee provision. That simply is not so. It cannot be done under the House rules.

Let me read you a review of the parliamentary situation, as prepared in the House of Representatives in consultation with the House Parliamentarian, and agreed to by the distinguished Parliamentarian Emeritus of the Senate, Bob Dove.

It says:

> If the Senate adopts the Helms amendment, the parliamentary situation could not be better for enacting it—

The Helms amendment—

> into law and sending the Interior appropriations bill to the President without further debate:
>
> 1. When the Interior Appropriations bill is messaged over to the House, the motion of highest privilege will be the motion to concur in the Senate amendment. If this motion passes, and there are no other amendments still in disagreement, the bill is thereby cleared for the President's signature.
>
> 2. Even if other motions (such as disagreeing to the Senate amendment and requesting a further conference, etc.) are offered, the vote in the House must be taken first on the motion to concur. It is clear from previous House votes that the votes are there to pass such a straightforward motion—meaning the Helms amendment. (A motion to concur with a further amendment is not in order, since that would be a third-degree amendment.)
>
> 3. The only possible motion involving this bill with precedence over the motion to concur would be a motion to table the motion to concur. The last time this was tried on an NEA motion, the motion to table failed. Even if the motion to table passed, Congressman Yates would be stuck unless he could get the House to pass another motion. However, even in the highly unlikely event he could get the House to vote to disagree with the Senate and request a further conference, there would be no conference—since the conference has been disbanded—unless the Senate also voted to go back to conference, and there is simply no reason for the Senate to do that when they could simply insist on the Helms amendment.
>
> 4. If the Rules Committee tries to deal with this issue today, attempting to bypass the normal process, they cannot bring up the rule today without getting a two-thirds vote (an utter political impossibility on this issue.) And since the motion to concur in the Senate Amendment can be made as soon as the House gets the papers, any rule passed by the Rules Committee on this subject today would be moot by tomorrow. There remains the outside possibility of adjourning to reconvene later today, but that would cause all-out partisan war in the House, as it did the last time this strategy was used.
>
> 5. The bottom line is that adopting the Helms Amendment today forces a straight and dispositive vote on the NEA issue and the entire bill, and the issue of grazing fees CANNOT be opened up unless the SENATE (and the House) votes to open it up by voting to go back to conference.

So if my amendment is defeated this afternoon, Mr. President, it will be the result of the deal cut in the House-Senate conference, which is now commonly known around this town as the "corn for porn" deal. That deal is now being held together based on a misunderstanding of what the parliamentary situation would be if the Senator, who have supported this amendment in the past, did so again today.

I suppose it can be fairly said that this is the first time an amendment, certainly one that I have offered, has been defeated by a bunch of bull.

Before I proceed to the amendment, Mr. President, I think it is essential to correct some outrageous misstatements of fact that have been circulated repeatedly this year in an undeserved defense of the National Endowment for the Arts. These misstatements have poured forth from the NEA's apologists in the news media—and, I am sorry to say, by some Senators and Members of the House of Representatives.

Mr. President, I come from the news media. I spent most of my career in the news business before I came to the Senate. But I have never seen such arrogant misrepresentations of the facts as I have witnessed day after day, week after week, month after month, regarding the National Endowment for the Arts funding for pornography.

Reporter after reporter, show after show, cries censorship even though they know that is false. They have hidden from the public what the issue really is—that is Government support for indecency, rottenness, homosexuality, sodomy, bestiality.

I have here, available for distribution to any Senator who may want it, just one example of materials funded with taxpayers' money by virtue of a 1991 grant from the National Endowment for the Arts. I am going to hold up just one picture for this NEA-funded publication, and I am going to hold it up just briefly. Mr. President, that is one page of a publication, and on it is a blown-up picture of a woman's vagina followed by some of the crudest language I have ever seen. I might add that I am now 70 years old. I have been around the track a few times. I was in the Navy for 4 years in World War II. I have heard it all and seen most of it. But I have never seen such rottenness as the filth contained in this publication and other works supported by the National Endowment for the Arts.

Mr. President, we have passed legislation over and over again in the Senate on this issue, and it goes to the House and it comes back watered down that it is meaningless.

Now, the news media is going to chortle tomorrow morning: "Helms is defeated"—but that is all right. I have been defeated before. But I will not be defeated on the substantive aspects of this issue. I will be defeated by a deal that has absolutely nothing to do with the merits of this debate. I will be defeated by arrogance on the part of some, and again, that is all right. I cannot control that.

All I can do, Mr. President, is tell the truth as I see it and hope for the best. But I say, with all the emphasis I possess, that if I am defeated this afternoon when we are on the threshold—on the 1-yard line—of passing and sending to the President a meaningful restriction on the NEA's malfeasence, it is admittedly disheartening to be stoned when we are so close.

I have heard repeated declarations by editors and Members of Congress that the existing so-called restriction—the watered-down rhetoric that went into the law last year instead of my amendment, and which the House has sent back once again as a substitute for my amendment—takes care of the NEA's irresponsible funding of patently offensive so-called art and, therefore, there is no need for the Helms amendment. However, the truth is that the NEA's subsidies for pornography have continued and that there is a crying need for the upcoming amendment.

The amendment has nothing whatsoever to do with censorship. What we are talking about is sponsorship—using the taxpayers' money to sponsor and subsidize filth.

Senators who want to know the truth can find it in the brown envelopes right beside my desk. They are welcome to ask for one. But, I defy them to look at the materials inside and tell me that they want the taxpayers' money to pay for such smut. I was tempted to have the pages put an envelope on each Senators desk, but I can envision the wisecracks in the media tomorrow morning to the effect that Senator HELMS is handing out pornography.

See, Mr. President, the liberals in the media do not want the public to know what is at stake in this matter. No, sir. A year or two ago I ran into a situation in North Carolina where they were saying that, "Senator HELMS is opposed to Mapplethorpe's pictures and here is one of Mapplethorpe's pictures," and then they published a photograph of a lily. They did not publish Mapplethorpe's photograph of a man with a bullwhip protruding from his rectum or any of the other things that are too gross to talk about on the floor of the U.S. Senate.

So I challenged the editors in North Carolina who were being so critical of me, to the paper in Greensboro for example, I said, "Let me send you the pictures and see if you still feel that way. I ask only that you have the photographs available at your paper so responsible citizens who have an interest in the issue can see them." Of course, I did not hear back from him.

Finally, I called him. I said, "Are you going to have it available?" He said, "We run a newspaper, not a library, Senator." You see, he did not want to tell the truth to his readers.

Mr. President, the word "censorship" has been so abused in the debate over the NEA. It is not censorship to tell people who crawl in the gutter that they have no right to invade the American taxpayers' pocketbooks.

Mr. President, the existing law, which the House used to gut my amendment in the conference report—an amendment approved by 2-to-1 margin in the House and Senate—has not shut off the foul stuff the NEA is subsidizing and promoting with the taxpayers' money.

For example, the National Endowment for the Arts this year gave new grants to Holly Hughes. Senators should remember that name from last year. The NEA gave her more money for a little project that she arrogantly proclaimed "will deal with lesbian themes and there will be sexual material in this work." Yet, she got the money.

Another new grant from the NEA went to the Kitchen Theater. Do you remember that? It was subsidizing and promoting a work by a woman named Karen Finley. Do you remember her? She is the woman who last year appeared on stage in public, nude, after having smeared her body with chocolate and bean sprouts. Oh, boy, that is great art. We need to tell John Q. Public down in Lumber Bridge, NC, "You do not know art. Therefore, you just send the money. We will do whatever we want to with it."

That is what the NEA says and that is what the Congress has upheld. That is what JESSE HELMS from North Carolina is opposed to, has been opposed to, and forever will be opposed to.

More grants are going this year to numerous so-called gay and lesbian film festivals in New York, in San Francisco, and other cities around the country. Still another 1991 NEA grant was used to produce a so-called arts journal. That is the document in the envelopes in the box right by my desk. I warn Senators who take possession of the packet of this to be sure that the ladies employed by the Senate, and particularly the young people who serve as pages, are not exposed to it. I do hope Senators will take a look at it. I think they will see what I am talking about.

Mr. President, insofar as this Interior appropriations conference report is concerned, this is it, the last call, in this instance, for the Senate to stand up to decency, to insist on responsible expenditure of the taxpayers' money, and to reject the nonsense that self-proclaimed artists should have free access to the taxpayers' pocketbooks to subsidize and reward filth masquerading as art. We have been down this road many times, as I have indicated earlier.

Yet, we still have declaration by certain politicians and by the news media that it is somehow censorship for Congress to require the National Endowment for the Arts to spend the taxpayers' money responsibly.

The amendment that I am going to send to the desk shortly is the very same amendment that was agreed to by the Senate on September 19 by a vote of 68 to 28 and which the House of Representatives supported not once but twice by a better than 2-to-1 majority vote. One was 286 to 135, and the other was 187 to 133. Each of the House votes, as a matter of fact, were motions to instruct the House conferees to accept the Helms amendment. And a gentleman with obvious power in the House said, "I do not care what the House says; it is not binding. The Helms amendment is not going to be in the conference report." And he, in effect, said, "If you want this, if you want that, if you want the other thing, you had better go along with me." It does not matter about the substance of the issue.

He is determined that the National Endowment for the Arts will not be inhibited in the slightest, as is evident by the garbage that the NEA has subsidized this very year, despite these overwhelming votes in the Senate and twice in the House. The minority who oppose this amendment in the House once again succeeded in gutting the Helms amendment in conference by the process that I have just described.

And they roped in a lot of my best friends in the Senate, some of my strongest supporters in the past, regarding the NEA matter.

So, Mr. President, the amendment's opponents are reduced to using procedural dodges and back room deals, like the "corn for porn" deal in the most recent conference, because the conferees know the American people are resentful. And if you doubt it, come over to my office sometime and look at my file of letters from all over the country and every State.

I am confident that we will hear the tired old argument that while Senators may be concerned about the NEA, the Senate should not send this conference report back to the House. But that is precisely what the Senate should do, Mr. President—if Senators really want to put an end to the outrages funded by the NEA.

With this vote, Senators can put an end to years of backroom deals and parliamentary "flim-flam" by voting for the pending amendment. Then, the conference report will go back to the House for the first up and down vote ever allowed in the House of Representatives on this issue.

If the House votes in favor of the amendment—as it undoubtedly will, if given a chance—then the Interior appropriations bill will go directly to the President without going back to conference or the Senate.

Mr. President, the NEA's "hallelujah chorus" is terrified that such a vote would destroy, once and for all, the legal technicality—the phony, contrived "artistic merit" loophole—that the NEA has used to dupe the American people with on this issue since 1989. That loophole has allowed the NEA to deceive the American people into believing that the NEA's unrepentant defenders in Congress are doing something to stop the NEA's pornographic outrages when in point of fact they are doing nothing but providing an alibi for the NEA.

This transparent deception is deliberate. The NEA's lackeys have intentionally fashioned a loophole in current law that allows the NEA to circumvent each and every NEA obscenity restriction Congress has passed since 1989. So, despite the deluge of tough-sounding rhetoric in the conference report, it simply restates the legalistic and phony loophole allowing the NEA to fund anything the self-proclaimed art experts choose to call art—no matter how disgusting, filthy, and vulgar it may be. The loophole is intended to let the NEA continue doing what it has been doing.

I guess it is artistic merit that a naked woman is up on the stage with chocolate smeared all over her, or bean sprouts, or whatever it is. I do not want to censor her; I just do not want to support her. I do not want John Q. Public to be taxed to support her, but the NEA feels differently about it.

So do not tell me that the NEA is straightening up and flying right. It is not so. I know what I am talking about.

Mr President, the problem from the beginning is, as it has been, the shallow contention by the self-proclaimed art experts, that some works are artistic simply because they are vile and offensive. These experts insist that the NEA is constitutionally compelled to fund such depravity with money taken from the American taxpayers against their will.

The amendment which I shall offer shortly would, if the Senate approves it, put an end to this deceitful charade. It prohibits the NEA from paying for patently offensive materials—regardless of whether the NEA's self-proclaimed experts consider such works to be artistic. The amendment's opponents in the House know this all too well. That is why they have worked so assiduously to misrepresent the pending amendment's language and—worse still—to prevent its being voted on, ever, by the U.S. House of Representatives.

Mr. President, another difference between current law—which is not working, has not worked, and will not work—and the pending amendment is that current law uses the Supreme Court standard for putting people in jail to regulate the NEA.

What nonsense. My amendment, which has been approved by a 2-to-1 margin by the Senate and, in effect, twice, by a 2-to-1 margin in the House of Representatives, would use the Federal Communications Commission standard for regulating public broadcasts, a standard which had been upheld by the U.S. Supreme Court. Therefore, the language in the conference report, and the current law, is doing nothing more than taking a nonsensical, convoluted position that if the Government cannot put you in jail for showing it, then the NEA cannot deny you Federal grants to subsidize it.

Yes, Mr. President, I voiced concern 2 years ago—as I do now—about the assault on the Nation's fundamental values by perverted so-called artists who insist upon attacking the moral sensibilities of the American people by demanding Federal funds to advance the causes of the radical homosexual movement and other sexually deviant lifestyles.

Since I first questioned why the American people's taxes were being used to subsidize such filth, little has changed. In fact, it has become worse. All Senators, I am sure, have seen reports—entirely accurate—of the degenerate art that the NEA has supported with public funds—despite the NEA's disingenuous attempts to deny direct responsibility for all of it.

There are Annie Sprinkle, Holly Hughes, Karen Finley, the Kitchen Theatre, live sex acts, homosexual pornography, and, of course, countless homo-erotic movies, photographs, and film festivals, paid for by the American taxpayers. Since last year's debate the NEA has awarded new grants to Holly Hughes, Karen Finley, the Kitchen Theater and numerous so-called gay and lesbian film festivals featuring films with titles like "Strip Jack Naked," "Yearning for Sodom," "S&M Sex and Music," "Why I Masturbate," and even worse.

Mr. President, from burning the American flag to desecrating their own and one another's bodies, the depravity of these self-annointed artists knows no bounds. The only religiously oriented art funded by the NEA are scurrilous attacks on the Catholic Church or blasphemous insults to the deity of Jesus Christ.

The depravity knows no bounds.

Nevertheless, the same contrived pronouncements continue to pour forth from the NEA and these decadent artists who have taken control of the arts community. There has been, in point of fact, a militant disdain for the moral and religious sensibilities of the majority of the American people while these perverted artists literally laugh all the way to the bank to deposit the taxpayer's money that they have been awarded by the NEA.

I have had a lot of interesting confrontations, I guess you would call them, with television stations. I was one of the operators of a fine television station at the time I announced for the U.S. Senate in 1972, and I know these people. Or I thought I did.

I have talked to them about how about being explicit in terms of what JESSE HELMS is talking about. You know what some of them said. They said we would lose our license if we ran those pictures. Of course, they would. That is precisely the point. Yet, you see these glib, smooth backed haired guys on television talking about censorship. I heard on the radio, WTOP radio, this morning the announcer said, "Art that Senator HELMS thinks is indecent." But I got news for him. Millions upon millions of people across this land know it is indecent.

A recent article in the Media Watch newsletter took note of the fact that the major networks failed to show the most controversial NEA-funded works in every one of the 47 stories on the NEA from June 1989 to September 1991. They do not dare use them. The networks typical excuse was used for example by CNN reporter Mary Tillotson on September 29, 1989, when she stated and I quote here, "The photographs at the heart of the dispute are not appropriate for television." But she takes the position that it is appropriate to spend the taxpayer's money to subsidize and promote this garbage.

Bullfeathers, I say to the media. The photos are so rotten that no television station would dare show them.

What Mary Tillotson of CNN and other stations do not say, Mr. President, is that they refuse to show the pictures because they know the Federal Communications Commission would jerk their licenses just like that if they did. The FCC has imposed, you see, some standards that have been approved by and upheld by the U.S. Supreme Court.

In other words, Congress has passed rules—enforced by the Federal Communications Commission and upheld by the Supreme Court—to require responsibility on the part of those who select the content of the television programs.

Yet, these same TV and radio stations still denounce my efforts to have Congress stipulate by law that exactly the same set of rules apply to NEA publicly funded art that the Federal Communications Commission already applies successfully to the television broadcasting industry.

And the point is this, if the Federal Communications Commission can enforce this standard for public broadcasts, then of course the NEA, they would not like it, but of course the NEA would have to enforce it or be ridden out of its job.

Mr. President, while the TV stations conveniently hide behind their "not appropriate for television" defense because it suits their political bias in the NEA controversy, that defense was not good enough for the Pentagon when it refused the networks' demands that they be allowed to broadcast graphic pictures of dead and dying soldiers during the Persian Gulf war.

Mr. President, I have received thousands of letters and telegrams from people all over America who are outraged that their taxes have been misused to subsidize the poisoning of America's moral fabric.

We are today engaged in more than a debate about the allocation of $170-plus million. The Federal Government spends more than that every hour. What is at stake is a matter of principle—a question as to whether we will allow the cultural high ground in this Nation to be slowly subsumed by a minority of people who are out to destroy the Judeo-Christian foundations of this Republic.

So let us lay to rest the intellectually dishonest nonsense that it is censorship to call a halt to using the taxpayers' money to promote and subsidize obscenity and vulgarity—and that the American people are somehow constitutionally obliged to support a decadent artistic elite at the expense of the deeply held beliefs of the vast majority of Americans.

Mr. President, these gutter artists are free to do whatever they want to do with their own money. I have said from the beginning that anybody who wants to scrawl dirty words on a men's room wall is free to do so, provided they furnish their own crayons and their own wall.

Mr. President, the point is this: There is a clear difference between censorship and sponsorship. Censorship is when the Government bans the production, distribution, or display of materials in both the private and the public sector. What is at issue, concerning NEA funding, is a question of sponsorship—not censorship—because it has absolutely nothing to do with banning anything or sending anyone to jail. It has to do only with the Federal Government using the taxpayers' money to finance—or sponsor—crude, filthy and perverted materials.

Under the Constitution, the Government has no obligation whatsoever to compel the taxpayers to subsidize projects that are so far beyond first amendment protection that the Federal Government could ban their dissemination in the private as well as the public sector. But let it be clear that the Government's refusal to subsidize in no way prevents people from displaying or selling such materials at their own expense in the private sector.

Mr. President, my amendment probably will be tabled, because of the loss of the votes of Senators who are friends of mine who feel like they are over the barrel. They feel like they cannot vote with me today. I think I understand. I do not quite understand however, their priorities, but I will never get my nose out of joint because a friend has a different priority than mine. But I hope we can lay to rest at least this afternoon the intellectually dishonest nonsense that it is censorship for Congress to call a halt to using the taxpayer's money to promote and subsidize obscenity and vulgarity and rottenness, not to mention the fact that the American people are somehow constitutionally obliged to support a decadent artistic elite at the expense of the deeply held spiritual and moral beliefs of the vast majority of the American people.

Let me say again: Censorship is not now nor has it ever been the issue. Sponsorship is the issue.

Mr. President, I ask unanimous consent that several items be printed in the RECORD at the conclusion of my remarks: A resolution adopted by the Southern Baptist convention calling on Congress to set standards to prohibit the NEA from funding morally repugnant and inoffensive art; an article that I, myself, submitted for the NOVA Law Review last year; and an article by Andre Ryerson that appeared in the Heritage Foundation Policy Review last year.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Christian Life Commission, Oct. 31, 1991]

RESOLUTION NO. 4—ON GOVERNMENT SUPPORT OF OBSCENE AND OFFENSIVE ART

Whereas, God has ordained government to do good work; and

Whereas, Southern Baptists have historically supported the constitutional rights of free speech and have opposed undue censorship; and

Whereas, Regulation of government funding of art, or certain types of expression claimed to be art, is not censorship of the arts; and

Whereas, The Supreme Court recently stated in *Rust v. Sullivan* that government may regulate expressive activity to conform to public policy as a condition for obtaining public funding; and

Whereas, The National Endowment for the Arts (NEA) has, increasingly in recent years, demonstrated a pattern of support for obscene, offensive, morally repugnant, and sacreligious "art"; and

Whereas, The Chairman of the NEA, who is appointed by the President, has demonstrated a clear lack of sensitivity to the concerns of evangelical Christians and others regarding the funding abuses of the NEA; and

Whereas, Last year, despite pleas from evangelical Christians and others, Congress and the President failed to support legislation which would have placed meaningful restrictions on what the NEA is permitted to fund but instead adopted an ineffectual standard calling for "general standards of decency"; and

Whereas, Since last year's ineffectual action by Congress, additional homoerotic, pornographic, and sacreligious "art" has been funded by the NEA with the explicit approval of its Chairman; and

Whereas, Some members of Congress and the President continue to oppose content restrictions on NEA funding.

Therefore be it Resolved, That we the messengers to the Southern Baptist Convention meeting in Atlanta, Georgia, June 4-6, 1991, recognizing the influence which the NEA has on our culture, deplore the lack of initiative by the President and Congress in addressing the continuing abuses of the NEA; and

Be it further Resolved, That we urge the President to act immediately to remove the current Chairman of the NEA and replace him with an individual who will stop funding obscene, offensive, morally repugnant, and sacreligious "art"; and

Be if finally Resolved, That we call on Congress and the President to set standards which will prevent the funding of obscene, offensive, morally repugnant and sacreligious "art," or, if that is not done, to cease funding the National Endowment for the Arts.

[From Policy Review, Fall 1990]

ABOLISH THE NEA—GOVERNMENT IS INCAPABLE OF DETECTING ARTISTIC GENIUS

(By André Ryerson)

Imagine a government so confident of its discernment, and so oblivious of this capacity in its citizens, as to declare each year which automobile it considered the most desirable, then awarded a subsidy, say, to General Motors for its Cutlass Supreme sedan, or to Ford for its Taurus wagon. It is likely that the news media together with the auto industry, and joined by the public at large, would be scandalized. In a market economy we expect government to play the role of umpire, ensuring that fair rules of competition prevail, but not otherwise meddling in matters of private choice. This role is clearly perverted by the government's cheering for one competitor over another and giving it a seal of approval plus cash rewards. The monarchs of Britain once did so, but republican values in America forbade such royal favors as a matter of principle.

Yet in a realm far less open to laboratory testing than the automobile industry, far more liable to error in the long lens of time, where personal taste reigns with magisterial indifference to modes of scientific verification—the arts—we find our government selecting among artists which are worthy to receive public funds and which are not. That the system has provoked a scandal that has reverberated through the halls of Congress is not especially remarkable. What is remarkable is that it took this long to occur.

AESTHETICS OF SCANDAL

The National Endowment for the Arts (NEA) managed to survive outside the light of public scrutiny for a good quarter century, quietly giving grants to artists of "approved" tendencies. The public was indifferent to art that was subsidized but out of sight. In recent years, however, with the rise of photography and "performance art" to places of prominence, the awards the NEA has made in these more accessible art forms have captured media and public attention as never before. With public scrutiny, cries of indignation were not long in coming at the extreme vulgarity of many works supported by the NEA, works of varying technical accomplishment but certain to offend the religious, moral, and aesthetic sensibilities of ordinary Americans.

The downward spiral of taste that the art world has suffered in recent decades follows, in large part, from a mistake about the nature of art that arose from an accident of history. In the 19th century, middle-class mores became wedded to officious norms of academic art so that the genuine artists of the day, without trying to shock anyone and merely by creating original works, appeared as revolutionary iconoclasts who threatened the social order. Ironically, some of the most brilliant figures of what was emerging as modern art, Manet, Degas, and Cézanne, were men of middle-class values and conservative politics. Neither they nor their liberal colleagues has any intention of overthrowing the social order with their work, a fact attested to by what they had to say for their art and even more by the paintings themselves. Cézanne spoke of achieving classical ideals by handling nature through "the cylinder, the sphere, the cone, all placed in perspective," and by distilling visual essentials in a painting, "producing pictures that are a lesson." Both in creating art and collecting, Cézanne recommended not radicalism, but taste: "Taste is the best judge. It is rare. The artist addresses himself only to an exceedingly restricted number of individuals." He did not consider critics prominent in this group of the elect, though they have since come to dominate the discussion of what constitutes art. "Discussions about art are almost useless," remarked Cézanne. "The labor that achieves programs in one's own craft is sufficient compensation for not being understood by imbeciles."

Impressionist painting's "shock value"—a novel factor in art history—was clearly incidental to the aesthetic value of its works. None of the world's great art until then, through some 5,000 years of labor, had ever been certified as superior by indignant public outcry against it. But ever since the fuss that greeted Impressionism, public scandal has become a convenient "proof" of aesthetic authenticity. By dint of some very sloppy reasoning, the accidental became confused with the essential—at least for certain cultural elites—and a series of simplistic tenets took root: To express the self is to shock. Art is expression. Therefore, art must be shocking.

The shallowness of this syllogism is rarely plumbed by the gallery directors, museum curators, art critics, and foundation heads who embrace and propagate it, among other reasons, because it makes connoisseurship an instantly acquired skill. For while judging the intrinsic merit of a new work of art is extremely difficult, virtually anyone can identify which play or painting is likely to be the most shocking to the average citizen. To fall into this basic error is lamentable enough for gallery managers and theater directors restlessly in search of clients. It is wholly unacceptable as the national arts policy of a government of, for, and by the people.

MORTAL CONNOISSEURS

The case for making the NEA more discerning with the people's money has been argued by some capable politicians, including Congressman Henry Hyde (in National Review), and by thoughtful art critics such as Samuel Lipman (in Commentary). Unfortunately, they err by recommending better judgment at the NEA to clean up the prevailing mess, instead of seeing that the very enterprise of selecting certain artists to receive grants, while rejecting others, is not an appropriate function for a democratic government.

The scandal has resurrected the old question, "What is art?" It has also added a new one to the agenda, "Why have an NEA?"

People outside a given field tend to trust its practitioners with more expertise than they actually possess. Disappointment follows from discovering that doctors do not have all the right answers and occasionally have the wrong ones, that judges do not always know the law, and that professors can be narrow-minded and ignorant. The recent scandal at the NEA should add to our wisdom in this regard, since it involves state-appointed connoisseurs selecting works of art judged so superior to the norm—a man squashing beetles on his chest, a woman defecating on stage, a porn queen inserting a speculum in her vagina to offer the audience a peek, lesbians inflicting wounds on themselves to prove that ours "is a sick society," a crucifix photographed in a jar of urine, a young girl photographed to reveal her genitals, a homosexual with a whip stuck in his rectum—that these achievements deserve the gift of taxpayers' money plus the imprimatur "funded by the NEA."

The whole misadventure ought to instruct the public that artists and art connoisseurs are no less mortal than the rest of humanity, and no more to be trusted to steer the ship of art than generals are to be trusted to choose our wars.

The brouhaha at the NEA obscures, by the very outlandishness of the works rewarded, that even in the most trustworthy and mature hands, ascertaining the value of contemporary art is fiendishly difficult. A great hoax is played on the public when the belief is sponsored that objective criteria exist to discern superior art from the ordinary, the way a consumer service can test the nutrition in a loaf of bread or the acceleration of a given car. And that is why most conservative critics of the NEA, in their moderation, are at odds with the past two centuries of experience, which teach us that there is no sure compass, certainly no unbiased trail guide, in the wilds of contemporary art. At least two generations must pass before any sort of meaningful judgment can be made about the lasting value of a newly minted sculpture, painting, play, or sonata. Critics are needed, certainly, to pass immediate judgment so that we may bestir ourselves to see and hear what in time may prove enduring. But their judgment is fallible and should not be endowed with a perspective it lacks and which only time can provide.

Nor are artists themselves possessed of this gift where the assessment of other artists is involved. An anecdote from the 19th century makes the point. A young painter went to see Manet, the great inaugurator of the Impressionist revolution. The master carefully looked at the young man's canvases, then told him the hard truth. He had absolutely no talent, and ought to find some other vocation. The young man, as it happened, ignored the expert's well-intended advice. His name was Renoir.

When Cézanne was shown some paintings by Van Gogh and asked what he thought of them. Cézanne opined that they were simply the works of a madman.

We expect some professional jealousy in any field, whether among lawyers, doctors, or auto mechanics. But what makes the arts different is that technical skills that are central to other professions are not central to the value of a work of art. Cézanne got lower grades for drawing at the lycée than did his companion Zola. But Cézanne became a great artist despite his awkward draftsmanship because of the quality and power of his vision. Art, as Proust underlined, is above all not a matter of technique, but a vision. And to cultivate a unique and personal vision may well insulate the artist from the virtues of competing visions. In consequence, the presence of artists on government panels distributing grants to other artists is no guarantee against poor judgment, not to mention cabals, cronyism, networks of convenience, political log-rolling, along with ideological self-advancement. All of these charges have been made against those involved in grant-giving at the NEA.

HOW GOVERNMENT CAN HELP

But are we not obligated, as a society, to "do something" for the arts? Is art not one of the highest pursuits of the human spirit, the embodiment of ideals all too unattainable in politics or commerce? Yes. And that is precisely why the funding of the arts in a free society should follow from the accumulated choices of the people in their natural diversity, whether as individuals or corporately as businesses and philanthropic foundations. It is not the role of government to "assist" the process either by joining in the swings of art fashion that anoint one coterie today and another tomorrow, or by trying to check or balance them by throwing state influence and power behind some others.

The response of a rigorous laissez-faire capitalist to the entire question would be that art is a commodity like any other, and those who want the product should pay for it. If no one wants Jane Doe's poems or John Brown's paintings, they deserve to sit unsold. Certainly government should have no role in paying for products that no individual will buy.

As a point of departure, the laissez-faire or market argument is unassailable. Society as a whole should not pay for what no individual member of it wants. But this argument omits a consideration that does make art different from other products, namely, the unique factor of time required to assess the ultimate value of a work. The examples of William Blake, Van Gogh, Emily Dickinson, and others unappreciated by their contemporaries rightly haunt those who think about the problem. Is there no way to assist, while they are alive, those who are creating the treasures of posterity, but which the marketplace in the short term identifies only haphazardly?

Some answers are fairly easy. If we want more people to appreciate art, to visit museums with their children, and to invest their taste in an occasional print or painting, an appreciation of art is an obvious precondition. Here the function of government through the schools is sensible and desirable, within the competing demands of a school curriculum.

Closely related to art education is the preservation of our cultural past, through museums, classical theater, and symphony orchestras. While private philanthropy should be our first preference, a role for government, nonetheless, is wholly acceptable in materially preserving our cultural inheritance about which, thanks to the passage of time, rough consensus reigns. Government also has a special place in choosing the architecture of civic buildings.

It is also the case that public space and buildings can be improved with public art. Indeed, commissioning works for this purpose began with the Parthenon of Athens in the time of Pericles. More innovative modes of selection than presently prevail, however, would be a healthy turn. It would be refreshing to see (if only for experimental purposes) a simple vote by visitors to an exhibit of models placed in competition, since the voters would be self-selecting (anyone who cares about public art) whose taste, arguably, might prove more distinguished than that of many foundations, and easily of the National Endowment for the Arts.

PART-TIME WORK

Beyond these rather conventional ideas in support of art are innovations yet to be attempted. Once we honestly admit to having no institutional method for identifying greatness among contemporaries (beyond success in the marketplace), we can see that any institutional role for government should aim at helping artists as a class, rather than playing at the roulette wheel of identifying genius.

One innovation of this sort would involve the tax code, to allow artists deductible losses without a limit of years after which the activity is deemed "a hobby," as is presently the case. Another might involve collecting. If we agree that buying art is desirable but beyond the means of ordinary citizens, a tax deduction could be granted for money spent to participate in "art clubs" to buy art and circulate the works among members who share similar tastes, creating, in essence, fluid mini-museums in the private sphere. (This is how Ben Franklin launched what eventually became our system of lending libraries.)

On the supply-side of the equation, creating art is a financially hazardous choice among vocations. Yet the risk is widely understood and appreciated. The overriding desire of any artist is to secure, not money, but time—the time needed for creative work. Society has no obligation, however, to sustain every self-declared artist—although the Dutch have attempted this with a workfare-for-artists scheme, paying basic salaries and filling countless warehouses with paintings no one sees or cares about. Dutch artists themselves find the system somewhat depressing, and there appears no great push to repeat the experiment elsewhere.

What remains possible on the part of both government and business is a modest, if neglected, gem of an idea: part-time work.

Flexible work schedules have long been demanded by feminists alert to the special problems of working mothers. Industry is awakening to the need for part-time professional schedules because without them superior workers are leaving. But the concept of part-time work has much wider applications. Whole categories of people, not just mothers, would benefit from the opinion of part-time work. While some jobs are not susceptible to such arrangements, many others are, and the advent of fax machines and modem-linked computers is loosening and decentralizing the modalities of much traditional work. More fluid work schedules would also make better use of office and factory equipment than does a rigid 9-to-5, five-day week, and would also relieve computer gridlock and its attendant auto pollution and waste of time.

Yet there remains a suspicion that anyone wishing to work part-time is not to be taken seriously. However, studies reveal that part-time professionals have higher rates of productivity than the 60 to 70 percent levels of full-time workers, and in professions with high "burnout" rates, part-time professionals perform above standard.

With part-time work, both professionals and unskilled, made more available, an ambitious but unknown artist would be able to work two 10-hour days, receiving exactly half the salary and benefits of his 40-hour co-worker, and still have five full days a week to pursue his art. He would be self-sustaining, a burden on no one, accepting a more ascetic standard of living in order to pursue a creative ideal.

AMATEUR TREASURES

One can imagine an objection, nonetheless, that would run as follows: "We don't want people working less and producing less: we want them working more. And we certainly don't want a large army of persons playing at art. We want artists who are skilled, competent, in demand, and who work at art full-time. In a word, we want professionals, not amateurs.

The answer to these points is, first, that in a free society people should be able to buy a very precious commodity: time. As we steadily become more affluent in the decades and centuries ahead, more people are going to prefer time to a second or third car in the garage, whether to watch their children grow or to pursue a neglected talent. Time will be seen as the ultimate luxury, and while some will waste it, history shows that leisure has permitted many of the finest works of art and philosophy to arise. And, yes, their authors were very often "amateurs," in that no one was prepared to pay them for their work.

The list of philosophers who were amateurs begins with Socrates, who earned not a drachma for his ideas, and includes Descartes, Locke, Bacon, and Spinoza, whose livelihoods were, respectively, artilleryman, tutor, judge, and lens grinder. Poetry would scarcely exist but for its amateurs who include Villon, Keats, Baudelaire, Rimbaud, Mallarmé, Whitman, and Dickinson, who earned their living at everything from picking pockets and teaching English to working as a Washington bureaucrat. Proust was an amateur novelist, as were Jane Austen and Stendhal. In discursive writing, Montaigne was one of our more distinguished amateur essayists, as were Pascal and Thoreau. In painting, the names of Degas, Cézanne, Van Gogh, and Modigliani are emblematic of artists who spent most of their lives working at their easels without pay. Western civilization would be a sorry thing without its ledger of unpaid work and the heroism of its visionary amateurs.

DECENTRALIZING JUDGMENT

Other ideas to advance the arts need to be explored. But our ultimate goal and established truths need to be kept in view. The last thing we should want for a democracy is a government rhinoceros attempting to arrange the china shop of aesthetic preference. Nor does it matter whether the disruption proceeds from a belief that art is a tool for improving the people (the old Communist thesis of socialist realism) or from the belief that government is competent to identify genius and reward it (with grants from the NEA for "cutting edge" artists).

The distribution of grant money to a chosen few assumes a wisdom that government does not possess, and affords it powers it does not deserve. A free society naturally develops a healthy pluralism of, competing tastes and preferences, whether in cheeses, wines, books, or art. The ethos of a free society aims at decentralizing opportunities and power, not narrowing them. In diversity is strength. This applies as much to art collecting and connoisseurship as to art creation. Only by encouraging widespread, spunky and independent judgment among the public do we improve our chances that an Emily Dickinson or a Cézanne will be identified while still alive. Quite the reverse will occur by "letting the government" take care of what government is utterly ill-designed to do—discern subtlety of expression and artistic genius. Through the NEA we are fostering the worst of all worlds. We are institutionalizing the nation's taste, and doing so at the lowest level of sensationalist vulgarity.

DEATH OF PATRONAGE

The recent scandal of government funding may prove a blessing if the policy implications behind the events are plumbed to their root. The enterprise of identifying enduring art has no agreed-upon criteria, for its standards are hotly debated by critics curators, and the artists themselves. Government, least of all, is suited to select the worthies amid the crowd. Government has no special authority or expertise whatever in the arts, and its role should be one of a strictly neutral agent so far as regards the success or failure of this artist or that, this school or another.

We should recall that Shakespeare, Rembrandt, Shelley, Keats, and countless other great artists did not depend on government grants to create their works. Their support came from private patrons. Even when governments played a role, it was mainly for the purchase of art in public places—usually sculpture—the selection of which enjoyed broad support. The Church was a great institutional patron, whose place today has been largely taken by corporations and foundations. What is new in recent decades is a widely noted decline in independent taste. An elitist herd mentality has begun to steer the art support process, with timid corporations looking to the NEA for leadership, the NEA narrowly in thrall meanwhile to the "cutting edge" discerned in provocative "performance art" and whatever else enjoys the passing spotlight of New York fashion.

What is lacking today are bold patrons with genuinely independent taste. We need to think about the problem by remembering that Van Gogh sold exactly one painting in his lifetime. It would be interesting to know who the buyer was. We know it was not a museum, and certainly not a government. It was an individual with the courage of his taste. We badly need such patrons at all levels of our society, free of government attempts to steer the selection process.

We have no way of knowing how our grandchildren will judge our preferences and rearrange our museums. Some humility is in order here. We have no more wisdom about which few living artists will survive the sorting process and enter the pantheon of art than did the last century, which ignored some of the finest painters and poets of the age. In some sense, this is a fundamental condition of art. As Andre Malraux put it: "Art obeys its own peculiar logic, all the more unpredictable that to discover it is precisely the function of genius."

ART-STATE SEPARATION

The closest policy model to consider might be the government's relation to religion. The tax code grants religious personnel and institutions general advantages on the grounds that religious faith serves society in moral and spiritual ways distinct from the works of commercial enterprise. But we forbid the government from favoring one sect over another, this faith over that. The faiths and sects must compete among themselves for public favor in the marketplace of belief. The state establishes rules of fair play, but otherwise does not meddle in the free choice of individuals and voluntary groups.

The same policy should operate in the arts. The government has no business favoring one school of art over another, or awarding funds to this painter rather than to that. It lacks the competence to do so, because discernment in as personal and private a matter as art is as unsuitable to public measurement as religious faith.

An enlightened arts policy for a free society must respect the diversity that freedom creates, limited only by the frontiers of morally acceptable behavior as defined by law. Government may serve in a general way to facilitate activities deemed good. But where diversity of private taste contends, the state must stand aside.

[From the Nova Law Review, Spring 1990]

ART, THE FIRST AMENDMENT, AND THE NEA CONTROVERSY

(By Jesse Helms)

TAX-PAID OBSCENITY

America has been caught up in a struggle between those who support values rooted in Judeo-Christian morality and those who would discard those values in favor of a radical moral "relativism." As congressman Henry Hyde has said, "the relativism in question is as absolutist and as condescending self-righteous as any 16th century [Spanish] inquisitor."

For my part, I have focused on the federal government's role in supporting the moral relativists to the detriment of the religious community. I confess that I was shocked and outraged last year when I learned that the federal government had funded an "artist" who had put a crucifix in a bottle of his urine, photographed it, and gave it the mocking title, "Piss Christ." Obviously, he went out of his way to insult the Christian community, which was compounded by the fact that Christian taxpayers had been forced to pay for it.

As one distinguished federal judge wrote in a personal letter to me, when a federally-funded artist creates an anti-Christian piece of so-called art, it is a violation of an important part of the First Amendment which guarantees the right of all religious faiths to be free from governmentally-sanctioned criticism. When the National Endowment for the Arts contributes money to an artist for him to use to dip a crucifix in his own urine for public display, it is no different [in terms of church and state entanglement] from a municipality's spending taxpayers' money for putting a crucifix on the top of city hall."

The controversy over Andres Serrano's so-called "art" had hardly begun when it was disclosed that the national Endowment for the Arts also had paid a Pennsylvania gallery to assemble an exhibition of Robert Mapplethorpe photographs which included photos of men engaged in sexual or excretory acts. The exhibit also included photos of nude children. A concerned Borough President in New York City sent me a copy of an NEA-supported publication in New York, Nueva Luz, which featured photos of nude children in various poses with nude adults, men with young girls and young boys with adult women.

All of those "works of art" were offensive to the majority of Americans who are decent, moral people, Moreover, as any student of history knows, such gratuitous insults to the religious and moral sensibilities of fellow citizens lead to an erosion of civil comity and democratic tolerance within a society. Therefore, funding such insults with tax dollars surely is anathema to any pluralistic society.

This was the basis of my offering an amendment to the Interior Appropriations bill to prohibit the National Endowment for the Arts [NEA] from using tax dollars to subsidize or reward "art" which is blasphemous or obscene. Congress unwisely enacted only a severely weakened version of the amendment that does not even prohibit funding for such works as those by Mapplethorpe and Serrano—which created the controversy. Even so, this weakened amendment has been the target of unfounded and often absurd criticisms.

Opponents of the legislation often make the following unfounded and misleading allegations:

1. Restrictions on federal funding for the arts constitutes direct censorship

This is a deliberate attempt to confuse censorship with sponsorship. Such deliberate misrepresentations are intellectually dishonest.

The Constitution gives Congress the responsibility and duty to oversee the expenditure of all federal funds—including funding for the arts. The amendment originally proposed, as well as the one passed, was intended to forbid the federal government from taking money from citizens by force and then using it to subsidize or reward obscene or blasphemous art. The amendment clearly limits the issue to the question of whether the government should use tax funds in the role of a patron (sponsor) for such "art." The legislation in no way "censors" artist; it does not prevent artists from producing, creating, or displaying blasphemous or obscene "art" at their own expense in the private sector.

Therefore, sanctions comparisons between the amendment and communist dictatorships in Eastern Europe fall on their face. In communist countries everything is paid for by the government; therefore, if not approved by the government, it is not produced. Western democracies, on the other hand, rely on the private sector where ideas are left free to compete with minimal or no governmental participation.

Thus, it should be obvious to all that, despite the amendment, American artists who choose to shock and offend the public can still do so—but at their own expense, not the taxpayers'. Censorship is not involved when the government refuses to subsidize such "artists." People who want to scrawl dirty words on the men's-room wall should furnish their own walls and their own crayons. It is tyranny, as Jefferson said in another context, to force taxpayers to support private activities which are by intent abhorrent and repulsive.

The enormous response I have received from throughout the country indicates that the vast majority of Americans support my amendment because they were aghast to learn that their tax money has been used to reward artists who had elected to depict sadomasochism, perverted homoerotic sex acts, and sexual exploitation of children.

2. Subsidizing some art forms but not others (obscene art) constitutes indirect censorship

If this is true—and it isn't—the NEA has been in the censorship business for 25 years, which means that the only way to get the government completely out of the "censorship business" is to dismantle the NEA.

By its very nature, the NEA has the duty to establish criteria for funding some art while not funding others. So, those who are crying "censorship" in this regard are ignoring the defect of their logic (or lack thereof). Do they not see that, following their logic, every applicant denied federal funding can protest that he has been "censored" by the subjective value judgments of the NEA's artistic panels?

3. Is there such a thing as obscene art?

The vast majority of taxpayers would first ask themselves whether something is obscene—and if it is, then it's not art. However, some verbose art experts—and the NEA—do just the opposite. Anything they regard as "art" cannot be obscene no matter how revolting, decadent, or repulsive. As NEA's Chairman John Frohnmayer told a California newspaper. "If an [NEA art] panel finds there is serious artistic intent and quality in a particular piece of work, then by definition that is not going to be obscene."

4. Federal funding restrictions must use the obscenity definition outlined by the Supreme Court in Miller v. California?

It is important to remember that the Supreme Court has never established an obscenity definition for the purposes of restricting government funding. But Chairman Frohnmayer and the "arts community" erroneously assert that the Constitution requires that the definition in *Miller* v. *California* be used in both restricting federal funding and banning obscenity. However, refusing to subsidize something does not "ban" it. In order to BAN obscenity, *Miller* v. *California* requires the government to prove that materials: (1) appeal to a prurient interest; (2) depict in a patently offensive manner sexual or excretory activities or organs; and (3) lack serious artistic or scientific value.

Numerous cases show that the Court does not apply the same standards to government's refusal to fund First Amendment activities as it does to the government's effort to ban such activities.

For example, in *Maher* v. *Roe*, the Court stated that merely because one has a Constitutional right to engage in an activity, he or she does not have a Constitutional right to Federal funding of that activity. As long ago as 1942, in *Wickard* v. *Filburn*, the Court stated that, "It is hardly lack of due process for the Government to regulate that which it subsidizes." And recently as 1983, in *Regan v. Taxation With Representation*, a unanimous Court reiterated a litany of cases holding that restriction on the use of taxpayers' funds, in the area of expressive speech, do not violate the First Amendment and need not meet the same strict standards of scrutiny.

Thus, it is unlikely that the Supreme Court would require Congress to use *Miller* test in its entirety in order to prohibit the NEA from funding obscenity. In fact, I believe the Court would uphold a Congressional prohibition on funding for any patently offensive depictions or descriptions of sexual or excretory activities or organs regardless of the presence of absence of artistic merit.

It would be interesting if Congress should decide to adopt the *Miller* standard in its entirety because *Miller* allowed a jury of ordinary citizens to decide if something is or is not obscene. The 1989 amendment approved by Congress on the other hand, effectively grants the NEA and its elitist arts panels sole authority to decide what is or is not obscene for purposes of government funding.

Thus, the legal effect of the current law is to prohibit nothing. The NEA can cloak even the most patently offensive depictions of sexual or excretory conduct with "artistic merit" simply by deciding to fund the work, thereby making it legally non-obscene. This was precisely what the current amendment's drafters intended since they wanted to deceive the public into assuming that federal funding for obscenity had been prohibited—when, as a legal matter, it has not. Since last fall, Chairman Frohnmayer has asserted that he would and could fund the Mapplethorpe exhibit under the language passed by Congress.

5. The original Helms amendment is not enforceable

This is nonsense, and those who say that know that it's nonsense. There was nothing vague about it—and the Federal Communications Commission is having no problem making the determination that various broadcasts are indecent and/or obscene. The Postal Service is able to do the same thing concerning obscene or indecent mail. The Justice Department's National Obscenity Task Force has been able to determine what is obscene under the federal criminal statutes.

If the FCC, the Postal Service, and the National Obscenity Task Force can handle their responsibilities in this regard, why cannot the National Endowment for the Arts do likewise?

6. The amendment chills artistic expression

The "arts community" is fond of asserting that prohibiting NEA funding of obscene art will either "destroy art in America" or, at best, "lead to art which is bland." On the other hand, they also argue that the NEA has funded only about 20 controversial works out of 85,000 grants over the last 25 years. (This, by the way, is statistical manipulation, but that's an argument for another day.)

The point is this: The "arts community" cannot have it both ways. Either the NEA is funding so many controversial works that eliminating such funding will devastate the arts community—or the NEA has funded so few (20 in 25 years) that an obscenity restriction could have no more than a negligible impact.

My response to the first argument is that if art in America is so dependent on obscenity in order to be creative and different, then Congress has a duty to the taxpayers to shut the NEA down completely, thereby slowing America's slide into the sewer. My answer to the second argument is that if so few offensive works have indeed been subsidized by the NEA, why all the fuss from the "arts community"?

In summary, the National Endowment for the Arts has always had the responsibility and the duty to decide what is and is not suitable for federal funding of the arts—and that has been precisely the problem. The NEA has defaulted upon that responsibility. It has been insulated from mainstream American values so long that it has become captive to a morally decadent minority which delights in ridiculing the values and beliefs of decent, moral taxpayers.

It should therefore be evident that as long as the NEA is given the sole authority to decide what is artistic—and thus not obscene—the agency intends to continue to fund obscenity under the pretense that it is "art"—even when the taxpayers disagree. Congress, at a minimum, should use the entire Miller test by allowing a panel of lay citizens—and not the self-appointed elitists at the NEA—to decide whether patently offensive works merit taxpayer funding.

Or Congress could just adopt my original amendment, and let the "art community" continue to howl.

Mr. HELMS. Mr. President, I move to concur in the House amendment with a further amendment that I now send to the desk.

Mr. BYRD. Mr. President, before the distinguished Senator makes that motion, would he allow Senator METZENBAUM to make some remarks? We only have an hour and half between us, 45 minutes each, and the distinguished Senator has very appropriately—and I would have done the same thing were I in his place—used sometime before making his motion because the time will start running when it is on the motion.

Mr. HELMS. I understand.

Mr. BYRD. I have several speakers, and they more than can be accommodated in the 45 minutes. Will the Senator withhold and let Senator METZENBAUM at least make his remarks? I would appreciate that.

Mr. HELMS. I now have the floor, do I not, Mr. President?

The PRESIDING OFFICER. Yes.

Mr. HELMS. I will be glad to yield to Senator METZENBAUM for whatever remarks he may make, provided I not lose my right to the floor.

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I thank my colleague from North Carolina for his courtesy.

Mr. President, no one would ever say that the Senator from North Carolina is not persistent.

Mr. President, by my count this is the ninth time in 2 years that the Senator from North Carolina has seen fit to raise an issue or to offer an amendment to interfere with the operation of the National Endowment for the Arts.

We who support the arts community here on the Senate floor have bent over backwards to accommodate the concerns of the Senator about Federal funding of artistic works. We have addressed the issue of obscenity.

Nevertheless, it seems that every few months we are confronted again with yet another attack on the arts endowment, yet another amendment dealing with the issue of perceived obscenity—an issue that we clearly settled when the endowment was reauthorized last year.

Let us take a look at the history of this issue.

On July 26, 1989, just over 2 years ago, the Senate accepted an amendment offered by the Senator from North Carolina to the Interior appropriation bill prohibiting funding for the dissemination, promotion or production of obscene or indecent materials or materials denigrating a particular religion or nonreligion.

Two months later, the Senator attempted to put the Senate on record in support of his original amendment to the Interior bill. In that effort, he failed by a vote of 65 to 35.

Instead, the Senate passed by a vote of 65 to 31 a modified Helms amendment expressing the sense of the Senate that the conferees should accept modified language prohibiting funding for obscene materials.

A few weeks later, the Senate passed the Interior conference report, which included specific language on obscenity. That was not good enough for the Senator from North Carolina. He offered a stronger amendment, and it was tabled by a vote of 62 yeas to 35 nays.

The final conference agreement prohibited the use of funds for materials, which in the judgment of the endowment, were obscene.

As a result, the Endowment Chairman subsequently required artists to certify that their works were not obscene—the equivalent of an artist's loyalty oath.

I am frank to say that I disagreed with requiring an artist to have to take such an oath. But that was the practice.

This arrangement proved essentially unworkable. Many recipients turned down grants. Long time, established organizations and individuals, including the New York Shakespeare Festival, choreographer Bell Lewitzky, and the Kenyon review at Kenyon College in Ohio turned down grants rather than sign the oath. Hundreds of awardees protested the requirement.

To resolve the issue, the Senate Labor and Human Resources Committee, the appropriate authorizing committee with jurisdiction over the National Endowment for the Arts, approved a reauthorization bill in 1990.

The bill ensured that no Federal funds would be used to support obscenity, while leaving the determination of obscenity in the courts, where it belongs.

On October 24, 1990, during consideration of the Interior appropriations bill the Senate agreed by a vote of 73 to 24 to include the reauthorization language on obscenity in the appropriation bill.

At that time, the Senator from North Carolina again offered an amendment to insert content restrictions. His amendment was rejected by a vote of 70 to 29.

The Senator's second amendment forbidding the funding of material that denigrates religion passed by voice vote.

Then the Senator from North Carolina offered another amendment, which was rejected, that would have limited the use of financial aid funds.

A week later, both the House and Senate approved the Interior conference report, which included the entire House national endowment reauthorization bill—including language prohibiting funding of projects determined to be obscene.

At that point, Mr. President, many of us thought—I think the entire Congress thought, and maybe much of the Nation thought, those who have had an interest in the issue—that we have resolved the issue.

Obscene work would not be funded. If questionable work somehow slipped through, and was later judged obscene by a court under the community standards test, then the artist would have to pay back the grant. If it were determined by the courts to be obscene and had slipped through the process, it would have to be returned by the artist who had received the grant. And that artist, furthermore, would be banned from receiving future funds until the grant was actually repaid.

But that was not satisfactory to the Senator from North Carolina.

On September 19, 1991, he again returned to the floor, as was his right, and he offered, and the Senate passed, 68 to 28 still another amendment prohibiting the use of funds for materials that "depict or describe, in a patently offensive way, sexual or excretory activities or organs.

Incidentally, this is virtually the same amendment that the Senate rejected by a vote of 70 to 29 during consideration of last year's Interior appropriations bill.

What this amendment did was preempt the courts from the process. Rather than going to court to determine whether art is obscene based on the values of the local community, the Chairman of the National Endowment would make the decision—himself—and not based on whether the work is obscene—but whether it is "patently offensive" and I am frank to say I do not know how that would be determined.

A second amendment from the Senator from North Carolina, designed to split the arts community against itself by shifting NEA funds to the States, was withdrawn by him.

Nine amendments and 2 years later, we are right back where we started.

Mr. President, this Senator believes that enough is enough. Let us put this issue to rest.

This amendment is unnecessary. Despite all the unfounded and unsubstantiated rhetoric, the Endowment has a record of which all of us can be proud. For 26 years, it has had a record of unparalleled achievement as a national endowment for the arts throughout the world. There is nothing comparable.

This Endowment encourages and supports artists, and it promotes excellence in dance, theater, music, the visual arts and other fields. It has brought great works of art to Americans in virtually every corner of our Nation. The Endowment has leveraged millions of dollars of support for the arts from the private sector, and has contributed to economic development, revitalizing inner-cities, stimulating revenue, creating jobs and giving Americans a greater opportunity to enjoy, view, and participate in the arts.

Have there been some situations that maybe were questionable? Of course. They make thousands upon thousands of awards. And out of thousands of grants only a very few have been controversial. And during the lengthy reauthorization process, we did, indeed, include a number of significant reforms—reforms to increase accountability, and to prevent art determined as being obscene from being funded. It only makes sense to let the reforms have a chance to work before imposing new restrictions on the Endowment.

The Bipartisan Independent Commission established by the Congress to look into the issue specially recommended against content restrictions in the NEA grant process.

To quote from their report—and I want to emphasize, Mr. President, it was bipartisan, it was independent, it was established by the Congress to deal with these very kinds of issues.

> The Independent Commission recommends against legislative changes to impose specific restrictions on the content of works of art supported by the Endowment. Content restrictions may raise serious constitutional issues, would be inherently ambiguous and would almost certainly involve the Endowment and the Department of Justice in costly and unproductive lawsuits.

I am frank to say that I do not believe any of us in this body are in a position to say what is or what is not art. I have difficulty understanding exactly what the Senator from North Carolina wants the Senate to do.

Would he actually want to abolish the National Endowment for the Arts? In one of the amendments he had proposed it provided for distribution of the funds on a State-by-State basis and would literally have emasculated the National Endowment for the Arts. I cannot believe the Senator from North Carolina would want that. He comes from a State that has a rich tradition of cultural leadership. But if he wants to ensure that obscene works of art do not receive Federal taxpayer funding, if that be his objective, he has already won that battle. We have already done it. We do not have to do it every 3 months, or 6 months, or every year.

Mr. President, I hope my colleagues will recognize the important contributions which the Endowment has made to our cultural life and the enormous benefits that it has brought to communities throughout this country. And I hope at an appropriate time those who are handling this measure will see fit to table it, and if they offer such a motion I commit myself to support it.

I yield the floor and thank the Senator from West Virginia for arranging for the Senator from Ohio to have adequate time to speak.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. HELMS. I now move to concur with the House amendment, with a further amendment that I send to the desk.

I did not have a microphone. Did the Chair hear?

I now move to concur in the House amendment, with a further amendment that I will send to the desk.

The PRESIDING OFFICER. The pending amendment is Senate amendment 130, so that motion is not in order at this time.

Mr. HELMS. I yield the floor.

Mr. BYRD. Mr. President, may we have a reading of the amendment?

Mr. President, I ask unanimous consent that the pending amendment, which I believe is No. 130, be temporarily set aside so that the Senator may be allowed to go to the next amendment, which is 164.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1299 TO AMENDMENT IN DISAGREEMENT NO. 164

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1299 to Amendment in Disagreement No. 164.

At the end of the amendment, add the following:

"SEC. . Notwithstanding any other provision of law, none of the funds made available to the National Endowment for the Arts under this Act may be used to promote, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs.".

The PRESIDING OFFICER (Mr. FOWLER). The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The Chair's understanding is that there are, by agreement, 90 minutes allocated for this amendment equally divided between the managers of the bill, proponents of the bill and the opponents.

Who yields time?

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Illinois 2 minutes.

The PRESIDING OFFICER. The Senator from Illinois [Mr. SIMON] is recognized for 2 minutes.

Mr. SIMON. Mr. President, I voted for the earlier amendment that was offered by the Senator from North Carolina and, while I shall support the chairman of the Appropriations Committee, who also serves as chairman of the subcommittee of jurisdiction here, one very specific item that did concern me was a Journal that was shown to me that was gross, crude, it violates the most elemental standards. But on checking into it further I discovered that the National Endowment for the Arts requested the money, $1,400 for that, requested that be returned, and it is in the process of, if necessary, litigating on that.

It does seem to me that the National Endowment for the Arts is handling its responsibility as it should.

As has been pointed out, there are about 85,000 grants that have been made by the National Endowment for the Arts, about 20 of which have been controversial. That, frankly, is not a bad record.

Again, I do not defend for a moment money going for this kind of a journal it should not have gone for. But that was not the intent of the grant. Those who received the grant apparently violated, clearly, the express understanding, written understanding with the National Endowment for the Arts.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I yield myself such time as I may require. I am obliged to respond to my friend and neighbor, the distinguished Senator from Illinois.

Inside the packet we are talking about is the publication he was talking about. It is called "Performance Journal 3," which was produced by an organization called "Movement Research," in New York City.

Movement Research received a $4,400 grant from the NEA this year to provide, "general services to the dance field," and to help publish this so-called journal which, by the way, goes out free of charge to about 15,000 people.

Mr. President, I have highlighted certain sections of this disgusting journal that Senators may find of interest, including the following:

Explicit nude photos—taken by NEA-funded porn star Annie Sprinkle—of surgically created hermaphrodites (people with both male and female sex organs.)

Nude photographs and articles featuring a variety of so-called "gender confused" people including transvestites, transsexuals, cross-dressers, and—a new one on me—"transgenderists."

A fictional story, written in the first person by Lazarus, describing his homosexual liaisons with Jesus both before and after His resurrection.

A full-page ad—two thirds of which consists of a photograph of a vagina and accompanied by the large caption, "Read My Lips Before They're Sealed."

Yet another ad urging readers to join a Washington, D.C. protest against President Bush's "murderous inaction" on AIDS.

Mr. SIMON. Will my colleague yield?

Mr. HELMS. I will in just one moment.

There are numerous other equally sickening passages and depictions that are also highlighted.

To get specifically to what my friend from Illinois was saying, it is true that the NEA is now trying to get $1,400 of its money back—the amount NEA's auditors say Movement Research used to create this publication. Of course, the NEA and others now cite these actions as an example of how last year's so-called obscenity prohibition is working. It is not working.

And that is absolutely untrue. I do not doubt the sincerity of my friend from Illinois, but I say to him, he is sincerely wrong, because as the NEA's letter to Movement Research and the Washington Post article in the Senators' packets acknowledges, the NEA did not—did not—try to get the taxpayers' money back on the grounds that the publication violated last year's obscenity standards.

In attempting to get these tax funds back, the NEA was forced to resort to another part of the law that prohibits the use of Federal funds to lobby Congress together with two technical errors Movement Research made on its application for NEA funding. That is a far cry from doing anything effective about the real issue.

The NEA did not—and could not—try to recover its money on the grounds that the publication is disgustingly offensive because under current law, which the House of Representatives substituted for the Senate language approved overwhelmingly by the Senate on September 19 in the pending conference report, the language in the conference report now pending. The fact is, under current law and the conference report, for the NEA to succeed in recovering the money on the grounds that a work is obscene, an artist must first be arrested, a jury must then convict him or her of producing criminally obscene materials, and, finally, even after the conviction, the NEA must then wait until the convicted artist has exhausted all of his or her legal appeals.

Now what kind of enforcement is that? What all that means is that if Movement Research had left out the one sentence in this sickening journal that urged its patrons to contact their Senators, and if it had fixed the two somewhat arbitrary determinations of technical violations as cited by the NEA, the NEA would be powerless under current law, and under the language in this conference report, to even try to get the taxpayers' money back.

I know the Senator from Illinois did not know that. Otherwise, he would not have represented it to the contrary.

However, if the pending amendment were now law, the NEA could recover the taxpayers' money—without having to resort to back door, after-the-fact, technicalities—because this publication obviously contains material that "depicts [and] describes, in a patently offensive way, sexual or excretory activities [and] organs—material and descriptions that would be prohibited under the pending amendment.

Mr. President, the NEA obviously thinks that the activities of the crowd that put this garbage together is high art and that average Americans should be compelled to subsidize them out of their paychecks because the NEA has given movement research a grant almost every year since 1984.

Now is the time to put a stop to such outrages. The fact that the NEA was forced to resort to technical violations to get its money back shows beyond a doubt that the current law embodied in the conference report is totally ineffective. If Senators want a real law that will stop these outrages—instead of tough-sounding but ineffective verbiage—they should resoundingly support the pending amendment.

Mr. President, I yield the floor.

Mr. BYRD. Mr. President, how much time does Mr. Jeffords want?

Mr. JEFFORDS. I inquire whether I can be allocated 5 minutes of time.

Mr. BYRD. Mr. President, I yield 5 minutes to the distinguished Senator.

The PRESIDING OFFICER. The Senator from Vermont [Mr. JEFFORDS] is recognized.

Mr. JEFFORDS. Mr. President, first let me respond to the Senator from North Carolina with respect to the particular work he was referring to. I have talked to the Chairman of the Endowment, Mr. Frohnmayer. He assured me the NEA is taking action in order to prevent the kind of abuse that has occurred with respect to the utilization of Endowment funds, and that the Endowment has made provisions in its contracts and grants which allow for review, to protect the public against such misuse.

So the fact that it was brought under the terms of the grant rather than under the legislation is not important. The important thing is that because of the actions of the Senator from North Carolina and the votes of this body and others, action is being taken by the Endowment in order to protect against abuse, and they are seeking the return of the funds. I wanted to make that clear.

Before going on to the Endowment, I would just like to make a couple of other small points about the conference report that we have before us.

First, Mr. President, a small but important item. Seventeen of my colleagues and I sent a letter to Chairman BYRD and Senator NICKLES urging them and fellow Senate conferees to recede to the House funding level for the Energy Information Administration's [EIA] "State Energy Price and Expenditure Report." The House provided $75,000 for that report.

The conferees instructed EIA to continue publishing the "State Energy Price and Expenditure Report," but did not provide funds for doing so. The "State Energy Price and Expenditure Report" is a very important document. It just happens that they have taken this up on the same day the energy bill was discussed. It is ironic we would be talking about both today. EIA is supposed to find the money from other accounts.

I find it ironic that we have commenced debate on S. 1220—comprehensive energy strategy legislation—but are unwilling to appropriate modest sums of money so EIA can provide us with the information we need to make informed energy policy decisions. The "State Energy Price and Expenditure Report" provides the only data of that sort available at the State level. I think we are being "penny wise and pound foolish" in this regard.

Second, Mr. President, the conference report does not contain any increase in the fee for grazing on Federal rangelands.

For the second year in a row, the conference committee has come back with directions to the committees with jurisdiction to take action. I bring that out because I know at the time I was arguing this issue, with the Senator from Ohio, a number of my colleagues came to me and said, "we would vote with you because we realize that this is wrong, but, we have the word of the people who are involved with this that they are going to solve it in the conference report * * * they are willing to make changes. Thus, we will not vote with you."

I just want to point out to those colleagues who gave me that reasoning, again, we are going to have to revisit it, hopefully, and make everyone aware that the appropriate committee, the Energy Committee, should bring out something to help us in that regard.

Finally, again, I want to go back to the NEA. I am not going to repeat the arguments that have already been made but I will just point out again that we are talking about aberrations in the normal situation, only 20 out of some 85,000 grants have raised the kind of problems that we see. It is just something that disturbs me to think that we have to keep bringing this up because I am a strong supporter of the NEA. It has greatly enriched America's society.

It has supported artists and writers. It has brought the arts to communities in America that otherwise would not benefit. It has initiated arts programs in schools.

Some claim that the current funding patterns of the NEA favor large cities to the disadvantage of small communities. Again, I say, wrong. As a Senator from the State of Vermont—a State which 47 other States outsize—I fully support the current funding patterns of the NEA. Let me cite a few examples of the good work NEA has sponsored in Vermont recently:

In 1990, the NEA provided a grant to the Vermont Council on the Arts to launch an arts program for rural Vermont school districts.

In 1991, NEA grants have supported the Vermont Mozart Festival, the Flynn Theatre for the Performing Arts, the Marlboro School of Music, and the Catamount Film & Arts Co.

The NEA has also funded a workshop to support the art of elderly and rural Vermonters and a project to preserve art and historical collections throughout the State.

These are just a few examples of recent NEA grants in my State. These grants help children, rural Vermonters and elderly citizens. These grants bring classical music and dance to the small cities of Vermont. These grants are what the National Endowment for the Arts is all about. It is not about a few aberrations which occur because of the vast number of people who benefit and take advantage of the various grants that we have.

Let me turn now to the underlying political issues. We are elected to defend the principles of the Constitution, not to bend with every whim and wind that may blow to raise discredit upon these fine programs.

Our Nation was founded in order to guard the right of individual Americans to say what they want to say and to pray where they want to pray. The Congress of the United States of America should not be party to any effort that curtails these rights. Courts of law shall determine what is and is not obscene, not the U.S. Senate.

As an American citizen, I would rather be offended by the works or words of a fellow free American than have my own rights of free speech abridged.

As an American citizen, I do not want to support mundane and mediocre art simply because it offends no one. I want to be challenged and inspired. Let us not reduce art to a painting of an owl on a rock simply because it offends no one. It also inspires no one.

Of course, the opinions of some are going to be offensive to some others. Of course, artists worth their salt will venture into new areas—areas which may uplift us, mystify us or make us downright angry. That is a price America has always wanted to pay to preserve its freedom, its freedom of speech and expression. I take my hat off to the NEA for finding 84,980 projects to fund that did not create controversy but created inspiration and help to our arts. This is a remarkable accomplishment.

It is America's willingness to challenge the status quo and conventional wisdom that has fostered America's great contributions to the arts and sciences. Because we allow our citizens to think and create and invent whatever they want, our Nation has soared. Let us not now be party to any legislation that would clip those wings. Let us not become slugs, afraid to look up, afraid to try, crawling where we once flew high.

I yield the floor.

The PRESIDING OFFICER (Mr. CONRAD). Who yields time?

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Nevada. How much time does he require?

Mr. REID. About 6 minutes.

Mr. BYRD. Mr. President, I yield 6 minutes to the distinguished Senator.

The PRESIDING OFFICER. The Senator from Nevada, Mr. REID, is recognized for 6 minutes.

Mr. REID. Mr. President, I endorse final passage of this conference report on this very major appropriations bill. The issue of disagreement over specific issues always exists when a number of people gather to resolve their differences over questions of immense proportion and significance, such as the items in this report. But we should not commit what Mr. Eulau referred to as ecological fallacy, what some of us refer to as not being able to see the forest for the trees.

This legislation is about the future health care and education for thousands of Native Americans, such as the Dunseith Elementary School Expansion and the Eastern Cheyenne River School new construction in North Dakota. These are real projects that help real people. And the Crow Montana Indian Hospital in Montana, the Indian Hospital being built in Wager, SD, and the Native American Culture and Arts Program in Hawaii are a few of the examples of programs that absolutely must go forward if we are to provide adequate services for Native Americans in this country.

We have a lot of problems, Mr. President. We talk about what needs to be done with the Kurds in Turkey and Iran and Iraq. But let us start talking about people who live in our country who need help. This legislation helps people. The status of Indian schools in this country is a disgrace, a national disgrace, and this bill is doing something to solve some of those problems.

Mr. President, there is in this bill money for an Indian school in the State of Nevada, Pyramid Lake Indian School, a school that is so old parts of it have been condemned. This school is in such bad shape that they have to have school on different parts of this spread-out campus, using the word very liberally, but people have to cross a major thoroughfare to go to parts of the school. The school does not have many students in it now. Why? Because it is such a disgrace, not only to Native Americans but to people of the State of Nevada, and it should be a disgrace to the people in Washington, DC, who serve in this administration and this Congress.

So this legislation does something to help people in America. This legislation makes provision to upgrade and protect the future of many of our national parks, such as the Big South Fork National River and Recreation Area in Kentucky, the Canyonlands National Park in Utah, the Everglades National Park in Florida, the Council Bluffs National Trail Center in Council Bluffs, IA, the Hawaii Volcanoes National Park in Hawaii, and, yes, Mr. President, the newest national park of them all, the Great Basin National Park in Nevada, to name just a few of the things this bill does to improve national parks in this country that have been neglected over the last decade or two.

This legislation provides research and resource management moneys for national forests in this country, programs in Nebraska like the agroforestry program in Lincoln, and a biodiversity program in Grand Island, NE. In the Pacific Northwest there is the Mount Saint Helens Visitors Center, which we know is so important in that part of the country.

Mr. President, this legislation is about providing jobs; protecting endangered species; fire suppression in our national forests; land acquisition in environmentally sensitive areas, areas that, if we do not do something with this bill this year, will be subdivided and lost forever to this country; protection of wetlands. Mr. President, this legislation will help preserve a place in Nevada that is not important to Nevada only but important to the entire country because it is preserving part of the great North American flyway. We are having fewer and fewer waterfowl migrating south. Why? Because of the stillwater marshlands in Nevada that have been destroyed by virtue of what is happening with diverting rivers and things of that nature. This legislation will provide the ability for waterfowl to go south, so to speak. It is so important. Because of this legislation, the first freshwater in 80 years will go into that marshland.

Surely the Members of this body have the wisdom and vision to see that this bill is not about a few special projects or interests, nor should it be reduced to a debate on specific ideological differences.

It should be abundantly clear that I do not support pornography, nor does anyone in this Chamber support pornography. I have supported time and time again my friend from North Carolina with the amendments he has offered, which we refer to as the Helms amendment. I do not appreciate, respect, or want to look at some woman that is stripped naked and has smeared her body with chocolate, but as has been indicated, Mr. President, and will be indicated, that is a small minority of what the NEA does. Whatever it does and allows is too much, and I want to work with my friend from North Carolina to stop that. But it will not be stopped. We worked in that conference for not hours, but days, trying to work something out, and we were not able to preserve the Helms amendment. We tried. We were not able to do that.

We have here a compromise. That is what legislation is about. I have voted with Senator HELMS. I have voted with Senator HATCH.

Mr. President, may I have an additional 2 minutes. I ask the chairman of the committee for an additional 2 minutes.

Mr. BYRD. Mr. President, I am going to have a little difficulty with time. I yield to the Senator 2 additional minutes.

Mr. REID. I supported Senator HATCH, along with 64 other Senators, during the debate. I cast that vote because I share the concern that many of you have about the present method by which grants are made by the National Endowment for the Arts for certain projects that many of us consider obscene.

I will continue to support efforts to resolve that problem with my colleagues, but we cannot let this bill go to the House of Representatives. I have served there. The Rules Committee is all powerful over there. They will find a way, if this is sent back, to put other matters that are contentious back into this bill and will cause many of us to lose things that are important to this country and to our respective States.

This legislation is important for the people of this country, and I think the conferees who worked with this arduously and diligently should be patted on the back for the work that was done in being able to arrive at a bill that we now have in this process. I extended my hand, after we finished that conference, to the chairman of the Appropriations Committee from this Senate, who was able, with his experience and his wisdom, to get us to the position we now are. The chairman of the Appropriations Committee certainly does not approve pornography, nor does any person on this committee and in this body.

So I think this body has an obligation to pass this extremely important appropriations bill and send it to the President for signature without further delay.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I yield—how much time does the Snator from New Mexico want?

Mr. DOMENICI. Five minutes.

Mr. BYRD. I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, let me say at the outset so there will be no misunderstanding, I normally support Senator HELMS. Today, I will not. I will support the chairman of the committee, who will attempt to table the amendment.

I hope that everyone understands that in this situation we have tried our best to uphold the Senate position. We went to conference. There were many difficult issues. Senator HELMS wanted to change a statute which is just 1 year old, that is, the basic underlying law is 1 year old. Senator HELMS wanted that law changed, and most of the Senators wanted it changed, but there were many things in the bill that we had to work out. And as it turns out, the two most contentious issues were resolved, one in favor of the Senate, and one in favor of the House. It turns out that on the NEA issue the situation was resolved in favor of the House. On another issue that was important to many here, it was resolved in favor of the Senate.

Frankly, I am convinced that because the issues are so contentious, and we are well into the year—actually, this law should have been passed by October 1—I am certain that if we send it back to the House, we will be in this particular muddle for days and weeks to come, and the outcome on many issues that have already been resolved will again be in question.

So it is with regret that I suggest we leave the law for NEA alone and that we ask the Chairman of NEA, Chairman Frohnmayer, to enforce the law as best he can with vigor and with concern. It might come as a surprise to some that this law that we wrote 1 year ago, while it is difficult and onerous and hard to interpret, has worked both ways, believe it or not. There a number of law suits pending against the NEA for enforcing this law, just as there are some who are very concerned because some of the art that is funded, indeed, seems not to fit their idea of what is the kind of art for which taxpayer funds should pay.

I do not support the proposition that things we pay for with taxpayers' dollars, that we can otherwise say we are not going to support, are entitled to all of the constitutional protections. I do not believe that for a minute. I do not think the Supreme Court is ever going to say that. But I do think this is a tough area to administer.

I think those who are running NEA ought to understand in our handling of these issues that we are serious about administering this law. That means that NEA should be tough, and should give the benefit of the doubt to the statute and to the Congress, which is clearly concerned about taxpayer support for the kinds of things that the average public would not want around or care to see.

Again, may I say, whereas I would normally support the distinguished Senator, Senator HELMS, I am not today because I think we ought to resolve this conference. We ought to finish this bill. One big issue went our way, one big issue went the House's way, and we have finished the bill.

For those who are wondering about this bill, it is an excellent bill. You can argue the issue I have just discussed, but this is an excellent bill. There are many appropriations bills that are spending more than they should under the budget agreement by delaying outlays until next year. Of delayed appropriations, this bill has $37 million in outlays of that kind of funding. That is not very much for the huge expenditures in this bill. It is done because there was no other way to handle certain Indian claims settlements.

I might suggest that most matters have been resolved in favor of good, sound fiscal policy. This is probably the leanest appropriations bill that we had. It had less in funding increases, and we accomplished more with these funds because of the prudence of those putting the bill together, and the help and cooperation of the Senators and all of their staffs.

It seems to me when you have a bill that is this good, the major issues of contention have been resolved, one for the House and one for the Senate—and I repeat, we are only talking about a 1-year-old statute on NEA that the Senate sought change—it seems to me that we should wind this matter up, finish the bill, pass it, and send it to the President for signature.

Let me suggest before I close that I am not going to be saying such kind words about other bills in terms of the overall budget and the 5-year budget agreement. The two remaining bills may put significant pressure on next years spending caps. There will not be any point of order against those bills.

In the House, I have heard many Members say, Mr. Chairman, that we should cut Defense spending more; that is what we are hearing. Well, in the House Defense appropriations bills, they have delayed appropriations of over $2.4 billion in Defense outlays until next year. In other words, they spent every penny we allocated them, and then took $3.3 billion more in program spending and said we will provide these funds later in the fiscal year. That is not very consistent with wanting to cut defense, I say. It seems to me they cannot, even with what they have, stay within their spending allocation. They want more.

The Senate did not do that, but the House did. The Senate, however, did the same thing in the Labor, Health and Human Services, and Education bill I must admit. We do not know the final numbers yet. We have very significant increases for domestic discretionary spending in that bill. That was not enough either. The conferees have delayed the obligation of some $4.3 billion in budget authority until late in the fiscal year, shifting perhaps $3 billion in outlays until fiscal year 1993. We will talk about that at another time.

I raise this issue because this bill does not use this budgetary device. When you get a bill that was already very restrained—and I have to compliment the chairman and the ranking member, Senator NICKLES, for the fine job they have done—you have to pass the bill they bring back from conference and take their recommendations.

So I hope the Senate will do that. The contentions about NEA, and whether its activities under its charter are right or wrong, will live to be argued another day.

I yield the floor. I thank the Chairman for the time.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. HELMS. Mr. President, I think I will suggest the absence of a quorum, and hope that it will be charged equally to both sides.

Mr. BYRD. Mr. President, I would not want it to be charged equally. I thought the Senator from Indiana wished to speak.

Does the Senator wish their side to take two in a row? Very well.

Mr. WIRTH. Will the Senator from North Carolina yield to me 5 minutes while we are waiting? Would that be agreeable to the Senator from North Carolina, from the time allocated to him.

Mr. HELMS. I have to inquire which way the Senator is going to vote.

Mr. WIRTH. I have some statements to make about the amendment offered by the distinguished Senator from North Carolina.

Mr. HELMS. Pro or con?

Mr. WIRTH. Just questions and observations about the amendment. I do not intend to make any statements pro or con on the amendment, but only to make observations about the amendment.

Mr. HELMS. My friend will understand that our time is limited, too.

Mr. WIRTH. Mr. President, rather than have the time charged equally to both sides, I thought we might use this up in a constructive way.

Mr. BYRD. Mr. President, I yield 5 minutes to the distinguished Senator.

Mr. WIRTH. I thank the distinguished chairman of the committee.

Mr. President, first of all, I ask all the ladies employed by the Senate, and young people who are here as pages, to shield their eyes as they were asked to earlier today. Mr. President, I know there is a lot of very careful and legalistic thought about this amendment, but there are other things, Mr. President, that must be said about this amendment.

So, hoping that people are shielding their eyes, Mr. President—Mr. President, if I might, this is a reproduction of a Titian, Venus with a Mirror. Titian was a very fine Venetian painter, Mr. President, and probably dominated Italian painting in the 16th century. This particular work, could not have been supported with Federal funds under the amendment we are discussing on the floor today.

More recently, if you would shield your eyes further, Mr. President, we have here Toulouse-Lautrec, A Paris Street Scene, painted in the late 19th century. This distinguished painter could not receive Federal support to complete this work.

I am sorry that the distinguished author of the amendment is not here. Let me, if I might, turn this back around so people will not have to see this painting.

Mr. President, let me enter into the RECORD, an editorial from the Denver Post, which I will paraphrase. It comments on the amendment offered by the Senator from North Carolina which states:

> No appropriations are to promote, disseminate or produce materials that depict excretory activities or organs.

Mr. President, had the supporters of this amendment ever passed a basic biology course, they would have known that the skin is classified as an organ of the body——

Mr. COATS. Will the Senator from Colorado yield for a question?

Mr. WIRTH. When I am finished, there is lots of time—and that perspiration, among other natural functions, is unquestionably an excretion. Of course, deodorant companies spend millions of dollars each year to convince consumers that sweat is patently offensive.

Our Government could not fund a Titian which pictures skin, or Toulouse-Lautrec, or any of a number of other items.

What else might happen if we enact this amendment? The absurdity of this comes home to us when we look at great pieces of Western literature. From Cervantes' second book, which I have earned with the sweat of my brows, the National Endowment for the Arts would not be able to support such literature. Or, even Shakespeare. We all know from our high school course, the critical question, To be or not to be, and two-thirds of the way through that it refers to grunt and sweat under a weary life.

That sort of thing, reference to an excretory organ, we would not be able to support, or have in any kind of exhibit, or have in any kind of a library, because sweat or skin may very well be patently offensive to someone in the Government, and we could not support it.

Think about it, Longfellow, "His brow is wet with honest sweat. He earns what-e'er he can," would be outlawed as well.

I understand the legalisms involved here, but who are we to be making this kind of a judgment? We have some basic freedoms in this country, and the reason for us to be offering this kind of amendment, and in fact taking it as seriously as we do, escapes me, as it should all Americans, who are looking at what we do in this institution.

I close with a couple of sentences out of this very fine editorial: "We would hope that all Members of Congress will join in proving that the honest sweat of American citizens smells far better than the censorship of this amendment."

Mr. President, this amendment ought to be turned down. We should not tolerate this sort of thing on the floor of the U.S. Senate or in our democratic institutions.

I ask unanimous consent that the Denver Post editiorial be printed in the RECORD and I yield the floor.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Denver Post, Oct. 23, 1991]

HELMS' NO-SWEAT CRUSADE

Jesse Helms, who is to high culture what Nero was to fire prevention, has now launched a new crusade to drive sweat out of American Life.

Seeking anew to gut the National Endowment for the Arts, the Tarheel Trogolodyte persuaded Congress to add language to the NEA appropriation that bans using money "to promote, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs."

Had Helms ever passed a basic biology course, he would have known that the skin is classified as an organ of the body—and that perspiration, is unquestionably an "excretion." And, of course, deodorant companies spend millions of dollars a year to convince consumers that sweat is "patently offensive."

Ergo, it is now against the law in Jesse Helms' America to take a picture of anyone sweating. Not to mention crying, bleeding, sneezing or (gasp) blowing his nose. By Helms' lights, even Norman Rockwell is a pornographer.

Incredibly, Colorado Sen. Hank Brown voted for this latest Helmsian stupidity, though Tim Wirth voted to defend the right to sweat. In the House, Reps. Pat Schroeder and David Skaggs voted against Helms, but those faithful Four Horsemen of the Right Guard—Campbell, Hefley, Schaefer and Allard—all backed the no-sweat amendment.

When this latest Helmsian idiocy comes back to the full House again, we hope all of Colorado's delegation will join in proving that the honest sweat of American citizens smells far better than the stinking censorship of Jesse Helms.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I do not know what amendment the Senator from Colorado is talking about. He certainly is not talking about mine. I am sorry he is offended by these works of art. I do not believe the Senator has even read the amendment.

Let me read the amendment for his edification: "Notwithstanding any other provision of law, none of the funds made available to the National Endowment for the Arts under this act may be used to promote, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs." If he thinks that is covered by this amendment, he better think again.

I yield to the Senator from Indiana such time as he may require.

Mr. COATS. Mr. President, I found the presentation of my colleague from Colorado somewhat—well, very disingenuous and somewhat amusing. The Denver Post obviously has not read the amendment of the Senator from North Carolina either, because to draw an equivalence between the works of art displayed by the Senator from Colorado, and what the Senator from North Carolina is attempting to restrict the use of taxpayers' dollars to fund, is laughable.

Anyone who takes 5 seconds to examine the types of so-called works of art that the NEA has funded with taxpayer dollars and compares them with what is being portrayed as objectionable here, and what the Senator is attempting to eliminate, which by the way, the Senate has done in an overwhelming vote this year, and the House has endorsed by a more than 2-to-1 vote in instructions to conferees on two separate occasions, to draw the equivalence between the recognized works of art that the Senator from Colorado displayed and what the Senate is attempting to restrict is almost beyond comprehension. I do not think it is a serious attempt to get at what I believe is a very serious question.

This debate really should not be necessary, Mr. President. The specific language of the amendment that we are debating and discussing here today was overwhelmingly passed by the Senate this year by a vote of 68 to 26. The House of Representatives, as I indicated, on two occasions, back to back, supported, by a more than 2-to-1 margin, the vote of the U.S. Senate.

It is incomprehensible to me, and I think to most Americans, how a small group of Senate leadership in a conference could reject not only the will of the Senate and the will of the House, but clearly the will of the people, as expressed by votes of their representatives in both the Senate and the House.

But we now find out, I guess, why that happened. A deal was made. As so often happens when this body or the House passes something that clearly expresses the will of the body and the will of the people, a small group of people meet in a secret room, not open to the public or press, and decide that their conclusions, their will, is more important than that expressed publicly by the elected representatives of the people.

So a deal was cut. A deal was cut that made the equivalence between——

Mr. REID. Will the Senator yield?

Mr. COATS. When I finish, I would be happy to.

Mr. BYRD. If the Senator will yield, the meeting was not in a closed room. It was open to the press. All of the formal meetings of the conference are open to the press.

Mr. COATS. I stand corrected. I thank the chairman for correcting me on that. I made the assumption that had it been open to the public, perhaps that agreement would not have been made. That was an incorrect assumption. I thank the chairman for bringing that to my attention.

The point I want to make is that I find it difficult to believe that there is an equivalence between something that this body and I think the American people in an overwhelming way have found very offensive and totally inappropriate use of their tax dollars, and a provision determining whether or not we would increase the amount of grazing fees paid to the Federal Government. But apparently that agreement was made, and I think that is very unfortunate.

I think Americans have lost their patience with the process by which we make these decisions, even when their mandate is clear. When relief appeared to be in sight as to how we would deal with this question, it seems to me that politics got in the way, and now we are reduced to the alternative of explaining to the American people that, well, yes, we understand that you are frustrated with how your money is used to fund some of these projects and, yes, the Senate did express that frustration in a vote and, yes, the House did the same. But, you see, an arrangement had to be made in order to get the bill out of conference, and in order to protect the current level of grazing fees paid by some Western States to the Federal Government, we had to drop this provision.

The point here, Mr. President, as opposed to what the Senator from Colorado indicated, this is not a question of whether or not an artist has the right of expression under our first amendment to create any kind of junk that he wants. If he wants to create stuff that I would find offensive, and most Americans find offensive, then I suppose he, within certain very limited restrictions, has the right to do that. This is the question about whether the taxpayer should pay for it. If somebody wants to go in their garage and create a piece of junk, I suppose that is just fine, but I do not want to pay for it, and my constituents do not want to pay for it, and we should not ask them to pay for it.

What we are asking the NEA to police is this outrageous practice—however limited it is—of saying: We will take the taxpayers' money, and we cannot put any restrictions on what is done, or what it is used for; that to do so would somehow take away an artist's right of free expression. All we are saying is: Not with my money. All I am saying to my constituents is: not with your money. That is what they want me to say.

This question of saying: It is just a few places out of a big total—that is a disingenuous argument. That simply says that just because there are a few pieces of rotten stuff out here, we have no obligation to deal with it.

Most of you know what is pretty good. If a little bit of it is rotten, then by percentage we have not reached the threshold where we ought to do something about it. But I think what the American people are saying is that we do not want to pay for this kind of stuff, period. I do not care if you use one piece or a thousand pieces. When something is as morally and patently offensive as some of the material that has been approved by the National Endowment for the Arts, we do not think that is an appropriate use of taxpayers dollars. We have a higher priority use for that.

Mr. President, I think it is instructive to make sure we understand the distinction we are making here because the proponents or those that oppose this amendment are trying to couch this argument along the line of taking away someone's right of free expression. This Senate is not an art critic. It should not be an art critic. I do not want to put myself in a position of determining what is offensive and what is not offensive and what is art and what is not art.

All I know is I am a steward of the people's resources and they send me here to make judgments about the wise use of those resources. I could spend a lot of time on this floor illustrating how we have not wisely used those resources. But certainly we have the right to make a judgment to put minimal restrictions on an agency that is utilizing the taxpayers' funds. The key words here are "patently offensive."

The material that the Senator from Colorado—and I am sorry he is not on the floor here to engage me in a discussion and debate on this—but the material that the Senator from Colorado has displayed clearly is not patently offensive. It is a recognized work of art. Clearly, this amendment has nothing to do with sweat glands. Why the Denver Post chose to take this line of reasoning is beyond me.

But the word "patently" as defined by Webster is "obviously" or "clearly." And the word "offensive" means "obnoxious" or "disgusting"; "obviously disgusting", "clearly obnoxious", and I think when we ask the director and the board or whoever makes these decisions at the National Endowment for the Arts, when we ask them to apply this reasonable standard, surely that is a reasonable request made by this body.

Finally, let me just repeat again, Mr. President, we should not even be having this debate. We have had this debate. The Senate has heard both sides. They have voted by a more than 2-to-1 margin; 68 of our colleagues have said we agree with the amendment of the Senator from North Carolina. Our colleagues in the House, all 435 of them, by a more than 2-to-1 margin, not once but twice so they could make their point, instructed the conferees not to drop this language, and it was traded because in return a few cents increase in the grazing fee was dropped.

So to protect the grazing fees paid by westerners for their livestock, we have dropped a provision which, by any stretch of the imagination, is reasonable—restriction on the use of taxpayers' funds. I do not see the equivalence between the two of them at all.

I trust the Senate will abide by its earlier decision and not fall prey to a decision made by a few people in a tradeoff that I do not think I can explain or anyone else can explain to the American public.

I thank the Senator for yielding the time.

I yield the floor.

Mr. BYRD. Mr. President, I yield 2 minutes to the Senator from Rhode Island.

Mr. PELL. I thank the Senator from West Virginia.

Mr. President, it is scarcely a year since the Congress completed its reauthorization of the National Endowment for the Arts. It was the most thorough and thoughtful reauthorization that has occurred since we established the Arts Endowment in 1965.

Debates in Congress about the National Endowment for the Arts have now consumed enough of the time and energies of Members of Congress and their staffs to light the city of Washington for the next few years. Enough is enough.

The political nature of these debates has given me cause to think of my old friend and colleague Jack Javits. When he and I first proposed the idea for a Federal foundation for the arts more than a quarter century ago, we took great pains to create a process that would be free of politics. This meant that there would be no official Government-sanctioned art and no congressional restrictions on what artists could create. We succeeded in creating a system that has produced nothing short of a cultural renaissance in America. I continue to believe very strongly in what we accomplished.

Congress devoted its full attention last year to the charges that the NEA has violated the moral standards of America by the way it spends the taxpayer's money.

At the end of this exhaustive process we reached a hard-fought compromise which I believe was reasonable and fair. This accord dropped the Helms amendment that placed impractical and unworkable restrictions on Endowment grants and provided a working definition of "obscenity" as derived from the Supreme Court. It provided appropriate provisions for the courts to determine matters of obscenity using local community standards. It further established a mechanism for the Endowment to recover funds found to have been spent on the creation of obscene art. I remind my colleagues that the Senate endorsed these steps last year.

I very much regret that, after all we did, new efforts have been mounted to discredit and restrict the National Endowment for the Arts. I am relieved and pleased, however, that members of the conference committee did not bow to the pressures from the far right. Language proposed to restrict the Endowment's ability to support the arts was wisely rejected by the conferees. The spirit in which Jack Javits and I established the Endowment is still intact though the road has been bumpy of late and I fear that it may remain bumpy for a while.

It is therefore imperative that we support the agreement reached by the conferees and, in so doing, ratify the reforms that were so laboriously crafted last year.

I urge my colleagues to put this divisive and unwarranted debate behind us by opposing the amendment offered by Senator HELMS.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I yield myself such time as I may require.

I knew and respected and admired Jack Javits who would not have countenanced this sort of thing. I think Jack Javits would be on this floor raising Cain right now if he were here.

Mr. President, I ask unanimous consent that the rollcall vote No. 197, which was the first vote on the pending amendment on September 19 of this year, be printed in the RECORD immediately prior to the upcoming vote on the pending amendment. I send it to the desk.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE VOTE ON THE PENDING AMENDMENT, SEPTEMBER 19, 1991

YEAS—68

Baucus, Bentsen, Bingaman, Bond, Boren, Breaux, Brown, Bryan, Bumpers, Gorton, Graham, Gramm, Grassley, Hatch, Hatfield, Heflin, Helms, Hollings, Inouye, Johnston, Kasten, Kerrey, Kohl, Burdick, Burns, Byrd, Coats, Cochran, Cohen, Conrad, Craig, D'Amato, Lott, Lugar, Mack, McCain, McConnell, Mikulski, Murkowski, Nickles, Nunn, Pressler, Pryor, Reid, Robb, Roth, Daschle, Dixon, Dodd, Dole, Domenici, Exon, Ford, Fowler, Glenn, Rudman, Sanford, Sasser, Shelby, Simon, Simpson, Smith, Specter, Stevens, Symms, Thurmond, Wallop, Warner.

NAYS—28

Adams, Akaka, Biden, Bradley, Chafee, Cranston, Danforth, DeConcini, Durenberger, Gore, Jeffords, Kassebaum, Kennedy, Kerry, Lautenberg, Leahy, Levin, Lieberman, Metzenbaum, Mitchell, Moynihan, Pell, Riegle, Rockefeller, Sarbanes, Wellstone, Wirth, Wofford.

NOT VOTING—4

Garn, Harkin, Packwood, Seymour.

Mr. HELMS. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I yield 3 minutes to the Senator from Rhode Island [Mr. CHAFEE].

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 3 minutes.

Mr. CHAFEE. Mr. President, tonight is Halloween, and we are being spooked by the imaginary goblins, namely, the National Endowment for the Arts.

I think this body ought to be tired of debating this issue. By my count we had at least seven votes on the subject of the National Endowment for the Arts in the past 2 years. And there was one more, if you count the original amendment voice-voted by the Senate (over my objections) in July of 1989. Yet here we have another one.

You might think that we have an agency run amok here, wildly throwing money at every smut project in town. What agency is that? It is not the NEA. The National Endowment is a worthwhile, valuable asset to American arts and culture, and thus to our whole society. It has funded some controversial projects. Yet out of the nearly 90,000 or so grants awarded since their origination, the controversial projects number maybe 3 dozen, a tiny fraction. I suspect there aren't many agencies with that kind of track record.

We have heard a lot about Annie Sprinkle and other artists whose names are bandied about here today and previously. Let us mention some other names that the National Endowment for the Arts has funded: The Dance Theatre of Harlem, the Renoir Exhibit at the Boston Museum of Fine Arts, the Vietnam War Memorial, children's public television programs, such as Wonderworks.

In my own State they have helped fund the very popular Providence First Night Celebration. We have had student arts and theaters programs and we have programs for the elderly funded with the help of the NEA.

Last year, to address concerns about obscenity, we approved by a 73-to-24 vote a reauthorization bill carefully drafted to address such problems. As enacted, the bill established a decency standard as part of the criteria used by the NEA in judging whether to fund a project. It also required that any artist whose NEA-funded project was determined to be obscene by the courts to return the funding. This put the debate on obscenity back where it should be—in the courts.

That is where it belongs, and let us leave it there, Mr. President. The NEA is making a good-faith effort to implement its new guidelines—why not give the agency a chance before we start changing things again? They are trying to do a difficult job. In fact, the ultimate irony of the situation is that the NEA now is being challenged in court under the first amendment because of that decency standard. They are being besieged—from both sides.

The NEA has a challenging task to accomplish. Let us not make it any tougher. Let us give the agency a chance by leaving it alone.

I thank the distinguished manager.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I yield myself such time as I may consume.

Mr. President, the conference report contains compromise language regarding the National Endowment for the Arts. Rather than adding new language establishing yet another standard by which the NEA must evaluate its grant applications, the conferees of the House and Senate reinforced the directions provided under the authorizing statute for NEA.

The underlying statute explicitly states that obscenity "* * * is without artistic merit, is not protected speech, and shall not be funded."

This compromise language will not be acceptable to every Member. It is not the language I would have preferred. But a conference is a series of compromises, wherein each participant must give a little in order to get a little. Such is true in the case of the NEA.

My distinguished colleague, the ranking manager of the Interior appropriations bill, Mr. NICKLES, made extended arguments in support of the language which had been adopted by the Senate weeks ago by a vote of 68 to 28, and I was one among those 68 because I support, in concept, the idea that the distinguished Senator from North Carolina is seeking to establish.

The bottom line of any and all efforts to prevent some of these very offensive, disgusting, so-called works of art from receiving funding is that the NEA must exercise its judgment in reaching its grant award decisions or the Congress should cut the funds or eliminate the funds. We tried to reduce the funds earlier this year. Senator KASSEBAUM offered an amendment to reduce the funds. I voted for that amendment to reduce the funds for the NEA. But the amendment was rejected overwhelmingly.

Responsibility lies ultimately with the Chairman of NEA, but greater responsibility must also be exercised by the panelists and the artists. This responsibility cannot be easily legislated. Failure to exercise such responsibility, however, will lead to continued challenges to the NEA, and possibly, a significant reduction in funding for NEA. I, for one, have said that I might support that approach in the future.

The answer to issues such as those raised by the Senator from North Carolina is reform in the panel process and greater responsibility for the decisions made by the NEA. Last year, the reauthorization for the NEA directed a significant number of changes to the panel review process by which NEA reaches its grant recommendations and decisions. The geographic representation on panels is to be broader, and stricter conflict of interest requirements were imposed.

The NEA must reject grant applications it considers to be questionable. Artists must recognize that an NEA grant is not a right, but is a privilege. The extremes on both sides of this issue detract from the benefits the arts bring to many in our society. The taxpayer must not be asked to continue to fund these objectionable works forever.

Mr. President, I ask unanimous consent that a letter addressed to me by Mr. Frohnmayer dated September 10 of this year be printed in the RECORD, together with my response to Mr. Frohnmayer by letter dated September 23.

NATIONAL ENDOWMENT FOR THE ARTS,
Washington, DC, September 10, 1991.
Hon. ROBERT C. BYRD,
Chairman, Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BYRD: I am enclosing background information on action that the Endowment recently took involving an Arts Endowment Dance Program grantee, Movement Research Inc.

The Endowment found that a publication partially funded by a Fiscal Year 1991 grant, Movement Research Performance Journal #3, viewed in its entirety, does not comply with the purposes for which the grant was given as specified in the category guidelines and the grant application statement. The agency additionally found that the journal violated the terms and conditions of the grant by printing material intended to influence members of Congress about pending legislation. Accordingly, the Endowment requested the return of NEA funds that were used in support of the journal.

I am available at any time to discuss this issue further with you.

Sincerely,
JOHN E. FROHNMAYER,
Chairman.

SEPTEMBER 23, 1991.
Mr. JOHN E. FROHNMAYER,
Chairman, National Endowment for the Arts, Washington, DC.

DEAR JOHN: Thank you for your letter of September 10, 1991, regarding actions taken recently by the National Endowment for the Arts regarding Federal Funds granted under the auspices of the NEA Dance Program to Movement Research, Inc.

Based on the information provided in your letter, I understand that NEA has determined that some of the funds provided were used for purposes which, in your judgment, reflect inconsistencies with the terms of the grant award. I wish to commend you and the Endowment for your prompt actions to recoup the Federal funds associated with the Movement Research "Performance Journal #3." Such materials do not even merit association with the word "art", and certainly should not be associated with the term "excellence."

In reauthorizing the National Endowment for the Arts last year, Congress made clear that ultimate responsibility for the decision-making at NEA lies with the Chairman. If the NEA is unwilling or unable to justify fully its decisions to the taxpaying public, continued debate over the proper role of the Federal government in funding for the arts is inevitable.

With warm regards, I am

Sincerely yours,
ROBERT C. BYRD.

Mr. BYRD. Mr. President, in my response, I said in part:

> In reauthorizing the National Endowment for the Arts last year, Congress made clear that ultimate responsibility for the decision-making at NEA lies with the chairman. If the NEA is unwilling or unable to justify fully its decisions to the taxpaying public, continued debate over the proper role of the Federal Government in funding for the arts is inevitable.

Mr. President, nobody, even the Senator from North Carolina, objects to this misuse of the taxpayers' money with greater indignation than does this Senator from West Virginia. But saying that, does not remove the problem.

It is very difficult, if not impossible—we have found it impossible thus far—to construct language that will eliminate this kind of funding for these kinds of so-called art pieces. We have found it difficult to find the kind of language that does not run afoul of the Constitution. There is where the problem comes in. And so we have done the best we could.

We went to the conference. We were 4 days in formal conference, 21 days in preconference meetings. This item was decided in a formal conference close to the end of the conferences. It resulted in a compromise between the two bodies, in which compromise the House yielded to the Senate on the matter of grazing fees and the Senate yielded to the House on the matter of the NEA. So that was an agreement. We reject yours, you reject ours. That is it. And those two items had remained almost to the end of the conference.

So we have an agreement that we entered into with the House. I would not want to see that agreement broken. If breaking the agreement would resolve this problem for all time, then I would see fit to break the agreement. But this is a problem that has always existed. That is not to say we should not try to do something about it. But it has always existed.

If we read Milton's "Paradise Lost" we will find that when Adam and Eve were driven from the garden, Adam was told that he would bruise the head of the serpent and the serpent would bruise the heel of man.

Procopius was a Byzantine historian in the sixth century, A.D.

He wrote *The Histories;* the *Buildings,* and he wrote *The Secret History*. *The Secret History* concerned Theodora, the wife of Justinian. It also concerned the story of Belisarius, the great Roman general who served under Justinian, and the wife of Belisarius, Antonina. In this work, Procopius wrote about Theodora, how Theodora led a life of harlotry before she married Justinian. He described how she would appear in the circuses, in the shows, in the theater. She would perform her nude acts and, in one performance, she would lie down on the stage and spread herself out and lie face upwards on the floor.

Servants would sprinkle barley grains over her private parts, and geese, trained for the purpose, would pick them off one by one with their bills and swallow them. Without blushing, Theodora, when she stood up again, appeared to be proud of this act.

That was offensive to Procopius' tastes. That was close to 1,500 years ago. Justinian died in the year 565. So did Belisarius and so, incidentally, did Procopius. They all died apparently in the same year. But Procopius' *Secret History* did not appear until the 1600's, I believe about 1,000 years following his death. So it was secret. It was not published until about 1,000 years later.

I say this to say that the world has always been subjected to such offensive acts. We have always had people who were willing to sell their bodies in commerce. And there have been laws passed time and time again through the centuries to deal with such filth. We have passed laws and we should not desist from trying to do what we can to outlaw such obscenities. I am simply saying that we have had such troubles for thousands of years.

We still have the problem, because the serpent is still abroad in the land. And it always will be so.

Now, Mr. President, let me take just 2 minutes to comment on the parliamentary situation. Mr. President, do not let it be said that the House cannot take action to put the grazing fee back on this vehicle and send it back to the Senate. It can be done.

We say in the Senate, anything can be done by unanimous consent. But not everything, under the rules, can be done by unanimous consent in the Senate. For example, I cannot call attention to certain people in the gallery by unanimous consent. The Chair should not even put my request.

I cannot come in after the Chair has announced the results of a rollcall vote, and get unanimous consent to be allowed to vote. The Chair cannot even entertain such a request.

But one can almost do anything in the House with their rules. They can bring out a rule. They can certainly get the grazing fee back on. If it is the will of the House that they want to put the grazing fee back on this and send it back to the Senate, they can do it. Do not ever let anyone tell you that that cannot be done.

Of course, the fastest way to get this measure to the President is for the Senate not to add any amendment to the measure at this time. But the Senator has a right to offer his motion and the Senate has a right to send it back to the House.

But the House also can get a rule waiving points of order. And if the House wants to add a third-degree amendment to this amendment when it gets over to the House, the House can do that if it gets a rule waiving points of order. And if the House were to do that, and it came back here with a third-degree amendment, the Senate can add a fourth-degree amendment, because the Senate must not allow itself to remain defenseless in the face of actions by the House of Representatives.

If the Senate amends the amendment in disagreement, the House could concur therein, as the distinguished Senator from North Carolina has said, or by special rule could concur therein with a further amendment. This rule could assign the highest privilege to this motion to concur with an amendment.

It is also possible, by special rule for the House to concur therein with further amendment in the third degree, waiving points of order. Such special rule could assign the highest privilege to the motion to concur with an amendment. This could be accomplished by adoption of a special rule which the House could proceed to do by a majority vote any time beginning tomorrow.

If it were today, it would require a two-thirds vote, as the distinguished Senator from North Carolina has so accurately stated. But it does not have to be done today. If the House should wait until tomorrow, then a majority vote would accomplish what it would require a two-thirds vote to do today.

Such special rule would require only a majority vote for its adoption, and the motion to concur with any amendment would only require a majority vote.

Although it is assumed that the House will take up this measure today, it is entirely possible that the Senate message on this bill would not be considered in the House until tomorrow, at which time the House, by a majority vote, not a two-thirds vote, could adopt a special rule authorizing virtually any amendment on any subject.

So I would rather not take the chance on having a grazing amendment attached to this amendment. I think we would run the extreme danger of that because, as I say, there was an agreement that if the Senate would yield on the NEA, the House would yield on the grazing fee.

If we break the agreement, do not think that we definitely shall get by with doing it unilaterally. Because when we send it back over there, the House may say: "Well, the Senate has broken its half of the agreement. Let us proceed to break our half. And we might then get the grazing fee right back here in the Senate.

There is nobody in here who can say authoritatively that that cannot happen. And nobody can say that it will not happen.

I yield to the Senator.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, is it not also true that the Rules Committee is the one committee where the appointments are made exclusively by the Speaker of the House, which is controlled by the majority party?

Mr. BYRD. That is my understanding.

Mr. REID. So that would mean the Rules Committee has a great deal of leeway; is that not true?

Mr. BYRD. Absolutely. It really does.

The PRESIDING OFFICER. The time for the Senator from West Virginia has expired.

Mr. BYRD. Has it all expired?

The PRESIDING OFFICER. It has expired.

Mr. BYRD. Mr. President, I promised two Senators they would have some time. I wonder if we could——

Mr. NICKLES. Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. Twenty-two minutes, 50 seconds.

Mr. BYRD. Would the Senator from North Carolina be in a position to yield me some of his time?

Mr. HELMS. Let me yield to the Senator from Oklahoma, and we will discuss how much. Of course I will yield that. Our relationship is such we will not have any problem.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Carolina controls 22 minutes 28 seconds.

Mr. HELMS. Twenty-two, 28? I yield such time as the Senator from Oklahoma may desire.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I thank the Senator from North Carolina, and I also wish to compliment Senator BYRD because, as he mentioned, during this conference—we had a long conference, the longest conference I have been involved in. I asked Senator BYRD, who has been here about three times as long—I have been up here, this is my 11th year; the Senator from West Virginia has almost, if not more tenure in the Senate than anyone else—if it was not his longest conference. I think he said it might have been.

We met for days, and we discussed this amendment for hours over several days. It was not a mild discussion. We went over this amendment at length various times. I will tell you, the Congressman from Illinois, Congressman YATES, is very steadfast in his position. I compliment him for it. Just as the Senator from North Carolina is very steadfast in his position. I do not know how this is going to be resolved.

The Senator from North Carolina won a vote, a big vote, a very strong vote in the Senate originally, and actually we have had good votes in favor of his position in the House. But they did not control the conference. And my colleague, the chairman of the Appropriations Committee, mentioned, well, a deal was struck in the conference. I was not part of that deal. I did not agree with that deal.

I do not like the idea of saying, well, we will give on something like grazing fees—this is the House's position—if you will give on NEA. I object to that. But I did not win. I tried. I tried my very best to defend the Senate position. I happen to think it is right. Because if we do not have the Senate position, we go to the language which is now in the bill. We go back to what I call the Yates language, and I find that quite inadequate.

I will tell you, the net result is, if we continue with this language—and a lot of it is the same language that is under the authorization bill that passed a year ago—you do not really clean up a lot of the very offensive type of grants that are being abused by a few people.

I agree with several of my colleagues. Most of the grants that are made by NEA are not offensive. Most are doing a good job throughout the country. But some are quite offensive, and some of the so-called artists—and I would put that term in quotes—really abuse the system. They found out how to get the grants. Maybe they have friends on the reviewing committees that continue to have their names pop up as recipients. They do very offensive things, very offensive things, things we cannot show on the floor of the Senate, one of which is in this packet, if Senators wish to see it. This is a group called Movement Research, that has some of the filthiest, most sacrilegious things I have every seen. Yet, they receive a grant.

I will compliment NEA. They said, "Hey, this is offensive. Not only that, but you lobbied in the most offensive way I have ever seen any lobbying ever done." And so NEA says: "We want our money back."

This group says, "Heck no. We are not going to give your money back. Take us to court." The money we are talking about is $1,400—$1,400. It appalls me to think that our dollars, tax dollars, would be used to fund any type of group like this, a radical—well, it is not art. It is offensive. It is offensive. If you took that out to the American people, 99.9 percent plus would be very offended, if not outraged.

I am going to tell my colleagues something. NEA is probably not going to get their money back. It is interesting to note, NEA, in my opinion, has not done a very good job at stemming the tide from not funding some of these very offensive groups. There are a few groups they decided not to fund because they have been very offensive. They have done things like urinate on the stage or they have done things like parading in the nude and covering themselves with chocolate and a lot of different things, and NEA said, "We will deny you a grant." They are suing NEA. And then NEA shows a lack of courage. Instead of standing up to their suit or something, they turn around and give them more grants. That probably has offended me more than anything, to think that NEA would succumb to that type of pressure: "Oh, they are going to sue us," and then turn around, the very parties suing them because they denied them a grant, they are turning around and giving them more money. I am critical of the director and critical of the screening committees who made that recommendation. I find that offensive, so I want to stop it.

I heard everybody say, "We do not support that kind of art." But the language that is in the appropriations bill before us does not stop it. You have to be convicted of a criminal offense of obscenity before funds will be denied.

There is a court case on Mapple-thorpe. You might remember that. We had some very graphic pictures of that a year ago, including another person urinating in another person's mouth and even more offensive pictures than that. A district court found that was not offensive, that did not classify as obscenity under the language that we are looking at. So this language does not really do anything to clean up some of the really outrageous things that a few people do—not many—but a few people who have just found out how to abuse this system. You have to be convicted of obscenity and use all your recourses through every appellate level before you will be denied any assistance. I think that is too far. I do not think this language does enough. It will not do anything, frankly, to curb the abuses that we have on our desk today or the abuses of the past like Mapplethorpe and others.

That is why I support the amendment of the Senator from North Carolina and the reason why I would like to correct my friend from Ohio, Senator METZENBAUM, who is not on the floor, or Senator WIRTH, from Colorado, who said we already did it, we did it in the authorizing language. The authorizing language is this language, and it will not work. It flat will not work. It will not curtail this type of abuse by a few people. Therefore, I support the Helms amendment.

As far as the procedure is concerned, again, I have the greatest respect for Senator BYRD, but I do not think we can determine what is going to happen in the House if the Helms amendment is adopted. I know there are all kinds of threats: We are going to put on the Sinar amendment, do something else on grazing. Certainly they are going to be vindictive. I do not know. I happen to really believe in the Helms language. I think it is a significant improvement over the language in the bill, which is nothing but a fig leaf. It does nothing to cure the real problems we have had in funding NEA and, therefore, I support the Helms language.

The PRESIDING OFFICER (Mr. GRAHAM). Who yields time?

Mr. BYRD. Mr. President, I promised Mr. CRAIG 4 minutes, and I promised Mr. KENNEDY 3 minutes. I wonder if Senator HELMS would help me a little.

Mr. BUMPERS. Mr. President, if the distinguished chairman of the committee will yield.

The PRESIDING OFFICER. The Senator from North Carolina is controlling 14 minutes, 47 seconds.

Mr. HELMS. Does the Senator desire 4 minutes for one Senator and 3 minutes for another?

Mr. BYRD. I asked 4 for Mr. CRAIG, 3 for Mr. KENNEDY, and Mr. BUMPERS wants 3 minutes. That is 10 minutes.

Mr. HELMS. Fine. That is fine. And if you have further problems, we can work on that, too.

Mr. BYRD. May we count it against the Senator's time?

Mr. HELMS. I would rather not. At the appropriate time I may yield back the remainder of my time.

Mr. BYRD. I ask unanimous consent then, with the approval of Mr. HELMS, that Mr. CRAIG have 4 minutes, Mr. KENNEDY have 3 minutes, and Mr. BUMPERS have 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I thank my colleague from North Carolina for his cooperation. It is, in fact his generosity which puts me in an almost embarrassing situation because I am standing this afternoon to do something that I thought about for some time before I came to the floor, and that was to vote for a motion to table the amendment of my colleague from North Carolina.

Mr. President, I am doing that out of some very real frustration, not over my colleague or his amendment, but over the process that has found us in this situation, which I dislike very much. When I watched the leveraging process that went on by the chairman of the Appropriations Subcommittee from the House denying the will of the Senate spoken as loudly and clearly as this body did but a few weeks before the conference on this particular amendment—and I am speaking of the amendment—and I am speaking of the amendment to the National Endowment for the Arts—to express the will, what I believe to be the will, of the American people as to not funding what is very clearly and without question pornography. That is one side of the issue, Mr. President.

The other side of the issue is the will and the effort on the part of the chairman of the Interior Appropriations Subcommittee to respond to the concern of Western grazing interests to be treated fairly on their ability to graze livestock on public lands, an issue that is very important to me and other Western Senators, as important as the issue of the NEA.

So you see, today I would like to have it both ways, but I cannot, and a good many of us cannot, and that disturbs me a great deal because I think both supporting the appropriate process in determining what is a reasonable fee to charge Western grazing interests for public grassland in this country—and it will be addressed in the authorizing committee in the coming year—and to express the will of the American people as to the mishandling of their tax dollars as they are being allocated for pornographic art is what this body ought to be doing, but we are denied that today.

I am looking for an opportunity to stand once again with my colleague from North Carolina to address the will of the American people to appropriately direct the responsible authorities of the National Endowment for the Arts to do what I think our citizens want. And, at the same time, I will support a motion to table today because it is just so fundamentally important that I do not see hundreds of my ranching families in Idaho bankrupt because certain interests would wish to charge an inappropriate, if not deleterious, fee for Western grazing on public lands.

Those are the issues today. I prefer not to be on this floor speaking, but it is important that I speak up because both issues are important. It is not only important for Idahoans to understand where I stand on this issue, but I think it is important for my colleague from North Carolina to understand why I speak with such passion on both issues. They are important. And the Appropriations Committee and the subcommittee, chaired by my colleague from West Virginia, did all they could do and did it well, and I respect them for their effort. My colleague from Oklahoma was forthright in his desire to serve the will of the Senate on both issues, and he is right. He negotiated for hours to try to resolve this. We arrived at an impasse, and the impasse was resolved by what we now have before us, and I hope we can move this process in a timely fashion. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 3 minutes.

Mr. KENNEDY. Mr. President, first of all, I want to join those in commending the Senator from West Virginia, the chairman of the Appropriations Committee, for his willingness to take on this particular issue, which is basically the issue of censorship, that we are faced with this afternoon. No one is interested in seeing the funding or the advancement of obscene art, but what was actually created last year as a remedy must be supported and should be supported.

Mr. President, for 25 years, the National Endowment for the Arts has passed out some 90,000 grants to communities, small towns, museums, galleries all over this country, and there are 25 controversial items.

The real question that we are deciding now is whether we are going to follow what has been established in the Supreme Court under the Miller decision and follow the guidelines which have been established for the support for those particular items under the Miller decision or whether we are going to set in motion censorship in the U.S. Senate.

I think the Appropriations Committee has wisely recommended a course of action. I think it is consistent with the objective of all of us in terms of the support for the arts. I think we have to recognize that in the continuation of supporting arts in the future, there are going to be other mistakes that may be made. We have to recognize that. We have established a procedure. We should follow that procedure and reject the Halloween trick of the Senator from North Carolina.

Mr. President, I support the work of the Senate and House conferees on the Interior appropriations bill, and I urge the Senate to reject this excessive parliamentary maneuver to create an amendment in disagreement where there was none before.

I particularly commend the conferees for adopting a reasonable and responsible approach to the funding of the National Endowment for the Arts.

For many months, the NEA has been subjected to a long line of unreasonable and unfair attacks that amount to blatant Federal censorship of the arts and a serious threat to artistic freedom. This worthwhile agency has come under continuing intensive scrutiny that is clearly designed to intimidate its officers. Its work has been disparaged and denounced, all because of some 20 grants out of over 90,000 awarded in the past 25 years.

It has become politically expedient to attack the agency, just as it has become convenient to distort its grantmaking history and ignore the valuable support by the Endowment for museums, symphonies, opera companies, and dance companies across America.

Instead of the gauntlet of blame and harassment it has been forced to run, the Endowment should be receiving well-deserved credit for the outstanding job it has done in providing support for these institutions and promoting broad new access to the arts for large numbers of our citizens.

Congress dealt last year with the problems raised by the agency's handful of controversial grants. We dealt with them effectively, and the conferees were right to reaffirm the accord we reached.

In response to legitimate concerns about these few controversial grants, Congress made clear that Federal dollars should not be spent on any project that is obscene. The law we enacted last year explicitly prohibits funds for such projects. If any funds are awarded for such purposes, they must be refunded to the Government. The proper way to determine obscenity is through the determination of the courts, as the law provides, and not by installing the Senator from North Carolina, or any other Members of Congress, as a board of censors for the arts.

I continue to believe that the solution last year, which was agreed to by the Senate, is the most reasonable way to deal with the issue of controversial grants. It guarantees that work which is obscene will not be funded.

Indeed, it is my understanding that with respect to the item in the brown envelope of the Senator from North Carolina, the Endowment is taking appropriate steps to recover the Federal funds.

In addition, in the final package adopted last year by Congress, we took further steps to enhance State participation in the allocation of Federal funds. A provision increasing the passthrough to the States from 20 percent to 30 percent for 1991 and 1992, and to 35 percent for 1993 was approved.

This reform was intended to bring the decisionmaking on grants closer to the people. In practice, however, the Endowment now has less control over who gets grants, even though the agency still retains overall accountability for whatever grants are made. In fact, many of the grants that have been found to be the most controversial by the Senator from North Carolina have been subgrants awarded by State or other subgrantors.

Unfortunately, much of the information from the field indicates that States are allocating—for the first time in recent history—less, not more, money for the arts. The difficult budgetary situation confronting many States is forcing them to cut back on spending, and often it is support for the arts that is being sacrificed.

As a result, the increased Federal passthrough is being used to replace, not supplement, existing resources in the States. This is not what Congress intended. It is not the best use of the small Federal appropriation that we make for the arts in America, and I hope that we will address this problem as soon as possible in future legislation.

As a practical matter, many of the States themselves do not feel they can responsibly adjudicate the extra funds. The National Association of State Arts Agencies and the National Assembly of Local Arts Agencies officially oppose any additional increase in funds to the States.

In sum, the Arts Endowment cannot walk away from art that is progressive or challenging, and few of us in the Senate or the Nation think it should. The compromise adopted last year, which is repeated in the conference report, is a sound basis to separate the meritorious from the unacceptable.

Opinion polls demonstrate again and again that Americans respect the arts and want them to be a larger presence in their lives. A primary goal of the Endowment is to carry out this mission, so that the arts become more broadly available throughout the Nation, not just for elite or urban audiences, but in all neighborhoods and communities across the country.

The agency has made mistakes, and it will continue to make them. But in any realistic perspective, its achievements far exceed its failures. The corrective action we took last year is the right response, and the Senate should give it time to work. There is no justification, none whatever, for the artistic harassment the Senator from North Carolina continues to inflict upon this decent and successful agency. I urge my colleagues to table the Helms amendment and protect the Endowment from this irresponsible Halloween attack.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 3 minutes.

Mr. BUMPERS. Mr. President, I have never before spoken on this subject in the Senate, and do so with some reluctance today. First of all, I would like to believe that the goals of the Senator from North Carolina are the same as mine. I do not believe he was any more offended by the Mapplethorps exhibit than I was. I even voted with him on his amendment to the Interior bill to dramatize my concern.

Now, what we are really debating here, ultimately, in my opinion, is whether or not some exhibit, or expenditure of taxpayers' money for patently offensive art should result in eliminating all funds for the National Endowment for the Arts.

I must say, Mr. President, that in my State these funds are used to fund the Arkansas Symphony, a very fine organization; we fund drama; we fund writers. We are proud of all the results of these grants.

The reason I am going to vote to table the Helms amendment is because I do not believe his language does any more to accomplish what he wants than the House language does. As a matter of fact, I believe the House language is probably better. The Helms language is more explicit, certainly, but in the long run I am not sure that it accomplishes even his own goals very well.

Finally, Mr. President, let me say that I worry about the thrust of the Helms language. I believe strongly in musical and dramatic and literary freedom, artistic freedom. I do not believe, and the Senator from North Carolina does not believe, that the American taxpayers ought to subsidize something that is obviously offensive to virtually everybody. There are some who never find anything offensive, I guess. But I share the Senator's concern about tax money being used for what is obviously obscene.

But if the Helms language had been on the books for the last 500 years in the whole world, all of the great art museums in the world would probably not have more than half to two-thirds as much art as they have hanging on the walls, and many great revered religious paintings would never have been done. And so, Mr. President, I worry about where we might be headed with this.

When I think of Russia, I think of the great writers, the great musicians, the great artists that were produced in Russia in 1,000 years of her history until 1917, when all of a sudden everything had to pass some kind of Communist political test. So creative talent was effectively thwarted.

Mr. President, I just want to say that while I believe the aim of the Senator from North Carolina is laudable, I do not believe it does anything more than the House language does. I am not involved in the grazing fee issue. I do not know what happened on that.

Finally, Mr. President, I want everybody to bear in mind that the first thing Hitler did was to get control of the courts, literature, art, and music. And I do not want that to ever happen in this country.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I be allowed to proceed for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I supported the Helms amendment when it first came up, and I am going to vote with my chairman, Senator BYRD. Anybody who was in that conference, as I was, knows he did everything he could to uphold the Senate's view that this is a good bill; that we put the bill in jeopardy if we do not support him. I hope other Senators will support Senator BYRD.

The PRESIDING OFFICER. The Senator from North Carolina controls 14 minutes 17 seconds.

Mr. HELMS. Mr. President, I yield to the distinguished Senator from Wyoming such time as he may require.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, first I want to thank both Senator BYRD and Senator HELMS for their courtesies, along with the manager, Senator NICKLES. I had an obligation which took me out of the city for a few hours and they were helpful in enabling me to speak, and I appreciate that. I would not have asked for that, and they were ready to grant it. I appreciate it, and we will go forward.

Mr. President, I concur with what my friend from Idaho has said. You can imagine the conflict of those of us from the West, from the public land States in dealing with this issue, because I can assure you this is not about rich ranchers when you get to grazing fees, and that is what this is all about. Because we have it on good recommendation, or at least knowledge, that if this were to go back with this proposal, indeed the grazing fee issue would rise again. That is a quadrupling of the fees on the Western lands. We could not chamber that. It is not something against the rich. It really is hundreds of people who are hard-scrabble people. When we think of the agricultural support systems in the United States, this is a very minimum one.

So it is a real conflict, because I, along with 67 others, supported Senator HELMS. He took the issue further than the Supreme Court decision on obscenity. But I think in a way that the courts could well weigh it and see what they might do with it.

But I pay tribute to Senator HELMS. He works doggedly on the issues in which he believes. He has always assisted the West. He has helped us in many ways. He is not a regional person or provincial person. He understands our problems. We try to understand his.

So this issue is undergirded in a way where I feel badly that we had to come at a measure about which he feels so strongly. And yet when you weigh it, it would be as deep an issue for the Senator from North Carolina, such as tobacco, or something that would be close to the bone and the heart like that. And we get into those, we get caught in those.

So I thank Senator HELMS for his continued assistance to us, and I certainly regret that it came to this peculiarity of legislative reality where sometimes they wire the package together so it is sure to blow up and at least detonate someone, and that is what we have today. I commend the Senator for his strength of feeling.

There are many things in these materials that are being presented to us which are truly repugnant. I know a lot about art. I love art. I have been to some of the great capitals of the world. I am very fortunate to have been involved in art galleries. But there are some things that are not art and they are obscene under anyone's interpretation, whether it is community standards or whatever. Certainly some of the things I have seen in the cloakroom today have escaped my attention as being listed in that category.

So I thank the Senator from North Carolina for his courtesies, I thank the Senator from West Virginia for his forbearance, and the Senator from Oklahoma.

GRAZING FEES

Mr. DOMENICI. Mr. President, I want to thank the distinguished chairman of the Senate Appropriations Committee and the distinguished ranking member of the Interior Appropriations Subcommittee for their support of the Senate position on grazing fees in the recently concluded conference on the Interior appropriations bill for fiscal year 1992.

I am pleased to say that the Senate conferees adhered to the Senate position on several issues of serious consequence to the Western States. One of these issues was the Senate's deletion of the House provision to significantly increase grazing fees charged on public lands.

The conferees did include language in the conference report requiring the Departments of Agriculture and the Interior to contract for a study to update and review the information in their 1986 joint report to the Congress entitled "Grazing Fee Review and Evaluation."

I believe such an evaluation will be valuable to the authorizing committee as it begins to review Federal policy relating to the use of public lands and grazing fees.

Mr. President, the livestock industry plays a vital role today, as it always has, in the economy of the West. Many of the communities that exist today grew into being as a result of livestock production, and this industry still provides that major economic base for many of the Western States. Besides providing a tax base for State and local governments, more than 20 percent of all personal income in Western States is a result of livestock production.

The Federal Government is the largest landowner in the West, and both the Government and the private landowners of the West have benefited from a "partnering up" that has provided for the utilization of the Western rangelands for the raising of livestock.

Some have said that Western livestock production is such an insignificant part of the national production that its demise would hardly be missed. Yet, 40 percent of all cow-calf producers with herds of 100 head or greater use Federal lands, in conjunction with their own, to create viable ranching operations.

The question of how much the forage that grows on the Federal lands is worth has been debated for nearly a century. It is difficult to calculate the value of Federal land and forage, because the quality of the forage, the accessibility of the lands, the lack of water, and range improvements that make the land productive are all very different from private pasture lands. It is now time to settle the issue and to close this debate on the value of Federal forage, which has gone on too long.

It has been 13 years since the passage of the Public Rangelands Improvement Act [PRIA], and it is time to update the information used then on range conditions, big game populations and other factors that have been part of this debate. It is time to determine if the funding for the range management program that PRIA provided has contributed to better range conditions.

The 1986 grazing fee review and evaluation, which the conferees direct to be updated and reviewed, is at the center of this controversy. It is my hope that under this congressional directive the land management agencies will take this opportunity to fully and fairly evaluate the criticisms directed to the study design, the data collection methods, and the analysis and conclusions reached in that study.

The major fee studies conducted in 1966, and again in 1977, rejected the use of private lease rates as a basis of comparison to establish Federal forage values. The 1982 study that provided the information for the 1986 evaluation was the first time private lease rates were used for comparison. This is a major point of controversy, which must be dealt with as we prepare to address the grazing fee issue in the authorizing committee next year.

I know we would all like to see the issue of Federal grazing fees settled in a manner that is fair to everyone—fair to the people of the West who must partner with the Federal landlord, and fair to the Government that represents all the people of this Nation.

We can only make sound decisions in such matters if we have sound information upon which to base them. I hope that the review mandated in this conference report will provide that sound information.

The PRESIDING OFFICER. The Senator from North Carolina controls 10 minutes 29 seconds.

Mr. HELMS. I thank the Chair.

Mr. President, I am going to yield back in just a moment the remainder of my time. Of course I thank my friends, AL SIMPSON and DON NICKLES and others, for their support. I understand the situation.

I had at least a dozen Senators come to me who said, "Look, JESSE, I want to support you, but we have to get this grazing fee under control." So I bear them no animus whatsoever.

I do not like the process in the House of Representatives, particularly by one man, who said publicly that he did not care how the House voted with respect to this; he was not going to yield the will of the body.

I will make a few comments. I always am fascinated by the wealth of knowledge of my friend from West Virginia, the distinguished President pro tempore and chairman of the Senate Appropriations Committee. He talked about Empress Theodora and her act on the stage, which is somewhat similar to some of the rottenness funded by the NEA. I want to simply point out to that to my knowledge Theodora did not get an NEA grant.

Senator KENNEDY, as is customary, raised his voice and talked about censorship. Nothing was ever suggested by this Senator, or anybody else insofar as I know, related to censorship. I say again that what we are talking about is not censorship. It is sponsorship.

I do not want to say very much about the analogy that I used earlier today. If a guy wants to go into a men's restroom and scrawl dirty words on a wall, that is fine—just so long as he furnishes his own crayons and his own wall.

What we are talking about is taking money from the American taxpayers, and giving grants to smut peddlers. It is as simple as that.

We are not talking about censorship. We are not talking about taking away anybody's rights. This guy who took the picture that I held up two or three times, he has a right to do that. I think he is a reprobate for doing it. But if he did it with his own money, and on his own time, that would be one thing. But he used taxpayers' money. The people who published this newspaper, received NEA funds.

I am sick and tired of this business of using the taxpayers' money to promote, encourage, and subsidize filth. That is the issue; nothing remotely involving censorship is in it. It is plain and simple sponsorship that the NEA is doing.

With that, Mr. President, I know I am going to be defeated.

There is going to be in the CONGRESSIONAL RECORD how each Senator voted the last time this matter came up in the Senate when by a margin of better than 2 to 1 the Senate approved this very amendment. Senators will explain their votes.

I will help the Western Senators who are caught in a vise on this issue. I will write to their constituents who are offended by the switching of the votes, because they had a reason satisfactory to themselves to change their vote. I bear them no animus. They are my friends now, they have been my friends, and they will be my friends.

But this business of the NEA putting the Government in the pornography trade, has to stop.

If I could borrow an expression from a pretty great general whom I admired very much, I say to you, Mr. President, on this issue, "I shall return."

I yield the floor. I yield the remainder of my time.

Mr. SANFORD. Mr. President, I rise today to express my support for the Department of Interior appropriations bill. I will be voting against the amendment that has been offered by the senior Senator from North Carolina as I believe that the important appropriations of the Department should go forward.

If the Helms amendment in question passes, the Interior appropriations conference report will be returned to the House, which would most likely delete the amendment and send the conference report back again to this Senate for consideration. While this is going on, our funds for the Department of Interior will be held hostage. The $5.6 million for land acquisition for the Fort Raleigh National Historic Site on Roanoke Island, NC, will be hostage to this NEA amendment. The land at Roanoke Island was first used by English colonists in the New World more than 400 years ago and may include archaeological remains of the Cittie of Raleigh. Ancient tribal sites of the Roanoke and Croatan tribes exist here, as well as the Civil War Battle of Roanoke Island and the site of the Confederate Fort Hunger. Other funds important to North Carolina sites will also be hostage to the delays caused by this process, those for the Chattooga Wild and Scenic River, Uwharrie National Forest, and Alligator River to name just a few.

Two years ago I supported a Fowler amendment which banned the NEA from funding obscene art. That is currently the law—the NEA cannot fund pornography. Last year legislation was passed that states if an NEA-funded work is deemed to be pornographic, the artist must repay the NEA for the grant. I voted for both of these amendments and am firmly in support of them.

In September of this year I supported the Helms amendment because I wanted to continue to send a message to the NEA that they need to be careful about the art they fund. I believe that the NEA got that message due to the strong support the Helms amendment received, and I believe they are taking action to improve their grant-making procedures. However, the funds contained in the Department of Interior appropriations bill are very important not only to North Carolina but to every State across the Nation. Holding up the Interior appropriations bill at this time would not be a wise action; it would not be to anyone's benefit. I join Senator ROBERT BYRD in voting for final passage of this bill without attaching the NEA amendment, which very well could kill this important legislation. No one has been more determined than Senator BYRD to be certain NEA funds are not to be used for improper purposes. I strongly support Senator BYRD'S balanced position.

Mr. SPECTER. Mr. President, I support the amendment offered by Senator HELMS to restrict funding from the National Endowment for the Arts for indecent artwork because I believe it is a legitimate constitutional limitation and it is necessary if funding for the arts is going to continue.

In Sable Communications versus FCC, the Supreme Court states that restrictions on indecent speech are constitutional so long as they are narrowly tailored to achieve their objective and not vague. Following that decision, the District of Columbia Court of Appeals in Action for Children's Television versus FCC upheld restrictions on television restricting material that depicts or describes, "in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." It is that exact definition which this amendment uses.

In my judgment, this is a fair and narrowly drawn limitation for works of art which are supported by Federal funding. There is a very strong feeling in our country, which I see reflected increasingly in my open house/town meetings in Pennsylvania, against offensive sexual materials, especially when they are federally funded.

An important consideration in coming to this conclusion is that I believe all funding for the arts may be in jeopardy unless there are some parameters which comport with public sensitivity. If such parameters are not established, then I believe there is a great danger that public opposition may well result in the elimination of all Federal funding.

Mr. KOHL. Mr. President, I will support the motion to table the amendment offered by my good colleague from North Carolina.

When the Senate considered the Interior appropriations bill for fiscal year 1992, I supported his proposal. I did so, because like the Senator from North Carolina, I am flatly opposed to using taxpayer funds to pay for obscene art. There is no question about that, and his amendment clarified what I think was indeed the sense of the Senate in that regard and it improved the legislation before us.

During the conference with the House, the Senator's language was modified to explicitly prohibit funding obscene art, and to confirm a process wherein taxpayers can recover funds that have been used to support obscene workshops, productions and pieces of art.

In my opinion, the conference report language is an improvement of the Helms amendment in two ways.

First, the conference report reference to obscenity is broader. Many of my constituents find things other than "excretory organs" obscene and patently offensive. The committee amendment addresses those things.

Second, the original language that the Senator from North Carolina would like us to support today simply says, we shouldn't fund this type of art. Well, I agree. However, if we've learned one thing in the past few years, it is that there will be works of art or performances that will be funded that will offend the public. What we need is some way to get the public's money back from an artist who has used Federal funds to produce obscene art. The language in the conference report does that, and that is critical. We must have a way of holding these people responsible to the taxpayers.

Mr. President, as an original supporter of the Helms amendment, I am pleased that the conferees have taken this issue seriously. I am pleased that they have presented us with a proposal that is even better than the one included in the Senate-passed bill. I commend the chairman of the committee and urge my colleagues to support the motion to table the Helms amendment.

The PRESIDING OFFICER. (Mr. LIEBERMAN). All time is yielded back.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, this vote to table the motion by the distinguished Senator from North Carolina is not a vote for obscenity. It is a vote in favor of the conference report, and a reaffirmation that obscenity is without artistic merit and shall not be funded.

I hope that Senators will vote to support my tabling motion.

I make a motion to table the motion of the Senator from North Carolina, and I ask for the yeas and nays on that.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia to lay on the table the motion to concur in the House amendment to Senate amendment, No. 164, with further amendment numbered 1299. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Pennsylvania [Mr. WOFFORD] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Texas [Mr. GRAMM] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 73, nays 25, as follows:

[Rollcall Vote No. 241 Leg.]

YEAS—73

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Bradley
Breaux
Bryan
Bumpers
Burdick
Burns
Byrd
Chafee
Cochran
Cohen
Conrad
Craig
Cranston
Danforth
DeConcini
Dodd
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Gorton
Harkin
Hatch
Hatfield
Inouye
Jeffords
Johnston
Kassebaum
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Lugar
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Robb
Rockefeller
Sanford
Sarbanes
Sasser
Simon
Simpson
Stevens
Symms
Warner
Wellstone
Wirth

NAYS—25

Brown
Coats
D'Amato
Daschle
Dixon
Dole
Graham
Grassley
Heflin
Helms
Hollings
Kasten
Lott
Mack
McCain
McConnell
Nickles
Roth
Rudman
Seymour
Shelby
Smith
Specter
Thurmond
Wallop

NOT VOTING—2

Gramm
Wofford

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the President pro tempore [Mr. BYRD].

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate recede from Senate amendment No. 130, that the Senate agree with the House position on amendment No. 191, and that the underlying amendment No. 164, as proposed by the House, be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, the conference report is still before the Senate?

AMENDMENT IN DISAGREEMENT NO. 167

The PRESIDING OFFICER. Amendment No. 167 in disagreement is before the Senate.

The Senator from Alaska has the floor.

TONGASS NATIONAL FOREST

Mr. STEVENS. Mr. President, apparently some have the impression that this year's National Forest funding levels are not consistent with the Tongass Timber Reform Act. However, that is not the case.

Before the Tongass Reform Act passed, region 10 had a special permanent appropriation for timber sales activities in the Tongass. We gave that up under the Reform Act and agreed to be treated like other national forests—taking general decreases and accepting general increases.

Indeed, the statement of managers which accompanies the Interior appropriations bill makes this clear. The managers say:

> The net change to the budget request for timber stand improvement is to be applied nationally, since the managers agree that no specific reductions in any budget activity will be directed at the Tongass National Forest. Funding for the Tongass National Forest is to be treated as any other national forest. General increases will go to the Tongass, and so will general decreases.

We also accepted a provision under the Reform Act that the Forest Service would "seek to meet" the market demand for timber. As a result, timber operators gave up some security and relinquished a guaranteed level that was to average about 4.5-billion board feet per decade.

Four hundred and fifty mmbf per year was not the rule under the old management regime even though the law required it; 412 mmbf is the most volume released since 1986.

History evinces that funded timber sale preparation levels do not directly relate to harvest levels. Congress might appropriate funds for 420 mmbf, but 420 mmbf will not necessarily be released to the operators, nor will it be cut. Court and administrative challenges delay sales and reduce timber supplies. That is partly why we have timber supply shortfalls.

And do you know who pays for this? Taxpayers. That's right. U.S. taxpayers. Under the Equal Access to Justice Act fees and costs are awarded in successful court challenges to a timber sale EIS. As a result, there is no incentive for these groups not to sue. They sue to stay in business.

The timber supply is constrained and we are in this shortage situation, in part, because of challenges. There are, 170 mmbf enjoined in the Tongass now. Another 20 mmbf is administratively stayed.

Appeals, injunctions, notices of appeal, or informal notices of appeals are the rule on many sales.

For fiscal year 1992, the first year after the Tongass Timber Reform Act, the Senate Interior Appropriations Committee treated timber preparation funding in the Tongass like other national forests. There was no special treatment.

In contrast, the House sent a bill to the Senate which specifically cut funding for the Tongass to a level to produce only 300 mmbf. The budgeted level was 420 mmbf. All regions, including region 10, had timber sale preparation levels set out in the Senate bill.

The Senate bill went through subcommittee, full committee, and the Senate floor, before conference. The ultimate compromise included in this report was funds to produce 420 mmbf, a level developed the same way timber preparation levels for other regions were reached. Incidentally, 420 mmbf is a level below which industry and the Forest Service estimate market demand to be in fiscal year 1992.

The timber supply was constrained this year in the Tongass. Heavy snowfall didn't allow prompt commencement of work in the beginning of the operating season. Then, when the season started, there was not nearly enough released, roaded timber for the companies to operate on. Weeks in which the traditional harvest was 15 to 35 mmbf, it reached only 2 to 5 mmbf due to this constrained timber situation.

Litigation is partly to blame for this situation. The 170 mmbf enjoined would have all been harvested if it were available. Much of the 20 mmbf stayed administratively would have also been harvested. Thus, the actual cut last year would have approached 490 mmbf. That is 70 mmbf less than the compromise in the appropriation bill for this year. And actual cut in prior years is not necessarily the only indicator of market demand.

The Forest Service has estimated market demand in the near term—fiscal year 1992—to be 470 mmbf. I ask unanimous consent to have printed in the RECORD two letters from the Forest Service that explain their view on market demand for the Tongass. The letters also explain why it is so important to have volume built up in the timber pipeline which can be accessed for harvest.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Juneau, AK, October 23, 1991.

Mr. HOWARD WEAVER,
Editor, Anchorage Daily News,
Anchorage, AK.

DEAR MR. WEAVER: Your paper has recently run articles regarding the FY 92 budget and timber sale preparation levels for the Tongass National Forest. It's apparent that there is a misunderstanding of the relationship of sale preparation to actual timber harvest.

Sale preparation is a lengthy process; normally three years or more depending on the complexity of the sales, appeals, and litigation. Tax dollars allocated in the FY 92 budget will be invested in sales that will not be harvested until future fiscal years. Only very rarely is it possible to prepare a sale that can be ready for harvest in the same year.

Much has been made of the 450 million board feet per year. Some allege that to have a sale prep level of that quantity is failure to observe the recently enacted Tongass Timber Reform Act (TTRA). That simply is not true! Congress recognized that this was a decadal quantity which they stated in ANILCA as 4.5 billion board feet per decade. In any given year more or less than 450 million board feet could be offered so long as the total harvest for the decade did not exceed 4.5 billion board feet. The amount of timber harvested during the decade is the controlling factor, not the amount of timber prepared for sale in any particular year.

Under the current Tongass plan, 4.5 billion board feet per decade was determined to be sustainable in perpetuity from the 10% of the Tongass that is available for timber harvest. TTRA further reduced the amount of land available for timber harvest and prescribed other measures so that the amount of harvest that can be sustained is less than the 4.5 billion board feet per decade. The precise level is being determined.

The best management of the timber sale process is possible when there is enough timber prepared in advance so that sales offerings in any particular year can be adjusted to reflect the current situation. Indeed, to fulfill Congressional direction in TTRA to seek to meet market demand requires that enough timber sales be prepared in advance to provide this flexibility. Two to three times the average annual harvest is desirable. Currently, less than one year average annual harvest is available.

Finally, contrary to your reports, the timber program on the Tongass is a moneymaker for the American public. It's true that during the downturn of the timber markets in the middle 1980's, which has been described by some as the worst in 50 years, expenditures for timber sales exceed receipts. In FY 90, the timber program returned $2 for every $1 spent. The returns would have been even greater if purchasers of timber from the National Forests in Alaska were allowed to sell logs for processing elsewhere rather than being required to process them in Alaska to provide jobs for Alaskans.

Sincerely,
MICHAEL A. BARTON,
Regional Forester.

DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Juneau, AK, October 24, 1991.

Hon. TED STEVENS,
U.S. Senate, Washington, DC.

DEAR SENATOR STEVENS: This is in response to a verbal request from Duane Gibson, of your staff, for clarification of the Forest Service's interpretation of the Tongass Timber Reform Act, Section 101, direction to:

". . . seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber for such forest and (2) meets the market demand from such forest for each planning cycle."

As you know, economic forecasting is less than an exact science, particularly with respect to the more distant future. We make such forecasts based on the best available information. A great many variables go into the development of these projections and, over time, we monitor and make adjustments to our forecasts as deemed prudent.

We currently estimate that harvest from the Tongass, necessary for total supply to meet average annual expected demand, is predicted to be near 400 MMBF from 1990–2010. This projection was developed by researchers at the Pacific Northwest Experiment Station. The researchers reviewed a series of six studies known, collectively, as the Alaska Timber Market Studies. The results are documented in a report entitled, "An Analysis of the Timber Situation in Alaska: 1970–2010" (August 1990). A separate estimate by the Alaska Forest Association places the average annual market demand for the Tongass at 565 MMBF, or higher. Total mill capacity in Southeast Alaska is over 800 MMBF.

As for the near term, this projection could, and probably will, vary significantly. Historically, we have based our annual requests for funding the timber program on anticipated timber harvest levels. This is based on the most current timber harvest levels and what we can foresee in terms of the many factors which can effect demand.

Currently, we anticipate that the mills at Klawock and Haines will reopen in 1992 and that, as a result, timber harvest levels on the Tongass will be about 470 MMBF in FY 92. In order to meet the demand, we would need to prepare and offer new sales in FY 92 that approach 470 MMBF. We would also need to begin building enough volume under contract so that timber purchasers have the opportunity to meet fluctuating demands in future years. Such an amount under contract would equal 2–3 years of the average harvest volume. Currently, less than one year of the anticipated annual harest volume is under contract.

In summary, while a large number of unforeseeable economic, political, and other factors can effect demand, we anticipate that the long-term average annual timber demand from the Tongass will be around 400 MMBF with near term demand being around 470 MMBF.

Sincerely,
MICHAEL A. BARTON,
Regional Forester.

Mr. STEVENS. Mr. President, in addition, market demand from Federal lands in the Tongass may be increasing even more. Timber harvests from Native corporation lands, which supply fiber to the mills in southeastern Alaska, are rapidly declining. Thus, overall demand from Federal lands should be increasing over the coming years.

I also ask unanimous consent that a table from the Forest Service be printed in the RECORD. The table shows the volume offered and harvested—in net sawlog and net sawlog plus utility—and the appropriated sale preparation since 1986—always given in net sawlog.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TONGASS NATIONAL FOREST TIMBER SALE OFFER/PREPARED AND HARVEST LEVEL, FISCAL YEARS 1986–91

[In million board feet]

	Offer/prepared [1]		Harvested [2]		Appropriated sale [3] prep (sawlog)
	Sawlog	Total [3]	Sawlog	Total	
Fiscal year:					
1986	382	440	251	291	412
1987	396	452	282	336	378
1988	337	387	332	396	348
1989	320	369	377	445	300
1990	334	385	399	471	340
1991	341	395	300	364	[4] 383

[1] Offered/Prepared is used to measure annual attainment of appropriated targets. For short-term sales, volume is included when the sale has been advertised. For long-term sales, volume is included when the harvest unit has been fully prepared and available for release to the purchaser. Fiscal Year 1990 sawlog volume was reported as 310 in the draft 1990 Timber Supply and Demand Report. This was corrected to 334 in the final report.

[2] Harvest includes only volume that has been cut, scaled, and paid for. The annual volume is from the Timber Sale Automated Statement of Account (TSA).

[3] Total includes both chargeable net sawlog volume and utility log volume.

[4] 353 MMBF was assigned to the Tongass in the budget/appropriation process. 383 was attained when salvage sale contributions were factored in.

Mr. STEVENS. In this year's appropriation process, we have not treated the Tongass differently from other national forests and we have not mandated a particular cutting level. Rather we have suggested a preparation level before legal and administrative challenges take their toll.

Last, contrary to the view of some, there are no taxpayer subsidies in the Tongass National Forest. In fiscal year 1990, the Tongass timber program returned $2 for every $1 spent. The Tongass is number 16 of 154 national forests for returns. It is a positive cash flow timber program.

REMOVAL OF MINING PATENT MORATORIUM

Mr. STEVENS. Mr. President, a mining patent moratorium was removed from this year's Interior Appropriation Bill. I might add, this is the second year in a row that the Senate removed this provision.

For miners in Alaska, and throughout the rest of the West, stopping this back door attempt to change a central part of the mining law through the appropriations process was important to preserving a good law that works well.

Last year when we had the debate on the mining patent moratorium, I said that I was going to frame the vote. And I did just that. It is hanging right behind my desk. This year's vote on the moratorium was closer than last year's Senate vote.

This Senator is even more concerned than last year with the moratorium trend in appropriations bills. When this type of moratoria are used as short cuts to lever legislative changes that are not coming out of the authorizing committee, it is just plain wrong.

Sometimes I do not think some in the East comprehend our problems as public land States in the West. Before we can do anything on our land we must get clearance after clearance from a host of Federal agencies.

There ought to be more understanding from those in the East who make decisions here in Congress that significantly influence economies in the West. I am working on a bill now called the Public Lands Equitable Distribution Act. The measure will propose a way to better distribute the different types of public lands throughout the country.

I also think that some from the East do not understand how their economies are linked to Western economies. I asked the miners in Alaska, do a little survey for me on where they purchase their supplies and products. I will include the results of this survey after my remarks.

Alaska miners purchase their mining supplies from 48 States, plus the District of Columbia. I hope Senators realize that if miners are forced out of business by bad changes in a good mining law, the impacts will be felt across the country.

I understand that field hearings on broader mining law reforms under the Bumpers bill are being scheduled in Western States

To me that is encouraging. If this law should be changed, it should be changed through the legislative process and the people directly affected by the substantive changes should be given an opportunity to be heard. The appropriations bill just is not the place for those substantive changes.

I want to thank those in the Senate who supported the miners.

Mr. BYRD. Mr. President, there are too many conversations going on around the Chamber. I ask for order in the Senate.

The PRESIDING OFFICER. The President pro tempore is, as usual, correct. Will Senators please remove their conversations from the Chamber?

The Senator from Alaska.

Mr. STEVENS. Mr. President, I do thank the distinguished President pro tempore, because I was just going to thank the Senators, and this certainly includes the distinguished chairman of our Appropriations Committee. I want to thank all who supported the miners again this year and removed the patent moratorium from this bill.

I urge everyone to think of using the legislative process for any amendment that should be made to the general mining laws.

I ask unanimous consent that the survey results, to which I referred earlier, be printed in the RECORD.

There being no objection, the materials was ordered to be printed in the RECORD, as follows:

States From Which Alaska Miners Purchase Mining Supplies

State	*Number of firms supplying AK Miners*
Alabama	4
Arizona	28
Arkansas	3
California	154
Colorado	85
Connecticut	22
Delaware	3
Florida	11
Georgia	25
Hawaii	2
Iowa	11
Idaho	20
Illinois	98
Indiana	10
Kansas	6
Kentucky	9
Louisiana	6
Maryland	7
Massachusetts	21
Michigan	30
Minnesota	25
Mississippi	4
Missouri	29
Montana	2
Nebraska	2
Nevada	29
New Hampshire	6
New Jersey	32
New Mexico	3
New York	41
North Carolina	7
North Dakota	1
Ohio	57
Oregon	66
Oklahoma	15
Pennsylvania	92
Rhode Island	4
South Carolina	6
South Dakota	4
Tennessee	10
Texas	64
Utah	50
Vermont	1
Virginia	20
Washington	330
D.C	8
West Virginia	2
Wisconsin	47
Wyoming	5

Mr. BYRD. Mr. President, so far as I know, there is only a possibility that there may be one more motion or amendment offered in connection with the amendment in disagreement. I do not see either Senator SIMPSON or Senator MURKOWSKI on the floor, but it will be one or both of those Senators.

Until we are able to hear any indication from them as to what their wishes are, as far as I know, there is no other action on this matter.

Does the majority leader wish to proceed to something else, or seek to utilize the time right now?

Mr. NICKLES. Will the chairman yield?

Mr. BYRD. Yes.

Mr. NICKLES. I have consulted with the Senator from Wyoming, who is on the floor now. We are hopeful we will be able to wrap this one last amendment up in the next 15 or 20 minutes and dispose of this bill. So I think we are getting very close.

Mr. BYRD. So what the Senator is saying, then, it may be 15 or 20 minutes before we are able to dispose of this.

Mr. NICKLES. That is correct.

Mr. STEVENS. Will the Senator yield for just one question? Is it anticipated there will be a rollcall vote on that amendment?

Mr. BYRD. I do not anticipate one.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislation clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, last evening and earlier today, I indicated that it was my hope that we could complete action at an early hour this evening on this bill so that those Senators with small children could spend the evening of Halloween with them—there are several Senators in that situation—and that following action on this bill, we would return to the energy bill for such debate and discussion as those Senators who wished to may participate in.

I now ask the managers whether or not we have reached a stage with respect to the Interior bill that would permit me to announce that there would be no further rollcall votes. If we could proceed to finish the bill, those Senators who wish to spend the early part of the evening with their children could do so.

I ask the distinguished chairman whether or not it is possible for me to make that announcement now.

Mr. BYRD. Mr. President, if the distinguished majority leader will yield, as far as this bill is concerned, this conference report, there will be no more rollcall votes.

There is one amendment in disagreement that remains, and it is being held open so that Senator SIMPSON and Senator MURKOWSKI and possibly—there are one or two other Senators interested—Senator KOHL. If one or more of those Senators wish to make a motion in regard thereto I will be willing to accept the motion because it is my understanding the matter would be accepted in the House if it came back, and the measure would go to the President.

That is the only thing that remains. That would not require a rollcall vote. So, in response to the majority leader, I anticipate and can assure the distinguished majority leader there will be no more rollcall votes on this matter.

Mr. NICKLES. I concur. There will be no rollcall request made on this side. I think we are finished with this bill shortly.

Mr. MITCHELL. In that event, Mr. President, there will be no further rollcall votes this evening. There will be a rollcall vote tomorrow morning at a time to be stated, which I will state after further consultation with the distinguished Republican leader. That will occur tomorrow morning.

For now, there will be no further rollcall votes today. Mr. President, might I inquire what length of delay you anticipate before you are able to resolve the one pending matter to which you referred?

Mr. BYRD. It is my understanding 15 minutes.

Mr. NICKLES. If the majority leader will yield just for a question as far as tomorrow is concerned, some of us have two or three plane reservations already scheduled. Could you give us some kind of idea when we might vote tomorrow?

Mr. MITCHELL. Yes. Tomorrow morning.

Mr. NICKLES. In the morning?

Mr. MITCHELL. Yes.

Mr. NICKLES. I thank the majority leader.

Mr. MITCHELL. Mr. President, I will repeat then, there are no further rollcall votes this evening. There will be that one rollcall vote tomorrow.

I would like to suggest, if the managers do not object, we now return to consideration of the energy bill until such time as the chairman is ready to complete action on the Interior appropriations conference report, with the understanding that the Senators engaged in debate on energy would yield to the chairman to return to that when they are ready to complete action on that bill. Then the debate can continue on the energy bill and there will be no intervening time lost. Is that agreeable to the distinguished manager?

Mr. JOHNSTON. Yes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana.

NATIONAL ENERGY POLICY ACT

MOTION TO PROCEED

The Senate continued with the consideration of the motion.

Mr. JOHNSTON. Mr. President, if I may bring my colleagues up to date on the state of play as far as the energy bill is concerned, tomorrow morning, Mr. President, 1 hour after convening at an hour to be agreed upon, we will have a cloture vote on the motion to take up the bill. Mr. President, I hope my colleagues are willing to consider a comprehensive energy policy. S. 1220 is that comprehensive energy policy. It is 16 titles. It involves both energy efficiency and alternative fuels—a very extensive program. Energy conservation, it has a CAFE section—that is fuel efficiency for automobiles—along with natural gas, Outer Continental Shelf, strategic petroleum reserve, nuclear energy—that is both nuclear licensing and research on new reactors.

It involves research on such things as biomass, electric cars, wind energy—the whole of what is generally referred to as the soft path—as well as clean coal and other technologies.

Mr. President, there are controversial sections of this bill no doubt. The Arctic National Wildlife Refuge is probably the most controversial part of the bill. But, Mr. President, I plead with my colleagues, those who are opposed to that provision, to let us take up the subject of comprehensive energy policy. Let us first consider those matters that do not involve the Arctic National Wildlife Refuge, that do not involve CAFE standards, and see if the Senate can work its will on them.

Let us bring up the issue of nuclear licensing, for example, and see whether or not we can come to an agreement, come to a consensus of Senators on the subject and lay that question, then, aside.

Let us work on energy efficiency, that the Senator from Colorado, [Mr. WIRTH], has spent so much time on. Let us see if we can come to a consensus on energy efficiency. I think there are some 20 amendments, possible amendments, to that. We are prepared to accept many of those energy efficiency amendments. Let us see if we can get an agreement in place for energy efficiency.

Let us do the same thing with these other titles and then, when we finish that, it would be my intention to put in an amendment with respect to ANWR and/or CAFE, or both together. At that time the filibuster could then proceed. I am not asked for any concession at all from my colleagues with respect to their right to filibuster. I am not asking for it because I would not get it. But unless we can get 60 votes on that issue of ANWR, we know we cannot pass it. I am frank to tell the Senate I do not believe we could get it.

But at least this Senate ought to consider comprehensive energy policy. Everybody is singing from the same song sheet as far as the problem is concerned. I have not heard anybody here say we do not have a problem as far as energy dependency is concerned. The Senator from Colorado makes a better speech on that than the proponents of the bill do. It is just that we have not come to a meeting of the minds on the elements of energy policy.

Frankly, I think this Senate would look awfully silly to say we are not going to consider comprehensive energy policy. I think we would look awfully silly. And anybody who thinks that you are going to kill this bill and then you are going to send it back to the Energy Committee and they are then going to come up with a bill that everyone likes—we heard this morning that each section was salvaged separately by different Senators. We started off with the Senator from Colorado [Mr. WIRTH] who is on the committee and has worked on it. He said, look, but for ANWR, it is a great bill. And then the Senator from Montana said it is a sorry bill, there is nothing good about it. Then the Senator from Minnesota said approximately the same thing. Everyone—like the blind men and the elephant—sees it differently. So be it, that is what democracy is about. That is what this Senate is about, the greatest deliberative body in the world, so we say.

Why do we not deliberate on this very important policy of energy and work our will on that as to which we can get achievement on and move this country? If we cannot move it all the way, then let us move it part of the way. But to say you cannot even talk about it, we are going to put a gag rule on the Senate as far as energy is concerned, and then to say if this bill fails you will think of something—you have to be dreaming, Mr. President. That is what we have done for 19 years.

The Senator from Nevada [Mr. BRYAN] brought up his CAFE standard bill some time ago by itself, in isolation, and he could not get past the cloture. And if he brings it up again by itself he will not be able to get past the cloture.

The same thing is true with any of the elements of the bill not taken together. And one not think you can get energy efficiency so quickly either. Some Senators say the energy efficiency provisions are not very strong. You have not seen the opposition. The National Association of Homebuilders, for example, objects to energy standards for buildings and for homes. They think it goes too far. They do not want these standards.

I appreciate that. I am sympathetic with them. I like that group. But you just cannot bring up little bits and pieces by itself and expect that it is going to happen. Mr. President, I plead with my colleagues to think this thing through. If you sink this package, and it is clearly within the ability of this Senate to sink it, then do not kid yourselves, you have sunk energy policy because there is no quick consensus.

We cannot go off in the room over there and come back with a consensus if we take ANWR out. And, by the way, how would I take ANWR out? I very strongly believe that the 1.2 million acres, which is a part of the Arctic National Wildlife Refuge in which we want to drill, leaving the other 34-odd million acres of the Arctic National Wildlife Refuge undisturbed, I strongly believe you can drill there and do so safely without any harm.

I know that it is part of 3.355 billion acres of tundra in the Arctic, and that it is not harmful to the wildlife. But let us suppose I changed my mind completely. Now just how would I keep the Senators from Alaska from bringing that issue up for a vote?

Let me say you brought back a bill that the Senator from Minnesota wanted, and it is energy efficiency, and it is conservation, and it is all of those things he talked about this morning. What is the first amendment out of the box? ANWR. You have to face that issue. And is he going to then filibuster his own bill? Are you then going to say we are not going to consider anything if ANWR is brought up as an amendment?

If you are saying that, then you are giving to any Senator a right to kill any legislation as to which there is not a unanimous consent, because all he has to do is say I want to put ANWR on as part of that bill, because then that means you have an automatic filibuster which is successful.

So, Mr. President, I see we are about ready to finish up this other bill. Let me plead with my colleagues, let me plead with this body to let us consider energy policy on the floor of this Senate and let sections of that bill rise or fail on their merit. You do not have to give up your right to filibuster ANWR by considering energy efficiency. Let us see if we can agree what energy efficiency ought to be as policy. Let us see if we can agree on these other matters, preserving everyone's right to filibuster ANWR. That is all we ask. We will vote on it tomorrow.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1992—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Oklahoma.

Mr. NICKLES. Thank you very much, Mr. President. It is my hope and desire we can conclude the Interior bill. I believe the Senator from Wisconsin has an amendment. This will be the last amendment that we have, and then I believe we have some colloquies we want to insert in the RECORD and we can finish this Interior bill in the very near future.

The PRESIDING OFFICER. The Senator from Wisconsin [Mr. KASTEN].

UNANIMOUS-CONSENT AGREEMENT

Mr. KASTEN. Mr. President, I ask unanimous consent that the Senate recede to the House position on amendment No. 167 and at the same time the agreement of yesterday adopting amendment No. 175 be vitiated; and that it be in order that I offer a further amendment to amendment No. 175.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, I have no reason to object——

Mr. BYRD. Mr. President, I interpose no objection on this side. This has been cleared.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, this amendment has been cleared with us.

Mr. METZENBAUM. Reserving the right to object, did I understand the Senator from West Virginia to say no objection? Does he know what the amendment is about?

Mr. BYRD. Yes, I do.

Mr. METZENBAUM. I did not know what the amendment was about. I have no problem.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

AMENDMENT NO. 1300 TO AMENDMENT IN DISAGREEMENT NO. 175

Mr. KASTEN. Mr. President, I send an amendment to the desk on behalf of myself, Senator MURKOWSKI, Senator SIMPSON, and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KASTEN], for himself, Mr. MURKOWSKI, Mr. SIMPSON, and Mr. KOHL, proposes an amendment numbered 1300 to the amendment in disagreement No. 175.

Mr. KASTEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On amendment No. 175 insert before the "." ": *Provided further*, That within the funds appropriated in this bill for Fossil Energy Research and Development, $5,000,000 shall be made available for planning, design and initial construction of the Heartland project".

Mr. KASTEN. Mr. President, this is not a clean-coal amendment. This amendment merely provides the funds appropriated in this bill for fossil energy research in the sum of $5 million will be made available for the planning, design and related activities for the Heartland project. The Department of Energy will provide this research and development funding and the project itself will provide significant levels of private funding as well to allow progress to go forward on this innovative technology. I urge the adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? Hearing none, the question is on agreeing to the amendment.

The amendment (No. 1300) was agreed to.

Mr. KASTEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KASTEN. I thank the Chair, and I thank the Senator from West Virginia and the Senator from Oklahoma.

Mr. BYRD. Mr. President, I ask unanimous consent that the amendment No. 175, as amended, be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Amendment in disagreement No. 175, as amended, was agreed to.

Mr. BYRD. Mr. President, I ask that the motion to reconsider be laid upon the table.

The motion to lay on the table was agreed to.

THE UNIVERSITY OF NORTH DAKOTA ENERGY AND ENVIRONMENTAL RESEARCH CENTER

Mr. BURDICK. Mr. President, the fossil energy research section of the fiscal year 1991 Interior appropriations bill includes $4,750,000 for ongoing research at the University of North Dakota Energy and Environmental Research Center [UNDEERC]. UNDEERC receives these funds under a cooperative agreement with the Department of Energy. Though this agreement is set to expire during fiscal year 1992, the bill does provide funding for the entire fiscal year and it is my understanding that it is the committee's intent that DOE and UNDEERC sign a new 5-year cooperative agreement at current funding levels. Mr. President, I would like to ask the chairman of the committee, Senator BYRD, if this indeed was the committee's intent?

Mr. BYRD. This is correct. It is the committee's intent that a new 5-year cooperative agreement be signed at current funding levels and that UNDEERC continue its efforts to increase its share of non-Federal research contracts.

Mr. BURDICK. Thank you, Mr. President. I should add that since this facility was transferred from the Department of Energy, the center has done an outstanding job of attracting research contracts with private industry. Particularly successful has been the jointly sponsored research project program. UNDEERC has been able to extensively leverage this money with private funds. In fact, since 1988, UNDEERC has increased its work with private industry fivefold.

ADVANCED BATTERY RESEARCH PROGRAM

Mr. KASTEN. Mr. President, I would like to engage the distinguished floor manager in a colloquy regarding the funding for the Department of Energy, specifically the advanced battery research program. I would first commend the floor manager, the chairman of the Interior Appropriations Subcommittee, for his leadership in providing this important program with the resources necessary to pursue the U.S. advanced battery consortium [USABC] goals. My specific concern, however, is whether he and his committee view the program as crucial to the development of electric vehicles?

Mr. BYRD. I thank the Senator for his comments. This program is crucial. In order to meet any near-term electric vehicle production date—to produce an electric vehicle which is of practical cost and utility and can be a reliable vehicle choice for an American family as well as the commercial and industrial uses—we will need battery technology which is safe, reliable, and environmentally attractive. The State of California has mandated the use of zero-emission vehicles by 1998 to help solve the air pollution problems in the Los Angeles basin. To meet that goal it may be necessary to demonstrate full-scale battery feasibility and pilot-scale production capability by late 1994. That is indeed "near term."

I have been greatly encouraged that private industry has made a very substantial financial commitment to this program. In that regard the appropriations bill includes language that requires a 50-percent cost-sharing level by the non-Federal participants in the program.

Mr. KASTEN. I thank the chairman for his description of the program and for his insightful comments. I believe that it is only through this combined Federal and private sector effort that we will be able to reach that very short-term goal and be able to provide not only Californians, but all Americans, and foreign consumers, with an affordable pollution-free vehicle in this decade. I believe we would all rejoice to begin the next century with less air pollution and with a greatly reduced dependence on foreign oil.

However, I am very concerned with reports I have received that there may be a preconceived perception by some managers of the program that the most widely used and currently available technology, lead-acid battery technology, is somehow limited and outdated. As a result, additional research and development on this most viable candidate is being eliminated. Ironically, I am also being told that lead-acid technology could be the quickest and least expensive route to effective electric vehicle development.

Mr. DeCONCINI. If the Senator will yield, I would like to say that I completely share his concern. Although the familiar battery now in common use is not adequate to future electric vehicle [EV] use without modification, I am told that there is an advanced form of lead-acid technology that combines traditional lead-acid electrochemistry with the principles of gas recombination. This results, I understand, in products that are maintenance-free, viable in any position, smaller, lighter, and more powerful than flooded lead-acid analogs. These batteries are apparently safer, more versatile, and like existing lead batteries, are expected to be completely recyclable.

Additionally, research is being conducted in my State, within separate Federal and State funded programs, on related technology advancements, such as optimizing the charging cycle of lead-acid batteries using photovoltaic cells. Because of the increase in electrical generation that electric vehicles will require, the use of solar energy, especially in the Southwest, may be a very practical consideration in our overall research strategy. So, I would certainly hope that this, or any technology, which has proven reliability, and which shows promise, would not be prematurely eliminated.

Mr. KASTEN. I thank my distinguished colleague and would add that it is my understanding that some electric vehicle prototypes, now being experimented with independently, are utilizing lead-acid battery technology. The technicians apparently believe this technology, with additional research in ways to exploit polarization and other inherent characteristics of lead-acid technology, some unique to lead-acid technology, could best accomplish near-term success. Research successes involving lead-acid batteries are especially desired because the infrastructure for manufacturing and distributing these batteries is already in place, which gives lead-acid batteries a substantial advantage in any commercialization strategy.

I would like to inquire of the distinguished floor manager if it is the committee's intent to include all viable technologies, including lead-acid technology in this very critical phase of the research program? And whether the committee views the potential recyclability of battery materials as an important consideration?

Mr. BYRD. I would assure the Senator that it is not the committee's intent to eliminate any technology from participation in the program and that the potential recyclability of battery materials is an important consideration. Of course, we will be influenced by what the technical experts, at DOE, think is reasonable and in the public interest.

Mr. KASTEN. I thank the chairman for his clarification. Because of the scope and scale of this program, any technology being omitted from further research and development would mean, in effect, the end of Federal funding for research on those technologies. It could also greatly limit our opportunities as a country to produce efficient and competitive electric vehicles to meet a great and immediate domestic and world demand. I would hope we could receive a report from the department, within the near future, on the technologies being developed. And I think we should be prepared to address these concerns during the fiscal year 1993 appropriations hearings.

I again thank the very distinguished floor manager, the chairman of the Appropriations Committee, for his excellent comments and insights.

TONGASS NATIONAL FOREST TIMBER ISSUES

Mr. STEVENS. Mr. President, I want to thank my good friend Chairman BYRD for his kind cooperation in working out the details of this tough bill. I especially appreciate the work of him and his staff on timber issues related to the Tongass National Forest in southeast Alaska.

Last year Congress passed the Tongass Timber Reform Act which substantially changed the operation of the Tongass. The cost of implementing this act was quite high—at least $1.2 million in immediate costs to comply with new legislative mandates—according to the Forest Service. Long-term contracts with the two large mills had to be rewritten, timber sales had to be reworked, stream buffers were required to be redone. All of these mandated requirements came to a substantial sum.

Addressing these costs meant all the timber that was to be prepared and offered in fiscal year 1991 was not completed.

Since costs of implementing the reform act were unknown at the time of budgeting, we added $1.2 million in the Senate bill to replenish these costs. I ask my friend from West Virginia, if he will, to explain how these funds will be allocated.

Mr. BYRD. Certainly. The statement of the managers directs the Forest Service to allocate additional funds needed to replace fiscal year 1991 timber preparation funds for the Tongass. As the Senator has indicated, the Forest Service estimate of these costs is at least $1.2 million, which is the amount we provided in the Senate bill.

Mr. STEVENS. I understand that the Statement of Managers which accompanies this conference report makes that amount available "within existing funds." Is my interpretation of this language correct, in that before funds are allocated between the several regions, Tongass implementation costs should be allocated to region 10?

Mr. BYRD. The Senator is correct. These funds are in addition to the funds necessary to conduct the fiscal year 1992 sales program of 420 MMBF for region 10. The additional funds are to be used to replenish timber preparation funds that were actually used to implement new requirements under the new authorizing act so that the needed environmental work for all sales anticipated in fiscal year 1991 may be completed and the sales proceed.

Mr. STEVENS. I thank my good friend, Chairman BYRD.

STEWARDSHIP END RESULT

Mr. DECONCINI. Mr. President, when the Senate considered the fiscal year 1992 Department of the Interior and Related Agencies Appropriations Act, my amendment to initiate an experimental program on the national forests in the Southwest, regions 3 and 4, involving the use of land management service contracts, or "Stewardship End Result" contracts, was accepted and included in the bill to be considered by the conferees.

The amendment, in the form of bill language was considered and accepted by the conferees, but with certain modifications. First, the pilot program has been limited to the Kaibab National Forest in Arizona and Dixie National Forest in Utah. Second, language regarding the distribution of 25 per centum payments to local governments was deleted because of uncertainty as to the mechanisms involved.

As a member of the conference committee, I would like to assure local governments, however, that is my understanding, that there remains a total commitment to 25 per centum payments in the experimental program and the committee will be looking for a report from the Forest Service on how this is best accomplished administratively. I would like to ask my distinguished colleague from Utah, Mr. GARN, who was also a member of the conference committee, if he shares that understanding.

Mr. GARN. I thank the Senator and would like to say emphatically, that I share his understanding that that remains a total commitment to the 25 per centum payments from timber receipts. I also understand that the difference in bill language reflects the possibility that no change in current law may be necessary and that we need to look at how the program can be administered more effectively. These payments are very important in Utah, as I am sure is the case in Arizona, and I will join with the Senator in reviewing this experimental program as it is developed this year, to make sure the commitment is honored.

Mr. DECONCINI. I thank the Senator and would like to add that the committee can revisit the structure of the bill language during the review of this program as we consider the fiscal year 1993 appropriations requests, and any necessary changes can be made at that time. I would again like to extend my appreciation to the Chairman for his support and leadership, and to all of the conferees both House and Senate, and certainly to staff members who have worked so well to develop this program legislatively.

Mr. STEVENS. Mr. President, as I have said before, I want to again thank Chairman BYRD and his staff for their understanding of the tight timber situation we are facing in the Tongass National Forest.

The chairman met the difficult task of absorbing a large off budget item—the old Tongass timber supply fund—into this appropriation bill. This is a great accomplishment given the tight 302(b) allocation for the subcommittee. It should be clear that no special fund exists for the Tongass, as did in the past. The Tongass will be receiving its funds in the same manner as do all the other national forests.

Chairman BYRD and Chairman YATES have been most understanding in providing $20 million for a national timber pipeline initiative. Under the compromise with the House, the Forest Service is to report to the committee on a proposed distribution of funds for this initiative, and the Forest Service is also required to allocate the funds according to factors spelled out in the statement of managers. Would the chairman be willing to briefly explain the allocation of funds for this initiative?

Mr. BYRD. Yes, I would. The Senate bill provided $30 million for the timber pipeline initiative, but the compromise was $20 million.

I am aware of the great need for pipeline funds in region 10. I understand that this year there was a severe shortage of timber in Alaska, less than a 6-month supply. In allocating the funds for the pipeline initiative the Forest Service should consider the need to build up the timber pipeline in region 10.

The statement of managers directs the Forest Service to distribute funds for the pipeline initiative based on several factors, including the existing pipeline levels, market demand meeting requirements in the law, and the need for advance work such as road construction. We set out these factors so that the pipeline will begin to fill up and needless work won't be done on an uncertain land base. I expect that when the Service weighs these factors, region 10 will fare well for pipeline initiative funds.

Mr. STEVENS. I thank my friend, Chairman BYRD.

REINTRODUCTION OF WOLVES TO YELLOWSTONE

Mr. WALLOP. Mr. President, on page 16 of the statement of managers, the managers have agreed to include language which would direct the Fish and Wildlife Service to complete an environmental impact statement on the reintroduction of wolves to Yellowstone National Park. The managers further agreed that the environmental impact statement is to cover a broad range of alternatives. I would like to ask the chairman of the committee whether the wolf management report referred to in H.R. 2686 as passed by the Senate on September 19, 1991, is to be considered as one of the alternatives?

Mr. BYRD. The Senator is correct, and I believe my colleague, the distinguished ranking member of the subcommittee, concurs in my assessment.

Mr. NICKLES. If the Senator will yield for a moment.

Mr. BYRD. I yield to the Senator from Oklahoma.

Mr. NICKLES. I thank the Senator and would say to my colleague from Wyoming, the managers report language does not disagree with nor negate the language of the Senate-passed bill. The Senator from West Virginia is correct—a broad range of alternatives would include the recommendations of the Wolf Management Committee report published as and entitled "Reintroduction and Management of Wolves in Yellowstone National Park and Central Idaho Wilderness Area."

Mr. WALLOP. Mr. President, I thank both the Senator from West Virginia and the Senator from Oklahoma for their response and appreciate their assistance in this very important matter.

CHISHOLM, ELLSWORTH, AND WESTERN CATTLE DRIVE TRAILS

Mrs. KASSEBAUM. Mr. President, I would like to thank the distinguished chairman of the Committee on Appropriations, who is also chairman of the Subcommittee on Interior, for his generosity in including in this year's appropriation funds, for a feasibility study of the Chisholm, Ellsworth, and

Western Cattle Drive Trails and eight frontier cavalry forts in Kansas.

For clarification purposes, I would like to ask the distinguished chairman if it is his understanding that funds referenced in the conference report for the study of the cattle trails are to be used for the study of the cavalry forts as well?

Mr. BYRD. Yes, it is my understanding that the funds that were appropriated by the conference committee are to be used to study both the cattle trails and the cavalry forts. We think these are good projects, and we were delighted to be able to accommodate the Senator from Kansas on her request.

Mr. NICKLES. For clarification purposes, I would also like to add that it is my understanding that the funds are to be used to study both the cattle trails and the eight cavalry forts in Kansas. The Senator from Kansas is always very restrained in her funding requests, and I thank her for bringing the need for these studies to our attention.

Mrs. KASSEBAUM. I thank the Senators for clarifying this issue, and I yield the floor.

OLYMPIC WHITEWATER EVENTS

Mr. SASSER. Mr. President, the Atlanta Organizing Committee for the 1996 Olympic games has expressed a serious interest in holding all whitewater events on the Ocoee River in Polk County, TN. Because of the river's proximity to Atlanta, and due to the river's challenging rapids, the Ocoee is the most logical place for these events to occur. However, the events can occur only if the Federal Government provides support. The river and its surrounding lands are all managed by the Federal Government. The USDA Forest Service, Cherokee National Forest, and the Tennessee Valley Authority are the principal agencies involved.

I strongly believe that the Forest Service should continue to cooperate with TVA to support the organizing committee, the State of Tennessee, and the government of Polk County in assessing the feasibility of this site and ascertaining what the impacts on the Federal lands would be. The Service and TVA could provide assistance in determining the location and design of temporary and permanent facilities; in obtaining the necessary permits, licenses, or leases; and in ensuring that all laws that protect environmental, historical, or archaeological resources are obeyed.

The whitewater event will affect public resources over a broad geographic area in the Southeast that contains a large amount of Federal land, and the impact of this event will begin far in advance of the Olympic competition in 1996 and last after the awareness and popularity of the Ocoee River and other similar rivers in the Southeast, and a significantly elevated level of use of Federal recreation facilities in the region.

I intend to ask that the Forest Service prepare a report assessing these issues, detailing what is needed to meet the impacts, and the associated costs. This report would address Forest Service and Tennessee Valley Authority lands and facilities within the Ocoee River corridor and lands under the jurisdiction of the Forest Service in Tennessee, North Carolina, and Georgia. The Forest Service should assess the potential effects of the competition on its roads, trails, and recreational facilities; and the opportunities presented and costs associated with interpreting natural resource management in the United States to domestic and foreign visitors. The report should also address the opportunities this event provides for the Forest Service and TVA to contribute to the development of the local economy.

Does the Senator from West Virginia agree that the Forest Service has an important role to play should the Olympic whitewater events be held on the Ocoee River, and that it should take the steps I have outlined above?

Mr. BYRD. Mr. President, I do agree with the Senator from Tennessee that the Forest Service has a vital role to play should the Ocoee River be chosen as the site of the Olympic whitewater events. As he points out, the river and surrounding lands are all managed by the Federal Government, and the Forest Service is one of the principal management agencies.

I understand that the Forest Service and TVA are both already participating in the preliminary planning for these events. The Forest Service should continue to participate, to the extent possible, within its existing budget, with the other parties interested in these events. If additional requirements are needed to deal with this issue, the Forest Service should identify them as well in submitting the information requested by the Senator from Tennessee.

TERRTIORIAL APPROPRIATIONS

Mr. JOHNSTON. Mr. President, there are two questions I have regarding the statement of managers with respect to two items under the appropriations for Territorial and International Affairs, and I would like to ask the chairman for clarification.

Mr. BYRD. I would be pleased to provide any clarification.

Mr. JOHNSTON. First, with respect to the $500,000 provided for the brown tree snake program. There has been a concern raised that this snake infestation problem is multijurisdictional, both geographically and with regard to Federal agencies, and that this complexity has apparently contributed to the Federal Government's inability to develop a comprehensive plan for the snake's eradication. Accordingly, it was my understanding that these funds, with the exception of the $100,000 to be provided to the State of Hawaii, would not be released until a comprehensive control plan had been agreed to by the governments of Guam and Hawaii, and by the departments of the interior and agriculture. I firmly believe that the granting of further funds without a comprehensive multiyear plan to identify and coordinate all of the necessary parts of an eradication plan, will not advance our goal of control. Am I correct that these funds are to be released only for the implementation of such a comprehensive plan?

Mr. BYRD. Yes; it is intended that these funds not be released until a multiyear and coordinated plan has been developed, and for the purpose of initiating that plan.

Mr. JOHNSTON. I thank the Senator for that clarification. Second, with respect to the $1,000,000 for additional studies on Rongelap Atoll. The conference report states that these studies are to be carried out in accordance with the plan recently agreed to by the Republic of the Marshall Islands, the Rongelap Atoll local government, the Department of Energy, and the Department of the Interior. However, it is my understanding that these funds are to be used to implement the Rongelap scientific work plan in accordance with a memorandum of understanding between these four parties. It appears that the plan and the memorandum of understanding may have been inadvertently merged in the understanding of the conferees. A clarification that there are, in fact, two separate documents which will govern the use of these funds is important.

Mr. BYRD. The Senator is correct. The plan has been completed, but the memorandum of understanding is in the process of being developed. It is intended that these funds not be released until the memorandum has been completed. Mr. President, I understand, and would like to add, that the House Appropriations Subcommittee for Interior and Related Agencies concurs with these clarifications.

Mr. JOHNSTON. Mr. President, as chairman of the authorizing committee I have asked the Office of Territorial Affairs for the opportunity to review the brown tree snake control plan and the Rongelap memorandum of understanding prior to the release of funds for either project. Does the distinguished chairman have any objection to this procedure?

Mr. BYRD. No; I have no objection.

Mr. JOHNSTON. I thank the chairman for his clarification and assistance on these items.

INDIAN MUSEUM

Mr. BYRD. Mr. President, I would like to engage Senator NICKLES in a brief colloquy related to funds available to the Smithsonian Institution for the expedited construction of the National Museum of the American Indian in New York. It is my understanding that the Smithsonian Institution is capable of completing the Indian Museum construction at the Custom House facility so that exhibits commemorating the quincentenary of initial contacts between American Indians and European explorers could be opened less than 1 year from today.

It seems to me that such an expedited schedule would be very timely, and I thank the Senator from Hawaii [Mr. INOUYE] for bringing this matter to my attention. It is my understanding that a total of $1.14 million would be required to accomplish the opening of the quincentenary exhibits in the Custom House. I support the reprogramming of these funds, as appropriate, from the Smithsonian's construction account and the salaries and expenses account.

Would the ranking member of the subcommittee, Mr. NICKLES, join me in directing the Smithsonian to accomplish this reprogramming?

Mr. NICKLES. Mr. President, I join the chairman of the subcommittee in the expectation that the Smithsonian will accomplish this reprogramming quickly so that the exhibits may be opened in October 1992. I understand that this reprogramming will stimulate an additional $250,000 in private contributions for the planned exhibits.

Mr. BYRD. I thank the Senator for his concurrence, and I would hope that we can reach a quick agreement with the House Interior Appropriations Subcommittee on this reprogramming proposal.

INDIAN LITIGATION FUNDING

Mr. McCAIN. Mr. President, the conference report contains language directing the Bureau of Indian Affairs to provide sufficient funds for the Hopi and Navajo tribes for the 1882 litigation, and for the Hopi, Navajo, and San Juan Southern Paiute Tribes for the 1934 litigation. Such language was added to the report to ensure that the tribes would receive a part of the financial support necessary to resolve such litigation. Given Congress' historical commitment to assist with the substantial litigation costs, and further given the immediacy of the court schedules already established for these cases, do the conferees believe it is essential that funds be released?

Mr. BYRD. Mr. President, the conference agreement includes $2.1 million for attorneys fees to assist the tribes in cases such as these described. The funds should be made available as soon as possible to meet the immediate litigation requirements confronting tribes.

Mr. McCAIN. I thank the Senator. Mr. President, I ask unanimous consent to print in the RECORD information regarding court schedules relative to these two litigations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The 1934 and 1881 Litigation Schedule

1934 TRIAL

(1) Phase II of the 1934 trial is scheduled to begin March 10, 1992.

(2) Phase I of the 1934 trial is complete. An opinion may be rendered within the next two months, and will shape the issues to be resolved in the Phase II litigation.

1882 CASES

(1) Accounting Case: The JUA accounting case is set for trial April 14, 1992, before the United States District Court for Arizona.

(2) Owelty, Damage, and Use Cases: litigation is pending before the United States District Court for Arizona. All fact discovery closes December 1, 1991. All trial expenses must be named by December 15, 1991. The experts must exchange reports by February 1, 1992. All expert discovery must be completed by March 1, 1992. All motions in limine and the like must be submitted by March 16, 1992. The Local Rule 42c conference is scheduled for May 18, 1992. Sequential trials will begin June 2, 1992.

(3) Rental Cases: A decision from the United States District Court for Arizona in the 1979–1986 rental cases is expected around November 15, 1991. Other rental cases arising during the period 1986–1989 are being briefed and argued before the Department of the Interior.

(4) *Many Beads et al.*, v. *United States:* Litigation is active before the Ninth Circuit Court of Appeals.

(5) New Construction: A hearing date before the United States District Court for Arizona remains to be scheduled.

Mr. RUDMAN. Mr. President, I join my colleague from South Carolina, the chairman of the Commerce-Justice-State subcommittee, in thanking the conferees on the Interior appropriations bill for including several technical corrections to our appropriations act for fiscal year 1992. Senator HOLLINGS has explained these technical corrections, so I will not go into detail on each provision. However, I do want to join him in clarifying the appropriation provided for the National Meteorological Center for a new supercomputer. A total of $15,000,000 is provided for the supercomputer upgrade, of which $9,000,000 is for the first installment on a multiyear lease-purchase agreement. The remaining $6,000,000 is for operation and maintenance costs. At the same time, the funding for AWIPS/NOAAPORT should total $19,778,000.

This clarification is needed due to the fact the National Oceanic and Atmospheric Administration budgeted for operational costs in a procurement line item. This is inappropriate, and should be corrected in next year's budget.

I thank the chairman and ranking member of the Interior Subcommittee for the opportunity to clarify this important item, and I yield the floor.

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1992 Interior appropriations conference agreement, and to commend the distinguished Senate appropriations chairman, Senator BYRD, for his outstanding efforts on this bill.

This legislation makes important investments in the preservation of our Nation's natural heritage, through its support of the National Park Service, the U.S. Fish and Wildlife Service, and the Forest Service. It also provides essential support for the National Foundation on the Arts and Humanities and the Smithsonian Institute, and contains money for health and education programs that are vital to Native Americans.

I would like to discuss a number of items involving historic preservation, parks, and open space in my State that are addressed in this bill.

NEW JERSEY URBAN HISTORY INITIATIVE

Mr. President, this legislation contains $7.9 million I requested for the New Jersey urban history initiative, a project that will serve to accentuate the rich history of New Jersey's cities.

From the Revolutionary War to the Industrial Revolution to modern times, New Jersey's cities have played a vital role in the growth of our Nation. Many New Jersey cities contain physical reminders of their rich history. These are sites of such national significance that they have been designated national landmarks or have been placed on the National Register of Historic Places. Unfortunately, though, many of these significant structures have fallen into disrepair.

My New Jersey urban history initiative proposes to rehabilitate historic structures in three New Jersey cities: Paterson, Trenton, and Perth Amboy. These renovations would be made under the Park Service's authority, pursuant to the National Historic Sites Act of 1935, to rehabilitate and maintain nationally significant historic structures.

At my request, the committee has earmarked $4.2 million for the city of Paterson, NJ, my hometown. Paterson holds a special place in history as one of the leading industrial cities of this Nation. The Great Falls in Paterson is the site of the first attempt in the United States to harness the entire power of a major river for industrial purposes.

The Great Falls National Historic District in Paterson contains some of the most important vestiges of our Nation's industrial heritage. Unfortunately, Patterson, which is about to celebrate its bicentennial, has had its share of bad fortune. The Historic District has been ravaged by fires.

The National Park Service, in its 1989 report on damaged and threatened national historic landmarks, described the Great Falls Historic District as suffering "severe physical deterioration" and recommended that the structures be "stabilized, and when a compatible new use is found, rehabilitation should be undertaken."

The raceways, a system of canals which were used to channel water from the Great Falls to the nearby mills, is the unifying thread of the district. The raceways have fallen into severe disrepair and must be stabilized and refurbished.

The funding earmarked for Paterson would be used to repair the middle raceways, as well as to make historic streetscape improvements within the district. Funding would also be used for the Park Service to perform a comprehensive assessment of historic structures within the district and to devise an action plan to stabilize and reverse the decline of the area.

Trenton, the capital of New Jersey, is rich in revolutionary and postrevolutionary history. The historic structures in Trenton would benefit enormously from the $1.892 million in Federal funding that the committee included for Trenton as part of my urban history initiative.

For example, the 100-year-old Trenton Battle Monument, which memorializes General Washington's Christmastime victory against the Hessians, is in need of refurbishing. Funding also will be used for improvements along the Delaware and Raritan Canal in downtown Trenton. The canal was one of the Nation's most important commercial transportation routes. During the 1860's and 1870's, it often exceeded the Erie Canal in total tonnage. In addition, the Old Barracks Museum, which is a national landmark, is sorely in need of repairs.

The New Jersey urban history initiative includes $1.808 million for Perth Amboy, which was the capital of prerevoluntionary east New Jersey. The Perth Amboy Train Station was built in 1928. Perth Amboy has always served as a transfer point between local and express trains. The Tottenville Ferry slip structure was built in 1904 and is the last vestige of a long-history of Perth Amboy ferry service. Both of these failing historic structures would be revitalized as part of this project.

In addition, the funding for Perth Amboy will be used to conduct a survey of historic buildings located in the business district along Smith Street, which connects the historic ferry slip to the train station.

With Federal help, we can restore some of these historic buildings and sites, we can renew these areas and recapture an important part of history. I am hopeful that revitalization initiated with these Federal funds will serve as a magnet to attract private investment in these downtown neighborhoods.

I am extremely grateful to the distinguished chairman for his assistance with this project, which is so important to me and the people of my State.

OUTER CONTINENTAL SHELF [OCS] OIL AND GAS MORATORIA

Mr. President, I'd also like to express my support for the bill's provision banning OCS leasing activities on lease sale 145, which stretches from Rhode Island to northern Florida. The Senate bill retains the House report moratoria language, and I am very pleased that the committee chose to include my request for the moratoria in the Senate bill. I am likewise pleased that the conference agreement reflects that important language.

In 1988, then-candidate George Bush visited the New Jersey shore. He called the pollution of our coastal waters and beaches a "national tragedy," and promised to protect the Nation's shores. Yet, in his June 1990 OCS moratoria decision, the President protected only a portion of the Nation's coastline. Although he recommended moratoria for most of the west coast, much of New England and certain areas off western Florida, the President flatly ignored New Jersey and the other Mid and South Atlantic States. That decision effectively discriminates against the Mid and South Atlantic States by saying that other offshore areas are somehow more sensitive and more deserving of protection.

It took the National Academy of Sciences 3 years, and the President's OCS task force another year, just to conclude that the areas placed under moratoria needed further study. And the President's decision called for an additional 6–10 years of study to determine the environmental impacts on these States. How can the administration already have all the answers for New Jersey and the other unprotected States? The answer is, it can't.

Obviously, the President does not believe that these States deserve protection. But the economies of these unprotected States rely heavily on their coastal resources. And spilled oil can have devastating effects on a State's commercial and recreational industries, not to mention the damage it can inflict on its marine and estuarine systems.

The waters off New Jersey are just as precious as those covered by the President's ban: Our beaches deserve equal treatment. Since the June 1990 decision, I have sent several letters to the President, and have met with the Director of the Minerals Management Service. In each instance, I have urged that New Jersey receive the same type of environmental reviews as those States which obtained moratoria. Unfortunately, the MMS is now holding out vast acreage off the eastern seaboard for oil and gas leasing. It's now up to the Congress to remove the prejudice and instill some justice into the OCS planning and leasing processes.

In the wake of the gulf war, the administration's national energy strategy has proposed increasing our domestic production to offset our dependence on foreign oil. And OCS development would play an important role in the administration's energy plan. Yet, even if we developed all the unleased portions of our OCS, it would provide us with less than 1 percent of world oil supplies. The Marine Management Service has estimated that there is less than a month's worth of oil in lease sale 145. These are meager benefits in the face of the potential economic and environmental risks posed to our vulnerable coastal States, and OCS development would do little to affect our reliance on the volatile world oil markets.

Increasing domestic oil production from our ocean waters is a short-term fix to our shortage of oil. The United States simply does not possess large enough reserves—on or offshore—to satisfy this Nation's insatiable appetite for oil. The United States has the highest per capita energy consumption rate in the world. If we truly want to wean ourselves from foreign oil dependence, the answer lies in reducing our use of oil, and increasing our use of alternative fuels and renewable energy—and not in increased domestic oil production from our ocean waters.

I commend the Senate Appropriations Committee for its attention to this very important issue and I am pleased the conference supports the moratoria in the Interior Appropriations bill for outer continental shelf lease sales.

LAND ACQUISITION FOR WILDLIFE REFUGES AND PARKS

Mr. President, this legislation also contains funding for refuge and park land acquisition that is of special significance to my State. New Jersey is the most densely populated and urbanized State in the Nation, but New Jersey also has some beautiful areas that are home to diverse plant and animal life. The fact that New Jersey is so urbanized, makes the preservation of our remaining undeveloped areas that much more important.

The New Jersey coast is an area that feels the pressure of development very acutely. I'm very pleased, therefore, that the conference agreement contains $4 million to continue acquisition of critical properties at the E.B. Forsythe National Wildlife Refuge.

The Forsythe Refuge includes critical wintering habitat for black ducks and Atlantic brant, as well as habitat for the peregrine falcon, blue heron, and the federally listed piping plover. The area also includes the Swan Point Relay, where clams are cleansed by the Reedy Creek's clean waters before being made available to the public, and the area is crucial to New Jersey's clamming industry.

Last year, I worked with the chairman to provide $3.25 million to enable the Fish and Wildlife Service to begin acquisition at Reedy Creek in the Forsythe refuge. Recently, the Fish and Wildlife Service obtained title to two properties with money Congress appropriated last year. I'm very pleased that acquisition has begun, but more funding is needed to continue this important project.

This money will provide a shot in the arm for conservation efforts at Reedy

Creek and Cedar Bonnet Island at the Forsythe Refuge. The Fish and Wildlife Service is proceeding rapidly toward acquiring nearly all the land at Cedar Bonnet Island.

I also want to thank the chairman for his help in having $3 million included in the conference agreement for land acquisition within the Pinelands National Reserve.

Created by Congress in 1978, the Pinelands marked the first application of the national reserve concept. The Pinelands Reserve is comprised of 1.1 million acres of land that spans seven counties, and is characterized by low, dense forests of pine and oak, cedar and hardwood swamps, bogs, marshes, and pitch pine lowlands. The reserve contains 12,000 acres of pigmy forest which is made up of dwarf pine and oak smaller than 11 feet in height. Also, the reserve houses 850 species of plants and 350 species of animals including rare species such as the Pine Barrens tree frog.

Three major rivers run through the reserve. Funding for land acquisition is authorized by Public Law 100-486 and will be matched by New Jersey State funds making a minimum of $6 million available to preserve this unique area.

Last year, the Senate passed my legislation to establish in law the Wallkill National Wildlife Refuge, and later Congress appropriated funds to begin acquisition there. The conference agreement before us contains $500,000 to continue land acquisition at the Wallkill Refuge. That acquisition is another important step in the conservation of ecologically significant land in New Jersey.

The Wallkill River and its adjacent lands comprise one of the last high-quality waterfowl concentration areas in northwestern New Jersey, and is home to a diversity of wildlife including 16 State-listed endangered species.

Mr. President, I would also like to point out that, at my request, the conference agreement contains almost $1.5 million for land acquisition and waste cleanup at the Great Swamp National Wildlife Refuge. This refuge, located 25 miles west of New York City, is under heavy development pressure. The acquisition of land provided for in the bill will prevent encroachment from residential development that is rapidly destroying valuable habitat, degrading water quality, and threatening the ecological integrity of the swamp.

The conference agreement also provides $3 million for land acquisition at the Cape May National Wildlife Refuge. This refuge is divided into two sections, the Delaware Bay Division and the Cedar Swamp Division, and includes land considered among the Atlantic flyway's most important staging and wintering areas during spring and fall migration. The refuge also contains habitats important for at least five plant species being considered for Federal threatened or endangered listing.

Overall, this conference agreement contains $12 million for land acquisition in New Jersey's refuges, and I'm extremely pleased that we are taking these important steps to protect and preserve these environmental treasures and open spaces for ourselves and for our children.

GATEWAY NATIONAL RECREATION AREA

Mr. President, I also want to point out that the conference agreement contains over $2 million for Gateway National Recreation Area's Sandy Hook unit. Gateway quickly became one of the Nation's most popular national parks, and each year millions of people travel to New Jersey to take advantage of Sandy Hook's acres of barrier beaches, bays, lighthouse, and historical forts.

With this money that I requested, the Park Service can now begin upgrading its sewage disposal system and improving maintenance of the beaches to keep them safe and clean for Sandy Hook's numerous visitors.

OHMSETT AND OILSPILL RESEARCH

I'm pleased, Mr. President, that the conference agreement restores funding deleted by the House of Representatives for the Minerals Management Service's Oil Spill Response Program. This conference agreement includes funding for the oil and hazardous materials simulated environmental test tank, or OHMSETT, facility in Leonardo, NJ. I had written to the distinguished chairman earlier in July requesting his help in restoring these funds, because there is an urgent need to find new and better ways to respond to oilspills.

OHMSETT is a unique installation for testing offshore oilspill response equipment and procedures. Although the OHMSETT facility was closed in 1988, MMS plans to reopen it later this year. MMS intends to use OHMSETT for a variety of purposes, including evaluation of innovative oil spill treatment and detection technologies.

The Department of Interior, the Coast Guard, and the Environmental Protection Agency have stated publicly that enhancing Federal research programs on spill response and prevention technology is essential. The oilspills in the Arthur Kill in New Jersey, and more recently, spills in the Persian Gulf resulting from Iraqi environmental terrorism, have highlighted the need to find more effective ways to respond to these environmental disasters.

The OHMSETT facility is a critical resource for spill research efforts, and I'm pleased that the committee has fully funded MMS Oilspill Response Program.

ABANDONED MINES

Finally, Mr. President, Oxford Township and High Bridge Borough are two communities in my State that face a grave situation. Both of these New Jersey towns have abandoned mine shafts running underneath them. In both towns, many of these shafts have begun to collapse, or in some cases have already collapsed, causing damage to property and posing a potential safety hazard. Also, many residents have had difficulty in securing insurance since the incidents.

These towns need the financial and technical help of Federal Government, and I thank the chairman for his work to ensure that this conference agreement provided $75,000 for remediation efforts in Oxford Township and $75,000 for work in High Bridge.

Mr. President, I would again like to commend the distinguished chairman for his outstanding work on this bill and for his cooperation, assistance, and attention to the needs of the State of New Jersey. I would also like to commend the chairman's chief clerk, Charles Estes, for his very helpful and competent assistance. Finally, I would like to thank Rusty Mathews and Sue Massica for their assistance.

I urge my colleagues to support this conference agreement.

Mr. BYRD. Mr. President, I wish to thank the majority leader and the Republican leader, the ranking member, Mr. NICKLES, and all Senators for the excellent cooperation and help that we have received in connection with this bill and the conference report.

I also wish to thank all Senators on both sides of the aisle who supported the tabling motion earlier today. And in saying that, I wish to extend to Mr. HELMS my thanks for the courtesies he always renders in matters of this kind. I think he worked hard. He had a difficult position to uphold. It took courage, but he is not lacking in courage. As I indicated earlier, there are many of us who voted to table his amendment today who voted in the first instance in support of his amendment because, in substance, we agree to it. There were 68 votes in support of that amendment earlier this year, 28 votes in opposition. So it took a lot of effort on the part of a lot of Senators to turn that many votes around. I thank the Chair and yield the floor.

Mr. NICKLES. Mr. President, I wish to compliment the Senator from West Virginia, the chairman of this subcommittee and chairman of the full committee, for his outstanding work in a very difficult, long, tedious, cumbersome process in marking up this bill. We had thousands of requests and we also had thousands of items that were in disagreement that we had to negotiate with the House.

I also compliment the staff on both sides. I think they did an outstanding job in putting the bill together. I might tell my colleagues there is an increase in outlays by .95 percent, less than 1 percent in outlay increase, and a 1.12

percent increase in budget authority. That is lower than most any other bill we have, with the exception of the Department of Defense. That was not easy, given the number of requests.

I also compliment the Senator from North Carolina. He did not win on his amendment today, but it was not because he did not show the persistence of a giant. This is not an easy issue, to say the least, and I compliment him for his leadership. I thank again the chairman for his patience because he has shown the patience of Job in a very difficult ordeal.

I think we have a good bill. I am optimistic that the President will sign it, and I think it deserves to be signed. I look forward to seeing this particular bill conclude.

Mr. BYRD. Mr. President, if the distinguished Senator will yield.

Mr. NICKLES. I will be happy to.

Mr. BYRD. Mr. President, his reference to staff reminds me that I should extend my gratitude to the members of the staff and I will name the various staff members in the RECORD.

First, Mr. President, I wish to thank my chief of staff, Barbara Videnieks. I thank the majority staff of the full committee: Jim English, Mary Dewald, and Anita Skadden; the minority staff of the full committee, Keith Kennedy; the majority staff of the Interior Subcommittee: Sue Masica, Rusty Mathews, Ellen Donaldson, Carla Burzyk, and Charlie Estes; and the minority staff of the subcommittee: Cherie Cooper and Ginny James.

I call attention finally, once again to the fact that this bill has sustained a 1.26-percent cut across the board in order to make it conform to the budget requirements.

NATIONAL ENERGY POLICY ACT

MOTION TO PROCEED

The Senate continued with the consideration of the motion.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, on tomorrow, we will have a vote on cloture on the question of the motion to take up.

I was just talking to my friend from Ohio about the question of whether there is any advantage to our side of the aisle by being able to work through the first 14 titles of this bill, saving the question of cloture on ANWR and CAFE to the end.

The reason I asked my friend from Ohio is because he is one of the preeminent experts in this body on the use of the rules and on the use of the cloture. So I would like to engage in a colloquy, keeping my right to the floor, with the Senator from Ohio, if he would like to discuss that question, and see if he can educate me on what advantage there is that our side would gain by that.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I would be very happy always to engage in a colloquy with my friend from Louisiana. But I am frank to say that I believe the Senator from Montana, and the Senator from Colorado, and certain other Senators have taken a more leadership role in connection with this subject. I feel I am playing a supporting part and will try to be helpful to them. But with respect to the floor strategy, I would like to suggest that my good friend hold that question unless the Senator from Colorado desires to respond to it.

Mr. WIRTH. I was trying to gain recognition for exactly that purpose because I think it is very important to explain the parliamentary situation. If the Senator from Ohio yields the floor, I would ask for recognition.

Mr. METZENBAUM. I yield the floor with the understanding that the Senator from Colorado be recognized.

The PRESIDING OFFICER. The Senator from Louisiana retains the floor. The Senator from Louisiana yielded to the Senator from Ohio.

Mr. JOHNSTON. Mr. President, I do not wish to yield the floor, but I would be delighted to engage in a colloquy with the Senator from Colorado on the subject.

Mr. WIRTH. Fine, if the Senator has a question. The Senator from Colorado wants to be recognized in his own right, but I would be happy to engage in any colloquy that my distinguished chairman would like.

Mr. JOHNSTON. Yes. Mr. President, I want to reason together on this bill because the Senator from Colorado has a lot invested in this bill, as I do. I would like to see if we cannot work our will on such parts of the bill as we can agree to. I think the Senator from Colorado might have an idea that our side, that is, the pro-ANWR side, gains some advantage on a later ANWR cloture, or cloture vote on ANWR by considering the first part of the bill. It seems to me that that is not so.

I do not seek to gain an advantage. What I really seek to do is to agree on what we can agree to to work our will on energy policy because otherwise the alternative is that this whole bill goes down. The problem is—let us say the whole bill goes down, or let us say the Senator from Colorado and his group are successful either on the filibuster on the motion to take up or on a later filibuster on the bill itself and the whole bill comes down. Then what do we do? Everybody says then we go off in a room somewhere and come back with a bill.

Well, let us say we go back to the Energy Committee and we come back with a bill that has 14 parts and does not include ANWR and CAFE. Then we come to the floor and we work our way through 14 parts, and then someone gets up, as they would be sure to do, and says, Mr. President, I move to add at the end of the bill ANWR, and they put on this title. Then what happens? Is there a filibuster from the Senator's side again?

In other words, what I am saying is what is the Senator from Colorado seeking and how would he go about seeking it?

Mr. WIRTH. I would like to be able to, on my own time, lay out where we are, but I will be happy to do part of this in response to the distinguished chairman of the Energy Committee since he controls the floor at this point.

The Senate, as the distinguished senior Senator from Louisiana knows, was established in a compromise at the time of the Constitutional Convention. The Senate was established in order to protect small States and in order to protect interests in this country so that they would not get overwhelmed by the majority. That is one fundamental rationale for why the Senate is here. This institution is meant to protect those kinds of interests against the abuse of some majority. That is why we have in the Senate the capacity to filibuster.

Mr. JOHNSTON. I do not disagree with the Senator's right to filibuster.

Mr. WIRTH. If the Senator wants me to explain what our position is, I will be happy to do so. I think that is only fair. Otherwise, the Senator can continue and I will then lay out our case in our own time. That is only fair. The Senator asked me what our position was. I was trying to explain it. But he controls the time.

Mr. JOHNSTON. I know, Mr. President. I have been asked to control the time until it is worked out as to when we set the vote tomorrow.

Mr. WIRTH. The Senator can yield the floor and I will be recognized and let people work things out, and so on.

Mr. JOHNSTON. In other words, the Senator is saying that a repartee between us on the question——

Mr. WIRTH. No. I was trying to explain what our position was. The Senator controls the floor and the Senator can interrupt me at any time. The Senator controls the time. I have no control over the time until he yields the floor.

I would be happy to explain our position, which is a very clear, rational position related to the rights of Senators, what this institution is all about, and our rights to filibuster.

Let me explain in a very simple way. There was a piece of legislation that came to the floor a year ago on corporate average fuel economy. There were many of us who were advocates of that piece of legislation, and that piece of legislation was stopped by a filibuster. We had a majority of the votes to increase fuel economy for automobiles, and that piece of legislation was stopped by a filibuster, not by 51 votes, not by 50 votes, but at that time by 43 votes.

Now, that is one of the rights of Senators and the distinguished Senator from Louisiana was one of the minority who stopped the corporate average fuel economy legislation. That is perfectly within the Senator's rights to do so, and perfectly within the rights of those who oppose CAFE standards to filibuster that bill. We were not able to get 60 votes to break a filibuster, so we lost. That is one of the operating principles of this institution.

Now, I may not agree with those rules. I think they are quite archaic, but we have them. But as long as we have them we all ought to be able to use those rules.

Now, because the distinguished chairman of the Energy Committee has brought up this broad bill that includes the Arctic National Wildlife Refuge, there is no way that I or others who oppose the Arctic can filibuster bringing up the Arctic. It is part of this broader bill.

What we have offered to the distinguished Senator from Louisiana is to let us get on with an energy bill, put the CAFE proposal out as a separate bill, as it was done before, and put the Arctic Refuge proposal out as a separate bill. That gives us our right to look at the Arctic Refuge separately and to filibuster that. When it is part of the bill, we cannot filibuster the Arctic section of the bill by itself. It is part of the overall bill. Since we have been denied our right to filibuster the Arctic section of the bill, the only choice that the Senator, the distinguished chairman, has left to us is to filibuster the whole bill. That is the only choice the Senator has left us.

Mr. JOHNSTON. Mr. President, will the Senator answer me this? How would he have me do this? Let us say I wanted to do it. And I have told him that I would not and could not. But how would he mechanically have me perform this act of putting these out as separate bills?

Mr. WIRTH. The Senator is very familiar with the fact that under rule XIV it is possible to bring the Arctic Refuge issue directly to the floor. The Senator is familiar with that. The Arctic comes up as a separate bill on the floor, and then the Senate works its will separately on the Arctic.

Mr. JOHNSTON. Let us say the first amendment is the text of S. 1220.

Mr. WIRTH. Excuse me.

Mr. JOHNSTON. Let us say the first amendment is the text of the bill S. 1220.

Mr. WIRTH. The first amendment to the Arctic could be the text of S. 1220. But if you bring the Arctic up, we can filibuster bringing up the Arctic. That is our right. The Senator did exactly that when corporate average fuel economy legislation was brought up. The Senator supported the filibuster of that and did not allow that to be done. The Senator filibustered, and it did die.

Why does the Senator from Louisiana have the right to do that with corporate average fuel economy and we do not have the right to do that with the Arctic? What is good for the goose is good for the gander.

Mr. JOHNSTON. I am only trying to reason with the Senator, reason together with the Senator. All right. So we bring up the Arctic as a separate bill, and the Senator is successful in filibustering of the Arctic. So let us lay it aside. Then what would we do, what is the next step? We have no energy policy. What is the next step?

Mr. WIRTH. I think that rational individuals would say we want to get an energy policy and we would do precisely what was done on the Clean Air Act. I will give the Senator another example.

The Environment and Public Works Committee worked through a very ambitious Clean Air Act, and brought it to the floor of the U.S. Senate, and the distinguished minority leader led a threatened filibuster against the Clean Air Act. So the Clean Air Act never came up. That was not because the distinguished Republican leader was opposed to the Clean Air Act. He was not. I know he was not opposed to the Clean Air Act. He just did not happen to like the structure of the Clean Air Act as it came out of the Energy and Environment and Public Works Committees.

Consequently, he threatened to filibuster that bill. The Clean Air Act could not come up. Everybody wanted to get a Clean Air Act. Everybody wants to get an energy bill. He just was able then to do it closer to his terms.

Consequently, the distinguished Republican leader, and the distinguished Democratic leader went back into the majority leader's office with Senator BAUCUS, and they hammered out a different piece of legislation that was more acceptable for everybody in the Senate. Those are the procedures that we follow here.

We did that with the Clean Air Act, and out of it came a pretty darned good piece of legislation, not as strong as I would like to have seen it, but it accommodated more of the interests of people on the other side of the aisle. That is the way this institution works. They have their rights; we want to use our rights.

Mr. JOHNSTON. I understand that history very well. I am not asking the Senator to render his rights.

Mr. WIRTH. That is what happened. We have been forced to surrender our right to use a particular set of mechanisms to kill one part of the bill we think is fundamentally flawed and wrong.

Mr. JOHNSTON. I understand that. We go off in this back room, the front room, or the Energy Committee, EPW Committee and we come back with a bill, and we say this is the bill. This is a great bill now. It does not have ANWR. It does not have PUHCA reform. It does not have nuclear policy, natural gas.

Mr. WIRTH. I do not know where the Senator would get such a bill as that. He might do that. I cannot imagine that is an energy bill.

Mr. JOHNSTON. Whatever it is, let us define it as one that suits whoever.

Mr. WIRTH. We have suggested exactly what this ought to be, in the 14 titles of the bill, exclusive of CAFE and the Arctic. Let us put that on the floor as a bill. Then if the Senator from Alaska or somebody else wants to add the Arctic to that, they can bring that up, and then we will filibuster that, and use the same weapon that the distinguished chairman used on the CAFE bill. That is perfectly all right.

Mr. JOHNSTON. How do we ever get to energy policy?

Mr. WIRTH. Of course, we get the whole bill done. The Senator knows as well as I do how many times there have been efforts to filibuster particular pieces of legislation, and after a certain period of time people realize that they cannot break the filibuster. Then the particular item causing the filibuster gets dropped. You go on.

I have had that happen to me on a number of occasions related to issues of choice and reproductive freedom. We have 57 or 58 votes in the U.S. Senate in favor of issues of choice. But people on the other side filibuster amendments or bills on these issues and we have not been able to get them passed. That is the way this institution works. Frustrating and archaic as it may be, that is the way the institution works.

I have not stood up and complained about that when I lost on this subject of position of choice. We have worked to get 60 votes. We have not done it yet.

Mr. JOHNSTON. Would the Senator tell me what the difference is between the place we are in now where we consider the 14 titles, and then have an amendment with a separate filibuster on ANWR, as opposed to going to some committee or whatever and coming back with a bill that has 14 titles and having an amendment on ANWR to filibuster? It is exactly the same thing.

Mr. WIRTH It is very simple. The bill in front of us does not have 14 titles. It has 16. One title is on the Arctic Refuge and one title is on CAFE. That is where we are. I cannot remove the Arctic title of the bill with 41 votes. I am deprived of my ability to filibuster the Arctic. That is very simple. Those are the rules of the Senate.

I believe that the Senator from Colorado and others have a perfect right to use the filibuster just as the distinguished chairman of the Energy Committee used the filibuster to help kill CAFE, just as others have used to help to kill various amendments related to reproductive freedom. Those are all examples of how this institution works.

The Senator has been around here a lot longer than I have. He is a lot more subtle in how this institution works. He knows that. I know that. There is no mystery.

Mr. JOHNSTON. I know enough to know that 41 votes kills any bill and any amendment, and if you get 41 votes to kill this bill, you have 41 votes to kill the next bill, and all you would be doing is putting this off until next year.

Mr. WIRTH. Wait a minute. Who is saying he wants to kill the next bill? We have said to the Senator—if the Senator would let me continue—we have said over and over again we would like to see an energy policy. We believe that a fair way of going about doing this, one that is fair to everybody, is to have a 14 title bill that comes out separately; a bill on the Arctic Refuge separately, and a bill on CAFE separately. All of the elements of an energy policy are there. We then have the ability to filibuster the Arctic. Those who are opposed to CAFE have the ability to filibuster CAFE

Those are the two large and contentious issues. We try those. If we win, fine; if we do not win, fine. We get them behind us and go on with a separate energy policy.

The Senator was saying, the whole bill falls. Why is that? The House is doing their energy bill separately from CAFE from the Arctic. Why can we not?

Mr. JOHNSTON. The whole bill falls because somebody offers ANWR and you filibuster and you have 41 votes. That is why.

Mr. WIRTH. But ANWR, the Arctic, is already in the bill. The bill that the Senator has on the floor, and with 41 votes I cannot remove the Arctic from the bill. It takes 51, 50 or 51 votes to remove the Arctic from the bill. I have rights in the Senate to use the weapon of 41 votes. I plan to do everything I can to use that right.

Mr. CONRAD. Will the Senator yield?

Mr. WIRTH. I do not have the floor. I wish I did.

Mr. JOHNSTON. I yield.

Mr. CONRAD. I thank the Chair.

I would just like to know—I must say when I listen to my good friend from Colorado who I have deep respect for, talk about being denied his rights, the question that comes to this Senator's mind is why did the Senator from Colorado vote to report this bill to the floor out of the committee?

The Senator from Colorado knows the rules of the Senate. The Senator from Colorado knows that we do not have an equivalent situation to CAFE because in this situation we have a multititle bill. We have multiple subjects being addressed.

I have heard the discussion about rights being denied, but I know my good friend voted for this bill out of committee to report it to the floor and he must have known that we would be in precisely this posture when that occurred.

Mr. WIRTH. The Senator from Louisiana has the floor.

Mr. JOHNSTON. Mr. President, I have the floor, but I will keep the floor and yield to the Senator from Colorado for the purpose of answering the question.

Mr. WIRTH. I appreciate that. The Senator from North Dakota knows full well that the Senator from Colorado wrote a number of the titles of this bill with the assistance of the chairman. We worked very closely together on a lot of those 14 titles. I think much of that makes very good sense.

I made very clear throughout the history of energy legislation my feelings about the Arctic. I pointed out very clearly in the RECORD when we voted on this that I would do everything I could on the floor to knock the Arctic out of the bill, but that I believed that it was important for us to get on with energy policy. The Senator knows that. I do not believe it is really particularly useful for us to sort of raise why did you do this, why did you do that? My explanation was very clear then. The Senator knows that.

Mr. JOHNSTON. If I may reclaim the floor in order to yield to the majority leader.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I have discussed with the distinguished Republican leader, with the managers of the bill, with several Senators, who are in opposition to the bill, the best way to proceed on this matter. And I am, therefore, shortly going to propound a unanimous-consent agreement which would set the vote on the cloture motion on the motion to proceed at 10 a.m. tomorrow morning.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I now ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. on Friday, November 1; that following the prayer, the Journal of the proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that the time between 9 a.m. and 10 a.m. be for debate on the motion to proceed to S. 1220, with the time equally divided and controlled between Senators JOHNSTON and BAUCUS.

I further ask unanimous consent that the vote on cloture on the motion to proceed to S. 1220 occur at 10 a.m., and that the mandatory live quorum be waived.

The PRESIDING OFFICER (Mr. WELLSTONE). Is there objection?

Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, therefore, the vote will occur precisely at 10 a.m. tomorrow. There will be an hour of debate prior to the vote tomorrow. That will be the only rollcall vote tomorrow, and the next rollcall vote will be on Tuesday, no earlier than 2:15 p.m., no later than 6 p.m., on the Gates nomination.

The Senate will remain in session this evening to continue debate on this matter for as long as any Senator wishes to engage in such debate. Tomorrow, after the cloture vote, if any Senator wishes to address this subject, the Senate will be in session for that purpose as well.

I thank my colleagues for their cooperation, and Senator BAUCUS, particularly, for his cooperation on this matter, as well as the distinguished Republican leader, and all of our colleagues.

The Senator from Louisiana had the floor, which he graciously yielded to me. I yield back to him.

Mr. JOHNSTON. Mr. President, I have had enough of the floor. I want to give my colleagues a chance to speak.

Mr. WIRTH. Mr. President, I want to follow up on one thing the Senator said earlier. We got into a lot of discussion. The Senator said earlier, about 20 minutes or an hour ago, that he did not think that his side could get 60 votes on behalf of the Arctic. I happen to agree that he cannot get 60 votes. So the question I ask is that since that is the case, why do we not just put the Arctic out there, have that vote, let everybody see what the situation is.

The Senator did his very best to get the Arctic refuge opened to oil drilling. You get the rest of your bill and not the Arctic, and we can move on to the energy policy without the Arctic in it.

Mr. JOHNSTON. The Senator from Colorado knows he has a right to offer a motion to strike.

Mr. WIRTH. The Senator is denying me the right to filibuster, and we are back in the same situation. By the way this process has been set up, it has denied that right to those of us who would like to have the right to filibuster this part of the bill. Therefore, we have no other choice but to filibuster the whole bill and to make it as difficult as possible to bring up the bill. That seems to me to be a relatively useless exercise, an enormous waste of time, but the Senator gives us no other choice. We have offered a whole variety of alternatives, with no answer to any of them.

Mr. JOHNSTON. I submit to my friend that he can move to strike ANWAR. If he is successful, it is stricken. If he is not successful, he can filibuster.

Mr. President, what the Senator is really saying is he does not want the Senator to come out here and vote on ANWAR or any other part of this bill.

Mr. WIRTH. That is absolutely not what I am saying. The Senator knows that. The Senator controls the floor. I would be happy to respond, if I might.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Mr. JOHNSTON. I yield to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I have waited here since 1 or 1:30 today to speak, and I have no desire to speak at this hour, because it is late. Each side has one-half hour between 9 and 10 tomorrow. The manager on this side has indicated he has no objection to my having 10 minutes. I would like to have 10 minutes at 9:30 a.m. tomorrow morning to speak in opposition to the bill.

Mr. BAUCUS. Mr. President, I would encourage the Senator from Ohio to give us a little flexibility tomorrow. He has asked for 10 minutes, and it is my intention to give the Senator from Ohio 10 minutes tomorrow. But I would rather we not lock in a time. I think that all of the Senators would be in a little better position if we debate tomorrow in the usual form, with times being equally divided, and we work it out.

Mr. METZENBAUM. If I have the assurance that I will have the 10 minutes, because I have been patient all day.

Mr. BAUCUS. Yes.

Mr. JOHNSTON. It is my intention to yield the floor, unless there is a question for me.

Mr. CONRAD. Mr. President, I ask if Senator JOHNSTON will yield for a question.

Mr. JOHNSTON. Yes.

Mr. CONRAD. We have heard it repeatedly stated on the floor today that Senators have been denied their rights. Is it not true that the bill coming out of committee, with 16 titles, has come to the floor in the usual form, and that no Senator has been denied their rights? The Senators have an opportunity to filibuster this bill, and that is precisely what is occurring. There is a filibuster, because of strongly held feelings, which I would be quick to acknowledge that the Senator from Colorado expressed in the committee. But is it not the case that this bill has come to the floor in the usual form, and no one has been denied their rights; is that not the case?

Mr. JOHNSTON. That is absolutely correct. All I am saying is, let us consider the bill. It is comprehensive, with 16 titles; it is a balanced, I believe, effective national energy strategy. You may not like the chocolate part. You may like the vanilla. Let us see if we can put together different parts on which we can come to consensus. If we get hung up on something and cannot get past the 60-vote barrier, then we will make our decision to drop that or not, or maybe to bring the whole bill down. But the alternative we are faced with is to bring this whole bill down and not to be able to bring out anything else, because ANWR comes back on anything else, and there goes the filibuster again, and that bill is brought down ad infinitum. That is what has happened up here for 19 years.

I am saying, let us see what parts we can agree to of an energy policy, and if we cannot, that is fine. If the Senator wants to consider ANWR in isolation, make a motion to strike. If you are successful, it is stricken. If you are not successful, then you start your filibuster. How does that surrender any rights? You have every right in the world. What the Senator does not want to do is let Senators vote on ANWR. That is what this is all about.

Mr. CONRAD. Further, if the Senator will yield, let me say that this Senator has voted against ANWR three times. I voted against it, because I do not think it should be done, unless there is a comprehensive bill. My definition is that a substantial increase in fuel efficiency should be part of it. If it is not, I might vote against ANWR again.

I must say that this Senator finds it hard to see how any Senator has been denied their rights, and I fear that what is being sent out as a message is that somehow through chicanery, or through some unfair tactic, people have been denied rights around here.

I might wind up voting with the Senator from Colorado. I might wind up voting with him. But I really do not see how anybody has been denied their rights.

I thank the Chair.

Mr. JOHNSTON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. WIRTH. Mr. President, we have had a great deal of procedural discussion over the last hour, and I think it is very useful for those who are not familiar with how the U.S. Senate operates, why the filibuster existed, and I attempted to explain that earlier. I think enough has been said about that.

There are many of us who feel very, very strongly about the addition of the Arctic National Wildlife Refuge to the energy bill, and I want to speak about that very briefly in just a few minutes. There are others with whom I disagree who feel strongly that we should not corporate average fuel economy to the legislation. The two distinguished Senators from Michigan and others feel very, very strongly that is the wrong thing for us to do.

Those two issues, the Arctic National Wildlife Refuge and the so-called CAFE standards, are two enormously contentious issues. Earlier, there was an attempt to bring up CAFE, the corporate average fuel economy, as a separate bill. That was filibustered. CAFE did not win. We would like to have the same right in dealing with the other very contentious issue of the Arctic National Wildlife Refuge.

I have made that point over and over and over again.

Since we do not, under these procedures, have the ability to filibuster the Arctic separately, the only choice left to us is to filibuster the whole bill. You say, OK, what happens if you filibuster the whole bill? What I think is going to happen is that this is going to go on and on and on, and ultimately the Senate is going to get up against Thanksgiving. Before that, we are going to get up against the banking bill, which we have to get to the floor, and we will go no further on the energy bill for this year.

Mr. WALLOP. Mr. President, will the Senator yield?

Mr. WIRTH. If the Senator will let me finish then I will be happy to yield. I appreciate the interest and work the distinguished Senator from Wyoming has done on this legislation.

We will make it very uncomfortable. What is going to happen will make it uncomfortable to continue on the energy bill for a period of time. We have that right. That happens in this institution, and happens on a steady basis. We get up toward Thanksgiving and get up toward the banking bill coming up, and the time will come when we have to act on the banking bill. We have to act on the bank insurance fund. That has to be done, and the energy bill, quite inevitably, as I see it—and I have not talked to anybody else about this—but the energy bill, quite out of necessity, is going to be taken off of the floor. We then go on to the banking bill, and what other areas of must-do business which has to be done.

So we have no energy bill. We come back in January or February, whatever it may be, we come back at a later date and start working again on an energy bill.

I would suggest—and I have made this suggestion to the majority leader; I have made this suggestion to the distinguished Senator from Louisiana—that it is a much, much better use of our time and energy, if we take 14 sections of this bill, and get that done. That would have been done, by the way, a long time ago, had the Arctic Refuge proposal not been in this bill.

The only thing that is holding up the consideration of this bill is the inclusion of provisions opening the Arctic National Wildlife Refuge to redevelopment. Otherwise, this bill would have been on this floor weeks ago, if not months ago. We would have worked our way through it in some of the duller days of September. We would have had this bill done and sent over to the House, without the Arctic in it.

But the choice was made, let us keep the Arctic refuge proposal in it. Therefore, it has not been brought up. and now that it is up, it is going to cause an enormous amount of furor and is going to take use even more time. That does not seem to me to be a very rational use of time.

Let us go on and do an energy bill that does not have those two contentious titles in its, and deal with them separately, work the will of the Senate separately on those two bills. It seems to me that not only protects all Members in here, but gets us the rest of the energy bill.

Then the argument was made that just having the 14 titles alone will not do the job. What do you mean, will not do the job? If we have an aggressive piece of legislation that has in it alternative fuels, alternative fuel vehicles, a very aggressive conservation program, changes in the regulatory structure, over electric utilities and nuclear power, that will not do a good part of the job? A lot of titles in this bill are very important. There are many of us who believe that they point us toward an alternative path which is exactly the direction in which we ought to go.

If we continue this mad dependence on oil, we may, if the people are successful in drilling in the Arctic refuge, add a few more years to our oil dependence. Two hundred days, by the way; we are going to prolong the agony of shifting away from oil economy for 200 more days. What better time than to do it now and to make the shift, make the change, which I believe we all know this country has to do.

To what do we change? The Senator from Colorado believes that one of the most important and promising transitional fuels is natural gas, which we have in this country in great abundance. We have an enormous amount of natural gas in the United States. And what we ought to be doing is everything that we can to increase our use of this abundant, cheap, clean, domestic fuel as a bridge fuel between now and sometime maybe in the middle of the next century, when we are into a nonfossil fuel economy. That, plus conservation, plus looking at electric vehicles, and enhanced recovery of our traditional sources of oil will get us through this period of time. It is a policy for the future.

But the Senator from Colorado also believes that if we continue the old way of doing business, go drill in the Arctic, add 200 more days, we are just putting off the changes that we are going to have to do anyway. This is a perfect chance for us to make that change. On that there is disagreement. I understand that. I believe that very strongly; I believe that we ought to be looking at the future in a very different way. Let us not do business as usual; let us change. We have to change. We had 550,000 young men and women in the Persian Gulf because of our refusal to change. Let us change. Let us not expose ourselves to that again.

If we drill in the Arctic, we just expose ourselves 200 days from now rather than today. That does not seem to be the kind of long-term vision that we all ought to be having. That is the argument on the Arctic, by itself, Mr. President.

The procedural issue is a complicated one, but a relatively simple one. What I believe and my colleagues believe, and we made this offer, is that let us not get into this prolonged hassle. Let us put a 14-title bill out there; put a separate Arctic bill out there, and a separate CAFE bill out there.

We can get that 14-title bill through here in a matter of days and send it over to the House. We can come back and deal with the Arctic refuge, or we can deal with the Arctic first. We can show that you cannot break a filibuster on the Arctic, and it goes away. That is the position that we think is the appropriate way to do this, and we are fully within our rights to do it that way.

Final point: Let me go back again to the Clean Air Act. There are many here who worked mightily on the Clean Air Act. The jurisdiction for the Clean Air Act is found in the Environment and Public Works Committee. The Environment and Public Works Committee reported out a very aggressive clean air bill, not dissimilar from the one initially proposed by President Bush in the summer of 1989. That bill came out of the Environment and Public Works Committee and was sent to the floor.

When the distinguished Senator from Montana attempted to bring up the clean air bill, there was threat of filibuster. In essence, the Clean Air Act was filibustered. The distinguished Senator from Montana was not able to bring up the Clean Air Act because he knew there were 41 people who were opposed to the Clean Air Act as reported by the committee.

As a consequence, the clean air bill did not go anywhere. It was taken off the floor, sent back into the majority leader's office, and a different agreement got hammered out that was more acceptable to everybody.

That is precisely what we can do in this situation. We can hammer out a procedure. We do not even have to get into the complexities of the substance of the energy bill. We can just hammer out a procedure that is agreeable to everybody and get onto this. Otherwise, we are going to be here and be here and be here. I do not think that is a very productive way to operate. But that is what each of us can do under the rules of the U.S. Senate, and I plan to do that.

Mr. President, I appreciate the comments. The distinguished Senator from Wyoming had asked me to yield, and I would be happy to yield.

Mr. WALLOP. Mr. President, I ask the Senator to yield just for a question. He said the only time you can have a filibuster on the Arctic refuge is on a motion to proceed to the bill. You can filibuster it when you get to that section and title.

Mr. WIRTH. That is exactly the point.

Mr. WALLOP. But that is not what the Senator said; implying, therefore, that he will not filibuster it should he lose.

Mr. WIRTH. Mr. President, I reclaim the floor. The Senator was not here for the earlier discussion with the Senator from Louisiana where we went through this at great length. To remove the section on the Arctic Refuge from the bill requires 50 or 51 votes or a majority. I may have those votes, you may have those votes. None of us knows. But I have the right to do everything I can so we do not get to that point.

The only suggestion I am making is, let us take that out and deal with it separately and get on with the rest of the bill. The rhetoric that says we must have this in this energy bill or everything falls apart, and so on, is simply inaccurate. The House is doing its bill without an Arctic National Wildlife Refuge in it. We can do our bill that way. We can do a very good, comprehensive bill, as a matter of fact a more rational bill, without the Arctic in it. That is a point to be made.

I think we have been around this circle a lot of times. I greatly appreciate my colleagues' understanding on this and forbearance as we explain this. The distinguished Senator from Louisiana and I went back and forth on this, and I suspect the record is more than replete with our procedures and our rights under those procedures.

Mr. President, I thank you very much and I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I want to say to anyone else that wants to speak, I really will not speak long. I did not have an opportunity earlier this morning because I was tied up in other matters, and I feel rather strongly about this, so I thought I would speak a bit tonight.

Mr. President, it is really ironic that some of the very same people who are tonight saying no, no, no, we just will not let you proceed, are the same people that a few months ago were, with the same vigor, saying to the President of the United States, "You have no domestic policy." What domestic policy should we have? And right at the top of the list was we need an energy policy.

But you see what is wrong, Mr. President, is that the energy bill produced by the Energy Committee, 17 votes in favor, 3 against—and I know the occupant of the Chair was 1 of the 3. Nonetheless, 17 to 3 by a major committee of the U.S. Senate, and guess what? "We want an energy policy, but it is not ours, so you will not even vote on it."

You know, of late, people have said that the Americans are kind of disgusted with the Congress, sort of upset with the Congress. Well, now, if the leadership will let this go on, instead of for two votes, if they will let those who want to deny this bill an opportunity to even breathe, let that happen for about 2 weeks and you will see that the ire of the American people will be on those who are saying, yes, to an energy bill, but, no, unless it is ours. Those are the people that the Americans will say, "What is wrong with you?"

And some will stand up and say, "I want to save the Arctic wilderness." Do you know the people will know by then what the Arctic wilderness issue is all about, and the overwhelming majority will say, "Speak your piece"—those who want to save it, not let one ounce of oil be drilled for in that wilderness, in that refuge. By that time they will say, "Speak your piece and get your votes if you have got them. If you do not, let the U.S. Senate proceed with an energy policy."

Is it not amazing? If I am hearing right, under the guise of having some procedural rights, the proponents of doing nothing on the Arctic National Wildlife Refuge are saying, "Unless we get our way, you will not have an energy policy in America." Actually, they are saying, "We want our way on ANWR, and you cannot have an energy policy unless you do it our way."

Frankly, I think that is just about as arrogant, in terms of our resources and our ability to look out for our people, as anything I have heard of. Someone talks of the oil available at ANWR as being only enough for 200 days, as if the American people will be fooled. What we are really talking about is an energy reserve that may yield up to 250 billion dollars' worth of domestically produced energy. It used to be: A billion here and a billion there really mounted up. But now it is $250 billion here and $250 billion there does not mount up.

That means we are going to leave $250 billion of American oil in the ground with all the thousands of jobs that go with it, the money that goes with it, and some are leaving the notion that we will do nothing, we just will not go drill for it. We will buy it from another country. That is what we will do.

You know, that is what is kind of what we are worrying about today, what is wrong with the American economy. And we take liberty with this American economy as if she had the most profuse capability to produce, that she can take all kinds of insults and just rock along. Well, this is a $250 billion one we are voting on.

And it is all right for those in America who belong to the various lobbying groups who do not want us to do anything there. And you know, I call them for what they are. They are lobbying groups, and the American people ought to know what they are. They are lobbying in our home States just as if they own something, as if they really were in the business. They used to say about our business people that they should not lobby us. But I guess it is all right for this kind of lobbying to go on. Every office is getting bombarded with calls about saving the ANWR, advertisements in our home States. Well, that just happens to be their position and we ought to have a right to vote on it, not hold up the energy policy of this country. And the same with the CAFE standards. We can vote here.

Let me say for those who want jurisdictional issues to hold this bill up, I see the distinguished subcommittee chairman from the Clean Air Committee. It was said that his bill on clean air came out and it was a strong bill and we did not get to vote on it on the floor. Well, that bill and some other parts of it had some of the Energy Committee's jurisdiction. But that is not an issue.

The issue is, it was not a filibuster that defeated his bill. He got his bill through. He just got it changed substantially over there in little rooms where we met for days on end, not because of a filibuster, but because an overwhelming number of Senators were not going to vote for it; They wanted it changed.

Now, if they have that kind of support here, let us just get the bill up. If they have got overwhelming support for their position, those who filibuster it will be felt. We will find out if they have overwhelming support. They do not. That is why. They do not have overwhelming support.

They may have enough votes to keep this from proceeding under a filibuster, but eventually the old chickens-will-come-home-to-roost notion will be out there is our country, the energy policy will lie at their doorstep. And do you know what it will be? None. None. We do not need one. Rock along with what we have got, because some people think they know better. They do not trust the Senate to vote anymore. They do not trust the committee. They trust a few and they trust their own experts and their own lobbying and their own ideas about American's future and American jobs and American investment and automobiles and alternatives. Their way or not way. That is the motto: Their way or no way.

Well, frankly, I hope it does not turn out that way. I hope we get an opportunity to debate these issues fully. And clearly the American people will end up deciding one way or another on the major issues before us, and we will do a better job if we get them down here and debate them.

We are not going to get much done if we dance around the edge with debates like tonight that are talking about cloture and filibusters and the very thing, when it comes to an energy policy, that causes most Americans to say what are you doing? How many days does it take you to decide whether you are going to take a bill up, especially a bill on energy policy?

So I thank the Chair for recognizing me and for the few moments I had this evening to speak on the subject.

I hope to be able to help the distinguished manager, Senator JOHNSTON, from Louisiana, and the ranking Republican, Senator WALLOP, of Wyoming, as they proceed with this bill. They have done a wonderful job under very difficult circumstances. I thank them and the many supporters. And I thank the supporters from all around the country. They are very interesting because they are former Secretaries of Energy, whether under Democrat or Republican Presidents, who have looked at this and said we ought to do it. But we are not going to have a chance so long as these are enough people who say do it our way or do not even move the bill. Our way or no way.

I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I believe that America needs to have an energy policy. Clearly, we paid a heavy price for not having had one in the last dozen years—or having abandoned the policy that we commenced in the late 1970's.

Second, I believe that Congress is going to have an important role in shaping that energy policy, so that at some point we are going to have to have before this Senate, with the clear differences of direction and values and philosophy that have already been expressed, the opportunity in our democratic system for the specifics of an energy policy to be debated and voted upon.

Third, I believe in any discussion of a public issue the fundamental beginning point is the diagnosis: What is the problem? You cannot prescribe unless you have further assessed what is the pathology that you wish to correct.

I must say, Mr. President, that what disturbs me most is that I believe there has been a fundamental misdefinition, misdiagnosis of the problem. And I submit as my most recent evidence of this, an article by Senator JOHNSTON which appeared in today's Washington Post under the heading "Last Chance for an Energy Policy."

I ask unanimous consent to have it printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 31, 1991]

LAST CHANCE FOR AN ENERGY POLICY

(By J. Bennett Johnston)

For the first time in more than a decade, a bipartisan consensus between Congress and the president on a national energy policy is within reach. Several recent columns, including Sen. Tim Wirth's "Battle for the Arctic" [op-ed, Oct. 25] and Jessica Mathews's "Oil Not Worth the Effort" [op-ed, Sept. 13], focus on where disagreement remains. What should not be missed is how far we have come together on this issue. For the areas of agreement reveal how tragic the loss will be for the nation if that remaining controversy were to deny us any energy policy at all.

In long and fruitless debate throughout the 1980s, Congress and the president could not agree even on the existence of a problem. Now all concede that the United States has a fast-growing addiction to foreign oil from six politically volatile nations in the Middle East. In 20 years we will be importing 70 percent of our oil. The president, Congress and editorialists alike now see that we must "confront the tremendous economic and national security risks created by our dependence on imported oil," to use Wirth's words. There is also unanimity that the military option, especially in the Middle East, is no rational substitute for an energy policy. And everyone agrees that other nations will be watching carefully what we, the world's largest oil consumer, decide to do about our predicament.

There is even general accord on most of the solutions, again a giant step forward from the ideologically driven debate of the 1980s. First, improving our energy efficiency is essential. This is especially true for new automobiles and light trucks, which in the last three years have actually declined in fuel economy back to the 1985 level. Some, including the president, disagree about how far to press Detroit, but the general objective is undisputed. A basis for compromise is there.

Second, all agree we must encourage substitutes for oil, among them natural gas, biomass and solar energy. The bill reported out of my committee contains many provisions for enhanced efficiency and alternative fuels that I know Wirth endorses, because he wrote them.

What threatens the entire effort is disagreement about opening new areas to oil exploration, in particular the Arctic National Wildlife Refuge. Wirth espoused the case against the legislation that my committee has reported to the Senate. He said in a nutshell that we should not tolerate any environmental risk to look for oil in ANWR because whatever is there isn't enough to matter, given the vast oil reserves in the Middle East. Instead, we should use our technology for conservation and alternative fuels to stop our addiction to oil. This is our chance, he said, to lead the world and disappoint the Arab oil barons by saying yes to the environment and no to oil dependence.

But this issue is not just about ANWR, because the same arguments used here would, if accepted, apply to new oil exploration anywhere in the coastal waters of the Outer Continental Shelf and in fact any remote area of America not tapped for oil.

Our legislation is designed to control our growing addiction to foreign oil; it will not eliminate it anytime soon. The truth is that simply denying our country access to new domestic oil sources in ANWR and elsewhere does nothing to stop our addiction to foreign oil. It will not automatically result in greater energy efficiency or use of alternative energy sources. Without some other drastic method of altering the basic energy economics in the United States, consumers will continue to use foreign oil, inevitably from the Middle East. Yet I haven't seen any stampede of members to introduce legislation to alter those basic economics with a large oil import fee, which I would support. Another approach is hefty gasoline taxes, for which the votes are also lacking. No doubt our allies, who already have enormous energy taxes, will be watching to see how we can have our cake and eat it too with ANWR.

Those who say we don't need the oil are obliged to advocate their alternative. Winston Churchill's warning to the House of Commons is appropriate: "All attempts to bridge a 12-foot stream by an eight-foot plank are doomed to failure, and the plank is lost. It is a concession to bring forward a nine-foot plank, but again that may be lost." To write any national energy policy that says in effect we don't need any new domestic oil is to offer at best the nine-foot plank.

It has taken more than a decade to achieve consensus on the growing danger of our foreign oil addiction, the need for world leadership and the outlines of a comprehensive policy. Loss of this opportunity to establish an energy policy would be a tragedy for the nation. I believe that a reasonable compromise is achievable. To just say no to any compromise on ANWR is to say no to a national energy policy and yes to reliance on the Middle East for the lifeblood of our economy.

Mr. GRAHAM. Senator JOHNSTON states:

> In the long and fruitless debate throughout the 1980's, Congress and the president could not agree even on the existence of a problem. Now all concede that the United States has a fast-growing addiction to foreign oil from six politically volatile nations in the Middle East.

The definition of the problem is that we have an addiction to oil from unstable nations in the Middle East.

I will admit that we have such an addiction; that the principal sources of our supply are unstable. But, Mr. President, I believe our problem is much more fundamental than that.

The problem for the United States as an energy issue is that we have a diminishing domestic resource of petroleum. That resource is currently estimated on the low side at 47 billion barrels, and on the high side at 80 billion barrels. I am going to assume the most optimistic scenario, a scenario that the scientists estimate only has a 5-percent chance of being accurate, and that is that we have 80 billion barrels of petroleum within the United States, including that which is available should ANWR be drilled.

We are consuming 6.3 billion barrels a year. Mr. President, if my math is correct, if we were to achieve the solution of the problem of eliminating the addiction to foreign oil totally and were to go completely on our domestic reserves and resources and do nothing else, in approximately 13 years we would have accomplished the national goal of draining America. We would have zero petroleum under our national sovereignty. At that point we would be totally dependent on foreign sources because we would have no domestic sources.

So, Mr. President, I think the problem properly defined is not America's addiction to foreign oil, it is America's addiction to oil. Fundamental to any rational energy policy is an effort to stretch the number of years in which we can still have that domestic resource available to us.

Part of the question of an energy policy is—for when? For what time period? Are we talking about an energy policy for the next 13 years? Are we talking about an energy policy that will last for the lifetime of those Americans currently in their adult years?

I do not believe that is an acceptable energy policy. I believe we must have as a central objective how to husband that 80 billion barrels of petroleum that we have, to make it last as long as possible and, therefore, to restrict and cause to recede the date upon which America will be totally dependent upon foreign oil.

Energy policy, Mr. President, does not exist in a vacuum. It is linked to other national goals. Energy and transportation are important goals, important because the transportation uses over 60 percent of all of the petroleum that we consume in the United States, it uses 25 percent of all the energy sources that we consume in the United States.

But, do we have a transportation policy which encourages rational conservation of our limited petroleum? Do we have an energy policy linked to a transportation policy that will encourage things that we know will conserve petroleum, such as more efficient automobiles? Encouraging people to move from automobiles to more efficient forms of transportation? Are we looking into the 21st century with things that have become common in the 20th century in Japan and Europe, such as high-speed rail as an alternative to more energy-intensive forms of transportation? The answer is, Mr. President, regrettably, no. We have an energy policy which has been lost within our transportation policy.

In fact, the President's budget this year, appalling as it sounds, actually recommended a cut in our Nation's effort toward alternatives to the single vehicle as a means of transportation. We have stagnated over the last 5 years, in terms of increasing efficiency of our vehicles.

Mr. President, an energy policy is not delinked from an economic policy. It is critical that the United States become more competitive economically with the rest of the world. Yet, today we are consuming about twice as much energy in all aspects of our economy as our major competitors. That means that when we look on the showroom floor at an American automobile, one of the reasons that its price is what it is, is because it carries a substantially higher increment of energy cost in its production—not its operation but in its production and manufacture—than does its competitor from Europe, and particularly its competitor from Japan.

Not only do we have the need to stretch and husband our remaining 80 billion barrels, we have a need to make our society, our economy more efficient, if we want our society to be more competitive.

We know some of the things that are available in order to accomplish the stretching. We know the potential for the development of increased alternative fuels. I, for one, support an increase in nuclear, as part of our strategy to stretch our remaining domestic petroleum reserves. We know the potential in cleaner, and alternative fuels. We know the potential in continuing to add to our strategic petroleum reserves so we are increasing the amount of petroleum which is available within this country.

In addition to energy policy being part of transportation policy and economic policy, and clearly environmental policy, it is also an important cultural issue. We have had in area after area a tendency to transfer from our generation to future generations the hard choices and the consequences of not making those hard choices. We have seen it in the way we have handled our Federal budget, where our children and grandchildren are going to live their lifetimes paying a substantial amount of the bill that we're unwilling to shoulder ourselves. We are going to see a generation of Americans who will reach their retirement in the early part of the 21st century, with a Social Security system that is substantially less stable than is the one that we have today because, instead of investing those enormous surpluses that are being developed in Social Security, we have used them to fund that budget deficit.

We are seeing an infrastructure that is crumbling. We are soon going to pass a transportation bill, Mr. President, unless something unexpected occurs. It will be a transportation bill which will assure us that our Nation's highways and public transportation systems will be worse 5 years from now than they are today. We are transferring to future generations a deteriorating American infrastructure.

And in energy policy, what we are about to say is that we are going to continue to operate essentially as we are today, consuming 6.3 billion barrels of oil; we are going to try to have a policy which will increase the proportion of that which is from domestic sources; we are going to accelerate the day at which we will have totally depleted our domestic reserves. We are going to soon have the day in which America will lose its national energy sovereignty as it relates to petroleum because we will have exhausted that reserve.

Mr. President, the dilemma that I and, I suggest, many of our colleagues have is how do we break this Gordian knot? How do we come to grips with the need for an energy policy which is directed at the real as opposed to the transitory problem?

Mr. President, I urge the proponents of this legislation to do as Senator BAUCUS and Senator MITCHELL and others did with the Clean Air Act. What ought to happen for the benefit of our Nation is a pause in which there can be thoughtful, sustained attention to the complexities of a national energy policy. I believe the Nation was well served by what happened between the days that we initially considered and then the days in which we began the process of debate on the Clean Air Act and what happened in those approximately 30 days was an intense discussion and resolution of an interrelated web of highly complex issues to finally produce legislation which received the affirmative vote of the vast majority of the Members of this body, and finally has now become the law of the land.

I believe that process has the greatest potential of allowing us to focus on the methodology and prescription for a national energy policy. I fear if we were to take the path that has been suggested that we are again saying our generation is not going to carry any pain, our generation is going to continue essentially business as usual. Our generation is going to accelerate the consumption of finite vital national resources so that our children and our grandchildren can live in a depleted America.

We have just celebrated the 103d birthday of Theodore Roosevelt. Theodore Roosevelt challenged this Nation in may ways. One of the ways he challenged us was to say that we were trustees of this planet and that the test of our trusteeship is if we could leave to the next generation not a world depleted but a world enhanced by our presence. That is the challenge before us today. As we turn our attention to a national energy strategy for America, will we be able to say that at the conclusion of this policy that we have left an America enhanced to future generations, not one which is depleted and dependent.

S. 1220 IS THE WRONG ANSWER TO THE WRONG PROBLEM

The energy bill recently reported out of the Energy and Natural Resources Committee looks awfully familiar. It should, because it is little more than the President's National Energy Strategy, which was roundly criticized when it was floated this Spring.

And like the Bush plan, it is the wrong answer to the wrong problem.

This energy bill misdefines the problem as oil imports rather than our overall dependence on and inefficient use of oil.

The solution it proposes is to greatly accelerate exploitation of our domestic natural resources and "drain America first."

At best, it would buy our Nation only a few additional years of avoiding fundamental change, at the cost of even greater dependence on imported petroleum in the next century.

THE NUMBERS DO NOT LIE

According to the Department of the Interior and the Congressional Research Service, the most likely estimates are that we have only 27 billion barrels of domestic oil reserves, and 36 billion barrels of resources.

Reserves are known quantities of oil, and can be measured with fairly high accuracy. On the other hand resources, defined as undiscovered but economically recoverable oil, are harder to quantify.

These agencies estimate that there is a 95-percent chance that oil resources could be as little as 20 billion barrels, and only a 5-percent chance that they could be as high as 53 billion barrels.

Yet even if we assume the most optimistic—and highly unlikely—scenario, that means America has only about 80 billion barrels of oil left in the ground.

Unfortunately, we consume oil at an alarming rate. In 1990, we used 6.3 billion barrels a year. About half of that was imported.

Do you realize that if we were to rely exclusively on our domestic supplies and did nothing to decrease our consumption, that we would completely exhaust our own supply of oil in 13 years?

People do not believe that, because they do not want to believe it. But mathematics do not lie: Divide 6.3 into 80, and you get "Less than 13 years."

Opponents will say, "But if the price goes up, there will be incentives to find more oil." I'm sorry, but the 80-billion-barrel estimate is the most optimistic scenario and assumes finding the maximum possibly recoverable.

Thus, any strategy that focuses almost exclusively on producing more oil rather than using less is dangerously nearsighted. All we will be doing is shifting to our children the burden of coming up with a rationale answer to our oil addiction.

But the problem is ours, and we must address it now.

THE ADMINISTRATION'S ENERGY AGENDA IS A FAILURE

Energy policy does not exist in a vacuum. It must be integrated with improving environmental protection, transportation efficiency, and economic competitiveness.

Last winter, Congress received the administration's proposals for a national energy strategy and a national transportation policy. These issues are closely related; nearly two-thirds of America's oil, and a fourth of all our energy, is burned for transportation.

But the two plans made virtually no reference to each other.

One way to reduce our dependence on petroleum is to move passengers and freight more efficiently. The Tri-County Rail System that links Dade, Broward, and Palm Beach Counties takes some 2,000 to 3,000 vehicles off the crowded highway system in south Florida each day.

Yet, the President's transportation plan offered no leadership for mass transit; Federal support would be cut.

Meanwhile, America continues to consume approximately twice as much fuel per capita as our principal competitors like Japan and Germany. We will be at an increasing competitive disadvantage if this trend continues, but the administration-inspired energy bill makes virtually no attempt to increase our fuel efficiency.

We must correct that mistake.

WE NEED TO IMPROVE FUEL EFFICIENCY

Moving toward energy security doesn't have to degrade our lifestyles. Fuel efficiency in cars increased markedly in the seventies and much of the eighties, without reduction in comfort, quality or safety. Auto fuel efficiency increased 78.5 percent from 1975 to 1990, from an average of 15.8 miles per gallon to 28.2 miles per gallon.

However, auto fuel efficiency began to level off in 1986 and declined in 1988 and 1989. If America is serious about energy conservation, we must improve the fuel efficiency of new cars.

Increasing auto fuel efficiency 40 percent by the year 2001 could save America 2.5 million barrels of oil daily, nearly 15 percent of our total domestic consumption. Such improvement should be a basic component of our energy policy, but the oil industry, the auto lobby, and their allies in the administration continue to vehemently fight this goal.

The counterconservation strategy of the Administration is out of sync with the pervasive environmental awakening in this Nation. McDonalds stopped using foam containers for Big Macs. The tuna industry brags about protecting dolphins. More Americans than ever are recycling glass and paper.

DRAINING ANWR AND AMERICA FIRST IS NO LONG RANGE PLAN

The President's plan calls for oil drilling in some of the Nation's most sensitive ecosystems, including the Arctic National Wildlife Refuge [ANWR] in Alaska.

Even if we put aside the significant environmental damage that such drilling would cause, and if we assume that there is as much oil in ANWR as the oil companies say, why are we rushing to drain America first?

Under one scenario from the oil industry, we will drain ANWR in 10 years. That will leave us in no better position than we are in today.

In the long run, our national security depends on preservation of our natural resources. Stopgap measures, such as drilling in the Alaskan refuge and other environmentally sensitive areas, are not the answer to our energy needs.

Daniel Yergin writes in "The Prize" that the debate between conservation and "drain America first" goes back at least to World War II. Then-Secretary of the Navy James Forrestal argued that extraordinary measures to maximize American production after the war could deplete future strategic reserves.

WE NEED ENVIRONMENTALLY SOUND ALTERNATIVES

Instead of pumping ever more oil, we need to invest in energy sources which are sustainable and do not pollute our environment. For instance, solar energy will only be a significant resource when we improve the photovoltaic cells which allow us to harness the Sun's energy.

Nuclear power can also play a significant role in meeting America's needs, but only when we can ensure the safety of plant operation and waste disposal.

For transportation, we must commit ourselves to developing new cleaner fuels, and alternatives to the automobile. If the prices for our energy sources were to reflect accurately all their costs—economic, strategic and environmental—market forces would lead us away from oil and other depletable resources.

But that is economic theory, which is subject to endless debate. The bottom-line challenge facing America is beyond debate. We are consuming fossil fuels much faster than nature made them.

If we want to remain strong—at home and abroad—we must wean ourselves and embrace a future of conservation and alternative energy sources.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. WALLOP. I thank the Chair.

Mr. President, earlier today when I had the floor, I misspoke myself concerning statements of the occupant of the chair. For that I wish to apologize. I had quoted him as saying, as I thought he had, that there was not much interest in this; and, in fact, what he had said was there was no public interest groups.

So I misspoke myself and for that I apologize. I did not wish to have him believe that I had accused him of an untruth.

I say in all honesty I do not know what he considers public interest. Usually in the eye of the beholder, certainly the chambers of commerce of all the States in America and the national chamber, for those who belong to them feel they are a public interest. Certainly the citizens for a Sound Economy, citizens for the Environment, the Coalition of Northeastern Governors, the Electric Consumers Council, the Energy Council, Western Governors Association, the National Association for State Legislatures, National League of Cities—all of those have some claim on being public interests.

I would say as well, Mr. President, that I have new letters of support for this legislation—one from the Institute for Public Affairs signed by Mandell Ganchrow and Bill Rapfogel of the Union of Orthodox Jewish Congregations of America, from the Chairman of the Joint Chiefs of Staff, and from the National Security Adviser to the President of the United States.

I ask unanimous consent that those letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INSTITUTE FOR PUBLIC AFFAIRS,
New York, NY, October 24, 1991.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

HON. MALCOLM WALLOP: The Orthodox Union is deeply committed to working toward an effective and comprehensive national energy policy. One of the most important goals of an energy policy is to reduce our nation's dangerous dependence on foreign sources of oil.

Currently, America is 50% reliant on imported oil, more than half of which is imported from OPEC countries. Oil production from all major domestic oil fields is declining, so without new sources of domestic oil production the situation will only get worse. Today, our nation spends some $150 million a day on imported oil. This accounts for over one-half of our trade deficit.

Accordingly, the Orthodox Union strongly urges your support for the exploration and development of the potentially vast oil reserves of Alaska's Arctic National Wildlife Refuge (ANWR) as provided in Senate Bill S. 1220. ANWR has the potential to supply America with major quantities of oil for twenty to thirty years. President Bush and the Energy Department have declared that ANWR can be developed in an environmentally sound manner.

Increased U.S. reliance on Middle East oil is not in the national interest. Our foreign policy and in particular our interest in Israel, our one democratic ally in the region, must not be held hostage. The exploration and development of ANWR oil is one important step in reducing our reliance on imported oil. We strongly support it and hope we can count on you.

Sincerely,

MANDELL I. GANCHROW,
Chairman.
WILLIAM E. RAPFOGEL,
Executive Director.

THE CHAIRMAN,
JOINT CHIEFS OF STAFF,
Washington, DC, October 25, 1991.

Hon. MALCOLM WALLOP,
Ranking Republican, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR WALLOP: Thank you for your letter informing me of the upcoming consideration by the Senate of the National Energy Security Act of 1991 (S. 1220). I join Secretary Cheney in supporting the passage of this important legislation.

In my role as Chairman, I am acutely aware of the linkage between a sound national energy policy and the ability to use our Armed Forces effectively. A most important element of this linkage is the need to lessen America's reliance on foreign sources of energy. Since the Armed Forces are a major consumer of energy and ready access to available sources of energy is critical to the success of our mission, I fully support efforts to achieve an energy-independent America.

I support the Defense Department's endorsement of S. 1220, with the modifications requested by the Administration. Your continued efforts on this critical subject are of the utmost concern to the Department. I appreciate the opportunity to comment on this legislation.

Sincerely,

COLIN L. POWELL,
Chairman, Joint Chiefs of Staff.

THE WHITE HOUSE,
Washington, October 24, 1991.

Hon. MALCOLM WALLOP,
Ranking Minority Member, U.S. Senate, Washington, DC.

DEAR SENATOR WALLOP: Thank you for your letter of October 3 on S. 1220, the National Energy Security Act of 1991.

I strongly support Congressional passage of legislation which will contribute to developing a viable, comprehensive approach to our energy needs. When modified as requested by the Office of Management and Budget, S. 1220 will make a significant contribution to improving our energy security.

I greatly appreciate the time and effort you are devoting to this very important task.

Sincerely,

BRENT SCOWCROFT.

Mr. WALLOP. Mr. President, I hope the Senator from Minnesota accepts the apology of the Senator from Wyoming, but I have a couple of other quick things. I am glad the Senator from Florida is still on the floor because he simply either has been misadvised as to what the bill contains or he has not read it.

All the ideas expressed by the Senator from Florida cost money. All of the ideas expressed by the Senator from Florida are contained in the bill. All of the ideas expressed by the Senator from Florida are paid for by the production of energy out of the United States.

Earlier the Senator from Montana made the claim that oil companies, big oil, had taken $40 billion out of Prudhoe Bay. Mr. President, if that is the case, and if that is an accurate figure, so, too, did the United States harvest a lot of taxes out of those dollars. So, too, did the State of Alaska harvest a lot of taxes out of those dollars.

The energy bill is set up today as the revenues from ANWR, the revenues from production go into the research and development of electric cars, of new conservation technology, of biomass fuels, and all the kind of things that the Senator said he hoped we would do. But I point out that there is one very specific thing that he and others are overlooking: We are not in any near term going to be able to eliminate oil as part of the transportation mix. Inasmuch as we are not, the money that is paid for that oil as part of the transportation mix will either be paid into the coffers of the United States, in part into the coffers of the United States, or paid totally into the pockets of Arabs and foreigners. It is as simple as that.

We cannot get something for nothing out of all of this.

I would say, there have been so many misstatements. Senator KENNEDY from Massachusetts said that we expanded offshore drilling. In fact, we contracted it. This Senator thought that was a strange thing to do in an energy bill. This Senator believes an energy bill to have balance must call for some production as well as for some conservation, but what the Senator from Florida overlooks, and others criticizing this bill, that when balanced in the accounting, that this bill saves about 2 to 1 over what it produces. The conservation sections of the bill are that much more effective than the calls for production are.

So I hope he might get with his staff and others and take a look at the assessments that have been made on this bill because what we are trying to do is to get to the point where we can debate those provisions. If more conservation is the wish of the Senator, more innovative transportation systems are envisioned in this bill, more innovative means of generating electric power are envisioned in this bill; how can we get to that point unless we have the vehicle to which the amendments can be offered?

So, Mr. President, it is clear the Senator from Wyoming is going to have more than one thing to say about this bill before it is all over. But I did want the occupant of the chair to understand I did not intend to impugn him. I did want the Senator from Florida to understand that there is more to this bill than was portrayed by the able and eloquent remarks that he just gave us. I hope that when he discovered all of those things he might join us in getting to the floor where we can debate and, in fact, improve or even, in fact, knock down and defeat the bill.

But in the lifetime of this Senator in the U.S. Senate and, in fact, in the lifetime of this Senator's awareness of politics, there has never been a balanced and total comprehensive energy policy offered. This is the first one. What a shame to lose it on a filibuster.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. I thank the Chair.

Mr. President, I want to take a few moments if I can just to share some thoughts with respect to the energy bill.

I would like to begin by commending the Senator from Louisiana who has put a lot of time and a lot of effort into trying to come up with an energy policy for the country. I heard him earlier talking about the question of whether or not we want to debate an energy policy, as if that is really the issue in front of the Senate, when it is not. That is really a red herring.

The question is not whether or not we want to debate an energy policy, but it is whether or not this bill, this so-called energy policy, is in a condition that is ready to be debated, that it represents really a broad enough cross-section of the Senate's view of what an energy policy ought to be rather than representing, as I and many others think it does, a rather narrow view of what energy policy ought to be and particularly a significant amount of what the administration thinks ought to be the policy of energy.

A lot of us are very troubled by different titles of this bill, by different sections of it. I want to take a moment to think about this bill in the context of where we have been over the last years and what that means.

We were shaken last year by the events that led up to the Persian Gulf crisis. I am not sure why we were so shaken because, really, we had been through it before and we could see it coming. But as is often the case in this country, we have a way to getting past the moment of initial crisis and we put it behind us.

So the eighties were an extraordinary period of willful turning away from reality about energy.

In the 1970's, we had people pulling guns on other Americans in gas lines, and we had people waiting hours in fuel lines and adjusting their lives, and we even were into a rationing system. We have been there.

The result was that in this country sensible people stood back and said we have to have an energy policy. Indeed, for a period of time, we developed what we thought was an energy policy. We created incentives for alternatives, renewables. We began to do a lot of research. We created the Solar Institute and funded it. A lot of things began to happen. Indeed, the United States became the world's leader in photovoltaics and in other technologies relating to new fuels.

Then suddenly, when President Reagan came in, he openly abandoned all pretext of Government leadership in trying to set energy policy. The Reagan energy doctrine was that there is no need to conserve, no need to be efficient, that the market is going to take care of that, and in fact, President Reagan was so confident about the Nation's energy situation that he defined his mission as one of dismantling the Department of Energy. Funds for research into those alternatives, photovoltaics, were sucked away. I think we had something like a $200 million budget out in Colorado, and $150 million of it was taken away.

People who were tenured professors at universities in this country who have left those positions of tenure in order to go to become researchers for the future were suddenly out in the street without a job, and basically the effort stopped. The result today, in

1991, is that Japan and Germany are the world's leaders in the technologies that we have handed them. We have the gall to ask ourselves, as we so often do, why we fall behind and why we have a problem?

This bill, I regret to say, represents some aspects of where we would like to go in terms of energy, certainly in the areas that it sets out to address. But the manner in which it addresses those areas is fundamentally in the same vein as we have been for the last 12 years or more, dependent upon oil, not acknowledging the extraordinary demands that we face with respect to the future on clean air, health-related hazards, global warming, and so forth.

I view this bill as somehow an acknowledgment that the Congress cannot do better, that we as legislators cannot pick a better beginning point from which to suggest to the Nation a debate on energy policy ought to start.

I am troubled somewhat about some aspects of the process. I am not going to go into all of those right now. But it disturbs me as a member of the Commerce Committee who, as one of the primary sponsors of CAFE, has worked with Senator HOLLINGS, and others, Senator BRYAN, to see that we have a sensible policy there, that the Commerce Committee efforts seem to have been left somewhere in the dust in this presentation.

It concerns me that other efforts of other committees—other individuals who have long had an involvement in certain areas here—that those committees also seem to not have their expressed will reflected in what we have here at this point in time.

But consider the real meaning of the Arctic National Wildlife Refuge.

Senator JOHNSTON from Louisiana came to me, and he is a friend. I respect enormously his commitment on this. I think he wants an energy policy. I think he is facing the difficult task of trying to meld together the many different interests that are represented here. In that effort he asked me if I would review, If I would have an open mind, to look at the Arctic National Wildlife Refuge. I did that, I think, with a genuine open mind.

It is interesting because I did learn some things. I learned that some of the arguments being made by some environmental groups in fact were not correct with respect to some aspects of that issue. I certainly came to a conclusion about certain claims about footprint of gravel or about dislocation of certain caribou or something. I felt that at least there were questions with respect to them, that they were not settled issues, and that one could find legitimate argument on them. But what I could not find was a rationale for drilling in the wildlife refuge. Under the best of circumstances, I could not find the rationale right now.

If the purpose of it is to impact the balance of trade or if the purpose of it is to somehow affect our dependency on foreign oil, there ought to be a showing that it does that. But there cannot be such a showing because it cannot do that beyond the most marginal level.

Sure, there is a tiny upsurge in oil if you find it, and if you met your best expectation of 200 or so days, 2 percent of the United States' demand, sure you are going to get a little bubble there. But in terms of ever affecting U.S. dependency on foreign oil—who is kidding whom?

No one can pretend that the amount of oil you would get out of the Arctic National Wildlife Refuge would in the least way affect this Nation's security capacities or any decision we would have to make about in a war in the gulf or anywhere else, because there is not enough oil there for this country to survive more than 200 days if it is applied to the total demand for a contiguous period of time.

The real issue is whether or not the United States of America is going to continue to be dependent on oil and whether or not we want to violate what that symbol means in the context of judging a real energy policy for this country.

I hear my colleagues say, well, it is terribly important to drill there now because of the dependency and all of the security issues and so forth. But, Mr. President, the price of oil is going to go up. I presume demand is going to go up. And clearly supply in other parts of the world ultimately is going to go down.

So it seems to me that a country that is willing to spend money to put oil away for a crisis, being our national security reserve, if we are willing to do that, why would we want to dig the last natural national security reserve that exists? It makes far more sense as a hedge against the future to keep this oil where it is and to proceed down the road of developing alternatives with the possibility that if we are not good enough or do not or cannot, we know we have this reserve ultimately if there were an emergency or an exigency that demanded our drilling it.

But in the face of the bill that weakens standards with respect to electrical powerplants, that weakens standards with respect to nuclear power safety, that strips the Northeast of some of its capacity to have access to natural gas, that does not mandate or press people into a state of conservation in some of those areas where there is enormous room for conservation—to now proceed to drill in the face of all of those other negatives in this legislation, and to use up the so-called last natural national reserve of oil simply does not make sense.

It does not make sense practically. It makes even less sense in terms of the message it sends to America that we can just go ahead and live as usual. We cannot.

So, Mr. President, I am not going to belabor each and every one of the areas of concern that I have about this legislation, though they exist in the nuclear licensing, they exist on the CAFE where we are doing far less in this bill than I think the majority of Senators believe we could be doing.

There is a provision for offshore oil licensing in this legislation which I believe opens up an issue that many of us thought we had settled and laid to rest. For those of us with areas such as the Georges Bank of Massachusetts where we are currently preventing oil and gas activities, this bill, we fear, has loopholes which begin to open up the possibilities of that drilling.

I support the revenue sharing measures, Mr. President. But those revenues should not be distributed with no strings attached. They should be distributed in a way that encourages conservation and ameliorates environmental damage from oil and gas activities.

I believe that the clean air standards provisions should not be permitted to be weakened as they do here. This bill permits local increases of sulfur dioxide and even larger increases of nitrogen oxides right in the wake of our working so hard to clean up acid air, and have smog limitations.

So, Mr. President, it is my hope that Senators will decide that this bill is not ready for debate yet; that it does not represent consensus with a national energy policy that we ought to have.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. DODD). The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I thank my friend, who has been waiting for some time for what I understand is going to be a rather thorough presentation on the energy bill. I will not be that long, and I very much appreciate the opportunity to respond.

I spoke earlier in the day and, of course, tried to enlighten some of my colleagues on the merits of this energy package and the substantial responsibility that they were undertaking by leading this filibuster fight against even bringing the bill to the floor.

Mr. President, if one relates to what is occurring here, really, it is a cop-out by this body to address the hard decisions that are necessary to have a comprehensive energy policy.

More simply put, Mr. President, are the misleading statements that are made by Members of this body that are diligent, but very naive. We have heard time and time again in this debate the issue of, well, why should we open up the Arctic coastal plain, the 1002 area, and explore this area and leave a lasting footprint for only a 200-day supply of oil?

Mr. President, every Member who has spoken with some degree of expertise on ANWR assumes there is oil there. They assume there is 200 days there. We do not know what is there, Mr. President. We do not know if there is any oil.

We had a major identification of an area called Mukluk several years ago. Mukluk was a structure. The experts, geologists, told us that we were very lucky to find a major field. It was put up for lease. The oil companies bid it. Some companies virtually staked their corporate fortune. And the oil was there—it was there 10,000 years ago, but it was gone. We do not know if there is any oil in this area. We will not know unless it is put up for lease, and there better be a lot of it, or it will never be brought to market. These are the facts.

When you say a 200-day supply, what does that mean? I am sick and tired of hearing this generalization: Well, it is only a 200-day supply. If ANWR is a 200-day supply, how many days will alternative fuel supply us with; 1 or 2 days, or one-half a day?

Which 200 days will we go without cars, buses, planes, trains, no heat, no food, no pharmaceuticals? Let us put it in another comparison, Mr. President. If it is a 200-day supply, it will be the third largest field ever found in the United States, next to Prudhoe Bay and east Texas. If it is a 600-day supply, Mr. President, it would be as large as Prudhoe Bay, or perhaps larger. And what has Prudhoe Bay been doing as a 600-day supply? Well, as a 600-day supply, it has been supplying this Nation with 25 percent of the total crude oil produced in this Nation for the last 15 years.

That is pretty significant. We do not know what is there. We will not know what is there until we initiate expiration, and we will do it by competitive bidding with the private sector.

I have heard tonight "big oil this" and "big oil that," but I have never heard "jobs." I have never heard that people can buy a home because they work for an oil company, or are a member of a community that goes to the concerts and to the symphonies, people like you and me, or maybe they are not. Maybe they are the real people in this country.

Oil brings jobs. Oil fuels airplanes. Oil makes an automobile industry in this country. Surely, we have to wean—and we are—our dependence on foreign oil by encouraging alternative fuels. But make no mistake about it. My colleague from Massachusetts just said he expected the price of oil to go up. No, Mr. President, it is not going to go up. OPEC figured this thing out. They are going to keep the price of oil relatively low, so it will be very attractive for us to continue to bring in large amounts of imported oil. That is a fact. So that we cannot bring in alternative fuels without subsidizing them. That is a fact.

They have learned their lesson in OPEC, and we have not. They must be just gleeful tonight as they observe this debate, knowing indeed in advance what is happening. What is happening is we are going to be importing more oil from OPEC, and we are going to bring it in foreign vessels, crewed by foreign crews, vessels built in foreign shipyards. We are paying $57 billion today for that oil, and we are going to be increasing.

Why are we going to be increasing, Mr. President? Because our production is in decline. That is just a fact.

Nobody mentions the reality that when you are in a process of decline, and you have an area at a level of consumption, you are going to have to get it from someplace, and you are going to import it in foreign ships. That is just as simple as the reality of what is occurring. But some of my colleagues seem to have this idea that there is something else out there, some other alternative.

We talk about the footprint. What is the footprint likely to be? I will tell you what it is, Mr. President. It is likely to be 12,500 acres, if the oil is there. Do you know how big that is? That is as big as the Dulles International Airport, assuming the rest of the State of Virginia were a wilderness. Yes, that is the footprint, if the oil is there.

The area is covered with ice and snow four-fifths of the year. If the oil is not there, there will never be a footprint. But the Federal Government and my State will share substantial revenues, as much as $3 billion to $6 billion.

But if the oil is there, Mr. President, what is going to happen in this country is you are going to see the economy pick up. Do you know why? Because there are 745,000 jobs at stake here in 47 States.

Do you know what the contribution is, Mr. President, of the gross national product is going to be $550 billion. Almost $50 billion in my State alone. So one can quickly see that this is a jobs issue, too, as well as an environmental issue.

And make no mistake about it. As I have said before, Prudhoe Bay is the finest oil field in the world. If we do not want an oil field, that is something else again. It is not perfect, but it is better than anything that has been developed anywhere in the world, with sensitivity to the environment and ecology, and the same application can take place and will take place if this body moves on this energy package and we initiate the authority that is necessary to put this up to competitive bids.

So, Mr. President, there have been suggestions that there will be little gain and so much lost if we open this up. That simply has no justification whatsoever. There is going to be so much lost if we do not open it up: the economy of this Nation, jobs, and the lessening of dependence on the Mideast.

You know, Mr. President, sometimes we overlook the wishes of the people. If you look at the attitudes in Alaska, I will tell you that the native people want the responsible development in ANWR. They have seen what Prudhoe Bay has offered them: alternative lifestyle, education, medical facilities that they never had before. These are the things that mean a lot to people. They have known, as a consequence of the experience we have had in Prudhoe Bay, that their lifestyle can be protected because they have a role in it. They are conservation-oriented people. People of Alaska want this to happen. Our Eskimos who live there want it to happen, the Governor, the legislature, and certainly the delegation.

But do the leaders of this filibuster care about energy strategy? I do not think so. ANWR is the lightning rod, but ANWR is the underpinnings. It is going to finance alternative energies. What do they really care about? You know what they care about. They care about the environmentalists as an elite class. You know how many visitors there were last year in ANWR? They were 154, Mr. President. Do you know what they paid to get there? Approximately $5,000.

That is a fact. Look at how many jobs we are looking at in this country to offset what a few elite can enjoy in an area. That does not necessarily suggest that we cannot open it up in an environmentally sound manner because what they do not tell you, and nobody on the other side mentions it, there are 19 million acres in ANWR and 8 million acres have been set aside in a wilderness in perpetuity. You know what that means around here? And 9.5 million acres have been set aside in a refuge that can only be opened up by Congress. We have 1.5 million acres remaining in the 1002 area that this body and this Congress has the authority to open up for competitive bidding.

You wonder where this issue is going? Mr. President, it has become a political issue; it has become a partisan issue. This energy bill is viewed as President Bush's energy bill. Why should we support President Bush's energy bill in an election year. What an unfortunate set of circumstances? One wonders, Mr. President, where these opponents will be in 10 years. And one wonders, when we get 70 to 75 percent dependence on imported oil, which we will, that is when OPEC will say that now is the time to begin to raise the price. And when oil is $40 or $45 or $50 a barrel, you watch the attitude in this body change. You watch the consumer that says, "Hey, wait a minute. Enough is enough."

Why not do it now, Mr. President? Find out if it is there, bring the environmental community aboard. Let them help us design the safeguards, if the oil is there. But, Mr. President, the environmental community is holding no prisoners on this one because it is a great issue. It is 3,000 or 4,000 miles away. Only a few of them get up there, and they are telling you and they are telling me that we should not do it, that we cannot do it, that we do not need it. Mr. President, we are running amuck in this body if we are led to believe that we cannot initiate this authority and do it in a responsible manner, and they should come aboard and help us.

The last point I want to make, Mr. President, is this issue of a complete Arctic ecosystem. It sounds beautiful. But, you know, my State is one-fifth the size of the United States, 2½ times the size of Texas, a population of about 550,000. We have 54 million acres of designated wilderness already, the size of the State of South Carolina. Some of us are asking how much is enough?

I tell you what the environment community is committed to in Alaska. They have told us——

They had a function here in Washington. They were nice enough to ask me to speak. It was called "Wild Alaska." I get enough of wild Alaska when I get home. But their commitment, by the end of the century, is to put 100 million acres of my State into wilderness. You might as well put up a big sign that says, "Keep Out."

Mr. President, we are not drilling off the coast of California, we are not going to drill off the east coast, we are not going to drill off Florida, we are not going to drill in Bristol Bay. Here is an area, on land, where we have proven, with the Prudhoe Bay development, that we can responsibly drill for oil and gas in the Arctic, and this body of so-called experts that know nothing about the record of drilling in Alaska and their impressionistic attitudes prevailing where some suggest, "The *Exxon Valdez* is the reason I cannot vote to open up ANWR." There is no connection between the marine disaster and opening up an oil field on land and connecting it to an existing pipeline.

Mr. President, as this body, I hope, reflects on the merits and the criticism of big oil, that they reflect on the realism of people, of jobs, of raising children and what this means to the productive capacity of this Nation. And, if we do not have the expertise within the technology that we have developed that we cannot open up this area safely, why, then, perhaps we should pursue some other alternatives that are yet to be spelled out.

But, Mr. President, we clearly have an obligation to work together not as obstructionists, but to develop a comprehensive energy policy. And never before have we gotten this far before in the sense of having such a comprehensive policy, and now we have an obligation to work together to make it better.

My friend from Colorado, who suggests that we should spin out ANWR, that is, the lightning rod that can take care of CAFE, is being totally unrealistic with reality. We had the hearings and voted it out. We had a solid vote, 17 to 3. As a consequence, Mr. President, the will of this body should be to proceed with the traditional process where the bill comes up and is allowed to be debated under the normal procedure of 50 votes making a determination of the ultimate outcome. If that is not the will of this body, then I am afraid, Mr. President, that we will live to regret the action that would be taken not to initiate a forward progress with this energy bill and a realistic recognition that development of ANWR could go a long, long way toward stabilizing not only our economy but challenging our ingenunity to do it in a responsible manner.

I thank the Chair, and I thank my colleagues who have waited, and I wish you all a good day.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I rise to state my position on the cloture motion. Before I begin, I want to express my appreciation to my colleague from Vermont who has a much more impressive, at least in its display characteristics, presentation than I will have and I think, knowing him, in the depths of his argument as well. He has been very patiently waiting and permitted me to go ahead, and I express my appreciation to him for that.

Mr. President, tomorrow the Senate will vote on a cloture petition on the motion to proceed to S. 1220, the National Energy Security Act of 1991. I will vote against cloture. I do not think this bill is ready for Senate consideration.

REACTIVE POLICIES

On several occasions over the past twenty years this Nation has tried to establish a comprehensive energy policy. Each of these efforts has come after turmoil in the Middle East that disrupted our energy supplies and damaged our economy. American hostages and American troops have been at the center of some of these events.

In response to each new crisis, there has been a demand for energy independence. "Let us free America from this entanglement in the Middle East. Let us be energy independent so that we need not risk American lives for foreign oil. No blood for oil." That is the cry we have heard.

And Presidents and the Congress have responded. President Nixon gave us Operation Independence. President Ford called it Project Independence. President Carter called it the moral equivalent of war. And now we have the National Energy Security Act of 1991.

THE SIREN CALL OF INDEPENDENCE

During the debate on this bill we will hear the now familiar refrains time and again. "We need to do everything we can to reduce our dependence on foreign oil. We have plenty of domestic energy * * * coal, natural gas, corn power * * * to replace foreign oil. We are the Middle East of coal. And, if we were just more efficient we could save as many barrels of oil as we import from the Middle East." The premise that we can and should strive to be energy independent is behind each of these slogans.

But in our drive to be energy independent, we have made some colossal errors over the years. President Nixon put price controls on domestic oil, encouraging its use and actually increasing our dependence. The 1977 spasm of energy policy brought us the Powerplant and Industrial Fuel Use Act that tried to limit the use of natural gas, especially to generate electricity. The Industrial Fuel Use Act was later repealed and the Clean Air Act passed last year tries to encourage the use of natural gas to produce electricity.

Many of us were here for the windfall profit tax, a centerpiece in our response to the Iranian Revolution and attendant oil problems in 1979 and 1980. It has also been repealed. And most of the solar energy and conservation tax gimmicks that went with it have also been allowed to lapse, gimmicks which I participated in.

And who can forget the Energy Security Act of 1980? It created the Synthetic Fuels Corporation that was authorized to spend up to $80 billion subsidizing energy from shale oil and liquid fuels from coal. A truly excessive proposal that was also repealed.

The purpose of reciting this history is to remind the Senate of what has so often happened when we have taken up big energy bills in response to Middle East turmoil. We have made very big mistakes; very costly mistakes in judgment and policy. Let me review that list again; price controls on domestic oil; the Powerplant and Industrial Fuel Use Act; the windfall profit tax; the Energy Security Act of 1980; and the Synthetic Fuels Corporation.

These are pieces of comprehensive energy policies that failed miserably and have since been repealed. These policies were generated in the heat of war or in the malaise of economic collapse and were offered to the American public as ways to achieve that elusive goal of energy independence. They were designed to insulate us from the realities of the world energy economy. The National Energy Security Act of 1991 has germinated in that same climate of dependence hysteria, it is held out to us with that same promise of energy independence and it contains the same kinds of excesses we have so often voted for in the past.

ANWR AND DRAFT

One Member of the U.S. Senate testifying before the Environment and Public Works Committee said that voting to make the Alaska National Wildlife Refuge a wilderness area is tantamount to restoring the draft. We either have oil and gas drilling in ANWR or we have young American men and women in the Persian Gulf risking their lives for access to foreign oil. We are told that is the choice.

If I believed for one minute that drilling the Alaska National Wildlife Refuge would keep the sons and daughters of America out of war, I would vote to drill it—every Senator would. But that is not the choice we face.

Let us look at the facts on ANWR. If there is oil in the Alaska refuge, we might be able to bring it to market by the year 2000. In the year 2000, it is projected that the U.S. will use between 17 and 19 million barrels of oil per day. About 6 million barrels of that oil will come from domestic wells. Six out of the 17 to 19 million barrels will come from domestic wells. About 70 percent will be imported; 70 percent of our oil will come from foreign sources.

If the Alaska refuge contains the 3.2 billion barrels of oil that the Department of Interior says and if it is produced at about 750,000 barrels per day, our dependence on foreign oil would be reduced to about 65 percent.

In the year 2000 we are 70 percent dependent without new Alaskan oil and 65-percent dependent if we drill the refuge and find the oil.

Does anybody believe that the difference between 70 percent dependence and 65 percent dependence is the difference between war and peace for America in the Middle East? The choice is not drilling ANWR or American bases in Saudi Arabia.

Drilling a national wildlife refuge to make the Nation energy independent is the kind of mistake, a mistake of excess, that we have so often made in energy policy. It is like setting aside $80 billion for the Synthetic Fuels Corporation. Or converting all our powerplants to coal and then converting them back to natural gas again and sending the bill to future generations.

ALTERNATIVE FUELS

There are other demonstrable mistakes of that type in this bill. For instance, this bill has a national goal of 30 percent alternative fuels in the transportation sector by the year 2010. That is an example of excess. One of the problems that goes with importing oil is a negative balance of trade. Importing a million barrels of oil per day imposes a $9 billion per year penalty in our trade balance. It is a cause for concern. As a nation we need to find ways to reduce that imbalance or offset it with exports.

But simply setting our sights on 30 percent alternative fuels does not qualify as a reasonable response to the problem. It would cost about $60 billion in capital investment to replace 1 million barrels per day of oil with natural gas. It would cost 80 billions of dollars—equivalent to the now repealed authorization for the Synthetic Fuels Corporation—to replace that million barrels of oil with ethanol or methanol. I should be all for that because it comes from corn in my State. And it would cost $240 billion in capital investment to replace 1 million barrels of oil per day with electric vehicles. Those costs are staggering. They are excessive. They are the very same excesses that we have voted for in the past and that have subsequently been repealed.

CAFE

I fear that if this bill comes up the Senate will be presented with another excess. That is a CAFE proposal that is beyond reason. Some will want to take the Corporate Average Fuel Economy Program from the current standard of 27.5 miles per gallon to 40 miles per gallon. I have no doubt that we can get to that number technically. I think we can do it with cars that are safe. we could do much better job on auto safety and highway safety than we are doing. And I also expect that some day much better fuel economy will become national policy because of our concern for the global environment and the impact of carbon dioxide on climate.

But that day is not today. The American public will not support a 40-miles-per-gallon standard in the name of energy security. By reaching for it we would risk undermining the CAFE program itself.

During most of its life, CAFE did not push the auto industry. The jump in oil prices did. Consumer preferences ran ahead of the CAFE numbers. That is not true today. As I say, I think CAFE regulations will some day play an important role in our efforts to respond to the global warming problem. And when we can make the case to the American public on that basis, we will have their support. But that day is not today.

If we try to reach for some excessive CAFE Program today and justify that reach on energy independence we will fail. It will be rolled back, if avoiding imported oil is the only justification. It will be another part of the energy policy that will be repealed.

TWO BIRDS IN BUSH DO NOT EQUAL ONE IN HAND

It may be said here on the floor that tough numbers for CAFE are a necessary companion to drilling ANWR. Somehow, the two of them together will prove that we are finally serious about energy independence. But two very large mistakes are not better than one. The willingness to reach for any option, however, excessive, to avoid dependence is not the definition of good energy policy.

We have a tendency to see our dependence on foreign oil as a sickness, as an addiction. Middle East oil is the heroin of the American economy. Whenever there is turmoil in the Middle East, we resolve to come to our senses and break this dependence.

We are willing to try the most extravagant cures to get well.

No scheme is too expensive.

Every nutball idea is a potential magic bullet.

The more exotic the solution—shale oil, fusion, hydrogen fuels—the more we are willing to spend to replace foreign oil.

That mentality has led use astray so many times in the past. And that is the mentality that continues to inform this bill. Excess in the name of energy independence has become the very test of sincerity.

There is a book that was published last Winter on the history of petroleum in the world economy. It is by the distinguished energy economist, Daniel Yergin. It is titled "The Prize. The Prize. The prize is 600 billion barrels of Middle East oil that can be produced for $2 per barrel. It is a treasure that can fuel prosperity for economies around the globe for a hundred years into the future. For most of the past 100 years, the United States has been the principal supplier of oil to the world. Texas was the Mideast of 1890, 1910, and 1930. But the reserves of Texas pale in comparison to the oil wealth found in the Persian Gulf.

It is not our oil. But the nations that own it want to sell it. Some of those nations are our friends and allies, more so today than a year ago. But even our enemies in the region are not trying to withhold their oil from the marketplace. It does them no good in the ground.

This is very cheap oil. Much less than a buck a gallon. It fueled the boom of the fifties and sixties in the United States. That is how we became dependent. In real term it is just as cheap today as it was then. It is much less expensive than many of our domestic alternatives. Much less expensive.

It may be that some here in the Senate think it makes sense to pay $2 a gallon for corn-derived ethanol or $3 gallon for liquid fuel from coal or $4 a gallon to avoid using fuel with some exotic conservation technology. That is the theory of this bill and some of the amendments we will see if this bill comes to the floor.

There has been much said today about whether Senators want to have an energy policy or not. It has been suggested that those who oppose cloture do not want an energy policy. Throughout that discussion there has been an underlying assumption that this Nation can only be considered to have an energy policy, if we have in place some mix of programs likely costing billions of dollars to taxpayers and consumers that is designed to end our dependence on foreign oil or for some Senators on oil altogether.

That is not my definition of an energy policy. And that is not a definition the American people are going to support when they understand the true costs of the alternatives put forward in this bill.

I am not against an energy policy for this country.

I am for the strategic petroleum reserve.

I am for research and development on new technologies.

I am for alternative fuels in niche markets where they can have significant environmental payoffs.

I am for provisions in this bill that would encourage wiser energy use by the Federal Government.

Those are all elements of a national energy policy.

I pray for the success of the peace talks now occurring in Madrid. That, too, is also an essential part of an energy policy.

I am opposed to spending billions of taxpayer dollars and tens of billions of consumer dollars in the elusive quest for energy independence. That is not the only definition of an energy policy.

If there is a message to policymakers from Americans today, it is: "Don't repeat the mistakes of the past. Don't waste my time or my money." Mr. President, I respectfully request that our colleagues on the Energy Committee listen to that message. And I respectfully suggest that President Bush put all the Nation's creative resources to work on a national energy policy in light of the new world order in national and international relations, in trade and energy, in the Middle East, and today—in Madrid.

Mr. President, with gratitude to my colleague from Vermont, and to all who are staying in here on Halloween, I express my appreciation for his yielding to me and I yield the floor.

MORNING BUSINESS

Mr. BRYAN. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein and that the matters considered in this period be placed at an appropriate place in the RECORD so as not to show any interruption in the statement of the distinguished junior Senator from Vermont.

The PRESIDING OFFICER. Without objection, it is so ordered.

FREE THE CLARKE NOMINATION

Mr. DOLE. Mr. President, I wish to take a minute to call my colleagues' attention to an editorial in today's Washington Post concerning the renomination of Robert Clarke as Comptroller of the Currency.

As the editorial correctly points out, Mr. Clarke was renominated by the President on January 23, 1991. Since then, America has won the Persian Gulf war; a coup failed in the Soviet Union; the President nominated and the Senate confirmed a Supreme Court Justice; we have passed a crime bill, a civil rights bill, and countless other pieces of legislation. But, apparently, there has not been time to hold more than two hearings on Mr. Clarke's nomination.

There has been time, however, for some to try to pin all the ills of the banking industry on Mr. Clarke. Nine months later, it is time for Mr. Clarke's critics to present their case, or to allow the nomination to proceed.

By allowing Mr. Clarke's nomination to twist in the wind, the Senate is sending mixed signals to an already fragile banking industry. What this industry needs now more than anything is certainty.

Let me quote directly from today's editorial:

> Thus far * * * when Mr. Clarke has been given an opportunity to respond directly and on the record * * * he has given a good account of himself and his stewardship of the OCC. * * * Before the Senate recesses, Senator Riegle should present his case, for or against Mr. Clarke, and then allow the committee to vote on this critical appointment.

Mr. President, I ask that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

MAKE A DECISION ON MR. CLARKE

In his blast at Congress last week, President Bush took special aim at the Senate, where key administration appointments have languished for a number of months. Mr. Bush gave special mention to the problem of Comptroller of the Currency Robert Clarke, whose renomination has been pending before the Banking Committee since January. "In times of economic concern, we need the service of these people, and if members of the Senate don't like my nominees, then they should vote against them. But they should not stall progress," complained Mr. Bush. But the delay in action on Bob Clarke is not the fault of the confirmation process or rank partisanship. The delay is the handiwork of one senator—the chairman of the Banking Committee, Don Riegle (D-Mich.), and his influential staff.

Sen. Riegle's disenchantment with Mr. Clarke is no secret: He has publicly suggested that President Bush reconsider Mr. Clarke's reappointment. To his opponents on the committee, Mr. Clarke (1) is soft on bankers (having practiced regulatory banking law before coming to Washington from Texas in 1985); (2) doesn't like to take formal actions against improperly run banks; (3) takes shortcuts on bank examinations; and (4) prefers that banks operate under weaker capital standards.

To their mind, most of the costly bank failures of the past five years are largely Mr. Clarke's fault. That is the case they have been trying to build for the past several months. But after all that time, including two days of testimony from Mr. Clarke and a review of hundreds of OCC documents and bank records, Sen. Riegle apparently still doesn't feel his case is strong enough to allow the committee to debate and vote on the nomination.

We have said all along that Mr. Clarke is obliged to defend his record as comptroller, including his regulatory philosophy and the actions he has taken to enforce national banking laws and regulations. By taking liberties with Mr. Clarke's past statements and positions or by quoting him out of context it is possible to portray him as the source of all that ails the banking industry. Some of that, we fear, may be happening in this case.

Thus far, however, when Mr. Clarke has been given an opportunity to respond directly and on the record to Sen. Riegle's questions and concerns, he has given a good account of himself and his stewardship of the OCC. The discretion of the chair should not be abused. Before the Senate recesses, Sen. Riegle should present his case for or against Mr. Clarke and then allow the committee to vote on this critical appointment.

UNEMPLOYMENT COMPENSATION

Mr. DOLE. Mr. President, just very briefly on another matter that I know is of great importance to every Senator, that is unemployment benefits.

For some time now, in fact almost for 2½ months, the debate has been raging in the Congress and in the Senate not on whether or not we should extend benefits or provide extended benefits—that is a given on both sides—but whether or not those benefits should be paid for.

Bills have been presented. This Senator has a provision to provide 6 and 10 weeks. The senior Senator from Minnesota [Mr. DURENBERGER] and the junior Senator from Montana [Mr. BURNS] have another proposal that provides more weeks but they are paid for, as opposed to the plan submitted by my colleagues in the other party.

The President has said from the outset send me a bill that does not violate the budget agreement, send me a bill that is not a budget-buster, send me a bill that pays for itself and I will sign it. The President said that in a meeting I had with the President and other members of the Republican leadership 10 o'clock this morning. He made it very clear at the leadership meeting that he was very interested in reaching an agreement on an unemployment compensation bill.

He has simply asked to meet these three conditions:

First, let us make it short term.

Second, let us make it within the budget agreement.

And, third, no new taxes to finance it; we need to find other ways to pay for it.

Let me say that I have been encouraged by meetings I have had with the chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, and the chairman of the Senate Finance Committee, Senator BENTSEN. I have been encouraged that there is an effort underway—I understand there will be another meeting tomorrow by the Democratic leadership—to try to come together on some agreement among the Democratic leadership that they may then present to those of us on the Republican side. Based on the encouragement I received, at least I thought I had received in talking to Senator

BENTSEN, and I think I did receive in talking to Senator BENTSEN and Congressman ROSTENKOWSKI, I have been visiting with Congressman MICHEL, the Republican leader in the House, with the Secretary of Labor, Secretary Martin, and with the Director of the Office of Management and Budget, Mr. Darman.

In fact, we have had meetings all day long since 12 o'clock noon with a number of important officials from the Labor Department trying to consider different options. We prepared a number of options to meet the three tests: short term, within the budget agreement, and no new taxes to finance it.

We now have four options, four additional options, in addition to the original Dole proposal and in addition to the Durenberger-Burns proposal.

So I say to my colleagues on the other side, we would like to get this done. We believe it can be done. We believe we can take care of this in the same spirit.

We had bipartisan support of the civil rights bill that was finally voted on last night. If we can conclude an agreement on unemployment benefits, extended benefits for unemployed workers, men and women in every State in this Nation, and if we put our mind to it, we can do it before the end of next week.

So it is not going to be easy because my colleagues know when you get a tax bill in the Senate, anybody can offer tax amendments. There is a great incentive there to offer some amendment that cannot be voted down or that might embarrass somebody politically. But I am prepared to say if we can reach an agreement on this side of the aisle, we will pledge ourselves to fight off all amendments to make certain that the unemployment benefits can be paid as quickly as possible.

I say to my friends on the other side of the aisle, we are prepared to meet, prepared to discuss, prepared to negotiate. I speak also for the President of the United States.

I yield the floor.

CHINA'S WEAPONS MAFIA

Mr. HELMS. Mr. President, the boast of communism was that it was a people's government. There were some who believed that, but I do not think that anyone believes it any more. We have seen the collapse of communism in Eastern Europe. We have seen the collapse of communism in the former Soviet Union.

And I think that it will be not long before we see the collapse of communism in the People's Republic of China. The signs of the times are writ large. Indeed, one of the most important signs is that the dynastic Communist families that rule the so-called Peoples Republic are already making preparations to get out of the country, or to get their families out, before the inevitable collapse.

Moreover, the way that the dynastic Communist families are financing the proposed exodus is through corrupt arms deals with unstable regimes. This practice gives them funds to live abroad, to send their sons and daughters to universities abroad, and to prepare a secure haven for themselves when they themselves must flee.

For example, Deng Xiaoping's own son-in-law is one of the biggest arms dealers in Communist China. Communist Chinese President Yang Shangkum, who is reported to have ordered the troops to fire at Tianamen, also has a son-in-law. He used to be in the same arms export firm with Deng's son-in-law, but he is now away at the London School of Economics, where he is undoubtedly learning better marketing techniques. Yang's oldest son is also reported to be in the arms business.

Mr. President, we now know something of these Communist Chinese arms companies because Bill Triplett, a senior professional staff member of the Foreign Relations Committee reported on them in an article entitled "China's Weapons Mafia" in Sunday's Washington Post Outlook section.

There is a little history behind this article. Last summer I sent Bill out to the Far East with instructions to find out what could be disclosed about this murder-for-profit business. He did a lot of digging, spoke to a great number of people, and asked a lot of questions.

The results were startling. What is clear is that the Communist Chinese and the ruling elite know that the end is coming. Perhaps that is why we have what amounts to a fire sale of weapons of mass destruction to the Middle East. It seems as if almost anybody with the requisite cash can have his own nuclear weapons and delivery systems, courtesy of the Communist Chinese aristocratic clans.

Mr. President, we have the leverage to stop this activity. We can tell the Communist elite clans that there will be no sanctuary in the West for those who sell nuclear arms to the Middle Eastern dictators. We can make them understand that when the domestic revolution comes, the arms dealers will be turned over to the justice of the Chinese people. We can make them understand that their secret bank accounts will be frozen.

Mr. President, I ask unanimous consent that the article "China's Weapons Mafia" and an associated article, both by Mr. William C. Triplett II, from the Washington Post of October 27 be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 27, 1991]

CHINA'S WEAPONS MAFIA

(By William C. Triplett II)

Polytechnologies. Rainbow Development Corp. Kaili Corp. (a/k/a Carrie Enterprises.) The Lantian Corp. The China Great Wall Industry Corp. NORINCO. Nondescript, yet slightly romantic-sounding, the names are familiar in the global arms bazaar, where billions of dollars of weapons and lethal technology are bought, sold and transported each year in a booming trade that shows little sign of diminishing despite the end of the Cold War.

Seemingly nondescript corporations engage in everything from export of space launch services (Great Wall), to building armored cars (NORINCO), to advising on nuclear power development (Rainbow). All are key export-inport components of China's aggressive and highly profitable defense industry. This network of front companies and secretive international trading firms have one other thing in common: They are run for profit by China's ruling clans, the dynastic families that were disgraced in the Cultural Revolution but survived and thrive today.

In the 1980s, China emerged as a leading arms supplier to the Third World, signing agreements between 1983 and 1990 (worth more than $16 billion. Much of China's business was with Iran; Beijing became Tehran's biggest weapons supplier during the 1981–88 Iran-Iraq War, selling $4.8 billion in weapons and munitions to Iran in 1983–90. With that war over and Iran's economy in deep trouble, China must look elsewhere for major sales. But the clan-affiliated firms have shown a willingness to sell advanced weapons to some of the world's most ruthless rulers.

For example, according to the Far Eastern Economic Review, the Chinese have recently delivered to Syria the Transporter/Erector/Launcher (TELs) equipment associated with the M–9 series ballistic missile system. The M–9 is a modern, nuclear-capable, fully mobile missile with a range of 350 miles and comparable to the Soviet SS–23. Despite heavy U.S. diplomatic pressure, Syria and China agreed on the missile deal at a secret meeting in Beijing in May. Many here believe the missiles will be delivered after Congress recesses this fall to avoid exacerbating debate on Capitol Hill over most-favored-nation (MFN) trade status for China.

The Chinese also have admitted that this year they transferred M–11 ballistic missiles to Pakistan; the number is unknown. The M–11 is a modern, mobile, nuclear-capable missile with a shorter range but heavier payload than the M–9. The Arab press claims that China will make M–9 and M–11 missiles in Iran, perhaps as part of a 10-year military technology-transfer agreement Beijing and Tehran signed in January 1990.

U.S. experts have found the Chinese contributed significant nuclear technology to at least one of Saddam Hussein's clandestine nuclear weapons programs. Earlier this year it was revealed that the Chinese are constructing a nuclear facility in Algeria. British experts rate the facility at an estimated 40 mega-watts, enough to produce five atomic bombs per year when it begins operation.

In light of these and other sales in the Middle East, Washington proliferation specialists are stepping up analysis of the Chinese arms export system. The Defense Intelligence Agency (DIA) has identified 23 Chinese government-owned or -controlled firms through which nearly all arms sales are made. Congressional investigators say that with one exception, the organizations were set up in the 1980s as export companies for the various armaments ministries and the Equipment (Armament) Department of the Chinese People's Liberation Army (PLA). As DIA noted in a recent compilation of Chinese defense efforts:

"The companies . . . are established and chartered to conduct business in the international market. Many have offices overseas. While they are profit-oriented and are the key means for defense complex foreign-exchange earnings, they are also the primary conduits for acquisition of new and advanced technologies."

According to the DIA account, the import-export complex is divided into "two main hierarchies . . . the uniformed services of the People's Liberation Army (PLA) and the defense-related ministries under direction of the State Council." There are 10 PLA-run companies and 12 affiliated with the ruling State Council. Coordinating both hierarchies is the Commission on Science, Technology and Industry for National Defense (COSTIND), which also operates its own advanced technology firm, the China New Era Corp., which engages in scientific exchanges and exhibitions and scouts for advanced technology. Analysts have identified relatives of numerous senior Chinese leaders among the officials of several of the most active firms. [See related story below.]

It is not entirely clear how each firm operates or relates to the other firms. Some, such as Polytechnologies Corp. and COSTIND, are pure middle-men, producing nothing themselves. Others, such as NORINCO, China Precision Machinery Import-Export Corp. and China Great Wall Industry Corp. either make hardware or provide services through middle-men, or directly to purchasers. Rainbow Development is active in the nuclear technology field, but it is unclear whether it is a middle man or has something of its own to transfer.

According to a Hong Kong source with detailed knowledge of China's weapons sales policies, until recently, the Bank of Credit and Commerce International (BCCI) was the bank of choice for the arms exporters. With its extensive Mideast operations and reputed money-laundering proclivities, BCCI would have been a natural fit for the Chinese. BCCI also operated in Beijing, the Shenzhen Special Economic Zone outside Hong Kong and in 27 branches in Hong Kong itself through what BCCI called the Bank of Credit and Commerce Hong Kong (BCCHK). Of a reported $400 million of Chinese government money in BCCHK accounts, several million dollars reportedly belonged to the Ministry of Aerospace Industry, the parent of the Chinese ballistic missile producers, the Chinese Precision Machinery Import-Export Corp. It is unclear what effect the BCCI scandal and the multiple investigations of the bank and its affiliates may have on Beijing's ability to smoothly arrange financing for insuring, storing and shipping weapons, or diverting money to bank accounts abroad.

What is clear is that China reaps huge profits from its foreign sales. According to three experts on China's defense establishment who wrote recently in International Security magazine, Polytechnologies alone made a net profit of $2 billion selling nuclear-capable CSS-2 ballistic missiles to Saudi Arabia. Even if the firm kept only 5 percent of the profit for itself and returned 95 percent to the PLA to develop the next generation of missiles, the company still would have garnered $100 million. Presumably, much of this would be available for the ruling clans.

But beyond an apparent agreement among the ruling factions about control of the export firms, mystery surrounds how profits are divided or deposited.

According to sources in Hong Kong and elsewhere, clan members put their arms profits to a variety of uses. First seems to be foreign travel. Since Chinese money is not convertible into hard currency, foreign currency, called "waihua," is very valuable, more so because few citizens inside the country have legal access to foreign money. Second, the profits may finance university education abroad for the children of the elite. Third, it may be used to import luxury goods, air conditioners and Toyotas for the clans. Finally, analysts say they believe the families have sent substantial sums of cash overseas. As the revelations in East Europe have shown since the collapse of party control there, such plunder is common in communist regimes. For the Chinese ruling cadres, there is yet another reason for secret stashes: As one experienced Hong Kong observer put it in 1988: "All the families suffered during the Cultural Revolution. They know they are unpopular and they are Chinese."

All of this makes a difficult dilemma for American policy makers. Most of the Middle Eastern recipients of Chinese arms sales are anti-democratic regimes that rose to power through force and violence and maintain themselves in the same manner. A number of these regimes have a history of assassination of American government officials and sponsorship of terrorism aimed at Americans abroad. As the case of Iraq shows, some regimes are reaching the point of technological breakthrough for building weapons of mass destruction and the means to deliver them.

Realistic control of Chinese sales of weapons of mass destruction and their delivery systems to the Middle East is already very difficult and likely to grow worse. Indeed, Secretary of State James A. Baker III reportedly may soon go to Beijing to take up the issue.

But with the Chinese leadership's personal rice bowls at stake, continuing duplicity and evasion of international responsibility seems likely. U.S. efforts to persuade the Chinese leadership to exercise restraint in arms sales to the Middle East has sometimes led to ludicrous scenes in which American officials appeal to high-ranking Chinese for restraint only to learn later that the Chinese official has offspring among DIA's list of arms exporters.

The situation is very likely to grow worse in the short to medium term. As the end approaches for the octogenarians who guide China today, those who derive position and authority from the elder leaders will be tempted to make quick bucks while they can.

The Chinese are talking about possibly signing the Nuclear Non-Proliferation Treaty (NPT) and joining the Missile Technology Control Regime (MTCR), but they have a dubious record in living up to international arms control agreements they have already signed. And, as Saddam has demonstrated to the world, it is possible to be a signatory to the NPT, have inspections by the International Atomic Energy Agency and still pursue several secret nuclear weapons programs.

In a report last summer, defense specialist Richard F. Grimmett of the Congressional Research Service wrote that "it is not clear whether China will be able to sustain its level of arms sales in the Near East region now that the Iran-Iraq war has ended and it is a party to discussions aimed at regulating arms transfers to this region." But Grimmett cautioned, "Given China's need and desire to obtain hard currency, it seems prepared to pursue arms-sales opportunities it deems appropriate whenever they present themselves."

As a practical matter, if the United States and its allies wish to have any serious influence on Chinese arms sales, they will have to find ways to severely increase the downside risk of such sales. Turning up the heat could include economic sanctions, as are now under consideration by the Congress, or a decision by the Western industrial powers, including Japan, to sharply restrict high technology flows to China. Finally, the West could very quietly inform the clans that, come the democratic revolution in China, they will not find refuge in the West if they have contributed to the nuclear arming of Middle Eastern dictators.

[From the Washington Post, Oct. 27, 1991]

NUKE CRUX: "CLANS"

When tracing the hidden beneficiaries of China's global arms trade, it doesn't hurt to know some genealogy.

China's paramount leader, Deng Xiaoping, openly refers to the ruling hierarchy of the People's Republic as "clans." Former U.S. ambassador to China James Lilley has called the leadership a "decaying dynasty." Others call them Communist aristrocrats.

As in any aristrocracy, kinship to the founders is crucial to claims of legitimacy in dividing benefits. In China, legitimacy rests where it has since the founding of the state in 1949—upon Mao Zedong.

The nation's three leading figures—Deng Ziaoping himself, together with Chen Yun, who is chairman of the Standing Committee of the Party Central Advisory Commission, and Yang Shangkun, PRC President and First Vice Chairman of the Central Military Commission—all attended a conference in 1935 when Mao was chosen leader of the Communist Party. This history has helped the inner leaders insure that their own families have prospered.

The great Communist families reflect what some analysts call "pre-modern outlook": They see their existence and the workings of the Chinese state chiefly in terms of the Mafia-like structures within which they live and prosper. They are looking out for themselves first, no matter what political rules they may apply to the Chinese masses.

Officials of China's 23 known military import-export firms may draw salaries from the firms, but a substantial amount of the firms' profit is considered money belonging to the clan which they represent.

Some of the clan linkage in the arms complex have surfaced. For example, by late 1988, Polytechnologies officials included Senior Col. He Ping (Deng Xiaoping's son-in-law), Wang Xiaochoa (Yang Shangkun's son-in-law, Wang Zihua (then-Communist Party general secretary Zhao Ziyang's son-in-law) and Wang Jun (PRC Vice President Wang Zhen's son). A source in Hong Kong said these officials held the same hierarchical relationship to each other as their relative/patrons held in the PRC political and miilitary hierarchy. One source told me that Senior Col. He Ping and his wife Deng Rong spent several years in the Chinese Embassy in Washington where they studiously cultivated senior U.S. government officials.

There are other examples: COSTIND is dominated by Maj. Gen. (Tech) Nie Li, the daughter of China's only living marshal, Nie Rongzhen. She is deputy director of the Science and Technology Committee of

COSTIND and her husband, Lt. General Ding Henggao, is COSTIND's chairman. President Yang Shangkun's eldest son is reputed to be an official of COSTIND, as is Zhang Pin, a son of former defense minister Zhang Aiping. Other great clans represented in COSTIND are two different Ye families—Ye Chumei, daughter of the late Marshal Ye Jianying, and Ye Zhengda, son of the late Gen. Ye of the PLA New Fourth Army.

General He Pengfei, son of the late Marshal He Long, is the director of the PLA's Equipment (Armament) Department which, in turn, controls Polytechnologies. He is about to be replaced by Senior Col. He Ping and presumably will be rewarded with a suitable promotion. Both He Ping and He Pengfei are expected to be promoted to the Party General Committee at next year's 14th National Congress of the Chinese Communist Party.—WILLIAM C. TRIPLETT II.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a treaty which were referred to the appropriate committees.

(The nominations and treaty received today are printed at the end of the Senate proceedings.)

ANNUAL REPORTS UNDER THE HIGHWAY SAFETY ACT AND THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT—MESSAGE FROM THE PRESIDENT—PM 92

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying reports; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

It is my privilege to provide you with the annual reports on activities under the Highway Safety Act and the National Traffic and Motor Vehicle Safety Act, both enacted in 1966. These reports provide a summary of our activities during calendar year 1990 and of the National Highway Traffic Safety Administration's priority plan for the next 3 years. The plan will be an evolving guideline for the agency's safety activities to improve motor vehicle and traffic safety.

The plan includes motor vehicle rulemaking on the crashworthiness of passenger cars, light trucks, and vans; vehicle rollover stability; and safety improvements in heavy trucks, school buses, and child safety seats.

It also calls for initiatives to promote State laws and programs to increase safety belt use, motorcycle helmet use, and to discourage drunk and drugged driving.

The report on motor vehicle safety includes the annual reporting requirement in title I of the Motor Vehicle Information and Cost Savings Act of 1972.

In the Highway Safety Acts of 1973, 1976, and 1978, the Congress expressed its special interest in certain aspects of traffic safety that are addressed in the volume on highway safety.

I am pleased to inform you that 1990 was a year of significant gains in traffic safety. The traffic fatality rate, the accepted measure of risk on the road, was 2.1 deaths per 100 million vehicle miles traveled, the lowest in history and down 36 percent since 1980. Safety belt use is also higher than ever, with 49 percent of Americans buckling up, and drunk driving fatalities have declined significantly.

There is good news for Americans in virtually every critical part of the highway safety picture. The decline in the fatality rate is especially encouraging and means that we are able to drive with less risk. The dramatic increase in safety belt use and public concern about drunk driving have translated into thousands of lives saved and injuries avoided.

The progress we have made is, of course, no consolation to the relatives and friends of the 44,500 people who, despite the safety advances and greater public awareness, lost their lives in traffic accidents in 1990.

As we continue to pursue highway and motor vehicle safety programs that are most effective in preventing these deaths and injuries, I am convinced that significant progress will be made through the combined efforts of government, industry, and individual motorists.

GEORGE BUSH.

THE WHITE HOUSE, *October 31, 1991.*

MESSAGES FROM THE HOUSE

At 11:55 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1046) to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3543. An act making dire emergency supplemental appropriations and transfers for relief from the effects of natural disasters, for other urgent needs, and for incremental costs of "Operation Desert Shield/Desert Storm" for the fiscal year ending September 30, 1992, and for other purposes.

At 1:05 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 3371. A act to control and prevent crime;

H.J. Res. 281. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic; and

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 3543. An act making dire emergency supplemental appropriations and transfers for relief from the effects of natural disasters, for other urgent needs, and for incremental costs of "Operation Desert Shield/Desert Storm" for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, October 31, 1991, he had presented to the President of the United States the following enrolled bill:

S. 1823. An act to amend the Veterans' Benefit and Services Act of 1988 to authorize the Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 1322. A bill to amend title 18 of the United States Code to clarify and expand legal prohibitions against computer abuse.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 61. A joint resolution to designate June 1, 1992, as "Kentucky Bicentennial Day".

S.J. Res. 81. A joint resolution to designate the periods commencing on December 1, 1991, and ending on December 7, 1991, and commencing on November 29, 1992, and ending on December 5, 1992, as "National Home Care Week".

S.J. Res. 96. A joint resolution to designate November 19, 1991, as "National Philanthropy Day".

S.J. Res. 145. A joint resolution designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week".

S.J. Res. 157. A joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week".

S.J. Res. 164. A joint resolution designating the weeks of October 27, 1991, through November 2, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week".

S.J. Res. 174. A joint resolution designating the month of May 1992, as "National Amyotrophic Lateral Sclerosis Awareness Month".

S.J. Res. 176. A joint resolution to designate March 19, 1992, as "National Women in Agriculture Day".

S.J. Res. 180. A joint resolution designating December 1 through 7, 1991, as "Geography Awareness Week".

S.J. Res. 188. A joint resolution designating November 1991, as "National Red Ribbon Month".

S.J. Res. 197. A joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day".

S.J. Res. 206. A joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day".

S.J. Res. 217. A joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian".

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

Alice M. Batchelder, of Ohio, to be U.S. circuit judge for the Sixth Circuit;

Harold R. DeMoss, Jr., of Texas, to be U.S. circuit judge for the Fifth Circuit;

Rebecca F. Doherty, of Louisiana, to be U.S. district judge for the Western District of Louisiana;

Denis R. Hurley, of New York, to be U.S. district judge for the Eastern District of New York;

Barbara A. Caulfield, of California, to be U.S. district judge for the Northern District of California;

Ronald E. Longstaff, of Iowa, to be U.S. district judge for the Southern District of Iowa;

John W. Lungstrum of Kansas, to be U.S. district judge for the District of Kansas;

Terry R. Means, of Texas, to be U.S. district judge for the Northern District of Texas;

Robert Q. Whitwell, of Mississippi, to be U.S. attorney for the Northern District of Mississippi for the term of 4 years;

William D. Hyslop, of Washington, to be U.S. attorney for the Eastern District of Washington for the term of 4 years;

Kevin C. Potter, of Wisconsin, to be U.S. attorney for the Western District of Wisconsin for the term of 4 years;

Michael S. Gelacak, of Virginia, to be a member of the U.S. Sentencing Commission for a term expiring October 31, 1997.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LAUTENBERG:

S. 1898. A bill to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and catastrophic events involving marine mammals; to the Committee on Commerce, Science, and Transportation.

By Mr. MITCHELL (for Mr. WOFFORD):

S. 1899. A bill to encourage youth receiving Federal assistance for higher education or job training to serve their communities and their country, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HELMS:

S. 1900. A bill to amend the Internal Revenue Code of 1986 to repeal the income taxation of corporations, to impose a 10 percent tax on the earned income (and only the earned income) of individuals, to repeal the estate and gift taxes, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE (for himself and Mr. HATCH):

S. 1901. A bill to amend title 5, United States Code, to make election day a legal public holiday, with such holiday to be known as "Democracy Day"; to the Committee on the Judiciary.

By Mr. ADAMS (for himself and Mr. KENNEDY):

S. 1902. A bill to amend title IV of the Public Health Service Act to require certain review and recommendations concerning applications for assistance to perform research and to permit certain research concerning the transplantation of human fetal tissue for therapeutic purposes, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SIMON (for himself, Mr. MACK and Mr. DECONCINI):

S.J. Res. 224. Joint resolution designating March 1992 as "Irish-American Heritage Month"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DURENBERGER (for himself and Mr. WELLSTONE):

S. Res. 212. Resolution commending the Minnesota Twins as the 1991 World Champions of baseball; submitted and read.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG:

S. 1898. A bill to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and catastrophic events involving marine mammals; to the Committee on Commerce, Science, and Transportation.

MARINE MAMMAL HEALTH AND STRANDING RESPONSE ACT

• Mr. LAUTENBERG. Mr. President, today I am introducing the Marine Mammal Health and Stranding Response Act. This bill will require the National Oceanic and Atmospheric Administration [NOAA] to establish a marine mammal stranding program and a program to assess the health of marine mammals. The bill has been introduced in the other body by Congressman TOM CARPER of Delaware. Congressman CARPER has an extensive record of protecting our marine environment. I commend him for taking this initiative.

Mr. President, our citizens have a long-running love affair with marine mammals. We enjoy watching these intelligent and graceful animals perform in marine mammal parks, we take boat trips to watch whales, porpoises, and seals in their native environments, we forced tuna fishermen to stop using fishing techniques which killed porpoises and we were gripped as we watched the extraordinary efforts made to save three whales trapped by the expanding ice off Alaska a few years ago.

But in 1987 and 1988, we watched with dismay as at least 750 bottlenose dolphins died off the east coast. Over 10 percent of those died in New Jersey despite the heroic efforts of Bob Schoelkopf and others at the Marine Mammal Stranding Center in Brigantine, NJ. But these efforts were hampered by a lack of resources, an emergency response program, a marine mammal tissue bank, and protocols for collecting marine mammal tissues from diseased or dead marine mammals. And a lack of baseline data hampered efforts to determine the cause of these deaths.

The President's fiscal year 1992 budget included $500,000 for NOAA for the establishment of a tissue bank and a stranding network for marine mammals. The NOAA budget document provides the rationale:

> A lack of baseline data on levels of contaminants and toxins in marine mammals and other protected species has limited NOAA's ability to identify the causes and take necessary actions in response to strandings and die-offs that occur periodically. . . . In the event of subsequent catastrophic occurrences, stored tissues can be analyzed so comparisons can be made to present and past conditions as an indicator of changes in environmental conditions which could help define causes of these phenomena. . . . This would make it possible to use this source of information more effectively to improve our understanding of the biology of these species and to aid the recovery efforts.

The other body rejected this proposal but the Senate Commerce, Justice, State appropriations bill included the requested funding at my request. The Congress ultimately agreed to provide $250,000 to initiate this program.

The Marine Mammal Health and Stranding Response Act would authorize these health and stranding efforts and ensure that we are prepared to respond to and understand strandings and unusual events affecting marine mammals. It would establish:

First, a marine mammal stranding response program to rescue marine mammals, gather data on marine mammal strandings, and establish protocols for collecting marine mammal tissue;

Second, a marine mammal emergency response program to respond to massive strandings; and

Third, a marine mammal tissue bank to store marine mammal tissue to study disease and pollutant levels in marine mammals.

Mr. President, I urge my colleagues to support this legislation. And I ask unanimous consent that a copy of the bill and a section-by-section analysis be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1898

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Health and Stranding Response Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) there is currently no systematic program for the assessment of the health and health trends of marine mammal populations along the coasts and waterways of the United States;

(2) insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal strandings and unusual mortality events;

(3) an accurate assessment of marine mammal health and health trends, causes of marine mammal strandings, and reasons for unusual mortality events cannot be made without adequate baseline data on the health and life histories of marine mammals and the environment in which they live;

(4) a systematic assessment of the presence, levels, and effects of potentially harmful contaminant on marine mammals would provide a better understanding of the causes of marine mammal strandings and unusual marine mammal mortality events;

(5) responses to marine mammal strandings and unusual mortality events are often uncoordinated, and the lack of sufficient contingency planning precludes adequate determination of the causes of strandings and unusual mortality events;

(6) standardized methods for the reporting of stranded, dying, dead, or otherwise incapacitated marine mammals would greatly assist in the determination of the causes of marine mammal strandings and unusual mortality events and enhance general knowledge of these species;

(7) the lack of a formal system for the collection, preparation, and archiving of, and providing access to, marine mammal tissues hinders efforts to determine the health of marine mammals and develop baseline data; and

(8) information on marine mammals/ including results of analyses of marine mammal tissues, should be broadly available to the scientific community through a marine mammal data base.

SEC. 3. MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM.

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by adding at the end the following new title:

"TITLE III—MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

"SEC. 301. ESTABLISHMENT OF PROGRAM.

"(a) IN GENERAL.—The Secretary shall establish in accordance with this title a program for examining marine mammal health and for effectively coordinating responses to strandings and unusual mortality events, which shall be known as the 'Marine Mammal Health and Stranding Response Program'.

"(b) PURPOSES.—The purposes of the Program shall be the following:

"(1) Ensure rapid and effective response to strandings and unusual mortality events.

"(2) Provide baseline data on the health of marine mammals.

(3) Facilitate the identification of marine mammal health trends.

(4) Facilitate correlation of the health of marine mammals with physical, chemical, and biological environmental parameters.

"SEC. 302. STRANDING RESPONSE PROGRAM.

"(a) IN GENERAL.—The Secretary, and the Secretary of the Interior, as appropriate, in consultation with the Marine Mammal Commission, shall establish as part of the Program a stranding response program.

"(b) PURPOSES.—The purposes of the stranding response program shall be the following:

"(1) Provide for the rescue and rehabilitation of live stranded marine mammals, commensurate with sound conservation practices.

"(2) Working in conjunction with the Smithsonian Institution, gather and analyze data, by region, on the species, numbers, conditions, and causes of illness or death of stranded marine mammals, and any other appropriate life history information.

"(3) Establish criteria and provide for the collection, preservation, labeling, and transportation of marine mammal tissues for physical, chemical, and biological analyses and for archiving in the Tissue Bank as established in section 305.

"SEC. 303. EMERGENCY RESPONSE PROGRAM.

"(a) EMERGENCY RESPONSE GROUP.—

"(1) ESTABLISHMENT.—The Secretary, in cooperation with the United States Fish and Wildlife Service and the Marine Mammal Commission, shall establish an emergency response group of marine science and marine conservation experts, which the Secretary shall utilize to respond to marine mammal emergencies or unusual mortality event.

"(2) FUNCTIONS.—The emergency response group established under this subsection shall—

"(A) assist the Secretary in determining when a marine mammal emergency or an unusual mortality event is occurring;

"(B) develop contingency plans in accordance with subsection (b) for responding to marine mammal emergencies and unusual mortality events;

"(C) assist the Secretary in formulating a response plan for particular marine mammal emergencies and unusual mortality events; and

"(D) identify individuals or organizations at a regional or local level, who could, in times of marine mammal emergencies or unusual mortality events, assist the Secretary in implementing a coordinated and effective response.

"(b) MARINE MAMMAL EMERGENCY RESPONSE CONTINGENCY PLANS.—

"(1) IN GENERAL.—The emergency response group established under this section shall develop, and the Secretary shall issue contingency plans for responding to marine mammal emergencies and unusual mortality events.

"(2) CONTENTS.—The contingency plans shall—

"(A) be designed to ensure rapid and effective response to marine mammal emergencies and unusual mortality events, to maximize the possibility of identifying—

"(i) the cause or causes of such emergencies and events;

"(ii) the effect of such emergencies and events on populations of marine mammals;

"(iii) the roles played by physical, chemical, and biological factors in such emergencies and events; and

"(B) identify and, by means approved by the Secretary, ensure the availability of persons, facilities, and other resources necessary to conduct that response.

"(c) MARINE MAMMAL EMERGENCY RESPONSE CONTINGENCY FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury a fund to be known as the 'Marine Mammal Emergency Response Contingency Fund', which shall consist of amounts deposited into the Fund under paragraph (3).

"(2) USES.—Amounts in the Fund—

"(A) shall be available for use by the Secretary in such amounts as are provided in appropriations Acts to compensate persons for costs incurred in acting, in accordance with contingency plans issued under subsection (b), in response to emergencies involving strandings or unusual mortality events; and

"(B) shall remain available until expended.

"(3) DEPOSITS INTO THE FUND.—There shall be deposited into the Fund—

"(A) amounts appropriated to the Fund, or otherwise for marine mammal emergency response purposes; and

"(B) amounts received by the United States in the form of gifts, devises, and bequests under section 304.

"SEC. 304. MARINE MAMMAL EMERGENCY RESPONSE DONATIONS.

"For purposes of carrying out sections 203 and 303, the Secretary may accept, solicit, and use the services of volunteers, and may accept, receive, hold, administer, and use gifts, devises, and bequests.

"SEC. 305. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS

"(a) TISSUE BANK.—

"(1) IN GENERAL.—The Secretary shall coordinate facilities for the storage, preparation, examination, and archiving of marine mammal tissues, which shall be known as the 'National Marine Mammal Tissue Bank'.

"(2) ACCESS TO TISSUE BANK.—The Secretary shall establish criteria for access to marine mammal tissues in the Tissue Bank which ensure appropriate use of the material by governmental and nongovernmental scientific researchers.

"(3) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING.—The Secretary shall issue guidance on marine mammal tissue collection, preparation, archiving, and quality-control protocols that will ensure—

"(A) appropriate and uniform methods and standards for those activities to ensure confidence in marine mammal tissue samples used for research; and

"(B) documentation of procedures used for collecting, preparing, and archiving those samples.

"(b) TISSUE ANALYSIS.—

"(1) IN GENERAL.—The Secretary, in consultation with other appropriate Federal and State agencies and appropriate private and academic institutions and in accordance with guidance issued under paragraph (2) shall monitor and determine the levels of, and if possible the effects of, potentially harmful contaminants present in representative species and populations of marine mammals in United States coastal waters, using the most effective and advance diagnostic technologies and tools practicable.

"(2) GUIDANCE FOR MARINE MAMMAL TISSUE ANALYSIS.—The Secretary shall issue guidance on marine mammal tissue analysis and quality assurance protocols that will ensure uniformity in techniques and data reporting for such analysis.

"(c) DATA BASE.—The Secretary shall develop and maintain a central data base which will ensure an effective means for tracking and assessing data on marine mammals, including, but not limited to, relevant data on all samples collected for and maintained in the Tissue Bank.".

SEC. 4. DEFINITIONS.

Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended—

(1) in paragraph (11)—

(A) by striking "The Term" and inserting "(A) Except as provided in subparagraph (B), the term"; and

(B) by adding at the end of the paragraph the following:

"(B) In title III, the term 'Secretary' means the Secretary of Commerce."; and

(2) by adding at the end the following new paragraphs:

"(15) The term 'Fund' means the Marine Mammal Emergency Response Contingency Fund established by section 303(c).

"(16) The term 'Program', as used in title III, means the Marine Mammal Health and Stranding Response Program established under that title.

"(17) The term 'Tissue Bank' means the National Marine Mammal Tissue Bank established under section 305(a).

"(18) The term 'unusual mortality event' means a die-off of marine mammals that either by virtue of the number of animals involved, the species of animals involved, the location of the stranded animals, or the duration of the die-off, constitutes an unusual event.

"(19) The term 'stranding' means a marine mammal event wherein—

"(A) a marine mammal is dead and—

"(i) is on a beach or shore of the United States, or

"(ii) is in the water within the exclusive economic zone of the United States; or

"(B) a marine mammal is alive and—

"(i) is on a beach or shore of the United States and is unable to return to the water, or

"(ii) is in water within the exclusive economic zone of the United States which is so shallow that the marine mammal is unable to return to its natural habitat under its own power."

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Section 109(h) of the Marine Mammal Protection Act (16 U.S.C. 1379(h)) is amended by adding at the end the following:

"(4) There is authorized to be appropriated to the Department of Commerce for the purposes of title III an amount not to exceed $500,000 for each of the fiscal years 1992 and 1993. An additional $500,000 is authorized to be appropriated to the Department of Commerce in fiscal year 1992 for the Fund to be available until expended to carry out the purposes of section 303.".

SECTION-BY-SECTION SUMMARY OF MARINE MAMMAL HEALTH AND STRANDING RESPONSE ACT

Section 1. Short title.

Section 1 designates as the short title of this legislation the "Marine Mammal Health and Stranding Response Act".

Section 2 sets forth Congressional findings regarding the lack of effective programs to assess the health of marine mammals and to react to strandings and unusual marine mammal mortality events.

Sec. 3. Marine mammal health and stranding response program.

Section 3 would establish a new Title III of the Marine Mammal Protection Act, creating the Marine Mammal Health and Stranding Response Program. The new title as divided into the following sections:

Section 301. Establishment of program.

Section 301(a) would require the Secretary of Commerce to establish a health and stranding program. Subsection (b) states that the purposes of the program are to: 1) ensure rapid and effective response to strandings and unusual mortality events affecting marine mammals; 2) provide baseline data on the health of marine mammals; 3) facilitate the identification of marine mammal health trends; and 4) facilitate the correlation of the health of marine mammals with relevant environmental parameters.

Section 302. Stranding Response Program.

Section 302(a) would require the Secretary of Commerce and the Secretary of the Interior, in consultation with the Marine Mammal Commission, to establish a stranding response program as part of the overall health and stranding program established by Title III. The purpose of the stranding response program, as set out in section 302(b) are to: 1) provide for the rescue and rehabilitation of live stranded marine mammals; 2) gather and analyze data, in conjunction with the Smithsonian Institution, on species, numbers, conditions, and causes of illnesses or death of stranded marine mammals, and any other appropriate life history information; and 3) establish criteria for the collection, preservation, labelling, and transportation of marine mammal tissues for analysis and for archiving in the tissue bank created in section 305.

Section 303. Emergency response program.

In order to address the different problems represented by massive strandings and unusual mortality events involving marine mammals, Section 303(a) would require the Secretary of Commerce, in cooperation with the United States Fish and Wildlife Service and the Marine Mammal Commission, to establish an emergency response group of marine science and marine conservation experts, which the Secretary of Commerce would utilize to respond to marine mammal emergencies and unusual mortality events. The response group would: A) assist the Secretary in determining when a marine mammal emergency or an unusual mortality event is occurring; B) develop contingency plans for responding to emergencies and unusual mortality events; C) assist the Secretary in formulating a response plan for particular emergencies and mortality events; and D) identify individuals and organizations who could assist in implementing coordinated and effective responses.

Subsection (b) would require that the emergency response group develop, and the Secretary issue, contingency plans to ensure rapid and effective response to emergencies and unusual mortality events. These plans would be designed to maximize the possibility of identifying—in the case of these emergencies and events: i) their cause or causes; ii) their effects on populations of marine mammals; and iii) the roles played by physical, chemical and biological factors. The plans would also identify and ensure the availability of persons, facilities and other resources necessary to conduct the response.

Subsection (c) would establish a "Marine Mammal Emergency Response Contingency Fund" which would be used by the Secretary to compensate persons for costs incurred in responding to emergencies and unusual mortality events. The Fund would be composed of appropriated funds and gifts.

Section 304. Marine mammal emergency response donations.

Section 305 would permit the Secretary to accept, solicit, and use the services of volunteers, and to accept and use gifts, devises, and bequests.

Section 305. National marine mammal tissue bank and tissue analysis.

Section 305(a) would require the Secretary to coordinate facilities—to be known as the "National Marine Mammal Tissue Bank"—for the storage, preparation, examination, and archiving of marine mammal tissues. In keeping with the establishment of the tissue bank, the Secretary is directed to develop criteria for access to the tissue bank by scientific researchers, and to issue protocols on tissue collection, preparation archiving and quality control to ensure appropriate and uniform methods and to inspire confidence in the quality of tissue samples used in research.

Subsection (b) would require the Secretary, in consultation with other appropriate Federal and State agencies and appropriate private and academic institutions, to monitor and determine the levels of—and if possible, the effects of—potentially harmful contaminants present in representative species and populations of marine mammals in U.S. coastal waters. To ensure uniformity in tissue-analysis techniques and data reporting, the Secretary is directed to develop appropriate tissue analysis and quality assurance protocols.

Subsection (c) would direct the Secretary to develop and maintain a central data base to ensure an effective means for tracking and assessing data on marine mammals, including relevant data on all samples contained in the tissue bank.

Sec. 4. Definitions.

Section 4 of the bill defines the following terms: Secretary (meaning the Secretary of Commerce), Fund (the Contingency Fund—section 303(c)), Program (the Marine Mammals Health and Stranding Response Program), tissue bank (see section 305), unusual mortality event (unusual die-off of marine mammals), and stranding (dead marine mammals on beach or in water; live marine mammals on shore or in water so shallow they cannot return to their natural habitat under their own power).

Sec. 5. Authorization of appropriations.

Section 5 would authorize an appropriation to the Department of Commerce for the purposes of this new Title III of up to $500,000 for fiscal years 1992 and 1993. The section would also provide an additional $500,000 for the Department of Commerce in fiscal year 1992 to be available until expended for the contingency fund established in section 303.●

By Mr. HELMS:

S. 1900. A bill to amend the Internal Revenue Code of 1986 to repeal the income taxation of corporations, to impose a 10-percent tax on the earned income—and only the earned income—of individuals, to repeal the estate and gift taxes, and for other purposes; to the Committee on Finance.

TITHE TAX ACT OF 1991

Mr. HELMS. Mr. President, during my 19 years in the Senate, I have made clear my belief that it is imperative for Congress to overhaul the Federal income tax system. The Internal Revenue Code of 1954 is a disaster. It is a burdensome set of laws that is widely regarded—and rightly so—as unfair.

Several years ago, I had the privilege of visiting with Jim and Karen Quick, a delightful young couple from Greensboro, NC. At that time, Karen was a 12-year veteran of the Internal Revenue Service.

I have spoken before in the Senate of Karen's award-winning essay on tax policy entitled "Tax Simplification: Let's Play Flat Ball." To refresh my colleagues' memories, in her essay, Karen compares U.S. tax laws to a frustrating ball game with constantly changing rules and few winners.

"Americans are tired of playing Bracketball," she writes. "One of the most infuriating aspects of 'Bracketball' is the constant movement of the goal line. When the players get near it, the officials move it." The solution she proposes is "a simple, fair, effective game called 'Flatball.' "

Mr. President, I ask unanimous consent that a copy of Karen's essay be printed in the RECORD at the conclusion of my remarks, and I recommend that Senators take the time to read and consider her thoughts.

Mr. President, the convoluted nature of the Nation's tax laws has caused the American people to lose faith in their Government. Most are convinced that the complexity of the tax laws may be a disguise for unfairness and inequity.

That is why, Mr. President, I had mixed feelings about the Tax Reform Act of 1986. On the one hand, Congress made a significant improvement by lowering the tax rates and reducing the number of brackets. On the other hand, many provisions were included simply to raise revenue in order to keep the bill revenue neutral—changes based neither on logic nor on sound tax policy. The net result left our tax laws even more complex and created a number of problems for various sectors of the economy.

Mr. President, the key to sustained and vigorous economic growth lies in the adoption of policies aimed at reducing marginal tax rates and stimulating investment in the private sector of our economy. The current tax system offers little hope of attaining these ends. On the contrary, the system we have now tends to penalize productivity and encourage tax evasion.

That is why I have concluded that a flat rate tax is the only fair solution to the problem created by the existing tax system and I am today introducing a 10-percent flat tax bill. The concept is fair. It is proportionate. It will work—and, more importantly, work simply.

This is not a new idea, but it is an idea which can and will be a starting point for a continued comprehensive study of our ever-complex Tax Code. The bill is similar to legislation I offered in the 97th, 100th, and 101st Congresses. Companion legislation has been introduced in the House of Representatives by my distinguished friend and colleague from Illinois, Representative PHIL CRANE.

First, my bill would eliminate the income tax on corporations. Congress must recognize the economic reality that corporations don't pay taxes—people do. Corporations simply pass their tax bills on to consumers in the form of higher prices and to workers in the form of reduced wages. This burden falls most heavily on the poor because the poor spend a larger percentage of their income on consumer goods.

The corporate income tax is also passed on to shareholders in the form of reduced dividends and reduced corporate savings and investment. Since pension plans are major shareholders, the corporate tax can drastically reduce potential pension benefits to workers.

Obviously, Mr. President, reduced corporate savings and investment have a negative impact on economic growth and thus reduce employment opportunities. This constitutes a further hidden tax on American workers.

Perhaps most importantly, Mr. President, elimination of the corporate income tax will promote efficiency in the market because all businesses will be placed on a level playing field. Tax considerations will no longer affect business decisions. Furthermore, elimination of this cost to business will also make U.S. business more competitive in the world market thereby encouraging new exports and creating new jobs.

Second, this bill reforms the income tax on individuals and by so doing, will reduce the amount of tax paid by most Americans. The bill would eliminate all current deductions, credits, and exemptions. It would provide a single exemption of $10,000 per taxpayer—to be adjusted annually for inflation—and impose a 10-percent tax on all earned income.

Mr. President, the exemption from taxation of the first $10,000 of earned income for each taxpayer will provide relief for low income individuals while also providing an incentive for individuals to enter the work force. The flat 10 percent rate eliminates the disincentive for one to increase one's income that results with a highly progressive system.

The bill defines "earned income" as the compensation one receives for performing work. It includes wages, salaries, fees, and fringe benefits. It does not include passive income—such as capital gains—interest income, and dividends. Furthermore, while fringe benefits are taxable, the bill eliminates valuation problems by valuing all fringe benefits at the actual cost to the employer of providing the benefits.

Mr. President, implementation of a 10 percent flat tax will have a profound effect on the economy in several ways. First, it will promote growth by increasing incentives for work, investment, and production through lower marginal rates. The increased savings will push interest rates down and thus reduce the cost of capital.

Second, it will stimulate economic growth through the elimination of tax on capital gains. This will encourage investment and expansion of capital funds, which will lead to more businesses and more jobs.

Third, by eliminating the tax on dividends, a flat tax will eliminate the penalty for investing in stock and will stimulate greater capital availability for economic growth.

Fourth, a flat tax brings greater efficiency to the economy by eliminating preferences in the Tax Code that interfere in economic decisions.

Finally, it will simplify the income tax system and enhance its fairness and equitibility. If we can simplify our tax system so that every American can fill out his or her income tax on the back of a postcard, we would put an end to the huge and burdensome tax avoidance industry.

Our tax system has become so complex, economically counterproductive, outmoded, and riddled with exceptions that it's no wonder that the American people are losing faith in their Government. There is something Orwellian about a government that subjects its citizens to rules that are too complex for them to understand.

Mr. President, it's time to stop applying piecemeal, short term remedies, such as modification of the fringe benefits provisions, and to adopt a new tax system based on equity, efficiency, and simplicity. The legislation I am introducing today would do just that. In fact, I cannot imagine what could be more fair to the American people than a flat 10 percent tax.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD together with the essay mentioned earlier.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1900

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tithe Tax Act of 1991.

SEC. 2. REPEAL OF TAXATION OF CORPORATIONS.

The following provisions of the Internal Revenue Code of 1986 are hereby repealed:

(1) section 11 (relating to corporate income tax),

(2) section 55 (relating to alternative minimum tax) to the extent it applies to corporations,

(3) section 511 (relating to unrelated business income tax),

(4) section 531 (relating to accumulated earnings tax),

(5) section 541 (relating to personal holding company tax),

(6) section 594 (relating to alternative tax for certain mutual savings banks),

(7) section 801 (relating to tax imposed on life insurance companies),

(8) section 831 (relating to tax on certain other insurance companies),

(9) section 852 (relating to tax on regulated investment companies),

(10) section 857 (relating to tax on real estate investment trusts), and

(11) section 882 (relating to tax on income of foreign corporations connected with United States business).

SEC. 3. 10 PERCENT INCOME TAX RATE FOR INDIVIDUALS.

Section 1 of the Internal Revenue Code of 1986 (relating to tax imposed on individuals) is amended to read as follows:

"SECTION 1. TAX IMPOSED.

"(a) IN GENERAL.—There is hereby imposed on the income of every individual a tax equal to 10 percent of the excess of the earned income of such individual for the taxable year over the exemption amount for such year.

"(b) DEFINITIONS.—For purposes of this section—

"(1) EXEMPTION AMOUNT.—

"(A) IN GENERAL.—The term 'exemption amount' means, for any taxable year, $10,000 increased (for taxable years beginning after December 31, 1992) by an amount equal to $10,000 multiplied by the cost-of-living adjustment for the calendar year in which the taxable year begins.

"(B) COST-OF-LIVING ADJUSTMENT.—For purposes of this paragraph—

"(i) IN GENERAL.—The cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(I) the CPI for October of the preceding calendar year, exceeds

"(II) the CPI for October of 1991.

"(ii) CPI.—The term 'CPI' means the last Consumer Price Index for all-urban consumers published by the Department of Labor.

"(C) ROUNDING.—If the increase determined under this paragraph is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or if such increase is a multiple of $5, such increase shall be increased to the next highest multiple of $10).

"(2) EARNED INCOME—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'earned income' means—

"(i) wages, salaries, and other employee compensation,

"(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year, and

"(iii) the amount of dividends which are from a personal service corporation or which are otherwise directly or indirectly compensation for services.

"(B) EXCEPTIONS.—The term 'earned income' does not include—

"(i) any amount received as a pension or annuity, or

"(ii) any tip unless the amount of the tip is not within the discretion of the service-recipient.

"(C) FRINGE BENEFITS VALUED AT EMPLOYER COST. The amount of any fringe benefit which is included as earned income shall be the cost to the employer of such benefit."

SEC. 4. REPEAL OF SPECIAL DEDUCTIONS, CREDITS, AND EXCLUSIONS FROM INCOME FOR INDIVIDUALS.

Chapter 1 of the Internal Revenue Code of 1986 is amended by striking out all specific exclusions from gross income, all deductions, and all credits against income tax to the extent related to the computation of individual income tax liability.

SEC. 5. REPEAL OF ESTATE AND GIFT TAXES.

Subtitle B of the Internal Revenue Code of 1986 (relating to estate, gift, and generation-skipping taxes) is hereby repealed.

SEC. 6. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall apply to taxable years beginning after the date of the enactment of this Act.

(b) REPEAL OF ESTATE AND GIFT TAXES.—The repeal made by section 5 shall apply to estates of decedents dying, and transfers made, after the date of the enactment of this Act.

(c) TECHNICAL AND CONFORMING CHANGES.—The Secretary of the Treasury or his delegate shall, as soon as practicable but in any event not later than 90 days after the date of the enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives a draft of any technical and conforming changes in the Internal Revenue Code of 1986 which are necessary to reflect throughout such Code the changes in the substantive provisions of law made by this Act.

TAX SIMPLIFICATION: LET'S PLAY FLATBALL

(By Karen Quick)

Americans are tired of playing Bracketball. Who wants to keep playing this "tax game" which has unfair, complicated rules; an unlimited fourth quarter with no time-outs; and is affiliated with an inefficient association at the point of bankruptcy? Complaints are commonplace; motivation is low; and initiative is almost nonexistent. It is a confusing and biased game. The players are involuntarily drafted for participation despite their physical conditions. Their contracts automatically renew annually requiring longer and longer playing periods. The more influential athletes manage to gain preferential treatment from the promoters and officials. Some are allowed to sit on the bench for extensive periods of time and some are even paid not to show up at all. Needless to say, this does little for team morale and enthusiasm. This favoritism puts an unnecessary burden on the rest of the team. The few remaining dedicated players, who show up for all the practices come rain or shine and who give it their best shot, look forward to high scores. It gets to be a tough game as these dedicated players are forced to compensate for the "bench sitters" and "game cutters." There is a noncommittal attitude spreading among the ranks. Partly to blame is the large staff of inconsistent coaches who have different ideas of how the game is to be played. More and more of the officials are using poor judgment to call the plays. Many illegal substitutes, illegal blockings, and intentional fouls go uncalled. A lot of bloody noses result. Nobody, including the promoters and officials, seems to know how the game is to be played. One of the most infuriating aspects of Bracketball is the constant movement of the goal line. When the players get near it, the officials move it. There are strong rumors circulating in the locker rooms that a players' strike is in the works. They are tackling an enormous task in their efforts to change to a simple, fair, efficient game called "Flatball."

This fictitious analogy of our current system of American taxation may be somewhat exaggerated in pointing out the inherent problems. Yet, it brings to light the need for simplicity, fairness, and efficiency in our system of taxation. Such a tax reform referred to above as "Flatball" would not only provide needed revenue, it would also stimulate the economy, lighten the administrative load, and improve compliance. The most noteworthy result would be a boost to those precious intangibles; morale, motivation, and ingenuity.

To better understand the need for tax reform, some brief background information on the definition and history of American taxation will be given first. Numerous indictments of the current income tax system will follow. The last section will contain workable methods of sound income tax reform.

DEFINITION OF TAXATION

"The art of taxation consists of plucking the greatest number of feathers from a goose with the least amount of squawking."[1] This popular saying equates the unpleasant task of collecting taxes with the plucking of feathers. It implies the need for an economically balanced method that is viewed by the populous as simple, fair, and efficient.

What is a tax and why is it levied? "Tax" is defined as a compulsory contribution levied upon persons, property, or businesses for the support of government.[2] This basic definition makes no implication that taxes are imposed to resolve all the nation's financial and social problems. The tax laws were not intended to legalize social engineering as a government business. In a July 8, 1981 *Wall Street Journal* article by Christopher Conte, the following quotation from Senator Hatfield was given; "By attempting to solve every social and economic problem through the tax code, we have put a greater burden on the average taxpayer."[3] Taxes are not defined as a vehicle to be used to subsidize special interest groups regardless of their merits. the meaning is clear and simple. Taxes are collected to pay the necessary military and civil expenses[4] that provide goods, services and order without stifling economic growth or human ingenuity.

HISTORY OF AMERICAN TAXATION

Chief Justice John Marshall stated in 1819 during the famous case of *McCulloch v. Maryland* "the power to tax is the power to destroy." The power to tell the citizenry how much money they must pay to make their government work must be jealously guarded.[5] The writers of the Constitution were very much aware of this fact. They knew one of the major causes of the War of Independence was the imposition of taxes by the British Parliament on the colonies without their consent.[6]

In the United States, the first income tax was enacted in 1861 to help finance the Civil War. It allowed a $600.00 exemption and levied a 3% charge on incomes below $10,000 and a 5% charge on incomes above that level. In 1864, the rates were increased to 5% and 10%.[7] Tax receipts peaked in 1866 when income tax accounted for about 25% of federal revenue. In 1871, Representative Dennis McCarthy of New York expressed the view of the income tax opponents in these words, "unequal, perjury-provoking, and crime-encouraging, because it is at war with the right of a person to keep private and regulate his business affairs and financial matters." Senator John Sherman of Ohio responded with these remarks: "When you come to examine the income tax you will find that it applies, it is true, to only about 60 thousand people; but they do not pay their proper share of other taxes. WHY? Can a rich man with an overflowing revenue consume more sugar or coffee or tea, or drink more beer or whiskey, or chew more tobacco, than a poor man? You tax tobacco at the same rate per pound, whether it is the tobacco for the wealthiest or the poorest. . . . But when in a system of taxation you are compelled to reach out to many objects, you must endeavor to equalize your general results. . . . Therefore, when it

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Footnotes at end of article

is complained that the tax on an article consumed is unjust upon the poor, because the poor have to consume a greater proportion of their income in its purchase than the rich, we answer that to countervail that we have levied a reasonable income tax upon such incomes as are above the wants and necessities of life. That is the answer and it is a complete answer; because, if you leave your system of taxation to rest solely upon consumption, without any tax upon property or income, you do make an unequal and unjust system."[8] These words of Sherman and other supporters of an income tax failed to gain a renewal of the tax. Thus, the income tax law expired in 1872[9] because it was considered an invasion of privacy with socialistic tendencies.[10]

Between 1873 and 1893, members of Congress introduced 68 different income tax bills. In 1894, a 2% income tax on incomes over $4,000 was finally passed with much controversy. But the U.S. Supreme Court declared the tax unconstitutional and in violation of Article 1, Section 2, Paragraph 3 which says that all direct taxes must be levied among the states in proportion to their population. Congress circumvented the Supreme Court's decision by proposing a constitutional amendment on July 12, 1909.[11] The well-known sixteenth amendment was ratified on February 29, 1913 by 42 states.[12] This removed the constitutional hurdle and gave Congress the authority to tax incomes from whatever source derived; without apportionment among the several states and without regard to any census or enumeration."

After more than 40 years from the expiration of the Civil War income tax, the first legal income tax was enacted under the leadership of President Woodrow Wilson.[13] It granted a $3,000 exemption for single persons and a $4,000 exemption for married couples. The graduated rate began at 1% on the first $20,000 of taxable income and ranged to a top rate of 7% on taxable incomes over $500,000. Net profits of corporations were taxed at a flat rate of 1%. Only about 0.4% of the population filed tax returns in 1913. All federal receipts amounted to about 2.6% of GNP.[14]

The next 40 years was just as stormy for the income tax. From 1913 to 1954 the income tax was part of America's struggle for survival through war and depression. By the time WWI had ended, three separate tax bills had increased tax rates nearly tenfold and exemptions had dropped significantly. But only 8% of the population paid taxes. President Warren G. Harding's Secretary of Treasury, Andrew Mellon, argued persuasively for tax reduction to foster economic growth. He stated: "Any man of energy and initiative in this country can get what he wants out of life. But when that initiative is crippled by legislation or by a tax system which denies him the right to receive a reasonable share of his earnings, then he will no longer exert himself and the country will be deprived of the energy on which its continued greatness depends. . . . On the other hand, a decrease of taxes causes an inspiration to trade and commerce which increases the prosperity of the country. . . ."[15]

With a large part of the population tired of war and taxes, Mellon's proposals gained ground. In 1921, the maximum tax rate was cut from 77% to 58% and in 1926 it was finally cut to 25%. Credit is given to Mellon and his support for tax cuts that spurred the economic boom of the 1920's. A get-rich-quick attitude pervaded the scene and many people had their shirts riding on the stock market.[16] This speculative fever prevented sound financial decisions and resulted in a rocky financial structure. Frantic transactions were prevalent. "Even the professional analyst of financial properties was sometimes bewildered when he found Co A holding a 20% interest in Co B, and Co B an interest in Co C, while C in turn invested in A, and D held shares in each of the others. But few investors seemed to care about actual worth. . . ."[17]

Until the Great Depression of the 1930's, Americans practiced the notion of a limited role for federal government with correspondingly low taxes. Except for periods of war or recession, revenues from exercises and customs were sufficient to finance those activities widely regarded as federal functions. But when the Great Depression took hold, President Herbert Hoover sponsored tax increases in a vain effort to balance the budget that reduced personal allowances and pushed the top tax bracket from 25% to 63%.[18] The economy was too weak to provide sufficient revenue. Increased rates just made matters worse. Taxes were now spent on human needs as well as national defense. When World War II broke out, millions of Americans went back to work and taxes were increased. Before the war was over, rates exceeded 90% and three-fourths of the population had to pay income taxes. A "class tax" had been replaced by a "mass tax."[19] After World War II, rates were not greatly reduced. This was the first time marginal peacetime rates, even for the middle classes and corporate businesses, exceeded 40% and even 50%. The role of government had become more involved creating a much larger establishment requiring continuously larger revenue for its ever-increasing expenditures.[20] With the acceptance of a larger government establishment, people realized high tax rates were inevitable. The Internal Revenue Code of 1954 preserved high tax rates ranging from 20% to 91%. It laid the foundation for the slow downhill slide to our current complicated, unfair tax system.

The end of the 1950's ushered in a new business term "tax planning" (a euphemism for tax avoidance) and a new profession appeared on the scene—"tax consultant." A reform introduced by President Kennedy lowered the top rate to 70%. Another tax cut, in 1969, lowered the top rate for salary income to 50%.[21] In 1981, legislation was passed to enact President Reagan's three-year 25% across the board tax cut that reduced the range to 11%-50% for all types of income[22] and introduced inflation indexing.[23] These reductions only slightly modified the progressivity of the income tax system and preserved the unfair tax expenditures and loopholes.

Tax revenue from federal, state, and local governments amounts to approximately one-third of the Gross National Product. About 35% of all government revenue is collected by the state and local levels. It is in the form of individual income taxes, corporated income taxes, sales taxes, property taxes, and various fees and charges.[24] Recent dramatic events such as Proposition 13 in California and Proposition 2½ in Massachusetts have brought some needed reform. Although reforming state and local government taxes is an important controversial subject, this paper will focus on the federal tax policies that generate about 65% of all government receipts.

What are the sources of federal revenue? Nearly one-half is derived from individual income taxes. This category amounted to 49% of all federal receipts in 1982. This percentage has been as low as 12% in 1940 and stayed around 45% during the 1960's and 1970's. The fastest growing category in the federal system is the social security taxes that provided about 34% of the total revenue in 1982. Corporate income taxes as a share of federal receipts steadily dropped throughout the 1970's. In 1982, this category generated about 8% of the revenue. Excises provided approximately 5%; estate and gift taxes brought in barely over 1% and other miscellaneous charges were just under 3% of the total receipts.[25]

Federal income taxes for individuals have increased from about $120 billion in 1974 to about $300 billion in 1982. During this same period, corporate income taxes stayed relatively flat at about $50 billion causing a decline in their share of overall federal receipts. To provide sufficient revenue for the current level of government operations, a simplified tax system would have to be capable of generating approximately $350 billion if both the individual and corporate income tax structures were overhauled.[26]

The proposal that will be recommended in this paper would replace the existing individual and corporate income taxes leaving the other aspects of the federal tax structure intact.

Why is a tax reform needed? The answer to this question could easily exceed 2,000 pages which is the approximate length of the Internal Revenue Code. Only the main indictments against the current income tax system will be covered in this paper. The four main dimensions to the inefficiency of the present system encompass economic barriers, complexity, stiffled intangibles and administrative difficulty.

Going back to the basic definition of taxation, we are reminded that the reason for the collection of taxes is to support the government as it provides necessary goods, services, and order without stiffling economic growth or human ingenuity. Our current income tax system fails to meet the fundamental purpose of its existence. It produces too little revenue. The United States government spends more on defense and domestic programs than it collects in tax revenue. Federal taxes went from a level of 3% of the Gross National Product in 1929 to about 19% in 1982. However, government spending amounted to approximately 24% of the Gross National Product in 1982. Chronic deficits over the last two decades not only offend the notion of good fiscal housekeeping, but also injure the economy and create unnecessary distortions.[27] In fiscal year 1982, after the enactment of a large budget reduction, the federal budget still had a deficit for the 13th straight year and for the 19th time in the last 20 years. Deficits have grown in recent years at such a rate that three-fourths of the 486 billion dollars in deficit accumulated from 1962–1982 resulted since 1974. From fiscal year 1946 through 1960, deficits as a percent of Gross National Product averaged about 0.4%. Over the next ten years the deficit equivalent averaged 0.8% of the Gross National Product. But over the next eleven years, the average magnitude of the deficit rose to 2.4% of the Gross National Product.[28]

Budget deficits reduce the growth of productive capacity when the economy is operating at a high level of employment. Deficits absorb over one-half of national savings leaving less savings available for investments in productive expansions. To maintain high levels of investment, the United States must borrow from abroad. If present trends continue, the United States could easily become a net debtor to the rest of the world.[29]

Because deficits force the government to compete for available saving, interest rates remain artificially high. These high rates discourage purchases of long-term assets such as housing. They also overvalue the dollar causing a competitive disadvantage for the United States in the world market.[30]

Closely tied to the problem of persistent, chronic deficits is the accusation that the federal government has become bloated, disorganized, wasteful, and inefficient. Is the federal government too big? Donald Lambro, Washington correspondent of United Press International, would shout an emphatic "yes"! Mr. Lambro concludes, "Americans have more government than they need, more than they want, and more than they can afford. Like a riderless locomotive whose throttle has been pulled wide open, the federal government is running out of control."[31] This paper will not attempt to address the issue concerning the excessiveness of the federal government. An organized and efficient use of income taxes directly relates to the amount of revenue needed and the existence of a balanced budget.

Another economic indictment against the current tax system is that increased earnings with progressive rates cause "Bracket Creep." Inflation pushes income into higher marginal tax rates making the overall effect of "Bracket Creep" worse. Millions of Americans face high marginal tax rates that were intended for those with much higher incomes. The Treasury Department reported that in 1965 a family of four earning a median income had a tax rate of 17% which increased to 24% in 1980. For families with twice the median income the rate almost doubled from 22% to 43%. This increase was due to the progressive rate structure and inflation. "Bracket Creep" is leaving many families with less real purchasing power after taxes.[32]

For the last 20 years, each time family income rose by 10%, government receipts increased approximately 15%.[33] High marginal tax rates affect people's incentive to produce additional earnings. It impacts upon the worker's decision to work overtime or to go play tennis. The higher the marginal rate, the cheaper the price of leisure. High rates reduce capital formation and economic growth.[34] Professor Arthur Laffer illustrates the relation between taxes and incentives with the "Laffer Curve." He restates the concept of diminishing returns. "At some point, additional taxes so discourage the activity being taxed, such as working or investing, that they yield less revenue rather than more. There are two rates that yield the same amount of revenue: high taxes on low production; or low taxes on high production. . . . There is, however, at any one time, some rate that allows the government maximum revenue and yet does not discourage maximum production."[35] Congressman Jack Kemp in his book entitled, *An American Renaissance*, gave the following illustration: "Consider the baker who is taxed 20% on the first loaf of bread, 40% on the second loaf, 60% on the third, 80% on the fourth, and 100% on the fifth and who can produce only one loaf per day. His objective would be to increase his output and increase his income. His rewards for pushing forward on the frontiers of baking technology are reduced again and again for each additional loaf he bakes. When he is at the level of four loaves—or at the margin, the 100% tax rate—all incentive to increase his baking productivity ends because if the baker were to produce a fifth loaf of bread, it would be taxed entirely away."[36]

A fourth economic indictment against the present tax system is that hoopholes and tax shelters are allowing many Americans to avoid their fair share of the tax burden. Since 1979, there has been a rapid increase in the number of tax preferences and in their revenue loss. According to the Joint Committee on Taxation and the Congressional Budget Office, there were 104 tax preferences in effect in the fiscal year 1982. These preferences caused the tax base to shrink to less than one-half of the 1982 national income. In 1981, these 104 preferences cost $229 billion in lost revenue.[37] According to the IRS publication, *Statistics of Income for 1981*, the category of itemized deductions alone reduced adjusted gross income by 24% that year or by $254.4 billion. Interest expense was the single largest itemized deduction claimed in 1981 amounting to $108.7 billion.[38] Senator Bill Bradley of New Jersey gave an example of the largest syndicated tax shelters in history. He included it in his book entitled, *The Fair Tax*, Chapter 3 appropriately subtitled, "True Tales of Amazing Tax Shelters." The example follows: "The largest syndicated tax shelters in history allows the partners to purchase 45,000 old billboards for $485 million and depreciate them over the 15-year write-off period for real estate. When the billboards are sold, they will generate a long-term capital gain taxed at preferential rates. Each investor must put up $150,000, so this shelter is only available to the big hitters. However, each was promised net tax benefits over a six-year period worth $181,950; that is the tax benefits exceeded the original investment. Is this what the President meant by supply-side economics? Obviously not. No economic growth results from simple reshuffling the ownership of 45,000 existing billboards."[39] With this example it is easy to see how families who reported income in 1981 of more than $1 million paid an effective rate of only 17.7% through the use of tax shelters.[40]

In order to manipulate transactions to avoid tax, some keen minds had to connive the schemes. Out of the approximate 46,000 active tax professionals needed to interpret the complex tax law, several thousand specialize in tax shelters.[41] Think of the talent and time expended in this tax shelter industry. It is sad to admit but our income tax system has created an industry devoted to the inefficient use of investment capital. Our tax system encourages people to lose money for tax purposes and it encourages special interests to lobby for more and more selective relief.

To better understand the existence of tax preferences, we must recall the squeeze of inflation and the pain of high tax rates. Many groups have lobbied for selective relief before their elected representatives. The most powerful and influential got an exclusion, deduction, or credit to suit their special interest.[42] Legislators keep succumbing to the pressures of the lobbyists who keep repeating the little ditty made famous by Senator Russell Long of Louisiana; "Don't tax you, don't tax me, tax that fellow behind the tree."[43] President Reagan even abandoned his clean bill principles to join the crowd supporting special interests before the passage of the Economic Recovery Tax Act of 1981. A *New York Times* editorial said; "Greed and politics are running wild on Capitol Hill, and the Nation's great economic difficulties, which were supposed to be the object of budget and tax reductions, are recklessly ignored."[44] Once again the well-being and, prosperity of the nation lost out to the flawed logic of special interest groups. When will the legislators stop playing Santa Claus to influential lobbyists?

Evidenced by a newspaper article as recent as June 7, 1986, the Senate Finance Committee still insists on playing Santa Claus. The *Greensboro News and Record* article stated the Committee was proposing to give away more than 170 "toys" to special interest beneficiaries, such as "cellular telephones," "strawberry square," and "Channel." Senator Howard Metzenbaum of Ohio said, "There is blatant concealment in this bill. * * * We're still trying to find all the special provisions that are hidden in those 2,847 pages." Senator Metzenbaum listed 16 specific provisions that warranted further study. What about the remaining 154 special interest provisions?"[45] Another article, one week later in the same newspaper, gave some specifics on one of the loopholes that had been proposed by the Senate. Unocal of Los Angeles was to forego paying up to $50 million of federal taxes because they had incurred a $4.4 billion debt fighting off an attempted takeover. This loophole was killed by Senator Metzenbaum's amendment but what about the remaining loopholes?[46] The whole legislative process seems to "degenerate into a scramble to see who can get the largest slices of a shrinking pie." Nobody wins in this sport of mutual plunder. Real economic expansion through fair and simple tax reform is the surest remedy for this diversive sport.[47]

Taking into consideration the high tax rates of our progressive structure, the high level of inflation, and the large number of unfair tax preferences, is it any surprise that the underground economy in the United States is growing so rapidly? A fifth indictment against the present tax system is that it encourages tax evasion. "Sheep may stand still while they are sheared, but taxpayers do not."[48] An estimated 25 million working Americans engage in both legal and illegal activities to hide all or a portion of their income from taxation. The magnitude of this problem is described by Sylvia Porter in the following manner: "A veiled economy more vast in scope than most of the individual economies of most other countries on this globe lies underneath the in-the-open economy in which tens of millions of us in the United States live. An immense proportion of all the transactions that occur in our country take place in this underground—but they are untraced in any fashion, thus uncounted, unreported and most significant, untaxed. You yourself may well be a part of it, without even being aware that you are."[49] The Internal Revenue Service estimated the 1981 loss of revenue from legal activities to be $74.7 billion. In addition, the Internal Revenue Service estimated a $9 billion tax evasion from illegal activities such as drug traffic and prostitution.[50] Some experts think the legal and illegal sources of income that do not appear in the Gross National Product is much higher than these Internal Revenue estimates. Some analysts claim that unreported income in the United States is close to a trillion dollars. For every four dollars of legal income reported, there is another one hidden from view.[51]

Why is tax cheating so prevalent? People are very dissatisfied with unfair loopholes that favor special interest, poor fiscal policies that contribute to inflation, steep graduated rates that cause "Bracket Creep" during inflationary times, government waste, and the unresponsiveness of the tax legislators to the national interest.[52] The cure for these ills is not cheating. The solution is a complete overhaul of the federal income tax system. This would not only boost the Gross National Product but remove some of the incentives to join the underground economy. Less participation in the underground economy would increase the tax base already riddled with unfair, excessive loopholes, and reduce the burden on taxpayers.

A sixth economic indictment against the current system of taxation is the disincentives and distortions it causes on saving, investing, working, and prices. High marginal tax rates discourage every productive activity. The incentives to take a risk, accept added responsibilities, and expand our Gross National Product, are dfulled when a big hunk of the prize goes to somebody else.[53] "When individuals bear the full cost of their actions and are able to reap fully the gains that occur from their activities, they use resources wisely. When I bear the full cost of food, clothing, telephone service, recreation facilities and thousands of other items, you can be reasonably sure that I will conserve on my use of these items. I will not consume them unless I value the services that they provide more than the cost of the provision. Similarly, when I am able to reap the full benefits of my productive activities, you can be sure that I will undertake even unpleasant tasks when the benefits (usually personal income) exceed the costs. When individuals bear the full cost and reap the full benefits, they will use resources in a wealth-creating manner. They will engage in positive-sum economic activity. . . . Problems arise when a sizeable share of the benefits or costs emanating from economic activity accrues to nonparticipating parties. High marginal tax rates make it possible for individuals to enjoy tax deductible items at a fraction of their cost to our economy. . . . However, deductibility does not reduce the cost *to society* of the valuable resources used to produce these commodities."[54] The marketplace is far more efficient in allocating resources and setting prices than the Internal Revenue Code. The present system makes us less competitive in the world economy and prevents us from reaching our economic potential as a nation. A tax deduction is of little benefit if there is no income to subtract it from.[55]

The tax laws interfere with business decisions in an unwise, haphazard way. High marginal tax rates make consumption cheap and encourage debt instead of equity. This causes saving to decline and in turn reduces investment which is the foundation for future economic growth.[56] This disincentive is aggravated by inflation which pushes people into higher marginal tax brackets even though their real pre-tax income does not change.[57] Tax policy distorts income during real economic growth and inflationary periods causing consumption to become cheaper and saving more expensive.[58] "The current tax code distorts investment decisions so that economically desirable investments often appear less attractive than those where tax incentives inflate profitability. Section after section tells new investors what lines of business to enter, tells existing corporations how to go about their work, and puts a heavy tax on the profits of successful and productive corporations. The whole system makes no economic sense."[59] To improve incentives and reduce investment distortions, a tax system is needed with a much broader base that permits a low tax rate.

The second main dimension to the inefficiency of the current tax system is the complexity of the Internal Revenue Code. The legal complexity makes comprehension, compliance, and administration difficult. Transactional complexity encourages individuals and businesses to engage in complicated maneuvers to avoid taxes.[60] The lack of simplicity makes the uniform application of the tax laws difficult to achieve. It also imposes a high cost of taxation.

"It was a bizarre trial, a tax protest case. The defense lawyer didn't have a chance, but his closing argument was a humdinger. It went like this: The lawyer hefted the Internal Revenue Code and leaned on the jury box. 'I wish this book could talk,' he said plaintively. 'I wish this book could talk because it would crawl over this rail, it would crawl up into your laps, it would look up at you and it would cry, 'Nobody understands me.''"

The above segment was taken from a May 13, 1983 *Wall Street Journal* article by Caryl Conner, who was a speechwriter in the Carter White House. In her article entitled "Offering Incentives to Tax Evaders," she realizes the essential function of the Internal Revenue Code is to raise revenue but it creates tax evasion by its complexity and "revenue hemorrhage." She is critical of the Code's ambiguity, chaos, loopholes, social engineering, and unenforceability.[61] Let's not take Ms. Conner's word for it, let's go right to the source—Section 1302. "Definition of Averageable Income; Related Definitions" states:

(a) Average Income.—

(1) In general.—For purposes of this part, the term "averageable income" means the amount by which income for the computation year (reduced as provided in paragraph 2) exceeds 120% of average base period income.

(2) Reduction.—The taxable income for the computation year shall be reduced by—

(A) The amount (if any) to which section 72(m) (5) applies; and

(B) The amounts included in the income of a beneficiary of a trust under section 667(a)

(b) Average Base Period Income.—For purposes of this part—

(1) In general.—The term "average base period income" means one-fourth of the sum of the base period incomes for the base period.

It is surprising less than one-third of those eligible to reduce their tax computation by income averaging actually do so?[62] In short, Section 1301 means that if a person has a lot more income in 1984 than he (she) had in the past four years, then income averaging may lower the tax amount. Phrases such as "averageable income" and "base period income" are contained in this Code Section. The word "income" is also used. Nowhere in the two thousand pages of the Internal Revenue Code is the word "income" defined. Since tax is imposed on "income," it would be logical to expect a definition in the beginning of the Code. Congress threw darts all around the bullseye with definitions of "gross income," "adjusted gross income," "taxable income," "earned income," "unearned income," "ordinary income," "averageable income" and others.[63]

Tax law terminology is difficult to understand but the problem is aggravated by the use of such long sentences. A sentence in Section 170(b)(1)(A) contains 379 words; another sentence in Section 7701(a)(19) has 506 words. The Connecticut statute forbids the use of sentences longer than an average of 22 words and no sentence can be longer than 50 words.[64] To comprehend the exact meaning of some of these long Code sentences, the reader would need to construct flow charts. What kind of grade would the English high school teacher of those tax legislators give her ex-students on clarity and sentence structure?

The application of tax law is not uniform. In an attempt to understand and fairly apply the more than 2,000 pages of basic tax law, there are about 10,000 pages of tax regulations and thousands of pages of interpretations and judicial opinions.[65] Even with all this research material available, most taxpayers do not understand the tax laws. Judges do not interpret the laws uniformly. Consider the two separate cases of a Minnesota state trooper and a New Hampshire state trooper. The argument was that since the state was his employer, all the highways were the "premises" of his employer. Since he was required to eat at restaurants on the highway, the meals were "furnished for the employer's convenience on his premises." The Minnesota state trooper won the court case. Unfortunately, the state trooper in New Hampshire fared worse. The court there stated that it did not go along with this "metaphysical concept" concerning the state's territory being the "premises" of the employer. The court further stated that the meals must be "furnished in kind." With the same facts, two different states had two different rulings.[66]

Former Commissioner of the Internal Revenue Service, Jerome Kurtz, stated the Service was aware of 3.8 million taxpayers who underreported their 1979 income but an astonishing 2 million overstated their income. In addition to the confusing, verbose language of the Code, the taxpayer has to contend with complicated, lengthy forms. People turn to commercial tax preparers, IRS employees, and certified public accountants for help. Facing up to the complexity of the Code, it is understandable that these assistors and preparers do not always get the right tax amounts. Certified Public Accountants have the best record for accuracy but they are a very expensive source of help. In 1981, about 41% of all filers had their returns prepared by tax professionals with a price tag of over $1 billion.[67] To obtain a true picture of the cost of taxation, the time spent collecting and recording data must be considered as well as the time spent filling out the various forms. Taxpayers must also fund the operations of the Internal Revenue Service. Its budget grew from about $2 billion in 1978 to approximately $3 billion for 1983. Lumping all these direct and indirect cost together, taxpayers bear between $9 and $10 billion for preparing and verifying their taxes, above what they pay in income taxes.[68]

The tax laws are complex and ambiguous. They need to be reformed to impose a low flat rate on a much broader base. The laws could be simple if there were no exceptions.

The third dimension to the inefficiency of the present tax system is the negative impact upon human intangibles. In some way, all the previously discussed indictments have a stiffling effect upon those precious intangibles. When disincentives and dissatisfaction are high, morale and initiative are low. This puts a damper on human ingenuity which is one of the greatest source of improved productivity. History has proven reward, not deprivation, to be the best method for motivating people to be aspiring, risktaking, and enterprising. Congressman Jack Kemp, in his book entitled *An American Renaissance*, summarizes the way our current tax system operates. Human ingenuity "isn't just amazing inventors like Edison or dramatic managerial innovators like Henry Ford. Improvements in efficiency spring from millions of creative workers, supervisors, and managers whose intimate knowledge of their tasks leads to new methods of improving products or saving costs. From this vast pool of dispersed knowledge, a market economy draws people who gamble that they have a better idea about how to provide more or better goods with fewer or cheaper resources. But they won't take those risks unless they will be rewarded if they succeed. By continually removing the incentives which reward achievement, we have created a system which taxes the imagination, ingenuity, and enterprise of the American people.[69]

The last dimension to the inefficiency of the present system of taxation is administrative difficulty. The economic barriers, excess burdens, unfair rules and repressed intangibles pose problems in collection and enforcement. Complexity, combined with inflation and high marginal rates, encourage tax avoidance and evasion. These factors increase the administrative burdens. The Internal Revenue Service employed about 85,000 people in 1983, which was about the same number as in 1979. During this same period, returns being audited because of tax shelter issues increased from 183,00 to 335,000.[70] The proportion of returns examined in 1984 was only 1.3%.[71] Administrative expenditures of the Internal Revenue Service dropped from 0.54% of revenue collected in 1975 to 0.41% in 1981 before reaching 0;48% in 1984. Over this same period, the ratio of IRS employees to total returns filed declined by 19%.[72] With taxpayers devoting more time and resources in avoidance techniques, administrative costs must increase to ensure proper compliance.

An income tax reform removing special deductions, credits and allowances would simplify enforcement. Compliance costs could be utilized more effectively if the tax system had a broad base with a low flat rate. Internal Revenue Service could concentrate on unreported income without being bogged down with verifying a proliferation of credits, exclusions, allowances and deductions. With understandable rules and low rates, a sense of fairness would be present that would foster voluntary compliance.

Having reviewed the numerous inefficiencies of the American income tax system, it is refreshing to present some workable recommendations for sound tax reform. The simplification proposals set forth in this paper will suggest fundamental changes to tax laws, forms, and procedures for the individual and corporation income taxes.

Tax legislators, accountants, administrators, most other taxpayers, and even some of the guilty tax evaders want tax reform. They just cannot seem to agree on how to reform the tax laws. Some people have even developed a strong dislike for the phrase "tax reform." They cannot help but recall the numerous changes made in prior years that started out as tax simplification measures but resulted in another lost battle for efficiency and fairness.

An Internal Revenue employee shared her astonishment at the size of one estate tax return that was about two inches thick, complete with index tabs. The next day she realized that estate return was not so long compared to other tax returns that were filed in the Greensboro District of the Internal Revenue Service. Tax returns had been received that individually filled the contents of a cardboard box one foot deep. It is time to raise the confidence of all taxpayers in the income tax system. True tax reform without loopholes, steep rates, and complicated rules is urgently needed.

How could true federal income tax reform by achieved? The basic steps to true reform follow:

a. Abolish loopholes
b. Broaden the tax base
c. Change to a low, flat rate
d. Deduct a personal allowance
e. Exempt an amount for each dependent
f. File simplified forms 1040 and 1120

What are the goals of sound tax policy? After implementation of the above tax simplification, the following would result:

a. Administrative ease
b. Boosted intangible
c. Conserved resources
d. Dynamic economy
e. Efficiency
f. Fairness

To achieve these goals for individual income taxes, the following tax law changes are recommended:

1. Repeal all individual adjustments to income, exclusions, deductions, and credits (except withholding and excess FICA credits). Depreciation would be allowed at a rate that provides an adequate cushion for inflation but would not favor one asset over another.

2. Include employee compensation, such as wages, salaries, tips, pensions, bonuses, prizes, fringe benefits, workman compensation and the market value of non-cash items.

3. Exclude employee reimbursements for business expenses and employer provided medical benefits.

4. Include income (loss) from business activities and any other income sources.

5. Allow a personal allowance of $6,000.00 for married taxpayers; $4,500.00 for head of household status, and $3,000.00 for single status.

6. Allow dependent allowances of $1,000.00 each.

7. Apply a low, flat rate against taxable income.

8. File on simplified form 1040.

9. Require residential leasor information. (Space is provided on form 1040)

10. Require withholding at the source whenever possible.

The individual income tax return, form 1040, would be used primarily to report employee compensation, dividends, interest, capital gains (losses), and the net income (loss) from sole proprietorships, partnerships, and small business corporations. Rents, royalties, and other sources of individual income would be included on form 1040. The personal and dependent allowances would provide a floor so that the poorer families would pay little or no income tax. After combining all sources of income and subtracting the allowance(s), taxable income would remain. If the amount was positive, then the flat rate would be applied to arrive at a total income tax.[73]

The goals previously listed could be achieved by implementing the following major revisions to the corporate income tax structure:

1. Gross revenue would be reduced by ordinary and necessary business expenses provided such items were included in receipts.

2. Business expenses would include the cost of purchases of goods and services used for business purposes during the tax year.

3. Dividends paid to shareholders and reported on their returns would be excluded on the corporate return. Federal income tax would be withheld on dividends which would be reflected on the 1099-DIV forms sent to shareholders.

4. Depreciation and amortization would be allowed at a rate that provides an adequate cushion for inflation but would not favor one asset over another.

5. Exemptions and exclusions, such as the capital gain exclusion, would no longer be allowed.

6. Tax credits would be repealed. This includes investment tax credit, jobs credit, research and development credit, and business energy credit.

7. Tax would be computed on the simplified form 1120 using the same low, flat rate assessed on the individual income tax return.

8. If negative income resulted, the loss would be carried forward and interest income allowed. There would be no limit to the amount of the loss of the number of years carried forward.[74]

The underlying foundation for income tax reform for individual and corporate incomes is a much broader base with a low flat rate. The most unfair aspect of our current system is the large array of complicated loopholes that haphazardly and uneconomically grant selective relief. A wise economist commented several years ago, "Taxpayers using loopholes are a lot like a crowd of people standing tip-toed watching a parade. They are all very uncomfortable on their toes, but no one can stand flat on this feet because he would lose his view. Yet, if they all could agree to get off their toes together, they all would see just as well, and they would feel much better too."[75] Loopholes must be abolished in order to restore a sense of fairness and to encourage economic growth.

The flat rate income tax system would be fine tuned for maximum efficiency. The lowest possible rate would be applied against a broad tax base to provide sufficient revenue to fund the fiscal budget. (A temporary source of revenue to pay off the accumulated deficits will be discussed later.) A lot flat rate of 10% on a very broad base has been proposed by Senator Jesse Helms.[76] Robert Hall and Alvin Rabushka first published in the *Wall Street Journal* their proposal for a flat tax that closely fits the consumption tax concept.[77] They are confident that a low, flat rate of 19% on individual and corporate incomes would generate more revenue than the current system and would, thus, take less time to balance the federal budget. The recommendations outlined in this paper conform to the rules of comprehensive income taxation instead of consumption taxation. The flat rate would be lower than 19% because the base would be broader. The flat rate could hover around 10% and generate sufficient revenue to fund an efficient federal government operation.

To clean up some of the results of poor fiscal housekeeping, the flat rate could be increased. But to interfere as little as possible with saving, investing, and working decisions, a temporary source of revenue could be implemented. A national retail sales tax on nonessential, luxury goods could supplement the income taxes collected. These funds would be earmarked for paying off the accumulated deficits. Implementation would be faster and more efficient if the states were used as administrative agents. The rates should be set high enough to cover existing state retail sales taxes. This supplemental tax system could be a powerful tool to wipe out the accumulated deficits. The importance of previously discussed problems, such as reduced investments, economic distortions, and high interest rates have serious repercussions on the entire nation. Whether these deficits are funded by a slightly higher flat tax or a national retail sales tax is not as important a decision as the need to pay them off.

With simpler and fairer laws, the costs that taxpayers bear to prepare, verify, and pay their income taxes would be greatly reduced. The removal of loopholes and the expansion of the tax base would also reduce administrative costs. A low, flat tax would restore a sense of fairness that would make administration much easier. It would improve the integrity of the administrators which is the heart of voluntary compliance.

One of the key concepts to efficient tax administration is withholding at the source. Wages, pension, interest, dividends, etc., would be subject to the low flat rate. Using a withholding chart, the payer would retain and remit the income tax to the Internal Revenue Service via the quarterly employment tax return (form 941). The recipient would be issued an information document such as W-2 or 1099 showing the total income and withholdings. If the recipients had only wage and salary income, it could be possible that they would have the correct amount remitted to IRS and would not have to file a 1040 form. They would, however, be required to claim the correct filing status and number of dependents on their withholding certification (form W-4). This form would be updated annually and could require copies of birth certificates for each dependent. Annual wage statements, forms W-2, would still be issued.

Former IRS Commissioner Mortimer Chaplin estimated the following percentages of income types go unreported:

1. 35–50% of royalty and rental income
2. 30–40% of all self-employed income
3. 17–22% of capital gains
4. 8–16% of dividend and interest income.[78]

The flat tax proposals would help compliance in the last category by requiring withholding at the source. Payers of royalty income would also be required to withhold at the source. Payers of residential rental income would submit an information form stating the amount and recipient of the rental income. Individual payers would be provided space on their form 1040 to give this information. A large amount of capital gain income results from real estate and stock transactions. Consideration could be given to the collection at the local government level for the income tax on real estate sales at the time the deeds are recorded. The seller could present documentation of the basis. It could be compared to the sales price to obtain the withholding amount for income taxes. When corporations sell stock, they could also compare the basis to the selling price and withhold the appropriate amount of income taxes at the flat rate. Withholding at the source and better utilization of information documents, would improve compliance.

With the repeal of loopholes, IRS would no longer utilize resources to verify a mass of deductions, exclusions, and credits. They could concentrate on sources of unreported income, the proper filing of returns, and the prompt payment of all taxes. With the implementation of the flat tax supplemented by a national retail sales tax on a temporary basis, the folks at IRS would find the laws easier to understand and enforce. Tax simplification would also improve public understanding of the tax laws and boost public confidence. Tax administrators would smile as they noticed the taxpaying public moving toward a model state of voluntary self-assessment.[79]

The proposed tax simplification set forth in this paper would establish a fair and efficient income tax system. A redirection of efforts and capital would produce real growth. A growing, efficient economy would raise national output, stimulate human intangibles, and increase the standard of living. The American dream is not a scramble for a larger piece of a shrinking pie. In the words of Congressman Jack Kemp, "We must have economic growth . . ., which means we must press ahead to gain the necessary tax . . . reforms that will permit growth. We want to excite the elusive but vital qualities of human ingenuity and effort. Qualities important not only to an economy increasingly dominated by sophisticated services, but to the well-being and happiness of our nation's people. Ingenuity is discovered only through effort, an intangible substance which certainly means more, much more, than putting in hours. After all some people manage to retire on the job. Effort encompasses such things as a continual eagerness to acquire new knowledge and skills, a willingness to accept new responsibilities, to take the risk of initiating change. Effort can only be measured indirectly, by results, and the results are not only measured by personal prosperity but by the enrichment of community life as well."[80]

FOOTNOTES

[1] Robert E. Hall and Alvin Rabushka, *The Flat Tax* (Standard, Calif.: Hoover Institution Press, Stanford University, 1985), p. 1.

[2] Sidney I. Landau, ed. in chief, *Doubleday Dictionary* (Garden City, N.Y.: Doubleday and Company, Inc., 1975.

[3] Christopher Conte, *Wall Street Journal*, 8 July 1982.

[4] Hall and Rabushka, *The Flat Tax*, p. 1.

[5] Patricia C. Archeson, *Our Federal Government How It works*, An Introduction to the United States Government, 4th ed. (New York: Dodd, Mead, 1984), p. 11.

[6] Ibid., p. 17.

[7] Hall and Rabushka, *The Flat Tax*, p. 19.

[8] Senator Bill Bradley, *The Fair Tax* (New York: Pocket Books, 1984), p. 70.

[9] Ibid., p. 71.

[10] Hall and Rabushka, *The Flat Tax*, p. 19.

[11] Ibid., p. 20.

[12] Senator Bill Bradley, *The Fair Tax* p. 24.

[13] Ibid., p. 74.

[14] Hall and Rabushka, *The Flat Tax*, p. 20.

[15] Senator Bill Bradley, *The Fair Tax* p. 75.

[16] Ibid., p. 77.

[17] Ibid., p. 78.

[18] Hall and Rabushka, *The Flat Tax*, p. 21.

[19] Senator Bill Bradley, *The Fair Tax*, p. 80.

[20] Dan Brawley, *The Subterranean Economy* (New York: McGraw-Hill, 1982), p. 4.

[21] Hall and Rabushka, *The Flat Tax*, p. 5.

[22] Ibid., p. 21.

[23] "Tax Foundation's Tax," *Features* 30 (March 1986):2.

[24] Hall and Rabushka, *The Flat Tax*, p. 7.

[25] Ibid., p. 7.

[26] Ibid., p. 8.

[27] Henry J. Aaron and Harvey Galper, *Assessing Tax Reform* (Washington, D.C.: The Brookings Institution, 1985), p. 7.

[28] John W. Ellwood, "*Balancing the Federal Budget and Limiting Federal Spending: Constitutional and Statutory Approaches*," September 1982. Congress of the U.S. Congressional Budget Office, Washington, D.C., p. 9.

[29] Aaron and Galper, *Assessing Tax Reform*, p. 8.

[30] Ibid., p. 8.

[31] Donald Lambro, *Fat City: How Washington Wastes Your Taxes* (South Bend, Ind., 1980), p. xv.

[32] Hall and Rabushka, *The Flat Tax*, p. 23.

[33] Jack Kemp, *An American Renaissance: A Strategy for the 1980's* (New York: Harper & Row, 1979), p. 100.

[34] *Fairness and the Reagan Tax Cuts*. Hearing before the Point Economic Committee Congress of the U.S. 98th Congress Second Session, 12 June 1984 (Washington, D.C.: U.S. Government Printing Office, 1984), p. 8.

[35] Kemp, *An American Renaissance: A Strategy for the 1980's*, p. 50.

[36] Ibid., p. 52.

[37] Bradley, *The Fair Tax*, p. 87.

[38] Hall and Rabushka, *The Flat Tax*, p. 25.

[39] Bradley, *The Fair Tax*, p. 39.

[40] Ibid., p. 12.

[41] Ibid., p. 26.

[42] Ibid., p. 49.

[43] Ibid., p. 56.

[44] Ibid., p. 58.

[45] *Greensboro News and Record*, 7 June 1986, Washington AP.

[46] *Greensboro News and Record*, 14 June 1986, Washington AP.

[47] Kemp, *An American Renaissance: A Strategy for the 1980's*, p. 79.

[48] *Fairness and the Reagan Tax Cuts*, p. 52.

[49] Jerome Tuccille, *Inside the Underground Economy* (New York: Signet, 1982), p. 68.

[50] Joseph A. Pechman, ed., *Options for Tax Reform* (Washington, D.C.: The Brookings Institution, 1984), p. 21.

[51] Tuccille, *Inside the Underground Economy*, p. 69.

[52] Pechman, *Options for Tax Reform*, p. 21.

[53] Bradley, *The Fair Tax*, p. 48.

[54] *Fairness and the Reagan Tax Cuts*, p. 54.

[55] Bradley, *The Fair Tax*, p. 51.

[56] *Fairness and the Reagan Tax Cuts*, p. 6.

[57] Ibid., p. 10.

[58] Ibid., p. 7.

[59] Ibid., p. 35.

[60] Aaron and Galper, *Assessing Tax Reform*, p. 42.

[61] Caryl Conner, "Offering Incentives to Tax Evaders," *Wall Street Journal*, 13 May 1983.

[62] Bradley, *The Fair Tax*, p. 19.

[63] Michael Savage, *Everything You Always Wanted to Know About Taxes But Didn't Know How to Ask* (New York: Dial Press, 1982), p. 3.

[64] Brawly, *The Subterranean Economy*, p. 42.

[65] Bradley, *The Fair Tax*, p. 18.

[66] Savage, *Everything You Always Wanted to Know About Taxes But Didn't Know How to Ask*, p. 34.

[67] Bradley, *The Fair Tax*, p. 26.

[68] Robert E. Hall and Alvin Rabushka, *Low Tax, Simple Tax, Flat Tax* (New York: McGraw-Hill, 1983), p. 6.

[69] Kemp, *An American Renaissance: A Strategy for the 1980's*, p. 54.

[70] Internal Revenue Service, *Annual Report of the Commissioner and Chief Counsel of the Internal Revenue Service*, 1980, p. 27; 1983, p. 11; 1984.

[71] Ibid., 1984, Table 7.

[72] Ibid., 1984, Tables 6 and 22.

[73] Archeson, *Our Federal Government How It Works, An Introduction to the United States Government*, p. 35.

[74] Ibid., p. 122.

[75] Bradley, *The Fair Tax*, p. 102.

[76] Pechman, *Options for Tax Reform*, p. 30.

[77] Hall and Rabushka, *Low Tax, Simple Tax, Flat Tax*, p. 19.

[78] Robert Buechner, *Prosper Through Tax Planning* (New York: Coward-McCann, 1983), p. 1.

[79] Brawly, *The Subterranean Economy*, p. 27.

[80] Kemp, *An American Renaissance: A Strategy for the 1980's*, p. 194.

BIBLIOGRAPHY

Aaron, Henry J. and Galper, Harvey. *Assessing Tax Reform*. Washington, D.C.: The Brookings Institution, 1985.

Archeson, Patricia C. *Our Federal Government: How It Works, An Introduction the United States Government*. 4th ed. New York: Dodd, Mead, 1984.

Bowskey, Charles A., Comptroller General. *An Analysis of Fiscal and Monetary Policies*. Washington, D.C.: U.S. Government Accounting Office, August 31, 1982.

Boskin, Michael J., ed. *Federal Tax Reform: Myths and Realities*. San Francisco, Calif.: Institute for Contemporary Studies, 1978.

Bradley, Senator Bill. *The Fair Tax*. New York: Pocket Books, 1984.

Brawly, Dan. *The Subterranean Economy*. New York: McGraw-Hill, 1982.

Break, George F. *Financing Government in a Federal System: Studies of Government Finance*. Washington, D.C.: The Brookings Institution, 1980.

Buechner, Robert. *Prosper Through Tax Planning*. New York: Coward-McCann, 1983.

Cullinan, Paul. *The Combined Effects of Major Changes in Federal Taxes and Spending Programs Since 1981*. Staff Memorandum, April 1984.

Conner, Caryl. "Offering Incentives to Tax Evaders." *Wall Street Journal*, 13 May 1983.

Conte, Christopher. *Wall Street Journal*, 8 July 1982.

Dworak, Robert J. *Taxpayers, Taxes, and Government Spending: Perspectives on the TP Revolt*. Praeger Publishers, 1980.

Ellwood, John W. *Balancing the Federal Budget and Limiting Federal Spending: Constitutional and Statutory Approaches*. Washington, D.C.: Congress of the United States, Congressional Budget Office, September 1982.

Fairness and the Reagan Tax Cuts. Hearing before the Point Economic Committee, Congress of the United States 98th Congress Second Session. Washington, D.C.: Government Printing Office, 1984.

Friedman, Milton. *Tax Limitation, Inflation and the Role of Government*. Dallas, Texas: The Fisher Institute, 1978.

Greensboro News and Recod. Washington AP. Greensboro, N.C., June 7 and June 14, 1986.

Hall, Robert E., and Rabushka, Alvin. *Low Tax, Simple Tax, Flat Tax*. New York: McGraw-Hill, 1983.

Hall, Robert E., and Rabushka, Alvin. *The Flat Tax*. Stanford, Calif.: Hoover Institution Press, Stanford University, 1985.

Internal Revenue Service. *Annual Report of the Commissioner and Chief Counsel of the Internal Revenue Service, 1980, 1983, 1984*.

Kemp, Jack. *An American Renaissance: A Strategy for the 1980's*. New York: Harper & Row, 1979.

Lambro, Donald. *Fat City: How Washington Wastes Your Taxes*. South Bend, Ind.: Regnery/Gateway, Inc., 1980.

Landau, Sidney, I., ed. in chief. *Doubleday Dictionary*. Garden City, N.Y.: Doubleday, 1975.

Levitan, Sar A., and Werneke, Diane. *Productivity: Problems, Prospects, and Policies*. Baltimore and London: Johns Hopkins University Press, 1984.

McClure, Charles E., Jr. *Must Corporate Income Be Taxed Twice?* Washington, D.C.: The Brookings Institution, 1979.

National House Democratic Caucus. "Renewing America's Promise: A Democratic blueprint for Our Nation's Future," January 1984.

Pechman, Joseph A., ed. *What Should Be Taxed: Income or Expenditure?* Washington, D.C.: The Brookings Institution, 1980.

Pechman, Joseph A., ed. *Options for Tax Reform*. Washington, D.C.: The Brookings Institution, 1984.

Publication 79, 1982 Statistics of Income: Individual Income Tax Returns. Washington, D.C.: U.S. Government Printing Office, 1982.

Savage, Michael. *Everything You Always Wanted to Know About Taxes But Didn't Know How to Ask*. New York: Dial Press, 1982.

Statistical Abstract of the United States. 105th ed. Washington, D.C.: U.S. Department of Commerce, Bureau of Census, 1985.

Strengthening the Federal Revenue System: Implications for State and Local Taxing and Borrowing. Washington, D.C.: Advisory Commission on Intergovernmental Relations, 1984.

"Tax Foundation's Tax." *Features* 30 (March 1986):2.

Tuccille, Jerome. *Inside the Underground Economy*. New York: Signet, 1982.

By Mr. DASCHLE (for himself and Mr. HATCH):

S. 1901. A bill to amend title 5, United States Code, to make election day a legal public holiday, with such holiday to be known as "Democracy Day"; to the Committee on the Judiciary.

DEMOCRACY DAY

Mr. DASCHLE. Mr. President, in the 1990 elections, voter turnout equalled 36.4 percent of the voting age population and 54.7 percent of registered voters. That was the lowest turnout for an off-year election since 1942. Voter turnout in the last Presidential election was just barely over 50 percent of the voting age population.

Between 1960 and 1980, voter turnout declined by 10 percentage points. In 1980, almost 74 million Americans eligible to vote declined to do so. That poor turnout meant that, for the first time since 1948, the two major party candidates together did not muster the voting support of a majority of the eligible voters.

Mr. President, those statistics should alarm each and every one of us. Whether one wants to blame them on those who decline to vote or on those who have been elected, we are facing a crisis that threatens to undermine our national identity.

As the democratic leader of the world, the United States has one of the worst voter participation records in the world. It is ironic that we in the United States, the Nation that has inspired the emergence of democratic governments throughout Eastern Europe and the Soviet Union, have watched the Soviet and East European people risk their lives for democracy, for the right to vote, while many of us have taken that special right for granted.

"Democracy" is defined as "government by the people." I hope we can take our cues from the Soviet and East European citizens. It is time we got our democracy back.

What will get it back? There is no simple solution. It will take time. It will take the serious efforts of educators and employers, of voters and elected officials, of groups and individuals.

Today Senator ORRIN HATCH and I are initiating one, modest effort to further the cause. We are introducing legislation to declare election day a legal, but unpaid, public holiday. This legislation is not intended to be the last word on voter turnout, but a small step in the overall effort to encourage all American citizens to take pride and participate in their government the most fundamental way. By voting.

Each year we in Congress honor hundreds of causes and civic groups by commemorating a day, week, or month in their name. It is time that we as a nation honor and promote the continuation of our democratic heritage by declaring a permanent holiday in its name. Under the legislation we are proposing today, this holiday will be known as "Democracy Day."

Why do we need such a holiday? I think the statistics speak for themselves. We need to spark a renewal in our appreciation of democracy and the need to vote. Declaring election day a holiday would move us toward that goal.

Many ask what effect a holiday that offers employees no paid leave would have. At least a paid holiday would give people more time to vote, they might argue. They might add that it is sad if our Nation cannot afford to take a day off for democracy.

That argument may be partially accurate, but it also misses the point. Studies about the effect paid leave would have on voter participation are inconclusive. It is true that the lack of time during the workday and the lack of transportation to the polls are genuine problems for too many Americans, and every effort should be made to make voting more accessible. But the main problem we face is an erosion of values in our civic culture. Many people now feel that their vote is of little importance. When it comes to voting, there is not enough feeling of civic duty or responsibility. We could legislate a paid holiday on election day, but we cannot legislate the fundamental transformation of values necessary to get people to vote and participate. This is a challenge to us more as statesmen than as legislators.

It is my sincere hope that the designation of election day as Democracy Day—an unpaid, legal holdiay—will inspire Americans to celebrate their freedom and embark on the road to increased voter participation. The genuine honoring of democracy is dependent upon the initiative of individual citizens and civic associations and organizations.

As I noted earlier, the success of Democracy Day, or any initiative to revive our Nation's values, is vitally dependent upon our schools and other civic groups in our communities. It is with their support that we seek to declare election day a legal public holiday. I am pleased to announce that the proposal Senator HATCH and I are introducing today has the support of the Veterans of Foreign Wars, Project VOTE, the National Education Association, and other groups who work hard in their communities to encourage people to vote. We look forward to working with grassroots organizations across the country and with all our colleagues to celebrate our democratic values through the establishment of Democracy Day.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1901

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) democratic government derives its legitimacy from the consent of the governed, as manifested in the full participation of an informed and aware electorate;

(2) since 1960 the rate of voter participation in the United States has declined and is now among the lowest of any nation with a democratic form of government;

(3) since 1972 the rate of voter participation among young people in the United States has declined significantly;

(4) the Federal Government should encourage personal responsibility and the broader understanding of the value and importance of the right to vote; and

(5) the establishment of a legal public holiday on election day, the first Tuesday after the first Monday in November of each even numbered year, could provide a substantial incentive to increase voter participation by the American public.

SEC. 2. SENSE OF THE CONGRESS.

It is the sense of the Congress that educators, civic and charitable organizations, radio and television broadcasters, and public officials at all levels of government should help the people of the United States celebrate Democracy Day through appropriate celebrations and events which stress the importance of self-government.

SEC. 3. DESIGNATION OF DEMOCRACY DAY AS A LEGAL PUBLIC HOLIDAY.

Section 6103 of title 5, United States Code, is amended by adding after subsection (c) the following new subsection:

"(d) The first Tuesday after the first Monday in November in each even numbered year shall be a legal public holiday to be known as Democracy Day, except that Democracy Day shall not be considered a legal public holiday for purposes of statutes relating to pay and leave of employees as defined by section 2105 of this title.".

Mr. HATCH. Mr. President, I rise today in conjunction with Senator TOM DASCHLE in support of designating election day as Democracy Day and declaring it as an unpaid legal public holiday.

As this great Nation strives to maintain and promote democracy around the world, I consider it appropriate that we further our efforts by encouraging our own citizens to participate in the democratic process

Mr. President, the United States of America is synonymous with democracy throughout the world. However, the fact that voter turnout at elections over the past 50 years has decreased dramatically concerns me. If we are to maintain a government that is elected by the people for the people, we must make sure that all eligible citizens are given a fair chance to vote.

I am confident that when the Founding Fathers forged the process by which this country would function, they had envisioned the ideal situation in which all people were interested in who was representing them and protecting their best interests, thus actively participating in the electoral process. Sadly, this is not the case currently. Democracy Day would not only enhance our fellow citizens' opportunity to participate in the electoral process, but also remind them of their great freedom and responsibility to vote.

Some may think, "My vote will not count; I am just one voter out of millions of others, so I will not bother to vote." That is just not true. All votes count. All Americans are responsible for maintaining democracy in this great country, and Democracy Day will help to renew and instill this fading sense of responsibility.

Some may argue that we designate Democracy Day as a paid holiday rather than unpaid holiday. But, would that encourage more voting? Not necessarily. Would that help solve our fiscal problems? Definitely not. However, Democracy Day as an unpaid holiday would encourage employers to allow employees to take time to vote who may be unable or unwilling to otherwise.

Designating this holiday will additionally encourage participation from all areas of the community. Just a few of these areas include education, media, and business. Educating our children in the voting process will ensure that they will take the opportunity to vote seriously thus ensuring this country's continued democracy.

For example, schools will be encouraged to hold political assemblies, educate students about local, State, and national issues, sponsor essay contests, and allow children to participate in the voting process by voting in mock elections and accompanying their parents to the polls as they vote.

In addition, the media will be encouraged to take part through public service announcements and ads reminding the public of their opportunity and responsibility.

Not only will schools and the media be encouraged to participate, but business will also be encouraged. Here, employers may give employees time off to go to the polls, perhaps a half-hour to an hour. Transit companies may provide free transportation for the day to allow even more people to vote. Additionally, decorations, parades, and festivities will generate enthusiasm in getting involved in the electoral process. As you can well imagine, Mr. President, the possibilities are limitless and will only promote the recognition of and active participation in democracy.

I do not expect that voter turnout will be 100 percent from this time forward, perhaps realistically that will never happen. But, Democracy Day will allow those who care enough about their freedom and maintaining democracy in their country to make the effort to vote for who they decide will represent them.

Mr. President, I urge my colleagues who support democracy to likewise support designating Democracy Day as a legal, unpaid Federal holiday.

By ADAMS (for himself and Mr. KENNEDY):

S. 1902. A bill to amend title IV of the Public Health Service Act to require certain review and recommendations concerning applications for assistance to perform research and to permit certain research concerning the transplantation of human fetal tissue for therapeutic purposes, and for other purposes; to the Committee on Labor and Human Resources.

RESEARCH FREEDOM ACT OF 1991

• Mr. ADAMS. Mr. President, I rise today to introduce the Research Freedom Act of 1991. This legislation is a bill of hope for Americans suffering from diseases such as Parkinson's, juvenile diabetes, spinal cord injuries, Alzheimer's—and for curing genetic diseases—before the baby is even born.

For the last 4 years, the Bush administration has banned research on fetal tissue transplantation—promising research on the treatment of diseases which cause a great deal of suffering. Diseases—like Parkinson's, juvenile diabetes, spinal injury, Alzheimer's—for which there are no known cures and few effective treatments.

This ban is not based on good science. It is based on right wing demagoguery. It is based on the misguided belief that fetal tissue transplantation promotes abortion.

It does not. A panel of experts appointed by the Reagan administration found that there was no evidence to support such a position. What they did find was that the use of fetal tissue is acceptable public policy as long as certain safeguards are followed. The panel's recommendations were even supported by Dr. Bernadine Healy and Dr. Louis Sullivan before their political appointments.

We need to be clear about what we are talking about. Fetal tissue transplantation research usually involves cells from an aborted fetus. These cells are then transplanted into an adult or child—or more recently and successfully—into a fetus that is afflicted by a genetic disease. If the transplantation is successful, the new cells take on the function of the organ into which they are placed. This means the transplantation may actually cure the disease or the disability.

Fetal tissue transplanation is not done with living fetuses or potentially viable fetuses. This research is done with fetuses that are dead.

And no matter what your view on abortion, you can choose to discard that tissue and not permit its use for promising research to save lives. Or you can tell the families of people like our former colleague Mo Udall, that we will continue to ban such promising life-saving research.

The Reagan Fetal Tissue Advisory Panel found no moral, ethical, or legal reason to prevent such research. And neither did the overwhelming majority of House Members—Republican and Democrat, antiabortion and prochoice—who voted for legislation that ends the moratorium on fetal tissue research. The bill I am introducing today, would strike down the administration's ban on fetal tissue transplantation research. It would restore the right of scientific research to go on undeterred by Government interference. And it would restore hope to the millions of individuals afflicted by these devastating diseases.

My bill, like the House bill championed by my good friend HENRY WAXMAN that passed last July, would codify the protections recommended by the Reagan administration's Human Fetal Tissue Transplantation Advisory Panel. These safeguards will protect against any possible abuses—no matter how unlikely—by prohibiting directed donations to friends or relatives or the sale of fetal tissue. The bill also requires the decision to have an abortion and the decision to donate tissue be carefully separated.

Finally, my legislation is a bill of rights for scientific research to be free from Government interference. The Administration continued the ban on this life-saving research despite the findings of the advisory panel to go forward and despite the NIH review panel that concurred with those findings. In fact, the administration acted capriciously—if not illegally. It ignored the findings of its own reviewers, it issued no regulations, it had no authority to intervene in the scientific review process.

My bill will put a halt to these practices. It will also give the hope to millions of Americans and their families that this promising research may one day offer a cure to end the suffering caused by so many diseases.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1902

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Research Freedom Act of 1991".

SEC. 2. ESTABLISHMENT OF CERTAIN PROVISIONS REGARDING RESEARCH CONDUCTED OR SUPPORTED BY NATIONAL INSTITUTES OF HEALTH.

Part G of title IV of the Public Health Service Act (42 U.S.C. 289 et seq.) is amended by inserting after section 492 the following new section:

"SEC. 492A. CERTAIN PROVISIONS REGARDING REVIEW AND APPROVAL OF PROPOSALS FOR RESEARCH.

"(a) REVIEW AS PRECONDITION TO RESEARCH.—

"(1) PROTECTION OF HUMAN RESEARCH SUBJECTS.—

"(A) In the case of any application submitted to the Secretary for financial assistance to conduct research, the Secretary may not approve or fund any application that is subject to review under section 491(a) by an Institutional Review Board unless the application has undergone review in accordance with such section and has been recommended for approval by the Board conducting such review.

"(B) In the case of research that is subject to review under procedures established by the Secretary for the protection of human subjects in clinical research conducted by the National Institutes of Health, the Secretary may not authorize the conduct of the research unless the research has, pursuant to such procedures, been recommended for approval.

"(2) PEER REVIEW.—In the case of any application submitted to the Secretary for financial assistance to conduct research, the Secretary may not approve or fund any application that is subject to technical and scientific peer review under section 492(a) unless the application has undergone peer review in accordance with such section and has been recommended for approval by the entity conducting such review.

"(b) ETHICAL REVIEW OF RESEARCH.—

"(1) PROCEDURES REGARDING WITHHOLDING OF FUNDS.—If research has been recommended for approval for purposes of subsection (a), the Secretary may not withhold funding for the research on ethical grounds unless—

"(A) the Secretary convenes an advisory board in accordance with paragraph (4) to study the ethical implications of the research; and

"(B) the majority of the advisory board recommends that, on ethical grounds, the Secretary withhold funds for the research.

"(2) APPLICABILITY.—The limitation established in paragraph (1) regarding the authority to withhold funds on ethical grounds shall apply without regard to whether the withholding of funds is characterized as a disapproval, a moratorium, a prohibition, or other description.

"(3) PRELIMINARY MATTERS REGARDING USE OF PROCEDURES.—

"(A) If the Secretary makes a determination that an advisory board should be convened for purposes of paragraph (1), the Secretary shall, through a statement published in the Federal Register, announce the intention of the Secretary to convene such a board.

"(B) A statement issued under subparagraph (A) shall include a request that interested individuals submit to the Secretary recommendations specifying the particular individuals who should be appointed to the advisory board involved. The Secretary shall consider such recommendations in making appointments to the board.

"(C) The Secretary may not make appointments to an advisory board under paragraph (1) until the expiration of the 30-day period beginning on the date on which the statement required in subparagraph (A) is made with respect to the board.

"(4) ETHICS ADVISORY BOARDS.—

"(A) Any advisory board convened for purposes of paragraph (1) shall be known as an ethics advisory board (hereafter in this paragraph referred to as an 'ethics board').

"(B)(i) An ethics board shall advise, consult with, and make recommendations to the Secretary regarding the ethics of the project of biomedical or behavioral research with respect to which the board has been convened.

"(ii) Not later than 180 days after the date on which the statement required in paragraph (3)(A) is made with respect to an ethics board, the board shall submit to the Secretary, and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report describing the findings of the board regarding the project of research involved.

"(C) An ethics board shall be composed of no fewer than 14, and no more than 20, individuals who are not officers or employees of the United States. The Secretary shall make appointments to the board from among individuals with special qualifications and competence to provide advice and recommendations regarding ethical matters in biomedical and behavioral research. Of the members of the board—

"(i) no fewer than 1 shall be an attorney;

"(ii) no fewer than 1 shall be an ethicist;

"(iii) no fewer than 1 shall be a practicing physician;

"(iv) no fewer than 1 shall be a theologian; and

"(v) no fewer than one-third, and no more than one-half, shall be scientists with substantial accomplishments in biomedical or behavioral research.

"(D) The term of service as a member of an ethics board shall be for the life of the board. If such a member does not serve the full term of such service, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

"(E) The Secretary shall designate an individual from among the members of an ethics board to serve as the chairperson of the board.

"(F) In carrying out subparagraph (B)(i) with respect to a project of research, an ethics board shall conduct inquiries and hold public hearings.

"(G) With respect to information relevant to the duties described in subparagraph (B)(i), an ethics board shall have access to all such information possessed by the Department of Health and Human Services, or available to the Secretary from other agencies.

"(H) Members of an ethics board shall receive compensation for each day engaged in carrying out the duties of the board, including time engaged in traveling for purposes of such duties. Such compensation may not be provided in an amount in excess of the maximum rate of basic pay payable for GS-18 of the General Schedule.

"(I) The Secretary, acting through the Director of the National Institutes of Health, shall provide to each ethics board such staff and other assistance as may be necessary to carry out the duties of the board.

"(J) An ethics board shall terminate 30 days after the date on which the report required in subparagraph (B)(ii) is submitted to the Secretary and the congressional committees specified in such subparagraph.".

SEC. 3. RESEARCH CONCERNING THE TRANSPLANTATION OF FETAL TISSUE.

Part G of title IV of the Public Health Service Act (42 U.S.C. 289 et seq.) is amended by inserting after section 498 the following new section:

"SEC. 498A. RESEARCH ON TRANSPLANTATION OF FETAL TISSUE.

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) AUTHORITY.—The Secretary may conduct or support research concerning the transplantation of human fetal tissue for therapeutic purposes.

"(2) SOURCE OF TISSUE.—Human fetal tissue may be used in research carried out under the authority of paragraph (1) regardless of whether the tissue is obtained subsequent to a spontaneous or induced abortion or subsequent to a stillbirth.

"(b) INFORMED CONSENT OF DONOR.—

"(1) IN GENERAL.—With respect to research carried out under the authority of subsection (a), human fetal tissue may be used only if the woman providing the tissue provides a signed statement declaring that—

"(A) such woman donates such fetal tissue for use in research of the type described in subsection (a);

"(B) such donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of such tissue; and

"(C) such woman has not been informed of the identity of any such individuals.

"(2) CERTIFICATION OF CONSENT.—With respect to research carried out under the authority of subsection (a), human fetal tissue may be used only if the attending physician provides a signed statement declaring that—

"(A) the tissue has been donated in accordance with paragraph (1);

"(B) in the case of tissue obtained subsequent to an induced abortion, consent for such abortion was obtained prior to obtaining or requesting consent for the donation of such tissue; and

"(C) in the case of tissue obtained subsequent to an induced abortion, full and complete disclosure has been provided to the donor described in paragraph (1) with regard to—

"(i) such physician's interest in the research to be conducted with the donated tissue; and

"(ii) any known medical risks to such donor or risks to the privacy of such donor that might be associated with the retrieval of such tissue and that are in addition to risks of such type that are associated with the induced abortion.

"(c) Informed Consent of Researcher and Donee.—With respect to research carried out under the authority of subsection (a), human fetal tissue may be used only if the individual with the principal responsibility for conducting such research provides a signed statement declaring that such individual—

"(1) is aware that—

"(A) the tissue is human fetal tissue;

"(B) the tissue may have been obtained subsequent to a spontaneous or induced abortion or subsequent to a stillbirth; and

"(C) the tissue was donated for research purposes;

"(2) has provided such information to other individuals with responsibilities regarding the research; and

"(3) will require, prior to obtaining the consent of an individual to be a recipient of a transplantation of the tissue, written acknowledgment of receipt of such information by such individual recipient.

"(d) Availability of Statements for Audit.—

"(1) In general.—The Secretary, acting through the Director of the National Institutes of Health, shall require that each entity that applies for a grant, contract, or cooperative agreement under this Act for any project or program that involves the conduct of research of the type described under subsection (a) provide certification that the statements required under subsections (b)(2) and (c)(1) will be available for audit by the Secretary.

"(2) Confidentiality of audit.—Any audit conducted by the Secretary pursuant to paragraph (1) shall be conducted in a confidential manner to protect the privacy rights of the individuals involved in such research, including those individuals involved in donation, transfer, receipt, and transplantation of human fetal tissue. With respect to any material or information obtained pursuant to such audit the Secretary shall—

"(A) use such material or information only for the purposes of verifying compliance with the requirements set forth in this section;

"(B) not disclose or publish such material or information, except where required by Federal law, in which case such material or information shall be coded in a manner such that the identities of such individuals are protected; and

"(C) not maintain such material or information after completion of such audit, except where necessary for the purposes of such audit.

"(e) Applicability of State and Local Law.—

"(1) Research conducted by recipients of assistance.—The Secretary may not provide financial assistance for research conducted under the authority of subsection (a) unless the applicant for such assistance agrees to conduct the research in accordance with applicable State and local law.

"(2) Research conducted by Secretary.—The Secretary may conduct research under the authority of subsection (a) only in accordance with applicable State and local law.

"(f) Definition.—For purposes of this section, the term 'human fetal tissue' means tissue or cells obtained from a dead human embryo or fetus subsequent to a spontaneous or induced abortion, or a stillbirth.".

SEC. 4. PURCHASE OF HUMAN FETAL TISSUE; SOLICITATION OR ACCEPTANCE OF TISSUE AS DIRECTED DONATION FOR USE IN TRANSPLANTATION.

Part G of title IV of the Public Health Service Act, as amended by section 3 of this Act, is further amended by inserting after section 498A the following new section:

"SEC. 498B. PROHIBITIONS REGARDING HUMAN FETAL TISSUE.

"(a) Purchase of Tissue.—It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.

"(b) Solicitation or Acceptance of Donated Tissue for Use in Transplantation Research.—It shall be unlawful for any person or entity to knowingly solicit, acquire, receive, or accept a donation of human fetal tissue for the purpose of research involving transplantation of such tissue into another person if the donation affects interstate commerce, the tissue will be or is obtained subsequent to an induced abortion, and—

"(1) the donation will be or is made pursuant to a promise to the donating individual that the donated tissue will be transplanted into a recipient specified by such individual;

"(2) the donated tissue will be transplanted into a relative of the donating individual; or

"(3) the person or entity that knowingly solicits, acquires, receives, or accepts such donation has provided valuable consideration for the costs associated with such abortion.

"(c) Criminal Penalties for Violations.—Any person who violates subsection (a) or (b) shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

"(d) Definitions.—For purposes of this section:

"(1) The term 'human fetal tissue' has the meaning given such term in section 498A(f).

"(2) The term 'interstate commerce' has the meaning given such term in section 201(b) of the Federal Food, Drug, and Cosmetic Act.

"(3) The term 'valuable consideration' does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.".

SEC. 5. NULLIFICATION OF MORATORIUM.

(a) In General.—Except as provided in subsection (c), no official of the executive branch may impose a policy that the Department of Health and Human Services is prohibited from conducting or supporting any research on the transplantation of human fetal tissue for therapeutic purposes. Such research shall be carried out in accordance with section 498A of the Public Health Service Act (as added by section 3 of this Act), without regard to any such policy that may have been in effect prior to the date of the enactment of this Act.

(b) Prohibition Against Withholding of Funds in Cases of Technical and Scientific Merit—.

(1) In general.—In the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may not withhold funds for the research if—

(A) the research has been approved for purposes of section 492A(a) of the Public Health Service Act (as added by section 2 of this Act);

(B) the research will be carried out in accordance with section 498A of such Act (as added by section 3 of this Act); and

(C) there are reasonable assurances that the research will not utilize any fetal tissue that has been obtained in violation of section 498B(a) of such Act (as added by section 4 of this Act).

(2) Standing approval regarding ethical status.—In the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the issuance in December 1988 of the Report of the Human Fetal Tissue Transplantation Research Panel shall be deemed to be a report—

(A) issued by an ethics advisory board pursuant to section 492A(b)(4)(B)(ii) of the Public Health Service Act (as added by section 2 of this Act); and

(B) finding that there are no ethical grounds for withholding funds for such research.

(c) Authority for Withholding Funds From Research.—In the case of any research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may withhold funds for the research if any of the conditions specified in any of subparagraphs (A) through (C) of subsection (b)(1) are not met with respect to the research.

(d) Definition.—For purposes of this section, the term "human fetal tissue" has the meaning given such term in section 498A(f) of the Public Health Service Act (as added by section 3 of this Act).•

• Mr. KENNEDY. Mr. President, I am pleased to join in introducing this important legislation to end arbitrary and groundless restraint on biomedical research. The Research Freedom Act of 1991 will shield the Nation's premier biomedical research agency, the National Institutes of Health, from unreasonable prohibitions on exceptional and promising lines of research. The principal purpose of this legislation is to remove the administration's ban on fetal tissue transplantation research. That ban is unjustified on scientific, ethical, or humane grounds. Our bill will establish rational and fair procedures for review of medical research projects. The measure is intended to allow meritorious research to proceed without unreasonable or ideological obstructions.

By unilaterally imposing a ban on fetal tissue transplantation research, the administration has withheld support for research that has great promise for helping millions of Americans with otherwise incurable diseases. There is real potential for developing treatments for Parkinson's disease, Alzheimer's disease, diabetes, spinal cord injury, and other chronic diseases and disorders, including cancer and a wide range of birth defects and genetic diseases. For many of these afflictions, no other area of research offers promise of this magnitude.

It is difficult to imagine where we would be today had research with fetal tissue been similarly restricted 40 years ago. At that time, over 50,000 people were becoming infected with polio every year. Cultured human fetal cells were essential to growing the polio virus and to the research that led to the development of the polio vaccine. As a result of that research, polio was eradicated, and countless numbers of people in America and throughout the world have been spared the ravages of that disease.

The proposed research involving the transplantation of fetal tissue into humans has already passed the rigorous technical, scientific, and policy analysis of the merit review system at the NIH. Even the administration does not challenge the high scientific merit or potential medical value of such research. The NIH currently funds other research using fetal tissue—the administration objects only to federally funded research projects that would use fetal tissue, obtained from induced abortions, for transplantation to treat or cure disease. The NIH Human Fetal Tissue Transplantation Research Panel, appointed by the Reagan administration, concluded after extensive study that support for fetal tissue transplantation research is "acceptable public policy". The panel proposed guidelines and procedures to address concerns about maintaining separation between research and abortion.

The NIH panel included theologians, physicians, scientists, and lawyers, many of whom are opposed to abortion. They carefully considered, in public forums, the ethical, legal, and scientific ramifications of this research and voted overwhelmingly that it should go forward. The Advisory Committee to the Director of NIH unanimously approved the panel's report. Two NIH directors and one acting director have said that this research should proceed. Yet, the administration prohibits it.

The administration has deviously called its ban an "indefinite moratorium," in order to circumvent the normal regulatory process and reduce public scrutiny. The Department of Health and Human Service's own counsel has advised that the ban likely fits within the definition of a "rule." He wrote that failure to codify the policy in the Federal Register, "opens a window of potential legal vulnerability" for the ban.

The administration has attempted to justify its ban by claiming that fetal tissue transplantation research will increase the incidence of abortion. The NIH Task Force found no evidence to support this assertion—and some evidence to refute it. The administration itself has been unable to present any evidence to Congress to substantiate its assumption. In fact, recent success in the private sector with fetal-to-fetal transplantation to correct genetic defects could actually lead to reductions in the incidence of abortion, if the research were to receive Federal support.

At the present time, the oversight of privately funded fetal tissue transplantation is inadequate, since there are no Federal guidelines to protect participants. This measure will put such guidelines into place for both the public and private sectors. It establishes safeguards recommended by the NIH Task Force.

The decision to terminate a pregnancy is highly personal and complex. There is no evidence to suggest that women will be more likely to have abortions because of the knowledge that fetal tissue can be used for medical research. Fetal tissue has been used for research since the 1950's, with no link to the incidence of abortion. Such an incentive is especially unlikely, since there would be no assurance that the tissue from a particular fetus could or would be used for research.

Nevertheless, to prevent such an unlikely incentive for abortion, safeguards are included in the measure to ensure that consent to donate tissue is neither requested nor obtained until after a woman consents to undergo an abortion. The measure makes it unlawful to purchase human fetal tissue or to donate tissue to a designated recipient or family member. Any party involved in obtaining or using fetal tissue is prohibited from paying for the abortion. The bill provides criminal penalties for violations, and imposes stricter standards than now apply for other types of organ donation.

With these safeguards, any potential incentives for abuse will be removed. No profit could be derived from providing the tissue for research. No family member or friend could benefit from a woman's abortion.

The bill will also prevent similar ideological interference with other biomedical research proposals. The administration has arbitrarily withheld funds for other scientifically approved research proposals on in vitro fertilization and sexual behavior. Such unilateral action will be prohibited by this legislation. Instead, the bill will require the administration to convene an ethics advisory board to address ethical concerns that arise in connection with research products that are approved on scientific grounds. Only when a majority of the board recommends that funds be withheld can research be stopped. This measure will restore the freedom of inquiry that is essential to the continued success of the country's biomedical research.

It is likely that every Member of the Senate has a family member, a friend, or knows someone with diabetes, Alzheimer's disease or Parkinson's disease. All of these patients and millions of others could benefit from this research. Our colleague Mo Udall had been planning to undergo transplantation therapy this summer to relieve his Parkinson's disease, before other complications intervened.

This bill is an important step for medical research and better health care for large numbers of our people. It has already passed the House as part of the legislation reauthorizing NIH, and I urge my colleagues to support it.●

By Mr. SIMON (for himself, Mr. MACK, and Mr. DECONCINI):

S.J. Res. 224. Joint resolution designating March 1992 as "Irish-American Heritage Month"; to the Committee on the Judiciary.

IRISH-AMERICAN HERITAGE MONTH

● Mr. SIMON. Mr. President, I rise today to introduce a joint resolution to designate March 1992 as "Irish-American Heritage Month." This resolution will nationally recognize the many contributions Irish-Americans have made throughout our Nation's history.

Approximately 40.7 million Americans are of Irish-American descent. From Andrew Jackson, our seventh President, to James Hoban, the man who designed the White House, Irish-Americans have played an integral role in shaping our national heritage. Artists, playwrights, social reformers, inventors, and politicians, including eight signers of the Declaration of Independence, are only a fraction of the many Irish-Americans who have helped enrich our great Nation. Their legacy and achievements will be better appreciated by the celebration of "Irish-American Heritage Month."

America is known as the melting pot of the world. Our national heritage is not the product of just one culture or one tradition, but takes the contributions of all the peoples of the world and combines them into the wonderful, colorful and diverse society called America. This resolution honors one of those proud traditions. I am pleased to sponsor this joint resolution and look forward to celebrating "Irish-American Heritage Month."●

ADDITIONAL COSPONSORS

S. 267

At the request of Mr. REID, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 267, a bill to prohibit a State from imposing an income tax on the pension or retirement income of individuals who are not residents or domiciliaries of that State.

S. 614

At the request of Mr. DASCHLE, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 614, a bill to amend title XVIII of the Social Security Act to provide coverage under such title for certain chiropractic services authorized to be performed under State law, and for other purposes.

S. 747

At the request of Mr. PRYOR, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 747, a bill to amend the Internal Revenue Code of 1986 to clarify portions of the Code relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from Missouri

[Mr. BOND] was added as a cosponsor of S. 879, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of certain amounts received by a cooperative telephone company indirectly from its members.

S. 1159

At the request of Mr. GORE, the names of the Senator from Colorado [Mr. WIRTH] and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 1159, a bill to provide for the labeling or marking of tropical wood and tropical wood products sold in the United States.

S. 1332

At the request of Mr. GRASSLEY, the names of the Senator from Oregon [Mr. HATFIELD] and the Senator from Florida [Mr. MACK] were added as cosponsors of S. 1332, a bill to amend title XVIII of the Social Security Act to provide relief to physicians with respect to excessive regulations under the Medicare Program.

S. 1346

At the request of Mr. SYMMS, the names of the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 1346, a bill to amend the Internal Revenue Code of 1986 to provide for a 50-percent-of-occupancy rule with respect to the valuation of seats on corporate aircraft on a legitimate business flight when those seats would have otherwise gone unoccupied.

S. 1357

At the request of Mr. BREAUX, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 1357, a bill to amend the Internal Revenue Code of 1986 to permanently extend the treatment of certain qualified small issue bonds.

S. 1372

At the request of Mr. GORE, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1372, a bill to amend the Federal Communications Act of 1934 to prevent the loss of existing spectrum to Amateur Radio Service.

S. 1479

At the request of Mr. GRASSLEY, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1479, a bill to amend the Public Health Service Act to reauthorize certain programs with respect to health care areas, to provide for the establishment of model programs in behavioral health, and for other purposes.

S. 1737

At the request of Mr. DOLE, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 1737, a bill to prohibit the import from Yugoslavia of defense articles on the United States munitions list.

S. 1776

At the request of Mr. KENNEDY, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 1776, a bill to amend the Immigration and Nationality Act with respect to the admission of O and P nonimmigrants.

S. 1793

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1793, a bill to restrict United States assistance for Serbia or any part of Yugoslavia controlled by Serbia until certain conditions are met, and for other purposes.

S. 1848

At the request of Mr. KENNEDY, the names of the Senator from Indiana [Mr. COATS] and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of S. 1848, a bill to restore the authority of the Secretary of Education to make certain preliminary payments to local educational agencies, and for other purposes.

S. 1865

At the request of Mr. ROTH, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 1865, a bill to amend the Internal Revenue Code of 1986 to provide for a reduction in individual income tax rates, a new individual retirement account and incremental investment tax credit.

SENATE JOINT RESOLUTION 133

At the request of Mr. HOLLINGS, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of Senate Joint Resolution 133, a joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research.

SENATE JOINT RESOLUTION 196

At the request of Mr. SIMON, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of Senate Joint Resolution 196, a joint resolution to designate October 1991 as "Ending Hunger Month."

SENATE JOINT RESOLUTION 217

At the request of Mr. HATFIELD, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from Nebraska [Mr. EXON], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of Senate Joint Resolution 217, a joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian."

SENATE CONCURRENT RESOLUTION 69

At the request of Mr. CRANSTON, the names of the Senator from Arizona [Mr. DECONCINI], the Senator from Virginia [Mr. ROBB], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of Senate Concurrent Resolution 69, a concurrent resolution concerning freedom of emigration and travel for Syrian Jews.

SENATE RESOLUTION 212—COMMENDING THE MINNESOTA TWINS AS THE 1991 WORLD CHAMPIONS OF BASEBALL

Mr. DURENBERGER (for himself and Mr. WELLSTONE) submitted the following resolution; which was considered, amended, and agreed to; as follows:

S. RES. 212

Whereas baseball fans around the world have been treated to the most exciting and well-played World Series in history;

Whereas this was the first World Series ever pitting two last place finishers from the previous year;

Whereas both teams received tremendous support from their cities and from fans around the country and the world;

Whereas the Atlanta Braves showed amazing skill and grit under pressure, both in the series and throughout the season;

Whereas the Minnesota Twins put on a remarkable display of total baseball, combining outstanding pitching, great defense, and timely hitting;

Whereas Twins mainstays Kirby Puckett and Jack Morris performed like the superstars they are and were supported by a succession of different heroes every night;

Whereas the Twins are one of the most respected organizations in professional sports through the good work of Owner Carl Pohlad, General Manager Andy McPhail, President Jerry Bell, and Manager Tom Kelly;

Whereas the entire series was conducted with the highest level of athletic skill, personal character, and sportsmanship; Now therefore, be it

Resolved, by the Senate of the United States: That the Atlanta Braves and the Minnesota Twins be commended for their outstanding play and the credit they have brought to "our national pastime," and that the Minnesota Twins are congratulated for being 1991 World Champions of baseball.

AMENDMENTS SUBMITTED

COMMENDING THE MINNESOTA TWINS AS THE 1991 WORLD CHAMPIONS OF BASEBALL

DURENBERGER AMENDMENT NO. 1298

Mr. DURENBERGER proposed an amendment to the resolution (S. Res. 212) commending the Minnesota Twins as the 1991 World Champions of Baseball, as follows:

Amend the seventh paragraph to read as follows:

Whereas the Twins are one of the most respected organizations in professional sports through the good work of owner Carl Pohlad, general manager Andy McPhail, president Jerry Bell, and Manager Tom Kelly; and

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1992

HELMS AMENDMENT NO. 1299

Mr. HELMS proposed an amendment to the amendment of the House to the amendment of the Senate numbered 164 to the bill (H.R. 2686) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes, as follows:

"SEC. . Notwithstanding any other provision of law, none of the funds made available to the National Endowment for the Arts under this Act may be used to promote, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs.".

KASTEN (AND OTHERS) AMENDMENT NO. 1300

Mr. KASTEN (for himself, Mr. MURKOWSKI, Mr. KOHL, and Mr. SIMPSON) proposed an amendment to the amendment of the House to the amendment of the Senate numbered 175 to the bill H.R. 2686, supra, as follows:

An Amendment No. 175. Insert before the ".": ": *Provided further*, That within the funds appropriated in this bill for Fossil Energy Research and Development, $5,000,000 shall be made available for planning, design and initial construction of the Heartland project".

EMERGENCY DROUGHT RELIEF TO THE RECLAMATION STATES

CRANSTON (AND SEYMOUR) AMENDMENT NO. 1301

Mr. BRYAN (for Mr. CRANSTON, for himself and Mr. SEYMOUR) proposed an amendment to the bill (H.R. 355) to provide emergency drought relief to the Reclamation States, and for other purposes, as follows:

At the end of subsection 102(d) add the following new sentence: "Water made available by the Secretary in 1991 from the Central Valley Project, California, to the Grasslands Water District for the purpose of fish and wildlife shall be nonreimbursable.".

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold a hearing on Asian Organized Crime.

This hearing will take place on Tuesday, November 5 and Wednesday, November 6, 1991, at 10 a.m. in room 342 of the Dirksen Senate Office Building. For further information, please contact Daniel Rinzel of the subcommittee's minority staff at 224-9157.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON EDUCATION, ARTS AND HUMANITIES

Mr. BRYAN. Mr. President, I ask unanimous consent that the Subcommittee on Education, Arts and Humanities of the Committee on Labor and Human Resources and the Joint Economic Committee be authorized to meet during the session of the Senate on Thursday, October 31, 1991, at 9 a.m., for joint hearing on "Technology in the Classroom: The Last Mile."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EAST ASIAN PACIFIC AFFAIRS

Mr. BRYAN. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Foreign Relations Committee be authorized to meet during the session of the Senate on Thursday, October 31, at 2:30 p.m. to hold a hearing on U.S. Security Policy in East Asia.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TERRORISM, NARCOTICS AND INTERNATIONAL OPERATIONS

Mr. BRYAN. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Narcotics and International Operations of the Foreign Relations Committee be authorized to meet during the session of the Senate on Thursday, October 31, at 10:30 a.m. to hold a closed hearing on the narcotics and foreign policy implications of the BCCI affair.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TOXIC SUBSTANCES, ENVIRONMENTAL OVERSIGHT, RESEARCH AND DEVELOPMENT

Mr. BRYAN. Mr. President, I ask unanimous consent that the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, October 31, beginning at 2 p.m., to conduct a markup on S. 1655, the Environmental Research, Development, and Demonstration Authorization Act of 1991.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. BRYAN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, October 31, 1991, at 6 p.m., in closed session, to discuss conference on H.R. 2100, the National Defense Authorization Act for fiscal years 1992 and 1993.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO BAY RABINOWITZ

• Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to Bernard "Bay" Rabinowitz, a New Jerseyite whose commitment to his community and to improving the life of others is unparalleled in selflessness and dedication.

On November 13, 1991, Temple B'nai Israel in Nutley, NJ, will honor Bay for his life of good works and service to New Jersey. I join in paying tribute to Bay and am proud to bring this occasion to the attention of my colleagues.

In many ways, Mr. President, Bay has lived out the American Dream. A product of the New Jersey public school system, Bay studied and graduated from the prestigious Massachusetts Institute of Technology. He served his country as a first lieutenant with the U.S. Third Army in the European Theater during World War II.

After the war, Bay returned home, as did so many others, to start his life anew and launch a career in business. It was a career marked with great success, highlighted by his serving as president and chief executive officer of Atlantic Industries for 18 years.

Despite these impressive career achievements, Bay Rabinowitz, has never been content to simply do well for himself. Mr. President, anyone who knows Bay understands that the real motivating force in his life has been to make a social contribution and to help others. Business success may have provided Bay and his family with security and a personal sense of pride in doing a job well, but service has given his life meaning.

Bay's commitment to improving health care, and expanding access to it by keeping costs down, is typical of his desire to be of service, to make things work for others. He has never believed that top notch medical care is a benefit to be enjoyed only by the wealthy. He sees it as a basic right for all people.

For over 30 years, Bay has worked actively to improve health care for all New Jerseyites. He has served as chairman of the health department evaluation board in Nutley, was named to the New Jersey Rehabilitation Commission task Force, served as State chairman of the New Jersey Conference on Aging, as first president of the low cost psychotherapy plan, twice as chairman of the Essex County Mental Health Association Board, and from 1977–79 as vice chairman of the New Jersey State Health Coordinating Council and as its chairman from 1980–82.

The list continues to include membership on the executive committee of the Center for Molecular Medicine and Immunology from 1986–87, as chairman of the blue ribbon task force on local health planning in 1986, and as vice chairman of the cardiac services task force.

After retiring from Atlantic Industries, Bay became chairman of the Board of the United Hospitals Medical Center in Newark. A full-time job for most people, this extraordinary man still finds the time to devote himself to many other activities. He continues to serve on the board of the St. Barnabas Burn Foundation and is a member of the Citizen's Commission on AIDS for New York and New Jersey.

In addition to his important work in health care, Bay has been involved in numerous other State and community projects. He has served on the advisory board of center for technology, policy and industrial development at his alma mater, MIT, on the Statue of Liberty Centennial Commission for the State of New Jersey, and served on the board of chosen freeholders in Essex County, NJ.

Bay gets great joy from life and enjoys nothing more than giving back to the community that he believes has been so generous to him and his family. By anyone's measure, he has been enormously successful in business, and it is an accomplishment he can be proud of. But, his real satisfaction comes from his efforts to improve the quality of life for others.

Anyone who encounters Bay has to be touched by his humanity, his charm, his sharp mind, his gentle wit, his selflessness, and his innate goodness. When I think of Bay, I think of a model American. He is a man who believes in democracy and takes seriously the obligations that come with it. He understands that we as individuals share a common bond, and a common responsibility, with one another. Bay is an individual to be respected, emulated, and cherished.

Mr. President, to know Bay is a pleasure; to have been touched by his good works has been, for many, a God send. Seldom have I been so fortunate to witness such pure generosity in a human being. I am honored to call Bay my friend.

Thus, it is with pride that I join with Temple B'nai Israel and the citizens of Nutley in honoring Bay Rabinowitz. Dedicated husband and father, successful businessman, and committed public servant, Bay truly embodies the spirit of giving. I can think of no one more deserving of honor and recognition.•

THE 50TH ANNIVERSARY OF THE SINKING OF THE U.S.S. "REUBEN JAMES"

• Mr. WARNER. Mr. President, a few weeks ago a small group of men held a gathering in Washington that drew little attention from the press or official Washington. They were a group of the survivors of the U.S.S. *Reuben James*: the first U.S. warship sunk in World War II. And although I was unable to join them as they gathered at the U.S. Navy Memorial to remember their fellow seamen who have gone before them, I want to take this moment to pay due tribute to those brave sailors who lost their lives in the service of their country 50 years ago today.

On October 31, 1941, a German U-boat torpedoed and sank the U.S.S. *Reuben James*. Of the 160 crew members only 45 were rescued by nearby ships. Many of the survivors from the crew have dutifully remained in contact in the 50 years that have followed the horrible event that drew them together. I admire their commitment to each other, the commitment to their fallen mates, and their commitment to their country.

Mr. President, modern history has seen countless lives lost in war. It is only through remembering those who gave themselves in duty that such loss is given meaning, and, ultimately, that we may learn from history. I salute those members of the crew of the *Reuben James* who came together in Washington earlier this month, and I join them in tribute to the honored dead of their crew.•

S. 646—APPOINTMENT OF NEW BANKRUPTCY JUDGES

• Mr. FOWLER. Mr. President, I rise to engage my distinguished colleague from Arizona, Mr. DECONCINI, on a matter regarding S. 646, the recently passed Senate legislation authorizing the appointment of a number of new bankruptcy judges. The bill, authored by Mr. DECONCINI and reported by the Senate Judiciary Committee, passed the Senate on August 2, 1991. In the case of the State of Georgia, S. 646 authorizes the appointment of three additional judges. In addition to creating two new judgeships for the northern district of Georgia, the text of the bill explicitly creates one new judgeship for the middle district of Georgia. With regard to the new judge authorized for the middle district, the committee report that accompanies S. 646 recommends that this judge be shared by the middle and southern districts of Georgia. It is my understanding that this report language was included by the Judiciary Committee in an attempt to follow the recommendation made by the Judicial Conference of the United States that one additional judgeship be created for and shared by the middle and southern districts of Georgia. Is that correct?

Mr. DECONCINI. That is correct.

Mr. FOWLER. It is my belief that the Judiciary Committee's adherence to the Judicial Conference's recommendation for a shared judge between the two districts would have been made clearer if the text of the bill itself had mentioned both the middle and southern districts in the appropriate authorizing clause. Does the Senator agree?

Mr. DECONCINI. Yes, I agree. The inclusion of a clause in the text of S. 646 that names only the middle district of Georgia rather than both the middle and southern districts of Georgia was a drafting oversight. It was the intention of the Judiciary Committee to follow the recommendation of the Judicial Conference and create a judgeship to be shared by the middle and southern districts.

Mr. FOWLER. I thank the Senator from Arizona for this clarification.•

IN RECOGNITION OF FAYE SARKOWSKY

• Mr. GORTON. Mr. President, thank you for allowing me this opportunity to recognize the commitment and dedication of an outstanding individual from the State of Washington—Faye Sarkowsky.

On September 23, 1991, the YWCA of Seattle-King County honored Mrs. Sarkowsky by naming her the 1991 recipient of the Isabel Colman Pierce Award for Excellence in Community Service. It is with great pleasure that I take this moment on the floor of the Senate of the United States to congratulate Mrs. Sarkowsky on receiving this award. It is a fitting reflection of the many lives she has influenced throughout her years of service.

On behalf of the citizens of Seattle, King County, and the State of Washington, I applaud Faye Sarkowsky and her commitment to community service.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Michelle Maynard to participate in a program in Germany sponsored by the Konrad Adenauer Foundation on November 9–16, 1991.

The committee has determined that participation by Ms. Maynard in this program, at the expense of the Konrad Adenauer Foundation is in the interest of the Senate and the United States.•

LOST OPPORTUNITY FOR BOLD NEW STEPS IN HOUSING PROGRAMS

• Mr. MCCAIN. Mr. President, I rise today to express my deep concerns about the housing provisions of H.R. 2519, the appropriations bill that will fund Federal housing programs in fiscal year 1992. While I supported this bill as passed by the Senate, I must express my great dismay at the lack of support the conference agreement gives to the administration's housing initiatives.

Last year the Congress and the administration joined together to pass the National Affordable Housing Act, a bold and significant step in Federal housing policy. This bill, signed into law with strong bipartisan support, improved the way the Federal Government will aid communities and citizens in need of decent, affordable housing.

I supported the National Affordable Housing Act, and I have eagerly awaited this year's appropriations process, hoping that the funds necessary to sufficiently get its new housing initiatives up and running would be allocated by the Congress. Unfortunately, as the fiscal year 1992 process draws to a close, I regret to state that the Congress has clearly stumbled by suffocating much of the promise of this law.

After being passed by both the Senate and House, H.R. 2519 has taken a serious turn for the worse. President Bush's HOPE Program, developed under the visionary and resolute leadership of HUD Secretary Jack Kemp, has been drastically underfunded.

I firmly believe that HOPE will become an outstanding example of the type of domestic program reform we need in this Nation. HOPE will provide grants to low-income families to enable them to become homeowners for the first time. Instead of perpetuating a reliance on Federal housing subsidies, the HOPE Program will promote tenant ownership of housing units, and allow public housing tenants to achieve the dream of home ownership.

Sadly, the conferees agreed to a first year budget for HOPE that is 60 percent less than the President's budget request, and almost $100 million less than approved by the Senate in July. From this inauspicious beginning, the bill's housing provisions continue to go downhill.

The HOME Investment Partnership Program—a heralded new block grant to States, local communities, and nonprofit groups—has been contorted in the appropriations process. While they adequately funded HOME, the conferees have changed the program to one that could fall prey to the same inefficiencies that devastated public confidence in past Federal housing programs.

Several aspects of HOME merit careful scrutiny over the next year. The Congress has delayed the local matching requirement for the receipt of HOME funds for 1 year. While I fully recognize the fiscal relief this offers cities facing budget difficulties, it also removes a crucial, fundamental principal of HOME: That an active Federal, State, and local partnership is vital to meeting the housing needs of low-income Americans. A local match for HOME funds would undoubtedly ensure a greater commitment to the judicious use of limited taxpayer dollars, as well.

Even more distressing is the elimination of important incentives in the HOME Program for tenant-based assistance and rehabilitation. I fear that the conferees have shaped HOME in such a way that it will merely function as a federally funded trough for costly new public housing construction.

Mr. President, this is a disservice to not only the people of Arizona, but to all Americans who are concerned about increasing housing opportunities for low-income citizens. If there is one lesson the Congress should have learned about Federal housing policy, it's that massive new construction efforts are extremely expensive; they take years to offer any real benefit to the needy; they subsidize developers at the expense of the additional families languishing on public housing lists that could be served; and they have been plagued by scandal and abuse.

It is astounding that some of my colleagues persist in supporting vast expansions of new public housing construction, when over 100,000 dilapidated, vacant units stand as clear testimony to its flaws and wastefulness. I wholeheartedly share Secretary Kemp's intense frustration at the extent to which H.R. 2519 will misdirect public housing funds for new construction. The $700 million that the conference agreement contains for new construction could be put to far better use as housing vouchers or certificates.

Finally, this appropriations bill zeroed out funding for the rental housing component of the Shelter Plus Care Program for the homeless. Shelter Plus Care is an attempt to tie in Federal, State, and local resources to offer comprehensive services to the homeless. We need to offer the homeless more than temporary, emergency shelter, and this program was a constructive step forward in integrating housing, substance abuse, and other supportive services. I hope the Congress will reverse this omission during next year's appropriation process.

Mr. President, I must express my admiration and tremendous respect for the Secretary of HUD, Jack Kemp. Secretary Kemp is a man of remarkable ability, insight, and determination, and in my view he has clearly been the finest Secretary in the Department of Housing and Urban Development's history. Let the demagogues and professional cynics who attack the President for not having a domestic agenda take a look at the innovative programs and reforms led by Secretary Kemp. Let everyone concerned about providing decent housing for needy Americans review his unyielding leadership in retooling Federal housing programs to serve the poor—not special interest groups.

In expressing my concerns about the housing provisions of H.R. 2519, I do want to recognize the hard work of Senator MIKULSKI in drafting the clearly preferable Senate version of this bill. I'm thankful to Senator MIKULSKI, and the ranking minority member, Senator JAKE GARN, for their strong support of many programs that are vital to Arizona. These include services for native Americans and environmental protection.

The leadership of the Appropriations Subcommittee for VA, HUD, and Independent Agencies faced numerous competing interests of considerable importance. As best evidenced by the debate over space programs, Senator MIKULSKI and Senator GARN had an uphill struggle in attempting to balance the requests of many Members of Congress, the administration, and various constituencies.

Mr. President, I hope that next year the Congress can address some of the obvious shortcomings in Federal funding for housing programs. I pledge to do what I can to help recapture some of the opportunities for promise and reform that have been lost in H.R. 2519.•

TRIBUTE TO WILLIAM RUSSELL MOTE

• Mr. MACK. Mr. President, this week marks the 85th birthday of William R. Mote, and I would like to take a moment to honor Bill for his contributions to oceanographic and marine studies in Florida.

William Russell Mote was born in Tampa, FL, October 29, 1906, the son of Mr. and Mrs. Leroy Mote. He developed a love for the sea and the life it holds, and during his high school years in Tampa frequently explored the west coast of Florida and adjoining Gulf of Mexico.

After graduation from high school, business interests took him to New York City, Chicago, San Francisco, and Los Angeles, where he became an expert in the field of transportation. In 1940, he founded the Republic Carloading and Distributing Co., a nationwide transportation service. In 1944, his company popularized the piggyback concept, making it practical and profitable for the first time to transport large trailers and containers on flatcars across the United States.

In the last 25 years Bill has generously provided support for a variety of scientific and cultural projects, and since 1966 has been the principal benefactor of the Mote Marine Laboratory—formerly Cape Haze Marine Laboratory. The laboratory is devoted to the research and education fields of the marine and environmental sciences. In 1978, the laboratory relocated to new, expanded facilities on City Island, Sarasota, on property made available by the city of Sarasota and Arvida. Bill has served as the board of trustees president since 1967.

Bill has not been content to play only a passive role in the field of oceanography, however, and the list of oceanographic excursions and expeditions that he has organized and sponsored gives evidence of his boundless enthusiasm and vitality.

In 1964, Bill was asked by Governor Haydon Burns to serve on the Florida Council of 100, Committee on Oceanography, and played an active role in the deliberations of that committee. In 1968, Bill was the recipient of the Gold Medal Award of the International Oceanographic Foundation, which annually recognized "the nonprofessional who has done the most in the past year to promote the study of the sea."

Since the laboratory's move to City Island, Sarasota, Bill's most consuming interest is the laboratory named in his honor. Approximately one-half of his time is devoted to planning and financial support for the laboratory's development. Thanks to his generous help, the laboratory has become a major marine institution devoted to studies in biomedicine, fish enhancement, environmental assessment, coastal ecology, marine mammals and sea turtles, and the host of problems that affect the bays and estuaries of west Florida.

In summary, Bill, through his active interest and generous support for the marine sciences and the development of programs of research and education, has added importantly to the science of oceanography. At 85 years of age, he still remains dynamic and more enthused about marine science than ever.•

HARNEY AND LAKE COUNTIES LAND ACQUISITION

• Mr. HATFIELD. Mr. President, I wish to take a moment to make a short statement for the record with regard to Federal and acquisitions in eastern Oregon.

Nearly 75 percent of eastern Oregon is now owned by the Federal Government through such agencies as the Forest Service and the Bureau of Land Management. While counties in the region receive payments under the Payments in Lieu of Taxes Act [PILT] to compensate for their lost property tax revenue, many of these counties are now at the ceiling imposed by PILT. As a result, any new acquisitions by these agencies will come at the expense of local tax revenues and the services provided by local units of government.

The fiscal year 1992 Interior and Related Agencies Appropriations Act appropriates $2 million for the purchase of ranch lands on Steens Mountain in Harney County, OR. But two points must be made clear with regard to the language relating to that appropriation, and with respect to the intent of the conference managers:

First, the $2 million appropriated in this bill cannot be expended to acquire land in Harney or Lake Counties if the purchase would result in a net loss to the county tax bases; and

Second, the BLM shall not implement land exchanges in Harney or Lake Counties which result in a net loss to the county tax bases.

Mr. President, it is the clear intent of the conferees that land acquisitions should be accomplished to the greatest extent possible through land exchange. That has been the policy of the last two administrations, and it is one I strongly support. The $2 million appropriated here shall be expended only to acquire those lands which cannot be acquired by exchange. At the same time, expenditure of the appropriation should not be necessary, and shall not proceed, until title on those lands to be exchanged has been transferred.

I am hopeful this language can serve as a model for all future land exchanges so that the interests and resources of county governments can be preserved. There will be times when it is in the public interest for the Federal Government to acquire properties. This approach will protect the public interest, it will protect the interest of the property owner seeking the transfer, and it assures that local governments are consulted as partners when land acquisitions are proposed. In the future, land acquisitions should be accomplished only when lands of equivalent value are exchanged within the county of acquisition.•

THE MEDICAID MORATORIUM AMENDMENTS OF 1991

• Mr. McCONNELL. Mr. President, I rise today to speak about a bill I introduced, the Medicaid Moratorium Amendments of 1991.

Mr. President, at this moment, the States of this great Nation are facing a crisis of unprecedented urgency in their Medicaid programs. These programs, which serve our country's most needy citizens, have been called upon time and time again, by the Federal Government, to expand their coverage of Medicaid recipients. It is time for the Federal Government to stop passing the buck and make good on its commitment to Medicaid.

The fact is, Mr. President, that many States are in the midst of budget crises which are equally as bad as the Federal Government's, if not worse. These States have been forced to be extremely creative in their gathering of funds for Medicaid programs and thus we have seen a dramatic rise in the use of provider tax funds, and voluntary donation programs. These programs enable States to obtain increased matching funds from the Federal Government which States are then able to use to provide more services to Medicaid recipients.

Some people have described these programs as "scams." I want to address that charge directly. Last October, negotiations were held between Congress and the Health Care Finance Administration [HCFA] which led to statutory language specifically allowing States the use of revenues from taxes on hospitals and other providers to help pay for Medicaid programs. The only exception in the statutory language is the voluntary contribution option, which as a result of the negotiations were to have been eliminated with a 1-year phase-out period.

So I must ask, Mr. President, if Public Law 101-508 of the Omnibus Budget Reconciliation Act of 1990 clearly sanctions the use of provider-specific taxes as a Medicaid matching source, then how is this a scam? The only scam occurring with regards to this issue is the fact that the regulations which HCFA are proposing are illegal.

Furthermore, Mr. President, when the American public hears the word "scam," I think they picture money which is used for frivolous causes. Let us make ourselves absolutely clear about what the funds that are being raised through these provider taxes are paying for. In Alabama, $174 million in State fiscal year 1992 tax receipts were used for pregnant women and infants up to 133 percent of the poverty level; for an Omnibus Budget Reconciliation Act [OBRA] 1990 mandate for older children; for ongoing and new medical services costs; for disproportionate share hospital payments.

In Arkansas, South Carolina, and my State, Kentucky, a total of $231 million in tax receipts were used to pay for mandated eligibility expansions. At least eight States have used a total of $1 billion to pay for a disproportionate share of hospital payments. Again, Mr. President, I must ask, do these programs, which provide millions of dollars in assistance to pregnant women, young children, and indigent care seekers in hospitals, sound like scams?

My colleagues in Congress have cried time and time again for improved health care services in our country, but no one is willing to pay for it. The people that will be hurt by these regulations are the people in our country who are already the most vulnerable. I submit, Mr. President, that we should not be balancing the budget on the backs of disadvantaged mothers and children.

This bill does simply this: It provides for 1 year for the States to continue both their voluntary donation, and provider tax programs. This additional year would give Congress more time to designate which programs will remain legal, and will give States more time to act accordingly so that Medicaid recipients in their jurisdiction will not suffer unduly. This bill is a companion bill to H.R. 3595, introduced in the House by Representative WAXMAN. The Congressional Budget Office's [CBO] estimates for this bill are zero. Because these programs are already a part of the budget baseline, they would not be considered an additional financial strain to the budget.

Mr. President, this is truly an urgent matter for the many States these regulations will affect. These federal matching funds are crucial to the Medicaid programs in these States. If they are taken away, the poorest of our country's citizens will be placed at further risk of inadequate health care. If we really want to do something about infant mortality rates in this country, or adequate prenatal services, or the unavailability of health care to people who cannot afford it, then we must make the financial commitment.●

PROF. ANITA HILL

● Mr. SIMON. Mr. President, when Justice Thomas took his oath of office, he indicated that the time had come for healing. I certainly agree with that, and I applaud the Justice for that statement. I also think it is important, however, to ensure that the many accusations made against Anita Hill during the hearing be addressed as more information becomes available.

Toward that end, I would like to enter into the RECORD a letter from Mr. Donald H. Green, who was a partner at the law firm of Wald, Harkrader & Rodd during the time Professor Hill was an associate there. The letter responds to an affidavit submitted by Mr. John Burke, another partner at Wald, Harkrader & Ross at that time. Mr. Burke's affidavit was to the effect that Professor Hill's performance evaluation at the firm was unsatisfactory, and that she was asked to leave the firm.

At that time, Mr. Green was chairman of the firm's associate development committee, which was responsible for evaluation of Professor Hill's performance. Mr. Green's letter states that Professor Hill's performance was not unsatisfactory, that she was not asked to leave the firm, and that she left of her own volition. Moreover, according to Mr. Green, the firm's records show that: First, there is no indication that Professor Hill ever worked with Mr. Burke or under his supervision; and second, Mr. Burke was never a member of the associate development committee, nor was he given the authority to act on the firm's behalf to terminate associates.

Because of the short time to prepare for the hearings, not all of the relevant facts were entered into the RECORD. To help achieve healing and fairness for all concerned and to ensure the accuracy of Professor Hill's employment history, I would like this letter entered into the RECORD, along with the attached affidavits.

The material follows:

PEPPER, HAMILTON & SCHEETZ,
Washington, DC, October 21, 1991.

Re: Prof. Anita Hill.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building Washington, DC.

DEAR SENATOR BIDEN: I write to correct an unfair and false impression of Professor Anita Hill's performance at the law firm of Wald, Harkrader and Ross created by the affidavit of John Burke, Esquire, a former Wald, Harkrader and Ross partner, filed with the Committee on October 13, 1991.

During Professor Hill's tenure at Wald, Harkrader and Boss in 1980–1981, I was chairman of the firm's Associate Development Committee, which was responsible for associate evaluation I accordingly have direct knowledge of Professor Hill's performance evaluation. On October 14, 1991, I learned through inquiries from the press, that Senator Danforth had released a statement to the effect that a former partner of Wald, Harkrader and Ross had told the Committee that Professor Hill's performance had not been satisfactory and that she had been asked to leave the firm. I immediately prepared and sent to you my own affidavit which stated that Professor Hill's performance at the firm had not been unsatisfactory, that she was not asked to leave the firm, and that she had left of her own volition to pursue an alternative professional path. I said that my memory of the events was clear and that I had contacted the other two members of the Associate Development Committee and they concurred in my recollection. My interest in submitting the affidavit was not to oppose the nominating of Judge Thomas but to assure that in the Committee's consideration of the nomination Professor Hill received fair treatment. A copy of my affidavit is enclosed for your convenience.

At the time I submitted my affidavit, I had not seen the affidavit of Mr. Burke. I have now obtained a copy which I enclose. I have also had an opportunity to examine further the remaining files of Wald, Harkrader and Ross, which merged with my present firm in 1987.

The firm's records show that:

(1) Contrary to Mr. Burke's affidavit, there is no indication that Professor Hill ever worked on any legal matter with Mr. Burke or under his direct or indirect supervision or on assignment for him.

(2) Professor Hill did perform a brief assignment for another partner more senior to Mr. Burke in the field of law in which Mr. Burke practices. Professor Hill's work was favorably reviewed by that partner.

(3) There was another first-year African-American woman associate who did work with Mr. Burke during the time described in his affidavit, who was given an unsatisfactory evaluation and who was asked to seek other employment.

At the time set forth in his affidavit, Mr. Burke was a new, quite junior partner in the firm. My recollection is that he had joined the firm only two or three months before Professor Hill. He was not then, or at any time prior to his withdrawal from the firm in 1985, a member of the Associate Development Committee nor was he at any time given authority to act on the firm's behalf to terminate associates.

I consider Mr. Burke a friend and regret the necessity of disputing his affidavit. An effort has been made to bring the information from the firm's records to his attention. I hope that he will correct his affidavit but, in any event, I wanted the Committee to have this additional information. If you believe it desirable, I am prepared to restate the information in affidavit form.

Respectfully,

DONALD H. GREEN.

AFFIDAVIT OF DONALD H. GREEN

City of Washington,
District of Columbia,

Donald H. Green, being first duly sworn, deposes and says:

1. I am a member of the bars of the District of Columbia, New York, and Florida. Upon graduation from Harvard Law School and after service in the United States Marine Corps, I served as an attorney with the United States Department of Justice. I have been a partner in the law firm of Pepper, Hamilton & Scheetz in Washington, D.C. since June 1987. For 21 years prior to that time, I was a partner in the law firm of Wald, Harkrader & Ross (the "Wald firm"), also in Washington, D.C.

2. Ms. Anita Hill was a summer associate at Wald, Harkrader & Ross in the summer of 1979. Based upon her performance that summer, she received an invitation to return to our firm as a full-time associate upon her graduation from Yale Law School in 1989. She accepted that invitation, and started with the Wald firm a few months after her graduation. Although I did not work directly with her, I knew her as an associate in the Wald firm.

3. One of my roles in the Wald firm at the time that Ms. Hill was with the firm was to serve as Chairman of the Associate Development Committee. This Committee's function, among others, was to evaluate associate's performance. The Committee monitored the professional progress of associates in the firm, prepared the evaluations of the associates for review at semi-annual partner meetings, reported on associate performance at the partner meetings, and met with associates individually to inform them of the partnership's collective evaluation after such partners' meetings. If the Wald firm partners decided that an associate should no longer be employed by the firm, or should be advised to look for a position elsewhere, it was the function of the Associate Development Committee to convey that message.

4. In the Spring of 1981, the performance of Ms. Hill was routinely evaluated, along with all other associates. It is my recollection that her evaluation was typical of many of our starting associates. Her performance was *not* held to be unsatisfactory by the Wald firm. She was *not* asked by the partnership to leave the firm.

5. So far as I am aware, Ms. Hill left the Wald firm of her own volition, freely choosing an alternative professional path, which is not uncommon among young associates. I am aware of no pressure upon her to leave. I am confident that the Wald firm did not ask or press her to leave. Certainly, the Associate Development Committee, which I chaired, did not ask or press her to leave. That is my clear memory and I have recently contacted the other two members of the Committee and they confirm my recollection.

6. I have been told that today a former partner in the Wald firm has stated that the Wald firm asked Ms. Hill to leave the firm because of her allegedly inadequate performance. This is not correct. I have prepared and executed this affidavit, and submitted it to the Committee on the Judiciary of the United States, because it is important that the Committee and the Senate as a whole have the accurate facts about this matter.

The foregoing is true and correct to the best of my knowledge, information, and belief.

DONALD H. GREEN.

AFFIDAVIT

John L. Burke, Jr., being duly sworn, says:

1. I am the managing partner of the Washington office of the law firm of Foley, Hoag and Eliot. I have been engaged in the private practice of law in Washington, D.C. for 20 years. I live at 1403 McLean Mews Court, McLean, Virginia 22101.

2. From August 1, 1980, until June 15, 1985, I was a partner in the Washington law firm of Wald, Harkrader & Ross. To the best of my recollection, Anita Hill joined that law firm in the fall of 1980.

3. It was the practice of that law firm to evaluate the work performance of its associates approximately every six months. I recall a time, which I believe to be in the late winter or early spring of 1981, when I met with Anita Hill in my office at the law firm to discuss her work performance with her. At that time, I was the partner in charge of coordinating work assignments for the tax, general business and real estate section of that law firm. Anita Hill had performed work assignments for the lawyers practicing in that section, including several assignments for me.

4. To the best of my recollection, that performance evaluation lasted between 30 minutes and one hour. During the course of that performance evaluation, the specific details of which I am unable to reconstruct, I expressed my concerns and those of some of my partners, that her work was not at the level of her peers nor at the level we would expect from a lawyer with her credentials, even considering the fact that she was a first-year associate.

5. During the course of that performance evaluation, I suggested to Anita Hill that it would be in her best interests to consider seeking employment elsewhere because, based on the evaluations, her prospects at the firm were limited. I also discussed with Anita Hill the fact that Wald, Harkrader & Ross was not a firm which treated its lawyers harshly and would assist her, as it would any of its associates, in finding an appropriate legal position and that she should avail herself of that assistance.

6. The performance evaluation meeting was uncomfortable for both Anita Hill and me because I was conveying a very difficult message. Anita Hill discussed with me, and disputed, some of the comments about the quality of her work. Apart from that, there was nothing that I recall to be unusual about her reaction to the evaluation, given the circumstances.

7. It is my personal view that, based on Anita Hill's performance evaluations at Wald, Harkrader & Ross, returning to that law firm at the time that Clarence Thomas moved from the Department of Education to the Equal Employment Opportunity Commission was not an available option.

The above statement is given by me voluntarily this 13th day of October, 1991.

JOHN L. BURKE, Jr.•

INFLAMING PASSIONS ON TAIWAN

• Mr. SIMON. Mr. President, on October 13, the Democratic Progressive Party in Taiwan amended its charter to advocate a Taiwan independent of the People's Republic of China [PRC]. The DPP qualified this provision by basing its implementation on a national plebescite on independence.

The reaction in Beijing to this development has been both objectionable and unwise. Even before the DPP acted, Gen. Yang Shangkun on October 9 threatened those advocating independence in Taiwan with the statement that "those who play with fire will be burned to ashes." Not content with trying to intimidate those who were exercising their right to free speech—a freedom noticeably absent in practice in the People's Republic of China today—the authorities in Beijing subsequently warned the government in Taiwan that it should suppress the "Taiwan independence movement." Beijing attempted to further interfere in the political process in Taiwan by stating that if the "separatists" continued to try to "split the nation * * * then the Chinese Government will not sit idly by and remain indifferent."

The regime in Beijing, which has deprived the Chinese people of virtually every political and civil right, has no authority to try to dictate affairs on Taiwan. Intimidation and threats, in particular, have no place in this matter. President Lee Teng Hui rightfully rejected Beijing's implicit threat to invade, noting that it had triggered resentment in Taiwan.

I call on the Beijing authorities to refrain from further actions which would only further inflame passions on Taiwan.

I applaud the process of democratization on Taiwan under the leadership of President Lee that has clearly increased the stature of Taiwan in the world community. But I must also express my concern with the initial reaction of the governing party in Taiwan to the DPP's action. I take no position on the merits of the DPP's position on independence for Taiwan. Nevertheless, I believe any legal action against the DPP for its call for a plebescite on independence would tarnish the positive image Taiwan has successfully built in the international community in the last few years.

I am sympathetic to the fact that the reaction in Beijing on the independence issue has created a sense of crisis and uncertainty on Taiwan. I do not intend to suggest to the concerned parties there how to deal with the issue raised by the DPP's actions. I only urge that they approach these questions with reason and fairness, features which have been salient characteristics of Taiwan's democratization process and which have also been proven effective in maintaining and furthering economic prosperity and social stability on Taiwan.•

REMOVAL OF INJUNCTION OF SECRECY

Mr. BRYAN. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Treaty with Argentina on Mutual Legal Assistance in Criminal Matters (Treaty Document No. 102–18), transmitted to the Senate today by the President; and ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the Government of the United States of America and the Government of the Republic of Argentina on Mutual Legal Assistance in Criminal Matters, signed at Buenos Aires on December 4, 1990. I transmit also, for the information of the Senate, the Report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including members of drug cartels, "white collar criminals," and terrorists. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) the taking of testimony or statements of witnesses; (2) the provision of documents, records, and evidence; (3) the execution of requests for searches and seizures (4) the serving of documents; and (5) the provision of assistance in locating, tracing, immobilizing, seizing and forfeiting proceeds of crime, and restitution to the victims of crime.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *October 31, 1991.*

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations reported today by the Committee on the Judiciary:

U.S. SENTENCING COMMISSION

Michael S. Gelacak, to be a Member of the U.S. Sentencing Commission.

U.S. DISTRICT JUDGE

Rebecca F. Doherty, to be U.S. district judge;

Denis R. Hurley, to be U.S. district judge;

Barbara A. Caulfield, to be U.S. district judge;

Ronald E. Longstaff, to be U.S. district judge;

John W. Lungstrum, to be U.S. district judge; and

Terry R. Means, to be U.S. district judge.

U.S. ATTORNEY

Robert Q. Whitwell, to be U.S. Attorney;

William D. Hyslop, to be U.S. Attorney;

Kevin C. Potter, to be U.S. Attorney;

I further ask unanimous consent that the nominees be confirmed en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT ON THE NOMINATION OF MAGISTRATE RONALD LONGSTAFF

Mr. HARKIN. Mr. President, I wish to again express my strong support for Ronald Longstaff's nomination to sit on the U.S. District Court for the Southern District of Iowa.

Ron Longstaff has served with distinction as a U.S. magistrate judge since 1976, and before that served as clerk of court to the U.S. magistrate from 1968 to 1976. In that time he has produced a record of intelligent decisions and fairness to all parties which is well known in the Iowa legal community. In my contacts with leading attorneys in Iowa, I have never heard less than a strong positive endorsement of Magistrate Judge Longstaff's abilities. He was unanimously endorsed as scrupulously fair and free from bias.

Magistrate Judge Longstaff's record shows a high level of intellectual achievement. He attended the University of Iowa on a full tuition scholarship. As a student, he wrote a number of law review articles. He taught classes at Drake University Law School, and has lectured for the Iowa Bar Review course on Federal jurisdiction since 1973.

He has also demonstrated the creativity and skills needed to manage a district court caseload. The pretrial settlement procedure he developed has led to improved efficiency in handling cases in the southern district, often avoiding costly litigation and saving money for litigants and the court system alike. This ingenuity will be helpful as the Federal court system continues to deal with the torrent of cases coming before the Federal bench.

Finally, as chair of the Disability Policy Subcommittee, and a strong advocate of the rights of people with disabilities, I take special pleasure in supporting this nomination. Magistrate Judge Longstaff was born with cerebral palsy, but that has not stood in the way of his distinguished legal career serving this Nation in our Federal court system. I applaud his courage and conviction in overcoming architectural and attitudinal barriers.

I strongly support this outstanding nominee, and am proud to vote for his confirmation.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

REFERRAL OF NOMINATION

Mr. BRYAN. Mr. President, as if in executive session, I ask unanimous consent that the nomination of David M. Nummy, to be an Assistant Secretary of the Treasury, reported by the Committee on Finance, be referred to the Committee on Governmental Affairs for a period not to exceed 20 days.

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

REREFERRAL OF H.R. 35

Mr. BRYAN. Mr. President, I ask unanimous consent that the Energy and Natural Resources Committee be discharged from further consideration of H.R. 35, the Western North Carolina Wilderness Protection Act, and that the measure then be referred to the Agriculture Committee.

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS TO THE STANDING RULES OF THE SENATE

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 259, Senate Resolution 192, regarding a rules change to conform with recent changes enacted into law.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 192.) to amend the Standing Rules of the Senate, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 192) was agreed to.

The resolution, is as follows:

S. RES. 192

SECTION 1. OUTSIDE EARNED INCOME.

(a) The Standing Rules of the Senate are amended by inserting after rule XXXV the following:

"RULE XXXVI

"OUTSIDE EARNED INCOME

"For purposes of this rule, the provisions of section 501 of the Ethics in Government Act of 1978 (5 U.S.C. App. 7 501) shall be deemed to be a rule of the Senate as it pertains to Members, officers, and employees of the Senate.".

(b) Section 501 of the Ethics in Government Act of 1978 provides as follows:

"SEC. 501. OUTSIDE EARNED INCOME LIMITATION.

"(a) OUTSIDE EARNED INCOME LIMITATION.—(1) Except as provided by paragraph (2), a Member or an officer or employee who is a noncareer officer or employee and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.

"(2) In the case of any individual who becomes a Member or an officer or employee who is a noncareer officer or employee and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule during a calendar year, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member or such an officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member or such officer or employee during such calendar year and the denominator of which is 365.

"(b) HONORARIA PROHIBITION.—An individual may not receive any honorarium while that individual is a Member, officer or employee.

"(c) TREATMENT OF CHARITABLE CONTRIBUTIONS.—Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed $2,000 or be made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

"[Sec. 505(3) of such Act defines honorarium as follows:

"(3) The term 'honorarium' means a payment of money or anything of value for an appearance, speech or article [(including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) parenthetical effective January 1, 1992] by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.]".

SEC. 2. GIFTS.

(a) Rule XXXV of the Standing Rules of the Senate is amended—

(1) by striking clauses (1) and (3) of paragraph 1(a) and paragraph 1(b);

(2) by redesignating clause (2) of paragraph 1(a) as subparagraph (a);

(3) by redesignating subparagraph (c) of paragraph 1 as subparagraph (b);

(4) in subparagraph (a) of paragraph 1 (as redesignated), by striking "having an aggregate value exceeding $300 during a calendar year" and inserting "in any calendar year aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater"; and

(5) in subparagraph (b) of paragraph 1 (as redesignated)—

(A) in clause (2) by striking "less than $75" and inserting "$100 or less, as adjusted under section 102(a)(2)(A) of the Ethics in Government Act of 1978";

(B) in clause (2) by inserting "or" after the semicolon;

(C) in clause (3) by striking "; or" and inserting a period; and

(D) by striking clause (4).

(b) Paragraph 2(c) of rule XXXV is amended

(1) in clause (1) by striking "(and 2 nights)" and striking "(and 6 nights)"; and

(2) in clause (2) by striking "spouse of a Member" and inserting the following: "spouse or child of such Member".

SEC. 3. CONFLICT OF INTEREST.

Rule XXXVII of the Standing Rules of the Senate is amended—

(1) in paragraph 5 by—

(A) redesignating subparagraphs (a), (b), and (c) as clauses (1), (2), and (3), respectively;

(B) inserting "(a)" after "5"; and

(C) inserting at the end thereof the following:

"(b) A Member or an officer or employee whose rate of basic pay is equal to or greater than 120 percent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule shall not—

"(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;

"(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

"(3) receive compensation for practicing a profession which involves a fiduciary relationship; or

"(4) receive compensation for teaching, without the prior notification and approval of the Committee on Ethics."; and

(2) in paragraph 6 by—

(A) redesignating clauses (1), (2), and (3) of subparagraph (c) as subclauses (A), (B), and (C), respectively;

(B) redesignating subparagraphs (a), (b), and (c) as clauses (1), (2), and (3), respectively;

(C) inserting "(a)" after 6"; and

(D) inserting at the end thereof the following:

"(b) A Member or an officer or employee whose rate of basic pay is equal to or greater than 120 percent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule shall not serve for compensation as an officer or member of the board of any association, corporation, or other entity.

SEC. 4. PROHIBITION OF UNOFFICIAL OFFICE ACCOUNTS.

Paragraph 1 of rule XXXVIII of the Standing Rules of the Senate is amended by—

(1) redesignating subparagraphs (a), (b), (c), and (d) as clauses (1), (2), (3), and (4), respectively;

(2) inserting "(a)" after "1."; and

(3) adding at the end thereof the following:

"(b) Notwithstanding subparagraph (a), official expenses may be defrayed only as provided by subsections (d) and (i) of section 311 of the Legislative Appropriations Act, 1991 (Public Law 101-520).".

SEC. 5. AMENDMENT TO RULE XLI.

Paragraph 3 of rule XLI of the Standing Rules of the Senate is amended by striking "paragraph 2(d)" and inserting "paragraph 4".

SEC. 6. AMERICANS WITH DISABILITIES ACT OF 1990.

Rule XLII of the Standing Rules of the Senate is amended by—

(1) inserting "1." before "No"; and

(2) adding at the end thereof the following:

"2. For purposes of this rule, the provisions of section 509(a) of the Americans With Disabilities Act of 1990 shall be deemed to be a rule of the Senate as it pertains to members, officers, and employees of the Senate.".

SEC. 7. EFFECTIVE DATES.

(a) The amendments made by section 1(a) and section 3 of this resolution shall take effect on August 14, 1991.

(b) The amendments made by section 2(a) of this resolution shall take effect on January 1, 1992.

(c) The amendments made by section 2(b) of this resolution shall take effect on May 4, 1990.

(d) The amendments made by section 4 of this resolution shall take effect at the beginning of the second session of the 102d Congress:

(e) The amendments made by section 5 of this resolution shall take effect on the date of adoption of this resolution.

(f) The amendments made by section 6 of this resolution shall take effect on the date section 509(a) of the Americans With Disabilities Act of 1990 takes effect.

Mr. BRYAN. Mr. President, I move to reconsider the vote.

Mr. JEFFORDS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE EXTENSION OF NONDISCRIMINATORY TREATMENT WITH RESPECT TO THE PRODUCTS OF THE PEOPLE'S REPUBLIC OF BULGARIA

AND

THE EXTENSION OF NONDISCRIMINATORY TREATMENT WITH RESPECT TO THE PRODUCTS OF THE MONGOLIAN PEOPLE'S REPUBLIC

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of House Joint Resolution 281, a joint resolution approving the extension of nondiscriminatory treatment, most-favored-nations treatment, to the products of the Mongolian People's Republic; and House Joint Resolution 282, a joint resolution approving the extension of nondiscriminatory treatment, MFN treatment, to the products of the Republic of Bulgaria, just received from the House; that the joint resolutions be deemed read three times, passed, and the motion to reconsider the passage of the two resolutions en bloc be laid upon the table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 282) approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

So the joint resolution was deemed read three times and passed.

The PRESIDING OFFICER. The clerk will report the second joint resolution.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 281) approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic.

So the joint resolution was deemed read three times and passed.

ON RESOLUTIONS APPROVING THE EXTENSION OF MOST-FAVORED-NATION TREATMENT TO BULGARIA AND MONGOLIA

Mr. BENTSEN. Mr. President, I rise in support of House Joint Resolution 281 and House Joint Resolution 282 approving the extension of most-favored-nation [MFN] treatment to products imported from Bulgaria and Mongolia. These resolutions also approve the trade agreements negotiated with these two countries.

The agreements deserve our support. Not only will Bulgaria and Mongolia benefit from MFN status, but United States companies will also benefit from lower tariffs in those two markets. The agreements also contain a number of provisions aimed at making it easier for American companies to set up offices in Bulgaria and Mongolia, to hire staff and agents and distributors, to mount trade promotion events, to advertise their products and to conduct basic market research. Both agreements contain world-class commitments to protect the intellectual property rights of Americans. I ask unanimous consent that summaries of the two agreements be printed in the RECORD.

There being no objection, the materal was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE U.S.-MONGOLIAN TRADE AGREEMENT

Article I.—Article I provides that the United States and Mongolia shall accord most-favored-nation (MFN) treatment to each other's products with respect to customs duties and charges, the method of payment for imports and export, all rules and formalities in connection with importation and exportation, taxes and internal charges and other laws and regulations affecting the sale, distribution and storage of products. Each country agrees to accord non-discriminatory treatment to the products (except textiles) of the other country with respect to the application of quantitative restrictions and the granting of licenses.

Article II.—Under Article II, each country agrees not to impose taxes or other charges or implement regulations in a manner that disadvantages imports from the other country relative to domestic products, or to apply taxes or regulations as a means of protecting domestic production. The countries also commit to ensure that technical regulations and standards do not become obstacles to trade. In addition, Mongolia agrees to accede to the Convention Establishing the Customs Cooperation Council and Description and Coding System.

Article III.—In Article III, both countries agree to maintain a satisfactory balance of market access opportunities. This Article also provides that trade is to be conducted between the two countries by means of contracts concluded as exercises of independent commercial judgment on the basis of non-discrimination and customary commercial considerations such as price, quality, availability, delivery, and terms of payment. Article III also provides that neither country will require or encourage barter or countertrade.

Article IV.—Article IV includes general provisions concerning the desirability of expanding two-way trade and commits both countries to take "appropriate measures" to encourage the expansion of commercial contacts. Both countries agree to facilitiate the holding of trade promotional events and encourage their companies and citizens to participate in such events. Article IV also provides that the United States and Mongolia will permit the duty-free importation and reexportation of articles used in trade events.

Article V.—Article V permits each country to establish government commercial offices in the other party.

Article VI.—Article VI contains a number of provisions aimed at facilitating business transactions between the two countries. These provisions relate to the estalishment of "commercial representatives," the direct hire of employees, importation of office equipment, access to office space and living accommodations, employment of agents and distributors, the stocking and distribution of samples and replacement parts, advertising, market research, and access to services provided by the governments (*e.g.*, public utilities).

Article VII.—This Article requires each country to make publicly available on a timely basis all laws and regulations relating to trade, investment, taxation, and other commercial matters. In addition, Article VII requires each party to permit nationals and companies of the other country to comment on the formulation of rules and regulations which affect the conduct of business.

Article VIII.—Article VIII stipulates that, unless otherwise agreed, commercial transactions should be conducted in U.S. dollars or other convertible currency. The Article also binds the parties not to restrict the export of convertible currencies or deposits obtained in connection with trade in goods and services. In addition, the Article provides that nationals and companies of each country may maintain bank accounts in the other country. Artcle VIII also requires nondiscriminatory treatment with respect to a range of financial transactions.

Article IX.—Article IX sets forth detailed commitments regarding the protection of intellectual property. Each country confirms its adherence to the Paris Convention for the Protection of Industrial Property and agrees to adhere to the Berne Convention for the Protection of Literary and Artistic Works. In addition, Article IX provides for protection of computer programs, data bases, sound recordings, trademarks, semiconductor chip designs, and trade secrets. In addition, the Article commits each country to provide effective enforcement measures, both internally and at the border.

Artice X.—In Article X, each party agrees to strive for agreements on taxation and investment issues, which would include provisions on the repatriation of profits and transfer of capital. Each party also agrees to take steps to foster economic and technical cooperation in such fields as standards and statistics. Finally, each country agrees to consult on services trade liberalization.

Artcle XI.—Article XI provides safeguard arrangements calling for prompt consultations and permitting the imposition of import restrictions in case of market disruption.

Article XII.—This Article incorporates a number of provisions relating to the settlement of disputes. For example, Article XII grants national treatment to the nationals and companies of either party with respect to access to the courts and administrative bodies of the other party, encourages the adoption of arbitration and sets forth desired arbitration procedures and provides that each country is to ensure that there is an effective means for the recognition and enforcement of arbitral awards.

Article XIII.—this Article stipulates that nothing in the agreement limits the right of either country to take actions to protect its national security interests.

Article XIV.—In Article XIV, the parties agree to consult periodically to review the operation of the agreement.

Article XV.—This Article defines the key terms used in the agreement.

Article XVI.—This Article contains several exceptions to the agreement. The agreement is not to be construed, for example, to prohibit measures designed to secure compliance with laws which are not contrary to the purposes of the agreement or measures to protect intellectual property rights. The agreement does not affect agreements on textiles. Also, nothing in the agreement is to preclude a party from applying its laws to entities substantially owned or controlled by the government of the other party.

Article XVII.—Article XVII deals with the entry into force of the agreement, stipulates that the initial term of the agreement will be three years, with possible extensions for three-year terms, and provides for termination of the agreement.

In separate side letters, each of which is an integral part of the agreement, Mongolia has made additional commitments concerning the promotion of tourism and the establishment of commercial representations. Also, the United States agreed to give due consideration to Mongolia's request that it be designated a beneficiary under the Generalized System of Preferences.

SUMMARY OF THE U.S.-BULGARIAN TRADE AGREEMENT

Article I.—Article I provides that the United Sates and Bulgaria shall accord most-favored-nation (MFN) treatment to each other's products with respect to customs duties and charges, the method of payment for imports and exports, all rules and formalities in connection with importation and exportation, taxes and internal charges and other laws and regulations affecting the sale, distribution and storage of products. Each country also agrees to accord to the products of the other MFN treatment with respect to the allocation of and access to the currency needed to pay for imported goods. In addition, each country agrees to grant non-discriminatory treatment to the products (with the exception of textiles) of the other country with respect to the application of quantitative restrictions and the granting of licenses.

Article II.—Under Article II, each country agrees not to impose taxes or other charges or implement regulations in a manner that disadvantages imports from the other country relative to domestic products, or to apply taxes or regulations as a means of protecting domestic production. The countries also commit to ensure that technical regulations and standards do not become obstacles to trade. In addition, Bulgaria agrees to accede to the International Convention on the Harmonized Commodity Description and Coding System, and the United States agrees to provide appropriate technical assistance. Finally, both countries agree to maintain a satisfactory balance of market access opportunities.

Article III.—This Article provides that trade is to be conducted between the two countries by means of contracts concluded as exercises of independent commercial judgment on the basis of non-discrimination and customary commercial considerations such as price, quality, availability, delivery, and terms of payment. Article III also provides that neither country will require or encourage barter or countertrade.

Article IV.—Article IV includes general provisions concerning the desirability of expanding two-way trade and commits both countries to take "appropriate measures" to encourage the expansion of commercial contacts. Both countries agree to facilitate the holding of trade promotional events and encourage their companies and citizens to participate in such events. Article IV also provides that the United States and Bulgaria will permit the duty-free importation and reexportation of articles used in trade events.

Article V.—Article V obligates each country, consistent with applicable immigration laws, to permit government commercial offices to hire directly both host-and third-country nationals. This Article also contains general provisions concerning unhindered access to government commercial offices, the encouragement of participation in the activities of government commercial offices, and access to officials at federal and sub-federal levels.

Article VI.—Article VI contains a number of provisions aimed at facilitating business transactions between the two countries. These provisions relate to the establishment of "commercial representatives," the direct hire of employees, importation of office equipment, access to office space and living accommodations, employment of agents and distributors, the stocking and distribution of samples and replacement parts, advertising, market research, and access to services provided by the governments (*e.g.*, public utilities).

Article VII.—This Article requires each country to make publicly available on a timely basis all laws, regulations, judicial decisions, and administrative rulings relating to trade, investment, and other commercial matters. In addition, Article VII requires each party to permit nationals and companies of the other country to comment on the formulation of rules and regulations which affect the conduct of business.

Article VIII.—Article VIII stipulates that, unless otherwise agreed, commercial transactions should be conducted in U.S. dollars or other convertible currency. The Article also binds the parties not to restrict the export of convertible currencies or deposits obtained in connection with trade in goods and services. Article VIII also requires non-discriminatory treatment with respect to a range of financial transactions.

Article IX.—Article IX requires each party to provide for adequate protection and enforcement for patents, copyrights, trademarks, trade secrets, and layout designs for integrated circuits. Detailed obligations are set forth in a side letter to the agreement.

Article X.—In Article X, each party agrees to strive for agreements on taxation and investment issues, which would include provisions on the repatriation of profits and transfer of capital. Each party also agrees to take steps to foster economic and technical cooperation in such fields as standards and statistics. Finally, each country agrees to consult on services trade liberalization.

Article XI.—Article XI provides safeguard arrangements calling for prompt consultations and permitting the imposition of import restrictions in case of market disruption.

Article XII.—This Article incorporates a number of provisions relating to the settlement of disputes. For example, Article XII grants national treatment to the nationals and companies of either party with respect to access to the courts and administrative bodies of the other party, encourages the adoption of arbitration and sets forth desired arbitration procedures and provides that each country is to ensure that there is an effective means for the recognition and enforcement of arbitral awards.

Article XIII.—This Article stipulates that nothing in the agreement limits the right of either country to take actions to protect its national security interests.

Article XIV.—Article XIV establishes a Joint Commercial Commission to review the operation of the trade agreement and provides for prompt consultations in the case of disputes concerning the agreement.

Article XV.—This Article defines the key terms used in the agreement.

Article XVI.—This Article contains several exceptions to the agreement. The agreement is not to be construed, for example, to prohibit measures designed to secure compliance with laws which are not contrary to the purposes of the agreement, or measures to protect intellectual property rights. The agreement does not affect agreements on textiles. Also, each party has the right to deny the benefits of this agreement to any company controlled by a third country that does not have substantial business interests in the territory of that party or that does not maintain normal economic relations with that party.

Article XVII.—Article XVII deals with the entry into force of the agreement, stipulates that the initial term of the agreement will be three years, with possible extensions for three-year terms, and provides for termination of the agreement.

In separate side letters, each of which is an integral part of the agreement, Bulgaria has made additional commitments concerning the protection of intellectual property, the promotion convertibility, and other business facilitation issues.

Mr. BENTSEN. Mr. President, in the past year and a half, both countries have embarked on far-reaching political and economic changes. There has been a genuine move toward greater freedom of the press and religion and both have adopted policies guaranteeing free emigration. Both countries are forging ahead with market-based economic reforms—despite the fact that they are going through some hard times.

American companies can help Bulgaria and Mongolia achieve their economic development goals, and prompt enactment of these trade agreements is an important step toward that end.

MEASURES INDEFINITELY POSTPONED

Mr. BRYAN. Mr. President, I ask unanimous consent that calendar numbers 270 and 271 be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ANNIVERSARY OF THE NATIONAL CANCER ACT OF 1971

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 286, Senate Joint Resolution 133, regarding the 20th anniversary of the National Cancer Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 133) in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The joint resolution (S.J. Res. 133) was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble, as amended, was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 133

Whereas 1991 is the 20th anniversary of the National Cancer Act of 1971;

Whereas the passage of the National Cancer Act in 1971 led to the establishment of the National Cancer Program which has enabled over 7 million Americans to survive cancer, and has further led to the following progress being made against cancer:

(1) An increase in the overall cancer survival rate from 39 percent to 52 percent;

(2) A decrease in deaths from childhood cancer by 36 percent; and

(3) A decrease in deaths of persons under age 65 by 15 percent for colorectal cancer, by 25 percent for ovarian cancer, by 30 percent for bladder cancer, and by 40 percent for cervical cancer;

Whereas the National Cancer Act of 1971 has effected savings of billions of dollars, far outstripping investment in cancer research, as shown in the following:

(1) A 17 year total investment by the Government of $56,000,000 in testicular cancer research has resulted in a 91 percent cure rate, with an increased life expectancy of 40 years, and savings of $166,000,000 annually;

(2) A study of breast cancer supported by the National Institutes of Health costing $11,000,000 saves $170,000,000 annually in the treatment of women with breast cancer; and

(3) An investment of $11,000,000 in the treatment of Duke's C colon cancer by adjuvant chemotherapy saves an estimated $136,000,000 annually;

Whereas more than 1 million people will be diagnosed with cancer this year;

Whereas more than 510,000 people will die from cancer this year, or one every 62 seconds;

Whereas 7,600 children will be diagnosed with cancer this year and 1,500 children will die from cancer making it the leading cause of childhood deaths from ages 3 to 14;

Whereas 50 percent of all cancer strikes persons over age 65 and ⅔ of all cancer deaths occur in persons over age 65;

Whereas 43,000 people will die this year whose deaths could have been prevented by fully funded prevention and detection programs;

Whereas 76 million Americans alive today will be diagnosed with cancer at some point in their life;

Whereas funding for cancer research has decreased 6.2 percent over the past decade while funding for all other medical research programs has increased 37 percent;

Whereas the funding level proposed by the President for fiscal year 1992 falls $802,000,000 short of the Bypass Budget, a statutorily required budget developed by cancer experts which quantifies actual research, treatment, and prevention and control opportunities in cancer research; and

Whereas crucial priorities exist in cancer research which could provide the knowledge necessary to successfully address the increasing incidence of, and deaths caused by, the cancers which commonly afflict men and women, especially older Americans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the Congress reaffirms the commitment embodied in the National Cancer Act of 1971, specifically, that funding for cancer research should be a national priority to address the scope of the cancer epidemic;

(2) the public and private sectors should join forces to provide the necessary fiscal and human resources to establish, maintain, and strengthen the National Cancer Program; and

(3) this public-private partnership should strive to provide effective treatment to every American with cancer.

Mr. BRYAN. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. JEFFORDS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECLAMATION STATES EMERGENCY DROUGHT RELIEF ACT

Mr. BRYAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 269, H.R. 355.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 355) to provide emergency drought relief to the Reclamation States, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reclamation States Emergency Drought Relief Act of 1991".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Federal Reclamation laws" means the Act of June 17, 1902 (32 Stat. 388) and Acts supplementary thereto and amendatory thereof.

(3) The term "Federal Reclamation project" means any project constructed or funded under Federal Reclamation law. Such term includes projects having approved loans under the Small Reclamation Projects Act of 1956 (70 Stat. 1044).

TITLE I—DROUGHT PROGRAM

SEC. 101. ASSISTANCE DURING DROUGHT; WATER PURCHASES.

(a) CONSTRUCTION, MANAGEMENT, AND CONSERVATION.—Consistent with existing contractual arrangements and State law, and without further authorization, the Secretary is authorized to undertake construction, management, and conservation activities that will mitigate, or can be expected to have an effect in mitigating, losses and damages resulting from drought conditions. Any construction activities undertaken pursuant to the authority of this subsection shall be limited to temporary facilities designed to mitigate losses and damages from drought conditions, except that wells drilled to mitigate losses and damages from drought conditions may be permanent facilities.

(b) ASSISTANCE TO WILLING BUYERS AND SELLERS.—In order to minimize losses and damages resulting from drought conditions, the Secretary may provide non-financial assistance to willing buyers in their purchase of available water supplies from willing sellers.

(c) WATER PURCHASES BY BUREAU.—In order to minimize losses and damages resulting from drought conditions, the Secretary may purchase water from willing sellers, including, but not limited to, water made available by Federal Reclamation project contractors through conservation or other means with respect to which the seller has reduced the consumption of water. Except with respect to water stored, conveyed or delivered to Federal and State wildlife habitat, the Secretary shall deliver such water pursuant to temporary contracts under section 102: Provided, That any such contract shall recover any costs incurred by the Secretary in acquiring such water.

(d) WATER BANKS.—The Secretary is authorized to participate in water banks established by a State or, in the absence of such an established water bank, is authorized to establish intrastate water banks in accordance with State law in order to mitigate losses and damages resulting from drought conditions. The authorities granted to the Secretary by this title providing for the use of Federal Reclamation project facilities and the acquisition and delivery of project and non-project water for use both within and outside an authorized project service area may be used by the Secretary in establishing or participating in water banks.

SEC. 102. AVAILABILITY OF WATER ON A TEMPORARY BASIS.

(a) GENERAL AUTHORITY.—In order to mitigate losses and damages resulting from drought conditions, the Secretary may make available, by temporary contract, project and non-project water, and may permit the use of facilities at Federal Reclamation projects for the storage or conveyance of project and non-project water, for use both within and outside an authorized project service area.

(b) SPECIAL PROVISIONS APPLICABLE TO TEMPORARY WATER SUPPLIES PROVIDED UNDER THIS SECTION.—

(1) TEMPORARY SUPPLIES.—Each temporary contract for the supply of water entered into pursuant to this section shall terminate no later than two years from the date of execution or upon a determination by the Secretary that water supply conditions no longer warrant that such contracts remain in effect, whichever occurs first.

(2) OWNERSHIP AND ACREAGE LIMITATIONS.—Lands not subject to Reclamation law that receive temporary irrigation water supplies under temporary contracts under this section shall not become subject to the ownership and acreage limitations or pricing provisions of Federal Reclamation law because of the delivery of such temporary water supplies. Lands that are subject to the ownership and acreage limitations of Federal Reclamation law shall not be exempted from those limitations because of the delivery of such temporary water supplies.

(3) TREATMENT UNDER RECLAMATION REFORM ACT OF 1982.—No temporary contract entered into by the Secretary under this section shall be treated as a "contract" as that term is used in sections 203(a) and 220 of the Reclamation Reform Act of 1982 (Public Law 97–293).

(4) AMENDMENTS OF EXISTING CONTRACTS.—Any amendment to an existing contract to allow a contractor to carry out the provisions of this Act shall not be considered a new and supplemental benefit for purposes of the Reclamation Reform Act of 1982 (Public Law 97–293).

(c) CONTRACT PRICE.—The price for project water, other than water purchased pursuant to section 101(c), delivered under a temporary contract entered into by the Secretary under this section shall be at least sufficient to recover all Federal operation and maintenance costs and administrative costs, and an appropriate share of capital costs, including interest on municipal and industrial water, except that, for project water delivered to non-project landholdings, the price shall include full cost (as defined in section 202(3) of the Reclamation Reform Act of 1982 (Public Law 97–293; 96 Stat. 1263; 43 U.S.C. 390bb)). For all contracts entered into by the Secretary under the authority of this title, the interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs expended pursuant to this Act shall be at a rate to be determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with remaining periods to maturity of one year occurring during the last month of the fiscal year preceding the date of execution of the temporary contract or, in the case of existing facilities the rate as authorized for that Federal Reclamation project or, in the absence of such authorized rate, the interest rate as determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction was initiated on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which were neither due nor callable for redemption for fifteen years from date of issue.

(d) FISH AND WILDLIFE.—The Secretary may make water from Federal Reclamation projects and non-project water available on a nonreimbursable basis for the purposes of protecting or restoring fish and wildlife resources, including mitigation losses, that occur as a result of drought conditions or the operation of a Federal Reclamation project during drought conditions. The Secretary may store and convey project and non-project water for fish and wildlife purposes, and may provide conveyance of any such water for both State and Federal wildlife habitat and for habitat held in private ownership. The Secretary may make available water for these purposes outside the authorized project service area. Use of the Federal storage and conveyance facilities for these purposes shall be on a nonreimbursable basis.

(e) NON-PROJECT WATER.—The Secretary is authorized to store and convey non-project water utilizing Federal Reclamation project facilities for use outside and inside the authorized project service area for municipal and industrial uses, fish and wildlife, and agricultural uses. Except in the case of water supplied for fish and wildlife, which shall be nonreimbursable, the Secretary shall charge the recipients of such water for such use of Federal Reclamation project facilities at a rate established pursuant to section 102(c) of this Act.

(f) RECLAMATION FUND.—The payment of capital costs attributable to the sale of project or non-project water or the use of Federal Reclamation project facilities shall be covered into the Reclamation Fund and be placed to the credit of the project from which such water or use of such facilities is supplied.

SEC. 103. LOANS.

The Secretary of the Interior is authorized to make loans to water users for the purposes of undertaking construction, management, conservation activities, or the acquisition and transportation of water consistent with State law, that can be expected to have an effect in mitigating losses and damages, including those suffered by fish and wildlife, resulting from drought conditions. Such loans shall be made available under such terms and conditions as the Secretary deems appropriate: Provided, That the Secretary shall not approve any loan unless the applicant can demonstrate an ability to repay such loan within the term of the loan: Provided further, That for all loans approved by the Secretary under the authority of this section, the interest rate shall be the rate determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with periods to maturity comparable to the repayment period of the loan. Sections 203(a) and 220 of the Reclamation Reform Act of 1982 and sections 105 and 106 of Public Law 99–546 shall not apply to any contract to repay such loan. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives in writing of any loan which he intends to approve not less than thirty days prior to granting final approval.

SEC. 104. DEFERMENT OF PAYMENTS.

The Secretary is authorized to defer without penalty or additional interest, the payment of any installment of charges including operation and maintenance costs owed to the United States by irrigators as he deems necessary because of financial hardship caused by drought conditions: Provided, That any deferment shall be recovered and such recovery may be accomplished by extending the repayment period under the contracting entities' existing contracts with the United States.

SEC. 105. APPLICABLE PERIOD OF DROUGHT PROGRAM.

(a) IN GENERAL.—The programs and authorities established under this title shall become operative in any Reclamation State only after the Governor or Governors of the affected State or States has made a request for temporary drought assistance and the Secretary has determined that such assistance is merited, or upon the approval of a drought contingency plan as provided in title II of this Act.

(b) COORDINATION WITH BPA.—If a Governor referred to in subsection (a) is the Governor of the State of Washington, Oregon, Idaho, or Montana, the Governor shall coordinate with the Administrator of the Bonneville Power Administration before making a request under subsection (a).

TITLE II—DROUGHT CONTINGENCY PLANNING

SEC. 201. IDENTIFICATION OF OPPORTUNITIES FOR WATER SUPPLY CONSERVATION, AUGMENTATION AND USE.

The Secretary is authorized to conduct studies to identify opportunities to conserve, augment, and make more efficient use of water supplies available to Federal Reclamation projects and Indian water resource developments in order to be prepared for and better respond to drought conditions. The Secretary is authorized to provide technical assistance to States and to local government entities to assist in the development, construction, and operation of water desalinization projects, including technical assistance for purposes of assessing the technical and economic feasibility of such projects.

SEC. 202. DROUGHT CONTINGENCY PLANS.

The Secretary, acting pursuant to the Federal Reclamation laws, utilizing the resources of the Department of the Interior, and in consultation with other appropriate Federal and State officials, Indian tribes, public, private, and local entities, is authorized to prepare or participate in the preparation of cooperative drought contingency plans (hereinafter in this title referred to as "contingency plans") for the prevention or mitigation of adverse effects of drought conditions.

SEC. 203. PLAN ELEMENTS.

(a) PLAN PROVISIONS.—Elements of the contingency plans prepared pursuant to section 202 may include, but are not limited to, any or all of the following:

(1) One or more water banks whereby the Secretary and project and non-project water users may buy, sell, and store water consistent with State law, including participation by the Secretary in water banks established by the State.

(2) Appropriate water conservation actions.

(3) Water transfers to serve users inside or outside authorized Federal Reclamation project service areas in order to mitigate the effects of drought and which are consistent with Federal and State law.

(4) Use of Federal Reclamation project facilities to store and convey nonproject water for agricultural, municipal and industrial, fish and wildlife, or other uses both inside and outside an authorized Federal Reclamation project service area.

(5) Use of water from dead or inactive reservoir storage and increased use of ground water resources for temporary water supplies.

(6) Water supplies for fish and wildlife resources.

(7) Minor structural actions.

(b) FEDERAL RECLAMATION PROJECTS.—Each contingency plan shall identify the following two types of plan elements related to Federal Reclamation projects:

(1) those plan elements which pertain exclusively to the responsibilities and obligations of the Secretary pursuant to Federal Reclamation law and the responsibilities and obligations of the Secretary for a specific Federal Reclamation project; and

(2) those plan elements that pertain to projects, purposes, or activities not constructed, financed, or otherwise governed by the Federal Reclamation law.

(c) COMPLIANCE WITH LAW.—The contingency plans and plan elements shall comply with all requirements of applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321), section 715(a) of the Water Resource Development Act of 1986 (33 U.S.C. 2265(a), and the Fish and Wildlife Coordination Act, and shall be in accordance with applicable State law.

(d) REVIEW.—The contingency plans shall include provisions for periodic review to assure the adequacy of the contingency plan to respond to current conditions, and such plans may be modified accordingly.

SEC. 204. RECOMMENDATIONS.

(a) APPROVAL.—The Secretary shall submit each plan prepared pursuant to section 202 to the Congress, together with the Secretary's recommendations, including recommendations for authorizing legislation, if needed.

(b) PACIFIC NORTHWEST REGION.—A contingency plan under subsection (a) for the State of Washington, Oregon, Idaho, or Montana, may be approved by the Secretary only at the request of the Governor of the affected State in coordination with the other States in the region and the Administrator of the Bonneville Power Administration.

SEC. 205. RECLAMATION DROUGHT RESPONSE FUND.

The Secretary shall undertake a study of the need, if any, to establish a Reclamation Drought Response Fund to be available for defraying those expenses which the Secretary determines necessary to implement plans prepared under section 202 and to make loans for nonstructural and minor structural activities for the prevention or mitigation of the adverse effects of drought.

SEC. 206. TECHNICAL ASSISTANCE AND TRANSFER OF PRECIPITATION MANAGEMENT TECHNOLOGY.

(a) TECHNICAL ASSISTANCE.—The Secretary is authorized to provide technical assistance for drought contingency planning in any of the States not identified in section 1 of the Reclamation Act (Act of June 17, 1902, 32 Stat. 388), and the District of Columbia, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship, the Republic of Palau, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(b) TECHNOLOGY TRANSFER PROGRAM.—The Secretary is authorized to conduct a Precipitation Management Technology Transfer Program to help alleviate problems caused by precipitation variability and droughts in the West, as part of a balanced long-term water resources development and management program. In consultation with State and local water, hydropower, water quality and instream flow interests, areas shall be selected for conducting cost-shared field studies to validate and quantify the potential for appropriate precipitation management technology to augment stream flows. Validated technologies shall be transferred to non-Federal interests for operational implementation.

TITLE III—GENERAL AND MISCELLANEOUS PROVISIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Except as otherwise provided in section 303 of this Act (relating to temperature control devices at Shasta Dam, California), there is authorized to be appropriated not more than $90,000,000 in total for fiscal year 1992, 1993, 1994, 1995, and 1996.

SEC. 302. AUTHORITY OF SECRETARY.

The Secretary is authorized to perform any and all acts and to promulgate such regulations as may be necessary and appropriate for the purpose of implementing this Act. In carrying out the authorities under this Act, the Secretary shall give specific consideration to the needs of fish and wildlife, together with other project purposes, and shall consider temporary operational changes which will mitigate, or can be expected to have an effect in mitigating, fish and wildlife losses and damages resulting from drought conditions, consistent with the Secretary's other obligations.

SEC. 303. TEMPERATURE CONTROL AT SHASTA DAM, CENTRAL VALLEY PROJECT.

The Secretary is authorized to complete the design and specifications for construction of a device to control the temperature of water releases from Shasta Dam, Central Valley Project, California, and to construct facilities needed to attach such device to the dam. There is authorized to be appropriated to carry out the authority of this section, not more than $12,000,000.

SEC. 304. CONSISTENCY WITH STATE LAW.

All actions taken pursuant to this Act pertaining to the diversion, storage, use, or transfer of water shall be in conformity with State law.

SEC. 305. EXCESS STORAGE AND CARRYING CAPACITY.

The Secretary is authorized to enter into contracts with municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities, pursuant to the Act of February 21, 1911 (43 U.S.C. 523), for the exchange, impounding, storage, and carriage of water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes using any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California.

SEC. 306. REPORT.

There shall be included as part of the President's annual budget submittal to the Congress a detailed report on past and proposed expenditures and accomplishments under this Act.

SEC. 307. FEDERAL RECLAMATION LAWS.

This Act shall constitute a supplement to the Federal Reclamation laws.

TO PROVIDE EMERGENCY DROUGHT RELIEF TO THE RECLAMATION STATES

Mr. CRANSTON. Mr. President, the purpose of this amendment is to apply the authority established under subsection 102(d) to water made available by the Secretary of the Interior in 1991 to the Grasslands Water District for fish and wildlife purposes. Subsection 102(d) authorizes the Secretary to make water available for fish and wildlife on a nonreimbursable basis in order to help cope with drought-caused water shortages.

The Grasslands Water District represents the largest single area of wetland habitat remaining in the Central Valley. Protection of Grasslands habitat is vital to maintenance of Pacific Flyway waterfowl populations, and is especially important during the current drought. Ensuring that Grasslands' habitat is available this year is critical to migratory waterfowl and would provide significant public benefits.

The authority granted under subsection 102(d) would apply to Grasslands and others upon passage of this legislation. Given the probability that the bill may not be enacted into law until late in the year, the benefits of subsection 102(d) are unlikely to be available to Grasslands until 1992. Water deliveries for wetland habitat must be made available immediately in order to provide effective benefits for waterfowl this winter. The Secretary informed the Grasslands Water District recently that water was available for their use, but only on a reimbursable basis. This amendment would ensure that the provisions of subsection 102(d) would apply to water delivered to Grasslands in 1991, regardless of when H.R. 355 is finally enacted into law.

Mr. BURNS. Mr. President, I strongly support the passage of H.R. 355, the Reclamation States Emergency Drought Relief Act of 1991. This legislation, as amended by the Committee on Energy and Natural Resources, would provide the Secretary of the Interior with both temporary contract authority to deal with the current drought situation in many parts of the West, but also permanent authority to prepare for and deal with future drought situations.

There are in essence two significant amendments to the language passed by the House. The first is to make the emergency contract authority available for 2 years rather than the 1 year in the House-passed measure. The reason is that we do not know when this legislation will be finally enacted and a 2-year provision ensures that the relief will cover at least one full cropping season. The second is to make other provisions permanent. This is the third time in 15 years that some portion of the West has been so affected by drought that Congress has had to enact almost identical relief. There does come a time when a light goes on and we learn. There is absolutely no reason why we need to wait until farms go under, reservoirs go dry, towns truck in water, and refuges and habitat disappear before we take action.

I regret that it has taken this long to move this legislation. The House acted promptly and so should have the Senate. In July, I requested that the legislation be placed on the committee's agenda and circulated amendments, which included the provisions for 2-year contract authority and making the other authorities permanent. This legislation should have been enacted then so that the authorities could have been enacted during the last fiscal year. I am happy that virtually all my amendments were adopted, but I regret the delay. The impact on drought afflicted areas continues to grow. All segments of the West have paid the price for delay. Fish and wildlife, agriculture, municipal and industrial, recreation, all aspects of the West have been impacted.

I strongly support the passage of this legislation and I hope that the House will agree with the amendments and clear this measure for the President's signature.

Mr. WALLOP. Mr. President, I rise today to support and encourage passage of H.R. 355, the Reclamation States Emergency Drought Relief Act of 1991, as amended by the Committee on Energy and Natural Resources. We have dealt with similar legislation three times in the last 15 years. To those farmers and communities trying to survive this latest crisis, the lack of responsiveness by the Senate in moving this legislation must seem unconscionable.

Mr. President, we are talking about a drought. The bill was introduced in the House on January 3 of this year. It passed the House on March 21. The Senate received it on April 11 yet it was not reported out of committee until October 8. For those whose concept of a food supply chain begins at their local supermarket, this delay may not seem unreasonable, but if you are the farmer or farm community who just lost a whole growing season waiting for the Senate to act, you would see this delay somewhat differently. Without delving deeply into the reasons for the delay, suffice it to say that this was a horse going by and some individuals decided to try to add a few things to its pack. Well, those little additions just about stopped the poor old horse.

I would like to commend Senator BURNS for his efforts to secure early passage of this measure. Had the committee acted on the measure when Senator BURNS asked that it be placed on the agenda in July, we may have been able to provide some assistance this year. The amendments which he proposed at that time had my full support and it is simply unfortunate that the committee waited until October to report the measure.

Preventing a recurrence of this scenario is the rationale for the Senate amendments to H.R. 355. When a drought occurs, as it inevitably will, again and again in our part of the country, the people who produce our food and fiber cannot wait for relief. They need help just as soon as they can get it. Our amendments differ from the House passed version in two important respects. The first is the provision of emergency contract authority for a 2-year period in order to include at least one full growing season. The second is in granting permanent authority to the Secretary to develop and implement plans to deal with future drought events. Having in-place plans and implementing procedures instead of having to pass a law for every drought just makes good public policy sense.

There may be some who would rather require a new piece of legislation for every drought. That would assure them of a periodic horse passing by that may be going their direction. But the people of the reclamation States, the West, should review that line of reasoning as sufficient reason to consider changing legislators. This is a good bill as we have amended it. It provides the necessary tools for the Secretary to immediately address drought situations as and where they arise. It enables the Bureau to act expeditiously and in full cooperation with State and local government to behave as the Federal Government should in the part of the country where it is the major landowner, like a good neighbor.

I support this legislation and encourage my colleagues to vote favorably on it.

AMENDMENT NO. 1301

(Purpose: To provide drought assistance to the Grasslands Resource Conservation District, California)

Mr. BRYAN. Mr. President, I send an amendment to the desk on behalf of Mr. CRANSTON and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. BRYAN], for Mr. CRANSTON, (for himself and Mr. SEYMOUR) proposes an amendment numbered 1301.

Mr. BRYAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of subsection 102(d) add the following new sentence: "Water made available by the Secretary in 1991 from the Central Valley Project, California, to the Grasslands Water District for the purpose of fish and wildlife shall be nonreimbursable.".

The PRESIDING OFFICER. Without objection, the amendment (No. 1301) is agreed to.

Mr. BRYAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JEFFORDS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 355), as amended, was passed.

Mr. BRYAN. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. JEFFORDS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. BRYAN. Mr. President, I now ask unanimous consent that at the conclusion of the remarks of the Senator from Vermont [Mr. JEFFORDS] that the Senate stand in recess under the previous order until the hour of 9 a.m., Friday, November 1.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BRYAN. Mr. President, I yield the floor and once again acknowledge the courtesy of the Senator from Vermont in allowing us to interrupt his thoughtful and very provocative presentation.

NATIONAL ENERGY POLICY ACT

The Senate continued with the consideration of the motion to proceed.

Mr. JEFFORDS. Mr. President, I beg the indulgence of all those who are still present but this is an important bill we are discussing and it is something I have been working on for some 10 years. Before the Senator from Minnesota leaves I urge him to review the bill I have, for we do not necessarily take the position that we should be energy independent. But what position I do take is that we should place ourself in the position where we have that option. And that is what we are doing.

I remind the Senator from Minnesota we had a policy similar to mine from about the forties right up through the OPEC embargo of 1973. I know because those of us who lived in the East were very much concerned about that policy. But what we did then was wall off the influx of cheap oil for the purposes of increasing our domestic production. Those of us who lived where we would like to have seen that cheap oil were naturally upset. Then, of course, when the embargo came; then things flipped around.

What we are trying to do, though, is to return to a policy where we can ensure the domestic production of fuel as we did in those years, from I guess the fifties through 1973, where we ensured our energy security and our ability to produce our own, by saying that we are going to set the price high enough in order to produce domestically.

The bill I have works in similar ways, and I would only point out in the event cheap oil is available at the time when our bill would lead us to that position where we can be energy independent if that cheap oil flows in, we get the advantage of it for the other 70 percent that we are purchasing. But we have also placed ourselves in the position where, if we so desire, we will have the ability to become energy independent because we will develop the necessary commercial, capacity and infrastructure to place us in that position.

I hope those who are interested in the environment will recognize, as I will point out, one of those options at that time will most likely be ethanol, produced from biomass. And DOE figures, which I will give, will indicate that we will have the capacity at that time to totally fuel with motor fuels from ethanol which would be global warming neutral because we would not be pulling any carbon out from the ground where it has been for millions of years and placing it up in the atmosphere, but we would be really rotating the carbon presently above ground.

Only by pursuing a plan such as mine will we be in a position to let this Nation be globally warming natural. So I hope my colleague would not just write off consideration, or feel there is no such thing as a possibility of being energy independent. The figures I will give come from the Department of Energy. They are not from JIM JEFFORDS on some late night musing.

I appreciate that very much. I thank my colleague for listening to me and I hope perhaps he will review the situation.

Mr. President, now, and I again beg your indulgence, but this is such an important issue to our Nation, so important that I have taken many hours over the past 10 years to develop this strategy. As I mentioned earlier today, it is not just my thoughts but this plan has been looked at by the Department of Energy. They endorsed a similar plan. They took it to the White House, and the White House said no, we do not think we can be energy independent, so we are not going to go that way.

This is a DOE chart with one exception—well, it is a DOE chart, basically. What this shows is a little bit of this history.

Back here before the embargo we were right down at this corner here. That is when we had a stable price of oil for all those years. Then at this point we ran into the oil embargo here and we ended up with sharp increases. This is where our consumption began to go up. Then when we really got the full impact of the embargo. During this period of time we were building a policy of energy conservation, during the years up until 1980. So our consumption was increasing at this time, but then when we got up here we suddenly put our energy policies of conservation in. We had a steep decline in consumption, reaching a low at about 1981.

Then it was also at this period of time, although this would be on a different chart with pricing, at that particular point up in here, about 1979, OPEC dropped their price from about $40 a barrel to about $20 a barrel. At that point we were in serious trouble because we suddenly had all of those programs which the Senator from Massachusetts talked about, and others, that became to be very noneconomic. Thus our whole program for developing alternatives began to come to a slowdown and eventually to a screeching halt.

It was also at that time when I recognized that the policy of trying to subsidize the price of oil as we did in synfuels would be a disaster. When they did drop the price of course it proved to be one, because we could not afford to subsidize the price differential between the price of our synthetic fuels and the price of oil which at that time had dropped well below the cost of producing synthetic fuels.

So let me go back now and just refresh everyone. What my bill does is to create a market for alternative fuels domestically produced which will be required to replace the imports. I will talk later about how we do that.

This chart was prepared by DOE, not by me. What this chart shows is the present trend of our current policy. This shows with the current policy if we do nothing that our imports are going to shoot up and up and up so that by the year 2010 we are going to be almost totally dependent on imported oil. We will be just totally dependent upon outside oil interests.

The policy of the national energy strategy by the administration, by the various methods that they have, including ANWR, pull us down. But my colleagues will note that even from about 1993, through to the year 2010 or to about 2005, we have a slight rise and then a decline when ANWR comes in, and then it shoots up again. If we were to continue, we would see that our imports would continue to shoot up and we would be up here. We would reach that same place of almost total energy dependence almost a decade or two later.

If you take the bill that is before us from the Energy Committee, the only difference with this is instead of 7.1 million barrels a day, it would be 6.1.

So it is not as good as the national energy strategy, which came to us from the White House.

I just want to alert everyone that no matter what we do, unless we do something like I recommend, we are not going to place ourselves in a position to become energy independent at any time.

I also would like to point out, while I move to the next chart, that I do not fight with anyone. You can vote for my bill. Our plan will work with or without ANWR, with or without CAFE standards, with or without all the conservation measures in the present bill, with or without anything else. It can stand alone and do the job.

Let us take a look right now, though, especially for those who are from the Eastern States, to let them know what kind of a mess we are in again—as we have been in the past. Those of us on the Eastern seaboard are subjected, even more than the rest of the country, to the impact that we have by importing oil.

I come from Vermont; 100 percent of our oil, fuel oil is imported. The same is true with Delaware and others. All of those States in the upper part of the country, New England, are way up there. So we have the most to be concerned about.

Look how much of our money on this chart also is going overseas. My little Vermont is about $1 a day for every person in Vermont; $600,000 a day goes overseas every day. The same is true for the other States, according to population.

We want to do something about that. I do not mind and my people do not mind even if we have to pay a little bit more. But later I will show there really is no significant cost increase to the consumers. In fact, according to DOE figures, it probably will be less than we are paying now.

Now let us take a look at the impact it has on our economy, generally. I think this is important to remember as we go along—the tremendous drain on our economy at a time when we have become fragile with respect to being dependent upon economies of the rest of the world to provide our financing money, the fact that our wealth is being drained from our country and sent overseas. This shows the trade deficit and the percentage of the trade deficit, which is from petroleum.

As my colleagues can see, we are up, in 1990, to 52 percent of our trade deficit in dollars from importing oil. That is going to get worse. Remember, in the previous chart, no matter what we do, we are going to have an increase in the amount and percentage there. The only hope we have is if we increase our exports tremendously. Then that percentage will shift, but the actual amount of dollars will not change.

Again, this chart just shows the perilous situation we are in. This is the trend in our oil import situation right now. As my colleagues can see, it just shoots right up and out. This would be right up. When we get up here, we will be totally dependent on imported oil. Those are the trend lines.

As I showed on the other chart, they will change depending upon the national energy strategy, the White House, and somewhat less by the bill before us. Nothing but my proposal will do anything about changing that to a downward slope.

This is also one that should give some cause for concern. This green line is the total amount of petroleum imports. The red line is the amount which is imported from OPEC, and the blue is from non-OPEC. As we have seen from the recent problems in the Middle East, as well as the OPEC embargo, most of that OPEC oil comes from the Middle East, and thus we are very subject to interdictions, interruptions, and every one of those sends a spike into our economy.

The OPEC, after the embargo, reached a pretty high percentage, then dropped down as the price fell. Then as we brought on the North Sea oil, and these other things, the non-OPEC began to come up. This production, as we can see of the non-OPEC countries, is not increasing; it is decreasing. Where it is going to increase—barring some huge finds of oil which no one knows about—this is going to continue to increase, and this blue line is going to continue to go down.

So it demonstrates clearly that our future is dependent on the Middle Eastern or at least OPEC oil.

This next chart also demonstrates where our children's energy will come from, unless we do something. On this chart, the black is what we have left, where the oil in the world is. The red or the pink is where it used to be.

We will see in the United States, for instance, we used to have somewhere around 166.3 billion barrels of oil. We are down to 26.5. At the rate we are using this, we could use that up in a couple of years if we did not import anything. That shows how perilous our situation is. A little more in Canada. Mexico has about twice what we do. That again is only a couple years of total supply.

Then you look at where it is right now. It is all in the Middle East. That perilous situation which has had difficulties in wars for some 5,000 years is where our children's oil is going to come from if we do not give them an alternative way to find some energy sources.

This is another chart that demonstrates that. This is identified reserves and years of production at 1986 levels. This shows how many years are left in the various sources. Take Canada and the United States, 20 or less years. The same with the United Kingdom. They have 150 years' worth out in Kuwait, Saudi Arabia, and areas like that.

Now we can see by this chart also why Iraq went into Kuwait. It is a very obvious reason right there. Again, that has to give us cause for deep concern.

This next chart is pretty busy. It is pretty hard to read. The impact should not be reading each and every one, but if you can take a look at the interruptions that occurred in imported oil over the years, we will see that it was not just this last little problem in Iraq, little in sense at the time, rather they started back as early as 1954, in the Iranian fields when they were nationalized, the Suez war, the Syrian problems, the new Syrian civil war, Algerian-French—we can just go on down through there. The impact should be in the number of them and not necessarily the other aspects.

After demonstrating the problems and the perils that we have on dependency on imported oil, I would like to look at what the options are that we have with respect to our own indigenous resources.

As I will talk about briefly later, my bill opens up a free market, free from the domination of OPEC and its ability to lower its prices and thus prevent us from obtaining any capital to develop our domestic resources.

Mr. President, I wanted to let everyone know I am flying out to Wyoming tomorrow morning at 5 a.m. The reason I am keeping everyone here tonight is it is important that the provisions I am giving are available to those that are concerned about the motion to proceed. For it is my feeling that with the adoption of my amendment to the bill the business of the Senate could be expedited tremendously.

I hope we could accomplish that, and in order to try to expedite that I will expect to stay in opposition to the motion to proceed, and in the hopes we can even move the Senate rapidly by spending a little more time here tonight.

But in order to have any logic to that argument, you have to show that we have the resources with which to do the job, and that is to be energy independent if we so choose to, and my amendment would give us the option. I am not choosing any particular option, but I am merely trying to demonstrate that there are the resources available.

There are two that I will take a look at. Others, of course, will qualify. To give you an indication of where our Nation's resources are, this next chart shows you the fossil fuel resources that we have as of right now, in the sense of percentages, actually in billions of barrels of crude oil equivalent.

We have, right now, 1.980 trillion barrels of oil equivalent in coal. And the evidence is clear that we are developing and have developed ways to convert coal in a way that is even less environmentally damaging than the petroleum that we burn in our cars today. I mention that in particular because my amendment provides for two parts, one being replacement fuels to be used in automobiles with gasoline engines, as long as they may be allowable with respect to environmental concerns or clean air. So we have the resources to do it all alone with coal, as compared to just a bare 27 billion barrels of crude oil in the conventional sense of 65 billion barrels of natural gas and 560 billion barrels of shale oil.

So when you keep in mind that we are trying to accomplish two things with my amendment—first, to allow the gasoline engines that most of our cars have, and diesel engines that our cars have—we have a resource that can do it without doing something else. I want to do something else. I want to make that clear.

This is the DOE's chart that we have utilized here. These are not JIM JEFFORDS' figures or facts. They are those of the Department of Energy. The most attractive one in the long run is for those of us who have concerns about the future and what would happen if we were in a perilous situation respecting global warming. Do we want to continue to go forward with fossil fuels, which takes carbon out from under the ground where it has been for billions of years and puts it in the air and creates a global warming climate? If you believe that is bad, what are the options?

We have an option. Again, this is a DOE chart. They used this when pursuing this kind of an option. It demonstrates very clearly that—it is a very busy chart, and I will not go through all of it—we have ethanol options through the production of agriculture. This is not corn, or wheat, or whatever else. That is the present situation. But we have developed innovative, new techniques to convert even scrap paper into ethanol, through a system which is done through modern technology that does not require energy to complete in any great or significant amount. It is done through fungus growth—or I am not sure of the process, but I have been out to Colorado and have seen the experiments they have, such that we can attract the capital to develop the commercial opportunities there. Many of the resources can be grown with grasses that are periodic, so you do not have to plow or fertilize, and waste paper and sawdust and whatever else. We have more than enough capacity, without interfering with our food chain, to develop the resources necessary to fuel all of our vehicles with ethanol. We are not talking about next year, but we are talking about way into the future at times when the problems with global warming will be more pronounced.

Again, I want to remind everybody as to what happened when we tried to go another route; not the route that I have, but the route of trying to subsidize the cost or the price of a substitute fuel. This was back at the time around 1979–80 when the price of oil was up to $40, and we realized that we could utilize coal and synfuel. We spent billions of dollars. That was when I developed this concept. I recognized we were perilous under OPEC, because they could reduce the price, and at that time, Brazil—which is where I got the initial idea—was already demanding that their gasoline have at least 10 percent ethanol mixed in. They import all of their oil with huge sugar resources, and this was an inexpensive option to them relative to the cost of the oil at that time. They replaced 10 percent with no problem.

That kind of a concept developed into gasahol, which has been generally used. So we know there is a way that we can use gasahol, for instance, right now, but that requires a subsidy.

What happened here is, when I recognized that, I said what we have to do is go the other way. We have to wall off OPEC and create a separate market. I was thinking in terms of ethanol. And, as time went by, I recognized there were other options available.

The next part demonstrates what our program is. The target is replacement of 10 percent, which is easy under the full purview of the bill by 2001, because we include strip oil, which I will go through later, and a 30-percent goal by 2010. This is the only way, by having this goal. When they mentioned that goal in the bill, S. 1220, it is only the reference to the goal in the part of my bill that they took. They adopted the skeleton of my proposal, but carved out the heart and stripped off the muscles and left it as a study with a goal of 30 percent. I believe it is the only place it appears in that bill.

How do we do that? We do it through the refiners and, needless to say, that does not create any great thrill. Before anybody says, "Oh, my God, what a huge administrative burden that will be," I point out that the reformulated gasoline amendment we passed under the Clean Air Act already requires them to do all the kind of reporting and efforts that we would do. So there would be really no additional burden as far as administrative duties.

In addition to allowing them to replace their gasoline with things that can be mixed in it, we also developed a market credit system to help bring along those kinds of fuels that are independent and operate independently of the gasoline engine. That goes from electric cars to dedicated cars for methanol, ethanol, natural gas, or anything else.

In addition, of course, to the replacement side, things they can mix in could come from Canadian tar sands to United States tar sands, shale oil, and also from stripper wells, which I will mention later. So what they would do, instead of mixing in, they could buy a market credit. This would accomplish the purpose of transferring capital over to those areas where we need to develop the infrastructure and the commercialization. As I mentioned—and I will run through this briefly—we have two kinds of replacement fuels, including one that would replace gasoline in your car; and we have alternative fuels that would operate the motor outside of the utilization of gasoline or diesel fuel.

I also point out in that chart, which I am going through quickly tonight, that the clean air bill would bring along a lot of this, but not as quickly as we would. We are totally consistent with the clean air bill. In fact, we make it work faster and more efficiently.

What are the consumer costs? There will be arguments made that, yes, that is fine, but, good Lord, it is going to cost. What we do is mix those marginal cost differences into the price of gasoline. If you start out at 1 percent, even if you have a huge difference, a higher price for the fuel you are mixing, you spread it over the other 99 percent, and it becomes a very small amount.

This is again the Department of Energy material, not mine. This was their case. They indicated that we would have a 2½-cent increase in the price of gasoline at the maximum point that year, around 2010, when everything that is being geared up is going into play. From that point on we will most likely have a decrease in the cost.

In fact, using a different one—this was one set of scenarios—using their own scenario they believe it would only go up to about .6 of a cent and actually end up in the outyears about 2020, 2015, in that area. It would actually result in a lower price for various reasons, not the least of which is as we decrease our consumption of imported oil it is going to put pressures on to lower the price and therefore it would be helpful in that regard.

Now, this is important. You are going to hear even 2½ cents, 5 cents, 10 cents, whatever you want to argue, is going to be a huge increase. If you took a look at the real cost we are paying for gasoline now, not the cost that you are paying at the pump, but all the taxes and expenditures, all the costs of military operations in the Middle East, et cetera—and this is not my figure, this is the figure from the chairman of the Energy Committee, Senator JOHNSTON from Louisiana—the real cost of a barrel of oil is not $20; it is $200.

So, that gets you down to a very high price per gallon if you divide that by 42 gallons per barrel. You can see you are talking about $5 a gallon gasoline. There are a lot of figures. None as good as Senator JOHNSTON's. You can find figures, even $300, even Greenpeace and environmentalists get up to $459 a barrel. I use the one we have, of course, and I have eminent faith that is correct, from the chairman of the Energy Committee. That is about $5 a barrel actual cost per gallon of gasoline. Our cost would be well below that as far as any of the alternatives you can choose are going to be below that.

Again, this is another way, and I will not go through it this evening. It gives you an idea of the total, how we figure it out. DOE came up with figures. JOHNSTON came up with the figures on what the real cost per barrel of oil is.

I would hope at this point we would recognize that we have demonstrated a plan, we have demonstrated that that plan if it worked would put us in a position where we could be energy independent by the year 2010 and allow us at that point where we have a 30 percent displacement of our crude oil we could make the decision as to whether or not we want to go all the way out. If by that time, the world is at peace, the nations that supply the oil are very reasonable and the price is stabilized, we could just leave that option open and continue. No one would get hurt. Businesses would still have their share of the market and they could produce at a profit and we would be in a position that if the prices were coming down our prices would go down.

Let me tell you how the refiner can meet the 10-percent goal, and I will go over that briefly. They have several options. First and overall, they can blend in replacement fuel. It could come from stripper wells. It could come from reformulated gasoline. It could come from methanol. It could be from tar sands, oil shale, coal, a lot of things.

They say, oh, no, we do not want to do that. What else can they do? They can buy a market credit. They can find an ethanol producer and get credit for the ethanol being produced and put in the marketplace and used for motor fuel. They could also go to other alternatives for methanol, domestic methanol or other matters, and in addition to that they could produce themselves options, including natural gas, neat alcohols, electric vehicles, hydrogen. They could buy market credits from the option.

The market credit—what is that? Is that a mystery thing? We have done it in other areas, and the clean air bill in particular has a market credit built in similar to this. It is working or going to work well. It is in its infancy but we have shown this program to the author of the market credit and he found it very, very workable.

So I just say that all those options are going to be open. Nobody is going to get hurt that bad.

Now, stripper wells. Why do we bring stripper wells into this scenario? I will be candid with you. There are a lot of stripper wells out there. That obviously makes it more attractive for those people who have stripper wells. Why would we do it?

First of all, stripper wells are those that produce a couple barrels a day and they produce significant amount of oil, but it is from a very defined and depleting supply. It will phaseout somewhere just about the time that we would expect the alternatives would be ready because of the capital necessary, the time necessary to build the plants, and all. It would be phasing out at about the time they are phasing in. So we would have a very gentle phase-in period where most of it can, where we get geared up and work out administrative problems, and all that would come from stripper wells. But as those go down, and I will point out they will go down much lower because the demand would be there to increase the prices of stripper wells as they would be competing with probably higher price options.

Thus, the owners of stripper wells would be getting a better price for their oil as time goes by and, in addition to that, it would increase the amount of oil which we could get from the stripper wells because of that higher price and, therefore, we would increase domestic production from the stripper wells' capacity.

Again, I just show you that a stripper well produces about 2¼ barrels a day, and in the United States wells the average well produces about 12 barrels a day. You go to Saudi Arabia, and look what they are producing out of a well, or Iraq or Iran or Kuwait. It is just an incredible difference what they get out of their wells to show you how bad off we are in the science of energy production.

Again, this chart—I will not go over it this evening, but it shows what would likely be the increase in production from stripper wells as the price increased.

The final chart and the final part of my evening presentation, which I am so appreciative of your patience, indicates what we are trying to accomplish and states it very briefly. We will be on our way to energy independence in the year 2010. We will be able to make that decision as to whether or not it is in the best interest of this country to pursue and go forward. We will have options available to take care of global warming, which we do not have now. We will have options available to increase our ability to control our economy. We will create thousands of jobs. We will create the capacity to make this country strong and to solve economic problems. We will reduce the greenhouse gas emissions, as I said, in places where all the emissions are in this Nation. We will be in a position to reduce those substantially and without impacting our economy.

We will help our farmers and revitalize the agricultural industry of the country without significantly raising either food prices or gasoline prices. And finally, which is somewhat of a concern right now, we would lower the Federal deficit.

So if you are going to create jobs, lower the Federal deficit, end the problems of global warming and without raising significantly the price of motor fuels, it seems to me it is an option that ought to be pretty inviting to colleagues and I would hope they would take a close look at it.

I again reiterate, as I did this morning, originally a majority of the Energy Committee endorsed the bill I had in, but unfortunately later on other people, who were kind of upset with the fact that we might become independent of OPEC oil, were persuasive in some of their arguments and that scenario changed.

I would also point out there was some pretty broad support for my amendment and there is some support which has changed, and I will let you know why. We had the support of the American Gas Association, those that have the natural gas, and they were enthusiastic about it. But all of a sudden they went to neutral. Why? They discovered that half the natural gas, or well over half, is owned by oil companies. Those that have foreign interests in oil overseas would be adversely impacted.

Coal was strong behind us for a while and had the people in who said this is a great thing, and then, lo and behold, what happened? They discovered that either the coal was owned by foreign businesses or most of it was owned by the oil companies with interests over in OPEC, and thus they are now neutral. They are not in opposition.

But we have the support from the Sierra Club that recognizes especially the ultimate advantages environmentally by going this way. We have the renewable resource organizations back of us as well as a number of others which I will reiterate at a later time.

Mr. President, I certainly appreciate your indulgence here. I know a lot of this is repetitious to you, because we discussed this personally, but I hope that my contributions today will help us reach this goal which I think is possible and I think we should be at, and that is putting ourselves in a position to become energy independent.

Mr. President, again I thank you.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I may be permitted to speak notwithstanding the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, first of all, I do not know if he is still here tonight, but I wish to thank the Senator from Wyoming for his apology to me while I was the Presiding Officer. As you know, Mr. President, when you are the Presiding Officer, you cannot really respond. I never had a chance to thank the Senator from Wyoming. But I did appreciate his apology. And even though we have not agreed on issues, especially in the Energy Committee, I have always found him to be direct and straightforward and honest, and I much appreciated his apology.

There was something in the statement that the Senator from Wyoming made that I found to be very interesting, Mr. President. He pointed out that in S. 1220 we get twice as much energy savings from energy conservation as we do from new production.

Now, if that is true, Mr. President, if in S. 1220 we get twice as much energy savings with efficient energy use conservation as is the case with new production, then I would say that investing in energy conservation and efficiency is a pretty good buy.

This morning when I spoke—and I think it is worth saying one more time as we near the end of this debate before this critical vote on cloture—I pointed out that if you look at the spending priorities, rhetoric all aside, what you see is that 75 percent of the total cost of this bill is focused on coal, oil, gas, and nuclear power. Now, on the other hand, only less than a quarter of this bill is devoted to efficient energy use and renewables. A mere pittance—a mere pittance, 2 percent—is actually devoted to renewable policy.

Now if title VI, which covers energy efficiency, accounts for only 14 percent of the expenditures, and we are talking about 76 percent production oriented, and the Senator from Wyoming is right in his math that we get twice as much energy savings from conservation in this bill, then what that tells me is that by spending about one-fifth as much money on energy efficiency as production, which is what we do in this bill, we get twice as much out of it.

In other words, for the same dollar investment we get 10 times as much for efficiency provisions than we do for the production provisions. If that is the case—and I am not a Noble economist—it does seem to me that it is clear that if that is the case the priorities of this legislation then would focus on conservation and efficient energy use and renewables. That is where we get the greatest return. That is what is most respectful to the environment. That is what will make us more energy independent. That is what is better for our communities. That is what people have called for in poll after poll after poll. But that is not the priorities in this legislation.

Mr. President, I also want to take exception to something that the distinguished Senator from Louisiana, Senator JOHNSTON, said in his statement this afternoon. I do not say this in the spirit of acrimony. If the Senator is not here, I certainly will never make any remark that is acrimonious. I do not believe that. This is in the context of just an argument.

The Senator said that everything in his bill called for what he described as a "soft" energy path.

Now, the soft energy path is the terminology used in an article, a very important article written 15 years ago by one of the world's greatest energy experts, Amory Lovins.

Amory Lovins, interestingly enough, Mr. President, was here just a couple of days ago, right here in Washington, DC. He met with many staffs, and those Senators and Representatives who could come were also there. He gave a superb talk and he pointed out how much energy we could save if we took conservation and renewables seriously. As a matter of fact, Amory Lovins and his associates have identified 42 ANWR's of energy. Where are they, the 42 ANWR's? They are in our cars. I do not need to talk to you about that, Mr. President. We can drill for oil with fuel efficiency standards.

They are in our businesses. They are in our homes—42 ANWR's—in terms of what we could do by way of saved oil, saved energy, without threatening a beautiful wilderness area in our country.

But that is not the priority of this legislation. I want to be clear. We had a lot of wrangling on the floor today. But I think we really need to keep our eye on the prize, and the prize is the debate. That is what the Senator is for. People who watch our proceedings want us to be substantive.

So let me one more time make my case as to why I am so opposed to the motion to proceed. My case is as follows: S. 1220 is not an energy policy. The Senator from New Mexico said earlier today, and I was interested to hear his comments, that what disturbed him about the position that many of us have taken is that we are not interested in an energy policy. That is not true. I am interested in a credible, workable energy policy.

But S. 1220 is a nonenergy policy. It does not address the two most fundamental long-term energy problems in our country: Our growing and excessive dependence on imported energy which threatens our national security and the health of our economy; and, second—and I do not believe there has been enough discussion of this on the floor today—the threat to our world environment, namely, global warming and delayed climate change.

S. 1220 does not do anything to solve either of these problems. It does not do anything significant to solve these problems. It cannot deal with our fundamental dependence on imported oil no matter how hard we try. As I pointed out earlier, you cannot legislate geology. You just, simply cannot do it. No matter if you were to drill for oil or not in the Arctic National Wildlife Refuge, that will not change the fact that 3 percent of the world's oil resources are in the United States and 65 percent are in the Middle East.

I also want to make the point—and I am going to summarize my argument tonight—that even if we could drill for oil in the Arctic National Wildlife Refuge, even if you thought that was the right idea, and even if we could attain all the oil that some of the proponents of drilling in the Arctic National Wildlife Refuge say we could attain, it still would be a mistake. Oil is a fossil fuel, and fossil fuel burning releases carbon dioxide which is the principal greenhouse gas generated by human beings and the most important single cause of global warming.

The estimates by independent scientists are by the middle of the next century we are going to see an increase from 3 to 9 degrees Fahrenheit in temperature. This is the planet for our children and our grandchildren. I think it really is time that we focus attention on trying to make sure, through public policy, that we leave to our children a healthy and a beautiful and a safe planet Earth to live on.

That is not what this legislation does. As a matter of fact, it is incredible, S. 1220, if you look at it carefully—and I sit on the Energy Committee—does not even have a finding on global warming. It is as if we should make decisions about how we produce and consume energy independent of the environment. The people in this country have asked us to do something quite different.

Mr. President, let me make one other point, maybe just two other points. One has to do with what do the people want?

I want to show just one more chart. I showed it this morning, but, by gosh, at this point in the debate I think it is important to focus attention on this again.

Poll, December 1990, a national poll.

Energy conservation, priority for Government funding, 75 percent of the people said that is what they wanted. By the way, this was a nonpartisan poll in that it was taken jointly by a Republican pollster and a Democratic pollster.

Nuclear power ranked 10 percent. Coal and oil ranked 12 percent.

What do we do in this piece of legislation? We spend 75 percent for oil and for coal and for gas and for nuclear. What do we do with nuclear power? Even if I was a proponent of 200 more gigawatts of nuclear power—and I am not—the last thing I would want to do would be to jam nuclear powerplants down the throats of the people in this country.

What this piece of legislation does—See, I think there is more going on in this legislation than just ANWR. There are more flaws in this legislation than not having good fuel efficiency provisions. What this bill does is says to people in this country—I think people should know about this tonight—look, now we are moving to one-step, not two-step nuclear power licensing. You get one chance, one public hearing that is at the time of the original construction. Then, when you get to the operational phase, you do not get to have another hearing. You literally cut the public out of participation.

We live in a democracy. Tonight, one of the many reasons I am opposing this motion to proceed is that I am absolutely opposed to, in a democracy, cutting people, citizens, out of the public participation process. Those women and those men and their children have every right, when a nuclear powerplant is sited right on top of them, to make sure that that plant will meet their health and meet their safety needs and concerns.

Tonight I have heard so much about technology, over and over and over again. We have not solved the problem of what we do with the more nuclear wastes we generate. This bill does not take us down this path. What the people said in public hearings was give us consideration. What the people said was give us efficient energy use. What the people said was let us make a 20-year transition and get serious about renewable energy policy. What the people said in the public hearings was we want to be protective of the environment.

Instead, what we have is a piece of legislation which does what? It says we will drill for oil in the Arctic National Wildlife Refuge, we will not have serious, credible fuel efficiency standards, and we will build more nuclear powerplants and generate more nuclear waste.

I will tell you tonight, I know what happened. We had a debate a long time ago in the Senate about campaign finance. I will tell you what happened. Once the people got cut out of this in the public hearings that were held around the country and energy policy came to Washington, DC, oil companies took over. There was $20 billion to be made by oil companies oil drilling in the Arctic National Wildlife Refuge.

We are forgiving the nuclear power companies. I wonder how many people know that this piece of legislation writes off, forgives, $11 billion of debt to the nuclear power industry. Do many Senators who are going to vote on this tomorrow know this—$11 billion?

Mr. President, let me just conclude by reading a few letters that I would like to have printed in the RECORD, if at all possible.

National Taxpayers Union.

DEAR SENATOR: It is our understanding that S. 1220, the Johnston-Wallop bill may be coming to the Senate floor next week. We strongly urge you to reject this legislation by opposing any motion to proceed to consideration of this bill.

I will not read the whole letter but one paragraph I think is very telling.

Yes, this country is in need of a national energy policy; it should not, however, be based on taxpayer subsidies to energy industry special interests. The Johnston-Wallop bill forgives $11 billion of unrecovered costs owed to the U.S. Treasury by the commercial customers of the Department of Energy's Uranium Enrichment Program.

Mr. President, $11 billion. That is why the National Taxpayers League is opposed to this.

A letter from Friends of the Earth:

Title XIV of the bill provides for open-ended funding authorization for the government to conduct a coal-based synthetic fuels demonstration and commercialization program for a host of applications, including refining and transportation fuels.

I go on, and the main point is:

This provision resuscitates the late, unlamented Synthetic Fuels Corporation, and would lead to the waste of untold hundreds of millions of taxpayer dollars.

Mr. President, I ask unanimous consent both these letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

FRIENDS OF THE EARTH,
Washington, DC, October 30, 1991.

DEAR SENATOR: We are writing to express our opposition to the "National Security Act of 1991," S. 1220 and specifically to Title XIV, the coal section. We believe that these issues cannot be satisfactorily resolved by a series of amendments on the Senate floor and we therefore urge that you vote against cloture on S. 1220.

Title XIV of the bill provides for open-ended funding authorization for the government to conduct a coal-based synthetic fuels demonstration and commercialization program for a host of applications, including refining and transportation fuels. The provision also calls for "commercial scale" synthetic fuels demonstration projects, at least two of which would be constructed by the year 2000. This provision resuscitates the late, unlamented Synthetic Fuels Corporation, and would lead to the waste of untold hundred of millions of taxpayer dollars.

Additional provisions would spend taxpayers' dollars promoting the expanding use of coal through the export of U.S. produced coal and coal technologies. Particularly disturbing is a proposal for a Cabinet-level Council to promote coal-technology exports. This would place the U.S. in the position of urging foreign countries, particularly third world nations, to develop undue dependence on coal. This simply ignores the fact that coal is a significant source of carbon dioxide and is the fuel with the greatest greenhouse impact.

This title would also allow power plants which undergo extensive modifications to be exempt from the new source provisions of the Clean Air Act. This means that power companies would be able to replace much of their plants (up to 50% of the cost of a new power plant) and not be required to upgrade their air pollution control equipment.

This bill does not address the need for a long-term, sustainable, and environmentally sound energy strategy, and Title XIV, in particular, runs counter to such a needed strategy. Once again, we urge you to vote against cloture on S. 1220.

Sincerely,

BRENT BLACKWELDER,
President.

NATIONAL TAXPAYERS UNION,
Washington, DC, October 25, 1991.

DEAR SENATOR: It is our understanding that S. 1220, the Johnston-Wallop bill may be coming to the Senate floor next week. We strongly urge you to reject this legislation by opposing any motion to proceed to consideration of this bill.

Although, provisions relating to the Arctic National Wildlife Refuge [ANWR] and corporate average fuel economy [CAFE] standards are in the public eye, this bill has other provisions that are as controversial as they are costly to the taxpayers. In fact, the Congressional Budget Office reported that costs of this bill would exceed $7 billion over the next 5 years.

This country continues to be in the midst of a fiscal crisis. In September of 1991, our national debt crested $3.5 trillion, and continues to grow at an alarming rate. The aggregate debt, of course, is fueled by staggering deficits. The CBO says that the Fiscal Year 1991 deficit will be $279 billion and projections for Fiscal Year 1992 are now at $362 billion. Congress must change its spending habits.

Yes, this country is in need of a national energy policy; it should not, however, be based on taxpayer subsidies to energy industry special interests. The Johnston-Wallop bill forgives $11 billion of unrecovered costs owed to the U.S. Treasury by the commercial customers of the Department of Energy's Uranium Enrichment Program. Moreover, taxpayers may be left on the hook to pay for clean-up of the three plants that produce enriched uranium, estimated to be anywhere from $4 billion to $37 billion. Neither of these additional costs have been figured into the CBO cost estimate for the bill.

In addition, the Johnston-Wallop bill allows for an open-ended authorization to revive synthetic fuels development, as well as a blank check to help the DOE develop an "advanced" nuclear reactor.

The Johnston-Wallop bill is loaded with enormous subsidies to the energy industry. Subsidies cost the taxpayer billions of dollars by steering the market place away from the least cost options. Rather than creating a sound energy policy this bill gives away billions of taxpayer dollars to some of the nation's most powerful special interests. We urge you to protect the taxpayer by voting against cloture on the motion to proceed.

Sincerely,

JILL LANCELOT,
Director, Congressional Affairs.

Mr. WELLSTONE. Mr. President, I could go on, and tomorrow, perhaps in the last half hour of debate, I will get a chance to read from some other documents. I will just tell my colleagues right now, that when you look at the efficiency conservation provisions there are titles, but when you look at them you are not talking about mandates. It is voluntary, and you are talking about hardly an funding.

I will tell my colleagues something right now, every single—or I should not say that. But as far as I can tell, many of the people who have done the most important work about efficient energy use and conservation, including the energy conservation coalition, maintain that this legislation does not even begin to take us down the path of saving energy, conservation, and renewables.

Mr. President, let me conclude this way. It is a nonenergy bill. It is not what this country needs. It is not what the vast majority of people have called for.

We focused today mainly on oil drilling in the Arctic National Wildlife Refuge. We should. I think, from the point of view of someone who loves the environment, it would be a disaster. Moreover, I think it is crazy to rely on continuing fossil fuels.

But above and beyond that, there are other things to point out. Again, strong fuel efficiency standards are not here. We need to deal with the Bryan bill. We need to deal with that bill separately that establishes credible fuel efficiency standards.

People are cut out of the public participation process when it comes to nuclear power. I think that is a terrible mistake; not a step forward, but a huge step backwards.

When it comes to public utilities, the PUHCA reform, how many people in this country are experts on PUHCA? Until I came to the U.S. Senate and sat on the Energy Committee, I did not know what it was. But everybody turns their light switch on and off. I will tell the Senate something, we are talking about, with PUHCA, the functional equivalent of do people want this deregulation of S&L's. More concentration of power, more oligopoly, maybe more monopoly; not good for consumers. That is why consumer organizations oppose this bill.

I could go on and on. I will just simply end this way. I think tomorrow we have an interesting test case, and to me the test case is this: I know that energy is not exactly a burning issue to many people in this country, but I will say, Mr. President, it is an incredibly important issue. This vote tomorrow is a historic vote. It is a historic vote.

I am not speaking against the motion to proceed, and I am not voting against cloture tomorrow because I do not want the United States of America to adopt a credible, workable, energy policy. Quite to the contrary. I know from what I see, I know from the people in Minnesota who talk to me about this, and I know as a parent what I hope for my own children and grandchildren, that we have to get serious about making a transition in this country and that transition has to be an energy policy that is respectful of the environment, that once again is focused on reducing the demand by 10 percent and tripling production through renewables.

It is all there. The wind can be harnessed, solar, domestically produced clean fuels, a focus on fuel efficiency standards and saved energy everywhere. It is all there for us.

Mr. President, the question is this: Who dominates the political process here? Do the big energy corporations? Do the big oil companies? Are they the ones that get to decide the vote? I think not. So I think the test case tomorrow is going to be whether we have a system of democracy for the few or democracy for the many. I think that is what this vote is all about. I think it is a referendum of whether or not the vast majority of people really count.

Mr. President, I would like to have another minute. I would like to thank everybody. It is late at night. Many people are here. They have been here all day. I would like to thank all the people, all the staff, Parliamentarians, everybody else, for their kindness in letting me have this opportunity to have some final words in the debate today. I look forward to the debate tomorrow. I will be ready tomorrow morning.

RECESS UNTIL TOMORROW AT 9 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 9 a.m., November 1.

Thereupon, the Senate, at 8:54 p.m., recessed until Friday, November 1, 1991, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 31, 1991:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

LISA A. HEMBRY, OF TEXAS, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 1995, VICE DIANA D. DENMAN, TERM EXPIRED.

EXECUTIVE OFFICE OF THE PRESIDENT

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR TERMS EXPIRING OCTOBER 27, 1994:

CLAIR W. BURGENER, OF CALIFORNIA, VICE ANTONIO NAVARRO, TERM EXPIRED.

JOSE A. COSTA, JR., OF FLORIDA, VICE DANFORD L. SAWYER, JR., TERM EXPIRED.

JOSEPH FRANCIS GLENNON, OF FLORIDA. (REAPPOINTMENT)

IN THE NAVY

THE FOLLOWING NAMED CANDIDATES IN THE NAVY ENLISTED COMMISSIONING PROGRAM TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

NAVY ENLISTED COMMISSIONING PROGRAM, USN

To be ensign; permanent

ADAIR, THOMAS H.
ADAMS, DOUGLAS J.
ADAMS, JOHNNY R.
AGUILERA, ROBERT W.
ARCEMENT, BRIAN K.
ARNETT, DAVID L.
ATELA, JOHN A.
BALDI, JOSEPH A.
BERRAY, CHARLES S.
BILOTTA, JAMES M.
BOBBITT, RAYMOND A.
BOGAN, DANIEL F.
BORRERO, RICARDO
BOWMAN, SHEILA M.
BRAYBOY, JAMES L.
BROTHERS, KIRT D.
BROWN, TERRANCE
BUCKLAND, TIMOTHY A.
BUNDY, RONDII M.
CADE, WILLIAM J.
CARLAN, MICHAEL J.
CARPENTIER, JOHN G.
CARROLL, CARLOS J.
CARTER, JEFFREY J.
CAWLEY, PHILLIP D.
CHILDERS, JEFFREY A.
COLEMAN, CRAIG S.
COMBS, BRYAN K.
COOK, KELVIN F.
CREED, JOSEPH W.
CUTSUMBIS, PETER M.
CYR, PHILLIP G.
DARE, ROBERT E.
DEHAAN, DAVID C.
DELATORRE, ANTHONY R.
DEWOLF, HARRY L.
DINNOCENTI, ARTHUR
DOLAN, DANIEL T.
DORRANCE, KEVIN A.
DOUGLAS, ANTHONY K.
DOUGLAS, MICHAEL A.
DUNHAM, ZACHARY K.
ELLIS, TONY L.
FARLEY, MICHAEL
FINN, KEVIN P.
FISHER, DONALD S.
FISHER, GREGORY S.
FRETER, JERRY D.
GADD, STEVEN H.
GALVIN, MARK R.
GEIGER, DANIEL
GONZALES, JOSE J.
GORDON, KIRK R.
GOURDINE, TIMOTHY
GRADY, EARL S.
GRESETH, GREGORY J.
GUTIERREZ, TONY
GUYMON, VERNON M., III
HALAMA, DAVID J.
HAMILTON, DALE S.
HAND, CHRISTOPHER E.
HAND, FRANKIE J.
HANNA, JAMES H.
HARBOLD, DOUGLAS A.
HARGREAVES, KENNETH
HASTEN, VERNON N.
HATCHER, CURTIS J.
HELMBRECHT, STEVEN B.
HENSLEY, DARRYL W.
HEYWARD, FERRANDO R.
HILL, MARICHAL L.
HOMAN, NICHOLAS M.
HUDSON, DONALD S.
HUGHES, TIMOTHY A.
HUNKINS, JAMES C.
HURSEY, BRENT A.
IBARRA, JOHN J.
JACOBS, DEAN A.
JENKINS, BENJAMIN E.
JOHNSON, TROY M.
JOHNSTON, TIMOTHY J.
JOLIE, BARON D.
JONES, THOMAS H.
KARLEN, JAMES S.
KERN, ANTHONY P.
KLAMERUS, JEFFREY M.
KNEISLER, DANIEL J.
KRAUS, JAMES A.
KRIEPS, CHRISTOPHER A.
LAVIGNE, DAVID
LEIGH, GARY
LILLY, DAMON P.
LOWMAN, MARK A.
MANTI, SETH A.
MARINAC, MARK L.
MATTHEWS, JAMES D.
MAXEY, DALE W.
MEEKS, KEEVIN W.
MILLER, ARTHUR F.
MOLINA, BENJAMIN E.
MONTESINO, LEANDRO L.
MOORE, CHRIS A.
MOORE, RICHARD O.
MORGAN, JOEL K.
NELSON, ROBERT G.
NICHOLS, JACOB A.
NORTON, SCOTT Q.
OLLICE, LAWRENCE D.
ORR, TERRY M.
PARADISE, MATTHEW C.
PAULL, ROGER D.
PEDERSON, JOEL W.
PERRIN, BRADLEY S.
PETERSON, GARY
PICKETT, PHILLIP R.
PLACE, THERESA L.
QUAN, MICHAEL G.
RAIA, GERALD P.
RAINAIRD, ALISON K.
RASMUSSEN, DAVID N.
RATHBUN, JEFFREY T.
RAWLINGS, JAMES J.
RAZINHA, JAMES A.
REGUERA, AMELIA M.
REYNOLDS, COLLEEN R.
RIGGS, RICHARD C.
ROARK, KEVIN P.
ROBERTS, DANIEL J.
RODRIQUEZ, MARTIN E.
ROGERS, GREGORY N.
ROSENTHAL, EDITH M.
ROWE, ARTHUR T.
RUPPERT, MICHELE L.
SANNER, BRIAN L.
SCHNABEL, ROBERT G.
SCHULZ, KIMBERLY J.
SCOTT, STANLEY S.
SEELEY, DALE L.
SHENENBERGER, DONALD W.
SHOEMAKER, JERRY J.
SIMONSON, WILLIAM R.
SLAYTON, DAVID
SMITH, DEBORAH M.
SOCA, ANGEL S.
SPENCER, RICHARD A.
STEVENS, R.S.
STONE, CARY R.
STRUBLE, WILLIAM D.
SUHRE, DOUGLAS R.
THOMAS, ZANE R.
THRAILKILL, SHANE A.
TUCKER, RONALD P.
VALLER, SCOTT A.
VAUGHN, DOUGLAS J.
WAGNER, RUSSELL H.
WALSER, MICHAEL D.
WARD, JOHN M.
WARNER, DOUGLAS D.
WASHINGTON, VICTOR T.
WATTS, WAYNE D.
WEATHERLY, KIRK A.
WHITESCARVER, PAUL A.
WILCOX, ALPHONSO C.
WILKINS, CHARLES A.
WILLEMSSEN, BRIAN J.
WINDOM, JOHN H.
WOMACK, RONNIE
YEGGE, STEPHEN F.
YETMAR, PAUL A.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 31, 1991:

THE JUDICIARY

REBECCA F. DOHERTY, OF LOUISIANA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA.

DENIS R. HURLEY, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK.

BARBARA A. CAULFIELD, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA.

RONALD E. LONGSTAFF, OF IOWA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA.

JOHN W. LUNGSTRUM, OF KANSAS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF KANSAS.

TERRY R. MEANS, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS.

DEPARTMENT OF JUSTICE

ROBERT Q. WHITWELL, OF MISSISSIPPI, TO BE U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF 4 YEARS.

WILLIAM D. HYSLOP, OF WASHINGTON, TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF WASHINGTON FOR THE TERM OF 4 YEARS.

KEVIN C. POTTER, OF WISCONSIN, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF WISCONSIN FOR THE TERM OF 4 YEARS.

U.S. SENTENCING COMMISSION

MICHAEL S. GELACAK, OF VIRGINIA, TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION FOR A TERM EXPIRING OCTOBER 31, 1997. (REAPPOINTMENT)

EXTENSIONS OF REMARKS

KATIE VATH—MISSOURI MENTAL HEALTH ADVOCATE

HON. ALAN WHEAT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. WHEAT. Mr. Speaker, I am proud to bring to the attention of my colleagues the outstanding achievements of Katie Vath of Lee's Summit, MO, a true champion in the battle to improve the quality of life for Americans with mental illnesses.

Like many other Americans whose families are touched by mental illness, Mrs. Vath became an active advocate for the mentally ill when her son developed schizophrenia as a teenager.

Since her retirement from AT&T in 1986, Mrs. Vath has devoted herself to the effort to help people with mental illness lead productive lives. She has served as volunteer executive director of the Kansas City, MO, Alliance for the Mentally Ill and has served on and chaired the Missouri Mental Health Commission.

In 1990, she was elected to the board of directors of the National Alliance for the Mentally Ill and earlier this year was honored by being named president of NAMI, a family-based organization that works to increase public awareness of mental illness.

I am pleased to congratulate Mrs. Vath on her election as president of NAMI and to express my sincere appreciation for the work she is doing on behalf of the mentally ill in Missouri and across the Nation. I am also including for the information of my colleagues a moving tribute to Mrs. Vath that appeared in the September/October 1991 issue of the NAMI Advocate.

NEW NAMI PRESIDENT KATIE VATH SETS GOALS

Reaching the millions of Americans and their families who suffer alone from mental illness is the focus of new NAMI President Catherine A. (Katie) Vath of Lees Summit, Mo.

"We know there are thousands of people who could benefit from our unique family support and education program," she says. Catherine A. (Katie) Vath, the new president of NAMI. "As families united against mental illness, we can accomplish so much more than as individuals. We offer each other emotional support, work to reduce stigma, expand research and improve services."

She especially wants NAMI to reach more ethnic minorities, consumers and young families who may be experiencing mental illness for the first time. The National Institute of Mental Health estimates that one out of four families has a loved one with mental illness.

Mrs. Vath, who retired from AT&T in 1986 after 27 years with the Bell System, has four sons, one of whom developed schizophrenia as a teenager. Her story is similar to that of many NAMI members. "In high school, my son was a member of the National Honor Society, co-captain of the football team, and an outstanding writer," she recalled. Late in his teenage years, he became increasingly withdrawn. He kept returning from college because he could not manage the stress. He reported hearing voices, became agitated, then catatonic. He had to be hospitalized. His psychiatrist said he would never recover.

"He once said to me, Mom, this illness feels awful and I am so sick. Please help me!" Mrs. Vath recalled. "I promised I would."

She saw a small newspaper notice about a seminar on schizophrenia. There she met many members of the local Alliance for the Mentally Ill, and started attending meetings. "I found comfort there," she said.

"Good information about mental illness was sparse. The NAMI literature was very helpful in learning about the disease of schizophrenia." she said. "It also relieved me from the feeling that I had done something wrong, that somehow I had been a bad mother."

She has been active in the family movement ever since. In 1986, she retired from AT&T and became volunteer executive director of the Kansas City Alliance for the Mentally Ill. She has served on and chaired the Missouri Mental Health Commission since 1986. In 1990, she was elected to NAMI's Board of Directors.

Mrs. Vath, who lives in Lee's Summit, Mo., plans to advocate on the federal level for more research into the causes of mental illness as well as for improved services to mentally ill persons in their communities. She takes a special interest in national health insurance—to see that people with mental illness have the same coverage for biologically-based brain disorders as other physical illnesses.

"Each year, NAMI has been successful in convincing Congress to increase federal dollars for research," she said. She believes the recent decision to move the National Institute of Mental Health back under the auspices of the National Institute of Health will enhance scientific research into brain disease. "This move results from a recognition that mental illness is a physical disease and should be included with other diseases to get its fair share of research funding," she said.

Mrs. Vath would like to see states and localities develop more effective community-based services for people with mental illness. "We only perpetuate the stigma of mental illness when we remove people from the community where they could benefit from a normal lifestyle," she said.

The key to a successful community-based system, is accessible services on demand, such as crisis teams, affordable housing and supported employment. "We must simplify systems of care," she said. "They are often so complex that people don't get the services they need."

She would also like to see some changes within NAMI. "NAMI's strength has always been its grassroots," she noted. "I want to empower the grassroots affiliates." The overwhelming vote of the NAMI membership at the recent national convention to require all affiliates to be chartered within state organizations, and each state organization to be chartered by NAMI, "provides a perfect opportunity to revitalize NAMI's organizational structure, and to encourage more ideas from the grassroots," she said.

All of the changes Mrs. Vath would like to see point to one central goal—to help people with mental illness lead productive, successful lives. With appropriate medical treatment and emotional support, she knows this is possible. Her son, for example, had done much better than the psychiatrist predicted. He graduated from college, and has for years maintained a steady job in competitive employment.

TRIBUTE TO HAROLD G. SHIREY ON HIS RETIREMENT

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. TRAFICANT. Mr. Speaker, I rise today to wish a dedicated steelworker well as he retires from Copperweld. Mr. Harold G. Shirey, of my 17th District in Ohio, will retire on November 7, 1991.

Mr. Shirey is to be commended for his 35 years of dedicated work in the American steel industry. Indeed, Mr. Shirey has been a shining example of an American dream. After serving his country in the Army, Mr. Shirey joined Copperweld in the inspection department. From there, he ascended to mill finishing superintendent in 1984.

Offered early retirement due to his great contributions to the company, Mr. Shirey, the "Big Chew" joins his family and friends at Cesta's Golden Gate to celebrate on November 7, 1991.

I rise today, Mr. Speaker, to congratulate and commend a great winner for his contribution and dedication to the steel industry. Congratulations, Mr. Harold G. Shirey.

WACKO'S WILL SURELY MISS OL' BIG-HEARTED LUDLOW

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. DARDEN. Mr. Speaker, I rise today to express the disappointment of thousands of my fellow Georgians at the news that the Ludlow Porch radio show went off the air Monday after 20 years as an Atlanta fixture.

This is really bad news for Ludlow's fans, who considered him a part of their daily lives, sharing with him 4 hours a day from 9 a.m. to 1 p.m.

Born Robert Hanson, the personable ex-Marine adopted the name Ludlow Porch as a nickname on an early talk show, and the name stuck—even his wife Dianne calls him "Lud."

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

A friendly fellow in private as well as public, Ludlow was a popular host at East Cobb's Blue Ribbon Grill, which he owned for several years. Two regular customers, Paul McNulty and Jewel Wright remember how he'd greet each customer and, if they asked, sign copies of his books, to perfect strangers, with such endearments as "To the only woman I've ever loved."

Mr. Speaker, it's indicative of the esteem in which Ludlow Porch is held that he was featured by noted Atlanta columnist Celestine Sibley. I would like to share her column with my colleagues at this time.

[Wednesday, Oct. 30, 1991]

WACKOS WILL SURELY MISS OL' BIG-HEARTED LUDLOW

He has lent them money, found them jobs, saved them from suicide, served as best man at their weddings, pallbearer at their funerals and made them laugh and cry and think better of themselves.

And for the next two months Ludlow Porch won't be on the air to receive their calls.

"The Ludlow Porch Show," a 20-year staple on Atlanta radio, went off the air Monday, and Ludlow of the big smile and the big heart went home to make plans for a future statewide show feeling absolutely rotten.

"I'll miss them," he said. "I already miss the wackos," giving his pet name for his listeners.

"It's like tearing down the Fox," said his wife, Diane. "The phone keeps ringing."

It also kept ringing on the desk of TV writer Gerry Yandel, who wrote the story of Ludlow's departure. Having Ludlow not there amounted to heartbreak, desolation and desertion to thousands of radio listeners.

To some, like such an exuberant fan with the pseudonym Kitty Litter, it meant a fight. "We call ourselves the Grandmothers from Hell," she said. "We're mean and we won't take any funny business when it comes to Ludlow. They're saying WSB wanted to replace him with a show that would attract younger demographics. We're old, we wear flip-flops on our feet, but we're the ones with the money. Watch out for us!"

Ludlow found his fans numbered thousands a few years ago when he invited them to a wacko party at Colony Square, and 5,000 showed up.

Born Robert Hanson, the big talk-show host acquired the name Ludlow Porch as a "joke that got out of hand," he said. When he came home from Korea where he was a sergeant in the Marine Corps, he had a little fun writing authoritative letters on all kinds of subjects to the newspapers. The authority he always quoted as a philosopher or a nuclear fission scientist or a history professor bore the made-up name of Ludlow Porch.

When he began his radio career as a guest host on WRNG radio's talk show, he adopted the name as a nickname. Today hardly anybody who has known him since the Korean War, including his wife, calls him Bob. She calls him "Lud."

Ludlow's format has ever been "nothing smutty, keep it light, keep it moving, make it entertaining"—but because he is a compassionate man with ready sympathy for people in trouble, he has taken time on the air to help scores, usually asking them to talk to him off the air.

A kid in Virginia who was on drugs confessed his desperation and intent to kill himself. Ludlow persuaded him to hold off and talked to him for two hours. The young man later came to Atlanta, rehabilitated himself and now has a good job in California. A man and his wife and two children who were sleeping in their car now have jobs in Dahlonega, Ga., and are doing well.

The four-hour, 9 a.m.-to-1 p.m. Stint on WSB used only a fraction of Ludlow's time and talent. He has written 10 books, the most recent of which is "Lewis and Me and Shipper," about growing up as a stepson of columnist Lewis Grizzard's father. "I have known and loved a lot of rascals, including his son," he says.

He makes 50 or 60 speeches a year and vows that he enjoys them as much as his audience does. But that's Ludlow—on or off the air.

TRIBUTE TO A PUBLIC HOUSING MANAGER

HON. ALAN WHEAT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. WHEAT. Mr. Speaker, it is with deep sadness that I bring to the attention of my colleagues the news of a tragic drive-by shooting death in Kansas City, MO.

While such events are always disturbing, the impact of this terrible crime will long be felt in our community. The victim, 41-year-old Diana Humphrey, was a mother of three children, an exemplary public housing manager and an innocent bystander who happened to get caught in the crossfire.

I would like to share with my colleagues a moving tribute to the remarkable legacy of Diana Humphrey which was published in the Kansas City Call on September 13, 1991. The author is Joe Louis Mattox, a crime prevention officer for the Housing Authority of Kansas City, MO, and a friend and coworker of Ms. Humphrey.

[From the Kansas City Call (MO), Sept. 13–19, 1991]

TRIBUTE TO A PUBLIC HOUSING MANAGER

(By Joe Louis Mattox, PHM)

In the housing industry, a property manager is the central figure responsible for making a development attractive, safe and profitable.

Most people are attracted and rent apartments based on the way they look. Some reasons why tenants move from a complex is that they don't feel safe and maintenance service is poor. Landlords and owners cannot pay bills and make a profit on their investments if tenants don't pay rent and half of their units stay vacant.

A good property manager keeps a development looking good, does everything possible to keep the crime rate down, makes sure that the maintenance service is good and that owners get their rent.

Diana Humphrey, a 41-year-old single parent, mother of three children, was a good property manager. The residents of Wayne Miner Court say, "She was better than excellent."

Ms. Humphrey, who was killed in a drive-by shooting at her home last month, may have been the best property manager in Kansas City. I say so, not because she kept her property looking good, occupancy high and rent delinquencies low, but because she managed a public housing development that is almost free of crime and drug trafficking.

In the world of property management, managing a public housing development is the hardest job in the profession. The saying goes, "If you can manage a public housing project, successfully, you can manage anything."

What is also known in the housing industry is that property managers who have passed a test and been awarded a Public Housing Manager certificate, are in demand and can get a job anywhere.

Ms. Humphrey had a Public Housing Manager certificate. (Public Housing Managers are tested on government rules and regulations pertaining to tenant selection, rights and responsibilities of residents and owners, and eviction procedures. They know how to supervise large and small clerical and maintenance staffs, work effectively with tenant groups and law enforcement officials to reduce crime and make their safe places to live, and to get social services for their residents).

Ms. Humphrey was also what we call a manager's manager, she helped her co-workers. She taught me how to use a computer; she taught a number of managers how to recertify residents for continued occupancy, she worked week-end duty for anyone who asked; and as the first woman to ride and walk with the police in a footbeat patrol program, she made other female managers feel less apprehensive about participating in the program.

When I told Ms. Humphrey that I needed managers to take housing authority youth to events in our van, she accepted to become a driver, and said that one of her goals would be to get other managers to become drivers.

Diana was a great lady in another way. She is the only person in the African American community whom I know that signed the section on the back of their driver's license pertaining to organ donation. At her church, Palestine Baptist, Ms. Humphrey did the sign language for the choir.

For over a year, my office was in the building with Ms. Humphrey's. I will remember Ms. Humphrey walking her grounds, driving the van, assisting in the Wayne Miner Lunch room and Emergency Assistance Center, and working late to accommodate residents who couldn't bring their rent to the office until after five o'clock.

TRIBUTE TO THE UNITED VETERANS COUNCIL

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to the United Veterans Council of my 17th District in Ohio as they celebrate "Let Freedom Ring Day" on November 11, 1991.

Devoted to the well-being of veterans throughout the district and the Nation, this organization has organized Let Freedom Ring Day. At 11 in the morning on November 11, church bells throughout the community will ring to commemorate Veterans Day. Additionally, this organization has arranged a ceremony to be held in the Federal Plaza Square.

Mr. Speaker, I rise on this occasion to wish the United Veterans Council the best as they celebrate Veterans Day. Best wishes and congratulations on Let Freedom Ring Day.

TRIBUTE TO JOHN ADAMS

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. DARDEN. Mr. Speaker, I rise today to pay tribute to a longtime public servant and friend of mine, John Adams, who retired this month after 8 years as tax commissioner in Floyd County, GA.

Mr. Adams is only 58, which, as you know and I know, is not as old as it used to be, but his doctor advised him to retire because of health problems.

He didn't retire his sense of humor, though. As he announced his retirement October 1, he could not resist one of the little rhymes he is known for around Rome, GA.

"From now on, my motto is 'slow down and stick around,'" Mr. Adams said.

It is a measure of the kind of man he is, that when he felt he couldn't give 100 percent to his job, he resigned.

Born in Rome, Mr. Adams served in the Georgia House of Representatives from 1970 until 1976, and again from 1980 until mid-1983 when then Governor Joe Frank Harris appointed him tax commissioner of Floyd County. He was elected to a full 4-year term in 1984 and reelected in 1988.

Mr. Adams said his doctors advised him to keep interested in politics, so he plans to "help good, qualified candidates," he said.

John Adams has been my close, personal friend over the years. When I first announced my candidacy for Congress on the courthouse steps in Rome, John Adams and a few friends he had assembled were the only ones there.

He has always been my adviser, sort of a one-man kitchen cabinet from Rome. Without a doubt, he has been my No. 1 person in Rome over the years. He is a true friend.

He is well-known for his appreciation of good food. In fact, when we were in the State legislature, he gave Speaker Tom Murphy the Varsity Drive-In Restaurant telephone number as his off-duty number in Atlanta.

John Adams is a man of good humor, integrity, and competence. We wish him well in his retirement, and a speedy return to good health. He has earned a rest, of course, but honest, hard working public servants like he has always been are sorely missed when they have to step down.

Meanwhile, he plans to go fishing and play a little golf. Good luck, John Adams.

PSYCHIATRIC ABUSES DOCUMENTED IN CUBA

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mrs. MORELLA. Mr. Speaker, I would like to bring to Members' attention an important new book, "The Politics of Psychiatry in Revolutionary Cuba," coauthored by one of my constituents, Armando M. Lago. The book makes an important contribution to our understanding of the Cuban Government's systematic denial of basic human rights, and it has been well received by psychiatric and human rights groups. The APA Monitor, a publication of the American Psychological Association, gave the book an excellent review, the text of which follows:

PSYCHIATRIC ABUSES DOCUMENTED IN CUBA

(By Tori DeAngelis)

Julio Vento Roberes, a flutist who played in two Cuban symphony orchestras, is also an amateur political cartoonist. But unlike Garry Trudeau or Patrick Oliphant, Vento was forced to spend five years in a psychiatric ward of the main Cuban state hospital for expressing his political views.

Vento's diagnosis was "acute paranoia" and "delusions that he was a defender of human rights." Altogether, he underwent 16 sessions of electroconvulsive therapy (ECT), and received large doses of psychotropic medication. Neither physicians nor psychiatrists consulted with him about his treatment. When he finally went to the ward's attending psychiatrist to show him burns on his forehead from the ECT, the psychiatrist claimed he didn't know the treatment had been prescribed.

Vento's is but one of 28 such cases in Cuba documented between 1975 and 1990 in a report by the human rights groups Freedom House (FH) and Of Human Rights (OHR). Of Human Rights, based in Washington, D.C., is devoted exclusively to seeking human rights in Cuba. The New York-based Freedom House promotes human rights and democratization internationally, according to Charles Brown, projects coordinator for the Washington branch of Freedom House and a volunteer at OHR.

Written by Brown and Armando Lago, a member of OHR's board of directors, the 190-page report details psychiatric abuse that has occurred "on a remarkable scale" in Cuba, said Brown. The report, "The politics of psychiatry in revolutionary Cuba," was released last month.

In December, Amnesty International (AI) reported three additional cases of psychiatric abuse in Cuba in a document on the general human rights situation in that country, according to Rona Weitz, deputy director of AI's Washington office.

Lago and Brown investigated reports of alleged psychiatric abuse through a large number of sources, including the Cuban exile community in the United States, AI, Americas Watch (AW), Cuban human rights groups, American journalists and the underground dissident press in Cuba, said Brown.

All the cases that came to their attention were men, although there are rumors of similar abuses of women that the team hopes to investigate, said Brown. The report erred on the side of caution, he added. "The last thing we want is for the Cuban government to use the example of a weak case to discredit the entire report."

All the political dissidents cited in the report received similar punishment for their "crimes," Brown and Lago found.

Those targeted as "troublemakers" by Cuban security officials are in most cases first interrogated at the Cuban state security headquarters in Havana, said Brown. If they don't cooperate with them and sign a confession, they are sent to one of two criminally insane wards of the state hospital, he said.

In 1988, both AI and the United Nations (U.N.) Commission on Human Rights visited one of the forensic wards of Havana Psychiatric Hospital, where most of those who don't sign a confession end up. They found the facility cramped, ill-lit and crowded, according to the FH-OHR report.

In the forensic wards, the dissidents experienced at the least extremely unsanitary and unsafe conditions, and at worst repeated rounds of ECT and psychotropic drugs, as well as rapes and beatings by "guards" and other criminally insane inmates, said Brown. Those guards were often from the ranks of the criminally insane inmates in the wards, said Brown.

One dissident, Ariel Hildalgo Guillen, reported a standard practice among some inmates of "lighting the socks on fire" of sleeping inmates, said Brown. Hildalgo also cited cases of inmates masturbating over other inmates, said Brown.

Most of the dissidents were confined for relatively short periods—several days to a few months, the report states. Three people were held for more than two years, and several were held more than once. One dissident was confined seven times.

"There is a correlation between the length of and reasons for confinement," according to the report. Those who caused trouble in prison were incarcerated for longer periods of time, the report states. Vento was an exception to this rule.

The length of stays in the forensic wards was usually short because they are apparently used primarily for interrogations, said Brown. This situation differs from the Soviet Union, where political dissidents were often labelled "sluggish schizophrenics" and kept in mental hospitals for years.

Cuba is similar to the Soviet Union in the Brezhnev era in the way it links crime and political views, according to the report.

I hope that all Members will have the opportunity to avail themselves of this information as we consider United States policy toward Cuba.

ENVIRONMENTAL REPARATIONS—A MUST

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. HERTEL. Mr. Speaker, since the third week in February of this year, over 600 oil well fires have been set ablaze in Kuwait. Now approaching November, we learn that about 10 continue to rage on—and are about to be extinguished.

Today, I am offering a resolution that I hope will be passed by the House of Representatives on the day the last oil well fire from the gulf war is brought under control. That should happen as soon as Monday or Tuesday of next week.

This resolution proposes that the United Nations designate compensation funds to begin the important phases of environmental restoration ahead for the Persian Gulf region. The first and most important step in this process will be the completion of environmental damage assessments. Money for these assessments must be made available with haste.

We must not forget that one of the biggest victims of the Persian Gulf war has been the environment. On October 17, three Subcommittees of the Merchant Marine and Fisheries Committee explored—with various task forces sent to Saudi Arabia, Kuwait, and other neighboring countries—the extent of war-related environmental damages at sea, on land and in the air.

Congress has been steadfast in deploring the many crimes of ecoterrorism committed by Saddam Hussein. The United Nations has found the Iraqi Government liable for resulting environmental damage and has set up a mechanism for reparations to victims of war.

In all, it is the environment that has so far received the least of our attention. The U.N. Compensation Fund has been held hostage to Saddam Hussein's delibrate withholding of petroleum exports from which the fund is to derive its revenues. And, even if proceeds from Iraqi oil exports were forthcoming, there are doubts that environmental damage assessments, cleanup and restoration would receive the high priority necessary.

Ours is a world community—a planet of fragile ecosystems—that should not be wasted or plundered no matter what the cause. In the aftermath of the gulf war, we pause to compare the damage from oil well fires and oil lakes in the gulf region to the destruction caused by the *Exxon Valdez* accident in Alaska. Preliminary estimates reveal the total amount of oil intentionally discharged into the Persian Gulf by Iraq is over 30 times the amount spilled in the Prince William Sound—some 6 to 8 million barrels versus 260,000.

For the sake of the people of Kuwait, Saudia Arabia, and the other damaged gulf nations, we must call on the United Nations to bring together the world's scientific resources to perform damage assessments and to clean up and restore the ravaged gulf environment. For the sake of the world at large, we must halt ecoterrorism once and for all time.

The resolution I am introducing today urges the United Nations to set aside 25 percent of Iraqi petroleum exports provided to the U.N. Compensation Fund specifically for environmental reparations. The resolution places highest priority on the long-term environmental and public health impacts of Hussein's ecoterrorism.

The United Nations must continue to monitor and take steps appropriate to ensure oil export proceeds are available to compensate victims of the war—including the environment.

H. CON. RES. 230

Whereas the United States has deplored the unlawful acts of Saddam Hussein in encroaching the borders of Kuwait, in holding captive hostages, in plundering Kuwaiti property, in savaging the Kuwaiti people, in conducting extensive acts of "ecoterrorism" through mass destruction of natural resources, and in threatening world peace through blatant disregard of international treaties;

Whereas the United Nations Secretary-General has been directed by Security Council Resolution 687 (1991) to establish a special account to pay compensation for "any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait";

Whereas the United Nations Compensation Commission, established by the Security Council, is the mechanism for determining, among others issues, the level of contributions to the fund, the allocation of funds and payments of claims, the procedures for evaluating losses, and the resolution of disputed claims;

Whereas the United Nations Compensation Commission has dual levels of responsibility, both policy-making and functional, including establishing guidelines for categorization and formal presentation of claims by type and size;

Whereas Saddam Hussein's savage sabotage of Kuwait's natural resources constitutes massive "ecoterrorism"—resulting in long-term environmental and public health damages—the vast extent of which remain unidentified;

Whereas oil intentionally discharged by Iraq into the Persian Gulf continutes to cause unprecedented environmental damage to over 400 miles of Saudi coastline;

Whereas smoke plumes from over 600 oil fires have wreaked grave environmental pollution;

Whereas massive oil lakes caused by gushing oil from sabotaged wells continue to contaminate the Kuwait desert;

Whereas the extent of the damage to fragile marine ecosystems from six to eight million barrels of oil discharged into Gulf waters has yet to be assessed;

Whereas the impact of Saddam Hussein's ecoterrorism on public health through atmospheric pollution, soil acidification, groundwater pollution and damage to crops requires investigation: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) Finds that environmental damage, atmospheric pollution, and the resulting public health injuries from the oil well fires in Kuwait and the oil contaminated coastlines in the Gulf Region require urgent and immediate attention;

(2) Requests that the Secretary-General of the United Nations monitor and encourage the export and sale of Iraqi petroleum and petroleum products to compensate for losses and damages in compliance with United Nations Resolutions 687 and 705 (1991);

(3) Requests that the Secretary-General direct the United Nations Environmental Program and other appropriate United Nations organizations to monitor the long-term environmental and long-term public health impacts resulting from the unlawful destruction of natural resources in the Gulf Region;

(4) Urges that the United Nations Secretary-General give high priority to environmental damages as a category of claims and provide a special allocation for this category in the United Nations Compensation Fund, not subject to the limits for individual claimants, and that this allocation—

(A) comprise at least 25 percent of the portion of the fund available for payment to claimants under section E of United Nations Resolution 687 (1991);

(B) include funds for consolidated claims and reimbursement to various governmental and private organizations for expedited damage assessments to the environment and public health as a result of the Persian Gulf oil fires and slick;

(C) provide for the reimbursement for costs of cleanup and restoration of the environment performed by various governmental and private organizations; and

(D) be subject to periodic review in accord with United Nations Resolution 705 (1991) specifying compensation for losses to be paid by Iraq.

PERMANENT EXTENSION OF THE LOW-INCOME HOUSING TAX CREDIT

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. RANGEL. Mr. Speaker, I rise to call to the attention of my colleagues the following sign-on letter regarding H.R. 413 and the low-income housing tax credit.

Low-income housing tax credit has been a major vehicle for the construction of low- and moderate-income housing. As you know, we are in the process of winning congressional approval to make these tax credits permanent. A sign-on letter from the Community League of West 159th Street, Inc. follows:

[OCTOBER 7, 1991]

DEAR MR. CHAIRMAN: On behalf of the undersigned nonprofit community-based housing organizations from throughout the country, thank you for your leadership in introducing H.R. 413, the permanent extension of the Low-Income Housing Tax Credit. We appeal to you to find a way to pass this important legislation. Our country's housing needs are simply too urgent and too great to let this program expire.

Our communities face an affordable housing crisis of unprecedented proportions as evidenced by the following facts:

One in three Americans pay so much for housing that they cannot afford other basic necessities, according to a recent Economic Policy Institute study.

Only one of every three American households eligible for housing assistance receives it—a condition exacerbated in large measure by a 75-percent reduction in federal housing funds during the 1980s.

Among poor renters who receive no housing subsidies, 45 percent spend at least 70 percent of their meager income for housing.

As a champion of the Low-Income Housing Tax Credit, you are well aware that it is the federal government's primary tool for building low-income rental housing, and is now producing more than 120,000 units annually. It is highly targeted, with units serving very low-income residents for at least 30 years. The Credit works in our urban and rural communities in all parts of the country to rehabilitate and construct affordable apartments, single-family houses, and specially designed single-room homes that can serve homeless people and others with special needs.

We know from our experience working at the grassroots level that progress in overcoming this country's severe shortage of decent, affordable housing requires the kinds of creative solutions and especially the private sector involvement that the Credit has stimulated. The Credit has been essential to attracting corporate and individual investors to low-income housing. Each dollar of private investment has attracted an average of two more dollars from banks, states, localities, foundations, and others.

This private investor confidence and highly effective low-income housing production system can only be sustained if Congress accords the Credit the status it deserves as a permanent part of the tax code. With you help, the Credit has earned overwhelming bipartisan support in Congress, with 60 percent of all Representatives co-sponsoring your bill and 80 percent of all Senators co-sponsoring S. 308, introduced by Senators Danforth and Mitchell, to permanently extend this program.

Nevertheless, this year, as in years past, we are deeply concerned that there is a very real possibility that the Credit will expire entirely—not for lack of support, but because it is reliant on a broader legislative vehicle for passage. This year-to-year uncertainty must end if we are to address this country's pressing affordable housing needs.

On behalf of the millions of Americans without decent, affordable homes, your efforts to find a means for permanent extension of the Low-Income Housing Tax Credit is deeply appreciated.

Sincerely,

Alaska Coalition for the Homeless, Anchorage, AK.
Alaska Community Development Corporation, Anchorage, AK.
Anchorage Neighborhood Housing Services, Inc., Anchorage, AK.
Neighborhood Services, Inc., Birmingham, AL.
BGACD Community Development Corporation, Marvel, AR.
Casa de Nueva Esperanza (House of New Hope), Phoenix, AZ.
Phoenix Revitalization Corporation, Phoenix, AZ.
PPEP Housing Development Corporation, Tucson, AZ.
Arcata Economic Development Corporation, Arcata, CA.
Berkeley Oakland Support Services, Berkeley, CA.
Bonita House, Inc., Berkeley, CA.
California Housing Partnership Corporation, Berkeley, CA.
California Community Reinvestment Corporation, Burbank, CA.
Mercy Family Housing California, Burlingame, CA.
South Bay Community Services, Chula Vista, CA.
Project Home Run, Colton, CA.
Curry Temple Community Development Corporation, Compton, CA.
Drew Economic Development Corporation, Compton, CA.
Home Ownership Made Easy (H.O.M.E.), Culver City, CA.
The Affordable Housing Coordinating Network of Santa Clara County, Cupertino, CA.
Davis Community Housing, Inc., Davis, CA.
North County Housing Foundation, Escondido, CA.
South County Housing, Gilroy, CA.
Southern California Association for Nonprofit Housing, Hemet, CA.
Hollywood Community Housing Corporation, Hollywood, CA.
Coackella Valley Housing Coalition, Indio, CA.
Centinel Services, Inc., Long Beach, CA.
Retirement Housing Foundation, Long Beach, CA.
A Community of Friends, Los Angeles, CA.
Art House/A Program of California Lawyers for the Arts, Los Angeles, CA.
Concerned Citizens of South Los Angeles, Los Angeles, CA.
Dunbar Economic Development Corporation, Los Angeles, CA.
Esperanza Community Housing Corporation, Los Angeles, CA.
Homes for Life Foundation, Los Angeles, CA.
Little Tokyo Service Center, Los Angeles, CA.
Los Angeles Neighborhood Development Corporation, Los Angeles, CA.
People Coordinated Services, Los Angeles, CA.
Skid Row Housing Trust, Los Angeles, CA.
Neighborhood Partnership of Monclair, Monclair, CA.
Maravilla Project Area Committee, Monterey Park, CA.
Civic Center Barrio Housing Corporation-San Diego, National City, CA.
Metropolitan Area Advisory Committee, National City, CA.
Alliance for the Mentally Ill (AMI), Van Nuys, Northridge, CA.
Central East Oakland Neighborhood Housing & Community Service Corp., Oakland, CA.
Community Economics, Inc., Oakland, CA.
Jubilee West, Inc., Oakland, CA.
Oakland Business Development Corporation, Oakland, CA.
Central Church of Christ, Oceanside California, Oceanside, CA.
San Diego County SER/Jobs for Progress, Inc. Oceanside, CA.
Community Housing Services, Pasadena, CA.
Pasadena Housing Alliance, Pasadena, Ca.
Greater Richmond Community Development Corporation, Richmond, CA.
Richmond Neighborhood Housing Services, Richmond, CA.
California Homeless and Housing Coalition, Sacramento, CA.
Rural California Housing Corporation, Sacramento, CA.
Sacramento Mutual Housing Association, Sacramento, CA.
California Association Mobilehome Owners, San Diego, CA.
Civic Center Barrio Housing Corporation, San Diego, CA.
Housing Opportunities, Inc., San Diego, CA.
Linda Vista Community Development Corporation, San Diego, CA.
Saint Vincent de Paul Village, San Diego, CA.
Asian Neighborhood Design, San Francisco, CA.
Community Housing Partnership, San Francisco, CA.
Housing Conservation & Development Corporation, San Francisco, CA.
Non-Profit Housing Association of Northern California, San Francisco, CA.
Pine View Housing Corporation, San Francisco, CA.
San Francisco Coalition for Low Income Housing, San Francisco, CA.
San Francisco Housing Development Corporation, San Francisco, CA.
San Francisco Renaissance, San Francisco, CA.
Tenants and Owners Development Corporation (TODCO), San Francisco, CA.
Urban Economic Development Corporation, San Francisco, CA.
Community Housing Developers, Inc., San Jose, CA.
Mexican American Community Services Agency, San Jose, CA.
San Jose Development Corporation, San Jose, CA.
Ecumenical Association for Housing, San Rafael, CA.
San Rafael Housing Corporation, San Rafael, CA.
Civic Center Barrio Housing Corporation, Santa Ana, CA.
Hermandad Mexicana Nacional, Santa Ana, CA.
Santa Barbara Community Housing Corporation, Santa Barbara, CA
Santa Cruz Community Housing Corporation, Santa Cruz, CA.
Step Up On Second, Santa Monica, CA.
Burbank Housing Development Corporation, Santa Rosa, CA.
Cabrillo Economic Development Corporation, Saticoy, CA.
Western Development for Affordable Housing, Tustin, CA.
Vallejo Neighborhood Housing Services, Vallejo, CA.
Pajaro Valley Affordable Housing Corporation, Watsonville, CA.
Homes for Life Foundation, Wetchester, CA.
Coluee-Glenn-Trinity Community Action Agency, Willows, CA.
Pikes Peak Mental Health Center, Colorado Springs, CO.
Catherine McAuley Housing Foundation, Denver, CO.
Catholic Community Services, Denver, CO.
Colorado Coalition for the Homeless, Denver, CO.
Del Norte Neighborhood Development Corporation, Denver, CO.
Denver Enterprise Center, Denver, CO.
Denver Safe House, Denver, CO.
Hope Communities, Inc., Denver, CO.
Samaritan House, Denver, CO.
Catholic Community Services, Fort Collins, CO.
Jefferson County Self-Sufficiency Project, Golden, CO.
Hall Neighborhood House, Bridgeport, CT.
The Non-Profit Development Corporation of Danbury, Inc., Danbury, CT.
Broad Park Development Corporation, Hartford, CT.
Co-Opportunity, Inc., Hartford, CT.
La Casa de Puerto Rico, Inc., Hartford, CT.
La Casa Investments, Inc., Hartford, CT.
Sheldon Oak Central, Inc., Hartford, CT.
TAINO Housing & Development Corporation, Hartford, CT.
Connecticut Association of Housing Development Corporations, New Haven, CT.
Dixwell Community Development Corporation, New Haven, CT.
Housing Operations Management Enterprises (HOME), Inc., New Haven, CT.
Neighborhood Housing of New Haven, New Haven, CT.
Nutmeg Housing Development Corporation, New Haven, CT.
Science Park Development Corporation, New Haven, CT.
Mutual Housing Association of Southwestern Connecticut, Stamford, CT.
Harambee Housing Corporation of Connecticut, West Hartford, CT.
West Hartford Interfaith, West Hartford, CT.
American Planning Association, Washington, DC.
H Street Community Development Corporation, Washington, DC.
MANNA, Inc., Washington, DC.
North Capitol Neighborhood Development, Washington, DC.
Washington, D.C. Apartment Improvement Program, Inc., Washington, DC.
Delaware Housing Coalition, Dover, DE.
Interfaith Housing Task Force of Delaware, Wilmington, DE.
Clearwater Neighborhood Housing Services, Inc., Clearwater, FL.
Welaka Neighborhood Development, Inc., Crescent City, FL.
North Florida Education Development Corporation, Gretna, FL.
East Little Havana Community Development Corporation, Miami, FL.
Haitian Task Force, Inc., Miami, FL.
New Century Development Corporation, Miami, FL.

Community Equity Investments, Inc. (CEII), Pensacola, FL.

Neighborhood Housing Services, Inc./West Palm Beach, West Palm Beach, FL.

Housing Opportunities, Inc., Gainesville, GA.

Homeless Aloha, Inc., Honolulu, HI.

Wai'anae Coast Community Alternative Development Corporation, Wai'anae, HI.

Home Opportunity Made Easy, Des Moines, IA.

Boise Neighborhood Housing Services, Inc., Boise, ID.

Idaho Migrant Council, Inc., Caldwell, ID.

Bethel New Life, Inc., Chicago, IL.

Chicago Roseland Coalition for Community Control, Chicago, IL.

Chicago Urban League Development Corporation, Chicago, IL.

Circle Urban Ministries, Chicago, IL.

Covenant Development Corporation, Chicago, IL.

Division Street Business Development Association, Chicago, IL.

Eighteenth Street Development Corporation, Chicago, IL.

Greater Southwest Development Corporation, Chicago, IL.

Jane Addams Resource Corporation, Chicago, IL.

Kenwood-Oakland Development Corporation, Chicago, IL.

Lakefront Single Room Occupancy Corporation, Chicago, IL.

Lawndale Christian Development Corporation, Chicago, IL.

Neigborhood Housing Services of Chicago, Inc., Chicago, IL.

North River Commission/NRHDC, Chicago, IL.

Organization of the Northeast, Chicago, IL.

People's Reinvestment & Development Effort (PRIDE), Chicago, IL.

Pilsen Resurrection Development Corporation, Chicago, IL.

Shorebank Corporation, Chicago, IL.

Statewide Housing Action Coalition, Chicago, IL.

The Neighborhood Institute, Chicago, IL.

Travelers and Immigrants Aid, Chicago, IL.

Uptown Center Hull House Association, Chicago, IL.

Urban Development Corporation, Chicago, IL.

Voice of the People in Uptown Chicago Illinois, Chicago, IL.

Woodlawn East Community and Neighbors (WECAN), Chicago, IL.

Woodlawn Preservation & Investment Corporation, Chicago, IL.

Shawnee Development Council, Inc., Karnak, IL.

Project Now Community Action Agency, Rock Island, IL.

Trinity House, Inc., Rockford, IL.

Bridge Communities, Wheaton, IL.

Interfaith Housing, Wynetka, IL.

Community Reinvestment Project of East Chicago, Inc., East Chicago, IL.

Community Action Program of Evansville & Vanderburgh Co., Inc., Evansville, IN.

Community Action of Northeast Indiana, Inc., Fort Wayne, IN.

LaCasa of Goshen, Inc., Goshen, IN.

Indiana Housing Network, Indianapolis, IN.

Community Action of Greater Indianapolis, Inc., Indianapolis, IN.

Fountain Square Church & Community Project, Indianapolis, IN.

Interfaith Homes, Inc., Indianapolis, IN.

Martin Luther King Community Development Corporation, Indianapolis, IN.

Riley Area Revitalization Program, Indianapolis, IN.

Main Street Richmond Wayne County Indiana, Richmond, IN.

South Bend Heritage Foundation, South Bend, IN.

Mennonite Housing Rehabilitation Services, Inc., Wichita, KS.

Catholic Committee on Appalachia, Flatsburg, KY.

Community Action Council, Lexington, KY.

Metropolitan Housing Coalition, Louisville, KY.

Frontier Housing, Inc., Morehead, KY.

Christopher Homes, Inc., New Orleans, LA.

New Orleans Neighborhood Development Foundation, New Orleans, LA.

Allston Brighton Community Development Corporation, Allston, MA.

Affirmative Investment, Boston, MA.

Boston Aging Concerns Young & Old United, Inc., Boston, MA.

Castle Square Tenants Organization, Boston, MA.

Community Development Corporation of Boston, Inc., Boston, MA.

Community Economic Development Assistance Corporation, Boston, MA.

Inquilinos Boricuas en Accion (IBA), Boston, MA.

Massachusetts Affordable Housing Alliance, Boston, MA.

Massachusetts Tenants Organization, Boston, MA.

Tent City Corporation, Boston, MA.

The Community Builders, Boston, MA.

Cambridge Neighborhood Apartment Housing Services, Cambridge, MA.

Homeowners Rehab, Inc., Cambridge, MA.

Just A Start Corporation, Cambridge, MA.

Riverside Cambridgeport Community Corporation, Cambridge, MA.

Dorchester Bay Economic Development Corporation, Dorchester, MA.

Lena Park Community Development Corporation, Dorchester, MA.

The Neighborhood Development Corporation of Jamaica Plain, Jamaica Plain, MA.

Coalition for a Better Acre, Lowell, MA.

Merrimack Valley Housing Partnership, Lowell, MA.

Back of the Hill Community Development Corporation, Mission Hill, MA.

Dudley Street Neighborhood, Roxbury, MA.

Nuestra Comunidad Development Corporation, Roxbury, MA.

Urban Edge, Roxbury, MA.

Salem Harbor Community Development Corporation, Salem, MA.

Sommerville Community Corporation, Somerville, MA.

South Boston Community Housing, Inc., South Boston, MA.

Springfield Neighborhood Housing Services Inc., Springfield, MA.

Green Island Vernon Hill Community Development Corporation, Worchester, MA.

Baltimore Housing Assistance Corporation, Baltimore, MD.

City Homes, Inc., Baltimore, MD.

Family Life Foundation, Inc., Baltimore, MD.

Neighborhood Housing Services of Baltimore, Baltimore, MD.

Neighborhood Rental Services of Baltimore, Inc., Baltimore, MD.

People's Homesteading Group, Inc., Baltimore, MD.

Saint Ambrose Housing Aid Center, Baltimore, MD.

Southeast Development, Inc., Baltimore, MD.

Tri-Churches Housing, Baltimore, MD.

Words For Life, Baltimore, MD.

Columbia Housing Corporation, Columbia, MD.

Interfaith Housing Development Corporation of the MD Eastern Shore, Easton, MD.

Garrett County Community Action Committee, Inc., Oakland, MD.

Montgomery Housing Partnership, Inc., Wheaton, MD.

The Housing Foundation, Orono, ME.

Cornerstone Alliance, Boston Harbor, MI.

Church of the Messiah Housing Corporation, Detroit, MI.

Core City Neighborhoods, Detroit, MI.

Economic Justice Commission Episcopal Diocese of Michigan, Detroit, MI.

People in Faith United Housing Corporation, Detroit, MI.

Heartside Ministries, Grand Rapids, MI.

Inner City Christian Federation, Grand Rapids, MI.

Edison Neighborhood Association, Kalamazoo, MI.

Kalamazoo Neighborhood Housing Services, Kalamazoo, MI.

Greater Lansing Housing, Lansing, MI.

Michigan Housing Trust Fund, Lansing, MI.

Muskegon Area Fair Housing Center, Muskegon, MI.

Nelson Neighborhood Improvement Association, Muskegon, MI.

Cooperative Services, Oak Park, MI.

Pontiac Neighborhood Housing Services, Inc., Pontiac, MI.

FiveCAP, Inc., Scottville, MI.

Homespun Housing, Inc., Minneapolis, MN.

Minneapolis/Saint Paul Family Housing Fund, Minneapolis, MN.

Minnesota Coalition for the Homeless, Minneapolis, MN.

Phillips Community Development Corporation, Minneapolis, MN.

Phillips Neighborhood Housing Trust, Minneapolis, MN.

Powderhorn Residents Groups, Inc., Minneapolis, MN.

Project for Pride in Living, Inc., Minneapolis, MN.

Seward Redesign, Inc., Minneapolis, MN.

The Greater Minneapolis Metro Housing Corporation, Minneapolis, MN.

Appalachian Office of Justice and Peace, Saint Paul, MN.

East Side Neighborhood Development Company, Saint Paul, MN.

Lowertown Redevelopment Corporation, Saint Paul, MN.

Selby Area Community Development Corporation, Saint Paul, MN.

West Side Neighborhood Housing Services, Saint Paul, MN.

Goodhue-Rice-Wabasha Citizens Action Council, Inc., Zumbrota, MN.

Westside Housing Organization, Campus City, MO.

Black Economic Union, Kansas City, MO.

Blue Hills Homes Corporation, Kansas City, MO.

Community Development Corporation-Kansas City, Kansas City, MO.

Inner City Rehab & Community Development Corporation, Kansas City, MO.

Mercy Housing Kansas City, Kansas City, MO.

New Horizons Assistance Corporation, Kansas City, MO.

Twelfth Street Heritage Development Corporation, Kansas City, MO.

Ecumenical Housing Production Corporation, Saint Louis, MO.

Forest Park Southeast Housing Corporation, Saint Louis, MO.

Northside Residential Housing Corporation, Saint Louis, MO.
O'Fallon 2000, Inc. Community Development Corporation, Saint Louis, MO.
Saint Louis Association of Community Organizations (SLACO), Saint Louis, MO.
Town of Bolton Development Corporation, Bolton, MS.
Metcalfe Industrial Development Foundation, Inc., Greenville, MS.
Mississippi Action for Community Education, Inc. (MACE), Greenville, MS.
Big River Housing Development Corporation, Inc., Marks, MS.
Quitman County Development Organization, Inc., Marks, MS.
Quitman County Federal Credit Union, Marks, MS.
Central Mississippi, Inc., Winona, MS.
District XI Human Council, Missoula, MT.
Community Development of Beaufort-Hyde, Inc., Belhaven, NC.
Center for Community Self-Help, Durham, NC.
UDI Community Development Corporation, Durham, NC.
Guilford Native American Association, Greensboro, NC.
Western Greenville Community Development Corporation, Greenville, NC.
Joint Orange-Chatham Community Action, Inc. (JOCCA), Pittsboro, NC.
Downtown Housing Improvement Corporation, Raleigh, NC.
North Carolina Low Income Housing Coalition, Raleigh, NC.
Downtown Area Revitalization Effort, Inc., Wilmington, NC.
Wilmington-New Hanover Community Development Corporation, Wilmington, NC.
East Winston Community Development Corporation, Winston-Salem, NC.
Holy Name Housing Corporation, Omaha, NE.
Mercy Housing Omaha, Omaha, NE.
New Hampshire Coalition for the Homeless, Manchester, NH.
Tri-County Community Action Agency, Bridgeton, NJ.
Fairmount Housing Corporation, Jersey City, NJ.
Let's Celebrate, Jersey City, NJ.
Monarch Housing Associates, Montclair, NJ.
Homes of HOPE, Inc., Mount Holly, NJ.
Coalition Six, Newark, NJ.
New Community Corporation, Newark, NJ.
Newark Apartment Improvement Program, Newark, NJ.
H.A.N.D.S., Inc., Orange, NJ.
Arbor Hill Development Corporation, Albany, NY.
Cayuga County Homesite Development Corporation, Auburn, NY.
Bellport Hagerman East Parchogue Alliance, Inc., Bellport, NY.
Allegany County Community Opportunities & Rural Development Corp., Belmont, NY.
Banana Kelly Community Improvement Association, Inc., Bronx, NY.
Bronx United & Leveraging Dollars (BUILD), Bronx, NY.
Council of Bronx River Association, Bronx, NY.
M.B.D. Community Housing Corporation, Bronx, NY.
United Bronx Parents, Inc., Bronx, NY.
Astella Development Corporation, Brooklyn, NY.
Brooklyn Neighborhood Improvement Association, Inc., Brooklyn, NY.
East New York Urban Youth Corps, Brooklyn, NY.
Saint Nicholas Neighborhood Preservation Corporation, Brooklyn, NY.
Southern Brooklyn Community Organization (SBCO), Brooklyn, NY.
The Church of Saint Mark Episcopal, Brooklyn, NY.
The Miracle Makers, Inc., Brooklyn, NY.
Broadway-Fillmore Neighborhood Housing Services, Inc., Buffalo, NY.
Clayton Improvement Association, LTD, Clayton, NY.
Cuba Community Development Corporation, Cuba, NY.
Housing Assistance Program of Essex County, Inc., Elizabethtown, NY.
Southern Tier Office of Social Ministry, Elmira, NY.
Community Unified Today, Inc., Geneva, NY.
Marble City Housing Corporation, Gouverneur, NY.
Housing Help, Inc., Greenlawn, NY.
North Fork Housing Alliance, Inc., Greenport, NY.
Better Housing for Tomkins County, Inc., Ithaca, NY.
Triumph Ministeries, Jamaica, NY.
Friend's of Keeseville, Inc., Keeseville, NY.
Hunters Point Community Development Corporation, Long Island, NY.
Abyssinian Development Corporation (ADC), New York City, NY.
Asian Americans For Equality, New York City, NY.
Association for Neighborhood and Housing Development, New York City, NY.
Community Housing Association of Managers and Producers, New York City, NY.
Community League of West 159th Street, New York City, NY.
Community Service Society of New York, New York City, NY.
Ecumenical Community Development Corporation, New York City, NY.
El Barrio's Operation Fightback, New York City, NY.
FIND Aid for the Aged, Inc., New York City, NY.
Grosvanor Neighborhood, New York City, NY.
Harlem Restoration Project, Inc., New York City, NY.
Homeward Bound Community Services, New York City, NY.
Housing Service, Inc., New York City, NY.
J-H-G Management Corporation, New York City, NY.
Jerico Project, New York City, NY.
Metropolitan New York Coordinating Council on Jewish Poverty, New York City, NY.
New York Housing Now! New York City, NY.
Northern Manhattan Improvement Corporation, New York City, NY.
Probase, Inc./Project Basement, New York City, NY.
SAIF Advisory Committee, New York City, NY.
Settlement Housing Fund, Inc., New York City, NY.
West Harlem Group Assistance, Inc., New York City, NY.
Woodstock Housing Development Fund Corporation for Senior Citizens, New York City, NY.
PODER, Inc., Newburgh, NY.
Keuka Housing Council, Inc., Penn Yan, NY.
SHARP Committee, Inc., Phoenicia, NY.
New Rochelle Neighborhood Revitalization Corporation, Rochelle, NY.
Bishop Sheen Ecumenical Housing Foundation, Inc., Rochester, NY.
Lewis Street Center, Inc., Rochester, NY.
Rural Opportunities, Inc., Rochester, NY.
Urban League Economic Development Corporation, Rochester, NY.
Roosevelt Assistance Corporation, Rochester, NY.
Western Catskills Community Revitalization Council, Inc., Stampford, NY.
Akron Summit Community Action Agency, Akron, OH.
East Akron Neighborhood Development Corporation, Akron, OH.
Alliance Housing Task Force, Alliance, OH.
Corporation for Ohio Appalachian Development, Athens, OH.
Ohio Rural Housing Coalition, Athens, OH.
Development Corporation for Cincinnati, Cincinnati, OH.
Franciscan Homes Development, Inc., Cincinnati, OH.
Owning the Realty, Inc., Cincinnati, OH.
Walnut Hills Redevelopment Foundation, Inc., Cincinnati, OH.
Pickaway County Community Action, Inc., Circleville, OH.
Broadway Area Housing Coalition, Cleveland, OH.
Clark-Metro Development Corporation, Cleveland, OH.
Cleveland Housing Network, Cleveland, OH.
Cleveland Neighborhood Development Corporation, Cleveland, OH.
COHAB, Inc., Cleveland, OH.
Detroit Shoreway Community Development Organization, Cleveland, OH.
Famicos Foundation, Cleveland, OH.
Glenville Development Corporation, Cleveland, OH.
Housing & Neighborhood Development Services (HANDS), Cleveland, OH.
Lutheran Housing Corporation, Cleveland, OH.
Mount Pleasant Now Development Corporation, Cleveland, OH.
Near West Housing Corporation, Cleveland, OH.
NOLASCO Housing Corporation, Cleveland, OH.
Stockyard Area Development Association, Cleveland, OH.
Union Miles Development Corporation, Cleveland, OH.
University Settlement, Cleveland, OH.
Columbus Housing Partnership, Inc., Columbus, OH.
Columbus Neighborhood Housing Services & CNHS Development Corp., Columbus, OH.
Friends of the Homeless, Columbus, OH.
Ohio Capital Corporation for Housing, Columbus, OH.
Ohio Housing Coalition, Columbus, OH.
South of Main Development Corporation, Columbus, OH.
The Ohio Coalition for the Homeless, Columbus, OH.
County Corp, Dayton, OH.
Dayton View Community Development Corporation, Dayton, OH.
Edgemont Neighborhood Coalition, Inc., Dayton, OH.
Saint Ann's Huffman Area Neighborhood Development Corporation, Dayton, OH.
Saint Martin Development Corporation, Dayton, OH.
Home/Casas, Inc., Fremont, OH.
Marion H.A.N.D., Inc., Marion, OH.
Medina Metropolitan Housing Authority, Medina, OH.
LEADS Community Action Agency, Newark, OH.
Hutton House, Steubenville, OH.
Information & Referral Service of Catholic Charities, Steubenville, OH.

Jefferson County Coalition for Homeless/Housing, Steubenville, OH.

Jefferson County Community Action Council, Inc., Steubenville, OH.

The Urban Mission Ministries, Inc., Steubenville, OH.

Collingwood Spring/Old West End Partnership, Toledo, OH.

Toledo Warehouse District Association, Toledo, OH.

Kno-Ho-Co Community Action Commission, Warsaw, OH.

Community Housing Options Involving Cooperative Efforts (CHOICE), Youngstown, OH.

Washington County Community Action Organization, Aloha, OR.

Rose Community Development Corporation, Portland, OR.

Pennsylvania Rural Opportunities, Camp Hill, PA.

Central Pennsylvania Development Corporation, Clearfield, PA.

Duquesene Business Advisory Corporation, Dusquesne, PA.

Housing Development Corporation, Lancaster, PA.

Santo Gairo, Langhorne, PA.

Allied Human Services Association, Inc., New Castle, PA.

ACORN Housing Corporation of Pennsylvania, Philadelphia, PA.

Black Lutheran Community Development Corporation, Philadelphia, PA.

Central Germantown Community Development Corporation, Philadelphia, PA.

Centro Pedro Claver, Inc., Philadelphia, PA.

Community Ventures, Inc., Philadelphia, PA.

Greater German Housing Development Corporation, Philadelphia, PA.

Hispanic Association of Contractors and Enterprises, Philadelphia, PA.

Hunting Park Community Development Center, Philadelphia, PA.

Hunting Park Community Development Corporation, Philadelphia, PA.

Impact Services Corporation, Philadelphia, PA.

Neighborhood Action Bureau, Inc., Philadelphia, PA.

New Kensington Community Development Corporation, Philadelphia, PA.

Philadelphia Committee for the Homeless, Philadelphia, PA.

Philadelphia Neighborhood Enterprise, Philadelphia, PA.

Philadelphia Rehabilitation Plan, Inc. (PRP), Philadelphia, PA.

Philadelphians Concerned About Housing, Philadelphia, PA.

Popular Enterprise Community Development Corporation, Philadelphia, PA.

Project HOME, Philadelphia, PA.

United Hands Community Land Trust, Philadelphia, PA.

West Oak Lane Community Development Corporation, Philadelphia, PA.

Breachmenders, Inc., Pittsburgh, PA.

Lawrenceville Development Corporation, Pittsburgh, PA.

Montgomery County Housing Coalition, Souderton, PA.

Warminister Heights Homeowners Association, Warminister, PA.

CHAS Coalition, Washington, PA.

Community Action Southeast, Washington, PA.

Community Housing Task Force, Washington, PA.

Threshold Housing Development, Inc., Washington, PA.

Washington County Housing Authority Homeless Assistance Program, Washington, PA.

York Area Development Corporation, York, PA.

Las Flores Metacant, Inc., Coamo, Puerto Rico.

Church Community Housing Corporation, RI.

Housing Coalition, Providence, RI.

Omni Development Corporation, Providence, RI.

Beaufort-Jasper Economic Opportunity Commission, Inc., Beaufort, SC.

Beaufort-Jasper Low-Income Housing Coalition, Beaufort, SC.

Charleston Affordable Housing, Charleston, SC.

Appalachia Services Project, Johnson City, TN.

Neighborhood Housing Opportunities, Inc., Memphis, TN.

Community Development Corporation of Brownsville, Brownsville, TX.

Greater Eastwood Community Development Corporation, Houston, TX.

Azteca Economic Development & Preservation Corporation, Laredo, TX.

People, Incorporated of Southwest Virginia, Abingdon, VA.

Arlington Housing Corporation, Arlington, VA.

Robert Pierre Johnson Housing Development Corporation, Arlington, VA.

Albermarle Housing Improvement Program, Charlottesville, Va.

Charlottesville Housing Foundation, Charlottesville, VA.

Charlottesville Housing Improvement Program, Charlottesville, VA.

Virginia Mountain House, Inc., Christiansburg, VA.

Good Shepherd Housing Foundation, Manassas, VA.

Interfaith Housing Corporation, Midlothian, VA.

Westmoreland Housing Coalition, Inc., Montross, VA.

Fluvanna County Community Development Foundation, Palmyra, VA.

Church Hill Area Revitalization Team, Richmond, VA.

Highland Park Restoration and Preservation Program, Richmond, VA.

Oregon Hill Home Improvement Council, Richmond, VA.

Richmond Better Housing Coalition, Richmond, VA.

Single Room Occupancy Housing of Richmond, Inc., Richmond, VA.

Southside Community Development & Housing Corporation, Richmond, VA.

Task Force for Historic Preservation & the Minority Community, Richmond, VA.

Virginia Beach Community Development Corporation, Virginia Beach, VA.

Lake Champlain Housing Development Corporation, Burlington, VT.

Addison County Parent Child Center, Middlebury, VT.

Private Industry Council of Snohomish County, Everett, WA.

El Centro de la Raza, Seattle, WA.

Environmental Works, Seattle, WA.

Fremont Public Association & Washington Low Income Housing Congress, Seattle, WA.

Seattle Housing Resources Group, Seattle, WA.

South East Effective Development, Seattle, WA.

The Compass Center, Seattle, WA.

Spokane Low Income Housing Consortium, Spokane, WA.

Martin Luther King Ecummenical Center, Tacoma, WA.

Washington State Coalition for the Homeless, Tacoma, WA.

Blue Mountain Action Council, Walla Walla, WA.

Office of Rural and Farmworker Housing, Yakima, WA.

Common Wealth Development, Inc., Madison, WI.

Madison Area Community Land Trust, Madison WI.

Madison Community Co-op, Madison WI.

Project Home, Inc., Madison, WI.

Wisconsin Cooperative Development Council, Madison, WI.

Inner City Redevelopment Corporation, Milwaukee, WI.

Milwaukee Housing Assistance Corporation, Milwaukee, WI.

North Division Neighborhood Residents, Inc., Milwaukee, WI.

Westside Housing Co-op, Milwaukee, WI.

Wisconsin Farmers Foundation, Inc., Milwaukee, WI.

Partners for Community Development, Inc., Sheboygan, WI.

Cabell-Huntington Coalition for the Homeless, Huntington, WV.

TRIBUTE TO RICHARD ALAN GERBERRY

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. TRAFICANT. Mr. Speaker, I rise on this occasion to pay tribute to the late Mr. Alan Gerberry of my 17th District in Ohio.

Mr. Gerberry was a graduate of Austintown Fitch High School and an alumni of Ohio State University. With such a distinguished background, Mr. Gerberry engaged in work in the banking industry in Houston. Six years ago, he left Texas to work in Delaware in the management of the First Bank of U.S.A.

Mr. Gerberry was always surrounded by love and companionship. He leaves his twin brother, Ohio representative to the 71st District Ron Gerberry and two other brothers, Michael and James.

It is with my deepest regrets that I rise today, Mr. Speaker, to pay tribute to the late Mr. Alan Gerberry who passed away on October 1, 1991.

NATIONAL WOMEN VETERANS RECOGNITION WEEK

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. BILIRAKIS. Mr. Speaker, this week the House of Representatives will pass a resolution to designate the week beginning November 10 as "National Women Veterans Recognition Week." For the last 7 years I have introduced this measure in order to honor the more than 1.2 million women veterans who have served in our Armed Forces.

In 1984, I authored the first piece of legislation introduced in the Congress which called for national recognition of women veterans. While I was pleased to be the originator of this idea, I was surprised and disappointed that such recognition had not been given before. I am proud to say that every year since, the Congress and the President have approved "National Women Veterans Recognition Week." This acknowledgment has been long overdue.

Although official military participation began with the formation of the Army Nurse Corps in 1901, followed by the Navy Nurse Corps in 1903, women have served in and with the military services since our country was founded.

During World War I, the Army held fast to its prohibition against enlisted women, but the Navy Department took advantage of the clerical skills women offered by signing up 13,000 women in the Navy and Marine Corps. These women—who worked as telephone operators, clerical workers, typists and stenographers—were the first to be accorded full military rank and status. When WWI ended, however, they were demobilized, and except for the nurse corps, the American armed services were once again all-male institutions.

World War II marked a turning point in the history of women in the military. On May 14, 1942, the Women's Army Auxiliary Corps, or WAAC's, was created, followed 2 months later by the WAVES, which stands for "Women Accepted for Voluntary Emergency Service."

A total of 350,000 women served in the four services during World War II and their contribution to the war effort was invaluable. Perhaps the greatest compliment paid to the American women who served came from Albert Speer, Adolph Hitler's weapons production chief. Speer is reported to have said,

> How wise you were to bring your women into your military and into your labor force. Had we done that initially, as you did, it could well have affected the whole course of the war. We would have found out, as you did, that women were equally effective, and for some skills, superior to males."

In 1947–48, Congress recognized the valuable service of women during World War II by granting them active duty status in the regular Army, Navy, Marine Corps, and Air Force. Women continued to play an active role in Korea and Vietnam and in 1975, Congress further recognized the important contributions of women by requiring the service academies to admit women. The first women were graduated in 1980.

Whether women served as nurses, clerical support, mechanics, technicians, pilots, cryptographers or one of the many other positions of service, they have contributed and continue to contribute mightily to our defense in times of both war and peace. And despite the fact that women are officially excluded from combat duty we all know that many women veterans served under very difficult and dangerous circumstances—some even gave their lives for their country.

In fact, in every war before the 20th century in which the United States was involved, small numbers of women disguised themselves as men in order to serve in combat roles. Among the most famous of these were Deborah Sampson, alias Robert Shurtleff in the Revolutionary War; Lucy Brewer, alias George Baker, in the War of 1812; and Loretta Vasquez, alias Harry T. Buford, in the Civil War.

Despite the continuous service of women throughout the history of our Nation, we have not always recognized their tremendous contributions, nor have we paid attention to their needs as veterans.

It is my hope that "National Women Veterans Recognition Week" will highlight the special needs of women veterans, particularly in the areas of health care, employment, and readjustment problems. Of greatest importance is to increase women veterans' awareness of the availability of VA benefits and services for which they are eligible. Although much has been accomplished in the past serveral years, women veterans are less likely than their male counterparts to use veterans benefits such as VA health care and the Home Loan Guarantee Program.

In August, the Veterans' Affairs Oversight and Investigations Subcommittee, of which I am the ranking minority member held a hearing on the needs of women veterans. During the course of this hearing, several witnesses testified that they felt that traditional Veterans' Day festivities tend to overshadow the observance of "National Women Veterans Recognition Week." These witnesses felt it would be more appropriate to honor women veterans at some other time during the year.

In light of the testimony I heard during the August hearing, I am considering changing the date for the 1992 resolution. Several of the witnesses suggested June 12. This is the date in 1948 when President Truman signed the law establishing a permanent place for women in the Armed Forces. I hope that women veterans from across the country will contact me to express their preference for the commemoration of "National Women Veterans Recognition Week."

However, no matter when "National Women Veterans Recognition Week" is observed, it is a time for the country to become better acquainted with the service of women veterans and to express our gratitude to them for that service. It is also a time for women veterans themselves to remember their years in uniform and take pride in the many contributions women have made to the security and well-being of our great country.

I wish to thank Chairman SAWYER and the ranking member, TOM RIDGE, for their assistance in bringing this legislation to the floor. In addition, I wish to thank the women's groups, national veterans organizations and my House colleagues who worked diligently toward the enactment of this measure.

Thank you Mr. Speaker.

BANK REFORM, DEFORMED

HON. STEPHEN L. NEAL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. NEAL of North Carolina. Mr. Speaker, the New York Times editorialized today in favor of our Committee on Banking and Finance bill—they call it brilliant—and against the Gonzalez/Dingell plan—they call it deformed. The editorial is correct and I commend it to my colleagues:

BANK REFORM, DEFORMED

What started out as a wise, urgently needed rescue for the nation's ailing banks—and potentially for taxpayers as well—has turned grotesque. An ugly turf war between two House committees has yielded up legislation that would deform, not reform, the business.

There's still a way out, but unless some deft maneuvering takes place on the House floor in the next few days, the public will be left with a grim, graphic case study in what's wrong with Congress.

Early this year, the Bush Administration proposed a prudent plan to make banks safe by allowing them to diversify their investments. The idea was to let them set up branches anywhere and sell insurance, securities and mutual funds. That way bank profits would be insulated from losses on loans in any one state or sector.

The House Banking Committee, headed by Henry Gonzalez, made a good plan better by adding decisive safeguards. They would require banks to hold large reserves and force regulators to close failing banks before reserves dropped below specified targets. If these safeguards had existed in the 1980's, the savings and loan blowout, and taxpayer bailout, would never have occurred.

Then an ugly rivalry erupted. John Dingell's House Energy and Commerce Committee passed its own, directly contrary version. Purporting to protect insured deposits, the Dingell bill would set up "firewalls" to separate normal bank activities from new powers that bank reform would confer. But that extra protection isn't necessary and the firewalls would, as Mr. Dingell surely understood, keep banks from competing against insurance and securities companies.

How could two such opposite bills be reconciled? Unaccountably, the two chairmen met behind closed doors—and adopted Mr. Dingell's flawed proposal. In one stroke Mr. Gonzalez trashed much of his committee's brilliant work. The result is so offensive to genuine reform that President Bush is right to threaten a veto.

Mr. Dingell, the crusty Michigan Democrat, is the most visible but not the only impediment to the bank reform. House members are gun-shy of any proposal that hands banks new powers, especially since it was new Congressionally mandated powers that buried savings and loan institutions in such a monumental heap of bad debt.

Heedless fear of a repetition leaves many members leery of the Banking Committee bill. But even now, the Dingell bill can be turned into effective reform with merely one addition and one subtraction. Here's how.

The addition: Cover a new layer of protection for insured deposits at those few banks that choose to sell insurance and securities. These large banks would be required to invest insured deposits only in truly safe assets, like government securities. That way, should these banks fail, funds would automatically be available to pay back depositors without tapping Federal deposit insurance.

The subtraction: With that protection, Mr. Dingell's firewalls would serve no purpose and could be deleted, leaving banks that want to enter insurance and securities businesses free to do so without impossible impediment. And meanwhile, the great majority of banks with no such desire would be covered by the Banking Committee's sensible legislation.

For House members who remember reforms they approved in the 1980's, radical reform is scary. But bank reform, to be effective, must be radical because the banking system needs support. Either that support will come sooner, from an intelligent reform law that makes banks less risky—or later, from taxpayers.

Congress can yet give this twisted tale a last, wise turn.

INTRODUCTION OF THE FAIRNESS IN FEDERAL PURCHASES ACT OF 1991

HON. JOHN P. MURTHA

OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, October 31, 1991

Mr. MURTHA. Mr. Speaker, I come before the House today to express my concern about an issue which has a critical impact on our economy.

It is a matter that affects the nature of our commitments as a government—commitments to international agreements, to the implementation of Federal agency regulations to meet those commitments, and our specific commitments to our constituents—the American people—to see that fairness prevails in the execution of our official duties.

Since I came to Congress in 1974, I have consistently supported efforts to expand our economic base through improvement in our trade laws which are designed to mutually benefit our trading partners and ourselves by opening markets, eliminating trade barriers and providing safeguards and enforcement for potential abuses.

So, it was with this sense of purpose and anticipation that my colleagues and myself supported the passage of the Trade Agreements Act of 1979, an important piece of implementing legislation to the Tokyo Round of multilateral trade negotiations designed to achieve those objectives I just mentioned.

We are now witnessing the winding down of the current round of trade negotiations, the so-called Uruguay round, in which great effort has been expended by all parties to achieve further improvements in the ground rules for international trade.

A variety of issues regarding the evolution of these trade negotiations concern my colleagues and myself. Today, I would like to focus on one of my main concerns—the expectations we had for an opening of opportunities through the Government Procurement Code and the current efforts to expand this coverage.

When Congress passed the Trade Agreements Act of 1979, we had high expectations for commercial benefits from the Government Procurement Code with a potential opening of some $20 to $25 billion in trade opportunities for U.S. export sales to foreign government procurement entities.

In fact, since implementation of the code on January 1, 1981, the United States has spent on an annual basis some $18 billion in foreign source procurement while U.S. suppliers have taken in only $4 billion from sales to overseas governments for a total annual imbalance of some $14 billion. This means that U.S. agencies have purchased about $4.50 of foreign goods and services for every $1 U.S. companies have sold to foreign government agencies. This translates into an over 4-to-1 deficit with respect to trade opportunities for U.S. export sales to foreign governments.

Further, it is important to note that U.S. Federal agencies have confirmed the code has had less overall commercial value than originally anticipated and that of the markets opened, the benefits were disproportionately in favor of foreign suppliers.

With respect to the code, we have additional concerns about inadequate monitoring of foreign government compliance, inadequate efforts to enforce U.S. rights, the lack of U.S. Government assistance to firms wishing to take advantage of opened markets and the continued lack of progress to open foreign markets.

These issues need to be addressed thoroughly and now, when our trade negotiators are discussing the Government Procurement Code in Geneva during the current MTN round. We need to carefully reevaluate our current coverage and its impact to determine what indeed is in our best national interest. We should do this before we move aggressively to expand coverage to additional areas such as surface transportation and defense. In view of our economic condition and our experience to date with the code, we cannot afford to create unrealistic expectations about any potential benefits from these negotiations. We need concrete action which will serve our national interests.

Mr. Speaker, I have long maintained as many of my colleagues have, that our national security is closely linked with, and perhaps indistinguishable from, economic growth. Today, we find that economic growth threatened. Over the past 18 months, we have experienced a condition of relative instability in our economy with negative growth resulting in lost jobs and lost sales for both small and large businesses. Clearly, there is a need to act decisively.

After 11 years of limited opportunities for American companies overseas under the Government Procurement Code, the time has come to address the matter of imbalance with respect to our trading partners' government procurement practices. We need to refocus U.S. Federal procurement during this period of economic adjustment to enhance opportunities for small businesses and to preserve the jobs of workers which traditionally have the least resources to withstand economic recessions.

The use of U.S. Federal procurement dollars to assist small businesses and American workers is a sound practice and policy for our Government.

Therefore, today I am introducing legislation to establish a policy that will serve to reduce the imbalance in Government purchases by increasing procurement from domestic companies. Further, by enacting this legislation, Congress intends to promote fairness in Federal procurement by creating greater access to Federal procurement funds by small businesses and areas of high unemployment during economic downturns.

Mr. Speaker, as I mentioned in opening these remarks, we have a responsibility in Government to fulfill our commitments. I firmly believe that we have lived up to both the spirit and the letter of our commitments with respect to our trading partners and the Government Procurement Code over the past 11 years. Unfortunately, the record shows a reluctance on the other side to meet even a minimum of our expectations. Therefore, in view of this record and our current economic condition, we need to take such definitive action, and by doing, meet our commitment to this Nation and our constituents to seek fairness.

The following is a summary of the "Fairness in Federal Purchases Act of 1991:"

SECTION 1.—TITLE: THE "FAIRNESS IN FEDERAL PURCHASES ACT OF 1991"

SEC. 2.—FINDINGS AND PURPOSE

Since the implementation of the Government Procurement Code in January, 1981, U.S. agencies have purchased $4.50 of foreign goods and services for every $1.00 U.S. companies have sold to foreign government agencies. This translates into an over 4 to 1 deficit with respect to trade opportunities for U.S. export sales to foreign governments. (The U.S. spends approximately $18 billion in foreign source procurement each year while U.S. suppliers take in only approximately $4 billion from sales to overseas governments for an annual imbalance of an estimated $14 billion.

With the U.S. economy in a condition of relative instability over the past 18 months, there is considerable concern about continuing negative growth resulting in more lost jobs and sales for both small and large businesses.

After 11 years of limited opportunities for U.S. companies overseas under the Code, the time has come to address the matter of imbalance and to refocus U.S. Federal procurement toward greater use of domestic sources during economic downturns—a period in which the country now finds itself.

SEC. 3.—REQUIREMENT THAT FEDERAL AGENCIES INCREASE DOMESTIC PROCUREMENT AND PROCUREMENT FROM SMALL-BUSINESS CONCERNS DURING ECONOMIC RECESSIONS

GENERAL REQUIREMENTS

1. All Federal government procurement entities covered under the Government Procurement Code (GPC) will be required to determine the difference between the amount they have spent on foreign goods and services and the amount comparable foreign government agencies have spent on similar goods and services from domestic sources during the preceding fiscal year. If there were an unfavorable balance then U.S. agencies shall decrease foreign purchases and increase spending on procurement from domestic sources to eliminate the imbalance.

2. Increased domestic procurement would be engaged for a period of 18 months immediately after the Bureau of Labor Statistics (BLS) has reported at least 5 percent unemployment over a three-month period or the Department of Commerce (DOC) has reported at least one quarter of negative GNP.

3. After 18 months, the BLS and the DOC will report to the U.S. Trade Representative on GNP and unemployment data for the previous quarter. If the criteria were met, then an additional 12 months of increased domestic procurement will be engaged. Otherwise, the program would be terminated on a favorable report from BLS and DOC regarding economic and employment data.

4. To the extent practicable, Federal entities will maximize the use of small businesses by determining how much was spent on purchases from small businesses in the preceding fiscal year. If the amount was less than 35 percent of the total procurement dollars spent, then Federal agencies would be required to increase spending to an amount that equals or exceeds 35 percent of the total.

5. Small businesses would be eligible for an increase in the current preference from 12 percent to 15 percent. In addition, "labor

surplus" areas would be entitled to the upgraded preference of 15 percent during the period of this engagement.

I urge my colleagues to cosponsor and support this important legislation which will help create American jobs in areas of high unemployment, help small businesses compete and begin to address the unfavorable imbalance with respect to our trading partners' government procurement.

TRIBUTE TO THE 1991 INDUCTEES INTO THE AUSTINTOWN HALL OF FAME

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to the most recent inductees in Austintown's Hall of Fame which is in my 17th District of Ohio. These people have proven their expertise in the fields of business, professional and community service.

The first of these honorees was awarded based on her outstanding service to the business community. She is Mrs. Carol Fye, the owner of Advanced Marketing Systems. In her free time, Mrs. Fye acts on the board of the Mahoning Valley Camp Fire Council and on various committees of the board of education.

In the professional field, Mr. Robert Kloss has distinguished himself as vice-president of personnel for Home Savings and Loan for 30 years. Now a retiree, Mr. Kloss works as treasurer of the Kiwanis Club, Touchdown Club, Austintown Chapter of the AARP and growth foundation, among other activities.

The final inductee was chosen for his outstanding contributions in the field of community service. He is Mr. Griffith Thomas and is a board member of the local historical society, president of Kiwanis, secretary of the growth foundation and member of the July 4th Committee and Mahoning Planning Commission.

Mr. Speaker, it is with pride and gratitude that I rise today to pay tribute to Mrs. Faye, Mr. Kloss and Mr. Thomas as they are inducted to the Austintown Hall of Fame.

TERM LIMITS WILL NOT SOLVE PROBLEMS

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. KOSTMAYER. Mr. Speaker, one of the greatest storms brewing in the country today is the debate about term limits. For reasons I do not quite understand, term limit supporters believe that Government will be more responsive to its citizens if those citizens forego their right to elect the representative of their choice.

But Mr. Speaker, putting new limits on people's voting rights is not going to solve our problems.

The answer is not to push people out of Government, the answer is to get more people involved in it. The answer is not in pinning blame, but in finding solutions.

Ours is a participatory democracy and it only works when Americans care enough about it to participate in it. There are all sorts of easy gimmicks out there to improve the Government—term limits is just the latest—but the fact is democracy is not easy and it's never going to be. It takes work and vigilance on the part of all of us.

For some forceful thoughts on this subject, I commend the speech of our former colleague from Connecticut, Lowell Weicker, and ask that it be printed in the RECORD following my remarks:

STATEMENT OF LOWELL P. WEICKER, JR., CONVOCATION ADDRESS, GALLAUDET UNIVERSITY, OCTOBER 25, 1991

On the occasion of the fifth anniversary of Gallaudet College becoming Gallaudet University, I am pleased to stand here among men and women I respect most in this land, for reasons they may not realize.

First, there is a wonderful link between this university and Connecticut.

I read it last week, on a plaque in downtown Hartford, marking the site where, on April 15, 1817, the first school for deaf children was established in this country. It began with a class of seven.

These words were added: "Here, is witnessed, for the first time in this Western world, the affecting sight of a little group of fellow sufferers assembling for instruction, whom neither sex nor age nor distance could prevent from hastening to embrace the first opportunity of aspiring to the privileges that we enjoy as rational, social and immortal beings."

They were written by Thomas Hopkins Gallaudet. Such beginnings are a treasured part of Connecticut's history. But as important is today's activism, determination and spirit of Gallaudet students as evidenced by the occasion and the man that brings us together in this place.

You showed yourselves a positive, powerful force for empowerment by insisting on the installation of a deaf president for the first time in Gallaudet's history. And today, you have Dr. I. King Jordan—a man of courage, vision and determination—qualities that are sorely lacking among too many of our leaders.

Several years ago when you thought "the first opportunity for aspiring" had worn out its 160 year old stay you neither yelled at nor walked away from a world that handcrafted disabilities far more limiting than those God had wrought.

I would like to think the country caught your message—that political activism does work. I would like to believe that examples of confronting society's ills whether in Selma, Alabama or on Massachusetts Avenue before the gates of the South African Embassy would prove the point that one woman, one man can make a difference.

You don't have to look to Atlanta or Minneapolis these days for the national pastime. Look rather to an American people who have made government a national pastime of never ending Bronx cheers rather than a million acts of voting.

We've abandoned the playing field of free elections and constitutional government and become a nation of political couch potatoes and Monday morning quarterbacks.

For twenty-eight years I've heard the grousing of what Government doesn't do right. I've heard the unrelenting criticisms of those who serve in public office. Today the murmur has become an unintelligible cacophony that assaults all common sense.

There is nothing wrong with speaking out, but when knocking and slamming becomes the entire substitute for the process of thought and activism, then it is time someone spoke back.

Ours is a democracy. If people are upset with the daily results, it is because they have become absentee owners.

In the 1988 Presidential election as many Americans of voting age stayed home as went to the polls. It was the lowest voter turnout since the 1924 election between Calvin Coolidge and J.W. Davis. And that was in a time when voters had to hand crank their model T's or ride to the polls in a horse and buggy. Nowadays it's hard just to get someone to drop their bag of doritos long enough to cross the street to vote.

The 1988 turnout was pathetic but no surprise to those who have been watching voter participation decline steadily for two decades.

We've heard all the justifications. "None of the above." "The lesser of two evils." "Why should I?"

And the danger of low voter turnout is that men and women elected to office lack any mandate from the people. In the non-Presidential election year of 1990, only one of three of voting age Americans cast ballots in their respective district's congressional races. Lacking any marching orders, elected officials become uncertain where to go. Instincts to lead are overpowered by a fear of confronting the difficult, the untried, the unpopular. The purpose of power becomes retaining power.

Without the direction that the common sense majority of the Nation can provide at election time, officeholders cater to the winds of the day. With the dial tuned to talk radio and with a 1-800 line to their pollster, today's politician is whoever you want at the moment.

In 1988 when elected officials panicked over people's concern about drugs, that topic immediately became the subject of chest-pounding both in Congress and on the campaign trail. The Congress, as it had in the 1986 election, passed a massive anti-drug bill, and immediately flooded the home districts with press releases. Yet when it came time to fund the bill and the evil word taxes came up, the only sign of anyone in Congress was the Chamber's swinging exit doors.

Hard decisions don't get many dates in political circles these days. Knowing they weren't going to be held accountable, the Members of Congress chose to fight the drug war on paper. They went on record against drugs and at the same time they went on record against taxes. An unbeatable combination. Now that insanity can't happen without the approval, albeit tacit, of the American people. It isn't the fault of Mr. Reagan, Mr. Bush or the Congress. It's ours. As Ben Franklin said, "in this Nation, the people rule." It's not Washington who's to blame. It's not Hartford. It's us. If we get hoodwinked, it's with our own knowledge and consent. No one in an age of media overkill can legitimately plead ignorance when the bills come due.

In the last 5 years we've had two wars in the Persian Gulf. I'm speaking of the tanker escort operation during the Iran-Iraq war, and of course, operation Desert Storm. These were major operations involving great expense to this country's Treasury, but yet not one nickel has been asked of the American public. We sent over sons and daughters—some of whom lost their lives, but the American public with its 200 million individual purses was spared. Elected officials afraid of upsetting a spectator public, withheld the bill through yet another election. No one complained. As long as the bill isn't in the mail, why say anything? Yet why then should any American wonder at the deficit?

In 1988, almost 95 percent of incumbents in Congress were reelected, 1990—the year when the so-called anti-politician movement was running through the country—the percent was almost as high. Few politicians offered an agenda. Rallies were held not to hear about issues but to wave the flag. And most people on election day stayed home. In other words, dropped the flag.

In Connecticut's congressional election of 1986, seven hundred thousand eligible voters stayed away from the polls. Four years later I was elected governor and inherited a trash of constituent neglect—a $3 billion dollar deficit—the highest proportionate deficit in the Nation. The people of Connecticut had demanded high-quality services at below-cost prices. When presented with the bill in the form of one billion dollars in service cuts and a first ever State income tax, 40,000 mobbed the capital to protect and demand repeal. These Rip Van Winkles had gotten the wake-up call of their life.

Yet what makes them mad was that people say they expect from Government—honesty. Even though most politicians are malleable, the facts don't bend.

How many remember the energy crisis in the 1970's and the Arab oil embargo that nearly had this Nation kneeling in the sand. We could have gotten the sandals off our back and busted that embargo in 5 days time if we had immediately decontrolled energy prices and instituted mandatory conservation measures. But because no one wanted to change lifestyles, we spent half a decade in economic turmoil. And now in 1991 our energy vulnerability has never been greater. If oil prices soar again, who then is to blame? Washington? Saudi Arabia? Or us?

The 1980's brought selfishness to new heights. They preached that you can get something for nothing. It was a platform of more services, less taxes. It was great politics, but it didn't make budget sense. Not unless the country's population and problems grew smaller, which they didn't. The 80's made people feel good, especially about greed.

Today we're picking up the refuse of that philosophy in Connecticut. In Washington. In State Capitols across the land. Contrition? Forget it.

Invective has been substituted for solution. Blame replaces payment. Americans have forgotten the system that is the envy of the world. A system of dialogue and voting that only improves with use.

Years ago Congress had the opportunity and the mandate to bring equality of educational opportunity to all, but it failed to act. Instead the courts had to take over. Congress reacted by trying to emasculate the court's powers of remedy. Rather than devising programs to manifest our constitutional ideals, elected officials found straightjacketing the courts less antagonizing. More and more, the courts are being forced to take the responsibility that elected officials and their constituencies abdicate.

The ultimate fault, however, lies not with elected officials and courts but with all 250 million of us. The legislative and executive branches are a reflection of all of us. The start or finish of every priority is a call made by the American people.

Thirty years ago we in the North used to look down our noses on the South when it came to civil rights, but the fact of the matter was, we too, ignored equality. It wasn't until Martin Luther King pricked the conscience of a nation and people North and South decided they wanted civil rights, that legislation rolled through the Congress and became the law of the land. No filibuster could stop it even though that tactic had been the excuse for years of inaction.

The educator and former University of Chicago president, Robert Maynard Hutchins warned:

"The death of democracy is not likely to be an assassination by ambush. It will be a slow extinction from apathy, indifference, and undernourishment."

People today don't want involvement. They want the comfort of Government by autopilot. Term limitations, constitutional amendments to balance the budget. Gramm-Rudman. Referendums. Lazy man's alternatives—every one of them.

Whatever happened to voting? To serving? Are freedom and excellence no longer worth two minutes at the polls? If, in a recent poll, 83 percent of the people adjudged politicians as corrupt, then in our country that is a damning self judgment. In fact, that's not the case, so knock off the demeaning generalizations.

The democratic way of life is not easy, Justice Earl Warren reminded us. It conveys great privileges, but constant vigilance is needed to preserve them.

"This vigilance," he said, "must be maintained by those responsible for the Government: And in our country those responsible are 'WE' the people—no one else."

People need to be reminded of the power they hold if they choose to use it. Look at the Americans With Disabilities Act.

That act is a monument to what political activism at its best can accomplish. Our customs and laws had created barriers where God did not put them. And it took people—and unceasing grassroots effort—to return to disabled Americans the rights to which all in this Nation are entitled. Legislators heard the message. The President heard the message. And the ADA is now the law of the land.

Does that mean you and I can bide our time as we wait for the ADA to be implemented? No! Remember, a law without funding or enforcement is a nullity.

There is tremendous power in each American because ours is a government of laws. Our political system is the best in the world at translating the needs of the street into the laws of the Nation. It represents an opportunity for each of us, but it needs elbow grease, not dirty words.

Here at Gallaudet University you have taken advantage of the opportunity our system offers. You have chosen activism and reaped its rewards.

You have fulfilled those noble words of Eleanor Roosevelt:

"You gain strength, courage and confidence by every experience in which you really stop to look fear in the face . . . You must do the thing you think you cannot do."

For this, you of Gallaudet University make this Governor very proud . . . and very grateful.

Your example must be acted out again and again by a nation that long ago stopped trying. Here's to the tomorrows of one nation. Joined in vision. United in Action.

Thank you.

THE UNJUST DOUBLE STANDARD IN THE MIDEAST

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. GILMAN. Mr. Speaker, the Madrid Peace Conference has brought its regional participants to the table. While some observers have stated that the peace conference is the best opportunity Palestinians will ever have, in many respects, the status quo remains. On the eve of the conference, on Monday, October 28, 1991 Palestinian terrorists attacked an Israeli bus, murdering two adults and injuring five children. The Washington Post buried the story the next day. On Tuesday, October 22, 1991, as peace conference participants were arriving in Madrid, Palestinian terrorists struck again, killing several Israeli soldiers.

Many of these same terrorists and their organizations are given safe haven and financial support by one or more Arab States present at the conference. Yet criticism and distortions of the truth continue to be hurled at Israel from all sides.

Just a few days ago, A.M. Rosenthal of the New York Times discussed this double standard in more detail. Accordingly, Mr. Speaker, I request that his article be reprinted at this point in the CONGRESSIONAL RECORD for the benefit of our colleagues. His words ring true:

[From the New York Times, Oct. 22, 1991]

THE DOUBLE STANDARD

(By A.M. Rosenthal)

The double standard in the Middle East has become built into American diplomacy and journalism. It is so taken for granted that hardly anybody notices.

It is time to notice, the most important of times. The Israeli-Arab talks supposed to start at the end of this month can be an important step in the Mideast. The credit goes to the persistence of President Bush and Secretary of State James Baker, the willingness of the Israeli Cabinet to take plain risks for peace, and the decision of some Palestinians not to let yet another opportunity pass them by.

At last Palestinians and Jordanians will, in a joint delegation, face the Israelis. At least in theory, a basis of the talks will be the only solution possible for some years—Palestinian self-government for five years, hedged by Israeli military presence but meanwhile given broader horizons by negotiations about what-next.

If these talks are to get a fair chance, American diplomats, politicians and journalists of conscience, who will assess the talks day by day, ought to examine the double standard now—in justice not simply to Israel but to all who ache for peace in the Middle East.

In some important part, the double standard comes out of the nature of Israeli society and is a great asset to the country. If a higher standard of ethics and conduct is demanded of Israelis, it is because even its antagonists know it judges itself on democratic and political standards unknown elsewhere in the Middle East. Without those self-imposed standards Israel would have no greater claim to support and affection than any other small nation.

But throughout its existence, and increasingly, the double standard has not been just a debate about ethics. It became a whole arsenal of deadly weapons against Israel that the world chooses to ignore—vicious racial and religious insult, terrorism, boycott and embargo, refusal to abide by elementary diplomatic rules of conduct and, now, sabotage of the peace talks.

For almost a half-century Israel has been bombarded with filth—from the ceaseless and still-continuing anti-Israel and anti-Jewish campaign in almost every Muslim country worldwide. Filth from mouth, the press and the airwaves is meant to dehumanize a nation and make its extinction desirable. The world says nothing, does nothing.

In the United States—even in America—cartoons appear in the mainstream press that could have run in German Nazi papers. One showed an ugly Yitzhak Shamir beating a prostrate, tied Palestinian with a mace from which swung a menacing Star of David. The Star of David is a routine symbol of oppression now for some American cartoonists. Publishers do nothing; readers, nothing.

A Saudi Arabian is elected president of the U.S. General Assembly.

Before the Foreign Minister of Israel speaks, the Saudi prostitutes his position by absenting himself from the rostrum. If an Israeli had by some mad chance been elected president of any U.N. body, and withdrawn not to soil his eyes and ears with an Arab speaker, the critics of Israel, from the most vulgar to the toniest, would have howled. I didn't hear any howls about the absent Saudi.

Israel is asked to pay heavily, in land, for the normal trade and diplomatic relations that every other country gets as an automatic mark of nationhood. Pay to end the embargo, pay to get credits, pay to receive ambassadors. What payment did the U.S. get from Saddam Hussein for pushing credits to Iraq just before the invasion of Kuwait?

And now, Syria announces its boycott of half the peace conference, possibly the more important half—the regional discussions among Israel and her neighbors on arms control, water, economic development.

If Israel had done that—oh my, Washington and the journalistic critics would have positively danced with rage. I see not a step.

Instead it is Israel that gets the new barrage of warnings—shape up or starve, or as some fellow put it with such sensitive wit in The Washington Post, beggars can't be choosers.

So that anti-Israeli double standard already has made it a half-conference. The Arab states note American acquiescence. If Americans keep applying the double standard, what's left of the conference won't have much of a life expectancy.

NEW JERSEY PRIDE HONOR ROLL: ARTHUR VREELAND

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. GALLO. Mr. Speaker, on November 23, the people of Parsippany, NJ, will gather to honor a truly remarkable individual, who has given a lifetime of service to the protection of the public safety and property in our community.

Arthur Vreeland first joined the Parsippany Volunteer Fire Association in December of 1930 at the age of 22.

For more than 60 years, Arthur Vreeland has been an active member of the company and has spearheaded efforts to uphold the highest aspirations of firefighting in the protection of life and property.

He served for 35 years as secretary and has achieved the ultimate lifetime recognition as an honorary chief.

Arthur Vreeland's dedication to the Parsippany Fire Co. over 60 years gives meaning to the definition of volunteerism and sets a standard of service that will be difficult to duplicate.

Volunteers are the most important members of any community and none perform greater and more sustained service than the men and women who risk their lives to save others.

Volunteer fire and rescue squads save countless lives and protect personal property. They, in turn, are assisted by their auxiliary volunteers, who provide the support needed to keep these life-saving organizations moving forward.

Volunteers are the glue that hold our communities together, yet we often take for granted their valuable contributions of time and energy, which produce such positive results.

In fact, there are so many worthwhile projects in every community that we will never have too many volunteers who are willing to participate, even for a few hours a week.

It is no coincidence that communities with active citizen participation have a better quality of life than towns that have little or no sense of community spirit.

As we honor Arthur Vreeland for his 60 years' of service we also acknowledge all of our volunteers for their contributions to the community.

And, because of Arthur Vreeland's example, we are also reminded of the truly amazing things that can be accomplished when dedicated volunteers work together toward a shared goal.

Mr. Speaker, I ask my colleagues to join with me in saluting Arthur Vreeland for his lifetime of voluntary service to his community.

AMBASSADOR BAKHMETEFF'S ADDRESS TO CONGRESS

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. BROOMFIELD. Mr. Speaker, I would like to commend a good friend, historian, Mason, and former Congressman, Fred Schwengel. He is the founder and current president of the U.S. Capitol Historical Society, which works to make the history of the Capitol Building and Congress more available to individuals at home and abroad.

Each spring the U.S. Capitol Historical Society hosts a major annual symposium to inform our citizenry of various historical events. In recognition of the growing ties between the peoples of the United States and the U.S.S.R, Congressman Schwengel has written a letter to President Mikhail Gorbachev proposing a symposium where the leading historians of both nations would address the most critical dimensions of their respective histories and national characters.

In discussing this event with Congressman Schwengel, I was reminded of the historical significance between recent developments in the Soviet Union and the Russian republican period before the Bolshevik Revolution in 1971. In June 1917, Boris Bakhmeteff, the Ambassador to the United States from the Republic of Russia, a member of the faculty of Columbia University and a Mason, addressed the House of Representatives and the Senate with words that clearly demonstrate the similarities between the two periods. Mr. Speaker, I ask that Ambassador Bakhmeteff's address before the House and the Senate be printed in the CONGRESSIONAL RECORD:

BORIS BAKHMETEFF, AMBASSADOR TO THE UNITED STATES FROM THE REPUBLIC OF RUSSIA ADDRESS BEFORE THE U.S. HOUSE OF REPRESENTATIVES, JUNE 23, 1917

Mr. Speaker and gentlemen of the House [applause]. I am deeply conscious how great an honor has been conferred on me and the members of my mission by this gracious reception. I understand how unusual it is for this House to accord to foreigners the privilege of the floor. I realize that if you were moved to make such an exception it was due to the great and most extraordinary historic events which have been and are now taking place in the world.

Great indeed is the honor and the privilege to speak here, in this House, exemplifying as it does the Constitution of the United States—that wonderful document which embodies so clearly and yet so tersely the principles of free government and democracy. [Applause.]

Gentlemen of the House, when addressing you on behalf of the Government and the people of new Russia, when conveying to you the greetings of the new-born Russian democracy, you will conceive how impressed I am by the historical significance of this moment; you will understand why my emotions do overwhelm me.

During the last few months Russia has really lived through events of world-wide importance. With a single impulse the nation has thrown down the old fetters of slavery. Free, she is entering now the dawn of new life, joining the ranks of democracy, striving for the happiness and the freedom of the world. [Applause.]

Does not one feel occasionally that the very greatness and significance of events are not fully appreciated, due to the facility and spontaneity with which the great change has been completed?

Does not one always realize and conceive what it really means to humanity that a nation of 180,000,000, a country boundless in expanse, has been suddenly set free from the worst of oppression, has been given the joy and happiness of a free, self-conscious existence? [Applause.]

With what emotions are we inspired who have come to you as messengers of these great events, as bearers of the new principles proclaimed by the Russian Revolution.

May I be permitted to reiterate the expression of the feelings that stir our hearts and, impressed as I am by the might and grandeur of the wonderful events, welcome and greet you on behalf of free Russia? [*Applause.*]

Here at the very cradle of representative government I feel it proper to recall the very moments of birth of constitutional life in Russia which presented itself some 12 years ago at the time of the first Russian Revolution.

It was then that the Duma came into being. From the very inception of this assembly the old authority endeavored to curtail the powers that had been conferred on it. Its sole existence was an uninterrupted struggle; but in spite thereof, notwithstanding the limitations and narrowness of election laws, the Duma was bound to play a most important part in the national life of Russia.

It was the very fact of the being of a representative body which proved to be so fruitful and powerful.

It was that mysterious force of representation, force which draws everything into the whirlpool of legislative power, force the existence of which your American framers of the Constitution so deeply recognized and understood. It was that force which led the Duma, however limited, to express the feelings of Russia and frame her hopes during the world's great crisis, and made the Duma ultimately the center and the hope of national life.

It was the Duma who at the epoch when the old authority by vicious and inefficient management had disorganized the supplies of the country and brought the military operations to unprecedented reverse; it was the Duma who with energy and devotion called the people to organize national defense and appealed to the vital forces of the country to meet the German attack and save the nation from definite subjugation. Again, when it appeared that the short-sighted Government, who never took advantage of the patriotic enthusiasm and national sacrifice, was not only incapable of leading the war to a successful end but would inevitably bring Russia to military collapse and economic and social ruin, it was the Duma again who at that terrible hour proclaimed the nation in danger [*applause*]; it was at the feet of the Duma that the soldiers of the revolution deposed their banners and, giving allegiance, brought the revolution to a successful issue. It was then that from the ruins of the old regime emerged a new order embodied in the provisional government, a youthful offspring of the old Duma procreated by the forces of the revolution. [Applause.]

Instead of the old forms, there are now being firmly established and deeply embedded in the minds of the nation principles that power is reposed and springs from and only from the people. [Applause.] To effectuate these principles and to enact appropriate fundamental laws—that is going to be the main function of the constitutional assembly which is to be convoked as promptly as possible.

This assembly, elected on a democratic basis, is to represent the will and constructive power of the nation. It will inaugurate the forms of future political existence as well as establish the fundamental basis of economic structure of future Russia. Eventually all main questions of national being will be brought before and will be decided by the constitutional assembly—constitution, civil and criminal law, administration, nationalities, religion, reorganization of finance, land problem, conditionment of labor, annihilation of all restrictive legislation, encouragement of intense and fruitful development of the country. These are the tasks of the assembly, the aspirations and hope of the nation.

Gentleman of the House, do not you really feel that the assembly is expected to bring into life once more the grand principle which your illustrious President so aptly expressed in the sublime words. "Government by consent of the governed"? [Applause.]

It is the provisional government that is governing Russia at present. It is the task of the provisional government to conduct Russia safely to the constitutional assembly.

Guided by democratic precepts, the provisional government meanwhile is reorganizing the country on the basis of freedom, equality, and self-government, is rebuilding its economic and financial structure.

The outstanding feature of the present government is its recognition as fundamental and all important of the principles of legality. It is manifestly understood in Russia that the law, having its origin in the people's will, is the substance of the very existence of State. [Applause.]

Reposing confidence in such rule, the Russian people are rendering to the new authorities their support. The people are realizing more and more that to the very sake of further freedom law must be maintained and manifestation of anarchy suppressed.

In this respect local life has exemplified wonderful exertion of spontaneous public spirit which has contributed to the most effective process of self-organization of the nation. On many occasions, following the removal of the old authorities, a newly elected administration has naturally arisen, conscious of national interest and often developing in its spontaneity amazing examples of practical statesmanship.

It is these conditions which provide that the provisional government is gaining every day importance and power; is gaining capacity to check elements of disorder arising either from attempts of reaction or extremism. At the present time the provisional government has started to make most decisive measures in that respect, employing force when necessary, although always striving for a peaceful solution.

The last resolutions which have been framed by the Council of Workingmen, the Congress of Peasants, and other democratic organizations render the best proof of the general understanding of the necessity of creating strong power. The coalitionary character of the new cabinet, which includes eminent socialist leaders and represents all the vital elements of the nation, therefore enjoying its full support, is most effectively securing the unity and power of the central government, the lack of which was so keenly felt during the first two months after the resolution.

Realizing the grandeur and complexity of the present events and conscious of the danger which is threatening the very achievements of the revolution, the Russian people are gathering around the new government, united on a "national program." [Applause.]

It is this program of "national salvation" which has united the middle classes as well as the populists, the labor elements, and socialists. Deep political wisdom has been exhibited by subordinating various class interests and differences to national welfare. In this way this Government is supported by an immense majority of the nation, and, outside of reactionaries only, is being opposed by comparatively small groups of extremists and internationalists.

As to foreign policy, Russia's national program has been clearly set forth in the statement of the provisional government of March 27 and more explicitly in the declaration of the new government of May 18.

With all emphasis may I state that Russia rejects any idea of a separate peace? [Applause.] I am aware that rumors were circulated in this country that a separate peace seemed probable. I am happy to affirm that such rumors were wholly without foundation in fact. [Applause.]

What Russia is aiming for is the establishment of a firm and lasting peace between democratic nations. [Applause.] The triumph of German autocracy would render such peace impossible. [Applause.] It would be the source of the greatest misery, and, besides that, be a threatening menace to Russia's freedom.

The provisional government is laying all endeavor to reorganize and fortify the army for action in common with its allies. [Applause.]

Gentlemen of the House, I will close my address by saying Russia will not fail to be a worthy partner in the "league of honor." [Applause.]

BORIS BAKHMETEFF, AMBASSADOR TO THE UNITED STATES FROM THE REPUBLIC OF RUSSIA ADDRESS BEFORE THE U.S. SENATE, JUNE 26, 1917

Mr. President and gentlemen of the Senate, at the outset permit me to express to you sincere thanks and keen appreciation for the warm reception you have so graciously given to the members of the mission and to myself. Great is the honor you have bestowed by permitting me to address your distinguished body, abrogating thus a custom which has been upheld for more than a century, but still more gratifying is the expression of cordial sympathy and friendly feeling which have been so manifestly exhibited by your reception.

From the moment of our arrival in this country we have been deeply affected by the extraordinary greeting accorded us and by the constant expression of hearty welcome and sincere sympathy with which we have been hailed on all sides.

That bonds of friendship and sympathy united the people of the two nations we knew before we departed from Russia. They were amply manifested during the early days of the revolution. The act of prompt recognition of our new Government has been of incalculable value. For the brotherly encouragement which you gave us, and for the noble manner in which you so generously stretched forth a helping hand, we are here, in behalf of the new Russia, to express to you our deepest and most heartfelt gratitude. [Applause.]

We have come here as well to make clear the spirit and meaning of the great events taking place in our country. A thorough understanding is indispensable to enable our mission to accomplish the important task of establishing a close and effective cooperation between the two countries for common action and common cause. With the greatest of hope do I look forward to the results of such cooperation so vital to our mutual desire to firm a league of honor among free nations on the smoking ruins of automatic militarism.

At this moment all eyes are turned on Russia. Many hopes and many doubts are raised by the tide of events in the greatest of revolutions at an epoch in the world's greatest war. Justifiable is the attention, lawful the hopes, and naturally conceivable the anxiety. The fate of nations, the fate of the world is at stake, all dependent on the fate of Russia. Freedom and peace will be the blessings of the future if Russia happily emerges from the struggle a powerful democracy, sparkling with the gallantry of her army returning from fields won in common strife with her allies. [Great applause.]

An unprecedented epoch of spiritual depression, a new period of strenuous and anxious military depression would follow, should Russia fail to accomplish her task of political regeneration or should she collapse for economical reasons or the insufficiency of her arms. In all frankness and sincerity do I expose my cause, confident in your good will and paying tribute to the manifest feelings of sympathy, may I say affection?

I am not going to conceal the gravity of the situation that confronts the Russian Provisional Government. The revolution called for the reconstruction of the very foundations of our national life. It is not easy to comprehend what it means to reorganize all of Russia on democratic lines. Such work involves the whole of our social, economic, and political relations. The entire State structure is affected by the changes, involving village, district, county; in fact, every part from the smallest to the central State. The creation anew of a country of boundless expanse on distinctly new principles will, of course, take time, and impatience should not be shown in the consummation of so grand an event as Russia's entrance into the ranks of free nations.

We should not forget that in this immense transformation various interests will seek to assert themselves, and until the work of settlement is completed a struggle among opposing currents is inevitable and exaggerations can be avoided. Attempts on the part of disorganizing elements to take advantage of this moment of transition must be expected and met with calmness and confidence. [Applause.]

In exposing to you a true picture of the situation I feel that it is my duty to present to you two considerations which make me feel that Russia has passed the stage of the world when the future appears vague and uncertain.

In the first place, it is the firm conviction of the necessity of equality, which is widely developing and firmly establishing itself throughout the country.

In the eyes of the Russian people this principle of equality is based on the fertile democratic doctrine that governments derive their just power from the consent of the governed [prolonged applause], and hence that a strong government must be created by the will of the people. [Renewed applause.]

Three days ago in the House of Representatives I stated that a strong majority of the Russian people had united around the coalition cabinet on a national program. I mentioned the confidence and powerful support which the Government is at present enjoying, and which from day to day gives it more strength and determination, not only to suppress acts of lawlessness on the part of disorganizing forces but also to carry out the constructive work of national reorganization.

Since then my latest advices give joyful confirmation of the establishment of a firm power, strong in its democratic precepts and activity, strong in the trust reposed in it by the people in its ability to enforce law and order. [Prolonged applause.]

In the second place, and no less important, is the growing conviction that the issues of the revolution and the future of Russia's freedom are closely connected with the fighting might of the country. It is such power, it is the force of arms, which alone can defend and make certain the achievements of the revolution against autocratic aggression. [Applause.]

There has been a period, closely following the revolution, of almost total suspension of all military activity, a period of what appeared to be disintegration of the army, a period which gave rise to serious doubts and to gloomy forebodings. At the same time there ensued unlimited freedom of speech and of the press, which afforded opportunities for expression of the most extreme and antinational views, from all of which resulted widespread rumors throughout the world that Russia would abandon the war and conclude a separate peace with the central powers.

With all emphasis and with the deepest conviction, may I reiterate the statement that such rumors were wholly without foundation in fact. [Great applause.] Russia rejects with indignation any idea of separate peace. [Prolonged applause.] What my country is striving for is the establishment of a firm and lasting peace between democratic nations. Russia is firmly convinced that a separate peace would mean the triumph of German autocracy, would render lasting people impossible, create the greatest danger for democracy and liberty, and ever be a threatening menance of the new-born freedom of Russia. [Applause.]

These rumors were due to misapprehension of the significance and eventful processes of reorganization which the Army was to undergo as a result of the emancipation of the country. Like the Nation, the Army, an offspring of the people, had to be built on democratic lines. Such work takes time, and friction and partial disorganization must be overcome.

To adapt new principles to a body so huge, so very manifold, and so self-dependent as is a modern army is no simple task. Patience is required to mold it in accordance with forms of democracy and personal liberty, preserving at the same time discipline so essential for success on the field of battle.

One must also realize that the time has passed when the fares of nations can be decided by an irresponsible government or by a few individuals, and that the people must shed their blood for issues to them unknown. We live in a democratic epoch where people who sacrifice their lives should fully realize the reasons therefore and the principles for which they are fighting. [Applause.]

Just as the Russian people had to undergo a process of reorganization and political revolution so also did the Russian Army. It was necessary for it to live our illusions and deceptions, and to rally about a program of historical necessity and national truth.

The national program of the Government calls for effective organization and consideration of the army's fighting power for offensive as well as defensive purposes. [Applause.] This has been the outcome of the crystallization of the will of the people. That is the program as to warfare which has rallied around the Government, Russia's democracy, giving its leaders vigor and strength.

Conscious of the enormous task, the Provisional Government is taking measures promptly to restore throughout the country conditions of life so deeply disorganized by the inefficiency of the previous rulers and to provide for whatever is necessary for military success.

In this respect exceptional and grave conditions provide for exceptional means. In close touch with the panpeasant congress the Government has taken control of stores of food supplies, and is providing for effective transportation and just distribution. Following the example of other countries at war, the Government has undertaken the regulation of the production of main products vital for the country and the army. The Government at the same time is making all endeavors to settle labor difficulties taking measures for the welfare of workmen consistent with active production necessitated by the national welfare.

As to the army, the process of crystallization of the national will is expressing itself in a growing sentiment of general and common appreciation of events and a thorough understanding of the situation.

Peaceful in its intentions, striving for a lasting peace based on democratic principles and established by democratic will, the Russian people and its army are rallying their forces around the banners of freedom, strengthening their ranks in cheerful self-consciousness; to die, but not to be slaves. [Great applause.]

Russia wants the world to be safe for democracy.

To make it safe means to have democracy rule the world. [Prolonged applause.]

FAMILY TAX RELIEF ACT OF 1991

HON. MARTY RUSSO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. RUSSO. Mr. Speaker, there is already ample evidence to show that in this decade our tax system has favored the rich over the middle class and that our national wealth has flowed unevenly to the most wealthy at the expense of low- and middle-income working Americans. Families have seen their incomes stagnate or decline, even though a second wage earner, usually a wife, has entered the work force.

These pressures on American families' time and finances have hurt one group more than any other: our Nation's children. A 1990 Commission on Children said "never before has one generation of American children been less healthy, less cared for, or less prepared for life than their parents were at the same age." Today, many of our children are among the poorest Americans. Two million more children live in poverty today than did a decade ago, with 800,000 new children entering the ranks of the impoverished every year. Our domestic policy has neglected them, and our tax system in particular has served to discourage families with children rather than help them when they most need it.

Our children are an investment in our future, they are capital for a nation which has always sought greatness and succeeded. Families today need relief from not only the ongoing recession, but also from a decade of neglect by this and the previous administration. While European nations offer generous cash and tax benefits for parents of young children, the United States has allowed its most important direct tax benefit for working families with children—the personal exemption—to decline dramatically in real dollars over the past 40 years.

Today I will introduce a bill to recognize our children's value to our Nation and to reverse a national policy of benign neglect toward them. The bill would give families a tax credit of $350 for each child under age 18. For the average American family, this represents a $700 tax cut. It's simple, requires almost no extra paperwork, and will put cash in the hands of families with children. And we intend to pay for it.

Rather than raising taxes, the bill targets specific defense and domestic program cuts which would pay for the family tax credit. Overall, defense spending would be cut by $80 billion and domestic programs by $38 billion.

The revolutionary changes in the Soviet Union and Eastern Europe necessitate a reevaluation of our spending priorities. This bill maintains our security needs in a changing world. Manpower would be reduced and weapons systems designed to fight a war in Europe against the Warsaw Pact would be eliminated, while other systems would be scaled back. Some of the savings from their cuts would be used to redesign a fighting force which reflects the present world situation.

Several domestic programs which are wasteful, or which has outlived their usefulness would also be eliminated or cut back under the bill. There are straightforward cuts in domestic programs and we give every dime of savings back to families with children. Given the size of our deficit, this is the only responsible approach.

This bill was introduced in the Senate last week by my friend and colleague Senator BILL BRADLEY. I commend him for the work he has done on this legislation and on countless other matters which have improved the fairness of our Tax Code and improved the well-being of the American family.

Investing in our children is important not only for their well-being, but for our future competitiveness, our economic security, and our quality of life. The condition of our children's lives today will shape this Nation's future. This legislation says that we believe that families are the cornerstone of a productive, healthy society. It says our kids are our most precious resources.

TRIBUTE TO THE INDUCTEES TO THE SOUTH RANGE HIGH SCHOOL ATHLETIC HALL OF FAME

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. TRAFICANT. Mr. Speaker, it is my utmost pleasure to pay tribute to the class of 1991 inductees to the South Range High School Athletic Hall of Fame in my 17th District of Ohio.

These distinguished young people have proven their expertise in the field of football, basketball, track, baseball and cross country. It is my great pleasure to introduce these individuals and to congratulate them on their outstanding performances.

They are, in football, Wayne Gaither, Chris Madeline, Bob Sahli, Dick Dillon, Ken Wellendorf; in basketball, Rich Arnold, Bon Cook, Bob Jefferies, Sarah Harris Bennett, Jim Perry, Bruce Plaskett, Bill Yoho, Curt Kaiser and Todd Sauerwein; in track, Mark Bush, Alan Thornton and Jacob "Buster" Eshler; in baseball, Don Work; in cross country, Terry Kenny; and honorary members Joe Dickey, Jr., and Coach Dick Rezek.

Mr. Speaker, I rise to pay tribute to this great people and wish them the best on their journey.

CONGRESSIONAL BIOMEDICAL RESEARCH CAUCUS

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. GEKAS. Mr. Speaker, I would like to share with my colleagues some remarks made by Dr. Samuel Broder, Director of the National Cancer Institute, before the Congressional Biomedical Research Caucus on Monday, October 28, 1991. But first, I would like to say a few words about our caucus.

As a co-founder of the Biomedical Research Caucus, I want to thank everyone who attended the Biomedical Research Caucus' last briefing for this year, "New Frontiers in Cancer Research." Since our inception in August of 1990, our membership has grown to include 66 Members of Congress. I think we can be proud of the caucus events thus far, and the service we have provided to Congress through seven substantive briefings which offered opportunities for health policy staff to meet.

One highlight of our first full year was the July 29 briefing entitled "Research on Women's Health Issues for the 90's." At that briefing, Dr. Bernadine Healy, the first female Director of the National Institutes of Health [NIH], outlined her efforts to focus NIH's attention on the particular health needs of women. C-SPAN's coverage of this briefing enabled us to educate not only Members of Congress and their staff, but millions of viewers across the Nation. When Representatives BILL RICHARDSON, J. ROY ROWLAND, SONNY CALLAHAN and I found the caucus, we only hoped for such a wide audience.

On October 28, we finished out the year with a briefing on cancer, perhaps the most dreaded and prevalent health problem faced by the American public. Our speakers shared with us their remarkable findings on the quest for greater understanding of this ruthless killer. They rejuvenated the idea that one day, with a strong Federal investment and eager young scientists, America will find a cure for cancer.

I would like to thank Dr. George Mandel from George Washington University Medical School, who has organized the "Chairman's Caucus," a biomedical research promotional group consisting of biomedical research department chairmen from schools throughout the United States. It was good to have Dr. Mandel at the Caucus briefing.

Two groups have been leaders on this new frontier in cancer research, the American Cancer Society and the National Coalition for Cancer Research. They were represented by Dr. Walter Lawrence and Julia Sullivan, respectively, both of whom made brief introductory remarks. Dr. Walter Lawrence, president-elect of the American Cancer Society, is from the Massey Cancer Center at the Medical College of Virginia. Julia Sullivan is the executive director of the Candlelighters Childhood Cancer Foundation and board member of the National Coalition for Cancer Research. She substituted for Dr. Albert Owens, chairman of the National Coalition for Cancer Research from Johns Hopkins University, who could not be with us.

I would like to thank the American Cancer Society, the National Coalition for Cancer Research, the American Society for Cell Biology and the American Society for Biochemistry and Molecular Biology, for hosting the lunch.

Now I would like to introduce Dr. Samuel Broder, Director of the National Cancer Institute at the National Institutes of Health. Dr. Broder is our Federal general in the war against cancer and he directs our efforts. Dr. Broder is also a respected research scientist, who is largely responsible for developing AZT for use by AIDs patients. Dr. Broder spoke to us about gene therapy, an exciting new cancer treatment being used at NIH. The text of his remarks follow:

REMARKS BY SAMUEL BRODER, M.D.

I am very pleased to be here. You will also be hearing from two very distinguished scientists, Dr. Michael Bishop and Dr. Bert Vogelstein.

Twenty years ago, the National Cancer Act was signed into law establishing the eradication of suffering and death from cancer as a National priority. There is no question that the basic cancer research funded by the National Cancer Program has made a profound difference. Today, advances at the molecular level are being applied in prevention strategies, new diagnostic tests, and in experimental gene therapies.

For example, we have entered the era of genetic engineering for new vaccines and treatments of cancer. The first gene therapy used to immunize a patient against cancer occurred at NCI on October 8. This vaccine-like approach used genetically-altered issue from the patient's own tumor. An NCI team headed by Dr. Steven Rosenberg received permission from the NIH recombinant DNA advisory committee and Dr. Bernadine Healy to conduct this experimental procedure. The first patient was a 46 year-old man with advanced melanoma. A second patient with malignant melanoma, a 30 year-old woman, was immunized on October 11.

This is the latest in a series of innovative gene therapies that have been developed at NCI. Last September, researchers began gene therapy with two small girls with an inherited immune system disorder caused by the absence of the enzyme adenosine deaminase (ADA). They have since had considerable restoration of their immune function and progress has been very gratifying. These studies are the result of years of basic and clinical research and they blaze the path for treatment of cancer and hundreds of other genetic diseases. While still highly experimental and we cannot give promissory notes of success, such treatments are exciting as they offer hope where none existed.

There are many new and promising approaches to cancer prevention and control. Ultimately, the path to effective prevention is to understand the progressive genetic events that lead to a malignant transformation and the ways that these genetic determinants interact with environmental or lifestyle factors. In a sense, all of our basic research is leading to prevention and intervention strategies. More specifically, in the last year, there have been some important new chemoprevention therapies that are quite promising. Recently, one study showed that vitamin A-related compounds can prevent oral cancers and second primary head and neck tumors.

The entire field of adjuvant therapy is considered secondary prevention. Even though no tumor might be seen after it is treated surgically or through chemotherapy or radiation, new treatments are given in many cases to prevent recurrence or to knock out any residual tumor.

Perhaps I should remind you that the most important cancer preventive strategy is smoking cessation. In fact, all our efforts to reduce cancer incidence and morbidity may rest on whether or not we can reduce smoking in our society.

Perhaps we could briefly discuss the incidence and mortality rates associated with cancer. Major progress has been made in reducing deaths from childhood cancers—a reduction of 38 percent between 1973 and 1988. At the time of the enactment of the National Cancer Act, survival of children with cancer was relatively rare. Today, almost two-thirds of children with cancer now survive to the five-year "cure" point. There has also been important progress in preventing or treating many common cancers in adults under age 65. For this group, the overall death rate for cancer has fallen significantly. For example, the death rate for colorectal cancer has fallen by approximately 16 percent in the last 20 years. The death rate for ovarian cancer has decreased by approximately 25 percent and for stomach cancer about 30 percent. For bladder cancer in this age group, we have seen a decline of 30 percent. For cancer of the cervix, there has been nearly a 40 percent decrease.

However, as technology improves, underserved or high risk groups often appear to be falling behind. More logically, they are not improving, often because they are not receiving the full benefit of all these advances. The National Cancer Institute is targeting groups, such as women, minorities, the poor, and the older population, as well as specific cancers where increases have occurred, and regarding them as priority areas.

A recent study shows that high cancer rates among Black Americans are largely due to the numbers of Blacks in lower socioeconomic groups. If poverty or "poverty driven" lifestyles, unrelated to race, are potent factors for cancer, then this raises a very large social issue. NCI is addressing these issues via targeting these high risk groups and embarking on innovative education campaigns and research to find effective interventions in poor, underserved populations.

I am certain that you are aware of intense activity in the area of women's health. Caner is the second leading cause of death among women in the United States. In 1991, more than 250,000 women are expected to die of cancer and 150,000 to die specifically of lung, breast, and colon cancers, as well as cancers of the reproductive tract. NCI is pursuing a multifaceted and coordinated plan of research and application relating to women's health. Among some areas of high priority for NCI are the development and implementation of prevention clinical trials for breast cancer including dietary studies of reduced fat intake, and the role of tamoxifen chemosuppression.

Studies of access and delivery of health care for women who are medically underserved are currently underway. New therapies, such as taxol, are being developed. In brief, women participate in every phase of NCI-sponsored investigative activity, and the NCI ensures proportional representation of women in all clinical trials.

NCI is a full participant in the new NIH Women's Health Initiative. Dr. Healy, the Director of NIH, has extended the concepts initiated by NCI to develop a comprehensive, trans-NIH effort for intervention and prevention targeting the major causes of morbidity and mortality in women—namely, cancer (particularly breast but also reproductive tract, lung, and colon), heart disease, stroke, and osteoporosis. I should mention that lung cancer death rates in women now surpass death rates for breast cancer.

NCI allocates about half its budget to basic cancer research and we find it exciting that this research is leading to a unified theory of cancer. In many ways, basic laboratory research must be our highest priority. From the prototype discovery of the elucidation of the role of reverse transcriptase in allowing certain viruses to cause cancer to the most recent findings on oncogenes and tumor suppressor genes and cyclins (proteins that regulate cell division); basic cancer research has had unexpected dividends in illnesses other than cancer, yielding important insights into cystic fibrosis and neurofibromatosis and other diseases. This research has played a seminal role in the Nation's thriving biotechnology industry.

Some of the most profound discoveries have started in basic studies of rare conditions. About 10 years ago, it was discovered that the RB gene was missing in familial retinoblastoma, a rare childhood cancer of the eye. The normal RB gene appears to play a role in the suppression of cancer, so, when the gene is missing, cancer can occur. Abnormalities in the RB gene and the protein it produces have been found in acute lymphocytic leukemia, in osteosarcomas and in many of the common "adult" tumors such as lung and breast.

Abnormalities in another important "suppressor" gene, called p53, have been detected as part of somatic mutations in colorectal cancer and other common malignancies, including lung and breast cancers. Losses or mutations in the p53 gene or in its protein product, are clearly critical to the full development of these cancers.

While some cancers are caused by damaged or missing suppressor genes, other cancers appear to be prompted by mutations in growth-regulatory genes called oncogenes which become activated or amplified. Originally discovered in the 1970s in studies of cancer viruses in animals, oncogenes are now known to be part of a normal gene complement and to play a role in a wide range of human cancers, including those of the breast, lung, colon, kidney, bladder, nervous system, and blood.

One oncogene, HER-2/neu, has been found to be involved in the metastatic potential of breast cancer. Other genes, such as the myc or ras, may initiate different cancers which become fully virulent through other genetic mutations as, for example, in the RB or p53 genes.

An understanding of metastasis (the spread of cancer) may be one of the most far reaching basic research achievements. The majority of cancer-related deaths are caused by this spread of cancer cells from the original tumor to other parts of the body. While, in some cases, it is relatively easy to remove the original tumor, it is very difficult to find and treat the far-flung cells. NCI-supported scientists and NCI intramural scientists are now systematically investigating each of the genes and the steps involved in this lethal migration.

A gene has been identified that appears to act as a tumor suppressor; defects in the NM23 gene have been linked with highly metastatic breast cancer. It has recently been shown that introducing the normal NM23 gene into tumor cells prevents metastasis in animal models.

Nor can we forget the need for new therapies. We are working hard to develop a new drug which comes from a natural product. You may have read about taxol which is derived from a Yew tree in the habitat of the spotted owl. Taxol is promising in several cancers where other therapies have failed—refractory ovarian and breast cancer. Taxol is extracted from the bark of yew trees and although, unfortunately, striping the bark kills the tree, several approaches to synthesis and semi-synthesis are being developed.

Just a word about the way taxol seems to work. NCI-supported scientists have shown that a substance called tubulin serves as a major protein component of cells, which interacts with a complex of proteins called cyclins. Cyclins promote movement through the cell cycle. Tubulin is involved in cell division and it is known that several chemotherapeutic agents act upon it. Taxol acts on tubulin and "freezes" it in its polymerized form (microtubules) to prevent the cell from completing the process of cell division, hence stopping the proliferation of cancer.

I can assure you that we are very conscious and respectful of the environmental issues. We have a very good record of developing cancer drugs from natural products and it is very much in our interests to protect biodiversity and the environment.

Just a few words about how to get information from NCI if you, a family member, or friend has cancer. Call NCI's 1-800-4-CANCER phone number. Over 540,000 patients, families, and doctors received information about cancer treatment and clinical trials last year via the NCI Cancer Information Service (CIS).

The CIS covers the entire country, either through a regional office, often at an NCI Cancer Center, or through the National Office. Specific local resources are continually updated so that patients can find out exactly what exists in their own area.

We share our technology, too. Last year, to extend information services abroad, NCI installed a state-of-the-art system using a compact disk technology (CD-ROM) product at demonstration sites in three cancer research institutes in Eastern Europe. The use of this free-standing technology eliminates the expense and problems of telephone access to computer data bases. In 1992, an additional 15 systems will be installed in developing countries and 11 more will be installed in underserved areas in the United States. A number of NCI publications are also being provided free of charge to key medical libraries and academic institutions in Poland, Hungary, and the Soviet Union.

So in summary, as we acknowledge the twentieth anniversary of the National Cancer Act, it is important to take stock of where we have made progress and how much progress remains to be achieved.

IN HONOR OF NATHAN "NAT" DAVIS

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. SCHEUER. Mr. Speaker, I rise today to recognize and celebrate the life of Nathan "Nat" K. Davis, who lived in my district for many years. This Sunday a stretch of the Boston Post Road in the Bronx will be designated "Nathan K. Davis Walk" in his honor.

As a volunteer for senior citizens, Nat Davis performed many mitzvahs—that is, good deeds. He accompanied seniors on their visits to doctors and hospitals, took them shopping, and provided them with physical therapy.

For more than 14 years, he performed these mitzvot at the Senior Citizen Center at 2440 Boston Road Plaza. It is therefore fitting that the block between Mace and Waring Avenues, in front of 2440 Boston Road, will be designated as the "Nathan K. Davis Walk" this Sunday.

Nat, a New York City civil servant for more than 25 years, was known widely for his physical education instruction at Bronx House for many years. He loved his work, especially with the seniors, and extended his program to the Parkinson's group at Co-op City.

Nat was a wonderful husband and father. His wife, Thal, who survives him, remains active in the community. She continues to live in the Davis house in Pelham Parkway, where Nat lived from 1950 until his passing in 1986.

But Nat did not limit his community service to seniors. He was a scoutmaster of Troop 133, sponsored by the Pelham Parkway Jewish Center, through which he taught youngsters outdoor living.

He gave generously to the United Jewish Appeal-Jewish Federation and other Jewish philanthropies, among other organizations.

Put simply, he was a mensch—a good person—and many will tell of him as a beloved husband and devoted father. It is fitting and appropriate that "Nat Davis Walk" be designated in his honor so that all will remember his mitzvahs and his example.

DONALD SHAFFER RETIRES FROM DUNDALK COMMUNITY COLLEGE

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mrs. BENTLEY. Mr. Speaker, It is with great respect and admiration that I congratulate Mr. Donald Shaffer upon his retirement from Dundalk Community College in Dundalk, MD.

Since 1973, Donald Shaffer has served as associate professor of political science and history at Dundalk Community College. In addition, he has been a great lecturer and teacher at Essex Community College and Harford Community College. One cannot help but be impressed by the life and career of Donald Shaffer.

A native of Iowa, he served in the U.S. Army from 1948 to 1973 when he retired as chief warrant officer of military intelligence. Mr. Shaffer coauthored a book, "People's Republic of China," while serving on the faculty of the U.S. Intelligence School. He obtained a master of liberal arts from John Hopkins University and a bachelor of science from Sopia University in Tokyo, Japan. Advanced studies include University of Virginia, University of Copenhagen, Defense Language Institute, U.S. Army Intelligence School and Army Language School. He serves on the board of trustees of Eastern Christian College and is a consultant to the American Council on Education.

A well traveled man, Mr. Shaffer has traveled to numerous countries and has led many student/study groups abroad. In 1973, he was asked by the president of Dundalk Community College to institute a series of learning vacations for students and the community. This highly successful endeavor has given students the opportunity to gain valuable insight and knowledge through their travel/study experience.

In spite of his very active professional life, Mr. Shaffer is well known for his civic involvment as well. He has done extensive work with veterans at Fort Howard Veterans Hospital and has been involved actively with senior citizens. He also has served on two occasions as guest speaker at the Defenders' Day reenactment of the War of 1812 at North Point, MD.

Without a doubt, the career and life of Donald Shaffer truly is remarkable. One cannot help but be impressed by his list of accomplishments and achievements. However, he does not deserve recognition simply upon the merit of his professional accomplishment, nor does his personal appeal rest solely with the achievements listed above. Most importantly, Donald Shaffer possesses a great wealth of character and spirit. His warmth and friendly demeanor is always evident to all he meets.

Rarely in our lifetime do we meet someone as special as Donald Shaffer. When we do, we are fortunate indeed, as they truly enrich our lives.

Mr. Speaker, my fellow colleagues, I congratulate Mr. Donald Shaffer upon his retirement from Dundalk Community College. May he have continued health, happiness, and success in the years ahead.

ST. AUGUSTINE SCHOOL CELEBRATES 100 YEARS OF EDUCATIONAL EXCELLENCE

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. GUARINI. Mr. Speaker, this year is the 100th anniversary of the St. Augustine School in Union City, NJ, in my congressional district. I ask you and my distinguished colleagues to join me in recognizing the St. Augustine School and the people who have helped to make the school such a success.

St. Augustine parish was organized by Rev. Augustine M. Brady who came to the New Jersey area from the New York disocese. He was appointed by Bishop Wigger. It was Father Brady who initiated the building of the church in 1886. To accomplish this, six lots were purchased on the block between Morgan and Gardner Streets. This property was in the area formerly known as Union Hill. Presently, these streets are 39th and 40th Streets in Union City. The first mass was celebrated in the small frame church in August 1886.

On July 6, 1891, contracts were set up for the construction of the brick school building. A mortgage of $30,000 was negotiated to cover the cost of the school as well as improvements to the rectory. The school opened in September 1891, with 100 students and 5 faculty members. The two-story brick building which housed the school was considered a model structure at the time. The first principal was Sister Mary Lucina Boylan, a Sister of Charity. The Sisters of Charity from the convent station have staffed the school in a capable and professional manner.

Father Brady resigned in 1897, due to ill health. He was succeeded first by Father Stafford who was followed by Father McLaughlin. The convent was opened on 40th Street with the purchase of the Forstman property.

In 1913, Rev. Robert Byer became pastor of the church and in 1938, he purchased the Hillie House at 312 39th Street, the site of the present convent. Father Heavy succeeded Father Byer in 1940. During this period improvements were made to the school building. The towers and fire escapes which disfigured the front of the building were removed, the main entrance was rebuilt and the building was painted. Fireproof stairways and new plumbing were installed, new rooms and corridors laid out, a library and principal's office were created and new classroom furniture and equipment installed. The school, at that time, had increased its enrollment to 400 students with Sister Alma Mercedes serving as principal.

In 1951, Father James McAvoy became pastor and he was succeeded by Father James Healy in 1954. At this time, Sister Marie Elizabeth Taffee was principal of the school. Father Healy, later Monsignor Healy, started plans for a new addition including an auditorium/gymnasium to the school. The old church had to be moved to the edge of 39th Street in order to free ground space for the new school. During the construction of the school, masses were celebrated in the old church and in the Washington School. The new addition was completed and occupied on September 9, 1957, with Sister Francis Raymond as principal.

At this same time, construction was begun on a new church building. The benches were removed from the old church and put in the auditorium for masses during the building of the new church. The present church was dedicated in July 1958. Monsignor Healy remained as pastor until his retirement in 1970. Father George Ligos served as administrator for a short time until Father Raymond Murray was appointed pastor in 1971. Msgr. Thomas Heck, the present pastor, replace Father Murray in 1976.

Many former principals are still a vital part of St. Augustine's School. Sister Katherine Carroll, who served from 1964 to 1972, is presently school secretary. Sister Rose Carmel, who was principal from 1972 to 1978, is currently the school librarian. The school has profited greatly from their expertise and leadership and continued contributions.

Since 1978, Sister Roberta O'Hea has been principal of the school. Under her leadership, the school enrollment continues to increase, a new science lab and library have been built, and a federally funded lunch program initiated. In October 1991, St. Augustine School will participate in a Middle States evaluation. Accreditation by this organization will give further credence to our philosophy and goal to provide quality education.

On November 1, St. Augustine School celebrates 100 years of educating youth. I ask my distinguished colleagues to join me in recognizing the achievements and contributions of the school as well as the people who have made the school what it is. St. Augustine continues to serve the needs of the multicultural population of Hudson County and we are thankful that it is a part of our community.

SAN DIEGO IS HOME OF NAVAL AVIATION

HON. DUNCAN HUNTER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. HUNTER. Mr. Speaker, San Diego has long been recognized as "Navy Town U.S.A." What many of my colleagues may not know is that San Diego is also the home of naval aviation. In fact, the First Naval Aviation Detachment chose North Island as its winter quarters in 1912.

This year, Mayor Maureen O'Connor proclaimed San Diego to be "The Birthplace of United States Naval Aviation." I have reprinted the proclamation below.

THE CITY OF SAN DIEGO—PROCLAMATION

Whereas San Diego has a long and distinguished association with Naval Aviation; and

Whereas Lieutenant T.G. "Spuds" Ellyson, Naval Aviator Number One, received his flight training from Mr. Glenn Curtiss at the Curtiss Aviation School; and

Whereas the Curtiss Aviation School was opened on North Island on January 17, 1911; and

Whereas Lieutenant Ellyson was certified by Mr. Curtiss as a qualified aviator on April 12, 1911 in San Diego; and

Whereas Mr. Curtiss effected the first direct link up of an airplane and a United States naval vessel, by bringing his hydroaeroplane alongside U.S.S. Pennsylvania, having it hoisted aboard and later returned to San Diego Bay February 17, 1911; and

Whereas on February 25, 1911 Mr. Curtiss carried out the first successful amphibian flight from San Diego Bay on the "Triad" which served as the model for the first two aircraft acquisitions by the United States Navy, the A-1 and A-2; and

Whereas the First Naval Aviation Detachment selected North Island as its winter quarters in 1912:

Now, therefore, I, Maureen O'Connor, the Thirty-first Mayor of the City of San Diego, do hereby proclaim San Diego to be "the Birthplace of United States Naval Aviation", and commend to the citizenry the illustrious heritage of civilian and military aviation in this august City and commit to the continued productive partnership of the civilian and military communities in San Diego.

SUCCESS OF THE MIDDLE EAST PEACE PROCESS IS PREDICATED ON THE ADMINISTRATION'S ABILITY TO COMPREHEND THE ROOT CAUSES OF INSTABILITY

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. LANTOS. Mr. Speaker, as I watched representatives from Israel and the Arab nations sit down together in Madrid to discuss their shared future in the world's most volatile region, I was filled with both hope and fear.

While I sincerely hope that this historic conference will lay the groundwork for a lasting peace in the Middle East, I fear the administration is pursuing a policy based on a fundamental misunderstanding of the realities of that troubled region.

The administration will fail in its goal to bring peace and stability to the Middle East if it continues to ignore those realities. The genuine obstacles to stability in the region do not stem from the policies of Israel, the only democracy in the Middle East. Those barriers have been constructed by the leaders of the neighboring Arab nations.

It is the fundamentally undemocratic nature of the Arab governments—regimes that illegitimately sustain themselves through suppression and brutality—that stands in the way of stability. The elusive goal of peace will only be reached when the administration pursues a policy that takes these realities into full account.

Mr. Speaker, an editorial that appeared in the Wall Street Journal last Friday is an excellent examination of this issue. I ask that it be inserted in today's RECORD and I ask my colleagues to give it the thoughtful attention it deserves:

[From the Wall Street Journal, Friday, Oct. 25, 1991]

PEACE CONFERENCE PUZZLE

If you've been reading—or trying to read—all the coverage these many weeks about the Middle East peace conference now scheduled for next week in Madrid, and thinking that in the wake of the Iraq war it somehow doesn't all quite add up, here's why:

George Bush and James Baker have untied U.S. Mideast policy from its traditional mooring—Israel and democracy—and set it adrift in neutral waters between Israel and that mythical land, the unified Arab world. It's a strange voyage.

Many of us had thought that one of the primary fruits of the Iraq war would be a reorientation of the Gulf and other Arab states toward the political system that exists in most of the world—that is, away from dictatorships and absolute monarchies and toward a greater degree of popular self-determination. But no.

To soothe Arab sensitivities George Bush decided to spare Saddam Hussein and his dictatorship. Turkey's Turgut Ozal is the first victim of this mistake. When Mr. Bush withdrew, Mr. Ozal was left out on a limb with the Kurdish issue festering on his border. Saddam Hussein has been arming the Kurds to fight for independence from Turkey. Last week Turkish voters took out their frustrations for this mess on Mr. Ozal, who remains in power but with a greatly reduced base of support.

American submissiveness to Arab sensitivities also has scotched U.S. Gulf security plans. According to the Washington Post, the U.S. is withdrawing the weapons stockpile that it had hoped would be part of a postwar security umbrella for the region. The Arab regimes prefer to build up their own armies.

The least attractive shift in U.S. policy has been symbolized by the repeated trips James Baker has made to pay court to Syria's murderous dictator, Hafez Assad, one of next week's Madrid "peace" participants. The State Department apparatus that two years ago sanitized Saddam's crimes is now polishing Assad's image. The U.S. winked at Syria's October 1990 invasion of Lebanon and insists that Lebanon is still independent, though even the Syrian defense minister talks about Syria and Lebanon as "one country."

The U.S. has been unruffled by Assad's $3.5 billion postwar arms buildup (he reportedly spends 60% of his government budget on his army). The Syrian dictator has purchased 150 North Korean Scud Cs, and up to 24 Chinese M-9s. Factories at Damascus and Homs churn out chemical weapons to go in missile warheads. State also avoids mention of Syria's control of the $4 billion drug trade in the Bekaa Valley and Syrian unwillingness to cooperate with American drug-enforcement authorities.

Meanwhile, with the region bristling with dictators, terrorist armies and chemical weapons, Mr. Baker says the biggest obstacles to peace in the Middle East are West Bank Jewish settlements.

Mr. Assad, who's been around the Middle East even longer than Mr. Baker, knows that in reality the Israeli issue is mainly a playground for larger Arab power struggles.

If Mr. Baker looks around the room at the Middle East conference in Madrid next week, he will see the representatives of Syria, which has been at virtual war with the PLO since 1982, culminating in bloody battles last summer between Syrian and Palestinian forces in South Lebanon; Jordan, whose army massacred 8,000 Palestinians in 1970, and whose king continues to deny self-determination to the 70% of his population that is Palestinian; and Saudi Arabia, which demonstrates its concern for the Palestinians by expelling tens of thousands, and which has been trying to destabilize the regime of its Arab brother Jordan.

The Madrid peace conference must contend with not only the usual pit of Arab rivalries, but also a postwar power struggle for dominance in the Arab world among Egypt, Saudi Arabia and Syria. By focusing postwar attention on the Israeli dispute rather than economic development or democratization; the U.S. has ensured that Syria will emerge as the dominant Arab power. Egypt and Saudi Arabia are necessarily peripheral.

Perhaps Mr. Assad sees some further advantage for himself in conciliation with Israel, but more likely he wants to string the process along to keep the world coming to his doorstep. He's probably already spiked the peace process by refusing to take part in Phase III, the nuts and bolts cooperation talks on such things as water rights and arms control. To Israel, peace means cooperation between neighbors, Syria is inviting Israel to give up land without any promise of real peace.

Historians will have to figure out if America's bolstering of Syrian power was intentional or the result of Mideast inexperience. Thus far, it looks as if the central image of the peace process is Mr. Baker laboring among the procedural details, while the larger Arab power struggles play out over his head.

TRIBUTE TO MRS. ESTHER PILLEN

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. JACOBS. Mr. Speaker, As will be noted in the following obituary, Esther Pillen was the top assistant to my father when he served in the 81st Congress. I remember Mrs. Pillen as a woman of superior intelligence and iron will. In other words, she brooked very little nonsense from me when I visited the congressional office from time to time.

She was a wise and good woman who gave much of her life to the betterment of this institution.

[From the Washington Post, Oct. 30, 1991]

ESTHER R. PILLEN

Esther Rupple Pillen, 84, a retired Capitol Hill administrative assistant, died of cancer and heart ailments Oct. 22 at Carriage Hill Nursing Home in Silver Spring.

Mrs. Pillen was a lifelong resident of Washington and a graduate of Eastern High School. She attended George Washington University.

She began her career on Capitol Hill in the 1920s as administrative assistant to Sen. Simeon D. Fess (R-Ohio). From 1929 to 1949 she was administrative assistant to Rep. Louis Ludlow (D-Ind.). She worked for Rep. Andrew Jacobs Sr. (D-Ind.) from 1949 until 1951. She did not work on Capitol Hill during the next eight years, then served on the staff of Rep. Joseph W. Barr (D-Ind.) from 1959 until 1961 when she retired.

She had been a Red Cross assistant at Walter Reed Army Hospital and had participated in activities of the Crestwood Citizens Association in Washington. She was a member of Columbia Country Club, and she played bridge.

Her husband of 52 years, Herbert Pillen, died in 1988. She leaves no immediate survivors.

SALUTE TO THE RONALD REAGAN PRESIDENTIAL LIBRARY

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. GALLEGLY. Mr. Speaker, I rise today to honor one of the most significant events in the history of my hometown of Simi Valley, CA—the opening of the Ronald Reagan Presidential Library.

Next Monday, I will be privileged to participate as President Reagan, joined by President Bush and former Presidents Nixon, Ford, and Carter, opens his California mission-style library complex. This magnificent center will serve as a mecca for historians, as well as Americans from all walks of life, for decades to come.

Although President Reagan has never lived in Ventura County, it is logical and appropriate that he has chosen our community, located roughly halfway between his home in Bel-Air and his ranch in Santa Barbara County, as the home for his library. The vistas from the hilltop library site are stunning—on a clear day, you can see the Channel Islands some 60 miles away. In addition, President Reagan filmed several of his movies nearby and owned a ranch just 10 miles away for several years.

But more importantly, Simi Valley, along with the rest of eastern Ventura County, is and always has been Reagan country. Ronald Reagan is revered in my county for his beliefs, for his leadership and for what he stands for. Ronald Reagan stands for an America of leadership, an America of opportunity for everyone, and an America that truly is a shining city on a hill. Ronald Reagan knows that our Nation will have problems, but he also knows that with hard work and commitment to our basic principles, we will solve those problems and move ahead.

That was the basic lesson of the Reagan Presidency, Mr. Speaker, and is the reason that hundreds of thousands of people, from Maine to California, and from all around the world, will come to Simi Valley to learn more about this man and his times.

Mr. Speaker, I ask my colleagues, Republicans, Democrats and independent alike, to put aside partisan differences and join me in honoring Ronald and Nancy Reagan, and in commemorating the opening of the Ronald Reagan Presidential Library.

OPPOSITION TO H.R. 2730

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. McEWEN. Mr. Speaker, I rise to speak in opposition to H.R. 2730, the so-called Pension Simplification measure.

I speak on behalf of a great many Ohioans and on behalf of millions of American workers as well—workers whose long-range financial and retirement planning will in many cases be severely damaged if the proposals in H.R. 2730 become effective.

Let me say initially that there are positive proposals in this bill and similar bills which have been introduced aimed at broadening employee participation in the qualified retirement plan system, and this is, of course, a good thing. However, several of those broadening provisions are aimed at the small business community, and would require employer contribution of 3 percent of pay for all eligible employees in exchange for freedom from burdensome nondiscrimination testing. I have heard no cheers nor groundswell of support for these proposals from small business.

On the other hand, the expansion of eligibility for participation in section 401(k) plans to employees of exempt organizations and State and local governments is undoubtedly widely welcomed, as is the proposed clarification of the definition of a "leased employee."

Now these ostensible improvements in our Nation's pension system will have a collective price tag—a revenue expenditure cost. The bill sponsors tell us that these revenue costs will be balanced by other provisions in the bill labeled as "pension simplification," which provide the offsetting revenue enhancement to balance this bill. I say that those revenue enhancements are ephemeral—that they will never come—that American workers know enough about taxes and their own finances that they will not simply pour their own money down a proverbial rat hole—and that this bill, if enacted, will result in a revenue drain. Why? Because the proposals attach a tremendous price tag to lump sum distributions by removing every favorable tax device such distributions presently enjoy—5-year averaging, 10-year averaging, the exclusion of net unrealized appreciation in employer securities, the partial exclusion from the onerous 15 percent excise tax on excessive distributions.

Each of these changes is presumed by the plan sponsors to be a revenue raiser through the eradication of a tax benefit. In truth, a retiring plan participant will look at these new tax burdens and without question recognize that the only reasonable move is to roll over his or her distribution into an IRA. The result will be a real loss of revenue as the tax is realized over a period of years stretching 10–20–30 years into the future, as opposed to any taxes presently being paid at retirement. In fact, a person rolling into an IRA could defer paying any tax until they reach age 70½ if there is other income available to live on in the meantime.

Therefore, when we hear that revenue is the drive behind these changes, and that the bill is revenue neutral, I do not believe it.

And this brings us to the hidden agenda: These simplification proposals are meant to destroy the concept of lump sum distributions by forcing all retirees into rollover IRA's.

Is this a good and necessary result? It is not necessary and it is not necessarily good.

It is not necessary because the IRA rollover has been available since coming into being under ERISA in 1974. The device is widely known and widely utilized by those plan participants changing jobs and by retirees as well. There is no need to force retirees into an IRA.

It is not necessarily good because the individual retiree may have his or her own perfectly valid reasons to pay the tax on a lump sum distribution at the time of retirement. Some of these reasons are emotional—it is most satisfying to own one's own estate outright, having full capacity to handle one's own affairs. Some reasons are practical—it might be desirable to open a business of one's own, to purchase a new retirement home or RV. Some reasons are brutally realistic—terminal illness may dictate quick dispersion of the estate to children or to charities. Some reasons are cynically wise—tax rates will go up—let me pay my tax now. But the most telling reason is simply reason itself. Why force retirees into a mode already available to them by taking away the choice to do anything else? And that's what this bill would do.

By repealing 10-year averaging, we are breaking a promise we made to American workers in 1986 to grandfather amounts in the accounts of senior employees at that time. By repealing 5-year averaging, we are ignoring the fact that retirement distributions are funds that have accumulated over a lifetime of work, and we are going to tax them as though they have suddenly appeared on the day of retirement.

By repealing the exclusion of net unrealized appreciation in employer securities, we are saying that you have not accumulated these shares over a lifetime either. Investment in the securities of your employer is the ultimate profit sharing. And, under present law, the tax on that unrealized appreciation will be paid as the retiree liquidates holdings through the course of retirement. But if you had personally bought these shares we would not, and do not, tax that appreciation until you sell the shares. Where is the difference? Further, we're telling plan participants that they would be better served by investing in some fixed yield instruments in their plans rather than tying their future to the fortune or misfortune of their employer. Why should the employee take the risk of such investment in the employer's securities without the promise of equitable tax treatment?

And, finally, by reducing the threshold for application of the 15-percent excise tax on so-called excessive distributions from $750,000 to $150,000, we would simply make a bad tax worse. We made a mistake in 1986 in the application of this egregious tax. We should not compound that mistake now. If anything, this excise should be repealed.

In summation, H.R. 2730 contains some provisions which might help some businesses, but those provisions are being paid for by measures which will hurt and disrupt the plans of many individuals, and those measures are being painted with the color of money which will not be there. That paint will wash off with the first rain.

COMMEMORATING THE 50TH ANNIVERSARY OF THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. ANDREWS of Texas. Mr. Speaker, the year 1991 marks the 50th anniversary of the founding of The University of Texas M.D. Anderson Cancer Center, which today ranks as one of the world's premier centers devoted to the conquest of cancer.

Throughout its 50-year history, M.D. Anderson has been a pioneer in the fight against cancer. M.D. Anderson Cancer Center was one of the first comprehensive cancer centers in the United States designated under the terms of the National Cancer Act of 1971. Dr. R. Lee Clark, who served as M.D. Anderson's first full-time director and then as president over a 32-year period, was one of three members appointed to the original President's cancer panel in 1972. Since Dr. Charles A. LeMaistre assumed the presidency in 1978, M.D. Anderson Cancer Center has flourished in scope and now sets one of the Nation's highest standards for excellence in multidisciplinary patient care, research, education and prevention.

More than 270,000 patients from throughout the United States and 80 foreign countries have turned to M.D. Anderson Cancer Center for cancer care. Additionally, more than 25,000 physicians, scientists, nurses and other health care professionals have received part of their training at M.D. Anderson Cancer Center. The center has been a productive leader in conducting innovative research trials to improve therapies for cancer patients that are now available worldwide.

During the past half century, many major advances in cancer research and therapy have been achieved at M.D. Anderson. Examples of this progress include:

The design of the cobalt-60 unit, which made radiation therapy practical;

The first observation of virus-like particles in human cancer tissues;

The installation of the Nation's first hospital-based cyclotron to treat patients whose cancers resist conventional forms of radiation;

The construction of the country's first hospital operating suite specifically designed for electron-beam intraoperative radiotherapy;

The development of a banding technique to identify 46 mammalian chromosomes and methods to detect genetic-associated cancers;

The development of three generations of blood cell separators that divide blood into components to combat life-threatening infections, control hemorrhages and treat other complications;

The initial development of tiny portable drug-delivery pumps that have allowed thousands of patients to receive chemotherapy outside the hospital;

The design of a cold chamber cryostat that significantly improved pathologists' abilities to diagnose cancer while patients were in surgery and expedited preparing surgical specimen slides;

Pioneering chemoprevention studies to demonstrate the value of synthetic vitamin A analogues in preventing secondary head and neck cancers and reversing premalignant lesions;

One of the Nation's most extensive programs to test interferon and other biological substances;

Landmark contributions to limb-salvage treatment, in which bone cancer patients take chemotherapy before and after surgery to avoid amputation of affected limbs and diseased bones are replaced with metal prostheses or donor bones;

One of the country's largest bone marrow transplantation programs, supported by the first protected environment, a 22-bed unit for patients whose immune systems are suppressed during treatment;

The clinical application of interventional radiology methods to deliver anticancer drugs directly into deep-seated tumors;

The discovery of new information about how ultraviolet light can damage the immune system, leaving many people vulnerable to serious skin cancers.

M.D. Anderson's far-reaching research contributions continue adding to the knowledge needed to improve survival rates and, ultimately, achieve lasting cancer control through effective prevention strategies.

We thank the University of Texas M.D. Anderson Cancer Center on behalf of all those whose lives have been touched by this renowned institution and offer warm congratulations in this golden jubilee year. We look forward to the distinguished service from this institution that continues bringing international acclaim to the entire Nation.

THE MIDEAST'S REAL TROUBLES AREN'T ARAB-ISRAELI

HON. DUNCAN HUNTER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. HUNTER. Mr. Speaker, with the focus on the Middle East this week I would like to commend to my colleagues the following article from the Wall Street Journal. Mr. Doron makes a very interesting point that the real problems in the Middle East are not Arab-Israeli. I would encourage my colleagues to read this very intriguing commentary.

[From the Wall Street Journal, Oct. 31, 1991]

THE MIDEAST'S REAL TROUBLES AREN'T ARAB-ISRAELI

(By Daniel Doron)

TEL AVIV.—This is a week of hope, as Israeli leaders are finally allowed to sit down with their Arab neighbors to talk peace. But it is also a week of worry, because the Madrid summit is based on a faulty premise: That all of the region's problems can be viewed through the keyhole of the Arab-Israeli conflict. This conceptual framework was set decades ago by Arabists in the British Foreign Office, and has been adopted unwittingly by experts at the U.S. State Department.

Yet the fact remains that in comparison with the momentous upheavals rocking the Muslim world, the Arab-Israeli conflict is a sideshow with little geopolitical significance. It is a derivative conflict, Israel being the target of convenience for Islam's great sense of hurt and obsessive hostility toward the West.

This hostility reflects the deep crisis in Muslim societies and politics. They are experiencing explosive tensions, compounded by religious zealotry and xenophobic nationalism.

It is these forces that fueled the eight-year carnage between Iraq and Iran, the brutal takeover of Kuwait, the massacres of Shiites and Kurds, the 15-year factional bloodbath in Lebanon, repeated Syrian atrocities against a variety of ethnic and political groups, including its own Sunni majority, the violent takeover of Lebanon, murderous hatred between Syria and Iraq, Syria's several attempts to conquer Jordan, Nasser's bid to take over Saudi oil through a proxy war in Yemen, the bloody Yemeni civil war (where gas was used), the repeated killings of Copts by Egyptian Muslims, Algerian subversions against Morocco, Libya's aggression against all its neighbors and its wholesale involvement with terrorist movements. The list can go on to include other cases where an Islamic revival was given militant expression.

Yet there are those who are still convinced that of all these terrible conflicts, the Arab-Israeli struggle, confined to simmering *intifada*, is of paramount significance. It should be clear, however, that most of these explosive conflicts would have persisted, and perhaps even worsened, had Israel ceased to exist or been rendered weaker by a land-for-peace "settlement." Moreover, the wealthy but feeble oil states would long ago have ceased to exist had not the unifying hatred toward Israel prevented their brethren from attacking them.

True, an Arab crusade against Israel could temporarily galvanize parts of the Muslim world. But the powerful religious, social and economic divisions that tear at Islamic societies would subsequently incite—unless checked in time—much worse internecine brutalities. Remember that Christian Europe needed several centuries to control such forces. The crucial difference would be that today's crusades would not be fought with bows and arrows, or even with simple rockets and missiles, but with more accurate Scuds that are armed with weapons of mass destruction.

Even those who insist that the Arab-Israeli conflict requires the most urgent resolution could achieve faster progress if they would tackle its more basic causes. The Israeli people would be more inclined to accept the enormous risks involved in relying on peace agreements made with ruthless dictators if the U.S. made certain assurances.

President Bush could insist that international terror, such as the Pan Am bombing over Lockerbie, is no less an impediment to peace than the caravans erected on several barren West Bank hills. He could show a determination to control terrorism's sponsors, insisting that Syrian President Hafez Assad not give terrorists safe haven, or aid and abet the Lebanese proxies of the most extremist Muslim groups working under Iran's banner to undermine the peace conference (Iran has just restated its determination to destroy Israel and to develop an Islamic bomb). He could use his good offices with America's friends in the Persian Gulf and Arabia—whose lives and fortunes have just been saved with American blood and treasure—to cease financing the purchase of even more accurate Scuds from North Korea to threaten Israel.

Most important, President Bush could greatly advance world peace by demonstrating, as he has admirably done with Iraq, that the U.S. will not tolerate the proliferation of weapons of mass destruction to countries explicitly threatening to destroy others, and that he will not permit the subverting of his new world order. The president could make sure that the same effective safeguards now installed to prevent Iraq from acquiring nuclear weapons are imposed on other countries that are a threat to world peace.

The U.S. must also urgently address the misery afflicting most inhabitants of Muslim countries, which underlies their endemic violence. It should encourage economic growth and prosperity, the prerequisites to the evolution of democratic institutions and a civil society, just as it encourages reforms in formerly communist countries. Without economic freedom, political freedom cannot emerge; and without political freedom, Muslim countries, ruled by dictatorial factions, cannot live in peace for long, as the renewed aggressive posture of Iran demonstrates.

Tackling the oil cartel, which provides Muslim dictators with the treasure necessary to finance their aggression and buy political clout (as the Bank of Credit and Commerce International scandal revealed), would give enormous impetus to peace while improving world economic prospects, thus granting the U.S. extra political dividends.

Expecting the U.S. to undertake such bold-economic and political initiatives may seem a utopian quest. But as changes in Eastern Europe prove, only basic social, political and economic reform can reorient belligerent dictatorships toward peace. Economics is important here. Income from oil sales has given rise in many Arab countries to a wasteful public sector and a runaway military-industrial complex.

The present wide divisions of wealth in the Arab world incite a radicalism that will eventually erupt in wars. Since, with the availability of terrible weapons, such wars could cause a world conflagration, their prevention should be a major U.S. foreign-policy goal. But to succeed, the U.S. must refocus its policy on the basic problems facing the Islamic world rather than only the Arab-Israeli conflict. Now is the time to do it.

TRIBUTE TO DAVID FRAM

HON. SAM JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. JOHNSON of Texas. Mr. Speaker, I would like to take this opportunity today to commend a man who is a true American success story, defying the odds laid before him and proving that perseverance and faith do prevail.

David Fram has accomplished a great deal in a relatively short amount of time, overcoming numerous hurdles along the way. After spending 38 years in a State school, David Fram made the difficult transition into Miller House, a group home in Dallas, TX, for adults with mental retardation.

Since that move in 1984, David has become a beacon to both religious and civic communities in Texas' Third District. He works as an elevator operator at the Stoneleigh Hotel, volunteers for a local retirement home, and is president of the Dallas Area Texas Advocates sponsored by the National Association for Retarded Citizens [ARC].

It is because of that dedication and commitment to our Dallas area community that David Fram was selected as this year's ARC recipient of the Bill Sackter Award. The national award is given to only one American each year who shows an exceptional success in the transition into community living.

Mr. Speaker, David Fram is an inspiration to us all. I offer my admiration and my heartfelt wishes for many more successful years in his endeavors to make our community a better place to be.

IN RECOGNITION OF THE BAYVIEW HUNTERS POINT MULTIPURPOSE SENIOR SERVICES

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Ms. PELOSI. Mr. Speaker, I rise to recognize Bayview Hunters Point Multipurpose Senior Services on the occasion of their 20th anniversary.

In 1971, with the determination of its founders—Sam Moore, Matti Kimp, Leslie Hopkins, Marsha Berger, Phyllis Kearny, Rebecca Stark, Robert Lavida, and Virginia and Willie Thomas—the Bayview Hunters Point Senior Services Center was incorporated. Operating from the Bayview Lutheran Church, the agency began and continues to provide services including outreach, recreation programs, and social service referrals.

George Davis was hired as program director of the center in 1978 to develop a multipurpose senior center. His efforts were successful, a building was purchased, and the multipurpose center began its programming for seniors, including social service counseling, health screening, legal assistance and educational programs. Dr. Davis was then hired as the executive director for Bayview Hunters Point Multipurpose Senior Services.

After years of planning and fundraising, the Bayview Hunters Point Adult Day Health Center opened in 1984. The agency, in addition to providing health care to frail elders and disabled persons, became a member of the San Francisco In Home Supportive Services Consortium in order to provide health care to elders at home. Other programs developed between 1987 and 1991 include the Independent Elders Program, Project Voice, a telephone volunteer training program, and monthly outreach presentations.

As the Bayview Hunters Point Multipurpose Senior Services moves into its 20th year, new goals for services and projects abound. Goals for the future include the creation of an Afrocentric nursing home, a comprehensive adult day health model with senior housing, and coordination among community resources including the black church and a national black aging network dedicated to facilitating these services throughout the United States.

I commend the leadership of Dr. George Davis, along with the founders, the board of directors, and staff of Bayview Hunters Point Multipurpose Senior Services, which continues to grow and flourish, providing many needed programs and resources for seniors in San Francisco.

I commend the leadership of Dr. George Davis, along with the founders, the board of directors, and staff of Bayview Hunters Point Multipurpose Senior Services.

TRIBUTE TO "TRANSILVANIANA" SOCIETY ON THE OCCASION OF ITS 85TH ANNIVERSARY

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. VISCLOSKY. Mr. Speaker, I rise today to pay tribute to the "Transilvaniana" Society from East Chicago, IN on the occasion of its 85th anniversary. The society has been linked to many important moments in Romanian-American history.

The "Transilvaniana" Society was founded on December 10, 1905. Less than 1 year later, it took part in the union of Romania societies in Martins Ferry, OH, where it received the number "3". The society bears this number with pride today. The delegate to the meeting, Filon Holom, was elected second vice president of the newly formed Union of Romanian Societies of America, Inc.

In the same year, the society's members began construction of a new church, the New St. George, which they continue to support. The society's members held an impressive demonstration against the gathering that Count Karoly was holding in favor of the Hungarian state, on June 22, 1914. In the same year, the society made a substantial contribution to an orphanage in Sibiu. Also in 1914, they welcomed a Romanian delegation made up of the Reverend Father Vasile Lucaciu, the Reverend Father Loan Mota and Lt. Vasile Stoica.

Today we are witnesses to the continuing inhumane conditions the Romanian orphans are enduring, both physical and psychological, that have shocked the entire world. The "Transilvaniana" Society adopted a Romanian orphan after World War I. From 1918 on, the society regularly sent money for his upbringing. The money was sent to the American Committee for the Care of Romanian War Orphans, headed by the daughter of President Woodrow Wilson. In addition, the society donated important sums of money for the care of other war orphans, which were sent directly to Queen Marie of Romania.

The "Transilvaniana" Society has always maintained a very active Romanian cultural life here in America. The members attended concerts in Chicago conducted by the internationally known Romanian composer and violinist, George Enescu. In 1926, they went to New York to greet Queen Marie of Romania with Romanian and American flags.

During World War II, the society contributed to the American Red Cross, and has always donated to worthy causes. It was among the first to send a donation for the Romanian orphans after the revolution of December 1989, and was also among the first to donate money so that the union and league headquarters would have its own building, which they occupy today.

The society has been in the forefront supporting the union and league's activities, and Romanian life in general, in the United States. I have had occasion to spend time with the people of the "Transilvaniana" Society, and it is evident that this society has served to nourish and perpetuate the Romanian spirit in the United States. I would like to congratulate the members on their 85th anniversary celebration and wish them continued success in bridging the gap between Romania and America.

DOMESTIC VIOLENCE AWARENESS MONTH

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. LIPINSKI. Mr. Speaker, I would like to take this opportunity to stress the significance of October as "Domestic Violence Awareness Month." Unfortunately, domestic violence is prevalent in our country. An estimated 3 to 4 million American women are battered each year by their husbands or partners. Research suggests that wife-beating results in more injuries requiring medical treatment than rape, auto accidents, and muggings combined. This tragedy is not confined to any particular race or socioeconomic group—it occurs in all sectors of our society. "Domestic Violence Awareness Month" is an opportunity to dispel myths surrounding domestic violence and to bring public attention to the problem.

Statistics on domestic violence are shocking. The Federal Bureau of Investigation reports that 30 percent of female homicide victims are killed by their husbands or boyfriends. According to another study, violence will occur at least once in two-thirds of all marriages. Moreover, the Illinois Coalition Against Domestic Violence tells us that 30 percent of battered women are physically abused during pregnancy.

Children in homes where domestic violence occurs are also adversely affected. They are physically abused or seriously neglected at a rate 1,500-percent higher than the national average in the general population. Furthermore, these children are at a higher risk of alcohol and drug abuse.

Unfortunately, women have often been forced to suffer in silence because of misunderstandings about domestic violence. As legislators, we should enact laws to address this serious problem. We must work toward providing more shelters and services for battered women and their children. We must change the criminal justice system to hold abusers more accountable for their violence. Most importantly, we must make it our top priority to uphold the rights of battered women.

DADE COUNTY EDUCATORS WIN GRANT FROM BILL OF RIGHTS EDUCATION COLLABORATIVE

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, Ms. Charlotte Christensen and Ms. Ruby Wanland, both highly regarded and talented social studies educators in the Dade County Public School system, have been awarded a grant from the Bill of Rights Education Collaborative sponsored by the American Historical Association and the American Political Science Association. Their project, entitled "Opening the Doors of History to Democracy," was considered by the review board to be an impressive design, integrating strong intellectual content with a cooperative effort linking educators and community organizations.

The Bill of Rights Education Collaborative grant competition offers minigrants to educators to implement their own projects and teaching methods devoted to constitutional rights. The project need not be limited to school audiences alone, it may also include professional and community components. The goal of this collaborative effort is to foster innovative teaching methods that help the community-at-large continue to learn. The project submitted by Ms. Christensen and Ms. Wanland successfully met the objectives of this program with a historical survey of how democracy has taken root and grown in America, as embodied by the Bill of Rights.

Ms. Christensen and Ms. Wanland have contributed much to the Dade County School system as effective educators and innovators. Together they initiated, developed and implemented the Student-At-Risk Program at Miami Beach Senior High. Also, both are resident social studies teachers for the Dade Academy for the Teaching Arts [DATA]. Mr. Speaker, Ms. Christensen and Ms. Wanland have brought their unswerving commitment to excellence and extensive experience to education. I am confident that these teachers will successfully execute their program, "Opening the Doors of History to Democracy," and offer South Florida a greater sense of where democracy in America has come from and what it requires from us today.

NEW JERSEY HISTORIC CANALS ACT

HON. DICK ZIMMER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. ZIMMER. Mr. Speaker, I today I have introduced legislation today that would begin the process of designating the Morris Canal and the Delaware and Raritan Canal in New Jersey as national heritage corridors.

The bill would require the U.S. Interior Department to study the two canals, recommend future conservation options and suggest a detailed plan for financing and implementation.

The 1-year study would describe and delineate the proposed boundaries of the corridors. It would also provide an inventory and assessment of their historic, economic, natural, recreational, scenic, cultural and scientific resources.

Individuals and organizations interested in the two canals would participate in the study, which would be conducted by the National Park Service.

Both of these canals have been placed on the National Register of Historic Places in recognition of their important historical contributions. Barges traveling the Morris Canal transported anthracite coal from northeastern Pennsylvania to coastal markets and the developing iron industry along the canal. The D&R Canal was the first level connection between New York and Philadelphia. Both canals were vital links in the development of our Nation's transportation system and contributed to New Jersey's early economic growth.

The areas to be studied include the 102-mile Morris Canal, which stretched from Phillipsburg to Jersey City, the 66-mile Delaware and Raritan Canal, which runs from New Brunswick to Bordentown, and the 22-mile feeder canal for the Delaware and Raritan which runs from Raven Rock in Hunterdon County to the canal in Trenton.

Studying the two canals is a necessary first step to their possible designation as heritage corridors.

Quick passage of this bill is important to New Jersey. A national heritage corridor designation would spur preservation efforts along the Morris Canal, which was covered over after it was closed to navigation in 1924. The D&R Canal, which is already the centerpiece of a State park, would benefit from recognition of the area's national significance.

MEXICO: ON THE FAST TRACK

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. DREIER of California. Mr. Speaker, last spring, Congress gave President Bush the authority to negotiate a free-trade agreement with Mexico. Since that time, critics have charged that Mexico has done little to move towards a free-market economy, which is critical if we are to improve economic relations between our two nations.

The enclosed article, published by the Inter-American Development Bank, points out that Mexico has indeed made great strides in this area. I would hope that my colleagues will consider it carefully.

MEXICO: ON THE FAST TRACK—INTERNAL REFORMS AND EXTERNAL TRADE PACTS

Mexico has emerged from the "lost decade" of the 1980s with an increasingly robust economy, a government committed to fundamental change, and the prospect of a commercial link-up with the United States and Canada that would create a unified market of some 360 million people.

The country is building its economic growth on a foundation of measures to stabilize and restructure the economy. The government moves have been bolstered by progress in debt negotiations, an increase in world oil prices and the start of talks on a North American free-trade agreement.

The good results have been reflected in Mexico's gross domestic product (GDP), which last year grew at a rate of 3.9 percent. Moreover, the growth rate built up momentum during the year, starting at 1.9 percent in the first quarter and increasing to 5.8 percent for the final quarter.

CONSENSUS ON POLICIES

Much of the credit for Mexico's economic performance goes to the government's new policies and the consensus it has achieved in carrying them out.

For example, an agreement last year on the fourth and fifth phases of the Pact for Stability and Economic Growth, which seeks to coordinate prices, wages, and the exchange rate, produced measures to increase some energy prices, adjust the minimum wage and reduce the exchange depreciation.

The government continues to focus its fiscal policy on increasing public revenue and improving efficiency in resource allocation. The tax rate for companies was reduced from 37 percent to 36 percent, and in 1991, to 35 percent. The maximum rate for individuals was dropped from 40 to 35 percent. Despite the lower tax rates, improvements in collection procedures boosted tax revenues from 9.8 percent of GDP in 1989 to 10.4 percent of GDP in 1990. Part of the revenues is being used to increase investments in education, health and urban development, and to assist needy communities.

In the area of finance, constitutional reforms were approved to allow majority private sector participation in commercial banking, including participation of foreign investment.

Government deregulation measures included a revision of the regulatory framework governing the telecommunications and transportation sectors to encourage competition and reduce costs.

Finally, the process of privatization took a major step last year with the sale of state-owned shares of TELMEX, shifting management of the telecommunications giant to the private sector. About 1,155 public enterprises were in existence when Mexico began its privatization process in 1982; only 285 remained last year.

HIGHER PRODUCTION

Mexico's agricultural production and manufacturing both posted gains last year. Agriculture reversed the trend of the previous two years, and the 3.4 percent annual growth rate was the highest since 1985.

For the fourth year in a row, the manufacturing sector grew faster than the economy as a whole. The most active areas were metal products, machinery and equipment, in which the real increase in production was 12.9 percent. This performance was primarily due to the vitality of the automotive sector.

The 7.7 percent growth in construction activity was the highest in nine years the result of an increase in public investment and greater availability of credit at lower interest rates.

Particularly encouraging was the performance of Mexico's private sector investment, whose rate of growth between 1989 and 1990 increased from 9 percent to 14 percent. In addition, public sector investment reversed the trend of recent years by growing by 13 percent.

The increase in private sector investment was financed by a large flow of funds from the securities market, from capital repatriation, and from the growing availability of credit at lower interest rates due in part to the conclusion of external debt negotiations. In fact, bank credit in 1990 experienced a real increase of about 34 percent, most of which was channeled to the country's private sector. By year end, approximately half of the balances of credit provided by the banking system had been channeled to the private sector, as compared with the average of 28 percent during the past decade, when most of the credit went to finance the public deficit.

Interest rates were another bright spot last year. The sharp drop in the cost of money was due in part to the conclusion of external debt negotiations in March 1990, which helped to reduce the perceived risk of holding assets in Mexican pesos. The interest rate drop was further strengthened by the renewal of the Pact for Stability and Economic Growth, and by the announcement of the privatization of commercial banks in May 1990.

Success in controlling inflation was mixed last year, when December to December prices in 1990 rose to around 30 percent after failing to 20 percent in 1989, following levels higher than 100 percent in the previous two years.

THE OUTLOOK

Signs point to a continuation of recent trends. Economic growth in Mexico for 1991 should be similar to that of 1990, sustained by a continued increase of demand and a revitalization of the productive apparatus through increased investment.

Inflation should drop, with price behavior continuing to be determined by the terms of the Pact for Stability and Economic Growth, which has helped moderate price rises through fiscal discipline and political consensus. As the economy moves forward, there will remain the longer-term problem of moving from a coordinated system of prices, wages and exchange rates, toward less regulation and greater competitiveness..

As in 1990, the promising economic outlook and the increased confidence that Mexico now enjoys should contribute to a surplus in the capital account. The renewed confidence by the international markets was made clear when Mexico returned to the voluntary capital market with the placement in 1990 of international bonds by four state corporations. Moreover, in February 1991, for the first time since the onset of the debt crisis, the government carried out a sale of international bonds, in this case for a value of 300 million German marks.

Even greater expectations of Mexico's economic performance followed the announcement of negotiations to establish a free-trade zone between Mexico, the United States and Canada. Such an agreement will not only increase Mexico's economic opportunities, but also confirm the government's commitment to maintaining an open, competitive and deregulated economy. Mexico has entered into negotiations with Chile, Colombia, Venezuela and the Central American countries to forge similar free-trade agreements.

Finally, Mexico will press on with the job of restructuring its economy. The government has announced plans to privatize commercial banks, continue selling TELMEX shares it still owns, and privatize other enterprises in the areas of insurance, fertilizer, steel, fishing and sugar.

These trade and reform efforts are expected to continue the process of laying the foundations for economic growth to transform the Mexican economy internally and reorder its relationship to the international economy.

THE NATIONAL WILDLIFE REFUGE SYSTEM MANAGEMENT AND POLICY ACT OF 1991

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. GIBBONS. Mr. Speaker, today I am introducing the National Wildlife Refuge System Management and Policy Act of 1991 to improve the management of the National Wildlife Refuge System. This is companion legislation to S. 1862.

President Theodore Roosevelt established the first national wildlife refuge nearly a century ago, launching a campaign to provide critical habitat for wildlife. Today over 460 refuges have been created, benefiting more than 700 species of birds, more than 1,000 mammals, reptiles and amphibians, and untold numbers of fish and plants.

Unfortunately, wildlife protection on the refuges is being undermined by secondary uses of the lands and waters allowed under two laws passed in the 1960's. Power boating, mining, military air exercises, and off-road vehicles have all been classified as compatible uses of many refuges. In 1989 the General Accounting Office determined that, on 60 percent of our Nation's refuges, harmful activities are threatening our wildlife resources. Subsequently, the U.S. Fish and Wildlife Service, the managing body of the refuge system, agreed with the GAO's study.

Clearly, Congress needs to outline precise purposes for the National Wildlife Refuge System, to improve its administration and management, to improve the compatibility determination process, to establish comprehensive planning for the system, and to provide for interagency coordination in maintaining refuge resources. My legislation would accomplish this.

It just makes sense that we should bolster the National Wildlife Refuge System's ability to provide the critical habitat needed to protect our natural resources.

TRIBUTE TO MIKE AND CAROL ALESSIO

HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. CUNNINGHAM. Mr. Speaker, the true rewards of life consist only of what we give away. For years, Mike and Carol Alessio of San Diego are being rewarded indeed, as they have dedicated their lives to community service behind the scenes, and given freely of their time and money to improve the quality of life in the city which is their home.

On November 14, 1991, after having been the beneficiaries of the Alessios' unselfish dedication, leaders of the San Diego Meals-on-Wheels Program will honor this wonderful couple. And I wish to pay tribute to the Alessios as well, by entering a review of their distinguished community service into the permanent RECORD of this House.

Mike Alessio is a true community leader for San Diego. He has headed or been a member of numerous civic and charitable organizations. Mr. Alessio is the president of the Boys & Girls Clubs of San Diego, and is a board member and executive officer of the Kiwanis Club of San Diego, Francis Parker Academy and the Advertising & Sales Club. He also sits on the board of directors of Pioneer Hook & Ladder, the Kiwanis Foundation, Cal-Neva Bottling Association, the Metro YMCA, the St. Vincent de Paul Center, and the Miss California Pageant.

In addition to being a reserve officer of the San Diego Police Department and a member of the Honorary Deputy Sheriff's Association, Mike Alessio is a member of the San Diego Crime Commission. He is a past member of the Street Youth Task Force, Crime Stoppers and the University Club of San Diego.

Carol Alessio's support of her community is equally dedicated and far reaching. She has devoted much of her personal time to raising funds for many worthy causes throughout the San Diego area. In 1986, she was honored as a "Woman of Dedication" in San Diego. And in 1989, Mrs. Alessio was awarded the "Damas de Distinction" by the Mexican-American Foundation.

She has served on numerous local charitable committees, including the American Cancer Board, Commission for the Status of Women, Make-A-Wish Foundation, Children's Hospital & Health Center Telethon, the Children's Home Society, Mercy Hospital Auxiliary, the San Diego Zoological Society and the San Diego Historical Society. In 1987, President Ronald Reagan recognized Mrs. Alessio's commitment to fighting illiteracy by appointing her to the National Council on Adult Education, which she served on until 1990.

Mike and Carol Alessio's outstanding record of community service may not cause them to be recognized on the street or featured in the newspaper. But their dedication to the city they love reaches all San Diegans in one way or another. And as just one person who appreciates the high standard the Alessios have established, I am honored and humbled to thank them deeply.

May the RECORD show that Mike and Carol Alessio exemplify the strong and selfless character that helps make San Diego, CA, America's finest city.

TRIBUTE TO N-VIRO ENERGY SYSTEMS ON THEIR RECEIPT OF THE PRESIDENT'S ENVIRONMENT AND CONSERVATION CHALLENGE AWARD

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Ms. KAPTUR. Mr. Speaker, N-Viro Energy Systems of Toledo, OH, has been selected as one of the recipients of the President's Environment and Conservation Challenge Awards. This recognition is long overdue to a company that is at the forefront of developing technologies that help preserve our world's fragile environment. N-Viro Energy Systems is American ingenuity at its best.

N-Viro Energy Systems has been a pioneer in the development of waste utilization technologies. The N-Viro soil technology combines by product alkaline admixtures derived from air pollution prevention processes, and mixes them with biological waste materials, such as municipal wastewater residuals. The combination of six stresses—high heat, pH, accelerated drying, ammonia, salts, and indigenous microflora—lead to the pasteurization of the residuals. Consequently, the combination also leads to better physical characteristics of wet residuals, giving it the consistency of a granular topsoil with significant nutrient, mineral, and organic aglime value.

In Toledo, OH, home of the first major N-Viro Soil installation, over 32,000 tons of product have been produced since January 1, 1991. To date, all of the material has been sold to northwest Ohio farmers as an agricultural organic aglime. Use of the product reduces farm fertilizer costs and increases soil productivity.

N-Viro soil has received international acclaim for its contribution to cost effective resource conservation and recovery efforts. On behalf of the U.S. Congress, I would like to congratulate N-Viro Systems for this very special honor. It is well deserved and should serve as an example to all small businesses across the Nation that by applying innovative solutions to complex problems, we help our environment, create jobs, and restore American competitiveness.

WORKFORCE DEVELOPMENT COUNCIL ENRICHES LIVES

HON. TIMOTHY J. ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. ROEMER. Mr. Speaker, I rise today to pay tribute to several Hoosiers who, despite great odds, have distinguished themselves through their hard work and commitment in the Workforce Development Council of South Bend.

David Jenner, a LaSalle High School drop out, participated in the Youth Service Bureau's 70001 program. The program helped David gain self-esteem and taught him to control his temper.

Today, David holds a job as a prep cook and has even saved enough to buy a car. He is earning a G.E.D. and aspires to attend chef school.

I am proud that David, who has been called a role model to the other students at the Youth Service Bureau, was recently honored for outstanding progress at the Workforce Development Council alumni day. David was one of seven alumni recognized by the Workforce and by our community as being winners and true achievers.

Also rewarded for her hard work and determination was Betty Pflugshaupt of Plymouth, IN. Betty is single parent who, just 3 years ago, was supporting her small children with the salary of a part-time waitress. Today, she is an assistant manager at the largest K-Mart in the State of Indiana and has earned a business degree at Ancilla College.

Like Betty, Tera Redd of South Bend has learned to overcome great odds with the help of the Workforce Development Council. A 10th grade dropout working in a limited clerical position, Tera decided 3 years ago that she needed more education in order to make a better life for herself. With support from Job Training Services and a Pell grant, she enrolled at Indiana Vocational Technical College in secretarial science. Today, she is employed as a full-time secretary in the child support division of the probate court in South Bend. She has come a long way.

For over a decade, the Workforce Development Council has provided academic, financial, and emotional support for unemployed or underemployed workers in our Third District. Many are single heads of households. Several are enrolled in welfare and foodstamp programs. About two-thirds do not read and write at a high school level. The job training services at the Workforce Council helped these individuals develop general basic education skills and identify their career goals and interests. Students learn organization and time management skills while preparing to meet the challenges of higher level technical training.

Mr. Speaker, I applaud hard working Hoosiers like David Jenner, Betty Pflugshaupt, and Tera Redd, and believe that their commitment to the Workforce Development Council is to be commended. They have proven to themselves and to the entire community that hard work and determination does, indeed, pay off. They are now on their way to building successful, rewarding careers.

LAWRENCE SPEISER

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. EDWARDS of California. Mr. Speaker, I learned only a few days ago of the death on August 30, of America's great civil libertarian and my dear friend of many years. I was out of the country on that date and somehow the sad news did not reach me until today.

The first telephone call I made in January 1963 after being sworn in as a Member of Congress was to Larry Speiser. I had known about him before I came to Washington as the talented and highly regarded executive director of the Northern California Civil Liberties Union in San Francisco. In this important office he had led the efforts for all Californians in defending the constitutional and civil rights of individuals. Larry then moved on to become the executive director of the national office of the ACLU.

My telephone call to Larry in January 1963, resulted in a luncheon meeting and a friendship and collaboration that continued for more than a quarter century. In the early 1960's the House Committee on Un-American Activities was at its zenith of power, constantly in the news and on TV, and deeply offensive to Americans who valued due process and the constitutionally guaranteed rights of freedom of speech and association. Larry helped me enormously in my personal resistance to HUAC, and 10 years or so later, with the help of Bob Drinan and others we witnessed its demise with considerable satisfaction.

Larry's other major achievements as the ACLU leader here in Washington brought nationwide recognition and praise for Larry and his organization. He won the law suit that outlawed the poll tax in Virginia. In another suit he abolished compulsory religious service attendance at U.S. military academies. Before the U.S. Supreme Court he argued successfully that Maryland officials need not take a religious oath. He ended the California practice of requiring veterans to take a loyalty oath as a condition to receiving certain benefits.

Larry Speiser was always generous with his time in supporting local and national bar associations. He accepted a place on the D.C. Board of Governors. He served ably as the chairman of the American Bar Association committee on the rights of the accused. He also served with skill and enthusiasm on the Senate Committee on Juvenile Justice. All in all, Larry's life was a consistent and courageous succession of efforts to enforce the Constitution's guarantee of individual rights and freedoms, and the extraordinary successes he had bear witness to his heroism.

I spent many hours and evenings as a personal friend of Larry and Lane Speiser. I have happy memories of these times. They strengthened my faith in our Constitution and in the American dream. I join many hundreds of people who feel an enormous sense of loss and who send loving sympathies to Lane and the children, Amy, Terry, and Matt.

CAPT. TRACEY BORUM: A MODEL OF NEW MILITARY

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 31, 1991

Mr. GORDON. Mr. Speaker, the makeup and mission of our Nation's military has been shaped through the years to meet the challenges of a changing world.

Like society, our Armed Forces have become more integrated with men and women of all races working hand-in-hand toward the common goal of a strong, efficient national defense. As the banner of freedom spreads throughout the world, our troops have increasingly become providers of humanitarian aid, wielding ploughshares as adeptly as swords.

U.S. Army Capt. Tracey Borum, a graduate of Middle Tennessee State University and a resident of Nashville, is a perfect example of these positive changes.

During Operation Desert Storm/Desert Shield in the Persian Gulf, Captain Borum was sent to the United Arab Emirates to help the small nation of 500,000 people improve its ability to deter future military aggressors.

Hers was no routine training assignment because her trainees were the first group of women ever to enlist in the UAE military. The group was changing decades of tradition in which women had lived behind veils as second-class citizens to men.

By combining her outstanding personal leadership and technical skills, Captain Borum successfully overcome the significant cultural barriers to train the Arab women to use assault rifles, rocket-propelled grenades, multipurpose machine guns, hand grenades, and other weapons.

Captain Borum served as an inspiration to her UAE counterparts, helping them realize their own abilities. Her work encouraged the women's national pride while at the same time making their nation's military more self-sufficient against future Saddam Husseins.

With Captain Borum's help, the UAE women now have the skills and confidence to train other women for noncombat specialist roles.

Tracey Borum, who is now assigned to the 701st Military Police Battalion at Fort McClellan, AL, is a shining example of our Nation's new military—proud and strong, able to respond to every challenge in both peace and war.

SENATE—*Friday, November 1, 1991*

(Legislative day of Tuesday, October 29, 1991)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable JOSEPH I. LIEBERMAN, a Senator from the State of Connecticut.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Behold, how good and how pleasant it is for brethren to dwell together in unity!—Psalm 133:1.

Almighty God, Creator and Sustainer, we are grateful and proud of our country with its unprecedented unity in diversity. Out of many we are one. We are grateful and proud of our political system for which there was no model when conceived by our Founders, but has become a model for the world. We thank You for a two-party system and the nature of those parties which represent the diversity, and we recall the often-heated debate during the Constitutional Convention out of which the U.S. Senate became the living model of the Union of the States.

Eternal God, perfect in love and peace, help the Senate to find a way to demonstrate the unity which it was intended to model. Like a great symphony—100 instruments, 100 scores, making beautiful music—help the Senate find a way to demonstrate its incredible power potential without sacrificing the power of each Senator or violating the differences in the two-party system upon which our Government is built.

In the name of the Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 1, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOSEPH I. LIEBERMAN, a Senator from the State of Connecticut, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. LIEBERMAN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NATIONAL ENERGY SECURITY ACT

MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of the motion to proceed to S. 1220, the energy bill. The time between now and 10 a.m. is equally divided and controlled between the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Montana [Mr. BAUCUS].

The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, I yield myself 3 minutes.

Mr. President, we are back this morning on our favorite subject, which is the consideration of comprehensive national energy policy.

Mr. President, it is my hope that we can find a way to at least let this Senate focus on what is a very vital and important subject, which is national energy policy.

In order to do that, of course, we must first invoke cloture on the motion to take up. Otherwise, we cannot explore any way of dealing with this. I have been racking my brain to find out what might be the ways that would satisfy the opponents of this measure to let us at least consider the other parts of the bill other than drilling in the Arctic National Wildlife Refuge, which I know to be very controversial.

I have wondered, for example, if I offered a substitute amendment that did not include ANWR and CAFE, so that would be the pending business, and that if that amendment were adopted it would exclude the ability to consider ANWR, whether that would be suitable, keeping in mind that then to add ANWR it would take a majority vote.

There are various things we could consider here as ways to look at comprehensive energy policy. I am willing to explore those, Mr. President. I hope the opponents are. They say they want to consider national energy policy. They say they consider it to be a problem for the Nation. I take them at their word.

If they are sincere in that, then surely they should be willing to at least tell me what it is they wish as a means of proceeding, give us some formula by which we can pursue national energy policy. I do not think that is too much to ask—something other than just saying defeat this bill and we will think of something. We will go back in a backroom somewhere and come out with some magic formula that is going to please everyone and do away with the controversy.

Mr. President, there is controversy throughout energy policy; even the energy efficiency proposals are highly controversial because they make people do that which they would not otherwise be required to do.

So, Mr. President, I hope we can go into not only debate this morning, but if we do invoke cloture then we can go into consideration of national energy policy from a standpoint of seeking a solution and finding a formula to consider this most important subject.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from Montana.

Mr. BAUCUS. Mr. President, I think we ought to yield to whoever wants to next speak.

I yield 5 minutes to the Senator from Tennessee.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee [Mr. GORE].

Mr. GORE. Mr. President, there is, indeed, in the words of the old cliche, nothing as powerful as an idea whose time has come. But, as a corollary, we all know there is nothing as tragic as pursuing an idea whose time has passed. The idea that we can solve the energy crisis by simply producing more oil is an idea I think whose time has passed.

I oppose the pending motion because it is based on the idea that we can become more energy independent by drilling for and using more oil. We are on a futile search for an energy source that we cannot seem to give up. This Nation needs an energy policy and not a drilling policy. We need a plan for more efficiency, not for more consumption. We need a plan that enhances our environment, not exploits our environment, does not exploit our environment.

Geography does not lie. Seventy to eighty percent of the world's oil reserves are in the Middle East. Drilling in the Arctic National Wildlife Refuge, which is one of our Nation's most beautiful, most pristine wilderness areas, will not change that fact or make us less dependent on that oil.

So long as we are behaving as if we are almost addicted to oil, we remain hostage to the politics and polemics of the Nations in the Middle East that have most of the oil.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

There are those who argue that the war against Iraq somehow justifies proceeding to this bill to save Americans from fighting for oil in the future. I do not agree with bringing up the bill under the smokescreen of the burning wells in Kuwait.

If you look at all of the oil wells on fire in Kuwait and remember all of the smoke that clouded the skies of that whole region, that represents less than 1 percent of the total amount of pollution and CO_2 that we are putting into the atmosphere worldwide every single day.

The fact is we have to change from a policy of accelerated consumption toward one based on more efficiency and alternative sources of energy.

We did not send troops to the Middle East to justify drilling a modest supply of oil in the Arctic Refuge. We did not send troops to the Middle East to support a policy of more consumption at home. This Senator voted to authorize the use of force in the Middle East to protect millions of people from the oppression of a brutal dictator, Saddam Hussein, and I will continue to advocate freedom for the people still under his oppressive regime. Let us not confuse the fight for democracy with the fight for energy independence.

Having studied S. 1220 thoroughly, it is clear to me that, if implemented, this bill will lead us on a path that jeopardizes our security, stifles our economic vitality, and is environmentally disastrous.

The organizing principle of the bill is that we can produce our way to energy security, that we can just keep drilling empty holes looking for oil and sooner or later we will be secure. What is the justification? Can we, in fact, meet our energy needs by increasing domestic production? The answer is no. Will we find more oil? We probably will if we take that course. Will it make much difference in the overall picture? No, it will not. It will simply delay our task of coming to grips with the underlying problem.

It is almost as if someone addicted to alcohol or drugs is confronted by his friends and sits down and takes a long, hard look at his problem. And then finally the light bulb comes on, and he decides the real problem is he just cannot get enough of it. Well, that is not the real problem. The fact is we have to change our basic attitudes toward consuming more and more and more energy every single year.

We have to come to grips, as well, with some fundamental geological facts. That is that our domestic oil reserves have peaked out, and they are now on the decline. Can we reverse that trend? The answer is no. It has been said before, but it is still true: You cannot draw blood from a stone.

The supporters of the bill say that we can—if we would just open up areas that are currently off bounds to drilling. But President Bush made that same argument in his national energy strategy proposal, and the very documents he supplied in support of the proposal showed that the argument was unsound.

Experts at the Department of Energy estimated how much additional oil we could extract from areas like the Arctic National Wildlife Reserve and the Outer Continental Shelf, and concluded that the possibilities were very small. In fact, the strategy would lead us down a path of ever-increasing reliance on imported oil.

Stepping up efforts to wrest still more oil from the wells we have already tapped is also suggested as a solution. But, again, the argument is fanciful. The bottom line is that, if our economy remains tied to fossil fuel production and use, our security remains hostage to volatile politics abroad.

And what of our economic security? Do we have an alternative but to find—and consume—our national resources in order to fuel our economy? Indeed we do, and in fact, our economic viability depends on willingness to chart a new course.

We have faced these questions before. The current energy debate echoes the debates of the early 1970's. Until the 1970's, most people believed that economic growth demanded more and more energy consumption. But then we discovered that economic growth can occur without additional energy consumption. U.S. energy consumption in 1986 was about the same as it was in 1973, while the economy grew by about 40 percent in real terms. Even the strongest advocates of conservation were stunned by the gains made in energy efficiency. By replacing energy use with new technologies and smart management, we exposed the fallacy behind the supposed link between energy consumption and economic growth.

We learned to save energy and build our economy. The two are not mutually exclusive. We learned that by experience.

We cannot afford to fall prey to that false link again. After our successes of the seventies and early eighties, our energy use trends are again climbing. The consequence? Our ability to compete in the world marketplace is quickly slipping away. If we don't chart a different course now, we sacrifice, rather then secure our economic well-being.

And Mr. President, our environmental security is also in the balance if we continue down the path this bill defines. Just last week, we received startling news about the devastating impact our industrial society is having on the global environment. For the first time, NASA scientists determined that, not only are we destroying the ozone layer some 200 percent faster than ever before predicted or measured, but we are experiencing that destruction during the summer months when we are most likely to be outdoors and exposed to the Sun's ultraviolet radiation. This news is ominous for human health; for the vitality of our crops; for the stability of the entire food chain on which all life depends. But the news is also ominous in another, and even more threatening way. Nature is sending us a loud message that the response to our continued pollution of the atmosphere will neither be graceful nor gradual. Rather, dangerous thresholds can indeed be reached, and once we cross these critical points our ability to mitigate or avoid harmful impacts is limited indeed.

But this bill is blind to this stark reality. Our inefficient, fossil fuel-driven economic engine pumps millions of tons of carbon dioxide into the atmosphere every year. The United States alone is responsible for some 23 percent of global carbon dioxide emissions, and atmospheric concentrations of CO_2 are now well beyond concentrations measured at any time over the last 160,000 years. The message from the ozone scientists is that we cannot ignore the increasing pressures we are putting on the planet. But, rather than steer us away from this crazy course, S. 1220 accelerates the pattern. Still more fossil fuels will be burned; still more of our natural resources will be sacrificed if this is the energy course we chart.

I therefore urge my colleagues to vote against cloture on the motion to proceed to this bill. Let us begin developing an energy policy that can ensure our security; our economy; and our environment. The time has come to pursue the idea of energy independence through conservation, efficiency, and the development and commercialization of renewable energy resources. The time has passed to pursue the drill and spill philosophy displayed in this bill.

Let me just say in response to the suggestions that were made earlier—I am sure my colleagues from Montana will address this—we could take up the Arctic measure separately, and CAFE, and then deal with the debate about the energy bill. Then I think that would be the best way to proceed.

So I wanted to respond to that question from the distinguished chairman of the committee.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BAUCUS. I yield 10 minutes to the Senator from Ohio.

Mr. METZENBAUM. I thank my colleague.

Mr. President, this bill has a title that sounds good, but with provisions which are so very bad. This bill draws its energy from drilling the fragile Arctic Wildlife Refuge and jump starting the nuclear energy without regard to safety. It is ironic that we began this debate on October 31, Halloween, a time when children dress up in fantastic costumes and pretend to be something they are not.

This bill pretends to be the last chance for an energy policy. No way is that the case. This bill, which purports to be a new policy, to lead us in a new direction, returns to the failed policies of the past that we have been discussing over the years, favoring big oil and the nuclear lobbies, leading us to more oil dependency and high-level radioactive nuclear waste.

This bill masquerades as a balanced, comprehensive way to energy security, but it is neither balanced nor comprehensive, and it is unlikely to buy us much security. How much energy security will we get from another 200 days of oil supply? Yes; that is right. If there is oil, the best estimates predict a total of 200 days' supply. That is what the optimists think we might get from drilling the Arctic National Wildlife Refuge.

It is trick-or-treat time. The tricks are being played on consumers, and the treats are there in ample supply for big oil, nuclear interests, natural gas pipelines, and other special energy interests.

Let me point out a disappearing trick. Consumer refund provisions for natural gas consumers that were in the bill in February vanished without a trace, and the consumers are left holding the bag for refunds to which they are entitled.

The Johnston-Wallop bill originally contained a provision for the consumers of natural gas. It would have given the consumers the right to get their money back—not somebody else's—when they have been overcharged. This consumer protection was removed in markup. "Forget the consumer" is the motto of this bill.

Last April, the Department of Energy reported that the loudest single message they heard at a dozen public hearings held over an 18-month period was to increase energy efficiency in every section of the economy. Energy efficiency was seen as a way to reduce pollution, reduce dependence on imports, and reduce the cost of energy. But S. 1220 fails to emphasize efficiency, conservation, and development of renewable and alternative energy resources. It misses a historic opportunity to set our energy policy on a new path.

This bill is loaded up with treats for special interests and some window dressing for efficiency and renewable. S. 1220 is just not a good starting point from which to fashion a true, balanced energy policy. While there are many reasons why we need an energy policy, this bill is worse than no policy at all.

The Johnston-Wallop bill looks too much like the Bush energy strategy, which looks like business as usual. It is positively bold in opening the Arctic to drilling and in reviving the nuclear industry with research money and one-stop licensing. But it is meek and mild when it comes to fuel efficiency and conservation. Instead of standard goals, it offers guidelines and wishful thinking.

This bill's priorities are all wrong. A prime example is the ANWR in Alaska. Twelve days ago, the Senate Environment Committee voted overwhelmingly by a 3 to 1 margin—the vote was 12 to 4—to preserve the Arctic coastal plain as wilderness. But the centerpiece of this bill is oil drilling in the Arctic. The oil people have wanted that for years, and this bill gives it to them.

It is unrealistic to try to produce our way to energy security with oil. It just cannot possibly be done. If oil company optimists are right, and that is a big if—there is no reason to trust their optimism, but if—the Arctic at best may hold up to 3 billion barrels of oil. Three billion barrels of oil would only be four-tenths of 1 percent of the proven oil reserves in the Middle East, a drop in the bucket.

How much safer will we be with another four-tenths of 1 percent of proven oil reserves? At best, we might produce 300,000 barrels a day for 30 years from the Arctic. Frankly, that is not very much.

Mr. President, with increased fuel economy standards, we can save 2½ million barrels of oil each and every day, 18 times the optimistic 300,000 barrels a day that might be produced from ANWR.

This bill continues the Reagan-Bush laissez-faire policy of deregulation. It deregulates natural gas pipeline construction and gas sales. What an absurdity. Without any consumer protection or environmental protection, it is a giveaway to the natural gas companies.

It permits deregulation of new hydroelectric dams and two thirds of the existing hydroelectric dams in the United States without adequate environmental protection. It deregulates electric generation without adequate consumer safeguards or transmission access.

We need more protection for the consumer and more protection for the environment, not less.

S. 1220 does not guarantee more energy supply or energy security. It does guarantee more regulatory neglect. Do we really need more of the deregulation of the Reagan years? I think not.

This bill's policy, like the Bush strategy, seeks to increase our reliance on nuclear power, but it eliminates public input, cuts down the licensing review process, and it ignores the waste disposal problem. This policy, like the Bush strategy, ducks some of the tough conservation and efficiency improvements. It misses a major opportunity to reduce oil consumption by increasing automobile efficiency standards. It calls for a study, not the reality of actual standards.

Instead of establishing real efficiency standards for cars, it bucks the job to the Bush Energy Department and the Department of Transportation. A lot of good that will do. A lot of confidence we can have in those Departments.

In the coming weeks and months, I am prepared to work with my colleagues to enact an energy policy that is more balanced, more comprehensive, and one that will lead us to a cleaner, safer future, not just lead us to the next crisis.

Mr. President, there are some who say that somehow the CAFE standards—that is the standards regulating the number of miles per gallon that a car is to get and that our manufacturers are to produce—is somehow tied to the ANWR aspects of the bill.

This Senator finds no relationship on those two issues at all. One has to do with what we should be doing with respect to conservation of energy; the other has to do with the drilling for oil in the Arctic National Wildlife Refuge. There is no connection between the two, no tie-in. Those who suggest that if one provision drops out, they both have to drop out, I do not buy that.

Second, let me say that, today, we will have a vote on whether or not we should proceed to the consideration of this bill. I do not know what the final count will be on that vote, but even if there should be cloture invoked and we move to the bill, let me say loudly and clearly that is not the end of the battle. That is only the beginning of the battle. Because many Senators in this body will say, "Let us go ahead and discuss it, but we are not prepared to vote for the bill in its final form." The battle will be a long one, a tough one, and it will require probably additional cloture votes after we get on the bill, if we do that.

I say we ought to take this bill down, we ought to defeat the cloture motion and go back to the drawing board, and make this a bill that is more balanced and more fair to the American consumer, and take away some of the special privileges we are giving to the oil companies, the nuclear industry, and the natural gas industry.

I yield the floor.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

We are continually told that this bill does nothing for energy efficiency, conservation, or alternative fuels. Interestingly, I had a debate with a member of the World Watch Institute before the USA Today editorial board not too long ago who repeated that same shibboleth. I asked him, "What is it that is not in this bill that you would suggest?" He thought for a long time and gave me three things, all of which were in this bill. That is typical, Mr. President.

The fact of the matter is that, out of a total of 130 pages, over one-quarter of this bill is dedicated to conservation and renewable titles. Senator WIRTH, who was the architect of those proposals, stated that they are excellent provisions. I have letters of support from the National Association of State Energy Officials, the National Community Action Foundation, the National Association of Regulatory Utility Commissioners, and many, many more.

I yield myself an additional 30 seconds, Mr. President.

We are told that the Department estimates 3 billion barrels of oil as the top amount. The fact of the matter is that the mean estimate of the Department of the Interior was 3.6 billion barrels. The top estimate was 9.2 billion barrels. The report prepared by the American Association of Petroleum Geologists says to least 15 billion barrels may be recoverable, and perhaps as many as 30 billion barrels. No one knows. We ought to find out for this country.

I yield 5 minutes to the distinguished Senator from Wyoming.

Mr. WALLOP. Mr. President, we are also told that you cannot solve the energy crisis by producing more oil. Well, the other side of that coin, Mr. President, is you cannot solve the energy crisis without producing something. These silver-bullet-syndrome heroes that believe that somehow or another there is one provision that can provide for 100 percent of America's energy needs are simply living in a dream world, or they dissemble. However efficient as this Nation is, we will still have to use some oil, and far into the next century—at least the first quarter of it.

Given, Mr. President, the balance of payments that is mortgaging the future of Americans, why would these folks who oppose it want to line the pockets of an Arab sheik with silver, who employs no people, who pays no taxes, and whose interest specifically is in denying the United States and the industrial world the revenues to invest in the research that will relieve this dependence?

I hear those on the other side of this argument talking, namely, about energy independence. The one realistic thing about this bill is that it does not promise what cannot now be achieved, but it certainly relieves the threat to our dependence; it certainly balances the use of energy in America in ways in which it is not now; it certainly tries, in ways that are more efficient, to get us into the use of natural gas, I say to the Senator from Ohio, to generate, in a competitive way, for the first time, the electricity needs of this country.

We have the Arctic plain heroes, who have never been there, make the argument that drilling less than one-half of 1 percent of that place is somehow or another going to destroy the whole of America. Mr. President, let me say that there is no country in the world so stupid as to deny itself the use of its own resource, thereby creating its dependency, thereby adding to its balance of payments deficit, thereby mortgaging the future of its children.

Mr. President, these folks apparently do not mind that, last year, 65 percent of our deficit in foreign trade was spent on energy, imported oil—no taxes, no jobs for Americans, no R&D resource, as we use the moneys from ANWR.

It is just a question now, Mr. President, as to whether America is mature enough to look at all of its resources, its technological resources, energy resources, and its other means of resolving its problems; or if we still have to bicker in backroom politics, as they have suggested, that we go into a room and not debate it on the floor, that we go someplace and solve these things with a group of four and some staff, instead of in the public arena, the way which the American Founding Fathers designed to solve problems. Oh, no, they will deny us the chance to debate, if they have the chance to succeed.

My guess is that the American people are fed up with the idea of using America's hard-earned dollars to line the pockets of people overseas. My guess is that this country is fed up with darkroom, backroom politics. My guess is that there will be hell to pay in politics if this country does not address a balanced energy strategy, which includes not only conservation, but production; which includes not only conservation and production, but an advanced program of R&D into the technological future, which will be America's exports, if they only allow us to get there in the future. It will be the taxes that are paid on the resources of Americans that fund this R&D, which will provide American technology to every advancing country in the world. Oh, no, they would rather pay this money to Arabs, rather pay it to Venezuelans, rather pay it to Far Easterners, and deny ourselves the revenues, jobs, and the country that can look itself in the eye and say, "We use what we have."

I thank the chairman.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BAUCUS. Mr. President, I inquire how much time is remaining on this side.

The ACTING PRESIDENT pro tempore. The Senator from Montana has 14 minutes, the Senator from Louisiana has 18 minutes, 44 seconds.

Mr. BAUCUS. I yield 3 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the Senator from Montana and I will be very brief because I think what we are discussing here far misses the mark.

Mr. President, I rise today to express my opposition to S. 1220, the National Energy Security Act. This bill serves us more of the gluttonous menu of environmentally destructive energy development programs we now employ when we need to go on an energy diet and develop cleaner, nonpetroleum-based fuels. It continues our existing misplaced energy priorities and it misses important energy conservation opportunities.

Mr. President, we often hear talk about the energy crisis. But the United States does not have a shortage of energy. Rather, we are too dependent on petroleum-based liquid fuels and too reliant on foreign oil—a reliance which adversely affects our national security and our balance of trade. Too much of the world's oil is under the control of Mideast countries—37 percent of the world market and 24 percent of U.S. imports. And U.S. oil imports are too high—around 50 percent of our oil use or roughly 8.5 billion barrels per year.

Energy use has another important dimension, its effect on our environment. Some sources of energy cause significant, adverse environmental impacts—on local, regional, and global scales. Of particular concern is the release of carbon dioxide which contributes to global warming.

In 1988, then candidate George Bush promised to address the greenhouse problem by using the White House effect.

But this White House effect has turned out to be nothing but more hot air to heat up our Earth. The President's national energy strategy actually contemplates a 25-percent increase in carbon dioxide emissions over the next 25 years.

The administration's carbon dioxide position stands in stark contrast to the policies of the rest of the industrialized world. Eighteen industrialized nations already have committed to stabilizing or reducing carbon dioxide emissions by the year 2000.

And this past summer, the British Prime Minister Major wrote the White House criticizing the United States position on global warming and urging the United States to join Britain in setting limits on carbon dioxide.

So the self-proclaimed environmental President stands alone in failing to act to reduce carbon dioxide emissions.

These policies are particularly embarrassing because the United States emits a disproportionate amount of the world's carbon dioxide, about 20 percent of the world's CO_2 emissions.

The United States emits 5 tons of carbon dioxide per person while the West German rate is 3 tons and Japan is 2 tons per person. So we should be taking a leadership role in reducing carbon dioxide emissions.

The heart of our energy policy should be energy conservation. The United States has an enormous potential to conserve energy. With less than 5 percent of the world's population, and about 2.5 percent of the world's oil reserves, the United States uses 25 percent of the world's energy output.

If the United States used energy as efficiently as Japan, we could lower our national fuel bill by $200 billion every year. Per capita energy use in the United States is more than double that of Japan, France, and Italy and close to double that of the United Kingdom and West Germany. We must tap into our energy conservation potential.

Where is the leadership from the White House on energy conservation? You can read the national energy strategy and go blind looking for new programs to tap into this vast potential.

The President gives short shrift to energy conservation, short shrift to increasing automobile fuel efficiency. Instead, the President, and S. 1200, proposes environmentally damaging energy production like oil development in ANWR.

Mr. President, after the *Exxon Valdez* spill 2 years ago, I visited the spill, the industrial complex at Prudhoe Bay and the coastal plain of ANWR.

What I saw was the best of nature and the worst of man.

I saw the best of nature in the Arctic Refuge, an area which even the Department of the Interior says, "is the only conservation system unit that protects, in an undisturbed condition, a complete spectrum of the Arctic ecosystems in North America." An area which biologist George Schaller calls "unique and irreplaceable, not just on a national basis, but also on an international basis."

Beauty, wilderness, pristine—these words simply fail to capture what I saw, and what is at stake if we allow oil and gas drilling to proceed.

Unfortunately, in seeing the spill in Prince William Sound, I saw the worst of man. I saw how carelessness despoiled a rich ecosystem: dead wildlife, oil-coated beaches.

This devastation by man stands in stark contrast to the beauty of nature I saw.

And I saw a huge industrial complex at Prudhoe Bay. I felt like I was at the end of the Earth from a wilderness area looking at this complex.

And that's what's at stake as we consider S. 1220. Do we want to preserve that unique beauty of nature? Or do we want to create an industrial complex of drill sites, waste pits, roads, airports, marine facilities, solid waste dumps, sewage treatment plants, pipelines, spills, and pollution?

A complex that according to the Department of the Interior's own report would affect 12,650 acres of this unique wilderness area.

Do we want to develop the ANWR, to keep feeding our fossil fuel appetite, or do we want to conserve fuel resources, develop alternative sources of energy and preserve our pristine lands?

If we drill for oil in ANWR, we may find oil for a few years, but ANWR will never be wilderness again.

If we develop ANWR we threaten this unique wilderness system. And if we destroy the wilderness values in ANWR, we also threaten an undisturbed ecosystem with its polar bears, musk oxen, and porcupine caribou.

And if we destroy our own wilderness areas, what credibility will we have in telling other countries to preserve their forests, wetlands, and biological diversity?

Mr. President, we must not allow oil exploration and development in ANWR.

So, in establishing energy policy, we must reduce our reliance on unstable sources of oil and stimulate sources of energy which minimize environmental impacts. We need a four-pronged approach to address our energy crisis—energy conservation, renewable energy, alternative fuels, and enhanced recovery of oil from existing oil fields.

Mr. President, S. 1220 fails to establish the policy we need. So I will be voting against invoking cloture.

In the days ahead, I plan to provide more detailed views about the type of energy policy we need to adopt.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I yield 4 minutes to the Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I cannot help but think that many of my colleagues who are speaking against this proposal to bring the energy bill before this body are really running interference for America's extreme environment community that clearly does not want an energy bill.

I find it rather curious that my colleagues from Colorado and Montana are not at all interested in working to make this a better bill. They only want to kill it because it has ANWR in it. I wonder what they are afraid of, because they are talking about killing jobs in this country, killing the largest single identifiable project for jobs, approximately 735,000 jobs in 47 States. They are talking about killing a contribution to the gross national product of this country of $550 billion. These are jobs in 47 States. They are talking about increasing imports, doubling imports from the Mideast by the year 2000 to 2010. They are talking about the lifestyle of the native people of my State that have observed oil development in Prudhoe Bay done in a responsible manner.

I heard one Senator comment on his view of Prudhoe Bay. They remind me of flying over a State. Let me tell you ANWR is 19 million acres. Prudhoe Bay is but a very, very small part of it. And make no mistake about it, anybody in this body can criticize the Prudhoe Bay development but it is the finest oil field in the world, bar none.

We can do a better job if we are lucky enough to find oil in ANWR. We talk about a 200-day supply. That would be the third largest field ever found in the United States if there is oil there.

No one knows, Mr. President, it may be a 600-day supply, which would supply this Nation with 25 percent of its total crude oil which it has been doing for the last 15 years.

You call that insignificant? Well, it is not. It is an affront to my State. We have been a State for 32 years. We are trying to establish a responsible economic development scenario. We are late coming in. We are all by ourselves, us and Hawaii. You have already established your economy. You have established your resource development. And what you are threatening to do to Alaska is putting up a big sign that says "Keep out." The American environmental community is committed to 100 million acres of wilderness in my State of Alaska. They have 56 million acres now.

Mr. President, what does this mean if ANWR is not in the bill? The funding mechanism for the energy bill is ANWR. ANWR is supposed to provide funds for alternative fuel, funds for energy efficiency, funds for electric cars, funds for solar energy, funds for hydropower, electric power, research, development, clean coal technology. It will not be there if we take ANWR out of the bill, and that is what everybody wants.

The Senator from Alaska wants to reduce our dependence on imported oil, but this is how we do it. It is a sound bill.

Mr. President, I urge my colleagues to invoke cloture. And I conclude by the question that many of us are going to have to answer, and it is kind of a "trick or treat" the day after Halloween, when we vote on whether to invoke cloture on the motion to proceed to consideration of the bill: Shall we trick the American people and deny them the energy strategy this Nation so desperately requires, or shall we treat them to a responsible Congress by putting petty squabbling aside and working toward the national good? I thank the Chair and I thank my colleagues.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 3 minutes to the distinguished Senator from Minnesota.

Mr. WELLSTONE. Mr. President, this leaves little time for debate. Let me say to the Senators from Wyoming and Alaska that this energy bill is a nonenergy bill. That is the problem. It does not deal with our persistent dependence on imported energy. It does not deal with the greatest threat to the environment, global warming.

If we are concerned about energy dependency, then we save oil. And there are not provisions to do that in this bill. People around this country were at public hearings. They said they wanted to focus on conservation and renewables. What they have instead in this piece of legislation is drilling for oil in the Arctic National Wildlife Refuge, building more nuclear powerplants, generating more nuclear waste, $11 billion debt forgiveness for the nuclear industry.

Do Senators want to vote for that? Could Senators want to vote for that?

This piece of legislation, S. 1220, is not balanced. In the 1980's it was a lost decade for energy policy in this country. If we pass this legislation it will be a lost decade in the 1990's, and we will have missed an important chance to do well for our children and our grandchildren.

This is not comprehensive energy policy, except if you mean by comprehensive, there is something in this bill for every oil company.

The Senator from Wyoming said the people in this country are getting fed up. Well, I think they are getting fed up with the way we finance campaigns; they are getting fed up with the way we conduct campaigns; they are getting fed up with this mix of money and politics here in Washington.

I do not know that this vote is a referendum on the energy bill. I think it is a referendum on whether or not the U.S. Senate belongs to the vast majority of people who want an energy policy respectful of their community and environments, or whether or not the United States belongs to oil companies. That is what the vote on this bill is all about.

I yield my time.

Mr. JOHNSTON. I yield myself 1 minute.

Mr. President, really I do not think we are well served by that rhetoric which says that we do nothing for energy efficiency. Now the Senator from Minnesota, when he began his speech yesterday, came out with a proposal from an energy efficiency group which included a number of things, every one of which were either in this bill or involved the jurisdiction of the Finance Committee and taxes. If he wants taxes let him propose them. If he wants energy efficiency, let him support this bill because that is what this bill does.

Mr. WELLSTONE. Will the Senator yield?

Mr. JOHNSTON. As far as this forgiveness of the so-called debt to the nuclear companies, that is part of legislation that has been passed by this Senate six times, six times. There is no debt. That is a fiction. And to say this is a giveaway bill to the nuclear industry, well, Senators voted for it six times, and it is right and there is no debt and this bill does not do that.

Mr. WELLSTONE. Will the Senator yield?

Mr. JOHNSTON. Yes, I yield.

Mr. WELLSTONE. We went through this debate yesterday about the question of efficient use standards. You mentioned soft path energy. That goes back to a famous article written by Amory Lovins on energy policy. He pointed out that we could save the equivalent of 42 ANWR's if we were serious about efficient energy use starting in the transportation sector.

Do you not agree with Amory Lovins that we need to do much more than what is in the bill when it comes to energy savings in transportation, which is the most wasteful sector?

Mr. JOHNSTON. I proposed an amendment to have tougher CAFE standards in the committee and lost. And I am prepared to offer it here on the floor if I am given a chance to bring it up. Senator BRYAN will be able to bring up his numbers. I think they are too high, but the Senate can work its will. But how can you even consider CAFE if you cannot get the bill up on the floor? That is the point.

Mr. WELLSTONE. One final question for the Senator if I could ask: Is there not a provision that deals with loan forgiveness of the nuclear industry in this bill?

Mr. JOHNSTON. No.

Mr. WELLSTONE. There is not?

Mr. JOHNSTON. There is not.

Mr. WELLSTONE. I would like Senators to read this bill before we vote on it.

Mr. JOHNSTON. The Senator has made a statement there is such a provision. I would like him to point to it. He made the statement. The bill is before the Senate. Point toward that provision.

Mr. WELLSTONE. I will get the bill and we will go over that.

Mr. President, the Senator from Louisiana asked that I point out the exact provisions of S. 1220 which write off some $11 billion in debt owed the American taxpayers by the nuclear power industry.

As the Senator from Louisiana knows, section 161(v) of the Atomic Energy Act of 1954, as amended, requires DOE to recover its full costs from commercial customers for providing uranium enrichment services.

I ask that the attached section of a January 29, 1986, Federal Register notice be included in the RECORD following these remarks. This document demonstrates that the Department of Energy concluded that there was some $7.552 billion in unrecovered costs from its provision of enrichment services. According to the General Accounting Office, these unrecovered costs total over $11 billion with interest. Notably, I understand the GAO testified to this point as recently as last week, when GAO officials appeared before the House Interior and Insular Affairs Committee.

Now, to return to S. 1220. The bill writes off this debt through two provisions. Under section 10102, it repeals the full cost recovery requirement of the Atomic Energy Act. Then, under section 10103, it adds to the act a new title which specifies under section 1506(d)—page 128 of the committee report—that the outstanding debt to be repaid would be some $364 million. The committee report discusses the issue of unrecovered costs and the GAO's $11 billion estimate on pages 309 and 310 where it explains the intent of this new language.

In addition to the various reports of the General Accounting Office and the committee's own report it is my understanding from discussions with legal counsel for the National Taxpayers Union that these provisions, combined, effectively write off the debt owed the American public by the nuclear power industry.

In order to make all of the details of this situation clear to my colleagues, I ask unanimous consent that a briefing paper by the National Taxpayers Union Foundation, dated September 1990, be included in the RECORD following these remarks.

There being no objection, the material was ordered to be printed in the RECORD as follows:

[From the Federal Register, Jan. 29, 1986]

"*Recovery of Prior Government Costs.*" DOE is committed to the recovery of appropriate Government costs over a reasonable period of time. To assist in the attainment of this objective, the proposed criteria set forth in section 762.6 a mechanism for the recovery of prior Government costs. This mechanism would establish reserves sufficient to return to the U.S. Treasury, over a reasonable period of time, previously unrecouped and unrecovered costs associated with the provision of enrichment services to civilian customers.

Under this mechanism, DOE proposes to repay the U.S. Treasury, over a reasonable period of time, $3,457 million of the $7,522 million in prior unrecovered Government costs remaining as of September 30, 1985. The reduction of $4,065 million in the amount to be recovered is the equivalent of writing off plant capacity that will not be used in current or future enrichment operations. Interest will be added to the amount to the recovered by applying to the average annual outstanding balance an interest rate of 6.310 percent, the weighted average of Treasury interest rates applicable in the years in which net increases in Government costs occurred.

Repayments to the Treasury will be made annually. From fiscal years 1987–1991, the amount of the annual repayment is expected to be a $150 million minimum plus a percentage of gross commercial revenues—eight percent in 1987 and eleven percent thereafter. Beyond fiscal year 1991, the annual repayment is expected to be the $150 million minimum plus half the savings from projected decreases in TVA demand charges for electricity.

[National Taxpayers Union Foundation,
September 1990]

STOPPING A BUDGET MELTDOWN: REORGANIZING THE FEDERAL URANIUM ENRICHMENT PROGRAM

(By Charles Montange)

PREFACE

The federal uranium enrichment enterprise is an enormous commercial operation—the largest uranium enrichment business in the world, controlling billions of dollars in nuclear fuel contracts, and serving the vast majority of U.S. nuclear utilities as well as many foreign utility customers. But the enterprise is in deep trouble. Although legally required to recover its costs, unrecovered costs now exceed $10 billion. The government has adopted a contract that contains unlawful features precluding cost recovery.

Billions of dollars in additional costs are expected. The Department of Energy (DOE), the agency administering the program, has not accumulated any funds to pay for environmental clean-up and decommissioning liabilities. Estimates for these liabilities begin at $4 to $6 billion and range upward. DOE's domestic customers, who insisted on the policies that have led to the $10 billion in unrecovered costs, threaten to purchase nuclear fuel from foreign suppliers unless U.S. taxpayers bail out the entire program.

The Senate Energy and Natural Resources Committee at least six times in the past four years has reported legislation, or sponsored amendments to unrelated bills, to place these liabilities on taxpayers and to provide additional bail-outs demanded by the utility industry. Further, the Committee-supported legislation would reorganize the federal enrichment enterprise to relieve DOE of its obligation to protect the interest of U.S. taxpayers in the future.

The House of Representatives has rejected each of the Senate's proposals. To stimulate House action, DOE commissioned a $2.5 million "independent analysis" by an industry consulting firm, Smith Barney, Harris Upham & Co. Although the Smith Barney report ostensibly provides information to clarify the public debate on the issues, the report was initially withheld from the public. DOE released only a three-page "Executive Summary," parroting in conclusory fashion much of the DOE's failed policies. It offered neither new ideas nor plausible solutions to relieve taxpayers of the continued burden of unnecessarily subsidizing the DOE uranium enrichment program. After considerable delay, the agency released a "sanitized" version of the Smith Barney report. Data understood to undercut DOE's conclusions was omitted from the publicly released version of DOE's report. In the fashion of a red herring, the secret report has been used only as a purported foundation for misleading leaks, like the recent erroneous suggestion in the Washington Post that the enterprise made a "profit" in 1989.*

There are many alternatives to the DOE/utility industry bail-out proposals. Taxpayers need not be, and should not be, subsidizing nuclear fuel for nuclear utilities. The only ingredients needed to pursue these alternatives are political backbone and will, for all non-bail out solutions are opposed by powerful special interests seeking further and unwarranted taxpayer subsidies.

The DOE enrichment program has been gravely mismanaged, leading to heavier and heavier liabilities for U.S. taxpayers. Reform of the program is clearly needed. But institutionalizing taxpayer losses does not constitute "reform." Reform requires either (a) enforcement of the full cost recovery requirement of existing law, or (b) directing the program to maximize profits from the sale of enrichment services, coupled with freeing it from the constraints that currently preclude it from doing so.

Taxpayer losses from this program are real and mounting daily. Genuine reform is urgently needed. Unless something is done, taxpayers will be left holding the bag for all unrecovered costs and for all decommissioning liabilities, notwithstanding clear requirements of existing law to the contrary. Moreover, all the remaining assets of the program will have been dissipated.

Tracking the Department of Energy's Unrecovered Costs and "Write-Off's"

October 1, 1982. The "government investment" was $6.557 billion. (DOE 1983 Report.)

September 30, 1983. The investment stood at $6.936 billion. (DOE 1983 Report.)

October 1, 1983. The investment was given as $6.103 billion. (DOE 1984 Report.) According to the 1984 Report, $900 million in cash and unpaid obligations was removed from "government vestment."

April 1, 1984. DOE moved $1.2 billion to a "Reserve for Unrecoverable Capital Cost," and ceased recovering depreciation or imputed interest on this amount. (DOE 1984 Report.) This left $5.469 billion in "government investment" on which DOE purported to recover depreciation and imputed interest as of Sept. 30, 1984. (DOE 1984 Report.)

September 30, 1985. DOE "wrote-off" as "loss on capital investment" $2.589 billion for the Gas Centrifuge Enrichment Project and $1.2 billion for the gaseous diffusion plants, as well as $0.303 billion of imputed interest on same, for a total write-off of $4.092 billion. This reduced, unlawfully, the "government investment" from $7.486 billion to $3.394 billion. (DOE 1985 Report.)

January 29, 1986. DOE represented that it intended to "repay the Treasury, over a reasonable period of time, $3,457 million of the $7,522 million in prior unrecovered costs remaining as of September 30, 1985." 51 Fed. Reg. 3629 (Jan. 29, 1986).

April 7, 1987. Unrecovered DOE costs (government investment) were at least $8.8 billion. Statement of Keith Fultz (GAO), before the Energy & Power Subcomm. of the House Energy and Commerce Comm., released April 8, 1987.

September 30, 1988. The government investment stood at $9.6 billion. Statement of K. Fultz (GAO), in Hearings before the Energy Research and Dev. Subcomm. of the House Science, Space & Tech. Comm., 101st Cong., 1st Sess., at p. 40 (1989). Due to imputed interest, the investment is now greater than $10 billion.

January, 1989. DOE proposed an enrichment budget predicated on the adoption of legislation removing any obligation to repay the Treasury for "government investment," i.e., essentially a complete "write-off." That appears to be DOE's current position.

Senator WENDELL FORD: "Which strategy most nearly approaches the one that the [Department of Energy] is now pursuing [with respect to its uranium enrichment business]?"

Booz, Allen & Hamilton, consultants: "The current approach . . . is a milk the business approach in that investments are not being made to develop the low cost approach or technology in the future. It is an interesting combination, actually, of that plus not maximizing the price but reducing the price. So it is sort of a poorly executed harvest strategy . . . the enterprise would hold prices up while not investing and maximize returns to the Treasury. What [the Department of Energy] is doing is reducing prices to hold customers, but not offering the customers long-term viable business. So they are both reducing the value of the enterprise and they are not investing in the future.[1]

I. THE FEDERAL URANIUM ENRICHMENT PROGRAM: A CASE STUDY IN MISMANAGEMENT

The federal government, doing business as the Department of Energy (DOE), owns and, through a contractor,[2] operates the only American facilities capable of enriching uranium for use in civilian nuclear reactors.

The DOE uranium enrichment business has been a financial disaster. The General Accounting Office (GAO) has calculated that during the 1980's the DOE enrichment enterprise accumulated approximately $10 billion in "unrecovered costs" associated with supplying uranium enrichment services to foreign and domestic electrical utilities.[3] Also, according to DOE and GAO figures, the total cost to bring the three existing DOE enrichment facilities into compliance with applicable environmental laws exceeds $2 billion,[4] and the cost to decommission the three facilities[5] (one of which[6] has already been permanently shut down) may exceed $4 billion.[7] DOE's consultants, Smith Barney, have indicated that the DOE estimates may well be low by an order of magnitude—that is, environmental remedial action and decommissioning expenses may exceed $20 billion. The "sanitized" version of the Smith Barney Report states that "the ultimate liability on the environmental side is likely to be a number far larger than anyone has officially acknowledged to date."[8] DOE has failed to accumulate any reserves to pay for these enormous liabilities.[9]

In short, the tragic truth is that total value of these "unrecovered costs" and unfunded liabilities is at least $16 billion and "likely . . . a number far larger." A $16 billion figure thus represents a conservative (i.e., probably low) estimate of the amount of taxpayer subsidy thus far provided for a program that by law was (and still is) supposed to recover all of its costs and not operate with taxpayer subsidies.[10]

While DOE's foreign-government-owned competitors, Eurodif and Urenco, were charging $170 to $190 per "SWU" (the unit measuring enrichment services), DOE developed and in 1984, with its customers, signed a "utility services enrichment contract" ("USEC"). Under the USEC, DOE dropped its price to a level now averaging well below $120/SWU. DOE also guaranteed a low maximum ceiling price for ten years. At the new DOE price level, or at the somewhat higher guaranteed ceiling price, the agency cannot recover its costs. Thus it cannot accumulate adequate reserves to cover environmental and decommissioning costs, nor undertake appropriate investment programs. As experts from Booz, Allen & Hamilton declared in congressional testimony in 1987, the agency was following a "poorly executed harvest strategy" that neither made money for the Treasury, nor fostered a viable enterprise for the future.[11] Another way to state the Booz, Allen & Hamilton conclusion is that DOE is simply running the enrichment program into the ground at taxpayer expense.

In a subsequent legal opinion, GAO determined the guaranteed prices to be unlawful under the full cost recovery requirement imposed by law.[12] GAO has observed that DOE's 1984 contract accordingly violated the requirement that the agency recover its costs.[13] In order to support its unlawfully low prices, the agency purported to "write-off" (ignore) several billion dollars in investments it had made in a new plant and in various upgrades for the benefit of civilian uranium enrichment customers.[14] If an agency is lawfully required to recover costs, it cannot avoid that requirement merely by declaring that it is ignoring those costs. In

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***Energy Department Negotiates for Cheaper Soviet Uranium, Post, June 16, 1990, p. A4.**

[1] footnotes at end of article.

sum, DOE not only has failed to collect roughly $16 billion in unrecovered costs and accrued liabilities, but also, according to GAO, has failed to act in accordance with law.

Large losses continue

The domestic uranium enrichment program has been a major loser. It has been operated in neither a lawful nor business-like fashion. The losses have been enormous and the hemorrhage continues. Roughly a half billion to a billion dollars are being lost each year. This loss represents a continued and growing taxpayer subsidy.

Although faced with too much capacity, even after the shut down of the Oak Ridge plant, the agency is being lobbied by government contractors, domestic utility customers and the communities harboring the three existing enrichment plants to build another new enrichment plant based on so-called AVLIS (atomic vapor laser isotopic separation) technology.[15] DOE's prior venture in constructing additional capacity in the face of little market demand, the GCEP (Gas Centrifuge Enrichment Project) facility at Portsmouth, was a total disaster. DOE belatedly cancelled that boondoggle only after accruing almost $3 billion in losses for taxpayers. Estimated costs for AVLIS, a technology not yet tested on a commercial scale, are comparable to or greater than the marginal costs of operating the current gaseous diffusion plants.[16] No private interests have stepped forward to share, much less bear, the risks associated with this new "son-of-GCEP."[17]

Restructuring the program to halt the growing loss to taxpayers, to recover decommissioning costs, and to wean the program from its current unmitigated dependence on taxpayer subsidies is vital. The program should have been restructured years ago.

"But such mistakes are not new; history is full of the errors of states and princes."[18]

II. HOW FEDERAL URANIUM ENRICHMENT POLICY COLLAPSED

A. Some basics

There are two significant isotopes of uranium in nature: U235 and U238. U235 is much more readily fissionable, but it comprises only about 0.8 percent of natural uranium. The U235 content of a given batch of uranium must be increased, or "enriched," to the level of 2 to 4 percent for use in commercial nuclear reactors. Several technologies currently exist for purposes of enriching uranium. The initial technology, gaseous diffusion ("GD"), involves pumping uranium hexafluoride (UF6) gas through innumerable porous membranes. This technology requires large plants and significant quantities of electrical energy. A more recent technology, the gas centrifuge, involves spinning UF6 at very high speeds in a centrifuge, and uses less electrical energy. A new and currently commercially unproven technology relies on atomic vapor laser isotopic separation (AVLIS). However enriched uranium is produced, it is sold in units called "SWU's," which is short for "separative work units."

B. A brief history of the Federal program

The U.S. government emerged from WWII owning the only uranium enrichment facilities in the world: the three GD plants at Oak Ridge (Tennessee), Paducah (Kentucky) and Portsmouth (Ohio). At that time, private ownership of "enriched" uranium was unlawful.[19]

Wishing to encourage expansion of reliance on nuclear-generated electricity, Congress in 1964 adopted the Private Ownership Act. That statute among other things amended the Atomic Energy Act of 1954 to permit private ownership of enriched uranium.[20] Although Congress provided for private ownership of nuclear fuel, the legislation envisioned continued federal ownership of the three uranium enrichment plants. The new law provided that the owner of the plants, then the Atomic Energy Commission (AEC), would enrich uranium for civilian customers for a fee. This concept was known as "toll enrichment."

The key statutory language governing the provision of enrichment services was contained in section 161v. of the Atomic Energy Act of 1954, 42 U.S.C. §2201v. This language called for recovery of the costs of providing uranium enrichment services. More specifically, the statute currently requires that "any prices established under this subsection shall be on the basis of recovery of the Government's costs over a reasonable period of time."

The Atomic Energy Commission, with the approval of the powerful Joint Committee on Atomic Energy of the U.S. Congress,[21] provided that the cost recovery requirement applied to both direct and indirect costs, including depreciation and a return on investment. Under the "Conway Formula," worked out with the Joint Committee, non-government customers were required to pick up all depreciation costs when private toll enrichment began absorbing 75 percent of the capacity of the enrichment plants.[22] That point was reached in 1976.[23] When the Atomic Energy Commission appeared to diverge from this basic approach, Congress amended section 161v. in order to confirm an opinion by the General Accounting Office[24] that the statute required the federal government to price uranium enrichment services so as to secure full cost recovery.[25]

Forecasting a dramatic increase in the demand for electricity and the use of nuclear power, the Atomic Energy Commission and its successors, the Energy Research and Development Administration (ERDA) and subsequently DOE, pursued a number of policies that have profoundly affected today's nuclear fuel market. AEC and its successors adopted a major program to expand uranium enrichment capacity. This included two major elements: (1) the "CIP/CUP" (Cascade Improvement Project/Cascade Upgrade Project) upgrade of the three existing GD enrichment plants at a cost in excess of $1 billion, and (2) the development and, until 1984, construction of a gas centrifuge enrichment plant (GCEP), at a cost exceeding $2 billion.

All this construction was undertaken with the support of the nuclear utility industry, and at its behest. Spokesmen for the utility industry argued strenuously for expansion of enrichment capacity, asserting that the risks of not having adequate enrichment capacity exceeded the risks of having surplus capacity. For example, in 1974, the major utility trade association, Edison Electric Institute (EEI), urged more federal investment in enrichment capacity, testifying that "the economic penalties that would be imposed by a shortfall of enrichment capability far exceed the costs that would be associated with temporary oversupply."[26]

When GAO warned against incurring the high costs and risks of building new enrichment plants in the face of uncertain demand, it was harshly criticized by spokesmen for the nuclear utility industry for raising these doubts.[27] In their testimony supporting the $10 billion federal centrifuge program in 1978 against GAO objections, the nuclear utilities testified that "the need to proceed rapidly with the planned . . . plant is urgent and cannot be overemphasized."[28] Ironically, the same industry and its spokesmen now harshly criticize GAO for suggesting, in effect, that the utilities who urged the costly policies at issue here now bear more of the costs which their policies provoked, rather than seek to place all those costs on the taxpayer.[29] The nuclear utility industry continued to support the construction program until the centrifuge was canceled in favor of development of a supposedly even more promising technology, AVLIS.[30] All the costly construction sought by the utility industry is now unneeded capacity.

The AEC also required its toll enrichment customers to obtain "long-term fixed commitment" (LTFC) contracts. The LTFC contracts obligated utility customers to purchase specific quantities of uranium enrichment services whether those services were required or not. This tended to insulate the federal uranium enrichment program in the short term from swings in demand for enrichment services. It also risked creating a glut of enriched uranium if growth in demand did not materialize. Moreover, partly because the federal government did not wish to be responsible for assuring adequacy of enrichment capacity for foreign customers, and partly to encourage the creation of non-federal sources of enrichment, the government declared a moratorium on new contracts. This encouraged the development of competing enrichment facilities by two European government consortia. The two competitors were Eurodif, dominated by France and operating with GD technology, and Urenco, comprised of West Germany, Britain, and the Netherlands, and operating with gas centrifuge technology. The policy of encouraging the development of foreign competitors also carried risks if forecast demand increases proved overly optimistic.

The original forecast of an explosion in demand for enrichment services in fact was excruciatingly wrong. Demand for electricity did not expand as forecasted and the proportion of electrical energy supplied by nuclear facilities did not grow as predicted. Rather than the projected 1,000 new reactors in the U.S. by the turn of the century, the number instead will be approximately 100. A number of factors contributed to this dramatic shortfall in demand, including construction delays and the adverse reaction to the accident at Three Mile Island. In any event, there was a total cessation of orders for new domestic reactors after 1978, and a flood of cancellations for reactors on order.

Many utilities, which were locked into LFTC contracts, accumulated large inventories of nuclear fuel, both in the form of enriched uranium and in the form of natural uranium concentrates. These excess inventories tended to be dumped in the so-called "secondary market," depressing "spot market" prices for both uranium and enrichment services.[31] DOE's foreign competitors also offered limited quantities of surplus production on the U.S. market at prices below those on their home market, leading to further downward pressure on spot market prices.

After desultory efforts to modify the LFTC contracts, DOE in early 1984 resorted to a major overhaul of its program. Unfortunately, the overhaul, while benefiting nuclear utilities with lower prices, wreaked havoc with the enrichment program's financial structure. Additionally, the overhaul disregarded legal requirements embodied in section 161v. of the Atomic Energy Act to protect taxpayer interests.

DOE's 1984 overhaul of its program focused on three major initiatives. First, DOE cancelled the GCEP project after almost $3 billion in costs had been accrued. The agency permanently suspended recovery of those new wasted costs from its customers. As GAO subsequently determined, this unilateral "write-off" was contrary to the full cost recovery requirement embodied in section 161v. of the Atomic Energy Act. As a corollary to the cancellation of GCEP, DOE determined to pursue development of the new AVLIS enrichment technology instead.

Second, DOE engaged in a related series of cost-cutting moves. The agency permanently shut down its Oak Ridge gaseous diffusion plant, and drastically curtailed operations at its other enrichment plants in preference for selling enrichment services out of inventory. In addition, DOE ultimately entered into a settlement (costing over $1 billion) of "take or pay" electricity contracts with Tennessee Valley Authority. Some of these cost-cutting actions involved significant taxpayer subsidies. For example, rather than operate its plants, DOE sold fuel from its stockpile at its average acquisition price.[32] That price was a fraction of the actual market price.[33] DOE "booked" this "fire-sale" of taxpayer assets as a savings, and purported to pass the savings on to its customers in the form of reduced prices. In fact, the savings was simply a below-market price sale and thus a taxpayer subsidy.

Third, DOE issued a new uranium enrichment contract, known as the "utility services enrichment contract" ("USEC"). LTFC contract holders were permitted to shift into the USEC without penalty. The USEC guaranteed a maximum ceiling price, required that only 70 percent of enrichment requirements be purchased from DOE, loosened cancellation provisions, and provided other benefits for DOE customers. DOE also cut its enrichment prices. Under the USEC, the guaranteed ceiling price has been as low as $119.10.[34] The actual price for each customer depends upon the discount negotiated for customers who obtain 100 percent of their requirements from DOE rather than the minimum of 70 percent. The actual average contract price has been less than $109.[35] This price level does not permit recovery of DOE's costs of providing uranium enrichment services, unless, of course, enormous "write-off's" for plant and equipment are permitted. Moreover, this price level excludes any funding for the enormous decommissioning expenses associated with the three existing enrichment plants. If such "write-off's" are taken, and if no funds are collected for decommissioning expenses, then taxpayers in effect are massively subsidizing the DOE uranium enrichment program.[36]

The problem can also be examined on a per unit basis. In response to questions asked by House Interior Committee Chairman Udall, GAO indicated that DOE's cost per SWU were about $131 in fiscal 1986, but the agency's average base price was $119. The base price was thus $12 lower than average production costs. GAO noted that these cost figures did not take into account depreciation or reasonable return on government investment by DOE. If the latter costs were taken into account, per unit costs would be $172.[37] DOE was thus losing $43 ($172–$119) on each SWU sold at base price. Actual losses were higher for 100 percent customers, because the average price for such customers was less than the base price. Sales of 10,000,000 SWU per year yields an annual taxpayer loss (or taxpayer subsidy for the industry) of at least $430,000,000 per year. This loss is continuing and probably accelerating. A recent account in the Washington Post[38] suggests DOE achieved a substantial profit in 1989. This suggestion ignores unlawful DOE "write-off's" and is based on a menage of other "creative accounting" techniques.

C. DOE as a rogue agency: More on the unlawfulness of the USEC

When DOE issued the USEC, it also overlooked a variety of other legal requirements. Procedurally, section 161v. obligated DOE to provide enrichment services only in accordance with written "criteria," or rules.[39] The USEC contained features, such as guaranteed ceiling prices, that GAO found violated the then-extant criteria.[40] Additionally, the USEC is a rule itself. It is generally applicable, and as a generally applicable action, meets the definition for rules in the Administrative Procedure Act, 5 U.S.C. §551, et seq. In general, federal rules and regulations may only be adopted after notice and an opportunity for public comment, absent an exemption. There is no exemption from notice and comment rulemaking requirements applicable to the USEC. DOE nonetheless issued the contract without any compliance with notice and comment rulemaking procedures.[41]

Substantively, the new contract overlooked two key aspects of section 161v.: the full cost recovery requirement and the so-called "uranium industry viability proviso." DOE's substantive slip-up with respect to the uranium industry viability proviso spawned a significant intra-industry squabble that has a bearing on the full cost recovery requirement. That prolonged dispute, which lasted from 1984 until the U.S.-Canada Free Trade Compact was adopted in 1988, merits some examination.

Until the adoption of the Free Trade Compact, section 161v. required the federal government to withhold enrichment services from foreign-source uranium destined for domestic end use to the extent necessary to "assure the maintenance of a viable domestic uranium industry." The domestic uranium industry, which was suffering from the same inventory overhang which troubled DOE, viewed the USEC with dismay. First, the USEC allowed unrestricted enrichment of foreign-source uranium for domestic end use. The effect of allowing enrichment of foreign ore for domestic end use was to allow cheap foreign feed material unrestricted entry into the U.S. domestic market (there were, and are, no tariff barriers). Second, the USEC was designed to encourage utilities to employ excess inventory for up to 30 percent of their requirements. The effect of encouraging reliance on inventories of enriched uranium was to decrease demand for natural uranium as an input to enrichment plants.

Caught between inexpensive imports and policies encouraging reliance on inventory, demand for domestic uranium evaporated and prices plunged. U.S. domestic uranium production plummeted from 40 million pounds per year to under 10 million pounds, and employment dropped 90 percent (from 21,951 in 1979 to 2,141 by the end of 1988).[42]

Several smaller companies in the domestic uranium industry sued DOE, calling for invalidation of the USEC on the basis of the procedural and substantive deficiencies indicated above. They also called for limitations on enrichment of foreign-source uranium for domestic use. The United States District Court for Colorado eventually issued a summary judgment declaring the USEC illegal for failure to comply with the criteria/rulemaking requirement, especially as related to requirements for full cost recovery.[43] The district court subsequently issued another summary judgment requiring DOE to limit foreign-source uranium for domestic end use.[44]

DOE, in an effort to patch up an otherwise untenable legal position, quickly proposed[45] and, after considerable comment, adopted[46] revised uranium enrichment criteria. The new criteria purportedly ratified the illegal USEC and ostensibly vested broad discretion in the agency to do whatever it wished with regard to cost recovery. DOE also appealed the adverse rulings by the district court to the U.S. Court of Appeals for the Tenth Circuit. The Tenth Circuit vacated the judgment invalidating the USEC on the procedural ground that the uranium companies had not demonstrated "standing to sue."[47] DOE, however, was unsuccessful in its efforts to persuade the U.S. Court of Appeals to uphold the contract on the theory that the rulemaking had cured all deficiencies. The court observed that DOE's rulemaking efforts would not insulate the contract if the rules themselves violated section 161v.[48] GAO has issued a letter indicating that the new DOE rules in fact violate section 161v.[49]

The Tenth Circuit affirmed the lower court's judgment in favor of enrichment limitations.[50] DOE took another appeal to the Supreme Court. The high court vacated the judgment requiring enrichment limitations on the ground that the uranium companies had not demonstrated (they had not attempted to demonstrate) that the limitations would do any substantial good.[51] Before this issue could be tried, Congress adopted the U.S.-Canada Free Trade Compact. The Compact effectively repealed the "uranium industry viability" proviso in section 161v. of the Atomic Energy Act with regard to uranium from Canada.[52] The method of this repeal was to treat Canadian ore as equivalent to U.S. ore, and thus to permit unlimited importation of Canadian material. Since the bulk of uranium imports into the U.S. are from Canada,[53] enrichment limitations directed solely at non-Canadian foreign uranium would be ineffective. The uranium industry voluntarily dismissed its litigation.[54]

This episode suggests that if a group with standing sued DOE in order to enforce the full cost recovery requirement of section 161v. of the Atomic Energy Act, it would quite likely obtain, as elements of the domestic uranium industry did, a judgment declaring the basic tenets of DOE's enrichment program unlawful. This raises the question why no one has brought such a suit. The answer is simple. Cost recovery is inherently a taxpayer issue. No special interest group is interested in enforcing it. Unfortunately, the Supreme Court is widely regarded as having limited the standing of taxpayers for proposes of suing the U.S. government to the very limited context of enforcing constitutional guarantees of separation of church and state, absent a specific statutory provision conferring standing.[55] Because there is no express statutory provision authorizing taxpayer standing to sue with respect to section 161v., the DOE enrichment program has become a captive of special interests (i.e., its customers and contractors), and the cost recovery requirement has been flagrantly breached.

What to do About the USEC

The General Accounting Office repeatedly has indicated that the Uranium Services Enrichment Contract (USEC) contains provisions which are *ultra vires* under section 161v. of the Atomic Energy Act. "[W]hen an agent of the government enters a contract that does not satisfy statutory or regulatory conditions, the courts cannot bind the government to the contract." *Augusta Aviation, Inc.* v. *United States*, 671 F.2d 445, 449 (11th Cir. 1982). *See also Schweiker* v. *Hansen*, 450 U.S.

785, 788 (1981); *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380, 386 (1947).

To date, all the Senate Energy Committee bailout proposals either directly "ratify" the illegal USEC, or indirectly ratify it by repealing the full cost recovery requirement of section 161v. of the Atomic Energy Act. So long as this approach is taken, any legislation dealing with enrichment will constitute a bail-out at taxpayer expense.

There are alternatives. For example, Congress could require DOE to renegotiate the contracts to provide full cost recovery. Alternatively, Congress or DOE could impose a surcharge on enrichment adequate to secure full cost recovery. As a minimum, Congress could confer standing on taxpayers to sue to enforce the full cost recovery provisions in section 161v. of the Atomic Energy Act.

D. The DOE program burns while Congress fiddles

As outlined above, much has happened since the advent of the USEC in 1984. However, the events recounted have masked a languishing program. For the past six years, DOE has failed to recover costs as required by section 161v. Those unrecovered costs can now be conservatively estimated at a minimum of $10 billion. DOE also has failed to collect a dime for decommissioning the three uranium enrichment plants. One of these plants, at Oak Ridge, has already been shut down. According to DOE documents, environmental remedial action and decommissioning costs at the three plants could total $4 billion to $6 billion.[56] Smith Barney, Harris Upham & Co., the consultants retained by DOE to "independently analyze" the federal program, have publicly indicated that the actual costs will likely be far greater.

Illegal Prices Lose $4 Billion Since 1984

DOE's pricing strategy not only has failed to respond to its costs and liabilities but also has taken a rather bizarre approach to its competitors. DOE has acknowledged that its competitors are charging prices of approximately $170 to $190 in their domestic markets,[57] but is nonetheless pricing its product at approximately one-half to two-thirds that level across the board.

For each dollar that DOE cuts its price, it loses approximately $10 million, based on average private sales of 10,000,000 SWU's per year. If DOE matched its foreign competitors' general price level, then the agency would likely have earned approximately $600 million per year in additional funds since 1984. Under this analysis, DOE's pricing strategy has caused total losses to taxpayers, not counting interest, to exceed $4 billion. Perversely, DOE's pricing strategy appears designed to maximize losses rather than profits. It literally is transferring whatever value once existed in the enrichment enterprise to its customers. It is using up—harvesting—the program without any payback to the program's owner, the U.S. taxpayer.

DOE professes that it must cut its prices to meet competition. There are two immediate responses to DOE's superficial claim. First, while the agency may have to reduce prices in the future when its current contracts expire, it only serves to lose money to reduce prices, as DOE has done, for all agency customers under their current long-term contracts. Second, DOE's de facto paramount objective is preserving or even increasing market share. But the objective in a competitive market is not to cut price to prevent any and all losses in market share.[58] Instead, the objective in a competitive market is to maximize profits and the value of the enterprise. This means DOE should charge as much as possible without resulting in so great a loss of customers as to reduce overall revenues in excess of marginal costs.

From a taxpayer standpoint, a competently-managed DOE since 1984 should have charged much more in order to maximize profits instead of pursuing the current approach of enhancing losses. This not only would make more money now, but also would have left the agency in a stronger financial position when its long-term contracts expire and it really does face competition. Maximizing profit only makes good business sense, but at this point is the only strategy consistent with federal law.

Among other things, two factors stand out as indicators that DOE could charge higher prices and "make them stick" to a degree sufficient to make more money. First, utilities will sustain penalties for canceling their enrichment contracts on less than ten years' notice. This permits DOE flexibility to charge more, except for the constraint of the illegal guaranteed maximum ceiling price. Second, and in any event, DOE customers cannot cancel and go elsewhere unless there is somewhere else to go. With the possible exception of the Soviet Union, enrichment capacity elsewhere is limited, and most excess world capacity is controlled by DOE. Even if DOE priced the services very high, there would be limited capacity abroad to service enrichment demand for the next five to six years. After that time, competitors might be able to bring on line additional capacity, if they had sufficient long-term commitments from customers to justify that move. But given this scenario, a strategy to minimize taxpayer losses would be to raise prices now, and to prepare the business to offer substantial price cuts in the future.

Rather than pricing high now when cost recovery is possible, DOE has cut its prices, leaving hundreds of millions of dollars on the table. This in turn has jeopardized the agency's ability to offer price cuts in the future when they in fact may be necessary, unless those cuts are further subsidized by taxpayers. The agency continues to roll up huge future liabilities or decommissioning its existing plants, and in effect is failing to provide anything to the Treasury for depreciation or return on investment in those plants. The entire program is being run on the assumption that the taxpayer investment in the program—the plant, equipment, uranium inventory—is being furnished for free, and that taxpayers will assume virtually all of the costs associated with environmental remedial action and decommissioning the plants.

Experts from Booz, Allen & Hamilton, in testimony before the Senate Energy and Natural Resources Committee in 1987, aptly summed up the current and on-going mismanagement of the program. They noted that the program is being run on the basis of a "sort of . . . poorly executed harvest strategy. . . ." In a well executed harvest strategy, the enterprise would hold prices up while not investing and maximize returns to the Treasury. What [DOE] is doing is reducing prices to hold customers, but not offering the customers a long-term viable business. So they are both reducing the value of the enterprise and they are not investing in the future.[59]

DOE is now reportedly exploring an arrangement with the Soviet Union to import into the United States uranium enriched in the Soviet Union for sale to U.S. facilities and for defense reactor systems, evidently to support a further cut in prices in a continued effort to maintain or to enhance market share.[60] This episode again illustrates the dismal results of DOE's pricing strategy since 1984. The agency has not recovered costs, it has operated on the basis of huge taxpayer subsidies, and it is evidently exploring reliance on Soviet enrichment services in order to cut its prices further. This basic approach, unless checked, means that under current policies, there will be no recovery of taxpayer losses from the federal nuclear fuel program.

"[H]e intends only his own gain [but] he is . . . led by an invisible hand to promote an end which was no part of his intention [i.e., the maximization of the wealth of the Nation]."[61]

III. THREE MODELS FOR RESTRUCTURING THE URANIUM ENRICHMENT PROGRAM

The fundamental objective for the uranium enrichment enterprise should not be to subsidize one or more of the special interests involved in the nuclear fuel industry. Instead, the basic goal should be to maximize the value of the enterprise for its owner, the federal taxpayer. In a free market system such as ours, value is determined by the market price of the enterprise. Currently, there are no buyers for the enterprise, even if it were offered for sale. Given the liability overhang for decommissioning costs, and the constraints posed by the USEC, the enterprise currently has a negative value, not unlike many Savings and Loans. The objective in the near to medium term for any restructuring should be to restore value to the enterprise without huge subsidies and assumptions of liability by taxpayers.

There are three basic models for restructuring the DOE uranium enrichment program in a fashion minimally compatible with taxpayer interests.

The first alternative is simply to get the federal government out of the uranium enrichment business, while maximizing revenues from the enterprise in order to offset the enormous unrecovered costs and decommissioning liabilities which the enterprise has accumulated. This approach, in the terminology of Booz, Allen, would encompass a "well-executed" harvest strategy.

The other two alternatives would involve reorganizing the program either (1) as a kind of utility serving other utilities, or (2) as a profit-maximizing competitive business. Mixing these latter two approaches together is a recipe for financial disaster and wealth destruction, precisely as we are currently experiencing with the federal program. Additionally, if the approach of profit maximization is adopted, some means must be incorporated to assure that this is not simply a subterfuge to impose liability for all or most of past operations on the federal taxpayer.

A. A "well-executed harvest strategy"

The basic assumption employed by the Senate Energy and Natural Resources Committee in framing its bail-out legislation for the uranium enrichment program is that the United States must retain a substantial, ongoing civilian uranium enrichment enterprise to serve U.S. and foreign nuclear utilities. This assumption is encouraged by spokesmen for key nuclear industry lobbying organizations like the Edison Electric Institute (EEI) and the American Nuclear Energy Council (ANEC). Both urge that the United States government retain enrichment capacity to serve civilian nuclear fuel needs. EEI and ANEC qualify that position by insisting that the government-supplied enrichment services be provided as "competitive" prices. In other words, EEI and ANEC, on behalf of the special interests which they represent, want U.S. taxpayers to bear all downside risks of loss if the federally-provided capacity is not "competitive."

The taxpayer guarantee sought by the nuclear utility industry is precisely the same genre as the taxpayer guarantee of deposits in Savings and Loan Associations. These guarantees allow private businesses to make more money by taking greater risks, while leaving taxpayers to absorb losses for fiscal fiascoes.

Is there any reason, other than the pleas of special interests, for the U.S. to retain a substantial, on-going civilian uranium enrichment enterprise? No. The chief reason advanced for a continued federal government presence is national security. This has two aspects: (a) maintenance of supply capabilities for military purposes and (b) non-dependence on foreign sources of supply for civilian need.

U.S. military needs are limited to approximately 1 million SWU per year for naval reactors, which, unlike civilian reactors, require highly enriched uranium (HEU). HEU needs are met through special circuits at the Portsmouth, Ohio enrichment plant. Obviously the U.S. will retain and operate those circuits even if the government withdraws from the civilian uranium enrichment business. Proponents of a bailout argue that it will be more costly to operate the HEU circuits absent a civilian program. This does not appear to be correct. First, defense enrichment is supposed to bear its own costs, and, according to GAO and DOE estimates, it has largely done so. Second, if there are going to be increased costs, they are effectively inevitable in any event. The same bailout proponents who insist that the civilian enterprise holds down defense-side costs argue for construction of a 9 to 10 million SWU AVLIS plant. Such a plant will not produce any HEU, but it will meet all civilian enrichment needs. This will inevitably lead either to an inefficient operation of the existing Portsmouth and Paducah plants, or to their closure. This means that the HEU cirucuits at Portsmouth either will be operated in conjunction with costly and inefficient civilian operations at Portsmouth, or with no civilian operations. In any event, defense-related costs, if they are going to go up, will go up.

There is also an excellent way to hold down defense costs by safeguarding against any latent inefficiencies caused by getting out of the federal civilian uranium enrichment enterprise. The U.S. could simply operate Portsmouth at high efficiency for a period of time to accumulate a stockpile of several years'—or even a decade's—worth of HEU requirements, then mothball the HEU circuits until they are needed again.

The national security argument as applied to civilian needs is even less convincing. The United States is more heavily dependent upon forms of energy other than nuclear. The government has nevertheless not nationalized the fuel sources for those forms. There is less of a national security reason for a federal presence in the ownership and operation in the nuclear fuel area than for coal, oil or natural gas.

The domestic nuclear utility industry claims that it will only buy "competitively" priced uranium enrichment services, and will thus rely on foreign sources if these sources are cheaper. This suggests that the nuclear utility industry sets a low value on retaining a "secure" federal source of supply, unless the industry does not have to pay anything for it (i.e., taxpayers subsidize it, and guarantee its availability regardless of costs). In any event, there is no evidence that a federal presence is necessary to assure a domestic source of supply. Several utilities are actively exploring construction of a private enrichment plant in Louisiana ("Louisiana Enrichment Services"), that will use foreign technology, be privately financed, and will not require any taxpayers subsidies.[62] This demonstrates that federal involvement is not required to assure the development of domestic sources of uranium enrichment for civilian reactors. Finally, any domestic energy security need could be met by mothballing the existing uranium enrichment plants, thus holding them in reserve.

Once the assumption that the U.S. government must provide civilian uranium enrichment services is recognized as a canard, the next question is what consequences follow. The most obvious solution is for the federal government to get out of the civilian uranium enrichment business. From a pragmatic point of view, any civilian uranium enrichment enterprise run by the federal government will be subject to manipulation by special interest groups. Government contractors will lobby for massive and economically-suspect construction programs like AVLIS. Resistance to these pleas, which are already supported by the communities and congressional delegations of Portsmouth, Oak Ridge, and Paducah (all of which hope to get the new contracts),[63] will be slight, because the U.S. taxpayers will be guaranteeing the enormous downside risks. Nuclear utilities will lobby for price cuts and supply guarantees, just as they have done in the past, with taxpayers again covering the difference between what the federal enterprise charges and its traditionally much higher actual costs. The only way to assuredly break this cycle is for the federal government to get out of the civilian uranium enrichment business.

Since the federal civilian uranium enrichment enterprise has run up enormous "unrecovered costs" and equally enormous unfunded liabilities for decommissioning the existing plants, the only logical way to get out of the business is to cut costs by ceasing all work on development and deployment of new enrichment technologies and to raise the prices charged by the enterprise to the highest levels possible. This strategy would maximize the current value of the federal uranium enrichment enterprise, return the most funds to the Treasury, and best protect the taxpayer from future subsidies and liabilities.

Because the political pressure to retain a federal presence in providing uranium enrichment services is so great, it is pertinent to examine circumstances under which that could be done without burdening taxpayers with astronomical costs and liabilities and enormous downside risks. There are two basic models for reorganizing the enterprise in a fashion that protects taxpayer interests: the utility model and the for-profit corporation model. Both will be discussed in turn.

The Current Value of DOE's Civilian Enterprise

In its supposedly independent analysis of DOE's civilian uranium enrichment program, Smith Barney estimates that the value of the enterprise is approximately $3 billion, if taxpayers assume all liability for future decommissioning costs and the entire $10 billion in "unrecovered costs" is written off.*

Although Smith Barney purports to advocate reorganization of the program as an on-going enterprise in corporate form, Smith Barney does not suggest that such a reorganization will enhance the value of the enterprise. The reason appears to be that the enterprise is hobbled, in Smith Barney's analysis, with the guaranteed maximum ceiling prices embodied in DOE's generic "utility services enrichment contract" (USEC). These prices prevent the enterprise from maximizing profit, regardless of its form. Organizing the enterprise as a corporation without doing something about USEC does not improve the current value of the DOE enterprise. Further, it suggests that, from an economic perspective, a well-executed harvest strategy makes as much money—with less risk—as attempts to maintain the DOE enterprise as an on-going business.

Smith Barney identifies only two actions which might improve the cash value of the federal uranium enrichment enterprise on an "on-going basis. The first action is for the federal enterprise to curtail its domestic operations, import Soviet uranium, and serve as a marketing agent for that uranium. According to Smith Barney, this would enhance the value of the enterprise by roughly $200 million.**

Smith Barney also suggests that investing in AVLIS would also enhance the current value of the enterprise by approximately $200 million. However, this favorable estimate of AVLIS is based on a string of assumptions that are open to question. First, the economic benefit of AVLIS is approximately ten years away and assumes that AVLIS will be a competitive source of production. Ten year forecasts in the nuclear fuel area have been terribly unreliable, especially in terms of projecting profitable federal government investments. Second, the advent of AVLIS will require the shut down of at least one additional existing gaseous diffusion plant, with the maturation of associated environmental remedial action and decommissioning liabilities. These liabilities more than wipe out any additional current value associated with AVLIS. If the best case for AVLIS is a mere $200 million enhancement to current value, it hardly seems worth the very great risks.

Another conclusion is obvious from the Smith Barney estimates. If the current value of the DOE enterprise, whether reorganized or not, is only $3 billion, then it is impossible for the enterprise to recover the civilian share of the totally unfunded liabilities for decommissioning, much less any of the taxpayer investment in the assets of the enterprise. Smith Barney has suggested that total decommissioning liabilities may equal or exceed $20 billion. The civilian share, based on the proportion of SWUs produced for civilian purposes to total SWUs, is almost exactly 50 percent, or about $10 billion. The net shortfall, if the enterprise is only worth $3 billion, is approximately $7 billion.

If Congress intends to avoid foisting all decommissioning liabilities on taxpayers, the Smith Barney report thus indicates that some sort of fee will have to be assessed against former, current and future DOE uranium enrichment customers.

B. The utility model

1. Some Background on Pricing by Utilities

The original federal enrichment program was conceived as a kind of utility serving other utilities. At the time of the adoption of the Private Ownership Act in 1964, the federal enrichment program was the western world's monopoly supplier of enrichment services. Because of the heavy investment required to enter the market, as well as technological and security requirements, the federal program not only was a de facto monopoly, but also appeared to be a kind of natural monopoly.[64]

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*The analysis in this section is based in part upon conversations with congressional staff who have reviewed the non-public version of the Smith Barney Report.

**This action would be compatible with a well-executed harvest strategy.

Investment decisionmaking and price setting of monopoly utilities are usually subject to government regulation. Ordinarily, regulated monopolists are limited to cost recovery, including depreciation, and a reasonable return on investment. Indeed, "nothing in public utility controls is more conventional, more securely established in regulatory methods, than the idea of a 'reasonable return on the value of a firm's existing plant.'"[65] For ease of expression, we will refer to this approach to pricing as the "regulated utility model."

Not surprisingly, the pricing regime for the federal program basically followed the "regulated utility model." Under section 161v. of the Atomic Energy Act, the program was to charge rates sufficient to recapture all its costs, including depreciation and a return on investment.

Regulation limiting a utility to recapture of cost plus a reasonable return on investment obviously limits the profit which a utility can derive from serving its market. In order to attract capital into a business whose upside gain is limited by public utility regulation, the investors are ensured against downside risk of loss. The ordinary assurance is that they will get a reasonable return on investment regardless. This is generally accomplished by requiring utility customers to purchase services from the utility at a price adequate to cover costs. This assurance appears to have been contemplated for the federal uranium enrichment program. In the event that "competition" from foreign government-owned enrichment facilities developed which would stress this structure, the Atomic Energy Commission indicated that it would adopt appropriate restrictions, either by regulation or by license conditions imposed on domestic nuclear utilities, to maintain the government's monopoly in the domestic market, and thus to assure a financially sound program.[66] In confirmation, representatives of the nuclear utility industry testified that they would pick up the costs of investment in enrichment plant and equipment, and urged that such investments be made notwithstanding the risk that the plant would not be needed.[67]

2. The Loss of the Appearance of Monopoly Power

Spurred by the moratorium on new enrichment contracts proclaimed by the federal government in the 1980's, foreign governments have emerged as potential sources of enrichment supply. This brings into question the necessity of applying the "regulated utility model" to the federal uranium enrichment program. If the federal uranium enrichment program is no longer inherently a monopoly, then it no longer needs to be subject to the "regulated utility model" unless there are important political reasons to continue the enterprise as a monopoly.

The chief political reason currently being advanced for continued treatment of DOE as some sort of monopolist, or at least for preventing the DOE enterprise from behaving as a profit-maximizing business, is "national security." In particular, some policymakers, including legislators and spokesmen for some DOE enrichment customers, frequently express concern about the uncertainties of relying upon foreign sources of enrichment for a variety of "energy security" or "national security" reasons. This concern is strongly echoed in the Smith Barney "Executive Summary," which speaks of assuring "a reliable and economic domestic source of enrichment services for commercial and military applications" on "national security" grounds.[68]

As already indicated, the entire "national security" argument for subsidizing DOE uranium enrichment capacity is hardly compelling. Some additional points are worthy of attention here. According to the June 16, 1990, issue of the Washington Post, DOE is actively negotiating with the Soviet Union to import Soviet-enriched uranium for U.S. utilities and for U.S. Navy reactors.[69] Interest in out-sourcing to the Soviet Union on the part of proponents of the national security argument is not compatible with insisting that federal operations be heavily subsidized on national security grounds. Even if there was no interest in Soviet supplies, the national security argument is internally contradictory and otherwise contrived. Both the federal government and the nuclear utility industry have permitted the domestic uranium industry to collapse, in preference for U.S. reliance on foreign sources of uranium. The government and the domestic utility industry have shrugged off the uranium industry's claims of national security importance. If U.S. "security" needs are insufficiently compelling to require steps to prevent the loss of domestic self-reliance for uranium, it is contradictory to claim "security" needs dictate self-reliance for enrichment, especially through a federal program.[70]

If DOE's domestic customers felt that a domestic enrichment program was critical, then they could either buy out the DOE program and privatize it, or at least stop threatening to turn to alternative suppliers unless taxpayer subsidies are continued for the existing program. The utility industry, which should be in a good position to judge energy security needs, professes an unwillingness to pay any "premium" to the federal enrichment program for security purposes, and instead insists on taxpayers underwriting that objective.[71] In essence, taxpayers are being asked to guarantee the nuclear utilities against the risk of loss due to the utilities' own potentially reckless conduct. This sort of federal guarantee is precisely what spawned the enormous Savings and Loan disaster.[72] It should not be repeated here. Guarantee against downside losses, as the utilities, Smith Barney, and others seem to want with the "national security" argument, must be avoided like the plague. They set the government up for loss of taxpayer funds with no commensurate gain. They amount to wealth destruction through special interest subsidization.

If there is a "national security" reason for assuring retention of a substantial enrichment capacity, then U.S. utilities should be required either to buy the program, or to guarantee payment of prices sufficient to assure that all government costs to provide the capacity are covered, whether the capacity is or is not used. If the U.S. is to be self-sufficient in enrichment capacity for energy security reasons, it certainly does not follow that the U.S. taxpayer should pick up the tab. If the federal program must be adequate for self-sufficiency for "energy security" reasons, then its customers should pay for it. Taxpayers should receive a reasonable return on their investment, in accordance with the "regulated utility model." The customers, not the taxpayers, should pay for any "security" guarantee.

In sum, all that accepting the "security" arguments means is that continued organization of the DOE enrichment program as a utility serving other utilities may be appropriate. This suggests application of the "regulated utility model," assuring taxpayers against losses, and not, as proponents of the security argument seem to think, assuring taxpayers of losses. The flip side of a utility's obligation to provide for customer needs is that customers must reimburse the utility for its costs. As applied here, this means that the federal government should require U.S. utilities to purchase enough of their enrichment needs from the federal enrichment utility sufficiently to cover its full costs, including a reasonable return on investment. Failure to do so amounts to a recipe for continued and growing taxpayer subsidization of a mature industry.

Although the "national security" argument is unpersuasive, there is one important political reason for treating DOE's program as a legal monopoly: that reason is to assure full cost recovery. DOE has run up over $10 billion in uncovered costs and liabilities that under section 161v. its customers should have borne. It is unfair for all these costs and liabilities to now be foisted on federal taxpayers. The enrichment entity, operating as a utility with market protection, could charge prices sufficiently high to recover the approximately $10 billion in unrecovered costs to date, as well as to recover sufficient funds to assure decommissioning of its existing plants. This is the only current political (and legal) justification for continued application of the "regulated utility model." Of course, the domestic utility industry is opposed to any recovery of past costs and liabilities, despite the very clear and compelling logic for doing so.

C. Reorganization as a profit-maximizing business

The federal uranium enrichment enterprise also could be organized as a for-profit corporation. Both DOE and the utility industry assert that the market for uranium enrichment services now is highly competitive and no longer a natural monopoly. Under classical economic theory, the most efficient means to allocate resources in a competitive market is by allowing each actor in the market to make the best possible deal and, in the course of doing so, to permit each actor to attempt to maximize its profit. Given the "competitive" nature of the market, an obvious alternative for operation of the federal uranium enrichment enterprise is as a profit-making entity.

There are two preliminary questions with regard to reorganization of the DOE enrichment program as a for-profit enterprise. First, in what form should the program be reconstituted? There are two basic options: (a) some variety of federal agency similar to the current DOE operation or (b) a corporation. The track record for the federal uranium enrichment enterprise as an "agency" is, in a word, miserable. Indeed, the poor history of federal involvement is a primary justification for urging that the U.S. government get out of the civilian uranium enrichment business. This itself suggests the desirability of a corporation form, if the federal government remains in the business. However, calling something a "corporation" is merely a name change. Without more, it does nothing to protect taxpayer interests, and may be a step backward. The "corporation," proposed by the Senate Energy and Natural Resources Committee, is a significant step backward.

In order to be effective, a corporation must have a clear goal—profit maximization—and a strong management centered in a board of directors. A genuine corporation with both attributes offers several advantages for a reformed federal uranium enrichment enterprise.

A corporate form with a fully functioning board can provide ready oversight and centralized policy direction for purposes of profit maximization. This is clearly superior to the oversight provided by Congress and the Executive Branch. Special interests are likely to be extemely energic in attempting to divert Congress and the Executive Branch from allowing any reorganized enrichment enterprise to profit maximize. The more insulated the enterprise is from special interest-driven "oversight" to prevent profit maximization, the better. Additionally, the corporate form is a proven vehicle for business activities.

Should such a corporation be owned by the government or by the private sector? Privatization of government-owned commercial enterprises is preferable because, among other things, it frees these businesses from unwarranted constraints and forced taxpayer subsidies imposed by special interest lobbying. However, DOE's Smith Barney consultants suggest that a buyer cannot be found for the DOE enrichment enterprise on terms that did not involve the assumption by taxpayers of virtually all liabilities and risks of liabilities associated with the current enterprise. Thus, privatization of the program now would amount to a massive give-away, coupled with a massive liability assumption by taxpayers. In order to privatize in a fashion comparable with taxpayer interests, the program must first be reorganized in order to staunch taxpayer losses and to create some value in the marketplace.[73]

Profitability will depend upon two basic factors: the market and management. For purposes here, the market is given. However, management is obviously a variable. A reorganized uranium enrichment enterprise must be managed to seize opportunities to profit maximize. In order to be so operated, management must have consistent and unequivocal directions and incentives to maximize profit. Additionally, obstacles to profit maximization must be removed. Finally, management must be accountable for failure.

The corporation must be instructed to maximize profit (or, perhaps more accurately value) for its owners. If this goal is eroded by the imposition of other goals, such as meeting some obscure energy security need,[74] maximizing market share,[75] increasing employment opportunities,[76] or constructing another unneeded enrichment plant,[77] the new corporation will simply serve as another vehicle to provide taxpayer subsidies to some special interest involved in the nuclear fuel business. To repeat, the goal of profit maximization must be clear, paramount and unequivocal in order for a corporate structure to be something other than a farce.

Additionally, management incentives must be adopted to favor profit maximization. Career advancement, and compensation, should be linked to achieving profit goals. Absent such incentives, management would too easily be diverted into simply building corporate fiefdoms, catering to parochial customer interests, or succumbing to political pressure to provide the customary subsidies to special interests.

However, stating that profit maximization is the corporation's goal will do no good if the corporation is saddled with all the baggage arising from DOE's failure for the past decade to operate in accordance with the full cost recovery requirement of section 161v. of the Atomic Energy Act. Even with the best incentives, the USEC as issued by DOE is an obstacle preventing any reorganized enterprise from charging true market prices. That contract guarantees a maximum ceiling price that is below the level needed to recover costs, and is inconsistent with profit or asset value maximization. Furthermore, DOE has failed to recover any funds for the multi-billion dollar costs associated with its massive decommissioning liability. Most likely, it will be impossible for the DOE program to recover these costs unless a significant portion of past enrichment services are recovered from prior customers through appropriate surcharges and user fees. If a reorganized corporation is to behave as a free market profit-maximizer, and not as a fig leaf to "forgive" billions in "unrecovered costs" (tantamount to unlawful taxpayer subsidies), the reorganized enterprise must be carefully structured to take into account DOE's past failure to recover costs and to reserve for future liabilities.

Finally, for any reorganization to work, steps must be taken to assure that management is accountable. The key reason that section 161v. of the Atomic Energy Act did not work to assure cost recovery was lack of accountability by DOE management. Managers of the program are currently not responsible to a board of directors. Congressional oversight is a poor substitute because it is fractured between two Senate and three House authorizing Committees, coupled with the Senate and House appropriations committees. When "control" is so diffuse, it is questionable whether there is any control at all. In any event, congressional "oversight" is much more suited to resolving trade-offs between or for special interests. It is not suitable to assure profit maximization.

Another ingredient necessary to assure profit maximization is an independent enforcement mechanism. Unfortunately, no mechanism equivalent to a shareholders' derivative lawsuit is currently available to hold management accountable to taxpayers. As noted, under Supreme Court decisions, taxpayer standing to sue appears extremely limited, absent a specific congressional authorization. For a reorganized enterprise to flourish, management must be unequivocally subject to control by a board of directors, and explicit provision should be made for enforcing profit-maximization by providing for the equivalent of a shareholders' derivative suit; i.e., taxpayer standing to sue.

Has DOE Made a Profit?

In an article published in June of this year, the Washington Post reported that the DOE civilian uranium enrichment enterprise had purportedly made hundreds of millions of dollars in "profits." (Post, June 16, 1990, at A4.) In response to an NTUF FOIA request, DOE indicates that the only source for this Post claim is the Smith Barney Report. The Smith Barney Report—in step with the nuclear fuel industry—advocates, on a "policy" basis, recalculation and taxpayer assumption of all the $10 billion in "unrecovered costs" associated with the program.* The Smith Barney Report also tracks the industry line that taxpayers should assume all liability for decommissioning the federal uranium enrichment plants, which the Report suggests will be far higher than all official estimates to date. If taxpayers pick up all past unrecovered costs and all decommissioning liabilities, then, with a few more questionable assumptions, the enterprise has generated a "profit" in a creative accounting sense. An entity which has lost billions and incurred billions in unfunded liabilities has hardly generated a "profit." The Post fell for a ruse.

"A political system of interest-group bargaining will almost certainly result in very large inefficiencies by society in the use of its available resources. For example, each interest group will face the following incentive: If government can be pressured to provide greater goods and services for that particular group, the full benefits will flow to the group. Yet, the costs are likely to be much smaller, because the burden of taxation to pay for the benefits will be spread over the full body of taxpayers. Each interest group will typically have a strong incentive to demand as much in goods and services from government as it can get. . . . [Under this regime,] government would tend toward ever-growing budget deficits. . . . [B]oth the absolute magnitude and the distribution of goods and services provided by government [under this regime] are likely to be irrational."[78]

IV. CONGRESSIONAL EFFORTS TO DATE HAVE BEEN COUNTERPRODUCTIVE

The Senate Energy and Natural Resources Committee has fashioned a variety of bail-out proposals over the past five years. Each proposal:

(1) repeals the one provision in current law ostensibly protecting taxpayer interests, namely, the full cost recovery portion of section 161v. of the Atomic Energy Act.

(2) in effect ratifies the USEC, thus saddling any new enterprise with a contract guaranteeing ceiling prices below the level of cost recovery, and otherwise encumbering it so as to preclude profit maximization.

(3) has vague language concerning the goal of maximizing profit, and at the very least mixes that goal with alternative goals, thus raising the probability (if not the certainty) that any new entity would quickly be diverted to the service of special interests rather than the public interest.

(4) forgives all but about $364 million of the $10 billion in unrecovered costs.[79]

(5) encourages the reorganized enrichment entity to raise further capital by borrowing $2 billion, thus raising the possibility of yet further taxpayer bail-out demands when the new enterprise goes bankrupt as the existing program under similar policies has.

(6) purports to establish a fund to accumulate a reserve for decommissioning costs, but fails to include any mechanism to generate, much less assure, any significant revenues for that fund.

The "Write-Down" to $364 Million in the Senate Energy Committee Uranium Enrichment Legislation

In its various versions of the bail-out legislation, the Senate Energy Committee reduces the government investment in the uranium enrichment program to $364 million. Where does this number come from? It appears to derive from a number suggested by Mr. Williams Lee, a long-time spokesman for the nuclear utility industry.

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*The Smith Barney Report also purportedly asserts that there has been an over-recovery, as opposed to a $10 billion under-recovery, of costs, but this claim is likewise based on a whole series of "policy" judgments, all of which are made in favor of the nuclear utility industry at taxpayer expense, and all of which are contrary to the original parameters established for the civilian uranium enrichment program.

Mr. Lee is a top executive with Duke Power Company, a major energy Department enrichment customer. In a letter dated September 27, 1985, to Congressmen Fuqua, Udall and Lloyd of the House of Representatives, Mr. Lee suggested that the obligation on the part of uranium enrichment customers to repay the government's investment in the program should be limited to "net appropriations." Mr. Lee calculated net appropriations to be $355 million. This is equivalent to ignoring—"writing off"—the entire government investment in the original gaseous diffusion plants (estimated at $1.5 billion), all investment in upgrading the gaseous diffusion facilities for commercial purposes, all investment in the Gas Centrifuge Enrichment Project (which was solely for commercial purposes), all investment in uranium inventories, and all investment in research and development of new technologies for commercial use. It also calls for all government investment to be furnished for free (i.e., with no imputed interest, or any other "reasonable return" on investment). In confirmation that the $364 million figure is based on Mr. Lee's suggestion, DOE, in response to questions propounded by Representative Marilynn Lloyd, recently explained that—

"$364 million represents the cashflow associated with the commercial sale of uranium. The value of the assets transferred to the enrichment program is not a factor in the calculation."*

In their response to Mr. Lee, the three Representatives stated that "[m]ost of [the unrecovered balance—then estimated at $6 billion] . . . is due to federal investment after 1971 . . ."—in other words, for commercial purposes. The Representatives explained that even with adjustments favored by the utility industry, "it is clear that a significant sum would still be owed to the government." "[W]e believe," they said, "that all costs to the government should eventually be recovered." Letter to Mr. Lee, dated Nov. 6, 1985.

(7) fails to establish control in a true board of directors and to assure accountability by the management to its board. As a result, the new enrichment entity quickly would become a captive of special interests. Indeed, the proposals seem to encourage this by institutionalizing a conflict of interests: the various proposals call for at least one utility executive to serve on such advisory board as is constituted for the entity.[80]

(8) fails to provide for taxpayer standing to sue to protect any remaining taxpayer interests in the legislation. This failure propagates the Achilles' Heel of the existing enrichment program—namely, lack of any enforcement mechanism.[81]

Independent analyses by the media have repeatedly, consistently and accurately labelled the Senate legislation and its House progeny as "bail-out" or "rip-off" proposals.[82] The Chairman of both the Committee (Senator J. Bennett Johnston) and the relevant Subcommittee (Wendell Ford) have expressed skepticism toward establishing a profit-seeking enterprise. The clear objective of the legislation to date has been to forgive all existing unrecovered costs, and to allow the enterprise lawfully to require extensive additional taxpayer subsidization in the future.

Original versions of the Senate bailout proposal included multi-billion dollar bailout for the domestic uranium industry, as well as provisions directing the new enrichment entity to increase its market share even at the further expense of taxpayers.[83] The Bush Administration has endorsed a variant of the Senate bailout proposal, with many of the same features.[84]

This scenario has been further complicated by recent attempts by the Senate Energy and Natural Resources Committee to expedite licensing of a new domestic competitor of the DOC program,[85] that is sponsored impart by Urenco, a foreign enrichment concern, using Urenco technology. The competitor, Louisiana Enrichment Services (LES), for the first time would provide domestic utilities with a domestic supplier of enrichment services other than DOE. It obviously will reduce DOE's options to curtail taxpayer losses.

Several ironies are presented by the Louisiana proposal. First, the Louisiana venture will supposedly be financed by capital or assurances of a market wrought from U.S. utilities.[86] If U.S. utilities are willing to provide such assurances to help a foreign competitor to construct a plant in Louisiana, why are they not willing to step forward to purchase one of DOE's enrichment plants, or to finance DOE's AVLIS technology? Why are they demanding that DOE, that is, the taxpayer, assume all the risks? Second, why should legislation be adopted to facilitate the Louisiana venture when the DOE program is in such drastic need of overhaul and yet languishes?

The U.S. House of Representatives thus far has resisted the general Senate bail-out effort, and has not progressed the proposal to facilitate the Louisiana venture. No bills have emerged from House committees for purposes of negotiation in a conference with the Senate. In the meantime, however, DOE uranium enrichment program continues to lose money and value. As each year ticks by, the opportunities dwindle either to accomplish a well-executed harvest strategy, or to re-establish a vigorous uranium enrichment program that would protect taxpayers from increasing liabilities and subsidy of obligations.

Congressmen Dennis Eckart (D-Ohio) and George Miller (D-Calif.) have introduced an alternative to the taxpayer bail-out embodied in the DOE/Senate legislation, appropriately called the "Uranium Enrichment Reorganization and Taxpayer Protection Act."[87] The Eckart-Miller proposal calls for capitalizing the federal enrichment program as if it were a private business rather than writing off its assets to a fraction of book value. Instead of concentrating power in a politically-appointed administrator, the Eckart-Miller bill establishes control in a board of directors. Rather than vague guidance for pricing policy seemingly consistent with subsidizing prices in order to maximize market share, the Eckart-Miller approach establishes a paramount purpose of maximizing the value of the corporation. Moreover, the Eckart-Miller bill includes various incentives for management to profit maximize, and specifically authorizes citizen suits to assure management accountability for profit maximization purposes. The Eckart-Miller bill also contains various provisions to assure recovery of the civilian (i.e., nuclear utility) share of decommissioning costs.

V. CONCLUSION

It is clear that something should be done about the federal uranium enrichment enterprise. It also is clear that the solutions proposed by the Senate Energy Committee, recently endorsed by the Bush Administration, are non-starters. There is intense special interest opposition by the utility industry and associated contractors and nuclear fuel interests to establishing the enterprise on a sound footing, insulated from any need for, or possibility of obtaining, further taxpayer subsidies.

The federal enrichment program, like Humpty Dumpty, has taken a very great tumble. Because of special interest shortsightedness, it is well beyond the point of the federal government being able to put it back together again without requiring utility customers or U.S. taxpayers to pay more into the enterprise. There is no justification for foisting the burden on the taxpayer. The only economically reasonable course at the current time is to raise prices as high as possible as soon as possible, to make as much money as possible now, and to phase the federal program out. Any further attempts to infuse more taxpayer funds into the current loser should and must be resisted. If a federal civilian uranium enrichment program is preserved as an on-going entity, it should only be done with the most stringent protections for taxpayer interests.

Rep. Gibbons: "Well, I was here in 1964 [the year the Private Ownership Act was adopted]. . . . I don't recall any great discussion that we specifically promised prosperity for this industry. As I recall, the industry wanted some independence and they got it. Now they are in here asking us to bail them out. . . . [W]e did not intend to become a socialist state. I understand why the electric utilities want to get fuel as cheap as possible. All of us want to get our electricity as cheap as possible. We should like to get it free if we could. But I think we just have another case of overexpectation here. Why should we bail them out with this legislation?"[88]

APPENDIX I

The new AVLIS technology: Cost-effective investment or boondoggle?

Who should pay for the "next generation" of enrichment technology? Not the U.S. taxpayer.

The federal government, based on a forecast of increased demand, doubled the capacity of the gaseous diffusion plants at a cost in excess of $1 billion. That capacity is now unneeded, and the Oak Ridge Plant has been shut down permanently. The federal government, again on the basis of its forecasts, spent almost $3 billion on a gas centrifuge plant at Portsmouth. This was cancelled in 1984 in the face of lack of need and in favor of projected AVLIS technology.

There is currently no forecast for a marked increase in demand for uranium enrichment services. The U.S. does not require any new capacity to serve all foreseeable domestic needs. Yet advocates of AVLIS call for construction of a new enrichment plant based on that technology, ranging up to 9,000,000 SWU in capacity (roughly equivalent to current demand for U.S. enrichment). If an AVLIS plant is constructed, it will necessarily displace demand currently being served by DOE's existing plants. It either will render those plants or itself inefficient, or it will necessitate a shut down of existing capacity.

No one to date has analyzed AVLIS in terms of its ability, or likelihood, to minimize taxpayer losses from DOE's uranium enrichment program. Policymakers should be extremely skeptical that AVLIS will lead to loss minimization. It is likely to be yet another costly mistake if constructed at taxpayer expense. The following points merit special attention.

First, any AVLIS plant will be excess capacity and will be selling into a glutted market. This renders investment in the plant extremely risky. This is all the more the case given DOE claims that the Soviet Union is willing to sell 6,000,000 SWU per year at or perhaps below the cost of producing enriched uranium via AVLIS. The nuclear utilities appear unprepared at this point to commit either to fund the AVLIS plant or to purchase services from the AVLIS plant. Why should the enormous investment risks associated with AVLIS be borne by taxpayers?

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*H.R. 2840—The Uranium Enrichment Reorganization Act, Hearings before the Energy Res. & Dev. Subcom. of the House Science, Space & Tech. Comm., 101st Cong., 1st Sess. at 319 (1989).

Second, AVLIS remains untried, and under current projections, it does not result in significant savings. Projected AVLIS costs range from about $60 to $100 per SWU if development costs are taken into account. If a small plant is built, the high end of this cost range will apply. If a large plant is constructed, costs may approach the lower end. But the actual costs to operate the gaseous diffusion plants are currently only about $60. Proponents of AVLIS argue that gaseous diffusion costs will go up if pollution controls are installed on coal-fired generating stations that produce electricity to operate the gaseous diffusion plants. But the costs associated with AVLIS technology may also go up.

Third, AVLIS, as currently designed, cannot produce the highly enriched uranium needed for defense naval reactors. Therefore, the federal government will need to keep at least one gaseous diffusion plant operating to produce highly enriched uranium. By diverting demand for low enriched uranium from that plant, AVLIS may increase the cost of highly enriched material.

Under these circumstances, it seems clear that the government should not build any additional enrichment plants. Construction should proceed only if substantial equity participation is obtained from the nuclear industry, or if utilities guarantee that they will purchase services from the plant sufficient to assure recovery of costs.

The utility industry currently is supporting legislation to expedite the licensing of a URENCO-developed gas centrifuge uranium enrichment plant to be operated by Louisiana Energy Services (LES) in Louisiana. Private investors from the utility and nuclear fuel industry are bearing the risks for this proposed plant. This demonstrates that arrangements can be made for new plants and non-gaseous diffusion technology without requiring taxpayers to bear all the downside risks.

Currently nuclear utilities are urging DOE to build AVLIS. AVLIS should be constructed only if it is at the risk of the utilities and not at the risk of the taxpayers.

APPENDIX II

What the nuclear utilities say about unrecovered costs

The nuclear utilities claim that they "have paid their full share of all past costs and are not responsible for any debt."* GAO's rebuttal of the utility position is succinctly stated in the 1989 hearings.** The utility arguments, portions of which are inconsistent, run as follows:

1. The prices utilities paid were based on methodology reviewed and approved by GAO and the Joint Committee.

True—until the advent of the generic "utility services enrichment contract" (USEC) in 1984. DOE in USEC abandoned the pricing methodology reviewed and approved by GAO and the Joint Committee. USEC was predicated on huge "write-off's" of costs.

2. The full cost recovery requirements of section 161v. is just a guideline; nothing really requires cost recovery.

False. This is revisionist history and a flat disavowal of what the utility industry said section 161v. meant from 1964 through 1984. No express payment is required to the Treasury, but this is to permit flexibility for re-investment in the program. However, all re-investments remained subject to the paramount requirement of cost recovery. This was the consistent interpretation of the law by GAO, by DOE's predecessors, and, until 1984, by DOE. Additionally, this interpretation was propounded by the nuclear utilities until 1984.

3. Utilities' obligation to repay is limited to their government enrichment contracts and they never agreed to pay more.

False. An ultra vires government contract is not enforceable against the government. Utilities for twenty years embraced the full cost recovery requirement of section 161v. Only now are they disagreeing with that commitment.

4. The government's interest is like an equity holder, not a bondholder, and thus is not a "debt," but an amount at risk which is now lost to its owner.

The first thing to note about this argument is that effectively admits there has been a loss. Aside from this admission, the argument is beside the point. Section 161v. and implementing criteria, expressed in federal rules, provided that the federal government, like a bondholder, or an equity holder in a utility, would obtain a "reasonable return" on investment. Not only are the utilities arguing against any return on the investment, but they are arguing that the entire investment should be "written-off." This is simply a convoluted way to call for a huge taxpayer subsidy.

5. The enrichmnent program serves U.S. defense and non-proliferation goals as well as commercial goals, and thus taxpayers should subsidize prices for commercial users.

Of course, taxpayers should pay for the defense share of enrichment costs. However, according to GAO and DOE statements, taxpayers already have paid or will pay for all the defense share. Although some adjustments may be appropriate, the vast build of the enormous "unrecovered cost" figure of $10 billion is properly attributable to commercial operations. Additionally, commercial customers have not paid their share of decommissioning expenses. This violates section 161v. of the Atomic Energy Act, a provision that the utilities heretofore supported.

FOOTNOTES

[1] Restructuring the Department of Energy's Uranium Enrichment Program, Hearings before the Subcommittee on Energy Research and Development, Senate Energy and Natural Resources Comm., 100th Cong., 1st Sess. at 187 (1987).

[2] The current contractor is Martin Marietta. The former contractor was Union Carbide.

[3] GAO gave the level of "unrecovered costs" as $9.6 billion as of the close of FY 1988. See Statement of K. Fultz for GAO, July 26, 1989, at p. 2, before the Energy Research and Dev. Subcomm. of the House Science, Space and Technology Committee. This amount increases at the rate of approximately 0.5 to 1.0 billion per year, and now exceeds $10 billion.

[4] GAO, Uranium Enrichment (GAO/RCED-89-170BR) 29-37 (July 1989).

[5] The three facilities are Paducah, Kentucky, Portsmouth, Ohio; and Oak Ridge, Tennessee.

[6] Oak Ridge.

[7] GAO, Uranium enrichment, supra.

[8] Smith Barney Report, p. 65. All references are to the "sanitized" version.

[9] Id.

[10] Section 161v. of the Atomic Energy Act, 42 U.S.C. §2201v.

[11] See note 1, supra.

[12] Letter, Comptroller General to the Hon. John Dingell, Dec. 27, 1984, pp. 7–8 [B-207463] [hereinafter cited as 1984 GAO Letter].

[13] 1984 GAO Letter at 22.

[14] E.g., 1984 GAO Letter, supra note 10, at 22. See also OMB, Major Policy Initiatives 88 (1986) (acknowledges amount of unrecovered costs and indicates major write-off); 51 Fed. Reg. 3624 (1986) (same).

[15] "Backed by cheerleaders and school bands, Ohio politicians . . . joined 2,500 residents of the Portsmouth [Ohio] area in urging the Energy Department to locate a[n] [AVLIS] uranium processing facility there that the government has yet to decide to build. Paducah, Ky., and Oak Ridge, Tenn. are also clamoring for the plant for the same reason: about 1,500 jobs. Washington Post, June 16, 1990. A4.

[16] H.R. 2480—The Uranium Enrichment Reorganization Act, Hearings before the Energy Res. and Dev. Subcomm. of the House Science, Space and Technology Comm., 101st Cong., 1st Sess. at 178–79 (1989) (hereinafter referred to as "1989 Hearings") (reprinting letter from NTU to Deputy Secretary of Energy Henson Moore summarizing the data).

[17] DOE Response, dated July 31, 1990, to NTUF FOIA Request, dated June 18, 1990, Q 13.

[18] B. Franklin, Autobiography 161 (M. Farrand ed. 1949).

[19] Section 52 of the Atomic Energy Act of 1954, 68 Stat. 929-30, 42 U.S.C. §2011 (1954) (now repealed).

[20] In particular, the Private Ownership Act repealed the prohibition on private ownership of "special nuclear material"—enriched uranium.

[21] See, e.g., 1970 U.S.C.C.A.N. 5004-5 and 5012 (confirming GAO construction).

[22] The Conway Formula is embodied in an exchange of letters between AEC and the Joint Committee reprinted in Uranium Enrichment Services and Related Matters, Hearings before the Jt. Comm. on Atomic Energy, 88th Cong., 2d Sess. 517–19 (1966). See also 1984 GAO Letter, supra, App. IV, at 4-5.

[23] 1984 GAO Letter at 22.

[24] See note 17, supra.

[25] Id.

[26] Future Structure of the Uranium Enrichment Industry, Hearings before the Jt. Comm. on Atomic Energy, 93rd Cong., 2d Sess 175 (1974).

[27] See Hearings before the Energy & Env. Subcomm. of the House Comm. on Interior and Insular Affairs, 99th Cong., 2d Sess, testimony of B. Jeanine Hull for National Taxpayers Union at p.3 (1986) (quoting earlier utility industry testimony, including testimony attacking GAO warnings).

[28] Uranium Enrichment Policy, Hearings before the Energy Res. & Dev. Subcomm. of the Senate Energy & Nat. Resources Comm., 95th Cong., 2d Sess. 80, 87,444 (1978). See also id, at 75 and 88 (asserting that utilities would pay for all the associated costs under current law).

[29] For example, EEI's Loring Mills now claims that the unrecovered costs are the fault of GAO's alleged "lump[ing] government domestic and foreign policy actions . . . while ignoring the year-by-year directives of Congress" and he now asserts that "[s]omething is wrong with the GAO logic." Uranium Enrichment and Mill Tailings Reclamation Legislation, Hearing before the House Ways & Means Comm., 100th Cong., 2d Sess. at 78 (1988). With respect to enrichment, GAO's predictions and logic have been demonstrably superior to those of EEI, and additionally have been far more consistent.

[30] See, e.g., Uranium Enrichment Policy, Hearings before the Energy Cons. & Power Subcomm of the House of Energy & Power Comm., 98th Cong., 1st & 2d Sess. 315–26 (1983–84).

[31] For further discussion of this widely acknowledged history, see Montange, The Federal Uranium Enrichment Program and the Criteria and Full Cost Recovery Requirements of Section 161 of the Atomic Energy Act, 2 J. Min. L. & Policy 1 (1986–87).

[32] See 1984 GAO Letter at 23–25.

[33] GAO concluded that DOE's use of "acquisition costs" for pricing the uranium stockpile was not necessarily unlawful under some aspects of section 161v. and 161m. of the Atomic Energy Act, but questioned whether DOE had undervalued "acquisition costs" (by not including storage and other overheads) and whether DOE's practices with obligations toward the domestic uranimum industry. Apart from legal requirements, GAO questioned the wisdom of distributing an asset at a price below its market price. 1984 GAO letter at 26.

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*The utility arguments recounted herein are based on the testimony of Joseph M. Farley on behalf of American Nuclear Energy Council and Edison Electric Institute at Hearings on H.R. 2480—The Uranium Enrichment Reorganization Act, Hearings before the Energy Research and Development Subcommittee of the House Science, Space and Technology Committee, 101st Cong., 1st Sess. 79 (1989).

**Id at 332.

[34] Letter, Mr. Garrish (DOE) to Senator Humphrey, March 25, 1988, Answer to Q 10 [herinafter cited as 1988 DOE Letter.] Relevant excerpts from this letter are reproduced in the 1989 Hearings, supra, at 201, et seq.

[35] See 1988 DOE Letter, Answer to Q 10 (.7 x 117) + (.3 x 90) = $108.90.

[36] The on-going subsidization of the uranium enrichment program by taxpayers has been consistently highlighted by National Taxpayers Union since 1984.

[37] K. Fultz (GAO) to Cong. M. Udall, April 14, 1987, response to Q 4.

[38] *Wash. Post*, June 16, 1990, A4.

[39] 1984 GAO Letter at 6–8.

[40] *Id.*

[41] 1984 GAO Letter at 9–12. 42 U.S.C. §7191(a)(1) renders the procedures of 5 U.S.C. §551, at seq., applicable to DOE and §7191(b)(3) repeals the exception from rulemaking requirements for contracts ordinarily applicable under 5 U.S.C. §553(a)(2).

[42] *See U.S. Uranium Industry Seen Continuing Its Long Decay, Washington Post*, Oct. 10, 1989, at D1; *Nuclear Reaction; U.S. Uranium Mines, Thriving 5 Years Ago, Are Nearing Extinction, Wall St. J.*, June 12, 1985, A1.

[43] *Western Nuclear v. Huffman*, C.A. 84–C–2315, Amended Order filed Sept. 19, 1985.

[44] *id.*, Order filed June 20, 1986.

[45] 51 Fed. Reg., 3624 (Jan. 29, 1986).

[46] 51 Fed. Reg. 27132 (July 29, 1986).

[47] *Western Nuclear v. Huffman*, 825 F.2d 1430, 1437 (10th Cir. 1987).

[48] 825 F.2d at 1434.

[49] Letter, Comptroller General to Rep. Markey, Feb. 19, 1986 [B–207463] (the GAO opinion relates to DOE's proposed new criteria which in pertinent part are the same as the final criteria adopted).

[50] *Id.*, 825 F.2d at 1437–40.

[51] *Huffman v. Western Nuclear*, 108 S. Ct. 2087 (1988). The case was remanded for possible trial of the question.

[52] P.L. 100–449, title III, §305(b), 102 Stat. 1876.

[53] Canadian uranium available for export is generally of higher grade than U.S. ore. *See U.S. Uranium Industry Seen Continuing Its Long Decay, Washington Post*, Oct. 10, 1989, D1. Ironically, the Canadian ore destined for the American market tends to come from high grade deposits in western Canada, and is much higher in grade than the Ontario ore reserved for Canada's domestic market, which is centered in Ontario.

[54] Throughout the litigation, the domestic uranium industry had been seeking "deals" with the utility industry whereby the uranium industry would agree to de facto repeal of the uranium viability proviso in return for utility and federal government assistance to clean-up uranium mill tailings. At one point, elements of the utility industry, as well as DOE, had agreed to a $1.75 billion bailout for the uranium industry, with the bulk of the funds coming from taxpayers and ratepayers, for uranium mill tailings clean-up subsidies and a program to purchase excess uranium for the government stockpile at above-market prices. See Uranium Enrichment and Mill Tailings Reclamation Legislation, Hearing before the House Ways & Means Comm., 100th Cong., 2d Sess. at 75 & 89 (1988) (testimony of EEI/Duke Power spokesman William Lee about the package deal). See also, e.g., S. 2097 and its House counterparts, H.R. 4934, H.R. 4975 & H.R. 4489 of the 100th Cong., all discussed in testimony of the National Taxpayers Union before the Energy Res. and Dev. Subcomm. of the House Science, Space, & Tech. Comm., Oct. 6, 1988; Uranium Revitalization, Tailings Reclamation, and Enrichment Legislation, Hearing before the Energy & Env. Subcomm. of the House Interior Comm., 100th Cong., 2d Sess. at 287 (1988). This "deal" was detailed by the Free Trade Compact as well. The domestic uranium companies are still seeking subsidies from U.S. taxpayers for uranium mill tailings clean-up. With the threat of enrichment limitations gone, the nuclear utilities are unwilling to enter into any "deal."

[55] 13 C. Wright & A. Miller, Federal Practice & Procedure §3510.10. (1984).

[56] See GAO, Uranium Enrichment (GAO/RCED–89–170br) 29–37 (July 1989).

[57] 1988 DOE Letter, Answer to Q 11 [1989 Hearings at 203].

[58] Maximizing market share is more the objective of a monopolist, and, in a competitive market, generally requires some source of revenue outside the market to subsidize below cost prices and other anti-competitive measures.

[59] See note 1, supra.

[60] Energy Department Negotiates for Cheaper Soviet Uranium, Wash. Post, June 16, 1990, at p. A4.

[61] A. Smith, An Inquiry into the Nature and Causes of the Wealth of Nations 421 (E. Cannan, ed., 4th ed.).

[62] Paradoxically, the Senate Energy and Natural Resources Committee is encouraging the LES project, causing more competition and economic difficulties for the DOE enterprise, at the same time the Committee is arguing for a massive taxpayer bailout of the DDOE enterprise on the ground that the enterprise is vital for national energy security.

[63] See DOE response dated July 31, 1990, to NTUF FOIA request dated June 18, 1990, Q 13.

[64] From an economist's point of view, certain markets are inherently "natural monopolies": it is simply far less expensive for one company to supply the market than to have multiple companies supplying the market. See A. Kahn, The Economics of Regulation 11 (1970). A classic example is a local telephone company or local electric company. It is cheaper for one set of telephone or electrical wires to be strung and maintained than for multiple sets. Markets which are natural monopolies are frequently served by utilities.

[65] E. Mansfield, Microeconomics 282 (1969).

[66] E.g., Private Ownership of Special Nuclear Materials, Hearings before the Legis. Subcomm., Jt. Comm. Atomic Energy, 88th Cong., 1st Sess. 29–30 (1963); Proposed Modification of Restrictions on Enrichment of Foreign Uranium for Domestic Use, Hearings before the Jt. Comm. on Atomic Energy, 93rd Cong., 2d Sess. at 8, 232–33 (1974). Although the Atomic Energy Commission was split into ERDA (later DOE) and NRC in 1974, nothing in that change altered the substantive authorities under the Atomic Energy Act, and both NRC and DOE share authority under key provisions such as AEA §§161b. & p., 42 U.S.C. §§2201b. & p. See H. Rep. 93–707 at 27; S. Rep. 93–980 at 84 (1974) (reports on Energy Reorganization Act).

[67] See pp. 5–6, supra.

[68] Smith Barney, et al., Executive Summary x (1990).

[69] Energy Department Negotiates for Cheaper Soviet Uranium, Wash. Post, June 16, 1990, at p. A4.

[70] U.S. military requirements are currently 1 million to about 3 million SWU per year, chiefly for naval reactors. These requirements can be supplied with a much smaller federal enterprise than currently exists. Further, notwithstanding "Third World" military involvements such as Kuwait, the current international situation suggests the military requirements for uranium may decrease rather than increase for the foreseeable future. See "Military Chiefs Detail Plans to Cut Troops, Weapons," Washington Post, May 12, 1990, A1. Any U.S. military enrichment needs could be satisfied by retaining one plant. This indeed will have to be done anyway if AVLIS, which is ostensibly not suitable for high grade enrichment, supplants commercial operation of the existing GD plants.

[71] The Smith Barney "Executive Summary" falls for this "argument," inviting continued taxpayer subsidies for the enrichment program because "a growing percentage of U.S. utility customers are purchasing enrichment from foreign suppliers, including the Soviet Union." Smith Barney Exec. Summary at x. This may be the largest blunder in the Smith Barney report from a policy standpoint, but the verdict on largest blunder cannot be announced so long as the full report is withheld from the public.

[72] C. England, Federal Deposit Insurance: Should It Be Privatized?, National Forum at 24 (Spring 1990) ("Depositors whose accounts are fully protected by the government do not choose their banks on the basis of financial strength, conservative investment practices, or the managers' gilt-edged reputations. . . . [This] relieves bank owners and managers of the need to compete on the basis of safety and financial stability").

[73] In theory, government enterprises can operate efficiently if they would behave as if they were private, for-profit enterprises. See E. Mansfield, Microeconomics 424–25 (1969).

[74] This rationale has been suggested by various subsidy proponents, as well as by DOE's consultant Smith Barney in its recent "Executive Summary."

[75] This appears to have been DOE's objective with respect to the USEC.

[76] This appears to be a basic objective of at least some members of Congress with uranium enrichment facilities within their districts.

[77] This appears to be an objective of DOE contractors, research laboratories, and at least some members of Congress who sense that DOE's program is otherwise on the rocks and that existing gaseous diffusion plants may be shut down.

[78] "Economic Public Policy" in Privatization: Toward More Effective Government, Report of the President's Commission on Privatization 233–34 (March 1988).

[79] DOE has recently given the book value of its enterprise as $4,726,137—about 14 times the value down for which the Senate would write it off. See H.R. 2480—The Uranium Enrichment Reorganization Act, Hearings before the Energy Res. & Dev. Subcom. of the House Science, Space, & Technology Comm., 101st Cong., 1st Sess. 313 (1989).

[80] Seating a utility executive on a board advising or controlling the enrichment entity amounts to institutionalization of a conflict of interest.

[81] See, e.g., S. 2097, 100th Cong.

[82] E.g., "Taxpayer-enriched uranium rip-off?" Washington Times, March 15, 1988, at F1; "$9 Billion Bailout for Nuclear Industry?" Washington Post, March 21, 1988, at A9.

[83] See Uranium Enrichment and Mill Tailings Reclamation Legislation, Hearings before the House Ways & Means Comm., 100th Cong., 2d Sess. (1988) (hearings on House bills identical to S. 2097).

[84] During the Reagan Administration, DOE and the Office of Management and Budget sought to limit the "write-off" so as to preserve $3 billion to $3.5 billion in unrecovered costs for eventual recovery. With the endorsement of the Johnston/Ford/Duke Power figure of $364 million, the "write-off" is nearly complete.

[85] See Testimony of Senator Johnston in favor of expediting the LES proposal, and testimony of Charles H. Montange on behalf of National Taxpayers Union questioning the impact of the LES proposal in the Oversight Hearing on Licensing of Uranium Enrichment Facilities, before the Energy & Env. Subcomm. of the Interior & Ins. Affairs Comm., 101st Cong., 2d Sess., March 6, 1990.

[86] Cf. H.R. 2480—The Uranium Enrichment Reorganization Act, Hearings before the Energy Res. & Dev. Subcom. of the House Science, Space, & Technology Comm., 101st Cong., 1st Sess. 178 and 215 (1989).

[87] H.R. 5181, 100th Cong., 2d Sess.; H.R. 2278, 101st Cong., 1st Sess.

[88] Uranium Enrichment and Mill Tailings Reclamation Legislation, Hearing before the House Ways & Means Comm., 100th Cong., 2d Sess., at 53–54 (commenting on the 1988 vintage of the Senate Energy Committee bailout legislation).

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. CONRAD. Mr. President, I ask for 2 minutes from the chairman.

Mr. JOHNSTON. I yield 3 minutes to the distinguished Senator from North Dakota.

Mr. CONRAD. I thank the chairman. Over and over we have heard on the floor that there is no energy efficiency standards in this bill, there is no conservation in this bill. I do not know what bill they are talking about. It is certainly not the bill that is before this body.

Anyone can open the bill and find out what is in it. I refer to page 3, title VI, energy efficiency. And it says, building energy efficiency codes, residential energy efficiency ratings and mortgages, manufactured housing energy efficiency, improving efficiency in energy intensive industries, and the list goes on and on and on. Renewables, alternative fuels provisions, conservation, energy efficiency. It is all here.

Is it perfect? No, it is not. I believe very strongly that the fuel efficiency standards ought to be increased, but for Members to tell the American people and to tell our colleagues that there is nothing here on conservation, that there is nothing here on energy efficiency, that there is nothing here on renewables, that there is nothing here that goes toward conserving energy is just not so. Those of us who are members of the committee and worked months on this bill have an obligation to set the record straight.

Mr. President, fundamentally, the question is this: America is 50-percent dependent on foreign crude oil as we meet here today. The Office of Technology Assessment told us this week that we are headed for 75-percent dependence on foreign crude oil by the year 2010 if we fail to act. A failure to invoke cloture would be a failure to act. It would be a serious mistake for this country.

What could be more clear? We have just had 500,000 young Americans put their lives on the line, at least in part because of this Nation's energy dependence. I urge my colleagues to support cloture.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BAUCUS. Mr. President, I yield 1 minute to the Senator from Michigan.

Mr. RIEGLE. I thank the Senator.

There are major problems with this bill. Title XV is an example. ANWR and nuclear relicensing are examples. But most important, this bill opens up the CAFE issue and that poses great dangers to the U.S. auto industry and tens of thousands of U.S. jobs. And it is obvious from what was just said by the chairman of the committee that he is open to higher CAFE standards. That troubles me greatly.

Unless the bill is reworked, I think there is a great danger of unrealistically high CAFE standards being adopted. That would do tremendous damage to the auto companies, our national industrial base, and U.S. industrial workers. The CAFE standards being sought by some would add $70 billion in new capital costs to the auto industry. They have just lost nearly $10 billion in the last five quarters. They do not have the money. The Government is not offering to provide the money, and it just does not make any sense.

The industrial economy today is in deep trouble. The President has no plan to deal with it. We cannot risk destroying one or more of the U.S. auto companies. More time is needed to deal with these issues before moving ahead with this bill.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. JOHNSTON. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. The Senator from Louisiana has 9 minutes and 10 seconds; the Senator from Montana, 7 minutes, 33 seconds.

(Mr. WIRTH assumed the Chair.)

Mr. JOHNSTON. Mr. President, I yield myself 2 minutes.

Mr. President, getting back to energy efficiency, in this bill, we have some 30 different initiatives for energy efficiency. They include establishing energy efficient standards for new buildings and requiring their use to obtain Federal mortgages; establishing energy efficient standards for commercial and industrial equipment, such as lighting, heating, air-conditioning, utility transforming equipment; establishing strong incentives for State utility regulatory agencies to set new rate structures to promote energy efficiency programs, integrated resource planning, maximum efficiency in utility generation and transmission operation, integrated resource planning for TVA and the Federal power marketing agencies.

Mr. President, the list goes on and on. I have made speeches about this in the morning hour here.

Mr. President, you know in spite of laying out the case for energy efficiency in this bill, for conservation in this bill, for alternative fuels in this bill, nobody comes up and challenges the bill and says you ought to do this or do that with respect to energy efficiency or conservation or alternative fuels. They just simply say there is nothing in here. Thirty initiatives drawn by the Senator from Colorado, the leading energy efficiency alternative fuels Senator in this body, and yet we are told there is nothing in it for energy efficiency.

Mr. President, we are living in a dream world. Black is white, up is down, and there is nothing in this bill for energy efficiency.

It is just not true, Mr. President. I mean, I am speechless. To say we have a quarter of this bill, we have 150 pages, or whatever the number of pages is, dealing with energy efficiency, and nobody makes a suggestion of how to strengthen it other than by taxes. Oh, everybody tells us you can put in taxes in this bill. But what really do you do for energy efficiency that we have not done?

I submit we have done all that is appropriate and proper and sensible. And if there is something else to do, when we put that title up there, we will consider amendments to it. As a matter of fact, the Senator from Colorado has suggested another seven or eight different amendments which we have already agreed to accept. But somehow, that is not enough.

What is enough and what do you want? What do you want besides taxes? That is what I want to know. And if you are for taxes, go to the Finance Committee and propose them.

I have been down that route. I proposed a 50-cent gasoline tax back in the seventies, a 10-cent a year increase over 5 years, and I heard nothing from the environmentalists, I heard nothing from the soft path people. All I heard was from my State, and they did not like it.

I learned my lesson about taxes. And I say to the people in my State, I am not for them. Thank you very much. If somebody else wants to propose them, that is fine.

But, Mr. President, there is plenty in this bill for energy efficiency, conservation, and alternative fuels.

Mr. CONRAD. Will the gentleman yield for a brief question?

Mr. JOHNSTON. Yes, I will.

The PRESIDING OFFICER. The Senator's 2 minutes has expired.

Mr. JOHNSTON. Mr. President, I yield such time as this question takes.

Mr. CONRAD. Mr. President, I am told that the Department of Energy has estimated that without this bill we will use 14 million barrels a day of imported oil. If this bill passes, that will be reduced to 8 million barrels. Is that the chairman's understanding?

Mr. JOHNSTON. The Senator is correct.

Mr. CONRAD. So those who say we are not saving oil are just flat wrong.

Mr. JOHNSTON. Absolutely wrong. I think the question is an excellent one. I think this is a lot more far-reaching than even the proponents of the bill know about. It is a tremendously far-reaching bill.

Mr. CONRAD. I thank the chairman.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Will the Senator from Louisiana yield?

Mr. JOHNSTON. On your time.

Mr. BAUCUS. Mr. President, I yield 1 minute to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the chair and I thank the Senator from Montana.

Mr. President, there is a crisis of public confidence in Congress today. Part of the reason for that is that too often we do not reflect the values and concerns and hopes for the future of the American people. We reflect the concerns of established interest groups that are well represented here in Washington.

I am convinced that one central feature of this bill is consistent with that loss of confidence and that is the plan to drill for oil in the Alaskan wilderness, because every poll I have seen shows that the American people do not want us to do that.

Mr. President, I say to our friends from Alaska, who have complained about what we are trying to do to their land, that this land is quite literally our land. It is American land. It is the land that Seward bought from the Russians more than a century ago, and that law after law has preserved the American people's right to enjoy.

The motion to proceed is a difficult motion to filibuster. It is going to be a close vote in about 10 minutes. I say to my colleagues if you truly want to protect the Alaskan wilderness this may be the last best hope. But this is only the first round in a fight that will go on. I, for one, will do everything I can to stop this bill if it continues to force drilling for oil in the Alaskan wilderness because something irreplaceable will be lost.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. JOHNSTON. Mr. President, I yield to my colleague from Louisiana 3 minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, let me first rise and congratulate the distinguished chairman of the Energy Committee. As I listened to the debate on this bill from the Democratic side, it sounded like George Bush came down one dark night and crafted this bill and threw it out on the Senate floor.

I think we should all, as Democrats, remind ourselves this is a product of a democratically controlled Senate, a democratically controlled Energy Committee, which is chaired by a Democrat. The final vote in that committee was 17 to 3. It was not by a one-vote margin. It did not come out here by a tie vote with a recommendation that we consider it. It passed by a huge, overwhelming majority, I say to my Democratic colleagues, by a democratically controlled committee. Yet there are some now who refuse to even consider the bill that our committee has produced.

The Senate Energy Committee in a compromise fashion has produced a piece of legislation that some may disagree with. But why are they afraid to even talk about it? Is the problem in our country so serious that we have to stick our heads in the sand like a bunch of ostriches and say we are so fearful of working the will of the majority that we will not even consider or not even allow the majority to work its will? What kind of future thinking, planning, or strategy for security in this country does that represent?

I suggest it represents a philosophy that is simply not acceptable when we have the situation in the world that demands our country have an energy policy. There is no doubt we have none. America's energy policy has not been made in Congress. It has not been made by the oil companies. It has not been made by the White House. It has been made by OPEC. Every time OPEC meets in a fancy hotel in Europe to determine how much oil they are going to produce, they determine the economic and defense security of this country. That, I suggest, is totally and absolutely unacceptable.

Why should the Senate be so fearful of even discussing or debating or even voting on a proposal that has come from the democratically controlled Energy Committee?

For those who do not like some provisions of a 17-title bill, I suggest when that title comes up they offer an amendment to strike it. That is the democratic way that this Senate always operates. If they do not like ANWR, if they do not like CAFE, the only thing they have to do when the bill is coming up for consideration is simply offer an amendment to take that section out. If they win, they win. If they lose they lose.

But the situation we have now is that America is losing. This country is losing because of the inability of this Congress—and particularly this body—to even consider something that some people may consider is too controversial. "I do not like that position, that title, so we are not going to do anything but stick our heads in the sand and pretend we do not have a problem."

I suggest to those who take that position it is only more of the same, and if there is anything the American public do not want—talk about polls? Americans do not want more of the same.

In effect, we have a vacuum. We have no energy policy and that is unacceptable. The bill should be brought up and debated and voted on.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. JOHNSTON. How much time is left?

The ACTING PRESIDENT pro tempore. The Senator from Louisiana, 1 minute and 22 seconds; the Senator from Montana, 6 minutes and 8 seconds.

Who yields time?

Mr. BAUCUS. Mr. President, I yield myself 2 minutes.

Mr. President, I want to make a couple of points clear here. It has been said that those who are concerned about this bill do not want an energy bill considered this year. That is patently false. That is incorrect. We, all of us in the Senate, very much want an energy bill. We want to work on sound energy policy. Why? Because our country is becoming more and more dependent upon foreign sources for oil.

We know what happened in the gulf. We know what might happen in the future unless our country adopts a very strong energy policy.

Under this bill, the bill before us now, the United States will be more dependent upon foreign oil in the future than it is even today. We have heard some figures indicating that we can be a little less dependent. Those rely on efficiency standards which are essentially discretionary on the part of the Secretary of Energy, or they are voluntary. They are illusory; they are not there. There may be some, but in the main they are not there.

I believe—I think most of us who have problems with this bill believe—that we have to take the opportunity now to craft an energy policy that, in fact, makes America less dependent on foreign oil. This bill does not do that. This bill is business as usual. Our country can no longer afford business as usual. Our country must rededicate itself. It must find new ways to pull itself up by its bootstraps so we begin not only to address production. The Senator from Wyoming is correct, we have to address production. Production is part of a balanced energy policy. But production also includes much greater efforts on enhanced recovery, secondary and tertiary recovery, than there might possibly be up on ANWR.

I yield myself 1 additional minute.

It also means true conservation; true, meaningful conservation. We are the most inefficient country in the world but for Canada. Japan is much more energy efficient than we. Germany is much more energy efficient than we. Every other country is much more energy efficient than the United States of America, but for Canada. That is probably because it is a little bit colder up in Canada than it is in the United States most months of the year.

If we are going to compete in the future, we have to, today, develop the technologies to make America more competitive, more efficient, so we cannot only produce products in our country that are more efficient but we can sell them overseas to other countries and sell technologies to other countries. We cannot go down the path of business as usual, and that is what this bill does.

One other point, there are all kinds of ways to put this back together again. We have suggested one approach, the three-bill approach. It does not change the substance. It is just a change in the process.

Another approach is to meet in S-224, as we did on the Clean Air Act. I, as the manager of the Clean Air Act, knew when that bill came out of committee it needed work. There was solid opposition on the floor. So we worked, sat down together to develop it—all Members of the Senate. Then it was fully debated here on the floor. That is a process that worked.

There are all kinds of ways to deal with this, and I urge us to reject cloture in the vote on the motion to proceed so we can find a process that moves America toward a sound energy policy.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself the remainder of my time.

Mr. President, we have heard a lot of talk here about what the bill does and does not do. The bill needs debate. I think we can demonstrate with time that it is not just a good bill, it is a very good bill, on energy efficiency, conservation, and alternative fuels.

I believe, if given the opportunity to present this title by title, we can convince a majority of Senators, including a majority of Democratic Senators, that most titles in this bill are excellent. I think they will vote for it as Democrats did in the committee by a vote of 8 to 3.

But what we need is an opportunity to explore various ways to bring this bill up. I do not know what this two-bill strategy is. Is that unanimous consent? Is that a motion to strike? I mean, a motion to strike will be in order as soon as we come up. If you want a test vote on the Arctic, why do the opponents of the Arctic not move to strike? If you win, you win. If you do not win, then you can filibuster.

I find it disingenuous to say they want to consider the bill yet will not give us a way to consider it. Let this Nation consider energy policy. It is here. It is now. And now is the time the Nation needs your vote.

The PRESIDING OFFICER (Mr. KOHL). The Senator from Montana has 2 minutes.

Mr. BAUCUS. I yield 1 minute to the distinguished Senator from Nevada.

Mr. BRYAN. Mr. President, central to debate over the last couple of days has been the Arctic and CAFE, and, indeed, those are central aspects of a sound energy policy.

But what is at issue here is even broader and, in my view, more significant than that. We are talking about a change of philosophy. Those who advance the cause of S. 1220 are relying upon a romantic notion of the past, that somehow energy independence can be secured by proceeding along with the same approach that for nine decades has dominated energy policy in this country; that by drilling in the Arctic, by drilling in the outer coastal shelf, somehow that will lead to energy independence.

I think the evidence and logic conclusively demonstrate to the contrary. We must, Mr. President, and we should, seize the opportunity to lead the world in the energy technologies of the next century. That, Mr. President, is what we must do.

The PRESIDING OFFICER. The Senator from Montana has 50 seconds.

Mr. BAUCUS. Mr. President, I yield the remaining time to the Senator from Colorado.

Mr. WIRTH. Mr. President, we have had a long and extensive debate, and there will be more, I believe. We believe on our side that we are entitled to the same rights in the Senate as others on other issues. That debate has been made. We also believe very strongly that we do need an energy bill, and we made a number of proposals of how to get from here to there.

Finally, Mr. President, it is enormously important to remember that we on this globe have to look to the future. If we drill in the Arctic, how can we say to the Brazilians, "Do not cut down your rain forests?" U.S. leadership is imperative.

Mr. ROBB. Mr. President, it is with reluctance that I will vote no on the motion to invoke cloture on the motion to proceed to S. 1220, the National Energy Security Act of 1991.

I believe strongly that our Nation needs to deal forthrightly with our energy problem. Our overreliance on imported oil is a gaping national security threat. But I think our energy policy needs to be aggressive and forward-looking, and I fear that S. 1220, as drafted, falls short. I would prefer an energy policy that moves us more dramatically beyond oil, which puts greater emphasis on conservation and on alternative fuels and renewable energies. I am particularly disappointed that the bill tries to address energy policy without mention of the one measure which experts believe could most significantly reduce our reliance on oil: An increase in the gasoline tax.

Mr. President, I do not cast my vote lightly. I very rarely vote against cloture. But I do so today in the hope that failure to gain cloture will lead to the kind of off-the-floor negotiations which made the clean air bill more acceptable to a broad mainstream within the Senate. Should the cloture motion fail, I hope that negotiations will begin swiftly so that the Senate can take up a more balanced and progressive energy bill as quickly as possible.

Mr. GLENN. Mr. President, I rise today to cast my vote against the motion to proceed to S. 1220, the National Energy Security Act of 1991.

Mr. President, I strongly believe it is critical to our national security, our continued economic growth, and our competitiveness abroad for our Nation to have a comprehensive energy policy that decreases overreliance on imported oil. I also strongly believe that S. 1220 is the wrong bill and the wrong approach to achieving these objectives.

I support an energy policy that promotes energy conservation, encourages energy efficiency, and furthers the development and use of alternative fuels and renewable energy sources. These energy goals can be met while protecting the environment and providing fairness to consumers. S. 1220 attempts to lead us into the future with the energy policies of the past—more energy production and more damage to the environment. We cannot reduce long-term dependence on foreign oil simply by greater exploitation of nonrenewable energy resources.

Mr. President, I also have serious reservations about a number of the specific provisions in S. 1220. I am not convinced that changes in the Public Utility Holding Company Act [PUHCA] will provide either sufficient consumer protections nor will result promised competitive benefits. I am also troubled by the elimination of Federal jurisdiction over the majority of hydroelectric projects. Further, I am concerned about changes in the procedures for nuclear licensing.

Mr. President, the energy policy we develop will touch the lives of every American now as well as the lives of future generations. We need an energy policy with a long-term goal, not a short-term fix. We need an energy policy that recognizes the fragility of our environment and the limitation of nonrenewable resources. S. 1220 is simply not the legislation to accomplish these objectives. I urge my colleagues to join me in opposing cloture on the motion to proceed to this bill.

Mr. REID. Mr. President, I rise to commend the chairman and ranking minority member of the Energy Committee for their diligent efforts to report a comprehensive energy security bill. The committee expended considerable effort to develop this encompassing measure.

Many characterize our current energy policy as nonexistent. Others claim our policy is to have access to as much oil as we want at the lowest price for as long as we can. The Middle East is the source of well over half the world's known oil reserves and it's the cheapest in the world to produce. Because energy is such a central feature of the economy, it is virtually impossible to resist using the most economical source of energy, however unreliable it might be. Critics believe this proposal does very little to promote conservation, renewable and alternative energy sources; claiming the bill is weighted too heavily toward fossil fuel production.

Mr. President, I believe something for everyone can be found in this proposal. The massive proposal contains 16 titles, including provisions to address fuel economy, alternative fuels, renewable energy, energy sufficiency, oil drilling in the Arctic National Wildlife Refuge, advanced nuclear reactors, nuclear plant licensing, uranium enrichment, natural gas development, offshore drilling, research and development of coal and other energy technologies, promotion of power-generating business, and shortfalls in the strategic petroleum reserve. And, it is primarily for this reason that I must vote against cloture. Unfortunately, there are provisions of the bill that have been developed without input and consideration by the approprate committees of jurisdiction.

For example, the Clean Air Act and the National Energy Policy Act are affected by provisions contained in S. 1220. The Clean Air Act and NEPA clearly fall under the jurisdiction of the Environment and Public Works Committee.

In some instances, the bill's directives are actually contrary to the actions of other committees. As my colleagues are aware, the energy security bill would allow the Federal Government to lease drilling rights along the Arctic National Wildlife Refuge. During the 100th Congress, the Subcommittee on Environmental Protection held hearings on the future management of the Arctic refuge in December 1987 and February 1988. In the 101st Congress, Arctic refuge wilderness legislation again was introduced and referred to the Environment and Public Works Committee. On October 17, the Environment and Public Works Committee reported legislation to designate the Arctic National Wildlife Refuge's coastal plain as a unit of the National Wilderness System. Matters relating to wildlife refuges are under the purview of the Environment and Public Works Committee.

This legislation also streamlines the licensing procedures required to build and operate a nuclear powerplant. The nuclear licensing process has received considerable attention in the past. In 1990, the Subcommittee on Nuclear Regulation held a series of hearings examining the various safety, economic, and policy obstacles affecting the future of nuclear power in this country. Streamlining the reactor licensing process was considered at these hearings. In fact, a hearing on proposals to change nuclear plant licensing procedures was held in May by the chairman of the Subcommittee on Nuclear Regulation of the Environment and Public Works Committee. Current licensing procedures, created by the Nuclear Regulatory Commission, are undermined by the provisions contained in S. 1220. The issue of nuclear licensing falls within the jurisdiction of the Nuclear Regulation Subcommittee.

Of course this is a comprehensive proposal, designed to address the various shortcomings in what some believe to be a nonexistent energy policy. Nevertheless, I have misgivings about several of the bill's provisions and believe we should not proceed.

Mr. KOHL. Mr. President, in the debate over S. 1220 and national energy policy, proponents of this bill frequently cite the need to fully develop this Nation's domestic resources—namely fossil fuels—in order to reduce our growing reliance on foreign energy supplies. And I agree that we should encourage reasonable development of our Nation's domestic resources. But finite supplies of fossil fuels are not the solution to our long-term energy needs. Instead, I believe this Nation should begin to rely on another domestic resource which we have in abundant supply: American intellect and ingenuity.

I will vote against the motion to proceed to S. 1220 because I believe that we, as a nation, can do better. This legislation asks the Nation to accept the status quo, as if it were inevitable. It attempts to appease our increasing appetite for oil, rather than attempting to cure our addiction. It takes the easy way out, rather than challenging our Nation to make sacrifices and aspire to real solutions.

Mr. President, as we have heard many times in this debate, our Nation truly needs a comprehensive energy policy. The current situation is intolerable, and will only become worse unless our energy habits are drastically changed. America's continued reliance on oil and other fossil fuels threatens our national security, our environment, and our global competitiveness. The recent war in the Persian Gulf has shown that our addiction to oil carries a very high price.

Proponents of S. 1220 argue that increased development of our domestic oil reserves will help free America from dependence on foreign supplies in the Middle East. Proponents of the bill would have us believe that drilling in the Arctic National Wildlife Refuge [ANWR] will make our Nation more energy self-sufficient.

But the facts would tell us otherwise. The Middle East has proven oil reserves totaling about 660 billion barrels, versus 26.5 billion barrels in the United States. Even if the optimistic assumptions about oil in ANWR prove correct, domestic reserves would grow by only 3.2 billion barrels—hardly enough to make a real difference. To look at it another way, the United States currently imports about 50 percent of the oil we consume, and that percentage keeps climbing. Even if substantial quantities of oil are found in ANWR, we will reduce dependence on imported oil by only 1 or 2 percentage points—a mere drop in the bucket.

So let us stop fooling ourselves. Clearly, we cannot drill ourselves out of dependence on foreign oil. The longer it takes us to understand that, the more painful it will be when we make the inevitable transition to new energy supplies. Rather than wait for the next crisis, we must begin now to reorient our energy habits. Rather than wait until oil cartels raise prices and devastate our economy, or until another political upheaval in the Middle East threatens our oil supplies, or until our environment is hopelessly destroyed, we should begin now to plan for a dramatically different energy future.

Some proponents of this legislation would ask us to believe that there are no realistic alternatives to fossil fuels, at least in the immediate future. They tell us that we must resign ourselves to the reality of oil addiction, and simply minimize the consequences of our addiction by increasing domestic production. They would have us believe that we must accept the destruction of ANWR, a unique and fragile ecosystem, for the short-term benefit it would provide. And I do mean short-term: Average estimates of the oil which may lie beneath ANWR would supply America's oil needs for only 200 days.

But there are very realistic alternatives to the development of ANWR. Recent advances in solar and wind energy technologies are extremely promising. I am convinced that if the leaders of this Nation would make a serious commitment to renewable energy and conservation, we could begin to move away from our dangerous dependence on fossil fuels. I believe that if we were to challenge this Nation's best minds to the development of reliable and cost-effective alternative energy supplies, the challenge would be met. And if we as a nation were to back our commitment with adequate financial resources, we would meet the challenge sooner rather than later.

Furthermore, if we act early to encourage development of alternative energy technologies, American companies could gain an edge over their foreign competitors in this promising industry. By helping our companies take the lead in the world market, we would create millions of new jobs and improve our balance of trade. On the other hand, if we do not act quickly, our competitors will corner the market on lucrative energy technologies, and Americans will lose out on a tremendous opportunity.

It is time we started challenging the American intellect and ingenuity, rather than taking the easy way out. As former Energy Secretary James Schlesinger pointed out in a recent speech, it is easier for this country to fight a war in the Persian Gulf than to tighten our belts here at home and conserve energy. I believe that we can do better.

For example, S. 1220 overlooks one of the most obvious sources of energy conservation: the corporate average fuel economy [CAFE] standards. Moderate increases in automobile fuel efficiency would drastically reduce our need for foreign oil, and more than offset any oil which might be found in ANWR. New and emerging technologies will be capable of making our cars more fuel efficient without making them smaller. Yet S. 1220 does not require any increase in CAFE standards.

In addition, greater energy conservation in our industrial sector would help our Nation compete in the global economy. Some of our competitor nations use half as much energy per unit of GNP as does the United States. By conserving energy, our competitors reduce production costs and beat our manufacturing prices.

It is time we started listening to our children and grandchildren, who are growing up in an era of environmental awareness. We should teach them that there are values worthy of sacrifice. We should show them that we are considerate enough to protect this Nation's last wholly intact ecosystem for future generations and for dependent wildlife. And we should show them that we will not accept mediocrity, but will challenge ourselves to do better.

Mr. President, as I said before, this country desperately needs an energy policy. But we should not accept an energy policy which promotes business as usual, and is premised on the development of the Arctic National Wildlife Refuge. While there are some good conservation and renewable energy provisions in this bill, they are overwhelmed by other provisions which promote development, particularly in ANWR.

Therefore, I am opposed to S. 1220, and will vote against cloture on the motion to proceed to the bill. I urge my colleagues to oppose the bill, and to stand up for an energy policy which truly promises self-sufficiency, American competitiveness, and the environment.

Mr. SANFORD. Mr. President, let me first say to my colleagues that I hope to see this body approve a truly visionary national energy strategy. This should be an exciting time for the U.S. Senate, a long-awaited time when we can say to the American people that business as usual is not good enough, not good enough for the future economic and social well-being of our citizens, and not good enough for our fragile environment. We have an opportunity to guide this Nation into the next century and away from our addiction to polluting and finite fuel sources.

I have been very popular over the last several weeks with the scores of groups attempting to predict my vote on cloture on the motion to proceed. To be frank, this has been a difficult decision for me. This Nation needs a comprehensive energy strategy and they need it as soon as possible. And, I believe the Energy Committee measure has some very responsible provisions; the committee worked long and hard on this bill and I am not prepared to dismiss their efforts.

Mr. President, I do, however, believe that S. 1220 needs more than just a few cosmetic changes. I am not prepared to consent to what promises to be a very divisive floor fight over a measure which might better be dealt with in the spirit of compromise off the Senate floor. There is no question that serious differences exist between Senators on this bill; differences that have not seen the light of compromise to date, and differences that could hold this body hostage for many days, and even weeks, to come.

One concern with S. 1220 that I have expressed to many of my constituents and colleagues involves the issue of reforming the Public Utility Holding Company Act. While this act may require updating, I am convinced that the method of deregulation suggested in S. 1220 will neither benefit the consumer nor properly address our need to encourage conservation and renewable power generation.

I cannot help looking back to the Clean Air Act debate last year. We had a somewhat analogous situation to what we see before us today. After a minority group of Senators prevented that measure from coming to the floor, the bill went to the negotiating table, was dissected, debated, and altered, and reemerged as a stronger bill which finally represented the consensus of the Senate.

S. 1220 is an extremely complex and broad piece of legislation. Its implications are extremely important to the future quality of life in America. It is not a bill that should be shoehorned through this body, but one that should receive the honest review of every Member. Therefore, Mr. President, I must oppose cloture.

Mr. RUDMAN. Mr. President, I rise today to discuss S. 1220, the National Energy Security Act of 1991. Like many of my constituents from New Hampshire, I have serious reservations about certain provisions included in this legislation. However, I will support the motion to proceed to consider the bill although I have not reached any conclusions as to the merits of the overall package. I believe that a full debate on national energy policy would be beneficial not only for ourselves but also for the American public. I should note that I reserve the right to vote against the bill, and against cloture on the bill, at a later point in the debate.

It has been over 18 years since this country has addressed a comprehensive national energy strategy. For years the energy debate has focused on the fact that we lack a coherent national strategy. Simultaneously, figures of foreign oil dependency has continued to rapidly escalate. In the 1970's, U.S. consumption of foreign oil was at 38 percent and it has now risen to 50 percent. We are the world's largest oil consumer and at our current rate of consumption, we will be importing 70 percent of our oil within 20 years. Mr. President, coming from New England where the energy dependence on imported oil is the highest in our Nation, I am well aware of the problems this can cause. Unfortunately, we did not learn the lesson of successful conservation even after the Arab oil embargo of the 1970's. It took American troops deployed on Saudi Arabian soil to demonstrate the risk that the United States faces in terms of future economic prosperity, international competitiveness, and national security.

As I stated earlier I have serious concerns about S. 1220. As a cosponsor of S. 279, the Motor Vehicle Fuel Efficiency Act, I am disappointed that there are no strong provisions mandating an increase in the corporate average fuel economy, or CAFE, standards. In as much as 60 percent of the oil consumed in this country is used by the transportation sector, over half of that by automobiles, we have to make this sector of the economy more efficient. Increasing new car fuel efficiency could save as much as almost 15 billion barrels of oil by the year 2005, or 2.8 million barrels of oil a day and more thereafter. By contrast, total daily oil consumption is now nearly 17 million barrels per day. Such savings would reduce our dependence on foreign oil, keep CO_2 emissions down, relieve pressure on the foreign trade deficit—one-third of which is attributable to oil—and greatly help the U.S. economy. I believe the adoption of meaningful CAFE standards are a necessary component of any national energy strategy.

I recognize the concern over whether to allow oil exploration in Alaska. This decision has important economic and environmental implications for our country, and I have yet to decide how I will vote on it. However, views on this as well as other matters need to be fully debated and voted on while considering the bill; it should not be discussed under the parliamentary restrictions of a motion to proceed.

In closing, today we have the chance to openly debate a matter of extreme national significance. We should not shy away from this opportunity. I am hopeful that we can proceed on this matter, have a healthy discussion, and resolve the future of the Nation's economic and national energy security.

Mr. DODD. Mr. President, procedural votes in the Senate are often mistaken for substantive positions on legislation. Given the strong feeling on S. 1220, the National Energy Security Act, I just wanted to take a few moments to explain my vote in favor of the motion to proceed to the bill.

Had the vote today been an up or down vote on S. 1220, I would have registered my vote with an emphatic "no." I would not and could not have supported S. 1220 in its current form.

I cannot support a bill that has as its centerpiece the opening of the Arctic National Wildlife Refuge. To open this pristine Arctic Wilderness to drilling for oil and gas, which only has a less than 50-50 chance of succeeding, is poor policy that strikes the wrong balance between conservation and production.

I also could not support an energy policy that did not include tough new corporate average fuel economy standards. A balanced policy must address our growing consumption of oil; and vehicle fuel use accounts for over 60 percent of our Nation's oil use. Adoption of the Bryan bill, of which I am a cosponsor, would have been a major step forward in reducing our dependency on foreign oil.

I am also uncomfortable with title XV of S. 1220, the title to reform the Public Utility Holding Company Act. While PUHCA was not an issue of significant focus in the debate today, I have chaired several hearings on this subject and have been working with the Connecticut Department of Utility Control as well as with environmental, consumer, and industry groups in an effort to craft amendments to address serious deficiencies in this title.

There were other titles in S. 1220 of grave concern to me—the provisions affecting the licensing of nuclear plants and those affecting the regulation of hydropower plants, changes in the management of our Outer Continental Shelf, and policies affecting imports of Canadian natural gas. I planned to focus my efforts on addressing these and other problems, making the necessary chances and crafting a sound energy policy for our Nation.

With these fundamental concerns about this measure, many will ask why I supported cloture on the motion to proceed. My procedural vote today was a plea to begin meaningful discussion on this most important and vital issue.

Mr. President, this Nation has gone on for far too long without a national energy policy. I look back at my statements and those of others in January of this year and am reminded how crucial this issue is to our Nation and its future. It is clear we need to explore how we can best protect our environment while, at the same time, move forward to make our Nation more energy independent. I was hopeful that this undertaking would begin today, and that I could play a meaningful role in this process. However, that task will now await us on another day and I look forward to working with my colleagues on this vital issue.

Mr. SPECTER. I am voting for cloture today on the motion to proceed to consideration of the energy bill because I believe the full Senate ought to have an opportunity to debate national energy legislation. While I fully respect the position of those environmental groups who opposed cloture on the motion to proceed, I believe the issues warrant consideration by the full Senate.

I believe the vast majority of us in this Chamber are in agreement that this country is in urgent need of national energy legislation. Earlier this year I introduced S. 326, a bill which promotes greater energy efficiency through implementation of a number of reasonable and achievable conservation measures. While it was my hope that the Energy Committee would move quickly on a package of conservation measures which included provisions from my bill, it became clear early on that these vital issues were going to be held hostage to the more controversial issues relating to national energy policy.

The result of this stalemate is that we are faced today with the prospect of a filibuster on the motion to proceed to consideration of S. 1220, the National Energy Security Act of 1991. Many of the provisions from my bill such as least-cost planning for utilities, Federal energy management incentives, and home energy rating systems have been included in part in S. 1220. Although I would prefer to see issues such as energy efficiency standards debated separately, I recognize that in the near term they will only be considered as part of more comprehensive energy legislation.

Mr. President, in addition to the energy efficiency provisions, I believe S. 1220, as drafted, contains a number of important initiatives that are essential to helping our country achieve energy independence. At the same time I recognize that this bill contains a significant number of controversial provisions, many of which require significant modifications before I will be in a position to support passage of the legislation. Nevertheless, the Senate must be able to debate these and other issues openly on the floor so that we can more fully determine if a compromise is attainable. For these reasons, I cannot support a filibuster of the motion to proceed.

Mr. President, those of us who recognize the need for a new national energy strategy must bear down and try to work our way through the problems blocking agreement on a comprehensive energy strategy. As we saw with consideration of the Clean Air Act Amendments of 1990, if there is sufficient will to enact much needed new energy laws, then we should be able to bring such matters to the floor and forge a compromise on those issues which still provide controversy. My fear is that if this filibuster succeeds, it may cause us to lose the only chance we will have in the near future to reconcile tomorrow's energy needs without diminishing natural resources.

•Mr. KERREY. Mr. President, I would like to express my opposition to the motion to invoke cloture on the National Energy Security Act of 1991.

I have chosen to vote no because the legislation before us does not provide a balanced long-term energy strategy. Balanced legislation would not only reduce our dependence on foreign sources of energy. It would also provide a serious plan for making us more efficient in our use of energy; it would provide a greater boost for domestic clean burning, alternative, and renewable sources of energy; and it would be an investment in our economic future. I also oppose the legislation provision opening up the Arctic National Wildlife Refuge's coastal plain to oil and gas drilling. Further, I was disappointed by the legislation's weak provision addressing motor vehicle fuel efficiency.

I would also like to highlight the tremendous opportunities in the area of efficiency that any comprehensive energy strategy should promote. In recent years there have been great strides in demand side management by utilities directed by encouraging consumers to use less energy and use it more efficiently. We should encourage such efforts and harness the power of the market to help us achieve our goals. There are opportunities in every sector—housing, industrial and commercial, and transportation—to use energy more efficiency and economically, and I believe we need to press forward in each of these areas.

It is important that we develop a national energy strategy that combines both short- and long-term steps to ensure our long-term economic, environmental, and energy security. In developing such a strategy we will need to balance various options and will need to make difficult decisions. I look forward to supporting such efforts here in the Senate.•

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 1220, a bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation and for other purposes.

Bennett Johnston, David Boren, Lloyd Bentsen, Daniel Inouye, Kent Conrad, John Breaux, Jeff Bingaman, Malcolm Wallop, Pete V. Domenici, Larry Craig, Steve Symms, Don Nickles, Richard Shelby, Alan Simpson, Trent Lott, Orrin Hatch.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to consideration of S. 1220, the National Energy Security Act of 1991, shall be brought to a close.

The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. PELL (when his name was called). Mr. President, on this vote, I have a live pair with the junior Senator from Nebraska [Mr. KERREY]. If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "aye." I withhold my vote.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Nebraska [Mr. KERREY], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

On this vote, the Senator from Rhode Island [Mr. PELL] is paired with the Senator from Nebraska [Mr. KERREY]. If present and voting, the Senator from Nebraska would vote "nay" and the Senator from Rhode Island would vote "aye."

Mr. SIMPSON. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Vermont [Mr. JEFFORDS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 50, nays 44, as follows:

[Rollcall Vote No. 242 Leg.]

YEAS—50

Akaka
Bentsen
Bingaman
Breaux
Brown
Bumpers
Burns
Byrd
Coats
Cochran
Conrad
Craig
D'Amato
Danforth
Daschle
DeConcini
Dodd
Dole
Domenici
Ford
Garn
Gorton
Hatch
Hatfield
Heflin
Helms
Inouye
Johnston
Kassebaum
Kasten
Lugar
McCain
McConnell
Mitchell
Murkowski
Nickles
Nunn
Packwood
Pressler
Pryor
Rudman
Seymour
Shelby
Simpson
Specter
Stevens
Symms
Thurmond
Wallop
Warner

NAYS—44

Adams
Baucus
Biden
Bond
Bradley
Bryan
Burdick
Chafee
Cohen
Cranston
Dixon
Durenberger
Exon
Fowler
Glenn
Gore
Graham
Grassley
Harkin
Hollings
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Lott
Mack
Metzenbaum
Mikulski
Moynihan
Reid
Riegle
Robb
Rockefeller
Roth
Sanford
Sarbanes
Sasser
Simon
Smith
Wellstone
Wirth

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Pell, aye

NOT VOTING—5

Boren
Gramm
Jeffords
Kerrey
Wofford

The PRESIDING OFFICER. On this vote there are 50 yeas and 44 nays. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON addressed the Chair.

The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, in case anyone wants to know what this vote means, it means we lost. I congratulate those who formed a very strong phalanx against this bill. I think this means that the approach—you know, sometimes I am slow to learn, but I have learned that the approach of the Energy Committee in this bill is not the will of the Senate, or at least it is not the will of 60 Senators.

It is my thought at this time that we will not try cloture again, although, at the invitation of the majority leader, we will come in to talk about where we go from here.

I fear, I really do, that where we go from here is where we have been. But I will certainly work to try to pull together a bill.

I must say that, while I lost, and I hope lost graciously, I certainly have great admiration for those who fought the fight. The environmental groups, I must say, wrote the textbook on how to defeat a bill such as this, and my admiration is to them for the political skill which they exhibited. Not only the environmental groups, but the automobile companies, and some of the utilities and what we call the "just say no's." They pulled together a tremendous phalanx, which was very effective.

We tried to do the same thing, Mr. President. That is what democracy is about. You get those who are supporting your view, and you go out there and call the other side special interest, and you get your groups and try to get your votes, and we did not get enough votes. We understand that. I must say that I would not have done it any differently.

Our staff on the Energy Committee, I think, is truly, truly extraordinary. Not only was their effort tremendous in terms of the energy and application which they put to it, but the level of skill and the level of dedication was great.

We think—at least we tell ourselves, those of us who are for this bill—that we are doing the right thing, for the right reasons, in the national interest, and not in a narrow, partisan, parochial, special interest way. I think we were. I adhere to that view. I am sorry that we did not have a right or the ability to explore alternative means of having this bill considered. Perhaps there is someone who will meet with us and with the majority leader that can find an alternative method to come to some kind of consensus on national energy policy.

Mr. President, we may have defeated comprehensive national energy policy here today, but we have not defeated the problem. The problem remains. It has been this way for 19 years. Every time we try to do something, we say "not this, something else." We say, "Not the Energy Committee; go to the Finance Committee and get taxes."

Well, I await somebody else's solution. We have done our best, and I give my congratulations to those who, at least at this point in the game, won the fight.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I want to recognize and congratulate the efforts of the Senator from Louisiana, the chairman of the Energy Committee. This, I believe, is just one chapter in a series of efforts that we will undertake to write a sound energy policy.

It is not my view—and I know it is not the view of others who are in opposition to the cloture motion—to stop an energy bill. We now have an opportunity to sit down with the chairman of the committee, and with other Members of the Senate who are interested in fashioning energy policy, so we can get on with it, and so that we can begin in our country to in fact adopt an energy policy which does address America's unfortunate dependence upon foreign sources of oil.

I want to thank the chairman of the committee for basically deciding that he would not proceed, if I understand it, with another cloture vote, so we can get on with a sound, balanced policy. I thank the chairman again for his efforts.

I want to thank the others in the Senate who have worked so hard to fashion a sound energy policy. But the point I want to underline is this: We do want to work with the chairman and other Senators, and we pledge our efforts to do so, so that we can develop an energy policy that makes sense for America.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. WIRTH. Mr. President, I believe our work has just begun. This was the political side of the job that we have done over the few days and weeks in counting votes. We now move on to the substantive side of the job.

I look forward to working with the distinguished chairman of the Energy Committee, who, as I have said, was enormously forthcoming in so many provisions of this legislation, which I think are good, and I think can be made better.

More important, I think we have made a couple of statements about the two enormously contentious issues in this bill. One of those is corporate average fuel economy. The other is whether or not we should open the Arctic National Wildlife Refuge. I hope that now we can proceed on an overall energy bill, knowing that those two ought to be set aside. Those have been sort of bookends of this bill. We ought to set them aside, do them individually, and then do the overall energy bill. I think we have that opportunity.

I think, also, it is useful for all of us to remember that there is a very good model for this. We had a clean air act that came to the floor out of the Environment and Public Works Committee, and it was very clear that there were not enough votes to break a filibuster. So that bill got worked out, and we ended up with, I think, a very good piece of legislation.

If we can look at that as a model and understand that that kind of constructive history can be used by us here, we can be back very quickly and have an overall energy bill.

I thank the distinguished chairman of the full committee, who put his heart and soul into this, as few people can do. We all know how dedicated and tenacious Senator JOHNSTON is and can be. We saw him doing that, and I have enormous respect for that. I hope we now join forces with everybody's efforts and have an overall energy bill.

I yield the floor.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, I, like the chairman, am as full of admiration for the organizational skills of those who rose against this bill. I am less full of admiration for some of those Senators who came to me seeking deals on this side, saying, "If you do that, then we can do that."

I am in agreement with the Senator from Montana that this is just one chapter, but it is the same chapter we have always written. It is the same chapter since 1969, Mr. President. Senator JOHNSTON has been in the Senate longer than I—19 years to my 15. I have seen us tie up energy policy in the past, and I have seen us do what is being asked of us now, to do that which is easy, and that which is popular, and that which special interest groups surround; and the result will be, as the result has been: A distorted national energy program which, necessarily, drives the market to the bubble of political expediency. That is where the least resistence is.

So the only opportunities that we had in here to provide markets, expand uses for America's natural gas, to provide funding for technology to advance us well above other nations of the world and new energy uses, technology, and conservation, will be denied.

The distortion is absolutely going to be real. There is no better example of how the distortion works in energy policy than the decision "sometime ago" to deregulate new gas on the thesis of the then-Secretary of Energy that we had discovered all the gas in the world and our job was now but to democratize the misery of using up what we knew of and, therefore, there was no risk in deregulating new gas.

They did. And guess where all the gas that comes from the country right now has been discovered after that deregulation of new gas? But in the meantime old gas remains regulated and we have all these ridiculous things that drive us here to take-or-pay contracts. We had, by law, to break contracts in America.

Another wonderful thing was the Synthetic Fuel Corp., built out of a tax revenge because oil companies were making money in the old days of an embargo.

So we got synthetic fuels and wasted many, many dozens of billions of American's dollars, and we had tax credits for wood-burning stoves which are now not allowed in parts of the country because of clean air problems.

What we have done today is simply deny ourselves the chance to deal and debate with energy policy that is balanced between conservation and production.

We are not mature enough in America yet. We heard lots of people saying "no blood for oil," also the ones saying "do not drill for oil."

Mr. President, I trust the sincerity and the judgment of the chairman. He is my friend and we have worked together. This was a bipartisan bill. Our staffs worked well, and the committee worked well. There was nobody in the committee whose interests were run over. This was not some subterranean plot that some suggest we now engage in and go in the back room and decide what things are going to be with four or five Senators and a little bit of staff.

This was done in the full light after dozens and dozens of hearings. It was done in front of the public. It was done in front of the press who sat at the table. It was done with the full cooperation of the chairman with the press who answered their questions day after day and who sought not to distort the issue as those who aligned against this did, showing pictures of Colorado as though they were the Arctic National Wildlife Refuge.

We are not mature enough. We have not reached the state of maturity in this country where we can deal with energy policy and ignore, for a change, the special narrow interest and look at the broader public interest. Those groups who call themselves public interest groups and the public they serve might well be in Baghdad as in downtown America.

I say again that these folks who have denied us are content to line the pockets of foreigners with Americans' hard-earned silver, jobs that we have, none of whom are going to hire American, none of whom are going to pay a penny's worth of taxes, none of whom had the interest that was contained in this bill to pay for the research and the development into the new energy technologies of the future.

There is no silver bullet, Mr. President. None is going to be found by the new chapter of which the Senator from Montana speaks. Energy policy requires every bit of energy resource, conservation, technology, and innovation that we can use to lessen our dependence.

The futile, silly arguments that, because there were only 200 days of oil in ANWR meant that we should not drill, it got down to this: Why in Heaven's name should any Senator have eaten breakfast this morning? He will only be hungry by lunch. Using that logic, Mr. President, no oil field in America—but perhaps one in Texas—would have ever been drilled. No one coal mine is going to provide all of America's energy needs. No one oil field is going to. None of our uranium resources are going to provide all of America's energy needs. None of the natural gas by itself in a field is going to provide all the natural gas that America needs.

Energy policy is part of a composite whole which requires heavy efforts at conservation, heavy efforts at tertiary recovery, heavy efforts at new production, heavy efforts at nuclear, heavy efforts at electric battery research and biomass fuels, and all of these things. No one of these fuels is going to solve our problem and no amount of envy that somebody else is doing something that somebody else is not doing is going to solve our problem.

No, Mr. President. We had thought, the chairman and I—his leadership brought us here—that maybe for a moment we had reached a level where this country's attention could be focused on its energy crisis. We were wrong.

I guess I do not know what it takes. It is hard to deal with energy policy in a crisis because everybody then wants revenge, somebody is making a profit, because everything else is short. I do not know what happened to the State, of the Senator from Ohio, which had to shut down factories and schools in the last natural gas crisis.

There is just nothing to it now; that is forgotten. There is no means of unburdening the transportation system for natural gas; no means of providing the new markets that it could supply, and no means of providing the competition and the electric-generating industry that it could supply.

So what the Senate has done today is to say, in many respects, those few little groups are willing to speak for all of America and not even allow this country to debate—in front of all Americans—the policy that could begin to relieve the desperate dependency we are developing. And nothing that was done by defeating this day is going to lessen American's dependence on oil, foreign and domestic; in fact it enhances dependence. Those that feel good about that I congratulate. This Senator does regret deeply this minority thwarted the will of the majority to even debate the American energy future.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, I follow up on what the Senator from Wyoming has said concerning the minority here. It is not a partisan minority. It is a minority of do nothings and know nothings who want to stop even the debate over what we should have in a national energy policy.

Having stood here now through three separate areas of debate over energy policy, two of them led by my late good friend, the Senator from Washington, Scoop Jackson, and now this one commencing with the leadership of the Senator from Louisiana, I think some of those do-nothing, know-nothing Senators here ought to read a little bit of history.

When we first started out, we were worried about petrodollars that were leaving our country because we had increased our dependence on foreign oil to about 20 percent. Then by the time we got to the second go round, the dependence on foreign oil was about 30 percent; in the last year alone it has gone up 10 percent more. We are at 50 percent. By the end of this decade, we will exceed 65 percent in terms of importing our energy.

Some of these people seem to think that by conservation alone they can create more supply to meet the demand. Our demand is increasing. We now have the large majority of women in the work force. Instead of just one family car going to work, there are two in most instances, and beyond that there is probably another car for the children. That is the America lifestyle.

These do nothing, know nothings are going to say to those working couples you cannot have a car, and what is more you cannot leave behind you in your home the electric washer and the dryer and the coffee pot that comes on because it can be set and be automatic. All of these lifestyle improvements of the United States are energy intensive. And if we are to preserve our lifestyle we must find a new energy policy.

My State has half the coal of the United States. It probably has more than half of the remaining oil of the United States. Yet these do-nothing, know-nothings are drawing lines around the land in my State on a map and saying you cannot use that land, land that is there that God gave us that gives us the resources for the future.

These same people are saying, oh, no, you cannot go into oil shale. They are saying you cannot open coal. They are now saying we cannot even reexamine nuclear policy. They are spelling the doom of this country in terms of our current lifestyle and the projected hopes and dreams for our children.

But even what is worse, as the Senator from Wyoming has said, they are unwilling to even debate it. I told the Senator from Colorado I am looking forward to this debate. As a matter of fact, I hope to undress many of his theories but he is unwilling to debate. He is unwilling to bring it up and face the facts.

I believe there is still a majority of the people here in this Senate that will favor the opening of ANWR for oil exploration before we are through. The minority of the Senate has stopped that.

I believe there is majority sentiment in the Senate to work out new CAFE standards that will not kill the American industry. There is a minority out here that says, "No, you are going to take our bill or nothing." There is another group here that says we need to reform our utility policy, and they are unwilling to accept the solution in this bill, so unwilling they will not even debate. This has been a coalition of do-nothing, know-nothings on a series of issues. There is no majority issue opposition here to ANWR.

If there is, it comes from a political minority on the other side of the aisle. And I look forward to seeing that exposed, because I think it is an opening wedge of the 1992 campaign on what should be the energy policy of the United States.

I am willing to stand with the President of the United States on that policy. I believe he has some of the answers. He has proposed them several times and the Congress is unwilling to address them. When he gets out on the campaign swings next year, I hope he raises them again. Because I believe those couples who are going to work want to drive that second car. I believe they want their children to have cars. I do not believe they want them to have aluminum that will collapse every time there is an accident.

Mr. President, this Senate has now said no to even debating an energy policy—even debating it. If that is some sort of success, you know, I welcome it. It sounds to me like the days of the know-nothings. We are going to hear it time and time again in this Congress. And to me it is going to enlighten the elections for the coming two or three Senate elections.

This Senator intends to go throughout the country and try to inform some of the people of this country of the duplicity of some Senators here: Senators who had introduced bills as far as their own State is concerned that would preserve energy development, would preserve mining development. But if another Senator introduces a bill for that same treatment in their State, they raise the ire of the extreme environmental movement of the country.

The Senator from Louisiana congratulated the extreme environmental movement for political astuteness. I say they are misusing the tax laws. They are misusing the money that has been given them to try to help preserve the environment. They are using it for political purposes.

Before this debate is over, we are going to do everything we can, everything we can, to see to it that that comes about. That debate is one that I look forward to entering into. It is going to be a tough debate.

I am tired of this soft-shoeing on this issue. I only wish that some of those who have been here before—the great Senator from Washington, the great Senator from Nevada, Senator Bible, and others who approached this in a bipartisan manner—were here. that is my last comment.

If the Democrats of this body think they can sit down and devise a national energy policy all alone, be my guest. It is a bipartisan policy the country needs and the country wants, and it is not one dictated by a few extremists who are unwilling to do anything but stick their heads in the sand.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I will be very brief. I will not address myself to the substance of the legislation but rather to the substance of the Senator from Louisiana.

I do not know any Member of the U.S. Senate who has tangled more often than I have with the Senator from Louisiana. He comes from an oil-producing State. I come from a consuming State. But, with no exceptions, he has always been a gentleman, able legislator, captain of a team that operates astutely, with integrity, with dignity.

Although we have had a victory today in defeating the cloture motion, I just want to say to my friend and colleague that the Senate is better off by reason of his being here, and I respect him. I think that I speak for many of us who were on the prevailing side today when I say that he is an able legislator and does his job well.

Sometimes we win out here and sometimes we lose. I hope that, before this entire energy issue is concluded, we will be able to come together and work out a piece of legislation or several pieces of legislation that will serve this country well. I congratulate the Senator.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

First, let me commend Senator JOHNSTON, the Senator from Louisiana, for the commitment that he has made over an extended period of time, well over a year. I have been on the Energy Committee since coming to the Senate in 1980. As a consequence of that dedication and the dedication of the minority through Senator WALLOP, we went through some very, very difficult discussions to try and formulate a compromise.

I think the committee staff on both sides has made significant contributions in the process of developing that compromise.

Well, we have killed in 3 days an effort that took over a year to develop. We have killed it, Mr. President, with no compromises, and no alternatives. One is reminded of a child building some blocks and somebody just coming along at the last minute and kicking them down.

And now we hear our colleagues say, "Well, let us go back and pick it up. We can address the difficulties with CAFE. We can address the difficulties with nuclear. We can address the difficulties with ANWR."

Do you know what we have here, Mr. President? We have, first of all, a jurisdictional dispute between two committees. Make no mistake about it. We have heard it. We watched the debate. We watched the filibuster formulate primarily from members of the Environment and Public Works Committee.

Who are we kidding, Mr. President? Do the American people really think that this body is genuinely committed or capable, either one, of picking up the pieces, the pieces that are so diverse as a consequence of this vote, the pieces that represent the CAFE interests, the automobile industry that is in a decline, that is losing money, and does not want a tough CAFE bill; or the Environment and Public Works Committee that has a Bryan bill demanding 40 miles per gallon which would, for all practical purposes, kill fleet averages from the standpoint of the ability of the American automobile industry to be competitive? Do you expect this body to formulate a bill out of the ashes that would address these extreme concerns? It is absolutely ridiculous. It will not happen.

Nuclear utilities. That issue is an environmental issue. It is a clean air issue. It is a jobs issue. And certainly ANWR, which has been the lightning rod of this whole debate. And the issue has been brought up of a 200-day supply or 600-day supply. We have been through that. The Senator from Alaska is not going to repeat the realities associated with the number of jobs we are talking about in this country.

This bill, Mr. President, this bill, this energy bill, this comprehensive bill, would have provided this Nation with 735,000 jobs, would have made a contribution to the gross national product of this country of $550 billion, and this body has just killed it by a vote of 50 to 44. They have not come up with any alternative. They have simply killed it. And then my colleagues on the other side, in their rhetoric, suggest that we can simply pick it up and go on.

Mr. President, we have been going through this process for not 1 or 2 years. We have been trying to develop an energy policy for this Nation since the midseventies. We have gone through this before. I hope the American people have some type of a reference point to see the progress that we have made.

What galls the Senator from Alaska is the rhetoric that suggests that because we lost on a comprehensive bill today, that we can pick up the pieces and reach a compromise. That is idiotic. It will never happen. The diverse opinions between CAFE and ANWR, and nuclear, and the jurisdictional disputes between the Energy and the Environment and Public Works Committees simply will not allow that to happen. We had a comprehensive bill. We had compromises. And we have seen the consequences.

Well, Mr. President, I think we have to reflect on the significance of what this vote means today. It means that 44 of our colleagues are going to have to bear the responsibility for the Nation not developing a comprehensive energy bill.

I want to thank those 50 Senators that saw fit to recognize that it was in the interest of this body to lay the bill down and begin the debate. I challenge the logic of 44 of my colleagues who saw fit to suggest that they did not want to debate it.

So the bottom line, Mr. President, is they can bear the responsibility to the people of the United States as we look at a declining economy, as we look at an opportunity we had for the most significant contributions to jobs in this Nation.

I do not take that lightly, Mr. President, because it is going to come back. My concluding remark is, OPEC is going to take this message and they are going to say we will simply provide more exports of crude oil into the United States and when it gets up to 70 or 75 percent, then we will start raising the price. But make no mistake about it, they have it figured out. They are going to keep the price low and we are going to continue to import. We are going to have a difficult time bringing on alternative energies because they will not fit the economics without a subsidy, which we could not agree on anyway. So we become more and more dependent.

Then one of these days OPEC is going to look at the United States and say, "Aha, 75, 80 percent? We will just start moving the price up." And I will tell you where those 44 people will be. They will be here saying the public demands that we develop our resources in this country; that we open up striper wells; that we encourage development.

Where are we going to be? We are going to be held hostage because we fought a war. Did we not? And the war we fought was to stop naked aggression. And it was to keep oil flowing. But today that did not work. There was no reference to that.

It is a tragedy, Mr. President. I just hope the American people are not naive enough to believe that the general comments from our colleagues that we can simply pick up and move on with a comprehensive energy policy are realistic because they are not, for the reasons I have cited.

I thank the Chair and I particularly thank the professional staff that has worked so hard, so long, to attempt to make a contribution, a meaningful one, in addressing the Nation's energy security interests which were so deeply, deeply, deeply cut today. I thank the Chair.

The PRESIDING OFFICER (Mr. SIMON). The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, this is a serious moment. Those of us who have worked almost a year to present a package to our colleagues have seen that, for the moment at least, go up in smoke. I do not think we should lose at this moment the respect for our colleague, the chairman of the committee, who has made a truly valiant effort here.

I think it is important, perhaps, to understand the constellation of forces that joined against cloture, because it is an unusual coalition. And those who are watching are perhaps mystified by how we could have a defeat for going forward on a debate on an energy bill.

It is pretty hard to defeat a coalition that is made up of the environmental community, who felt strongly that drilling in Alaska should be off-bounds and the automobile industry, which was strongly opposed to any increase in fuel efficiency; and oddly enough, those who are in favor of the strongest increase in fuel efficiency who were also part of the coalition. So, curiously enough, you have those who are in favor of much stronger CAFE standards opposed to cloture and those who are on the other side of that controversy opposing cloture. In addition, you have about half the utility industry in this country adamantly opposed to cloture on this bill.

If that constellation of forces were not enough, in addition, you had two jurisdictional disputes. You had the Commerce Committee, that had earlier passed out the Bryan fuel efficiency standards, upset that fuel efficiency was in a bill out of the Energy Committee. And then of course you had the Environment and Public Works Committee that I think was unanimous, or close to unamious, in opposition because they, too, have their own view on energy policy.

I want to join in commending those who won this battle. They did a very good job of organizing the necessary votes to prevent cloture. They also waged an aggressive and sincere debate on the floor. I disagree with them, but they have prevailed, at least for the moment.

I do not think we should forget that the challenge remains. We are still 50 percent dependent on foreign crude oil after that vote. We are headed for 75-percent dependence on foreign crude oil if we fail to act. Those are stubborn facts. They mean this country is vulnerable. It is dependent. And we must act.

I have always believed that an increase in fuel efficiency was critically important to an overall energy package. I believed the only way to get an increase in fuel efficiency was a part of a comprehensive package that probably would have to include drilling in Alaska in order to succeed.

I still suspect that is right. I suspect we will not be able to get a significant increase in fuel efficiency absent a comprehensive package, and that is unfortunate. But that should not mean that we give up, because this country demands a comprehensive energy strategy and we have the obligation to provide it.

I am disappointed at the result, but I am hopeful that in the hours ahead we can come together and recognize the challenge that remains for our country. We can do that. Over and over I have seen this body at critical times and in critical hours move together to do something that simply had to be done. I hope that occurs again in the coming hours.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I understand the Senate is attempting to go in recess. Is that correct?

The PRESIDING OFFICER. The Chair is not able to provide the answer to that immediately.

Mr. DOMENICI. Let me just say I do not want to use a lot of time, obviously. I heard much discussion on the energy bill, but I felt, having heard most of the discussion, that there were one or two thoughts I might contribute. Last night I happened to flip on television and I saw an American city in bankruptcy, and I saw a receiver appointed to run this city in the northeast of America. And then I saw a series of photographs of the people of the bankruptcy city and a series of photographs about how the bankruptcy city looked.

Then I saw a series of questions, I might say to my good friend, Senator PRYOR. Some questions were directed to the taxpayers as he or she walked down the streets, many of them old, many of the sickly. They were asked, "What are we going to do? You do not want to pay any more taxes, so the firemen are going to be laid off. We are not going to have any policemen."

Then they went over and asked a fireman. "What do you think about this?" And the fireman said, "They ought to pay us." And somebody said, "What happens if they are broke?" And another fireman—said, "It does not matter; we have a contract." And they went to the police department and they said essentially the same thing.

They asked some citizens getting on a bus. They responded, "No more taxes." Even the fireman did not want to pay any more taxes, even though the fireman was losing his job because they were not enough taxes to pay him.

Obviously, in many people's minds, that is not what this issue is about. But, Mr. President, I believe it is. I do not think we ought to discuss an energy bill as an energy bill. I think we ought to talk about it as an economic bill. There is nothing about this country that is closer related to growth, prosperity, and jobs than energy.

I was here when we had the first crisis. A boycott put us in great trouble. And out in America people were saying, one group—probably part of the same group that is opposing this bill today—were saying "Think of it. Think of it," they were saying. "America uses 33 percent of the world's energy." They were running around saying, "Boy we are terrible people—33 percent of the world's energy and we are only 6 percent of the world's population." As I recall, that was what they were saying.

Thirty-three percent of the world's energy; terrible. What they did not tell the American people is that we were producing then and we are by far in the way the world's largest producer of goods, services, and things of value. Thirty-three percent of the energy and America is the largest provider of everything produced, grown, or eaten. That is not bad. But, more important, it indicated that energy and growth and prosperity were related, and it would be nice if we could say we could continue to be the world's No. 1 producer and use only 15 percent of the energy. It would be wonderful.

I will tell my colleagues, we do not know how yet. And that is why this bill, in my humble opinion, an energy policy for America, should come ahead of almost anything. We are running around meeting in little backrooms trying to come up with an economic growth package—is that not what people are doing—to get us out of the recession. Is it not interesting? They are trying to get us out of the recession in short term. And, sitting here today are a few groups in America saying vote no on an energy policy, because it is not what we want. We would rather have nothing for America than what we have pending, say a few groups in America, who run around saying they are for America.

Let me suggest the reason I started this off with a bankrupt city and people who are really down and out in the bankrupt city is if the United States of America does not have an energy policy and have it pretty soon, using as much of its own resources as possible, conserving as much as possible, modernizing its regulatory system as it pertains to natural gas and electricity, modernizing the nuclear regulatory system, opening a small portion of the ANWR in Alaska. If there is oil there, only three or four or five football fields will be used, or some say the size of Dulles Airport is what they would use for all of the drilling that would occur. Why not look at that?

Some people forget that ANWR could produce $250 billion, Mr. President, in oil for Americans. Some would say that is not very much. Let me suggest that is what is wrong with us. We thought for so long that nothing amounted to very much. We could say forget the $250 billion that we would produce of our own oil, for our own country, for our own companies. We are just so rich that we do not need it. But we do need it.

I said last night, when I came to the Senate, a billion here, a billion there, it really mounts up. And now $250 billion in oil value does not amount to much. If you cannot do it your way, we will have no energy policy. What about the jobs in automobile manufacturing in the United States? It is in big trouble. A big part of our manufacturing is that, the big three plus all the related industries in this country.

There are some saying it does not really matter how much more regulatory burden you put on them. It does not make any difference. They are just going to make it anyway. That is the story of America because we could do things in a nonchalant manner 25 years ago, regulate ourselves, give ourselves away, overcharge for this, save this, destroy that, add it all up; it did not matter. We were so productive, and there was no one around to compete with us.

But let me suggest that America has matured, and with it we are not as affluent as we were and we cannot afford to do the kind of things that some people think America can do as a matter of course: Lock up $250 billion of oil; leave an ancient, crazy quilt of regulations on nuclear powerplants that do nothing but take time; have an old system with reference to how we build new powerplants to generate electricity, but keep it because it has worked during these marvelous glory days in America.

On that issue, even some of their power companies are telling their Senators to vote against the whole bill. That is why a few southern votes turned up the way they did in this bill. There are others who say, "Do not worry about it; we have to tighten more regulations. We have to do it like we have always done it. It used to work. It will still work." That is not the case.

So I am hopeful that before this all finishes, we will come to our senses. The President of the United States submitted a good energy policy. This bill incorporates a good deal of it. But some is not his, it is ours; Democrat and Republican Senators.

It is time that we do some things instead of talking so much about the President and his failure to do things and the failure of the energy companies, when truly most of the failure is right here. Because a few groups in America did a great job, and if they cannot get it their way, they do not want an energy bill at all. Do it our way, or do not do it.

I thank the Chair and the Senate for giving me a few moments, and I yield the floor.

Senator PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. I thank the Chair for recognizing me this morning.

Mr. President, I did not participate in the debate on the so-called Johnston-Wallop legislation that the Senate has just refused to go to or to consider. But I do feel it is necessary to respond to a couple of the comments that have been made this morning subsequent to that vote.

If I might, Mr. President, draw the attention of my colleagues to a statement by my very good friend and esteemed colleague from Alaska, Senator STEVENS, who seemed to be implying that this was a Republican-Democrat type of mix; that the Republicans wanted an energy policy; that the Democrats did not want an energy policy.

Mr. President, I am not certain that our friend from Alaska meant to leave that impression with the Senate or with the country, as a matter of fact. But I would like to say that I just calculated the vote taken on rollcall No. 242, which was, of course, the cloture motion on the motion to proceed. I find it an interesting mix: 18 Democrats on this side of the aisle voted to, basically, cut off debate. They voted for cloture. Thirty-two Republicans voted to cut off debate and move to the so-called energy bill.

On the nay side of the ledger, Mr. President, and I say to my colleague from Idaho and my colleague from Alaska, Senator MURKOWSKI, who is on the floor now, there were 35 Democratic "no" votes, voting not to proceed to the energy bill. There were nine on the Republican side who voted not to proceed to the energy bill.

Mr. President, in this area, the only purpose in my rising this morning is to simply clarify that situation and to make certain we do not depart for the weekend feeling that this was an up or down issue, a partisan issue between Democrats and Republicans, or something that, as one of our colleagues might have implied, is something the President can make hay on.

I do not think that is the case, and I certainly do not think that should be the case, Mr. President. We had a very strong mix of votes between Republicans and Democrats when, for whatever reasons, we decided not to cut off debate. So now, as we approach the noon hour on Friday, we are leaving town, many of us, with the feeling that the energy debate is over for the year.

Mr. President, I hope it is not over for the year. I hope that those people involved in this debate who have participated in the discussions, our colleagues in the Senate who are on the committees, notwithstanding which committees they are on, can revisit this issue.

We have just fought a war in the Persian Gulf over energy.

Certainly militarily it appears that we won that war, but after that war, with regard to energy dependency, Mr. President, we are still where we were. We must have a new approach to finding the energy resources that are available not only here but certainly throughout the world, wherever they might be, to satisfy our energy needs.

Mr. President, I think we do have an energy policy, and that policy is pretty simple: we are going to continue buying our energy from someone else; we are going to continue a policy of dependency on other countries. For the moment, we depend on the Mideast. I do not think that is the policy this country or our people want, and I do not think this Senate and the Congress of the United States, as well as the President, want to be classified as leaders of this particular policy. We must find a new policy.

Finally, Mr. President, let me take one or two moments, if my colleague from Idaho will be so kind to allow me to talk about one of my favorite subjects, and that is something which has put us into this spot and which has prohibited us from considering the Johnston-Wallop energy bill. That is a parliamentary maneuver, Mr. President, called a motion to proceed. The motion to proceed is debatable, as we know. It is filibusterable, as we know, and it takes 60 votes, 60 U.S. Senators all voting "yes," before we can ever even move to take up an issue.

Has this Senate this year voted on ANWR? Have we debated ANWR, whether ANWR is going to open up or not? No. We have just refused ourselves that opportunity. Have we debated whether or not it is proper to force our CAFE standards to be adopted to get better gas mileage? No. We have not debated that. We have chosen not to. We have chosen basically to opt out because of a parliamentary maneuver that is almost as old as the Senate itself. It is an archaic and arcane part of our rules, the motion to proceed.

Mr. President, for a number of years I have jointed Senator DANFORTH and other Members of this body to attempt to eliminate the motion to proceed from our rules. In my opinion, this is another example and another time that we have seen the motion to proceed invoked, with all of the rights certainly available to any Senator to invoke that maneuver. I am not taking away from that right. I am just thinking and saying, Mr. President, that we should not continue using the motion to proceed to preclude us from going to an issue. I think we are mature enough to look at ANWR and ask and answer ultimately the question, Do we want to proceed? Do we want to open up ANWR in Alaska or do we not, to take it on its merits, to vote it up or vote it down. The same applies to the argument of CAFE standards.

But to continue using this archaic rule, the motion to proceed, as a threat to any legislation that is rumored or discussed to be put on the calendar in the Senate, I think, Mr. President, is wrong. I do not think it is fair. Ultimately, I think it is an insult to the intelligence of this body to continue with the motion to proceed which stops us from debating issues that our country needs to have debated and certainly the Senate needs to discuss.

Mr. President, I want to thank my good friend from Idaho for yielding to me. He is a very wise man, Mr. President. I have served in this body a little over a dozen years with the Senator from Idaho. Mr. President, he has become smart. He has become a very wise man during this period because he has decided he is going back home; he is no longer going to continue here. He is no longer going to be a part of the Senate, but he is going to return, I guess you would say, to his people.

It has been my honor to have served with him, and I wish him well. He has been my friend. We do not always vote the same way. None of us vote the same way in this body. But I want to say to my friend, Mr. President, what a splendid individual he is and what a pleasure it has been to have served with him. I wish him well in every respect.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I thank my good friend from Arkansas for those kind remarks. I might just say how good it is to see him back among us because of the difficulties he suffered this year and the inspiration he has provided so many of us personally to take care of our most important possessions, of course, our health and our families. I do respect him and appreciate him for it and am so glad to see him back looking so well. I must say I will miss this institution, but I look forward to a new life, and I believe there is a life outside of the Senate.

Mr. President, we have heard much said here today about this piece of legislation. As I told the chairman of the committee, Senator JOHNSTON, in private conversation, I hope he does not give up on this bill now. I said the same thing to Senator WALLOP, the ranking Republican. I hope they bring this bill back again and again and we continue to debate this issue because, even though throughout the world the Marxist labor theory of value has been debunked as a failure, as miserable, it does not work, it still works here in the U.S. Senate in terms of mobilizing forces that work very hard. Even though maybe the cause they work for, by the definition of some of us, is not a good cause, they were successful because of the rules of the institution and because they were able to focus different special interests to get enough votes to deny the opportunity for the Senate to move forward and debate a bill that I think overall, although I do not like every part of the bill and would try to amend some of those things in the bill to improve upon it, would be good for the country.

As the distinguished occupant of the chair knows, Mr. President, I have said many times that in Congress usually when legislation comes before Congress, 9 out of 10 times, if you vote against it, you are right because usually it is bad for the economy. When the Democrats run Congress, probably 95 out of 100 times it is right. I will give the Republicans five times out of 100, the advantage.

But I say to my friend, Mr. President, this is a bill I believe would be good for the country, to recognize we need a coherent energy policy. So I hope they do bring it back. We should be opening up ANWR. It was part of the plan when the Alaska lands bill passed back in 1980. I was on the Interior Committee in the House. there was an agreement struck. Senator Jackson carved out a piece of that Arctic plain and said we will preserve that part so they can drill oil where the oil was thought to be and give the Alaskans and Americans an opportunity to develop some of their own resources. So I hope that they will bring it back.

Mr. President, when I look at the legislation that passed—with regard to my reference about what Congress does is usually bad for the economy, and I say that oftentimes on the stump, that you can usually estimate, when the politicians in Washington are gathered around together all heralding some great cause, it is usually bad for the economy. Look, this Congress borrows $1 billion a day. That is what we are doing today. We borrowed $1 billion yesterday, we are borrowing $1 billion today, and we will borrow $1 billion tomorrow. Tell me, if you take a computer and estimate where we have come from and you put that computer to work to tell you where we are going, what will it take to wake up the Congress? Borrow $2 billion a day, $3 billion a day, $4 billion a day, $1 trillion a day? Where are we heading with this economy?

Where are our cities headed? Why are the people unemployed?

I will tell you why. Just in the past few years we have passed several pieces of legislation that are disastrous for the economy. One is the so-called budget agreement of 1990.

Within that budget agreement it raised the taxes. It broke the boatbuilding industry in this country because of some insane idea that we could raise luxury taxes so we could soak the rich, but we drove the incentives out. So the people go offshore to buy a boat or they do not buy a boat at all. The luxury tax was bad.

We made OSHA inspectors into tax collectors in that bill; the Congress did. The President signed it. It is a disaster to the economy. So we have more unemployment. We passed the Clean Air Act; this Congress did. These are all bills I voted against, I may say.

The Clean Air Act is an unmitigated disaster to the economy of this country. When the regulations start taking place it is going to drive the chemical industry out of the United States, the steel industry out of the United States, the pharmaceutical industry out of the United States. Then people wonder why we have unemployment and why we are not competitive with our foreign competitors.

We raised the minimum wage law; the Congress did. We just recently this last week passed a civil rights bill that will make it much more difficult for small business people to operate. It is a quota bill. Do not think it is not. It is a bill that will force mandatory quotas.

It is so amazing to me to sit here and hear Congress talking about business necessity as though we know what is necessary to run a business out in Peoria, Pocatello, when the people are there. They may know what they need to do and who to hire to run their business. But somehow Congress thinks they can sit here and agree to these things.

So most of the things that happen are bad for the economy. That politicians in Washington decide it just works out that way.

Here we are now. We have an opportunity to put together a good, coherent energy plan, much of which will help encourage and provide some incentives for development of our resources and point us in the direction of self-sufficiency, and what we do is we will not even debate it.

I do not know what it takes. Maybe the Republic has to fall into literally the dustbin of history before people in the District of Columbia will wake up or, better yet, before the American people will wake up and hire a new Congress. That is what I would hope they do, is hire a new Congress. Congressmen, after all, work for the people; Senators work for the States, according to the Constitution, and the States and the people could hire a new group.

Surely this would not do any worse than we have done in the last 12 months toward doing anything to address what the real problems of the country are, to address the fact that if we are going to have good civil rights in the country, we need to be sure people have good jobs and an economic opportunity for upward mobility.

If we expect to have any kind of an energy policy, we should have some coherent plan where we can develop energy, streamline the licensing procedure for nuclear power. But no. Congress does not want to address that. It is not good enough, or it does not suit the Sierra Club or someone. So we cannot do those things yet. We will eventually, I believe, wake up. The American people will wake up, and Congress will do the right thing.

So I urge Senators JOHNSTON, WALLOP, DOLE, MITCHELL, the leaders here on this issue, to bring this issue up again and let us debate it again. As Senator STEVENS said, let us get it into the national debate. Whether it is a pure partisan issue between Republicans and Democrats I personally do not care. Let us get it out in the campaign, let the people discuss and debate the issue, let the people tell the Members of the House and Senate what they think about it. Do they want to develop their energy resources in this country? Do they want to be self-sufficient in energy?

It would be very healthy for this country to have this issue debated in the 1992 elections. I think that it would be very healthy in that respect for the leadership to bring it back before the Senate and let us try again. Maybe we can persuade some of our colleagues.

When I look through the list, I think there are some Senators that might have a time or two decided they would vote to not deny the opportunity to debate the issue. They would still have an opportunity to vote against the legislation or to even filibuster it after the debate starts, if they do not like the way the amendment process goes.

Mr. President, I hope that will happen.

Mr. President, if no other Senator is seeking recognition, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ENERGY BILL DEBATE

Mr. KENNEDY. Mr. President, the action just taken by the Senate is the beginning of a sea of change in the way we approach our energy future. The Senate finally said no to the extravagant dreams of big oil and the nuclear power industry. We have taken a giant step toward the creation of a sensible and balanced energy future that respects the environment and pays more than lip service to essential goals, such as energy conservation, the development of promising alternative energy sources, and the preservation of the environment.

The Nation has changed course on energy. The doomsayers are wrong. We recognize our problems, and we are moving more responsibily than ever to address them. We are on the right energy track for America at last.

TODAY'S UNEMPLOYMENT FIGURES

Mr. KENNEDY. Mr. President, the latest unemployment figures demonstrate once again that the economy is riding on empty.

The national unemployment rate increased slightly, to 6.8 percent, where it has been hovering in recent months.

In Massachusetts, the news is somewhat less bad—the jobless rate has finally dipped below 9 percent for the first time in many months.

All of us hope that the long-awaited recovery may be underway, but few of us have any confidence that it is.

For Massachusetts, in fact, the first sign of recovery has a hollow ring, it may mean only that we are moving from the depression level to the recession level.

This grim news comes on top of other data confirming America's economic problems.

Although GNP rose slightly in the third quarter, many analysts see this as a temporary pause before the economy resumes its downward course.

Earlier this week, we learned that new homes sales fell by almost 13 percent, the sharpest drop in 2½ years. The number of Americans using food stamps is at its highest level in history, and consumer confidence in October plunged by over 12 percent, close to the level last seen in the 1982 recession. This drop reflects what all of us already know: The economy is in trouble, and we are not doing what we should do to revive it.

The American people understand the gravity of our economic crisis, and so does Congress, but the administration does not.

President Bush continues to ignore our problems here at home, while focusing on foreign affairs. Last August, at Kennebunkport, the President said he would come back fresh from his summer vacation and focus on domestic issues in September. September and October have come and gone.

The economy is in worse shape, and more families are hurting because of the recession; but, still, the administration does nothing. Waiting for George is more frustrating than waiting for Godot.

During this period, according to press reports, the President met with 21 heads of foreign nations, including the leaders of Iceland, Micronesia, and Lichtenstein, but he could not find the time to meet with Republican representatives to discuss family and medical leave.

In September, the President met individually only three times with members of his own Cabinet to discuss domestic issues, and two of those three meetings took place on the run, while flying to political appearances. The President talked to the Senate majority leader four times, all on international issues. The President never once addressed domestic problems, including the plight of the unemployed.

Twice, the President has vetoed unemployment benefits. Unlike every other President during previous recessions, Republican and Democrat alike, President Bush refuses to help working families in need.

After months of needless suffering caused by the President's vetoes, action on unemployment benefits is more essential than ever. Now, at last, there are reports that the administration is listening.

After ignoring every clear piece of economic data for months, the administration has finally seen a number that concerns them: the President's collapsing rating in the polls. Sadly, that is the only figure that could catch this administration's eye and generate concern.

If a genuine compromise is in the air, we should be clear about one thing: We should not cut back on aid to the unemployed. Every dollar we cut now means less help in the months ahead of those who need our help the most.

If the President has finally seen the light, all he has to do is approve the earlier relief that Congress endorsed. That relief is already more modest than the assistance extended in previous recession, and it should not be slashed deeper.

Clearly, if there is to be a compromise, it should be on offsetting the revenue loss involved, not on reducing the level of benefits.

In my view, even a revenue offset ought to be unnecessary. These additional unemployment benefits have already been paid for. The unemployment trust fund has an $8 billion surplus. That surplus was raised to accommodate precisely the condition we now face, widespread unemployment caused by this recession.

The administration continues to insist that the Budget Act does not permit benefits to help the unemployed to be designated as emergency spending, and avoid the need for offsetting revenues. Does it take a depression to convince this administration that an emergency exists?

They are all too willing to use the emergency designation for priority foreign policy spending. Why not for domestic priorities, too?

Nevertheless, as a practical matter, it is essential to find a formula to enable this legislation to pass, with or without the signature of the President.

Senator **BENTSEN** has put forth a worthwhile proposal for offsetting the revenue loss in whole or in part. But the important thing is to move forward now, and ease the pain that so many working families are needlessly suffering because of the intransigence of the White House.

The economy is in trouble. The people who are hurting are innocent victims of this stalemate. They need help. They need it now. And they deserve it now. A new extended unemployment benefits bill should be passed immediately, and I urge the Senate to act as soon as possible.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LET'S PASS THE BENTSEN-ROTH SUPER IRA

Mr. ROTH. Mr. President, I want to bring to the attention of the Members of the Senate a three-page advertisement in yesterday's Washington Post. The ad has been run in U.S.A. Today, Newsweek, and Forbes, and was sponsored by Merrill Lynch. The ad asks that the Congress pass the Bentsen-Roth Super IRA, and if the facts in the ad do not wake us up, then I do not know what will.

The first page begins by stating that—

> The average 50 year old has only $2,300 in savings.
>
> What happens when 75 million baby boomers retire?
>
> U.S. standard of living threatened by low savings rate.
>
> The Japanese are outsaving us four to one.

Let me add that there are plenty of other things that could be added to this list. But I would like to emphasize the points made here.

This advertisement is important because it brings the message that Senator **BENTSEN** and I, and 76 other Senators, have been trying to bring home. We must solve the savings crisis in this country. It is tantamount to any long-term economic success that America could possibly enjoy.

The ad focuses on the right concerns—concerns that are addressed by the Bentsen-Roth IRA.

First, Americans are not prepared for retirement, at a time when they are spending more years in retirement than ever before in America's history.

Second, our younger generation has not adopted good habits of savings that older generations have. This means that we have to start getting them in the habit, and it means incentives to do so, like the IRA.

Third, that if we do not change the law, bring about these incentives, and allow the free market to sell the idea of increasing our savings, then we are likely to become a nation with an ever-decreasing standard of living. This point was strongly made in the Finance Committee by Alan Greenspan, Chairman of the Federal Reserve, earlier this year.

Fourth, and finally, the point is well taken that the Bentsen-Roth IRA is critical for competitive reasons.

I have to point out that a nation of high savers, like Japan, will always have a competitive advantage over a nation of low savers, without a large supply of available private capital, like America. The reason is clear: Economies will suffer because they will not be able to take on important projects that are capital intensive. But nations like Japan, with a high savings rate, will be able to do these projects. They will beat America in the marketplace.

The automobile industry is a perfect example, and we are seeing it happen in computers and other high-tech industries.

I must add that I am sick of hearing some pundits say that we cannot pass the IRA because it is prosavings at a time when the economy is sluggish because Americans are hesitating to consume. A recent story I read said that LLOYD BENTSEN said his "IRA would both encourage consumers to spend and to save more." They were trying to make him look foolish, but it is the pundits who are foolish.

When Americans save more, the money doesn't just vanish. It goes back into the economy. It allows Americans to borrow money at lower costs for factories, homes, education, health care, and other reasons. It helps strengthen our weak financial institutions by increasing their deposits and eliminating the credit crunch. The idea that prosavings incentives will bring a halt to consumer spending and only worsen our current economic problems is 100-percent wrong, and that kind of shortsightedness should be brought to an end.

Mr. President, I ask unanimous consent that a copy of the three-page advertisement from the Post be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Advertisement from the Washington Post, Oct. 31, 1991]

The average 50-year-old has only $2,300 in savings. What happens when 75 million baby boomers retire? United States standard of living threatened by low saving rate. The Japanese are outsaving us four to one.

There Are a Lot of Good Reasons Why We Support the Super IRA

YOU'RE LOOKING AT THE LIFE SAVINGS OF THE AVERAGE 50-YEAR-OLD: $2,300

The view from Merrill Lynch: We recently completed a report on saving in this country. And the news isn't good.

The gap between how much people are saving and how much they will need for retirement is incredible. Families headed by individuals aged 45-54 have median financial assets of only $2,300.

There is also a large gap between the beliefs of preretirees and reality when it comes to who will pay for retirement. Many regard the Government and their employer as the major sources of retirement income. Thirty percent of preretirees believe an employer pension will be their most important retirement-income source. In reality, pensions account for only 14% of income after age 65.

The aging of America adds new urgency to the need for saving. As the baby boom generation reaches retirement age, expenditures for health care as well as living expenses will climb dramatically. Sadly, Americans today are not adequately preparing to cover the cost of their longer life spans.

Thus there is no escaping the fact that personal saving must be increased to fill the gap left by Social Security and private pensions.

Policymakers can make a great deal of difference by creating tax incentives for saving. In a recent study by the Wirthlin Group, 75% of the retirees between 45 and 64 surveyed said they would save more if the Government provided them with direct tax incentives.

In addition, our report summarizes research indicating that tax incentives for saving have worked in the past to create new saving. It also shows why tax incentives need not cost Federal tax revenues or increase the deficit.

For your copy, contact us at the address below. Ask for "Save, Ourselves: The Human Dimension of the Saving Crisis."

WHAT'S WORRYING 90 PERCENT OF THE PEOPLE FACING RETIREMENT?

The View from Merrill Lynch: There's an increased concern over retirement savings, according to the third annual Merrill Lynch Retirement Planning Survey.

Since our first survey in 1988, specific concerns have heightened. Perhaps the most disturbing is the increase from 70% in 1988 to 83% in 1990 in the number of preretirees who worry about their ability to meet daily living expenses. This is not concern about which cruise to take, or whether or not to spend the winter in Florida. It's concern about being able to buy a daily newspaper, to pay the electric bill, to pay for the simple necessities of life. It's important to note that all the people in this survey were between 45 and 64 years old, had full-time jobs (not self-employed), and one-third had household incomes of $50,000 or more.

Not surprisingly, maintaining financial independence is an even greater concern. In 1988, 79% of pre-retirees were worried about their financial independence. By 1990, those concerned had increased to 89%.

High costs of health and medical bills is another key area of concern which has risen dramatically. In 1988, 80% of the people surveyed expressed concern. In the latest survey 93% said they're worried and in the oldest group surveyed, the 60 to 64 year olds, the number rose to 97%.

Clearly, concerns about meeting retirement costs have reached almost universal levels. Yet, amidst all the concern is a growing awareness that the primary responsibility for paying for retirement lies with the individual, not with the government or with employers. In 1989, 54% of pre-retirees said that they had primary responsibility for retirement income. In 1990, that figure rose to 62%.

While people recognize their own responsibilities, they also feel they would do a lot better with a little help. In fact, 66% said they would save more if the government provided direct tax incentives.

The Bentsen-Roth and Pickle-Thomas bills currently before the Senate and the House, respectively would go a long way toward giving people the incentive they need. Their passage would also be a message to all Americans, that the Congress of the United States recognizes their concerns and is willing to do something about them.

Good News: IRA's Attracted Up to $138 Billion in New Savings From 1982-86.

The View from Merrill Lynch: A recent study indicates that IRAs were a powerful generator of new savings by middle income taxpayers before they were restricted in 1986. The study prepared by the Institute for Research on the Economics of Taxation, reports that most IRAs were restricted in 1986. The study, prepared by the Institute for Research on the Economics of Taxation, reports that most IRAs were funded by new saving rather than transfers from existing savings.

Analyses of the data show that as much as $138 billion or 80 percent of the total IRA contributions between 1982-86 came from new saving.

The study indicates that "IRAs are clearly not a rich man's savings vehicle. Two-thirds of the beneficiaries of IRA deductions were middle or lower income. Of the more than 15 million tax returns with IRA contributions, over 10.5 million, or 66.9 percent were of families or individuals with adjusted gross income of less than $50,000. These returns showed 58.8 percent of the total dollars contributed to IRAs."

In addition, there is little or no evidence that IRAs were funded primarily by cashing out existing taxable assets or by borrowing. The study also reports that preliminary figures for 1987 indicated a drop in IRA contributions of $24 billion, or 67 percent since IRA deductibility was curtailed in 1986. One-third of the decline, of $8 billion, came from taxpayers with incomes below $50,000 a year.

William A. Schreyer, Chairman and CEO of Merrill Lynch reviewed the new study during a recent address to the society of American Business Editors and Writers. He called on the federal government to find ways to renew the appeal of IRAs, and urged Congress to expand the flexibility of IRAs to allow tax-free withdrawals for education, medical, long-term health care or housing ownership.

"This would provide a powerful incentive to encourage people to save more for the future, rather than spend for today. And it would cost the Treasury very little now." said Mr. Schreyer. Furthermore, he added, "The evidence clearly shows that IRAs have functioned as a powerful savings incentive—and not just for wealthy taxpayers."

Mr. Schreyer sees the nation's savings and investing needs as "one of the biggest economic stories of the 1990s—and very much a human story, as well. What's at stake is nothing less than our continued standing as a first-rate economic power in the global economy, and our ability to sustain a high standard of living that all our citizens have a right to enjoy."

For an executive summary of the Institute for Research on the Economics of Taxation's study, *Save America: A Primer on U.S. Savings and Its Effects on Economic Health*, contact the Merrill Lynch Government Relations Office at the address below.

Let's Bring This Saving Vehicle Out of Retirement

The View from Merrill Lynch: "Bringing the IRA out of retirement is something we can do now, today, to jump-start savings and help millions of working Americans plan for tomorrow," is the message Senator Lloyd Bentsen delivered in a speech recently.

We couldn't agree more.

A new Merrill Lynch study adds documentation to the critical need for savings. It shows that if Americans continue saving at the present low rate, within 20 years this country's retirees could face severe economic difficulties.

According to the Third Annual Merrill Lynch Retirement Survey. America's preretirees, ages 45-64, have a poor understanding of the costs of retirement and unrealistic expectations about the sources of their retirement income.

The study found a large gap between what people expect to receive from Social Security and employer pension plans and the much smaller amounts they are more likely to receive upon retirement.

As a result, with the huge baby boom groups edging toward retirement and with people living longer in retirement, millions of Americans face a bleak and tragic future unless they start saving more now.

John L. Steffens, Executive Vice President, Merrill Lunch Private Client Group, said in a recent speech. "It's clear to us that people 10 to 20 years from retirement are not saving enough, and that if this trend continues, we could face a full-scale national crisis.

With Social Security and pension benefits to become relatively less generous in the decades ahead, it is absolutely essential for people to begin building a personal nest egg now.

"This group pre-retirees includes the first of the baby bommers, who face immense financial hardship if they fail to change their saving habits," said Mr. Steffens. "Our children and grand children will inherit huge financial burdens of caring for this large generation of elderly indigents."

Our survey indicates Americans need all the encouragement they can get to increase their savings, which is why we at Merrill Lynch support he Bentsen-Roth Super IRA proposal. As Senator Bentsen said, "It will encourage millions of Americans to save and it will help individuals plan for an uncertain future."

These advertisements appeared over the past three years in various publication as part of Merrill Lynch's ongoing efforts to help revive the IRA. And one very good reason why you should. Your financial future.

The new proposed Super IRA can make a difference for millions of Americans.

On March 12, 1991 Senators Lloyd Bentsen and Bill Roth introduced a bill proposing the establishment of a new Super Individual Retirement Account designed to restore IRA eligibility to all American workers. On the same day Congressmen J.J. Pickle and Bill Thomas introduced the bill in the House of Representatives. This legislation is now pending before the House and Senate.

The new Super IRA would give the individual the option of selecting a plan where contributions create an immediate tax deduction, or one where withdrawals are totally tax-free after five years. In either case, the Super IRA will permit penalty-free withdrawals for first-time home purchases, education expenses and catastrophic medical expenses, as well as withdrawal for any purpose after age 59½.

Annual research sponsored by Merrill Lynch shows people are unprepared for retirement and fear they won't have adequate income for daily living expenses, let alone the expenses of long-term health care. Bad news, indeed.

However, the studies show that most people would respond positively to saving incentives such as those outlined in the Super IRA proposal.

Support the Super IRA now.

Please join in. Write or call your Senators and Representatives. If he or she is already a cosponsor of the Super IRA, express your thanks. If not, urge them to become one. For names and addresses of your legislators and their position on the Super IRA, call 1-800-637-7455, Ext. 9171. And also ask for a copy of one or both of our timely booklets, "The Retirement Fallacy" and "The Public Policy Case for Saving."

THE NAFTA WORKER ADJUSTMENT ASSISTANCE ACT

Mr. ROTH. Mr. President, during the debate on the extension of fast-track authority earlier this year the U.S. free-trade negotiations with Mexico served as a focal point for those opposed to the extension. In response to the strong concerns that were raised over these free trade talks the President submitted an action plan on May 1.

Earlier this week I introduced, along with my distinguished colleague Senator MOYNIHAN, the NAFTA Worker Adjustment Assistance Act, which is designed to address one of the key commitments made in the President's action plan—the commitment to provide "a worker adjustment program that is adequately funded and that ensures that workers who may lose their jobs as a result of an FTA with Mexico will receive prompt, comprehensive, and effective services."

Mr. President, it is important, in my view, that we not wait for the North American Free-Trade Agreement to be submitted to Congress before devising such a worker adjustment program. Now is the time to begin the process of stimulating discussion on the key issues involved, and to build the consensus that will be needed to meet the commitment made in the May 1 action plan. The legislation we introduced this week will move this process forward.

The NAFTA Worker Adjustment Assistance Act is built on the premise that the current Trade Adjustment Assistance [TAA] Program should form the basis of any special program for workers affected by an FTA with Mexico for two important reasons. First, it has been an effective and positive program which has strong support at the State and worker level. This was recently underscored by several witnesses during hearings before the Committees on Finance and Ways and Means.

Second, but not any less important, is the fact that Congress has made itself very clear since creating TAA in 1962 that providing special adjustment assistance programs for trade-impacted workers should go hand in hand with major trade liberalization action on the part of our Government. This remains just as true, if not more true, today.

There is no question that the launching of the North American free-trade negotiations is a major trade liberalizing initiative. In fact, it is unprecedented in many ways. Above all, it will be the first time the United States has ever negotiated a comprehensive free-trade agreement with a major developing country which is also a top trader with the United States. Mexico is, in fact, our third largest trading partner. While I believe these negotiations hold great economic promise for the United States, it is clear at the same time that difficult, structural change will also occur.

By building on the current TAA Program, I believe we can provide the type of help that workers affected by such structural change will need. The NAFTA Adjustment Assistance Act accomplishes this by creating a special rule under TAA to ensure that workers who may be dislocated by free trade with Mexico will be eligible for the full range of TAA benefits. The special rule will expand TAA eligibility to workers dislocated because a United States plant has moved to Mexico to take advantage of the free-trade agreement. Moreover, the bill provides for an expedited procedure for automatically certifying the workers affected by such a plant relocation if the company relocating was subject to the advanced notification requirements under the Worker Adjustment and Retraining Notification Act.

In addition to expanding TAA's eligibility coverage to include workers impacted by production shifts to Mexico, the legislation raises the current $80 million cap on training to $100 million. This aims to account for the increase in training that may be needed as a result of dislocation caused by NAFTA.

Other changes are made to improve the general operation of the current TAA Program. These changes, including greater emphasis on early and effective reemployment services such as job search assistance, are based on recent studies and testimony before Congress. Another change is to create greater followup of workers participating in the TAA Program to gauge more accurately the effectiveness of the services being provided.

One important reason for moving ahead now to devise an effective worker adjustment program in relation to NAFTA is the need to provide new funding. I believe that the main beneficiaries of a free trade agreement with Mexico should be willing to help the workers who will be hurt by it by supporting a temporary, de minimus uniform import fee at the border. A negotiated small border fee would allow both sides to afford special worker adjustment programs, and would be, in my view, much more preferable to other funding alternatives such as imposing some new form of permanent payroll or other tax.

Under the NAFTA Worker Adjustment Assistance Act, the President is directed to seek agreement with Mexico on the imposition of this type of small border fee. As I stated to Ambassador Hills in a letter this past August, the ability to impose a small adjustment fee should be an important negotiating objective with our Mexican counterparts. Other Members of Congress are now starting to raise this idea, and I hope that such support will grow.

For some time now, I have supported pursuing this approach for funding U.S. trade-related worker adjustment needs. In the 1988 Omnibus Trade Act, for example, I authored a provision requiring the President to seek multilateral agreement in the GATT along these very lines. This provision, I might add, was strongly endorsed by my colleagues on both sides of the aisle. We should now take advantage of the opportunity presented by the NAFTA talks to negotiate such a fee with Mexico. This should be much less difficult than accomplishing the same goal with well over 100 countries. It could, in fact, help pave the way for future agreement in this area on a plurilateral and multilateral basis.

Mr. President, as I stated earlier, my intention in introducing this legislation is to stimulate serious discussion early on how to provide effective adjustment assistance to workers who may be dislocated by free trade with Mexico, and how to pay for it. It is a focused bill which aims to address the specific worker adjustment needs under a North American Free-Trade Agreement, while making some general improvements to the broader operation of the TAA Program.

I view this legislation as an important starting point. I believe that the results of the recently launched GAO investigation on TAA and other worker adjustment assistance programs, such as title III of the Job Training and Partnership Act, will shed additional light on possible improvements to these programs. I do not believe, however, that we should wait for the investigation to be completed before moving forward.

I look forward to working with my colleagues in addressing what I believe to be an essential part of the NAFTA negotiations.

Mr. President, I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from Illinois is recognized.

COMMENDING SENATOR BENNETT JOHNSTON

Mr. SIMON. Mr. President, I did not take part in the debate on the motion to proceed to the energy bill. I was one of those who voted against the motion to proceed, which prevailed. I do not think there is any question we have to create an energy policy in this Nation, but it has to take a somewhat different direction than the bill that was before us.

My reason for rising is to commend Senator BENNETT JOHNSTON. Immediately after that vote, he got up and congratulated those who prevailed, indicated he still feels very strongly, but he conducted himself in such a way that this body can work. It is essential, for a free system to work, for the symphony of democracy to work, to have the little grace notes that take place here. And BENNETT JOHNSTON's comments were a perfect illustration of how a Senator should conduct himself or herself in order that we can proceed. We all win some; we all lose some. Sometimes it hurts more than others.

BENNETT JOHNSTON worked very, very hard on this, and ultimately there still will be some very positive results from his actions.

But I simply wanted to stand up and say I knew before the action today that Senator BENNETT JOHNSTON was a class act in the U.S. Senate, but he illustrated that and underscored it by the way he conducted himself immediately after the vote. And it is not just what he said about himself. He conducted himself in a way that we should conduct ourselves in this body.

Mr. President, I yield the floor.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1992

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2686.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

> *Resolved*, That the House disagree to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 175 to the bill (H.R. 2686) entitled "An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes.".

Mr. BYRD. Mr. President, I ask unanimous consent the Senate recede from its amendment to the House amendment to the Senate amendment No. 175, and that the Senate concur in the House amendment to the Senate amendment No. 175.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Mr. President, we have no objection on this side.

The PRESIDING OFFICER. The Senator from Oklahoma.

NATIONAL ENERGY SECURITY ACT

Mr. NICKLES. Mr. President, I rise with a great deal of frustration concerning the vote the Senate had earlier today, basically killing the energy bill for this Congress, in all likelihood; certainly killing it for this year.

I heard some of my colleagues say about the cloture vote: "We did not get cloture; now we can strip out a bill and we can pass a bill we like." Frankly, some of us worked on the Energy Committee for months. Some of us have actually worked about a decade or more trying to pass a sensible energy policy for this country. Unfortunately, the Senate, and primarily a majority of the Democrats in the Senate, killed the bill.

I find that to be grossly irresponsible. I will make a prediction. Here we are, November 1991. I want my colleagues to remember, the year 2000, that we killed this bill today. Because by the year 2000, some things are going to be happening in this country that people are going to be upset about.

I will just mention one. We are going to be paying enormous sums of money for imported oil—enormous sums.

Somebody says, "How much are you talking about?" I will tell you right now, last year we spent $54.7 billion for imported oil—$54 billion. That happened to be 54 percent of our negative balance of trade.

I have heard a lot of people make speeches on this floor that our balance of trade is too high; we need more exports. The largest import we have is oil.

For the last few months it has been right at 48 percent. I have heard people say it is 50 percent. It fluctuates, bounces around on a seasonal basis. But gross imports are about 48 percent of consumption right now, gross. That is a fact.

Imports have been rising, and our domestic production has been declining. The national rig count has dropped from 3,974 in 1981 to 1,980 in 1985, to 775 in September 1991. So our reliance on imports will continue to escalate throughout the nineties.

We needed to pass this bill to slow that trend down. We are still going to be importing a lot of oil. Even if we pass this bill we are going to be importing a lot of oil by the year 2000 or 2010, but we would have been able to reduce it rather significantly if we had passed this bill.

The Department of Energy estimated we would have been able to save something like 2.4 million barrels per day by the year 2010 if we had passed this bill. I think maybe that estimate is pessimistic; I do not know. But through a combination of conservation measures, enhanced production measures, and alternative sources this bill had a lot of things in it to help reduce imported oil.

Frankly, to kill this bill, as the majority of the Democrats voted to do today, is grossly irresponsible.

Why did they do it? They say "Oh, we do not want to drill in ANWR." I do not know exactly how many of my colleagues have been to ANWR, but I heard such great descriptions of this beautiful, pristine ecosystem, the last one in the world. I have been there. It is frozen tundra. It is not beautiful, by any stretch of the imagination.

What we were proposing to be opened up for drilling, is such a very small percentage of ANWR. I think the Senator from Alaska said it well. I compliment both Senators from Alaska, but particularly Senator MURKOWSKI, who has led this fight for so long and who knows this area so well. It happens to be in his State.

Yet, the majority of the Senate says: "Oh, no; we do not want it touched. We want to have no drilling whatsovever in ANWR, the Arctic National Wildlife Refuge."

Yet, the size we were looking at drilling, I think, was the size of Dulles Airport. The land mass of Alaska is massive. I think it is something like 370 million acres. The total acreage of ANWR is 19,000,000 acres. They were looking at the possibility of maybe 12,000 acres in ANWR for potential development.

Somebody said, "Oh, this is going to scar the environment." They really do not know what they are talking about, or they are misstating the facts. I have been there. I have seen Endicott Field, where production is very successful, very concentrated. It is a platform where they have several drilling rigs that use directional drilling. It does not foul the environment.

Prudhoe Bay does not foul the environment, and it did not handicap, nor hurt, the caribou or the native animals. As a matter of fact, the only area in which we saw caribou was at Prudhoe Bay. We flew all over ANWR—all over ANWR—for hours, and we saw hardly anything on four legs. We did not see any caribou. They were not migrating at the time.

Having a drilling pad on ANWR would not have harmed the caribou. It would not have harmed the polar bears. When I walked in to vote today, the environmentalists were out in the lobby handing out their buttons, "Save the Polar Bear." It would not have harmed the polar bear to have drilling in ANWR. The drilling we have in the gulf coast has not hurt the fishing. It has not hurt the shrimping. It has not hurt the wildlife in that area. The drilling we have in my State is very compatible with the environment, and it would have been very environmentally sound in ANWR. But that is the reason this bill was killed. I think that is very unfortunate.

Mr. President, a couple of things are going to happen, and again, I want people to look at the year 2000. Many times we do not look far enough ahead. Right now, people are not in gasoline lines, so they do not care. That is the hottest issue on the floor of the Senate.

Right now, the hot issue on the floor of the Senate is unemployment compensation because the Democrats feel they are winning on this issue. If they wanted to have unemployment compensation to help the people who are unemployed, they would have passed the bill 2 months ago and already have provided thousands of people a continuation of unemployment compensation, because we offered to do it. The President said he would have signed it.

But, no. People wanted to play politics. They say, "Hey, we are winning on this issue; we have the votes," even though they could not override the veto. They tried it twice; they may try again. I hope not.

I now hear we will have a compromise, something we can pay for, something that will not bust the budget. But that is what people are interested in: "What is political today; what can help me get elected tomorrow?" Not what is good for the country in the long-term.

I tell you, in the long-term we are going to have problems, and those problems are going to be that Prudhoe Bay right now, where we receive about 2 million barrels of oil per day, is declining. That decline will continue. It will become an accelerated decline.

That is 2 million barrels per day. That is about 25 percent or more of our domestic production. So, as that declines, if we do not have something else coming along—and we do not have any additional production in the lower 48 to fill that void—we are going to be importing that much more oil. So, instead of importing 48 percent, as I just mentioned, as we have been doing this year, that figure will continue to escalate.

I will guess that by the year 2000 the figure will be much closer to 60-some percent. I am going to guess it is going to be well above 60 percent, probably much closer to 66 percent. I am putting that in the RECORD today, so you will be able to read it 9 years from now.

I am going to tell you, if we are importing about two-thirds of the domestic petroleum needs of this country, we are going to be very vulnerable. Some people say, "Oh, we have the strategic petroleum reserve to save us." I do not think that will solve the problem. It may give us a little insurance, or a buffer, but it is not going to solve the problem. It is certainly not going to pay the bill.

If we are paying $54 billion today, and the price of oil is $18, $19, $20 for oil today, and we are importing 48 percent, what is it going to be when we are importing 60-some percent 9 years from now at a higher price and maybe we will have some shortages. I do not know whether we will have shortages, but we will be a lot more vulnerable to shortages, and in all likelihood the price will be much, much higher. And the export bill or the negative balance of payments we have for oil will make $54 billion look cheap.

Mr. President, another guess: It will be above $100 billion. That is a lot of U.S. dollars that we are going to be shipping overseas. That is a lot of jobs.

I happen to be from an energy State. Some accuse me of being biased, but I happen to have a national interest in this. I will tell my colleagues, there was not a lot in this bill that we killed today that would have benefited my home State—not enough. We need a tax bill to do that. But there were some things that would've helped this country, and instead of taking the bill up and maybe trying to improve it where we could, they just killed it. They may say, "Hey, we are only going to be in session, what, 3 more weeks this year. We have to be out; we have to be out for Thanksgiving." Sure, I would like to be out. I would like to have the opportunity to go back to my home State, but I happen to think this country needs an energy policy.

I heard many of my colleagues on that side of the aisle say, "For 10 years this country has not had an energy policy." I've heard that statement so many times, and every time I hear it I try to respond to it. It took us many, many years to undo the damage from the Carter energy policy, the so-called Carter years. We did several things in accordance to a national energy policy, almost all of which were wrong, almost all of which were national disasters. We passed a windfall profit tax and placed a very punitive, heavy excise tax, which had no correlation whatsoever to profits, but a heavy excise tax on domestic production. Did we place that on imports? No. So we had a punitive tax on domestic production and no tax on imports. So we decreased domestic production, and we increased reliance and dependency on imports. It raised about $72 million from a few States.

What did we do with that money? We said, "Oh, we are going to enhance our energy security." Hogwash. What did we do? We started a synfuels corporation in which we wasted billions of dollars, a Federal energy corporation, and we are still paying for it.

In the Interior bill we just passed, we put in some money for the Great Plains coal gasification plant, which has been a financial disaster from day one. It probably has already lost well over $1 or $2 billion, and we have ended up putting in another $25 million grant and a $25 million loan so it can achieve environmental compliance to produce natural gas at about three times the world market price—three times the price my producers can get. That is what we got out of the Synthetic Fuels Corporation, a total disaster, and we are still paying for it.

Congress has repealed the Synthetic Fuels Corporation. Congress has repealed the windfall profits tax. Congress has repealed the Fuel Use Act that said we could not burn natural gas in utilities and powerplants and industrial plants. That was crazy. But you might remember back then we had a shortage of natural gas. The Carter administration said, "We are going to run out of natural gas, so let us pass laws so we cannot burn it in these large plants." It made no sense whatsoever. We finally repealed it, but it took us several years to do so. I am proud to have been the sponsor of repealing the Fuel Use Act and proud to have been the sponsor of the bill to repeal the windfall profits tax. I am proud to have been a sponsor of a bill to deregulate natural gas prices, because one of the other results of the Carter policy was 28 different price categories for gas—28. We had the same commodity, natural gas, that burned the same in a home in Oklahoma as it did in Washington or New York, but we had 28 different price categories for gas. It made no sense whatsoever. It was Government by the Congress trying to say, "Here is what we think the price of gas should be at all these different depths." It was ridiculous. It made no sense. It took us many, many years to do it, but we finally deregulated gas. President Bush signed that bill. So we have made some progress. We have undone most of the damage that was done by the Carter administration.

Congress also passed, I might mention while I am going through the litany, the Emergency Standby Petroleum Allocation Act. Again, another idea that big government can solve problems. Reagan vetoed that bill and we were able to sustain the veto. So it took us many, many years, about 8 or 9 years to undo the damage of the Carter administration. All the while we heard our colleagues saying we needed a national energy policy. So we worked hard and long and we came up with one, and yet my colleagues, and primarily the Democrats, said, "No, we do not want a bill because it has ANWR, and we do not like ANWR." Some people say, "Well, because you do not do enough on CAFE, we do not want the bill." How can you get CAFE if you do not have a bill on the floor? That argument is ludicrous. I disagree with the people who want to impose radical CAFE standards on automobiles. I do not want to take away consumer choice. I do not want to mandate that all cars be almost as small as this desk. But I will tell you they are not going to get CAFE if they do not have a bill. They say, "Oh, no, we want more stringent CAFE or we do not want ANWR so we are going to kill the bill so we will not even get to consider these issues."

I am not exactly sure where the votes would come out. Maybe they had the votes for CAFE. The President said he would veto too stringent CAFE standards, if that were the case. Frankly, we do have the votes to sustain a veto on that. I know that. I think other colleagues know it, too. Yet, we are going to have a big debate on it. Fine. I debated it several times, and I would debate it again. But we do not even have that option now because these Senators would not even vote to proceed to the bill. That decision in effect said, "Hey, we do not have a problem because now we are not going to have an energy bill this year because of the vote today." Today's vote disgusts me, and our country is going to be paying for it. Our country will pay for it and, mark my words, several years from now people are going to say, "Why did we not do more? Why did we not do something to keep us from writing so many checks to other countries for oil? Why are we so dependent? Why do they have that much leverage over us, economic leverage, oil leverage?"

This country happens to run on oil. A lot of people wish it was not the case, and I guess, if we followed the guidance of some, we could mandate that people not ride in automobiles and trucks and that they instead ride bicycles so we would not be as dependent. But I do not think the American people are ready for that just yet.

So, again, Mr. President, I rise today to mention that we have tried. We failed today, and that is unfortunate. But the problem did not go away. This problem will only get worse as time goes by unless this country actually puts together a good, sound, comprehensive energy proposal. Maybe what we should do now is pick up some of the pieces. There are some things in this bill that will help the natural gas industry. They will help utilize a resource that is very good, environmentally sound, and cuts through some of the redtape. We happen to have an abundance of natural gas, and I think we will for some time. My State happens to have abundance of it. We have gas wells being shut-in all over my State in so maybe we can do some of these things on a piecemeal basis.

I will say our country will be a loser unless we pass a good comprehensive energy program. I heard some of my colleagues say this bill does not do enough for conservation. Maybe they should read the bill. The bill has a lot in it for conservation, it has a lot of renewables, it does a lot for energy efficiency. It does not go as far as some people would like. Some people want to mandate that every car in America will average 40 miles per gallon or 50, no telling what their limits might be. But it still was a good solid bill. If we had the bill on the floor, if they thought it did not do enough in one area, they could have amended it. Since they voted against cloture on the motion to proceed, we will not have a bill on the floor, so they are not going to be able to improve it. They just killed our hope for this year, and, I am afraid, maybe for this Congress, of passing a significant energy bill. But I think the real losers will be our country and our future.

Mr. President, I yield the floor.

A NEW ENERGY POLICY

Mr. GRASSLEY. Mr. President, we are going to pass an energy bill during the 102d Congress. A few months ago we all had to cast votes on risking the lives of hundreds of thousands of American men and women. It would be shocking, therefore, to find anyone serving in this Congress who does not believe we must have a new energy policy.

The chairman of the Senate Energy Committee yesterday in his opening statement presented a dramatic photo of a burning oil well in the Middle East. He said we must have a new oil policy. We are too dependent upon Middle East oil. That 300,000 Americans risked their lives, and sadly, many did not return home alive.

The chairman said that this is what this issue is all about.

I could not agree more.

This legislation could very well turn out to be the most important legislation considered by the 102d Congress. It will impact every American for decades to come, and in fact, will have worldwide implications.

For this reason, this bill is far too important to rush through the Senate in the few days before we adjourn before Thanksgiving. This bill is far too important to rush through at the end of any session when Senators are weary and battle-scarred from the bruising fights that have taken place in recent weeks.

We need time for very careful reflection. We need time to sort through the avalanche of documents which have flooded our offices during the last few days, to sort through the oftentimes conflicting information and claims by the many, many opposing viewpoints on the vast number of controversial issues.

Mr. President, there is one proposal that I am extremely concerned about. I am proud to announce that I will be cosponsoring the alternative fuels amendment by Senator JEFFORDS. I am proud of the fact that former Senator McCLURE, before he retired, and when he was ranking Republican member of the Senate Energy Committee, cosponsored Senator JEFFORDS proposal.

Senator JEFFORDS has exhibited great foresight in his proposal. It is the only proposal that I have seen which we can support, and go back to our constituents and say with all honesty and sincerity that, we really believe we have taken significant steps down the road toward energy independence.

But powerful forces are taking an absolutely radical, unbending approach to the Jeffords amendment. The oil industry has declared allout war against this amendment which will displace a portion of our gasoline supply with domestically produced alternative fuels.

The September 25, 1991, Journal of Commerce reported:

> The oil industry claims it would forgo Alaskan-refuge exploration if it could squelch a proposal that would require it to increase sales of alternative fuels such as

> compressed natural gas, corn-based ethanol or methanol made from gas.
>
> "If [Jeffords' measure] is included in the overall energy bill, we will oppose the bill," said Earl Ross, a spokesman for the American Petroleum Institute.

The oil companies said it "would be too costly to build plants to manufacture alternative fuels."

Well, then why are the oil companies investing so heavily overseas in methanol and MTBE plants?

And I emphasize overseas. If any of my colleagues have been lulled to sleep with the comfort that the Clean Air Act and our alternative fuels vehicle initiatives are going to reduce our dependence upon the Middle East, then they better start asking some very pointed questions to oil companies before we consider the Jeffords amendment and ask them why they are going overseas to invest in alternative fuels.

Well, "it's more cost effective," you might hear. In fact, that is why they oppose most alternative fuel efforts, "too costly." "Let the marketplace take care of our energy needs."

Mr. President, I will take a back seat to no one with regard to supporting a free market. A free market assures the most efficiently run economy possible.

But the marketplace will not make us energy secure, it will not maintain a clean environment.

In fact, who are we kidding? Where is the free market when we have to risk the lives of 300,000 Americans, as the chairman so pointedly noted, simply to keep our supply lines open? There is no supply and demand of a free market when you have to subsidize the supply side with hundreds of billions of dollars in subsidies in the form of military protection. And when dealing with a cartel.

Mr. President, the General Accounting Office recently issued a report which found that the U.S. taxpayer dished out $420 billion to cover military and foreign aid aimed at protecting our interests in the Middle East from 1980 to 1990. That comes out to about $3 per gallon of imported gasoline.

That is the subsidy to help the oil industry. But they oppose investing in our own alternative fuels domestic program, one which assures displacement, assures it, not merely elusive goals, and not merely a study, but actually assures it.

So, the problem is this. The oil industry is telling the U.S. Senate that unless we do it their way, unless we proceed with a business-as-usual approach to energy dependency of foreign sources, then the oil industry does not want us to pass a bill.

They do not want a bill. So you see, in a large sense, the oil industry is greatly responsible for this filibuster.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GORE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Tennessee is recognized.

Mr. GORE. I thank the Chair.

(The remarks of Mr. GORE pertaining to the submission of Senate Resolution 213 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. GORE. Mr. President, I would like to briefly address a second subject.

The PRESIDING OFFICER (Mr. EXON). The Senator from Tennessee.

GLOBAL CLIMATE SYSTEM

Mr. GORE. Mr. President, I rise on this occasion to call the attention of my colleagues to what I believe to be an extremely significant development in our effort to understand the intricate workings of the global climate system. In a recent letter to me, which I will provide to my colleagues, Rear Admiral Chesbrough, Oceanographer of the Navy, announced that the Navy had revised its disclosure policy for sea ice data from the Arctic Basin. Previously, the data was classified and therefore unavailable to civilian scientists. Now, after working closely with my staff and me, the Navy has "scrubbed" that data of sensitive information relating to our national security, and the admiral forwarded the ice profiles to my office, and I will soon present them to the experts in sea ice research who have said, to a person, that they believe this data will be extremely valuable in helping to understand what is happening to the extent and thickness of ice in the Arctic Basin.

Of course, as the computer models of global warming have long told us, warming is expected to take place much more rapidly at the poles than at other latitudes, and yet the only record of what has happened to ice at the North Pole is the record compiled by the U.S. Navy, which has traveled for 30 years with nuclear submarines underneath the ice cap carefully making a sonar track and, in the process, collecting a great deal of information about the ice itself.

That record has been properly classified as sensitive for national security reasons. But now a method has been found to protect the national security and give to the relevant experts in the scientific community the record of ice thickness such as it is from those sonar tracks for it to be studied in detail.

I want to take this opportunity on the floor of the Senate to express my sincere thanks to the U.S. Navy and to publicly acknowledge the cooperation they have shown in making this effort a success.

In pursuit of this agreement I might say, Mr. President, I have made two trips to the Arctic Basin, the last one earlier this year to the pole by way of nuclear submarine, and on each of those trips I have met with ice specialists who are extremely concerned about the potential for dramatic changes in the global climate balance, not just because of slow gradual warming, but because at some point that slow process may push us past a threshold beyond which the internal dynamics of the global climate system may reorganize themselves so that ocean current and wind current, which we now take for granted, which have fallen within the same basic pattern within certain boundaries for the last 9,000 to 12,000 years, since the end of the last ice age, those patterns could be subject to dramatic change if we allow the world climate system to cross this threshold.

One of the early warning signals will be in the Arctic Basin in the information about the ice thickness and extent at the North Pole.

The tremendous potential of civilian and defense cooperative research first became clear to me in November of 1989. I actually was with my wife taking our children to Disney World. I noticed a headline in the Orlando Sentinel about the efforts by scientists to gain access to this ice record, and they have denied access—again quite understandably because of the national security considerations involved.

The report in the Orlando Sentinel also indicated that scientists suspected significant changes were occurring in the thickness of the ice in the Arctic, but they could not accurately gauge that change because the best baseline data were in Navy hands and classified.

When I returned to Washington I contacted the Navy to see what might be done. The Navy was immediately responsive, and in March, submarine ice profiling data from three Arctic deployments were released to a panel of sea ice specialists that I had convened to work on this matter and to discuss it further with the Navy.

And we now know that significant changes are in fact occurring in the Arctic. Recently, scientists announced that the Polar ice cap has receded by some 2 percent in just the last 10 years. While previously the ice was known to wax and wane in its extent over the Canadian archipelago, Greenland area, and the region over the East Siberian Sea, never before had the ice been known or measured to shrink in its overall coverage.

There is also evidence of erratic trends, especially on the Greenland side of the Arctic basin. In recent years, there has been, in wintertime, a record maximum extent of ice followed immediately in summertime by a record minimum extent of ice.

Mr. President, this kind of erratic behavior is sometimes associated with a change in equilibrium on the part of natural systems, as is the case with mathematical systems. But in any event, the findings now available show that indeed there is cause for tremendous concern.

At my request, the Navy has also initiated discussions with a group of researchers at Columbia's Lamont Doherty Geological Observatory. Again, I wish to commend the United States Navy for immediately responding to a set of concerns that have not historically been right in the center of those we have asked the Navy to deal with. But they are true professionals. They understand what is at stake. They also understand how the unique assets and resources of the Navy, with submarines unavailable to anyone else, can be brought to bear in assisting efforts by our Nation to understand this crisis that we face.

Dr. Wally Broecker, an authority on ocean and biogeochemical cycles at Columbia University, and his colleague, Dr. Peter Schlossers, have detected what may be a serious malfunction in what is referred to as the ocean pump—the tremendously powerful sinking mechanism that drive ocean currents worldwide.

Mr. President, as they have explained it to me, the Gulf Stream is part of an even larger flow of warm water from the equatorial regions northward into the North Atlantic toward Greenland and Iceland.

When these warm waters reach the cold air currents coming down off the North Pole, with the prevailing currents coming across the North Pole from Siberia toward Greenland, when those ice-cold air currents reach the warm waters of the Gulf Stream off the Coast of Greenland, there is an enormous amount of evaporation that takes place.

The evaporation rises up into the atmosphere and then is carried by the prevailing wind currents over to England and Europe and, in fact, carries as much heat to Europe as one-third the total heat arriving on Europe from the Sun. So it is an enormous factor in the world climate system.

Indeed, Paris is much farther north than Washington, DC, or New York City, and yet it is significantly warmer. And that is because of this evaporation off the coast of Greenland, coming from the collision of the Gulf Stream and the cold air currents coming from the North Pole.

Now, what happens after the evaporation takes place is not confined, of course, to the transfer of heat over to Europe. What also happens is that the water which is left has a much higher concentration of salt, because when the evaporation of sea water takes place, the salt is left and the ratio of salt to water is much higher. And that means that the remaining water is heavier, denser, colder, and it sinks toward the bottom.

Five billion gallons per second, according to these experts, sink from the Greenland Sea down toward the bottom, and form a cold current that heads back south toward the Equator. This current is equal in volume approximately to the strength and size of the Gulf Stream. It flows underneath the Gulf Stream.

Now, this pump, which relies upon the evaporation of the Gulf Stream in the Greenland Sea, drives the entire ocean current system worldwide. After that cold current, coming underneath the Gulf Stream, heads back toward the Equator, it winds around the Horn of Africa up into the Northern Pacific. Along the way, it also receives cold water coming off the Continent of Antarctica from the melting that goes down to the bottom of the ocean there, and adds force to this cold current as it goes into the Pacific.

When it reaches the Northern Pacific, it then comes up to the surface again, and a warm current heads back to the south, down through the part they call the Straits of Malacca, and then back around on top of the cold current and feeds into the Gulf Stream again.

So that the entire ocean current system of the entire world is a conveyor belt, in effect, to use Dr. Wally Broecker's term. And there are two mechanisms driving that conveyor belt. One of them is in Antarctica; the other one is this ocean pump located off the coast of Greenland, between Greenland and Iceland, in several locations, concentrated in the same area.

Now, Mr. President, what drives that pump is the contrast between the cold temperatures of the North Pole and the warm temperatures of the Gulf Stream. If that difference narrows and the rate of evaporation lessens, then the pump is slowed down or even cut off, and the ocean conveyor belt also then slows down.

Why would anyone think this is a matter of concern? Well, for one thing, the climate historians tell us that, in fact, this happened once before, at the end of the last Ice Age, sometime around 11,000 years ago. As best they can peg the date, it was approximately 8750 B.C.

The receding glaciers, moving northward off the North American Continent, created a huge inland sea of fresh melt water. What we refer to as the St. Lawrence River was the location, according to these scientists, of a large ice dam which melted and then suddenly broke up, allowing fresh water to rush in enormous quantities into the Greenland Sea.

When that enormous quantity of fresh water diluted the salt water of the Gulf Stream coming north, this pumping mechanism was shut off. Northern Europe, which had been coming out of the Ice Age with the rest of the world, suddenly lost this evaporation, the warmth from the evaporation coming across the North Atlantic, and then went back into the Ice Age for another 1,000 years.

How long did it take for that change to occur?

It occurred, according to the scientific record, in less than 20 years. It just suddenly changed, and the global climate pattern adopted a new configuration.

Mr. President, Dr. Peter Schlosser, who works with Dr. Broecker, has been studying the pump mechanism. He and his team of scientists have found—and he just returned from the North Pole on a German icebreaker just a few weeks ago—but in earlier research he found that a critical portion of this ocean pump that operates in the Greenland Sea has been nearly crippled in its capacity to redistribute the warm and cold waters of the Atlantic. In the site studied most intensively, the flow of water out the bottom of that sinking mechanism had decreased by 80 percent in a 10-year period. He has not studied the other sites where this mechanism is in operation in nearly the detail he has been able to devote to this one. But the consequences of this development are potentially extremely serious. European countries still do depend upon that pumping mechanism I have described to moderate their weather. And, of course, the equilibrium of the global climate generally depends upon the continued operation of that pumping mechanism. If this research turns out to be validated in the other areas of the sinking there, then it may be looked back upon as the beginning of the same phenomenon that has been described by climate historians as occurring some 11,000 years ago.

If it happened in only 20 years, 11,000 years ago, then the implications are obvious. We are playing with grave danger. Yet we are continuing to put the warming gases into the atmosphere every single day. All those oil fires in Kuwait, all the wells that were on fire, all the smoke and soot blackening the sky in that entire region represents 1 percent of what the world puts into the global atmosphere on an average day.

We are not as yet certain of the cause of the problems that Dr. Broecker and Dr. Schlosser have detected, and it is for that reason I have asked the Navy to work with them as they have previously been willing to work with the ice scientists. With the help of Navy submarine crews operating on patrol in the Arctic region, the scientists will be able to obtain information that is so critically needed but is obviously prohibitively expensive to individual researchers to obtain on their own.

Mr. President, before I conclude, I would like to touch on one other, this time closely related, matter. The distinguished occupant of the chair is the chairman of the Strategic Subcommittee of the Armed Services Committee, and I am grateful to him for his efforts in this regard.

I would like to update my colleagues on the cooperative work of the Defense Department, the Department of Energy and the EPA pursuant to the Strategic Environment Research and Development Program initiated by Senator NUNN and myself last year. Through this program, the agencies are meeting to identify resources that can be brought to bear on the issue of climate change in addition to the problem of environmental restoration of Federal facilities. I have seen the outlines of the research agenda that is being prepared, and I am extremely encouraged by the possibility that in due course, information from Department of Defense satellites, sensors, and other resources will be contributed to this effort.

It is also my belief that the intelligence services of our Government hold information, collection capabilities, and analytic talent that can also contribute to the progress of scientific work on the global environment.

At the same time I worked on this matter with the Navy that I described, and with the Strategic Defense Initiative office on supercomputer capacity for climate modeling about which they were very cooperative. I have also, during that 2-year period, been working closely with the intelligence community. I wish to express my thanks to the chairman of the Senate Intelligence Committee, Senator BOREN, and to my colleagues in the other body on the House of Representatives Intelligence Committee for their cooperation in this regard. But, most of all, I wish to express my thanks to and respect for the professionals in the intelligence community who have, again, been extremely responsive to exploring this challenge of how to protect the national security interests in keeping information, that should not be public, confidential and classified while at the same time scrubbing the data in ways that make it possible for climate researchers and scientists looking at the problems of the global environment to be able to use it.

With the help of Senator BOREN, I have met with representatives of the intelligence community on numerous occasions in an effort to explore the potential of this endeavor and its limitations and to find ways to make use of the information, subject, of course, to the appropriate security measures. Having served for a number of years on the House Select Committee on Intelligence, I realize very clearly that this kind of collaboration would be new territory for the intelligence community and that there are important constraints that must be respected. As the initiator of this endeavor, let me say that I have had that concern foremost in my mind from the very start. I have such deep respect for those who collect this intelligence, and, having worked with them for a long time, I also know how important it is to make sure that it is never compromised.

Nevertheless, we are also emerging into a new world, in which an understanding of global environmental developments must take its place alongside older forms of information as a priority matter for Government, and for cooperation between Government and the community of scholars who are at the leading edge of research in this field.

In the course of my work on this problem, I have found already that the intelligence professionals who know how to interpret evidence collected by satellites and by other means do indeed have skills that can be brought to bear in greatly accelerating our ability as a nation and as a civilization to understand the dangerous trends that are underway in the global environment right now. I am also grateful to senior officials in the intelligence community who have allowed this work to proceed, and I will report back to the Senate as this measure is matured and as we have further developments.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROCKEFELLER). Without objection, it is so ordered.

UNEMPLOYMENT

Mr. SASSER. Mr. President, 8.6 million Americans, 8,600,000 of our fellow countrymen, woke up this morning with no job to go to. That is 140,000 more Americans out of work since September. In the past month, 140,000 additional people have lost their jobs, making the total unemployed 8.6 million.

This is a figure that tells a story of continued layoffs, continued stagnation. Our economy is still losing ground to this recession, and working Americans are suffering.

What is our policy for recovery? What is this Government's policy for economic recovery?

Mr. President, I am sorry I asked myself that question because we do not have one. There is a deafening silence coming from this administration. The alarm bells are simply ringing off the walls; the advisers are running around like the Keystone Cops while the Chief Executive quietly snoozes upstairs.

The unofficial unemployed rate jumped back today to 6.8 percent but that is far from a true barometer of the economic plight of the American people. If you add in those Americans who are unemployed, and those so discouraged that they have even given up looking for work after looking for it for months and not finding it, then you are talking about 16 million victims of this recession, either unemployed or underemployed. They have lost their full-time jobs and are now working part time. One-and-a-half million Americans have gotten so discouraged they do not even look for jobs anymore.

Mr. SARBANES. Will the Senator yield?

Mr. SASSER. If you add all of that up, I say to my friend from Maryland, that is 16 percent of the work force in this country.

I am pleased to yield to my friend from Maryland.

Mr. SARBANES. The Senator points to a very important factor. We received the testimony this morning from the Commissioner of Labor Statistics on the unemployed rate which has gone up to 6.8 percent. This is up from a rate of 5.7 percent just a year ago.

As the Senator has pointed out, there are 8,700,000 Americans unemployed, and there are 6,300,000 Americans working part time who want to work full time. There are 21 million Americans working part time, a little under 15 million of those want to work part time. That is their choice, but 6,300,000 want to work full time, and they can only find a part time job.

Then as the Senator points out, there are over 1 million additional Americans so discouraged that they dropped out of the work force. This adds up to more than 16 million Americans who are either unemployed or partially unemployed. Just to dramatize this—1 out of every 10 families in this country in the last year has had a family member who has experienced unemployment.

Mr. SASSER. Just to follow on to what the distinguished Senator from Maryland is indicating here this afternoon, a poll recently run by the Washington Times, ABC News found that a majority of Americans now are saying that the fear of losing their job is their No. 1 concern ahead of all others.

When you listen to the figures cited here of joblessness by the Senator from Maryland, then it comes as no surprise that that is the No. 1 fear of a majority of Americans now, and that fear is losing their job. Layoff announcements have really replaced profit reports as the routine part of our economic news. You do not read about profit reports anymore. You read about people losing their jobs.

Here is a sampling from last week, and it reads this way every week: The Compact Computer firm cut their number of employees by 1,400. Last week, General Electric cut another 1,500 employees out of work, another 1,500. Hyatt Hotels laid off another 700. It goes on and on and on, week after week. And no business is insulated, and no sector of the economy is immune to the job losses or layoffs. It cuts all across the economy. It is not regional. It is not just one industry. It is all across the country, and it crosses industry lines.

Mr. SARBANES. If the Senator will yield, just to support what the Senator is saying, there is a column in this morning's New York Times by the distinguished economic columnist, Leonard Silk, entitled, "Bleak Job Picture Darkens the Mood." He goes on to say:

> A good part of the explanation for the bleak mood of consumers and the widespread disbelief that the recession is over is the persistence of unemployment, and, among those who have not seen a pink slip, worry about being laid off."

He then goes on to say, and I am going to read right from the article:

> Some of the most prominent American companies, in both services and goods, have announced layoffs. Edward S. Hyman of the International Strategy and Investment Group, noted that, just in October, layoffs were announced by American Express, Pacific Telesis, Hercules, Amoco, Raytheon, Westinghouse, Allied Signal, RJR Nabisco, Boeing, United Technology, Exxon, Sears, Campbell's Soup, Citicorp, AT&T, IBM, Bell Atlantic, Rockwell, Time Inc., General Electric, Wal-Mart, Chase Manhattan, U.S. Shoe, and Phelps Dodge.

All these announcements occurred just in October.

Mr. SASSER. If the Senator will yield, let me add to what my friend from Maryland is saying.

These people losing their jobs now are people who have never been without jobs in their lives, many of them. Solid, middle-income Americans are losing their jobs and being squeezed to their last penny of savings. As they lose their jobs, and as they fall, they are reaching out for a safety net that has been shredded by arrogant neglect.

Let me give an example of what I am talking about: The Department of Agriculture reported on Wednesday that nearly 24 million Americans received food stamps in August. That means that 1 in 10 Americans are now receiving food stamps—and that is a 26-percent increase in the number—since George Bush took office. It is an all-time record.

What astounds those who run this food stamp program is the sharp rise in middle-class food stamp recipients.

I see the distinguished senior Senator from Connecticut on the floor, and I know how concerned he has been over a period of time about this economic recession, and the hardship it is causing in his State and in New England. But listen to what one food stamp worker says in Boston: "We are getting calls from people who always had a full work history and never needed public assistance of any kind."

Mr. President, that remark should send a shock of recognition through this Senate. There is a real possibility that this recession is something more than the inevitable turn of the business cycle. It may demand that we do more than quietly wait for the cycle to spin us out of trouble. The upward turn just may not come.

Mr. SARBANES. If the Senator will yield, what the situation cries out for is a President of the United States who will manifest some concern about this situation and is prepared to take action.

It is just incredible. Here we have the unemployment rate up to 6.8 percent today, and food stamp recipients are at all-time high. Indicators are down. The morning paper has stories that factory orders show a drop of 1.7 percent in September which is the second straight monthly decline, the Commerce Department said. The article goes on to say that "the recovery is in trouble."

There is an article here, "Optimism Is Blighted in the Midwest: Across the American Midwest, Traditional Home of Industry and a Can-Do Optimism, a Mood of Hesitancy, Mistrust and Disorientation Seems To Have Taken Hold."

> What depresses many people in the Midwest is a sense that things cannot get better in the foreseeable future. Few perceive that the Bush administration has the means to revive the economy.

Then the President holds a meeting at the White House with these so-called economic advisers. Listen to this:

> After his meeting in the Cabinet Room, Mr. Bush spoke to a group of small business executives who had been invited to the White House. He spoke to the businessmen briefly during a photo session—

We know about those. We have a lot of those photo sessions around here—

> during a photo session, the President said the economy has "turned the corner," and was "headed for recovery." But he quickly added, "I am still concerned about the economy. It is not as strong as we obviously would like it to be."

We have been hearing this short and shallow refrain all year. This recession, if it runs for another 2 months, will be the longest recession in the post-World War II period. Bush and his economic advisers keep calling this a "short and shallow" recession. If the recession runs another 2 months, it will exceed in length the 1974–75 and the 1981–82 recessions, and it will be the longest recession of the eight recessions we have experienced in the post-World War II period.

Mr. SASSER. The Senator from Maryland is precisely correct. President Bush took office in January 1989. There are 2 million more Americans unemployed today than when he took office, and 5 million more American receive food stamps today than the day George Bush took office. And the confidence—the distinguished Senator from Maryland I think has a chart that demonstrates this—of American consumers is half of what it was on inauguration day.

Let me just say this: President Bush is the first President since Herbert Hoover to preside over a decline in the standard of living of the American people. Let me just demonstrate with this chart——

Mr. SARBANES. If the Senator will yield, he has made reference to the consumer confidence index. This is a figure reported by the Conference Board, a private sector organization. This chart shows that consumer confidence took an incredible downturn in 1991. It started to come back, but now look at what happened. It has gone down again, almost equal to the low point, and these low points were last reached in the depths of the 1981–82 recession—some would even call it a depression. It was the worst we had experienced since the 1930's. Consumer confidence is now back down to this level.

This is a very worrying figure here, and it reflects what consumers across the country are feeling. Yet, the President is saying, right in the face of this kind of attitude, that the economy has "turned the corner" and has "headed for recovery."

(Mr. BRYAN assumed the chair.)

Mr. SASSER. Just let me say to my friend from Maryland, if middle-income Americans are surviving on food stamps, and we are seeing that all across this country, they certainly are not out buying consumer goods. And no wonder consumer confidence has plunged to new lows.

Let me illustrate to my friend from Maryland—and I see the distinguished chairman of the Senate Banking Committee, Senator RIEGLE of Michigan, has arrived on the floor. I know he is interested in this, and has held hearings dealing with this particular problem. But the common statistic or the common tool used by economists to determine whether or not the standard of living is going up or going down is annual real per capita growth of the gross national product.

We have studied this phenomenon, and using statistics supplied by the Commerce Department of the administration, we find that the Bush administration is the first administration since the Second World War to preside over a negative per capita GNP growth rate; the first one, really, since the administration of Herbert Hoover.

It is absolutely shocking. In the 3 years that this administration has been in office, the real per capita GNP growth of Americans has declined by three-tenths of 1 percent, the first time in over a half century.

Now, my friend from Maryland was saying that the President was saying that more jobs are right around the corner. Sixty years ago, another President, Herbert Hoover, told everyone who would listen that prosperity was just around the corner. That prosperity proved to be a hairpin turn that we nearly failed to come out of, economically, socially, politically, and every other way.

Mr. RIEGLE. Mr. President, will the Senator yield at this point?

Mr. SASSER. I am pleased to yield to my friend from Michigan.

Mr. RIEGLE. Mr. President, obviously part of the economy is a little stronger. There is a story today in the Washington Times. The headline is "Bush Collars First $1 Million of Campaign." This talks about a big fundraising event that just took place down in Texas. It said, here in this article in the Washington Times:

> During the rip-roaring fund raiser, the President pledged to veto any new extension of unemployment benefits that isn't pay-as-you-go.

It goes on to say that the President and the Vice President are out there working on the economy—this is on the economy of their campaign account—and they are going to raise a total of $3 million in their first 24 hours of raising money for their reelection. They have an event scheduled today down in Dallas, and it says here:

> Mr. Bush will attend a Dallas doubleheader today—a reception hosted by financier T. Boone Pickens to raise $750,000 for GOP redistricting lobbying, and then another boots-and-bow-ties campaign dinner. Mr. Quayle will travel back home to Indiana to raise another $250,000 for the cause.

Why is this relevant? Because there is time being spent, obviously, on this effort, to go out and make a major effort to raise campaign money. And obviously the people who are giving this money are not the ones who are feeling the great damage of this recession. This is part of the problem. That is, that there are some people in the country obviously well insulated from the recession, not bearing the brunt of the recession, and it is not hard for them to write these big campaign checks and go out and rake in some $3 million over a 2- or 3-day period of time here.

But this very money that is coming in, a lot of it was produced by the tax cuts, the capital gains and other preferential treatments, and so forth. Being talked about now is a replay of the tax cuts of the 1980's that have generated the very strong economic conditions of some, and we now see that coming back in here.

Mr. SASSER. Mr. President, will the Senator yield on that one point?

Mr. RIEGLE. Yes.

Mr. SASSER. I saw some recent statistics that the Senator may find interesting. During the decade of the 1980's, the income of the richest 1 percent, the richest 1 percent in this country, their income went up by 100 percent during the decade of the 1980's, while their tax liability went down—went down—by 8 percent.

Mr. DODD. Mr. President, will the Senator yield on that point?

Mr. SASSER. I will be pleased to yield.

Mr. DODD. The actual numbers are real income, after-tax income went up 10 percent, and their Federal taxes declined by 15 percent. So the actual numbers are a decline of 15 percent in Federal taxes and real income, after-tax income went up 10 percent through 1980 and 1990.

Mr. SARBANES. Mr. President, it is absolutely incredible, when you contrast what has happened for the very wealthy in terms of this overwhelming increase in their after-tax income, with what is happening to ordinary working people.

Now, the Labor Department issued this week a release, and I am just going to quote two paragraphs from it.

> Nearly one family in 10, 6 million families in all, was affected by unemployment in the third quarter of 1991, the U.S. Department of Labor reported today. Reflecting the deterioration of the economy between 1990 and 1991, the number of families with at least one unemployed member rose by about a million between the third quarter of 1990 and the third quarter of 1991.
>
> Over the same period the median weekly earnings of families with members employed as wage and salary workers rose by 1.8 percent. This was less than half of the 3.9 percent increase in the consumer price index.

The dollar amount of earnings for middle-income individuals rose by 1.8 percent. But the prices of what they had to buy with their earnings rose by 3.9 percent. So prices went up more than their income went up. What that means is that their standard of living at the end of that year was lower than their standard of living had been at the beginning of that year. They are worse off today, not better off.

Mr. DODD. Mr. President, if my colleague will yield on this point, I went over these numbers frequently over the last week or so. Let me project that out, having just responded, to the decade of the 1980's, when it came to the top 1 percent of the income earners. Take, if you will, the income earners with incomes—you would hardly call this middle class, but for the sake of discussion—people with incomes of around $12,000 a year up to about $75,000. By anyone's definition, that includes middle in this country. People in this category, which represent 98 percent of the people of this country, their Federal taxes went up about 2 percent on the average, actually a little higher in some, a little lower in others.

Their after-tax income, wages and income, declined in that 10-year period by 7 percent. And just to confirm what the Senator from Maryland has said, let me give you an idea of what happened to costs of goods and services during that 10-year period. Housing costs went up in the neighborhood of 170 percent. Public college tuitions went up nearly 530 percent in that 10-year period. Private higher education tuition costs went up in excess of 250 percent. Health care costs went up in excess of 300 percent in this country.

So at the time that real wages after taxes were declining for middle-income people, and their Federal taxes were going up, the cost these people were paying for basic things like housing, education, and health went up through the ceiling. So when you see what has happened to that income category, that group of people, versus the top 1 percent, you begin to get a flavor of why it is so difficult for people to make ends meet.

I want to commend my colleagues, by the way, while I am here. These Senators, I should point out to our other colleagues, have been involved in this for so long. I am recently involved in these questions, and obviously, in our part of the country, we have felt it.

The distinguished chairman of the Banking Committee, and in fact, my colleague from Tennessee and my colleague from Maryland, who serve with me on the Banking Committee, know what the credit crunch has meant to us in the New England States, as well.

We found one lending institution after another folding, closing their doors; people who are creditworthy being denied credit, trying to expand and grow, having a devastating effect on our economy.

And for the last 2 years, or approximately 2 years, we have tried desperately to get the Treasury, the FDIC, the Office of the Comptroller of the Currency, and the Federal Reserve Board to pay attention to this, to understand what it means to small businesses and medium-sized industries and to individuals when that credit window slams shut. And we see these institutions that could have survived, quite frankly, with a little creative help, would have made a difference in terms of their being around. It ultimately costs the American taxpayers a fortune because of having to pay the cost of bailing out these institution. It has been devastating to us.

And, frankly, I hear my colleagues talk about the economy and talk about some of the President's statistics. Maybe he is talking about some of these other places we are helping out. Maybe it is Cambodia, maybe it is Bangladesh, maybe it is in Spain. Maybe in Madrid the prosperity is just along the way. Maybe some of the Baltic States, the Soviet Union, the PRC.

By God, we seem to have spent an inordinate amount of time in the last 18 months designing an economic plan for every country of the world, yet I cannot get anybody to pay attention to Bridgeport, CT, that has gone bankrupt, or to people in Hartford or New Haven that have lost their jobs. But yet we seem to have a plan for everybody else in the world.

And all the American public is saying is, "Can't we at least be at the top of the agenda, the domestic issues here at home? Don't we deserve at least as much consideration as these other nations in the world?"

I am not advocating and would not suggest the President abdicate his responsibilities in foreign policy. That would be the height of irresponsibility. But I would like to think this country came first. I would like to think that were the case.

Mr. SARBANES. If the Senator will yield on that point.

The President of the United States found emergencies overseas in the course of 1991 in order to send assistance abroad, and, therefore, he used the provision of the budget agreement which said he could go outside of its parameters if he found an emergency, and the Congress agreed with him. The President came to the Congress. He said, "I think there is an emergency overseas. We need to provide some assistance." The Congress said, "We agree with you, Mr. President. We will provide this assistance," but that was at the President's initiative.

Then we tried to get the President to recognize an emergency at home for the unemployed workers of America who have used up their benefits, who do not have any income, and who are confronted with the problem of how they are going to pay their mortgage or their car payment or put food on the table. We asked the President to declare an emergency to help these Americans here at home, and the President would not do it.

In mid-August the President could have found an emergency and unemployment benefits would have flowed to the millions of Americans who had exhausted their benefits. He refused to do so. Just last month we sent him a bill finding an emergency in order to pay these unemployment benefits, and he vetoed that bill.

So we cannot even get parity for America. I agree with the Senator. If America is not strong at home, we are not going to be able to project strength abroad. We cannot even get parity for Americans out of President Bush. He is giving more favorable treatment to people overseas than he is giving to people here at home. We need a most-favored-nation status for our own people, for our own Nation.

Mr. DODD. If the Senator will yield, I am curious about one statistic. These unemployment numbers that came out today, and yesterday in my home State of Connecticut, came out about noon today. Am I correct, if you have exhausted your benefits you no longer are calculated? If you do not show up on anyone's list, you are no longer calculated in the numbers of the percentages of unemployed? Is that correct, I ask the Senator from Tennessee or the Senator from Maryland.

Mr. SASSER. The Senator from Maryland is the expert on this matter, and I defer to him for the answer.

Mr. SARBANES. If you become so discouraged in your job search by the bad economic times that you in effect drop out of the labor market then you do not get counted. There is something over 1 million Americans in that category.

There are 8.7 million Americans who are unemployed. They are looking for work and they cannot find work. That is where we get the 6.8 percent unemployment rate. And there are 6.3 million Americans who are working part-time who want to work full-time. Now, if you count all three of those categories to get an unemployment rate, the unemployment rate today is 10.1 percent. That is the comprehensive unemployment rate, over 10 percent.

But if you have exhausted your benefits and are looking for a job, you still get counted as unemployed. Where you do not get counted is you do not get counted in the unemployment system in order to trigger a State for paying extended benefits. No State is currently paying extended benefits.

It is incredible what has happened in this country. We have had this recession which now is almost the longest recession in the postwar period. There is the basic 26 weeks you get in unemployment insurance. In every other recession we have provided extended benefits for a longer period of time to try to carry people through. If you lost your job a year ago, when the unemployment rate was 5.7 percent by now, you would have used up your 26 weeks of benefits and you are now looking for a job in a job market where the unemployment rate is 6.8 percent. In other words, you are out there now on the street trying to find a job in a job market that is significantly worse than when you lost your job.

In every other recession, we provided extended benefits to the unemployed. This chart shows the number of persons receiving extended benefits during Ford, Carter, and Reagan. This point shows the number of persons currently receiving extended unemployment insurance benefits. It is almost zero. I do not know if you can see it from there.

Mr. DODD. Barely.

Mr. SARBANES. Barely. Well, this is this time under President Bush. They are not providing these extended benefits, even though the trust fund into which employers pay for extended benefits is now showing a large surplus. They have collected this money for the explicit purpose of paying extended benefits, and they have not paid them. It is an abuse of this trust fund. You have millions of Americans unable to provide for their families, and it is a tragic situation.

Mr. DODD. If my colleague will yield, I have held now three hearings in the State of Connecticut on unemployment benefits. There are now 60,000 families in the State of Connecticut who have exhausted their unemployment benefits. It is an unprecedented number of people in a State, that prides itself in having a healthy economy which contributed to significantly to the defense of this country. 60,000 families have exhausted their benefits.

I am not exaggerating when I tell my colleagues that we had citizens come forward at those hearings and it was not uncommon that the witnesses said they have submitted as much as 750, 800, 1,000 résumés around the country, skilled people who have never been without work in their lives. Never. These are people who worked in our defense industries, people who are engineers, who are scientists, who are draftsmen, designers, for the first time in their lives, have never, never, even imagined themselves being caught in that category. Today 60,000 of them, heads of households in our State, have lost those unemployment benefits, and the number is going up on a daily basis.

That is a fascinating report the Senator gave, the fact that President Reagan and President Ford understood the importance of that issue and were willing to step forward and use the fund for which it was created and we now have an administration that will not even recognize that. That is reprehensible in any view.

Mr. RIEGLE. If the Senator will yield at that point. You know, we are out here today, I think, making the point about what is happening to the economy and the failure to respond to it. I would say that even some of our friends on the other side of the aisle, while they are not out here today, are also beginning to understand and express some alarm about it, although it tends to be in a political context.

I see here a story today in the Washington Times. It says, "Bush, His Party Split on Economy." I want to read just a little bit of it. It says:

> The economic slump is driving a wedge between the White House and congressional Republicans.
>
> While President Bush's advisers preach caution, House Republicans are pleading for him to enter the political debate over how to spur economic growth. In the Senate, economic woes have already begun to take a toll.
>
> During a leadership meeting at the White House yesterday, Sen. Phil Gramm, chairman of the Republican Senatorial Campaign Committee, told Mr. Bush that former Attorney General Richard Thornburgh has only a 50-50 chance of defeating incumbent Democrat Harris Wofford in next week's special election.
>
> Mr. Gramm did not blame Mr. Thornburgh's troubles entirely on the recession, but operatives in both camps say anxiety over the economy has boosted Mr. Wofford's populist, outsider campaign.
>
> The threat of losing the Pennsylvania seat has led Mr. Gramm and others to pressure the White House harder than ever to take a bold stand on economic growth.

We need economic growth. It looks to me here as if the people of Pennsylvania have an opportunity next Tuesday to send a very powerful signal down here to force a change in the economic plan that will start producing some jobs in this country.

A little bit later in this article it says, and all these are quotes:

> Mr. Bush's caution reflects the influence of Treasury Secretary Nicholas Brady and Budget Director Richard Darman. Neither wants to reopen the capital gains debate, which in the past has made the president look like a guardian of the rich and a Scrooge to the poor.
>
> Until recently, most Republicans sympathized. Now they've begun to fear running alongside the "recession president."
>
> Members are very concerned," said Rep. Tom DeLay of Texas. "We're not getting any leadership. We're telling them [the White House]: 'Just be for something!'"

So you even have, here, a case of somebody in the other party who is beginning to see this damage pile up. While it is in a political context, now they want some action. "Just be for something."

Let us be for something that is going to help the people. Let us be for something that is going to provide jobs in America. Not a free trade agreement with Mexico which is a jobs program for Mexico; or special trade arrangements with China, which is a jobs program for China; or special arrangements for Turkey, jobs programs for Turkey or for Kuwait or for these other countries. We need jobs here in the United States. People are desperate for work. They want to work.

As the Senator from Connecticut has said, we are talking about people unemployed for the first time maybe in decades of a work history and a work record; people who are looking for work, sending out as many as 1,000 resumes, and there is no work to be found.

Meanwhile, the President has time and the people around him have time for every country on Earth. The other day they announced they had a new plan for Cambodia. Most people cannot find Cambodia on the map of the world.

I have asked the President and the Labor Secretary to go out and visit some of the unemployment offices in Tennessee, or in Maryland, or Connecticut, or Rhode Island—certainly to come to Michigan. We have 170,000 people in Michigan right now who have lost their unemployment benefits, are out of money and cannot find work.

So this administration needs to address its attention to the problems of this country. I think the people of the United States want that done. That is what the polling data is now telling us, that people in this country say it is time to move and put America No. 1 on the list.

Mr. SASSER. Mr. President, I see the distinguished Senator from Rhode Island has arrived on the floor. The State of Rhode Island has been hard hit by this recession. I yield, now, to the distinguished Senator from Rhode Island to address this problem.

Mr. PELL. Mr. President, I thank my friend from Tennessee for yielding to me, as I have to catch a plane. I appreciate it very much.

He is right; in Rhode Island we are really suffering. We had 7,000 citizens line up in the pouring rain the other day to get a little bit of food out of the surplus food program. The unemployment figures released by the Department of Labor demonstrate that the economic recovery long promised by the administration has not yet arrived. It is yet to come.

The latest unemployment figures, national ones, show unemployment increasing to 6.8 from 6.7 for the month of September.

In my State of Rhode Island I regret to say the figures are now 9.6 percent unemployment.

I have spoken before about the thousands of Rhode Islanders who have been devastated by the poor economy and forced to wait in line for surplus Federal food.

Now I am told Rhode Islanders will be receiving leftover supplies from Operation Desert Storm to help them through the bad economic times we live in.

I find it ironic that our Nation spends billions of dollars to wage a war in the Persian Gulf, but all we can offer to Americans in need are the field rations leftover from that war.

This assistance is welcome, but we should be able to do more.

We should provide the extended unemployment benefits that will allow the victims of our terrible economy to ride out these troubled times.

Despite congressional approval of these extended benefits, this assistance has been denied because some believe prosperity is just around the corner. The question is what corner and how far do we have to go to get to that corner?

In reality, the current unemployment figures do not reveal any light at the end of the tunnel. Economic indicators related to manufacturing figures paint an equally gloomy picture.

The Commerce Department reports that orders for manufactured goods continued to decline in September for the second straight month. The National Association of Purchasing Management also reports that its monthly index of business activity has dropped from the previous month.

Mr. President, I may be warm here in Washington today, but winter is almost here. In my part of the country, winter is a very, very hard time for those in need. The hard times we are experiencing will get worse unless there is help.

The quickest way to deliver this help would be for the administration to recognize the suffering that is taking place on the home front and approve the extended unemployment benefits program that has twice been sent to the President for his signature.

The time has come to lift the veil from our eyes and recognize we cannot just be patient and wait for economic recovery, we must act now before the bitter cold is added to the bitterness of unemployment and hunger.

Mr. SASSER. Mr. President, I thank the Senator from Rhode Island. I think it is a sad commentary that the people of Rhode Island the distinguished chairman of the Foreign Relations Committee has spoken of so eloquently here this afternoon would be reduced to sustenance by relying on the same MRE meals that our military was passing out to the Kurdish refugees in the Middle East.

Mr. PELL. If the Senator will yield, I would not be surprised if we got old ones from World War II or the Spanish-American War, the way they look after our people.

Mr. SARBANES. Mr. President, I want to express my very deep appreciation to the Senator for his very steadfast efforts on this issue throughout these many months, fighting here to respond to the situation of the unemployed.

I want to contrast the fact that the distinguished Senator from Rhode Island, who is chairman of the Senate Foreign Relations Committee and therefore has a direct responsibility for dealing with America's problems internationally, has the vision and the perception and the understanding to be concerned about the problems of Americans here at home, all Americans, and especially the citizens of the State of Rhode Island with the actions of President Bush. I wish the President of the United States could show the same dimension of concern for the problems here at home instead of only being concerned about what is happening abroad.

The distinguished chairman of the Foreign Relations Committee, who has the responsibility to look after our international obligations, has manifested throughout this effort a very deep concern for what is happening here at home. He understands what American working families are going through and has fought with us, every step of the way, to try to respond to their problems and to address their need.

I not only thank the Senator for his statement, but for his consistent efforts throughout this period to try to do something about the unemployed. I wish the President of the United States would manifest the same concern and the same attention to this pressing problem.

Mr. PELL. I thank my colleague and friend very much.

Mr. SASSER. Mr. President, the distinguished Senator from Maryland, as my colleagues know, also serves as the chairman of the Joint Economic Committee. The Senator from Maryland has been at the forefront in urging the President and this administration to respond to the problems in this economy and more specifically, to respond to the needs of the unemployed that are among us.

Here are the kind of responses that we have been receiving. Bear in mind, on two separate occasions this body has passed a bill to extend exhausted unemployment insurance benefits to the millions of Americans who have exhausted those benefits by virtue of having been out of work for so long. On two separate occasions we have sent to the President legislation to extend these unemployment benefits, and the votes here have been large votes affirming the view of the Members of this Senate.

And, indeed, the Members of the House of Representatives have voted likewise, affirming their desire that these needs of our citizens be met. On two separate occasions, the President has vetoed, has killed this effort on the part of the Senate, led by the distinguished chairman of the Joint Economic Committee, to alleviate the suffering of the millions of unemployed across this country.

But what makes it even worse are statements that have been made by representatives of this administration. Just let me read one.

The Secretary of Labor who has the responsibility for being the spokesman for working people across this country, here is what she said about our efforts to extend the unemployment compensation that had expired, to extend it to those who had lost their benefits through no fault of their own. She wrote:

> The administration is concerned that while the objective of this bill is to provide additional income protection for workers, the result of the bill would be slower reemployment.

In other words, if you alleviate the suffering of these people and give them the unemployment benefits that they have paid for, that their employers have paid for, that they need, that are much less than the salary they would get if they were working, that this would be an impediment to these workers going back to work. In other words, these unemployed people are lazy and they do not want to work, so says the Secretary of Labor.

And prior to that, the Director of the Office of Management and Budget came out and said that expanding benefits would increase unemployment; this expanding these benefits would increase unemployment because "it has the perverse effect of becoming an incentive to be unemployed."

That is the administration's view of the work ethic of the American people.

In my State of Tennessee, last week a company in the western part of my State advertised that 10 jobs were available. By 7:30 in the morning, 800 people were lined up out in front of that business establishment, 800 desperately wanting a job, desperately wanting to work. And the Secretary of Labor and the Director of the Office of Management and Budget, in the face of this, says, in essence, that they are unemployed because they are too lazy to work.

Mr. SARBANES. Will the Senator yield on that point?

Mr. SASSER. I yield to my distinguished friend from Maryland.

Mr. SARBANES. Mr. President, that same Secretary of Labor this morning commenting on the increase in the unemployment rate up again to 6.8 percent said:

> The virtually unchanged unemployment rate of 6.8 percent—

You say virtually unchanged when it goes up like that—

> coupled with yesterday's announced decrease in the number of initial unemployment insurance claims is the sign that the economy is pointed in the right direction.

Budget Director Darman all year long has been saying the light is at the end of the tunnel, the recovery is right around the corner. They will not recognize the problem. They will not even admit that we have a problem on our hands, even though you have all of these distressing figures.

There is no sign of a sustained recovery. New orders for durable goods were down 3.2 percent in September, and they were down 4.1 percent in August. The home building industry, which has usually been a leader out of the recession is in bad shape. Housing starts and building permits have both fallen since July. Sales of existing homes have fallen for 3 straight months.

We talked earlier about the current state of consumer confidence with respect to the economy. It fell 12.5 points in October to 60.4 on the conference board index. That is only 6 points above the very low level it reached in the 1981–82 recession. Consumers are not going to bring us out of this recession because they do not have the money to spend, and they are overloaded with debt.

Now we have all of these indicators and, meanwhile, the administration is whistling through the graveyard. They have to recognize the problem.

The President himself comes out of a meeting with small business people and says, "The economy has turned the corner and is headed for recovery." Who are they kidding? Then they are going to point to the fact that the GNP figure for the last quarter went up 2.4 percent.

Let me just comment on that. We had three straight quarters of negative GNP growth. Then we had a positive quarter with 2.4-percent growth. Of the eight previous postwar recessions, in six of them, we had positive growth followed by negative growth. In other words, we may be headed for what is called a double-dip recession. You come up a little bit and then you go back down.

The amount of growth, the 2.4 percent, is by far the worst record of any recession in the postwar period. Usually you come out of a recession with a really significant growth period. This is very anemic growth by past standards in recessions. In addition, consumer spending for autos and new housing is down, real spending by State and local governments is down, and durable goods orders are down. The administration is living in some kind of dream world when the Secretary of Labor, the Director of the Office of Management and Budget, and the President himself, can make these kind of statements.

Mr. SASSER. Will the Senator yield just on that point? On the question of the 2.4 percent real growth in GNP for the third quarter of 1991, the real story in that is that growth in September at the end of the quarter was decidedly weaker than growth in July at the beginning of the quarter.

Mr. SARBANES. That is right.

Mr. SASSER. What we find is that automobile sales, for example, are 15 percent below where they were in July. The economy is getting sicker. In other words, this economy is weaker as we go into October than it was when we went into July 1991.

Mr. SARBANES. The Senator is absolutely right. It is a very important point to make. I was making the point that the overall growth for the quarter was very weak compared with past recessions.

But what the Senator has developed is an even more important perception, and that is that even this anemic growth was split between higher growth at the beginning of that quarter and lower growth at the end of that quarter. So, as we move into the period in which we now find ourselves, we do not have an economy picking up in strength, we have an economy trailing off in strength.

Mr. SASSER. An economy that is giving every indication that it may do just what the distinguished Senator from Maryland indicated, and that is spin off into a double-dip recession. In other words, the economy went up just briefly in July and then it trailed off again with very, very weak numbers in August and September. And it looks worse in October.

Now, the distinguished chairman of the Banking Committee knows this as well as I, but the chairman of the Federal Reserve Board, Dr. Al Greenspan, indicated just a few days ago that the economic growth figures were disappointing. And there is widespread speculation now that there might be an effort to further loosen monetary policy, to lower interest rates to try to give this economy a shot in the arm. But that has not worked. That has not worked.

Mr. RIEGLE. Will the Senator yield just for a minute on that point? It relates to what he and the Senator from Maryland have just said.

This is another story out of today's Washington Times newspaper on the weakness of the economy right now. The headline on this story is, "Fresh

Dip in Orders Triggers New Fears." I want to read the first three paragraphs. It says:

> Orders for manufactured goods dropped 1.7 percent in September for the second straight monthly decline, the Government said yesterday, raising fears of production and job cuts in an economic sector that had been doing well.
>
> "It says the recovery is in trouble," said David Jones, an economist with Aubrey G. Lanston & Co., a New York securities dealer.
>
> The National Association of Purchasing Management reported separately that manufacturing eased in October to its slowest pace in three months.

Now, this relates to the point that was just made about the fact that in the last quarter, the first month of that quarter was stronger but it was getting weaker through the quarter. And they carry that forward here to say that manufacturing eased in October to its slowest pace in 3 months.

> The trade group said its purchasing managers' index was 53.5 percent in October against 55 percent in September. A reading about 50 percent indicates manufacturing is growing.

But this obviously shows a decline. So that we may very well be headed into a double dip.

And then it concludes this way:

> The decline, which followed eight months of increases in the index, could spell trouble for the overall economy.

I just want to introduce one other item to this. That is to put the trade deficit on top of this, because the United States in the middle of the 1980's left this international credit position that we had been in, going back all the way to 1914, and during this period of Reaganomics you can see there was a dramatic change in our economic situation. We crossed this debtor nation line, not only became a debtor nation but we have now gone rocketing down this line so that we have passed every other nation.

We hear about all of the economic problems in the Soviet Union. We owe more money to foreign countries today than any other country. And it is getting worse each day.

If you add to that what is going on in the banking system—we hear about the Great Depression of the 1930's. Well, here is a chart that starts in 1930 and comes right on up to the early 1990's. This is how many bank failures we had during the Great Depression.

Mr. SASSER. Is that 75 bank failures?

Mr. RIEGLE. Yes, 75 bank failures.

Mr. SASSER. At the highest level.

Mr. RIEGLE. At the highest level in the recession. Then as you see when the recession——

Mr. SASSER. This is the Great Depression of the thirties.

Mr. RIEGLE. Yes, this is the Depression of the 1930's. But then it ended. And you see us coming through the 1940's, 1950's, 1960's, 1970's and up to the 1980's with almost no bank failures. But then look what happens when we get into the 1980's. I frankly think this was due to the speculative excesses of the Reaganomics that we were talking about before.

Look at this explosion of bank failures and look at where we are here. This is what has emptied the deposit insurance fund. The fund is broke. We are going to have to have a bill up here on the Senate floor perhaps this coming week to borrow money to put into the insurance fund just so that money will be there to cover the additional bank failures that are out ahead of this.

But all of this piles up one thing on top of another. If you do not have an economic strategy, this is what you start to get. You start to get major parts of your economy caving in. You get a very perverse and damaging situation developing in your trade area which takes millions of jobs out of this country.

Mr. SARBANES. Will the Senator go back to that chart for just a second. I think this is a very significant chart. The United States was a creditor nation. In other words, others owed us more than we owed them ever since World War I.

Mr. RIEGLE. Yes.

Mr. SARBANES. Ever since World War I we held a creditor position, a strong international financial position. Then in the 1980's, because we were running these large trade deficits year in and year out, and the administration would not do anything about them, we passed into a debtor status. It gets worse year by year by the amount of our trade deficit.

How can you be a world power and be a debtor nation? I submit that there is a basic inconsistency in those two things over any extended period of time. You cannot ride into town standing tall in the saddle if you owe money to everybody you see on every street corner, and that is the situation in which the United States is finding itself.

Mr. SASSER. If the Senator will just yield on that point for one moment, the distinguished Senator from Maryland earlier in this discussion indicated that the standard of living, in essence, for middle-income Americans was falling because their purchasing power was not keeping pace with inflation. So the real quality of their life is declining.

Now, one of the reasons for the standard of living declining for the average American family is right here before our very eyes. We are paying more of our national wealth in interest for money borrowed from abroad to finance the deficit operations of the Reagan and Bush administrations. And year in and year out that wealth that is produced by the sweat of the brow of the American workingman and workingwoman, that wealth is going abroad to pay the interest on this money that is being borrowed.

Mr. SARBANES. The Senator is absolutely right. What being a debtor means is that you have to produce an extra margin to pay your debts abroad instead of using it for your own standard of living.

So the consequence of this is that you have to work but you cannot fully realize the benefits of that work because some of those benefits must be sent out of the country in order to service that debt.

Mr. SASSER. And we see—if the Senator will yield just a moment—now in this chart that our chickens are coming home to roost on us. Every President since World War II—John Kennedy had a growth rate of 3.5 percent per capita GNP; Lyndon Johnson right behind him with 3.3 percent growth. Even Ronald Reagan here had a 2.1 percent growth, and we were eating up our seed corn to do that. That is when we became a debtor nation, was during the administration of President Reagan. Our chickens have come home to roost on us now here in the administration of George Bush because we are sending so much money abroad. We are becoming noncompetitive, and we are seeing here that the standard of living in the Bush administration, for the first time since World War II, is going down for the American citizen as the annual per capita GNP growth rate declines. We have no economic policy. And that is the problem that is facing the citizens of this country.

Mr. SARBANES. I submit not only does the administration not have a policy, they will not even recognize the problem.

Mr. RIEGLE. That is what happened in this meeting at the White House. Even some of his Republican colleagues came in and said it was a problem, and they do not want to believe it.

Mr. SARBANES. The Senator quoted the Secretary of Labor and the Director of the Office of Management and Budget. They do not even listen to what Alan Greenspan said about the economy.

About a week ago he said this about the economy:

> In recent weeks, it turned demonstrably sluggish. The sparks visible earlier in the summer are no longer apparent. The economy is moving forward but in the face of a 50-mile-an-hour headwind.

We have a quote from the Secretary of Labor saying that nothing has happened. It is all sweetness and light. She is going to put the best gloss on this thing. This is today based on the increase in the unemployment rate:

> The virtually unchanged employment rate of 6.8 percent coupled with yesterday's announced decrease in the number of initial unemployment insurance claims is a sign that the economy is pointed in the right direction.

Now, initial unemployment claims the previous week were the highest they have been since March. They went over 450,000. Then this week they dropped back to 405,000. But the running average is much higher than it has been over the summer. So it is this Pollyanna. They are wearing these rose-colored glasses when they look out at the economy, and they keep coming to us and saying there is nothing wrong.

Meanwhile, people are falling off the end of the Earth as far as this economy is concerned.

It is just an outrage what is happening in this country.

Mr. RIEGLE. Will the Senator yield?

I wanted to cite another paragraph out of this story in today's Washington Times, if I may, on this very point. This is this meeting they had yesterday at the White House. Some Republican Members of the Congress went down asking for action, and were turned down. But this is what it says:

> Until recently, most Republicans sympathized.

With doing nothing. That is my addition here.

> Now they've begun to fear running alongside the "recession President."

Representative TOM DELAY of Texas said:

> Members are very concerned. We're not getting any leadership. We're telling them [the White House]: "Just be for something."
>
> These fears came crashing down on Mr. Brady at a Wednesday meeting with House Republicans. At least 10 lawmakers—moderates and conservatives—demanded to know what the White House was going to do about the economy.
>
> According to participants, Mr. Brady said the White House would do nothing until it could be guaranteed victory on the House floor.

Then this House Member says:

> Members just couldn't believe what they were hearing.

The point is they do not want to do anything. They do not want to acknowledge the problem. Part of the reason they do not want to acknowledge it is they helped created it. There are 11 years now of Bush-Reagan and Bush-QUAYLE, stretching over that whole, long period of time. It has created that huge trade deficit that I showed a moment ago.

Look what it has done to the Federal budget deficits. These are our Federal budget deficits from 1981 up through 1992. This scale is notched in $50 billion segments. You can see how these Federal budget deficits have been rising, rising, rising; almost a half a trillion dollars, approaching $500 billion for 1992. This is what Reaganomics has given us.

It is not just the trade deficit that I was showing awhile ago where we now owe all this money to foreigners and are sending all of this interest money out of the country. But look at this pattern of deficits. They put these Gramm-Rudman-Hollings budget programs in here that were supposed to bring these deficits down to zero. In this case, by 1991. It was a fraud at the time. It did not work. The deficits did not come down. We see that they went up.

Then we had Gramm-Rudman-Hollings II. It did not work any better. It did not bring the deficits down. They went up even higher.

Now we have the latest package, the so-called budget package.

I want to commend the Senator from Tennessee who said it was time to break out of this particular plan because it is not working either. The world has changed. The Soviet Union has collapsed. Our people are out of work. We need health insurance in this country. We need a concentration on the problems of America.

It is time to get rid of these schemes that have not worked and have made our economic problems worse, made our financial problems worse, helped cave in our banking system where we see this massive record of failures. It is time to put all of that aside.

We need a new economic plan for this country, a new economic plan for America, one that concentrates on the real needs of our people. That is what this country needs. We have to have it.

Mr. SARBANES. If the Senator will yield, because I want to address the point I was making about why the administration would not recognize the problem. Why would they not admit there is a problem? I am going to quote from a letter sent to me by an unemployed person who exhausted his benefits and was concerned about our efforts here to extend unemployment benefits.

> DEAR SENATOR SARBANES: I am writing to you regarding a serious crisis that exists nationally. The subject is a lack of adequate unemployment benefits for working men and women. What has been allowed to happen in this country has been a disgrace. As I stand in line every week I get to hear firsthand the concern in the voices of people. The first blow was losing their job. The second was seeing the United States Government abandon them in their hour of need. These are the hard-working people that have over the years made this country great. These were workers who have held the same jobs in many cases for numbers of years.

This is the point the distinguished Senator from Tennessee, and Connecticut were making earlier, that this recession is hitting people who have never before experienced unemployment. They are now coming up against something for the first time in their career.

What constitutes an emergency?

> Whenever the unemployment rates have been this devastating in the past, the Federal Government has automatically stepped in.

This letter writer is absolutely right. In the past recession the Government stepped in and we extended unemployment benefits.

> What has made this emergency different? Could it be that no one wants to admit that there is an emergency?
>
> This extension of unemployment benefits are programs for the middle-class working people who have fallen on hard times. They have contributed to this Government. They will pay income taxes on this money. This is is not a handout. This is not a freebie. These people will contribute again. It has been proven.
>
> This country is in jeopardy of losing one of its natural resources. The United States was made great by working people. This Government should show dedication and loyalty to these people who have contributed both financially with their income tax dollars and fiscally with their hard work.

That is right from the heart of an unemployed person.

Mr. RIEGLE. If the Senator will yield, I think that really gets at the center of this problem. These problems have been papered over as they have been building up through the 1980's, I think principally as a result of the failed policies of Reaganomics. They are of such a size and such a consequence and they have done so much damage to the country with these massive debts, public debts, private debts, foreign trade balances being the wrong way now that we have a huge foreign debt that we owe.

We see the economic growth, as Senator SASSER pointed out. It essentially has disappeared under President Bush. It is actually a negative figure since he has taken over as President. Every other President, going all the way back to the days of John Kennedy and Ford, Truman—actually before—and Eisenhower——

Mr. SASSER. If the Senator will yield, this is every President since World War II.

Mr. RIEGLE. They have all managed a positive growth performance in terms of jobs except this crowd.

Mr. SASSER. Let us say we took it back far enough and included the administration of Roosevelt. You have to get back to the administration of President Herbert Hoover before you found a President that presided over a negative per capita growth as this administration has.

Mr. RIEGLE. I think Senator SARBANES has hit the nail on the head. If you take this chart and poor that flat performance is, you take this buildup in our foreign debt and how disastrous that is, you take this massive collapse in the banking system and how disastrous that is, you take the massive increase in Federal deficits and how unprecedented that is, they cannot afford to let anybody see this. I mean they do not want to have to acknowledge the problem because they have been in power now 11 years and this is the result of their plan.

So now they are in a situation where basically they have to say that the plan did not work, and they have to roll out a new plan. They cannot decide to do it. That is why they had this big hair-pulling contest down at the White House yesterday where some of their own people came in and said they could not believe it. They said we are not getting any leadership. I am quoting this Republican House Member from Texas. "We are telling them: 'Just be for something.'" Because what is happening is all of this has come crashing down on the country. It has come crashing down in these congressional districts.

These people are going down and telling the White House they have a real problem because their plan has not worked. Their plan has been a failure. It is time now to have a new plan.

Unfortunately, I gather from what is reported here, the President did not want to hear this. So he left, went down to do this big fundraiser in Texas. And I am sure there was a lot of hooting and hollering down there because those are all the people that by and large have done very well during this period of time. They do not think there is a problem, either. But there is a problem. It is a big problem. It is time that this country addresses it.

Mr. SASSER. There is a problem. You cannot paper it over any longer. There have been promises, promises, promises.

In 1988, the President promised that he would create, over the next 8 years, 30 million jobs. Well, here is how it looks, how he has done it. We begin when the President is sworn into office. This chart runs for 4 years. If you divide his 30 million jobs over 8 years into 4 years, he is supposed to have created 15 million jobs at the end of this 4-year period.

How has he done? Let us just look and see where we are here. By the third quarter of 1991, he has created a total of 259,000 jobs, which leaves him significantly short of where he should be. He should be here, at about 10 million jobs. He has created about 259,000, not even enough jobs, as the distinguished chairman of the Joint Economic Committee knows, to keep up with population growth—not even enough job creation to keep up with population growth.

So even those who have gone from full-time jobs to part-time jobs, those who have gone to being fully employed to underemployed, even if you count those in, he is still much below the population growth in job creation. That is another indication of why the standard of living is falling in this country.

Along comes the Congress, and we went to do something about these millions of people who are unemployed, through no fault of their own, and who have exhausted their unemployment insurance. We want to extend it, just as it has been done in every recession since President Eisenhower.

President Eisenhower agreed to do it during the recession of the late 1950's. President Ford agreed to do it. Of course, President Nixon agreed to it during the economic downturn in his administration. This is the first administration that has vetoed the efforts by this Congress to extend unemployment benefits to those of the unemployed who have exhausted their benefits.

But now, to be fair, there appears to be a change in attitude developing in the administration. The question comes: Is this a change of heart, or is this just a simple reading of the polls? Is this change coming as a result of these stormy meetings that the distinguished Senator from Michigan has detailed that have occurred at the White House?

Could it be that the President is finally, after reading those polls, starting to wake up and smell the coffee, that the American people are furious, and they have had enough promises? They want to know why this administration cannot even demonstrate the minimum decency of extending the unemployment benefits to those who are unemployed, who have paid for them, but who have exhausted them, just as they have been extended in every administration from President Eisenhower forward.

Mr. SARBANES. If the Senator will yield, I am frank to say that I think what the American people want is the President of the United States to come home and to face this problem here. I know the purposes of these trips abroad are important. I do not, for a moment, begin to minimize them.

But the fact of the matter is that the President was away this week; he is going to be away next week. He is going to be away at the end of the month for 10 days, I think; although apparently now they are trying to cut back the length of that trip, because they think it looks bad.

Of course, it is not enough for him just not to make the trips. He has to shift the focus of his mental attention and concern away from these overseas situations and back to these problems right here at home, to the people across the country that are hurting. A lot of these indicators look poor. He needs to pay attention to these problems and begin to address them.

It is not enough to make nice pollyannish statements and to wear these rose colored glasses. It is being reflected in the attitude of the American people, and when you get this kind of drop in consumer confidence taking place that we see here. It started back up, and look at this: It dropped 12½ points in the last month alone.

Mr. SASSER. Mr. President, if the Senator will yield, I thought economists were saying that if we are going to come out of this recession, it has to be a consumer led recovery; is that correct?

Mr. SARBANES. That is generally how you pull out of it, but that is not happening here. Generally, you come out with the housing sector helping to lead the way. To show how serious this is, the interest rates have dropped; there has been some movement down in the interest rates, and we are getting better mortgage terms, which would argue, of course, that you would get an increase, an upswing in housing starts. And then the housing sector, which has traditionally been one of the engines of bringing us out of a recession, would be able to do its job in that regard.

Look at what is happening here. The housing starts are going back down again. So we have a situation in which the very sector of the economy which you have traditionally relied on to help move you out of recession is in fact itself sluggish, which only underscores the seriousness of the situation with which we are confronted, and the urgency and the importance of the President addressing his attention to this problem.

Mr. SASSER. Mr. President, if the Senator will yield a moment, interestingly enough, the Federal Reserve has been responding to the economic downturn—I think belatedly, but at long last—and they have begun to loosen monetary policy and have begun to lower interest rates.

The problem that business borrowers are having—and let us face it, business runs on credit—is they cannot borrow the money. There is a credit crunch.

I had a businessman from Nashville, TN, come to see me, and he said:

> Senator, I do not care if the interest rate is 2 percent, or 1 percent. If the bank will not loan me the money, if I cannot get the credit, then the interest rate has no relevancy to my business. What I need is the money.

What do we hear out of the administration? The President is deploring the fact that we have a credit crunch. Why is something not done about this? The President says that as if somebody else is President. This President has the responsibility of appointing a Comptroller of the Currency, who reports to the Secretary of the Treasury, and reports to the President of the United States. Yet, the President runs around wringing his hands saying: Oh, what are we going to do about the credit crunch?

Mr. DOMENICI. Will the Senator yield for a question?

Mr. SASSER. Mr. President, it is simple what he does about it. If the Secretary of the Treasury or Comptroller of the Currency will not carry out the President's policies, get him another Secretary of the Treasury, get him another Comptroller of the Currency. You cannot blame this one on the Congress.

Maybe they are going to blame it on poor old Jimmy Carter. When things get rough, they always start talking about, well, Carter did this. That is what Ronald Reagan did for 8 years. You would have thought Ronald Reagan was never President, that Jimmy Carter was President. It became humorous.

Well, this is not a laughing matter. We have a serious problem in this economy. Millions of Americans are suffering. We are on the verge of falling off into a double-dip recession. I fear that we have serious structural deficiencies in this economy that we have not addressed now for 11 years. I fear that we are now starting to reap the whirlwind of it.

The distinguished chairman of the Banking Committee has outlined here for us the disaster that has befallen financial institutions in this country. I never thought I would live to see the day that the Federal Deposit Insurance Corporation would be broke.

(Mr. ROBB assumed the chair.)

As I stand before this body today, the Federal Deposit Insurance Corporation that insures the savings of millions of Americans is insolvent, and they will be coming out here soon to ask for additional taxpayers' money to bolster it.

The distinguished chairman of the Banking Committee has produced a chart here which illustrates that the Federal Deposit Insurance Corporation now has a negative worth of $5 billion. I never thought I would live to see the day that the national debt of this country, in the short period of 11 years, would increase by over 300 percent, but that is what has happened. It took this country 200 years to build up a national debt of $900 billion, most of that in the 20th century. Most of that debt was built up fighting wars. Wars are very expensive. We fought the First World War, the Second World War, the Korean war and the Vietnam war. But even at the end of all that and after 200 years of history, we just had a national debt of $900 billion. In the last 11 years we almost quadrupled that debt that took us 200 years to build.

I say to my colleagues there is something dramatically wrong here. Something has happened to the economy of our country, which I think these charts graphically illustrate. The chart that shows that we in the United States of America now are the largest debtor nation in the world. I never thought I would live to see that.

The Senator from Maryland and I are about the same age. He is probably a little younger. He looks a lot younger. But we had the great good fortune to be young men in the 1950's and the early 1960's. I remember the economic growth of that period and the optimism in this country and the confidence that Americans had. We had a can-do attitude. We could get the job done. We were the best, and look at us now: the largest creditor nation in history. It has happened just in the past 10 years.

Mr. SARBANES. If the Senator will yield, Newsweek magazine has just done a special issue in which they raise the question as to whether the young people today will be able to live as well as their parents, not better, but as well. And how the growing concern in the country is that they are not even going to be able to reach the living standard of their parents. The premise in this country has always been that each generation will do better than the generation before.

Home ownership in this country has declined over the last decade. If you make a median income in America today, you cannot afford to buy a median-priced home. It is out of your reach. So the cost of a house exceeds the resources available to a family in the middle of the income scale. That is just to dramatize one thing that has happened in this country. The standard of living for wage and salary earners now—not people reaping huge unearned income, but wage and salary earners—has declined over this past year.

Mr. SASSER. If the Senator will yield, that just tells part of the story. He will recall back when he was a young man in the 1950's and 1960's, just one member of the household worked, usually just one member of the household worked. Now, to maintain a standard of living at all, you usually have to have two wage earners in the household. Of course, that has serious sociological and cultural implications. When there is no one at home to help to look after the children that are growing up, there are serious social and cultural implications that flow from that.

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. SASSER. I will in a moment.

That may explain the explosion in criminality we have had in this country. That may explain the fact that the construction of prisons is a growth industry here in the United States of America. This declining standard of living may explain the fact that, on a per capita basis, we have more people in prisons in the United States than any other nation in the world, even more than the People's Republic of China, I say to my friend from Maryland, which we all know is a police state.

We have serious economic problems. The Senator from Maryland and I have been on this floor for weeks with just one simple plea to this administration: Extend to the millions of unemployed in this country the same consideration that has been extended to others who were unemployed in previous recessions that have occurred since the Second World War. To this point all we have gotten out of this administration is a veto, is a veto of legislation that has passed here with large bipartisan majorities.

I see my friend, the Senator from New Mexico, on the floor here, and I say this has not been a partisan issue here in this body. We have all voted by large numbers for this unemployment compensation extension, but to no avail. So I am hopeful that we are going to send the President another bill in the not too distant future, and I am hopeful that he will reconsider and recognize the suffering of millions of people who have exhausted their unemployment benefits who want to work but cannot find jobs.

I have visions of those 800 people that reported to the little factory in west Tennessee that advertised 10 jobs; 800 people almost rioted. The sheriff had to come out there. These people want to work. They are desperate. They do not want any unemployment insurance. They do not want any food stamps. They want to have the dignity of a job and the dignity of work.

But until that time comes, until we can fashion an economic policy, until this administration answers the call of its citizens, and until that time comes, the least we can do is follow the leadership of the Senator from Maryland and my friend from Texas, Senator BENTSEN, and extend these unemployment benefits to those who need them.

Mr. SARBANES. If I could just add to what the Senator has said about people wanting to work. I am quoting a letter that was sent to me by an unemployed person saying: "What we as unemployed people want is to be able to rebuild our self-esteem, pay our bills, and contribute to this country. We are not looking for a handout, but right now we need more help." That is what is reflected in these letters.

These are hard-working people. They have held steady jobs. They have helped to sustain the economy. They have helped to build the country. They now find themselves in a difficult situation.

This woman says about having brought up her children and looking after them and says, "I do not want any praise or desire any for what I have done. They were my responsibility, and I lived up to it. What I want now is help from the Government until things get better for me and all the thousands of people that are in the same situation."

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico [Mr. DOMENICI].

Mr. DOMENICI. Mr. President, let me say that I do not have a lot of time. Clearly I could not in a few minutes respond to the thousands of words uttered here today, but I do want to make a couple of points. I do thank the three Senators. At least they have only brought this argument to the floor once this week, and that is very helpful to me. There are some new charts that are very helpful. It is probably helpful to C-SPAN also. The others were getting rather ragged. They had been on display several times stating the same case.

Having said that, let me take one serious matter they discussed and tell the people listening and those here: Would you believe, after all this discussion about unemployment compensation, that about 30 minutes ago the unemployment compensation extension program went into a tailspin when the Democratic chairman of the House Ways and Means Committee decided that he wanted nothing to do with what the Democratic leader here—that is the leader of the Finance committee—had in mind and both went away in a huff.

So, as of today those who control both Houses by plenty of votes have been fighting about unemployment. It may be a first as they suggested. It is also the first in modern times that we decided to make an unemployment compensation extension totally partisan. That side of the aisle has decided that there will be no unemployment compensation extension unless it is theirs.

As a matter of fact, I can now display this chart showing how long we already would have had extended unemployment compensation in effect had the Senate adopted the Dole-Domenici proposal when it was first offered. It is all of these months and some more that those unemployed people needed it and needed it badly. They would be getting it now. Now we hear from the majority leader that not only will there not be a bill that Republicans support, but it will be precisely what he wants or there will not be one.

Now the American people ought to listen to that. They would find it hard to recognize that attitude as real compassion, that as real interest in getting something done for the unemployed. It is actually real interest in getting the unemployment bill done their way so they can take credit for it or there will not be one.

Well, frankly, I do not think we are going to get anywhere on that. And we ought to get an unemployment extension, and we ought to get it quickly. And we are talking about it and we are looking at it, and the Democrats are now coming our way to try to do it in a way that does not break the budget.

The distinguished Senator from Texas suggested one way to pay for it. It seems that was acceptable, but now it is not acceptable to the Democratic House at this point in time. But we will get it done.

Now, Mr. President, what I would like to suggest to my three colleagues from the other side of the aisle, who have a very exciting program to put forth for the American people—they have become extremely good historians of economic history. I would like to suggest that they come forth one of these days, and we will let them have as much time as they would like, and they ought to come forth and tell the American people what they will do to fix this economic situation.

Mr. SASSER. Will the Senator yield on that point?

Mr. DOMENICI. No, I will not. When I asked you to yield, you could not find time. I do not have much time myself now, and I have to leave the floor.

But you have suggested one thing, that we extend the unemployment benefits. I agree with that. But I do not believe there is a person around that thinks that alone is something that will make America grow and prosper. That is nothing that will fix the American recession. It will help some working men and women that need help, and we ought to do it.

But what is the plan to take all these horrible facts that they talk about and fix them? Frankly, they talk of it as if it was George Bush that did them all.

Let me remind the American people—they know it. They know it, but let me tell them. Do you know who runs the Congress of the United States? Do you think George Bush does? It is the Democratic Party. They run it here and they run it over there in the House. In fact, Democrats have run it over there on the House side for so long we do not even know there is another party. They not only run the House, they own it, lock, stock, and barrel.

And if I understand history, only in two Congresses since the Second World War, 4 years, has the House been run by Republicans. The most recent period was following the landslide of Dwight Eisenhower in 1952. So who spends money? The President of the United States? Who pays for the defense? The President of the United States? Of course not. Who makes American budget policy? The President? Of course not.

The President suggests, and this Congress does what it thinks it wants to do. There has been a lot of things accomplished together by Congress and the President. When it gets close to election time, the togetherness just leaves the scene. All of a sudden partisanship takes over. Everyone should understand that.

You can get this lecture, you can get it in any third-year economic history class. The professors will tell you about all these things that have happened in America. They will also tell you that during this post-World War II period of time, Japan, Germany, and other countries became powerful, and we might not have known how to respond. For a while, things came easy to us. Our people worked hard. We did not have to worry much about competition from other countries.

Well, we do now. And it takes some very, very new kinds of approaches to keep this economy alive and prosperous.

Let me suggest in closing, I do not want to paint all three speakers with the same set of facts, because I do not remember what my friend the chairman of the Budget Committee did on foreign aid. But I have heard the absent member of the trio talk, in real inspirational tones, about the President and how he should not be worrying about Cambodia. He ought to be home, because there is a $25 million program to save hundreds of thousands of survivors of the killing fields of Cambodia who are in danger of dying.

Well, the person that made that accusation—the distinguished Senator from Michigan [Mr. RIEGLE]—has a wonderful record on foreign aid. It is probably the best in this body. The best for spending more on foreign aid than most Senators in this body.

He complains of $25 million that our President agreed to spend for a program we allowed him to do. He voted for $45 billion in foreign aid over the last 12 months. Not $45 million, $45 billion. The Senator from Michigan directed the President to do dozens of things in foreign countries.

Is it not something that the President of the United States is being chastised on the floor about a humanitarian relief effort by someone who would vote for $45 billion worth of foreign aid? Why? Because he executed a program that we authorized for a desperate Cambodia, where hundreds of thousands of people were dying?

It seems to me that if my friends on the other side give us a little notice before they come down with their lengthy exposés on modern American history, maybe we will have a chance to respond. Until then, we will wait around for the next episode to see if they have a plan for America's future. We all know the problems. What do they suggest we ought to be doing?

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maryland [Mr. SARBANES].

Mr. SARBANES. Mr. President, I listened with great interest to the distinguished Senator from New Mexico, and particularly his reference to the third-year college economics class. He needs a third-grade political science class that examines the use of the Presidential veto in the effort to try to enact policy.

What the Senator said is, "the Democrats control the Congress. Why do they not pass this program?" We passed the unemployment insurance extension program. We passed it with very substantial majorities. It went to the President, and the President vetoed it. Instead of signing the bill and paying these unemployment benefits, the President vetoed it.

It came back to the Congress, and we tried to override the President's veto. We had 65 votes to override the veto in the Senate; 35 votes against overriding the veto. Of the 65 votes, every Democratic Member of the Senate voted to override. All 57. Eight of our colleagues on the Republican side, recognizing this desperate situation, joined with us in that effort. That represents about 20 percent, not quite 20 percent of the Republican Members of the Senate.

Now think of that margin. That is a very large, impressive margin. If anyone out there ran to be the head of some club and won 65 to 35, they would say that was such a decisive victory, why did anyone run against me? But it is not enough to override a veto.

The President of the United States, George Bush in this instance, was able, by exercising that veto and linking it with only 35 out of 100 Members of the Senate to negate the congressional action and prevent those unemployment insurance benefits from flowing.

So make no mistake about where the responsibility rests that there are no unemployment benefits being paid across this country to millions of Americans who are in desperate need. The Congress did its job.

We were not able to override his veto. We got 65 votes. But it is not enough to override a veto. Which is only to underscore the power of the veto which this President has used time, and time, and time again to thwart the efforts of the Congress, on behalf of the American people, to enact legislation which is desperately needed in the country.

The people need to understand that. They need to understand that this President has a veto agenda. This President is negating congressional action. He is not interested in working with the Congress to solve these problems but he wants to stamp that veto on that legislation and prevent us from acting.

We had plant closing legislation. Now we have family leave legislation, which the President previously vetoed.

The President says if you do these things we are not going to be able to compete with these other countries. We are in an international economy. We have to compete with these other countries, and if you pass these things to help American workers and American families we are not going to be able to compete. Talk about family values, we cannot have a simple family leave bill so a mother or father can stay home with a sick child. They say if you do this, we are not going to be able to compete internationally.

Why is it that the nations we are competing with are able to do these things and still compete effectively? If they were not doing them one might have to look at that argument. If they said, if we do this in America, if we concern ourselves with family leave and plant closing and health care for all of our people—it is a disgrace, millions of Americans with no health care coverage—we will not be able to compete. But look at the industrial countries in Europe. Look at Japan. They are doing all of these things, Mr. President, and they are doing them in measure that exceeds what we are proposing here.

How come they can do these things and compete effectively and we are told we cannot do them? Maybe it is because they treat their people with a certain amount of dignity and respect. You talk to Europeans. They are absolutely shocked by the unemployment insurance situation in this country. You talk about health care to people in these countries—they are absolutely shocked by the lack of comprehensive health care in America, absolutely shocked. They have it. Yet their productivity record and their performance record is sufficiently good. They are giving us a tough time economically in the international competition.

Maybe the time has come to start thinking that our human resources are something to invest in. People are not simply automatons to be used up and then thrown on the scrap heap and forgotten about and discarded.

The return on labor ought to have some reasonable measure with a return on capital. We have now shifted the return to the top end of the income scale. The gap between what the head of the company makes in this country and what the worker on the factory floor makes far exceeds the situation in Japan or Germany or France or Italy. We used to be proud of the middle class in this country. We looked at these other countries and said they have the very wealthy and then all the rest of their society. But in America we have a large middle class and that is the strength of our economy and that is the strength of our society.

The thing has just turned right around. We are squeezing the middle class out in this country. The middle class is falling behind. The benefits have been shifted by the tax policies of the last decade, to the people at the very top of the income scale. And the efforts here in Congress to alter that by the majority consistently runs into the stonewall of the veto. George Bush is proud of exercising this veto and has bragged about it. But what it has meant is misery for the American people—most recently demonstrated in his veto of the unemployment insurance bill.

So the distinguished Senator can come to the floor and fulminate about it. But the fact of the matter is that the reason the unemployment benefits are not being paid is because George Bush exercised his veto and that veto was sustained in this body by Republican Senators. Not all of them, but enough of them to sustain the Presidential veto: 65 to 35. Think of what a vote that is. It was not even close. But it is not enough to override a veto.

So the President negates these efforts to address the problems of the American people, all the while denying there is even a problem. It is only now that the rumblings coming from the grassroots are being felt by others in his party that finally seem to turn attention to this pressing, pressing problem.

The Senator spoke about providing assistance overseas. Those were in response to the President's requests. He came to the Congress this year. He said there is a budget agreement but I want to go outside of the budget agreement, and I want to send some money overseas because we have real emergencies over there, and the Congress agreed with him. I agreed with him. I voted to do that. But I never dreamed that this same President who saw all these emergencies overseas, when it was pointed out to him that we had an emergency here at home with unemployed Americans, would turn his back on them and reject this effort to assist them. He not only turned his back, but used the veto in order to negate action taken by an overwhelming majority of this Congress.

That is what has happened, and I am sad and sorry to report it. That is what we have been contending with, not only on this issue but a whole range of other issues.

So, what the President is doing by using his veto and holding on to only one-third of one body of the Congress, he precludes any further action, and that is the root cause of these difficulties.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee [Mr. SASSER].

Mr. SASSER. Mr. President, my distinguished friend from New Mexico, for whom I have great respect and affection, indicated a moment ago, almost in frustration—he said, "Well, what would you do? What is the plan that you are offering? What are the Democrats going to do about it?"

That, to me, was almost an admission of the bankruptcy that haunts the party of the President in dealing with the economic malaise and I might say the deepening economic malaise that affects this Nation of ours.

We do have a plan. It is very simple. It has been all over the newspapers. It has been all over television. The distinguished majority leader just yesterday laid it out clearly, precisely, in a speech he made to a group here in Washington concerned with economic policy. And the distinguished majority leader, Senator MITCHELL of Maine, said this. He said, number one, what we propose is a tax cut for middle-income Americans. During the last 11 years, middle-income Americans got a lot of rhetoric but no relief.

There have been a number of middle-income tax cuts offered by the Members of the majority party in this body and in the House of Representatives.

It has been offered as a means of economic stimulus and, yes, Mr. President, as a means of redressing the inequities that have occurred in tax policy over the past 11 years.

I said just a moment ago, and the distinguished Senator from Connecticut corrected me, and I do not remember precisely what his figures were, but the ones I saw indicate that the top 1 percent of population in this country, that is the richest, the top 1 percent of the income people in this country, the richest people, saw their income over the past 10 years increase by 100 percent. The top 1 percent increased their income by 100 percent. At the same time, under the tax policy of the Reagan-Bush administration, their taxes went down by 8 percent. Income increased by 100 percent, taxes go down by 8 percent, while the middle 60 percent of the country in income, the great American middle class, saw their real disposable income increase not at all and they saw their tax liability go up.

So the first item on our agenda for economic recovery is a tax cut for middle-income taxpayers. They have not had their tax cut; they have had a lot of rhetoric. We want to be responsible about it. We want to pay for it.

My colleague, Senator GORE, of Tennessee, has made common cause with Representative TOM DOWNEY, who sits on the House Ways and Means Committee, and they want to pay for their tax cut for middle-income taxpayers, the great American middle class, by increasing the taxes on those at the very top of the wage scale, the richest 1 percent, by increasing the taxes that they had cut during the decade of the 1980's.

Mr. SARBANES. I ask my colleague: Is it not accurate to say that the President of the United States, George Bush, has indicated his adamant opposition to any suggestion that a tax cut for middle-income people should be paid for by collecting some taxes from the very wealthy who have benefited from this tax bonanza over the last decade? Has he not publicly expressed his opposition to that?

Mr. SASSER. The Senator from Maryland is quite correct. The President has publicly expressed his opposition to a tax cut for middle-income Americans, while at the same time espousing at the top of his voice a new capital gains tax cut once again for the richest in our society; a capital gains tax cut, 65 percent of which will go to those who make more than $200,000 a year. That is disparity.

Mr. SARBANES. The Senator has portrayed it absolutely correctly. That is what we are dealing with here. We are trying to get some relief for middle-income Americans and pay for it by getting the revenues to pay for it from the very wealthy. The President is opposed to that. The President wants to give a further tax cut to the people at the very top of the income scale. It is just incredible.

Mr. SASSER. If we cannot bring ourselves to pay for a tax cut for middle-income Americans by taxing those who reaped the bonanza in the decade of the 1980's, we will look somewhere else, because we think it is imperative that middle-income taxpayers get a tax cut.

I have suggested that we simply reduce the defense budget by 5 percent over the next 5 years, just by 5 percent over the next 5 years. We can do that in view of what has happened to the Soviet Union. The other superpower in the world is no more. It has collapsed. It is in dissolution. The Soviet military threat has evaporated. So surely we can reduce defense spending an additional 5 percent and give the great American middle class, that has been paying the bill, a tax cut.

So there are two ways that a tax cut for middle-income Americans could be paid for. It gives tax equity and, equally as important, it would be a stimulus to this economy.

The distinguished Senator from Maryland said earlier that the economists say that if we are to come out of this recession, it must be led by consumer spending. The problem is the consumers who are the great American middle class do not have any money to spend, and a tax cut would help them.

Second, the distinguished majority leader, yesterday, in outlining a program for economic recovery, called for incentives to help first-time home buyers. This is something that the Members of my party have known since the early 1930's. It was the fastest and most direct way to help average-income Americans help themselves and at the same time help the economy.

The distinguished Senator from Maryland said just a moment ago that young people coming up now feel that they cannot live as well as their parents; they may have a lower standard of living than their parents. I submit that this is the first time, at least in this century, perhaps for the first time in American history, when a young generation coming up is pessimistic about its economic future and is worried that it cannot even achieve the same standard of living that their parents could.

But one way to help them would be just what the majority leader advocated yesterday: Incentives for first-time home buyers who principally are young people, young married couples, and this is a stimulus for the economy. Usually when we start coming out of a recession, it is home building and autos and auto sales that bring it up first.

What is the rest of our plan?

Mr. SARBANES. Will the Senator yield?

Mr. SASSER. I will be pleased to yield to the Senator from Maryland.

Mr. SARBANES. I think it is important to put in the RECORD what the majority leader said on this tax cut for middle-income people, and I am now quoting the majority leader:

> The strategy of the American family employed in the last decade to maintain living standards no longer works. As the real wages fell, they worked longer hours and at more jobs.

Which is a point the Senator made earlier.

> Then the second spouse went into the work force. When two incomes were not enough to make ends meet, they loaded up with debt. That worked for awhile, but no longer. Families need relief. They are stretched too thin. They need higher wages and lower taxes. A tax cut has to cut the taxes of middle-income Americans. No more trickle down theories to justify tax breaks for the wealthy. The American people have been trickled on long enough.
>
> Americans in the middle-income range need a tax cut after 10 years of steadily climbing taxes. The country needs that kind of tax cut because the middle class of this country is what makes or breaks our prosperity. We must relegate to the ash heap of history that disproven, unfair economic theory that national prosperity depends entirely on cutting the taxes of the very wealthy. Trickle down hasn't worked. It was a dismal failure that must not be repeated. Yet the President is still wedded to the idea of another tax break primarily for families making more than $200,000 a year.

As the Senator pointed out.

The Senator from New Mexico asked what is our program? I believe in a percolate up theory of economics, not in a trickle down theory of economics.

Mr. SASSER. If the distinguished Senator from Maryland will recall, a distinguished economist some years ago, in describing trickle down economics and how it works, said that if you feed the horse enough corn, the sparrow in the street might get a kernel. I think that is the best definition of trickle down economics that I have heard.

The Senator is quite right. We do believe in percolate up economics. And that is what a middle-income tax cut is all about, because there is where the purchasing power is, with the great American middle class.

Mr. SARBANES. That is right. And if you create prosperity in the broad base of American society, the people at the top will get their share. They will prosper along with everyone else. That has been the success story of American economics. We have broadened out the working class and the middle class, and the people at the top benefit from that. They get their share of it. But this notion that you load all the benefits in at the top, which is what the Bush administration believes in, and then you wait for it to trickle down to the great mass of the people. It has not happened. It is not going to happen.

As the majority leader pointed out in this statement:

> We must relegate to the ash heap of history that disproven, unfair economic theory that national prosperity depends entirely on cutting the taxes of the very wealthy.

I want the people at the top to get their share, but I want the people in the middle and the working people to get their share of the benefits of America. They are the ones who basically have built and are building the country. They ought to get a fair and equitable return for their efforts, and they are not getting it.

As we said earlier, the standard of living of middle-income people in this country, wage and salary earners, is in fact dropping, while the standard of living of those at the very top is increasing by incredible percentages.

Mr. SASSER. Mr. President, the Senator from Maryland will recall that when Franklin Delano Roosevelt was sworn in as President of this country at the height of the Great Depression, when the country was desperate, on its knees, on the verge of revolution, rather than saying we have nothing to fear but fear itself, and by the way, I am going to give the wealthy a tax cut out of this depression, he said, "The rising tide lifts the small and the large boats alike."

That is still true today. If we can grow this economy, if we can get it moving by giving middle-income taxpayers additional funds through a tax cut, it will stimulate this economy. They will lead us out of this recession with consumer-led spending because this is where the pent-up demand is, among the middle class that has been impoverished over the past 11 years.

Mr. President, the distinguished Senator from Maryland was indicating, and the majority leader had also in laying out a program for economic development and a means of getting us out of this recession, there were a number of points. I have alluded to the middle-income tax cut. We have alluded to incentives for first-time home buyers. But third, the majority leader indicated that we need an interest rate and credit policy that goes beyond photo opportunities. Businessmen are not going to get credit simply because a White House aide drafts a policy paper.

Now, it does not make any difference how low the interest rates are if the banks will not loan money because of an overrestrictive credit policy imposed upon them by the Department of the Treasury and the Comptroller of the Currency. Then the economy continues to stagnate. Rather than wringing his hands about the fact that his own Comptroller of the Currency has an overly restrictive credit policy, the President either ought to take him to the woodshed or get himself another Comptroller of the Currency so that American businesses can have access to the credit they need to expand.

The majority leader had a fourth point yesterday in this Democratic economic recovery package. He said that we need to reform unemployment insurance. We need to reform the whole unemployment insurance system. This year alone, more than 3 million unemployed Americans are going to exhaust their unemployment insurance. For the first time in 60 years, we have a President that will not go along with the Congress and help them.

They need this unemployment insurance for two reasons. One, to alleviate their suffering and to tide them over until they can get a job again. But second, this will provide some modicum of economic stimulus. The unemployed are going to spend every dollar they get through unemployment compensation for the necessities of life. And that will have some minor stimulative effect on the economy.

In the fifth point that the majority leader raised in his economic recovery plan, he said we need to turn our attention to one of the principal factors that is undermining the security of the American family, and that is lack of access to an affordable health-care system.

I was pleased to see that the distinguished Senator from Pennsylvania, HARRIS WOFFORD, running in a hard-fought campaign in Pennsylvania, where he has come from being 40 points behind to a point now where he may very well win the election, has been talking about a health-care system that will provide the kind of quality, affordable health care to which American working people and the American middle class are entitled. Apparently, the people of Pennsylvania agree with him and are responding to that appeal.

I predict, Mr. President, that that is going to be a fundamental underpinning in this economic recovery plan that the majority leader has proposed.

Sixth, he has said—and I think this is probably one of the most important—we need a long-term economic growth program that lays a solid foundation for the future by increasing investment in education, investment in worker training, investment in research and development. We must do this so that we have the human resources to compete in this very competitive world.

The distinguished chairman of the Appropriations Committee, ROBERT BYRD of West Virginia, has been on this floor many times and spoken very eloquently about the need to invest in the education of American young people. He has said that he thinks it is time for us to invest in ourselves again, to start investing in the United States of America, to invest in our own people.

That is an economic recovery program. My friend from New Mexico wanted to know what we would do. I think we have answered that question: A tax cut for middle-income Americans, who desperately need it and who deserve it, paid for by increasing taxes on the very wealthy or by reducing moderate cuts in defense. Let the middle class have some of the peace dividend. They are the ones who have borne this burden for almost half a century. Let them have some of the peace dividend.

And, yes, what is wrong with giving incentives to young Americans who want to buy a new home? We have done that for almost 50 or 60 years, off and on. That was the basic tenet of the economic policy of Franklin Delano Roosevelt in the 1930's and 1940's.

And, yes, we need to do something about credit policy and an interest-rate policy that makes borrowing prohibitive or makes credit impossible to get for American business people. Certainly, we have to reform an unemployment insurance system that leaves literally millions of Americans who paid for unemployment insurance out in the cold when a recession comes.

Yes, we do need to address the problems of health care in this country. Health care, quality, affordable health care, is something that I firmly believe most American families wish for almost as much as anything that they could wish for, and is something to which they are entitled.

Lastly, we need a long-term economic growth program, one that lays a solid foundation to make this country competitive to the year 2000 and beyond, one that will once again reverse the decline in the living standard of our people, and put us once again on the road to prosperity and a better quality of life.

That means a better education for our people, all of our people. It means training our workers. Every other modern industrialized successful country does that. It means research and development incentives for American business and for American universities.

My friend from New Mexico asked for an economic program. He wanted to know what we would do. Those are some of the things that we would do.

But one of the things that we would not do is we would not remain frozen in the ice of indifference while our country declines to a second-class power economically. We would not remain frozen in the ice of indifference as millions of our fellow citizens suffer because they have lost jobs through no fault of their own and cannot find another. We would not remain frozen in the ice of indifference and do nothing. We have a program. The majority leader of the U.S. Senate, Senator MITCHELL, has advanced that program. And I think it is a program, Mr. President, for success.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENDING UNEMPLOYMENT BENEFITS

Mr. DOLE. Mr. President, we were encouraged when the Democrats approached us about a compromise on unemployment benefits, and we were truly encouraged to learn that they might be prepared to meet the tests that the President set out: One, that the program be short-term; two, that we stay within the budget agreement; and three, that there be no new taxes to finance the package.

As a result of the early contacts I had with the chairman of the Finance Committee, Senator BENTSEN, and the chairman of the Ways and Means Committee, Congressman ROSTENKOWSKI, we have been working with Secretary Martin and Budget Director Darman to craft a proposal on an unemployment compensation bill so that we might productively engage in these discussions.

We have gone over the package. There was a meeting this afternoon in the Ways and Means Committee. They could not come to an agreement. I think they are going back on Monday. A number of questions were asked about how the so-called Bentsen proposal would impact on small business men and women, farmers, and others. Apparently, there was enough concern that the chairman decided to postpone any additional action until Monday.

But as we understand it, it would continue to break the budget agreement—we think it can be corrected—and it also continues to use three tiers. The last time we used three tiers was in 1983, and the unemployment rate was 9.2 percent. We triggered off that program in 1985 when the unemployment rate was 7.2 percent. Today it was 6.8, up from 6.7. But at the same time, we had jobless claims drop 47,000 this past week. So the news was mixed. It is not good, but it is mixed.

Today's rate is 6.8 percent. It is obviously not the same crisis we had a few years ago. That is not to say we do not have a problem, but it is to say we ought to resolve our differences and, in my view, that could be done in an hour. The differences are not that great. I believe that, politics aside, if we can determine we are going to do that, or we are given a chance, I think we would agree on a basic structure of an extended benefits package.

I think it is fair to say that any current differences are largely technical, but they are critical nonetheless. They include the structure of the program, as well as the revenue sources. As I said, last night on the floor, we had four options. Today we have two additional options. I have indicated that we have had about 8, 10, to a dozen people working in my office in the past 2 days from the Office of Management and Budget, from the Labor Department, Congressman MICHEL's staff, my own staff, and Senator DOMENICI's staff, reviewing a number of options.

We believe that we can satisfy the concerns that some may have on the other side, if additional of our options meet the President's requirements and they do stay within the budget. Our options will use the existing administrative structure, thereby providing faster service to the unemployed, and that is very important.

Let us not change the structure. If we are concerned about getting benefits quickly to unemployed workers—and we are—let us not try to reinvent the wheel. This is not the time to do that.

More important, our options will meet the needs of those currently unemployed, including those who have exhausted their benefits. So I guess the point is that we are prepared—I speak for myself and the Republican leader in the House, Congressman MICHEL—to meet with our counterparts on the Democratic side and to assure the unemployed that they will receive their much-needed benefits.

Again, it would seem to me, having been involved in this for some time, that we have had a package out there, and had it been passed, we would have had benefits paid all of September and all of October. And today is November 1. So the question is: How much longer should the unemployed wait?

I believe there is an agreement now that the package will be paid for. That is the big, big hurdle.

As I said, there are still other technical areas—critical to some extent, but technical in nature—that we need to address. The important point is that we have now agreed—at least it seems to me from what I have read and heard and picked up around the cloakrooms and other places, that we have agreed—there seems to be an agreement, although not reached, but an agreement out there somewhere that will pay for the package, and that will provide probably more benefits than would have been provided under the so-called Dole package, which was 10 weeks in some cases and 6 weeks in others. In that package, it is paid for.

I have no objection to adding additional weeks, if, in fact, we can pay for those. I now think we can, notwithstanding a number of, I understand, serious questions raised in the markup on the House said today in the Ways and Means Committee.

Mr. President, I cannot speak for the President of the United States, but I believe, having visited with him yesterday, and visiting with Mr. Darman, the Director of the Office of Management and Budget, that the seeds are there for an agreement. That is the bottom line. I hope we can do it early next week and start the benefits going.

There is no doubt about it that there are people in need. There are men and women who have a lost their jobs.

And I listened to—as much as I could—the dog and pony show here this afternoon that went on for about 3 hours, and I listened to all the reasons that we were in economic difficulty.

Nobody ever got around to who spent the most money and what the records were of those who were participating in the Bush-bashing contest, or what their record was on spending and foreign aid. I had noted that the Senate-House conference committee voted to give $1 billion to aid the new Soviets to train pilots and others. We have a lot of pilots in America that ought to be trained. That was not President Bush's idea. I do not know where it come from. It probably is a sound idea, but every time President Bush wants to help somebody in difficulty, then we have the charge from the other side, "here he goes again." They say, "If you live somewhere outside of America, President Bush will take care of you, but if you live here in the United States, you are out of luck."

That will not wash, because we are going to have a number of speeches on this floor, and we are going to be pointing out specifically how different Members have approached foreign aid, for example, when the President requested $1 billion, how they have increased it to $2, or $3 billion. And we will find out how that washes out.

I think there will not be a great surprise for people who watch the Congress on a daily basis. Three weeks ago, we voted on a foreign aid bill to spend $25 billion in 2 years on foreign aid. Eighty-eight percent of the Democrats in the Senate voted for the bill; 74 percent of the Republicans voted against it.

That is another example that has been overlooked on the other side, this massive spending on foreign aid and domestic spending, which was probably the leading cause for the recession we have today—the spending—and failure to come to grips with it, failure of the Congress to be responsible.

Last year, we voted on a major new foreign aid proposal for Latin America, which was a bill introduced by one of my colleagues on the other side of the aisle, and a colleague on this side offered an amendment to put some controls on the projects in the bill, so that the money would not be wasted on big State-run projects. Ninety-six percent of the Democrats voted against that amendment. So I am laying a little groundwork here for what I think will be an interesting discussion in the next few weeks, about who has voted for spending.

One thing about my colleagues on the other side is that they can produce more charts. They have a bigger chart budget than ours. We only have this one chart, which shows that had we acted on the Dole-Domenici proposal, which paid for itself, unemployment benefits would have been extended. I know that it is hard for those on the other side of the aisle to accept paying for anything. And we could have had benefits going all of September and all of October, and now it is November 1.

So let me repeat what I have indicated before. We are prepared on this side of the aisle, as we have prepared from day one, to pass an extended benefits bill for America's unemployed when we pay for it so we do not load it up on their children, the unemployed workers' children and all the others' children and taxpayers of America by increasing the deficit $6.2 billion. And we are prepared to do that.

We are also prepared, if we can reach an agreement and they do not try to shove it down our throat, to advise the distinguished chairman of the Finance Committee, Senator BENTSEN, that as the leader of this side, we are prepared to fight off all amendments that are not germane because this will be a tax bill and it could be open season, and there are a lot of attractive amendments that I know my colleagues on this side would like to offer to see how my colleagues on the other side would respond. But I do not believe that should happen on an unemployment bill. And this Senator is prepared if we can reach some agreement within the budget that is short term and that takes no new taxes, then I think we can do this rather quickly.

So, Mr. President, I urge my colleagues on both sides of the aisle to give the leadership on both sides of the aisle an opportunity to work with the appropriate committee members in the House and Senate to work out a package that we cannot only vote for but a package that will be signed by the President of the United States who said yesterday morning and who said dozens and dozens of times before he is prepared and has been prepared to sign an unemployment benefits bill that was paid for, that was paid for, that did not violate the budget agreement that 76 Senators voted for not too many months ago.

I remember some of the speeches at that time—they were very good—about how we had to stand up and be counted and we are going to have to stick to this budget. It was going to be painful. There would be a lot of temptations to break the budget but we were going to stand firm. That is what we said. And we meant it. At least I hope we meant it. I believe that that ought to be the course we should follow now.

Before we talk more about tax cuts and a $5.6 trillion economy—a $11 billion tax cut probably would not even make a dent—we ought to deal with the unemployed of America. We are prepared to do that. We stand ready to do that. And I suggest that 2 months is long enough to wait. All of September, all of October benefits could have been there, could have been paid for. Had we run out of money, we would have found some other ways to pay for those benefits. If we do not, we are going to continue running up the deficit—$3.5 trillion now, $250 billion in interest.

I did not hear from my colleagues this afternoon about all the spending and the deficit and how it got there. Who voted for it? Who voted against it? The problem is we need to act and act quickly, and I urge my colleagues to cooperate wherever we can in the next few days to put together a bipartisan package on unemployment benefits.

The PRESIDING OFFICER (Mr. FORD). The majority leader.

UNEMPLOYMENT INSURANCE

Mr. MITCHELL. Mr. President, I welcome the concern expressed by the distinguished Republican leader about the needs of America's unemployed, the millions of Americans who, through no fault of their own, have lost their jobs and whose insurance benefits have expired.

I will have some detailed remarks to make with respect to the situation in a moment, but I want to begin by responding to and correcting remarks made earlier by the Senator from New Mexico in which he referred specifically to me in connection with the action of this afternoon in the House Ways and Means Committee.

The remarks were mistaken, unintentionally I am certain, in suggesting that I was somehow involved with or responsible for the action of the Ways and Means Committee.

In fact, well prior to that committee's meetings, I had conveyed to the Speaker of the House my willingness to support the proposal that was presented to the Ways and Means Committee, a proposal suggested earlier in the week by Senator BENTSEN, the distinguished and effective chairman of the Senate Finance Committee.

And the action by the committee this afternoon in requesting further opportunity to study the matter was understandable in light of its complexity, and I understand the Treasury Department also requested the opportunity to study the matter over the weekend before commenting in detail on it.

But, I merely wish to make clear that insofar as I am aware, the only person to have suggested any relationship between me and the House Ways and Means Committee action was the Senator from New Mexico. There is no relationship. The House leadership was well aware prior to that meeting of my willingness to accept and support that plan. I hope we can have action.

Today, the Labor Department reported that the unemployment rate rose to 6.8 percent. That is where it has been hovering virtually all year. The largest job loss was in retailing because consumers are not spending. American consumers lack now both cash and confidence.

The construction industry in the United States has seen a full 10 percent of its jobs vanish in just this last year. The unemployment rate in that sector of the industry is now at 16 percent.

The Index of Leading Economic Indicators, which forecasts economic activity 6 to 8 months in the future, fell one-tenth of 1 percent after a flat performance last month.

The economy is stagnant. We need an economic recovery program. I have outlined one which I have proposed. Other Democrats have offered other proposals. We hope that we can have action soon.

Yesterday, the President said he was distressed at being criticized for vetoing the unemployment insurance bill. I believe the proper course of action for the President would have been, of course, to sign the bill. That is a simple, single action which would have permitted meaningful benefits to flow to Americans who, through no fault of their own, confronted dire emergencies a long time ago.

Now, I indicated to the Speaker and to the House leadership that I was prepared to support the Bentsen proposal, even though I had proposed as an alternative to it that we freeze the foreign aid budget instead of the unemployment compensation budget. The savings from freezing foreign aid in the future, not cutting it below current levels, simply holding spending at current levels, would pay for extended unemployment benefits for American families today—and without any direct cut in foreign aid to any one nation.

I was pleased to hear the distinguished Republican leader discuss the strong opposition on the Republican side to foreign aid spending and perhaps there may be some willingness on the part of our Republican colleagues to freeze foreign aid in the future, although we are advised that the President would oppose such a plan.

Mr. President, the Warsaw Pact collapsed 2 years ago. The Soviet Union as a single entity is in the process of collapse. The threats to the United States and to Western democracies that were real and tangible in past years are no longer real and tangible.

Yet we still spend over $16 billion each year on foreign aid to shore up friends and allies in the face of the perceived Soviet threat.

But that's yesterday's threat. Yet the American taxpayer is still sending upwards of $16 billion to 147 different countries each year.

Instead of asking for ever-increasing amounts of foreign aid, as President Bush has so far done, my proposal is simple: Put Americans first.

There is no monolithic Soviet empire seeking to undermine Third Countries. There is no need to spend billions of dollars persuading people that communism does not work when communism is collapsing right around their own ears.

Meantime, here at home, more than 8½ million Americans are out of work.

Three million Americans will lose every sources of income this year because they have exhausted their unemployment insurance and cannot find work. Their homes, their autos, the economic security of their lifetime's work will be at risk through no fault of their own.

The President says this is not an emergency, so he will not declare an emergency that would allow the $8 billion in the unemployment trust fund to go to these people.

But the President has declared emergencies that demands budget-busting spending for Kurdish people, Israeli people, Turkish people, and many other outside the United States.

He just does not see an emergency when it comes to American people.

The President says he wants to see the program paid for. Well, my proposal to freeze foreign aid spending at 1991 spending levels would pay for it. What is wrong with that?

The President would only need to choose between the needs of Americans here in our own country or programs devoted to helping people in other countries.

Under my proposal, the foreign aid spending that now goes to 147 different foreign countries would simply be frozen. I am not even proposing to cut away money out of foreign aid. I am saying let us freeze it at current levels for 4 years and that would save nearly $6 billion.

It would allow us to give more than 1½ million American workers and their families extended help in this long and deep recession. It would allow those families to have a source of income so they could save their homes, so their cars would not be repossessed, so they can hold on to the economic security they have worked for.

Mr. President, this is not a fight between political parties. The victims of this are the unemployed people, and they are the ones we should be concerned about.

Charity ought to begin at home. Today the needs of Americans are being overlooked. The needs of Americans out of work are serious. They affect millions of families in every State of the Union.

Twice now the Congress has passed legislation to deal with their needs. The first time we asked the President to recognize an emergency involving Americans. He refused. The second time he vetoed the bill. We have to do something now. We have to get unemployment benefits flowing to those Americans who need them.

Mr. President, the real issue is the number of Americans who are going to be covered. That is the issue. Are we going to deal seriously with the problem or not?

I would point this out: In the recession of 1971, there were 26 weeks of extended insurance benefits. In the recession of 1975, there were 39 weeks of extended insurance benefits. In the recession of 1982, there were 29 weeks of extended insurance benefits. Our proposal, the Democratic proposal, provides for 20 weeks of extended insurance benefits, less than the amount in each of the three previous recessions in the past quarter century, and yet we have been told that is too much.

Just 2 days ago, the President's Director of the Office of Management and Budget said, "That is too much. We can't go beyond the level of benefits in the bill offered by our colleagues."

We believe that not to be sufficient. We believe that there has to be the level of benefits contained in our bill and we will insist upon that. We hope the President reverses his position and accepts that level of benefits.

Mr. President, recently the Center on Budget and Policy Priorities prepared an analysis of the two bills. It indicates, I will quote just briefly from it. It indicates that: "The difference is very substantial. This report finds that nearly 1 million jobless workers who have exhausted their State benefits since March 1 would be eligible for assistance under the bill vetoed by the President, while just 135,000 such workers would be eligible * * *" under the alternative bill offered by our colleagues. That is a difference in coverage between 1 million people and 135,000.

Mr. President, I ask unanimous consent that the full text of this report be printed in the RECORD.

There being no objection, the text of the report was ordered to be printed in the RECORD, as follows:

[Center on Budget and Policy Priorities, Oct. 14, 1991]

REACHING BACK TO HELP THE UNEMPLOYED

(By Isaac Shapiro)

Last Friday, President Bush vetoed legislation that would have provided additional unemployment benefits to workers who exhaust their state benefits. The President has indicated he prefers unemployment insurance legislation similar to that introduced by Senator Robert Dole.

Some of the more widely-discussed differences between the bill vetoed by the President, S. 1722, and the Dole legislation include the controversy over the emergency waiver in S. 1722 as well as differences regarding the number of weeks of additional benefits that would be provided to workers exhausting their benefits during the next several months.

Another key difference, however, has received less discussion than it merits—the difference in the amount of assistance provided to workers who have exhausted their unemployment benefits over the past half year and are still out of work.

This difference is very substantial. This report finds that nearly one million jobless workers who have exhausted their state benefits since March 1 would be eligible for assistance under the bill vetoed by the President, while just 135,000 such workers would be eligible for assistance under the Dole bill.

Those affected are among the jobless workers whose needs are likely to be greatest since they have been out of work and without benefits the longest.

COMPARING THE "REACHBACK PROVISIONS"

Both bills provide benefits to two groups of jobless workers. The first group consists of those workers whose state unemployment benefits run out during the nine-month period after the bill is enacted. All such workers will be eligible for assistance under both bills, with S. 1722 providing a maximum of seven to 20 weeks of assistance to these workers, depending on the state where the worker lives. The Dole bill would provide these workers a maximum of six to ten weeks of assistance.

The second group of workers affected by these bills consists of workers whose benefits ran out between March 1, 1991 and the present and who are still out of work and looking for a job. The provisions covering workers whose benefits ran out between March 1 and early October are known as "reachback provisions" and are the focus of this analysis.

The reachback provisions of the two bills differ greatly. The provisions of the vetoed bill cover the vast majority of workers who have exhausted unemployment benefits in recent months. The Dole bill covers only a small fraction of these workers.

In 36 states and the District of Columbia, workers who exhausted their state unemployment insurance benefits between March and early October—and who are still unemployed—would be eligible for additional aid under S. 1722. Nearly nine of every ten workers who exhausted their state benefits in recent months—89 percent—live in these 36 states.

By contrast, under the Dole proposal, workers who have exhausted their benefits since March 1 would be eligible for benefits in only six states. Just 14 percent of workers who exhausted their state benefits in recent months live in these six states.[1]

The difference in the number of jobless workers who are assisted under the reachback provisions of the two bills is similarly stark. (See the Appendix for an explanation of how these figures were calculated. As explained there, this analysis is likely to underestimate the number of workers affected by the reachback provisions under both bills, particularly in large states. The understatement of the number of workers affected is larger for S. 1722 than for the Dole proposal.)

An estimated 980,000 workers who exhausted their benefits between March 1 and October 5 would be eligible for additional benefits under S. 1722's reachback provision.

By contrast, an estimated 135,000 workers who exhausted their benefits during this period would be eligible for additional benefits under the Dole reachback provision.

S. 1772's reachback provision assists 845,000 more jobless workers—seven times as many people—than the reachback provision in the Dole bill.

STATE ANALYSIS

As Table I indicates, in 31 states and the District of Columbia, workers whose benefits expired between March and early October would be eligible for benefits under S. 1772's reachback provision but would not be eligible for benefits under the Dole bill. These states include most of the states with the highest unemployment rates in the nation.

West Virginia's unemployment rate of 10.5 percent is the highest of any state in the nation. Michigan's rate of 9.7 percent is second highest. Mississippi's rate of 8.7 percent is fourth highest. None of these states would qualify for reachback help under the Dole bill. All would qualify for reachback help under S. 1722.

Seven other states that have unemployment rates above seven percent would be eligible for reachback assistance under S. 1722 but not under the Dole bill. These states are Alabama, Arkansas, California, Florida, Kentucky, Louisiana, and New Hampshire.

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[1] Both bills would provide reachback benefits to Puerto Rico.

The differences between the two bills would affect particularly large numbers of people in various states.

In California, nearly 170,000 jobless workers whose benefits ran out between March and early October would be eligible for additional assistance under the vetoed bill. None of these workers would be helped by the Dole bill.

In New York, 106,000 workers would be eligible to be helped by the reachback provision under the vetoed bill; none would receive assistance under the Dole bill.

In Florida, Michigan, Pennsylvania, and Texas, 50,000 to 60,000 workers in each state would be eligible to be assisted by the reachback provision under the vetoed bill but would not be assisted under the Dole bill. Just under 50,000 workers in Illinois would benefit from S. 1722's reachback; none of them would receive help under the Dole bill.

In addition, in four of the six states that do qualify for reachback assistance under the Dole bill, fewer weeks of assistance would be provided—and fewer workers would be helped—than under S. 1722. These states are Alaska, Maine, Massachusetts, and Rhode Island. (See Table II for the maximum number of weeks of additional assistance that workers in each states would receive under the reachback provisions of the two bills.)

In New Jersey, the same number of workers would qualify for reachback assistance under both bills. In this state, however, the Dole bill would provide more weeks of benefits.

In one state—Connecticut—workers would qualify for reachback assistance under the Dole bill but would not qualify for this assistance under S. 1722.

A final point should be mentioned about the reachback provisions of the Dole bill. Under the Dole proposal, a state's eligibility for reachback coverage is not directly tied to a state's unemployment rate. Consequently, most states with unemployment rates above seven percent would not qualify for reachback assistance, while some states with unemployment rates below seven percent would qualify. New Jersey's unemployment rate is 6.2 percent—below the national average of 6.7 percent—while Alaska and Connecticut both have unemployment rates under seven percent. These are three of the six states that do qualify for reachback help under the Dole bill.[2]

This anomalous situation—of workers living in states with the highest unemployment rates in the nation not qualifying for additional assistance while other workers in states with stronger labor markets do qualify for this aid—would not occur under S. 1722. Reachback eligibility under S. 1722 is tied to a state's average unemployment rate over recent months. All states with average unemployment rates of six percent or more would qualify for assistance.[3]

RECENT EXHAUSTEES ARE IN NEED OF AID

The reachback provisions are important because they are designed to help a group of workers likely to find themselves in an especially precarious position. The family of a worker who exhausted state unemployment benefits between March and September—and who is still looking for a new job—is likely to be in more difficult economic straits than the family of a worker who exhausts state unemployment benefits this month or next. The family that exhausted its benefits earlier in the year is more likely to have partly of fully depleted any other resources on which it could draw.

Many families whose workers exhausted their benefits since March may already have fallen into poverty. A Congressional Budget Office study issued last year compared the poverty rate among jobless workers during the period they received unemployment benefits to their poverty rate three months after their benefits ran out. The study found their monthly poverty rate was twice as high after they exhausted their benefits. Nearly one in three who had exhausted their benefits were poor.[4]

It should be noted that if the federal government had responded earlier in the recession to address the problem of workers exhausting their unemployment benefits, workers who exhausted their benefits in recent months would have received or would be receiving this additional aid. It seems ironic, as well as inequitable, to deny additional benefits to such workers simply because the federal government took so many months to act—and consequently, their benefits ran out before the unemployment legislation was enacted.

Since March, from 240,000 to 334,000 workers have exhausted their state benefits each month without being eligible for additional aid. In July and August, more than 300,000 workers exhausted their unemployment benefits each month without being able to receive any extended benefits. Levels this high are unprecedented in the recorded history of the unemployment insurance program.

Both the greater need among those whose benefits have already run out and the principle of providing equal assistance to jobless workers placed in similar circumstances suggest that unemployment insurance legislation should include strong reachback provisions.

TABLE I.—NUMBER OF JOBLESS WORKERS WHOSE BENEFITS HAVE RUN OUT SINCE MARCH AND WHO WOULD QUALIFY FOR ADDITIONAL AID UNDER THE TWO BILLS

	Under Dole bill	Under S. 1722
Alabama	0	12,239
Alaska[1]	3,248	4,052
Arizona	0	0
Arkansas	0	9,051
California	0	168,966
Colorado	0	0
Connecticut	22,339	0
Delaware	0	1,828
District of Columbia	0	5,469
Florida	0	50,002
Georgia	0	34,262
Hawaii	0	0
Idaho	0	4,636
Illinois	0	49,517
Indiana	0	16,341
Iowa	0	0
Kansas	0	0
Kentucky	0	11,130
Louisiana	0	8,384
Maine[1]	7,407	11,077
Maryland	0	19,343
Massachusetts[1]	40,482	46,725
Michigan[1]	0	59,796
Minnesota	0	0
Mississippi	0	8,441
Missouri	0	21,649
Montana	0	2,941
Nebraska	0	0
Nevada	0	6,590
New Hampshire	0	706
New Jersey	58,246	58,246
New Mexico	0	3,513
New York	0	106,314
North Carolina	0	23,462
North Dakota	0	0
Ohio	0	37,233
Oklahoma	0	6,457
Oregon[1]	0	10,356
Pennsylania	0	55,343
Rhode Island[1]	3,958	10,919
South Carolina	0	11,986
South Dakota	0	0
Tennessee	0	24,996
Texas	0	53,634
Utah	0	0
Vermont[1]	0	1,803
Virginia	0	0
Washington	0	20,273
West Virginia[1]	0	5,850
Wisconsin	0	0
Wyoming	0	0
United States	135,861	983,533

[1] See "Note on Tables."

Source: Center on Budget and Policy Priorities calculations based on information from the U.S. Department of Labor, the Congressional Research Service, and Mathematica, Inc.

TABLE II.—MAXIMUM NUMBER OF WEEKS OF BENEFITS THAT ELIGIBLE INDIVIDUALS COULD RECEIVE UNDER THE REACHBACK PROVISIONS OF THE TWO BILLS

	Under Dole bill	Under S. 1722
Alabama	0	13
Alaska[1]	0–10	0–13
Arizona	0	0
Arkansas	0	13
California	0	13
Colorado	0	0
Connecticut	10	0
Delaware	0	7
District of Columbia	0	13
Florida	0	13
Georgia	0	7
Hawaii	0	0
Idaho	0	7
Illinois	0	7
Indiana	0	7
Iowa	0	0
Kansas	0	0
Kentucky	0	13
Louisiana	0	13
Maine[1]	0–10	7–20
Maryland	0	7
Massachusetts[1]	0–10	7–20
Michigan[1]	0	7–20
Minnesota	0	0
Mississippi	0	20
Missouri	0	7
Montana	0	13
Nebraska	0	0
Nevada	0	7
New Hampshire	0	13
New Jersey	10	7
New Mexico	0	13
New York	0	13
North Carolina	0	7
North Dakota	0	0
Ohio	0	7
Oklahoma	0	7
Oregon[1]	0	7
Pennsylvania	0	13
Rhode Island[1]	0–10	7–20
South Carolina	0	7
South Dakota	0	0
Tennessee	0	7
Texas	0	7
Utah	0	0
Vermont[1]	0	0–13
Virginia	0	0
Washington	0	7
West Virginia[1]	0	7–20
Wisconsin	0	0
Wyoming	0	0

[1] See "Note on Tables."

Source: Center on Budget and Policy Priorities based on information from the U.S. Department of Labor and the Congressional Research Service.

NOTE ON TABLES

States marked with an asterisk are states that were eligible for the federal extended benefits program, which provides up to 13 additional week of extended benefits, during all or parts of the period between March 1 and early October. Under both bills, any weeks of benefits a worker received under the extended benefits program would count against any potential reachback benefits the worker could receive.

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[2] Under the Dole bill, a state's eligibility for additional benefits is determined by the number of people claiming state unemployment benefits as well as the number of people exhausting state benefits in the most recent three months. As a result, some states with restrictive unemployment insurance programs that make it harder for unemployed people to qualify for state benefits—such as Mississippi and West Virginia—are less likely to qualify for reachback help under the Dole bill than are states with less restrictive unemployment insurance programs.

[3] Specifically, a state would be eligible for reachback benefits under S. 1722 if its unemployment rate either from February to July or from January to June averaged six percent or more.

[4] Ralph E. Smith and Bruce Vavrichek, the Congressional Budget Office, Family Incomes of Unemployment Insurance Recipients and the Implications for Extending Benefits, February 1990.

For example, Alaska was eligible for the extended benefits program from February through the beginning of September. Workers in Alaska who received the full 13 weeks of extended benefits during this period would not be eligible for any additional assistance under S. 1722. The 13 weeks of extended benefits assistance would fully offset the maximum number of weeks of reachback benefits that S. 1722 would provide in Alaska, which is also 13 weeks.

Such workers in Alaska would also be ineligible for any reachback benefits under the Dole bill. Workers in Alaska who received between 10 and 13 weeks of extended benefits during this period would also fail to qualify for reachback benefits under the Dole proposal. This is because the Dole bill provides a maximum of 10 weeks of reachback benefits in Alaska. (An Alaskan worker could have received fewer than 13 weeks of extended benefits in recent months if, for example, the worker was one of those jobless individuals who had collected less than the full 13 weeks of extended benefits when the state became ineligible for the extended benefits program in early September.)

An Alaskan worker who received five weeks of extended benefits before Alaska became ineligible for the program could receive up to eight additional weeks of benefits under S. 1722 and up to five additional weeks of benefits under the Dole bill.

The data reflected in Table I on the number of workers eligible for benefits under the reachback provisions of the two bills take into account the fact that some exhausts in states marked with an asterisk would not qualify for additional benefits.

APPENDIX—ESTIMATING THE NUMBER OF PREVIOUS EXHAUSTEES WHO MAY STILL BE ELIGIBLE FOR ADDITIONAL BENEFITS

Many workers who have exhausted their unemployment benefits since last March have found new jobs and would no longer qualify for or need additional unemployment aid. Many others, however, have not. They have exhausted their unemployment benefits, continue to look for work, but have not found a job.

No ongoing government survey exists of the number of workers that fall into these different categories. As a result, it was necessary to estimate the number of workers who have exhausted their unemployment benefits since March and would be eligible for additional benefits under the two bills.

The estimates are based on actual data on the number of workers exhausting their benefits each month and an estimate of how many of these workers potentially remain eligible for new aid because they have not been reemployed. The estimate is based on a study conducted by Mathematica, Inc. for the U.S. Department of Labor. (Walter Corson and Mark Dynarski, Mathematica Policy Research, Inc., A Study of Unemployment Insurance Recipients and Exhaustees: Findings From a National Survey, September 1990.) This study estimated the length of time it took workers who exhausted their unemployment benefits to find a new job. Similarly, the study estimated the percentage of workers who exhausted their unemployment benefits who then found new jobs after various periods of time. For example, the study found that 10 weeks after workers exhausted their benefits, 40 percent had found a new job.

The study covered 1988, when the unemployment rate was 5.5 percent. The unemployment rate is higher today, having averaged 6.8 percent since March. In today's weaker labor market, it is likely to take longer to find new employment than in 1988. Consequently, using the results of the Mathematica study is likely to understate the number of workers who exhausted their benefits since March 1991 and who remain without a job today. The estimates derived here therefore tend to understate the number of workers potentially eligible for the reachback provisions of the two bills. Since S. 1722 provides reachback benefits in six times as many states as Dole, the understatement is greater for S. 1722.

For purposes of this analysis, the results of the 1988 study were applied universally across states. Since most state labor markets are weaker than they were in 1988, this is likely to understate the number of workers affected by the reachback provisions in most states. The understatement would be largest in those states whose unemployment rates are now highest and where it consequently is most difficult to find a new job.

Mr. MITCHELL. Mr. President, I also would like to address the subject of financing. I know that my distinguished colleague has repeatedly talked about paying for the measure. I think it is very important to understand that the payment mechanism included in the alternative bill involves two provisions.

The first is to collect on default of students loans. The problem is, that proposal brings in not one penny to the Treasury until 1994. It extends, after 1994, an authority the Internal Revenue Service already has to collect unpaid loans out of a person's tax returns; that is persons who are entitled to an income tax return. Under an accounting treatment that the Office of Management and Budget has previously rejected, that would take credit in 1992 for money that will not flow into the Treasury until 1994.

The other major funding source is the sale of certain rights under the broadcasting spectrum by the Federal Communications Commission. The bill would require the sale of the eligible spectrum in 1992 but would result in a substantial loss to the Treasury by forcing the sale in a shorter period of time than would be appropriate.

I believe that it would be better to simply freeze foreign aid. And I hope, given the record with respect to foreign aid to which my friend and colleague earlier referred, that perhaps we could get a willingness to be supportive on that side. If that cannot be done, then, as I indicated to the Speaker earlier, prior to the Ways and Means meeting—and I repeat here—I am fully prepared to support the alternative proposal set forth by Senator BENTSEN.

I hope that could be agreeable and acceptable to our colleagues, and that the President will reverse his position on this issue and that we could then proceed to get this matter resolved.

I made clear my preference for the foreign aid freeze. I cannot understand why anyone would object to just holding foreign aid at the current level to enable us to take care of our own people; $16 billion to 147 other countries—that is what we are providing now. That is plenty of money, given our domestic needs here at home.

Now, I have not proposed to cut foreign aid. I have not proposed to take one country and single them out and cut their funding. What I said is that Americans need help, that we ought to put Americans first, and heed the old Biblical saying that charity begins at home.

So, Mr. President, I welcome the comments of the distinguished Republican leader about a willingness to get this behind us. I think we all share that view. I think we all recognize the very real needs among the American people. There is very great stress and anxiety, even fear, among those who now face, in some parts of the country, a very stern and severe test this winter with no income whatsoever. We have an obligation to see to it that they receive their benefits.

I understand that the Ways and Means Committee has not rejected the proposal; that they wanted time to consider it; that they are going to come back on Monday. Perhaps they will either accept it or propose an alternative or make some changes, and we can get this done in a way that will bring the benefits to the people who really desperately need them.

Mr. President, I am pleased now to yield to the distinguished Republican leader.

Mr. DOLE. Mr. President, I will just comment very briefly. I think there will be plenty of time for debate. I appreciate the comments of the majority leader.

Certainly on foreign aid, I think the problem would be you probably could not just freeze it; there would be efforts by some on both sides to cut foreign aid. And I have learned that foreign aid is not very popular in America. What Americans are looking for is American aid.

I am not sure whether it will cover credit guarantees to the Soviet Union, whether or not the freeze would cover loan guarantees of $10 billion that Israel requested. The Soviet Union is asking for an additional $2.5 billion credit guarantee.

I am not certain how foreign aid is defined. But I do believe there would be a lot of interest in reducing the foreign aid budget, not just freezing the budget, but probably in reducing the foreign aid budget by some Members on both sides of the aisle.

But let me assure the majority leader that we have not rejected the alternative financing. In fact, I met with Senator BENTSEN. And I know when you pick up $3.2 billion somebody is going to be disadvantaged. I think what Treasury is looking at, and I think what some of the members of the Ways and Means Committee—they did not reject anything today—what they want to look at is what is the distribution—does it hit farmers or small business men or women or big business or whatever—before they make a final judgment on Monday.

So I would say to the majority leader that I recognize that our bill was not as generous as the original Bentsen proposal. We never indicated it was. We said ours was only 10 and 6 weeks. Certainly his was more generous, with three tiers, 30, 20, and 7, I believe. But it cost twice as much.

The point I hoped to make was if we could find some way to pay for it—even though the scoring, as you indicated, may not be the way we would score it—if it is agreed to by CBO on the $1.7 billion on student loans and OMB. And I think the same is true of the Bentsen proposal which picks up another $3.2 billion.

So, in my view, the options are there to pay for it. Maybe foreign aid is another viable option. I think if we can just agree on the structure, I think we could do business very quickly.

Mr. MITCHELL. Mr. President, that is my hope. As we all know, Senator DOLE and I perhaps better than anyone, that rarely do we ever get our way completely.

Mr. DOLE. That is right.

Mr. MITCHELL. That is a direct result of the competitive nature of our political process, and it is appropriate.

I have a preference. I have stated it. Senator DOLE has a preference. He has stated it. Senator BENTSEN has a preference. He has stated it. Many others have their preferences.

What I hope—and I have stated the reasons for my preference—but what I hope is out of all this we can produce legislation that will achieve what we ought. We must keep in mind what is our central objective, the objective which I have sought to attain since early summer, and that is to provide much needed extended unemployment insurance benefits to the millions of American families who need them. The objective can sometimes be obscured in the back and forth, and the different proposals and plans made on either side. But I think we have to keep our eyes fixed on that objective.

What we are concerned about is the well-being, indeed the survival intact, of American families at a time of great stress; at a time of, really, serious economic problems throughout our entire society.

MOTION TO PROCEED WITHDRAWN—S. 1220

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed to S. 1220.

The PRESIDING OFFICER. The motion is withdrawn.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 596—THE FEDERAL FACILITIES COMPLIANCE ACT

Mr. DODD. Mr. President, I rise today to express my pleasure on the adoption of the Federal Facilities Compliance Act on October 24 and particularly commend my colleague the majority leader Senator MITCHELL, on his efforts in bringing the Federal Facilities Compliance Act to the floor.

The act, designed to prevent Federal polluters from claiming immunity from enforcement of Federal and State hazardous and solid waste laws, is long overdue.

In fact, the Federal Government which operates more than 2,300 facilities which treat, store, or dispose of hazardous waste is counted among the Nation's worst polluters with 120 facilities on the 1,200-site Environmental Protection Agency national priority list of the Nation's most contaminated sites. The Department of Defense and the Department of Energy are particularly egregious offenders of the Nation's environmental protection laws with compliance rates 10–15 percent lower than private facilities.

Mr. President, enactment of the Federal Facilities Compliance Act will mean that Federal facilities, again, many of whom are on the EPA's national priority list, no longer have indiscriminate authority to pollute without fear of accountability.

The act will give State environmental officials and the Environmental Protection Agency much needed power to hasten the clean up of hazardous waste sites on Government land. It will end the immunity exercised by executive branch polluters to penalties under national hazardous waste laws and will clarify EPA's authority to fine and to take administrative enforcement action against Federal facilities that are in violation of hazardous waste requirements.

Thus, the Federal Facilities Act will force those entities responsible for a substantial number of facilities currently violating national hazardous waste laws to answer to State and Federal regulators and follow the statutory scheme for hazardous waste cleanup. It is only logical that Government facilities be subject to the same stringent hazardous waste cleanup laws as their private counterparts.

As we continue to view the devastating environmental effects of poorly managed hazardous waste sites, it becomes clear that drastic action is necessary to enforce hazardous waste cleanup provisions. This act recognizes that Government, rather than being immune to hazardous waste regulations, should take the lead in requiring environmentally safe hazardous waste facilities.

Environmental safety, whether it involves cleanup of existing problems or prevention of unnecessary pollution, is a public responsibility. The Government is the ultimate representative of the Nation's public and thus must assume responsibility for its own contribution to the Nation's hazardous waste problem. Passage of this act will ensure that Government will become more responsive to the environment.

IOWA'S EDUCATION ACHIEVEMENTS

Mr. GRASSLEY. Mr. President, although a new revolution in American education is just beginning, Iowa has already accomplished many of our Nation's educational goals for the year 2000. Most of Iowa's students start school ready to learn, and 88 percent of them graduate from high school. They have outstanding academic achievement, including the Nation's highest or next to highest scores on both national aptitude tests for college admission.

Iowa has one of the Nation's best and safest learning environments. It has an exemplary record of parental involvement—parental involvement and encouragement which, frankly, is crucial for the rest of the Nation to understand if it ever hopes to achieve similar success in educating our children.

Notwithstanding Iowa's impressive educational achievements, we are always looking for ways to improve. Consequently, there have been several State-level reports on how changes can further improve the educational system of Iowa. The most recent report was issued by the Teachers Association itself. This report, called "Time for Change", lists what teachers say will help upgrade our schools. I am proud to share this report with my colleagues, and I commend Iowa's teachers for their hard work in producing it.

This thought provoking report acknowledges what I have long believed—"education is controlled locally in America, and no one wants it any other way. No one favors Federal control over education, particularly in the absence of Federal support." Iowa has achieved so much in education because the Federal Government has deferred to State, local, and community control over the education of our children.

Teachers devote their careers and lives to educating our children, so it is important to draw from teachers' expertise to determine what they think will improve education in our schools. After all, they are in the trenches on a daily basis dealing with the challenges of teaching our children.

As with any report, no one will agree with every conclusion. Likewise, I do not embrace everything in this report. For instance, the report envisions the school as the clearinghouse of the community and a "viable clinical setting for dealing with the needs of the whole child." It thus recommends expanding the role of health and social work professions to meet the whole child under one roof.

The report also recommends that "only those licensed to do so will be permitted to make decisions about a student's progress or achievement."

We can all appreciate the fact that in today's world, children do spend a considerable time in school, and needs beyond the primary mission of educating our children from time to time must be met within the school environment.

And few would argue that the education and licensing standards established for teachers make them uniquely qualified to make decisions about a student's progress and achievement.

But it seems that these two recommendations diminish—instead of build upon—the backbone and key to Iowa's education successes.

I am referring to the absolutely critical role that Iowa's families play in our children's educational achievements. Iowa's school children succeed because their families and communities have instilled into them a very strong work ethic. Our children are highly motivated to learn, to obtain a good education, and to excel.

Iowa's teachers have been instrumental in further encouraging this work ethic and motivation, but if that foundation and support does not exist at home, it is rare that a school environment can fill these unmet needs of the child.

If there is one thing that the Iowa education success story demonstrates, it is the importance that the needs of the whole child are met, not in a clinical setting of social workers and health care professionals, but instead in the home by the child's family.

Therefore, what I would like to see is some serious consideration into what can be done to increase parental involvement, not diminish it. There is no question that families live in a busy world, particularly those with both parents working, or those with only one parent in the household. But for most parents, their primary concern is for their children, and they are anxious to do what is necessary to assure a good life and future for their children.

With these things in mind, Mr. President, I recommend this report to my colleagues, and ask unanimous consent that the full text be placed in the RECORD after my remarks. I commend Iowa's teachers for the initiative, time and effort they took in preparing this report.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

TIME FOR A CHANGE—A REPORT TO THE PEOPLE OF IOWA

Asking the Experts

Iowa has a good record in educational reform. Ours is the only state to finance decentralized change. We involve many groups, organizations and sectors in our schools. Our students consistently out-perform others nationally; and Iowa's teachers are known nationally for educational quality, reform and innovation.

But even in Iowa, schools today are the same as they were at the beginning of the "excellence movement." Permanent structural changes in schools have not occurred. In part, this is because the recommendations of teachers have not been heard clearly. While many issue reports about education, few ask teachers for information. In this report, Iowa's teachers say clearly what must be done to improve schools.

Method

We started with a scientific sample of Iowa's teachers. From responses to a questionnaire of one hundred items, four major concerns were identified. These were made into questions and taken to groups of teachers, selected at random. Discussion in each group was transcribed and analyzed. A summary was drafted and submitted to state-level teacher leaders, who adopted recommendations. A report was drafted and submitted to leaders of local teachers' associations. Recommendations were returned to the state-leaders' group for review. Many were incorporated into a draft which was approved by the ISEA's Executive Board. The result fairly and scientifically defines the advice which teachers have for Iowans.

We begin with the school building, because the building is where everything comes together for students. The second part deals with state-level reforms which will support change in buildings. The third part deals with federal changes which support state and local changes. Finally, we offer a vision of schools in the future.

In this report, we take a "systems approach." We look at the way our proposals interact. Then we select elements which are moral, professional, equitable, efficient, and viable. Finally, we select only those elements which have the greatest leverage for transforming schools permanently.

SUPPORTING REFORM AT THE SCHOOL BUILDING

A Lack of Time

Our greatest need is time, time to educate every child fully. We need time to change our teaching styles so that we can work with individuals rather than groups. We need time to prepare for classes and instruction. We need time just to "catch up," let alone to prepare. And, we need time for professional improvement.

We need time to involve parents with schools and their children's learning. We need time to educate parents about parenting and learning in the home. We need time to personalize learning for each child. We need time for summer school—not for all children, but for those who might require or profit from it. A longer school day is not desirable, as this, in itself, does not improve the quality of instruction.

We need time to develop schedules which are flexible and which reflect parents' needs and students' learning styles. We need to create professional teams which guide learning and help children keep growing. We need time for planning during the school day. We need time to work on skills which allow us to work interactively toward each child's unique potential. We need more time just to teach.

We need time to collect the information needed to make decisions about our work environment—the school building. We need time to analyze that information, ponder it, and design proposals for the future. We need time to make schools "a safe place for the mind to grow." We need time to make decisions which transform schools while reforming them.

We need time to educate every child—but those with special needs and the "average" child. We need time for professional journals, sabbaticals, graduate courses and degrees, continuing education, our health, our families and our own lives. We need time to work in and make a contribution to our neighborhoods. We need time for planning, working with volunteers and paraprofessionals, real evaluation, professional growth, mentoring new teachers, helping other colleagues, working with children with special needs, and for mainstreaming.

The Missing Ingredient

We can save time by getting rid of non-instructional on teaching—like unnecessary announcements from the public address system. Professional time can be saved by delegating lunchroom duty, study hall and playground supervision to others. Time can be saved by removing things from the curriculum when others are added. But overall, we need more time for quality. In fact, we need more time just to decide how to use our time. Until teachers have the time to change, schools will resist change. Schools need time, for a change.

Some Assumptions

Time costs money, and money is in short supply. Since money is limited, new money should be spent on priorities. Priorities should be set by those nearest to the point of implementation, teachers. Additional money will be needed, because the increase in new money controls the rate of change. Retooling can be financed without new money, but only if innovation is delayed. Any delay sacrifices increasing numbers of students to a system which is already obsolete.

Greater efficiency in obsolete schools cannot prepare children for the Twenty-first century. Unless there's a change in the structure of education, students will be increasingly unable to compete in a world economy, contribute to democracy, or achieve personal fulfillment. A major change in quality is needed; This depends on adequate and assured financing for education and educational reform.

Proposals for Time

These innovations about time can help to transform schools:

Time for team planning, team teaching, and cooperative education at the building level.

Time to plan for comprehensive school transformation through participatory decisionmaking.

Time to learn and deploy new technology which improves teaching and productivity for students and teachers.

Redesign of instructional time to include a wider variety of teaching strategies, such as discovery and guided discovery so that teaching styles can be matched with learning styles. This may require the elimination of some items from the curriculum to make room for others.

A longer teacher contract year with any additional time dedicated to preparing, planning, mentoring new teachers, and growing professionally.

Time to participate in state-level professional activities, such as serving on or attending meetings of the FINE Commission, the Board of Educational Examiners, or the many committees of the Department of Education.

Redesign of the school year—in terms of total hours, not days.

Relief from distracting intrusions into instructional time and the learning environment.

Professional discretion over the use of professional time.

Creation of a maximum class size in traditional instructional classrooms which calculates class size by including weights established for each student with special needs.

Authority and Responsibility

Teachers are licensed by the State. We have the exclusive legal authority to teach; yet we lack effective authority over local decisions relating to teaching. We have no authority over schedules in buildings, even though schedules control the learning environment. We have little authority over professional development, a building's program budget, the hiring of other professionals in our buildings, student placement in regular or special education, discipline policies for students, planning time, involuntary transfers of personnel, space allocation, peer evaluation for licensure, or practice teachers from teacher education programs. Authority exists on paper; but in practice, there is responsibility only.

One reason schools are inflexible is that teachers lack authority over professional functions. We are ready to build trust by working cooperatively; to interact with one another collegially; and to build meaningful goals and commitments for schools. But we are blocked by obsolete, undemocratic notions of authority and bureaucracy. To do our jobs, we need a clear definition of our authority.

We want to make real decisions—beyond token "input"—and we want to implement decisions meaningfully. Central authority is appropriate for some things; but school boards must be willing to delegate effective authority to principals and teachers in order to achieve results. Only teachers and principals can effectively organize their own work.

We are willing to change collective bargaining so that it complements decisions made by professionals in school buildings; but superintendents and school boards must support shared authority and decisions made by others. Real participatory governance is necessary. The "narrow legalistic conception of governance," which rules schools today, makes effective schools impossible and sets an anti-democratic example for students.

The process must be fair. It must give effective authority over instructional matters to those who are exclusively licensed to perform such tasks. Decisions should be based on professional knowledge and knowledge of individual students. Because each child and learning environment is unique, there will be great variety. This is an asset.

Decisions do not occur in isolation. They are part of a district's total decisionmaking system. In such a system, teachers serve in leadership roles. Principals, too, are key players. We are ready to be leaders, make commitments, and transform schools permanently. But others must be ready to see and accept us in new roles. We are willing to change, but others must allow us to do things differently.

Recurring Themes

Iowa's teachers are willing to change the way decisions are made. We are ready to define teachers' unique responsibilities in school buildings; but we need effective authority over processes which define what teachers do. We are ready to be accountable for our decisions; but meaningful accountability depends on effective professional authority.

Recommendations

These hold great promise for transforming authority in school buildings:

Teachers and principals have effective authority over decisions which affect their work and time.

Instructional decisions are differentiated from building management issues.

Knowledge, training and information about collaboration and effective leadership are available to principals and teachers.

Governance of the school site is shared by principals and teachers.

Decisions about what can be done and should be done are realistic and based on available resources.

Multiple options about goals, based on available resources, are provided by educators in each building for board approval.

Accountability for achieving goals is limited to programs which have been mutually agreed upon.

Collective bargaining supports professional decisions made in each building by teachers and principals.

"Action research"—research from practice and practice from research—drives decisions at the school site.

Administrative and board support for decision making in school buildings is present if schools are to be transformed.

Innovations are based on readiness, are voluntary, and are committed to gradual rather than sudden change.

Teachers, principals and administrators are accountable for meeting the educational needs of their students. The decision on how to teach remains the exclusive prerogative of those who are licensed for this purpose.

Teachers and principals have the effective authority to perform the tasks for which they are exclusively licensed by the state.

Evaluation and Accountability

Economic competitiveness, vital democracy and personal fulfillment cannot be achieved by being more efficient at turning out a product which is evermore obsolete. As "lockstep" instruction is counterproductive, so also is accountability for lockstep instruction. To succeed, all must be willing to do things differently.

Also, accountability means little if students are unprepared to learn. In this connection, educators are in a "no win" situation. Teachers cannot be responsible for learning among students who are hungry, sick, working long hours at a job after school, or physically and psychologically abused. And yet, teachers must make up for such deficiencies when nobody else will.

A third precondition of accountability is autonomy. Professional authority is prerequisite to professional accountability. We cannot be accountable for professional results unless we are treated as professionals capable of and charged with making professional decisions. When those accountable are not key players in making decisions, the result is counterproductive.

Also, accountability is a quality, not a product. Like justice, it's difficult to achieve. Professionals cannot guarantee what they do, because every profession is both an art and a science. Teaching is an art as well as a science; it is the inspired application of knowledge to affect growth. "Cause-and-effect" relationships are rare. A person's education is an accumulation of a lifetime of thoughts, feelings and actions—often unplanned and intangible. As an end in itself, accountability is meaningless; it is significant only when it affects the process which it evaluates.

Multiple choice and other standardized tests have limited value in assessing higher-order skills and complex tasks. New measures for assessment and evaluation are needed to measure thinking, feeling, doing, and their interaction. These must assess higher-order learning and teaching, as well as basic skills. Both the quantitative and the qualitative can be measured, but only by differing, mutually exclusive criteria.

Student evaluation must be more personalized as learning is customized. The best evaluation measures each learner's performance against one's personal growth rather than "the average." Student evaluation should reflect ability rather than chronological age. Feedback must be timely and sensitive to self-esteem. Otherwise, the chance to benefit will be reduced to punishment. Responsibility and accountability must not be confused. The effect of class size on quality must be considered.

Effectiveness depends on effective principals and teachers. Decisions about effectiveness and evaluation must occur at the level closest to implementation. Students and parent must be responsible as well as teachers and administrators. Evaluation should include follow-up studies with students after they have entered the work force. Building-level goals should be clear and simple, since multiple missions cloud outcomes and impede achievement.

Parents and others—from business and the community—are needed in schools to improve understanding. New methods of assessment are needed to measure learning in unusual situations. Many students attend three or four schools in a year; others learn in correctional facilities, hospitals and juvenile homes. Additional support and recognition is needed for teachers in demanding environments.

Recurring Themes

We are ready to be accountable for the progress of students, but accountability must be real. It must do more than filter out bad news and manufacture good news. It must do more than reassure the public or thump deficiencies from a bully pulpit. Real accountability affects the lives of students. It requires new mechanisms which measure new achievements by individuals and which support change.

Recommendations on Accountability

These principles can develop a new system of accountability in schools and other settings:

Student evaluation is based on individual growth. It provides continuous reporting after decisions are made by professionals responsible for a student's learning. These are developed for all students and implemented in lieu of mass instruction. Parents, teachers, and students participate in this process, and each has the right of appeal.

Accountability is local; parents, school board, community, students and the teaching profession are accountable to one another.

Evaluation recognizes that the most resistant problems of mass education are caused by the system itself rather than the people within it.

Recommendations by evaluators, rather than mandates, are provided as feedback in a timely manner.

Evaluation and accountability relate to educational reform. They take responsibility for changing the structure of education. They deal with the evaluation of programs and decision-making processes as well as with individuals or teams or professionals. They account for inputs, processes and outputs, since education depends on all three. They reflect qualitative as well as quantitative factors.

Evaluation is fair and limited to areas of performance which are under the teacher's, student's, or principal's actual control.

Beginning at the Beginning

Age is often the least important fact about children, yet schools depend on chronological age. Ample evidence exists that learning is enhanced when individuals learn at their own rate, yet education is a lockstep from preschool to PhD. Learning is greatly improved for disadvantaged children through a quality preschool opportunity; yet programs that work, like Head Start, are inadequately financed by government. Many studies point to a large savings in social costs for adults if the health, family, nutritional and educational needs of small children and their mothers are provided; yet spending for remediation and correction has priority over prevention. We must invest more in our children earlier if we expect more from them in return.

While restructuring and retooling needs to occur and be financed at all levels of education simultaneously, an immediate return can be realized by transforming education at the beginning. "Beginning," means early and late childhood from birth to what is presently grade six. "Early" and "late childhood" are used to emphasize that these differ from traditional grade-based, age-based instruction.

A new structure for "beginning education" will meet the needs of children as individuals. It will bring parents into the educational process and provide them with parenting skills if needed. It will match our hours to those of the parent. It will allow business to support education by freeing employees for volunteer work in schools or providing them with time during the work day for working with teachers. It will allow teachers to communicate more fully with parents.

It will provide flextime for school employees. It will build professional teams around the whole child in order to meet every child's needs in health, nutrition, family support, and education. It will apply technology so as to track and minister to the needs of each child through personalized learning. It will transform each classroom into a clinical setting. It will link teachers to children in many new instructional ways. Early Childhood Centers will transform elementary schools from mass production based on lockstep to learning environments which cater to the growth of individuals.

In these centers, children will be educated differently. Students will learn at their own rate. As they move through the educational system, additional levels can be transformed. In thirteen years, the entire structure will be made over. But this "makeover" must be financed. Transforming elementary schools alone will require a substantial permanent increase in school aid.

Proposals for Early Childhood Education

Reform can be made effective and permanent if the structure of elementary education is transformed as follows:

The elementary school is a new professional setting which deals with the needs of the whole child from birth through ability levels now associated with grade three. These "Early Childhood Centers" are based on needs. While not all children will require help from birth, help is available as necessary.

The work of reforming beginning education requires all-day kindergarten. This must be available every day, all day, in every district, for every child who is ready for it.

Each school district conducts an assessment to determine how it is meeting the needs of children.

Instruction eliminates grade levels and Carnegie units. Instead, it is based on personalized learning which accounts for each child's unique talents, interests and learning style.

Early Childhood Centers are staffed with professionals from education, health, and social work who work together as a team on behalf of individual students and their families; but authority and responsibility rests with the teacher who develops and monitors a student's learning.

Parents are involved in the work of these centers in empowered roles. They receive help to increase their ability to support their children's learning.

Government eliminates conflicting jurisdictions and permits Early Childhood Centers to operate free from competing bureaucracies. Unnecessary rules are eliminated, and new state support structures are enacted.

New technology is financed, developed, and tested in Early Childhood Centers to support personalized learning.

Teachers have professional development which prepares them for educating the whole child as an individual in a nongraded setting.

Resources are reallocated from existing intervention and correction programs as savings are realized.

Reallocation across and within sectors of education occurs as interconnections are identified.

Grades four through six are transformed to nongraded "Late Childhood Centers" as children move on from Early Childhood Centers. This allows gradual rather than sudden reform.

Licensure for teachers reflects student developmental states rather than grade levels. Four categories should be created: Early Childhood; Late Childhood; Early Adolescence; and Late Adolescence and Adult. These should overlap, since the transition between them is gradual.

Licensure is based on what teachers need to know and be able to do, rather than completion of courses.

The creation of Early Childhood Centers creates a new professional setting which blends the work of nurses, social workers and teachers. Licensure authority is located in a single agency to permit flexibility, promote effectiveness and prevent bureaucratic entanglements.

Licensed paraprofessionals in schools are well trained and well paid to perform their important tasks.

Elements in Common

This report has dealt with Time; Authority and Responsibility; Evaluation and Accountability; and Early Childhood Centers. These are interrelated. Only by integrating change among these areas can schools be transformed permanently. Single or unconnected reforms will be absorbed.

The next phase of educational reform is comprehensive school transformation. It will be characterized by:

Many items interacting simultaneously within each proposed reform.

Focus on the school building as the unit of productivity from which advances are measured.

Increasing responsibility; autonomy and accountability at the building level.

Decreasing "standardized" regulation with greater leadership from departments, bureaus, and programs at the state level.

Local ("bottom up") and state ("top down") efforts which support each other.

Emphasis on higher-order learning and multiple measures of achievement.

Emphasis on meeting the needs of constituencies at the building level.

Support for a multiplicity of diverse outcomes for students and buildings.

Emphasis on personalized learning for every child, including the "average" child.

Increasing utilization of decentralized electronic technology, using software, as an additional teaching tool which is available to the teacher.

Increasing productivity and a shift in labor-intensive costs from rote to higher-order professional tasks as a result of technology.

Instruction which is increasingly self-regulated and nongraded.

Involvement with the whole child by teams of educators, social workers and nurses.

Emergence of the school building as a clearinghouse for personalized health, social, community and educational services for students across bureaucratic and professional lines.

Increased flexibility in licensure with simultaneously higher standards.

Modest—but assured and continuous—state financing for pilot programs which demonstrate reforms.

Higher salaries to attract and retain persons with professional knowledge and preparation.

Maintaining present reform programs with increasing focus on reforms which interact to produce restructuring.

Building on the trust and consensus produced by the Iowa Educational Excellence Act (Phrase III).

Allocating instructional and categorical local, state and federal funds directly to individual school buildings for allocation by teams of professionals.

More simplicity at the state and federal levels; more complexity and diversity at the building level.

Opportunity for educators to play many diverse professional roles in buildings and increased professionalism and autonomy among educators.

Agreement that consensus is the basic decision-making mode in school buildings, school districts, and state-level educational planning.

Gradual change resulting from self-motivated, voluntary actions.

Greater emphasis on the role of the building principal.

Greater emphasis on the formative role of principals and less emphasis on the summative role, which is shifted to central administrators.

Fusion of research and practice by teachers and teachers educators.

Developing a new class of licensed paraprofessionals who may perform limited teaching responsibilities under the supervision of a licensed professional.

Greater support, interaction and respect between schools and higher education.

Developing school boards as policymakers rather than micromanagers.

Developing transformational leaders in administration at the building level.

Visible, public adjustments by teacher associations toward professionalism.

Responsibility for maintaining momentum for reform shifting from politicians to parents and educators.

Emergence of a new professional setting from teaching, nursing and social work, beginning at the Early Childhood level.

Self-directed, experiential professional development for teachers studying together in small groups.

Teachers and teachers' associations taking responsibility for the development and maintenance of professional culture.

Greater communication among all stakeholders in education at all levels.

STATE LEVEL PRIORITIES FOR SCHOOL TRANSFORMATION

Our priorities for school buildings are (1) Decentralized Technology; (2) Personalized Instruction; and (3) Decentralized Decision Making, which includes both shared decision making and accountability. Each requires retraining for teachers and new funds to support innovation. Taken together, they provide the leverage needed to change schools permanently.

While they operate within school buildings, they require state support. The state must prioritize around those reforms which most transform school buildings. This will accelerate change, transform school structure, improve quality, and keep waste to a minimum.

State government should concentrate on actions which contribute the most to change. In this way, scarce resources can be directed efficiently and waste can be minimized. Waste will be greatest where reforms are "one-shot," unconsidered, occur in isolation, are "shotgunned," imposed from above, or motivated by politics. Concentrating on three elements—Personalized Instructions; Decentralized Technology; and Decentralized Decision Making (and the new training they require)—will produce systemic change at the lowest cost.

Technology

Many agree that new technology, available to teachers as a tool, can transform teaching from mass to personalized learning. But few agree on how this tool shall be shaped and delivered to teachers. Those with an interest in hardware oversell technology, emphasize great projects over the small, and begin empire-building. Hardware affecting large numbers of students is purchased without research from pilot programs. Expansive systems are purchased without evidence that they're better than existing methods.

Some technology reinforces mass instruction just as we are trying to create personalized instruction. Distance learning," for example, is given priority over microteaching; "add on" programs are created rather than new programs. Sometimes, systems are justified on instructional grounds, but used for administrative purposes or are unrelated to schools in any way. At other times, technology is promoted as a way to avoid school reorganization.

Technology can reinforce "passive learning," increasing the drop out rate. It can improve efficiency at the expense of quality. It can be based on the latest fad. These detract from more productive approaches and can lead to expensive systems which are unused.

Our greatest need is for technology which increases the number and quality of tools available to us as we teach individual students. Such tools involve microteaching, professional diagnostics with data basing, and individualization of instruction. From a teacher's perspective, the best technology is decentralized. It is a tool, not a communications medium or an instructional method; and it should be implemented gradually, not suddenly.

Recurring Themes

New statewide electronic systems must be based on pilot studies and research before they are used on students. These should support personalized learning. The politics of technology should not be permitted to control decisions about the use of technology. If politics controls, innovation will be impeded. An unplanned project—even when effective—alienates the teachers whom it's intended to assist. Ineffective projects delay the promise of technology for years. Any delay sacrifices the next generation of students to the doctrine of "technology for its own sake." Technology must be deployed by users who have the power to make informed choices.

Recommendations About Technology

These principles support technology which transforms schools:

Program and funding priority is given to technological projects which relieve teachers so that we may provide higher-order learning, personalized learning, and remedial intervention to students.

Technological projects include "real time" interactive electronic classroom-based systems which provide rote instruction and drill; monitor student progress on instruction and drill; analyze student progress; compare such progress to other students in progressively larger educational units; provide a pedagogical database for intervention strategies, including lesson plans; and provide a professional database for retrieving research in a form which is usable in the instructional setting.

State projects in technology are evaluated on the basis of their contribution to the above goal to establish priority.

New technologies build on old technologies.

Simple technologies take precedence over complex ones.

Decentralized technologies take precedence over centralized ones.

Every teacher has a telephone and a computer.

An "end-point users' advisory committee," of teachers and principals only, sets priorities, locates technological needs and advises the Legislature. This committee should parallel the "Narrowcast Advisory Committee," but report to the State Board of Education.

Statewide innovations aren't implemented widely until pilot programs have been evaluated in controlled research programs.

Follow-up research is conducted to evaluate programs.

Extensive training, together with time to develop instructional applications, must be available to realize the promise of technology. These require financial support.

Participation in pilot programs is voluntary for teachers and students, and no person is part of a controlled experiment without prior consent.

Personalized Instruction

The national reports agree: Education must be transformed from mass production to personalized instruction. Only by educating every child to the fullest can we hope to compete internationally, achieve equity, support democracy, or gain fulfillment. Only by transforming schools can individuals be educated fully. The reports are right; we need to transform schools to produce quality in quantity.

These goals are not new. They are the same goals which have guided American education for over a century. But they have not been realized. They remain unrealized because our society placed higher priority on equity than on quality, and then failed to finance even equity. Even so, Iowa's schools delivered equity. Opportunity of access has been realized, even though it came at the expense of quality and the needs of individuals. But excellence for everyone is a new goal which has yet to be attempted. To meet this goal, we must educate students in a new way.

The goal—"excellence for every child"—is difficult to achieve. For one thing, when teachers teach individuals, the structure of schools neutralizes and absorbs the innovation. Obsolete systems create the defects which make quality impossible.

Teaching individually means developing new teams of professionals to diagnose, intervene and evaluate students on personalized learning. It means developing new ways to teach higher-order skills and to evaluate them; using technology to provide repetitive instruction, evaluation, diagnosis of learning disorders, and intervention through personalized learning; the time to develop new techniques; professional training to learn and share knowledge; dealing with the whole child; and learning at the student's own pace without respect to grade level. Most of all, it means doing what has never been done before. Developing personalized instruction means reinventing schools and transforming teaching into a true and fully recognized profession.

Among the innovations needed for tomorrow's schools, teaching individually is the greatest unknown. There is little research about it, and most of this is not usable in the classroom. A pedagogy for individual instruction does not exist. Technology will play an important part, but the content of that technology has yet to be developed. Professional development will be important, but the nature of retraining remains unknown. The new mandate for personalized instruction is the greatest leap of faith since our national commitment to equality of educational opportunity. The teaching profession is ready to accept this challenge and make good on it, just as it did for educational opportunity. But as we did for that mandate, we begin today without knowing how. As with equity, we will have to create solutions as we go along.

Recommendations for Personalized Instruction

Personalized instruction will be enhanced by the following:

Every student has personalized instruction planned around the student's unique abilities, learning style, past achievements, temperament, goals and readiness. Teachers have time to develop effective personalized learning programs for students.

Progress for each student is by electronic record which links student progress, the personalized learning plan, the recommendations of the student's professional support team, the results of rote and higher order learning exercises compared with other students at different scales of reference; diagnosis of learning disorders; interventions; and reference to case studies and research.

A database of personalized learning plans, methods, theories, microteaching, software, and lesson plans is available electronically to every teacher.

Professional development and licensure (including Phase III) center on Personalized Instruction, Applied Technology, and Decentralized Decision Making as new areas to be supported and evaluated.

Teachers have sabbaticals and short-courses in Personalized Instruction, Applied

Technology, Software Development, and Decentralized Decision Making.

Extensive training together with time to develop techniques for personalized instruction must be made available if the promise of such instruction is to be realized. This will require financial support.

Research is integrated with teaching; professors and teachers work together to understand personalized instruction, applied technology, and collegial decisionmaking.

Research and development is a major cost item for Iowa's Department of Education; researchers compete to meet specifications developed by the Department.

Decentralizing Decision-Making

When we issued our last report to you in 1983, we knew that decentralization was important; but we did not know much about it. It was a new commitment, another leap into the unknown. We made the commitment because decentralization was central to transforming schools. Since then, much has been learned. Some of this new knowledge relates to school buildings, mentioned in a previous section of this report, "Accountability and Responsibility." Here we consider state-level implications.

Few innovative projects have been undertaken. Some are the result of Phase III. Others—like the Mastery in Learning Project at the Paul Norton School in Bettendorf and the Learning Laboratory Initiative in Marshalltown—are the result of collaborative work among the Iowa State Education Association, the National Education Association, and school districts.

We now know that reform must be integrated throughout a school district and each school building. Change is most likely in districts which have enough stability to tolerate change. A facilitator from outside of the district is an essential ingredient.

Districts are capable of transforming themselves, but new money is necessary. Trust is the prerequisite of collegiality and change. Nothing can be done without the support of administrators and school boards. Teachers need training in group dynamics, collegial decision making and parental involvement.

Teachers' greatest need is professional information about the school buildings in which they work. The involvement of parents is essential. Each building has unique problems. There is more than one solution for a problem, and each solution is unique. Solutions often do not transfer from one building to another, although support and enthusiasm are contagious.

Teachers are willing to accept responsibility for making professional decisions in school buildings Building-level decisionmaking is time consuming and requires constant diligence. Voluntary change and participation works well and is the only approach that produces self-regulating change over the long term.

Change is a function of new dollars available for change. Retooling schools is as expensive as retooling any business. We know how to link school transformation to evaluation, group pay for group work, site-based decision-making, and Phase III.

Teachers and their representatives are ready to support school transformation. Business groups—like the Business Roundtable and the Iowa Futures Project—support schools and change. Legislators and the Governor support educational reform and link future financial support to change

Decentralized decision making is a proven strategy for transforming schools comprehensively and permanently. But few districts have begun the process of comprehensive change. In part, this is because change requires financing. No state funds have been available to support pilot projects in comprehensive school transformation. Change could be advanced if there were pilot programs for schools willing to change

Recommendations About Decentralized Decision Making

Here are state-level initiatives which support decentralization:

The state should finance pilot projects in comprehensive school transformation. Each project should be for multiple years. Projects should include small, midsize and large districts. They should support multiple and varied approaches to change on a collaborative, voluntary, and collegial basis.

Responsibility for research and development for pilot projects in comprehensive school transformation should be located in Iowa's Department of Education. A major permanent allocation for this purpose should be provided. Application to provide services must be competitive and based on written specifications.

School aid directs instruction and instruction-related resources to school buildings, to be allocated by local building teams.

Any extra days of working time for teachers should be allocated to school buildings as a "professional bank" to support in-service and professional activities.

Programs in parental involvement are encouraged for all buildings

A voluntary, higher order of accreditation for school buildings is created by Iowa's Department of Education or the North Central Association. Schools meeting the higher-order requirements are excused from the rule-driven standards of traditional state accreditation. Higher-level standards include criteria on collegial decision-making, building-based resource allocation, personalized learning, technology, and building-based professional development for teachers and principals.

Extensive training together with time to develop shared decision making must be made available if the promise of autonomy is to be realized. These will require financial support.

To implement the team concept and make the school a viable clinical setting for dealing with the needs of the whole child, every school building must have a full-time principal, a full-time counselor, and a full-time media specialist; a school psychologist; a school social worker; and a full licensed school nurse. Necessary paraprofessional and secretarial assistance must also be available.

A new class of licensed paraprofessional—requiring two years of college—performs limited teaching duties under the direction of a teacher so that teachers have time for governance and the development of personalized learning for every child.

The right of teachers to effectively perform the professional tasks for which we are exclusively licensed is honored and maintained. These rights are made explicit in the laws or rules of our state and in local school board policies.

Each district has a decisionmaking process which decides among different instructional packages based on different levels of financial support. These are created by joint action of school boards and educators in each school building.

Professional licensure supports comprehensive school change by requiring educators and their preparation programs to show evidence of ability to deal with collegial decisionmaking, applied technology and personalized instruction.

Decentralization is supported by state appropriations earmarked directly to school buildings.

State mandates and rules are reduced, since decentralization cannot be achieved through centralized state planning.

State policy makers support innovation and change with assured and adequate appropriations.

Teachers' salaries reach the national average so that Iowa can compete for talent needed in the complex schools of the future.

A mentor program for beginners is provided by the Iowa Board of Educational Examiners. The state must finance released time for beginning teachers and their mentors before implementing the program.

THE FEDERAL CONNECTION

Education is controlled locally in America, and no one wants it any other way. No one favors federal control over education, particularly in the absence of federal financial support. But the federal government has an important role. It can call public attention to problems, as it has been doing since 1982. It can provide financial assistance to categorical programs, as it does for special education and Head Start. It can support innovation and school transformation, though it has not yet done so.

A federal role is needed in innovation and change. School transformation requires additional financing, and this controls the rate of change and innovation in schools. Also, no state has been able to finance comprehensive school change. While many states have made major financial commitments for change, all—including Iowa—have found it necessary to withdraw that support for financial reasons.

The federal government has another role: It attaches conditions to federal funding. These can distort and control state programs. Often, they involve hidden costs which accrue at state and local expense. This can be expensive, convoluted, inefficient, and counterproductive. Special education, for example, is afflicted by micromanagement, rules and excessive federal regulation. Government must interact effectively at all levels if schools are to realize their new mandate. The federal government must do its part.

Recommendations for Federal Action

The following outlines a meaningful, change-oriented federal role in education:

The federal government creates one federally financed project to demonstrate comprehensive school change in each Congressional District. Projects are selected on a competitive basis by committees established by state departments of education for this purpose. Grants are substantial and tied to applied technology, decentralized decision-making, and personalized instruction.

The federal government deregulates its educational programs.

Federal funds for instructional programs are allotted to school buildings.

The federal government withholds federal funds from professional schools which lack national accreditation. Student loans should not be available to students enrolled in unaccredited professional programs.

The federal government coordinates its agencies to support children of all ages in health, education and welfare.

The federal government aims its research programs in education at applied technology, decentralized decision making, and personalized learning.

THE SCHOOL OF THE FUTURE

Iowa's schools still exist to prepare students for employment, citizenship, and personal fulfillment. These were once realized through seat-based instruction. But changes in technology, values, students, and the economy have made old methods inadequate. Our old approach permits defects and casualties. In our new world, human resources are so valuable that, to be competitive and effective, we must educate every child to the fullest.

America needs schools where all children succeed. Such a school provides personalized learning, educates rather than trains, and applies the best that is known about teaching in theory and practice. It creates an environment conducive to learning and is a safe place where the mind may grow. It is collegial rather than corporate and is a place where teachers and administrators shape the learning environment through shared decisionmaking. It is based on the school building. And it has enough money, technology, and people to provide excellence to everyone.

The teaching profession is ready to create the schools of tomorrow from the schools of today. But we need to be authorized to innovate within the major systems which control learning at the building level. Such systems include compensation, evaluation, decision making, professional development, and student programs—the very items authorized by Phase III. But while Phase III has fostered many innovations, it has not transformed schools. To transform schools, innovations must interact. Our challenge is to transform schools from corporate to collegial environments through innovations which interact to create the schools of the future. A few carefully chosen interventions can transform schools pervasively and permanently.

In transformed schools, technology will provide every student with a personalized learning program. Technology will free teachers from rote tasks and paperwork. Software will be developed and shared for instructional, professional, and reference purposes. Students will create instructional programs for themselves and others. Systems which integrate student responses and achievement will be available to a team of educators which regularly reviews and proscribes learning strategies for each child. Emphasis will be on higher-order learning.

Each student will be involved in interaction and discussion rather than lecture and presentation. There will be few, if any, intrusions into the learning process. Bells will disappear; students will learn at their own rate and be evaluated against each individual's own growth. Students will progress from one level to another as they are ready. Students will learn in all three areas of human endeavor—thinking, feeling, and doing—and become active participants in their own learning.

Decisions about students will be made in school buildings. Only those licensed to do so will be permitted to make decisions about a student's progress or achievement. Decisions about the allocation of resources will be made by professionals in each learning center. Teaching will be a respected and autonomous profession, equal to any other. Students who choose to learn will be the norm and be respected for it by their peers. Compensation will be based, in part, on the achievement of building level goals. Teachers and administrators will work together collegially at the building level and have the support of others.

All the above relate to applied technology, personalized learning, and decentralized decision making. Implemented piecemeal, no change will occur, because the present structure absorbs single innovations. But implemented together, they will change schools comprehensively and permanently. Innovation in three key areas can produce "excellence for everyone."

These systemic changes depend on assured, sufficient financing, popular support, and cooperation among all levels of government. Without such support, schools may change eventually in response to massive social change. But for each year's delay, a year's worth of children will be sacrificed to a system which is already obsolete. In a time of great change, no nation can afford such a sacrifice and remain economically or politically viable.

The rate of change is controlled by money. New money is necessary for retooling, research, program design, professional development, technology, individualization of instruction and decentralized decision-making. If new money cannot be found, schools cannot change fast enough to impact the economic, social and personal decline now overtaking our nation. Large sums are necessary, over and above scheduled increases. All levels of government—working with business, agribusiness and educations—must come together.

It is not enough to have high expectations. We must also have high standards which are enforced. But given Iowa's head start on educational reform, both high standards and high expectations can be achieved with your help. With your help, schools can realize our nation's new goal of "excellence for everyone."

PROPOSED CONSOLIDATION OF CERTAIN CIA ACTIVITIES

Mr. WARNER. Mr. President, I rise to speak briefly in support of the proposed consolidation of several Central Intelligence Agency activities at two new sites, one in my State and one in West Virginia.

There has been considerable debate, in the press and elsewhere, about this proposal. Unfortunately, not all of the discussion has been well-informed.

In order to promote public understanding of the rationale for this project, I would like to place in the record three factual documents.

Two of these documents help to detail the CIA's extensive, thorough site selection process and the Agency's compelling need for these new sites.

The third document conveys the enthusiasm of some of my constituents—the Government and the people of Prince William County, VA—who would benefit from this proposed relocation.

First, the first document is a letter sent to me by Mr. Richard J. Kerr, Acting CIA Director, in my role as ranking Republican on the Senate Armed Services Committee. This letter also was delivered to chairmen and ranking members of other key committees in the House and Senate.

In this letter, Mr. Kerr makes the following important points:

That congressional approval of the CIA's proposed relocation plan is needed now;

That the dual-site approach—that is, Prince William County, VA, and Jefferson County, WV—makes sense;

That the proposal reflects appropriate contributions from expert real estate and site-selection consultants;

And that, contrary to the criticisms of some, the Agency has carefully considered the interests and welfare of its own employees in advancing this proposal.

Second, the second document I am offering for the record is a memorandum, dated August 21, 1991, and written by Mr. Robert T. Kleinpaste, head of Legg-Mason Realty Group, Inc.

Legg-Mason was the consultant hired by the CIA to aid in selecting sites for the proposed relocation.

The Legg-Mason memo—which is not an official document, but which reflects Legg-Mason's experience with this project—makes clear that the CIA's search for suitable sites has been carried out over an extended period of time. Legg-Mason has participated in the process as a consultant for a year—they were hired in October 1990.

During that time, the CIA's plans, and thus its criteria for suitable sites, have evolved. That is normal for a relocation plan as complex as this.

Mr. Kleinpaste's memo sheds light on how the process evolved from a search for one site to a search for two sites, and why the Prince William County and Jefferson County sites emerged at the top of the list.

Third, Mr. President, I am well aware that the CIA's relocation proposal would have a potential economic impact on three congressional districts. Not surprisingly, competitive pressures are at play here. I would also note that my respected colleague in the House, Congressman D. FRENCH SLAUGHTER, has been unable, because of illness, to be involved personally in all aspects of this proposal.

Therefore, I would like to place in the record a letter dated August 22, 1991, to Congressman DAVE MCCURDY, chairman of the House Intelligence Committee, from the Prince William County, VA, board of supervisors. Much of Prince William County lies in Congressman SLAUGHTER's district, the Seventh.

This letter discusses the many ways in which Prince William County meets the CIA's criteria as a site for relocation. The letter also makes very clear that Prince William County strongly supports the proposed move.

In summary, Mr. President, the CIA has proceeded in this case in a careful, thorough and responsible manner, on a matter of considerable importance to the Agency and its employees.

I believe this proposal is beneficial to my State. Equally important, it will allow the CIA to better fulfill its mission.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CENTRAL INTELLIGENCE AGENCY,
Washington, DC, October 31, 1991.

Hon. JOHN W. WARNER,
Ranking Minority Member, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR WARNER: With conference action on the Intelligence Authorization and Defense Appropriations bills at hand, I want to reemphasize the Agency's urgent need to consolidate its employees at two additional locations.

The Agency has been trying for more than 10 years to consolidate a workforce that currently is housed in 21 leased facilities in the Washington metropolitan area. These facilities are expensive, and many have serious security vulnerabilities and structural deficiencies that make them unsuitable for prolonged Agency use. The proposed consolidation would enhance the productivity and security of our workforce, improve the Agency's operational efficiency, and be cost effective in the long run.

We spent more than two years developing the specific facilities consolidation plan that was presented to the Intelligence and Appropriations Committees on July 5, 1991. I want to emphasize that while we certainly should have done a better job of keeping the Committees informed as this planning process progressed, it was always our intention to present a proposal for full congressional consideration. No action has been taken that would undermine or pre-empt the Congress' role in determining the fate of this proposal. As with any initiative requiring appropriated funds, the decision on how to proceed remains in the hands of Congress. For the reason detailed below I urge you to support our proposal.

ACTION IS NEEDED NOW

Now is the time to deal with the Agency's space requirements. A recovery in the real estate market and construction industry would make consolidation more difficult and costly. Delay also would increase the need for more short-term, costly solutions to our space problems, such as leasing additional buildings and upgrading existing leased facilities.

The cost estimate that we have provided for this project—$1.2 billion—includes inflation-adjusted costs for operations and maintenance, security, and communications, in addition to land acquisition, project design, and construction. Most cost estimates do not include all of these factors. The estimated cost for land acquisition, project design, and construction is approximately $700 million, including projected inflation.

Our proposal assumes that CIA will have a smaller workforce in the coming years, but the problems that underlie our proposal will persist and worsen if action to alleviate them is not begun now. If we receive approval to begin the project in FY 1992, we estimate that by the year 2010 the amount we would save in costs associated with continuing to lease, renovate, and supplement rented buildings would cover the full cost of construction and outfitting the proposed new government-owned facilities.

THE DUAL SITE APPROACH MAKES SENSE

Two distinct groups of Agency employees need to be consolidated. One group—composed of some of our scientific, technical, and administrative personnel—requires traditional office space, interacts with Headquarters regularly, and travels frequently. The Prince William County Virginia site is most suitable for that group. The other group interacts less frequently with Headquarters and is engaged in special purpose, light industrial, and related activities. The size and relatively low cost of the Jefferson County West Virginia site make it well suited for this group. It should be noted, in this connection, that West Virginia has figured in our thinking about consolidation locations for a number of years.

Consolidating activities currently scattered at 21 leased buildings onto two new compounds would greatly enhance the Agency's operational effectiveness. Components with units in multiple workplaces could be brought together, and time consuming inter-building travel by personnel who must interact with one another daily would be eliminated.

We will, of course, continue to house on the Headquarters compound Agency elements responsible for collecting and analyzing information and making it available to the Executive branch and Congress. These personnel must interact daily among themselves, with other elements of the Intelligence Community, and with policymakers.

THE PROPOSAL REFLECTS APPROPRIATE INPUT FROM EXPERT CONSULTANTS

We have been assisted by two consultants, Legg Mason Realty Group, Inc., and Dewberry & Davis. We carefully considered their input, melding it with our own analysis of security, communications, and operational considerations. The role of consultants is, of course, advisory, and the decision on the shape of our proposal was made by Agency management. With respect to the decision to locate some Agency elements in West Virginia, our real estate consultant, Legg Mason, has stated that "it makes perfect sense to locate operations needing large amounts of warehouse, maintenance, and research and development space that do not require day-to-day physical contact with Langley, on a lower priced parcel of land in an outlying area."

AGENCY EMPLOYEES HAVE BEEN CONSIDERED

It is important to remember that we are discussing the possibility of new compounds that will not begin being occupied until the late 1990s. There will be no immediate disruptive impact on Agency employees. Indeed, by the time this project is nearing completion upwards of 50 percent of the current Agency workforce will have left our employ. Many of the individuals who ultimately would work at the new compounds are not yet associated with the Agency. Current employees who would be affected by the consolidation would have ample notice and time to consider their individual situations. If employees have special needs precluding them from working at either of the proposed sites, we would attempt to identify suitable positions for them elsewhere in the Agency. Agency employees have for over 40 years served in difficult and dangerous circumstances all around the world. We do not believe that the prospect of a workplace in an outlying area will be overly daunting to them.

Forgotten in some of the discussion of this proposal is the fact that, from the very beginning, Agency management was influenced by its concern that many of our employees have difficulty in affording to live close to the current Headquarters compound, and are increasingly burdened by long daily commutes. Insofar as it made sense from a mission perspective, it was hoped that in addition to cost savings a more remote location could help our employees, most of whom already live in the Northern Virginia triangle bounded by Leesburg, Manassas, and Falls Church. Positive aspects of the consolidation with respect to opportunities it would create for more affordable housing and/or less time-consuming reverse commutes should not be overlooked.

I urge the Committee to support the Agency's consolidation proposal. If funding is provided, we will scrupulously follow congressional requirements in implementing the plan, ensuring that Congress, OMB, and the General Services Administration are consulted throughout the process. Please let me know if I can provide the Committee any additional information.

This letter is also being provided to Chairman Nunn, the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, and the Chairmen and Ranking Minority Members of the Senate Appropriations Defense Subcommittee, the House Permanent Select Committee on Intelligence, the House Appropriations Defense Subcommittee, and the House Armed Services Committee.

Sincerely,

RICHARD J. KERR,
Acting Director of Central Intelligence.

LEGG MASON REALTY GROUP, INC.,
Baltimore, MD

MEMORANDUM

From: Mr. Robert T. Kleinpaste, President, Legg Mason Realty Group, Inc.

Date: August 21, 1991.

Subject: The agency's consolidation process.

It has come to our attention, through various press reports and the transcript of the House of Representatives' Select Committee On Intelligence, that a great deal of misunderstanding and suspicion concerning your selection of the properties for future Agency consolidation. We feel that the current criticism of the site selection process stems from a basic misunderstanding of the process itself and the constantly evolving criteria which we used in evaluating potential sites, not all of which are contained in our reports. I decided that I would put in writing what I believe to be the process employed and the events; based upon our time records, meeting notes memoranda and reports. In addition, I will give you my interpretations of events, instructions and meetings.

SITE EVALUATION PROCESS SUMMARY

Representatives from Legg Mason Realty Group, Inc. (LMRG) first met with Agency representatives in January, 1989. At that time we were contracted to perform a preliminary search for a site that could potentially accommodate a consolidated Agency facility. One of the purposes of this consolidation was to phase-out the need to continue to lease scattered facilities in the Washington Metropolitan Area and, over the long term, save money. For this effort LMRG and Agency officials developed a set of site criteria and requirements in order to identify and rank properties that were to be considered for a consolidated facility. At that time, you were considering developing 1.9 million square feet on one site. Along with the size preference of 500 acres or more, we targeted sites that were in agricultural areas that could potentially handle the facility but whose cost would be below $50,000 per acre. In addition we reported on the viability of locating a consolidated facility on existing federally owned property at several sites in the Northern Virginia area.

The result of this analysis was a listing of properties, primarily farms, that were large enough to accommodate the proposed facility. Unfortunately, many of the proposed sites were located in areas not currently served by utilities.

In October of 1990, we met with you again to discuss your progress in securing approval for the project. At that time, the selection criteria had been refined to include sites between 250 and 500 acres and allowed for the consideration of planned business parks (whose land prices were substantially higher than the agricultural sites but were closer to existing utilities). However, it was still the intention of the Agency to consolidate on one site. Because of this, we were still using the drive-time distance to Langley as a major criterion.

During several of our progress meetings in December 1990, you began to express some concern over the land cost estimates we had developed on many of the top ten sites and suggested that alternatives may need to be considered.

In our Site Search and Facility Consolidation Analysis dated January 29, 1991, LMRG evaluated the top 65 candidate sites and developed a list of the top ten. These sites were then evaluated by the Agency for operations, telecommunications and security considerations. We were never provided any specific information on these matters; these factors were always dealt with by the Agency, and it was our assumption that you factored these considerations into our data and conclusions.

We also addressed in this study two sites located in Jefferson County, West Virginia and one in the Tyson's Corner area that had been brought to the Agency's attention prior to our being contracted in October of 1990. However, since we were still working under the assumption that the entire facility would be placed on one site, the requirement for day-to-day physical contact with Langley precipitated our cautionary comments concerning locating the entire facility in Jefferson County, West Virginia.

In the meantime, the Agency requested that Dewberry & Davis perform an engineering/environmental analysis of the top sites targeted by LMRG along with the lower cost alternative brought to the attention of the Agency in Jefferson County, West Virginia. This analysis was completed by Dewberry & Davis January 11, 1991.

During the rest of January 1991, we discussed different facility configurations and costs and agreed that, due to the substantial land cost savings and the possibility of better sites than the ones previously identified, additional sites in Jefferson County, West Virginia should be studied.

Based upon these discussions, LMRG and Dewberry & Davis evaluated 19 potential sites within Jefferson County, West Virginia that could potentially accommodate the proposed facility. As a result of that analysis, we identified two sites south of Charles Town which would be suitable if West Virginia were to be the location for the facility. The preferred site was the property which adjoins to the south. However, upon further study we determined that this site was not for sale and the site was chosen as the best West Virginia alternative.

In March 1991, the Agency requested that LMRG and Dewberry & Davis perform a detailed engineering and land use site analysis on the top candidate sites including the Jefferson County, West Virginia alternative. The conclusions of that analysis are contained in the Facility Consolidated Analysis Phase 2 Report, dated April 29, 1991.

Up until this point, LMRG and Dewberry & Davis had no knowledge that the Agency was considering splitting the proposed facilities and our reports were based upon the assumption that all new facilities would be placed on one site.

During the month of April 1991, Agency officials advised us that they had been considering splitting the proposed facility. Their expressed intent was to locate Agency Departments and functions that did not require day-to-day physical interaction with Langley on land that could be acquired at a much lower land cost and allow the purchase of a larger property to allow for future expansion.

As I told you previously, if the Agency had told us to identify sites for facilities such as warehouses and printing plants, we would not have eliminated West Virginia sites in our January 29, 1991 report and would have developed a somewhat different set of selection criteria than those we developed for the single consolidated facility.

This major change in the requirements and criteria for choosing a site would drastically temper our stated concerns on the Jefferson County, West Virginia site selection. In fact, it makes perfect sense to locate operations needing large amounts of warehouse, maintenance, and research and development space that do not require day-to-day physical contact with Langley, on a lower priced parcel of land in an outlaying area. This will not only allow the Agency to purchase land at lower costs, it will also allow Agency personnel, if they choose, to locate in an area with a lower cost of living than Northern Virginia. However, due to the site's location, it will also allow those existing employees living in Northern Virginia and West Virginia to commute to work in 75 minutes or less (depending on their location in the area) and stay in their current residences.

RECENT PRESS STATEMENTS

Recent articles in the press concerning our site selection analysis are often inaccurate concerning the analysis and recommendations provided in our reports to you and we feel that clarification is necessary.

In our report dated January 29, 1991, we were unaware of any construction schedule and were assuming that the entire facility would be built on one site. We suggested that moving the entire proposed facility to Jefferson County, West Virginia might overburden existing transportation networks and may result in the loss of some existing employees. However, we must point out that any consolidation and movement of offices might result in the loss of employees. Furthermore, we made no suggestion that a move to West Virginia would hurt the Agency's mission.

The operative statements here suggest that we felt that if West Virginia was going to be considered further, it would require more detailed analysis and that the Agency should be made aware of these considerations. We suggested that the Agency should make its determination with these considerations in mind. However, since we were not privy to operational, communications and specific facility requirements, we were not in a position to make the final site selection. Our role in the entire site analysis and selection process is to provide detailed information and advice on real estate matters only. The press and others are failing to understand that we are your consultant, not the decision-makers. In fact, even though we had limited operational input, one of our final recommendations was that operational considerations should drive your ultimate decision.

It is apparent to us from recent announcements and press coverage that no one seems to understand that this process has evolved over the past two years from a very preliminary estimate of need to a more detailed plan. As the process evolved, several of the selection criteria changed and the order of importance has shifted several times. Any suggestion that a rigid, non-responsive set of criteria should have been used throughout the process indicates a lack of understanding of how facilities planning and site selection is performed. As operational and facilities priorities change, the selection criteria must be flexible in order to test all possibilities. Therefore, recent criticism of the current plan, using information and advice LMRG provided seven months ago on a project that has evolved during that time and ignoring advice provided since then, is unwarranted.

It has also been suggested recently that the Agency should start over, possibly using GSA resources, in performing the site search. If recent examples of GSA's process is any indicator, it will be many years before the Agency will be able to start a new facility. Their process in choosing a developer on the Fort Belvoir Engineering Proving Grounds and the Internal Revenue Service headquarters, begun almost two years ago, has cost potential bidders several hundred thousand dollars and was recently halted completely. The GSA is starting the process over again and it will be several more years before any buildings could be completed. In fact, many of the best and largest development firms that submitted proposals on that project have vowed that they will think twice about ever bidding again on a GSA development proposal. If this GSA process was to begin all over again, the cost savings attributable to leases expiring over the next three to four years would be lost and development and construction costs will increase.

It has also been suggested that the Agency should begin the site selection process over again and allow for competitive proposals. It is my strongly held belief that you have already conducted one of the most thorough and effective site selection competitions ever undertaken. Rather than entertain proposals on sites that were clearly inappropriate, you applied competitive selection criteria and solicited proposals from owners of sites which would accept facilities of the type being planned. In order to insure that all possible sites were considered, you accepted submissions from the public. We have reviewed each of those submissions with you and found none to be acceptable based upon our criteria.

What I find most offensive and inaccurate in the recent press coverage is the implication that we made recommendations regarding West Virginia which you then completely ignored. This is just not the case, and ignores the significant amount of work by all of us and your staff (including operations personnel), between the January study (which recommended against West Virginia) and the list of final sites which included one in West Virginia.

I am also very disturbed by the implication that the Agency has been less than prudent in this process. I have told you previously how impressed I am with the diligence, care and ethics which you and your staff have brought to this site selection process. You should be commended for this work not vilified.

I hope that your professional approach to the construction of these much-needed facilities continues to be applied to this very complex and politically difficult process.

COUNTY OF PRINCE WILLIAM,
Prince William, VA, August 22, 1991.

Hon. DAVID MCCURDY,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN MCCURDY: On behalf of the Prince William Board of County Supervisors, I want to reiterate our support for the proposed consolidation of Central Intelligence Agency facilities in Prince William County. We will do our part to ensure that the Prince William County site remains the low cost location for this facility.

Recent newspaper articles and discussion by the House Select Committee on Intelligence have criticized the proposed Central Intelligence Agency consolidation plans. Most of these discussions have focused on the Jefferson County, West Virginia site and have not fully addressed the merits of the Prince William County, Virginia site.

The Prince William Board of County Supervisors strongly supports the relocation of all or a portion of the CIA facilities to Prince William County, Virginia. The Prince William County site meets or exceeds all of the selection criteria established by the Central Intelligence Agency:

Minimum 75 minute drive to CIA headquarters. The Prince William County site is less than 45 minutes from CIA headquarters in Langley, Virginia.

Parcel size 250 to 1,000 acres. The Prince William County site is approximately 530 acres. This site could accommodate the entire consolidation.

No topographical or environmental constraints. The elevation and surrounding topography of the Prince William County site are compatible with the security and microwave site line requirements of the Central Intelligence Agency. In addition, the Prince William County site has very deep bedrock, making it less costly to build upon. The Prince William Board of County Supervisors has thoroughly reviewed the environmental impact of an office park development on this site and concluded several years ago that it was an appropriate site for an office park such as the one planned by the Central Intelligence Agency.

Adequate utilities. The Prince William County site has adequate water, sewer, electricity, and gas utilities on site or immediately adjacent. A new storm sewer system will be completed in the spring of 1992.

Transportation access. The Prince William County site is located at the intersection of Interstate 66 and U.S. Route 29. Both of these roads provide easy access to the entire Interstate network and the Capital Beltway. The site also is served by U.S. Route 15, U.S. Route 55, and VA. Route 28. None of the other candidate sites have this transportation advantage.

The Prince William County site is less than 50 minutes from Washington National Airport and approximately 20 minutes from Washington Dulles International Airport. In addition, the Prince William County site will be served by High Occupancy Vehicle lanes on Interstate 66 by the middle of this decade. Construction of these lanes are already underway in Fairfax County. The Prince William County site is within a 10 minute drive of two future commuter rail stations which will begin service to Washington, D.C. in April of 1992. Finally, the Prince William County site is within a 15 minute drive of the Manassas Airport, a general aviation facility with a new control tower.

The Prince William County site has withstood the scrutiny of a professional real estate consultant and the Central Intelligence Agency. It is conveniently located for existing and future CIA employees and will retain jobs in Northern Virginia. The quality of life in Prince William County will offer many intangible benefits to current and future employees of the CIA, including a plentiful supply of affordable housing.

We urge you to take advantage of the current real estate market and proceed with this site for some or all of the Central Intelligence Agency relocation in Prince William County, Virginia. This site will be a benefit to the Agency, the Commonwealth of Virginia, the United States, and the American taxpayer. Please let us know if we can assist you in this matter or if we can answer any questions.

Sincerely,

TERRENCE SPELLANE,
Chairman.

DAN HANSON—BARTLETT AWARD

Mr. SYMMS. Mr. President, I rise today to congratulate my friend Dan Hanson for being selected as the 1991 recipient of the George S. Bartlett Award. This award was presented during American Association of State Highway and Transportation Officials [AASHTO] annual meeting on October 14, 1991, in Milwaukee, WI.

This is one of the most prestigious awards that anyone can get who has worked in transportation.

Established in 1931, the Bartlett Award is conferred annually upon an individual who has made an outstanding contribution during their career to the development of our Nation's highway transportation system.

There is no person more deserving of this award than Dan. I had the privilege of working with him during the reauthorization of the highway programs in 1982 and 1987, and his knowledge and insight were consistently sought during the legislative process.

Mr. President, as last years recipient of the Bartlett Award, I welcome Dan into the ranks of individuals who have been honored with this award, and ask that an article on his distinguished career be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AWARDS PROGRAM OF THE OPENING GENERAL SESSION—AASHTO 91 WISCONSIN

(77th Annual Meeting, Milwaukee, WI, October 14, 1991)

THE GEORGE S. BARTLETT AWARD

(Established in 1931, the George S. Bartlett Award is conferred annually upon some individual who has made an outstanding contribution to highway progress. The award recipient is selected by a three-member Board of Award made up of the Presidents of the American Association of State Highway and Transportation Officials, the American Road and Transportation Builders and the Transportation Research Board of the National Research Council.)

Daniel J. Hanson, Sr, retired this year after 23 years of service with the American Road and Transportation Builders Association (ARTBA). Hanson joined ARTBA in 1968 as its deputy executive vice president and became the association's chief executive officer in 1973. He served his last two years as ARTBA president emeritus.

As ARTBA's president, Hanson was one of the transportation construction industry's leading advocates and was a frequent expert witness before congressional committees. During the 1970s he helped organize the American Transportation Advisory Council (ATAC), an ARTBA-sponsored Washington, D.C. based coalition of 80 organizations and firms concerned with the future of transportation in the United States. In 1982, Hanson helped acquire industry support for a proposal to increase the federal motor fuels user fee by five-cents-per-gallon. His effort garnered him the honor of being the first private-sector recipient of the CIT Corporation's "Rebuilding America Award".

As president emeritus, Hanson concentrated on legislative activities and coordination of ATAC events. He was also the ARTBA representative to the "Transportation 2020" Advisory Committee on Highway Policy.

He is a past chairman of the Washington, D.C. "Road Gang." and currently serves as vice chairman of the Advisory Committee on Traffic Safety. A registered professional engineer, Hanson plans to continue his work in the transportation field as a legislative consultant.

BATTLE OF POINT PLEASANT—A CLAIM FOR UNHERALDED PATRIOTS

Mr. BYRD. Mr. President, I ask my colleagues to join me today in remembering those whom many believe to be the first military veterans in our Nation's history. I am speaking of the militiamen of the Battle of Point Pleasant, a battle waged in my home State of West Virginia—at that time, Virginia—and officially recognized in 1908 by the 60th Congress as the First Battle of the Revolutionary War.

On October 10, 1774—6 months before the "shots heard 'round the world" were fired at Lexington and Concord—800 rugged colonial militiamen, under the command of Col. Andrew Lewis, met and defeated 1,000 Shawnee Indians commanded by Chief Cornstalk at the confluence of the Ohio and Great Kanawha Rivers. If the Shawnees had claimed victory, an alliance with the British may have developed and weakened the position of the colonists. However, the colonists' defeat of the Shawnees demonstrated their military potential and strengthened their stance of independence from official British colonial policy.

The battle and the subsequent peace treaty with the Indians brought relative peace to the Ohio frontier for several years and opened the way for further westward movement by American settlers into the Midwest. But most importantly, it freed the American patriots from having to fear a rearguard Indian attack on the Virginia frontier as the rebellious colonies struggled for their liberty against the King's soldiers during the Revolutionary War.

At the Battle of Point Pleasant, our forefathers took a bold and courageous step toward securing freedom and asserting their independence. The service of these militiamen was a true pledge of allegiance to liberty and self-government and I take pride in honoring the forgotten men who helped shape the destiny of our Nation.

I ask unanimous consent that the list of names of those who fell in battle and were buried at "the Point" on October 11, 1774, be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

NAMES FOR TEMPORARY GRAVE MARKERS

1. Charles Lewis, Colonel, Army of Virginia, American Revolution, March 11, 1736–October 10, 1774.

2. John Field, Sr., Colonel, Army of Virginia, American Revolution, 1720–October 10, 1774.

3. Thomas Buford, Captain, Army of Virginia, American Revolution, 1736–October 17, 1774.

4. Robert McClanahan, Captain, Army of Virginia, American Revolution, c. 1748–50–October 10, 1774.

5. John Murray, Captain, Army of Virginia, American Revolution, ——— –October 10, 1774.

6. James Ward, Captain, Army of Virginia, American Revolution, c. 1729–October 10, 1774.

7. Samuel Wilson, Captain, Army of Virginia, American Revolution, 1730–October 10, 1774.

8. Hugh Allen, Lieutenant, Army of Virginia, American Revolution, c. 1745–October 10, 1774.

9. Matthew Bracken, Lieutenant, Army of Virginia, American Revolution, ——— –October 10, 1774.

10. Edward Goldman, Lieutenant, Army of Virginia, American Revolution, ——— –October 17, 1774.

11. Jonathan Cundiff, Ensign, Army of Virginia, American Revolution, ——— –October 10, 1774.

12. George Cameron, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

13. Richard Trotter, Sergeant, Army of Virginia, American Revolution, c. 1738–October 10, 1774.

14. Samuel Croley, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

15. John Dinwiddie, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

16. Joseph Hughey, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

17. Thomas McClung, Private, Army of Virginia, American Revolution, c. 1728–October 10, 1774.

18. James Mooney, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

19. Hugh O'Gullion, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

20. William Stephen, Private, Army of Virginia, American Revolution, c. 1760–October 10, 1774.

21. Isaac Van Bibber, Private, Army of Virginia, American Revolution, p. 1725–October 10, 1774.

22. David White, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

23. Marck Williams, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

24. David Kincaid, Private, Army of Virginia, American Revolution, ——— –October 10, 1774.

25. John Frogg, Jr., Captain/Sutler, Army of Virginia, American Revolution, May 26, 1745–October 10, 1774.

26. Twenty-one whose names are unknown, Privates, Army of Virginia, American Revolution, ——— –October 10, 1774.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,421st day that Terry Anderson has been held captive in Lebanon.

NATIONAL HOME CARE WEEK

Mr. HATCH. Mr. President, I am very pleased that we are considering "National Home Care Week." This resolution recognizes the organizations and professionals throughout our country who provide the extremely vital health service of home health care to millions of Americans. I wish to thank my colleague, Representative LEON PANETTA of California, for his sponsorship of this resolution in the House of Representatives.

It is fitting that we highlight home health care during the week following Thanksgiving. This holiday is a time that brings families together to share their joys, their hopes, and their traditions. Home health care keeps families together by allowing a loved one to receive needed care in the familiar surroundings of his or her own home. This Thanksgiving, thousands of home care recipients will be able to spend this holiday in the midst of their families. Millions of elderly citizens will continue to live their lives with dignity and a sense of independence thanks to assistance provided by home care providers. Institutionalization for many ailments is no longer necessary given today's effective home health care services.

As we face the issues of providing long-term care to seniors, chronically ill children, and disabled citizens in America, I fervently hope that home care will become an integral component of any program. Home care provides cost-effective treatment of injuries and illnesses that, left untreated, often lead to more costly acute care and long-term institutionalization. Given our continuing battle with rising health care costs and the fact that we must rein in these costs if we hope to provide our Nation with appropriate health care, we must work to identify and develop these cost-effective means of health care delivery.

Home care is much more than preventive medicine. It is the most humane form of health care. It is also the type of care preferred by a vast majority of seniors. According to a national poll conducted by Louis Harris and Associates, fully 78 percent of those polled said they preferred to receive care in their homes instead of in a nursing home. Often nothing is more nourishing than to be in familiar surroundings while receiving vital attention.

There are countless families who could benefit from home care services. For example, one Utah family has a child with multiple health problems. After 3 months of the child's hospitalization, the escalating costs became unbearable. The family decided to bring the child home despite the need for constant care and monitoring. A home care nurse came to the home and sympathetically guided the parents through the process of taking care of a technology-dependent child. She provided counseling, skilled nursing assessment, monitoring, and teaching and helped with necessary support services. Due to her ability and friendship, the care of this child became less of a struggle. The child's presence at home with her parents and siblings was a joy.

This joint resolution honors the numerous health professionals, like the home health care nurse in Utah, who provide compassionate and expert care for elderly and disabled individuals. The individuals and organizations who make such a worthwhile contribution to society deserve to be honored. Moreover, I hope that by commemorating National Home Care Week, we may bring increased attention to this valuable service and the potential it holds for meeting the long-term care needs of our Nation.

RETIREMENT OF DR. HARRY M. LIGHTSEY, JR.

Mr. THURMOND. Mr. President, South Carolina is fortunate to number many fine educators among its citizens, and I am fortunate to have known many of them personally. Undoubtedly, one of these outstanding individuals is my good friend Dr. Harry M. Lightsey, Jr., the president of the College of Charleston.

Dr. Lightsey, who has served our State's higher education system for many years, recently announced that he will leave his post as president to return to the classroom. Although the College of Charleston will sorely miss his administrative ability, his formidable knowledge and experience will be a rich resource for his students.

Mr. President, Harry Lightsey is a man of character, courage and compassion, and I wish him well as he continues his service to the next generation of South Carolina leaders. I ask that an editorial from the State and an article from the Charleston News & Courier be printed in the RECORD immediately following my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the State, Oct. 26, 1991]

"A TOUGH ACT TO FOLLOW"

Harry M. Lightsey, Jr.'s remarkable career will take yet another turn June 30 when he leaves the presidency of the College of Charleston to teach in the philosophy department there. It will be a loss to the college's administration but a boon to the students who will have the chance to learn from him.

Dr. Lightsey's homespun manner belies his outstanding academic and administrative talents. A native Columbian, he earned summa cum laude honors in veterinary medicine at the University of Georgia and law at the University of South Carolina.

As a practicing attorney here, his expertise in the complicated field of utility rate law was legend. He also served stints as chairman of the state Democratic Party, the S.C. Human Affairs Commission and the Governor's Energy Management Policy Commission. He joined the USC law school faculty in the early 1970s and became dean in 1980. In 1986 he accepted the interim presidency of the College of Charleston. School trustees quickly recognized his abilities and named him president a few months later.

During Dr. Lightsey's tenure at the College of Charleston, said Higher Education Commissioner Fred Sheheen, academic standards, faculty salaries and student SAT scores all have gone up. Although Dr. Lightsey is only 59, he said he wanted to step down now to allow a new president to tackle such key issues as fund-raising, implementation of a more complete graduate program and the thorny issue of getting legislative approval for university status.

Dr. Lightsey's successor surely will benefit from his counsel as the college moves forward. As trustee Gordon Stine observed, "Harry will be a tough act to follow."

[From the Charleston Post and Courier, Oct. 17, 1991]

LIGHTSEY TO RESIGN JUNE 30

(By Lori D. Roberts)

College of Charleston President Harry M. Lightsey, Jr. said Wednesday he will resign his post June 30, an announcement that surprised and shocked trustees and higher education officials.

Lightsey, 59, will remain as a faculty member in the philosophy department through December 1993.

Lightsey, one of three finalists to succeed former USC president James Holderman, made the announcement in a closed session of the college's Board of Trustees meeting. As the meeting was in session, a memorandum circulated to the school's staff and faculty.

"I have decided that the time has come for me to begin thinking of retirement," Lightsey said in the memo. "In making this decision, I have tried to place the college's best interest first and to allow time for an orderly search and selection of a new person to lead the college to its future."

Lightsey also suggested in his memo that he is "stepping aside" to allow a new president to take on some key issues the college soon will need to address. Among those issues an enrollment campaign to address the needs of students and faculty; a boost in private giving and a capital funds campaign, and the implementation of a more complete graduate program.

"Clearly, the presidency requires a person with an extended outlook to address these midterm needs," Lightsey said in the memo.

"Harry Lightsey will be missed greatly when his retirement takes place," said board of trustees chairman Joe Berry, also a closed friend of Lightsey's. "We're just thankful that we've had him for the last five or six years.

"He is doing what he thinks is best for the College of Charleston and himself. He feels it needs a president who will be there for a while to take care of these situations rather than come right in the middle of them.

"He has no specific plans, other than retirement," Berry said. "If he does, I'm not aware of them and I think I would be."

Lightsey, who practiced law in Columbia from 1961 to 1973, could not be reached Wednesday night for further comment. He will hold a news conference at the school at 1 p.m. today.

In January 1986, Lightsey took a six-month leave of absence from his position as dean of the University of South Carolina law school to be interim president of the college. After a little more than three months, he resigned from the deanship he had held for nearly six years, choosing instead to serve another year as interim president.

In March 1987 he was inaugurated as the school's 18th president.

"I think that all the people that I know in higher education and in South Carolina would agree that he has been an exceptionally good president of the College of Charleston," said Fred Sheheen, commissioner of the State Commission on Higher Education. "The standards have gone up tremendously, the faculty salaries have been substantially enhanced, the academic program has been a centerpiece and the quality of students has gone up—entering freshman SAT scores rank among the highest.

"I think it's been a very strong presidency, I really do," Sheheen added.

Dr. Gordan B. Stine said the board had a reception meeting Tuesday night with faculty members, and that "there was no indication last night" Lightsey planned to resign.

"We all were very surprised and shocked, and none of us suspected it. None of us expected him to leave," said Stine, a member of the board's executive committee and chairman of the academic affairs committee.

Lightsey's track record extends beyond the educational arena.

He was state Democratic Party chairman from 1970 to 1972, when he became a full professor of law at the University of South Carolina. He also has written and co-written at least two law-related publications and has served on a host of educational, political and legal committees and associations.

Lightsey's decision to remain on the school's faculty for more than a year leaving the presidency isn't uncommon, Sheheen said.

"Presidents not infrequently decide to lay aside their administrative responsibilities and continue in the classroom," he said. "That's a very common way for presidents to wind up their careers."

The search for a new president won't be easy, trustees and officials said.

"I think, personally, Harry will be a tough act to follow," Stine said. "Anybody who's done an excellent job is tough to follow. There's just no other word other than 'excellent.'"

SUPPORTING ROBERT GATES' NOMINATION TO DIRECTOR OF CENTRAL INTELLIGENCE

Mr. THURMOND. Mr. President, as the Full Senate prepares to consider the nomination of Robert Gates to the post of Director of Central Intelligence, it is important for us to keep in mind that we are entering a new era in intelligence gathering. The world we live in today is full of questions, and we need a person at the helm of the Central Intelligence Agency who can provide the answers we need.

Mr. Gates' qualifications to head the CIA and the American intelligence community are well established. He has spent his entire adult life in government service, working to protect the interests of our Nation, first as a member of the CIA and then as deputy to National Security Adviser Brent Scowcroft.

Mr. President, I request that a copy of an editorial from the Charleston, SC News and Courier supporting Mr. Gates' nomination be printed in the RECORD following my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Charleston News and Courier, Oct. 8, 1991]

GATES: STILL THE RIGHT MAN FOR CIA

During a press conference last Friday morning in Washington, President Bush reaffirmed his support for the embattled candidacy of Robert Gates to be director of central intelligence. The president, himself a former CIA director, knows why Mr. Gates is the right man for the job.

Mr. Bush's vote of confidence in Gates came hours after Intelligence Committee Chairman David Boren took the unusual step of defending Mr. Gates before members of his own committee. He praised the candidate's candor and reminded his colleagues that Mr. Gates had gone out on a limb to keep the committee up to date during the Iran-Contra scandal, when the late CIA Director William Casey wanted the lawmakers excluded from the loop.

Sen. Boren's dramatic testimony came after the decision last week of one panel member—South Carolina's Sen. Ernest F. Hollings—to announce he would vote against Mr. Gates because, the AP reported, he was the CIA's deputy director during the controversial Casey era. "Your experience is what disqualifies you," Sen. Hollings reportedly told Mr. Gates. "Yes, you did too good a job for Bill Casey. You're not the right man at this particular time."

The question that troubles Sen. Hollings and others is: Did Mr. Gates require CIA analysts, either directly or inferentially, to put a political spin on estimates of Soviet activities during the 1980's? Some CIA employees have testified that he did; other analysts have flatly disagreed.

Ever since the legendary Walter Bedell Smith set up the CIA's analysis operation in the 1950s to produce a single set of intelligence estimates for use by U.S. policymakers, agencies and offices throughout the government have jockeyed to have their views reflected in the analyses. For example, the Pentagon obviously would want to emphasize the Soviet military threat, while the State Department may wish to see a different interpretation.

The system guaranteed that politics and personalities would affect the way in which date were analyzed. What analyst eager to keep his or her job would knowingly advance a view that contradicted a forceful leader like Bill Casey? Or Stansfield Turner before him? In this hothouse atmosphere, analysts automatically tailored their opinions to reflect their bosses' views. No one had to tell them to do it. The system guaranteed it.

Mr. Gates early on has quietly pushed the merits of plurality and competitive thinking in the intelligence community. Rather than submit one set of estimates to policy-makers, be argued, a number of conflicting analyses should be presented to give planners as many substantive options as possible.

Bureaucracies—and the intelligence community certainly is that—resist innovation and tend to savage advocates of change. Mr. Gates certainly has seen his share of slings and arrows, but he has acquitted himself admirably. He has the intelligence, the poise, and the integrity necessary to overhaul the badly demoralized U.S. intelligence community. He is the right man for the job. Let him get on with it.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination:

Calendar 342. Michael H. Moskow, to be a Deputy U.S. Trade Representative;

That the Committee on Government Affairs be discharged of the following nomination: Jill E. Kent, to be Chief Financial Office, Department of State; and

That the nominees be considered and confirmed en bloc, that any statements appear in the RECORD, as if read, that the motions to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

Michael H. Moskow, of Illinois, to be a Deputy U.S. Trade Representative, with the rank of Ambassador.

DEPARTMENT OF STATE

Jill E. Kent, to be Chief Financial Officer, Department of State.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:40 a.m., a message from the House of Representatives announced that the House disagrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 175 to the bill (H.R. 2686) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes.

At 12:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 140. Joint resolution designating November 19, 1991, as "National Philanthropy Day";

H.J. Res. 177. Joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day"; and

H.J. Res. 280. Joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week."

At 3:19 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3489. An act to reauthorize the Export Administration Act of 1979, and for other purposes; and

H.J. Res. 175. Joint resolution to designate the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week."

The message also announced that the bill of the Senate (S. 320) entitled the "Omnibus Export Amendments of 1991", in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of the House and that such bill is respectfully returned to the Senate.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 1046. An act to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans;

H.R. 2686. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes;

H.J. Res. 281. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic; and

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. BYRD].

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3489. An act to reauthorize the Export Administration Act of 1979, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2088. A communication from the Director of the United States Information Agency, transmitting, a draft of proposed legislation to transfer the au pair program from the United States Information Agency to the Department of Justice; to the Committee on Foreign Relations.

EC-2089. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report providing information concerning Calendar Authorization Act, Fiscal Years 1988 and 1989, P.L. 100-204, Section 701(b)(2)(F); to the Committtee on Foreign Relations.

EC-2090. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the Baltic States related to the Treaty on Conventional Armed Forces in Europe (CFE Treaty) agreed in the Joint Consultative Group in Vienna on October 18, 1991, by the twenty-two signatories of the CFE Treaty; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Select Committee on Indian Affairs, with amendments:

S. 1287. A bill to amend the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (Rept. No. 102-199).

By Mr. PELL, from the Committee on Foreign Relations, with an amendment:

S. Res. 198. A resolution amending Senate Resolution 62 of the One Hundred Second Congress to authorize the Committee on Foreign Relations to exercise certain investigatory powers in connection with its inquiry into the release of the United States hostages in Iran (Rept. No. 102-200).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 1903. A bill to require the Secretary of Agriculture to take such action as may be necessary to prevent the inadvertent introduction of brown tree snakes into other areas of the United States from Guam, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KASTEN:

S. 1904. A bill to amend title XI of the Higher Education Act of 1965 to provide assistance to institutions of higher education to enable such institutions to support programs that are designed to address urban campus and community crime issues; to the Committee on Labor and Human Resources.

By Mr. DECONCINI:

S. 1905. A bill to amend the Internal Revenue Code of 1986 to reduce certain aviation related excise taxes; to the Committee on Finance.

By Mr. PELL (by request):

S. 1906. A bill to authorize the sale to the Republic of Korea of obsolete ammunition from War Reserve Stocks; to the Committee on Foreign Relations.

By Mr. LAUTENBERG:

S. 1907. A bill to establish national centers for plastics recycling research and development and to establish a national clearinghouse on plastics recycling; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG:

S. 1908. A bill to require a study on the potential for increased recycling of automobile components in the United States and the steps needed to increase such spending; to the Committee on Environment and Public Works.

By Mr. MOYNIHAN:

S. 1909. A bill to liberalize the social security retirement earnings test for individuals who have attained normal retirement age, and to modify the taxation of social security benefits; to the Committee on Finance.

By Mr. LEAHY:

S. 1910. A bill to permit the Secretary of Agriculture to use funds of the Commodity Credit Corporation during the initial 90-day period of each of fiscal years 1992 through 1995 to purchase, process, and distribute additional commodities under the emergency food assistance program and certain hunger prevention programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 1911. A bill to amend the Internal Revenue Code of 1986 to require foreign insurance companies to use same year tax return data in calculating minimum effectively connected net investment income, to provide for a carryover account, and to allow an election to use an individualized company yield; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GORE (for himself and Mr. PELL):

S. Res. 213. A resolution expressing the sense of the Senate regarding United States policy toward Yugoslavia; to the Committee on Foreign Relations.

By Mr. DOLE:

S. Res. 214. A resolution to correct the engrossment of S. 1745; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KASTEN (for himself and Mr. KOHL):

S. 1904. A bill to amend title XI of the Higher Education Act of 1965 to provide assistance to institutions of higher education to enable such institutions to support programs that are designed to address urban campus and community crime issues; to the Committee on Labor and Human Resources.

CAMPUS-COMMUNITY CRIME INTERVENTION PROGRAM

• Mr. KASTEN. Mr. President, I am introducing legislation today that will establish a program of Federal support for urban institutions of higher education as they grapple with crime on their campuses and in the surrounding communities.

Unfortunately, violent crime in America's cities has touched the lives of too many Americans. It is no coincidence that as economic conditions have deteriorated in recent years—in cities from Boston to Los Angeles to Washington, DC—crime rates have escalated to critical proportions.

Last year, in Washington, DC, we in the Congress were reminded daily of the number of violent crimes occurring within the city's boundaries. The city's residents watched in horror as the city's annual murder rate reached a new all time high. The media renamed the city the "Murder Capital of the United States."

In my home State of Wisconsin, the homicide rate in the city of Milwaukee increased 42 percent between 1989 and 1990.

The upsurge in violent crime in America's cities has had a serious impact on the Nation's universities, particularly those in the inner cities. In the past, these schools prided themselves on their ability to offer incoming students access to the many socially and culturally rich experiences of a metropolitan environment.

Today, those benefits are overshadowed by the dark specter of criminal activity on and near campus. Increasingly, America's college students are afraid to explore the intellectual and cultural wealth of our cities, because the risk to their personal safety simply has become too great.

According to the recently published findings of a 1990 survey conducted by Towson State University, one-third of all university students in the United States will be the victim of a crime at sometime during their university experience. In addition, according to USA Today's most recent poll, the best predictor of crime is the size of the town: The most prone to violence is a school with less than 10,000 students in a city of more than 500,000 people; the safest is a school with 10,000 to 20,000 students in a city of under 100,000.

In my home State, Marquette University in Milwaukee has experienced five tragic reminders of the increasing economic deterioration and criminal activity in America's urban communities. In the past 6 years, five Marquette students were killed in criminal incidents.

While none of those killings occurred on the Marquette campus, they all occurred in the community surrounding the campus, where many Marquette students live in rental housing.

The latest, the January 14 murder of Mario Gonzalez, a 22-year-old senior in Marquette's engineering school occurred outside an off-campus Marquette fraternity house. Mario was just months away from earning the first college diploma in his family of immigrants from Mexico City. He was shot to death by a 15-year-old boy who apparently wanted the portable stereo given to him for Christmas.

Marquette and most other American universities have recognized that information alone will not solve this growing problem. Marquette has realized that in order for the Nation's urban universities to survive to perform their educational functions, they must enter into partnership with their neighborhoods and communities. These partnerships will halt the economic deterioration of those communities and reduce the incidence of criminal activity on and near their campuses. They must address the root causes of crime, not simply report on its occurrence. Marquette has stepped forward with a partnership plan to do just this.

Marquette's University/Neighborhood Partnership Program, a campus security and community development demonstration program, represents a creative, productive approach to this important problem. It utilizes Marquette's significant academic, human, and financial resources to address not only the symptoms but also the root causes of urban crime: poverty, illiteracy, unemployment, drug and alcohol abuse, and skyrocketing school dropout and teenage pregnancy rates.

I am confident that the Marquette Plan will have a dramatic and positive affect not only on Marquette's campus and in its community, but also as a demonstration of the role that institutions of higher education can and must play as partners in their communities. It will have important applications on urban campuses and communities across the Nation.

The legislation will provide support for the Marquette Plan, as well as similar programs at a number of other institutions. To achieve this end, the bill requires the Secretary of Education to provide annual grants of $4 million to each institution meeting the terms and conditions of the application for a period of 5 years. This level of funding, combined with a significant commitment of resources from both the community and the university, will be enough to make a difference.

Mr. President, I ask unanimous consent that a copy of the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1904

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REVISION OF TITLE XI.

Title XI of the Higher Education Act of 1965 (20 U.S.C. 1136 et seq.) is amended—

(1) by redesignating part C as part D;

(2) by redesignating sections 1121, 1122 and 1123 as sections 1131, 1132 and 1133, respectively; and

(3) by adding after part B the following new part:

"PART C—CAMPUS-COMMUNITY CRIME INTERVENTION PROGRAM

"SEC. 1121. FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds that—

"(1) crime rates are accelerating rapidly in cities across the United States, and many of those cities experienced unprecedented rates of homicide in 1990;

"(2) urban institutions of higher education suffer disproportionately from the increasing rates of criminal activity on and near their campuses, and have begun to have difficulty guaranteeing the safety of their students, faculty, administrators, and employees;

"(3) the implementation of the Student Right-To-Know and Campus Security Act of 1991 will provide students and parents with valuable information about crime on and near urban campuses, but will not impact the frequency or severity of that activity and will have a disproportionately adverse impact on student recruitment and retention efforts at urban institutions of higher education; and

"(4) if significant progress is to be made in addressing campus and community crime problems on and near United States' urban institutions of higher education and the root causes of those problems such as poverty, unemployment, illiteracy, drug and alcohol abuse, and increasing school dropout and teenage pregnancy rates, then those institutions must play a significant role as partners with local governments, business and industry, and community organizations in achieving such progress.

"(b) PURPOSE.—It is the purpose of this part to provide support enabling institutions of higher education to work in partnership with local governments, business and industry, and community organizations, to devise and implement solutions to severe problems of urban campus and community crime, and the root causes of such problems.

"SEC. 1122. PROGRAM AUTHORIZED.

"(a) IN GENERAL.—The Secretary is authorized to award grants to and enter into cooperative agreements with institutions of higher education to enable such institutions to design and implement programs that address pressing and severe crime problems in urban institutions of higher education and the surrounding community, including the root causes of those problems such as poverty, unemployment, illiteracy, drug and alcohol abuse, and increasing school dropout and teenage pregnancy rates.

"(b) DISTRIBUTION AND NUMBER.—The Secretary shall award grants and enter into cooperative agreements under this part to institutions of higher education in a manner that—

"(1) achieves a regionally equitable distribution of such grants; and

"(2) serves 8 urban institutions of higher education with documented campus and community crime problems.

"(c) DURATION.—Each grant awarded or cooperative agreement entered into under this part shall be awarded for a period of 5 years.

"(d) ANNUAL AMOUNT.—The Secretary shall not make a payment pursuant to a grant or cooperative agreement under this part in any fiscal year which exceeds $4,000,000.

"SEC. 1123. APPLICATION FOR CAMPUS-COMMUNITY CRIME INTERVENTION GRANTS.

"(a) APPLICATION.—

"(1) IN GENERAL.—Each institution of higher education seeking assistance under this part shall submit to the Secretary an application at such time, in such form, and containing or accompanied by such information and assurances as the Secretary may require by regulation.

"(2) CONTENTS.—The application submitted pursuant to paragraph (1) shall—

"(A) describe the activities and services for which assistance is sought, including not only enhanced security and safety awareness measures but also coordinated programs for adult literacy, school dropout prevention, legal and housing aid, family counseling, employment skills training, and economic development and community stabilization;

"(B) describe the manner and extent to which such programs will efficiently utilize the academic, financial, and human resources of the institution;

"(C) include information on the community to be served and its existing needs, the method by which the institution plans to measure the success of such activities and services in addressing such needs, and the institution's plans for reporting such information to the Secretary and disseminating such information to urban institutions of higher education nationwide; and

"(D) document that the institution of higher education has coordinated its program to serve an urban institution of higher education and the surrounding community with the following entities associated with such urban institution:

"(i) A local government.

"(ii) A business or other employer.

"(iii) A community service organization.

"(3) SELECTION PROCEDURES.—The Secretary shall, by regulation, develop a formal procedure for the submission of applications under this part and shall publish in the Federal Register an announcement of such procedure and the availability of funds under this part.

"SEC. 1124. ALLOWABLE ACTIVITIES.

"Funds made available under this part may be used for research on, or planning and implementation of, resource exchanges, technology transfers, technical training, the delivery of services, or technical assistance in the following areas:

"(1) Urban campus and community crime prevention, detection, and intervention.

"(2) Security awareness training for students, faculty, administrators, and other employees on and near urban institutions of higher education, as well as families, children and the elderly who reside in urban communities.

"(3) Educational outreach, including adult literacy and school dropout prevention programs.

"(4) Community services, including legal and housing aid, employment skills training, and drug and alcohol abuse and family counseling.

"(5) Neighborhood development activities, including physical improvements to the urban institution of higher education and the surrounding community, the improvement of area housing stock and the encouragement of long-term, single-family residence in the area, and, in cooperation with area business leaders, the support of economic growth and development to further stabilize the community.

"SEC. 1125. COMMUNITY-CAMPUS CRIME INTERVENTION DEMONSTRATION PROGRAM.

"(a) PROGRAM AUTHORIZED.—

"(1) IN GENERAL.—The Secretary is authorized to award grants to or enter into cooperative agreements with institutions of higher education to enable such institutions to support programs demonstrating to urban institutions of higher education across the Nation the role that such institutions can play as partners in their communities to address pressing and severe crime problems and such problems' root causes such as poverty, unemployment, illiteracy, drug and alcohol abuse, and increasing school dropout and teenage pregnancy rates.

"(2) NUMBER.—The Secretary shall award or enter into 8 grants or contracts in accordance with this section.

"(b) APPLICATION.—

"(1) IN GENERAL.—Each institution of higher education seeking assistance under this section shall submit to the Secretary an application at such time, in such form, and containing or accompanied by such information and assurances as the Secretary may require by regulation.

"(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall contain—

"(A) a description of a well-documented and thoroughly analyzed problem of on- or near-campus crime that is representative of the problems faced by urban institutions of higher education nationally;

"(B) a well-defined plan for developing solutions to such problem that will be replicable by institutions of higher education in cities across the Nation; and

"(C) an established position in the community to be served of cooperation and leadership on the issues of campus and community crime, educational outreach, community service, and neighborhood development.

"(c) AUTHORIZED ACTIVITIES.—Funds under this part may be used for research on, or planning and implementation of, resource exchanges, technology transfers, technical training, the delivery of services, or technical assistance in the following areas:

"(1) Urban campus and community crime prevention, detection, and intervention.

"(2) Security awareness training for students, faculty, administrators, and other employees on and near urban institutions of higher education, as well as families, children and the elderly in urban communities.

"(3) Educational outreach, including adult literacy and school dropout prevention programs.

"(4) Community services, including legal and housing aid, employment skills training, and drug and alcohol abuse and family counseling.

"(5) Neighborhood development activities, including physical improvements to the urban campus and community, the improvement of area housing stock and the encouragement of long-term, single-family residence in the area, and, in cooperation with area business leaders, the support of economic growth and development to further stabilize the community.".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 1132 of the Higher Education Act of 1965 (as redesignated in section 1(2)) is amended—

(1) by striking "There" and inserting "(a) PARTS A AND B.—There"; and

(2) by adding at the end the following new subsection:

"(b) PART C.—There are authorized to be appropriated $32,000,000 for fiscal year 1993

and each of the 4 succeeding fiscal years to carry out part C.".●

By Mr. DECONCINI:

S. 1905. A bill to amend the Internal Revenue Code of 1986 to reduce certain aviation related excise taxes; to the Committee on Finance.

REPEAL IN INCREASE OF AVIATION EXCISE TAXES

● Mr. DECONCINI. Mr. President, last year Congress passed the 1990 Omnibus Reconciliation Act. In this act, the excise tax on airline passengers tickets was increased by 25 percent, from 8 to 10 percent. This tax was ill timed and should be repealed without delay.

We are all aware that tax increases during a recessionary period contribute to stagnation of the economy and delay recovery. This 25-percent increase in the airline ticket tax has proven particularly damaging for the airline industry. Since the beginning of 1991, Eastern Airlines has been liquidated, and Pan Am and Midway have been lost as viable domestic competitors. In addition, several other airlines are experiencing serious financial difficulties. Continental and America West have filed for chapter 11 bankruptcy. In addition, USAir and TWA are experiencing serious financial problems.

The gulf war had a disastrous effect on the airline industry. Because of the threat of war and instability that accompanies those fears, the price of oil spiraled upward. Not only did prices of oil go up, passenger traffic dramatically decreased.

During the second quarter of 1990, the last quarter before the gulf crisis, the airline industry experienced a healthy profit of $560 million. In the third quarter of 1990, the industry got its first sample of the misfortunes of the war; it registered a $210 million loss. However that loss was minor compared to the fourth quarter of 1990 and the first quarter of 1991. In those two quarters respectively, the airline industry lost $3.7 billion and $1.37 billion.

The increase in the world price of oil was especially damaging to the airlines. Increases in airline fuel were greater than the overall oil price rise. In July 1990, before Iraq invaded Kuwait, airline fuel sold at 57.4 cents a gallon. By October and November of last year, airline fuel prices had doubled to $1.14 a gallon, reaching their peak. Airline fuel prices have yet to drop to their prewar levels.

Concomitantly, the volume of airline passengers decreased significantly in the United States once the war began. The fear of terrorism due to the gulf war resulted in massive cutbacks in both business and pleasure travel. The war, coupled with the onset of the recession, have prevented a return to profitability.

The airline industry's economic well-being is particularly sensitive to both wars and economic downturns. As chance would have it, both of these events transpired in the past year. At the same time, we in our wisdom imposed an additional 2 percent tax on the industry.

It is time, Mr. President, to admit our mistake and repeal last year's increase. Our economy cannot break out of its recessionary doldrums if major industries are restrained from economic recovery.

Today I am introducing legislation to repeal last year's increase in the airline passenger ticket tax and I ask unanimous consent that the bill be printed in the RECORD. This is the first of many proposals I intend to offer with an eye toward bringing economic recovery to different segments of our economy.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1905

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DECREASE IN RATES ON TRANSPORTATION.

(a) IN GENERAL.—Subsections (a) and (b) section 4261 of the Internal Revenue Code of 1986 (relating to imposition of tax) are each amended by striking "10 percent" and inserting "8 percent".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transportation beginning after December 1, 1991, but not to amounts paid on or before such date.●

By Mr. PELL (by request):

S. 1906. A bill to authorize the sale to the Republic of Korea of obsolete ammunition from War Reserve Stocks; to the Committee on Foreign Relations.

SALE OF CERTAIN OBSOLETE AMMUNITION TO KOREA

● Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to authorize the sale to the Republic of Korea of obsolete ammunition from war reserve stocks.

This proposed legislation has been requested by the Department of Defense, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the general counsel of the Department of Defense to the President of the Senate, which was received on October 15, 1991.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY FOR THE SALE TO KOREA OF OBSOLETE AMMUNITION FROM WAR RESERVE STOCKS

Notwithstanding section 514 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321h), or any other provision of law, the Secretary of Defense is authorized to sell to the Republic of Korea, at a price negotiated by the Secretary, all or any part of obsolete ammunition intended for use as reserve stocks for Korea and located in a stockpile in the Republic of Korea on the date of the enactment of this Act. The obsolete ammunition shall be sold for not less than its salvage value, minus the costs of salvage.

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, DC, October 7, 1991.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is proposed legislation "To authorize the sale to the Republic of Korea of obsolete ammunition from War Reserve Stocks."

This proposal is part of the Department of Defense legislative program for the 102d Congress. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to authorize the sale to the Republic of Korea of certain ammunition in the War Reserve Stock for Allies (WRSA) stockpile located in the Republic of Korea at a price negotiated by the Secretary of Defense.

Since 1972, the United States has maintained a stockpile of WRSA ammunition in the Republic of Korea (ROK). The purpose of the stockpile is to provide a vital supply of ammunition that could be used by the U.S. armed forces in the event of an attack by North Korea. Also, because the stockpile is owned by the United States, it could be made readily available to the ROK forces by international agreement in the event of an urgent need related to the defense of the Republic of Korea. Both the national defense interests of the Republic of Korea and the strategic interests of the United States have been served by the arrangement.

Over the years, the U.S. force structure has changed substantially. Many weapons used by U.S. forces at the time the WRSA stockpile was established have been replaced with weapons incompatible with some of the stockpiled ammunition. The ROK armed forces, however, due to high replacement costs and the adequacy of the weapons for the type of military operations that might be conducted on the Korean peninsula in the event of an attack by North Korea, continue to use weapons that can make use of this ammunition.

Because the ammunition in the WRSA stockpile is obsolete for U.S. forces, the current arrangement is no longer in the United States interest. Although U.S. interests are served by the presence of the ammunition in the Republic of Korea, so long as it remains compatible with the weapons used by ROK forces, United States ownership results in increasing costs for the maintenance and accountability of ammunition which is obsolete to our needs.

To resolve this unsatisfactory arrangement, the Department of the Army desires to sell the subject ammunition to the Republic of Korea. However, section 514 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321h) requires that the value of such transfer be charged against funds authorized under foreign military assistance legislation or against the limitations specified in such legislation. Section 514 states that value means the "acquisition cost plus crating, packing, handling, and transportation costs." The acquisition cost of the subject ammunition is approximately $152 million. Because of the cost, the Republic of Korea has not sought transfer of the WRSA ammunition. From the standpoint of the Republic of Korea, leaving the ammunition under U.S. ownership is an acceptable solution.

This legislative proposal would permit a one-time transfer of the subject ammunition in Korea to the Republic of Korea at a price negotiated by the Secretary of Defense, but not less than the ammunition's salvage value. This transfer would eliminate the expenditure of funds necessary to maintain and account for ammunition that cannot be used by U.S. forces. It would enable the Republic of Korea to use the subject ammunition for training and other purposes. Further it would free up much needed storage space for other requirements.

Other options have been fully considered but are not feasible. Although the ammunition could be demilitarized in the Republic of Korea, that would result in a sacrifice of the value the subject ammunition now has and could adversely affect our relations with the Republic of Korea. The ammunition could be demilitarized in the United States, but would involve the same disadvantages in demilitarizing the ammunition overseas with the additional problems and costs associated with transporting the ammunition to the United States. With legislative relief from statutory restrictions, the ammunition could be excessed and sold to a third country at a negotiated price. No potential buyer has been identified for this option and again, significant costs would be incurred in transporting the ammunition. None of these options would serve the strategic interests of the United States in protecting the sovereignty of the Republic of Korea.

The effect of this draft bill on the deficit would be:

FISCAL YEARS

[In millions of dollars]

	1991	1992	1993	1994	1995	1991–95
Receipts	$0	$0	$0	$1.77	$0	$1.77

The Omnibus Budget Reconciliation Act requires that all revenue and direct spending legislation meet a pay-as-you-go requirement. That is, no such bill should result in an increase in the deficit; and if it does, it must trigger a sequester if it is not fully offset. This proposal would increase receipts. Considered alone, it meets the pay-as-you-go requirement of Omnibus Budget Reconciliation.

Sincerely,

TERRENCE O'DONNELL.●

By Mr. LAUTENBERG:

S. 1907. A bill to establish national centers for plastics recycling research and development and to establish a national clearinghouse on plastics recycling; to the Committee on Environment and Public Works.

NATIONAL PLASTICS RECYCLING RESEARCH AND DEVELOPMENT ACT OF 1991

● Mr. LAUTENBERG. Mr. President, today I am introducing the National Plastics Recycling Research and Development Act of 1991. This bill will establish three centers for plastics research to help the Nation increase recycling of plastics. The bill was introduced in the House by Congressman TORRICELLI. I commend him for his initiative.

Mr. President, it's no secret that we face a solid waste crisis. We're generating 180 million tons of garbage a year, roughly double the amount from 1960. At the same time we are running out of landfill capacity.

Plastics are a rapidly growing segment of our garbage problem. In 1988, 14.4 million tons of plastic entered the municipal solid waste stream, an increase from 0.4 million tons in 1960. EPA expects plastics entering the waste stream will increase to 25.7 million tons by 2010. Plastics now make up 9 percent of the garbage which is discarded, up from 0.5 percent in 1960.

But the United States recycles only a small portion of this plastic, only 0.2 million tons or roughly 1 percent of the plastic waste generated. Plastic soft drink bottles are the only plastic product which is recycled in any significant amount. The plastics industry has established a goal of recycling 25 percent of the plastic bottles and containers entering the solid waste stream by 1995.

If we are going to see an increase in recycling of plastics, we're going to need additional research to address the technical and economic problems in collecting, sorting, reclaiming and marketing recycled plastics.

The most important problem revolves around the mixing of different types of plastics. Some use of plastics includes different resins. Mixed plastics can be processed only into relatively low-value items. Even those products which use one type of resin must be separated from products made with other types of resin.

Much of the existing research on plastics recycling is being conducted by the Center for Plastics Recycling Research at Rutgers University. This facility, which has been designated as a National University/Industry Cooperative Research Program by the National Science Foundation, is developing ways to recycle plastics at the highest level of economic value and with the greatest environmental benefits. Just a few weeks ago, the center developed an automated system for sorting virtually any plastic resin in the solid waste stream. It is essential that we foster these research efforts if we are going to increase our recycling of plastics and reduce the amount of garbage which must be disposed.

The National Plastics Recycling Research and Development Act of 1991 would require EPA to establish three national plastics recycling research and development centers. These centers would conduct research on:

Promoting increased recycling of plastics products and materials which are not currently recycled in significant amounts; developing improved methods for collecting, sorting, and reclaiming plastics; and new commercial applications for recycled plastic products and ways to expand commercial markets for recycled plastic products.

EPA would provide 50 percent of the funding for these centers.

The bill also requires EPA to establish a National Clearinghouse on Plastic Recycling at one of the recycling centers. The clearinghouse would disseminate information on issues related to plastics recycling.

Mr. President, I urge my colleagues to support this legislation and I ask unanimous consent that a copy of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1907

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act shall be cited as the "National Plastics Recycling Research and Development Act of 1991".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) In 1988, 14.4 million tons of plastic entered the municipal solid waste stream in the United States.

(2) The United States recycles less than 5 percent of post-consumer plastic discards.

(3) Improved collection and separation of plastics, including solutions to problems caused by the amount of space taken up by plastic wastes and the variety of plastics found in post-consumer waste, would lead to increased plastics recycling in the United States.

(4) Plastics recycling success stories must be disseminated widely in order to avoid duplicative research.

(5) There is a need for a coordinated Federal plastics recycling research effort to concentrate research on the key barriers to increased plastics recycling and to increase awareness among potential users of the progress being made in plastics recycling technologies.

(6) The mission of a coordinated Federal plastics recycling research effort should be to establish the technology data base necessary to allow the eventual recycling and reclamation of all waste plastic materials in the solid waste stream to their highest level of economic value, and to transfer the technology to the public domain.

SEC. 3. NATIONAL CENTERS FOR PLASTICS RECYCLING.

(a) ESTABLISHMENT OF CENTERS.—The Administrator of the Environmental Protection Agency, in consultation and collaboration with the Secretary of Commerce, shall establish 3 National Plastics Recycling Research and Development Centers at institutions of higher education.

(b) TOPICS OF RESEARCH.—The research activities conducted by the Centers shall include, but not be limited to, the following:

(1) A study to determine the plastic products and materials present in large amounts in the solid waste stream but not currently recycled in significant amounts and research into how to promote increased recycling of those products.

(2) Research into the development of improved methods for collecting, sorting, and reclaiming plastics.

(3) Research into new commercial applications for recycled plastic products and ways to expand commercial markets for recycled plastic products.

(4) Research into the development of plastics recycling methods and systems which will save resources through the preservation of the chemical energy content of recycled plastic waste products and materials.

(c) GRANTS.—The Administrator shall make a grant to each Center in the amount of 50 percent of the funds required by such institution to conduct its assigned activities, with the remaining funds being provided by non-Federal sources (such as the State in which the Center is located, the institution of higher education involved, and the private sector).

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the purposes of this section $5,000,000 for fiscal year 1992 and for each of the next four fiscal years.

SEC. 4. NATIONAL CLEARINGHOUSE ON PLASTICS RECYCLING.

(a) ESTABLISHMENT.—The Administrator of the Environmental Protection Agency, shall establish and operate a clearinghouse to be known as the National Clearinghouse on Plastics Recycling. The Clearinghouse shall be located at one of the National Plastics Recycling Research and Development Centers established under section 3.

(b) FUNCTION.—The National Clearinghouse on Plastics Recycling shall gather, catalog, and disseminate information on issues and activities related to recycling, including information on—

(1) Current and prospective technologies for collecting, sorting, and reclaiming plastics;

(2) the development and marketing of products made from recycled plastics; and

(3) model plastics recycling programs for cities and towns.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the purposes of this section $2,000,000 for fiscal year 1992 and $1,000,000 for each of the next four fiscal years.•

By Mr. LAUTENBERG:

S. 1908. A bill to require a study on the potential for increased recycling of automobile components in the United States and the steps needed to increase such recycling; to the Committee on Environment and Public Works.

AUTOMOBILE RECYCLING STUDY ACT

• Mr. LAUTENBERG. Mr. President, today I am introducing the Automobile Recycling Study Act of 1991. It would establish a process to remove obstacles to the recycling of automobiles. The bill was introduced in the other body by Congressman TORRICELLI. I commend him for his initiative.

Mr. President, three growing problems threaten our ability to recycle automobiles. Unless addressed, these problems will worsen our garbage disposal problems.

Discarded automobiles currently are recycled at a very high rate. Over 9 million automobiles were recycled in 1990. Auto hulks are fed into shredders which reduce the hulk into fist sized pieces of metal. This metal is recycled. The plastic, rubber, fabric, glass and dirt in a car comes out as processing waste or fluff. Land disposal is the only present option for dealing with the fluff.

Right now, none of the nonmetallics used in automobiles are being recycled, and there is no technology currently available or economically viable even being developed. The amount of fluff from cars is growing because the amount of plastics used in cars is growing and plastic recycling has not addressed the different plastics resins mixed in the fluff.

If the nonrecoverable percentage of an automobile increases significantly, the recycling industry may be faced with disposal costs for fluff which are greater than the value of the recyclable fraction of the automobile.

A second problem facing automobile recyclers is the use of air bags containing sodium azide. Sodium azide is an explosive chemical and a poison and has been associated with threats to human health. Unexploded air bags cannot be detected in normal recycling operations.

The explosion of an undetonated air bag in equipment used to process and recycle automobile metal could cause serious injury to employees, damage equipment and expose employees and others to sodium azide.

Finally, toxic materials may be used in building an automobile which can hamper recycling efforts and threaten human health. For example, cadmium is used widely to coat certain bolts in automobiles or as a coloring medium. Cadmium is included on numerous Federal lists of toxic chemicals which threaten human health and the environment including EPA's list of 17 chemicals which it has targeted for reductions.

The Automobile Recycling Study Act would require EPA, after consultation with the automobile and recycling industries, to report to Congress on obstacles to auto recycling, methods to incorporate recyclability into the planning of new cars, amounts and types of toxic and nonrecyclable materials now used in cars and methods for engineering new plastics which would be more easily recyclable.

The bill is strongly supported by the Institute of Scrap Recycling Industries, which is the recycling industry's trade association. The institute sees this bill as a model for working with other industries to design their products for recyclability.

I urge my colleagues to support this legislation. And I ask unanimous consent that a copy of the bill, together with a copy of a letter supporting the bill from the Institute of Scrap Recycling Industries, be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1908

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act shall be cited as the "Automobile Recycling Study Act of 1991".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The United States is rapidly running out of landfill space as the volume of municipal solid waste increases, existing landfills close, and new landfills become harder to site.

(2) An average of 10,000,000 automobiles in the United States are scrapped each year.

(3) While most metal parts of automobiles currently are recycled, about 25 percent of a scrapped vehicle's weight is discarded in landfills.

(4) The use of automobile parts, which are difficult to recycle, is expected to increase from about 10 percent of a car's weight to more than 15 percent in the next two decades.

(5) Increased use of air bags in automobiles poses a threat to safe and efficient recycling due to the toxic chemicals contained in air bag systems, and an increased need for better fuel efficiency has led to greater use of materials which are not easily recyclable.

(6) In order to increase the quantity of an automobile's materials that can be recycled, automobiles should be designed with recycling in mind.

(7) Several European automakers, in part because of governmental prompting, have launched initiatives to cut waste from scrapped automobiles through more careful car design and greater use of recyclable or reusable materials.

(8) Automobile manufacturers must work in tandem with the producers of raw materials for automobiles, materials suppliers, the automotive dismantling industry, the scrap processing industry, chemical process engineers, and the recycling industry to develop a more recyclable automobile.

(9) The Federal Government has an interest in coordinating research and development and supporting efforts by automakers to develop recyclable designs for automobiles.

SEC. 3. STUDY OF AUTOMOBILE RECYCLING POTENTIAL AND GOALS.

(a) STUDY REQUIREMENT.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Transportation and the Secretary of Commerce, shall conduct a study on the potential for increased recycling of automobile components in the United States and the steps needed to increase such recycling.

(b) MATTERS TO BE STUDIED.—In carrying out the study, the Administrator shall consider, at a minimum, the following:

(1) The major obstacles to increased recycling of automobile components and how those obstacles can be overcome.

(2) Methods for incorporating recyclability into the planning, design, and manufacturing of new automobiles.

(3) Identification of toxic and nonrecyclable materials presently used in automobiles and possible substitutes for those materials.

(4) The feasibility of establishing design standards for automobiles that would result in a gradual phase-out of hazardous and nonrecyclable materials used in automobiles.

(5) Methods for engineering new plastics for use in automobiles that would be more easily recyclable.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the study required by subsection (a). The report shall contain a discussion of each matter described in subsection (b), as well as the findings and recommendations of the Administrator.

(d) ADVISORY COMMITTEE.—(1) the Administrator, in consultation with the Secretary of Transportation and the Secretary of Commerce, shall establish an advisory committee made up of representatives of the automobile manufacturing industry, the recycling industry, automotive materials industries, the automotive dismantling industry, State and local governments, and nongovernmental organizations. The committee shall advise the Administrator on issues pertaining to the development of the report required by this Act.

(2) The Committee shall be subject to the provisions of the Federal Advisory Committee Act.

(3) The Administrator shall terminate the advisory committee not later than 30 days after the report required by this Act is submitted to Congress.

INSTITUTE OF SCRAP
RECYCLING INDUSTRIES, INC.,
Washington, DC, October 28, 1991.
Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The Institute of Scrap Recycling Industries, Inc. (ISRI), is pleased to learn that you will soon introduce legislation to encourage the recycling of automobiles. Over 10 million scrap automobiles are successfully recovered in the United States each and every year. Automobiles make up the largest single source of scrap steel recovery in the U.S.—which now totals 60 million tons a year.

We agree with you that automobile recycling must be optimized if we are to avoid a solid waste disaster. If products continue to be designed without regard to their ultimate recyclability, recycling cannot succeed. The continued inclusion and the forecast expansion of non-recoverable components, toxic components, and other impediments to recycling in durable goods such as automobiles could easily disrupt the delicate economics which dictate whether or not a car will be recovered from the waste stream. Clearly, to dispose of 10 million auto hulks a year would not only waste precious resources, but would also swamp existing disposal capacity.

We believe the legislation you have offered will provide a framework for the affected industries and environmental organizations, in partnership with the Federal government, to promote automobile recovery. We are pleased to see far-sighted proposals such as this one introduced, and look forward to working with you on this occasion, as we have in the past.

Kind personal regards,
HERSCHEL CUTLER,
Executive Director.●

By Mr. MOYNIHAN:

S. 1909. A bill to liberalize the Social Security retirement earnings test for individuals who have attained normal retirement age, and to modify the taxation of Social Security benefits; to the Committee on Finance.

LIBERALIZATION OF SOCIAL SECURITY EARNINGS TEST

● Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill that includes two important proposals related to the Social Security Program.

The first proposal would raise the annual exempt amount under the Social Security retirement test for those age 65 to 69 by $3,000 a year for the next 5 years. This would increase the retirement test from $9,720 this year to $24,720 by 1996. The proposal would greatly assist those senior citizens earning average wages or less who want to continue working to supplement their Social Security retirement income. By 1996 they could earn more than 2½ times as much as they can now before benefits could be reduced by their earnings.

The second proposal would provide that, for beneficiaries with sufficiently high income, the maximum portion of Social Security benefits subject to income tax would be 55 percent in 1992 and 1993, and 60 percent in 1994 and thereafter, as compared with 50 percent under present law. The bill maintains the income thresholds in present law that protect the vast majority of current recipients from having any of their benefits taxed at all. In 1990, only 16 percent of Social Security beneficiaries had income above the thresholds and had any part of their benefits taxed. This proposal would more nearly conform the tax treatment of Social Security benefits to that of private pensions, while maintaining significant tax treatment advantages for Social Security benefits, as I will explain shortly.

The two proposals embodied in this bill, or similar ones, are often proposed or discussed individually. Each proposal has an independent policy basis and can stand alone on its own merits. But they complement one another financially, since together they are budget neutral, so that it makes some sense to consider them together.

A number of proposals have been introduced in the current Congress to raise the Social Security retirement test. Under current law, if an individual files for Social Security retirement benefits and continues to work, his or her benefits may be reduced if earnings exceed a certain amount, called the annual exempt amount. For those aged 65 to 69, the annual exempt amount is $9,720 in 1991. For those under age 65, it is lower. The retirement test does not apply to those age 70 or over. Exempt amounts are indexed to rise automatically each year with the increase in average wages. If yearly earnings exceed the annual exempt amount, benefits are reduced by $1 for every $3 of excess earnings. The retirement test does not apply to unearned income.

The retirement test was a part of the original Social Security Act of 1935. Its defenders say that the purpose of the test is to provide an objective measure of retirement, and that individuals should not receive retirement benefits unless they have in fact retired. They also point out that repeal of the retirement test would cost about $5 billion a year in extra benefits, which would go in disproportionate share to wealthy senior citizens who continue, for example, to practice law or sit on corporate boards.

Critics say that the retirement test may have made sense in the 1930's as a means of encouraging retirement of older workers to make room for younger workers, but that the structure of the current work force makes the retirement test obsolete. They also say that the test serves as a serious work disincentive for the elderly, and unfairly penalizes those seniors who want to continue their working lives.

These are reasonable arguments on both sides, which explains why efforts to liberalize the retirement test—efforts that I have supported—have proceeded incrementally. For example, in the Social Security Amendments of 1983 we provided for changing the benefit offset for persons aged 65 to 69 from a $1 benefit loss for every $2 of earnings over the exempt amount, to $1 for every $3. This modification became effective last year.

In 1983 we also provided for gradually increasing the delayed retirement credit to an actuarially fair level. Under this provision, monthly benefits are increased by a certain percentage for each year of delay in receipt of retirement benefits from age 65 to 69. Thus, persons who want to continue to work past age 65 can delay filing for benefits and later be compensated for the foregone benefits. In the 1983 amendments, we provided for gradually raising the delayed retirement credit from 3 percent to 8 percent a year, over the period 1990–2009, so as to make it more actuarially compensatory.

The present proposal would raise the retirement test exempt amounts for those age 65 to 69 by $3,000 a year for the next 5 years, from the current $9,720 to $24,720 in 1996. Seniors could thus earn more than 2½ times as much in 1996, as they can now before benefits could be affected by their earnings. A significant number of senior citizens who continue to work past age 65 but earn less than $24,720 a year would no longer be affected by the retirement test at all. This would clearly be a big help to those seniors earning average wages or less who want to keep working to supplement their Social Security retirement income.

The other part of the bill would provide that, for beneficiaries with sufficiently high income, the maximum portion of Social Security benefits subject to income tax would be 55 percent in 1992 and 1993, and 60 percent in 1994 and thereafter, as compared with 50 percent under present law. The bill would maintain the income thresholds in current law that protect the vast majority of recipients from having any of their benefits taxed at all.

Presently, up to one-half of Social Security benefits may be counted as taxable income for beneficiaries with income over certain threshold amounts. Specifically, if the sum of adjusted gross income, tax-exempt interest income, and one-half of Social Security benefits exceeds the applicable threshold, then the lesser of (a) one-half of benefits, or (b) one-half of the excess, must be counted as taxable income. The thresholds are $25,000 for single persons, and $32,000 for couples filing jointly. Currently, only 16 percent of Social Security recipients have income above the thresholds and pay Federal income tax on any part of their benefits. Revenues from the taxation of benefits are deposited in the Social Security trust funds.

The current provision for the taxation of benefits was adopted in the Social Security Amendments of 1983, and became effective in 1984. Prior to 1984, benefits were not subject to income tax, but the issue had been considered from time to time. For example, the 1979 Social Security Advisory Council reviewed the matter and stated as follows:

> The [original] tax treatment of Social Security was established at a time when both Social Security benefits and income tax rates were low. In 1941 the Bureau of Internal Revenue ruled that Social Security benefits were not taxable, most probably because they were viewed as a form, of income similar to a gift or gratuity.
>
> The council believes that this ruling was wrong when made and is wrong today. The right to Social Security benefits is derived from earnings in covered employment just as is the case with private pensions.

The council found that the tax treatment of private pensions would, in theory, be an appropriate model for the tax treatment of Social Security. Private pension benefits are taxed to the extent that they exceed the employee's accumulated contributions to the plan. The council cited estimates to the effect that high wage earners—that is, maximum contributors—entering the labor force in 1979 would pay into the Social Security system no more than 17 percent of what they could be expected to get back in benefits. But the council concluded that it would be too complicated to tax Social Security on exactly the same basis as private pensions, and that rough justice would be done if half the benefit—construed as the employer contribution—were made taxable.

From time to time we still hear discussion of proposals to tax up to 85 percent of benefits. But there is a problem with such proposals, which is that they do not take account of the effect of inflation on a worker's contributions. A worker's early dollar contributions to Social Security are worth much more when paid than when received. Annual contributions of hundreds of dollars in the 1960's and 1970's may be worth thousands of dollars at retirement in the 1990's, in real terms. In recognition of this, it would seem more appropriate to tax only the value of benefits in excess of contributions adjusted for inflation, rather than the value of benefits in excess of nominal contributions.

Actuaries at the Social Security Administration estimate that, if we adjusted contributions for inflation, the accumulated indexed maximum contributions for high wage earners who retired in 1990 would account for about 35 percent of the present value of their expected benefits. This would make it appropriate to tax no more than 65 percent of the benefits of such retired workers. The Congressional Budget Office estimates that it would be appropriate to tax 60 to 70 percent of the benefits of such retired workers under this method. This bill; takes the low estimate and provides that, for beneficiaries with income over the current income thresholds, the portion of benefits subject to income tax would be no more than 55 percent in 1992 and 1993, and no more than 60 percent in 1994 and thereafter.

I wish to make clear that, under this proposal, Social Security benefits would continue to receive preferential tax treatment compared to private pensions. First, we would establish the principle of indexing Social Security contributions for inflation for tax purposes. And second, we would maintain the income thresholds that currently keep the majority of recipients from having to pay any tax whatsoever on their Social Security benefits.

The provision to liberalize the retirement test costs about $6 billion over 5 years, and the proposed modification in the taxation of benefits raises the same amount over this period. The coupling of these proposals thus achieves two independent Social Security policy objectives in a budget-neutral fashion.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1909

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIBERALIZATION OF EARNINGS TEST FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

(a) IN GENERAL.—Subparagraph (D) of section 203(f)(8) of the Social Security Act (42 U.S.C. 403(f)(8)) is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l) before the close of the taxable year involved shall be increased by $3,000 in each taxable year over the exempt amount for the previous taxable year, beginning with any taxable year beginning after 1991 and before 1997.".

(b) CONFORMING AMENDMENT.—The second sentence of section 223(d)(4) of such Act (42 U.S.C. 423(d)(4)) is amended by striking "which is applicable to individuals described in subparagraph (D) thereof" and inserting "which would be applicable to individuals who have attained retirement age (as defined in section 216(l)) without regard to any increase in such amount resulting from a law enacted in 1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to taxable years beginning after December 31, 1991.

SEC. 2. MODIFICATION IN PERCENTAGE OF SOCIAL SECURITY BENEFITS SUBJECT TO TAX.

(a) IN GENERAL.—Subsections (a) and (b) of section 86 of the Internal Revenue Code of 1986 (relating to social security and tier 1 railroad retirement benefits) are each amended by striking "one-half" each place it appears and inserting "55 percent for a taxable year starting in 1992 or 1993 and 60 percent for taxable years starting after 1993".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.•

By Mr. LEAHY:

S. 1910. A bill to permit the Secretary of Agriculture to use funds of the Commodity Credit Corporation during the initial 90-day period of each of fiscal years 1992 through 1995 to purchase, process, and distribute additional commodities under the emergency food assistance program and certain hunger prevention programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

COMMODITIES ASSISTANCE ACT OF 1991

• Mr. LEAHY. Mr. President, as I speak thousands of Vermonters, and others across the country, are suffering the loss of commodities in the TEFAP and soup kitchen programs.

Food shelves in my State have had to cancel distribution of commodities for this month, leaving many families without the food assistance that is so critical during this recession.

This could all have been prevented if the administration had been willing to continue its commodity purchases as scheduled for the beginning of the fiscal year. Instead, the administration chose to balance its checkbook on the backs of working families seeking assistance from local food shelves.

This bill, the Commodities Assistance Act of 1991, ensures that the administration will not be able to play this game again. If the beginning of the fiscal year interferes with the delivery of commodities to the TEFAP and the soup kitchen programs, the Secretary of Agriculture must use funds from the Commodity Credit Corporation to continue delivery of these commodities.

Let me point out that this bill does not increase spending. It only ensures that there is no delay in spending that would occur anyway.

This legislation means that no Vermonters, or any other American families, will have to go without basic food supplies for months because the administration is busy counting its pennies.•

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 1911. A bill to amend the Internal Revenue Code of 1986 to require foreign insurance companies to use same year tax return data in calculating minimum effectively connected net investment income, to provide for a carryover account, and to allow an election to use an individualized company yield; to the Committee on Finance.

TAXATION OF CERTAIN FOREIGN COMPANIES

• Mr. RIEGLE. Mr. President, today I am introducing, along with Mr. LEVIN, a bill to amend section 842(b) of the Internal Revenue Code which affects the taxation of foreign companies carrying on insurance businesses within the United States. This legislation is intended to correct certain technical problems and inequities in the current section 842(b). Identical legislation, H.R. 3388, has been introduced in the House of Representatives by Congressman SANDER LEVIN of Michigan.

Section 842(b) was added to the Internal Revenue Code as part of the Omnibus Budget Reconciliation Act of 1987 to address a concern that foreign insurance companies were able to minimize the amount of net investment income subject to U.S. taxation. Section 842(b) sets out rules for calculations of "required U.S. assets" and "minimum effectively connected net investment income." Under section 842(b), the net investment income of a foreign insurance company that is effectively connected with the conduct of an insurance business in the United States may not be less than the required U.S. assets of the company multiplied by the domestic investment yield applicable to the company for the taxable year. Required U.S. assets is the product of the foreign insurance company's U.S. insurance liabilities and the domestic asset/liability percentage. Once this minimum amount of effectively connected net investment income is calculated, the insurance company pays tax under the regime set out in subchapter L of the Internal Revenue Code, but using the greater of this minimum amount or the company's actual amount of effectively connected net investment income as the amount of its net investment income.

The amending legislation does not change the fundamental concept set out in the 1987 amendments but simply corrects certain technical problems and inequities. The amending legislation modifies current section 842(b) in three mechanical ways. In addition, the amending legislation allows a foreign insurance company to elect to incorporate its own U.S. dollar-denominated assets' yield in the calculation of the minimum effectively connected net investment income. During the markup of last year's reconciliation bill, a proposal similar to this legislation was included in a list of 28 tax proposals that had been reviewed by the Joint Committee on Taxation.•

ADDITIONAL COSPONSORS

S. 243

At the request of Mr. DOLE, his name was withdrawn as a cosponsor of S. 243, a bill to revise and extend the Older Americans Act of 1965, and for other purposes.

S. 474

At the request of Mr. DECONCINI, the names of the Senator from Montana [Mr. BURNS], the Senator from Alaska [Mr. STEVENS], the Senator from New Hampshire [Mr. SMITH], the Senator from Idaho [Mr. SYMMS], the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. JEFFORDS], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 474, a bill to prohibit sports gambling under State law.

S. 1423

At the request of Mr. DODD, the names of the Senator from Maine [Mr. COHEN] and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 1423, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

S. 1555

At the request of Mr. RIEGLE, the names of the Senator from Pennsylvania [Mr. WOFFORD] and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of S. 1555, a bill to provide for disaster assistance to fruit and vegetable producers, and for other purposes.

S. 1577

At the request of Mr. METZENBAUM, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Utah [Mr. HATCH], the Senator from Iowa [Mr. HARKIN], the Senator from Washington [Mr. ADAMS], the Senator from Maryland [Ms. MIKULSKI], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Connecticut [Mr. DODD], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Rhode Island [Mr. PELL], the Senator from Illinois [Mr. SIMON], the Senator from Vermont [Mr. JEFFORDS], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Indiana [Mr. COATS], the Senator from South Carolina [Mr. THURMOND], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1577, a bill to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the Act, and for other purposes.

S. 1677

At the request of Mr. DASCHLE, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Arizona [Mr. DECONCINI], the Senator from Massachusetts [Mr. KERRY], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 1677, a bill to amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the Medicaid Program, and for other purposes.

S. 1738

At the request of Mr. DASCHLE, the names of the Senator from Missouri [Mr. BOND], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Tennessee [Mr. GORE] were added as cosponsors of S. 1738, a bill to prohibit imports into the United States of meat products from the European Community until certain unfair trade barriers are removed, and for other purposes.

S. 1741

At the request of Mr. ROBB, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 1741, a bill to provide for approval of a license for telephone communications between the United States and Vietnam.

S. 1786

At the request of Mr. BAUCUS, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1786, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment.

S. 1810

At the request of Mr. DURENBERGER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the Medicare Program, and for other purposes.

S. 1855

At the request of Mr. GRASSLEY, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 1855, a bill to provide for greater accountability for Federal Government foreign travel.

SENATE JOINT RESOLUTION 194

At the request of Mr. GRAMM, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of Senate Joint Resolution 194, a joint resolution to designate 1992 as the "Year of the Gulf of Mexico."

SENATE JOINT RESOLUTION 197

At the request of Mr. COCHRAN, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Joint Resolution 197, a joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day."

SENATE JOINT RESOLUTION 198

At the request of Mr. AKAKA, the names of the Senator from Utah [Mr. GARN] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Joint Resolution 198, a joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

SENATE JOINT RESOLUTION 211

At the request of Mr. D'AMATO, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of Senate Joint Resolution 211, a joint resolution designating October 1991 as "Italian-American Heritage and Culture Month."

SENATE CONCURRENT RESOLUTION 17

At the request of Mr. HATCH, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Kentucky [Mr. FORD], the Senator from Hawaii [Mr. INOUYE], the Senator from Alabama [Mr. HEFLIN], the Senator from North Dakota [Mr. CONRAD], the Senator from Illinois [Mr. DIXON], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of Senate Concurrent Resolution 17, a concurrent resolution expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration.

SENATE CONCURRENT RESOLUTION 65

At the request of Mr. DECONCINI, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of Senate Concurrent Resolution 65, a concurrent resolution to express the sense of the Congress that the President should recognize Ukraine's independence.

SENATE RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Resolution 70, a resolution limiting expenditures in campaigns for election to the Senate, setting standards of conduct for those seeking election or re-election to the U.S. Senate and providing sanctions against those elected who bring discredit to the U.S. Senate by violating the established standards of conduct.

SENATE RESOLUTION 116

At the request of Mr. ROTH, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of Senate Resolution 116, a resolution to express the sense of the Senate in support of Taiwan's membership in the General Agreement on Tariffs and Trade.

SENATE RESOLUTION 213—RELATIVE TO UNITED STATES POLICY TOWARD YUGOSLAVIA

Mr. GORE (for himself and Mr. PELL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 213

Whereas attacks against the people and territory of the Republic of Croatia by armed forces responding to direction from the Republic of Serbia are continuing despite numerous cease-fire agreements negotiated under the auspices of the European Community;

Whereas losses of life, property, and displacement of persons have already reached grievous levels and are continuing to rise as the result of continued violation of cease-fires;

Whereas attacks against the Republic of Croatia represent an effort to change post-war borders by force; and

Whereas it is a fundamental principle essential for the future peace of Europe that internationally recognized borders not be changed by force: Now, therefore, be it

Resolved, That it is the sense of the Senate that unless the authorities and military forces now conducting military operations against the Republic of Croatia immediately comply with the terms of the cease-fire previously negotiated by the European Community, the policy of the United States should be—

(1) to recognize the republics of Slovenia and Croatia as independent states;

(2) to freeze all assets in the United States in which the Republic of Serbia has any right, title, or interest, and to break off all commerce or any form of assistance or cooperation between the United States and the Republic of Serbia;

(3) to offer humanitarian assistance to the Republic of Croatia;

(4) to place the Republic of Serbia on notice that continued military action will cause the United States to place this issue on the agenda of the United Nations Security Council as an international act of aggression, and to call for appropriate sanctions; and

(5) to require of Croatian authorities a clear and binding commitment to protect the rights of Serbs living within the boundaries of Croatia, and to demand a formal commitment on their part to accept international inspection and, if necessary, arbitration, if needed to protect those rights.

Mr. GORE. Mr. President, last Friday, in a speech given here in this Chamber, I discussed events in the former nation of Yugoslavia and called for a change in American policy, promising on that occasion to return with a resolution describing in detail what ought to be done.

I submit a resolution, cosponsored by the distinguished chairman of the Senate Foreign Relations Committee, Senator PELL, in keeping with the commitment that I made last week.

Essentially, this resolution calls upon the Republic of Serbia to comply finally with the cease-fire proposals put forward by the European Community. If the Republic of Serbia will not comply, the resolution states that American policy will then change.

Specifically, the United States should extend formal recognition to the Republics of Slovenia and Croatia. The continuation of attacks against the territory of Croatia would be, unambiguously, an international matter which could then be dealt with by appropriate unilateral United States action, such as humanitarian aid for Croatia, and bring action in the U.N. Security Council.

It is important to realize that the European Community is approaching the same line of action now at great speed. They have exhausted their patience with the Republic of Serbia, and they have set a fixed deadline of November 7, for compliance with the cease-fire.

Failing that, the European Community, as of October 28, has announced that it is taking this matter to the Security Council under chapter VII of the U.N. Charter, which, as Iraq has reason to know, has teeth.

In order to do this, however, it will be important to have converted the issue to an international, rather than an internal, dispute. I believe that the Europeans, having held off for some time, are now prepared to recognize Croatia if the November 7 deadline is not met by the Republic of Serbia. There is no guarantee of this, but the logic of the situation points straight at that outcome.

Mr. President, I will circulate this resolution to all Members of the Senate over the weekend, and then hope that it will pick up increasing numbers of cosponsors as a signal to the leaders of the Republic of Serbia that the world is about to turn against them in a manner that will cost them dearly, especially if they do not immediately stop their attack on the people and territory of Croatia.

I am by no means unaware of the historic reasons for fears entertained by the Serbs, as regards their treatment in Croatia.

The international community must demand that these rights be respected under terms that can be verified, and my resolution makes that point.

But Belgrade is not menaced by aircraft and tanks from Croatia, while cities of Croatia have been strafed, shelled, and blockaded by forces operating under Serbian control. That simply has to stop. The realities of the situation have to be faced. There can no longer be a unified Yugoslav State. Its people no longer want there to be a unified Yugoslavia. The sooner we recognize that Yugoslavia exists no longer, the sooner we will be able to define an American policy that makes sense.

As I said last week, in my own family, the older brother of my father, who was in his late teens at the time, was pulled out of the hills of middle Tennessee and sent to a conflict we now refer to as World War I, because the blood feuds in the Balkans spilled over into world politics and led to that great conflagration.

Now that we are on the verge of a new era in which we can grasp the potential for peaceful resolution of differences that would once have led to warfare, now that the European Community is struggling toward its own integration into an unified political and economic entity, once again blood feuds and ancient hatreds in the Balkans are threatening to spill over into the rest of the global community.

How many potential conflicts are there in parts of the former Soviet Union, for example, in other places in Eastern Europe, where the jury is still out on whether they will be able to resolve those disputes without resorting to bloodshed and violence? What happens in the Balkans and the reaction of the world community to the events unfolding in the Balkans will have grave implications for all of those other potential disputes.

Mr. President, I strongly believe that the United States must speak out, must change its policy, and must join with the European Community in pushing toward a resolution of this dangerous violence now unfolding in the Republic of Croatia.

The people of the former nation of Yugoslavia are determined to have their version of independence in the various republics I have mentioned here. Some of them have paid for that desire in blood. And their determination must be respected and recognized as irreversible.

The PRESIDING OFFICER. The Chair inquires of the Senator from Tennessee, has he submitted the resolution referenced in his talk today to the desk?

Mr. GORE. Mr. President, I ask unanimous consent that a statement by the European Community dated a few days ago on this matter, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT ON THE SITUATION IN YUGOSLAVIA

The European Community and its Member States have studied the results of the seventh plenary session of the Conference on Yugoslavia, which was held at The Hague on October 25, 1991 under the chairmanship of Lord Carrington.

They have concluded that five Republics have reiterated their receptiveness to cooperation based on a draft agreement submitted by Lord Carrington and the chair. They have also taken note that one Republic continued to reserve judgment.

The European Community and its Member States have always been convinced that only a global treaty based on the principles reflected in the draft agreement presented at the Conference on Yugoslavia would ensure a peaceful solution to the present crisis. In particular the principles relating to unilateral non-modification of borders, the protection of human rights and the rights of national and ethnic groups constitute a universal, objective model leaving no place for compromises.

The European Community and its Member States are dismayed at the repeated violations of these principles. Within this context they are referring to the position adopted by the Serbians at the Conference, to the coup d'état perpetrated by four members of the Federal Directorship (Présidance), together with their announcement of a plan to establish a "Greater Serbia." The statements and actions of the Federal Army, condemned in the October 28, 1991 Statement on Dubrovnik, should likewise be viewed in this context.

These principles should be accepted unequivocally by all the parties concerned, so that the Conference on Yugoslavia will be able to achieve positive results. This involves removal of any Serbian reservations, and, if such is the case at the next plenary session on November 5, the Conference will be able to continue in its present form based on the draft agreement.

In the contrary event, the Conference will continue with the Republics disposed to cooperate with a view to arriving, at the conclusion of a negotiating process conducted in good faith, as was agreed at Haarsuilens on October 6, at a political solution as regards recognition of those Republics who desire same. Those parties who fail to cooperate must then expect that restrictive measures will be taken against them by the European Community and its Member States.

The European Community and its Member States will request the Security Council to consider without delay the question of new restrictive measures based on Chapter VII. The Ministers will examine the question of restrictive measures at their November 4 meeting with a view to making a decision at a subsequent meeting to take place within the week, based on the results of the next plenary Conference session on November 5.

Taking into account the importance of the November 5 meeting, the Conference Coordinator, Ambassador Wijnsendtz, will meet with the parties concerned in Yugoslavia in a last attempt to reconciling persisting differences of opinion. Lord Carrington will be informing the Secretary General of the United Nations this very day. In the meantime, the Conference work groups will continue to develop and refine the agreement with a view towards a global solution.

The European Community and its Member States appeal to the CSCE (Conference on Security and Cooperation in Europe) as well as the Security Council of the United Nations to continue to show their support of their efforts to come to a peaceful solution of the Yugoslavian crisis and to denounce the role played by the Federal Army, as well as the coup détat perpetrated by four of the members of the Federal Directorship.

SENATE RESOLUTION 214—TO CORRECT THE ENGROSSMENT OF S. 1745

Mr. DOLE submitted the following resolution; which was ordered to be held at the desk by unanimous consent:

S. RES. 214

Resolved, That in the engrossment of S. 1745, the Secretary of the Senate is directed to make the following corrections:

(1) TO CONFORM DEFINITION OF COMPLAINING PARTY TO PERMIT FEDERAL GOVERNMENT EMPLOYEES TO OBTAIN DAMAGES FOR ADA VIOLATIONS.—In section 102, in section (d)(1)(B) of proposed section 1977A, insert "a person who may bring an action or proceeding under section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1))," before "or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)".

(2) TO CONFORM DEFINITION OF DISCRIMINATORY PRACTICE.—In section 102, in section (d)(2) of proposed section 1977A, strike "disparate treatment" and insert in lieu thereof "discrimination".

(3) AGREED CHANGES TO GLASS CEILING AMENDMENT.—

(a) At the end of section 202(a)(6), insert "and" after ";"

(b) At the end of section 202(a)(7), strike "; and" and insert "."

(c) Strike section 202(a)(8).

(4) RESTORE MURKOWSKI AMENDMENT.—Strike section 402 and insert in lieu thereof the following new section:

SEC. 402. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise specifically provided, this Act and the amendment made by this Act shall take effect upon enactment.

(4) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983.

(5) TO CORRECT A TECHNICAL ERROR IN SECTION 109(B).—In section 109(b), in proposed section 702(b), strike "joint management committee" and insert in lieu thereof "joint labor-management committee".

(6) TO CORRECT TECHNICAL ERRORS IN SECTION 103.—In section 103, strike ", 1981A" and insert in lieu thereof ", 1977A"; and strike "1981" and insert in lieu thereof "1977".

AMENDMENTS SUBMITTED

NATIONAL ENERGY SECURITY ACT

COCHRAN (AND LOTT) AMENDMENT NO. 1302

Mr. LOTT (for Mr. COCHRAN, for himself and Mr. LOTT) proposed an amendment to the bill (S. 1220) to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes, as follows:

On page 489, line 3, of the pending measure insert "(a.)" after "SEC. 184."

On page 489, line 10, add the following subsection:

"(b) As a necessary part of enlarging the Strategic Petroleum Reserve to one billion barrels, the President shall direct the Secretary of Energy to establish, consistent with the requirements of the National Environmental Policy Act (42 U.S.C. 4341), and to maintain (with funds appropriated for the Strategic Petroleum Reserve for fiscal year 1991 and fiscal years beginning thereafter) a Strategic Petroleum Reserve site in the State of Mississippi at the Richton Saltdome in Perry County, Mississippi of at least 150 million barrels of such oil or product.

NATIONAL JOB SKILLS WEEK

GORE AMENDMENT NO. 1303

Mr. MITCHELL (for Mr. GORE) proposed an amendment to the joint resolution (S.J. Res. 164) designating the weeks of October 27, 1991, through November 2, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week", as follows:

On page 2, lines 3 and 4, strike "October 27, 1991, through November 2, 1991," and insert in lieu thereof: "December 8, 1991, through December 14, 1991,".

NOTICE OF HEARINGS

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. LEVIN. Mr. President, I wish to announce that the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, will hold a hearing on "Buying 'Green': Federal Purchasing Practices and the Environment," on Friday, November 8, 1991, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building.

ADDITIONAL STATEMENTS

ENGLISH AS THE OFFICIAL LANGUAGE OF THE GOVERNMENT

• Mr. SHELBY. Mr. President, each fall, much of this Nation's attention is focused on our national pastime—baseball. This year has been no different. I would like to congratulate both the world champion Minnesota Twins and the National League champion Atlanta Braves on one of the most exciting world series I have ever seen. These teams, and everyone connected with them, are winners.

Baseball is uniquely American. When the World Series comes around every year, the game seems to get a grip on our national consciousness. And it is no wonder. Baseball was our first national sport. The country and the sport grew up together. Soldiers on both sides of the Civil War played baseball and the game has not changed much since its conception early in the 19th century.

In many ways, the game of baseball reflects our American culture. It says a lot about who we are. Our competitiveness, our sense of fair play, our team spirit. And now, when there is so much concern about diversity, baseball shows us it is possible to be diverse, to be individuals, to be distinct and still function as a team within the framework of unity.

However, to function effectively, players must be able to communicate.

It is the same with our country. Without a common means of communication, a shared language, the United States could not function as a united nation. As my colleagues in the Senate know, I am the sponsor of S. 434, the Language of Government Act. This bill would make English our official language of Government preserving the greatest common bond we share in this diverse Nation.

The United States already has a common language, a common history, and a common culture. The Language of Government Act fosters unity through common communication. It is with English that we have dissolved mistrust and fear and drawn up understandings and agreements that allow our society to function. We, as elected representatives, should understand better than anyone the importance of communication.

In the U.S. Congress, we come from different backgrounds. Yet despite our differences we work together. We debate, we argue, and we compromise in a language we all understand. Through this communication, we express our beliefs and translate them into legislation. Without communication, there would be no means of sharing our various traditions and heritages. We would be separated by language barriers, confused, and disorganized.

Mr. President, the Language of Government Act would establish a national language policy where today there is none. It would make English the official language of our legislative, administrative, executive, and judicial branches of Government. Despite some misconceptions, S. 434 would not affect the private use of language in the home, the church, the community, or private business. The purpose of this legislation is not to dampen the interest or enthusiasm that our citizens hold for other languages—I encourage the study of foreign languages. It would not affect the teaching and learning of other languages. In fact, since our Government functions in English now, very little would actually change if this bill were passed. But by establishing a language policy now, the United States can avoid a situation similar to the one that is currently strangling the Canadian Government.

The issue of official language is communication. Within the framework of unity we are free to develop our individual talents and skills, and cultivate our diversity. As in baseball, we may play our individual positions with style and flair and still function as a team, united and strong. That, after all, is our Nation's heritage. And with passage of the Language of Government Act, it will be our future.•

REPUBLICANS COULD GOVERN

• Mr. KASTEN. Mr. President, in a recent article, columnist David Broder reported on the effects of the Senate Republican Conference Task Force on Economic Growth and Job Creation and the House Wednesday Group to develop new strategies to cure poverty and recession.

Contrary to conventional wisdom, Republicans are not the party of the status quo—we are the true party of progress and change. We believe that the power of incentives, free enterprise, and voluntarism can be harnessed to solve some of America's most difficult economic and social problems.

I highly recommend Mr. Broder's article entitled "Republicans Could Govern" to the Senate and I ask that it be printed in the RECORD:

The article follows:

[From the Washington Post, Oct. 27, 1991]

REPUBLICANS COULD GOVERN

(By David S. Broder)

Unless you are of a certain age and were really tuned into politics in the early '50s, the possibility of a Republican Congress is as unfamiliar to you as a balanced budget. The last time there really was a Republican Congress was back in 1953–54. Democrats yielded the Senate majority to the GOP briefly between 1981 and 1987, but they have held control of the House of Representatives ever since 1955.

Anyone under 50 can be forgiven for thinking that the only thing Republicans can do in the legislative branch is oppose Democratic initiatives, support presidential vetoes and defend administration officials and appointees before congressional committees. That's all they've ever seen.

The Republicans are type-cast as naysayers, obstructionists and lackeys of the White House. No wonder, then, that the voters' reflex is to keep electing Democrats to the House and Senate.

For a few hours the other morning, however, it was possible to glimpse what life might be like in a Republican Congress. It was nothing like the stereotype.

Over in a Senate committee room, the Republican Conference Task Force on Economic Growth and Job Creation was holding a mock hearing on tax proposals to stimulate the lethargic economy and ward off an early return to recession.

In a small office in the Capitol, the House Wednesday Group, an informal caucus of issue-oriented Republicans, was holding a press briefing on a report embodying two years of their work on new approaches to cracking the problem of persistent poverty.

My purpose is not to ballyhoo their specific proposals, although many of them make sense. Any open-minded person who was in either of those rooms would come away knowing that he had been listening to intelligent, serious people actively engaged in figuring out answers to major problems—not throwing sand in the gears of government.

The two Republican congressmen who presented the anti-poverty initiative were Reps. Vin Weber of Minnesota and Bill Gradison of Ohio. Their colleagues and congressional reporters know them to be among the brightest and most hard-working members of the House. But after 26 years of combined service, they are virtually unknown to the country, because neither has ever chaired a committee hearing, managed a major piece of legislation on the House floor or directed an investigation. Those are the perks of the majority party, and for 37 years, the voters have denied those opportunities and responsibilities to the Republicans.

The key figures in the Senate mock-hearing were somewhat more familiar: Senators Phil Gramm of Texas and Bob Kasten of Wisconsin, both key players in the Reaganomics revolution of the early 1980s; House Minority Whip Newt Gingrich of Georgia, a star of C-SPAN; and Secretary of Housing and Urban Development Jack Kemp, their ally inside the Bush administration.

Yet for these folks, too, there is immense frustration in the fact that when domestic policy is set, the action flows between the White House and the congressional Democrats. Congressional Republicans and their ideas are often left on the sideline.

Divided government has many costs, ranging from the protracted impasse of last year's budget summit to the ugly spectacle of the recent Clarence Thomas hearings. But the largest cost is that the country never gets to have more than a fraction of the intellectual and political resources of either political party applied to the problems of the nation.

An important objective of both the Wednesday Group and the Senate GOP Task

Force was to persuade the Bush White House to take a look at new approaches to the stubborn problems of poverty and the sluggish economy. Were President Bush dealing with a Republican Congress, he would have no choice but to consider such views—and every incentive to weigh seriously what congressional Republicans were suggesting.

For these would be the people who would finally shape whatever legislation was passed. And as his ticketmates in the next election, they would share a common interest in seeing that the nations problems we solved.

None of that is true when Republicans are in the minority and Democrats control Congress. The president need not heed advice from congressional Republicans, because they cannot pass any bills. The Democrats can pass bills, but they have no motivation to help make the president a success.

So the system ends up frustrating everyone in it—and serving the country badly. That's why the most critical question for 1992 is not whether the Democrats regain the White House or the Republicans win Congress. The critical objective is to see one party or the other do both—and give this country a government again, not just another set of warring politicians.

Democrats could provide that government if they produce a credible replacement for Bush from their field of presidential candidates. But what I saw on Capitol Hill suggests that Republicans are ready to govern—if given the chance.

EMERGENCY DROUGHT AID

• Mr. SEYMOUR. Mr. President, I am pleased with the passage of the emergency drought bill to meet the critical situation that is plaguing my State of California and the many other Western States.

California is nearing the end of it's fifth and most severe drought year. Loss to agricultural production, decrease in urban supplies, and damage to fish and wildlife resources have been devastating. Another year of drought similar to 1991 will certainly cripple my State economically and cause environmental damage that cannot be repaired for years to come.

There will be no quick fixes short of massive rainfall. The U.S. Bureau of Reclamation has already announced that if the State receives normal rainfall they will most likely deliver only one-half the regular water supply to Federal agricultural customers.

People that I have talked to during my tours of California understand that the only way to survive this drought is to join hands through cooperation and coordination. This can only be accomplished with conservation, sharing, and most important, compromise. The needs of our communities and industries must be carefully balanced with the needs of our environmental resources.

Much of the difficulty in dealing with the drought situation has been the lack of authority and resources available to the Secretary of the Interior to join with the State agencies and others in taking the needed relief actions. The bill as passed will grant to the Secretary authority to implement drought relief measures in consultation with the States, join the State agencies in forming water banks to share the supplies, and allow the use of Federal facilities for non-Federal purposes.

Some aspects of this legislation are particular important:

First, it provides for low-cost loans to build and management water facilities, and to purchase of water to offset the impacts of the drought.

Second, defers payments by Federal contractors to the government, without penalty or additional interest charges, for water not received due to the drought.

Third, gives the Secretary permanent authority to work cooperatively with the involved States in dealing with drought impacts.

Fourth, authorizes the Secretary to use water reservoirs and canals to store and convey non-Federal water to be used for municipal, industrial, and fish and wildlife purposes.

In addition to authorizing the immediate implementation of several much needed provisions, this act directs the Secretary to have in place within 2 years drought contingency plans. These plans will be developed in cooperation with the State, local, and private agencies that manage the water resources and will be consistent with State law. The actions to be carried out under this legislation will greatly enhance the Federal Government's effectiveness in assisting during the current drought and in dealing with future droughts when they occur.

I am pleased with passage of this most important legislation. It is not just California legislation, but reaches into those many States that are suffering now or may suffer in the future from drought.•

HONORING POINTS OF LIGHT

• Mr. KASTEN. Mr. President, all Americans need to take the battle against drug abuse seriously. Illegal drugs are destroying the minds of our young people—wrecking their future and the future of our country.

I am proud to report that there is a group of Wisconsinites who are setting a terrific example for the rest of us. Aid Association for Lutherans [AAL] has established a program called Get Involved Before Your Kids Do. This program teaches parents effective strategies for communicating the dangers of drugs to their children.

Deserving particular praise are Mary Harp-Jirschele, AAL director of public service/information, and Glenn Ocock, vice president of fraternal benefits. They represented AAL at a ceremony in which President Bush honored the AAL program as one of his "thousand points of lights."

This program is indeed a point of light we can all be proud of—lighting the way toward a drug-free future for a generation of young people at risk.

The news article follows:

AAL CITED AS POINT OF LIGHT

Aid Association for Lutherans has once again been honored by President Bush for its drug abuse abatement efforts.

Two representatives from AAL attended a celebration Monday at Disney World in Orlando, Fla., where the Bushes paid tribute to the individuals and organizations selected in the president's "Points of Light" program.

In January 1990 he named the AAL program "Get Involved Before Your Kids Do," as his 49th daily Point of Light.

Representing AAL were Mary Harp-Jirschele, director of public service/information, and Glenn Ocock, vice president of fraternal benefits. Both worked on the "Get Involved" program.

Harp-Jirschele conducted a public relations workshop this week for Points of Light representatives with substance abuse interests.

Monday's luncheon with the president and an evening celebration at the Magic Kingdom were taped for subsequent telecasting on the three major national networks and the Disney Channel.

AAL's "Get Involved" is a two-part program designed to teach parents of elementary and junior high youths how to communicate with their children about the dangers of drugs.

Since its inception in 1987, over 610,000 people have attended workshops in more than 5,000 communities. AAL has invested over $2.5 million in program expenses and volunteers have donated 341,985 hours in its presentation.•

ENTERTAINMENT INDUSTRIES' "MAN OF THE YEAR" FRANK MANCUSO

• Mr. D'AMATO. Mr. President, I rise today to pay tribute to Frank G. Mancuso, whose long and outstanding career with Paramount Pictures was climaxed by his tenure as chairman and chief executive officer of the company. This month Mr. Mancuso is to be honored as "Man of the Year" by the Film Group of UJA-Federation's Entertainment Industries Division.

Frank G. Mancuso's outstanding qualities of enlightened leadership and innovation brought unprecedented success to Paramount Pictures, the company with which he has been associated for 30 years. His great success is readily available in the areas of motion pictures, television, and home video. Mr. Mancuso's other associations and affiliations are not as well known but are worthy of commendation. They include: outstanding board member of the Academy of Motion Picture Arts and Sciences; the Motion Picture Association of America; Variety Clubs International; the Will Rogers Memorial Fund, affiliated with the New York - Cornell Medical Center; Sundance Institute; the Museum of Broadcasting and the Motion Picture Pioneers; as well as the American Film Industries Second Decade Council of which he is the chairman.

Born in Buffalo, NY, Frank Mancuso has been a New Yorker all of his life except for two very short stints, one in Canada and one in Los Angeles. He entered the motion picture business in 1959 as buyer and operations supervisor for Basil Enterprises. He stayed for 4 years, then started with Paramount Pictures in Buffalo as a booker. From there, Mr. Mancuso quickly advanced from branch manager to vice president and general sales manager of Paramount in Canada, then he became western division manager in Los Angeles, then general sales manager in New York, then executive vice president of distribution and marketing, then president of Paramount's Motion Picture Group, and finally chairman and chief executive officer of Paramount Pictures; all in 20 years.

His business accomplishments are great, his approach is philanthropic, and we might say that Frank G. Mancuso is the salt of the earth. He has done much for the motion picture industry and for New York State. It is no wonder that the UJA-Federation has selected him as "Man of the Year." Frank, I salute you and wish you much health and happiness in the days to come.•

MORRIS SIEGEL INDUCTED INTO THE WASHINGTON HALL OF STARS

• Mr. DODD. Mr. President, on November 3 the city of Washington, DC, will unveil another monument. This time, happily, it will honor a living legend. Morris "Mo" Siegel will be inducted into the Hall of Stars and his name will be permanently displayed on a banner at RFK Stadium alongside most of the prominent sports figures he has covered in his 44 years here.

Mr. President, Morrie Siegel is a sports journalist. Actually, he would probably be insulted to be referred to as a sports journalist. He is a newspaperman who covers sports and he is a good one. I am one who has always thought the best newspaper writing is to be found in the sports pages of our Nation's newspapers. And I have always believed that Morrie ranks with the best of all writers.

Morrie's writing is lean and spare. Like Hemingway, he writes in clear simple prose without needless embellishments. He reports the facts and tells the truth as he knows it to be. His sources are numerous and impeccable. He comes from the old school of reporting that says get the facts accurately and get them early into your story. He decries the fact that sports fans today have to read six or seven paragraphs into a column before they find out who won the game.

Morrie began writing sports while he was a student at Emory University. He wrote for the Atlanta Constitution and then moved to Richmond where he worked for the Times-Dispatch. He then moved north to Washington where he worked for all of the city's great newspapers, the Daily News, the Washington Star, and the Washington Post.

When I was a teenager here I remember seeing him on television on channel 9. He was not your usual television sportscaster. But his unruly hair, his disheveled appearance and his gutteral growling voice quickly captured your attention. He looked and sounded like a classic newspaperman.

But to see Siegel at his best is to be with him at lunch at his pal Duke Ziebert's Restaurant or at dinner at Bobby Abbo's Roma Restaurant. There he will regale you with stories of all your sports heroes. DiMaggio, Robinson, Williams, Mantle, Lombardi, Jurgensen, Kilmer, are all brought to real life by Morrie's recounting their prodigous feats both on the playing field and off.

His marvelous ability to tell a story is not limited to sports figures. He will have you in tears laughing at the tales of celebrities, writers, saloon keepers, bookmakers, bettors, lawyers, Supreme Court Justices, and yes, Mr. President, even Presidents and politicians. Like his writing, his stories are witty, caustic, and cynical, but never mean-spirited.

This is a man who reveres his profession and believes in it passionately. He is also concerned that today's sportscasters are sacrificing precision and substance for image.

I remember watching a football game with Morrie and hearing the announcer say, "For those of you who might have just tuned in, the score is Washington 17, the New York Giants 14." He turned to me and said, "Let me ask you, CHRIS. Would the score have been any different if you had not just tuned in?" I remember this as just one small example of his passion for truth, precision, and clarity.

A few weeks ago Morrie received the Vincent T. Lombardi Symbol of Courage Award from the Cancer Center at Georgetown University. This prestigious award is given annually to a "person in the world of sports who has suffered cancer, and possesses those qualities which made Coach Lombardi an inspiration to all people—dependability, courage, honor, and discipline." On hand at the ceremony were his ex-wife Myra MacPherson, a noted writer herself, their children, Michael, a press secretary in the House of Representatives, and Leah, who works in television news in Charlotte, NC.

Thankfully, he is winning the battle with cancer, and those of us who appreciate his talent can still read his columns and see him on television. And just as important, we can still have lunch and dinner with him.•

REQUESTING A HALT IN THE FORCED RETURN OF HAITIAN NATIONALS IN THE UNITED STATES

• Mr. D'AMATO. Mr. President, I rise to cosponsor Senate Concurrent Resolution 71, calling on the Attorney General of the United States to temporarily halt the forced return of Haitian nationals in the United States during the present crisis in Haiti.

Having overthrown the constitutional democracy of Haiti, the military junta has brazenly and illegally displaced the rightful President, Jean-Bertrand-Aristide. This flagrant act of disregard for the wishes of the Haitian people must be reversed and President Aristide returned to power. Haitians have lived long enough under the boot of totalitarianism.

In October, when I met President Aristide, I expressed my support for his reinstatement to power in Haiti. He is an outspoken reformist who is deeply committed to democracy. He needs and deserves our support. The Haitian people also need and deserve our support. We cannot now force Haitian nationals wishing to remain in the United States to return to life under harsh totalitarian rule. Let us do what is right and just and allow Haitian nationals to remain here.

I supported Senate Resolution 186 calling for the immediate reinstatement of the legitimate government of President Jean-Bertrand-Aristide and that all appropriate actions be taken to restore democratic government in Haiti. Again, I chose to stand with the Haitian people. They need our help and they deserve our help. Therefore, I support Senate Concurrent Resolution 71 protecting Haitian nationals who do not want to return to dictatorship.

Let us do what is right and allow them to remain here in freedom. Their forced return to Haiti would be a recipe for their death.•

THE 60TH ANNIVERSARY OF REV. MSGR. JOHN LODGE McHUGH

• Mr. D'AMATO. Mr. President, I rise today to recognize an outstanding clergyman, Msgr. John Lodge McHugh of Buffalo, NY. The monsignor is celebrating his 60th anniversary of his ordination to the Roman Catholic priesthood.

Monsignor McHugh is the founding pastor of St. Amelia Parish in Tonawanda, NY. The parish includes a large parish school, a rectory, a convent, and a church. The monsignor served as pastor at St. Amelia's from the beginning of the parish in the fall of 1953 until his retirement on July 31, 1982. He still resides at St. Amelia's and assists in the parish duties today.

John Lodge McHugh was born on Sunday, St. Patrick's Day, 1907, in St. Louis, MO. When John was 6 years old the family moved to Buffalo, NY. He attended Canisius High School and Canisius College. He received a bachelor of arts degree in June of 1928. In September that year, he entered Our Lady of Angels Seminary at Niagara University and received a master of arts degree.

On December 19, 1931, John Lodge McHugh was ordained to the holy priesthood by Bishop William Turner, D.D. His first assignment was St. Joseph's Cathedral in Buffalo. He was chaplain to the Knights of Columbus and the Columbian Squires and organized the Catholic Lawyers Guild. On December 11, 1947, he was appointed secretary to Bishop John F. O'Hara, CSC. On January 20, 1948, he became private chamberlain to His Holiness, Pope Pius XII, where he stayed until his appointment to St. Amelia's on September 5, 1953.

Rev. Msgr. John Lodge McHugh has had a long, distinguished, career in the priesthood and I commend him.●

THE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of Calendar Nos. 287, 288, 289, 290, 291, 293, 294, 295, 296, 297, 298, and 299, that the resolutions be read a third time and passed; that the motion to reconsider be laid upon the table, en bloc; that the preambles be agreed to, and that the amendment to the preamble, where appropriate, be agreed to; further that any statements relating to these calendar items appear at the appropriate place in the RECORD, and that the consideration of these items appear individually in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

KENTUCKY BICENTENNIAL DAY

The joint resolution (S.J. Res. 61) to designate June 1, 1992, as "Kentucky Bicentennial Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 61

Whereas on June 1, 1792, President Washington signed a proclamation admitting Kentucky as the Fifteenth State of the Union, separating Kentucky from the Commonwealth of Virginia;

Whereas for two centuries, the people of Kentucky have made substantial contributions to the economic and social wellbeing of the United States of America;

Whereas the State of Kentucky has become a national leader in agriculture, natural resource industries, and manufacturing;

Whereas beautiful mountains, lakes, trees, and farms of the State of Kentucky are appreciated and preserved, and the quality of life is unsurpassed;

Whereas the history of Kentucky is associated with the history of westward expansion as Daniel Boone and others opened the frontier by clearing the Wilderness Road through the Appalachian Mountains;

Whereas Kentucky is the birthplace of both Union President Abraham Lincoln and Confederate President Jefferson Davis, thus symbolizing the State's dualistic role in the Civil War;

Whereas Kentucky is the Nation's largest producer of coal and burley tobacco;

Whereas Kentucky is the home of Dr. Ephraim McDowell, the first physician to perform internal surgery west of the Allegheny Mountains, and whose statue now graces the United States Capitol;

Whereas Kentucky is home to the thoroughbred horse industry and the world's most celebrated horse race, the Kentucky Derby, held in Louisville;

Whereas bluegrass music originated in Kentucky, the Bluegrass State", and continues to be a favorite pastime of many Kentuckians;

Whereas Kentucky is the home of "The Great Compromiser", Henry Clay, United States Senator, Speaker of the House of Representatives, and Secretary of State, as well as the home of the twelfth United States President, Zachary Taylor, and four United States Vice Presidents, Richard M. Johnson, John Cabell Breckinridge, Adlai Stevenson, and Alben W. Barkley;

Whereas Kentucky is home to the 101st Airborne Division at Fort Campbell and the Army Armor Center and School at Fort Knox, where the world's largest gold depository is maintained; and

Whereas Kentucky, which represents the ideal in outdoor recreation and maintains one of the Nation's most outstanding State park systems, is home to the only park of its kind, the Kentucky Horse Park in Lexington: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That June 1, 1992, is designated as "Kentucky Bicentennial Day", and the President is authorized and requested to issue a proclamation calling upon the people of Kentucky and the United States to observe such day with appropriate ceremonies and activities.

NATIONAL HOME CARE WEEK

The joint resolution (S.J. Res. 81) to designate the periods commencing on December 1, 1991, and ending on December 7, 1991, and commencing on November 29, 1992, and ending on December 5, 1992, as "National Home Care Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

S.J. RES. 81

Whereas organized home care services to the elderly and disabled have existed in the United States since the last quarter of the 18th century;

Whereas home care is an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places emphasis on the dignity and independence of the individual receiving these services;

Whereas since the enactment of the Medicare home care program, which provides coverage for skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, and home health aide services, the number of home care agencies in the United States providing these services has increased from fewer than 1,275 to more than 12,000; and

Whereas many private and charitable organizations provide these and similar services to millions of individuals each year preventing, postponing, and limiting the need for them to become institutionalized to receive these services: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the periods commencing on December 1, 1991, and ending on December 7, 1991, and commencing on November 29, 1992, and ending on December 5, 1992, are designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such weeks with appropriate ceremonies and activities.

NATIONAL PHILANTHROPY DAY

The joint resolution (S.J. Res. 96) to designate November 19, 1991, as "National Philanthropy Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 96

Whereas there are more than 800,000 nonprofit philanthropic organizations in the United States;

Whereas such organizations employ more than 10,000,000 persons, including approximately 4,500,000 volunteers;

Whereas the people of the United States contributed approximately $114,000,000,000 in 1989 to support such organizations;

Whereas philanthropic organizations are responsible for enhancing the quality of life of people throughout this Nation and the world;

Whereas the people of this Nation owe a great debt to the schools, churches, museums, art and music centers, youth groups, hospitals, research institutions, community service institutions, and organizations that aid and comfort the disadvantaged, sick, and elderly; and

Whereas the people of the United States should demonstrate gratitude and support for philanthropic organizations and for the efforts, skills, and resources of the people who carry out the missions of such organizations: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 19, 1991, is designated as "National Philanthropy Day" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day with appropriate programs, ceremonies, and activities.

NATIONAL WOMEN VETERANS RECOGNITION WEEK

The joint resolution (S.J. Res. 145) designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week", was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 145

Whereas there are more than 1,200,000 women veterans in the United States representing 4.2 percent of the total veteran population;

Whereas the number of women serving in the United States Armed Forces and the number of women veterans continue to increase;

Whereas women veterans have contributed greatly to the security of the United States through honorable military service, often involving great hardship and danger;

Whereas women are performing a wider range of tasks in the United States Armed Forces, as demonstrated by the participation of women in the military actions taken in Panama and the Persian Gulf region;

Whereas the special needs of women veterans, especially in the area of health care, have often been overlooked or inadequately addressed by the Federal Government;

Whereas the lack of attention to the special needs of women veterans has discouraged or prevented many women veterans from taking full advantage of the benefits and services to which they are entitled; and

Whereas designating a week to recognize women veterans will help both to promote important gains made by women veterans and to focus attention on the special needs of women veterans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning November 10, 1991, is designated as "National Women Veterans Recognition Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate ceremonies and activities.

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I rise to urge my colleagues to give their unanimous approval to the pending matter, Senate Joint Resolution 145, a joint resolution which I authored to designate November 10 through 16, 1991, as National Women Veterans Recognition Week. The measure is substantively the same as House Joint Resolution 242, which was introduced in the House of Representatives by Representative MICHAEL BILIRAKIS on May 2, 1991.

For the past 7 years, I have sponsored legislation designating a week near Veterans Day as National Women Veterans Recognition Week. I am proud to have sponsored this legislation for so many years and am equally proud of the strong bipartisan support it has received from my colleagues in the Senate. This year's resolution is cosponsored by 32 Democrats and 21 Republicans.

Mr. President, the goals of designating a week to recognize and honor women veterans are twofold: To increase the public's awareness of the accomplishments of women in the Armed Forces and to make women veterans more aware of the many benefits available to them because of their service. Women veterans comprise approximately 4.2 percent of the total veteran population, a percentage that is growing as the percentage of women in the active military—currently at a record 12 percent—continues to rise. These women, who served with honor, skill, and dedication, are a group of veterans who have too often been underestimated, forgotten, or ignored. We must reverse this perception and recognize the historical and growing contributions of women veterans to our national defense. As demonstrated during the past year by the more than 30,000 women who have served in the Persian Gulf region, women are performing a wide range of tasks vital to the Armed Forces and are clearly an integral part of the All-Volunteer Force.

Because many women veterans are not aware of the various benefits to which they may be entitled, such as health care, educational assistance, employment services, and home loan guaranties, they often do not apply for them. We have a responsibility to inform women veterans of these benefits in order to ensure that they receive all the assistance and services to which they are entitled. We must ensure that they are provided equal and appropriate services, particularly in the area of health care, where there are important differences between the needs of men and women veterans. With reference to this issue, in September 1990, I asked the General Accounting Office to undertake a review of women veterans' access to VA health-care services and the quality of care furnished to them. This review will evaluate VA's actions to implement recommendations issued by GAO upon its completion of a 1982 study of women veterans' access to VA benefits and services. I anticipate receiving the updated report in the near future and plan to follow up on any deficiencies that may be identified.

Mr. President, the resolution designating the week of November 10 as National Women Veterans Recognition Week will continue the momentum built over the last 7 years to call attention to this important but often overlooked group of veterans. I thank my colleagues for supporting this resolution.

HIRE A VETERAN WEEK

The joint resolution (S.J. Res. 157) to designate the week beginning November 10, 1991, as "Hire a Veteran Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 157

Whereas the people of the United States have a deep appreciation and respect for the men and women who serve the United States though service in the Armed Forces;

Whereas many veterans possess special qualities and skills that make them ideal candidates for employment;

Whereas may veterans encounter difficulties in securing employment despite these special qualities and skills; and

Whereas the Department of Veterans affairs, the Department of Labor, the Office of Personnel Management, and many State and local governments administer veterans programs and have veterans employment representatives to ensure that veterans receive the services to which they are entitled and to promote employer interest in hiring veterans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning November 10, 1991, is hereby designated as "Hire a Veteran week", and the President is authorized and requested to issue a proclamation calling upon employers, labor organizations, veterans' service organizations, and Federal, State, and local governmental agencies to lend their support to the campaign to increase employment of the men and women who have served the United States through service in the Armed Forces.

NATIONAL AMYOTROPHIC LATERAL SCLEROSIS AWARENESS MONTH

The joint resolution (S.J. Res. 174) designating the month of May 1992 as "National Amyotrophic Lateral Sclerosis Awareness Month," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 174

Whereas over 300,000 people alive today will eventually die from Amyotrophic Lateral Sclerosis ("ALS"), commonly known as "Lou Gehrig's Disease", which afflicts the motor/neuron system of the human body;

Whereas at least 5,000 people will be diagnosed this year as having ALS, or an average of 13 cases per day;

Whereas there is still no known cause or cure for ALS despite the fact that the disease was discovered in 1869;

Whereas victims of this disease may lose total movement of their arms, legs, fingers, and toes, as well as the ability to speak, swallow, or breathe;

Whereas ALS patients have an average life expectancy of between 2 and 5 years after being diagnosed as having the disease;

Whereas wheelchairs, respirators, and feeding tubes are often necessary to assist those who outlive the average life expectancy;

Whereas the National Institutes of Health have found that victims of ALS are increasingly younger, with many in their 20's and 30's, and some mere teenagers;

Whereas ALS strikes people regardless of race, sex, age, or ethnicity;

Whereas the number of male victims of ALS under the age of 50 equals the number of female victims, but over the age of 50, male victims outnumber female victims by a ratio of 3 to 1;

Whereas finding the causes of, and the cure for, ALS will prevent the disease from robbing hundreds of thousands of Americans of their dignity and lives;

Whereas 1992 marks the 51st anniversary of the death of one of America's greatest baseball players, Lou Gehrig, for whom the disease was named; and

Whereas raising public awareness of this disease will facilitate the discovery of a cure: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of Ameria in Congress assembled, That the month of May 1992, is designated as "National Amyotrophic Lateral Sclerosis Awareness Month". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate programs and activities.

NATIONAL WOMEN IN AGRICULTURE DAY

The joint resolution (S.J. Res. 176) to designate March 19, 1992 as "National Women in Agriculture Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, as as follows:

S.J. RES. 176

Whereas women hold important leadership positions within the American agriculture system, a system with a level of efficiency that leads the world;

Whereas women are full working partners on the family farm;

Whereas the family farm offers the best means of ensuring the protection of our natural resources as well as guaranteeing future generations of Americans as abundant and safe supply of food; and

Whereas the public should be aware of the contributions made by women in the American agricultural system to the health and prosperity of all Americans: Now, therefore, be it

Resolved by the Senate and House Representatives of the United States of America in Congress assembled, That March 19, 1992, is designated as "National Women in Agricultural Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

GEOGRAPHY AWARENESS WEEK

The joint resolution (S.J. Res. 180) designating December 1, through 7, 1991, as "Geography Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 180

Whereas geography is the study of people, their environments, and their resources;

Whereas the United States is a truly unique Nation with diverse landscapes, bountiful resources, a distinctive multiethnic population, and a rich cultural heritage, all of which contribute to the status of the United States as a world power;

Whereas the leadership of the United States in world affairs is threatened by a lack of understanding of the locations and significance of historic changes occurring around the globe;

Whereas a knowledge of geography provides a "Window on a Changing World" and a way in which to understand events and their impact on the United States;

Whereas the United States is a Nation of worldwide involvements and influence, the responsibilities of which demand an understanding of the lands, languages, and cultures of the world;

Whereas geography today offers perspectives and information in understanding ourselves, our relationship to the Earth, and our interdependence with other peoples of the world;

Whereas the first federally funded National Assessment of Educational Progress survey revealed a "disturbing geography knowledge gap" among 12th graders in the United States;

Whereas this survey also indicated that many students did not know that the Mississippi River flows into the Gulf of Mexico, or that the Panama Canal shortens sailing time between the east and west coasts of the United States, nor could they identify Jerusalem on a regional map, or name the three oceans moving east around the globe from Africa;

Whereas departments of geography are being eliminated from institutes of higher learning in the United States, thus endangering the discipline of geography in this country;

Whereas, while geography as a distinct discipline has virtually disappeared from the curricula of schools in the United States, it is still being taught as a basic subject in other countries, including the United Kingdom, Canada, Japan, and the Soviet Union;

Whereas an ignorance of geography, foreign languages, and cultures places the United States at a disadvantage with other countries in matters of business, politics, the environment, and global events;

Whereas one-third of adults in the United States cannot name four of the sixteen North Atlantic Treaty Organization members nations, and another one-third cannot name any; and

Whereas national attention must be focused on the integral role that knowledge of world geography plays in preparing citizens of the United States for the future of an increasingly interdependent, interconnected, and rapidly changing world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 1 through 7, 1991, is designated as "Geography Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

NATIONAL RED RIBBON MONTH

The joint resolution (S.J. Res. 188) designating November 1991, as "National Red Ribbon Month," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 188

Whereas the most frequently committed crime in America is drunk driving;

Whereas each year on our Nation's highways more than forty-five thousand people lose their lives due to auto crashes, approximately half of these involving alcohol;

Whereas more than three hundred and forty-five thousand people are injured in alcohol-related crashes each year;

Whereas Mothers Against Drunk Driving (MADD) is an organization of nearly three million members and supporters across the Nation which has had a major impact on reducing death on our highways;

Whereas in November 1991 MADD will launch a major holiday public awareness compaign by asking America to "Tie One On For Safety" this holiday season; and

Whereas beginning in November MADD and other concerned groups will distribute more than ninety million red ribbons nationwide to create awareness about the dangers of drinking and driving: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 1991 is designated as "National Red Ribbon Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate activities devoted to reducing death and injury on our Nation's highways due to drinking and driving.

NATIONAL MILITARY FAMILIES RECOGNITION DAY

The joint resolution (S.J. Res. 197) acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 197

Whereas the Congress recognizes and supports the Department of Defense policies to recruit, train, equip, retain, and field a military force that is capable of preserving peace and protecting the vital interests of the United States and its allies;

Whereas the people of the United States are particularly indebted to and respectful of the family members of the more than 500,000 military personnel activated for Operation Desert Shield and Operation Desert Storm;

Whereas military families shoulder the responsibility of providing emotional support for their service members;

Whereas, in times of war and military action, military families have demonstrated their patriotism through their steadfast support and commitment to the Nation;

Whereas the emotional and mental readiness of United States military personnel around the world is tied to the well-being and satisfaction of their families;

Whereas the quality of life that the Armed Forces provide to military families is a key factor in the retention of military personnel;

Whereas the people of the United States are truly indebted to military families for facing adversities, including extended separations from their service members, frequent household moves due to reassignments, and restrictions on their employment and educational opportunities;

Whereas 74 percent of officers and 53 percent of enlisted personnel in the Armed Forces are married;

Whereas families of active duty military personnel (including individuals other than spouses or children) account for more than 2,770,000 of the more than 4,841,000 in the active duty community, and spouses and children of members of the Reserves in paid status account for more than 1,317,000 of the more than 2,346,000 in the Reserves community;

Whereas spouses, children, and other dependents living abroad with members of the Armed Forces total nearly 487,000, and these family members at times face feelings of cultural isolation and financial hardship; and

Whereas military families are devoted to the overall mission of the Department of Defense and have accepted the role of the United States as the military leader and protector of the free world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the Congress acknowledges and appreciates the commitment and devotion of present and former military families and the sacrifices that the families have made on behalf of the Nation; and

(2) November 25, 1991, is designated as "National Military Families Recognition Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate programs, ceremonies, and activities.

DUTCH-AMERICAN HERITAGE DAY

The joint resolution (S.J. Res. 206) to designate November 16, 1991, as "Dutch-American Heritage Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 206

Whereas, on November 16, 1776, the batteries at the Dutch port of St. Eustatius fired the first salute to the flag of the newly independent United States;

Whereas the firing by the Dutch of the first salute to the flag of the United States uplifted the morale and determination of the individuals who were fighting for American independence;

Whereas commemoration of Dutch-American Heritage Day provides an opportunity for approximately 8,000,000 Dutch-Americans to celebrate their Dutch roots and the extraordinary contributions their ancestors made to the political, economic, and cultural development of the United States; and

Whereas commemoration of Dutch-American Heritage Day promotes awareness by the people of the United States of the essential role performed by the Dutch people in securing American independence and in aiding the development of the United States for the past 215 years: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 16, 1991, is designated as "Dutch-American Heritage Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate programs, ceremonies, and activities.

YEAR OF THE AMERICAN INDIAN

The joint resolution (S.J. Res. 217) to authorize and request the President to proclaim 1992 as the "Year of the American Indian," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 217

Whereas American Indians are the original inhabitants of the lands that now constitute the United States of America;

Whereas American Indian governments developed the fundamental principles of freedom of speech and the separation of powers in government, and these principles form the foundation of the United States Government today;

Whereas American Indian societies exhibited a respect for the finite quality of natural resources through deep respect for the Earth, and such values continue to be widely held today;

Whereas American Indian people have served with valor in all wars that the United States has engaged in, from the Revolutionary War to the conflict in the Persian Gulf, often serving in greater numbers, proportionately, than the population of the Nation as a whole;

Whereas American Indians have made distinct and important contributions to the United States and the rest of the world in many fields, including agriculture, medicine, music, language, and art;

Whereas it is fitting that American Indians be recognized for their individual contributions to American society as artists, sculptors, musicians, authors, poets, artisans, scientists, and scholars;

Whereas the five hundredth anniversary of the arrival of Christopher Columbus to the Western Hemisphere is an especially appropriate occasion for the people of the United States to reflect on the long history of the original inhabitants of this continent and appreciate that the "discoverees" should have as much recognition as the "discoverer";

Whereas the peoples of the world will be refocusing with special interest on the significant contributions that American Indians have made to society;

Whereas the Congress believes that such recognition of their contributions will promote self-esteem, pride, and self-awareness in American Indians young and old; and

Whereas 1992 represents the first time that American Indians will have been recognized through the commemoration of a year in their honor: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1992 is designated as the "Year of the American Indian". The President is authorized and requested to issue a proclamation calling upon Federal, State, and local governments, interested groups and organizations, and the people of the United States to observe the year with appropriate programs, ceremonies, and activities.

NATIONAL JOB SKILLS WEEK

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 292, Senate Joint Resolution 164, designatiing National Job Skills Week.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 164), designating the weeks of October 27, 1991, through November 2, 1991, and October 11, 1992 through October 17, 1992, each separately, as National Job Skills Week.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

AMENDMENT NO. 1303

Mr. MITCHELL. Mr. President, I send an amendment to the desk on behalf of Senator GORE, designating National Job Skills Week, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. GORE, proposes an amendment numbered 1303.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, lines 3 and 4, strike "October 27, 1991, through November 2, 1991," and insert in lieu thereof: "December 8, 1991, through December 14, 1991,".

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Tennessee.

The amendment (No. 1303) was agreed to.

Mr. GORE. Mr. President, Senate Joint Resolution 164 designates the week of December 8 through 14, 1991, and the week of October 11, 1992, through October 17, 1992, as National Job Skills Week.

Mr. President, I would like to thank Chairman BIDEN and the Committee on the Judiciary for bringing the National Job Skills Week resolution (S.J. Res. 164) to the Senate floor and helping get it passed. I believe that technological achievements play a prominent role in advancing the United States' economy. National Job Skills Week focuses national attention on the changing needs of employers and workers. It raises the profile of private and public job-training efforts and promotes thorough examinations of promising technology and management developments. Thank you, Mr. President.

The PRESIDING OFFICER. The joint resolution will be engrossed for a third reading, deemed read a third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 164

Whereas the ability to maintain an internationally competitive and productive economy and a high standard of living depends on the development and utilization of new technologies;

Whereas new technologies require skills that are currently unavailable in the national workforce;

Whereas experts in both the public and private sectors predict that a shortage of skilled entry-level workers will exist through the remainder of this century;

Whereas young people in the United States are experiencing higher than normal unemployment rates because many of them lack the skills necessary to perform the entry-level jobs that are currently available;

Whereas these young people will continue to experience higher than normal unemployment rates unless they develop the skills necessary to perform the entry-level jobs that become available;

Whereas American workers who face dislocation due to plant closures and industrial relocation need special training and education to prepare for new jobs and new opportunities; and

Whereas a National Job Skills Week can serve to focus attention on present and future workforce needs, to encourage public and private cooperation in job training and educational efforts, and to highlight the technological changes underway in the workplace; Now, therefore be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the weeks of December 8, 1991, through December 14, 1991, and October 11, 1992, through October 17, 1992, are each separately designated as "National Job Skills Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such weeks with appropriate ceremonies and activities.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, in behalf of Senator Gore, I send a title amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

Amend the title so as to read:

"Designating the weeks of December 8, 1991, through December 14, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week".".

The PRESIDING OFFICER. The question is on agreeing to the amendment to amend the title.

The amendment was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE JOINT RESOLUTION 140—"NATIONAL PHILANTHROPY DAY"

HOUSE JOINT RESOLUTION 177—"DUTCH-AMERICAN HERITAGE DAY"

HOUSE JOINT RESOLUTION 280—"HIRE A VETERAN WEEK"

HOUSE JOINT RESOLUTION 175—"NATIONAL HOME CARE WEEK"

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed en bloc to the immediate consideration of the following joint resolutions just received from the House: House Joint Resolutions 140, 177, 280, and 175; that the resolutions be deemed to have been read a third time and passed, en bloc; that the motion to reconsider the passage of these resolutions be laid upon the table, en bloc; that the preambles be agreed to; and, further, that the consideration of these items appear separately in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (H.J. Res. 140) was deemed read a third time and passed.

The preamble was agreed to.

The joint resolution (H.J. Res. 177) was deemed read a third time and passed.

The preamble was agreed to.

The joint resolution (H.J. Res. 280) was deemed read a third time and passed.

The preamble was agreed to.

The joint resolution (H.J. Res. 175) was deemed read a third time and passed.

The preamble was agreed to.

ORDER OF JUNE 19, 1991, VITIATED

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order of June 19, 1991, relative to S. 1204 be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—PERTAINING TO CORRECTING ENGROSSMENT OF S. 1745

Mr. MITCHELL. Mr. President, I ask unanimous consent that following the disposition of the nomination of Robert Gates on Tuesday evening, November 5th, the majority leader be recognized to seek unanimous consent to correct the engrossment of S. 1745 and, if an objection is raised to granting a consent for the correction, the Senate proceed to the immediate consideration of a Senate resolution, notwithstanding the provisions of rule XXII, that has been filed at the desk by the Republican leader; that no amendments or motions be in order to the resolution; that there be 30 minutes of debate equally divided and controlled between Senators ADAMS and DOLE; and that, at the conclusion or yielding back of time, the Senate proceed to vote without any intervening action or debate on the adoption of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I send the resolution to the desk.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

Mr. MITCHELL. Mr. President, I inquire of the Republican leader if I am correct in stating that he is not in a position to give consent to proceed to S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991?

Mr. DOLE. No. I must say that personally I wish we could proceed to it, but I am not in a position to give that consent.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, in view of this, I now move to proceed to Calendar No. 245, S. 543, and send to the desk a cloture motion on the motion to proceed to S. 543.

The PRESIDING OFFICER. The clerk will read the cloture motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991:

Albert Gore,
John D. Rockefeller,
Don Riegle,
Christopher Dodd,
Richard H. Bryan,
Claiborne Pell,
Jim Sasser,
Tim Wirth,
J. Lieberman,
Harry Reid,
Thomas Daschle,
Max Baucus,
George Mitchell,
Nancy L. Kassebaum,
Pete Domenici,
Bob Dole.

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed to S. 543.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the required live quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY, NOVEMBER 4, 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11:30 a.m. on Monday, November 4; that following the prayer the Journal of proceedings be deemed approved to date; that following the time for the two leaders there be a period for morning business not to extend beyond 12 noon, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. MITCHELL. Mr. President, I remind Senators that on Monday at 12 noon, by a previous order, the Senate will turn to the consideration of the nomination of Robert Gates to be Director of the CIA, with a vote scheduled to occur on Tuesday, November 5, not prior to 2:15 p.m. but not later than 6 p.m. Therefore, Mr. President, the next rollcall vote will occur on Tuesday between 2:15 p.m. and 6 p.m.

As matters now stand, Mr. President, also for the information of Senators, immediately after that vote, we will proceed to the resolution of the distinguished Republican leader with 30 minutes, a maximum of 30 minutes of debate scheduled, to be controlled by Senator DOLE and Senator ADAMS, and that if necessary a vote will occur on that resolution. That will be on Tuesday evening. And then finally, the cloture vote on the motion to proceed to the banking reform bill which has just been filed will then occur after that vote.

So as of now we have the certainty of one vote and the potential of three votes on Tuesday: on the Gates nomination, on the resolution of the distinguished Republican leader with respect to the Wards Cove case, and on the cloture motion on the motion to proceed to the banking reform bill.

RECESS UNTIL MONDAY, NOVEMBER 4, 1991, AT 11:30 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 5:01 p.m., recessed until Monday, November 4, 1991, at 11:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 1, 1991:

DEPARTMENT OF ENERGY

THE FOLLOWING NAMED PERSONS TO BE ASSISTANT SECRETARIES OF ENERGY:

LEO P. DUFFY, OF PENNSYLVANIA, (ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT), VICE DONNA R. FITZPATRICK, RESIGNED.

JAMES G. RANDOLPH, OF OKLAHOMA, (FOSSIL ENERGY), VICE ROBERT H. GENTILE, RESIGNED.

GREGG WARD, OF VIRGNINA, (CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS), VICE JACQUELINE KNOX BROWN, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 1, 1991:

DEPARTMENT OF STATE

JILL E. KENT, OF THE DISTRICT OF COLUMBIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF STATE.

EXECUTIVE OFFICE OF THE PRESIDENT

MICHAEL H. MOSKOW, OF ILLINOIS, TO BE A DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE ON THE SENATE.

HOUSE OF REPRESENTATIVES—*Friday, November 1, 1991*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

May our talk of peace, O God, be translated to the works of peace and may our conversations about understanding and good will move to the action of conciliation between peoples and nations. You have created us as one people, gracious God, and You have given Your blessing to the peacemakers, so may we live as one human community with respect and appreciation one for another. May the kind words we speak with our lips be transposed into deeds that give each person peace in their hearts and hope for every tomorrow. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas [Mr. JOHNSON] come forward and lead the House in the Pledge of Allegiance.

Mr. JOHNSON of Texas led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment joint resolutions of the House of the following titles:

H.J. Res. 281. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic; and

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.J. 355. An act to provide emergency drought relief to the Reclamation States, and for other purposes; and

H.R. 2950. An act to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 2950) "An act to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes" and requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints from the Committee on Environment and Public Works only for matters within its jurisdiction: Mr. MOYNIHAN, Mr. BURDICK, Mr. MITCHELL, Mr. LAUTENBERG, Mr. REID, Mr. CHAFEE, Mr. SYMMS, Mr. WARNER, and Mr. DURENBERGER; from the Committee on Commerce, Science, and Transportation only for matters within its jurisdiction: Mr. HOLLINGS, Mr. EXON, Mr. BRYAN, Mr. DANFORTH, and Mr. GORTON; from the Committee on Banking, Housing, and Urban Affairs only for matters within its jurisdiction: Mr. RIEGLE, Mr. CRANSTON, Mr. SARBANES, Mr. BOND, and Mr. D'AMATO; from the Committee on Finance only for matters within its jurisdiction: Mr. BENTSEN, Mr. MOYNIHAN, Mr. BAUCUS, Mr. PACKWOOD, and Mr. DOLE; from the Committee on Governmental Affairs only for the consideration of the Uniform Relocation Act Amendment: Mr. GLENN, Mr. LEVIN, and Mr. ROTH; to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2686) "An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate numbered 1, 6, 9, 12, 16, 18, 19, 24, 26, 32, 33, 34, 37, 39, 40, 41, 52, 55, 63, 64, 65, 68, 69, 76, 86, 87, 89, 105, 108, 109, 124, 126, 127, 129, 131, 133, 137, 142, 144, 157, 163, 165, 179, 180, 185, 190, 193, 195, 196, 201, 214, 218, 219, 222, 224, and 226, to the above-entitled bill.

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate numbered 164 and 191, to the above-entitled bill.

The message also announced that the Senate recedes from its amendments numbered 130 and 167, to the above-entitled bill.

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 175, with an amendment.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S.J. Res. 133. Joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research.

The message also announced that, pursuant to Public Law 99-498, the Chair, on behalf of the President pro tempore, appoints Dr. William C. Hiss of Maine, to the Advisory Committee on Student Financial Assistance.

PERMISSION TO OFFER MODIFICATION OF AMENDMENT DURING CONSIDERATION OF H.R. 6, FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

Mr. VENTO. Mr. Speaker, I ask unanimous consent that during the consideration of the bill, H.R. 6, I be permitted to offer a modified version of my amendment which was made in order under the rule.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

Mr. WYLIE. Reserving the right to object, Mr. Speaker, and I do not object, but may I ask, does this incorporate the arrangements which we agreed to last evening as far as the opt-out amendment?

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I appreciate the gentleman yielding to me. As the gentleman is aware, I have been working with the gentleman and with the gentleman from Texas [Mr. GONZALEZ], the chairman of the Banking Committee, in an effort to reach a consensus. The proposed changes were developed after the rule was reported. They are minor changes, but significant in the sense that they represent a bipartisan agreement with regard to the opt-out amendment.

Mr. WYLIE. Has the gentleman from Nebraska [Mr. BEREUTER] been consulted?

Mr. VENTO. Mr. Speaker, if the gentleman will yield further, yes. The gentleman from Nebraska [Mr. BEREUTER] has been fully consulted, as have been numerous other authors of the amendment.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Mr. WYLIE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The text of the Vento amendment, as modified, is as follows:

Page 185, beginning on line 12, strike sections 301, 302, 303, 304, 305, and 306 and insert the following new sections (and redesignate the succeeding section and conform the table of contents accordingly):

SEC. 301. NATIONWIDE BANKING.

(a) INTERSTATE ACQUISITIONS.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended to read as follows:

"(d) INTERSTATE ACQUISITIONS AND BRANCHING.—

"(1) IN GENERAL.—Subject to paragraph (4), the Board may approve an application under this section by a bank holding company or foreign bank to acquire, directly or indirectly, any voting shares of, interest in or all or substantially all of the assets of any additional insured depository institution or bank holding company located in any State.

"(2) STATE LAW.—Subject to paragraph (4), any acquisition described in paragraph (1) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of—

"(A) the location or size of the acquiring company, foreign bank, or subsidiary of such company or foreign bank;

"(B) the number of insured depository institution subsidiaries of such company or foreign bank; or

"(C) any other factor that, directly or indirectly has the effect of prohibiting or limiting the acquisition of shares or control of an insured depository institution or bank holding company located in that State by an out-of-State bank holding company or foreign bank if such factor is not applied with similar effect in the case of acquisitions of insured depository institutions or bank holding companies located in such State by bank holding companies located in the State.

"(3) CONCENTRATION LIMITS.—The Board may not approve an application under paragraph (1) if—

"(A) the applicant controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institutions deposits of the United States, as determined under regulations of the Board; or

"(B) the applicant controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the bank to be acquired is located, as determined under regulations of the Board, except that a State may waive the applicability of this subparagraph.

Nothing in this paragraph affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies.

"(4) LIMITATIONS ON CONSOLIDATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any insured depository institution acquired after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 pursuant to paragraph (1) may not be a party to any transaction under subsection (h) before the end of the 3-year period beginning on such date of enactment.

"(B) PROVISION APPLICABLE TO CERTAIN INSTITUTIONS.—Subparagraph (A) shall not apply with respect to any insured depository institution the acquisition of which occurs after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 pursuant to an application or notice filed before such date with any appropriate Federal banking agency or State bank supervisor.

"(5) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry to the acquisition of existing banks shall apply, except that a State law which requires that the bank must have been in existence longer than 5 years shall not apply unless such law is in effect on such date of enactment.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act.

SEC. 302. INTERSTATE BRANCHING BY NATIONAL BANKS.

Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended—

(1) by redesignating subsections (d) through (h) as subsections (e) through (i), respectively; and

(2) by inserting after subsection (c) the following:

"(d) INTERSTATE BRANCHING BY NATIONAL BANKS.—

"(1) IN GENERAL.—

"(A) APPROVALS AUTHORIZED.—Beginning 3 years after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Comptroller of the Currency may approve an application under this section which will permit a national bank that is adequately capitalized and adequately managed to establish or acquire, and operate, a branch located outside the State in which the main office of such bank is located, subject to paragraphs (2), (3), and (6).

"(B) CONDITIONS.—In determining whether to grant approval under subparagraph (A), the Comptroller of the Currency shall consider the bank's rating under the Community Reinvestment Act of 1977 and the views of the appropriate State bank officials regarding the bank's compliance with applicable State community reinvestment laws.

"(C) APPLICABLE LAW.—

"(i) IN GENERAL.—Subject to paragraph (6), any branch established or acquired under subparagraph (A) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State, unless such State law, is preempted by Federal law regarding the same subject. There shall be no discriminatory effect in the application of such laws between a branch of a bank chartered by the host State and in-State branches of out-of-State national banks. Such State laws shall be enforced, with respect to branches of national banks by the Comptroller of the Currency. All other laws of the host State shall apply as if the branch was a national bank situated in that State.

"(ii) FILING REQUIREMENT.—A host State may require any national bank that has its main office in another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any national bank the main office of which is located in another State from establishing or operating a branch within the host State if that national bank or its branch materially fails to comply with the filing requirements.

"(2) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (1) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending 3 years after the date of the enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A national bank that has its main office in a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(3) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—The Comptroller of the Currency may approve an application under paragraph (1)(A) before the expiration of the 3-year period described in paragraph (1)(A), if the State in which the branch is or will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of the time period described in paragraph (1)(A).

"(B) AFTER THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (2), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(4) STATE IMPOSED CONDITIONS ON INTERSTATE BRANCHING.—

"(A) A State may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the Comptroller of the Currency shall consider any timely comments of the host State prior to approving that application); and

"(B) subject to paragraph (6) a State may impose other conditions on a branch established or acquired under paragraph (1)(A) if—

"(i) the conditions do not discriminate against out of State banks or bank holding companies; and

"(ii) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(5) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The Comptroller may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution deposits of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State banks or bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(6) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry to the acquisition of existing banks or branches shall apply, except that a State law which requires that the bank must have been in existence longer than 5 years shall not apply unless such law is in effect on such date of enactment. State laws in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 that restrict such entry shall, for purposes of this paragraph, be deemed to apply to both banks and branches.

"(7) DEFINITIONS.—For purposes of this subsection—

"(A) ADEQUATELY CAPITALIZED.—The term 'adequately capitalized' means, with respect to any national bank, a bank which maintains capital in an amount which meets or exceeds the required minimum ratio for each relevant capital measure.

"(B) HOST STATE.—The term 'host State' means the State in which a national bank establishes or maintains a branch other than the State in which the bank has its main office and is engaging in banking business.

"(C) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 303. INTERSTATE BRANCHING BY STATE BANKS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) INTERSTATE BRANCHING BY STATE BANKS.—Beginning 3 years after the date of enactment of the Financial Institutions Safety and Consumer Act of 1991, an insured State bank that is adequately capitalized and adequately managed may establish or acquire, and operate, a branch located outside the State in which the bank is chartered if authorized by the law of the State in which the bank is chartered, subject to paragraphs (5), (6), and (9).

"(4) APPLICABLE LAW.—

"(A) IN GENERAL.—Subject to paragraph (9), any branch of an out-of-State bank shall be subject to the laws of the host State as if such branch were a branch of a bank chartered by that State.

"(B) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches pursuant to paragraph (3) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(C) FILING REQUIREMENT.—A host State may require any insured bank chartered by another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any State bank chartered by another State from establishing or operating a branch within the host State if that State bank or its branch materially fails to comply with the filing requirements.

"(D) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection limits in any way the right of a State to—

"(i) determine the authority of State banks chartered in that State to establish and maintain branches; or

"(ii) supervise, regulate, and examine State banks chartered by that State.

"(5) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (3) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending 3 years after the date of enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A State bank that is chartered by a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(6) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE 3-YEAR PERIOD FOLLOWING ENACTMENT.—A State bank may establish or acquire, and operate, a branch outside the State in which the main office of the bank is located, subject to the provisions of this subsection, before the expiration of the 3-year period described in paragraph (3), if the State in which the branch will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of the time period described in paragraph (3).

"(B) AFTER THE 3-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (5), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(7) STATE IMPOSED CONDITIONS ON INTERSTATE BRANCHING.—

"(A) A State may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the home State banking authority and the appropriate Federal banking agency shall consider any timely comments of the host State prior to approving that application); and

"(B) Subject to paragraph (9), a State may impose other conditions on a branch established or acquired under paragraph (3) if—

"(i) the conditions do not discriminate against out-of-State banks or banking holding companies; and

"(ii) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(8) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The home State banking authority and the appropriate Federal banking agency may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution deposits of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(9) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry only through the acquisition of existing banks or branches shall apply except that a State law which requires that the bank must have been in existence longer than 5 years shall not apply unless such law is in effect on such date of enactment. State laws in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 that restrict such entry shall, for purposes of this paragraph, be deemed to apply to both banks and branches.

"(10) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—A host State bank supervisory or regulatory authority may examine a branch established in the host State by banks chartered by another State for the purpose of determining compliance with host State laws regarding banking, taxation, community reinvestment, fair lending, consumer protection, and permissible activities and to ensure that the activities of the branch are conducted in a manner consistent with sound banking principles and do not constitute a serious risk to the safety and sound operation of the branch.

"(B) ENFORCEMENT.—In the event that a host State bank authority as described in subparagraph (A) determines that there is a violation of host State law concerning the activities being conducted by the branch or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank authority may undertake such enforcement actions or proceedings as would be permitted under host State law if the branch in question were a bank chartered by that host State.

"(C) COOPERATIVE AGREEMENT.—The State bank authorities from one or more States are authorized to enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

"(D) FEDERAL REGULATORY AUTHORITY.—

"(i) IN GENERAL.—Nothing in this subsection limits in any way the authority of the appropriate Federal banking agency to examine any bank or branch of a bank for which the agency is the appropriate Federal banking agency.

"(ii) REVIEW OF INTERSTATE AGREEMENTS.—If the appropriate Federal banking authority determines that the States have failed to reach an agreement under subparagraph (C), or that such an agreement fails to adequately protect the Federal Deposit Insurance Fund, the appropriate Federal banking authority shall not defer to State examinations of the out-of-State branches.

"(11) DEFINITIONS.—For purposes of this subsection—

"(A) Host state.—The term 'host State' means the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and engaging in banking business.

"(B) Adequately capitalized.—For the purposes of this subsection, the term 'adequately capitalized' means, with respect to any insured State bank, a bank which maintains capital in an amount which meets or exceeds the minimum ratio for each relevant capital measure.".

SEC. 304. BRANCHING BY FOREIGN BANKS.

(a) In General.—Section 5(a) of the International Banking Act of 1978 (12 U.S.C. 3103(a)) is amended to read as follows:

"(a) Interstate Banking Operations.—

"(1) In general.—A foreign bank may establish and operate—

"(A) a Federal branch or agency, with the approval of the Board and the Comptroller of the Currency, in any State outside its home State to the extent that such establishment and operation would be permitted under section 5155 of the Revised Statutes for a national bank; or

"(B) a State branch or agency, with the approval of the Board and the appropriate regulatory authority of the State, in any State outside its home State to the extent that such establishment and operation would be permitted under section 18(d) of the Federal Deposit Insurance Act for a State bank,

as if the foreign bank were a national bank having its main office, or a State bank chartered, in the home State of the foreign bank.

"(2) Criteria for determination.—In approving an application under paragraph (1), the Board and the Comptroller of the Currency—

"(A) shall apply the standards for establishment of a foreign bank office in the United States under section 7(e); and

"(B) may not approve an application unless it determines that the foreign bank's financial resources, including the capital level, are equivalent to those required for a domestic bank to be approved for branching under section 5155 of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act and, in the case of the first branching application by such foreign bank, after consultation with the Secretary of the Treasury regarding capital equivalency.

"(3) Requirement for a separate subsidiary.—If the Comptroller of the Currency or the Board, taking into account differing regulatory or accounting standards, finds that adherence to capital requirements equivalent to those imposed under section 5155 of the Revised Statutes and by section 18(d) of the Federal Deposit Insurance Act can be verified only if banking activities are carried out in a domestic banking subsidiary within the United States, it may approve an application under paragraph (1) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

"(4) Additional authority for interstate branches and agencies of foreign banks.—Notwithstanding paragraph (1) and section 4(h), a foreign bank may, with the approval of the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside of the foreign bank's home State if—

"(A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and

"(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act.".

(b) Treatment of United States Banking Subsidiaries.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by adding at the end the following:

"(d) Treatment of United States Subsidiary of a Foreign Bank.—A foreign bank that has a domestic subsidiary within the United States may establish Federal and State branches and agencies outside its home State to the extent permitted under section 5155(d) of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act.".

(c) Home State Determinations.—

(1) Method of determining.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

(A) by striking the phrase "in the State in which such branch or agency is located"; and

(B) by adding at the end the following sentence: "For the purposes of section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)), the home State of a foreign bank shall be its home State as determined under section 5(c).".

(2) Single state determinations.—Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 3103(c)) is amended to read as follows:

"(c) Determination of Home State of Foreign Bank.—For the purposes of this section—

"(1) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than 1 State, is the 1 of those States elected of the foreign bank, or, in default of such election, by the Board; and

"(2) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in only 1 State, is that State.".

SEC. 305. PERMISSIBLE CONSOLIDATION.

Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following subsection:

"(h) Permissible Consolidation.—

"(1) In general.—Except as provided in subsection (d)(1), a bank holding company having subsidiary banks located in more than 1 State may combine 2 or more of such banks into a single bank by means of merger, consolidation, or other transaction on or after 18 months from the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991. Notwithstanding any other provision of Federal law or any provision of State law, any consolidation effected in accordance with this subsection shall be permissible within a State as of 18 months after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, unless such State has enacted a law in accordance with section 5155(d)(2)(A) of the Revised Statutes or section 18(d)(5)(A) of the Federal Deposit Insurance Act that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(2) Additional branches.—The consolidated bank may, subject to compliance with all applicable Federal or State laws relating to the establishment, acquisition or operation of a branch, establish, acquire and operate additional branches at any location where the consolidated bank or a preexisting bank could, if they had not been parties to such consolidation, have established or acquired and operated a branch, unless precluded by any provision of State law in existence on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

"(3) Effect of state prohibition of branching.—If, during the period beginning 18 months from the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 and ending on the expiration of 3 years from such date of enactment, a consolidation authorized by paragraph (1) is effected resulting in the conversion of a bank into a branch located in a State which, after such consolidation, has enacted a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State, then such branch shall, under regulations of the Federal or State banking authority having jurisdiction of the bank prior to its conversion into a branch, be promptly converted bank back into the bank as it existed prior to such consolidation.

"(4) Applicable law.—Any branch of a national bank established or acquired in connection with a consolidation or other transaction under paragraph (1) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State, unless such State law, is preempted by Federal law regarding the same subject. There shall be no discriminatory effect in the application of such laws between a branch of a bank chartered by the host State and in-State branches of out-of-State national banks. Such State laws shall be enforced, with respect to branches of national banks by the Comptroller of the Currency. All other laws of the host State shall apply as if the branch was a national bank situated in that State.".

THE BUSH RECESSION

(Mr. DOWNEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOWNEY. Mr. Speaker, this has been a bad week for President Bush. All the polls reflect the American people's belief that he spends too much time on foreign policy and is out of touch with the plight of ordinary citizens.

The economic recovery he told us is just around the corner looks like it is permanently stalled.

With unemployment going up today he has finally figured out that maybe a third veto of extending benefits will not play too well with working men and women, and he has indicated, 16 months after the recession started that he will sign an extension of benefits. Halleluia.

His economic advisers are as confused and cluttered as his passport on what to do with the economy. But they are in agreement on one thing. Whatever goes wrong, blame it on the Democrats.

Their ability to shift the focus is second to none.

Republicans will tell you with a straight face that this is GEORGE MITCHELL's recession. TOM FOLEY's unemployed. Nonsense, they have held the Presidency for 10 years, the Senate for 6 of the last 10 and every veto of this President has been sustained. This is their government. They are in charge. This is George Bush's recession, plain and simple.

MICROLOAN PROGRAM WOULD HELP AMERICANS ACHIEVE SELF-SUFFICIENCY

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, I believe that many of the Americans who receive welfare benefits would do better if they could do better.

And yet, we have done little to unleash the entrepreneurial instinct that could transform an economically dependent member of our society into a productive, economically independent one.

That is why I have introduced H.R. 3471, the Small Business Economic Opportunity Enhancement Act of 1991.

This proposal establishes a 5-year demonstration program to provide loans of $10,000 or less to very small businesses.

It will also make it easier for States to change their welfare rules so that welfare recipients can participate without losing their benefits.

The legislation is unique because it combines a waiver program with the use of existing SBA funds.

It cuts through the bureaucratic redtape that is keeping many who receive public assistance from achieving self-sufficiency.

I would urge my colleagues to join me in support of H.R. 3471 and to remember that it is easy to say you are all for small business, but it is how you vote that really counts.

WE NEED A PRESIDENT WHO UNDERSTANDS NEEDS OF ORDINARY WORKING AMERICANS

(Mr. GEPHARDT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Speaker, as the President was addressing his big donor fundraiser in Houston last night, his Department of Labor was preparing a press release with discouraging news for the average people who live day-to-day.

That news was released this morning: Last month 140,000 American workers lost their jobs, joining the ranks of over 8½ million others who have already lost their livelihoods in this Republican recession. And still the President will not sign a decent and humane unemployment benefits bill.

What a contrast: a thousand points of light for the unemployed worker, a $1,000 a plate for the incumbent President. Does he not understand that we cannot be a strong country abroad, if we are not a strong country at home?

We need a President who understands the realities, the pain, and the needs of ordinary, working Americans.

Mr. Speaker, I say to the President, sign the unemployment bill.

RELIEF FOR IRAQ'S SUFFERING CHILDREN

(Mr. WYLIE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WYLIE. Mr. Speaker, we have our problems here in the United States, the state of the economy, the state of the banking industry, and they are serious problems not to be taken lightly, but this is a pretty good place in which to live and rear our children when we are confronted with problems in other countries, and we should concern ourselves with some of the problems in other countries.

There is much documentary evidence that the children in Iraq are needlessly dying of malnutrition. This is inexcusable in a country with Iraq's wealth.

I called the State Department and learned that all limits on food imports were removed in March, and there seems to be plenty of food being shipped to provide significant aid to Iraq's children.

Saddam Hussein, not the United States of America or the United Nations, decides to whom food and medicine are distributed.

The United States must get help of the United Nations and countries bordering on Iraq to put pressure on Iraq to allow relief organizations into Iraq to distribute food to Iraq's suffering children.

PRESIDENT BUSH, THE FUNDRAISER

(Mr. ECKART asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ECKART. Mr. Speaker, we seem to have a President who will spend any amount of time in the United States when it comes to raising money.

Yes, the first thing President George Bush does upon returning from Madrid is to fly directly to Houston, TX, for a $1,000-a-plate fundraising dinner.

□ 1010

And then from Houston to Dallas and later from Dallas to New York and New York to Washington, DC; no, not to come and sign an unemployment compensation bill but to hold another $1,000-per-plate dinner.

Mr. Speaker, recent polls suggest that almost three-fourths of the entire American population believe that this country is headed on the wrong track. For Mr. Bush it is a one-way track and it is a track out of town.

It is not a shame that we have a President who will go anywhere in the United States to raise money, but when it comes to raising unemployment benefits, he will do anything to avoid it?

JEANE KIRKPATRICK ON THE MANAGUA CONNECTION

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, the October surprise business was its counterpart which the Democratic leadership is not moving so quickly to investigate—I refer to the Democrats' Managua connection. Let me share with you some comments by the Honorable Jeane Kirkpatrick.

She was asked to comment on the press reports that certain Members of Congress from the Democratic Party were in contact with the Sandinista Communist regime in opposition to U.S. policy.

Dr. Kirkpatrick replied:

> There is no doubt that many people in the administration felt that there were Democratic Congressmen, to put it bluntly, who not just doubted the wisdom for United States support for the Nicaraguan Contras, but who were actually supportive of the Sandinista regime. And there is no doubt either that there was a good deal of evidence that suggests there were Democratic Congressmen who were actually supporting the Sandinista regime who actually wanted them to win. Which sort of puts them, as it were, on the other side in a military conflict in which lives are at stake.

Dr. Kirkpatrick goes on to say she believes—

> That this question of full, total, and honest disclosure to the Congress of the details of secret operations should be considered in the light of evidence that some of the Congressmen raising the questions were, in fact, deeply sympathetic to the Communists who were governing Nicaragua at that time.

Mr. Speaker, Dr. Kirkpatrick's words speak for many of us.

THE TITLE OF THE OFFICE IS PRESIDENT OF THE UNITED STATES

(Mr. DORGAN of North Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORGAN of North Dakota. Mr. Speaker, President Bush is upset because some of us have been saying that he is spending too much time abroad, too much time traveling and not enough time here at home.

Last night he said that anyone who says we should retreat into an isolationist cocoon is living in the last century.

Well, I think the President still does not get it; no one here is suggesting that we ought to retreat into an isolationist cocoon; no one is suggesting that.

We are simply saying that it is time to divide the time a little bit; the Presidency ought to be focused on the United States.

The title of the office is: President of the United States. We have a recession. We have a crushing debt. We have troubles in our schools. We have a crime wave. We have a health care crisis. This country needs some attention.

This country needs some leadership. We are asking, Mr. President, that we spend some time taking care of things here at home. That, Mr. Speaker, is what we are asking for.

LET'S PUT OUR MONEY WHERE OUR MOUTH IS, LET'S PURSUE SOME ECONOMIC GROWTH

(Mr. GUNDERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Speaker, I ask unanimous consent that I may be permitted to read from a printed document.

The SPEAKER pro tempore (Mr. VISCLOSKY). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. GUNDERSON. Mr. Speaker, let me read to you from today's Washington Post, where it says what the leader of the Democratic Party in the other body said, and I am going to quote:

> "President Bush's record for economic growth and job creation is worse than for any other President since Herbert Hoover," Mitchell said. "During Bush's presidency, our country has grown at a slower rate, with fewer jobs created than during any other presidency in the last 60 years," he said.

Mr. Speaker, I cannot believe those words would be recited by anybody from the Halls of the United States Congress.

The President, in 1989, in his first budget, advocated R&D tax credits, capital gains, enterprise zones. What did the Democratic Congress do? Pass none of it.

In January 1990, in his second budget he advocated that permanent R&D tax credit, capital gains, enterprise zones, family savings accounts. What did this Congress do? We passed none of that. We passed a $144 billion tax increase and increased unemployment by 1 percent.

In his budget this year in January of 1991, the President asked for permanent R&D tax credits, capital gains, enterprise zones, family savings accounts, penalty-free IRA's, and permanently extending tax extenders.

What has the Democratic Congress done? We have passed none of it.

It is time we put our money where our mouth is and we pursue some economic growth.

GEORGE BUSH MUST LEAD AND WE SHALL FOLLOW

(Mr. TORRICELLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TORRICELLI. Mr. Speaker, you can feel it on every street corner and, indeed, across America. It is a part of every conversation. There is a fear gripping our country, a fear that what we are experiencing is not a simple recession, not an ordinary economic downturn; a fear that years of neglect dragged by a mounting debt, international uncompetitiveness, fundamental weakness in our financial institutions, a fear that we are experiencing more than simple unemployment. Our people are losing the opportunity, our standard of living is at issue.

Mr. Speaker, we only have one leader at a time. George Bush is that leader. And we, in either party, are prepared to follow. But we need more than simple proposals to increase the national debt, as was just outlined.

We need proposals to solve the fundamental economic weakness of our country, and for that George Bush must come home, he must address the problems of America. He must lead, and we shall follow.

TRIBUTE TO JOSEPH PAPP

(Mr. GRANDY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GRANDY. Mr. Speaker, yesterday, while we were making the world safe from core banking and tearing ourselves up over title IV, a light went out on Broadway and across this country: Joe Papp died at the age of 70.

And I though I would take a minute to just reminisce with my colleagues, seeing as how I am probably the only Member of this body who has both performed on his stage and on yours, Mr. Speaker.

I can recall last spring, when we were mapping out our strategy on the NEA authorization fight, I asked him if in 1973 a particularly controversial play he was then producing had received any NEA money. And he said, "Did you see that show?" And I said, "Joe, I was in that show."

But that is the way it should be. He made a greater impression on me than I did on him.

And anybody who knew him or saw one of his productions knows that he offended and outraged and amazed and ultimately enriched every person he encountered, whether they worked for him or sat in one of his audiences.

I find it interesting, as we continue to debate NEA, that no matter how many motions to instruct conferees or amendments patently offensive or otherwise that we assume to pass on NEA reauthorization, the bottom line, Mr. Speaker, is that Joseph Papp was and is our country's greatest national endowment for the arts.

THE UNITED STATES—NOT AS BORING AS THE PRESIDENT MIGHT THINK

(Mr. VISCLOSKY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VISCLOSKY. Mr. Speaker, I guess George Bush just finds America boring. Sure, he has come back from overseas, but he leaves for the Hague and Italy next week.

I am sorry the President finds his own country so boring because there are many interesting and exotic locales to visit. Places like:

Rome, NY; Moscow, ID; Peru, IN; Berlin, IL; Berlin, OR; Berlin, WI; Paris, TX; Paris, IA; London, WI; Dublin, IN; Venice, CA; Lima, OH; Florence, SC; Brazil, MS; Berlin, WV; Norway, SC; Athens, IL; Genoa, WV; Athens, OH; Athens, GA; Lebanon, KY; Dublin, VA; Lebanon, IN; Lebanon, OR; Paris, IA; Lebanon, PA; Lebanon, KS; Shanghai, IN; Siberia, IN; Columbia, CA; Vienna, VA; Belfast, ME; Cambridge, WI; Belgium, WI; Sydney, ND; Warsaw, MO; Turkey, KY; Bethlehem, CT; Berlin, CT; and Denmark, IL.

The only catch is, President Bush might find unemployed and underemployed Americans living in these fine communities. Talking to them would not be nearly as much fun as raising $800,000 in Houston in one night. That is too bad.

A QUICK FIX WON'T HELP US NOW

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, the latest crazy idea to be floated here is that we need an economic package to stimulate the sluggish economy. Does anybody here remember that we are running a deficit of $360 billion? How much economic stimulus can we stand?

No. Mr. Speaker, the economy is sluggish in large part because we have run so many huge deficits for so long that we now have a tremendous drag on economic growth; namely, so much of our resources are going to service our $4 trillion debt instead of being committed to economic expansion.

The idea of encouraging savings through expanded IRA's is a fine one that I support, but the timing of encouraging savings in the midst of an economic recession is highly suspect. The time to encourage personal savings is when people have some money to save, not when they're out of work.

Why don't we realize that we had a great consumption party in the 1980's, largely funded by foreign investors, ran up a three-fold increase in our national debt, and now the party is over and the hangover is setting in. The 1990's had better be a time of regaining control over our fiscal destiny and having the courage to stick to a program of deficit reduction and spending controls, rather than looking for another quick fix.

□ 1020

WE MOURN THE PASSING OF JOSEPH PAPP

(Mr. WILLIAMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILLIAMS. Mr. Speaker, the American producer and playwright, Joseph Papp, passed away yesterday. Three of Mr. Papp's productions won Pulitzer Prizes: "No Place to be Somebody," "That Champion Season," and America's longest-running musical, all of our favorites, "A Chorus Line." Joseph Papp founded the great, continuing, American festival, Shakespeare in the Park.

Mr. Speaker, I got to know Joseph Papp some during the last Congress as we worked together on the authorization of the National Endowment for the Arts. Joseph Papp disliked vulgarity. He hated pornography. And he was fiercely opposed to those politicians who would define pornography for the rest of us. He greatly adhered to America's freedom of expression and fiercely wanted it to continue through the National Endowment for the Arts.

Mr. Speaker, Joseph Papp was a good fellow. We mourn his passing, and we celebrate his life.

CLOSE DOWN THE RTC—IT IS NOT DOING ITS JOB

(Mr. JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of Texas. Mr. Speaker, we will soon consider an additional $80 billion for the Resolution Trust Corp. on top of the $80 billion they have received.

In Texas, the RTC is not doing its job. It is not selling the billions of dollars of real estate, it controls, quickly enough. Millions of our tax dollars are being poured down a black hole in the form of lawyers' fees and carrying costs.

Yesterday's Wall Street Journal notes that the unified German Government is rapidly selling off assets once owned by the Communist East Germans.

The Germans have sold off nearly 24,000 businesses, and millions of dollars' worth of property.

Meanwhile, the Journal points out, the RTC just acquires more and more assets, rather than reducing their real estate inventory. And apparently no end in sight.

Mr. Speaker, Congress must put the S&L crisis behind us, close down the RTC and let our economy grow and prosper once again.

ZENITH IS GONE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, due to American trade and tax policies: telephones are now made in Singapore; cars and VCR's are made in Japan; transmissions are made in Brazil; and it does not stop, my colleagues.

The last American manufacturer of televisions has announced it will move on a fast track to Mexico. That is right; Zenith Corp. of Springfield, MO. There will be 1,200 American workers out of work who will apply for welfare and unemployment, and 1,200 people in Mexico will lineup and apply for jobs making televisions that our consumers will buy—that cannot get into the Japanese market.

My colleagues, the truth is our tax laws coming out of the Committee on Ways and Means are no different than George Bush's, and most of those key staffers on the Committee on Ways and Means, when they leave the employ of the Government, they go to work for foreign countries.

Let us start taking a look at ourselves, because we are screwing this country and our workers.

THE WONDERS OF WASHINGTON STATE

(Mr. CHANDLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. CHANDLER. Mr. Speaker, I am not here to defend the Committee on Ways and Means, but to say that it is gratifying when people come and visit my great State of Washington and then write and tell me about it.

Mr. Speaker, they are impressed with our beaches, our sparkling and friendly cities, the spectacular mountains, and the fertile farms, and they always go home with some wine, and perhaps a box of apples, and some wonderful memories.

I just received from the wife of one of our colleagues, Arlene Crane, the wife of PHIL, a letter expressing her appreciation for the wonder of our State.

The letter referred to is as follows:

JOVIAL JOURNEY JOURNAL

(By Arlene C. Crane)

Well, Washington, you did it again. We wended our way through your choice, charming corridors and you wowed us with your wondrous, winsome majesty, et cetera. We journeyed throught your workplaces and playgrounds * * * to your hearths and homes * * * we passed passels of prominent peaks and promontory points, trekked through thousands of tumbleweed, viewed various vistas, ogled occasional orchards, visited venerable vintners along the way, and what not.

Gaggles of gamboling GOP galore gathered to grab a glimpse of the gorgeous guru of gab who graciously gave great gems of lucid Lincoln lore, and more. Motoring madly mostly mornings midst mayhem, managing many munchies midway * * * much, much more. Got going with Gretchen and gang getting great grub and a radiating Ridpath respite * * * sadly said "so long" to Spokane.

Departed with Davidson for Dayton and delightful dalliance with the Williscrofts and company * * * pressing on to Prosser * * * plenty of pleasantries and presents proceeding to Pasco, precipitation, peak performance plus penetrating palaver. Yonder, Yakima of yore and yet more yarns, yuks and yaks * * * yes, yawns and so on. Looming large the last lap and Lisa * * * soon settled into Swiss styled Sorento in Seattle * * * sweet serendipity.

Anon another Valentine anniversary (32) artfully accomplished attuned with the Trues (10) * * * aptly attended by Jennifer et al. Knockout Keynote in Kane * * * rave reviews and raucous reunion replete with rapping and ranting * * * ad infinitum. Breakfast barge to Bainbridge * * * kingsize kuchen in kitsap * * * alas, alac Kismet. Headlong to the Hood Canal hosting heavenly Horn of Plenty * * * Hip, Hip Hooray! Herculean helpmate hand in hand homeward bound, hesitantly, honestly.

OVER 50 PERCENT OF OUR OIL STILL COMES FROM OVERSEAS

(Mr. SARPALIUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SARPALIUS. Mr. Speaker, I commend the President on the leadership that he has given on trying to help solve all the problems around the world. Especially the problems in the Middle East.

But, Mr. Speaker, I hope that the President will begin focusing on the problems that we have here at home.

A year ago, as we were taking troops to the Middle East to liberate Kuwait, we brought them there also to protect the oil reserves in Saudi Arabia. And why? Because over 50 percent of the oil that we use in this country then, came from overseas.

Mr. Speaker, it has been a year now, and this country is no better off today than what it was then. Still today over 50 percent of our oil comes from overseas. Mr. Speaker, I represent the largest oil and gas producing district in Texas, and those producers are going broke.

Mr. Speaker, it is time for this President to bring back the experience he has gained in trying to help solve all the problems around the world and start concentrating on our problems here at home.

SUPPORT THE BEREUTER-VENTO AMENDMENT TO THE BANKING BILL

(Mr. LUKEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUKEN. Mr. Speaker, one of the most important, attractive and popular parts of the banking bill that we have discussed for the last year or so is the interstate branching provision. Literally billions of dollars are wasted by American bankers as they try to comply with the conflicting regulations in each State to do business.

I want to draw my colleagues' attention to the Vento-Bereuter amendment that will be considered today because it adopts a very interesting approach. It respects the rights of the States by allowing them to opt out of interstate branching, if they choose to do so. The penalty for that is that banks within their State cannot go out and branch into other States. It is an approach, I think, that will give us interstate branching, that respects the rights of States, and I urge my colleagues to carefully consider the Bereuter-Vento amendment today.

IN SUPPORT OF THE HORSE AND CARRIAGE

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute.)

Mr. APPLEGATE. Mr. Speaker, there are a lot of dumb ideas around, but there is one on the Washington, DC, ballot this Tuesday, and it is to do away with horses and carriages on the streets.

Mr. Speaker, this is Americana. Tourists who come to Washington, DC, like to be reminded of the past, if they cannot get into the White House.

Horses have advantages over cars. There is no air pollution, except for an occasional toot, and, speaking of toots, they do not have any horns to blow. They catch their own waste. They do not splash pedestrians. And they wear rubber shoes so they do not damage the streets or even hurt the horse.

Mr. Speaker, New York has horses and carriages, and Europe and countries all over the world have horses and carriages, but, no, not Washington, DC. Maybe those who want to protect the horse should propose rickshas. Then we can have people pulling people.

I just say, "It's a dumb idea whose time hasn't arrived."

TRIBUTE TO JUDGE FRANK M. JOHNSON OF ALABAMA

(Mr. ERDREICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ERDREICH. Mr. Speaker, I would like to take this time to honor a special man whose actions moved the Nation. During his 36-year tenure on the bench, Judge Frank M. Johnson, of Alabama, issued rulings that not only reshaped the South, but changed the Nation. Johnson, who turns 73 this week, has taken senior status on the Federal court.

I would like to share with my colleagues the judge's favorite quote, by Abraham Lincoln:

> I do the very best I know how, the very best I can; and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference.

We don't need a host of angels to attest to the correctness of the judge from Winston County, AL. His courageous, far-reaching rulings—almost by themselves—ended segregation in Alabama and gave meaning to our fundamental American principles, that all men are created equal, that this indeed is the land of opportunity for all. America thanks you, Judge Johnson.

□ 1030

A CALL FOR A DOMESTIC ECONOMIC SUMMIT

(Mr. HERTEL asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. HERTEL. Mr. Speaker, our country is in very serious trouble. We have the lowest number of housing starts since 1945. We have the worst car sales in the history of our country. We have had fewer jobs created in the last 3 years than at any time since Herbert Hoover was President.

Today I am writing to President Bush, and I ask my colleagues to join me in calling for a domestic economic summit. We need leadership here at home. We need someone in charge. We need help, and our people need help.

Mr. Speaker, I ask my colleagues to join me in calling for a domestic economic summit so that the President can listen to people from around this country—business leaders, union leaders, people who care about making our economy better for the families of this country.

RECESSION CONTINUES, ECONOMIC FIGURES SHOW EVEN GREATER DECLINES

(Mr. HAYES of Illinois asked and was given permission to address the House for 1 minute.)

Mr. HAYES of Illinois. Mr. Speaker, I want to bring to the attention of this body that the demagoguery and hot air concerning the creation of new jobs is unfair to the working men and women of this country. Political posturing in this body and at the White House will not heal the deep wounds of this ongoing recession—the worst since World War II. They need real help and real jobs, so they can put food on the table. I want to make it clear, Mr. Speaker, that new tax breaks for the rich will not necessarily mean new jobs that create gainful, long-term employment. The trickle down theory has not worked, and crumbs from the table of the wealthy will not solve our economic woes.

Mr. Speaker, I want to present one illustration of what happens to public assistance rolls when there are no jobs. Just yesterday, the New York Times reported that the number of people receiving Federal food stamps jumped to a record level in the month of August. One out of every ten Americans depend on the Government to put food on the table, and they are not all African-Americans as the David Dukes would have us believe. New jobs will reduce the deficit, and take people off of the public assistance roles be they white, black, or brown.

My colleagues from the other side of the aisle appear to be overly zealous to balance the budget deficit at the expense of eliminating Federal funds for programs designed to help those in need. I believe that it is time that the administration put money where their mouths are.

ADMINISTRATION INVITED TO ADDRESS LOSS OF JOBS TO MEXICO

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, it is now almost 2 months, in fact the 54th day since I personally invited the Bush administration's top United States-Mexico trade negotiator Carla Hills to join me and other Members of Congress on a tour of Midwestern and other United States factories that have been closed or downsized here in the United States. Jobs have been lost in dozens of United States communities, where workers earned a living wage; and the corresponding plants have opened in Mexico where workers earn on average $1 an hour, not even enough to buy the goods they are producing.

Today is the 54th day that Carla Hills has not responded to my invitation to get out from behind the bargaining table and come meet Americans face to face that will be affected by this trade pact. In Ohio alone 100,000 jobs have been lost to Mexico already.

Thousands more U.S. jobs are on the line. Real jobs to real Americans. In fact since George Bush became President there are 300,000 less jobs in the United States of America. Negotiating a free trade agreement with Mexico means more than conducting talks; it means facing the people whose lives and jobs are in your hands. Wouldn't it be nice if George Bush also accepted our invitation? My message to Carla Hills and Grorge Bush: we're still waiting for you to RSVP.

IRAN AND MAINLAND CHINA REPORTED TO BE DEVELOPING NUCLEAR DEVICE

(Mr. KASICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KASICH. Mr. Speaker, I know that a lot of people got tired of listening to me rant and rave about the Export Administration Act and the spreading of technology throughout the world, but if Members happened to read yesterday's newspapers and saw any of the television reports across this country, they know that the nightmare scenario, as I called it, continues to unfold.

There are reports from our high officials that the Government of Iran is now in concert with the Government of China to develop a nuclear device. Of course, we have in this overall Congress extended the most-favored-nation status to China, one of the greatest proliferators of arms in the world.

Just imagine for a second the Government of Iran holding a nuclear weapon, with President Rafsanjani saying that Iran has the right to develop a nuclear weapon, and we begin to think about the implications of a country with extremists running the government with their hands on a nuclear weapon. We not only have to speak out against what the Chinese are doing, we have to stop the spread of technology like we tried to do in the Export Administration Act.

Mr. Speaker, we have got to stop the spiraling sale of conventional weapons and weapons of mass destruction if future generations are going to have the chance to enjoy what we have enjoyed.

IN MEMORY OF JOSEPH PAPP

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, the world, especially New York City, is a darker place today, for one of our guiding lights has gone out. Joseph Papp, who gave us such priceless jewels of the modern theater as "A Chorus Line," "Hair", and "That Championship Season" is dead. Who could not be awed by the man who took Shakespeare from a traveling flatbed truck to the five-theater complex now housed in the Public Theater? The person who could come into contact with Joe Papp and not be bowled over by his exuberance, excitement, and commitment to drama is a person you will never meet.

He worked with some of the most talented writers and actors of our nation—playwrights like David Mamet, Sam Shepard, and John Guare; actors such as Kevin Kline, James Earl Jones, Michelle Pfeiffer, and Raoul Julia. Joe Papp has also brought the theater to so many who might not otherwise have enjoyed it. In 30 years the New York Shakespeare Festival has staged over 60 productions in Central Park—and presented them for free.

Finally, as a Member of the U.S. Congress and as the chairman of the Congressional Arts Caucus, I cannot overstate the important role Joseph Papp has played as a champion of the arts—not only in New York City, but in the United States. Joe Papp stood up to those who would try to censor artistic expression; he stood up for the principle of free speech and the integrity of the written word. Joe Papp opposed attempts to silence the creative process at every turn.

Today, we deeply mourn the death of Joseph Papp. He was a friend and in many ways a colleague. Through the medium of the theater, Joe Papp struggled to make our city and country a more livable place; to uplift our spirits, to challenge our minds, and to see us through to another day. It was a struggle he finessed very well. Our hearts are heavy today—from the loss of a dear man, but also with the love which we all shared for him.

MAJORITY HOLDING UP ACTION ON ECONOMIC MEASURES

(Mr. THOMAS of Wyoming asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. THOMAS of Wyoming. Mr. Speaker, I am getting a little weary of the majority party coming to this podium and complaining about not doing anything about the economy. We have talked about doing something about the economy for a very long time, and we ought not to forget that the Democrats have a majority in this House, have a majority in the Senate, and can do whatever the Members of the majority decide to do.

We talked about the budget agreement last year. What did we do? We raised taxes. The majority raised taxes.

We talked about trying to do something about a balanced budget amendment. The majority party will not talk about that. We talked about a line item veto. The majority party will not talk about that.

We talked about trying to get something done about unemployment. The majority does not want to send an unemployment bill to us so that will happen.

We talked about getting jobs in the highway bill. The majority has not moved the highway bill.

Mr. Speaker, we can do many things here, and these are some of the things we ought to do. Instead of posturing and trying to put the blame on somebody else, we ought to do what we can do in this Congress, and do it now.

PRESIDENT STILL PUSHING FOR CAPITAL GAINS TAX REDUCTION

(Mr. PEASE asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. PEASE. Mr. Speaker, as one Democratic Member, I rise to congratulate President Bush for his achievement in Madrid. It is truly a monumental achievement. The President deserves much credit for it.

But I found it incredible that immediately upon his return from Madrid the President would fly to Texas and tell 800 people, each of whom paid $1,000 for their dinner, that the solution to our Nation's problem is a lower capital gains tax rate. That certainly should have been a receptive crowd for the message because 80 percent of the benefit of a low capital gains rate would go to those earning over $100,000 a year.

President Bush says that a capital gains reduction is a job measure and a small business creation measure, but there is not one shred of evidence that a lower capital gains rate will spur the economy. What it will do is put $12 billion into the hands of the wealthiest Americans at a time when millions of unemployed Americans cannot get extended benefits because of the intransigence of the Bush administration.

□ 1040

JOB-PROTECTED CHILD CARE LEAVE NECESSARY FOR AMERICA

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I come in front of this body very humbly to say, I don't get it. One of the "Dear Colleagues" we got this week from one of my male colleague friends, I have pondered all week, and I still do not get it. Our colleague is protesting family medical leave, which is going to be coming up next week.

In the headlines on his paper that he sends us he says "Should people who are convicted of date rape be entitled to parental leave? Should married men who impregnate teen girls be entitled to parental leave?"

Well, the answer is clearly no, unless they claim responsibility for the child and undertake the care of the child.

Now, what I do not get is whether this colleague is protesting the fact that to get parental leave they would have to claim responsibility and take care of the child, which I think would certainly be better for the child than the other way around, or what he is trying to do. But the whole basis of parental leave is being attacked by this, as I see it, because what we are really trying to do is get adults the ability to have job-protected leave to care for any child that is brought into the world.

Mr. Speaker, I think that is a very, very important component, and I hope this kind of inflammatory stuff does not keep getting out of control.

TRIBUTE TO CWO MARTIN GAFFNEY

(Mr. ATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ATKINS. Mr. Speaker, last night Marine Corps CWO Martin Gaffney died from AIDS.

I first heard from Mr. Gaffney in May 1986. He contacted my office in distress after his wife, Mutsuko, received a blood transfusion tainted with the AIDS virus at a Navy hospital. Mutsuko died in 1987. Their 13-month-old son died of AIDS. And now Mr. Gaffney is dead, leaving his 8-year-old daughter, Maureene to the custody of his brother who lives in Lowell, MA.

Thankfully, Maureene is not infected with the AIDS virus. And, although no amount of money can replace a father, mother, or brother, Mr. Gaffney was able to win a settlement with the Government to provide for his daughter now that he is gone. But this case was needlessly drawn out by the Government, putting undo stress on a very ill man.

Earlier this month, Martin Gaffney said:

> I want to spend time with my daughter * * * I want to be able to be a full-time single parent while I'm alive and I won't be able to do that until * * * the Government pays the damages.

With the court settlement early this month, we are thankful that he was able to spend some time with his daughter, but it was not as much as any of us had thought or hoped for. Mr. Speaker, Mr. Gaffney served his country and his family well. We are all saddened by his death, and share the grief of his daughter, his family, and his friends.

PROGRAMS TO EXPAND NATION'S STOCK OF AFFORDABLE HOUSING REMAIN IN LIMBO

(Mr. MACHTLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MACHTLEY. Mr. Speaker, sitting, or should I say stuck, in committee at this time are two bills crucial to this Nation's stock of affordable housing. I am talking about H.R. 1067 and H.R. 413, bills which permanently extend the Mortgage Revenue Bond Program and the low-income housing tax credit respectively.

Of all the expiring tax provisions before this Congress, it could be argued that perhaps no others are as significant as these. The Mortgage Revenue Bond Program is the only Federal program available to help lower-income families and home buyers meet their mortgage costs.

This program, which has helped over 1.3 million families reach the American dream of owning a home, has been extended five times in the last decade. There is little doubt about the need for this successful program.

The low-income housing tax credit is the only Federal incentive left to support the construction or rehabilitation of our rapidly disappearing low-income housing stock. This program has the added bonus of not only increasing the number of low-income housing units but also stimulating growth in our Nation's vital construction and housing industries.

Permanent extension of both the mortgage revenue bond and low-income housing tax credit programs has overwhelming bipartisan support in the House. H.R. 1067 has 374 cosponsors, H.R. 413 has 283 cosponsors. Last week, letters were sent to the chairman and ranking minority member of the Ways and Means Committee that had the signatures of 225 Members of Congress, these letters asked that both these programs be extended this year.

To allow these programs to expire would have a devastating effect on affordable housing programs, our entire housing industry, and low-income families across the Nation. Last year, the Mortgage Revenue Bond Program was allowed to expire because Congress did not act in time. Let us learn from our lessons of the past and not make the same mistake twice. Let us make these programs permanent now.

BANKING CRISIS NEEDS NATIONAL GOVERNMENT ACTION

(Mr. VENTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, I rise today to comment concerning the activities regarding the banking bill, H.R. 6. Obviously the issue of the banking crisis is a very important matter. It is even more important today than it was earlier this year when the President asked for the recapitalization of the bank insurance fund.

The bank insurance fund now is estimated to have a loss that is 2½ times greater in 1992 than it was initially anticipated. By the end of this year 1991, the bank insurance fund, which provides the insurance for over 110 million depositors in this country, will be technically insolvent and unable to meet its obligations in terms of foreclosing on banks and to pay the depositors when the bank has insufficent assets.

Mr. Speaker, I recall during the 1980's, the President and the administration asked for a substantial amount of money and Congress only acted to provide a limited amount. There was great consternation about the fact that forbearance had to be practiced and that was somehow that Congress reneged on its responsibilities, although we do not in any shape or form, regulate the day-to-day activities or rules for banks.

I would remind Members some of whom may seek a temporary reprieve, hoping this $70 billion bank insurance fund problem will go away. The bank insurance is not going to go away. We have to deal with it, and we have to deal with it now, and we should do it by supporting H.R. 6, as amended, today—and avoid efforts to derail H.R. 6 and simply provide the $70 billion without a new policy path and necessary safeguards.

LIBERAL DEMOCRATS IN A TIME WARP

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, the Democratic party is acting like it found that DeLorean time machine from the movie "Back to the Future." The only problem is, they have taken it back to the past and have gotten stuck.

While the administration has been offering visionary programs for our future, like America 2000, HOPE, and HOME and a tough and effective war against crime and drugs, the Democrats are still locked in battles of long ago. Battles like the 1980 Presidential campaign and the Iran-Contra affair.

The Democrats complain about the President's alleged lack of a domestic agenda, but their own domestic agenda centers on investigating the 1980 Reagan for President campaign and allowing independent counsel Lawrence Walsh to spend untold millions chasing ghosts of 10 years ago.

Meanwhile, our Nation's budget deficit has spiraled out of control and Congress has no new spending priorities.

Come November 1992, the American people will have a choice between two parties. The Democrats, which are caught in a tax and spend time warp, or the Republicans—the party that creates economic opportunities and is not afraid to solve world problems.

TIME TO CHANGE THE COURSE

(Mr. GEJDENSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEJDENSON. Mr. Speaker, the right wing of the Republican Party still drives its course. You would think we would have learned from 1981 through 1986, with their tax acts that have quadrupled the national debt and made us a debtor Nation instead of a creditor Nation. When we look around the globe, we can see Germany and Japan moving forward with an expanding economy. We see the United States with a contracting economy.

Mr. Speaker, it is time to change the course. Nobody needs to ask the question are you better off today than you were 4 years ago. We have now had 20 out of the last 24 years, as Republican administrations bankrupt this Nation.

Mr. Speaker, we used to be the largest creditor Nation on the face of this Earth. People used to send us money for what they owed from overseas. We followed Mr. Laffer, supply-side economics, and the 1986 tax cut, which destroyed real estate and banking.

Mr. Speaker, we have got to change that course, not stay the course, stop with the right wing rhetoric, and pay attention to the needs of American workers and industry to put this country back on course.

PARTY LABELS IN THE HOUSE

(Mr. CUNNINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CUNNINGHAM. Mr. Speaker, I have a correction to make.

When a vote is called in the House, the parties are listed on America's television screens as "Democrat," "Republican," and "Independent."

I took issue on Wednesday with that "Independent" label, because it represents the vote of one Member, my friend BERNIE SANDERS of Vermont, who is a Socialist.

However, the gentleman from Vermont informed me yesterday that though he is indeed a Democratic Socialist by philosophy, his name on the ballot last November did indeed list him as an "Independent."

So, as the votes are counted and divided by political parties for the benefit of Americans watching the House on TV, let the name "Independent" continue to represent my friend, Mr. SANDERS of Vermont.

HEALTH INSURANCE COVERAGE FOR ALL AMERICANS

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, we all know the tiresome and difficult statistics: 34 to 37 million Americans do not have health insurance; in Kentucky, anywhere from 250,000 to as many as 700,000 people are not covered by insurance.

Mr. Speaker, we know that you sometimes cannot find private insurance. If you find it, you cannot afford it. When you can afford it, the first illness causes its cancellation.

□ 1050

The gentleman from Illinois [Mr. ROSTENKOWSKI], chairman of our Committee on Ways and Means, has recently introduced a bill which I think makes a very significant contribution to solving these problems. It is a modest step forward, but it is a step forward to cover uninsured Americans who either are self-employed or who work with small companies. I think it is a very important bill.

I do hope it is heard and comes to the floor in the near future.

EXTENSION OF UNEMPLOYMENT BENEFITS

(Mr. LEVIN of Michigan was given permission to address the House for 1 minute.)

Mr. LEVIN of Michigan. Mr. Speaker, I have just, as others have, seen the unemployment figures. The unemployment rate has climbed one-tenth of 1 percent up to 6.8 percent.

I have also just been handed an article from the Detroit Free Press with the headline "U.S. Encourages Rich to Take More, Prosperity is Shrinking for Most Americans."

The President, I guess yesterday, was at a $1,000-a-plate dinner. I think he better worry about Americans who are trying to find $10 for the dinner table. The President should leave the $1,000 dinners and worry about extending benefits for hundreds of thousands of middle- and low-income Americans who need an extension of benefits, so they can find something again for their dinner table rather than $1,000-a-plate dinners.

It is time for action. I hope the developments of today will be a wake-up call for the President. We need to worry about the Mideast. We also need to worry about the Midwest.

DEFENDING PRESIDENT BUSH

(Mr. ROHRABACHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROHRABACHER. Mr. Speaker, today we have heard the President attacked for being overseas for far too long. We have also seen that the President has been acknowledged for the successes that he has had in American foreign policy.

Let us note that the reason he is successful in foreign policy could be because foreign policy is basically the purview of the executive branch and the President, and he does not have to deal with Congress.

Perhaps one of the reasons he has not been as successful in domestic issues is he has to go through a Congress controlled by big taxers and big spenders that are destroying the economic viability of this Nation. If the President is successful in foreign policy, it is because he does not have to have everything approved by the liberals in Congress. If he has a failure in domestic policy, it is because the policies of high taxes and overspending were forced upon him by one of the biggest spending and biggest taxing Congresses in American history.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1992

Mr. YATES. Mr. Speaker, I move to take from the Speaker's table the bill, (H.R. 2686) making appropriations for the Department of the Interior and Related Agencies for the fiscal year ending September 30, 1992, and for other purposes, with the remaining Senate amendment numbered 175 and disagree to the Senate amendment to the House amendment to the Senate amendment thereto.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment numbered 175, as follows:

Senate amendment to House amendment to Senate amendment numbered 175: At the end of the amendment insert ": *Provided further*, That within the funds appropriated in this Act for Fossil Energy Research and Development, $5,000,000 shall be made available for planning, design and initial construction of the Heartland project".

The SPEAKER pro tempore (Mr. TORRICELLI). Under the rule, the gentleman from Illinois [Mr. YATES] will be recognized for 30 minutes, and the gentleman from Ohio [Mr. REGULA] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. YATES].

Mr. YATES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the further Senate amendment takes $5 million out of the fossil energy research and development account and makes it available for planning, design, and initial construction of the so-called heartland, clean coal project.

When the original amendment was before the House last week, the House rejected it overwhelmingly on a voice vote. At that time $44 million was proposed for the project. That sum has been reduced by the Senate to $5 million.

But, Mr. Speaker, it is not a question of money that is involved here. This is a question of integrity. The fundamental question is whether the integrity of the Clean Coal Program and the selection of projects will now be compromised by special preference being given to the heartland project.

In free and fair competition, the heartland project was not selected.

This amendment is an effort to insert special preference for this project over its competitors and gives that project a grossly unfair advantage. The amendment is even worse than the original Senate amendment because it is open ended, even if it is less money than the original amendment. This amendment is assured funding. In the original amendment, funding was contingent.

Finally, there is no requirement for cost sharing on the part of heartland in this amendment. At least 50 percent cost sharing is required for other clean coal technology programs, but the heartland amendment proposes no cost sharing in any respect.

The amendment takes an additional $5 million from an account which already is being reduced by $6 million in an across-the-board cut. It has had large reductions in both the House and Senate in its research programs.

Mr. Speaker, for all these reasons, we should again reject the Senate amendment. Let heartland compete in round No. 5 with other projects. Let us close the No. 4 round finally. Let us close this bill. Let us send this amendment back to the Senate with the recommendation that this amendment not be agreed to.

Mr. Speaker, I reserve the balance of my time.

Mr. REGULA. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding to me.

I rise in complete support of what the gentleman from Illinois has just said. This is a project which ought to be kept in competition, not be given special preference. And this particular project is, I think, very disturbing in the way that it is evolving.

First of all, we had a very definite intrusion into the regular processes of clean coal technology selection, and it came to the floor with an optional $44 million worth of spending the other day. The House rejected that.

Now what we have done is we have taken the program out of clean coal, put it into fossil energy research and given it an assured $5 million.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, this money is not for research. This money is for advanced planning and for construction.

Mr. WALKER. Reclaiming my time, as I understand it, it is coming out of the fossil research moneys though, is it not?

Mr. YATES. If the gentleman will continue to yield, except for the fact that it will not be used for research.

Mr. WALKER. But that is the next point I was going to make. It is stripping the money out of that particular account and is doing so in a way that assures that they go ahead with design, planning, and construction, which assures that it is a true foot-in-the-door amendment that is very difficult then to back away from in the future, once construction is underway.

There is another disturbing element from all of this. That is, that the company that is involved in all of this is in debt to the State for about $11 million. I am concerned that the way the open-ended nature of this money is in place would indicate that some of the money at least could be used to repay the State for its loans to this company in the early stages. That also would be a direct violation of everything that the fossil research moneys are to be used for.

I believe that the gentleman from Illinois is absolutely correct in what he is doing. We ought not approve money for this project in this bill. We ought to allow this project to compete in round five of clean coal technology. If it is a meritorious project, it will be funded under that particular round. And that is the way it should be.

□ 1100

Mr. REGULA. Mr. Speaker, I yield 2 minutes to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. Mr. Chairman, I thank the gentleman for yielding time to me. I want to thank the gentleman for giving some consideration to this project and simply say that as we move forward in clean coal V, as we move forward in important areas of doing research, I hope that we will give some consideration to the West, frankly, where most of the coal is produced. I hope we will give some consideration to the idea of enriching this fuel so that it becomes an available alternative.

This is clean coal, but we need to understand that there are many more uses that can be made here. So I understand what the gentleman is saying, and I simply would urge that we move forward into clean coal V and to take these projects into account.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. THOMAS of Wyoming. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding. I think he makes an excellent point, and it is one reason why I am assured that the second project, which is also a Wyoming project, was picked in the last round. We are talking about a competing project here, but the project that was picked was picked largely because it was Western coal technology, it is my understanding.

So I think there is sensitivity at the Department of Energy and in the groups that are involved in this planning to the point that the gentleman makes, and I too hope that as we move forward, we assure that there is a balance in the programs that we are approving.

Mr. SYNAR. Mr. Speaker, the Senate has amended the conference report sending back to the House a modified version of an original Senate amendment that earmarked $44 million for a clean coal technology project that does not meet the Department of Energy's [DOE] selection criteria. The new amendment is for only $5 million from fossil fuels research and development, but it would be spent for planning, design, and construction of an unqualified project relieving its proponents of the obligation of providing matching funds.

Last week, I said that if you liked synfuels, you'll love heartland fuels. Well, here is the proof: This Senate amendment—which was based on the leak of procurement sensitive DOE data—subverts the $5 billion national commitment, cost shared by the Government and the private sector—and it subverts the fossil fuels research and development process as well.

There is a need to demonstrate economic and environmentally sound methods of using abundant domestic coal. But there is no need for Congress to select any project. It never has and it never should. However, the new Senate amendment to the conference report ignores DOE's selection process and criteria for clean coal technology and ignores common sense and fair play for fossil R&D. As a result the conference report provides funds for a single, unqualified applicant.

Mr. Speaker, earmarking funds for heartland fuels was wrong. It was wasteful. It would have awarded funds to a project that finished 19th out of 33 projects in the round four clean coal process. It would have rewarded the person or persons who leaked this information.

This amendment is no different. This amendment should be rejected by the House and the bill returned to the Senate.

Mr. REGULA. Mr. Speaker, I yield back the balance of my time.

Mr. YATES. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore (Mr. TORRICELLI). The question is on the motion offered by the gentleman from Illinois [Mr. YATES].

The motion was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to H.R. 2686 just considered, and that I may be permitted to include tables, charts, and other material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

The SPEAKER pro tempore. Pursuant to House Resolution 264 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 6.

The Chair designates the gentleman from Illinois [Mr. YATES] to assume the chair temporarily.

□ 1103

ON THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, with Mr. YATES [Chairman pro tempore] in the chair.

The Clerk read the title of the bill.

The Chairman pro tempore. When the Committee of the Whole rose on Thursday, October 31, 1991, all time for general debate for the Committee on Agriculture had expires.

Pursuant to House Resolution 266, the gentleman from Texas [Mr. GONZALEZ] will be recognized for 30 minutes and the gentleman from Ohio [Mr. WYLIE] will be recognized for 30 minutes for additional general debate.

The Chair recognizes the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I think we are here reaching the home stretch on the consideration of H.R. 6, which is a substantial rewrite of some of the existing banking laws. It is not what we ought to have, it is not what we should have had 20 years ago, but we are going about as fast, as most expeditiously, and as most comprehensively as is humanly possible under our system of procedures.

The country has tremendous problems. Even now the industry itself does not even seem to have the perception as to the depth, the scope, the scale, the complexity, the seriousness of the crisis our Nation faces. So that thus far, the actions of the House have been most welcome. The House has, by I think a very substantial margin, shown that it is intending to have safeguards and protections.

Now, some would like to consider that as a sort of a sporting contest between industry groups. I hope eventually that people will get down to the substantive provisions that were involved in yesterday's vote, the very specific provisions for specific protections needed if insured institutions, with their vast credit powers, are to be allowed to engage in nonbank banking enterprises, particularly those as volatile as the securities. Some of the industry, by industry's scorekeeping, reaches some absurd levels.

I guess we could easily say that building codes help one industry and hurt another. Builders do not particularly like strong building codes. The insurance industry does. So does that make codes designated for public protection proinsurance? Many believe airbags are a great protection for the driving public, but it is true that they benefit companies that insure cars.

Public protections are needed in every industry, be it banking, building, or any other sector of the economy, and those protections are seldom industry-neutral.

One insurance company was clearly a big winner in yesterday's vote, and that is the Federal Deposit Insurance Corporation. My friends, let me tell you the point we reached there, and we are not addressing it at this time but we will, hopefully, later in title V. The gentleman from Ohio [Mr. WYLIE] and I are joining in an attempt to do something to reduce the base of exposure of this insurance fund. Let me tell you where we are. Who did it? Did the Congress? Well, yes, by letting the regulators usurp the definition of that insurance deposit amount. But it was the banking industry that did it, like the S&Ls. We have $3.9 trillion in insured deposits that we tell the people are guaranteed by the Government of the United States up to $100,000, and we have a broke insurance fund; $3.9 trillion in the commercial banks' insured fund, and a broke BIF.

Do you mean to tell me that we have to be space scientists to figure out the mathematics and the impossibility of that ratio? Of course not. So what we are doing here really is kind of touching on some of the periphery things that need to be done. I hope when we get title V we can have the joinder, because it is going to take goodwill.

When I hear about this being an administration or a Republican or a Democratic or a liberal or a conservative financial position, let me tell my friends, financing and banking are like mathematics; you are either right or you are wrong.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

H.R. 6 is supposed to be a reform bill. It is a bill that was supposed to restore the health and profitability of the banking system.

Yet, through the actions of the Rules Committee and the House floor yesterday, we have taken what was a good bill reported by the Banking Committee and made it into a regressive bill.

I hear a lot of speeches about the state of the economy. But Members were voting yesterday to reduce the profitability of the banking system. I guess the Members that voted for the Dingell compromise do not think there is a credit crunch.

While that is bad enough, before the day is out we have a choice to further clutter this bill with killer amendments.

INTERSTATE BANKING

For example, on interstate banking, the Banking Committee passed a broad bill that will permit banks to bank and branch across State lines. The purpose of this is to permit banks to diversify their risks by diversifying geographically. This way the banks won't be subject to regional declines like New England and Texas.

But an amendment by Mr. RICHARDSON has been made in order that will have States opt-in to such a system. This guts the Banking Committee's work. This is a regressive amendment.

Even Mr. RICHARDSON'S home State permits full interstate banking from any other State.

I prefer that we stick with the Banking Committee's plan. I plan to support Mr. VENTO, and let States opt-out. This puts the affirmative burden on the States to stop banking and branching. This is clearly the better way to go.

CONSUMER AMENDMENTS

Several consumer amendments were made in order that have nothing to do with improving this bill.

Mr. KENNEDY'S amendment requires specific lending commitments in writing before banks can expand geographically or into new financial areas.

This is highway robbery of the highest order and we make it legal.

It is a personal injury lawyers dream, because Mr. KENNEDY thinks that he has found a deep pocket, and he is going after it. The only problem is—if banks are such deep pockets, why are so many failing and why does this bill have to recapitalize the FDIC.

Ninety percent of his amendment has noting to do with mortgage lending discrimination that has been reported in the newspapers, because this is the same amendment that was offered months ago in committee before we had the Federal Reserve data.

Other amendments like the Waters amendment—the Waters amendment is a freeze on bank fees. Former Secretary of the Treasury John Connally would like this amendment, because it would be the first price freeze we have had since 1971.

Mr. NEAL of Massachusetts has a burdensome reporting requirements amendment.

Members will have the chance to actually reform deposit insurance coverage my reducing multiple accounts.

Chairman GONZALEZ and I have filed an amendment to limit the number of insured accounts an individual can have at any one institution. Under our amendment, and individual could have two insured accounts per institution: $100,000 in a regular account and $100,000 in a retirement account. This is a very important amendment.

When the Treasury Department proposed this bill, this was part of their recommendations for deposit insurance changes. Regrettably, the Banking Committee struck this from the bill, and has made no changes with respect to reducing deposit insurance coverage. I could argue that they have in fact increased deposit insurance coverage.

Deposit insurance was created to protect the small saver—not the rich investor. In 1933, deposit insurance coverage was $2,500. Now it is $100,000—a fourfold increase—when adjusted for inflation—in deposit insurance coverage. Ninety-seven percent of America will not be affected by permitting only $200,000 of Federal deposit insurance coverage at any one institution.

I have an ad here that many banks run about deposit insurance coverage. It demonstrates how a family of four can get $1.4 million in deposit insurance. This is a gross distortion of the original intent of Federal deposit insurance. Yet this is what is going on in the marketplace. Our own Wright Patman Credit Union offers the same coverage in one of the pamphlets it distributes.

In conclusion, Mr. Chairman, I urge Members not to vote for consumer amendments that have nothing to do with helping the consumer. I urge them to resist the special interests and vote to make real deposit insurance reform.

Let us try and salvage some reforms in H.R. 6.

□ 1110

Mr. GONZALEZ. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. ANNUNZIO], the distinguished majority ranking member of the committee and chairman of the Subcommittee on Financial Institutions Supervision, Regulation and Insurance, of the Committee on Banking, Finance and Urban Affairs.

Mr. ANNUNZIO. Mr. Chairman, I thank the distinguished chairman of the Committee on Banking, Finance and Urban Affairs for yielding this time to me and for his kind remarks.

Mr. Chairman, I rise in support of H.R. 6. I want to commend the gentleman from Texas, the chairman of the Banking Committee, and the gentleman from Michigan, [Mr. DINGELL] for working out the jurisdictional problems with this legislation, and for helping to bring forth the bill on which we are now debating. As chairman of the Subcommittee on Financial Institutions, which first dealt with H.R. 6, I well know the complex problems and the deep passions that this legislation provokes. Nevertheless, it is a bill that must be passed.

Mr. Chairman, some 2 years ago, I first began expressing concern about the amount of money that the Federal Deposit Insurance Corporation [FDIC] had in reserve to backup the bank deposits.

Despite my concerns and warnings that the fund was in danger, the then chairman of the FDIC, William Seidman, was equally vigorous in his beliefs and statements that the fund was not in danger. Unfortunately, too many people listened to what Mr. Seidman said rather than looked at what Mr. Seidman did.

When Mr. Seidman became Chairman of the FDIC in 1985, the fund had $18 billion in reserves. Today, less than 2 weeks after Mr. Seidman has given up his chairmanship of the FDIC, the fund, according to even the most optimistic experts, has somewhere between $2 to $3 billion. It is my belief that the fund is much closer to zero than it is to $2 billion. In fact, I think it will serve this body well as we debate H.R. 6, to look at the fund as bankrupt because there can be no other conclusion.

If one of the 50 largest banks in this country were to become insolvent right now, the FDIC would not have the funds to pay off the depositors without resorting to a taxpayer subsidy.

More than a year ago, as chairman of the Financial Institutions Subcommittee, I commissioned three of this country's leading economists to look into the health of the FDIC. The three economists reported that the fund was in serious trouble and could well require an additional $63 billion in order to meet all of its future obligations.

That study was roundly criticized by FDIC officials and many in the banking industry. There can be no doubt now that those of us who tried to call attention to the problems of the bank insurance fund were doing the correct thing. And those individuals who sought to cover up the problem have actually made the problem worse.

Much will be said about the bank reform portions of H.R. 6, but I want to use my time to discuss two important provisions of H.R. 6—the refunding of the bank insurance fund and increased supervision on the part of our banking agencies.

This legislation would allow FDIC to borrow $30 billion to recapitalize the bank insurance fund. The repayment of this money is to come from increased insurance premiums levied against federally insured banks. Nothing in this legislation is intended to require the taxpayers to pay for recapitalizing the bank insurance fund. An amendment, which I offered to the legislation in committee, requires that the premiums be set at a level high enough to ensure repayment.

I am deeply concerned, Mr. Chairman, that the Federal Deposit Insurance Corporation may already be seeking to violate that provision of the legislation even before it has become law.

Last week, the FDIC refused to raise bank premiums above the current level of 23 cents each $100 of insured deposits. Many of us in the Congress feel that a premium of 30 cents is needed and justified. The FDIC argues that the 23 cents per $100 premium is adequate to repay the $30 billion funding sought in this legislation. However, the agency, in almost the same breath, indicates that it may need additional funds from the Treasury in order to meet anticipated losses if the economy does not improve.

Instead of waiting for additional funding to be needed before raising premiums, FDIC should be trying to achieve extra premium income now, so that when additional funding is needed there will at least be extra money in the form of increased premiums available to offset the cost. This attitude on the part of the FDIC clearly indicates that it foresees a taxpayer bailout of the banks, rather than the banks bailing themselves out.

The sad part is that the banks have refused to cleanup their own mess. At about the same time that I became concerned about the health of the bank insurance fund, I proposed a solution to the problem that would have involved no taxpayer funding, and would have made certain that Congress would not have to replenish the bank insurance fund.

Under my plan, each federally insured bank would deposit with the Federal Deposit Insurance Corporation an amount equal to 1 percent of its deposits. That would have immediately raised some $25 billion to recapitalize the fund. In addition, my proposal would have required that any time the amount of money in the FDIC fund fell below the 1-percent mark, there would be an assessment made against every insured bank to bring the fund back to the 1-percent level. There would be no need to seek funds from the Treasury or the taxpayers since any time the fund got into trouble, every bank in the country would be called upon to pay their share of the cost.

Now was this some pie in the sky theoretical type proposal? Hardly. This is the exact same insurance premium arrangement under which all federally insured credit unions operate. When the credit union fund suffered heavy losses during the early 1980's, the 1-percent capitalization plan was put on the lawbooks for credit unions. The credit unions put up their own money without 1 penny of taxpayers' funds being used. And this year, when the credit union fund experienced some large expenses because of the failure of the New England economy, it was the credit unions themselves who brought their fund to the healthy level that it stands at today.

But my 1-percent proposal for the banking industry was rejected, and on some of the strangest grounds that I have ever heard. It was argued that my plan was not sound because the accounting treatment given to the 1-percent deposit might involve a double counting standard under which the banks could be allowed to carry the insurance premium as an asset. I wasn't worried about accounting, I was worried about saving the taxpayers money. My plan would have raised $35 billion overnight without 1 dime coming from the taxpayers, yet those that opposed the plan complained about accounting treatments.

Well, the FDIC and its bank insurance fund has wonderful accounting principles. It's flat broke and on the verge of a taxpayer bailout, but its accounting principles are superb. Had we adopted my 1-percent proposal, we would not be here today. We might be arguing over accounting treatment, but we would not be arguing over a taxpayer bailout. It is a shame that is the situation that we find ourselves in today.

I am not concerned about the so-called bank reforms or new powers in this legislation. In testimony on this legislation, we were told many times that if banks had expanded powers in the last decade, they would not be in the shape they are in today.

Much was made of the fact that no U.S. bank is among the top 10 largest banks in the world. And, once again, it was the lack of new powers that caused this low world ranking, we were told.

I do not buy those arguments. The large banks in this country have not fallen into the economic cellar because they were not allowed to underwrite securities, or sell insurance.

No, the problems were caused because they made bad loans to Third World countries solely because they were promised record high interest rates, and because they financed billion dollar corporate takeovers that generated huge up-front fees for the banks, but little in repayment ability.

And the big banks got into trouble because they lent too heavily in the commercial real estate market vying to seek which bank could lend the most money to build office buildings in already overbuilt areas. The banks didn't look at repayment ability, but instead, were dazzled by their ability to charge extra fees and command high interest rates for these office building ventures.

Forget all of the apologists who claim that the banks would not be in trouble today if they had expanded powers. The banks got into trouble because of two words—"bad management."

And that same bad management that caused them to teeter on the edge of economic ruin, would have made the same bad decisions in the insurance business, the securities business, or any other new powers that might have been allowed for commercial banks.

Mr. Chairman, in 1980, when Congress first began the deregulation of our financial industries, a serious mistake was made in that legislation. In fact, it was of such grave concern to me that I was 1 of only 13 Members of the House who voted against the conference report on that legislation, and as a member of that conference committee, I refused to sign the conference report. The mistake was believing that by deregulating our financial industries, the regulators would make certain that the taxpayers were not placed at risk by allowing speculative and wild investments and operations. While Congress thought that there would be increased supervision and examination, the administration knew otherwise. And instead of increasing examinations, the administration reduced examiners.

I am proud that in H.R. 6, because of provisions that I authored, the regulators will not be able to turn their backs on their jobs. For example, I was horrified to discover that up until last year there were some banks under the supervision of the Federal Deposit Insurance Corporation that had not been examined for 6 or 7 years. Under H.R. 6, every federally insured financial institution will have to be examined at least once-a-year.

In addition, the so-called forbearance that we saw in the savings and loan industry will no longer exist. One of the reasons the losses in the savings and loan industry were so great is that regulators refused to close down sick institutions. Instead, they kept them open in hopes that they would grow back to profitability. That regulatory fairy has been totally discredited now, and in H.R. 6 we prescribe a different form of preventive medicine. When an institution falls below 2 percent of capital, a triggering mechanism will be setoff that will close the institution. This provision alone could save the taxpayers billions of dollars.

Mr. Chairman, I urge the passage of H.R. 6.

□ 1120

I want to say to my colleagues, in conclusion, we need this bill, we must pass this bill. The only way we are going to get out of the mess and the trouble in which we find ourselves is if somehow, somewhere, we can wave a magic wand that will tell the bankers, "Don't be so greedy. Let's all pay our share of this debt together."

So I urge an "aye" vote on the legislation.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. I thank the gentleman for yielding me this time.

Mr. Chairman, I would like to identify myself with the remarks of the gentleman from Ohio [Mr. WYLIE] and I rise in support of the bill.

Mr. Chairman, I have been very interested in the banking bill and its progress during the last year since I have been a new member of the Committee on Banking, Finance and Urban Affairs.

There is no doubt that it is a complex matter, and it has been mentioned several times that it is complex. But the fact is—and this may oversimplify it a little bit—it would be less complex if we take a look at what we really want as a product when we are through.

I am afraid we are attempting to make a horse and tacking things on and it comes out a camel, coming down with all kinds of things without any clear view of what it is we are seeking to do.

I suppose there would be lots of versions of what it would be, but let me share with you some of the things that I think we ought to look for as we take a look at the amendments that come before us.

First of all, the banking business, I think, is a business, a necessary business, one that deals with depositors' money, money guaranteed by the Government and therefore proper to be regulated, and regulated completely.

But, Mr. Chairman, banking is not a social agency, it is not designed to provide unreimbursed services, it is not designed to redistribute income. The system is designed to operate in the private sector, making enough profit to be able to attract capital. As one of our Members was mumbling the other day on the way back to the office, "These guys are still paying dividends."

You have to pay dividends to attract capital. That is the way the business operates. I think you have to have that as part of what you see as an outcome. If businesses are able to make a profit, and they should, then they are also subject to losses; the stockholders have to accept that. But they have to be able to compete, to work in the markets, to attract people, to attract customers.

Mr. Chairman, I think we should try to tailor the bill so that it results in a product that will have some of these characteristics: a strong financial community. If we are going to have a strong economy, we have to have facilities that are capable of making loans with a minimum risk to the taxpayers.

Mr. Chairman, I urge support of this bill and the elimination of some of the amendments.

Mr. GONZALEZ. Mr. Chairman, I yield 5 minutes to the gentlewoman form Ohio [Ms. OAKAR].

□ 1130

Ms. OAKAR. Mr. Chairman, what we have before us in H.R. 6 is the outcome of good old fashioned hard legislative work. This bill is not just the product of the Banking Committee. It is not just the product of the Energy and Commerce Committee. It is a series of proposals fought for and won before five separate committees. It reflects the majority view of the Members of those five quite diverse committees who worked with great diligence and dedication on a broad range of topics.

Because the financial system is at risk, circumstances dictate that we must make changes to adapt to the new financial environment. In New York, in London, in Tokyo, in Frankfurt, in markets world wide, United States banks are not competing. The harsh reality requires that if we are going to be competitive in world markets, we are going to have to have expanded powers in the banking industry. If we are going to realize the efficiencies and the increased productivity possible through new technologies, we are going to allow for true interstate banking and branching. It is not a matter of if we should allow banks to have these expanded powers, what we must decide is if we are going to do it well.

Through countless hearings and endless markups has emerged a bill that I am satisfied is a reasonable solution. H.R. 6, with its careful balance of new powers offset by prudent reporting, and accountability, is the proper vehicle to achieve our goals. Our committee chairman have hammered out an agreement; an agreement that is not perfect; an agreement that does not give anyone everything they wanted in the bill; but an agreement that is in the best interest of this country and the economy and an agreement I can and will support.

I believe this bill deserves your support, too.

This is one of those bills where we can show the American people, that we, in the Congress, can act responsibly and lead us out of this recession. If we fail to show courage, if we fail to support the leadership of our Chairmen and Ranking Members, if, indeed, we fail to produce what can our constituents think?

Along with the new securities and interstate powers, this bill contains the much-needed capitalization of the bank insurance fund, allowing the FDI to borrow up to $30 billion from the Treasury and leverage borrowing for up to an additional $45 billion. It is imperative to note that this recapitalization is merely a line of credit and that any money used by the FDIC is a loan that will be paid back by the banking industry. Assessment rates have already been increased to 23 basis points to help ensure that these funds are temporary transfers. And to prevent future problems, the bill also spell out strict new accounting standards, dictates that the least cost resolution of a filied institution must be used, clarified capital level requirements, and calls for mandatory prompt intervention when levels fall too low. Institutions well below capital level requirements, as strictly defined in this bill, must be placed in conservatorship within 30 days. All institutions will be required to be examined on an annual basis and must have an independent audit performed. Regulators will no longer be able to allow a failing institution to languish and ring up even more losses.

H.R. 6 eliminates the too-big-to-fail doctrine effective in 1995. No longer will regulators be able to prevent large banks from failing because they view these large institutions as too important to the financial industry or the country. Too many managers at these large banks have abused this policy and taken risks that were totally unjustified, secure in the knowledge that if their big gamble failed, the Government and taxpayers would bail out their banks.

Foreign banks will undergo more open and rigorous regulation through the provisions in H.R. 6. Better coordination with foreign regulators and increased access to documentation will help to ensure that the illegal activities that have plagued certain foreign banks operating in the United States can be identified with greater ease and, hopefully, prevented altogether. The FDIC, or any other U.S. regulatory agency is also expressly prohibited from making restitution for foreign deposits in U.S. banks that have failed. For years, these foreign deposits have had a free ride; they did not pay assessments into the bank insurance fund, yet they would receive full coverage. No more.

H.R. 6 also contains consumer provisions that strengthen the Community Reinvestment Act by encouraging the financial institutions to participate in CRA. Banks are actually given tax credits for increasing their participation in low-income communities. This means better access to capital for the disenfranchised in our cities; a better chance to improve one's life. H.R. 6 eases paperwork requirements on banks and gives them proper credit for working with minority, female, and low-income groups.

Interstate banking and branching is provided for in the bill allowing greater efficiencies available through technology to operate in our banking system. Increased competition from banks previously barred from branching to other location will be good for consumers by presenting more choices and lower rates and fees. Duplicate levels of management will be eliminated, allowing banks to provide more responsive customer service. The nationwide banking and branching title also provides additional protection against deposit production offices and requires that CRA exams be performed on a State-by-State basis.

Firewalls between banking and securities affiliates have been constructed in such a way that will protect the integrity of the financial system. Mixing of funds, cross marketing, consumer disclosure, and a host of other concerns have all been addressed.

I am very happy the committee accepted my provision in H.R. 6 which allows bank insurance fund members to merge with savings association insurance fund member institutions. This will bring private capital into the financial system by encouraging mergers and acquisitions of institutions. This will help to offset potential losses to the insurance funds; every dollar that private investors put into an institution decreases the likelihood of failure and relieves the taxpayers of a potentially expensive bailout. This amendment is a refinement of an idea I first proposed in the FIRREA legislation of 1989 and which has proved to be most effective.

The committee has wisely decided to allow individuals to retain multiple insured accounts and to retain deposit insurance limits at $100,000 per account. The intent of maintaining multiple insured accounts is to preserve depositor confidence in the system. Confusion resulting from changes in coverage could cause the transfer of billions of dollars in the system, causing further uncertainty. Limiting deposit coverage would likely send deposits to low-yield Government bonds that already are completely insured. That would dry up credit availability for individuals and small businesses and made an already bad situation worse. It is important to note that multiple accounts are not responsible for bank failures in any way. Bank failures are a result of mismanagement, poor investments by institutions, and poor regulation.

The bill requires risk-based capital standards to be implemented based upon the relative riskiness of a bank's assets. Risk-based assessments require the bank to back riskier investments with more capital, more of their own money. Banks will be responsible for maintaining the internationally agreed-to Basle Accord Capital Standards which calls for an 8-percent equivalent weighted capital level. Some instruments carry little or no capital requirements because they carry little or no risk, such as Government bonds. Others may be weighted up to three times normal levels for risky venture capital investments. This weighting of assets will help ensure that bankers weigh return on investment factors versus risk factors and invest prudently. Again, if an institution fails, every dollar put up by the banker is a dollar that depositors and taxpayers will not have to bail out. In this provision we finally have language that rewards bankers for their prudence rather than their greed and recognizes the difference between a solid investment and mere speculation.

The Federal banking agencies are required to formulate regulations setting standards for real estate lending by insured depository institutions. This is a very sound proposal that prescribes limits on real estate lending by our banks. We all know the trouble that the savings and loans and now the banks have gotten into because they were not able to regulate themselves and sensibly assess the risks involved with land and development deals. The banks, the Congress, and the taxpayers of this country are now paying the tab for empty offices and strip malls across the country.

The bill provides for protection from sophisticated professional brokers who move large sums of deposits in an out of accounts and institutions. Yet pass-through protection is provided for the pensions of hard-working, middle-class Americans who rely on these accounts to provide for their retirements.

In short, the bill provides a healthy set of checks and balances while empowering our financial institutions to engage in new activities needed to compete in the global economy.

I would like to personally thank my chairman, HENRY GONZALEZ, plus Mr. DINGELL, both of whom have been more than fair throughout the deliberation on this bill, and I encourage you to support H.R. 6 on the floor.

Mr. WYLIE. Mr. Chairman, I yield 6 minutes to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Chairman, I want to thank the gentleman from Ohio [Mr. WYLIE] for yielding this time to me.

My colleagues, during the course of our discussion of H.R. 6, it is unavoidable that we must discuss the willingness and ability of the banks to reach out into distressed communities and into the minority communities to do what Congress said they should do back in 1977, under the Community Reinvestment Act.

Last week, or 10 days ago, the Federal Reserve came in with a stunning report basically confirming that many of us have said in terms of discriminatory practices related toward those among us in our society, particularly minority groups in distressed communities. the mortgage rejection rates around the country: 14.4 percent, whites; Blacks, 33.9 percent; Hispanics, 21.4 percent. So, clearly this study confirmed the worst suspicions of many Republicans and many Democrats.

What the study did not show, however, is that it is not just mortgage lending, that there is real discrimination in the marketplace, but it also has to do with small business lending. Black entrepreneurs, Hispanic entrepreneurs, have a tough time getting loans, many of them even though they are qualified.

So, in this banking bill there have been two approaches; The gentleman from Massachusetts [Mr. KENNEDY], my good friend, who believes as strongly as I do, the CRA, and he has got an amendment that is going to be discussed today; and I have got one that others in this body are going to try to take out on Monday. So, I want to use this time to talk a little bit about mine because we will have the debate on the Kennedy amendment a little bit later on today.

I might add I think parenthetically they probably could coexist, to see which was better. The gentleman from Massachusetts [Mr. KENNEDY] prefers a more punitive approach. My approach is a little bit more market oriented, incentive based approach. He would encourage red-lining; I would encourage green-lining. But that is for later on.

My colleagues are going to receive some information from some of the regulators who are going to say that the Ridge-Flake amendment, and I must emphasize to my colleagues that this is not just my initiative; our friend and colleague from New York has worked very hard with me on the Bank Enterprise Act. That is the amendment in this banking bill. That is the amendment that passed by a vote of 37 to 11 in the Committee on Banking, Finance and Urban Affairs. We have worked hard to come up with an incentive to urge banks to lend into distressed communities, and I noticed that our friends down at the FDIC have already started circulating a letter saying that it is not a good thing because the incentive we used is an offset against some of the bank insurance fund payments that are made by the banks, basically to help insure their industry.

Mr. Chairman, let me give some of my colleagues who are not on the Committee on Banking, Finance and Urban Affairs a little bit of a background. The banks pay 23 cents per hundred dollars worth of deposits and from that 23 cents on a hundred dollars worth of deposits they have created what is now called the bank insurance fund. The dollars that would be involved in a potential offset on the Ridge-Flake amendment are two-tenths of 1 percent of the dollars that would be generated over the next 4 years. It has been estimated that the BIF will generate on this 23 cents per hundred dollars $25 billion in 4 years. our cost is estimated by the CBO at roughly $60 million in 4 years, but it would leverage, my colleagues, leverage $1 billion worth of new investment, $1 billion worth of new mortgages, $1 billion of new entrepreneurial capital in distressed communities.

My colleagues, again it would be two-tenths of 1 percent of that $25 billion over a 4-year period that would leverage $1 billion worth of new investment, and there are attendant economic costs wherever we try to solve a social problem. The gentleman from Massachusetts [Mr. KENNEDY] has economic costs associated to his approach. I have economic costs associated with my approach. But I prefer to incentivize green-lining instead of punishing red-lining.

□ 1140

Let us get back to these regulators, the regulators who have the audacity to come and say that this amendment, which is something like $60 million out of $25 billion that will be generated by the banks, this amendment, which is $60 million in comparison to the $70 billion that the regulators want, somehow destabilizes the bank insurance fund.

Make no mistake about it, Mr. Chairman, regulators do not like the CRA, they do not like the Community Reinvestment Act. I had occasion to go back to the 1977 hearings on CRA, and I would say it is as clear and unequivocal as the nose on your face that the Federal Reserve Board did not like CRA then, the Federal Deposit Insurance Corporation did not like CRA then, and the Office of the Comptroller of the Currency did not like CRA. So let us disabuse ourselves of the notion that they are coming up because they think somehow CRA would be jeopardized, because, they never supported it in the past, or that somehow the BIF would be jeopardized by this modest offset against the $25 billion that would be generated over the next couple of years.

Reaching out to minorities will not destabilize the bank insurance fund, creating economic opportunities will not destabilize the bank insurance fund, creating community development corporations will not destabilize the bank insurance fund, and empowering people will not destabilize the bank insurance fund. This is how the regulators get a grip.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. RIDGE] has expired.

Mr. WYLIE. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding time to me.

Well, once again, Mr. Chairman, we have excelled in an outstanding performance in this Congress. This banking bill in its current form will be to the financial marketplace of America what in 1986, the tax reform bill was to the taxpayers of this country.

We have quickly identified all of our problems. The banks are in trouble. Why? Well, because of duplication of Federal regulators. We have got them tripping all over people, and what happens? Lenders are scared. We have a credit crunch. Is it a mystery? If we make this loan, will we be written up for making irresponsible use of extension of credit?

What else is in danger? The American taxpayer. As troubled banks that are regulated by duplicitous Federal regulation get into trouble and lose money, we turn around and call them a taxpayer. No, we will not allow outside capital to come into the marketplace because allowing commercial entities who have 80 percent of the disposable investment capital in this country would be illogical. We do not let people who have money put it in the defense marketplace.

And what do we do with regard to geographical problems, as in the

Southwest, where we all ranted and raved about the losses of the irresponsible Southwest when they were dependent on the oil and gas community and where banks could not spread their investment portfolio.

And now, interestingly enough, I read that in the Northeast, where we have the highest default rate on loan performance in this country, the top 9 out of 10, according to the last survey, are in trouble. Imagine that. And we still say, no, we should not have interstate branching. We want to keep people in their markets where we know they can lose money.

We have really gotten to the end of the process here where we have a banking bill that will make sure that we do not have diversified powers. It would be like going back home today to your big retailer outlet in your community that sells a whole array of products, one that has branched all over the United States, and we walk into that retail establishment and say to him: "Oh, well I'm sorry but you can't sell anything but toothbrushes, frozen pizzas, and tires, and you will have to shut your operation down everywhere but in this one country."

Now, that makes a lot of sense. if you told that retailer that particular requirement, and that we are going to have Federal regulators checking on him to see if he complied, he would think you are nuts, and he would be right.

But what do we tell banks? "No, you can't branch. No, you can't sell new products, despite the fact that you have competitors encroaching on every area in which you do business."

Banks are not alone in banking services, if you have not heard that story before, there are lots of people selling banking products, but banks cannot sell new ones. No, that would be irresponsible.

But we have not reached the end of our regulatory responsibilities. We need to make sure that we have more Federal regulators. I hear banks crying for that all the time. And what are we going to do? We will soon consider the Kennedy amendment.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. BAKER] has expired.

Mr. RIDGE. Mr. Chairman, I yield 1 additional minute to the gentleman from Louisiana [Mr. BAKER].

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. BAKER. Mr. Chairman, I want to make one more little point before I conclude and before I yield.

The CHAIRMAN. Let the Chair state that the rule enables the ranking minority member to control the time. Does the gentleman from Ohio [Mr. WYLIE] wish to yield time?

Mr. WYLIE. Yes, Mr. Chairman. I yield 2 additional minutes to the gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Chairman, I thank the ranking minority member for yielding more time to me.

Mr. Chairman, I would like to point out that we are not finished with our regulatory revisions, that we have decided that there is one other area we need to move into quickly and strongly, and that is in regard to the enforcement of CRA provisions in community reinvestment to make sure that people who are otherwise out of the lending process have access to credit. That is fine. That is responsible. But how do we enforce it? We are going to have a covert plan. We are going to get two guys to walk in and allege to be interested in borrowing, and the Federal Government will pay for these teams of inquisitors to come around and make sure that that rural bank in that town of 5,000 people who cannot find quality CRA investments gets into trouble because they do not act right when they refuse to extend that credit.

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. BAKER. I am happy to yield to the gentleman from Georgia.

Mr. BARNARD. Mr. Chairman, I would just like to ask the gentleman this: First of all, I would like to commend him on a very, very sensible statement.

No. 2, we have talked about a financial service center in banks, and naturally we are interested in safety and soundness. We want less risk in the banking industry. Would the gentleman tell me what risks there are in a bank selling insurance?

Mr. BAKER. Mr. Chairman, it is amazing to me. I cannot understand how we look at making a profit as a risky opportunity. We are not insuring against loss. All we are going to be doing, as a bank selling insurance, is acting as an agent making a commission.

Mr. BARNARD. What about being a broker?

Mr. BAKER. I do not understand where insurance sales become a risk to a bank. If you make the sale, you make a profit. If you do not make the sale, you lose nothing.

Mr. BARNARD. There is no underwriting there, just plain selling?

Mr. BAKER. That is right. We are not insuring risk; we are just taking a premium from the customer.

Mr. BARNARD. And the same thing is true about brokering investments. Is there any risk in actually selling a stock, selling a man a stock that he orders himself?

Mr. BAKER. Oh, there is a risk. Somebody might make a profit.

Mr. BARNARD. I see.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. BAKER] has again expired.

Mr. WYLIE. Mr. Chairman, I yield 2 additional minutes to the gentleman from Louisiana [Mr. BAKER].

Mr. BARNARD. Mr. Chairman, will the gentleman yield further?

Mr. BAKER. I am happy to yield to the gentleman from Georgia.

Mr. BARNARD. Mr. Chairman, let me say this: There are a lot of good things about this bill which I want to reiterate. I want to follow up on the statement of the gentlewoman from Ohio, and I want to follow the statement of the gentleman from Pennsylvania [Mr. RIDGE]. I think the gentleman from Pennsylvania [Mr. RIDGE] and the gentleman from Massachusetts [Mr. KENNEDY] have a very, very needful approach to the problem we have, and that is the underserved of this country. But to whom are we looking to bail out the bank insurance fund. We are looking to the banks. Now, does it not take profits in order to make money to bail out the BIF's?

Mr. BAKER. Not the way the Federal Government wants to do it and not the way this Congress wants to do it. The way we do it in this Congress is regulate you more, let you sell less, and make sure at the same time you have a statutory obligation to make more money. It is perfect. It is logical.

Mr. BARNARD. Mr. Chairman, what does the gentleman see in this bill, then, to enhance the opportunity of banks to make more money to pay off the BIF to serve these minorities that are not being served? How are we going to do this in this bill so they can make the money and do all these great things?

Mr. BAKER. If I were in the banking business, I would sell my stock now. That would be the only way they could make money.

Mr. KENNEDY. Mr. Chairman, will the gentleman yield?

Mr. BAKER. I am happy to yield to the gentleman from Massachusetts.

Mr. KENNEDY. Mr. Chairman, I just wanted to clear up what is obviously a misinterpretation of the gentleman from Louisiana with regard to what we actually are going to do with regard to the smaller institutions of this country.

First and foremost, there is no provision in the amendment that would suggest that two people are going to be hired by the Federal Government to go out arbitrarily and investigate any bank. The only thing the amendment would do would be to provide as a tool for Federal regulators, once the antidiscrimination study that the gentleman from Pennsylvania [Mr. RIDGE] has already referred to has been completed——

Mr. BAKER. Mr. Chairman, reclaiming my time, I cannot yield further. I am running out of time. I understand the gentleman's point, but I am running out of time.

The CHAIRMAN. The gentleman's time has now run out.

Mr. WYLIE. Mr. Chairman, I yield 2 additional minutes to the gentleman from Louisiana [Mr. BAKER].

□ 1150

Mr. BAKER. Mr. Chairman, if I may reclaim my time, I hate to do this to the kind gentleman from Massachusetts [Mr. KENNEDY], because we have had differences on committee, we have discussed the issue before, and the gentleman will have time on his amendment, and we do have some differences as to how the effect of this CRA requirement will impact the cost of operating a business. I am sure, if we are fortunate, we will have time to debate it further.

Mr. Chairman, I would just like to conclude with one further observation. Let us say we have determined that there has been a plane accident of great magnitude, and this plane is down off the coast of the United States somewhere. We only have a limited amount of time to respond and save these lives that are in jeopardy.

So with quick, effective, responsive nature, we have designed a rescue party and we load it with all the necessary supplies and experts to go out and save these lives. And we give them directions and tell them where it is.

Then at the last moment, the Congress calls up and says, "We've got a better plan. Take the stuff off the plane. Put it out in the parking lot. Get everybody on a train who is an expert and send them to the west coast."

That is what we are doing with the banking bill. We have designed the worst possible plan to save the American financial system.

Mr. WYLIE. Mr. Chairman, will the gentleman yield?

Mr. BAKER. I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, I want to say the gentleman from Louisiana [Mr. BAKER] is correct on the issue of testing. In the amendment that I have, which I think is the one that should be offered, it says "fair lending testing defined." It says:

> For purpose of paragraph (1), fair lending testing shall be defined as a process whereby two or more persons of identical or substantial similar creditworthiness but of different race, color, religion, national origin, sex or marital status, or age seek mortgage loans or depository services from an insured depository institution for the purpose of assessing the institution's compliance with fair lending laws.

Mr. BAKER. Mr. Chairman, reclaiming my time, I certainly agree with the interpretation of the gentleman from Ohio. There will be reason for dispute from the other side. I want to make it clear in fairness to the gentleman who will propose the amendment at a later time, whether this amendment is adopted or not, the ship has sunk. This is just one more rock on a slowly sinking boat, and it is not the real element before the House.

The CHAIRMAN. The Chair will advise Members that the gentleman from Ohio [Mr. WYLIE] has 8 minutes remaining, and the gentleman from Texas [Mr. GONZALEZ] has 8 minutes remaining.

Mr. GONZALEZ. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. KENNEDY] to continue his discussion on this matter.

Mr. KENNEDY. Mr. Chairman, the fact is that this bill does provide increased new powers to banks, despite all the gnashing of teeth we have heard with regard to the shortcomings of the bill.

Fundamentally, what this bill is going to do is provide interstate banking. When all is said and done, at the end of the day we are going to provide major new power of interstate banking to the institutions of this country.

What we find is that in the instances where interstate banking has been implemented in this country, there is a very disturbing trend of what has taken place. That trend is the major institutions cross State lines. They go and purchase a smaller institution in another State, and they do what we call deposit suck. They end up going into those banks, sucking up the deposits, bundling them together, and investing them on Wall Street.

We take the money out of Main Street, and we invest it on Wall Street. And we have seen this time and time again. We have seen one major bank in this country in the past 6 or 8 months buy up $22.5 billion worth of deposits and invest $18.5 billion on Wall Street.

Mr. Chairman, the fact is what we are going to be doing with this bill, unless we create incentives for these institutions to invest back into the local communities where they are going to be purchasing these smaller banks, we are going to suck up the capital needs of those very small rural communities.

All the Community Reinvestment Act does in this particular bill is say that banks that are in excess of $100 million worth of value that want to go interstate have had to have a past record of satisfactory or better under the Community Reinvestment Act, and they have to make a commitment in writing as to how they are going to meet the credit needs of the local community where they are acquiring a new bank.

That is the only thing that is required under the Community Reinvestment Act. There are separate provisions under the Home Mortgage Disclosure Act which deal with the fundamental problems of discrimination in banking which is taking place today.

Mr. GONZALEZ. Mr. President, I yield 2 minutes to the distinguished gentleman from Wisconsin [Mr. KLECZKA], a member of the Committee on Banking, Finance and Urban Affairs.

Mr. KLECZKA. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, one of the Members of the House a short time ago asked, Where are we going to look to bail out the banks? And he answered it himself by saying the banks.

Well, I say to you, that is total nonsense. The bank bailout, whether or not this bill passes, has already started. The bank insurance fund, the FDIC, is broke. This legislation asks for a $70 billion Treasury loan, which in my estimation will never be repaid by the banks.

In fact, with the pending bank failures on the line today, it is estimated that that $70 billion will not last through the end of next year. At that point we are going to loan them more money, more money, and to say that this is not going to turn into another S&L crisis, I say, hold on, you are in for a rough ride, because I say that is what is going to happen.

I personally would have supported a narrow bill, one which will recap the bank insurance fund, one which would have provided for some administrative reform, some changes in the law to provide for some deposit insurance reform.

I was not successful in the Committee on Rules. The House has made its determination that we should be debating a broad bill, and that is what we are doing today. We are talking about a bill that extends additional powers to the banks, the same type of powers, or additional powers, to those who we gave the S&L's years ago, which got them into a mess.

But now we are going to have a motion in a short time to throw this package back to committee, because some in this Chamber did not get their way on title IV of the bill, which was tough medicine for the banks. Basically it stated that if, in fact, you want these new powers, you are going to have to abide by some tough, tough regulations.

That was passed by the House. That portion of the bill was retained by the House, and now there are those in the Chamber who will say, well, I lost that issue. I am going to take my ball and go home.

Mr. Chairman, that is not the legislative process. We have other amendments to address. I am saying let us address those amendments, complete action, and make a judgment on passage on Monday of next week.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Chairman, I thank the distinguished gentleman for yielding to me.

Mr. Chairman, it is my understanding there is just a nominal amount of time left during the course of general debate. I wanted to alert Members to what I will be doing just prior to our getting to the further amendment stage here, an appropriate time to offer a motion to strike the enacting clause, which provides for 5 minutes of debate pro and 5 minutes against. While this is a limited period of time, I do not think we want to be out there asking for extensions of time to debate that.

Mr. Chairman, if I might very briefly at this point suggest why I will be making that move, I think I come to the floor with very clean hands. Yesterday, recall the rule on this measure was about to go down. It passed by two or three votes, one of which was mine, plus seven more on my side, at my direction.

For what purpose? Not to kill it outright then. Let us at least give this thing a chance on the floor of the House to see where we are and how the land lays, and that opportunity was there.

Members spoke their piece. I did not take the floor after that at all. I did not influence it one way or another.

But as a result of, without naming any specific amendment, the failure to strike a significant portion of this measure that would invite a Presidential veto, I think makes it rather ridiculous for us to continue all day today or whatever and all day Monday, and then have so much come fall around us that in the final analysis we cannot even be sure of having a sufficient number of votes to pass this thing.

We have got to get a bank insurance fund bill through this Congress before we leave. Certainly for the bank insurance fund, yes, and for the other reforms we would like to have. But I cannot get away from the fact that when the vote was taken yesterday on one very significant amendment, I would be willing to wager that at least 50 percent of the Members of this House did not know for sure what was involved in that motion to strike.

Mr. Chairman, it galls me a little bit when a committee with 52, 53, or 54 members, and another with 43, 44, or 45 members, and distinguished chairmen that they are, very respectful in my mind always for those who serve with such distinction over a long period of time, come to agreement with so little time for the general membership to know what was this kind of smokehouse agreement or backroom agreement? Do we really know what it does and what it does not do?

Oh, I would be willing to wager if each one of our Members were asked point blank could you spell it out for me, they would have to be saying, "Well, it was a personality thing that I was really voting for there, not really the substance of that amendment."

□ 1200

I do not know. I am not imputing anything other than I do not think this is the way this House works best.

So for that reason, I want to offer that motion or will be offering that motion at the conclusion of general debate as a means of offering the majority then, because it will be their prerogative on their motion, to send the measure back to the Committee on Banking, Finance and Urban Affairs, to work out something that can then be palatable for the general membership, sufficiently to get it adopted by this House in conference with the Senate, something in agreement that the President can ultimately get signed.

Mr. WYLIE. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, I will support a motion by the gentleman to strike everything after the enacting clause. I will do that somewhat reluctantly but with serious intent.

The House Committee on Banking, Finance and Urban Affairs reported out an excellent and comprehensive piece of legislation. We worked together in a bipartisan way, the chairman and I and other members of the committee. I was proud of our product.

Given the action of the Committee on Rules and the action on this House floor yesterday, it seems to me that the handwriting is on the wall, and we are in the process of passing a bill here, it seems to me, which will provide for less growth and fewer jobs, a less productive economy.

There are many, many mischievous amendments in this rule, which was adopted by the Committee on Rules, which, in my judgment, will only make the matter worse before we come to final passage. I think we could save ourselves some time if we vote for this motion to strike after the enacting clause, go back and sit down in a bipartisan way and see if we cannot work out something that the President can sign, that we will suggest that the President can sign.

Another example of one of the amendments that failed yesterday by a rather substantial margin was the one offered by the gentleman from New Jersey [Mr. RINALDO], which would have allowed the U.S. corporations to buy failed or failing banks. We got a lot of talk about the camel's nose under the tent and about Trojan horses, all that. But what we have are some camels' noses under the tent and Trojan horses coming up here to a good productive banking bill, which have snuck their way into this.

It seems to me that if we are going to try to save the Federal Deposit Insurance Corporation fund, the bank insurance fund, that we ought to allow some of our companies which are making a profit and which have some capital to invest in our private companies to do so, if the bank has already failed.

The amendment would have said that it had to be a level 5 bank before any money from a corporation could be invested in it. I think that makes a lot of sense, but I want to commend the chairman, the gentleman in the well, our distinguished leader, for his leadership on this particular proposition.

I think it gives us an opportunity to express ourselves just a little bit on this side of the aisle.

Mr. MICHEL. Mr. Chairman, if I might just make one further comment, I realize there are a number of other pending amendments that would be considered the balance of this day and the balance of Monday. I do not mean by what I do here to prejudice in any way the value of those amendments or being for or against them, because some of them quite frankly might be all very well.

I know the gentleman from Minnesota [Mr. VENTO] has one that, quite frankly, is very acceptable to this Member, to the administration, and on others I would have to say I will vote no. I guess we all have that view here, those that we would vote for and those that we would not.

But considering the situation for what it is and the time element and what we could do by way of telescoping that time element to ultimately get us where we have got to go and have to go before we adjourn, I talked to the Speaker this morning. He still wants to abide by that time frame of the 22d or that weekend before Thanksgiving.

When we think in terms of unemployment compensation being concluded, this being concluded, and Civil Rights and several others of those pieces of legislation, we have got a time element on our hands here, a time problem with a very complicated issue.

This seems to me, to give the specialists on that committee the chance to do their work. They can separate out for us, rather than in-house, in this kind of situation. They can do a heck of a lot better job than we would by simply openly doing it.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentlewoman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, I think the gentleman may have answered my question. My concern is that we do have a banking bill before the end of this session. I think that seems to be his intention, too. I am somewhat concerned about the length of time that we are talking about here.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GONZALEZ. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. LUKEN], the very capable though brand new member of the Committee on Banking, Finance and Urban Affairs.

Mr. LUKEN. Mr. Chairman, I remember when the debate on the banking bill began, the Treasury came in with a big chart and the chart was a list of the top 30 banks, biggest banks in the world. And the worry was that the United States did not have enough banks on that list.

I worried then and I worry now that Treasury was willing to cut a lot of corners and sacrifice a lot of safety to get American banks on that list.

We took a very different approach, and I think the bill that we have now before us takes a very different approach. It allows for this Congress to consider a wide array of banking services, independent branching, which I think is a wonderful amendment, the Vento amendment that will be offered today, a wide range of services. But it does so against the backdrop of understanding that it is the American depositor, it is the American taxpayer that is at risk.

I would urge opposition to the motion to recommit this bill to the committee.

Mr. GONZALEZ. Mr. Chairman, I yield 1 minute to my friend, the gentleman from Arkansas [Mr. ALEXANDER], a very distinguished Member of the House.

Mr. ALEXANDER. Mr. Chairman, unlike the gentleman from Illinois, I did not vote for the rule to provide for consideration of this bill because I do not agree that the procedures set forth by the Committee on Rules were satisfactory. However, now that the bill is being debated, we must complete consideration. I think it would be totally irresponsible to bail out on this issue.

I want to compliment the gentleman from Texas, the gentleman from Georgia, and the gentleman from Ohio and all members of the Committee on Banking, Finance and Urban Affairs for even bringing this controversial bill to the floor for consideration.

We live in a time when economic power is more important than military power and, at the same time, our banking industry is in trouble. It must be fixed so that American banks can compete in a global economy. We in this House must resolve the issues presented in this bill.

It is irresponsible for the President to not come forward and provide leadership, so we must do it for him.

I urge my colleagues to defeat the Michel motion which would kill the bill. Thank you.

Mr. GONZALEZ. Mr. Chairman, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise in support of the bill.

Mr. Chairman, yesterday's vote against the core bank amendment was regrettable.

The core bank concept was designed to meet America's current banking crisis by creating a new banking industry which would provide traditional banking services with the appropriate Federal safety net for the protection of the traditional depositor and ultimately the American taxpayer.

Clearly, the debate on core banking was fraught with misinformation and a lack of understanding of the provisions of the amendment.

First, the amendment was specifically designed to phase core banking in over an 8-year period. Admittedly, the core bank concept was new to many Members and it did need much refinement. But the scare tactics we heard that billions of dollars would leave the traditional banking system through a process of disintermediation, was just plain unfortunate. Had core banking gone into effect in January, that may have been true, but if one would have listened to discussion, it would have been clear that many of the concerns expressed, however, disingenuous, would certainly have been addressed by the Banking Committee, the regulators, and the industry itself over that 8-year period.

In addition, the concern expressed that core banking would have resulted in a credit crunch was equally incredulous. This country is in the midst of the worst credit crunch since perhaps the 1950's. The current system of banking has left us with major problems with nonperforming loans in commercial real estate and other risky investments. It has resulted in the highest number of bank failures in this Nation since the Great Depression. It has resulted in the $500 billion S&L bailout we are currently dealing with.

Core banking is not a new, radical idea. Core banking has, in reality, been at the very foundation of American banking since the beginning of this Nation. And, despite uninformed and misleading comments made during the debate, core banking, as it existed before 1929 and again before 1981, was not, as some tried to insinuate, at the bottom of the Great Depression or the S&L debacle.

In fact, part of the reason for the Great Depression and for the changes in banking law in 1933, was the fact that a few banks did mix investment banking with commercial banking and made the wrong decisions with their depositors money. In 1981, after passage of the Garn-St Germain deregulation bill, for some, the sky became the limit. Excessively high interest rates, bidding wars, larger and larger loans to borrowers, and more and more risky investments brought us the bailout we are asking the American taxpayer to pay for today.

Mr. Chairman, the point here is that the core bank proposal represented the best opportunity for this Congress to address the issue of deposit insurance and banking reform. It was regrettable that the House took this issue so lightly and did not give it a fair hearing.

Taking deposits from traditional small savers and protecting those life savings through the deposit insurance system; making home, automobile, small business, and personal loans has always been the business of banking. These activities do not change under core banking. And consistent with this concept and to avoid conflicts of interest the vote yesterday confirmed the need for strong firewalls.

If we are to avoid the perils of the deregulation fever of the 1980's that brought us the S&L scandals, then we must adopt this bill.

Mr. GONZALEZ. Mr. Chairman, I yield myself such time as I may consume in order to enter into a colloquy with the gentleman from Illinois [Mr. ANNUZIO], our distinguished chairman.

Mr. ANNUNZIO. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from Illinois.

Mr. ANNUNZIO. Mr. Chairman, I thank the gentleman for yielding and for joining me in a colloquy regarding the repayment of bank insurance fund borrowings from the Treasury.

I would ask the distinguished chairman of the Banking Committee, Mr. GONZALEZ, to join me in a colloquy regarding the repayment of bank insurance fund borrowings from the Treasury. The Financial Institutions Subcommitee, which I chair, adopted language which is in H.R. 6 to require the FDIC to assess banks sufficient amounts to repay the Treasury.

I would ask the distinguished chairman of the Banking Committee whether section 103(a) of H.R. 6 requires the FDIC, as a condition to borrowing any money from Treasury, to submit a repayment schedule demonstrating that income from assessments on banks will be sufficient to repay the borrowings?

Mr. GONZALEZ. The gentleman from Illinois is correct. A repayment schedule based only on assesments is a condition precedent to the FDIC borrowing any money from Treasury.

Mr. ANNUNZIO. And is it also that section 103(b) of H.R. 6 would provide for emergency special assessments by the FDIC to assure that the repayment schedule is met?

Mr. GONZALEZ. The gentleman is correct.

Mr. ANNUNZIO. I thank the distinguished committee chairman for particpating in this colloquy. It reassures me that this bill absolutely requires banks, without recourse to a taxpayer bailout, to repay the Treasury for shoring up the bank insurance fund.

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from Georgia.

☐ 1210

Mr. BARNARD. Mr. Chairman, based upon the colloquy just engaged in, from what has been said then about this bill, this is not a taxpayers' bailout.

Mr. GONZALEZ. The gentleman is correct.

The CHAIRMAN. All time has expired.

PREFERENTIAL MOTION OFFERED BY MR. MICHEL

Mr. MICHEL. Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. MICHEL moves that the committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken out.

The CHAIRMAN. The gentleman from Illinois [Mr. MICHEL] is recognized for 5 minutes.

Mr. MICHEL. Mr. Chairman, previously during the closing moments of general debate I outlined my position. I do not want to be repetitive here. I do want to give time to our ranking member on the Committee on Banking, Finance and Urban Affairs, the gentleman from Ohio [Mr. WYLIE] for any comments he may make, and the gentleman from New York [Mr. LENT] from our Committee on Energy and Commerce.

But let me very briefly summarize, if I might again. Why do I make this motion?

First of all, I voted for the rule to bring it to the floor and did not oppose it. There were only eight on our side. I was one of those, because I thought we ought to give the process an opportunity to work its way through, if at all possible. Now, admittedly, on one of those significant motions to strike the decision was adverse to and what I consider to be a death knell to this legislation, as far as getting a signature by the President is concerned. And I look at the time element and the timeframe here in what little time we have left before Thanksgiving Day break to get a banking bill with the Banking Insurance Fund and what other good things we can do in addition to that enacted by both Houses and signed into law in appropriate time.

So I am saying that here we have an opportunity to take advantage by simply striking, by simply adopting my motion, and then if it is adopted under the rules the majority can very well make the motion to refer it to the Committee on Banking, Finance and Urban Affairs for further consideration.

I would make it very clear, abundantly clear, in times past when Members have availed themselves of this opportunity, of this motion, it is to kill the bill outright. That is not my intention. As I indicated, there are amendments pending here that I would not want to prejudice by this motion. Some may be good, some may be bad. But on the general direction in which we moved yesterday there seems to me to be no alternative but for us to try and cut the timeframe here, and by doing so, with those of you who are so well-posted on the subject matter in your respective Committee on Banking, Finance and Urban Affairs to come back to this House and with a sense or a feel of what can not only be adopted by this House, the other body, in conference, and hopefully signed by the President. That is the reason for making the motion.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I am happy to yield to the distinguished gentleman from New York, the ranking member on the Committee on Energy and Commerce.

Mr. LENT. Mr. Chairman, I would rise in strong support of the gentleman's motion. This bill is going nowhere. We know from the White House that it is doomed for veto, if it even gets that far. Many of my colleagues on the other side of the aisle have indicated to me that next Monday or Tuesday, when the debate would be over, they intend to vote against this bill on the final passage.

I say let us send this bill back to the Committee on Banking, Finance and Urban Affairs now, save some very valuable time, and perhaps come up with a bill down the road, next week or so, that all of us could get behind.

Mr. WYLIE. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I am happy to yield to the distinguished gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, I support the gentleman's motion, too, enthusiastically, because we do have some urgency before us to report out a bill and get it to the President's desk for signature which will recapitalize the bank insurance fund. That has to be done. We ought to adopt the so-called early intervention procedures which are in the bill. We have all agreed on those, those are meaningful amendments in the bill which need to be enacted.

We have a provision in the bill which the GAO has indicated is very good providing for auditing requirements and regulation requirements and examining requirements. We need some deposit insurance reform. There are some areas in this bill where we can all come to an agreement.

After yesterday's vote it seems to me that this bill is destined for failure because it has been loaded up with a lot of extra amendments which are going to be very, very controversial. The title IV which came out of the Committee on Energy and Commerce is very controversial, but I think it is time for us to sit down in a bipartisan way to work as Republicans and Democrats with the President and to try to come up with a measure which can be enacted into law timely and which the President will sign.

Mr. MICHEL. I thank the distinguished gentleman for his statement.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I am happy to yield whatever time I have left to the distinguished gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I rise in support of our leader's motion. I do so with great regret, but for all of us on both sides of the aisle who support true banking reform, this is the right step to take. Given yesterday's votes, we no longer have a reform bill, we have a legislative disaster.

We had a good bill a week ago, but in the intervening days, a handful of Members have undone 10 months of hard work by the Banking Committee. We are witnessing a classic job of legislative sabotage. It is a bitter disappointment for those of us who worked so hard for a reform bill. But the real losers are: American business, American families, and the American taxpayer.

It is simply wrong to pour more billions into the deposit insurance fund without correcting the underlying problems of our banking system. And as it stands now, this bill perpetuates and exacerbates most of those fundamental problems.

Instead of preparing America's financial services for the 21st century, this bill holds back America's financial institution, at precisely the time when our economic competitors are moving ahead. Financial competition is now global. Money moves around the world by electronic transfer—in the blink of an eye. Banks, insurance companies, and securities firms are not just competing with the guy across the street or across town, they are competing with Japanese, German, French, and Swiss companies. But our outdated banking laws are keeping American financial services tied to a horse-and-buggy age, when everyone else is driving supercharged racing cars.

In today's world, with today's technology, American business and American families can make financial transactions with firms in London, Paris, Geneva, or Tokyo just as easily as they can in their hometown or in any American financial center. No wonder foreign firms are capturing more and more of America's financial services markets. And in 5 or 10 years, global financial transactions will be even easier. That means our banks, insurance companies, and securities firms all will continue to lose their lifeblood business. And the American taxpayer will face even larger liabilities. The issue here is America's economic and financial security in this new world.

The bill our committee created would have addressed these issues by reforming our out-of-date laws. But now, after 10 months of work, our bill lies in ashes, and we have a bill that: Denies reality, ignores that competition, and fails to make the needed reforms.

The only proper course is to return this bill to committee, so Congress does not compound the problem. But I will tell you this: No Member of the House should vote for another dollar of taxpayer liability until we make sure that the system is safe and our banks have some chance to survive in the future.

Mr. GEPHARDT. Mr. Chairman, I rise in opposition to the motion.

Mr. Chairman, I would urge Members to resist this motion.

Last Sunday the Redskins played the New York Giants in New Jersey. After the first half, the Redskins were behind 13 to nothing, and people were saying I guess at half time, "Well, this game's over. The winning streak of the Redskins is over, and the Giants are going to win."

But by the end of the game it turned around and the Redskins won.

I think what is being asked here is unprecedented, and in my view is not what we ought to do, with all respect to my distinguished colleague.

This bill was worked on for over 10 months by the Committee on Banking, Finance and Urban Affairs and by other committees in the House that had jurisdiction over parts of this bill. It is a very complicated and difficult piece of legislation. We all know that.

I commend the Members who voted for the rule yesterday. I think the rule was good. I had conversations when the rule was on the floor before it was voted on with proponents of the Dingell-Gonzalez amendment who said we are going to lose the amendment, should we not pull the rule. I had others, who were against the Dingell-Gonzalez amendment, who said we are going to lose, let us pull the rule.

It was obvious that no one knew what was going to happen to that important amendment. But with all respect to the distinguished minority leader, I think Members did know what the issues were, and the Members of the House, by a majority vote on that important amendment said that they wanted that amendment, they did not want it stricken, and they wanted those changes in the banking law to be the House position in this proceeding.

There are a lot of other amendments that are important to the future of this legislation that we will either take up now or we will take up next week. We ought to go forward with that. We do not know what the outcome on the bill will be. We do not know what the outcome in the conference will be. We do not know what the outcome will be if we could produce a bill in the conference or whether the President would sign it or not.

But I do not see how we help ourselves by sending this complicated piece of legislation back to all of these committees, have them go back through a long process to bring it back, probably without a lot of change in what they do, and have us go back through this again. We are here. We have gotten through part of it. In the next day or two we can finish the rest of it, and then let us see where we go.

Let me end with one thing that I think is in the background of all of this. Look, let us be honest about it. No Member wants to vote for this piece of legislation.

□ 1220

This is $70 billion we are loaning to make sure these deposits are firm, and let us also make no mistake that we are not leaving here this year until a recap of this fund in the minimum takes place.

I do not want to vote for it. Neither does anybody else. But let us remember what this is about. This is about the savings of our people, and this is a Government program conceived in the New Deal that has done what it was set up to do.

We would be in a depression in this country if we did not have this kind of legislation out there, and the RTC that will come next week: We have to pass these bills.

We can all crouch in the back and say, "Yes, I want it to pass, but not with my vote." I hope we will not do that. I hope we will stand up for what is right, be honest with the American people, do the right thing, stand behind these accounts. This program is working. Thank God it is in place. Thank God these accounts are insured.

Let us do our best in the next few days to come up with a piece of reform legislation that will make our banking laws better, that will avoid the mistakes of the future and not create these kinds of problems in the future and do what our people sent us here to do, which is to do the right thing.

The CHAIRMAN (Mr. CARR). The question is on the preferential motion offered by the gentleman from Illinois [Mr. MICHEL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MICHEL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 158, noes 243, answered "present" 1, not voting 31, as follows:

[Roll No. 364]

AYES—158

Allard
Archer
Armey
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Bentley
Bereuter
Bliley
Boehlert
Boehner
Broomfield
Bunning
Callahan
Camp
Campbell (CA)
Carper
Chandler
Clinger
Coble
Coleman (MO)
Combest
Coughlin
Cox (CA)
Crane
Cunningham
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Ewing
Fawell
Fields
Fish
Franks (CT)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Goss
Gradison
Grandy
Green
Gunderson
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Henry
Herger
Hobson
Holloway
Horton
Houghton
Hunter
Hyde
Inhofe
James
Johnson (CT)
Johnson (TX)
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Leach
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Machtley
Martin
McCandless
McCollum
McCrery
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Molinari
Moorhead
Morella
Morrison
Myers
Nichols
Nussle
Oxley
Packard
Paxon
Petri
Porter
Pursell
Quillen
Ramstad
Ravenel
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Santorum
Saxton
Schaefer
Schiff
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stump
Sundquist
Taylor (NC)
Thomas (CA)
Thomas (WY)
Upton
Vander Jagt
Vucanovich
Walker
Walsh
Weber
Weldon
Wolf
Wylie
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—243

Abercrombie
Ackerman
Alexander
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Bacchus
Beilenson
Bennett
Berman
Bevill
Bilbray
Bonior
Borski
Boucher
Brewster
Browder
Bruce
Bustamante
Byron
Campbell (CO)
Cardin
Carr
Chapman
Clay
Clement
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Cox (IL)
Coyne
Cramer
Darden
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dingell
Dixon
Donnelly
Dooley
Dorgan (ND)
Downey
Durbin
Dwyer
Early
Eckart
Edwards (CA)
Edwards (TX)
Engel
English
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Gejdenson
Gephardt
Geren
Gibbons
Glickman
Gonzalez
Gordon
Guarini
Hall (OH)
Hall (TX)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hoagland
Hochbrueckner
Horn
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jacobs
Jefferson
Jenkins
Johnson (SD)
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McDermott
McHugh
McMillen (MD)
McNulty
Mfume
Miller (CA)
Moakley
Mollohan
Montgomery
Moody
Moran
Mrazek
Murphy
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Obey
Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Pastor
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Poshard
Price
Rahall
Rangel
Ray
Reed
Richardson
Roe
Roemer
Rose
Rostenkowski
Roybal
Russo
Sabo
Sanders
Sarpalius
Sawyer
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Swett
Synar
Tallon
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Washington
Waters
Waxman
Weiss
Wheat
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—31

Bilirakis
Boxer
Brooks
Brown
Bryant
Burton
Dannemeyer
Davis
DeLay
Dicks
Dymally
Gaydos
Hopkins
Ireland
Johnston
Marlenee
McCurdy
Miller (WA)
Mineta
Mink
Murtha
Neal (NC)
Oberstar
Rowland
Sangmeister
Savage
Slaughter (VA)
Swift
Tanner
Towns
Whitten

□ 1440

The Clerk announced the following pairs:

On this vote:

Mr. Burton of Indiana for, with Mr. Mineta against.

Mr. Davis for, with Mr. Johnston against.

Mr. DeLay for, with Mr. Dymally against.

Mr. Marlenee for, with Mr. Brown against.

Mr. McEWEN changed his vote from "no" to "aye."

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 5, printed in House Report 102–281.

AMENDMENT OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

SEC. 411. REMOVAL OF GROWTH CAP IN RESPECT OF COMMUNITY-RELATED ASSETS OF GRANDFATHERED LIMITED SERVICE BANKS MEETING CAPITALIZATION REQUIREMENTS.

(Section 4(f)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(3)) is amended—

(1) in subparagraph (B)(iv), by inserting ", except as provided in subparagraph (D) of this paragraph" before the period; and

(2) by adding at the end the following:

"(D) REMOVAL OF GROWTH CAP IN RESPECT OF COMMUNITY-RELATED ASSETS OF GRANDFATHERED LIMITED SERVICE BANKS MEETING CAPITALIZATION REQUIREMENTS.—

"(i) IN GENERAL.—On and after August 10, 1991, a bank controlled by a company described in paragraph (1) shall—

"(I) not increase its community-related assets during any 12-month period by more than 7 percent of the total CEBA-restricted assets of the bank as of the last day of the immediately preceding 12-month period; and

"(II) be permitted to increase its community-related assets without limitation if the bank meets all applicable capital requirements established by the Board.

"(ii) DEFINITIONS.—For purposes of clause (i):

"(I) COMMUNITY-RELATED ASSETS.—The term 'community-related assets' means—

"(aa) loans (including mortgage and other real estate loans, time and demand loans, and installment loans) made to any individual, business, charitable or other nonprofit institution, or government (or agency or instrumentality thereof), which is located in the State or States in which the bank or any branch of the bank is located or in any State contiguous thereto; and

"(bb) investments in obligations of the Federal government (or any agency or instrumentality thereof), certificates of deposit, debt securities which, when issued, had less than 1 year to maturity, obligations of a State (or any agency or instrumentality thereof), other tangible or intangible assets located in the State in which the bank or any branch of the bank is located, and cash or cash equivalents maintained during the course of business (including cash on deposit to satisfy reserve requirements), which are funded by liabilities to customers located in the State or States in which the bank or any branch of the bank is located or in any State contiguous thereto.

"(II) TOTAL CEBA-RESTRICTED ASSETS.—The term 'total CEBA-restricted assets' means, as of the date on which such total value is determined for a bank, an amount equal to the total value of the bank's assets as of August 10, 1988, increased by 7 percent compounded annually during the period beginning on August 10, 1998, and ending on the date of such determination.".

The CHAIRMAN. Under the rule, the gentleman from Massachusetts [Mr. FRANK] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. I yield myself such time as I may consume.

Mr. Chairman, after that great effort the Chair put into getting order, I am sorry to say I do not have anything more interesting to say to the Members.

Mr. Chairman, this is not an amendment of enormous moment. It would not seem to me to be a terribly controversial one. We have in this country entities known as nonbank banks. Now, people might think when we talk about nonbank banks today, that we are talking about the institutions that used to be banks that went under. We have a whole lot of those. Those are called exbank banks. These are nonbank banks.

They were set up earlier in this recent period, and they were called nonbank banks because they did part of what a bank did, but not all of it; they would either take deposits or make loans.

There are now about 40 of these nonbank banks. I want to make clear that the amendment that I am offering applies to every one of those institutions.

Let me say to the Members that this will get exciting.

The nonbank banks, of which there are about 40, all of them would be covered by this. The effect of this amendment is to remove a cap that was put on their lending activities. There is a cap that was put on their lending activities a few years ago.

The basic reason I offer this, Mr. Chairman, is there are parts of this country where we have a credit crunch. People debate the reasons for the credit crunch. It has been particularly severe in New England. My colleagues from New Hampshire would be especially interested in discussing this.

Mr. Chairman, it does not seem to me good policy to put a cap on what perfectly sound institutions can lend, according to existing rules of lending, particularly in those areas of the country where there may be a shortage of loans available.

That is what this amendment does. It applies only to institutions that are at minimum capital standards or above. We have not had in the recent years any failures in this set of institutions.

We have had Mr. Seidman and others say that they present no risks. They are something of an anomaly. They will not be a growth entity; we are not talking about new ones. But we do have about 40 institutions out there today that, if they meet capital standards and are prepared to make loans to borrowers who are prepared to engage in economic activity, it seems to us they should be allowed to do that.

Mr. Chairman, I reserve the balance of my time.

Mr. GONZALEZ. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Chairman, I rise in more than just opposition to this amendment; I rise in strong opposition to this amendment because I think this is so important that the Members ought to at least evaluate what is involved here.

First, nonbank banks are banks. They take deposits, make loans, and are federally insured. They are uniquely privileged as a group, however, because their lucky owners are not bank holding companies. Thereby they are not subject to those regulations.

That is right, these nonbank holding companies can engage in securities activities—we heard all the wailing yesterday—commercial activities and insurance activities, without firewalls, without protective safeguards, without limitation, and yet federally insured.

In 1987, in the Competitive Quality Banking Act, Congress finally grappled with the issue of nonbank banks. Existing companies were grandfathered. Let me say that I said "the Congress," the Congress failed, so the regulators moved in. Congress then, after the fact, grandfathered the existing companies, but certain modest limitations were placed on them in recognition of their privileged status. One of these limitations which this amendment would remove, and the only limitation, was a 7 percent cap.

Now, 7 percent is far in excess of the rate of growth of the GNP. Also, such companies can acquire failed institutions from the RTC or FDIC without losing their exemption.

What this amendment would do would be to remove this prerequisite that the Congress insisted on as the only limitation, but they are banks. The other banks, the regular bank holding company banks, are regulated, they are in competition with this tremendous activity that does not have that with which to contend.

This amendment seeks to eliminate that growth cap, I repeat, for the certain designated nonbanks which my esteemed colleague from Massachusetts says is about 40. Thus, this elite group, the most privileged group in America, of companies, are exempt from the Bank Holding Company Act, can grow without limit, buy more banks. That is what he talks about when he says they will lend. Well, they will if their cap is removed; they can buy more banks, securities firms, all without any regulatory safeguards or firewalls.

□ 1250

Mr. Chairman, this is the definition of the camel's nose under the tent. I certainly urge a strong vote against this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from New Hampshire [Mr. ZELIFF].

Mr. ZELIFF. Mr. Chairman, I rise in support of the Frank amendment, that would raise the 7 percent growth cap on community based assets of limited services banks; New Hampshire needs this amendment. New England needs this amendment. Five of New Hampshire's seven biggest banks were taken over this month by the FDIC; 30 percent of our banking assets were involved.

Somewhere between $1 and $2 billion of assets will be liquidated in this takeover.

This will further depress an already depressed real estate market.

It is extremely difficult to get a loan in New Hampshire, or New England, because no one knows if property values have hit bottom yet.

The Frank amendment will allow financial institutions that want to make loans, to make loans.

We believe that the Frank amendment will stimulate competition, and has the potential to be the catalyst that jump-starts our troubled economy toward recovery.

I understand that when Congress imposed that 7 percent growth cap on so-called nonbanks in 1987, it was labeled as a temporary measure.

Now more than 4 years later, what was considered a temporary restriction is instead a barrier to limited service banks' growth.

This temporary restriction is also a major barrier to New Hampshire's economic recovery.

We have three such nonbanks in New Hampshire, and this so-called temporary growth cap is preventing healthy, well capitalized banks from fully serving our State. This temporary barrier is depriving New Hampshire consumers and small businesses of much needed credit, essential to the economic welfare of our State and region.

Let us face it, this temporary barrier, is really a barrier to prevent competition.

We need help. We need lending competition.

I urge my friends on both sides of the aisle to support the Frank amendment, and help New Hampshire's and New England's troubled economy rebound.

Mr. GONZALEZ. Mr. Chairman, I yield 5 minutes to our distinguished colleague, the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I thank the gentleman from Texas [Mr. GONZALEZ] for yielding, and let me just say to my colleagues, If you listen to our distinguished colleague from Massachusetts, who I hold in the highest regard, his amendment sounds like a low-income housing project. But let me assure you it's anything but.

Mr. Chairman, by way of background, in the 1970's and early 1980's some commercial enterprises found a loophole in the Bank Holding Company Act's prohibition against commercial firms owning banks. Hence the creation of the so-called nonbank bank. After much debate during the early 1980's, Congress finally chose not to close, but to restrict the nonbank bank loophole in the Competitive Equality Banking Act of 1987, the so-called CEBA statute. While Congress could have required divestment of these nonbanks by the institutions which owned them, it instead grandfathered them with some restrictions in their growth and activities.

As the conference report on the 1987 statute noted, and I quote, "In view of the potential for the ownership of nonbank banks by commercial firms to result in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and in order to avoid the potential for unfair competition with regulated bank holding companies * * *" the act requires that any company lose its grandfathered rights and become subject to the Bank Holding Company Act if it does not abide by the growth restrictions.

The amendment before us, Mr. Chairman, benefits only a select few, the list of which reads like a Who's Who of corporate leviathans. It is unfair that the rest of the actors in the economy must fall under the restrictions in the Bank Holding Company Act, yet these firms do not.

I would just conclude by noting to this Chamber that by analogy, if not by fact, this is very similar to the question of whether commercial firms should own banks. If one supports the idea of conglomeration of commercial firms owning commercial banks, then certainly support the amendment of the gentleman from Massachusetts [Mr. FRANK]. If one has doubts about that idea, and by a 2-to-1 margin this Congress rejected that yesterday, I would hope Members would be consistent to and vote against this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Chaiman, I thank the gentleman from Massachusetts [Mr. FRANK] for yielding this time to me.

Mr. Chairman, I would have to say that this amendment is a close call for me, but I come down on the side of making more credit available. I support the amendment to remove the growth capital on nonbank banks because I think that would be the result of it. After several years of this cap we imposed on the nonbank banks, I think it is time that the cap be removed. We imposed it for 1 year to see what would happen. We grandfathered in a lot of nonbank banks, as was talked about a little earlier here, but growth caps fly in the face of capitalism, free markets and the American entrepreneurial spirit it seems to me. It makes little sense to restrict the earnings and the profits of an institution.

Mr. Chairman, it seems counterproductive to curb the earnings of healthy institutions that are financing our economy. Sound institutions should be allowed to grow, and this is especially important in light of all the complains about the credit crunch.

It is not a complete removal of the growth cap, I might say. It only applies to institutions that meet their capital requirements, and those capital requirements are the same as those for banks, and they have meet that 8 percent requirement by January 1, 1992, which is coming up pretty quickly here. It only applies to activity engaged in by these nonbank banks in their home State or in a bordering State.

Mr. Chairman, I think the amendment makes good sense, and I am pleased to support the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from New Hampshire [Mr. SWETT].

Mr. SWETT. Mr. Chairman, as Jim Fallows so aptly said, "What we are grappling with in our society is capitalism without capital." That is why I rise in support of Mr. FRANK's amendment to modify the 7 percent per year growth cap on community-based assets of limited service banks.

Mr. Chairman, last year through the loss of equity and the decline in deposits, New Hampshire banks lost $1 billion. To put that figure in context, the entire New Hampshire State government operates on an annual budget of $1.6 billion. That loss gave New Hampshire the fifth worst record in the entire Nation for 1990.

During the first 3 months of 1991, bank assets dropped another 6.5 percent—placing New Hampshire dead last in the country. Just 3 weeks ago, the five largest banks there were taken over by the FDIC.

Under these conditions, it makes little sense for the Federal Government to prevent healthy, well-capitalized community banks from serving the credit needs of individuals and small businesses. But that is exactly what Congress will be doing if it fails to pass the Frank amendment.

Mr. Chairman, I understand that when Congress imposed the 7 percent growth cap on so-called nonbank banks in 1987 as part of CEBA, the Competitive Equality Banking Act, Congress did so as a temporary restriction is instead a barrier to limited service banks' growth, inhibiting these institutions' ability to serve their communities.

In at least the case of one institution in New Hampshire, the growth cap is preventing a healthy, well-capitalized bank from fully serving its community and is therefore depriving New Hampshire consumers and small businesses of much needed credit and other services essential to the economic welfare of the community. There is no reason to perpetuate the CEBA restriction on limited service banks, particularly during these difficult economic times.

We can do much to meet the needs of communities now in a credit crunch by lifting the 7 percent growth cap on the community-based assets of limited service banks, and I therefore encourage my colleagues to support the Frank amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I have known for some time that my friend, the gentleman from Texas [Mr. GONZALEZ], the distinguished chairman of the Committee on Banking, Finance and Urban Affairs, was a devotee of philosophers, but I have come to think that perhaps his favorite philosopher is Aristotle, who was against lending money at interest, because I think that is sometimes the philosophy that motivates us here because all these institutions stand guilty of is lending people money so they could do productive things and collecting the loans. None of them have failed.

The gentleman from Iowa [Mr. LEACH], my friend, said I made it sound like a low-income housing project. Well, I would have tried to do that if I thought it would have gotten his vote, but I cannot even get his vote for low-income housing when the banking bill is up, so I would not try that. But I would say this: He talked about, well, this is just like letting some commercial firm own a bank. The problem is we are not here talking about the future. We are talking about an existing set of institutions which are allowed to grow 7 percent a year.

☐ 1300

If this is such a perilous enterprise, if allowing these entities to lend people money for commercial purposes is such a terrible thing, where is their list of "horribles?" What has gone wrong?

In fact, what we have is institutions that Congress has decided to limit, not allow any new ones, institutions which have a perfectly good record. Now, I know there is a liberal instinct that says the rentier class should be the object of an attitude of scorn from us, that people who lend other people money and collect interest are somehow to be held as suspect. I understand that attitude, but it is not the best way in contemporary American to run an economy.

There have been institutions that we are talking about that have been in existence for some time. Some are in New Hampshire, which is where the approach came from to me, from people in New Hampshire where there are not a lot of banks. New Hampshire has not had the best couple of years recently, and there are not a lot of banks. This is a source of loans, and I do not understand why we are so angry at the ideal that these perfectly honest business people will lend other people some money and have it paid back. I would reiterate that none of those who have been so trepidatious have been able to point to any kind of problems.

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I will yield to my friend, the gentleman from Georgia, in a minute.

Let me just say this: We can get rid of all our metaphors first. As I said today to my friend, the chairman of the committee, I had a nightmare last night about a camel's nose being found under a Trojan horse, not a pretty sight. There is no possibility of any of this happening today, Mr. Chairman. These are limited by statute. We cannot have any new ones. We have an operation that has worked well. Nothing wrong has happened. We are simply trying to expand the flow of credit.

Mr. Chairman, I yield to my friend, the gentleman from Georgia.

Mr. BARNARD. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, let me clarify one thing. The institutions we are talking about are what we call nonbank banks; am I right?

Mr. FRANK of Massachusetts. Yes, the gentleman is correct.

Mr. BARNARD. And inasmuch as they are nonbank banks we have removed all of the risk from the Federal Deposit Insurance Corporation, if I am not mistaken, because they either take deposits or they do not——

Mr. FRANK of Massachusetts. They take deposits, but they do not make loans.

Mr. BARNARD. They do not make commercial loans.

Mr. FRANK of Massachusetts. The ones we are talking about are basically, I would say, the ones that do not take deposits, because we are talking about increasing their lending activity.

Mr. BARNARD. The thing about it, though, is where in America do we put a limit on what people do?

Mr. FRANK of Massachusetts. Mr. Chairman, I thank my friend for his statement.

Let me just say this: These institutions have been around. Some of the limitations came, by the way, from other commercial entities that thought they were unfair competition. This is an example of some commercial entities not wanting to face competition from others, but they have been in existence for many years, and none of the opponents can show us a bit of harm except that they do violence to Aristotle.

The CHAIRMAN. All time of the gentleman from Massachusetts [Mr. FRANK] has expired.

Mr. GONZALEZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me first clarify this for the sake of my esteemed colleague's understanding: Yes, I am sympathetic to Aristotle versus Plato, because Aristotle was a libertarian, and Plato was an authoritarian. First, the Hitlerian regimes were exponents of the Platonian doctrines.

As for interest, I have always been against usurious interest. I think usury, as it was considered for thousands of years, is a sin.

As to the camel's sticking his nose in and this terrible dream my colleague had, I would say it must have been a nightmare if that camel stuck his nose, if it was a Trojan horse or any kind of a horse, in the wrong part of that horse.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I am glad to yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I will say to the gentleman that I am afraid, as far as our colleagues are concerned, those on the Banking Committee appear neither in the guise of Plato nor in the guise of Aristotle. They see us as Socrates bearing hemlock, and I am afraid they have reacted in that manner.

Mr. GONZALEZ. Well, we cannot dispute that. The leader mentioned that earlier.

Mr. Chairman, I yield whatever remaining time I have to the distinguished gentleman from Minnesota [Mr. VENTO] to conclude the debate.

Mr. VENTO. Mr. Chairman, I rise in opposition to the Frank amendment.

I have been interested in this philosophical discourse with regard to the anatomy of horses, and so forth, but I must say that I think this proposal is a loser in terms of where we are going.

First of all, we are in this bill trying to improve and protect the deposit insurance programs and to revitalize them 70 billion dollars' worth, and we are also, of course, concerned about the health of the financial companies and the banks.

Many in this country think we have too many banks, and one of the reasons that that view persists is because we have had in a sense a tremendous amount of regulatory activity that has tried to condense and compress some of the banks.

Here is a case: In the 1980's, during the regulatory zeal, where the regulator under Ronald Reagan and George Bush did not in fact limit the issuance of franchises to banks alone, we had the Bank Holding Company Act, we had the basic national bank franchises, and we had State bank franchises, but that was not enough. They created a whole new category of what are called nonbank banks. They found a loophole, and they exploited it with 40 companies, 40 large companies. These large corporations got involved here, including security firms, insurance companies, and retail sales organizations, and they in fact created these types of entities.

I would remind my colleagues that they issue or they take in deposits that are insured, insured retail deposits, so they do represent a real risk to the deposit insurance system. The question is why can they not follow the basic law in terms of the Bank Holding Company Act? Why can they not follow the precepts that are in this law that is before us today?

They are subject to none of these. The only safeguards we put in place when we made the determination in order to terminate these in the conference report was the 7-percent growth cap limitation. That is the only restraint we had. We said, "OK, they are in these places where they need credit, but how can we limit this from becoming a cancer that is going to eat up the entire deposit system, which is going to make irrelevant the current banking system?"

This is the system that we have that is going to in fact compete, and, I might say, compete not on the same or equal footing under the same law but with a special law and a rule that was devised by the regulators. The way we limited it was with the 7-percent cap.

My colleague points out there are problems in terms of credit across the country. The problem is not too few banks in this country.

In fact, I do not see the purpose served here. If these institutions want to provide these services, then they can organize under the various laws and provide certain safeguards that we provide in the Bank Holding Company Act under the law we are passing today, rather than a special one. The only safeguard we have is the limitation in terms of the 7 percent. That is what we would wipe out with this amendment.

Mr. Chairman, that is why, notwithstanding the good nature of my good friend, the gentleman from Massachusetts, this amendment should be soundly defeated.

Mr. GONZALEZ. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. FRANK].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 104, noes 290, answered "present" 2, not voting 37, as follows:

[Roll No. 365]

AYES—104

Ackerman
Allard
Armey
Aspin
Atkins
Ballenger
Barnard
Barton
Beilenson
Berman
Bliley
Boehner
Broomfield
Bunning
Campbell (CA)
Carper
Coughlin
Cox (CA)
Coyne
Crane
Dixon
Donnelly
Dooley
Doolittle
Dreier
Early
Edwards (CA)
Fazio
Flake
Foglietta
Ford (TN)
Frank (MA)
Frost
Gejdenson
Gekas
Goodling
Goss
Gradison
Green
Hastert
Hefley
Hoagland
Holloway
Houghton
Hughes
Kasich
Kennelly
Kolbe
Kopetski
LaFalce
LaRocco
Lent
Machtley
Mavroules
McCandless
McHugh
McMillan (NC)
Mfume
Moakley
Moody
Moran
Morella
Murphy
Neal (MA)
Nowak
Oakar
Olver
Oxley
Pelosi
Petri
Pursell
Rangel
Riggs
Rinaldo
Ritter
Rohrabacher
Roth
Saxton
Scheuer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Skaggs
Smith (NJ)
Snowe
Solarz
Studds
Swett
Taylor (NC)
Thomas (CA)
Traficant
Upton
Vander Jagt
Walsh
Weiss
Weldon
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—290

Abercrombie
Alexander
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
AuCoin
Bacchus
Barrett
Bateman
Bennett
Bentley
Bereuter
Bevill
Bilbray
Boehlert
Bonior
Borski
Boucher
Brewster
Browder
Bruce
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CO)
Cardin
Carr
Chandler
Chapman
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Costello
Cox (IL)
Cramer
Cunningham
Darden
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dickinson
Dicks
Dingell
Dorgan (ND)
Dornan (CA)
Downey
Duncan
Durbin
Eckart
Edwards (OK)
Edwards (TX)
Emerson
Engel
English
Erdreich
Espy
Evans
Ewing
Fascell
Fawell
Feighan
Fields
Fish
Ford (MI)
Franks (CT)
Gallegly
Gallo
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Gordon
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Henry
Hertel
Hobson
Hochbrueckner
Horn
Hoyer
Hubbard
Huckaby
Hunter
Hutto
Hyde
Inhofe
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennedy
Kildee
Kleczka
Klug
Kolter
Kostmayer
Kyl
Lagomarsino
Lancaster
Lantos
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Levin (MI)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Martin
Martinez
Matsui
Mazzoli
McCloskey
McCollum
McCrery
McDade
McDermott
McEwen
McMillen (MD)
McNulty
Meyers
Michel
Miller (CA)
Miller (OH)
Mink
Molinari
Mollohan
Montgomery
Moorhead
Morrison
Mrazek
Myers
Nagle
Natcher
Nichols
Nussle
Obey
Olin
Ortiz
Orton
Owens (NY)
Owens (UT)
Packard
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Porter
Poshard
Price
Quillen
Rahall
Ramstad
Ravenel
Ray
Reed
Regula
Rhodes
Richardson
Ridge
Roberts
Roe
Roemer
Rogers
Rose
Rostenkowski
Roukema
Roybal
Russo
Sabo
Sanders
Santorum
Sarpalius
Sawyer
Schaefer
Serrano
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (OR)
Smith (TX)
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stump
Sundquist
Swift
Synar
Tallon
Tauzin
Taylor (MS)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Torricelli
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Vucanovich
Walker
Washington
Waters
Waxman
Weber
Wheat
Williams
Wilson
Wise
Wolf
Wolpe
Wyden
Yates

ANSWERED "PRESENT"—2

Cooper
McGrath

NOT VOTING—37

Archer
Baker
Bilirakis
Boxer
Brooks
Brown
Bryant
Dannemeyer
Davis
DeLay
Dwyer
Dymally
Gaydos
Herger
Hopkins
Horton
Ireland
Johnston
Levine (CA)
Lowery (CA)
Marlenee
McCurdy
Miller (WA)
Mineta
Murtha
Neal (NC)
Oberstar
Ros-Lehtinen
Rowland
Sangmeister
Savage
Slaughter (VA)
Stokes
Tanner
Towns
Traxler
Whitten

□ 1326

The Clerk announced the following pair:

On this vote:

Mr. Dymally for, with Mr. Dwyer of New Jersey against.

Messrs. STUMP, GILMAN, and YATES changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 6, printed in House Report 102–281.

AMENDMENTS EN BLOC OFFERED BY MR. KENNEDY

Mr. KENNEDY. Mr. Chairman, I offer amendments en bloc.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. KENNEDY: Page 212, after line 9, insert the following new section (and amend the table of contents accordingly):

SEC. 311. COMMUNITY BENEFIT REQUIREMENTS.

(a) IN GENERAL.—The appropriate Federal banking agency shall not approve an interstate expansion application under this subsection unless—

(1) the applicable written community reinvestment evaluation and community reinvestment rating has been made publicly in the manner required under section 807 of the Community Reinvestment Act of 1977;

(2) the applicant has made, in writing to the agency in the publicly available portion of the application, the community reinvestment commitments described in subsection (b);

(3) the agency makes the findings described in subsection (c).

(b) COMMUNITY REINVESTMENT COMMITMENT.—The community reinvestment commitments required under paragraph (1)(B) are specific commitments stating how the proposed acquisition would maintain or improve the availability and affordability of credit and deposit services offered by the depository institution, branch, or branches involved and commonly used by the entire community, including—

(1) any low- and moderate-income neighborhoods or equivalent rural or minority areas within the institution's community;

(2) low- and moderate-income or minority persons; and

(3) small businesses.

(c) AGENCY FINDINGS.—

(1) IN GENERAL.—The findings of the appropriate Federal banking agency meet the requirements of this paragraph if the agency finds that—

(A) except as provided in paragraph (2), the applicant financial services holding company and each subsidiary depository institution have a current community reinvestment rating under section 807(b)(2) of the Community Reinvestment Act of 1977) of "a satisfactory record of meeting community credit needs" or better; and

(B) taking into account the applicant's commitments under paragraph (2) of this subparagraph, the proposed acquisition would maintain or improve the availability and affordability of credit and deposit services offered by the institution to the communities, persons, and borrowers referred to in such clause.

(2) LARGE HOLDING COMPANY STANDARD.—Notwithstanding paragraph (1)(B), in the case of an applicant under this paragraph which controls 5 or more subsidiary insured depository institutions in a State, as many as 20 percent of such institutions, but not the largest depository institution, may have a current community reinvestment rating (under section 807(b)(2) of the Community Reinvestment Act of 1977) of "needs to improve record of meeting community credit needs". However, subsidiaries in such category shall enter into such commitments as the agency may require, taking into account any public comments or testimony received by the agency, to take actions that will enable the subsidiaries to achieve a community reinvestment rating of satisfactory or better before the end of the 2-year period beginning on the date of the approval of such application.

(3) DISCLOSURE OF AGENCY'S FINDING AND CONCLUSIONS.—In the appropriate Federal banking agency's order of approval under this subparagraph, the agency shall state the reasons for the findings under this subparagraph.

(d) PATTERN OF ACTIVITY.—The appropriate Federal banking agency shall not approve an application under this subsection by an insured depository institution or financial services holding company with total assets of $1,000,000,000 or more if the applicant or its subsidiary depository institutions, either individually or collectively, have exhibited, in the 5 years prior to the application, a pattern of—

(1) closing branches in a manner that tends to exclude low- and moderate-income or minority neighborhoods or equivalent areas; or

(2) failing to provide reasonably priced and accessible deposit services to low- and moderate-income persons, except where said agency finds that such closing were necessary to avoid significant safety and soundness problems, with reasons for such findings stated in writing.

(e) PUBLIC PARTICIPATION.—

(1) NOTICE REQUIRED.—A financial services holding company that has submitted an application under this section shall give notice of the proposed acquisition or branching by publication in the Federal Register.

(2) PUBLIC COMMENT.—Prior to acting on an application under this section, the appropriate Federal banking agency shall accept public comment on the application for a period of not less than 60 days from the date of publication required by paragraph (1).

(f) COVERAGE AND EXEMPTIONS.—

(1) INSURED DEPOSITORY INSTITUTION AND SMALL HOLDING COMPANY EXCEPTION.—The interstate expansion application by an insured depository institution with total assets of less than $100,000,000 and by a financial services holding company whose existing depository institution subsidiaries have combined total assets of less than $100,000,000, shall be exempt from the requirements of this section.

(2) EMERGENCY ACQUISITION EXCEPTION.—This paragraph shall not apply to acquisition pursuant to section 13(f) or 13(k) of the Federal Deposit Insurance Act.

(3) SCOPE OF APPLICATION.—This subsection shall apply only with respect to applications filed after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

(g) DEFINITIONS.—For purposes of this paragraph—

(1) the term "low- and moderate-income neighborhood or equivalent area" means a neighborhood which is described in section 17(c)(2)(B) of the Housing Act of 1937;

(2) the term "low- and moderate-income persons" has the meaning given such term in section 102(a)(20) of the Housing and Community Development Act of 1974; and

(3) the term "interstate expansion application" means—

(A) an application by a national banking association pursuant to section 5155(c)(3) of the Revised Statutes (12 U.S.C. 36(c)(3)) to establish and maintain a domestic branch in a State other than the applicant's home State;

(B) an application by a State chartered insured bank pursuant to section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) or section 9 of the Federal Reserve Act (12 U.S.C. 321) to establish and maintain a domestic branch in a State other than the applicant's home State; or

(C) an application by a diversified holding company or financial services holding company pursuant to section 3(f) of the Financial Services Holding Company Act (12 U.S.C. 1842(f)) to acquire an additional insured depository institution located in a State other than the applicant's home State;

(D) an application by an insured depository institution pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) to acquire one or more domestic branches from a depository institution located in a State other than the applicant's home State;

(E) an application by an insured depository institution pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) to merge or consolidate with a depository institution located in a State other than the applicant's home State;

(F) an application by a savings and loan holding company or foreign bank pursuant to section 10(e)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(3)) to acquire an additional savings association located in a State other than the applicant's home State;

(G) an application by a federally insured savings association to establish or acquire one or more domestic branch offices or to merge or consolidate with a depository institution located in a State other than the applicant's home State.

Page 185, after line 9, insert the following new subtitle (and amend the table of contents accordingly):

Subtitle D—Community Reinvestment and Fair Lending

SEC. 241. PERFORMANCE DATA IN COMMUNITY REINVESTMENT ACT EVALUATIONS.

(a) IN GENERAL.—Section 807(d) of the Community Reinvestment Act of 1977 is amended by adding at the end thereof the following new paragraph:

"( ) PERFORMANCE DATA.—A written evaluation prepared pursuant to paragraph (1)(B) shall assess and discuss for each metro area listed pursuant to paragraph (2) of this section any relevant performance data that indicates the extent to which the institution is or is not serving the credit needs of such metro area, including data produced pursuant to the Home Mortgage Disclosure Act. Nothing in this paragraph shall be construed to impose any additional reporting requirements on any insured depository institution.".

SEC. 242. FAIR LENDING.

(a) IN GENERAL.—Each Federal banking agency shall promulgate and publish regulations establishing procedures to enforce and promptly correct violations of fair lending laws, including the Fair Housing Act and the Equal Credit Opportunity Act.

(b) REQUIREMENTS FOR REGULATIONS.—

(1) IN GENERAL.—Regulations promulgated pursuant to subsection (a) shall establish standards and procedures for the enforcement of fair lending laws. Such regulations shall require analysis of already available data bearing on lending activities in specific neighborhoods or among minority or low- and moderate-income persons.

(2) USE OF HOME MORTGAGE DISCLOSURE DATA.—Regulations promulgated for this section shall utilize annual data obtained from Home Mortgage Disclosure Act statements of insured depository institutions and other available data that may be necessary to carry out the purposes of subsection (a). Nothing in this paragraph shall be construed to impose any additional reporting requirements on any insured depository institution.

(3) ANALYSIS OF PATTERNS OF DISCRIMINATION.—Data utilized pursuant to paragraph (2) shall be analyzed for specific patterns of discrimination, including but not limited to—

(A) disparities in rejection rates for low- and moderate-income, minority, and female applicants in relation to other applicants;

(B) disparities in levels of applications from low- and moderate-income, minority, and female applicants in relation to other applicants; and

(C) disparities in lender market share according to neighborhood and borrower characteristics.

(c) DEADLINE FOR REGULATIONS.—Each Federal banking agency shall, after notice and an opportunity for comment, prescribe final regulations under subsection (a) not later than 180 days after the date of the enactment of this Act. Such regulations shall take effect not later than 270 days after the date of enactment.

(d) PROMPT CORRECTIVE ACTION FOR FAILURE TO COMPLY WITH FAIR LENDING STANDARDS.—

(1) COMPLIANCE EXAMINATION.—For any insured depository institution which fails to meet any standard established pursuant to subsection (a) or (b), the appropriate Federal banking agency shall conduct, within 60 days, further inquiry to determine the extent of noncompliance with fair lending and community reinvestment statutes. Such inquiry shall include an onsite examination where the patterns found pursuant to subsection (b)(3) are particularly extensive.

(2) FAIR LENDING PLAN.—The appropriate Federal banking agency shall require any insured depository institution which fails to meet any standard established pursuant to subsection (a) or (b) to submit a fair lending plan for correcting any deficiency of the institution with respect to such standard to the agency not later than 30 days after the institution is notified by the agency of such failure.

(3) PUBLIC PARTICIPATION.—

(A) WEEKLY BULLETIN.—The appropriate Federal banking agency shall—

(i) prepare a weekly list of all insured depository institutions that have been required to file a fair lending plan; and

(ii) publish such list at least weekly in the Federal Register.

(B) PUBLIC ACCESS.—The required fair lending plan shall be made available to the public at the major branches of any insured depository institution and from the regional offices of the appropriate Federal banking agency. The plan shall not include proprietary information.

(C) PUBLIC COMMENT.—Prior to approving a fair lending plan, the appropriate Federal banking agency shall accept public comment on the plan for a period of not less than 30 days.

(4) AGENCY FINDING.—The appropriate Federal banking agency shall review an insured depository institution's fair lending plan and determine if the plan is sufficient to overcome identified fair lending violations in a timely manner. The agency shall take into consideration any public comment received in acting on the fair lending plan.

(5) FOLLOW-UP COMPLIANCE EXAMINATION.—Within 12 months of approving a fair lending plan, the appropriate Federal banking agency shall conduct a subsequent compliance examination to determine—

(A) that requirements of the plan are being carried out by the institution; and

(B) that no further fair lending violations are evident.

(6) SANCTIONS APPLICABLE TO INSTITUTIONS THAT FAIL TO SUBMIT OR COMPLY WITH FAIR LENDING CORRECTIVE ACTION PLANS.—If any inusred depository institution or depository institution holding company fails to submit a fair lending plan which meets with the appropriate Federal banking agency's approval or fails to comply with the fair lending plan, the agency shall—

(A) issue an order requiring such fair lending corrective action; and

(B) assign the insured depository institution a rating of "substantial noncompliance" with the Community Reinvestment Act of 1977.

(7) ADDITIONAL SANCTIONS.—For any insured depository institution or depository institution holding company that fails to submit a fair lending plan which meets with the appropriate Federal banking agency's approval or fails to comply with the fair lending plan, the agency may impose civil monetary fines not to exceed $5,000 per day, consistent with the extent of the violations and the size of the institution.

SEC. 243. FAIR LENDING TESTING.

(a) IN GENERAL.—Each Federal banking agency shall establish procedures to conduct fair lending testing of federally insured depository institutions and nondepository mortgage lenders for purposes of determining compliance with fair lending and laws, including the Fair Housing Act and the Equal Credit Opportunity Act.

(b) FAIR LENDING TESTING DEFINED.—For purposes of paragraph (1), far lending testing shall be defined as a process whereby 2 or more persons of identical or substantially similar credit worthiness but of different race, color, religion, national origin, sex or marital status, or age seek mortgage loans or depository services from an insured depository institution for the purpose of assessing the institution's compliance with fair lending laws. Such purpose shall in no way be revealed to the institution by either the applicants or by any Federal banking agency.

(c) PROGRAM ADMINISTRATION.—Each Federal banking agency shall, to the extent possible, seek to have fair lending test procedures administered by the Department of Housing and Urban Development, or by an independent nongovernmental entity with experience adminstering similar such procedures.

(d) EVALUATION OF TESTING PROCEDURES.—Tests conducted pursuant to this section shall consider any factors relating to compliance with fair lending laws, including but not limited to—

(1) specific, overt discriminatory treatment based on race, color, religion, national origin, sex or marital status, or age; and

(2) differential decisions made by the institution on applications for loans or depository services submitted by applicants defined in subsection (b), which decisions appear to be based on criteria not allowed under the Fair Housing Act and the Equal Credit Opportunity Act.

(e) IMPLEMENTATION.—

(1) IN GENERAL.—Each Federal bankng agency shall, after notice and an opportunity for public comment, prescribe final regulations under subsection (a) not later than 180 days after enactment of this Act. Such regulations shall take effect not later than 270 days after the date of enactment

(2) GENERAL ENFORCEMENT EXAMINATION PROCEDURES.—Such regulations shall require that fair lending testing procedures be integrated into general enforcement examination procedures, and specify the frequency which such procedures will be utilized.

(3) PATTERNS OF DISCRIMINATION.—Such regulations shall also require that fair lending testing procedures be utilized as soon as practicable in an institution which the appropriate Federal banking agency determines to demonstrate patterns of discrimination as established by the agency pursuant to section 242.

The CHAIRMAN. Under the rule, the gentleman from Massachusetts [Mr. KENNEDY] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. WYLIE. Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes at the appropriate time.

The Chair recognizes the gentleman from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. Chairman, I yield myself 2 minutes and 15 seconds, and I ask unanimous consent to yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER] and ask that he be permitted to yield such time as he may choose.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. KENNEDY. Mr. Chairman, this amendment addresses a very serious problem in the banking industry: Discrimination based on region and race.

Let's take a look at what is going on in America today. Large interstate banks are slamming shut the doors of credit on small towns and neighborhoods. They're sucking deposits from Main Street, shipping them to Wall Street, and saying "no deal" to small businesses and families trying to own a home. One large regional bank bought 18 billion dollars' worth of junk bonds and T-bills on Wall Street—with deposits collected in Texas.

Other Americans are being denied credit based not on where they live, but on the color of their skin. New data, released last week, show that minorities are two to four times more likely to be rejected for a home loan than whites of the same income. That is not equal opportunity. It is a double standard. It's un-American, it's illegal, and it must stop.

The problem is not bad laws. It is bad enforcement. Bank regulators are asleep at the switch. They treat banks like golfing partners, not banks. Over the last decade, only one case of lending bias has been sent by a regulator to the Justice Department. In the 13-year history of the Community Reinvestment Act, over 60,000 exams have been made of banks seeking new powers.

Yet, only 14 banks have ever failed one of those exams.

This amendment says to regulators: Enough is enough. You've abused your discretion for too long. You won't get tough on discrimination and redlining, so we'll get tough on you. We'll require you to detect discrimination, correct it, and make sure no small town or minority citizen is denied their fair share of credit.

Community banks have nothing to fear from this amendment. It imposes no new paperwork requirements on law-abiding lenders. It requires no forced lending. It won't subject banks to across-the-board testing. All it says is that people should be judged based on their ability to repay a loan, not the color of their skin, their sex, or their religion.

Mr. Chairman, credit is the key to the American dream. Without it, people cannot share the tremendous wealth of our free market system—cannot buy a home, own a car, or send a child to college. If banks can ask taxpayers for $70 billion, then the least we can do is guarantee those taxpayers equal access to credit.

So, if you like the idea of giant bank vampires sucking the lifeblood from your local communities, then vote against this amendment. But if you want to ensure that small businesses and young families get the credit they need to prosper, then support it. And if you are not bothered when an American can't get a loan because of the color of his or her skin, then vote no. But if you believe in equal opportunity for all, then I urge you to vote aye.

□ 1330

Mr. LEACH. Mr. Chairman, I yield myself such time as I may consume.

Let me just begin by complimenting the gentleman from Massachusetts for raising a real issue, an issue that is not fabricated; it is documented. On the other hand, I think we should all recognize that now and again there are problems in American society that are real for which there can be counterproductive results. In this case the result that is being advocated, in my judgment, is not only potentially counterproductive, it may be un-American. And I would ask the gentleman's attention. He used the word "un-American" in his analysis. What is at issue here is the development, among other things, of the use of testers, which is not only expensive, which in one sense is trivial—but raises very serious ethical questions, which is not. Human beings, without their knowledge, are to be tested by the government.

I personally think it is a duty of regulators to set stiff standards, very stiff standards, and it is their duty to look at results and to make sure those standards are met. I will not disagree one bit with the gentleman's intent in that regard. But the idea of going after the testing of people in the private sector in this way is very, very slippery. It may be the ultimate governmental intrusion in the American system.

The problem is real. The secret police solution, however, is more KGB than American modeled.

Here, I would like to raise one other point and advise this body to read the Federal Reserve Board's study on this subject. It raises some arguments for the gentleman and against. But on this ethical issue, a compelling case seems to me to be made.

Let me go to a second issue here. It is not at all clear that the gentleman is not addressing the wrong target. Let me explain what I mean. We now have a circumstance, particularly in housing, where almost 80 percent of housing mortgage originations are now going through the secondary market, Fannie Mae and Freddie Mac. Neither Fannie Mae nor Freddie Mac are subject to the Community Reinvestment Act; they are not subject to the Fair Housing Act; they are not subject to the Equal Credit Opportunity Act.

If the Members will look at the Federal Reserve Board study, it is very interesting that the private sector, to which the gentleman wants to direct these new police state testings, scores better than the public sector that this body is designed to oversee to a higher degree.

Mr. KENNEDY. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I am happy to yield to the gentleman from Massachusetts.

Mr. KENNEDY. Mr. Chairman, I appreciate the gentleman yielding. First of all, I think the gentleman is familiar with the fact that I offered, because we serve on the same committee together, an amendment that would have included Fannie Mae and Freddie Mac in the Community Reinvestment Act 2 years ago and 4 years ago, and it gets defeated in our committee.

I agree with the gentleman 100 percent that both of those institutions ought to be included in the Community Reinvestment Act, No. 1.

No. 2, I wish the gentleman from Iowa, and I wish all the Members, would understand that the fair lending testing program that is part of this is only a tool which the regulators may use at their discretion once an institution has already been determined to be at risk for discrimination.

Mr. LEACH. Mr. Chairman, I would like to recapture my time, and I reserve the balance of my time.

Mr. WALKER. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I rise in favor of the amendment and I would like to begin first by entering into a colloquy with the gentleman from Massachusetts [Mr. KENNEDY], with regard to some of these questions. I think this may allay some of the fears that this is a police state amendment. That is fairly harsh language.

Let me ask the gentleman, does this amendment require that all banks be tested for fair lending violations?

Mr. KENNEDY. Mr. Chairman, if the gentleman will yield, no, absolutely not. It only says that regulators should use testing if warranted. That's how HUD has used testing for 23 years. If there's no evidence of discrimination at a bank, then there'd be no need for testing.

Mr. WALKER. How much will this program cost?

Mr. KENNEDY. The program is modelled on HUD's Fair Housing Testing Program, and we asked Jack Kemp to help us set it up. HUD's program costs very little—at most a couple of million dollars. In a bill that gives banks $70 billion, $2 or $3 million for equal opportunity is not too much to ask.

Mr. WALKER. Does this amendment mandate that banks will have to lend to minorities even if none currently live in their service territory—in other words, is this a quota measure?

Mr. KENNEDY. Of course not. It's an equal opportunity amendment—nothing more, nothing less. It doesn't require banks to lend to minorities if none currently live in their service territory. It says everyone ought to be treated based on their ability to repay a loan, not the color of their skin, their gender, or their religion.

Mr. WALKER. Does this amendment impose any new paperwork burdens on banks?

Mr. KENNEDY. No, unless they're found to be in violation of fair lending laws, in which case they'd have to submit a fair lending plan to correct that violation. Law-abiding banks will have no new paperwork whatsoever as a result of this amendment.

Mr. WALKER. Mr. Chairman, let me thank the gentleman from Massachusetts because some of the Members on my side who have talked to me about this have had concerns in some of these areas, and I hope maybe the legislative history will help allay their concerns.

I would also say to the House, and particularly to the Members on my side of the aisle, we claim to be a party of growth and opportunity. This is an opportunity issue. This is a question of whether or not all people in our society are going to have the opportunity to rise up the ladder. If in fact we understand what is happening in our society we understand that for certain people they have not been given the opportunity to rise up the ladder because they have had economic opportunity clamped off from them by banks that either redline or in other ways do not lend them the money they need in order to move. That is wrong. And if we are going to be a party of opportunity, it seems to me that here is a place to show it.

This does not involve quotas. This does not involve Government intervention. What this involves is giving people an opportunity in order to move ahead economically.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, I thank my friend for yielding and I also want to rise in support of this amendment for the simple reason that, as I analyze it, it also precludes the practice of redlining.

I just want to ask the gentleman, I read that the amendment would prohibit banks with assets more than $1 billion from expanding across State lines if they had exhibited a pattern of closing offices in a way that excludes low and moderate income or minority areas. Is that correct?

Mr. WALKER. The gentleman is correct.

Mr. HUNTER. Let me just say that the Republican Party and conservatives in this House stand for opportunity, and the idea of Americans climbing the economic ladder. They are currently prohibited from that because of geographical location, in some cases by redlining, and I support the amendment.

□ 1340

Mr. LEACH. Mr. Chairman, I yield myself 45 seconds simply to say that I do not think the Republican Party stands for the establishment of an entrapment police force.

On the issue of cost, you can listen to the gentleman from Massachusetts, and that is fair, but let me just read briefly from the Federal Reserve Board of the United States:

> The cost of a testing project would be quite substantial given the number of tests necessary to attempt to produce statistically reliable results. Staff estimates that a "test" of testing in just three locations would cost between $600,000 and $1 million. Further use of the technique obviously would involve a great deal of money.

Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this amendment reminds me of how doctors treated patients in the Middle Ages. Centuries ago when a patient was sick, the doctors came in and attached leeches to draw out the bad blood. More often than not the patient died, and no one could understand why.

Today we have a banking system that is sick. Hundreds of banks have failed, and more are in grave trouble.

So what does Dr. KENNEDY prescribe? He sends out for another jar of leeches.

This amendment adds major costs to every bank, simply so that Ralph Nader's unemployed disciples can get jobs carrying out the sponsor's amendment.

It sets up a Nader secret police and gives them authority to walk into any bank in the country with false documents so that they can entrap any bank employee. You doubt my word? Read the amendment.

That is why the Federal Reserve rejected this scheme, because it is wrong and would add as much as $200,000 in operating costs per bank.

When the taxpayer bailout comes, and it is going to come given what the House has done to this bill, this is one of the amendments you can point to as a cause. The last thing we should be doing is voting for more operating costs for our banks when we are trying to save the system from a taxpayer bailout.

This is the wrong idea at the wrong time, and I urge my colleagues to reject it.

Mr. KENNEDY. Mr. Chairman, will the gentleman yield?

Mr. ROTH. I am happy to yield to the gentleman from Massachusetts.

Mr. KENNEDY. Mr. Chairman, I do not know where the gentleman gets his cost figures. The fact is that this program received help from Jack Kemp in designing it.

Mr. ROTH. Reclaiming my time, the Federal Reserve has projected these costs to be as much as $200,000 per bank. Now, the author of this amendment should do his research before he brings in these amendments, and we would not have costly amendments like this on the floor.

When you propose to give people false documents so they can walk into any bank in the country, and disguise their intentions, you have nothing but entrapment of any person that is working in a bank. That is a police state. That is what we do not want.

And if anyone doubts what I have said, read the amendment.

Mr. KENNEDY. I do not know, but it is not in this amendment.

Mr. LEACH. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Kansas [Mr. ROBERTS].

Mr. ROBERTS. Mr. Chairman, I guess I owe this body an apology. I got a little ruffled yesterday in the debate over the rule when I learned that my amendment to exempt country banks from CRA was not made in order by the rule. I was especially miffed when I learned that Mr. KENNEDY'S amendment dealing with CRA was made in order by the rule. Having had a day to cool off and study the issue, however, I realize the importance and value of the Kennedy amendment.

How silly of me to suggest we reduce paperwork on country banks, when instead we can send out undercover CRA SWAT teams prowling the countryside at taxpayers expense to find that evil discriminatory banker. I will caution Mr. KENNEDY, however, this may be difficult out in my country. You see, your testers might stick out a little bit in Plainville, or Smith Center, or my hometown of Dodge City because the banker usually knows everyone in town. In fact the premise behind my amendment was just that. Since country bankers are such an integral part of their community, why require them to fill out this book report to document it.

Now Mr. KENNEDY is sure to point out the most recent data from the Home Mortgage Disclosure Act shows that minorities are less likely to get loans. Now, besides from the fact that this act does not include credit worthiness data, I want to remind everyone that this data does not include any loan information from my district. Why? Because under the Home Mortgage Disclosure Act nonmetropolitan areas are exempt. Now there's an idea!

Mr. Chairman, I am strongly opposed to the Kennedy amendment for a number of reasons. Most important of which is the unrealistic costly use of testers to conduct covert examinations of banks. Anyone who has ever gone in for a home mortgage knows that the loan is not made based on your good looks. Bankers need documentation which demonstrates credit worthiness. Will we need to falsify tax returns, Social Security numbers, and credit reports? Then what happens when they get the loan? Do the testers pull out their CRA SWAT ID and say "Psych." How is our friendly real estate agent going to feel when the nice young couple they thought they had just sold a house to, were actually undercover CRA cops.

The cost of this program would be incredible. The Federal Reserve recently estimated that even a limited type of testing would cost $600,000 to $1 million for just three locations. The testing envisioned in this amendment would cover thousands of locations and would cost billions of dollars. I am willing to spend money to stop illegal lending practices, but are there other less expensive ways to accomplish this.

Mr. Chairman, I realize the need for antidiscrimination protection in our banking law. I would not be before you today if my amendment protected institutions engaging in discriminatory practices. It does not. All banks, regardless of size, are required to comply with the Equal Credit Opportunity Act which prohibits discrimination on the basis of race, color, sex, age, religion, marital status or national origin. If discrimination is the problem let's strengthen enforcement of the Equal Credit Opportunity Act and focus our efforts and scarce Federal resources where the incidence of discrimination is the highest. I submit that this is not on Main Street America in the community banks of this country.

Mr. KENNEDY. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I am delighted to yield to my friend and colleague, the gentleman from Massachusetts.

Mr. KENNEDY. Mr. Chairman, I have been accused of setting up SWAT teams, the KGB.

The fact is this is a program that Jack Kemp tried to design.

The CHAIRMAN. The time of the gentleman from Wisconsin [Mr. ROTH] has expired.

Mr. KENNEDY. Mr. Chairman, I yield 1 minute to the distinguished chairman of the committee, the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Chairman, I rise in support of the Kennedy amendment.

We know that there are divisions enough in other sections of H.R. 6, but nevertheless, I think some of the basic issues have been decided.

I really, truly hope that there is not any one of us that believes that an insured depository institution would have and should have the right to discriminate against citizens on the basis of race, color, ethnic background, or sex. We have to face the fact that for many years we tried to shove under the rug the ugly fact of discrimination.

In the 1960's, the middle 1950's, and the late 1960's, finally, the country confronted it, and I think the country is better off as a result.

We will hear many talks about the burdens on the banks. We have already. I hope the Members will stop and consider that the burden on the family that cannot get that loan is awesome and terrible.

For that reason, I support the Kennedy amendment.

Mr. KENNEDY. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. TORRES].

Mr. TORRES. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Massachusetts [Mr. KENNEDY].

Mr. Chairman, I rise today in strong support of the amendment offered by my colleague on the Banking Committee, Mr. KENNEDY.

Much has been said about what this amendment will or will not do. And much of what is being said is simply not true. But I am not here to clarify this amendment. Its intent and consequences are clear for all to see.

What the amendment does is provide this body with a clear and simple choice.

If you vote for this amendment you are voting to help stop banks from discriminating against low-income families, small businesses, family farmers and minorities. You are voting to stop banks from denying loans to minorities, simply because the color of their skin is brown or black.

If you vote against this amendment you are voting to allow banks to continue treating minorities, small business owners, and family farmers as second-class citizens.

Three years ago Mr. KENNEDY offered an amendment to require banks and other financial institutions to provide Congress with data on their lending practices. Well, we have seen that data and it is not pretty. Let's vote for this amendment and tell those people who are unjustly being denied loans that we will not ignore them.

We have seen the data released by the Federal Reserve Board just last week showing serious violations of fair lending laws by some banks. The data reveal that minorities, particularly black and Hispanic applicants, are two to four times more likely to be rejected for home loans than are nonminorities having the same income. Furthermore, a continuing trend of redlining of minority and low-income neighborhoods by the Nation's banking industry is evident.

It is unconscionable that we are seeing this kind of data despite the Federal laws which have been enacted for years making mortgage discrimination unlawful. These laws are obviously not being enforced. It is just unacceptable for any American to be denied equal access to credit, a fundamental element of our American democracy, and to be cheated out of the dream of home ownership in this way. My colleagues, it is imperative that we do what is necessary to redress these violations of fair lending law.

The Kennedy amendment will ensure that banking regulators enforce fair lending, fair housing, and community investment laws. Whether intentional or not, the efforts of the banking industry have not been adequate in meeting the credit needs of the low-income and minority residents of their communities. The banks are up here asking for new ways to make a profit. At the very least, they must be held to some accountability in meeting the credit needs of low-income families, small businesses, farmers, and consumers, in the communities they serve.

I urge a "yes" vote on this amendment.

Mr. KENNEDY. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I rise in strong support of the amendment offered by my colleague from Massachusetts.

In all the debate over expanding bank powers we've heard many passionate pleas for doing what's good for America's financial institutions, for doing what's fair for America's banks. But it is ironic that we have not heard one word, not one word, about doing what is fair for America's banking customers. Not one bank that has come to me looking for help, looking for Congress to provide them with a way to make more money, has said that it wants to do more for small depositors, or that it has expanded its Community Reinvestment Act lending beyond what the statute calls for. Even raising the issue of my concern with banks about their providing basic banking services, or strengthening the CRA, gets brushed aside with a brusque, "Oh well, we're doing our part." Well, apparently they are not.

I hope that all of us have seen the recently released study by the Federal Reserve Board which shows that minorities are much less likely to be approved for a home mortgage than whites. I say I hope that we have all heard about this study because very little has been made or said of this study. It is sad that in the midst of national debate over banking issues, this study and its implications have been all but dismissed. But I guess I really shouldn't be surprised. All too often when studies document yet another aspect of discrimination against black and other minorities in this country, they are relegated to the, "Oh well, that's life in America" pile.

If I sound mad it's because I am mad. And I am sick and tired of corporate America coming to Congress with its hands out and not offering to do one thing for those at the bottom. For those on whose backs this Nation was built.

How can we explain to our constituents that we bailed out the savings and loans, and are now trying to prop up the banks, but that we aren't doing a thing for African Americans, Hispanics and other ethnic minorities but socking those taxpayers with the bill.

I am appalled by the results of the Fed study. There is no excuse to the findings in this study. None. Banks have not a leg to stand on in this case. They cannot say that minorities were denied loans at a greater rate because their economic status was not as strong as the whites that applied. Perhaps the most shocking aspect of this study shows that whites in the lowest-income category were approved for mortgage loans more often than black applicants in the highest-income group. These were not economic decisions that were made but racial ones, pure and simple. Now I am not one to bring up the ugly specter of racism as an easy explanation for all of life's ills. But frankly, there is no other way to explain the disparity in lending than racially discriminatory practices.

I have been told a million times by banks how important it is for them to be allowed to do interstate branching. Well, it is only fair that if you want to move outside your traditional areas, you must first show that you are in compliance with existing laws, including those that require that banks meet the credit needs of the community.

Another important aspect of this amendment requires regulators to come up with procedures to enforce and promptly correct violations of existing fair-lending laws. This is a critical component. Again referring to the recent study, the only thing I have heard so far for the Fed is they find these results very worrisome. Very worrisome is the turning down of mortgage loans to working families with good credit references simply because they are black. Very worrisome is redlining which has been a banking practice for far too long. The problem of redlining and lending discrimination is far more than very worrisome; it is an insult to all minorities and the shame of the banking industry.

And after the Fed has unfurled its collective brow over this very worrisome matter, they have the nerve to say they will carefully examine the lending practices of banks that were shown to have substantial discrepancies in their lending policies. This is pure and simple baloney. If we are really serious about establishing a banking system that is truly fair, then this amendment must be a part of that system.

Mr. Chairman, we have today the indisputable figures from the recent study and no definitive action by the Fed, and certainly none by the banks. We in Congress have made it clear that fairness in lending is just not real important in the overall scheme of things. Well it should be. Now is time for Congress to step in and say, "enough is enough." We can do this by recognizing that the Kennedy amendment is a good step in that direction. With this amendment, we are not asking banks to set aside a percentage of their loans for minority individuals or communities. We are not telling them they have to lend to certain people. We are not asking for money out of their pockets or profits. What we are saying with this amendment is that they must obey the law, they must not discriminate on the basis of race when granting loans. A provision like this amendment is long overdue and I urge my colleagues to support it.

Mr. KENNEDY. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I rise today in support of the Kennedy amendment.

I think that all of us who have had opportunities to look into the various communities and see what is happening will attest that you can go into almost any urban community in America, and you will see that there is, indeed, a difference in some portions of them. Indeed, last year when I had a redlining hearing in New York, we found that many banks were taking in deposits and were not giving any money, any loans, in those communities from which they were receiving those deposits.

It seems to me then, Mr. Chairman, that what the gentleman from Massachusetts [Mr. KENNEDY] is offering is an opportunity for us to get a hand on the analysis that is necessary to make banks understand that they have an obligation and a requirement to be able to respond to the needs of those communities.

□ 1350

Indeed, in these times when we talk about mergers of major banks, there needs to be some means by which we assure that in the process of merging they do not do less service than they are currently doing. Most of these banks have already moved their branches from the communities that they ought to be serving and all the gentleman from Massachusetts [Mr. KENNEDY] is asking is that we ask for fairness and lack of discrimination in the process.

Mr. LEACH. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. KANJORSKI], a distinguished member of the Committee on Banking, Finance and Urban Affairs.

Mr. KANJORSKI. Mr. Chairman, I serve on the Banking Committee. I have a great deal of respect for my friend, the gentleman from Massachusetts [Mr. KENNEDY] and I supported the earlier version of his amendment in the Banking Committee, because I thought it was important; but I rise today in opposition, because of one very major addition he has made to it which I cannot support.

I think for those of us who just a couple weeks ago fought hard to protect the habeas corpus process in the United States, for those of us who fought against indiscriminate mandatory drug testing in the United States, for us to get up here and not recognize the civil liberties implications of this amendment, that it is a desecration of the Constitution of the United States for a very, very minor reason. It frightens me when I think that my good friend, the gentleman from Massachusetts [Mr. KENNEDY] is joined by my good friend, the gentleman from Pennsylvania [Mr. WALKER], and there are those of us who are in between those two philosophies in the House, that maybe it is time for those in the moderate element of the House, the center of the House, to appreciate that we did not come here only to cure bank problems. We took an oath of office to protect the Constitution of the United States, and if we are going to hire testers and the Gestapo to go out to the banking industry, why not the insurance industry? Why not the transportation industry? Why not the securities industry? Why not lawyers? Why not doctors? Why not the Government? Why not our offices?

I will bet you there are Members of Congress in some districts whose staffs discriminate for one reason or another. Do we test them? No.

Do we really have to bring this country and this Constitution down to that level to help?

There is not a Member of this Congress who is in favor of redlining or does not want to see the hardest prosecution against those institutions that violate our antidiscrimination laws.

But we have strong laws on the books which already make it illegal to discriminate, and provide severe penalties for violations. To violate our Constitution or to encourage a movement toward a police state, for whatever reason, is unjustified.

Whatever happened to the American principles of jurisprudence under which probable cause must be established?

This is persecution, not prosecution, and that is not the American way.

I ask my colleagues not to support this taxpayer-financed entrapment system.

Mr. Chairman, I know this is the day after Halloween, but that is no excuse to go on a witchhunt.

We must support our Constitution, our Bill of Rights, and our system of jurisprudence, by opposing this amendment.

Mr. KENNEDY. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. FROST].

Mr. FROST. Mr. Chairman, I rise in support of the amendment offered by my colleague from Massachusetts [Mr. KENNEDY].

That this amendment is needed is clear from the figures recently released showing the lending practices of financial institutions around the country. These figures show that banks have been rejecting minority applicants for mortgage loans anywhere between two to eight times as often as white applicants.

These figures show graphically that lending institutions utilize race as one means of determining whether credit will be provided to an applicant. Minorities in Texas have reported that biases are so established that they have become a way of life, just another obstacle that has to be overcome in trying to finance the purchase of a home. In fact, some minorities in the real estate business report that they no longer take clients to banks because loan rejections are the rule. This is discrimination, pure and simple, and it is illegal. And it is time that we act to put a stop to it.

This amendment will enable us to make certain that lending institutions wanting to buy or open a branch in another State are meeting the credit needs of their communities. If they are not meeting the credit and deposit needs of the community they now serve, they should not be permitted to branch into another State.

This amendment will also strengthen enforcement mechanisms to better detect and correct violations of fair lending and community reinvestment laws. This will not create additional burdens on those institutions that are in compliance with the laws. It will, however, allow us to identify institutions not in compliance and act to end discriminatory practices.

I urge my colleagues to support this amendment. It is time that we make it clear that discrimination by lending institutions must stop, and that the financial industry must provide credit and other banking services on an equal basis to all persons.

Mr. KENNEDY. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES of Illinois. Mr. Chairman, since it was reported the other day in one of the Chicago papers that Chicago is one of the worst cities in the country when it comes to racial discrimination on home mortgages, I would like to enter into the RECORD a position in support of the amendment of the gentleman from Massachusetts and thank him for having introduced this amendment.

Mr. WALKER. Mr. Chairman, I yield myself the final 2 minutes.

Mr. Chairman, it is somewhat amusing to hear some of these people talk about how horrible these testers are and how they are un-American.

Let me put it to you this way, my friends. If you are against drug stings in this country, then I can see why you have a problem, but my guess is that many of us feel as though when there is massive illegal activity taking place and the Justice Department has to turn to a device like this, they should be able to do so. That is exactly what we are talking about here, regulators where they find massive violation being able to turn to a device to assure that they are right in getting the job done.

Let me put it in these kinds of terms and maybe it will help divide out where you are on this amendment.

If you are against redlining, then you are for this amendment. If you are for all Americans, not just certain Americans getting mortgages for the homes they want, then you are for this amendment. If you believe in the American dream based upon upward mobility that is based upon ability and hard work, then you are for this amendment. If you are for small entrepreneurs getting the money they need to move themselves ahead, then you are for this amendment. If you stand for equal opportunity, and that it seems to me is the basic reason for voting for this amendment, equal opportunity has to be assured, not just talked about. Up until now, all we have done so often is talk about it. Here is a chance to do something about it. Here is a chance to help assure it. Here is a chance for those of us in the conservative movement who keep talking about the fact that we are for opportunity to actually stand up and vote for opportunity.

Mr. Chairman, I would request that we do just that.

Mr. LEACH. Mr. Chairman, I yield such time as he may consume to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. Mr. Chairman, I rise in opposition to the amendment.

Mr. LEACH. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. RIGGS].

Mr. RIGGS. Mr. Chairman, I thank the gentleman for yielding this time to me.

To my colleague, the distinguished senior deputy whip, I find it a little bit incredulous that we are comparing drug trafficking with violations of the Community Reinvestment Act.

Let me just say to my colleagues, if you favor the stick approach, you are for this amendment. If you favor the carrot approach, then you will vote for the Ridge-Flake greenlining amendment.

I want to make clear my strong opposition to the fair lending testing provision offered by Mr. KENNEDY. It is a wolf in sheep's clothing. I oppose this provision because I believe that it is both costly and unethical.

First off, the Federal Reserve has determined that testing was a very expensive and cost-ineffective technique of determining compliance with the Fair Housing Act and Equal Credit Opportunity Act. For just a three city test of the testing technique, the costs estimates ranged from $600,000 to over $1 million. This obviously makes it impractical to test every financial institution, as the Kennedy amendment proposes.

I am also concerned that this amendment will violate the pay-go provisions of the Budget Enforcement Act.

Second, and most important, I take strong issue with the technique involved here. The ethics of involving Government officials or agents of our Government in deception and potentially outright entrapment of our own citizens is very troubling.

HUD currently uses this practice, but that should not mean the technique should be expanded in its application. As an example, I am sure that most Americans would be very troubled by the thought of IRS agents in disguise acting as accountants. I have always strongly supported the rights of minorities to have equal access to credit; however, I condemn in equally strong terms this unethical practice as a means of ensuring equal access.

Mr. KENNEDY. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia [Mr. LEWIS].

Mr. LEWIS of Georgia. Mr. Chairman, I want to thank my colleague and friend, the gentleman from Massachusetts [Mr. KENNEDY] for yielding this time to me.

Mr. Chairman, I rise in strong support of the Kennedy amendment, because it attempts to bring fairness into the Nation's banking system. It is my firm belief that this amendment is long overdue.

I am outraged by the treatment that blacks and other minorities have been getting from our Nation's banks.

The facts are clear, Mr. Speaker. The facts clearly reflect open and blatant racial discrimination; yet the Federal Reserve does nothing about these facts. The banks are still saying to blacks, to minorities, "It's okay, it's all right to deposit your hard-earned dollars, but don't except us to loan you any money to buy a house, to buy an automobile, don't expect us to invest in your neighborhoods."

The scars and stains of racism are deeply embedded in the banking system of America. The fact is clearly here for us to see today that the Federal Reserve has allowed these practices to continue, and it is wrong.

The Kennedy amendment only seeks to get the Federal Reserve and our Nation's banks to do what is right, what is fair, what is just, but a whole world is passing us by as we move toward the 21st century. It is a shame and a disgrace that we are here debating whether we should support a simple little amendment to help end discrimination in our lending and banking institutions. I think we have a moral obligation to act, and to act now.

Mr. Chairman, the Kennedy amendment is proposing nothing but fairness, nothing but simple justice. I urge my colleagues to vote for this amendment.

Mr. KENNEDY. Mr. Chairman, I yield 1 minute to the gentleman from Maryland [Mr. MFUME].

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Mr. MFUME. Mr. Chairman, growing up in this country many years ago, I was faced with a stark reality that, whether we like it or not, we do have two standards and we have two approaches.

As a child in the first grade, when asked, "What do you want to be," I was told that I could be a dishwasher or a ditch digger because in fact, "It just wasn't your time."

I had parents in this country grow up, go before mortgage officers in banks, to apply for loans, and they were told, "Mr. Jones, your credit is good and it appears satisfactory, but come back on another day." And further, "Yes, you have worked long and hard, but come back on another day." And, "Yes, you, Mr. Jones, you are honest, you are hardworking, you are law-abiding, but come back on another day."

And people talk about not being opposed to redlining? Well, what are we going to do? This is the Congress of the United States. Let us do something about it. But do not tell me, as I have been told all my life, and people of African ancestry and Hispanic ancestry, to wait for the next tomorrow and the next generation and the next election.

We, too, are endowed with certain inalienable rights, life, liberty and the pursuit of happiness.

The CHAIRMAN. The Chair would like to advice the opponent and the proponent of the amendment that the Chair was in error. The gentleman from Massachusetts has the right to close debate inasmuch as this amendment was not considered in committee. The Chair was not aware of that and apologizes.

The time situation is that the gentleman from Massachusetts [Mr. KENNEDY] has 2 minutes remaining, and the gentleman from Iowa [Mr. LEACH] has 3 minutes remaining.

Mr. WYLIE. Mr. Chairman, this amendment was considered in committee. I do not know where the information came that it was not.

Mr. KENNEDY. This is a very different amendment than the one we considered in committee, I say to the gentleman from Ohio.

The CHAIRMAN. For what purpose does the gentleman from Florida rise?

Mr. STEARNS. Mr. Chairman, I was in the committee, and that was the same amendment that we considered.

Mr. KENNEDY. Excuse me, no, it was not. The chairman of the committee is here. This is not the same amendment.

The amendment that was offered in committee had to do with the Community Reinvestment Act portion of this amendment, but it did not have to do with the secondary portion, which is the discriminatory lending. As you will recall, the committee, when the discriminatory lending study came out, had already finished its work.

The CHAIRMAN. Regular order is demanded, regular order is demanded.

The Chair recognizes the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, on the basis of comity, I would simply like to accommodate the gentleman from Massachusetts on this point and let him close debate. I think that is fair.

The CHAIRMAN. The Chair, as well, thanks the gentleman from Iowa.

Does the gentleman from Iowa have time to yield?

Mr. LEACH. It is my understanding I have 3 minutes remaining? Is that correct?

The CHAIRMAN. The gentleman is correct.

Mr. LEACH. Mr. Chairman, I yield 2 of those minutes to the distinguished ranking member of the committee, our distinguished leader, the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Chairman, I thank the gentleman for yielding, and I appreciate the comity and the spirit in which Mr. LEACH offered to allow the gentleman on the other side to close.

This amendment is called the community benefits requirements amendment; and that is the style of the amendment that was offered in our Committee on Banking, Finance and Urban Affairs by the gentleman from Massachusetts. But so be it.

Mr. Chairman, I oppose this amendment. This amendment will gut the interstate branching provisions in H.R. 6. It will only provide additional obstacles and costs to the banks which desire to branch interstate, an activity which is widely supported by the administration and a majority of the members of the ranking Committee.

The branch closing provisions proposed in the Kennedy amendment conflict with provisions already in the bill.

H.R. 6 includes provisions which were offered by the gentleman from Maryland [Mr. MFUME] and myself which addresses the issue of branch closings.

H.R. 6 provides that public notice shall be provided before a branch is closed, as well as an assessment of the impact of local credit needs if the branch is closed.

How does one interpret the Mfume-Wylie amendment if the Kennedy amendment is adopted?

We may end up hurting the very people we are trying to help.

The Kennedy amendment refers to diversified holding companies. However, H.R. 6 does not now reference or deal with the issue of diversified holding companies.

I believe the amendment is not properly drafted.

Finally, the testing program proposed by the Kennedy amendment is a half-baked idea. It is a proposal that was rejected by the Federal Reserve Board because it would not guarantee accurate findings; it would be very costly to administer, and it would be unclear as to who will pay for the cost of the program.

This is not a social welfare bill that we have before us. Banks should be in the business of lending based on creditworthiness.

I think the Kennedy amendment is an extreme measure, and I would urge Members to vote "no."

Mr. LEACH. Mr. Chairman, I yield myself the balance of the time.

The CHAIRMAN. The gentleman from Iowa [Mr. LEACH] is recognized for 1 minute.

Mr. LEACH. Mr. Chairman, at issue the last few days are questions of serious judgment. I am personally persuaded the issue in this amendment is a constitutional question. We ought to have high—unblemishable—standards in civil rights; we ought to have stiff enforcement. But I ask every Member of this body, "Do you want to create an entrapment police force?"

Economic marshals of this nature would be unprecedented in our history. It has been cited here very glibly that drug dealers and bankers are the same. I would say to everyone: Bankers sometimes are curmudgeonly but they are not members of the same profession as drug dealers.

Let us not undercut American values with very understandable emotions.

I urge this amendment, with the highest respect, be defeated.

Mr. KENNEDY. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Chairman, I rise in strong support of this fairness amendment.

Mr. Chairman, I rise in strong support of the amendment by the gentleman from Massachusetts.

Mr. Chairman, there are provisions in this bill already, provisions which I and others on the committees vigorously support, which require an institution to be well-capitalized before it may engage in interstate banking or branching or to engage in new securities activities. This makes good sense; it is fair; it is judicious.

Similarly, it makes sense to ensure that, beyond being in sound financial shape, a bank is a good citizen, concerned with the well-being of the communities in which it operates. Let's not forget the special position that banks hold in our economy and their unique relationship, through the deposit insurance system, they have with the Government. Banks are insured by the taxpayers of this country and that support constitutes an obligation to provide equal credit to the whole community.

As you are well aware, the recent HMDA study provides some rather disturbing statistics. Clearly the lending practices of banks as reflected in this report demonstrate that redlining still exists in the United States. Bias against blacks and Hispanics is happening and not just within their own income brackets. Not only are low-income blacks and Hispanics less likely to have their loans approved compared to whites with low incomes, but high-income level blacks and Hispanics are less likely to have their loans approved compared to low income whites. This, 25 years after the civil rights bill was passed.

Truly our banks could and should be doing more to make access to credit available to all people. This amendment will ensure that banks that are making this effort, banks that are being good members of the communities in which they are located, are the ones that will be granted additional powers.

Mr. Chairman, I commend Mr. KENNEDY for his amendment and urge its adoption.

Mr. KENNEDY. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey [Mr. PAYNE].

(Mr. PAYNE of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. PAYNE of New Jersey. Mr. Chairman, I rise in strong support of the Kennedy amendment.

I commend by colleague from Massachusetts for his leadership on this issue.

Last week's release of a study by the Federal Reserve Board confirmed what many of us from urban areas have long known—that it is much more difficult for minorities to borrow money for mortgages and other purposes, even when their incomes and credit histories are similar to other customers whose applications are approved.

In my home district, I have worked on this issue with the Newark Coalition for Neighborhoods, a local group which is a member of the statewide fair lending coalition. The coalition has been keenly aware of the problem of discrimination in the lending process, and has worked diligently to negotiate agreements with New Jersey banks to give minorities a fair chance to obtain home mortgages.

It has been said many times that home ownership is the cornerstone of the American dream. But unless our banks are willing to set fair and equal lending standards for all people seeking home mortgages, millions of Americans will be shut out of that dream.

The Kennedy amendment will make banks more accountable for their mortgage lending practices. Banks which comply with the law should have no reason to fear accountability for their practices. Mr. Chairman, I urge my colleagues to support this amendment which will help restore fairness to our banking system.

Mr. KENNEDY. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. SERRANO].

Mr. SERRANO. Mr. Chairman, I rise in strong support of the Kennedy amendment, which will help the poor of the Bronx and other places throughout the country.

Mr. Chairman, I rise in support of the amendment offered by my distinguished colleague from Massachusetts [Mr. KENNEDY]. This bill, H.R. 6, has been debated extensively in several House and Senate committees, and now on the House floor. Throughout this debate, we have been asked to balance the needs and interests of the American consumers whose interest we represent, with the viability and competitiveness of the banking industry.

We hear that this amendment will impose too much paperwork on already overburdened banks, and that struggling banks cannot afford these administrative burdens. But my constituents are struggling too, and they cannot afford to be shut out any longer from receiving adequate banking services. If they were being served, we would not need to stand up today and remind the banks that we will not grant them the new power of interstate branching until they show that they are adequately serving the areas in which they already operate.

My district is engaged in a struggle to foster small and minority business development. We are trying to take control of our local economy. Large banks have not demonstrated a willingness to invest in entrepreneurs with good business ideas. Potential employers and trainers of local residents find it practically impossible to raise the capital they need to operate. FDIC is a federal program, supported by all taxpayers. My struggling community pays taxes to a Federal Government that covers the uninsured deposits of large banks, but we cannot rely on those banks for small business loans.

The Federal Reserve recently released a study based on Home Mortgage Disclosure Act data. This study shows that African-Americans and Hispanics were rejected for mortgages 2 to 4 times more often than whites in 1990. Is it any wonder that the banks would rather not report such data? Is it really the paperwork burden they object to, or is it the conclusions drawn from the data that they would prefer not to deal with? If the banking industry wants to avoid the negative publicity that comes from CRA and HMDA reporting, all they have to do is come back to our abandoned neighborhoods and serve the qualified applicants for mortgages and small business loans.

This amendment will put teeth in CRA. By requiring banks to demonstrate fair lending practices before they branch interstate or merge, we will provide a strong incentive for improved service in underserved markets. We all know that the Nation's largest banks want to complete mergers. We know that they want interstate branching. Now we must let them know what we want for our constituents. We want fair lending practices for our potential homeowners and small and minority business people.

I urge my colleagues to vote "yes" on the Kennedy amendment.

Mr. KENNEDY. Mr. Chairman, I yield the final 2 minutes for closing debate to the majority leader, the gentleman from Missouri [Mr. GEPHARDT].

Mr. GEPHARDT. Mr. Chairman and Members of the House, I strongly support this amendment. I also want to make the point that many of us support very strongly the interstate banking provisions in this bill. I think one of the things that we have to do is to give our banks the ability to spread across this country, to become competitive in all communities and competitive in the world. But the worry that we have about that, that this amendment solves—and it will not complicate the ability of our banks to put their operations throughout the country—the worry that we have is that they will forget the needs of the people in the local communities where they are being established. We do not want poor people who put their moneys into these institutions to be left out, we do not want people who are minorities who put their moneys into these institutions to be left out; we do not want communities and small businesses that live in these areas to be left out. And if we are going to give the right, as I think we should, for our great banks to go across this country and put facilities in community after community, we have to insure that the people who are there depositing their hard-earned dollars in these banks are treated fairly. That is what this amendment does in its simplest terms.

If you want to keep faith with our local community, our minorities, our poor people and the people who have had the good that has come from our local banks, as we change this banking system, then stand up for the Kennedy amendment because it stands up for the people we represent.

Mr. ROYBAL. Mr. Chairman, I rise in strong support of the community benefits and fair lending enforcement amendment to H.R. 6 offered by the gentleman from Massachusetts. We have recently seen the distressing results of a Federal Reserve Board study released last week which documented the high rates at which minorities are turned down for mortgage loans. This study found that black and Hispanic home buyers who applied for home mortgages were rejected at a rate 2 to 3 times higher than their white counterparts. The report also documented that prosperous minorities are rejected at a rate higher than poor whites. Black and Hispanic families whose income exceeded the community median by 20 percent had their mortgage applications turned down more frequently than whites whose family income was 20 percent less than the community average.

It is clear that our lending institutions are not approving home loans on a fair and equitable basis. The Kennedy amendment would make large interstate banks more accountable and discourage them from using discriminatory lending practices. It is time for our banks to stop discriminatory lending practices in the communities they serve. I strongly urge my colleagues to vote for the Kennedy amendment.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendments en bloc offered by the gentleman from Massachusetts [Mr. KENNEDY].

The question was taken, and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. KENNEDY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 152, noes 241, answered "present" 1, not voting 39, as follows:

[Roll No. 366]

AYES—152

Abercrombie
Ackerman
Andrews (ME)
Andrews (TX)
Aspin
Atkins
AuCoin
Bacchus
Barton
Beilenson
Bennett
Berman
Boehlert
Bonior
Borski
Carper
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Cox (IL)
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Donnelly
Downey
Durbin
Early
Eckart
Edwards (CA)
Edwards (TX)
Engel
Espy
Evans
Fascell
Fazio
Feighan
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Franks (CT)
Frost
Gejdenson
Gekas
Gephardt
Gingrich
Gonzalez
Green
Gunderson
Hayes (IL)
Hertel
Hochbrueckner
Horn
Horton
Hoyer
Hubbard
Hunter
Jacobs
Jefferson
Jones (GA)
Jontz
Kasich
Kennedy
Kennelly
Kildee
Kleczka
Kostmayer
LaFalce
Lantos
Lehman (FL)
Levin (MI)
Lewis (GA)
Lowey (NY)
Manton
Markey
Mazzoli
McDermott
McNulty
Mfume
Miller (CA)
Mink
Moakley
Moody
Moran
Mrazek
Neal (MA)
Nowak
Oakar
Olver
Ortiz
Owens (NY)
Pallone
Panetta
Pastor
Payne (NJ)
Perkins
Petri
Pickle
Rangel
Reed
Richardson
Ritter
Roe
Roybal
Sabo
Sanders
Scheuer
Schroeder
Schumer
Sensenbrenner
Serrano
Shays
Sikorski
Sisisky
Slaughter (NY)
Smith (FL)
Solarz
Stark
Stokes
Studds
Synar
Tallon
Torres
Torricelli
Towns
Traficant
Upton
Vento
Visclosky
Walker
Walsh
Washington
Waters
Waxman
Weiss
Weldon
Wheat
Williams
Wolpe
Wyden
Yates
Yatron

NOES—241

Alexander
Allard
Anderson
Andrews (NJ)
Annunzio
Anthony
Applegate
Archer
Armey
Ballenger
Barrett
Bateman
Bentley
Bereuter
Bevill
Bilbray
Bliley
Boehner
Boucher
Brewster
Broomfield
Browder
Bruce
Bunning
Burton
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carr
Chandler
Chapman
Clement
Clinger
Coble
Coleman (MO)
Combest
Coughlin
Cox (CA)
Cramer
Crane
Cunningham
Darden
DeLay
Derrick
Dickinson
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
English
Erdreich
Ewing
Fawell
Fields
Fish
Gallegly
Gallo
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Glickman
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Holloway
Houghton
Huckaby
Hughes
Hutto
Hyde
Inhofe
James
Jenkins

Johnson (CT)
Johnson (SD)
Jones (NC)
Kanjorski
Klug
Kolbe
Kolter
Kopetski
Kyl
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Luken
Machtley
Martin
Martinez
Matsui
McCandless
McCloskey
McCrery
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Miller (OH)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison
Murphy
Myers
Nagle
Natcher
Nichols
Nussle
Obey
Olin
Orton
Owens (UT)
Oxley
Packard
Parker
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (FL)
Peterson (MN)
Pickett
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Ravenel
Ray
Regula
Rhodes
Ridge
Riggs
Rinaldo
Roberts
Roemer
Rogers
Rohrabacher
Rose
Rostenkowski
Roth
Roukema
Russo
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Schulze
Sharp
Shaw
Shuster
Skaggs
Skeen
Skelton
Slattery
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stenholm
Stump
Sundquist
Swett
Swift
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (GA)
Thomas (WY)
Thornton
Unsoeld
Valentine
Vander Jagt
Volkmer
Vucanovich
Weber
Whitten
Wilson
Wise
Wolf
Wylie
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—39

Baker
Barnard
Bilirakis
Boxer
Brooks
Brown
Bryant
Bustamante
Campbell (CO)
Dannemeyer
Davis
Dwyer
Dymally
Gaydos
Hayes (LA)
Hopkins
Ireland
Johnson (TX)
Johnston
Kaptur
Levine (CA)
Marlenee
Mavroules
McCollum
McCurdy
Michel
Miller (WA)
Mineta
Murtha
Neal (NC)
Oberstar
Pelosi
Ros-Lehtinen
Rowland
Sangmeister
Savage
Slaughter (VA)
Tanner
Traxler

□ 1427

The Clerk announced the following pairs:

On this vote:

Mr. SANGMEISTER for, with Mr. JOHNSTON against.

Mr. MINETA for, with Mr. MARLENEE against.

Ms. PELOSI for, with Mr. McCOLLUM against.

Mesrs. RUSSO, HEFNER, GORDON, DERRICK, and EDWARDS of Oklahoma changed their vote from "aye" to "no."

Messrs. SMITH of Florida, BOEHLERT, and RITTER changed their vote from "no" to "aye."

So the amendments en bloc were rejected.

The result of the vote was announced as above recorded.

(By unanimous consent, Mr. WALKER was allowed to proceed out of order.)

LEGISLATIVE PROGRAMS

Mr. WALKER. Mr. Chairman, I have asked for this time for the purpose of ascertaining the schedule for next week.

Mr. GEPHARDT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am happy to yield to the distinguished majority leader, the gentleman from Missouri, to receive the schedule for next week.

Mr. GEPHARDT. Mr. Chairman, I thank the gentleman for yielding. I thought it would be well to give the Members information now about the schedule for next week.

Obviously we will be trying to finish another amendment here and will be leaving around 3 o'clock.

On Monday the House will meet at noon, and we hope to finish H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991. I think Members should expect that it may take into the early evening, I would say 7, no later than 8 o'clock, to finish the bill.

On Tuesday, November 5, the House will meet at noon and take up eight suspension bills, as follows:

H.R. 3624, to amend the Tariff Act to provide for the appointment of the Chairman of the U.S. International Trade Commission;

H.R. 3049, Judicial Naturalization Amendments of 1991;

H.R. 3350, Civil Rights Commission Reauthorization Act of 1991, concur in Senate amendment;

H.R. 1537, revision of title 49, United States Code;

H.R. 3298, Farm Credit Banks and Associations Safety and Soundness Act of 1991;

H.R. 2927, St. Croix, Virgin Islands Historical Park and Ecological Preserve Act of 1991;

H.R. 3387, authorizing the development plan for Pennsylvania Avenue; and

S. 1563, National Sea Grant College Program Authorization Act of 1991.

Mr. Chairman, on all of those bills considered under suspension, if there are votes, we will have the votes rolled and delayed until Wednesday.

□ 1430

There will not be votes on Tuesday for the reason that we have elections that some Members want to go to throughout that day and evening. We felt it would be best, rather than trying to hold a couple of votes, to not have them.

On Wednesday, November 6, and the balance of the week, we will meet at 10 a.m. We will take up H.R. 2707, the Labor, Health, and Human Services appropriations for fiscal year 1992. We will be taking up the unemployment compensation amendments. We will take up the unemployment compensation amendments. We will take up the Family Medical Leave Act of 1991. Further action will be possible on the Civil Rights Act of 1991. We will have the National Oceanic and Atmospheric Administration Authorization Act of 1991, and probably a bill on the Aroostook Band of Micmacs Settlement Act and the Milk Inventory Management Act of 1991.

On Wednesday the votes that are held from Tuesday on suspension will probably occur after we are finishing the work on the unemployment compensation amendments, which will probably be the first thing we take upon Wednesday morning.

Mr. WALKER. Mr. Chairman, I thank the gentleman. I have just a couple of questions. First of all, for Wednesday, is it probable we will do the full complement of 1-minutes on Wednesday so that Members can expect that there might not be votes until closer to say 11 o'clock or noon?

Mr. GEPHARDT. Mr. Chairman, if the gentleman will yield further, that decision has not been made. We do have a time problem on Wednesday with the unemployment bill. The chairman has to try to finish it by 2 o'clock. So we may have to shorten 1-minutes to maybe five per side in order to accommodate that.

Mr. WALKER. So do we have a guess as to when Members could expect the first vote?

Mr. GEPHARDT. Mr. Chairman, I would say that it would be 11 or 11:30 probably for the first vote on Wednesday.

Mr. WALKER. Mr. Chairman, with regard to the Civil Rights Act, are we expected to take up the Senate-passed bill, or are we going to have some other piece of legislation before us?

Mr. GEPHARDT. Mr. Chairman, the plan I think now is to try to take up the Senate-passed bill. There are some technical problems with the Senate acting, so we are trying to work our way through those problems at this time.

Mr. GALLEGLY. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from California.

Mr. GALLEGLY. Mr. Chairman, I thank the gentleman for yielding.

To you, our esteemed majority leader, Mr. GEPHARDT, I rise somewhat reluctantly to express some feelings relative to the priorities we have in this House. This Monday there is a very historic event taking place in the State of California. The Ronald Reagan Library is opening and, for the first time in the history of the United States, there will be five Presidents present, for the first time in the history of this country. It happens to be in my district, and I know many Members that would like to attend this event.

Our first responsibility is to address the issues of this House. Last night, Mr. Leader, we adjourned early so we could all go trick or treating. Today our general business convened somewhere around noon and we are going to stop at between 2:30 and 3 o'clock. Of course we are not going to work this evening or this weekend, but Monday we could have 10 or 11 votes.

I will be here, because that is my first responsibility. But I think that the priorities between trick or treating and five Presidents of the United States is an insult to the institution.

Mr. GEPHARDT. Mr. Chairman, will the gentleman yield further?

Mr. WALKER. I yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Chairman, I understand the frustration of the gentleman from California [Mr. GALLEGLY]. It is a frustration that we all feel, being tied to a schedule that has to accommodate the needs of all 435 of us to the best of our ability.

I would say to the gentleman that we had many requests from Members about last night because they wanted to be at home with their children on Halloween. I also understand that there are Members that do not have their children here and there are Members who do not have children, and they felt that we should have worked last might. Again we have the problem of accommodating conflicting interests.

I also understand the desire of the gentleman to be in his district, to be in California on an important occasion. Usually we have not been meeting on Mondays. A week or so ago we said to expect votes on Mondays, because, again acceding to the wishes of a lot of Members, we are really earnestly trying to finish this session of Congress before Thanksgiving. In order to do that, we have to finish this legislation we are working on now and a number of other pieces that are going to take that time.

I do want the gentleman from California [Mr. GALLEGLY] to know that I take his statement seriously. I know the gentleman is frustrated, and I realize what a difficulty he is placed in. We do our best to work around everyone's scheduling needs.

Mr. WALKER. Mr. Chairman, one more question: I have been asked on our side, does the gentleman have any view as to whether or not this schedule will probably take us into next Friday?

Mr. GEPHARDT. It will.

Mr. WALKER. It will. I thank the gentleman.

The CHAIRMAN. It is now in order to consider amendment No. 7 printed in House Report 102-281 offered by the gentleman from Iowa [Mr. LEACH].

AMENDMENTS EN BLOC OFFERED BY MR. LEACH

Mr. LEACH. Mr. Chairman, I offer amendments en bloc.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. LEACH: Page 205, after line 6, insert the following new section (and redesignate the subsequent sections and conform the table of contents accordingly):

SEC. 307. MINIMUM CAPITAL REQUIREMENT FOR NEW INTERSTATE BANKING AND BRANCHING POWERS.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by sections 301, 302, 303, 304, 305, and 306 shall not apply with respect to any insured depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act) unless the depository institution has—

(1) a ratio of tier 1 capital to total assets of not less than 6 percent; and

(2) a ratio of total capital to total assets of not less than 8 percent.

(b) REGULATOR DISCRETION.—

(1) IN GENERAL.—Subject to paragraph (2) and with the approval of the Federal Deposit Insurance Corporation and the appropriate Federal banking agency, any financial services holding company which controlled any full-service bank subsidiary on May 15, 1991, may convert such bank into a branch of any out-of-State bank pursuant to the amendments made by this title without regard to the minimum capital requirements of this section.

(2) RESTRICTIONS.—No branch of a bank which results from a conversion described in paragraph (1) may have total assets in excess of the average amount held by such branch during May 1991, so long as such bank fails to meet the minimum capital requirement established by this section.

Page 245, strike line 11 and all that follows through line 16, and insert the following:

"(1) MINIMUM CAPITAL REQUIREMENTS FOR NEW FINANCIAL ACTIVITIES.—No financial services holding company may engage in, or acquire or retain the shares of any company engaged in, any new financial activity unless each depository institution subsidiary of such holding company has a ratio of tier 1 capital to total assets of not less than 6 percent.

The CHAIRMAN. Under the rule, the gentleman from Iowa [Mr. LEACH] will be recognized for 5 minutes, and a Member opposed to the amendments will be recognized for 5 minutes.

The Chair recognizes the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, this is a very straightforward amendment. What it does is simply require minimum capital standards before a bank can expand geographically or take on new risky powers.

In the way of background, we are in a situation today where we have an all-time high level of loans as a multiple of capital. In 1955 the banking system averaged about five times loans to capital. Today it is about 10 times.

Significantly, it really is quite a lot more than that for our larger banks, particularly those that are in an expansionary mood. The larger banks have between 20 and 40 times loans to capital, and, if honest accounting were taken into consideration, it might be a little worse situation than that.

Whether one opposes or supports giving bank holding companies or banks new powers or the ability to expand geographically, this Congress ought to understand that they ought to be well-capitalized to do these functions.

Mr. Chairman, I would like to alert Members that given the fact that virtually every financial entity that purchased a securities firm in the last two decades has lost substantial sums of money, given the fact that virtually every financial entity that has expanded geographically has found that the loans the further they are placed from the locus of their center of organization, have lost disproportionate amounts of money, Members ought to be very concerned about adequate capital.

Furthermore, it cannot be underestimated that the No. 1 deposit insurance reform that this Congress can consider is higher capital standards. There is a great irony here: Everybody in America knows we need more capital in banks, but I would stress to this body that as this bill propels conglomeration and consolidation, those institutions conglomerating and consolidating are doing it on more and more leveraged capital. Capital is seeping out, not into the system.

Good banking is in inverse proportion to size; capital strength is in inverse proportion to size; and the only way we can keep capital in banking is to mandate adequate capital standards. Strong rhetoric is no substitute for strong law.

For those of my colleagues who are worried about the credit crunch, let me stress that higher capital standards are the best antidote against credit stringency during recessions. As the Treasury Department noted in its report on modernizing the financial services industry, capital helps avoid credit crunches:

> In an economic downturn, a poorly capitalized institution that suffers losses is more likely to restrict credit in an effort to shrink so as to build capital ratios. A well-capitalized institution can afford more losses and yet continue to lend in the same circumstances. Thus, adequate capital should help keep credit flowing even during economic downturns.

Mr. Chairman, for these reasons I urge adoption of this commonsense amendment.

Mr. WYLIE. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Ohio.

□ 1440

Mr. WYLIE. Mr. Chairman, I note that institutions that meet or exceed their capital requirements will be able to engage in these new powers and the Leach amendment will provide for 8-percent capital in order for banks to take advantage of these new branching laws, if we indeed pass interstate branching.

I just thought for the record I should note that I believe the amendment may be somewhat too restrictive. We have discussed this. I would prefer that it be modified so that the capital level 1 and 2 banks that meet or exceed their capital requirements could branch immediately. However, at this time I will not oppose the gentleman's amendment.

Mr. MFUME. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Maryland.

Mr. MFUME. Mr. Chairman, I thank the gentleman for yielding to me.

I think that the gentleman's approach to a problem that we have been faced with for a long time is well-reasoned, and it is my approach to the precarious problem of capital standards for banks. It sets up, as has been noted here, capital standards, a capital/assets ratio of at least 6 percent and a total capital/assets ratio of 8 percent.

After having gone, as we have, through the terrible era of S&L failures and witnessed, as we have, the continuation of depositor confidence eroding and, after having learned of the bitter fruits of the lesson of undercapitalization, I would simply suggest that what the gentleman from Iowa [Mr. LEACH] is doing is attempting to ensure both safety and soundness in the industry.

For those reason, I would urge an "aye" vote on this.

Mr. LEACH. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is there a Member in opposition to the amendment? The Chair sees none, and the opposition yields back its time.

Mr. LEACH. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendments en bloc offered by the gentleman from Iowa [Mr. LEACH].

The amendments en bloc were agreed to.

Mr. GONZALEZ. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. DURBIN) having assumed the chair, Mr. CARR, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, had come to no resolution thereon.

PERSONAL EXPLANATION

Mr. TAYLOR of Mississippi. Mr. Speaker, 1991, I was unavoidably detained due to circumstances beyond my control. Because of a last minute flight cancellation of a connecting airline in Memphis, TN, I missed four rollcall votes on amendments to the banking reform bill, H.R. 6. Had I been present at the time of the votes, my votes would have been as follows: Rollcall vote 367—"yea"; rollcall 368—"yea"; rollcall 369—"nay"; and rollcall 370—"nay."

PERSONAL EXPLANATION

Mr. DANNEMEYER. Mr. Speaker, I was unavoidably absent from the House. Had I been present I would have voted "aye" on rollcall Nos. 364, 365, and "nay" on rollcall No. 366.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore (Mr. DURBIN). Is there objection to the request of the gentleman from Texas?

There was no objection.

ADJOURNMENT TO MONDAY, NOVEMBER 4, 1991

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

THE DEBATE ON H.R. 6

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute.)

Mr. GONZALEZ. Mr. Speaker, I rise to take this opportunity that seems to give us a chance to express our profound gratitude to the Members of the House who have acted with, I believe, a great deal of propriety and restraint in this very, very passionate type of legislation confronting us. No matter how we would like to pretty it up, it is a difficult legislative business, and it is going to arouse passions and be somewhat divisive.

I believe the House has done very well. I want to remind the Members that what I said earlier during debate is that unfortunately, the perception as to the depth, the magnitude, the scope, the scale of this enormous crisis facing the country, which is beyond just financial. We are facing, this country is undergoing a moral and financial earthquake. I think that working, as we have in this manner, we have redeemed the virtue and the honor of this body.

CONFERENCE REPORT ON H.R. 2707, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1992

Mr. NATCHER submitted the following conference report and statement on the bill (H.R. 2707) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1992, and for other purposes:

CONFERENCE REPORT (H. REPT. 102-282)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2702) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1992, and for other purposes, having met after full and free conference, have agree to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 22, 28, 31, 32, 33, 34, 40, 63, 69, 70, 74, 75, 76, 77, 80, 82, 83, 84, 86, 97, 98, 105, 110, 120, 121, 125, 127, 144, 152, 153, 157, 159, 160, 169, 173, 185, 189, 190, 196, 198, 203, and 204.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 20, 30, 61, 81, 85, 89, 92, 100, 103, 104, 106, 107, 123, 128, 131, 138, 146, 147, 148, 155, 162, 163, 165, 166, 171, 174, 175, 177, 182, 183, 184, 192, 208, 211, and 212, and agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$63,000,000*; and the Senate agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$77,644,000*; and the Senate agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$5,400,000*; and the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$9,312,000;* and the Senate agree to the same.

Amendment numbered 10:

That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$308,241,000;* and the Senate agree to the same.

Amendment numbered 11:

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$86,940,000;* and the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$24,038,000;* and the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$21,838,000*; and the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$799,770,000*; and the Senate agree to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$95,340,000*; and the Senate agree to the same.

Amendment numbered 17:

That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$231,326,000*; and the Senate agree to the same.

Amendment numbered 18:

That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$304,157,000*; and the Senate agree to the same.

Amendment numbered 19:

That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *two*; and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$256,924,000*; and the Senate agree to the same.

Amendment numbered 23:

That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$4,409,000*; and the Senate agree to the same.

Amendment numbered 24:

That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$141,053,000*; and the Senate agree to the same.

Amendment numbered 25:

That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$46,320,000*; and the Senate agree to the same.

Amendment numbered 27:

That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$2,360,841,000*; and the Senate agree to the same.

Amendment numbered 36:

That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$1,504,924,000*; and the Senate agree to the same.

Amendment numbered 37:

That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$25,600,000*; and the Senate agree to the same.

Amendment numbered 39:

That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$29,400,000*; and the Senate agree to the same.

Amendment numbered 43:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$1,199,398,000: Provided, That of the funds made available under this heading, $54,555,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$160,493,000: Provided, That of the funds made available under this heading, $7,903,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 45:

That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$664,080,000: Provided, That of the funds made available under this heading, $28,457,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 46:

That the House recede from its disagreement to the amendment of the Senate numbered 46, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$583,378,000: Provided, That of the funds made available under this heading, $27,357,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 47:

That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$971,111,000: Provided, That of the funds made available under this heading, $45,627,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 48:

That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$818,910,000: Provided, That of the funds made available under this heading, $48,104,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 50:

That the House recede from its disagreement to the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$271,002,000: Provided, That of the funds made available under this heading, $12,504,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$253,902,000: Provided, That of the funds made available under this heading, $8,846,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 53:

That the House recede from its disagreement to the amendment of the Senate numbered 53, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$204,502,000: Provided, That of the funds made available under this heading, $7,593,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$149.830,000: Provided, That of the funds made available under this heading, $7,486,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 55:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$315,220,000: Provided, That of the funds made available under this heading, $15,000,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 56:

That the House recede from its disagreement to the amendment of the Senate numbered 56, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following:

$45,196,000: Provided, That of the funds made available under this heading, $2,646,000 shall not become available for obligation until September 30, 1992; and the Senate agree to the same.

Amendment numbered 57:

That the House recede from its disagreement to the amendment of the Senate numbered 57, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$105,261,000: Provided, That of the funds made available under this heading, $10,000,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 58:

That the House recede from its disagreement to the amendment of the Senate numbered 58, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows: *Provided, That of the funds made available under this heading, $800,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 59:

That the House recede from its disagreement to the amendment of the Senate numbered 59, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$100,303,000: Provided, That of the funds made available under this heading, $3,500,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 60:

That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$143,313,000;* and the Senate agree to the same.

Amendment numbered 62:

That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows: *Provided, That of the funds made available under this heading, $12,500,000 shall not become available for obligation until September 30, 1992*; and the Senate agree to the same.

Amendment numbered 67:

That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$103,840,000*; and the Senate agree to the same.

Amendment numbered 72:

That the House recede from its disagreement to the amendment of the Senate numbered 72, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$66,035,000*; and the Senate agree to the same.

Amendment numbered 78:

That the House recede from its disagreement to the amendment of the Senate numbered 78, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,274,055,000*; and the Senate agree to the same.

Amendment numbered 88:

That the House recede from its disagreement to the amendment of the Senate numbered 88, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$405,607,000*; and the Senate agree to the same.

Amendment numbered 91:

That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$437,418,000, of which $41,368,000 shall be for carrying out section 681(a) of the Community Service Block Grant Act, $4,050,000 shall be for carrying out section 408 of Public Law 99–425*; and the Senate agree to the same.

Amendment numbered 101:

That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted proposed by said amendment insert the following: *$91,673,000*; and the Senate agree to the same.

Amendment numbered 102:

That the House recede from its disagreement to the amendment of the Senate numbered 102, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted proposed by said amendment insert the following: *$31,001000*; and the Senate agree to the same.

Amendment numbered 111:

That the House recede from its disagreement to the amendment of the Senate numbered 111, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$6,707,014,000*; and the Senate agree to the same.

Amendment numbered 113:

That the House recede from its disagreement to the amendment of the Senate numbered 113, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$5,525,000,000*; and the Senate agree to the same.

Amendment numbered 114:

That the House recede from its disagreement to the amendment of the Senate numbered 114, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$610,000,000*; and the Senate agree to the same.

Amendment numbered 115:

That the House recede from its disagreement to the amendment of the Senate numbered 115, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$70,000,000*; and the Senate agree to the same.

Amendment numbered 116:

That the House recede from its disagreement to the amendment of the Senate numbered 116, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$308,298,000*; and the Senate agree to the same.

Amendment numbered 117:

That the House recede from its disagreement to the amendment of the Senate numbered 117, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$36,054,000*; and the Senate agree to the same.

Amendment numbered 118:

That the House recede from its disagreement to the amendment of the Senate numbered 118, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$61,820,000*; and the Senate agree to the same.

Amendment numbered 119:

That the House recede from its disagreement to the amendment of the Senate numbered 119, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$25,125,000*; and the Senate agree to the same.

Amendment numbered 129:

That the House recede from its disagreement to the amendment of the Senate numbered 129, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,578,195,000*; and the Senate agree to the same.

Amendment numbered 134:

That the House recede from its disagreement to the amendment of the Senate numbered 134, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$425,000,000*; and the Senate agree to the same.

Amendment numbered 136:

That the House recede from its disagreement to the amendment of the Senate numbered 136, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$225,407,000*; and the Senate agree to the same.

Amendment numbered 137:

That the House recede from its disagreement to the amendment of the Senate numbered 137, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,854,895,000*; and the Senate agree to the same.

Amendment numbered 139:

That the House recede from its disagreement to the amendment of the Senate numbered 139, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$143,000,000*; and the Senate agree to the same.

Amendment numbered 145:

That the House recede from its disagreement to the amendment of the Senate numbered 145, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$5,900,000*; and the Senate agree to the same.

Amendment numbered 149:

That the House recede from its disagreement to the amendment of the Senate numbered 149, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *the Stewart E. McKinney Homeless Assistance Act, $1,429,760,000*; and the Senate agree to the same.

Amendment numbered 154:

That the House recede from its disagreement to the amendment of the Senate numbered 154, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *and $2,000,000 shall be for technical assistance under section 404(d); $14,000,000*; and the Senate agree to the same.

Amendment numbered 168:

That the House recede from its disagreement to the amendment of the Senate numbered 168, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$212,360,000*; and the Senate agree to the same.

Amendment numbered 170:

That the House recede from its disagreement to the amendment of the Senate numbered 170, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$23,000,000*; and the Senate agree to the same.

Amendment numbered 178:

That the House recede from its disagreement to the amendment of the Senate numbered 178, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$47,313,000*; and the Senate agree to the same.

Amendment numbered 180:

That the House recede from its disagreement to the amendment of the Senate numbered 180, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$24,000,000*; and the Senate agrees to the same.

Amendment numbered 186:

That the House recede from its disagreement to the amendment of the Senate numbered 186, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$16,000,000*; and the Senate agrees to the same.

Amendment numbered 187:

That the House recede from its disagreement to the amendment of the Senate numbered 187, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment insert the following: *, including $3,500,000 for the National Clearinghouse for Science and Mathematics under section 2012(d); $12,000,000 shall be for regional consortia under section 2016*; and the Senate agrees to the same.

Amendment numbered 191:

That the House recede from its disagreement to the amendment of the Senate numbered 191, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$147,747,000*; and the Senate agrees to the same.

Amendment numbered 193:

That the House recede from its disagreement to the amendment of the Senate numbered 193, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$16,718,000*; and the Senate agrees to the same.

Amendment numbered 194:

That the House recede from its disagreement to the amendment of the Senate numbered 194, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$299,000,000*; and the Senate agrees to the same.

Amendment numbered 195:

That the House recede from its disagreement to the amendment of the Senate numbered 195, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$55,000,000*; and the Senate agrees to the same.

Amendment numbered 199:

That the House recede from its disagreement to the amendment of the Senate numbered 199, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$198,592,000*; and the Senate agrees to the same.

Amendment numbered 201:

That the House recede from its disagreement to the amendment of the Senate numbered 201, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,225,000*; and the Senate agree to the same.

Amendment numbered 202:

That the House recede from its disagreement to the amendment of the Senate numbered 202, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$275,000,000*; and the Senate agree to the same.

Amendment numbered 207:

That the House recede from its disagreement to the amendment of the Senate numbered 207, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$831,000*; and the Senate agree to the same.

Amendment numbered 209:

That the House recede from its disagreement to the amendment of the Senate numbered 209, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,569,000*; and the Senate agree to the same.

Amendment numbered 210:

That the House recede from its disagreement to the amendment of the Senate numbered 210, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$4,398,000*; and the Senate agree to the same.

Amendment numbered 215:

That the House recede from its disagreement to the amendment of the Senate numbered 215, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$6,395,000*; and the Senate agree to the same.

Amendment numbered 216:

That the House recede from its disagreement to the amendment of the Senate numbered 216, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$41,352,000*; and the Senate agree to the same.

Amendment numbered 217:

That the House recede from its disagreement to the amendment of the Senate numbered 217, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$11,000,000*; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 3, 7, 9, 13, 26, 29, 35, 38, 41, 42, 49, 52, 64, 65, 66, 68, 71, 73, 79, 87, 90, 93, 94, 95, 96, 99, 108, 109, 112, 122, 124, 126, 130, 132, 133, 135, 140, 141, 142, 143, 150, 151, 156, 158, 161, 164, 167, 172, 176, 179, 181, 188, 197, 200, 205, 206, 213, 214, 218, and 219.

WILLIAM H. NATCHER,
NEAL SMITH,
EDWARD R. ROYBAL,
LOUIS STOKES,
JOSEPH D. EARLY,
STENY H. HOYER,
R.J. MRAZEK,
JAMIE L. WHITTEN,
CARL D. PURSELL
(excepting on delayed obligations),
JOHN EDWARD PORTER
(excepting and reserving in opposition to all delayed obligations),
BILL YOUNG
(except for section 514 and amendments providing for delayed obligations),
VIN WEBER
(except for section 514 and delayed obligations),
JOSEPH M. MCDADE,
Managers on the Part of the House.

TOM HARKIN,
ROBERT C. BYRD,
ERNEST F. HOLLINGS,
QUENTIN N. BURDICK,
DANIEL K. INOUYE,
DALE BUMPERS,
HARRY REID,
BROCK ADAMS,
ARLEN SPECTER,
MARK O. HATFIELD,
TED STEVENS,
WARREN B. RUDMAN,
THAD COCHRAN,
SLADE GORTON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2707) making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies, for the fiscal year ending September 30, 1992, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

PROGRAM ADMINISTRATION

Amendment No. 1: Appropriates $73,980,000 as proposed by the Senate instead of $74,188,000 as proposed by the House.

Amendment No. 2: Makes available $56,952,000 from the Unemployment Trust Fund as proposed by the Senate instead of $57,129,000 as proposed by the House.

TRAINING AND EMPLOYMENT SERVICES

Amendment No. 3: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$3,861,338,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $3,698,000 for labor market information and $4,760,000 for training and technical assistance. The agreement includes $350,000 for the provision of materials for Job Corps community projects.

The agreement also includes $4,000,000 to continue the Samoan, Pacific Islander and

Asian American employment and training initiative. Of the total, $3,000,000 is for Hawaii, $750,000 is for California, and $250,000 is for the State of Washington, as the vast majority of the target population resides in these States.

The conference agreement provides sufficient funds for the Secretary to increase support to national community-based organizations and disability-related programs.

Amendment No. 4: Earmarks $63,000,000 for Native American programs instead of $59,625,000 as proposed by the House and $64,000,000 as proposed by the Senate.

Amendment No. 5: Earmarks $77,644,000 for migrants and seasonal farmworkers instead of $75,288,000 as proposed by the House and $80,000,000 as proposed by the Senate.

Amendment No. 6: Earmarks $5,400,000 for activities conducted by and through the National Occupational Information Coordinating Committee instead of $2,500,000 as proposed by the House and $6,000,000 as proposed by the Senate.

The conferees support the establishment of career development programs to train personnel in assisting students to understand themselves in the context of their career development, to be aware of the world of work, to understand the linkage between academic skills and work-related skills, and to make effective career decisions. The conferees recommend that NOICC expend up to $1,500,000 in fiscal year 1992 for the establishment and operation of such programs.

Amendment No. 7: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$187,700,000 is appropriated for part B of title II of the Job Training and Partnership Act, as amended, in addition to amounts otherwise provided herein for part B of title II, to be available for obligation for the period October 1, 1992 through June 30, 1993; and, in addition, $73,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement changes the period of availability for a portion of the summer youth employment funds. An amount of $187,700,000 will become available on October 1, 1992 instead of July 1, 1992 as originally proposed in both the House and Senate bills.

The agreement provides $73,000,000 for Job Corps capital costs instead of $52,464,000 as proposed by the House and $80,464,000 as proposed by the Senate. This includes $10,900,000 for the additional funds needed in fiscal year 1992 for the six previously approved new centers, $7,800,000 for special facility projects and not less than $4,300,000 for planning, priority site acquisition and facility design for further expansion. The conferees understand that additional funds will be required in future years to sustain the expansion. When locating sites for new centers, the Secretary shall give priority consideration to those communities that already have shown a strong interest in the expansion of the Job Corps program, where there is a significant need to serve poverty youth, and where appropriate and cost-effective facility and/or site acquisition is possible. All new centers shall be selected through a competitive process. The Department is encouraged to proceed with the replacement of the center that had to be closed for reasons unrelated to performance.

Amendment No. 8: Appropriates $9,312,000 for job training for the homeless under the McKinney Act instead of $7,400,000 as proposed by the House and $11,223,000 as proposed by the Senate.

Amendment No. 9: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

On page 16 of the House engrossed bill, insert after line 19 the following:

SEC. 100. (a) Notwithstanding any other provision of law, on or before December 1, 1991, the Secretary of Labor, acting under the Occupational Safety and Health Act of 1970, shall promulgate a final occupational health standard concerning occupational exposure to bloodborne pathogens. The final standard shall be based on the proposed standard as published in the Federal Register on May 30, 1989 (54 FR 23042), concerning occupational exposures to the hepatitis B virus, the human immunodeficiency virus and other bloodborne pathogens.

(b) In the event that the final standard referred to in subsection (a) is not promulgated by the date required under such subsection, the proposed standard on occupational exposure to bloodborne pathogens as published in the Federal Register on May 30, 1989 (54 FR 23042) shall become effective as if such proposed standard had been promulgated as a final standard by the Secretary of Labor, and remain in effect until the date on which such Secretary promulgates the final standard referred to in subsection (a).

(c) Nothing in this Act shall be construed to require the Secretary of Labor (acting through the Occupational Safety and Health Administration) to revise the employment accident reporting regulations published at 29 C.F.R. 1904.8.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language proposed by the Senate to require the Secretary of Labor to promulgate by December 1, 1991 a final occupational health standard concerning occupational exposure to bloodborne pathogens. The agreement deletes other language proposed by the Senate that would have done the following: (1) imposed a maximum percentage increase in individual State allotments under title II–A of the Job Training Partnership Act; (2) appropriated $510,000,000 for various accounts in the Departments of Health and Human Services and Education, the obligation of which would have been delayed until September 30, 1992, and delayed the obligation, and extended the availability of, various other accounts in the public Health Service; and (3) expressed the sense of the Senate concerning possible modifications in the 1990 Budget Summit Agreement. The agreement also includes language stating that nothing in this Act shall be construed as requiring OSHA to revise its employment accident reporting requirements. This latter provision is related to action taken with respect to amendment number 19.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

Amendment No. 10: Appropriates $308,241,000 instead of $304,481,000 as proposed by the House and $312,000,000 as proposed by the Senate.

Amendment No. 11: Appropriates $86,940,000 instead of $85,879,000 as proposed by the House and $88,000,000 as proposed by the Senate.

It is the intent of the conferees that the current title V Older Americans Act sponsors continue to build upon their past accomplishments, and it is further expected that the Labor Department shall maintain substantially the existing status and method of operation of this successful program.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

Amendment No. 12: Appropriates $24,038,000 instead of $23,377,000 as proposed by the House and $24,700,000 as proposed by the Senate.

Amendment No. 13: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$3,148,655,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment Nos. 14–15: Earmark $821,608,000 for Employment Service State grants instead of $805,117,000 as proposed by the House and $838,100,000 as proposed by the Senate.

The conferees recommend that the Labor Department, in allocating Employment Service 3-percent setaside funds, ensure that no State be reduced below its prior year's level, to the maximum extent possible.

LABOR-MANAGEMENT SERVICES

SALARIES AND EXPENSES

Amendment No. 16: Appropriates $95,340,000 instead of $95,840,000 as proposed by the House and $94,840,000 as proposed by the Senate.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 17: Appropriates $231,326,000 as proposed by the Senate instead of $232,626,000 as proposed by the House and deletes language proposed by the Senate that would have prohibited the Department of Labor from enforcing certain model garment regulations under the Fair Labor Standards Act.

The managers direct that the Secretary of Labor shall not implement or enforce model garment regulations or model garment enforcement policy promulgated under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), unless the model garment programs comply with the following:

(1) the employee's work is voluntary;

(2) the patterns, fabric, and notions are provided by the employers at no cost to the employees;

(3) the employees retain ownership of the model garments after the display period; and

(4) the model garments are in fabrics, styles and sizes determined by the employees to be appropriate for the employees' use.

The conference agreement reflects the permanent prohibition on implementation of the Davis-Bacon helper regulations enacted in section 303 of Public Law 102–27.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 18: Appropriates $304,157,000 instead of $302,107,000 as proposed by the House and $305,207,000 as proposed by the Senate. The conference agreement includes an increase of $1,250,000 over the House bill for the on-site consultation program. The conferees agree that up to $450,000 shall be used to provide for replacement equipment for the national consultation laboratory. The agreement includes sufficient funds to annualize costs of district offices without reducing safety and health coverage elsewhere in the region as proposed by the Senate.

Amendment No. 19: Specifies two or more employees hospitalized instead of one or more as proposed by the House and five or more as proposed by the Senate. The conferees are agreed that the action taken on this amendment shall not be construed to require OSHA to revise its employment accident reporting requirements that are imposed by regulation. Any changes to the current reporting requirements would have to be accomplished through the normal regulatory process. The conference agreement includes bill language under amendment number 9 to clarify this matter.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 20: Appropriates $185,364,000 as proposed by the Senate instead of $186,157,000 as proposed by the House.

The conferees are agreed that the agency is to submit semi-annual reports with regard to mandatory annual inspections. This should be done by February 1 and August 1 of each year.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

Amendment No. 21: Appropriates $256,924,000 instead of $258,504,000 as proposed by the House and $223,293,000 as proposed by the Senate.

Amendment No. 22: Makes available $50,399,000 from the Unemployment Trust Fund as proposed by the House instead of $48,599,000 as proposed by the Senate.

The conference agreement includes the following increases over fiscal year 1991: $16,100,000 and 96 FTE's for the improvement of Federal economic indicators, $15,750,000 and 140 FTE's for the Federal Employees Pay Comparability Act and $3,581,000 for executive direction and staff services. The conferees approve the BLS national office consolidation and understand that the costs associated with this move are a one-time need.

The conferees direct the Department to fund the Mass Layoffs statistics program in fiscal year 1992 by utilizing discretionary funds available under title III of the Job Training Partnership Act. The program is to be continued at the 1991 level of $5,904,000 and 14 FTE's.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

Amendment No. 23: Earmarks $4,409,000 for the President's Committee on Employment of People with Disabilities instead of $4,078,000 as proposed by the House and $4,740,000 as proposed by the Senate.

Amendment No. 24: Appropriates $141,053,000 instead of $144,319,000 as proposed by the House and $139,680,000 as proposed by the Senate.

OFFICE OF INSPECTOR GENERAL

Amendment No. 25: Appropriates $46,320,000 instead of $46,636,000 as proposed by the House and $45,359,000 as proposed by the Senate.

TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

Amendment No. 26: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *X, XII,*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The amendment adds legal citations for the family planning program and the trauma care program.

Amendment No. 27: Appropriates $2,360,841,000 instead of $2,137,533,000 as proposed by the House and $2,389,822,000 as proposed by the Senate.

The conferees are concerned that the community health centers program has not given sufficient priority to the health care needs of Asian Americans and Pacific Islanders, many of whom are recent arrivals to the United States who lack access to health care due to cultural and language differences. Accordingly, the Department is strongly urged to make this population a priority.

The conferees are concerned that migrant health centers have been underfunded over the past ten years and have provided an increase sufficient to fully fund basic migrant health center services. In addition, the conferees have provided not less than $1,500,000 for new outreach initiatives to migrant farmworkers and their families.

The conferees have provided a total of $75,000,000 for the Healthy Start initiative, with $10,000,000 of that amount to be allocated for infant mortality projects at community and migrant health centers, both within the target areas of the Healthy Start initiative and in other areas with high infant mortality rates.

The conferees have recognized the severe infant mortality problem in every State in the nation and have increased funding for a number of programs, including the Maternal and Child Health Block Grant and the Healthy Start infant mortality initiative. The conferees are concerned that the initial grants in the Healthy Start program have been targeted almost exclusively to urban areas. The conferees urge the Secretary to increase the program's emphasis on rural areas. The conferees intend to monitor closely all the infant mortality initiatives to ensure that the considerable commitment of Federal resources is properly targeted to rural urban areas with high infant mortality rates.

Within the total for health care for the homeless, funds have been provided to support outreach and primary health services for homeless children, as authorized in section 340(s) of the Public health Service Act.

The conferees direct that no funds may be expended to centralize grant-making or administrative operations of the family planning program. The conferees support continuation of regional grant-making authority.

The conferees have provided sufficient funds to meet statutory requirements for the minority centers of excellence program. The conferees expect that HRSA will allocate some of the additional funds to increase the number of Hispanic and Native American centers of excellence beyond the $2,500,000 base, as well as all other categories of centers.

Of the amounts provided for the Native Hawaiian health care program, $800,000 shall be for the Native Hawaiian health professions scholarship program. The conferees intend that scholarships shall be made available to the widest possible range of health professionals.

Of the amounts provided for Pacific Basin activities, $1,800,000 shall be used to continue the Medical Officers program.

The conferees intend that user fees collected for the national practitioner data bank shall remain available until expended for the operation of the data bank.

With respect to the funds set aside for special projects of regional and national significance from amounts provided for the Maternal and Child Health Block Grant over $600,000,000, the conferees urge the Secretary to give the highest priority to support home visiting and one-stop shopping programs.

Within the amount available for the Maternal and Child Health Block Grant set-aside for special projects of regional and national significance, the conferees encourage the Secretary to increase support for the hemophilia treatment centers and are agreed that funding for the centers shall, at a minimum, be maintained at the current level.

Within the amount available for the Maternal and Child Health Block Grant set-aside for special projects of regional and national significance, the conferees have included funds to support the ongoing Cooley's Anemia demonstration and treatment centers at the current level of funding. The conferees fully expect these funds to be utilized as intended.

The conferees intend that a portion of the amount available for the Maternal and Child Health Block Grant set-aside for special projects of regional and national significance be expended for the continued expansion of the university affiliated program network.

The conferees agree that the increase over the budget request for organ transplantation is to be used for grants for projects designed to increase the supply of donated organs. Special emphasis should be given to efforts that would coordinate the activities of organ procurement organizations, hospitals, and health care professionals.

The conferees urge the Office of Rural Health Policy to work with national representatives of non-physician health professions in addressing the shortage of health care providers in rural America. The conferees support the establishment of an interdisciplinary task force to guide policy in this area.

Within the increase provided for pediatric AIDS demonstrations, funds have been included to expand technical assistance services for strengthening and development of HIV service delivery infrastructures to provide comprehensive family-centered care to children, women, adolescents and families with HIV disease. The conferees are agreed that priority should be given to public/private comprehensive pediatric and family HIV consortia when awarding these funds.

To further implement last year's directive to expand pediatric and family AIDS services to the currently unserved or underserved hemophilla population, the conference agreement includes funds within the amount for pediatric AIDS demonstrations to initiate in fiscal year 1992 regionally-based projects through the treatment centers network.

Within the total provided for Title II of the Ryan White Act, 10 percent should be retained by the Secretary for special projects of national significance. The conferees direct that $5,000,000 of the set-aside be used to continue the HIV/AIDS dental reimbursement program for dental schools and post-doctoral dental education programs for the costs incurred in providing oral health services to HIV-positive patients. The remainder of the funds should support the priority areas designated by HRSA, especially mental health, rural and Native American priorities.

Amendment No. 28: Deletes specific reference to the Healthy Start program as proposed by the Senate.

Amendment No. 29: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$125,00,000, of which $25,000,000 shall be for the Healthy Start Program,*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement makes available $125,000,000 in delayed obligations instead of $86,000,000 as proposed by the House and $50,000,000 as proposed by the Senate. $25,00,000 of this total is designated for the Healthy Start infant mortality program.

Amendment No. 30: Delays the obligation of funds identified in the previous amendment until September 30, 1992 as proposed by the Senate instead of September 19, 1992 as proposed by the House. In amendment number 9, the Senate bill made $86,000,000 available for obligation on September 30, 1992 until October 30, 1992.

Amendment No. 31: Deletes language proposed by the Senate transferring $55,000,000 from the Education Excellence account. Bill language is included in the Education Excellence account to achieve this transfer.

Amendment No. 32: Deletes language earmarking $10,000,000 for trauma care as proposed by the Senate. The conference agreement provides $5,000,000 for this activity within the total appropriated.

Amendment No. 33: Deletes language earmarking $2,000,000 to establish an Office of Adolescent Health as proposed by the Senate.

The conferees have deleted without prejudice bill language regarding an Office of Adolescent Health. The conferees intend $2,000,000 to be used to establish such an office. The office shall coordinate Departmental efforts to improve adolescent health, including increasing the number of health providers such as nurse practitioners and physician assistants trained in adolescent health.

Amendment No. 34: Deletes language earmarking $2,900,000 for home health demonstrations as proposed by the Senate. The conference agreement provides $2,900,000 for this activity within the total appropriated.

HEALTH EDUCATION ASSISTANCE LOANS PROGRAM

Amendment No. 35: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Seante with an amendment, as follows:

Restore the matter stricken by said amendment, amended as follows:

In lieu of the sum in said amendment, insert: *$290,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement establishes an annual loan limit of $290,000,000 for the HEAL program rather than $260,000,000 as proposed by the House. The Senate bill did not include a loan limitation.

CENTERS FOR DISEASE CONTROL

DISEASE CONTROL, RESEARCH, AND TRAINING

Amendment No. 36: Appropriates $1,504,924,000 instead of $1,390,662,000 as proposed by the House and $1,530,982,000 as proposed by the Senate.

The conferees recommend that $46,000,000 be provided to State and local health departments to ensure that vaccines are available and administered to children under two. The conferees recommend that the Centers for Disease Control provide $10,000,000 for the second dose of the measles, mumps and rubella vaccine, and $6,000,000 for the fourth dose of the haemophilus influenzae type B vaccine. The conferees further recommend that $18,000,000 for the hepatitis B vaccine be incorporated into the universal vaccination program.

The conferees are concerned about the relative distribution of funding for the NIOSH extramural program. The amount used to fund extramural grants represented only 8 percent of the FY 1991 research budget. The conferees encourage the distribution of research funds to a wider spectrum of peer-reviewed recipients.

As the 20th anniversary of mining under the two milligram respirable coal dust standard approaches, NIOSH is encouraged to examine the standard to ensure its efficacy in preventing the occurrence of lung disease among coal miners.

The conferees expect that the increase provided for the disabilities prevention program will be used to expand the number of States supported and to increase support to currently supported States. Because significant increases to programs aimed at the prevention of adult chronic disease have been provided, funds should not be utilized for similar activities under the disabilities prevention program.

The conferees understand that the CDC has been designated as the lead agency to coordinate the implementation of the recommendations of the Traumatic Brain Injury Task Force and expect the CDC to submit an implementation plan for this initiative prior to next year's budget hearings. The conference agreement includes sufficient funds to facilitate this process and to develop uniform guidelines for the reporting of head injuries.

Within the amount provided for HIV/AIDS activities, the conferees have included funds to, at a minimum, maintain the current service level for the ongoing hemophilia project in HIV/AIDS risk reduction, education and outreach activities.

The Commonwealth of Puerto Rico continues to have the second highest rate of AIDS cases per 100,000 population and the sixth highest number of AIDS cases among all States and Territories. The conferees are agreed that CDC should continue to assist Puerto Rico, including additional counseling, testing and patient notification resources, from available funds.

The conferees place high priority on the continued provision of effective HIV prevention services. The conferees encourage CDC to exercise its funding flexibility under general authority to assure that HIV prevention services and programs supported through the CDC/State Cooperative Agreements are maintained in the FY 1992 period.

Amendment No. 37: Earmarks $25,600,000 for buildings and facilities instead of $6,338,000 as proposed by the House and $38,338,000 as proposed by the Senate. Included in this amount is $19,600,000 for the NIOSH occupational safety and health laboratory, including $5,000,000 for equipment.

Amendment No. 38: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *:Provided, That of the funds made available under this heading, $134,000,000 shall not become available for obligation until September 30, 1992*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 39: Makes available up to $29,400,000 from amounts available under section 2711 of the Public Health Service Act to carry out the National Center for Health Statistics surveys instead of $25,000,000 as proposed by the House and $33,800,000 as proposed by the Senate.

Amendment No. 40: Deletes language proposed by the Senate expressing the sense of the Senate that certain funds shall not be distributed pursuant to title IIIA of the Ryan White CARE Act.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CANCER INSTITUTE

Amendment No. 41: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$1,989,278,000: Provided, That of the funds made available under this heading, $223,446,000 shall not become available for obligation until September 30, 1992: Provided further, That the Director of the National Institutes of Health, within thirty days of enactment of this Act, may transfer such portion of $160,000,000 which becomes available on September 30, 1992 as she deems appropriate to other Institutes for research directly related to the prevention, treatment or cure of cancer*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $1,989,278,000 instead of $1,830,509,000 as proposed by the House and $2,010,230,000 as proposed by the Senate. $223,446,000 of the total is available for delayed obligation rather than $248,093,000 as proposed by the Senate in this amendment and amendment number 9 and $63,446,000 as proposed by the House. These delayed funds will become available for obligation on September 30, 1992 as proposed by the Senate rather than on September 19, 1992 as proposed by the House.

The conferees have included language permitting the Director of HIH to transfer a portion of the funds which become available on September 30, 1992 to other Institutes for cancer research if she deems it appropriate. It is the intention of the conferees that the Director have flexibility within the limits of the statutory language to allocate this additional funding among the various Institutes of the NIH. The Director should report her recommendation to the House and Senate Appropriations Committees prior to such transfers.

The amount agreed to by the conferees includes sufficient funds to continue the program in proton beam therapy at the planned level.

Prostate cancer is the second leading cause of cancer death in men. It now accounts for more new cases of cancer among men than lung cancer and is second only to lung cancer as the cause of cancer-related deaths in men. The problem is particularly acute among black Americans and men over 65 years of age. In recognition of these statistics, NCI is directed to place additional emphasis on prostate cancer research by establishing prostate cancer centers under the Specialized Program of Research Excellence program. An institution receiving such a grant would demonstrate its commitment to support outstanding researchers who would focus specifically on research to advance knowledge in prostate cancer. These centers will provide an interdisciplinary, interdependent coordinated research program in basic research, etiology, diagnosis, prevention, vaccine research, translation of basic research knowledge into clinical applications, training, and community outreach. These centers will support cutting edge research and serve as a fertile ground for career development of young researchers by providing training opportunities in several disciplines and by emphasizing the translation of research advances from the laboratory to the bedside.

The conferees express their serious concern about the growing epidemic of breast and prostate cancer in the United States. The conferees urge, in the strongest way, that the National Cancer Institute make breast, prostate, ovarian, and cervical cancer its top priorities and treat these diseases with utmost urgency.

The conferees have agreed to provide an increase of $275,519,000 over the fiscal year 1991 appropriation for the National Cancer Institute, and restate their intention that funding for direct research on breast, ovarian and prostate cancer receive significant increases as outlined in both the House and Senate reports accompanying H.R. 2707. The conferees believe that sufficient funds have been appropriated to achieve the goals set forth in House Report 102-121 and Senate Report 102-104 in this regard.

Amendment No. 42: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate designating a Matsunaga-Conte Prostate Cancer Research Center.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

Amendment No. 43: Appropriates $1,199,398,000 instead of $1,202,398,000 as proposed by the House and $1,190,396,000 as proposed by the Senate. The conference agreement provides that $54,555,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

The conferees understand that the National Cholesterol Education Program (NCEP) guidelines which were published in 1987 will soon be revised. Because of the pressing need to more accurately identify Americans at risk for heart attacks, the conferees encourage the NCEP to fully reflect the latest scientific data relating to the importance of screening for, and treatment of, the triad of lipid abnormalities, i.e., the three principal factors in blood that have been shown to affect coronary heart disease: low levels of "good" cholesterol (HDL), elevations in "bad" cholesterol (LDL), and elevations of regularly monitored blood fats (triglycerides).

The conferees are aware of the continued growth and success of the National Marrow Donor Program (NMDP) which will exceed 500,000 volunteer donors during fiscal year 1992. The conferees have added funds to the President's request for the administration of the NMDP, human leukocyte antigen (HLA) typing of potential volunteers, minority donor recruitment activities, and marrow transplantation-related research. The conferees have also included funding for a clinical trial to determine the risk-benefit relationship for T-cell depletion of marrow for allogenic marrow transplantation in reducing acute graft-versus-host disease.

In support of an accelerated scientific program in fiscal year 1992, the conferees have included additional funds for increased research support to expand investigation into gene therapy and other promising areas of research aimed at seeking a cure for hemophilia.

NATIONAL INSTITUTE OF DENTAL RESEARCH

Amendment No. 44: Appropriates $160,493,000 instead of $161,235,000 as proposed by the House and $158,266,000 as proposed by the Senate. The conference agreement provides that $7,903,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

Amendment No. 45: Appropriates $664,080,000 instead of $667,820,000 as proposed by the House and $652,861,000 as proposed by the Senate. The conference agreement provides that $28,457,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

The conference agreement includes additional funds for cystic fibrosis research to continue the cystic fibrosis centers program as well as to provide increases for new research grants. The agreement also provides increased funds for kidney research which the conferees expect to be placed across the spectrum of kidney research and training to promote basic and applied research efforts.

NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

Amendment No. 46: Appropriates $583,378,000 instead of $583,355,000 as proposed by the House and $583,386,000 as proposed by the Senate. The conference agreement provides that $27,357,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

The conferees encourage the Institute to increase its efforts in the area of post-polio syndrome and would like a report on its activities in this field prior to the fiscal year 1993 hearings.

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

Amendment No. 47: Appropriates $971,111,000 instead of $972,830,000 as proposed by the House and $965,952,000 as proposed by the Senate. The conference agreement provides that $45,627,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

The conferees urge that the community-based AIDS research initiative be given priority consideration for increased funding.

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

Amendment No. 48: Appropriates $818,910,000 instead of $820,160,000 as proposed by the House and $815,158,000 as proposed by the Senate. The conference agreement provides that $48,104,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

Amendment No. 49: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$524,452,000: Provided, That of the funds made available under this heading, $27,368,000 shall not become available for obligation until September 30, 1992: Provided further, That funds made available under this heading shall not be used to conduct the SHARP survey of adult sexual behavior and the American Teenage Survey of adolescent sexual behavior*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides that $27,368,000 of the amount appropriated will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992. The conferees modify language proposed by the Senate to prohibit the use of funds to conduct either the SHARP survey of adult sexual behavior or the survey of adolescent sexual behavior. The conferees delete language proposed by the Senate which would transfer to the adolescent family life program funds that would otherwise have been used to conduct the two surveys.

The conference agreement includes funds for the establishment of a comprehensive gynecological and obstetrical research program at the Institute. The conferees wish to emphasize that the amount agreed to includes sufficient funds to establish a new intramural clinical and laboratory gynecology research program at the NIH campus and clinical center.

It is the intent of the conferees that any shortfall that may exist in meeting Congressional priorities be made up with funds previously budgeted for the survey of adult sexual behavior and the survey of adolescent sexual behavior.

The conferees are concerned that there is currently no permanent or standing study section for medical rehabilitation research in NIH and existing study sections are not focused on rehabilitation-related research. The conferees urge NIH to consider establishing such a section.

NATIONAL EYE INSTITUTE

Amendment No. 50: Appropriates $271,002,000 instead of $272,260,000 as proposed by the House and $267,229,000 as proposed by the Senate. The conference agreement provides that $12,504,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

Amendment No. 51: Appropriates $253,902,000 instead of $254,912,000 as proposed by the House and $250,873,000 as proposed by the Senate. The conference agreement provides that $8,846,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

The conferees urge the Institute to explore the public health hazards associated with volcanic emissions on the Big Island of Hawaii.

NATIONAL INSTITUTE ON AGING

Amendment No. 52: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$387,014,000: Provided, That of the funds made available under this heading, $31,308,000 shall not become available for obligation until September 30, 1992: Provided further, That the Director of the National*

Institutes of Health, within thirty days of enactment of this Act, may transfer such portion of $15,000,000 which becomes available on September 30, 1992 as she deems appropriate to other Institutes for research directly related to Alzheimer's disease

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $387,014,000 instead of $362,528,000 as proposed by the House and $397,176,000 as proposed by the Senate. $31,308,000 of the total is available for delayed obligation rather than $38,308,000 as proposed by the Senate in this amendment and amendment number 9 and $16,308,000 as proposed by the House. These delayed funds will become available for obligation on September 30, 1992 as proposed by the Senate rather than on September 19, 1992 as proposed by the House.

The conferees have included language permitting the Director of NIH to transfer a portion of the funds which become available on September 30, 1992 to other Institutes for Alzheimer's disease research if she deems it appropriate. It is the intention of the conferees that the Director have flexibility within the limits of the statutory language to allocate this additional funding among the various Institutes of the NIH. The Director should report her recommendation to the House and Senate Appropriations Committees prior to such transfers.

NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

Amendment No. 53: Appropriates $204,502,000 instead of $204,977,000 as proposed by the House and $203,076,000 as proposed by the Senate. The conference agreement provides that $7,593,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

Amendment No. 54: Appropriates $149,830,000 instead of $144,495,000 as proposed by the House and $151,608,000 as proposed by the Senate. The conference agreement provides that $7,486,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

NATIONAL CENTER FOR RESEARCH RESOURCES

Amendment No. 55: Appropriates $315,220,000 instead of $309,200,000 as proposed by the House and $317,227,000 as proposed by the Senate. The conference agreement provides that $15,000,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

The conferees delete without prejudice language proposed by the House prohibiting the use of these funds to support indirect costs for general research support grant programs. The conferees understand that this language is no longer necessary.

The conferees agree that the amount appropriated includes funds to be used for the biomedical research support grants program.

NATIONAL CENTER FOR NURSING RESEARCH

Amendment No. 56: Appropriates $45,196,000 instead of $43,143,000 as proposed by the House and $45,880,000 as proposed by the Senate. The conference agreement provides that $2,646,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

The conferees believe a concerted effort should be made to enhance the quantitative analysis skills of nursing faculty during the coming year.

NATIONAL CENTER FOR HUMAN GENOME RESEARCH

Amendment No. 57: Appropriates $105,261,000 instead of $93,115,000 as proposed by the House and $109,309,000 as proposed by the Senate. The conference agreement provides that $10,000,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

JOHN E. FOGARTY INTERNATIONAL CENTER

Amendment No. 58: Delays the obligation of $800,000 until September 30, 1992 as proposed by the Senate in amendment number 9. The house bill provided that these funds be delayed until September 19, 1992.

NATIONAL LIBRARY OF MEDICINE

Amendment No. 59: Appropriates $100,303,000 instead of $99,565,000 as proposed by the House and $100,549,000 as proposed by the Senate. The conference agreement provides that $3,500,000 of this amount will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

OFFICE OF THE DIRECTOR

Amendment No. 60: Appropriates $143,313,000 instead of $149,176,000 as proposed by the House and $125,724,000 as proposed by the Senate.

The conference agreement includes $10,300,000 for the Office of Research on Women's Health, $10,300,000 for the Office of Research on Minority Health, $2,000,000 for the study of unconventional medical practices, and $18,000,000 for the Director's discretionary fund. The conferees encourage the Director to use a portion of the discretionary fund for the James A. Shannon Director's Award Program.

The conferees are agreed that research on DES-exposed populations be a priority for the NIH. The conferees recommend coordination between the NCI, NIEHS, and NICHD in the implementation of longitudinal studies to determine the risk of cancers in DES-exposed offspring and mothers, evidence of late recurrences of clear cell cancer, and the effects of DES on the immune and endocrine systems.

The conferees agree that the Office of Research on Women's Health should coordinate with the NIH Office of Research on Minority Health and the Office of Minority Health in the Office of the Assistant Secretary for Health to ensure that resources are targeted appropriately and effectively.

The conferees are aware of numerous, highly successful sharing agreements between the NIH clinical center and the Bethesda Naval Hospital, and understand that the NIH clinical center operates a fully integrated hospital information system. The conferees encourage the Director to continue and to expand these types of agreements, particularly in the area of medical automation and patient care.

The conferees reiterate the guidance provided last year regarding cost control and financial management and specifically urge the elimination of downward negotiations. The Institutes, through their study sections and advisory councils, should aggressively eliminate any costs which they believe are unnecessary. Once this is done, a grant or center should be funded at the full level without arbitrary reductions.

It is the intention of the conferees that the review of indirect cost issues discussed in the Senate report should be undertaken by the General Accounting Office rather than by the Office of the Inspector General in the Department of Health and Human Services.

Amendment No. 61: Inserts language proposed by the Senate which modifies House language describing the women's health study.

Amendment No. 62: Delays the obligation of $12,500,000 until September 30, 1992 as proposed by the Senate in amendment number 9. The House bill provided that these funds be delayed until September 19, 1992.

Amendment No. 63: Restores language proposed by the House to allow funds to be used to purchase not to exceed five passenger motor vehicles for replacement only.

Amendment No. 64: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided further, That $7,500,000 of this amount shall be available for extramural facilities construction grants if awarded competitively*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement modifies Senate language to earmark $7,500,000 for extramural facilities construction grants if awarded competitively.

Amendment No. 65: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the term "high-priority" named in said amendment, insert: *emergency*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement modifies Senate language to give the Director of NIH one percent transfer authority for emergency, rather than high priority, activities. The Director shall have sole authority to determine what constitutes an emergency. Any transfer of funds between Institutes by the Director must be completed by August 1, 1992. The conferees intend the one percent transfer authority to provide the Director with the management flexibility she has indicated she needs.

BUILDINGS AND FACILITIES

Amendment No. 66: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which permits the NIH to acquire real property.

Amendment No. 67: Appropriates $103,840,000 instead of $108,625,000 as proposed by the House and $89,485,000 as proposed by the Senate.

The conference agreement includes $7,800,000 to begin construction of a facility for the National Institute of Environmental Health Sciences in Research Triangle Park, North Carolina.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH

Amendment No. 68: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$3,081,119,000: Provided, That of the funds made available under this heading, $164,100,000 shall not become available until September 30, 1992*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement deletes the provision added by the Senate which would reduce salaries and expenses for the Departments of Labor, Health and Human Services, and Education.

The conferees have continued the initiative in rural and Native American mental health research. The conferees intend funds to be used for basic research on factors that increase risk for mental health problems of individuals and families in rural America and for applied research to develop family-centered services to reduce these risks.

The conferees note the growing body of knowledge that has established attention deficit disorder as a neurologically-based disorder and encourage the National Institute of Mental Health, and other Institutes working cooperative on "Decade of the Brain" activities, to increase research in this area.

The conferees urge that within the clinical training program special emphasis be given to encouraging Native Americans to enter psychiatric nursing and a priority placed on prevention-oriented training.

The Office for Substance Abuse Prevention and the Department of Education are urged to look at the benefits of a demonstration of drug-use prevention in the schools using dynamic video media.

Amendment No. 69: Deletes language proposed by the Senate which would transfer $2,000,000 from this account to the Department of Labor for employee assistance programs.

The conferees have deleted without prejudice bill language transferring $2,000,000 from the Office for Substance Abuse Prevention to the Department of Labor for employee assistance programs. The conferees encourage the agency to work with the Department of Labor to fund such programs.

Amendment No. 70: Deletes earmark of not less than $60,000,000 for projects serving pregnant women and their infants as proposed by the Senate.

ASSISTANT SECRETARY FOR HEALTH

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

Amendment No. 71: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts a legal citation for the adolescent family life program.

Amendment No. 72: Appropriates $66,035,000 instead of $71,318,000 as proposed by the House and $54,302,000 as proposed by the Senate.

The conferees have provided $500,000 to the Office of Minority Health to develop a national education/information demonstration to communicate healthy lifestyle messages to minority populations. This demonstration will develop, produce, and distribute culturally sensitive media messages on how to lead healthier lifestyles to minority communities most at risk for premature death and disability.

The conferees recommend $8,000,000 for the National Vaccine Program Office, which includes funding to continue the clinical trial of acellular pertussis vaccines. The conferees understand that funds for additional work on children's vaccines have been provided to NIAID. The conferees intend that the National Vaccine Program coordinate all Federal vaccine research and development efforts.

The conferees understand that the National Vaccine Program has begun a study of vaccine manufacturing and purchase and that other Federal agencies are supporting studies on vaccine pricing and other issues. The conferees urge the NVP to coordinate all of these studies to ensure that there is no unnecessary duplication but that key questions about vaccine pricing and Federal purchase are answered.

The conferees request that the NVPO submit a report to the House and Senate committees by December 15, 1991, detailing expenditures for the clinical trial on acellular pertussis vaccines, serological work conducted by FDA and CDC, other research activities, and administrative expenses for the NVPO. The report should address FY 1991 funds and projections for FY 1992 funds.

The conference agreement includes $2,519,000 for the National AIDS Program Office.

AGENCY FOR HEALTH CARE POLICY AND RESEARCH

HEALTH CARE POLICY AND RESEARCH

Amendment No. 73: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$101,870,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees support the efforts of AHCPR to train new health services researchers. The conferees encourage AHCPR to increase the funding available for training in FY 1992.

Amendment No. 74: Makes available $4,880,000 from the Medicare trust funds as proposed by the House instead of $6,723,000 as proposed by the Senate.

Amendment No. 75: Makes available $1,012,000 from the Medicare trust funds as proposed by the House instead of $1,050,000 as proposed by the Senate.

Amendment No. 76: Places a limitation of $13,444,000 on amounts available pursuant to section 926(b) of the Public Health Service Act as proposed by the House instead of $49,944,000 as proposed by the Senate.

HEALTH CARE FINANCING ADMINISTRATION

PAYMENTS TO HEALTH CARE TRUST FUNDS

Amendment No. 77: Appropriates $39,421,485,000 as proposed by the House instead of $39,401,083,000 as proposed by the Senate.

PROGRAM MANAGEMENT

Amendment No. 78: Makes available from trust funds $2,274,055,000 instead of $2,282,055,000 as proposed by the House and $1,982,901,000 as proposed by the Senate.

Amendment No. 79: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided further, That the use of the term "unanticipated costs" in the foregoing proviso refers only to costs associated with unanticipated workloads: Provided further, That the Secretary shall make a recommendation upon enactment of this Act and thereafter prior to the first day of each following quarter of the fiscal year, about the extent to which contingency funds may be necessary to be expended*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes bill language to clarify that the contingency fund is provided for expenses associated with unanticipated workloads.

The conferees urge and expect the Administration to immediately release the contingency fund if the Secretary determines it is necessary to prevent disruption of service to Medicare beneficiaries and providers, including the continuation of existing toll-free telephone line service, the timely payment of claims, and maintenance of current timeframes for resolving hearings and appeals.

The conferees express great concern about the September 12, 1991 interim regulation on State use of provider-specific taxes, intergovernmental transfers, and voluntary donations toward the State share of Medicaid expenditures (56 Federal Register 46380). The conferees believe that the interim final rule violates Congressional intent, as expressed in the Omnibus Budget Reconciliation Act of 1990, and would have an unacceptably severe negative impact on many State Medicaid programs. The conferees gave serious consideration to inclusion of bill language prohibiting the Department of Health and Human Services from enforcing this rule during fiscal year 1992, and it may yet be necessary for Congress to take this action. The conferees urge the Department of Health and Human Services to withdraw the interim final rule immediately, and to work with Congress to develop more appropriate policies.

The conferees are aware that legislation pending before the House and Senate addresses the issue of recoupment of funds paid by Medicare to former Uniformed Services Treatment Facilities for services provided during the period from October 1, 1986 to December 31, 1989. The managers urge HCFA to refrain from taking action to assess or collect those disputed amounts paid by Medicare until after the authorizing committees of Congress act.

The conferees are aware that the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) terminated separate reimbursement to physicians under Medicare for the interpretation of electrocardiograms (EKGs) effective January 1, 1992. Furthermore, the conferees recognize that the Physician Payment Review Commission, in its annual report, concluded that even though payment will be bundled into office visits, the OBRA 1990 provision will create inequities among specialties and physicians and recommended that Congress modify the provision in OBRA 1990 to pay for EKG interpretation separately at a resource-based price. The conferees are concerned that without a modification of this provision the quality of patient care may be diminished by limiting the ability to diagnose a variety of conditions affecting the heart. Therefore, the conferees urge the appropriate committees of jurisdiction to heed the recommendation of the Physician Payment Review Commission and take action to amend this provision in OBRA 1990 prior to its becoming effective on January 1, 1992.

The conferees are disturbed that HCFA has yet to comply fully with the intent of Congress under section 429 of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360), entitled "HCFA Demonstration—Ventilator Demonstration Units." The agency is directed to comply immediately with the reimbursement requirements pursuant to section 429.

The conferees encourage the agency to expedite the distribution of funds appropriated for health insurance information, counseling, and assistance grants.

Amendment No. 80: Deletes language proposed by the Senate which would establish an emergency fund for survey and certification activities. This activity is supported in the Program Management account.

SOCIAL SECURITY ADMINISTRATION

SUPPLEMENTAL SECURITY INCOME PROGRAM

Amendment No. 81: Appropriates $13,929,491,000 as proposed by the Senate instead of $13,926,491,000 as proposed by the House.

The conference agreement provides a total of $14,000,000 for research and demonstration projects, which includes $6,000,000 to continue the SSI outreach program.

LIMITATION ON ADMINISTRATIVE EXPENSES

Amendment No. 82: Provides for a limitation on trust funds of $4,582,000,000 as proposed by the House instead of $4,442,000,000 as proposed by the Senate.

The conference agreement includes undistributed reductions in salaries and expenses accounts for the three Cabinet Departments in a general provision in title V of the bill. The conferees regard the Limitation on Administrative Expenses of the Social Security Administration as being of the highest priority, and expect the Secretary to carefully consider workload factors when allocating the undistributed reductions to the Health and Human Services administrative accounts.

Amendment No. 83: Provides a contingency reserve of $100,000,000 as proposed by the House instead of $50,000,000 as proposed by the Senate.

Amendment No. 84: Restores language proposed by the House and stricken by the Senate which delays obligation of $80,000,000 until September 19, 1992.

ADMINISTRATION FOR CHILDREN AND FAMILIES

FAMILY SUPPORT PAYMENTS TO STATES

Amendment No. 85: Appropriates $11,901,046,000 as proposed by the Senate instead of $11,862,146,000 as proposed by the House.

Amendment No. 86: Deletes language proposed by the Senate which would have streamlined collection of fees from States for use of the Federal Parent Locator Service. The House bill included no similar provision.

LOW INCOME HOME ENERGY ASSISTANCE

Amendment No. 87: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,500,000,000, of which $80,000,000 is hereby designated by Congress to be an emergency requirement pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, and*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 88: Earmarks $405,607,000 to become available on September 30, 1992 instead of $50,000,000 as proposed by the House and $445,000,000 as proposed by the Senate. In amendment number 9, the Senate bill made $405,607,000 available for obligation on September 30, 1992 notwithstanding any other provision of the Act.

The conferees intend that all LIHEAP funds appropriated be obligated in fiscal year 1992. The Department of Health and Human Services is directed to announce grant awards to States based on the full amount of the conference agreement. It is expected that States will make every effort to obligate the full amount, minus any allowable carryover, either on a reimbursable basis, or by other means such as issuing commitments for future payments to energy vendors or contracting for energy conservation services.

Amendment No. 89: Appropriates $300,000,000 to be made available only if requested by the President and designated as an emergency under the Budget Enforcement Act as proposed by the Senate instead of $600,000,000 as proposed by the House.

REFUGEE AND ENTRANT ASSISTANCE

Amendment No. 90: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$410,630,000: Provided, That of the funds made available under this heading for State cash and medical assistance, $116,616,000 shall not become available for obligation until September 30, 1992: Provided further, That when sufficient funds have been made available to reimburse all allowable fiscal year 1991 claims for refugee cash assistance, refugee medical assistance, unaccompanied minors, and State and local administrative costs, fiscal year 1991 funds appropriated for cash and medical assistance may be used to supplement insufficient fiscal year 1990 grants to States for the programs of refugee cash assistance and refugee medical assistance*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees intend that the highest priority be given to the continuation of the unaccompanied minors program for the entire fiscal year. The conferees are agreed that not more than 15 percent of funding appropriated for social services may be used for discretionary grants.

The conferees intend that prior to allowing States to use fiscal year 1991 funds to support fiscal year 1990 unreimbursed costs, the Office of Refugee Resettlement must ensure that all allowable cash and medical assistance expenditures for refugee cash assistance and refugee medical assistance, unaccompanied minors, and State and local administrative costs for fiscal year 1991 as submitted by March 31, 1992 are fully paid.

The conferees recognize that the delay in the availability of funds for refugee cash and medical assistance may make it difficult for some States to maintain a viable refugee program. The Director is encouraged to provide flexibility to the States in managing State-administered programs in order to mitigate any disruption in resettlement services to eligible refugees.

COMMUNITY SERVICES BLOCK GRANT

Amendment No. 91: Appropriates $437,148,000 instead of $420,724,000 as proposed by the House and $453,431,000 as proposed by the Senate, of which $41,368,000 is earmarked for discretionary activities under section 681(a) of the Community Services Block Grant Act, and $4,050,000 is earmarked for the Demonstration Partnership program.

The conference agreement includes $22,000,000 for Community Economic Development, $4,099,000 for Rural Housing, $3,025,000 for Farmworker Assistance, $12,000,000 for National Youth Sports, $4,050,000 for Demonstration Partnerships, and $244,000 for Technical Assistance. The conferees have dropped the earmarks for these programs from the bill, but fully expect the Department to comply with these allocations, allowing that up to $250,000 of the discretionary funds may be used for an annual report as required by section 682(a)(1) of the Community Services Block Grant Act.

Amendment No. 92: Earmarks $7,000,000 for the Community and Nutrition program as proposed by the Senate instead of $5,484,000 as proposed by the House.

Amendment No. 93: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment insert: *: Provided, That $29,124,000 made available under this heading shall not become available for obligations until September 30, 1992*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement modifies language proposed by the Senate to delay obligation of funds for Community Economic Development, Farmworker Assistance and Rural Housing until September 30, 1992. The House bill included no similar provision.

PAYMENTS TO STATES FOR CHILD CARE ASSISTANCE

Amendment No. 94: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *no funds are provided for fiscal year 1992*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides no funds for the licensing improvement grant program as these activities can be funded under that basic child care block grant program.

STATE LEGALIZATION IMPACT OF ASSISTANCE GRANTS

Both House and Senate bills include language which defers $1,122,922,000 in funds appropriated for the State Legalization Impact Assistance Grant Program (SLIAG) from fiscal year 1992 to fiscal year 1993. The deferral was based on the need to achieve outlay savings in 1992, and does not represent a permanent reduction in funds available to States. The conferees are aware that some States will have a SLIAG funding shortfall in 1992 and that additional States may run out of funds in 1993. The conferees are also aware that the deferral of 1992 could result in cutbacks in financial, medical and educational assistance to newly legalized aliens in some States. The conferees are also in agreement that further deferral of SLIAG funds would be detrimental to the objectives of the program and would place in jeopardy newly legalized aliens and their ability to complete the requirements for citizenship. Therefore, the conferees agree to provide sufficient funds for SLIAG in 1993, and direct the Secretary to distribute these funds no later than October 15, 1992. This action will result in a five month deferral in the availability of funding and will have minimal impact for most States participating in the program as currently allotments are expected to be sufficient through the end of 1992. State and local service providers should therefore be reassured by this action and should not diminish activities to meet the needs of persons eligible for SLIAG services. The conferees further note that the 1993 appropriations may be used to reimburse costs incurred by States and local service providers on or after October 1, 1989.

The Immigration Reform and Control Act (IRCA) of 1986 requires estimated Federal expenditures on newly legalized aliens to be "offset" (deducted) in computing the amount of annual appropriations available for allocation to States under the SLIAG program. Recognizing that the actual amount of Federal offset expenditures will differ from the estimated offset, IRCA also requires that SLIAG appropriations be adjusted for the difference between estimated and actual Federal offset costs in the prior fiscal year. The conferees are concerned that the Department of Health and Human Services has not adjusted the amount of SLIAG appropriations for the difference between estimated and actual Federal offset costs in prior fiscal years using actual expenditure data, as required by law. The conferees strongly urge the Secretary to abide by IRCA requirements and adjust for any underestimate or overestimate of Federal offset costs in fiscal years 1988 through 1991 utilizing the latest available expenditure data and to allot to States any additional funds resulting from the adjustment by no later than April 30, 1992.

PROGRAM ADMINISTRATION

Amendment No. 95: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$92,500,000, together with such sums as may be collected, which shall be credited to this account as offsetting collections, from fees authorized under section 453 of the Social Security Act*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $92,500,000 for program administration instead of $87,500,000 as proposed by the House and $89,828,000 as proposed by the Senate. The conferees agree to delete language proposed by the Senate which would have allowed the Department to fund AFDC quality control error rate determinations from funds withheld from State AFDC funds. The House bill contained no similar provision.

The conference agreement includes $5,000,000 for job creation demonstrations and $500,000 for training and technical assistance under the Community Services Block Grant Act.

The conferees expect the Administration for Children and Families to ensure the participation of Community Development Corporations in the section 505 demonstration. The Administration for Children and Families is directed to require economic development strategies as part of the application process to ensure that highly qualified organizations participate in the demonstration.

HUMAN DEVELOPMENT SERVICES

Amendment No. 96: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$3,537,562,000, of which up to $6,225,000 shall remain available until expended for information resources management: Provided, That of the funds made available under this heading for carrying out the Older Americans Act of 1965, $25,000,000 shall not become available for obligation until September 30, 1992*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees are agreed that ten percent of the total appropriation for comprehensive child development centers shall be reserved to allow currently operating programs to make quality improvements necessary to meet the statutory requirement of providing comprehensive services. Prior to allocating funds for quality improvements and new programs, the Department shall allocate to each grantee those funds necessary to maintain the levels of service provided during the prior year, taking into consideration the percentage change in the Consumer Price Index for all Urban Consumers, as published by the Bureau of Labor Statistics.

The conferees concur with the Senate language directing that the Department move quickly to obligate the second year of funding for training of Head Start teachers.

The conferees are aware of provisions included in the House-passed Older Americans reauthorization act to establish a multigenerational demonstration project under title IV of the Older Americans Act. Funding has not been provided because the program is not yet authorized. The conferees are agreed that $2,000,000 may be reprogrammed from title III to initiate this program once an authorization has been enacted into law.

The conferees have included $17,000,000 to develop and expand health promotion and disease prevention programs provided to older Americans at congregate meal sites, senior centers, and through the meals-on-wheels program. The conferees intend that these funds be used to supplement and not replace existing support for these services.

The conferees expect that at least $300,000 in the social services research activity will be made available to support and maintain a multi-State foster care data archive for policy and research purposes on services delivered to children and their families.

It is the conferees' intent that no more than three new UAP's will be funded with the increase for university affiliated programs, the remainder to be obligated for training initiatives selected at the discretion of the individual UAP's, including initiatives in behavior management personnel preparation.

The conferees encourage the Administration on Developmental Disabilities to establish an interagency working group on personal assistance services comprised of the Health Care Financing Administration, Administration on Aging, the Office of Special Education and Rehabilitation Services, the Social Security Administration and the Equal Employment Opportunity Commission. The group should include the examination and development of alternative funding mechanisms in its consideration of ways to provide personal assistance services.

The budget request for FY 1992 did not include sufficient funds to meet the demand for ANA programs, an inflation adjustment, or for the ANA environmental grant program. The conferees urge the department to seek additional funds for the ANA in future budget requests, including the environmental grants program, in view of the severe poverty, unemployment, health and education deficits that Native Americans face.

The conferees have included funds to continue the work of the National Indian Policy Center and the Native Hawaiian Revolving Loan program, upon its reauthorization. The conferees expect that the revolving loan funds will be matched by the Office of Hawaiian Affairs.

The conferees urge that priority consideration be given to funding centers for the purpose of advanced interdisciplinary training in child development and social policy.

Amendment No. 97: Deletes language proposed by the Senate that would have earmarked funds for section 411 of the Older Americans Act and for section 162 of the Developmental Disabilities Assistance and Bill of Rights Act.

The conferees encourage the Department of Health and Human Services to provide funds for rural outreach programs which provide geriatric training by geriatric mental health specialists to individuals working with elderly persons, for the purposes of detecting mental health conditions common among the aged. Programs are being developed that provide geriatric training to an array of professional and service providers from rural areas, to better acknowledge and ascertain mental health conditions of rural elderly people. The conferees believe that geriatric mental health training will provide both appropriate interventions and useful information in meeting the mental health needs of the elderly.

Amendment No. 98: Deletes language proposed by the Senate that provided for a transfer of funds from the Department of Education. Similar transfer language is included under the Educational Excellence account in the Department of Education.

Amendment No. 99: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided further, That of the amounts provided under this heading $2,000,000 shall be for the White House Conference on Aging, which shall only become available for obligation upon enactment into law of authorizing legislation and shall remain available until expended*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees have provided $2,000,000 to be used for the White House Conference on Aging to be held in 1993. It is the intent of the conferees that the funds provided for the White House Conference not be diverted from title IV of the Older Americans Act. The conferees expect a full report on the planning and expenditure of the funds for the WHCA by March 1, 1992.

Amendment No. 100: Deletes language proposed by the House and stricken by the Senate that would have rescinded $144,925,000 of Child Care and Development Block Grant funds for fiscal year 1991.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

Amendment No. 101: Appropriates $91,673,000 as proposed by the House instead of $79,444,000 as proposed by the Senate and deletes earmark of $24,079,000 for the Office of the General Counsel as proposed by the House.

Amendment No. 102: Makes available $31,001,000 from the Social Security trust funds as proposed by the House instead of $30,350,000 as proposed by the Senate and deletes earmark of $26,031,000 for the Office of the General Counsel as proposed by the House.

The conferees are agreed that up to $50,110,000 should be utilized for the Office of the General Counsel, including $26,031,000 from the Social Security trust funds.

The conference agreement includes $500,000 for the human services transportation technical assistance program.

OFFICE OF THE INSPECTOR GENERAL

Amendment No. 103: Appropriates $60,794,000 as proposed by the Senate instead of $63,842,000 as proposed by the House.

Amendment No. 104: Inserts language proposed by the Senate that reduces funding for the Office of the Inspector General by $2,603,000.

GENERAL PROVISIONS

Amendment No. 105: Deletes language proposed by the Senate which would have permitted Federal funds to be used for abortions in the case of rape or incest when the incident has been promptly reported.

Amendment No. 106: Deletes language proposed by the House which would have reduced funding for the Office of the Assistant Secretary for Health and General Departmental Management and increased funding for Human Development Services.

Amendment No. 107: Inserts language proposed by the Senate which reduces travel expenses for the Department of Health and Human Services by $9,492,000.

Amendment No. 108: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which prohibits any recovery or withholding of payments resulting from State compliance reviews in the child welfare or foster care programs during fiscal year 1992.

Amendment No. 109: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which amends the Public Health Service Act to expand the membership of the Board of Directors for the National Foundation for Biomedical Research.

Amendment No. 110: Deletes language proposed by the Senate which would have required parental notification or consent, with some exceptions, before an entity receiving Federal funds under title X of the Public Health Service Act could perform an abortion on a minor.

TITLE III—DEPARTMENT OF EDUCATION

COMPENSATORY EDUCATION FOR THE DISADVANTAGED

Amendment No. 111: Appropriates $6,707,014,000 for compensatory education programs instead of $7,075,750,000 as proposed by the House and $6,284,526,000 as proposed by the Senate.

Amendment No. 112: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$152,000,000 shall become available on September 30, 1992 and shall remain available through September 30, 1993 and $6,524,351,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides that $6,524,351,000 of the appropriation for compensatory education shall become available on a forward funded basis on July 1, 1992 instead of $7,042,750,000 as proposed by the House and $6,256,202,000 as proposed by the Senate. The conference agreement also provides that an additional $152,000,000 will become available on September 30, 1992 as proposed by the Senate in Amendment No. 9.

Amendment No. 113: Earmarks $5,525,000,000 for basic grants instead of $5,805,000,000 as proposed by the House and $5,176,575,000 as proposed by the Senate.

Amendment No. 114: Earmarks $610,000,000 for concentration grants instead of $645,000,000 as proposed by the House and $575,175,000 as proposed by the Senate.

Amendment No. 115: Earmarks $70,000,000 for the Even Start program instead of $100,000,000 as proposed by the House and $54,500,000 as proposed by the Senate.

Amendment No. 116: Earmarks $308,298,000 for migrant education programs instead of $322,000,000 as proposed by the House and $294,596,000 as proposed by the Senate.

Amendment No. 117: Earmarks $36,054,000 for neglected and delinquent programs instead of $36,000,000 as proposed by the House and $36,108,000 as proposed by the Senate.

Amendment No. 118: Earmarks $61,820,000 for State administration instead of $64,500,000 as proposed by the House and $59,140,000 as proposed by the Senate.

Amendment No. 119: Earmarks $25,125,000 for program improvement activities instead of $32,250,000 as proposed by the House and $18,000,000 as proposed by the Senate.

Amendment No. 120: Deletes language proposed by the Senate related to minimum State grants under the program improvement activity.

Amendment No. 121: Deletes language proposed by the Senate which would have allowed the transfer of funds to initiate new educational excellence programs if authorized prior to December 31, 1991. Funding for these activities has been provided under the Educational Excellence appropriation account.

IMPACT AID

Amendment No. 122: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$771,708,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 123: Earmarks $588,540,000 for payments under section 3(a) as proposed by the Senate instead of $585,540,000 as proposed by the House.

Amendment No. 124: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *, $1,952,000, to remain available until expended, shall be for payments for decreases in Federal activities under section 3(e), $2,000,000 for section 10, which shall become available on September 30, 1992 and remain available until expended,*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $1,952,000 for payments under section 3(e) related to decreases in Federal activity as proposed by the Senate. The House bill did not include funding for this purpose. The amendment further specifies that $2,000,000 of the $28,000,000 agreed to for construction programs does not become available until September 30, 1992 as proposed by the Senate in amendment number 9. This $2,000,000 is allocated for additional section 10 grants.

Amendment No. 125: Deletes language proposed by the Senate which would have provided certain exceptions to the policy of basing impact aid payments on prior year data. The conferees have agreed to postpone the use of prior year data pending action by the authorizing committees. (See Amendment No. 126.)

Amendment No. 126: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows: In lieu of the matter inserted by said amendment, insert: *: Provided further, That none of the previous provisos related to revisions in the use of prior year data in determining payment amounts provided for under this account or related to preliminary payments shall be effective for fiscal year 1992 and preliminary payments shall be authorized on the same basis as provided for prior to the enactment of P.L. 102-103*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement deletes language proposed by the Senate which would have modified the proposed policy to use prior year data in calculating payments. In lieu of this language, the conferees have agreed to postpone the switch to prior year data pending modifications to the basic authorizing statute. The agreement further allows preliminary payments on the same basis as applicable in fiscal year 1991.

Amendment No. 127: Deletes without prejudice language added by the Senate with respect to the so-called wealth neutrality standard used for determining eligibility of certain school districts. The conferees understand that this matter involves payments for fiscal years beyond the scope of this legislation and that this matter is currently under review by the Secretary of Education. The conferees further note that wealth neutrality standards have been used in certain States for many years without objection by the Department.

The conferees are greatly concerned about the severe, adverse financial impact many school districts are experiencing as a result of educating federally connected students. The conference considered but did not accept bill language to adjust payments to several school districts which have experienced severe adverse financial circumstances. In particular, the conferees gave consideration to inclusion of bill language to hold harmless school districts which experience a drop in Impact Aid payment status as a result of school consolidation. This situation arises when two or more school districts combine to spread the financial burden of educating federally connected students over a larger population base. The conferees direct the Department to work with the authorizing committees and with federally impacted school districts to develop legislation that will equitably compensate school districts which educate children of military personnel. In addition, the conferees direct the Department to consult with affected school districts regarding their continued participation in the Impact Aid program to determine whether anticipated school closings can be averted.

Conferees are concerned that there may be districts in the process of making repayments to the Department for whom the additional burden of these repayments may prompt financial ruin. Conferees urge the Department to make arrangements with these districts to allow them to meet their financial obligations in a manner that will preserve their financial viability.

SCHOOL IMPROVEMENT

Amendment No. 128: Inserts legislative citation for the national Writing Project as proposed by the Senate.

Amendment No. 129: Appropriates $1,578,195,000 for school improvement activities instead of $1,577,618,000 as proposed by the House and $1,586,595,000 as proposed by the Senate.

Amendment No. 130: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$1,236,963,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 131: Earmarks $24,600,000 for national activities as proposed by the Senate instead of $27,600,000 as proposed by the House.

Amendment No. 132: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *$3,800,000 shall be for civic education programs under section 4609, $30,304,000 shall be for emergency grants under section 5136,*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $3,800,000 for civics education activities as proposed by the Senate instead of $3,000,000 as proposed by the House. The agreement deletes bill language proposed by the Senate specifying the amount of funding for grants to the State of Hawaii under the Drug Free Schools program. The conferees expect these funds to be allocated consistent with the provisions of Public Law 101-226.

Finally, the conference agreement provides $30,304,000 for emergency grants under the Drug Free Schools program as proposed by the Senate instead of $25,000,000 as proposed by the House.

EDUCATIONAL EXCELLENCE

(INCLUDING TRANSFER OF FUNDS)

Amendment No. 133: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *sections 329 and 330 of the Public Health Service Act (Migrant and Community Health Centers), and section 670T of the Comprehensive Child Development Act,*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement retains legislative citations inserted by the Senate modified to clarify that funds are available for migrant health centers under section 329 of the Public Health Service Act as well as Community Health Centers under section 330.

Amendment No. 134: Appropriates $425,000,000 for educational excellence activities instead of $500,000,000 as proposed by the House and $325,000,000 as proposed by the Senate. The conference agreement includes $100,000,000 for new America 2000 educational excellence activities if enacted into law prior to April 1, 1992.

Amendment No. 135: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *, not less than $55,000,000 of these funds shall be transferred to the Community and Migrant Health Centers programs, not less than $20,000,000 shall be transferred to the Comprehensive Child Development Centers and $100,000,000 shall be for new America 2000 educational excellence activities, if enacted into law: Provided further, That the December 31, 1991 deadline for enacting new authorizations for the America 2000 initiatives may be delayed by the Secretary until April 1, 1992 if he determines that sufficient progress is being made towards final approval of such legislation except that this delay shall not apply to programs*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $55,000,000 for community and migrant health centers and $20,000,000 for comprehensive child development centers as proposed by the Senate. The House bill did not include funds for these activities under the Educational Excellence account. The agreement also retains an appropriation of $250,000,000 for the Head Start program included by both the House and the Senate. The conferees do not expect any adverse effect as a result of making payments to comprehensive child development centers on July 1, 1992 as provided in the bill.

The agreement also provides that $100,000,000 of these funds will be available for new America 2000 initiatives which may be authorized during Fiscal Year 1992. The conferees have provided authority to the Secretary to delay the obligation of these funds until April 1, 1991 if he believes that sufficient progress is being made towards enactment of the necessary legislation. If legislation is not enacted into law by that date, the conferees expect these funds to be allocated among existing programs which provide direct assistance to local school districts in reaching the America 2000 education goals. The conferees direct that this distribution be restricted to national programs in which funds are distributed by statutory formula.

The conferees note the importance the arts play in enhancing the academic and creative achievement of students. The conferees therefore urge the Department of Education when funding Education Excellence activities to give consideration to programs which emphasize the visual arts, the performing arts, literature, the history and aesthetics of the arts, and the media and design arts.

BILINGUAL AND IMMIGRANT EDUCATION

Amendment No. 136: Appropriates $225,407,000 for bilingual and immigrant education instead of $249,000,000 as proposed by the House and $201,814,000 as proposed by the Senate. The conferees are agreed that $12,000,000 of these funds should be awarded under the new special competition for communities with large numbers of new immigrants.

SPECIAL EDUCATION

Amendment No. 137: Appropriates $2,854,895,000 instead of $2,822,676,000 as proposed by the House and $2,860,756,000 as proposed by the Senate.

Amendment No. 138: Earmarks $320,000,000 for preschool programs as proposed by the Senate instead of $295,920,000 as proposed by the House.

Amendment No. 139: Earmarks $143,000,000 for Chapter 1 activities instead of $135,661,000 as proposed by the House and $148,861,000 as proposed by the Senate.

The conferees note that this appropriation begins the process of merging the Chapter 1 handicapped program with programs authorized under the Individuals with Disabilities Education Act. The conferees expect the authorizing committees to address this issue during the 102nd Congress. Barring action by the authorizing committees, it is the intention of the conferees to continue the merger of these programs through the appropriation process.

The conferees are concerned that the education ombudsman program authorized in 1990 was not funded in fiscal year 1991. The conferees expect that funds will be made available for demonstration of the education ombudsman program in fiscal year 1992.

The conferees wish to clarify that the funding included in both the House and Senate bills for special education personnel development is intended for the training of administrators as well as teachers to address the needs of children with Attention Deficit Disorder.

REHABILITATION SERVICES AND DISABILITY RESEARCH

Amendment No. 140: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$2,077,158,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees intend that training grants awarded under title III, Section 304 may be used to fund the provision of technical assistance benefiting the rehabilitation personnel targeted and supported by these grants.

The conferees strongly recommend that RSA develop a technical assistance and training center for the client assistance program which will provide legal and advocacy training and support to individual client assistance programs. Such a center should be implemented by an organization that has demonstrated the necessary legal and technical expertise to fully support the program.

Amendment No. 141: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$31,103,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $31,103,000 for special demonstration projects instead of $18,368,000 as proposed by the House and $25,103,000 as proposed by the Senate.

Amendment No. 142: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *, including $6,000,000, to remain available until expended, for a grant to a hearing research center to support applied and basic research activities, which shall be awarded competitively, and $6,000,000 for grants to establish regional comprehensive head injury prevention and rehabilitation centers, which shall be awarded competitively*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 143: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the word "persons" named in said amendment, insert: *entities*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The House bill contained no similar provision.

Amendment No. 144: Deletes language proposed by the Senate that would have earmarked funds for orthotics and prosthetics training programs. The House bill included no similar provision.

The conferees recognize that skilled personnel in the profession of orthotics and prosthetics are crucial to ensure that the rehabilitation needs of disabled persons are met. In the past, the Rehabilitation Services Administration has provided funding for institutions of higher education which provide orthotics and prosthetics education.

The conferees are concerned that in recent years orthotic and prosthetic education funds have been substantially reduced. Within the increase provided to the Rehabilitation Services Administration, the conferees have provided sufficient funds to restore the amount for competitive grants to the level previously awarded.

SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

AMERICAN PRINTING HOUSE FOR THE BLIND

Amendment No. 145: Appropriates $5,900,000 instead of $5,500,000 as proposed by the House and $6,600,000 as proposed by the Senate.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

Amendment No. 146: Appropriates $39,439,000 as proposed by the Senate instead of $38,500,000 as proposed by the House. The agreement also specifies that $342,000 of this amount is for the endowment matching program as proposed by the Senate. The House bill did not include funding for the endowment program.

GALLAUDET UNIVERSITY

Amendment No. 147: Appropriates $76,540,000 as proposed by the Senate instead of $73,172,000 as proposed by the House.

Amendment No. 148: Earmarks $1,000,000 for the endowment grant program as proposed by the Senate instead of $976,000 as proposed by the House.

VOCATIONAL AND ADULT EDUCATION

Amendment No. 149: Appropriates $1,429,760,000 for vocational and adult education programs instead of $1,651,500,000 as proposed by the House and $1,333,333,000 as proposed by the Senate. The agreement deletes the citation for technology assistance grants included by the House but stricken by the Senate and includes the citation for homeless programs added by the Senate.

The conferees direct the Department to devote $500,000 of the funds provided for the National Institute for Literacy to a national center for the study of learning disabilities. The goal of this center should be to develop a battery of tests for the diagnosis of learning disabilities in adults and intervention strategies to address these disabilities.

The conference agreement includes $2,000,000 to continue model demonstration programs in the area of corrections education.

The conference agreement includes $1,000,000 under adult education national programs to support a joint initiative with the Department of Labor to fund up to two consortia for postsecondary school-to-work transition initiatives targeting minorities that are underrepresented in the scientific and health fields.

Amendment No. 150: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts language making funds for tribally controlled postsecondary schools available on October 1, 1991 instead of July 1, 1992 as provided by the House.

Amendment No. 151: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *$60,000,000 shall become available on September 30, 1992 and remain available through September 30, 1993 and*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate. The conference agreement modifies language proposed by the Senate to delay the obligation of $60,000,000 of funds until September 30, 1992 as proposed by the Senate in amendment number 9.

Amendment No. 152: Deletes language added by the Senate which would have funded vocational education employment centers authorized under title III, part G, subpart 1. Funding for this type of demonstration has been included under the regular vocational education demonstration authority.

Amendment No. 153: Earmarks $12,000,000 for vocational education research as proposed by the House instead of $10,000,000 as proposed by the Senate. The amount agreed to includes $2,000,000 for technical assistance to local school districts authorized under section 404(d) as proposed by the House.

Amendment No. 154: Restores the legislative earmark for technical assistance discussed under amendment number 153 as proposed by the House but stricken by the Senate. The amendment also earmarks $14,000,000 for vocational education demonstrations as proposed by the Senate instead of $12,000,000 as proposed by the House. The conferees are agreed that this amount is sufficient to fund all demonstration activities discussed in the House and Senate reports.

Amendment No. 135: Deletes the word "and" as proposed by the Senate.

Amendment No. 156: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: *, $5,000,000 shall be for State Literacy Resource Centers under the National Literacy Act of 1991, and $5,000,000 shall be for prison literacy activities as authorized under section 601 of the National Literacy Act of 1991, as amended by Public Law 102–103.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement earmarks $5,000,000 for literacy resource centers instead of $10,000,000 as proposed by the Senate. The House bill did not include funding for this program. The conference agreement also earmarks $5,000,000 for prison literacy activities instead of $10,000,000 as proposed by the Senate in amendment number 157. The House bill did not include funding for this purpose.

Amendment No. 157: Deletes language proposed by the Senate which would have provided a separate appropriation for prison literacy programs. The conference agreement instead earmarks these funds within the total for the Vocational and Adult Education account. (See Amendment No. 156)

STUDENT FINANCIAL ASSISTANCE

Amendment No. 158: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$62,000,000, which shall become available on September 30, 1992 and remain available through September 30, 1993, together with $6,822,880,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $6,884,880,000 instead of $6,853,000,000 as proposed by the House and $6,900,356,000 as proposed by the Senate. The conference agreement provides that $6,822,880,000 become available on a current year basis and that $62,000,000 become available on September 30, 1992 as proposed by the Senate in amendment number 9. All of these funds remain available through September 30, 1993.

The conference agreement does not include any new funds for Perkins loan teacher cancellation payments. It is the understanding of the conferees that sufficient funds are available from prior year unobligated balances to fund all 1992 requirements.

Amendment No. 159: Deletes language proposed by the Senate related to Federal programs of student financial assistance regarding certain educational programs using telecommunications as a principal method of instruction. The House bill included no similar provision.

The conferees recognize that a significant number of colleges, universities and vocational and technical institutions throughout the United States increasingly are using telecommunications to extend the reach of higher education to potential students. This form of delivery is particularly important in rural and isolated areas, but is also being used with more frequency in urban areas throughout the United States. The conferees therefore urge the Department of Education neither to initiate nor to continue any proceedings that would classify telecourses leading to recognized degrees as correspondence instruction until Congress completes action on the Higher Education Act. While this suspension will impose no burden on the department, fairness requires that colleges and universities employing telecommunications delivery be protected from the risk of real or potential retroactive liability until Congress has the opportunity to clarify the definition of telecommunications in reauthorization of the Higher Education Act.

Amendment No. 160: Deletes language proposed by the Senate which would have prohibited the award of Pell grants to incarcerated individuals. The conferees understand that this issue is currently being considered by the authorizing committees with jurisdiction over the Higher Education Act.

GUARANTEED STUDENT LOANS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

Amendment No. 161: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

(INCLUDING TRANSFER OF FUNDS)

For the costs of guaranteed loans, including administrative costs other than Federal adminis-

trative costs, as authorized by title IV, part B, of the Higher Education Act, as amended, such sums as may be necessary to carry out the purposes of the program: Provided, That such costs, including costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended. In addition, for administrative expenses to carry out the guaranteed loan program, $45,000,000. In addition to amounts appropriated in this Act for liquidation of contract authority in the "Guaranteed Student Loans (Liquidation)" account, there is also provided for payment of obligations incurred under contract authority entered into pursuant to title IV, part B, of the Higher Education Act, as amended, $1,114,748,000 which shall be transferred to the Guaranteed Student Loans (Liquidation) account.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $45,000,000 for the administration of the Guaranteed Student Loan program instead of $46,433,000 as proposed by the House and $40,000,000 as proposed by the Senate. The agreement also inserts language not included in either the House or Senate bills which provides additional funds to meet the most recent estimate of the cost of the Guaranteed Student Loan entitlement. These funds support interest subsidies and loan default costs mandated by the basic law. The total cost of these payments is now estimated at $4,220,459,000 in Fiscal Year 1992.

While no formal budget request has been submitted by the President for the Guaranteed Student Loans program account, the conferees have agreed to the most recent language submitted by the Department of Education to fund all requirements under current law. The conferees understand this indefinite authority may result in additional expenditures beyond those specified in the House and Senate reports.

HIGHER EDUCATION

Amendment No. 162: Inserts legislative citation proposed by the Senate for Urban Community Service Grants.

Amendment No. 163: Inserts legislative citation proposed by the Senate for grants to the Warren G. Magnuson Endowment.

Amendment No. 164: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$827,523,000 of which $24,000,000 shall become available on September 30, 1992 and*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides that $24,000,000 will not become available until September 30, 1992 as proposed by the Senate in amendment number 9. The conferees do not expect this to have any programmatic impact on programs other than a split payment of amounts awarded through the normal grant process.

The conferees intend that of the increases appropriated over FY 1991 for domestic activities under the International Education and Area Studies program, the bulk of the increase will be devoted to existing National Resource Centers, as specified in the House report and the Senate bill, and the remainder of the increase will be provided for Sec. 604 programs as specified in the Senate bill, and for the International Business Centers.

Amendment No. 165: Inserts language proposed by the Senate earmarking $2,000,000 of the appropriation for the Warren G. Magnuson Endowment as authorized by section 140(a) of Public Law 100-202. The House bill included no similar provision.

Amendment No. 166: Earmarks $9,642,000 for grants under section 6 of part A of title IV of the Higher Education Act as proposed by the Senate instead of $9,271,000 as proposed by the House.

Amendment No. 167: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which sets aside the limitation under title IV of the Higher Education Act related to the amount of funds which can be allocated to the Ronald E. McNair Post-Baccalaureate Achievement Program. The House bill included no similar provision.

HOWARD UNIVERSITY

Amendment No. 168: Appropriates $212,360,000 instead of $212,960,000 as proposed by the House and $199,131,000 as proposed by the Senate.

The conferees acknowledge the significant role Howard University plays in training students from Africa, the Caribbean, and other Third World countries. For this reason, the conferees encourage the Department of Education to consider the repeal of the foreign student surcharge.

Amendment No. 169: Earmarks $2,928,000 for the endowment grant program as proposed by the House instead of $4,500,000 as proposed by the Senate.

Amendment No. 170: Earmarks $23,000,000 for construction instead of $23,600,000 as proposed by the House and $2,000,000 as proposed by the Senate.

COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS

Amendment No. 171: Modifies designation of account title as proposed by the Senate.

Amendment No. 172: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which makes $30,000,000 available for new academic facilities loans in fiscal year 1992. The House bill included no similar provision.

EDUCATION RESEARCH, STATISTICS, AND IMPROVEMENT

Amendment No. 173: Deletes legislative citation for Blue Ribbon Schools proposed by the Senate.

Amendment No. 174: Inserts legislative citation for Regional Mathematics and Science Consortia proposed by the Senate.

Amendment No. 175: Inserts legislative citation for the Star Schools program as proposed by the Senate.

Amendment No. 176: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$258,684,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 177: Deletes without prejudice language proposed by the House but stricken by the Senate related to high technology schools demonstrations. (See amendment number 180.)

Amendment No. 178: Earmarks $47,313,000 for statistics activities instead of $44,313,000 as proposed by the Senate and $50,000,000 as proposed by the House.

Amendment No. 179: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$29,900,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate. This amount specifies the portion of the account available for assessment activities and adjusts the amount to include funds previously requested in the Budget under statistics.

Amendment No. 180: Earmarks $24,000,000 for the Fund for Innovation in Education instead of $27,737,000 as proposed by the Senate and $19,000,000 as proposed by the House. (See amendment number 181.)

The conferees remain supportive of efforts to establish new television programming targeted towards improving the reading and writing skills of elementary school children and support the allocation of resources for such activities.

The conferees are concerned that a limited number of grants was made through the competition for Academies for Teachers in the Five Core Disciplines and that many worthy applications were not funded. The conferees note particularly the need for teacher training efforts in severely disadvantaged areas like the lower Mississippi River Delta region. The conferees direct the Department to commit up to an additional $1,200,000 to fund worthy applications that were previously reviewed in the teacher academy competition.

The conferees reiterate their support regarding the need to provide technical assistance to local school districts attempting to restructure their elementary and secondary school systems. The conferees therefore urge the Department to fund efforts which provide leadership and technical assistance in the design, development, implementation, and evaluation of innovative educational environments.

Amendment No. 181: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken by said amendment, insert: *, including $6,000,000 for a high technology demonstration grant, including equipment, which shall be awarded competitively;*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement deletes without prejudice language proposed by the House but stricken by the Senate related to school health funds and inserts language specifying funds for the high technology demonstration program. (See Amendment No. 180.)

Amendment No. 182: Earmarks $5,495,000 for the Grants to Schools and Teachers program as proposed by the Senate instead of $5,284,000 as proposed by the House.

Amendment No. 183: Earmarks $3,755,000 for Family-School Partnerships as proposed by the Senate instead of $3,611,000 as proposed by the House.

Amendment No. 184: Earmarks $14,700,000 for the National Diffusion Network as proposed by the Senate instead of $14,000,000 as proposed by the House.

Amendment No. 185: Deletes legislative earmark proposed by the Senate related to Blue Ribbon Schools.

Amendment No. 186: Earmarks $16,000,000 for Eisenhower Math-Science activities instead of $14,000,000 as proposed by the House and $18,000,000 as proposed by the Senate.

Amendment No. 187: Specifies that $3,500,000 of the appropriation for the Eisenhower program is for a national math and science clearinghouse instead of $6,000,000 as proposed by the Senate. The agreement also provides for a separate earmark of $12,000,000 for regional math and science consortia. The House bill included no similar provisions.

Amendment No. 188: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *$18,417,000 shall be for star schools, of which $1,000,000 shall become available for obligation on September 30, 1992, and of which $4,000,000 shall be to establish a demonstration of statewide, two-way interactive fiber optic telecommunications network, carrying voice, video, and data transmissions, and housing a point of presence in every county, which shall be awarded competitively;*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The agreement specifies that $18,417,000 of the appropriation is for the Star Schools program instead of $18,404,000 as proposed by the Senate. The House bill did not include funding for the Star Schools program. The agreement also inserts language proposed by the Senate to set aside $4,000,000 of the Star Schools appropriation for a special demonstration of State-wide educational technology including two-way fiber optics telecommunications.

LIBRARIES

Amendment No. 189: Restores legislative citation proposed by the House but stricken by the Senate.

Amendment No. 190: Restores the legislative citation for title VI of the Higher Education Act proposed by the House but stricken by the Senate.

Amendment No. 191: Appropriates $147,747,000 for library programs instead of $142,747,000 as proposed by the House and $149,747,000 as proposed by the Senate.

Within the programs authorized by titles I and V of the Library Services and Construction Act, the conferees encourage the Department of Education to give high priority to enhancement of Hispanic heritage collections, particularly those focused on Puerto Rican history and culture and located in urban areas with a high concentration of Puerto Ricans.

Amendment No. 192: Inserts language proposed by the Senate providing that $2,500,000 of the appropriation for college library resources be awarded for a biotechnology demonstration program. The House bill included no similar language.

Amendment No. 193: Earmarks $16,718,000 for construction activities instead of $14,218,000 as proposed by the House and $19,218,000 as proposed by the Senate.

DEPARTMENTAL MANAGEMENT

Amendment No. 194: Appropriates $299,000,000 for program administration instead of $301,952,000 as proposed by the House and $284,008,000 as proposed by the Senate. Amendment number 218 provides for a reduction in all Departmental Management activities of $10,660,000 to be distributed by the Secretary.

The conferees have deleted the statutory requirement proposed by the Senate to increase the number of State monitoring staff under the Individuals with Disabilities Education Act. The conferees are agreed, however, that the Secretary should assign additional staff to this critical activity. The conferees direct the Department to allocate to the monitoring staff of the Office of Special Education Programs an additional nine FTEs for the purpose of monitoring State formula grants under the Individuals with Disabilities Education Act, part B. The Secretary should report to the Committees his actions in this area not later than December 31, 1991.

Amendment No. 195: Appropriates $55,000,000 for the Office for Civil Rights instead of $56,000,000 as proposed by the House and $51,691,000 as proposed by the Senate. (See Amendment No. 218.)

Amendment No. 196: Appropriates $26,932,000 for the Office of Inspector General as proposed by the House instead of $26,530,000 as proposed by the Senate. (See Amendment No. 218.)

GENERAL PROVISIONS

Amendment No. 197: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which inserts language permitting the National Commission on Financing of Postsecondary Education to accept private contributions.

Amendment No. 198: Deletes language proposed by the Senate which would have transferred certain unobligated balances at the Department of Education to the Star Schools activity. Funding for this program has been provided for under the Educational Research, Statistics, and Improvement account. (See Amendment No. 188.)

TITLE IV—RELATED AGENCIES

ACTION

OPERATING EXPENSES

Amendment No. 199: Appropriates $198,592,000 instead of $193,678,000 as proposed by the House and $201,691,000 as proposed by the Senate.

Amendment No. 200: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$32,688,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement earmarks $32,688,000 for VISTA operations instead of $32,693,000 as proposed by the House and $34,683,000 as proposed by the Senate.

Amendment No. 201: Earmarks $1,225,000 for the Action Drug Alliance Program instead of $1,000,000 as proposed by the House and $1,451,000 as proposed by the Senate.

The conferees intend that a portion of the 1991 unexpended balances together with additional funds provided in the bill be used to provide a 10 cents per hour increase for Action and non-Action funded volunteers in the Foster Grandparent and Senior Companion programs. The conferees have agreed to continue for one more year the stipend subsidies for non-Action funded volunteers which were provided last year. The conferees expect that projects will fully support the costs of these stipend increases for non-Action funded volunteers in subsequent years. Additional funds have been included for cost-of-living adjustments for projects and new national significance grants.

CORPORATION FOR PUBLIC BROADCASTING

Amendment No. 202: Appropriates $275,000,000 instead of $253,309,000 as proposed by the House and $284,000,000 as proposed by the Senate.

The conferees agree that public broadcasting should be expanded to areas of the country and audiences which are unserved or underserved. Of the total increase provided for fiscal year 1994, the conferees urge and expect the Corporation for Public Broadcasting to allocate the maximum amount that is allowable under the law to address unserved and underserved areas and audiences.

The conferees further direct CPB to ensure that no funds are distributed under subparagraph (A)(ii)(II) of section 396(k)(3) of the Communications Act of 1934 to provide programming, unless the programming uses close-captioned broadcasting or the provision of close-captioned broadcasting would cause an undue administrative or financial burden.

FEDERAL MEDIATION AND CONCILIATION SERVICE

Amendment No. 203: Deletes legal citation proposed by the Senate for the Labor-Management Cooperative Grant Program.

Amendment No. 204: Appropriates $28,118,000 as proposed by the House instead of $29,118,000 as proposed by the Senate.

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Amendment No. 205: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,750,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $1,750,000 instead of $2,000,000 as proposed by the House and $3,000,000 as proposed by the Senate.

NATIONAL COMMISSION ON CHILDREN

Amendment No. 206: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides $950,000 available through December 31, 1992, to provide final funding for the Commission. The House did not provide funding for this Commission.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Amendment No. 207: Appropriates $831,000 instead of $750,000 as proposed by the House and $911,000 as proposed by the Senate.

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Amendment No. 208: Appropriates $440,000 as proposed by the Senate instead of $390,000 as proposed by the House.

NATIONAL COUNCIL ON DISABILITY

Amendment No. 209: Appropriates $1,569,000 instead of $1,497,000 as proposed by the House and $1,642,000 as proposed by the Senate.

PHYSICIAN PAYMENT REVIEW COMMISSION

Amendment No. 210: Appropriates $4,398,000 instead of $4,300,000 as proposed by the House and $4,495,000 as proposed by the Senate.

RAILROAD RETIREMENT BOARD

DUAL BENEFITS PAYMENTS ACCOUNT

Amendment No. 211: Appropriates $319,100,000 as proposed by the Senate instead of $315,000,000 as proposed by the House.

Amendment No. 212: Deletes language proposed by the House providing that the entire appropriation shall be immediately credited to this account.

Amendment No. 213: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate

which includes language providing funding in 12 approximately equal amounts on the first day of each month in the fiscal year.

LIMITATION ON ADMINISTRATION

Amendment No. 214: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$72,287,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $72,287,000 for administrative expenses instead of $74,037,000 as proposed by the House and $73,287,000 as proposed by the Senate.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

Amendment No. 215: Appropriates $6,395,000 instead of $6,089,000 as proposed by the House and $6,700,000 as proposed by the Senate.

SOLDIERS' AND AIRMEN'S HOME

OPERATION AND MAINTENANCE

Amendment No. 216: Appropriates $41,352,000 instead of $40,581,000 as proposed by the House and $42,123,000 as proposed by the Senate.

UNITED STATES INSTITUTE OF PEACE

Amendment No. 217: Appropriates $11,000,000 instead of $8,393,000 as proposed by the House and $11,918,000 as proposed by the Senate.

TITLE V—GENERAL PROVISIONS

Amendment No. 218: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

SEC. 513. (a) Notwithstanding any other provision of this Act, funds appropriated for salaries and expenses of the Department of Labor are hereby reduced by $31,991,000; salaries and expenses of the Department of Education are hereby reduced by $10,660,000; and salaries and expenses of the Department of Health and Human Service are hereby reduced by $142,349,000, including $8,000,000 of funds appropriated in this Act for travel costs of the Public Health Service: Provided, That the reduction for travel costs shall be from the amounts set forth therefor in the budget estimates submitted for the appropriations.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement restores language proposed by the House and deleted by the Senate modified to provide for a total reduction of $185,000,000 in salaries and expenses throughout the bill, including an $8,000,000 travel reduction in the Public Health Service. The conferees are agreed that the Secretary of each Department shall have the discretion to allocate the reduction within his or her own Department.

Amendment No. 219: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

(b) Notwithstanding any other provision of this Act, there are hereby appropriated an additional $214,000 for "Salaries and expenses, Occupational Safety and Health Review Commission" and an additional $786,000 for "Salaries and expenses, Federal Mine Safety and Health Review Commission".

(c) Notwithstanding any other provision of this Act, appropriations in this Act for carrying out sections 658A through 658R of the Omnibus Budget Reconciliation Act of 1981 shall not become available for obligation until September 30, 1992.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment in the Senate.

The conference agreement provides additional funds for two small review commissions and delays the obligation of funds under the Child Care and Development Block Grant Act until September 30, 1992. The agreement deletes Senate language proposing a one percent reduction in all salaries and expenses appropriations.

DEFINITION OF PROGRAM, PROJECT AND ACTIVITY

During fiscal year 1992, for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended, the following information provides the definition of the term "program, project, and activity" for departments and agencies under the jurisdiction of the Labor, Health and Human Services, and Education and Related Agencies Subcommittees. The term "program, project, and activity", shall include the most specific level of budget items identified in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1992, the accompanying House and Senate Committee reports, the conference report and accompanying joint explanatory statement of the managers of the committee of conference.

CONFERENCE AGREEMENT

The following table displays the amounts agreed to for each program, project or activity with appropriate comparisons:

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
SUMMARY										
Title I - Department of Labor:										
Federal Funds	7,541,537,000	7,336,447,000	7,435,073,000	7,485,176,000	7,476,230,000	-65,307,000	+139,783,000	+41,157,000	-8,946,000	
Current year	(7,541,537,000)	(7,336,447,000)	(7,435,073,000)	(7,485,176,000)	(7,288,530,000)	(-253,007,000)	(-47,917,000)	(-146,543,000)	(-196,646,000)	
1993 advance	---	---	---	---	(187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	
Trust Funds	(3,345,157,000)	(3,398,136,000)	(3,512,648,000)	(3,537,331,000)	(3,509,301,000)	(+164,144,000)	(+111,165,000)	(-3,347,000)	(-28,030,000)	
Title II - Department of Health and Human Services:										
Federal Funds (all years)	151,680,827,000	165,657,345,000	167,121,817,000	168,803,583,000	168,611,962,000	+16,931,135,000	+2,954,617,000	+1,490,145,000	-191,621,000	
Current year	(130,543,893,000)	(139,119,345,000)	(139,460,825,000)	(141,142,591,000)	(140,950,970,000)	(+10,407,077,000)	(+1,831,625,000)	(+1,490,145,000)	(-191,621,000)	
1993 advance	(21,136,934,000)	(26,538,000,000)	(27,660,992,000)	(27,660,992,000)	(27,660,992,000)	(+6,524,058,000)	(+1,122,992,000)	---	---	
Trust Funds	(6,554,729,000)	(6,543,148,000)	(6,937,781,000)	(6,504,857,000)	(6,934,781,000)	(+380,052,000)	(+391,633,000)	(-3,000,000)	(+429,924,000)	
Title III - Department of Education:										
Federal Funds	22,883,520,000	26,580,972,000	28,266,159,000	27,416,427,000	27,774,312,000	+4,890,792,000	+1,193,340,000	-491,847,000	+357,885,000	
Total including Guaranteed Student Loans	(27,093,338,000)	(29,656,683,000)	(31,341,870,000)	(30,492,138,000)	(31,964,771,000)	(+4,871,433,000)	(+2,308,088,000)	(+622,901,000)	(+1,472,633,000)	
Title IV - Related Agencies:										
Federal Funds (all years)	1,079,950,000	1,036,650,000	1,030,273,000	1,070,083,000	1,057,259,000	-22,691,000	+20,609,000	+26,986,000	-12,824,000	
Current year	(761,314,000)	(776,650,000)	(776,964,000)	(786,083,000)	(782,259,000)	(+20,945,000)	(+5,609,000)	(+5,295,000)	(-3,824,000)	
1994 advance	(318,636,000)	(260,000,000)	(253,309,000)	(284,000,000)	(275,000,000)	(-43,636,000)	(+15,000,000)	(+21,691,000)	(-9,000,000)	
Trust Funds	(98,731,000)	(121,615,000)	(108,983,000)	(109,039,000)	(107,637,000)	(+8,906,000)	(-13,978,000)	(-1,346,000)	(-1,402,000)	
Total, all titles:										
Federal Funds (all years)	183,185,834,000	200,611,414,000	203,853,322,000	204,775,269,000	204,919,763,000	+21,733,929,000	+4,308,349,000	+1,066,441,000	+144,494,000	
Current year	(161,730,264,000)	(173,813,414,000)	(175,939,021,000)	(176,830,277,000)	(176,796,071,000)	(+15,065,807,000)	(+2,982,657,000)	(+857,050,000)	(-34,206,000)	
1993 advance	(21,136,934,000)	(26,538,000,000)	(27,660,992,000)	(27,660,992,000)	(27,848,692,000)	(+6,711,758,000)	(+1,310,692,000)	(+187,700,000)	(+187,700,000)	
1994 advance	(318,636,000)	(260,000,000)	(253,309,000)	(284,000,000)	(275,000,000)	(-43,636,000)	(+15,000,000)	(+21,691,000)	(-9,000,000)	
Trust Funds	(9,998,617,000)	(10,062,899,000)	(10,559,412,000)	(10,151,227,000)	(10,551,719,000)	(+553,102,000)	(+488,820,000)	(-7,693,000)	(+400,492,000)	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
TITLE I - DEPARTMENT OF LABOR										
EMPLOYMENT AND TRAINING ADMINISTRATION										
PROGRAM ADMINISTRATION										
Job training programs	19,884,000	21,528,000	21,528,000	21,528,000	21,528,000	+1,644,000	---	---	---	D
Trust funds	(2,118,000)	(2,179,000)	(2,179,000)	(2,179,000)	(2,179,000)	(+61,000)	---	---	---	TF*
Employment security	316,000	442,000	442,000	442,000	442,000	+126,000	---	---	---	D
Trust funds	(12,611,000)	(13,472,000)	(13,472,000)	(13,472,000)	(13,472,000)	(+861,000)	---	---	---	TF*
Financial and administrative management	13,343,000	14,502,000	14,502,000	14,502,000	14,502,000	+1,159,000	---	---	---	D
Trust funds	(10,075,000)	(10,686,000)	(10,686,000)	(10,686,000)	(10,686,000)	(+611,000)	---	---	---	TF*
Executive direction and administration	4,376,000	5,031,000	5,031,000	4,376,000	4,376,000	---	-655,000	-655,000	---	D
Trust funds	(3,870,000)	(4,047,000)	(4,047,000)	(3,870,000)	(3,870,000)	---	(-177,000)	(-177,000)	---	TF*
Regional operations	15,215,000	16,132,000	16,132,000	16,132,000	16,132,000	+917,000	---	---	---	D
Trust funds	(24,319,000)	(26,745,000)	(26,745,000)	(26,745,000)	(26,745,000)	(+2,426,000)	---	---	---	TF*
Apprenticeship services	16,051,000	16,553,000	16,553,000	17,000,000	17,000,000	+949,000	+447,000	+447,000	---	D
Total, Program Administration	122,178,000	131,317,000	131,317,000	130,932,000	130,932,000	+8,754,000	-385,000	-385,000	---	
Federal funds	69,185,000	74,188,000	74,188,000	73,980,000	73,980,000	+4,795,000	-208,000	-208,000	---	
Trust funds	(52,993,000)	(57,129,000)	(57,129,000)	(56,952,000)	(56,952,000)	(+3,959,000)	(-177,000)	(-177,000)	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
TRAINING AND EMPLOYMENT SERVICES										
Grants to States:										
Block grant	1,778,484,000	1,778,484,000	1,773,484,000	1,773,484,000	1,773,484,000	-5,000,000	-5,000,000	---	---	D
Summer youth employment and training program	682,912,000	682,912,000	682,912,000	682,912,000	495,212,000	-187,700,000	-187,700,000	-187,700,000	-187,700,000	D
Advance appropriation, FY93	---	---	---	---	187,700,000	+187,700,000	+187,700,000	+187,700,000	+187,700,000	D
Dislocated worker assistance	526,986,000	526,986,000	576,986,000	576,986,000	576,986,000	+50,000,000	+50,000,000	---	---	D
Federally administered programs:										
Native Americans	59,625,000	58,690,000	59,625,000	64,000,000	63,000,000	+3,375,000	+4,310,000	+3,375,000	-1,000,000	D
Migrants and seasonal farmworkers	70,288,000	56,911,000	75,288,000	80,000,000	77,644,000	+7,356,000	+20,733,000	+2,356,000	-2,356,000	D
Job Corps:										
Operations	800,238,000	837,033,000	846,033,000	847,033,000	846,533,000	+46,295,000	+9,500,000	+500,000	-500,000	D
Construction and renovation	67,259,000	50,464,000	52,464,000	80,464,000	73,000,000	+5,741,000	+22,536,000	+20,536,000	-7,464,000	D
Subtotal, Job Corps	867,497,000	887,497,000	898,497,000	927,497,000	919,533,000	+52,036,000	+32,036,000	+21,036,000	-7,964,000	
Veterans' employment	9,120,000	8,792,000	9,120,000	9,120,000	9,120,000	---	+328,000	---	---	D
National activities:										
Pilots and demonstrations	36,216,000	27,753,000	27,753,000	38,753,000	35,753,000	-463,000	+8,000,000	+8,000,000	-3,000,000	D
Research, demonstration and evaluation	12,927,000	10,000,000	10,000,000	11,927,000	10,000,000	-2,927,000	---	---	-1,927,000	D
Other	22,673,000	13,706,000	16,706,000	25,606,000	23,606,000	+933,000	+9,900,000	+6,900,000	-2,000,000	D
Subtotal, National activities	71,816,000	51,459,000	54,459,000	76,286,000	69,359,000	-2,457,000	+17,900,000	+14,900,000	-6,927,000	
Subtotal, Federal activities	1,078,346,000	1,063,349,000	1,096,989,000	1,156,903,000	1,138,656,000	+60,310,000	+75,307,000	+41,667,000	-18,247,000	
Total, Job Training Partnership Act	4,066,728,000	4,051,731,000	4,130,371,000	4,190,285,000	4,172,038,000	+105,310,000	+120,307,000	+41,667,000	-18,247,000	
Job training for the homeless	11,223,000	---	7,400,000	11,223,000	9,312,000	-1,911,000	+9,312,000	+1,912,000	-1,911,000	D
Total, Training and Employment Services	4,077,951,000	4,051,731,000	4,137,771,000	4,201,508,000	4,181,350,000	+103,399,000	+129,619,000	+43,579,000	-20,158,000	
Current year	(4,077,951,000)	(4,051,731,000)	(4,137,771,000)	(4,201,508,000)	(3,993,650,000)	(-84,301,000)	(-58,081,000)	(-144,121,000)	(-207,858,000)	
FY 1993	---	---	---	---	(187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS										
National contracts	304,481,000	267,395,000	304,481,000	312,000,000	308,241,000	+3,760,000	+40,846,000	+3,760,000	-3,759,000	D
State grants	85,879,000	75,419,000	85,879,000	88,000,000	86,940,000	+1,061,000	+11,521,000	+1,061,000	-1,060,000	D
Total	390,360,000	342,814,000	390,360,000	400,000,000	395,181,000	+4,821,000	+52,367,000	+4,821,000	-4,819,000	
FEDERAL UNEMPLOYMENT AND ALLOWANCES										
Trade adjustment	269,000,000	226,000,000	226,000,000	226,000,000	226,000,000	-43,000,000	---	---	---	M
Other activities	500,000	250,000	250,000	250,000	250,000	-250,000	---	---	---	M
Total	269,500,000	226,250,000	226,250,000	226,250,000	226,250,000	-43,250,000	---	---	---	
STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS										
Unemployment Compensation (Trust Funds):										
State Operations	(1,458,435,000)	(1,510,973,000)	(1,510,973,000)	(1,510,973,000)	(1,510,973,000)	(+52,538,000)	---	---	---	TF*
State integrity activities	(278,249,000)	(304,723,000)	(304,723,000)	(304,723,000)	(290,723,000)	(+12,474,000)	(-14,000,000)	(-14,000,000)	(-14,000,000)	TF*
National Activities	(6,213,000)	(6,486,000)	(6,486,000)	(6,486,000)	(6,486,000)	(+273,000)	---	---	---	TF*
Contingency	(391,544,000)	(440,703,000)	(440,703,000)	(440,703,000)	(440,703,000)	(+49,159,000)	---	---	---	TF*
Subtotal, Unemployment Compensation(trust funds)	(2,134,441,000)	(2,262,885,000)	(2,262,885,000)	(2,262,885,000)	(2,248,885,000)	(+114,444,000)	(-14,000,000)	(-14,000,000)	(-14,000,000)	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
Employment Service:										
Allotments to States:										
Federal funds	21,177,000	22,500,000	21,177,000	22,500,000	21,838,000	+661,000	-662,000	+661,000	-662,000	D
Trust funds	(783,940,000)	(727,500,000)	(783,940,000)	(815,600,000)	(799,770,000)	(+15,830,000)	(+72,270,000)	(+15,830,000)	(-15,830,000)	TF*
Subtotal	805,117,000	750,000,000	805,117,000	838,100,000	821,608,000	+16,491,000	+71,608,000	+16,491,000	-16,492,000	
National Activities:										
Federal funds	3,806,000	2,200,000	2,200,000	2,200,000	2,200,000	-1,606,000	---	---	---	D
Trust funds 1/	(56,114,000)	(72,500,000)	(85,000,000)	(80,000,000)	(80,000,000)	(+23,886,000)	(+7,500,000)	(-5,000,000)	---	TF*
Targeted jobs tax credit	(19,518,000)	(20,000,000)	(20,000,000)	(20,000,000)	(20,000,000)	(+482,000)	---	---	---	TF*
Subtotal, Employment Service	884,555,000	844,700,000	912,317,000	940,300,000	923,808,000	+39,253,000	+79,108,000	+11,491,000	-16,492,000	
Federal funds	24,983,000	24,700,000	23,377,000	24,700,000	24,038,000	-945,000	-662,000	+661,000	-662,000	
Trust funds	(859,572,000)	(820,000,000)	(888,940,000)	(915,600,000)	(899,770,000)	(+40,198,000)	(+79,770,000)	(+10,830,000)	(-15,830,000)	
Total, State Unemployment 2/	3,018,996,000	3,107,585,000	3,175,202,000	3,203,185,000	3,172,693,000	+153,697,000	+65,108,000	-2,509,000	-30,492,000	
Federal Funds	24,983,000	24,700,000	23,377,000	24,700,000	24,038,000	-945,000	-662,000	+661,000	-662,000	
Trust Funds	(2,994,013,000)	(3,082,885,000)	(3,151,825,000)	(3,178,485,000)	(3,148,655,000)	(+154,642,000)	(+65,770,000)	(-3,170,000)	(-29,830,000)	
ADVANCES TO UNEMPLOYMENT TRUST FUND AND OTHER FUNDS	328,000,000	236,990,000	236,990,000	236,990,000	236,990,000	-91,010,000	---	---	---	M
Total, Employment & Training Administration	8,206,985,000	8,096,687,000	8,297,890,000	8,398,865,000	8,343,396,000	+136,411,000	+246,709,000	+45,506,000	-55,469,000	
Federal funds	5,159,979,000	4,956,673,000	5,088,936,000	5,163,428,000	5,137,789,000	-22,190,000	+181,116,000	+48,853,000	-25,639,000	
Current year	(5,159,979,000)	(4,956,673,000)	(5,088,936,000)	(5,163,428,000)	(4,950,089,000)	(-209,890,000)	(-6,584,000)	(-138,847,000)	(-213,339,000)	
FY 1993	---	---	---	---	(187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	
Trust funds	(3,047,006,000)	(3,140,014,000)	(3,208,954,000)	(3,235,437,000)	(3,205,607,000)	(+158,601,000)	(+65,593,000)	(-3,347,000)	(-29,830,000)	

1/ FY 1991 total for computer operations not available for obligation until Oct. 1, 1991. House & Senate bills include $12,500,000 for computer operations, not available for obligation until 9/30/92.

2/ Includes Federal, Trust and advance Trust funds.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
LABOR - MANAGEMENT SERVICES										
SALARIES AND EXPENSES										
Labor-management relations service	5,733,000	5,526,000	5,526,000	5,526,000	5,526,000	-207,000	---	---	---	D
Labor-management standards enforcement	25,238,000	26,530,000	26,530,000	26,530,000	26,530,000	+1,292,000	---	---	---	D
Pension and welfare benefit programs	56,405,000	63,784,000	63,784,000	62,784,000	63,284,000	+6,879,000	-500,000	-500,000	+500,000	D
Total, LMSA	87,376,000	95,840,000	95,840,000	94,840,000	95,340,000	+7,964,000	-500,000	-500,000	+500,000	
PENSION BENEFIT GUARANTY CORPORATION										
Program Administration subject to limitation (Trust Funds)	(41,641,000)	(47,787,000)	(47,787,000)	(47,787,000)	(47,787,000)	(+6,146,000)	---	---	---	TF
Services related to terminations not subject to limitations (Trust Funds)	(27,773,000)	(25,025,000)	(25,025,000)	(25,025,000)	(25,025,000)	(-2,748,000)	---	---	---	TF
Total, PBGC (trust funds)	(69,414,000)	(72,812,000)	(72,812,000)	(72,812,000)	(72,812,000)	(+3,398,000)	---	---	---	
EMPLOYMENT STANDARDS ADMINISTRATION										
SALARIES AND EXPENSES										
Enforcement of wage and hour standards	91,295,000	97,336,000	97,336,000	96,586,000	96,586,000	+5,291,000	-750,000	-750,000	---	D
Federal contractor EEO standards enforcement	52,585,000	55,909,000	55,909,000	55,909,000	55,909,000	+3,324,000	---	---	---	D
Federal programs for workers' compensation	60,427,000	67,985,000	67,985,000	67,985,000	67,985,000	+7,558,000	---	---	---	D
Trust funds	(992,000)	(1,035,000)	(1,035,000)	(1,035,000)	(1,035,000)	(+43,000)	---	---	---	TF
Executive direction and support services	10,846,000	11,396,000	11,396,000	10,846,000	10,846,000	---	-550,000	-550,000	---	D
Total, salaries and expenses	216,145,000	233,661,000	233,661,000	232,361,000	232,361,000	+16,216,000	-1,300,000	-1,300,000	---	
Federal funds	215,153,000	232,626,000	232,626,000	231,326,000	231,326,000	+16,173,000	-1,300,000	-1,300,000	---	
Trust funds	(992,000)	(1,035,000)	(1,035,000)	(1,035,000)	(1,035,000)	(+43,000)	---	---	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
SPECIAL BENEFITS										
Federal employees compensation benefits...............	318,000,000	188,000,000	188,000,000	188,000,000	188,000,000	-130,000,000	---	---	---	M
Longshore and harbor workers' benefits................	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	---	---	---	---	M
Total, Special Benefits.........................	322,000,000	192,000,000	192,000,000	192,000,000	192,000,000	-130,000,000	---	---	---	
BLACK LUNG DISABILITY TRUST FUND										
Benefit payments and interest on advances...........	866,019,000	861,135,000	861,135,000	861,135,000	861,135,000	-4,884,000	---	---	---	M
Employment Standards Admin., salaries & expenses......	28,900,000	30,145,000	30,145,000	30,145,000	30,145,000	+1,245,000	---	---	---	M
Departmental Management, salaries and expenses........	23,171,000	25,579,000	25,579,000	25,579,000	25,579,000	+2,408,000	---	---	---	M
Departmental Management, inspector general............	371,000	333,000	333,000	333,000	333,000	-38,000	---	---	---	M
Subtotal, Black Lung Disablty. Trust Fund, apprn	918,461,000	917,192,000	917,192,000	917,192,000	917,192,000	-1,269,000	---	---	---	
Treasury administrative costs (indefinite)...........	756,000	756,000	756,000	756,000	756,000	---	---	---	---	M
Total, Black Lung Disability Trust Fund.........	919,217,000	917,948,000	917,948,000	917,948,000	917,948,000	-1,269,000	---	---	---	
Total, Employment Standards Administration......	1,457,362,000	1,343,609,000	1,343,609,000	1,342,309,000	1,342,309,000	-115,053,000	-1,300,000	-1,300,000	---	
Federal funds..................................	1,456,370,000	1,342,574,000	1,342,574,000	1,341,274,000	1,341,274,000	-115,096,000	-1,300,000	-1,300,000	---	
Trust funds....................................	(992,000)	(1,035,000)	(1,035,000)	(1,035,000)	(1,035,000)	(+43,000)	---	---	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs				Mand
						FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION										
SALARIES AND EXPENSES										
Safety and health standards..........................	7,620,000	8,078,000	8,078,000	8,078,000	8,078,000	+458,000	---	---	---	D
Enforcement:										
Federal Enforcement..............................	123,935,000	133,508,000	133,508,000	134,008,000	134,008,000	+10,073,000	+500,000	+500,000	---	D
State programs....................................	63,731,000	66,344,000	66,344,000	66,344,000	66,344,000	+2,613,000	---	---	---	D
Technical Support....................................	16,684,000	17,708,000	17,708,000	17,708,000	17,708,000	+1,024,000	---	---	---	D
Compliance Assistance................................	37,370,000	38,942,000	38,942,000	41,942,000	40,692,000	+3,322,000	+1,750,000	+1,750,000	-1,250,000	D
Safety and health statistics.........................	29,116,000	30,390,000	30,390,000	30,390,000	30,390,000	+1,274,000	---	---	---	D
Executive direction and administration...............	6,737,000	7,137,000	7,137,000	6,737,000	6,937,000	+200,000	-200,000	-200,000	+200,000	D
Total, OSHA....................................	285,193,000	302,107,000	302,107,000	305,207,000	304,157,000	+18,964,000	+2,050,000	+2,050,000	-1,050,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
MINE SAFETY AND HEALTH ADMINISTRATION										
SALARIES AND EXPENSES										
Enforcement:										
Coal	87,338,000	94,750,000	94,750,000	95,100,000	95,100,000	+7,762,000	+350,000	+350,000	---	D
Metal/nonmetal	35,223,000	37,718,000	37,718,000	37,718,000	37,718,000	+2,495,000	---	---	---	D
Standards development	1,363,000	1,516,000	1,516,000	1,516,000	1,516,000	+153,000	---	---	---	D
Assessments	2,313,000	2,455,000	2,455,000	2,455,000	2,455,000	+142,000	---	---	---	D
Educational policy and development	14,953,000	14,152,000	14,152,000	15,152,000	14,152,000	-801,000	---	---	-1,000,000	D
Technical support	20,563,000	21,322,000	21,322,000	21,615,000	21,615,000	+1,052,000	+293,000	+293,000	---	D
Program administration	11,808,000	14,244,000	14,244,000	11,808,000	12,808,000	+1,000,000	-1,436,000	-1,436,000	+1,000,000	D
Total, Mine Safety and Health Administration	173,561,000	186,157,000	186,157,000	185,364,000	185,364,000	+11,803,000	-793,000	-793,000	---	
BUREAU OF LABOR STATISTICS										
SALARIES AND EXPENSES										
Employment and Unemployment Statistics	67,159,000	85,709,000	85,709,000	75,549,000	85,709,000	+18,550,000	---	---	+10,160,000	D
Labor Market Information (Trust Funds)	(51,488,000)	(50,399,000)	(50,399,000)	(48,599,000)	(50,399,000)	(-1,089,000)	---	---	(+1,800,000)	TF*
Prices and cost of living	74,336,000	85,000,000	85,000,000	80,960,000	85,000,000	+10,664,000	---	---	+4,040,000	D
Wages and industrial relations	25,738,000	45,216,000	45,216,000	29,366,000	45,216,000	+19,478,000	---	---	+15,850,000	D
Productivity and technology	5,699,000	6,316,000	6,316,000	6,316,000	6,316,000	+617,000	---	---	---	D
Economic growth and employment projections	3,479,000	3,844,000	3,844,000	3,844,000	3,844,000	+365,000	---	---	---	D
Executive direction and staff services	27,258,000	32,419,000	32,419,000	27,258,000	30,839,000	+3,581,000	-1,580,000	-1,580,000	+3,581,000	D
Total, Bureau of Labor Statistics	255,157,000	308,903,000	308,903,000	271,892,000	307,323,000	+52,166,000	-1,580,000	-1,580,000	+35,431,000	
Federal Funds	203,669,000	258,504,000	258,504,000	223,293,000	256,924,000	+53,255,000	-1,580,000	-1,580,000	+33,631,000	
Trust Funds	(51,488,000)	(50,399,000)	(50,399,000)	(48,599,000)	(50,399,000)	(-1,089,000)	---	---	(+1,800,000)	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
DEPARTMENTAL MANAGEMENT										
SALARIES AND EXPENSES										
Executive direction	21,419,000	27,911,000	24,911,000	21,419,000	21,419,000	---	-6,492,000	-3,492,000	---	D
Transfer from ADAMHA for employee assistance	---	---	---	(2,000,000)	---	---	---	---	(-2,000,000)	NA
Legal services	52,722,000	58,588,000	58,588,000	56,985,000	57,786,000	+5,064,000	-802,000	-802,000	+801,000	D
Trust funds	(278,000)	(332,000)	(332,000)	(332,000)	(332,000)	(+54,000)	---	---	---	TF*
International labor affairs	6,572,000	7,284,000	7,284,000	7,284,000	7,284,000	+712,000	---	---	---	D
Administration and management	20,209,000	21,812,000	21,175,000	21,812,000	21,494,000	+1,285,000	-318,000	+319,000	-318,000	D
Adjudication	14,603,000	16,187,000	16,187,000	16,187,000	16,187,000	+1,584,000	---	---	---	D
Promoting employment of the disabled	4,077,000	4,078,000	4,078,000	4,740,000	4,409,000	+332,000	+331,000	+331,000	-331,000	D
Women's Bureau	7,413,000	7,562,000	7,562,000	8,319,000	7,940,000	+527,000	+378,000	+378,000	-379,000	D
Civil Rights Activities	4,338,000	4,534,000	4,534,000	4,534,000	4,534,000	+196,000	---	---	---	D
Undistributed	---	---	---	-1,600,000	---	---	---	---	+1,600,000	D
Total, Salaries and expenses	131,631,000	148,288,000	144,651,000	140,012,000	141,385,000	+9,754,000	-6,903,000	-3,266,000	+1,373,000	
Federal funds	131,353,000	147,956,000	144,319,000	139,680,000	141,053,000	+9,700,000	-6,903,000	-3,266,000	+1,373,000	
Trust funds	(278,000)	(332,000)	(332,000)	(332,000)	(332,000)	(+54,000)	---	---	---	
VETERANS EMPLOYMENT AND TRAINING										
State Administration:										
Disabled Veterans Outreach Program	(77,170,000)	(34,910,000)	(79,170,000)	(79,170,000)	(79,170,000)	(+2,000,000)	(+44,260,000)	---	---	TF*
Local Veterans Employment Program	(71,095,000)	(74,223,000)	(73,095,000)	(73,095,000)	(73,095,000)	(+2,000,000)	(-1,128,000)	---	---	TF*
Subtotal, State Administration	(148,265,000)	(109,133,000)	(152,265,000)	(152,265,000)	(152,265,000)	(+4,000,000)	(+43,132,000)	---	---	
Federal Administration	(21,180,000)	(20,054,000)	(20,054,000)	(20,054,000)	(20,054,000)	(-1,126,000)	---	---	---	TF*
National Veterans Training Institute	(2,440,000)	---	(2,440,000)	(2,440,000)	(2,440,000)	---	(+2,440,000)	---	---	TF*
Total, Trust Funds	(171,885,000)	(129,187,000)	(174,759,000)	(174,759,000)	(174,759,000)	(+2,874,000)	(+45,572,000)	---	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
OFFICE OF THE INSPECTOR GENERAL										
Audit:										
Federal funds	20,693,000	20,673,000	20,673,000	20,673,000	20,673,000	-20,000	---	---	---	D
Trust funds	(3,784,000)	(4,023,000)	(4,023,000)	(4,023,000)	(4,023,000)	(+239,000)	---	---	---	TF*
Investigation:										
Federal funds	7,729,000	8,245,000	8,245,000	8,245,000	8,245,000	+516,000	---	---	---	D
Trust funds	(310,000)	(334,000)	(334,000)	(334,000)	(334,000)	(+24,000)	---	---	---	TF*
Office of Labor Racketeering	10,495,000	11,322,000	11,322,000	11,322,000	11,322,000	+827,000	---	---	---	D
Executive Direction and Management	5,119,000	6,396,000	6,396,000	5,119,000	6,080,000	+961,000	-316,000	-316,000	+961,000	D
Total, Office of the Inspector General	48,130,000	50,993,000	50,993,000	49,716,000	50,677,000	+2,547,000	-316,000	-316,000	+961,000	
Federal funds	44,036,000	46,636,000	46,636,000	45,359,000	46,320,000	+2,284,000	-316,000	-316,000	+961,000	
Trust funds	(4,094,000)	(4,357,000)	(4,357,000)	(4,357,000)	(4,357,000)	(+263,000)	---	---	---	
Total, Departmental Management	351,646,000	328,468,000	370,403,000	364,487,000	366,821,000	+15,175,000	+38,353,000	-3,582,000	+2,334,000	
Federal funds	175,389,000	194,592,000	190,955,000	185,039,000	187,373,000	+11,984,000	-7,219,000	-3,582,000	+2,334,000	
Trust funds	(176,257,000)	(133,876,000)	(179,448,000)	(179,448,000)	(179,448,000)	(+3,191,000)	(+45,572,000)	---	---	
Undistributed salaries and expenses reduction	---	---	-30,000,000	-13,269,000	-31,991,000	-31,991,000	-31,991,000	-1,991,000	-18,722,000	D
Total, Labor Department 1/	10,886,694,000	10,734,583,000	10,947,721,000	11,022,507,000	10,985,531,000	+98,837,000	+250,948,000	+37,810,000	-36,976,000	
Federal funds	7,541,537,000	7,336,447,000	7,435,073,000	7,485,176,000	7,476,230,000	-65,307,000	+139,783,000	+41,157,000	-8,946,000	
Current year	(7,541,537,000)	(7,336,447,000)	(7,435,073,000)	(7,485,176,000)	(7,288,530,000)	(-253,007,000)	(-47,917,000)	(-146,543,000)	(-196,646,000)	
FY 1993	---	---	---	---	(187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	
Trust funds	(3,345,157,000)	(3,398,136,000)	(3,512,648,000)	(3,537,331,000)	(3,509,301,000)	(+164,144,000)	(+111,165,000)	(-3,347,000)	(-28,030,000)	

1/ Includes Federal and Trust funds.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
TITLE II - DEPARTMENT OF HEALTH AND HUMAN SERVICES										
HEALTH RESOURCES AND SERVICES ADMINISTRATION										
HEALTH RESOURCES AND SERVICES 1/										
Health Care Delivery and Assistance:										
Community health centers..........................	478,191,000	478,191,000	478,191,000	478,191,000	478,191,000	---	---	---	---	D
Transfer from "Educational excellence".........	---	---	---	(49,000,000)	(49,000,000)	(+49,000,000)	(+49,000,000)	(+49,000,000)	---	NA
Subtotal, Community Health Centers..........	(478,191,000)	(478,191,000)	(478,191,000)	(527,191,000)	(527,191,000)	(+49,000,000)	(+49,000,000)	(+49,000,000)	---	
HUD health service grants.........................	3,416,000	3,000,000	7,500,000	4,692,000	6,096,000	+2,680,000	+3,096,000	-1,404,000	+1,404,000	D
Targeted infant mortality initiative:										
Healthy start................................	25,000,000	138,659,000	69,330,000	25,000,000	40,000,000	+15,000,000	-98,659,000	-29,330,000	+15,000,000	D
Additional appropriation 9/30/92..........	---	---	---	50,000,000	25,000,000	+25,000,000	+25,000,000	+25,000,000	-25,000,000	D
Community health centers.....................	---	---	69,329,000	---	10,000,000	+10,000,000	+10,000,000	-59,329,000	+10,000,000	D
Subtotal....................................	25,000,000	138,659,000	138,659,000	75,000,000	75,000,000	+50,000,000	-63,659,000	-63,659,000	---	
Total, Community Health Services...............	506,607,000	619,850,000	624,350,000	557,883,000	559,287,000	+52,680,000	-60,563,000	-65,063,000	+1,404,000	
Migrant health....................................	51,723,000	51,723,000	51,723,000	53,700,000	51,723,000	---	---	---	-1,977,000	D
Transfer from "Educational excellence".........	---	---	---	(6,000,000)	(6,000,000)	(+6,000,000)	(+6,000,000)	(+6,000,000)	---	NA
Subtotal, Migrant Health Centers............	(51,723,000)	(51,723,000)	(51,723,000)	(59,700,000)	(57,723,000)	(+6,000,000)	(+6,000,000)	(+6,000,000)	(-1,977,000)	
Black lung clinics................................	3,708,000	3,708,000	3,708,000	4,000,000	4,000,000	+292,000	+292,000	+292,000	---	D
Health care for the homeless......................	39,036,000	63,041,000	51,000,000	61,041,000	56,021,000	+16,985,000	-7,020,000	+5,021,000	-5,020,000	D
Family planning...................................	144,311,000	150,000,000	---	162,000,000	150,000,000	+5,689,000	---	+150,000,000	-12,000,000	D

1/ Budget and House bill include delayed obligation of $86,000,000 until Sept. 19, 1992. Senate delays until 9/30/92 through 10/30/92. Conference agreement assumes a total of $125,000,000 of delayed obligations until 9/30/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
National Health Service Corps:										
Field placements	42,256,000	42,256,000	42,256,000	42,256,000	42,256,000	---	---	---	---	D
Loans and scholarships	48,795,000	53,795,000	58,795,000	58,795,000	58,795,000	+10,000,000	+5,000,000	---	---	D
Subtotal, Natl Health Service Corps	91,051,000	96,051,000	101,051,000	101,051,000	101,051,000	+10,000,000	+5,000,000	---	---	
Hansen's Disease services (Carville)	19,792,000	19,489,000	19,489,000	19,489,000	19,489,000	-303,000	---	---	---	D
Payment to Hawaii, treatment of Hansen's Disease	3,383,000	3,000,000	3,000,000	3,000,000	3,000,000	-383,000	---	---	---	D
Home health demonstration grants	2,928,000	---	---	2,900,000	2,900,000	-28,000	+2,900,000	+2,900,000	---	D
Alzheimer's care grants	---	---	---	5,000,000	4,000,000	+4,000,000	+4,000,000	+4,000,000	-1,000,000	D
Trauma care	---	---	---	10,000,000	5,000,000	+5,000,000	+5,000,000	+5,000,000	-5,000,000	D
Undistributed	---	---	---	-12,900,000	---	---	---	---	+12,900,000	D
Total, Health Care Delivery & Assistance	862,539,000	1,006,862,000	854,321,000	967,164,000	956,471,000	+93,932,000	-50,391,000	+102,150,000	-10,693,000	
Health Professions:										
Exceptional need scholarships	9,759,000	10,400,000	9,759,000	9,759,000	9,759,000	---	-641,000	---	- ---	D
Minority centers of excellence	14,151,000	14,920,000	27,920,000	14,140,000	24,140,000	+9,989,000	+9,220,000	-3,780,000	+10,000,000	D
Public health special projects	3,757,000	---	3,757,000	4,557,000	4,307,000	+550,000	+4,307,000	+550,000	-250,000	D
Health administration grants	1,554,000	---	1,554,000	1,554,000	1,554,000	---	+1,554,000	---	---	D
Public health traineeships	3,416,000	---	3,416,000	3,416,000	3,416,000	---	+3,416,000	---	---	D
Health administration traineeships	484,000	---	484,000	484,000	484,000	---	+484,000	---	---	D
Preventive medicine residencies	1,654,000	---	1,654,000	1,654,000	1,654,000	---	+1,654,000	---	---	D
Family medicine residencies	36,108,000	---	36,108,000	32,000,000	36,108,000	---	+36,108,000	---	+4,108,000	D
General dentistry residencies	3,834,000	---	3,834,000	3,834,000	3,834,000	---	+3,834,000	---	---	D
General internal medicine and pediatrics	17,256,000	---	17,256,000	16,250,000	17,256,000	---	+17,256,000	---	+1,006,000	D
Family medicine departments	6,831,000	---	6,831,000	6,400,000	6,831,000	---	+6,831,000	---	+431,000	D
Physician assistants	5,021,000	---	5,021,000	5,021,000	5,021,000	---	+5,021,000	---	---	D
Area health education centers	19,237,000	---	19,237,000	19,237,000	19,237,000	---	+19,237,000	---	---	D

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
Health education and training centers............	3,904,000	---	3,904,000	3,904,000	3,904,000	---	+3,904,000	---	---	D
Health professions date analysis.................	1,762,000	---	1,762,000	1,762,000	1,762,000	---	+1,762,000	---	---	D
Disadvantaged assistance.........................	30,817,000	32,841,000	30,817,000	30,817,000	30,817,000	---	-2,024,000	---	---	D
Disadvantaged minority health improvement.........	10,734,000	10,734,000	23,234,000	10,734,000	20,000,000	+9,266,000	+9,266,000	-3,234,000	+9,266,000	D
Minority HPSL initiative..........................	2,928,000	15,000,000	15,000,000	14,928,000	14,964,000	+12,036,000	-36,000	-36,000	+36,000	D
Allied health grants and contracts................	1,659,000	---	1,659,000	4,000,000	2,830,000	+1,171,000	+2,830,000	+1,171,000	-1,170,000	D
Interdisciplinary traineeships....................	4,392,000	---	4,392,000	5,000,000	4,696,000	+304,000	+4,696,000	+304,000	-304,000	D
Health professions spec ed initiatives............	2,398,000	---	2,398,000	2,398,000	2,398,000	---	+2,398,000	---	---	D
Geriatric centers and training....................	13,708,000	---	13,708,000	13,708,000	13,708,000	---	+13,708,000	---	---	D
Pacific Basin activities (including Medical officer training)..............................	2,440,000	---	2,440,000	2,608,000	2,560,000	+120,000	+2,560,000	+120,000	-48,000	D
Native Hawaiian health care.......................	3,416,000	---	3,416,000	3,600,000	3,600,000	+184,000	+3,600,000	+184,000	---	D
National practitioner data bank...................	1,926,000	5,000,000	7,000,000	5,000,000	6,000,000	+4,074,000	+1,000,000	-1,000,000	+1,000,000	D
User fees....................................	---	-5,000,000	-5,000,000	-5,000,000	-5,000,000	-5,000,000	---	---	---	D
Nurse training:										
Advanced nurse education......................	12,463,000	---	12,463,000	12,463,000	12,463,000	---	+12,463,000	---	---	D
Nurse practitioners / nurse midwives..........	14,639,000	---	14,639,000	14,639,000	14,639,000	---	+14,639,000	---	---	D
Special projects..............................	10,532,000	---	10,532,000	11,000,000	11,000,000	+468,000	+11,000,000	+468,000	---	D
Traineeships..................................	13,664,000	---	13,664,000	14,151,000	14,151,000	+487,000	+14,151,000	+487,000	---	D
Nurse anesthetists............................	1,430,000	---	1,430,000	1,930,000	1,930,000	+500,000	+1,930,000	+500,000	---	D
Undergraduate scholarships....................	2,380,000	---	2,380,000	2,380,000	2,380,000	---	+2,380,000	---	---	D
Loan repayment for shortage area service......	1,455,000	---	1,455,000	1,455,000	1,455,000	---	+1,455,000	---	---	D
Nurse disadvantaged assistance................	3,416,000	4,160,000	3,416,000	3,416,000	3,416,000	---	-744,000	---	---	D
Subtotal, Nurse training....................	59,979,000	4,160,000	59,979,000	61,434,000	61,434,000	+1,455,000	+57,274,000	+1,455,000	---	
Total, Health professions......................	263,125,000	88,055,000	301,540,000	273,199,000	297,274,000	+34,149,000	+209,219,000	-4,266,000	+24,075,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
MCH and Resources Development:										
Maternal & child health block grant...............	587,310,000	553,627,000	580,000,000	686,000,000	650,000,000	+62,690,000	+96,373,000	+70,000,000	-36,000,000	D
Pediatric emergency care.........................	4,880,000	---	4,880,000	4,880,000	4,880,000	---	+4,880,000	---	---	D
Organ transplantation............................	3,723,000	3,387,000	5,137,000	3,387,000	3,737,000	+14,000	+350,000	-1,400,000	+350,000	D
Health teaching facilities interest subsidies.,...	476,000	450,000	450,000	450,000	450,000	-26,000	---	---	---	D
Perinatal facilities.............................	976,000	---	---	---	---	-976,000	---	---	---	D
Total, Resources Development....................	597,365,000	557,464,000	590,467,000	694,717,000	659,067,000	+61,702,000	+101,603,000	+68,600,000	-35,650,000	
Buildings and facilities............................	1,844,000	---	---	---	---	-1,844,000	---	---	---	D
Rural health research...............................	4,674,000	4,139,000	4,139,000	5,000,000	5,000,000	+326,000	+861,000	+861,000	---	D
Rural outreach grants...............................	19,518,000	---	---	25,000,000	22,500,000	+2,982,000	+22,500,000	+22,500,000	-2,500,000	D
Acquired Immune Deficiency Syndrome (AIDS):										
Training of health personnel.....................	17,029,000	17,029,000	17,029,000	17,029,000	17,029,000	---	---	---	---	D
Facilities renovation grants.....................	4,029,000	4,029,000	---	---	---	-4,029,000	-4,029,000	---	---	D
Pediatric health care demonstrations..............	19,518,000	19,518,000	19,518,000	20,000,000	19,800,000	+282,000	+282,000	+282,000	-200,000	D
Ryan White AIDS Programs:										
Emergency assistance.........................	87,831,000	87,831,000	100,000,000	122,137,000	122,000,000	+34,169,000	+34,169,000	+22,000,000	-137,000	D
Comprehensive care programs...................	87,831,000	87,831,000	91,819,000	122,137,000	108,000,000	+20,169,000	+20,169,000	+16,181,000	-14,137,000	D
Early intervention program....................	44,891,000	44,891,000	55,000,000	44,891,000	50,000,000	+5,109,000	+5,109,000	-5,000,000	+5,109,000	D
Subtotal, Ryan White AIDS programs........	220,553,000	220,553,000	246,819,000	289,165,000	280,000,000	+59,447,000	+59,447,000	+33,181,000	-9,165,000	
Subtotal, AIDS...........................	261,129,000	261,129,000	283,366,000	326,194,000	316,829,000	+55,700,000	+55,700,000	+33,463,000	-9,365,000	
Program management including AIDS....................	98,548,000	100,851,000	103,700,000	98,548,000	103,700,000	+5,152,000	+2,849,000	---	+5,152,000	D
Total, Health resources and services............	2,108,742,000	2,018,500,000	2,137,533,000	2,389,822,000	2,360,841,000	+252,099,000	+342,341,000	+223,308,000	-28,981,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
MEDICAL FACILITIES GUARANTEE AND LOAN FUND:										
Interest subsidy program	20,000,000	19,000,000	19,000,000	19,000,000	19,000,000	-1,000,000	---	---	---	M
HEALTH EDUCATION ASSISTANCE LOANS PROGRAM (HEAL):										
New loan subsidies	---	21,813,000	30,000,000	30,000,000	30,000,000	+30,000,000	+8,187,000	---	---	M
Liquidating account	---	35,502,000	48,000,000	48,000,000	48,000,000	+48,000,000	+12,498,000	---	---	M
HEAL loan limitation (non-add)	(260,000,000)	(185,000,000)	(260,000,000)	---	(290,000,000)	(+30,000,000)	(+105,000,000)	(+30,000,000)	(+290,000,000)	NA
Subtotal	---	57,315,000	78,000,000	78,000,000	78,000,000	+78,000,000	+20,685,000	---	---	
Program management	1,400,000	1,500,000	1,500,000	1,500,000	1,500,000	+100,000	---	---	---	D
Total, HEAL	1,400,000	58,815,000	79,500,000	79,500,000	79,500,000	+78,100,000	+20,685,000	---	---	
VACCINE INJURY COMPENSATION:										
Pre - FY89 claims (appropriation)	79,920,000	---	80,000,000	80,000,000	80,000,000	+80,000	+80,000,000	---	---	M
Post - FY88 claims (trust fund)	154,080,000	84,920,000	84,920,000	84,920,000	84,920,000	-69,160,000	---	---	---	M
HRSA administration (trust fund)	2,500,000	2,000,000	2,500,000	2,500,000	2,500,000	---	+500,000	---	---	M
Subtotal, Vaccine injury compensation	236,500,000	86,920,000	167,420,000	167,420,000	167,420,000	-69,080,000	+80,500,000	---	---	
Total, Health Resources and Services Administration	2,366,642,000	2,183,235,000	2,403,453,000	2,655,742,000	2,626,761,000	+260,119,000	+443,526,000	+223,308,000	-28,981,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
CENTERS FOR DISEASE CONTROL										
DISEASE CONTROL 1/										
Preventive Health Services Block Grant................	92,702,000	107,472,000	92,702,000	150,000,000	135,000,000	+42,298,000	+27,528,000	+42,298,000	-15,000,000	D
Prevention centers..................................	4,367,000	3,949,000	4,367,000	6,000,000	5,184,000	+817,000	+1,235,000	+817,000	-816,000	D
Lead poisoning prevention............................	7,790,000	14,949,000	7,790,000	25,000,000	23,000,000	+15,210,000	+8,051,000	+15,210,000	-2,000,000	D
Sexually transmitted diseases:										
Grants..	73,638,000	77,638,000	73,638,000	77,638,000	77,638,000	+4,000,000	---	+4,000,000	---	D
Direct operations................................	11,330,000	11,910,000	11,330,000	11,910,000	11,620,000	+290,000	-290,000	+290,000	-290,000	D
Subtotal, Sexually transmitted diseases.........	84,968,000	89,548,000	84,968,000	89,548,000	89,258,000	+4,290,000	-290,000	+4,290,000	-290,000	
Immunization:										
Grants..	182,004,000	208,865,000	248,865,000	223,865,000	238,865,000	+56,861,000	+30,000,000	-10,000,000	+15,000,000	D
Additional appropriation 9/30/92..............	---	---	---	10,000,000	10,000,000	+10,000,000	+10,000,000	+10,000,000	---	D
Direct operations................................	30,129,000	46,510,000	46,510,000	51,510,000	46,510,000	+16,381,000	---	---	-5,000,000	D
Vaccine stockpile................................	2,928,000	---	---	---	---	-2,928,000	---	---	---	D
Adverse events reporting.........................	2,470,000	2,470,000	2,470,000	2,470,000	2,470,000	---	---	---	---	D
Subtotal, Immunization programs.................	217,531,000	257,845,000	297,845,000	287,845,000	297,845,000	+80,314,000	+40,000,000	---	+10,000,000	
Infectious disease excluding AIDS/TB..................	43,689,000	45,179,000	45,179,000	49,579,000	47,379,000	+3,690,000	+2,200,000	+2,200,000	-2,200,000	D
Tuberculosis grants..................................	9,109,000	12,334,000	13,334,000	17,334,000	15,334,000	+6,225,000	+3,000,000	+2,000,000	-2,000,000	D
Chronic & environmental disease prevention...........	51,408,000	56,664,000	56,664,000	76,264,000	71,264,000	+19,856,000	+14,600,000	+14,600,000	-5,000,000	D
Breast and cervical cancer screening..................	29,259,000	50,000,000	50,000,000	50,000,000	50,000,000	+20,741,000	---	---	---	D
Injury control..	24,036,000	26,066,000	26,066,000	28,066,000	28,066,000	+4,030,000	+2,000,000	+2,000,000	---	D

1/ Budget and House bill include delayed obligation of $94,000,000 until Sept. 19, 1992. Senate bill delays obligations of $94,000,000 until 9/30/92 through 10/30/92. Conference agreement assumes a total of $134,000,000 of delayed obligations until 9/30/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
Occupational Safety and Health (NIOSH):										
Research	86,508,000	86,508,000	86,508,000	97,886,000	95,600,000	+9,092,000	+9,092,000	+9,092,000	-2,286,000	D
Training	10,472,000	10,472,000	10,472,000	10,972,000	10,972,000	+500,000	+500,000	+500,000	---	D
Subtotal, NIOSH	96,980,000	96,980,000	96,980,000	108,858,000	106,572,000	+9,592,000	+9,592,000	+9,592,000	-2,286,000	
National Center for Health Statistics:										
Program operations	48,301,000	48,301,000	48,301,000	48,301,000	48,301,000	---	---	---	---	D
Program support	3,105,000	3,105,000	3,105,000	3,105,000	3,105,000	---	---	---	---	D
1% evaluation funds (non-add)	(19,000,000)	(33,800,000)	(25,000,000)	(33,800,000)	(29,400,000)	(+10,400,000)	(-4,400,000)	(+4,400,000)	(-4,400,000)	NA
Subtotal, health statistics	51,406,000	51,406,000	51,406,000	51,406,000	51,406,000	---	---	---	---	
Epidemic services	68,714,000	78,228,000	73,714,000	79,728,000	76,000,000	+7,286,000	-2,228,000	+2,286,000	-3,728,000	D
Buildings and facilities	31,951,000	8,338,000	6,338,000	38,338,000	25,600,000	-6,351,000	+17,262,000	+19,262,000	-12,738,000	D
Program management	3,016,000	3,309,000	3,309,000	3,016,000	3,016,000	---	-293,000	-293,000	---	D
Acquired Immune Deficiency Syndrome (AIDS)	494,660,000	494,660,000	480,000,000	480,000,000	480,000,000	-14,660,000	-14,660,000	---	---	D
Total, Disease Control	1,311,586,000	1,396,927,000	1,390,662,000	1,540,982,000	1,504,924,000	+193,338,000	+107,997,000	+114,262,000	-36,058,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
NATIONAL INSTITUTES OF HEALTH (INCLUDES AIDS) 1/										
National Cancer Institute:										
Regular program	1,676,507,000	1,772,560,000	1,793,257,000	1,788,331,000	1,792,026,000	+115,519,000	+19,466,000	-1,231,000	+3,695,000	D
Research training	37,252,000	37,670,000	37,252,000	37,252,000	37,252,000	---	-418,000	---	---	D
Additional appropriation 9/30/92 1/	---	---	---	184,647,000	160,000,000	+160,000,000	+160,000,000	+160,000,000	-24,647,000	D
Subtotal	1,713,759,000	1,810,230,000	1,830,509,000	2,010,230,000	1,989,278,000	+275,519,000	+179,048,000	+158,769,000	-20,952,000	
National Heart, Lung, and Blood Institute	1,080,251,000	1,162,725,000	1,155,707,000	1,143,705,000	1,152,707,000	+72,456,000	-10,018,000	-3,000,000	+9,002,000	D
Research training	46,691,000	47,199,000	46,691,000	46,691,000	46,691,000	---	-508,000	---	---	D
Subtotal	1,126,942,000	1,209,924,000	1,202,398,000	1,190,396,000	1,199,398,000	+72,456,000	-10,526,000	-3,000,000	+9,002,000	
National Institute of Dental Research	142,867,000	154,771,000	155,184,000	152,215,000	154,442,000	+11,575,000	-329,000	-742,000	+2,227,000	D
Research training	6,051,000	6,168,000	6,051,000	6,051,000	6,051,000	---	-117,000	---	---	D
Subtotal	148,918,000	160,939,000	161,235,000	158,266,000	160,493,000	+11,575,000	-446,000	-742,000	+2,227,000	
National Institute of Diabetes, Digestive, and Kidney Diseases	590,853,000	633,863,000	643,401,000	628,442,000	639,661,000	+48,808,000	+5,798,000	-3,740,000	+11,219,000	D
Research training	24,419,000	24,694,000	24,419,000	24,419,000	24,419,000	---	-275,000	---	---	D
Subtotal	615,272,000	658,557,000	667,820,000	652,861,000	664,080,000	+48,808,000	+5,523,000	-3,740,000	+11,219,000	
National Institute of Neurological Disorders and Stroke	528,398,000	569,838,000	570,010,000	570,041,000	570,033,000	+41,635,000	+195,000	+23,000	-8,000	D
Research training	13,345,000	13,517,000	13,345,000	13,345,000	13,345,000	---	-172,000	---	---	D
Subtotal	541,743,000	583,355,000	583,355,000	583,386,000	583,378,000	+41,635,000	+23,000	+23,000	-8,000	

1/ Budget and House bill include delayed obligation of $400,000,000 until Sept. 19, 1992. Senate bill delays obligations of $606,647,000 until 9/30/92 through 10/30/92. Conference agreement assumes delayed obligation of $575,000,000 until 9/30/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
National Institute of Allergy and Infectious Diseases.	887,089,000	955,581,000	952,643,000	945,765,000	950,924,000	+63,835,000	-4,657,000	-1,719,000	+5,159,000	D
Research training..................................	20,187,000	21,130,000	20,187,000	20,187,000	20,187,000	---	-943,000	---	---	D
Subtotal...	907,276,000	976,711,000	972,830,000	965,952,000	971,111,000	+63,835,000	-5,600,000	-1,719,000	+5,159,000	
National Institute of General Medical Sciences........	667,930,000	738,292,000	728,080,000	723,078,000	726,830,000	+58,900,000	-11,462,000	-1,250,000	+3,752,000	D
Research training..................................	92,080,000	94,888,000	92,080,000	92,080,000	92,080,000	---	-2,808,000	---	---	D
Subtotal...	760,010,000	833,180,000	820,160,000	815,158,000	818,910,000	+58,900,000	-14,270,000	-1,250,000	+3,752,000	
National Institute of Child Health and Human Development..	462,584,000	503,137,000	508,289,000	507,454,000	508,080,000	+45,496,000	+4,943,000	-209,000	+626,000	D
Research training..................................	16,372,000	17,447,000	16,372,000	16,372,000	16,372,000	---	-1,075,000	---	-*-	D
Subtotal...	478,956,000	520,584,000	524,661,000	523,826,000	524,452,000	+45,496,000	+3,868,000	-209,000	+626,000	
National Eye Institute..............................	245,947,000	264,767,000	264,966,000	259,935,000	263,708,000	+17,761,000	-1,059,000	-1,258,000	+3,773,000	D
Research training..................................	7,294,000	7,493,000	7,294,000	7,294,000	7,294,000	---	-199,000	---	---	D
Subtotal...	253,241,000	272,260,000	272,260,000	267,229,000	271,002,000	+17,761,000	-1,258,000	-1,258,000	+3,773,000	
National Institute of Environmental Health Sciences...	230,122,000	243,472,000	244,006,000	239,967,000	242,996,000	+12,874,000	-476,000	-1,010,000	+3,029,000	D
Research training..................................	10,906,000	11,012,000	10,906,000	10,906,000	10,906,000	---	-106,000	---	---	D
Subtotal...	241,028,000	254,484,000	254,912,000	250,873,000	253,902,000	+12,874,000	-582,000	-1,010,000	+3,029,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs				Mand Disc
						FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	
National Institute on Aging	313,969,000	338,664,000	352,745,000	365,393,000	362,231,000	+48,262,000	+23,567,000	+9,486,000	-3,162,000	D
Research training	9,783,000	9,894,000	9,783,000	9,783,000	9,783,000	---	-111,000	---	---	D
Additional appropriation 9/30/92 1/	---	---	---	22,000,000	15,000,000	+15,000,000	+15,000,000	+15,000,000	-7,000,000	D
Subtotal	323,752,000	348,558,000	362,528,000	397,176,000	387,014,000	+63,262,000	+38,456,000	+24,486,000	-10,162,000	
National Institute of Arthritis and Musculoskeletal and Skin Diseases	186,393,000	197,859,000	198,123,000	196,222,000	197,648,000	+11,255,000	-211,000	-475,000	+1,426,000	D
Research training	6,854,000	6,938,000	6,854,000	6,854,000	6,854,000	---	-84,000	---	---	D
Subtotal	193,247,000	204,797,000	204,977,000	203,076,000	204,502,000	+11,255,000	-295,000	-475,000	+1,426,000	
National Institute on Deafness and Other Communication Disorders	130,950,000	142,287,000	140,510,000	147,623,000	145,845,000	+14,895,000	+3,558,000	+5,335,000	-1,778,000	D
Research training	3,985,000	4,034,000	3,985,000	3,985,000	3,985,000	---	-49,000	---	---	D
Subtotal	134,935,000	146,321,000	144,495,000	151,608,000	149,830,000	+14,895,000	+3,509,000	+5,335,000	-1,778,000	
National Center for Research Resources	332,589,000	318,230,000	306,534,000	314,561,000	312,554,000	-20,035,000	-5,676,000	+6,020,000	-2,007,000	D
Research training	2,666,000	2,745,000	2,666,000	2,666,000	2,666,000	---	-79,000	---	---	D
Subtotal	335,255,000	320,975,000	309,200,000	317,227,000	315,220,000	-20,035,000	-5,755,000	+6,020,000	-2,007,000	
National Center for Nursing Research	35,330,000	39,247,000	38,751,000	41,488,000	40,804,000	+5,474,000	+1,557,000	+2,053,000	-684,000	D
Research training	4,392,000	4,500,000	4,392,000	4,392,000	4,392,000	---	-108,000	---	---	D
Subtotal	39,722,000	43,747,000	43,143,000	45,880,000	45,196,000	+5,474,000	+1,449,000	+2,053,000	-684,000	

1/ Budget and House bill include delayed obligation of $400,000,000 until Sept. 19, 1992. Senate bill delays obligations of $606,647,000 until 9/30/92 through 10/30/92. Conference agreement assumes delayed obligation of $575,000,000 until 9/30/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
National Center for Human Genome Research	83,309,000	105,178,000	89,006,000	105,200,000	101,152,000	+17,843,000	-4,026,000	+12,146,000	-4,048,000	D
Research training	4,109,000	5,309,000	4,109,000	4,109,000	4,109,000	---	-1,200,000	---	---	D
Subtotal	87,418,000	110,487,000	93,115,000	109,309,000	105,261,000	+17,843,000	-5,226,000	+12,146,000	-4,048,000	
John E. Fogarty International Center	17,519,000	19,922,000	19,922,000	19,922,000	19,922,000	+2,403,000	---	---	---	D
National Library of Medicine:										
Regular program	66,251,000	73,308,000	74,408,000	75,392,000	75,146,000	+8,895,000	+1,838,000	+738,000	-246,000	D
Medical library assistance	14,691,000	16,309,000	14,691,000	14,691,000	14,691,000	---	-1,618,000	---	---	D
Biotechnology information	10,466,000	10,937,000	10,466,000	10,466,000	10,466,000	---	-471,000	---	---	D
Subtotal	91,408,000	100,554,000	99,565,000	100,549,000	100,303,000	+8,895,000	-251,000	+738,000	-246,000	
Office of the Director	97,651,000	95,176,000	149,176,000	125,724,000	143,313,000	+45,662,000	+48,137,000	-5,863,000	+17,589,000	D
Buildings and facilities	168,687,000	104,125,000	108,625,000	89,485,000	103,840,000	-64,847,000	-285,000	-4,785,000	+14,355,000	D
Total N.I.H.:										
Regular program including training	8,276,739,000	8,774,886,000	8,824,886,000	8,771,486,000	8,835,405,000	+558,666,000	+60,519,000	+10,519,000	+63,919,000	
Additional appropriation 9/30/92	---	---	---	206,647,000	175,000,000	+175,000,000	+175,000,000	+175,000,000	-31,647,000	
Total	8,276,739,000	8,774,886,000	8,824,886,000	8,978,133,000	9,010,405,000	+733,666,000	+235,519,000	+185,519,000	+32,272,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION										
ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH 1/ (INCLUDES AIDS)										
National Institute of Mental Health:										
Research	455,500,000	491,754,000	491,754,000	531,754,000	505,754,000	+50,254,000	+14,000,000	+14,000,000	-26,000,000	D
Instrumentation grants	1,323,000	1,338,000	1,323,000	1,338,000	1,323,000	---	-15,000	---	-15,000	D
Research training	26,942,000	27,701,000	26,942,000	27,701,000	26,942,000	---	-759,000	---	-759,000	D
Clinical training	13,670,000	---	8,000,000	13,670,000	10,835,000	-2,835,000	+10,835,000	+2,835,000	-2,835,000	D
Community support demonstrations	24,885,000	25,880,000	24,885,000	25,880,000	24,885,000	---	-995,000	---	-995,000	D
Prevention demonstrations	4,880,000	5,075,000	4,880,000	6,075,000	5,478,000	+598,000	+403,000	+598,000	-597,000	D
Grants to States for the homeless (PATH)	26,153,000	43,116,000	26,153,000	43,153,000	30,000,000	+3,847,000	-13,116,000	+3,847,000	-13,153,000	D
Homeless services demonstrations	5,861,000	---	5,861,000	5,861,000	5,861,000	---	+5,861,000	---	---	D
Homeless research demonstrations	---	20,000,000	---	---	---	---	-20,000,000	---	---	D
Protection and advocacy	15,614,000	---	15,614,000	19,500,000	19,500,000	+3,886,000	+19,500,000	+3,886,000	---	D
Direct operations	40,982,000	43,982,000	43,982,000	40,982,000	43,982,000	+3,000,000	---	---	+3,000,000	D
Subtotal, mental health	615,810,000	658,846,000	649,394,000	715,914,000	674,560,000	+58,750,000	+15,714,000	+25,166,000	-41,354,000	
National Institute on Drug Abuse:										
Research	257,896,000	284,624,000	270,000,000	275,000,000	270,000,000	+12,104,000	-14,624,000	---	-5,000,000	D
Instrumentation grants	504,000	524,000	504,000	524,000	504,000	---	-20,000	---	-20,000	D
Research training	6,783,000	7,020,000	6,783,000	7,020,000	6,783,000	---	-237,000	---	-237,000	D
Treatment demonstrations	45,465,000	46,955,000	46,955,000	46,955,000	46,955,000	+1,490,000	---	---	---	D
AIDS demonstrations	73,193,000	71,550,000	71,550,000	71,550,000	71,550,000	-1,643,000	---	---	---	D
Direct operations	32,186,000	35,552,000	35,552,000	32,186,000	35,552,000	+3,366,000	---	---	+3,366,000	D
Subtotal, drug abuse	416,027,000	446,225,000	431,344,000	433,235,000	431,344,000	+15,317,000	-14,881,000	---	-1,891,000	

1/ Conference agreement assumes delayed obligations of $164,100,000 until 9/30/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
National Institute on Alcoholism and Alcohol Abuse:										
Research	138,849,000	149,932,000	149,932,000	154,932,000	152,432,000	+13,583,000	+2,500,000	+2,500,000	-2,500,000	D
Instrumentation grants	575,000	581,000	575,000	581,000	575,000	---	-6,000	---	-6,000	D
Research training	3,542,000	3,666,000	3,542,000	3,666,000	3,542,000	---	-124,000	---	-124,000	D
Substance abuse homeless demonstrations	15,983,000	---	15,983,000	15,983,000	15,983,000	---	+15,983,000	---	---	D
Direct operations	11,789,000	12,596,000	12,596,000	11,789,000	12,596,000	+807,000	---	---	+807,000	D
Subtotal, alcoholism	170,738,000	166,775,000	182,628,000	186,951,000	185,128,000	+14,390,000	+18,353,000	+2,500,000	-1,823,000	
Office for Treatment Improvement:										
Alcohol, Drug Abuse & Mental Health block grant	1,268,670,000	1,268,670,000	1,235,000,000	1,405,670,000	1,360,000,000	+91,330,000	+91,330,000	+125,000,000	-45,670,000	D
Treatment grants to crisis areas	31,296,000	32,548,000	31,296,000	35,986,000	35,986,000	+4,690,000	+3,438,000	+4,690,000	---	D
Treatment improvement grants	83,363,000	86,698,000	83,363,000	83,363,000	83,363,000	---	-3,335,000	---	---	D
Capacity expansion program 1/	---	68,000,000	---	---	---	---	-68,000,000	---	---	D
Treatment waiting list grants reappropriation	38,545,000	---	---	---	---	-38,545,000	---	---	---	D
Direct operations	5,209,000	7,718,000	7,718,000	5,209,000	7,718,000	+2,509,000	---	---	+2,509,000	D
Subtotal, Treatment improvement	1,427,083,000	1,463,634,000	1,357,377,000	1,530,228,000	1,487,067,000	+59,984,000	+23,433,000	+129,690,000	-43,161,000	
Office for Substance Abuse Prevention:										
Prevention programs	112,003,000	125,505,000	112,003,000	135,500,000	130,000,000	+17,997,000	+4,495,000	+17,997,000	-5,500,000	D
Community youth activity program	20,162,000	---	15,162,000	4,669,000	9,916,000	-10,246,000	+9,916,000	-5,246,000	+5,247,000	D
Community prevention grants	99,118,000	113,852,000	99,118,000	107,183,000	99,151,000	+33,000	-14,701,000	+33,000	-8,032,000	D
Transfer to DOL Departmental Management	---	---	---	2,000,000	---	---	---	---	-2,000,000	D
Training	25,986,000	25,986,000	25,986,000	20,986,000	20,986,000	-5,000,000	-5,000,000	-5,000,000	---	D
Direct operations	14,200,000	16,237,000	16,237,000	14,200,000	16,237,000	+2,037,000	---	---	+2,037,000	D
Subtotal, Substance Abuse Prevention	271,469,000	281,580,000	268,506,000	284,538,000	276,290,000	+4,821,000	-5,290,000	+7,784,000	-8,248,000	

1/ Budget proposes additional $31 million transfer from forfeiture fund.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
Treatment outcome evaluations........................	8,134,000	8,598,000	8,598,000	8,598,000	8,598,000	+464,000	---	---	---	D
Buildings and facilities..............................	7,775,000	7,775,000	5,000,000	5,000,000	5,000,000	-2,775,000	-2,775,000	---	---	D
Office of the Administrator..........................	11,368,000	14,895,000	14,895,000	11,368,000	13,132,000	+1,764,000	-1,763,000	-1,763,000	+1,764,000	D
Total, Alcohol, Drug Abuse & Mental Health......	2,928,404,000	3,048,328,000	2,917,742,000	3,175,832,000	3,081,119,000	+152,715,000	+32,791,000	+163,377,000	-94,713,000	
ST. ELIZABETHS HOSPITAL..............................	11,711,000	---	---	---	---	-11,711,000	---	---	---	D
Total, Alcohol, Drug Abuse & Mental Health Admin	2,940,115,000	3,048,328,000	2,917,742,000	3,175,832,000	3,081,119,000	+141,004,000	+32,791,000	+163,377,000	-94,713,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
ASSISTANT SECRETARY FOR HEALTH										
OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH 1/										
Population affairs:										
Adolescent family life	7,789,000	12,000,000	---	---	7,789,000	---	-4,211,000	+7,789,000	+7,789,000	D
Health Initiatives:										
Office of Disease Prevention and Health Promotion	4,577,000	4,577,000	4,027,000	5,000,000	4,514,000	-63,000	-63,000	+487,000	-486,000	D
Physical fitness and sports	1,443,000	1,443,000	1,443,000	1,443,000	1,443,000	---	---	---	---	D
Minority health	14,470,000	15,016,000	15,016,000	15,016,000	15,016,000	+546,000	---	---	---	D
National vaccine program	9,631,000	2,300,000	12,500,000	2,300,000	8,000,000	-1,631,000	+5,700,000	-4,500,000	+5,700,000	D
Health Service Management	21,020,000	21,220,000	21,770,000	21,770,000	21,770,000	+750,000	+550,000	---	---	D
Acquired Immune Deficiency Syndrome (AIDS)	8,238,000	8,773,000	8,773,000	8,773,000	7,503,000	-735,000	-1,270,000	-1,270,000	-1,270,000	D
Undistributed	---	---	5,789,000	---	---	---	---	-5,789,000	---	D
Total, OASH	67,168,000	65,329,000	69,318,000	54,302,000	66,035,000	-1,133,000	+706,000	-3,283,000	+11,733,000	
RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED OFFICERS										
Retirement payments	95,717,000	104,303,000	104,303,000	104,303,000	104,303,000	+8,586,000	---	---	---	M
Survivors benefits	5,926,000	6,650,000	6,650,000	6,650,000	6,650,000	+724,000	---	---	---	M
Dependent's medical care	19,230,000	20,499,000	20,499,000	20,499,000	20,499,000	+1,269,000	---	---	---	M
Military Services Credits	3,399,000	3,222,000	3,222,000	3,222,000	3,222,000	-177,000	---	---	---	M
Total, Retirement pay and medical benefits	124,272,000	134,674,000	134,674,000	134,674,000	134,674,000	+10,402,000	---	---	---	

1/ Budget proposes delayed obligation of $4,000,000 until Sept. 19, 1992.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs				Mand
						FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
AGENCY FOR HEALTH CARE POLICY AND RESEARCH										
Health services research:										
Research	25,424,000	5,329,000	25,424,000	5,329,000	26,224,000	+800,000	+20,895,000	+800,000	+20,895,000	D
Trust funds	(1,012,000)	(1,050,000)	(1,012,000)	(1,050,000)	(1,012,000)	---	(-38,000)	---	(-38,000)	TF*
AIDS	10,252,000	10,800,000	10,252,000	10,800,000	10,252,000	---	-548,000	---	-548,000	D
Program support	2,274,000	2,330,000	2,274,000	2,330,000	2,274,000	---	-56,000	---	-56,000	D
Subtotal including trust funds	38,962,000	19,509,000	38,962,000	19,509,000	39,762,000	+800,000	+20,253,000	+800,000	+20,253,000	
1% evaluation funding (non-add)	(13,444,000)	(39,544,000)	(13,444,000)	(34,544,000)	(13,444,000)	---	(-26,100,000)	---	(-21,100,000)	NA
Medical treatment effectiveness:										
Federal funds	57,806,000	15,824,000	57,806,000	50,824,000	63,120,000	+5,314,000	+47,296,000	+5,314,000	+12,296,000	D
Trust funds	(4,880,000)	(36,723,000)	(4,880,000)	(6,723,000)	(4,880,000)	---	(-31,843,000)	---	(-1,843,000)	TF*
Subtotal, Medical treatment effectiveness	62,686,000	52,547,000	62,686,000	57,547,000	68,000,000	+5,314,000	+15,453,000	+5,314,000	+10,453,000	
1% evaluation funding (non-add)	---	(10,400,000)	---	(15,400,000)	---	---	(-10,400,000)	---	(-15,400,000)	NA
Total, Health Care Policy and Research:										
Federal Funds	95,756,000	34,283,000	95,756,000	69,283,000	101,870,000	+6,114,000	+67,587,000	+6,114,000	+32,587,000	
Trust funds	(5,892,000)	(37,773,000)	(5,892,000)	(7,773,000)	(5,892,000)	---	(-31,881,000)	---	(-1,881,000)	
Total, 1% evaluation funding (non-add)	(13,444,000)	(49,944,000)	(13,444,000)	(49,944,000;	(13,444,000)	---	(-36,500,000)	---	(-36,500,000)	
Total, Health Care Policy and Research (non-add)	(115,092,000)	(122,000,000)	(115,092,000)	(127,000,000)	(121,206,000)	(+6,114,000)	(-794,000)	(+6,114,000)	(-5,794,000)	NA
PHS travel reduction	---	---	-8,000,000	---	-8,000,000	-8,000,000	-8,000,000	---	-8,000,000	D
Total, Public Health Service:										
Federal Funds	15,182,278,000	15,637,662,000	15,828,491,000	16,608,948,000	16,517,788,000	+1,335,510,000	+880,126,000	+689,297,000	-91,160,000	
Trust funds	(5,892,000)	(37,773,000)	(5,892,000)	(7,773,000)	(5,892,000)	---	(-31,881,000)	---	(-1,881,000)	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
HEALTH CARE FINANCING ADMINISTRATION										
GRANTS TO STATES FOR MEDICAID										
Medicaid current law benefits	48,794,085,000	56,712,895,000	56,712,895,000	56,712,895,000	56,712,895,000	+7,918,810,000	---	---	---	M
State and local administration	2,760,865,000	3,186,254,000	3,186,254,000	3,186,254,000	3,186,254,000	+425,389,000	---	---	---	M
Proposed legislation	---	-91,500,000	---	---	---	---	+91,500,000	---	---	D
Subtotal, Medicaid program level, FY 1992	51,554,950,000	59,807,649,000	59,899,149,000	59,899,149,000	59,899,149,000	+8,344,199,000	+91,500,000	---	---	
Less funds advanced in prior year	-10,400,000,000	-13,500,000,000	-13,500,000,000	-13,500,000,000	-13,500,000,000	-3,100,000,000	---	---	---	M
Total, current request, FY 1992	41,154,950,000	46,307,649,000	46,399,149,000	46,399,149,000	46,399,149,000	+5,244,199,000	+91,500,000	---	---	
New advance, 1st quarter, FY 1993	13,500,000,000	17,100,000,000	17,100,000,000	17,100,000,000	17,100,000,000	+3,600,000,000	---	---	---	M
PAYMENTS TO HEALTH CARE TRUST FUNDS										
Supplemental medical insurance	34,730,000,000	38,684,000,000	38,684,000,000	38,684,000,000	38,684,000,000	+3,954,000,000	---	---	---	M
Hospital insurance for uninsured	559,000,000	584,000,000	584,000,000	584,000,000	584,000,000	+25,000,000	---	---	---	M
Federal uninsured payment	46,000,000	37,000,000	37,000,000	37,000,000	37,000,000	-9,000,000	---	---	---	M
Program management	---	116,485,000	116,485,000	96,083,000	116,485,000	+116,485,000	---	---	+20,402,000	M
Proposed legislation	---	-20,402,000	---	---	---	---	+20,402,000	---	---	M
Total, Payment to Trust Funds	35,335,000,000	39,401,083,000	39,421,485,000	39,401,083,000	39,421,485,000	+4,086,485,000	+20,402,000	---	+20,402,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
PROGRAM MANAGEMENT										
Research, demonstration, and evaluation:										
Regular program, trust funds	(35,621,000)	(36,000,000)	(45,621,000)	(45,621,000)	(45,621,000)	(+10,000,000)	(+9,621,000)	---	---	TF*
Rural hospital transition demonstrations, trust funds	(24,398,000)	---	(21,000,000)	(25,000,000)	(23,000,000)	(-1,398,000)	(+23,000,000)	(+2,000,000)	(-2,000,000)	TF*
Essential access community hospitals, trust funds.	(9,759,000)	---	(9,759,000)	(9,759,000)	(9,759,000)	---	(+9,759,000)	---	---	TF*
Subtotal, research, demonstration, & evaluation.	(69,778,000)	(36,000,000)	(76,380,000)	(80,380,000)	(78,380,000)	(+8,602,000)	(+42,380,000)	(+2,000,000)	(-2,000,000)	
Medicare Contractors (Trust Funds):										
Operating funds, current	(1,493,959,000)	(1,457,000,000)	(1,457,000,000)	(1,457,000,000)	(1,457,000,000)	(-36,959,000)	---	---	---	TF*
Contingency reserve fund	(58,210,000)	(100,000,000)	(257,000,000)	(257,000,000)	(257,000,000)	(+198,790,000)	(+157,000,000)	---	---	TF
Subtotal, Contractors	(1,552,169,000)	(1,557,000,000)	(1,714,000,000)	(1,714,000,000)	(1,714,000,000)	(+161,831,000)	(+157,000,000)	---	---	
State Certification:										
Medicare certification, trust funds	(159,497,000)	(160,000,000)	(160,000,000)	---	(150,000,000)	(-9,497,000)	(-10,000,000)	(-10,000,000)	(+150,000,000)	TF*
Proposed legislation, user fees, trust funds	---	(-160,000,000)	---	---	---	---	(+160,000,000)	---	---	TF*
Subtotal, State certification	(159,497,000)	---	(160,000,000)	---	(150,000,000)	(-9,497,000)	(+150,000,000)	(-10,000,000)	(+150,000,000)	
Federal Administration:										
Trust funds	(301,409,000)	(333,006,000)	(331,752,000)	(188,598,000)	(331,752,000)	(+30,343,000)	(-1,254,000)	---	(+143,154,000)	TF*
Less current law user fees	(-248,000)	(-77,000)	(-77,000)	(-77,000)	(-77,000)	(+171,000)	---	---	---	TF*
Proposed legislation, user fees, trust funds	---	(-34,902,000)	---	---	---	---	(+34,902,000)	---	---	TF*
EMERGENCY FUND	---	---	---	(306,804,000)	---	---	---	---	(-306,804,000)	NA
Subtotal, Federal Administration	(301,161,000)	(298,027,000)	(331,675,000)	(188,521,000)	(331,675,000)	(+30,514,000)	(+33,648,000)	---	(+143,154,000)	
Total, Program management	(2,082,605,000)	(1,891,027,000)	(2,282,055,000)	(1,982,901,000)	(2,274,055,000)	(+191,450,000)	(+383,028,000)	(-8,000,000)	(+291,154,000)	
Total, Health Care Financing Administration:										
Federal funds	89,989,950,000	102,808,732,000	102,920,634,000	102,900,232,000	102,920,634,000	+12,930,684,000	+111,902,000	---	+20,402,000	
Current year, FY 1992	(76,489,950,000)	(85,708,732,000)	(85,820,634,000)	(85,800,232,000)	(85,820,634,000)	(+9,330,684,000)	(+111,902,000)	---	(+20,402,000)	
New advance, 1st quarter, FY 1993	(13,500,000,000)	(17,100,000,000)	(17,100,000,000)	(17,100,000,000)	(17,100,000,000)	(+3,600,000,000)	---	---	---	
Trust funds	(2,082,605,000)	(1,891,027,000)	(2,282,055,000)	(1,982,901,000)	(2,274,055,000)	(+191,450,000)	(+383,028,000)	(-8,000,000)	(+291,154,000)	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
SOCIAL SECURITY ADMINISTRATION										
PAYMENTS TO SOCIAL SECURITY TRUST FUNDS...............	46,958,000	40,968,000	40,968,000	40,968,000	40,968,000	-5,990,000	---	---	---	M
SPECIAL BENEFITS FOR DISABLED COAL MINERS										
Benefit payments......................................	837,511,000	813,000,000	813,000,000	813,000,000	813,000,000	-24,511,000	---	---	---	M
Administration..	7,081,000	7,336,000	7,336,000	7,336,000	7,336,000	+255,000	---	---	---	M
Subtotal, Black Lung, FY 1992 program level.....	844,592,000	820,336,000	820,336,000	820,336,000	820,336,000	-24,256,000	---	---	---	
Less funds advanced in prior year..............	-215,000,000	-203,000,000	-203,000,000	-203,000,000	-203,000,000	+12,000,000	---	---	---	M
Total, Black Lung, current request, FY 1992.....	629,592,000	617,336,000	617,336,000	617,336,000	617,336,000	-12,256,000	---	---	---	
New advance, 1st quarter, FY 1993...............	203,000,000	198,000,000	198,000,000	198,000,000	198,000,000	-5,000,000	---	---	---	M
SUPPLEMENTAL SECURITY INCOME										
Federal benefit payments..............................	16,184,751,000	16,105,000,000	16,105,000,000	16,105,000,000	16,105,000,000	-79,751,000	---	---	---	M
Beneficiary services..................................	32,517,000	39,100,000	39,100,000	39,100,000	39,100,000	+6,583,000	---	---	---	M
Research demonstration................................	8,275,000	11,000,000	11,000,000	14,000,000	14,000,000	+5,725,000	+3,000,000	+3,000,000	---	M
Administration..	1,183,378,000	1,321,391,000	1,321,391,000	1,321,391,000	1,321,391,000	+138,013,000	---	---	---	D
Zebley administration.................................	232,000,000	---	---	---	---	-232,000,000	---	---	---	D
Subtotal, SSI FY 1992 program level.............	17,640,921,000	17,476,491,000	17,476,491,000	17,479,491,000	17,479,491,000	-161,430,000	+3,000,000	+3,000,000	---	
Less funds advanced in prior year...............	-3,157,000,000	-3,550,000,000	-3,550,000,000	-3,550,000,000	-3,550,000,000	-393,000,000	---	---	---	M
Total, SSI, current request, FY 1992...........	14,483,921,000	13,926,491,000	13,926,491,000	13,929,491,000	13,929,491,000	-554,430,000	+3,000,000	+3,000,000	---	
New advance, 1st quarter, FY 1993............	3,550,000,000	5,240,000,000	5,240,000,000	5,240,000,000	5,240,000,000	+1,690,000,000	---	---	---	M

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
LIMITATION ON ADMINISTRATIVE EXPENSES (Trust Funds) 1/	(3,510,774,000)	(3,834,000,000)	(3,834,000,000)	(3,752,200,000)	(3,834,000,000)	(+323,226,000)	---	---	(+81,800,000)	TF
Zebley administration 2/	(232,000,000)	---	---	---	---	(-232,000,000)	---	---	---	TF
Portion treated as budget authority	(600,150,000)	(648,000,000)	(648,000,000)	(639,800,000)	(648,000,000)	(+47,850,000)	---	---	(+8,200,000)	TF*
Subtotal, LAE operating level	(4,342,924,000)	(4,482,000,000)	(4,482,000,000)	(4,392,000,000)	(4,482,000,000)	(+139,076,000)	---	---	(+90,000,000)	
(Contingency reserve)	(46,385,000)	(50,000,000)	(100,000,000)	(50,000,000)	(100,000,000)	(+53,615,000)	(+50,000,000)	---	(+50,000,000)	TF
Subtotal, LAE	(4,389,309,000)	(4,532,000,000)	(4,582,000,000)	(4,442,000,000)	(4,582,000,000)	(+192,691,000)	(+50,000,000)	---	(+140,000,000)	
Total, Social Security Administration:										
Federal funds	18,913,471,000	20,022,795,000	20,022,795,000	20,025,795,000	20,025,795,000	+1,112,324,000	+3,000,000	+3,000,000	---	
Current year FY 1992	(15,160,471,000)	(14,584,795,000)	(14,584,795,000)	(14,587,795,000)	(14,587,795,000)	(-572,676,000)	(+3,000,000)	(+3,000,000)	---	
New advances, 1st quarter FY 1993	(3,753,000,000)	(5,438,000,000)	(5,438,000,000)	(5,438,000,000)	(5,438,000,000)	(+1,685,000,000)	---	---	---	
Trust funds	(4,389,309,000)	(4,532,000,000)	(4,582,000,000)	(4,442,000,000)	(4,582,000,000)	(+192,691,000)	(+50,000,000)	---	(+140,000,000)	

1/ Budget, House bill, and conference agreement include delayed obligation of $80,000,000 until Sept. 19, 1992.

2/ Available FY 91-93.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs				Mand Disc
						FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	
ADMINISTRATION FOR CHILDREN AND FAMILIES										
FAMILY SUPPORT PAYMENTS TO STATES										
Aid to Families with Dependent Children (AFDC)........	11,296,000,000	12,135,000,000	12,135,000,000	12,135,000,000	12,135,000,000	+839,000,000	---	---	---	M
Payments to territories..............................	16,346,000	16,346,000	16,346,000	16,346,000	16,346,000	---	---	---	---	M
Emergency assistance.................................	191,600,000	176,900,000	176,900,000	176,900,000	176,900,000	-14,700,000	---	---	---	M
Repatriation...	5,000,000	1,000,000	1,000,000	1,000,000	1,000,000	-4,000,000	---	---	---	M
State and local welfare administration...............	1,448,200,000	1,512,800,000	1,512,800,000	1,512,800,000	1,512,800,000	+64,600,000	---	---	---	M
Work activities / child care.........................	317,000,000	433,000,000	433,000,000	433,000,000	433,000,000	+116,000,000	---	---	---	M
At risk child care...................................	150,000,000	300,000,000	300,000,000	300,000,000	300,000,000	+150,000,000	---	---	---	M
Proposed regulatory savings..........................	---	-38,900,000	-38,900,000	---	---	---	+38,900,000	+38,900,000	---	M
Subtotal, Welfare payments....................	13,424,146,000	14,536,146,000	14,536,146,000	14,575,046,000	14,575,046,000	+1,150,900,000	+38,900,000	+38,900,000	---	
Child Support Enforcement:										
State and local administration..................	1,181,000,000	1,309,000,000	1,309,000,000	1,309,000,000	1,309,000,000	+128,000,000	---	---	---	M
Federal incentive payments......................	296,000,000	332,000,000	332,000,000	332,000,000	332,000,000	+36,000,000	---	---	---	M
Less federal share collections..................	-906,000,000	-1,015,000,000	-1,015,000,000	-1,015,000,000	-1,015,000,000	-109,000,000	---	---	---	M
Subtotal, Child support......................	571,000,000	626,000,000	626,000,000	626,000,000	626,000,000	+55,000,000	---	---	---	
Total, Payments, FY 1992 program level..........	13,995,146,000	15,162,146,000	15,162,146,000	15,201,046,000	15,201,046,000	+1,205,900,000	+38,900,000	+38,900,000	---	
Less funds advanced in previous years.........	-3,000,000,000	-3,300,000,000	-3,300,000,000	-3,300,000,000	-3,300,000,000	-300,000,000	---	---	---	M
Total, Payments, current request, FY 1992.......	10,995,146,000	11,862,146,000	11,862,146,000	11,901,046,000	11,901,046,000	+905,900,000	+38,900,000	+38,900,000	---	
New advance, 1st quarter, FY 1993..........	3,300,000,000	4,000,000,000	4,000,000,000	4,000,000,000	4,000,000,000	+700,000,000	---	---	---	M

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
PAYMENTS TO STATES FOR AFDC WORK PROGRAMS............	1,000,000,000	1,000,000,000	1,000,000,000	1,000,000,000	1,000,000,000	---	---	---	---	M
ENERGY ASSISTANCE PROGRAMS										
LOW INCOME HOME ENERGY ASSISTANCE:										
Regular program....................................	1,340,445,000	875,000,000	950,000,000	1,094,393,000	1,014,393,000	-326,052,000	+139,393,000	+64,393,000	-80,000,000	D
Congressional emergency........................	---	---	---	---	80,000,000	+80,000,000	+80,000,000	+80,000,000	+80,000,000	D
Additional appropriation 9/30/92.............	74,610,000	50,000,000	50,000,000	405,607,000	405,607,000	+330,997,000	+355,607,000	+355,607,000	---	D
Emergency allocation 1/..........................	---	---	(600,000,000)	(300,000,000)	(300,000,000)	(+300,000,000)	(+300,000,000)	(-300,000,000)	---	NA
ENERGY EMERGENCY CONTINGENCY FUND....................	195,180,000	100,000,000	---	---	---	-195,180,000	-100,000,000	---	---	D
Total, Energy assistance programs..............	1,610,235,000	1,025,000,000	1,000,000,000	1,500,000,000	1,500,000,000	-110,235,000	+475,000,000	+500,000,000	---	
Total including emergency.......................	(1,610,235,000)	(1,025,000,000)	(1,600,000,000)	(1,800,000,000)	(1,800,000,000)	(+189,765,000)	(+775,000,000)	(+200,000,000)	---	
REFUGEE AND ENTRANT ASSISTANCE										
Cash and medical assistance 2/.......................	234,216,000	---	117,600,000	117,600,000	117,600,000	-116,616,000	+117,600,000	---	---	D
Additional appropriation 9/30/92.................	---	---	---	116,616,000	116,616,000	+116,616,000	+116,616,000	+116,616,000	---	D
Social services..	82,952,000	---	82,952,000	82,952,000	82,952,000	---	+82,952,000	---	---	D
Voluntary agency program.............................	39,036,000	---	39,036,000	39,036,000	39,036,000	---	+39,036,000	---	---	D
Preventive health......................................	5,631,000	---	5,631,000	5,631,000	5,631,000	---	+5,631,000	---	---	D
Targeted assistance....................................	48,795,000	---	48,795,000	48,795,000	48,795,000	---	+48,795,000	---	---	D
Undistributed...	---	410,630,000	---	---	---	---	-410,630,000	---	---	D
Total, Refugee Resettlement....................	410,630,000	410,630,000	294,014,000	410,630,000	410,630,000	---	---	+116,616,000	---	

1/ Available only upon submission of a formal budget request designating the need for funds as an emergency as defined by the BEA.

2/ House bill makes funding available only through 3/31/92. Conference agreement does not include termination date.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
STATE LEGALIZATION IMPACT ASSISTANCE GRANTS										
Current year	-566,854,000	-1,122,992,000	-1,122,992,000	-1,122,992,000	-1,122,992,000	-556,138,000	---	---	---	D
Advance funding	583,934,000	---	1,122,992,000	1,122,992,000	1,122,992,000	+539,058,000	+1,122,992,000	---	---	D
Total	17,080,000	-1,122,992,000	---	---	---	-17,080,000	+1,122,992,000	---	---	
COMMUNITY SERVICES BLOCK GRANT										
Grants to States for Community Services	349,372,000	---	349,372,000	370,000,000	360,000,000	+10,628,000	+360,000,000	+10,628,000	-10,000,000	D
Homeless services grants	33,181,000	---	25,000,000	30,181,000	25,000,000	-8,181,000	+25,000,000	---	-5,181,000	D
Discretionary funds:										
Community economic development 1/	20,494,000	---	21,500,000	22,000,000	22,000,000	+1,506,000	+22,000,000	+500,000	---	D
Rural housing 1/	4,099,000	---	4,099,000	4,099,000	4,099,000	---	+4,099,000	---	---	D
Farmworker assistance 1/	3,025,000	---	3,025,000	3,025,000	3,025,000	---	+3,025,000	---	---	D
National youth sports	10,832,000	10,832,000	12,000,000	12,832,000	12,000,000	+1,168,000	+1,168,000	---	-832,000	D
Technical assistance	244,000	---	244,000	244,000	244,000	---	+244,000	---	---	D
Subtotal, discretionary funds	38,694,000	10,832,000	40,868,000	42,200,000	41,368,000	+2,674,000	+30,536,000	+500,000	-832,000	
Community Partnerships	4,050,000	---	---	4,050,000	4,050,000	---	+4,050,000	+4,050,000	---	D
Community Food and Nutrition	2,440,000	---	5,484,000	7,000,000	7,000,000	+4,560,000	+7,000,000	+1,516,000	---	D
Total, Community services	427,737,000	10,832,000	420,724,000	453,431,000	437,418,000	+9,681,000	+426,586,000	+16,694,000	-16,013,000	

1/ Conference agreement assumes delayed obligation until 9/30/92. The Senate bill delayed obligation of $22,000,000 of Community economic development funding until 9/25/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
GRANTS TO STATES FOR CHILD CARE										
Block grants to States 1/	731,925,000	731,925,000	825,000,000	825,000,000	825,000,000	+93,075,000	+93,075,000	---	---	D
FY 91 rescission	---	---	-144,925,000	---	---	---	---	+144,925,000	---	D
Subtotal, block grants	731,925,000	731,925,000	680,075,000	825,000,000	825,000,000	+93,075,000	+93,075,000	+144,925,000	---	
Licensing grants to States	13,000,000	13,000,000	25,000,000	13,000,000	---	-13,000,000	-13,000,000	-25,000,000	-13,000,000	D
Total, Child care grants	744,925,000	744,925,000	705,075,000	838,000,000	825,000,000	+80,075,000	+80,075,000	+119,925,000	-13,000,000	
PROGRAM ADMINISTRATION										
Federal Administration	76,093,000	81,000,000	81,000,000	76,093,000	81,000,000	+4,907,000	---	---	+4,907,000	D
Research & evaluation	10,735,000	6,500,000	6,500,000	13,735,000	11,500,000	+765,000	+5,000,000	+5,000,000	-2,235,000	D
Total, program administration	86,828,000	87,500,000	87,500,000	89,828,000	92,500,000	+5,672,000	+5,000,000	+5,000,000	+2,672,000	
SOCIAL SERVICES BLOCK GRANT (TITLE XX)	2,800,000,000	2,800,000,000	2,800,000,000	2,800,000,000	2,800,000,000	---	---	---	---	M

1/ FY91 total makes available Sept. 7, 1991. FY 1992 request, House & Senate bills include delayed obligation of these funds until 9/19/92. House bill assumes rescission of $144,925,000 of FY91 funds. Conference agreement makes total available on 9/30/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
HUMAN DEVELOPMENT SERVICES										
Programs for Children, Youth, and Families:										
Head start:										
Regular grants	1,951,800,000	2,051,800,000	1,963,800,000	1,951,800,000	1,951,800,000	---	-100,000,000	-12,000,000	---	D
Transfer from ''Educational Excellence''	---	---	(250,000,000)	(250,000,000)	(250,000,000)	(+250,000,000)	(+250,000,000)	---	---	NA
Subtotal	(1,951,800,000)	(2,051,800,000)	(2,213,800,000)	(2,201,800,000)	(2,201,800,000)	(+250,000,000)	(+150,000,000)	(-12,000,000)	---	
Child development associate scholarships	1,397,000	1,397,000	1,397,000	1,397,000	1,397,000	---	---	---	---	D
Family crisis program:										
Child abuse state grants	19,518,000	19,518,000	19,518,000	21,518,000	20,518,000	+1,000,000	+1,000,000	+1,000,000	-1,000,000	D
Child abuse challenge grants	5,367,000	5,367,000	5,367,000	5,367,000	5,367,000	---	---	---	---	D
Runaway and homeless youth	35,132,000	35,132,000	35,132,000	36,370,000	35,751,000	+619,000	+619,000	+619,000	-619,000	D
Family violence	10,735,000	10,735,000	10,735,000	21,470,000	20,000,000	+9,265,000	+9,265,000	+9,265,000	-1,470,000	D
Abandoned infants assistance	12,557,000	12,557,000	12,557,000	12,557,000	12,557,000	---	---	---	---	D
Emergency protection grants - substance abuse	19,518,000	19,518,000	19,518,000	19,518,000	19,518,000	---	---	---	---	D
Subtotal, family crisis	102,827,000	102,827,000	102,827,000	116,800,000	113,711,000	+10,884,000	+10,884,000	+10,884,000	-3,089,000	
Dependent care planning and development	13,175,000	13,175,000	13,175,000	13,175,000	13,175,000	---	---	---	---	D
Child welfare services	273,911,000	273,911,000	273,911,000	273,911,000	273,911,000	---	---	---	---	D
Less amounts derived by transfer	-27,352,000	---	---	---	---	+27,352,000	---	---	---	D
Subtotal, child welfare services	246,559,000	273,911,000	273,911,000	273,911,000	273,911,000	+27,352,000	---	---	---	
Subtotal, Program for Children, Youth, and Families	2,315,758,000	2,443,110,000	2,355,110,000	2,357,083,000	2,353,994,000	+38,236,000	-89,116,000	-1,116,000	-3,089,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs				Mand Disc
						FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	
Programs for the Aging: 1/										
Grants to States:										
Supportive services and centers..............	290,818,000	290,818,000	290,818,000	324,000,000	317,000,000	+26,182,000	+26,182,000	+26,182,000	-7,000,000	D
Ombudsman activities..........................	5,367,000	5,367,000	5,367,000	11,367,000	8,367,000	+3,000,000	+3,000,000	+3,000,000	-3,000,000	D
Nutrition:										
Congregate meals...........................	361,083,000	361,083,000	361,083,000	373,000,000	367,000,000	+5,917,000	+5,917,000	+5,917,000	-6,000,000	D
Home-delivered meals.......................	87,831,000	87,831,000	87,831,000	91,831,000	89,831,000	+2,000,000	+2,000,000	+2,000,000	-2,000,000	D
Federal Council on Aging..........................	181,000	181,000	181,000	181,000	181,000	---	---	---	---	D
Grants to Indians.................................	14,639,000	14,639,000	14,639,000	15,224,000	15,124,000	+485,000	+485,000	+485,000	-100,000	D
Frail elderly in-home services....................	6,831,000	6,831,000	6,831,000	7,000,000	6,916,000	+85,000	+85,000	+85,000	-84,000	D
White House Conference on Aging..................	976,000	---	---	3,400,000	2,000,000	+1,024,000	+2,000,000	+2,000,000	-1,400,000	D
Undistributed......................................	---	---	---	-3,400,000	-2,000,000	-2,000,000	-2,000,000	-2,000,000	+1,400,000	D
Subtotal, Aging programs.......................	767,726,000	766,750,000	766,750,000	822,603,000	804,419,000	+36,693,000	+37,669,000	+37,669,000	-18,184,000	
Developmental disabilities program:										
State grants.......................................	64,409,000	64,409,000	64,409,000	71,773,000	67,706,000	+3,297,000	+3,297,000	+3,297,000	-4,067,000	D
Protection and advocacy............................	20,982,000	20,982,000	20,982,000	24,080,000	22,500,000	+1,518,000	+1,518,000	+1,518,000	-1,580,000	D
Subtotal, Developmental disabilities...........	85,391,000	85,391,000	85,391,000	95,853,000	90,206,000	+4,815,000	+4,815,000	+4,815,000	-5,647,000	
Native American Programs............................	33,376,000	33,376,000	33,376,000	34,376,000	34,126,000	+750,000	+750,000	+750,000	-250,000	D

1/ Senate bill included delayed obligation of $25,000,000 until Feb. 1, 1992. Conference assumes delayed obligation of $25,000,000 until Sept. 30, 1992.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
Human services research, training & demonstration:										
Comprehensive child development centers...........	24,398,000	24,398,000	45,000,000	24,398,000	24,398,000	---	---	-20,602,000	---	D
Transfer from "Educational excellence".........	---	---	---	(20,000,000)	(20,000,000)	(+20,000,000)	(+20,000,000)	(+20,000,000)	---	NA
Subtotal, Comprehensive Child Development...	(24,398,000)	(24,398,000)	(45,000,000)	(44,398,000)	(44,398,000)	(+20,000,000)	(+20,000,000)	(-602,000)	---	
Child abuse discretionary activities..............	14,639,000	14,638,000	14,639,000	14,639,000	14,639,000	---	+1,000	---	---	D
Runaway youth - transitional living...............	9,939,000	9,939,000	12,000,000	12,000,000	12,000,000	+2,061,000	+2,061,000	---	---	D
Runaway youth activities - drugs..................	14,786,000	14,786,000	14,786,000	15,786,000	15,286,000	+500,000	+500,000	+500,000	-500,000	D
Youth gang substance abuse........................	14,786,000	14,786,000	7,100,000	14,786,000	10,943,000	-3,843,000	-3,843,000	+3,843,000	-3,843,000	D
Temporary childcare/crisis nurseries..............	11,055,000	11,055,000	11,055,000	11,055,000	11,055,000	---	---	---	---	D
Child welfare training............................	3,559,000	3,559,000	3,559,000	3,559,000	3,559,000	---	---	---	---	D
Child welfare research............................	6,652,000	7,807,000	6,652,000	6,652,000	6,652,000	---	-1,155,000	---	---	D
Adoption opportunities............................	12,687,000	12,687,000	12,687,000	12,687,000	12,687,000	---	---	---	---	D
Aging research, training and special projects.....	25,941,000	25,941,000	25,941,000	25,941,000	25,941,000	---	---	---	---	D
Social services research..........................	2,879,000	3,879,000	7,879,000	12,879,000	10,379,000	+7,500,000	+6,500,000	+2,500,000	-2,500,000	D
Developmental disabilities special projects.......	3,025,000	3,025,000	3,025,000	3,325,000	3,248,000	+223,000	+223,000	+223,000	-77,000	D
Developmental disabilities university affiliated programs..	13,907,000	13,907,000	15,407,000	16,407,000	16,030,000	+2,123,000	+2,123,000	+623,000	-377,000	D
Total, Human Services Res, Trng & demonstration.	158,253,000	160,407,000	179,730,000	174,114,000	166,817,000	+8,564,000	+6,410,000	-12,913,000	-7,297,000	
Program direction....................................	73,906,000	88,000,000	88,000,000	79,034,000	88,000,000	+14,094,000	---	---	+8,966,000	D
Total, Human Development Services...........	3,434,410,000	3,577,034,000	3,508,357,000	3,563,063,000	3,537,562,000	+103,152,000	-39,472,000	+29,205,000	-25,501,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
PAYMENTS TO STATES FOR FOSTER CARE AND ADOPTION ASSISTANCE										
Foster care	**1,813,186,000**	**2,223,668,000**	**2,223,668,000**	**2,223,668,000**	**2,223,668,000**	**+410,482,000**	**---**	**---**	**---**	**M**
Adoption assistance	**189,832,000**	**201,861,000**	**201,861,000**	**201,861,000**	**201,861,000**	**+12,029,000**	**---**	**---**	**---**	**M**
Independent living	**60,000,000**	**70,000,000**	**70,000,000**	**70,000,000**	**70,000,000**	**+10,000,000**	**---**	**---**	**---**	**M**
Prior year claims	**520,911,000**	**118,476,000**	**118,476,000**	**118,476,000**	**118,476,000**	**-402,435,000**	**---**	**---**	**---**	**M**
Transfer to child welfare service	**27,352,000**	**---**	**---**	**---**	**---**	**-27,352,000**	**---**	**---**	**---**	**M**
Total, Payments to States	**2,611,281,000**	**2,614,005,000**	**2,614,005,000**	**2,614,005,000**	**2,614,005,000**	**+2,724,000**	**---**	**---**	**---**	
Total, Administration for Children and Families	**27,438,272,000**	**27,009,080,000**	**28,291,821,000**	**29,170,003,000**	**29,118,161,000**	**+1,679,889,000**	**+2,109,081,000**	**+826,340,000**	**-51,842,000**	
Current year	**(23,554,338,000)**	**(23,009,080,000)**	**(23,168,829,000)**	**(24,047,011,000)**	**(23,995,169,000)**	**(+440,831,000)**	**(+986,089,000)**	**(+826,340,000)**	**(-51,842,000)**	
FY 1993	**(3,883,934,000)**	**(4,000,000,000)**	**(5,122,992,000)**	**(5,122,992,000)**	**(5,122,992,000)**	**(+1,239,058,000)**	**(+1,122,992,000)**	**---**	**---**	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
OFFICE OF THE SECRETARY										
GENERAL DEPARTMENTAL MANAGEMENT:										
Federal funds	78,944,000	91,673,000	86,673,000	79,444,000	91,673,000	+12,729,000	---	+5,000,000	+12,229,000	D
Trust funds	(22,451,000)	(22,786,000)	(19,111,000)	(22,310,000)	(22,786,000)	(+335,000)	---	(+3,675,000)	(+476,000)	TF
Portion treated as budget authority	(7,899,000)	(8,215,000)	(6,890,000)	(8,040,000)	(8,215,000)	(+316,000)	---	(+1,325,000)	(+175,000)	TF*
Total, Departmental management	109,294,000	122,674,000	112,674,000	109,794,000	122,674,000	+13,380,000	---	+10,000,000	+12,880,000	
OFFICE OF THE INSPECTOR GENERAL:										
Federal funds	51,918,000	63,842,000	63,842,000	58,191,000	58,191,000	+6,273,000	-5,651,000	-5,651,000	---	D
Trust funds	(19,202,000)	(20,476,000)	(16,363,000)	(16,333,000)	(16,363,000)	(-2,839,000)	(-4,113,000)	---	(+30,000)	TF
Portion treated as budget authority	(23,467,000)	(26,871,000)	(21,470,000)	(21,500,000)	(21,470,000)	(-1,997,000)	(-5,401,000)	---	(-30,000)	TF*
Total, Inspector General	94,587,000	111,189,000	101,675,000	96,024,000	96,024,000	+1,437,000	-15,165,000	-5,651,000	---	
OFFICE FOR CIVIL RIGHTS:										
Federal funds	17,066,000	18,524,000	18,524,000	18,524,000	18,524,000	+1,458,000	---	---	---	D
Trust funds	(97,000)	(99,000)	(99,000)	(99,000)	(99,000)	(+2,000)	---	---	---	TF
Portion treated as budget authority	(3,807,000)	(3,901,000)	(3,901,000)	(3,901,000)	(3,901,000)	(+94,000)	---	---	---	TF*
Total, Civil Rights	20,970,000	22,524,000	22,524,000	22,524,000	22,524,000	+1,554,000	---	---	---	
POLICY RESEARCH	8,928,000	5,037,000	5,037,000	5,037,000	5,037,000	-3,891,000	---	---	---	D
Total, Office of the Secretary:										
Federal funds	156,856,000	179,076,000	174,076,000	161,196,000	173,425,000	+16,569,000	-5,651,000	-651,000	+12,229,000	
Trust funds	(76,923,000)	(82,348,000)	(67,834,000)	(72,183,000)	(72,834,000)	(-4,089,000)	(-9,514,000)	(+5,000,000)	(+651,000)	
Total, Office of the Secretary	(233,779,000)	(261,424,000)	(241,910,000)	(233,379,000)	(246,259,000)	(+12,480,000)	(-15,165,000)	(+4,349,000)	(+12,880,000)	
UNDISTRIBUTED SALARIES AND EXPENSES REDUCTION	---	---	-116,000,000	-53,099,000	-134,349,000	-134,349,000	-134,349,000	-18,349,000	-81,250,000	D
UNDISTRIBUTED TRAVEL REDUCTION	---	---	---	-9,492,000	-9,492,000	-9,492,000	-9,492,000	-9,492,000	---	D
Total, Department of Health and Human Services:										
Federal Funds	151,680,827,000	165,657,345,000	167,121,817,000	168,803,583,000	168,611,962,000	+16,931,135,000	+2,954,617,000	+1,490,145,000	-191,621,000	
Current year FY 1992	(130,543,893,000)	(139,119,345,000)	(139,460,825,000)	(141,142,591,000)	(140,950,970,000)	(+10,407,077,000)	(+1,831,625,000)	(+1,490,145,000)	(-191,621,000)	
FY 1993	(21,136,934,000)	(26,538,000,000)	(27,660,992,000)	(27,660,992,000)	(27,660,992,000)	(+6,524,058,000)	(+1,122,992,000)	---	---	
Trust funds	(6,554,729,000)	(6,543,148,000)	(6,937,781,000)	(6,504,857,000)	(6,934,781,000)	(+380,052,000)	(+391,633,000)	(-3,000,000)	(+429,924,000)	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
TITLE III - DEPARTMENT OF EDUCATION										
COMPENSATORY EDUCATION FOR THE DISADVANTAGED 1/										
Grants for the Disadvantaged (Chapter 1):										
Grants to local educational agencies:										
Basic grants	5,001,975,000	5,001,975,000	5,805,000,000	5,176,575,000	5,387,000,000	+385,025,000	+385,025,000	-418,000,000	+210,425,000	D
Additional appropriation 9/30/92	---	---	---	138,000,000	138,000,000	+138,000,000	+138,000,000	+138,000,000	---	D
Concentration grants	555,775,000	674,775,000	645,000,000	575,175,000	596,000,000	+40,225,000	-78,775,000	-49,000,000	+20,825,000	D
Additional appropriation 9/30/92	---	---	---	14,000,000	14,000,000	+14,000,000	+14,000,000	+14,000,000	---	D
Subtotal, grants to LEA's	5,557,750,000	5,676,750,000	6,450,000,000	5,903,750,000	6,135,000,000	+577,250,000	+458,250,000	-315,000,000	+231,250,000	
Capital expenses for private school children	36,108,000	36,108,000	38,000,000	42,108,000	40,054,000	+3,946,000	+3,946,000	+2,054,000	-2,054,000	D
Even start	49,771,000	60,000,000	100,000,000	54,500,000	70,000,000	+20,229,000	+10,000,000	-30,000,000	+15,500,000	D
State agency programs:										
Migrant	294,596,000	294,596,000	322,000,000	294,596,000	308,298,000	+13,702,000	+13,702,000	-13,702,000	+13,702,000	D
Neglected and delinquent	36,108,000	36,108,000	36,000,000	36,108,000	36,054,000	-54,000	-54,000	+54,000	-54,000	D
State administration	59,140,000	59,140,000	64,500,000	59,140,000	61,820,000	+2,680,000	+2,680,000	-2,680,000	+2,680,000	D
State program improvement grants	14,785,000	30,000,000	32,250,000	18,000,000	25,125,000	+10,340,000	-4,875,000	-7,125,000	+7,125,000	D
Evaluation and technical assistance 2/	13,175,000	17,000,000	17,000,000	13,175,000	15,088,000	+1,913,000	-1,912,000	-1,912,000	+1,913,000	D
Rural technical assistance centers 2/	4,463,000	4,463,000	5,000,000	5,000,000	5,000,000	+537,000	+537,000	---	---	D
Total, Chapter 1	6,065,896,000	6,214,165,000	7,064,750,000	6,426,377,000	6,696,439,000	+630,543,000	+482,274,000	-368,311,000	+270,062,000	
Migrant education:										
High school equivalency program 2/	7,807,000	8,135,000	8,500,000	8,119,000	8,310,000	+503,000	+175,000	-190,000	+191,000	D
College assistance migrant program 2/	1,952,000	2,034,000	2,500,000	2,030,000	2,265,000	+313,000	+231,000	-235,000	+235,000	D
Subtotal, migrant education	9,759,000	10,169,000	11,000,000	10,149,000	10,575,000	+816,000	+406,000	-425,000	+426,000	
Total, Compensatory Education programs	6,075,655,000	6,224,334,000	7,075,750,000	6,436,526,000	6,707,014,000	+631,359,000	+482,680,000	-368,736,000	+270,488,000	
Subtotal, forward funded	(6,048,258,000)	(6,192,702,000)	(7,042,750,000)	(6,408,202,000)	(6,676,351,000)	(+628,093,000)	(+483,649,000)	(-366,399,000)	(+268,149,000)	

1/ $200 million originally requested within this account for Choice Schools considered under the Educational Excellence account.

2/ Current funded.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
IMPACT AID										
Maintenance and operations:										
Payments for ''a'' children	585,540,000	588,540,000	585,540,000	588,540,000	588,540,000	+3,000,000	---	+3,000,000	---	D
Payments for ''b'' children	136,626,000	---	136,626,000	136,626,000	136,626,000	---	+136,626,000	---	---	D
Payments for Federal property (Section 2)	16,590,000	16,590,000	16,590,000	16,590,000	16,590,000	---	---	---	---	D
Payments related to decreased activity (Sec. 3e)	1,952,000	---	---	1,952,000	1,952,000	---	+1,952,000	+1,952,000	---	D
Subtotal	740,708,000	605,130,000	738,756,000	743,708,000	743,708,000	+3,000,000	+138,578,000	+4,952,000	---	
Disaster assistance (Section 7)	13,663,000	---	---	---	---	-13,663,000	---	---	---	D
Construction	26,349,000	15,000,000	26,000,000	26,000,000	26,000,000	-349,000	+11,000,000	---	---	D
Additional appropriation 9/30/92	---	---	---	2,000,000	2,000,000	+2,000,000	+2,000,000	+2,000,000	---	D
Total, Impact aid	780,720,000	620,130,000	764,756,000	771,708,000	771,708,000	-9,012,000	+151,578,000	+6,952,000	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs				Mand Disc
						FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	
SCHOOL IMPROVEMENT PROGRAMS 2/										
Educational Improvement (Chapter 2):										
State and Local Programs:										
State block grants 1/	448,914,000	448,914,000	450,000,000	450,000,000	450,000,000	+1,086,000	+1,086,000	---	---	D
Evaluation	976,000	---	---	---	---	-976,000	---	---	---	D
Subtotal	449,890,000	448,914,000	450,000,000	450,000,000	450,000,000	+110,000	+1,086,000	---	---	
National programs:										
Inexpensive book distribution (RIF)	9,271,000	9,271,000	10,000,000	10,000,000	10,000,000	+729,000	+729,000	---	---	D
Arts in education:										
Regular program	4,392,000	4,392,000	3,700,000	8,600,000	8,600,000	+4,208,000	+4,208,000	+4,900,000	---	D
Initial forward funding (House only) 1/	---	---	4,900,000	---	---	---	---	-4,900,000	---	D
Law - related education	5,855,000	---	6,000,000	6,000,000	6,000,000	+145,000	+6,000,000	---	---	D
Subtotal, National programs	19,518,000	13,663,000	24,600,000	24,600,000	24,600,000	+5,082,000	+10,937,000	---	---	
Total, Chapter 2	469,408,000	462,577,000	474,600,000	474,600,000	474,600,000	+5,192,000	+12,023,000	---	---	
Civics education	---	---	3,000,000	3,800,000	3,800,000	+3,800,000	+3,800,000	+800,000	---	D
Drug-free schools and communities:										
State grants 1/	497,709,000	497,709,000	497,709,000	517,617,000	507,663,000	+9,954,000	+9,954,000	+9,954,000	-9,954,000	D
School personnel training	23,395,000	23,395,000	23,395,000	24,331,000	23,863,000	+468,000	+468,000	+468,000	-468,000	D
National programs:										
Regular programs	60,914,000	60,914,000	60,914,000	63,351,000	62,133,000	+1,219,000	+1,219,000	+1,219,000	-1,218,000	D
Emergency grants	24,331,000	49,500,000	25,000,000	30,304,000	30,304,000	+5,973,000	-19,196,000	+5,304,000	---	D
Subtotal, drug-free schools	606,349,000	631,518,000	607,018,000	635,603,000	623,963,000	+17,614,000	-7,555,000	+16,945,000	-11,640,000	

1/ Forward funded.

2/ Many activities previously funded in this account transferred to Education Research & Improvement.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
Strengthening teaching and administration:										
Eisenhower mathematics and science education State grants 1/	202,011,000	239,011,000	240,000,000	240,000,000	240,000,000	+37,989,000	+989,000	---	---	D
Christa McAuliffe fellowships	1,954,000	2,036,000	2,000,000	2,000,000	2,000,000	+46,000	-36,000	---	---	D
Other school improvement programs:										
Magnet schools, desegregation program	109,977,000	109,977,000	110,000,000	110,000,000	110,000,000	+23,000	+23,000	---	---	D
Education for homeless children & youth 1/	7,313,000	---	37,000,000	25,000,000	25,000,000	+17,687,000	+25,000,000	-12,000,000	---	D
Women's educational equity	1,995,000	500,000	2,000,000	500,000	500,000	-1,495,000	---	-1,500,000	---	D
Training and advisory services (Civil Rights IV-A)	21,329,000	21,329,000	22,000,000	22,000,000	22,000,000	+671,000	+671,000	---	---	D
Dropout prevention demonstrations	34,064,000	29,214,000	50,000,000	35,427,000	40,000,000	+5,936,000	+10,786,000	-10,000,000	+4,573,000	D
General assistance to the Virgin Islands	4,366,000	4,366,000	4,500,000	4,500,000	4,500,000	+134,000	+134,000	---	---	D
Ellender fellowships/Close up 1/	4,101,000	---	4,100,000	4,500,000	4,300,000	+199,000	+4,300,000	+200,000	-200,000	D
Follow through	7,265,000	---	10,000,000	7,265,000	8,632,000	+1,367,000	+8,632,000	-1,368,000	+1,367,000	D
Native Hawaiian Education	6,366,000	---	6,400,000	6,400,000	6,400,000	+34,000	+6,400,000	---	---	D
Foreign Language Assistance 1/	4,880,000	---	5,000,000	12,000,000	10,000,000	+5,120,000	+10,000,000	+5,000,000	-2,000,000	D
Subtotal, other school improvement programs	201,656,000	165,386,000	251,000,000	227,592,000	231,332,000	+29,676,000	+65,946,000	-19,668,000	+3,740,000	
National writing project	1,952,000	---	---	3,000,000	2,500,000	+548,000	+2,500,000	+2,500,000	-500,000	D
School year extension study commission	976,000	---	---	---	---	-976,000	---	---	---	D
Total, School improvement programs	1,484,306,000	1,500,528,000	1,577,618,000	1,586,595,000	1,578,195,000	+93,889,000	+77,667,000	+577,000	-8,400,000	
Subtotal, forward funded	(1,164,928,000)	(1,185,634,000)	(1,238,709,000)	(1,249,117,000)	(1,236,963,000)	(+72,035,000)	(+51,329,000)	(-1,746,000)	(-12,154,000)	

1/ Forward funded.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
EDUCATIONAL EXCELLENCE / AMERICA 2000										
Educational Excellence:										
New generation of American schools..............	---	180,000,000	---	---	---	---	-180,000,000	---	---	D
Merit schools....................................	---	100,000,000	---	---	---	---	-100,000,000	---	---	D
Governors' academies for teachers................	---	70,000,000	---	---	---	---	-70,000,000	---	---	D
Governors' academies for school leaders..........	---	22,500,000	---	---	---	---	-22,500,000	---	---	D
Assistance for parental choice programs..........	---	200,000,000	---	---	---	---	-200,000,000	---	---	D
Choice demonstrations of national significance....	---	30,000,000	---	---	---	---	-30,000,000	---	---	D
Alternative teacher and principal certification...	---	25,000,000	---	---	---	---	-25,000,000	---	---	D
Commission on time, study, learning, and teaching.	---	1,000,000	---	---	---	---	-1,000,000	---	---	D
Subtotal, Educational excellence................	---	628,500,000	---	---	---	---	-628,500,000	---	---	
Vocational and Adult Education:										
Regional literacy resource centers...............	---	5,000,000	---	---	---	---	-5,000,000	---	---	D
Literacy initiatives.............................	---	5,000,000	---	---	---	---	-5,000,000	---	---	D
Higher Education: Endowment grants for HBCUs.........	---	10,000,000	---	---	---	---	-10,000,000	---	---	D
Assessment, Statistics, Research and Improvement:										
World class standards/achievement tests..........	---	12,400,000	---	---	---	---	-12,400,000	---	---	D
Goals panel: National report card................	---	2,000,000	---	---	---	---	-2,000,000	---	---	D
America on line..................................	---	5,000,000	---	---	---	---	-5,000,000	---	---	D
Assessing workplace literacy skills..............	---	2,000,000	---	---	---	---	-2,000,000	---	---	D
Statistics: Expansion of the adult literacy survey	---	1,100,000	---	---	---	---	-1,100,000	---	---	D
Assessment: Preparing interim tests..............	---	5,000,000	---	---	---	---	-5,000,000	---	---	D
Fund for the Improvement and Reform of Schools and Teaching..	---	10,700,000	---	---	---	---	-10,700,000	---	---	D
Subtotal, ASRI................................	---	38,200,000	---	---	---	---	-38,200,000	---	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
Departmental Management: Program administration......	---	3,300,000	---	---	---	---	-3,300,000	---	---	D
Head start 1/..	---	---	250,000,000	250,000,000	250,000,000	+250,000,000	+250,000,000	---	---	D
Community and migrant health centers 1/.............	---	---	---	55,000,000	55,000,000	+55,000,000	+55,000,000	+55,000,000	---	D
Comprehensive child development centers 1/..........	---	---	---	20,000,000	20,000,000	+20,000,000	+20,000,000	+20,000,000	---	D
Consolidated funds - regular appropriations 1/.......	---	---	250,000,000	---	100,000,000	+100,000,000	+100,000,000	-150,000,000	+100,000,000	D
Consolidated funds - by transfer 1/..................	---	---	---	(100,000,000)	---	---	---	---	(-100,000,000)	NA
Total, Educational excellence..................	---	690,000,000	500,000,000	325,000,000	425,000,000	+425,000,000	-265,000,000	-75,000,000	+100,000,000	
BILINGUAL AND IMMIGRANT EDUCATION										
Bilingual education:										
Bilingual programs..............................	121,039,000	123,814,000	171,000,000	123,814,000	147,407,000	+26,368,000	+23,593,000	-23,593,000	+23,593,000	D
Support services................................	11,632,000	11,632,000	12,000,000	12,000,000	12,000,000	+368,000	+368,000	---	---	D
Training grants.................................	36,066,000	36,066,000	36,000,000	36,000,000	36,000,000	-66,000	-66,000	---	---	D
Immigrant education..................................	29,277,000	29,277,000	30,000,000	30,000,000	30,000,000	+723,000	+723,000	---	---	D
Total..	198,014,000	200,789,000	249,000,000	201,814,000	225,407,000	+27,393,000	+24,618,000	-23,593,000	+23,593,000	

1/ To be made available on July 1, 1992.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
SPECIAL EDUCATION										
State grants:										
EHA grants to States part ''b''....................	1,854,210,000	1,976,095,000	1,976,095,000	1,976,095,000	1,976,095,000	+121,885,000	---	---	---	D
Chapter 1 handicapped grants.......................	148,861,000	125,661,000	135,661,000	148,861,000	143,000,000	-5,861,000	+17,339,000	+7,339,000	-5,861,000	D
Preschool grants...................................	292,770,000	295,920,000	295,920,000	320,000,000	320,000,000	+27,230,000	+24,080,000	+24,080,000	---	D
Grants for infants and families....................	117,108,000	128,819,000	175,000,000	175,000,000	175,000,000	+57,892,000	+46,181,000	---	---	D
Subtotal, State grants...........................	2,412,949,000	2,526,495,000	2,582,676,000	2,619,956,000	2,614,095,000	+201,146,000	+87,600,000	+31,419,000	-5,861,000	
Special purpose funds:										
Deaf-blindness.....................................	12,849,000	12,849,000	13,000,000	13,000,000	13,000,000	+151,000	+151,000	---	---	D
Severe disabilities................................	7,869,000	7,869,000	8,000,000	8,000,000	8,000,000	+131,000	+131,000	---	---	D
Serious emotional disturbance......................	1,952,000	1,952,000	4,000,000	4,000,000	4,000,000	+2,048,000	+2,048,000	---	---	D
Early childhood education..........................	24,202,000	24,202,000	25,000,000	25,000,000	25,000,000	+798,000	+798,000	---	---	D
Secondary and transitional services................	14,639,000	14,639,000	17,000,000	19,000,000	19,000,000	+4,361,000	+4,361,000	+2,000,000	---	D
Postsecondary education............................	8,559,000	8,559,000	9,000,000	9,000,000	9,000,000	+441,000	+441,000	---	---	D
Innovation and development.........................	20,174,000	20,174,000	24,000,000	21,000,000	21,000,000	+826,000	+826,000	-3,000,000	---	D
Media and captioning services......................	16,424,000	16,424,000	17,000,000	17,000,000	17,000,000	+576,000	+576,000	---	---	D
Technology applications............................	5,593,000	5,593,000	10,000,000	10,000,000	10,000,000	+4,407,000	+4,407,000	---	---	D
Special studies....................................	3,904,000	3,904,000	4,000,000	4,000,000	4,000,000	+96,000	+96,000	---	---	D
Personnel development..............................	69,289,000	69,289,000	89,800,000	89,800,000	89,800,000	+20,511,000	+20,511,000	---	---	D
Parent training....................................	9,759,000	9,759,000	10,200,000	12,000,000	12,000,000	+2,241,000	+2,241,000	+1,800,000	---	D
Clearing houses....................................	1,525,000	1,525,000	2,000,000	2,000,000	2,000,000	+475,000	+475,000	---	---	D
Regional resource centers..........................	6,620,000	6,620,000	7,000,000	7,000,000	7,000,000	+380,000	+380,000	---	---	D
Subtotal, Special purpose funds..................	203,358,000	203,358,000	240,000,000	240,800,000	240,800,000	+37,442,000	+37,442,000	+800,000	---	
Total, Special education.........................	2,616,307,000	2,729,853,000	2,822,676,000	2,860,756,000	2,854,895,000	+238,588,000	+125,042,000	+32,219,000	-5,861,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
REHABILITATION SERVICES AND DISABILITY RESEARCH										
Vocational rehabilitation State grants:										
Grants to States	1,632,625,000	---	1,735,480,000	1,788,000,000	1,788,000,000	+155,375,000	+1,788,000,000	+52,520,000	---	M
Supported employment State grants	29,150,000	---	29,150,000	31,065,000	31,065,000	+1,915,000	+31,065,000	+1,915,000	---	M
Client assistance	8,310,000	---	8,310,000	9,141,000	9,141,000	+831,000	+9,141,000	+831,000	---	M
Subtotal, State grants	1,670,085,000	---	1,772,940,000	1,828,206,000	1,828,206,000	+158,121,000	+1,828,206,000	+55,266,000	---	
Special purpose funds:										
Special demonstration programs	18,368,000	---	18,368,000	25,103,000	31,103,000	+12,735,000	+31,103,000	+12,735,000	+6,000,000	M
Supported employment projects	10,023,000	---	10,023,000	10,423,000	10,423,000	+400,000	+10,423,000	+400,000	---	M
Recreational programs	2,617,000	---	2,617,000	2,617,000	2,617,000	---	+2,617,000	---	---	M
Migratory workers	1,060,000	---	1,060,000	1,060,000	1,060,000	---	+1,060,000	---	---	M
Projects with industry	19,445,000	---	19,445,000	20,390,000	20,390,000	+945,000	+20,390,000	+945,000	---	M
Helen Keller National Center	5,367,000	---	5,367,000	5,867,000	5,867,000	+500,000	+5,867,000	+500,000	---	M
Independent living:										
Comprehensive services	13,619,000	---	13,619,000	14,200,000	14,200,000	+581,000	+14,200,000	+581,000	---	M
Centers	27,579,000	---	27,579,000	29,000,000	29,000,000	+1,421,000	+29,000,000	+1,421,000	---	M
Services for older blind	5,914,000	---	5,914,000	6,505,000	6,505,000	+591,000	+6,505,000	+591,000	---	M
Protection & advocacy for severely disabled	976,000	---	976,000	1,074,000	1,074,000	+98,000	+1,074,000	+98,000	---	M
Subtotal, Independent living	48,088,000	---	48,088,000	50,779,000	50,779,000	+2,691,000	+50,779,000	+2,691,000	---	
Training	33,353,000	---	33,353,000	36,688,000	36,688,000	+3,335,000	+36,688,000	+3,335,000	---	M
National Institute on Disability & Rehabilitation Research	58,924,000	---	58,924,000	61,000,000	61,000,000	+2,076,000	+61,000,000	+2,076,000	---	M
Technology assistance	20,982,000	27,340,000	27,340,000	28,000,000	28,000,000	+7,018,000	+660,000	+660,000	---	M
Evaluation	976,000	---	976,000	1,025,000	1,025,000	+49,000	+1,025,000	+49,000	---	M
Subtotal, Special purpose funds	219,203,000	27,340,000	225,561,000	242,952,000	248,952,000	+29,749,000	+221,612,000	+23,391,000	+6,000,000	
Consolidated request, new legislation	---	1,976,040,000	---	---	---	---	-1,976,040,000	---	---	M
Total, Rehabilitation services	1,889,288,000	2,003,380,000	1,998,501,000	2,071,158,000	2,077,158,000	+187,870,000	+73,778,000	+78,657,000	+6,000,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES										
AMERICAN PRINTING HOUSE FOR THE BLIND....................	6,136,000	6,136,000	5,500,000	6,600,000	5,900,000	-236,000	-236,000	+400,000	-700,000	D
NATIONAL TECHNICAL INSTITUTE FOR THE DEAF:										
Operations..	36,884,000	36,884,000	38,500,000	39,097,000	39,097,000	+2,213,000	+2,213,000	+597,000	---	D
Endowment grant...	328,000	342,000	---	342,000	342,000	+14,000	---	+342,000	---	D
Subtotal, NTID..	37,212,000	37,226,000	38,500,000	39,439,000	39,439,000	+2,227,000	+2,213,000	+939,000	---	
GALLAUDET UNIVERSITY:										
University programs..................................	47,623,000	47,623,000	48,473,000	50,480,000	50,480,000	+2,857,000	+2,857,000	+2,007,000	---	D
Precollege programs 1/............................	21,223,000	21,223,000	21,223,000	22,560,000	22,560,000	+1,337,000	+1,337,000	+1,337,000	---	D
Endowment grant..	976,000	1,000,000	976,000	1,000,000	1,000,000	+24,000	---	+24,000	---	D
Construction..	2,440,000	1,000,000	2,500,000	2,500,000	2,500,000	+60,000	+1,500,000	---	---	D
Subtotal, Gallaudet University.................	72,262,000	70,846,000	73,172,000	76,540,000	76,540,000	+4,278,000	+5,694,000	+3,368,000	---	
Total, Special Institutions for Disabled........	115,610,000	114,208,000	117,172,000	122,579,000	121,879,000	+6,269,000	+7,671,000	+4,707,000	-700,000	

1/ Kendall Elementary and Model Secondary Schools.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
VOCATIONAL AND ADULT EDUCATION										
Vocational education:										
Basic grants	856,503,000	890,656,000	1,077,000,000	897,500,000	900,000,000	+43,497,000	+9,344,000	-177,000,000	+2,500,000	D
Additional appropriation 9/30/92	---	---	---	50,000,000	50,000,000	+50,000,000	+50,000,000	+50,000,000	---	D
Community education employment centers	---	---	---	7,500,000	---	---	---	---	-7,500,000	D
Supplemental grants, equipment	---	---	100,000,000	---	---	---	---	-100,000,000	---	D
Additional appropriation 9/30/92	---	---	---	10,000,000	10,000,000	+10,000,000	+10,000,000	+10,000,000	---	D
Community - based organizations	11,711,000	11,711,000	12,000,000	12,000,000	12,000,000	+289,000	+289,000	---	---	D
Consumer and homemaking education	33,352,000	---	38,000,000	33,352,000	35,000,000	+1,648,000	+35,000,000	-3,000,000	+1,648,000	D
State councils	8,783,000	8,783,000	9,000,000	9,000,000	9,000,000	+217,000	+217,000	---	---	D
Tech Prep	63,434,000	63,434,000	100,000,000	65,971,000	90,000,000	+26,566,000	+26,566,000	-10,000,000	+24,029,000	D
Tribally controlled post-secondary vocational institutions 1/	2,440,000	2,440,000	2,500,000	2,500,000	2,500,000	+60,000	+60,000	---	---	D
National programs:										
Research	6,831,000	10,000,000	10,000,000	10,000,000	10,000,000	+3,169,000	---	---	---	D
Technical assistance, sec. 404 (d)	---	---	2,000,000	---	2,000,000	+2,000,000	+2,000,000	---	+2,000,000	D
Demonstrations	12,970,000	9,000,000	12,000,000	14,000,000	14,000,000	+1,030,000	+5,000,000	+2,000,000	---	D
Data systems (NOICC/SOICC)	4,880,000	4,880,000	5,000,000	5,000,000	5,000,000	+120,000	+120,000	---	---	D
Subtotal, national programs	24,681,000	23,880,000	29,000,000	29,000,000	31,000,000	+6,319,000	+7,120,000	+2,000,000	+2,000,000	
Bilingual vocational training	2,888,000	2,888,000	3,000,000	3,000,000	3,000,000	+112,000	+112,000	---	---	D
Subtotal, Applied technology education	1,003,792,000	1,003,792,000	1,370,500,000	1,119,823,000	1,142,500,000	+138,708,000	+138,708,000	-228,000,000	+22,677,000	

1/ Senate bill and conference agreement make funding available 10/1/91.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
Adult education:										
State Programs....................................	201,035,000	221,500,000	250,000,000	221,500,000	235,750,000	+34,715,000	+14,250,000	-14,250,000	+14,250,000	D
National programs..................................	7,807,000	9,000,000	9,000,000	9,000,000	9,000,000	+1,193,000	---	---	---	D
Literacy training for homeless adults.............	9,759,000	---	---	9,759,000	9,759,000	---	+9,759,000	+9,759,000	---	D
Workplace literacy partnerships...................	19,251,000	19,251,000	20,000,000	19,251,000	19,251,000	---	---	-749,000	---	D
English literacy grants...........................	976,000	976,000	1,000,000	1,000,000	1,000,000	+24,000	+24,000	---	---	D
State literacy resource centers...................	---	---	---	10,000,000	5,000,000	+5,000,000	+5,000,000	+5,000,000	-5,000,000	D
Prison literacy training program..................	---	---	---	10,000,000	5,000,000	+5,000,000	+5,000,000	+5,000,000	-5,000,000	D
Subtotal, adult education.........................	238,828,000	250,727,000	280,000,000	280,510,000	284,760,000	+45,932,000	+34,033,000	+4,760,000	+4,250,000	
Technology education demonstrations..................	964,000	---	1,000,000	---	---	-964,000	---	-1,000,000	---	D
Commercial truck driver training.....................	1,952,000	---	---	3,000,000	2,500,000	+548,000	+2,500,000	+2,500,000	-500,000	D
Total, Vocational and adult education..........	1,245,536,000	1,254,519,000	1,651,500,000	1,403,333,000	1,429,760,000	+184,224,000	+175,241,000	-221,740,000	+26,427,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
STUDENT FINANCIAL ASSISTANCE 2/										
Pell Grants: Academic year 1992 - 1993 1/	5,374,282,000	5,775,121,000	5,350,000,000	5,360,000,000	5,360,000,000	-14,282,000	-415,121,000	+10,000,000	---	D
Contingency	---	---	100,000,000	100,000,000	100,000,000	+100,000,000	+100,000,000	---	---	D
Presidential Scholarships, new legislation	---	170,000,000	---	---	---	---	-170,000,000	---	---	D
Supplemental educational opportunity grants	520,155,000	346,945,000	570,000,000	570,000,000	577,000,000	+56,845,000	+230,055,000	+7,000,000	+7,000,000	D
Additional appropriation 9/30/92	---	---	---	62,000,000	---	---	---	---	-62,000,000	D
Work-study	594,689,000	396,615,000	595,000,000	618,476,000	615,000,000	+20,311,000	+218,385,000	+20,000,000	-3,476,000	D
Income contingent loans	4,880,000	10,000,000	5,000,000	4,880,000	4,880,000	---	-5,120,000	-120,000	---	D
Perkins loans:										
Federal capital contributions	156,144,000	---	156,000,000	156,000,000	156,000,000	-144,000	+156,000,000	---	---	D
Loan cancellations	---	15,000,000	13,000,000	15,000,000	---	---	-15,000,000	-13,000,000	-15,000,000	D
Subtotal, Perkins loans	156,144,000	15,000,000	169,000,000	171,000,000	156,000,000	-144,000	+141,000,000	-13,000,000	-15,000,000	
State student incentive grants	63,531,000	---	64,000,000	76,000,000	72,000,000	+8,469,000	+72,000,000	+8,000,000	-4,000,000	D
Total, Student Financial Assistance	6,713,681,000	6,713,681,000	6,853,000,000	6,962,356,000	6,884,880,000	+171,199,000	+171,199,000	+31,880,000	-77,476,000	
GUARANTEED STUDENT LOANS (LIQUIDATING)										
Contract authority to liquidate pre-1992 loan subsidies	(4,209,818,000)	(3,075,711,000)	(3,075,711,000)	(3,075,711,000)	(4,190,459,000)	(-19,359,000)	(+1,114,748,000)	(+1,114,748,000)	(+1,114,748,000)	NA
Appropriation, including shortfalls (non-add)	(5,381,422,000)	(3,105,711,000)	(3,105,711,000)	(3,105,711,000)	(4,220,459,000)	(-1,160,963,000)	(+1,114,748,000)	(+1,114,748,000)	(+1,114,748,000)	NA
GUARANTEED STUDENT LOANS PROGRAM										
Guaranteed Student Loans:										
New loan subsidies (contract authority)	---	2,655,636,000	2,655,636,000	2,655,636,000	2,655,636,000	+2,655,636,000	---	---	---	M
Mandatory admin expenses (contract authority)	---	164,611,000	164,611,000	164,611,000	164,611,000	+164,611,000	---	---	---	M
Total	---	2,820,247,000	2,820,247,000	2,820,247,000	2,820,247,000	+2,820,247,000	---	---	---	
GSL LOAN ADMINISTRATION	34,671,000	46,433,000	46,433,000	40,000,000	45,000,000	+10,329,000	-1,433,000	-1,433,000	+5,000,000	D

1/ 1991 includes prior year shortfall and contingency.

2/ Conference agreement assumes $62,000,000 of the total is not made available until 9/30/92.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
HIGHER EDUCATION										
Aid for institutional development:										
Strengthening institutions........................	87,831,000	87,831,000	90,000,000	87,831,000	87,831,000	---	---	-2,169,000	---	D
Strengthening historically black colleges & univ..	87,831,000	87,831,000	100,000,000	87,831,000	100,000,000	+12,169,000	+12,169,000	---	+12,169,000	D
Strengthening historically black grad institutions	11,711,000	11,711,000	12,000,000	11,711,000	11,711,000	---	---	-289,000	---	D
Endowment grants..................................	17,462,000	7,462,000	7,500,000	7,500,000	7,500,000	-9,962,000	+38,000	---	---	D
Subtotal, Institutional development............	204,835,000	194,835,000	209,500,000	194,873,000	207,042,000	+2,207,000	+12,207,000	-2,458,000	+12,169,000	
Program development:										
Fund for the Improvement of Postsec. Education....	14,639,000	14,639,000	15,000,000	15,000,000	15,000,000	+361,000	+361,000	---	---	D
Minority science improvement......................	5,855,000	6,101,000	6,000,000	6,000,000	6,000,000	+145,000	-101,000	---	---	D
Innovative projects for community services........	1,464,000	6,830,000	1,463,000	1,463,000	1,463,000	-1,000	-5,367,000	---	---	D
Student Literacy Corps............................	5,367,000	---	5,367,000	5,367,000	5,367,000	---	+5,367,000	---	---	D
International educ & foreign language studies:										
Domestic programs.............................	28,670,000	28,670,000	34,000,000	30,170,000	30,000,000	+1,330,000	+1,330,000	-4,000,000	-170,000	D
Additional appropriation 9/30/92..........	---	---	---	4,000,000	4,000,000	+4,000,000	+4,000,000	+4,000,000	---	D
Overseas programs.............................	5,855,000	5,855,000	6,000,000	6,000,000	6,000,000	+145,000	+145,000	---	---	D
Foreign language & area studies fellowships VI	11,342,000	11,342,000	13,000,000	13,000,000	13,000,000	+1,658,000	+1,658,000	---	---	D
Subtotal, International education...........	45,867,000	45,867,000	53,000,000	53,170,000	53,000,000	+7,133,000	+7,133,000	---	-170,000	
Cooperative education.............................	13,175,000	13,175,000	14,000,000	14,000,000	14,000,000	+825,000	+825,000	---	---	D
Law school clinical experience....................	5,855,000	---	8,000,000	8,000,000	8,000,000	+2,145,000	+8,000,000	---	---	D
Subtotal, Program development..................	92,222,000	86,612,000	102,830,000	103,000,000	102,830,000	+10,608,000	+16,218,000	---	-170,000	
Construction:										
Interest subsidy grants, prior year construction..	20,396,000	19,412,000	19,412,000	19,412,000	19,412,000	-984,000	---	---	---	D
Academic facilities...............................	4,197,000	---	---	---	---	-4,197,000	---	---	---	D
Subtotal, Construction.........................	24,593,000	19,412,000	19,412,000	19,412,000	19,412,000	-5,181,000	---	---	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs				Mand Disc
						FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	
Special grants:										
Assistance to Guam..................................	488,000	---	500,000	500,000	500,000	+12,000	+500,000	---	---	D
Margaret Chase Smith Library........................	976,000	---	---	---	---	-976,000	---	---	---	D
John McCormack Institute............................	2,928,000	---	---	---	---	-2,928,000	---	---	---	D
Robert A. Taft Institute............................	683,000	550,000	550,000	550,000	550,000	-133,000	---	---	---	D
Magnuson Endowment..................................	2,928,000	---	---	2,000,000	2,000,000	-928,000	+2,000,000	+2,000,000	---	D
Model Law Center, Seton Hall University...........	5,367,000	---	---	---	---	-5,367,000	---	---	---	D
Bethune-Cookman.....................................	---	---	300,000	300,000	300,000	+300,000	+300,000	---	---	D
Urban Community Service.............................	---	---	---	10,000,000	8,000,000	+8,000,000	+8,000,000	+8,000,000	-2,000,000	D
Subtotal, Special grants....................	13,370,000	550,000	1,350,000	13,350,000	11,350,000	-2,020,000	+10,800,000	+10,000,000	-2,000,000	
Aid for students:										
Special programs for the disadvantaged (TRIO plus)	333,758,000	---	385,249,000	385,249,000	365,249,000	+31,491,000	+365,249,000	-20,000,000	-20,000,000	D
Additional appropriation 9/30/92.............	---	---	---	20,000,000	20,000,000	+20,000,000	+20,000,000	+20,000,000	---	D
Consolidated undergrad outreach (proposed leg)....	---	384,249,000	---	---	---	---	-384,249,000	---	---	D
McNair graduate outreach (proposed leg)...........	---	10,826,000	---	---	---	---	-10,826,000	---	---	D
Undergraduate scholarships:										
Byrd honors scholarships......................	9,271,000	9,271,000	9,271,000	9,642,000	9,642,000	+371,000	+371,000	+371,000	---	D
National science scholars.....................	976,000	10,000,000	4,500,000	4,500,000	4,500,000	+3,524,000	-5,500,000	---	---	D
Douglas teacher scholarships..................	14,639,000	14,639,000	15,000,000	15,000,000	15,000,000	+361,000	+361,000	---	---	D
Subtotal, Undergraduate scholarships........	24,886,000	33,910,000	28,771,000	29,142,000	29,142,000	+4,256,000	-4,768,000	+371,000	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
Graduate fellowships:										
Harris graduate fellowships..................	17,566,000	---	17,600,000	17,600,000	17,600,000	+34,000	+17,600,000	---	---	D
Harris public service fellowships............	3,198,000	---	3,200,000	3,200,000	3,200,000	+2,000	+3,200,000	---	---	D
Javits fellowships...........................	7,807,000	---	8,000,000	8,000,000	8,000,000	+193,000	+8,000,000	---	---	D
Graduate assistance in areas of national need.	24,885,000	---	30,000,000	25,000,000	28,000,000	+3,115,000	+28,000,000	-2,000,000	+3,000,000	D
Minority participation in graduate education..	5,953,000	---	5,826,000	5,953,000	5,953,000	---	+5,953,000	+127,000	---	D
National graduate fellowships (proposed leg)..	---	54,107,000	---	---	---	---	-54,107,000	---	---	D
Subtotal, Graduate fellowships.............	59,409,000	54,107,000	64,626,000	59,753,000	62,753,000	+3,344,000	+8,646,000	-1,873,000	+3,000,000	
Veterans' education outreach.....................	2,733,000	---	2,700,000	2,733,000	2,700,000	-33,000	+2,700,000	---	-33,000	D
Legal training for the disadvantaged (CLEO).......	2,928,000	---	3,000,000	3,045,000	3,045,000	+117,000	+3,045,000	+45,000	---	D
School, college & university partnerships.........	3,904,000	---	4,000,000	4,000,000	4,000,000	+96,000	+4,000,000	---	---	D
Total, Higher education.....................	762,638,000	784,501,000	821,438,000	834,557,000	827,523,000	+64,885,000	+43,022,000	+6,085,000	-7,034,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
HOWARD UNIVERSITY										
Academic program	153,515,000	153,515,000	153,515,000	158,515,000	153,515,000	---	---	---	-5,000,000	D
Endowment grant	2,928,000	4,500,000	2,928,000	4,500,000	2,928,000	---	-1,572,000	---	-1,572,000	D
Research	4,616,000	4,616,000	4,616,000	4,616,000	4,616,000	---	---	---	---	D
Howard University Hospital	28,301,000	28,301,000	28,301,000	29,500,000	28,301,000	---	---	---	-1,199,000	D
Emergency construction	5,855,000	---	23,600,000	2,000,000	23,000,000	+17,145,000	+23,000,000	-600,000	+21,000,000	D
Total, Howard University	195,215,000	190,932,000	212,960,000	199,131,000	212,360,000	+17,145,000	+21,428,000	-600,000	+13,229,000	
COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS (LIQUIDATING):										
Borrowing authority	29,277,000	---	---	---	---	-29,277,000	---	---	---	D
Interest subsidy payments	8,449,000	3,598,000	3,598,000	3,598,000	3,598,000	-4,851,000	---	---	---	M
Total, College Housing Liquidating	37,726,000	3,598,000	3,598,000	3,598,000	3,598,000	-34,128,000	---	---	---	
COLLEGE HOUSING AND ACADEMIC FACILITIES PROGRAM										
New loan subsidies	---	---	---	7,539,000	7,539,000	+7,539,000	+7,539,000	+7,539,000	---	D
Federal administration	---	---	---	566,000	566,000	+566,000	+566,000	+566,000	---	D
Loan limitation	---	---	---	(30,000,000)	(30,000,000)	(+30,000,000)	(+30,000,000)	(+30,000,000)	---	NA
Total, College Housing Program	---	---	---	8,105,000	8,105,000	+8,105,000	+8,105,000	+8,105,000	---	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
EDUCATION RESEARCH, STATISTICS, AND IMPROVEMENT										
Research	64,714,000	74,296,000	71,000,000	71,500,000	71,000,000	+6,286,000	-3,296,000	---	-500,000	D
High technology demonstration program	---	---	8,000,000	---	---	---	---	-8,000,000	---	D
Statistics	44,313,000	51,974,000	50,000,000	44,313,000	47,313,000	+3,000,000	-4,661,000	-2,687,000	+3,000,000	D
Assessment (NAEP)	19,211,000	28,086,000	28,000,000	20,000,000	29,900,000	+10,689,000	+1,814,000	+1,900,000	+9,900,000	D
Fund for Innovation in Education	27,737,000	27,737,000	19,000,000	27,737,000	24,000,000	-3,737,000	-3,737,000	+5,000,000	-3,737,000	D
Fund for the Improvement and Reform of Schools and Teaching:										
Grants for schools and teachers	5,284,000	1,880,000	5,284,000	5,495,000	5,495,000	+211,000	+3,615,000	+211,000	---	D
Family-school partnerships	3,611,000	927,000	3,611,000	3,755,000	3,755,000	+144,000	+2,828,000	+144,000	---	D
Eisenhower mathematics & science educ national program	11,711,000	14,711,000	14,000,000	18,000,000	16,000,000	+4,289,000	+1,289,000	+2,000,000	-2,000,000	D
(Clearinghouse non-add)	---	---	---	(6,000,000)	(3,500,000)	(+3,500,000)	(+3,500,000)	(+3,500,000)	(-2,500,000)	NA
Math Science consortium	---	---	---	15,000,000	12,000,000	+12,000,000	+12,000,000	+12,000,000	-3,000,000	D
National Diffusion Network	14,151,000	14,151,000	14,000,000	14,700,000	14,700,000	+549,000	+549,000	+700,000	---	D
Blue ribbon schools	885,000	885,000	---	885,000	---	-885,000	-885,000	---	-885,000	D
Javits gifted and talented students education	9,732,000	9,732,000	9,732,000	9,732,000	9,732,000	---	---	---	---	D
Star schools	14,417,000	10,000,000	---	17,404,000	17,417,000	+3,000,000	+7,417,000	+17,417,000	+13,000	D
Additional appropriation 9/30/92	---	---	---	1,000,000	1,000,000	+1,000,000	+1,000,000	+1,000,000	---	D
Educational partnerships	4,233,000	4,233,000	4,233,000	4,233,000	4,233,000	---	---	---	---	D
Territorial teacher training	1,769,000	1,769,000	1,769,000	1,769,000	1,769,000	---	---	---	---	D
Leadership in educational administration (LEAD)	3,831,000	370,000	370,000	370,000	370,000	-3,461,000	---	---	---	D
Midcareer teacher training	987,000	---	---	---	---	-987,000	---	---	---	D
National council on educational goals	1,952,000	---	---	---	---	-1,952,000	---	---	---	D
Innovations in teacher education, new legislation	---	20,000,000	---	---	---	---	-20,000,000	---	---	D
Subtotal	228,538,000	260,751,000	228,999,000	255,893,000	258,684,000	+30,146,000	-2,067,000	+29,685,000	+2,791,000	
National board for professional teacher standards	4,880,000	---	4,880,000	4,880,000	4,880,000	---	+4,880,000	---	---	D
Total, ERSI	233,418,000	260,751,000	233,879,000	260,773,000	263,564,000	+30,146,000	+2,813,000	+29,685,000	+2,791,000	

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
LIBRARIES										
Public libraries:										
Services	83,898,000	35,000,000	83,898,000	83,898,000	83,898,000	---	+48,898,000	---	---	D
Construction	19,218,000	---	14,218,000	19,218,000	16,718,000	-2,500,000	+16,718,000	+2,500,000	-2,500,000	D
Interlibrary cooperation	19,908,000	---	19,908,000	19,908,000	19,908,000	---	+19,908,000	---	---	D
Training 1/	651,000	---	5,000,000	5,000,000	5,000,000	+4,349,000	+5,000,000	---	---	D
Research and demonstrations	325,000	---	325,000	325,000	325,000	---	+325,000	---	---	D
Research libraries	5,855,000	---	5,855,000	5,855,000	5,855,000	---	+5,855,000	---	---	D
Library literacy programs	8,163,000	---	8,163,000	8,163,000	8,163,000	---	+8,163,000	---	---	D
College library technology	3,904,000	---	3,904,000	6,404,000	6,404,000	+2,500,000	+6,404,000	+2,500,000	---	D
Foreign language materials (Title V-LSCA, VI-HEA)	976,000	---	1,476,000	976,000	1,476,000	+500,000	+1,476,000	---	+500,000	D
Total, Libraries	142,898,000	35,000,000	142,747,000	149,747,000	147,747,000	+4,849,000	+112,747,000	+5,000,000	-2,000,000	
DEPARTMENTAL MANAGEMENT										
PROGRAM ADMINISTRATION	284,595,000	303,567,000	301,952,000	284,008,000	299,000,000	+14,405,000	-4,567,000	-2,952,000	+14,992,000	D
OFFICE FOR CIVIL RIGHTS, SALARIES AND EXPENSES	48,405,000	56,000,000	56,000,000	51,691,000	55,000,000	+6,595,000	-1,000,000	-1,000,000	+3,309,000	D
OFFICE OF THE INSPECTOR GENERAL, SALARIES AND EXPENSES	24,837,000	28,521,000	26,932,000	26,530,000	26,932,000	+2,095,000	-1,589,000	---	+402,000	D
UNDISTRIBUTED SALARIES AND EXPENSES REDUCTION	---	---	-10,000,000	-3,785,000	-10,660,000	-10,660,000	-10,660,000	-660,000	-6,875,000	D
Total, Departmental management	357,837,000	388,088,000	374,884,000	358,444,000	370,272,000	+12,435,000	-17,816,000	-4,612,000	+11,828,000	
Total, Department of Education	22,883,520,000	26,580,972,000	28,266,159,000	27,416,427,000	27,774,312,000	+4,890,792,000	+1,193,340,000	-491,847,000	+357,885,000	
Total including Guaranteed Student Loans	(27,093,338,000)	(29,656,683,000)	(31,341,870,000)	(30,492,138,000)	(31,964,771,000)	(+4,871,433,000)	(+2,308,088,000)	(+622,901,000)	(+1,472,633,000)	

1/ Training funds requested under Higher Education.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
TITLE IV - RELATED AGENCIES										
Action (Domestic Programs):										
Volunteers in Service to America:										
VISTA operations	30,287,000	35,803,000	32,693,000	34,683,000	32,688,000	+2,401,000	-3,115,000	-5,000	-1,995,000	D
VISTA Literacy Corps	4,621,000	4,930,000	4,621,000	4,930,000	4,776,000	+155,000	-154,000	+155,000	-154,000	D
Student Community Service	976,000	976,000	976,000	976,000	976,000	---	---	---	---	D
Subtotal	35,884,000	41,709,000	38,290,000	40,589,000	38,440,000	+2,556,000	-3,269,000	+150,000	-2,149,000	
Special Volunteer Programs:										
Drug programs	2,191,000	1,451,000	1,000,000	1,451,000	1,225,000	-966,000	-226,000	+225,000	-226,000	D
Older Americans Volunteer Programs:										
Foster Grandparents Program	62,946,000	62,946,000	62,946,000	65,590,000	65,590,000	+2,644,000	+2,644,000	+2,644,000	---	D
Senior Companion Program	27,569,000	27,569,000	27,569,000	28,727,000	28,727,000	+1,158,000	+1,158,000	+1,158,000	---	D
Retired Senior Volunteer Program	33,425,000	33,425,000	33,425,000	34,830,000	34,128,000	+703,000	+703,000	+703,000	-702,000	D
Subtotal, Older Volunteers	123,940,000	123,940,000	123,940,000	129,147,000	128,445,000	+4,505,000	+4,505,000	+4,505,000	-702,000	
Inspector General	976,000	1,017,000	920,000	976,000	954,000	-22,000	-63,000	+34,000	-22,000	D
Program Support	28,301,000	30,435,000	29,528,000	29,528,000	29,528,000	+1,227,000	-907,000	---	---	D
Total, Action	191,292,000	198,552,000	193,678,000	201,691,000	198,592,000	+7,300,000	+40,000	+4,914,000	-3,099,000	
Corporation for Public Broadcasting: 1/										
FY 1994 (current request)	253,309,000	260,000,000	253,309,000	284,000,000	275,000,000	+21,691,000	+15,000,000	+21,691,000	-9,000,000	D
FY 1993 satellite replacement	65,327,000	---	---	---	---	-65,327,000	---	---	---	D
Subtotal, Corporation for Public Broadcasting	318,636,000	260,000,000	253,309,000	284,000,000	275,000,000	-43,636,000	+15,000,000	+21,691,000	-9,000,000	

1/ FY 1991 approp. adv. in FY89 is $298,870,000.
FY 1992 approp. adv. in FY90 is $327,280,000.
FY 1993 approp. adv. in FY91 is $318,636,000.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991 Comparable	FY 1992 Budget Request	FY 1992 House Bill	FY 1992 Senate Bill	Conference	Conference vs FY 1991 Comp.	Conference vs FY 1992 Request	Conference vs House Bill	Conference vs Senate Bill	Mand Disc
Federal Mediation and Conciliation Service............	27,037,000	28,145,000	28,118,000	29,118,000	28,118,000	+1,081,000	-27,000	---	-1,000,000	D
Federal Mine Safety and Health Review Commission......	4,189,000	4,719,000	4,357,000	4,357,000	5,143,000	+954,000	+424,000	+786,000	+786,000	D
National Commission on Acquired Immune Deficiency Syndrome..	2,928,000	3,000,000	2,000,000	3,000,000	1,750,000	-1,178,000	-1,250,000	-250,000	-1,250,000	D
National Commission on Children.......................	1,073,000	---	---	950,000	950,000	-123,000	+950,000	+950,000	---	D
National Commission on Libraries and Information Science...	732,000	911,000	750,000	911,000	831,000	+99,000	-80,000	+81,000	-80,000	D
National Commission to Prevent Infant Mortality.......	390,000	---	390,000	440,000	440,000	+50,000	+440,000	+50,000	---	D
National Council on Disability........................	1,439,000	1,642,000	1,497,000	1,642,000	1,569,000	+130,000	-73,000	+72,000	-73,000	D
National Labor Relations Board........................	147,461,000	162,000,000	162,000,000	162,000,000	162,000,000	+14,539,000	---	---	---	D
National Mediation Board..............................	6,514,000	7,008,000	6,775,000	6,775,000	6,775,000	+261,000	-233,000	---	---	D
Occupational Safety and Health Review Commission......	6,247,000	6,711,000	6,497,000	6,497,000	6,711,000	+464,000	---	+214,000	+214,000	D
Physician Payment Review Commission (trust funds).....	(3,778,000)	(4,495,000)	(4,300,000)	(4,495,000)	(4,398,000)	(+620,000)	(-97,000)	(+98,000)	(-97,000)	TF*
Prospective Payment Assessment Commission (trust funds)...	(3,875,000)	(4,210,000)	(4,030,000)	(4,030,000)	(4,030,000)	(+155,000)	(-180,000)	---	---	TF*

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
Railroad Retirement Board:										
Dual benefits payments account....................	326,927,000	315,000,000	315,000,000	319,100,000	319,100,000	-7,827,000	+4,100,000	+4,100,000	---	D
Interest payment..................................	---	---	9,000,000	---	---	---	---	-9,000,000	---	D
Less income tax receipts on dual benefits.........	-16,000,000	-18,000,000	-18,000,000	-18,000,000	-18,000,000	-2,000,000	---	---	---	D
Subtotal, dual benefits........................	310,927,000	297,000,000	306,000,000	301,100,000	301,100,000	-9,827,000	+4,100,000	-4,900,000	---	
Federal payment to the Railroad Retirement Account	400,000	400,000	400,000	400,000	400,000	---	---	---	---	M
Limitation on administration:										
(Retirement).................................	(69,936,000)	(74,037,000)	(74,037,000)	(73,287,000)	(72,287,000)	(+2,351,000)	(-1,750,000)	(-1,750,000)	(-1,000,000)	TF*
(Unemployment)...............................	(15,287,000)	(17,263,000)	(17,263,000)	(17,263,000)	(17,263,000)	(+1,976,000)	---	---	---	TF*
Subtotal, administration....................	(85,223,000)	(91,300,000)	(91,300,000)	(90,550,000)	(89,550,000)	(+4,327,000)	(-1,750,000)	(-1,750,000)	(-1,000,000)	
(Special Management Improvement Fund) 1/.....	---	(13,910,000)	(3,264,000)	(3,264,000)	(3,264,000)	(+3,264,000)	(-10,646,000)	---	---	TF*
Total, limitation on administration.........	(85,223,000)	(105,210,000)	(94,564,000)	(93,814,000)	(92,814,000)	(+7,591,000)	(-12,396,000)	(-1,750,000)	(-1,000,000)	
(Inspector General)..........................	(5,855,000)	(7,700,000)	(6,089,000)	(6,700,000)	(6,395,000)	(+540,000)	(-1,305,000)	(+306,000)	(-305,000)	TF*
Soldiers' and Airmen's Home (trust fund limitation):										
Operation and maintenance..........................	40,581,000	42,123,000	40,581,000	42,123,000	41,352,000	+771,000	-771,000	+771,000	-771,000	D
Capital outlay.....................................	11,223,000	4,220,000	4,220,000	4,220,000	4,220,000	-7,003,000	---	---	---	D
United States Institute of Peace.......................	8,393,000	8,911,000	8,393,000	11,918,000	11,000,000	+2,607,000	+2,089,000	+2,607,000	-918,000	D
United States Naval Home (trust fund limitation):										
Operation and maintenance..........................	---	10,055,000	10,055,000	10,055,000	10,055,000	+10,055,000	---	---	---	D
Capital program....................................	---	1,253,000	1,253,000	1,253,000	1,253,000	+1,253,000	---	---	---	D
White House Conference on Library and Information Services...	488,000	---	---	---	---	-488,000	---	---	---	D
UNDISTRIBUTED SALARIES AND EXPENSES REDUCTION.........	---	---	---	-2,367,000	---	---	---	---	+2,367,000	D
Total, Title IV, Related Agencies:										
Federal Funds (all years)..................	1,079,950,000	1,036,650,000	1,030,273,000	1,070,083,000	1,057,259,000	-22,691,000	+20,609,000	+26,986,000	-12,824,000	
Current year, FY 1992....................	(761,314,000)	(776,650,000)	(776,964,000)	(786,083,000)	(782,259,000)	(+20,945,000)	(+5,609,000)	(+5,295,000)	(-3,824,000)	
FY 1994..................................	(318,636,000)	(260,000,000)	(253,309,000)	(284,000,000)	(275,000,000)	(-43,636,000)	(+15,000,000)	(+21,691,000)	(-9,000,000)	
Trust funds................................	(98,731,000)	(121,615,000)	(108,983,000)	(109,039,000)	(107,637,000)	(+8,906,000)	(-13,978,000)	(-1,346,000)	(-1,402,000)	

1/ Request available for FY 1992 - FY 1996;
House and Senate bill and conference agreement
available for FY 1992 only.

CONFERENCE AGREEMENT: H.R. 2707 - FY 1992 APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

	FY 1991	FY 1992	FY 1992	FY 1992		Conference vs				Mand
	Comparable	Budget Request	House Bill	Senate Bill	Conference	FY 1991 Comp.	FY 1992 Request	House Bill	Senate Bill	Disc
SUMMARY										
Title I - Department of Labor:										
Federal Funds	7,541,537,000	7,336,447,000	7,435,073,000	7,485,176,000	7,476,230,000	-65,307,000	+139,783,000	+41,157,000	-8,946,000	
Current year	(7,541,537,000)	(7,336,447,000)	(7,435,073,000)	(7,485,176,000)	(7,288,530,000)	(-253,007,000)	(-47,917,000)	(-146,543,000)	(-196,646,000)	
1993 advance	---	---	---	---	(187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	(+187,700,000)	
Trust Funds	(3,345,157,000)	(3,398,136,000)	(3,512,648,000)	(3,537,331,000)	(3,509,301,000)	(+164,144,000)	(+111,165,000)	(-3,347,000)	(-28,030,000)	
Title II - Department of Health and Human Services:										
Federal Funds (all years)	151,680,827,000	165,657,345,000	167,121,817,000	168,803,583,000	168,611,962,000	+16,931,135,000	+2,954,617,000	+1,490,145,000	-191,621,000	
Current year	(130,543,893,000)	(139,119,345,000)	(139,460,825,000)	(141,142,591,000)	(140,950,970,000)	(+10,407,077,000)	(+1,831,625,000)	(+1,490,145,000)	(-191,621,000)	
1993 advance	(21,136,934,000)	(26,538,000,000)	(27,660,992,000)	(27,660,992,000)	(27,660,992,000)	(+6,524,058,000)	(+1,122,992,000)	---	---	
Trust Funds	(6,554,729,000)	(6,543,148,000)	(6,937,781,000)	(6,504,857,000)	(6,934,781,000)	(+380,052,000)	(+391,633,000)	(-3,000,000)	(+429,924,000)	
Title III - Department of Education:										
Federal Funds	22,883,520,000	26,580,972,000	28,266,159,000	27,416,427,000	27,774,312,000	+4,890,792,000	+1,193,340,000	-491,847,000	+357,885,000	
Total including Guaranteed Student Loans	(27,093,338,000)	(29,656,683,000)	(31,341,870,000)	(30,492,138,000)	(31,964,771,000)	(+4,871,433,000)	(+2,308,088,000)	(+622,901,000)	(+1,472,633,000)	
Title IV - Related Agencies:										
Federal Funds (all years)	1,079,950,000	1,036,650,000	1,030,273,000	1,070,083,000	1,057,259,000	-22,691,000	+20,609,000	+26,986,000	-12,824,000	
Current year	(761,314,000)	(776,650,000)	(776,964,000)	(786,083,000)	(782,259,000)	(+20,945,000)	(+5,609,000)	(+5,295,000)	(-3,824,000)	
1994 advance	(318,636,000)	(260,000,000)	(253,309,000)	(284,000,000)	(275,000,000)	(-43,636,000)	(+15,000,000)	(+21,691,000)	(-9,000,000)	
Trust Funds	(98,731,000)	(121,615,000)	(108,983,000)	(109,039,000)	(107,637,000)	(+8,906,000)	(-13,978,000)	(-1,346,000)	(-1,402,000)	
Total, all titles:										
Federal Funds (all years)	183,185,834,000	200,611,414,000	203,853,322,000	204,775,269,000	204,919,763,000	+21,733,929,000	+4,308,349,000	+1,066,441,000	+144,494,000	
Current year	(161,730,264,000)	(173,813,414,000)	(175,939,021,000)	(176,830,277,000)	(176,796,071,000)	(+15,065,807,000)	(+2,982,657,000)	(+857,050,000)	(-34,206,000)	
1993 advance	(21,136,934,000)	(26,538,000,000)	(27,660,992,000)	(27,660,992,000)	(27,848,692,000)	(+6,711,758,000)	(+1,310,692,000)	(+187,700,000)	(+187,700,000)	
1994 advance	(318,636,000)	(260,000,000)	(253,309,000)	(284,000,000)	(275,000,000)	(-43,636,000)	(+15,000,000)	(+21,691,000)	(-9,000,000)	
Trust Funds	(9,998,617,000)	(10,062,899,000)	(10,559,412,000)	(10,151,227,000)	(10,551,719,000)	(+553,102,000)	(+488,820,000)	(-7,693,000)	(+400,492,000)	

WILLIAM H. NATCHER,
NEAL SMITH,
EDWARD R. ROYBAL,
LOUIS STOKES,
JOSEPH D. EARLY,
STENY H. HOYER,
R.J. MRAZEK,
JAMIE L. WHITTEN,
CARL D. PURSELL
(excepting on delayed obligations),
JOHN EDWARD PORTER
(excepting and reserving in opposition to all delayed obligations),
BILL YOUNG
(except for section 514 and amendments providing for delayed obligations),
VIN WEBER
(except for section 514 and delayed obligations),
JOSEPH M. MCDADE,
Managers on the Part of the House.

TOM HARKIN,
ROBERT C. BYRD,
ERNEST F. HOLLINGS,
QUENTIN N. BURDICK,
DANIEL K. INOUYE,
DALE BUMPERS,
HARRY REID,
BROCK ADAMS,
ARLEN SPECTER,
MARK O. HATFIELD,
TED STEVENS,
WARREN B. RUDMAN,
THAD COCHRAN,
SLADE GORTON,
Managers on the Part of the Senate.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate recedes from its amendment to the amendment of the House to the amendment of the Senate numbered 175 to the bill (H.R. 2686) entitled "An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes.".

The message also announced that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 175, to the above-entitled bill.

RESTORING AUTHORITY OF SECRETARY OF EDUCATION TO MAKE PRELIMINARY PAYMENTS TO LOCAL EDUCATIONAL AGENCIES

Mr. KILDEE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1848) to restore the authority of the Secretary of Education to make certain preliminary payments to local educational agencies, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Michigan?

Mr. GOODLING. Mr. Speaker, reserving the right to object, I rise in support of S. 1848, which restores the ability of the Department of Education to make preliminary payments to school districts receiving impact aid.

As my chairman, Congressman KILDEE, will explain, this language is necessary to correct a problem created earlier this year when we passed the National Dropout Prevention Act of 1991.

School districts throughout the United States are currently experiencing financial difficulties because the Department of Education is unable to provide them with their preliminary payments. The Department supports this legislation and is encouraging its early enactment.

I urge my colleagues to pass S. 1848.

□ 1450

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1848

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Dropout Prevention Technical Correction Amendment of 1991".

SEC. 2. TECHNICAL AMENDMENT.

Paragraph (2) of section 5(b) of the Act entitled "To provide financial assistance to local educational agencies in areas affected by Federal activities and for other purposes", approved September 30, 1950 (20 U.S.C. 240(b)(2)) is amended to read as follows:

"(2) As soon as possible after the beginning of any fiscal year, the Secretary shall, on the basis of a written request for a preliminary payment from any local education agency that was eligible for a payment for the preceding fiscal year on the basis of entitlements established under section 2 or 3, make such a preliminary payment—

"(A) to any agency for whom the number of children determined under section 3(a) amounts to at least 20 per centum of such agency's total average daily attendance, of 75 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements; and

"(B) to any other agency, of 50 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements.".

The SPEAKER pro tempore. The gentleman from Michigan [Mr. KILDEE] is recognized for 1 hour.

Mr. KILDEE. Mr. Speaker, this bill restores the Department of Education's authority to make preliminary payments under section 5 of the impact aid law.

The authority to make these payments was mistakenly eliminated by the National Dropout Prevention Act of 1991.

A restoration of this authority is necessary to ensure that school districts, which depend heavily on this assistance, can receive an initial impact aid payment in a timely fashion.

S. 1848 is urgently needed and deserves our immediate approval.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KILDEE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

VETERANS DAY REMEMBRANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. SKELTON] is recognized for 5 minutes.

Mr. SKELTON. Mr. Speaker, 50 years ago on what was then known as Armistice Day, November 11, 1941, I was a fifth grader at Central School in Lexington, MO. My father, a veteran of the World War, was the most popular orator in Lafayette County, an outstanding trial lawyer by profession.

On that day, my father took me to Odessa, where he was to deliver an address during the Odessa High School Armistice Day Program. That assembly is still clear in my memory. I remember students on the stage dressed as doughboys from the great war. Another student beat the bass drum to simulate artillery fire. My father gave a patriotic speech, speaking of the greatness of our country and the freedoms we enjoyed. I vividly recall him reciting that poem by John McCrae that came out of that war, "Flanders Fields."

I also remember my father telling that young audience, "There are those of you in this audience who might well have to fight for your country once again."

How prophetic my father was. For less than a month later, the Japanese attacked Pearl Harbor and our country was engulfed in a war that would consume the efforts of the American people for nearly 4 years. And, true to my father's words, there were those in that student audience who fought in that great struggle; all of them sacrificed, some gave their lives.

In one way or another, each generation of Americans is called upon to uphold the cause of freedom. Sometimes it is upon the field of battle and other times it is a civil struggle within our Nation. The torch of freedom is passed—from one generation to another—and each succeeding generation must do its part to keep that flame of freedom burning brightly.

In memory of those who went before us who held the torch high during their day, and also in memory of that speaker who spoke to that high school audience on that November 11, 1941, let us recall those words in "Flanders Fields:"

FLANDERS FIELDS

In Flanders fields the poppies blow
Between the crosses, row on row,
That mark our place; and in the sky
The larks, still bravely singing, fly
Scarce heard amid the guns below.
We are the Dead. Short days ago
We lived, felt dawn, saw sunset glow,
Loved and were loved, and now we lie,
In Flanders fields.
Take up our quarrel with the foe:
To you from failing hands we throw
The torch; be yours to hold it high.
If ye break faith with us who die
We shall not sleep, though poppies grow
In Flanders fields.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. SAVAGE (at the request of Mr. GEPHARDT), for today, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. GOODLING) to revise and extend his remarks and include extraneous material:)

Mr. CUNNINGHAM, for 60 minutes each day, on November 5, 6, and 7.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous matter:)

Mr. ROSTENKOWSKI, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. DORGAN of North Dakota, for 60 minutes, on November 5.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GOODLING) and to include extraneous matter:)

Mr. COUGHLIN in two instances.
Mr. LENT.
Mr. HENRY.
Mr. GALLO in two instances.
Mr. LAGOMARSINO.
Mr. WELDON.
Mr. BROOMFIELD.
Mr. MACHTLEY.
Mr. RINALDO.
Mr. BLAZ.
Mr. BURTON of Indiana in two instances.
Mr. HERGER.
Ms. ROS-LEHTINEN.
Mrs. MORELLA.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. DINGELL.
Mr. LANTOS.
Mr. TORRICELLI.
Mr. MANTON.
Mr. LEHMAN of California.
Mr. SKELTON.
Mr. DONNELLY.
Mr. RAY.
Mr. JOHNSON of South Dakota.
Mr. KILDEE.

SENATE BILLS REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S.J. Res. 133. Joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research; to the Committee on Energy and Commerce.

ADJOURNMENT

Mr. MCNULTY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 56 minutes p.m.), under its previous order, the House adjourned until Monday, November 4, 1991, at 12 noon.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports of various committees of the U.S. House of Representatives concerning foreign currencies and U.S. dollars utilized by them during the third quarter of 1991 pursuant to Public Law 95-384, as well as reports concerning official foreign travel by miscellaneous groups of the U.S. House of Representatives in 1991 are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON EDUCATION AND LABOR, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1991

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Theodore S. Martin	9/22	9/25	Canada	565.73	498.00	170.40	150.00	113.60	100.00	849.73	748.00
Randel K. Johnson	9/22	9/25	Canada	565.73	498.00	170.40	150.00	113.60	100.00	849.73	748.00
Vicki Nimmo	9/25	9/27	Canada	565.73	498.00	170.40	150.00			736.13	648.00
Committee total					1,494.00		450.00		200.00		2,144.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

WILLIAM D. FORD, Chairman, Oct. 21, 1991.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1991

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Hon. Beryl Anthony, Jr	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1991—Continued

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain		1,040.00						1,040.00
Hon. William J. Coyne	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain		1,040.00						1,040.00
Hon. Byron Dorgan	7/1	7/2	Canada		44.90		68.02				112.92
Hon. Sam Gibbons	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain		1,040.00						1,040.00
Hon. Ed Jenkins	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain		1,040.00						1,040.00
Hon. Nancy Johnson	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/8	Great Britain		260.00						260.00
Commercial transportation (London–New York).							352.00				352.00
Hon. Sander Levin	9/3	9/5	Germany		476.00						476.00
	9/5	9/6	Tallinn		255.00						255.00
	9/5	9/6	Vilnius		255.00						255.00
	9/7	9/8	Tbilisi		178.00				504.00		682.00
	9/8	9/10	Soviet Union		574.00				30.92		604.92
Commercial transportation							2,113.45				2,113.45
Hon. Jim McDermott	9/2	9/7	Germany	2,058.70	1,190.00		3,208.35				4,398.35
Hon. Don Pease	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain	614.11	1,040.00						1,040.00
Hon. Dick Schulze	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain		1,040.00						1,040.00
Hon. Pete Stark	8/31	9/3	Great Britain		773.00						773.00
	9/3	9/5	Germany	1,235.22	714.00		433.49				1,147.49
Commercial transportation							5,266.00				5,266.00
Hon. Don Sundquist	7/26	7/29	Switzerland	970	639.00		3,129.00				3,768.00
David Abernethy	9/2	9/7	Germany	2,058.70	1,190.00		616.40				1,806.40
Thelma Askey	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain	614.11	1,040.00						1,040.00
Brian Biles	9/2	9/7	Germany	2,058.70	1,190.00		616.40				1,806.40
John P. Hardt	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain	614.11	1,040.00						1,040.00
Charles Kahn	9/3	9/7	Germany	1,670.96	952.00		853.00				1,805.00
Robert Leonard	7/1	7/2	Canada		44.90		68.02				112.92
Franklin Phifer	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain	614.11	1,040.00						1,040.00
Anna Pineda	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain	614.11	1,040.00						1,040.00
James Reuter	9/2	9/7	Germany	2,058.70	1,190.00		616.40				1,806.40
Joanna Shelton	8/24	8/27	Germany		1,095.97						1,095.97
	8/28	8/30	Czechoslovakia		520.00						520.00
	8/30	8/31	Hungary		218.00		58.24		29.15		305.39
	8/31	9/3	Soviet Georgia		534.00				71.92		605.92
	9/3	9/6	Soviet Union		861.00						861.00
	9/6	9/7	Estonia		255.00						255.00
	9/7	9/11	Great Britain	614.11	1,040.00						1,040.00
Committee total					63,173.44		18,039.41		1,747.76		82,960.61

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[1] Per diem constitutes lodging and meals.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1991—Continued

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DAN ROSTENKOWSKI, Chairman, Oct. 22, 1991.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, CONFERENCE ON EUROPEAN COOPERATION AND SECURITY, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 12 AND JAN. 19, 1991

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Spencer Oliver	1/12	1/19	Switzerland				[3]2,922.00				2,922.00
Committee total							2,922.00				2,922.00

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

[3] Commercial round trip Washington/Geneva/Washington.

DANTE B. FASCELL, Aug. 14, 1991.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, CONFERENCE ON EUROPEAN COOPERATION AND SECURITY, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JUNE 28 AND JULY 4, 1991

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Hon. Eni F.H. Faleomavaega	6/30	7/4	Austria		807.71						807.71
Commercial round trip Washington, Vienna, Washington.							5,491.90				5,491.90
Local transportation							30.00				30.00
Deborah Burns	6/28	7/3	Austria		1,089.01						1,089.01
Commercial round trip Washington, Vienna, Washington.							3,400.00				3,400.00
Local transportation							99.81				99.81
Charles O'Regan	6/28	7/4	Austria		1,440.69						1,440.69
Commercial round trip Washington, Vienna, Washington.							3,400.00				3,400.00
Local transportation							37.00				37.00
Martin Sletzinger	6/28	7/5	Austria		1,459.61						1,459.61
Commercial round trip Washington, Vienna, Washington.							3,399.90				3,399.90
Committee total					4,797.02		15,858.61				20,655.63

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DANTE B. FASCELL, Aug. 14, 1991.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2291. A letter from the General Counsel, Oversight Board of the Resolution Trust Corporation, transmitting the audited financial statements of the Resolution Trust Corporation as of December 31, 1990, pursuant to Public Law 101–73, section 511(a) (103 Stat. 404); to the Committee on Banking, Finance and Urban Affairs.

2292. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting notification of a proposed license for the export of major defense equipment sold commercially to Saudi Arabia (Transmittal No. DTC–38–91), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

2293. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting notification of a proposed license for the export of major defense equipment sold commercially to the United Kingdom and Belgium (Transmittal No. DTC–45–91), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

2294. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting notification of a proposed license for the export of major defense equipment sold commercially to Malaysia (Transmittal No. DTC–48–91), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

2295. A letter from the Director, Office of Management and Budget, transmitting a report for pay-as-you-go calculations for Public Law 102–136, pursuant to Public Law 101–508, section 13101(a) (104 Stat. 1388–582); to the Committee on Government Operations.

2296. A letter from the Army and Air Force Exchange Service, transmitting copies of actuary's reports for the Retirement Annuity Plan for Employees of the Army and Air Force Exchange Service; Supplemental Deferred Compensation Plan for Members of the Executive Management Program; the General Information Sheet for the Retirement Savings Plan and Trust for Employees of the Army and Air Force Exchange Service for the plan year ended 31 December 1990, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

2297. A letter from the Secretary, Commission of Fine Arts, transmitting the annual report under the Federal Managers' Financial Integrity Act for fiscal year 1991, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. NATCHER: Committee of conference. Conference report on H.R. 2707 (Rept. 102–282). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. RANGEL:

H.R. 3696. A bill to amend the Public Health Service Act to provide for assessments in each State of the incidence and prevalence of substance abuse and of the extent to which the availability, from public and nonprofit private providers, of treatment for such abuse is insufficient to meet the need for such treatment, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ROSTENKOWSKI (for himself and Mr. DOWNEY):

H.R. 3697. A bill to provide a program of emergency unemployment compensation, and for other purposes; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. WAXMAN:

H.R. 3698. A bill to amend the Public Health Service Act with respect to services for mental health and substance abuse, including establishing separate block grants to enhance the delivery of such services; to the Committee on Energy and Commerce.

By Mr. AuCOIN:

H.R. 3699. A bill directing the President to instruct the Attorney General to apply for the appointment of an independent counsel with respect to civil and criminal violations of law relating to savings associations; to the Committee on the Judiciary.

By Mr. MACHTLEY (for himself, Mr. Frank of Massachusetts, Mr. Studds, Mr. Reed, and Mr. Atkins):

H.R. 3700. A bill authorizing the designation of Portugal under the visa waiver program under certain conditions; to the Committee on the Judiciary.

By Mr. RITTER (for himself and Mr. Moorhead):

H.R. 3701. A bill to aid in the establishment of an advanced telecommunications infrastructure fund and to stimulate the deployment of advanced telecommunications technologies, and for other purposes; to the Committee on Energy and Commerce.

MEMORIALS

Under clause 4 of rule XXII,

312. The SPEAKER presented a memorial of the Senate of the Commonwealth of Pennsylvania, relative to three Pennsylvania Veterans Administration hospitals; to the Committee on Veterans' Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 23: Mr. Flake.

H.R. 53: Mr. Cox of Illinois and Mr. Riggs.

H.R. 75: Mr. Hansen.

H.R. 118: Mr. Murphy, Mr. Chandler, and Mr. Ireland.

H.R. 187: Mr. Johnston of Florida, Mr. Lehman of Florida, Mrs. Unsoeld, and Mr. Towns.

H.R. 252: Mr. Edwards of Oklahoma.

H.R. 381: Mr. Stark, Mr. Sanders, Mr. Fields, and Mr. Lewis of Georgia.

H.R. 382: Mr. Owens of New York, Mr. Mazzoli, and Mr. Solarz.

H.R. 413: Mr. Sawyer, Mr. Volkmer, Mr. Ireland, Mr. Lowery of California, Mr. Cox of California, Mr. Olin, and Mr. Brooks.

H.R. 565: Mr. Young of Alaska, Mr. Lagomarsino, Mr. Wolf, Mr. Sangmeister, Mr. Oxley, and Mr. Lowery of California.

H.R. 643: Mr. McGrath.

H.R. 673: Mr. Traficant.

H.R. 676: Mr. Bateman.

H.R. 747: Mr. Wylie, Mr. Rinaldo, and Mr. Duncan.

H.R. 1115: Mr. Stump, Mr. Zeliff, Mr. Combest, Mr. Rhodes, and Mr. Cox of California.

H.R. 1145: Mr. Berman, Mr. Bilbray, Mr. Waxman, Mr. Scheuer, Ms. Horn, Mr. Gonzalez, Mr. Geren of Texas, Mr. Sanders, Ms. McCloskey, Mr. Pallone, Mr. Kildee, Ms. DeLauro, Mr. Lehman of Florida, Mr. Martinez, Mr. Clay, Ms. Kaptur, and Mr. Kleczka.

H.R. 1154: Mr. Olver, Mr. DeFazio, Mr. Lancaster, and Mr. Markey.

H.R. 1184: Mr. Lewis of Florida and Mr. Morrison.

H.R. 1195: Mr. Machtley.

H.R. 1202: Mr. Smith of New Jersey, Mr. Edwards of California, Mr. DeFazio, Mrs. Kennelly, Mr. Engel, Mr. Traxler, Mr. Andrews of Maine, Mr. Campbell of Colorado, Mr. Spratt, and Mrs. Morella.

H.R. 1234: Mr. Boucher.

H.R. 1277: Mr. Condit, Mr. Kennedy, Mr. Chandler, Mr. Engel, Mr. Dwyer of New Jersey, Mr. Ewing, and Mr. Orton.

H.R. 1300: Mr. Ford of Tennessee and Mr. Faleomavaega.

H.R. 1348: Mr. Gaydos, Ms. Kaptur, Mr. Young of Florida, Mr. Brown, and Mr. Riggs.

H.R. 1421: Mr. Duncan, Mr. Porter, Mr. Costello, Mr. Camp, and Mr. Armey.

H.R. 1570: Mr. Condit, Mrs. Johnson of Connecticut, Mr. Sikorski, Mr. Wylie, Mr. Coyne, and Mr. Shaw.

H.R. 1601: Mr. Johnston of Florida and Mr. Jacobs.

H.R. 1992: Mr. Jenkins and Mr. Sisisky.

H.R. 2210: Mr. Lewis of Georgia, Mr. Brooks, Mr. Schumer, and Mr. LaFalce.

H.R. 2264: Mr. Cox of California.

H.R. 2385: Mr. Chandler.

H.R. 2448: Mr. Porter.

H.R. 2908: Mr. Kleczka.

H.R. 2929: Mr. Waxman, Mr. Weiss, Mr. Shays, Mr. Hoagland, Mr. Andrews of Texas, Mr. Feighan, Mr. Payne of New Jersey, Mrs. Lowey of New York, and Mr. Pease.

H.R. 2936: Mr. Morrison, Mrs. Morella, Mr. Roemer, and Mr. Rohrabacher.

H.R. 3011: Mr. Ritter and Mr. Owens of Utah.

H.R. 3112: Mr. Bustamante, Mr. Spratt, Mr. Torres, Mr. Hughes, Mr. Blaz, Mr. Faleomavaega, and Mr. Kostmayer.

H.R. 3221: Mr. Rhodes, Mr. Matsui, Mr. Chandler, Mr. Gallegly, Mr. Lightfoot, Mr. Shays, Mr. Oxley, Mr. Lewis of Florida, Mr. Cunningham, Mr. Gillmor, Mr. Rogers, Mr. Jones of North Carolina, Mr. Nussle, Mrs. Byron, Mrs. Roukema, Mr. Peterson of Florida, Mr. Weldon, Mr. Broomfield, Mr. Cox of California, Mr. Brewster, Mr. DeLay, Mr. Rinaldo, Mr. Duncan, Mr. Fields, Mr. Stenholm, Mr. Towns, and Mr. Hatcher.

H.R. 3296: Mrs. Meyers of Kansas, Mr. Visclosky, Mr. Schiff, Mr. Kyl, Mr. Mavroules, Mr. Jefferson, Mr. Cox of California, Mr. Frost, Ms. Kaptur, Mr. Dannemeyer, Mr. Kostmayer, Mr. Waxman, and Mr. Fish.

H.R. 3299: Mr. Clay, Mr. Dwyer of New Jersey, Mr. Downey, Mr. Fish, Mr. Fuster, Mr. Horton, Mr. Kanjorski, Mrs. Lowey of New York, Mr. Manton, Mr. Pallone, Mr. Scheuer, Mr. Towns, and Mr. Weldon.

H.R. 3311: Mr. Faleomavaega and Mr. Peterson of Florida.

H.R. 3380: Mr. Ray, Mr. Marlenee, Mr. Smith of Florida, Mr. Payne of Virginia, Mr. Staggers, Mr. Chapman, Mr. Nichols, and Mr. Oberstar.

H.R. 3393: Mr. Kopetski, Ms. Norton, and Mr. Frank of Massachusetts.

H.R. 3412: Mr. Carper, Mr. Kostmayer, Mr. Smith of New Jersey, and Mr. Gilchrest.

H.R. 3413: Mr. Sanders, Mr. Jontz, Ms. Norton, Mr. Kolter, and Ms. Kaptur.

H.R. 3432: Mr. Sanders.

H.R. 3444: Mr. Dellums, Ms. Norton, Mr. Towns, and Mr. Rahall.

H.R. 3454: Mr. Glickman, Mr. Coleman of Missouri, Mr. Hammerschmidt, Mr. Herger, Mr. Allard, and Mr. Barrett.

H.R. 3462: Mr. Peterson of Florida, Mrs. Byron, Mr. Ford of Tennessee, Mr. Johnson of South Dakota, Mr. Lancaster, and Mr. Jones of Georgia.

H.R. 3506: Mr. Schiff, Mr. Towns, and Mr. Frost.

H.R. 3553: Mr. Peterson of Florida.

H.R. 3555: Mr. Stark, Mr. Goodling, Mr. Miller of Washington, Mr. Atkins, Mr. Coleman of Texas, Mr. Zimmer, Mr. Peterson of Florida, and Mr. Brown.

H.R. 3619: Mr. Fascell, Ms. Ros-Lehtinen, Mr. Ray, Mr. Gingrich, Mr. Lehman of Florida, Mr. Goss, Mr. Bacchus, Mr. Gibbons, Mr. Schiff, Mr. Hyde, Mr. Smith of Florida, and Mr. Young of Florida.

H.R. 3645: Mr. Ritter.

H.R. 3653: Mr. Wilson.

H.R. 3678: Mr. Kyl and Mr. Weber.

H.J. Res. 21: Mr. Machtley.

H.J. Res. 28: Mr. Dymally and Mr. Kolter.

H.J. Res. 152: Mr. Vander Jagt.

H.J. Res. 198: Mr. Dannemeyer, Mr. Hutto, Mr. Obey, Mr. Boehlert, Mr. Callahan, Mr. Franks of Connecticut, Mr. Gallegly, Mr. Gallo, Mr. Gradison, Mr. Green of New York, Mr. Hansen, Mr. Henry, Mr. Hyde, Mr. Lightfoot, Mr. Ritter, Mr. Roth, Mr. Saxton, Mr. Schaefer, Mr. Schiff, Mr. Shaw, Mr. Solomon, Mr. Thomas of Wyoming, Mr. Thomas of California, Mr. Wylie, Mr. Dellums, Mr. Dingell, Mr. McHugh, Mr. Neal of North Carolina, Mr. Smith of Iowa, and Mr. Tauzin.

H.J. Res. 201: Mr. Lent, Mr. Coleman of Texas, Mr. Miller of California, Mr. Leach, Mr. Payne of Virginia, Mr. Kasich, Mr. Stenholm, Mr. Anderson, Mr. Bustamante, Mr. Dixon, Mr. Dornan of California, Mr. Walsh, Mr. Parker, Mr. Wyden, Mr. Hayes of Louisiana, Mr. Young of Alaska, Mr. Ritter, Mr. Pastor, Mr. Gordon, Mr. Hubbard, Mr. Peterson of Florida, Mr. Carper, Mr. Gallo, Mr. Dorgan of North Dakota, Mr. Solarz, Mr. Bilirakis, Mr. Boehner, Mr. Huckaby, Mrs. Morella, Mr. Cramer, Mr. Thomas of California, Mr. Thomas of Wyoming, Mr. Sabo, Ms. Pelosi, Mr. Neal of Massachusetts, Mrs. Boxer, Mr. Fazio, Mr. Staggers, Mr. Andrews of Maine, and Mr. Borski.

H.J. Res. 212: Ms. Snowe, Mr. Cramer, Mr. Brown, Ms. Long, Mr. Rinaldo, Mr. Studds, Mr. Tanner, Mr. Tauzin, Mr. Wise, Mr. Slattery, and Mr. Sawyer.

H.J. Res. 242: Mr. Ballenger.

H.J. Res. 316: Mr. Manton, Mr. Levin of Michigan, and Mr. Smith of Florida.

H.J. Res. 326: Mr. Thomas of California, Mr. Packard, Mr. Ballenger, Mr. Bustamante, Mr. Espy, Ms. Kaptur, Mr. Kolter, Mr. Lehman of California, Mr. Levin of Michigan, Mr. Manton, Mr. Martinez, Mr. Roe, Mr. Spratt, Mr. Taylor of Mississippi, Mr. Gingrich, Mr. Huckaby, and Mr. Fawell.

H.J. Res. 328: Mr. Owens of Utah, Mr. Moran, Mr. Smith of Florida, Mr. Johnson of South Dakota, Mr. Abercrombie, Mr. LaFalce, Mr. Weldon, Ms. Slaughter of New York, Mr. Waxman, Mrs. Boxer, and Mr. Campbell of California.

H.J. Res. 349: Mr. Horton, Mr. Clinger, Mr. Clement, Mrs. Bentley, Mr. Ramstad, Mr. Lipinski, Mr. Payne of New Jersey, Mr. Doolittle, Mrs. Johnson of Connecticut, Mr. Guarini, Mr. Walsh, Mr. Davis, Mr. Owens of Utah, Mr. Jefferson, Mr. Payne of Virginia, Mr. Faleomavaega, Ms. Long, Mr. Hammerschmidt, Mr. Towns, Mr. Vander Jagt, Mr. Bennett, Mr. McEwen, Mr. Dicks, Mr. Espy, Mr. Dannemeyer, Mr. Murphy, Mr. Owens of New York, Mr. Roe, Mr. Traficant, Mr. Staggers, Mr. Volkmer, Mr. Emerson, Mr. Peterson of Florida, and Mr. Martinez.

H.J. Res. 362: Mr. Kopetski, Mr. Hastert, Mr. Pursell, Mr. Ramstad, Mr. Studds, Mr.

Anderson, Mr. Wyden, Mr. Shaw, Mr. Clement, Mr. Walsh, Ms. Waters, Mr. Dwyer of New Jersey, Mr. Emerson, Mr. Lancaster, Mr. Poshard, Mr. Riggs, and Mr. Bacchus.

H. Con. Res. 188: Mr. Bereuter, Mr. Feighan, and Mrs. Meyers of Kansas.

H. Con. Res. 221: Mr. Dellums, Mr. Horton, Mr. Penny, Mr. Ritter, Mr. Matsui, Mr. Andrews of Maine, Mr. Skaggs, Mr. Owens of Utah, Mr. Schiff, Mr. Ravenel, Mrs. Meyers of Kansas, Mr. Sawyer, Mrs. Unsoeld, Mr. Towns, Mr. Faleomavaega, Ms. Norton, Mr. Rangel, Mr. Feighan, Mr. Lehman of Florida, Mr. Bilbray, Mr. Washington, Mr. Torres, Mr. Dwyer of New Jersey, Mr. Edwards of California, and Mr. Scheuer.

H. Con. Res. 222: Mr. Berman.

H. Con. Res. 223: Mr. Abercrombie, Mr. Ackerman, Mr. Annunzio, Mr. Carr, Mr. Cunningham, Mr. Dornan of California, Mr. Frank of Massachusetts, Mr. Frost, Mr. Kostmayer, Mr. Lagomarsino, Mr. Lehman of Florida, Mr. Lent, Mr. Levin of Michigan, Mr. NcNulty, Mr. Matsui, Mr. Owens of Utah, Mr. Scheuer, Mr. Schiff, Mr. Schumer, and Mr. Smith of Florida.

H. Con. Res. 225: Mr. Shays, Mr. Ballenger, Mr. Lewis of Florida, Mr. Petri, Mr. Bennett, Mr. Riggs, Mrs. Lloyd, Mr. Livingston, Mr. Walsh, Mr. Lagomarsino, and Mr. Hancock.

H. Res. 26: Mr. Bilirakis, Ms. Snowe, Mr. Stump, Mr. Klug, Mr. Lewis of Florida, Mr. Smith of Texas, and Mr. Brown.

H. Res. 207: Mr. Kostmayer.

H. Res. 233: Mr. Fawell, Mr. Jacobs, and Mr. Walsh.

EXTENSIONS OF REMARKS

LOCKING UP CRIMINALS: GETTING TO THE ROOT CAUSE OF AMERICA'S CRIME EPIDEMIC

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. COUGHLIN. Mr. Speaker, for too long critics of Federal, State, and local law enforcement criminal justice programs have gotten away with unsubstantiated charges that incarceration is a waste of money, that it has no impact on America's epidemic of crime and drugs. Fortunately, the American people know better. Simple common sense requires that repeat offenders of violent crimes must be locked up. Society demands and deserves protection from such people. The first civil right of every American is to be free from the fear of crime. Getting repeat offenders off the street inevitably saves money, saves lives, and reduces crime and violence.

There is increasing evidence to support the success of incarceration. An excellent article in the Washington Post on October 27, 1991—An Anti-Crime Solution: Lock Up More Criminals—reviews the latest data. The article examines the varying incarceration strategies of a number of different U.S. States. The author, Eugene Methvin, finds that those States who adopted an aggressive strategy to lock up repeat offenders experienced a reduction in crime, and those who chose to let prisoners out early to save funds, ended up with more crime and more suffering for their citizens.

Of course, incarceration is only one part of our Nation's struggle against drugs and crime. Education, treatment, and rehabilitation are also important. However, we cannot get to the root causes of our crime epidemic unless we clear from our streets, neighborhoods, and communities repeat offenders and plant them in a prison for a good, long time.

The article discussed above will be placed at this point in the RECORD.

AN ANTI-CRIME SOLUTION: LOCK UP MORE CRIMINALS

(By Eugene H. Methvin)

[Eugene Methvin, a Reader's Digest senior editor, has reported on the U.S. criminal justice system for more than 40 years. He served on the 1983–86 President's Commission on Organized Crime.]

One of America's best-kept secrets is that our huge investment in building prisons—an estimated $30 billion in the last decade to double capacity—has produced a tremendous payoff: Americans are safer and, as the Justice Department reported last week, crime has fallen steadily.

Moreover, some pioneering research and police field testing suggest that if we again double the present federal and state prison population—to somewhere between 1 million and 1.5 million—and leave our city and county jail population at the present 400,000, we will break the back of America's 30-year crime wave.

Liberal opponents will howl, of course. They have convinced many Americans that imprisonment is a failed policy and don't want to hear otherwise. The Edna McConnell Clark Foundation bombards influential media, declaring: "Our prison population has gone up by more than 200 percent in the last 15 years with no resulting decrease in crime." The director of the American Civil Liberties Union's National Prison Project, Alvin Bronstein, writes that "no jurisdiction has ever . . . had an impact on crime rates by an expanded incarceration policy." Washington Post columnist Colman McCarthy insists that prisons don't succeed but "work-release or community-service programs, structured therapy, in-prison job training, restitution, house arrests with electric monitoring and halfway houses do."

Other pundits and experts will point out that a numerical correlation—between increased incarceration and deceased crime rates—does not prove a causation and that other demographic variables may be at least partly responsible for the trend. They are usually the same people who nonetheless find correlations between crime and joblessness, poverty and illiteracy and who argue that public money is better spent addressing these "root causes."

Despite our high prison population, punishment for crime is near an all-time low, Texas A&M University economist Morgan O. Reynolds observes. He did a 38-year comparison of serious crime and probable punishment—that is, the expected days in prison as determined by the median prison sentence for all serious crimes and weighted by probabilities of arrest, prosecution, conviction and imprisonment. He charted the two lines from 1950 to 1988. His chart shows a big horizontal "X".

Probable punishment turned sharply down in 1954, and crime soared. Thus, in 1950 we had 1.8 million serious crimes, and the average criminal risked 24 days in prison. By 1964 imprisonment risk dropped in half, to 12.1 days, and crimes had increased to 4.6 million. By 1974, the criminals risked a mere 5.5 days in prison and America had 10.3 million crimes. Finally, in 1975, punishment turned slightly up, and the crime increase slowed. In 1988, the prison risk was 8.5 days and the number of crimes was 13.9 million.

"Why is there so much crime?" asked Reynolds. "The main reason is that crime pays for millions of criminals and potential criminals. Only 17 in 100 murders result in a prison sentence. The imprisonment rate for rape is 5.1 percent, for assault 1.5 percent and for auto theft only 0.3 percent . . . . Even though police make 13 million arrests each year, less than 2 percent of them result in a prison sentence."

A related analysis produces similar conclusions. During the 1960s, total prison population fell for a then-historical peak of about 219,000 in 1961 to about 195,000 in 1968. During the same decade, crimes soared from 3.4 million in 1960 to 8 million in 1970, according to the FBI's Uniform Crime Reports (UCR) based on incidents reported to police.

Only after 1972 did the prison population start upward, surpassing the 1961 peak in 1975, then soaring to 771,243 by last Jan. 1. And, wonder of wonders, crime declined significantly—whether measured by the FBI's long-standing UCR or by the Justice Department's National Crime Survey of households conducted by its Bureau of Justice Statistics (BJS).

The distinction between the two surveys is important. The FBI's UCR, begun in 1929, includes only crimes reported to police; in 1973 Justice began its scientific BJS surveys to estimate actual victimization totals, including crimes not reported to police—which the department estimated at 62 percent in 1990 (and more than half of all violent crimes). The two sets of figures frequently produce seeming contradictions and must be interpreted carefully. For example, the latest BJS report shows that the percentage of assaults reported to police increased from 43 to 47 in 1989–90—which alone would produce an increase of almost 10 percent in the FBI's reported assaults even if there were no actual increase.

Moreover, there are differences in crimes. Half or more murders and aggravated assaults are one-in-a-lifetime crimes of passion that involve acquaintances; robbery and burglary are almost always crimes of deliberation by predators who repeat and repeat and repeat. I rely more heavily on the latter two categories than on others when measuring the effectiveness of imprisonment rates. There are other variables as well. The crack cocaine epidemic, which began in 1985, clearly has produced an increase in criminality since then—including murderous battles over turf. Rape and theft remain the most underreported crimes of all, though efforts by police and victims groups to encourage rape reporting are having some success. And much depends on what year is used as a baseline.

Given these caveats, it is not surprising that the FBI could report this weekend that the number of reported crimes in the nation in the first half of 1991 increased 2 percent over the first half of 1990, continuing an upward trend evident since the mid-1980s—while the BJS could report last weekend that actual criminal victimization (reported and unreported) decreased 3.9 percent last year, continuing a "downward trend . . . that began a decade ago." Contradictory? Not really. They are describing different groups of crimes over different periods of time.

Both surveys, in fact, show a long-term downward trend. Even without adjusting for increased population, increased reporting to police or the crack phenomenon of the late 1980s, the FBI's reported murder rate for the 1981–90 decade declined 8 percent and the burglary rate 26 percent—though the robbery rate increased 5 percent. The broader BJS survey documents an overall 9.2 percent decline in violent crimes since its first survey in 1973; robbery is down 16 percent, burglary 41 percent and rape 33 percent. In sum, the BJS found, the rate of crimes against people was 25 percent lower in 1990 than in 1973 and the rate of household crimes 26 percent lower. The number of personal or household crimes, it added, fell from 41 million in 1981 to 34 million in 1990—a decline of 7 million in a decade.

Michigan, California and Texas in the 1980s have conducted revealing demonstrations of

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

contrasting "deprisonization" and "lock 'em up" policies.

Case 1. Michigan tried it both ways. In the late 1970s, legislators and voters refused to build new prisons, and the State soon was forced to deal with severe overcrowding. The governor granted emergency releases to 20,000 inmates in four years, some more than two years early. Michigan became the only state to record a prison population decrease in 1981–85, dropping from 15,157 in 1981 to 14,604 in 1984 but then jumping sharply to 17,755 in late 1985 after a Detroit Free Press series on early release of prisoners.

The violent-crime rate for Michigan reported by the FBI soared 25 percent, and public outrage mounted. Starting in 1986, a crash prison-building program doubled inmate population in five years. And, wonder of wonders, Michigan's crime rate dropped. Robbery and burglary rates fell more than 25 percent; in Detroit the decline was even more impressive—burglaries down 32 percent, robberies 37 percent. (Murders decreased at lesser rates—12 percent in the state and 4 percent in the city, an apparent anomaly probably explained by new and deadly warfare among crack cocaine gangs in Detroit, as in Washington.)

Success in Michigan wasn't cheap. The state voted $888 million to build and expand prisons by 1992, and operating them costs additional millions each year. But there were savings too. In 1988, U.S. Sentencing Commission criminologist Mark A. Cohen calculated the cost of 10 crimes to their victims by combining direct costs such as lost property and wages with estimates of pain, suffering and fear based on known jury awards. Cohen calculated the cost of a rape at $51,050, a robbery at $12,594, an assault at $12,028, a burglary at $1,372. By this measure, the decrease in just two prominent "fear" crimes—robberies and burglaries—saved Detroiters $113,546,000 in a single year.

Case 2. Since 1982 Californians have approved $3.7 billion in bonds to build prisons. From 1980 to January 1991, inmate population quadrupled from 22,600 to 98,000. By the 1990s, murder, rape and burglary rates fell a whopping 24 to 37 percent from their 1980–82 peaks—which translates as an annual reduction of nearly a thousand murders, 16,000 robberies and a quarter of a million burglaries.

Case 3. Conversely, Texas learned that skimping on prisons inflates crime disastrously. Prison costs had soared because of a burgeoning inmate population, a doubling of the guard/prisoner ratio and a federal judge's order to make costly changes—some indisputably necessary, such as better medical care, but others of dubious value, such as free college courses. The yearly cost per prisoner would eventually rise from $2,920 to $14,000 in the '80s, but in an early effort to slow it, the legislature in 1983 adopted a turn-'em-loose-faster approach. Thus, while the imprisoned convict population grew by 2½ times, the average term served dropped from 55 percent of sentence to less than 15 percent and the number of convicts on parole increased by 21 times.

Texas A&M professor Reynolds calculated the consequences. The expected punishment for a serious crime dropped 43 percent (from 13 days to 7.4) from 1980 to 1989, though for the nation as a whole it rose by about 35 percent (from 5.5 days to 8.8) in roughly the same period. Factoring the probability of arrest, conviction and imprisonment, a potential criminal in Texas today risks little. Fewer than one out of every 100 serious crimes results in a prison term, and those who land in prison serve an average of only 10 months. For murder an offender risks 24 months, for rape 5.3 months, for robbery 2 months and for burglary 7 days.

Result: The crime rate soared 29 percent in the 1980–89 decade, though nationally it dropped 4 percent, making Texas the second most crime-prone state. In 1980 no Texas city had ranked in the 20 worst America cities in property crimes; in 1988, 13 of the nation's worst 20 cities were in Texas.

If increased incarceration cuts crime, how many convicts should we keep locked away in this "land of the free"? When can we stop? And how much can we afford? We've spent an estimated $30 billion to double our prison population in the past decade, and yet today our prisons crowd in perhaps 140,000 more than they should.

University of Pennsylvania criminologist Marvin Wolfgang compiled arrest records up to the 30th birthday for every male born and raised in Philadelphia in 1945 and 1958 and published a 1990 study comparing the two cohorts. In both, about 35 percent of the young men collected one arrest and most never tangled with the law again. The real hard-core predators were an astonishing small group of repeaters who were rarely punished; just 7 percent of each age group committed two-thirds of all violent crime, including three-fourths of the rapes and robberies and virtually all the murders. Moreover, this 7 percent not only had five or more arrests by age 18 but went on committing felonies and, for every arrest made, got away with about a dozen crimes.

Incredibly, only 14 percent of the first five arrests resulted in punishment; in the other 86 percent, no charges were brought. Even the 14 killers among the 1945 cohort averaged an appallingly lenient four years behind bars. Yet when punishment was tried, it worked. The few who were imprisoned committed fewer and less serious crimes afterward.

What can be done? Wolfgang's studies suggest that about 75,000 new young, persistent criminal predators are added to our population every year. They hit their peak rate of offenses at about age 16. Locking up all of them from the time of a third felony conviction until, say, age 30 would almost double our present prison population to about 1,230,000. But such long-term imprisonments may not prove necessary if punishment is applied early and consistently.

Another measure of the size of our hard-core criminal population comes from a Justice Department program begun in 1983 and based on the Philadelphia findings. Justice persuaded 20 cities to have their police, prosecutors, schools and welfare and probation workers pool information and focus on the worst offenders, generally youngsters with three or more arrests by age 18. A "serious habitual offender" (SHO) gets priority attention from probation authorities, and if he is arrested anew, investigators and prosecutors throw the book at him with escalating penalties (coupled with rehabilitation efforts) in an effort to stop the revolving door.

In all 20 cities, SHOs consistently comprised less than 2 percent of all juveniles arrested, or about 18 to 25 youngsters per 100,000 population. Thus, out of 250 million Americans, we would have a maximum of maybe 62,500 SHOs between their 14th and 18th birthdays at any one time. Putting them all behind bars until 30 after the third offense—or even permanently, as is the law in many states, though rarely enforced—would be a relatively inexpensive way to cut a huge chunk out of our still atrocious crime rates.

California's only participating city, Oxnard, began a concerted effort to get the city's active SHOs behind bars, and in 1987 violent crimes dropped 38 percent, more than double the drop in any other California city. By 1989 all 30 of Oxnard's identified active SHOs were behind bars—almost exactly the predictable total for a city of 130,000—and its citizens experienced the lowest crime of a decade. Murders declined 60 percent, robberies 41 percent and burglaries 29 percent.

Based on these social yardsticks, I'd hazard a guess that America's hard-core violent repeaters number upwards of a million. That in turn suggests that if we increase federal and state prison populations to between 1 million and 1.5 million and keep our jails (usually operated by cities and counties for misdemeanor sentences of a year or less) at the present level of about 400,000, we may see a sharp drop in our horrendous crime rates.

And what about those alternatives to imprisonment Colman McCarthy touts?

The American Institutes for Research in the Behavorial Sciences, a non-profit Washington think tank, studied 350 high-repeat Illinois delinquents and found imprisonment was significantly more effective in reducing subsequent arrests from their previous levels. Judges committed the 159 worst prospects to incarceration and sent another 191 to foster or group homes for community "treatment" programs; the latter recorded subsequent arrest reductions of 56 to 68 percent while those imprisoned registered 71 percent fewer. Moreover, those not imprisoned were free to continue committing untold crimes while in "treatment."

In short, lock 'em up and you slow 'em down. Turn 'em loose and you pay an awful price.

WOMEN MUST TAKE A STAND ON HARASSMENT AS IT HAPPENS

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. BURTON of Indiana. Mr. Speaker, I am today entering into the CONGRESSIONAL RECORD an article written by Andrea Neal, a columnist for the Indianapolis Star.

Ms. Neal writes a very illuminating article on the Judge Clarence Thomas confirmation hearings and on sexual harrassment.

I hope all of my colleagues will take the time to read this article as I have found it is very insightful.

[From the Indianapolis Star, Oct. 12, 1991]

WOMEN MUST TAKE A STAND ON HARASSMENT AS IT HAPPENS

The confirmation process for Judge Clarence Thomas is no longer about Judge Thomas or his fitness for the nation's highest court.

It has become a referendum on sexual harassment.

Those who oppose Judge Thomas are self-proclaimed defenders of women and the right to be free of discrimination in the workplace. Those who support him are painted as Neanderthals unwilling to take sexual harassment seriously.

Feminists and the women of Capitol Hill are indignant. A group of female House members marched to the Senate to complain that the men on the Judiciary Committee were insensitive to charges leveled at Thomas by former aide Anita Hill.

I am indignant, too.

I am indignant that Senate Democratic staff members went fishing for dirt in a desperate attempt to block Judge Thomas' confirmation.

I am indignant at the way the media have sensationalized and the Senate politicized some very private incidents that may or may not have occurred.

And I am troubled that Hill chose to speak out about Thomas' alleged advances almost a decade later—only as he got close to a seat on the United States Supreme Court.

MORE EXCUSES

There are many valid excuses for Hill's delay.

If she had complained at the time, she would have been fired.

If she had spoken out immediately, her colleagues would have viewed her as a troublemaker.

If she had blown the whistle, she would have blown her own chances of getting ahead.

Frankly, I'm tired of excuses.

We offer similar excuses for why women don't report rape. We're afraid we won't be believed. We're afraid the criminal justice system won't take us seriously. We're afraid we will be treated like the accused, not the victim.

By accepting these excuses, society ends up perpetuating the very myth women are battling: that we are weak and men are strong and that we must stay silent even in the face of comments or conduct we find offensive.

It is time to quit making excuses and to speak out.

There may be casualties along the way—lost jobs, missed promotions, failed court cases. But every time a victim goes public, it will be easier for the next one.

TIME IS UP

It seems to me there is a natural statute of limitations for sexual harassment charges. And that is for as long as a harassing workplace situation exists and a remedy is within reach.

Women have a duty to be honest about what we consider misconduct—at the moment it occurs, not 10 years later.

If a colleague demeans me, I will tell him. If a boss harasses me, I will report him. I will not laugh at a sexist joke unless I am amused. And when I make an inappropriate or sexist remark—as I am sure I will do—I hope my co-workers will tell me, too.

In the real world, people tell dirty jokes and say things that are stupid and off-color and occasionally harassing.

Do we have to live in fear that somewhere down the line someone will remember and take us to the mat?

With Judge Thomas, the stakes are a little higher than usual. And the truth more elusive.

But if we refuse Judge Thomas, who will prove acceptable?

Must all Supreme Court justices be like David Souter, the court's most recent addition, who brought to the bench no personality, no past writings, no girl-friends, no ex-wives and few, if any, real-life experiences?

The jury is still out on who is telling the truth in the Thomas-Hill dispute.

But for our next Supreme Court justice, I hope we end up with a real human being like Judge Thomas.

H.R. 3697, THE EMERGENCY UNEMPLOYMENT COMPENSATION REFORM ACT OF 1991

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. ROSTENKOWSKI. Mr. Speaker, at the beginning of this recession we were assured it would be a short and shallow recession. As the months have passed, we have learned what millions of America's workers have been learning first hand—this is a longer and deeper recession than anyone imagined.

The time for debating the finer points of unemployment benefit extensions has passed. The time for partisan bickering about budget busting and financial finagling has passed. The time for Congress to pass a fiscally responsible unemployment benefit bill and for the President to sign that bill has arrived.

The President said yesterday he will sign a bill similar to S. 1722, the bill he vetoed recently, if it meets two conditions: First, it must not break the budget summit agreement of last year; second, it must be paid for.

Mr. Speaker, today I am introducing a bill that meets the President's standards and that he should sign. It does not break the budget summit agreement, and it is paid for. It is similar to the bill the Committee on Ways and Means reported last week, H.R. 3575.

This bill differs from H.R. 3575 in four ways. First, it restores the 20-week tier of benefits for high unemployment States. Second, it replaces the proposed increase in the Federal unemployment taxable wage base with a provision making estimated tax payments conform more closely to a taxpayer's actual tax liability to finance the costs of the bill. Third, it provides appropriations of $155 million for administrative costs to make sure the benefits are paid as quickly as possible. And, fourth, it provides extended railroad insurance benefits.

Mr. Speaker, it is time to deliver on our promises. The President has agreed with us that millions of American workers are hurting and that we need to extend unemployment benefits. I urge my colleagues to support this bill, and to pass it as soon as possible. America's workers have waited far too long for their Government to act.

NAVAL AVIATION: THE CHOICE TO SINK OR SWIM

HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. CUNNINGHAM. Mr. Speaker, now and for the foreseeable future, American Naval aviation is in big trouble. One particular decision by a House-Senate conference—between funding the F–14D or the proposed F/A–18E/F combat aircraft—will determine whether America's capability to project military force from the sea will spend the next two decades sinking or swimming.

First, it is instructive to review the battlefield. To even the casual follower of American national defense, it is clear that the Navy has problems. The Stealth carrier-based aircraft of the future, the A–12, succumbed to huge cost overruns and technological problems. Then, the Air Force chose its next generation of fighter aircraft for the Air Force, the F–22 Advanced Tactical Fighter—an extraordinarily capable plane, but too large for use on carrier decks. True, the Navy has embarked on designs for a stealthy, new AX carrier-based attack aircraft. But that plane is nearly a generation away, provided that the money faucet keeps running, which is by no means certain.

While the Soviet Union declines as a military power, it is more than reasonable to question the importance of Naval aviation in America's defense planning. The House-Senate conference, and the Pentagon itself, are required to prepare a defense against not only the military threats present today, but to look into a crystal ball to identify tomorrow's military threats as well. The magnificent changes of the last few years indicate that such an approach is more guesswork than science. But the lessons of Desert Storm, a type of warfare which is much more likely than the conflict between nuclear superpowers which dominated our planning during the cold war period, teach us that a fast-moving, agile national defense provides us with the best protection for the future. Such an agile defense is best suited by a navy that can strike the enemy from the air. The primary Naval air attack missions, sending small, swift aircraft to destroy important military targets behind enemy lines and to protect vital sea lanes, will remain a necessary component of the wars of tomorrow, as much as we hope they will never occur. Notwithstanding the outstanding work of the Air Force in Desert Storm, we cannot count on the next military threat coming to a region waiting with hundreds of millions of dollars' worth of airstrips ready for our use.

In this environment, the House-Senate conference will decide the short- to medium-term future of Naval aviation. And in no instance is the choice more clear than between the F–14D and the F/A–18E/F. As a former fighter pilot myself, and as a Congressman responsible for wise stewardship of taxpayer dollars, it is my firm belief that the House-Senate conference committee should choose the upgraded F–14D.

Both of these aircraft are thoroughbreds with impeccable bloodlines, with the F–14 and F–18 having served well in training and combat missions for years. But there are important distinctions, especially between the more advanced versions which are under consideration now, the F–14D and the F/A–18E/F. Because the Navy has not procured a pure attack aircraft since the venerable A–6, a design now nearly 40 years old, and any AX attack plane is nearly a generation away, the F–14D and F/A–18E/F have been proposed to fulfill not just air combat requirements, but attack missions as well, until the AX is built.

In head-to-head comparison with the F/A–18E/F, the F–14D is faster and more maneuverable, with the ability to carry more advanced radars and a larger quantity of ordnance than the proposed F/A–18E/F, at a lower cost to the taxpayers. Furthermore, the F–14D has been fully tested and can go into production tomorrow, whereas the F/A–18E/F requires major untested modifications not found in the current F/A-18. The F/A-18E/F paper airplane will require from $6 to $8 billion in time-consuming research and development before the first aircraft is delivered—money which would be better spent building and upgrading F-14D's.

Frankly, the debate in the House-Senate conference will mean little to Navy pilots, except to the extent that these proceedings will provide them with highly capable aircraft. Many of the characteristics of both the F-14D and the F/A-18E/F are highly technical, ranging from engine specifications to classified targeting electronics and so forth, so I will not review them in detail. But in my 300 combat missions over Vietnam, I learned that military effectiveness and the chances that I would survive depended not only on my own skill and training, but also on the speed and capabilities of my aircraft. Combat pilots since World War I have shared these values, the greatest of which is the truism speed is life—it is tactical advantage, and less time spent as a target over enemy airspace.

The pilots who live by the capabilities of these aircraft have much to say, and should carry a great deal of weight in the House-Senate conference debate. Once again, the choice is clear. The Navy's premier high-performance aircraft pilots—America's Top Guns—side strongly with the F-14D. Sixty Top Gun pilots singed a highly detailed letter on the issue, which has been widely distributed throughout the Pentagon. Allow me to pull out a few quotes:

> The F-14D Super Tomcat is more capable than the proposed F/A-18E/F, is here now, and should be utilized to its full potential.
>
> Surely the cost of research and development for the F/A-18E/F will far exceed that needed for upgrades to the F-14D that are already available.
>
> It is irrational to wait for the introduction of an aircraft which could be 50 percent more expensive and possess less capabilities than the F-14D.

There is no question that, given the choice, the people who risk their lives in combat aircraft much prefer the F-14D over the F/A-18E/F. The F-14D is quicker, with greater range, and clearer eyes to see the enemy before the enemy sees us.

Now, while many nations enter a brave, new, and unsure world, and while pressures at home to reduce defense spending are greater than at any time since the Second World War, the House-Senate conference committee holds the reins of the Navy at a most critical juncture. The facts have been presented, and the process nears its end. Without the F-14D, America's ability to strike an enemy from the sea will undoubtedly be compromised; with it, the Naval aviation component of our national defense will remain an important deterrent to the Saddam Husseins of the future, whomever they may be.

May the conference, Congress, and the Pentagon choose well, and choose the F-14D.

GATOR INDUSTRIES HONORED AS ONE OF TOP 10 HISPANIC BUSINESSES

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it is my great pleasure to recognize Gator Industries, which was recently selected as 1 of the 10 most important Hispanic businesses in Dade County by the Greater Miami Chamber of Commerce and the Hispanic Heritage Council.

Along with the other businesses, Gator Industries was presented with this award at the Omni International Hotel at a luncheon honoring these distinguished firms. The businesses were selected from a list of the 100 most important Hispanic firms in the United States, which was published in Hispanic Business magazine.

Greater Miami Chamber of Commerce President-elect Carlos Arboleya said that these firms were selected for their efforts on behalf of the Hispanic community and for their contribution to the economic development of Dade County.

Accepting the award for Gator Industries was Guillermo Miranda, Jr., who said that he represented his company's 950 employees.

I would like to take this opportunity to thank Gator Industries for the contribution it has made to the economy of South Florida, providing economic opportunity, economic development, and employment for the people of the Miami area.

POPULAR MYTHS OF CORPORATE JAPAN

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. BURTON of Indiana. Mr. Speaker, one of the biggest problems we face in dealing with the Japanese in the area of trade and investment is the unfair practices being employed by many, if not all, of the major Japanese corporations.

I am today inserting into the CONGRESSIONAL RECORD for the perusal of all my colleagues a copy of an article written by T. Boone Pickens who has some indepth knowledge of what it is like to deal with a major Japanese corporation.

I hope all my colleagues will take the time to read this article as I feel it is very illuminating.

OK, Toyota, OK, Koito. I give. After more than two years as the largest shareholder in Koito Manufacturing, it became clear to me that you will never grant my request for representation on Koito's board.

Yes, I was fed up with Toyota's stonewalling and moved on to other things. But I have moved on with a sense of accomplishment for exposing once and for all the link between Japan's closed corporate system and the "success" of Japan's economy.

As an oil man, I've drilled my share of dry holes, but I've always prided myself in knowing when to plug them. I decided to sell Boone Co.'s 26 percent stake in Koito back to its former owner. I did not realize a profit, but there is an eminently valuable moral to my story. One that if not heeded by all Americans, promises to profoundly alter the very foundation of our economic system.

I will continue to fight the battle on other fronts. But the fight for a two-way economic street with Japan will ultimately have to be waged and won by our policy-makers. That will only happen when we accept the fact that Japan's economic success is the result of a rigged system. Then we must negotiate with the Japanese accordingly.

What I have learned as the largest shareholder of Koito is that most of the popular wisdom about the source of Japan Inc.'s incredible success over the past decades is pure myth. Japan Inc. is not smarter, more agile and more efficient than America—it is simply based on business principles that America spurned almost a century ago when we outlawed trusts, monopolies and cartels. We never said those principles did not work—the question was, work for whom and at a cost to whom?

Sure, I know why the Japanese prize their system of corporate cartels. Cartels are more efficient and give executives more control over everything from suppliers to the market. On the downside, though, cartels ultimately limit consumer choices and increase prices. Simply put, they are a beautiful way to get rich while squeezing out competitors and exploiting consumers. Unfortunately, since the competitors have to be squeezed out first, the consumers are the last to know, and by then it is too late. Anyone who reads the business section even once a week should know that is exactly what the Japanese are doing in America.

In Japan, these cartels even have a special name. They call them "keiretsus." Keiretsus are intricately interlocking webs of share-ownership and corporate board memberships that give a handful of Japanese corporations at the top of the pyramids virtual feudal control over vast networks of suppliers and workers.

It's clear Japan Inc. is not just transplanting factories in America but also its keiretsu system. It's just a matter of time before American consumers feel the keiretsu wrath just as the Japanese have.

In a report due to be released in May, the Mid-America Project identifies 61 companies in Toyota's American keiretsu and 60 companies in Nissan's American keiretsu. Data on more than 1,200 other Japanese companies operating in Mid-America continues to be collected and analyzed by researchers and evidence of other keiretsu activity is apparent.

The success of keiretsu is its ability to lock Americans out of Japanese markets while eliminating competitors in the United States. According to Commerce Undersecretary for International Trade Michael Farren, Japan has exported more than $11 billion in auto parts to the United States during the past two years, while allowing only $640 million worth of American parts into Japan. This figure alone accounts for 11 percent of our total trade deficit with Japan.

I'll remain an outspoken critic of Japan's keiretsu system. I've submitted testimony in the U.S. Federal Trade Commission investigation of whether Japan is violating our antitrust laws by exporting its keiretsu system to the United States.

I've urged Congress to continue pursuing Internal Revenue Service reports that Japan is dodging up to $34 billion in U.S. taxes each year by underreporting the earnings of keiretsu-member companies. Congress is also considering trade reciprocity legislation to close U.S. markets until Japan allows us access to its markets.

Boone Co. encouraged U.S. Structural Impediment Initiative negotiators to focus on keiretsu, resulting in Japan's pledge to make keiretsu "more transparent" by requiring disclosure of keiretsu ties. Now U.S. negotiators must make them honor their pledge.

We helped start the Mid-America Project that, with the support of unions representing 35,000 workers in a six-state region, is helping communities better understand the economic impact of keiretsu on Main Street.

We also led the call for Japan's government to pressure corporate Japan to increase the dividends paid to small shareholders and encouraged other shareholder rights.

Based on my experience in Japan, American policy-makers first will have to acknowledge that the Japanese government may be powerless in the face of keiretsus. All government officials we approached said Toyota is a power unto itself.

The United States should resolve that our antitrust laws are not only essential to our free enterprise system, but that they will be enforced wherever American commerce is at work. That means stopping cartels from selling products in our markets and halting the keiretsu invasion of our economy.

From a trade negotiating standpoint, we should sit down with the Japanese, show them a copy of the free trade agreement with Canada, and tell them we have six months to negotiate something similar or we start erecting trade barriers to match theirs. Investment reciprocity restrictions would be the first place to start. They can't invest here until we can do the same there. That should get their attention. Renaming Japan as an unfair trader under Super 301 is another place we can start.

But most importantly, the moral to my story is that we should stop blaming ourselves, see Japan's keiretsus for the unfair cartels that they are, and then threaten their very existence before it's too late.

AMERICA SAYS NO TO MARIJUANA USE

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. COUGHLIN. Mr. Speaker, the war against drugs is a difficult fight. There is much we have yet to accomplish. However, there are times when it is appropriate to examine the progress we have made to date, as we continue to work toward total victory. I am pleased to report that in our effort to reduce domestic demand for illicit narcotics, indications are that we are headed in the right direction.

Numerous drug consumption surveys have indicated that use of all types of deadly drugs is on the decline. Equally important, people's attitude toward narcotics have also changed. Where once drug consumption was viewed by many as a harmless pleasure, it is now recognized as a dangerous and risky activity that jeopardizes one's health, as well as one's career.

There are many reasons for this change in behavior. They include strong law enforcement programs on the Federal, State, and local level, as well as widespread education campaigns, especially the creative advertising initiatives of the Partnership for a Drug-Free America. Strong leadership from President Bush, and drug czars Bill Bennett and Bob Martinez, have ensured that initiatives to combat drugs gained the attention and resources they required to have a positive impact.

An excellent illustration of the progress we have made can be found in a front page story in the New York Times of October 29, 1991. The story discusses how and why Americans are now rejecting marijuana consumption. I strongly recommend that my colleagues review this article and I am inserting it at this point in the RECORD.

[From the New York Times, Oct. 29, 1991]

COSTLY AND SCARCE, MARIJUANA IS A HIGH MORE ARE REJECTING

(By Joseph B. Treaster)

Not long ago, hosts at some Upper East Side dinner parties would set out little silver bowls of home-rolled marijuana cigarettes along with the after-dinner drinks. Rock concerts unfolded under canopies of marijuana smoke, and the drug's syrupy aroma drifted across schoolyards and campuses, construction sites and corporate offices, public parks and private patios.

But as quietly and gradually as the widening of a waistline, America's infatuation with the herb of many names—grass, pot, dope, weed, ganja, sess, sens, smoke, skunk and, quaintly, in the long ago, Mary Jane—has been fading.

In New York and throughout the country, lighting up is no longer hip, not in high school, not at college, not at most social events and, with the advent of widespread random drug testing, certainly not on the job.

'IT'S NOT COOL ANYMORE'

The great marijuana cloud has grown wispy as rebellion and the quest for nirvana have yielded to conformity and the struggle for survival, as health concerns and a vague fear of getting into trouble have risen above the desire to get giddy.

Part of the shift, undoubtedly, has also been because of relentless police pressure that has transformed an abundant drug once available for $20 or $30 an ounce into a scarce commodity selling in some quarters of New York for $800 an ounce, more than twice the price of gold.

"It's not cool anymore," said a high school senior in Manhattan, capturing the mood of the 90's with the language of the 60's.

Although the glory days of the Beatles are generally remembered as the peak of the marijuana craze, the popularity of the drug gathered momentum through the 70's and stayed relatively strong until the late 80's.

Advocates insist that marijuana—the mildest and by far the most widely tried illegal drug in America—is no more harmful than alcohol, not even the latest strains, which are 10 times more potent than the grass of the flower children. Still, it has been as much a target of the national antidrug campaign as cocaine, heroin, LSD and barbiturates, and many people have clearly taken the warnings and prohibitions to heart.

No conclusive medical evidence on the long-term effects of marijuana has been developed. But Federal officials contend it is a steppingstone to other drugs. Many addicts do report that marijuana was their first drug. But legions of former smokers say they never went on to anything stronger. "Most of us," said one professional woman in her mid-40's, "just dropped out of drugs and called it a day."

Ultimately, it seems, marijuana just does not fit the personal visions of growing numbers of New Yorkers and other Americans. Nor do most other drugs, including cocaine, alcohol and nicotine, all of which are being increasingly rejected.

Some of those most militantly opposed to marijuana and other drugs are schoolchildren who for several years now have been attending antidrug classes and watching antidrug messages on television. One junior high student in Queens said she had no interest in experimenting with marijuana. "It just doesn't seem like it would be fun or anything," she said. "We've heard so much about it, that it's horrible and stuff."

PRESIDENT BUSH'S HISTORIC REMARKS AT THE MIDDLE EAST PEACE CONFERENCE

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. BROOMFIELD. Mr. Speaker, when historians of the future write about the recent convening of the Middle East Peace Conference in Madrid, they will rank it among the United States greatest diplomatic accomplishments.

In working to bring about the new world order marked by justice and respect for human rights, President Bush has accepted a challenge past administrations have shied away from—that of trying to resolve the longstanding Middle East problem. Although the road ahead is long, hopefully all parties to the dispute will negotiate in good faith so that the talks will bring progress. Both Israelis and Arabs would benefit from a new order of political stability and increased economic development in the Middle East.

Yesterday, Arabs and Israelis sat at the same table and talked with each other. I salute the President for accomplishing what many of us, only a few years ago, thought was impossible. Although success in the talks is not guaranteed, George Bush's vision of a future Middle East that is at peace with itself may someday become a reality.

I commend the following excerpts from President Bush's opening remarks at the Middle East Peace Conference to my colleagues in the Congress.

[From the Washington Post, Oct. 30, 1991]

"PEACE IS POSSIBLE" IN THE MIDEAST

MADRID.—Here are excerpts from President Bush's opening remarks at the Middle East Peace Conference.

We come to Madrid on a mission of hope to begin work on a just, lasting and comprehensive settlement to the conflict in the Middle East. We come here to seek peace for a part of the world that in the long memory of man has known far too much hatred, anguish and war. I can think of no endeavor more worthy or more necessary.

Our objective must be clear and straightforward. It is not simply to end the state of war in the Middle East and replace it with a state of nonbelligerency. This is not enough. This would not last.

Rather, we seek peace. Real peace. And by real peace, I mean treaties, security, diplomatic relations, economic relations, trade, investment, cultural exchange, even tourism. What we seek is a Middle East where vast resources are no longer devoted to armaments; a Middle East where young people no longer have to dedicate and all too often give their lives to combat; a Middle East no longer victimized by fear and terror; a Middle East where normal men and women lead normal lives * * *.

I expect that some will say that what I'm suggesting is impossible. But think back. Who, back in 1945, would have thought that France and Germany, bitter rivals for nearly a century, would become allies in the aftermath of World War II? And who, two years ago, would have predicted that the Berlin Wall would come down? And who, in the early 1960s, would have believed that the Cold War would come to a peaceful end, replaced by cooperation, exemplified by the fact that the United States and the Soviet Union are here today, not as rivals but as partners, as Prime Minister Gonzalez pointed out?

No, peace in the Middle East need not be a dream. Peace is possible.

The Egyptian-Israeli peace treaty is striking proof that former adversaries can make and sustain peace. And moreover, parties in the Middle East have respected agreements, not only in the Sinai, but on the Golan Heights as well. The fact that we are all gathered here today for the first time attests to a new potential for peace * * *.

Peace will only come as the result of direct negotiations, compromise, give-and-take * * *. We come here to Madrid as realists. We don't expect peace to be negotiated in a day or a week or a month or even a year. It will take time. Indeed, it should take time—time for parties so long at war to learn to talk to one another, to listen to one another, time to heal old wounds and build trust. In this quest, time need not be the enemy of progress.

What we envision is a process of direct negotiations proceeding along two tracks, one between Israel and the Palestinians. Negotiations are to be conducted on the basis of U.N. Security Council Resolutions 242 and 338. The real work will not happen here in the plenary sessions but in direct, bilateral negotiations * * *.

For Israel and the Palestinians, a framework already exists for diplomacy. Negotiations will be conducted in phases, beginning with talks on interim self-government arrangements. We aim to reach agreement within one year; and once agreed, interim self-government arrangements will last for five years. Beginning the third year, negotiations will commence on permanent status.

No one can say with any precision what the end result will be. In our view, something must be developed, something acceptable to Israel, the Palestinians and Jordan, that gives the Palestinian people meaningful control over their own lives and fate and provides for the acceptance and security of Israel.

We can all appreciate that both Israelis and Palestinians are worried about compromise, worried about compromising even the smallest point, for fear it becomes a precedent for what really matters. But no one should avoid compromise on interim arrangements for a simple reason. Nothing agreed to now will prejudice permanent status negotiations. To the contrary, these subsequent negotiations will be determined on their own merits.

Peace cannot depend upon promises alone. Real peace, lasting peace, must be based upon security for all states and peoples, including Israel. For too long, the Israeli people have lived in fear, surrounded by an unaccepting Arab world. And now is the ideal moment for the Arab world to demonstrate that attitudes have changed, that the Arab world is willing to live in peace with Israel and make allowances for Israel's reasonable security needs.

We know that peace must also be based on fairness. In the absence of fairness, there will be no legitimacy, no stability. And this applies above all to the Palestinian people, many of whom have known turmoil and frustration above all else.

Israel now has an opportunity to demonstrate that it is willing to enter into a new relationship with its Palestinian neighbors, one predicated upon mutual respect and cooperation. Throughout the Middle East, we seek a stable and enduring settlement. We've not defined what this means. Indeed, I make these points with no map showing where the final borders are to be drawn. And nevertheless, we believe that territorial compromise is essential for peace * * *.

Success will escape us if we focus solely upon what is being given up. We must fix our vision on what real peace would bring. Peace, after all, means not just avoiding war and the cost of preparing for it. The Middle East is blessed with great resources—physical, financial, and, yes, above all, human. And new opportunities are within reach if we only have the vision to embrace them * * *.

I want to say something about the role of the United States of America. We played an active role in making this conference possible, and both the Secretary of State Jim Baker and I will play an active role in helping the process succeed.

Toward this end, we've provided written assurances to Israel, to Syria, to Jordan, Lebanon, and the Palestinians, and, in the spirit of openness and honesty, we will brief all parties on the assurances that we have provided to the other. We're prepared to extend guarantees, provide technology and support, if that is what peace requires. And we will call upon our friends and allies in Europe and in Asia to join with us in providing resources so that peace and prosperity go hand in hand * * *.

We have seen too many generations of children whose haunted eyes show only fear, too many funerals for their brothers and sisters, the mothers and fathers who've died too soon; too much hatred, too little love. And if we cannot summon the courage to lay down the past for ourselves, let us resolve to do it for the children.

SWEENEY THIRD-GRADERS

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. RICHARDSON. Mr. Speaker, during the August recess I spent an hour one afternoon reading to and conversing with a class of third-graders at an elementary school in my district. My visit was arranged by Partners in Education, a local organization which has been extremely successful in involving all segments of the adult world in the day-to-day workings of the community's public schools.

The class I visited with is designated for bilingual education, and I was asked to read in both English and Spanish. After the story, we discussed the importance of reading and of proficiency in several languages, particularly in a multicultural State like New Mexico.

The children impressed me as bright, enthusiastic, and inquisitive. They asked about the duties of my office and whether I was rich and famous. Recently I received an envelope containing illustrated letters from each member of the class, thanking me for the visit. I would like to share a few of those with my colleagues:

DEAR CONGRESSMAN RICHARDSON: Thank you for reading to us. I really like the story. I really have been reading and I know it'll help me when I'm older. When I am older I'm going to be a teacher. I want too teach third grade.

Sincerely,

KRYSTAL PEREA.

DEAR CONGRESSMAN RICHARDSON: Thank you for coming and reading us a story. The story was very nice. I like the story Juan Camison. I saw you on T.V. I like you. You are very nice.

ERICA MONTOYA.

DEAR CONGRESSMAN RICHARDSON: The story was neat. The name was called Juan Camison. I saw you on TV. I got your autograph. Thank you for your spare time. I want to be a Congressman like you.

JAMES CATANACH.

DEAR CONGRESSMAN RICHARDSON: Thank you for coming to read to us I really like when you came to read I like the story you read to us it was really fun and I want to learn Spanish when I grow up. We are learning Spanish every day I'm getting better at Spanish.

Your my friend.

VICTORIA CROSS.

DEAR CONGRESSMAN RICHARDSON: You are a nice man. I wish you will come to our school again. I wish you will come to Santa Fe again. I like you very much. The end.

Your friend,

MICHAEL ROMERO.

Mr. Speaker, I recommend to my colleagues that they become acquainted with their pre-voting-age constituents. Both they and their letters are delightful.

MARGARET DAUGHERTY LEWIS

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mrs. SCHROEDER. Mr. Speaker, how to provide the best health services for a variety of Americans is a question on everyone's mind. For the record, I would like to introduce to you Margaret Daugherty Lewis, one health care worker who is providing accessible and necessary health care for many Americans.

Margaret Daugherty Lewis hails from my hometown of Denver. She runs the National Association of Home Health Agencies, representing over 5,500 home health organizations. She has devoted her life to championing visiting nurse agencies and home health services. She has created programs that combine clinical and public health nursing. And, she has provided our community with well-trained nurses equipped to service the medical, social, and mental needs of the community.

Margaret Daugherty Lewis will be inducted into the Health Care Hall of Fame on November 6. Her efforts toward providing comprehensive health care for Coloradans is much appreciated throughout the State and should serve as a model for us all.

TRIBUTE TO H. TOWNSEND HADER

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. SKELTON. Mr. Speaker, an outstanding Missourian and long time friend of mine, Judge H. Townsend Hader, of Lexington, MO, died October 28. Judge Hader was an associate circuit judge in Lafayette County. Judge Hader, who was affectionately known as "Chick," opened a law firm in Lexington in 1939 and was a member of the Aull, Hader & Sherman firm, also in Lexington, from 1965 to 1975. He was appointed a magistrate judge in 1975 and retired as an associate Lafayette County circuit judge in 1981. He was Lafayette County prosecuting attorney in 1949 and 1950 and Lexington city attorney from 1950 to 1956.

He was a member of the American Kansas City Metropolitan and Lafayette County bar associations and the Missouri Bar. He was a 1936 graduate of the University of Missouri-Columbia, where he was an outstanding member of the Missouri football team. He attended the MU and University of Wisconsin law schools. He received a law degree from Washburn University in 1938. He was a member of Kappa Sigma, the MU Alumni Association, the Kansas City Club, the Friends of Art and the Forty Years Ago Column Club.

He was president of the Lyons Foundation in Lexington. He was a member of the Lexington Masonic Lodge, Ararat Shrine, the Elks Lodge and the American Turners. He was an Eagle Scout, a charter member of Troop 2 of the Boy Scouts in Higginsville, MO, and a warrior in the Tribe of Mic-O-Say.

He was a member of Christ Episcopal Church, Lexington, and its vestry, and he was a lay reader at the church. He was an Army veteran of World War II and a member of the American Legion and the Veterans of Foreign Wars. He was born in Higginsville, MO, and moved to Lexington in 1939.

Judge Hader will be remembered for being an outstanding lawyer, as well as a compassionate, loyal friend. I know the Members of this body join me in extending sympathy to his wife, Jane.

BARTON DRUG TESTING AMENDMENT FOR MEMBERS OF CONGRESS

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. TORRICELLI. Mr. Speaker, today I would like to enter into the CONGRESSIONAL RECORD the text of a letter written by Representative PETER DEFAZIO about the successful passage of an amendment to the dire emergency supplemental bill that requires a drug testing program for Members of Congress.

While I do not feel that drug testing for Members of Congress is necessarily a bad idea or that Mr. Barton's actions were a cynical exercise to embarrass his colleagues, I agree with the spirit and intent of this correspondence.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
October 30, 1991.

Representative JOE BARTON,
Washington, DC.

DEAR JOE: You must feel a great sense of accomplishment with the passage of your amendment to the "Dire Emergency Supplemental" requiring the expenditure of $50,000 for the possible mandatory random drug testing of Members of Congress. There are some who say this was a cynical exercise on your part in an attempt to embarrass or intimidate your colleagues and demean the institution. Knowing that you are an honorable Member of Congress, I will not attribute such base motivations to you. In that spirit, I would like to offer to you and those who supported your amendment suggestions to improve your program.

Are you aware that alcohol is the most abused drug in America? That leaves an awful big loophole in your "emergency" legislation. Your amendment will not address alcohol abuse unless it is implemented on a no prior warning, 24-hour per day basis—perhaps linked to a "no knock" or "good faith exception" bill.

Alternatively, an enhanced testing regime would get at the alcohol question. How about a million dollars or two for a voting card breathalyzer interlock system similar to that used on auto ignition systems?

I'd urge you to look at two additional tests in the same spirit that you proposed this test. First and foremost, you should recommend lie detector tests. Now I know that your administration found them unseemly when proposed for Justice Thomas, but don't let that stop you.

Finally and most importantly, I would recommend you lead the way by taking an I.Q. test.

Your Colleague,
PETER DEFAZIO.

INTRODUCTION OF THE STATEWIDE SUBSTANCE ABUSE ASSESSMENT AMENDMENTS ACT

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. RANGEL. Mr. Speaker, today, I am introducing the Statewide Substance Abuse Assessment Amendments Act, a bill to improve the management and accountability of publicly funded substance abuse treatment programs supported under the Federal Alcohol, Drug Abuse and Mental Health Services [ADMS] block grant.

The ADMS block grant is the primary vehicle for Federal funding to States for substance abuse treatment. From 1986 to 1991, Federal spending on substance abuse programs under the block grant increased four-fold, from approximately $240 million to nearly $960 million. As Federal spending for substance abuse treatment has grown rapidly in recent years, so have concerns about accountability.

At my request, the General Accounting Office [GAO] conducted a review of the ADMS block grant. Specifically, I wanted to know if Congress has the information it needs to determine whether the investment Congress is making in substance abuse treatment is being used for effective programs and services.

The GAO recently completed its study of the block grant. On October 17, 1991, at a hearing of the Select Committee on Narcotics Abuse and Control, which I chair, GAO presented its findings and recommendations.

Unfortunately, the results of GAO's study are not encouraging. Despite increases in Federal spending for drug treatment, GAO concluded that little information is available on the nature of State drug abuse treatment activities or on the quality and appropriateness of services. What information does exist is often not comparable from State to State because the data collected are not uniform. GAO also found that the Department of Health and Human Services [HHS] provides minimal oversight of State activities because of a departmental policy of deference to a State's interpretation of block grants requirements unless HHS finds that the State's interpretation is clearly erroneous. HHS adheres to this policy even though Congress, in 1988, repealed the provision of the block grant statute that had prohibited HHS from either prescribing the manner in which states should comply with the block's grant's requirements or establishing reporting requirements.

GAO also found that the Office of Treatment Improvement [OTA], which administers the block grants, is taking important steps to help States access their needs and improve the delivery of treatment services that are effective in reducing drug abuse. OTI's program is designed to provide for uniform data collection, technical assistance including the establishment of treatment program guidelines or performance standards called treatment improvement protocols, and monitoring of state activities. GAO concluded, however, that OTI's efforts to improve treatment services and increase State accountability for ASMS funds will be difficult to achieve because State participation is voluntary. Consistence with HHS policy to grant State wide discretion in meeting block grant requirements, implementation of OTI's program will be left to the States. GAO recommended that HHS exercise the authority granted by Congress to establish reported requirements for the States that will provide the information needed to determine if block grant funds are being used for effective programs and services.

In addition to GAO, the Select Committee heard testimony from Dr. Beny Primm, the head of OTI, and Arther Webb, director of the State of New York Division of Substance Abuse Services. Neither witness took issue with GAO's report, which was supportive of OTI's statewide systems development plan [SSDP], OTI's program to improve the accountability and effectiveness of treatment programs. OTI acknowledged that States currently lack the capabilities and resources to conduct needs assessments and that without current data on the incidence and prevalence of drug abuse and treatment availability, States cannot target ADMS fund to areas of greatest need as required by the block grant. While supporting OTI's SSDP initiative and GAO's call for enhanced State reporting requirements to realize the full potential of OTI's program, Arthur Webb made clear that current economic conditions make it impossible for States to implement new Federal mandates without the dollars to carry them out.

The bill I am introducing today addresses the concerns raised in the GAO's report and the testimony at our hearing. It establishes as a requirement of the block grant that States conduct annual, statewide assessments of the extent of substance abuse and the capacity and utilization of treatment services in the State. Each State would be required to use the data collected in the assessments to target block grant funds to the areas of greatest need for substance abuse treatment within the State. The requirement for the assessments would be phased in over a 3-year period, and by fiscal year 1995, the conduct of annual statewide assessment would be a condition for a State's receipt of its block grant payments. The types of assessments required would include: incidence and prevalence studies of substance abuse among the general population of a State; incidence and prevalence studies of specified subpopulations which are intended to provide a clearer picture of substance abuse among groups frequently overlooked in general surveys such as pregnant women, criminal justice populations including youth in the juvenile justice system, and heroin addicts; and treatment capacity and utilization studies.

To assure that States have adequate resources to conduct these mandated needs assessments, the bill requires the Secretary of Health and Human Services to provide grants or contracts to States each year for these data collection activities. Funds for these grants and contracts would be reserved from amounts already set aside under the block grant for various services research, technical assistance and data collection efforts. The bill reserves $13 million for these statewide assessments for fiscal year 1992, $26 million for 1993, $39 million for 1994 and not less than $39 million for each subsequent fiscal year. These amounts are consistent with estimates by OTI of what these assessments will cost under its SSDP program.

In addition, the bill requires the secretary to provide technical assistance to the States to help States develop the expertise they need to conduct these needs assessments and utilize the data effectively. The costs of providing this technical assistance would be met out of funds reserved by the bill for the conduct of statewide assessments.

The bill also requires the Secretary to develop uniform criteria for these new statewide assessments. These criteria must be developed after consultation with the States and appropriate national organizations. This requirement is intended to ensure the collection of comparable data to permit analyses of substance abuse needs and services at the sub-State, State and national levels. It is also intended to ensure that implementation of the statewide needs assessment requirement is a collaborative effort. States are expected to comply with reasonable requests for data. At the same time, OTI is expected to work cooperatively with the States and other Federal agencies involved in substance abuse data collection to assure a coordinated effort that meets State and local requirements as well as Federal needs for accurate, timely data without imposing undue burdens on the States.

The administration has called for States to prepare statewide treatment plans as a way of establishing greater accountability for State's use of substance abuse funds under the block grant. The needs assessments my bill would require provide the basic foundation a State must have before it can build an effective treatment plan. These assessments would establish the data collection and reporting requirements GAO says are needed so that State and Federal administrators and the Congress will have the information to determine if block grant funds are being used effectively to reduce substance abuse.

The GAO did not propose legislation to Congress because it concluded that Congress had already granted HHS sufficient authority to establish the reporting requirements GAO recommends. To date, however, HHS has failed to exercise the authority Congress has provided. My bill will require HHS to establish the data collection and reporting requirements GAO recommends to assure that block grant funds are targeted to areas of greatest need, as required by law, and are used for effective programs and services. These reporting requirements are also needed to successfully implement OTI's SSDP initiative for improving the accountability of block grant funds. In addition, my bill assures the availability of funds for this effort from funds now set aside in the block grant for data collection, services research and technical assistance. Much of these funds are currently being allocated for projects that are not directly related to management of the block grant and that could be funded under other authorities. It is time to make sure that these funds are used first to provide the information that we as policymakers need in order to know that our investment in substance abuse treatment is being used effectively.

I urge my colleagues to support this measure. The text of the bill follows:

H.R. 3696

To amend the Public Health Service Act to provide for assessments in each State of the incidence and prevalence of substance abuse and of the extent to which the availability, from public and nonprofit private providers, or treatment for such abuse is insufficient to meet the need for such treatment, and for other purposes.

H.R. 3696

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Statewide Substance Abuse Assessment Amendments Act".

SEC. 2. ESTABLISHMENT, IN PROGRAM OF BLOCK GRANTS REGARDING SUBSTANCE ABUSE, OR REQUIREMENT FOR STATEWIDE ASSESSMENT OF EXTENT OF SUBSTANCE ABUSE AND CAPACITY FOR TREATMENT.

(a) ALLOCATION OF APPROPRIATION.—Section 1911 of the Public Health Service Act (42 U.S.C. 300x) is amended—

(1) in subsection (b), by striking "For the purpose" and all that follows through "1923," and inserting the following: "For the purpose of carrying out section 509D, section 1916B, and sections 1921 through 1923,"; and

(2) by adding at the end the following new subsection:

"(c) For the purpose of carrying out section 1916B, the Secretary shall obligate, from the amounts reserved under subsection (b) for the fiscal year involved, $13,000,000 for fiscal year 1992, $26,000,000 for fiscal year 1993, $39,000,000 for fiscal year 1994, and not less than $39,000,000 for each subsequent fiscal year."

(b) STATEWIDE ASSESSMENT.—Subpart 1 of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) is amended by inserting after section 1916A the following new section

STATEWIDE ASSESSMENT OF EXTENT OF SUBSTANCE ABUSE AND CAPACITY FOR TREATMENT

"SEC. 1916B. (a) For fiscal year 1995 and subsequent fiscal years, the Secretary may not make payments under section 1914 to a State for a fiscal year unless the State agrees to complete, by the end of the fiscal year, whichever of the following assessments the Secretary determines is appropriate for the State for the fiscal year:

"(1) An assessment of the incidence and prevalence in the State of substance abuse among the general population.

"(2) An assessment of the incidence and prevalence in the State of such abuse among subpopulations specified by the Secretary.

"(3) An assessment of the extent to which the number of individuals in the State seeking treatment for such abuse from public and nonprofit private entities in the State exceeds the number of individuals to whom the entities have the capacity to provide treatment.

"(b)(1) For fiscal year 1992 and subsequent fiscal years, the Secretary shall, from amounts available pursuant to section 1911(c), provide grants or contracts to States for the conduct of assessments described in subsection (a). Subject to the extent of the amounts so available, the Secretary shall in making the grants ensure that—

"(A) for fiscal year 1992, assessments described in such subsection are conducted by ⅓ of the States;

"(B) for fiscal year 1993, such assessments are conducted by ⅔ of the States, including each State for which the assessments were conducted for fiscal year 1992; and

"(C) for fiscal year 1994, such assessments are conducted by each State.

"(2) Paragraph (1) may not be construed as requiring that the Secretary, in making grants under such paragraph for any fiscal year, provide for the conduct by any State of more than one of the assessments described in subsection (a).

"(c) The Secretary shall provide to the States technical assistance regarding the conduct of assessments under this section.

"(d)(1) The uniform criteria developed by the Secretary under section 509D(d) shall include uniform criteria for conducting the assessments described in subsection (a). The Secretary shall ensure that each assessment conducted pursuant to this section is conducted in accordance with the uniform criteria that are developed for the assessments, subject to paragraph (2).

"(2) Upon the request of a State, the Secretary may provide a waiver to the State of all or part of the requirement established in paragraph (1), subject to the Secretary ensuring that the data collected pursuant to the waiver will have sufficient utility for purposes of the program carried out under this section.".

SEC. 3. USE OF ASSESSMENTS BY STATES IN ALLOCATING BLOCK GRANT AMONG COMMUNITIES.

Section 1916(c)(19) of the Public Health Service Act (42 U.S.C. 300x-4(c)(19)) is amended by striking "will be targeted" in the matter preceding subparagraph (A) and all that follows through the semicolon at the end of such subparagraph and inserting the following: "will be targeted to communities in the State with the greatest need for treatment for substance abuse, as determined by the State after consideration of—

"(A)(i) data collected in the assessments conducted by the State under section 1916B; or

"(ii) with respect to any assessment under such section that has not been conducted by the State, such data as the State may possess on the categories of information with respect to which the assessment is to be conducted;".

SEC. 4. RULE OF CONSTRUCTION REGARDING DELEGATION OF AUTHORITY TO STATES.

With respect to States receiving payments under subpart 1 of part B of title XIX of the Public Health Services Act—

(1) such subpart may not be construed as authorizing the Secretary of Health and Human Services to delegate to the States the primary responsibility for interpreting the governing provisions of the subpart, including delegating authority with the result that different States are permitted to reach different interpretations of any provision of the subpart; and

(2) the Secretary may not give any legal effect to section 50(e) of part 96 of title 45, Code of Federal Regulations (45 CFR 96.50(e)).

OK FEDERAL FAMILY LEAVE BILL

HON. CHARLES A. HAYES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. HAYES of Illinois. Mr. Speaker, supporters of families look forward to the Congress voting on the family and medical leave bill soon. It is a shame that we have waited 7 years to get to this point. Opponents of the bill are a minority, yet they have been able to thwart the will of the majority of Americans as well as the majority in Congress.

I would like opponents to read this editorial from the Chicago Sun-Times and reconsider the prospect of voting against the will of millions of working people.

[From the Chicago, (IL) Sun-Times, Sept. 23, 1991]

OK FEDERAL FAMILY LEAVE BILL

For nearly seven years, family advocates in Congress have been trying to fashion a family and medical leave bill that the White House could live with, gradually watering it down to the point where 96 percent of all businesses would be exempt.

Only those with 50 or more workers would be required to provide unpaid leaves for new parents, or staffers requesting time off to care for a seriously ill family member, under the latest compromise measure now working its way through the Senate.

Leaves would be limited to 12 weeks. It would cost employers no more than $6 per covered worker per year to implement. And they could still deny leaves to "key employees," or to any who had worked less than 1,250 hours over the past 12 months.

There is little in it for President Bush, who has expressed concern about hardships on employers, to quibble with. It will still leave millions of Americans without this form of job protection, and small businesses with the right to do as they please.

In fact, the best that can be said of the bill may be that it's better than nothing.

But that is no small consideration when the United States stands alone, among the industrialized nations of the world, in failing to provide job-protected time off for new parents.

The Bush White House continued to hold the threat of a presidential veto over Congress last week, putting out the word that it still prefers "voluntary leave policies"—but Sen. Christopher S. Bond (R-Mo.) and his colleagues have largely defanged its arguments with this modest proposal.

They have bent over backward to produce a bill Bush can sign, if partisans in both houses sign off on it next month, as expected. And he should.

PERM-FIVE PROGRESS IN MIDDLE EAST ARMS CONTROL

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. FASCELL. Mr. Speaker, the Committee on Foreign Affairs has long championed and held special interest in promoting positive steps in arms control as a means of lessening tensions and regional instabilities, not only among the superpowers but in other regional flashpoints as well. One such volatile region that has consistently drawn the attention of the committee has been the Middle East and Persian Gulf. To that end and in the wake of Operations Desert Shield and Desert Storm, the committee developed and the House approved an important new legislative initiative calling for the implementation of a multinational arms transfer and control policy toward the Middle East and Persian Gulf region.

This initiative was included in both the State Department—H.R. 1415—and foreign assistance—H.R. 2655—authorization bills and initially opposed by some in the executive branch who interpreted this congressionally mandated proposal as an infringement on Presidential prerogative and authority. Withstanding those objectives, however, the committee continued to work in conjunction with the executive branch to produce a conference report that included a version of the committee's Middle East-Persian Gulf arms control initiative that was acceptable to the administration. To that end, I am pleased to inform my colleagues that on October 28, the President signed Foreign Relations Authorization Act for fiscal years 1992–93 into law—Public Law 102–138—and as such enacted this congressional call for greater multilateral restraint and arms control for the Middle East and Persian Gulf regions.

I am also pleased to report on other steps the administration has taken with regard to this most important issue. As I informed my colleagues last week (CONGRESSIONAL RECORD, October 24, pages E 3549–50), the permanent five members of the U.N. Security Council met in Paris on July 7 and 8, where they declared their intent to seek the elimination of the transfer of weapons of mass destruction [WMD] and missiles, and committed themselves to the creation of a universal register of arms under the auspices of the United Nations. These negotiations were followed upon by a second round of the permanent five in London on October 17 and 18 where they agreed to the adoption of common guidelines for conventional arms transfers to not only the Middle East but throughout the global community of nations. These negotiations will be continued in Washington early next week where hopefully, additional agreement can be obtained with regard to greater transparency and consultation among arms suppliers on both WMD and conventional arms transfers, especially those to the Middle East and the Persian Gulf.

In this regard, I am attaching to this statement, a copy of the London communique of the Permanent Five—the People's Republic of China, the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America—on arms transfers and nonproliferation. I am pleased to congratulate the President on the progress that has been achieved to date, and encourage him to continue in implementing the call of the Congress and as such the people of the United States, for the development and implementaion of a multinational policy for bringing arms control to the Middle East and Persian Gulf regions.

MEETING OF THE FIVE ON ARMS TRANSFERS AND NON-PROLIFERATION

1. In accordance with their agreement in Paris on 8 and 9 July 1991, representatives of the United States of America, the People's Republic of China, France, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics met in London on 17 and 18 October to take forward their discussions on issues related to conventional arms transfers and to the non-proliferation of weapons of mass destruction.

2. Recalling the statement which was issued in Paris on 9 July, they:

Agreed common guidelines for the export of conventional weapons (annexed). They expressed the hope that other arms exporting countries will adopt similar guidelines of restraint;

Agreed to inform each other about transfers to the region of the Middle East, as a matter of priority, of tanks, armored combat vehicles, artillery, military aircraft and helicopters, naval vessels, and certain missile systems, without prejudice to existing commitments to other governments;

Agreed to make arrangements to exchange information for the purpose of meaningful consultation, bearing in mind their shared concern to ensure the proper application of the agreed guidelines, and to continue discussions on how best to develop these arrangements on a global and regional basis in order to achieve this objective;

Welcomed work at the United Nations General Assembly on the early establishment of a UN register of conventional arms transfers, and supported the current consultations on this issue between a wide range of UN members in which they are actively participating. They called for universal support for this work;

Noted the threats of peace and stability posed by the proliferation of nuclear weapons, chemical and biological weapons, missiles, etc., and undertook to seek effective measures of non-proliferation and arms control in a fair, reasonable, comprehensive and balanced manner on a global as well as on a regional basis. They reaffirmed the importance of maintaining stringent and, so far as possible, harmonized guidelines for exports in this area. They embarked on a comparison of their national export controls on equipment related to weapons of mass destruction and agreed to examine the scope for further harmonization of those controls. They agreed to pursue discussions at their next meeting on these subjects;

Agreed to continue discussing the possibilities for lowering tension and arms levels, including the development of further measures of restraint concerning arms transfers and ways of encouraging regional and global efforts towards arms control and disarmament;

Agreed to continue to give these efforts high priority and meet again in the new year in the United States to take forward their discussions, and to meet regularly thereafter at least once a year.

GUIDELINES FOR CONVENTIONAL ARMS TRANSFERS

The People's Republic of China, the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, recalling and reaffirming the principles which they stated as a result of their meeting in Paris on 8 and 9 July 1991, mindful of the dangers to peace and stability posed by the transfer of conventional weapons beyond levels needed for defensive purposes, reaffirming the inherent right to individual or collective self-defense recognized in Article 51 of the Charter of the United Nations, which implies that states have the right to acquire means of legitimate self-defense, recalling that in accordance with the Charter of the United Nations, UN Member States have undertaken to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human economic resources, seeking to ensure that arms transferred are not used in violation of the purposes and principles of the UN Charter, mindful of their special responsibilities for the maintenance of international peace and security, reaffirming their commitment to seek effective measures to promote peace, security, stability and arms control on a global and regional basis in a fair reasonable, comprehensive and balanced manner, noting the importance of encouraging international commerce for peaceful purposes, determined to adopt a serious, responsible and prudent attitude of restraint regarding arms transfers, declare that, when considering under their national control procedures conventional arms transfers, they intend to observe rules of restraint, and to act in accordance with the following guidelines:

1. They will consider carefully whether proposed transfers will: (a) promote the capabilities of the recipient to meet needs for legitimate self-defence; (b) serve as an appropriate and proportionate response to the security and military threats confronting the recipient country; (c) enhance the capability of the recipient to participate in regional or other collective arrangements or other measures consistent with the Charter of the United Nations or requested by the United Nations;

2. They will avoid transfers which would be likely to (a) prolong or aggravate an existing armed conflict; (b) increase tension in a region or contribute to regional instability; (c) introduce destabilizing military capabilities in a region; (d) contravene embargoes or other relevant internationally agreed to restraints to which they are parties; (e) be used other than for the legitimate defence and security needs of the recipient state; (f) support or encourage international terrorism; (g) be used to interfere with the internal affairs of sovereign states; (h) seriously undermine the recipient state's economy.

MEXICAN INTEGRATED ENVIRONMENTAL BORDER PLAN

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. COLEMAN of Texas. Mr. Speaker, negotiations between the United States, Mexico, and Canada with respect to a North American free trade agreement are currently underway. I wanted to bring to the attention of my colleagues an important speech by Mexico's Secretary of Urban Development and Ecology, Lic. Patricio Chirinos, concerning environmental programs along Mexico's northern border. I hope that Members will share my encouragement by Mexico's environmental initiative which was announced on October 23 in Ciudad Juarez, Chihuahua, Mexico. The speech follows:

MEXICAN INTEGRATED ENVIRONMENTAL BORDER PLAN

(By Lic. Patricio Chirinos, Secretary of Urban Development and Ecology)

First of all, let me thank the Honorable Governor Baeza and the Honorable Municipal President, Macias Delgado, for their fine hospitality and the great support they have provided to carry out this meeting.

Honorable Municipal Presidents: We have called this meeting, first of all, to express to all of you the appreciation of the Government of Mexico, for your valuable participation in the recent public consultation work carried out to analyze and enhance the Comprehensive Mexico-United States Environmental Border Program.

Second, to briefly review its progress and, finally, to inform you on some measures adopted by President Salinas, as part of the environmental strategy that we are implementing along the entire border.

As you know, since 1983, there has been a bi-national agreement between Mexico and the United States, La Paz Agreement, which has been in force to jointly attack the frontier's environmental problems. Based on that legal tool, President Salinas and Bush issued instructions in November of last year to proceed further through the development of the Comprehensive Program.

This is a program that the Environmental Protection Agency, on behalf of the United States, and SEDUE, on behalf of Mexico, have been developing and preparing, bilaterally, with the objective of linking the effort from both countries to solve the complex environmental border problems.

The program has been conceived not as an exclusively federal tool but is rather based, in a decisive manner, on the efforts of State and Municipal authorities from both countries.

Furthermore, and as ordered by both Presidents, one of its conditions is the broad participation of the community: research and college education centers, the industrial sector, the unions, and, particularly, from non-governmental organizations more concerned with environmental problems.

Therefore, EPA and SEDUE, when we felt that we already had a working document as a base, decided to subject it to a public referendum, which, as you will recall, took place during the second half of September in 17 border cities, seven of which are located on the Mexican side.

The comments, criticisms and proposals made during the consultation meetings, are the basic raw materials for the development of the final version of this Comprehensive Program. In connection with this, I am pleased to inform you that, also on instructions from President Salinas, the version being prepared will be submitted, on the Mexican side, to a second public consultation process.

The reason behind it is straightforward. We do not want a bureaucratic program, developed from the capitals of both countries; what we want is a program that strictly responds to the priorities defined by the border community itself.

In other words, we want a program sanctioned in the border, and only when it is ready will EPA and SEDUE submit it for consideration by Presidents Salinas and Bush. I want to clarify that once the works, the schedules and the responsibilities have been outlined in the final version, the exact amounts and financing sources for the program will be defined. We expect that this will take place, at the latest, next January.

However, it is clear that we are not going to wait to see the final document to begin the basic works that, as you have pointed out, cannot be delayed; and that, regardless of the final structure of the Program, we agree are priorities.

We all know—and that is one of the issues that was stressed during the previous consultation—that the bottom line of many environmental problems are those inherent to urban development.

Measures to deal with the treatment of waste water; solid waste—particularly toxic waste—and conditions for its control and final disposal; the orderly growth of cities and their adequate installations; and, of course, environmental pollution produced by vehicles, which is increased by deficiencies in roads and in public transportation.

In view of these circumstances there are works that cannot be postponed. That is why I want to inform you that President Salinas has instructed us to channel, along the entire border, between 1992 and 1994, an investment close to 1.4 trillion pesos, i.e., approximately US$460 million.

Presidential instructions are very clear: to support the State Governments and above all, you, Honorable Municipal President, who know the problems and the needs of your communities best. Therefore, let me then point out the following: Measures ordered by the President of the Republic of Mexico in support of the comprehensive program.

Sewage and Waste Treatment Plants. It is a priority to stop water pollution and streamline its use in this area where the resource is particularly scarce. It is necessary to have efficient sewage systems and adequate treatment plants in order to treat and, whenever possible, reuse waste water. To that effect, 671 billion pesos (US$220 million) will be invested over the next three years.

Mincipal Solid Waste. The accelerated increase in population in border cities and the proliferation of industries and services have rendered insufficient the waste collection, treatment and disposal system, including toxic waste.

Thus, for the first stage, investments of close to 78 billion pesos (US$30 million) are planned to expand the collection capacity and to construct sanitary landfills in the main border cities.

Transportation and Roads. Improving circulation and vehicle fleet conditions, particularly in areas of heavy traffic, is an essential step in attacking environmental pollution. We are planning to work in two directions:

First, through the construction or improvement of roads, bridges and border crossing. We will invest 360 billion pesos (US$120 million), with emphasis on the seven cities with the most movement of transportation.

Second, more than 155 billion pesos (US$52 million) in credit lines will be established for private/public transportation ventures.

Creation of Territorial Reservations. The demographic dynamics of the border cities require adequate services and the timely prevention of negative environmental impacts. To that effect, 132.5 billion pesos (US$40 million) will be set aside to acquire 3,185 hectares of land across the frontier border.

I wish to highlight only some of the more immediate actions with greater environmental benefits, which represent the scope of the effort. As soon as 1992 the following actions will be carried out.

PRIORITY WORKS

For instance, here in Ciudad Juárez, construction will begin on a high-capacity treatment plant, and the sewage system coverage will be expanded, all of that at a cost of 32.184 billion pesos (US$10 million).

Besides, more than 13.570 billion pesos (US$4 million) have been programmed for the construction and equipping of a transfer unit, acquisition of transport units and heavy equipment for sanitary filling.

In this city, works will also begin for a 33-km expansion of the road network, traffic control devices, paving, and bus stops, at a cost of 20 billion pesos (US$6 million), and the establishment of 300 hectares of territorial reserves, at a cost of 12 billion pesos (US$4 million).

In Tijuana, all primary sewage network collectors will be completed, to which 24,000 residential discharges will be added. Besides, all IDB/Tijuana Project goals will be completed. This represents a total investment of 42.8 billion pesos (US$14 million). In accordance with the International Commission on Borders and Waters, a binational plant for waste water treatment will be initiated in that city, planned for next year.

On the other hand, in order to improve road influx and border crossing traffic from Tijuana, 27.5 billion pesos (US$9 million) will be invested; yet another 16.223 billion (US$5 million) will be directed through loans to improve public transportation.

In Mexicali, initiation of the Mexicali Project II, which includes a sewage system for the eastern part of the city; rehabilitation of collectors in the downtown area; and the expansion of the treatment plant, more than 26.8 billion pesos (US$8.6 million) will be allocated; to increase paving and road improvement coverage, another 14 billion pesos will be channeled, as well as loans in excess of 11.2 billion pesos (US$3.8 million) to modernize transport.

It is worth clarifying that territorial reserves in Mexicali and Tijuana are in addition to the 1.770 hectares recently established under instructions from President Salinas for low-income housing.

In San Luis Rio Colorado, construction of a treatment plant will begin and sewage coverage will be increased by investing 9.27 billion pesos (US$3 million); to solve the problems of municipal waste, 4.22 billion pesos (US$1.4 million); and to improve and adequate the road network, 5.65 billion pesos (US$1.8 million).

In Nogales, come November, the expansion works of the international treatment plant will be completed so that it operates at twice its original capacity; and the expansion of the collector system for the southern area will be completed, with resources amounting to 5 billion pesos (US$1.6 million).

In the same municipality, 5.53 billion pesos (US$1.8 million) will be invested in the purchase of collection equipment and construction of sanitary landfills; 11.3 billion pesos (US$3.6 million) will be invested in the pavement and improvement of roads.

In Piedras Negras, the construction of a treatment plant and the expansion of sewage coverage is planned at a cost of 10.8 billion pesos (US$3.6 million); to improve collection and waste disposal 4.5 billion pesos (US$1.5 million) will be allocated; investment for roads will be 3.6 billion pesos (US$1.2 million).

In Nuevo Laredo, the comprehensive project already in progress to sanitize Rio Grande will be accelerated, beginning with the construction of a treatment plant and a pumping station, investing close to 42 billion pesos (US$14 million) from which 6.658 billion pesos (US$2 million) will be set aside to solve solid waste problems.

In Reynosa, in addition to the expansion and rehabilitation of the treatment plant, measures will be taken to develop the sewage system allocating 13.4 billion pesos (US$4.4 million) for this purpose; an investment of approximately 6 billion pesos (US$2 million) to purchase vehicles and heavy equipment for sanitary landfills to improve waste collection and disposal has been planned.

In that same city, roads will be improved with an investment of a little more than 15.6 billion pesos (US$5.2 million) and 150 hectares of territorial reserves will be established, at a cost of 6 billion pesos (US$2 million).

In Matamoros, an investment of almost 19 billion pesos (US$6 million) will be set aside to construct a treatment plant and expand sewerage coverage; for the acquisition of containers, collection vehicles and heavy equipment for sanitary landfills, close to 6 billion pesos will be invested (US$2 million); to improve and expand pavement coverage of the road network, more than 15.6 billion pesos (US$5.2 million) will be channeled.

BORDER CROSSING ROADS

The improvement of border crossing roads is basic to decongest and speed up passenger transportation and cargo operations. This is essential to decrease environmental pollution indices. An example of this is the crossing in Ciudad de Colombia, Nuevo León which will be provided with the physical infrastructure and roads to decongest other points such as Nuevo Laredo and Reynosa.

To that, add the construction of bridges in Julio Blanco, Tamaulipas, and those planned for Mexicali, Laredo, Piedras Negras as well as the expansion of others in Tijuana and Chihuahua.

ENVIRONMENTAL CONTINGENCY FUND FOR THE NORTHERN BORDER

During consultations with area residents, they emphasized as their highest priority the need to strengthen the capabilities of State authorities to respond to emergency environmental situations, i.e., those not foreseen in normal planning and which, by their nature, require immediate applications actions.

Thus, I am pleased to inform you that a reimbursable and permanent environmental contingency fund has been established in the northern border cities in the amount of approximately 12 billion pesos (US$4 million) which will be operated by BANOBRAS.

STRICT APPLICATION OF THE LAW

Another but no less important issue resulting from our discussion with the residents of the northern cities is the question of environmental management. That is, the necessary tasks to ensure efficient enforcement of the law throughout the border area.

In this sense, I wish to inform you that SEDUE has been working at a fast pace to decentralize functions and heighten the ability of all our Regional Delegations in the area. We will increase twofold our inspection teams, which at present are being recruited and adequately trained.

In other words, by January 1992, we will have an inspection corps of 200 qualified technicians whose fundamental mission will be to ensure strict compliance with regulations, based on orientation and advisory services to the companies. Only those businesses that do not want or cannot comply shall be subject to penalties.

In this process, we have determined that certain tasks must be decentralized, a function that should no longer be managed centrally, including the issuance of ecological manuals here at the border. Therefore, I have given instructions so that, effective November 15, that function will be transferred to the Delegations. This measure will help speed up the border environmental management.

We will strengthen our information systems. To that end, in 1992 all SEDUE border delegations will have computer networks and data bases.

Thus, in cooperation with EPA and the cooperation of Customs authorities in both countries, we will keep stricter control on border crossings of raw materials and dangerous wastes. With the present information scheme, in three years we have prohibited imports to the country of close to one million tons of hazardous substances.

Environmental inspection, linked to the information exchange mechanism, will be a decisive factor to, on the one hand, avoid illicit traffic of materials and hazardous waste toward our country and, on the other, to ensure—as established by Law—that in-bond plants return their waste to the country of origin.

This last aspect will be strengthened through increasing regulation of the maquiladora plants industry, as to environmental regulations and guidelines. There is already impressive progress. In 1989, one year after enactment of the ecological legislation, only 6% of the industries had met the requirements for operating licenses; today, that percentage represents 54.6%.

Likewise, last year only 30% of maquiladora plants generating hazardous waste declared them; today, this is reported by 55%. Previously, only 14.5% returned their waste; today 31% do so.

I can assure you that, by December 31st of this year, the 1,455 maquiladora plants operating at the border must have their corresponding operating license.

SEDUE will channel in 1992, only for the border area, resources in the order of 19 billion pesos (US$6.33 million) which, added to those allocated for these areas by other Federal agencies, will reach 50 billion pesos (US$25 million). This is an amount without precedent, especially for SEDUE investment, which, with an approximate increase of 450% in comparison with 1991, will be basically geared toward monitoring and environmental control tasks and not operating expenses.

PRIVATE SECTOR PARTICIPATION

It is clear that environmental management cannot rely exclusively on public resources. That would only lead to inefficiency and undesired expansion of the administrative and bureaucratic apparatus.

It is time to pave the way toward a scheme that involves private individuals, technicians and professionals, so that, gradually, they take charge of the advisory, auditing and environmental inspection tasks. This will translate to greater efficiency at SEDUE, while at the same time opening a vast field of work for society. We are already making progress in this area.

Additionally, as it is already happening here in Ciudad Juarez, foreign and domestic private companies have offered to participate in the water treatment plant that will be initiated in 1992, assuming part of the financing and the management.

Private participation is also taking place with respect to purchasing of urban land for low-income housing. Ways and means are being defined to establish trusts for this purpose; and even to expand, those from the public sector. For instance, in the case of Mexicali and Ciudad Juarez, close to 300 hectares will be built with participation from the private sector.

The same criteria will be applied to construction and expansion of primary roads—such as it is being used on the national highway network—and in the waste treatment systems, as is planned in the cities of Mexicali, Nuevo Laredo and Matamoros.

The methods to expand private sector participation are: long term licenses and permits; management and public works contracts; bonds issued by State or Municipal Governments; organization of joint ventures or consumer cooperatives. This is the call being made to private investment.

This is an investment field that has already been successfully broadened in several countries of the world, and is essential for Mexico, especially here in the border area.

Within the framework of this Program, there is a core aspect that, no doubt, is one of the most important demands from the public, and, particularly, from the border population. This is: not to accept any new project, domestic or foreign, if it does not strictly comply with environmental safety criteria. This is already a Government commitment with which we will have to comply.

In this and other objectives of the Program, the role of State authorities and especially of the Honorable Municipal Presidents, will be essential. You all are well aware that, while decentralization is necessary for domestic development, with respect to environmental issues, it is an essential condition.

In closing I would like to point out that the Undersecretary for SPP is here with us today, as well as the General Directors of CONAGUA, NAFINSA and BANOBRAS, all Federal Government agencies which, besides SEDUE, will maintain direct contact with you in the implementation of the Program and thus guarantee full compliance with the instructions issued by the President of the Republic.

DON'T LET AFFORDABLE HOUSING BECOME A THING OF THE PAST

HON. PAUL B. HENRY

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. HENRY. Mr. Speaker, I rise today with good news and bad news. The good news is from my Fifth District of Michigan, where in just a few days ground will be broken on a special project. The Inner City Christian Federation of Grand Rapids, in partnership with Old Kent Financial Corp., will begin construction of 30 three-bedroom homes for low-income families. This collaboration is one of the first of its kind and stands as a national model.

A major portion of funding of the Pleasant-Prospect Homes project is possible because Congress, in 1986, established the low-income housing tax credit program. Old Kent Financial Corp. will receive tax credits for its $1.25 million investment in the $2.3 million project.

I submit Mr. Speaker, that this is precisely the type of private sector involvement that I and my colleagues on both sides of the aisle so strongly support. A corporate good neighbor working with a concerned community organization to put roofs over families' heads. But, now for the bad news.

Mr. Speaker, this tax credit program is due to expire at the end of the year. How can we let this happen? How can we slam the door on private sector dollars at the moment the poor need help most? Even if the tax credit program is reinstated at a later date, investors' confidence could be irreparably damaged.

We must not let this session come to a close without renewing the low-income housing tax credit program. Furthermore, I urge my colleagues to make it a permanent renewal. If we don't do this now, we will be turning our backs on people who truly need our help.

Following is the statement announcing this project, Mr. Speaker, and I urge you to take every possible action to see that the extension and renewal of tax credits to meet the housing needs of low-income Americans is renewed before this session of the Congress recesses for the holidays.

ICCF AND OLD KENT FINANCIAL CORPORATION FORM PARTNERSHIP FOR CONSTRUCTION OF AFFORDABLE HOUSING

Inner City Christian Federation [ICCF] and the Old Kent Financial Corporation have entered into a unique partnership that will result in the construction of 15 new duplexes on scattered sites within a fifteen square block of Southeast Grand Rapids. Old Kent will provide equity as the limited partner and receive certain low-income housing tax credits.

The project has been named Pleasant-Prospect Homes after two of the streets in the target area. When completed the project will provide 30 units of affordable rental housing to persons earning less than 50 percent of the area median income. Fifty percent of the area median income for a family of four is $20,150. Great care has been exercised in designing buildings which are consistent with the architectural character of surrounding homes. When completed these units will be highly desirable for their exterior appearance and their interior layout. Off-street parking and adequate play space for children are other features of the project.

The total cost of the project, including construction, fees, rental assistance, and operating reserve, is estimated to be $2.3 million. It will be financed in three ways. The Old Kent Financial Corporation will invest $1.25 million in the project Old Kent will received tax credits and tax losses from the project over the next 15 years in exchange for its investment in the project. ICCF has received approval of a mortgage loan of approximately $850,000 through the Michigan State Housing Development Authority's (MSHDA) Neighborhood Preservation Program. ICCF has also received a $195,000 grant from the Affordable Housing Program of the Federal Home Loan Bank, administered through First of America Bank, after construction begins on the project.

Groundbreaking for the project is scheduled for November, 1991.

Inner City Christian Federation was incorporated as a Michigan nonprofit corporation in the 1968. ICCF, together with its sister corporation, ICCF Non-profit Housing Corporation, operates various programs designed to accomplish ICCF's primary objective of providing safe, affordable housing to persons of low and moderate incomes.

Through its Reconstruction for Lease and Purchase Program, ICCF provides opportunities for home ownership. Through its Madison Apartments, ICCF provides quality rental housing for low-income families and individuals. Through the Family Haven, ICCF provides homeless families with emergency shelter.

Through its various programs, ICCF has assisted in the production of over 200 units of affordable housing in Grand Rapids.

50TH WEDDING ANNIVERSARY OF MICHAEL AND VIRGINIA CUNNINGHAM

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. MANTON. Mr. Speaker, I rise today to pay tribute to Michael and Virginia Cunningham on their 50th wedding anniversary, which they will celebrate on November 9, 1991. Michael and Virginia are an inspiration to those who know them because of their dedication to each other and their commitment to the Queens community.

Mr. Speaker, on November 9, 1941, Virginia and Michael were married at our Lady of Perpetual Help Church in Richmond Hill, Queens. Virginia, who was born in Richmond Hill, and Michael, who was born in Yorkville, took residence in Richmond Hill after he was discharged from the Army in 1945. Michael and Virginia later moved to Jackson Heights, where they currently reside.

After his discharge Michael returned to his alma mater, St. John's University, where he attained his LLB in 1950. He then joined the family business and in 1970 became an administrative law judge. He was an active supporter of the American Legion and become commander of Post 630 in Forest Hills. Michael was instrumental in the founding of the Vietnam veterans housing development in Forest Hills. Michael had realized his long-time goal to develop a desirable place to live for the veterans in Queens.

Virginia was also active in community affairs, including the Forest Hills Post 630 Auxiliary, and the Community House in Forest Hills.

Michael and Virginia have contributed greatly to the Queens community. They are second generation Irish and they have instilled the traditional values of hard work, faith, and family in their children Virginia, Constance, Paul, and Catherine and their four grandchildren.

Mr. Speaker, in honor of their 50th anniversary, I ask my colleagues to join me in congratulating Michael and Virginia on this milestone and wishing them all the best in the years ahead.

BANKING BILL LACKS A VISION FOR THE NATION

HON. CRAIG THOMAS

OF WYOMING

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. THOMAS of Wyoming. Mr. Speaker, we have been hearing the complaints of several Members here on the House floor, "The President does not have a domestic agenda—he's lost touch with the people of America." Well I have read through his proposals and do not think this is the case. He is very much in contact with the American people and he has a good idea of what they want. The problem does not lie within his proposals but when they come to this body and start bouncing through the Halls of Congress.

Consider the path of the President's Financial Institution Safety and Consumer Choice Act of 1991, there is a comprehensive vision behind the President's proposal and the legislative changes point the Nation down a positive course. With a few modest amendments, the proposal was favorably reported out of the House Banking Committee.

But the bill we are considering here today is not the President's bill—which started the debate on banking reform. It is a different piece of legislation. It lacks a vision for the Nation. This is most unfortunate. Our top priorities should be to protect depositors and taxpayers. These should be reflected in the legislation as they move toward the President's desk. This body has once again lost sight of its responsibility.

As many of us have seen first hand, the financial services industry has changed significantly since the foundations of our banking laws were established. Now there are several new players in this game. We've also seen recently a good deal of our banks—for various reasons—fall on hard times. There are also a lot of good bankers out there struggling with Government regulation restricting how they can compete in the changing market. As a result, the bank insurance fund needs additional money. We must recognize this urgency. We must restore the profitability of our Nation's banks. These are the issues that bring us here today.

I have received mail nearly every day during this session from people in Wyoming concerned about additional unnecessary regulation on banks. I have yet to receive a letter urging me to support basic banking and Government check-cashing mandates, stiffer CRA requirements, or even the recently passed Truth in Savings Act. These folks say the action we take should reflect a real need to protect the American taxpayer.

I share these views. I tend to view banks as a private, service industry that needs some Government regulation. It's certainly not a social program—not even an entitlement. However, I'm continually concerned by the agenda of certain Members to put substantial and costly restrictions on banks which have nothing to do with safety and soundness.

But the process has gotten out of hand and the legislation has drifted off course. Instead of helping banks, we are hurting them and if this process continues on the new course driven by the House leadership, then the burdens on banks will only grow.

I will support amendments that attempt to bring this legislation back in line. I urge every Member to closely take a look at this legislation and consider what is being done.

JOHN ADASE, "MR. ROSELLE PARK"

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. RINALDO. Mr. Speaker, the people of Roselle Park, NJ, a borough that I represent, have lost one of their most public spirited citizens in John Adase. He was my good friend as well, and he will be greatly missed by all those he helped.

Generations of Roselle Park residents admired, loved and respected this kind and good man. He fits President Bush's description of a thousand points of light that illuminate America's cities and towns; good citizens doing their best to improve the quality of life in our local communities.

The story of John Adase's contributions to Roselle Park was written by Tom Canavan, editor of the Roselle Park Leader, and I ask that it be inserted in the RECORD as follows:

"HE WAS MR. ROSELLE PARK" BOROUGH MOURNS LOSS OF JOHN ADASE

To many in Roselle Park, losing John Adase is like losing a piece of the foundation on which the borough was created.

For many years, Mr. Adase was everywhere—as a member of a veterans group, the bowling league, school and civic groups, and most predominately, as a member and former vice president of the Dads Club, in which he played an integral role helping the people he cared for most—the youth.

He was "Mr. Roselle Park."

Mr. Adase, a lifelong resident of Roselle Park, died Oct. 16 in St. Elizabeth Hospital. He was 74.

Many of his friends this week remembered the man who was dubbed Mr. Roselle Park because of his active involvement in the borough. To them, the loss of their friend is the loss of "a kind, understanding, helpful" figure in the borough's history.

"While death is universal," noted Superintendent of Schools Ernest J. Finizio Jr. during the funeral Mass Monday, "we are also aware that the lives which led to death differ drastically in quality. We realize that some people live their lives with such honor and dignity, that at their death, it is only fitting that those around them stand up and proclaim that this was a life worthy of note, worthy of respect and worthy of honor."

That was the life led by Mr. Adase, Finizio said.

"John's life shines forth as a beacon to everyone of just what can be accomplished in this imperfect world—when a life is so lived that an entire community is shaken by its loss," he said.

Mr. Adase was involved with the Roselle Park Boys and Girls Basketball Parents Association, the Roselle Park Wrestling Parents Association and the Roselle Park Youth Baseball League. A playing field in the borough bears his name.

Mr. Adase also was a member of the Dads Club, an organization that assists the high school athletics department and provides scholarships to students who excel academically and athletically.

During his tenure in this organization, Mr. Adase served as a vice president and trustee, and chaired many of its committees.

Dads Club President Lou Ternyik recalled this week Mr. Adase's "generosity to the youth of Roselle Park." He cited the Little League fields and how integral a role Mr. Adase played in their construction. "He donated sod, recruited volunteers and had some of the kids in town work on the fields," he said.

In the 1960s, Ternyik said, Mr. Adase "was integral in bringing together the Roselle and Roselle Park athletics." The Dads Club was founded in 1934 as an organization that began as a dinner for the football players. Now, operating under an $18,000 budget, the club provides scholarships to students, provides jackets to athletes who earn their Varsity letters, and presents plaques when teams reach the championships in their sport. Athletic equipment also has been donated by the club to the high school.

"He was very personable and likeable, and his death is a great loss to our town," he said.

Mr. Adase was a member of American Legion Post 60, an honorary member of the Aldene School Parent-Teachers Association, the Roselle Park Municipal Bowling League, the Roselle Park Pop Warner football organization. He was active with the Boy Scouts, the Roselle Park Band, and in the elementary school music awards.

He was a general contractor in Adase Brothers, which he started with his late brother, Frank. He served in the Army in World War II.

Borough Councilman Jacob Magiera also remembered Mr. Adase. "It's not the longevity of a person. It's how well he or she has lived their lives. It's not how wealthy a person is, it's how they shared their wealth. Mr. Adase is a perfect example of not how much I can do for myself, but how much I can do for the people of Roselle Park," he said.

Mayor Helen Ryan agreed.

Saying that the entire borough "was very saddened by his death," Ryan called Adase a "friend" as reiterated Finizio's statement that Adase was "Mr. Roselle Park."

He was very generous with his donations to any organization that came to him," she said. "That alone was a great attribute and I think that Roselle Park owes Mr. Adase some sort of great tribute because he deserves it."

"The pride John had in his family name—Adase—can be spelled in the following manner: A—active; D—dedication; A—athletics; S—supportive; E—excellence in all aspects of life," Finizio said.

Mr. Adase is survived by his wife, Rose; two sons, Frankie and John Jr.; three brothers, Joseph, Rocco and Michael; two sisters, Isabelle Moscaritola and Rose Ciccarelli; and four grandchildren.±

THE TUFTS ENVIRONMENTAL LITERACY INSTITUTE WINS THE PRESIDENT'S 1991 ENVIRONMENT AND CONSERVATION AWARD

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. MARKEY. Mr. Speaker, I am very proud to rise and congratulate Tufts University for winning the President's 1991 Environment and Conservation Challenge Award for its innovative and forward-looking Environmental Literacy Institute.

Tufts University president, Jean Mayer and dean, Anthony Cortese of the department of environmental programs at Tufts University accepted the award on behalf of the Tufts Environmental Literacy Institute [TELI] at a ceremony in the Rose Garden yesterday. I would like to congratulate Dr. Mayer in particular, for his longstanding commitment to environmental education and his leadership in making this program possible.

This innovative program, codeveloped by Tufts University and Allied Signal, Inc., is the first environmental education program in the country to integrate environmental issues into undergraduate, graduate, and professional school curricula. The program helps faculty members to incorporate environmental concerns into their courses and to produce more environmentally literate citizens.

After 2 years, it has proven tremendously successful in bringing environmental concepts into the classroom. It has been used not only at Tufts University but across the world in such countries as Brazil, Hungary, and the Soviet Union. If we are to meet the daunting environmental challenges which lie ahead, it will be critical that people throughout the world understand the effects of their actions on the environment. The Tufts Environmental Literacy Institute brings us one important step closer to that goal.

IN GRATITUDE TO A MOST VALUABLE PERSON

HON. BEN GARRIDO BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. BLAZ. Mr. Speaker, an old priest friend of mine once told me that in every calling, every profession, and every discipline there are 12 apostles. These apostles will always stand up and be counted when roll is called for service to the community. Although these apostles come from every age and from different walks of life, they have one thing in common—an undying devotion to God, country, and their fellow man.

I rise today with a great sense of pride and deep gratitude to pay tribute to a man from my district who epitomizes one of these apostles. I have known him for over 40 years and I have watched him pursue his dreams tenaciously and succeed spectacularly. However, in all the years that I have known him, I have not once seen him trade principle for profit.

He has never forgotten what it's like to walk that proverbial mile in the moccasins of life. He has known the squalor of the barrios and the destitution of the villages.

I recall so vividly an incident a few years ago which characterizes this man perfectly. As a friend of almost 40 years, I felt very comfortable asking for his support on an issue. With all sincerity, he told me that he could not support me because he has promised it to someone else in appreciation for what this other person had done on his behalf. Explaining his position, he simply stated: "BEN, I have a lot of flaws, but ingratitude is not one of them."

I have reflected on that comment over the years. What originally constituted a great disappointment and embarrassment for me has now come to symbolize the simple dignity and nobility of his character. He chose to be candid and honest with me rather than not keep his word to another person.

And a man of his word he is. When the Catholic Church on Guam needed assistance with expansion, he promised to support the church. And he did. When the local power authority needed help managing its operating costs, he promised to step in and help put things right. And he did. When the Filipino community on Guam needed a leader and a spokesman, he promised to represent and bring them together. And he did. When the American Red Cross needed someone to spearhead its campaign, he promised to serve. And he did. In countless other times when he was called on for assistance and support, he promised to give of himself and did—simply, unselfishly, and without fanfare.

This brings to mind a favorite line from Ralph Waldo Emerson which I believe fits this man perfectly: "What lies behind us and what lies before us are tiny matters compared to what lies within us."

The character within this man—the love and compassion and honesty and courage and humility that is within him—makes us all the better for it because he is among us.

I wish to salute this man, a man who wears many hats in our community—a consummate businessman, a generous patron, an untiring volunteer, a distinguished colleague, a loyal friend, and a loving husband and father. The initials of his name, "MVP," provides a clue to what he has become for our community and for our people—a most valuable person.

By now, it must be obvious that I can only be speaking of one person—Mark V. Pangilinan.

Mark, on behalf of the people of Guam, in recognition and appreciation of your many, many years of service and contribution to our community, I wish to convey a profound and deeply felt "Dangkalu na si yuus ma'ase!" and "Maraming salamat po!"

We often speak of the annals of our country and of the pages of history. By my action today, I am entering into the RECORD of the U.S. Congress this tribute to you along with a summary of your exemplary service to the people of Guam.

Mark, we who believe in you may have a lot of flaws, but ingratitude is not one of them.

MARK V. PANGILINAN: SUMMARY OF EXEMPLARY SERVICE TO THE COMMUNITY

Mark V. Pangilinan is a common man of uncommon achievement, a man of boundless energy, enthusiasm and foresight, a man for whom the initials "MVP" have come to signify what he has become for Guam. In the purest sense of service and contribution to our community, Mark V. Pangilinan is a most valuable person.

Mark's humble roots can be traced to a rural area in Pampanga, Philippines, where he tilled the land at this family's farm. Rising before dawn each day, he labored beside his parents to grow rice, sugar cane, corn and pigs. Encouraged by his father to become an engineer, Mark attended Far Eastern University in Manila until the outbreak of World War II when he returned to the family homestead. During the years when the Philippines was occupied by Japanese forces, Mark and his family actively supported the Filipino guerrilla movement. The family farm provided shelter, food and diversion to rejuvenate weary guerrillas.

Those early years made a lasting impression on young Mark. They instilled in him the values of hard work, perseverance self-reliance, community service and the willingness to take risks. These would serve him well later in life.

When the war ended, Mark set out to see the world. He joined the Merchant Marine in 1945 and served as the radioman on a ship that shuttled goods and personnel between Okinawa, Shanghai, Japan and the Philippines. The ship also made periodic stops on Guam, which at that time was just beginning to rebuild itself from the ruins of the war. With his engaging personality and dynamic charm, Mark quickly made friends with some of the island's most influential families and soon began taking orders from them for merchandise from the Philippines. In 1946, sensing the opportunities on the westernmost American territory in the Pacific, Mark immigrated to Guam, married a local chamorrita, Guadalupe Torres, and took out a $5,000 loan to open a haberdashery shop in 1948.

Thus began the formation of a ripple, tiny at first, then slowly building, growing, swelling and surging over the years into a tidal wave of multi-million dollar businesses on Guam:

1948—Haberdashery Shop.
1949—Agana Men's Apparel Shop.
1952—Bataan Restaurant and Guam Furniture Shop.
1963—Allied Construction Company.
1964—Mark's Walgreen (Department Store).
1966—Ben Franklin (Variety Store).
1968—Mark's Insurance Underwriters.
1969—ACE Hardware and Mark's Motor Company (Honda).
1971—Mark's LP Gas.
1973—Mark's Shopping Center.
1974—Guam Amusement Park (now Yigo Shopping Center).
1977—Mark's Sporting Goods.
1979—The Guam Tribune (Newspaper).
1982—Mark's Laundromat and Mark's Music Center.

1984—Guam Office Supply.
1987—Sinajana Shopping Mall.

Mark's wholly-owned family companies have flourished over the years into a multimillion dollar conglomerate. In this process, they have pulled Guam's retail and service sectors like a steady locomotive and contributed essential consumer goods and services into Guam's economy. As the President and Chairman of the Board of Mark V. Pangilinan Enterprises, Inc., Mark heads one of Guam's top five business groups and its most diversified conglomerate. His five children—David, Cerila, Genedine, Mark, Jr., and John—all actively participate in the management of the family business.

At 64, still strong and full of energy, Mark has no immediate plans to retire and still keeps a close eye on his companies with rotating personal visits to each division head on a daily basis.

Despite his hectic business schedule, Mark has always found time to contribute actively to Guam's civic affairs. His keen interest in education prompted him to chair the Board of Regents of the University of Guam. His interest in military activities helped him as a member of the Civilian Advisory Council of both the Commander Naval Forces Marianas and the Strategic Air Command of the U.S. Air Force. As former chairman of the Board for the Guam Power Authority, Mark brought his business acumen to bear in cutting costs and streamlining operations in order to secure $36 million in federal loan guarantees. Mark has also taken leadership roles in the American Red Cross, the Guam Chamber of Commerce, the Filipino Community of Guam and the Catholic Church, where he was very close to Archbishop Felixberto Flores.

For his many contributions, Mark has received numerous awards and accolades, including: Ancient Order of Chamorri (Guam's highest award), Pro-ecclesia Pontificae (from Pope Paul), Most Outstanding Filipino Overseas (from the Philippine Government), Executive of the Year (from the Guam Business News), and Honorary Doctor of Laws Degree (from the University of Guam).

No amount of awards, honors, medals, plaques or other types of outside recognition can pay adequate tribute to the contributions made to Guam by this man. Neither can any amount of external inducement prompt him to continue his tradition of service and contribution to our island and to our people.

Mark V. Pangilinan is not driven by things outside of him, but by the strength of character which is within him—commitment, perseverance, honesty, vision, hard work, honor and courage.

After all is said and done, Mark's character will be the true measure of his contribution to our community.

NEW JERSEY PRIDE HONOR ROLL: JACK MOTT

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. GALLO. Mr. Speaker, when Jack Mott was appointed head baseball coach for Parsippany High School and Parsippany Hills High School, Whitey Ford was still 1 year away from becoming the Cy Young Award winner; the Pirates beat the Yankees in 7 games to win the World Series; Roberto Clemente would have to wait until the following season to win the first of four NL batting championships; Mickey Mantle led the American League with 42 home runs, one ahead of the National League leader, Ernie Banks, and the new high school in Parsippany, opened in 1956, was preparing to graduate its second class of seniors.

Jack Mott's challenge was team building and his dedication paid off almost immediately.

In the ensuing three decades, Jack has coached a long and distinguished string of top-notch teams, including three State champions and six conference champions. By his fifth season as coach he built a powerhouse team that racked up 27 consecutive wins and went on to an impressive string of 42 victories in 43 games between 1965 and 1967.

For this sterling achievement, Jack Mott was named Morris County and North Jersey Coach of the Year, 1965–66. He was named New York Daily News All-Star Coach in 1970.

Because of his love of baseball, a whole new world opened up for Jack. In 1967, he was U.S. Armed Forces clinic director in the Far East. For the next 12 years, Jack conducted clinics on three continents and continues to share his expertise through his baseball camp activities.

In 1968 and 1969, Jack coached the U.S. Army softball team, Fort Eustis, VA, and Fort Leonard Wood, MO, and was named All-Star Softball Coach for those years.

In the mid-1970's, Jack coached the Raybestos Cardinals softball team to a national championship.

Since 1978, Jack Mott has been the general manager and coach of the Budweiser Belles softball team of Parsippany, the 1990 regional champions.

In 1980, Jack was named head softball coach for the County College of Morris and built a team of regional champions in the 1984 season.

Jack Mott was named district athletic director in 1982, applying his experience to the broader concerns of the overall sporting program in the Parsippany-Troy Hills School District.

Coaches have a difficult job that goes beyond simply winning games. They have to be role models, character builders, and teachers of teamwork.

These are life skills that are as valuable in the classroom as they are on the playing field. Jack Mott has always brought that added dimension to his professional career, first as a teacher, then as a guidance counselor, and for the last 25 years as the director of adult education for the Parsippany-Troy Hills School District.

Mr. Speaker, I ask that my colleagues join with me in recognizing the career accomplishments of Jack Mott on the occasion of his retirement dinner, December 5, 1991.

CUTS IN NATIONAL GUARD UNITS ARE TOO EXTREME

HON. TIM JOHNSON

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. JOHNSON of South Dakota. Mr. Speaker, I rise to strongly object to the downsizing of the National Guard nationwide. With defense cuts aimed at reducing the number of active duty personnel, we will need to place more emphasis on the less costly National Guard and Reserve force structure in order to preserve maximum national security during this time of international realignment. Retaining experienced military personnel in the National Guard may be the only affordable solution.

The National Guard is critically important, first and foremost because of its cost efficient contribution to national security. Reductions, however, also have a very real local impact. In my own State, the Guard is currently looking at a reduction of over 800 full-time positions. In South Dakota, where very small towns are the rule rather than the exception, and a loss of even 8 jobs in such a small community is potentially disastrous, the effect of losing 800 jobs would be catastrophic.

I oppose any reduction in National Guard strength. However, if a cut is required, I support the strategy outlined to me by South Dakota's adjutant general. This approach would involve a reduction in the force structure allowance from the fiscal year 1991 force structure allowance of 471,000, tied to the authorized ARNG end strength of 457,000 to a fiscal year 1992 force structure allowance of 450,000 tied to the proposed end strength of 440,000. That represents a cut of about 21,000 force structure allowance and 17,000 end strength. This should provide sufficient flexibility for some force structure adjustments during this fiscal year. To that end, I ask the House to support the Senate language in the 1992 Defense appropriations bill.

While world events would certainly point to a need to reevaluate our defense spending priorities and need to maintain a large standing force, we cannot let down our guard.

TRIBUTE TO COL. WALKER WILLIAMS

HON. RICHARD RAY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. RAY. Mr. Speaker, I rise today to pay tribute to Col. Walker Williams as he retires after more than 29 years of distinguished service in the U.S. Air Force.

Colonel Williams is retiring today from his current position as chief of the Programs and Resources Division in the Air Force Reserve Headquarters. In this job, he is responsible for providing reserve expertise to the air staff in the implementation of their policy.

Colonel Williams was born in Buena Vista, GA, in 1938 and graduated from Marion County High School. He attended Georgia Tech prior to entering into aviation cadet navigator training at James Connally Air Force Base, TX, in 1962. He received his bachelor of science degree in sociology from Troy State in 1974 and a master's degree in business administration from Southern Illinois University in 1977.

Upon receiving his commission in 1962, Colonel Williams was assigned as a navigator in C–130 and C–141 aircraft. He transferred from active duty to the Air Force Reserve in 1969.

With no break in service, Colonel Williams became an Air Reserve technician flying C–141's and C–5's. He then became a statutory tour officer at both the Air Force Reserve Headquarters at Robins Air Force Base, GA, and at Air Force Headquarters. He supervised the Air Force Reserve's programming function.

Colonel Williams is a graduate of the Air Command and Staff College and the Air War College. He is a master navigator with over 9,800 flying hours. His decorations include the Legion of Merit, the Meritorious Service Medal, and the Air Medal.

I am sure that all of my colleagues will join me in thanking Colonel Williams for his fine service and congratulate him on his recent appointment to the position of Deputy Director of the Reserve Officers Association. I wish Colonel Williams, his wife Marlies, and their three children the best of luck in the future.

PREVENTATIVE ACTION AT HUD—INTRODUCTION OF LEGISLATION TO MAKE ADDITIONAL NEEDED REFORMS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. LANTOS. Mr. Speaker, 2 years ago one of the principal concerns of the Congress was dealing with the massive waste, fraud, abuse, and political favoritism that we found at the Department of Housing and Urban Development under the administration of former HUD Secretary Samuel Pierce.

In late 1989, the Congress adopted the HUD Reform Act to correct many of the most serious of these abuses, which were exposed during the investigation by my Subcommittee on Employment and Housing of the Government Operations Committee. While this reform legislation has done a great deal to correct many of the problems that we found, there are additional deficiencies which the HUD investigation identified that also require corrective action, both at HUD and elsewhere in the Federal Government.

Mr. Speaker, yesterday I introduced a series of four bills which deal with these problems. These four House bills are companion measures to legislation that was introduced earlier in the other body by the distinguished Senator from Florida, BOB GRAHAM. This legislation is the result of the series of hearings and the outstanding work of the Senate HUD Moderate Rehabilitation Investigation Subcommittee, which Senator GRAHAM chaired. I commend the Senator for his thorough, conscientious examination of HUD programs and operations, and I welcome the legislation he has introduced.

For the benefit of my colleagues, I would like to summarize the key provisions of these bills.

H.R. 3682—A bill to amend the Internal Revenue Code of 1986 to provide a 3-year extension of the low-income housing credit, and for other purposes. Referred to the Committee on Ways and Means. The first of these four bills which I have introduced (H.R. 3682), will extend the low-income housing credit for 3 years. This tax credit is a critical Federal incentive for the construction and rehabilitation of affordable rental housing for low-income individuals and families. It is important, Mr. Speaker, that this vital program continue in order to provide tax incentives for developers of low-income housing. The bill also authorizes housing credit agencies to collect a compliance monitoring fee and includes in the process a requirement that the housing credit agency determine the amount of credit that must be allowed to ensure project feasibility, the developer fee, and any direct or indirect benefits to the developer.

H.R. 3683—A bill to establish an Assistant Secretary for Administration of the Department of Housing and Urban Development. Referred to the Committee on Banking, Finance and Urban Affairs. This bill (H.R. 3683) deals specifically with HUD—it converts the post of HUD Assistant Secretary for Administration from a political to a career position in order to help improve internal management of the agency.

H.R. 3684—A bill to develop Federal Government performance standards and goals plans, and for other purposes. Referred to the Committee on Government Operations and the Committee on Rules. This third bill (H.R. 3684) requires Congress to include language specifying performance standards and goals plans in all authorizing and appropriating legislation and requires Federal agencies to establish conforming performance standards and goals plans. This bill strengthens the inspectors general of Federal agencies to permit them to monitor the implementation of the provisions of this legislation. In particular, this bill requires that a statement of goals for each HUD program must be a component of the HUD Secretary's semiannual reports.

H.R. 3685—A bill to establish the Office of Management and the Office of the Budget. Referred to Committee on Government Operations. This fourth bill (H.R. 3685) creates a separate Office of Management and an Office of Budget within the executive branch. The legislation divides the functions of these separate agencies, and places the Office of Information and Regulatory Affairs and the Office of Procurement Policy within the Office of Management. The Program Associate Director positions at these revamped agencies would be converted to career positions.

Mr. Speaker, I applaud Senator GRAHAM for his conscientious effort in preparing these four bills. They represent a serious and thoughtful effort to deal with the management and administrative problems that permitted the waste, fraud, abuse, and political favoritism that we uncovered at HUD. I urge the committees to which these bills have been referred to give them thoughtful consideration and I invite my colleagues to join me in supporting this legislation.

TRIBUTE TO JIM CALDWELL

HON. EARL HUTTO

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. HUTTO. Mr. Speaker, I rise today to commend the work of Director Jim Caldwell and his staff at the Biloxi, MS, Veterans Hospital. My constituent, Betty Drake of Pensacola, FL, in a recent letter, reminded me of the professionalism and hard work of Director Caldwell's staff.

In her letter, she states that—

> I am presently a patient at the vets hospital in Biloxi, MS. There is no way I can ever begin to thank the people here for the wonderful way they take care of me.

At a time when the press has struggled to find inefficiencies at our veterans' hospitals, I am pleased to receive an outstanding report on the veterans hospital that serves my district. Therefore, I commend and thank the people of the Biloxi Veterans' Hospital and urge them to continue their exemplary work.

A TRIBUTE TO THE SUMMER EMERGING SCHOLARS PROGRAM AT BOWIE STATE UNIVERSITY

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mrs. MORELLA. Mr. Speaker, I rise to congratulate the faculty and students involved in the Bowie State University's Summer Emerging Scholars Program for academically at-risk students on winning the 1991 Retention Excellence Award awarded by the Noel/Levitz National Center for Student Retention.

Bowie State University was recognized as 1 of 16 institutions of higher education that receiving this national award. It won the award based on several factors, including documentable results of student retention, potential for the program to be nationally replicated, and innovation used to retain students.

The Summer Emerging Scholars Program was created last summer by the center for learning and academic support services under the leadership of Barbara Williams. Dedicated to finding and developing students with the potential to enter and to succeed in college, but without the necessary credentials to be admitted under normal criteria, the program gives these students a chance for success.

During a 5-week summer program, students are given intensive instruction modules in English, writing, and mathematics. This instruction is reinforced with tutoring, skill-building sessions, and discussions about cultural awareness. Upon successful completion of this program, students are admitted to Bowie State University as freshmen.

During its initial year, the program retained 41 of 43 students whose success was rewarded with admission to Bowie State University's 1990–91 freshman class. During their first semester, several of the students, who came to the program from various parts of the country, achieved a 3.0 grade point average or better.

As a former teacher, I am delighted that, with the assistance of people like Barbara Williams and the Summer Emerging Scholars Program, students are able to achieve their potential. Mr. Speaker, it is a proud moment for me to pay tribute to the commendable efforts of Barbara Williams in providing the added instruction these emerging scholars need to succeed as college freshmen. I congratulate Ms. Williams and Bowie State University on receiving national recognition from the Noel/Levitz National Center for Students Retention, and I wish the winning combination of faculty and students continued success.

TRIBUTE TO MR. CLIFFORD L. JONES

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. WELDON. Mr. Speaker, I rise today to pay tribute to Mr. Clifford L. Jones as he retires as the president of the Pennsylvania Chamber of Business and Industry. For more than 8 years Mr. Jones has lead the fight for economic expansion and improvement in the Commonwealth of Pennsylvania, and now, after years of public service, he plans a well deserved retirement.

Mr. Jones has held many positions of importance over the years in Pennsylvania. Prior to his tenure with the State chamber, he served as the secretary of the Department of Environmental Resources, secretary of the State's Labor and Industry Department, Secretary of Commerce and chairman of the Public Utilities Commission. He served three Governors over a period of 17 years.

Mr. Jones devoted much of his time and attention to the Republican Party of Pennsylvania serving as the party's State chairman from 1970 to 1974. During that period of time he was credited with erasing the debt that the party had incurred and strengthening the party's organization.

Many service organizations have recognized Mr. Jones for his efforts through the years including the Hazleton Jaycees who named him Outstanding Young Man of the Year in 1962. Mr. Jones received the Karl Mason award for improvements to Pennsylvania's Environment. Along with these awards are numerous honorary degrees that several colleges conferred upon Mr. Jones in recognition of his achievement on behalf of Pennsylvania.

Mr. Speaker and fellow colleagues, Clifford Jones has given his time and effort to the citizens of Pennsylvania with strong commitment to excellence. We will surely miss the leadership that he has given us, and his service and record will be an inspiration for all of us to follow in the years ahead. Please join me in congratulating Clifford Jones on the announcement of his retirement from the Pennsylvania State Chamber of Business and Industry.

A TRIBUTE TO MARINE OFFICER MARTIN GAFFNEY

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. DONNELLY. Mr. Speaker, I rise today to pay tribute to Marine Officer Martin Gaffney, who died earlier today due to complications from the AIDS virus. Officer Gaffney fought a battle that no one in this Chamber has ever witnessed.

Officer Gaffney finally won his lawsuit against the United States last April, 5 years after his 13-month-old son, John, died of AIDS. His wife, Mutsuko, who contracted the disease in 1981 from a transfusion given to her in a U.S. Navy hospital during the stillborn birth of a first son, died in 1987.

For months, Officer Gaffney waited to hear whether the Justice Department would appeal his case. He was crushed when just before the deadline for appeals expired he learned that the Solicitor General planned to challenge the Court's decision. At the 11th hour, he learned that no appeal would be filed. Finally, the burden had been lifted. His only surviving daughter, Maureene, 8, is financially secure. No amount of money, however, could bring back her father or her family.

For Officer Gaffney, a loving and caring father, it is tragic that he used the only strength he had left to fight the Washington redtape to help insure his daughter's future. It is more tragic that if the initial judgment had stood, precious time could have been saved. Martin Gaffney would have been able to communicate to his daughter the circumstances of the last few years in a way only a father could explain. Instead, she will have to rely on the stories from her aunts and uncles to learn how bravely her father fought for her security.

I salute Officer Martin Gaffney and wish that he rest in peace.

A TRIBUTE TO DR. TRUMAN ATKINS

HON. CHARLES HATCHER

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. HATCHER. Mr. Speaker, I would like to take this opportunity to congratulate Dr. Truman Atkins of Thomasville, GA, for being named the 1991 Georgia Principal of the Year. It is certainly an honor to receive such an award on behalf of Thomas County Central High School and the State of Georgia. I am confident that the students as well as their parents realize his leadership has helped achieve educational excellence. As a principal, Dr. Atkins has had a positive impact on the school; he has enhanced the performance of teachers, students, parents, and support staff. Indeed, the leadership of Dr. Atkins has increased consciousness and sensitivity this past year regarding students' needs in education.

As you know, Mr. Speaker, education has become a top priority for legislators on both sides of the aisle during the 102d Congress. There have been several education initiatives introduced during this first session of the 102d that strive to reshape the current educational system and set goals to improve the future of our schools and students. Increased funding for education is obviously important to the Members of the House of Representatives as shown in the passage of the Labor, Health and Human Services, and Education appropriations bill for fiscal year 1992. At the present time, the U.S. Congress is working diligently on the reauthorization of the Higher Education Act.

Dr. Atkins is a good example of what it takes to be an effective educator. People, such as he, can help encourage the Federal, State, and local governments to work together to obtain national educational goals. It will take the combined effort of communities, school personnel, families as well as all levels of government to enable our students to become competitive in the work force and most importantly, well-rounded adults. I would like to thank Dr. Atkins for his important role as a leader and an educator.

A TRIBUTE TO GREEN BAY PACKAGING FOR INNOVATION IN CONSERVATION

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. ROTH. Mr. Speaker, it is with great pride I rise today to salute the management and employees of Green Bay Packaging, a fine company located in the Eighth District of Wisconsin, which I represent. Yesterday, Green Bay Packaging was one of only eight companies to receive a citation award from President Bush for innovation in the development of environmentally friendly products. The ceremonies for the President's 1991 Environment and Conservation Challenges Awards were held in the Rose Garden at the White House, and Roger Hoffman accepted the award on behalf of the company.

Three years ago, Green Bay Packing began to develop recyclable products. Its research led to the introduction of three new containerboards used to manufacture corrugated boxes. Eco-Brite has an outer surface derived from old newspapers; Eco-White has an outer surface derived from office waste paper; Eco-Stack is the first 100 percent recycled content linerboard made from old corrugated containers. These products are currently being used as packaging materials for products sold by companies like Sears, Wal-Mart, and Xerox.

The accomplishments of Green Bay Packaging are extremely important. The company and its employees are providing a vital link in the recycling chain. The first step in the recycling process is to separate the material from the waste stream. We are doing that now in communities across the country. But to make it worthwhile for these efforts to continue, uses must be found for the separated material. Demand must be created by individuals and companies who have been ingenious enough to invent ways of using the material. That is exactly what Green Bay packaging has done.

The new materials Green Bay Packaging is creating from previously used paper products are eliminating wastes that otherwise would have clogged our landfills or polluted our air because of incineration.

On behalf of the people of the Eighth Congressional District of Wisconsin and the entire Nation, I wish to congratulate Green Bay Packaging on being awarded the first-ever President's Environment and Conservation Challenge Award. I further wish to urge them to continue their research and efforts in our behalf and on behalf of future generations that will inhabit the Earth.

TRIBUTE TO BEDFORD JUNIOR HIGH SCHOOL'S ANTI-DRUG PROGRAM

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. DINGELL. Mr. Speaker, I rise today to call your attention to the efforts of students, faculty, and parents at Bedford Junior High School in Bedford Township, MI, to work for the elimination of illegal drugs from our community.

Last month, Bedford Junior High School recognized the importance of a drug-free lifestyle during the National Red Ribbon Week with its slogan, "Neighbors—Drug-Free and Proud." This is the second year that this school has taken the opportunity to educate its students on the importance of personal health. One of the most important parts of this program is letting young people know that it is all right to say no to drugs.

Mr. Speaker, programs like that of Bedford Junior High School are worthy of high praise. Recent national tracking studies have shown that with higher public awareness of the dangers of illegal drugs, there has been a significant shift of attitude toward a negative view of illegal drug use and drug users. Reportedly there has also occurred a significant reduction in the number of Americans who use cocaine and marijuana.

I believe that presenting this message to young people as they come to an age where they must make adult choices sends them a positive message: "Don't do drugs. They will ruin you. We care."

Mr. Speaker, Bedford Junior High School has taken this message to heart and is succeeding. Ninety-five percent of its 1,063 students have signed a pledge to stay drug- and alcohol-free. I ask my colleagues to join me in sending my sincere congratulations to Bedford Junior High School.

IN MEMORY OF JOHN SIEGLINGER AND ROBERT SHAW

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. LAGOMARSINO. Mr. Speaker, I rise today to pay tribute to two of our Nation's brave citizens, John Sieglinger and Robert Shaw, who lost their lives on October 16, 1991, while fighting a devastating forest fire in the mountains of the State of Montana.

Both John and Robert were employed by the U.S. Forest Service as pilot firefighters stationed at the Los Padres National Forest. As a result of inclement weather, the partners' Lockheed P–3 Orion was lost over Montana's Bitteroot Mountains while en route to assist in fire suppression efforts.

I never had the pleasure of meeting John or Robert. I did attend a memorial service for them on Sunday, October 20, 1991, and saw just how generous these two men were. John was one of the key pilots who boldly fought the fierce Santa Barbara Painted Cave fire last year. Robert was a man who always had time for somebody who really wanted to learn about the profession. Family and friends shared their experiences and feelings about John and Robert, both of whom were kind, caring, and gracious individuals who loved life and people.

In closing, it would be very difficult to overstate the extent to which John and Robert will be missed. We should all praise their valor and dedication to duty and offer our condolences to their sorrowing but proud families.

IN RECOGNITION OF THE U.S. SQUASH TEAM

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize the U.S. squash team who will be participating in the world team championship in Helsinki, Finland on November 11 to 17.

What makes this U.S. squash team so special is that three of the four participants on the team are from my home State of Rhode Island. The team members are Mark Talbott of South Kingstown, RI, Kenton Jernigan of Newport, RI, Jeff Stanley of Bonnet Shores, RI, and William Karlin, of Brooklyn, NY. In addition Tom Jones, publisher of Squash News, and manager of the U.S. national team, hails from Hope Valley, RI. Peter Briggs of Greenwich, CT is the coach of the United States team.

A total of 87 countries now play squash. The world team championship is held every 2 years; 24 teams will be participating in the world team championships in Helsinki, Finland this year. The U.S. team finished 17th in the last event in Singapore, won by the Australian team.

This year the team will be going to Helsinki, Finland with great expectations. It is a great honor for the State of Rhode Island to be so well represented on the U.S. national squash team at this international spring event. It is with great pleasure that I extend my best wishes to the Rhode Island delegation and the whole U.S. national squash team for their greatest success at this most prestigious sporting event.

CONGRESSMAN KILDEE HONORS IVOR JONES: PUBLIC DEFENDER

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. KILDEE. Mr. Speaker, I rise today to urge my colleagues in the United States House of Representatives to join me in paying tribute to an outstanding public servant, Mr. Ivor Jones.

Ivor Jones is retiring as defender administrator for my home county of Genesee. He has been the first and only defender administrator for Genesee County, having served in this position since it was first established in 1969. Ivor Jones has been a staunch supporter of the rights of the accused, ensuring that those in the criminal justice system are treated fairly and given due process, as guaranteed by our Nation's Constitution.

Ivor Jones is a true American success story. He was born in Wales and emigrated to this country with his family in 1927. He entered the U.S. Army and served his country with honor as a U.S. Ranger, seeing action in the invasion of Normandy. He has maintained his contact with his fellow Rangers by being active in organizing reunions for his unit. Like many other soldiers, he completed his education, receiving his undergraduate degree from Penn State University. Following his graduation, he entered law school, graduating from the Wayne State University School of Law in 1958.

He distinguished himself after graduation from law school, first working as an assistant prosecuting attorney in Genesee County. He then entered into private practice as well as serving as a special assistant attorney general for the State of Michigan and handling cases for the Michigan Department of Transportation. Throughout his legal career he carried with him an unwavering commitment to serving the indigent to ensure they received proper legal representation.

Ivor's commitment to his community carried into his personal life as well. He served on the Carman-Ainworth School District Board of Education and has been an active member of the Democratic Party, participating and contributing to the betterment of his community. Ivor has three children, one of whom has followed his father into the legal profession. Ivor has also been blessed with five grandchildren and will soon gain another grandchild. He has been a loving father, grandfather, and a defender of the constitutional rights of the accused in the criminal justice system.

Mr. Speaker, it is indeed a great honor and distinct pleasure for me to rise before my colleagues and pay tribute to such a fine American as Ivor Jones. He has been an inspiration to young attorneys who are beginning their careers and has strengthened the legal system by his very presence. But above all else, Ivor Jones has been a champion of the rights guaranteed by our Constitution. Ultimately, it is individuals such as Ivor Jones that make our system work. While Ivor is retiring from this phase of his career, I am certain that he will continue to remain active and will successfully pursue other goals. I call upon my colleagues in the U.S. House of Representatives to wish him the very best in all that he may do.

MANAGEMENT OF FEDERAL OLD-GROWTH FORESTS

HON. WALLY HERGER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 1, 1991

Mr. HERGER. Mr. Speaker, the problem of developing a balanced, equitable, and scientifically credible solution to our current timber supply crisis in northern California and the Pacific Northwest is especially complex and vexing. This body is considering a wide range of proposals to address this problem. No less than nine legislative measures are presently before the House. The differences among them have been subject to several committee hearings and a great deal of discussion among the involved Federal agencies, interest groups, the Members of this body, and various scientific specialists.

In order to obtain some useful insights about the basic elements of a solution, I joined my colleagues Mr. RIGGS, Mr. DOOLITTLE, and Mr. SMITH of Oregon last month in a letter to the Department of Agriculture and the Department of the Interior concerning the legislative proposals before the House. We wanted some guidance from the professional resource managers, scientists, and technicians in the Departments about the essential form that a legislative solution should take. Several of the proposals before the House call for the creation of an old-growth reserve in Oregon, Washington, and northern California. The proposals differ, however, on how such a preserve should be established, with two different views emerging.

On the one hand, some Members believe that the preserve boundaries should be established by Congress. At least the first, if not the final, decision concerning map boundaries and preserve location and size would be designated by statute.

A different view holds that the land management agencies should establish the preserve boundaries based upon statutory direction from Congress and, to the extent possible, through the resource planning processes already provided in the National Forest Management Act and the Federal Land and Policy Management Act. These are the measures passed by Congress in 1976 that set the framework for the management of our Federal lands.

We asked the two Departments about the relative merits of each approach, and I am pleased to be able to share their response with my colleagues. I ask that they be included in the RECORD. Without recounting the details of each response, suffice it to say that both Departments strongly prefer the latter approach described above. The Department of the Interior notes that the Bureau of Land Management is currently developing an old-growth protection alternative in its existing planning process which will rely heavily on the concept of managing for forest biodiversity. The Department of Agriculture's response provides a very helpful insight as to the management alternatives for maintaining old-growth forest structure and values, noting that simply drawing lines on a map does not distinguish between old-growth values that require strict preservation and those values that must be maintained by active management.

Both agencies note that congressional line-drawing would move significantly away from the management principles articulated in the 1976 organic statutes for each agency. They also note that such an approach would deprive the Congress and the country of the opportunity to benefit from the professional expertise and scientific background of the specialists in each agency. Both agencies argue strongly for congressional direction, followed by agency implementation, as the best way to successfully preserve and manage important old-growth values.

Mr. Speaker, I believe that these agencies have provided useful advice to the Congress as we struggle during the next several months over the proper form for a bill to resolve the forest crisis in the Pacific Northwest and northern California. This is a time when many in the country are critical of Congress over how it discharges legislative tasks and responsibilities that are clearly congressional. I do not believe that the Congress should assume unto itself the professional and scientific responsibilities of our land managers schooled in the principles of forest biology, wildlife ecology, and other important natural resource disciplines. I urge all of my colleagues to read the exchange of letters that follows and to use this information to provide insight as we go about our constitutional task of providing legislative direction to the executive branch.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, August 27, 1991.

Hon. EDWARD MADIGAN,
Secretary of Agriculture, USDA, 14th Street & Independence Avenue, SW., Washington, DC.

DEAR SECRETARY MADIGAN: As you know, we are considering a wide range of proposals to address the current federal land management crisis in northern California, Oregon and Washington. No less than eight legislative measures are presently before the House.

As these proposals have been introduced and discussed, a generic question has arisen about which we would like both your guidance and the Administration's view. Several of the proposals, including H.R. 2463, call for the creation of an old growth forest preserve in Oregon, Washington and northern California. The proposals differ, however, on the question of how such a preserve should be established, with two different views emerging.

On the one hand, some members of Congress believe that the preserve boundaries should be established by Congress, with Congress making at least the first, if not the final, decision concerning map boundaries and preserve location and size. H.R. 842 has Congress making both interim and final decisions on the size and boundaries of the preserve, legislatively referencing maps in the former case. H.R. 2807 and H.R. 3263 have Congress legislating interim preserve boundaries with map references, while providing the federal land management agencies some flexibility to modify, upon the advice of outside scientific advisors, final preserve boundaries.

A different view holds that the land management agencies should establish the preserve boundaries based upon statutory direction from Congress and, to the extent possible, through the resources planning processes already provided in the National Forest Management Act and the Federal Land Policy and Management Act. H.R. 1590 takes this approach with a committee of outside scientific advisors assisting in the designation of final preserve boundaries. H.R. 2463 takes the same approach but depends more heavily on the existing technical expertise of the federal land management agencies.

The broad question, as we see it, is as follows: Should Congress assume the technical responsibility of drawing lines on maps to initiate or finalize a preserve; or should we provide statutory direction to accomplish this objective and rely on the expertise of the agencies (perhaps assisted by outside scientific advisors) to perform this task through their land management planning processes?

We need your thoughts on this question as soon as possible. We are particularly interested in your views as to the advantages and shortcomings of each approach. If we choose the former approach, what type of technical assistance can you provide to would-be cartographers in Congress? If we choose the latter approach, what sort of direction do you suggest that we provide to the agencies?

Most importantly, what is your preference? Agency testimony on several of the above-referenced bills strongly suggests a preference for the latter approach. But is this an issue which would influence your views about supporting a measure on final passage?

Please respond as promptly as possible as this is an issue that we wish to discuss with our constituents during the recess. Thank you for your assistance in this matter.

Sincerely,

WALLY HERGER.
FRANK RIGGS.
BOB SMITH.
JOHN T. DOOLITTLE.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 3, 1991.

Hon. MANUEL LUJAN, Jr.,
Secretary of the Interior, Department of the Interior, Washington, DC.

DEAR SECRETARY LUJAN: As you know, we are considering a wide range of proposals to address the current federal land management crisis in northern California, Oregon and Washington. No less than eight legislative measures are presently before the House.

As these proposals have been introduced and discussed, a generic question has arisen about which we would like both your guidance and the Administration's view. Several of the proposals, including H.R. 2463, call for the creation of an old growth forest preserve in Oregon, Washington and northern California. The proposals differ, however, on the question of how such a preserve should be established, with two different views emerging.

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We need your thoughts on this question as soon as possible. We are particularly interested in your views as to the advantages and shortcomings of each approach. If we choose the former approach, what type of technical assistance can you provide to would-be cartographers in Congress? If we choose the latter approach, what sort of direction do you suggest that we provide to the agencies?

Most importantly, what is your preference? Agency testimony on several of the above-referenced bills strongly suggests a preference for the latter approach. But is this an issue which would influence your views about supporting a measure on final passage?

Please respond as promptly as possible as this is an issue that we wish to discuss with our constituents during the recess. Thank you for your assistance in this matter.

Sincerely,

BOB SMITH.
FRANK RIGGS.
WALLY HERGER.
JOHN T. DOOLITTLE.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, October 24, 1991.

Hon. WALLY HERGER,
U.S. House of Representatives, Longworth House Office Building, Washington, DC

DEAR CONGRESSMAN HERGER: Thank you for your August 27 letter asking for our position on the appropriate means for designating old growth reserves if the Congress proceeds with legislation to establish such a reserve system in Washington, Oregon and northern California. Secretary Madigan asked that I respond. I apologize for the delay.

You asked whether Congress should assume technical responsibility for drawing lines on maps to initiate or finalize a preserve, or instead provide statutory direction to guide the land management agencies to accomplish the same through their land management planning processes.

In its testimony on August 1, 1991 favoring S. 1156, The Federal Lands and Families Protection Act, the Administration noted that the creation of an old growth reserve system should first recognize old growth forests that already are reserved under Federal ownership. Priorities for adding to the reserve system should be based on marginal value for achieving old growth habitat and ecosystem objectives, using the forest planning processes of the agencies as the means for balancing old growth objectives against other resource objectives, and providing opportunities for public involvement and comment.

The underlying premise for creating an old growth reserve system is that old forests have unique values in terms of their composition, structure, and function. Unfortunately, the "lines-on-maps" proposals currently before Congress do not distinguish between unique old growth values that may warrant preservation, and old growth structure that can be sustained, enhanced, or even created through professional forest management. For example, it is now apparent that the conservation of the northern spotted owl across its range may depend as much on managing forests to maintain an older forest structure across the landscape, than it does with reserving scattered unmanaged stands of old growth. The Spotted Owl Interagency Scientific Committee (ISC) rejected the Spotted Owl Habitat (SOHA) theory consisting solely of old growth reserves, in favor of habitat conservation areas with old growth structure strategically located within a forest matrix managed to sustain, enhance or create desirable forest structure.

Existing legislative authority and direction for managing the National Forests put emphasis on comprehensive land and resource management planning with public involvement, followed by implementation of the plans by professional forest managers. We support the democratic principles embodied in this approach, and would consider a "lines-on-maps" approach by Congress to be a major shift away from these principles.

It is already apparent that the delineation of areas by lines on maps in some of the proposed old growth bills is flawed by a lack of sensitivity for what is actually on the ground, or the relative value of each area as a reserve compared to other multiple use considerations. Many of the so-called old growth areas are found to contain relatively little contiguous old growth when examined on the ground. The creation of an old growth reserve system should be done with sensitivity to what is actually on the ground and the relative marginal values between single purpose old growth protection and multiple use opportunities. It is not a job that can be done at arms-length with any acceptable degree of sensitivity or credibility.

It is far better for the Congress to provide broad statutory authority and direction for the creation of an old growth reserve system, and then allow implementation of that direction through the land and resource management planning processes mandated by Congress through the National Forest Management Act (NFMA) and the Federal Land Planning and Management Act (FLPMA). This will allow forest managers and scientists to work together on a site-specific basis to develop and evaluate alternatives for achieving a balance between old growth objectives and other multiple use values, and provide opportunities for public involvement and comment.

Please let me know if I can be of further assistance. Duplicates of this letter have been sent to Representatives Riggs, Smith and Doolittle.

Sincerely yours,

JOHN H. BEUTER,
Deputy Assistant Secretary,
Natural Resources and Environment.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
Washington, DC, October 22, 1991.

Hon. WALLY HERGER,
House of Representatives, Washington, DC.

DEAR MR. HERGER: Thank you for your letter of September 3, 1991, to Secretary Manuel Lujan, Jr., cosigned by Representatives Robert F. Smith, John T. Doolittle, and Frank D. Riggs, regarding the Department of the Interior's opinion on potential legislation associated with Federal forest management in northern California, Oregon, and Washington. Secretary Lujan has asked the BLM to respond. I apologize for the delay in responding.

Your questions centered around the advantages and disadvantages of Congress drawing temporary or permanent lines on maps versus Congress providing general direction for the responsible land management agencies to identify geographic areas and management approaches that will meet identified objectives. As you indicated, our testimony on some of the pending bills indicates that we favor the latter approach. Federal land management agencies, such as the Bureau of Land Management (BLM) and Forest Service, are specifically directed by law to address resource issues such as old growth forest and spotted owl habitat management through their planning process. They have the experience, the professional staff, the data, and the tools to do the job. They have done and are continuing to do their planning consistent with existing law and biological knowledge and with full consideration of current social and economic concerns and values. Both agencies involve the public extensively in the planning process. If the agencies are given new information or new objectives, they can determine effective ways to use that information or meet those objectives.

It would be helpful if Congress were to provide direction to agencies to meet the needs of the people of this Nation. This could include short-term minimum biological protection levels and commodity production targets that would not only protect future planning options but would also provide a reliable timber harvest level to ease the economic transition to the future. It could also provide long-term objectives for management of the forests, their products, and their ecosystems. With these basic guidelines and objectives, the responsible agencies can develop the appropriate and responsive process to meet established goals.

We believe that legislation should provide clear direction without drawing specific reserve areas on maps. In fact, given the rapid growth of knowledge about forest ecosystems and potential for responsive and innovative management responses, flexibility for the agencies could be a major benefit to the resources and the people who depend on them.

For example, the BLM in Oregon is currently developing an alternative in its planning process that will consider the whole forest ecosystem through management for biodiversity. Although the spotted owl is the current focus of concern, we know that there are other sensitive species that we will need to consider in the long term. We do not know now if this alternative or something similar

to it might be our preferred alternative when we complete our draft plans, but we are already learning from our analysis process. This type of innovation and progress would not be as likely if legislation spelled out very specific land allocations and commodity production figures for the long term.

Of course whatever type of direction Congress wishes to provide, the BLM will offer its services in providing scientific and management expertise to help develop legislation.

I trust this information is helpful to you. If I can be of further assistance, please let me know. Similar letters are being sent to Representatives Riggs, Smith, and Doolittle.

Sincerely,

CY JAMISON,
Director.

SENATE—*Monday, November 4, 1991*

(Legislative day of Tuesday, October 29, 1991)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by the Honorable PAUL D. WELLSTONE, a Senator from the State of Minnesota.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Blessed is the nation whose God is the Lord * * *.—Psalm 33:12.

Almighty God, Creator, and Father of all peoples, our prayer is made at a time of great need. You know better than we, better than political polls, the consternation, mistrust, and anger of the people. You know the minds and hearts of the Senators—their struggle, in the light of conscience, with people demands, economic and financial realities, and the pragmatism of politics as the 1992 national election warms up. The situation demands more than the best human wisdom and ingenuity has to offer.

Gracious God, help us take seriously the words of Franklin Delano Roosevelt, spoken at a time of national disaster: "No greater thing could happen to our land today than a revival of the spirit of religion—a revival that would sweep through the homes of the Nation and stir the hearts of men and women of all faiths to a reassertion of their belief in God and their dedication to His will for themselves and for their world. I doubt if there is any problem—social, political, or economic—that would not melt away before the fire of such a spiritual awakening." Revive us, O Lord, restore our confidence in reality beyond the finite limits of the secular and the temporal.

In the name of Him who is the Way, the Truth, and the Life. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 4, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PAUL D. WELLSTONE, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WELLSTONE thereupon assumed the chair as Acting President pro tempore.

The ACTING PRESIDENT pro tempore. In my capacity as a Senator from Minnesota, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. The leader time is reserved under the previous order.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon with Senators permitted to speak therein for not to exceed 10 minutes each.

Mr. CONRAD. Mr. President, I ask unanimous consent to be permitted to speak for up to 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

INTERNATIONAL TRADE AND JOBS

Mr. CONRAD. Mr. President, today I would like to talk about international trade and jobs in the rural economy.

As the occupant of the Chair so well knows, rural America is in serious economic trouble today because of years of economic mismanagement and disastrous trade policies. The Great Plains of our Nation have lost 2 percent of its jobs in the 1980's and 5 percent of its population. Unfortunately, those problems are continuing. Grain prices in real terms are at or near 50-year lows. Let me repeat that, Mr. President: Grain prices that our farmers receive are at or near 50-year lows.

Oilseed exports are down 70 percent from 1980. Net farm income will fall 25 percent this year over last. And estimates of net farm income over the next decade put it near Great Depression levels. That is the reality that we confront in the heartland of this country, Mr. President.

I think it is time to ask why the rural parts of this country are in such deep trouble? Why is there economic hardship all across the midsection of this country? Why, in the farming sector, are we living off the balance sheet? Why are we finding year after year that our best young farmers are giving up, leaving the land, heading for the cities because they cannot make a decent living farming in America today?

Just a few weeks ago, Mr. President, a very close friend of mine called me late one evening. He said, "Senator, I have just had something happen that shakes me very much. A neighbor just called me, one of the best farmers in all of southwestern North Dakota, and he said to me, 'If you know anybody that wants to buy land, ours is for sale.' "

My friends said, "You know, my neighbor is not only the best young farmer in our part of the country, but also somebody who is almost debt free, and yet he is selling out. He is 40 years old."

My friend asked his neighbor, "Why would you be selling?"

He said, "Well, it is very simple: We looked at what has happened over the last 3 years. We realize we lost money every one of the last 3 years. We are not going to lose any more. We are getting out now."

My friend told me, "Senator, if they cannot make it, none of us can make it." If they cannot make it, none of us can make it.

Our State university did a study of the North Dakota farm economy. They found under the new farm bill that under current conditions, 35 percent of the grain farmers in my State are going to go out of business in the next 5 years. 35 percent of the grain farmers in North Dakota cannot survive under the conditions that they face today.

Mr. President, what is the problem? How can it be that 1 in 3 farmers in North Dakota cannot survive? How can it be that we are headed for levels of farm income that are like those of the Great Depression? How can that be?

Mr. President, the major reasons are the billions of dollars in lost trade opportunities, and tens of thousands of lost jobs, due to our bankrupt agricultural trade policies in this country.

In the past decade this Nation has been in an agricultural trade war with the European Community, only our administration has been firing blanks while they have been firing live ammunition.

Mr. President, this chart tells much of the story. It shows the European Economic Community and United

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

States export subsidies in the year 1991. Here is the United States, this little tiny bar down here—less than $1 billion. This is what we are doing to fight in this traded war. And here is what our opposition is doing: This big bar that is 13 times as much. That is what the European Community is doing.

With these expenditures the EC is taking market after market after market. Someday, someday soon, the United States is going to wake up, the United States that has dominated world agricultural trade, and to find ourselves the poor cousin, and to find that the Europeans now dominate world agricultural trade. People in this country are going to ask the question: How could this have happened? Have America's trade negotiators been asleep? Has no one been making certain that American markets were protected? Has no one been interested in making sure that American jobs are still there?

Mr. President, let me just give a few examples of what the Europeans have been doing while America has been asleep at the switch.

This chart shows EC net grain trade. Subsidies have converted the EC from a net grain importer to world's second largest exporter—27 million metric tons of net exports in 1991-92. Quite a story, is it not, Mr. President?

We go back to 1980 and 1981, Europe was importing grain, importing it. Look what happened. In 1984 and 1985, all of a sudden they turned from being an importer to being an exporter. Ever since then, they have been on a one-way escalator going up.

Their share of world market's has increased year after year until they have moved into the No. 2 position in net grain trade.

At the same time the EC has been expanding in grain production and exports it has been expanding in oilseed production. EC oilseed production jumped fourfold over the past decade. Mr. President, now nearly 10 million tons larger than a decade ago. And some wonder why there is hurt across the heartland in America, Mr. President. There is hurt because we are losing jobs and opportunity to the Europeans who have the good sense to go out and battle for these markets.

While we wait and while we sit and while our administration does nothing but keep muttering the mantra of free trade, free trade, free trade, Europeans are in an aggressive battle to secure markets because they know, Mr. President, that at some point we will recognize that this is a trade war. They believe that at some point there will be a cease-fire, and they think it will be a cease-fire in place, and they want to occupy the high ground. Mr. President, they are well along the way.

The EC agricultural trade war has cast a huge loss in U.S. acreage under production. This ought to sober up everyone who cares about the fundamental health of America's economy because this chart shows the EC increase in net exports over the past decade has cost 36 million acres of U.S. grain and soybean production.

Mr. President, we have 36 million acres idled in America because of what the European Community has done with their aggressive trade practices and we do not hear a peep from this administration, Mr. President; not one word. We do not find the administration out jawboning Europe. We do not see them with an aggressive trade policy. Precisely the opposite, as the occupant of the Chair knows so well.

In the last farm bill fight, the administration was arguing to reduce the resources that America put in this trade war, to back out. That was their answer. In the face of an aggressive effort by Europe to secure these markets, the answer from this administration has been to raise the white flag of surrender—surrendering the market, surrendering the jobs, surrendering the opportunities. And we wonder why there is a crisis in rural America.

Mr. President, the beat goes on. And we know where this is all headed. Let me just show you what the support levels are commodity by commodity of our friends in Europe compared to what we are doing here in the United States.

For sugar the Europeans are supporting their producers at $30 a hundredweight; the United States $18 a hundredweight. On sunflowers, the European are supporting their producers at $28 a hundredweight. We are supporting our producers at $8.80 a hundredweight. On soybeans, they are supporting their producers at $15 a bushel. We are at one-third of that, $5 a bushel, Mr. President. On Durum wheat, they are supporting their producers at $9.50 a bushel; we are at $4. And on corn, Mr. President, they are at $5.20 a bushel, and we are at $2.75.

Is there any wonder that Europe is on the rise and America is in retreat in the grain markets of the world?

Now I would guess those who are listening in might ask themselves a question. Certainly, America, in these important talks that are underway, is trying to secure a level playing field for America's producers. Would that not be logical? Would that not be what you would think would be happening?

Would you not think that America's negotiators would be insisting that if we are going to have free trade, that it must be fair trade, and that an American producer would get the same price for its production as the European producer? Would you not expect if we are going to have free trade that a farmer in North Dakota or Minnesota would get the same for a bushel of corn or a bushel of wheat as a European producer would get? Would that not be fair?

That is not what is happening, Mr. President. That is not what is happening. We are not even seeking a level playing field. No, our negotiators are saying we are trying to get an equal percentage reduction from these unequal levels of support. Think about that. Our negotiators are seeking to get an equal percentage reduction from these unequal levels of support. That can only produce one result. If you have equal percentage reductions from an unequal base, you wind up with an unequal result. Our negotiators would lock in the European advantage. They would lock in the chance for a European farmer to get twice as much or three times as much for the very same commodity as the American producer.

And some people wonder why American producers are angry and worried about the future. It is very simple, Mr. President. They are fighting in a battle in which they are given no ammunition, they are given no chance to win. They are locked into a situation in which the advantage of Europe will continue and grow. That is why the American farmers feel abandoned by this administration. And that is why American producers realize that unless there is a change in the American position, we cannot win.

Mr. President, when you take an equal percentage reduction from an unequal base, the result is to maintain the inequity. For those who say they are for free trade, let me just say, I agree. I am for free trade. But let them answer this question: Is it free trade if a European producer gets $8.50 for Durum wheat and an American farmer gets $3.70? Is it free trade if the European farmer gets $4.70 for corn and an American farmer gets $2.60? Is it free trade if a European farmer gets $11.80 for soybeans and an American farmer gets $5?

Mr. President, my farmers do not think that is free trade. They think that is negotiated trade and that we are losing the negotiation. Because, Mr. President, these are the results that will come if the U.S. position in the trade talks is adopted.

Can you believe it? Can you believe that is the U.S. position? The negotiators, who are being paid by United States taxpayers, are pushing a position that would lead to this result, a result in which European farmers would get two or three times as much as American farmers for the very same commodities. Can you believe that is the American negotiating position? Well, it is.

We just had a meeting with Ambassador Hills last week and I asked her the question: Are you still pursuing a policy in which there will be equal percentage reductions from an unequal base? Is that really our position?

She said it was.

That policy, that strategy, is an absolute disaster for American agriculture. If we want to assure that the projections that net farm income in the next 10 years will be at depression levels, we ought to just pursue this policy; we ought to just say steady as she goes, let us keep right on, because this policy will absolutely assure that result.

This country simply cannot afford to continue on this path. All across my State people are hurting. At every community forum that I hold, farmers come up to me and say, "I do not see how I can survive. It does not pencil out. There is no way I can make ends meet. I am living off my balance sheet. When are you guys going to do something about it? When are you guys going to do something about it?"

There is a choice before America, and the choice is who is more important. Is it more important that our State Department representatives are greeted warmly at their receptions in the European capitals? Or is it more important that the farmers and workers in this country be given a fair shake? Where do our negotiators direct their attention? Where are their priorities?

This administration thus far seems to think the top priority is maintaining good relations with those who are out to steal our markets. The amazing fact is we have actually financed this assault on our agricultural markets. How can that be? Very simply, Mr. President. While we see the Europeans spending $140 billion a year to subsidize agriculture, to secure our markets, to take our jobs—at the very same time they provide support 13 times as high as that provided in this country, we are paying their defense bills to the tune or over $100 billion a year. At the very time some wonder where they got the resources to do this, we know they are getting the resources from us. We pay their defense bills. They take the savings and they put it into agriculture, so they can dominate world markets. They put the money into health programs for their people. They put it into education programs for their people so they are competitive and can seize market after market from this country. And you wonder when are we going to awaken to what is happening.

What could be more clear? This is not free trade. This is not fair trade. It is negotiated trade, and we are losing the negotiations.

Today I call on U.S. negotiators to change course. Forget this bankrupt policy of equal percentage reductions from an unequal base. Let us put America first. Let us insist that we go to a level playing field. If there is going to be free trade, let it be fair trade. If there is going to be an agricultural negotiation, let us make certain that American does not lose.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOREN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENATE REFORM

Mr. BOREN. Mr. President, I have been coming to the Senate each week, two times a week, to talk about the problems facing this institution. As all of us know, this institution is in trouble. Many of us, in a bipartisan effort, have joined together to try to start a movement which would overhaul this institution and bring about sweeping reforms, the kind of effort very much like that which was undertaken in 1947 known as the Monroney-LaFollette Committee and proposal, which did bring about major changes in Congress.

It was at a time in which the cold war was beginning and Congress realized it was not equipped to deal with the changes in the world that were taking place. Now, as the cold war winds down, it is again appropriate that we undertake such an effort to make major changes in Congress. We all know, we all understand, that Congress is simply not equipped to deal with the challenges we are now facing.

Over this past weekend the Washington Post ran a series of stories which indicated that we do, indeed, face a crisis of confidence in our political institutions in this country. In an article headed "A Tide of Pessimism and Political Powerlessness Rises," the Post in the article written by Mr. Balz and Mr. Morin said:

> Under indictment by an increasingly cynical public, the American political system stands trial a year before the 1992 elections, facing a crisis of confidence that rivals the period of disillusionment immediately after the Vietnam War and the Watergate scandal nearly two decades ago.

The article goes on:

> Unlike the political upheaval of the 1970s, this period appears unique in that there is no cataclysmic event that triggered the current decline in confidence. Rather it is disillusionment by a thousand cuts: broken promises, growing problems, failed policies, governmental gridlock and a corrosive mixture of money, special interests, negative campaigns and politically inspired spectacles that have created a widening gap between the politicians and the public they claim to serve. * * *
>
> Today, seven in 10 Americans believe the government is controlled by special interests, not by themselves, a view that was rejected by a similarly strong majority.

Three-fourths of our people expressing a lack of confidence in their own Government, the mirror image of the way people felt 40 years ago, when three-fourths of the American people expressed confidence in the Congress and confidence in their leaders and confidence in the institutions of Government.

Mr. President, how long are we going to wait to act? We all understand the problem; we all know. And the Senate has acted upon a bill which would reform the way we finance campaigns in this country. I agree with the perception of the American people that there is an undue influence of money in this system. I agree with the American people that special interests have too much ability to influence what goes on here. I understand why people have become deeply cynical about their own government.

Mr. President, we have passed a bill that would start a process that would end up in a conference committee once the House of Representatives acts. It would enable us then to work with the White House to fashion a bipartisan compromise to stop the money chase in American politics, to change a system under which incumbent Members of Congress are able to raise and spend $8 for every $1 that a challenger can raise.

Mr. President, how long are we going to wait? I again urge the House of Representatives to act on campaign finance reform so that we can begin the process of a conference that will lead to a fundamental and final agreement between both Houses of the Congress and the White House on this for reform of our political process.

I also urge that we begin the process of holding hearings and acting upon Senate Concurrent Resolution 57, which would set up a special committee of limited duration that would cooperate with volunteer, nonpaid staff, just as was the case in 1947 with the Monroney-LaFollette Commission, which received assistance from professors, the American Political Science Association, the private sector, and other experts who helped bring about recommendations which made fundamental changes in Congress.

It is time for us to act. We have over 300 committees and subcommittees. We are unable to get the peoples' business done. We run as fast as we can, from morning until night, taken up with trivia. Almost 7,000 bills introduced; only 250 enacted into law. The process is clogged. We have an ever growing bureaucracy, moving from 2,000 employees to 14,000 employees over the past three decades.

Mr. President, how long are we going to wait? Congressman HAMILTON and Congressman GRADISON, in a bipartisan effort, have introduced similar legislation on the House side. My colleague, Senator DOMENICI, who is now on the floor, has joined me on the Senate side in a bipartisan effort to bring about the same kind of action.

Mr. President, we are the trustees of this institution. If we do not act, if we do not take care of this institution, if we do not revitalize this institution, who else will? It is time for us to do something.

The American people are absolutely right in their perceptions of the Congress. Let us be honest about it. They have had enough, and those of us who came here because we wanted to make a difference in this country, because we wanted to contribute the ideas that we had and the experience that we had, to pass on something enhanced to the next generation, know that the institutional structure that has grown up over a period of years is preventing the kind of positive problem solution that our country cries out to have.

No one else will do it if we do not do it. We are the trustees. These seats, these chairs, these desks belong to the American people, not to us. We are but their trustees. This institution belongs to them. We have a responsibility to do something that will restore this institution to the vitality that it once had and to once again merit the respect of the American people.

I am pleased to announce today that Senator MIKULSKI has now become a cosponsor of Senate Concurrent Resolution 57. She becomes the 16th Member of the Senate to join us in this effort. Every day we are getting interest from other colleagues. I hope we will see the time when over half the Members of this body cosponsor this resolution, we enact it into law, and we get on with the task that is before us.

How long are we going to wait? How many more articles like this are we going to have to read? How many more polls are we going to have to see before we decide to do something?

In 1968, 55 percent of the people agreed with the statement: "Those we elect to Congress in Washington lose touch with the people pretty quickly." Today, 74 percent agree with that statement. Three in five Americans say they have just a little or no confidence in Government to solve their country's major problems. How long are we going to wait? Are we going to wait until it is 80 or 90 percent?

Question: "Do you think the elected leaders in Washington are really interested in solving the Nation's biggest problems, or do you think they are just interested in appearing to solve them?" Only want to appear to solve them: 65 percent. Are we going to wait until it is 99 percent who think we are not sincere?

"Do you think the overall level of honesty in politics has risen, fallen, or stayed the same in the last 10 years?" Fallen: 54 percent. "How much confidence do you yourself have in Congress?" The percentage saying they have some or very little confidence, just a little confidence: only 21 percent. On and on and on.

"Do you favor a limitation on the number of years a person can serve in the Congress?" Favor: 74 percent. It is no wonder people agree with the statement made by Reggie Belk of Charlotte, NC, quoted in the Post over the weekend:

> Congress is the best Government you can buy. Show me one poor person who serves in Congress. Show me one middle-class person * * *.

Others mention the fact of special-interest groups and the impact because of the way we finance campaigns.

Mr. President, let us not wait any longer. We came here because we wanted to serve this country. Let us revitalize this institution and bring it back to health so that we can make the kind of contributions we wanted to make when we first came to this place. Time is wasting. The crisis is deepening. Let us earn and merit the confidence of the American people once again by putting our own house in order.

Mr. DOMENICI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to speak for 10 minutes, 5 on the subject Senator BOREN spoke on, and 5 regarding health care.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOMENICI. I thank the Chair.

Let me say to my friend from Oklahoma, Senator BOREN, I am first going to apologize. I have not been able to come to the floor with him each time he spoke on this, at least not in the last couple of weeks. I want to say that does not mean my commitment has weakened one bit.

Frankly, it is amazing how we can sit here, the envy of the world with reference to our democratic institution, and know full well because we do not choose to organize this beautiful, marvelous institution of freedom in a way that permits us to do our jobs well, and we sit there and leave it like it is, and yet the whole world is looking at us, saying: We want to be like you.

I am reminded, when the leader of Russia was here—Boris Yeltsin, he sat with us in a room over here—the reason I thought he was a pretty astute politician, he sat at the table with our leader, Senator MITCHELL, and the Republican leader, Senator DOLE, and a few other people. When he got up to make his remarks, he said this—I know it was said in typical jest by Senator DOLE, but frequently when he speaks like this it is very, very important, and he uses a light expression to make the point. Boris Yeltsin got up and said: "Sure was nice to sit by Senator DOLE and Senator MITCHELL, and to be in the U.S. Senate." [Through an interpreter.]

"You know" Senator DOLE said, "you do not want to learn so much from us that you do everything like us."

And everybody laughed and he laughed. I am sure Senator DOLE had in mind what we are talking about on the floor of the Senate today.

Frankly, the time has come to say to the American people: We are going to try to do something about the way we run this place, to give our Senators an opportunity to do their job better so that they are not so dependent upon staff day by day, hour by hour, because they have no time to listen, to study, to prepare.

And so we are jumping around from one committee to another. I admit that I am as guilty as any, but I also am ready to admit that if we reform the system, I am more than glad to get rid of committee assignments and make sure that all of us have far less to do. Hopefully, we will do it better.

Mr. President, that does not mean that we should stop being politicians. It does not mean that we should stop debating on the floor of the Senate. It does not mean that we should agree on everything. Obviously, democracy requires different opinions among leaders and parties, and we ought to have that.

But as a matter of fact, Mr. President, and I say to my friend Senator BOREN, the truth of the matter is that less time is spent on that than anything else. How many times have we been on the floor when there is nobody here?

I had a couple of people from out of State stop me the other day. There was apparently a debate they liked very much, three Democrats and one Republican. I think I was the Republican. I think she liked the Democrats. But anyway, we were walking down the hall, and she thought it was such a good afternoon of debate. She said, "Where are all the Senators?" "Well, they are already home. They have left Washington." That was an afternoon for quorum calls and introducing a few bills.

There is nothing wrong with that, but clearly, unless it is late of an evening, it is almost accidental to find two Senators standing up without a piece of paper that staff prepared that they are reading and getting at each other about what is wrong with the country or what is wrong with the other side's proposals. I submit to you they cannot; there is no time; they are on so many subcommittees, committees, task forces, you cannot imagine.

Actually, we are only asking for a chance. The Boren-Domenici suggested reform commission is not going to force its will on anybody. It is saying, give us a chance. Give us some Senators and a couple of outside people who want to help with this Senate and give us some time. We are going to hear from the best thinkers in the country, from institutions that have studied the Senate or that will, and we are going to ask them to help us decide how to make this an institution which keeps pace with our times.

We are not going to be able to restore public confidence or trust until we take some necessary steps to right our own house, to make this place a better place to work, one where the lines are more clearly drawn and one where the time of Senators, if they want to, can be spent on serious matters affecting our country, where they will have enough time to think a little bit about some broad ideas rather than jumping around from one idea to another, one subcommittee to another, without a chance to do anything significant in between.

So I once again say to my friend from Oklahoma, it was a pleasure to cosponsor this proposal. It is my pleasure to push for it. I am very hopeful—and I do not even mind saying it here in public—I am very hopeful that Senator DOLE will be on the resolution very soon. I will be talking to him again today and tomorrow.

Mr. BOREN. Will the Senator yield?

Mr. DOMENICI. I will be pleased to yield.

Mr. BOREN. Mr. President, I thank my friend from New Mexico. I am honored to be able to work with him as a bipartisan team because, after all, this is an American problem. We must put aside party affiliation and work together as Americans to solve this problem. I am very proud to work with him on this matter.

As he has indicated, one of the reasons why we have very little time to take care of the big problems facing this country, to engage in the kind of substantive debate we should, is that the average Member of the Senate now serves on 12 committees and subcommittees, running from morning to evening, on minor matters, on bills that should never have been produced clogging the process.

I indicate to my colleague I have had a very good discussion of our proposal with the chairman of the Rules Committee, Senator WENDELL FORD, of Kentucky. I know my colleague knows he is a person who sincerely——

Mr. DOMENICI. Absolutely.

Mr. BOREN. Cares about major reforms, cutting the mailing costs, cutting printing costs, doing some very positive things already. He certainly indicated to me he has an open mind about this and hopes the Rules Committee—they are under some constraints as we run toward the end of the session—will be able to consider our proposal in a timely fashion. I am very encouraged from that constructive conversation I had with him, and I want to pass that on to my colleague from New Mexico.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 1912 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session to proceed to the nomination of Robert M. Gates to be Director of Central Intelligence. The clerk will report.

NOMINATION OF ROBERT M. GATES, OF VIRGINIA, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

The assistant legislative clerk read the nomination of Robert M. Gates, of Virginia, to be Director of Central Intelligence.

(Mr. REID assumed the chair.)

Mr. BOREN. Mr. President, I thank the Chair. I thank my colleague for allowing us to talk about these other important issues dealing with the reform of this institution itself and also the Senator from New Mexico speaking about health care as well, before we begin the discussion of the nomination which is now pending before the Senate.

As we turn to the nomination now before us and begin our discussion of this nomination let me say to my colleagues that this certainly is one of the most important posts that we fill in the Government of the United States. It is particularly important because of the changes that are occurring in the world around us. The quality of intelligence provided to the policymakers in this country from the President of the United States on down over the next decade will have a great impact on the ability of this country to prepare itself for continued leadership in the world into the next century or, on the other hand, if intelligence fails to meet the task, fails to give the information, the analysis to the policymaker that he or she needs, it could have a crippling impact upon our ability to provide the same quality of life for the next generation as we have had in the past.

Mr. President, when we began these confirmation hearings on the nomination of Robert Gates to be Director of Central Intelligence, I expressed my hope that when we finished the process, without regard to the final vote, the American people could justifiably say our hearings had been both thorough and fair.

I want to thank the members of the committee on both sides of the aisle for their cooperation and for their common commitment with me to realize that goal. I appreciate the words of encouragement which each one of the members of our committee has spoken to me about our process. I also want to thank the members of the staff on both sides of the aisle who have labored long hours to help us achieve our goal of thoroughness and fairness.

Virtually every procedural procedure of the committee was unanimous during our confirmation hearings and process. We have sought to be fair by involving the staff designees of every single member of the Senate Intelligence Committee, Democrat and Republican alike, to act as a steering committee in making decisions about which witnesses should be called, which documentary evidence should be obtained, and which evidence should be examined. We have had certainly no shortage of conflicting viewpoints and diversity of opinion among the witnesses, or reflected in the documents which we have studied, or the issues upon which we have focused.

I honestly believe that these hearings have been the most thorough ever conducted for a nominee for the position of Director of Central Intelligence. The nominee himself answered more than 800 questions under oath during the confirmation process before the Intelligence Committee.

I would urge my colleagues to take time to read the report issued by the committee and to study any of the testimony or additional documents which they need to study to reach a thoughtful decision themselves about this nomination because of its importance.

More people have been interviewed and more pages of documents have been studied and declassified than in any other confirmation hearing in the history of the Intelligence Committee. That is as it should be, because as I have said the next Director of Central Intelligence will be called upon to make the most sweeping changes in the intelligence community since the CIA was created almost a half century ago.

In our committee process, we also sought to educate the American people through our confirmation hearings about the intelligence community. As taxpayers, the people pay a multi-billion-dollar bill for intelligence, and they should know as much as possible about intelligence operations and the challenges which we face in a totally changed world.

As I have said, in many ways the ability of our policymaker, including the President, to make sound decisions to prepare us for the next century, will depend upon the quality of the intelligence which he receives and others who serve with him in the Government, both in the executive branch and in the Congress.

After a very careful consideration I cast my vote as a member of the Intelligence Committee in favor of confirming the President's nominee Robert M. Gates to be the Director of the Central Intelligence Agency.

The committee voted 11 to 4 to favorably report his nomination to the full Senate. I reached the decision to vote for the confirmation of Mr. Gates for several reasons.

First, Mr. Gates has the knowledge and experience vitally needed by the Director of the CIA. The next Director will immediately have to plunge into the process of radically changing the intelligence community to coincide with all of the changes in the world around us. There is certainly no time to bring in a new Director from the outside, lacking in experience and detailed knowledge of the intelligence community.

This is no time for on-the-job training. We cannot afford to take 2 or 3 years for the new Director to learn the current programs before thinking about how to change them. We need a Director who can hit the ground running. There is absolutely no time to waste.

We also need a Director who can work with Congress to develop new structures and budget priorities and who has the respect and confidence of the President so that he will be prepared to implement these proposals. The President, who is himself a former Director of Central Intelligence, would simply not have the same level of respect for the opinions of a newcomer to the intelligence field, even a person of great stature, that he would have for the views of Mr. Gates, with whom he has already entrusted great responsibility as a member of his National Security Council staff, deputy National Security Adviser.

Mr. President, I have had an opportunity to discuss with our President, on several occasions, important intelligence matters, and since he is himself a former Director of Central Intelligence, I can tell my colleagues that he has decided views about intelligence issues, and he has a grasp of much detailed information. And because he has this personal experience, it is very difficult, at times, to convince the President to change his views and preconceptions about what should be done in a certain case.

That is why it is important to have someone who also has experience in the intelligence community, particularly if we get into certain situations over the next year or two, as we grapple with changes that must be made in the intelligence community; we must have someone whose experience and opinion the President will respect. If we bring in someone from the outside, someone even of immense ability, the President will take the view that, as a former Director of Central Intelligence himself, he simply knows more about the intelligence issues than the person he has appointed as Director.

That is not the case with Mr. Gates. It is going to take rapid action on our part. Anyone who thinks we are not going to have to bring about sweeping changes in the intelligence programs and intelligence budget, should simply stop and reflect upon the fact that over half of the agencies of the American intelligence are targeted directly or indirectly on the Soviet military target, on a threat that has been severely diminished over the past few months. Many of the agencies that have been created as part of the intelligence community, since the beginning of the cold war, have been created to cope with that particular threat.

This means that we must have tremendous shifts of budgetary priorities. Hopefully, we can have some bottom-line budget savings that will be significant. We must restructure what is left of the intelligence community in a way that meets new priorities and enables that community, and the many talented people who make it up, to efficiently meet the needs of a new century, to be equipped to deal with new missions that will be assigned. That is why we need someone not only with experience, but also someone for whom the President of the United States will have respect as these important issues are being discussed.

Second, I believe that the next Director should have a strong commitment to the congressional oversight process. As I said on the last day of the public hearings in our committee, I cannot ignore my own experience with Mr. Gates over the last 5 years. First, when he was Acting Director of the CIA, then when he was Deputy Director to Judge Webster, and during the time that he has been deputy to General Scowcroft at the National Security Council.

During the course of our hearings, we viewed in some detail those instances in recent years where he—at times single-handedly—stood up for the oversight process and for improved relationships between the branches of Government, even at the point of arguing with the President himself in support of the need for an independent statutory inspector general for the Central Intelligence Agency, and for writing into law new oversight legislation to reflect the lessons learned from the Iran-Contra affair.

Why, Mr. President, do I put such emphasis on the importance of the oversight process? Is it simply because I have been charged with the responsibility of serving as chairman of the Intelligence Committee for the past 5 years? Is it simply because I want the power of Congress enhanced in this area, or specifically the power of the Senate Intelligence Committee, or the prestige of the Senate Intelligence Committee enhanced? Not at all, Mr. President.

I am a believer in the oversight process, because it is virtually the only way that the American people—not Members of Congress, but the American people, with their elected representatives acting on their behalf—have to make sure that the most secret programs of our Government are operated in a way which is not only cost effective, but perhaps, even more important, consistent with the basic bedrock values to which we are committed as Americans, and that the law and the constitutional process will be followed.

We had the tragedy in this country of the Iran-Contra affair, because there was a failure to notify the oversight committees, and because information was withheld in a way that the watchdogs were not able to watch, that the American people, through their elected representatives, were not able to have a system of checks and balances in terms of the programs that were undertaken by some elements we now know of in the Intelligence Committee acting in league with those from the private sector, who had no authority from those elected and holding constitutional positions in our Government.

That is why I feel so strongly about the oversight process—because it goes to the heart of our ability to control and hold accountable the most secret programs of our Government.

Yes, there are times that we must have secret operations in the interest of national security, and those secrets must be kept. But, at the same time, under our constitutional representative democracy, we must ensure that those programs are being operated with oversight by the people's representatives and by those who hold constitutional positions in our Government.

That is why I think oversight is so important. That is why I have taken so seriously the responsibility that has been given to me and those who have worked with me as members of the Intelligence Committee, over now the past 7 years. I have been privileged now to serve as chairman of that committee longer than any other Member of the Senate since the committee was created.

For 4 of those years, I was privileged to have as my vice chairman the distinguished Senator from Maine [Mr. COHEN]. During this past year, I have been privileged to work with a new vice chairman, Senator MURKOWSKI of Alaska. Both of those vice chairmen have shared with me a conviction that we had a higher calling in that committee than any responsibility to party or to personal politics, that we really and truly did have a trusteeship responsibility for the rest of the Senate and for the American people; and that when an issue arises in that committee, unlike an issue before Agriculture Committee, or the Commerce Committee, or the Finance Committee, or some other committee of the Congress, including those on which I serve, it was not my responsibility, or that of Senator COHEN, or Senator MURKOWSKI, or the other members of our committee, to ask ourselves purely how do I feel about this program, but to ask ourselves how all of the Members of the Congress would feel about it, if they knew about it, and more importantly, how would the American people feel about it, if they knew about it? And if it cannot pass muster with the values of the American people, then it should not be undertaken.

That has been our responsibility. It is a responsibility that we have all tried to exercise as best we could.

I am proud of the fact that it has been a responsibility that we have exercised largely in a bipartisan fashion. I am proud of the fact that I can count on two hands the number of instances out of 300 or 400 major decisions that our committee has had to make over the last 5 or 6 years in which there has been a partisan division on our committee. And, in fact, never has there been an actual party-line vote in our committee during this period of time. And nearly all of the decisions we have reached have been unanimous, because we have simply worked together until we reached a consensus that fairly reflected the very diverse views that are present on the Senate Intelligence Committee.

So the oversight process is important. It is important to the American people. It is our means of ensuring that the CIA, its programs, and the secret programs of the rest of the intelligence community, are operated as they should be operated: honestly, lawfully, and in keeping with our basic values.

That is why I think it is so important. That is why I cannot turn my back on the actions—not the words, not the rhetoric, but the actions—Mr. Gates took during the time that he served both as Acting Director after Mr. Casey's incapacitation and death, and as Deputy Director to Judge Webster.

I point out that we are dealing, in the case of Mr. Gates, with a longstanding professional in the intelligence community, and not a politician, or someone brought in because of political credentials. He has not been someone's campaign manager, like Mr. Casey was. He is a person who started out at age 24 in the intelligence community as a junior analyst at the very bottom of the ladder.

He has served as a professional in administrations of both our political parties. He served longer as deputy to Mr. Brzezinski and in the Carter White House than he served as deputy to Mr. Casey. He has served longer as deputy to Judge Webster and longer as deputy to General Scowcroft than he did, for example, as deputy to Mr. Casey.

He has had strong bipartisan support of Directors appointed by Presidents of both political parties. We have received communications from several former Directors of the agency which indicate that their own experience in working with Mr. Gates was an experience that was very positive and constructive from their point of view. Those comments have come from a wide divergence of people, from Mr. Helms and Mr. Webster, former Directors, to Mr. Colby and Mr. Schlesinger, also former Directors.

He has been praised by those who had known him in terms of their own oversight responsibility. I received a telephone call a few days ago from Congressman Edward Boland of Massachusetts, the author of the Boland amendment which put restrictions on aid to the Contras during this very controversial period of time, a piece of legislation that was a focal point in our inquiry into the Iran-Contra affair, a distinguished past chairman of the House Intelligence Committee. He called me on the telephone, having been watching the confirmation hearings, told me as former chairman of the House Intelligence Committee he had experience in dealing with Mr. Gates. He felt strongly he should be confirmed and should be Director of Central Intelligence because he had the experience and ability and objectivity to bring about the changes that are now needed in the Central Intelligence Agency.

So we have had testimony from a number of people in a position to understand the professional capabilities and qualities that are necessary for the next Director.

From Adm. Robert Inman, former Deputy Director himself, one of the most highly regarded people in the intelligence field, known as a reformer, perhaps the preeminent reformer in the intelligence community, who had in the past two or three decades been in support of Mr. Gates.

All of them also point to his support of the oversight process. And again I go back not to rhetoric but to actions. I am sure Senator COHEN will have much to say in the course of this debate himself about his own experience.

Mr. President, I ask unanimous consent to print in the RECORD at this point an article written by former vice chairman of the committee, Mr. COHEN, in the Washington Post today headed "Why Robert Gates Should Be Confirmed."

There being no objection, the article was ordered to be printed in the RECORD as follows:

[From the Washington Post]

WHY ROBERT GATES SHOULD BE CONFIRMED

(By William S. Cohen)

During Robert Gates's recent confirmation hearings, the dark veil that conceals the CIA's inner workings was lifted. Behold, what the public discovered was not a spy palace filled with robotic objectivity and sterility, but a bureaucracy teeming with real human beings, fuel-injected with passions, prejudices, ambitions and jealousies. Contrary to popular myth, our intelligence professionals have not been drained of the emotions that bedevil most mortals.

It was an important revelation and a timely reminder that as we search for the best individuals to lead our institutions, we not view imperfection in character or error in performance with such piety that we embrace those who have made no errors or enemies by virtue of their having made no decisions.

Bob Gates is a man who made both errors and enemies during his long career at the CIA. His critics claim that he is steel-elbowed, hawkish, clever, selectively amnestic and intellectually accommodating to his superiors. The most serious charge is that he is essentially dishonest. As evidence, his critics say he was involved in the Iran-contra scandal, skewed intelligence to conform to President Reagan's or Bill Casey's predilections and was openly hostile to analysts who viewed the Soviet Union through glasses less darkly. The charges are more easily made than proved.

IRAN-CONTRA INVOLVEMENT

A common error is made in joining the sale of weapons to Iran with the diversion of funds from the sales to the Nicaraguan contras to form the shorthand description, "Iran-contra scandal." Knowledge of the foolhardy but legal sale of weapons is wrongly deemed to establish knowledge of and acquiescence in the illegal diversion of funds. I concede that Gates, once apprised of the diversion—be it in August or September of 1986—should have pursued the issue more aggressively. But I don't concede the charge that he was deeply involved in helping to conceal that diversion.

One witness argued that since the director of the CIA knew of the diversion of funds, as allegedly did the deputy director for operations, it was inconceivable Gates did not have full knowledge of the covert activities of Oliver North and others. As Arthur Liman, the Senate's counsel to the Iran-contra committee, has said: "Criminal conspiracies usually do not conform to corporate hierarchies. Conspirators confide in fellow conspirators—not necessarily in their bosses." Adm. Bobby Inman's experience as Bill Casey's deputy offers validity to Liman's observation.

PREPARATION OF FALSE TESTIMONY TO CONGRESS

Gates was charged with overseeing the preparation of Bill Casey's testimony to Congress on Nov. 20, 1986. An initial draft indicated that a shipment of Hawk missiles in November of 1985 was said to be oil-drilling equipment. It is clear from the evidence that by 1986, Bill Casey knew that Hawk missiles were aboard a CIA-controlled aircraft. It is unclear, however, whether Casey knew at the time of the shipment itself the true nature of the cargo. In fact, John McMahon, who was then Casey's deputy, testified that he initially believed that the cargo consisted of oil-drilling equipment. No evidence obtained throughout four major investigations supports the charge that Gates knew what McMahon did not or that Gates had engaged in misleading Congress by preparing false testimony.

POLITICIZATION OF INTELLIGENCE

Two former intelligence analysts and one present consultant testified that Gates was guilty of the cardinal sin of manipulating intelligence to appease policy makers. It is not an unprecedented charge—similar allegations were leveled against William Colby and more recently against William Webster—but it is one to be taken seriously, for it strikes at the very core of the agency's mission to seek and present the truth. Slanted intelligence is more dangerous than poor intelligence, or indeed, no intelligence.

Politicization, like beauty, may rest in the eye of the beholder. The criticism, rejection or simple omission of an analyst's work may be seen by that analyst as intellectual dishonesty rather than a legitimate difference of opinion. There are no hard evidentiary rules that can resolve the inevitable disputes between the managers of intelligence analysis and the managed. One must weigh factors such as: the personalities, philosophies, motivations and reputations of the individual involved; the persistence and depth of their disagreements; and the quality of the final intelligence products submitted to the policy makers. Of the roughly 2,500 intelligence estimates produced during Bob Gates's tenure, a handful were presented to the committee as evidence that Gates sacrificed his integrity for political expediency.

While others view the evidence differently, I found the charge of intellectual corruption exaggerated in some cases and simply wrong in others. For example, one witness (who himself was accused of politicization and believes he was demoted by Gates) vehemently adhered to allegations that were flatly contradicted by the evidence. In one case, he alleged that Bill Webster had ordered an investigation of politicization and had directed that Gates not be advised of the investigation. In another, he alleged that Gates had used a cover letter to transmit a CIA report on the attempted assassination of Pope John Paul II to Anne Armstrong, a member of the president's Foreign Intelligence Advisory Board, that was different from the one sent to the vice president. Both allegations were disproved at the hearings. Contrary to the charge that Gates was an unprincipled sycophant who curried favor with his superiors, the evidence showed that Gates disseminated numerous reports contradicting the policies of the Reagan administration on such contentious issues as chemical weapons, Lebanon, the Soviet pipeline and Soviet defense spending.

A NEW WORLD ORDER DEMANDS A NON-CAREER, NON-CONTROVERSIAL DIRECTOR OF CENTRAL INTELLIGENCE

The Soviet empire's collapse coupled with declining defense and intelligence budgets in the United States means that we will need to restructure the intelligence community radically to meet the requirements of the new age. Some believe that no director of the CIA should ever come from within the agency, as that individual will be hampered or compromised by institutional loyalties or enmities.

Independence and objectivity are important qualifications for any director. In addition to these qualities, President Bush obviously believes that an empirical understanding of intelligence requirements and operations also is important at a time of dynamic global change.

Some of Gates's critics, however, even while assuming that an intelligence career person is not to be automatically disqualified from directing the CIA, maintain that whether his faults are real or imaginary, the mere perception that this particular nominee carries the bruised baggage of another era precludes his confirmation to this position. It is an argument similar to one sweeping the country today that current members of Congress (who are viewed by a significant percentage of the American people as being corrupt) no longer should be called upon to deal with the fiscal, domestic and foreign policy problems confronting our nation. Experience, be damned, they argue. We need those who have yet to be corrupted.

I believe the hurricane winds of change dictate the next DCI be one who thoroughly understands the strengths and weaknesses of a vast bureaucracy, who comprehends the complexities of the intelligence world, who knows where the agency must go in the future because he understands where it has been, and one who has learned from past mistakes and is dedicated not to repeat them.

My judgment rests on something less tangible than, but equal in importance to, the documentary record compiled on Bob Gates. I have had occasion to work with him closely when he served as acting director of the CIA and deputy director to Bill Webster. I found his commitment to strong congressional oversight to be sincere. There was no holding back or cutting cute corners with partial disclosure of information. He proved open, forthcoming and prepared to carry out his responsibilities as fully to Congress as he was to the president.

Bob Gates is not a flawless man with an unblemished record. There are few people in or out of Washington who can claim perfection. I am persuaded, however, that he has the ability and the will to exercise judgment that is independent of political pressure and that he has the capacity to restore morale and effectiveness at the CIA.

Mr. BOREN. Mr. President, from the very moment that Senator COHEN and I undertook the responsibilities to serve as chairman and vice chairman of the committee, during that entire period of time in which we were dealing with Mr. Gates as Acting Director and as Deputy Director, we met with him weekly or sometimes biweekly, at least once every 2 weeks. This has been our practice continuing on with Judge Webster who had met similarly with myself and Senator MURKOWSKI to discuss those matters which were of greatest concern between the Intelligence Committee in the exercise of its watchdog responsibility and the community itself.

Those meetings occurred between, as I say, usually the Director, sometimes the Deputy Director and the vice chairman and myself over this period of time.

We were given an opportunity not really even granted the other members of our own committee who saw these people, these leaders at the agency, far less frequently than we did to judge whether or not they were sincerely committed to the oversight process.

I can say to my colleagues that during that period of time of those weekly meetings and biweekly meetings that time and time again as we sought to get information about what was going on in the intelligence community we were given information, volunteered to us, information in many cases that reflected unfavorably on the CIA or that pointed out a problem at the CIA about which we were unaware, and in some cases information that we probably never could have found even after long and intensive investigation.

In other words, Mr. Gates, both as Acting Director and as deputy to Judge Webster, did not follow the policy of "wait until they ask the right question to tell them the information they need to know." It was volunteered to us. It was very sensitive information, important information. And when we responded to it and we asked that something be done or corrective action be taken, instead of excuses or rationalizations we got action.

My colleagues have all had the experience of dealing with some of those in the executive branch, and that is not certainly the way in which many of them conduct themselves, forthrightly with immediate action and response, volunteering information instead of trying to wait until the right question was asked.

That was our experience, and I urge my colleagues to talk with Senator COHEN about it, or talk with Senator MURKOWSKI about it. Do not just take my word for it. They also sat in on those meetings. We know what we were told and we know the spirit with which we were told it. That is important for the American people when we create an independent audit unit for the first time in the history of this country, in the Senate Intelligence Committee, to be able to go out and look at the most secret accounts of the CIA around the world, anywhere in the world, and find out what was really going on.

There were those who wanted to resist that independent audit capability because until that day all of us had always been dependent upon the Central Intelligence Agency to, in a sense, audit itself and tell us how they are spending the money. As we know, the General Accounting Office and others in the Government do not provide audits of CIA because the programs are so secret and sensitive. Some of the problems are known only to a handful of people in the Government.

There were those at the Agency who said, "We do not want to give the intelligence community access," and we had no statutory authority, I would point out. We simply got the dollars to create the audit unit and asked the agency to cooperate, and there were those who did not want to cooperate and those who said, "We have to have at least 2 weeks' notice before you can show up and look at some secret bank account someplace in the world."

It was Mr. Gates, in concert with Judge Webster, and Judge Webster said, on his recommendation, that no, they have a right to have immediate access, unannounced, anywhere, any time in the world to go in and look at the most secret programs of the Government.

I will tell my colleagues, while I cannot say the instances on the floor because they remain classified, that in some cases we found things that were wrong and programs that needed to be shut down, and we shut them down. We stopped them. And we had the cooperation of the Director and the Deputy Director in doing so, and we did get excuses or recriminations. Instead, we got expressions of appreciation for our finding things that were wrong and seeking to correct them.

Mr. President, we would not have established the precedents for that strong, independent audit capability today were it not for the words and the actions of Mr. Robert Gates. The same is true of the bill which set up the independent statutory inspector general for the Central Intelligence Agency.

The President called me on the telephone after that bill was passed. He indicated to me that he was going to veto that bill. I asked as a courtesy to have the right to appear before him and argue my case. I did. I want down and met with the President. As I recall, Governor Sununu, Boyden Gray, legal counsel to the President, and others, were involved in that process. I asked Mr. Gates if he would be a part of this process and attend the meeting. He did. At that point in time Judge Webster himself, who is a man of unquestioned integrity, who has been an outstanding Director in terms of restoring confidence in the Central Intelligence Agency, the honesty and the integrity of that process, was himself opposed to the creation of an independent, statutory inspector general confirmed by the Senate because he felt that he should be trusted enough not to have such a position in his agency.

As I pointed out to him, it was no lack of trust in Judge William Webster. It was the fact he was not always going to be Director of that agency and we needed to put that function into law.

The President spoke out against it at the beginning of our conversation, and so did others in the room. In fact no one spoke out for the position that we should have an independent inspector general except myself until Mr. Gates spoke up and told the President of the United States, quite directly but respectfully, that he thought the President was wrong. He used that very word. "With all due respect, Mr. President, I believe you are wrong. The CIA changed since you were a Director. We need this kind of check and balance. We need this kind of oversight." I have seen the tragedy caused when good professional officers were forced into situations to take actions that they did not want to take; they were afraid not to act because their careers were on the line. Had we had this kind of independent inspector general at that time and if those people were required to report to him and, if the inspector general will be required, as he is under law, to report any disagreement he had with the Director, let us say he would have had with Director Casey at the time to report to our committee within 5 days, we might not ever had the tragedy of the Iran-Contra affair as it evolved.

And after hearing from Mr. Gates, the President reluctantly changed his mind, and I would say not with great enthusiasm and with some misgiving, but he did allow that bill to become law. The same was true again when we passed our authorization bills twice—the first one was vetoed—which wrote into the statutory law of this country the lessons learned from the Iran-contra affair, to retroactive findings, no verbal notification, notification of when third parties and private citizens are involved in carrying out secret programs, notification to the Intelligence Committee.

The President was on the verge of vetoing the bill for a second time because he was advised by some of those within the White House that this was again in interference with the executive preogatives of the President. Once again, I appealed to Mr. Gates to help argue our case with the President and try to help us talk the President out of vetoing this bill so we could have effective and forceful congressional oversight, and he did so.

So, Mr. President, I have been asked by our colleagues, and I have tried the best I could for the past 5 years to serve as chairman of this committee, not always stating my own views but trying to state what I thought were the views, the bipartisan views, of consensus within the Congress and within the country in terms of the attitudes and principles that the people would want to see established in these programs.

I can simply say that the tremendous progress we have made over the past 5 years in strengthening the oversight process, the weekly meetings in which information is candidly shared with the leadership of the two committees, the independent audit unit to let us go in and look at those most secret accounts which we could never do before, the independent inspector general, statutorily confirmed by the Senate, obligated to report to the Congress when he finds something wrong, even wrong with the actions of the Director, and the statutory provisions that strengthen oversight in the aftermath of the Iran-Contra Committee, they could not have been possible, they simply would not have happened, I can say to my colleagues, without the help and assistance of Mr. Gates and without his laying forcefully into the debate.

I take nothing away from the members of our own committee in saying that Members on both sides of the aisles or other Members of this Chamber who have stood with us to fight for effective oversight all have made an immense contribution and it was the initiative of our committee and the members both present and past over the past 7 years that really brought about these changes, but still there were roadblocks in the way.

There would have been Presidential vetoes, there would have been stonewalling, the possibility of stonewalling, at the CIA of our audit unit, for example, had it not been for the attitude and the positions taken by Mr. Gates during that period of time. And as one that has been asked by the Members of this body to forcefully assert the right to congressional oversight, I simply cannot ignore the fact that he made a real contribution to this process. And when I think about the qualities that are needed in this turbulent period of change in a new Director, I want a Director who not only has experience and expertise but I want a Director, not for the sake of our committee but for the sake of the country, who is committed to the oversight process and believes that Congress has a rightful role to play on behalf of the American people in overseeing intelligence operations.

I also cannot ignore the commitment he made during his testimony before us in the committee hearings on September 16, the first day of the hearings, Mr. Gates said:

> I commit to you that should I be confirmed, whatever differences may develop from time to time between the intelligence committees and the executive branch generally or CIA in particular, I would resign rather than jeopardize that relationship of trust and confidence.

Later the same day, he told us:

> Now under those circumstances, I think that if I were to find that something illegal were going on in that context, I would make the case to the President: (A) That it made it imperative to inform the Congress, and (B) that I could no longer serve as Director if that could not be done.

I believe that these are the clearest and most far-reaching commitments to the oversight process ever made by a person nominated for this position.

I have also considered what the nominee says will be his priorities for the future.

It is significant that he wants to make intelligence more useful in informing the policymaker. He has experience both as a producer and as a consumer of intelligence. Nothing is more important to morale at the CIA than for its employees to feel that their work means something. I believe that Mr. Gates having observed what kind of information is needed by Presidents and policymakers, from his vantage point in both the Bush and Carter White Houses, would help make intelligence more relevant to the policy process.

It was clear at the outset that the President had sent us a nominee whose training and experience would not be an issue. Having served in senior positions at the CIA and at the National Security Council in both Democratic and Republican administrations, Mr. Gates certainly understands intelligence and how it fits into the business of government.

But as I pointed out when Admiral Inman former Deputy Director of Central Intelligence, appeared before the committee, Mr. Gates has been perhaps the consummate staff officer. He advanced quickly through the ranks to senior positions, clearly having impressed his superiors. But the qualities that have made him an excellent staff officer are not necessarily those needed to perform as a real leader. The Members of the Senate have to assess not simply how he has performed in a staff role, but, more importantly, whether he is prepared at this point in his life and career to become a leader—to fill one of the most sensitive post in the U.S. Government.

Past performance is obviously relevant to our assessment, and there is a voluminous record here for us to analyze—a record of decisionmaking, a record of dealing with people, of taking positions. Mr. Gates has also had the misfortune of being in the intelligence community during a very controversial period. He has admitted to us that there are things he would do differently, if he had to do them over again.

We can all appreciate that. We recognize that people do mature; their outlooks change; their methods change; they grow wiser by experience. Ours is not a society, or a political system which forever holds a person's past mistakes or shortcomings against him. But the question for us is whether, in fact, Mr. Gates has changed, whether he has matured, whether he has grown wiser by experience. Is he ready to lead the CIA and the U.S. intelligence community into the post-cold-war era?

As the testimony at the committee hearings demonstrated, we have a nominee before us whose past performance as a manager of the intelligence process has been challenged. These are, for the Senate, very serious issues to consider.

Although the committee has looked into a variety of allegations in the course of the confirmation process, the most substantial allegations focus on two areas: The nominee's involvement in the Iran-Contra affair; and his tenure as CIA Deputy Director for Intelligence, responsible for the Agency's analysis and production.

I want to comment on both areas with respect to what the evidence shows and does not show.

INVOLVEMENT IN IRAN-CONTRA

First, with respect to the nominee's involvement in Iran-Contra, let me make a general observation and then proceed to specific points in the evidence.

The committee heard a lot of testimony during the first part of the hearing about Director Casey's work habits, including the testimony of the two former Deputy Directors who preceded Mr. Gates, Admiral Inman and John McMahon. It all followed a similar pattern: Mr. Casey made no special effort to keep his Deputy or the rest of the chain of command at CIA informed of what he was doing. He often reached down into the bureaucracy and made contact with whomever was dealing with the subject at hand. Mr. Casey followed a similar pattern in his dealing with the White House. If he debriefed his subordinates on conversations he had with the National Security Council staff, it was more often happenstance than routine.

It is also clear that the Iran operation was heavily compartmented within CIA. Very few were aware of the operation, and only a handful were personally involved in providing support. It was not widely known or widely discussed.

It is important to keep this background in mind in terms of evaluating Mr. Gates' role in all of this. When one looks at all the points on the record where Mr. Gates came in contact with the Iran initiative in some fashion, for those who do not understand the huge volume of work of the CIA, it could appear that he and Director Casey, and the CIA staff, must have spent half their working day mulling over the Iran operation. Quite the opposite is true. There were relatively infrequent communications between Gates and Casey on this subject, and at least until October 1, 1986, when Charles Allen informed Mr. Gates of the problems with the operation, it is reasonable to believe that it commanded relatively little of his attention.

It is important to judge the adequacy of his actions in this affair against this background.

With this perspective, let us examine the evidence.

First, the evidence shows that Mr. Gates had no part in the initiation of the arms sales to Iran, but was kept advised of the operation until it was disclosed in November 1986.

Second, the evidence shows that he had serious misgivings about this operation and he did, through Mr. McMahon, convey to Mr. Casey his disapproval of it. We had testimony of Mr. McMahon on that subject, and how they worked together on a cable to Mr. Casey, pleading with him to talk the President out of this arms sale program to Iran.

Next, some of the evidence indicates that he was advised of the speculation concerning a diversion by Mr. Kerr in late August 1986, but that under the circumstances in which the information was provided, it is not unreasonable to believe that the potential importance of the information did not register with him in a way that would have caused him to remember it.

Mr. Kerr testified it was a very brief conversation, a couple of minutes in length. Several other topics were discussed. And this particular matter was raised in something of an offhand way.

> The record does not establish that Mr. Gates deliberately withheld, or condoned the withholding, of pertinent information in Director Casey's testimony of November 21, 1986.

But while I do not find a smoking gun in the record of Iran-Contra, I have, for some time, been bothered by what I perceived to have been the general lack of aggressiveness on the part of the nominee in responding to information which came into his possession during this entire episode. Whether it was the speculation he heard about a possible diversion, or who was behind the Contra resupply operation, or the problems with the Iran arms sales, he typically sought to find out if CIA was clean, but was not aggressive in seeking the facts. While I do not believe that the record shows that Mr. Gates is guilty of malfeasance, or of initiating or conspiring with illegal behavior, it can sustain the criticism—and I believe merited criticism—that he was not active enough in seeking to prevent such conduct.

To his credit, Mr. Gates dealt with this subject in his opening statement before the committee, acknowledging that there were things he should have done, and that he should have been more aggressive in following up on things he was told. To quote a portion of what he did to us:

> I suspect few people have reflected more than I have on the Iran-Contra affair—what went wrong, why CIA played by rules not of its own making, and what might have been done to prevent or at least stop this tragic affair. CIA has already paid a fearful price and learned costly lessons. But today I want to speak about the misjudgments I made. * * *
>
> I should have taken more seriously * * * the possibility of impropriety or even wrongdoing in the government, and pursued this possibility more aggressively.

Said Mr. Gates:

> I should have pressed the issue of a possible diversion more strenuously with Director Casey and with Admiral Poindexter. * * *
>
> I should have been more skeptical about what I was told. I should have asked more questions and I should have been less satisfied with the answers I received, especially from Director Casey. * * *
>
> [But] you will not find a nominee for Director of Central Intelligence more aware of and sensitive to the lessons of that time, or more understanding of the importance of a good faith relationship with the Congress.

I accept Mr. Gates' statement, and believe it to be sincere. I think this lesson has sunk in.

Again, I say I do not believe it merely because he said it. I believe it because of my own personal experience, week after week, with the vice chairman, meeting with him both as acting and deputy director, and the kind of information and kind of trust that was placed in the oversight committees by him. I believe it because I have seen him argue, as I say, vociferously and vigorously with others in the executive branch on behalf of congressional oversight powers.

So my belief is not simply based upon the fact that he said it to the committee on the opening day, the fact that he said it, that he was a big enough person to own up to his mistakes, but more importantly, over the past 3 to 4 years, he has acted upon the lessons that he learned. I am prepared to believe the nominee would, in fact, do things differently if he were confronted with similar circumstances in the future. In some ways he may indeed be even more sensitive to these problems than any other potential nominee because of his own experience. Who among us has not learned from his mistakes and been more sensitive to certain kinds of problems because of mistakes we ourselves have made in the past?

Perhaps the most difficult set of issues we have attempted to evaluate regards allegations that Mr. Gates systematically suppressed or distorted intelligence estimates so that they reflected the dominant policy positions of the Reagan administration.

These allegations have been treated seriously and exhaustively because they go to the heart of why we established the Central Intelligence Agency to provide the President with honest, independent judgments on matters affecting our Nation's security. As I have noted, it makes little sense to spend billions of dollars on sophisticated satellites, human intelligence and all the tools we use to collect intelligence if what comes out of the process is skewed, dishonest or self serving.

Our staff has pursued numerous allegations, many more than the 20 points specified by Mr. Gates in open session. We heard from six compelling witnesses, in what can only be termed some of the most riveting testimony ever presented before this committee or the American people about U.S. intelligence. We have reviewed hundreds of documents, and have had an unprecedented amount of material declassified and released to the public.

But the allegations regarding politicization extend far beyond documents and cases. Rather they affect people, and raise issues regarding the nominee's leadership ability and sensitivity to the feelings and motions of the people he was charged to lead.

The evidence supports several conclusions.

First, it is clear that the transition from the 1970's to the 1980's was marked by a significant philosophical and policy transformation in our view of the Soviet Union both in policy and intelligence.

The Soviet invasion of Afghanistan marked the end of détente. The election of Ronald Reagan and the appointment of Bill Casey as DCI, a man of definite views and unique standing with the President created an inevitable tension in an intelligence bureaucracy which critics had long perceived to hold too benign a view of Soviet intentions.

There is no doubt that the Casey era brought a new attitude with respect to the analysis of Soviet behavior. Casey wanted evidence emphasized that had previously been deemphasized. He wanted issues developed that analysts previously had failed to take seriously. The question is, did these actions result in better intelligence or skewed intelligence?

Graham Fuller's testimony to the committee articulated the view that some have described as a liberal versus conservative struggle with regard to Soviet analysis. According to Mr. Fuller; and I now quote him:

> The actions that the Soviets fulfilled in Afghanistan were inconsistent with a generally shared SOVA—

That is the Soviet division of the Central Intelligence Agency—

> vision that the Soviets tended to react defensively in the third world and avoided risk. There was a tendency toward a certain homogenization, couched primarily in terms of Soviet dilemmas and problems, obscuring the fact that they had just taken over several real countries in the process in the late 1970's.

Doug MacEachin, another of our witnesses, provided additional insight into the turbulent transition that occurred at the CIA from the 1970's to the 1980's. In depicting CIA's experiences with regard to the Soviet invasions of Czechoslovakia in 1968 and Afghanistan in 1979 he stated:

> In both instances, we had seen definite signs of military preparations consistent with an invasion. In each case we failed to give a judgment that a military attack was likely or even the most likely outcome. In each case the attack did occur. In each case the attack occurred—

For example in Afghanistan—

> when our analysis has persuaded us that this would be a dumb thing for the Soviets to do and they probably would not be doing dumb things. In both cases part of our failure was our hang up in internal debates. Rather than trying to lay out the threatening situation to the reader, acknowledging both our uncertainties and the potentials, we routinely got bogged down in an internal contest as to whose views would win the institutional place. Who would be judged right at least for the purposes of putting out the product?

This was before Mr. Gates became Deputy Director of Intelligence. This was being described as too benign a view of the Soviet Union, mistakes made and failure to predict invasion of Afghanistan, and other action.

When Mr. Gates became Deputy Director for Intelligence, he was placed in the middle of this. Conflict was already occurring; the agency was already divided.

It is well known that Gates did not have a benign view of the Soviet Union. His criticisms of the analysis of the agency and his views were echoed by many members of the administration that was coming into office in the early 1980's.

Yet, according to Mr. MacEachin—a man who described his biases regarding the Soviet Union as closer to Mel Goodmans than Bob Gates—here is what Mr. MacEachin said, talking about Mr. Gates:

> In my experience he was as he has said, ready to be persuaded by evidence and analysis. I found him more ready to ensure treatment of competing hypotheses, honest treatment than many of the people criticizing him here for imposing his own outlook. And he was definitely ready to publish intelligence judgments that ran counter to the very strongly held views and vested interests of many consumers. And I found this to be true even when he himself was not persuaded that the judgment was necessarily right.

In others words, he was in favor of publishing this analysis even when he himself did not agree with it, and when the policymakers did not agree with it.

Mr. Graham Fuller stated:

> At no time was I ever told what either the administration or Casey or Gates wanted to come out of an estimate or what it should say or what conclusions it should reach. Not only was I never told what to say, but I would have regarded it as outrageously improper to even hear the suggestion.
>
> Where Casey did not always hide what he hoped analysis would indicate, Gates was always fully aware of the requirements of analytic procedure and of the validity of independent analysis.

Indeed, some contend that what happened in the Casey-Gates era was that the Agency's analytical judgments were not supported by the available intelligence. Rather, conclusions were drawn in finished analysis, without substantiation, where the product highlighted the more nefarious aspects of Soviet intentions.

For example, the Agency's work on Iran, particularly the 1985 memorandum to holders authored by Graham Fuller, has been cited as a case where the evidence simply did not bear out the analysis that the Soviets viewed Iran as a target of major opportunity. Still, the evidence does not support a conspiracy theory that Mr. Fuller's estimate was concocted intentionally to rationalize a later covert policy of arms for hostages—a policy Fuller himself testified he knew nothing about. But Fuller's own statement of his motivation for the 1985 piece bears repeating.

> When the SOVA analyst brought me this portion of the estimate, Mr. Chairman, on Soviet policy toward Iran, I was immediately unhappy. It dismissed the possibility that the U.S.S.R. would even seek to take advantage of the desperate arms need in Iran and it comfortably dismissed any serious design or intention to gain dominant influence in Iran in the foreseeable future.
>
> But would not Moscow have leapt at the chance to gain a foothold in Iran a few years after the invasion and the occupation of Afganhistan even if the possibility were only slight the impact of such a logical move by Moscow to support left wing forces in Iran to exploit chaos or to become a sole arms source to Iran would have been a major political coup for Moscow and a major loss for the U.S. It would have been nothing short of derelict of the intelligence community to point out this warning. I believe that it can only be through the relentless examination of various new hypotheses and counter hypotheses that the intelligence community will ever have a chance to get at the illusive truths of forecasting the unknowable.
>
> Topics should not have been dismissed so contemptuously just because CIA analysts have no evidence that the Soviets were involved in one or another activity. This is one of the dilemmas of good intelligence work. It is not good versus evil. So is the absence of evidence mean that something is not there. Or it has not happened? How much should we rely on intuition judgments and experience in appraising the likelihood of events or motives, or the issue of who benefits from an event?

This comes from a person with long experience on the scene in the Middle East.

He goes on:

> The dilemma can never be solved. SOVA seems to have clung to the idea that the sweeping force of "no evidence" means that we don't think it happened; which is a safe and perhaps appropriate position for a junior analyst.
>
> Is wisdom couched exclusively at lower levels with the hard facts? Or does it reside, perhaps nearer the top with senior, experienced officials who have seen much of the world and a lot of politics—and indeed some of whom may also have their own agendas as well.

I think we all understand what is meant here, that experience and judgment does come into play.

Politicization is an extremely serious charge; one that we have not dismissed lightly. It is also a charge that, once made, is difficult to completely resolve. Again, I quote from Mr. MacEachin's testimony:

> But it's right out of Franz Kafka. Because once you are accused, the Inspector General will never come back and say you're absolved. You will never be definitely acquitted. They will say we found no evidence to substantiate it. Charged but not indicted. Ostensibly acquitted.

It is almost impossible to prove a negative, as we have all learned, once an accusation is made. It is often damaging.

There are many elements of the record which do not support the charge of systematic politicization. If politicization were as systematic as alleged and I urge my colleagues to consider this:

Would the CIA have published a paper on Soviet chemical weapons in 1984 stating the view that the Soviets were unlikely to initiate extensive use of chemical weapons during a war with NATO at a time the House of Representatives was debating appropriations for binary chemical weapons?

All of us remember the emotions of that debate. I can recall within this very Chamber the then Vice President of the United States, then Vice President Bush, came to this Chamber to cast a tie-breaking vote on this issue, and here was Mr. Gates supporting and encouraging the publication of a report that said the Soviets were unlikely to use this kind of chemical gas, implying that, therefore, we do not need to be producing it ourselves.

Second, would the CIA have categorically stated in 1983 that United States policy aspirations in Lebanon were ill-founded and would not succeed? Would the Agency tell the Secretary of State that the May 17 accords were doomed to failure? They were simply seeking to please the policymaker?

Would Bob Gates have supported the Office of Soviet Analysis' judgment in 1983 that the growth in Soviet defense spending has leveled off—that it was approaching zero growth during the Reagan defense buildup against the strong wishes of the Department of Defense and the Defense Intelligence Agency?

Would Bob Gates in June of 1988 have allowed Doug MacEachin, then Director of CIA's Office of Soviet Affairs, to publish a view, contrary to his own, that the defense burden would lead Gorbachev to take unilateral cuts—cuts that were indeed taken 6 months later by the Soviets if he was intent on politicizing intelligence and only having views go forward that please the policymaker, this in the midst of a major debate in Congress on the amount that was appropriated for the defense budget, contrary to the recommendations of the President?

But to deal with this issue as one of black and white would be a mistake. There were failures here. There were shortcomings in the process. Some would call it a failure of leadership, some a lack of maturity or sensitivity. But the fact is that there are clear winners and losers in every judgment made by the intelligence community. And during the 1980's, we must conclude that there were problems of morale and confidence at lower working levels. The process either did not accommodate the views of the minority, in some cases, or failed to give them an adequate forum to fully articulate their points of view. Disenfranchised analysts came to feel that their point of view once neglected would never prevail again.

The facts show that Bob Gates was a tough manager. He demanded that analysts clearly marshal the facts and all of the evidence. The environment was tough, no place for the meek, and in the process, some professionals came to feel that people were being leaned on and that their views were not treated with respect.

A review of the documents simply, as I have indicated, do not bear out charges of blanket politicization. In some cases, in some few cases out of the many, many scores of estimates that were given, there is some reason to question the judgment that was made. But I do think that leadership and sensitivity were lacking. Those on the losing side of decisions felt mistreated. Upon reflection, Mr. Gates has given several positive suggestions for improving the analytical process, including providing crisp, clear majority decisions with dissenting minority views being given a full opportunity for the dissenters to spell out their reasoning and their own point of view, much like that we often see in a court decision. I think this is a very appropriate suggestion and one which the next director of central intelligence, be it Mr. Gates or someone else, should undertake to implement.

The critical question in my mind is: Has Bob Gates grown? Is he ready to lead, and by leading, nurture all in his flock?

My own personal conclusion is that he has. People must be judged at different points in their careers. I believe that he understands the needs of people, and the real pain of the 1980's.

He served a difficult and opinionated Director in the 1980's. But he also served under two of the finest intelligence officers we have known—Bobby Inman and John McMahon. He also has served as deputy to two people of outstanding character and integrity, Bill Webster and Brent Scowcroft. He served under the very able direction of Mr. Brzezinski in the administration of President Carter.

He served Bill Casey, but he also served these men as well. So when blanket indictments are being delivered, they are being delivered against other individuals as well, men who I believe would not tolerate imposing their own world views or politics upon analytical judgments.

After watching and working with Bob Gates as chairman of this committee for over 5 years, I believe he has matured, and that he is ready to face the challenges ahead and address the concerns of the people he will lead. This is my own judgment—and one I hope my colleagues will consider.

Let me say a few words about the analysts, young and old, who came forward to cooperate with the committee during the confirmation process.

As I said during the final moments of our own committee process, they have my commitment and indeed the commitment of our committee no action will be taken against them in a way that will disrupt or penalize their career advancement. If Mr. Gates is confirmed, I intend to hold him accountable and carefully scrutinize his decisions and actions to ensure that needed changes are made.

Our committee and, I hope, the entire Senate will pay increased attention to the less glamorous but the important issue of morale at the Central Intelligence Agency and the well-being of the men and women who work there. I have given personal assurances to at least two individuals that for my remaining 5 years in the Senate, long after I have left this committee, I will intervene on their behalf at the slightest hint of retribution. And I say openly to those at the CIA that I believe Bob Gates will live up to the standards of decency required. But if he does not, I will be the first to take action whether I serve on the Intelligence Committee or not.

I also indicated just before we took the vote in our committee that I believed the confirmation process itself has been constructive and it has been beneficial. In recent days, because of obvious problems, there are many who have expressed doubt that we should have a process like the confirmation process on an important nomination in our Government. If they will examine the process followed by the Intelligence Committee, a bipartisan process, a thorough process, a fair process, a businesslike process, I think they will find there are many benefits that flow from a tough and thorough and demanding confirmation process. I believe that this nominee, Mr. Gates, will be more sensitive to the feelings and to the perceptions of others as a result of the confirmation process and that the committee will be more attentive to morale problems.

So I think it is going to be helpful. The next Director is going to have to deal with a group of people who are very apprehensive. We are moving into an unknown period. They know that major reorganizations are coming into the intelligence community. These are talented men and women.

If I had to say which agency in the Government has perhaps the highest level of talent, the highest IQ level of any of the agencies of Government, it is probably those who serve in the intelligence community. Many of them are dedicated. It is very frustrating work because by the very nature of their work their successes are never known. They can never have their children congratulated in school because their classmates have read about the wonderful deeds of their mothers or fathers who work at the Central Intelligence Agency. The only thing that ever becomes public are the failures and misfortunes.

So it is a tough business. It is difficult to keep morale up, especially when the contributions that you are making to your country are known to so few. So it is very important to have a Director that is sensitive to the morale problems, sensitive to the needs of the employees at the agency. And I believe that the confirmation process itself as we have had an opportunity to listen to the perceptions, whether they are right or wrong, of men and women at the Central Intelligence Agency will be helpful to this nominee if, indeed, he is charged with the responsibility of leading the agency when we finish our deliberations.

Finally a note as to who got it right and who got it wrong about the failure of communism and the rise of democracy in the Soviet Union and whether being right or wrong should influence our deliberations about Mr. Gates.

My reading is that the CIA, at least for the last 5 years, has been consistent and unequivocal in its description of a steadily worsening failure of a Soviet economic system to provide the material basis for its society.

I know there will be those—my good friend, the distinguished former vice chairman of the committee during a period of time before I came on the committee, certainly has his strong views. I am not here as an apologist for the mistakes that have been made by the Agency. I think the speed with which the changes came in the Soviet Union surprised virtually all of those in the community, or many of those in the community as it surprised the policymakers in Government. I am certainly not prepared to say that the estimates of the gross national product, of the Soviet Union were correct and that many mistakes were not made, but I think we should also put into the RECORD some of the instances in which clearly the intelligence community was tracking the changes in the Soviet Union and was right in what it said.

For example, I quote from an estimate made in 1989. Let me quote this because I have heard that the CIA often compared the economy of the Soviet Union to that of Japan. Let me read what the CIA said in 1989.

> Indeed, although clearly a military superpower, the Soviet Union has an economy that in many ways is like that of a developing country. The level of per capita consumption in the U.S.S.R., for instance is far below that of the developed Western countries and Japan * * * the pattern of consumption and output [also] resembles that of less developed nations * * * [for example] the per capita consumption of consumer durables resembles that of many Latin American countries * * * [it] was more comparable to countries such as Mexico and Brazil [in] 1985 * * * the Soviet position relative to the rest of the world has not improved over the past 2 decades. * * * The share of agricultural output in GDP in the Soviet Union is similar to that in Turkey and in the Philippines.

I can quote another report in 1988 which I mentioned a little bit earlier, which indicates after talking about the terrible economic problems faced by the Soviet Union:

> All of this leads us to conclude that—barring a major change in the party leadership or in the external situation—there is a good chance that Gorbachev will, by the end of this decade, turn to unilateral defense cuts.

There are many others that I could quote going back into earlier periods of time; the fact that they were really on a downhill slide in terms of their economy. I will not take time to go into all of them. But I simply want to point out that the record is not quite one of complete failure to read the signs in the Soviet Union.

As has been indicated, the question that could not be answered with confidence and over which there was a substantial debate among analysts within the Soviet office and within the community, the Government and academic community was what would be the outcome when the seemingly inevitable crisis did occur? Would it result in a more backward government, a move back toward repressive totalitarianism, or would forces for political reform break out toward a more democratic process as has been the case?

It is no secret that Mr. Gates had decidely hard-line views on questions regarding the political failure of the Soviet Union or its future. While he was right about his concern that hardliners would make a last effort through a coup or other means to reverse Gorbachev's reforms, and he clearly was right about that, he was clearly too pessimistic about the outcome as we have now seen.

But I do not believe that anyone should be faulted purely for being wrong some of the time, if what we want out of intelligence is straightforward, clear points of view, both majority views and dissenting views that are not relegated to obscure footnotes. If we get into the business of punishing people every time they are wrong, we will end up destroying any chance we have of getting better analysis and moving away from the "mush" that we have been receiving.

In addition to the allegations on politicization, the committee in closed session looked into the nominee's actions or involvement in two other areas. The first involved his knowledge of reporting, which involved contacts between Members of Congress and officials of the Sandinista regime during the mid-1980's, as testified to by Alan Fiers, and whether such reports may have been used improperly.

While the committee's inquiry into this area is still ongoing, I believe we have ascertained that element which relates to Mr. Gates. We have also heard from the nominee under oath on this subject. I see nothing here that suggests improper action on the part of the nominee.

The second area we dealt with in closed session involved the CIA's relationship with the Government of Iraq during the mid-1980's. This involved only the provision of certain intelligence, no arms or equipment, in support of the Iraq war effort.

Questions were raised whether the transfer of this information should have been treated as covert action under the law requiring a Presidential finding and reporting to the committees. Intelligence exchanges in the past had not been considered covert actions, but there were circumstances which suggested to some that the purpose of a sharing arrangement may have more than simply provided a quid pro quo for intelligence collection.

My view is that this activity under the law, intelligence sharing, was not a covert action. It was not intended to influence Iraq to do anything it was not already doing. It was intended to support an ongoing activity. The United States did not enter into the relationship to induce Iraq to undertake a new policy but, rather, to show Iraq how to succeed at the policy it had already adopted. Throughout this relationship, the United States provided nothing but intelligence and advice. No evidence has been uncovered up to this time to indicate that the CIA or any other entity of the United States Government supplied arms or related military equipment or technology to Iraq.

I read an interesting article in the newspaper over the weekend which talked about whether it was proper for us, whether it was sound, whether it was good judgment for us to have shared intelligence with Iraq. And it indicated that the committee had found there was nothing wrong with that, it was indeed good judgment. That was certainly not what I said.

I have never said that I thought it was good judgment. The question we have been examining is the relationship of this nominee to any intelligence sharing that went on and whether or not it was legal, not whether it was wise.

As I have cautioned about our relationship with Syria and other countries that have practiced terrorism in the past, we have to be very careful that we do not allow those alliances of the moment in a passing national interest to blind us to the activities in the long run of countries that would be alarming to our national interest. A marriage of convenience temporarily does not always mean that in the long run the interests of the country will coincide.

I frankly, in my own mind, have some real question about the wisdom of whether or not we should have ever entered into any kind of relationship with Iraq. That is hindsight. I think we all realize that at that time there was a possibility that Iran would have won the war outright, and we all understand the relationship between the United States and Iran during that period of time was strained, to say the least. We had gone through the hostage crisis, and many other events involving the Iranians, which certainly deeply soured and bitterly tainted American-Iranian relations during that period of time.

Our focus has been rather not on the wisdom of what was done either at the time or in retrospect but on whether or not these actions were legal.

Let me say it is ironic that there could be any implied criticism of Mr. Gates in this regard because he is the person negotiating with our committee who has continued to move more broadly the definition of what is a significant intelligence activity.

In other words, the actions undertaken at that time under the definitions that we were then working under the precedents of how the Intelligence Committee shared information with our committee would not have been shared, although there, indeed, was some briefing of our committee staff. It was not mandated under the policies we were then following.

We set out, Senator COHEN, and myself, and others to negotiate with the administration to broaden the definition of significant intelligence activities so the committee would get more information about more activities in the future. Mr. Gates, who in fact principally on the administration side or the executive branch side, helped us and spoke in favor of changing and broadening the definitions and the practice. So because of his actions negotiating and being helpful to us on the committee, as we ascertained our right to get this information, it is because of the position that he and others took, if this activity were to happen today, we would be given a great deal more information about it than we would have been given 4 or 5 years ago.

Against this factual record involving the service of Mr. Gates, I have also considered what the nominee says will be his priorities for the future.

I think it is significant that the nominee believes the DCI, while not playing the role of a policy advocate, must be deeply involved, in a very practical way, in the policymaking process within the administration. Otherwise, this enormous investment we make in intelligence will have little practical impact.

It is significant that he sees the DCI as taking more of a leadership role in the intelligence community, suggesting that the DCI's authorities themselves should be reviewed, that national capabilities must be better integrated to support the military, and that better ways must be found to get the intelligence output to policymakers to make a difference.

I applaud his statements that he will make dealing with the threat of proliferation of chemical, nuclear, and biological weapons his first priority, that he sees economic intelligence as something we must do much better in the future, and that we need more emphasis on obtaining better human source intelligence about the intentions of potential adversaries to provide earlier warning in an era when fewer American forces are forward positioned around the world. He also understands the need for new education programs like the National Security Education Act proposed by this committee to create a larger pool of expertise in foreign language and area studies. He also sees the possibility of a greater use of CIA assets to assist in solving global environmental problems.

He also accepts the need for change and for budget reductions, which we all think are inevitable, but wants to manage them in a way that keeps our eye on what still matters to the United States insofar as its strategic interests are concerned.

In short, the nominee's views about the future of intelligence accord largely with my own and those of many committee members.

Last, I have tried to imagine how this appointment would affect the CIA itself.

Clearly, there are many at CIA who are anxious about this nomination.

To deal with these concerns, it will take not just a firm hand, but a gentle hand as well. This will be a time for healing, not stridency; for compassion, not vindictiveness. A time to get on with the future, a future that holds enormous challenge for the intelligence community, and not to reopen old wounds or rekindle old animosities.

It will not be easy for this nominee, but I believe he can do it. He would start with an important advantage: He is close to this President. As has been said several times at these hearings, there is nothing more important to morale at the CIA than for its employees to feel their work means something.

I think the nominee also understands how critical the CIA employee is to the process. If CIA is to provide insight to the policymakers, it must have employees who are themselves insightful, who are trained and experienced in international affairs, who are well-traveled and conversant with other cultures, and who are intellectually rigorous. It also needs employees who will stay there and become experts and specialists in their own right. And people, ultimately, do not stay where they are unhappy, where they are not challenged, where their work is not appreciated, or their concerns addressed. I think Mr. Gates appreciates how important this intangible factor really is.

In concluding, I believe, that on balance, Robert M. Gates is prepared to provide that kind of leadership we need as we approach the next century. He has the necessary expertise. He has a first-rate mind. He has a sincere commitment to the oversight process and a partnership with Congress while enjoying the respect of the President. Like all of us, he is not the same person he was 5 or 10 years ago. I am convinced that he has learned from his mistakes and in fact that he will be an even better director because he has passed through difficult times.

I will vote to confirm this nominee as I voted to recommend his confirmation as a member of the committee. I hope that my colleagues in the Senate will do the same. It is my honest view that he has the ability to be not just an adequate or an acceptable Director of Central Intelligence, but he has the ability to be an outstanding one.

Let me say that in making these judgments I want to make it clear that again the intelligence community or the Intelligence Committee, whether we are dealing with Mr. Gates, if he is indeed confirmed, or some other person, the President's choice who is confirmed to this position, the Intelligence Committee will retain a vigorous oversight. We expect to be full partners in the process of redesigning and reshaping the intelligence community, and reordering its budgetary priorities. We are going to be vigilant, as I have indicated, about the internal situation at the CIA itself, about the morale and the working conditions of those that work in the agency and make such a contribution to the national security.

We intend to be vigilant, whether we are dealing with nominee as the next Director or some one else in that position. We will continue to do all that we can, all within our power, utilizing all of the new devices that have been created over the past 3 or 4 years, to strengthen the oversight process and to make sure we never forget that the Central Intelligence Agency, like all other parts of our Government, does not belong to the President. It does not belong to the members of the Senate Intelligence Committee, or the House Intelligence Committee. It belongs to the American people. It is ultimately accountable to them as an agency that must be operated in keeping with their values, their traditions.

Mr. President, I appreciate the patience of my colleagues in allowing me to make these opening comments and to summarize the actions of the Senate Select Committee on Intelligence. As I have indicated, we have by vote of 11 to 4 recommended to our colleagues in the Senate that Mr. Gates' nomination be approved, and that he be designated to serve as the next Director of the Central Intelligence Agency.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, in a fine essay in this morning's Washington Post, "Why Robert Gates Should be Confirmed," Senator COHEN, who until last year served as vice chairman of the Select Committee on Intelligence, offers a fine and thoughtful argument, of the sort we have come to rely upon from him. Thoughtful, balanced, and in his special way, to the point. "the most serious charge [against Mr. Gates] is that he is essentially dishonest." In the main, that he lied to Congress.

I do not consider that charge to be proven. I consider it a dim day for the Central Intelligence Agency when that becomes the pivotal issue in a choice of a Director. But having read "Scandal: The Crisis of Mistrust in American Politics," Suzanne Garment's brilliant new critique of American politics and government, there is no great ground for surprise in this.

Let me then make this statement. If, in my view, the most serious charge against Mr. Gates was dishonesty, I would vote for him. As, indeed, most Senators will vote for him. But I have a very different view. One which commands almost no support. Or interest. And, yet, the Constitution clearly anticipates that Members will present such views in the Senate from time to time. And provides that "for any Speech or Debate in either House, they shall not be questioned in any other Place." (Article I, section 6.) A matter to which I will return.

My concern is of a wholly different order. It is that the Central Intelligence Agency failed in its single, overriding, defining mission, which was to chart the course of Soviet affairs.

I repeat what I have said before. For a generation the Central Intelligence Agency told successive Presidents everything there was to know about the Soviet Union except that it was about to fall apart, principally from internal failures and contradictions.

To the contrary, almost to the moment of that collapse, the Central Intelligence Agency depicted the Soviet Union as an industrial giant, whose economy was closing on that of the United States, with all that implied for sustained military and diplomatic intervention abroad.

Our able and I say learned chairman has just been telling us of a report in 1989, when the Agency discovered that the per capita income of the Soviet Union was about that of Mexico. Well, it took until the Soviet empire was breaking up and falling apart, and starvation was in the press, that this momentous discovery was made. Ten years earlier, the formal judgment was that the per capita income of the Soviet Union was about that of the United Kingdom, about that of Japan. It was not until the collapse a decade later that this revisionist view appeared, and it is to that revisionist view that I address these remarks which, as I say, will not be attendant, but may some day be read in another generation.

I am not, however, alone in this view. In the current issue of Foreign Affairs, Adm. Stansfield Turner, former Director of the CIA, fair to pleads that:

> We * * * not gloss over the enormity of this failure to forecast the magnitude of the Soviet crisis.

I repeat, Mr. President, "The enormity of this failure." This comes from a very able former Director. I was on the committee the 4 years that he was DCI.

Already, he continues, we hear "revisionist rumblings that the CIA did in fact see the Soviet collapse emerging after all." Some individuals may have done, he continues. But: "On this one, the corporate view missed by a mile."

If you wish to encounter more of these revisionist rumblings, Mr. President, you have only to consult the report of the Select Committee on the Nomination of Robert M. Gates to be Director of Central Intelligence. We knew as early as 1989 that there was going to be trouble. Well, some individuals, Admiral Turner said, have begun this revisionism because some individuals may well have foreseen that collapse. But again I quote Admiral Turner: "On this one, the corporate view missed by a mile."

But plain, it is this Senator's view that by confirming Mr. Gates, the Senate will confirm this revisionist view.

Whereupon the Agency which this Senator has known, has worked with, worked within, has fiercely defended, and unreservedly admired—this Agency will die.

If that statement has an emotional edge, so be it. I am of that generation which held the CIA in special respect, even awe. For it was an awesome challenge: to take on the Soviet Union at the height of the expectation of irrepressible world conflict. Close friends, classmates, joined—one died. Young. Others worked along side it. Starting about 30 years ago, I did. As an ambassador. As a participant in various activities. At one point in the 1970's, for example, it fell to me to participate in the defection of Arkady N. Shevchenko, the highest ranking official of the Soviet Government ever to come over to our side, as we would say. Time magazine described "consternation at the United Nations, intense alarm in Moscow, and scarcely concealed elation in Washington" when the news broke some years later. But there was no celebrating on the part of the agents involved. Their existence at the time, and later, was known but to a tiny few, and remained that way. They had taken vows of silence, anonymity, and, yes, poverty by the standards of their contemporaries, and intense deprivation and danger at points in their careers.

These are the men and women I think about this afternoon. It is their Agency that is now going to go the way of all mortals. All mortal Government organizations, that is. The organizational equivalent of eutrophication. Drying up, dying off.

I began to worry about this after becoming a member of the Intelligence Committee in 1977, and especially so after becoming vice chairman, back to back as he would say, with our beloved former colleague, Barry Goldwater. After rotating off the committee, I was given the Agency Seal Medallion, out of some sense, I like to think, that when we had disagreed—when at one point I said I would resign—it was because I cared.

When I speak of the Agency as I have known it dying off, I mean nothing more dramatic than the gradual routinization and bureaucratization of its work. Accompanied by the routine activities known to theorists as organizational maintenance.

In this regard I recall the occasion when our great colleague from the other body, Representative Boland of Massachusetts, rotated off the House select committee. A reception was held. Sumptuous by any standards—the shrimp never gave out—such was the generosity of the corporate donors. I was asked to come over and say a word on behalf of the Senate committee, which I did with the greatest pleasure. Afterward, an Agency official came over and said: "You know, any college senior has been taught that if an activity in the executive branch wishes to flourish, it must get itself a pair of committees on Capitol Hill to look after it. Now do you not think it surprising that it has taken something called the 'intelligence community' a quarter century to figure this out!"

And how right he was. The CIA is now steadily acquiring all the instruments and strategies of organizational maintenance that we expect of, say, the Department of Agriculture. Or the FBI. Not long ago Cokie Roberts, that redoubtable observer of Washington ways, broadcast on National Public Radio a commentary on the Gates hearings. She touched on the question of whether the Agency had missed the Soviet collapse. Promptly on cue, a representative of the Director of Public Relations—or should I say directorate—called up to ask if Ms. Roberts wouldn't care to come out to visit the Agency, get to know its analysts, see the day care center, and perhaps better understand their work.

Size becomes self-justifying. Senator COHEN writes this morning that we need Mr. Gates because "the next DCI [must] be one who thoroughly understands the strengths and weaknesses of a vast bureaucracy.* * *" That is our BILL COHEN. He tells it like it is. This bureaucracy now has an organization of retired officers who rally round when the budget is threatened. The budget is secret, of course; and like most such secret budgets, grows in the dark.

An affirmative action program is firmly in place. In recent days lively articles by Paul Farhi of the Post and Elaine Sciolino of the Times report a new advertising campaign.

"Uncle Sam Says Come Spy for Me As CIA Begins Appeal to Minorities," "Recruitment Advertising Campaign Debuts in Ebony Magazine," "Bumpy Ride for C.I.A. in Effort to Hire Minorities." Add to this the economic weight and interests of assorted contractors, principally in the aerospace industry, and you have the three components of the classic Iron Triangle of congressional, executive, and private interests.

Most disappointing is the revisionism. In July 1990 I presided at hearings of the Committee on Foreign Relations on "Estimating the Size and Growth of the Soviet Economy." These were not adversarial. Clearly, the intelligence community had overestimated the size of the Soviet economy by as much as a factor of three. A huge, almost inexplicable error had been made. I will not swear to this, but as I have earlier noted, citing the Constitution, I cannot be held responsible in another place for what I say on the floor. And so I would say, generally speaking, the Soviet economy in the last two decades, has been about one-third the size of the CIA estimate.

But, this was not an error confined to the intelligence community. For reasons that might better be suggested at another time and place, it was part of a general failure of perception, albeit the U.S. Government paid for most of it. The matter was nicely summed up by a brilliant witness before our committee, Nicholas Eberstadt who said:

> In fact, I believe, it may be safe to say that the U.S. Government's effort to describe the Soviet economy may be the largest single project in the social science research ever undertaken.

And he went on to say, it was a bust; we got it wrong; to which I will return, because it is not getting it wrong that is unforgivable, it is denying that you got it wrong. That is where you find out the quality of institutions and individuals.

But what did we hear from Mr. George Kolt, Director of Soviet Analysis, Directorate of Intelligence, Central Intelligence Agency:

> In my statement I plan to review for you our methodology for assessing Soviet economic performance; highlight some of the pitfalls involved, pitfalls that we have not always been able to avoid; discuss the main lines of criticism of our work; and finally, cite previous public testimony that I believe will show that essentially we were right in our descriptions of the Soviet economy over time and its prospects.

A year later, Admiral Turner would speak of the enormity of the CIA failure. But within the Agency: Stonewalling and revisionism.

At this point I should declare my interest, as the lawyers say. In the course of the 1970's I became convinced that the U.S.S.R. was an unstable regime and would soon collapse. My reasoning was simply enough. It was clear enough that Marxist-Leninist doctrine propounded two central predictions. The first was that socialist production would be more efficient than capitalist production. Anyone visiting Moscow would know that this was not yet self-evident. One thinks of George Will's story of Isaac Deutscher telling a group at Oxford that "proof" of Trotsky's farsightedness was that even then, years later, none of his predictions had yet come true. Then in 1976 came Murray Feshbach's striking testimony before the Joint Economic Committee that life expectancy for males in the Soviet Union was declining. Feshback a product, incidentally, of the Bureau of the Census. So much is collected in mortality statistics. Something was seriously wrong.

A second Marxist-Leninist prediction was the disappearance of ethnic/nationalist/religious attachments and the emergency of a new Soviet man, as they said, dedicated to international solidarity and ineluctable triumph. Well, by 1979, it was plain enough that the Czar's empire was seething with ethnic, nationalist, religious discontent.

In these circumstances, in 1979 I wrote an essay for Newsweek—part of a forum on the eighties—in which I said that in the 1980's the Soviet Union would break up and that this could be an intensely dangerous moment for the simple reason that the new insurgent or separatist nations that would emerge could very possibly get hold of nuclear weapons as part of their own defense system against Moscow, or some other hated if nearby capital. In this regard there is an important front page story in today's Post—"Soviet Government Faces Closing of 70 Ministries"—and a fine editorial in the Times—"The Soviet Disunion's Missiles."

This was not, on my part, a one-time statement. I repeated the general proposition with fair regularity. Often here on the Senate floor. Nor was it the product of some soft feeling about the Soviet Union that has been suggested or implied already today. That in the seventies the CIA was soft on the Soviet Union. I was not learning this from the CIA. I would like to point out that they had just the opposite view. But already some are prepared to say to their colleagues, who in the seventies thought exactly what they thought in the eighties, they were "soft."

I was raised in New York City and early in life fell among mensheviks, the writers of the New Leader. I listened to Kerenskiy in high school. From the time I was 15, I was given to understand that the Soviet Union would break up and it was only a matter of time. And by the 1970's, I could see that the time was at hand.

And indeed, by the 1980's, I had become vice chairman of the Select Committee on Intelligence and watched us commence to get involved with Nicaragua, watched us walking down the path that in many circumstances would have led to the impeachment of a President. I found our policy difficult to understand. Did it not seem obvious that the emergence of the Sandinistas there was a colonial phenomenon of the center and the periphery that was happening in a kind of time warp? I would put it that when an idea dies in Madrid, it takes two generations for word to reach Managua. Paris/Saigon. Lisbon/Maputo. I don't know whether the idea was ever alive in Lisbon, but in any event, when an idea dies in Lisbon it takes a long time for the news to reach Maputo. Now communism had once been a living, vital creed in Madrid. Read Orwell. Or read, as I did as a child at the time, about La Passionara. But all that was over. The Communist idea had died in Madrid. France has been called the first daughter of the church; the French Communist Party was the first daughter of the world international movement. But there came a time when the CP vote, the Parti Communiste, was down to 20 percent. And half their members, their voters, were over 60—dying. Communism as a belief had died in all the places it had once thrived. In Paris, in New York, in London, in Rome. Probably by now in Moscow.

Let me, at this point, note a remark made to a meeting of the Foreign Relations Committee on October 16 by Peter Kravchanko, Foreign Minister of the Republic of Belarus. I had asked him when belief in communism had died in, shall we say, Minsk. He replied with great condor and insight—or so we felt:

> In answer to your question about when communism disappeared, it is difficult to say, but I would say in 1979, Brezhnev disintegrated as a personality. Many ideas also disintegrated. In the 1970's and 1980's, we had a two-dimensional life. First, there were the ideological stereotypes, and second, there was conventional wisdom. Gorbachev, I believe, by the end of the seventies was aware of the inevitability of change, but his hands were tied. What is the modern evaluation of Gorbachev? Power has been transferred to the republics. It is an irreversible process.

Seemingly, nobody in the CIA could grasp the argument. Recall that I was then vice chairman of the committee. Someone must have been listening when I would say these things. But the idea was somehow inaccessible. No one would even take you aside and say, you know, friendly like, "You are not helping yourself by saying these things. It will all look very bad someday, held against you in an election or something."

I wondered about it, and I think I know the answer. Basically a different idea was in place. I don't know enough of what was going on within the councils of the intelligence community, but consciously or not the CIA adopted Trotsky's old dictum that "The road to Paris leads through Calcutta." Probably in response to the appearance of the Sandinistas in Managua. It is one of the dicta that is behind the domino theory in some ways. This was partly a notion that colonial revolt would break up the European nations, partly a notion that the most immiserized populations would most likely respond to Communist appeals. It was not within his reach intellectually to say they would respond to ethnic or nationalist appeals, religious appeals. It was part of the Marxist prediction, as I said earlier, that this would not happen. In any event, we began to see the Reds coming at us from Central America. Two days driving time, as our President once put it, from Harlingen, TX.

I could not believe this. I had gone down to Managua and met with the junta. The head of the Ministry of Interior took me to lunch at the Barrio Sandino. A suspicious looking beef stew was served up, along with Pepsi Cola, the politically correct soft drink of Marxists in those days. I demurred, asking instead for rice and beans, a reliable and, in fact, delicious lunch. After some delay the Minister was forced to tell me that they had no beans. I settled on rice. As my companions later wished they had done. In power for what, two or three growing seasons, and already no beans. But headed for the Alamo.

The most painful instance of the Trotsky hypothesis that I have yet seen was the memorandum from Mr. Gates to Mr. Casey of December 14, 1984, which Senator METZENBAUM made public in the course of the recent hearings. It is the genuine article, alright.

The memorandum strongly suggests that Gates knew that the CIA was violating the law in Nicaragua because it was trying to overthrow the Nicaraguan Government. He calls the argument that the United States was trying to cut off the flow of arms to El Salvador a "fig leaf." He says that we "started out justifying the program on the basis of curtailing the flow of weapons.* * *" But he clearly understands that our effort was to overthrow the Government in Nicaragua.

Three times he invokes the image of "a second Cuba" on "the mainland of the Western Hemisphere." He speaks of our "helplessness." He derides the idea that the Nicaraguan Government could become pluralist as "silly and hopeless." He wonders if we are going to collapse the way we did in Angola, in Vietnam, and so forth.

He repeatedly advocates the use of "all necessary means—short of invasion" to overthrow the Nicaraguan Government. As you know, this included acts of war; namely, a naval blockage and air strikes.

He adds: "Can the United States stand a second Cuba in the Western Hemisphere? One need only look at the difficulty that Cuba has caused this country over the past 25 years to answer that question." What question? What difficulty has Cuba caused us over the last 25 years?

I was in this city, was a member of the administration, at the time of the Cuban missile crisis. I don't remember any trouble since then.

It is true, it has been difficult to come by a genuine Monte Christo, and is to this day. But absent those who cannot make do with good Cuban cigars made in Miami—on the whole it has been a bearable experience. But, we are told that the existence of this regime in Nicaragua is a threat to us.

In less than 5 years time the Soviet Union would withdraw from Eastern Europe, including East Germany, without firing a shot. That Soviet Union would then start breaking up. It would next begin begging the West for aid. Famine would be predicted for the winter 1991–92. All this was close enough you could reach out and touch it. Save at the CIA which was living out—as the Nation was soon acting out—a Trotskyite fantasy.

Again it would be alright if you could face up to these blunders. But no. Or at least nothing was heard to that effect in the course of the committee hearings. Just as the subject is hardly touched upon in the committee report.

But it is to the failure of economic analysis—so palpable, so capable of quantification at some level at least—that I return. In mid-October I learned that the Deputy Director for Intelligence had spoken to an assembly of the Directorate of Intelligence on this matter. I wrote Mr. Richard Kerr asking if I might have a copy. This was promptly and courteously provided. In his address, John L. Helgerson, the current DDI, put the matter openly enough—

> And above all, there have been continuous and widespread misstatements about our analysis of the Soviet economy. This problem is frustrating when it involves the press, but it is doubly frustrating when it involves members of the Congress, senior U.S. military officers, or others who are in a position to know the facts. Often the misrepresentations are unintentional, but that makes them no less harmful.

Note that touch. Members of Congress "who are in a position to know the facts." But what? Misrepresenting them? Sorry, we can't say. The facts are secret, of course, but if you knew the secrets, you would know that some persons are misrepresenting the secrets which you cannot know because they are secret. But watch out, fellows, watch out.

In his letter of transmittal Mr. Kerr offered evidence that the CIA had spotted the economic decline. This was in public testimony by Admiral Turner to the Joint Economic Committee in 1979. Mr. Kerr wrote:

> I also have included an extract from the Joint Economic Committee (JEC) report of 1979 that contains CIA's intelligence assessment of the Soviet economy. While the specific numbers on growth are questionable (we have always acknowledged that our confidence in specific numbers was shaky), I believe the judgments about the basic trends in the Soviet economy were on the mark. Maybe we were listening to you with greater care than you guessed.

Here are excerpts from the testimony which he provided with his letter. It is the testimony of DCI Turner before the Joint Economic Committee in 1979:

> Overall, there is every reason to believe that a continued decline in the rate of Soviet economic growth is inevitable through most of the 1980's.
>
> We now expect Soviet GNP to grow at somewhat less than 3 percent annually over the next few years (down from our earlier estimate of about 4 percent) and then fall gradually.
>
> The U.S.S.R. enters this period of slowing growth with a per capita national output well behind the U.S., West Germany, and France, and in the same league with Italy, the UK, and Japan.
>
> Soviet GNP is just about three-fifths the United States.* * *

Fast-forward to Mr. Helgerson's pep talk of October 11:

> On the economic side, one would never know from reading the newspapers that we told the Joint Economic Committee back in 1977 that a marked reduction in the rate of economic growth in the 80's was almost inevitable. In the mid-80s, we wrote that, even in the best circumstances, a period of economic disruption was in store for the Soviets that would further depress growth. Similarly, one would not know from the press that we have said in the last two years that the Soviet

> consumer—on a per capita basis—is on a par with the Mexican consumer.

I hope I am wrong. But I detect a fast shuffle. Hadn't Admiral Turner described the U.S.S.R. as having the per capita national output "in the same league with Italy, the UK, and Japan"? Surely, he had. In the same league with advanced industrial nations. But now we learn that the Agency has been saying that the "Soviet consumer * * * is on a par with the Mexican consumer. When did we change our minds? The current CIA World Factbook gives us a Mexican per capita income of $2,680; Japanese at $17,100—six times as high.

This is particularly fascinating because in an op-ed article in the Washington Post published on May 19, 1988, one of the most astute critics of the CIA's economic analysis, Swedish economist Anders Aslund, wrote of the CIA's report on the Soviet economy in 1987:

> Until recently, the CIA stated that the national income per capita was higher in the Soviet Union than in Italy. Anyone who has visited both countries should be able to see for himself that such a statement is absurd.* * * To anyone who has lived in the Soviet Union, it is clear that it is a reasonably well-developed Third World country, calling to mind * * * Mexico * * * in terms of infant mortality, life expectancy, agricultural employment, consumption, and other nonmilitary indicators of economic development. In many regards Russians are worse off.* * *

For that matter, in 1986 the CIA reported that per capita GNP in East Germany was higher than West Germany. It is not clear whether that estimate has as yet been revised. But then it doesn't that much matter any more.

Here, in closing, is the point as this Senator sees it. Starting with the Gaither Commission in the late 1950's, the United States Government embraced a model of Soviet economic growth that was wildly unrealistic. By the mid-1970's, the formal CIA estimate of the Soviet economy was 62 percent of the United States. If you took Admiral Turner's three-fifths at 1979 and plotted U.S. actual economic growth against the projected rate of three percent annual growth for the U.S.S.R., they would reach 66 percent of the U.S. economy. All this gave us a wildly erroneous basis on which to produce our celebrated "threat analyses," but also, in this Senator's judgment, blinded us to the impending crisis of belief in the Soviet Union which would inevitably produce a crisis of the regime.

Mistakes were made. Maybe big mistakes. Maybe mistakes having something to do with a $4 trillion debt, three-quarters of which was run up in the last decade when we could have afforded to cut back our defense program, ignore the Nicaraguas and the Angolas, concentrate on our own economy.

Very well, mistakes were made. Enormous mistakes as Admiral Turner insists.

These were honest mistakes. They were mistakes made by informed and intelligent analysts. No other intelligence agency, as best I know, contradicted us. Few economists—notably Anders Aslund in Sweden and Igor Birman, a Russian emigre economist in this country, but few others.

Fair enough.

Admit it.

Be someone of the stature of Stansfield Turner. It happened on his watch, too. Who says so? He says so.

But no. The word from Langley is that we were right all along. I wish them a long institutional life, stealing Japanese trade secrets. Some of it just possibly in West Virginia.

Mr. President, I will vote "No."

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey [Mr. BRADLEY] is recognized.

Mr. BRADLEY. Mr. President, let me say to the distinguished Senator from New York, having been on the floor during the last hour is one of the reasons I cherish serving with him in the U.S. Senate. I do not think that another Senator could have given either the historical context or the penetrating experience that the Senator from New York has conveyed to us today. I think it holds enormous implications for not just this nomination but for this country. And I thank him very much for his statement.

Mr. MOYNIHAN. I thank my gallant and gracious colleague. As is so often he is so much more learned than he is willing to let us know. I look forward to his remarks on the subject.

Mr. BRADLEY. Mr. President, I also would like to begin by expressing my admiration and appreciation to the chairman of this committee, Senator BOREN, and his deputy, Senator MURKOWSKI, for the way they have conducted this confirmation hearing process.

They have been thorough and they have been fair, and as Senator BOREN said at the beginning of his remarks, never has a confirmation of the CIA Director interviewed more people, heard more witnesses, asked more questions, took more testimony. I think it is a tribute to him and to Senator MURKOWSKI. I believe that one of his objectives, which was to try to take a hearing process on an arcane subject and educate the American people about the intelligence process, did succeed and succeed very well in part because of his own vision, also in part because of the tenacity and cooperation of the professional staff on both sides of the aisle.

Mr. President, President George Bush has nominated Robert Gates as his next CIA Director. The Senate must advise against or consent to that nomination. The nominee, once confirmed, disappears behind a cloak of secrecy, held accountable only by closed-door meetings of the U.S. Senate and House Intelligence Committees and by the private supervision of the President.

The intelligence, developed by CIA and other intelligence agencies affects decisions involving many billions of dollars, literally hundreds of billions of dollars every year. We now spend $300 billion annually on defense based largely on a picture of the threats painted by the intelligence community. Based on that picture, Americans pay taxes to buy weapons, train troops, and maintain forces to defend our interests.

For 45 years, we have fought a cold war of political and military competition with the Soviet Union. It began in the ashes of World War II, but its ideological component goes back to the Bolshevik revolution. Since then, the United States and the Soviet Union have held totally opposite views of history and social development. These views were in conflict.

The Marxist-Leninist belief system encompassed all aspects of life and promised to create a new "Soviet man," who would work not for his own benefit, but for the benefit of his fellow Soviet citizens. In theory, workers were, in Marx's words, to toil "from each according to his ability, to each according to his need." In practice the revolutionary idealism embodied in the ideology degenerated into a totalitarian nightmare that took millions of its own citizens' lives in the gulag. In the process it smashed ethnic bonds, suppressed religion, and ruthlessly punished political dissent.

Centralized, authoritarian control was reasonably good at producing big, uniform things such as dams, apartment buildings, subways, and missiles. It was terrible at tailoring anything to the individual consumer. It was incapable of building unique national comparative advantage. Individual initiative was not rewarded; it was punished. Diverse needs were not met. Individual well-being stagnated. The saying among Soviet workers became, "You pretend to pay; we pretend to work."

Centralized, authoritarian control was even more stifling for anything that depended on a free flow of ideas. Unsanctioned ideas were dangerous. They undermined the orthodoxy. They ruffled the feathers of the rulers. They challenged the status quo in everyday life. Ideas were controlled, or more properly submerged, for generations. The Soviet Union built itself into a police state superpower with a massive military force which could threaten the world.

The American belief system, on the other hand, emphasized the rights of the individual. American society embraced free enterprise and then tried to soften its edges. America believed in the market system. America believed that government should not guarantee wealth but opportunity. Individuals and corporations should compete in the private sector. Those who won should be taxed fairly so that those who lost the economic competition would not suffer. The market was never perfect and in times of war it gave way to State control. Still, Americans in economic matters trusted self-reliance more than solidarity.

But Americans have believed in more than the market. We have believed in personal mobility and the free flow of ideas. We have believed in an openness of spirit and a range of possibility unheard of anywhere at any time in history. We have believed in the proposition that self-government was possible in a world of monarchies and dictatorships.

The genius of the Founders was to construct a system in which participation could be broadened and each generation could create America anew. The vote was the fulcrum of democracy, the press its conscience, and the prospect of a better life for your children its driving motivation. America fought two world wars in the 20th century defending those values.

Then came the cold war. It locked Americans into a central preoccupation with armed Soviet totalitarianism. Domestic politics in the cold war became less open, more tarred by the imperatives of a national security state. For 45 years, the primary goal of U.S. foreign policy was to counter and contain communism around the globe.

The Central Intelligence Agency became the quintessential cold war institution. It was conceived and dedicated to the proposition that the world was a potential battlefield between two great superpowers. The mission of the Agency was to be a crucial force in that war. An underlying assumption of American foreign policy was that little happened in the world that was unrelated to the Soviet Union.

Thus, under Republican and Democratic Presidents alike, a nationalist movement in Southeast Asia was viewed as part of the movement toward world domination by the Comintern. An election in Chile was seen as the first step toward the country becoming a Soviet puppet. And a civil war in Angola turned into a subterranean superpower face-off.

The CIA was steeped in the lore of dirty deeds and fictional characters. Yet it also excelled at thorough hard-hitting analysis and possessed vast technical knowledge.

The operational side of the Agency was often at odds with the analytical division. But both were shrouded in secrecy. The insularity of any bureaucracy was intensified at CIA by the cloak of secrecy and the discipline of compartmentalization. Such an institution is always problematical in our democracy. Americans have a visceral suspicion of secrecy in their Government. The periodic misuses of the Agency in Watergate or in Iran-Contra only confirmed their unease.

The CIA is in its third generation since the emergence of the Communist threat after World War II. Today it is more like an enormous university than a police department. It is filled with the brightest people in Government, who willingly subject themselves to the confines of a lie detector culture so they can serve their country. Each individual brings his or her own views of American interests and the threats to these interests. The reasons why people serve vary from intellectual competition to the call of patriotic public service, to the thrill of being on the cutting edge—of knowing how things really work, to the responsibility of having policymakers depend on them.

Bright people and strongly held views produce sparks. That is particularly true regarding the U.S.S.R. The accepted premise since World War II was that the Soviet Union was a threat.

In that cold war context, the CIA had three major functions: First, assessing an enemy or potential enemy's military capacity; second, the discovery of an enemy's intentions; and third, countering hostile intelligence services. Each of them required our intelligence services to infer the truth from whatever evidence they could gather.

In theory, the CIA had no ax to grind on policy questions. It is supposed to be strictly objective in what it concludes from what it has learned. Whereas, for example, the Navy might be inclined to inflate the strength of an enemy's fleet in order to boost expenditures on its own, the CIA's role is to find out the simple facts in order to let the President and other policymakers decide just how big and modern that naval fleet really should be.

That is the way the process is supposed to work. But there are some problems when that theory bumps up against the real world. Some judgments can never be confirmed definitively one way or the other, and all judgments have domestic political consequences. The depth of the political consequences are directly related to the pressure on the Agency to skew judgments to fit conventional wisdom. If the Soviet Union has been defined politically as the "evil empire" with designs in Central America, then the possibility of ambiguous data being misinterpreted as indicating a Soviet threat to Panama increases with every Presidential speech.

Clearly, there has been tension within the Agency during the seventies and eighties. One manager said in an unguarded moment that there was a conflict between the "Commie symps and the Commie bashers." Or as he put it more euphemistically later, between those who were influenced mainly by assumptions of what were politically 'logical' and those whose interpretations tended to be influenced more by what they thought were the dictates of Soviet ideology—that is, before Gorbachev changed it in 1986. This mixture of talents and biases and egos generated tensions that challenged the best of managers. Charges of politicizations have been recurrent. I think they were the exceptions but in an Agency whose employees were dedicated to the credo, "To seek the truth," any perception of slanting intelligence or compromising independence of judgment stimulates proper resistence and checks excesses.

But now there has been a tidal shift. The assumptions of American intelligence since August 1945 died in August 1990. The 45-year-old cold war ended not with a big bang, as so many had feared since Hiroshima, but with the peaceful dissolution of Communist power in the U.S.S.R.—a historical watershed of monumental proportion.

Increasingly, the U.S.S.R. will not be a threat. That could mean that the justification for the CIA itself is threatened. Monitoring the Soviet military power will not be nearly as important or difficult as it used to be. The world has changed; intelligence needs have changed; the CIA must change. New goals must be set if the CIA is to remain central to U.S. policymaking. Real threats must be discovered before it is too late to protect U.S. interests.

With this backdrop, the question before us is whether Robert Gates should be Director of the CIA. This nomination is about one man and his fitness to serve, but it is as much about this administration and its fitness to lead. And ultimately, it is about all of our abilities to let go of old perceptions and see things anew.

To give a sense of what has happened to our world and to consider whether the current administration understands its implications, I would like to read some lengthy excerpts from a soon to be published book called "Mr. Bush's War," written by Stephen Graubard, the editor of Daedalus Quarterly. The book explores our present predicament. It has implications not only for whom we choose as the next Director of the CIA, but also for how we approach our children's future.

Professor Graubard reconstructs George Bush's challenge when he became President in 1989 as follows:

> If the cold war was indeed over, then American foreign policy had to be dramatically altered. The President's political life had been in the service of men who made the Soviet Union their chief concern. What ought the new American foreign policy be? Where would the President receive his instruction?
>
> * * * Without being a disciple of Henry Kissinger or Jeane Kirkpatrick, did he understand the nature of authoritarian governments? If he did not, how could he hope to deal with Saudi Arabia, Kuwait, or Iraq, not to speak of the Soviet Union, China, and Cuba? In his elaborate defense of free markets, did he understand the reasons for the inefficiency of Communist economies, and not only in the Soviet Union? Had he himself been taken in by the myths that had been perpetrated for so long on why Germans,

even under Communism, prospered? And how could he hope to understand modern Japan if he imagined that it was a brilliant American occupation that had created its postwar prosperity? Did he realize the extent of America's own social devastation? Did he understand how perceived economic weakness would limit and shape any foreign policy initiatives that others might wish to press on him?

* * * If the Cold War was indeed over, at least in one of its guises, accommodating leaders in the Kremlin might not survive for very long; a new kind of dictatorship, less dominated by a Marxist veneer, might soon emerge, with or without Gorbachev at its head, presiding over a nation more xenophobic than any that had existed since 1917. The President saw no necessity to treat with the "opposition" in the Soviet Union. * * * [T]o do so would have been, in his mind, to betray a power that existed, preferring a power that might never be.

He was equally inept in treating with the Chinese who rebelled in Tiananmen Square, preferring to deal with those who gave the military their orders to shoot. * * *

That he lacked any notion of what to do about Eastern Europe was obvious. * * * How to use the revolutionary events occurring there to realize larger American objectives, how to make democracy a more potent force in the world, how to harness foreign policy bonuses to spur genuine domestic economic and social reform—these did not seem even to occur to him or to his Secretary of State as reasonable policy goals. * * * The vague talk of a Marshall Plan, which came principally from others, scarcely commended itself to someone who knew how limited were the Treasury's assets. The United States of 1989–90 was not the United States of 1947–48; the country lacked the resources and the will to launch venturesome and expensive foreign policy initiatives. In any case, no comparable ideas existed in 1989. Those who advised President Bush, while delighted with the ending of the Cold War, had no notion of what the event portended. To have understood 1989 and appreciated its potential, seeing it as something other than the triumph of an abstract "democracy" and of "free markets," would have required an appreciation of all that had changed in the world since the time of Winston Churchill and Charles de Gaulle, and why rhetoric alone, with its promise of economic abundance, would never suffice to dampen fires ignited by nationalism and race, with deep historic roots, which had only been superficially covered up by Communist repression. George Bush, having received instruction from Ronald Reagan and Richard Nixon, knew how to win elections and swim in Cold War waters. He knew nothing of navigation in a world where the new heads of state were frequently men recently liberated, not only from prisons but from myths, the most confining being that Communism would last forever.

Defined by his World War II experience, and even more by all that the cold war had taught him the President lived by myth, * * *. He pretended that the decline of the Soviet Union simply reinvigorated and made even more intimate his relations with his NATO allies. No one had ever told him that there were no permanent alliances. He imagined that Germany would for all time thank him for what he had done to restore unity, as it would remain forever grateful for what the United States had done to defeat nazism and contain communism. He saw foreign states as static entities, when all the evidences of his life suggested the opposite. Not everyone in Eastern and Central Europe waited to be "developed" by the new united Germany, not everyone in the Soviet Union had forgiven or forgotten World War II or imagined that only their communist rulers had oppressed them. Historical memories were long—Arabs still spoke of the Sykes-Picot pact—and the Japanese thought of Hiroshima in a way that American psychologists never could. The whole history of the twentieth century suggested that the most stable and seemingly permanent features of life were in fact transitory. The President, * * * scarcely understood this, failing to see the opportunities created by a whole set of events that gave the United States a new freedom.

The principal challenge of the United States was not becoming the world's policeman, organizing friendly (and not so friendly) nations to fight territorial aggression, or even instructing them in how to make peace, but to assume a wholly new role, to see itself as the quintessential "modern society," divided and fractious, a microcosm of global society, with all its racial and cultural conflicts and divisions. The old sort of Cold War Manichaeanism, with its simple good guy/bad guy divisions, had reduced all political debate to television drivel; * * * More seriously, it had forced the United States to repudiate its long-standing utopian ambition—to be democratic and open.

Whether or not Gorbachev survives as the President of a viable Soviet Union, whether or not Baker succeeds in pressuring Israel "to give peace a chance," the new world, a disordered world, will be one of nationalist resurgence and religious intolerance, of economic and social inequities that produce violent explosions, made all the more incendiary when restrictive immigration policies are introduced in many places in Europe and elsewhere to remove a safety valve provided by the more prosperous to those they wish to employ in menial pursuits. The world is more dangerous not because Communism has failed but because decades of Cold War have raised ambitions, and not only in Europe.

An American, reflecting on this, may wish to draw different conclusions from four decades of the Cold War. Is it at all possible that there have been no victors, that Germany and Japan, despite their very real economic prosperity, represent nothing that has ultimate meaning for the world? Might the dilemma of the late twentieth century be that the American utopia has lost its power at precisely the same time that the Soviet myth has been smashed and that their simultaneous collapse creates a grave intellectual and moral vacuum in the world? If so, what can that mean to those concerned with the United States, with its future political and moral role in the world? Will they acknowledge that the cold war, perhaps necessary, contributed to the defeat of Soviet Communism, but also served to create many of the least attractive features of late-twentieth-century American (and world) society? More importantly, is it possible that five decades of war, beginning in 1941, have instructed the American people in a flawed text, that they imagine foreign policy and domestic policy to be separable, that one may be successful in one and fail in the other? In truth, they are related, in ways that neither Bush nor Reagan could ever understand. Unless President Bush's foreign policy is placed in a context that includes his failure to address the serious domestic problems of the United States, and not only of the American economy, there is no possibility of the country emerging from the current era of fable and myth.

The Bush administration lacked a policy for dealing with the Soviet Union in 1989; it had none worthy of the name in 1990, though it recognized how Soviet weakness could translate into a political advantage in the Gulf War; it still lacked such a policy in 1991. Politics required, however, that this fact be hidden. In the New World Order that was being heralded, the Soviet Union would have its place, as co-convener of a Middle East peace conference.

The President rode high, and few asked embarrassing questions, none calculated to puncture the fable he was creating. The world had passed out of the more than four-decades long Cold War, as destructive in its own way, though not in human casualties, as * * * the war that had ravaged Europe between 1914 and 1918. Men acted as if the damage done the Soviet Union and its satellite empire could be repaired, not immediately perhaps, but certainly, if only those making their exit from Communism recognized the necessity to convert quickly to a market economy. No one asked why the United States—one of the more ancient of the market economies, * * * continued to show signs of economic distress and social disorder. If the system worked so well, why did it not operate as effectively in the United States as it did in Germany and Japan. * * * No one thought it necessary to review the history of the nineteenth century, which would have explained how Socialism developed initially in response to certain inequities created by an unregulated free market economy, or how that economy had been superseded by state controls during the war, and how desperate had been the efforts to re-create it in 1919, to recapture a world that had been lost.

The Bush administration never asked such questions. * * * Its own success depended on a single fable being believed by the electorate—that all went well in America, that it continued to be a teacher to the world, a moral example to others. The possibility that it had lost those distinctions, that its leadership was of a kind different from what it pretended, was never bruited about in or near the White House. To have acknowledged such failure would have required the construction of another political agenda very different from that of the New World Order.

Mr. President, I have read that lengthy quote from the soon-to-be-published book, so that we might focus that the fundamental question posed by this nomination is not about Bob Gates, but about this administration and its failure to understand the emerging post-cold-war world. Yes, the immediate question is whether Robert Gates is the man to effect the necessary changes at the CIA. The President wants him because he has worked with him for several years. The Senate shall decide whether he meets our standards. In the words of Senator BYRD on the Thomas nomination, "I am not God, but I do have a vote." A nominee must show why he merits that vote.

What are the arguments that the supporters of Robert Gates advance? They say that during this crucial time of change we need a Director who knows the score, who knows the Agency, who knows the procedure. In other words, the institution is so compartmented, so opaque, so uncooperative that only someone who has participated in the internal power struggles themselves can effect change.

I disagree with that assessment and I think its proponents find themselves as advocates for a pessimistic view of the Agency and for a nominee steeped in the old institution, the old assumptions, and the old mission.

They also argue that Mr. Gates will provide the "unvarnished truth," independent of policy considerations but crucial to our national interest because he has promised to do so.

It is interesting to remember why this is such an issue. It is an issue because he has not displayed that independence in the past. He crossed the line that the CIA is not supposed to cross more than once. Because of that he has had to promise the Intelligence Committee that he will not do it again. In effect, his record of crossing the line is supposed to provide us assurance that it will not happen in the future.

I believe the President should select as the next Director someone about whom there can be no question and no doubts, someone who does not have to labor to counter suspicion on many close questions. I believe the next Director of the CIA should have bold conceptual ability, strong managerial talents and no ties to the controversies of the last decades. Does Mr. Gates meet these standards?

I will argue that Mr. Gates does not meet these standards and that, in addition, he has shown a lack of judgment; he is part of the administration's policy process, and he cannot lead an agency effectively toward its new mission.

Robert Gates served as assistant to the Director of CIA in 1981, as Deputy Director for Intelligence from 1982 to 1986, as Chairman of the National Intelligence Council from 1983 to 1986, and as Deputy DCI from 1986 to 1989. He had a meteoric rise. These were years of internal upheaval, ideological fervor, deep involvement in policymaking, massive covert actions at variance with overt policy, unreported use of intelligence for major policy purposes and contempt at the top for the congressional oversight process.

Mr. Gates was there for all of it. For a part of it he was Mr. Casey's right-hand man, swimming in the controversies of the last decade. If as Deputy Director of the CIA he did not know about the Iran-Contra plot, he either was incompetent or chose not to know. Either it creates serious questions about his suitability for this job. He has admitted that he should have taken more seriously the possibility of the impropriety and wrongdoing. He should have pressed the issue of possible diversion with Mr. Casey and Admiral Poindexter. He should have been more skeptical about what he was told, asked more questions, been less satisfied with answers, especially from Casey. He also does not recall significant details about when he was first told of the diversion of funds for the contras or that on several occasions Mr. Allen made specific reference to Colonel North's involvement, or that he, Mr. Gates, himself made references about Colonel North. Ties to these past controversies alone, in my view, should disqualify him for this job. We are not, in the words of Senator HOLLINGS, trying a murder case. We do not need a smoking gun. We are deciding fitness to lead.

Another reason I do not see Mr. Gates as a leader of the agency needs is because he does not have the necessary managerial talent or bold conceptual ability.

In 1986, at a meeting of the Intelligence Committee, I asked him to think unconventionally about the Soviet Union. General Secretary Gorbachev had just said that class struggle was no longer a basis for Soviet foreign policy and Foreign Minister Schevarnadze was beginning to subordinate foreign policy to domestic concerns. I asked Mr. Gates if there was a change in the Soviet Union, what intelligence should be doing to prepare us? He responded that he did not have resources for such idle speculation. Six months later, he wrote inside the agency that the CIA "wasn't creative enough in the way we are analyzing Soviet internal development" and that the analysts were not giving him the best information about the "turbulence and unhappiness in the U.S.S.R." But even as he said these things within the institution, he kept hewing to the old line outside. Even as late as a 1989 speech, he predicted that "whether Gorbachev succeeds, fails, or just survives, a still long competition and struggle with the Soviet Union lie before us." In a conflict between political logic and ideology, cold war ideology and a lifetime skepticism won out over bold conceptual ability.

But people say, "How can you blame him for missing the end of communism? Most people did." The excuse that everyone else missed it first is not true. Witness all of the distinguished former vice chairman Senator MOYNIHAN's predictions; witness even a speech I made in 1986 about the dire straits of the Soviet economy.

But the point is that the Deputy Director of the CIA is not "most people." He is charged with the responsibility to monitor the Soviet threat and to recognize when that Nation is in the midst of economic disintegration.

Unlike many, almost anyone else, Mr. Gates' speeches through 1989 continued to claim the chances of fundamental change were very small. He stood almost alone in getting it wrong. Yet he was unique in his responsibility to get it right.

But more problematical for his confirmation, in my view, than his missing the end of communism in the Soviet Union was the way he responded to an agency that did not want to have its methodology of assessing the Soviet monolith challenged. For example in 1984, a Soviet emigre economist wrote to Gates that the Soviet economy was in worse shape than the CIA recognized. Professor Birman warned Gates in a memorandum, and he said a number of things about the Soviet economy. I will read some.

> The Soviet economy produces not as much as 60 percent of the American national product, but much less.
>
> The military share of Soviet national product is not 12 to 14 percent, but much higher.
>
> The Soviet standard of living is not something like a third of American, but rather a fifth.
>
> The current state of Soviet economic affairs is very dramatic. If the economic system is not radically changed [reformed], the economy will not "muddle through" the 1980s, but will reach zero, and then negative, growth. In contrast to cyclical Western economies, this will not be followed, in a few years, by a return to positive growth. It is precisely economic difficulties, and the need to justify them, which force the Kremlin to be so hostile to us.
>
> The Soviet economy is in a severe financial crisis. Particularly, the budget deficit is huge, and still growing; the population's enormous monetary savings must somehow be liquidated, which is one of the rulers' most pressing headaches; the crisis intensifies all economic imbalances.

He goes on:

> The real role of foreign trade in the Soviet economy is tremendously underestimated. The Soviets plug a huge hole in their budget with "earnings from foreign trade" currently about 20 percent of all revenues; those earnings in 1982 constituted 11 percent of National Income reported. Incorrect treatment of foreign trade leads to evident mistakes in Western calculations of growth rates and military expenditures in rubles.
>
> Measurements of the Soviet economy's productivity can, and must be, radically improved. For example, the productivity measurements unfortunately employ CIA figures for output growth, which allegedly are deflated, together with nondeflated figures for capital growth.

He goes on:

> I strongly disagree with statements that reduction of military expenditures will hardly affect overall Soviet economic performance.

He goes on:

> The basic model used for computation of Soviet GNP and its growth rate is not quite satisfactory.

He goes on:

> My understanding of these matters has been developed on the basis of my Soviet economic education, 25 years of work within the Soviet economy, and 10 years of studies after emigration.

He goes on:

> My views are so different from commonly held ones, relate to such fundamentally important issues, and lead to such important political conclusions that they should not be ignored.

He goes on:

> But I believe that the actual CIA monopoly of serious research on the Soviet economy

should not last longer. I hope that the suggested discussions will once again demonstrate the necessity of having views alternative to the CIA's on the Soviet economy.

Those were excerpts from the memo that Mr. Birman sent to Mr. Gates around 1984.

Mr. Gates replied to Birman that he asked the Soviet division to remain in touch and that an outside panel would interview him.

But Mr. Gates did little else. In fact, in answering questions during the hearings, he said a number of remarkable things.

He said:

> I had a problem throughout the early '80s with CIA's work on the Soviet economy * * * when it came to these statistical or quantitative analyses of the Soviet economy, I had a lot of problems, and I would try to get them to talk to people like Igor Birman and other defectors and emigres. And they would talk to them generally grudgingly * * * it was very difficult to change an analytical model that had been in place for a generation and frankly I wasn't prepared to push the system so badly out of shape as would have been required to basically turn that system on its head.

I then asked him:

> Even if you sensed that these people had some potentially important, very important, decisive information?

His response was:

> And I pushed them onto SOVA and I asked them to take their views into account and to listen to them and hopefully take them seriously and I did not make much headway.

I then said:

> So that basically, getting back to the way we began * * * my question is what did you do? Here you have a memo from Birman. * * * You've expressed admiration for them. We all know that their estimate was much more on target than that which we had. You sensed that. What did you do to try to get that a part of the CIA analysis upon which billions of dollars were being spent?

And Mr. Gates responded:

> I pressed the Soviet office to sit down and spend time with these people and to try and reflect these alternative views, and I did not succeed.

The reason this question is relevant is that here was Mr. Gates in possession of information that fundamentally challenged the prevailing view. He expressed interest in the information's importance. If the Soviet economy is smaller than we thought, in greater turmoil, and the defense budget is a bigger part of it, then Soviet defense spending could not be sustained, and with deteriorating living standards, social conflict was likely. Yet he continued to make his projection of the Soviet military from the basis of a larger Soviet economy and the old methodology. The bureaucracy resisted, and he gave up. He was unable to refocus the Agency on an interpretation of the Soviet economy whose truth could have changed out perception of the Soviet threat, saved billions of taxpayer dollars, and given us a hint of the tumult that was about to engulf the Soviet Union.

How should we expect him to be able to deal with the much more diverse challenges that face American intelligence now? How can we be sure he is up to radically altering the way the Agency understands the emerging world? How can we be assured he will not make the same mistake with China? How do we know he has the strength and creativity to redirect and refocus an Agency full of bright people, many of whom are locked into old ways? How can he, a cold warrior himself, get an Agency to focus around the world less on the Soviet military and more on interaction of ethnic nationalism, proliferation of nuclear and chemical weapons, power of religious and secular grassroots movements, and terrorism? How?

Mr. President, I believe Bob Gates is earnest, hardworking, and intelligent. In the Webster years, he was more attentive to congressional oversight. I do not know him personally, but he has an appealing demeanor and appears likable. Yet I do not see him as the leader the Agency needs now. Not only because I do not believe that he possesses the bold conceptual ability or the managerial skills, not only because of his ties to the controversies of the past decade, but also because I believe he has allowed ambition or ideological conviction to overshadow his judgment on a number of occasions.

In November 1986, he gave a speech entitled "War by Another Name" and did an op-ed of the same title in which he wrote that "the Soviets' aggressive strategy in the Third World has, in my view, four ultimate targets—first the oil fields of the Middle East which are the life line of the West and Japan; second, the Isthmus and Canal of Panama between North and South America; and third, the mineral wealth of southern Africa. * * * The fourth target is the West itself." When asked if there were any intelligence estimates that confirmed his view of Panama or southern Africa, he said no. When asked why he said it anyway, he replied, "poetic license." I do not believe that the Deputy Director of the CIA should use poetic license to describe the hostile intent of what has been America's chief threat.

At the same time in 1986, he unwisely interjected himself and the Agency into another contentious policy debate. He strengthened the hand of those who were advocating SDI by stating in another speech that the Soviets would test ground-based lasers for use in ballistic missile defenses by the late 1980's and components for a large-scale deployment system in the 1990's. He highlighted only the alarming aspects of Soviet laser research, and ignored the views that disputed the timetable and suggested even if the Soviet did test a ground-based laser, scientific breakthroughs would be needed in other areas before the Soviets could deploy a ballistic missile defense system.

The Deputy Director of the CIA should not be advocating policy or using "poetic license" to ring alarms. The speeches were serious mistakes. Mr. Gates promises not to do it again. But why did he do it then? Did he not know that people would take his statements as true? Wouldn't anyone who heard him assume that the CIA believed the Soviets had designs on Panama, that the CIA, believed without a doubt that the Soviets were about to test a ground-based laser and deploy an SDI-type ballistic missile system in the 1990's. His rhetorical excesses fed the ideological fervor of the times. They reinforced the Reagan administration's insistence that Americans pay more and more taxes to finance defense expenditures to counter the Soviet Union.

Why did Mr. Gates make these statements? What do they reveal? Frankly, I do not know. But one possibility is that he made them to curry favor with Mr. Casey, who saw hostile Communist designs virtually everywhere in the Third World. Or perhaps he wanted the President to be aware of his support for SDI. The other possibility is that Mr. Gates himself was an ideologue whose poetic license revealed that he had become a victim of cold war thinking—able to see only good and evil—even as the world around him was being shaped by more complex forces requiring greater insight than the old ideological view could yield—more understanding than fervor. Both explanations raise serious questions about his judgment and his commitment to provide the unvarnished truth to policymakers. Ideological bias or the desire to say what supervisors want to hear don't convey independence or strength. And they are habits that don't disappear overnight. Will he on every occasion provide judgments unclouded by his own personal biases? Will he never hesitate to challenge a policymaker's, even a President's, lifelong assumptions if the unvarnished truth dictates it? I have some doubts.

What the CIA needs now, I believe, is not an insider but a fresh person from the outside. A figure such as John McCone. Someone with managerial skills and bold conceptual ability. Someone who can refocus and inspire the talent in the Agency. Someone who can leap over the controversies of the last decade.

Why do we want someone as Director who has to carry the burden of the Casey years? What overwhelming advantage to the national interest, what extraordinary reason or what exceptional talent would someone have to bring to this job to justify the public suspicion that will necessarily be engendered by this nominee's confirmation? My answer is none. For someone from the inside, there are too many debts owed, too many old scores to be settled, too many doubts to be alleviated, too many impressions already hardened, too many ambitions already curtailed to be the pathfinding leader that the agency needs now.

So far, my objections to Mr. Gates are, first, his past inattentiveness to the Iran-Contra scandal; second, his management and conceptual failures in refocusing the Agency's own changes in the Soviet Union; and, third, his lack of judgment in advocating controversial policy positions.

My fourth objection to Mr. Gates' nomination is that he comes out of the policymaking arm of the Bush administration. While that should not disqualify someone in all occasions, to my mind it does so on this occasion. He comes to the CIA not only with his lifelong attitude toward the Soviet Union, but with vested interests in a number of policy disputes. For example, an immediately critical question facing United States policy is whether to prop up the Soviet Central Government over the Republics. Mr. Gates' view to my knowledge has not taken issue with President Bush's clear preference for the center. Did he do anything to affect drafts of the famous Kiev speech in which President Bush stood with the central Communist apparatus and referred to the desires for independence in Ukraine and other Republics as "suicidal nationalism"? Within weeks, Communist power had ended in the Soviet Union, the Baltics achieved independence, and the Ukraine set December for an independence referendum. The point here is Mr. Gates goes to the CIA as a warrior in those disputes and policies, not as an impartial purveyor of intelligence.

He has only been a key manager of the administration's approach to Iraq since the early 1980's. He participated actively in the zigzag tilt toward Iraq between 1982–88; he did not seek to keep intelligence focused on Iraq after the 1988 Iraqi victory, even though Sadam Hussein's forces remained mobilized, preferring instead to concentrate on a crumbling Soviet threat; he failed to focus more intelligence resources on the monitoring of Iraqi nuclear development; he failed to monitor effectively Iraq's attempts to get strategic and dual use technology; and finally, he did not question the intelligence estimate that ratified the rosy assumptions the administration had made in 1989 about Saddams peaceful intention toward oil rich Arab neighbors. In sum, Mr. Gates contributed to the administrations policy of appeasement by neglecting signs of rapidly growing threats and belligerence on the part of Saddam Hussein.

Again Stephen Graubard's analysis:

> The failure to attend to Iraq during eight years of war, and in the first year and a half of the Bush administration as well, showed a blindness common to a government dominated by men * * * who were following a Nixon-period script they barely understood. In seeking to rekindle the more aggressive Middle Eastern diplomatic policies initiated by Kissinger and pursued under Presidents Nixon and Ford, hoping finally to bring to fruition negotiations successfully concluded by President Carter at Camp David, they failed to recognize how much the geopolitical conditions in the area had changed. A more supple group might have wished to construct an agenda more suited in 1989 and 1990, one that took account of the collapse of the Soviet Union and considered how the military ambitions of both Iraq and Iran might be affected. The administration's concerns with Arab grievances in the occupied territories were reasonable, if placed in a broader context. The failure of both the President and his Secretary of State to interest themselves in Iran—to seek some sort of political relations with that once friendly state—was exceeded only by their innocence in not knowing how to deal with Iraq, a desperate state, economically and ideologically bankrupt, and therefore militarily unstable.
>
> In the end, they could take none of these things seriously enough. Teheran and Baghdad could not compete for the attention of men whose minds were fixed on Moscow and Bonn, real powers, nations with whom important business could be conducted. But the death of Marxism * * * did not coincide with the death of nationalism; indeed, it may have only contributed to its growth. Oblivious to this, the President and his Secretary of State deluded themselves about the nature of the world they were seeking to refashion. To have coped with its new possibilities would be required * * * a political will that took into account certain fundamental ideological and geopolitical realities that had not existed in the time of the Shah or of Brezhnev.

Stephen Granbard once again.

Mr. Gates was President Bush's No. 2 national security policy manager throughout the leadup to, course of and aftermath of the gulf war. How can his assessments of the region be fresh, with his past policy battles clearly etched in his mind and on his resume. And for what? I ask. The question is not whether he should be the President's man. Of course, he should be. The question is why the President has sought to convert his No. 2 national security policy manager into Director of Central Intelligence. I believe it will lead to unanswerable questions and endless doubts on virtually every CIA estimate with regard to the Persian Gulf or the Soviet Union. It will handicap the credibility and the future effectiveness of the Agency.

Mr. Gates is really President Bush's policy double. He has shown zest for all the things that have preoccupied the President for 40 years—the cold war, the Soviet threat, seeing reality through bureaucratic eyes. He will, I believe, reinforce these tendencies, and that will diminish the robustness and creativity and breadth of the intelligence product he delivers to policymakers. There is another way.

My fifth objection to Mr. Gates relates to the changing demands on intelligence. As I said earlier, the cold war CIA had a very specific central mission: To monitor the Soviet strategic threats, count weapons and estimate the strength of armed forces. It is a job the CIA did very well.

The CIA also kept track of the Soviet economy: production levels, crop yields, inflation, budgets, productivity, and many other demographic and macroeconomic details. The Agency, as I have said, has done a less good job here but it at least had a lens through which to view Soviet society.

On the third level, the Agency's work in Soviet politics focused on a finite number of leading actors. It did it well enough to tell American politicians a story about power and conflict that they could understand. These three jobs the Agency clearly did.

What the Agency's technical virtuosity never had any ability to do or what its leadership never had any real success in doing was to bring into overall analysis and to recognize the peoples of the former Soviet Union as important and influential actors, with interests, ideas, and initiatives of their own.

To determine characteristics of a tank or the production of a factory was possible, to assess the potential for grassroots movements, the power of religious faith, the bonds of ethnicity, the appeal of democracy, the death of Marxism as a belief system, and the commitment of ordinary people of transformation were missions that were orders of magnitude more difficult.

Strategic intelligence in the broadest sense must include the ability to understand culture and history—not just some bit of military, technical, or industrial information. No single bit of information gives you the answer. It is the total picture projected by a mosaic of many pieces that fully counts. And if you focus on only three tiles of the mosaic, then you cannot see the overall picture. What the Agency has done well is to look at a couple of tiles in the mosaic and tell you exactly how many grains of blue and red and yellow are on the tile. What they have not done well is to describe the total picture. The new mission for the CIA has to focus on the total picture.

To say we need more human intelligence deals with process, not substance. To say the new mission should be economic intelligence is colossally shortsighted. To apply the techniques of the national security state to decisions on the interest rates in the Bundesbank or materials research breakthroughs in Britain or Japan is a dangerous path. In a world more and more interdependent each day, in which cooperation will be more and more important, economic spying holds the potential of being dangerously counter productive.

The Agency has to be less dualistic, less static. Change will characterize our future in ways we can never imagine. The idiosyncratic thinker or analyst will have to be rewarded, not shunted. Issues of race, language, ethnicity, and aspects of the human spirit such as courage, faith, and commitment will loom larger than weaponry and will need to be assessed. Divisions between rich and poor nations will be of greater concern. Arbitrary distinctions between domestic and foreign affairs will impede clear vision. The one-dimensional economic or military answer while necessary will not be sufficient. It will not provide the most helpful clues to our future threats or to our greatest opportunities. What is needed is truly new thinking.

And really that is my fundamental objection to Bob Gates as a director—that he is a captive of past realities. He is a bright man, but I believe he is more rather than less likely to cling to the old cliches or the old thinking which everyday becomes less relevant and less valid. After 2 months of intense questioning and years of thought, I believe that his leadership at CIA would not be able to give national security policymakers the best intelligence they will need to protect U.S. interests effectively against unseen dangers in the uncharted and potentially turbulent future that lies ahead.

Those are the reasons why I will oppose the nomination of Robert Gates.

I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Alaska [Mr. MURKOWSKI] is recognized.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I ask unanimous consent that I may be allowed as much time as I need, and that upon completion of my opening statement, Senator METZENBAUM may be recognized to speak next.

The PRESIDING OFFICER. Without objection, it is so ordered. There are no constraints on the Senator's time. The Senator from Ohio will be recognized next.

Mr. MURKOWSKI. Mr. President, I think we have seen in the statement made by my colleague, Senator BOREN, who spoke on behalf of the nominee, and in the statements of Senator MOYNIHAN and Senator BRADLEY, who were, in their extended remarks, provoking, to say the least, that the matter of Mr. Gates' nomination has been examined thoroughly. As a consequence of the efforts made by Chairman BOREN, and by all members of the staff, we have made every effort to leave no stone unturned, to hear from the relevant witnesses, and to extend into closed session, when appropriate, testimony bearing on the fitness of Mr. Gates.

As vice chairman of the committee, I certainly want to thank those who cooperated, and more particularly the professional staff, who have spent an extraordinary amount of time in detailing material for the Members, and particularly in following up various memorandums, letters, and requests and I assume once in a while things that came over the transom, so to speak.

But clearly I think the evidence will show, and the preponderance of my colleagues' vote tomorrow that, indeed, Mr. Gates is suitable as the President's nominee for the head of the Central Intelligence Agency.

So I rise today as vice chairman of the Senate Select Committee on Intelligence to speak in behalf of the nomination of Mr. Gates to be the Director of the Agency.

As has been indicated by the chairman, this nomination has been reported favorably by the committee by a vote of 11 to 4, a vote that came, as I have noted after a rigorous process. We have gone about 6 months on this nomination.

During this time, the committee has studied reams of documents, interviewed scores of individuals, and as I indicated, sought the answers to thousands of questions. It is rather interesting to reflect on some of the arithmetic, Mr. President. In the open hearing sessions alone, the nominee personally responded under oath—under oath, Mr. President—to 850 questions. I am not aware of a case where a nominee for any position has received perhaps greater scrutiny and attention from any committee than has Mr. Gates.

The committee's examination was demanding and, I think it is fair to say, remarkably bipartisan. At the outset, the chairman and I agreed that we would not impose artificial constraints on the scope or the timeframe of the process we were undertaking. We agreed that we would hold as much of the hearings as possible in open session. We agreed that we would tackle the issues as they arose and attempt to deal with them in a comprehensive and a balanced manner.

When we began, Mr. President, we expected the principal focus of our inquiry to involve issues widely ranging from Iran-Contra to other issues and allegations. But little did we realize at the time that many of the issues that I will cite would emerge, some of which were rather bizarre, others quite serious. At times, even the most farfetched issue became the subject of national news reporting and gained more prominence than, in the opinion of the Senator from Alaska, they deserved.

Regardless, we realized the committee had to do the best job it could at tracking down whatever allegations were made about the nominee. We deployed our staff resources in a bipartisan manner in developing as much information as possible prior to, during, and even after our public hearings. Neither the chairman nor I directed our staff to build a partisan record or a record that either supported or opposed this nomination. To the best of my knowledge, we honored every Senator's request that was made to produce either witnesses or documents, no matter who made the request.

I appreciate the kind comments Senator BRADLEY made in his opening remarks. While we may not agree on this nomination, I think it is safe to say, on intelligence matters, the Senator from New Jersey and I agree more often than not. I wish that I could encourage him on some of our Alaskan issues, but that is another story for another time.

Mr. President, the hearing was not revealing. I cannot think of another instance in which the public was provided as much insight into the inner workings of the Central Intelligence Agency. I think the public and the media really got an inside look.

Each member of our committee explored areas of particular individual concern. I, for one, was particularly interested in developing the record on how the agency was managed during the years of Director William Casey in an effort to try and place issues about Dr. Gates in the context of the times prevailing.

Our report and our hearings provide the public a rich body of information on the analytical process of the CIA, management structures, and even personalities. While some of these matters were discussed in a most critical way, I do not take the pessimistic view that the morale of the CIA has been shattered by the experience. Rather, it is far healthier to discuss problems than to suppress them. I am confident that we have exceptionally high caliber people working in the CIA, and that we will continue to attract high quality intelligence officers who understand the importance of the work they do and how much of our national security is dependent on that.

I believe we accomplished what we set out to do, and we are here today to present and debate the facts surrounding this nomination for the benefit of the American people.

ROBERT GATES

I am convinced that Bob Gates should be confirmed as the new Director of Central Intelligence, and I am equally convinced that he can and will provide the leadership necessary to overcome problems that came to light as a consequence of our hearings. He is the right person to lead the community into the unchartered waters of the future.

Before the hearings, I was well aware of the President's confidence in Bob Gates. I had an opportunity to discuss the nominee with the President on two occasions, and I can tell you of the strong support the President has for Mr. Gates. The relationship between Mr. Gates and the President is a significant factor in the ability of Dr. Gates to lead the intelligence community. Simply put, he will have the President's attention when the tough decisions must be made.

After observing Bob Gates in our hearings, I think I have a better understanding of why he has the President's trust:

He has clearly mastered the complexities of the intelligence community. The new DCI must have a complete understanding of how the community operates in order to shape its future because the future is changing.

I think Mr. Gates has proven that his intellectual capacity is deep. He is articulate and well-informed. He is experienced as both a provider and a consumer of intelligence.

He has withstood enormous pressure in these hearings and certainly will be able to withstand the rigors of being Director of Central Intelligence. I am sure his family has had to withstand those rigors and as a consequence have stood by his side with greater patience and understanding.

Finally, I am confident he has learned much from our confirmation hearings. I have no doubt that some matters discussed have not been pleasant for him to hear, and he surely understands that there is at least a perception problem in the CIA concerning his past tenure there. I, for one, believe he will be a better manager as a result of this knowledge. On the other hand, I have no doubt that he will drive the intelligence community hard, that he will make tough decisions, and that he will demand hard work and precise thinking and, most of all, will demand accountability from those who work with him.

I support Bob Gates to be the next DCI, and I have every confidence that he will do an outstanding job. I also share the chairman's view that Bob Gates will work well with the oversight committees of Congress. His track record in this regard is unmatched. He supports oversight and works extremely well with those of us who have been called upon to perform the oversight function.

IRAN-CONTRA

Mr. President, during the course of this debate, some of my colleagues will raise issues surrounding the Iran-Contra affair as reasons why Robert Gates should not be confirmed. So at the outset I would like to briefly summarize what the evidentiary record on Iran-Contra says about Robert Gates.

First, Mr. Gates had no part in initiating the arms sales to Iran. In fact, he opposed them, and he made those views well known to his superiors, John McMahon and Director Casey.

Second, there is absolutely no evidence that Mr. Gates ever participated in or condoned the diversion of arms money to the Contras.

Third, Mr. Gates did not deliberately withhold nor encourage others to withhold evidence about the CIA's involvement in Iran-Contra.

Fourth, once Bob Gates became fully aware of the possible diversion of funds to the Contras in October 1986, he took positive action to learn whether the Agency was implicated.

Many of us can look back over the Iran-Contra affair and wish we had read the tea leaves better or had taken more direct action to uncover the truth. Bob Gates has said as much in his testimony before our committee. He told us:

> I suspect few people have reflected more than I have on the Iran-Contra affairs. * * * I want to speak about the misjudgments I made and the lessons I learned. * * * I should have taken more seriously after the first of October, 1986, the possibility of impropriety or even wrong doing in the government, and pursued this possibility more aggressively. I should have pressed the issue of a possible diversion more strenuously with Director Casey and Admiral Poindexter. I should have done more. Instead, I contented myself with taking the information I had received to Casey and Poindexter, as well as to CIA's general counsel, and then did not follow up after returning from overseas. * * * I should have been more skeptical about what I was told. I should have asked more questions and I should have been less satisfied with the answers I received, especially from Director Casey. * * * I should have pressed harder for reversing the provision in the January finding prohibiting informing the Congress.

But the record is also clear that Bob Gates did take steps after October 1986 to get to the bottom of CIA's involvement in the Iran-Contra matter.

After the committee explored these matters in some detail, it became clear that there was no so-called smoking gun implicating Robert Gates for any improper activities relating to Iran-Contra. The committee then moved on to another issue, the so-called slanting of intelligence.

INTELLIGENCE ANALYSIS

Mr. President, when we talk about intelligence analysis, why, much of it is in the eyes of the beholder. The question is, did Bob Gates intentionally slant the intelligence product of the CIA in order to please policymakers or to promote the point of view of persons within the Reagan administration including Bill Casey? This was a most serious accusation and the committee devoted a great deal of time and attention to it.

What did a hard look at the evidence reveal?

First of all, it is important to put these allegations of slanting intelligence analysis into perspective. In the period Bob Gates was DDI or DDCI, nearly 2,500 major assessments and estimates crossed his desk. And how many of these is he seriously alleged to have slanted? According to our own staff analysis, less than 10 and probably less than 5. And a close look at even that handful reveals there is, in fact, not a single case where the evidence clearly points to Bob Gates deliberately slanting intelligence.

What we have instead are many instances where Dr. Gates' strong views, rigorous standards, and tough criticism left analysts with bruised feelings. We have some instances where Dr. Gates' managerial style probably engendered more hard feelings than was necessary. Bob Gates is a tough man in a tough business that requires accountability.

It is noteworthy that none of Dr. Gates' senior colleagues at the time, including Hal Ford, apparently thought Bob's style was a serious problem. At least they never raised it with him directly.

Let us remember the circumstances under which Bob Gates became DDI in 1982. At an extraordinarily young age he was selected for the top analytical post in the CIA because William Casey and Admiral Inman both saw in him an extraordinary talent. They also thought it was time to groom a professional intelligence officer as a future DCI.

Admiral Inman testified that this decision put Dr. Gates in an extraordinarily difficult position. He had little management experience and he had little background on the operations side of intelligence. Because of his youth, he would inevitably be resented by many of those more senior officers who had been passed over. Under the circumstances, it would have been unbelievable if he had not ruffled some feathers, and even made some mistakes. What is extraordinary is how few he appears to have made.

Dr. Gates' position was made all the more difficult by the fact that William Casey was one of the strongest-minded DCI's in recent history. The Reagan administration came into office with a clear policy agenda and Mr. Casey was closely attuned to the President's views. Mr. Casey was not adverse to pushing the intelligence community hard when an issue—such as the possible Soviet role in the papal assassination attempt—aroused his or the President's interest.

Under these circumstances, it fell largely to Robert Gates to make CIA responsive to the needs of policymakers in the new administration while, at the same time, protecting the nonpolitical character of intelligence analysis. To please both Mr. Casey and the professional CIA analysts was a daunting task. It is clear to me, however, that Bob Gates performed with extraordinary skill and integrity under the circumstances.

Bob Gates is the first to admit that the persistent allegations of slanting intelligence are a cause for real concern. He is also the first to admit that his youthful management style 8 or 10 years ago may have been unnecessarily abrasive.

But, as I said at the conclusion of our confirmation hearings, the question is not whether he did everything right in the early 1980's. The question is whether he has grown and learned so that he is the right man for the early 1990's. Has he become the man Admiral Inman expected? I believe the answer is clearly "yes." I call the attention of my Senate colleagues to Bob Gates' eight-point plan for dealing with the issue of slanted intelligence. In summary, this eight-point plan contains incentives to encourage the expression of dissenting points of view in the preparation of analysis, a new emphasis by the inspector general on the integrity of the analytical process, changes in training, and efforts to ensure integrity, independence, and the avoidance of self-censorship.

This is a serious plan that provides convincing evidence that he has listened to the critics and he intends to come to grips with their concerns.

I ask unanimous consent that Mr. Gates' eight-point plan be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Eight-Point Plan of Robert Gates as Outlined in Hearings Before the Senate Select Committee on Intelligence

What has emerged in these hearings is clear evidence that the perception of politicization in some areas remains real and must be addressed by the next Director. What is needed then is a set of measures to assure that the integrity of the process is protected. That one or another person's views do not inhibit the diversity of analysis and that analysts need not play it safe with upper management through self-censorship.

And yet to accomplish these objectives while maintaining and further improving the quality and intellectual toughness of the product. To change an atmosphere, a tone is a tall order. And in the real world, probably never perfectly attainable.

Even so, there are measures that can be taken. First, if confirmed I would candidly and quickly address these issues for all analysts. I would stress the importance of integrity and objectivity of the product. The importance of insuring that divergent views are heard and conveyed to the policymaker. And emphasize to all managers that analysts are to be encouraged to speak their minds openly. And that there should be incentives for doing this.

In short, we should try to codify that professional ethic, Mr. MacEachin described, and make it part of our daily work. In this connection, I would also tell all agency employees my door is open to those with concerns about this and other issues. And that I intend to reach out to them as well.

I also would ask for a restoration of collegial civility that acknowledges that honest people can and will disagree and that we must not attribute base motives when disagreements are involved.

Second, I believe all managers of analysis should have as a part of their own performance evaluation, an appraisal of how well they encourage the above principals and values in their organizations.

Their openness to alternative views and their willingness to support their analysts up the line once they've approved the analysis themselves.

Third, if confirmed, I would direct the office of the Statutory Inspector General to pay special attention to problems of analytical process and to serve as a focal point for analysts and analytical managers concerned about process and the integrity of the product.

Fourth, I believe issues relating to integrity of analysis, relationships with policymakers, and managing different points of view should be made a part of every training course for analysts and their managers.

Fifth, this committee and its house counterpart for the past decade have focused especially on budget and clandestine activities. I encourage the committees to consider re-establishing something like their old analysis and production subcommittees that can focus oversight on the analytic process.

This also could help the DCI better deal with analytical problems such as you have heard the last few days.

Sixth, if confirmed, I would ask the President's foreign intelligence advisory board for its help and ideas in this area.

Seventh, if confirmed I would consider creation of an analysis council of retired former senior officers that could advise the DCI and DDCI and the Deputy Director for Intelligence about the problems we are discussing.

Suggest possible, additional, remedies and perhaps serve also as ombudsman to hear and evaluate analyst complaints and concerns.

Eighth, and finally, if confirmed, I would solicit from the analysts, and the managers of analysis themselves, their own ideas on how to re-build morale, ensure integrity, and independence. How to avoid self-censorship, and deal with the perceptions of politicization.

If confirmed, I would expect to report to both intelligence committees on implementation of these and related measures when Congress returns in January.

INTELLIGENCE SHARING WITH IRAQ

Mr. MURKOWSKI. Mr. President, turning briefly to a subject that is not easily dealt with on the floor due to the classification involved, the Senate should know that we explored in some detail issues involving an intelligence sharing relationship with the Government of Iraq. Our report covers the subject and the committee's conclusions in a way that does not compromise intelligence sources and methods, but I highlight it as yet another area where we spent a significant amount of time and energy. I would stress that we found nothing linking Robert Gates to any improper activities.

OTHER ALLEGATIONS

Mr. President, there were a number of other allegations made in connection with Robert Gates. Just to give my colleagues the flavor of some of the more bizarre allegations the committee had to track down, I will list a few of them here:

A former civilian translator for the Israeli military intelligence charged that Robert Gates conspired with the 1980 Reagan-Bush campaign organization to delay the release of the American hostages held by Iran in an effort to prevent a so-called October surprise hostage release and a Jimmy Carter reelection victory;

This same individual claims that Robert Gates accompanied him on a flight from Miami to Phoenix while he carried a Samsonite suitcase filled with $16 million in $100 bills which constituted a part of the October surprise payola destined for the Iranians.

A self-professed arms merchant and former member of the Iranian intelligence service claims that Robert Gates was the central figure in a covert effort to provide cluster bombs to Iraq through a Chilean arms dealer and a Swiss-based financier.

Now, Mr. President, regardless of how colorful these allegations sounded, the committee felt it had a duty to track them down. With the assistance of the FBI and the CIA's independent inspector general, we found these and a number of other allegations that were made about Robert Gates to be absolutely false.

In closing, Mr. President, the committee has undertaken a rigorous process exploring the record and qualifications of Robert Gates. As a consequence of that process, the committee—by a strong, bipartisan vote—recommended this nominee to the full Senate to become the next Director of Central Intelligence.

Others join us in this recommendation. Former Directors Richard Helms, William Colby and William Webster, along with former Deputy Director Bobby Inman and others, all support this nominee and recommend his confirmation.

Another former DCI, President George Bush, the Commander in Chief who is held ultimately accountable for the performance of the CIA and the entire national security apparatus, has chosen Robert Gates as the individual he wants as the Director of Central Intelligence.

Eleven of the fifteen members of the Intelligence Committee recommends that the nominee be confirmed.

We will hear of course from a few who do not share our view during the Senate's deliberations, and we will consider their reasoning and engage in debate. I, for one, am looking forward to this debate, and I am confident that the chairman, myself, and other members of the committee who are here in support of the nomination can respond to any of the questions or concerns our colleagues might raise.

Mr. President, I urge the Senate to vote to confirm Robert Gates as the next Director for Central Intelligence.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from Ohio.

Mr. METZENBAUM. Mr. President, the nomination of Robert Gates to become Director of Central Intelligence was announced nearly half a year ago and was sent to the Senate over 4 months ago. Since that time, under the able leadership of our chairman, the Senator from Oklahoma, and our vice chairman, the Senator from Alaska, the Senate Intelligence Committee has conducted a searching inquiry into Mr. Gates past record and his qualifications for this high office.

This inquiry has been long and fruitful. We held nine public hearings and five closed hearings or briefings. We took testimony from 13 witnesses in open session and from several additional witnesses in closed session. And we obtained dozens of relevant documents from the CIA, many of which we were able to make available to the American people.

Both we and the country have learned much in the process.

We have gained further insight into the seamy world of Iran-Contra, and how that unhappy affair affected the CIA.

We have learned much about the CIA's liaison relationship with Saddam Hussein's Iraq, which was kept secret from Congress for years until a newspaper exposed it in late 1986.

And through five hearings and extensive documentary research, we have all gained an understanding of how real people operated in the real world of intelligence analysis during the 1980's.

We also learned more about the use and misuse of intelligence on House and Senate Members and staff, but this was necessarily done in closed session. The value of these public revelations should not be underestimated. As we leave the cold war behind us, public support for secret government can no longer rest on the old foundation of fear and conflict. Rather, we must build a new foundation of knowledge and trust.

A public that understands the benefits and risks associated with U.S. intelligence programs will be better able to weigh the Nation's need both for secret intelligence and for limits on the agencies that provide it. A public that sees its intelligence committees in action will be better able to weigh the performance both of the intelligence agencies that the public funds and of the elected representatives who serve as the American people's surrogate in watching over the use of their money.

Our efforts in this confirmation process will also lead to better oversight of intelligence. As the chairman noted in additional views that he submitted with the committee report on this nomination, we will continue our inquiry regarding the handling of intelligence reporting on U.S. persons who exercise their constitutional right to oppose U.S. policy.

The committee published a major report 2 years ago on how the FBI targeted Americans who opposed United States policy on El Salvador. In that case, the Americans were private citizens. In the Nicaragua case that we examined last month, the targets were Members and staff of the Congress itself. This is a useful reminder to us all that it is not just the other guy whom the Constitution protects. It is the American political system itself that we safeguard when we protect individual rights and liberties.

I suspect that the Intelligence Committee will also pay more attention to the liaison relationships that U.S. intelligence agencies have with foreign governments. We have tried to get more information on such relationships before. And we have tried to get more information, but we have been faced with a fair amount of CIA foot-dragging over the years.

The Iraq case provides a clear example of why the intelligence committees have a right to be concerned about liaison relationships, as I will discuss later. Now we have CIA agreement, however, on an important point. When intelligence liaison goes beyond routine cooperation and is used by the National Security Council as a tool of foreign policy, the intelligence committees shall be informed as a matter of course.

For the present debate, however, the important thing is that all this committee effort gave us a much more complete picture of Robert Gates—the person, the intelligence analyst, and especially the CIA official from 1982 until 1989. Much of what we learned is contained in the report that the committee issued 10 days ago. I commend that report to my colleagues, even though I do not agree with all of it. There is real information in it, something most unusual in a report on a nomination. The staff of our committee did a good job; it makes for good reading.

On the basis of the record we have created—in open and closed hearings, in our report, and in the documents we have examined and, when possible, released to the public—I conclude that Robert Gates is not the person to lead U.S. intelligence in the 1990's.

I say this with sadness, because I know that he is a sincere and talented man. I believe that he should continue to serve this administration. But based on his past performance, I think that to make Robert Gates the next director of Central Intelligence would be a disservice to both him and this country.

The first issue we examined was Mr. Gates' involvement in Iran-Contra. Here we had a 5-year record of committee interest, including 2 days of hearings with Mr. Gates in 1987 that led him to ask the President to withdraw his first nomination to be CIA Director.

In 1987, Mr. Gates told our committee that he had little to do with the Iran arms sales and nothing to do with CIA efforts to support the Nicaraguan Contras. He told us that despite his promises in 1986 to be involved in all aspects of CIA operations, there had in fact been a "division of labor" between Director Casey and himself that left him out of the loop on these important programs.

Mr. Gates also told the Intelligence Committee in 1987 that the CIA's efforts to support an Israeli shipment of American arms to Iran in November 1985 had been legal, despite the absence of a Presidential finding, and therefore that there had been no obligation to inform the committee of that episode when Director Casey testified on the arms sales a year later. Mr. Gates added that he himself had forgotten about the fact that the CIA had then drafted a retroactive Presidential finding to authorize its actions.

Since the committee's 1987 hearings, further information had come to light as a result of the Senate and House Iran-Contra committees' investigation and the criminal cases against Ollie North, John Poindexter, and others. So the committee sent Mr. Gates a set of questions citing documents and testimony concerning his knowledge of Iran-Contra. We were hoping that by showing him those materials, and giving him as much time as he needed to prepare written answers, we might jog his memory and be able to fill out the record on his involvement or knowledge.

That was our hope, Mr. President, but we were sadly disappointed. For in his responses to our 67 questions, Mr. Gates indicated that he had forgotten or could not recall some 22 matters, and that he did not know about another 33. Indeed, he wrote "I do not recall," or the equivalent fully 33 times; "I did not learn," or the equivalent 25 times; "I don't know," or the equivalent 22 times; and "I did not know," or the equivalent 20 times. Those answers made me concerned, and they still do. For they came from a man who is clearly very intelligent and who is reputed to have a photographic memory.

The events and information that Mr. Gates could not recall were not minor matters. They included Admiral Poindexter's effort to have the CIA buy the assets of the so-called private benefactors. They included a conversation within which Mr. Gates was first told that a senior analyst feared somebody was diverting Iran arms sale profits to the Contras, over a month before that analyst came to him directly. They included his knowledge of the fact that Southern Air Transport was involved in shipping arms to Iran, as well as in the resupply flights to the Contras. And they included conversations that other CIA officials remembered having with Mr. Gates, or material that they provided, In the days before Director Casey's misleading November 1986 testimony to our committee.

Mr. Gates also left the clear impression that, although he had been given as much time as he needed to answer the committee's written questions, he had not made any great effort to think about them or to dig up relevant information from CIA files. Thus, in response to several questions about references to him in Ollie North's personal notebooks, Mr. Gates replied, "I have not reviewed Lieutenant North's notebooks, and I do not know the meaning of the entry."

On the face of it that sounds all right, but we in fact had sent him the pages in question, and we later found relevant documents in Mr. Gates' CIA files that he could have obtained as well, if he had cared to do so.

Also bothersome was Mr. Gates' response to the committee's question on the May 1985 estimate that overstated the risk of Soviet inroads in Iran and recommended easing the arms embargo against Iran so that our allies could increase Western influence there.

Mr. Gates quoted from a letter he had sent the committee in 1987 in which he stated:

> There were no dissents to the estimate from any agency. The independence and integrity of the intelligence process were preserved throughout.

That answer was submitted in July of this year. Less than 2 months later, Mr. Gates had to admit that the reason why there were no dissents was that he had personally called the head of the State Department's Bureau of Intelligence and Research to get him to withdraw a dissenting footnote. And after we heard from the national intelligence officer who was in charge of this estimate, Mr. Gates also admitted that he had known of dissent within the CIA, and that he had approved a redrafting of part of the estimate to heighten its portrayal of the Soviet threat to Iran.

The Intelligence Committee also covered the Contra side of Iran-Contra. Indeed, we had little choice. Just as we were about to begin our hearings, Alan Fiers—the former chief of the CIA's Latin America Task Force—reached a plea bargain with the special prosecutor and admitted that he had known not only about Ollie North's activities in resupplying the Contras, but also about Colonel North's diversion of funds from the Iran arms sales.

Mr. Fiers stated that he had informed two of his superiors about this: The Latin America Division Chief and CIA's Deputy Director for Operations. And we learned that he had had a series of meetings with Mr. Gates, especially beginning in mid-August of 1986, to discuss CIA plans for resuming covert support to the Contras.

This led to one of the most basic questions in our hearings: How could as intelligent and high-ranking an official as Mr. Gates, serving as Director Casey's Deputy, have avoided knowing what was apparently known by both his boss and several of his subordinates?

Mr. Fiers told the committee that he had never specifically told Mr. Gates what was going on. But he added that everybody knew what Colonel North was doing, and he believed Mr. Gates must have known as well, at least in general terms.

Now the former Deputy Director for Operations has been indicted for making false or misleading statements to Congress. The former Assistant Secretary of State has reached a plea bargain on similar, but lesser, charges. And Mr. Gates says that nobody told him—and that he did not ask.

In his statement at our first hearing 7 weeks ago, Mr. Gates admitted to bad judgment in failing to fully follow up when he heard that there might have been a diversion of Iran arms profits; in failing to apply his analytic skepticism to what he was told by other CIA officials, including Director Casey; and in not pressing harder for notification to Congress. In response to questions, he also admitted that he had been too slow to involve himself in operational matters after becoming Bill Casey's deputy.

I know that those admissions were hard to make in the glare of public attention. I also appreciate the assurances that Mr. Gates gave us that he would give high priority to maintaining congressional trust in U.S. intelligence. But the fact remains that Iran-Contra was not his finest hour and that he was slow to admit to the extent of his involvement or knowledge of these matters. Even today, Mr. Gates gives the impression that he would rather forget those events than truly come to grips with their implications for CIA management and his own leadership record.

The same can be said, Mr. President, for Mr. Gates' record in the other major operation that the CIA hid from Congress in those days—its secret intelligence liaison relationship with Saddam Hussein's Iraq.

Mr. Gates was involved in the initial development of options for dealing with the Iran-Iraq war, which led to that liaison relationship. He was also in charge of the CIA directorate that prepared intelligence information for passage to the Iraqis.

Mr. Gates was not intimately involved in day-to-day operations of the Iraq liaison program, but in 1986 he was occasionally an active participant. He testified that his efforts on this program were one of the distractions that kept him from responding effectively to the reports of a possible Iran-Contra diversion in October 1986.

More importantly, Mr. Gates was fully informed and fully aware of the foreign policy implications of Iraq liaison. He knew that the United States was secretly helping Iraq in the Iran-Iraq war, even as it publicly proclaimed its neutrality.

In 1986, when the CIA's intelligence relationship with Iraq became more active, policymakers had to decide how much additional support to give Iraq. A major factor in that decision was how to support Iraq without informing Congress of the secret tilt toward Iraq.

Mr. Gates was fully aware of that approach, as well. He went along with not telling Congress. He did not even seek legal guidance from the CIA's general counsel.

With hindsight, the CIA's lawyers argue that they had no obligation to inform this committee of the Iraq liaison activities, given the way the law was interpreted in the 1980's. But they add that under current interpretation of National Security Act provisions regarding significant anticipated intelligence activities, they would indeed be obligated to inform the intelligence Committees.

Frankly, I find that legalistic sophistry. The statutory requirement to inform the Intelligence Committees of "significant anticipated intelligence activities" has existed since 1980. And it did not take any genius to figure out that a secret tilt in the Iran-Iraq war was significant.

One can even make a case that some of the Iraq liaison activities were in fact intended to influence Iraqi actions, rather than merely to obtain "necessary intelligence." If so, then pursuant to the Hughes-Ryan amendment to the Foreign Assistance Act of 1961, Iraq liaison was a covert action program subject to the requirement for a Presidential finding. Mr. Gates knew of those activities, but took no action to inform himself about their legal implications or to challenge CIA conventional wisdom that they did not need to be reported to the oversight committees. This raises serious questions in my mind regarding his ability to manage sensitive operations.

Moreover, although Robert Gates was involved in the CIA's intelligence relationship with Iraq, neither he nor CIA appear to have fully appreciated Iraq's capacity to threaten United States interests. After the Iran-Iraq war, Mr. Gates allowed intelligence resources to be shifted to monitoring the Soviet military—despite Iraq's failure to demobilize and its continued effort to acquire weapons of mass destruction.

Had he devoted his attention and energy to encouraging better intelligence collection and analysis on potential Iraqi threats, Mr. Gates might well have enabled the CIA to do a better job of covering Iraq's ballistic missile and nuclear programs, as well as Iraqi military procurement efforts that involved illegal transfers of United States materiel or technology. Had he demanded more effort on Iraqi intentions and military preparations, United States intelligence might have spotted Iraqi preparations for the Kuwait invasion in time for our leaders to take effective preventive action.

Mr. President, as I said before, Mr. Gates is an intelligent man, very intelligent.

How do we explain Mr. Gates' poor record on sensitive covert action and intelligence liaison matters in the 1980's? One answer is that he was new to that world, as he came from the analytic side of the Agency. But another answer is that his heart was not in it. What Robert Gates has really cared about over the years was meeting the worldwide Soviet threat. That subject has already been addressed by others who have spoken today. Mr. Gates was convinced that the CIA had failed to warn policymakers of major Soviet moves and, in his words, had "obscured in the 1970's and early 1980's the reality that the Soviets were prepared to put at risk their relationship with the United States rather than forego opportunities in the Third World."

When he became Deputy Director for Intelligence in 1982, Mr. Gates' first act was to gather the analysts together and tell them how poorly they had performed over the years. The anger generated by this speech was the beginning of his difficulties in managing the analytic arm of CIA and of the accusations of politicizing intelligence under his leadership that persist to this day.

Mr. Gates' preoccupation with the worldwide Soviet challenge is a theme that runs through the many cases our committee examined in response to complaints by over a dozen current and former CIA analysts.

And I want to say to you, Mr. President, that as long as I have been in this body, I have never heard as many people who had worked for, or were expecting to be working for, someone—as they were in those positions at the moment, employees of an agency—willing to come forward and indicate their concern about Mr. Gates becoming the new head of the CIA. Some of them did so at personal risk to their futures. They are to be commended. But it is an indication of how strong their feeling is at the CIA.

In 1982, Mr. Gates told the head of CIA's Office of Soviet Analysis to pay more attention to the threat of Soviet inroads in Iran; he also cited the lack of United States involvement in the Iran-Iraq war as one sign of United States unwillingness to meet the Soviet challenge.

Not surprisingly, then, Mr. Gates' support for the May 1985 Iran estimate that overstated the Soviet threat and recommended easing the Iran arms embargo was also prompted by his Soviet preoccupation. When the estimate's manager wrote Director Casey a few months later that Iran no longer seemed as likely to collapse as he had feared, Mr. Gates did nothing to inform policymakers. When a new Iran estimate reversed the old one in February 1986, he again did not call it to the attention of policymakers.

Mr. Gates later testified that he had believed the threat of Soviet inroads was still real, even though it had failed to come to pass. As late as May 1986, he was still telling analysts that there was "more than meets the eye" in Soviet-Iranian relations. And in his January 1987 testimony to the Senate Foreign Relations Committee, Mr. Gates did not even mention that the February 1986 estimate had drawn back from the alarmist predictions of May 1985. Instead, he gave them the discredited May 1985 version of the Soviet threat to Iran and said that United States intelligence still had to watch that threat.

Mr. Gates consistently opposed CIA analyses and estimates that saw the early signs of declining Soviet power, both at home and around the world. He underestimated both the weakness of the Soviet economy and the strength of the Gorbachev phenomenon. On November 25, 1986, Mr. Gates gave a speech in San Francisco alleging that the Soviet Union had strategic designs on the Panama Canal, Arabian oil fields and the strategic minerals of southern Africa—statements that he admitted in recent testimony had not been based on any intelligence information. In that same speech, on the day that Ed Meese told America about the Iran-Contra connection, Mr. Gates called for legislation that would permit more secrecy in approving United States arms sales. A second speech the same day made inaccurate predictions of near-term Soviet advances in ground-based laser ABM systems and called for approval of the strategic defense initiative.

Mr. Gates combined his Soviet preoccupation with a determination to read and edit all CIA analyses that went to senior policymakers—hundreds of them each year. By making himself the sole arbiter of good analysis, he also made himself—at least in the eyes of many analysts—the arbiter of politically correct analysis as well. His criticisms were often scathing, especially when directed at those who failed to understand the extent of the Soviet challenge as he saw it. He permitted not a single intelligence directorate dissent to national estimates on matters dealing with Soviet internal politics or actions around the world.

Mr. Gates helped ease out some midlevel managers in the Office of Soviet Analysis who oppose his views. Apparently he did not realize what a massive impact this would have on analysts' morale and performance. He also gave other CIA offices the impression that analysis regarding worldwide Soviet activities had to hew to a political line. And he failed to stick up for his organization when the Directorate of Operations got unusual control over analysis regarding the Contras in Nicaragua—an action for which he was severely criticized within the CIA.

Mr. Gates also encouraged tighter presentation of intelligence analysis, and this was useful. But his rigid and very public views on policy and his role as the sole judge of analytic quality guaranteed that analysis in areas of concern to him would become personalized. Many saw that as politicization.

Many analysts still see it that way, as our committee learned from their testimony, sworn statements and staff interviews, Mr. Gates presented a vigorous defense of his actions and refuted some of the allegations we had heard. But he could not shake them all, and I commend part two of the committee's report to my colleagues, so they can evaluate this for themselves.

They will find one case in which Mr. Gates was accused of killing a draft estimate on the Soviet Union and the Third World. He replied that in 1982, he was "in no position bureaucratically to kill" an estimate, and with respect to that quote, that is technically correct. But Mr. Gates was already the Deputy Director for Intelligence, and he wrote a memorandum attacking the draft estimate that did result in the estimate being rejected. His technical point is thus rather misleading.

Readers of the committee report will also find a case in which Mr. Gates was accused of allowing an operations officer to take part in the drafting of current intelligence so as to exaggerate the success of the Contras in Nicaragua. He replied by citing CIA analyses that outlined "serious Contra problems." The committee found, however, that several of those analyses were upbeat descriptions of Contra activities, and that most of the others focused on the Contras' need for more outside assistance.

The committee also found that a CIA inspector general's report criticized the Directorate of Operations for "warping and hyping" its analysis on the Contras, and took Mr. Gates' Directorate of Intelligence to task for failing to stick up for its analysts.

I could give other examples as well, both from the 20 points to which Mr. Gates responded and from other allegations that he chose to ignore. But Mr. Gates' precise batting average is not the point. He himself said that he was relying on documents the CIA had gathered for him, because he had purged his mind of memories from those years when he left the CIA in 1989.

My real concern, and I think it needs be the Senate's concern and the country's concern, is that Mr. Gates, knowing full well that he was hazy on these matters, chose to come out swinging at all these allegations instead of giving them more thoughtful consideration. He was willing to concede only that others could misperceive his actions—and never that he himself might have made mistakes.

Mr. President, it is difficult to oppose as skilled and sincere a man as Robert Gates. He has much experience, and he should continue to make a real contribution to this country as Deputy National Security Advisor.

I believe Mr. Gates when he says that he will try his best to improve on his past performance if we confirm him as CIA Director. I do not doubt that he has grown in the last 5 years, or that he has thought about the problems he had in the 1980's.

But he will have no easy time trying to manage the CIA. Half that agency deals with operations, in which Mr. Gates has shown no particular managerial or leadership talents. The other half deals with analysis, in which Mr. Gates' world-view has hindered his management in the past and is singularly inappropriate to today's post-cold war world.

The CIA needs a leader now who can take it from turmoil to triumph, and I think Mr. Gates is the wrong person to whom to give that task. I will work with him in his new role if he is confirmed, and I hope that the concerns raised in our committee's searching inquiry will make Mr. Gates a better Director of whom we can all be proud.

Tomorrow I hope to address myself to another aspect of Mr. Gates' nomination.

I believe that the CIA is going to have some rough times, some changing times facing a new world in the coming years. We are all aware of what has happened in Europe, and we are all aware of things that are happening throughout the world. It is a different kind of world and so the CIA is going to have to be a different kind of body.

The CIA is going to have to have the best team possible, working together as an integrated whole. I think there is a real question as to whether Mr. Gates is the person who can bring that agency together. I will address myself to that subject tomorrow. For today I want to say that I believe there are better people for this important job, and I urge my colleagues to vote against his confirmation.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Rhode Island [Mr. PELL].

Mr. PELL. Mr. President, I have decided to support the nomination of Robert Gates to be Director of the Central Intelligence Agency.

I realize he has made errors in the past which is why his name was withdrawn from earlier consideration for this most responsible position.

I believe, though, he has learned from his experiences.

He has the 11 to 4 support of the Oversight Select Committee on Intelligence.

And, he has satisfied me in personal conversations and correspondence that he is "committed to the presentation of alternative or contrary points of view, where they may exist."

He also agreed that "special care must be taken to insulate DI analysis from DO influence when the DO is engaged in a covert action or has special relationships that may affect its view of a particular situation."

For these reasons, and on balance, I intend to vote for him.

Mr. HATCH. Mr. President, I rise today to strongly endorse the nomination of Robert Gates as the Director for Central Intelligence. Robert Gates is eminently qualified for this position, and has a long and distinguished career as a public servant spanning over two decades. He has worked at the CIA and is intimately familiar with the complexities of the intelligence process. He has also served under the tenure of three different Presidents at the NSC and demonstrated outstanding leadership in this capacity. Mr. President, Robert Gates possesses the personal integrity and breadth of experience that the intelligence community needs at this crucial time. I believe that Robert Gates will be an excellent Director of the CIA, and I support his confirmation without reservation.

Mr. President, I would like to express my concern over how this nomination was handled in the Intelligence Committee. I believe that a number of spurious charges were leveled against Bob Gates' integrity during the committee hearings. I would like to take this opportunity to address two specific charges that partisan critics have leveled against Robert Gates, and attempt to refute each point in turn.

First, Robert Gates' character has been consistently questioned because he served as William Casey's deputy and did not know about the diversion of Iran-Contra funds. The implicit assumption drawn by critics of this nomination is that Director Casey knew about the Iran-Contra affair, and consequently his deputy should have known as well. I would suggest, Mr. President, that this allegation is incorrect.

Director Casey did not run the CIA like a direct line organization—he possessed his own distinct management style. He needed someone to manage the day-to-day operations of the agency, while he took care of other business. Casey needed someone with an excellent head on his shoulders who understood the intelligence process, and who was capable of delivering a useful intelligence product to policymakers in a timely fashion. His man was Robert Gates. The workload that Robert Gates handled as deputy certainly kept him occupied, and, in my opinion, effectively precluded his involvement in the Iran-Contra affair. I believe Robert Gates' testimony about his lack of involvement in this matter.

Mr. President, I would also point out that William Casey always sought to control access to sensitive information. William Casey realized that an inverse correlation existed between the number of people with access to sensitive information, and the length of time that this information remained a secret. Having managed to keep President Reagan and the Washington press corps in the dark about Iran-Contra for some time, I am confident that he could keep a subordinate out of the loop if he chose to do so. I believe that is precisely what occurred. He deliberately kept Robert Gates out of the loop and allowed his deputy to oversee the agency's affairs. This would be in complete accordance with William Casey's management style and personality. Thus, allegations that Robert Gates has not been completely candid about his knowledge of the Iran-Contra affair are unfair and unjustifiable.

A second accusation discussed frequently at the Senate Intelligence Committee hearings concerned the deliberate slanting of intelligence information, specifically National Intelligence Estimates [NIE], to please administration officials. This is an extremely serious allegation, but I would suggest that this has more to do with the statements of a few disgruntled employees jealous of Robert Gates' rapid advancement than a serious critique of intellectual freedom at the CIA.

Some members and former colleagues of Robert Gates, for example, suggest that he exaggerated estimates of Soviet military power in the 1970's and 1980's, as well as the scope of Soviet adventurism in the Third World. Despite the unfair assertions of these critics, Robert Gates was correct about trends in Soviet defense and foreign policy throughout the decades of 1970's and 1980's. The Soviet Union did represent a fundamental challenge to our vital strategic interests, and had engaged in a long and expensive military buildup. The overall portrait of Soviet military power that the intelligence community painted during this period was correct—and Robert Gates was instrumental in helping to draft and critique these lucid and timely intelligence assessments. The credibility of these estimates has never been seriously called into question by anyone inside or outside of the intelligence community. Consequently, I do not understand how these assessments could have been politicized since they represented the general consensus of views that were prevalent in the intelligence community at the time. Robert Gates should be commended for ensuring that these views were heard and understood clearly by policymakers because that is the mission of the intelligence community.

Mr. President, I would like to observe that the next several years will require the agency to change its focus and adjust to the emerging international environment. It will usher in a period characterized by the rapid dissolution of the Soviet Union, the integration of West Europe, the proliferation of conventional and nuclear weapons in the Third World, environmental problems, large scale refugee migration, and ethnic strife. In light of these dynamic changes, the CIA will require someone at the helm that understands the needs of high level policymakers, but that is schooled in the procedures of the intelligence process. The position of Director for Central Intelligence [DCI] will require a person with the requisite experience and expertise—and not a director who will have to learn on the job. Robert Gates possesses these attributes, and I believe that he should be confirmed.

Mr. PELL. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE RESOLUTION 213: FILLING THE VOID OF U.S. LEADERSHIP ON YUGOSLAVIA

Mr. PELL. Mr. President, in response to the deteriorating situation in Yugoslavia, the European Community has put the Serbian government on notice that Serbia must cease its aggression against the people of Croatia and end its obstruction of the EC sponsored peace process.

Today, the foreign ministers of the EC countries are meeting in Brussels to discuss plans to impose sanctions against any republic that continues to stand in the way of peace. Serbia is the only Republic that has rejected the EC's latest attempts to resolve the conflict, and if tomorrow's talks at The Hague fail, the EC has threatened not only to impose an embargo on Serbia, but to bring the issue to the U.N. Security Council. Some EC members—notably Germany—have urged the EC to go further and recognize Slovenian and Croatian independence should tomorrow's efforts fail. I sincerely hope that tomorrow's meeting at The Hague will produce a settlement to the Yugoslav conflict, but if that is not to be, I hope that the European Community will follow through on its ultimatum.

I believe that the United States, at the very least, should move in the same direction as the European Community. To date, the administration has balked at suggestions that we take the initiative, or even make proposals to the European Community on the Yugoslav issue. In recent testimony to the Senate Foreign Relations Committee, Deputy Assistant Secretary of State for European and Canadian Affairs Ralph Johnson stressed that the United States was not taking the lead on the Yugoslav issue, but that "we have been supporting and intend to continue to support the European Community's CSCE-mandated effort to bring about a genuine ceasefire and political settlement. We believe that collective efforts have the best prospects for influencing the situation." On the specific issue of sanctions, Mr. Johnson stated: "Should the EC decide to impose sanctions, we would support its decision and work to coordinate with the EC to impose sanctions ourselves."

Mr. President, it clear that the administration has not been a leader in bringing an end to the Yugoslav bloodbath, but I would argue that the administration has not been a very good follower on this issue. We do not even have a representative at The Hague to observe the EC negotiations.

Last Friday, Senator GORE and introduced a resolution that calls upon the United States to take decisive action if Serbia continues to obstruct the European Community sponsored peace talks. Should the EC efforts fail, Senate Resolution 213 calls for the United States to recognize Slovenia and Croatia, to impose economic sanctions against Serbia, and to bring the issue to the U.N. Security Council. Finally, I believe that it is important to recognize the historical basis for Serbian fears, and accordingly, our resolution calls for firm measures to assure the rights and safety of Serbs living in Croatia.

Mr. President, in contrast to the administration, the Congress has been a strong advocate for United States action to resolve the Yugoslav crisis. In the Senate, we have passed several resolutions during the past months calling for an end to the violence, for a negotiated settlement, and for a U.S. leadership role. Like the European Community, however, many of us have become frustrated by Serbian intransigence at The Hague talks, and we recognize that a coordinated and coherent response is needed. Senate Resolution 213 outlines a policy that should guide U.S. actions in the event that The Hague negotiations are unsuccessful. I strongly support this resolution, and I urge its early adoption by the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma [Mr BOREN].

Mr. BOREN. Mr President, I want to commend the distinguished chairman of the Foreign Relations Committee for the continuing contribution which he makes to the work of this body and to the interests of our country and also to the cause of peace and stability in the world, a contribution which he is making now with his proposal in regard to the situation in Yugoslavia and in that part of Eastern and Central Europe.

NOMINATION OF ROBERT M. GATES, OF VIRGINIA, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

The Senate continued with the consideration of the nomination.

Mr. BOREN. Mr. President, I also want to express my appreciation to him for the comments which he made in announcing that he will vote in favor of the confirmation of Robert Gates to be Director of Central Intelligence. I know Chairman PELL has made a very thoughtful consideration of all of the issues in this matter.

I want to join with him in saying that I, like Senator PELL, am totally committed to the objectivity of the intelligence analysis process. That is the heart and soul of intelligence, as I said earlier in my opening remarks on the floor today. It would be completely unnecessary for us to spend billions of dollars collecting raw intelligence data if the analysts are going to slant the intelligence and simply tell the policymakers what they want to hear. That can be done by one analyst and a typewriter. It would not require the immense amount of funds and the intensive effort that we make to collect intelligence.

I have been impressed, as has been Senator PELL, by the recommendations which Mr. Gates has made. He made some of these comments in public hearings before our committee for trying to change the system—he has reflected upon it, he has looked upon his own experience—to change the system to ensure we indeed have objective analysis from the intelligence community. I think his proposal, that we move to a majority and minority expression of viewpoints and the provision of intelligence analysis, much like the majority and minority opinions of a court, is a very good one. That way we will have crisp, clear, predictive intelligence in terms of the majority view and not a watered down, caveated product that General Schwarzkopf and others have complained about, while at the same time the presentation of minority views set forth with the reasoning behind those minority views will assure that those who do not prevail in the internal debate will also have a chance to be heard by the policymaker.

I think it will add to the intergrity of the process and protect the objectivity of the process in the long run.

So I again want to thank my colleague for his comments, for his contribution to this process. I think, as I have said in the beginning, the confirmation process is a valuable process because, as we raise these kinds of questions, we also have an opportunity to focus the attention of the nominees on areas that need improving.

I am convinced that if Mr. Gates is confirmed as Director of Central Intelligence, he will be a better Director because we have gone through the confirmation process, because he will have been sensitized even further in the course of these proceedings to problems that exist in the Agency, areas that need improvement, and will have had the constructive suggestions of Members of the Senate and a constructive dialog with him in the course of this process.

So I thank my colleague, and I want to pledge that as chairman of the committee, if Mr. Gates is confirmed, or if, indeed, he is not confirmed and someone else is placed in that position, we will continue—and I know the other members of our committee on both sides of the aisle share that common commitment—to focus upon the objectivity of intelligence analysis and the integrity of that process as one of our prime areas of concern.

Mr. President, I would also like at this point to insert into the RECORD a summary of several different estimates and pieces of analysis done by the Central Intelligence Agency over the last decade. I will not go into all of them on the floor at this time, but I believe that they will indicate that there has been a consistent and unequivocable description in these pieces of analysis by the Central Intelligence Agency of the worsening failure of the Soviet political and economic system throughout the last decade.

The question that could not be answered with confidence, and over which there was substantial debate by analysts within the Soviet office, intelligence communities, the Government, and the academic community, was what would the outcome be when the seemingly inevitable crisis occurred? Would it result in a move backward to more oppressive totalitarianism or would it force political reforms and move the country in a direction of a more democratic process?

Many have seized on the inability of the agency to answer this question in precise terms as a sign of failure. While I think there is room for criticism, I do not believe it would be fully fair to look at only one part of the equation. I think some of the critics have dismissed an entire body of analysis and judgment which provided policymakers from the President to Members of Congress very good insight into the Soviet political and economic transformation that has occurred since Gorbachev came to power and very good insight into the nature of the problems of the Soviet economy.

So while I certainly do not offer this evidence in the way of apologizing for any mistakes and errors that may have been made, I simply do offer it for the sake of inserting some balance into our deliberations because it is an overstatement to say that throughout the past decade the intelligence community has been wrong, totally wrong, about the impending economic and political crisis in the Soviet Union. The record does not bear that out. There is room for criticism. There is also room for commendation in terms of the record of the past 10 years.

I urge my colleagues to look at the balance of the full record and not just at parts of it that have been highlighted by some of our colleagues and some in the course of the debate over the Gates nomination.

Yet, let us be clear about the fact that the Agency has not always been correct about predicting outcomes. But contrary to the allegations of critics, the Agency did not miss change in the Soviet Union during Bob Gates' tenure as DDI or DDCI. His own views in no way impeded a healthy and rich record of understanding of trends and the prospect for change in the Soviet Union.

What I have done is go back over a decade and reviewed what the Agency has been saying about the Soviet economy, defense spending, and Gorbachev. What follows is a recitation of quotes from documents that have been declassified by the CIA. What the documents show—and do so conclusively from my point of view, is that the Agency got it right, not wrong—and provided a solid understanding of trends in the Soviet Union.

In 1979, the Agency noted the societal pressures building in the Soviet Union by stating:

> Soviet consumer discontent is growing and will cause the regime of the 1980's serious economic and political problems. * * * In the longer run * * * consumer dissatisfaction could have severe political consequences. The Soviet leaders can ill afford to ignore the material demands of their increasingly acquisitive society. If, as projected, economic growth declines to the point where the regime is unable to improve or even maintain the current standard of living by the mid-1980's, the incidence of active unrest will certainly grow, forcing the leadership to consider a reordering of its priorities.
>
> *** National minorities, particularly in the Western borderlands, tend to see their economic woes caused by Russian exploitation. On several occasions in recent years, economic and national grievances have combined to produce large-scale demonstrations in the Baltic republics and in the Ukraine. The approach of "hard times" will aggravate ethnic conflict. ***

In 1981, in a study commissioned by the CIA entitled "Consumption in the U.S.S.R.: An International Comparison" and submitted to the Joint Economic Committee, the Agency stated:

> The Soviet pattern in many respects conforms to that in less developed countries, and remarkably little progress toward a more modern pattern has been made in recent decades. In this and other respects, the U.S.S.R. is indeed the world's most "underdeveloped country." *** In the U.S.S.R., long-continued investment priorities favoring heavy industry and defense, coupled with a rigid and cumbersome system of economic organization, have combined to produce a consumer sector that not only lags behind both the West and Eastern Europe, but also is in many respects primitive, grossly unbalanced and in massive disequilibrium. These negative aspects cannot be captured in quantitative comparisons, which as a consequence, overstate the level of well being in the Soviet Union relative to other countries. Progress in raising living standards is likely to slow to a crawl and the consumer sector will remain fourth class when compared with western economies.

In a 1982 assessment the CIA stated:

> The Soviet Union now faces a wide array of social, economic and political ills, including general social malaise, ethnic tensions, consumer frustrations, and political discontent. *** How these internal problems will ultimately challenge and affect the regime, however, is open to debate and considerable uncertainty. Some observers believe the regime will have little trouble coping. *** Others believe that economic mismanagement will aggravate internal problems and ultimately erode the regime's credibility, increasing the long-term prospects for fundamental change.
>
> *** Popular discontent over a perceived decline in the quality of life represents, in our judgment, the most serious and immediate challenge for the Politburo.

It should be noted that this study incorporated the results of Murray Feshbach's research on increasing infant mortality and declining life expectancy in the Soviet Union.

In a 1983 assessment the Agency stated:

> Civil unrest in the Soviet Union takes many forms. Since 1970, intelligence sources report over 280 cases of industrial strikes and work stoppages, public demonstrations, and occasional violence, including sabotage, rioting, and even political assassination attempts. *** The scope and character of popular grievances that are suggested in recent civil unrest probably present a greater long-range challenge to the regime than the narrower intellect dissident movement.

In June 1983, in another assessment, the CIA stated:

> Growth had been decelerating since World War II and nose-dived in 1976–1982. Productivity slumped even more dramatically. The surprising and dramatic turndown was triggered by a pathbreaking—but ultimately failed—investment decision in the 1976–1980 Five Year Plan, but other internal and external factors also caused serious damage. Strenuous efforts have not halted the decline. Even if major systematic reforms are launched—and they aren't on the agenda—industrial growth and productivity will not rise for many years.

In July 1983, with the Defense Intelligence Agency taking a dissent, the Agency stated:

> New evidence indicates that in at least one major area—procurement of military hardware—the Soviets have not maintained their past spending momentum since 1976.

In a September 1985 assessment, the Agency stated:

> Economic performance has improved in recent years from the low levels of 1979–1982, but the system cannot simultaneously maintain growth in defense spending, satisfy demand for greater quantity and variety of consumer goods/services, invest amounts required for economic modernization/expansion, and continue to support client-state economies. It is an open question how much economic improvement will occur and how long it can be sustained.

On July 10, 1987, the Agency stated:

> If by next year, industrial modernization doesn't provide enough growth to give generous investments to consumers as well as to defense and investment, leaders will have to reallocate.

In an August 1987 assessment, the Agency stated:

> Even before Gorbachev took over, there was an emerging consensus among the elite that the need to revitalize the economy was reaching a critical stage. We expected, in the long-term, major problems for him because the system would block, not help, him; and he would have to deal with increased demands for shares of a diminishing resource pie. It will be a tumultuous year ahead, politically, in the U.S.S.R.

In a submission to the Joint Economic Committee in September and October 1987, the Agency stated:

> A period of economic disruption is likely over the next few years, even in the best cir-

> cumstances, that would depress growth to less than two percent and complicate the delicate balance between interest groups. There might not be a noticeable payoff for years to come. Nevertheless, there are good reasons why this program has a better chance than its predecessors: it is bolder, more comprehensive, has more leadership commitment, and better means of monitoring compliance. But likely gains will not match Gorbachev's expectations.

In submission to the Joint Economic Committee in April and June 1988, the Agency stated:

> We foresaw troubles for Gorbachev—too few investment resources chasing too many needs, unrealistic growth targets, a squeeze on the consumer, military expenditures at a high absolute level, and people/system problems. We continue to think the outlook for the reform program is bleak unless and until the Soviets deal with fundamental problems. Reforms are pointed in the right direction, but don't go far enough. Price reform is at the heart of the issue—also an incentive program to spur productivity.

In June 1988, in commenting on the Soviet Union's economic woes, the Agency stated:

> The budget deficit has increased dramatically over the last three years. It is financed by new money and inflation is obvious and deleterious. Gorbachev must act quickly to improve the quality of life because if the deficit is not controlled, it will produce inflation much worse than at any time in the postwar era.

In the same month in 1988, the Agency stated:

> Nonetheless, the meager progress so far in the industrial modernization program, particularly in machinery output, which is the linchpin of the plan, creates powerful incentives for at least a short-term reduction in military procurement and construction, and perhaps even in the size of the active-duty forces. A leadership seeking ways to conserve resources going to military would not be hard pressed to find elements of the massive Soviet military establishment that seem excessive in relation to "reasonable" security requirements, especially if more weight is given to political dimensions of security. In deed, a case could be made—and is, in fact, implied in the arguments of some writers—that defense spending could be cut at the same time the effectiveness of the Soviet military is improved. All of this leads us to conclude that—barring a major change in the party leadership or in the external situation—there is a good chance that Gorbachev will, by the end of this decade, turn to unilateral defense cuts.

In March 1989 the Agency stated:

> Indeed, although clearly a military superpower, the Soviet Union has an economy that in many ways is like that of a developing country. The level of per capita consumption in the U.S.S.R., for instance is far below that of the developed Western countries and Japan. * * * The pattern of consumption and output (also) resembles that of less developed nations. * * * (For example) the per capita consumption of consumer durable resembles that of many Latin American countries. * * * (it) was more comparable to countries such has Mexico and Brazil (in 1985). * * * The Soviet position relative to the rest of the world has not improved over the past ten decades. * * * The share of agricultural output in GDP in the Soviet Union is similar to that in Turkey and in the Philippines.

GORBACHEV'S RISE TO POWER

In evaluating Gorbachev's ascendancy, all of the CIA products quickly identified the new General Secretary as a vigorous, imaginative leader, both domestically and in foreign and security policy. His commitment to reinvigorating the Soviet economy and revitalizing Soviet society—even if only to reestablish the credibility of the party and political system—were reported early on, as was his creative approach to foreign and security policy—especially in arms control.

But the CIA analysis also described the early Gorbachev to be more of a fixer than a true reformer; his early moves were unmistakenly aimed at making the system work, not changing the system. CIA reported that his efforts to jump start the economy through efficiency and improved industrial production would at best produce a short term shot in the arm, and he could not sustain even the sought for improved efficiencies while forcing the consumer to await any tangible benefits. And that when these short term gains puttered out, he would be faced with a situation even worse—in part from his unfulfilled promises—than his predecessors. And that sooner or later this would force him to confront the real problems—that dealing with a need to both improve consumer and societal welfare while also modernizing the antiquated industrial base would bring him squarely in confrontation with the immense, disproportionate share of national wealth going to the military; and that the political system and the party machinery which provided the instruments for power, that he was trying to revitalize, were in fact the chief obstacles to achieving his ends.

In sum, CIA products during the first year of Gorbachev described clearly that he was a new brand of leader, committed to improving the economic performance with a vague future promise that this would ultimately improve the social lot, but CIA also expressed skepticism that he could succeed without systemic change in the command economy mechanisms and the stifling political system, or relief from the crushing military burden.

In March 1986 submissions to the Joint Economic Committee the CIA stated:

> In the absence of [an] upturn, however, the hopes for eliciting a great work effort will probably plummet as general disillusionment sets in, with the population seeing Gorbachev as no more effective than Brezhnev or Chernyenko * * * Gorbachev might permit selective utilization of private sector activity, particularly consumer services. This would require a greater departure from economic orthodoxy than he has indicated so far he is willing to do. * * * Gorbachev's approach has reflected adherence to the Soviet model. He doesn't seem to want to change the model. He seems to think he can make it work better. In sum, we continue to believe that major adjustments probably will have to be made in Soviet economic policies, if Gorbachev hopes to come close to his economic objectives. At this stage, it is too early to say just what moves, if any, he would make.

On the political side, in April 1986 the CIA stated:

> Gorbachev's initial party congress effectively drew a curtain on the Brezhnev era. * * * but was not the decisive break some Soviets and Western experts had predicted. * * * For every issue moved forward an equally important question was sidestepped. * * * Gorbachev's avoidance of potentially divisive issues at the congress was politically prudent, but continued caution could slow the momentum he has built over the first year.

In April 1986 the Agency stated:

> Gorbachev has set for himself the ambitious objective of reviving Soviet communism—by revitalizing the economy, the society, the ideology, and the party itself. The General Secretary, building on initiatives started under Andropov, has moved vigorously to address societal and economic ailments confronting the regime. * * * These policies will increase turbulence within society and the elite. Within officialdom, powerful vested interests will attempt to slow the pace and limit the scope of change.
>
> * * * Soviet leaders will face continuing problems throughout the 1980's and beyond. Soviet society problems result from fundamental contemporary conditions that the regime is unable or unwilling to alter. The growing sophistication of consumer demand is a natural consequence of the very process of economic modernization that the regime wants to further. The growing size of the critically thinking public is the result of expanded education, which is essential to the country's progress. The exposure of the population to external influences is partly due to technological advances beyond the regime's control.

It needs to be borne in mind that the above citations are all from products done in the first year of the Gorbachev tenure.

In February 1987, CIA's SOVA published an assessment of the challenges Gorbachev would face. The key judgments from this study have now been declassified and submitted for the record in their entirety.

CIA's March 1987 submission to the Joint Economic Committee also sums up much of what CIA products had said during Gorbachev's second year.

> The plan that was [originally] submitted under the Gorbachev leadership essentially did not change or envisage any change in the fundamentals of the Soviet system. * * * We saw major problems for him * * * it was our view that the system he thought he could exercise would, in effect, stymie him * * * he still had not dealt with * * * the incentives to overcome the cynicism of a population that believed it had seen this before and of a managerial system which had strong disincentives for creativity, enterprise, and initiative. And * * * he had to contend with a large number of sinecures which had grown up over the last 18 years of the Brezhnev leadership * * * [regarding defense] there will come a time in the next year or two, we think, when the question of cutting tools for

> the next generation of weapons systems will be a serious issue, and when the debates begin on the next Five Year Plan. It is clear that the military is going to have to be dealt with insofar as its share of investments is concerned.
>
> And finally, the consumer is going to have to see some results * * * if he is going to have the kind of positive incentives needed.
>
> Gorbachev appears now to have recognized that he is, indeed, running into the kinds of systemic problems we anticipated * * * facing resistance and blockage * * * he has taken the first steps toward challenging some fundamental aspects of the system. * * * This has created a great deal of political tension in the Soviet Union.

In a July 1987 assessment CIA's Bureau of Soviet Affairs stated:

> Because he seems determined to protect a modernization program that is already underfunded and because the milestones for fashioning the 1991–95 economic plan are fast approaching, Gorbachev is likely to seek arms control agreements in the final years of the Reagan Administration rather than wait for the next election. Moreover, the weaknesses of the reform measures undertaken thus far are likely to become clearer over the next few years. We think Gorbachev is likely to move forward rather than retreat and push through more radical reforms so that they will be in place for the 1991–95 plan period.
>
> * * * Gorbachev has already asked the military and the population to curb their appetites in return for more later. If his programs do not work out, other leaders could appeal to these constituencies. The risks in a more radical reform and a rewrite of the social contract are that confusion, economic disruption, and worker discontent will give potential opponents a platform on which to stand. Gorbachev's position could also be undermined by the loosening of censorship over the written and spoken word and the promotion of limited democracy. If it suspects that this process is getting out of control, the party could well execute an abrupt about-face, discarding Gorbachev along the way.

In this period from the beginning of Gorbachev's second year that CIA began to focus increasingly on the tension between Gorbachev's efforts on the economy and outlook for the defense budget. An additional product, principally in the political sphere, dealt with Gorbachev's efforts to take back from the military and defense industrial sector the control that Brezhnev has allowed to develop. In an October 1987 assessment CIA stated:

> Gorbachev's intention of challenging the military's priority status has been reflected in a series of actions from his first hours as party boss. * * *

And, as was described by CIA, Gorbachev's policies toward more systemic change did indeed result in increased turbulence within Soviet society. Throughout 1987 and the ensuing years, SOVA turned out numerous products describing the rising ethnic and society volatility. All of these papers not only analyzed specific ethnic hot spots but also flagged the broader issue of empire maintenance.

As the summer of 1988 approached, it appeared that the drama whose setting had been laid out in the above listed products and other products was reaching a critical juncture with an upcoming All-Union Party Conference. This prospect was described in a SOVA product published in June 1988. CIA stated:

> [It] could mark a watershed in the history of the Soviet system. * * * Gorbachev is counting on the party conference to approve sweeping changes in the Soviet political system in order to breathe new life into his efforts to restructure the economy and build a stronger foundation for regime legitimacy. * * * Changes under consideration, if successfully adopted and implemented, would radically alter the Soviet political landscape by "democratizing" the party and society, limiting the role of the party in day-to-day economic and social life, and opening the way for decentralized decision making.

In fact, this event turned out to be another mixed affair. Conflicts and resistance were becoming entrenched and as had happened so often, Gorbachev temporized. Many of the reforms CIA had expected were passed, but the major shakeup of the party did not occur. But the forward leaning stance reflected in this attempted forecast shows that CIA and SOVA in particular was in fact looking at the prospects for dramatic change that would transform the landscape.

And shortly, thereafter, in September, the expected major shakeup did in fact occur. It included not only major realignment of leadership personnel, but a restructuring of the party and state organs both at the center and regionally. The imminence of a major political event had in fact been forecast in a SOVA paper shortly before it happened, although the precise outcome could not be forecast. It was a clear move by Gorbachev to outflank the party and move to state organizations. It reflected a clear signal that he had given up on trying to reform the work through the party apparatus. A December CIA 1988 paper described the significance of this event by stating:

> [It could] strengthen legislative institutions and transfer some executive powers from conservative and resistant party bodies back to the presidency * * * give greater priority to consumer goods and services and may lead to increased diversion of resources from military to domestic economic needs * * * allow more tolerance for national assertiveness * * * more pragmatic, nonideological approaches to foreign affairs * * * [increased] prospects for advancing 'new thinking' on national security issues.

Mr. President, I will conclude by saying that I believe this is a rather rich record of publication. Notwithstanding, Mr. Gates's own personal views, the Agency demonstrated a strong understanding of events and trends in the Soviet Union. It allowed policymakers to take the Agency's product and combine it with diplomatic reporting, academic papers and their own personal prejudices to come to their own judgments.

But the bottom line is the Agency did not miss the key events and trends in the Soviet Union in the 1980's. And whether Mr. Gates had hardline views or not, he did not stop the flow of independent thinking and analysis.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER (Mr. SIMON). The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I shall vote for confirmation of Robert Gates as Director of Central Intelligence. I served on the Intelligence Committee from 1981 to 1989 and those were critical years for the Intelligence Committee. There has been a great deal of 20–20 hindsight that has been directed back to the reports that took place during that period of time.

I have reviewed the report of the Select Committee on Intelligence and, considering my observations of the nominee during that period of time, I think he has integrity and he has the experience and the ability to do the job that has to be done. I think he can hit the ground running. He understands how the agency works, and he also understands there are major changes that have to be made to deal with the fact that we are moving into in a new era, a situation where you only have one superpower left in the world.

My experience with him was that he cooperated with the Congress. Many times he told us things that there is no way we could have found out on our own. I believe he is in a position where he can help us in doing the critical oversight responsibilities that we have. From very extensive observations and frequent direct contact with Mr. Gates, I have firsthand knowledge of his qualifications in his dealing with the Intelligence Committee. I found him consistently forthcoming and helpful.

Notwithstanding his demonstrated competence, his confirmation hearings raised some questions for me, as it did for other Members, questions about whether Robert Gates had been a party to slanting intelligence to produce what his superiors wanted to hear. The perception has been established that Mr. Gates had yielded to pressures which always exist to produce intelligence to support the policy of an administration. My own careful examination of the facts, however, has persuaded me that that perception is false; that Mr. Gates maintained the independence of judgment that we have to have from the intelligence community.

The allegations of slanting intelligence came primarily from people who were involved in analyzing Soviet activity in the Third World. If Bob Gates permitted or encouraged slanting intelligence to please policymakers, one would expect to find that kind of evidence in other areas around the world. A solid test of Mr. Gates' record, therefore, would come from looking at these other issue areas. I believe the factual record shows that on a number of significant problems, Bob

Gates supervised the production of reports or estimates that did not support administration policy decisions—in fact, in one instance went so far that as I understood it one of the Secretaries tried very much to get him discharged.

In 1983, a national intelligence estimate judged that the prospects of achieving United States objectives in Lebanon were bleak and that was despite the Presidential policy decision to deploy Marines. Now, that is the last kind of intelligence report that an administration would want at a time like that.

He also supervised the production of an estimate that the U.S.S.R. would build a pipeline into Western Europe despite the sanctions. Now, you remember all the debate we had here at that time when President Reagan was trying to put sanctions on building that pipeline: you are going to stop the Russian Government from being able to earn hard currency by selling their gas through that pipeline, bringing it into Western Europe. Part of the results of that were that the Caterpillar Co., for example, which was dominant worldwide, lost all kinds of business in Europe and gave the Japanese time to bring on a very strong competing product, to develop the economies of size, to develop market share, and take much of market share away from Caterpillar.

The whole process did not work. The embargo did not work. The administration was wrong on it. And the intelligence report was correct.

Mr. Gates also supervised the production of an estimate that the U.S.S.R. would go ahead and implement that and would have the cooperation of our allies in the West, and that also happened.

In 1984, as Congress was debating United States plans to produce new binary chemical weapons, Mr. Gates defended and published a CIA research effort that concluded that the Soviets were not going forward with a comparable program. That is the last thing the Defense Department would want to hear at a time like that. That is the last thing that an administration wanted to hear about the evil empire at a time like that.

There are many other examples during Gates' tenure at CIA in reporting on El Salvador, Angola, Pakistan, the Philippines, as well as the Soviet Union where the intelligence community took stands that were unwelcome in the administration.

This body of evidence has persuaded me that while the perceptions of slanting clearly existed among some analysts whose ideas were rejected, the facts exonerate Bob Gates from those charges. That does not mean he was always right in his own strongly held pronounced opinions, but his views were not tailored to support the wishes of the White House officials just because it would coincide with their policies.

Nevertheless, I suspect that the confirmation process has made Mr. Gates acutely sensitive to the need to deal with the perception as well as the reality of any evidence to slant intelligence judgments.

Mr. President, the world has changed dramatically in recent months, and that requires the CIA and other intelligence agencies to change as well, so they can respond to the new and different challenges that we face as a nation. While I support Mr. Gates and have high confidence in how he will carry out his important duties, I also believe that the changes required by new world conditions must be made and quickly. Fortunately, I think with his vast experience in the intelligence field, he can get that kind of job done and he will have broad support in the Congress to go ahead with the extraordinarily difficult job that lies ahead of him.

Mr. President, I yield the floor.

Mr. BOREN. Mr. President, I thank the distinguished Senator from Texas, the chairman of the Senate Finance Committee, for his comments, and also take this opportunity to thank him for his service on the Senate Select Committee on Intelligence. Senator BENTSEN was already a member of that committee at the time I became a Member. He was senior to me as a member of that committee. By virtue of the fact that he was already chairman of the Finance Committee, under our rules he did not succeed to the chairmanship of the Intelligence Committee.

I was privileged to become chairman of the committee. But during those first 4 years of my service as chairman of the committee, the Senator from Texas was the ranking member on our side of that committee. His experience, his knowledge, and his insight as a member of the Intelligence Committee were invaluable to me. He approached every issue with the same thoroughness that he has demonstrated today in his analysis of the various intelligence estimates that were prepared during the time Mr. Gates served as Deputy Director for Intelligence of the Central Intelligence Agency.

I express my appreciation to him for his comments today, and especially for his long and very valuable service on the Intelligence Committee.

As we all know, it is not only a matter of intellect that is important in making very difficult decisions on sensitive issues that affect national security. It is also a matter of judgment, balance in a decisionmaking process. Time after time as we tackled very difficult decisions within the Intelligence Committee, Senator BENTSEN contributed not only his keen insight but he contributed also his judgment, his best judgment about how we should proceed. On many occasions, his suggestions became the prevailing view of the committee. I appreciate very much the tremendous contribution which he made during that period of time.

Mr. President, I have really no other comments to make at this time except I would like to insert in the RECORD several communications which I have received from others in the intelligence community. As has been indicated, we have had the testimony of Mr. McMahon, the former Deputy Director of Central Intelligence, highly respected in the community in favor of Mr. Gates. We have also had the testimony of Adm. Robert Inman, the former Deputy Director as well of the Central Intelligence Agency, a leading figure in the effort to reform the intelligence process.

I have mentioned the comments which Congressman Edward Boland, the former chairman of the House Intelligence Committee authorized me to make in conveying the support which he expressed to me for Mr. Gates to be Director.

I would also like to insert in the RECORD at this point, I will not read the full text, a letter from James R. Schlesinger, the former Director of Central Intelligence, former Secretary of Energy and Defense, who wrote to me on October 9. I will read a part of what he said. He indicated to me that while he was not in a position to comment on other issues before the committee, had no detailed knowledge of the issues relating to Iran-Contra and some of the other matters, he did have judgments about Mr. Gates.

He said:

> I have pondered about how I might be useful to the committee with respect to the pending nomination of Robert Gates. Though I have had only occasional contact with Bob Gates over the years, I have developed a high regard for him. He has served the Nation's intelligence community with great dedication. I believe that he knows what it is necessary to know—to help restructure this Nation's intelligence operations in the aftermath of the Cold War. It is a mission he is well suited to perform.

I also received a letter from William Webster, immediate past Director of Central Intelligence, on October 8 in which he said:

> I respectfully urge that the Senate Select Committee on Intelligence endorse the nomination by President Bush of Robert Gates to be the next Director of Central Intelligence. I believe that Bob Gates possesses the requisite ability, character and experience to lead the Agency and the Intelligence Community in the very challenging times that lie ahead. I believe he can and will engender the indispensable trust that can only be earned through performance and maintained by accountability.

I also received a letter on October 7 from another former Director of Central Intelligence, Mr. Richard Helms. Again, I will not read the full letter at this point, but it says:

> DEAR MR. CHAIRMAN: This letter is to endorse the nomination of Robert Gates to be

Director of Central Intelligence, a position he would hold "at the pleasure of the President of the United States for the time being."

If confirmed by the Senate, Mr. Gates would be the first Director to have risen through the ranks of the Intelligence Directorate at the Central Intelligence Agency. This is the moment in history when such an appointment is indicated. Intelligence analysis is after all the core of the CIA's mission, as prescribed in the National Security Act of 1947. In addition, Mr. Gates has twice served in the White House, once on the NSC staff—

Which of course was under President Carter—

and now as Deputy Assistant to the President.

Under President Bush—

From this experience he has had a unique opportunity to learn at first hand what the President and his staff require in the way of intelligence background. And I might add, this constitutes a significant asset which no other Director has enjoyed. On top of this Mr. Gates knows the entire Intelligence Community, how it operates, the quality of what it produces. This means that in reorienting the U.S. intelligence apparatus in the world conditions created by the end of the Cold War, he would be able to "hit the ground running." No training or indoctrination process would be necessary.

Also, I received a letter from another who is recognized as a leader for reform for oversight—for making sure that the intelligence community operates within the law, the spirit of the law, and within American values. This is William Colby, who was Director of Central Intelligence from 1973–76.

Mr. Colby writes in part:

Mr. Gates is superbly qualified for the post from his experience and performance as a career officer of the Agency, as its Deputy Director and as an officer and Deputy at the National Security Council. He has an exceptional record of service in the structure in which he will work as Director of Central Intelligence.

Mr. Gates will be the first Director with intelligence experience who will come from the analytical element of the Agency, his predecessors all having had operational experience. This is an important symbolic step, reflecting the true analytical "center" which lies at the heart of Central Intelligence.

I hope the committee and the full Senate will fully support his confirmation.

Mr. President, I ask unanimous consent that the full text of these letters from previous Directors of Central Intelligence be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC, *October 7, 1991.*

Hon. DAVID L. BOREN,
Chairman, Senate Select Committee on Intelligence, Washington, DC.

DEAR MR. CHAIRMAN: This letter is to endorse the nomination of Robert Gates to be Director of Central Intelligence, a position he would hold "at the pleasure of the President of the United States for the time being."

If confirmed by the Senate, Mr. Gates would be the first Director to have risen through the ranks of the Intelligence Directorate at the Central Intelligence Agency. This is the moment in history when such an appointment is indicated. Intelligence analysis is after all the core of the CIA's mission, as prescribed in the National Security Act of 1947. In addition, Mr. Gates has twice served in the White House, once on the NSC staff and now as Deputy Assistant to the President. From this experience he has had a unique opportunity to learn at first hand what the President and his staff require in the way of intelligence background. And I might add, this constitutes a significant asset which no other Director has enjoyed. On top of this Mr. Gates knows the entire Intelligence Community, how it operates, the quality of what it produces. This means that in reorienting the U.S. intelligence apparatus in the world conditions created by the end of the Cold War, he would be able to "hit the ground running." No training or indoctrination process would be necessary.

Mr. Gates has endured intense scrutiny by the Senate during the confirmation hearings. He has been under the press microscope as well. If he had rough personality edges before, this experience would most likely knock them off.

On Sunday, October 6, Mr. Harry Rowen wrote an excellent article in support of Mr. Gates. I enclose a copy with this letter. But I particularly want to draw attention to one sentence and to underline it: "There has been too much time spent in the past week on flimsy charges about political intrusions on the purity of the analyses and much too little about how to get better work done." As Director of Central Intelligence for six and a half years and Deputy Director for fourteen months, I had ample opportunity to learn about political pressure and the unpopularity of intelligence analysis which does not support Administration policy. Those issues, important though they are, dwarf beside the problems of fashioning objective analysis designed to help the President and of predicting the course of events in a reasonably accurate way. Mother Nature did not give man the gift of prescience. Intelligence officers strive valiantly to remedy that oversight, but they are often wrong. Mr. Gates, I believe, would give the solution of these many problems an intelligent, aggressive, and hard-working effort. He is well equipped to do this.

Sincerely yours,
RICHARD HELMS.

LAW OFFICES OF DONOVAN LEISURE,
ROGOVIN, HUGE & SCHILLER,
Washington, DC, October 7, 1991.

Hon. DAVID L. BOREN,
Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Please allow me to express my full support for the confirmation of Mr. Robert M. Gates to become Director of Central Intelligence.

Three reasons fully warrant this confirmation:

1. Mr. Gates is superbly qualified for the post from his experience and performance as a career officer of the Agency, as its Deputy Director and as an officer and Deputy at the National Security Council. He has an exceptional record of service in the structure in which he will work as Director of Central Intelligence.

2. President Bush has full confidence in him from their many years of working together. This is a very important consideration in the performance of the duties he will have.

3. Mr. Gates will be the first Director with intelligence experience who will come from the analytical element of the Agency, his predecessors all having had operational experience. This is an important symbolic step, reflecting the true analytical "center" which lies at the heart of Central Intelligence, but it is also an important recognition that the main challenges of the post-Cold War world will lie in analysis of the masses of information that new open world will provide.

I hope the Committee and the full Senate will fully support his confirmation.

Respectfully,
WILLIAM E. COLBY,
Director of Central Intelligence (1973–76).

BETHESDA, MD, *October 8, 1991.*

Hon. DAVID L. BOREN,
Chairman, Senate Select Committee, Committee on Intelligence, Washington, DC.

DEAR MR. CHAIRMAN: I respectfully urge that the Senate Select Committee on Intelligence endorse the nomination by President Bush of Robert Gates to be the next Director of Central Intelligence.

I believe that Bob Gates possesses the requisite ability, character and experience to lead the Agency and the Intelligence Community in the very challenging times that lie ahead. I believe he can and will engender the indispensable trust that can only be earned through performance and maintained by accountability.

Bob's confirmation process has been rigorous, and as I watched and read about it I asked myself whether I had learned anything which would alter my support for Bob as D.C.I. The short answer is that I did not. But knowing Bob as I have for many years, and working closely with him these past four, I am convinced that the concerns expressed by some will be a challenge to him and that he will be an even better D.C.I. in consequence of them. In his testimony before your Committee, Bob has endorsed the important standards of trustworthiness, objectivity, nonpolicy-making and relevance for the Agency and the community, and I have every confidence he will apply those standards successfully throughout his tenure should the Senate see fit to confirm him.

Sincerely,
WILLIAM H. WEBSTER.

WASHINGTON, DC, *October 9, 1991.*

Hon. DAVID L. BOREN,
Chairman, Senate Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR SENATOR BOREN: I have pondered how I might be useful to the Committee with respect to the pending nomination of Robert Gates to be Director of Central Intelligence. Though I have had only occasional contact with Bob Gates over the years, I have developed a very high regard for his intelligence, his ability, his forcefulness. He has served the nation and the intelligence community with great dedication. I believe that he knows what it is necessary to know—to help restructure this nation's intelligence operations in the aftermath of the Cold War. It is a mission he is well suited to perform.

Yet, regrettably, I am not in a position to comment on those other issues that have absorbed much of the Committee's attention—what Bob Gates may have known or may have done during the eighties—since I have no direct knowledge about such matters. Therefore, on those issues I myself can shed little light for the Committee—though I believe that some of the assertions made about supposed slanting simply ignore the inherent difficulties in running an intelligence organization and in providing finished intelligence.

Yours sincerely,

JAMES SCHLESINGER.

Mr. BOREN. Mr. President, I also want to insert in the RECORD another letter from a person for whom those of us who have had experience in the national security community in the area of both defense and intelligence have profound respect. This is from Vice Adm. E.A. Burkhalter, Jr., U.S. Navy (Retired).

Admiral Burkhalter was the Chief of Naval Intelligence. From October 1982 until September 1986, he was Director of the Intelligence Community Staff.

During that period of time, he worked very closely with Mr. Gates as a professional peer when he was Deputy Director for Intelligence and the reporting senior for the National Intelligence Council.

Admiral Burkhalter writes in part—and I want to quote just a portion of his letter, as I know he was known to many of us—I see the distinguished ranking member of the Armed Services Committee is now present on the floor. I know he is well aware of the long work of Admiral Burkhalter in the national security field and I want to quote.

Mr. WARNER. Mr. President, that is correct. I have known him for many, many years and worked with him.

Mr. BOREN. I want to mention one comment and then I will yield the floor. He said—this letter was written on October 16:

> In observing the comments of the various analysts who appeared before you, I would submit that although Mel Goodman and Hal Ford are certainly credible analysts and men of integrity, they never rose in the positions of responsibility held by Larry Gershwin and Graham Fuller, who both were eminently respected within the Intelligence Community. John McMahon and Admiral Bob Inman, two of my former bosses, appeared before the SSCI to give strong support to Bob as the DCI, and I concur with their views expressed to the Committee regarding Bob's qualifications. Having worked with Bob Gates closely for four years, I found him to be a man of integrity and one who was respected throughout the Intelligence Community. He is a professional who knows the national security process, and I am confident that he can adapt and make the changes required in this dynamic time to make our intelligence apparatus responsive to new and emerging requirements. Finally, he has the confidence of the President which is a most important factor for the DCI.
>
> I therefore strongly endorse Bob as the DCI, and I urge you to vote in the affirmative for his nomination.—

This is a letter directed to me prior to our vote.—

> I would be pleased to expand on any of my views to you if you should so desire.
>
> Very sincerely,
>
> E.A. BURKHALTER, Jr.,
> *Vice Admiral, USN (Ret.).*

I ask unanimous consent that the letter from Admiral Burkhalter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BURKHALTER ASSOCIATES, INC.,
Washington, DC, October 16, 1991.

Senator DAVID L. BOREN,
U.S. Senate,
Washington, DC.

DEAR SENATOR: I wanted to give you my personal views on the nomination of Bob Gates to be the Director of Central Intelligence and also comment on the recent debate on analysis as it was viewed by myself on television and reported in the newspapers.

As you will recall, from October 1982 until September 1986 I was the Director of the Intelligence Community Staff. During that period of time, I worked very closely with Bob Gates, first as a professional peer when he was the Deputy Director for Intelligence at CIA and the reporting senior for the National Intelligence Council, and subsequently during the last year of my tenure as the Deputy Director of Central Intelligence. During that period when he was the DDI, I observed that Bob, contrary to some of the statements provided to you during your hearing, encouraged divergent views in the analytical process. At the same time I know he was a tough task master on both himself and his people.

Regarding the National Intelligence estimate process, I would like to observe that the National Intelligence Council was a separate entity from the Central Intelligence Agency although Bob had the ultimate responsibility for the analysis of both organizations. However, each National Intelligence estimate that was prepared had to be reviewed by the National Foreign Intelligence Board, and frequently the author of this document was from one of the other intelligence agencies and not the CIA. I sat in on almost all of the National Foreign Intelligence Board meetings as an observer when these estimates were reviewed. I can never recall a single instance in which I felt that Bob Gates was trying to either unduly influence the estimate or attempting to politicize it for whatever reason. Bob expressed his views forthrightly, but so did every other member of the National Foreign Intelligence Board, and at times those views might have been at variance to those of Bob's. Nevertheless, he always accepted the outcome of those meetings in which the NIE was formally adopted and then supported that estimate's views. He upheld that same philosophy during his tenure as the DDCI.

During the last eight months of my time as the Director of the Intelligence Community Staff, Bob was my boss, having relieved John McMahon as the DDCI. At no time during that period did Bob try to exercise any kind of undue persuasion on me or politicize anything that I might be doing. On the contrary he felt so strongly about the role of analysis that he recommended one of his top analysts to assume the duties as the Director of the Imagery Requirements and Exploitation Committee, better known as the COMIREX. I readily accepted this nomination, and Bob's nominee has served with distinction and respect in that position for the past five years.

In observing the comments of the various analysts who appeared before you, I would submit that although Mel Goodman and Hal Ford are certainly credible analysts and men of integrity, they never rose to the positions of responsibility held by Larry Gershwin and Graham Fuller, who both were eminently respected within the Intelligence Community. John McMahon and Admiral Bob Inman, two of my former bosses, appeared before the SSCI to give strong support to Bob as the DCI, and I concur with their views expressed to the Committee regarding Bob's qualifications. Having worked with Bob Gates closely for four years, I found him to be a man of integrity and one who was respected throughout the Intelligence Community. He is a professional who knows the national security process, and I am confident that he can adapt and make the changes required in this dynamic time to make our intelligence apparatus responsive to new and emerging requirements. Finally, he has the confidence of the President which is a most important factor for the DCI.

I therefore strongly endorse Bob as the DCI, and I urge you to vote in the affirmative for his nomination. I would be pleased to expand on any of my views to you if you should so desire.

Very sincerely,

E.A. BURKHALTER, Jr.,
Vice Admiral, USN (Ret.).

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

COMMENDATION OF COMMITTEE LEADERSHIPS

Mr. WARNER. Mr. President, at this time I would like to give my remarks on behalf of this distinguished public servant whom I have known and worked with for well over a decade now.

But prior thereto I want to pay my respects to my good friend and colleague from Oklahoma, the chairman of the committee, together with the distinguished ranking member, Mr. MURKOWSKI, of Alaska.

They have provided leadership, and this nomination will be the result of the leadership that they have provided together with the backup of the extraordinary staff, both the majority and the minority. We have very little distinction between the staffs on our committee. They work together hand in hand.

I want to salute the Chairman. He has done a very thorough job on this. He presided over all of the hearings. I have been present, I think, every single day of the 10 days on which our committee held these hearings. I have watched him, and the manner in which he has made certain that all witnesses—whether in support or those that have a dissent to cast—were carefully, courteously, and fully heard. And once their testimony was made a part of the record, then under his direction, and that of Senator MURKOWSKI, the record was surveyed very carefully.

So I want to pay my respects to my chairman and all members of the committee.

I think our committee can look back on this nomination process with a sense of pride. We have done it, as we are required under the Constitution, and we have done it thoroughly and well.

The committee has held hearings on 10 days and some 21 witnesses, 2,500 pages of testimony. And since the President nominated Mr. Gates, our staff has reviewed thousands of documents and interviewed dozens of individuals, many of them who did not appear before the committee.

I think our committee has covered every issue, including Mr. Gates' views on intelligence, his relationship with the charismatic and colorful—Bill Casey; and his former performance in high level positions in the CIA before he came up for this nomination.

We have gone over all of this, his involvement and noninvolvement, in the Iran-Contra scandal—as well as his involvement in the analytical process, the question about the cooking of the books. I personally looked over much of the record, and listened to the witnesses. I did not find any evidence that would give rise to an allegation of cooking the books.

But nevertheless, there were those who felt that he had indulged in that practice and, as a consequence, we very carefully considered their statements and viewpoints.

On the whole, the process has been fair, thorough, and, as I say, I think the committee can look back as to having done its work in a very credible fashion.

Mr. Gates is, indeed, in my judgment—and I say this with tremendous enthusiasm—highly qualified to be the next Director of the Central Intelligence. His detractors cast a dissenting voice, and stated that he knew more about the Iran-Contra episode than he admits and that he failed to forcefully bring his concern about CIA's involvement to the attention of his superiors. These views were carefully considered and weighed by the committee.

Bob Gates gave a candid rebuttal, including not only his opening statement, but his subsequent appearances before the committee. Indeed, there was an admission that in hindsight he could have perhaps done things differently, particularly during the Iran-Contra period.

There is not one in this Chamber who given the opportunity to go back over his or her record would not likewise, I think, look upon a certain chapter in their public careers and say perhaps we could have acted more wisely.

At the same time, it must be stressed that he did make his superiors both in CIA and the White House aware of potential wrongdoing in the Iran-Contra period. He did that in a very timely fashion, as he became aware of it himself.

Overall, the picture we have based on his testimony and that of others and former distinguished senior intelligence officials such as Admiral Inman, John McMahon, is one of a very thoughtful man.

Bob Gates is a very thoughtful man, an honest man, an experienced official, a good analyst, a no-nonsense manager, and a man with a vision of the future direction of the role of U.S. intelligence.

I am particularly impressed with his recognition that U.S. intelligence must redirect its focus, its resources, its support to tackle the two most important problems facing the security of this Nation. These are the proliferation of weapons of mass destruction, and the need to help equip our citizens to compete in an increasingly unfriendly global economic environment that is closing in all around us.

In the area of economic intelligence, it is important that the CIA perform its role carefully, less as a spy role, more of a role just in keeping the President, the members of the Cabinet, the senior officials of this Government, and Members of the Congress fully informed on what other nations are doing and how they are daily endeavoring to get so many of our economic secrets away from this country and use it for their own benefit.

We cannot rely on the honesty of foreign governments or foreign firms. We simply have to have within our Government structure adequate protections. We must monitor the flow of technology and equipment, protect trade secrets and patent rights, and block illegal trading practices.

Bob Gates, in direct response to questions by this Senator and others during the course of the hearings, and indeed in his opening and closing statements, made reference to the economic problems facing this Nation and the role of the CIA to help ameliorate them. He has given us the assurance of his deep attention to these subjects. He has indicated he will work closely to support the key policy elements of our Government in these areas: Department of Defense and State against the proliferation of mass weapons of mass destruction; the Departments of State, Commerce and Treasury, as well as a Customs Bureau, as it relates to economic intelligence.

I want to stress one additional and very important point. Along with his other attributes, Mr. Gates has the confidence of the President of the United States. In his effort to reshape U.S. intelligence for the 1990's and make intelligence a more powerful voice throughout the U.S. Government, there can be no greater asset than to have a trusted and respected working relationship between the Director of the CIA and the President of the United States.

While the Director of Central Intelligence has broad responsibilities, his most important mission is to provide direct intelligence and support on a daily basis to the President of the United States. Their personal relationship is as important as their professional relationship. Here Mr. Bush, our president, has worked with Bob Gates over many, many years. He respects him, and he has steadfastly, throughout this nomination process, supported him; he has not waivered at any time.

He made it clear to all concerned, and most particularly the Senate of the United States, that Bob Gates was his personal choice, after a great deal of reflection. He noted that having been Director of Central Intelligence himself—he was the first President in the history of this country to have served in that office—that he understood the mission of the CIA and the related intelligence agencies. He was imminently qualified to select Bob Gates to be the Director of the CIA. That weighed heavily with this Senator.

Consequently, I think we should pay particular attention to the fact that the President—again, the first President to have been Director of the Central Intelligence Agency—personally chose Robert Gates as the man to run the overall Intelligence Agency.

Our country asks much of the intelligence community and its next Director. Bob Gates has the confidence of the President and the opportunity to visit with him at any time. Mr. Gates feels that it is necessary that the analysis, not only of the CIA but other related intelligence agencies, be made known to the President.

That should give a certain sense of pride to the employees of the CIA and other agencies to know that their boss, Robert Gates, will take their analysis and that it will reach the President, be carefully assessed, and indeed provide the foundation for many of the decisions which have to daily be made by our Government.

Bob Gates, having the confidence of the President, will again earn the respect and admiration, trust and confidence, of all of the intelligence agencies throughout the world. This is absolutely essential, if he, as Director of the CIA, is to fulfill his position.

We must do this at a time when the intelligence budget will shrink. The country will require a better organized, more cohesive intelligence community as a result. This is a time for vigilance, excellence, and in short, a time for leadership.

Mr. President, unequivocally, in this Senator's judgment, Robert Gates provides these characteristics. I will, with enthusiasm, vote for this nominee.

I yield the floor.

Mr. EXON address the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, in nominating Robert Gates to be the Director of the Central Intelligence Agency, the President has selected a man of high qualifications. He has 25 years with the CIA and other related agencies, related to national security and defense issues, and is a man who obviously knows the CIA from the inside and out. He is a dedicated and hardworking follower of every supervisor that he has served.

Robert Gates has earned the confidence of Presidents, and those who worked for Presidents. His record is replete with a broad array of dedicated national security work and analyses.

His smarts as an inside operator for the top decisionmakers are well-established in shaping national defense and national security. He has faithfully served this President since 1989, as the Assistant to the President for National Security Affairs.

While these credentials are outstanding, I might say that we should take a look. With that impressive resume, he should be confirmed; right? No way. And it is wrong.

While his credentials are outstanding, any objective review of the testimony would have raised serious doubts about his moving to the top position in the CIA. If the hearing record shows anything conclusively, it demonstrates an individual who has performed in at least some circumstances, at a minimum, in less than a candid manner. It shows lack of proper assessment in key areas.

It demonstrates a lack of forcefulness for what was right at times or a tendency to simply "look away" when knowledge of possible inappropriate or outright illegal activities were contemplated or performed within the agency where he held high responsibilities and obligations.

His career, regrettably, took a sad wrong turn when President Reagan nominated, and we confirmed, his campaign manager, of all people, to be head of the CIA. Mr. President, the true story may never fully be known, but there is little that one could conjure up that William Casey would not at least be capable of, whether he carried them out or not.

The brilliant and capable Robert Gates is certainly not a shining star in this troubled period, because he looked but did not act, and, therefore, I conclude he is not the person to step into the directorship.

In a dramatically changing world, a happening clearly missed by the CIA, at the costs of fears and multibillions of dollars in expenditures, the CIA demands a new director without ties within this highly important agency.

It must be recognized, and I strongly feel, that the budget of the CIA and their sister agencies must be slashed. What are their present annual expenditures? Well, Mr. President, as you know, that is classified, but I have seen a published report that, without any backup, indicates it is about $30 billion a year. That is $30 billion a year, Mr. President, just in case someone might misunderstand my remarks. At least that is what was alleged in a printed article.

I believe that Robert Gates is not now the individual for that job, despite what I consider a record of some significant accomplishments. He is a casualty of the Reagan-Casey years, as unfortunate as that might be for a dedicated and brilliant practitioner of the art of intelligence.

Mr. President, I will cast my vote in the negative.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOREN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BOREN. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBAL-STATE TAX APPORTIONMENT AGREEMENTS

Mr. BINGAMAN. Mr. President, today I rise to bring to the attention of my colleagues a problem that has gone unresolved for too long, a problem for which I believe a logical solution exists. I speak of the problem of dual taxation of energy and mineral resources on tribal lands. It is a problem which affects tribes, States, and also the Nation.

Considerable wealth in the form of mineral and energy resources exists on many of the tribal reservations in this country. Many of these resources go unexplored or untapped, not by design nor lack of interest, but because of the tax situation. Dual or double taxation exists because both tribes, and the States within which their reservations are located, have the authority to tax energy and mineral development activities of nontribal entities. In most cases, both tribes and States choose to exercise their authority. The result is that taxes on mineral development on the tribal lands are substantially higher than on nearby nontribal lands. This higher tax rate discourages industry from pursuing resource development within the tribal boundaries, and translates into significant losses of revenue for tribes and States alike.

Mr. President, at a time when the Nation's economy is in trouble, when we seem to be unable to control the growth of the Federal deficit, we should remove obvious barriers to economic development in any part of this country. We particularly need to be concerned about the inadequacy of the economic bases on many tribal reservations and the attendant unemployment and social problems which now must be addressed through Federal assistance programs. Dual taxation now acts as a barrier to the mineral and energy development which will move many tribes toward self-sufficiency.

Mr. President, we also cannot lose sight of a related problem—our energy security, or the lack thereof. For our oil imports to continue to rise is unacceptable. Fostering the development of domestic energy resources is one way to help reduce oil imports. We cannot allow dual taxation to continue to stand in the way of the development of key domestic reserves.

Let us be realistic about the problems we face. Domestic energy resource exploration and development are flagging. World oil prices are low and likely to remain so. The declining productivity and, in some cases, marginal quality of our domestic oil and gas reserves in such a market make exploration and development unattractive. The financial risk associated with these developing domestic resources has increased; industry is reluctant to invest. The situation is exacerbated on tribal lands where the dual tax burden may make the difference between a company's choosing to invest or not. If the tribes are to attract investment by non-Indian companies, taxes on tribal lands will have to be comparable to taxes elsewhere within a State.

There are several ways to realize comparable tax rates. One would be for either a State or a tribe to choose not to impose taxes. Again, let us be realistic—for most tribes and States, this is not a viable option. Another option would be for the Federal Government to provide tax relief through some form of tax credits—an easy solution perhaps, but a difficult one to enact. The exploding Federal deficit alone makes such an approach difficult. In my view there is another option which may prove to be more practical.

I know most of my colleagues are aware that the courts have ruled that both State and tribal governments have the right under current law to impose taxes on business and facilities on tribal lands which are owned by nontribal individuals or entities. We also must recognize that States and tribes both provide services to tribal members and nontribal residents on the reservations. Both have a need to raise revenues to provide those services and taxing energy and mineral resources is one means of doing so. The other key consideration is that both the tribes and States have a stake in seeing that economic development takes place on the reservations. An obvious option would be for States and tribes to agree to share tax revenues.

The idea of sharing tax revenues is not new and has been applied elsewhere. It seems to be appropriate for energy and mineral development as well. Very recently, the National Indian Policy Center published a paper entitled "Resolving Tribal State Tax

Conflicts." The authors make the point that neither side benefits when litigation, with its adversarial postures, is used as the tool for resolving conflicts between tribes and States. A more effective means of resolving conflicts, they maintain, is to discuss and develop mutually beneficial agreements. I agree with this view. Cooperation is the key.

Mr. President, if the issue of dual taxation can be resolved, the economic development which follows will benefit all parties. Accordingly, I am putting into the RECORD a draft of legislation which is entitled "The Tribal-State Tax Apportionment Agreement Act of 1991." I hope it will serve to stimulate a dialog on this important issue. I have asked the Joint Committee on Taxation to review the draft bill. I also urge my colleagues and interested parties to review it and comment. I do not plan to introduce this legislation until I have had a chance to receive and review those comments.

The Tribal-State Tax Apportionment Agreement Act would encourage tribes and States to use a cooperative approach to resolve their energy tax conflicts. It provides a mechanism by which tribes and States can negotiate agreements apportioning energy and mineral development taxes. The bill does not dictate the terms of, nor a formula for, apportioning taxes. Rather, recognizing that there is considerable variation in economic situation and tax structure from State to State and reservation to reservation, the bill would allow a fair amount of latitude in the terms so that the participants could tailor an agreement to their own situation. Such legislation would not require that States and tribes negotiate agreements if both are satisfied with the existing tax structure. However, if either a tribe or State is interested in an agreement, the other party would be obligated to enter into negotiations.

Mr. President, the time has come to begin the dialog on dual taxation. I expect that all interested parties will have comments and concerns. We need to consider them all. Delaying the discussion gains nothing. The Congress needs to hear the views of those involved. I am confident we will find there is much common ground.

Economic development in tribal lands and encouragement of domestic energy production are two pressing issues for this Nation. The Tribal-State Tax Apportionment Agreement Act or similar legislation could further our goals in both areas. I ask my colleagues to give serious consideration to my proposed solution. The next step will be to continue the discussion with representatives of States and the tribes.

I have summarized the key provisions of the legislation separately. I ask unanimous consent that the summary and the draft legislation be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PROPOSED TAX APPORTIONMENT BILL

Purpose: Provides a mechanism by which States and Tribes may develop tax apportionment agreements for non-Indian owned businesses engaged in energy and mineral resource development on Indian lands.

SECTION 1—FINDINGS

Cites tribal authority and need to tax, negative impact of dual state and tribal taxation on mineral development on tribal lands, and suggests apportionment agreement take into account that both states and tribes provide government services to residents on tribal reservations.

SECTION 2—DEFINITIONS

SECTION 3—REQUEST FOR NEGOTIATIONS

Either a state or a tribe may request the other to enter into negotiations for developing an apportionment agreement. Within 60 days after receiving a written request from one party, the other is authorized to enter into negotiations.

SECTION 4—CONTENT OF THE AGREEMENT

Content of the agreement is not prescribed, but provisions which might be included in the agreement, are suggested:

(A) General provisions—

(1) apportionment of taxes between the state and the tribe,

(2) tax rates,

(3) collection and administration of such taxes,

(4) government services provided by the state and the tribe to Indians and non-Indians residing on tribal lands, and

(5) resolution of disputes relating to such taxes.

(B) Enforcement provisions.

SECTION 5—JURISDICTION OF U.S. COURTS

This section describes procedures should the tribe and the state be unable to reach agreement. Specifically:

U.S. district courts have jurisdiction over controversies arising from failures by either party—

(1) to enter into negotiations within 180 days after such a request is made or

(2) to conduct negotiations in good faith.

In case of failure to conclude an agreement, each party submits to a mediator selected by the Court its last best offer. The mediator selects the better of the two. If both parties consent, then this proposal becomes the agreement.

SECTION 6—FAILURE TO ENTER INTO AN AGREEMENT

If the Tribe consents to the mediator's choice and the State does not, the State loses its authority to tax energy and mineral resource activity on the Tribe's land.

If the State consents and the Tribe does not, then the State has the authority to continue taxing as before.

SECTION 7—EFFECT ON EXISTING TRIBAL/STATE AGREEMENTS

The agreement will not change contracts and agreements related to energy and mineral resource developments already in effect.

SECTION 8—APPROVAL OF SECRETARY OF THE INTERIOR

The Secretary of the Interior must approve any agreement before it goes into effect.

S. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a et seq.) is amended by adding at the end thereof the following title:

"TITLE I—TRIBAL-STATE ENERGY AND MINERAL RESOURCE DEVELOPMENT ACTIVITIES TAX APPORTIONMENT AGREEMENTS

"SEC. 101. FINDINGS.

"The Congress finds and declares that—

"(1) Indian tribes are responsible for exercising governmental authority over Indian lands;

"(2) the power of taxation is a necessary attribute of tribal sovereignty, the revenue from which is needed by tribal governments to defray the costs of providing necessary public services;

"(3) the burden of State and tribal taxation combined has discouraged energy and mineral resource development activities on Indian lands; and

"(4) apportionment of taxes on energy and mineral resource development activity on Indian lands between a State and a tribal government should take into account the governmental services contributed by the State and the tribe to members of such tribe and others residing on such lands.

"SEC. 102. DEFINITIONS.

"As used in this title, the term—

"(1) 'energy and mineral resource development activities' means any activity of a business or facility, carried out on Indian lands, involving the exploration, development, production, creation, transportation, or distribution of energy or mineral resources except that such term shall not include any portion of any such activity which is owned by the Indian tribe having jurisdiction over such Indian lands.

"(2) 'Indian' means an individual who is a member of a federally recognized Indian tribe;

"(3) 'Indian lands' means—

"(A) all lands within the limits of any Indian reservation as established pursuant to Federal treaty, Federal law, or Executive Order of the President, and over which an Indian tribe exercises governmental powers; and

"(B) any lands title to which is held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power; and

"(4) 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians which—

"(A) is recognized as eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians; and

"(B) is recognized as possessing power of self-government.

"SEC 103. REQUEST FOR NEGOTIATIONS.

"(a) Any Indian tribe having jurisdiction over Indian lands in a State is authorized to request such State, or any officer designated by such State, and any such State or officer is authorized to request the governing body of such tribe, to enter into negotiations for the purpose of entering into an Energy and Mineral Resource Development Activity Tax Apportionment Agreement (hereafter referred to in this Act as the 'Agreement') governing the imposition, collection, administration, and distribution of energy and mineral resource development activity taxes imposed by such State or by both such State and Indian tribe on energy and mineral resource development activities located on such Indian lands.

"(b) Any such request pursuant to subsection (a) of this section shall be in writing, and shall be signed by the party making the request. Within 60 days following the receipt by the governing body of such tribe, or by such State or official, of such request, the governing body of the tribe, on behalf of the State, are authorized to enter into negotiations with each other and to enter into such an Agreement.

"SEC. 104. CONTENT OF AGREEMENT.

"(a) GENERAL PROVISIONS—Any Agreement negotiated pursuant to this title may include provisions relating to—

"(1) the apportionment or sharing of State and tribal energy and mineral resource development activity taxes imposed by an Indian tribe or the State on such activities carried out on Indian lands located within such State;

"(2) taxation rates imposed or to be imposed on any such activity carried out on Indian lands;

"(3) collection and administration of taxes imposed by a State or an Indian tribe on energy and mineral resource development activities carried out on Indian lands;

"(4) government services provided by a State and an Indian tribe in connection with Indian lands, or to Indians and non-Indians residing on such lands; and

"(5) the resolution of disputes between the State and the Indian tribe arising out of or in connection with such activity taxes.

"(b) ENFORCEMENT PROVISIONS.—Any Agreement entered into pursuant to this title shall include provisions sufficient to enable any party to the Agreement to enforce the provisions thereof in an appropriate United States district court.

SEC. 105. JURISDICTION OF UNITED STATES DISTRICT COURTS.

"(a)(1) Any United States district court shall have jurisdiction over any controversy arising from the failure of a State, or over any controversy arising from the failure of an Indian tribe, to enter into negotiations for the purpose of entering into an Agreement under this title, or arising from the failure to conduct such negotiations in good faith, or arising out of or in connection with the carrying out of any such Agreement, including a breach thereof.

"(2) For purposes of this section and title 28, United States Code, a dispute under this title relating to a failure referred to in subsection (a)(1) of this section shall be considered a controversy.

"(b) An Indian tribe or a State may initiate proceedings described in subsection (a) of this section for a declaratory judgment under chapter 151 of title 28, United States Code, only after the close of the 180-day period beginning on the date the Indian tribe requested the State, or such State, or official designated by such State, requested the tribe, as the case may be, to enter into negotiations.

"(c) If, in any such proceeding, the court finds that either party has failed to enter into negotiations, or to negotiate in good faith in an attempt to conclude an Agreement governing any taxation referred to in section 103 of this title, the court shall issue a declaration to that effect.

"(d) If a State and an Indian tribe fail to conclude an Agreement governing such taxation within the 60-day period following the date of such declaration, the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed Agreement that represents their last best offer for an Agreement. The mediator shall select from the two proposed Agreements the one which best carries out the purposes and intent of this title; any other applicable Federal law; and the findings and declaration of the court.

"(e) The mediator appointed by the court under subsection (d) of this section shall submit to the State and the Indian tribe the Agreement selected by the mediator under subsection (d) of this section.

"(f) If both the State and the Indian tribe consent to the proposed Agreement submitted by the mediator during the 60-day period beginning on the date on which such Agreement is submitted, such Agreement shall be treated as an Agreement entered into pursuant to this title.

"(g) If either party does not consent during the 60-day period to the proposed Agreement submitted by a mediator under subsection (e) of this section, the mediator shall notify the Secretary of the Interior as to the actions taken by all parties and the Secretary shall publish a notice to that effect in the Federal Register.

"SEC. 106. FAILURE TO ENTER INTO AN AGREEMENT.

"(a) In any case in which an Indian tribe consents to the Agreement submitted by the mediator as provided under section 105(e) and a State fails to consent to such Agreement, such State, on and after the date of the publication in the Federal Register of a notice to that effect by the Secretary as required by subsection (g), shall have no authority or jurisdiction to impose any tax on any energy and mineral resource development activity located on the Indian lands of such tribe.

"(b) In any case in which a State consents to the Agreement submitted by the mediator as provided under section 105(e) and an Indian tribe fails to consent to such Agreement, such State shall, on and after the date of the publication in the Federal Register of a notice to that effect by the Secretary as required by subsection (g), have the authority to tax or continue to tax such energy and mineral resource development activity without regard to the provisions of this title.

"SEC. 107. EFFECT ON EXISTING TRIBAL/STATE AGREEMENTS.

"Nothing in this title shall be construed to alter, or to require the altering of, any contract or agreement in effect on the date of the enactment of this title between any State and Indian tribe relating, in whole or in part, to energy and mineral resource development activities taxes on Indian lands.".

SEC. 108. APPROVAL OF SECRETARY OF THE INTERIOR NECESSARY FOR ANY SUCH AGREEMENT UNDER THIS TITLE.

No Agreement pursuant to this title shall take effect unless such Agreement has been approved by the Secretary of the Interior.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,424th day that Terry Anderson has been held captive in Lebanon.

MESSAGES FROM THE HOUSE

At 2 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2454. An act to authorize the Secretary of Health and Human Services to impose debarments and other penalties for illegal activities involving the approval of abbreviated drug applications under the Federal Food, Drug, and Cosmetic Act, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second time by unanimous consent, and referred as indicated:

H.R. 2454. An act to authorize the Secretary of Health and Human Services to impose debarments and other penalties for illegal activities involving the approval of abbreviated drug applications under the Federal Food, Drug, and Cosmetic Act, and for other purposes; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 792. A bill to reauthorize the Indoor Radon Abatement Act of 1988 and for other purposes (Rept. No. 102-201).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOMENICI:

S. 1912. A bill to amend the Public Health Service Act and the Social Security Act to increase the availability of primary and preventive health care, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE:

S. 1913. A bill to amend the Internal Revenue Code of 1986 to revise the application of the wagering taxes to charitable organizations; to the Committee on Finance.

By Mr. PELL (by request):

S. 1914. A bill to transfer the au pair program from the United States Information Agency to the Department of Justice; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI:

S. 1912. A bill to amend the Public Health Service Act and the Social Security Act to increase the availability of primary and preventive health care; to the Committee on Finance.

PRIMARY HEALTH CARE INVESTMENT ACT

Mr. DOMENICI. Mr. President, like other Senators, I have been taking a hard look at our health care system to find ways to control costs and to expand access to care. In June, I introduced a liability reform proposal with the endorsement of former Surgeon General Everett Koop. That bill is Senate bill 1232. It would go a long way toward stopping the explosion in health care costs by reducing defensive medicine and lowering malpractice insurance costs.

Today I am introducing another proposal. This one is intended to provide wider access to essential services. Primary and preventive services are the foundation of our health care system.

Now, I know it is going to come as a surprise when I talk of the objective facts about this piece of legislation because we have heard so much about the costs that I am sure people are going to wonder how this can be so. But, remember, I am talking about primary and preventive care services. That means the things that normally would get taken care of by a doctor in a doctor's office. It does not mean after a doctor has diagnosed something and sends you to a hospital. It does not mean the hospital part. But most day-by-day contacts of American people have to do with primary and preventive services—a child who is sick, an adult who perhaps has a very serious stomach ailment or stomachache or even a broken foot on a child who is playing outside or some kind of an ear infection. For all of those you go to a doctor. That is primary care.

These primary care activities are services we all need to stay healthy. Additional examples would be prenatal care, childhood immunization, screening tests for signs of poor health and disease, treatment of common illnesses before they become more serious, and sound direction from a doctor and direction from him on healthy behavior.

Yet, our health care system underinvests in these basic services even as we continue to pour enormous resources into new high tech treatments and procedures that are marginally beneficial and too expensive for many Americans. I believe we need to reorient our priorities by investing more of our public funding in primary and preventive care. To do this I am introducing legislation to expand our primary care infrastructure to provide access to basic health care to over 8 million more Americans by 1996. Let me repeat. This will cover 8 million additional Americans.

Now, that does not sound possible, but let me continue. With all of the unnecessary health care that is delivered in this country, we certainly could restrain some use of physicians and hospital services, but not at the expense of primary and preventive care. In fact, we should be encouraging people to get cost-effective primary and preventive services because these services will reduce health care costs in the long run.

As a Nation, we spend more on health care than any other industrialized country. In 1989, we devoted over twice as much of our productive capacity to health care than did the United Kingdom, 75 percent more than Japan, 40 percent more than former West Germany—we have no numbers on the new Germany—and 35 percent more than Canada.

Despite this overwhelming expenditure, many millions of Americans, unlike citizens in most other industrialized countries, do not have access to health care because they do not have health insurance. Nationwide, there are some 33 million people who fit into this category, about one out of seven. Twenty-five percent of the uninsured are children. The problem is severe in New Mexico, my State—25 percent of the population. According to one study, there are two areas in the country that have a more serious problem—the District of Columbia and, from what we gather, the State of Texas have higher percentages of uninsured.

Clearly, the uninsured are at risk financially if they suffer a severe illness or are injured in an accident. Hospital and physician bills are simply too expensive for most Americans to pay out of their own pockets. But the uninsured also are vulnerable to getting sick more frequently and severely because they forego routine, but important, primary and preventive care.

Recent studies indicate that uninsured people use physicians' services 37 percent less than those with health insurance, and that the uninsured are 50 percent less likely than the insured to get certain primary and preventive services such as blood pressure screening, pap smears, and glaucoma tests.

Over 500,000 New Mexicans live in health professional shortage areas, meaning there are at least 3,500 people for every primary care provider. Furthermore, over half of the people in New Mexico live in counties that are designated as medically underserved.

Has my time expired? I ask for 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Let me proceed quickly to then say fortunately we have effective programs already in place that can provide efficient primary and preventive care to the uninsured and to those who live in underserved areas. These programs need additional resources if they are going to take up more of the huge unmet needs that exist, as I have just explained, including the rural areas.

So my proposal is as follows: First, community health centers. Currently community health centers provide primary care to about 6 million Americans who live in medically underserved areas, 6 million. Services are free to persons below the poverty line and are based on a sliding scale to those above the poverty line.

These centers are simply the most efficient primary care delivery system available. We can provide comprehensive primary and preventive care to an uninsured individual for under $90 each year of Federal spending, $90 a year per person.

It would cost $625 per person, or 600 percent more, to provide similar services to those persons through the Medicaid Program. I hope some pay attention to that. That is, for the 6 million who are served in community health centers, it is about $90 a year per person for primary and preventive care. The same care under Medicaid is 600 times higher, $625.

So my bill authorizes 20 percent expansion of health center funding in each of the next 5 years. It will be effectively doubled in 5 years. By 1996, it will be receiving a total of $1.2 billion, double what it is getting now. But get this; it will provide an additional 8 million more Americans with care, making 14 million who will get primary care and preventive care through this series of centers across the land.

The only thing we need to do to make sure that will work is also double the size of the National Health Service Corps. It is not a big expenditure. It provides us with doctors, and if you double it each year—excuse me, 20 percent each year. So you are doubled in 5 years. You will be providing 1,120 additional recruits who will serve in health centers in rural America and in some of our central cities where there are indeed large numbers of poor people and others who do not have access to high quality primary health care.

So we would add 20 percent a year there.

Let me suggest for anyone that wonders whether or not we can pay for this, if you want to pay for this program, all you have to do, believe it or not, is to take 0.2 of 1 percent—not 2 percent—0.2 of a percent of the Labor, Health and Human Services budget, the appropriation, take 0.2 of 1 percent, put it in this account, and you are on your way to covering 14 million Americans by this kind of healthy delivery.

I think we ought to do it and we ought to do it quickly.

I ask unanimous consent that the bill and a summary be made a part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1912

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Primary Health Care Investment Act of 1991".

SEC. 2. PUBLIC HEALTH SERVICE PRIMARY CARE PROVISIONS.

(a) COMMUNITY HEALTH CENTERS.—Section 330(g)(1)(A) of the Public Health Service Act (42 U.S.C. 254C(g)(1)(A)) is amended by striking out "and such sums" and all that follows through the period and inserting in lieu thereof the following: "$580,000,000 for fiscal year 1992, $680,000,000 for fiscal year 1993, $830,000,000 for fiscal year 1994, $990,000,000 for fiscal year 1995, and $1,200,000,000 for fiscal year 1996.".

(b) NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP AND LOAN REPAYMENT PRO-

GRAMS.—Section 338H(b)(1) of such Act (42 U.S.C. 254q(b)(1)) is amended by striking out "and such sums" and all that follows through the period and inserting in lieu thereof the following: "$63,600,000 for fiscal year 1992, $76,300,000 for fiscal year 1993, $91,600,000 for fiscal year 1994, $109,900,000 for fiscal year 1995, and $131,900,000 for fiscal year 1996.".

SEC. 3. PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS OF PRIMARY CARE RESIDENTS INCREASED.

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395 ww(h)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) DETERMINATION OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary shall determine an approved FTE resident amount for each cost reporting period beginning after October 1, 1991, as follows:

"(A) DETERMINING NATIONAL AVERAGE SALARY PER FTE RESIDENT IN FISCAL YEAR 1989.—The Secretary shall determine the national average salary for fiscal year 1989 for a full-time-equivalent resident in an approved medical residency training program.

"(B) UPDATING TO A COST REPORTING PERIOD THAT BEGINS IN FISCAL YEAR 1992.—The Secretary shall update the amount determined under subparagraph (A) by the estimated percentage change in the consumer price index from the midpoint of fiscal year 1989 to the midpoint of each cost reporting period that begins in fiscal year 1992.

"(C) UPDATING TO SUBSEQUENT COST REPORTING PERIODS.—For each subsequent cost reporting period, the Secretary shall update the amount determined under subparagraph (B) or this subparagraph for an immediately preceding cost reporting period by the estimated percentage change in the consumer price index from the midpoint of that preceding period to the midpoint of that subsequent period, with appropriate adjustments to reflect previous under- or over-estimations in the estimated percentage change in that index.";

(2) in paragraph (3)(B)(i), by striking "hospitals"; and

(3) in paragraph (4), by amending subparagraph (C) to read as follows:

"(C) WEIGHTING FACTOR FOR CERTAIN RESIDENTS.—Such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

"(i) that the weighting factor for a primary care (as defined by the Secretary) resident, or for an intern, is 2.2,

"(ii) that the weighting factor for a nonprimary care resident who is in the resident's initial residency period is 2.0, and

"(iii) that the weighting factor for a nonprimary care resident who is not in the resident's initial residency period is 1.2.

The Secretary shall make such adjustments as are necessary to the weighting factors to maintain aggregate payments under this section to all hospitals at the same level that such payments would have been made under this section prior to enactment of the amendments made to this section by the Primary Health Care Investment Act of 1991.".

(b) EFFECTIVE DATE.—(1) Except as otherwise provided by paragraph (2), the amendments made by this section shall apply to cost reporting periods beginning after October 1, 1991.

(2) For a cost reporting period that falls partly in fiscal year 1991 and partly in fiscal year 1992, the provisions of section 1886(h), as in effect before the date of enactment of this Act, shall apply proportionally to that part of the cost reporting period that occurs before fiscal year 1992.

PRIMARY HEALTH CARE INVESTMENT ACT OF 1991—SENATOR PETE V. DOMENICI—BRIEF SUMMARY

1. COMMUNITY HEALTH CENTERS

The proposal would increase authorized funding levels for community health centers by about 20 percent each year over a five year period, effectively doubling the size of the program by 1996. The additional funding would allow health centers to serve over 8 million more patients by 1996.

HEALTH CENTERS

	1992	1993	1994	1995	1996
Funding (millions) ..	$580	$680	$830	$990	$1200
Additional Patients Served (millions)[1]	.7	2.7	3.5	5.7	8.4

[1] Above 1991 levels.

2. NATIONAL HEALTH SERVICE CORPS

The proposal would also increase authorized funding levels for the National Health Service Corps by approximately 20 percent each year over a five year period, with 70 percent of the funding going to loan repayment in the first two years of the five year plan. Estimates indicate this funding would bring an additional 1120 primary care providers into underserved areas by 1995.

NATIONAL HEALTH SERVICE CORPS RECRUITMENT

	1992	1993	1994	1995	1996
Funding (millions) ..	$63.6	$76.3	$91.6	$109.9	$131.9
Additional Field Strength[1]	190	450	740	1120	870

[1] Above projected baseline levels.

3. REORIENT MEDICARE GRADUATE MEDICAL EDUCATION PAYMENTS

Medicare payments to hospitals for the costs of graduate medical education programs would be altered in a budget neutral manner. Payments would be based on a national average per resident amount, and payments for primary care residents would be 20 percent higher than payments for non-primary care residents.

S. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Primary Health Care Investment Act of 1991".

SEC. 2. PUBLIC HEALTH SERVICE PRIMARY CARE PROVISIONS.

(a) COMMUNITY HEALTH CENTERS.—Section 330(g)(1)(A) of the Public Health Service Act (42 U.S.C. 254c(g)(1)(A)) is amended by striking out "and such sums" and all that follows through the period and inserting in lieu thereof the following: "$580,000,000 for fiscal year 1992, $680,000,000 for fiscal year 1993, $830,000,000 for fiscal year 1994, $990,000,000 for fiscal year 1995, and $1,200,000,000 for fiscal year 1996.".

(b) NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS.—Section 338H(b)(1) of such Act (42 U.S.C. 254q(b)(1)) is amended by striking out "and such sums" and all that follows through the period and inserting in lieu thereof the following: "$63,600,000 for fiscal year 1992, $76,300,000 for fiscal year 1993, $91,600,000 for fiscal year 1994, $109,900,000 for fiscal year 1995, and $131,000,000 for fiscal year 1996.".

SEC. 3. PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS OF PRIMARY CARE RESIDENTS INCREASED.

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395 ww(h)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) DETERMINATION OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary shall determine an approved FTE resident amount for each cost reporting period beginning after October 1, 1991, as follows:

"(A) DETERMINING NATIONAL AVERAGE SALARY PER FTE RESIDENT IN FISCAL YEAR 1989.—The Secretary shall determine the national average salary for fiscal year 1989 for a full-time-equivalent resident in an approved medical residency training program.

"(B) UPDATING TO A COST REPORTING PERIOD THAT BEGINS IN FISCAL YEAR 1992.—The Secretary shall update the amount determined under subparagraph (A) by the estimated percentage change in the consumer price index from the midpoint of fiscal year 1989 to the midpoint of each cost reporting period that begins in fiscal year 1992.

"(C) UPDATING TO SUBSEQUENT COST REPORTING PERIODS.—For each subsequent cost reporting period, the Secretary shall update the amount determined under subparagraph (B) of this subparagraph for an immediately preceding cost reporting period by the estimated percentage change in the consumer price index from the midpoint of that preceding period to the midpoint of that subsequent period, with appropriate adjustments to reflect previous under- or over-estimations in the estimated percentage change in that index.";

(2) in paragraph (3)(B)(i), by striking "hospital's"; and

(3) in paragraph (4), by amending subparagraph (C) to read as follows:

"(C) WEIGHTING FACTOR FOR CERTAIN RESIDENTS.—Such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

"(i) that the weighting factor for a primary care (as defined by the Secretary) resident, or for an intern, is 2.2,

"(ii) that the weighting factor for a nonprimary care resident who is in the resident's initial residency period is 2.0, and

"(iii) that the weighting factor for a nonprimary care resident who is not in the resident's initial residency period is 1.2.

The Secretary shall make such adjustments as are necessary to the weighting factors to maintain aggregate payments under this section to all hospitals at the same level that such payments would have been made under this section prior to enactment of the amendments made to this section by the Primary Health Care Investment Act of 1991.".

(b) EFFECTIVE DATE.—(1) Except as otherwise provided by paragraph (2), the amendments made by this section shall apply to cost reporting periods beginning after October 1, 1991.

(2) For a cost reporting period that falls partly in fiscal year 1991 and partly in fiscal year 1992, the provisions of section 1886(h), as in effect before the date of enactment of this Act, shall apply proportionally to that part of the cost reporting period that occurs before fiscal year 1992.

By Mr. DASCHLE.

S. 1913. A bill to amend the Internal Revenue Code of 1986 to revise the application of the wagering taxes to charitable organizations; to the Committee on Finance.

APPLICATION OF WAGERING TAXES TO CHARITABLE ORGANIZATIONS

Mr. DASCHLE. Mr. President, I rise to propose repeal of two taxes that interfere with the charitable activities of nonprofits.

Nonprofit organizations perform badly needed services which government is often ill-equipped to provide. Through use of local and private funds, these organizations mobilize volunteers to assist in providing temporary shelter to the homeless, soup kitchens, rape counseling, educational services, suicide hot-lines, transportation to the elderly and disabled, and much more.

The work of charitable organizations is essential to the national effort to grapple with many of these vital social needs. Congress has recognized this fact by exempting charitable groups from the Federal income tax. This policy has never been questioned.

Yet, two taxes tucked into the Tax Code are threatening the ability of certain nonprofits to raise funds and pursue their charitable goals. The first, found in section 4411, is an annual occupational tax of $50 imposed on each volunteer who helps with activities like pull tabs and jar raffles. The second, set forth in section 4401, is a wagering excise tax of 0.25 percent on the gross income raised from these activities.

For many charitable organizations, such as the Knights of Columbus, the Elks, and numerous veterans groups, wagering games are central to their fundraising activities. The occupational tax creates a strong incentive to limit the number of volunteers who help with fundraising activities. And the wagering excise tax directly reduces the amounts raised that would otherwise be used to support the organization's charitable goals.

While these taxes have been on the books for some time, they have not been collected by the Internal Revenue Service—until recently. In the past few years, the IRS has initiated regional audits to collect these taxes.

The legislation I am introducing today would repeal both the special occupational tax and the wagering excise tax. Except for the effective date, my bill is identical to legislation introduced in the 101st Congress by Representative HANK BROWN and then-Senator Bill Armstrong, whose State is one of seven or eight that have been the focus of IRS audits on these taxes.

Like their bill, my proposal would limit the repeal of the wagering excise tax to the extent the nonprofit demonstrates that funds raised by wagering games have been directed toward the organization's charitable goals. Thus, if funds from wagering games conducted by nonprofits inure to the benefit of the members of the organization, then they would still be subject to the wagering excise tax.

Mr. President, whatever rationale there may be for imposing the occupational and excise taxes on wagering in other contexts, they do not make sense as applied to nonprofits. For those who may be concerned that nonprofits are engaging in activities unrelated to their tax-exempt purposes, the nonprofits are already subject to the unrelated business income tax.

Nonprofits in a number of States already have faced substantial financial and administrative difficulties as a result of the retroactive enforcement of these taxes. We must take action now to prevent further interference with the legitimate fundraising activities of nonprofit organizations. I urge my colleagues to support this legislation.

By Mr. PELL (by request):

S. 1914. A bill to transfer the Au Pair Program from the U.S. Information Agency to the Department of Justice; to the Committee on Foreign Relations.

AU PAIR PROGRAM ACT OF 1991

● Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to transfer the au pair program from the U.S. Information Agency to the Department of Justice.

This proposed legislation has been requested by the U.S. Information Agency, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the section-by-section analysis and the letter from the Director of the U.S. Information Agency to the President of the Senate, which was received on November 1, 1991.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1914

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Au Pair Program Act of 1991."

SEC. 2. The Attorney General shall establish and implement an international cultural exchange program pursuant to section 101(a)(15)(Q)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(Q)(ii)), which shall be known as the au pair program.

SEC. 3. The Attorney General shall promulgate regulations for the administration and operation of the au pair program as established by section 4 of this Act not later than the effective date of the amendments made by section 4.

SEC. 4. Section 101(a)(15)(Q) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(Q)) is hereby amended as follows:

(i) by inserting "(i)" after the words "participant in";

(ii) by inserting ", or (ii) an au pair program, approved by the Attorney General and subject to regulations he may issue, for the purposes of providing child care and the opportunity for cultural sharing. The Attorney General shall have the authority to determine the numerical and geographical limitations of any program established under this subparagraph" after the words "domestic workers".

SEC. 5. The amendments made by section 4 shall take effect one year after enactment, and section 8 of Public Law 101-454 is hereby repealed as of that date.

SECTION-BY-SECTION ANALYSIS OF AU PAIR PROGRAM ACT OF 1991

The proposed legislation transfers the authority to administer the au pair program from the United States Information Agency to the Department of Justice. Currently, USIA administers the au pair program pursuant to Public Law 101-454. The provision creates a sub-category of 8 U.S.C. 1101(a)(15)(Q) to accommodate nonimmigrants seeking to participate in the au pair program.

USIA determined, and GAO advised, that the au pair program exceeded USIA's mandate under the Mutual Educational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. 2451, et seq. The new provision requires the Department of Justice to establish an au pair program which will provide child care and the opportunity for cultural sharing. The Attorney General is required to implement regulations for the administration of the au pair program. Because the au pair program administered by USIA pursuant to Public Law 101-454 was limited numerically and geographically, the proposed legislation places both of these considerations within the discretion of the Attorney General.

Section 5 of the proposed legislation repeals Section 8 of Public Law 101-454 which had authorized continuation of the au pair program under the aegis of USIA.

U.S. INFORMATION AGENCY,
Washington, DC, October 25, 1991.

Hon. DAN QUAYLE,
President, U.S. Senate.

DEAR MR. PRESIDENT: Enclosed for your consideration and appropriate reference is a bill, the "Au Pair Program Act of 1991," which will transfer the authority to administer the au pair program from the United States Information Agency to the Department of Justice.

The Department of Justice will administer the program pursuant to a new sub-category of the Q visa, a category created by the Immigration Reform Act of 1990.

The United States Information Agency determined, and the General Accounting Office advised, (GAO Report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 1990), that the au pair program exceeds USIA's mandate under the Mutual Educational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. 2451, et seq.

The Office of Management and Budget advises us that there is no objection from the standpoint of the Administration's program to the submission of this legislation to the Congress.

Sincerely,

HENRY E. CATTO,
Director.●

ADDITIONAL COSPONSORS

S. 493

At the request of Mr. KENNEDY, the name of the Senator from Iowa [Mr.

HARKIN] was added as a cosponsor of S. 493, a bill to amend the Public Health Service Act to improve the health of pregnant women, infants, and children through the provision of comprehensive primary and preventive care, and for other purposes.

S. 664

At the request of Mr. THURMOND, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 664, a bill to require that health warnings be included in alcoholic beverage advertisements, and for other purposes.

S. 747

At the request of Mr. PRYOR, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 747, a bill to amend the Internal Revenue Code of 1986 to clarify portions of the Code relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 843

At the request of Mr. BREAUX, the names of the Senator from Connecticut [Mr. LIEBERMAN] and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 1156

At the request of Mr. PACKWOOD, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 1156, a bill to provide for the protection and management of certain areas on public domain lands managed by the Bureau of Land Management and lands withdrawn from the public domain managed by the Forest Service in the States of California, Oregon, and Washington; to ensure proper conservation of the natural resources of such lands, including enhancement of habitat; to provide assistance to communities and individuals affected by management decisions on such lands; to facilitate the implementation of land management plans for such public domain lands and federal lands elsewhere; and for other purposes.

S. 1289

At the request of Mr. BIDEN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 1289, a bill to amend the provisions of the Higher Education Act of 1965 relating to treatment by campus officials of sexual assault victims.

S. 1333

At the request of Mr. SASSER, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1333, a bill to amend the Federal Property and Administrative Services Act of 1949 to authorize the Administrator of General Services to make available for humanitarian relief purposes any nonlethal surplus personal property, and for other purposes.

S. 1424

At the request of Mr. CONRAD, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 1424, a bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a mobile health care clinic program for furnishing health care to veterans located in rural areas of the United States.

S. 1729

At the request of Mr. KENNEDY, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1729, a bill to amend the Public Health Service Act to require drug manufacturers to provide affordable prices for drugs purchased by certain entities funded under the Public Health Service Act, and for other purposes.

S. 1777

At the request of Mr. ADAMS, the names of the Senator from Illinois [Mr. SIMON] and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 1777, a bill to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes.

S. 1810

At the request of Mr. DURENBERGER, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the medicare program, and for other purposes.

S. 1838

At the request of Mr. PRYOR, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1838, a bill to amend title XVIII of the Social Security Act to provide for a limitation on use of claim sampling to deny claims or recover overpayments under medicare.

S. 1879

At the request of Mr. PRESSLER, his name was added as a cosponsor of S. 1879, a bill to authorize the adjustment of the boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest, and for other purposes.

SENATE JOINT RESOLUTION 193

At the request of Mr. SANFORD, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of Senate Joint Resolution 193, a joint resolution to establish a commission to commemorate the bicentennial of the establishment of the Democratic Party of the United States.

SENATE JOINT RESOLUTION 207

At the request of Mr. HATCH, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Montana [Mr. BAUCUS], the Senator from Texas [Mr. BENTSEN], the Senator from Missouri [Mr. BOND], the Senator from New Jersey [Mr. BRADLEY], the Senator from Colorado [Mr. BROWN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Montana [Mr. BURNS], the Senator from Mississippi [Mr. COCHRAN], the Senator from North Dakota [Mr. CONRAD], the Senator from Idaho [Mr. CRAIG], the Senator from California [Mr. CRANSTON], the Senator from New York [Mr. D'AMATO], the Senator from Arizona [Mr. DECONCINI], the Senator from Illinois [Mr. DIXON], the Senator from Connecticut [Mr. DODD], the Senator from Kansas [Mr. DOLE], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Utah [Mr. GARN], the Senator from Washington [Mr. GORTON], the Senator from Iowa [Mr. GRASSLEY], the Senator from Oregon [Mr. HATFIELD], the Senator from Alabama [Mr. HEFLIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUYE], the Senator from Vermont [Mr. JEFFORDS], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Wisconsin [Mr. KASTEN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Michigan [Mr. LEVIN], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Florida [Mr. MACK], the Senator from Ohio [Mr. METZENBAUM], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Oklahoma [Mr. NICKLES], the Senator from Georgia [Mr. NUNN], the Senator from Oregon [Mr. PACKWOOD], the Senator from South Dakota [Mr. PRESSLER], the Senator from Nevada [Mr. REID], the Senator from Michigan [Mr. RIEGLE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Delaware [Mr. ROTH], the Senator from Tennessee [Mr. SASSER], the Senator from California [Mr. SEYMOUR], the Senator from Illinois [Mr. SIMON], the Senator from New Hampshire [Mr. SMITH], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Alaska [Mr. STEVENS], the Senator from South Carolina [Mr. THURMOND], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 207, a joint resolution to designate the period commencing on December 1, 1991, and ending on December 7, 1991, and the period commencing on November 29, 1992, and ending on December 5, 1992, each as "National Adoption Week."

SENATE JOINT RESOLUTION 214

At the request of Mr. RIEGLE, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of Senate Joint Resolution 214, a joint resolution to designate May 16, 1992, as "National Awareness Week for Life-Saving Techniques."

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

AMENDMENTS SUBMITTED

NATIONAL ADOPTION WEEK

HATCH AMENDMENT NO. 1304

Mr. BOREN (for Mr. HATCH) proposed an amendment to the joint resolution (S.J. Res. 207) to designate the period commencing on December 1, 1991, and ending on December 7, 1991, and the period commencing on November 29, 1992, and ending on December 5, 1992, as "National Adoption Week," as follows:

Strike all on page 3, line 5, beginning with "Dec." through all of line 7, and insert: "November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992,".

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a markup on Tuesday, November 5, 1991, beginning at 2:30 p.m., in 485 Russell Senate Office Building on S. 1595, Alaska Native Languages Preservation and Enhancement Act of 1991.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee hold a full committee hearing to consider the President's nomination of Paul Cooksey to be Deputy Administrator of the Small Business Administration. The hearing will take place on Thursday, November 7, 1991, at 2 p.m., in room 428A of the Russell Senate Office Building. For further information, please call John Ball, staff director of the Small Business Committee at 224-5175.

SUBCOMMITTEE ON COMPETITIVENESS AND ECONOMIC OPPORTUNITY

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Subcommittee on Competitiveness and Economic Opportunity will hold a hearing to address product liability, innovation and small business. the hearing will take place on Thursday, November 7, 1991, at 9:30 a.m., in room 428A of the Russell Senate Office Building. For further information, please call Ken Glueck of Senator LIEBERMAN's staff at 224-4041.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. BOREN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Monday, November 4, 1991, at 3:15 p.m., in open session, to receive testimony on the Conventional Forces in Europe [CFE] Treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

LEGISLATION AFFECTING DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

• Mr. GRAHAM. Mr. President, on October 31, the distinguished chairman of the Subcommittee on Employment and Housing of the House of Representatives Government Operations Committee, TOM LANTOS, introduced companion legislation to reform weaknesses and inefficiencies at the Department of Housing and Urban Development and throughout the Federal Government.

I commend Chairman LANTOS for his leadership and perseverance in exploring the challenges facing HUD and look forward to working with him to see that the lessons learned during the House and Senate investigations of the crisis at HUD will benefit HUD and other agencies of the executive branch and Congress.

Chairman LANTOS introduced H.R. 3682, the companion to S. 1447, which amends the Internal Revenue Code of 1986 by extending the low income housing credit for 3 years. H.R. 3682 also authorizes the collection of a compliance monitoring fee and includes in the process whereby the housing credit agency determines the amount of Government subsidy needed to ensure project feasibility the developer fee and any direct or indirect benefits to the developer.

H.R. 3683/S. 1448 convert the post of HUD Assistant Secretary for Administration from a political to a career position.

H.R. 3684/S. 1449 develop Federal Government performance standards and goals and clarify provisions of the Inspector General Act regarding identification of material weaknesses, the investigation of fraud, the issuance of 7-day letters, and the inclusion of a statement of goals and goal achievement in semiannual reports.

H.R. 3565/S. 1450 establish the Office of Management and the Office of Budget, and convert the Program Associate Director positions at these offices to career positions.

As I explained July 11, when I introduced these bills in the Senate, these proposals are an attempt to remedy the deficiencies within the Federal Government. Furthermore, they are intended to ensure that we get full value for our tax funds and to restore public confidence in Government institutions.•

COMMENDING MS. PEGGY BERRY

• Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a humanitarian who has provided remarkable service as a healthy families and young children project home visitor. I am speaking of Ms. Peggy Berry.

Through her work with the Healthy Families and Young Children Program, Peggy has worked to provide home visits, promoted immunization, educated parents on home and auto safety, and provided referrals to community organizations. In addition, Peggy has implemented the Mon and Me support group, developed Stories Under the Sky, an onsight reading program for low-income housing units, and lead many workshops and outreach programs to train others. I congratulate Peggy Berry as recipient of the 1991 March of Dimes Make a Difference Award.

I join today with the Greater Kansas City area March of Dimes to honor the many unsung heroes who daily make a difference in the quality of life in the area of maternal and children's health. We salute those whose enthusiasm and deeds bring good to the community, in ever increasing measure. When we give of ourselves, we experience the renewing power of life.•

REMARKS BY MR. ENRIQUE IGLESIAS, PRESIDENT OF THE INTER-AMERICAN DEVELOPMENT BANK

• Mr. LUGAR. Mr. President, I ask that a speech on Latin American achievements and challenges delivered by Mr. Enrique Iglesias, President of the Inter-American Development Bank, be included in the RECORD.

President Iglesias is a remarkable and insightful leader and friend whose many accomplishments over the years are enviable and laudable. This speech testifies to the breadth and depth of his experience and understanding of current economic and political developments throughout Latin America.

I recommend the speech for those who wish to learn more about the prospects and perils of economic recovery and progress in Latin America, about political development and liberalization and about the diverse social challenges throughout the region. Because he was addressing a meeting of the Inter-American Press Association, he also delves into the special responsibilities of the media in their reporting on these developments and challenges.

Therefore, I ask that the full text be inserted into the RECORD.

The text follows:

REMARKS BY MR. ENRIQUE V. IGLESIAS, PRESIDENT OF THE INTER-AMERICAN DEVELOPMENT BANK, AT THE MEETING OF THE LATIN AMERICAN PRESS ASSOCIATION, SÃO PAULO, BRAZIL, OCTOBER 22, 1991

CURRENT ECONOMIC TRENDS IN LATIN AMERICA, WITH SPECIAL EMPHASIS ON INTEGRATION

I am delighted to be able to take part in this meeting and to address you, the members of the Inter-American Press Association, first, because I am aware of the media's importance in restoring democracy in Latin America, and second, because I have had first-hand experience of the important work done by the Association in the region over the years.

I would like to take this opportunity to commend the Association for its continuing defense of freedom of speech, which is inseparable from the political and economic freedoms that prevail now more than ever before in our hemisphere. The progress made on freedom of speech has been central to consolidating democracy in Latin America, and you have made a forceful contribution to that process. Now the Association has a significant opportunity to direct part of the energy formerly devoted to defending freedom of speech to other causes, such as modernization, integration and the provision of information from the countries of Latin America.

I would like to say a few words on the following aspects of the topic I have been given:

(1) The legacy of the lost decade;

(2) The silent revolution taking place in the region;

(3) The transition from the Washington economic consensus to the Latin American economic consensus;

(4) Latin America's prospects on the current international scene; and

(5) The role of the media in this process.

I. The legacy of the lost decade

I would like to begin by pointing out a fact that is difficult to reconcile with the traditional view of Latin America, particularly in the wake of the recession and social crisis of the eighties: the region that consistently showed the highest overall annual rate of economic growth in the world in this century is Latin America. This fact came to light recently among the statistics included by Professor Angus Maddison in his book The World Economy in the Twentieth Century. According to those statistics, the countries of Latin America averaged a yearly rate of growth of 3.8 percent between 1900 and 1987, compared to 2.9 percent for the countries later to form the OECD, 3.2 percent for the countries of Asia, and 3.3 percent for the Soviet Union. In short, for the first eighty years of this century Latin America was able to record the highest rate of economic growth in the world. The question then arises: Why should the region not be able to recover from the past decade and show indicators in future similar to those it recorded for most of this century? Personally, I think it is possible, and the following remarks reflect what I would call a serene optimism concerning our future.

The crisis of the eighties was influenced, first of all, by the precipitation of old contradictions that were built into earlier development patterns—patterns characterized by three elements that represent in a nutshell the problems faced by the region in recent years. Our development has been unstable, inefficient and inequitable.

The instability arose from an over-tolerance of inflationary pressures, which led to extremes of runaway inflation in many countries. The inefficiency was attributable mainly to excessively protectionist policies and the region's isolation from the climate of international competitiveness that emerged as the economies of the world opened up to global forms of interdependence and trade. The inequity had to do with highly concentrated income distribution, which gave rise to the dramatic forms of critical poverty which today affect almost one third of the Latin American population—poverty having its origins in our colonial background, and which the development policies of the post-war period failed to eradicate.

These critical factors were aggravated by the easy indebtedness used by the countries in the region during the seventies to alleviate the effects of the oil shocks and the global recession, and further deferred the solution of many of the problems inherited from past. Those problems grew significantly worse in the eighties when global anti-inflation measures suddenly pushed up interest rates and drastically eroded the terms of trade for developing countries, particularly those in Latin America. The consequences are well known: during the eighties the region transferred over 223 billion dollars in debt service and interest payments, at the same time as capital inflows fell sharply and terms of trade deteriorated to unprecedented levels. The result was a severe restriction on the entire region's capacity for investment and growth.

The impact of the crisis of the eighties is also well known. Latin America slipped backward thirteen years in terms of living standards overall, and over twenty-five years in some countries. Such harsh crises have so far been seen only in wartime. In fact, service on Latin America's external debt in the eighties, as a proportion of GDP, exceeded the amount of compensation payments made by Germany after the First World War. That is a measure of the severity of the crisis that shook the region in the eighties.

Perhaps the most serious and at the same time the least noticeable effect of the crisis was in investment levels, which fell to two thirds of their levels during the seventies. This translates into a shortfall of between 70 and 80 billion dollars annually for the past decade in terms of economic and social investments in Latin America. The repercussions are serious and ongoing, affecting the present and future growth of our region and calling for an all-out effort if we are to recover lost ground.

The precipitation of all these factors broadly characterizes the period that we at ECLAC were calling the "lost decade" in the economic evolution of Latin America. There is something to be salvaged, however: that the eighties enabled the region to face up to the true nature of its problems, to gain an awareness of them and come up with healthy reactions. This process culminated, in many countries, with the advent of a new political leadership—one that was much more pragmatic, less ideological and much better disposed to undertake sweeping changes in the economy.

It is this new generation that has initiated what has been called the silent revolution now taking place in Latin America.

II. The silent revolution in Latin America

The silent revolution has come about on various mutually-reinforcing fronts.

(1) A Search for Stability

The first has been the implementation of stabilization programs to deal with inflation, often runaway inflation. Today the region can point to some of the most outstanding cases of combating uncontrolled inflation, and the past year's drop in inflation rates is a clear sign that the current policies are having positive results. Argentina, Peru and Nicaragua have all recently shown proof of this.

Within such stabilization policies an important role has been played by debt reduction programs, through their noticeable effect on fiscal accounts. Rigorous fiscal adjustment programs have been placed into effect in parallel to the stabilization programs everywhere. It is recognized in the region today that the fiscal deficit has much to do with the serious macroeconomic imbalances of the past, and that it will need to be addressed with determination and courage in order to establish a minimum underpinning of stability on which to found healthy, self-sustained development processes.

The region as a whole is moving toward greater macroeconomic balance, an often difficult process that carries high political and social costs but confirms the countries' resolve to attack one of the elements that contributes most to maintaining injustice in present-day Latin American society: high inflation rates. Public opinion sees very clearly in Latin America today that the heaviest tax on lower-income people is derived from high inflation rates, and that the social cost of undertaking stabilization programs is much less significant than the persistent costs borne by those social groups owing to acute inflationary imbalances in recent years. Hence the political courage, the unusual degree of social tolerance, that is behind many of these new programs.

(2) Openness to the Outside

The second pillar of that silent revolution is Latin America's increasing openness to the outside. It is recognized today that in an ever more interdependent world, characterized by the emergence of a global economy, there is no substitute for our competitive integration with the international economy if we are to achieve dynamic economic growth. This fact has now been absorbed and assimilated by public opinion in Latin America. Economic development cannot exist in isolation, and countries need to get in step with the world economy by improving their international competitiveness. Programs for economic liberalization, tariff reduction and export promotion, representing historic milestones in comparison with the past, have been initiated all over Latin America to this end. Protectionism has been reduced in the region to levels approaching those of the industrialized world, in some cases more rapidly and more comprehensively than ever seen before. Still, the persistence of recessive trends internationally, and the threats posed by current protectionist feeling and by the possible failure of the Uruguay Round of the GATT, are generating doubts about the recognition and response with which such efforts are being met on the part of the international community, revealing a regrettable lack of symmetry between that response and the efforts made by the countries of Latin America.

(3) Reviewing the Role of the State

The third front on which progress has been made in this silent revolution is the restructuring and streamlining of the public sector, in combination with a tendency to focus its efforts on a smaller number of activities than in the past. This has given rise to a heightened effort to increase efficiency within the public sector overall, particularly within public enterprise, and to undertake a series of privatizations and other forms of administrative decentralization. State reform today is not only an important component of economic efficiency in our countries, but also a fundamental step toward furthering the democratization process at every level.

These three pillars of adjustment policies and structural reforms have been accompanied by debt reduction models which, once past the overriding initial concern to safeguard the position of creditor banks, were intended to alleviate the burden borne by debtor countries. The Brady Plan, for instance, enabled some countries to overcome the apprehension that had prevailed since the eighties concerning the debt. Although it cannot be said that the issue is no longer important or of serious concern to some countries, the debt reductions implemented by countries like Mexico, Costa Rica, Venezuela and Uruguay have made positive contributions to the adjustment programs and structural reforms mentioned earlier.

The adjustment policies and economic reforms coincide with the ideas contained in what Professor Williamson has called "the Washington consensus", a package of structural reforms proposed by the Bretton Woods organizations that tend to stabilize the economy and promote higher productivity and efficiency levels. Macroeconomic balance, openness to the outside, and public-sector reform are three fundamental aspects of that consensus as well, not to mention others which we will pass over here for lack of time.

The reactions to this silent revolution are already being felt on various levels:

(a) The growth rate has improved. According to the most recent ECLAC reports, the region's GDP rose 2.4 percent overall in 1991, compared to an average increase of considerably less than 1 percent in the three preceding years and in contrast to growth of just 0.3 percent in 1990.

(b) Inflation has fallen in most countries, although some, still in the beginning stages of the process, continue to show very high rates. According to ECLAC, yearly inflation rates approached 1,200 percent in 1989 and 1990, fell to 300 percent in 1991, and show favorable trends for the future.

(c) Capital flows have been restored to the region, the return of Latin American capital has picked up considerably, foreign investment has become highly attractive, and stock markets have been revitalized in most countries. According to the last OECD report, in 1990 the region showed a positive transfer of resources for the first time since 1983. Between 1983 and 1989, negative transfers abroad were between 15 and 20 billion dollars a year. In 1990, says the OECD, the trend was reversed, with a net capital inflow of 10 billion dollars.

All of the above are important indicators of preliminary reactions to the silent revolution.

III. From the Washington consensus to the Latin American consensus

Both the silent revolution that is occurring in Latin America today in line with similar changes all over the world, and the results that have begun to emerge, leave us with food for thought. Have we arrived at a definitive formula that will enable Latin America to overcome its economic stagnation and move toward sustained development in future? To what extent are the reforms being undertaken by our countries a response to the influence of international financial organizations? Finally, will the Washington consensus, centered as it is around economic reforms, be sufficient to ensure a positive response to that question?

As to the first, economic history and development experience have shown us that there are no magic formulas or absolute models to guide these processes. One of the factors that has most compromised the political and economic evolution of Latin American countries is the tendency to attribute a kind of ideological aura to policies that seem appropriate at a given time. Any policy is, by definition, a response to particular circumstances. Only historical materialists and the most extreme liberals have thought themselves capable of predicting or ending history. But history is in ceaseless flux, generating different experiences, giving rise to new phases and situations that call for a specific response. That is why I do not believe there is a single definitive formula for taking on the problems of the world or those of Latin America.

Nor do we think that the various formulas now being implemented in the countries of the region toward recovery are exclusively a response to the recommendations made by the financial organizations in Washington. One of the most remarkable characteristics of this stage is the trend toward a convergence in the development policies pursued by the countries in the region, both in terms of their leaders' records and in the fact that those policies coincide with the recommendations of the international financial organizations, with which a new, more constructive dialogue has been established in recent years. True, the international organizations have contributed much to the policy-setting process, but in my view the policies are fundamentally a response to the silent revolution that is being carried out, in various ways, by the countries themselves, their leaders, and their societies.

With respect to the effectiveness of the proposed measures, I would venture to say in present circumstances that the ingredients of the Washington consensus, the outcome of the past years' experiences, are a necessary but not sufficient component of a development pattern that must be responsive to our historical experiences and to our social and political way of life. In addition to supporting the reforms under way, then, and seeking to achieve economic efficiency, certain other measures need to be implemented that have to do with political conditions, the social situation, and the institutional structure of the countries in the region.

The challenges facing the region will need to be tackled jointly through the reforms indicated, if we truly wish to maintain long-term sustained growth as well as the equity and social justice consistent with political stability and the final aim of development.

The first challenge is a political one. The economic reforms introduced by our countries have coincided with their return to democracy. Alternating democratic governments and the party system will be essential to the workings of the political systems prevailing in the countries in our region. But those reforms, by definition, assume a certain time period and require an "economic time" that does not always coincide with "political time". Accordingly, in addition to realizing from the outset that such reforms will need longer time periods to take root and mature, we must also recognize that a basic political consensus will have to be achieved in each country on certain uncontested matters upon which economic growth can be built in future. One component of economic consensus is therefore to secure major political agreements that make it possible to ensure the continuation of certain measures without threatening the democratic functioning of our institutions or the inevitable alternation of our governments.

The second challenge is social. Overwhelming poverty and social misery continue to exist in Latin America. Of course such problems cannot be solved in the short term, but their continued existence could undermine the very objectives of economic transformation and the consolidation of democracy. Absolutely essential in the present circumstances, then, are policies that ensure the intelligent use of available resources to solve social problems, not only to maximize their effectiveness without disturbing macroeconomic equilibrium, but also to make their use more and more efficient and focused. In other words, we are convinced that using social spending properly is just as important as increasing it. As Tocqueville said, a need becomes unbearable when one knows that it can be satisfied. I sincerely believe that some of the region's more distressing social problems can be solved, even within the current limitations of the Latin American economy. For this to occur, social issues must be included in the explicit objectives of the economic policies of each country: that is the only way to effectively make them a fundamental element or overall economic strategy. Economic efficiency without social efficiency would mean having economy without society. And social efficiency without economic efficiency would mean having society without economy. The great challenge of a Latin American consensus is to find a balance between the two, between the current circumstances and the means available to us.

The third challenge has to do with Latin America's international position. Latin America needs to define its position within the modern world. New possibilities for international relations, have opened up in recent times. The most significant, without a doubt, is the Enterprise for the Americas initiative put forward by the President of the United States. Under the initiative, the region is invited to form free trade areas that could some day create a kind of common market encompassing both the north and the south of our American continent. The challenge is formidable, but the opportunities are equally impressive. Preparing for this undertaking implies a clear awareness that Latin American integration will have a stronger footing through this opportunity. Perhaps for this reason we have seen the recent emergency of integration models that are more pragmatic than in the past, more oriented toward a competitive integration with the global economy through the reduction of tariffs—an integration that will support a new way of relating internationally, as with the Enterprise for the Americas initiative. That initiative, we would point out, is the first U.S. Attempt to stimulate integration in the Latin American region. We believe that integration could represent a powerful instrument for use by our countries to exploit the opportunities offered by globalization, if the region is to take advantage of the comparative advantages bestowed upon it by history, geography and past experience. I believe this is one of the major issues facing us, and it is essential that we redefine our international position in terms of the potential underpinning of integration processes as they are currently taking shape in the region.

The fourth challenge is institutional in nature. We noted earlier that the question of the public sector is central to economic reform. I believe the matter goes beyond public-sector reform alone and involves a whole reconstruction of our institutional system. One of the most negative results of the crisis—and of inflation in particular—has been the destruction of traditional institutions in the broadest sense, and a weakened capacity for public-sector action on all levels, both direct and indirect, macroeconomic and regulatory, and in its inescapable responsibility for such areas as education or social security. As well as the issue of public-sector reform and efficiency, therefore, we need to be concerned about strengthening the various social and economic agents and developing human resources to enable them to deal efficiently with the new problems of development. Public-sector reform is an essential component of the overall reform we mentioned earlier, and improving education is one of its main objectives.

Finally, another reform that is closely related to the preceding one is the strengthening of the role of the private sector and the various agents of the State, based on the responsibility incumbent on the community in Latin American economies. It is now widely recognized that the private sector plays a predominant role in the region's economic development, not only through its creative dynamics but also because it sustains, largely on its own the capitalization effort required by our countries, whose governments do not have access to sufficient capital. It is essential to have a clear definition of the rules, in order to generate a more positive climate for private investment and as a basis for a new alliance between the public and private sectors. Past experience, in Europe and in southeast Asia, shows this to be one of the major pillars of economic development from a comparative point of view.

IV. Latin America in the international context

The challenges just outlined are specific to our region, and meeting them will make it possible to reconcile the international vision with a Latin American one in which development, sustained on a solid regional consensus, will be economically and socially feasible.

Latin America is part of the current international scene. Along with the recognition of a regional consensus, Latin America must acknowledge the sweeping changes taking place in the world as a whole. International society has been transformed in ways so profound and with prospects so far-reaching as to be unparalleled in post-war history. Alongside the crisis in the Communist system we are seeing a new openness to broad understandings to consolidate peace and gradually reduce arms expenditures made to prevent old conflicts. The resulting social dividend bodes well for the future of humanity, as do the extraordinary possibilities for political development in international relations.

Latin America must navigate in these waters using its own maps and, today more than every before, make its own values prevail. In these times, as the new international order faces threats from nationalism, border conflicts and minorities with compelling claims, Latin America has messages to offer that are rooted in its most characteristic features, laid down throughout its political and human evolution. This is a continent that has no need to reproduce the acute contradictions apparent in other regions in the world, one that shows, in fact, an extraordinary consistency on many levels. I believe that Latin America can contribute to formulating new rules that will enable the international community to function better. I believe, also, that the region has everything it needs to become a significant focus for international investment, and that its political presence will be an equally significant factor in the new world order now taking shape.

V. The role of the media in Latin America development

Unqualified as I am to speak to you on this topic, I would like to share a few thoughts on the role of the press in this context. The press has a special responsibility in present-day Latin America. Political freedom is flourishing on a par with economic freedom, and both are highly dependent on the information process. The world is seeing a time of political transparency and economic growth based primarily on knowledge and information.

In addition to the foregoing, which is already accepted in any democratic system, the press has a special responsibility with respect to the reforms being undertaken in Latin America. It has the potential to disseminate, explain, and stimulate constructive debate to clarify the nature of such reforms and the costs and benefits of the various options. In order for political and economic agents—and citizens generally—to take an active part in the new stage of development, they must be adequately informed. In fact, recent proposals on the development priorities in the region underscore the development of human resources, a task in which the media have an important part. From this point of view, the press can respond to the demand for information on the new items on the agenda for global and regional development, such as economic modernization, public-sector reform, the international positioning of our countries, ways to improve equity, educational challenges, and environmental protection, among others.

As well, the press is the natural vehicle for opening up our countries to the outside world, for we live in a global and simultaneous village in which everything affects everything else. In the interconnected and competitive world of today, those who know what is happening in other countries—how their societies and economies are evolving, how their businesses work and the techniques they employ—have an enormous comparative advantage over those who are isolated or ill-informed. It follows that the media have a singular opportunity to contribute to the dissemination and transparency of the new ideas, new knowledge, new technologies and new markets so crucial to the development process in Latin America.

I would like to close on a note of hope for the course of the Latin American economy in the nineties, one that is borne out by recent projections made by international economic organizations, including the Bank. It is a hope sustained by many years of working in the region, observing and bearing witness to many illusions and an equal number of disappointments—a hope upheld above all by the impressive consensus that has arisen in the region in recent years on what should form the foundation for sustained and equitable economic development. That consensus is being built upon an understanding of the hard lessons learned in the eighties in Latin America and the changes sweeping the rest of the world.

Nothing has been more central to public opinion in the region, particularly among the least fortunate, than a recognition of the social costs involved in the inflationary excesses of the past years and of the essential value of proper macroeconomic management and austere fiscal policy in protecting living standards. Nothing has been more revealing for public opinion than the crisis of the State in the Socialist countries, in order to assess the limits of the role we wish to accord the public sector within our own economies.

Lessons from inside the region and abroad have been assimilated by leaders who are less ideologically oriented, more pragmatic and more committed to a serious effort to adjust economies and modernize production. In most countries this is possible thanks to a degree of social tolerance which may be attributable to adjustment fatigue and a desire to seek definitive ways of overcoming the crisis but which nevertheless has limits that must be recognized if we are to avoid social hopelessness.

Generally speaking, the objectives and instruments of the changes being undertaken in our countries are very similar in nature, even though their pace and scope may differ, and thus their degrees of success.

This is generating a new phenomenon: opportunities to work together both inside and outside the region tend to come up between those countries where reforms have taken place at the same speed and are similar in scope. Doors are being opened to regional cooperation and international opportunities based not only on the region's history or geography but on the degree of maturity and compatibility of the reforms. The recent free trade agreement between Mexico and Chile is an outstanding example of the possibilities offered by compatible economic programs. The free trade agreement between Mexico and the United States is another. These instances deserve reflection and stimulus from the international community with respect to those countries struggling to achieve stability and structural change.

All these signs of hope, however, cannot conceal the risks involved: the risk of simplification and the specific political and social dangers.

The most serious simplification would be to fall into the temptation of thinking that everything in the past *was* bad and everything we believe today *will be* good. If there is a lesson to be learned from a difficult half-century of searching for answers to the problems of development, it is that we need to approach them with humility, for they are much more complex than even we thought at the outset.

The political danger will ensue if economic reforms are not accompanied by a reform of political institutions and greater citizen participation, to strengthen our democracies and establish within them the necessary basic consensuses of which we spoke earlier.

The social danger, that support will be lacking for these processes, will arise if we are not capable of dealing rapidly with the most pressing problems caused by the social debt that is weighing down our countries.

Once again, Mr. President, I would like to thank you and the Inter-American Press Association for giving me the opportunity to share these thoughts with you.•

SALUTING THE NATIONAL COUNCIL OF JEWISH WOMEN OF GREATER KANSAS CITY

• Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a remarkable volunteer agency that has served the needs of childern and families. I am speaking of the National Council of Jewish Women of Greater Kansas City.

The National Council of Jewish Women is deserving of special recognition for their court appointed special advocate [CASA] project. The council recruits, trains, and supervises volunteers who advocate for the best interest of abused and neglected children in juvenile court proceedings. The council is also actively involved in projects addressing teenage pregnancy and motherhood, child sexual abuse prosecution, establishment of a telephone network for Parents Anonymous, day care resources, and domestic violence court proceedings. The National Council of Jewish Women has benefited literally thousands of children and, therefore, are deserving of special recognition. I congratulate the National Council of Jewish Women as recipient of the 1991 March of Dimes "Make a Difference" Award.

I join today with the Greater Kansas City Area March of Dimes to honor the many unsung heroes who daily make a difference in the quality of life in the area of maternal and children's health. We salute those whose enthusiasm and deeds bring good to the community in ever-increasing measure. When we give of ourselves, we experience the renewing power of life.•

ALCOHOL AND DECISIONS PROGRAM

• Mr. DURENBERGER. Mr. President, I rise today to commend the University of Minnesota-Dakota County Extension Service's Alcohol and Safety Decisions Program. Not only has this program proven effective in training young adults to educate their peers as to the dangers of alcohol, but it has also received the support of public officials ranging from the Dakota County Sheriff's Department to the Governor of Minnesota.

As stated in the Hastings, MN, Star-Gazette:

> The Alcohol and Safety Decisions program trains teens in grades eight through 12 in leadership and prevention skills. The teens then present a three-class curriculum to fourth- and fifth-grade students in school about dealing with peer pressure and how to make wise decisions about the use and abuse of alcohol. This year, the Alcohol Decisions program has trained over 300 teen teachers and has reached nearly 3,000 fourth-, fifth-, and sixth-grade students in Dakota County.

As the youth of America face the challenges of everyday life, programs such as the one in Dakota County provide a vital service by making use of one's peers to point out the hazards of alcohol abuse and the effects it can have on a young life.

Mr. President, again I commend the Dakota County Extension Service on its efforts to provide our young people with preventive education, and I thank them on behalf of the many individuals whose lives have been touched by this remarkable approach.•

TRIBUTE TO DR. SAMUAL U. RODGERS

• Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a humanitarian who has provided remarkable service in the area of quality health care for the poor. I am speaking of Dr. Samual U. Rodgers.

Dr. Samual U. Rodgers has instituted his vision by developing and implementing programs which address current health care needs of the community through integrity and commitment. For well over 40 years, Dr. Rodgers has worked closely with legislators, community leaders, and health care professionals as a voice for the poor. I congratulate Dr. Rodgers as recipient of the 1991 March of Dimes Make a Difference award.

I join today with the Greater Kansas City Area March of Dimes to honor the many unsung heroes who daily make a difference in the quality of life in the area of maternal and children's health. We salute those whose enthusiasm and deeds bring good to the community in ever increasing measure. When we give of ourselves, we experience the renewing power of life.•

RETIREMENT OF HARRIET HEALY, UNIVERSITY OF NORTHERN IOWA

• Mr. GRASSLEY. Mr. President, I just wanted to make note of the recent retirement by a wonderful lady, Harriet Healy, from the University of Northern Iowa. Harriet worked 14 years in the special education department as administrator of the Northern Iowa Instructional Laboratory. She has trained and inspired countless number of students, helping to maintain the national reputation UNI has in education. In addition to her instructional duties, Harriet successfully raised money for the Catholic student center at UNI.

Although retired from the university, Harriet will continue to benefit society with her efforts as a member of the Iowa Campaign Disclosure Commission.

Harriet, her husband, Dr. John Healy, and their four children have been friends of mine for several years. I would like to give Harriet my best wishes and congratulations.•

TRIBUTE TO KANSAS CITY-WYANDOTTE COUNTY HEALTH DEPARTMENT

• Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a remarkable health care agency that has provided outstanding service in the area of quality health care for high-risk prenatal patients. I am speaking of the Kansas City-Wyandotte County Health Department.

The Wyandotte County Health Department has developed an innovative and successful high risk prenatal program originating in 1968, which has been lauded by the health care industry. Using a multidisciplinary approach and providing unique services including: Transportation, social support counseling, and home visiting. Dr. Dannie M. Thompson, Margaret Daly, RN, ARNP, and staff have made outstanding progress in the treatment of at-risk women. Because of the teamwork, commitment, and compassion the health care professionals at the Wyandotte County Health Department have demonstrated that they are deserving of special recognition. I congratulate the Wyandotte County Health Department as recipient of the 1991 March of Dimes Make a Difference Award.

I join with the Greater Kansas City Area March of Dimes to honor the many unsung heroes who daily make a difference in the quality of life in the area of maternal and children's health. We salute those whose enthusiasm and deeds bring good to the community in ever increasing measure. When we give of ourselves, we experience the renewing power of life.•

TRIBUTE TO ARCHBISHOP JOHN R. ROACH

• Mr. DURENBERGER. Mr. President, when searching for admirable Americans, we need look no further than in our own communities. Indeed, it seems that deeds of great magnitude are done only by people we don't know, from places remote and distant from the places we know and love. It's easy to overlook greatness when we have it close at hand.

I rise today to pay tribute to a great Minnesotan, a product of the beautiful prairie and Minnesota River Valley of Prior Lake and Shakopee. My friend, Archbishop John R. Roach, is the model of a great leader: Compassionate, intelligent, a man of the people, and full of good humor. I congratulate him as he celebrates his 70th birthday, his 45th anniversary as a priest and his 20th year as a bishop. For 16 years, he has been the spiritual leader and friend of 652,000 Catholics in the 12-county, 224-parish Archdiocese of St. Paul and Minneapolis.

Archbishop Roach has dedicated his life to service as a pastor, an educator, an adviser, and an administrator, and he has been a national and international force in today's American Catholic Church. Archbishop Roach has touched the spiritual and secular lives of public and private individuals, families, urban and rural communities.

For 22 years, Archbishop Roach has lived out his commitment to education. He began his career as a teacher and became headmaster at St. Thomas Academy, in St. Paul, MN. His expertise has been sought by many education associations. Archbishop Roach has held leadership positions for many of these organizations including the advisory committee of the North

Central Association of Colleges and Secondary Schools, chairman of the National Catholic Education Association Board, member of the Bishops and Catholic College and University Presidents Committee, member of the board of trustees of the Catholic University of America, advisory committee of the College Entrance Examination Board, president of the Association of Military Colleges and Schools of the United States, president of the Minnesota Catholic Education Association, and the chairman of the Committee on Accreditation of Private Schools in Minnesota. Currently, he is on the board of directors for the University of St. Thomas and a trustee for the St. Paul Seminary School of Divinity and St. John Vianney Seminary. He also holds honorary degrees from a variety of institutions of higher education including Gustavus Adolphus College, St. Peter, MN, St. Mary's College, Winona, MN, and Villanova University, Villanova, PA.

On October 17, WCCO Radio saluted Archbishop Roach saying:

> During his tenure there have been significant developments in programs and services offered through the local Catholic Church. Catholic Charities has expanded its services in response to the growing needs of women and children, the homeless and the hungry, the aging and the immigrant. A housing affiliate, Westminster Corporation, was started and has developed and/or manages more than 2000 units of safe, affordable housing for families and individuals. New or expanded services include AIDS Ministry, ministries to minorities, and the first U.S. diocese to establish a Commission on Women. Archbishop Roach is active in formal dialogue with leaders of other faiths, and this past year signed a formal covenant with the Evangelical Lutheran Church in this area.

Archbishop Roach is known for his ability to bring together people from many disciplines to discuss issues and solve problems. He had a hand in publishing several pastoral letters regarding social justice, parent/teen communication, and teens and sexuality. When he was president of the National Conference of Catholic Bishops, Archbishop Roach spearheaded the publication of two letters that demonstrate the wide scope of his knowledge: "Economic Justice for All," 1986; and "The Challenge of Peace: God's Promise and Our Response," 1983.

Through his life, Archbishop John R. Roach has fulfilled a high purpose. There is no greater achievement than strengthening your community and the lives of the people you touch. Friends are a blessing, and Archbishop Roach is a true friend.•

MS. KAREN WATTS, HUMANITARIAN

• Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a humanitarian who has provided remarkable service caring for highrisk expectant mothers. I am speaking of Ms. Karen Watts.

Karen Watts has served as a health care provider, administrator, and liaison for doctors and patients. Her care goes far beyond her professional position with Healthdyne Inc. Karen is a motivating force in a number of health care committees and nonprofit programs. She has done a great deal to advance day care and corporate wellness programs. The enthusiasm and dedication that Karen Watts possesses is deserving of special recognition. I congratulate Karen Watts for making the first annual 1991 March of Dimes Make a Difference Award, a truly wonderful experience.

I join today with the Greater Kansas City Area March of Dimes to honor the many unsung heroes who daily make a difference in the quality of life in the area of maternal and children's health. We salute those whose enthusiasm and deeds bring good to the community in ever increasing measure. When we give of ourselves, we experience the renewing power of life.•

UNEMPLOYMENT INSURANCE

• Mr. MITCHELL. Mr. President, last Friday the Labor Department reported that the unemployment rate rose again. The index of leading economic indicators fell slightly. Both facts indicate that the recession is not over.

Instead, it is continuing. The downturn that began in July 1990 continues to sap the economy. It has been throwing Americans out of work for 16 months. In the past month alone, more than 400,000 working Americans have put in applications for unemployment insurance each week, and there is no end in sight.

The Democratic Congress has responded. We have twice acted to reform the unemployment insurance system. The system needs reform. It does not help the 3 million Americans who are going to exhaust their unemployment compensation this year, nor is it performing the function of maintaining purchasing power in hard-hit communities. Today each plant closing or worker cutback means lost sales for local retailers and other businesses.

And for those out of work for months on end, the system does not provide what it used to provide in every recession for the last half-century:

Extended insurance so people do not have to exhaust their savings and bankrupt themselves waiting for the economy to turn up again.

The Democratic Congress has acted twice to provide extended insurance coverage. The first time around, the President ignored the bill. The second time around he vetoed it.

Now, at long last, he has begun to see what American workers have faced for more than a year. The President has now seen that there is a recession.

Now he says he wants to act but he does not have a plan of his own. So he has asked the Democratic Congress to provide him with one.

I have a suggestion. Several Democrats have offered suggestions. Senator BENTSEN has made one proposal which I have advised him and the Speaker of the House I will support. My preference is that we freeze foreign aid for the next 4 years and use that money for Americans instead.

Freezing foreign aid would leave it with the same amount of money it has today, no less. I am not suggesting a cut. The foreign aid freeze would actually generate savings larger than needed for the extension of unemployment benefits. Funds would be available to honor our commitments to important foreign policy goals.

It would not affect grain sales to the Soviet Union and there would be sufficient funds to accommodate loan guarantees to Israel

The foreign aid freeze would provide funds for what I think is a more important priority—the needs of Americans families and workers here in America. Unfortunately, although the President says he sees a problem, although he says he wants to solve it, although he says we should find a way to solve it that does not add to spending, he does not want to freeze foreign aid to do it.

Extended unemployment insurance is not, according to President Bush, an emergency, so he will not declare an emergency to finance it, although he has declared emergencies for Iraq, Turkey, and elsewhere.

But he will not do it for Americans. He demands the insurance be paid for, but he will not pay for it by holding foreign aid spending levels.

The President keeps saying he does not want to bust the budget agreement. But it was his insistence that the budget agreement protect foreign aid spending. Congress did not want that. President Bush demanded it. An agreement that locks us into helping foreigners when Americans are in trouble is an agreement that begs to be changed, but the President resists.

Spending on foreign aid has grown by leaps and bounds under President Bush and Reagan. Congress has not forced President Bush to spend his attention and our tax dollars on foreign countries. Congress did not insist on making foreign aid spending sacrosanct in last year's agreement. President Bush did.

In the area of foreign aid and State Department operations, the areas I want to see frozen, we have had a 60 percent increase in State Department funding, after inflation, in the last 10 years.

The Department of State payroll has grown by nearly 4,000 persons under Reagan-Bush management. Do we need every one of those bureaucratic positions?

But he will not accept the commonsense idea of freezing that budget.

When the people of the United States face an emergency—and this recession is an emergency for close to 8½ million of our fellow citizens—we have a right to expect that American tax dollars will flow first to our own people. But in the meantime, American taxpayers are still sending upward of $16 billion a year to some 140 different countries.

In 2 weeks time, the President will be traveling in the South Pacific for a couple of weeks. Before he leaves for the South pacific, he should sign into law an unemployment extension bill, so that the jobless here in the United States facing the winter do not have to do so without income.

I hope that before he heads for the South Pacific, the President will also give careful thought to the idea that the needs of Americans ought to take priority over the needs of foreigners when it comes to spending tax dollars.•

COMMENDING MS. SHARON TURNER-JACKSON

• Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a humanitarian who has provided remarkable service through the Greater Kansas City March of Dimes. I am speaking of Ms. Sharon Turner-Jackson.

Ms. Turner-Jackson's devotion to the mission of the March of Dimes is a tremendous asset. Sharon goes the extra mile for those in need and has had a very positive influence on those she works with. The service Sharon has given while at Truman Medical Center and the several boards that she served on to improve the quality of life for families makes her deserving of special recognition. I congratulate Sharon Turner-Jackson for making the first annual 1991 March of Dimes Make a Difference Award a truly wonderful experience.

I join today with the Greater Kansas City Area March of Dimes to honor the many unsung heroes who daily make a difference in the quality of life in the area of maternal and children's health. We salute those whose enthusiasm and deeds bring good to the community in ever increasing measure. When we give of ourselves, we experience the renewing power of life.•

FIRSTS IN PLANETARY EXPLORATION

• Mr. FOWLER. Mr. President, October 29, 1991 bore witness to two firsts for our Nation's program of planetary exploration. Two of NASA's robot planetary explorers accomplished feats which would have been hard to imagine only a few decades ago.

The first global maps of Venus, taken by the Magellan spacecraft orbiting the planet, were released by the Jet Propulsion Laboratory. Through sulfuric acid clouds and an atmosphere hot enough to melt lead, Magellan's radar has revealed a dynamic planet of unimagined complexity. Created by piecing together hundreds of radar images of Venus taken over a 14-month period. The global maps suggest that Venus has apparently been almost completely resurfaced by volcanic erruptions. Venus' second highest mountain, Maat Mons, may even be covered with lava less than 10 years old from an active volcano. Fifteen-mile-diameter pancake domes, about a half a mile high, may have resulted from highly viscous lava erupting from vents in the crust. Other lava flows have extended hundreds of miles in eruptions that may have lasted for centuries. These vast quantities of molten rock, flowing like water, created channels that resemble river and creek beds on Earth. But if Venus ever had real water, it was long before its surface temperature reached its current 900 degrees Fahrenheit.

To date, the only places in the solar system known to have active volcanoes are Earth, Jupiter's satellite Io, and Neptune's Triton. According to Magellan project scientists, we now have a better global map of Venus than of the Earth.

October 29 also marked another space first in the world of exploration. The Galileo spacecraft, on its way to Jupiter, became the first spacecraft to fly by an asteroid. On its way to orbit the giant planet Jupiter, Galileo passed within 1,000 miles of the asteroid Gaspra, moving at a relative velocity of 17,900 miles per hour. An oblong body about 8 miles long, Gaspra may be a remnant of the primitive material from which the solar system formed 4.6 billion years ago. This encounter marks a milestone in the history of space exploration, for until recently, no man-made object has ever passed close to an asteroid. Instead, scientists have been forced to study asteroids through ground-based telescopes.

Galileo's encounter with Gaspra took place almost 225 million miles from Earth and 205 miles from the sun; amazingly, the spacecraft arrived within 1½ seconds of the expected arrival time and only about 3 miles from where scientists and engineers expected it to be. Given the overall harshness of the space environment and the phenomenal distances and travel times involved, this is a remarkable accomplishment. NASA and the team from the Jet Propulsion Laboratory deserve the highest of praise for these two space firsts.

This is not the first time our program of planetary exploration has been brilliantly executed. These missions build on a rich heritage of U.S. planetary exploration dating back to the early 1960's. Since Mariner 2 visited Venus in December 1962 and Mariner 4 returned the first closeup views of Mars in July 1965, the United States has been actively engaged in the exploration of the solar system. Three successful Ranger missions, seven Surveyors, and five Lunar Orbiters preceded the Apollo missions to the Moon. In November, 1971, Mariner 9 first revealed the utter complexity of Mars and provided sound evidence that the planet, cold and dry today, may once have had a much warmer, wetter, and a climate suitable for life. This mission in turn paved the way for the more detailed and spectacular results of the Viking landers and orbiters in the mid-1970's.

Pioneers 10 and 11 led the way into the outer solar system in the 1970's visiting Jupiter and Saturn, and exploring the interplanetary medium. They were followed by Voyagers 1 and 2, which from 1979 to 1989 revealed, planet by planet, a series of worlds, ring systems, and moons that have caught the public's imagination and provided an unanticipated wealth of information and scientific detail.

The next planetary mission will be Mars Observer, scheduled to launch in September 1992. Mars Observer will orbit the red planet, obtaining detailed measurements of its geochemistry and minerology, sounding its atmosphere, measuring its magnetic field, and obtaining high resolution images of its surface. Mars Observer will build on the results of the Viking mission of the 1970's, which revealed spectacular details of Mars' vast canyons and giant volcanoes, and evidence of ancient lakes and river channels whose water may once have supported life. This mission will enable further exploration planned for the late 1990's and early next century.

Mars Observer will be followed by CRAF/Cassini. Endorsed by advisory committees of the National Research Council, these coupled missions scheduled for launch in the mid-to-late 1990's, are an integral part of our ongoing program of planetary exploration. They are an integral part of NASA's research mission, the systematic exploration of the solar system, and have been approved by Congress. CRAF [comet rendezvous asteroid flyby] will be the first comet spacecraft to rendezvous with a comet in the outer solar system, and fly in formation as the comet swings toward the sun. A rendezvous has a series of advantages over fast flyby missions. Changes in the comet can be studied, including the development of its tail and coma, as it approaches and then recedes from the Sun. Complete mapping of the comet nucleus can be carried out, under a variety of lighting conditions and at various distances from the comet. Cometary dust and gas can be collected at speeds low enough so that their grains and molecules are not destroyed in impact with the spacecraft.

Cassini will be the first spacecraft to orbit the planet Saturn, examining the planet, its icy satellites, and its mysterious, cloud-shrouded moon Titan.

Not only is CRAF/Cassini a vital element in the U.S. program of planetary exploration, but it is also a paradigm for the conduct of cost effective missions with high science return. CRAF and Cassini are two closely interrelated missions using the new Mariner Mark II spacecraft design. The fact that they share nearly identical spacecraft designs has resulted in significant cost savings. The cost effective nature of the joint mission is attributable to five factors: Nearly identical spacecraft; same management and test teams; a single multimission ground system; a common instrument design for nearly half the instruments; cost-sharing on both missions—Germany and the European Space Agency will share costs on Cassini; Italy will cost share on both.

The international collaboration on CRAF/Cassini has significantly reduced the cost of the mission, while at the same time broadened the scope of the science investigations. Germany will provide the major components of the propulsion system, in addition a major portion of the CRAF payload. Italy will provide the spacecraft antenna hardware for both spacecraft and major elements of the Cassini science payload. The European Space Agency will provide the probe which will be carried by the Cassini spacecraft into orbit at Saturn and, after separation from the spacecraft, will enter the atmosphere of Titan. In all, there will be a mixture of United States and European elements carried on the probe.

The explorations to be conducted by CRAF and Cassini complement each other; their subject—commets, asteroids, Titan and the Saturnian system, share a common origin in the outer solar system. CRAF/Cassini will also investigate processes still taking place—processes that reproduce the physical and chemical effects that must have occurred in the primordial solar nebula and the environments around the forming planets.

Our Moon also offers the potential for a rich harvest of information, including how the Earth-Moon system was formed, as well as the processes that have affected both the Earth and the Moon over the history of the solar system. NASA is studying a series of small spacecraft, called lunar scout, that would orbit the Moon, mapping lunar crystal composition and mineralogy, measuring the gravity field and topography, and studying lunar magnetism. These orbital survey data would prepare the way for a resumption of missions to the lunar surface, and the eventual return of humans to the Moon.

There can be no doubt that our Nation's program of planetary exploration has been a stunning success; furthermore, relative to other space ventures, NASA's robotic planetary exploration program bears a relatively low cost for an enormously high rate of return. Planetary science has grown rapidly into a vital research field in its own right, and its projects support technology development in areas such as high-performance communications and navigations systems, composite materials applications, fault tolerant electronics, and sensors such as charged coupled devices. It is also crystal clear that space exploration is a key element of our investment in future math and science education. There is, and continues to be, significant direct involvement by the U.S. university faculty and students in planetary exploration.

However, declining space science budgets in the seventies and early eighties, the increasing costs of cutting edge missions, and the *Challenger* disaster have combined to threaten, if not impede, American progress in space science and exploration. I believe that it is critical that, as a nation, we assert our international leadership role in this field, and I urge my colleagues to continue their support and commitment to a balanced NASA program in which space science receives an equitable share of funding.●

COMMENDING DR. PAUL WINCHESTER

● Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a remarkable humanitarian who has provided remarkable service as a neonatoligist doctor at Humana Hospital of Overland Park, KS. I am speaking of Dr. Paul Winchester.

Dr. Winchester has displayed outstanding care for high-risk patients and their babies. Dr. Winchester has made great strides to advance the care our doctors are able to provide. It is vital to identify high-risk patients early on and Paul Winchester's resourcefulness and wisdom has improved this area of health care. Dr. Winchester is endeared by his patients and colleagues and is deserving of special recognition. I congratulate Dr. Paul Winchester as recipient of the 1991 March of Dimes Make a Difference Award.

I join today with the Greater Kansas City area March of Dimes to honor the many unsung heroes who daily make a difference in the quality of life in the area of maternal and children's health. We salute those whose enthusiasm and deeds bring good to the community in ever-increasing measure. When we give of ourselves, we experience the renewing power of life.●

NATIONAL ADOPTION WEEK

Mr. BOREN. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 207, designating "National Adoption Week;" that the Senate then proceed to its immediate consideration; that the amendment at the desk to the joint resolution and the amendment to the title be deemed agreed to; that the joint resolution be deemed read a third time and passed; that the motion to reconsider be laid upon the table; and that the preamble be agreed to; further that any statements appear at the appropriate point in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the amendment (No. 1304) was deemed agreed to as follows:

Strike all on page 3, line 5, beginning with "Dec." through all of line 7, and insert: "November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, ".

So, the joint resolution (S.J. Res. 207), as amended, was deemed read a third time and passed, as follows:

S.J. Res. 207

Whereas Thanksgiving week has been commemorated as "National Adoption Week" for the past 13 years;

Whereas the Congress recognizes that belonging to a secure, loving, and permanent family is every child's right;

Whereas the President of the United States has actively promoted the benefits of adoption by implementing a Federal program to encourage Federal employees to consider adoption;

Whereas approximately 36,000 children who may be characterized as having special needs such as being of school age, being members of a sibling group, being members of a minority group, or having physical, mental, and emotional disabilities are now in foster care or in institutions financed at public expense and are legally free for adoption;

Whereas public and private barriers inhibiting the placement of special needs children must be reviewed and removed where possible to assure their adoption;

Whereas the adoption of institutionalized or foster care children by capable parents into permanent homes would ensure an opportunity for their continued happiness and long-range well-being;

Whereas the public and prospective parents must be informed that there are children available for adoption;

Whereas media, agencies, adoptive parent and advocacy groups, civic and church groups, businesses, and industries will provide publicity and information to heighten community awareness of the crucial needs of children available for adoption; and

Whereas the recognition of Thanksgiving week as "National Adoption Week" is in the best interest of adoptable children and in the best interest of the public generally: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, are each designated as "National Adoption Week", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe

each week with appropriate ceremonies and activities.

The title was amended to read as follows:

To designate the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, each as "National Adoption Week."

ORDERS FOR TUESDAY

Mr. BOREN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m., Tuesday, November 5; that, following the prayer, the Journal of the proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein, with the time under the control of the majority leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 9:30 A.M.

Mr. BOREN. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

Thre being no objection, at 5:46 p.m., the Senate recessed until Tuesday, November 5, 1991, at 9:30 a.m.

HOUSE OF REPRESENTATIVES—*Monday, November 4, 1991*

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. DERRICK].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 1, 1991.

I hereby designate the Honorable BUTLER DERRICK to act as Speaker pro tempore on Monday, November 4, 1991.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we practice our faith and celebrate the spiritual heritage of those who have gone before, we acknowledge, O God, the richness of our traditions and the strength and the hope that Your word gives to us. May we grow deeper in our own understanding of faith, become more aware of the opportunities for service to others and learn to appreciate people from other traditions and to see their walk of faith. Bless all Your people, O God, and give them Your peace. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from California [Mr. TORRES] please come forward and lead the House in the Pledge of Allegiance?

Mr. TORRES led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment joint resolutions of the House of the following titles:

H.J. Res. 140. Joint resolution designating November 19, 1991, as "National Philanthropy Day";

H.J. Res. 175. Joint resolution to designate the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week";

H.J. Res. 177. Joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day"; and

H.J. Res. 280. Joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week".

The message also announced that the Senate had passed joint resolutions of the following titles, in which the concurrence of the House is requested:

S.J. Res. 61. Joint resolution to designate June 1, 1992, as "Kentucky Bicentennial Day";

S.J. Res. 81. Joint resolution to designate the periods commencing on December 1, 1991, and ending on December 7, 1991, and commencing on November 29, 1992, and ending on December 5, 1992, as "National Home Care Week";

S.J. Res. 96. Joint resolution to designate November 19, 1991, as "National Philanthropy Day";

S.J. Res. 145. Joint resolution designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week";

S.J. Res. 157. Joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week";

S.J. Res. 164. Joint resolution designating the weeks of December 8, 1991, through December 14, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week";

S.J. Res. 174. Joint resolution designating the month of May 1992, as "National Amyotrophic Lateral Sclerosis Awareness Month";

S.J. Res. 176. Joint resolution to designate March 19, 1992, as "National Women in Agriculture Day";

S.J. Res. 180. Joint resolution designating December 1 through 7, 1991, as "Geography Awareness Week";

S.J. Res. 188. Joint resolution designating November 1991 as "National Red Ribbon Month";

S.J. Res. 197. Joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day";

S.J. Res. 206. Joint resolution to designate November 16, 1991, as "Dutch-American Heritage Day"; and

S.J. Res. 217. Joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian".

PERSONAL EXPLANATION

Mr. ROWLAND. Mr. Speaker, I ask that the RECORD reflect that I was absent from the House last week on Tuesday evening, Wednesday, Thursday, and Friday because of a death in my family.

IOWA CITY AND THE NATION MOURN THEIR GREAT LOSS

(Mr. NAGLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NAGLE. Mr. Speaker, I do not come gladly to the floor today.

On my entry into politics I followed the career of three people. Two were named Kennedy, and one was named King. I have, during my entire life, and public life, tried to reconcile what to me was incomprehensible: That people of reason and compassion would be struck down in the prime of their lives by irrationality. To me it has always been both unfathomable and incomprehensible.

I am afraid I come to the floor today with a similar message of incomprehension and, frankly, bewilderment.

On Friday, in my State, in one of those cities in my district, in a university that I graduated from, five people lost their lives in an act of violence and madness and irrationality. People associated with an intellectual community.

Forgive us in Iowa if we've always felt—with a certain degree of parochial pride—that those kinds of events could not happen in our State. And, when news of the first event came about, I have to admit that we said, "Not Iowa, and, surely in all of Iowa, not Iowa City."

Mr. Speaker, the gunman struck down three of the Nation's top physicists and space research teachers and an academic affairs person who devoted her life to learning and to teaching.

The NASA space program has been crippled by this loss, but, more than that, we perhaps lost the innocent belief that somehow we in Iowa were different, somehow our intellectual community was different, and we, in fact, were creatures of reason.

These people who searched their life for answers and for learning now probably reside in a celestial body. The mystery of the universe that they sought to explore is now unfolded before them in God's good grace and His good judgment. Those who sought to teach can now learn the secrets of life, and those who sought to learn will have that wish fulfilled.

For those of us who remain behind, their loss will always be unabated, our sense of innocence now set aside, our prayers for their family and hopes for their loved ones undiminished. We join, in this little that we can do, in offering them comfort, and offering them our support, and offering them our prayers.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Mr. Speaker, I would request that the House observe a moment of silence for the five people who lost their lives and the one who remains critically ill in Iowa City, in my State, my town, and my university.

[From the New York Times, Nov. 4, 1991]

THE IOWA SHOOTINGS: PORTRAITS OF THE VICTIMS

IOWA CITY, IOWA, November 3.—Following are biographical sketches of the victims in the shooting rampage here Friday, drawn from information from the University of Iowa and interviews.

Linhua Shan, 27 years old, was a research investigator for the university's Department of Physics and Astronomy. He received a doctorate from the department in May; his dissertation sought to explain the structure of the rings of Saturn.

Mr. Shan, who came from a small town in southern China, was a member of the theoretical space physics group, which had been organized by two of the slain professors, Christoph K. Goertz and Robert Alan Smith. Mr. Shan was married and had no children.

Robert Alan Smith, 45, came to the university in 1989 from the Science Applications International Corporation, where he had been a research physicist for eight years.

Dr. Smith had published more than 30 scientific articles in professional journals and was known as a leader in the field of space plasma theory. He received his bachelor of science degree from Northwestern University in 1968 and a Ph.D. from the University of Maryland in 1973. He was married and the father of a six-year-old son.

Christoph K. Goertz, 47, came to the university in 1973 as a research associate and was appointed a full professor of physics in 1981.

Dr. Goertz published more than 150 scientific articles and served as editor of the journal of Geophysical Research. Earlier this year, he had been elected an external scientific member of the Max Planck Institute for Extraterrestrial Physics in Garching, Germany.

A native of Danzig, Germany, he received his bachelor's degree from the Technische University Berlin in Berlin in 1969 and his doctorate from Rhodes University in Grahamstown, South Africa, in 1972.

Dwight R. Nicholson, 44, came to the university in 1978 and became a full professor of physics in 1986. He had been chairman of the Department of Physics and Astronomy since 1985.

Active in plasma physics research, Dr. Nicholson also published a graduate-level textbook on plasma theory. He received his bachelor's in physics from the University of Wisconsin in 1969 and his doctorate in plasma physics from the University of California in Berkeley in 1975.

T. Anne Cleary, 56, was the vice president for academic affairs. She came to the university in 1979 as a professor of educational measurement and statistics.

Dr. Cleary was an authority in educational testing and published many articles on the subject. Before coming to Iowa. Dr. Cleary had been a vice president at The College Board, where she had worked since 1971.

She received her bachelor's from Marquette University in Milwaukee and her doctorate in psychology and statistics from the University of Illinois, Urbana.

Miya Sonya Rodolpho-Sioson, 23, who is listed in critical condition, was working temporarily as a receptionist in the office of academic affairs.

Ms. Rodolpho-Sioson is an honors student at the university, where she majors in Spanish and Portuguese and global studies. Born in the Philippines, Ms. Rodolpho-Sioson received her American citizenship last month.

(A moment of silence was observed.)

TRIBUTE TO JOHN DU CHATEAU

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, I rise today in honor of John Du Chateau, a man who gave his life helping the community of Luxemburg, WI.

On October 23, Mr. Du Chateau died of a heart attack while fighting a barn fire. Under his leadership, the Luxemburg Fire Department had been modernized and improved, for the benefit of all.

For over 44 years, John was a member of the Luxemburg Volunteer Fire Department. He gave his time, and eventually his own life, helping his friends and neighbors.

In 1990, he was named Fire Fighter of the Year by the Wisconsin State Fire Fighter's Association.

During his 14 years as chief of Luxemburg's Fire Department he was outstanding in all he did, and he did a lot.

John Du Chateau provided a shining example to young and old alike. He willingly gave of himself to better his community, his county, State, and country.

I offer my heartfelt condolences to his friends and especially his family. Luxemburg has lost a great friend and a fine leader.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills and joint resolutions on Friday, November 1, 1991:

H.R. 1046. An act to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans;

H.R. 2686. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes;

H.J. Res. 281. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic; and

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

TRIBUTE TO HENRY B. GONZALEZ' 30 YEARS OF SERVICE

(Mr. TORRES asked and was given permission to address the House for 1 minute and include extraneous matter.)

Mr. TORRES. Mr. Speaker, today the House enters into the last phase of the banking reform bill of 1990. The bank reform bill has had the able leadership of the chairman of the Committee on Banking, Finance and Urban Affairs, the gentleman from Texas [Mr. GONZALEZ].

Mr. Speaker, I rise today to address my colleagues in the House to indicate that the gentleman from Texas [Mr. GONZALEZ] today completes 30 years as a Member of this House. It is an extraordinary record of a man who first came to the U.S. Congress 30 years ago, in 1961. Prior to that he was a member of the city council of the city of San Antonio, TX, and served in the latter portion of the term as mayor pro tempore. In 1957, he was elected as a Texas State senator, resigning in 1957 to come here to the House.

Mr. Speaker, I ask my colleagues, all my colleagues assembled, to join me in wishing the gentleman from Texas [Mr. GONZALEZ] good wishes for the many years he has given, not only to this House, but to this country, and I am including an article which recently appeared in Unidos magazine attesting to his many deeds for this House and for the country.

The article referred to is as follows:

HENRY B. GONZALEZ

(By Robert Moreno)

The enigma of Congressman Henry B. Gonzalez is that he really is no enigma at all. Since assuming the Banking Committee Chairmanship two years ago, about the only concession the combative San Antonio Texas lawmaker has made to the well-financed banking interests his Committee oversees, has been the retirement of his trademark "Nathan Detroit" suits in favor of more conservative pin striped ones.

Such independence continues to perplex and confound the essentially non-minority establishment legislators and influence peddlers that predominate Congress.

The enigma, if there ever was one, is that after almost 30 years in Congress, Henry B. is still un-bought, un-bossed and apparently largely unimpressed, with even the leadership of his own political party.

Usually described as a maverick, combative and honest to a fault, Henry B. is the ultimate outsider who got inside.

Folks in Texas have known this for years. Now that he is arguably one of the most powerful Committee Chairmen in the Congress, the rest of the country is now receiving regular doses of Henry B.'s Texas tutorial in "How to come to Washington and not lose your ethics."

"When Henry B. took over the leadership of the Banking Committee I suppose there were a lot of folks, mostly those folks who didn't know him and who therefore have tended to underestimate him, that Henry was going to change", reflects Tony Sanchez, Chairman of the International Bank of Commerce, the largest minority owned bank in the United States.

"I haven't agreed with all of Henry's positions, but I've always known, as I believe all Texans know, that he's honest, a man who calls them as he sees them. A man who has always brought much needed balance to Congress", Sanchez adds. And Sanchez should know. He's known Henry B. for over 50 years.

Today Henry B. Gonzalez is unquestionably the most powerful Latino to ever walk the halls of Congress. And considering the amount of national attention now focused on the banking and savings and loan industry fiasco, Henry B.'s ascendancy to the Banking Committee Chairmanship continues to make a lot of powerful financial interests in this country nervous.

Those "interests" are nervous because Gonzalez is not part of the Washington 'old boy network'; never has been, doesn't want to be, never could be.

The great 'unsaid' in all the negative rhetoric they expound about his conduct as Committee Chair (his leadership has been challenged twice), is that the Chairman represents an ethnic and cultural difference that continues to confound them. He's a non-yuppie Tex-Mex who's not forgotten the battle scars he received fighting civil rights battles in racially divided San Antonio in the 1950's.

"You have to understand that Henry B. is a product of Jim Crow Texas. He cut his political teeth at a time when Hispanics had to take tough, unrelenting stands, against almost impossible odds, in order to achieve their goals. If he appears to be sometimes uncompromising, it's because he has had to be", explains fellow banking Committee member Congressman Esteban Torres, (D)–CA. "But I wouldn't underestimate him as a legislator. He probably has the most acute appreciation of history and legislative procedure of any political leader I know and he uses historical acumen to his benefit", Torres continues.

Henry B. doesn't reflect the polish and tact of those legions of sometimes too compromising Hispanics who were churned out of guilty white liberal colleges and universities during the sixties and seventies, and who are just now beginning to influence business and public policy. Henry B. doesn't look like a lot of Washington lawmakers. He doesn't talk like any Washington dealmakers. The country club, tennis set environment of your average investment banker is as foreign to Henry B. as George Bush spending a night out with Saddam Hussein in Bagdad.

That's the rub.

Since he doesn't act like the majority, and doesn't compromise like the majority, that white majority continues to embrace an inability to understand real "cultural" differences in the man and so his intelligence and political prowess are constantly underestimated.

Many of those differences were formed during Henry B's. youth in those "bad old days" for Mexican-Americans in Texas. "It was a time", Congressman Gonzalez recollects, "when things were so tough that if a dog bit a Mexican, they'd kill the Mexican, send his head to Austin for analysis and give the dog rabies shots."

Things weren't quite that extreme for Mexicans growing up in Texas. Nevertheless Henry B. has always conducted his political life as a man who has a range of indelibly etched experiences of what it's like to grow up poor, hopeless and uneducated in America. He's a man who has never forgotten that even in a society as full as opportunity as America, millions of people continue to suffer quiet lives of desperation.

This is the kind of stuff that makes him challenge the leadership of his own party, as he did when he demanded hearings on the high stepping antics of banker Charles Keating and his five friends in the Senate of the United States; in spite of concerns that such hearings would inevitably embarrass the Democratic leadership, which it did.

The abuse and waste of billions of taxpayers dollars, irrespective of the political affiliation of the perpetrators, was Mr. Gonzalez's only concern. When they charge he's difficult and not up to the challenge of guiding the Banking Committee through the challenges it faces while resolving the nation's current banking and savings & loan crisis. When they challenge his leadership of the Committee, as they have twice since he assumed leadership, what they're really saying is that they want someone in the position who's more inclined to protect the status quo.

It's a happy accident that Henry B. is in a position to do something about the banking fiasco. Former Committee Chairman Fernand St. Germain, would never have held such hearings on the Keating five. "I would certainly agree with that", Mr. Gonzalez smiles wryly. With regard to the five Senators who were brought up before his Committee, he is totally non-sympathetic.

Quoting a line from former Illinois Senator Paul Douglas, the Congressman laments, "A legislator should not immediately concede that the constituent is always right and the administrator is always wrong, but as far as possible find out the merits of each case and only make such representations as the situation permits."

Of course the question is 'when does the situation permit?' My feeling is that if a legislator doesn't know the difference by the time he comes to Congress, then it's too late. I don't care what code of ethics you have. Anyone who doesn't know the difference between genuine constituent service and influence peddling doesn't belong in Washington." Gonzalez continues.

"Not many people know that Henry B. represents an unparalleled political legacy that few Latinos can or ever will match. He's a person who's campaigned through 11 states as national chairman of the Viva Kennedy Clubs. Vice President Lyndon Johnson teamed up with famed Mexican comedian Catinflas to barnstorm for Henry B. during his first bid for Congress in 1961," adds Torres.

In the final analysis, that's what may be so threatening about Henry B. The real enigma of the man may be how a person of such integrity has been able to survive through 15 terms of Congress.

CRITICIZING THE PRESIDENT IS NOT ENOUGH

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker and Members of the House, Members of this body who oppose the President begin to take the podium in steams of objection and criticism of the President of the United States because they tie in to slipping numbers of the economy with what they perceive, with what they are eager to see, as being failed policies of the President of the United States.

□ 1210

I do blame them, but it is still politics. Yet we can put all their records of rhetoric together and it does not create one job, and they continue to oppose the President's policy which he enunciated from the first day he took office, to create economic growth and create jobs. There is only one way to do that, and that is to allow incentives for people to invest in creating new businesses, to expand old businesses, and thus to put people to work.

It is not enough to stand up here and criticize the President. It is more important for us to listen to what the President proposes on economic growth. We cannot have the economy turn around and jobs created without economic growth.

A NEW SYMBOL FOR REPUBLICANS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Presidents Coolidge and Hoover did it; Presidents Reagan and Bush did it. To get elected, they cut taxes. When that did not work, they raised taxes. When that did not work, they blamed the Democrats.

But that is not what Mr. Bush said as a candidate in 1980. He said:

> If you elect Ronald Reagan, he will double the national debt in his first term, our banks and savings and loans will collapse, and poverty and bankruptcies will explode. Furthermore, it is voodoo economics."

Now what is the President saying? "The Democrats made me do it."

I think it is time, Mr. Speaker, that we should have a picture of Presidents Hoover, Coolidge, Reagan, and Bush, not on Mount Rushmore but on a new Republican designer currency, the 1992 food stamps.

OVERREGULATION THREATENS OUR NATION'S SMALL BUSINESSES

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, I recently got a letter from Mr. Joe Baker, the owner of a small roofing company in Wichita, KS.

Mr. Baker wrote:

> It is not the IBMs, General Motors or Boeings who are creating the new jobs, . . . inventing the new products and in general powering the American economy. It is the small businessman.

He told me:

> I don't think the average politician has any idea how frustrated and mad the small businessman is becoming over the unbearable regulations that are being jammed down his throat. Our survival is on the line. We need leaders with some common sense.

Mr. Speaker, this roofer from Wichita is right on target. We need to use some basic common sense when we consider passing laws that throw yet another obstacle in the path of the small business owner.

I would urge my colleagues to keep Mr. Baker's comments in mind this week as we vote on a number of issues affecting small business. Because it is easy to say that you're for small business. But it's how you vote that really counts.

REGULATION FOR THE NATION'S BIG BANKS

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute, and to revise and extend his remarks, and include extraneous matter.)

Mr. MAZZOLI. Mr. Speaker, we have all heard of the doctrine, which I consider to be a bankrupt doctrine, that certain banks are too big to fail, that their failing would be so thunderous and have so many negative reverberations that they cannot be allowed to fail.

According to the New York Times this morning, Mr. Speaker, there is a new bank doctrine out that some banks are too big, in this case Citibank, to be criticized or to be publicly told that they have to change their lending practices, their management practices, or improve their capital position.

This has implications, Mr. Speaker, in many respects. We have before us a bill that will be voted on this evening, the bank reform bill, which does permit banks to get bigger. It does permit banks to become more powerful and to extend their reach into certain nontraditional commercial areas. That could make some even bigger than Citibank today, and if being big means they are too big to fail or if being big means they are too big to be criticized, Mr. Speaker, we are making a very serious error. I would hope that the Committees on Banking of the House and the Senate would look into the question of whether Citibank is too big to be publicly regulated.

A TRIBUTE TO THE FBI ON ITS HOSTAGE RESCUE EFFORTS IN ALABAMA

(Mr. OXLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. OXLEY. Mr. Speaker, as a former special agent of the Federal Bureau of Investigation, I took great pride in the actions of the FBI's hostage rescue team in safely ending the August uprising at the Federal Correctional Institution in Talledega, AL. This was achieved under the aggressive leadership of the Department of Justice, and with close coordination between the FBI and the Federal Bureau of Prisons.

After the takeover, Acting Attorney General William Barr immediately designated the FBI with primary responsibility for a tactical response. Ten days later, in keeping with the team's motto, "To Save Lives," the 50-man hostage rescue team executed a deliberate assault with surgical precision, and within moments safely removed the men and women being held hostage.

I can speak of the danger that these agents faced on that early morning in August. We owe these extraordinary men, as well as all law enforcement officers who place themselves in harm's way each day, a debt of gratitude for the uncommon public service they provide.

Mr. Speaker, I insert into the RECORD at this point the August 30, 1991, press statement of the Acting Attorney General.

STATEMENT OF ACTING ATTORNEY GENERAL WILLIAM BARR

I have a short statement.

The hostage situation at Talladega is over. At 4:40 a.m., EDT, I authorized the FBI's Hostage Rescue Team, supported by FBI SWAT teams and Bureau of Prisons' Special Operations Response Teams, to effect a rescue.

I took this step based on the recommendation of the Director of the FBI and the Director of the Bureau of Prisons that the rescue could be effected with a high probability of success and that further delay would increase the risk to the hostages and others.

All of the hostages were rescued safely, and they are now receiving medical treatment. None were injured in the rescue and no members of the rescue teams were injured. We believe that one inmate received a minor injury.

This was a terrorist incident where the lives of innocent persons were put at risk in an attempt to force actions by the Government. As in any such incident, our concern was minimizing the risk of harm to the hostages and others.

We took action at this time because in our best professional judgment it was necessary to achieve that goal. We could not make concessions to terrorists holding hostages—to do so would put the thousands of dedicated professionals working in our prisons at constant risk.

Moreover, there was considerable risk that the situation inside the prison would deteriorate requiring an emergency response. Such an emergency response could increase the risk of harm to the hostages, rescue team, and inmates.

I would like to thank Mike Quinlan, Director of the Bureau of Prisons, William Sessions, Director of the FBI, Floyd Clarke, Deputy Director of the FBI, and Bill Baker, Assistant Director of Criminal Investigations of the FBI, and all of the people who work with them for their superb work throughout this crisis.

But, above all, I would like to express my appreciation to the dedicated law enforcement personnel who took part in this operation. We are grateful beyond words and proud beyond measure of their professionalism, dedication to duty, and willingness to put their lives on the line to save the hostages. We truly have the best law enforcement personnel in the world.

I also want to recognize the tremendous resolve of the hostages and their families. They have been put through the most difficult situation imaginable and conducted themselves with courage, honor, and professionalism.

THE BUSH TEAM: A QUARTER OF A MILLENNIUM IN WASHINGTON

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, President George Bush's campaign to eradicate Potomac fever makes a great stump speech, but it contrasts starkly with the epidemic within his own administration.

When it comes to Potomac fever, George Bush is a carrier.

Here are the grisly facts. President Bush, his Vice President DAN QUAYLE, and his Cabinet Secretaries have piled up 230 years living in Washington. By next year's Presidential election, the Bush entourage will have amassed almost a quarter of a millennium bivouacked inside the beltway.

When Bush rails against entrenched powers in Washington, he might as well be haranguing a mirror. Bush himself has logged 25 years in evil Washington. He, QUAYLE, and many of his Cabinet Secretaries have spent most of their adult lives toiling in the same vineyards he rhetorically torches.

THE POTOMAC FEVER ALL STARS

President George Bush: 1967–91: 25 years.

Vice President Dan Quayle: 1977–91: 15 years.

Agriculture Secretary Edward Madigan: 1973–91: 19 years.

Commerce Secretary Robert Mosbacher: 1989–91: 3 years.

Defense Secretary Dick Cheney: 1968–91: 24 years.

Education Secretary Lamar Alexander: 1991: 1 year.

Energy Secretary James Watkins: 1982–86, 1989–91: 8 years.

HHS Secretary Louis Sullivan: 1989–91: 3 years.

HUD Secretary Jack Kemp: 1969–91: 22 years.

Interior Secretary Manuel Lujan: 1969–91: 22 years.

Attorney General-nominee William Barr: 1971–91: 20 years.

Labor Secretary Lynn Martin: 1981–91: 11 years.

Secretary of State James Baker: 1975–91: 17 years.

Transportation Secretary Samuel Skinner: 1989–91: 3 years.

Treasury Secretary Nicholas Brady: 1982, 1989–91: 4 years.

Veterans Secretary Edward Derwinski: 1959–91: 33 years.

A PLEA TO RESIST EFFORTS TO BREAK THE BUDGET AGREEMENT

(Mr. KYL asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. KYL. Mr. Speaker, one of the selling points of last year's budget deal, the Budget Enforcement Act of

1990, was that it would lock in the defense budget for 3 years. Many of us predicted that some of our big-spending colleagues, however, would soon want to change that, and just a year after the budget deal was signed we have legislation introduced to do precisely that.

I submit, Mr. Speaker, that this is the wrong time to be breaking the budget deal. Let us allow it to operate the way it was intended to operate.

In the first place, there is no big peace dividend, as some have suggested. It costs money to restore closed military bases to an environmentally sound status. It costs money to dismantle nuclear warheads. But even if there were to be a peace dividend, it seems to me the best news for the taxpayers of this country and for our economy would be to allow the people to keep that money by reducing taxes. Or, we could reduce the Federal budget deficit rather than simply stealing it from defense and spending it on other domestic discretionary programs.

So I hope that this legislation to break the budget deal after 1 year and combine the defense budget with other discretionary spending budgets will be a nonstarter, Mr. Speaker.

BEATING THE DEVIL

(Mrs. COLLINS of Michigan asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Mrs. COLLINS of Michigan. Mr. Speaker, this past week the citizens of Detroit beat the devil. Some years ago Halloween's "Devil Night" changed from childish pranks to devastating arson, burning down many of the abandoned buildings in the city of Detroit.

But last week 36,000 good people from Detroit and friends from the suburbs took to the streets in citizen patrols, and they were successful in beating the devil. Last week, on Devil's Night, there were only 62 fires in the city of Detroit, and the average for a city of that size on an average night is about 70 fires.

Mr. Speaker, this just tells us what good people can do to take back their streets when they get involved.

KEEP FAITH WITH WARDS COVE WORKERS

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, last week the Senate passed a historic civil rights bill after extensive negotiations. One of its achievements is to overturn the Supreme Court decision in a case called Wards Cove Packing Co. versus Atonio. That decision made it harder to challenge employment practices that hurt minorities and women.

But the Senate added a little amendment to the civil rights bill. It says that the bill does not apply to the Wards Cove case itself. That means that after 17 years of litigation, 2,000 Asian-American and Alaska Native cannery workers will be the only Americans the Civil Rights Act does not protect.

That amendment should outrage everyone on this floor who believes in equal justice under the law. It is a cynical betrayal of people who have been to court nine times over 17 years, trying to get justice.

I want to pass a strong civil rights bill that works for every American. I hope the Rules Committee will allow an amendment removing the exemption for the Wards Cove case. I hope my colleagues on both sides of the aisle will support that amendment and the principle of equal justice.

☐ 1220

FHA THWARTED IN PROVIDING HOME OWNERSHIP

(Mr. VENTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. VENTO. Mr. Speaker, the U.S. economy continues to falter unpredictably, which is of deep concern to people across the country, and certainly Members of this body.

Home ownership has always been one of the basic pillars of our economy, but the FHA program changes in law provided significant downpayment increases, and now the regulatory requirements have made for even a larger downpayment. HUD's special regulatory efforts to pile increase upon increase amounts, yet above the amounts provided in law, are taking their toll. The fact is that FHA loans are down by 35 percent when measured compared to comparable time periods last year.

The administration, and specifically the Secretary of HUD, has touted home ownership as being very important. But our economy cannot function when they take away the basic tools and basic opportunities for home ownership, such as the FHA Program.

Mr. Speaker, in my own State FHA loans have dropped over 50 percent. Part of it is the general economy, but a great part of the decline of home ownership is that the effort to save the FHA Program, pay increasing upfront money, and lowering risk is killing the FHA program.

Mr. Speaker, this solution was wrong in the beginning, and I think the evidence of home ownership decline and the evidence of FHA loan decline speaks for itself.

No amount of up-front money or downpayments are going to make up for the regulatory shortfall of the 1980's and the out-of-control appraisal process that was in some instances overtly and covertly fraudulent. Mr. Speaker, hopefully the Congress will continue to closely follow the consequences of the Bush administration policy which purports to save the FHA Program by making it unworkable.

The following is a news article that was printed in the weekend news reports which addresses the consequence of the FHA changes and the decline of FHA loans when they are most needed and historically most used in exactly the type of countercyclical economic downturn that we are experiencing today.

LOAN APPLICATIONS OFF SHARPLY AT FHA

(By Ann Mariano)

DALLAS.—Applications for Federal Housing Administration-insured home loans have dropped sharply in the six months ended Sept. 30, largely because buyers must now put down more cash than in the past, according to a report by the Mortgage Bankers Association of America.

Since July 1, home buyers using FHA-insured loans have been required to pay in cash for 43 percent of the fees and expenses charged at the time a sale is completed. Before the change, buyers could cover all of these costs by financing them as part of the mortgage.

Under the new rules, a buyer who takes out a $100,000 mortgage and has $2,500 in closing costs must pay about $1,000 more in cash than under the previous formula, according to the Mortgage Bankers Association (MBA). Closing costs include charges for appraisals, inspections, settlement attorneys' work, real estate brokers' commissions, title insurance premiums and fees charged by lenders at the time of sale.

Department of Housing and Urban Development officials said the cash payments were made necessary because of heavy losses in the FHA insurance program in recent years. The FHA is part of HUD.

The number of FHA loan applications plummeted to 63,419 in September from 97,450 in April, a 35 percent decline, according to HUD records. During the same period, applications for mortgages insured by the Department of Veterans Affairs, which did not impose new fees, rose about 40 percent.

Private insurance companies reported receiving about 60,000 applications a month during the same six months, a higher level than in 1990, said Brian J. Chappelle, MBA staff vice president.

The number of buyers seeking FHA loans dropped by nearly half in some states, such as Minnesota and North Carolina, during the six-month period from March through September. The FHA's business fell by 29 percent in Texas and 26 percent in Illinois.

In the Washington area, FHA insurance applications declined by about 37 percent, according to HUD records.

There were about 61,000 applications for privately insured mortgages in August, an increase of about one-third compared with 1990. Similar increases being reported for June and July, Chappelle said.

Although home sales have dropped in many parts of the nation during the recession, thousands of homeowners have taken advantage of interest rates at 9 percent or less for a 30-year, fixed-rate loan to refinance mortgages. About half of all loans being issued now are refinancings and in many cases owners are taking out conventional mortgages to refinance FHA loans, Chappelle said. Less than 20 percent of the FHA's business this year has been in refinanced loans, he said.

As a result, the FHA is losing many of the strongest loans in its portfolio, leaving the agency with a higher proportion of mortgages with owners who may eventually default or be late in making payments, Chappelle said.

"FHA is the beginning of the housing chain," said Angelo Mozilo, new president of the MBA. People often buy their first home with an FHA-insured loan and sell it several years later to move up to a more expensive house. If the FHA is weakened, the entire housing market is in trouble, he said.

The FHA has suffered heavy losses over the past four years in the wake of the housing recession, especially in the West and Southwest. The FHA operates four funds to insure the loans on single-family homes, apartment projects and several types of specialized housing. The single-family fund is the strongest, but it has suffered large losses in the last four years because of collapsing real estate markets.

Without the reform ordered by the Bush administration, "FHA would have gone out of business," said HUD Deputy Secretary Alfred A. DelliBovi. The extra charges have not been in effect long enough "to reach a conclusion" about their impact on prospective buyers, he said. But even with the new restrictions, "the FHA program is still more attractive" to purchasers than other mortgage insurance, DelliBovi said.

In a recent report, the Price Waterhouse accounting firm said the FHA still has not resolved its "longstanding internal * * * weaknesses" in the way it manages the housing insurance funds. The FHA "must place top priority on upgrading" accounting and financial management, the company said.

Testifying at a recent hearing before the House Banking, Finance and Urban Affairs Committee's housing subcommittee, FHA Commissioner Arthur J. Hill said the agency will need three to five years to clean up all of its problems. "It's not a shortterm solution," he said.

Rep. Mary Rose Oakar (D-Ohio), a subcommittee member, said Hill's estimate is "very upsetting to me. I don't buy the fact that we can't do better."

If HUD does not have enough staff "to clean up the mess at FHA, which is really disgraceful, tell us," she said. Congress will "work with you" to get more help.

Joseph M. Ventrone, Republican deputy staff director for the House Banking Committee, said fear of "the demise of FHA is a little premature." Ventrone, who spoke at the MBA convention here, said he could "predict with some certainty" that Congress will investigate if the FHA appears in danger of losing too much business.

TRIBUTE TO BILL GRAHAM

(Mrs. BOXER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOXER. Mr. Speaker, last weekend America lost a giant of the rock music world, Bill Graham. He was a constituent of mine, and I was proud to represent him in the Congress.

For me it was a personal loss. Bill Graham was a man of toughness and compassion, a man who survived the Nazi Holocaust, with an incredible sense of who he was. He never forgot and he worked to make America and his own community the best it could be.

Bill and I did not always agree on everything, but there was always mutual respect, and I was lucky. Bill took me as one of his causes and he helped me in my career.

To his sister Esther, whom he revered, to his son David, whom he adored, I send my deepest condolences, as well as to the rest of the family and friends.

Mr. Speaker, yesterday, 300,000 Californians came to Golden Gate Park in San Francisco to honor Bill Graham. The performers he loved gave of themselves selflessly. It was a fitting tribute, music for Bill; and Bill will live on in the music.

SYRIA AND THE PEACE CONFERENCE

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, over the weekend all of the parties in the Middle East peace conference began to make some progress. All of the delegations, including the Palestinian delegation, sat down one-on-one with the Israeli delegation for the first time in history. At this point, the one party that seems most likely to derail the peace conference is Syria, along with the puppet government in Lebanon.

Syria's position is that Israel must give back all occupied territories before discussing anything further. Syria's primary objective is to regain the Golan Heights, which it lost in battle after using it to shell Israeli farmers. That is what it has to gain at the conference, and it seems to have little to lose. Has the United States pressed Syria to give up its practice of terrorism, or its massive arms buildup? And what about Lebanon? How can anyone ask Israel to withdraw from the security zone in southern Lebanon when the country is being run by Syria, and overrun by Syrian troops?

Foreign Minister Al-Sharaa's rhetoric reveals how little Syria cares about the truth. At a conference meant in part to deal with the rights of Palestinians in Israel, a topic Israel is willing to address, Al-Sharaa blatantly misrepresents conditions for minorities in his country, claiming that the Jews of Syria live in complete freedom. In fact, Syrian Jews are forbidden the right to travel and emigrate abroad, while being denied religious freedoms at home. This issue must be addressed at the peace conference as much as any other.

Now all of the parties have begun to move towards the goal of peace. But Syria would have the other Arab countries cease their talks until Syria's demands are met. Syria pretends to be concerned about the Palestinians, but it would derail the peace conference for its own purposes, just as it derailed a schedule regional conference on water rights. As one Palestinian official said of Syria, "They have said they could wait a hundred years to get the Golan Heights back from Israel. We don't have that luxury."

Mr. Speaker, I hope that the other Arab countries don't make the mistake of thinking that President Assad has their interests at heart. And I hope our President starts treating Syria like the kind of state it is, before yet another relationship with an Arab despot explodes in our faces.

FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991

The SPEAKER pro tempore. (Mr. DERRICK). Pursuant to House Resolution 264 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 6.

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IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, with Mr. CARR in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, November 1, 1991, the amendment offered by the gentleman from Iowa [Mr. LEACH] had been disposed of.

It is now in order to consider amendment number 8 printed in House Report 102–281, as modified by the order of the House of Friday, November 1, 1991.

Pursuant to House Resolution 266, if amendments numbered 8 and 9 are both adopted, only the latter amendment adopted will be considered as finally adopted and reported back to the House.

AMENDMENT AS MODIFIED OFFERED BY MR. VENTO

Mr. VENTO. Mr. Chairman, I offer an amendment, as modified.

The CHAIRMAN. The Clerk will report the amendment, as modified.

Amendment, as modified, offered by Mr. VENTO: Page 185, beginning on line 12, strike sections 301, 302, 303, 304, 305, and 306 and insert the following new sections (and redesignate the succeeding section and conform the table of contents accordingly):

SEC. 301. NATIONWIDE BANKING.

(a) INTERSTATE ACQUISITIONS.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended to read as follows:

"(d) INTERSTATE ACQUISITIONS AND BRANCHING.—

"(1) IN GENERAL.—Subject to paragraph (4), the Board may approve an application under this section by a bank holding company or foreign bank to acquire, directly or indirectly, any voting shares of, interest in or all or substantially all of the assets of any additional insured depository institution or bank holding company located in any State.

"(2) STATE LAW.—Subject to paragraph (4), any acquisition described in paragraph (1) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of—

"(A) the location or size of the acquiring company, foreign bank, or subsidiary of such company or foreign bank;

"(B) the number of insured depository institution subsidiaries of such company or foreign bank; or

"(C) any other factor that, directly or indirectly has the effect of prohibition or limiting the acquisition of shares or control of an insured depository institution or bank holding company located in that State by an out-of-State bank holding company or foreign bank if such factor is not applied with similar effect bank if such factor is not applied with similar effect in the case of acquisitions of insured depository institutions or bank holding companies located in such State by bank holding companies located in the State.

"(3) CONCENTRATION LIMITS.—The Board may not approve an application under paragraph (1) if—

"(A) the applicant controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institutions deposits of the United States, as determined under regulations of the Board; or

"(B) the applicant controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the bank to be acquired is located, as determined under regulations of the Board, except that a State may waive the applicability of this subparagraph.

Nothing in this paragraph affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies.

"(4) LIMITATIONS ON CONSOLIDATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any insured depository institution acquired after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 pursuant to paragraph (1) may not be a party to any transaction under subsection (h) before the end of the 3-year period beginning on such date of enactment.

"(B) PROVISION APPLICABLE TO CERTAIN INSTITUTIONS.—Subparagraph (A) shall not apply with respect to any insured depository institution the acquisition of which occurs after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 pursuant to an application or notice filed before such date with any appropriate Federal banking agency or State bank supervisor.

"(5) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry to the acquisition of existing banks shall apply, except that a State law which requires that that bank must have been in existence longer than 5 years shall not apply unless such a law is in effect on such date of enactment.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act.

SEC. 302. INTERSTATE BRANCHING BY NATIONAL BANKS

Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended—

(1) by redesignating subsections (d) through (h) as subsections (e) through (i) respectively; and

(2) by inserting after subsection (c) the following:

"(d) INTERSTATE BRANCHING BY NATIONAL BANKS.—

"(1) IN GENERAL—

"(A) APPROVALS AUTHORIZED.—Beginning 3 years after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Comptroller of the Currency may approve an application under this section which will permit a national bank that is adequately capitalized and adequately managed to establish or acquire, and operate, a branch located outside the State in which the main office of such bank is located, subject to paragraphs (2), (3), and (6)

"(B) CONDITIONS.—In determining whether to grant approval under subparagraph (A), the Comptroller of the Currency shall consider the bank's rating under the Community Reinvestment Act of 1977 and the views of the appropriate State bank officials regarding the bank's compliance with applicable State community reinvestment laws.

"(C) APPLICABLE LAW.—

"(i) IN GENERAL.—Subject to paragraph (6), any branch established or acquired under subparagraph (A) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State, unless such State law, is preempted by Federal law regarding the same subject. There shall be no discriminatory effect in the application of such laws between a branch of a bank chartered by the host State and in-State branches of out-of-State national banks. Such State laws shall be enforced, with respect to branches of national banks by the Comptroller of the Currency. All other laws of the host State shall apply as if the branch was the national bank situated in that State.

"(ii) FILING REQUIREMENT.—A host State may require any national bank that has its main office in another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any national bank the main office of which is located in another State from establishing or operating a branch within the host State if that national bank or its branch materially fails to comply with the filing requirements.

"(2) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (1) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending 3 years after the date of the enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A national bank that has its main office in a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(3) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—The Comptroller of the Currency may approve an application under paragraph (1)(A) before the expiration of the 3-year period described in paragraph (1)(A), if the State in which the branch is or will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of the time period described in paragraph (1)(A).

"(B) AFTER THE THREE-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (2), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(4) STATE IMPOSED CONDITIONS ON INTERSTATE BRANCHING.—

"(A) A State may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the Comptroller of the Currency shall consider any timely comments of the host State prior to approving that application); and

"(B) subject to paragraph (6) a State may impose other conditions on a branch established or acquired under paragraph (1)(A) if—

"(i) the conditions to not discriminate against out of State banks or bank holding companies; and

"(ii) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(5) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The Comptroller may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution deposits of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State banks or bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(6) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry to the acquisition of existing banks or branches shall apply, except that a State law which requires that the bank must have been in existence longer than 5 years shall not apply unless such law is in effect on such date of enactment. State laws in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 that restrict such entry shall, for purposes of this paragraph, be deemed to apply to both banks and branches.

"(7) DEFINITIONS.—For purposes of this subsection—

"(A) ADEQUATELY CAPITALIZED.—The term 'adequately capitalized' means, with respect to any national bank, a bank which maintains capital in an amount which meets or exceeds the required minimum ratio for each relevant capital measure.

"(B) HOST STATE.—The term 'host State' means the State in which a national bank establishes or maintains a branch other than the State in which the bank has its main office and is engaging in banking business.

"(C) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 303. INTERSTATE BRANCHING BY STATE BANKS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) INTERSTATE BRANCHING BY STATE BANKS.—Beginning 3 years after the date of enactment of the Financial Institutions Safety and Consumer Act of 1991, an insured State bank that is adequately capitalized and adequately managed may establish or acquire, and operate, a branch located outside the State in which the bank is chartered if authorized by the law of the State in which the bank is chartered, subject to paragraphs (5), (6), and (9).

"(4) APPLICABLE LAW.—

"(A) IN GENERAL.—Subject to paragraph (9), any branch of an out-of-State bank shall be subject to the laws of the host State as if such branch were a branch of a bank chartered by that State.

"(B) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches pursuant to paragraph (3) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(C) FILING REQUIREMENT.—A host State may require any insured bank chartered by another State that wishes to establish a branch within the host State to comply with filing requirements that are not discriminatory in nature and that are similar in their effect to those that are imposed on a corporation from another State that is not engaged in the business of banking and that seeks to engage in business in the host State. The host State may preclude any State bank chartered by another State from establishing or operating a branch within the host State if that State bank or its branch materially fails to comply with the filing requirements.

"(D) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection limits in any way the right of a State to—

"(i) determine the authority of State banks chartered in that State to establish and maintain branches; or

"(ii) supervise, regulate, and examine State banks chartered by that State.

"(5) STATE ELECTION TO PROHIBIT INTERSTATE BRANCHING.—

"(A) IN GENERAL.—The provisions of paragraph (3) shall not apply to branches to be located in a State which has enacted, during the period beginning on January 1, 1990, and ending 3 years after the date of enactment of this subsection, a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(B) EFFECT OF PROHIBITION.—A State bank that is chartered by a State that has in effect a prohibition under subparagraph (A) may not acquire or establish a branch located in any other State under the provisions of this subsection.

"(6) STATE ELECTION TO PERMIT INTERSTATE BRANCHING.—

"(A) DURING THE 3-YEAR PERIOD FOLLOWING ENACTMENT.—A State bank may establish or acquire, and operate, a branch outside the State in which the main office of the bank is located, subject to the provisions of this subsection, before the expiration of the 3-year period described in paragraph (3), if the State in which the branch will be located enacts a law during that period expressly permitting interstate branching by all national and State banks before the expiration of the time period described in paragraph (3).

"(B) AFTER THE 3-YEAR PERIOD FOLLOWING ENACTMENT.—A State that originally elected, pursuant to paragraph (5), to prohibit interstate branching may nonetheless elect at any later time to permit interstate branching if such State enacts a law expressly permitting interstate branching by all national and State banks.

"(7) STATE IMPOSED CONDITIONS ON INTERSTATE BRANCHING.—

"(A) A State may require a copy of an application submitted under this section to be filed with the host State banking authority in a timely manner (and the home State banking authority and the appropriate Federal banking agency shall consider any timely comments of the host State prior to approving that application); and

"(B) Subject to paragraph (9), a State may impose other conditions on a branch established or acquired under paragraph (3) if—

"(i) the conditions do not discriminate against out-of-State banks or banking holding companies; and

"(ii) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(8) CONCENTRATION LIMITS.—

"(A) IN GENERAL.—The home State banking authority and the appropriate Federal banking agency may not approve an acquisition under paragraph (1)(A) by a bank of a branch located in another State if—

"(i) the bank controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution deposits of the United States, as determined under regulations of the Board of Governors of the Federal Reserve System; or

"(ii) the bank controls, or upon completion of the acquisition would control, 30 percent or more of the insured depository institution deposits in the State in which the branch to be acquired is located, as determined under regulations of the Board of Governors of the Federal Reserve System, except that a State may waive the applicability of this subparagraph.

"(B) LIMITATIONS.—Nothing in subparagraph (A)—

"(i) affects the applicability of Federal antitrust laws or of State antitrust laws that do not discriminate against out-of-State bank holding companies, or

"(ii) applies to the establishment of new branches located outside the State where the main office of the bank is located.

"(9) EXCEPTION.—Notwithstanding the previous paragraphs, any provision of State law in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, or enacted thereafter, which restricts entry only through the acquisition of existing banks or branches shall apply, except that a State law which requires that the bank must have been in existence longer than 5 years shall not apply unless such law is in effect on such date of enactment. State laws in existence on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 that restrict such entry shall, for purposes of this paragraph, be deemed to apply to both banks and branches.

"(10) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—A host State bank supervisory or regulatory authority may examine a branch established in the host State by banks chartered by another State for the purpose of determining compliance with host State laws regarding banking, taxation, community reinvestment, fair lending, consumer protection, and permissible activities and to ensure that the activities of the branch are conducted in a manner consistent with sound banking principles and do not constitute a serious risk to the safety and sound operation of the branch.

"(B) ENFORCEMENT.—In the event that a host State bank authority as described in subparagraph (A) determines that there is a violation of host State law concerning the activities being conducted by the branch or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank authority may undertake such enforcement actions or proceedings as would be permitted under host State law if the branch in question were a bank chartered by that host State.

"(C) COOPERATIVE AGREEMENT.—The State bank authorities from one or more States are authorized to enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

"(D) FEDERAL REGULATORY AUTHORITY.—

"(i) IN GENERAL.—Nothing in this subsection limits in any way the authority of the appropriate Federal banking agency to examine any bank or branch of a bank for which the agency is the appropriate Federal banking agency.

"(ii) REVIEW OF INTEREST AGREEMENTS.—If the appropriate Federal banking authority determines that the States have failed to reach an agreement under subparagraph (C), or that such an agreement fails to adequately protect the Federal Deposit Insurance Fund, the appropriate Federal banking authority shall not defer to State examinations of the out-of-State branches.

"(11) DEFINITIONS.—For purposes of this subsection—

"(A) HOST STATE.—The term 'host State' means the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and engaging in banking business.

"(B) ADEQUATELY CAPITALIZED.—For the purposes of this subsection, the term 'adequately capitalized' means, with respect to any insured State bank, a bank which maintains capital in an amount which meets or exceeds the minimum ratio for each relevant capital measure.".

SEC. 304. BRANCHING BY FOREIGN BANKS.

(a) IN GENERAL.—Section 5(a) of the International Banking Act of 1978 (12 U.S.C. 3103(a)) is amended to read as follows:

"(a) INTERSTATE BANKING OPERATIONS.—

"(1) IN GENERAL.—A foreign bank may establish and operate—

"(A) a Federal branch or agency, with the approval of the Board and the Comptroller of the Currency, in any State outside its home State to the extent that such establishment and operation would be permitted under section 5155 of the Revised Statutes for a national bank; or

"(B) a State branch or agency, with the approval of the Board and the appropriate regulatory authority of the State, in any State outside its home State to the extent that such establishment and operation would be permitted under section 18(d) of the Federal Deposit Insurance Act for a State bank.

as if the foreign bank were a national bank having its main office, or a State bank chartered, in the home State of the foreign bank.

"(2) CRITERIA FOR DETERMINATION.—In approving an application under paragraph (1), the Board and the Comptroller of the Currency—

"(A) shall apply the standards for establishment of a foreign bank office in the United States under section 7(e); and

"(B) may not approve an application unless it determines that the foreign bank's financial resources, including the capital level, are equivalent to those required for a domestic bank to be approved for branching under section 5155 of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act and, in the case of the first branching application by such foreign bank, after consultation with the Secretary of the Treasury regarding capital equivalency.

"(3) REQUIREMENT FOR A SEPARATE SUBSIDIARY.—If the Comptroller of the Currency or the Board, taking into account differing regulatory or accounting standards, finds that adherence to capital requirements equivalent to those imposed under section 5155 of the Revised Statutes and by section 18(d) of the Federal Deposit Insurance Act can be verified only if banking activities are carried out in a domestic banking subsidiary within the United States, it may approve an application under paragraph (1) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

"(4) ADDITIONAL AUTHORITY FOR INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS.—Notwithstanding paragraph (1) and section 4(h), a foreign bank may, with the approval of the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside of the foreign bank's home State if—

"(A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and

"(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act.".

"(b) TREATMENT OF UNITED STATES BANKING SUBSIDIARIES.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by adding at the end the following:

"(d) TREATMENT OF UNITED STATES SUBSIDIARY OF A FOREIGN BANK.—A foreign bank that has a domestic subsidiary within the United States may establish Federal and State branches and agencies outside its home State to the extent permitted under section 5155(d) of the Revised Statutes and section 18(d) of the Federal Deposit Insurance Act.".

(c) HOME STATE DETERMINATIONS.—

"(1) METHOD OF DETERMINING.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

"(A) by striking the phrase "in the State in which such branch or agency is located"; and

"(B) by adding at the end the following sentence: "For the purposes of section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)), the home State of a foreign bank shall be its home State as determined under section 5(c).".

"(2) SINGLE STATE DETERMINATIONS.—Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 3103(c)) is amended to read as follows:

"(c) DETERMINATION OF HOME STATE OF FOREIGN BANK.—For the purposes of this section—

"(1) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than 1 State, is the 1 of those States elected of the foreign bank, or, in default of such election, by the Board; and

"(2) the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in only 1 State, is that State.".

SEC. 305. PERMISSIBLE CONSOLIDATION.

Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following subsection:

"(h) PERMISSIBLE CONSOLIDATION.—

"(1) IN GENERAL.—Except as provided in subsection (d)(1), a bank holding company having subsidiary banks located in more than 1 State may combine 2 or more of such banks into a single bank by means of merger, consolidation, or other transaction on or after 18 months from the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991. Notwithstanding any other provision of Federal law or any provision of State law, any consolidation effected in accordance with this subsection shall be permissible within a State as of 18 months after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, unless such State has enacted a law in accordance with section 5155(d)(2)(A) of the Revised Statutes or section 18(d)(5)(A) of the Federal Deposit Insurance Act that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State.

"(2) ADDITIONAL BRANCHES.—The consolidated bank may, subject to compliance with all applicable Federal or State laws relating to the establishment, acquisition or operation of a branch, establish, acquire and operate additional branches at any location where the consolidate bank or a preexisting bank could, if they had not been parties to such consolidation, have established or acquired and operated a branch, unless precluded by any provision of State law in existence on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

"(3) EFFECT OF STATE PROHIBITION OF BRANCHING.—If, during the period beginning 18 months from the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 and ending on the expiration of 3 years from such date of enactment, a consolidation authorized by paragraph (1) is effected resulting in the conversion of a bank into a branch located in a State which, after such consolidation, has enacted a law that applies equally to national and State banks and that expressly prohibits all out-of-State banks from establishing or acquiring branches located in that State, then such branch shall, under regulations of the Federal or State banking authority having jurisdiction of the bank prior to its conversion into a branch, be promptly converted bank back into the bank as it existed prior to such consolidation.

"(4) APPLICABLE LAW.—Any branch of a national bank established or acquired in connection with a consolidation or other transaction under paragraph (1) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered by that State, unless such State law, is preempted by Federal law regarding the same subject. There shall be no discriminatory effect in the application of such laws between a branch of a bank chartered by the host State and in-State branches of out-of-State national banks. Such State laws shall be enforced, with respect to branches of national banks by the Comptroller of the Currency. All other laws of the host State shall apply as if the branch was a national bank situated in that State.".

Mr. VENTO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment, as modified, be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The CHAIRMAN. Under the rule, the gentleman from Minnesota [Mr. VENTO] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. BEREUTER. Mr. Chairman, if no one is in opposition, I ask unanimous consent to claim the 15 minutes in opposition.

The CHAIRMAN. Is any Member in opposition to the amendment?

Is there objection to the request of the gentleman from Nebraska?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, pursuant to the unanimous-consent request Friday, November 1, 1991, I have submitted a modified version of my amendment at the desk. I have asked that the reading of the amendment be dispensed with.

Mr. Chairman, I am offering this amendment today with Congressman BEREUTER, the chairman of the full Banking Committee, Mr. GONZALEZ, the ranking minority member, Mr. WYLIE and other members of the Banking Committee. I would like to thank them and their staffs for their cooperation on this amendment.

This amendment is a bipartisan consensus amendment marked out by myself and Mr. BEREUTER. It is a compromise between those members such as myself who would have preferred the more restrictive opt in alternative, and those members such as Mr. BEREUTER who advocate an opt out, and those members such as Mr. WYLIE, who sought to maintain the original administration position. I want to thank the members involved in the discussions about this matter for their cooperation in reaching this compromise.

This compromise is a fair deal for States, for banks and for consumers.

Under the consensus amendment, States will be provided with 3 years to elect to opt out of interstate branching. States will also be permitted to establish nondiscriminatory laws that cover branches on such crucial consumer concerns as fair lending, consumer protection, and public filing disclosures. This amendment also retains the committee-reported provisions on the Community Reinvestment Act and credit making by out-of-State branches.

The Vento-Bereuter amendment provides the banks with certainty. Under the compromise, banks will be able to branch in a State in 3 years unless that State opts out of the system. Interstate banking will be permitted nationwide in 18 months and after the 18 month period, banks will also be able to consolidate existing free-standing banks as well as those banks for which an acquisition application has been filed by the date of enactment.

Mr. Chairman, one of the major underpinnings of the administration's banking proposal is interstate branching. The administration claimed that such branching would realize millions and millions of dollars for the banks and be the difference between success and failure.

The issue is not so crystal clear. Branching is not the panacea that the administration claims. The savings will not be as great as the administration claims and there are potential pitfalls.

To be certain, the banks that are currently well managed will succeed and grow under branching. But for those banks that are not well managed or that already have bad loan portfolios, branch banking is not a magic wand that will cure those ills. That is why the safeguards in the Vento-Bereuter amendment are so essential. Only well managed, healthy banks will be able to branch under the compromise amendment.

In its blind embrace of branching, the administration has run roughshod over State rights by precluding any role for the States to opt out of the system or to impose responsible controls on branch operations. The Vento-Bereuter amendment restores the appropriate State role in a workable, reasonable manner.

Mr. Chairman, I urge my colleagues to support this bipartisan compromise. The amendment has broad support including the National Governors Association, the American Bankers Association, the Conference of State Bank Supervisors, the Consumer Federation of America, and the Department of the Treasury. I urge your vote for the amendment.

Mr. Chairman, I reserve the balance of my time.

□ 1230

Mr. BEREUTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the Vento-Bereuter amendment, and urge my colleagues to adopt the amendment.

Mr. VENTO and I were joined in filing this amendment by distinguished Banking Committee members ANNUNZIO, KLECZKA, LEACH, NUSSLE, CARPER, GILLMOR, and THOMAS and the amendment is now supported by the distinguished chairman and ranking member of the Banking Committee, the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Ohio [Mr. WYLIE] respectively.

By way of background, this Member notes that if enacted, title III of H.R. 6 would repeal the Douglas amendment to the Bank Holding Company Act to authorize full nationwide banking for bank holding companies and repeal the McFadden Act to allow interstate branching for banks.

The amendment is a compromise amendment reflecting a number of concerns and viewpoints, particularly with respect to the ability of banks to branch across State lines. In summary, our amendment would give States an opportunity to decide whether to rely on the interstate branching structure contained in H.R. 6, or opt-out of the framework.

Specifically, the amendment would make no change in the fundamental direction of the interstate banking provisions in H.R. 6. It does, however—

Reduce the delay of interstate banking from 3 years to 1½ years after date of enactment;

Require that banks entering a State have to comply with all State laws pertaining to community investment, lending—for example, the amendment also requires the Comptroller of Currency to check Community Reinvestment Act compliance of national banks seeking to expand into other States, but no additional CRA requirements are imposed;

Allow branching based on State law—the amendment further stipulates that, except for existing law as in the case of Illinois and Arkansas, a State can't require acquisition of a bank more than 5 years old;

Establish an opt out-opt in window for 3 years after date of enactment, as found in the Senate bill. It also specifies that even if a State has opted out, it can come back into full interstate branching even if the 3 year time frame has expired. Further it specifies that if a State opts out, banks located in the State will not be able to branch into another State;

Set concentration limits—national limit of 10 percent of insured depository institution assets and a limit of 30-percent insured depository institution assets at State level—although a State can waive that requirement;

Allow existing banks to convert to branches within 18 months after date of enactment—consolidation language;

Forbid a State from imposing requirements on potential acquisitions not imposed on in-State banks;

Allow a State to apply its own laws if it opts out—the amendment specifies the kinds of State laws that would prevail unless specifically preempted—e.g., intrastate branching, CRA, fair lending, community reinvestment.

In my view, while Congress can set Federal standards, States need an opportunity to examine the proposed changes in the general area of interstate banking and an opportunity to opt out.

Nearly all States allow either some sort of interstate banking or branching by depository institutions, but they also impose their own requirements, based on local conditions and markets, such as—method of entry, application procedures, reporting requirements, and requirements for community investment and economic development activities.

Why an opt-out rather than an opt-in?

In my view, an opt-out presents the most equitable solution to allowing States a chance to consider nationwide banking and branching, while still setting a Federal standard for federally insured depository institutions.

Given that 48 States allow some form of interstate banking, and others have specific laws pertaining to branching, an opt-in approach will only complicate, rather than simplify, the existing interstate branching and banking structure.

Further, the potential benefits, as well as the costs of permitting full interstate branching, are not so great as to warrant a State review. Most importantly, an opt-out rather than opt-in would require States to address the issue rather than avoiding the topic. If the House adopts an opt-in amendment—that may follow this amendment—it will accomplish very little in moving the Nation along in the active consideration and substantial implementation of nationwide branch banking.

I doubt whether even a half dozen States would opt-out during this 36 month period, but State legislatures ought to be given the opportunity to consider having their State opt out. That, my colleagues, is a privilege we in the Congress ought to be pleased to give State legislators—a chance for action on the issue rather than just blaming Congress for forcing interstate branch banking upon their States. I ask my colleagues isn't that opportunity to act rather than simply complain an option it would really be a pleasure to offer them?

I stress that our amendment, crafted with considerable care over several weeks, with the benefit of observing Senate action, has taken into consideration a whole range of concerns and desires, including:

Those of the administration, those of State bank regulators, those of the banking industry—ranging from small institutions to regional and larger banks—and those of State governments—note: The National Governors Association and the Conference of State Bank Supervisors supports the Vento-Bereuter amendment.

As a result of our work on this amendment, the American Bankers Association now supports the amendment, and I understand that the Treasury Department has reversed their earlier mild opposition to the opt out approach since the concept was first considered in the Banking Committee.

This legislation must give States the option of not participating in the bill's interstate branching provisions—rather than superimposing the new interstate branching law upon them.

In some States, such as this Member's home State, Nebraska, mandated interstate branching is still a major concern among some of our citizens. States that have established branching laws have also spelled out under what conditions that branching can occur.

In conclusion, this Member urges adoption of the amendment:

It is a compromise that will generally continue to allow banks to consolidate their operations, thereby reducing operational costs,

It will continue to adequately capitalized banks to acquire other banks, and

It will still grant some time for States, through their legislative bodies, to examine what is most appropriate for them.

Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. WYLIE], the distinguished ranking member of the full committee.

Mr. WYLIE. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise in support of the Vento-Bereuter amendment. Both the gentleman from Minnesota [Mr. VENTO] and the gentleman from Nebraska [Mr. BEREUTER] have worked very hard to bring to the floor a compromise. Personally, I would have preferred a straight opt-out amendment, but this is a good amendment. It is a good compromise, and as the gentleman from Nebraska [Mr. BEREUTER] said, he thinks the administration is in support of the amendment.

I can tell him with assurance that the administration is in support of the amendment and urges adoption. One of the reasons the Treasury was against the amendment originally was that there was no antidiscrimination language included, but that has been taken care of now.

As I have said numerous times, I believe that permitting nationwide banking and branching is one of the most important reforms that we are making in this bill. It is good for the banks. It is good for the customers. It is good for our economy. I think it will help prevent bank failures.

But due to the concerns of the States, this amendment will let them opt out of branching, if they so choose. I think there are only four States which do not now allow interstate branching or banking of some sort. Due to the concerns of the States, this amendment will let them opt out, branching, in their own way and in their own time.

But due to their concerns, we did put in some safeguards, and I think that most of the States now, when they evidence some concern about the opt-in provision, would now support this opt-out provision. And I think the gentleman from Nebraska did make that point very well.

Under the compromise, we will permit nationwide banking in 18 months, nationwide branching in 3 years, and 3 years for the States to opt out. I make that point. They will have 3 years to opt out. They do not have to drop dead on the passage of the bill. That was one of the objections, I think, to my original opt-out amendment. I can understand where they are coming from.

States could, however, opt out sooner if they so desire. Existing banks will be able to consolidate their operations in the branches within 18 months. Out-of-State banks will be subject to State law in important areas such as consumer protection, community reinvestment, and fair lending. States will be able to condition the entry of out-of-State banks to buying existing institutions. That is another important provision in here, but with reasonable limits on this power.

Mr. Chairman, I urge Members to vote for the Vento-Bereuter amendment.

Mr. BEREUTER. Mr. Chairman, I reserve the balance of my time.

Mr. VENTO. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. GONZALEZ], chairman of the committee.

Mr. GONZALEZ. Mr. Chairman, I certainly want to thank the gentleman from Minnesota [Mr. VENTO] and also thank him for having worked out and forged this compromise. This is a compromise. The amendment provides for interstate banking and branching in what I would say in an effective and balanced way.

Interstate banking and branching provide banks with the necessary efficiencies and geographic diversification to help banks be stronger. The fact of the matter is that this will continue to be an issue, but I thank that since the advent of such things as the instantaneous electronic communication, the days of the rigid State border barriers are doomed. It is just a matter of how, from the public interest, we can protect the greatest interests of the greatest number.

This amendment provides a needed balance between profitability and the important interests of the various States by providing States with the ability to determine how and to what extent banks can branch into their State.

The amendment grants States, such as my own home State of Texas, a latecomer, to doing away with unitary banking as well as providing for some form of interstate, and that legislature meets every 2 years. So this bill, this amendment would give the time necessary to opt out of interstate branching, if the legislature desires.

It also gives host States the ability to require out-of-State banks to make loans in the host State, which I think is the main objective.

So with that, I want to thank the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I reserve the balance of my time.

Mr. BEREUTER. Mr. Chairman, I yield 3 minutes to the gentleman from Wyoming [Mr. THOMAS], a member of the Committee on Banking, Finance and Urban Affairs who has been very active in this legislation.

Mr. THOMAS of Wyoming. Mr. Chairman, of all the provisions in H.R. 6, the interstate branching provisions do cause me and folks in my State some concern.

My experience with the dual banking system in Wyoming has been positive. Since I lean toward local government and States' rights, I find it easy to subscribe to the idea of a dual banking system.

Full nationwide interstate branching will result in a new banking system, diversified into all areas of the country.

The State's role as a regulator must not be overlooked. They can add a good deal of insight when looking at concentration levels, State laws and regulation to protect consumers, and local economic development needs.

The Vento-Bereuter amendment gives the States a 3-year opt-in/opt-out window for interstate branching.

If there is such a thing, this is indeed a good compromise. The current bill calls for immediate interstate branching with no State input. Let's not be left with this.

It allows States to decide whether or not to take part in interstate branching.

In addition, it yields to States who can impose nondiscriminatory conditions upon the operation of out-of-State banks within their borders.

If you support the notion of State rights and the benefits of their input, I would urge you to vote for this amendment.

Let us not be left with the current language currently in title III.

☐ 1240

Mr. BEREUTER. Mr. Chairman, I reserve the balance of my time.

Mr. VENTO. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin [Mr. KLECZKA], one of the major participants and authors of the amendment.

Mr. KLECZKA. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I would like to compliment the gentleman from Minnesota [Mr. VENTO] and the gentleman from Nebraska [Mr. BEREUTER] for the leadership they have shown in developing a compromise on the interstate branching issue.

I was proud to work with them on this matter in the House Banking Committee, where we were not able to prevail. I am happy to join today in strongly supporting this amendment, which now has the support of the Consumer Federation of America, the Treasury, the Conference of State Bank Supervisors, and the American Bankers Association.

The bill initially proposed to the Congress by the administration provided for unrestricted interstate branching, a radical change in the law which would lead, almost certainly, to a distinctly centralized banking system.

Put in simple terms, it reflected the philosophy of this administration when it comes to banking which is: Bigger is better.

In my view, interstate decisions should be made with the advice of the various State legislatures. They should not be made in New York or Washington DC.

Without the Vento-Bereuter amendment, States would have no control over bank decisions to branch within their borders.

When it comes to banking, communities in Wisconsin and elsewhere need institutions which seek to establish roots, not branches.

If we do not adopt the Vento-Bereuter amendment, we will certainly see a sharp reduction in the number of banks, which now number approximately 12,000 nationwide. It could well signal an end to traditional community banks, which have served credit needs, especially of smaller businesses, particularly well for many years.

Without appropriate decisionmaking in the various States, we face a prospect that lending and other policy decisions once made by neighbors will be made by people who we do not know, and never will know.

Lending and other policy decisions how made at the local level may be made at a distant corporate headquarters. In some instances, essential decisions may be made overseas at a headquarters of a parent bank embarked on a U.S. branch bank strategy.

The Vento-Bereuter amendment strikes an appropriate balance on this matter. I am pleased it retains an amendment I added to H.R. 6 in the House Banking Committee which requires the appropriate Federal financial regulator to prepare a separate, written evaluation of an institution's CRA performance in each State in which the institution maintains branches. This provision is essential if we are to ensure that banks enter an area not simply to gather deposits, but also to make loans to the community.

The Vento-Bereuter amendment allows nationwide interstate banking after 18 months and establishes a 3-year window for States to opt out of interstate branching. In addition, the amendment set reasonable concentration limits of 10 percent nationwide and 30 percent statewide to protect against undue consolidation by a particular institution.

I urge support for the Vento-Bereuter amendment.

Mr. BEREUTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Iowa [Mr. NUSSLE], a first-term active Member.

Mr. NUSSLE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise today in support of the Vento-Bereuter amendment to allow States to play a role in the decisions regarding interstate branching. H.R. 6, as reported out of the Banking Committee, repeals the Douglas amendment to the Bank Holding Company Act and the McFadden Act authorizing full nationwide banking and interstate branching respectively.

These changes to decades-old banking laws will streamline the existing patchwork of interstate banking laws and provide the opportunity for many banks to consolidate their operations to strengthen their capital positions, which is desperately needed in the industry at this time. Those are laudable goals. I do have concerns, however, over the level of participation for States under this bill.

I believe State governments should play a significant role in structuring a system of nationwide branching. The amendment offered by Congressmen VENTO and BEREUTER is the best method of achieving this goal. This amendment forces States to closely examine their options with regard to interstate branch banking and determine whether or not this system will be beneficial to their banks, consumers, and the economy of the State. I urge my colleagues to support the Vento-Bereuter amendment.

Mr. VENTO. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Delaware [Mr. CARPER], a member of the committee and a cosponsor of the amendment.

Mr. CARPER. Mr. Chairman, I thank the gentleman for yielding time to me. The amendment that is before us at this moment is similar, quite similar, in fact, to an amendment that almost prevailed in the full Committee on Banking, Finance and Urban Affairs. We came very close to passing something along these lines. I am pleased to have had the opportunity to work with the gentleman from Minnesota [Mr. VENTO] and the gentleman from Nebraska [Mr. BEREUTER] and others within the coalition since that markup to bring us together on what I think is both good public policy and policy that is likely to prevail here today.

Whether we like it or not, interstate banking is occurring in our country and prevails in virtually all States today. Unfortunately, the version of interstate banking that is taking place in the United States these days is not the most efficient, it is not the most economical, neither for banks nor, ultimately, for consumers. It turns out probably it is the most expensive way to go to interstate banking.

The language in the bill that is before us today without this amendment frankly is not sensitive to the rights of States to have a voice and to say whether or not they believe it is good for them to participate in interstate branching in this country. If a State, under this amendment, wants to stay out of interstate branching, if they want to be excluded from interstate branching, to preclude others from coming in, all a legislature and a governor have to do is simply to pass a law and say "We opt out. We do not want to play at this point in time." Ultimately, if they decide to change their minds and elect at some future date to participate in interstate branching, they may do that. This approach is opt out. It is a good approach. My guess is that most States will not elect to opt out. My guess is most States will elect to participate in interstate branching, but for any who want to opt out they will have with this amendment the opportunity to opt out.

The amendment is a very good compromise between those who frankly believe interstate branching is good and would like to see it take place and those who have some grave concerns about interstate branching.

This is a compromise that says we are going to move toward interstate branching, but if a State has some overriding concern that would compel them to keep out at this time, they may voice their opinion and exercise the right of their State to opt out.

Mr. VENTO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as has been indicated, this amendment and this topic has been before the Committee on Banking, Finance and Urban Affairs for many years. It has been well over 50 years since restrictions on interstate banking and interstate branching have been a part of the fabric of our law. Trying to deal with that and deal with the dual regulatory system between the States and national Government is a very difficult matter on which to craft public policy and find a path of compromise. We have successfully done that and a lot of Members deserve credit.

I know several years ago I labored on an opt-out amendment in the Banking Committee. We are going to hear more discussion today on an opt-in amendment. The basic difference I think is that in the opt-out amendment the States are required, they must address the issue in an affirmative manner if in fact they want to exercise certain State responsibilities as opposed to, for instance, not taking any action under the amendment that will be offered by my good friend and colleague, the gentleman from New Mexico [Mr. RICHARDSON].

I think the Vento amendment before us now is the best way to function, to require a positive action by States, an affirmative action in terms of making a change in terms of not participating in interstate banking or interstate branching.

☐ 1250

The option of interstate banking and interstate branching should enhance the profitability of banks. It does—the banks claim—provide for greater diversity. It does provide certain economies, and I know that our compromise has dealt with all of the different possibilities in terms of interstate banking and interstate branching.

As an example, varied regions that have interstate banking, the sequence that we are proposing in the amendment before the House is to move forward in terms of permitting those powers to devolve to the specific financial institutions, it is an orderly process. The amendment has been given a lot of thought and a lot of support. As I said, it is supported by the Consumer Federation of America, the American Bankers' Association, the State Bankers' Supervisors' Association, and, of course, numerous Members of Congress. I appreciate their support and the efforts they have made to weld this compromise, an important part of our bill.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. BEREUTER. Mr. Chairman, I yield 1 minute to the gentleman from Iowa [Mr. LEACH], a Member who has also been involved in preparing this compromise.

Mr. LEACH. Mr. Chairman, let me just say that this is a very thoughtful compromise.

I would like to ask one question of the two gentlemen if I could.

My office just received this morning a phone call from the office of the multistate tax commission that represents State tax commissioners: We, as you know, in another portion of this bill have carefully written a compromise that keeps the tax liabilities for banks at the States where profit is made. There apparently is a bit of uncertainty the way this is written that it might impinge upon that principle.

I am right, am I not, that there is no intent to overthrow that principle in this amendment?

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. It is not our intent to modify the method of taxation through the changes that we are making in interstate banking or interstate branching in this measure or amendment before us.

Mr. LEACH. That was my understanding. Is that the understanding of the gentleman from Nebraska?

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I am happy to yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, yes, it is my understanding.

Mr. LEACH. Mr. Chairman, I think it is good to have that in the RECORD. Let me just say that I think the gentleman from Minnesota and the gentleman from Nebraska did a wonderful job crafting this compromise.

Mr. BEREUTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to thank all the gentlemen previously mentioned by this Member, particularly the distinguished gentleman from Minnesota [Mr. VENTO], who have been involved in drafting this compromise. It has been my pleasure to join them in the effort.

Mr. Chairman, I urge my colleagues to support the Vento-Bereuter opt-out amendment.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. MORAN. Mr. Chairman, I rise in support of the amendment offered by Representatives BRUCE VENTO and DOUG BEREUTER. This amendment would address many of the concerns I had on interstate branching with the original bill that was approved by the House Banking Committee.

First, it gives the States the option to opt out of interstate branching. I do not believe Virginia will follow this course, but this State right should not be preempted by the Federal Government.

Second, by allowing States the authority to establish the requirements on out-of-State banks that want to branch in-State, the amendment will help preserve the current dual banking system. Most of the innovative banking services we have witnessed over the past two decades, such as ATM machines and NOW accounts, evolved at the State level. Federal legislation should not stifle State innovation.

Mr. Chairman, the Federal financial regulatory agencies could learn a thing or two from Virginia's bank supervisor. Mr. Sidney A. Bailey is a man of integrity who fought hard to close troubled institutions when the Federal regulators chose to look the other way. We should not undermine a State like Virginia from establishing conditions that will ensure the safety and soundness of Virginia institutions.

Third, by setting concentration limits on the amount deposits banks can hold in any one State, the amendment addresses my concern that interstate branching will create a rash of bank mergers and acquisitions whose end result will be large megabanks that are unresponsive to local needs.

Mr. Chairman, this is a good amendment, and I am pleased to support it.

The CHAIRMAN. The question is on the amendment, as modified, offered by the gentleman from Minnesota [Mr. VENTO].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. VENTO. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered

The vote was taken by electronic device, and there were—ayes 366, noes 4, answered "present" 1, not voting 62, as follows:

[Roll No. 367]

AYES—366

Abercrombie
Ackerman
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Bliley
Boehlert
Boehner
Bonior
Boucher
Boxer
Brewster
Brooks
Broomfield
Browder
Brown
Bruce
Bunning
Burton
Bustamante
Callahan
Camp
Campbell (CA)
Cardin
Carper
Carr
Chandler
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Costello
Coughlin
Cox (CA)
Cox (IL)
Coyne
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLauro
DeLay
Dellums
Derrick
Dicks
Dingell
Donnelly
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Durbin
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Espy
Evans
Ewing
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Gunderson
Hall (OH)
Hall (TX)

Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Hertel
Hoagland
Hobson
Hochbrueckner
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Inhofe
Ireland
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
Lagomarsino
Lancaster
LaRocco
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Luken
Machtley
Markey
Martin
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCrery
McCurdy
McDade
McDermott

McEwen
McGrath
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Moorhead
Moran
Morella
Morrison
Murphy
Murtha
Myers
Nagle
Natcher
Neal (NC)
Nichols
Nowak
Nussle
Oakar
Oberstar
Obey
Olin
Olver
Orton
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Payne (VA)
Penny
Perkins
Peterson (FL)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Ravenel
Reed
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Roberts
Roe
Roemer
Rogers
Rohrabacher
Rostenkowski
Roth
Roukema
Rowland
Roybal
Russo
Sabo
Sanders

Sangmeister
Santorum
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stark
Stearns
Stenholm
Stokes
Stump
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Torricelli
Traficant
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Washington
Waters
Waxman
Weber
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—4

Herger
Johnston

LaFalce

Sarpalius

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—62

Alexander
Bentley
Bilirakis
Borski
Bryant
Byron
Campbell (CO)

Chapman
Clay
Dannemeyer
Dickinson
Dixon
Dwyer
Dymally

Engel
Ford (MI)
Ford (TN)
Gephardt
Gingrich
Green
Guarini

Hatcher
Holloway
Hopkins
Hyde
Lantos
Laughlin
Levine (CA)
Lowery (CA)
Lowey (NY)
Manton
Marlenee
McCollum
McHugh
Michel

Mink
Molinari
Mrazek
Neal (MA)
Ortiz
Payne (NJ)
Pease
Pelosi
Peterson (MN)
Rangel
Ray
Ritter
Ros-Lehtinen
Rose

Savage
Sikorski
Slaughter (VA)
Smith (TX)
Stallings
Studds
Sundquist
Taylor (MS)
Thomas (CA)
Towns
Traxler
Weldon
Wolpe

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Mr. ALLARD changed his vote from "no" to "aye."

So the amendment, as modified, was agreed to.

PERSONAL EXPLANATION

Mrs. LOWEY of New York. Mr. Chairman, due to mechanical difficulties on the plane on which I returned to Washington, I unavoidably missed the vote on the Vento-Bereuter amendment earlier today. Had I been present, I would have voted "no."

The CHAIRMAN. It is now in order to consider amendment No. 9 printed in House Report 102–281.

AMENDMENT OFFERED BY MR. RICHARDSON

Mr. RICHARDSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. RICHARDSON: Page 187, beginning on line 1, strike sections 302, 303, 304, and 305, through page 203, line 11 and insert the following (and redesignate the subsequent sections and conform the table of contents accordingly):

SEC. 302. INTERSTATE BRANCHING BY NATIONAL BANKS AND STATE BANKS.

(a) NATIONAL BANKS.—Section 5155 of the Revised Statutes (12 U.S.C. 26) is amended by adding at the end the following new subsection:

"(i) INTERSTATE BRANCHING.—

"(1) IN GENERAL.—Notwithstanding any other subsection of this section, a national bank, with the approval of the Comptroller of the Currency, may establish and operate a branch at any location in any State other than the State in which the main office of such bank is maintained if the establishment and operation of such branch in the State (in which such branch is to be located) is specifically authorized under the statute of law of such State, by language to that effect and not by implication.

"(2) SUBJECT TO STATE LAW REQUIREMENTS.—The establishment and operation of any branch of a national bank under paragraph (1) shall be subject to any requirement, condition, or limitation established under or pursuant to the law of the State in which the branch is (or is proposed to be) located.

"(3) SUBJECT TO CAPITAL REQUIREMENTS.—A national bank may not establish or operate any branch under paragraph (1) unless it is a level 2 depository institution (as defined under section 38 of the Federal Deposit Insurance Act) which maintains capital that exceeds the required minimum ratio for each relevant capital measure.".

(b) STATE NONMEMBER INSURED BANKS.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) STATE NONMEMBER INSURED BANK BRANCHES IN OTHER STATES.—The Corporation may not approve the establishment and operation of any branch of a State nonmember insured bank at any location in any State other than the State in which such bank is chartered, unless—

"(A) the establishment and operation of such branch in the State (in which such branch is to be located) is specifically authorized under the statute of law of such State, by language to that effect and not by implication;

"(B) the establishment and operation of the branch is carried out in accordance with all requirements, conditions, and limitations established under or pursuant to the law of the State in which the branch is (or is proposed to be) located; and

"(C) such bank is a level 2 depository institution (as defined under section 38 of the Federal Deposit Insurance Act) which maintains capital that exceeds the required minimum ratio for each relevant capital measure.".

SEC. 303. INTERSTATE BRANCHING AND BANKING BY FOREIGN BANKS.

(a) IN GENERAL.—Notwithstanding any other provision of law, a foreign bank which engages directly in the business of banking, with the approval of the appropriate Federal banking agency, may establish and operate a branch at any location in any State other than the State in which the main office of the foreign bank is maintained if the establishment and operation of such branch in the State (in which such branch is to be located) is specifically authorized under the statute law of such State, by language to that effect and not by implication.

(b) SUBJECT TO STATE LAW REQUIREMENTS.—The establishment and operation of any branch of a foreign bank under subsection (a) shall be subject to any requirement, condition, or limitation established under or pursuant to the law of the State in which the branch is (or is proposed to be) located.

(c) SUBJECT TO CAPITAL REQUIREMENTS.—A foreign bank may not establish or operate any branch under subsection (a) unless it is a level 2 depository institution (as defined under section 38 of the Federal Deposit Insurance Act) which maintains capital that exceeds the required minimum ration for each relevant capital measure.

(d) FOREIGN BANK DEFINED.—For purposes of this section, the term "foreign banks" has the meaning that term has in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

The CHAIRMAN. Under the rule, the gentleman from New Mexico [Mr. RICHARDSON] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. WYLIE. Mr. Chairman, I am opposed to the amendment offered by the gentleman from New Mexico.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes at the appropriate time.

Mr. RICHARDSON. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, we find ourselves today on the House floor debating bank reform legislation because the banking industry and our economy are in deep trouble, and both have been badly damaged by a decade of easy credit and mismanagement. Today, we are paying the price for that financial recklessness and face some tough choices on how to correct those excesses and get our banking system and economy back on its feet.

I hope we can make some improvements to this bill in order to provide a framework within which sound lending practices and good bank management are restored. If that cannot be achieved, then it would be a grave mistake to expand powers and allow banks to get into new markets and riskier ventures. In its current form, I am not convinced that H.R. 6 restores that kind of market discipline to the system. Rather, this legislation, and specifically its interstate branching provisions, is rewarding failure by throwing a life preserver to precisely those banks that have gotten us into so much trouble—to those banks whose overaggressive lending practices and blind zeal for higher earnings now threaten the soundness of the entire system.

With the industry in such poor health because of the deteriorating condition of big banks, Congress should not be taking any steps to make banks bigger and to make the problems worse. Unfortunately, the interstate branching provisions in H.R. 6 would do just that. The problems plaguing banks will not go away by adopting a policy to consolidate the industry and fuel a new wave of mergers.

The House of Representatives just voted to put us down that road in 3-years time, unless the State legislature and Governor of your home State can pass a law to opt-out of the nationwide banking and branching system. While the opt-out approach is better than the original language in H.R. 6, it does not satisfy some legitimate economic concerns of many States, and it weakens the ability that States now have to address issues such as credit availability and local economic investment.

The Richardson-Sarpalius-Slattery amendment is a significant improvement to the original language in H.R. 6 and to the opt-out alternative. Our amendment would allow States to elect on their own to opt-in to the interstate branching system. The amendment also gives States the authority to establish conditions on interstate branches. In addition, should a State make an affirmative decision to allow branching for State and national banks, this expanded power would be granted only to banks that exceed minimum capital requirements.

This capital requirements provision is essential. It will guarantee that only healthy banks are the ones expanding and growing in size. The last thing the Federal Government needs is to allow and, indeed, to encourage the problems of undercapitalized, troubled banks to grow larger through branching. To do so would turn a manageable and relatively minor exposure to the bank insurance fund into a larger, more costly problem for the Federal Government and the American taxpayer.

The State opt-in amendment gives States a choice. It empowers them to make the decision of out-of-State bank entry for themselves. Let individual States determine what its financial needs are and how to go about meeting them. Give them the opportunity to see how interstate branching works in other States and regions. If its advantages are as great as its proponents claim, you can be sure that States will opt-in. If it's fool's gold, Congress will have spared many States, hundreds of banks, and the bank insurance fund from an ill-conceived policy.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong opposition to this amendment. We have just adopted the Vento-Bereuter opt-out amendment which, I think, is a good compromise. I think it is a fair compromise. I think it will help us modernize our banking system and recognize market realities.

Mr. Chairman, the amendment of the gentleman from New Mexico [Mr. RICHARDSON] I think is regressive. It slows down what I think is the natural evolution of the banking system; that is, interstate banking. It ignores the market reality. Currently, all but four States, just four States, allow some form of interstate banking.

Mr. Chairman, in my own State of Ohio we have had interstate banking for a long time, and we have one of the strongest banking systems in the whole United States. Even the gentleman's own State of New Mexico allows full nationwide banking. And why is that? Why do they allow it?

Six New Mexico banks failed during the 1980's. Four banks have been closed in the last 13 months. Additionally, the accumulation of problem assets, particularly among the State's largest banks, remains a source of concern reflecting a worsening real estate situation and continuing problems with commercial loan exposure. Among the State's 29 largest banks with more than $100 million in assets, profitability declined dramatically last year. New Mexico's 18 S&L's reported a combined loss of $305 million for 1990, indicating a negative 9 percent average return on assets. S&L's in only two other States, Arizona and Massachusetts, had higher losses last year as measured by average return on assets. The poor performance of the State's S&L's reflects the continuing impact of the collapse of real estate and energy markets.

According to the FDIC, in 1988 New Mexico authorized nationwide nonreciprocal banking to take effect on January 1, 1990. However, a subsequent law, passed in 1989, advanced the nationwide trigger to June 1989. The Vento-Bereuter amendment provides ample protection for States that choose not to allow interstate banking.

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The Richardson amendment on the surface appears to move us forward, but in fact it moves us backward. This amendment puts the onus on the States to opt-out even if they already have interstate banking. This requirement needlessly delays recognizing market realities.

The opt-in provision just prolongs the period in which banks will be subject to costly, outmoded, Depression-era banking laws. Although interstate banking is an important issue for State legislators to consider, it might not be as important as balancing the budget, creating jobs, taxation, or education. Consequently, State legislators may put interstate banking on the back burner.

The Vento-Bereuter amendment recognizes these problems and requires the States to opt-out if they do not want interstate banking. This is a far more realistic approach, and I urge that the Richardson opt-in amendment be defeated in favor of the Vento-Bereuter amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. RICHARDSON. Mr. Chairman, I yield 3 minutes to the distinguished cosponsor of this amendment, the gentelman from Texas [Mr. SARPALIUS].

Mr. SARPALIUS. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, if we look at the communities around this country, we find that every community is built on a foundation, and the cornerstones of those communities are their churches, their schools, their local governments, and their banks. Their banks have the ability to loan money to small business, to farmers, to ranchers, and to other businesses within that community to help them survive.

Mr. Chairman, we have an amendment here that really puts in jeopardy the ability for those small rural banks to survive. This is a big bank versus small bank issue. We can look at who supports each side. Big does not always mean it is better. We can look at Wal-Mart, for example, a company that has gone into rural communities, established itself, and forced many small businesses to go under. They do not even utilize the local banks for their own payroll. Big does not necessarily mean it is better.

Mr. Chairman, there is a big difference between opt-out and opt-in. I served in the State legislature in the State of Texas when we debated the issue of interstate banking within that State when our State was suffering a great deal. We decided that the State should make its own decisions in deciding to have local boards, local officers, and whether to operate that bank on a local level, and it has been successful in Texas.

We are now looking at a proposal to take that away. With an opt-in proposal we are giving that right to the States to make that decision as to whether or not they want interstate banking.

Every State in this country is different. I think this ought to be a decision that the State legislatures make. With an opt-out proposal we are telling the big banks to go into rural community, establish a small branch bank, and suck the money out of that local community, and they wind up funneling it to New York or some other large city. And who suffers? The local depositors.

With opt-out, we are then telling the legislature that they can come back in and then decide to close those banks. No State legislature is going to approve of closing banks throughout their State.

I think it is far wiser for this body to give the States the right to address that issue first, before those banks become established.

So, Mr. Chairman, I strongly urge my colleagues to support this amendment and give the States the right to decide whether or not to have interstate banking.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I thank the gentleman for yielding time to me, and I rise in strong opposition to the Richardson amendment.

The bottom line is that the Richardson amendment, make no mistake about it, would kill any form of interstate banking. And if there is one good thing in this proposal, it is that; it is interstate banking.

We have great divisions in this body about whether banks should be allowed to take on new businesses and how they should get into them. We have great divisions about too big to fail and how that should be handled. But the one place where just about every expert who has studied this issue comes to the same conclusion is that interstate banking is necessary.

I heard my good friend, the gentleman from Texas, talk about Wal-Mart, saying it is a bad thing. Well, I guess we could go back to the days in all of American industry when nothing could cross State lines. Let us have little auto companies, let us have little steel companies, let us have little banks, and let us then have the Japanese, the Germans, the French, and the Koreans roll over this economy in 3 years.

The fact of the matter is that the real benefit to interstate banking lays with the consumer. If a bank in State A can do it better and cheaper, they ought to compete.

The big banks will not always prevail. When the big New York City banks perhaps 15 or 20 years ago were allowed to go upstate, everyone said there would be no more little banks. But the little banks outcompeted a lot of those big banks. That will happen throughout the country, and there ought to be competition.

We have a lot of banks in this country, but they are all stuck in their local markets. They are not competing and giving consumers the break. We need interstate banking for international competitiveness. We need interstate banking to allow the consumer the ability to have the competition he or she needs, so he or she can get the best price. We need interstate banking for the stability of the system.

Mr. Chairman, I strongly urge defeat of this killer amendment.

Mr. RICHARDSON. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the Richardson-Sarpalius amendment, and I will oppose the entire bill when it is up for a final vote.

Mr. Chairman, I rise in opposition to this bill which gives the biggest banks in this country through our so-called Federal financial regulators a right to put both their hands into the pockets of the U.S. taxpayer. Let me enumerate my several reasons.

Foremost, I adamantly oppose increasing six-fold—to $30 billion—the line of credit the Treasury currently extends to the FDIC. Why? Most important, because the bill to extend that credit will ultimately fall on the backs of the American taxpayer. The Bush administration and its friends in Congress who think banks can do no wrong would argue that our taxpayers will never see this bill since it is the banks themselves that will shore up the BIF. I disagree. Already, GAO and CBO contend that the BIF will be bankrupt by the end of 1991. They indicate that by the end of 1992, without a further infusion of funds, the BIF will plummet as far as $11 billion into the red. It takes only a quick study of the sharply increasing trend of bank failures—470-percent increase in the second half of the 1980's over the first—to see that fewer and fewer banks will bear the simultaneously skyrocketing BIF debit. This, Mr. Chairman, is a recipe for disaster. We cannot rely on the failing bank industry to prop itself up. Enter, the American taxpayer.

As we all know too well, this will be the second trumpet call the American taxpayer has answered on behalf of financial industries. The S&L crisis was their first, and it does not present a pretty picture for this look-alike bank bailout. Already Congress and the administration have buoyed up the failing S&L's to the tune of $110 billion and expect to add as much as $115 billion more to that total. Efforts on the part of the Department of Justice to recover funds from the S&L swindlers in major fraud court prosecutions do little to offset that bill. Department of Justice has ordered restitutions in the amount of a mere $384.7 million, only 5.2 percent of the $7.4 billion loss associated with the S&L's they swindled, and just two-tenths of 1 percent of the $215 overall estimated net loss for the bailout. Now the banks are asking for $30 billion more, and leading economists in familiar S&L style predict the bill could mount as high as $200 billion.

The fact that the American taxpayer must foot the bill is glaringly unfair, for several reasons. An old American proverb proclaims "He who dances must pay the fiddler." The banks have danced into a morass of debt through market driven risk taking that exceeded the limits of prudence. Why must the American taxpayer who never even graced the bankers' floor pay their fiddler? President Roosevelt likewise underscored this absurdity during the dark banking holiday in March 1933: "What right have we," he queried, "to tax the American people to insure bank deals any more than to tax them to insure the transactions of any other business?" Would that the present administration could likewise pierce to the fact that the $30 billion recapitalization is an unprecedented move: It puts the U.S. taxpayer behind the follies of our largest banks.

And indeed it is our largest banks who even our smallest taxpayers will be bailing out. A recent article in the Washington Post named a few of the lucky behemoths which will receive hard-earned taxpayer money: Citibank, with over $159 billion in assets and in need of $5½ million quick fix; Chase Manhattan with over $75 billion in assets, looking for $2.9 million more; and Security Pacific with assets of $55 billion and new capital needs at $1.47 million. Compared even to the most ardent credit card user among our taxpayers, these debts are astronomical. Certainly this administration is the reverse of Robin Hood: It robs from the poor to pay the rich.

This willingness to find $30 billion for banks and S&L's is especially disturbing in light of repeated failures on the part of this administration to fund programs that directly benefit our citizens. The most recent transgression in this trail of negligence is the President's veto of two unemployment bills because he did not want to spend down the $5 billion trust that workers funded. This atrocity caps off a historical trend of congressional haggling for just millions of dollars to house our citizens and keep our lands clean. Yet the Bush administration manages to fight for billions of dollars to pay for still another bank bailout. The administration's priorities are painfully clear: Big banks take precedence over the American taxpayer.

So I oppose extending the $30 billion line of credit—this blank check—because the bill—which will go to our largest banks—will land on the back of our taxpayers, who neither deserve it nor receive similar perks from the administration to meet their needs. I also oppose the mechanism in place for funding this $30 billion through borrowing from the Treasury for loss funds and from the Federal Finance Bank for working capital. Financing by borrowing entails paying interest on the borrowed funds. That cost taxpayers $2.8 billion in just the last 2 years in the process of cleaning up failed S&L's. A leading economist from Stanford University indicates that the interest payments may reach $900 billion over the duration of the S&L bailout, nearly tripling its price tag. Treasury Department figures too show that, should the FDIC fully use and pay back the $30 billion over a 10-year period, we will rack up over $23 billion—$2.4 billion annually—in interest payments to add to the $30 billion tab.

I served 8 years on the Banking Committee. In all this time, I was truly dismayed that no bill—no idea—from the Bush administration nor this Congress offered to take this monumental monkey off the back of the U.S. taxpayers. Alternative proposals were not even welcomed by the committee of jurisdiction. But many were offered—by Mr. LAFALCE, by Mr. TAUZIN, by Mr. WOLPE, by Mr. KENNEDY, by Ms. OAKAR, by Mr. DONNELLY, by Mr. WHITTEN, by Mr. MRAZEK, and myself. I ask this Congress and the Bush administration to go back to the drawing board and seriously consider such alternatives and other creative proposals like them to help heal our Nation's banks at a reduced cost. We in Congress must be as creative in finding solutions as the thrift swindlers and bank dealers were in creating the problems.

In addition to my concerns regarding both the mandating and financing of the $30 billion credit line, I have other concerns with the bill. I oppose the interstate branching provisions in title III on the grounds that it will separate the leadership of the bank from the community which it serves, curbing their ability to understand the community's economic needs, and tempting them to invest local dollars elsewhere when they more properly belong at home. In fact, one of the reasons these big banks are in trouble is because of their ill-advised loans to the Third World, loans not backed up by collateral. Need we more evidence? Interstate branching also may strike hard against the main street communities since a CEO in a skyscraper in New York City will hardly be aware of the needs of the small investor in rural or small town medium size communities.

I am troubled too about the prospect of repealing Glass-Steagall. Though the Gonzalez-Dingell compromise imposes strict firewalls designed to separate the federally insured funds from securities and insurance activities that the new financial services holding companies undertake, I know that no firewall—except for the strictest of provisions—is strong enough to absolutely curtail the greedy from jumping over it. We saw deregulation drive savings and loans into the risky investments that produced their present sorry state. Especially at a time of bank failure when temptations will be greatest, this is no time to fiddle with the walls of Jericho.

Likewise the creation of diversified holding companies that can own both financial service holding companies—and so banks through them—and commercial enterprises will result in an unhappy concentration of economic and financial power. It will also compromise the objectivity of credit judgments on both the part of the banks and their commercial affiliates. To echo Herb Stein of the American Enterprise Institute:

> There is little reason to think that nonfinancial businesses will be more willing to put capital in banks than the ordinary investor would, unless the nonfinancial business sees an opportunity to gain from the connection something other than the return of the equity. This opportunity is likely to mean some form of self-dealing that is illegitimate.

H.R. 6 charges an exorbitant price tag which our taxpayers will undoubtably bear. It proffers uncreative means of funding that bill. It makes possible new abuses associated with interstate banking and expanded powers. In light of these reasons, stand with me for the American consumer, against another bank bailout, and against H.R. 6.

Mr. RICHARDSON. Mr. Chairman, I yield 4½ minutes to the gentleman from Kansas [Mr. SLATTERY], the coauthor of this amendment.

Mr. SLATTERY. Mr. Chairman, when we look at this legislation and look at this amendment, I think we should ask ourselves one basic question: Who can best meet the capital needs of consumers, small businesses, and farmers all across this great country of ours? When we look at the question of who can best capitalize small businesses, I can say as one who started a small business before I ran for Congress that I did not go to Wall Street, I did not go to Citibank, or I did not go to any big bank around the country to find the money to start my business; I went to my local community bank. I hope that we all keep that in mind, because there will be a lot of talk about now devastating it is going to be if we do not unleash the big banks and allow them to go all over this country and get involved in interstate branch banking.

The fact of the matter is, as far as this Member is concerned, the big banks want deposits from many slower growth areas, smaller communities in this country, to finance operations in the fast growth areas of this country. Well, that may make sense if you live in a fast-growth area, but for the slow-growth areas that are capital intensive, like those many communities all across this country that depend on agriculture, it is critically important that we keep that local capital in those local communities.

I would just observe to my friends who do not know who can best meet the capital needs of small business, consumers, and farmers, to just take a look at those who are supporting this amendment, and I would submit that they probably know best who can better take care of their capital needs. So it will not come as a great surprise that most of the agricultural organizations in this country support this amendment. Many of the small business groups in this country support this amendment, including the NFIB. Many consumer organizations, including the Consumers Federation of America, support this amendment. The Association for Retired Persons also supports this amendment. Those are the people we should be concerned about, and those are the people that in my judgment can best determine who will be looking out for them when they have to borrow money, and I hope we are listening to what they have to say on this legislation.

The other point I would make is that a lot of the proponents and supporters of the big bank position on this amendment will argue that we have to do this to be more competitive, but the facts are, I say to my friends, that when these big banks come into the smaller communities, they are going to enjoy one great advantage. It is called too big to fail. That doctrine is going to be in place regardless of what we do with this amendment and the underlying legislation. Although we are making some minor changes in too big to fail, it is basically protected.

□ 1330

So the big banks doing business in the smaller communities are going to be able to say to the depositors there, you can put your money in our facility and you will not have to worry about it, because have you ever seen an example of a big bank failing, like Citicorp, or Chase, or Bank of America.

The answer to that question is going to be no, they have never failed. Too big to fail is going to be in place. It is going to be an enormous advantage for those big banks out there that are saying just give us a level playing field.

It will not be a level playing field, and those big banks are going to be sucking the deposits by the billions out of smaller communities all over this country. And what are they going to be doing with this money? Folks, it is going to go all over the world. Do not kid yourselves about it. It is going to go to Argentina, Brazil, and maybe the Soviet Union.

Mr. Chairman, I say no to that. I say we should keep this capital at home and make sure that that money stays as close to the smaller communities in this country as possible. I say we should keep this money at home. I say we should keep it in the smaller communities that desperately need it, where I believe the 1990's will provide us with enormous opportunities for growth and creation of jobs if we can capitalize those smaller businesses and farmers and other individuals, consumers in the smaller communities all over this country, that desperately need the capital.

Mr. Chairman, I strongly urge Members to support this amendment and support this legislation on final passage if we should adopt this amendment.

Mr. WYLIE. Mr. Chairman, I yield 2½ minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Chairman, we have just seen a vote of 366 to 4 for the Vento-Bentsen opt-out arrangement. I rise, however, in strong opposition to the Richardson amendment, as its passage will preempt the Vento-Bentsen amendment under the king-on-the-hill rule established by the House Rules Committee for the debate on this series of amendments on interstate branch banking.

Perhaps only a few Members of this body have more small, independent banks in their district than their Member does. I also think it is fair to say this gentleman was perhaps the most vociferous member in the committee and subcommittee in arguing a concern about capital and decisions being sucked out of States under some forms of nationwide interstate branch banking.

I suggest to Members that while it may be safer for some Members of Congress, including this one, to remain silent on the Richardson amendment, nevertheless we ought to reject it. It is in the national interest to reject it.

Now, the opt-out arrangement that we have just put in place, contrary to what the gentleman from Texas [Mr. SARPALIUS] said, will not cause State legislatures to close down new branches that have come into their State as a result of the passage of this legislation. Interstate branch banking under this legislation does not go into effect for 3 years. During that 3-year period of time State legislatures can opt out—and indeed must opt out if they intend to act—before new interstate branching provisions of this legislation go into effect.

One of the difficulties that we have in this country and the reason we have to look at the national interest as we consider the Richardson amendment is that the Nation's biggest banks and regional money-center banks do not reflect in their customer base, the geographic diversity of the country and similarly do not reflect the industrial economic base of the country. So when we have a problem in the Oil Patch of the Southwest, or in New England as we have right now, banks that have a customer base limited to that particular geographic area of industrial base are in difficulty.

When we have those regional-based difficulties, they fail and result in an extraordinary drain on the BIF of the FDIC.

What our regional money-center banks and big banks need to have the opportunity to do is to branch across this country and give themselves some geographic and industrial diversity. That is one reason why it is important to reject the opt-in amendment. The amendment will also result in legislative chaos; passage of the Richardson amendment will create an even more complicated environment than we now have.

Mr. Chairman, I think the Vento-Bentsen opt-out amendment presents the more equitable solution to allowing States to consider nationwide branching. Given the fact that 48 States allow some form of interstate branch banking right now, and others have laws specifically pertaining to branching, an opt-in provision only will complicate the matter.

Mr. Chairman, I urge Members to reject the Richardson amendment.

Why an opt-out rather rather than an opt-in?

In my view, an opt-out presents the most equitable solution to allowing States a chance to consider nationwide banking and branching, while still setting a Federal standard for federally insured depository institutions.

Given that 48 States allow some form of interstate banking, and others have specific laws pertaining to branching, an opt-in approach will only complicate, rather than simplify the existing interstate branching and banking structure. It is a gigantic step backward and will result in chaos in State legislatures and banking.

Further, the potential benefits, as well as the cost of permitting full interstate branching are not so great as to warrant a State review. Most important, an opt-out rather than opt-in would require States to address the issue rather than avoiding the topic. If the House adopts an opt-in amendment, that may follow this amendment, it will accomplish very little in moving the Nation along in the active consideration and substantial implementation of nationwide branch banking.

Mr. Chairman, I urge my colleagues to reject the Richardson amendment.

Mr. RICHARDSON. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Chairman, I rise in support of the Richardson-Sarpalius amendment. I think this amendment comes closest to giving States their existing rights to regulate their own banking system. It does not prevent interstate banking. It simply puts the burden of proof on determining at the State level when interstate branch banking is appropriate and under what rules and regulations. It gives States the ability to determine how to allow interstate branching in their State.

One of the opponents of this amendment has made the point about the Germans and the Japanese and the French and some of our other international banking competitors. I would simply say that in Rio Vista, TX, I do not believe the Japanese, the French, the Germans, or any other international bank is going to come into that community.

The Stretch Smith family, however, has been operating a bank, what is called the Cow Pasture Bank, in Rio Vista for over 75 years. I want to give them the ability to continue to do that.

Mr. Chairman, please vote for the Richardson amendment.

Mr. WYLIE. Mr. Chairman, I yield 2½ minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Chairman, I want to thank the gentleman from Ohio [Mr. WYLIE] for enabling me to speak on this issue.

Mr. Chairman, first I would like to congratulate the efforts of the gentleman from Minnesota [Mr. VENTO], and the gentleman from Nebraska [Mr. BEREUTER], both individuals from essentially rural States in America who have put together a compromise that was just overwhelmingly adopted by this body, which I think balances appropriately the interests of those in favor of unlimited interstate branching and the interests of the States in regulating branches of national banks. This is an appropriate compromise.

Mr. Chairman, believe me, the amendment that is being presented right now is an inappropriate compromise, and I would urge its defeat.

Mr. Chairman, let me give an example of why national interstate branching is so important. Let us take a look at Texas.

In Texas in 1980 the top 10 banks were very well capitalized, highly capitalized. They were known throughout the Nation for that. They had capital of 8, 10, and 12 percent.

During the 1980's, once the recession struck the oil patch States, 9 out of 10 of those banks failed, 9 out of 10 very healthy banks that should not have failed and would not have failed if they had been part of a larger nationwide network, so that a recession in one geographical area would not bring down all the banks in that area, because they would be supported by banks in a different geographical area.

Mr. Chairman, that is one of the fundamental reasons for interstate branching and why it would help the economy.

Let us take the example my friend the gentleman from Texas [Mr. SARPALIUS] gave about Wal-Mart, that we should not have let Wal-Mart into the small communities because it puts the small businesses out of business.

Mr. Chairman, let me ask a fundamental question: Is it the role of the U.S. Congress to protect small businesses from competition? Or is it the role of Congress to promote competitions? That is what we are here to do today.

Mr. Chairman, I urge defeat of this amendment.

Mr. RICHARDSON. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Florida [Mr. BACCHUS].

Mr. BACCHUS. Mr. Chairman, I rise in strong support of this amendment. I voted for the previous amendment, but I think this one is even better.

When it comes to banking issues, as a member of the Committee on Banking, Finance and Urban Affairs I confess I am a Jacksonian. By that I do not mean Jesse Jackson, I mean Andrew Jackson. I like the dual banking structure. I like to have the State regulators looking over the shoulders and breathing down the necks of the Federal regulators.

Mr. Chairman, State regulators are far from perfect, but it has become clear to me in my tenure, however brief it is, on the Committee on Banking, Finance and Urban Affairs, that Federal regulators are too far from perfect. They watched as the BCCI took over much of our banking system. They watched as the Bank of New England went down the drain.

Mr. Chairman, I feel much more comfortable with an opt-in provision such as this that would allow the States to make their own decision, as they have always done, that would protect us against the credit crunch, that would protect us against the slipping away of our deposits and decisionmaking in loans.

Mr. Chairman, I strongly support this amendment.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, let me just say I agree with very many of the premises articulated by advocates of this amendment, but come down in conclusion on the other side. What we are dealing with is much more a matter of degree than kind. With this amendment we are still going to have interstate banking; 46 or 47 of the States have already passed regional or national interstate banking compacts, so what is really at issue is certainty of the law, not whether or not we are going to have interstate banking.

□ 1340

Here let me just mention for those that have advocated this amendment that there is one part of the Vento-Bereuter amendment that is more strict than the gentleman's provision. In Vento-Bereuter we have concentration limits. No bank can have more than 10 percent of the deposit base of the country and there is 30 percent triggering point for State concentration.

I raise this because this is a protection in the statute in Vento-Bereuter that is not in the gentleman's amendment.

Second, let me also stress that in other provisions of the bill, we have higher capital standards required for branch banking than exists in this amendment. And third, I would like to stress that we have a prohibition in other provisions of this bill against deposit production offices being developed that would not serve local lending needs.

My own view is that States should be protected with the rights of how they craft the entrance of interstate branching and banking, but that it is probably better dealt with in Vento-Bereuter than in this compromise. Therefore, even though I agree with the premise of the gentleman who advocated this amendment and probably disagree with the premise of one of the detractors, the gentleman from New York [Mr. SCHUMER], I still come down in conclusion on the side of the gentleman from New York [Mr. SCHUMER] and the gentleman from Ohio [Mr. WYLIE] and hope this amendment is defeated.

Mr. RICHARDSON. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, let me just address some of the concerns raised by my colleague from Ohio and the gentleman from New York [Mr. SCHUMER].

Some of the proponents of the big banks have tried to label this amendment as regressive, as an approach that basically turns back the clock. the contention is inaccurate. We presently operate right now within an opt-in system. This amendment simply maintains the dual banking system and preserves the current role that States play as partners in that system.

My colleague from Ohio mentioned the New Mexico situation. He is not accurate. Yes, several years ago my home State passed a law to allow full nationwide banking, and so have many other States in some form or the other. Nothing in the amendment changes that.

Let me repeat that for my colleagues: Nothing in this amendment affects those States that have already elected to opt in to nationwide banking or those States that already allow branching by out-of-State banks.

In response to the gentleman from New York [Mr. SCHUMER], he would like you to believe that a vote for option is a vote to kill any and all possible attempts to establish less restrictive branching powers. That is also not true. If we look to the example of nationwide banking, the vast majority of States have indeed exercised the opt-in approach available to them under the Douglas amendment and have allowed interstate banking through the bank holding structure. In fact, 48 States presently allow some form of interstate banking.

There is no reason to believe that the opt-in approach will not continue to work. Maybe it will not happen within the 3 years timetable demanded by the big banks, but if the advantages of interstate branching are as wonderful as its proponents claim, you can bet on it that States will exercise their right to opt in.

Mr. Chairman, it is entirely consistent for Members that voted for the previous amendment to now support this one. In essence, we are protecting States from interstate branching by giving consumers choice, giving your local community bank some protection, letting the residents of our own States, when it comes to economic development matters, credit matters, to simply have a say. This is why this amendment is supported by such groups as the National Federation of Independent Business, Consumer Federation of America, AFL–CIO, Independent Bankers.

I urge support for this amendment.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise in strong opposition to this amendment. The amendment that we have just adopted, the opt-out, takes care of any protections that are necessary for State regulation. This amendment is a killer amendment. It kills probably the most essential reform of our bill. Next to the new capital standards, this is probably the most essential reform of our bill. Without an orderly phase-in to interstate banking our system will be frozen in the time and incapable of meeting the needs of a modern economy.

There is really no point to a bill, if we kill interstate banking, which is what this amendment is designed for.

I want to also dispel the myth of consumer protection. What we are doing here is allowing more capital into more States and more diversification of risk in investment. I want to applaud the statement of my colleague, the gentleman from Nebraska [Mr. BEREUTER] and associate myself with his remarks and repeat again the essential point that he made. It is good for his State, Nebraska, and it is good for a State like New Jersey and the Northeast to diversify risk and investment and provide more capital and more help and more credit for all classes of consumers.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Utah [Mr. ORTON].

Mr. ORTON. Mr. Chairman, I, too, rise in opposition to the Richardson amendment. I favored the Vento amendment. In fact, we have interstate banking. Forty-eight States have right now adopted provisions which allow banks to cross State lines.

The difference is, those banks have to create a separately incorporated organization inside the State. That is the difference.

In fact, if we allow interstate branching, what we are doing away with is the need for a separate organization. That is all. Because each State continues to retain its own authority, its own laws and regulations over the branch of that bank in that State. This is not a States' rights issue.

States retain the right to control and regulate each branch inside the State. This is a question of economies of scale. Much has changed in our recordkeeping.

Mr. Chairman, I rise in opposition to the Richardson-Sarpalius amendment on interstate banking. The restrictions on interstate banking and branching adopted over 50 years ago have become a unnecessary burden on the banking industry and, indeed, on the growth of the American economy. The McFadden Act, adopted in 1927, essentially bars federally charted banks from branching across State lines. It also forbids State-chartered banks that are members of the Federal Reserve from branching interstate. The Douglas amendment, adopted in 1970, allows bank holding companies to acquire institutions across State lines, but only with the host State's explicit permission.

Forty-eight States, including my own State of Utah, have passed laws specifically to permit interstate banking. Banks and other financial institutions now operate in a highly competitive and rapidly changing business environment. These States have recognized that interstate banking is an important element of improving the ability of banks to compete effectively in this new business environment. In light of these changes, the real issue presented to this body is not whether banks will be permitted to operate across State lines, but how.

H.R. 6, as reported by the House Banking Committee, establishes a nationwide framework for interstate branching. It repeals the Douglas amendment allowing bank holding companies to acquire banks across State lines regardless of State law. It also provides that within 3 years of enactment, national banks will be allowed to establish branches in any State regardless of State law. Bank holding companies with existing interstate bank subsidies would be permitted to convert these institutions into branches of a lead bank under H.R. 6. This consolidation could occur immediately after enactment of the bill.

Mr. Chairman, I support the liberalization of restrictions on instate branching as amended by Vento-Bereuter to preserve the ability of States to regulate the operation of financial institutions within their own borders. This permits nationwide interstate branching while providing the States with an opportunity to "opt-out" during the 3 year phase-in period. If a State decides not to participate in interstate banking, the amendment stipulates that banks located in that State could not expand into other States. The amendment also permits a State to impose conditions on banks seeking to branch into that State. However, those conditions may not unfairly discriminate against out-of-State banks or bank holding companies.

The Richardson-Sarpalius amendment would permit out-of-State banks to open branches in a State only if that State passes a law specifically allowing them to do so. This eviscerates the most important reform contained in this bill—permitting banks in the U.S. to branch across State lines where they conform with legal requirements under State law. It is important to recognize that interstate branching poses no increased risk to the safety of financial institutions. It also does not benefit "big banks" at the expense of small- and medium-sized banks. Rather, it simply means that a bank operating in one State would no longer need to create a new and very expensive corporate shell in a different State in order to enable it to operate in that State. Instead, a bank could simply open up a branch office in a different State—providing that State had not decided to "opt-out" of interstate branching. These branch banks would be required to operate under the same State laws and requirements that apply to local banks. Again, I remind you that 48 States already permit interstate banking. For those States, interstate branching will cause no disruption to their State banking system.

Mr. Chairman, the principal of States' rights to regulate financial institutions within their boundaries is well served by the "opt-out" approach utilized by the Vento-Bereuter amendment and adopted by this House. It strikes the correct balance between the need to preserve States rights and the need to eliminate unnecessary restrictions on interstate banking and branching. I urge my colleagues to oppose adoption of the Richardson-Sarpalius amendment.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. BAKER] to close debate.

Mr. BAKER. Mr. Chairman, underlying the questions of national branching, opting in, opting out, really is a question of competitiveness. The fear that in the marketplace the small independent banker will no longer be able to compete with large national firms bringing their deposit base into our communities.

It just simply is not so. In upstate New York, history shows us that where a very large, well-funded national bank came in to compete with the small, rural community-owned banks, they got their hat handed to them. They had to pull out.

It is an expensive proposition to open up a branch in a market, and they simply will not do it where market demographics do not justify it.

The Federal Reserve and other regulators carefully reviewed the right to branch into someone else's territory. We now look at issues like cross elasticity and all sorts of market demographics in order to determine if the consumer interest will be best served by allowing another entity into the marketplace.

Finally, we give the States the right under the Vento previously adopted amendment to opt out of the system if they think in their State's best interest it is not the step to take.

This is a poorly conceived amendment. Please vote no.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendment offered by the gentleman from New Mexico [Mr. RICHARDSON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. RICHARDSON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 142, noes 250, answered "present" 1, not voting 40 as follows:

[Roll No. 368]

AYES—142

Abercrombie
Allard
Andrews (ME)
Annunzio
Applegate
Aspin
Bacchus
Barton
Bennett
Bevill
Bilirakis
Bonior
Boxer
Brooks
Browder
Bruce
Bunning
Burton
Camp
Carr
Chandler
Clay
Clement
Coleman (MO)
Collins (IL)
Conyers
Costello
Cramer
Crane
Darden
Davis
de la Garza
Dellums
Dicks
Dingell
Dorgan (ND)
Duncan
Durbin
Eckart
Edwards (OK)
Edwards (TX)
Emerson
English
Espy
Evans
Ewing
Gaydos
Geren
Gillmor
Glickman
Goss
Gunderson
Harris
Hayes (IL)
Hefley
Herger
Hubbard
Hughes
Hutto
Ireland
Jefferson
Johnson (SD)
Jones (GA)
Jones (NC)
Jontz
Kaptur
Kildee
Klug
Lewis (GA)
Lipinski
Lloyd
Long
Matsui
Mazzoli
Meyers
Mfume
Mollohan
Montgomery
Moody
Morella
Murphy
Myers
Nagle
Natcher
Nichols
Oberstar
Obey
Olver
Ortiz
Pallone
Parker
Pastor
Penny
Perkins
Peterson (MN)
Petri
Porter
Poshard
Quillen
Rahall
Richardson
Roberts
Rogers
Rostenkowski
Rowland
Russo
Sanders
Sangmeister
Sarpalius
Schaefer
Schiff
Schroeder
Schulze
Sensenbrenner
Serrano
Shaw
Sikorski
Skeen
Skelton
Slattery
Solomon
Stenholm
Stokes
Swift
Synar
Tanner
Thomas (GA)
Thornton
Torres
Towns
Traficant
Unsoeld
Upton
Vander Jagt
Volkmer
Washington
Weber
Weldon
Wheat
Wilson
Wise
Yatron

NOES—250

Ackerman
Anderson
Andrews (NJ)
Andrews (TX)
Anthony
Archer
Armey
Atkins
AuCoin
Baker
Ballenger
Barnard
Barrett
Bateman
Beilenson
Bereuter
Berman
Bilbray
Bliley
Boehlert
Boehner
Boucher
Brewster
Broomfield
Brown
Bustamante
Byron
Callahan
Campbell (CA)
Cardin
Carper
Clinger
Coble
Coleman (TX)
Collins (MI)
Combest
Condit
Coughlin
Cox (CA)
Cox (IL)
Coyne
Cunningham
DeFazio
DeLauro
DeLay
Derrick
Dickinson
Donnelly
Dooley
Doolittle
Dornan (CA)
Downey
Dreier
Early
Edwards (CA)
Engel
Erdreich
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gilman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Hastert
Hayes (LA)
Hefner
Henry
Hertel
Hoagland
Hobson
Hochbrueckner
Horn
Horton
Houghton
Hoyer
Huckaby
Hunter
Hyde
Inhofe
Jacobs
James
Jenkins
Johnson (CT)
Johnson (TX)
Johnston
Kanjorski
Kasich
Kennedy
Kennelly
Kleczka
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Markey
Martin
Mavroules
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McMillan (NC)
McMillen (MD)
McNulty
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Moorhead
Moran
Morrison
Murtha
Neal (MA)
Neal (NC)
Nowak
Nussle
Oakar
Olin
Orton
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Patterson
Paxon
Payne (VA)
Pease
Peterson (FL)
Pickett
Pickle
Price
Pursell

Ramstad
Rangel
Ravenel
Reed
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roe
Roemer
Rohrabacher
Roth
Roukema
Roybal
Sabo
Santorum
Savage
Sawyer
Saxton
Scheuer
Schumer
Sharp
Shays
Shuster
Sisisky
Skaggs
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Spence
Spratt
Staggers
Stark
Stearns
Stump
Swett
Tallon
Tauzin
Taylor (NC)
Thomas (WY)
Torricelli
Valentine
Vento
Visclosky
Vucanovich
Walker
Walsh
Waters
Waxman
Weiss
Whitten
Williams
Wolf
Wyden
Wylie
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—40

Alexander
Bentley
Borski
Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Dymally
Ford (MI)
Ford (TN)
Gingrich
Green
Guarini
Hatcher
Holloway
Hopkins
Lantos
Levine (CA)
Marlenee
Martinez
McHugh
Michel
Mink
Molinari
Mrazek
Payne (NJ)
Pelosi
Ray
Ros-Lehtinen
Rose
Slaughter (VA)
Stallings
Studds
Sundquist
Taylor (MS)
Thomas (CA)
Traxler
Wolpe

□ 1408

The Clerk announced the following pairs:

On this vote:

Mr. Stallings for, with Mr. Guarini against.

Mr. Wolpe for, with Mr. Thomas of California against.

Mr. Marlenee for, with Mr. Molinari against.

Mr. KENNEDY and Mr. RANGEL changed their vote from "aye" to "no."

Mr. JOHNSON of South Dakota, Mr. CONYERS, Mrs. UNSOELD, and Messrs. WASHINGTON, MONTGOMERY, NATCHER, LEWIS of Georgia, and MFUME changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment number 10 printed in House report 102-281.

□ 1401

Mr. BARNARD. Mr. Chairman, let me state that when the Rules Committee authorized this amendment, I was in opposition to title III. Now as amended by the Vento amendment, I am in support of title III, but the Rules Committee did indicate that I could make a designee to offer title III.

Therefore, Mr. Chairman, I designate the gentleman from Vermont [Mr. SANDERS] as my designee to offer the striking amendment.

AMENDMENT OFFERED BY MR. SANDERS

Mr. SANDERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment, is as follows:

Amendment offered by Mr. SANDERS: Page 185, beginning on line 10, strike out all of title III through page 212, line 9, and redesignate the succeeding titles and sections (and references thereto), and conform the table of contents accordingly.

The CHAIRMAN. Under the rule, the gentleman from Vermont [Mr. SANDERS] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes.

The Chair now recognizes the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, I speak today in strong opposition to title III, a title which would significantly increase the concentration of ownership in the banking industry, a title which would result in the elimination of hundreds, if not thousands, of small community banks.

I speak in opposition to title III because the Federal Government does not have the right to wipe out the regulations developed by over 48 States, all of whom are attempting to represent the best interests of their citizens.

Mr. Chairman, this is an extremely dangerous piece of legislation which deserves to be defeated. All over America our people are alarmed by the growing concentration of wealth and power in this Nation, both for individuals and for industries. Today, the wealthiest 1 percent of our population owns over one-third of the wealth of the Nation and in industry after industry we see a handful of giant corporations controlling what is produced and distributed. The rich get richer and more powerful with more and more ownership resting in fewer and fewer hands, while the ordinary people and the small business people get poorer and have less opportunity to succeed.

Mr. Chairman, if we pass this title, which will allow the huge banking interests to come into any State in America and buy out any small bank that they want, what we will be creating is a banking industry which will be almost completely dominated by a handful of huge financial cartels. If you like that style of banking with a handful of huge cartels controlling the banking industry of America, then you can vote against this amendment.

In my own State of Vermont and in States all over this country, it is the small banks who are standing up for the consumer, for the small business person, who are supporting efforts toward affordable housing, lending out money to the minorities. It is not the huge mega-billion-dollar banks.

Mr. Chairman, we have heard all the arguments of how bigger is better and how we need to trust the banking future of this country to a handful of giant banks. Some in this body may think that is the way to go, but I respectfully and strongly disagree, and I am not alone.

I refer my colleagues to an article in the Quarterly Review which is put out by the Federal Reserve of Minneapolis, and what these economists tell us is something that we all know, bigger is not necessarily better. Over the past two decades, banks with assets of over $1 billion have failed at a rate over twice that of banks with less than $1 billion in assets. Big banks are less profitable than medium and small banks.

Some here would have us believe that all kinds of efficiencies can be gained by allowing this kind of concentration to occur, but again, the facts do not support that argument.

In the same Federal article, these two economists point out that very large banks experience diseconomies of scale, meaning they become less efficient.

It seems to me to support a policy which will create fewer, more risky, less profitable, and less efficient banks is irresponsible at best.

Mr. Chairman, I would like to address my remarks as the only independent in this House to my friends, the conservative Republicans, and my friends, the liberal Democrats.

In fact, Mr. Chairman, I am amazed from a philosophical point of view that Members of either the Republican or Democratic Parties could contemplate supporting this horrendous title.

My Republican colleagues claim to be conservatives. For years they have been talking about the need to get big government off the backs of the people and to allow mainstream America to determine its own future. How can an honest conservative go home to his or her State and say, "I have supported the Federal Government's right to almost completely preempt and override all State laws governing interstate banking"?

How can a conservative go home and say that after they have been telling us for years that they want big government to get off the backs of the people and to leave the States alone?

So I would hope that my honest conservative friends will say, let the States continue to regulate the banks. Do not let the Federal Government preempt banking regulations back home.

Mr. Chairman, for my Democratic friends who speak for the worker, the farmer, and the little guy, why are you aligning yourselves with the Chase Manhattan Bank and with Citibank against the needs of the people back home?

Mr. Chairman, I see the gentleman from North Dakota [Mr. DORGAN], and I am happy to yield to him.

Mr. DORGAN of North Dakota. Mr. Chairman, I appreciate the gentleman yielding time to me.

Mr. Chairman, I intend to support the gentleman's amendment to strike this title.

I think the question here is why would we decide in Federal law at this point in this bill to say that we will override State determination, State legislators, State law, with respect to what kind of banking exists in the given States? Why would we not want the States to continue to make that judgment on their own? Are they not in the best position to evaluate what they want for themselves and their future?

I cannot conceive of the largest money center banks coming in to a small State in the Midwest to see if they cannot better serve it. I can conceive that they would like to come out there with a vacuum cleaner and grab up all that money that is laying around and invest it someplace else in the world, but I do not believe that the impression might be that they would like to find a better way to serve those areas.

I think it is important at this time for us to decide to abandon this title in this bill and allow the States, who I think are in the best position to do so, to make judgments about what kind of banking they want in their States in their future.

I think the gentleman has done a service by offering this amendment today, and I intend to support it.

Mr. SANDERS. Mr. Chairman, I thank the gentleman from North Dakota. His point is well taken.

I was the former mayor of the city of Burlington, VT. As a mayor, and mayors all over this country today are able to walk into their local banks and say to their bankers, "We need money for affordable housing. We need money for minorities. We need money for women and small business. We need money to improve life in our communities."

If your small banks are owned by multinational corporations, citizens and local officials are going to be walking in and the banks will say, "Hey, we don't make those decisions. They are made out of State or they are made in Japan or they are made someplace else."

□ 1420

If we want the banking interests of this country to remain responsive to the needs of the people, we have got to say that large banks cannot simply come in and take over small banks all over this country.

Mr. Chairman, I reserve the balance of my time.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we had this argument in the committee, and the gentleman's argument was rejected then, his motion was rejected at that time.

We have had the argument twice before on this floor today in the Vento-Bereuter amendment and in the Richardson amendment.

I think the will of the House is to provide some accommodation for interstate branching.

Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition to the amendment and would point out to my colleagues that the Vento-Bereuter amendment that we adopted in this bill provides the States with a positive role; in a 3-year period they will be able to opt out of interstate branching, interstate banking, if that is what they wish to do. Obviously, that is important that we recognize States' rights and their role. The Vento amendment also provides the States the right to regulate national branches on the same basis that they regulate State branches, on a nondiscriminatory type of basis.

I think it is important that the financial institutions across this country are able to move into the 21st century, be able to offer financial services on a nationwide basis.

We have a number of safeguards in the bill dealing with CRA, the Community Reinvestment Act; and amendment offered by Mr. KLECZKA in committee that talks about the role of banks that seek to move into interstate branching.

The gentleman from Iowa [Mr. LEACH] offered an amendment dealing with capital so that we are certain that interstate branching and banking institutions are adequately capitalized.

I think, beyond that we have dealt with concentration issues. My colleague and friend from Vermont has talked about concentration and the merger of institutions. That is going on today irrespective of whether we have interstate branching and interstate banking. The fact is that that is a concern.

This amendment we placed in the bill provides concentration limits, albeit very large limits, 10 percent of the national basis and 30 percent within the State, but they do provide some safeguards and do answer some of the concerns raised by the gentleman from Vermont.

So I think we have really fashioned a good interstate banking and branching compromise in the bill before us. I think we want to move forward now to determine the type of efficiencies and the type of economies that may be possible, and I therefore rise in opposition to the amendment to strike title III and support the Vento-Bereuter adopted amendment that is in the bill before us.

Mr. WYLIE. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I think the gentleman from Minnesota made an excellent point in closing, and that is that by permitting banks to expand interstate by branching, it is estimated that billions of dollars can be saved through the elimination of duplicative costs. I think this is a point that has to be made here.

Currently, all bank expansion is conducted through separate corporate entities even though they have the right to branch into another State. Each bank has to have its own board of directors, its own back office operations, its own overhead, its own paperwork requirements, and so forth. Branching makes it easier, less costly. It can effect economies of scale.

I think it makes it a lot easier for the consumer to take advantage of these reduced costs of banking.

I therefore would urge a "no" vote on the amendment.

Mr. SANDERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to make two points, and if I may, I would like to query the distinguished gentleman from Ohio [Mr. WYLIE].

I say to the gentleman from Ohio that for years many of us have been hearing from conservative circles about the need to get Big Brother off the back of mainstream America. We have been hearing that the Federal Government is preempting the rights of the States and the cities and how terrible that is.

Could the gentleman please tell me and tell the people how one can defend a piece of legislation which basically wipes out the ability of the State governments all over this America to do what is best, what they deem to be best in terms of banking? How does one defend that?

Mr. WYLIE. If the gentleman would yield, I respectfully disagree with the gentleman's observation that it wipes out the opportunity for the States to do whatever they want to do. It really does not have anything to do, I would say to the gentleman, with the Federal Government's operations of these banks. That is already in place.

Now, we adopted the Vento-Bereuter amendment, which allowed the States to opt out if they do not like interstate banking or interstate branching.

So I would suggest to the gentleman that Vento-Bereuter is a States' rights amendment.

Mr. SANDERS. I would respectfully disagree with the gentleman from Ohio. In my State of Vermont, and, I suspect, in dozens of other States, there are regulations that the State legislatures have passed designed to protect the best interest of those States.

Basically, what they say, not just in terms of acquisition of banks, they say that if an out-of-State bank comes in and it is in the best interests of the

State, if they bring new capital into the State, if they are more responsive to the needs of the people in the State, "We will let those banks in." But, if not, "We won't let those banks in."

There is nothing in the Vento amendment which deals with the ability of large out-of-State banks to come in and to swallow up small, locally owned banks.

The States are being preempted in this area, and I think that that is very wrong and inconsistent with those people who for years have talked about Big Brother stepping over the rights of State and local government.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding.

Mr. Chairman, under the Vento-Bereuter amendment, States have the option over a 3-year period to opt out so that they would not be involved. So I think the concern was that once they make that decision, obviously, then they fall under State laws. If they file under the Federal laws with regard to the size of institutions, there is a 30-percent limitation in the Vento amendment concerning concentration.

I thank the gentleman for yielding.

Mr. SANDERS. Let me reclaim my time, and then I will yield to the gentleman from Ohio.

What the gentleman from Minnesota is talking about is branching. He is not talking about acquisition, which is equally important. I would be happy to yield to the gentleman from Ohio.

Mr. WYLIE. Well, we have a difference of opinion, as I said a little earlier, on this. I would say this, in effect, gives the States more rights. It is the first time since the 1860's that the States have had a right to suggest that a bank can either opt out or branch in that State. Right now, we have on the books laws which say that the States have to pass laws with respect to the Community Reinvestment Act, consumer protection laws, fair lending practices, and so on.

So, with the Vento-Bereuter amendments, the States can apply the State law more so than they have been able to in the last 100 years, I would suggest to the gentleman from Vermont.

Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. I thank the gentleman for yielding.

Mr. Chairman, the Constitutional Convention in Philadelphia, there occurred a great debate about an interstate commerce clause. There were some such as the gentleman from Vermont who argued that having an interstate commerce clause was going to be the ruination of the individual States. The fact of the matter is we would not have had the Unites States of America as we know it today without the interstate commerce clause.

But we really did not go quite far enough. In a sense, what we are being asked to do in H.R. 6 is come up with an interstate banking clause similar to the interstate commerce clause, and some still do not want that, some still are fighting the fight that was fought 200 years ago against interstate commerce.

The fact of the matter is we are the only country on the face of the Earth that does not have a banking system that reflects the strength of its own national economy. We are split up into little pockets, and that is why we had a problem in Texas, because we were confined to Texas; and that is why we had a problem in New England, because we were confined to New England. This regional division has made our financial services system weak.

The gentleman from Vermont [Mr. SANDERS] would have it remain weak. Virtually everyone else recognizes, depending upon the nuances, the necessity for some form of interstate banking and branching.

I hope you all do other than Mr. SANDERS suggested; reject his amendment.

Mr. SANDERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me respond briefly to Mr. LAFALCE and the point that those people who are enthusiastic about the growth of these huge multilateral banks are going to have the opportunity today and next week to vote for tens of billions of dollars of taxpayers' money to bail these institutions out.

☐ 1430

Mr. Chairman, the record is very clear that the smaller banks, who know their communities, who invest in their communities, are much safer banks, and the expansion of banking powers to allow the huge multinationals to come in and swallow up the small banks will not only do a disservice to the small communities of this country, to farmers, to workers, to small business people, but it will also lay the groundwork for a bailout, the likes of which this Nation has never seen.

Mr. Chairman, a wide array of organizations have deep concerns about this title and about unlimited banking and branching. In a recent letter, that I suspect everybody in this body received, from the executive director of the National Conference of State Legislatures, from the President of the Conference of State Bank Supervisors, from the staff attorney of Public Citizen and from banking representatives of the Consumer Federation of America; all of these people write:

> We reject these provisions for interstate banking and branching because they will likely lead to excessive concentration in the banking industry. They are also likely to interfere with State laws and regulations intended to protect consumers and encourage community reinvestment.

They write:

> Banking is a part of the fabric of the economic life of each and every State. Preemptive actions by the Federal Government that limit the flexibility of States to deal with local economic problems, including the capacity to make choices about the financing of housing, small business and community development weaken our Nation as a whole.

The Kansas Bankers Association, they write, and I think they speak for many similar organizations around this country; they write:

> We strongly disagree with any Federal mandate on interstate banking and branching which does not allow each State to determine its own best strategy.

In addition, Mr. Chairman, I have received a letter from the Senate Finance Committee of the State of Vermont which raises the very same point. The point they are raising, my colleagues, is we do not know what is best for the people of Kansas or Vermont.

Mr. WYLIE. Mr. Chairman, I yield myself whatever time it takes me to close.

Mr. Chairman, I respectfully suggest that the gentleman from Vermont [Mr. SANDERS] is arguing against his own position. H.R. 6 does not permit banks to open interstate offices without approval of the States. It says that the States can opt out, if the individual State wants to opt out. What it does is allow interstate offices to operate in a more efficient way, through the opening of a branch rather than a separate subsidiary, which is now required. In H.R. 6, branches are subject to the regulation of their host State, just as they are now, as if they were separately corporated, as they are now. States retain control over the conduct of these branches in the State, as I stated a little earlier. It does effect economies of scale, and I respectfully suggest a "no" vote on the amendment of the gentleman from Vermont [Mr. SANDERS].

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont [Mr. SANDERS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SANDERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 20, noes 374, answered "present" 1, not voting 38, as follows:

[Roll No. 369]

AYES—20

Bennett
Conyers
Dellums
Dorgan (ND)
Duncan
Evans
Hubbard
Jontz
Miller (OH)
Montgomery
Myers
Owens (NY)

Parker
Perkins
Poshard
Richardson
Rogers
Sanders
Volkmer
Yates

NOES—374

Abercrombie
Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Bonior
Boucher
Boxer
Brewster
Brooks
Broomfield
Browder
Brown
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carper
Carr
Chandler
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Collins (IL)
Collins (MI)
Combest
Condit
Costello
Coughlin
Cox (CA)
Cox (IL)
Coyne
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Donnelly
Dooley
Doolittle
Dornan (CA)
Downey
Dreier
Durbin
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
Engel
English
Erdreich
Espy
Ewing
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hoagland
Hobson
Hochbrueckner
Horn
Horton
Houghton
Hoyer
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Long
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Markey
Martin
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Moody
Moorhead
Moran
Morella
Morrison
Murphy
Murtha
Natcher
Neal (MA)
Neal (NC)
Nichols
Nussle
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (UT)
Oxley
Packard
Pallone
Panetta
Pastor
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rohrabacher
Ros-Lehtinen
Rostenkowski
Roth
Roukema
Rowland
Roybal
Russo
Sabo
Sangmeister
Santorum
Sarpalius
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stokes
Stump
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Upton
Vander Jagt
Vento
Visclosky
Vucanovich
Walker
Walsh
Waters
Waxman
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wyden
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—38

Borski
Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Dymally
Edwards (TX)
Ford (MI)
Ford (TN)
Gingrich
Green
Hatcher
Holloway
Hopkins
Lantos
Levine (CA)
Lloyd
Marlenee
Michel
Mink
Molinari
Mrazek
Nagle
Nowak
Payne (NJ)
Pelosi
Ray
Rose
Slaughter (VA)
Studds
Sundquist
Taylor (MS)
Thomas (CA)
Valentine
Washington
Wolpe

□ 1453

Mr. VOLKMER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 11 printed in House Report 102-281.

AMENDMENT OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. WATERS: Page 157, after line 22, insert the following new section:

SEC. 230. FREEZE ON BANK FEES FOR AVERAGE TAXPAYER ACCOUNTS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (j) the following new subsection:

"(k) FREEZE ON BANK FEES FOR AVERAGE TAXPAYER ACCOUNTS.—

"(1) IN GENERAL.—During the 2-year period beginning on the date of the enactment of this subsection, no insured depository institution may impose any fee of any sort on any average taxpayer account in an amount in excess of the amount imposed for such fee on June 18, 1991.

"(2) AVERAGE TAXPAYER ACCOUNT DEFINED.—For purposes of paragraph (1), the term 'average taxpayer account' means any transaction account held by any person other than a corporation in which the average daily balance (determined on a monthly basis) does not exceed $3,000.".

Amend the table of contents accordingly.

The CHAIRMAN. Under the rule, the gentlewoman from California [Ms. WATERS] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

The Chair recognizes the gentlewoman from California [Ms. WATERS].

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I call this amendment the fees freeze. Banks are attempting to cut their losses and finance new capital by increasing banks fees, across the board. These fees include minimum deposit requirements, checking account fees, fees on automatic teller machine use, fees for cashiers' checks, and so forth. Obviously, these fee increases fall the heaviest on low-income people.

According to a recent study by a Connecticut accounting firm, two-thirds of the banks polled said they were passing their premium increases on to their customers. The study's author concluded that, "Customers are paying for the recapitalization and refunding of the FDIC's bank insurance fund." What this means, in effect, is that customers are paying for the banks' bad loan practices.

Fee increases have risen beyond any realistic cost of providing service. In fact, just recently, a State court judge in California ordered Bank of America to cut in half its bounced check fee, on the grounds that the charge represents an unfair business practice.

My amendment places a moratorium on fee increases for the smallest depositors for 2 years.

Mr. Chairman, I sat through 60 hours of markup in the Banking Committee on H.R. 6. In that time, we considered amendments to help community banks, big banks, the securities industry, the insurance industry, and other large corporations. There were very few chances to do something specific, something immediate, for average customers. That's all my amendment seeks to do.

Banks have many types of customers. If they must raise the money to pay for their premium increases, they can get it from their large, big money customers. That's where the money is.

I have singled out small depositors for exemption because the banks have ample opportunity to increase the fees of large depositors, many of whom have insurance guarantees far beyond $100,000. We are insuring billions of dollars, at no cost to rich depositors, with great risk to the taxpayers. Surely rich depositors can offset the banks' premium increases and not be harmed in any way.

Mr. Chairman, all we are trying to do is make one simple gesture to the people of America. I think it is important to give small depositors a break. I think my amendment is fair and reasonable.

If I could make a final point, Mr. Chairman, the passage of my amendment would send an important message to the average consumer and small depositor in America. In light of recent events inside this institution, I think it is important to say that we, in Congress, are not so far removed from the hardships faced by most American banking customers.

The fees freeze is an honest attempt to be fair to banking customers. Small depositors have in no way contributed to the problems of the banking industry. They should not be responsible for recapitalizing it. My amendment is supported by the Consumer Federation of America, Public Citizen and ARORN. I urge my colleagues to support the amendment.

Mr. BAKER. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. HAYES], the distinguished former State banking commissioner of the State of Louisiana.

Mr. HAYES of Louisiana. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition, not because of any misunderstanding of the sentiment expressed by the gentlewoman from California [Ms. WATERS]. In fact, like all regressive taxes, such as those on gasoline and sales taxes, those who are harmed the most can afford it the least, when we build a system around very small spenders, small wage earners.

But in the earnings of a banking institution, what we are talking about is on-demand deposits. We are not talking about rich investors, because they will either be in certificates of deposit, or a nonaccount, where the cost analysis of the bank will be such that it will not spread with the same percentage of those who are $1,000 and less.

□ 1500

The point I am making is this: Across America there are people who are made up of a strong middle class who look at me every weekend when I return to Louisiana and express all of their frustrations with single sentences like "I carry the load for everyone; I pay more taxes and yet I don't qualify for any program to get my kid a scholarship; on the other hand I don't make enough money to pay tuition."

The same would be true here. It would not be major corporate depositors and demand money. It would be middle class America with a poverty line in my district of most families who still would cross the $1,000.

What I would like to support the gentlewoman on, and I have a feeling she may in the future have an opportunity on a later banking bill to offer it, is this: If we could put the two together, where, as part of the obligation under community reinvestment we could allow those frozen wage earners and senior citizens who fall at the poverty scale and the lowest amount of deposits for their fees and free fees to be part of the bank's obligation of community reinvestment, we might well be able to do two things: Help more members of the community who need it most and not affect banking institutions with rates being lowered by the Fed and with obligations made upon their demand deposits that will not allow the collection.

Ms. WATERS. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Chairman, I rise in support of the Waters amendment. The fact is that taxpayers are being taxed twice. They are paying twice at least, once for the premiums in the form of fees and again through tax-supported bailouts. I am going to read from a recent Wall Street Journal story, and I quote:

> The average consumer is feeling the pinch, too. Banks recognize that it would be politically explosive to charge a specific fee to cover insurance premiums on consumer accounts, but many are effectively doing just that. Service charges on personal savings and checking accounts are on the rise. New fees are being levied and banks are approaching a higher lending rate while offering low rates on deposits.

The Waters amendment shifts the burden back to the banks and it should be adopted.

Ms. WATERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. MFUME].

Mr. MFUME. Mr. Chairman, I rise in support of this protaxpayer, proconsumer fairness amendment from the gentlewoman from California, and I urge an "aye" vote.

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bill extends $30 billion in loans to the Treasury Department to recapitalize the bank insurance fund. We are told that banks will repay this loan over time through increased premiums. The implication is also that we are avoiding a taxpayer bailout of the banking industry.

Now, if banks turn around and increase their bank fees to pay back this borrowed money to the Treasury, I am not sure I see the difference between that and a taxpayer bailout. Why are bank customers supposed to feel better about having their fees increased for the next 30 years?

Increased bank fees are a hidden tax on consumers. This bill supposedly avoids a taxpayer bailout. My amendment simply insures that small depositors are not hit by bank fee increases, or hidden taxes, for 2 years.

Mr. Chairman, this is not for poor people. Poor people do not have any bank balances. This is for working people and middle-income people. This is a piece of legislation for fairness. It will send a message that those of us in Congress understand what it means to have a part of your salary eaten away by bank fees and increases.

I would ask for an "aye" vote on the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. BAKER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a very important amendment and certainly no one faults the effort to help those in society who cannot help themselves. Certainly those who are on support programs of various governmental agencies who are finding it more and more difficult to afford utilities and food certainly should not be faced with ever-increasing costs to carry on their financial activities.

But however, well-intended the gentlewoman's amendment may be, in fact, the way the amendment is constructed, it goes far beyond the description we have had here on the House floor. It would extend the benefits of no increase in bank service charges to any average taxpayer account which is defined as anyone who is not a corporation, a law partnership, a sole proprietorship a congressional campaign account. There are a litany of account services which would not be subject to any fee increases as the result of the 2-year moratorium this amendment would provide.

Further, in really looking at the credit needs of many of those who are lower income individuals, they certainly would like to have low-interest rates in order to be able to buy that washing machine or that automobile or hopefully at some point in their life be able to acquire that home.

What will simply happen in the marketplace as a result of the fees limitation the Waters amendment would impose will be simply to shift the income the bank now gets from fees and service charges over to the interest market. We simply cannot allow banks to lose additional funds with the imposition of the Waters amendment.

If they do not, for whatever reason, shift the loss of income over to the interest charges for services and acquiring those goods and services, which people may need for their homes, clearly this will lead to additional losses to banking institutions which are already troubled.

If we like FDIC failures and taxpayers bailouts, tell banks they cannot generate fees and services charges from activities they provide for their customers. If we were going to do it, why should the average balance which will be subject to this amendment be set at $1,000? If we are going to help indigent folks who should not be paying onerous bank fees, it would seem to me that the limitation on free banking services or a freeze on banking service charges would be more appropriate at the $100 or $200 level. But not allow someone who has multiple accounts in different financial institutions and may, in fact, have several thousands of dollars on deposit get by without any increase in fees or services charges as a result of this amendment.

I certainly understood the gentlewoman's intent in offering it, but I think it misses the mark. It would be ill-advised to adopt, and I would ask the House to reject.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in strong support of the amendment offered by my colleague from California.

Under the provisions of H.R. 6, banks will be required to pay higher insurance premiums and special assessments to the FDIC. We need not delude ourselves as to where the banks will get the funds for these additional payments. They will be passed on to bank depositors in the form of higher fees for accounts and services. The account holders who would be affected by this fine example of trickle down economics are those that are least able to absorb an increase in fees. We are not talking about persons who have hundreds of thousands of dollars in several accounts, but small depositors. These are the bank customers this amendment seeks to assist with a 2-year freeze on increasing fees they pay to their bank.

Make no mistake about it, this is not a consumer oriented bill, nor will the measure do much for small depositors. I am sorry to see that this bill does not contain a provision mandating that banks provide a low-cost check cashing services or lifeline checking accounts. These services are options under the bill's new Bank Enterprise Program, but participation is not mandatory. Further, no significant revisions are made to the Community Reinvestment Act to put teeth into existing antiredlining policies. This amendment will significantly enhance this bill.

I urge my colleagues to support this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California [Ms. WATERS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Ms. WATERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 70, noes 336, answered "present" 1, not voting 26, as follows:

[Roll No. 370]

AYES—70

Abercrombie
Ackerman
Bonior
Boxer
Brown
Carper
Clay
Collins (IL)
Collins (MI)
Conyers
Coyne
DeFazio
Dellums
Donnelly
Early
Edwards (CA)
Engel
Espy
Evans
Fazio
Flake
Foglietta
Gonzalez
Hayes (IL)
Andrews (ME)
Annunzio
Hertel
Jefferson
Kaptur
Kennedy
Kostmayer
Lehman (FL)
Lewis (GA)
Markey
Matsui
McDermott
Mfume
Mineta
Moakley
Neal (MA)
Nowak
Oakar
Olver
Owens (NY)
Pallone
Pastor
Payne (NJ)
Rangel
Atkins
AuCoin
Roybal
Sanders
Savage
Schroeder
Serrano
Slaughter (NY)
Stark
Stokes
Studds
Torres
Torricelli
Towns
Traficant
Vento
Waters
Waxman
Weiss
Wheat
Wyden
Yates

NOES—336

Alexander
Allard
Anderson
Andrews (NJ)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Borski
Boucher
Brewster
Brooks
Broomfield
Browder
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carr
Chandler
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Combest
Condit
Costello
Coughlin
Cox (CA)
Cox (IL)
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Durbin
Eckart
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Ewing
Fascell
Fawell
Feighan
Fields
Fish
Ford (MI)
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kasich
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kyl
LaFalce
Lagomarsino
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Martin
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Miller (CA)
Miller (OH)
Miller (WA)
Mollohan
Montgomery
Moody
Moorhead
Moran
Morella
Morrison
Murphy
Murtha
Myers
Nagle
Natcher
Neal (NC)
Nichols
Nussle
Oberstar
Obey
Olin
Ortiz
Orton
Owens (UT)
Oxley
Packard
Panetta
Parker
Patterson
Paxon
Payne (VA)
Pease
Penny
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Ravenel
Reed
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Russo
Sabo
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Scheuer
Schiff
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stenholm
Stump
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Weber
Weldon
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—26

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Dymally
Ford (TN)
Green
Hatcher
Hopkins
Lantos
Levine (CA)
Marlenee
Martinez
Michel
Mink
Molinari
Mrazek
Pelosi
Ray
Slaughter (VA)
Sundquist
Taylor (MS)
Thomas (CA)
Washington

□ 1528

The Clerk announced the following pair:

On this vote:

Mr. Dymally for, with Mr. Thomas of California against.

Mr. DEFAZIO changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 12 printed in House Report 102-281.

AMENDMENTS EN BLOC OFFERED BY MR. GRADISON

Mr. GRADISON. Mr. Chairman, I offer amendments en bloc.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendment en bloc is as follows:

Amendments en bloc offered by Mr. GRADISON: Page 158, beginning on line 5, strike out sections 232 and 233 through page 177, line 13, and redesignate the succeeding section (and references thereto) and conform the table of contents accordingly.

The CHAIRMAN. Under the rule, the gentleman from Ohio [Mr. GRADISON] will be recognized for 5 minutes, and a

Member opposed will be recognized for 5 minutes.

The Chair recognizes the gentleman from Ohio [Mr. GRADISON].

☐ 1530

Mr. GRADISON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment would strike sections 232 and 233 from the bill. These provisions entitle banks and S&L's to a reduction in their insurance premiums when they engage in certain socially useful activities.

Section 232 requires the bank insurance fund and the savings association insurance fund to cut in half any assessments on so-called lifeline accounts which offer basic transaction services to individuals. CBO estimates that this provision will cost the insurance funds $17 million in 1993-95. Section 233 of the bill would entitle banks to a reduction of between 5 and 15 percent in the assessment rate for any increases in lending to distressed neighborhoods. Although the sponsors have amended the bill's provisions to reduce their cost, CBO still estimates that the insurance funds would lose roughly $40 to $50 million of receipts each year from this second provision.

My objection is twofold. First, sections 232 and 233 contain direct spending and thus evade the appropriations process. At a time of record deficits, we should not enact new programs without at the same time finding the means to pay for them. Both of these provisions violate the Budget Act. However, the Committee on Rules has waived all points of order against them. Nevertheless, if left in the bill, they will result in additional PAYGO costs which, if not paid for later, will result in a sequester of nonexempt mandatory spending. Among the programs which will be reduced as the result to a sequester are Medicare, student loans, and farm price supports. My amendment seeks to protect these programs by striking any additional spending from the bill.

Second, these sections compromise both insurance funds. The bill's sponsors may argue that their provision allows the insurance funds to make up the lost premiums by increasing the assessment rate on banks. This power is likely to be meaningless, however, given the current weakness of the funds. The S&L industry has already had to seek taxpayer assistance. Elsewhere in H.R. 6 we authorize the FDIC to borrow an additional $30 billion from the Federal Government. Many experts doubt whether the fund will be able to repay this amount. If it does not, every dollar to premiums lost as a result of these provisions will have to be made up by taxpayers.

The insurance funds were set up to achieve a single, very important purpose: to ensure that the banking industry paid the cost of the Government's deposit guarantee. To be effective, premiums into the fund should be based solely on risk, and not on extraneous factors. The funds should not be used as a back door source of funding for other initiatives, however worthy. If Congress wants to create the type of programs called for in these two sections, it should fund them directly and pay for them with spending reductions in other programs. The new Chairman of FDIC, who has to oversee both of these funds, has written me a letter amplifying these concerns.

Mr. Chairman, usually I do not insist on a recorded vote. Today, however, I will. Responsible governing involves tough choices, and Members should be evaluated according to how they handle these choices. The sponsors of this provision are wrong when they insist that this vote is solely about investing in distressed communities. In this day of limited budgets, we only have so many dollars to spend. This vote is on whether we should spend those dollars on distressed communities instead of on existing programs such as Medicare, student loans, and farm income supports.

I am asking my colleagues to help me maintain the integrity of the insurance funds and protect existing programs. Support my amendment to strike sections 232 and 233.

Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I stand in strong support of the gentleman's amendment. I think the goals of the Ridge amendment are laudable. I think to promote lifeline or investment in the Community Investment Association is something the banks should be doing, but I do not think we need to report them for something they should be doing anyway.

Know full well, Mr. Chairman and Members, that part of this bill provides for a $70 billion loan to the banks, a loan which they are expected to pay back. I do not believe that we can at this point accept the Ridge committee amendment which relieves millions and millions of dollars of these insurance premiums which will be necessary and will go to pay off the loan. Know full well, though, that if we relief the banks from this insurance premium, it is your constituents, the taxpayers of this country, who will have to pick up that slack.

For that reason, Mr. Chairman, I ask the Members to vote for the amendment of the gentleman from Ohio.

Mr. RIDGE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. RIDGE] is recognized for 5 minutes.

Mr. RIDGE. Mr. Chairman, first of all, I yield 2 minutes to the gentleman from New York [Mr. FLAKE], the cosponsor of these sections known as the Bank Enterprise Act, which passed in the Committee on Banking, Finance and Urban Affairs by a vote of 37 to 11.

Mr. FLAKE. Mr. Chairman, the gentleman from Pennsylvania [Mr. RIDGE] and I join together in sponsoring an amendment, believing that it is important that this body understands what is happening in communities that are currently underserved by the banking community. It is our intention to try to create within those communities the means by which its citizens might be able to have access to some of the capital that is available in other parts of the communities through loans and through other kinds of services that banks generally offer. Those services are not offered to any great degree today, simply because many branches have already closed in those communities, thus the persons who live in these distressed areas and communities where banks are currently underserving them, find themselves at a major disadvantage.

We realize, Mr. Chairman, there are those who will argue that this does not conform to the budget agreement; but Mr. Chairman, I think it should be understood that the costs of the properties that are inventoried by the Federal Government more than offset the costs of what this particular program would cost.

Now, $43 million according to some estimates by the CBO is not a lot of money when one thinks about the fact that there are many persons living in these communities who cannot get loans, who cannot get basic financial services from the banking community.

I would argue against the person who has made this particular amendment today that the moneys do not necessarily come from Medicare, student loans, or farm supports. I think that is just an attempt to try to get persons to be in opposition to the bill.

In reality, Mr. Chairman, I think it is the right thing, I think it is the fair thing for this body to reject this particular amendment. I think it hurts more people than it helps. I think that everybody has a right and ought to have an opportunity to be able to have access, to be able to live in a home, to be able to know that that home can be mortgaged just like it can in any other part of the community.

So Mr. Chairman, I would urge that the Members of this body will vote against this particular amendment and give support to myself and the gentleman from Pennsylvania [Mr. RIDGE] as we try to do something that we think this Nation needs.

Mr. RIDGE. Mr. Chairman, I yield 1 minute to my colleague, the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, there are better ways, I believe, than this amendment to do this, but they are not available to us. Had the amendment of my colleague, the gentleman from Massachusetts [Mr. KENNEDY] passed, strengthening enforcement, I might not have voted for this; but now this is the only way left for us to do it, by incentive.

I do want to rise as a member of the Budget Committee to protest that this poor little gesture on behalf of the poor people being clubbed to death by that overburdened budget. This bill is going to raise billions and billions of dollars.

The gentleman from Pennsylvania and the gentleman from New York want to sprinkle a couple million on the poor people, and for the budget guns to be wheeled out and shoot that down is disproportionate.

This money is within the margin of error on the budget. We are not talking about very significant sums, and it is wholly inappropriate at this point to use the budget to squash the one last hope that we may have for people who will be weakened by this bill.

Mr. RIDGE. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman and my colleagues, ever so briefly, I would like to think that there is a bipartisan consensus that we need the Community Reinvestment Act.

I would like to think as a matter of social and economic policy that we agree that banks should be sensitive to the legitimate credit needs of people in distressed communities and distressed areas, more often than not minorities.

We have seen by the most recent Federal Reserve report that there is an unconscionable pattern of discrimination that occurs in these distressed communities. Many of you have read the recent Federal Reserve report. The report was quite clear that a pattern of discrimination existed. Therefore if you believe it is incumbent upon us to reverse this pattern of discrimination and if you believe that improving CRA is a worthy legislative and social policy objective, as policy makers we only have two alternatives to do so. We either punish the banks for their failure to live up to their CRA requirements, and our colleague, the gentleman from Massachusetts [Mr. KENNEDY], offered an amendment like that and it was defeated; his amendment would punish banks if they redlined neighborhoods and that amendment was defeated. The Ridge-Flake Bank Enterprise Act rewards institutions if they greenline, if they take pro-active steps in those distressed communities. There are incentives in the sections this amendment seeks to strike; are incentives for lifeline accounts, for lending, for locating community development corporations and community development banks, for investing in these distressed neighborhoods.

☐ 1540

Now, I differ with the author of this amendment, who claims it involves an expenditure of $40 to $50 million a year. The CBO estimate that we received said it would be about $60 million over 4 years, or $15 million annually.

My colleagues, the banks themselves will pay into the bank insurance fund over the next 4 years roughly $25 billion. What we are asking you to do today is to join with us in approving the use of two-tenths of 1 percent of that huge sum to leverage 1 billion dollars' worth of investment in distressed communities. No one can argue that using two-tenths of 1 percent of what banks will pay into the BIF, or 60 million of the $25 billion, will destabilize the insurance fund.

I respectfully disagree that sequestration will follow, as predicted by the author of the amendment.

My colleagues, I encourage you to defeat this amendment and support this initiative to encourage banks to invest in distressed communities.

The CHAIRMAN. All time has expired.

The question is on the amendments en bloc offered by the gentleman from Ohio [Mr. GRADISON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GRADISON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 204, noes 205, answered "present" 2, not voting 22, as follows:

[Roll No. 371]

AYES—204

Alexander
Allard
Anderson
Andrews (NJ)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
Ballenger
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Bilbray
Bilirakis
Boehner
Boucher
Broomfield
Bunning
Burton
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carr
Chandler
Clement
Clinger
Coble
Coleman (MO)
Combest
Condit
Costello
Coughlin
Cox (CA)
Crane
Cunningham
Davis
DeLay
Derrick
Dickinson
Dicks
Dooley
Dorgan (ND)
Dornan (CA)
Dreier
Edwards (TX)
Emerson
Fawell
Fields
Franks (CT)
Gallo
Gaydos
Gejdenson
Gekas
Geren
Gibbons
Gillmor
Gordon
Goss
Gradison
Guarini
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Hastert
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Houghton
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (SD)
Johnson (TX)
Jones (GA)
Kanjorski
Kleczka
Klug
Kolbe
Kopetski
Kyl
Lancaster
LaRocco
Laughlin
Leach
Lehman (CA)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Lowery (CA)
Machtley
Martin
Martinez
Mazzoli
McCandless
McCollum
McCrery
McGrath
McMillan (NC)
McMillen (MD)
Meyers
Miller (CA)
Miller (OH)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murphy
Myers
Nagle
Nowak
Oberstar
Obey
Olin
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Pursell
Quillen
Rahall
Ramstad
Regula
Rhodes
Rinaldo
Roberts
Rohrabacher
Roukema
Russo
Sarpalius
Sawyer
Saxton
Schaefer
Schulze
Sensenbrenner
Shaw
Sisisky
Skaggs
Skelton
Smith (IA)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stallings
Stearns
Stenholm
Stump
Sundquist
Tanner
Taylor (MS)
Thomas (WY)
Thornton
Torricelli
Valentine
Vander Jagt
Volkmer
Vucanovich
Walsh
Weber
Wilson
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—205

Abercrombie
Ackerman
Andrews (ME)
Annunzio
Atkins
AuCoin
Bacchus
Baker
Barnard
Berman
Bevill
Bliley
Boehlert
Bonior
Borski
Boxer
Brewster
Browder
Brown
Bruce
Bustamante
Carper
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Conyers
Cox (IL)
Coyne
Cramer
Darden
de la Garza
DeFazio
DeLauro
Dellums
Dingell
Donnelly
Doolittle
Downey
Duncan
Durbin
Early
Eckart
Edwards (CA)
Edwards (OK)
Engel
English
Erdreich
Espy
Evans
Ewing
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Frank (MA)
Frost
Gallegly
Gephardt
Gilchrest
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Grandy
Hall (OH)
Harris
Hatcher
Hayes (IL)
Hertel
Hobson
Hochbrueckner
Holloway
Horn
Horton
Hoyer
Hubbard
Jefferson
Johnson (CT)
Jones (NC)
Jontz
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kolter
Kostmayer
LaFalce
Lagomarsino
Lehman (FL)
Lewis (GA)
Livingston
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Matsui
Mavroules
McCloskey
McCurdy
McDade
McDermott
McHugh
McNulty
Mfume
Miller (WA)
Mineta
Moakley
Moody
Moran
Morrison
Murtha
Natcher
Neal (MA)
Neal (NC)
Nichols
Nussle
Oakar
Olver
Ortiz
Orton
Owens (NY)
Pastor
Payne (NJ)
Perkins
Peterson (FL)
Price
Rangel
Ravenel
Ray
Reed
Richardson
Ridge
Riggs
Ritter
Roe
Roemer
Rogers
Ros-Lehtinen
Rose
Rostenkowski
Roth
Rowland
Roybal
Sabo
Sanders
Sangmeister
Santorum
Savage
Scheuer
Schiff
Schroeder
Schumer
Serrano
Sharp
Shays
Shuster
Sikorski
Skeen
Slattery
Slaughter (NY)
Smith (FL)
Smith (NJ)
Solarz
Spratt
Staggers
Stark

Stokes
Studds
Swett
Swift
Synar
Tallon
Tauzin
Taylor (NC)
Thomas (GA)
Torres
Towns
Traficant
Traxler
Unsoeld
Upton
Vento
Visclosky
Walker
Washington
Waters
Waxman
Weiss
Weldon
Wheat
Williams
Wise
Wolf
Wolpe
Wyden
Wylie
Yates

ANSWERED "PRESENT"—2

Brooks
Cooper

NOT VOTING—22

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Dymally
Ford (TN)
Green
Hopkins
Johnston
Lantos
Levine (CA)
Marlenee
McEwen
Michel
Mink
Mrazek
Pelosi
Slaughter (VA)
Thomas (CA)
Whitten

☐ 1600

The Clerk announced the following pairs:

On this vote:

Mr. Thomas of California for, with Mr. Dymally against.

Mr. Green of New York for, with Mr. McEwen against.

Messrs. SMITH of New Jersey, KENNEDY, ORTON, SHAYS, GLICKMAN, and HOLLOWAY changed their vote from "aye" to "no."

Mr. WILSON and Mr. THORNTON changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to reconsider the amendment numbered 13 printed in House Report 102-281.

AMENDMENTS EN BLOC OFFERED BY MR. WYLIE

Mr. WYLIE. Mr. Chairman, I offer the amendments en bloc numbered 13.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. WYLIE: Page 455, line 8, strike "(C) and (D)" and insert "(C), (D), and (E)".

Page 455, strike lines 9 through 19 and insert the following new subparagraphs:

"(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor or by others for the benefit of the depositor, as follows:

"(i) Deposits registered under the same taxpayer identification number or employer identification number of one depositor shall be attributed to that deposit.

"(ii) Deposits registered under the taxpayer identification number or employer identification number of more than one depositor shall be attributed equally, unless otherwise specified in the deposit account records, among those depositors.

"(iii) Deposits consisting of a revocable trust or similar account shall be attributed to the settlor or grantor of the deposit account.

"(iv) Deposits maintained by an individual or entity (including an insured depository institution) acting as an agent, custodian, nominee, conservator or in a similar capacity on behalf of a principal (other than an insured depository institution) shall be attributed to such principal.

"(v) Such other attribution to a depositor as the Board of Directors determines by regulation not to be unduly burdensome and costly to calculate; provided that the depositor has control over the deposit account and that such attribution would be consistent with the insurance purposes of this Act.

"(D) DEPOSITOR IDENTIFICATION.—

"(i) IDENTIFICATION NUMBER.—All deposits shall be registered under the taxpayer identification number or employer identification number of each depositor.

"(ii) CONSIDERATION OF ADDITIONAL INFORMATION.—For the purpose of aggregating and attributing deposits the Corporation may consider additional information contained in the records of the insured depository institution or made available by the depositor.

Page 455, line 20, strike "(D)" and insert "(E)".

Page 462, after line 8, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(2) AGGREGATON RULES.—Section 11(a)(1)(C) of the Federal Deposit Insurance Act (as amended by subsection (b)(1) of this section) shall take effect on January 1, 1995.

Page 463, line 3, strike "(B)" and insert "(E)".

The CHAIRMAN. Under the rule, the gentleman from Ohio [Mr. WYLIE] will be recognized for 15 minutes and a Member opposed will be recognized for 15 minutes.

Mr. HUBBARD. Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN. The gentleman from Kentucky [Mr. HUBBARD] will be recognized for 15 minutes in opposition.

The Chair recognizes the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is the amendment that would limit deposit insurance coverage to $100,000 on regular deposit accounts per person in each institution. It would also allow for a $100,000 IRA account.

Because of the hearings over the years and the exposure of the Federal Savings and Loan Insurance Corporation fund, I had thought that the limit ought to be $100,000 per individual in all accounts. The Secretary of the Treasury and the Chairman of the Federal Deposit Insurance Company thought that was too restrictive and suggested a provision, which was in their bill, and which permitted $100,000 per individual per institution. A person could have as many $100,000 accounts as they have money if they would spread it around among the institutions.

Then we included an IRA account for each person in as many institutions as he desires. The IRA was a very, very successful way of encouraging savings. This amendment in effect, would recognize a very, very popular savings program.

I have a letter here from a good friend of mine who was the chief executive officer of a very successful depository institution. I got it this morning. This is what it says:

DEAR CHALMERS: Just a short note to tell you I think you are on the right track in trying to get Federal Deposit Insurance coverage reduced. It was never meant to cover such sizable amounts. It was to protect the little guy. Reducing the coverage would also, of course, reduce the Federal Government's potential loss.

Sincerely,

TOM.

That is the thrust of my amendment right there, and it says it much better than I can. If we cannot do this as far as deposit insurance reform is concerned, we cannot do anything.

I have an ad here from a bank that says that if you want coverage "up to $1.4 million in your individual account, we can show you how to do it." It says that a husband, wife, and two children may insure accounts up to $1.4 million.

Now, this is a gross distortion of what deposit insurance was supposed to be all about. I have no quarrel with the bank in proposing this or making this advertisement. It is perfectly legal, and what they have suggested is perfectly legal.

Here is a pamphlet from the Wright-Patman Federal Credit Union, and it says the same thing, that a multiple account is an easy way for wealthy, sophisticated investors to get protection.

I have an article here from the local newspaper, the Washington Post, that says, "Bank customers shuffling accounts to ensure Federal protection."

The lady shown here is actress Lynda Carter, "Wonder Woman," and she is married to Mr. Altman, who was president of the First American Bank until recently. The article says that she is shifting her money around into several accounts. "Carter took the money last week, sources said, and split her money up into a number of smaller accounts, each one fully insured by the Federal Government in the event of a bank failure. The Federal Government will insure up to only $100,000 in each account."

So she spread it around in several accounts. As I say, I think it is perfectly all right, and she is smart to do it, but that is an abomination of the process. Ninety-seven percent of all Americans who have deposits in banks and savings and loans will not be affected by my restriction, according to the FDIC. I cannot point to a single bank or savings and loan that has failed because of this excessive coverage, but I can point to many savings and loans which have helped to cause the problem with the Federal Savings and Loan Insurance Corporation fund because they went broke and depositors were insured for almost any amount they put in the bank, both insured and uninsured.

Mr. Chairman, I want to make one more point very clear. My amendment, as now drafted, is tied to the elimination of the too-big-to-fail doctrine. The bill says that no depository institution would be too big to fail after January 1, 1995, and no account will be insured above $100,000 after January 1, 1995. So there is a 3-year transition period. That ought to be plenty of time for the banks to get their house in order so we can get ours in order.

Many small banks complain that the too-big-to-fail doctrine was causing disintermediation, that money was being taken out of the small banks and shifted into large banks because they were too big to fail. Well, there will be no more deposit insurance based on the too-big-to-fail concept and for uninsured deposits after January 1, 1995.

□ 1610

I have a chart here that shows the growth of FDIC-insured deposits as a percentage of total bank deposits. I want to show Members how that has grown since deposit insurance was put in effect back in 1934. Here it is way up here today. This chart alone seems to me to demonstrate the wisdom of my amendment, and I urge an aye vote.

Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Chairman, I would like to ask the distinguished gentleman from Ohio [Mr. WYLIE] to clarify for me a provision of his amendment as it deals with passthrough insurance on pension funds and deferred compensation plans.

When we completed our work in the Committee on Banking, Finance and Urban Affairs, we provided in section 511 on deposits and pass-through insurance that Federal deposit insurance on a pro rata or pass-through basis would continue to be available on employee benefit plans as described in section 11(a)(8)(B)(ii) of the FDI Act and for deferred compensation plans, including 457 plans as described in the Internal Revenue Code of 1986, as long as deposits in these plans are placed in institutions which have sufficiently high ratings.

Mr. WYLIE. Mr. Chairman, will the gentlewoman yield?

Ms. OAKAR. I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, that is correct. That would continue. My amendment does not impact on the 457 pass-through amendment which was adopted by the House Committee on Banking, Finance and Urban Affairs. I do not change that.

Mr. HUBBARD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I urge Members to strongly oppose this amendment, for three reasons. First of all, the amendment will not reduce losses experienced by the Federal deposit insurance fund. Second, the amendment will heighten public anxiety, that is for sure. Third, the amendment will destabilize financial institutions, worsen the credit crunch, and be detrimental to the American economy.

Last Thursday on this bill we voted for a certain amendment. The next day the headlines of the papers across the Nation stated "House votes to curb bank expansions."

Mr. Chairman, can you imagine the headlines across the Nation tomorrow if this amendment by the gentleman from Ohio [Mr. WYLIE] should pass? The headlines would be "House cuts bank deposit insurance." Imagine the credit crunch that will come about, even worse than we have now.

My friend, the gentleman from Ohio [Mr. WYLIE], mentioned the Washington Post. I was not planning to mention their editorial opposing the Wylie amendment, but let me read the first paragraph, the headline being "Don't cut deposit insurance."

The first paragraph of the Post editorial:

> While many things need to be changed in the American banking system, the basic system of deposit insurance is not one of them. As Congress goes to work on the banking bill this week it would be wise to leave deposit insurance alone. The purpose of this bill is to produce stronger and more stable banks. Cutting bank insurance for depositors would just do the opposite.

Mr. Chairman, this amendment lost in the Subcommittee on Financial Institutions. It was defeated four times as it came up in different wording in the full Committee on Banking, Finance and Urban Affairs. Here we go again. There is a simple reason why a significant majority of members on the House Committee on Banking, Finance and Urban Affairs have opposed changes in this area: Altering deposit insurance coverage is bad public policy.

The fact of the matter is, this amendment would be ineffective at best. That is why such diverse entities as the U.S. General Accounting Office, the American Association of Retired Persons, the U.S. Chamber of Commerce, over two dozen major business groups, and, yes, every bank in America, opposes the reduction of deposit insurance coverage.

Mr. Chairman, I urge Members vote no on the Wylie amendment.

Mr. WYLIE. Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would just like to ask the distinguished ranking member several questions. Is this more or less the position that the administration proposed in the original bill?

Mr. WYLIE. Mr. Chairman, will the gentleman yield?

Mr. LEACH. I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, this is the administration position proposed in the original bill. Exactly.

Mr. LEACH. Mr. Chairman, reclaiming my time, historically is it not the case that deposit insurance was designed to protect the small depositor? Not institutions, but the depositor?

Mr. WYLIE. Mr. Chairman, if the gentleman will yield further, that is correct. Originally it was for $2,500. Given the rate of inflation, we now have a fourfold increase in that amount.

Mr. LEACH. Mr. Chairman, the more deposits that get protected, the greater the taxpayer liability?

Mr. WYLIE. There is no question about that. That is the purpose of my amendment, to protect the taxpayers from more liability.

Mr. LEACH. Mr. Chairman, I appreciate that. I would like to make one comment. As every Member in the Chamber knows, small banks feel disadvantaged by this. It is an understandable circumstance. On the other hand, it is the large banks that hold the larger number of deposits, on which there is a multiplicity of $100,000 coverages. If there is no change, what it means is that the large banks have far larger coverage for which the small banks—through their payments into the deposit insurance system—will have to, in effect, be held accountable.

Mr. Chairman, I would ask the gentleman from Ohio [Mr. WYLIE], is that a valid observation?

Mr. WYLIE. Mr. Chairman, that is a valid observation.

Mr. LEACH. So in one sense, it is really to the advantage of a small bank to have prudential deposit insurance, if that bank does not have as high a number of large deposits as a larger bank?

Mr. WYLIE. Mr. Chairman, I would think so, yes.

Mr. Chairman, the gentleman from Iowa [Mr. LEACH] made some very discerning observations. The gentleman is a valuable member of the committee.

The administration strongly supports this limit on deposit insurance.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. BACCHUS].

Mr. BACCHUS. Mr. Chairman, I rise in opposition to this amendment. I support reducing the risks to taxpayers from the failures of tottering banks. I do not support limiting deposit insurance in an effort to limit those risks, not while the misguided doctrine of too big to fail continues to enthrall bank regulators.

Mr. Chairman, the answer is not to limit deposit insurance; the answer is to limit the insured activities of banks. That is why I support core banking.

Mr. Chairman, the gentleman from Ohio [Mr. WYLIE] says he wants to protect the little guy. Amending the bill before us to limit deposit insurance would not protect the little guy, and it would not limit taxpayer exposure. This amendment would increase taxpayer exposure by encouraging the shift of millions upon millions in deposits from safe community banks to shaky money center banks that are the most likely to fail and fail big.

Mr. Chairman, I urge Members to defeat the Wylie-Gonzalez amendment.

Mr. WYLIE. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Texas [Mr. GONZALEZ], the chairman of the Committee on Banking, Finance and Urban Affairs.

Mr. GONZALEZ. Mr. Chairman, as one of the cosponsors with the gentleman from Ohio [Mr. WYLIE], I rise in support of the amendment. I want to run over briefly the key points involved here, because I think there has been a lot of obfuscations.

Mr. Chairman, let me say that I rise with somewhat of a shameful feeling that we would come up with this meager reduction in the base of exposure of this unsurance fund. It should be more substantial, to be truly honest with Members, and with the American people above all.

Mr. Chairman, if we continue the way we are going, I will predict that you will not be able to keep the commitment that the Government stands behind of paying up to $100,000 in insurance protection. You will see the day, and I do not think we can keep going the way we are at this exponential rate, where they will not even be able to pay 30 cents on the dollar.

Mr. Chairman, let us bring some sense to this ridiculous situation in which we have gotten the Nation. No other country has such a ridiculous and corrupted system as we have. You have got $3 trillion of insured deposits in the commercial banking system alone, and you have got a broke fund. You have got a broke insurance fund.

Mr. Chairman, how can anyone say that you have the capacity to pay on that guarantee, with no effort made to reduce that exposure? Rather we are increasing it.

One thing for sure: Because this has been obfuscated by the very tremendous bank, the IBAA and those folks, the effective date of the amendment proposed coincides with the effective date of the formal elimination of the too-big-to-fall policy in order to prevent the depositors from shifting their funds from small local banks to large money center and super regional banks in order to receive too-big-to-fall protection for deposits of over $100,000.

Mr. Chairman, I believe that this goes a little way in restoring what is still the congressional intent, that the amount to be insured by the taxpayers is up to $100,000. We have had studies that the committee staff have made just as of last year in the closeouts that have been resolved. The regulators were paying out 99 percent of all depositors.

The gentleman from Ohio [Mr. WYLIE] said just the other day in debate that the average depositor in the United States does not have over $8,750 in his account. So let us bring some common sense back.

The CHAIRMAN. The Chair will advise that the gentleman from Ohio [Mr. WYLIE] has 3½ minutes remaining, and the gentleman from Kentucky [Mr. HUBBARD] has 11½ minutes remaining.

□ 1620

Mr. HUBBARD. Mr. Chairman, I yield a minute and a half to the gentleman from California [Mr. RIGGS].

Mr. RIGGS. Mr. Chairman, I reluctantly rise in opposition to this amendment by the distinguished chairman of the Committee on Banking, Finance and Urban Affairs and my ranking member, the gentleman from Ohio [Mr. WYLIE].

We have taken steps, my colleagues on the Committee on Banking, Finance and Urban Affairs, to limit the true exposure to the bank insurance fund by limiting insurance on past-due accounts and brokered deposits. We are phasing out the direct risk to the bank insurance fund from the too-big-to-fail doctrine by 1996. So against that backdrop, limiting the number of insured accounts is a backward step, a further more in the wrong direction by this House, which may well have some undesired and unintended effects.

First of all, it will inconvenience and perhaps unduly penalize thousands of Americans, many of them elderly who saved diligently and invested wisely through a lifetime of sacrifice and discipline, because these Americans will be forced to seek out new banking relationships outside their home communities.

Second, it will cause a deposit flight from smaller banks, those which serve rural communities, to larger banks, those still perceived as too big to fail. And in the process undermine the strength and vitality of the small independent community-oriented banks, the very backbone of the American banking industry.

Mr. Chairman, we are headed toward a narrow BIF recap bill at this time and every Member of this body knows. We have done away with the concept of linkage, higher premiums and strengthening regulation in exchange for expanded powers and increased profitability. Deposit insurance reforms hurt small banks, hurt rural communities, will contribute to the credit crunch.

I urge my colleagues to defeat the amendment.

Mr. Speaker, I rise today to reluctantly oppose my friend from Ohio and distinguished ranking Republican on the Banking Committee, Mr. WYLIE. We've taken steps and adopted concrete measures in the Banking Committee to limit deposit insurance on pass-through accounts as well as brokered deposits. We're phasing out the too-big-to-fail doctrine by 1996. Against that backdrop, limiting the number of insured accounts is a step backwards, a further move in the wrong direction by this House, which may well have some undesired and unintended effects:

First, it may inconvenience and unduly penalize thousands of Americans, many of them elderly, who have saved diligently and invested wisely through a lifetime of sacrifice and discipline who will be forced to seek out new banking relationships, outside their home communities.

Second, it may cause a deposit flight from smaller banks serving rural communities to larger banks, those still perceived as too big to fail, undermining the strength and vitality of small, independent, community-oriented banks, the very backbone of the American banking industry. As the Banking Committee considered limitations to deposit insurance, we observed a miniature run on deposits from small depository institutions to large ones perceived by the general public to be too big to fail. This exodus has in many cases been largely comprised of small accounts of less than $100,000 which were taken from extremely healthy, well capitalized and well run rural banks. I believe we can safely conclude that the public views Congress' actions to limit the bank insurance fund's risk exposure as reneging on the full faith and guarantee of the U.S. Government. Naturally, the people were concerned with the safety of their savings, and moved their money into big safe havens.

Third, Mr. Chairman, we've headed now toward a narrow BIF recapitalization bill and every Member of this body knows it. We've broken the concept of linkage—higher premiums and strengthened regulation in exchange for expanded powers and increased profitability. Deposit insurance reforms hurt small banks and rural communities. At a time when lack of credit availability is stifling our economic growth and helping to drive the United States back into economic recession, we should hesitate to deprive the small rural banks, the engine of our economy, of fuel. Deposit insurance reforms coupled with a narrow bill may make marginally solvent banks insolvent and will make healthy banks significantly weaker. I urge defeat of the amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I reluctantly rise to stand in opposition to this amendment, yet through the experiences that we have seen in many of the smaller banks in this country, it becomes painfully clear to me who suffers the most when we place these kinds of limits on deposits. In reality, some of us who have just come, who are fresh from the recent Freedom Bank takeover, understand that there were many nonprofit institutions who kept their money in Freedom Bank.

They suffered simply because they were not too big to fail. They failed because the insurance decided that these banks could be closed up.

I cannot believe today, as I said on this floor, that we in fact have done anything to solve the too-big-to-fail policy. I tend to think that ultimately even if we pass this piece of legislation, we will discover that those who are responsible for making the decisions will decide that the larger banks are too big to fail.

Let us do the fairest thing. Let us do the right thing. Let us vote against this amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois [Mr. Cox].

Mr. COX of Illinois. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise today in opposition to the Wylie-Gonzalez amendment to tighten the limits on deposit insurance. There is no question that the sponsors of the amendment sincerely believe that this amendment will limit the exposure of the deposit insurance fund.

The fact of the matter is, there will be no limit whatsoever to the exposure of the fund. The real consequence will be movement of money from small financial institutions in the United States to large institutions where individuals believe that the institution will be protected by the too-big-to-fail policy.

The authors have tied this amendment to the date of the so-called elimination of the too-big-to-fail policy within the legislation. Please do not be fooled. To believe that the too-big-to-fail policy can be eliminated by this legislation, it cannot. Too big to fail will prevail whether or not it is included under the deposit insurance fund. We will simply turn to the Treasury to bail out financial institutions that risk the financial stability of the United States.

The concentration of capital that will be encouraged by the passage of this amendment will lead to far fewer financial institutions in the United States and the risk of allowing any one of those institutions to fail will be immense.

The responsible approach is to simply leave deposit insurance alone. If we can find a way to minimize exposure by eliminating too big to fail, let us do so. We simply cannot do it in this legislation, and another approach to reform ought to be taken rather than risking the money of the taxpayers. Oppose the amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. Luken].

Mr. LUKEN. Mr. Chairman, the motive behind this amendment is the best. It is terrific. It is to reduce the exposure to the American taxpayer. If we believe it is going to do that, then vote for it.

The fact is, it is not going to do that. We are going to have a lot of money shifting back and forth. And in the end, what is going to happen if this amendment is adopted is the little guy and the medium-sized guy are going to be hurt. That is going to be the effect.

If we are looking for deposit insurance reform, we are not going to find it in this amendment. The fact is that in 1995, if anybody believes, whether now or in 1995, if one of these large institutions goes under that the Federal Government is not going to pick up the tab, then vote for it. But that is simply not going to happen.

I think the history of bailouts in this country demonstrates that clearly. Oppose the amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Maryland [Mr. McMillen].

Mr. McMILLEN of Maryland. Mr. Chairman, I rise in opposition to the amendment. Yes, reform is desperately needed in the deposit insurance system, but this is not the answer. Reducing the insurance is not the answer.

The problem is in the price of the insurance. If we reduce the insurance, constituents will take their money out of the small and medium-sized banks and put it into the big centered banks. This is not real reform. This is the Trojan horse in the name of reform.

The fact is, unless we deal with the price of insurance, the fact is that there is a major taxpayer subsidy to the bigger banks in this country. We will not be dealing with the crux of the issue.

I urge my colleagues to oppose this amendment.

If we want real reform, let us do something about the price of the insurance.

Mr. WYLIE. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. McCandless].

Mr. McCANDLESS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, Federal deposit insurance is important because of the protection it provides.

It is so important that, if the system becomes insolvent, depositors will be protected by the full faith and credit of the United States. That means the taxpayers.

Prior to 1933, when a bank became insolvent, they simply turned out the lights and locked the front door. Depositors lost everything.

Federal deposit insurance was created to protect depositors and to coax them back to banks.

It was never intended to be investment insurance.

Today, the system has been expanded to the point where a family of four can qualify for $1.4 million in deposit insurance coverage. That is far in excess of what was originally intended.

To no one's surprise, the banks and S&L's have joined with strong opposition to limits on deposit insurance.

Let's face it. The strongest commercial advantage that financial institutions have over other forms of investment is Federal deposit insurance and the full faith and credit protection provided by the taxpayers.

Banks and S&L's pay premiums for deposit insurance, but they pay nothing for full-faith-and-credit coverage.

They recognize a good deal when they see it, and consequently, don't want it changed.

Back in 1986, 1987, and 1988, we all heard the arguments of the S&L industry against reforms that would have greatly reduced the costs of the bailout.

Frankly, we are hearing many of the very same arguments today.

Unless we want to repeat history, we must learn from it.

The current expanded insurance coverage helps only a very small percentage of depositors, but it poses serious risks to the deposit insurance funds and, ultimately, to the taxpayers.

We need to reform the system, and to protect the taxpayers.

Limiting deposit insurance to $100,000 per person per depository institution, plus another $100,000 coverage for retirement accounts, is a reasonable and modest reform.

Therefore, I urge support for the Wylie amendment.

□ 1630

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to my distinguished colleague, the gentleman from Idaho [Mr. LaRocco].

Mr. LaROCCO. Mr. Chairman, what goes too far is this amendment. We should take into consideration what the statistics are here on the accounts that are actually affected by this amendment. It is fewer than 1 percent of the accounts in U.S. banks that are affected by this amendment. Those are the accounts that are at risk here. At the same time it sends the wrong message. This amendment sends the wrong message to the American people. To make changes in the deposit insurance at this time when banks are shaky is the wrong message. It would have a negative impact. If there is any time we ought to have the status quo, it is now when the banks are shaky.

I do not think people in Idaho should pick up the Idaho Daily Statesman and see that Congress has rolled back bank insurance on their deposits. That is the wrong message. This amendment had thumbs down in the subcommittee, and in the full Committee on Banking, Finance and Urban Affairs it had thumbs down. It has been voted down. I say vote against this amendment.

Mr. HUBBARD. Mr. Chairman, I yield 30 seconds to our distinguished chairman of the Committee on Banking, Finance and Urban Affairs, the gentleman from Texas [Mr. Gonzalez], for the purpose of a colloquy with the gentleman from California [Mr. Matsui].

Mr. MATSUI. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

Mr. MATSUI. Mr. Chairman, I thank the gentleman for yielding to me.

I would like to engage the distinguished chairman of the Banking Committee in a brief colloquy.

By way of clarification, it is my understanding that it is the intent of this provision of H.R. 6 that whether a trustee holds funds, as in IRA or 401(k) plans or whether the State or local government holds funds as required under section 457, that beneficiaries of IRA and 401(k) plans would all receive Federal deposit insurance. Is that a correct statement?

Mr. GONZALEZ. Yes, that is correct.

Mr. MATSUI. I thank the gentleman for his clarification.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to my distinguished colleague, the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Chairman, I certainly agree with the objective of this amendment. People with multiple accounts can move their money around and, for themselves, obtain deposit insurance. But that is also the weakness of the amendment. In order to secure deposit insurance, depositors will most certainly move those funds. It is the depository institutions, however, we must be concerned about, and I think that point has been well made, especially those small communities which depend upon small community banks.

Holders of multiple deposits will move their funds out of those small community banks to the big city, money center banks. That is a risk I think we cannot afford to take. Too many communities depend on those banks. Too many communities depend upon that kind of deposit.

I think we need reform. I think we need to reduce our exposure as a government, but this is not the way to do it. I urge Members to defeat this amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1 minute to my distinguished colleague, the gentleman from Alabama [Mr. ERDREICH].

Mr. ERDREICH. Mr. Chairman, I thank the gentleman for yielding time to me. I rise in opposition to the amendment. Mr. Chairman, I think we are losing sight in this debate of the things already in the bill that reform deposit insurance. We put new requirements for passthrough insurance, we banned coverage for accounts in offshore branches, we mandated risk-based premiums, which is very important to reduce the risk to the fund. This amendment I do not believe is really reform, Mr. Chairman. Individuals then just shift accounts from one bank to a multiple number of banks.

I urge defeat of this amendment.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Chairman, I thank the gentleman from Ohio for yielding time to me.

Mr. Chairman, there is a lot of misinformation going on around here. Some of the proponents indicate they do not want us to touch the deposit limits, that they do not want us to roll anything back. The amendment does none of those things. Basically, what it does is spread the risk so the millionaire has to go to five different institutions instead of having his $1 million insured at one institution, which was never the case, never the premise for deposit insurance.

As the gentleman from Ohio indicated, it was to protect that small saver, and now a family of four can have up to $1.4 million in one institution totally insured by the taxpayer. That is wrong.

The situation, my friends, is in excess of $3 trillion in all the banks that is insured, with zero in the deposit insurance system. Seventy-nine percent of all the households in this country have less than $25,000 on deposit. Only 6 percent have in excess of $100,000 on deposit. Who, my friends, are we protecting here? Clearly not the taxpayer. It is the wealthy and the banks. Mr. Chairman, I ask that the Members support the Wylie-Gonzalez amendment.

Mr. HUBBARD. Mr. Chairman, I yield 1½ minutes to our distinguished colleague, the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL of California. Mr. Chairman, a good reform must be good in substance and it must be offered at a good time. I am very concerned about the time. Right now consumer confidence in the U.S. economy is at a very serious low. Right now depositors are not sure whether it is safe to keep money in accounts or not. I wish the economy were vibrant and upward trending. I cannot tell the Members that it is.

The proposal we have before us today would cause depositors to wonder, because the Federal Government would be messing with deposit insurance. It would not be that everyone would understand the sophisticated nuances. They would understand that the Federal Government was lessening the coverage deposit insurance used to provide.

I cannot accept that. Whatever the inherent logic of the proposal might be, this is not the time to do that. We run the risk of stampeding depositors and so collapsing a precarious situation.

One last point. If we did wish reform, the danger of this reform is that it is only symbolic. It does not demonstrably lower coverage. It only lowers coverage for those who are wealthy enough to have more than one $100,000 account, and who are not smart enough to place them in different banks.

To protect everyone else and uncover those, to send a signal of uncertainty at this time, are steps I cannot take.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. VALENTINE].

Mr. VALENTINE. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, most Members realize that it was a mistake to have ever increased the FDIC insurance fund to limit to $100,000 per account. It was a mistake to have created a situation whereby the use of only limited imagination a family of four could create accounts in a single bank having a total value of up to $1.4 million with American taxpayers insuring every dime.

Mr. Chairman, I know that such a result was not intended and you know it. We have to muster the courage to change this and we have to do it now.

The banking industry says that limiting FDIC insurance to covering only one account, per person, per institution will result in a shuffling of deposits and accounts. Maybe so.

The banking industry says that the public will panic and their funds will flow out of banks. We hope that this will not occur, but these risks must be run.

This bill will not have addressed the greatest problem if we in this Congress do not do something to limit taxpayers liability to the banking industry.

Some say not now. I ask, if not now—when. Tomorrow? Tomorrow, the task will certainly be far more difficult.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Chairman, I rise in support of the amendment.

H.R. 6

Over 50 years ago when the FDIC was created, depositors were entitled to $2,500 of deposit insurance. President Franklin Delano Roosevelt opposed even this modest level of coverage, apparently because he feared that the extent of coverage would grow well beyond that level.

He was right. Today, a family of four can amass $1.4 million of deposit insurance coverage at a single institution. Deposits at money center banks and at large regional banks are fully insured—you all intents and purposes—because those institutions are deemed too big to fail.

As a result, there is little evidence of market discipline. Depositors need not concern themselves greatly with the safety and soundness of the institution in which they deposit their funds. A perverse incentive exists for depositors to place their funds in multiple accounts in the riskiest, most likely to fail institutions where those deposits will earn the greatest return. If the institution fails, the FDIC, and ultimately the taxpayers, guarantees that depositors will be made whole whether they have $1 or $1 million on deposit.

The amendment before us today is, I believe, the same amendment I offered at full Banking Committee markup. It attempts to ensure that on January 1, 1995, two things happen to inject a measure of market discipline. First, no bank will be deemed too big to fail. And, second, families of four will not be able to garner $1.4 million of deposit insurance in a single institution. This amendment should be adopted.

Mr. WYLIE. Mr. Chairman, I yield my remaining 30 seconds to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, I rise in strong support of the Wylie-Gonzalez amendment.

As we listen to the debate one must wonder if Congress learned anything from the savings and loan bailout. America's taxpayers are holding the bag for hundreds of billions of dollars because of our Federal insurance.

☐ 1640

The modest amendment being offered by the gentleman from Ohio and the gentleman from Texas says that we are going to say to the richest Americans, "I am sorry, we have to draw the line: $200,000 is all we will protect."

For 99 percent of American savers and families, this amendment will not touch them. If there is going to be any panic over headlines concerning our action today, it will only be in Donald Trump's household.

Mr. WYLIE. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Mr. Chairman, I rise in strong support of the Wylie-Gonzales amendment in the name of the consumer. By consumer I mean small depositor.

It was the small depositor who was intended to be protected, not those who can deposit hundreds and hundreds of thousands of dollars.

All I want to see is recognition of the original intent of deposit insurance. This amendment will probably fail, but it's the one way for us to demonstrate the need for deposit insurance reform.

Under the Wylie amendment, coverage would be limited to $100,000 per person per bank, with an additional $100,000 in coverage for retirement accounts. Over 94 percent of all deposits would be protected under this proposal.

Mr. Chairman, the Wylie amendment is an important element in our efforts to reform the deposit insurance system. At a time when the taxpayers are being asked to pay over $325 billion to clean up the savings and loans mess, and to lend $75 billion to the bank insurance fund, they should not be held liable, through deposit insurance, for the 6 percent of wealthier depositors whose accounts exceed $100,000.

The Wylie amendment will restore some market discipline to the banking industry by denying troubled banks easy access to guaranteed funds. Instead, these institutions will need to improve their management and increase their capital base to attract deposits.

The expansion of deposit insurance to cover virtually all deposits has contributed to the enormous liability that the taxpayers must assume when financial institutions fail. If my colleagues are serious about reducing that liability, then support for the Wylie amendment is a step in the right direction.

Mr. HUBBARD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, two speakers just in the last few minutes have said that this amendment is needed to protect us from the big, wealthy banks, the big banks in this country, the rich people, as the gentleman from Illinois [Mr. DURBIN] said, and one more time: the headlines last Friday across the Nation, "House Votes To Curb Bank Expansions."

If this amendment passes this afternoon, the headlines tomorrow will be, "House Cuts Bank Deposit Insurance."

Consumers and depositors all across this Nation would want us, as Congressmen today, to vote no on this amendment. Among those supporting our side in opposition to this are the American Association of Retired Persons, the American Federation of Independent Business, the National Farmers' Union, the National Farmers' Organization.

There are three reasons why banks fail, and that is certainly not because of multiple deposit insurance accounts: bad loans, bad investments, loans to Third World countries, corporate takeovers. No one has ever suggested that any bank in the Nation has ever failed because of multiple deposit insurance.

I urge my colleagues to vote "no".

The CHAIRMAN. All time has expired.

The question is on the amendments en bloc offered by the gentleman from Ohio [Mr. WYLIE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WYLIE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 153, noes 264, answered "present" 2, not voting 14, as follows:

[Roll No. 372]

AYES—153

Abercrombie
Armey
Atkins
AuCoin
Ballenger
Beilenson
Bennett
Bentley
Bliley
Bonior
Boxer
Cardin
Carper
Clay
Clinger
Coleman (TX)
Collins (IL)
Conyers
Cox (CA)
Coyne
Crane
DeFazio
DeLay
Dellums
Derrick
Dickinson
Donnelly
Downey
Dreier
Durbin
Dymally
Early
Edwards (CA)
Engel
Evans
Fascell
Fawell
Foglietta
Ford (MI)
Frank (MA)
Franks (CT)
Gallo
Gejdenson
Gekas
Gephardt
Gingrich
Gonzalez
Goodling
Gradison
Guarini
Hayes (IL)
Hefley
Herger
Hochbrueckner
Houghton
Hoyer
Hughes
Hunter
Jenkins
Johnson (CT)
Johnson (TX)
Kanjorski
Kaptur
Kasich
Kildee
Kleczka
Kolbe
Leach
Lehman (CA)
Lehman (FL)
Lent
Lipinski
Livingston
Lowery (CA)
Markey
Martin
Matsui
Mavroules
McCandless
McCloskey
McCollum
McDermott
McGrath
McNulty
Meyers
Mfume
Miller (OH)
Miller (WA)
Mineta
Mink
Moakley
Molinari
Morella
Murphy
Nowak
Olin
Olver
Owens (NY)
Oxley
Packard
Payne (NJ)
Payne (VA)
Pease
Penny
Petri
Price
Rangel
Reed
Rhodes
Ritter
Rohrabacher
Roybal
Russo
Sabo
Santorum
Savage
Scheuer
Schroeder
Schulze
Schumer
Sensenbrenner
Shays
Shuster
Sikorski
Skaggs
Slattery
Smith (FL)
Solomon
Staggers
Stark
Stearns
Stokes
Studds
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Walsh
Washington
Waters
Waxman
Weiss
Weldon
Wolf
Wolpe
Wylie
Yates
Zimmer

NOES—264

Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
Bacchus
Baker
Barnard
Barrett
Barton
Bateman
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Boehlert
Boehner
Borski
Boucher
Brewster
Broomfield
Browder
Brown
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Carr
Chandler
Clement
Coble
Coleman (MO)
Collins (MI)
Combest
Condit
Costello
Coughlin
Cox (IL)
Cramer
Cunningham
Darden
Davis
de la Garza
DeLauro
Dicks
Dingell
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Duncan
Eckart
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Espy
Ewing
Fazio
Feighan
Fields
Fish
Flake
Frost
Gallegly
Gaydos
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Glickman
Gordon
Goss
Grandy
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefner
Henry
Hertel
Hoagland
Hobson
Holloway
Horn
Horton
Hubbard
Huckaby
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jefferson
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kennedy
Kennelly
Klug
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
LaRocco
Laughlin
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lloyd
Long
Lowey (NY)
Luken
Machtley
Manton
Marlenee
Martinez
Mazzoli
McCrery
McCurdy
McDade
McHugh
McMillan (NC)
McMillen (MD)
Miller (CA)
Mollohan
Montgomery
Moody
Moorhead
Moran
Morrison
Murtha
Myers
Nagle
Natcher
Neal (MA)
Neal (NC)
Nichols
Nussle
Oakar
Oberstar
Obey
Ortiz
Orton
Owens (UT)
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Pelosi
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Porter
Poshard
Pursell
Quillen
Rahall
Ramstad
Ravenel
Ray
Regula
Richardson
Ridge
Riggs
Rinaldo
Roberts
Roe
Roemer
Rogers
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Sanders
Sangmeister
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Serrano
Sharp
Shaw
Sisisky
Skeen
Skelton
Slaughter (NY)
Smith (IA)
Smith (NJ)
Smith (OR)

Smith (TX)
Snowe
Solarz
Spence
Spratt
Stallings
Stenholm
Stump
Sundquist
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Upton
Vander Jagt
Volkmer
Vucanovich
Walker
Weber
Wheat
Whitten
Williams
Wilson
Wise
Wyden
Yatron
Young (AK)
Young (FL)
Zeliff

ANSWERED "PRESENT"—2

Brooks
Cooper

NOT VOTING—14

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Ford (TN)
Green
Hopkins
McEwen
Michel
Mrazek
Slaughter (VA)
Thomas (CA)

□ 1701

Messrs. WHEAT, INHOFE, and McDADE changed their vote from "aye" to "no."

Mrs. BOXER, Mrs. UNSOELD, Mr. EVANS, Ms. KAPTUR, Mrs. COLLINS of Illinois, and Mr. HAYES of Illinois changed their vote from "no" to "aye."

So the amendments en bloc were rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 14 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. DORGAN OF NORTH DAKOTA

Mr. DORGAN of North Dakota. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. DORGAN of North Dakota: Page 452, after line 9, insert the following new section (and conform the table of contents accordingly):

SEC. 508. PROHIBITION AGAINST HIGHLY LEVERAGED FINANCING.

The Federal Deposit Insurance Act is amended by inserting after section 41 (as added by section 512 of this Act) the following:

SEC. 42. PROHIBITION AGAINST HIGHLY LEVERAGED FINANCING.

"(a) PROHIBITION.—No insured depository institution and no affiliate of any insured depository institution may make any loan, extend any credit, or make any investment in connection with any highly leveraged financing transaction.

"(b) HIGHLY LEVERAGED FINANCING TRANSACTION DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'highly leveraged financing transaction' means any transaction—

"(A) which involves the buyout, acquisition, or recapitalization of any business; and

"(B) which

"(i) results in the business having a liabilities to assets ratio exceeding 0.75;

"(ii) increases the liabilities of the business by at least 100 percent, and results in the business having a liabilities to assets ratio exceeding 0.50; or

"(iii) has been designated by an appropriate Federal banking agency as a highly leveraged financing transaction.

"(2) DE MINIMUS EXCEPTION.—For purposes of this section, the term 'highly leveraged financing transaction' does not include any transaction involving loans and investments not exceeding $20,000,000 in the aggregate.".

The CHAIRMAN. Under the rule, the gentleman from North Dakota [Mr. DORGAN] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

The Chair recognizes the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, 2 years ago a fellow came to my office who was trying to buy one of the bigger corporations in America in an LBO. He said to me this is not going to involve junk bonds. He was actually going to buy this company, load it with several billion dollars in debt, but he said it is not going to involve junk bonds. That made it all right, I guess.

I said I know, I understand it is not going to be junk bonds, it is syndicated fee-driven junk debt. It had gotten syndicated bank debt called highly leveraged transactions, and he bought the company, loaded it with debt. The banks were left with the HLT's. And, incidentally, now that debt is selling at about 80 cents on the dollar.

The point of the amendment I offer today with my colleagues, the gentleman from Wisconsin [Mr. OBEY] and the gentleman from Minnesota [Mr. PENNY], is an amendment that says that we do not believe highly leveraged transactions for the purpose of hostile takeovers and leveraged buyouts and that kind of activity ought to be done by the banks in this country with insured deposits.

We believe banks and their insured deposits and their affiliates ought not be involved in that kind of risk lending.

Why should we be recapitalizing, pouring public money in the front end but do nothing on the back end to stop that kind of speculation?

We went through a decade, the decade of the 1980's, that was a decade, unfortunately, of greed and excess and leverage and debt. And that was partly aided by the big banks.

Some $100 billion of HLT's exist in the portfolios of the big banks in this country. The 25 largest banks have $65 billion of these HLT's. And interestingly enough, several of them have highly leveraged transactions that exceed all of their capital.

My amendment asks this House whether we ought to continue to guarantee the deposits, the insured deposits of these institutions, while they make these kinds of risky loans called HLT's for the purpose of hostile takeovers and acquisitions?

The answer ought to be "no."

The core-bank proposal went down. This is the last stop on the station. If you want to decide that, as we recapitalize, we ought to stop this kind of nonsense vote for this amendment. A thousand banks have failed, hundreds more are on the brink of failure and a couple of thousand have had their capital eroded because of this kind of activity.

A recent report in the last week said this about banks:

> They are in trouble because of a series of ill-fated decisions in the last decade to lend money to Third World countries, to corporate takeover artists and to real estate developers who ended up not being able to pay.

This amendment takes one of those provisions, that is, the HLT lending, the highly risky lending, of insured deposits for hostile takeover artists and says, "We want it to stop." If that goes on, it ought to go on with other money that is not going to be ultimately insured by the Federal Government.

Mr. Chairman, I yield such time as he may consume to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. I thank the gentleman for yielding.

Mr. Chairman, this amendment simply says the taxpayer-insured funds ought to be financing investments that will help the economy grow, not those that will create mountains of corporate debt so that big business can buy up and chew up and spit out small firms and the jobs that go with them.

Banks ought to be banks; they ought not to be casinos.

This amendment has a small-business exemption which is important.

I hope that the House will support the amendment. I congratulate the gentleman for offering it.

Mr. DORGAN of North Dakota. I thank the gentleman from Wisconsin [Mr. OBEY].

Mr. Chairman, I might say this amendment has a $20 million exemption, a de minimis exemption.

So with respect to those small- and medium-size firms, they are not involved in this. We are not catching them in the net.

We are talking about the $500 million, the $200 million, the $1 billion debt instruments that I think are far too risky for us to continue to allow insured deposits to have to back them.

Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. PENNY], a coauthor of this amendment.

Mr. PENNY. I thank the gentleman for yielding.

Mr. Chairman, because of my strong interest in this issue, I asked the General Accounting Office to undertake a study of hostile takeovers and leveraged buyouts. I was joined in that request by 51 other Members of Congress.

Let me read to you from page 2 of the executive summary on that study, in which it indicates:

> In the LBOs we studied, the purchasers bought out the target companies equity holders with money from loans and bond issues. In Phillips' recapitalization, the company exchanged debt securities for nearly half of its outstanding common stock in

order to avoid an LBO. For all the cases we studied, the equity holders, through selling or exchanging the common stock, earned premiums ranging from about 36 percent to about 119 percent. The surviving companies' capital structures shifted so that debt became the primary source of funding, and debt reduction became one of the companies' highest priorities. The companies employed such strategies as asset sales, cost savings programs, employee layoffs, and spending restrictions to help pay off debt. Phillips and Safeway are currently operating profitably, but the remaining companies have declared bankruptcy and are now operating under bankruptcy court protection.

Mr. Chairman, these are not the kinds of investments we ought to make with federally insured deposits. For that reason I urge support of the Dorgan amendment.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] is recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I urge a "no" vote on this amendment. I believe it is premature at best. We have had no hearings on it in the Committee on Banking, Finance and Urban Affairs. Currently the banking regulators, acting jointly, have issued circulars, and we are in the middle of a comment period on this particular issue. I believe, as I said, it is premature.

This amendment would prohibit affiliates of depository institutions from engaging in highly leveraged transactions.

□ 1710

Mr. Chairman, the amendment, as defined, would prohibit any bank merger. The amendment prohibits any depository institution from engaging in a transaction that results in a business having a liability-to-asset ratio exceeding 75 percent. As no bank in this country has capital in excess of 25 percent, no bank could ever merge under this amendment. I do not think that is what the author intended, but that would be the effect of the amendment. If an affiliate of a bank, which is separately capitalized and subject to numerous fire walls, is also prohibited from providing financing for such activities, then I think the amendment goes too far again.

As I have said, we have held no hearings on it. We really do not know the seriousness of the impact it might have, and I would urge a no vote until we could have an opportunity to see what the regulators come up with and what their comment period results in.

Mr. BARNARD. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Georgia.

Mr. BARNARD. Mr. Chairman and Members, the hour is getting late. We are all tired. We are trying to consider things on which at this point in time, as the gentleman from Ohio [Mr. WYLIE] said, there have been no hearings. We do not know what the impact of this amendment is.

The gentleman from Ohio [Mr. WYLIE] has already explained one impact, as far as banks being able to merge under this amendment. We cannot stereotype this type of lending, believe me. We cannot say that all leveraged buyouts are bad and wrong.

Today the cable television industry, one of the most profitable industries in America today because it is growing, is operating on less leverage than it should have probably. Under this amendment they would have to nearly go out of business. Cable television companies would not be able to grow and expand.

So, I would say this is a much more serious amendment than it would appear to be, and then, too, let me talk about the regulators.

The regulators today have the power to regulate this type of transaction, and they are doing it all over the country. We get complaints from New England and other places, "Well, there's a credit crunch. The regulators are too hard on us." The regulators today are very sensitive to just this type of transaction, and they are regulating it.

Mr. Chairman and Members, this is no time to micromanage the banking business, or else we are going to be spending all our time and energies in the House trying to tell banks what to do and what not to do. We have legitimate and eligible regulators to do this job. If they cannot do it, then let us come back and do it, but I must say this is a flawed amendment, and it deserves to be defeated.

Mr. WYLIE. Mr. Chairman, I think this outright prohibition on the depository institution and all of its affiliates is unnecessary, and I urge a no vote.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Dakota [Mr. DORGAN].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 15 printed in House Report 102–281.

AMENDMENT OFFERED BY MR. NEAL OF MASSACHUSETTS

Mr. NEAL of Massachusetts. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. NEAL of Massachusetts: Page 49, after line 9, insert the following new section (and conform the table of contents accordingly):

SEC. 123. REPORTS OF FINANCIAL CONDITION BY LARGE INSTITUTIONS ENGAGED IN INTERSTATE BANKING.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following new paragraph:

"(10) CONDITION REPORTS BY LARGE INSURED INSTITUTIONS ENGAGED IN INTERSTATE BANKING.—

"(A) COVERED INSTITUTIONS.—For purposes of this paragraph—

"(i) INTERSTATE BRANCHING INSTITUTION.—The term 'covered interstate branching institution' means an insured depository institution that has total assets of $1,000,000,000 or more, as of its most recent fiscal year, and maintains branches in more than one State.

"(ii) INTERSTATE SUBSIDIARY INSTITUTION.—The term 'covered interstate subsidiary institution' means an insured depository institution that has total assets of $500,000,000 or more, as of its most recent full fiscal year, and it is a subsidiary of a holding company that controls insured institution subsidiaries in more than one State and has consolidated assets of $1,000,000,000 or more, as of the holding company's most recent full fiscal year.

"(iii) DUAL COVERAGE.—An insured depository institution that satisfies the criteria of both clauses (i) and (ii) of this subparagraph shall be deemed to be a covered interstate branching institution.

"(B) INTERSTATE BRANCHES: QUARTERLY LOAN DATA.—A covered interstate branching institution shall include in each quarterly report of financial condition required by this subsection the following loan categories, listed separately for each State within which it maintains one or more branches—

"(i) LOAN DATA ITEMS.—(I) The aggregate dollar amount of the institution's outstanding in-State loans in regard to such State, (II) the interest and fee income earned on such loans, (III) the dollar amount of such loans with nonaccrual status, and (IV) the net charge-offs for such loans.

"(ii) LOAN CATEGORIES.—(I) Construction loans, (II) commercial mortgage loans, (III) residential mortgage loans, (IV) farmland mortgage loans, (V) agricultural production loans, and (VII) consumer loans.

"(C) DEFINITION OF IN-STATE LOANS.—For purposes of subparagraph (B) the term 'in-State loan' means a loan that is made to a business entity that is engaged in business in the State, an agricultural loan to an entity in the State, a loan that is secured with property located in the State, and a loan made to an individual who is a resident of the State.

"(D) INTERSTATE BRANCHES: QUARTERLY DEPOSIT DATA.—A covered interstate branching institution shall also include in each quarterly report of financial condition required by this subsection the following deposit data items for each of the following deposit categories, listed separately for each State within which it maintains one or more branches—

"(i) DEPOSIT DATA ITEMS.—(I) The aggregate dollar amount of deposit balances at the institution's branch offices located within each State, and (II) the interest paid on such deposit balances.

"(ii) DEPOSIT CATEGORIES.—(I) Demand deposits (deposit balance data only), (II) interest-bearing transaction accounts, (III) savings deposits, (IV) time deposits under $100,000, (V) time deposits of $100,00 or more, and (VI) State and local government deposits (deposit balance data only).

"(E) INTERSTATE BRANCHES: OTHER QUARTERLY DATA.—A covered interstate branching institution shall include in its report of financial condition required by this subsection the following financial data, listed separately for each State within which it maintains one or more branches—

"(i) the aggregate dollar amount the institution's real estate owned in each State not including property owned by the institution for banking operations; and

"(ii) the institution's income from service charges on deposit accounts at the institution's branch institution.

"(F) INTERSTATE BRANCHES AND INTERSTATE SUBSIDIARIES: ANNUAL LOAN DATA.—A covered interstate subsidiary institution shall include in its report of financial condition required by this subsection for the fourth quarter of each calendar year the following information for its home State and a covered interstate branching institution shall include in its report of financial condition required by this subsection for the fourth quarter of each calendar year the following information listed separately for each State within which it maintains one or more branches—

"(i) SMALL BUSINESS LOANS.—The institution's total number and aggregate dollar amount of commercial loans and commercial mortgage loans outstanding to small businesses whose principal place of business is located within such State; itemized separately for—

"(I) commercial loans; and

"(II) commercial mortgage loans; and further itemized separately for—

"(I) small businesses with annual sales of $250,000 or less, and

"(II) small businesses with annual sales of more than $250,000.

"(ii) SMALL FARM LOANS.—The institution's total number and aggregate dollar amount of agricultural production loans and farmland mortgage loans outstanding to small farms whose principal place of business is located with such State; itemized separately for

"(I) agricultural production loans; and

"(II) farmland mortgage loans.

"(G) SMALL BUSINESS LOANS BY METROPOLITAN AREA.—The small business loans required by subparagraph (F)(i) shall be further itemized (according to the principal place of business of the small business borrowers) separately for—

"(i) each metropolitan area of the State,

"(ii) the low and moderate income portion of each such metropolitan area, and

"(iii) the minority portion (if any) of each such metropolitan area.

"(H) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—The Federal banking agencies may require insured depository institutions to report additional information beyond the requirements of this paragraph for the purposes of monitoring the insured condition of the depository institutions engaged in interstate branching and monitoring the volume of credit provided at the State and local community level by institutions engaged in interstate banking through either separate insured institution subsidiaries or interstate branching, and for implementing Federal antitrust laws.

"(I) ADJUSTMENT OF LOAN CATEGORIES.—The Federal banking agencies may adjust the loan category definitions prescribed by this paragraph to reflect changes in loan category definitions or classifications generally employed in the reports of financial condition required by this subsection, except any such adjustments must be consistent with the purposes of this paragraph.

"(J) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'small business means an enterprise with annual sales of $20,000,000 or less;

"(ii) the term 'small farm' means a farm business with annual sales of $500,000 or less;

"(iii) the term 'commercial loan' means a loan that is reportable as a commercial and industrial loan;

"(iv) the term 'agricultural production loan' means a loan that is reportable as a loan to finance agricultural production and other loans to farmers;

"(v) the term 'farmland mortgage loan' means a loan that is reportable as a real estate loan secured by farmland;

"(vi) the term 'metropolitan area' means a primary metropolitan statistical area, or consolidated metropolitan area, or consolidated metropolitan statistical area, as defined by the Secretary of Commerce;

"(vii) the term 'commercial mortgage loan' means a loan that is reportable as a real estate loan secured by nonfarm residential properties;

"(viii) the term 'construction loan' means a loan that is reportable as a real estate loan secured by construction and land development;

"(ix) the term 'consumer loan' means a loan that is reportable as a loan to individuals for household, family, and other personal purposes;

"(x) the term 'non-metropolitan portion' means the portion of a State that lies outside the metropolitan areas;

"(xi) the term 'low and moderate income area' means census tracts, as defined by the Secretary of Commerce, whose median family income is less than or equal to 80 percent of the median family income of the metro area in which they are located;

"(xii) the term 'minority area' means all census tracts as defined by the Secretary of Commerce in which minority persons compromise 75 percent or more of the resident population;

"(xiii) the term 'home State' means with respect to an insured depository institution that is a subsidiary of a holding company, the State in which the insured institution's deposit balances are principally located; and

"(xiv) the term 'reportable' refers to the reporting classifications employed in the reports of financial condition submitted pursuant to this subsection.".

The CHAIRMAN. Under the rule, the gentleman from Massachusetts [Mr. NEAL] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment of the gentleman from Massachusetts.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. NEAL].

Mr. NEAL of Massachusetts. Mr. Chairman, the amendment I introduce deals with two basic issues: safety and soundness, and credit access.

Mr. Chairman, all of us in this Chamber who have returned home during the past few weekends have been besieged by complaints about the credit crunch. Thousands of small business people across this country have been sentenced to death row. Mr. Chairman, good credit risks are being routinely denied across America. Loans are being called, and individuals who are current in their interest and principal payments are being told they have to liquidate their businesses.

Two years ago I warned Alan Greenspan about the credit crunch. Two weeks ago he acknowledged it. Two weeks ago President Bush acknowledged the credit crunch, and 2 weeks ago Secretary Brady acknowledged the credit crunch. Banks blame the regulators, regulators blame Congress, Washington blames the banker, and small businesses are being sentenced to credit capital punishment.

The fact is that we have no reliable data on which to measure this problem. Interstate branching is inevitable, and these data will be even harder to retrieve.

This amendment is not duplicative, despite what my colleagues might hear in a few moments. It only deals with small business and small farmers.

We have heard a lot during the past few weeks about helping the bankers. The truth is that we ought to be prepared to help small business people and small farmers across this country, and I urge a "yes" vote for the Neal amendment.

Mr. NEAL of Massachusetts. I yield 30 seconds to the gentleman from Texas [Mr. GONZALEZ], the chairman of the Committee on Banking, Finance and Urban Affairs.

Mr. GONZALEZ. Mr. Chairman, the Neal amendment is an extremely important addition to this bill—an amendment that addresses the serious lack of data on small business lending by the Nation's banks.

Small businesses are the lifeline of community development and they're invariably the first to be cut off when credit tightens. In fact, small business, particularly in low-moderate income areas, are more or less in a permanent credit crunch, good times or bad.

The Neal amendment recognizes that we need to monitor the pattern of deposits and loans as big banks move interstate and operate branches in scattered geographical locations.

Not only is this amendment important to monitor credit access, but it requires the reporting of data that will be vital for safety and soundness purposes. This enhances the call reports, breaks the commercial loans into size categories, and gives regulators key data on concentrations of credit and an ongoing means to monitoring the condition of institutions.

The amendment should be adopted.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield a minute and a half to the distinguished gentleman from Florida [Mr. IRELAND], the ranking member on the minority side.

Mr. IRELAND. Mr. Chairman, I thank the gentleman for yielding time, and I say to my colleagues that we hold the final responsibility for protecting our Nation's 20 million small enterprises and the workers they employ. The Neal amendment will help us to fulfill this responsibility.

The amendment requires billion-dollar financial institutions that are engaged in interstate branching to produce annual reports on all loans made to small businesses, small farms, and small disadvantaged businesses by geographic and metropolitan areas.

The amendment does not ask every bank in America to collect and produce reams of irrelevant information.

It simply makes it possible to track lending activity within a community. It is safeguard against a megabank coming into a location, sucking up all the deposits, and then failing to put money back into that community through small-business loans.

We are the gatekeepers to our Nation's future. And that future is irrevocably tied to the well-being of small businesses throughout this land.

On behalf of those small enterprises and for the sake of the millions of workers who help them succeed, I most strongly urge my colleagues to support the Neal amendment.

□ 1720

Mr. NEAL of Massachusetts. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the amendment. I believe that it is time for us to understand that there is just not enough data to allow us to be able to adjust problems before they become magnified. Recent studies clearly indicate that there is a necessity for this information, that there are certain communities and certain businesses in those communities that are not currently being served. Mr. Chairman, I ask all my colleagues to join with me in support of this amendment. It is a good amendment. It strengthens the banking bill, and I think the gentleman from Massachusetts [Mr. NEAL] has done a good job. Let us support him.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. MFUME].

Mr. MFUME. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Massachusetts [Mr. NEAL]. I think it is proper and prudent, and I urge an "aye" vote.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield 45 seconds to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I support the gentleman's amendment, as I did in the Banking Committee when he proposed the language already in the bill. There are two groups we pay a lot of lip service to here in Congress, but we often fail to help them when they need it most: Those groups are veterans and small business owners.

This amendment would have large interstate banks report quarterly information on small business lending. Small business loans would be reported by State and metro area. Within each metro area, small business loans would be reported as a subtotal for all low- and moderate-income census tracts and for all minority census tracts. Loans for small farms would be reported by State and listed separately for agricultural production loans and farmland mortgage loans.

I recognize that banks will not be entirely happy with this provision. They do a large amount of reporting already. But small business has been starving for credit lately, and we need to at least know where the loans are going. We need the information to make better policy, and not merely shoot in the dark. Small business is the most important growth industry in this country. For a State like Pennsylvania, where wages from traditional industries fed fathers and mothers and generations before us, we need small business growth to produce the major industries of tomorrow. The economy is in transition. We cannot depend solely on the traditional industries. Many are declining. We need capital for small business growth, and this amendment will shed light on the situation.

Mr. NEAL of Massachusetts. Mr. Chairman, I yield back the balance of my time.

Mr. WYLIE. Mr. Chairman, I wish to go on record at this time as being in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 10 minutes.

Mr. WYLIE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are in the process of loading up the canoe to sink it.

The Banking Committee print which was adopted already provides that the banks will make reports to the regulators on the amount of lending to small businesses and farms. This amendment is a duplicative at best, but it does target some banks which are going to branch interstate. It would require that they report all net lendings to small businesses, farms, net write-offs of loans, income on fees, income from loans, the dollar amount of deposit balances, and the interest paid on these deposits, just to name a few.

Why is this amendment necessary? This information is already being provided to the regulators. What it will do is ultimately pass the cost of all this information on to the consumers.

Banks comply with volumes of reporting requirements now. This amendment would do nothing but add more paperwork and more burden already imposed on the banks. H.R. 6 calls for a study of the paperwork cost to banks and Federal regulators in meeting current requirements. This will add to the cost of the study, in addition to adding to the cost of regulatory reporting by the banks.

Mr. Chairman, I urge a no vote on the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. NEAL].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 20 printed in House Report 102–281.

AMENDMENTS, EN BLOC, AS MODIFIED, OFFERED BY MR. GONZALEZ

Mr. GONZALEZ. Mr. Chairman, I offer amendments en bloc as modified.

The CHAIRMAN. The Clerk will designate the amendments en bloc, as modified.

The Clerk designated the amendments, en bloc, as modified.

The CHAIRMAN. The Clerk will report the amendments, en bloc, as modified.

The Clerk read as follows:

Amendments, en bloc, as modified, offered by Mr. GONZALEZ: AMENDMENT NUMBERED 20 IN REPORT 102–281 WITH GERMANE MODIFICATION, OFFERED BY MR. TOWNS:

Page 460, after line 21, insert the following new paragraph (and redesignate the subsequent paragraph accordingly):

(5) Insured deposits of nonprofit organizations.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended by adding at the end the following new paragraph:

"(8) INSURED DEPOSITS OF NONPROFIT TAX-EXEMPT ORGANIZATIONS.—

"(A) IN GENERAL.—Notwithstanding any limitation in this Act or any other provision of law relating to the amount of deposit insurance available for the account of any 1 depositor, each of the deposits at any minority depository institution of any depositor which—

"(i) is an organization referred to in section 501(c)(3) of the Internal Revenue Code of 1986; and

"(ii) is exempt from tax under section 501(a) of such Code,

shall be an insured deposit to the extent the aggregate amount of the deposits of such depositor at such institution do not exceed $500,000.

"(B) MINORITY DEPOSITORY INSTITUTION.—For purposes of this paragraph, the term 'minority institution' means a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

"(i) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(c) MINORITY. The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.".

"(D) EFFECTIVE DATE.—This paragraph shall become effective only when its costs are fully offset in each fiscal year through fiscal year 1996."

AMENDMENT TO H.R. 6, AS REPORTED OFFERED BY MR. DONNELLY

Page 522, after line 9, add the following new subtitle:

Subtitle K—Bank and Thrift Employee Provisions

SEC. 696. CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS.

(a) CONTINUATION COVERAGE.—The Federal Deposit Insurance Corporation—

(1) shall, in its capacity as a successor of a failed depository institution (whether acting directly or through any bridge bank), have the same obligation to provide a group health plan meeting the requirements of section 602 of the Employee Retirement Income Security Act of 1974 (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

(2) shall require that any successor described in subsection (b)(1)(B)(iii) provide a group health plan with respect to former employees of such institution in the same manner as the failed depository institution would have been required to provide but for its failure.

(b) DEFINITIONS.—For purposes of this section—

(1) SUCCESSOR.—An entity is a successor of a failed depository institution during any period if—

(A) such entity holds substantially all of the assets or liabilities of such institution, and

(B) such entity is—

(i) the Federal Deposit Insurance Corporation;

(ii) any bridge bank, or

(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

(2) FAILED DEPOSITORY INSTITUTION.—The term "failed depository institution" means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act) for which a receiver has been appointed.

(3) BRIDGE BANK.—The term "bridge bank" has the meaning given such term by section 11(i) of the Federal Deposit Insurance Act.

(c) NO PREMIUM COSTS IMPOSED BY FDIC.—Subsection (a) shall not be construed as requiring the Federal Deposit Insurance Corporation to incur, by reason of this section, any obligation for any premium under any group health plan referred to in such subsection.

(d) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event under section 603 of the Employee Retirement Income Security Act of 1974 occurred before, on, or after such date.

Mr. GONZALEZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendments en bloc, as modified, be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

PARLIAMENTARY INQUIRY

Mr. DONNELLY. Mr. Chairman, I have a point of parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DONNELLY. Mr. Chairman, I am the author of the second amendment in the en bloc amendments. I would like to ask the Chair, how would the time be divided?

The CHAIRMAN. The understanding of the Chair is that the rule describes the situation, and half of the 20 minutes, or 10 minutes, would go to the gentleman from Texas [Mr. GONZALEZ] and half to the gentleman from Ohio [Mr. WYLIE].

Mr. DONNELLY. I thank the Chair.

The CHAIRMAN. The gentleman from Texas [Mr. GONZALEZ] is recognized for 10 minutes.

Mr. GONZALEZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I offer an en bloc amendment consisting of two amendments. The first is a modified amendment offered by the gentleman from New York [Mr. TOWNS] which would provide an aggregate amount of deposit insurance up to $500,000 for deposits of nonprofit organizations in minority banks. The second amendment within the en bloc amendments is offered by the gentleman from Massachusetts [Mr. DONNELLY], which will provide for a continuation of employee health plan coverage in cases involving failed financial institutions.

Mr. Chairman, I urge the adoption of the en bloc amendment, and I reserve the balance of my time.

PARLIAMENTARY INQUIRIES

Mr. KLECZKA. Mr. Chairman, I have a parliamentary inquiry.

Mr. Chairman, the chairman of the Banking Committee is combining two amendments. Under this rule, is it possible to ask for a division on the two amendments?

The CHAIRMAN. The Chair has referred to the rule, and the rule makes the amendment en bloc not subject to a division of the question.

Mr. KLECZKA. Mr. Chairman, as a further parliamentary inquiry of the Chair, the Members who would be opposed to the Towns amendment would have to vote against the en bloc amendment, and then the gentleman from Massachusetts [Mr. DONNELLY] could bring his amendment back to stand alone?

The CHAIRMAN. The Chair cannot advise the Members.

Mr. DONNELLY. Mr. Chairman, I have a point of parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DONNELLY. Mr. Chairman, it is my understanding under the rules of the House that I have the right, irrespective of the actions of the House, to offer my amendment as it stands alone after the disposition of the en bloc amendment.

The CHAIRMAN. The gentleman is correct.

Mr. DONNELLY. I thank the Chair.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] is recognized for 10 minutes.

Mr. WYLIE. Mr. Chairman, while I understand that modifications have been made to both of these amendments, the Towns amendment, as I read it, states that notwithstanding any limitation in H.R. 6 or any other provision of law relating to the amount of deposit insurance available for the account of any other depositor, each of the deposits of any nonprofit organization shall be insured up to $500,000 if the deposits are made with a minority-owned institution.

With all due respect, Mr. Chairman, I must oppose this amendment.

The second amendment would broaden the FDIC's insurance coverage when closing banks so that the FDIC, in effect, would become a social welfare agency. Under current law, businesses that close because of bankruptcy do not enjoy health benefits under COBRA. The failure of a bank, I think, should be very similar to this.

Under the second amendment, those employees of failed banks would be covered under COBRA and, therefore, would be covered for health insurance. There is no indication of who is going to pay for it, but regardless they would be covered by health insurance.

□ 1730

Mr. Chairman, for these reasons I oppose the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. GONZALEZ. Mr. Chairman, may I inquire how much time we have on this side?

The CHAIRMAN. The gentleman from Texas [Mr. GONZALEZ] has 9 minutes remaining.

Mr. GONZALEZ. Mr. Chairman, I yield 4½ minutes to the gentleman from New York [Mr. TOWNS], and ask that he be allowed to control that time.

The CHAIRMAN. Without objection, the gentleman from New York [Mr. TOWNS] may control the time.

There was no objection.

Mr. TOWNS. Mr. Chairman, I withdraw my original amendment and urge my colleagues to support the compromise amendment offered by the chairman of the Banking Committee. This amendment would provide up to $500,000 in deposit insurance to charities and other nonprofit organizations who hold accounts in minority owned banks.

I was drawn to this issue upon the closing of Freedom National Bank. When Freedom National Bank, a Harlem-based minority owned institution, failed last November, over 35 nonprofit institutions lost over $14.7 million. Freedom depositors with accounts over $100,000 included churches, universities scholarship foundations, veterans service organizations, homeless shelters, long-term care facilities, housing development corporations, senior centers, and day-care facilities. For many people, these organizations provide the only safety net which has not been destroyed by Federal and State cutbacks.

Nonprofit entities often receive Federal funds which allow the organizations to operate a host of federally assisted antipoverty programs. Generally, State and Federal laws require these groups to keep separate accounts for each program. However, the FDIC policy combines different accounts into a single account. The charitable institution is deemed to be the account holder.

In January, the FDIC saw the foolish and callous effects of this policy and released a statement that acknowledged that there were inequities and offered to provide uninsured freedom depositors up to 50 percent on amounts over $100,000. Half was not good enough. The chairman of the FDIC pledged to "continue to study options to provide additional protection to charitable organizations." The FDIC has failed to offer any measure which would protect charitable organizations.

Some will say that we cannot afford to provide additional depository insurance coverage for these institutions. If we fail to cover the charities, the schools, and the churches, who will? We must not allow the church building fund, the school lunch program funds, the senior center's Meals on Wheels Program to be sacrificed in order to be handed over to cushion the financial blow for others—to hide the bad commercial real estate loans, the shady deals, and the poorly secured investments.

Mr. Chairman, this amendment corrects a longstanding wrong by protecting those institutions which provide the lifeblood for the poor and elderly all over this Nation.

Mr. Chairman, I think this is a good amendment. It makes a lot of sense. I think if we are able to do this, we will protect a lot of agencies.

What we have now is the Federal Government taking from these agencies money that they have given to them and putting it back in other organizations that do not need it as much as they need it. I think this legislation makes good sense.

Mr. Chairman, I ask Members to support this amendment. It will serve as a first step in providing a fair deal for so many institutions which provide the lifeblood of the poor and elderly in communities all over the Nation.

Mr. GONZALEZ. Mr. Chairman, I yield 4½ minutes to the gentleman from Massachusetts [Mr. DONNELLY], and I ask that he be allowed to control that time.

The CHAIRMAN. Without objection, the gentleman from Massachusetts [Mr. DONNELLY] may control the time.

There was no objection.

Mr. DONNELLY. Mr. Chairman, my amendment deals with an ambiguity in present law with regard to FDIC and the bridge bank and subsequent corporations' responsibility under the COBRA health insurance laws of 1985.

As Members will remember, as this body passed in 1985, it was signed by the President, we mandated that corporations and companies that laid off employees offer to their laid-off employees continuation of health insurance benefits. This continuation of health insurance benefits came at no cost to these companies or corporations. The only people that paid were the individuals who were laid off. They paid the full cost. The advantage to the laid-off employee was they could pay at group rates. It was determined in 1985, that this was sound public policy.

The FDIC has now taken the position that it is exempt from these COBRA laws that we mandate on every private company in the United States of America. It would seem to me at a time when this institution and this Government is under attack by the American people for continuing to exempt itself from laws that it mandates on other people, that one sector of the economy which is being devastated by layoffs, which just this last year 40,000 people lost their jobs in the banking industry in the United States, 40,000 people were left without adequate health insurance, that we can provide them today with adequate health insurance at no cost to the Federal Government, at no cost to the bridge banks, but with only a cost to the laid-off employee at a group rate.

Mr. Chairman, this is sound public policy. It is today as it was in 1985. We should not exempt an entity from the law that General Motors and Procter & Gamble and every other company in this country adheres to.

Mr. WYLIE. Mr. Chairman, I ask unanimous consent to reclaim 1 minute of my time.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. KLECZKA], and in doing that, I would ask who pays for these benefits if the Federal Government does not?

Mr. KLECZKA. Mr. Chairman, I find myself in a difficult position. I support the Donnelly amendment. However, I have to oppose the amendment by my good friend, the gentleman from New York [Mr. TOWNS]. Because of the amendments being en bloc, the only decision the House has to make is to vote against the entire amendment, and then the gentleman from Massachusetts [Mr. DONNELLY] will be permitted to offer his as a stand-alone amendment.

The House just rejected by a wide margin any limitation or spreading around of the risk of deposit insurance. Now in the same breath and the same day on the same floor we are going to extend to nonprofit organizations up to $500,000 of deposit insurance, where the taxpayers in one single account are limited to $100,000.

This bill, as we have said over and over, contains a $70 billion Treasury loan. Many of us believe the banks will never be able to pay that back. So the bill will be foisted upon the taxpayers.

So the taxpayers who will be footing the tab in future years are limited to deposit insurance of $100,000 per account, while nonprofit organizations, who pay no tax, will be given $500,000. That does not make sense at all.

Mr. GONZALEZ. Mr. Chairman, might I inquire how much time I have remaining?

The CHAIRMAN. The Chair will advise that the gentleman from Texas [Mr. GONZALEZ] controls the time under the rule. The gentleman from Texas did not designate anyone to use this time, but merely yielded 4½ minutes to the gentleman from New York [Mr. TOWNS], who yielded back 1 minute, and yielded 4½ minutes to the gentleman from Massachusetts [Mr. DONNELLY], who used 2 minutes.

Mr. GONZALEZ. Mr. Chairman, I designate 2½ minutes to the gentleman from Massachusetts [Mr. DONNELLY] for his control.

Mr. DONNELLY. Mr. Chairman, I yield 30 seconds to the distinguished gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I chair the committee which has jurisdiction over the health care portion of what the gentleman from Massachusetts [Mr. DONNELLY] is trying to protect here. As chairman of that committee, I support the Donnelly amendment as a way to protect employees who are required under the amendment and under the law to pay 100 percent of their health care cost. This will allow them to keep their health care coverage.

Mr. Chairman, I urge Members who are interested in protecting employees of banks which have gone under and protecting their health coverage to support the amendment of the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. MORAN].

☐ 1740

Mr. MORAN. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Massachusetts [Mr. DONNELLY] to extend health insurance coverage to employees of failed bank and savings and loan institutions. There are a number of such institutions in my district and, I suspect, in many districts represented here.

Congress made a commitment to American workers and their families in passing the 1986 Consolidated Omnibus Budget Reconciliation Act by including a provision which grants employees the option to continue their health insurance upon resignation or job termination.

Our Nation is experiencing severe economic recession, long-term unemployment, and regional credit crunches that dim prospects of imminent recovery. The number of those without health insurance is already draining the resources of our medical and social service facilities. It is reasonable for Congress to require successor banking institutions to administer the health plans of failing institutions and protect these employers who are discharged from their banking jobs through no fault of their own.

Mr. DONNELLY. Mr. Chairman, I yield myself such time as I may consume.

The en bloc procedure confuses things somewhat, and I just, in my final remarks, would like to clarify what the Donnelly amendment stands for. Forty thousand people since the beginning of this year have lost their jobs because of the economic situation of the banking industry. Were they to work in any other sector of the economy, those individuals, under the 1985 COBRA legislation, would be able to allow to themselves health insurance protection at full cost to themselves and at no cost to their employer.

The advantage of laid-off employees is that they can buy this health insurance at group insurance rates. So we are talking about 40,000 people here today that face no health insurance at all.

Finally, let me say, Mr. Chairman, it seems to me only fair that the mandates that we place on the public sector we also place on the private sector. It is inconceivable to me that the FDIC takes the position that they do not have to provide the same benefits to the laid-off employees that General Motors has to.

Mr. GONZALEZ. Mr. Chairman, I yield the remaining 1 minute to the gentleman from New York [Mr. TOWNS].

Mr. TOWNS. Mr. Chairman, I want to clear up some things that the gentleman from Wisconsin said and to make certain that he fully understands what this amendment does. We are talking about charitable organizations. When they are funded, they cannot break up their money. This only covers up to $100,000 as it stands now, which means if we have an organization that has a senior program that might be $200,000, Meals-on-Wheels could be $150,000, a counseling program be for another $30,000, early childhood programs for a couple $100,000, if the bank fails, the FDIC comes in and takes all the money over $100,000.

They cannot break up this. They have to have some protection.

So being they cannot do it any other way, I think that we have to give them some protection. This amendment gives them some protection. It is not enough.

The CHAIRMAN. The question is on the amendments en bloc, as modified, offered by the gentleman from Texas [Mr. GONZALEZ].

The amendments en bloc, as modified, were rejected.

Mr. DONNELLY. Mr. Chairman, I offer an amendment.

PARLIAMENTARY INQUIRIES

Mr. WYLIE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. WYLIE. Mr. Chairman, I ask if the amendment is appropriate at this time, given the rule.

The CHAIRMAN. The rule entitles the gentleman from Massachusetts to offer his amendment.

Mr. WYLIE. Separately, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. WYLIE. After the chairman has already done it en bloc?

The CHAIRMAN. The gentleman from Massachusetts has a right to offer his amendment.

Mr. WYLIE. So he gets two cracks at it in effect?

Mr. DONNELLY. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DONNELLY. Mr. Chairman, it was not the gentleman from Massachusetts' request that his amendment be included en bloc. Trust me.

Mr. WYLIE. Mr. Chairman, I do not have any quarrel with the gentleman from Massachusetts, but I thought we were following the rule as adopted by the Committee on Rules.

The CHAIRMAN. A similar ruling was made during consideration of the omnibus crime bill on October 17, 1991. The rule states very clearly that the gentleman from Texas has the right to offer an en bloc amendment. However, regardless of that en bloc consideration, then both the gentleman from New York and the gentleman from Massachusetts are entitled to offer their amendment in the printed order in House Report 102–281.

AMENDMENT OFFERED BY MR. TOWNS

Mr. TOWNS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. TOWNS: Page 460, after line 21, insert the following new paragraph (and redesignate the subsequent paragraph accordingly):

(5) INSURED DEPOSITS OF NONPROFIT ORGANIZATIONS.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended by adding at the end the following new paragraph:

"(8) INSURED DEPOSITS OF NONPROFIT TAX-EXEMPT ORGANIZATIONS.—Notwithstanding any limitation in this Act or any other provision of law relating to the amount of deposit insurance available for the account of any 1 depositor, each of the deposits of any depositor which—

"(A) is an organization referred to in section 501(c)(3) of the Internal Revenue Code of 1986; and

"(B) is exempt from tax under section 501(a) of such Code,

shall be an insured deposit.".

The CHAIRMAN. Under the rule, the gentleman from New York [Mr. TOWNS] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

PARLIAMENTARY INQUIRY

Mr. WYLIE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. WYLIE. Mr. Chairman, now that we are modifying what I thought was the rule that came from the Committee on Rules, is the amendment offered by the gentleman from New York the amendment as printed in the RECORD or the amendment which he modified and offered en bloc a little while ago?

The CHAIRMAN. The amendment offered by the gentleman from New York is the amendment printed in House Report 102–281.

Mr. WYLIE. So it is not the corrected amendment?

The CHAIRMAN. It is not as modified in the previous amendment; that is correct.

The Chair recognizes the gentleman from New York [Mr. TOWNS].

Mr. TOWNS. Mr. Chairman, I yield myself such time as I may consume.

What I would like to do is just indicate the fact that I think that the amendment makes a lot of sense and that I would hope that my colleagues look at the amendment and support it because, when you look at the agencies around that are being affected with just the $100,000 limit, I think that we need to do something. This will be the first step in doing that.

Mr. Chairman, I yield back the balance of my time.

Mr. WYLIE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

Mr. WYLIE. Mr. Chairman, I opposed this amendment a little earlier in general debate and suggested that what the amendment says is "Insured deposits of nonprofit tax-exempt organizations, notwithstanding any limitation in this Act or any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, each of the deposits of any depositor," and it says it shall be exempt from taxation and shall be insured up to $500,000.

Now, the way I read that amendment, that would include congressional campaign committees. I do not think that this is what the gentleman intended. He modified his amendment when it came to the House floor. So if there was any misunderstanding on that score, that would have been corrected and would have only applied to charitable organizations.

Mr. TOWNS. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from New York.

Mr. TOWNS. Mr. Chairman, that is what it applies to.

Mr. WYLIE. Reclaiming my time, that is not what the amendment says now.

Mrs. ROUKEMA. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentlewoman from New Jersey.

Mrs. ROUKEMA. Mr. Chairman, is this not the same amendment that was brought up in committee and that we defeated in committee?

Mr. WYLIE. It is not the same amendment, but we had a debate on a similar amendment.

Mrs. ROUKEMA. If the gentleman will continue to yield, it deals with establishing a new precedent in terms of a bank that may be considered by some as too good to fail as opposed to the part of the bill that we are foreclosing with too big to fail. But doesn't this amendment create another special category?

Mr. WYLIE. Mr. Chairman, that is correct.

Mrs. ROUKEMA. And it is a precedent that we have not up until now had. I do not think that this is the time to create new precedents and open up a whole new Pandora's box. If adopted, this amendment would create a new privileged and protected class of deposits. It would set a dangerous loophole through this precedent that could potentially incur untold millions, if not billions, of insured deposits placing taxpayers at greater risk.

Mr. WYLIE. Mr. Chairman, I thank the gentlewoman for her contribution.

Mr. BAKER. Mr. Chairman, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Louisiana.

Mr. BAKER. Mr. Chairman, is my understanding correct that the definition of not profit is not charitable, nonprofit, so that any organization that is formed for the purpose of environmental activism, for campaign purposes at the Federal or State level, for any other community interest which might be out there, whether it be religious in nature or not, the group could have on deposit $1 million. And if the institution where they have the funds on deposit gets into trouble, then that particular deposit, that particular organization is treated differently from every other person who makes deposits in that institution, some working person who has $125,000 in the bank?

Mr. WYLIE. Mr. Chairman, that is correct. I would say to the gentleman, when he modified his amendment, he limited the insurance coverage to $500,000. I was just shown here, "shall be an insured deposit." So there is no limit on the amount of insurance.

Mr. BAKER. If the gentleman will continue to yield, so it could be several millions of dollars if it was a real active organization and had a lot of money in the bank, and it would be fully insured like no other taxpayer?

Mr. WYLIE. Mr. Chairman, that is correct.

Mr. TOWNS. Mr. Chairman, I ask unanimous consent to reclaim my time.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. TOWNS. Mr. Chairman, I yield myself such time as I may consume.

Let me just say that there seems to be some real misunderstanding here. We are talking about a 501(c)(3). We are talking about taking money from ourselves in many instances. We are talking about programs that are funded by the Government. We are talking about programs that provide housing, senior citizens programs, and then all of a sudden that because a bank folds and all these programs are lumped together, whenever they have above $100,000, the Federal Government takes it. These are the programs we funded already.

□ 1750

So it seems to me that we should put some kind of safety net on these particular organizations. So I think what we are doing would just make sense.

To talk about the fact that it is going to cost more money, I think if we do not do it, it would cost money, because if we take away what we already have given, it does not make any sense. So I think we need to take a very serious look at it, and I think that we need to help the small banks, because if they are too big to fail, that is one thing. But we are talking about a small bank that services a community, and I think we need to take a very serious look at that. And I think that this body needs to address that issue. The way to do it is to support this amendment.

Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I think I can present in graphic detail what my colleague, the gentleman from New York [Mr. TOWNS], is asking for.

As most Members know, I also am a pastor of a church, and that church has a number of community programs under 501(c)(3) which are nonprofit. They include a home care agency, they include a clinic, they include a school, and they also include a nonprofit home development corporation that just built affordable housing.

We cannot break those moneys up into small individual $100,000 accounts. The definitions given by the particular funding agencies require that that money is kept in a bank, and in most instances it is more than $100,000. So in the case of Freedom, when they closed it meant that organizations like mine had suffered the loss of Government funds.

The Government has to either reinstitute those funds or if the funds are lost it means some senior citizens will not be able to eat. It means we will not be able to build housing or educate people. We need to understand what the program does and support it.

Mr. WYLIE. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Chairman, I thank the gentleman for yielding time to me. The issue before us is not whether we wish to help a nonprofit charitable organization engage in civic and community work. The drafting of the amendment first applies to any 501(c)(3) organization, which is not charitable in nature, it is simply nonprofit. A campaign fund is a nonprofit organization which may qualify under the terms of the amendment as drafted.

Further, the amendment previously considered in the House had a $500,000 cap on the deposit. The amendment before us now has no such cap, so it is unlimited insurance for a nonprofit organization which may not be charitable in nature, and we are setting up a special insurance pool where no other taxpayer enjoys that type of coverage. We simply have to recognize, if we are not going to limit the multiple account insurance question, we cannot be opening up with this legislation new liabilities for the Federal deposit insurance fund. It is already broke.

The CHAIRMAN. The gentleman from New York [Mr. TOWNS] has 2 minutes remaining, and the gentleman from Ohio [Mr. WYLIE] has 1 minute remaining.

Mr. TOWNS. Mr. Chairman, I yield back the balance of my time.

Mr. WYLIE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. TOWNS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. TOWNS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 63, noes 350, answered "present" 2, not voting 18, as follows:

[Roll No. 373]

AYES—63

Abercrombie
Ackerman
Andrews (NJ)
Annunzio
Berman
Bilbray
Bonior
Boxer
Brown
Clay
Collins (IL)
Collins (MI)
Conyers
Coyne
Dellums
Dymally
Engel
Espy
Evans
Fazio
Flake
Gejdenson
Gonzalez
Hall (OH)
Hayes (IL)
Hertel
Jefferson
Jones (GA)
Jontz
Kaptur
Kennedy
Levine (CA)
Lewis (GA)
Lowey (NY)
Manton
McDermott
Mfume
Mineta
Moody
Moran
Murphy
Nagle
Oakar
Owens (NY)
Payne (NJ)
Pelosi
Perkins
Rahall
Rangel
Roybal
Savage
Scheuer
Serrano
Stark
Stokes
Torres
Towns

Traficant
Washington
Waters
Waxman
Weiss
Wheat

NOES—350

Alexander
Allard
Anderson
Andrews (ME)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Beilenson
Bennett
Bentley
Bereuter
Bevill
Bilirakis
Bliley
Boehlert
Boehner
Borski
Boucher
Brewster
Broomfield
Browder
Bruce
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carper
Carr
Chandler
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)
Combest
Condit
Costello
Coughlin
Cox (CA)
Cox (IL)
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLauro
DeLay
Derrick
Dickinson
Dicks
Dingell
Donnelly
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Duncan
Durbin
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Emerson
English
Erdreich
Ewing
Fascell
Fawell
Feighan
Fields
Fish
Ford (MI)
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Hochbrueckner
Holloway
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (NC)
Kanjorski
Kasich
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Luken
Machtley
Markey
Marlenee
Martin
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McDade
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Miller (CA)
Miller (OH)
Miller (WA)
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison
Murtha
Myers
Natcher
Neal (MA)
Neal (NC)
Nichols
Nowak
Nussle
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Pastor
Patterson
Paxon
Payne (VA)
Pease
Penny
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Ramstad
Ravenel
Ray
Reed
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Russo
Sabo
Sanders
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Schroeder
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stearns
Stenholm
Studds
Stump
Sundquist
Swett
Swift
Synar
Tallon
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torricelli
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Weber
Weldon
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—2

Brooks
Cooper

NOT VOTING—18

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Foglietta
Ford (TN)
Green
Hopkins
McCurdy
McEwen
Michel
Mrazek
Sangmeister
Slaughter (VA)
Smith (FL)
Thomas (CA)

☐ 1812

Mr. MARTIN changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 22 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. DONNELLY

Mr. DONNELLY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. DONNELLY: Page 522, after line 9, add the following new subtitle:

Subtitle K—Bank and Thrift Employee Provisions

SEC. 696. CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Any successor of a failed depository institution shall—

(1) have the same obligation to provide a group health plan meeting the requirements of section 4980B(f) of the Internal Revenue Code of 1986 and section 602 of the Employee Retirement Income Security Act of 1974 (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

(2) be treated as the employer with respect to such former employees for purposes of applying section 4980B of such Code and part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974.

(b) DEFINITIONS.—For purposes of this section—

(1) SUCCESSOR.—An entity is a successor of a failed depository institution during any period if—

(A) such entity holds substantially all of the assets or liabilities of such institution, and

(B) such entity is—

(i) the Federal Deposit Insurance Corporation,

(ii) any bridge bank (as defined in section 11(i) of the Federal Deposit Insurance Act), or

(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

(2) FAILED DEPOSITORY INSTITUTION.—The term 'failed depository institution' means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act) for which a receiver has been appointed.

(c) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act, regardless of whether the qualifying event under section 4980B of the Internal Revenue Code of 1986 occurred before, on, or after such date.

The CHAIRMAN. The gentleman from Massachusetts [Mr. DONNELLY] will be recognized for 5 minutes, and the gentleman from Ohio [Mr. WYLIE] will be recognized for 5 minutes.

The Chair now recognizes the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Chairman, I beg the indulgence of the House. The hour is late.

The last en bloc procedure we went through I think was very confusing.

My amendment very simply deals with the issue of continued health insurance for the unemployed. In 1985, this House passed and the President signed legislation that allowed laid off employees to continue having health insurance coverage, to continue participating in the health insurance program of their company, at no cost to the company because the individual who was laid off would pay the full price up to 18 months.

All my amendment does is codify the existing law to make sure that the FDIC and/or its bridge banks meet those same requirements that we place on all other corporations and industries in the private sector.

It would seem to me, Mr. Chairman, at a time when this institution and this Government is under such scrutiny of exempting ourselves from requirements that we place on all Americans, the one place we should not is with the FDIC. They ought to obey the same parts of the Federal law that all other private sector corporations have to adhere to.

Mr. McGRATH. Mr. Chairman, will the gentleman yield?

Mr. DONNELLY. I yield to the gentleman from New York.

Mr. McGRATH. If I understand this amendment correctly, Mr. Chairman, those who would be laid off as a result of a bank closure would have to pay 102 percent of the premium in order to cover the entire cost of the premium, plus the carrying cost for an 18-month period, am I correct?

Mr. DONNELLY. The gentleman is correct.

Mr. McGRATH. Mr. Chairman, if the gentleman will yield further, I see nothing wrong with that. That is what happens when businesses go out of business today, am I correct?

Mr. DONNELLY. The gentleman is absolutely correct. This amendment has no cost to the taxpayer. It places no additional burden on any of the bridge banks.

Just in this year alone, 40,000 individuals, and I might say mostly mid-management and lower paid employees of financial institutions have lost their jobs, and these people are without health insurance and here we are, an institution that spends time and money trying to develop plans to provide health care for the uninsured, I think this is a good way to make a quick start.

Mr. Chairman, I yield 1 minute to the distinguished gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, every Member of this House is talked to by their constituents who ask that we concern ourselves with health care costs and health care coverage.

The gentleman from Massachusetts is addressing that with regard to employees of failed banks. His amendment says that when a bank fails and the FDIC takes it over, the FDIC can offer the following to the employees of that failed bank: They can say to them, "Mr. or Ms. Employee, if you will pay your share of the health insurance cost, if you will pay your employer's share of the health insurance cost and if you will pay 2 percent administrative cost, that is 102 percent of the cost of keeping insurance, then you will be allowed to do so."

Now, that is only fair. I chair the committee that oversees and has jurisdiction under ERISA, that is the law which govern this, and as chairman of that committee of the gentleman from Massachusetts.

Mr. DONNELLY. Mr. Chairman, I reserve the balance of my time.

Mr. WYLIE. Mr. Chairman, I expressed myself in opposition to this amendment a little earlier. This is now the original amendment which was printed in the committee report which accompanied the rule with reference to H.R. 6.

The CBO said it would have some budget impact. I know the gentleman from Massachusetts [Mr. DONNELLY] redrafted that and the amendment which we offered en bloc a little earlier took care of that; but under present law businesses which close because of bankruptcy do not enjoy health benefits under COBRA.

I think the failure of a bank is similar to this and, therefore, I go on record in opposition to the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. DONNELLY. Mr. Chairman, I yield myself 10 seconds.

The staff of the Banking Committee informs me that the CBO has never put anything in writing how my amendment as originally printed in the text would have any financial cost to the Federal Government.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Massachusetts [Mr. DONNELLY].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 24 printed in House Report 102-281.

AMENDMENT OFFERED BY MR. MORAN

Mr. MORAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MORAN: Page 522, after line 9, add the following new subtitle (and conform the table of contents accordingly):

Subtitle K—Sense of the House of Representatives on the Credit Crisis

SEC. 696. CREDIT CRUNCH.

(a) FINDINGS.—The Congress finds that—

(1) during the past year and a half a credit crunch of crisis proportions has taken hold of the economy and grown increasingly severe, particularly for real estate;

(2) to date the credit crisis has shown no sign of improvement with its effects being felt broadly throughout the Nation as business failures soar, financial institutions weaken, real estate values decline, and State and local property tax bases further erode;

(3) approximately $200,000,000,000 of the nearly $400,000,000,000 in commercial real estate loans now held by commercial banks are coming due within the next 2 years;

(4) banks for a variety of reasons, are reluctant to renew these maturing real estate loans;

(5) both pension funds in the United States, with assets of nearly $2,000,000,000,000, and a stronger and more active secondary market for commercial real estate debt and equity could play a more significant role in providing liquidity and credit to the real estate and banking sectors of the economy;

(6) many regulatory practices encourage banks to reduce their real estate lending without regard to long-term historical risk; and

(7) the stability of real estate has suffered during the past decade first from tax rules that in 1981 stimulated excessive investment in real estate, and then in 1986 when rules were adopted that discourage capital investment in real estate, artificially eroding real estate values.

(b) SENSE OF THE HOUSE OF REPRESENTATIVES.—It is the sense of the House of Representatives that—

(1) immediate and carefully-coordinated action should be taken by the Congress and the President to arrest the credit crisis referred to in subsection (a) and provide a healthy and efficient marketplace that works for owners, lenders, and investors; and

(2) that efforts should be undertaken to explore measures that—

(A) modernize and simplify the rules that apply to pension investment in real estate to remove unnecessary barriers to pension funds seeking to invest in real estate;

(B) strengthen the secondary market for commercial real estate debt and equity by removing arbitrary obstacles to private forms of credit enhancement;

(C) restore balance to the regulatory environment by considering the impact of risk-based capital standards on commercial, multifamily and single-family real estate; ending mark-to-market, liquidation-based, appraisals; encouraging loan renewals; and, fully communicating the supervisory policy to bank examiners in the field; and

(D) rationalize the tax system for real estate owners and operators by modifying the passive loss rules and encouraging loan restructures.

The CHAIRMAN. Under the rule, the gentleman from Virginia [Mr. MORAN] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Mr. SHAW. Mr. Chairman, if there is no Member in the Chamber opposed to the amendment, I ask unanimous consent to claim that time.

The CHAIRMAN. Is the gentleman opposed to the amendment?

Mr. SHAW. Mr. Chairman, I am not opposed to the amendment.

The CHAIRMAN. Without objection, the gentleman from Florida [Mr. SHAW] will be recognized for 5 minutes.

There was no objection.

□ 1820

Mr. MORAN. Mr. Chairman, I do expect that this amendment is nonpartisan, noncontroversial, strongly supported by both the Democratic and Republican Parties, and in fact by the executive branch and the legislative branch.

Notwithstanding the consensus it reflects, it is nevertheless a very appropriate and important addition to this banking reform bill. It calls for a comprehensive coordinated approach to deal with the credit crunch that is reaching crisis proportions throughout our country.

The American economy is much like a heavyweight champ today that is on the ropes and about to go down for the count. Lower interest rates alone are not going to revive it. It has taken too many body blows, insufficient investment in its physical infrastructure, a decade of high living, a checkbook that is $350 billion out of balance.

And now it is getting hit by foreign competition, by lack of consumer confidence, and a sick and failing banking system. At this time, to make matters tougher, it is having its arms held behind its back by a nationwide credit crunch that is making the money necessary to revive this economy too difficult to be obtained.

This amendment suggests both general and specific ways in which we can unleash the inherent strength of this economy to let it rebound, but it cannot come back unless small businesses, farmers, builders, and entrepreneurs can get credit from banks for reasonable and responsible projects.

In the real estate industry alone, 200,000 jobs have already been lost by building tradesmen, engineers, realtors, and to make it a lot worse before it gets any better, $200 billion of short-term commercial bank loans to the real estate industry for multi- and single-family residential projects and for office buildings construction will come due over the next 2 years.

According to a recent Federal Reserve Board survey, 93 percent of these loans are not getting the long-term extensions that they need. Yet only 6 percent of these commerical loans are nonperforming.

The rest are completely paid up to date. But the banking system is gripped by a fear of the future and intimidation of regulations. Some of that is justified, but much is unjustified.

The consequences of this mind-set against real estate loans is that real estate values are dropping through the floor, which means that local property tax assessments will deprive our local governments of the millions of dollars necessary for essential municipal services that only come from property taxes. Hundreds of businesses whose operating loans are collateralized by their real estate property are having those loans foreclosed.

Mr. Chairman, the billions of dollars of federally owned real estate with the Resolution Trust Corporation is losing millions of dollars of book value every day because of this loss in real estate values. This amendment calls for several things that would make a difference.

Immediate and carefully coordinated action by the Congress and the President to arrest the credit crisis, modernization and simplification of the rules that apply to pension investments and real estate because that is a $2 trillion industry that is the normal source of long-term financing; a strengthening of the secondary market for commercial real estate debt and equity by removing arbitrary obstacles, restoring balance to the regulatory environment by considering the impact of risk-based capital standards on commercial and multi-family and single-family real estate, ending the march-to-market liquidation appraisal-based appraisal and encouraging loan renewal, and fully communicating the supervisory policy that we established with bank examiners in the field; and lastly, rationalizing the tax system for real estate owners and operators by modifying the passive-loss rules and encouraging loan restructures.

The CHAIRMAN. The Chair recognizes the gentleman from Florida [Mr. SHAW].

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding and rise in favor of this resolution and the action it encourages.

Mr. Chairman, on October 17, 1991, I held a meeting on the credit crunch with regulators from the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Bank, and the Office of Thrift Supervision as well as leading builders, developers, business people, and bankers in the Washington, DC area. Congressman MFUME, a member of the Banking Committee, also participated in the meeting and listened to an avalanche of unhappy comments and personal experiences. Many of these men and women, who are involved in commercial and residential building, had voiced concern in the past year about the unavailability of capital for a variety of projects. One of the builders who attended the meeting later wrote,

> There is absolutely no credit available for residential construction!! We have not seen any new loans for the past two years and are being told by our banks not to expect any new money for the next two to three years * * * local builders who have played a major role in developing this region are all on the brink of bankruptcy. This is real and not a perceived point of view.

Several builders expressed the sentiments written by one local builder:

> Builders are finding it difficult to finance the construction of new homes, even where they have signed contracts from purchasers. This is particularly true for smaller builders, many of whom have been forced to cease operations.

Others have said that the availability of mortgage or construction financing for feasible and viable rental property and commercial projects is totally nonexistent.

Suburban Washington, DC is not the only region to experience this credit crunch; developers across the Nation are increasingly anxious about the scarcity of credit, even as the economy may be showing some weak but positive signs of emerging from recession.

Mr. Chairman, it is, therefore, with some urgency that I support the sense of the Congress resolution urging Congress and the administration to seek immediate remedies for the current crisis. It is time for action; enough has been written. Bank regulators have been told to use common sense in dealing with responsible lenders. Again, one of the builders mentioned,

> The regulators consistently stated that there is no problem with the availability of funds and that they are merely taking appropriate steps to deal with bad loans and uncreditworthy developers * * * the first step in solving a problem is the recognition of its existence.

There is a need to recognize that a credit crunch does exist and that Congress and the President must take immediate positive and constructive action. I see this resolution as only a symbolic first step in the right direction, but we cannot stop at a resolution. We must encourage the OCC and other bank regulators to implement a uniform, but fair standard of appraisals, permit and encourage loan refinancing, and immediately ensure that bank examiners in the field know and follow revised but more flexible underwriting guidelines for loans and appraisals.

There is abundant, clear, and convincing evidence that the regulatory pendulum has swung too far and is now contributing to economic stagnation and slow growth. Congress should not, and in my view, did not intend that virtually all financing for any residential or commercial development, especially where it is needed and is feasible, be brought to a complete standstill. I am undertaking an in-depth factfinding mission for the purpose of identifying the specific barriers and causes of our credit crunch and to provide findings and recommendations for solutions. I invite all of my colleagues in the House to participate with me.

Mr. Chairman, I urge our priority attention to this credit crisis. One of the builders at my October 17 meeting stated sadly that, if some positive action is not taken, there will be no participants in a similar meeting a year from now. With many of us now looking at costly and impractical stimulus and growth initiatives, getting credit for housing seems to me to be a better solution. I strongly support this resolution and the actions that it encourages.

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. ANDREWS].

Mr. ANDREWS of Texas. Mr. Chairman, I thank the gentleman for yielding and rise in support of the amendment.

Mr. Chairman, I rise in support of the amendment offered by my colleague JIM MORAN. There is no question that a credit crunch of crisis proportions has taken hold of the economy and is harming many industries, especially real estate.

The real estate industry, historically a great source of economic growth and jobs, is facing the worst crisis since the Great Depression. This crisis is exacerbated by the inequitable treatment real estate entrepreneurs receive under the passive loss rules. I introduced my passive loss bill, H.R. 1414, to remedy this inequity. We do not have a tax vehicle for H.R. 1414 this year, but when we do mark up a tax bill next year, I am confident that H.R. 1414 will be considered as part of the bill.

I hope that the administration can join with the House leadership to move an economic recovery package next year that will stimulate the economy, solve the credit crunch, and fix the passive loss rules.

Mr. SHAW. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, there is much to say about this particular amendment, but the time is late. I think the gentleman from Virginia [Mr. MORAN] stated it very eloquently.

I would like to add only one thing to his remarks, in addition to complimenting him for bringing this resolution before the committee. That is that the common denominator, the common currency of loans in this country traditionally has been real estate. In 1986, we passed a tax bill, much of which was needed but some of which was very damaging to the value of real estate.

With the plummeting value of real estate, it is necessary we go back and review what has been done and look at what is the main cause of the recessionary cycle that we are going through now and the banking crisis in which we find ourselves.

I think undoubtedly we have to say it is the value of real estate.

I think every Member in this Chamber tonight would agree real estate is at the very bottom of the problem, even though there may be some other problems.

Mr. Chairman, I urge adoption of this amendment.

Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. I thank the gentleman for yielding, and I rise in strong support of the resolution of the gentleman from Virginia.

I would say that we need, however, and I think all of us agree, what we need is very quick action following the adoption of this resolution. We obviously, in the Washington metropolitan area, are suffering very badly. We are not alone, we understand that. But if we do not move quickly, this recession clearly for us in the Washington area in the building industry is a depression.

We have 60 percent of the Southern Maryland Building Industry Association on the ropes, most out of business. We need to move, we need to move quickly and decisively.

Mr. Chairman, I join the remarks of the gentleman from Florida [Mr. SHAW] and the gentleman from Virginia [Mr. MORAN].

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. I thank the gentleman from Florida. I am in complete accord with the comments of the gentleman from Florida with regard to tax policy that needs to be reviewed.

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. MCMILLEN].

Mr. MCMILLEN. I thank the gentleman for yielding and join the gentleman for his call to arms.

Mr. SHAW. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Chairman, I thank the gentleman for yielding time to me, and I would like to express my support for the amendment and resolution offered by the gentleman from Virginia.

Mr. Chairman, the Nation is crying out for leadership from Washington to pull us out of the credit crunch that has helped to dry up new housing and major construction starts and which has resulted in thousands of job losses in the real estate industry and throughout the economy.

Businesses of all kinds—from car dealerships to defense contractors—are succumbing to the credit drought brought on by free-falling real estate prices. Real estate holdings that businesses had been counting on using to secure credit are simply no longer acceptable to banks as colateral.

Without credit, businesses cannot expand and many can be expected to fail. Through no fault of their own, more and more Americans will find themselves out of work unless we find a way to restore and strengthen our economy's sources of credit and capital.

This debate on banking reform legislation is the logical place to signal a redoubling of our efforts in this regard. The amendment offered by the gentleman from Virginia [Mr. MORAN] offers us the opportunity to send a clear message that Congress and the White House are prepared to work together on ending the credit crunch.

I urge all my colleagues to support the Moran amendment.

Mr. SHAW. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendment offered by the gentleman from Virginia [Mr. MORAN].

The amendment was agreed to.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

Mr. OWENS of Utah. I rise today to express my opposition to final passage of H.R. 6, the Deposit Insurance and Regulatory Reform Act.

Mr. Chairman, the goals of this legislation should be twofold. First and foremost, we must limit taxpayers' exposure to bank failures. This can only be done through substantive regulatory and deposit insurance reform. We should end the folly which is incorporated in the too-big-to-fail policy. Second, we must ensure that bankers and other holders of federally insured deposits no longer have incentive to engage in the risky lending activities that continue to plague the industry to this day.

Unfortunately, the final product of this heated debate does neither. I was one of just over 100 Members who supported the so-called core bank amendment, simply because it is the one alternative that might accomplish these twin goals. I reluctantly oppose the amendment to strike title IV of this bill, simply because title IV provided banks some means of involvement in securities activities while implementing mechanisms to protect federally insured deposits from high-risk activities. While title IV was far from perfect, I felt that the Congress must assert its legitimate role in the regulatory process, and retaining title IV, at that juncture, appeared the only legitimate means of asserting that authority.

Mr. Speaker, though I opposed that amendment, I was disturbed by the resoundingly antibank rhetoric surrounding that vote. And upon further thought, I intend to vote against final passage of the bill in the hope that the committees of jurisdiction will make the limited but real substantive reforms necessary to earn our support in the future.

The banking industry is undergoing significant changes—upheavals, even, that are inevitable in today's sluggish economy. Some failures will be the inevitable result of the capitalist system. Weaker and poorly managed banks should be allowed to fall, and title I, II, and V of this bill take much-needed steps in the right direction.

I firmly believe that banks should be allowed to branch out into nonbanking activities, albeit with appropriate firewalls and restrictions. Though federally insured deposits should not be exposed to the risky activities to which they were exposed in the 1980's, enhanced competition in the securities and insurance industries should be a welcome consequence of any substantive reform legislation. Nor am I convinced that this legislation, in its current form, provides adequate freedom for legitimate financial services companies to engage in legitimate banking activities.

This legislation fails to strike that balance of fostering competition in those industries while adequately protecting taxpayers from exposure to bank failures. The President has indicated that he will veto this legislation. A veto override of this legislation, in its current form, is unlikely. But real reform of the banking industry—at a minimum, BIF recapitalization and even minimal regulatory reform—is needed now. Both sides of this issue have heightened the intensity of the debate while lowering its quality.

The best alternative before us today is to send this bill back to the committee. If we send it back today, a clean bill with BIF recapitalization and limited but important changes is certain to be returned to us. I suspect that the issues of expanded bank powers and comprehensive deposit insurance reform will be among the primary issues of debate throughout the rest of the year and throughout the next session. I encourage my colleagues—especially those who supported retaining title IV last week, to join me in opposing final passage of this bill as a movement toward simple, but vitally needed reform and recapitalization.

Mr. DORNAN of California. Mr. Chairman, I rise today to express my extreme disappointment with H.R. 6, the Deposit Insurance and Regulatory Reform Act in its current form. Title IV of the bill is particularly regressive. I voted to strike title IV last week, and I urge all of my colleagues who also did so to likewise vote against passage of H.R. 6.

It is a shame, Mr. Chairman, that the Dingell-Gonzalez compromise was adopted as original text. It contradicts the procompetitive goals for which the House Banking Committee worked so hard. There are many amendments to this bill, including some to title IV, which I would normally have supported. Unfortunately, none of them would fix the fundamental flaw in the Dingell-Gonzalez language, the so-called blackout provisions preventing banks from lending to customers who also use the services of the bank's securities affiliate. This provision went against the better judgment of the Banking Committee. It rolls back current powers that some banks have to sell insurance and provide investment banking services, as well as limiting them in the future. Lost jobs and lost revenues will be the result, and neither will get our economy back on its feet.

The reason is simple: the blackout provision is anticompetitive, hurting both banks and their customers. It forces customers to choose between the services of the bank, and the services of the bank's securities affiliate. They cannot choose both. This excessive firewall creates duplicate regulation and makes it virtually impossible for a securities subsidiary of a financial services holding company to operate profitably. This is, to say the least, a bad way of regaining consumer confidence in our Nation's financial system and the marketplace.

It is, however, an efficient way of curtailing business. Constraining a bank's ability to make loans to customers who happen to be customers of the bank's securities affiliate will devastate both the corporate debt and mortgage-backed securities business of many banks. This is restrictive and unnecessary.

But it doesn't end there. Title IV also takes away existing options for banking organizations to engage in insurance activities and is therefore contrary to the procompetitive thrust of H.R. 6 as reported by the Banking Committee. It would eliminate: the ability of U.S. banks to conduct title insurance activities; many of the general insurance activities now conducted by small town banks; the authority of state banks to underwrite most of the insurance products currently authorized by their banking departments; and the ability of State banks to market new insurance products—including credit card insurance—on an interstate basis, except under very limited conditions.

Mr. Chairman, title IV as passed ruins what had been shaping up to be a good banking bill. It leaves in ashes—through a substitution in the final hour, mind you—well over a year's worth of hard work by the Banking Committee to fix the underlying weaknesses of our banking system. Never mind the furtive manner in which the Dingell-Gonzalez language was included in the bill which exemplifies everything the American public distrusts with this institution. Every other provision on deposit insurance, regulatory improvement, and nationwide banking and branching becomes moot in the face of title IV and its anticompetitive view of the role of our banks in our nation's economy.

I urge my colleagues not to simply pass another bill the President won't sign. I think the vote on striking title IV illustrates this body's own hesitancy to proceed with this flawed bill. Let's vote this bill down and send it back to the Banking Committee to remove the Dingell-Gonzalez language. I think we can all agree that this is no time for half measures. This bill is not finished. Let's not pass it until it is. Vote no on H.R. 6.

Mr. COX of Illinois. Mr. Chairman, I am greatly disappointed with the shape that H.R. 6, the Financial Institutions Safety and Consumer Choice Act of 1991, has taken as we move toward final passage of the bill. From the hearings and debate we have had on banking reform over the past 18 months, we have recognized the declining health of the banking industry. While many of our Nation's banks are still solvent and profitable, over a quarter are currently posting losses. We have learned from the mistakes of the 1980's and the thrift industry, and must now act in the most responsible manner we can to restore health to the industry.

There is no doubt that this legislation has some very valuable components. The bill contains a provision that will attempt to eliminate the too-big-to-fail policy, it requires regulators' early intervention in faltering institutions, and it maintains current levels of deposit insurance. In addition, Congress has shied away from a full repeal of Glass-Steagall in this legislation, preventing the combination of banking and commerce and excessively high concentrations of capital.

All this being said, we must assess what this legislation contains that we can call true bank reform. H.R. 6 was initially designed to give banks new powers and services. By allowing banks to get into insurance and securities activities, we were responsibly permitting banks to diversify and increase their capital levels. Despite this simple concept, the bill has strayed so far away from this goal. The restrictions that the bill contains today between banks and new powers are not only prohibitive, but regressive. In an effort to create firewalls, we have eliminated any incentive for banks to venture into more profitable markets.

I believe that the final product of H.R. 6 not only fails to fulfill our mission to restore health to the banking industry, but will ultimately cause more banks to fail. Over the course of activity on this bill, I have tried to maintain a balanced perspective between large and small banks and to assess what we can do to protect the taxpayer from a potentially insolvent industry. With these views in mind, I do not believe I can vote for H.R. 6 in good conscience. We are simply not doing anything to truly reform the banking industry.

The State of Illinois spent several years working to create a system that embraces a healthy balance between large and midsized banks and community banks, recognizing the State's geographic diversity. In the midst of the recession, Illinois' system has proven its effectiveness and withstood the weakening of the Nation's banking industry. I believe the Federal Government can learn from the process followed by Illinois, and understand the virtues of moving at a gradual pace.

H.R. 6 has seemed to move from one extreme to the other. Initially, I feared the bill could cause too much harm to community banks, and now I fear that larger banks cannot benefit from the bill in any way. As a result of withholding true reform from the industry, it is the taxpayer who stands to suffer the most. Until we take real steps to make the banking industry safe and sound again, the consumer gains nothing from this bill.

I regret that at the end of a several month process, Members of Congress have failed to work out their differences in this bill. Rather than creating a well-balanced compromise, we have created comprehensive legislation in which nobody wins. I am hopeful that we will learn from this lesson, and have the opportunity to revisit these issues in the near future. And especially, I am hopeful that we can create a product that will bring true safety and soundness to the banking industry.

Mr. MCMILLEN of Maryland. Mr. Chairman, we are considering the most important piece of financial legislation in 50 years. Nonetheless, I rise in opposition to this bill. It continues a policy of "heads banks win, tails taxpayers lose".

I supported the bill in the Energy and Commerce Committee and Subcommittee, but aired my reservations about certain provisions not under our jurisdiction. My opposition is not a reflection of the strenuous work which the committees have done, rather, it is rooted in my concern that the real problems which underlie the system have not been adequately addressed in this bill. I would prefer a narrow bill which recapitalizes the bank insurance fund [BIF], allows interstate banking, and includes the regulatory and FDIC changes which have been agreed upon. We should reconsider expanded bank powers issues only in conjunction with a serious reform of the deposit insurance system.

This legislation authorizes a $70 billion loan for the Federal Deposit Insurance Corporation [FDIC]. Technically, the banking industry is supposed to pay back the money so that the U.S. taxpayer is not forced to pick up the tab. This, unfortunately, is not likely. Private economists estimate that the banking industry will need a $200 billion investment to restore adequate capital levels, bail out failed banks and restore the industry's health.

If the point of the legislation is to make banks more competitive, it does not achieve this. If the point of the legislation is to limit taxpayer exposure and to avoid future bailouts, it does not achieve this. What the bill will do, is provide more money for the bank insurance fund, without creating market incentives and without fundamentally reforming the banking system.

In the public's mind, financial institutions are indistinguishable, be they sound or insolvent. Well managed banks pay the same insurance rates as the poorly run banks, and they have the same coverage. Hence, it is in a depositor's interest to find the highest rate of return, regardless of risk. There exists no incentives for either depositors or managers to exercise restraint. This principle was demonstrated in the S&L debacle, where the incentives actually ran the other way. Millions of dollars in brokered deposits sought the highest rates, regardless of the soundness of the institution. The only risk was and is to the U.S. taxpayer.

As Franklin Roosevelt predicted years ago, deposit insurance would encourage bad business practices, and encourage reckless lending. Ultimately, we would be insuring incompetence, and setting ourselves up for massive bailouts.

The FDIC was never intended to protect the $900 billion of uninsured deposits, yet the regulatory agencies now use FDIC premiums to pay off uninsured deposits, both foreign and domestic.

While the efforts to limit deposit insurance in the bill are appealing in principle—such as the proposal to limit coverage of multiple accounts—I am concerned that this will cause disintermediation for small banks, which, ironically, have been the sounder elements of the system. And although the bill eliminates the essentiality clause—too-big-to-fail—there will continue to be instances for macroeconomic purposes where the FDIC will bail out deposits over and above the $100,000 limit, despite the changes made by H.R. 6.

At issue here is the fact that the reform proposals don't alter the pricing of deposit insurance, which is artificial and does not reflect the actual value. An SEC study which came out earlier this year showed that the cost of deposit insurance systemwide was underpriced by $20 billion annually in each of the last 10 years. This amount is ultimately picked up by the system and the taxpayer. As Warren Buffet said:

> The government's insurance program needs to be overhauled to incorporate the first law of insurance underwriting: Rates must be based on risk.

While I applaud the efforts to implement a risk-based premium system over the next 3 years, I am concerned that the premiums will be a sliding scale based more upon what the FDIC thinks the banks can pay, rather than the price of the risk to the system. Furthermore, the underlying premise upon which these provisions are based—capital standards—are lagging indicators and do not accurately reflect liability.

The best way to minimize taxpayer exposure is to provide a sound deposit insurance system, one which infuses market discipline and minimizes the public subsidy inherent in deposit insurance. I offered an amendment to the Rules Committee which would institute a reinsurance system for deposits above $100,000. The specific proposal is not as important as the need to create a system where capital is attracted to safer banks, and risky lending practices discouraged by market pressures. The Senate bill contains provisions to establish a 30-year reinsurance pilot program, and the House bill creates a study to review the issue. Although these are steps in the right direction, they are too little and too late.

If such a market-oriented deposit insurance system existed, the debate over specific firewalls or other such provisions—which has been so contentious in the banking reform debate—becomes much less important to the underlying safety of the system. The concerns of many of my colleagues center on the fact that the public subsidy of deposit insurance will spill over into securities affiliates, insurance affiliates, and so forth, even with stringent firewalls.

SCHUMER-MC MILLEN

With the aforementioned comments in mind, there are a number of issues which I support in this legislation. Title IV of the bill contains one of the most significant consumer safeguards in the bill—the prohibition against the sale of bank securities in the lobby of such banks. Specifically, I am making reference to section 15D(d) of the committee print.

These provisions are based in large part on legislation which I introduced with Representative SCHUMER earlier this year, H.R. 1023, the Depositor Protection and Fraud Act of 1991. The origins of the legislation go back to a House Banking Committee hearing held 2 years ago, when I served on that committee. The hearing focused on the sale of lobby debt, and how many investors purchased high yield bonds under the false assumption that they were federally insured. The example was, of course, Lincoln Savings & Loan.

The provisions in H.R. 6 guard against a repetition of this tragedy by prohibiting the sale in a retail branch of a federally insured bank or S&L of certain specified types of debt or stock of the bank or any affiliate of the bank. This restriction does not apply to shares of certain mutual funds.

OPEN BANK ASSISTANCE

I would also like to commend the Banking Committee for its wisdom in continuing a policy which allows the FDIC to provide financial assistance to weak banks that are in danger of failing, the "open-bank assistance" provisions. The FDIC is allowed this authority only in the instance where it is necessary to keep the bank afloat while it repairs its capital, and if doing so would cost less than closing the bank, and the management was determined to be competent and had not violated any laws or regulations or otherwise took actions jeopardizing the institution. This is in keeping with Franklin D. Roosevelt's program of the Government acquiring preferred stock in well managed banks, in an effort to ensure the banks' survival until better economic times.

The bottom line is that we need to find the least cost way of resolving undercapitalized banks. The policy behind the open bank assistance provisions makes sense—it is in the best interest of the banks, and in the best interest of the taxpayer.

INTERSTATE BANKING

Regarding the interstate banking provisions, title III of the bill contains a much-needed relaxation of Federal laws preventing banks from operating across State lines. I support interstate banking, but do agree that State's rights should not be usurped by a Federal law in this area. It is simply prudent to respect such rights, and allow a State to "opt out" of the system. This kind of deference is necessary in a union of States as diverse as in this country. The Vento amendment establishing a 3-year period for States to opt out of the interstate branching system is a healthy balance in this area.

CORE BANK

While the core bank proposal is very appealing, and in keeping with my emphasis on limiting deposit insurance coverage, I opposed the core bank amendment on the floor. The reason for my opposition was based on the fact that this idea needs further review. Such a far reaching proposal raises numerous questions, ranging from the impact on capital shifts to the fallout on wholesale banks. However appealing or sound such a proposal may be, lingering questions demand thorough study. For this reason, I could not support the proposal this year, but hope the issue is reviewed in the future.

FDIC PRIVATE SECTOR AMENDMENT

In keeping with the least cost approach to resolving failed banks, I would note that within H.R. 6 is a provision amending the Federal Deposit Insurance Act to instruct the FDIC to utilize the services of private persons, such as real estate and loan portfolio asset management whenever practicable. This is similar to an amendment which I sponsored, and which was subsequently adopted, during the debate on the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA]. The FDIC has been operating under a different policy from the Resolution Trust Corporation [RTC] during this time, and the provisions in H.R. 6 simply resolve this discrepancy.

Admittedly, the record on the RTC's utilization of the private sector has been mixed. The RTC has been slow to implement a comprehensive system, but, as I understand it, the RTC has developed plans to contract out up to 80 percent of the 140 billion dollars' worth of assets which it currently holds to some 45,000 registered contractors. The point is that although the RTC has been slow to fully utilize the private sector, the RTC simply does not have the manpower nor the expertise to dispose of such an immense quantity of assets, and neither does the FDIC. If we are going to see a return on any of the funds which currently are being authorized for the BIF or the RTC, it will only be if we effectively and efficiently dispose of the assets which the Government is accumulating. Using the private sector for this function makes sense, both for the RTC and for the FDIC.

KENNEDY AMENDMENT

While I am very sympathetic with the intentions of the community benefit standards amendment offered by my colleague from Massachusetts, I opposed it for a number of reasons. To begin with, I feel strongly that if we really want to increase the competitiveness of banks, the last thing we need to do is add another layer of regulation to the industry. Furthermore, there are numerous provisions in the bill which bolster the Community Reinvestment Act, aside from the 10 major consumer laws enacted in the last few years.

The real problem behind this issue, however, is not whether we are for or against discrimination. Clearly no one is. Nor is the issue whether or not we have sufficient laws on the books. The problem is that the administration does not enforce the laws currently on the books, nor does it have the resolution to really battle the instances of discrimination. There is very little that Congress can do if the administration refuses to enforce the law. Unfortunately, passing new laws or adding another layer of bureaucracy to an already cumbersome regulatory apparatus is not the answer.

In summary, while there are many bright spots to this legislation, in the final analysis I have to oppose it. The bill adds more layers of bureaucracy on banks without adequately addressing key problems in the system. Without the kind of fundamental reforms that I have outlined, without instituting some kind of free market pressure to ensure accountability, without adopting a reinsurance based Federal deposit insurance system, the recapitalization of the BIF will simply become one more taxpayer bailout. In good conscience, I cannot support this.

Mr. FRANKS of Connecticut. Mr. Chairman, I rise in opposition to H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991. My opposition to this bill rests mainly with my concerns over title IV of the bill as amended.

This bill was introduced for three reasons: First, to recapitalize the bank insurance fund; second, modernize banking laws to increase competition in banking industry, and third, to modernize the banking regulatory structure.

Title IV was the section of the bill aimed at increasing competition in the banking industry. Title IV, as reported by the Banking Committee would have strengthened the role of capital by allowing banks to enter new activities and services based on solid capital levels. However, the House was not allowed to vote on this issue as the Energy and Commerce version of title IV was substituted. The Energy and Commerce version of title IV is a step back in banking and makes no attempt to modernize the bank industry. I believe that banks would lose competitive ground under the Energy and Commerce and would be better off under current law. For this reason, I voted for the amendment to strike title IV from the bill.

I support title III which will introduce interstate banking and branching throughout the country. I believe that this provision will allow banks to streamline their bureaucracy and interstate banking will prevent regional depressions from destroying the banking communities in these areas.

In addition, I supported the amendment to limit deposit insurance for individuals to $100,000 per person per institution with an additional $100,000 per person per institution on individual retirement accounts. Current deposit insurance coverage is too broad. This modest scaling back of deposit insurance is the appropriate move to make at this time. Most Americans do not come close to having $100,000 in deposits. Fewer than 6 in 100 households have deposits totaling more than $100,000. I believe this is a prudent and much needed reform in the deposit insurance system. Unfortunately, this amendment did not pass.

While this bill does contain the recapitalization for the bank insurance fund [BIF], I cannot support a measure which was intended to modernize the banking industry and instead moves the industry even further behind. Mr. Chairman, it is my hope that this bill will not pass and that instead the Banking Committee will first report a bill to recapitalize the BIF and then reach a consensus on modernizing the bank industry and regulatory structure .

Mr. MOODY. Mr. Chairman, I stand in support of final passage of H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991.

I feel that this bill brings several essential improvements to the banking industry that will help steer the industry away from the tragic path that the S&L's followed.

Specifically, title II of this bill provides many provisions that will strengthen Federal supervision and examination of banks and thrifts. The bill outlines precise levels of capital below which Federal banking regulators will be required to intervene promptly and implement strict reform strategies and recapitalization procedures for these institutions. This will prevent the problem of keeping weak banks open in the vain hope that they will be able to grow their way out of their problem. This ends up costing U.S. taxpayers even more. Early intervention is the public's best safeguard, and this bill makes it a requirement.

This bill would also require the Federal Deposit Insurance Corporation to use the least costly method of resolving troubled institutions, and the bill contains several provisions which would increase Federal Reserve regulation of foreign banks operating in the United States.

I also am pleased that limited additional powers were given only to the banks with the highest level of capital, level 1. I do not feel that banks which have undergone risky and unsuccessful operations should be allowed to assume powers which may prove to be even more speculative than the loan processes that were abused.

Mr. Chairman, I also want to speak out in strong support of the strong firewalls and restrictions that this bill places on the banks that will be able to assume new powers. Even the well-capitalized institutions should be watched closely as they enter new territory, and this bill requires strict supervision by both the Federal Reserve and the Securities and Exchange Commission.

Finally, I point out that the Nation's largest banks want to defeat this bill because they think it is too tough. The White House agrees. But the consumers, small community bankers, and depositors in Wisconsin that I have spoken to over the past 5 days have told me to support this bill.

Wisconsin banks are well run and well capitalized. They are not the cause of this problem. We need a law that forces banks in other states to act as responsibly. This is that bill.

For these reasons, Mr. Speaker, I support final passage of H.R. 6.

Mrs. MEYERS of Kansas. Mr. Chairman, it is with great reluctance that I cast my vote in favor of final passage of H.R. 6, the Deposit Insurance and Regulatory Reform Act. Many of the amendments I supported in hopes of improving the product were defeated. However, I am holding my nose and voting "aye" in the fervent hope that a bill will emerge from the House-Senate Conference Committee that is a better piece of legislation than H.R. 6.

It is absolutely vital that Congress take action to recapitalize the bank insurance fund before the end of this year. As Members of this body should know from the S&L mess, the price of a wait-and-see policy was very high. Fully 50 to 60 percent of the cost the taxpayers have been paying to bail out the S&L's was due to Congress' inability to take timely action and minimize that problem. Defeating H.R. 6 at this point in the process may doom Congress to repeating the same mistake. The bank insurance fund is nearly broke. Should the money run out by the end of the year with no recapitalization plan in place, the FDIC cannot step in to liquidate insolvent institutions. Those persons managing the insolvent institutions will seek to make high risk, high yield loans to pull themselves out of their desperate situation. The end result will be much higher losses to the bank insurance fund when Congress finally gets around to the issue at hand and addresses recapitalization—without the added clutter of new bank powers, firewalls, and the like.

I do not categorically oppose new powers for banks. In fact, I believe some expansion of bank powers, with proper regulation, may be necessary to render the United States financial institutions more competitive in the global market. However, first things first! I believe we should recapitalize the insurance fund, and make sure our banks are healthy. Unfortunately, the vehicle the House has been presented for prompt action on recapitalizing the insurance fund is not confined to that purpose.

Mr. Chairman, it troubles me to have to cast a "yes" vote on a bill that I probably wouldn't support, under different circumstances. However, I will not play a part in perpetuating a situation among our Nation's banks that existed a few years ago among our S&L's. By voting for H.R. 6, I am voting to keep the legislative process moving to address an urgent problem. I firmly believe it is the only responsible thing to do.

Mr. MAVROULES. Mr. Chairman, most recently, October 25 to be exact, the Administrator of the Small Business Administration Pat Saiki stated:

> America's small businesses are poised to lead the country into an economic recovery if they can get enough support from the lending community.

Federal Reserve Board Chairman Alan Greenspan, stated this week that the economy is struggling to move forward and he blamed a nationwide credit crunch. Lower interest rates and Treasury regulatory reforms have not improved the credit conditions.

During the House debate on legislation today to recapitalize the Federal Deposit Insurance Fund and restructure banking activities, I find it appropriate to reiterate the need for banks to responsibly support the capital needs of small businesses.

I wish to advise my colleagues' that New England has been experiencing a serious credit crunch for the last 18 months.

The House Small Business Committee held hearings on the credit crunch in April, 1990 and again in March, 1991, at which time, in spite of statistics to indicate otherwise, regulators and the President did not feel a tight credit market existed. In April of this year many of the President's economic advisors predicted that the recession would soon be over and we would enter a period of economic growth.

This, of course has not happened.

The New England economy has suffered considerable setbacks during the recession, resulting in some of the highest unemployment figures in the country. 254,000 New Englanders have lost their jobs in the last 2 years, 20 percent of the Nation's total. An incredible figure when New England makes up only 5 percent of the U.S. population. In April of this year, five of the six New England States had unemployment rates substantially higher than the national average of 6.8 percent.

The decline in capital in the region from September 1988 to December 1990 has slipped by 25 percent. The national decline is only 3 percent according to Federal Reserve data.

Mr. Chairman, in 1990, New England business failures rose 193 percent over 1989, while nationally business failures were up only 14.5 percent. The economic horror story of the region goes on and on. The national picture is not much better.

As you know 60 percent of the Nation's work force are employed by small businesses, and 50 percent of new jobs by the year 2000 will be created by small businesses. Therefore, it is crucial that we protect the backbone of our Nation's economy.

Furthermore, I agree with the President when he stated on September 30, 1991 and I quote "I worry about the economy. These are tough times. But we can do something about it." I also agree with him on his October 2 statement and I quote "We must create the right climate for business to flourish".

For these reasons, I joined other members of the New England delegation in introducing the Small Business Recovery Act of 1991, H.R. 3419. The Senate companion bill is S. 1753, and I applaud Senator LIEBERMAN and Senator DODD for sponsoring it. This measure would put capital back into the marketplace by making $500 million available to small banks for capital loans to small businesses.

Large businesses and large banks can obtain the necessary capital. It is the smaller ones that need our assistance and help. Congress must act now to preserve the jobs that are left and, most importantly, allow these businesses to expand.

One of the major differences between this recession and that of 1982 is the availability of credit. I find it very disturbing and distressing that businesses all across the region can not secure needed capital in which to carry out business functions, yet these businesses are profitable and pay their loans back.

I must reiterate the importance of H.R. 3419 and the impact it will have on areas of the Nation that is in real economic trouble. The statistics can be recited all day long, but what we need in New England is capital for our small businesses and we need it now.

Mr. Chairman I would like to enter a statement by the president and chief executive officer of the New England Council Nick Koskores which clearly outlines in great detail the economic hardships the small business sector in New England is experiencing.

Statement referred to follows:

Statement of Nicholas P. Koskores, President and CEO, The New England Council, Inc.

INTRODUCTION

Mr. Chairman and members of the subcommittee, thank you for this opportunity to appear before you to present my views on the impact the credit crunch is having on the New England economy.

My name is Nicholas P. Koskores, and I am President and Chief Executive Officer of the New England Council, the nation's oldest regional business group. Founded in 1925 by business leaders and the six New England Governors, my organization also happens to be the most successful example of regional cooperation between the public and private sectors in the United States.

Since its very beginnings, The New England Council has dedicated itself to improving the economic vitality and the overall quality of life in the six state region.

I am here today to bring to your attention the disastrous impact the credit crunch is having on our, and to a growing degree, the nation's, economy.

I also want to share with you our thoughts on how to address this problem, which is drying up business activity, threatening the banking system that stands behind business development, and costing us jobs.

To show you the depth of concern in New England, The New England Council is a part of an even broader regional coalition, some of whose representatives are sitting besides me, representing well over 10,000 regional businesses.

This coalition of ten thousand includes the Smaller Business Association of New England, The Greater Hartford Chamber of Commerce, the Connecticut Business and Industry Association, the Connecticut Bankers Association, the Greater Providence Chamber of Commerce, the Associated Industries of Massachusetts, the Massachusetts Business Roundtable, the Massachusetts Bankers Association, the New Hampshire Bankers Association, and the Business and Industry Association of New Hampshire.

All of us have been hard at work with the New England Congressional delegation since January of this year, trying to find constructive solutions to the region's number one problem today.

THE NEW ENGLAND ECONOMY

Mr. Chairman, the recession in New England began a year and a half before the national recession, and has been much, much deeper. Total employment in New England, which peaked in January, 1989, had fallen 6.5 percent by March, 1991. In comparison, national employment continued to rise through June of 1990—17 months after New England had reached its peak—and fell only 1.5 percent by March of this year.

Between 1984 and 1991, New England lost over 22 percent of its manufacturing employment. Putting more of a human face on this statistic, that translates into some 335,000 workers who lost their jobs. But employment data does not tell the whole story. Sector by sector our industries have been losing market share to international competition and to other regions of the United States.

More significantly, New England's small business community has had its feet knocked out from beneath it. Last year saw a 193 percent increase in business failures in New England—close to twenty times the national failure rate over the same span of time.

New England is heavily reliant on small business and small technological start-up firms for its economic vitality. Unlike the past, New Englanders cannot expect another big job-producing major industry—like textiles or the high technology manufacturing sector—to bail the region out. To the contrary, New England's economic renaissance will depend on the many mini-engines of growth found in the small business and entrepreneurial sector.

This brings me to what makes today's recession worse than past recessions. During the 1982 recession, New England entrepreneurs were still able to find opportunities to finance business development, and they played a big role in making the region's economy the strongest in the nation during the mid-1980s. I very much doubt that those same opportunities would have existed in 1982 if credit was as tight then as it is today.

Small business is also the most important contributor to the nation's economy. Over half of all jobs in the United States are created by small business. According to some accounts, small business is also expected to create about 60 percent of all new jobs nationally through the end of this century. Fortune 500 companies no longer have that potential. As the credit crunch rolls westward across the nation, you can be sure that more and more small businesses will be threatened.

THE RELATIONSHIP BETWEEN SMALL BUSINESS AND BANKS

Small business is heavily reliant on bank credit and a close relationship with the local bank to fund its operations. Big business, on the other hand, has other options to secure financing. When bank capital dries up, further weakening the banking system, small business development is undercut. Richard Syron, President of the Federal Reserve Bank of Boston, who appeared earlier before you, documents that New England has experienced a far greater loss of bank capital than elsewhere in the nation. I submit to you that there is a causal relationship between the steeper decline in bank capital in New England and its disproportionately higher business failure rate.

Here are some numbers that dramatize the extent of New England's credit crunch:

New England banks have experienced a 20 percent loss of capital; the nation, a relatively modest 3 percent decline in capital.

The total commercial and industrial loans at New England thrift and commercial banks declined about 15 percent or $7 billion, representing about 45 percent of the national decline in loans.

According to the Smaller Business Association of New England, 35 percent of its members, responding to the question, "Has your bank renegotiated, capped or suspended lines of credit?" answered in the affirmative.

According to a survey by the Connecticut Business and Industry survey, approximately 82 percent of the membership believes that there is a credit crunch.

In a survey by the Business and Industry Association of New Hampshire, 74 percent of its respondents said there is a credit crunch; 4 out of ten respondents said that they were having difficulty obtaining credit.

According to the Massachusetts Industrial Finance Agency, one-half of the respondents to its survey indicated that they were having significant problems obtaining credit. The Associated Industries of Massachusetts report similar problems in its membership.

I am enclosing with my testimony a summary of selected responses to an Associated Industries of Massachusetts survey on credit availability that provides some concrete examples of the problems small companies are facing.

In sum, what New England is today experiencing has been accurately characterized as a "death spiral," beginning with a weak economy; exacerbated by a desperate banking crisis and numerous bank failures; and threatening to destroy the crucial role small business can play in pulling New England out of its current decline.

But the credit crunch and banking crisis can longer be isolated in New England. It has finally, indeed, been recognized as a national problem, involving also the rapidly climbing, astronomical cost to the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to bail out banks an manage their seized assets. Recent statements by Commerce Secretary Mosbacher and White House Economic Advisor Boskin recognize the national dimensions of the problem. Unfortunately, Treasury and the other banking agencies offer no solution other than to keep on coming back to the taxpayer for more money.

THE SMALL BUSINESS RECOVERY ACT OF 1991

Mr. Chairman, as best as I can, with as much detail as I could muster, I have tried to present the scope of the problem confronting New England businesses, and to describe the importance of sound banks to business development. Others on this panel will be even more graphic.

But speaking for The New England Council and the broader coalition of which The Council is a part, we find it unsatisfactory merely to wring our hands in public and complain. And we find it unacceptable to subject the American taxpayer to higher taxes when better solutions are available.

On behalf of The New England Council, let me offer a modest, but constructive proposal for the consideration of this panel. It is the product of The New England Council's Task Force on Credit Availability, chaired by my fellow panelist, Mr. Sheldon Pollock.

Called the Small Business Recovery Act of 1991 (S. 1753), it was recently introduced by Senators Joseph Lieberman and Christopher Dodd of Connecticut. A companion bill has also been filed on the House side (H.R. 1349) by by U.S. Representatives Nicholas Mavroules of Massachusetts and Nancy Johnson of Connecticut.

S. 1753 represents a very do-able program that can help New England and, I believe, the nation in response to the credit crunch. The bill's aim is to establish a targeted, self-financing pilot program in New England. Specifically, it would authorize the Small Business Administration to guarantee the purchase of stocks or debentures in banks on condition that the eligible banks lend to worthy small businesses.

Moreover, the legislation focuses on smaller banks, traditionally the ones who lend to small business: Only banks with assets under $1 billion would be eligible for the program. The maximum amount to be guaranteed annually by the Small Business Administration would be $425 million, to be spread equitably throughout the region. Moreover, the program limits the total investment per bank to $4.5 million.

The program would also be self-financing. Eligible banks would be assessed an origination fee and an annual premium of two percent of the dollar amount guaranteed by the Small Business Administration to cover the cost of the program.

What does this mean to small business? Simply, it means that for every new dollar in bank capital, bank assets increase 12-fold. Using a 70 percent loan-to-deposit ratio, it means that for every bank with $60 million in new assets, there could be over $38 million in new loans made available.

To paraphrase, money is the root of all enterprise. New available credit translates into greater business activity and productivity—and more jobs.

Ideally, we in New England would like to see some form of open bank assistance, or a new Reconstruction Finance Corporation. During the depression, the RFC actually held close to 50 percent of all bank capital. But political realities compel us to join you in practicing the art of the possible.

Because of its targeted nature and self-financing mechanism, the Small Business Recovery Act of 1991, while not a panacea, seems to us to be a solid forward step. Ultimately, we see this pilot program as a model adoptable for use elsewhere in the nation. Thus we urge your favorable consideration of S. 1753.

Again, thank you for this opportunity to testify. Mr. Chairman, on behalf of The New England Council, I want to thank you for your leadership, and that of Senators Dodd and Kerry, on this important issue.

I would be pleased to take any questions you may have.

Mr. RIGGS. Mr. Chairman, I am happy to report that once again we've managed to snatch defeat from the jaws of victory. I am appalled at the direction this legislation has taken on the floor of the House.

In a time of economic recession, it seems contradictory to me to claim we are attempting to reform the financial system, in an effort to protect the taxpayer from another S&L style debacle, at the same time we make it impossible for depository institutions to operate in a profitable manner. When the Banking Committee reported H.R. 6, it was with a sense of logical give and take. We established a linkage between increased bank insurance fund premiums with more stringent regulation and broadened powers with expanded business horizons.

I have honestly never seen the credit markets in California more skittish. In conversation with a number of bank executives from the First Congressional District I have heard the same litany of frustration. Bankers are saying that in addition to being battered by a declining real estate market and generally poor economic conditions, they are being strangled by the regulators. They are having to increase loan loss reserves on even current loans. Bankers see the only alternative is to shrink assets and stick to the safest possible course. In other words, batten down the hatches and weather the storm as best they can.

The administration sent us a balanced, well-crafted package, albeit controversial in many respects, but still a bill which would have had the net effect of strengthening the American banking system.

The Banking Committee acted responsibly by carefully considering and debating at some length all facets of the legislation. The results reported was a progressive and responsible bill.

Now the emphasis has shifted from policy and substance to special interest politics with the result that the bill has been twisted beyond repair or recognition.

The path Congress has taken with this bill will lead to the following:

First, further "ratcheting" down of regulation; regulation so onerous and burdensome that the profits of banks will be greatly diminished.

Second, a bill that will do nothing to address the severe macroeconomic problems in the United States or stimulate capital formation and job creation.

Third, a bill that could very well make marginally solvent banks insolvent and healthy banks significantly weaker. The net effect of which will be increasing, not lessening, the strain on the BIF and the risk of a large-scale taxpayer bailout of the banking industry.

Mr. OBERSTAR. Mr. Chairman, after careful consideration and deliberation, I have decided to vote no on the final passage of the Deposit Insurance and Regulatory Reform Act (H.R. 6).

Like most Members in this body, I realize that our country's banking industry is reeling from the effects of economic recession and years of negligent regulatory enforcement during the height of the 1980's borrow, lend, and spend craze. The collapse of over 400 banks since President Bush took office is morbid testimony to this legacy of regulatory negligence and deterioration of the national economy.

The rash of bank failures has put an enormous strain on the Federal Deposit Insurance Corporation's [FDIC's] bank insurance fund [BIF], which is on the verge of being depleted. Replenishing the BIF is critical, and I support the bill's FDIC recapitalization provisions for achieving that goal.

However, I cannot support a bill that takes steps such as this bill does toward deregulating big banks. When savings and loans [S&L's] were deregulated in the early 1980's, the Reagan administration assured Congress that the risks were low and the returns to the economy would be high. The financial debacle that followed led to the most expensive Government bailout in our Nation's history. Now the Bush administration is trying to sell Congress on the merits of loosening regulations on banks, promising that "free and open competition" will lead to a stronger and more profitable financial services industry.

Providing security services and permitting wide-scale interstate branching are said to be small steps that will allow big banks to become profitable. We have also been assured that adequate "firewalls" and other protections will be implemented to prevent another S&L fiasco from developing. I've served in this House long enough to have seen too many "small" steps turn into "first" steps. Once the torch is lit, amendments, reconciliation bills, and other legislative vehicles can easily burn down firewalls, leaving us with an inferno blazing out of control. Call it whatever you'd like; this is a "deregulation" measure.

We should pause a moment here, before the vote on passage and recall the lessons of the savings and loan experience: the failed judgments of S&L officials in the marketplace, and the failure of the Federal Government's S&L regulatory agency to act vigorously in the public interest to prevent or to correct abuses. I cannot and will not support any bill that, no matter how remote the possibility, could lead us down the S&L path. Therefore, I will vote against H.R. 6 in its present form.

Mr. HOUGHTON. Mr. Chairman, very briefly let me urge my colleagues to recommit this bill as it appears to emerge for these past few days dictate. In brief it is a bad bill. It shuns reality. It is an intellectual answer to a real world problem.

Two points:

First, the Banking Committee worked for 2 years on a bill. Over a few days this was scrapped, and through the old tried and true method of smoke filled roomanship, a new bill was given birth. It had little resemblance to the 2-year product. I call this unprofessional. We also pledge to give this body respect, and when there is a reason we thumb our nose at it.

Second, the point I would like to make is that the entire reason for a Banking bill is to help the financial structure of this country, not hurt it. We already face enough trouble with the savings and loan fiasco. Why, I ask you, must we wake it worse. I thought our job was to help Americans face a new world of competition. When I first became associated with banking the United States had 8 out of the 10 largest, most profitable banks in the world. Today we offer up only 1 in the top 25.

Title IV I predict will eliminate that last one. It ignores the real world. Keep it and we deserve what we get—continued, creeping obsolescence. Why—why do we continue doing this to our selves.

I urge my colleagues to vote for recommital. Thank you.

Mr. WEISS. Mr. Chairman, I rise in support of H.R. 6, the Deposit Insurance and Regulatory Reform Act of 1991. Years of inquiry, testimony and examination by the House Committee on Banking, Housing, and Urban Affairs have culminated in this historic reform vehicle which will prudently modernize our banking system while reinforcing various safety mechanisms. It is of the utmost importance to my constituents in New York City to minimize taxpayer exposure while simultaneously reinvigorating the commercial banking industry of our city and Nation. H.R. 6 addresses these two vital concerns.

The need for reform is clear and urgent. Nationwide, one of every eight banks is losing money, with hundreds more operating on small or virtually nonexistent margins. The present decline reaches proportions we have not seen since the depression, ironically, when many of the laws we now are reforming, were first enacted. From 1933, when federally guaranteed deposits came into existence, to 1979, we witnessed the failure of 558 insured banks, an average of 12 failures per year. However, from 1980 to 1990, 1,200 insured banks either failed or were rescued by the Federal Deposit Insurance Corporation [FDIC], an average of 120 per year—or an annual rate 10 times greater than the previous 46 years. Even more striking was the pace of failures during the last 3 years of the past decade. Between 1986 and 1989, there were 603 failures, that's 200 per year. The losses posted by major banks in the last 2 years, the subsequent rush to consolidate, and the near-desperate sale of assets, illustrates that things have not improved. Unfortunately, the bleak performance of our banks are not self contained, they ripple exponentially through our economy. The inevitable credit crunch incurred by bank losses and failures have grounded an economic recovery to our recession from ever taking off.

As the guarantor of deposits, our Government backs the depositors of the banking system. Make no doubt about it, the swift and fundamental reforms included in H.R. 6 are desperately needed, if we are to see the banking industry rise from the canvass mat.

Title I of H.R. 6 contains what may be the bills' most urgently needed and important provision, the recapitalization of the bank insurance fund [BIF] which provides deposit insurance coverage to banks. It is estimated that BIF will only have a balance of $2.9 billion in its coffers by the end of 1991, and given FDIC predictions that 137 banks will have failed during 1991 and 200 more are expected to join their ranks in 1992, the fund is now effectively insolvent. The FDIC emblem, prominently displayed in bank windows and teller booths across the country, is a powerful symbol providing security and piece of mind to every depositor who utilizes a federall insured institution. The Government must keep and will keep its nearly 60 year old promise to back those deposits. H.R. 6 increases the FDIC's line of credit with the Treasury from $5 billion to $30 billion. These funds would be used to cover losses of federally insured banks if FDIC funds are depleted. The extended line of credit will be financed through the assessment of a special premium on federally insured institutions.

Under the bill, the FDIC may not use its Treasury line of credit unless the FDIC and the Treasury department establish a schedule under which the borrowed funds will be repaid. This schedule must show that the premium income of the FDIC is sufficient to repay the funds borrowed and the interest that accrues. The General Accounting Office will be required to report quarterly to Congress on the FDIC's progress in repaying these borrowed funds.

The measure incorporates numerous other provisions which reduce the risk of future losses to the FDIC fund and reduces taxpayer exposure to another bailout. These changes include eliminating the "too-big-to-fail" policy, prohibiting undercapitalized institutions from accepting brokered deposits, establishing risk-based premiums for banks, mandating uniform auditing and accounting standards, strengthening oversight of foreign banks' U.S. activities, creating an early intervention system in cases of soon-to-be defunct banks and requiring the FDIC to pursue least-cost resolution for those institutions that have gone under.

H.R. 6 also contains provisions addressing consumer protections and service to distressed communities. The measure seeks to ban the practice of using the endorsement of a check as an authorization for the automatic withdrawal of funds from an endorser's accounts. In addition, the bill establishes the Bank Enterprise Act under which financial institutions could reduce their deposit insurance premiums for increasing their activities in distressed communities.

As well as protecting consumers and taxpayers, the bill enacts many provisions to make banks more financially and internationally competitive. H.R. 6 eliminates existing restrictions on interstate banking and branching imposed under the McFadden Act of 1927 and the Bank Holding Act of 1956. The measure would permit bank holding companies to acquire banks or bank holding companies located in other States without restriction and to operate those banks as direct branches, effective 3 years after enactment. The bill also ends the prohibition against the branching of federally chartered banks in other States, effective in 3 years. States would be permitted to impose certain filing requirements upon out-of-State national banks, but only if they are similar to requirements imposed on other out-of-State businesses.

The current bill permits banks to affiliate with securities firms that could engage in a full range of securities activities. However, securities activities other than certain municipal securities, would have to be moved to either a subsidiary of the bank or an affiliated securities firm. These ample powers are tempered by the establishment of strong firewalls to ensure the integrity of the securities markets and further safeguard the deposit insurance system. In addition, the legislation continues the present prohibition on commercial ownership of banks and affiliation with insurance companies.

Banks do need to stand on a more competitive basis with other financial service providers, but that reform cannot be made at the expense of the American taxpayer. To allow banks broad diversification into securities' activities in order to bring about their recovery, without erecting solid firewalls, is like trying to put out a blazing fire with a shower of gasoline. H.R. 6, in its present form, provides much-needed diversification with sensible regulatory and enforcement muscle. I urge my colleagues to support its passage.

Mr. MATSUI. Mr. Chairman, I would like to take a moment to compliment the chairman of the House Banking Committee, the ranking member and the members of the committee for assuring that pass through deposit insurance on section 457 plan funds continues. As the chairman knows, in May of this year I introduced legislation which would have continued pass-through deposit insurance on section 457 plan funds. These funds are deferred compensation arrangements available only to employees of State and local governments. Legislation is necessary because unless Congress acts, pass-through deposit insurance on these funds will expire on January 29, 1992. This will be harmful to hundreds of thousands of depositors, but perhaps nowhere more than in my own State of California where more than any other State, government employees have found the 457 plan very attractive and have used them extensively.

Let me briefly explain why government employees find 457 plans so attractive and why I am strongly in favor of the Banking Committee's action and the provisions of H.R. 6 which protect deposit insurance on 457 plans. A 457 plan is a deferred compensation plan which is available only to employees of State and local governments. It permits a maximum of $7,500 in wages to be deferred annually. Since 1986, the only deferred compensation program that an employee of State or local government can have is a 457 program. Thousands of Californians and hundreds of thousands of public employees throughout the country now use 457 programs. For example, employees of the city of Los Angeles, Sacramento, San Diego and New York are actively involved in 457 plans. Nationally, as many as 150,000 government workers have placed funds in 457 plans. The funds can be invested in a number of investment vehicles, including insured deposits in financial institutions. Without enacting the appropriate provisions of H.R. 6, however, those deposits will become uninsured, leaving about $3½ to $4 billion in government employee funds, now in financial institutions, primarily thrifts, uninsured.

I believe that, if this Congress does not act, some of the most valued people in our society—firemen, policemen, teachers, nurses, judges, forest rangers, clerical workers, sanitation workers, and many, many more—will feel that a promise has been broken. That promise was made when these workers, in good faith, placed funds in financial institutions believing that those funds would continue to enjoy federal deposit insurance on a pass-through basis. As reported by the committee, H.R. 6 had no cutbacks in any of the other pass-through deposit insurance funds, including the private sector equivalent of the 457 plan—the 401(k) plan. How could we have explained to State and local government workers that they had been treated fairly if we had permitted pass through deposit insurance on section 457 plan funds in financial institutions to expire? That is why I am pleased that H.R. 6 has a provision which preserves deposit insurance on 457 funds.

Finally, perhaps one of the most important features of the amendment of the Banking Committee is that it introduces additional competition into the gathering of 457 plan funds. The Banking Committee's amendment and my legislation would permit thrift institutions to continue to have 457 plans insured on a pass-through basis for 457 plan participants, and opens up the field to commercial banks as well. Until now, that has not been possible and that is another reason why I support this provision and hope it will be enacted.

Again, Mr. Chairman, I commend your efforts, those of the ranking member and of the committee.

Ms. NORTON. Mr. Chairman, I rise in support of H.R. 6, the Deposit Insurance and Regulatory Reform Act. I do so, however, with great reservation. During the last decade, the watchdogs of the Federal Government have been asleep at the switch while the American banking industry made billions of dollars of bad loans. At the same time, they disproportionately denied minorities access to residential and commercial credit. The impact of this is plainly visible—failed banks, reduced mortgage availability, and increased business failures. The time has come for change, and this legislation, while taking some positive steps, does not go far enough to accomplish what is needed.

On October 21, 1991, the Federal Reserve Board issued a Home Mortgage Disclosure

Act report which revealed that blacks and Hispanics applying for mortgage loans are significantly more likely than white applicants to be denied credit. This is a deplorable situation. The Congress passed both the Home Mortgage Disclosure Act and the Community Reinvestment Act [CRA] to prevent the race of the applicant from determining access to loans, but it continues to be a factor to this day. The CRA was designed to ensure equal access to loans for minorities, and Federal regulators have done little over the past years to enforce it. Before the banking industry is granted expanded powers, such as those provided for in this bill, I would like to see new provisions in place to strengthen CRA compliance, and both the industry and Federal regulators demonstrate that they have cleaned up their acts.

Chairman GONZALEZ has taken a leading role on these issues. He developed H.R. 6 to establish bank capitalization standards to address the loan default problem. He also recently urged the administration to take immediate action to ensure that the current laws against loan discrimination are enforced. Both the chairman and I supported the amendment offered by my colleague Mr. KENNEDY, which would have forced banks attempting to open interstate branches to first show compliance with the CRA. But the Kennedy amendment failed, sending a message to the banking industry that you can expand without complying with the current antidiscrimination laws. This message is clearly wrong. The redlining must stop. The banking industry must be held accountable for its failures.

The District of Columbia Council focused its attention on local CRA compliance during public hearings held in 1989. At that time, many District banks made new commitments for local investment. Since then, however, the overall compliance has been disappointing as some banks have fulfilled these CRA commitments, and some have not.

The problems in the savings and loan and banking industries have placed an ever increasing burden on the American taxpayer. The insolvency of thousands of financial institutions is continuing to force this Congress to ante up billions for the support of the deposit insurance system. Funding these bailouts has made it more difficult to find money for programs designed to benefit the less fortunate of our society. Yet, those who could not get credit—because of discrimination—are also being asked to foot the bill for losses caused by those who did get them.

Certainly, the time has now come to ensure the future solvency of the banking system by increasing the regulatory and enforcement powers of the Federal Deposit Insurance Corporation, Federal Reserve Board and the Comptroller of the Currency. The provisions contained in this bill accomplish this by creating a system of capitalization ratings, and requiring yearly audits of all banks. These measures will provide early warnings to bank regulators of possible problems at financial institutions. Meaningful and timely steps can then be taken to minimize the number and impact of bank failures.

In the District of Columbia, the need for tough enforcement provisions became clear this past year with the Latin Investment scandal. With newly enacted legislation in place, the District of Columbia Office of Banking and Financial Institutions has since been aggressively monitoring the banking activities under its supervision, and has taken corrective action when needed.

District law currently authorizes the Office of Banking to permit out-of-State banks to establish branches within the District, if they agree to meet community development and investment requirements. The Vento amendment, which I supported and was approved to title III of this bill, is a strong and necessary step for continued State control of banking activities. It allows State agencies like the District of Columbia Office of Banking and Financial Institutions, to continue exercising regulatory powers over banks wishing to enter its jurisdiction. The bill would have stripped State regulators of this important means of ensuring delivery on the investment commitments made by out-of-State banks.

Given the poor enforcement record of Federal regulators, we should be strengthening State supervisory powers, rather than diminishing them. With this in mind, I will soon introduce legislation giving the District of Columbia Office of Banking and Financial Institutions primary regulatory authority over all nonfederally chartered banks in the District. The Office of Banking currently shares this authority with the Comptroller of the Currency, a situation which pre-dates home rule. No other State's bank regulatory agency is in this situation. Now that the District has the regulatory tools to do the job itself, the time for this change has come.

Mr. Chairman, the administration and banking interests contend that banks must be allowed to exploit new opportunities so that they will be better able to compete and survive in a changing financial services marketplace. But if we are to permit this, we cannot allow these same banks to continue their practices of the past. I will reluctantly support this bill. But, if banking institutions are to be permitted to expand their range of services, I would prefer that they first be required to demonstrate a willingness to provide equal access to credit in the minority communities that they serve, and demonstrate that they are adequately capitalized to prevent any risk to the depositors or taxpayers.

Mr. DINGELL. Mr. Chairman, in response to Members' questions about the content of the Gonzalez-Dingell compromise on title IV and in lieu of the filing of a formal committee report thereon, the following section-by-section analysis is submitted to serve as the legislative history of title IV. Reference should also be made to House Report 102–157, part 1 which was filed by the Committee on Banking, Finance, and Urban Affairs on July 23, 1991, and to House Report 102–157, part 4 which was filed by the Committee on Energy and Commerce on October 4, 1991.

TITLE IV—FINANCIAL SERVICES MODERNIZATION

SUBTITLE A—AMENDMENTS TO FEDERAL BANKING LAWS

CHAPTER 1—FINANCIAL SERVICES HOLDING COMPANIES

Sec. 401. Financial Services Holding Companies

This section amends the definitions contained in section 2 of the Bank Holding Company Act of 1956.

Subsection (a)(1) defines a "financial services holding company" as any company that controls any bank.

Subsection (a)(2) deletes a provision that by its own terms has expired.

Subsection (a)(3) amends subsection 2(f) to include a definition of "appropriate Federal banking agency" to provide that such term has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (FDI). The term "Board" is defined to mean the Board of Governors of the Federal Reserve System.

Subsection (a)(4) adds a series of new definitions to the Bank Holding Company Act. These definitions include:

Securities affiliate. A securities affiliate is defined in new subsection (n) as any company that is controlled by a financial services holding company and is engaged in the United States in activities that would not be permitted under section 4(c) of the Bank Holding Company Act for any subsidiary of a financial services holding company but for the authorization contained in section 4(c)(15) thereof.

Foreign bank. Under new subsection (o), the term "foreign bank" has the same meaning as the term has under section 1(b)(7) of the International Banking Act of 1978.

Insured depository institution. New subsection (p) defines the term "insured depository institution" by reference to section 3(c)(2) of the FDI Act.

Level 1 and level 2 depository institutions. These terms are defined under new subsection (q) by reference to new section 38 of the FDI Act (as added by Title I of this Act).

Level 1 financial services holding company. New subsection (r) provides that the term "level 1 financial services holding company" means any financial services holding company not less than 80 percent of the banking assets of which are held by level 1 depository institution subsidiaries and any other banking assets of which are held by level 2 depository institution subsidiaries.

Functional regulator. Under new subsection (s), "functional regulator" is defined as any Federal agency or State supervisory authority that has supervisory authority over activities of any company which is a financial services holding company or any subsidiary of any such company (other than an insured depository institution).

New financial activity. New subsection (t) provides that the term "new financial activity" means any activity described in sections 4(c)(8) or 4(c)(15) of the Bank Holding Company Act. It does not include any activities authorized by the Board pursuant to the closely related to banking standard under section 4(c)(8) by regulation or order that is in effect on December 31, 1992.

Qualified financial activity. New subsection (u) provides that the term "qualified financial activity" means any activity described in sections 4(c)(8) and 4(c)(15).

Financial affiliate. Under new subsection (v), the term "financial affiliate" means any subsidiary of a financial services holding company (other than an insured depository institution) that is engaged in the United States in qualified financial activities.

Section 401(b) makes certain conforming amendments in the Bank Holding Company Act including replacing references to "bank" with "insured depository institution" and replacing references to "bank holding company" with references to "financial services holding company."

Sec. 402. Acquisition of Banks

Section 402 amends the application procedures in section 3 of the Bank Holding Company Act for acquisitions of banks, savings associations, and financial services holding companies.

Subsection (a)(1)(A) amends section 3(a)(3), which prohibits the acquisition of more than 5 percent of a bank without the prior approval of the Board, to encompass acquisitions of insured depository institutions and financial services holding companies.

Subsection (a)(1)(B) makes it unlawful for any insured depository institution to become a financial services holding company. This changes current law which permits banks to be holding companies. This does not apply to foreign banks with insured branches in the United States.

Subsection (a)(1)(C) provides that companies that were bank holding companies on December 31, 1992 shall be financial services holding companies as of January 1, 1993 without obtaining the approval of the Board. This exemption is a one-time exemption for bank holding companies becoming financial services holding companies as a result of the enactment of this legislation. It applies to both companies regulated as bank holding companies and holding companies which will be financial services holding companies after January 1, 1993 but which maintain their exempt status under section 4(f) of the Bank Holding Company Act.

Subsection (a)(1)(D) permits reorganizations of banks into holding companies without obtaining the prior approval of the Board if, after the reorganization, the bank's shareholders will have substantially the same proportional share interest in the holding company as they had in the bank, the bank is a level I or level 2 depository institution after the reorganization, the holding company only engages in managing and controlling banks after the reorganization, and the holding company provides 30 days prior written notice to the Board.

Subsection (a)(2) makes technical amendments to the notice and hearing requirements in section 3(b) of the Bank Holding Company Act to provide that the Board will notify any other appropriate Federal banking agency and the State bank supervisor, if appropriate, when it receives an application for an acquisition of an insured depository institution.

Subsection (a)(3) expands the factors that the Board may consider in evaluating an acquisition, merger, or consolidation under the Bank Holding Company Act to include the safety and soundness of the insured depository institution to be acquired or of the insured depository institutions that are currently controlled by the holding company.

Subsection (a)(4) adds a new subsection (d) to section 3 of the Bank Holding Company Act to establish expedited procedures for acquisitions of additional insured depository institutions by level 1 financial services holding companies.

Under the expedited procedures, the Board must notify the appropriate Federal banking agency and any appropriate State bank supervisor in the manner provided in section 3(b) of the Bank Holding Company Act upon receipt of a completed application. The appropriate Federal banking agency and the State bank supervisor have 21 days after receipt of notice from the Board to submit their views and recommendations. The Board has 45 days to act on the application from the date a complete application is received. If the Board fails to act, the application will be considered approved. The 45-day period can be extended if any appropriate Federal banking agency or the State bank supervisor recommends disapproval. If any appropriate Federal banking agency or State bank supervisor recommends disapproval, the Board must follow the regular procedures for notice and hearing contained in section 3(b). The 45-day time period can be waived by the Board in the event of an emergency or if the insured depository institution is in danger of default.

Subsection (b) contains conforming amendments to the Bank Holding Company Act including the substitution of references to "financial services holding company" for "bank holding company" and references to "insured depository institution" for "bank."

Sec. 403. Interests In Nonbanking Organizations

Section 403 amends section 4 of the Bank Holding Company Act to describe permissible nonbanking activities for financial services holding companies.

Subsections (a) (1) and (2) delete provisions that have expired and make certain conforming amendments.

Subsection (a)(3) amends subsection (a)(2)(A) to provide that financial services holding companies cannot be banks. Foreign banks that are financial services holding companies are permitted to carry on banking activities in the United States, if such activity is otherwise permitted through a branch or agency as those terms are defined in the IBA.

Subsection (a)(4) provides that subsection (a)(2)(B) of the Bank Holding Company Act is amended by inserting: "permitted under subsection (c)(8) or (c)(15) in accordance with subsection (i) or (k), subject to all conditions specified in this section or in any regulation prescribed or order issued by the Board under this section." This is a technical correction that clarifies that the Board may impose conditions on its approval of any proposal by a financial services holding company to engage in securities activities or activities of a financial nature. The Board has this authority under the existing provisions of the Bank Holding Company Act. The technical changes are necessary to conform this section to the new sections added by H.R. 6. However, Congress does not intend that the Board use this provision to restrict the day-to-day activities of a securities affiliate, once it has been approved by the Board.

Subsection (a)(5) substitutes a new section 4(c)(8) to the Bank Holding Company Act to allow a financial services holding company to own the shares of any company engaged in any activities which the Board has determined by order or regulation to be of a "financial nature" in accordance with new section 4(i) of the Bank Holding Company Act. It is not intended that commercial activities be defined as of a "financial nature."

Subsection (a) (6) and (7) make technical corrections to subsections (c) (13) and (14) of the Bank Holding Company Act.

Subsection (a)(8) adds a new section 4(c)(15) to the Bank Holding Company Act which allows a financial services holding company to own the shares of any company engaged in specified securities activities.[1] As amended, paragraph (15) would include: (A) underwriting, distributing, or dealing in securities; (B) organizing, sponsoring, controlling, or promoting any registered investment company pursuant to the Investment Company Act of 1940; (C) securities brokerage, private placement, or investment advisory activities; or (D) other activities that require such company to register with the Securities and Exchange Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser.

This section has been revised to clarify that the securities activities authorized under H.R. 6 include any activity that would require a company to register as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser under the relevant federal securities laws. As originally written, this section would have authorized a securities affiliate of a financial services holding company to engage in any activity that is permitted for a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser. Because the federal securities laws do not establish or limit the nonsecurities activities that may be conducted by a company that is a registered securities broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, this provision could be construed to permit a securities affiliate to engage in a wide range of nonsecurities activities. The amendment to this section clarifies the intent to authorize securities affiliates to conduct only securities activities that are listed specifically in the section or that are securities activities that require registration under the federal securities laws. In this regard, it is intended that securities activities authorized under section 4(c)(15) would include activities normally engaged in by securities firms, such as merchant banking and foreign exchange transactions.

Subsection (a)(9) strikes the last two sentences of subsection (c) of the Bank Holding Company Act.

Subsection (a)(10) adds a new subsection (i) to section (4) of the Bank Holding Company Act. Under current law, the nonbanking activities of bank holding companies are limited to activities that the Board has determined to be "closely related to banking." H.R. 6 revises this standard to permit financial services holding companies to engage in any activities that the Board determines to be "of a financial nature." This is a more flexible test that is intended to permit the Board to take account of new developments in the provision of financial services, including technological and other developments in the financial markets generally, in authorizing new activities for financial services holding companies. Because H.R. 6 specifically authorizes financial services holding companies to own companies engaged in a variety of securities activities, including securities underwriting and dealing activities, the bill does not permit the Board to authorize these securities activities under this broader test. It is also intended that the Board not determine that any additional securities activities meet the current "closely related to banking" test during the period of time prior to the effective date of the new powers permitted by H.R. 6.

New Section 4(i)(3) provides that a financial services holding company must conduct its securities underwriting and dealing activities as well as other securities activities that are newly authorized by this bill within a Section 4(c)(15) securities affiliate that is subject to the firewalls and other prudential limitations in the bill. In addition, a financial services holding company that chooses to conduct securities placement activities that involve accepting risk as principal must do so within the securities affiliate, subject to the limitations applicable to securities affiliates. The bill permits financial services holding companies to continue to conduct certain securities activities that have already been authorized for bank holding companies under the existing provisions of the Bank Holding Company Act in a nonbank company that is not a securities affiliate subject to the limitations in the bill. The activities that may be conducted outside of the securities affiliate are limited to securities brokerage and advisory activities and underwriting and dealing in certain securities that a national bank would be permitted to underwrite and deal in directly within the bank (such as U.S. government securities). These activities are, however, subject to regulation by the SEC and will be limited by the section 23A and 23B protections contained in the Federal Reserve Act.

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[1] Under current law, as discussed below, bank holding companies may affiliate with securities firms whose activities have been determined to be "closely related to banking" under Section 4(c)(8) of the Bank Holding Company Act.

Some bank holding companies have already been permitted, under the current "closely related to banking" test, to own nonbanking companies that underwrite and deal in securities that are not eligible for a national bank to underwrite and deal in (so-called "section 20 companies"). Financial services holding companies that own section 20 companies may retain these companies for no more than three years following the date of enactment of the bill unless the holding company obtains Board approval to retain the company as a securities affiliate subject to all of the provisions and limitation in the bill applicable to newly authorized securities activities.

New section 4(i)(4) states that real estate activities are not of a financial nature for purposes of section 4(c)(8) except to the extent that the Board has approved such activities pursuant to the closely related standard in section 4(c)(8) prior to May 3, 1991.

New section 4(i)(5) states that insurance activities are not of a financial nature and no financial services holding company and no thrift institution subsidiary or insured institution subsidiary of a financial services holding company or subsidiary of such insured institutions may provide insurance as principal, agent, or broker except to the extent permitted under subparagraphs (A) through (G) of section 4(i)(5) of the Bank Holding Company Act which are intended to be identical to former subparagraphs (A) through (G) of section 4(c)(8) of the Bank Holding Company Act of 1956.

New section 4(i)(6) provides that a financial services holding company may not permit any bank subsidiary (or any subsidiary of such bank) to provide insurance as principal, agent or broker outside the State in which the bank is chartered unless such insurance activities in the nonchartering State are specifically authorized by the statutes of the nonchartering State. This limitation is imposed on "any bank subsidiary," including a national bank. It is intended that a national bank be considered to be chartered in the state in which it has its principal place of business. However, insurance may continue to be provided on an interstate basis so long as the coverages provided insure against the same type of risk or are functionally equivalent to those provided on or before June 1, 1991, and to the extent that the activities were lawful and not subject to legal challenge on that date, and subject to state regulation and control. The language "otherwise functionally equivalent to" is not intended to be interpreted in order to defeat the prohibitions set forth in this provision. For example, this provision may not be construed as authorizing the sale of ordinary life insurance by a bank that had previously been authorized to sell credit-related life insurance.

New section 4(i)(7) concerns the activities of an undercapitalized savings association that is acquired by a financial services holding company. H.R. 6 generally limits the securities, insurance, and real estate activities of insured depository institutions. The bill would permit undercapitalized savings associations that are acquired and recapitalized by financial services holding companies to continue to conduct these activities to the extent that they are permissible for a Federal savings association. This provision adds to paragraph (A) the parenthetical "(other than subsection (f))" to clarify that the exemption from the activities restrictions would not override the restriction on activities currently applicable to commercial companies that own so-called nonbank banks. Under current law, these companies retain their special exemption from the restrictions of the Bank Holding Company Act only so long as they continue to limit their activities and growth. This provision also adds to paragraph (A) the parenthetical "(other than paragraph (5))" to clarify that thrifts acquired by financial service holding companies are subject to the same restrictions contained in section 4(i)(5) of the Act as bank holding companies with respect to insurance activities.

New section 4(i)(8) requires the Board, whenever it makes a determination under subsection (c)(8) that any activity is an activity of a financial nature, to publish in the Federal Register, not later than seven days thereafter, the regulation or order by which such determination has been made and a description of the activity.

New section 4(j) of the Bank Holding Company Act provides for the transfer of certain securities activities upon a financial services holding company's acquisition of a securities affiliate. Paragraph (1) provides that a financial services holding company that acquires control of a securities affiliate may not permit any insured depository institution it controls to engage in the United States in any securities activity except to the extent specifically permitted for a national bank by statute or by regulations, order, interpretation, or approval of the Comptroller of the Currency (see Table A for a list of such approvals to date) before the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991. Paragraph (1) is amended to provide further that such securities activity may not involve the underwriting or distributing of securities backed by or representing an interest in mortgages or other assets originated or purchased by the national bank or any affiliate of the bank. This prohibition applies one year after the date of the acquisition of any securities affiliate.

Further, paragraph (2) provides that a financial services holding company that controls or acquires control of a securities affiliate may not permit any insured depository institution subsidiary of such company to underwrite or deal in obligations issued by a State or political subdivision; such activities may be conducted *only* by a securities affiliate in accordance with subsection (c)(15). This prohibition also applies one year after the date of the acquisition of any securities affiliate. Paragraphs (3) and (4) apply the same prohibition, respectively, to broker-dealer activities and to investment company activities, with an effective date of January 1, 1993.

Paragraph (5) states that section 4 of the Bank Holding Company Act shall apply to branches and agencies of foreign banks, and commercial lending companies owned by foreign banks, as if such branch, agency or commercial lending company was a bank.

Section 403 adds a notice provision in new subsection (k) to Section 4 of the Bank Holding Company Act. Subsection 4(k) requires any company to give at least 45 days prior written notice to the Board before engaging in, or acquiring or retaining ownership or control of the shares of a company engaged in, any nonbanking activity or any qualified financial activity. Similar to subsection 4(a)(4), Congress does not intend that the Board use this provision to restrict the activities of an affiliate that is a registered broker-dealer, once the acquisition or retention of such broker-dealer has been approved by the Board.

The notice must contain information required by the Board, by regulation or on a case-by-case basis. The Board may disapprove an activity or transaction by issuing an order to the holding company setting forth the reasons for disapproval before the end of 45 days following receipt of the notice. A notice shall be deemed to be approved unless it is disapproved within the 45-day period. The 45-day period may be extended an additional 45 days. A holding company may proceed with a transaction sooner if it receives written notification of approval from the Board. With respect to particular activities, the Board may eliminate the notice requirement or shorten the notice period. With respect to a proposal to engage in a 4(c)(8) activity not previously approved, the Board may extend the notice period for an additional 90 days.

Subparagraph (1)(D)(ii) provides that the Board may prescribe regulations which provide for no notice to be given with respect to a financial services holding company's engaging in nonbanking activities or acquiring or retaining ownership or control of companies engaged in qualified financial activities. An exception is established, however, that precludes no notice with respect to activities or transactions described in section 4(c)(15). It is expected that any shorter notice periods that may be established pursuant to this subparagraph with respect to such activities or transactions will remain of sufficient duration to enable the Board to consider the criteria for review in paragraph (2) of subsection 4(k).

New section 4(k)(2) sets forth the general standard for Board review. In evaluating a notice, the Board must generally use the following criteria: managerial resources; financial resources, including capital; any material adverse effect on the safety and soundness or financial condition of an affiliated insured depository institution; and whether there is any reasonable expectation of a public benefit that would outweigh any possible adverse effects. The Board must disapprove a proposal if any insured depository institution (or subsidiary thereof) controlled by the holding company is engaging in an unsafe or unsound practice or is in an unsafe or unsound condition.

Subsection (l) of section 4 of the Bank Holding Company Act provides that a financial services holding company may only engage in, or acquire or retain the shares of a company engaged in, any new financial activity, as defined in section 2 of the Bank Holding Company Act, if the holding company is a level I financial services holding company.

Subsection (m) of section 4 of the Bank Holding Company Act provides that any financial services holding company which engages in, or controls a company engaged in, any new financial activity and ceases to qualify as a level 1 financial services holding company must either restore the capital of insured depository institution subsidiaries in an amount sufficient to regain level 1 status or submit a capital plan, the implementation of which will allow the holding company to regain level 1 status. If a holding company fails to restore capital or implement a capital plan, it must divest its insured depository institution subsidiaries that are below minimum capital or terminate its new financial activities. The Board must promulgate regulations concerning appropriate capital standards and requirements for financial services holding companies. The Board and the appropriate Federal banking agencies must coordinate the application of these requirements with new section 38 of the FDI Act, as added by section 131 of Title I of this Act, and with section 5(e) of the FDI Act concerning cross-guarantees of sister insured depository institutions. Any such consolidated capital requirements or cross-guarantee provisions shall not in any way affect or impair the SEC's financial responsibility or net capital requirements for registered broker-dealers.

The Board is also required to provide timely notice to the SEC before any holding company is required to divest any interest in, or terminate any activities of, a company that is required to register with the SEC as, a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser. It is intended that sufficient notice be given to the SEC so that any such divestiture is done in an orderly manner without harming customers of the affiliate, and subject to the Securities Investor Protection Act and the federal securities laws. Similar timely notice is required in connection with any action pursuant to paragraph (2) of subsection (m) with respect to any other functional regulator where the company is subject to any financial responsibility or capital requirements.

Under section 4(n)(1)(A), insured depository institutions and their subsidiaries that are controlled by a financial services holding company are prohibited from offering customers advice or opinions on the products of the securities affiliates unless the insured depository institution or its subsidiary has provided a one-time written disclosure that the securities affiliate is affiliated with the insured depository institution and that the securities affiliate is not an insured institution and that its products are not insured deposits and are not guaranteed by the affiliated insured institution. The Board is instructed to prescribe regulations regarding such notice, in consultation with the SEC.

Under section 4(n)(1)(B), whenever an insured depository institution, its securities affiliate, or any other affiliate of any such institution makes the required disclosures, it must obtain a signed acknowledgement of receipt from the customer, unless the customer would qualify as an "accredited investor" as defined in section 2(15) of the Securities Act of 1933. An insured depository institution or its securities affiliate must obtain acknowledgement of receipt from such an accredited investor only at the time an account is opened.

Section 4(n)(1)(C) generally prohibits disclosures of confidential customer information by any insured depository institution subsidiary of a financial services holding company. Under some State laws, a separate affiliate is not required to sell insurance. In that case, the restrictions would apply within the insured depository institution itself. This provision also requires records be kept of customer consent by an insured depository institution. The provision further specifies that customer consent not only be acknowledged but "maintained" and should include date of acknowledgment, customer's name, address, and account number. Lastly, any renewal of an account or any rollover of a deposit is treated as a new deposit relationship with an insured depository institution for the purpose of availing existing customers (of such institution) of the consumer protections against disclosure in this subsection.

Section 4(n)(1)(D), "confidential customer information" means financial information regarding any specific individual which has been derived from any record of any insured depository institution and pertains to the individual's relationship with the institution.

Section 4(n)(1)(E) contains various exceptions to the definition of "confidential customer information". Any reference throughout this section to any information "obtainable" is intended to be in the "ordinary course of business" and not by any other means.

Section 4(n)(1)(F) provides that the Board may prescribe additional regulations to limit disclosure of nonpublic customer information between an insured depository institution and its subsidiaries and affiliates (including a creditworthiness evaluation of an issuer or other customer of the insured depository institution, its financial or insurance affiliate, or other subsidiary). "Affiliate" includes a separately identifiable department or division of an insured depository institution that is registered as an investment adviser.

Section 4(n)(2) provides that the insured bank or its affiliate must obtain from any customer prior to the sale or acceptance of any noninsured instrument, financial product or deposit a written receipt of a declaration in 18-point bold-type acknowledging that the product is not insured or guaranteed by the United States and that the customer could lose some or all of his or her money.

An exception to this section is provided for transactions by a broker or dealer registered under the Securities Exchange Act of 1934. Brokers and dealers are otherwise subject to customer disclosure requirements under the federal securities laws.

In addition, insurance activities of an affiliate of an insured depository institution that are (1) not conducted on the premises, (2) not part of any joint marketing, or (3) do not in any way involve an insured depository institution are exempt from the customer disclosure requirements in this section. The rationale here is that insurance activities not connected to an insured depository institution are not likely to lead to customer confusion about the Federally insured status of insurance products. An example would be an insurance company that owns a nonbank bank which is an insured depository institution. The disclosure requirements in this section are not intended to apply to insurance activities totally disassociated from the nonbank bank.

The amendment also clarifies that the customer disclosure requirements of this section are not intended when an insured depository institution makes a loan or an extension of credit. However, to the extent a loan or extension of credit is combined or marketed with an insurance product, then the customer disclosure requirements in this section are applicable to the insurance product.

New section 4(n)(3) requires the appropriate federal banking agencies to prescribe regulations jointly to prohibit any insured depository institution from employing any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the institution or the Federal Government is responsible for the activities of an affiliate, stands behind the affiliate's credit, guarantees any return on securities or insurance products sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate. It is not intended that such regulations prohibit a securities affiliate from imparting accurate information about securities for which the Federal Government is a source of payment or on which it guarantees any returns.

This advertisement limitation is in addition to certain certifications of understanding that the customers must sign when a purchase is made on the floor of an insured depository institution, as well as when the customer opens an account at the securities affiliate. Notwithstanding such customer certification, there may still be instances in which the inclusion of the logo, name, slogans, and similar information of the securities affiliates may be considered as misleading if it is presented in a way that causes a reasonable person to believe mistakenly that the institution or the Federal Government is responsible for the activities of a securities affiliate of the institution, stands behind the affiliate's credit, guarantees any returns on securities sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate. With respect to registered investment companies, however, section 466 would prohibit an investment company that has as investment adviser or distributor an insured depository institution from adopting, as part of its name, title, or logo, any word or design that is the same or similar to the name of the insured depository institution.

REQUIREMENTS APPLICABLE IN THE CASE OF FINANCIAL SERVICES HOLDING COMPANIES WITH SECURITIES AFFILIATES

New section 4(n)(4) places restrictions on transactions between insured depository institution subsidiaries of a financial services holding company and the securities affiliate. These so-called "firewall" provisions are designed to prohibit unsound banking practices, risk of loss to the bank insurance fund and the extended safety net, conflicts of interest, unfair competition, undue concentration of resources or decreased competition, and related concerns that would negatively impact the banking system and the securities markets, and the stability of and confidence in both.

Section 4(n)(4)(A)—Certain Financial Transactions of Insured Depository Institutions Prohibited—Section 4(n)(4)(A) provides that, notwithstanding any provision of subparagraph (E), no insured depository institution subsidiary of a financial services holding company may directly or indirectly engage in any of the following with respect to its securities affiliate:

(i) Except as provided in subparagraph (C), extend credit to such securities affiliate, with an exception provided in subparagraph (C) for extensions of credit made in the course of clearing U.S. Government or agency securities where such extensions of credit are repaid on the same or the next calendar day, are incidental to the clearing of transactions in those securities, and are fully secured in both principal and interest by such securities.

(ii) Issue a guaranty, acceptance, or letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to or for the benefit of such securities affiliate.

(iii) Purchase for the insured depository institution's own account, or for the account of any subsidiary of the institution, any financial asset of such securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

(iv) Purchase for the insured depository institution's own account, or for the account of any subsidiary of the institution, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such securities affiliate is an underwriter or a member of the selling group, or which such securities affiliate otherwise places, until (I) in the case of an underwriting, 60 days after completion of the underwriting period or (II) in the case of a placement, 60 days after the completion of the placement.

(v) Purchase for a customer account in which the insured depository institution or its subsidiary, acting as fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such securities affiliate is an underwriter or a member of the selling group or which such securities affiliate otherwise places (whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the insured depository institution or subsidiary to act in such capacity, unless such purchase is permitted by state law, is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship, and is effectuated by endorsement by the creator of the trust of a separate document that discloses [in accordance with regulations prescribed by the Board] any conflict of interest that an insured depository institution may have in making such purchases) until (I) in the case of an underwriting, 90 days after the end of the underwriting period or (II) in the case of a placement, 90 days after completion of the placement.

Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred to in the preceding sentence is incapable of providing the authorization or effectuating an endorsement referred to above, the beneficiaries of such trust or instrument may unanimously provide such authorization or effectuate such endorsement.

This provision does not authorize boilerplate endorsements, contracts of adhesion or lack of informed consent. State trust law supports the requirement of disclosure and informed consent of the trust beneficiary. Generally applicable principles of state trust law demand that a trustee avoid any dealings that may pose a conflict between the interests of the beneficiaries and the trustee's own self-interest. *See Scott* Sec. 170; 76 Am. Jur. 2d Trusts Sections 317, 318; *see also* 10 Am. Jur. 2d Banks Section 307.

(vi) Extend credit to any investment company which is sponsored, organized, controlled, promoted, or advised by such securities affiliate or the depository institution (including a separately identifiable department or division thereof) or any subsidiary of such institution, except as permitted by regulations prescribed by the SEC pursuant to section 18(f)(3) of the Investment Company Act of 1940.

(vii) Extend credit, arrange for the extension of credit, or issue a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit to an issuer of securities of which such securities affiliate is underwriting or placing any security for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities.

(viii) Extend credit to a customer of a securities affiliate for the purpose of repaying, in whole or in part, credit extended to such customer by the securities affiliate.

(ix) Except as provided in subparagraph (G), extend credit, arrange for the extension of credit, or issue a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, to or for the benefit of the issuer of any security of which such securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places, until (I) in the case of an underwriting, 90 days after the end of the underwriting period or (II) in the case of a placement, 90 days after the end of the placement.

(x) Except as provided in subparagraph (F), sell any financial asset of the depository institution or a subsidiary thereof to such securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

Section 4(n)(4)(B)—Certain Financial Transactions of Holding Companies and Subsidiaries During Distributions Prohibited—Section 4(n)(4)(B) prohibits a financial services holding company and a subsidiary of a financial services holding company (other than a securities affiliate) from, directly or indirectly, extending credit or arranging for the extension of credit to any person, if such credit is secured by, or is used to purchase, any security that is the subject of a distribution or placement in which a securities affiliate of such financial services holding company participates as an underwriter or member of the selling group or which the securities affiliate otherwise places (other than securities issued by an open-end investment company or unit investment trust or securities of the United States or any agency of the United States or securities on which principal and interest are fully guaranteed by the United States or any such agency) until 30 days after the end of the period in which such security is the subject of such distribution or placement.

This paragraph excepts out securities issued by an open-end investment company or a unit investment trust because firewalls designed to address problems relating to an analogous set of abuses with respect to open-end investment companies and unit investment trusts are provided elsewhere in the legislation.

It is intended that the covered entities will take appropriate action to institute, maintain, and enforce reasonable and proper systems of supervision, surveillance and internal control to protect against violations of this provision. For example, most firms use restricted list procedures when a deal is about to go public. It is not intended that an inadvertent error would be actionable, but a pattern of such violations would establish the failure to maintain an appropriate system.

Section 4(n)(4)(C)—Exception for Intra-Day Extensions of Credit in Connection with Clearing Government Securities—Section 4(n)(4)(C) provides an exception from the general prohibition on extensions of credit included in section 4(n)(4)(A). Extensions of credit made in the course of clearing U.S. Government or agency securities are permissible if such extensions of credit are repaid on the same calendar day, are incidental to the clearing of transactions in those securities, and are fully secured by such securities. While clearing credit is to be repaid on the same calendar day, the creditors' customers may have been unable to deliver securities to their customers because a portion of the securities expected were not delivered in a timely fashion. The impact of a delivery failure, or a computer or other funding or delivery difficulty may cause clearing credit "to be repaid on the same calendar day" to be delayed for a day or so. Such delays are intended to be permitted under this provision.

Section 4(n)(4)(D)—Prohibitions on Discriminatory Credit Treatment—Section 4(n)(4)(D) stipulates that depository institutions that choose to offer credit, including credit for clearing services for government securities to unaffiliated financial institutions, must not discriminate in the terms and conditions under which this service is provided vis-a-vis those made available to their own financial affiliates or to their own securities department or subsidiaries, unless based on objective criteria and sound business practices. This section requires that the Federal Reserve Board monitor the availability, cost, and conditions of such credit for clearing services to securities firms not affiliated with depository institutions. Should the Board determine that this service is becoming unavailable, or available under conditions that do not permit unaffiliated securities firms to compete effectively in the government securities market, section 4(n)(4)(D)(iii) requires the Board to promulgate rules designed to cure the situation, for example, by requiring depository institutions to offer such services under improved conditions and prices to unaffiliated firms, by providing such firms direct access to Reserve Bank clearing, or by making proposals to the Congress for remedial legislative changes.

Section 4(n)(4)(E)—Review of Intraholding Company Transfers—Section 4(n)(4)(E) prohibits a financial services holding company and, subject to subparagraph (A), a subsidiary of a financial services holding company (other than a securities affiliate) from extending credit (not otherwise prohibited under this Act) to, transferring financial assets to, or making an equity investment in, any securities affiliate without prior notice to the Board in accordance with regulations prescribed by the Board. The Board may prohibit any such transaction if the Board determines that such transaction would affect the financial resources of the financial services holding company to such an extent that the transaction would be likely to impair or diminish significantly the ability of the financial services holding company to take any action necessary to comply with the capital requirements applicable to each of its insured depository institution subsidiaries. Notwithstanding any other provision of law, no insured depository institution may make an equity investment in its related securities affiliate.

Section 4(n)(4)(F)—Asset Purchases From Affiliated Bank, Insured Institution, Or Subsidiary Thereof—Section 4(n)(4)(F) permits an insured depository institution, notwithstanding subparagraph (A)(x) of Section 4(n)(4), but subject to section 23B of the Federal Reserve Act, to sell any asset of such insured depository institution or subsidiary thereof for the purpose of including such assets in a pool of assets for the purpose of issuing asset-backed securities if:

(I) those securities are rated as investment grade by at least one unaffiliated, nationally recognized statistical rating organization;

(II) those securities are issued or guaranteed by a government sponsored enterprise which the Board has determined by regulation to be permissible for purposes of this exception;

(III) those securities represent interests in securities described in subclause (II) above;

(IV) the price at which an equity security or the yield at which a debt security to be distributed to the public is established at a price no higher, or yield no lower, than that recommended by a qualified independent underwriter which has also participated in preparing the registration statement and prospectus, offering circular, or similar document; or

(V) those securities would not be the subject of a public offering and would be sold only to accredited investors, as defined in the Securities Act of 1933.

The Board, after consultation with the SEC, shall prescribe regulations to ensure compliance with these requirements. The above-listed exceptions to subparagraph (A)(x) of section 4(n)(4) are intended largely to parallel NASD Schedule E, which addresses asset sales to affiliated entities for underwriting purposes.

Section 4(n)(4)(G)—Exceptions to Credit Facility Limitations—Section 4(n)(4)(G) would provide three exceptions to the prohibitions of section 4(n)(4)(A)(ix). The first exception in subparagraph (G) would be available for a credit facility that was entered into at least 60 days before the commencement of the underwriting or placement, unless such credit arrangement had been entered into in anticipation of such underwriting or placement. It is intended that credit facilities entered into before that 60 days still be subject to applicable arm's length requirements.

The second exception would be available if the credit facility is a renewal or extension, on the same or substantially the same terms and conditions, of a credit facility entered into by the institution with the same issuer at least 2 years before the beginning of such 60-day period, provided that the securities affiliate is not a "significant participant in the underwriting or placement," as defined by the SEC. It is intended that an extension or renewal of a credit facility shall not be deemed to be on "the same or substantially the same terms and conditions" if the interest rate or rates, the collateral, the maturity, or any other relevant term or condition is more favorable to the borrower or beneficiary than prevailing market conditions at the time of such extension or renewal if the same credit facility was being provided de novo by an unaffiliated, objective third party lender. Terms and conditions should differ only to the extent necessary to conform to market conditions at the time of the renewal or extension.

Further, the term "significant participant in the underwriting or placement" shall be defined in relation to such factors as the affiliate's percentage participation in the underwriting or placement in comparison to other participants and its management responsibilities for the underwriting or placement. Because there are circumstances in which less or sometimes substantially less than a majority interest or participation can nonetheless render a securities affiliate a "significant participant in the underwriting or placement", more precise definition of this term has been left to the SEC. This concept of a "significant participant in the underwriting or placement" is relevant as well to the provisions in subclause (IV) of clause (iii).

The third exception would be available for credit facilities that (1) comply with Board regulations reasonably designed to prevent unfair or coercive practices and subsidies, (2) meet certain conditions designed to ensure that the extension of credit is arm's length and does not provide any prohibited subsidy to the issuer, and (3) comply with clauses (iv) through (vi) of subparagraph (G).

Although the third exception is conditioned on compliance with clauses (iv) through (vi) of subparagraph (G), those clauses apply with respect to any excepted credit facility. Clause (iv) requires the board of directors of the financial services holding company to establish policies and procedures to ensure that the insured depository institution is aware when the credit facility would fall within the subparagraph (A)(ix) proscription. Clause (v) requires the insured depository institution and securities affiliate to maintain certain segregated records and file certain reports with the Board and the SEC concerning their compliance with the requirements of subparagraph (G). The arm's length demonstration to be supported by the records does not require documentation that a covered transaction was identical to another transaction with a borrower that was not an issuer. Clause (vi) requires the boards of the financial services holding company and the insured depository institution to (1) review annually the procedures of the holding company for compliance with the conditions of subparagraph (G), (2) determine quarterly that all significant credit facilities entered into by the insured depository institution which are made in reliance on the second exception were effected in compliance with such exception, and (3) promptly notify the Board and the SEC of any transaction that is not in compliance with the conditions of subparagraph (G).

The Board is authorized, in consultation with the SEC, to make such regulations as may be necessary or appropriate to implement the provisions of subparagraph (G) and to define the terms used therein. With respect to any Board rulemaking under this subparagraph, if the SEC comments in writing on a proposed regulation of the Board that has been published for comment under this subparagraph, the Board must respond in writing to the SEC's written comment before adopting such regulation. The Board must, at the request of the SEC, publish such comment and response in the Federal Register at the time of publishing the adopted regulation.

The Board's authority to define the terms used in this provision is vital to its implementation. In particular, the Board is authorized to define the terms "senior management," "executive management," "significant credit facility," and "significant participant in a credit facility." It is intended that the term "senior management" be defined to ensure that the approvals that must be made by senior management are made at an appropriately high level. Although senior managers need not be senior executives of an institution, they should not be loan officers.

The term "executive management" is intended to refer to a higher level within an institution's management. The category of executive management should be limited to executive officers, such as the institution's president, those vice presidents in charge of a principal business unit, division, or function, or those officers with a significant policy-making function. The term "executive management" should not include individuals who, although denominated "vice president", "senior vice president", or the like, do not have significant supervisory or policy-making responsibilities.

The term "significant credit facility" shall be defined with reference to such factors as the principal amount of the facility in absolute terms, the size of the facility in relation to the insured depository institution's capital and lending limits, and the size of the facility in relation to the institution's other outstanding loans. The Board could also take into account whether the credit facility was related to the underwriting. The term "significant participant in a credit facility" should be defined according to the relative participation of an insured depository institution in a credit facility, as measured by such factors as the percentage participation of the institution in comparison to other participants and the management responsibilities of the institution over the facility.

The terms "significant participant in a credit facility" and "significant participant in the underwriting or placement" trigger the certification required of the affiliate and the issuer under subclause (IV) of clause (iii). This certification will always be required where the insured depository institution is the lead bank on a covered credit facility and its securities affiliate is a co-manager of a covered transaction.

The purpose of section 4(n)(4)(A)(ix) is to remove a conflict of interest that could lead an insured depository institution either to assume large credit risks or to impose a tying arrangement on borrowers for the benefit of its securities affiliate. This conflict arises from the availability of insured deposits to support the underwriting activities of the securities affiliate. A depository institution could condition the availability of credit on the borrower's use of the securities affiliate.

Alternatively, a depository institution could assume greater risks in order to induce borrowers to use the securities affiliate. One very common problem during the 1980s was the granting of often highly imprudent loans by savings and loan associations to commercial real estate developers motivated by the ability to take into income immediately the loan origination fees (or "points") paid by the borrower. Using the immediate booking of fees, institutions could boost their net income and pay it out as salaries or dividends. Of course, the association was left saddled with a loan that might never be repaid, but that problem would not manifest itself until long after the fee income had been obtained.

This provision is designed to provide a simple and enforceable protection against a bank making an imprudent loan in order to obtain underwriting business for its securities affiliate. Like the S & L loan points, underwriting fees can be taken into income immediately. Therefore, a holding company would have an inducement to seek to obtain underwriting business and fees by offering an issuer choosing among competing underwriters a loan in either an otherwise unavailable amount or at a concessionary interest rate.

In either case, the decision to extend credit would not be objectively made and would present unacceptable risks to the taxpayer. The provision thus protects the taxpayer by ensuring that the institution's credit judgment takes priority over its interest in assisting the securities affiliate.

Under this provision, the Board will adopt rules designed to ensure that institutions that make credit extensions during the window surrounding and including the underwriting or placement neither use the availability of credit to subsidize their securities affiliates nor coerce potential borrowers into using the underwriting services of a securities affiliate. These rules shall be consistent with the essential purposes of the provision, which is the separation of the lending and underwriting activities of insured depository institutions and their securities affiliates and the protection of the federal safety net and institution borrowers from illegitimate practices that benefit the securities affiliate. Implementation of this provision and the Board's rules thereunder will be assured through the exercise of the examination and enforcement authority of the Board and the SEC.

The phrase "coercive or unfair practices" in clause (ii) is intended to include the express tying of credit facilities by an insured depository institution to investment banking services provided by affiliates. "Coercive or unfair practices" also include any conflict that would violate Section 5 of the Federal Trade Commission Act or comparable statutes barring unfair competitive activities. For example, any communication that might reasonably be construed as an indication to a borrower (or, by the same token, to an issuer of securities underwritten by a securities affiliate) that the decision by the insured depository institution to provide or continue to provide a credit facility will be influenced by the borrower's (or issuer's) willingness to use the services of the securities affiliate would be a "coercive or unfair practice." Also intended to be captured would be an implicit quid pro quo in the form of an understanding between the parties that the tied purchase would, for example, result in more flexibility on the part of the insured depository institution in servicing the loan.

Similarly, "induce" for purposes of this subparagraph means any act or communication by an insured depository institution where, under the circumstances surrounding such act or communication, it can reasonably be construed as having the potential of affecting the decision of the borrower or issuer to use the services of the insured depository institution's securities affiliate.

The provisions of subparagraph (G) are in addition to the prohibitions contained in Section 23B of the Federal Reserve Act (as amended by Section 433 of this legislation) and Section 106 of the Bank Holding Company Act Amendments of 1970. These laws also address coercion and tying by depository institutions.

Section 4(n)(5)—Prohibition on Reciprocal Arrangements Within the Holding Company—Section 4(n)(5) prohibits any affiliate of a financial services holding company from engaging in any transaction or reciprocal arrangement for the purpose of evading any restriction or limitation imposed with respect to the safeguard provisions of this Act.

This prohibition includes reciprocal as well as nonreciprocal arrangements with affiliates, unaffiliated companies, and customers for the purpose of evading the provisions of the bill.

Section 4(n)(6)—Interlocking Directors, Management Officials, and Employees Prohibited—Section 4(n)(6) prohibits an insured depository institution controlled by a financial services holding company or any subsidiary of any such institution from allowing any director, management official, or employee of such institution or subsidiary to serve at the same time as a director, management official, or employee of any securities affiliate controlled by such holding company. The Board is given the authority to grant exemptions, after consultation with the SEC, from these interlocking restrictions. In making such determinations, the Board shall consider the size of the financial services holding company, insured depository institution and securities affiliate involved; the burdens such restrictions impose; the safety and soundness of the insured depository institution and securities affiliate; and other appropriate factors, including unfair competition in securities activities or the improper exchange of nonpublic customer information.

This provision contains two exceptions: (1) for certain small financial services holding companies and (2) for certain back office operations. The Board shall grant, by regulation, an exemption with respect to interlocks with respect to holding companies whose total banking assets do not exceed $500,000,000. Further, the prohibitions under subparagraph (A) of section 4(n)(6) do not apply to any employee, other than an officer or director, employed by the financial services holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions if such functions are performed in a separate office or facility that is not open to the general public and in a manner consistent with the requirements determined by the Board after consultation with the SEC.

The term "management official" includes any officer and any employee with management functions (including a branch manager), any trustee of a business organization under the control of trustees (such as a mutual savings bank), and any person who has a representative or nominee serving in any such capacity.

Section 4(n)(7)—Prohibition on Favoring Captive Agents— Section 4(n)(7) states that an insured depository institution subsidiary of a financial services holding company may not (i) require that a customer use a particular insurance agent, (ii) solicit sale of insurance that is required under any loan unless the customer has been advised in writing of antitying provisions, (iii) solicit any insurance products required on any loan or extension of credit unless the customer has received a written commitment regarding the loan or credit, (iv) reject insurance contracts solely because such policy was issued or underwritten by any person not an affiliate of such subsidiary, (v) unless otherwise authorized by law, impose a separate charge in connection with a contract that requires insurance, or (vi) engage in other activities favoring an affiliated insurance agent. Insurance is defined for purposes of paragraph (7). Also, subparagraph (iii) is not intended to preclude a bank from requiring insurance for the collateral for a loan.

Section 4(n)(8)—Authority To Modify and Impose Additional Safeguards—Section 4(n)(8) permits the Board, in order to preserve the safety and soundness of insured depository institution subsidiaries of financial services holding companies, and to ensure that the activities of any financial services holding company and any subsidiary of any such company (other than an insured depository institution subsidiary) are conducted without the support of insured depository institution affiliates, to

(i) by regulation or order, adopt additional limitations or restrictions on any extension of credit or financial assistance or any transaction which has the effect of providing financial assistance by any insured depository institution subsidiary of any financial services holding company to, or for the benefit of, any affiliate of such institution which is engaged in any new financial activity or any customer of such affiliate; and

(ii) after consulting with and considering the views of the SEC, modify by regulation any limitation on the activities of financial services holding companies and their affiliates contained in this subsection.

Paragraph (B) of section 4(n)(8) establishes standards governing the exercise of authority under paragraph (A) of section 4(n)(8). Specifically, any authority under subparagraph (A)(i), with respect to additional limitations or restrictions, is to be exercised only after taking into account potential adverse effects of any extension of credit or other transaction referred to in such subparagraph, including unfair competition, conflicts of interest, and unsafe banking practices.

Any authority under subparagraph (A)(ii) to modify any limitation on activities contained in this section shall be exercised only if the Board, after consulting with and considering the views of the SEC, concludes that modifying such limitation is necessary to achieve a purpose of this Act, is consistent with the purposes of this section, the public interest, and the protection of investors, and would not be likely to result in any adverse effects, including unfair competition, conflicts of interest, unsafe banking practices, or undue risks to the Federal deposit insurance funds.

It is intended that the authority under this subparagraph (A)(ii) not be exercised in such a way as to undermine, directly or indirectly, in whole or in part, the intent of the firewalls and the investor, depositor, taxpayer and other safeguards contained in section 4(n). It is also expected that the Board and the SEC will be responsive to one another's views and will act pursuant to this paragraph in a coordinated fashion. Because of the mirror-image safeguards established by this Act that are to be enforced by the SEC and the Board with respect to the securities affiliate and the insured depository institution, respectively, unilateral or inconsistent action by either agency will have the practical effect of negating modification of any limitation made pursuant to this paragraph.

Section 4(n)(9)—Divestiture for Continuing Course of Misconduct Affiliated With Securities Affiliate—Section 4(n)(9) provides the Board with the authority to require a financial services holding company which controls a securities affiliate to divest either its securities affiliate or the insured depository institution, at the option of the holding company, where the holding company or any of its subsidiaries has engaged in a continuing course of conduct involving violations of the securities activities and firewall provisions contained in section 4(n), or regulations prescribed or orders issued thereunder by the Board. This section also provides for notice, an administrative hearing, and adjudicatory procedures for requiring such divestiture. In carrying out this section, the Board shall consult with and provide timely notice to the SEC. As noted above, any divestiture of a securities affiliate must be affected pursuant to SIPA and the federal securities laws.

Section 4(o)—Exception for Certain Nonbanking Investments—Section 4(o)(1) permits a holding company to own or control voting shares of a company engaged in activities that are not permitted for financial services holding companies in two circumstances. Subparagraph (A) is amended to provide that: the shares must have been acquired before September 30, 1991; the company on such date was an affiliate of an entity that is registered with the SEC as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser; and the aggregate investment in all such shares does not exceed 5 percent of the financial services holding company's capital and surplus on a consolidated basis.

Section 403(b) makes conforming amendments to section 4 of the Bank Holding Company Act including replacing references to "bank holding company" and "bank" with references to "financial services holding company" and "insured depository institution."

Section 403(c) sets forth a rule of construction relating to the removal of section 4(c)(8)(A) through (G) to section 4(i)(5) of the Bank Holding Company Act. The rule states that the amendments shall not be construed as making any substantive change in the meaning of former subparagraphs (A) through (G) of section 4(c)(8) and that any regulations or orders under or interpretations of such subparagraphs shall remain in effect on and after the date of enactment of the Financial Institutions Safety and Consumer Choice Act.

Sec. 404. Registration and Enforcement

Section 404 amends the Bank Holding Company Act to create a new section 5.

Under new section 5, the Board continues to function as the umbrella supervisor of the financial services holding company and its subsidiaries. In such capacity, the Board shall oversee the activities of the holding company and all its subsidiaries and affiliates to ensure the soundness of the holding company and to protect its insured depository institution. Notwithstanding the language in subsection (d) of section 404 permitting the Board to conduct on-site examinations of any subsidiary of a financial services holding company, the SEC remains the primary regulator, supervisor and examiner of any securities firm, including those in a holding company, pursuant to its authority under the federal securities laws. The bill specifically requires consultation between the Board and the SEC, use of SEC exams to the extent possible, and reciprocal notice before any examination commences of a securities firm regulated by the SEC. The bill also authorizes the SEC to accompany the Board on any examination of an SEC-registered entity.[2] The Board is generally expected to use the FOCUS and other reports regarding securities firms made by the SEC and the self-regulatory organizations. The SEC remains the primary regulator of all securities firms. As indicated above, the Board's authority with respect to covered securities firms is limited to ensuring the financial strength of the holding company consistent with the purposes of the Bank Holding Company Act.

Section 5(a) requires that a financial services holding company must register with the Board within 180 days of becoming a financial services holding company. Registration shall be documented on forms prescribed by the Board, which shall include information concerning the financial condition and operations, management, and inter-company relationships of the registrant and its affiliates, as well as any additional information deemed appropriate by the Board. Under subsection (a)(2), the regulators retain the discretion to extend the registration period beyond 180 days.

Section 5(b) authorizes the Board to prescribe such regulations and issue such orders as may be necessary to enable the Board to administer and carry out the purposes of the Bank Holding Company Act and prevent evasions thereof. Subsection (b)(2) requires the initial regulations implementing section 5 after the enactment of H.R. 6 to be proposed and prescribed by the Board and published in final form before January 1, 1993.

Section 5(c) sets forth the recordkeeping and reporting requirements that may be imposed by the Board on a financial services holding company.

Subsection (c)(1)(A) provides that the Board may require a financial services holding company and its insured depository institution subsidiaries to file reports under oath with the Board to keep the Board informed as to compliance with the provisions of the Bank Holding Company Act and regulations prescribed and orders issued thereunder. Subsection (c)(1)(B) provides that, for insured depository institution subsidiaries for which the primary regulator is not the Board, the Board is required to consult with and, to the extent possible, use reports obtained by any other appropriate Federal banking agency.

Subsection (c)(2)(A) provides that the Board may require any financial services holding company and any subsidiary thereof (other than an insured depository institution) to file reports with the Board if the Board reasonably believes that the activities or financial condition of such companies are likely to have a material impact on the financial or operational condition of any insured depository institution subsidiary of the company (or any subsidiary of the institution). It is not intended that the Board determine in advance that all affiliates of an insured depository are likely to have a material impact on the financial or operational condition of an affiliated depository institution. In promulgating rules or otherwise interpreting "material affiliates" under this subsection, the Board may find it useful to consider factors similar to those set forth in the SEC's proposed risk assessment rules regarding "material associated persons" subject to such rules.[3] As noted above, the Board should use existing reports filed with other functional regulators for this purpose whenever possible. In addition, any such reports should not be onerous in nature.

Subsection (c)(2)(B) provides that, where such material affiliates also have another functional regulator, the Board is required to consult with and, to the extent possible, use reports obtained by any such functional regulator. In the case of a subsidiary which is registered with the Commission as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board must comply with paragraph (5).

Subsection (c)(3)(A) provides for reciprocal access to reports, other than examination reports, between the Board and any functional regulator of any financial affiliate which is not a subsidiary of a financial services holding company, if the other functional regulator reasonably believes that the activities or financial condition of an insured depository institution or financial services holding company is likely to have a material impact on the condition of the financial affiliate. Subsection (c)(3)(B) provides for reciprocal access to reports, other than examination reports, between the Board and any other appropriate Federal banking agency for an insured depository institution of any affiliate of the insured depository institution, if such agency believes that the activities or financial condition of such affiliate is likely to have a material impact on the insured depository institution. The provisos excepting examination reports are not intended to preclude the sharing of examination reports by regulators on a case-by-case basis, as is currently done.

Subsection (c)(4) requires the Board and the SEC to adopt procedures to coordinate and provide for the cooperative exchange of information and reports regarding entities under their respective jurisdictions as may be necessary to carry out their regulatory responsibilities under the Bank Holding Company Act and the federal securities laws. By January 1, 1993, the Board and the SEC are required to report to Congress regarding the procedures adopted to carry out such information coordination.

Subsection (c)(5) authorizes the Board to ask the SEC to provide such information as may be reasonably necessary for the Board to conduct its supervisory responsibilities regarding an affiliate that is registered with the SEC as a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser. Such requests are intended to supplement the Board's information-gathering authorities during an emergency or other extraordinary situation. The Board should not request additional routine information that it ordinarily should obtain through the use of FOCUS or other existing reports that it obtains pursuant to subsection (c)(2)(A). In response to such a request from the Board, the SEC must use reasonable diligence to provide promptly to the Board such of the requested information regarding such SEC-registered affiliate as the SEC has available. If the Board needs additional information regarding such affiliate, it may then request that the SEC obtain such information, through examinations or otherwise. In response to a request from the Board for such additional information, the SEC must use reasonable diligence to obtain such information, including, if necessary, by conducting an examination of the affiliate, and must promptly provide to the Board such of the requested information as it has obtained. The Board may obtain such information from the SEC-registered affiliate directly only if the SEC does not comply with the Board's request. "Promptly" and "reasonable diligence" will vary according to the particular facts and circumstances and the nature and amount of information being sought.

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[2] Section 17(b) of the Securities Exchange Act of 1934 provides that all records of every member of a national securities exchange, broker or dealer who transacts a business in securities through the medium of any such member, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the SEC and the appropriate regulatory agency for such persons as the SEC or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

[3] Section 17(h) of the Securities Exchange Act of 1934, which was adopted as part of the Market Reform Act of 1990, provides for new recordkeeping and reporting obligations for broker-dealers that are members of holding company systems. These risk-assessment provisions permit the SEC to assess the risks that holding company system units pose to broker-dealers. The SEC authorized to require registered broker-dealers to (1) obtain such information, (2) make and keep such records, and (3) provide summary reports of such information to the SEC, concerning: (a) policies, procedures or systems for monitoring and controlling financial and operations risks, resulting from (b) financial and securities activities conducted by, and the customary sources of capital and funding of, (c) those associated persons whose business activities are reasonably likely in any particular case to have a material impact on the financial or operational condition of the registered broker-dealer.

Pursuant to this authority, the SEC has recently proposed temporary recordkeeping and reporting requirements. Proposed rule 17h-1T would require a broker-dealer to maintain and preserve certain information concerning each "material associated person" of the broker-dealer. Whether an associated person of a broker-dealer should be designated as a material associated person, thereby triggering the risk-assessment obligations, will depend on the fact and circumstances.

For guidance in determining materiality, proposed rule 17h-1T(a)(3) attributes relevance to the following factors: (1) nature and proximity of the relationship between the broker-dealer and the associated person; (2) overall funding needs of the broker-dealer and financial dependence on the associated person; (3) reliance by the broker-dealer or its customers on the associated person for operational support or services; (4) level of risk in activities of the broker-dealer or the associated person; and (5) ability of the associated person to cause withdrawal of capital from the broker-dealer.

Subsection (c)(6) provides that any reports obtained from the Board, any appropriate Federal banking agency, or other functional regulator under this subsection may not be disclosed to the public by the recipient agency or other regulator and may not be disclosed to any other governmental agency except as otherwise permitted by law. Reports obtained under this subsection may be used only to carry out the purposes of this subsection or as otherwise permitted by law. It is intended that Congress be specifically excluded from the restriction so that its oversight and investigations function is not impaired.

Section 5(d)(1) provides general authority for the Board to conduct examinations, including on-site examinations, of any financial services holding company, any insured depository institution subsidiary of such holding company, any subsidiary of such insured depository institution, and any other subsidiary of such financial services holding company. The Board shall consult with and, to the extent possible, use the report of examination made by any other appropriate Federal banking agency, the appropriate State bank supervisor, or any other functional regulator. The cost of examinations of a financial services holding company and any subsidiary thereof shall be assessed against, and paid by, the financial services holding company. Before beginning any examination of any broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board must notify the SEC of the examination and the SEC may accompany the Board and conduct its own examination.

Paragraph (2)(A) authorizes the SEC and each firewall examining authority to conduct examinations, including on-site examinations, for the purpose of determining compliance with the firewall provisions. Paragraph (2)(B) requires the Board and the SEC, to the maximum extent possible, to coordinate conduct of such examinations in order to avoid unnecessary regulatory duplication and undue regulatory burdens. In coordinating firewall examinations, the Board and the SEC shall establish procedures for the sharing and use of information, shall specify the minimum scope and frequency of such examinations, and shall establish such additional procedures as the Board and the SEC believe will facilitate the administration and enforcement of the firewall provisions. Ordinarily, a securities affiliate that is registered with the SEC shall be examined once each year and a financial services holding company, each insured depository institution subsidiary thereof, and each subsidiary of such insured depository institution shall be examined at least once during each 12-month period (beginning on the date on which the most recent examination of such company or subsidiary ended) for purposes of determining compliance with the firewall provisions.

Paragraph (2)(C) requires each general examining authority to cooperate with each firewall examining authority to the maximum extent practicable with respect to the sharing and use of information and conducting examinations. Paragraph (2)(D) requires each firewall examining authority to provide timely notice, whenever it intends to conduct an examination of an entity for firewall compliance purposes, to each general examining authority for such entity. Any such general examining authority may accompany the firewall examining authority and participate in such examination. When appropriate, the firewall examining authority shall consult with, and to the extent possible, use the report of examination made by the general examining authority, any appropriate State bank supervisor, any State securities commission, or any other functional regulator. The cost of any covered examinations shall be assessed against, and paid by, the affiliate for which the firewall examining authority is the general examining authority.

Paragraph (3) requires general examining authorities and firewall examining authorities promptly to inform each other of the results of any examination concerning compliance with the firewall provisions. Paragraph (4) contains the definitions relevant to examination authority.

Section 5(f) provides the Board with additional enforcement authority.

Pursuant to section 5(f)(1), in addition to any other authority of the Board, the Board may take any action described in paragraph (2) if the Board has reasonable cause to believe that any financial services holding company, or any subsidiary of a financial services holding company (other than an insured depository institution), is engaged in activities in such a manner as to constitute a serious risk to the financial safety, soundness, or stability of any insured depository institution affiliate. Congress expects the Board to adopt regulations specifically defining such activities so that entities have notice of activities that are subject to the Board's enforcement authority under this section.

Paragraph (2) authorizes the Board to institute cease and desist proceedings or to issue a temporary order against any covered entity that is engaged in qualified financial activities and that is not a registered broker or dealer affiliate to (i) cease and desist from engaging in the activity in question and (ii) take affirmative action to prevent significant dissipation of assets or earnings of an insured depository institution affiliate. The Board may also require any financial services holding company to increase its capital, however, any such action may not impact the capital or other financial responsibility requirements of other functional regulators.

If any company described in paragraph (1) fails to comply with any order discussed above, the Board may order the company to divest itself of either (I) the insured depository institution or (II) the offending nonbank affiliate within 120 days. Due notice and an opportunity for a hearing must be provided prior to any order to divest. If the Board makes the finding described in paragraph (1) with respect to a registered broker or dealer or government securities broker or dealer affiliate, the Board (after due notice and opportunity for a hearing and after considering the views of the SEC) may order the holding company to terminate the ownership or control of such broker or dealer in the same time periods and by the same methods. A holding company may divest by selling the affiliate to a third party or by a pro rata distribution of the shares of the affiliate to all of the shareholders of the distributing holding company. Any divestiture or liquidation of a securities affiliate shall, of course, be effected pursuant to the requirements of the Securities Investor Protection Act and the federal securities laws.

The Board may enforce any order issued under this subsection in the United States District Court within the jurisdiction of which the principal office of the holding company is located.

Section 5(g) generally requires the Board and the SEC to use reasonable efforts to coordinate enforcement proceedings for violations of the firewall provisions and requires each agency to file with the other agency notices before the commencement of any proceeding and a copy of any order entered after such proceeding. The Board and the SEC shall each inform the other of any violation or suspected violation of the requirements of section 4(n) of the Bank Holding Company Act and section 15D of the Exchange Act, and may recommend such enforcement action with respect to such violation as each determines to be appropriate.

Effective enforcement of the firewalls will require the close cooperation of the Board and the SEC, and section 5(g) is intended to provide a mechanism for this cooperation. Nevertheless, the effective enforcement of the firewall provisions also requires that the authority of each agency to enforce those firewalls with respect to entities within its jurisdiction remain unimpaired so that there are no gaps that can be exploited by would-be malefactors. Section 5(g)(2) makes clear that the allocation of firewall enforcement responsibility in section 5(g) does not in any way infringe on the current authority of the SEC under the federal securities laws to examine entities registered with it or to conduct investigations of possible violations of law. The provision preserves the existing authority of the SEC to bring a civil action seeking an injunction, a civil money penalty, or other relief against any person who violates the federal securities laws, either directly or as an aider and abettor, and to bring an administrative proceeding, such as those under sections 15(b)(4) and 15(b)(6) of the Exchange Act, where appropriate. The provision likewise preserves the existing authority of the Board under the Bank Holding Company Act. Preservation of these authorities will be essential to meaningful cooperation between the agencies and the effective enforcement of sections 4(n) and 15D.

Sec. 405. Reservation of Rights to States; Preemption of Anti-Affiliation Provisions

Section 405 amends section 7 of the Bank Holding Company Act to continue the current law's existing requirement that the Act not be construed so as to diminish the existing or future powers and jurisdiction of any State regarding companies, banks, financial services holding companies, and any of their subsidiaries.

Subsection 7(b) creates three exemptions from the reservation of rights to the States. First, no State law shall prevent or impede any insured depository institution (or any affiliate) from being or becoming a subsidiary or affiliate of a financial services holding company (or affiliate) because of the activities engaged in by either the depository institution (or any affiliate) or the financial services holding company (or any affiliate).

Second, no State law shall prevent or impede any financial services holding company (or any affiliate) from acquiring, owning, controlling, or affiliating with any insured depository institution (or any affiliate) because of the activities engaged in by either the depository institution (or any affiliate) or the financial services holding company (or any affiliate).

Third, no State law may prevent or impede any insured depository institution (or any affiliate) from (I) offering or marketing the products or services, except insurance, of any affiliated financial services holding company (or any affiliate) or (2) having its own products or services offered or marketed by any affiliated financial services holding company (or any affiliate). However, cross marketing of insurance products and services in insured depository institution affiliates is permitted only to the extent such activities are permitted for State banks in the particular State in which the products or services are to be offered.

State laws governing the examination, supervision, or regulation of financial service providers or the protection of consumers are not preempted unless any particular law is inconsistent with the purposes of the Financial Services Holding Company Act (in which case the State law will be preempted only to the extent of the inconsistency).

The provisions of subsection (b) apply to foreign bank branches, agencies, and commercial lending companies as these terms are defined in the IBA.

New section 7(b)(4) provides that, notwithstanding any other provision of this subsection, a State shall not be preempted from enforcing any State law that prohibits any ownership, control, or activity that is prohibited by this Act.

Sec. 406. Penalties

Section 406 amends section 8 of the Bank Holding Company Act by striking the term "profit significantly" and replacing it with the term "obtain anything of value."

In addition, section 8 is amended to allow civil and criminal penalties for violations of the Act to be imposed upon financial services holding companies.

Sec. 407. Conforming Amendments to Section 11

Section 407 makes certain conforming amendments to section 11 to replace references to a "bank holding company" and "bank" with a "financial services holding company" and "insured depository institution," respectively.

Sec. 408. Application of the Limitations on Tying Arrangements and Insider Lending To Financial Services Holding Companies

Section 408 replaces the term "bank holding company" with "financial services holding company" in that portion of the Bank Holding Company Act Amendments of 1970 governing tying arrangements and in that portion of the Federal Reserve Act governing insider loans.

Subsection (b) states the general rule that a financial services holding company and its nonbank subsidiaries may not provide products or services or set or vary the cost of products or services on the condition or requirement that the customer also obtain products or services from an affiliated bank.

Two exceptions to the general prohibition on tying are provided. First, products and services of a bank and an affiliate of a bank may be offered together and the price of the nonbank product may be varied on the condition that the customer purchases a bank product or service if both the bank product and the affiliate's product are separately available to the customer on substantially the same terms.

Second, a financial services holding company and any nonbank subsidiary may vary the price for any loan, discount, deposit or trust service on the condition that the customer obtain a loan, discount, deposit or trust service from an affiliated bank so long as the products or services are separately available.

Sec. 409. Provisions Exempting Financial Services Holding Companies From The Savings and Loan Holding Company Act

Section 409 amends section 10 of the Home Owners' Loan Act to exclude any financial services holding company (and any subsidiary of such holding company) that owns a savings association from the definition of savings and loan holding company and from the provisions of section 10 of the Home Owners' Loan Act. A financial services holding companies described in section 4(f) of the Bank Holding Company Act (companies owning nonbank banks) are not excluded from section 10.

Sec. 410. Cease and Desist Authority

This section amends section 8(b)(3) of the FDI Act to replace the term "bank holding company" with "financial services holding company."

Sec. 411. Effective Date

Generally, the amendments made by Subtitle A of Title IV are effective January 1, 1993. However, the amendments made by sections 408 and 409 shall take effect on the date of enactment.

Chapter 2—Depository Institution Conversions

Sec. 421. Failing Thrift Conversions To SAIF-Insured National Bank

This section amends section 10 of the Home Owners' Loan Act to provide that a national bank that is a member of the SAIF shall, upon application to the Director of the Office of Thrift Supervision ("Director"), be deemed to be a savings association for purposes of section 10 of the Home Owners' Loan Act if it meets certain conditions. Those conditions are either that the bank results from the conversion of, or acquires more than an insignificant portion of the assets of, a savings association which was in danger of default or was under the control or a conservator or receiver. After the conversion or acquisition the bank must be a level 1 or level 2 depository institution, as defined in new section 38 of the FDI Act.

Subsection (b) provides a rule of construction regarding the permissible activities and affiliations of a bank described above.

Sec. 422. QTL-Qualified National Banks Resulting From Conversion of Savings Associations

This section adds a new subsection (t) to section 10 of the Home Owners' Loan Act. The new subsection provides that a national bank which meets the qualified thrift lender test under the Home Owners' Loan Act, resulted from the conversion of a savings association subsidiary of a savings and loan holding company, and meets or exceeds minimum capital requirements shall be treated as a savings association for purposes of section 10. SAIF insured national banks will remain "banks" for purposes of the Bank Holding Company Act, and companies that own or acquire SAIF-insured national banks would be financial services holding companies subject to the provisions of that Act.

Sec. 423. Mergers and Acquisitions of Insured Depository Institutions During Conversion Moratorium

This section amends Section 5(d)(3) of the FDI Act to permit any insured depository institution to engage in certain "merger transactions" (as further described below) with any other insured depository institution.

Permissible transactions must be approved by the "responsible agency," which generally is the FDIC if the resulting entity is a State nonmember insured bank or savings bank, the Office of the Comptroller of the Currency (OCC) if the resulting entity is a national bank, or the Office of Thrift Supervision (OTS) if the resulting entity is a savings association. The Board must also approve a merger transaction if the resulting entity is a Bank Insurance Fund (BIF) member which is a subsidiary of a bank holding company.

Transactions permitted by this section include transactions described in clause (ii) (the merger or consolidation of a BIF member with a SAIF member), (iii) (the assumption of any liability by a BIF member to pay deposits of a SAIF member or vice versa), or (iv) (the transfer of assets of any BIF member to any SAIF member in consideration of the assumption of liabilities for any portion of the deposits of such BIF member or vice versa) of section 5(d)(2)(B) of the FDI Act.

If any resulting depository institution is a BIF member, that portion of the average assessment base of such member attributable to SAIF insurance shall be subject to assessment at the rate applicable under section 7 of the FDI Act for SAIF members. Similarly, in the case of any resulting depository institution which is a SAIF member, that portion of the average assessment base of such member attributable to BIF insurance will be subject to assessments at the assessment rate applicable under section 7 of the FDI Act for BIF members.

The responsible agency and the Board are required to follow the procedures and consider the factors set forth in section 18(c) of the FDI Act when acting upon an application for a merger transaction.

No transaction authorized by this section is intended to permit the transfer of any insured depository institution from one deposit insurance fund to the other deposit insurance fund. No merger transaction may be approved unless the acquiring institution and its holding company are in compliance with applicable capital requirements.

The Board may not approve any transaction under this section which would violate section 3(d) of the Bank Holding Company Act (the Douglas Amendment) regarding restrictions on interstate banking.

Any application by a State nonmember insured bank to acquire another insured depository institution which is required to be filed with the FDIC must be approved or disapproved in writing before the end of the 60-day period beginning on the date such application is filed. This 60-day period may be extended for one additional 30-day period if the FDIC determines that the applicant has failed to furnish all information required to be submitted in connection with an application or if any material information that has been submitted is substantially inaccurate or incomplete.

In a situation where any resulting depository institution is later in default or in danger of default, any loss incurred by the FDIC shall be allocated between the BIF and SAIF in amounts reflecting the amounts of insured deposits in such resulting depository institution assessed by BIF and SAIF respectively.

After the expiration of the conversion moratorium in August, 1994, the FDIC may approve an application by any resulting depository institution to be treated as an insurance conversion transaction and the resulting institution must pay any exit and entrance fee assessed by the FDIC and thus have its deposits subject to assessment by either the SAIF or BIF at the institution's option.

Subsection (b) provides that the amendments made by subsection (a) shall apply with respect to semiannual periods beginning after the date of the enactment of the Financial Institutions Safety and Consumer Choice Act.

Sec. 424. Mergers, Consolidations, and Other Acquisitions Authorized

Section 424(a) adds a new subsection (u) to section 5 of the Home Owners' Loan Act to permit any Federal savings association to acquire or be acquired by any insured depository institution in accordance with sections 5(d)(3) and 18(c) of the FDI Act.

New subsection (u) provides for an expedited approval process, similar to the process described in section 5(d)(3) of the FDI Act above, for conversion transactions by Federal savings associations.

The Director is authorized to prescribe regulations to carry out new section 5(u) of the Home Owners' Loan Act.

Section 424(b) amends the National Bank Act to allow national banks to acquire or be acquired by any insured depository institution. This subsection also prescribes an expedited approval process, similar to the process described above in section 5(d)(3) of the FDI Act.

Sec. 425. Acquisition of Thrift Institutions By Certain Companies Which Control Banks And Are Not Treated As Bank Holding Companies

Section 425(a) adds a new paragraph (14) to section 4(f) of the Bank Holding Company Act to allow a company that controls a bank and is not treated as a bank holding company, as described in section 4(f) of the Bank Holding Company Act as amended by the Competitive Equality Banking Act of 1987, to acquire control of an insured institution in a merger transaction pursuant to section 5(d)(3) of the FDI Act (as amended by section 423 above) without losing its exempt status.

Section 425(b) provides that an insured institution described in new section 4(f)(14) of the Bank Holding Company Act, may engage in any activity that the acquired insured institution engaged in prior to the merger to the extent that the activity is permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act and so long as the resulting institution does not both accept demand deposits and make commercial loans. In addition, notwithstanding the annual asset growth restriction imposed by the Competitive Equality Banking Act of 1987, the resulting institution may increase its assets as result of the merger transaction during a one-year period beginning on the date of such transaction.

CHAPTER 3—FINANCIAL ACTIVITIES OF NATIONAL BANKS

Sec. 431. Securities Activities of National Banks

Section 431 amends paragraph Seventh of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) regarding the powers of national banks.

The amended provision states that, notwithstanding any other provision of law (including section 5136), a national bank is prohibited, in the United States and pursuant to any express or incidental power, from underwriting, distributing, or selling securities backed by, or representing interests in, a pool of assets originated or purchased by the bank or any affiliate of the bank, and the bank is prohibited from continuing to engage in such activity pursuant to any order issued by the Comptroller of the Currency. A national bank also shall not sponsor, organize, promote, or control an investment company registered under the Investment Company Act of 1940.

Section 5136, as revised by Section 431, would limit the ability of national banks to engage in the United States in any securities activities except to the extent that such activity is specifically authorized by statute, or authorized by a regulation prescribed by, or an order, interpretation, or approval issued by, the Comptroller of the Currency (see Table A for a list of such approvals to date) pursuant to statute, on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, and does not involve the underwriting or distributing by any national bank of securities backed by or representing an interest in a pool of assets originated or purchased by the national bank or any affiliate of the bank. The effect of sections 451 and 452 of this Act is to require banks to move certain securities activities out of the bank into a SEC-registered entity. Any securities activities, including those permitted under this section, continue to be subject to the antifraud provisions of the federal securities laws and to the SEC's enforcement thereof, without regard to where such activities are conducted. No subsidiary of a national bank may engage in any activity in which a national bank may not engage.

Subsection (b) repeals section 20 (12 U.S.C. 377) and section 32 (12 U.S.C. 78) of the Banking Act of 1933, commonly known as the Glass-Steagall Act, effective January 1, 1993.

Subsection (c) makes a conforming amendment to section 9 of the Federal Reserve Act.

Sec. 432. Insurance Activities of National Banks

Section 432(a) provides for insurance activities of national banks in small towns with populations of 5,000 or less and the adjacent rural unincorporated areas. The insurance can only be sold to individuals who are residents of or employed in any small town within that State and persons engaged in any business in that place. "Business" is defined as a principal business office or principal headquarters. Insurance may also be sold to persons with respect to real property or personal property in such place.

Section 432(b) prohibits a national bank which sells insurance pursuant to the town of 5,000 exemption described in subsection (a) from guaranteeing the payment of any premium on any insurance policy for which the bank is acting as agent or guaranteeing the truth of any statement made by an insurance customer in applying for insurance.

Section 432(c) prohibits any national bank, or subsidiary, from selling or underwriting title insurance. The prohibition does not apply with respect to title insurance agency activity if a bank was actively and lawfully engaged in such activity as of June 1, 1991. Authorization to engage in title insurance activities is not sufficient without evidence of ongoing activity implementing that authority as of June 1, 1991.

Section 432(d) repeals the small town exception referred to in paragraph (2) to the extent the exception is still in existence before the date of enactment of this Act. Nonetheless, a new small town exception is explicitly enacted for purposes of this Act in subsection (a). Some controversy presently exists as to whether the small town exception was previously repealed. The Office of Law Revision Counsel has taken the position in the past that the exception was repealed. However, this controversy is the subject of pending litigation and it is the intent of this legislation to remain neutral in deciding that question. This section simply repeals the pre-existing small town exception, if it is determined to have not previously been repealed.

Sec. 433. Amendments To Section 23A and 23B of the Federal Reserve Act

Section 433(a) contains a series of amendments to section 23A of the Federal Reserve Act.

Section 23A of the Federal Reserve Act includes as a transaction with an affiliate any transaction by a member bank or its subsidiary with any person if any of the proceeds of the transaction are used for the benefit of, or transferred to, such person.

Subsection (a)(1) prohibits a financial services holding company from permitting an insured depository institution subsidiary to engage in any "covered transaction," as defined in section 23A of the Federal Reserve Act if the covered transaction exceeds 5 percent of the insured depository institution's capital stock and surplus, unless 5 days notice has been provided to the Board and the appropriate Federal banking agency.

Section 433(a) amends the definition of the term "affiliate" in three respects. First, it includes in the definition any investment company, commodity pool, or other company engaged in such activities if a member bank or any member bank affiliate is an investment adviser, commodity trading advisor, or performs substantially equivalent activities for the company.

Second, under current law, a nonbank subsidiary of a member bank is presumed not to be an affiliate. The amendment changes this presumption to encompass only subsidiaries of which the member bank owns at least 80 percent of the voting stock.

Under existing section 23A, the term "bank" includes a trust company. Section 433(a)(4) amends the definition of "bank" to include trust companies principally engaged in deposit taking or lending activities.

Section 433(a)(7) adds three transactions to the list of covered transactions in section 23A: First, a member bank's assumption of a liability of any affiliate is defined to be a covered transaction. Second, any transaction intended to enhance the marketability of securities, obligations, or assets underwritten or distributed by an affiliate, unless there is substantial participation by other lenders in the transaction, is defined to be a covered transaction. Any transaction concerning securities that a member bank may underwrite under current law is exempt. Third, any financial transaction determined by the Federal Reserve Board by regulation to be the same as a covered transaction is added.

Section 23A currently requires collateral to secure letters of credit issued on behalf of an affiliate. Section 433(a) provides that collateral is also required for letters of credit issued to affiliates.

Under current law, securities issued by an affiliate of a member bank are not considered acceptable collateral. Section 433(a) extends this treatment to securities issued by the member bank itself. Similarly, letters of credit issued on behalf of an affiliate are not considered acceptable collateral under current law. Section 433(a) extends this treatment to letters of credit issued to affiliates.

Although current law excepts the purchase of securities issued by a bank service corporation from the provisions of section 23A, section 433(a) qualifies the exemption to apply only to those service corporations that provide services solely to affiliated member banks.

Section 433(b) contains a series of amendments to section 23B of the Federal Reserve Act.

Under existing section 23B, covered transactions include those with a third party in the following two cases: (1) if an affiliate has a financial interest in the third party; or (2) if an affiliate is a participant in such a transaction. Section 433(b) adds a third case to the list: Any transaction with a third party who is a customer of an affiliate (as defined in section 2 of the Bank Holding Company Act).

Existing section 23B prohibits a member bank or its subsidiary from acquiring, during the existence of any underwriting or selling syndicate, any security if a principal underwriter is an affiliate of the bank. The only exception is if the acquisition was approved before the securities were initially offered for sale to the public by a majority of the bank's board of directors, provided those directors are not officers or employees of the bank or any affiliate. Section 433(b) amends this exception to require that the majority of directors not be officers, directors, or employees of the affiliate.

Sec. 434. Customer Disclosures

Section 434 amends Section 18 of the Federal Deposit Insurance Act to add a new subsection (o) entitled "Customer Disclosure Regarding Securities, Insurance, and Other Nonbanking Products."

New subsection (o)(1) requires an insured depository institution to prominently disclose in writing to each of its customers that any securities or insurance products offered, recommended, or sold by the institution are not deposits, are not insured by the FDIC, are not guaranteed by the institution or any affiliate, and are not an obligation of the institution, unless such is the case.

Under new subsection (o)(2), an insured depository institution may not permit securities or insurance products to be offered, recommended, or sold on the institution's premises or to an institution's customer as part of joint marketing activities with another entity, unless the other entity prominently discloses in writing that it is not an insured institution and is separate from the insured depository institution.

Under new subsection (o)(3), the insured depository institution or any affiliate must obtain from any customer prior to the sale of any noninsured instrument or financial product a written receipt of a declaration in 18 point bold type acknowledging that the product is uninsured and that the customer might lose some or all of his or her money.

An exception to this section is provided for transactions by a broker or dealer or government securities broker or dealer registered under the Securities Exchange Act of 1934. Brokers and dealers and government securities brokers and dealers are otherwise subject to customer disclosure requirements under the federal securities laws.

In addition, insurance activities of an affiliate of an insured depository institution that are (1) not conducted on the premises, (2) not part of any joint marketing, or (3) do not in any way involve an insured depository institution are exempt from the customer disclosure requirements in this section. The rationale here is that insurance activities not connected to an insured depository institution are not likely to lead to customer confusion about the Federally insured status of insurance products. An example would be an insurance company that owns a nonbank bank which is an insured depository institution. The disclosure requirements in this section are not intended to apply to insurance activities totally disassociated from the nonbank bank.

The amendment also clarifies that the customer disclosure requirements of this section are not intended when an insured depository institution makes a loan or an extension of credit. However, to the extent a loan or extension of credit is combined or marketed with an insurance product, then the customer disclosure requirements in this section are applicable to the insurance product.

Under subsection (o)(4), the appropriate Federal banking agencies, with respect to insured depository institutions and financial services holding companies, and the SEC, with respect to persons registered with it, may adopt regulations governing disclosures required by this section.

Sec. 435. Bankers' Banks

This section amends the National Banking Act to permit bankers' banks to provide services to holding companies as well as depository institutions.

CHAPTER 4—NONBANKING ACTIVITIES OF FOREIGN BANKS IN THE UNITED STATES

Sec. 441. Amendments to the International Banking Act of 1978

Section 441(a) amends section 8(a) of the IBA. Amended paragraph 8(a)(1) provides that any foreign bank that has a branch, agency or commercial lending company in the United States is subject to nonbanking activity restrictions of the Bank Holding Company Act to the same extent and in the same manner as a financial services holding company. Paragraph 8(a)(2) subjects companies owning the foreign banks described in 8(a)(1) to the Bank Holding Company and the anti-tying provisions of the Bank Holding Company Act Amendments of 1970 as well.

Paragraph 8(a)(3) of the IBA requires that the Board set capital and other financial requirements comparable to those of a United States financial services holding company for any foreign bank or company controlling a foreign bank seeking to conduct nonbanking activities permissible under this Act. The Board shall disapprove any application or notice by foreign bank to engage in any nonbanking activity unless such capital and other financial requirements are met by the applicant. In making its determination, the Board is required to take into account differences in domestic and foreign accounting standards and assure that competitive comparability between domestic and foreign banks is maintained.

Section 441(b) amends Section 8(c) of the IBA to cause the authority under the IBA for the continued operation of certain foreign bank subsidiaries operating before 1978 to expire upon a finding by the Board that the activity of such subsidiary has been authorized by statute as a permissible activity for financial service holding companies in the United States.

SUBTITLE B—AMENDMENTS TO FEDERAL SECURITIES LAWS

CHAPTER 1—REGULATION OF SECURITIES ACTIVITIES OF DEPOSITORY INSTITUTIONS

Part I—Broker-Dealer Provisions

Section 451 (Definition of Broker) amends the definition of "broker" in section 3(a)(4) of the Securities Exchange Act of 1934 (Exchange Act) to include banks, with certain specified exceptions. A bank that falls within the definition of "broker" would have to conduct its brokerage activities in a subsidiary or affiliate that is not a bank, registered with the SEC and subject to SEC regulation (see section 454) unless otherwise exempted (see sections 453 and 454).

There are two important exceptions. Activities falling within the exceptions could still be conducted in the bank subject to regulation by the appropriate bank regulator. These exceptions permit: (1) fiduciary securities activities, if the bank does not publicly solicit brokerage business or receive commissions or similar transaction-based compensation (excluding fees calculated as a percentage of assets under management); and (2) transactions in exempted securities, commercial paper, bankers' acceptances, and commercial bills.

Section 452 (Definition of Dealer) amends the definition of "dealer" in section 3(a)(5) of the Exchange Act to include banks, with certain specified exceptions. The initial exception is for a person who purchases and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. This restates existing law applicable to any person. Two additional exceptions are added: (1) a bank that purchases and sells commercial paper, bankers' acceptances, commercial bills, or exempted securities; and (2) a bank that purchases and sells securities for investment purposes for the bank or for accounts in which the bank, acting as trustee, is authorized to determine the securities to be purchased or sold.

Section 453 (Power to Exempt from the Definition of Broker and Dealer) amends section 3 of the Exchange Act to add a new subsection (e) authorizing the SEC to exempt any person or class of persons, conditionally or unconditionally, from the definitions of "broker" or "dealer" if such exemption would be consistent with the public interest, the protection of investors, and the purposes of this title.

Consistent with the Exchange Act's statutory objectives of ensuring the protection of the investing public and fair competition among securities participants, all institutions providing brokerage services should be subject to the same regulatory scheme. Therefore, sections 451 and 452 do not contain lengthy lists of exceptions. Rather than create legislative loopholes subject to possible exploitation, it is intended that the SEC use its authority under this section in appropriate circumstances. For example, the SEC should consider whether it is necessary for a bank currently subject to section 15(e) of the Exchange Act[4] and in compliance with all the terms and conditions imposed thereunder to have to register as a "broker" under section 451.

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[4] Section 15(e) of the Exchange Act provides:

(e) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under section 15 of this title and any person associated with any such member to comply with any provision of this title

The Committee also intends that the SEC use its authority under section 453 of this legislation to exempt from the definition of "broker" banks that only transact accommodation trades. The factors to be considered by the SEC in determining the scope of this accommodation exemption should include: (1) the de minimis number of separate transactions conducted by the bank in any fiscal year for the account of others in any securities; (2) whether the bank passes on only external costs and a reasonable service fee or has a more elaborate commission-based compensation structure; (3) whether banks pay employees on a commission basis for trades executed for customers; (4) whether the bank actively publicizes its securities execution facilities or makes its services available only to pre-existing customers; and (5) whether the bank is actively and regularly in the securities business either through activities conducted in the bank or through a direct subsidiary of the bank or through a broker-dealer affiliate.

Similarly, the SEC may consider a "networking" exemption along the lines of the networking exemption included in lines of former Rule 3b-9, to accommodate banks that associate with registered broker-dealers to provide securities services.

The authority given to the SEC in this area is intended to give the SEC independent discretion to grant exceptions from either or both of the definitions of broker and dealer, without a decision to grant an exception from one definition requiring that the same person or class of persons be granted an exception from the other definition.

Section 454 (Bank Securities Activities in a Separate Corporate Entity) amends the general registration requirement for brokers and dealers under section 15(a) of the Exchange Act to prohibit a bank from acting as a broker or dealer, except on an exclusively intrastate basis. This change is intended to require banks that come under the revised definitions of "broker" or "dealer" in the Exchange Act to create a separate affiliate or subsidiary to perform these securities activities. The SEC, as in current law, may consistent with the public interest and the protection of investors, conditionally or unconditionally exempt any broker or dealer or class of broker or dealers from this requirement or the general registration requirement.

Section 455 (Provisions Relating to Broker-Dealers Affiliated with Depository Institutions) amends the Exchange Act to insert after section 15C a new section 15D. This new section mirrors the restrictions in new section 4(n) of the Bank Holding Company Act to place restrictions on transactions between affiliates within a holding company where the holding company controls a securities affiliate. These prohibitions are necessary to enhance compliance with the safeguard provisions of Subtitle A of this Act by providing for surveillance of, and enforcement of compliance against, parties on both sides of the firewalls.

Section 15D(a)—Definitions—Section 15D(a) contains definitions.

Section 15D(b)—Consumer Protection Provisions—Section 15D(b) contains consumer protection provisions relating to disclosures by bank-affiliated broker-dealers regarding federal deposit insurance, to disclosures of confidential customer information, and to limitations on advertisements.

Section 15D(b)(1)—Disclosures by Bank-Affiliated Broker-Dealers Regarding Federal Deposit Insurance—Section 15D(b)(1) requires a registered broker or dealer that is an affiliate of an insured depository institution, in accordance with regulations prescribed by the SEC, to provide notice to its customers of the inapplicability of Federal deposit insurance with respect to securities or other financial products recommended, offered, or sold by such broker-dealer. Specifically, such broker-dealer must notify customers:

(1) that the registered broker or dealer is not an insured depository institution and is a separate corporate entity from the insured depository affiliate;

(2) whether the securities or other financial products underwritten, sold, offered, or recommended by such registered brokers or dealers are FDIC insured deposits or are guaranteed as to principal or interest by or are otherwise obligations of the insured depository institution;

(3) whether or not an affiliated insured depository institution is permitted by law to extend or arrange for the extension of credit or to provide any credit instrument or facility to or for the benefit of an issuer of any security that the registered broker or dealer sells or offers for sale; and

(4) of any additional information the SEC deems necessary.

The regulations prescribed by the SEC shall specify the time and manner by which such notice shall be provided to customers, and further shall specify when, under what circumstances, and by what means and procedures the notice required under this paragraph shall be made available in languages other than English. The Committee does not intend that the SEC adopt rules requiring the use of other languages for other disclosure documents required under the federal securities laws.

Section 15D(b)(2)—Disclosures of Confidential Customer Information Prohibited—Section 15D(b)(1) makes it unlawful for a securities affiliate to disclose, directly or indirectly, any confidential customer information to any person without the prior written consent of that customer. Section 15D(b)(2)(E) defines the term "confidential customer information" to exclude: (i) information obtainable either from an unaffiliated credit bureau or similar entity or from any other unaffiliated entity in the ordinary course of business; (ii) information provided to a credit bureau or similar entity in the ordinary course of business; (iii) information obtainable in connection with insurance under certain circumstances; and (iv) information provided to the SEC or a self-regulatory organization or in accordance with the Right to Financial Privacy Act of 1978.

Section 15D(b)(2) further requires that records or other evidence of a customer's written consent be maintained. This provision also enables the SEC to prescribe regulations limiting disclosures of nonpublic customer information from a securities affiliate to any of its affiliates.

This section does not affect other laws governing the use of material nonpublic information, such as the prohibitions against insider trading. Thus, for example, although this section allows disclosure of nonpublic information with the customer's written consent, it in no way legitimizes an otherwise impermissible use of that information to purchase or sell a security.

Section 15D(b)(3)—Limitations on Advertisement—Section 15D(b)(3) requires the SEC to prescribe regulations to prohibit any securities affiliate from employing any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that an affiliated insured depository institution or the Federal Government is responsible for or stands behind the activities or credit of the securities affiliate or that it guarantees any returns on securities sold by the affiliate or is a source of payment of any obligation of or sold by the affiliate. It is not intended that such regulations prohibit a securities affiliate from imparting accurate information about securities for which the Federal Government is a source of payment or on which it guarantees any returns.

This advertisement limitation is in addition to certain certifications of understanding that the customers must sign when a purchase is made of each and every uninsured obligation on the floor of an insured depository institution, as well as when the customer opens an account at the securities affiliate. Notwithstanding such customer certification, there may still be instances in which the inclusion of the logo, name, slogans, and similar information of the securities affiliates may be considered as misleading if it is presented in a way that causes a reasonable person to believe mistakenly that the institution or the Federal Government is responsible for the activities of a securities affiliate of the institution, stands behind the affiliate's credit, guarantees any returns on securities sold by the affiliate, or is a source of payment of any obligation of or sold by the affiliate. With respect to registered investment companies, however, section 466 would prohibit an investment company that has as investment adviser or distributor an insured depository institution from adopting, as part of its name, title, or logo, any word or design that is the same or similar to the name of the insured depository institution.

Section 15D(c)—Requirements Applicable in the Case of Financial Services Holding Companies with Securities Affiliates—Section 15D(c) creates a series of safeguard or "firewall" provisions. These so-called "firewall" provisions are designed to prohibit unsound banking practices, risk of loss to the bank insurance fund and the extended safety net, conflicts of interest, unfair competition, undue concentration of resources or decreased competition, diminution in investor protection, and related concerns that would negatively impact the banking system and the securities markets, and the stability of and confidence in both. Section 15D(c)(1) provides that it shall be unlawful for a securities affiliate directly or indirectly to engage in any of the following transactions involving an affiliated insured depository institution:

(A) Except as provided in paragraph (3), knowingly obtain, receive, or enjoy the beneficial use of credit from an affiliated insured depository institution, with an exception provided in subsection (c)(3) for extensions of credit made in the course of clearing U.S. Government or agency securities where such extensions of credit are repaid on the same calendar day, are incidental to the clearing of transactions in those securities, and are fully secured in both principal and interest by such securities.

(B) knowingly obtain, receive, or enjoy the beneficial use of a guarantee, acceptance, or letter of credit, endorsement, asset purchase

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(other than section 15(a) [registration requirements]) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an insured depository institution.

(C) sell to an affiliated insured depository institution, for its own account, or for the account of any subsidiary of the institution, any financial asset of the securities affiliate that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency.

(D) sell to an affiliated insured depository institution, for its own account or for the account of any subsidiary of the institution, any security (other than securities issued by an open-end investment company or a unit investment trust), of which the securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places, until (i) in the case of an underwriting, 60 days after completion of the underwriting period or (ii) in the case of a placement, 60 days after the completion of the placement.

(E) knowingly sell to a customer account for which an affiliated insured depository institution or its subsidiary, acting as a fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which the securities affiliate is an underwriter or a member of the selling group or which the securities affiliate otherwise places (whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the insured depository institution or subsidiary to act in such capacity), unless such purchase is permitted by state law, is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship, and is effectuated by endorsement by the creator of the trust of a separate document that discloses [in accordance with regulations prescribed by the Board] any conflict of interest that an insured depository institution may have in making such purchases) until (I) in the case of an underwriting, 90 days after the end of the underwriting period or (II) in the case of a placement, 90 days after completion of the placement.

Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred to in the preceding sentence is incapable of providing the authorization or effectuating an endorsement referred to above, the beneficiaries of such trust or instrument may unanimously provide such authorization or effectuate such endorsement.

This provision does not authorize boilerplate endorsements, contracts of adhesion or lack of informed consent. State trust law supports the requirement of disclosure and informed consent of the trust beneficiary. Generally applicable principles of state trust law demand that a trustee avoid any dealings that may pose a conflict between the interests of the beneficiaries and the trustee's own self-interest. See Scott Sec. 170; 76 Am. Jur. 2d Trusts Sections 317, 318; see also 10 Am. Jur. 2d Banks Section 307.

(F) arrange for the extension of credit from an affiliated insured depository institution to any investment company which is sponsored, organized, controlled, promoted, or advised by the securities affiliate except as permitted by the SEC pursuant to section 18(f)(3) of the Investment Company Act.

(G) arrange for the extension of credit from, or arrange for the issuance or entry into of a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an affiliated insured depository institution to an issuer of securities of which the securities affiliate is an underwriter for the purpose of paying, in whole or in part, the principal of, or any interest or dividends on, those securities (examiners, for example, would be required to review credit flows to such an issuer to monitor flows for such possible misuses, and, in particular, to focus on the timing and amount of loans, as well as their maturity and relative interest rate, as potentially indicative of such improper purposes).

(H) arrange for the extension of credit to a customer of the securities affiliate for the purpose of repaying, in whole or in part, credit extended to such customer by such securities affiliate.

(I) except as permitted under section 4(n)(4)(G) of the Bank Holding Company Act of 1956, arrange for the extension of credit from, or arrange for the issuance or entry into of a guaranty, acceptance, letter of credit, endorsement, asset purchase agreement, indemnity, insurance, or other credit instrument or facility, including a standby letter of credit, from an affiliated insured depository institution to or for the benefit of the issuer of any security of which the securities affiliate is an underwriter or a member of the selling group, or which the securities affiliate otherwise places until (i) in the case of an underwriting, 90 days after the end of the underwriting period or (ii) in the case of a placement, 90 days after the end of the placement.

(J) purchase any financial asset of an affiliated depository institution or a subsidiary thereof that is not a security of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency, with an exception provided in paragraph (5) of section 15D(c) for certain sales of assets.

Securities issued by an open-end investment company or a unit investment trust are excepted from the prohibitions in subparagraphs (D) and (E) because firewalls designed to address problems relating to an analogous set of abuses with respect to open-end investment companies and unit investment trusts are provided elsewhere in the legislation.

The prohibition against either directly or indirectly engaging in the transactions listed above involving an affiliated insured depository institution is intended to encompass all actions, direct or indirect, that result in such transactions and whose effect could be to benefit the securities affiliate to the detriment of the insured depository institution, to create an unfair competitive advantage for an affiliate, or to prejudice investors. For example, an insured depository institution could not make a loan to a customer on the collateral of securities issued by its securities affiliate. Such a loan would contravene the safeguard provided in section 15D(c)(1)(A).

Section 15D(c)(2)—Certain Financial Transactions of Holding Companies and Subsidiaries During Distributions Prohibited—Section 15D(c)(2) prohibits a securities affiliate from, directly or indirectly, arranging for the extension of credit from any affiliated financial services holding company or subsidiary of a financial services holding company to any person, if such credit is secured by, or is used to purchase, any security that is the subject of a distribution or placement in which a securities affiliate of such financial services holding company participates as an underwriter or member of the selling group or which the securities affiliate otherwise places (other than securities issued by an open-end investment company or a unit investment trust or securities of the United States or any agency of the United States or a security on which the principal and interest are fully guaranteed by the United States or any such agency) until 30 days after the end of the period in which such security is the subject of such distribution or placement.

This paragraph excepts out securities issued by an open-end investment company or a unit investment trust because firewalls designed to address problems relating to an analogous set of abuses with respect to open-end investment companies and unit investment trusts are provided elsewhere in the legislation.

Section 15D(c)(3)—Exception for Intra-Day Extensions of Credit in Connection with Clearing Government Securities Section 15D(c)(3) provides an exception from the general prohibition on extensions of credit included in section 15D(c)(1)(A). Extensions of credit made in the course of clearing U.S. Government or agency securities are permissible if such extensions of credit are repaid on the same calendar day, are incidental to the clearing of transactions in those securities, and are fully secured by such securities. While clearing credit is to be repaid on the same calendar day, the creditors' customers may have been unable to deliver securities to their customers because a portion of the securities expected were not delivered in a timely fashion. The impact of a delivery fail, or a computer or other funding or delivery difficulty may cause clearing credit that is "to be repaid on the same calendar day" to be delayed for a day or so. Such delays are intended to be permitted under this provision.

Section 15D(c)(4)—Prohibitions on Discriminatory Credit Treatment—Section 15D(c)(4) provides that no securities affiliate shall knowingly obtain or arrange for an extension of credit or services that would violate section 4(n)(4)(D) of the Bank Holding Company Act of 1956. That provision prohibits discriminatory treatment of or anticompetitive actions with regard to unaffiliated entities with respect to the provision of credit or services by an insured depository institution.

Section 15D(c)(5)—Asset Purchases From Affiliated Insured Institutions or Subsidiaries Thereof—Section 15D(c)(5) permits a securities affiliate, notwithstanding paragraph (1)(I) of section 15D(c) but subject to section 23B of the Federal Reserve Act, to purchase any asset of an affiliated insured depository institution for the purpose of including such assets in a pool in connection with the issuance of asset-backed securities if:

(I) those securities are rated as investment grade by at least one unaffiliated, nationally recognized statistical rating organization;

(II) those securities are issued or guaranteed by a government sponsored enterprise determined to be permissible by the Board for purposes of section 4(n)(4)(F)(i)(II) of the Bank Holding Company Act of 1956;

(III) those securities represent interests in securities described in (II) above;

(IV) the price at which an equity security or the yield at which a debt security to be distributed to the public is established at a price no higher, or yield no lower, than that recommended by a qualified independent underwriter which has also participated in preparing the registration statement and prospectus, offering circular, or similar document; or

(V) those securities would not be the subject of a public offering and would be sold only to accredited investors, as defined in the Securities Act of 1933.

The SEC, in consultation with the Board, shall prescribe regulation to ensure compliance with these requirements. The above-listed exceptions to paragraph (1) (I) of section 15D(c) are intended largely to parallel NASD Schedule E, which addresses asset sales to affiliated entities for underwriting purposes.

Section 15D(d)—Regulation of Transactions in Certain Securities on Bank Premises—Section 15D(d) amends section 15 of the Exchange Act to impose restrictions on the offer or sale of certain securities on bank premises. Generally, equity securities or debt issued by a bank or any affiliate of a bank may not be offered or sold to the general public in any office of the bank that is commonly accessible to the general public for the purpose of accepting deposits. This restriction does not apply to shares of registered investment companies affiliated with the bank if such securities are offered for sale by a registered broker-dealer. The restrictions of section 15D(d) also do not apply to ownership interests that are deposits or that constitute a means of payment to a third party such as a traveler's check or cashier's check. Although these instruments generally are not deemed to be securities, this provision has been included to make clear that they may be offered on a bank's premises.

Section 15D(e)—Prohibition on Reciprocal Arrangements Within the Holding Company—Section 15D(e) prohibits a securities affiliate of a financial services holding company from engaging in such transaction or reciprocal arrangements for the purpose of evading any restriction or limitation imposed by the safeguard provisions of this Act.

The prohibition includes reciprocal as well as nonreciprocal unaffiliated companies, and customers for the purpose of evading the provisions of the bill.

Section 15D(f)—Interlocking Directors, Management Officials, and Employees Prohibited—Section 15D(f) prohibits a securities affiliate controlled by a financial services holding company from allowing any director, management official, or affiliate employee of such to serve at the same time as a director, management official, or employee of any insured depository institution subsidiary of such holding company or any subsidiary of any such institution. The SEC is given the authority to grant exemptions, with the approval of the Board, from these interlocking restrictions. In making such determinations, the SEC shall consider the size of the financial services holding company, insured depository institution and securities affiliate involved; the burdens such restrictions impose; the safety and soundness of the insured depository institution and securities affiliate; and other appropriate factors, including unfair competition in securities activities or the improper exchange of nonpublic customer information.

This provision contains two exceptions: (1) for certain small financial services holding companies and (2) for certain back office operations. The SEC is directed to grant, by regulation, an exemption with respect to interlocks with respect to holding companies whose total banking assets do not exceed $500,000,000. Further, the prohibitions under paragraph (1) of section 15D(f) do not apply to any employee, other than an officer or director, employed by the financial services holding company or any subsidiary of such company to perform clerical, accounting, bookkeeping, statistical, or similar functions if such functions are performed in a separate office or facility that is not open to the general public and in a manner consistent with requirements determined by the SEC after consultation with the Board.

The term "management official" includes any officer and any employee with management functions (including a branch manager), any trustee of a business organization under the control of trustees (such as a mutual savings bank), and any person who has a representative or nominee serving in any such capacity.

Section 15D(g)—Authority to Modify and Impose Additional Safeguards—Section 15D(g) permits the SEC, in order to maintain investor protection and to ensure that the activities of any securities affiliate are conducted without the support of insured depository institution affiliates, to:

(1) by regulation or order, adopt additional limitations or restrictions on arranging or accepting any transaction that has the effect of providing financial assistance by any insured depository institution subsidiary of any financial services holding company to, or for the benefit of, a securities affiliate or any customer of such affiliate, and

(2) after consulting with and considering the views of the Board, modify by regulation any limitation on the activities of a securities affiliate of a financial services holding company contained in this section.

Paragraph (2) of section 15D(g) establishes standards governing the exercise of authority under paragraph (1) of section 15D(g). Specifically, any authority under paragraph (1)(A) is to be exercised only after taking into account potential adverse effects of any extension of credit or other transaction referred to in such subparagraph, including unfair competition, conflicts of interest, unsafe banking practices, preservation of the safety and soundness of insured depository institutions, undue risks to the Federal deposit insurance funds, and the protection of investors.

Any authority under this paragraph (1)(B) to modify any limitation on activities contained in this section shall be exercised only if the SEC, after consulting with and considering the views of the Board, concludes that modifying such limitation is necessary to achieve a purpose of this Act, is consistent with the purposes of this section, the public interest, and the protection of investors, and would not be likely to result in any adverse effects, including unfair competition, conflicts of interest, unsafe banking practices, or undue risks to the Federal deposit insurance funds.

It is intended that the authority under this paragraph (1)(B) not be exercised in such a way as to undermine, directly or indirectly, in whole or in part, the intent of the firewalls and the investor, depositor, taxpayer and other safeguards contained in section 15D. It is also expected that the SEC and the Board will be responsive to one another's views and will act pursuant to this paragraph in a coordinated fashion. Because of the mirror-image safeguards established by this Act that are to be enforced by the SEC and the Board with respect to the securities affiliate and the insured depository institution, respectively, unilateral or inconsistent action by either agency will have the practical effect of negating modification of any limitation made pursuant to this paragraph.

Section 15D(h)—Divestiture for Continuing Course of Misconduct—Section 15D(h) provides the SEC with the authority to require a financial services holding company to divest either its securities affiliate or the insured depository affiliate, at the option of the holding company, where the holding company or its securities affiliate has engaged in a continuing course of conduct involving violations of the securities activities and firewall provisions contained in new section 15D of the Exchange Act. This section also provides notice, administrative hearing, and adjudicatory procedures for requiring such divestiture.

Section 456 (Broker-Dealer Disclosure With Respect to Fiduciary Purchases In Underwritten Securities) amends section 15 of the Exchange Act by adding a new subsection (h). This provision requires informed consent with respect to certain fiduciary transactions.

Under this subsection, no broker or dealer may purchase, for a customer account in which the broker or dealer, acting as fiduciary, is authorized to determine the securities to be purchased or sold, any security (other than securities issued by an open-end investment company or a unit investment trust) of which such broker or dealer or affiliate thereof is an underwriter or a member of the selling group or which the broker, dealer, or affiliate otherwise places until (I) in the case of an underwriting, 90 days after the end of the underwriting period; or (II) in the case of a placement, 90 days after the completion of the placement.

Paragraph (2) of subsection 15(h) states that these restrictions apply whether or not such purchase is authorized by any trust agreement or any other instrument authorizing the broker or dealer to act in a fiduciary capacity, unless such purchase is permitted by State law; is explicitly authorized in the trust agreement or other instrument establishing the fiduciary relationship; and is effectuated by endorsement, by the creator of the fiduciary relationship, of a separate document that discloses (in accordance with the regulations prescribed by the SEC) any conflict of interest that the broker or dealer may have in making such purchase. Notwithstanding any provision of Federal or State law, if the creator of any trust agreement or other instrument referred above is incapable of providing the authorization or effectuating an endorsement referred to above, the beneficiaries of such trust or instrument may unanimously provide such authorization or effectuate such endorsement.

Part II—Bank-Investment Company Activities

Section 461 (Custody of Investment Company Assets By Affiliated Banks) amends sections 17(f) and 26(a)(1) of the Investment Company Act to clarify and strengthen the SEC's authority to adopt regulations governing the conditions under which banks may serve as custodians of affiliated investment companies. Specifically, a registered investment company is permitted to place its assets with a bank that is an affiliated person of such a company only if expressly permitted by rules, regulations, or orders that the SEC may adopt consistent with the protection of investors. Without this provision, a bank could cause its affiliated investment company to select the bank as the investment company's custodian, thereby depriving the investment company of an independent custodian and creating the potential for abuse and self-dealing.

Regulation of custodianship of securities owned by an investment company has historically been one of the fundamental investor protection mechanisms of the Investment Company Act. Modification of Glass-Steagall Act prohibitions on commercial banks engaging in certain investment banking activities creates new dangers and threatens to erode the consumer protection safeguards afforded by independent bank custodianship of assets owned by investment companies. Because of the greater potential for abuse where an affiliated rather than an independent bank serves as custodian, it is anticipated that the SEC will authorize affiliated bank custodianship only where the conditions and limitations imposed by the SEC assure that investors enjoy the same degree of protection as exists under independent bank custodianship today.

The concern that affiliated bank custodianship presents opportunities for abuse not present in truly independent bank custodianship is not solely with outright theft, which is exceedingly rare, but with unconventional practices which injure investors. Any regulations or orders of the SEC authorizing affiliate bank custodianship should take into account such practices, including the tying of underwriting services to the appointment of an affiliated bank as custodian.

Subsection (b) of section 461 makes a similar amendment to section 26(a)(1) where a bank affiliated with a unit investment trust seeks to serve as its trustee.

Subsection (c) of Section 461 amends section 36 of the Investment Company Act to establish for custodians of registered investment companies a federal standard of fiduciary duty in dealings between such fund or trust and its custodian. Section 36 currently authorizes the SEC to bring an injunctive action against a breach of fiduciary duty involving personal misconduct.

Section 462 (Affiliated Persons and Transactions) amends section 2(a)(3) of the Investment Company Act to add to the definition of "affiliated person" a new clause (G). Under this clause, the SEC may, by order, rule, or regulation, designate any person or class of persons as "affiliated persons" of an investment company by reason of having had, at any time since the beginning of the last two completed fiscal years of such investment company, a material business or profession relationship with such investment company or with any person that is a principal underwriter for, or promoter or sponsor of, such company or any affiliated person of such investment company. For purposes of new clause (G), a material business or profession relationship is one that arises from material extensions of credit or other material borrowing or such other relationships as the SEC finds to be within the intent of this definition, consistent with the public interest and the protection of investors.

This section also prohibits an investment company from knowingly acquiring securities during an underwriting where the proceeds will be used to retire indebtedness to an affiliated bank, Specifically, section 10(f) of the Investment Company Act is amended to prohibit a registered investment company from knowingly purchasing or acquiring, during the existence of an underwriting or selling syndicate, any security (except a security of which it is the issuer) the proceeds of which will be used to retire indebtedness owed to a bank or insured depository institution where such bank or institution or an affiliated person thereof is an affiliated person of such registered company.

Section 463 (Prohibition of Controlling Interest in Investment Company) restricts an investment adviser (and affiliated persons thereof) to an investment company in its ability to own, directly or indirectly, controlling interests in such investment company if it also holds shares of that investment company as a fiduciary. Section 15 of the Investment Company Act is amended to allow such controlling interest only if the adviser (1) passes through to the beneficial owners of the shares the power to vote them; (2) votes such shares in the same proportion as shares held by all other shareholders of the investment company; or (3) acts as otherwise Permitted by the SEC consistent with the protection of investors.

Section 464 (Borrowing from an Affiliated Bank) prohibits a registered investment company from borrowing from an affiliated bank or insured depository institution except as permitted by the SEC. Specifically, section 18(f) of the Investment Company Act is amended to prohibit any registered investment company from borrowing from any bank or insured depository institution if such bank or institution or any affiliated person thereof is an affiliated person of such company, except that the SEC may, by rule, regulation, or order, permit such borrowing as the SEC finds to be in the public interest and consistent with the protection of investors.

Section 465 (Independent Directors) amends two provisions of the Investment Company Act to strengthen its requirements for independent directors serving on the boards of investment companies.

Subsection (a) amends the definition of "interested person" in section 2(a)(19)(A) of the Investment Company Act to include (1) in clause (v), any person that, at any time during the last 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to, the investment company or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such person; and (2) in a new clause (vi), any employee of a bank or insured depository institution that acts as custodian or transfer agent for such company. Such persons would not be prevented from serving as directors of that investment company; rather, they merely would be considered "interested persons" for purposes of the required percentage of disinterested or independent directors of that investment company. The amendment is effective one year after the date of enactment of the Act.

Subsection (b) amends section 10(c) of the Investment Company Act, which currently provides that no registered investment company may have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank. The amendment extends the prohibition to the officers, directors, or employees of any one bank and its subsidiaries, or any one bank holding company and its affiliates and subsidiaries. This eliminates the potential to circumvent the legislative intent of section 10(c) by a bank or insured depository institution operating under a multiple bank holding structure.

Section 466 (Prohibition Against Use of a Bank's Name by an Affiliated Investment Company) amends section 35(d) of the Investment Company Act to prohibit under certain circumstances the use by an investment company of a name, title, or logo that is the same as or similar to the name, title, or logo of any affiliated bank or insured depository institution. If a bank or insured depository institution affiliate advises or distributes an investment company with a name or logo similar to that of such affiliated bank or institution, or if a bank or insured depository institution or affiliate of such bank or institution acts as investment adviser to an investment company that has a name or logo that is similar to that of such affiliated bank or institution, investors may be misled into believing that the investment company shares are insured deposits or backed by the bank's resources or those of the insured depository institution. Moreover, the resulting link in the public mind between a bank or insured depository institution and its investment company may damage such bank's or institution's reputation and public confidence in such bank or institution if its affiliated investment company encounters financial difficulty.

In addition, section 35(a) of the Act will continue to prohibit any person from representing or implying that an investment company, or its securities, are guaranteed by the United States.

Section 467 (Definition of Broker) amends the definition of "broker" in section 2(a)(6) of the Investment Company Act to reflect the bill's amended definition of that term in the Exchange Act. As before, the new definition would not include any person (including a bank) solely by reason of the fact that such person is an underwriter for one or more investment companies.

Section 468 (Definition of Dealer) amends the definition of "dealer" in section 2(a)(11) of the Investment Company Act to reflect the bill's amended definition of that term in the Exchange Act. The new definition would continue to exclude insurance companies and investment companies.

Section 469 (Treatment of Bank Common Trust Funds) amends section 3(a)(2) of the Securities Act of 1933 (Securities Act), 3(a)(12)(A)(iii) of the Exchange Act, and 3(c)(3) of the Investment Company Act to clarify that a bank or insured depository institution common trust fund is entitled to the exemptions from the registration and reporting provisions of these Acts only where (1) the fund is used as an aid to the administration of bona fide fiduciary accounts and (2) the fund is not publicly offered. These provisions would codify in the Acts the original legislative intent of the exemptions, that any publicly-offered common trust fund is the functional equivalent of an investment company and must be regulated as such. See S. Rep. No. 184, 91st Cong., 1st Sess. 27 (1969). Section 470 (Purchase of Investment Company Securities as Fiduciary) adds a new subsection to Section 17 of the Investment Company Act. The new subsection makes it unlawful for a financial services holding company, an affiliated person of a financial services holding company, a bank or insured depository institution or any affiliate thereof, to exercise discretion over fiduciary accounts to purchase as fiduciary any securities issued by an affiliated investment company unless any investment management, investment advisory, or similar fee received with respect to the fiduciary assets invested in securities of such investment company is waived. The new subsection provides an exception to this restriction where (A) the purchase or conversion is required by court order; (B) in the case of a discretionary account immediately revocable upon notice to the fiduciary and the beneficiary of the account has first received full disclosure; or (C) the beneficiary of the account has first received full disclosure and has granted prior, written consent.

If a banking organization that sponsors or acts as investment adviser to an investment company, or underwrites shares of an investment company, exercises investment discretion over fiduciary accounts to purchase as fiduciary securities issued by the investment company, the banking organization could harm trust beneficiaries by assessing to the fiduciary accounts new or higher fees than previously assessed to the accounts. Such actions could permit the banking organization to use the fiduciary accounts as a captive market to increase the banking organization's advisory fees. This provision recognizes the greater hazards of self-dealing from holding company arrangements under which a bank or insured depository institution affiliate has a fiduciary obligation both to the fund it advises and to the individual fiduciary accounts it manages on a discretionary basis.

The SEC is granted the authority, after consultation with the appropriate federal banking agency, to regulate the manner, form, and content of the disclosures required to be made in this section.

Section 471 adds a new subsection to Section 17 of the Investment Company Act.

This amendment restricts the circumstances under which bank or insured depository institution common trust funds may be converted into affiliated investment companies in order to protect common trust fund participants from overreaching or unfairness that may occur in the conversion context. This provision protects common trust fund participants from this and other potential abuses by requiring banking organizations that convert their common trust funds to mutual funds to waive any investment management, investment advisory or similar fee with respect to the fiduciary assets invested in securities of the investment company. This restriction does not apply where (A) the conversion is required by court order; (B) in the case of a discretionary account immediately revocable upon notice to the fiduciary and the beneficiary of the account has first received full disclosure; or (C) the beneficiary of the account has first received full disclosure and has granted prior, written consent.

The SEC is granted the authority, after consultation with the appropriate Federal banking agency, to regulate the manner, form and content of the disclosures required to be made in this section.

Section 472 (Extension of Credit for Purchase of Investment Company Securities) adds a new subsection to Section 17 of the Investment Company Act. This new subsection prohibits a financial services holding company or a bank or insured depository institution affiliated with an open-end investment company or unit investment trust from making loans to customers for the purpose of purchasing shares of the open-end investment company or unit investment trust with which it is affiliated. The new subsection would also prohibit such holding company or bank or insured depository institution from extending credit or arranging to extend credit on any security issued by such company or trust unless (A) the security was purchased pursuant to a plan for the automatic reinvestment of the dividends of such company or trust or (B) the security has been owned by the person to whom credit is extended or for whom it is arranged for more than 30 days or for such other period as the SEC may prescribe. This provision further empowers the SEC to adopt exemptive rules and orders in appropriate cases. This amendment would restrict extensions of credit by banks similarly to the current restrictions on extensions of credit by broker-dealers in Section 11(d)(1) and rules 11d1-1 and 11d1-2 under the Securities Exchange Act of 1934.

When a bank or insured depository institution sponsors or acts as investment adviser to an open-end investment company or unit investment trust, or underwrites securities issued by an open-end investment company or unit investment trust, such bank or institution may be tempted to make unsound loans to customers to enable them to purchase shares of such fund or trust in order to increase the underwriting and/or advisory fees due to the insured depository institution or its affiliate. This amendment prevents such abuses.

Section 473 (Access to Nonpublic Information) amends section 17 of the Investment Company Act to provide a new subsection that would prohibit a financial services holding company, insured depository institution, bank or affiliated person thereof that acts as investment adviser to an investment company to provide access to certain nonpublic information to employees or agents that provide investment advisory services to the investment company. Specifically, this provision prohibits access to nonpublic information that: (A) concerns the identity of any customer of such financial services holding company, bank or insured depository institution; or (B) concerns any relationship arising from material extensions of credit or other material borrowings between any customer and such holding company, bank or insured depository institution.

This section further directs the SEC, as it deems necessary or appropriate in the public interest or for the protection of investors, to adopt rules or regulations to require specific policies or procedures reasonably designed to ensure compliance with the new subsection.

This section does not affect other laws governing the use of material nonpublic information, such as the prohibitions against insider trading. Thus, for example, although this section does not prohibit the exchange of all information that is nonpublic, it in no way legitimizes an otherwise impermissible use of that information to purchase or sell a security.

Section 474 (Removal of the Exclusion from the Definition of Investment Adviser for banks that Advise Investment Companies) amends section 202(a)(11)(A) of the Investment Advisers Act of 1940 (Advisers Act) to delete the current exclusion from the definition of "investment adviser" for a bank that serves as an investment adviser to a registered investment company. The amendment would also delete the exclusion from the definition for bank holding companies. This exclusion is not necessary and, to the Committee's knowledge, no bank holding company currently relies on this exclusion.

The current exclusion for banks continues to obtain, however if the SEC permits a bank to perform such services through a separately identifiable department or division ("SIP") of the bank. In such a case, the SIP and not the bank shall be deemed the investment adviser.

Section 202(a)(11)(A) defines a SIP as a unit that (i) is under the direct supervision of an officer or officers designated as responsible for the day-to-day conduct of the bank's investment adviser activities for an investment company or companies, including the supervision of all bank employees performing such activities; and (ii) separately maintains in the SID's facilities or can readily extract from the bank's facilities all records relating to such advisory activities, including for purposes of independent examinations of such records.

This deletion of the bank exclusion is intended to strengthen the SEC's ability to oversee the activities of registered investment companies. It is also intended to subject banks that advise investment companies to the Advisers Act restrictions on performance fees, as well as agency cross transactions and principal transactions.

Section 475 (Bank and Insurance Pooled Investment Vehicles) mandates a study of the exemptions for collective trust funds for retirement plans. Under present law, bank collective investment funds for retirement plans' assets are exempt from registration and regulation under the federal securities laws. As a result, investors who save for their retirement through bank collective investment funds are denied the protection contained in the Securities Act, the Exchange Act, and the Investment Company Act.

This section directs the SEC to report to Congress on its findings and conclusions (together with recommendations for any administrative or legislative action) with respect to (1) the appropriate treatment of bank collective investment funds and separate accounts under the securities laws and ERISA and (2) the appropriate treatment of common trust funds under the securities laws. The SEC is directed to consult with the Secretary of Labor with respect to the first of these two issues.

Section 476 (Definition of Broker) amends the definition of "broker" in section 202(a)(3) of the Advisers Act to make it identical to the definition of "broker" in the Exchange Act, as amended by this legislation.

Section 477 (Definition of Dealer) amends the definition of "dealer" in section 202(a)(7) of the Advisors Act to make identical to the definition of "dealer" in the Exchange Act, as amended by this legislation.

Part III—Effective Date

Section 480 (Effective Date) provide that the amendments made by this chapter shall take effect on January 1, 1993,

CHAPTER 2—ADMINISTRATION OF SECURITIES LAWS WITH RESPECT TO SECURITIES OF DEPOSITORY INSTITUTIONS

Part I—Amendments to the Securities Act of 1933

Section 481 (Exemption to Permit Transition to Holding Company Structures) amends section 3(a)(9) of the Securities Act to facilitate the establishment of holding company structures as contemplated by this Act. Section 3(a)(9) currently exempts from the registration (but not the antifraud) provisions of the Securities Act securities exchanged by an issuer with its existing security holders exclusively where no commission or other remuneration is paid or given for soliciting the exchange. Section 483 amends section 3(a)(9) to add an exemption from the registration requirements of the Securities Act for certain securities issued or exchanged in the context of a reorganization of a corporation, including a bank, into a holding company. The exemption generally requires that, as part of the reorganization, the security holders exchange their securities of the corporation for securities of a newly-founded holding company with no significant assets other than the securities of the corporation and its subsidiaries, and that the security holders generally receive securities representing the same proportional interest in the holding company as they held in the corporation before the transaction. The rights and interests of the security holders in the holding company also must be substantially the same as those in the corporation before the transaction, and the holding company must have substantially the same assets and liabilities as the corporation had before the transaction. Those conditions are intended to ensure that the exemption is not used to transfer corporate control or substantially alter the proportional interests of shareholders without complying with the disclosure provisions of the Securities Act.

Part II—Report and Audit Requirements

Section 487(a)(Reports and Audit Requirements) amends the Exchange Act to create a new section 13A on fraud detection and disclosure in order to provide the SEC with timely notice of acts and conditions posing a material threat to the continued viability of an issuer. Section 13A(a) specifies certain procedures that must be included in each audit required by the Exchange Act of an issuer's financial statements. These include procedures designed to (1) detect illegal acts, (2) identify related party transactions that are material to the financial statements, and (3) evaluate whether there is substantial doubt about an issuer's ability to continue as a going concern. The SEC should consider the existing body of literature already used in the conduct of audits of financial statements and may utilize the procedures required by generally accepted auditing standards in these areas in prescribing by rule new procedures to implement the audit requirements under this section. Section 13A(b) provides that an independent public accountant who (1) becomes aware of an illegal act by his client issuer which affects the issuer's financial statements in a material manner and (2) finds that the issuer has not taken timely and appropriate remedial action after being so informed, must report that finding to the SEC if the issuer's board of directors fails to do so within one business day following its receipt of the accountant's report. The accountant maintains the option of resigning from the engagement and furnishing the SEC with a copy of its report. The SEC should consider the requirements under generally accepted auditing standards relative to illegal acts by clients in prescribing by rule new procedures to implement the auditor reporting requirements of this section. Subsection (c) provides that no independent public accountant shall be liable in any manner to any person for any finding, conclusion, report, or statement made in connection with subsection (b) of this section, including any rules promulgated pursuant thereto, if such finding, conclusion, report, or statement is made in good faith, based upon the independent public accountant's compliance with such subsections or rules (or both).

Section 487(b) (Effective Date) provides that as to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K (17 CFR 229.302(a)), the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1992. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1993.

SUBTITLE C—GENERAL PROVISIONS

Sec. 491. Report on Resources For Implementation

This section requires the Chairman of the SEC and the Chairman of the Federal Reserve Board to submit to Congress on April 15, 1992, and annually for the next five years, a report that states whether or not the SEC or the Board, as the case may be, has the manpower, funding, and other resources to oversee the activities contemplated by this Act and enforce the safeguards and other legal requirements established by this Act. This report should identify, in reasonable detail, any deficiencies in such staffing, funding, or other resources, and the steps being taken to correct such deficiencies.

The repeal of provisions of the Glass-Steagall Act and the establishment of firewall safeguards to replace the prohibitions of that Act that are repealed is an historic step in the Nation's approach to the structure and functioning of its credit and capital allocation systems and the conduct of commercial and investment banking. The Congress is concerned that the SEC and the Board both identify and possess the staffing, funding, and other resources necessary to oversee the new banking structure and to promulgate and enforce such regulations as are required. It is intended that the submission of these reports will have the effect of prompting diligence on the part of the agencies in identifying their resource needs and of giving the Congress the basis for confidence that the firewall safeguards will function as intended. Moreover, the requirements for review by the President and for communication with Congress will ensure that this critical matter will be addressed by the highest level of the Administration and that priority will be given to it.

Sec. 492. Study of Effectiveness of Customer and Investor Protection Firewalls

This section requires the SEC and the Board to conduct a joint study of the limitations on activities of financial services holding companies and their affiliates imposed by this legislation to protect the government safety net, especially the deposit insurance fund, and to curb various abusive practices. A report shall be submitted to the Congress on the findings and conclusions of the SEC and the Board, together with any recommendations for legislative or administrative action.

Sec. 493. Securities Registration and Reporting Study

This section requires the SEC and the Board to conduct a study of the continuing need for, and operation of, sections 3(a)(2) and 3(a)(5) of the Securities Act of 1933 and section 12(i) of the Securities Exchange Act of 1934 in the light of changes in the organization and operation of insured depository institutions as a consequence of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

Section 3(a)(2) of the Securities Act currently exempts from the registration, but not the antifraud, provisions of the Act any security issued or guaranteed by a bank. Section 3(a)(5) currently exempts securities issued by various savings associations from the registration, but not the antifraud, provisions of the Act.

In 1964, section 12(i) of the Exchange Act transferred from the SEC to the Federal banking agencies the responsibility for administering and enforcing sections 12, 13, 14(a), 14(d), 14(f), and 16 of the Exchange Act with respect to those banks within those agencies' respective jurisdictions. Jurisdiction over thrift reporting was similarly transferred from the SEC to the Federal Home Loan Bank Board (now the Office of Thrift Supervision) in 1974. All other powers, duties, and functions, including antifraud enforcement, under the Act, with respect to those institutions, resides with the SEC. Section 12 requires registration of securities traded on national securities exchanges or issued by certain issuers. Section 13 requires filing of periodic and other reports concerning these securities and their issuers and filing of disclosure statements by certain beneficial owners of those securities and by issuers that repurchase their securities. Section 14(a), (c), and (f) impose certain disclosure and other requirements concerning solicitation of proxies with respect to those securities. Section 14(d) imposes certain disclosure and other requirements with respect to tender offers. Finally, section 16 requires filings with respect to certain acquisitions and sales of equity securities by officers, directors, and principal shareholders. Only approximately 700 institutions file such periodic reports with the appropriate Federal bank and thrift regulators.

While the Administration's proposal called for repeal of these exemptions and said transfers, H.R. 6 does not repeal sections 3(a)(2), 3(a) (5), and 12(i). The study mandated by this section requires the SEC and the Board to analyze (I) any reduction in the number of insured depository institutions to which such section 12(i) applies as a result of enactment of this Act; (2) the costs of continuing to have separate administration and enforcement of reporting and disclosure provisions under the authority of such section 12(i); (3) any deviations in the regulations prescribed to enforce such reporting and disclosure requirements; (4) any resultant differences in enforcement or accounting practices and their impact; (5) the types of bank securities exempted under sections 3(a)(2) and 3(a)(5) and any related investor protection issues; and (6) such other factors as the SEC and the Board consider to be relevant to the consideration of whether to repeal or significantly amend such sections. A report on the study conducted under subsection (a) shall be submitted to Congress not later than January 1, 1995. The report shall include, in addition to a discussion of each of the issues required to be analyzed under subsection (a), such recommendations for legislation as the SEC and the Board consider appropriate.

The CHAIRMAN. Under the rule, the Committee rises.

□ 1830

Accordingly the Committee rose, and the Speaker pro tempore (Mr. HOYER) having assumed the chair, Mr. CARR, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6) to reform the deposit insurance system to enforce the congressionally established limits on the amounts of deposit insurance, and for other purposes, pursuant to House Resolution 266, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. WYLIE

Mr. WYLIE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. WYLIE. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. WYLIE of Ohio moves to recommit the bill, H.R. 6, to the Committee on Banking, Finance and Urban Affairs with instructions to report the same to the House forthwith with the following amendment:

Page 213, beginning on line 1, strike title IV through page 426, line 9, and insert the following new title (and conform the table of contents accordingly):

TITLE IV—BANK INSURANCE REFORM

SEC. 401. DELAWARE LOOPHOLE CLOSER.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by redesignating section 12 as section 13 and inserting after section 11 the following new section:

"SEC. 12. INSURANCE ACTIVITIES OF BANK SUBSIDIARIES OF HOLDING COMPANIES.

"(a) IN GENERAL.—No bank holding company may permit any bank subsidiary of such company, or any subsidiary of such bank, to provide insurance as a principal, agent, or broker beyond the borders of the State in which the subsidiary bank is chartered unless such insurance activities in the nonchartering State are specifically authorized by the statutes of that State, by language to that effect and not merely by implication.

"(b) CONTINUATION OF PRIOR ACTIVITIES.—Notwithstanding subparagraph (A) of section 4(i)(5), any bank holding company (or any successor of such company), or any bank subsidiary of a bank holding company (and any subsidiary of any such bank subsidiary) may continue insurance activities otherwise prohibited by subparagraph (A) on an interstate basis—

"(1) so long as those coverages insure against the same types of risks, or are otherwise functionally equivalent to, coverages provided on or before June 1, 1991;

"(2) to the extent that those activities were lawful and not the subject of legal challenge on that date; and

"(3) subject to State regulation and control.".

SEC. 402. TOWN OF 5,000 LOOPHOLE CLOSER.

(a) IN GENERAL.—Chapter 1 of title LXII of the Revised Statutes is amended by inserting after section 5136A (12 U.S.C. 25a) the following new section:

"SEC. 5136B. LIMITED INSURANCE ACTIVITIES FOR NATIONAL BANKS.

"(a) LIMITED INSURANCE ACTIVITIES FOR NATIONAL BANKS LOCATED IN SMALL TOWNS.—In addition to the powers now vested by law in national banks organized under the laws of the United States, any national bank that is located in a place that has a population not exceeding 5,000 (as shown by the preceding decennial census) may engage in insurance sales and insurance solicitation activities if—

"(1) the sales and solicitation activities are confined to that place of 5,000 or less and the adjacent rural unincorporated areas closest to that place; and

"(2) the insurance is sold only to—

"(A) individuals who are residents of, or are employed in, any place (including any unincorporated rural area) in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census);

"(B) persons—

"(i) who are engaged in business in any place in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census) and have a principal business office in any such place; or

"(ii) whose principal headquarters if located in any such place,

with respect to employees (including owner-employees) who reside in or are principally employed in such place, real property located in such place, personal property which is principally used in such place, or services provided by persons located in such place; and

"(C) any other person if the insurance is issued with respect to—

"(i) real property located in any place in such State that has a population not exceeding 5,000 (as shown by the preceding decennial census); or

"(ii) personal property which is principally used in such place.

"(b) CERTAIN ACTIVITIES PROHIBITED IN CONNECTION WITH INSURANCE ACTIVITIES.—No national bank which sells insurance pursuant to subsection (a) may—

"(1) assume or guarantee the payment of any premium on any insurance policy issued through the agency of the bank by the insurance company for which the bank is acting as agent; or

"(2) guarantee the truth of any statement made by an insurance customer in filing such customer's application for insurance.

"(c) LIMITATION ON TITLE INSURANCE ACTIVITIES.—No national bank may engage, directly or through a subsidiary, in any activity involving the underwriting or sale of title insurance other than title insurance agency activities in which such bank was actively and lawfully engaged, directly or, through a subsidiary, as of June 1, 1991.".

(b) REPEAL.—

(1) IN GENERAL.—To the extent the paragraph described in paragraph (2) is in effect on the day before the date of the enactment of this Act (whether as a paragraph of the Act described in such paragraph or as a provision of any other law), such paragraph shall cease to be effective as of such date of enactment.

(2) PARAGRAPH DESCRIBED.—The paragraph described in this paragraph is the paragraph contained in the Act entitled "An Act to amend certain sections of the Act entitled 'Federal Reserve Act' approved December twenty-third, nineteen hundred and thirteen" and approved September 7, 1916 (39 Stat. 753; omitted from the United States Code) which—

(A) relates to the authority of national banks in small communities to act as insurance agents and real estate brokers; and

(B) begins "That in addition to the powers now vested by law in national banking associations".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title LXII of the Revised Statutes is amended by inserting after the item relating to section 5136A the following new item:

"513B. Limited insurance activities for national banks.".

Mr. WYLIE. Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. WYLIE] is recognized for 5 minutes in support of his motion to recommit.

Is there a Member opposed?

Mr. GEPHARDT. I am opposed to the motion, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. GEPHARDT] will be recognized for 5 minutes in opposition to the motion to recommit.

The Chair recognizes the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, there is much good in this bill. We have bank insurance fund recapitalization, we have accounting reform, we have early intervention, we have the end of the too-big-to-fail doctrine, we have foreign bank supervision a la BCCI, we have a CRA study, we have the Bank Enterprise Act, and we have nationwide banking.

However, Mr. Speaker, I offer my motion to recommit basically because the bill has been dragged down by what I regard as an ill-conceived agreement negotiated by two powerful chairmen. No other members of the committees on either side of the aisle, and no other Members of the House, were consulted on the Dingell-Gonzalez amendment. I think the Dingell-Gonzalez amendment does much mischief to banking legislation as we now know it.

Mr. Speaker, the Committee on Rules refused to make in order any amendments to address the administration's severe concerns with respect to title 4.

My amendment, simply stated then, would preserve all of the bill, expressing the will of the House, with the exception of title 4 and including a so-called Hayes amendment. I urge adoption of my motion to recommit.

Mr. Speaker, I yield to the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Speaker, I thank the gentleman from Ohio [Mr. WYLIE] for yielding.

Mr. Speaker, I rise in strong support of the motion to recommit offered by the gentleman from Ohio [Mr. WYLIE].

During our consideration of this legislation last Thursday, I indicated in my statement that the Hayes amendment on insurance would be part of the motion to recommit. That is the case. The entire text of the Hayes amendment as proposed at the request of the insurance agents is included in this motion as the same as is now included in title IV of the Gonzalez-Dingell compromise.

Specifically, this amendment seeks to prevent banks from engaging in unlimited insurance activities beyond a State's borders without the legislative authorization of each individual State. It also serves to correctly clarify congressional intent regarding the geographic scope of a national bank's ability to sell insurance from a town of 5,000.

Mr. Speaker, I urge my colleagues to support this motion.

Mr. WYLIE. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Speaker, I rise in opposition to the motion to recommit because it is the only way to protect an amendment of this gentleman requiring a commercial bank to reach and maintain a 5-percent tier on capital before such a bank can enter the securities arena.

Here, I would like to stress that the Energy and Commerce Committee properly and wisely knocked out the Banking Committee's approach in title IV to authorize the melding of commerce and banking. It also attempted, properly, to establish appropriate firewalls between the securities and banking functions of a commercial bank. This gentleman, however, had doubts that a draft of a compromise crafted by two chairmen, without the input of any Member of the minority, without public comment on a draft presented to this body 2 days before amendments could be crafted, was likely to reflect either the public interest or the exact intent of those who brought it before this body.

Accordingly in a previous procedural motion which failed, I opted to vote to delete title IV. On this vote I am reversing my earlier judgment, partly, as mentioned above to protect the new capital standard established, partly to see that certain firewall approaches are dealt with in conference. But I must stress I believe the Energy and Commerce Committee may well have gone too far.

Because of the claims and counterclaims presented on this floor and in "Dear Colleague" letters and because of the nuances of purpose, I am enclosing below an analysis of a distinguished law firm which takes to task the Energy and Commerce position. The firm, having prepared the analysis at the behest of a major American bank, is not a disinterested party. Nonetheless, I think it important the perspective below be understood and, if this bill goes to conference, be addressed.

LAW FIRM ANALYSIS

Presumed Myth: "Banks must create a holding company and move all their securities activities into a holding company subsidiary.

Presumed Fact: "Banks do not have to create holding companies. Securities activities can be moved out of the bank into a subsidiary of the bank."

In actuality, section 403 of the compromise clearly states that "a financial services holding company which controls or acquires control of a securities affiliate shall not permit an insured depository institution subsidiary of such company to operate as a broker or dealer that is required to register under the Securities Exchange Act of 1934." Subsequently in section 432, which amends paragraph 7 of section 5136 of the Revised Statutes (12 U.S.C. 24(7)), the bill clearly states that "No subsidiary of a national bank may engage in any activity in which a national bank may not engage."

These activities preclude a national bank from having a subsidiary which engages in securities activities in which the bank itself may not engage.

Presumed Myth: "Banks cannot sell municipal securities any more."

Presumed fact: "Banks can sell municipal securities."

In actuality, section 403 of the compromise clearly states: "A financial services holding company which controls or acquires control of a securities affiliate shall—

(A) not permit, after the end of the 1-year period beginning on the date of the acquisition, an insured depository institution subsidiary of such company to underwrite or deal in obligations issued by any State or any political subdivision of any State; and

(b) permit the activities described in subparagraph (A) to be conducted only by a securities affiliate. . ."

Combined with section 451 of the bill, which revises the definition of "broker" under the Securities Act of 1933, and which would essentially prohibit banks from brokering securities, banks would be unable to underwrite, deal in, or sell municipal securities.

Presumed Myth: "A bank cannot offer a mutual fund that includes shares of a company to which the bank has loaned money."

Presumed Fact: "A mutual fund affiliated with a bank can't buy shares of a company (during the underwriting period) to which the bank has loaned money only if the proceeds of the sale of the shares will be used to pay off a loan to the bank."

In actuality, section 462 of the bill would permit the SEC to designate any person or class of persons as "affiliated persons" of an investment company by reason of having had, at any time since the beginning of the last 2 fiscal years of the investment company, a material business or professional relationship with the investment company or with a principal underwriter for, or promoter or sponsor of, the company. A material business or professional relationship is one that arises from material extensions of credit or other material borrowing as the SEC determines. That provision could prohibit a bank from maintaining any type of lending or other banking relationship with a corporation in whose securities an affiliated mutual fund invests. Alternatively, it could prohibit a mutual fund from investing in securities of any entity which maintains any type of lending or other relationship with an affiliated bank. Not only is such a prohibition unwarranted from a safety and soundness standpoint, it is patently unfair to both the borrower and its bank.

Supposed Myth: "A bank or an affiliate cannot sell an uninsured instrument without a disclosure to and acknowledgement by the customer that the instrument is not insured. Registered brokers and dealers are exempt."

Supposed Fact: "Disclosure and acknowledgement of uninsured status required by H.R. 6 and the compromise. Registered brokers and dealers must comply with thorough SEC disclosure requirements."

In actuality, Section 434 of the bill requires that when a transaction involves an instrument or other transaction not constituting an insured deposit, a bank or a securities affiliate must obtain from the customer a signed statement containing specific disclosures (that the product is not an insured deposit) before the completion of the transaction. This requirement would effectively eliminate the sale of uninsured products by banks and their affiliates and cut off states, municipalities, and the federal government from a major source of funds. Furthermore, customers would lose a valued and convenient service. The bill would essentially require the customer to come into the bank to conduct business that is normally conducted by telephone and the mails. Indeed, even a check deposited by mail into an account with over $100,000 would have to be rejected because of the inability to obtain prior signed acknowledgement.

Presumed Myth: "Banks may not sell proprietary mutual funds in their lobbies.'

Presumed Fact: "The compromise permits such sales to continue in the bank lobby by registered-broker dealers that can be bank affiliates and that are subject to SEC investor protection rules."

In actuality, Section 466 of the bill specifically states: "It shall be deceptive and misleading for any registered investment company which has as an investment adviser or distributor, a bank, or an insured depository institution (as such term is defined in section 3(c)(2) of the Federal Deposit Insurance Act) or affiliated person thereof, to adopt, as part of the name, title, or logo of such company, or of any security of which it is the issuer, any word or design which is the same as or similar to, or a variation of, the name, title, or logo of such bank or insured depository institution."

Thus, if one of the common precepts of a "proprietary mutual fund" is to be able to identify with the affiliated institution, the bill clearly prohibits it. Furthermore, the statement that sales are permitted in a bank lobby by registered broker/dealers overlooks the fact that interlocking *nonmanagement* employees between a bank and its securities affiliate are prohibited by the bill, even if the employees are registered broker/dealers subject to all of the NASD and SEC regulations (including the requirement that they only sell appropriate investments to their customers).

Presumed Myth: "The Banking Committee accepted all the Energy and Commerce firewalls."

Presumed Fact: "The Energy and Commerce Committee accepted all Banking Committee firewalls and added two additional firewall protections."

This statement apparently refers only to the firewalls contained in the proposed new subsection (n) to section 4 of the Bank Holding Company Act. In fact, the Energy and Commerce Committee added substantially more onerous provisions, even if not labeled "firewalls". For example:

1. The Energy and Commerce Committee amended the definition of "broker" under the Securities Act of 1933, which would effectively prohibit banks from engaging in most existing brokerage activities, except through an affiliated securities affiliate. That language effectively negates prior language in the bill authorizing banks to continue engaging in activities permissible before enactment of the bill. The language substantially increases the cost not only for purchasers of certain securities but also for issuers such as states and municipalities with no offsetting benefits.

2. The Energy and Commerce Committee added a significant new twist to the firewalls included in H.R. 6. In effect, it requires both the Federal Reserve and the SEC to concur on any proposed modifications to the firewalls. This is accomplished in section 455 of Title IV by amending the securities laws to make the firewalls reciprocally applicable to securities affiliates. For example, under the amendments to the Bank Holding Company Act, a bank generally may not extend credit to its securities affiliate. Under the reciprocal amendment to the securities laws, securities affiliates also may not accept such credit under the same circumstances. The Federal Reserve's authority to modify the firewalls extends only over banks and the financial services holding companies. The SEC is given similar authority to modify the firewalls with respect to securities affiliates.

Such a provision is not only legislative overkill, it effectively sets the legislative firewalls, which are designed to protect the insured depository institution affiliate, in stone. The only purposes for such reciprocal provisions is to provide the SEC with regulatory control over the lending activities of financial service holding companies and their subsidiary banks, and ultimately to ensure that the firewalls are not modified by Federal regulators.

3. The Energy and Commerce Committee added a provision to Title IV which would prohibit a bank from extending or denying credit or services, or varying the terms and conditions, if the effect would be to treat an unaffiliated entity less favorably than any affiliate of the bank, including *all bank subsidiaries*. The provision would also require banks, upon certain findings by the Federal Reserve, to offer to unaffiliated brokers and dealers in the U.S. government securities clearing services at "reasonable" prices, terms, and conditions, *regardless of the cost to the bank or the price, terms, or conditions the bank may charge or impose on its own securities affiliate*.

Section 23B of the Federal Reserve Act already prevents a bank from offering its nonbank affiliates services on any prices, terms, or conditions that are more favorable than those which are offered to unaffiliated third parties; and therefore, the provision is unnecessary from the standpoint of non-bank affiliates (such as securities affiliates). A bank, however, should not be prohibited from offering special pricing or terms to its own bank subsidiaries. Such a subsidiary is nothing more than a separately incorporated department of the bank, doing that which the bank itself can do. Congress would not attempt to regulate how a bank, or any other entity, charges on an internal basis for services provided to itself; but attempting to regulate pricing to bank subsidiaries amounts to the same thing.

It is the intention of this Member to support the bill on final passage. The administration's vision of an America in which large banks controlled by large corporations in an unfettered way are allowed to cross State lines and undertake securities activities is not mine. I prefer decentralized banking, total barriers to integrating banking and commerce, and reasonable firewalls between banking and securities activities.

I cannot stress enough that tough capital standards are key to prudential banking that a narrow approach is a prescription for a regulatory licentiousness. Hence, as much as I assume Energy and Commerce overstepped in attempting to protect the securities industry I feel compelled to support the bill.

It is simply more likely, in my judgment, that a more thoughtful House-Senate compromise can be crafted by paring back a comprehensive bill than negotiating from a narrow approach.

Mr. WYLIE. Mr. Speaker, I yield 1 minute to the gentleman from Louisiana [Mr. BAKER].

Mr. BAKER. Mr. Speaker, I thank the gentleman from Ohio [Mr. WYLIE] for yielding this time to me.

Mr. Speaker, in a moment we will be certainly asked to use our good wisdom with passionate entreaty to adopt this bill now reported to the House floor, and there is no vice in passionate wisdom in doing one's job, but it is wrong when one does not listen to the sound voice of reason.

Mr. Speaker, reason tells each Member of the House that what we have done here is not in anyone's best interest. The phones in our offices ring off the wall as small insurance companies fight large, as small banks fight large, as securities agents, real estate firms and everyone faces uncertainty in what this legislation will do to the financial marketplace.

Let us not be confused. This legislation will do for the financial marketplace what the *Hindenburg* does for air travel. It is a disaster, and we should not turn our backs simply because we are afraid of having to come back, and do it right and vote for this travesty without giving ourselves adequate and responsible opportunity to do it correctly.

If this motion should fail, please do not vote for this bill on final passage.

Mr. WYLIE. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Mr. Speaker, I rise in strong support of an attempt to save the *Hindenburg* by passing the recommittal motion.

By recommitting this legislation it means that we might have a chance to allow the committee process to work, wouldn't it be interesting to see how the Banking and the Energy and Commerce Committees vote? They haven't. By recommitting this bill will give them the chance.

Mr. WYLIE. Mr. Speaker, I yield the remainder of my time to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Speaker, I thank the gentleman from Ohio [Mr. WYLIE] for yielding this time to me.

Mr. Speaker, I think the important thing for us to remember about this motion to recommit and why it needs to be passed is it can make a good bill out of this. It will keep the whole bill intact except for title IV, which we had such a huge debate on striking the other day, but it keeps the guts of title IV's provisions on insurance. It does close the Delaware loophole. It does close the other loopholes of concern to the title insurance folks and others. It is a good bill from the insurance community standpoint with this motion to recommit passed, and it is a good bill for all of us who do not want to have to deal with unduly restricting banks.

Let us pass the motion to recommit, take the insurance provisions and put them in there, and strike everything else out of title IV. Vote aye on the motion to recommit, but, if it fails, vote no on the bill, but, if it passes, it is a good bill, and we ought to pass it. That will solve the problem.

The SPEAKER pro tempore. All time for the proponents of the motion to recommit has expired.

The Chair recognizes the majority leader, the gentleman from Missouri [Mr. GEPHARDT], for 5 minutes.

Mr. GEPHARDT. Mr. Speaker, Members of the House, I hope that Members will not vote for the motion to recommit and will vote for this legislation.

We have worked in committee for almost 10 months. We have worked on the floor now for 3 days. We cannot leave this session of the Congress this year until and unless we pass a bill in this area that at least recapitalizes the banking fund. If this bill fails tonight, we will have to stay here, go back to committee, try to bring out a bill that we can pass before we can leave this year.

I say to my colleagues, "If you vote for the motion to recommit, you vote to overturn what we said we wanted to do the other day, which was to pass the Dingell-Gonzalez compromise, which we all read, and understood and voted for by a majority vote, Republicans and Democrats, a few days ago."

□ 1840

This is a good bill. It is complicated. It undoubtedly could be improved. It undoubtedly will be improved in a conference with the Senate. The President can then look at that product and decide whether he wants to sign it or veto it. Then we will have to take that decision and see what we want to do from there. But for the life of me, I do not know why we would want to go back with a motion to recommit or, worse, defeat the bill tonight and go back to where we were 4 days ago or 6 months ago.

We hear a lot about what this lobby wants and what that lobby wants. Let us forget the lobbies and start thinking about what is good for the American people and the American taxpayers for a change. People are saying that if we vote for the motion to recommit, it will make the insurance lobby happy. Others say that if we defeat the bill, we will bring back a stripped-down bill, put in interstate banking, and that will keep the banking lobby happy, or if we do something else, it will make the securities dealers happy.

I say the heck with all of them. I say that we should just worry about the people who pay the taxes, the 70 billion taxpayer dollars that are going to go into this fund.

Let us remember what this is about. I was here in 1980. I voted for the Garn-St Germain compromise late at night. We revised and reformed the savings and loan industry. We opened up the insurance from $20,000 to $100,000, and with too-big-to-fail we went to unlimited insurance and we gave them new powers. Now in a few weeks we will take up another $80 billion for the RTC because of the decisions we made on the savings and loans in 1980.

It is now 1991, and we are now making the same decisions with regard to the banks. I beg the Members to consider when we make this decision—and I hope we will make it tonight—that if we are going to have this unlimited insurance and continue it as we are, we will take precautions so that we do not wind up with the banks being in the same condition as the savings and loans 1 year from now or 5 years from now or 10 years from now.

We have a responsibility to our people to recapitalize this fund and not to open it up and allow the same mistakes to be made. So I urge the Members to vote against this motion to recommit and stick with the decision we made 3 or 4 days ago.

Mr. Speaker, let us pass this bill over to the Senate and go to a conference and see if we can improve this bill and do what is right. Let us put the money in the fund, but let us reform the system so that the problem does not occur again.

The SPEAKER pro tempore (Mr. HOYER). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. WYLIE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 160, noes 253, answered "present" 1, not voting 19, as follows:

[Roll No. 374]

AYES—160

Allard
Archer
Armey
Aspin
Baker
Ballenger
Barnard
Barrett
Bateman
Bereuter
Bilirakis
Bliley
Boehlert
Boehner
Broomfield
Bunning
Burton
Callahan
Camp
Campbell (CA)
Chandler
Clement
Clinger
Coble
Coleman (MO)
Combest
Coughlin
Cox (CA)
Crane
Cunningham
Davis
DeLay
Dickinson
Doolittle
Dornan (CA)
Dreier
Duncan
Emerson
Erdreich
Ewing
Fawell
Fields
Franks (CT)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Goss
Gradison
Grandy
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Hastert
Hefley
Henry
Hoagland
Hobson
Holloway
Horton
Houghton
Hubbard
Hunter
Hyde
Inhofe
Ireland
James
Johnson (CT)
Johnson (TX)
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Machtley
Marlenee
Martin
McCandless
McCollum
McCrery
McDade
McMillan (NC)
Meyers
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison
Myers
Neal (NC)
Nichols
Nussle
Oxley
Packard
Paxon
Petri
Porter
Pursell
Quillen
Ramstad
Ravenel
Regula
Rhodes
Ridge
Riggs
Rinaldo
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Santorum
Saxton
Schaefer
Schiff
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stearns
Stump
Sundquist
Tallon
Taylor (NC)
Thomas (WY)
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Wolf
Wylie
Young (AK)
Young (FL)
Zeliff

NOES—253

Abercrombie
Ackerman
Alexander
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Atkins
AuCoin
Bacchus
Barton
Beilenson
Bennett
Bentley
Berman
Bevill
Bilbray
Bonior
Borski
Boucher
Boxer
Brewster
Brooks
Browder
Brown
Bruce
Bustamante
Byron
Cardin
Carper
Carr
Clay
Coleman (TX)
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Cox (IL)
Coyne
Cramer
Darden
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dingell
Donnelly
Dooley
Dorgan (ND)
Downey
Durbin
Dymally
Early
Eckart
Edwards (CA)
Edwards (OK)
Edwards (TX)
Engel
English
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Ford (MI)
Frank (MA)
Frost
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Glickman
Gonzalez
Gordon
Guarini
Hall (OH)
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Herger
Hertel
Hochbrueckner
Horn
Hoyer
Huckaby
Hughes
Hutto
Jacobs
Jefferson
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Long
Lowey (NY)
Luken
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moran
Murtha
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Oberstar
Obey
Olin
Olver
Ortiz
Orton
Owens (NY)
Owens (UT)
Pallone
Panetta
Parker
Pastor
Patterson
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Poshard
Price
Rahall
Rangel
Ray
Reed
Richardson
Roe
Roemer
Rose
Rostenkowski
Roukema
Rowland
Roybal
Russo
Sabo
Sanders
Sarpalius
Savage
Sawyer
Scheuer
Schroeder
Schumer
Serrano
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (IA)
Solarz
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Swett
Swift
Synar
Tanner
Tauzin
Taylor (MS)
Thomas (GA)
Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Volkmer
Walsh
Washington
Waters
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron
Zimmer

ANSWERED "PRESENT"—1

Cooper

NOT VOTING—19

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Foglietta
Ford (TN)
Green
Hopkins
McEwen
Michel
Moody
Mrazek
Murphy
Sangmeister
Slaughter (VA)
Smith (FL)
Thomas (CA)

□ 1901

Mr. LEWIS of California changed his vote from "no" to "aye."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HOYER). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GONZALEZ. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 89, nays 324, answered "present" 2, not voting 18 as follows:

[Roll No. 375]

YEAS—89

Abercrombie
Annunzio
Atkins
Beilenson
Berman
Bonior
Borski
Boucher
Bruce
Collins (IL)
Collins (MI)
Coyne
DeLauro
Dingell
Donnelly
Downey
Dymally
Early
Eckart
Edwards (CA)
Fascell
Fazio
Frost
Gekas
Gephardt
Gibbons
Glickman
Gonzalez
Hayes (IL)
Hertel
Hochbrueckner
Hoyer
Jacobs
Johnston
Jones (GA)
Kennelly
Kildee
Kleczka
Kostmayer
Lancaster
Leach
Lehman (CA)
Lehman (FL)
Levin (MI)
Lewis (GA)
Lowey (NY)
Luken
Machtley
Manton
Markey
Matsui
Mavroules
Meyers
Mink
Moakley
Moody
Moran
Neal (MA)
Oakar
Olver
Ortiz
Panetta
Pease
Pelosi
Penny
Pickle
Reed
Roukema
Roybal
Sabo
Sawyer
Scheuer
Schroeder
Schumer
Sikorski
Slattery
Solarz
Studds
Synar
Torres
Towns
Traxler
Vento
Walsh
Waxman
Weiss
Wolpe
Wyden
Yates

NAYS—324

Ackerman
Alexander
Allard
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Anthony
Applegate
Archer
Armey
Aspin
AuCoin
Bacchus
Baker
Ballenger
Barnard
Barrett
Barton
Bateman
Bennett
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boehner
Boxer
Brewster
Broomfield
Browder
Brown
Bunning
Burton
Bustamante
Byron
Callahan
Camp
Campbell (CA)
Cardin
Carper
Carr
Chandler
Clay
Clement
Clinger
Coble
Coleman (MO)
Coleman (TX)

Combest
Condit
Conyers
Costello
Coughlin
Cox (CA)
Cox (IL)
Cramer
Crane
Cunningham
Darden
Davis
de la Garza
DeFazio
DeLay
Dellums
Derrick
Dickinson
Dicks
Dooley
Doolittle
Dorgan (ND)
Dornan (CA)
Dreier
Duncan
Durbin
Edwards (OK)
Edwards (TX)
Emerson
Engel
English
Erdreich
Espy
Evans
Ewing
Fawell
Feighan
Fields
Fish
Flake
Ford (MI)
Frank (MA)
Franks (CT)
Gallegly
Gallo
Gaydos
Gejdenson
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goodling
Gordon
Goss
Gradison
Grandy
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hancock
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hoagland
Hobson
Holloway
Horn
Horton
Houghton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kennedy
Klug
Kolbe
Kolter
Kopetski
Kyl
LaFalce
Lagomarsino
Lantos
LaRocco
Laughlin
Lent
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Marlenee
Martin
Martinez
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Mfume
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison
Murtha
Myers
Nagle
Natcher
Neal (NC)
Nichols
Nowak
Nussle
Oberstar
Obey
Olin
Orton
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Parker
Pastor
Patterson
Paxon
Payne (NJ)
Payne (VA)
Perkins
Peterson (FL)
Peterson (MN)
Petri
Pickett
Porter
Poshard
Price
Pursell
Quillen
Rahall
Ramstad
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Riggs
Rinaldo
Ritter
Roberts
Roe
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Rowland
Russo
Sanders
Santorum
Sarpalius
Savage
Saxton
Schaefer
Schiff
Schulze
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter (NY)
Smith (IA)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Staggers
Stallings
Stark
Stearns
Stenholm
Stokes
Stump
Sundquist
Swett
Swift
Tallon
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (GA)
Thomas (WY)
Thornton
Torricelli
Traficant
Unsoeld
Upton
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walker
Washington
Waters
Weber
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wylie
Yatron
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—2

Brooks
Cooper

NOT VOTING—18

Bryant
Campbell (CO)
Chapman
Dannemeyer
Dixon
Dwyer
Foglietta
Ford (TN)
Green
Hopkins
McEwen
Michel
Mrazek
Murphy
Sangmeister
Slaughter (VA)
Smith (FL)
Thomas (CA)

□ 1918

The Clerk announced the following pair:

On this vote:

Mr. Smith of Florida for, with Mr. Murphy against.

So the bill was not passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. DANNEMEYER. Mr. Speaker, I was unavoidably absent from the House. Had I been present I would have voted "aye" on rollcall Nos. 367, 371, 372, and 374 and "nay" on rollcall Nos. 368, 369, 370, 373, and 375.

PRIVILEGES OF THE HOUSE—USE OF HOUSE RESOURCES BY HOUSE COUNSEL TO PREPARE LEGAL BRIEF ON CONSTITUTIONALITY OF TERM LIMITS

Mr. COX of California. Mr. Speaker, I rise to a question of the privileges of the House, and I send to the desk a privileged resolution (H. Res. 268) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Whereas, Rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively, or the integrity of its proceedings, are affected; and,

Whereas, under the precedents, customs, and traditions of the House pursuant to Rule IX, a question of privilege has arisen in cases involving the actions of officers and employees of the House, including the use of the House of Representatives legal counsel to represent individual Members or the House collectively, where such representation could reflect upon the House as a whole; and,

Whereas, the rights of the House collectively are affected directly by the House of Representatives' legal counsel preparing a formal legal brief arguing the unconstitutionality of Congressional term limits; and,

Whereas, the rights and the reputation of all Members of the House of Representatives are directly affected by the House of Representatives legal counsel preparing such a legal brief, which could be understood to imply the support of the House of Representatives and its membership (or at least a majority thereof) for the positions taken therein; and

Whereas, no vote of the Members of the House has occurred on any resolution or bill, authorizing the House of Representatives' counsel to prepare a legal brief for or against the constitutionality of term limits; and,

Whereas, the decision by the House of Representatives' counsel to use the funds and resources of the House to prepare arguments against the constitutionality of term limits—without any formal or informal vote of the Members—subjects the House collectively, and each of its Members, to legitimate question concerning the integrity of House proceedings; and,

Whereas, the use of official House resources to prepare a legal brief for an individual Member in a case where he is not a party, but where instead he has personal political interest, could subject Members, in their representative capacity, to ridicule and contempt; and

Whereas, the constitutionality of state-imposed term limits for Members of Congress is an open question, undecided by our legal system, and on which reasonable persons can differ;

Resolved, That the Clerk of the House shall take all necessary steps to notify interested parties, including the Florida Supreme Court, that the House of Representatives regrets that official resources were used to prepare a brief against the constitutionality of State-imposed term limitations for Members of Congress, and that the House has no official or unofficial position thereon.

The SPEAKER pro tempore (Mr. HOYER). The resolution constitutes a question of the privileges of the House.

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that further debate on this resolution and a possible vote on the resolution be deferred until the first order of business on Wednesday of this week.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. COX of California. Mr. Speaker, reserving the right to object, I have had the opportunity to discuss this question with the distinguished majority leader. I appreciate his request for unanimous consent, and I agree that it is in the best interests of all Members of the House so that we may have a full and fair debate on the question and a vote at a time when Members find it more convenient. As a result, I concur in the request for unanimous consent and urge my fellow Members to do likewise.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. ECKART. Mr. Speaker, reserving the right to object, could I inquire as to whether or not any effort has been made to secure the efforts of the House counsel to prepare a brief in support of the term-limit initiative?

Mr. COX of California. Mr. Speaker, will the gentleman yield?

Mr. ECKART. Further reserving the right to object, I yield to the gentleman from California.

Mr. COX of California. This Member has made no such efforts. I am aware, however, that a letter has been sent to the Clerk of the House of Representatives asking that that be done. It is not the tenor nor the intent of the resolution I have brought before the House to do so.

Mr. ECKART. Further reserving the right to object, Mr. Speaker, it in no way would force the House to take a position or the counsel to take a position in support or opposition to the initiative, but it is merely the seeking of legal advice of the counsel for Members individually? Is that the gentleman's understanding?

Mr. COX of California. If the gentleman will yield further, Mr. Speaker, my purpose in offering this resolution is to take a position as a body that, frankly, we have no position, that this is an open legal question, that it ought to be left to the decision by the courts.

Mr. ECKART. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PERMISSION TO HAVE UNTIL MIDNIGHT TUESDAY, NOVEMBER 5, 1991, TO FILE CONFERENCE REPORT ON H.R. 2100, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1992 AND 1993

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that the managers on the part of the House may have until midnight, Tuesday, November 5, to file a conference report on H.R. 2100 as amended, the National Defense Authorization Act for fiscal year 1992.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 323

Mr. GOSS. Mr. Speaker, I ask unanimous consent that my name be removed from the list of cosponsors of House Joint Resolution 323. My name was placed thereon in error.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

THE OCTOBER SURPRISE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana [Mr. LIVINGSTON] is recognized for 5 minutes.

Mr. LIVINGSTON. Mr. Speaker, congressional Democrats owe Ronald Reagan and George Bush and the American people an apology.

When it comes to ethics, the Democrat Party has selective moral outrage. They are unconcerned that John Kennedy might have schemed with Chicago and Texas politicians to steal the 1960 Presidential election. They do not ask how Lyndon Johnson, who was born into poverty and spent a career in public service, managed to retire as a multimillionaire.

But when the topic turns to Republicans in general and Ronald Reagan in particular, suddenly these Democrats make Cotton Mather look like Hugh Hefner.

□ 1930

Take their latest gimmick, the so-called October surprise investigation, which has been featured in newspaper articles and TV news shows extensively over the last 6 months.

Mr. Speaker, you know the October surprise. It was an idea that in 1980 Reagan campaign aids, including one person who is now a Federal judge on the D.C. Court of Appeals, secretly conspired with the ayatollah to delay release of U.S. hostages until after the election. Then according to this scenario, President Reagan agreed to divert arms and spare parts to the ayatollah.

Mr. Speaker, the basis for this article of faith among so many Democrats is the contention by Gary Sick, a disgruntled Carter administration adviser, now proven in articles in the New Republic and Newsweek to be mythical at best, and at worst a crock of horse feathers.

Sick says in a recent New York Times article that for a long time he himself doubted the October surprise scenario. Yet he claims he heard so much evidence in support of it from so many people that suddenly he is now convinced it is true.

Well, the facts tell a different story. In fact, Gary Sick is not some longtime doubter of this scenario. He has been pedaling the October surprise story, as well as his soul-searching conversion, for 3 years. He tried doing it during the final weeks of the 1988 Presidential campaign as a way of killing off the Bush campaign. It did not work then and it is even less credible today, despite the intent of the Democrats to begin investigations of his story in both Houses.

Sick claims George Bush was in Paris at the height of the 1980 campaign. He says he has witnesses to this; but looking at the facts you find that not only do all his witnesses turn out to be crackpots, felons, or pathological liars, but all the travel logs and the Secret Service files show that George Bush never left American shores.

One of the people Sick relies upon is Abolhassan Bani-Sadr, the former Iranian leader who was driven into exile in the early 1980's. Yet Bani-Sadr, a liar of the highest order, for the first decade of his exile never mentioned the October surprise. It was only when he decided to write and sell his memoirs that he decided to proclaim that George Bush was in Paris during October 1980, to deal arms for hostages; and yet, Mr. Speaker, we know now that it never happened.

Gary Sick was grilled on ABC's "Nightline" the day his story appeared. Ted Koppel put it to Sick in no uncertain terms. He said:

> I must tell you, I read with great interest and care your op-ed piece in the New York Times this morning. You don't have it. You make a number of allegations, a number of sources, most of them anonymous. It does not seem to me as though you've got an ironclad case.

Sick responded,

> It was not possible to list all the sources by name and background in a piece that size, and if you're talking about hard documentary evidence, you're absolutely right. It just isn't there in hard document form.

Well, of course it is not, Mr. Speaker, because no evidence exists; but the facts do tell us that Zbigniew Brzeinski in his memoirs as President Carter's own National Security Adviser writes:

> The outbreak of the Iran-Iraq war created in Iran a need for American spare parts and we began to hold out that option as a way of enticing the Iranians into a prompt settlement. By the middle of October, we were even discussing among ourselves

That is, the Carter administration—

> the possibility of pre-positioning some of those spare parts in Germany, Algeria, or Pakistan so that the Iranians could then promptly pick them up with their own aircraft.

So, Mr. Speaker, if you are going to conduct an investigation, note that it was the Carter people, not the Reagan people, who were talking about swapping arms for hostages.

Now, Mr. Speaker, this is typical of the intellectual bankruptcy of today's Democratic Party, always blaming someone else for their problems.

But it is their fault. They have held power in this Chamber uninterrupted for nearly four decades. They are the ones who refuse to curb Government spending, or roll back the scale of Government spending. They continue to write restrictive rules that prohibit full and fair and open debate here on the House floor, and it is they who are pushing a phony partisan investigation. It is no wonder that the American people do not trust Congress or do not trust the Democrats.

Even worse, Mr. Speaker, they may be right. Even more so now that we understand that the October surprise is a fraud and a hoax. Do not take my word for it. Read the New Republic and the Newsweek articles, and when you are through, Mr. Speaker, you can apologize to Ronald Reagan, George Bush, and the American people.

Mr. Speaker, I include the following article:

[From the New Republic]

THE CONSPIRACY THAT WASN'T

(By Steven Emerson and Jesse Furman)

Few op-ed pieces prove to be as popular or long-lived as the one Gary Sick wrote for The New York Times last April. He claimed that in October 1980 officials in Ronald Reagan's presidential campaign made a secret deal with Iran to delay the release of the American hostages until after the election. In return, the United States purportedly arranged for Israel to ship weapons to Iran. The charges of an "October Surprise" weren't new. They had been circulating in the press since 1987. But Sick, who had served on Jimmy Carter's National Security Council staff and is the author of the acclaimed All Fall Down (1985), an account of the 1980 Iran hostage crisis, gave new impetus to the story. So did a show the following day by PBS's "Frontline," in which Sick was featured.

When Sick first wrote about the release of the hostages in his book, he explained that there were several reasons they were freed in January 1981: Iranian enmity for Carter, the complications of unfreeing Iranian assets, the disorganization of the Iranian regime, and the protracted nature of U.S.-Iranian negotiations. But in his oped piece, Sick wrote that in preparation for a new book on Iran, October Surprise (to be published this month), he interviewed "hundreds of people" who told him about a secret Reagan-Bush hostage deal in 1980. What finally persuaded him was "the absence of contradictions on the key elements of the story" provided by his sources. Sick became convinced that William Casey, then Reagan's campaign manager, had met secretly in Madrid in the summer of 1980 with Iranian intermediaries to negotiate a secret deal, and that Casey and other officials met in Paris in October 1980, after which Iran broke off negotiations with the Carter administration. Sick also wrote that three of his sources saw then Vice President George Bush in Paris as well, but that "in the absence of further information, I have not made up my mind about this allegation."

The Sick piece and the "Frontline" story prompted a spate of alarmed editorials, an indignant request from former President Carter for a "blue-ribbon panel" to investigate the charges, and congressional inquiries into the October Surprise.

But the truth is, the conspiracy as currently postulated is a total fabrication. None of the evidence cited to support the October Surprise stands up to scrutiny. The key sources on whose word the story rests are documented frauds and imposters. Representing themselves as intelligence operatives, they have concocted allegations that are demonstrably false, and their stories, full of internal inconsistencies, are also contradictory. Almost every primary source cited by Sick or "Frontline" has been indicted or was the subject of a federal investigation prior to claiming to be a "participant" in the October Surprise. Finally, evidence we have uncovered shows that William Casey and George Bush could not have been present at the meetings alleged by the sources.

The term "October Surprise" was actually coined by Reagan campaign aides who worried in the fall of 1980 that Carter would launch an operation to free the hostages in order to win the election. Thus in the fall of 1980 members of the Reagan campaign team often met to discuss developments regarding the hostages. There was concern that Carter would do something to exploit the hostage situation, and some of the things the Republicans did—such as stealing Carter's debate book—were sleazy. But they certainly did not amount to treason, as proponents of the October Surprise have charged.

The conspiracy theory began to catch on in April 1987. On the front page of the Miami Herald, Alfonso Chardy reported on a secret meeting in early October 1980 with Richard Allen and Laurence Silberman, then foreign policy advisers to Reagan, and Robert McFarlane, then an aide to Senator John Tower on the Senate Armed Services Committee. The article said they "met secretly" at the L'Enfant Plaza Hotel in Washington, D.C., with a "man who said he represented the Iranian government and offered to release to candidate Reagan 52 American hostages being held in Tehran." Allen told the House Foreign Affairs Committee last May that he went at the "insistence" of McFarlane, who only indicated that the meeting was about the Middle East. Although the article quoted Allen as saying that he rejected the man's offer as "absurd" and told him to deal directly with the Carter administration, the article strongly implied that this meeting was part of a new scandal linked to the Iran-contra affair. Allen's decision not to inform Carter officials of the meeting fueled suspicion about the story.

Abolhassan Bani-Sadr, the president of Iran from January 1980 through June 1981, was quoted as claiming that he "learned in 1981" that Iranian leaders Ali Akbar Hashemi Rafsanjani and Mohammed Beheshti had collaborated with Reagan campaign aides to release the hostages. (Beheshti and Rafsanjani, bitter political opponents of Bani-Sadr, had forced him from power. Beheshti was later killed by a bomb in 1981, and Rafsanjani is now president of Iran.) Bani-Sadr also charged that the Reagan officials had promised Iran that it would receive weapons for its war with Iraq. But Bani-Sadr stipulated that the promises of weapons were not linked to the release of the hostages—and furthermore, he didn't know if any weapons were eventually shipped.

In early July 1987 the October Surprise got a big push from the Nation with Christopher Hitchens's charge that the Reagan campaign assured the Iranians that "if they kept the American hostages until after the election," the Iranians would be rewarded with arms. Hitchens quoted Barbara Honegger, a Reagan campaign researcher and low-level worker in the Reagan White House, as saying that in late October 1980 she had overheard an unidentified "staffer" say, "We don't have to worry about an 'October Surprise.' Dick cut a deal," presumably a reference to Richard Allen.

As these charges began circulating, Bani-Sadr's memory improved dramatically. On August 3 Flora Lewis reported in a New York Times column, based on an interview, that Bani-Sadr now held without doubt that the "Reagan campaign offered arms if the hostages were not released until after the 1980 election." He also asserted that in October 1980 his "aides found out" that Rafsanjani and Beheshti had delayed the release of the hostages, that there was a meeting between Beheshti and a "Reagan campaign official" in Paris, and that he "learned later" that Allen, Silberman, and McFarlane met with an Iranian envoy in Washington.

Bani-Sadr's memory continued to improve. On August 9, 1987, Miami Herald reporter Chardy quoted him as now saying that "secret contacts between Reagan and Khomeini representatives" had fixed a deal in October 1980 to free the hostages. (Note that according to Sick in a 1988 Los Angeles Times story, "Bani-Sadr had nothing to do with the negotiations. He was completely out of it.") The article also reported that the Reagan administration approved of, or at least condoned, Israeli arms sales to Iran in 1981. All the ingredients for the cabal were now in place.

Then, in an August 1987 interview with Leslie Cockburn for her book Out of Control, Bani-Sadr said that he knew ahead of time that Rafsanjani and Beheshti sent an Iranian envoy to meet with Allen and Silberman and that he even protested to Rafsanjani and Khomeini that it was "dangerous" to renege on the negotiations with Carter. Remember that initially he claimed to have no prior knowledge of any such meeting. Later he said he "learned" about the meeting in 1981. Now he was saying that he knew of the meeting ahead of time.

It got better. The following year, in a September 1988 article in Playboy by Abbie Hoffman and Jonathan Silvers, which painted the most comprehensive October Surprise conspiracy to date, Bani-Sadr said definitively that George Bush was the Reagan campaign official who met in Paris with Beheshti in October 1980. (A year later Bani-Sadr said he had a "document" showing that Bush was present at the meeting—but he could not disclose the document because "the life of the writer . . . and the lives of many people would fall into danger.") Bani-Sadr's accusations about Bush prompted an editorial in The Washington Post—not especially disposed to defending Bush in general—in October 1988 that noted Bani-Sadr's motivation in "smearing Bush." The Post wrote, "Bani-Sadr has to hope that U.S.-Iranian relations will continue to be antagonistic if the Iranian opposition is ever to have a chance of gaining important American support. His effort to smear Bush betrays concern about tensions lessening if the Republicans stay in power."

Emboldened by the eager response to his allegation by international journalists, Bani-Sadr wrote his memoirs, which went beyond even the October Surprise conspiracy. In My Turn To Speak: Iran, the Revolution & Secret Deals with the U.S. (published in France in 1989, and in the United States in 1991), Bani-Sadr portrayed himself as a man victimized by the double dealings of the Khomeni regime and the Reagan campaign.

At the same time a new "source" emerged—who was fortuitously able to confirm Bani-Sadr's allegations. His name was Richard Brenneke, an Oregon businessman, and he surpassed even Bani-Sadr in his ability to recall events that he had admitted earlier he knew nothing about.

Brenneke claimed to have worked for the CIA and FBI in addition to the Mossad and the French, Italian, and other intelligence services. His first surfaced in late November 1986, immediately after the official disclosure of the 'Iran-contra affair, when he claimed that he personally had informed then Vice President Bush's office in February 1986 of secret details of the Iran-contra affair. Reporters flocked to Brenneke as he began propounding incredible tales of U.S. and other covert operations. For example, he was a primary source for a front-page New York Times story on February 2, 1987, about the "Demavand project," a purportedly classified CIA-Pentagon operation to ship billions of dollars of sophisticated weapons, including tanks, bombers, and helicopters to Iran. Brenneke, the article reported, had provided the Times with "documents and telexes" including a letter of reference, dated June 20, 1979, which stated that he had been employed for the CIA for thirteen years and that the CIA "found him to be thorough, competent, and very trustworthy."

The CIA and the Defense Department issued categorical denials of the story. Other reporters at the Times began looking into Brenneke's allegations and his background. Both began to collapse. According to a veteran New York Times reporter, "We soon found out that Brenneke was . . . an absolute liar. Even the documents he gave us were forged, including the CIA letter of reference."

At The Portland Oregonian, reporters were amused at Brenneke's celebrity status: the paper had reported weeks earlier that Brenneke had greatly "exaggerated" his role in arms sales, that he had said he couldn't remember if he worked at the CIA, that none of his international arms dealing ever came to fruition, and that he had been the subject of an FBI investigation for his suspected role in a check-kiting scheme and a forged airplane title report years earlier.

For the most part, however, the press was willing to suspend disbelief. ABC News quickly ran a series of "investigative" stories based on new Brenneke allegations. In April 1988 the network aired a report based on a "confidential source"—who the network later admitted to be Brenneke—alleging that in 1983 the United States, working with Israeli intelligence, secretly flew weapons to the contras and used the planes on their way back to transport drugs into the United States.

Newsweek followed up with a story by Robert Parry that provided even more details about Brenneke's allegations, including the charge that Donald Gregg, Vice President Bush's national security adviser (now ambassador to South Korea), was part of the drugs-for-weapons operation. Parry suggested that he had independent confirmation of the ABC allegations, but Brenneke was the only named source for both news organizations. Over the next five months Brenneke's claims were the focus of more than 200 national news stories and columns. (One of the few reporters to raise questions about Brenneke was Mark Hosenball, who wrote an article for TNR in June 1988 saying that Parry and ABC had uncritically bought the story of an unreliable witness.)

It seemed there wasn't anything Brenneke did not know. He told The Los Angeles Times that he supplied explosives to a PLO training camp located in western Oregon, a camp about which Oregon law enforcement knew nothing. He told the Seattle Times of his knowledge of Israelis training Colombian drug cartel hit squads. He told the Detroit Free Press that he supplied U.S. intelligence with information from an Iranian military officer that included maps of Qaddafi's headquarters two months before the United States bombed Libya in April 1986. He quickly discovered that it was possible to get away with any allegation in the national security arena: if an intelligence agency, already suspect in the public's mind, denied something, that merely reinforced the authenticity of the charges.

By late September 1988 Brenneke, having never mentioned anything about the October Surprise, suddenly emerged as the primary source of the conspiracy in the United States. His disclosures came right after he met Honegger, the former Reagan campaign aide, in August 1988. Honegger had become one of the leading champions of the October Surprise. She claimed to have her own intelligence and confidential sources who "confirmed" the conspiracy and began working on a book called October Surprise, published in 1989.

Honegger herself was no stranger to controversy. A believer in paranormal events (she has an unusual master's degree in "parapsychology"), she claimed a "source" with her voice contacted her in early 1980 to tell her she would get a job with the Reagan administration. She said that an intelligence officer told her that U.S. satellites parted the clouds during Reagan's inauguration to let the sun shine only on Reagan. When she resigned from the Reagan White House, she told a reporter that she had been guided by insights that she described as "channeled information . . . as if it were from the future."

Honegger says in her book that she met Brenneke on August 22, 1988, in Washington. At the meeting, Brenneke told her that he had learned from his "Iranian contacts" that a secret meeting was held at the Raphael Hotel in Paris on October 19, 1980, between William Casey, Donald Gregg, Iranian arms dealer Cyrus Hashemi, and Iranian merchant Manucher Ghorbanifar. Brenneke told Honegger that he was not present at the Paris meeting, but that he had been in the city that weekend and that his presence there was purely "coincidental."

Honegger, who had been in touch with Bani-Sadr and was eager to substantiate his story about Bush attending the secret Paris meeting, recounted the allegations. What could Brenneke tell her about "Bush's possible participation"? she asked. Brenneke said he would "make a few phone calls to see the 'lay of the land,'" and would get back to her.

A week later the Playboy article hit the stands.

On September 23, 1988, Brenneke suddenly recalled that he had attended at least one of the meetings in Paris in October 1980, that there were a total of three meetings held on October 19 and 20, 1980, and that he had played a pivotal role in the October Surprise deal. Brenneke was appearing that day as a character witness at a Denver court for the sentencing of his friend Heinrich Rupp. Trained as a Nazi pilot, Rupp was a Colorado gold dealer who had been convicted of bank fraud and sentenced to forty-one years in jail. Brenneke told the court that Rupp had been prosecuted to shut him up about his involvement in flying Reagan campaign aide to Paris in October 1980.

Brenneke testified that on October 18, 1980, Rupp participated, at the request of the CIA, in a flight taking Bush, Casey, Allen, and Gregg to a meeting in Paris with Iranian representatives to work out a deal to delay the release of American hostages until after the election. He said that Rupp had been a long-time CIA pilot, and that Rupp personally flew Casey to France. Brenneke also said that he attended the third meeting, at which Casey and Cyrus Hashemi (both men were dead by the time of Brenneke's testimony) and Gregg also participated.

Brenneke went on to say that a CIA officer named Robert Kerritt had given him instructions to go to Paris. And as a result of the meetings with Casey and Bush, he claimed that he witnessed an agreement over the "logistics of transferring $40 million [in U.S. funds] for the purchase of weapons [for Iran]." Asked whether he ever played a "role in conveying or transferring that money," Brenneke said, "I don't believe so."

After the February 1987 New York times article had appeared, Brenneke had been contracted by Jack Blum, special investigator for the Senate Subcommittee on Terrorism, Narcotics and International Operations, headed by Senator John Kerry. He met with Brenneke for hundreds of hours, and a year and a half later Brenneke began telling newspapers that Blum and the other staffers corroborated his allegations about the October Surprise. Moreover, Brenneke testified under oath in the Rupp hearing that he had provided the October Surprise information to the Senate subcommittee and that it was later confirmed by the staffers.

Yet according to Blum and other Senate staffers, not only did Brenneke never mention the October Surprise; the subcommittee found him to be an outright liar. The committee obtained thousands of pages of documents from law enforcement and intelligence agencies and discovered, says Blum, "that nothing he said was ture—he had made it up based on what he read in the newspaper or what he was told."

The Senate subcommittee released a 1,166-page report December 1988, in which two pages are devoted to Brenneke. Among the conclusions: "The records show that Brenneke was never officially connected to U.S. intelligence." The report noted that Brenneke "began telling his stories about his 'secret' life as a spy" after being stopped by the U.S. Customs Service on his way back from Europe and asked about documents relating to arms deals. "His response was to offer to become a Customs informant," stated the report. Customs declined the offer. The report also noted that "Brenneke applied for a job with the CIA when he finished school but his application was rejected."

By May 1989 Brenneke's stories began to catch up with him. A Denver grand jury indicted him for perjury for making false declarations under oath to a federal judge in the Rupp hearing. Brenneke's trial took place in Portland, Oregon, in April 1990. A CIA official testified that not only had Brenneke and Rupp never worked for the CIA; the agency had never heard of anyone named Robert Kerritt—Brenneke's supposed contact. Secret Service agents testified that Bush had not left the country in the two weeks before the election; two of Casey's secretaries said the same thing about their boss. Then Gregg testified that on the weekend of October 18 and 19, 1980, rather than being at the Paris meetings as Brenneke claimed, he was on vacation at a beach in Delaware; on Monday October 20, he said he was back at work at the Old Executive Office building. He recalled that the weather was cloudy and produced a photograph of himself and his daughter on the beach. The back of the photo is stamped "October 1980" from the processing lab. The photo showed a hazy but partly sunny sky.

In response, Brenneke's lawyers produced Robert Lynott, a retired Portland TV weatherman who testified that his review of the weather reports showed there were overcast and rainy conditions most of that weekend in Delaware—and that therefore the photo must have been taken at a different time. This turned out to be the key piece of evidence on which the jury concentrated.

Following a three-week trial, Brenneke was acquitted, thanks to the prosecution's incompetence and overconfidence and the defense's success in shrouding Brenneke in the smoke and mirrors of the intelligence world. The prosecution was roundly criticized for not asking for or admitting any documentary evidence. The Secret Service agents didn't bring records to the trial, which made them vulnerable on cross examination. Casey's two secretaries admitted that Casey kept secrets from them, which rendered their testimony questionable in the minds of jurors.

Prosecutors did not introduce into evidence Gregg's datebook, which has the word "beach" penned on the October 18 weekend, or the four computerized White House memoranda that he sent from and received in his office on October 20. Thus the jury became preoccupied with the questions raised by the defense about the alleged date of the photograph. Three jurors later admitted that their "doubt" about the photograph was the main reason they had acquitted Brenneke.

Despite the litany of Brenneke's inconsistencies, October Surprise supporters touted his acquittal as proof of his veracity. Sick says: "Brenneke had the courage of his conviction in taking on the U.S. government on three key allegations [about the presence of Bush, Casey, and Gregg at the Paris meetings], and he was acquitted. . . . The evidence on George Bush not being in Paris is less persuasive than that of Donald Gregg. The way Bush has dealt with this is very suspicious. There is not a single shred of evidence that Bush was where he said he was." "Frontline" embraced Brenneke's trial defense that the weather conditions on the Delaware shore on October 20, 1980, were incompatible with the Gregg photo, claiming that "U.S. government documents show the weather was cold and cloudy that weekend on the Delaware shore." In fact, detailed hourly weather maps of that weekend from the National Oceanic and Atmospheric Administration show that on Sunday afternoon weather conditions were compatible with the picture Gregg produced.

"Frontline," Sick, and October Surprise conspiracy supporters also rely on the "eyewitness testimony" of Brenneke's good friend Rupp. Weeks after Sick published his op-ed piece, in which he indirectly cited Brenneke and Rupp (though not by name), when questioned by reporters skeptical about Brenneke's credibility, he disclaimed any reliance on him. Rupp, however, was still a primary source. He has maintained that his involvement in a loan fraud, which led to the collapse of the Aurora Bank in Colorado in 1985, was actually due to the CIA, for whom he said he was working, as part of a "national security operation" related to Iran-contra.

Like Bani-Sadr and Brenneke, Rupp's sudden recall of the October Surprise came about belatedly. Only after his conviction for bank fraud, Rupp began telling newspapers and TV stations that he flew Casey to Paris on October 18, 1980, and insisted that Bush was present on the tarmac at the French airport. There are numerous inconsistencies in Rupp's account. He was unable to produce any proof that he worked for the CIA, and the plane he said he piloted to Paris that weekend, according to leasing company records, was actually parked in California. Furthermore, Rupp's passport (and Brenneke's too, for that matter) shows no exit from the United States or entry into France in October 1980. Rupp told reporters he didn't know who his passengers were at the time of the flight to Paris. He claims only to have recognized the "Old Professor" six years later when Casey was shown "testifying on television" about the Iran-contra scandal (a dubious detail, seeing that Casey had a stroke a day before the televised hearings). Rupp also said it was only years later that he recognized the "tall man with the crooked eyes"—the person at the Paris airport—as George Bush. Is it conceivable that Rupp would not have recognized Bush or Casey when he saw them? After all, he claims to be a long-time CIA employee and pilot—and Bush was head of the CIA four years before. Moreover, Brenneke says that Rupp was one of "Casey's favorite pilots."

As for the allegations about Bush's presence in Paris on October 19 and 20, Secret Service records and contemporaneous news accounts of Bush's speeches show indisputably that he is publicly accounted for almost hourly—in numerous campaign stops—from October 15 through the late evening of October 18. On Sunday morning, October 19, according to information obtained by Gordon Crovitz of the Wall Street Journal, Bush had a private lunch with Judge Potter Stewart at the Chevy Chase Country Club. And Secret Service records show that agents went to the club to provide protection for Bush that Sunday morning. On the evening of October 19 Bush spoke to at a campaign event at the Washington Hilton, which is substantiated by newspaper accounts. On Monday, October 20, according to a schedule released by the White House and confirmed by newspaper and wire service reports, Bush campaigned the entire day in several cities in Connecticut.

When confronted with this information, October Surprise buffs either claim that the Secret Service records were fabricated or maintain that Bush could have flown to Paris on the Concorde and technically returned eight hours later. But if he did fly via Concorde (or any other high-speed plane), it conflicts with all of the statements made by Rupp and Brenneke, who said that Bush and Casey had flown to Paris on October 18 on a BAC-111. Nor is it compatible with any of the statements made by the other key sources used by "Frontline" and Sick.

By any measure of honest reporting, the October Surprise conspiracy should have died long ago. But like a version of the child's game "telephone," the story had taken on a life of its own, changing and expanding as it went from source to source. More and more "eyewitnesses" began emerging who often appropriated elements of the conspiracy, swapped lies among themselves or were prodded by journalists, and then wove new tales inserting themselves as minor or major characters. Though Bani-Sadr has consistently claimed to have his own proof of the conspiracy, for his book his only evidence was excerpts from Brenneke's court statements in the Rupp hearing. An October Surprise cult emerged, fueled by entrepreneurial journalists who had made the allegations into a lucrative cottage industry. PBS's "Frontline" documentary, for example, cost about $200,000 to $250,000 to produce, paid partially by taxpayer funds.

"Frontline" touted Brenneke's acquittal on perjury charges, declaring that "the government tried and failed to prove that William Casey was not in Paris." "Frontline" and Sick did not tell the public about Brenneke's numerous misstatements, discrepancies, and prevarications, which cast doubt on the credibility of the entire October Surprise scenario. On "Frontline" Brenneke said again that Gregg and Casey traveled secretly to Paris in October 1980. (Allen has produced a videotape of his October 19 appearance on "Meet the Press," so his name did not come up this time.) But Brenneke changed his story once again. In September 1988 he testified that he did not play a role in the transfer of $40 million in weapons to Iran: on "Frontline" he said that he was instructed by Casey at the meeting to launder the $40 million through a Mexican bank and that he did so.

Rather than rely exclusively on Brenneke, Sick and "Frontline" featured new sources who they said "confirmed" each other's accounts. These included Hoshang Lavi, Ari Ben-Menashe, and Jamshid Hashemi. Lavi, an Iranian-born arms dealer, claimed he was the unidentified Iranian emissary who met with Allen, McFarlane, and Silberman in Washington in early October 1980 at the L'Enfant Plaza Hotel. "Frontline" quoted Lavi as saying that he witnessed Khomeini's representatives being allowed to enter NATO bases in Europe and "pick whatever they want" for shipment back to Iran.

What "Frontline" and Sick did not reveal was the following: (1) Lavi's claim to have met the three Reagan supporters has been denied by McFarlane, Allen, and Silberman. (2) The only independent record of Lavi's meeting with anyone in 1980 are memoranda from the John Anderson campaign showing that he approached Anderson campaign officials on October 2 offering to secure the release of the hostages if the United States would unfreeze Iranian assets and provide F-14 spare parts. The campaign referred him to the State Department. (3) Lavi implied that he was acting on behalf of Bani-Sadr, but the State Department, according to 1980 department documents, found that he "had no authority to speak on behalf of Bani-Sadr," that he was a "self-appointed middleman" who was trying to broker a deal by going back to each party showing he had lined them up, and that "Lavi was a thoroughly disreputable character." (4) American and European defense and intelligence officials say it is ludicrous to believe that Iranians were escorted to NATO bases to play a military version of "supermarket sweep." (5) Since 1988, when Lavi was "discovered" by Honegger, he has made a series of unsubstantiated allegations, including that Customs Service agents assassinated an informant (Cyrus Hashemi) by pumping poison gas into his hospital room.

Even more than Lavi, "Frontline" and Sick relied heavily on the statements of Ari Ben-Menashe, an October Surprise source who only surfaced in 1990. "Frontline" described Ben-Menashe as a "former Israeli intelligence officer" and aired his claim to be "one of half a dozen Israelis sent to Paris at Casey's request to help coordinate arms deliveries" to Iran. "Frontline" reported that Ben-Menashe "saw a man [he] believed to be Bush" in Paris. Sick used Ben-Menashe as one of his major sources in proving that the October Surprise happened, that Casey was a key participant, and that Israel shipped weapons as part of the "deal."

Apparently emboldened by the acceptance of his allegations on "Frontline" and by Sick, last spring Ben-Menashe told several Australian newspapers and In These Times that he saw Bush arrive at a meeting on October 17 or 18, 1980, at a "top-floor conference room" in Paris, shake hands with Mehdi Karrubi, a leading Iranian cleric, and "close the door." But none of the other "eyewitnesses" and "sources" had ever mentioned Ben-Menashe's presence in Paris or that of any other Israelis, or of Mehdi Karrubi. Moreover, all of the reported sightings of Bush took place on October 19 or 20—not on October 17 or 18. Ben-Menashe has also claimed that Israel shipped more than $82 billion in arms to Iran since 1980—more than thirty-five times Israel's defense imports and domestic weapons production!

In an interview with In These Times last April, Ben-Menashe claimed that it was he—not Lavi—who met to discuss the hostages in early October at the L'Enfant Plaza Hotel with Allen, McFarlane, and Silberman.

Without providing any evidence—despite repeated promises to reporters and to congressional officials to hand over "documents"—Ben-Menashe has belatedly become a key insider on other topical issues. He has claimed to have detailed inside knowledge of the Inslaw case. He said that he met many times with Robert Gates in Chile and the United States, and even that he transferred a suitcase containing $16 million to Gates at one point. (The CIA and the National Security Council provided documents to the Senate Intelligence Committee showing that Gates was meeting elsewhere at the time of every meeting cited by Ben-Menashe.) Ben-Menashe has said that McFarlane was a paid Israeli agent since 1978, had received "millions of dollars" from Israel, and was the secret "Mr. X" in the Jonathan Pollard spy case. He even says that the United States, through Israel, shipped "billions of dollars of arms" to Iraq. He has become an "expert" on Israel's nuclear program—despite the fact that he never had any connection to it. He has claimed that in 1981 he planted the homing device at the Osirak reactor before it was bombed by Israeli planes, but records show he wasn't out of the country then. He has told Israelis and journalists that he was even offered to be head of the Mossad, Israel's secret intelligence service, but that he declined.

Sympathetic reporters uncritically portray Ben-Menashe as a "senior Israeli intelligence officer" and a "national security adviser" and "special emissary" to Israeli Prime Minister Yitzhak Shamir. In a recent interview, Sick said: "I am satisfied that Ben-Menashe knows a great deal. He has told me three or four things that I was able to corroborate. He told me he was an officer in a sigint [signal intelligence] unit. I have made no attempt to corroborate any of his other information [beyond allegations of 1980]." Seymour Hersh's new book, The Samson Option, which describes Israel's nuclear program and intelligence activities, uses Ben-Menashe as the primary source. Hersh said in an interview that Ben-Menashe was in sigint, that he was a "key player," and that "the Israelis want to hurt him bad" for his leaks of high-level classified information. But Hersh didn't interview Ben-Menashe until April, and he told The New York Times that he did not go to Israel to investigate Ben-Menashe's allegations or credibility. Hersh claims, incorrectly, that he would have been subject to Israeli censorship. What's more, according to U.S. and Israeli government documents and officials, Ben-Menashe was never in sigint, and the Israelis have never even attempted to initiate legal proceedings against Ben-Menashe, an act they would have obviously pursued if he were the source of important leaks. The closest access Ben-Menashe ever had to intelligence was his work as a low-level translator for the Israel Defense Forces External Relations Department from 1977 through 1987. Contrary to Hersh's assertion that the department is one of the most sensitive branches of military intelligence, it is in fact, compared with other branches, one of the most insignificant.

Ben-Menashe's responsibilities included translating letters and reports between the Israeli military and foreign military attachés. They did not include any translations of cables, though Israeli officials acknowledge that he did have access to minimally classified information, including a report in 1986 prepared for the United States discussing Israel's request to replenish weapons that it supplied to Iran as part of the Iran-contra operation. This alerted him to Israeli involvement in the affair, and to Iran's desperate search for weapons.

Like others before him, Ben Menashe's recall of the October Surprise came about belatedly—after he was arrested in 1989, imprisoned for a year, tried, and ultimately acquitted in 1990 on charges of illegally trying to export planes to Iran. According to his own letter of resignation, he left in 1987 because he had not received a promotion in many years. (Ben-Menashe has told reporters that he was fired for leaking a covert operation.) His personnel file notes that he was denied a special security clearance at one point because he was considered "delusional." It also says that he had begun trying to peddle weapons in scams in Chile (where he impersonated an Israeli embassy official), Singapore, and Sri Lanka (where he impersonated a Hebrew University professor). Since 1987 he has periodically charged foreigners with being Mossad agents, without any evidence. The most recent and notorious of these claims, which appears in Hersh's new book, it against media giant Robert Maxwell, who has sued.

In 1989 Ben-Menashe was arrested in California along with two Americans. A U.S. Customs agent, posing as a buyer for Iran, tape-recorded some of the conversations in which the men offered to ship the military transport planes to Iran, using a false end-user certificate, for $12 million apiece. Ben-Menashe was going to obtain the transport planes from Israel. The trial of Ben-Menashe and one of the Americans was held in 1990 in New York (the other was tried in California); Ben-Menashe was eventually acquitted. Most of the evidence that the prosecution introduced was directed against his co-defendant, and the evidence submitted against Ben-Menashe was insufficient to convict him.

Yet the court records and information provided by prosecutors show how wildly inconsistent Ben-Menashe's story has been. In 1988 he told a Time reporter that he was involved in a "secret operation" to free American hostages in Lebanon by arranging the sale of planes to Iran through Israel. But a short while later Ben-Menashe told a U.S. Customs undercover agent that since 1987 he had been "self-employed as a journalist and a translator and a political writer doing a lot of traveling * * * [and] that he had no ties with the Ministry of Defense." the undercover agent also testified that Ben-Menashe revealed to him that he was trying to obtain planes from Israel to be sold to an arms buyer. At pretrial, however, Ben-Menashe told attorneys that he became involved in plane sales to Iran because he wanted to expose Israel's covert operations. Ben-Menashe said he was acting as an "undercover journalist gathering information for a book" to "expose the ugly role of Israel and the United States in weapons sales."

During and after the trial, Ben-Menashe contends that he was one of the leading intelligence agents in Israel: Ben-Menashe's lawyer told the court that only three people in Israel were "privy to what was going on with Iran-contra"—Shamir, Israeli counterterrorism official Amiram Nir, and Ben-Menashe. Ben-Menashe claimed that Shamir dispatched him personally to carry out an operation to investigate who was trying to sell planes to Iran. According to sworn affidavits, Israeli officials in the office of the prime minister, including Shamir himself, never heard of Ben-Menashe.

Despite his brazen claims of being a "senior intelligence officer," Ben-Menashe went to extraordinary lengths to prevent the prosecution from obtaining his personnel records. He refused to sign a waiver authorizing the Israeli government to release his records to the U.S. court, telling his lawyers and the prosecutor that to do so would constitute a violation of the "Official Secrets Act in Israel," punishable "by death." In fact, there is no such thing as an "Official Secrets Act" in Israel, and there is no death penalty for releasing classified information—nor for that matter has Israel ever invoked its death penalty, with the notable exception of the execution of Adolf Eichmann. The judge compelled Ben-Menashe to sign the waiver. The records were then produced, which showed he was just a translator.

As a final defense, Ben-Menashe supporters claim that he must be credible because he knew of the Israel arms sales to Iran before they became public. But Israeli officials note that this knowledge can be explained both by his work translating letters to the United States in 1986 and by the fact that rumors of Israeli arms sales to Iran had circulated routinely throughout the Israeli Ministry of Defense. Ben-Menashe supporters also cite the numerous trips abroad he made from 1980 through 1987, evidence, they claim, that he was a secret agent. Yet his trips were on non-paid leave, and were recorded in his civilian passport. He never possessed a diplomatic passport as he claimed.

The last "new" primary source used by "Front-line" and Sick was Jamshid Hashemi, an Iranian middleman. His account added a new dimension to the October Surprise: he claimed that, in addition to the meetings in Paris in October 1980, there were earlier meetings in July and August of 1980, which Casey attended and at which the "deal" was actually made to delay release of the hostages.

In interviews on "Frontline" and with Sick, Jamshid said that in July 1980 he and his brother Cyrus (who died in 1986) met secretly in Madrid with Casey, a "senior CIA officer," and Iranian cleric Mehdi Karrubi. Jamshid said that Casey urged that "the Iranians hold the hostages until after the election," and that he, Cyrus, and Karrubi attended a second meeting with Casey in August in Madrid, where "Karrubi expressed acceptance ... the hostages would be released after Carter's defeat." In his op-ed piece, Sick accepted uncritically Jamshid's claims that he and his brother helped put the final touches on an agreement between Casey and Iran that weapons would be supplied if Iran delayed the release of the hostages.

Missing from Sick's and "Frontline's" recounting are revelations of Cyrus's and Jamshid's backgrounds that show their credibility problems to be even worse than those of Brenneke and Ben-Menashe.

Cyrus Hashemi was a typical Iranian middleman, trying to marry up business deals between Iran and other countries by inflating his importance to each side. According to declassified CIA documents and American intelligence officials, in early 1980 he offered his services to the Carter administration in getting the hostages released in return for spare parts for Iran. His lawyer, former Attorney General Elliot Richardson, put him in touch with the State Department. During the abortive attempt to free the hostages in April 1980, Cyrus offered to organize assistance from supporters in Tehran. The State Department even supplied him with funds, through the CIA, to assist him. But Cyrus failed to demonstrate that he had any connections in Tehran, and the CIA concluded that "his offers were part of a scam." All contact was dropped with Cyrus.

Cyrus was only one of several self-anointed Iranian intermediaries who purported to speak for Iran in dangling the freedom of the hostages in exchange for military weapons. Sick himself observed as much several years ago, in a chapter for the 1985 Council of Foreign Relations Anthology American Hostages in Iran: The Conduct of a Crisis: "Throughout the late summer and fall of 1980, the Carter administration had been approached by private individuals claiming to speak for Iranian authorities ... the evidence strongly suggested that these were private entrepreneurs who saw the possibility of some lucrative business for themselves."

In mid-1984 Cyrus, Jamshid, and a third brother, Reza, were indicted for their illegal efforts from October 21, 1980, through November 1981 to ship tens of millions of dollars of military equipment to Iran. After learning about the Hashemis' secret contacts with Iranian arms procurement officials in September 1980, FBI agents wiretapped Cyrus's office and temporary apartment in Manhattan. According to a transcript of one conversation on October 21, 1980, Cyrus and several Americans discussed plans to fulfill a request from Iranian officials for Cyrus (who had told them that he could obtain badly needed weapons) to arrange the exporting of arms. In the conversations Cyrus admitted that the project was illegal and suggested various ways of avoiding detection. That was the day after Brenneke had said Cyrus was in Paris meeting with Casey. In a subsequent interview with ABC's "Nightline," Jamshid made another startling claim; that starting up in August 1980, after the deal" was concluded with Casey, tens of millions of dollars of American-made weapons were shipped by boat to Iran from Israel. No evidence exists to support the claim, but if it is true, why would the Hashemis have worked so feverishly to obtain weapons in October through what they knew were illegal means?

Reza pleaded guilty, but Cyrus and Jamshid fled to Europe to avoid arrest. Cyrus retained several lawyers, including Richardson, who asked Casey, unsuccessfully, for special dispensation for his client in light of his earlier "assistance" to the United States in 1980, referring to his secret work with the State Department. When that failed, Cyrus attempted, again unsuccessfully, to negotiate for charges against him to be dropped in return for his cooperation in interceding with Iranian officials to secure the release of the hostages in Lebanon. Throughout this period neither Cyrus nor Reza nor Jamshid ever revealed to their attorneys or to U.S. government officials their alleged secret meetings with Casey in 1980. Is it conceivable that these men, who were desperate to get the charges against them dropped and were threatening, according to memorandums of conversations between Justice and CIA officials at the time, to reveal anything they knew, would not have threatened to disclose the most damaging information they possessed—a secret deal between Casey and Iran in 1980?

According to court records, in 1985 Cyrus, still a fugitive from justice, became involved with a group of international arms dealers, including Americans and Israelis, trying to sell arms to Iran. Cyrus then asked his attorney to relay to the Justice Department his offer to serve as an informant in the arms transaction in return for dropping the charges. The U.S. government agreed only to be "lenient" with Cyrus. He accepted. Soon thereafter the Customs agents, as part of a giant sting operation, began working with Cyrus overseas and in the United States to record secretly his conversations with the arms dealers.

Cyrus died on July 21, 1986, in London. A coroner's report attributed his death to a virulent strain of leukemia, which had been diagnosed only days before. A U.S. Customs Service agent attended the autopsy and concurred in its conclusions. Nevertheless, Hashemi's supporters, including attorney William Kunstler (who represents one of the arms dealers) and "Frontline's" Parry have stated that his death was "mysterious," that Cyrus was murdered to shut him up about what he knew about the October Surprise, and that the U.S. government has covered up his murder. Kunstler, who says that "there are suspicious needle pricks on both elbows" about the case, points out the The Village Voice is seriously considering paying for an exhumation. If anyone had an incentive to kill Cyrus, however, it was the arms dealers. After all, it was Cyrus's death that forced the government to drop its case against these men.

On July 20, after Sick and "Frontline" had aired Jamshid's charges, ABC's "Nightline" picked up on them. In an off-camera interview Jamshid described the meetings in Madrid at which the deal was allegedly arranged. At the first of them, which he said covered two consecutive days in "late July," Casey and two unidentified Americans first proposed the deal to Mehdi Karrubi, a "close associate" of Khomeini. The Hashemis allegedly served as interpreters. According to Jamshid, the parties met in Madrid again two weeks later, when Karrubi conveyed khomeini's approved of Casey's offer. "Nightline" and The Financial Times of London investigated Jamshid's charges and claimed to have found evidence that corroborated the story.

Among the "evidence" was the fact that hotel records indicate a Jamshid Halaj and an A. Hashemi checked into the Madrid Plaza in late July, and an Ali Balnean in August. These names allegedly confirmed Jamshid's recollection that he and his brother often used aliases. Jamshid even furnished "Nightline" with a business card using the name Ali Balnean. ("Nightline" also said that the name Robert Gray was in the hotel records. Robert Gray is a Washington public relations executive who served as Casey's top deputy in the 1980 campaign. He supplied "Nightline" with his passport, which indicated that he had not left the country in July or August 1980.) Even if one were to believe that the records were not altered with the Hashemis running around the globe attempting to broker arms deals it would hardly be surprising that they had been in Madrid during the tie Jamshid is talking about. Casey, however, was not.

"Nightline" said that Hashemi's accounts of the meetings were supported by the fact that William Casey was unaccounted for in the public record between August 8 and August 13, as well as July 27 to July 29. It is true that Casey was absent from the public record for a week in August, but it is surely more likely that he was busy with the Reagan campaign than flying off to Madrid. "Nightline" offered more "evidence" in support of the July absence: an unrelated article from The New York Times on July 30, 1980, about the complaints of a right-to-life group over Bush's selection as vice president, quoting a Reagan spokesman as saying Casey would deal with the group, "when he returns [today] from his trip abroad . (In a side note, "Nightline" did report that Jamshid Hashemi said Bush did not attend the alleged October Paris meetings as claimed by a number of others.)

However, "Nightline" had failed to find out that Casey was not in Madrid, but in London, at the Anglo-American Conference on the Second World War. So at the end of an unrelated show a week later, having been contacted by some of those who had attended the conference with Casey, "Nightline" provided a brief update on their previous report. They said that it has been confirmed that Casey had presented a paper on special operations in France during World War II on the morning of July 29, and showed a picture of Casey with some others taken at a reception on the evening of July 28. Ted Koppel said this would leave July 27 and early on July 28 for Casey to have met in Madrid (it is a ninety-minute flight from Madrid to London).

But "Nightline" was wrong again. Jonathan Chadwick, the secretary of the British planning committee for the conference, showed us documents from the conference, which chart the attendance of each participant at each session as well as their accommodations. Casey is not only accounted for in the evening of July 28 and the morning of July 29, but also for the night of July 27 and all day, except for a brief absence, on July 28. This makes Jamshid's story of two consecutive days of meetings impossible.

Not surprising, after the "Frontline" and Sick airing of the October Surprise, new "sources" emerged to tell of their dealings with Bush and Casey. Gunther "Russ" Russbacker claimed that he was the "smoking gun" in the October Surprise conspiracy. He told Marc Cooper of The Village Voice, in a story published this past August, that as instructed by his "big boss" at the CIA, he—along with "co-pilot" Richard Brenneke—flew Bush and Gregg back and forth to Paris in October 1980. What's more, Russbacker claimed that he flew back to the United States in a SR-71 supersonic high altitude spy plane in a flight that lasted ninety minutes. "Sitting next to me was George Bush," throughout the flight.

Russbacher gave his interview to The Village Voice from prison, where he is serving a twenty-one-month sentence for impersonating a federal officer. Yes, he too claims that he was framed by the CIA to shut him up. But he would not be silenced. And as noted by the Voice, Russbacher "has already become a sought-after guest on the radio talk show circuit (from a phone inside the prison) and his story has elicited queries from ABC 'Nightline,' NBC, CBS, The New York Times, Newsday, USA Today, San Diego Union, San Jose Mercury News, Dallas Morning News, and other publications."

The Voice revealed that Russbacher had a lengthy relationship with federal authorities, going back to 1965 when he was arrested for impersonating a U.S. marshal, to his army desertion in 1967, his false claim that he was an Army major, and his escape from prison in 1975. In 1987 he pleaded guilty to securities fraud.

For believers in the October Surprise, no doubt there are other "sources" out there, waiting to provide their own testimony. Yet the story has finally begun to unravel—and at least one star witness seems to have caught himself in his own web of lies. The Voice, which had been a proponent of the conspiracy, published a piece in September declaring that Brenneke "was nowhere near the alleged conspirators' meetings in Madrid and Paris in 1980, where he claims he helped Republican big-wigs negotiate a secret hostage deal behind Jimmy Carter's back." The author, Frank Snepp, had obtained Brenneke's diaries and credit card receipts, which showed that between 1980 and 1982 Brenneke "was never away from his favorite Portland restaurants and shopping malls for more than a few days at a time"—despite his sworn testimony that he personally flew planeloads of arms to Iran for "four to five weeks at a time" and his claim to have met with Bush, Gregg, and Iranian intermediaries during the same period.

Brenneke had originally given his financial documents to a writer named Peggy Adler Robohm after she signed a contract with

Brenneke and his agent last year to write his story. Initially an ardent believer in Brenneke, after scrutinizing his personal records Robohm found credit card bills and personal calendar notations that showed indisputably that he had lied, and she volunteered her information to Snepp. Snepp, who had reported Brenneke's allegations as truthful for ABC News for several years, now admits that his "apparent October Surprise fabrications undercut the credibility of everything he touched." He also concedes that Brenneke's own letters "trace the evolution of his public allegations, showing how tips from journalists and other sources prompted him to change this or that date, or modify a particular story line."

Still, cospiratorialists are not easily dissuaded. Although Snepp no longer believes that Bush or Gregg went to Paris in October 1980, he believes that Casey met with Iranian officials in Madrid in July 1980 to negotiate a secret deal with the Iranians. As for Brenneke, Snepp questions whether he was deliberately planted to "sidetrack and sabotage the investigation." Nevertheless, it is important to note that despite the irrefutable evidence that Brenneke never participated in any meetings, none of the other key sources has ever disassociated himself from Brenneke.

Meanwhile, with Brenneke largely discredited, Ben-Menashe has emerged as the main source. The October issue of Esquire features an article by Craig Unger that rehashes many of the earlier allegations and Ben-Menashe's most fantastic stories about the conspiracy. Not to be outdone, Newsweek has hired Unger to be a special consultant to help promote its own October Surprise investigation, although it recently published a piece raising serious questions about Ben-Menashe's credibility.

Bani-Sadr himself seems to be tripping over misstatements he has made over the past several years. In an interview with The New Republic in September 1991 at his home in Versailles, he recanted key allegations. Asked whether he still affirmed his charge in Playboy that Bush led the American side in secret Paris meetings with the Iranians and at least three arms dealers whom he also named, Bani-Sadr said, "No, that information had been given to me. So I gave the information so that it could be checked to see if they were there. For me, their presence does not matter. I have never guaranteed that those people were really those who had negotiated."

Pressed on his allegation in his book and in Playboy about Bush's presence in Paris, which he had said came from "intelligence," Bani-Sadr now backed away: "I have always repeated that I wasn't sure." He went on to say: "As a matter of fact, I am a sociologist. I do not deal with names; I deal with relations. And morally also I cannot really say if these people or other people were there because I am not sure. . . . I received names from Iran and I transmitted them; some proved to be true through research and others did not." Still, Bani-Sadr had a novel explanation for why he had raised the Bush charge: "It is said that Bush himself and his entourage initiated this information so they could later refute it and brand it all lies."

In the end, October Surprise believers point to their final fall-back argument: Casey was capable of doing anything. Indeed, Casey was capable of doing a lot of nasty things—as demonstrated by the Iran-contra disclosures. But no evidence has ever emerged that shows Casey at a secret meeting in Madrid or involved in any scheme to delay the release of the hostages.

On October 20, the very day that Brenneke and Ben-Menashe claim that Casey was in Paris, campaign records show that Casey had an 8 a.m. appointment at the Metropolitan Club in Washington and that he had two other appointments that day. Moreover, Richard Allen's personal telephone log shows that Casey made a telephone call to him on October 20 at 7:30 a.m., which Allen recalls as being local.

Proponents of the October Surprise theory, including Sick, cite as circumstantial evidence of a Reagan-Khomeini deal the facts that promising negotiations with the Carter administration in the fall of 1980 were broken off and that the Iranians dropped arms from their list of demands. Even here, however, the events do not support the conclusion. According to all accounts of the crisis, far from breaking off, the negotiations continued intensely through January. In September 1980 Khomeini sent his associate Sadegh Tabatabai to meet with the American negotiator, Warren Christopher, in Germany. "The first meetings were very promising," Christopher told The Los Angeles Times in October 1988. Tabatabai presented a set of moderate demands, including a U.S. non-intervention commitment, the unfreezing of Iranian assets in the United States, and the return of the Shah's wealth to Iran. In addition, Tabatabai asked for the delivery of some $350 million in arms and other military equipment that the Shah had purchased. Although Sick and other conspiratorialists remain surprised at the dropping of this demand, Christopher, who should know, notes: "I discouraged it, and it never came back. . . ." As he explained to The Los Angeles Times, "The issue of arms stayed on the table only briefly, I think they were just testing us."

In September 1980 Iraq invaded Iran. The Iraqi invasion preoccupied the Iranians, interrupting the negotiations. It was not until November 2, after they had stabilized the front, that the Iranians were able to return to the negotiating table. It was too late to reach a deal before the November 4 election. Both Christopher and Lloyd Cutler, counsel to President Carter, accept this explanation. As Christopher said: "It is an interesting question why the promising meetings we had in September ended so abruptly. . . . But I've always felt that the outbreak of the war seemed a sufficient explanation." In an op-ed piece in The New York Times, Cutler wrote that it was not until later in the fall that Hashemi Rafsanjani consolidated power, and any earlier deal would have made him vulnerable to attack from the more radical, anti-U.S. mullahs, including Bani-Sadr, who opposed the January deal with Carter as being too favorable to the United States. It was for this reason also that the Iranians rejected an October 11 offer from President Carter to provide, in exchange for the release of hostages, $150 million in arms that had been purchased by the Shah but held in the United States after the revolution. The release was in fact delayed, but it was done so unilaterally by the Iranians for their own motives—not least their enmity for Carter.

One of Sick's and "Frontline"'s major claims is that Israel served as a conduit for weapons immediately after release of the hostages. Yet none of their sources even remotely agrees on what arms were allegedly traded as a result of a deal, or how they were traded. Ben-Menashe's assertion that Israel sold $82 billion in arms to Iran over six years, mostly transported by plane, is contradicted by Jamshid Hashemi's statement that his brother arranged for the shipment of $150 million in arms by boat in four round trips from Israel to Iran between August 1980 and January 1981. Houshang Lavi declared that he witnessed Iranian officials select arms on NATO bases in 1981, and Richard Brenneke claimed that he laundered $40 million to Iran for arms purchases. And Bani-Sadr can't even get his own story straight. In In These Times he said that Iran received between $50 million and $100 million in arms during his administration. In his book and in our interview, however, Bani-Sadr denied that any large arms shipments were received when he was president, and that those promised as a result of the 1980 "deal" are continuing today.

Israel did in fact deliver arms, most probably with Reagan administration approval, in February 1981. However, State Department documents and interviews with Israeli and U.S. intelligence officials show that the amount was no more than $70 million. Moreover, the shipments were anything but an aberration. They were the resumption of what had been Israeli policy toward Iran prior to the crisis and the arms embargo, a policy that had often diverged from American interests. Israel had even continued some shipments during the embargo, but when Prime Minister Begin retroactively asked President Carter for his approval, Carter angrily refused, and no more equipment was traded. Shipments were resumed only after Carter himself, as part of a final agreement before he left office, lifted most sanctions on Iran on January 19, 1981.

Meanwhile, Sick has plunged even further into the depths of conspiracy. Several journalists say that earlier this year he told them that Gates was part of the October Surprise in 1980, and that the Senate Intelligence Committee chairman, David Boren, would not investigate because he was being "blackmailed" by the White House, which threatened to leak derogatory allegations about his personal life. According to Sick: "I never said I had personal knowledge of that. It was being told to me by other journalists." As for the bigger story, Sick says: "The whole October Surprise was a professionally managed covert action, and I'm frankly surprised that I have as much evidence as I do."

Sick's stubborn perpetuation of the story is all the more surprising given the scorn with which he greeted the Republicans' allegations in 1980 that Carter was planning an "October Surprise" to win the election. Six years ago, writing in the Council of Foreign Relations anthology, he declared: "In the last few months before the presidential elections, there were spurious reports that the Carter administration was planning a spectacular military operation against Iran. This so-called 'October Surprise' allegedly would be intended to win votes for the president. The story was a total fabrication. It was promptly denied by the White House, and a number of responsible newspapers refused to print it. Nevertheless, the story received widespread attention and soon developed a life of its own."

[From Newsweek, Nov. 11, 1991]

MAKING OF A MYTH

It is a story that will not die—a dark tale of conspiracy and political intrigue that, if true, would constitute something like an accusation of treason against George Bush, the late William Casey and other members of Ronald Reagan's 1980 presidential campaign. Briefly put, the "October Surprise" theory holds that Bush or Casey—or possibly Bush and Casey—cut a secret deal with Iran in the summer or fall of 1980 to delay the release of 52 U.S. hostages until after the November elections. Their objective, or so the theory holds, was to deny Jimmy Carter whatever political advantage the hostages' last-minute release might create—or, in short, to swing the 1980 election toward Reagan and Bush.

The October Surprise theory has been kicking around for the past 11 years, and it has become a mother lode for conspiracy junkies of all political persuasions. It got its biggest boost early this year when Gary Sick, a former member of Jimmy Carter's National Security Council staff, wrote an article on the op-ed page of The New York Times asserting his belief that it could have happened. Sick, who has already written a much-praised book ("All Fall Down") about the Iran hostage crisis, is about to publish a second book laying out his case for the October Surprise. The new book, to be published this week by Random House, is entitled "October Surprise." The Senate Foreign Relations Committee, meanwhile, voted last week to launch an investigation of the October Surprise theory, and the House Rules Committee is scheduled to vote this week whether or not to launch a separate investigation headed by Rep. Lee Hamilton of Indiana. So, true or not, the October Surprise is about to become yet another exhibit in the Beltway's chamber of Alleged Political Horrors—to escalate, along with the BCCI scandal, the Iran-contra affair and the savings and loan crisis, from cocktail-party gossip to subpoenas, sworn testimony and endless disputes among lawyers, investigators and witnesses.

Like all good conspiracy theories, this one forces all who would deny it to prove a negative—to prove that something did not happen. As any logician can testify, proving a negative is ultimately impossible. Equally disturbing, the October Surprise theory has now become complicated and so hideously detailed that no reasonable person can say with absolute certainty that there was no conspiracy and no deal. But Newsweek has found, after a long investigation including interviews with government officials and other knowledgeable sources around the world, that the key claims of the purported eyewitnesses and accusers simply do not hold up. What the evidence does show is the murky history of a conspiracy theory run wild.

GOING MAINSTREAM: A STORY IS BORN

Washington in the fall of 1980 was, like the rest of the United States, obsessed with the U.S. Embassy hostages in Iran. It was a national crisis: Public officials, the voters and the news media were grasping at every rumor. Jimmy Carter, then running for a second term, was almost completely preoccupied by obscure events half the world away; so was the Reagan campaign. In April, the Carter administration launched a desperate military gamble to extract the hostages from captivity, and failed, miserably, in the smoking wreckage at Desert One. The campaign proceeded: Carter turned back Edward Kennedy's challenge in the Democratic primaries, and Reagan dispatched George Bush. The hostage crisis, seemingly at an impasse, continued to simmer amid the hullabaloo of an election campaign. The election came and went, with Carter's landslide defeat—and in December, with the hostages still held in Iran, rumors of some sort of backstage contract between the Republican campaign and the Iranian government first appeared in print.

The outlet was hardly prestigious: the Executive Intelligence Review, a periodical published by followers of right-wing political extremist Lyndon LaRouche. On Dec. 2, 1980, EIR ran a story alleging that former secretary of state Henry Kissinger, a target for LaRouche followers, "held a series of secret meetings during the week of Nov. 12 in Paris with representatives of Ayatollah Beheshti, leader of the fundamentalist clergy in Iran." This was attributed to "Iranian sources" in Paris. The article continued: "Top level intelligence sources in Reagan's inner circle confirmed Kissinger's unreported talks with the Iranian mullahs, but stressed that the Kissinger initiative was totally unauthorized by the president-elect. 'If you know any way of controlling that man,' said one Reagan insider, 'please let me know'." (Kissinger said the EIR report was "totally untrue.")

The story said that this meeting was the climax of a prior liaison: "* * * it appears that the pattern of cooperation between the Khomeini people and circles nominally in Reagan's camp began approximately six to eight weeks ago, at the height of President Carter's efforts to secure an arms-for-hostage deal with Teheran. Carter's failure to secure the deal, which a number of observers believe cost him the Nov. 4 election, apparently resulted from an intervention in Teheran by pro-Reagan British intelligence circles and the Kissinger faction."

EIR said that its source "stressed" that those involved in this effort "did not have the approval of Ronald Reagan himself." Fast-forward to 1983, when the LaRoucheans returned to the story. An article in the Sept. 2 issue of their journal New Solidarity gave more detail. "During the pre-election period, Carter and his crowd were frantically trying to negotiate a deal based on arms and spareparts shipments, which Iran desperately needed after the outbreak of war with Iraq on Sept. 22 * * * The deal * * * fell through when the hard-line mullahs boycotted the Majlis in late October. Ayatollah Beheshti—known as the most pro-Soviet of the mullahs—was the key mover behind this."

When the story got its next boost—in an April 1987 article in The Miami Herald—it was from former Iranian president Abolhassan Bani Sadr, by now in exile in Paris. Bani Sadr "said he learned after the hostage release that two of the Ayatollah Ruhollah Khomeini's advisers had been involved in negotiations with the Reagan camp. The negotiations were to delay release of the hostages until after Reagan became president * * * The former president identified the two as Hashemi Rafsanjani [now himself Iran's president] and Mohammed Beheshti." Bani Sadr said he had asked both men about this. "They laughed,' he said. "They didn't say no'."

The Herald's story didn't get much play. But when Bani Sadr next spoke, to Flora Lewis of The New York Times in August 1987, the story grew. With The New York Times, Bani Sadr was more specific than he had been with The Miami Herald. He said negotiations with the Carter administration had been going well. "But then in October, everything suddenly stopped. My aides found out it was because the group in charge of the hostage policy, Rafsanjani, Mohammed Beheshti and Khomeini's son, did not want Carter to win the election. There was a meeting in Paris between a representative of Beheshti and a representative of the Reagan campaign." These and subsequent events, Lewis wrote, "confirm for him persistent rumors that the Reagan campaign offered arms if the hostages were not released until after the 1980 election. * * *" The story had finally made it into the mainstream.

The timing was propitious—high summer, so to speak, for conspiracy buffs. The reason was the Iran-contra scandal, which proved that the Reagan administration had indeed engaged in secret dealings with Iran. Although the exact starting point of those secret negotiations remains obscure to this day, it seems clear that the roots of Iran-contra run deeper than anyone has been able to document publicly. The Reagan White House, it seems clear, was obsessed by Iran during the early 1980s. Iran-contra also showed that the administration was eager to engage in covert action, and that it was ready to lie, destroy documents and cover up a range of covert activities that violated the law.

Contragate, in short, created fertile ground for the October Surprise theory. Reporting in November 1987, the joint investigating committee created by the House and Senate relegated the October Surprise rumors to a footnote. "There have been allegations that officials of the 1980 Reagan campaign—in order to prevent a pre-election announcement by President Carter (an 'October Surprise')—met with Iranian emissaries and agreed to ship arms to Iran in exchange for a post-election release of hostages," the report stated. "Reagan campaign aides were, in fact, approached by individuals who claimed to be Iranian emissaries about potential release of hostages, as were other campaign staffs. The committee was told that the approaches were rejected and found no credible evidence to suggest that any discussions were held or arrangements reached on delaying release of hostages or arranging an early arms-for-hostages deal."

It is likely that the October Surprise would have died somewhere in late 1987, except for the appearance of a group of apparently knowledgeable, conspiracy-minded "super-sources." Journalists are vulnerable to the lure of a super-source—another Deep Throat, someone who knows all and pieces everything together in a nice, neat package. In the October Surprise case, there are four would-be Deep Throats: Barbara Honegger, Richard Brenneke, Jamshid Hashemi and Ari Ben-Menashe. At some point each has claimed first-person knowledge of the conspiracy. The stories they told overlapped in broad outline—and in some cases, they compared stories, swapped details and helped each other become more convincing. Journalists committed to the notion of the October Surprise often acted as a conduit between them.

Barbara Honegger: Honegger was a researcher in Reagan's 1980 campaign and worked at the White House and the Justice Department until 1983. In summer of 1987, Honegger claimed that in late October 1980, in the Reagan campaign headquarters in the Washington suburb of Arlington, she had heard a jubilant staffer say, "We don't have to worry about an October Surprise. Dick cut a deal." Dick, presumably, was Richard Allen, the Reagan campaign's top foreign-policy adviser and subsequently Reagan's first national-security adviser. It was the first confirmation from inside—a bull's-eye for the conspiracy theorists and the journalists who were following their trail.

But there were several problems. The most basic was that Honegger was never able to identify this alleged staffer or say whether she had any reason to believe the staffer knew what he was talking about. The second was that Honegger, who published a book, "October Surprise," in 1989, herself seemed to have some difficulty in separating fact from fiction. Even Christopher Hitchins, a columnist for The Nation magazine and a sometime proponent of the October Surprise theory, said her exposé was "diffused and naive."

Richard Brenneke: A businessman from Portland, Ore., Brenneke claims to have worked for the CIA for 18 years as a contract operative. He met Honegger in August 1988 in Washington, where she told him about her theories on the October Surprise. Brenneke, astonishingly enough, claimed he had been present when the deal was done. He said the meeting had taken place in Paris, at the Hotel Raphael, on Oct. 19, 1980. And Brenneke confirmed what Honegger already thought: William Casey, then Reagan's campaign manager and later CIA director during Iran-contra, had represented the Reagan-Bush campaign. Donald Gregg, then a member of Jimmy Carter's National Security Council staff and later a national-security adviser for Vice President Bush, had been there, too. The Iranians were two arms dealers, Manucher Ghorbanifar and Cyrus Hasehmi.

Then, two weeks later, Bani Sadr expanded his previous story. In Playboy magazine, Bani Sadr made the most surprising charge so far—George Bush was also present in Paris. (In a scathing story on the October Surprise, The New Republic reported last week that Bani Sadr has now retracted his claim that Bush was present.) Brenneke said he, too, could confirm that Bush was in Paris—and he said so, under oath, in Denver on Sept. 23, 1988.

Brenneke was testifying on behalf of Heinrich Rupp, 58, a pilot and gold dealer who had been convicted of bank fraud. Rupp was an old friend, Brenneke said, the two had been involved in covert ops for the CIA. Brenneke gave sensational testimony. He said he had worked for the CIA for 18 years, until 1985. He said that on Oct. 19, 1980, Rupp had flown "Mr. Bush, Mr. Casey and a number of other people to Paris, France, from the United States for a meeting with Iranian representatives." Brenneke said he had been directly involved in one of what he said were three meetings with the Iranians. He listed the Americans as Bush, Casey, Donald Gregg and Richard Allen. He said the Iranians included Hashemi Rafsanjani, who was then speaker of the Iranian Parliament and now president of Iran, and Cyrus Hashemi.

Brenneke's testimony made news—and among those who read it, with mounting fury, was the investigator from Sen. John Kerry's subcommittee, Jack Blum. Blum has spent thousands of hours checking what Brenneke had told him and had begun to believe that Brenneke was a fraud. The final proof, for Blum, came when be read Brenneke's assurance to the judge in Denver. "I will say, your honor, I have made these statements to Senator Kerry's committee and the United States Senate—again, under oath. * * *" Blum knew that was not true: Brenneke had never mentioned any involvement in the October Surprise. Blum pressed the U.S. attorney's office in Denver to file perjury charges, and Brenneke was indicted in May 1989.

The trial, in April 1990, pitted Brenneke against the U.S. government—and the government lost. Donald Gregg, now U.S. ambassador to South Korea, testified he had not been in Paris on Oct. 19 or 20, 1980. Two of Casey's former secretaries said he had not been out of the country at that time. Two Secret Service agents said they were guarding Bush on the campaign trail when the meetings allegedly took place. A CIA records specialist said there was no trace that Brenneke had ever worked for the agency. But the government's case was sloppy, and Brenneke's lawyers played on the jury's doubts so skillfully that Brenneke was acquitted. In the process, he said he never meant to testify that he had actually seen Bush in Paris—only that he had been told Bush was there.

Ari Ben-Menashe: Ben-Menashe first surfaced as an October Surprise source in 1990, while he was being held in a federal prison in New York City on charges of attempting to sell U.S.-made military transport planes to Iran. Tried in October, he was acquitted after maintaining he had the secret approval of both the Bush administration and the Israeli government. Although Israeli officials deny it, Ben-Menashe claims he was an Israeli intelligence agent and an adviser to Prime Minister Yitzhak Shamir.

Like Richard Brenneke, Ben-Menashe has been interviewed many times by journalists looking into the October Surprise (Newsweek, Nov. 4). Ben-Menashe says he, too, was in Paris on Oct. 19–20, 1980, as a member of a six-person Israeli team that helped set up the meeting. He says he saw Bush and Casey there, and that they were accompanied by Robert Gates, who is now George Bush's nominee as CIA director. He says the Iranian delegation was led by the Ayatollah Mehdi Karrubi, not Cyrus Hashemi and Manucher Ghorbanifar. He told Newsweek that the meeting took place at the Hotel Ritz, not the Raphael or Crillon as Richard Brenneke claims; he also told another investigator, Israeli author Shmuel Segev, that the meeting was held at the Hotel George V. ABC News gave Ben-Menashe a lie-detector test in November 1990; according to Christopher Isham, an ABC producer, Ben-Menashe failed it.

Jamshid Hashemi: Jamshid Hashemi is a younger brother of Cyrus Hashemi, an Iranian arms dealer who died in London in 1986. Jamshid has been a source for ABC News and for "Frontline," the PBS documentary program. He claims that he, his brother Cyrus and Karrubi met William Casey in a hotel in Madrid in July 1980, to begin negotiating a secret deal with the Reagan-Bush campaign. There is at least some corroborating evidence for this claim. For one thing, knowledgeable officials agree that Cyrus Hashemi played a minor role during the hostage crisis—offering to help establish communications between the Carter White House and Iranian leaders. For another, as ABC-News reported, the register at the Madrid Plaza Hotel actually shows that "A. Hashemi" and "Jamshid Halaj" were registered as guests at the time in question, late July 1980.

MEETINGS AND MIXED MESSAGES

There are, of course, myriad further details to these shifting and mutually contradictory allegations. But the essentials are clear. There were two sets of meetings, the first between Karrubi, the Hashemi brothers and William Casey in Madrid, and the other in Paris in October. The second meeting involved either Casey and Gregg—or Casey, Bush and Gates—on the American side. On the Iranian side, depending on which "witness" is believed, it involved either Cyrus Hashemi and Manucher Ghorbanifar or the Ayatollah Karrubi. Bush, Gates and Gregg have all denied that they were in Paris on those dates, and that they ever tried to arrange a deal with any Iranian leaders. Casey is of course dead. So is Cyrus Hashemi. Ayatollah Karrubi has denied ever visiting Madrid.

A team of Newsweek correspondents has spent much of the past eight weeks exploring the evidence for these allegations. The Newsweek team believes that:

Casey did not go to Madrid. Jamshid Hashemi told his story at length to PBS's "Frontline" series in April and to ABC's "Nightline" in June. He would not appear on camera for either program, and he did not reply to Newsweek's requests for an interview. He alleges that in March or April 1980, Casey made contact with Cyrus and himself while the pair were on a visit to Washington. Casey, he says, wanted to establish contact with an Iranian who was close to Ayatollah Khomeini. The brothers agreed to act as go-betweens. The meeting took time to set up, but in July, Cyrus asked Jamshid to bring the Ayatollah Karrubi from Teheran to Madrid to meet with Casey. According to Jamshid, Mehdi Karrubi arrived with his brother Hassan.

They talked with Casey over two consecutive days, Jamshid says—two morning sessions of some three hours apiece. Then in August, Jamshid says, there was a second meeting between Casey and Karrubi, also in Madrid. After an exhaustive search of press reports, of Casey's diaries and of the diaries of his colleagues, ABC's "Nightline" reported that there was a three-day window—July 27, 28 and 29—during which Casey's whereabouts were unknown. On the 30th, ABC reported, Casey was being interviewed by an ABC correspondent at Reagan campaign headquarters and dined that night with Bush in Washington.

But Casey's whereabouts during the July "window" are convincingly established by contemporary records at the Imperial War Museum in London. Casey, it turns out, took a three-day breather from the campaign to participate in the Anglo-American Conference on the History of the Second World War. As a veteran of the Office of Strategic Services—the forerunner of the CIA—Casey delivered a paper on OSS operations in Europe during the war. He went to a reception for conference participants on the evening of July 28, and he was photographed there. He delivered his paper on the morning of July 29.

ABC News acknowledged these facts in an update later in June—but still maintained that Casey had enough time on July 27 and 28 to fly to Madrid to meet with the Iranians. A close examination of the conference records by Newsweek, however, demonstrates that Casey in fact was present at the conference sessions in London on July 28. Historian Jonathan Chadwick, who organized the conference, kept a precise, day-by-day and session-by-session record of who was present and who was not. According to Chadwick's records, Casey was present at 9:30 a.m. on the 28th, stayed for the second morning session, leaving after lunch and returning at 4 p.m. He was also present, of course, on the 29th, when he delivered his paper. "I was very excited that such a big man was coming, but it turned out to be a disappointment," Chadwick said. "He just talked it through in a very gravelly voice. He came over as a very tough sort."

There are records showing where Casey slept and ate as well—at the Royal Army Medical College, close to the Imperial War Museum. Officials there say they have a bill in the name of "W. Casey" charging him for a room on the nights of July 27 and 28, and for "messing"(eating a meal) on the 28th and 29th. There is, in short, no possibility that Casey could have held meetings with anyone on two successive days in Madrid.

Finally, there are large questions about Jamshid's story. He told ABC's Ted Koppel, for instance, that he and Cyrus made big profits in the arms trade as a direct result of the meeting in Madrid. But there is little evidence that the Hashemis had much money to spare. Elliott Richardson, who was Cyrus Hashemi's attorney in a 1984 arms-smuggling case, said that Cyrus seemed to be dealing in a "remarkably petty" quantity of arms.

The Paris meeting did not occur. The vast discrepancies between Ben-Menashe's account and Brenneke's account show, at the very least, that one of the two men is lying. But the weight of evidence suggests that both versions are false.

Ben-Menashe has changed his story repeatedly: did it happen at the Ritz, as he told Newsweek, or at the Hotel George V, as he told Shmuel Segev? He is also confused about the dates. In an interview with Newsweek, Ben-Menashe said he was sure it was Oct. 19 or Oct. 20 because it was close to the Jewish festival of Sukkot. Sukkot, a movable feast, occurred on Sept. 25 in 1980.

There is reason to believe, meanwhile, that Brenneke was nowhere near Paris on Oct. 19–20, 1980. The evidence consists of Brenneke's own credit-card receipts and desk diary for that period of time. According to a recent story in New York's Village Voice newspaper by Frank Snepp, a former CIA agent who is now a freelance journalist and investigator, Brenneke's credit-card receipts show that he stayed at a motel in Seattle, Wash., from Oct. 17 to Oct. 19. His desk calendar, Snepp also reported, showed that he was home in Portland on Oct. 20. These records, Snepp said, were shown to him by Peggy Adler Robohm, a writer who at first admired and wholly believed Brenneke's stories. Robohm got the records from Brenneke himself, during a short-lived collaboration on his autobiography. Fearful of being caught in a literary fraud, Robohm ended their collaboration last summer.

(Brenneke did not return repeated calls from Newsweek. But one of his lawyers, Mike Scott, said Snepp's story was false.)

There is, finally, solid evidence that George Bush did not go to Paris on Oct. 19–20, 1980—the U.S. Secret Service logs recorded where candidate Bush was on those days. Those logs show that Bush campaigned in New Jersey and Pennsylvania on Oct. 17, and that he went to the Chevy Chase Country Club, outside Washington, during the day on Oct. 19. They also show that he delivered a campaign speech before the Zionist Organization of America at a Washington hotel that night. The logs show that he returned to his home at about 9:30 on the night of the 19th. The next day, Oct. 20, the Secret Service logs and press reports both record that Bush was back on the campaign trail in New Haven, Conn. Given the travel time involved, there is no reasonable possibility that he could have flown to Paris, met the Iranians and returned to the United States in that time period.

These details may or may not convince conspiracy theorists who cling to the October Surprise—just as the Warren Commission report failed to convince a whole generation of would-be investigators that Lee Harvey Oswald, acting alone, killed John F. Kennedy. But the evidence on Bush and Casey's whereabouts—and on the bona fides of their accusers—must also be considered against the broad history of U.S.-Iran relations in the 1980s. Indeed, the October Surprise theory rests on two broad-brush assumptions that are highly suspect.

One is the notion that Iran must have gotten U.S. weapons from the Reagan administration in return for delaying the hostages' release. Despite the record of the Iran-contra scandal, however, there is oddly little evidence of any substantial weapons "payoff" to Iran. An authoritative analysis by the Stockholm International Peace Research Institute shows that Iran spent approximately $5 billion on arms between 1980 and 1983—and $3 billion of that total went for military equipment from communist-bloc countries. It is true, apparently, that Israel supplied Iran with $50 million worth of spare parts for U.S.-built F-4 Phantom jets in the spring of 1980. But $50 million is chicken feed for swinging a U.S. presidential election. And Iran never got spare parts for its more potent F-14s, which rarely flew during the Iran-Iraq War but which could well have deterred Iraqi air attacks on Teheran and other cities. Only the United States could have provided the parts. Arms dealer Ian Smalley, who made a fortune selling weapons to Iran, says he does not believe that the Reagan administration cut a deal. "If the U.S. had been in the market, we would have been out of business," Smalley said.

A second pivotal notion is that secret negotiations on the hostage issue between the Carter administration and the Iranian government inexplicably broke down during October 1980. (Gary Sick, among others, places great emphasis on this fact.) But Iranian leaders were arguably distracted by the outbreak of the Iran-Iraq War, which began on September 22. In a report for the Council on Foreign Relations, former Carter administration official Harold Saunders argues that the war "diverted and absorbed the attention of Iran's leaders"—and Saunders said that only "skillful management" by Rafsanjani got the Iranian Parliament to resolve its disagreements on the hostage issue. If, as some October Surprise proponents have claimed, Rafsanjani participated in the alleged secret deal with the Reagan campaign, why did he try to resolve the hostage impasse while Carter was still in power? Then, too, many Iranians hated Jimmy Carter. Eric Rouleau, who is now France's ambassador to Turkey, was a journalist in Teheran at the time. Rouleau, who knew many Iranian leaders personally, says he heard no gossip about any pending deal with the Reagan campaign. But the Iranians were well aware that releasing the hostages could help Carter win the election—and Rouleau says there was "a lot of discussion, lots of declarations, to the effect that the Iranians would never give any kind of 'gift' to President Carter."

There is, finally, one tantalizing coincidence in the secret record of the hostage crisis. On July 1, or July 2, 1980, Cyrus Hashemi met with a member of the Iranian leadership at the Ritz Hotel in Madrid. He was, apparently, acting as a go-between for the Carter administration, which by then was desperately seeking some new avenue to reopen the hostage negotiations. (That meeting, Newsweek sources say, led to a last-ditch diplomatic initiative by Secretary of State Edmund Muskie in September.) Within a week, according to Bani Sadr's diaries, Bani Sadr was told by the Ayatollah Khomeini's nephew that Iran had been approached by Reagan's men with a proposition on the hostages. The meeting site—Spain—was mentioned. Could it be that the ayatollah's nephew confused Reagan with Carter—and that the whole notion of the October Surprise stems from that simple mistake?

CONGRESSIONAL TERM LIMITS

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentleman from California [Mr. COX] is recognized for 5 minutes.

Mr. COX of California. Mr. Speaker, in 1991, term limits in various forms were introduced as bills in 45 States, according to the National Council of State Legislatures.

In 1992, at least 11 States are expected to have congressional term limit initiatives on their ballots, and the number could go as high as 18.

The California Supreme Court on October 10 upheld my State's 1990 election initiative imposing term limits for State legislators, and the reasoning of that decision on constitutional grounds applies across the board potentially to all of us in this Legislative Chamber.

Right now across America, sentiment is running high in support of term limits, for one fundamental reason. People frankly are fed up with business as usual. They are fed up with our high deficits. They do not believe that they are getting enough out of government in return for the very high and increasingly higher taxes that they pay.

Tomorrow in Washington State, initiative 553, by far the toughest term limit measure yet, will be on the ballot. Polls have shown support for it as high as 73 percent among those surveyed.

Many of my colleagues believe that term limitations for Members of Congress are a bad idea. I am not one of those, but I understand their reasoning.

Recently legal counsel for the House of Representatives was asked by a Member to file a brief and he spent, it is estimated, $25,000 of public funds doing just that. The brief was filed—I have it here—before the Supreme Court of Florida. It argues that term limitations imposed by States are unconstitutional, violative of the U.S. Constitution.

Frankly, Mr. Speaker, I believe that it is unwise for this House and this body, certainly without a vote of the Members to determine our collective position, to argue in Florida, in Washington or anywhere else, that if voters and States want to act to limit, consistent with their own constitutions and I believe the U.S. Constitution, the terms of Federal office holders, that we should tell them they cannot do so.

In fact, I believe it makes this institution look bad.

Today in the Washington Times, we have a headline, "House Haunted by Another Perk," and the suggestion is that by tapping into the House Legal Counsel free of charge to make political arguments in a case where none of us is a party, and perhaps we would not even have standing if we sought to make ourselves party, we are able to take advantage of the taxpayers' funds, just as we have done—not this Member personally—but just as the House has been called on the carpet collectively for bouncing checks, not paying restaurant bills and other perquisites, beauty shops, and barber shops and so on. This does not reflect well on our House at a time when we are unable to extend unemployment benefits, at a time when we are asking the people of America to pay more taxes to subsidize what turns out to be even more deficit spending.

This year it is anticipated our deficit will be, 1 year only, not only the highest in American history, but over $350 billion.

I submit that it is the poor performance of the National Legislature as a whole that is calling into question incumbency, permanent incumbency, and thus driving people to term limits.

I think it would behoove us to get busy doing our jobs and doing a better job and getting some results for the American people for the taxes they pay, and we would not have to worry so much about these term limit initiatives looking over our shoulders.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. COX of California. I yield to my colleague, the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, the gentleman from California [Mr. COX] has been kind enough to show me the brief in question.

As I understand it, we have a case pending in the Florida court regarding the legality or constitutionality of the Florida Legislature passing legislation that limits terms of Members of the U.S. House of Representatives.

Mr. COX of California. That is correct.

Mr. ARMEY. And the brief in question is what is called an amicus curiae, or friend-of-the-court brief.

Now, the fact is I could submit such a brief—is that not correct?

Mr. COX of California. In fact, any American could.

Mr. ARMEY. Any American citizen could?

Mr. COX of California. Yes.

Mr. ARMEY. So that as a citizen of the United States, if I wanted to go out and hire a lawyer to prepare such a brief, I could do so, and nobody is contesting that; but what the gentleman from California is telling me is that at the request of a Member of this body from the State of Florida, the paid legal counsel for the House of Representatives, an officer of the Congress compensated for his services by the taxpayers, actually used his time and the time and resources of his office to prepare this brief on behalf of a Member of Congress from Florida, is that correct?

Mr. COX of California. That is exactly right.

ORDER OF BUSINESS

Mr. ARMEY. Mr. Speaker, I ask unanimous consent to proceed now out of order for 5 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

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TERM LIMITS

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentleman from Texas [Mr. ARMEY], is recognized for 5 minutes.

Mr. ARMEY. Mr. Speaker, I will be brief.

The gentleman from California [Mr. COX] and I have different points of view about whether or not there should be term limits. I happen to believe it is a denial of the rights of the American voters to impose that restriction on service in Congress. That is another point to debate.

But the point the gentleman makes, if I may make it clear, the gentleman is raising the point that a Member of the House of Representatives ought not to be allowed to use the resources of the Congress which are in fact the resources of the American people to prepare a brief, a friend-of-the-court brief, to be submitted before the Supreme Court of the State of Florida with respect to a very, I think, intriguing constitutional question where the Member from Florida has a very personal political stake in the matter, as opposed to going out and hiring his own attorneys or going through some other private means to acquire legal assistance.

Mr. Speaker, I yield to the gentleman from California [Mr. COX].

Mr. COX of California. I thank the gentleman for yielding. I think that the gentleman from Texas has hit the nail on the head. There is plenty of room for disagreement about, first, the wisdom of term limits and, second, the constitutionality of State-imposed term limits under the U.S. Constitution.

That is precisely the point. Out of 435 Members of Congress, we have all sorts of differing opinions as a body. The House of Representatives cannot take a position, certainly not without a vote, for or against a deal like this. I think it, frankly, all behooves us to do so because we are getting headlines like this: "House Haunted by Another Perk." An individual Member, going out and doing this without a vote.

So what I have done is ask for a recorded vote of the entire House, and we will have that, the majority leader and the Chair have ruled that we will have that on Wednesday. We will have a full hour of debate, and each of us can go on record on the subject of whether or not we ought to have our legal counsel fighting the voters in the various States.

Mr. ARMEY. Mr. Speaker, I happen to believe, I might observe, that the American peanut program in our agricultural program is a bad program that ill serves the American people. Dare I to presume now from this incident that I might ask the general counsel of the U.S. House of Representatives to prepare an amicus curiae brief for me on behalf of my contentions against the American peanut program? Does the gentleman from California suppose that, should I make such a request, that it would be honored and I could have the advantage of $25,000 worth of the House of Representatives legal services for me to file such a brief?

Mr. Speaker, I yield to the gentleman from California.

Mr. COX of California. I think, on its face, that is a silly idea. I hope, on its face, notwithstanding that I think your position is a sound one, that the counsel would not write such a brief. The fact that each of us as Members has the opportunity to advance good ideas and bad ones, the American people likewise as voters ought to have the opportunity to come up with good ideas or bad ideas. It should not be the business of this body to stop them from doing so.

Mr. ARMEY. I thank the gentleman for at least not saying that it was a nutty idea.

Mr. Speaker, I yield to this gentleman from California [Mr. DREIER].

Mr. DREIER of California. I thank my friend for yielding. I would like to congratulate my friend from Newport Beach, the gentleman from California [Mr. COX], who has come forward with what I think is a very important resolution. What this apparent development simply underscores once again is the power of incumbency. My friend has showed us an article, which frankly I have not seen—it looks like the Washington Times.

Mr. COX of California. It is today's Washington Times.

Mr. DREIER of California. It talks about another perk. The mere existence of another perquisite of office means that we are simply enhancing the power of incumbency.

I find it ironic that the power of incumbency is being utilized to perpetuate incumbency, an attempt to try to defeat those who would want to impose some kind of term limitations on Members of this House, out of a sense of frustration, is being responded to with this extraordinary power that exists here. I think it is something that we as a House need to address, and I congratulate my friend for working on it.

Mr. ARMEY. If I may reiterate my point, I happen to believe that we ought not to impose limits on the terms of service in the House of Representatives. But the point that the gentleman is raising, should an individual Member of Congress be able to use some significant amount, 25,000 dollars' worth of legal services of the House of Representatives, to prepare a brief when in fact Congress itself has taken no position?

Mr. Speaker, I yield to the gentleman from California.

Mr. DREIER of California. Mr. Speaker, I think the gentleman from Texas would be in a better position to get a brief done on the peanut program, because it is something we have addressed in this House, than we would on an issue which has not been addressed in this House, designed to encourage the power of incumbency.

Mr. ARMEY. Mr. Speaker, I yield to the gentleman from California [Mr. RIGGS].

Mr. RIGGS. I thank the gentleman for yielding.

I would like to add a couple of other points here between the lines of the comments made by my distinguished colleagues in terms of identifying and pointing out the latest outrage to the American people. This does not qualify as the outrage of the week, this qualifies as the outrage of the month. It again demonstrates the arrogance of incumbency and corruption of the ruling party, the majority party in this House, and the rules by which we proceed.

I simply want to point out that, as I understand it, and I will ask this of my colleague, the House Legal Advisory Committee—we have such an organization, but as a new Member of this body I am not clear what the function of that committee is—but my understanding is they specifically rejected the request from the Speaker to prepare such a brief, and apparently subsequent events bypassed this committee altogether.

Mr. ARMEY. I yield to the gentleman from California.

Mr. COX of California. There is in fact a report in Roll Call of Monday, November 4, a story that describes that there was a division among the Democratic leadership of the House on the one hand and the Republican leadership on the other hand. The Republicans were opposed to using legal counsel in this fashion.

THE APPALLING COST OF THE RTC'S HASTE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. McCOLLUM] is recognized for 5 minutes.

Mr. McCOLLUM. I thank the Speaker.

Mr. Speaker, I am not here to address the term limit issue, although I have been fascinated by it, since I happen to be a very strong proponent of limiting terms, as some of the gentlemen are here today. I certainly do not think that that $25,000 should have been used in my State. I look forward to the debate on Wednesday.

Mr. Speaker, I yield briefly to the gentleman from California.

Mr. RIGGS. I do not want to make the gentleman lose his train of thought nor eat into his time, because I know he has a very important point to make, but the gentleman is probably too modest to point out that he is the author and primary sponsor of term limits registration now pending in this House. In fact, if I am correct, it is languishing in the Committee on the Judiciary Subcommittee on Constitutional Law.

Mr. McCOLLUM. The gentleman is correct.

Mr. RIGGS. That is since January 3, the first day of this session. And if this body wanted to have an open, honest debate on the substantive merits of the term limits idea and all the various nuances of that legislation, we could do so in the House Judiciary Committee.

Mr. McCOLLUM. If I may reclaim my time, I thank the gentleman for pointing that out even though it is not the reason for my special order. My amendment proposal has been languishing since January 1981, when I first introduced it in every Congress, in that subcommittee, with no real debate here. So I think it is great that the States are debating this. I think it is wonderful that initiatives are being put on the ballot. I agree with all my colleagues tonight in discussing it, that the House counsel should not be used to argue one side or the other of this, because the House is truly divided.

So I look forward to that debate on Wednesday. I think the gentleman made a very good point about the term limit issue.

Mr. Speaker, I yield briefly further to the gentleman from California.

Mr. RIGGS. If I may sum up my point, which is that the House counsel, upon the direction of the leadership of this body, has seen fit to effectively circumvent both the House Legal Advisory Committee as well as the House Judiciary Committee where again we do have the gentleman's legislation on term limits pending before the Congress.

Mr. McCOLLUM. The gentleman makes a very fine point, and I thank him for doing so.

The primary reason, Mr. Speaker, for my taking this special order today—not realizing we were going to get into the other issue—is an article that appeared in today's Wall Street Journal, and I would like to call the House Members' attention to this. It is called "The Appalling Cost of the RTC's Haste," by C. Daniel Clemente. Mr. Speaker, I will place the full article in at the end of my special order.

Mr. Speaker, Mr. Clemente is making a point that I think very, very important regarding what is happening with the Resolution Trust Corporation dealing with what they are doing with properties, particularly real estate properties that they have obtained as a part of their responsibilities in closing failed thrift institutions, savings and loans.

I think all of us in this body know that those that have been involved in any fraud or any kind of mismanagement or self-dealing in the savings and loan area, that those institutions ought to be closed and the perpetrators, if there is criminal activity in which they have been engaged, ought to be prosecuted and so on.

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Mr. Speaker, the issue that the author of this article raises though is: "What's happening in those cases where it is being closed," and he is also asking about why we need to be closing all of the institutions we are where there has been no fraud, or mismanagement or self-dealing, and I think he makes an excellent point about the impact of this on real estate in America and the tremendous cost to us as taxpayers by the devaluation of real estate by so much sales that are going on today by the RTC at values that are far below normal market values for real estate.

He raises, further, the question of, if we are going to sell under a policy of liquidating as quickly as possible these assets, what is that going to mean in terms of the some $300 billion in real estate loans that are due over the next 2 years that cannot be refinanced at present loan amounts because of the decline in value associated with the dumping of this property on the market at one time?

In other words, Mr. Speaker, he challenges a basic policy of those who are leading us through the RTC, and at the same time he asks Congress, "What are you meaning by all of this? Why are we seeking out $80 billion in new monies for covering losses that would be incurred in the process of all of this disposition of property in the closing of thrifts when a lot could be saved if we would just hold on to that real estate or devise methods where it could be held on to longer rather than being dumped on the market, and why," Mr. Clemente asks, "are we not using professional real estate management, people who know the development business, to dispose of these properties and to make these kinds of decisions?"

Mr. Speaker, I do not submit that everything that is in this column is something I embrace. I do not think all of the solutions he suggests are probably valid. I also do not submit to my colleagues that everything RTC is doing in this area is wrong. But I do submit that what the author is saying has a lot of truth to it and that in the next few days, as we have to face the question of funding the Resolution Trust Corporation for huge amounts more of money, we ought to be questioning the law as it now exists. We ought to be questioning the policy as it now exists. And I do not think we should be offering up billions more to RTC until we get the right answer to this and until, I think, in many cases, or at least in several, that we change the law so that the cost is not that great, that the cost is not that great in terms of appropriated moneys by this body, and, as important and perhaps more importantly, that the cost is not that great in the devaluation of real estate values in this country and the results of what it does to the refinancing of real estate loans and the problems that are going to be created for the long haul if we take this much value out of real estate in this country, especially during a time of recession.

So, with that in mind, Mr. Speaker, that is why I have come forward for this special order time. As I indicated under the unanimous consent request, I submit a copy of this article: "The Appalling Cost of the RTC's Haste."

The article referred to is as follows:

[From the Wall Street Journal, Nov. 4, 1991]

THE APPALLING COST OF THE RTC'S HASTE

(By C. Daniel Clemente)

The Resolution Trust Corp's liquidation of the property of failed savings and loans is turning into the greatest peaceful redistribution of wealth in modern times. But the redistribution is not going from the wealthy to the middle class, or even from the middle class to the wealthy, but rather from the middle class and the wealthy to the super-rich and to big business.

The RTC understands its mandate to be rapid liquidation of the real estate that has come into the government's hands. In order to sell fast, it has taken to selling its commercial real estate in bulk. But this decision has social consequences—especially since there is no financing available today for those willing to speculate on the purchase, development and improvement of real estate. When you offer property for sale in packages of $300 million, cash only, who do you suppose the buyers will be?

CONTROL OF REAL ESTATE

Real estate values and the real estate industry have been among the prime victims of this unintended social revolution, for two reasons: First, the RTC's huge financial needs have made credit unavailable to the industry as a whole. Second, it has taken control of the nation's largest group of real estate transactions out of the hands of the private sector and turned it over to a bureaucracy.

From my personal experience, this bureaucracy has been predominantly staffed by individuals whose professional background has either been in the Division of Liquidation of the Federal Deposit Insurance Corp, or in failed savings and loan associations. Individuals with those backgrounds maybe have great experience in the mechanics of acquiring and disposing of real estate. But the heart of the industry, the essence of the value of real estate, lies in the entrepreneurial developer's unique understanding of a particular piece of property and, most important, his understanding of the marketplace where the real estate is located, together with the laws, ordinances and regulations peculiar to its jurisdiction.

This crucial perspective is nowhere to be found at the RTC. The result is that the cost to the taxpayers of the S&L liquidation far exceeds what it would have been if management and control of the operation had been entrusted to people trained and motivated to realize the highest utility and value of property.

A developer wants to maximize the utility of a piece of property in as short a period of time as possible. A liquidator wants to dispose of the property as quickly as possible. But disposing of property as quickly as possible simply is not compatible with maximizing value, or even with minimizing loss.

To see these tendencies at work, look at the case of one specific project, Potomac Crossing, a planned unit development in the town of Leesburg, Va.

The property was purchased in late 1986 by a Virginia developer whose plan included design and construction of all necessary streets, sewer lines, water service, curbs and gutters and electrical service. Work was begun in the fall of 1987 and was to be accomplished in three phases. The original developer was able to complete phase one. Today, approximately 318 families live in Potomac Crossing. The total value of the homes sold in phase one exceeded $45 million.

In April 1990, United States Bank of Vienna, Va., acquired the uncompleted portion of the project, and brought in my firm as consultants to review the project and create a business plan. We determined that to maximize the return on the sale of the land, it would be prudent to complete the engineering work. This would enable us to obtain final site plan approval for the subdivision of all land in phases two and three into building lots. Because the engineering design work takes many months and because the approval process is so lengthy, taking property through the process to final approval adds great value to the property. We also advised United Savings Bank to commit the funds necessary to complete construction of the sewer line that would serve phases two and three.

Then, in August 1990, United States Bank was placed in conservatorship. The RTC became the owner of the property. It elected not to proceed with any further work on the land. Today, the RTC is holding 213 acres of ground that has no access to sewer lines and on which essentially no engineering work has been performed for more than a year. If we assume that it would take 60 days to complete the engineering drawings for those 213 acres, it is my estimate that it would take a total of at least 11 months to complete all the engineering work. In the year that has elapsed since it took it over, the RTC could have completed all the engineering work on the property.

Instead, it appears that this property will be sold by the RTC without any further engineering work being done, and without the sewer being bonded because of the uncertainty created by the RTC. The town of Leesburg insists that no additional lots can be recorded in Potomac Crossing until bonds have been posted to guarantee sewer construction. That means the property will have to be sold as acreage rather than as lots, and as acreage with no present access to sewer services.

In the meantime, the preliminary plan approval granted by the town is about to expire. Since the original preliminary plan was approved, the town has altered its design standards for public facilities. Engineering to meet the new design standards will cost an extra $440,600—money that could have been saved had the RTC finished the job bank in 1990.

Further, by interrupting construction of the sewer, the RTC has voided agreements with 11 neighboring property owners and the town to contribute to the cost of the Potomac Crossing sewer system. Had the sewer been built promptly, it could have cost as little as $768,998, to a new owner of Potomac Crossing, the cost could be as high as $3.5 million.

The property is being offered for sale by the RTC at $8 million. It will likely bring less than half that amount, between $3 million and $4 million—on a property that was carrying $16 million in debt when it was taken over.

If, on the other hand, it had been held and managed with an eye toward maximizing the value and utility of the property without taking any risk of development, and if about $1.5 million in engineering fees, review fees and sewer construction had been spent, today the property would reasonably be expected to yield in excess of $22 million.

In general, the RTC acts as best it can given its understanding of its mandate. But Congress must recognize that this mess cannot be brought to an even partially successful conclusion by mandating rapid liquidation. If we continue on the present course, the downward spiral in the value of real estate will accelerate, precipitating the collapse of commercial banks by undermining the value of property held as collateral, and eroding the principal element of every American family's net worth: the equity in their home.

The long-term economic value of real estate is a substantial portion of the nation's net worth, and as long as the RTC is poised to dump properties on the market, nobody knows how much farther prices will fall. If the roughly $300 billion in real estate loans due over the next two years cannot be refinanced at present loan amounts because of a decline of as much as 40% in real estate values, then we are headed for a new problem at least as big as the one we've watched grow for the past two years.

Here's what must be done:

The RTC should abandon the policy of liquidation as soon as possible.

Congress must recognize that as the owner of more than 61,000 parcels of real estate, the government, like it or not, is in the real estate business and must act prudently so as not to destroy the value of real property all across the country.

Private sector individuals and companies with real estate experience must be brought into the process early to aid in the management of real estate assets.

PARTICIPATION BY THE LITTLE GUY

A tax incentive to make it possible for the little guy to participate in the purchase of real estate and other assets from RTC must be enacted. For example, Congress could allow a deduction of $2,500 for investment in a publicly held entity that would buy assets from the RTC, the FDIC, Freddie Mac, Fannie Mae and other federally insured financial institutions.

Bank regulators must be prevented from forcing banks to write down assets that have real long-term value to their artificially low present values.

The FDIC must stop closing banks and thrift institutions where there is no evidence of fraud or self-dealing.

If Congress will not take such steps, there is no doubt in my mind that no one can estimate the ultimate cost facing this nation. The only thing I can say with absolute certainty is that it will far exceed anyone's worst fears.

THE MOUNT VERNON DAY CARE CENTER, INC.: 100 YEARS OF SUCCESS

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentlewoman from New York [Mrs. LOWEY] is recognized for 5 minutes.

Mrs. LOWEY of New York. Mr. Speaker, while the need for quality day care centers has been a major national issue in recent years, it has long been a priority for the people of Mount Vernon, NY. For 100 years, working parents in that city have been able to rely on the quality service of the Mount Vernon Day Care Center, Inc.

In 1891, the Bureau of Charities of the city of Mount Vernon, recognizing that many working parents needed a place for their children to be cared for while they worked, founded an institution that would help respond to this important need. The name has changed several times throughout the years, from The People's Institute, to the Family Service Association, to the Mount Vernon Day Care Center of today. Its mission has changed as well, from simply providing custodial care to seeking to provide an educational experience for young children at the same time as providing care. But the animating spirit of this fine organization has always been the same: A sense that meeting the needs of the families and children of Mount Vernon is of preeminent importance.

In recent years, the center has expanded its operations tremendously. In 1972, with assistance from the New York State Housing and Finance Agency, it moved into the building which it occupies today. In 1985, the center entered into an agreement with the Westchester Community Opportunity Program to provide two Head Start classrooms. And just last year an ambitious program of building improvements was undertaken. In the world of the 1990's, there is more need for quality child care than ever before, and this center is still doing everything that it possibly can to respond to that need.

Among those responsible for that achievement are center president Walter Royster, executive director Linda Iglehart, 1st vice president Monica Watson, 2d vice president James Simmons, recording secretary Ruth Wormsley, corresponding secretary Sheila Baptista, and treasurer James Dickerson. It is, in large part, their leadership and dedication that keep this institution viable. For that, we all owe them a debt of gratitude.

This weekend the center will celebrate its 100th anniversary. During this celebration, two very special people who have contributed to its growth will be honored. One is the former president of the center, Dr. Betty Shabazz. The widow of Malcolm X, Betty is the mother of six daughters and serves as the director of communications and public relations for Medgar Evers College of the City University of New York. She is a former president of the day care center's board of directors, and her work for the center has been impressive. Also being honored is the center's executive director, Linda Jones Iglehart. She is a former teacher of early childhood programs whose dedication to the children of Mount Vernon is unmatched, and whose tenure as executive director has been noteworthy for its success.

It is a privilege to join many others in congratulating Dr. Shabazz and Ms. Iglehart. They are worthy recipients of the awards that they are receiving, just as the Mount Vernon Day Care Center is a worthy recipient of the effort and the love which they and many others have given over the years. For any institution to survive for 100 years is a great accomplishment, Mr. Speaker. Even more remarkable is survival enhanced by growth and service. That is the nature of the Mount Vernon Day Care Center's survival. On behalf of all my colleagues, and the countless children whose childhoods are brightened by the service of this fine institution, I offer my sincere congratulations to all of the friends and staff of the Mount Vernon Day Care Center, Inc., as they begin a second century of service.

DEBATE TIME ON THE BAILOUT BILL THAT JUST FAILED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 60 minutes.

Mr. OWENS of New York. Mr. Speaker, I am going to take only a small portion of my 60 minutes to speak on a very relevant subject. I want to speak on the $70 billion bailout bill that just failed.

Mr. Speaker, we did not pass that bill. There was a vote of 324 against the bill; only 89 voted for it.

I call it a $70 billion bailout bill, and one of the reasons I voted against it is because nobody during the debate wanted to discuss the dollar value of the bill. That was the least discussed part of the bill. There are many reasons why other people voted against it. I will not pretend that all of those who voted no, voted for the same reason. This bill was voted down by a revolt of the independents for many reasons. There were many reasons why people chose not to vote for a bill that was a steamroller. It trampled on the people in many ways. It trampled on good ideas. It trampled on common sense, and, even in its procedure, it trampled on common sense and trampled on the dignity of the Members of the House.

One of the reasons, one of the major reasons, that I voted no, that I opposed the bill, is that the steamroller approach of the bill in general was added to the rule and the procedure. A $70 billion bill, and not every Member of the House had an opportunity to even make a statement of 1 minute. They cannot even make a 1-minute statement. Seventy billion dollars.

Mr. Speaker, I think this is a major responsibility. I think it is just as important as Desert Storm. I want to applaud the leadership of the House at the time that Desert Storm was being debated. Every Member of the House was given an opportunity, if they wanted it, to speak for 5 minutes. That made a lot of sense. It was a life-and-death issue. It was not $70 billion.

We did not admit it was $70 billion. It was only a $30 billion bill, but it is going up every day, but nevertheless please recognize that every Member of the House, all 435 of us, ought to have the right to let our constituents know and to go on record for history as to where we stood on such an important issue was there.

I wrote a letter to the Speaker at the beginning of this process for this bill asking that the rule do the same thing as it did, the leadership, take the same steps that it took in the case of Desert Storm. It was not really written into the rule when we debated Desert Storm. The leadership made arrangements because of the urgency of the matter and the importance of it. I asked that they do the same thing. I wrote a letter to the Speaker saying that every Member who wanted to speak should be given 5 minutes to speak on this $70 billion bailout of the commercial banks bill. I sent copies of the letter, of course, to all of the leadership of the House. I have not received a single response or comment from any of the leadership.

Mr. Speaker, this is not the first time that I have shown this concern. During the consideration of new rules for the House last fall I proposed a rules change. That rules change simply said that on any matter every Member of the House should be given a 1-minute privilege, or 10 1-minute privileges per year, that on any matter that they considered important they could use their 1-minute privilege 10 times per year and make a comment of 1 minute on that important bill. The Committee on Rules found that too dangerous. I mean the Democratic Caucus of the Committee on Rules found it too dangerous, and it did not go very far. I think it was too conservative, that 1 minute is not enough, and I am going the change that request to 5 minutes and offer it again as a rules change.

Mr. Speaker, this is just one example of how important it is. I mean stop and consider the fact that each one of the 435 Members of the House serve a district approximately the same size, that every one of our constituents deserves the same kind of representation. The more important a bill is when it comes to the floor, the more restrictive the rule is.

I say to my colleagues, "If you want to study that, ask CRS to research it. Go ahead and do it. I'll tell you from my 9 years of experience here that I've noted the more important a bill is, the more likely it is to be restricted to the least amount of debate."

We spend less time on the House floor per minute debating than the Senate does. The Senate has a hundred Members. They spend far more time on most legislation than we spend.

I think that the Committee on Rules is a wonderful invention. I think that the Committee on Rules is important to control the flow of legislation. I think it is a good procedure. But I think that it has been abused, and we have gotten into a tradition of abusing it to the point where the House leadership and each Member of the House cannot really justify to their constituency or the American people in general why we spent so little time discussing a $70 billion bill.

How much time did we allot for this bill? There were 3 hours and 45 minutes of general debate allotted to this bill, H.R. 6. There were 6 hours and 10 minutes of debate on the proposed amendments. Add the general debate time and the time for the amendments and we have 9 hours and 55 minutes to the bill which is making a $70 billion commitment.

Now, if there are people out there who followed the debate, they will say, "Where did you get $70 billion from?" They did not hear anybody discuss that.

□ 2000

I want to congratulate the majority leader who made the final speech. When he made the speech he at least acknowledged it was a $70 billion responsibility that was being undertaken by the Government in the bill. Five billion dollars has already been allotted to the FDIC. The commercial banks, and we are not talking about the S&L's, that is a whole other chapter, where later on this year between now and Christmas the stampede will be on to get more money to bailout the S&Ls, but this is the bailout of the commercial banks.

They got $5 billion already. They have another $30 billion that is immediately obligated in this bill. They are going to be obligated an additional amount to make the total obligation and responsibility to the American taxpayer $70 billion.

Seventy billion dollars is contained in this bill. By the title of it you would not know that that is what it primarily is about.

The total debate time was about 10 hours, or 595 minutes, if you want to be exact. The 9 hours, 55 minutes comes out to 595 minutes.

In 10 hours of debate time, this body considered $70 billion. That comes out to 1 hour of consideration per $7 billion, or 1 minute of consideration for $116 million, or for every second we are considering $1.9 million. If that does not sound like a lot of money to you, just stop and think. The responsibility of casting a vote on a $70 billion obligation rests with 435 Members, and yet if this Member representing the 12th Congressional District had asked for time to speak, I might have been given 30 seconds, or I might have been given time to quickly blurt out a unanimous-consent request. That is all I could hope for.

In 10 hours of debate you can only accommodate the members of the committee. You cannot accommodate many people. There is no use trying to squeeze the situation so that everybody only has a time to gasp.

Why are we in a such a hurry? Is the amount of time spent debating billions on the floor of the House so humongous that we have to rush through a $70 billion bill?

I have not done any research yet. I do not know exactly how much time we spent this year debating bills, but I would say from instinct, from feeling, we have spent relatively little time on the floor of the House debating important bills, or debating bills at all.

If you add it all up, we spend relatively little time. If you compare the House of Representatives with 435 Members to the Senate with 100 Members, you will find the Senate spent far more time on the floor debating bills in general, and per Member they are way ahead of us.

So I am not asking for anything unreasonable when I say on an important bill like this we should have had at least 5 minutes. One reason to vote against it is that the procedure was steamrolled and kind of ridiculous to have us go back to our constituencies and say "I voted on a bill involving an obligation of the American Government, the taxpayers, for $70 billion. But, I am sorry, I didn't have a chance to get one word in on the debate."

Seventy billion dollars would buy a lot of schools. It would buy a lot of teachers' salaries. Seventy billion dollars would pay for a lot of health care. I need not go on and on.

Seventy billion dollars is a lot of money. It is our obligation, it seems to me, to guarantee there is maximum discussion and maximum debate.

There has been a lot of discussion about the perks of the House and infantile complaints have arisen and the American people have been made to get excited about a lot of nonsense related to haircuts and traffic tickets and ridiculous things like that, things that can only be dreamed up by infantile freshmen who really do not know what is important.

There are a lot of very important changes that ought to be made in the way this House is governed. One important change is we ought to certainly guarantee that there is a reasonable time to debate every matter that needs to be debated.

The way things stand up, in the consideration of this $70 billion bill, which every Member of the House, if you divided the $70 billion by 435, you find each Member of the House is responsible for $161 million of that $70 billion, if we assume that responsibility that way, then each Member's theoretical 1½ minutes of debate time would have been worth $161 million of influence on that $70 billion tab.

It is ridiculous, again, that so little time was afforded to this very important bill. So that is a very good reason that some of these independent ants revolted and voted against the bill. Just procedurewise it is a ridiculous situation.

We spend a lot of time on ridiculous situations here. We get very passionate and very excited about pennies, while we spend billions and never stop really to even talk about it to any great extent on the floor of the House, $70 billion obligations like this to bailout the commercial banks.

We do not even use the term "bailout." We obfuscate an obligation of $70 billion in all kinds of language.

We vote $28 billion more for intelligence services, the CIA, and other intelligence gathering activities. What are they gathering intelligence activities for now? Why do they need $28 billion to gather intelligence when the cold war is over and the Russians are ready to sell us their secrets?

There was an article in the New York Times this morning about the Russians are working hard to sell their secrets about space technology to anybody who wants to buy it. Our Government is ready to spend billions of dollars on research for our space program for the future when they can spend a few million dollars and buy a little gadget, engines, metallurgy secrets, a number of things available. You just go over there and outbid the competition, and, instead of having to spend billions of dollars in future research, buy it from the Soviets.

Why do we need the CIA to protect our secrets or to get somebody else's secrets to the tune of $28 billion? It is one of those absurd things that did not get discussed very much when it was on the floor.

Why do we need them? The CIA could not even estimate properly the collapse of the Soviet economy. We were spending billions of dollars there. They could not see the collapse of a giant, gigantic, monstrous dinosaur economy. It all happened by accident to them. We were all shocked.

The CIA told us very differently about the state of the Soviet economy and their strength for the future. So why spend $28 billion?

Why continue to spend more than $100 billion to defend Germany and Japan? There are expenditures which are outrageous which are never discussed around here, but people want to get excited about checks that bounce at the House Bank that do not cost the American taxpayers 1 penny. They want to get excited about haircuts, they want to get excited about traffic tickets.

If you want to move the capital to New York, we will give you all the traffic tickets without having to run down to have them fixed. That is a courtesy we will give to the U.S. Government representatives, as we give it now to people from all over the world. The

U.N. people do not have to worry about getting tickets. They do not get them in the first place. They do not have to be fixed. Why do they keep giving us tickets?

So it is ridiculous to have all these minutiae, trivia, thrown at the American people, while billions of dollars are being wasted and there is no discussion.

There is another reason I voted against this bill, and that is the whole situation, the steamroller emergency that has been created by the banking industry.

First we had the S&L emergency. The S&L emergency was dumped in our lap, and we were told to save the American economy you have to give us the bailout money.

One hundred fifty-seven billion dollars we voted on the first go-around, the first and second go-arounds, to bail out the savings and loan associations. That action was supposed to save the American economy.

What has it done? The American economy has gone tumbling downhill since the bailout of the S&L's began. All we have done is created an RTC, a whole new industry, where the American taxpayers are paying money into a fund which is going into the bailout or the replacement of money that was stolen by the bankers and their cronies and their friends and their employees. The whole industry has been created so that Texas, the State which had the largest number of savings and loan associations to fail, Texas is the major beneficiary of the RTC industry. They have a whole industry, jobs and all kinds of benefits flowing from the bailout that is necessary because of the way Texas handled their financial institutions.

So that steamroller approach that was taken with the savings and loans was a fraud. We did not save the economy. Things kept going downhill, and now the commercial banks, for the same reasons as the savings and loans were failing, the commercial banks are failing. They do not admit they are failing.

William Seidman, who recently retired, was telling lies right up to the last day he left. William Seidman was a champion liar among official liars.

□ 2010

They lied about it up until the point where it was down to zero. Finally the fund was down to zero. They had to have a $5 billion loan from the U.S. Treasury. They do not call that a bailout. It is a loan. And on top of that, I just told my colleagues $30 billion is waiting immediately and another $40 billion bring the total to $70 billion, not a bailout, a loan.

Well, every year that banks continue failing means that we are further and further away from the loan ever being repaid. So it is the same as an appropriation for a bailout, just different language. It applies the same pressure to the American economy because the Treasury has to go out and borrow the money. It has an impact on the total finances of the Nation, total economy of the Nation. It is the same thing, but never mind the semantics of it. It is a $70 billion rescue that we are now being steamrolled into.

And we are told, "You've got to do it." The blackmail situation that existed in the S&L phenomenon, it was blackmail. Here we are, the savings and loan associations, We have Federal Deposit guarantees. We have squandered the money away with parties, and we have given our friends big loans without proper collateral. We have paid ourselves giant salaries. We have paid our employees tremendous commissions for making loans that have now gone bad. We have nothing to show for what we have done. Here we are. But you guaranteed the deposits and now you have to make good.

It is blackmail. "Come and give us the money to bail out." We had no choice. Now we are faced with a second blackmail situation. Here you are, American taxpayer. You guaranteed the deposits. You didn't set anything in motion on the management of the deposit. All you had was a few weak regulators out there, regulators who have giant conflicts of interest, regulators who were frightened of the political powers that told them this is the age of deregulation. You do what you are told to do or you don't last very long.

So we are all caught in the blackmail situation. Again, we guarantee the deposits. We have to come through with the $70 billion.

No matter how much we protest, we know that we have to come through with the $70 billion. The question is, if we must come to the rescue of the commercial banks, if we must do our duty, if we must bail them out to the tune of $70 billion, at least we ought to get a tradeoff, at least there should be some consideration of some real reforms. Who else would ask for $70 billion and expect to give nothing? The American banking industry wants to give nothing in return for demanding $70 billion.

We had some very reasonable proposals in this bill that were voted down. First of all, the too-big-to-fail doctrine has not been confronted in this bill. Without taking too much time, I just have to say the too-big-to-fail doctrine is just that. It is a doctrine that was concocted by the people who more and more have the power in our Government, term limitations, a lot of infantile people are jumping up and down about term limitations. They think that they will accomplish something by having term limitations on elected officials. But there are not term limitations on regulators. There are no term limitations being proposed for bureaucrats. There are no term limitations being proposed for the staff of the House of Representatives or the Senate.

People on staff, some have been here 30, 40 years. They do not speak to freshmen. A Member has to be here 5 or 6 years before they have any respect for that Member as a Congressman. Staff people, before we deal with reform in government by imposing term limitations on elected representatives, we ought to take a hard look at who really runs the Government.

William Seidman, the head of the FDIC, was never elected by anybody. Seidman and his predecessor established a doctrine without having any authority in law. Nobody has ever shown me the authority that allows Seidman and the FDIC people to say that there are some banks in this Nation that are too big to fail and, therefore, the Federal Deposit guarantees, which are limited in law to $100,000 per account, have to be extended to persons who have more than $100,000, to foreign governments or foreign investors or all the deposits.

The Bank of New England, everybody who had a dime in there above $100,000 need not worry. If one had $1 billion in the Bank of New England, an Arab sheikh, and you had put that much money in there, by doctrine, by proclamation, William Seidman and the FDIC Board said, "We are going to guarantee it. You are too big to fail. The American taxpayers are going to be very generous to you."

Where was the authority? They had no authority to do it. Why are they not challenged by the executive branch of Government? Because their friend's accounts are in there. Their constituents have accounts in there. Why are they not challenged by the Democratic leadership of the House and Senate? I do not know. They must have friends there also.

Billions of dollars are flowing into the pockets of people who had no guarantees in law. You, as the American taxpayers and voters, never said you would guarantee deposits of above $100,000 per account. Yet billions of dollars are guaranteed because certain banks are considered too big to fail.

Little banks like the Freedom National Bank in New York, a tiny little bank, a tiny bank, did not reach $1 billion in assets. When they had trouble they swooped down on them and closed them and they took the money away from them. Even charitable institutions, groups that had social work projects, projects to feed the homeless, Meals on Wheels for the aged, if they had more than $100,000, they took it. Some groups lost $500,000. That $500,000 lost by one agency was $500,000 lost by the taxpayers because that agency did not have a single dime in the bank that was private money. it was grants from the States or grants from the city or grants from the Federal Government.

The FDIC took the money. That means they took the taxpayers' money away above the $100,000 limit.

When they were confronted by the legislators, they felt guilty about that one. They decided to give half the money back, again by doctrine, half, but these little agencies are still waiting for the other half of the Government's money, the people's money that they just were entrusted with. It was one of the many kinds of absurdities.

They were so little that they could be trampled under and yet the Bank of New England, the Continental Bank of Illinois, on it goes, they are too big to fail. That doctrine was not challenged in this legislation.

There is some language about phasing it out, which does not confront the situation that is happening right now, and that is that every time a commercial bank fails, they are bleeding the American people, the taxpayers, dry.

The amendment by the gentleman from Ohio [Mr. WYLIE] and the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Wisconsin [Mr. KLECZKA] to limit taxpayer exposure to $100,000 per bank so that no person could recieve more than $100,000 per bank in insurance, that amendment went down to defeat. That was a reasonable proposal. Yet the banks did not want to compromise. The powers that be wanted to steamroll right over that one.

The gentleman from New York [Mr. SCHUMER] offered an amendment for core deposits to protect the deposits of all those depositors whose accounts were guaranteed up to $100,000 from investments that were risky. What could be more reasonable than to protect the deposits guaranteed by the American taxpayers from risky investments? That went down to defeat.

Other reasonable compromises were turned down. The amendment of the gentleman from Massachusetts [Mr. KENNEDY], which is an amendment which called for greater enforcement of the Community Reinvestment Act. The Community Reinvestment Act is a unique American approach that requires that banks act responsibly in their lending policies and lend to communities that normally do not attract investments, that banks recognize that they are in partnership with the people.

American banks are unique. Some of them complain about the Community Reinvestment Act. There is nothing like that imposed on Japanese banks, nothing like that imposed on the banks of West Germany. Of course, there is not. But the banks in West Germany do not receive a single penny in guarantees from the people. Deposits are not guaranteed in West Germany. Nothing is allocated by the Government to cover the deposits that are in banks.

They have insurance that they work out themselves privately, but they do not have any Government guarantees, no taxpayer guarantees. In Japan they have limited guarantees up to an amount, I think of like $14,000.

In England they have very limited guarantees, a certain small percentage of the total amount deposited. Nobody has guarantees which, again, reach $100,000 per depositor or all of the other accouterments and frills that allow people in banks too big to fail to have an unlimited amount of guarantees.

☐ 2020

So the banks in America, U.S. banks, have a special subsidy. They have a very special relationship with the people. They are in partnership with the people. If a bank decided it wanted to be strictly capitalistic, strictly private, give up its deposits, its guaranteed deposits, it will go out of business in a few months because very few people are going to deposit in a bank that does not have a guaranteed Federal deposit if there are other banks that do have it.

So their business is dependent on the American people. It is in partnership with the American people. Therefore, it is not unreasonable to ask them to assume certain responsibilities. Let us have a partnership. We recognize that we have been blackmailed. We are going to have to pay the $70 billion. In exchange for the $70 billion, at least give us what the Kennedy amendment asks. It does not ask for very much. The Kennedy amendment calls for simple matters like steps to improve enforcement of the law without burdening law-abiding lenders. It would require the large banks seeking interstate powers to have a satisfactory community lending record. It would make specific commitments to maintain and approve that record. The bank must make specific commitments.

Also it would require the establishing of prompt corrective action procedures to enforce the laws when they were violated. It would require the use of lending data when assembling the bank's lending record. It would require the establishment of fair lending procedure and testing procedure for that fair lending procedure. It was all very simple no-cost-to-the-Government and no-cost-to-the-banks steps that would put teeth in the Community Reinvestment Act, which has existed for more than 25 years, and the banks treat it as a joke. The Community Reinvestment Act, CRA, that is a big joke. That is something we have to do paperwork for but we never do anything in substance for.

Fulfilling their public obligation, recognizing that they are in partnership with the very people they are being asked to help, would have been a reasonable action by the banks and the banking interests that defeated the Kennedy amendment. CRA is now a joke. As I close, I want to emphasize that here is an area where, if we are going to have new action by the House, and we are going to have to have it, here is an area where I beg of the banks, the financial community, to act responsibly and recognize their obligation to give something back to the taxpayers who operate in partnership with them by guaranteeing their deposits. Unlike foreign banks, they have guaranteed deposits, so we would like them to guarantee a real benefit flows back to the community through the Community Reinvestment Act.

I have a proposal specifically which I would like to submit for the RECORD being offered to the New York State community reinvestment fund, calling for the creation of a $1 billion New York community reinvestment fund. New York State banks are worth more than $130 billion, their assets altogether, so it is no problem for them to create a $1 billion community reinvestment fund. I did not say $1 billion per year. The fund would turn over. The fund would be a lending fund. The fund is not giving away anything to anybody.

Mr. Speaker, I include for the RECORD a proposal for the establishment of a billion dollar New York State Community Reinvestment Fund, as follows:

PROPOSAL FOR THE ESTABLISHMENT OF A BILLION DOLLAR NEW YORK STATE COMMUNITY REINVESTMENT FUND OFFERED BY CONGRESSMAN MAJOR R. OWENS

INTRODUCTION AND BASIC ASSUMPTIONS

The Savings and Loan debate is now a fact of American life with devastating consequences for the economy. There is no way to avoid widespread damage. It is possible, however, to accentuate the positive and put forward a new initiative from the American financial community: Let's set an example for the rest of the nation. The Governor should undertake this task using his influence to encourage the banking community to take a high road moral leadership response, no legislation or executive order should be needed.

The voters and the general public are becoming more and more aware of the unique status of the banking business in the U.S. Taxpayer guaranteed federal deposit insurance places this industry in a partnership position with the public. Any bank which loses its government deposit insurance guarantees will be immediately placed at a competitive disadvantage and will not be likely to survive. A full undertaking of this public partnership situation will generate even more public scrutiny and voter dissatisfaction.

In the global market-place there are no government deposit insurance guarantees nearly as generous as those provided by the U.S. taxpayers. West Germany has no government deposit insurance for banks.

The wimpish enforcement of the Community Reinvestment (CRA) Act which requires banks to invest in the communities where they are located has made CRA a bit of a joke. This same CRA, however, can serve as a kingpin in the protection of the banking industry from the wrath of the American Taxpayers. In New York State, since its inception not very much has been invested in the CRA by any of the institutions covered by the law.

One problem has been the micro-investment approach and the Balkanization of the definition of "community". It would be more useful and relevent to define New York State and or New York City or Buffalo as "Communities" instead of limiting the concept to a neighborhood served by a local bank branch.

People in New York City, for example, clearly do not necessarily bank where they live. They are more likely to have banking accounts in the area near their work-place. The wealth collectively accumulated by the banks of New York City is derived from the dynamics of the total City economy and thus the City as a whole should be treated as the "Community" for the purposes of the Community Reinvestment Act.

Accepting a "Macro" approach to CRA instead of the traditional and obsolete "Micro" approach means that all banks have a responsibility for all of the neighborhoods of the City. The few smaller banks which have been left with branches in the poverty areas should not have the full responsibility for CRA dumped on them. An approach which establishes a state wide and/or citywide community reinvestment fund would be a far more workable approach. Only a Governor Cuomo or a Mayor Dinkins or a Felix Rohaytyn or all three together could provide the kind of leadership necessary to launch such a fund.

BASIC FEATURES OF FUND

Call upon all the banks in New York State whose deposits are guaranteed by Federal insurance to participate in the establishment of a Billion Dollar Community Reinvestment Fund. Each could contribute a percentage consistent with their total assets.

Funds would be allocated to the designated Poverty areas of the state in accordance with their percentage of the state's poor population.

In addition to the start up amount one tenth of the fund (100 Million dollars) would be added each year.

The fund would be authorized to annually expend one tenth of its resources for grants to CBO's for children's recreation/remediation programs to facilitate the establishment of at least one such recreation/remediation program within walking distance for every school age child. (This means the number of Elementary Schools in each designated poverty area.)

The fund would be authorized to annually utilize a second tenth of its capital for loans to small businesses located in poverty areas and owned by residents of such areas or by persons affiliated with organizations bases in such areas. The interest rate should be no more than one half of the prevailing prime rate.

The fund would be authorized to utilize the remainder of its capital for mortgages on low and moderate income rental housing units sponsored by individual developers affilatied with community based organizations or such organizations themselves. Mortgage interest rates should be no more than is necessary to cover administrative and processing costs. Developers would be required to rent units at a cost to the tenants of no more than 25% above the maximum rates charged by the New York City Housing Authority. Ten year options to purchase their apartments should be offered to tenants.

AMPLIFICATION OF PLAN FOR MORTGAGE FOR LOW AND MODERATE INCOME RENTAL HOUSING

The Billion Dollar Community Reinvestment Fund must be more flexible than similar government programs. While maintaining sound processes and procedures, it must recognize its unique mission: to provide needed housing through local ownership and development. Greater risks must be taken and the traditional rules must be adjusted.

Community roots must always be a priority consideration in granting mortgages. Since churches are the most stable, long term institutions within the poverty areas, churches must be aggressively encouraged to participate in housing development.

Joint ventures which utilize other government and private funds must be encouraged. Membership in citywide associations and consortiums for training, technical assistance, accounting, etc. must be required.

For each poverty area two or three entities should be designated to administer the fund utilizing local banks and private consultants as needed.

AMPLIFICATION OF PLAN FOR POVERTY AREA SMALL BUSINESS LOANS

Flexibility and risk taking must be the rule if the Billion Dollar Community Reinvestment Fund is to make a significant impact. SBA and a few other programs with rigid loan and credit rules should not be imitated.

Community roots should be the priority consideration when bending the rules. Such "roots" must translate into support for the local business person. The Church or the Lodge should be willing to invest also or sign Contracts for Business, etc.

"Necessity" services and retailers should be given priority in the allocation of loans. While no ventures should be automatically ruled out, those related to food, clothing, shelter, transportation, child care, etc. should be favored.

Persons who are members of group efforts and consortiums which provide necessary technical assistance, bulk purchasing, advertising, etc. should receive priority consideration.

AMPLIFICATION OF PLAN FOR GRANTS TO CHILDREN'S RECREATION/REMEDIATION PROGRAMS

Diverse grants which are not loans or investment are needed to stimulate changes in the non-physical environment of the poverty areas. Although government is better prepared for this task than the private sector, the Billion Dollar Community Reinvestment Fund can be an important source of "core" funding which guarantees the life of struggling Community based organizations. Crime prevention activities and education remediation are the highest program priorities for these communities. Both targets involve intense work with youth.

To avoid the obviously reoccurring problems of financial and administrative difficulties, "Prime Contracts" with large Community Based organizations should be utilized. Such entities would then "sub-Contract" to groups which are even closer to the target populations. The "prime contractors" would guarantee that taxes are paid and appropriate records are kept since the "prime contractors" with a critical mass of funding would be able to hire the quantity and quality of final personnel necessary.

Small Community based organizations have generally demonstrated their effectiveness in recruiting those in greatest need and in providing sound and continuing program activities. If they are kept free of fiscal record keeping responsibilities they will probably perform even better.

SPECIAL PROPOSAL FOR CHURCHES TO UTILIZE THE BILLION DOLLAR COMMUNITY REINVESTMENT FUND TO EARN PROFITS FROM THE NYC TOURISM INDUSTRY

The one NYC industry that is presently growing and destined to grow even more in the future is the New York Tourism Industry. Although the City has been given a bad image within the boundaries of the nation, foreigners still want very much to see New York and they have been greatly encouraged by the drop in the value of the dollar which makes their money worth more in our economy. At this very moment foreigners are filling the hotels in New York City.

There are also many Americans who still want to see New York at sometime before they die. Certainly there are a large number of African Americans who would visit the city if the hotel costs were not so high. There are also many persons and delegations in the Eastern European countries and in third world countries who would like to visit New York but find the cost of lodging too high. Many church groups refuse to come to New York for this same reason.

The proposition offered here is the following:

Churches should become sponsors for low cost lodging for visiting groups and families. After facilitating the construction of such facilities church representatives would work to guarantee that they are always full.

The Help I family housing for the homeless which was pioneered by Andrew Cuomo could serve as a model for such low-cost tourist lodging.

People traveling in groups and delegations do not mind sharing bathrooms and kitchens.

The economy of the city would greatly benefit by bringing in tourists who are not members of that jet-set or business class able to pay high costs for hotels. These family and group tourists would spend a greater share of their funds in shops, restaurants and entertainment establishments. The City government should therefore participate in the development of such "Church Tourist Centers."

Each church sponsor would have the right to reserve its facility for its own activities when needed: choir festivals, conventions, convocations, etc.

To guarantee ongoing professional Management churches could contract for experienced expert services.

If ten churches bought ten facilities online at the same time, obvious economies could be realized in both construction and operations.

Some churches may experiment by using their facilities to house the homeless during the coldest period of the year (December to March) and then return to tourist accommodations for the remainder of the year. The City would pay at the same rate as private groups.

Numerous jobs as service people would be generated within the "Church Tourist Center." Surrounding areas would also benefit since restaurants and shops would be patronized extensively.

The capital needed to build a "Church Tourist Center" would be considerable. Only a source like the Billion Dollar Reinvestment Fund could provide the financing for a series of such projects.

NOVEMBER 1990.

The $1 billion Community Reinvestment Fund has several parts. I will include them in their entirety in the RECORD, but I would like to conclude by saying, let us be reasonable in the structuring of a new bill. Let us be reasonable in meeting the responsibilities and obligations of the financial community, the banking community, to the American people. Let us add and include these reasonable amendments. Let us be reasonable in the establishment of a procedure which recognizes the dignity and the responsibility of every House Member.

If we are going to be responsible for an obligation of $70 billion, we would like to have some time to state our position on the floor. The Democratic leadership, it seems to me, can do no less. If we want to prove this body, let us do something significant which will certainly move the body's image forward, and not worry so much about trivial reforms which are being promoted by trivial people.

I hope that when the new bill returns every Member would at least have 5 minutes to state his opinions, if they want to state them, on a bill which obligates the American taxpayers for $70 billion.

FARM CREDIT SYSTEM

The SPEAKER pro tempore. Under a previous rule of the House, the gentleman from Mississippi [Mr. ESPY] is recognized for 60 minutes.

Mr. ESPY. Mr. Speaker, I take this time tonight, along with colleagues from Mississippi, Alabama, and perhaps Louisiana, to discuss a situation that affects farmer borrowers and rancher borrowers in our three affected States, Mississippi, Louisiana, and Alabama, who, if a certain bill which will be considered tomorrow under suspension passes, will be asked and indeed forced to merge their interests and their capital that they have accumulated in a bank called Federal Intermediate Credit Bank with another unspecified bank.

Now, this special order will get sort of technical, I suppose. It is full of acronyms. I suppose generally it can be reduced to one catch word or one slogan. It is called "heck, no, we won't go." These rancher borrowers and these farmer borrowers in these three affected States do not want to merge with this one unspecified institution. They have litigated this issue, they have won, and they do not want to be forced to merge and lose their property without due process of law.

This bank that we will discuss tonight is a sound bank. It is secure. It is under no threat of liquidation or loss of funds. So with my colleagues tonight I would like to discuss the genesis of this issue, the history of this bank, and if I can, Mr. Speaker, not take the entire hour but to use some of my time to insert into the RECORD a compromise position that this Member, as a member of the subcommittee, as a member of the full committee, and as an interested Member who has the interests of his constituents in mind, has submitted to the two sides in hopes that we can get some action on it.

What is the problem? The problem, Mr. Speaker, is that in the 1980's we saw widespread misuse of a farm credit system. Farmers and ranchers were encouraged to buy more land, plant more acreage, and buy bigger and better equipment and to pay off their loans by borrowing more and more money. It resulted in a farm crisis that we continue to battle today.

In an effort to curb these unsound financial practices the Congress in 1987 passed something that we call The Agriculture Credit Act of 1987. The emphasis of this bill was to reduce the overhead cost and to strengthen the long-term financial viability of the farm credit system by consolidating the Federal intermediate credit banks and the Federal land banks in each district.

There is a section called section 14 of the same Agriculture Credit Act of 1987 which mandated the merger of the Federal intermediate credit bank and the Federal land bank in each of the 12 farm credit districts throughout the United States. The mergers were to take place within 6 months after the enactment of the law which was enacted on July 6, 1988.

☐ 2030

The banks created by this same section 410, these mergers once merged, are to be called farm credit banks, and they are to handle both short-term and long-term lending to farmers and ranchers within this entire Farm Credit System.

The 1987 act did not include the mandated consolidation of the 12 farm credit districts called for in the earlier House version of the legislation. However, the act does provide a framework by which interdistrict mergers should occur.

Mr. Speaker, the whole issue is involved with one of local control. The entire issue involves one of consolidation which was a very contentious matter during the 1987 congressional debate, and the Congress, to its credit, reached a middle-ground position. I think that what we crafted was finely crafted and a delicate compromise.

In 11 of the 12 farm credit districts, the merger creation of these farm credit banks under this same section 410 took place, and these mergers in these 11 FCB's took place on schedule. However, the Farm Credit Administration failed to charter a farm credit bank in the Jackson district, and the Jackson district involves the territories, the States of Alabama, Louisiana, and Mississippi, and it failed to charter a Jackson district FCB, because the Farm Credit Assistance Board had decided to place this same Jackson Federal Land Bank into receivership.

Well, we were not exactly sure what happened, Mr. Speaker, so certain Members from these affected States in Alabama, Mississippi, and Louisiana asked that the GAO, the General Accounting Office, take a look at this and tell us what happened. A report was returned after a lot of study which basically said that the decision of this Farm Credit Assistance Board was based on "unsupported or inappropriate economic assumptions." So the result of this decision, and by this Member's opinion, a premature decision, caused an anomaly that has resulted in a situation that we are discussing tonight and which has yet to be resolved.

The Jackson Federal Intermediate Credit Bank, the FICB, nevertheless, tried to remedy this situation during 1988 and 1989 by looking for a farm credit bank to be a voluntary merger partner. Meanwhile, early in 1989, the Farm Credit Administration approved a sale of a number of long-term loans in the Jackson FICB in receivership to the Texas Farm Credit Bank at the same time amending the Texas bank's charter to permit it to make new long-term loans in the Jackson district. In issuing that charter extension, the Farm Credit Administration split the long-term and short-term lending authority in the farm credit district between banks based in different districts.

Then in the spring of 1989, the same Farm Credit Administration interrupted the Jackson FICB. It interrupted their voluntary merger process and instructed it to merge with the Texas Farm Credit Bank under this same section 410 of the 1987 act using the legal theory that the Texas bank was a functional equivalent of a Federal land bank in the Jackson district. Well, these folks from FICB objected, and they went to court, and they successfully appealed this Farm Credit Administration's edict to the courts.

In February 1991, the U.S. Court of Appeals for the Fourth Circuit ruled definitively, Mr. Speaker, that section 410 of the 1987 act did not give the Farm Credit Administration the authority to force this merger, to force this consolidation of the two separate farm credit districts.

So that, in effect, leads us to this point, leads us to this certain matter of controversy which I believe should not be brought up under a suspension theory. In an effort to correct what is an admitted anomaly, an aberration, the House Committee on Agriculture, of which I am a proud member, has included in H.R. 3289, which we will consider tomorrow on suspension of the rules, a section of language which, again, mandates the merger of this remaining Federal Intermediate Credit Bank.

The staff explanation of this section 401, as drafted, is that this section 410 is intended to complete the merger of all FICB's and FLB's into FCB's mandated under section 410 of the 1987 act.

But let us be honest, Mr. Speaker, since the Jackson district, again which encompasses territories of Mississippi, Louisiana, and Alabama, since the Jackson district is the only district currently without a section 410 farm credit bank, it is clear that the H.R. 3298 provision is addressed only and solely to the Jackson situation. Section 401 would accomplish its objective by requiring the Farm Credit Administration within 1 year after enactment to order the merger of the Jackson Federal Intermediate Credit Bank with the Farm Credit Bank located in one of the other 11 farm credit districts, but, again, Mr. Speaker, let us be honest. The clear effect of the bill is to mandate the consolidation of two farm credit districts which in 1987 Congress rejected the idea of this mandatory interdistrict merger and rejected the idea of forced consolidation of districts.

In 1991 the Fourth Circuit Court of Appeals did the same.

So we are overturning decisions reached by the Fourth Circuit Court of Appeals, and we are going back and overturning something that this body did in 1987.

What we need is a meaningful vote. Under H.R. 3298, the farmer borrowers of the two banks named in the Farm Credit Administration's order can have input into the terms of the merger, but if they cannot agree on the terms, then the Farm Credit Administration would design the merger plan as well.

While the staff explanation indicates that the provision for direct farmer borrower input is necessary to the effective and fair completion of this process, a proposition that I endorse and concur with, under the terms of the bill, if the borrowers in the two districts cannot agree on the terms of the merger plan, their input can be ignored completely. So these same farmer borrowers, these same rancher borrowers from Alabama, Mississippi, and Louisiana, these same folks that have labored, borrowing and investing in the Jackson FICB, if they are forced to merge with an unspecified bank, their input can only be as to the terms of the merger, the merger plan, not the merger partner, and if they disagree even with the merger plan, it seems as if they will not have a meaningful vote.

Over the last 2½ years, the farmer borrowers of both the Jackson FICB and the Texas Farm Credit Bank have paid colossal amounts for lawsuits, colossal amounts for lawyers, colossal amounts for lobbyists in an effort to make sure that their rights under the law are secure.

Section 401 of the bill overturns the court of appeals ruling that a forced interdistrict merger is illegal.

For this reason, Mr. Speaker, I do not believe that section 401 upholds the rights of the farmer borrowers of the institutions in the States of Louisiana, Alabama, and Mississippi, and I am not the only Member who tends to hold this position.

Mr. Speaker, I yield to my distinguished colleague, the gentleman from Mississippi [Mr. PARKER].

Mr. PARKER. Mr. Speaker, I thank my friend for yielding.

I also thank my colleague from Mississippi for arranging this special order.

Mr. Speaker, it is with mixed feelings that I rise today to oppose this measure. I believe that it is imperative that we restore the financial stability of the Farm Credit System. Without this body taking preventive steps at this time, the Farm Credit System, which our farmers depend upon, will be in the same situation that savings and loans business, and the banking industry, now find themselves in. However, included in this worthwhile legislation is language that would give the Farm Credit Administration the authority to require a merger for any Federal intermediate credit bank that has not merged with the Federal land bank serving that same district.

As we all know, this provision only applies to the Federal Intermediate Credit Bank in the Fifth Farm Credit District, located in Jackson, MS, my congressional district. We would not be discussing this issue had the FICB of Jackson had a merger partner back in the late 1980's. Their merger partner did not exist because it was placed into receivership and later liquidated. The Farm Credit Bank of Texas subsequently bought most of the assets of the failed Federal land bank—and then sought a merger with the FICB of Jackson. The FICB rejected the proposal over the Farm Credit Administration's directive. The Fourth Circuit Court of Appeals ultimately agreed that the FCA could not force such a merger.

However, now we have come back to address this issue. In the other body, they have refused to attach the Jackson FICB issue to this legislation. I think we should do the same—this legislation is not one on which this issue should be attached.

There have been several proposals offered to resolve the problem of the FICB in Jackson. One proposal would allow the Jackson FICB to continue to exist to provide short-term lending, while also allowing the Farm Credit Bank of Texas to provide the long-term lending. This proposal would maintain the status quo. Since I have not had one case where a farmer came to me saying he could not get financing because of this division, this proposal seems workable. However, I think that any proposal of this type, including the merger that would be mandated by this bill, should be determined by the Jackson FICB stockholders vote.

The action that this bill would attempt to take amounts to nothing less than a shotgun wedding. Although one party is willing, the other is not. Of course, the willing party has a lot more to gain from the merger than the nonwilling party. I do not think that this shotgun marriage should come at the end of this body's gun.

□ 2040

Mr. Speaker, I thank the gentleman for yielding to me and I appreciate the hard work he has put into this matter for the benefit of our State and the farmers of our State.

Mr. ESPY. Mr. Speaker, I thank the gentleman for participating. I applaud the gentleman for his remarks and associate myself with the things that he said.

The gentleman is vitally interested in this because it is physically located in the gentleman's district.

Also the gentleman said something that I would like to reiterate, and it is that the Members of the other body have also weighed in on this matter, and they have suggested in the other body that they do not consider this particular issue to be germane to the bill that we will be considering in conference. They have indicated that it is their intent not to consider in conference this particular section 410.

Therefore, I would agree with them that perhaps it is germane, but it is not appropriate at this time.

Also the gentleman mentioned the fact that in this particular Member's district, I have researched this issue very thoroughly and I have talked to farmer borrowers and rancher borrowers from both the Texas Federal Land Bank and the Jackson Federal Intermediate Credit Bank, and it must be said here tonight that the borrowers and investors in both institutions report to us that both institutions are sound and that both institutions adequately service their members; so with regard to the Jackson Bank, no one here and no one in this entire discussion has ever suggested that they are in jeopardy, that the members in Alabama, Louisiana, and Mississippi are not being adequately serviced.

Mr. PARKER. Mr. Speaker, will the gentleman yield further?

Mr. ESPY. Yes, I yield to the gentleman from Mississippi.

Mr. PARKER. Mr. Speaker, that point needs to be made very well. The system in Mississippi is extremely sound. Everyone in Mississippi knows that. It is one reason that Texas wants it so badly.

There is one point, and I have tried to remain as civil as I could possibly be about this whole scenario and how things have worked, but it really bothers me a great deal when all of a sudden I get information from Texas saying, "Listen, we charge less interest than they do in Mississippi."

Now, I do not know who they think we are. I do not know if they think we are stupid, or what; but I will tell you this. Whenever you check those records, all of a sudden you find in Texas that they are loaning money on land which is collateralized, and in Mississippi we are loaning money for production. Of course you can loan money cheaper for collateralized property. That loan is collateralized. It is a cheaper rate.

So it bothers me a great deal when all of a sudden this information, some of it is not quite up to par, and is brought to us and they say, "We want you to base your decision on that."

Mr. Speaker, I hope we remain civil throughout all this, and I thank the gentleman for yielding to me.

Mr. ESPY. Mr. Speaker, I thank the gentleman for his contribution.

Mr. HARRIS. Mr. Speaker, will the gentleman yield?

Mr. ESPY. Yes, I yield to the distinguished gentleman from the State of Alabama.

Mr. HARRIS. Mr. Speaker, I thank the gentleman for yielding. I certainly want to associate myself with the gentleman's remarks. I know the gentleman has worked very hard on this issue and a lot of us have worked with the gentleman on it. It seems like for at least the last 2 years that we have worked back and forth, hopefully trying to reach some settlement or resolution of the problem.

I know the gentleman feels the same as I do, that certainly we want to see that our farmer borrowers get the best interest rates that they can. That has been the bottom line with me in whatever we do, that it be in the best interests of our farmers.

But you know, one thing, and the gentleman touched on it and I would ask the gentleman, the FICB in Jackson, as I understand it, is one of the strongest banks in the United States; is that correct?

Mr. ESPY. It is my understanding that the Jackson-based FICB is a sound, solid, safe institution.

Mr. HARRIS. I further understand that there is about $80 million in assets that the bank has; is that true?

Mr. ESPY. To this gentleman's understanding, it is somewhere in that neighborhood.

Mr. HARRIS. Having studied the particular legislation before us. H.R. 3298, and of course I share the gentleman's thoughts and certainly oppose this legislation with him, but the vote that the stockholder borrowers are allowed, if I understand the gentleman correctly, is not on the merger itself; is that correct?

Mr. ESPY. It is my understanding under the terms of this particular bill, the Farm Credit Administration has, if you will, the trump card of choosing the merger partner. If the affected stockholder borrowers of this FICB disagree, their disagreement can only go to the terms of the merger agreement, not the identification of the merger partner. Even if they cannot agree on the terms of the agreement, then virtually their objection or their concerns really carry very little weight.

Mr. HARRIS. Mr. Speaker, if the gentleman will yield further, I know that the farmer borrowers that I have talked with in my district, of course they feel like they should have a vote on the merger, that the bylaws provide for a vote and they feel they should have a vote and that it is almost like taking your property without due process. Of course, they have sought due process. They have been through two courts, the Federal district court and the Fourth Circuit Court of Appeals. Of course, they won in the fourth circuit.

So I just want to ask our colleagues to look at this issue very closely. It is something very important to Alabama, Mississippi, and Louisiana. We just feel like our stockholder borrowers are entitled to a vote that counts and not one that is after the fact.

Mr. Speaker, I thank the gentleman for taking this special order tonight. I think it is a critical issue and I think the solution that the gentleman has offered that our good friend, the gentleman from Mississippi [Mr. PARKER] spoke of, certainly would be it sounds to me a good resolution of this problem.

Mr. ESPY. Mr. Speaker, I thank the gentleman for participating.

The gentleman also realizes by his presence and his participation that this is a contentious and a controversial issue. Under the rules of this House, if this body considers something on suspension of the rules, it is likely that the matters considered under that system are not controversial or are not contentious and must require a two-thirds vote of this body.

By our presence and by our discussion here tonight, anyone could deduce that this issue does carry some concern with certain Members in this House, particularly those from our affected States and therefore should not come under the suspension of the rules.

Mr. Speaker, I would like to talk about alternatives and I would like to talk about a compromise.

The borrowers of the Federal Intermediate Credit Bank of Jackson and its associations deserve a resolution that has the benefit of full discussion, the benefit of full consideration, and the benefit of full debate. However, hearings on this issue have never been held and solutions have never been discussed in an appropriate committee hearing or subcommittee hearing.

□ 2050

I believe that the farmer-borrowers of the affected institutions are entitled to a meaningful stockholder vote both on the identity of a merger partner and on the terms of a merger plan. So therefore, Mr. Speaker, as a result, this member has drafted an alternative resolution to section 410. The alternative would more fairly and responsibly apply section 410 of the 1987 act to the Federal Intermediate Credit Bank of Jackson.

In summary, it would apply section 410 to Jackson by chartering the only Jackson district bank still in operation, the Federal Intermediate Credit Bank of Jackson, as the 12th farm credit bank under section 410, the Federal Farm Credit Bank of Jackson. This will establish the last of 12 farm credit banks called for in the 1987 legislation, and it would in effect close the hole now existing from the earlier legislation. It will retain the essential element of Congress' agreement in 1987 that further consolidation of the 12 farm credit districts be done on a strictly consensual basis, only after a binding stockholder vote. The alternative protects the Farm Credit Bank of Texas by limiting the Farm Credit Bank of Jackson to short-term lending authority only.

Let me underscore that, Mr. Speaker, by saying that the Farm Credit Bank of Texas would be protected because the Farm Credit Bank of Jackson could only handle short-term loans. The new farm credit bank could handle short- and intermediate-term lending in the Jackson district, the same sort of authority it has had in the past and continues to have now as an FICB. Conversely, the Farm Credit Bank of Texas would retain its long-term lending authority and be limited to that lending authority in the Jackson district.

Mr. Speaker, I would note that the resulting situation is not without precedent. Currently in the State of New Mexico the Farm Credit Bank of Texas provides short- and intermediate-term lending services, and the Wichita Farm Credit Bank provides the long-term lending.

Additionally, under the alternative, action on district consolidation or merger of the short-term Farm Credit Bank of Jackson with another farm credit bank would be left to the stockholder-borrowers. Within 6 months after the FICB of Jackson is rechartered as a short-term farm credit bank, the Farm Credit Administration will conduct a referendum of all the stockholder-borrowers of the Production Credit Associations and the Federal Land Bank Associations in the States of Alabama, Louisiana, and Mississippi to determine whether they favor consolidation of the Jackson and Texas districts and the merger of the farm credit banks of Jackson and Texas.

If the proposition is approved by both the PCA stockholders and by the FLBA stockholders, the same referendum will be held within 3 months among the stockholder-borrowers of the farm credit bank located in the Texas district.

Mr. Speaker, if the referendum carries in Texas also, then the boards of directors and management of the banks involved must develop as soon as possible a plan for consolidation of the Jackson and Texas districts and the merger of the two farm credit banks.

The plan would have to include a provision for equal representation of the

Jackson and Texas district on the board of directors of the merged bank for at least 10 years following the merger, along with other provisions to ensure efficient and effective delivery of credit and to promote the financial strength of the institutions in the consolidated district.

This is the outline of a proposed solution, a compromise if you will, but it is strictly not written in stone. It is thrust on the table just to stimulate discussion, which I feel has been sorely lacking in this particular issue.

The alternative would complete the section 410 process in the neutral fashion, putting an end to the need for further litigation, putting an end to the need for further action by Congress on what has turned out to be a locally contentious matter.

At the least, it is an alternative that would allow the farmer-borrowers of all these affected States to decide for themselves the solution which is in their best interests, a proposition which I believe to be the only fair solution.

Mr. Speaker, let us not go to court any more, let us not use lobbyists any more, let us let this particular institution help to facilitate a discussion between the contesting parties in this matter and give the affected parties a vote that is meaningful.

Mr. Speaker, folks in the Soviet Union now see the light of day in which they have a vote. Folks in the former Communist bloc nations in Eastern Europe finally see the light of day and have entered a time where their vote has some meaning. Let us not deny it to the farmer-borrowers and the rancher-borrowers of Mississippi, Alabama, and Louisiana.

Mr. Speaker, I include at this point in the RECORD a statement by the gentleman from Mississippi [Mr. MONTGOMERY] in support of this proposition.

The text of the statement referred to is as follows:

Mr. MONTGOMERY. Mr. Speaker, I want to join with my colleague from Mississippi, MIKE ESPY, in expressing opposition to section 401 of H.R. 3298. The provision mandates the merger of the Federal Intermediate Credit Bank of Jackson with an unspecified farm credit bank, and gives the Farm Credit Administration option to choose that bank. My feeling is that any action such as this should be taken only after a vote of the stockholders and borrowers who are most involved.

I understand that the Federal Intermediate Credit Bank of Jackson is in fine fiscal shape. In fact, it is the best capitalized of all the banks in the farm credit system. Since being chartered 60 years ago, this bank has never received any financial assistance. It has done the job it was created to do, and today the bank is as strong financially as it has ever been.

A recent assessment of the bank's financial situation showed that it is healthy and well-capitalized due to its long history of sound, safe management practices.

That is why I must oppose the effort to include this forced merger in H.R. 3298. The Jackson bank is in a sound fiscal position, so before Congress takes action to change things, I think we should hear from stockholders/borrowers on the issue.

The affected parties in the States of Mississippi, Alabama, and Louisiana should have the same rights that their counterparts in every other farm credit district have.

Mr. ESPY has come up with compromise language that would be a workable solution, in my opinion. It would allow our Production Credit Associations to continue to make short- and intermediate-term loans and the Texas Farm Credit Bank would be allowed to make long-term loans. It also calls for a vote to be held to determine what the stockholders/borrowers think about the merger idea.

I hope we will have the chance to consider the Espy language because it would bypass the need for more action in the courts or legislation in Congress on this issue. Without it, I cannot support H.R. 3298.

I want to again voice my support for the Espy substitute language and to commend him for taking the leadership role in trying to solve this problem.

THE DECLINE OF THE MIDDLE CLASS AND THE ECONOMIC CRISIS IN THIS COUNTRY

The SPEAKER pro tempore (Mr. BENNETT). Under a previous order of the House, the gentleman from Michigan [Mr. BONIOR] is recognized for 60 minutes.

Mr. BONIOR. I thank the Speaker.

Mr. Speaker, I take the well this evening to talk about the decline of the middle class, the disparate numbers of the middle class as they relate to those who are the most fortunate in economic positions in our society, those at the very top, and then to talk a little bit about what this administration has—or I should say what this administration is not doing about this economic crisis that we have in the country today.

Let me begin, Mr. Speaker, by pointing out to my colleagues a series of articles appearing in the Kinght-Ridder newspapers originating in the Philadelphia Inquirer, authored by Donald Bartlett and James Steele, the award-winning investigative reporters for the Philadelphia Inquirer.

The subject is the decline of the middle class, how the game was rigged against the middle class, what went wrong, what happened in the 1980's to those in the middle, those at the bottom, and those at the top economically in our society.

I am not going to read all of this because it would take us many hours to digest it, to understand it, to discuss it.

But I would just like to point out a couple of things to my colleagues this evening.

What went wrong? Let me quote:

> The total amount of dollars and salaries funneled to the rich soared in the 1980s, as did the number of rich themselves. Meanwhile the total dollars in wages that went to the middle class increased on the average of just 4 percent a year, or during the decade 44 percent, barely enough to keep pace with inflation.

Actually, last year the median income family lost $500 over the previous year.

Now we are talking about people who make between $20,000 and $50,000 a year. Let us move up the scale a little bit. Let us talk about increases in salaries of people earning $200,000 to $1 million a year, $200,000 to $1 million a year. Their increase was 697 percent during the 1980's, 697 percent. And if you go a step further, the increase in salaries of people earning more than $1 million a year was 2,184 percent. The wealthy got wealthier, the middle class stayed the same or shrank, and the poor, as always, got poorer.

The number of people in our middle class has shrunk dramatically in the last 12 years during the Reagan-Bush administrations.

I would like to read one other thing before I get into the discussion of how this administration and their allies on this side of the aisle have addressed or failed to address this problem. This is an article by Senator CARL LEVIN called "Executive Pay Keeps Skyrocketing." I would like to quote from it if I might.

> In the last ten years, executive pay at major American corporations has exploded. At the same time, rank and file workers, as a group, have faced massive lay-offs, cutbacks in pay and benefits, and a dramatic loss of well-paying jobs.
>
> The growing gap between executive and average worker compensation threatens American competitiveness, sours labor-management relations, and divides the American workforce. It is a trend that must be reversed for the health of our economy and the strength of our political fabric.
>
> Statistics show the extent to which the pay of American chief executive officers (CEOs) is out of whack. First, CEOs pay in the United States far exceeds that of CEOs in any other country.
>
> CEO pay at a mid-sized company in America ($250 million in assets) exceeds that of CEOs at the same size company in Japan by more than two times and in Australia and Sweden by almost three times. The disparity is even greater at the $1 billion plus companies.
>
> Second, the growth in CEO pay far exceeds the pay growth for average American workers. For example, for 20 years, pay rates of CEOs, school-teachers, engineers, and factory workers increased at about the same rate. Then the 1980s came along, and CEO pay abruptly, rapidly, and disproportionately took off.
>
> The pay gap between CEOs and average American workers has since almost tripled. In 1975, U.S. CEOs made about 34 times the pay of average American workers. Today, that figure exceeds 100.

□ 2100

Mr. Speaker, the article goes on, and on, and on, and I think people get the point. The point is that the wealthy have been feeding at the trough and getting wealthier, and wealthier, and wealthier, and we do not deny people the ability to get wealthy in this country. That is part of the American dream. But to the extent that it is reached, it has deformed the basic fabric, economic fabric, and fairness in our society today.

Having said that, Mr. Speaker, let me, if I could, talk about what this administration has done or has failed to do to deal with this situation we have in the country, which I have in the State of Michigan, where almost a half a million people are out of work, cannot find a job. Three hundred thousand people a month in this society are exhausting unemployment benefits. The unemployment rate is officially at 6.8, but we all know it is hovering around 8 percent because of the structural deviation in the formula.

People are worried about unemployment. Nineteen percent of the American people in one poll, 20 in another poll, that say it is the No. 1 issue that is on their minds because they have someone in their home, some relative, or some neighbor who has lost their job, and these are hard-working, middle-class people who punch a clock, eat at their desk, work overtime when they can, when they have work, have a second job, but are out of work today. There is a fear in the land, a fear in the land that it could happen to me, to the next-door neighbor, and it is a serious fear.

Mr. Speaker, we have got to get moving in this Congress and in this Government. So much we can do here. The leadership downtown is instrumental in making sure we move. We on this side of the aisle, as Democrats, have said there are a number of things we have to do.

First of all, we have got to take care of those people, middle-class-income workers in our society who have been thrown out of work through no fault of their own because of this prolonged and deep recession, provide them with extended unemployment compensation. They paid for it, their employers and they. Through deferred compensation they have a fund. Eight point two billion dollars in this fund to take care of their needs. It is there for this purpose. We have ten million of these people who need help, and we have a fund to take care of them, but we cannot get the administration and the President to sign the bill to do the job.

Mr. Speaker, they say this recession is no big deal. The President says our bill is garbage. Darman says it just perpetuates the welfare system, and on, and on, and on, more excuses, people suffer, they cannot pay their mortgages, they cannot feed their kids, they cannot put 50 bucks aside for their future, for their child's education and their general future. And we have got the money sitting there to help them through this crisis.

So, unemployment compensation benefits is a part of the solution, a small part, but an important part. The next part is putting this country to work again and rebuilding it: roads, bridges, highways, sewer systems, remodeling our schools. We have done that. We passed a major transportation bill, another trust fund set-aside to do that, a $153 billion bill over 6 years that will put 2 million people to work.

Mr. Speaker, the President threatens to veto that, but we are going to pass it. We have already passed it here. It has passed in the Senate. It is going to come back, and we are going to pass it out of conference and send it to the President just like we are going to do another unemployment bill this week.

The third part of the program, and an important part, and that is to get money in the pockets of middle-class people, middle-income people, so that they can spend it, 50 bucks here, or 100 bucks here, maybe a little downpayment on an automobile, maybe a little bit to spend in the hardware store, to get this economy bubbling up again.

Henry Ford had a great idea. He decided to make automobiles, started an assembly line, produced these wonderful automobiles, but no one was buying them because no one had any money. He increased dramatically the salary of his workers, and that set a pattern across the country so that people started to buy and the economy started to explode.

We need to put tax dollars in the pockets of middle-income people so they can spend it, whether it is deferred for a rainy day, whether it is for savings, whether it is to get rid of debt, whether it is to put a downpayment on a home or automobile. That is what we have to do.

Mr. Speaker, we have a plan to do that, and we will unveil it very soon in this House of Representatives and in this Congress.

On the other hand, this administration is consumed, consumed with foreign policy, and that is not to say the foreign policy does not have an important and, in some instances, prominent role to play in our everyday political, and cultural and government life in this country. It is an important aspect of what we do. But they are consumed with it. They forget about the people here at home.

Mr. Speaker, the President can declare an emergency for the people of Bangladesh, for the Turks, for the Israelis, for the Kurds, provide them with billions of dollars. When it comes to Americans who are out of work, who need a little hand, it is not an emergency—"Can't take care of you."

Mr. Speaker, it is time to start taking care of our own. That is an important message. It is what the American people have been telling me, my colleagues, for years now. It is the reason why HARRIS WOFFORD is going to beat Dick Thornburgh in Pennsylvania tomorrow, because he is talking about taking care of Americans. He is talking about health care for Americans. He is talking about tax cuts for middle-income people and not for these CEO's, and not for the wealthy who have reaped the benefits at the expense of everybody else during the 1980's. He is talking about getting rid of this debt that we have, personal, national. He is talking about things that make sense. HARRIS WOFFORD, a man who cares about people, a man who will be a great Senator. He may even be a great President. Who knows?

Let me talk to my colleagues, if I could, for just a second about tax cut fever. There is a piece that appeared in today's Washington Post by Rowland Evans and Robert Novak, and I would like to quote from it. "An irate Senator PHIL GRAMM," a Senator from Texas; he used to serve here, glad he is in the other body—"shaken by the polls from Pennsylvania turned Thursday's weekly meeting of congressional leaders at the White House into an unprecedented exchange between President Bush and his Republican lieutenants on Capitol Hill.

□ 2110

What stunned GRAMM was the collapse of former Attorney General Dick Thornburgh's 44-point lead in Pennsylvania's special election. Confidential Republican surveys put him 2 points behind. GRAMM blamed the economy, the President's failure to take aggressive action, and Bush's advisers urging of passivity. Other GOP leaders, joined in, prompting the tart response by the President that the party's chieftains in Congress are 'sunshine patriots.' "

I am glad the President has decided not only to criticize Democrats, but to take shots at his own party leaders.

"The extraordinary session defined the real shape of political affairs in Washington today." This is Evans and Novak.

> White House smugness, they say, has been replaced by icy fear, but without any resolute action planned.
>
> The Republicans are divided about whether to move for tax cuts now or wait until January, and the President is torn between the opposing camps.

The article goes on.

> Thursday's heated meeting was the climax of 2 weeks of backstage maneuvers. A tax-cuts-now offensive was launched inside the administration by the Cabinet's only dissenter, Housing Secretary Jack Kemp, with cautious support from Vice President DAN QUAYLE.

I underline "cautious."

> Bush reelection campaign chiefs, headed by Commerce Secretary Robert Mosbacher, also pressed for action. Nagged by Republican fat cats, Bush seemed ready to move.
>
> But on Sunday, October 20, Senator Lloyd Bentsen of Texas, Democratic tax master in the Senate, unveiled his plan to give tax-

> payers $300 for every child. The next day the bond market went south in revulsion.

Well, that is not surprising. When the bond market people and the people on Wall Street and the fat cats see that the middle class are going to get anything, they get revulsed. That is the way it has been during the last 12 years or 11 years, and that is the way I guess it will be until we change the formula around here.

Back to the text of Evans and Novak. "That strengthened the hand of the Cabinet's leading antiaction advocate, Treasury Secretary Nicholas Brady, who fears tax-cut fever like the red death. From the hallowed inner sanctum of the Federal Reserve Bank came word that the central bankers preferred caution," against middle income people.

Not to be surprised. The bankers do not want the middle class to get a break either, right in there with the bond market people.

> With the tax cutters in seeming retreat, Fed Chairman Alan Greenspan last Monday signaled interest rate cuts ahead. White House sources sighed in relief, thinking that would take the pressure off and nothing would happen until the new year.
>
> But the battle was not over. Bush returned from Madrid Wednesday to go directly into an Oval House meeting on the economy, where Quayle advised him action was needed. Representative Vin Weber and Senator Robert Kasten unveiled a tax cut package, the fearless Kemp personally on hand to endorse it. That night at a private Hay-Adams Hotel dinner for Republican wise men, a straw vote came out in favor of a pre-Christmas tax cut, though only narrowly.

The next day at the White House, the inimitably pugnacious GRAMM, and he is pugnacious, I would agree with that, demanded action. He was backed by WEBER, KASTEN, and House minority whip NEWT GINGRICH of Georgia, blaming unnamed Presidential advisers for suppressing tax-cut fever. Everybody knew whom they meant: Brady, Chief of Staff John Sununu and Budget Director Dick Darman.

So what we see was the old fight we had last October when these fellows, the distinguished gentleman minority whip, Mr. GINGRICH, was in a real tussle and a real battle with Mr. Sununu and Mr. Darman, and they did not speak to each other for a period of time, and they were cussing out each other's plan to deal with the budget situation. It was a very, very tough time for these people.

Well, they are back at it again.

> The advisers did not respond, but the President did. He harkened back to last year's budget agreement when Gingrich led a revolt against the Bush-backed tax increase. Would his Republicans, Bush asked, leave him in the lurch again? Would he end up vetoing a Democratic bill, while they would not support him?
>
> Next, Kasten candidly took issue with Bush's formulation that he must "govern" and could not play the political game full tilt until he announced his candidacy. Kasten, facing his owr tough fight for reelection in Wisconsin—

And no wonder why, he sides with the big bankers and the bond market people and all those folks—

> Kasten, facing his own tough fight for reelection in Wisconsin, argued forcefully that the campaign has already started and an unknowing Bush is still on the sidelines.

Still on the sidelines. Well, I suspect that Dick Thornburgh would probably agree with that.

"What the President faces is not so simple as choosing between Congressional Republicans and his own advisers. At Thursday's meeting, House Minority Leader Robert Michel displayed reluctance to support what was seemingly clear-cut party policy; a capital gains tax cut. Improbably," Evans and Novak says, "Michel claimed he never had found a businessman who liked the idea."

I stopped when I read that, too.

"Improbably, Michel claimed he never had found a businessman who liked the idea" of a capital gains tax cut.

"Even Republicans who demand action are split on whether to balance campaign reductions with an upper bracket tax increase. Quayle says yes, Gramm absolutely no."

The last paragraph of the article by Evans and Novak says, "Only George Bush can set a decisive course. But the resolute Commander in Chief of Desert Storms laurels seems weak and confused in the economic arena. At stake is not only the Nation's economic health but whether Bush follows Jimmy Carter as a one-term President."

David Broder, in this same newspaper, the Washington Post, has a column that appeared on the 30th of last month called "Recession obsession."

He starts off by saying "President Bush is learning the truth of the old adage, 'When the economy goes wrong, everything goes wrong.'

"The sour, defensive tone of his last Washington news conference is the mirror image of the edgy, apprehensive tone of the voters I have been interviewing here in the self-styled Inland Empire," talking about California.

"While Bush busies himself in Madrid resolving ancient enmities in the Middle East, the residents of this county," San Bernardino County, "which Bush carried handily in 1988, stew about the loss of jobs, the rise of crime and the influx of drug gangs."

The article goes on to say,

> What the American people need least at this moment is evidence that Washington does not know what to do about the situation. And, unfortunately, that's just what they got from Bush's last press conference before heading overseas. With his economic advisers quarreling among themselves over the best course, Bush confessed he is puzzled by what to do. "What's needed? What will help? I am trying to sort that through."

Fred Barnes, the Washington Times, October 22, an article entitled "Pesky Slump Thing."

In the article, Mr. Barnes, a conservative, says:

> The Bush administration has lost is cohesion. Mr. Bush is often testy, opening White House meetings with angry outbursts. Faced with domestic problems, he is unsure. The control he's displayed in crises overseas is absent.
>
> Mr. Bush bristles at the notion that he is a 'foreign policy President' who ignores domestic problems.
>
> On the economy he's torn between arguing everything is fine and everything isn't. On October 4 he argued both. 'The drop in unemployment is one more sign that the economy is strengthening,' he said. Later he added, "Let me be the first to say all is not well."

At a September 2 EPC meeting, Economic Policy Council, Mr. Bush read the riot act. He said, "The credit crunch is real." He complained about overregulation. He said aides had assured him the credit problem was solved. "It's not solved," he asserted. "There is nothing coming from us about what we are going to do. There is nothing coming from us about what we are going to do."

□ 2120

Amen. We know that.

Hobart Rowen, the Washington Post, the 20th of October, I believe. The title of the article, "Bush's Nonpolicy Could Worsen the Recession."

"A few wise old Republican hands, like Senate minority leader ROBERT DOLE, are looking for ways to offset the GOP's Uncle Scrooge image on this issue," talking about unemployment and help for the unemployed.

"As part of the transparent-damage-limitation campaign, White House Chief of Staff John Sununu, who knows nothing about economics," this is Hobart Rowen, "but is supposed to know something about politics is masterminding a resurrection of Bush's capital gains proposal. That, at least, is what Sununu implies in a Wall Street Journal interview.

"Sununu regurgitates the deceptive notion that this bonanza for upper-income taxpayers will actually raise revenue. In the short run, that might help. Thus making the package, including other tax cuts, revenue neutral. But any economist worth the cost of his or her degree knows that Bush's capital gains proposal would lose money over the long run, adding to the Federal budget deficit.

> The business community, as a matter of fact, has been in the forefront of criticism of the administration's economic approach, accurately labeling as delusion its soothing assurances of a short and shallow recession.

It goes on and on and on. He quotes John Kenneth Galbraith about how difficult the times are in this economy and for millions of Americans.

Mr. Speaker, I will not belabor the point. I think I have made it. This administration's answer to getting this economy back in order is a tax cut for the wealthiest people in our society, people who have gained tremendous wealth over the 1980's.

They believe in this theory of trickle down, where you provide a select few at the top big bonanzas and somehow it is going to make its way throughout society.

The fact of the matter is, the chickens are coming home to roost. It has not worked. America needs leadership on the economic front. We need someone who will stand up for working middle-class people. We need someone who will speak for those who have been thrown out of work, through no fault of their own, in this deep and prolonged recession.

We need those who will address the health care issue, who will talk about the needs of the 37 million Americans who have nothing, not a dime, and for the literally tens of hundreds of millions of Americans who have insurance but are finding the cost so difficult to maintain and the coverage so meager in many instances.

This administration has not been paying attention to what is happening here at home. I regret that so very much, very much. The President has found it convenient to spend a good deal of his time on foreign policy. Again, I want to make it very clear, I do not begrudge the President's need to do that. I do not fault his leadership in certain areas. In fact, I commend him and Secretary Baker in what they did in the Middle East. It has been positive. It has been helpful, and they are both to be commended and congratulated. But there is an obsession with foreign policy. The stargazing over the Atlantic, while ignoring what is happening here at home.

All they have to do is pivot 180 and look what is happening in the rest of the country. But they will not. They are interested in traveling.

The President's itinerary: He has traveled a lot over the last year. September, he was in Helsinki, Finland, September of 1990. November 16 he was in Prague, Czechoslovakia. On the 18th, 2 days later, he was in Germany. Next day he went to Paris. A couple of days later he went to Jeddah, Saudi Arabia. Next day to Dhahran, Saudi Arabia. Next day to Cairo, Egypt. Next day to Geneva, Switzerland. Three days later Mexico City, Mexico. On the 3d of December, about a week later, to Brasilia, Brazil. I do not know why. On the 4th of December, Punta del Este, Uruguay. A day later Buenos Aires, Argentina. A day later he went to Santiago, Chile. On the 7th of December, 1990, he was in Caracas, Venezuela.

On the 13th of March, 1991, he was in Ottawa, Canada. On the 14th, 1991, he went to Martinique in the French West Indies. On the 16th, 1991, he went to Hamilton, Bermuda. On the 14th of July he was in France. On the 15th he went to London. On the 18th to Athens, Greece. On the 19th to Crete, on the 20th to Turkey, on the 21st to Istanbul, on the 30th to Moscow, on the 29th of October, to Madrid, Spain. On the 7th of November, he is planning a trip in a couple of days to Rome, Italy. Then to The Hague in the Netherlands and to be announced trips to Japan, South Korea, Australia, Singapore, and Indonesia.

Some of these, perhaps a good many of these trips, had merit to them, but if the President would devote a portion of his time that he spends overseas to the needs of unemployed people in this country, to the needs of this economy, to the health care needs of this country, Americans would be better off. Americans would appreciate him more. Americans would respond to him more.

Surely he knows he was at 90 percent in March in the polls and now he has dropped in some polls down to 55-percent approval rating.

Mr. President, stay home. Take care of business here. Start taking care of our own. America wants you here. We want you to deal with the health care crisis, with the unemployment crisis, the education problems we have, the environment. Stay here, Mr. President. There is plenty of work to be done here in America.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. SMITH of Florida (at the request of Mr. GEPHARDT), for November 5 through 11, 1991, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DREIER of California) to revise and extend their remarks and include extraneous material:)

Mr. COX of California, for 5 minutes today.

Mr. HANCOCK, for 5 minutes, on November 5.

Mr. RIGGS, for 5 minutes, on November 5.

Mr. LIVINGSTON, for 5 minutes, on November 6.

Mr. MCCOLLUM, for 5 minutes, today.

(The following Members (at the request of Mr. MCNULTY) to revise and extend their remarks and include extraneous material:)

Mr. PEASE, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mrs. LOWEY of New York, for 5 minutes today.

Mr. ESPY, for 60 minutes, today.

Mr. BONIOR, for 60 minutes today.

Mr. GONZALEZ, for 60 minutes, each day on November 5, 8, 11, 15, 18, 22, 25 and 29.

Mr. LIPINSKI, for 60 minutes, each day on November 6, 13, 20, and 27.

Mr. PEASE, for 5 minutes, each day on November 5, 6, 7, and 8.

Mr. PICKETT, for 60 minutes, on November 5.

Mr. JACOBS, for 60 minutes, on November 5.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. ARMEY, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. DREIER of California) and to include extraneous matter:)

Mr. BILIRAKIS.

Mr. RIGGS.

Mr. GALLEGLY.

Mr. MACHTLEY.

Mr. RITTER.

Mr. MCCOLLUM.

Ms. ROS-LEHTINEN.

(The following Members (at the request of Mr. MCNULTY) and to include extraneous matter:)

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN in 10 instances.

Mr. ANNUNZIO in six instances.

Mrs. LLOYD in 10 instances.

Mr. HAMILTON in 10 instances.

Mr. DE LA GARZA in 10 instances.

Mr. TRAFICANT in two instances.

Mr. REED in two instances.

Mr. SOLARZ.

Mr. RAHALL.

Mr. SMITH of Florida.

Mr. SABO.

Mr. ATKINS.

Mr. MARTINEZ.

Mr. OWENS of New York.

Mr. GUARINI.

Mr. COLEMAN of Texas.

Mr. ENGEL.

Mrs. LOWEY of New York in two instances.

Mr. BILBRAY.

Mr. AUCOIN.

SENATE JOINT RESOLUTIONS REFERRED

Joint resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S.J. Res. 61. Joint resolution to designate June 1, 1992, as "Kentucky Bicentennial Day" to the Committee on Post Office and Civil Service.

S.J. Res. 96. Joint resolution to designate November 19, 1991, as "National Philanthropy Day" to the Committee on Post Office and Civil Service.

S.J. Res. 145. Joint resolution designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week" to the Committee on Post Office and Civil Service.

S.J. Res. 164. Joint resolution designating the weeks of December 8, 1991, through December 14, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week" to the Committee on Post Office and Civil Service.

S.J. Res. 174. Joint resolution designating the month of May 1992, as "National Amyotrophic Lateral Sclerosis Awareness Month" to the Committee on Post Office and Civil Service.

S.J. Res. 176. Joint resolution to designate March 19, 1992, as "National Women in Agriculture Day" to the Committee on Post Office and Civil Service.

S.J. Res. 180. Joint resolution to designate December 1 through 7, 1991, as "Geography Awareness Week" to the Committee on Post Office and Civil Service.

S.J. Res. 188. Joint resolution designating November 1991 as "National Red Ribbon Month" to the Committee on Post Office and Civil Service.

S.J. Res. 217. Joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian" to the Committee on Post Office and Civil Service.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1046. An Act to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans,

H.R. 2686. An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes,

H.J. Res. 281. Joint resolution approving the extension of non-discriminatory treatment with respect to the products of the Mongolian People's Republic, and

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.

ADJOURNMENT

Mr. BONIOR. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 29 minutes p.m.) the House adjourned until tomorrow, Tuesday, November 5, 1991, at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2298. A letter from the Comptroller General, the General Accounting Office, transmitting the status of budget authority that was proposed for rescission by the President in his sixth special impoundment message for fiscal year 1991, dated July 24, 1991, pursuant to 2 U.S.C. 685 (H. Doc. No. 102–159); to the Committee on Appropriations and ordered to be printed.

2299. A letter from the Secretary, Housing and Urban Development, transmitting the final report describing the strategy and action plan developed to assist in the disposition of foreclosed properties in the stock of the Department, pursuant to Public Law 101–625, section 338(a) (104 Stat. 4146); to the Committee on Banking, Finance and Urban Affairs.

2300. A letter from the Secretary of Housing and Urban Development, transmitting the eighth annual report on rental rehabilitation for fiscal year 1991, pursuant to 42 U.S.C. 1437o(n); to the Committee on Banking, Finance and Urban Affairs.

2301. A letter from the Comptroller General, General Accounting Office, transmitting the list of all reports issued or released in September 1991, pursuant to 31 U.S.C. 719(h); to the Committee on Government Operations.

2302. A letter from the Chairman, Nuclear Regulatory Commission, transmitting the report on the nondisclosure of safeguards information for the quarter ending September 31, 1991, pursuant to 42 U.S.C. 2167(e); to the Committee on Energy and Commerce and Interior and Insular Affairs.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 2929. A bill to designate certain lands in the California desert as wilderness, to establish the Death Valley, Joshua Tree, and Mojave National Parks, and for other purposes; with amendments; referred to the Committee on Merchant Marine and Fisheries for a period ending not later than November 5, 1991, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X (Rept. 102–283, Pt. 1). Ordered to be printed.

Mr. ROSTENKOWSKI: Committee on Ways and Means. H.R. 2056. A bill to amend the Tariff Act of 1930 to require that subsidy information regarding vessels be provided upon entry within customs collection districts and to provide effective trade remedies under the countervailing and antidumping duty laws against foreign-built ships that are subsidized or dumped; with amendments; referred to the Committee on Merchant Marine and Fisheries for a period ending not later than February 28, 1992, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X. (Rept. 102–284, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GEPHARDT (for himself, Mr. LEVIN of Michigan, Mr. MAZZOLI, Mr. KILDEE, Ms. KAPTUR, Mr. MINETA, Mr. MARKEY, and Mr. ECKART):

H.R. 3702. A bill to extend and enhance the operation of the "Super 301" provisions of the Trade Act of 1974, and for other purposes; to the Committee on Ways and Means.

By Mr. DELLUMS (for himself, Ms. NORTON, and Mr. STARK):

H.R. 3703. A bill to authorize the conveyance to the Columbia Hospital for Women of certain parcels of land in the District of Columbia, and for other purposes; jointly, to the Committees on the District of Columbia, Government Operations, and Public Works and Transportation.

By Mr. HERTEL (for himself, Mr. JONES of North Carolina, Mr. BROWN, and Mr. SCHEUER):

H.R. 3704. A bill to authorize appropriations for the National Oceanic and Atmospheric Administration for fiscal year 1992; jointly, to the Committees on Merchant Marine and Fisheries and Science, Space, and Technology.

By Mr. FRANK of Massachusetts:

H.R. 3705. A bill to amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. GUARINI (for himself, Mr. FASCELL, Mr. SMITH of Florida, Mr. CRANE, Ms. ROS-LEHTINEN, Mr. MOODY, Mr. GILMAN, Mr. FORD of Tennessee, Mr. SCHULZE, Mr. JENKINS, Mr. RUSSO, Mr. SHAW, and Mr. SCHEUER):

H.R. 3706. A bill regarding the extension in 1992 of most-favored-nation treatment to the products of the Union of Soviet Socialist Republics; to the Committee on Ways and Means.

By Mrs. SCHROEDER:

H.R. 3707. A bill to provide grants for State pilot programs to retrain individuals in low paying and low-skill jobs in order to reduce unemployment and increase the pool of skilled workers in the United States; to the Committee on Education and Labor.

By Mrs. VUCANOVICH:

H.R. 3708. A bill to provide for an exchange of lands in the State of Nevada; jointly, to the Committees on Agriculture and Interior and Insular Affairs.

By Mr. CUNNINGHAM (for himself, Mr. DORNAN of California, Mrs. BENTLEY, Mr. BLAZ, Mr. BRUCE, Mr. DICKINSON, Mr. ESPY, Mr. EVANS, Mr. EWING, Mr. FRANKS of Connecticut, Mr. HANCOCK, Mr. HEFLEY, Mr. HOCHBRUECKNER Mr. HORTON, Mr. HUGHES, Mr. HUNTER Mr. HUTTO, Mr. JEFFERSON, Mr. KASICH, Mr. KOLTER, Mr. LANCASTER, Mr. LANTOS, Mr. LENT, Mr. LOWERY, of California, Mr. MARTIN, Mr. MCCLOSKEY, Mr. MCCRERY, Mr. MCGRATH, Mr. NCNULTY, Mr. MONTGOMERY, Mr. ORTIZ, Mr. OXLEY, Mr. PICKETT, Mr. RAVENEL, Mr. RITTER, Mr. SISISKY, Mr. SKEEN, Mr. SPENCE, Mr. STUMP, Mr. TAYLOR of Mississippi, Mr. TRAFICANT, and Mr. VANDER JAGT):

H.J. Res. 367. Joint resolution to urge and request the award of the Bronze Star to Navy and Marine Corps personnel who served in the defense of Corregidor Island, the Philippines, under General Wainwright; to the Committee on Armed Services.

By Mr. COX of California:

H. Res. 268. Resolution presenting a question of the privileges of the House; considered and postponed until November 6, 1991.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 127: Mr. BENTLEY and Mr. DOWNEY.

H.R. 474: Mr. DUNCAN.

H.R. 576: Mr. SCHAEFER, Mr. YOUNG of Florida, Mr. PETERSON of Minnesota, Mr. BENNETT, and Mr. CRAMER.

H.R. 661: Mr. ZELIFF, Mr. OWENS of Utah, Mr. MACHTLEY, Mr. SCHIFF, and Mr. KOSTMAYER.

H.R. 673: Mr. COX of Illinois.

H.R. 730: Ms. NORTON.

H.R. 793: Mr. MACHTLEY, Mr. CALLAHAN, Mr. YOUNG of Florida, Mr. PETERSON of Minnesota, Mr. DAVIS, Mr. ESPY, Mr. OWENS of Utah, and Mr. LANTOS.

H.R. 806: Mr. McCANDLESS.

H.R. 842: Mr. SANDERS, Ms. WATERS, and Mr. ANDREWS of Maine.

H.R. 872: Mr. BEREUTER and Mr. FORD of Tennessee.

H.R. 967: Mr. FRANK of Massachusetts.

H.R. 1004: Mr. LIGHTFOOT.

H.R. 1021: Mr. DWYER of New Jersey, Mr. EVANS, Mr. FROST, Mr. JEFFERSON, Mr. LaFALCE, Mr. OWENS of Utah, Mr. RANGEL, and Mr. ROE.

H.R. 1245: Mr. HOAGLAND, Mr. EWING, Mr. FUSTER, Mr. HORTON, and Mr. TORRICELLI.

H.R. 1311: Mr. ENGEL, Mr. HALL of Ohio, Mr. McMILLEN of Maryland, Mr. OXLEY, Mrs. ROUKEMA, and Mr. WELDON.

H.R. 1312: Mr. ENGEL, Mr. HALL of Ohio, Mr. OXLEY, Mrs. ROUKEMA, and Mr. WELDON.

H.R. 1386: Mr. HAYES of Illinois, Mr. JEFFERSON, Mr. LaFALCE, Mr. MFUME, and Mr. MORAN.

H.R. 1389: Mr. ROYBAL.

H.R. 1391: Mr. MACHTLEY.

H.R. 1393: Mr. DE LUGO.

H.R. 1473: Ms. NORTON, Mr. ANDREWS of Maine, and Mrs. LOWEY of New York.

H.R. 1502: Mr. TRAXLER, Mr. TORRES, Mr. EDWARDS of California, and Mr. DORGAN of North Dakota.

H.R. 1527: Mr. PASTOR and Mrs. MEYERS of Kansas.

H.R. 1730: Mr. FRANKS of Connecticut and Ms. LONG.

H.R. 1750: Mr. MACHTLEY.

H.R. 1771: Mr. HOUGHTON, Mr. McCRERY, and Mr. SPRATT.

H.R. 1916: Mrs. MINK and Ms. SNOWE.

H.R. 2058: Ms. SNOWE.

H.R. 2070: Mr. BENNETT and Ms. NORTON.

H.R. 2089: Mr. BACCHUS.

H.R. 2248: Mr. SANDERS, Mr. FAZIO, Mr. ARCHER, and Mr. BRUCE.

H.R. 2390: Mr. EVANS.

H.R. 2534: Mr. RIDGE, Mr. HANSEN, Mr. EVANS, Mr. LEHMAN of California, Mr. GILCHREST, Mr. CAMP, Mr. GEKAS, Mr. MILLER of Ohio, Mr. FASCELL, Mr. FISH, Mr. OXLEY, Mr. MAVROULES, Mr. COX of California, Mr. BOUCHER, Mr. McCOLLUM, Mr. BACCHUS, Mr. JOHNSON of South Dakota, Mr. ANDREWS of Maine, Mr. McCLOSKEY, Mr. FAWELL, Mr. ANDERSON, and Mr. VENTO.

H.R. 2540: Mr. KOLTER, Mr. DINGELL, Mr. BOEHNER, Mr. RITTER, and Mr. LIPINSKI.

H.R. 2541: Mr. KOLTER and Mr. DINGELL.

H.R. 2600: Mr. OLIN, Mr. DELLUMS, Mr. PETERSON of Minnesota, and Mr. DOWNEY.

H.R. 2643: Mr. EWING.

H.R. 2755: Mrs. JOHNSON of Connecticut.

H.R. 2867: Mr. LANCASTER.

H.R. 2870: Mr. McCANDLESS.

H.R. 2880: Ms. WATERS, Mr. RUSSO, Mr. HOYER, and Mr. GILCHREST.

H.R. 2890: Ms. KAPTUR, Mr. JOHNSTON of Florida, and Mrs. VUCANOVICH.

H.R. 2898: Mr. TAYLOR of North Carolina, Mrs. LOWEY of New York, Mr. Boehlert, Mr. ROE, and Mr. WOLPE.

H.R. 3067: Mr. BLAZ, Mr. LAGOMARSINO, and Mr. MARTINEZ.

H.R. 3070: Mr. MFUME, Mr. LEHMAN of California, Mr. BOEHLERT, Mr. PALLONE SANTORUM, and Mr. DeLAY.

H.R. 3102: Mr. SERRANO, Mr. LANCASTER, and Ms. NORTON.

H.R. 3195: Mr. WOLPE, Mr. DeFAZIO, Mr. BONIOR, Mr. BILBRAY, and Mr. OWENS of Utah.

H.R. 3209: Mr. PETERSON of Florida.

H.R. 3212: Mr. McCANDLESS.

H.R. 3231: Mr. JONTZ.

H.R. 3250: Mr. JONES of Georgia.

H.R. 3253: Mr. FORD of Tennessee, Mr. GIBBONS, and Mr. DONNELLY.

H.R. 3292: Mr. FRANK of Massachusetts, Mr. FASCELL, Mr. HERTEL, Mr. COLEMAN of Texas, Mr. FAZIO, Mr. VALENTINE, Mr. HORTON, Ms. KAPTUR, Mr. McCLOSKEY, Mr. HUGHES, Mr. GUARINI, and Mr. VENTO.

H.R. 3313: Mr. JONES of Georgia.

H.R. 3405: Mr. ATKINS.

H.R. 3512: Mr. WEBER, Mr. ANDERSON, Mr. BILBRAY, Mr. LAUGHLIN, Mr. SKELTON, Mr. ENGLISH, Mr. VISCLOSKY, Mr. PETERSON of Minnesota, Mr. QUILLEN, Mr. SUNDQUIST, Mr. ANDREWS of Texas, and Mr. HALL of Texas.

H.R. 3537: Mr. COUGHLIN and Mr. BLAZ.

H.R. 3545: Mr. RICHARDSON, Mr. HALL of Texas, Mr. VENTO, and Mr. SHAYS.

H.R. 3595: Mr. BROWN, Mr. WELDON, Mr. STAGGERS, Mr. OWENS of Utah, Mr. McHUGH, Mr. YATRON, Mr. OBERSTAR, Mr. KOPETSKI, Mr. SCHUMER, Mr. JONTZ, Mr. TRAXLER, Mr. ORTIZ, Mr. TORRES, Mr. LEVINE of California, Mr. MRAZEK, Mr. DE LUGO, Mr. CONYERS, Mr. LEHMAN of California, Mr. FASCELL, and Mr. SKAGGS.

H.R. 3599: Mr. HOLLOWAY.

H.R. 3649: Mr. KLECZKA, Mr. BOUCHER, Mr. WILSON, and Mr. KOLTER.

H.R. 3681: Mr. DINGELL, Mr. STENHOLM, Mr. RAMSTAD, Mr. ANDREWS of Maine, and Ms. KAPTUR.

H.J. Res. 212: Mr. SERRANO, Mr. DYMALLY, Mr. NATCHER, Mr. TRAFICANT, Mr. GEREN of Texas, Mr. CARR, Mr. SAXTON, Mr. SMITH of New Jersey, Mr. WALSH, Mr. McCOLLUM, and Mr. KOPETSKI.

H.J. Res. 312: Mr. MATSUI, Mr. TORRES, Mr. LEWIS of Georgia, Mr. APPLEGATE, Mr. BALLENGER, Mr. BILIRAKIS, Mr. DURBIN, Mr. EDWARDS of Oklahoma, Mr. KILDEE, Mr. LIGHTFOOT, Mr. ORTON, Ms. PELOSI, Mr. SABO, Mr. SCHUMER, Ms. SNOWE, Mr. YOUNG of Alaska, and Mr. THOMAS of Wyoming.

H.J. Res. 324: Mr. KASICH, Mr. LEWIS of California, Mr. FALEOMAVAEGA, Mr. APPLEGATE, Mr. REGULA, and Mr. McCRERY.

H.J. Res. 350: Mr. BENNETT, Mrs. BENTLEY, Mr. BERMAN, Mr. BILBRAY, Mr. BONIOR, Mr. BORSKI, Mr. CARPER, Mr. CLEMENT, Mr. CONYERS, Mr. COUGHLIN, Mr. COX of California, Mr. CRANE, Mr. DeFAZIO, Mr. DWYER of New Jersey, Mr. FAZIO, Mr. FOGLIETTA, Mr. FROST, Mr. HAMILTON, Mr. HAMMERSCHMIDT, Mr. HERTEL, Mr. HOAGLAND, Mr. HORN, Mr. HOYER, Mr. HUGHES, Mr. HYDE, Mr. JACOBS, Mr. JEFFERSON, Mr. JONTZ, Ms. KAPTUR, Mr. KOSTMAYER, Mr. LANCASTER, Mr. LEVIN of Michigan, Mr. LIVINGSTON, Mr. McDERMOTT, Mr. McEWEN, Mr. McNULTY, Mr. MARTINEZ, Mr. MFUME, Ms. MOLINARI, Mr. MOLLOHAN, Ms. NORTON, Mr. NOWAK, Mr. ORTIZ, Ms. PELOSI, Mr. POSHARD, Mr. RUSSO, Mr. SHAW, Ms. SLAUGHTER of New York, Mr. SOLOMON, Mr. SMITH of New Jersey, Mr. SMITH of Florida, Mr. STAGGERS, Mr. VOLKMER, Mrs. VUCANOVICH, Mr. WASHINGTON, Mr. WOLPE, and Mr. YATRON.

H.J. Res. 356: Mr. FROST, Mr. VENTO, Mr. HUGHES, Mrs. COLLINS of Michigan, Mr. JEFFERSON, Mr. MARTINEZ, Mr. FAZIO, Mr. LIVINGSTON, Mr. PICKETT, and Mr. COUGHLIN.

H. Con. Res. 192: Mr. MORAN, Mr. SPRATT, Mr. CRAMER, Mr. BEVILL, Mr. DORNAN of California, Mr. SYNAR, Mr. RAY, Mr. PURSELL, Mr. PARKER, Mr. YOUNG of Florida, Mr. PANETTA, and Mr. PORTER.

H.Con. Res. 224: Mr. MOORHEAD, Mr. TRAFICANT, Mr. ANDERSON, and Mr. WILSON.

H. Res. 134: Mr. ANDREWS of Maine.

H. Res. 164: Mr. WASHINGTON.

H. Res. 238: Mr. MORAN.

H. Res. 257: Mr. JONTZ, Mrs. UNSOELD, Mr. TRAXLER, and Mr. UPTON.

H. Res. 260: Mr. GEJDENSON, Mr. McNULTY, and Mr. GILMAN.

EXTENSIONS OF REMARKS

THE COMPASSION AND COMMITMENT OF ROBERT KRAFT

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. SOLARZ. Mr. Speaker, the Jewish tradition teaches us that one of the measures of a person's virtue is his or her capacity to carry out "ma'asim tovim," which can be translated from the Hebrew to mean "good deeds."

I rise today to pay tribute in this House to a dear friend of mine whose record of good deeds is almost immeasurable. Bob Kraft is a Boston industrialist whose success in the business world is matched by his commitment to helping those who are less fortunate and to making the world a better place in which to live. Together with his wife, Myra, and inspired by his late father, Harry Kraft, Bob has initiated projects ranging from job creation for Soviet Jews in Israel to scholarships for Boston youngsters to progressive environmental practices in his company.

Recently, the Jewish Advocate published a profile of Bob Kraft which details his many contributions to society. I commend this piece to my colleagues, and I hope that many of them will have the pleasure, as I have, to get to know Bob Kraft.

[From the Jewish Advocate, Sept. 27–Oct. 3, 1991]

POWER AND WEALTH HASN'T SPOILED ROBERT KRAFT

(By Jane Weingarten)

At Foxboro Stadium, home to the Boston Patriots and superstar rock concerts, recycled paper goods have replaced styrofoam cups and other environmentally unsound products. In box-making plants in Tel Aviv and Haifa, 40 Russian Jewish newcomers work alongside Israeli Arabs and Druse. Behind both of these innovative and successful ventures stands Robert Kraft, a business man with boyish good looks and an easy-going manner who likes a good business deal, but has a mission in life that he considers more important than the $100 million plus wealth his business holdings have reportedly earned him.

Kraft's feet have been firmly planted in the future-oriented world of power and business since he became President of Rand-Whitney, the largest privately-owned packaging company in the United States, and since he successfully launched his own company, International Forest Products. But he is also rooted, enthusiastic, and loyal to the spiritual ties and the Jewish values he learned from his father, the late Harry Kraft.

"I don't just want to play between the 40 yard lines. I have a mission to add value to life. In business, it's necessary to have good judgment, and to do the honorable and ethical thing. Each night I want to go to bed knowing that in every interaction I and those I met with during the day are richer for the experience," Kraft told the Advocate in an interview just before Yom Kippur.

The Day of Atonement has special meaning for Kraft. Raised in Brookline in a home steeped in Jewish values, the 50-year-old Kraft learned about prayer, study and acts of loving kindness from the elder Kraft, a devoted volunteer teacher at Temple Kehilleth Israel (K.I.) Religious School. On Saturday afternoons the family studied Talmud. "When you think you are high and mighty, walk on the beach and think of yourself as no more than a grain of sand under your feet," the elder Kraft taught Robert and his sister and brother.

Kraft still gets fresh squeezed orange juice, bagels and coffee in a heated cup when he visits his mother each Sunday. His father's death at age 65 in 1975 was a turning point. "I believe you're not really an adult until you lose a parent," he admits.

"It was Harry Kraft who gave many generations of children their Jewish values and sense of roots, which they have kept to this day," says Judge Sumner Kaplan. The elder Kraft's Saturday morning sermons for children were built around Bible passages he put into language children could understand." He was angelic, pleasant, compassionate, just a beloved man who was revered by many children. He reminded me of Julie Andrews with the Trapp family," says Kaplan, whose own daughters now in their 40s are among the former K.I. students who still talk about Kraft's role in shaping their Jewish identity.

The New Republic Editor-in-Chief Martin Peretz has known Bob Kraft for many years, and says he dwells successfully in both material and spiritual worlds because, "he combines inconsistent traits and somehow makes it work. He is both gentle and firm, idealistic and practical, learned and playful," says Peretz.

Peretz and Kraft served together for many years on the board of Channel 7 Television Station. Kraft became the second largest shareholder in the station, putting in a "significant infusion of capital that helped make possible the buyout of stock owned by a group of dissident shareholders—including Ruth Batson, other Black leaders, former M.I.T. President Jerome Weisner, and myself, and others who had originally taken over the station for idealistic purposes. Kraft came in as an articulate voice for creative programming that would stretch and challenge the audience," says Peretz. "But the station was really the playing of its major stockholder, David Mugar. It has been a failure as a business and an embarrassment as a cultural institution," says Peretz.

Kraft's arrangement with Channel 7 gave him a one-time ability to exit based on pre-depreciation values. "I have recently exercised my option. I made a good business deal," Kraft says.

Kraft started International Forest Products in the early 70s, after working for Rand Whitney, founded by his father-in-law Jacob Hiatt. He says it was against big odds that he was able to get his own company off the ground. Today, he reports, the award-winning company is environmentally sensitive, has a paper mill that takes in tons of recycled waste, and is responsive to its workers.

Shortly after founding International Forest Products, Kraft began doing business in Israel. Three years ago he entered into partnership with Koor Industries of Israel. Today, Carmel Container Systems Ltd., owned jointly by Rand Whitney and Koor Industries, is the largest Israeli company providing paper packaging for agriculture, food and beverage industries. A leader in exports, the company's three plants near Haifa, Tel Aviv and Carmel use state-of-the-art machinery to achieve sophisticated color printing and graphics. Carmel ranks 56th of 150 Israeli industrial leaders by sales volume. The company employs 800 people.

Kraft is proud of the role he has played through Carmel in giving jobs to Russian newcomers in Israel. "We Jews have a dream to add Russians. I'm in there doing it, creating a vibrant company to give them jobs and developing the Israeli economy."

"For me to sit in the lounge at the Tel Aviv Hilton, watching the sunset of the Mediterranean, is to know how lucky I am to be part of a generation that can get involved in that country's development. I was in Jerusalem before when it was a split city. Now, to doven at the Wall, I get a spiritual connection that is very deep," says Kraft.

"Bob Kraft's commitments are at the cutting edge of what is needed in Jewish life today. He has always been far-sighted in his thinking and was among the first to understand years ago the importance of economic developments for the State of Israel. He was willing to invest his time and money in Israeli business ventures. He also has a deep understanding of the importance of Jewish education for the future of our people, and of the crisis of identity our community is facing right now," comments Combined Jewish Philanthropies President Barry Shrage.

Kraft wants his four grown sons to maintain their loyalty to Jewish ties. "They keep kosher homes on their own now. In our ephemeral society, there is not enough tradition. When a son questions the value of organized religion, stress roots, and tell him that religion is a place to turn in tough moments," he explains.

Kraft calls his wife, Myra, his most valued advisor. She serves as a director of each of his companies. Myra Kraft is the daughter of Worcester philanthropist Jacob Hiatt, noted for funding comparative religion studies at Brandeis and Holy Cross.

Kraft says be learned about philanthropy from his own Dad, who never made much money in his dress factory, but always gave 10 percent of his earnings to charity. Together, Kraft and Myra have continued their family tradition with gifts that include a park in the heart of Jerusalem to honor its mayor Teddy Kollek. The Krafts also give scholarships to needy students who never know where the money came from. "We try to do things with little or no publicity. I believe people who have little or no hope need that kind of support with no strings attached," says Kraft. "Public service gives me psychic income that is vital to me."

Among the Krafts' many philanthropic gifts is the Harry Kraft Youth Center at Temple Emanuel. Temple Emanuel Rabbi Samuel Chiel says, "the Youth Center was given with love, but Kraft insisted on a quiet dedication. He is concerned about the best

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

sense of taking values from the past and his concern for the future. He doesn't seem to value fanfare," adds Chiel.

Among his hopes for the future of Israel—direct election of a Prime Minister to end the governmental deadlock that now exists. Kraft would like to see a leader like Benjamin Netanyahu, who can relate to the west. He would also like to see a Palestinian homeland in confederation with Jordan. "I'd fight like hell to give them land in the West Bank and Gaza," he says.

POLITICAL PARTIES IN YUGOSLAVIA

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. ENGEL. Mr. Speaker, I include in the RECORD a statement on the future of Kosova and Yugoslavia agreed to by the Coordinative Council of Albanian Political Parties in Yugoslavia. I believe that the United States must take a leading role in resolving the conflict in Yugoslavia and that true peace will not be achieved there until the legitimate interests of the Albanian minority have been addressed.

COORDINATIVE COUNCIL OF ALBANIAN POLITICAL PARTIES IN YUGOSLAVIA

The Coordinative Council of Albanian Parties in Yugoslavia, on the solution of the Albanian question and the actual situation in Yugoslavia issued the following political declaration:

A. The Albanian national question in Yugoslavia has remained unsolved since the creation of the Albanian state in 1913. Since then half of the Albanian population has remained outside the borders of Albania although they inhabit a homogenous territory in which they are autoctonous. The Albanians of Yugoslavia never enjoyed their legitimate national and civil rights.

B. The Albanians of Yugoslavia were left in this position since almost none of the generally accepted criteria for the determination of borders were respected. After the Second World War, the Albanians of Yugoslavia have been further divided into several federal units: Kosova, Serbia, Macedonia and Montenegro. The Albanians of Kosova have had a restricted political autonomy since 1945 which was somewhat broadened with the federal constitution of 1974 still in force and according to which Kosova is a constitutive Yugoslav federal unit.

C. Serbia, breaching the federal constitution, abolished the autonomy of Kosova, suspended the Regional Parliament and the government of Kosova as well as the local parliaments and governmental bodies; closed down mass media in Albanian; violently fired around 100,000 Albanian workers from their work; destroyed the educational system in Albanian and is in the process of abolishing it at all levels.

D. The Albanians of Yugoslavia have been organizing peaceful protests for a whole decade but all their protests have been brutally crushed by Serbian and federal police forces leaving behind over 100 people shot dead, several hundred people wounded, several thousand Albanian pupils mysteriously poisoned, thousands of Albanians imprisoned for political reasons and over half of the entire population brutally processed by the police. Repression, especially in Kosova, has become an everyday refrain for the Albanians and the situation is unbearable.

E. Since Yugoslavia proved to be an unsuccessful model for national and civil questions, Albanian deputies of the Parliament of Kosova—now in exile—proclaimed the Declaration of Independence on July 2nd 1990, whereas on September 7th, 1990 Kosova was proclaimed a republic. This came as a result of the beginning of restructuring in Yugoslavia.

Albanian political parties in Yugoslavia, being determined to follow the way of peaceful and democratic solution of all questions, on the basis of the right of people for self-determination, according to the principles of CSCE and the Conference of Paris, for the solution of the Albanian question in Yugoslavia as well as the Yugoslav crisis in general, offers the following options:

1. If the external and internal borders of Yugoslavia remain unchanged, then Kosova must have the status of a republic as a sovereign and independent state with the right of joining the league of other sovereign states in Yugoslavia.

Albanians in Kosova account for 90% of the population, whereas the Serbs, the Montenegrins and other ethnic groups amount to 10%. As to the question of the Serbs, Montenegrins and other ethnic groups in Kosova we do—of course—guarantee all national and civil rights.

Albanians in Macedonia (accounting for around 40% of the population), as well as in Serbia, Montenegro should have the status of a state forming element and should enjoy all national and civil rights.

2. If the internal borders between the republics are to be changed, the request of the Albanians in Yugoslavia is that the Albanian Republic in Yugoslavia be built on the bases of the ethnic and other principles that apply for the Serbs, the Croats, the Slovenes and other peoples of Yugoslavia.

3. If the external borders of Yugoslav are to be changed, the Albanians in Yugoslavia request that decisions about reunification of Kosova and other Albanian territories in Yugoslavia with Albania will take place through a plebiscite only under international monitoring.

Albanian Political parties in Yugoslavia accept the results of the Referendum organized in Kosova from September 26th–30th, 1991 for Kosova as a sovereign and independent republic.

The crisis in Yugoslavia began in Kosova where Albanians expressed their dissatisfaction with their position and it cannot be solved without the participation of around 3 million Albanians in Yugoslavia, in terms of numbers, the most numerous after the Serbs and the Croats.

Finally, the adequate solution of the Albanian question in Yugoslavia would be a great contribution for Albanians in the Balkans (around 7 million of them) to be a stabilizing factor in the region as well as in Europe.

DR. IBRAHIM RUGOVA,
The President of the Coordinative Council of Albanian Political Parties in Yugoslavia.

The following Albanian political parties are represented in this Council:

1. Democratic League of Kosova
2. Party of Democratic Prosperity-Macedonia
3. Farmer's Party of Kosova
4. Parliamentary Party of Kosova
5. Albanian Dem-Christian Party-Kosova
6. Democratic League in Montenegro
7. Party of Albanian National Unity-Kosova
8. Social Democratic Party of Kosova
9. Party of Democratic Action-Serbia
10. People's Democratic Party-Macedonia
11. Albanian Democratic Party-Serbia

HONORING CRAIG PROVOST ON ATTAINING EAGLE SCOUT RANK

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. REED. Mr. Speaker, I rise today to salute a distinguished young man from Rhode Island who has attained the rank of Eagle Scout in the Boy Scouts of America. He is Craig Provost of troop 28 in Providence and he is honored this week for his noteworthy achievement.

Not every young American who joins the Boy Scouts earns the prestigious Eagle Scout Award. In fact, only 2.5 percent of all Boy Scouts do. To earn the award, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. He must earn 21 Merit Badges, 11 of which are required from areas such as citizenship in the community, citizenship in the Nation, citizenship in the world, safety, environmental science, and first aid.

As he progresses through the Boy Scout ranks, a Scout must demonstrate participation in increasingly more responsible service projects. He must also demonstrate leadership skills by holding one or more specific youth leadership positions in his patrol and/or troop. These young men have distinguished themselves in accordance with these criteria.

For his Eagle Scout project, organized the cleanup of a neighborhood baseball field, by painting signs and removing debris he changed an eye sore in the community into a field to be proud of.

Mr. Speaker, I ask you and my colleagues to join me in saluting Eagle Scout Craig Provost. In turn, we must duly recognize the Boy Scouts of America for establishing the Eagle Scout Award and the strenuous criteria its aspirants must meet. This program has through its 20 years honed and enhanced the leadership skills and commitment to public service of many outstanding Americans, two dozen of whom now serve in the House.

It is my sincere belief that Craig Provost will continue his public service and in so doing will further distinguish himself and consequently better his community. I am proud that Craig Provost undertook his Scout activity in my representative district, and I join friends, colleagues, and family who this week salute him.

MELVIN "MEL" FURMAN, A MAN TO BE PROUD OF

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mrs. LOWEY of New York. Mr. Speaker, I rise to pay tribute to Melvin Furman, a man who embodies the spirit of community service.

This Saturday, Mel is being honored by the Jewish War Veterans of America, an organization which has upheld and defended human freedom and democracy at home and abroad for nearly a century.

Mel has held positions of leadership within JWV at the national, county, and local levels. He served on JWV's National Executive Committee and was the commander of the Westchester County JWV in 1977–78 as well as the commander of the Mount Vernon JWV Post No. 42 in 1971–72.

He has also served as the chairman of the Central Committee for Veterans Affairs in Mount Vernon. Mel has worked tirelessly on behalf of veterans throughout his life and has provided tremendous assistance to fellow veterans to ensure that their needs are more adequately addressed than otherwise would be the case.

Mel's military duty included 24 months as a staff sergeant in England during World War II as well as 8 months as a member of the occupation Army of Germany.

His years of community service have included valuable volunteer work for Cancorp, an organization that arranges flights for cancer victims who need to travel to obtain needed medical treatment.

Mel has been a leading Mount Vernon resident for the past 60 years, and throughout his life he has been a vibrant and energetic participant in the community's life. That continues to this day as he works hard in a very active retirement.

TRIBUTE TO WKSU'S EXPANSION IN TUSCARAWAS COUNTY

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. TRAFICANT. Mr. Speaker, I rise on this momentous occasion to pay tribute and congratulate WKSU as they expand into Tuscarawas County.

Throughout the month of October, WKSU celebrated this occasion with numerous groundbreaking ceremonies. WKSU's expansion was made possible by a grant from the Public Telecommunications Facilities Program as well as from generous contributions from the private sector. WKSU will use the funds to construct a new building for the station and to purchase new repeater stations. These new facilities will allow WKSU to reach an additional 159,000 listeners.

Mr. Speaker, I rise today to congratulate WKSU as they modernize their facilities to service an expanded number of listeners in my 17th District in Ohio and elsewhere.

SOVIETS MUST STOP AID TO CASTRO BEFORE GAINING MFN PRIVILEGES

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. GUARINI. Mr. Speaker, today I am introducing a bill which provides that the United States should not grant most-favored-nation status [MFN] to the Soviet Union until the Soviet Union ceases all military and economic support for the regime of Fidel Castro. Simply stated, we should not be giving trade privileges to a nation while it sends billions of dollars to prop up a Cuban dictatorship that could be a threat to our national security and that makes a mockery of human rights.

We must not forget the lessons of history. The Cuban missile crisis awakened Americans to the reality that there could be armed nuclear warheads just minutes from our population centers. Fidel Castro's military-oriented economy has lowered the standard of living of the Cuban people. As everyone knows, he has no regard for internationally accepted human rights standards or the promotion of democratic values, and has instigated guerrilla activities in Latin America and other parts of the world for years. Mr. Castro allows no freedom of the press, no religious activities, no workers' rights, and no criticism of his regime.

The Cuban people who live under this despot yearn for freedom. They endure harsh prison sentences merely for seeking the same fundamental human rights that people in most nations take for granted. Each year, thousands of Cubans risk their lives crossing by boat or on home-made rafts to Florida to escape this ruthless dictator, while millions more continue their daily drudgery, working for a failed system.

We must learn a lesson from history. This same man is far more desperate today than he was in the 1960's. He is cornered, he has ruined the economy, and he is increasingly isolated in a world that has all but abandoned a fatally flawed Communist ideology.

Mr. Speaker, Fidel Castro has counted on the Soviet Union for survival. Indeed, 70 percent of Cuban trade is with the Soviet Union. Cuba receives almost all of its oil—vital to Cuban industry—from the vast Soviet petroleum reserves.

Moreover, at least $1 trillion in Soviet military aid flows to Cuba annually, in addition to over $3,500 million in economic assistance.

Over the past few years, we have watched one Communist government after another being swept aside, giving rise to democracy, freedom, human rights, and economic opportunity. Eastern Europe is now free. The Baltic States are free. The Soviet Union is collapsing into loosely associated republics with newfound rights and economic opportunities for their citizens.

But, unfortunately for the Cuban people, Fidel Castro stubbornly clings to his repressive Communist ideology. Cubans are no closer to true freedom today than they were in 1960, and Mr. Castro, a die-hard Marxist, is trying to keep it that way.

Mr. Speaker, every day that this tyrant stays in power, thousands of innocent Cubans languish in prison for no crime other than the desire to be free. Millions more suffer under the yoke of totalitarianism. If Congress does not seize every opportunity to effect change in Cuba, the pain and suffering of an entire country will be on our hands.

Today, as we watch the drastic new steps the Kremlin is taking, we must begin serious debate on whether to grant MFN status to the Soviet Union while it continues to support the tyrannical Castro regime. I am here to remind my colleagues that trade privileges to the Soviet Union at this time would indirectly assist the Communist government of Fidel Castro. The money the Soviet Union saves in lower import duties in the United States could very well free up other Soviet funds to help prop up Mr. Castro. This is clearly contrary to the foreign policy interests of the United States.

The Soviet Union has become a vast potential market for United States exporters, and improved trade relations between our two countries will help support the fledgling Soviet democracy. But in the interest of ensuring the security of the Western Hemisphere and promoting human rights, we must encourage the Soviet Union to stop supporting the despotic Cuban regime before we extend any trade privileges to the Soviet Union.

I welcome President Gorbachev's announcement that he will cut back Soviet troops in Cuba. My bill provides an incentive for him to continue these cutbacks. If the Soviet Union is serious about democratization, and if it wants trade privileges from the United States, then its foreign policy and foreign aid must reflect this commitment. Subsidies to Fidel Castro must stop. I urge my colleagues to support and cosponsor this important legislation.

HWAC COMMENDED FOR ENVIRONMENTAL REPORT

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. RITTER. Mr. Speaker, I rise today to commend the Hazardous Waste Action Coalition [HWAC] for their leadership in taking an innovative approach to examining a new profession that has evolved—the hazardous waste practice—and for having the foresight to recognize the need to integrate the complex interrelationship among current laws and regulations, liabilities of hazardous waste management, roles and responsibilities of all involved parties, and the state of the technology.

HWAC, an association of engineering and science firms engaged in the investigation and cleanup of hazardous waste sites, recently released a report entitled, "The Hazardous Waste Practice—Technical & Legal Environment 1991," which provides a history of hazardous waste cleanup over the past decade and an assessment of the progress that has been made. This distinctive document also explains the technical uncertainties involved in the hazardous waste practice, the impact of liability concerns on cleanup activities, and the reality and magnitude of the problems remaining, which this Congress will address during this legislative session.

Founded in 1985, HWAC has been a leading voice for those attempting to clean up hazardous waste created by others. HWAC members employ approximately 75,000 people who constitute the vast majority of this great Nation's highly trained consulting engineers, scientists, geologists, hydrogeologiests, toxicologists, and chemists working on these vital public health and safety problems. These personnel are located in over 800 offices throughout the United States, and provide the greatly needed technical expertise to clean up the hazardous waste sites which are located in all of our districts.

As this body begins to examine legislation reauthorizing the Resource Conservation and Recovery Act [RCRA], I strongly urge that you review the HWAC report and reflect upon its analysis of the lessons learned in the last 10 years of hazardous waste cleanup. This Congress must learn from past cleanup efforts to ensure that hazardous waste management and restoration laws provide a safe environment for future generations. Copies of the report are available from HWAC.

A DEBATE OVER ASSISTANCE TO THE SOVIET UNION

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, the debate over granting foreign aid to the Soviet Union is getting more controversial every day.

For over 40 years, the nation whose Communist rulers were absorbed in adventurism and expansionism is now stagnant. Today, there is a new ideal in the Soviet Union and now this nation is looking at the United States and other nations for assistance.

Before the United States considers providing any new assistance to the Soviet Union, several of my colleagues and I believe it is important to establish at the outset the conditions that would have to be met by the Soviets. The conditions in the Kyl, Frank, Miller, Ros-Lehtinen, McCollum amendment could have been easily accomplished. One of the key elements of this amendment was for the Soviet Union to cease economic aid to Cuba. Indeed, my colleagues and I felt that it is in the best interests of both the United States and the Soviet Union to achieve this goal, and as soon as possible. Unfortunately, this amendment failed to be included in the foreign aid bill because it was taken out in behind the scenes negotiations, out of the public eye.

We all are aware that democracies are less threatening than authoritarian governments. That is why it is in the interest of the United States to exercise appropriate influence to foster change in the Soviet Union, to achieve a total transformation of its political, economic, and military systems.

In addition to the cutting off of aid to Cuba, the conditions to grant any new aid initiative must also include significant improvements in human rights, the creation of a democratic government, a reduction in military forces and spending, and an establishment of a free-market economy. If Mr. Gorbachev wishes to move toward a democratic and free-market society, as he claims, then he should save his government $4.5 to $7 billion annually by terminating aid to Cuba. Until Mr. Gorbachev does this, we must not consider any assistance to the Soviets based on their promise to free their own people while they continue to finance the subjugation of millions of Cubans. If the United States sends aid to the Soviets, we are taking part in this subsidy. Even if the United States tax dollars do not directly reach Havana, we are certainly freeing up Soviet money to send to Castro.

Congress will soon be faced with voting on most-favored-nation [MFN] status to the Soviet Union. Under the fast-track authority, President George Bush submitted his recommendation for MFN status to the Soviet Union. Under the fast-track authority, Congress can only vote up or down, without attaching amendments, and on a strict deadline for any trade vote.

President Bush feels that the time is right to grant MFN status to the Soviet Union, and his recommendation to do so was submitted to the Congress in early October. In response to these actions, I am an original cosponsor of Representative FRANK GUARINI's bill which conditions continued MFN status next year on the cessation of all Soviet military and economic aid to Cuba. Because of the way the law of fast-track authority is written, nothing can be done sooner to condition MFN status to the Soviet Union before 1992.

In the interest of human rights and ensuring security of the western hemisphere, we must influence the Soviet Union to cease aid to the Cuban regime before we extend any trade privileges to the Soviet Union.

Through the years, Congress has expressed its outrage over the human rights abuses exercised by Castro. Now is the time that his militaristic regime be cut off by his Soviet benefactors. We must reinforce these messages.

For the first time in over 40 years, the United States and the Soviet Union have a chance to develop a positive relationship. But the Soviet Union must be an honest broker for this relationship to work and we must not allow ourselves to foolishly believe the Soviets.

We have been mislead too many times already.

NOVEMBER IS HOSPICE MONTH

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. GALLEGLY. Mr. Speaker, I rise today to remind my colleagues that the President has declared November to be National Hospice Month, and to join me in honoring the important role that hospices play.

As the President has stated:

> Employing the skills of a full cadre of health care professionals and volunteers—including physicians, nurses, counselors, therapists, and members of the clergy—hospice care enables the terminally ill individuals to live peacefully and comfortably in their final days. The dedicated men and women who provide hospice care help terminally ill patients to face natural death without feeling alone or unprepared. They also help patients' families cope with emotional suffering and loss. A vital portion of our Nation's health care system, hospice programs reaffirm the inherent dignity and worth of each individual while underscoring our reverence for human life.

I also would like to pay special honor to Camarillo Hospice, the first bereaved program in Ventura County, CA. Formed in 1978, the hospice is a hospital-based but autonomous organization, based in Pleasant Valley Hospital. Like most such organizations, Camarillo Hospice is committed to the dignity of the human experience. It is about living, not about dying. This volunteer group believes that it is the quality of life that matters, whether that life is measured in years, days, or hours.

Mr. Speaker, Camarillo Hospice will provide its 1-on-1 care to more than 800 individuals and family members this year alone, and serves the communities of Camarillo, Somis, Santa Rosa Valley, Moorpark, and the Navy bases at Point Mugu and Port Hueneme.

As the Nation and California commemorate the fine work of hospices, I'm sure my colleagues join me in saluting the volunteers and staff associated with Camarillo Hospice—indeed, those associated with all of the many fine hospices nationwide—for the fine work they do in providing clients and families with the emotional, practical and spiritual assistance they need.

OREGON SUPPORTS FREEDOM FLIGHTS FOR SOVIET JEWS

HON. LES AuCOIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. AUCOIN. Mr. Speaker, I want to express my gratitude to Jerry Stern of Portland, OR, for his most recent efforts in support of the national Continuing Exodus campaign to bring Soviet Jews to Israel. Mr. Stern has agreed to pay the entire $250,000 cost of chartering a plane to bring 250 Soviet Jews to Israel. He has encouraged others to contribute to the cost of a second plane, and so far pledges have come in to pay for 64 of the 250 seats on this second plane.

Throughout its existence, the State of Israel has provided a haven for Jews from all parts of the world, from communities long victimized by intolerance and oppression. Now, the end of the cold war has enabled hundreds of thousands of Soviet Jews to obtain visas for Israel, achieving a long-sought goal of American foreign policy.

It is impossible not to admire the way Israel has risen to the challenge presented by the dramatic upsurge in immigration. An entire country is welcoming hundreds of thousands of new citizens with open arms, never hesitating to make the sacrifices needed to turn this dream into a reality.

Just as admirable is the generosity and dedication of Jerry Stern and the many other Americans who are doing so much to help the resettlement effort. I applaud these humanitarian efforts and submit for inclusion in the RECORD an article from the Jewish Review.

PORTLAND RESIDENT FUNDS ONE EXODUS FREEDOM FLIGHT

Portland's first Freedom Flight, part of the national Continuing Exodus campaign to fly Jews directly out of the Soviet Union, will take wing in early January, thanks in part to a generous grant by Jerry Stern. The campaign's aim is to have two full flights under the Portland banner within the next several months.

"There are Freedom Flights in ever community in the United States," says Stern. "I fear that this winter, when people in the U.S.S.R. find they don't have enough food and the store shelves are empty, there could easily be another coup attempt. But by then it will be too late. We have no other choice but to get our families out now."

Stern is funding an entire plane as a challenge to the Portland Jewish community to match it with a second flight. So far, 64 seats have been pledged on the second plane. It takes $250,000 to cover all the costs of chartering a plane to bring 250 Soviet Jews to Israel.

A seat can be purchased by individuals, groups or organizations for $1,000 with pledges payable over three years. All new pledges to Continuing Exodus can be credited toward a seat on the freedom flight. Seats on the plane can be purchased in memory or honor of a loved one. A nameplate will be attached to the actual plane seat.

For more information, contact the Jewish Federation of Portland at 245-6219.

HONORING THE BETSY ROSS LADIES AUXILIARY

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. ENGEL. Mr. Speaker, it is my special privilege today to pay tribute to the Betsy Ross Ladies Auxiliary to the Veterans of Foreign Wars of the United States on the occasion of its 75th anniversary, which makes it the oldest ladies auxiliary in the VFW.

All the veterans who participate at Bronx Post No. 95 know the dedication and commitment of the ladies auxiliary, and the community takes great pride in their accomplishments. From the day it was instituted in November 1916, the women of Betsy Ross have been active in supporting the troops of the United States. Within a year of its founding, the group effected the donation of an ambulance to our troops in France and followed soon after with the donation of a second ambulance in 1918.

Over the years, their generous service has continued in the promotion of programs involving youth activities, public safety, caring for disabled veterans, and a host of other activities. After 75 years of service, the Betsy Ross Ladies Auxiliary shows no signs of slowing down.

On behalf of the Bronx community, and with a larger thank you from our troops around the world, I congratulate all those who have been affiliated with the Betsy Ross Ladies Auxiliary for holding high the banner of strength and caring that characterizes the U.S. military.

TRIBUTE TO THE DEDICATION OF THE CRAIG BEACH VILLAGE MUNICIPAL BUILDING

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. TRAFICANT. Mr. Speaker, I rise to pay tribute to the Craig Beach Village Municipal Building as it opened its doors in my 17th District of Ohio on October 19, 1991.

This is truly a great occasion. In 1930, the populace voted to incorporate Craig Beach Village with Harry Vest as its first Mayor. The people of the village hoped to see a building erected to house its government.

That dream came true on August 12, 1991, when the first meeting was held in the Craig Beach Village Municipal Building. The dedication ceremony on October 19, 1991, was indeed, a monumental occasion.

Mr. Speaker, I rise today to pay tribute to the people of Craig Beach Village and their new municipal building. I congratulate them and wish them well.

TRIBUTE TO ROBERT P. PICARD, R.N.

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize Robert P. Picard, R.N., of Woonsocket, RI. Robert P. Picard is the recipient of the Francesco Cannistra, M.D. Memorial Award.

The Francesco Cannistra Memorial Award is presented each year by Thundermist Health Associates, of Woonsocket, RI, to the person in the northern Rhode Island community who has done the most to improve health care.

Robert Picard received his associate of science degree in nursing in 1970. Mr. Picard is currently employed as a Urological Nurse Specialist for the Visiting Nurse Service of Greater Woonsocket. Previous to this job he was employed by Landmark Medical Center for 23 years. Over the years Robert Picard's contributions to the community have been extraordinary.

Robert Picard was a founding member of the Association of Operating Room Technicians of Rhode Island. He has also served as treasurer for the Association of Operating Room Nurses of Rhode Island. In addition, he was the coordinator for the Advanced Life Support System for Woonsocket.

Robert Picard currently serves on the board of directors of the Northern Rhode Island Community Mental Health Center. He also presently serves as vice president for the board of directors at Tri-Hab, Inc., and he is the treasurer of the Woonsocket Rotary Club.

Through his career in the nursing profession, Robert Picard has received many awards. In 1970, he was the recipient of the Student Nurse of the Year Award. The American Heart Association has presented him with the Nurse of the Year Award in 1985, and the Special Service Award in 1988.

It is with great pleasure that I congratulate Robert Picard as the recipient of the Francesco Cannistra Memorial Award. Robert Picard has built a reputation in nursing that is admired by all associated with profession. I extend my best wishes to Robert Picard for all his future endeavors.

BRADFORD JAMES BOISVERT EARNS EAGLE SCOUT AWARD

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. REED. Mr. Speaker, I rise today to salute a distinguished young man from Rhode Island who has attained the rank of Eagle Scout in the Boy Scouts of America. He is Bradford James Boisvert of Troop 49 in Warwick and he is honored this week for his noteworthy achievement.

Not every young American who joins the Boy Scouts earns the prestigious Eagle Scout Award. In fact, only 2.5 percent of all Boy Scouts do. To earn the award, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. He must earn 31 merit badges, 11 of which are required from areas such as citizenship in the community, citizenship in the Nation, citizenship in the world, safety, environmental science, and first aid.

As he progresses through the Boy Scout ranks, a Scout must demonstrate participation in increasingly more responsible service projects. He must also demonstrate leadership skills by holding one or more specific youth leadership positions in his patrol and/or troop. These young men have distinguished themselves in accordance with these criteria.

For his Eagle Scout project, he donated his time, talents, and organizational skills to coordinate a community dinner for the members of a local church. He is an outstanding young man who is an inspiration to many.

Mr. Speaker, I ask you and my colleagues to join me in saluting Eagle Scout Bradford James Boisvert. In turn, we must duly recognize the Boy Scouts of America for establishing the Eagle Scout Award and the strenuous criteria its aspirants must meet. This program has through its 80 years honed and enhanced the leadership skills and commitment to public service of many outstanding Americans, two dozen of whom now serve in the House.

It is my sincere belief that Bradford James Boisvert will continue his public service and in so doing will further distinguish himself and consequently better his community. I am proud that Bradford James Boisvert undertook his Scout activity in my representative district, and I join friends, colleagues, and family who this week salute him.

THE CALABRIA MUTUAL AID SOCIETY: COMMITTED TO SERVICE

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mrs. LOWEY of New York. Mr. Speaker, Westchester's vibrant Italian-American community has made numerous important contributions to the well-being of Westchester. Without our flourishing and vibrant Italian-American community, our county would be a poorer place. A prime example of this is the work of the Calabria Mutual Aid Society, and the honorees for its 1991 dinner-dance, Assemblymen Ron Tocci and Frank DiMarco.

The Calabria Society, like other mutual aid societies in Westchester, does innumerable good works throughout our community. Through charitable giving drives, scholarship funds, and other worthwhile activities, they help to improve the quality of life of many of their neighbors as well as their own members. The Calabria Mutual Aid Society has been involved in this good work for 55 years.

One of the leaders of the society for more than 15 years is Assemblyman Ron Tocci, who has also represented the Sound Shore area in the New York State Assembly since 1985. He is a hardworking and conscientious legislator whose service in the assembly has been marked by a tremendous commitment to the fight against substance abuse, particularly among young people. As chairman of the committee on harbors and coastal zones, he has done a tremendous job of focusing attention on the need to clean up our State's waterways. Throughout his life, from his service as a paratrooper in Vietnam, to his tenure on the Westchester County Legislature, to the excellent work that he does today, Ron Tocci has been a model public servant. That spirit carries over, as well, into his service with the Calabria Society.

His commitment to a better Westchester is matched by that of Frank DiMarco, a descendent of a Calabria region family who is no stranger to community service. An attorney in private practice in New Rochelle, Frank has been active in the Calabria Society since 1975. Since 1978, he has held the position of lecturer in the society. His involvement in promoting the improvement of our community does not stop there, however. He has also applied his remarkable energy and many talents to such organizations as the Kiwanis Club, the Residence Park Neighborhood and Civic Association, of which he is treasurer and a member of the board of directors, and the Bronx Lodge of Elks, of which he is past exalted ruler.

These two individuals, Mr. Speaker, truly reflect the kind of dedication and commitment that make the Calabria Mutual Aid Society the important force in our community that it is. I am proud to have this outstanding group in the district that I represent. Indeed, everyone in Westchester is fortunate to have them working to improve our community. I am sure that all of my colleagues join me in congratulating Assemblymen Ron Tocci, Frank DiMarco, and all of the society's members on this special occasion.

COLUMBIA UNIVERSITY—A CENTER FOR THE STUDY OF ITALY

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. GUARINI. Mr. Speaker, it is with a great sense of pride, having received my naval commission from Columbia University's midshipman's school and as a Member of the House from New Jersey of Italian ancestry, that I bring to the attention of my distinguished colleagues the news that Columbia University has again become a major center for the study of Italy in the United States. Thanks to the enlightened decision of the Italian Government to acquire from Columbia for $10 million the Casa Italiana, an imposing Florentine-style building on its campus, and to allocate an additional $7.5 million for its restoration, Columbia will be able to resume its role as a world leader in Italian studies.

The Casa Italiana, a gift to Columbia in 1927 by a group of businessmen of Italian ancestry and for many years thereafter the Center for Italian Studies at Columbia, had reached the point where either a massive effort had to be made to renovate its structure and facilities or its original role would have to be abandoned. There was no choice. The sum needed to reach this goal was beyond the means of Columbia or the supporters of the Casa Italiana in this country.

A devoted group of educators, diplomats, students, and outside scholars devised an international plan to reach the goal. They knew that the road would be filled with obstacles and that the redtape of government and nonprofit institutions would be difficult to cut. It took them 3 years of work in the United States and Italy. The leaders of this group in the United States were Prof. Maristella Lorch, long associated with Columbia University, and Francesco Corrias, the former Italian Consul General in New York, and in Italy were Prime Minister Fuilio Andreotti and President Francesco Cossiga.

They devised quite an ingenious scheme whereby Italy would buy Casa Italiana from Columbia and then lease it back to Columbia after renovating it. Columbia would create exnovo "The Italian Academy for Advanced Studies in America" at Columbia University and cover its operating costs with proceeds from the sale. The academy was inaugurated on May 6, 1991, with an impressive ceremony attended by the President of Italy, the Prime Minister, the Foreign Minister, and many other Italian dignitaries and scholars. Representing Columbia were the president, the provost, and many faculty members from various disciplines, all of them scholars devoted to Italian culture, along with several hundred guests. The academy's first official activity was a 4-day congress "Cicero in America: Education and Political Life" chaired by Prime Minister Andreotti as founder and president of the Center for Ciceroina Studies in Rome. Here was Cicero speaking across the ages with his ideas embodied in our very constitution. Columbia is now reborn as the Center of Italian Studies in this country. Why reborn? Simply because, unknown to many, Columbia College was in 1805 the first American college to institute a course in Italian language, history, and poetry. There were no politics to be played at the time. Italy was not a state but rather a land of many nations with a common language and a tremendous wealth of humanistic, artistic, and scientific thinkers. Columbia's choice to fill the new post was Lorenzo Da Ponte, a Venetian subject. Why Da Ponte? Because he embodied the qualities of deep devotion to and profound knowledge of Italian culture. Da Ponte was well known in this era in the courts of Europe and its universities as the master port who gave Mozart his most famous libretti among them Don Giovanni, Nozze Di Figarao, and Cosi Fan Tutte. To celebrate Da Ponte's contributions to Columbia, the United States, and Italy, an exhibit was inaugurated on May 1, 1991, "Lorenzo Da Ponte: A Vision of Italy From Columbia College (1805–1838)." His tireless enthusiasm for bringing the two cultures together was presented with an elegant sense of propriety at the moment the academy came into being.

The new Italian Academy at Columbia is a unique example of international cooperation in the field of higher learning. The academy is a single entity with a dually composed board of guarantors appointed by Italy and Columbia to guide and supervise its activities. The president of the academy is Michael Sovern, president of Columbia University; its honorary president is Francesco Cossiga, president of the Italian Republic. Prime Minister Giulio Andreotti is its founding fellow together with President Sovern and the academy's first director, Prof. Maristella Lorch. The board of guarantors, chaired by Columbia Provost Jonathan Cole, also has the authority to appoint fellows of the Italian Academy. A fellow is someone deemed to have earned that honor by an enduring and notable contribution to humanity made in a context related to Italy and Italian culture. The academy does not enroll students nor award degrees. Its goal is to be the catalyst for the best scholars in the humanities, history, literature, mathematics, the arts, and the sciences. To this end, the Italian Academy will focus on the endowment of permanent chairs in these disciplines and bring and Columbia the finest minds in the world for lectures, seminars, and research. These scholars will continue to follow the time-honored tradition of embodying knowledge from the shoulders of giants—the great minds of the past—to honor the present and to pursue the quest for knowledge into the future.

The Sanpaolo Foundation, the Philanthropic Arm of the Instituto Bancario San Paolo Di Torino, was the first to endow a chair at Columbia under the new Italian Academy—a $1.8 million grant establishing the Sanpaolo Professorship in International Journalism. Similar endowments are being sought for chairs in various disciplines from other Italian institutions but not from them alone. The pursuit of higher learning is becoming more costly. In this new global time, we should work hard to find ways to reduce military expenditures and endow many more professorships and chairs at Columbia and other educational institutions.

I will continue my efforts to improve education at every level, starting with kindergarten. We must fight illiteracy and improve educational opportunities everywhere. But we cannot ignore the scientists and researchers who spend endless hours at their microscopes and computers striving to lessen suffering, to create richer, better lives for all. Mr. Speaker, I commend all those who have contributed to the founding of the Italian Academy. I urge full support for it among Americans who believe in this mission as expressed in its motto: "Pensare Insieme"—to think together.

HONORING ISIDORE DICKEN

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. ENGEL. Mr. Speaker, it is my honor today to pay tribute to a man who has accomplished what few others have achieved. My constituent, Isidore Dicken, is celebrating his 90th birthday.

Over 9 decades, Isidore has traveled many miles and seen many people and places. He was born in Russia in 1901 and came to the United States in 1923. One of his proudest moments occurred when he became a citizen of the United States in 1940.

Much of his career was dedicated to the craft of tailoring, where he brought color and style to people's lives. He made suits in Manhattan for famous stars such as Bob Hope and Julius LaRosa, and costumes for many Broadway plays at the Theater Costume House.

Isidore Dicken has been a dedicated family and community person. His late wife, Fay, and his son, Martin, have been the main recipients of this affection. But Isidore has also been active in the community as an air raid warden during World War II and as a member of the Co-op City Democratic Club.

It is impossible to fit 9 decades of activity into a short statement, so I must conclude by congratulating Isidore Dicken for reaching this milestone, and also thank him on behalf of the community for his outstanding citizenship.

HONORING DAVE COURVOISIER

HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. BILBRAY. Mr. Speaker, I rise today to honor a man whose dedication to helping to fulfill the needs of disadvantaged children has recently earned him the City of Hope National Medical Center's Spirit of Life Award. Dave Courvoisier, news anchor of NBC's Las Vegas affiliate KVBC, has become a local favorite and has distinguished himself both within the journalism and local philanthropic communities.

Courvoisier was raised on a farm near the small town of Greenville, IL, where he was active in sports, student government, and the annual school musicals, all the while keeping his grades in the top 20 percent of his class. He went on to attend the University of Illinois and graduated with a bachelor's degree in education, subsequently completing his student teaching requirements near Chicago. He then attended graduate school for a master's in exercise physiology while at the same time he researched heart patients using 24-hour-electrocardiograms, under a grant from the Illinois Heart Foundation.

After years of traveling and working for various companies, Courvoisier discovered his current and most loved profession, broadcasting and communications. His first major job in television news came at CBS affiliate KFVS–TV in Missouri. It was here he became involved with the Wednesday's Child Program which focused each week on a different child in need of adoption.

Courvoisier continued his series under the name "Best Friends" in North Carolina and then he moved to Las Vegas, where he is now a widely respected news anchor. He is now a major advocate for the homeless and foster children, as well as those seeking a big sister or big brother. As a member of the First Christian Church in Las Vegas, he serves as chairman of the finance committee and as an elder.

Mr. Courvoisier's accomplishments are many and his dedications are outstanding. I understand why the City of Hope is proud to honor a man who has found such a personal way to touch the hearts of disadvantaged children while sending a compassionate message about their needs to thousands. I ask you to join with me in praising this year's Spirit of Life Award recipient, who is an ideal model for not only the young people his work affects, but for all people everywhere.

TRIBUTE TO JAMES L. HEALY, JR.

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. ATKINS. Mr. Speaker, it is with sadness that I rise today to inform my colleagues of the passsing of Mr. James L. Healy, Jr. Jimmy was a young man who displayed incredible dedication and commitment to his home town of Westford, MA. He will be greatly missed by all who were fortunate enough to have known him.

Following a Healy tradition set by his grandfather, Jimmy was elected to the Westford Board of Selectment in 1988 of which he was chairman at the time of his death. He was a man who brought enthusiasm, energy, and a heightened sense of compassion to every civic endeavor with which he became involved. As a selectman he displayed a rare combination of community and academic mindedness that helped townspeople to appreciate the simple beauty and historic richness of Westford.

His greatest contribution, however, was the example he set for people young and old about commitment to one's community. In Jimmy we saw a man whose dedication and sense of responsibility to his town was second only to his family. Even during his final weeks Jimmy found the strength to attend a board meeting in an attempt to balance the town budget despite the physical pain of recent surgery. Two days later, he again left the hospital to attend a special town meeting out of concern for his constituents. His selfless act of courage symbolizes Jimmy's unique sense of commitment and love for his town.

Jimmy Healy was a man of many accomplishments. The list of his civic involvements is long and commendable. It illustrates the diversity of his knowledge and interests. He was a former trustee of Westford's J.V. Fletcher Library and served on the town's 250th Anniversary Committee. He was president of the Lafayette Committee in Boston, and was a member of the Union Club, the Harvard Club of New York, the Franco-American Club of Forge Village, Westford, and the Massachusetts Municipal Association.

Jimmy was a man who appreciated education. After graduating from Harvard University, he studied classical archeology at Bryn Mawr University in Pennsylvania and attended the American School of Classical Studies in Athens while working on digs in Greece and Turkey.

Jimmy also has an impressive career as video producer. As a vice president for Enterprise Media Inc., he conceived The Modern Presidency series which was hosted by David Frost. More recently he had worked as a consultant and video producer for his own company, Healy Associates.

Mr. Speaker, I offer my condolences to the Healy family and friends who I'm sure can temper their sadness with the knowledge that Jimmy's love for and service to his town will long be remembered. Jimmy was truly a special individual, a traditionalist who by following in the footsteps of his ancestors has further confirmed his family as a cornerstone of the Westford community. Jimmy has left his individual mark too; a tradition of unyielding courage, unequalled dedication, and unparalleled commitment to public service and his beloved hometown of Westford. This he displayed even during a time of great physical pain and personal suffering. Mr. Speaker, it is this level of commitment to public service that is necessary to lead this nation into the future and to meet the many difficult challenges which lie ahead.

CONFERENCE REPORT TO H.R. 2508

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mrs. COLLINS of Illinois. Mr. Speaker, earlier this week the House considered the conference report to H.R. 2508, the Foreign Assistance Authorization for fiscal years 1992 and 1993, and I am pleased to see that this legislation, along with my dissenting vote, was rejected.

I looked long and hard at this legislation, Mr. Speaker. It contained some excellent provisions, including a reversal of the administration's Mexico City family planning provisions and $1 billion for aid to Africa. Furthermore, I had been a supporter of foreign aid programs in the past. I believe that, as the world's first, and now last, superpower, we have been entrusted with certain responsibilities which we must uphold. We have continually cast ourselves in the role of freedom's champion, a role which cannot simply be shed by our apparent victory in the cold war.

My support for this legislation, however, was muted by the ever deteriorating quality of life here in our own cities and towns, while yet we continue to ship our dollars overseas for development abroad. Never before has one American generation been expected to have a lower standard of living than their parents. We have over 30 million working Americans with no health insurance whatsoever and the highest infant mortality rate in the industrialized world. We have millions of unemployed Americans with no benefits and millions of unemployable Americans because our education system is in shambles. And we have millions of Americans who live in squalid housing, with millions more who have no housing at all. Parts of my district, Mr. Speaker, have living conditions resembling those of many Third World nations, the very nations this legislation would have benefited.

Mr. Speaker, democracy has taken root throughout the world. We do not have the expansionism of the evil empire anymore to focus our dollars against. I believe it is time to begin concentrating our efforts, and our funds, on fighting our domestic enemies such as hunger, crime, and homelessness. People are hurting here in America and we must begin listening to their pleas for help. I simply will not return to my district in Chicago to try to explain to my constituents why this Nation cannot fund adequate health care programs, build affordable housing, and assist unemployed Americans whose benefits have been exhausted, but we can afford to send $25 billion abroad. It is unconscionable, Mr. Speaker, and I commend the House for rejecting the conference report.

JO WALKER-MEADOR—COUNTRY MUSIC PERSONIFIED

HON. BOB CLEMENT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. CLEMENT. Mr. Speaker, I rise today to pay tribute to a lady whose efforts have played a great role in the development of the country music industry—Mrs. Jo Walker-Meador.

Known globally, the Country Music Association is the world's most active trade association. When people think of the CMA, they think of Jo Walker-Meador, who was responsible for establishing the international reputation of respect the CMA commands.

For more than 30 years Jo Walker-Meador has given her time and talent to develop the Country Music Association into the entity it is today—a worldwide organization with more than 7,000 members dedicated to the American art form of country music.

Jo began her tenure with CMA in 1958 as office manager. Shortly afterward she became CMA's executive director, a position she held for more than 30 years.

Born Josephine Denning in Orlinda, TN, Jo attended Lambuth and Peabody Colleges and was employed by an amusement company and a food company before joining CMA. Jo has assisted CMA in establishing many important events and activities during her years with the organization, such as the Country Music Hall of Fame, the annual Awards Show, Fan Fair—with the Grand Ole Opry, SRO, formerly the Talent Buyer's Entertainment Marketplace, and the Music Industry Professional Seminar.

Jo has been recognized for her contributions to the country music industry on many occasions. In 1970, the city of Nashville presented her with the Metronome Award, given each year to the person who has done the most to further Nashville as a center for entertainment. In 1981, she was named Lady Executive of the Year by the Nashville Chapter of the National Women Executives, the SEAC Ambassador of Country Music, and the BMI Commendation of Excellence. She has also received the International Hubert Long Award and the IFCO Tex Ritter Memorial Award.

The Academy of Country Music honored Jo in 1983 with its Jim Reeves Memorial Award for her role in establishing the CMA's London office and her quarter-century of dedication to the industry.

Jo has always been involved in community civic and charitable events. She is a member of the National Academy of Recording Arts and Sciences, the American Cancer Society, the Metropolitan Tourist Commission, the Nashville Area Chamber of Commerce Board of Governors, the National Music Council board of directors, the Arthritis Foundation, and many other organizations.

She is the first woman ever elected to the Big Brothers of Nashville board of directors and in 1989 became the first woman elected as the organization's president. In 1977, she became the second woman ever elected by the membership of the Nashville Area Chamber of Commerce to serve a 3-year term on its board of governors.

Mr. Speaker, country music is enjoying its greatest popularity ever. From Moscow to Minnesota, Taiwan to Tennessee, more people than ever are listening to country music. Like any industry the country music business has enjoyed its highs and its lows. But, throughout the past three decades one lady has persevered and dedicated her considerable talents and time to ensuring this unique art form would grow and prosper.

Jo Walker-Meador has announced her retirement as CMA's executive director effective December 31, but I suspect her contributions to the industry she so loves will continue throughout her lifetime. During the recent country music Association awards show in Nashville, Jo was recognized by President George Bush for her outstanding contributions to country music industry.

The tributes to Jo will continue during special ceremonies in Nashville on November 14. Although I will be unable to attend because the House of Representatives will be in session, I want to take this opportunity to ask everyone of my colleagues who has ever enjoyed country music—from Hank Williams to Garth Brooks—to join me today in saluting a lady whose work was often behind-the-scenes, but is as responsible as any single person for the popularity country music enjoys today. I salute and pay tribute to the achievement and accomplishments of Mrs. Jo Walker-Meador—one of the true Queens of country music.

HONORING WILLIAM C. DANA

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. ENGEL. Mr. Speaker, a little more than a year ago, I paid tribute here to William Dana, who at the time was celebrating his 20th year as principal of Public School 21 in the Bronx. I return today to again speak of Bill Dana, this time in honor of his retirement from the New York City school system after more than 35 years as a teacher and principal.

Such a retirement brings on mixed emotions. I am grateful to Bill Dana for all his years of service, and there is no doubt that he will be able to look back on his career with great satisfaction. For selfish reasons, I am a little upset because our schools are losing a great educator and a good friend. It is not often that a person as caring and dedicated as Bill Dana comes along, and it is only natural for us to wish that he could stick around forever.

But it is time for Bill Dana to get a well-deserved rest, to spend more time with his family and friends, and to take the time to enjoy hobbies and interests that have probably been put off for a long while. I simply wish to extend my thanks and best wishes to Bill Dana on behalf of the people of the Bronx. It has been a good, long career that deserves a good, long retirement.

TODAY WE MUST ASK WHETHER OUR CHILDREN WILL LIVE BETTER THAN WE DO: VOTE FOR THE HIGHER EDUCATION REAUTHORIZATION

HON. MATTHEW G. MARTINEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. MARTINEZ. Mr. Speaker, opportunity is a great motivator. When Eugene Lang walked into his old junior high and announced that he personally would guarantee that every child in that auditorium who stayed out of trouble and graduated from high school would have guaranteed funding to go to college, the results were remarkable. In the years that followed, achievement rates went up, dropout rates went down, and kids went to college rather than being sidetracked on dead-end streets. As effective as they are, the "I Have A Dream" and other similar projects can serve only a few students.

Like Mr. Lang, the President sometimes ventures into classrooms, where he advises students to work hard, stay out of trouble, and go to college. This is good advice.

However, advice is not always enough. Many youngsters already realize that no matter how hard they work, their families simply cannot afford to send them to college. Parents realize this too: poll after poll shows families—many of them middle-income families—believing that the cost of higher education is putting higher education out of reach.

The decline in real wages for many families over the past decade suggests that these fears are rooted in the low productivity in the economy. Many families are finding that the economy just is not offering the opportunities it once did.

The decline in student aid over the past decade has helped put college out of reach for many Americans. Average aid as a percentage of the total costs at a public university sank from 81 percent in 1980–81 to 61 percent in 1988–89. At private universities, average aid covers only 21 percent of student costs! Federal policy has made things worse. Over the past decade student aid was switched from grants to student loans for students from low income families. This left low income students deep in debt at the point in their lives when they are trying to complete school, find a job, start a family, and keep a roof over their heads. Whether you look at default rates, college completion rates, or the falling proportion of minority students on campus, it is clear that the current student aid program needs improvement.

If we do not act, we risk a dismal spiral in which weak economic performance undermines education—which, in turn, undermines the future American economy.

H.R. 3553 provides realistic access to higher education for those able to benefit. H.R. 3553 allows every child to go as far as abilities and hard work can take him or her. And it builds the foundation for continued growth. In other words, it empowers the great motivator: Opportunity.

In 1980 candidate Reagan asked Americans whether we were better off than we had been 4 years earlier. Today, we must ask the more important follow-up question. Today, we must ask "Will our children live better than we do?" Access to higher education is essential to ensuring that the answer will be "Yes." Like Lincoln's land-grant colleges and Truman's GI bill, this legislation works to translate the American dream into the American reality by ensuring that every child has full access to the educational opportunities that hard work entitle him or her to. I urge my colleagues to join me in supporting this vital legislation.

ANOTHER OPPONENT OF TERM LIMITS

HON. JAMES A. McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. McDERMOTT. Mr. Speaker, on October 28, I addressed the House to discuss Washington State's term-limit initiative. I identified several organizations based in Washington, DC—Citizens for Congressional Reform and Citizens for a Sound Economy—as the principal backers of this purported grassroots effort. I identified the individuals who serve on the boards and advisory boards of these organizations.

Subsequently, I have learned that Woodruff M. Price, corporate vice president for Federal affairs of CSX Corp., had resigned on October 22 from the Washington Advisory Board of Citizens for a Sound Economy, because of his opposition to term limitations. I am pleased to correct the record, and I regret any embarrassment my statement may have caused Mr. Price.

TRIBUTE TO WILLIAMSBURG JR. HIGH SCHOOL

HON. NICK JOE RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. RAHALL. Mr. Speaker, today I honor Williamsburg Jr. High School, of Williamsburg, WV for winning the 1990–91 State Physical Fitness Champion Award.

This national contest is sponsored by the President's Council on Physical Fitness and Sports and is open to all students in all elementary and/or secondary schools. To win, a school must have the highest percentage of students who have been awarded the Presidential Physical Fitness Award by scoring 85 percent or higher on a battery of physical tests. Ranging from sit-ups to pull-ups to a one mile walk/run, these exercises test an individual's strength, endurance, and agility.

Mr. Speaker, I would like to applaud Williamsburg Jr. High School for emphasizing the importance of health and fitness to their students. In a country where only 10 percent of the American youth can actually achieve a passing grade for physical fitness, the Presidential Physical Fitness Award merits praise!

THE PEOPLE'S IMPRESARIO: A TRIBUTE TO JOSEPH PAPP

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. OWENS of New York. Mr. Speaker, I rise to pay tribute to New York theatrical producer Joseph Papp, who died of cancer Thursday, October 31, in Greenwich Village. Mr. Papp was a true innovator in the theater, taking risks to produce plays that were thought-provoking and controversial as well as entertaining. He will be remembered for making Shakespeare's plays accessible to mass audiences. He will also be remembered as a pioneer in what is called nontraditional casting, or placing actors of color in roles that were initially created for white characters, particularly in some of his productions of Shakespeare's works.

Shakespeare played a key role in Mr. Papp's decision to make the theater his life. Born Joseph Papirofsky 70 years ago in Brooklyn's Williamsburg section, the son of an impoverished immigrant trunkmaker and a seamstress, Mr. Papp began reading Shakespeare when he was 12 as a way to escape his bleak and economically deprived existence.

While in the Navy during World War II, Mr. Papp put on his first amateur productions. After the war, he studied acting and directing at the Actors Lab in Los Angeles. He later joined a touring production of the National Company's "Death of a Salesman,"

In 1954, while working at the CBS television network as a stage manager, Mr. Papp took over the basement of a church on Manhattan's Lower East Side and began producing plays for his New York Shakespeare Festival. Mr. Papp's Public Theater, an outgrowth of the festival, became one of the Nation's leading nonprofit theaters.

In the summer of 1956, Mr. Papp staged his city-funded Shakespeare Festival plays on the back of a flatbed truck, literally "putting his shows on the road" and taking his productions to all five of New York City's boroughs. His Central Park productions of Shakespeare plays were launched when one summer his mobile stage collapsed in the middle of Central Park. His annual Shakespeare summer-in-the-park productions eventually became a New York City theatrical tradition.

The plays were free and thus available to hundreds of low-income or no-income people who could not afford the often exorbitant prices of New York City theater tickets. Mr. Papp's commitment to bringing theater to mass audiences was evident in his tireless efforts to secure foundations' funding and private donations to pay for these annual free productions in Central Park.

Mr. Papp built Central Park's Delacorte Theater in 1962 while continuing to tour with his mobile plays. In 1987, Mr. Papp began a cycle of all of Shakespeare's 36 plays, presented either in the Public Theater complex or in Central Park.

Mr. Papp gave many playwrights and actors of color mass exposure in mainstream theater, among them black actors Morgan Freeman, who later received a best supporting actor Oscar nomination for his work in the film "Street Smart," and Denzel Washington, who won a best supporting actor Oscar for his role in Congressman Major Owens/Extension of Remarks the film "Glory."

My son Geoffrey acted in some of Joseph Papp's productions as part of a special program of Shakespeare plays for high school audiences in 1986 and 1987. Geoffrey played Romeo in "Romeo and Juliet" and Orlando in as You Like It," among other roles. He had a part in "Richard the Second," produced and directed by Papp at the Delacorte Theater, and he once played Puck in a Papp production of Shakespeare's "A Midsummer Night's Dream." This past summer, Geoffrey was the assistant director of a Papp production of "Othello," and he also understudied noted actor Raul Julia, who played Othello.

Among the playwrights of color whose works were produced by Mr. Papp were Miguel Pinero, author of the prison drama "Short Eyes," Ntozake Shange, author of the groundbreaking work on the plight of black women, "For Colored Girls Who Have Considered Suicide When the Rainbow Was Enuf", and Charles Gordone's "No Place To Be Somebody," which won a Pulitzer Prize drama.

Mr. Papp also produced many other plays with topical themes, such as "Hair," the 1967 musical about the hippie counterculture, "Sticks and Bones," "More Than You Deserve," and "The Basic Training of Pavlo Hummel," which concerned the Vietnam war, and "The Normal Heart," concerning the AIDS epidemic. "The Normal Heart" has great personal meaning for Mr. Papp, an early advocate of AIDS research. Mr. Papp lost his 28-year-old son, Anthony, to the disease a year ago.

Mr. Papp was a longtime champion of freedom of speech and association. In 1958 he was fired from his stage manager position on CBS television's "I've Got a Secret" game show when he refused to tell a congressional committee if he had ever been a Communist. More recently, he rejected grants from the National Endowment for the Arts because he would have had to sign an antiobscenity pledge.

The theater and art worlds have lost a champion with the passing of Mr. Papp, as have the thousands who enjoyed the free, handsomely produced and creatively staged Shakespeare plays in Central Park and in the mobile theater tours over the years. The Washington Post has called Mr. Papp "the people's impresario." He was that, and more: He understood the importance of art and beauty in our everyday lives, and he dedicated his life to bringing art and beauty to all people, regardless of their color, class, or ethnic group.

I appreciate Mr. Papp's stellar contributions to theater in New York City and nationally. I hope that, although Mr. Papp is gone, his efforts to make theater a mass experience and to make sure that art remains free and unfettered will continue to live on in the hearts of artists and audiences everywhere.

HONORING JOSEPH APPICELLA

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. ENGEL. Mr. Speaker, for more than eight decades, the Palenese Society in Yonkers has kept alive the spirit and citizenship that characterizes the Italian culture. The organization has established itself in the community as one that upholds the fine qualities of Italian-Americans, such as respect for the law, love of family, and a tireless work ethic.

That is why it is fitting that this year the Palenese Society is honoring Joseph Appicella at its 81st annual dinner-dance. Joe has been a dedicated public servant, working in several economic development posts for the city of Yonkers, where he worked on revitalizing businesses and creating jobs. He has also been an active member of the community outside of work. Joe's many affiliations include serving on the board of directors of his local homeowners association and of the Yonkers chapter of Big Brothers-Big Sisters.

Most of all, Joe is a dedicated family man. His wife, Elvera, and his children, Jennifer and Jessica, can attest to that fact.

Joe Appicella displays the attributes that honor his Italian-American heritage and his fellow citizens at the same time. I join the Palenese Society in thanking Joe for his many contributions to the community.

PARTISAN POLITICS AND THE MYTH OF THE OCTOBER SURPRISE

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. McCOLLUM. Mr. Speaker, when the country is desperately asking Congress to address the issues that are important; this Congress prepares to conduct a partisan, political witch hunt called the October Surprise.

The Democrat Party, the party of Jimmy Carter, frustrated at their inability to smear President Reagan during the Iran-Contra extravaganza now want to try to smear President Bush with innuendo and myth. I am placing in the RECORD a copy of the cover story from this week's edition of Newsweek magazine which reveals the myth of October Surprise.

Perhaps the members of the Democrat Party can read this article and save the money they plan to spend to pursue this political farce.

A copy of the article follows:

[From Newsweek, Nov. 11, 1991]

MAKING OF A MYTH

It is a story that will not die—a dark tale of conspiracy and political intrigue that, if true, would constitute something like an accusation of treason against George Bush, the late William Casey and other members of Ronald Reagan's 1980 presidential campaign. Briefly put, the "October Surprise" theory holds that Bush or Casey—or possibly Bush and Casey—cut a secret deal with Iran in the summer or fall of 1980 to delay the release of 52 U.S. hostages until after the November elections. Their objective, or so the theory holds, was to deny Jimmy Carter whatever political advantage the hostgages' last-minute release might create—or, in short, to swing the 1980 election toward Reagan and Bush.

The October Surprise theory has been kicking around for the past 11 years, and it has become a mother lode for conspiracy junkies of all political persuasions. It got its biggest boost early this year when Gary Sick, a former member of Jimmy Carter's National Security Council staff, wrote an article on the op-ed page of The New York Times asserting his belief that it could have happened. Sick, who has already written a much-praised book ("All Fall Down") about the Iran hostage crisis, is about to publish a second book laying out his case for the October Surprise. The new book, to be published this week by Random House, is entitled "October Surprise." The Senate Foreign Relations Committee, meanwhile, voted last week to launch an investigation of the October Surprise theory, and the House Rules Committee is scheduled to vote this week whether or not to launch a separate investigation headed by Rep. Lee Hamilton of Indiana. So, true or not, the October Surprise is about to become yet another exhibit in the Beltway's chamber of Alleged Political Horrors—to escalate, along with the BCCI scandal, the Iran-contra affair and the savings and loan crisis, from cocktail-party gossip to subpoenas, sworn testimony and endless disputes among lawyers, investigators and witnesses.

Like all good conspiracy theories, this one forces all who would deny it to prove a negative—to prove that something did not happen. As any logician can testify, proving a negative is ultimately impossible. Equally disturbing, the October Surprise theory has now become complicated and so hideously detailed that no reasonable person can say with absolute certainty that there was no conspiracy and no deal. but Newsweek has found, after a long investigation including interviews with government officials and other knowledgeable sources around the world, that the key claims of the purported eyewitnesses and accusers simply do not hold up. What the evidence does show is the murky history of a conspiracy theory run wild.

GOING MAINSTREAM: A STORY IS BORN

Washington in the fall of 1980 was, like the rest of the United States, obsessed with the U.S. Embassy hostages in Iran. It was a national crisis: Public officials, the voters and the news media were grasping at every rumor. Jimmy Carter, then running for a second term, was almost completely preoccupied by obscure events half the world away; so was the Reagan campaign. In April, the Carter administration launched a desperate military gamble to extract the hostages from captivity, and failed, miserably, in the smoking wreckage at Desert One. The campaign proceeded: Carter turned back Edward Kennedy's challenge in the Democratic primaries, and Reagan dispatched George Bush. The hostage crisis, seemingly at an impasse, continued to simmer amid the hullabaloo of an election campaign. The election came and went, with Carter's landslide defeat—and in December, with the hostages still held in Iran, rumors of some sort of backstage contract between the Republican campaign and the Iranian government first appeared in print.

The outlet was hardly prestigious: the Executive Intelligence Review, a periodical published by followers of right-wing political extremist Lyndon LaRouche. On Dec. 2, 1980, EIR ran a story alleging that former secretary of state Henry Kissinger, a target for LaRouche followers, "held a series of secret meetings during the week of Nov. 12 in Paris with representatives of Ayatollah Beheshti, leader of the fundamentalist clergy in Iran." This was attributed to "Iranian sources" in Paris. The article continued: "Top level intelligence sources in Reagan's inner circle confirmed Kissinger's unreported talks with the Iranian mullahs, but stressed that the Kissinger initiative was totally unauthorized by the president-elect. 'If you know any way of controlling that man,' said one Reagan insider, 'please let me know'." (Kissinger said the EIR report was "totally untrue.")

The story said that this meeting was the climax of a prior liaison: "* * * it appears that the pattern of cooperation between the Khomeini people and circles nominally in Reagan's camp began approximately six to eight weeks ago, at the height of President Carter's efforts to secure an arms-for-hostage deal with Teheran. Carter's failure to secure the deal, which a number of observers believe cost him the Nov. 4 election, apparently resulted from an intervention in Teheran by pro-Reagan British intelligence circles and the Kissinger faction."

EIR said that its source "stressed" that those involved in this effort "did not have the approval of Ronald Reagan himself." Fast-forward to 1983, when the LaRoucheans returned to the story. An article in the Sept. 2 issue of their journal New Solidarity gave more detail. "During the pre-election period, Carter and his crowd were frantically trying to negotiate a deal based on arms and spareparts shipments, which Iran desperately needed after the outbreak of war with Iraq on Sept. 22 * * * The deal * * * fell through when the hard-line mullahs boycotted the Majlis in late October. Ayatollah Beheshti—known as the most pro-Soviet of the mullahs—was the key mover behind this."

When the story got its next boost—in an April 1987 article in The Miami Herald—it was from former Iranian president Abolhassan Bani Sadr, by now in exile in Paris. Bani Sadr "said he learned after the hostage release that two of the Ayatollah Ruhollah Khomeini's advisers had been involved in negotiations with the Reagan camp. The negotiations were to delay release of the hostages until after Reagan became president * * * The former president identified the two as Hashemi Rafsanjani [now himself Iran's president] and Mohammed Beheshti." Bani Sadr said he had asked both men about this. "They laughed,' he said. "They didn't say no'."

The Herald's story didn't get much play. But when Bani Sadr next spoke, to Flora Lewis of The New York Times in August 1987, the story grew. With The New York Times, Bani Sadr was more specific than he had been with The Miami Herald. He said negotiations with the Carter administration had been going well. "But then in October, everything suddenly stopped. My aides found out it was because the group in charge of the hostage policy, Rafsanjani, Mohammed Beheshti and Khomeini's son, did not want Carter to win the election. There was a meeting in Paris between a representative of Beheshti and a representative of the Reagan campaign." These and subsequent events, Lewis wrote, "confirm for him persistent rumors that the Reagan campaign offered arms if the hostages were not released until after the 1980 election. * * *" The story had finally made it into the mainstream.

The timing was propitious—high summer, so to speak, for conspiracy buffs. The reason was the Iran-contra scandal, which proved that the Reagan administration had indeed engaged in secret dealings with Iran. Although the exact starting point of those secret negotiations remains obscure to this day, it seems clear that the roots of Iran-contra run deeper than anyone has been able to document publicly. The Reagan White House, it seems clear, was obsessed by Iran during the early 1980s. Iran-contra also showed that the administration was eager to engage in covert action, and that it was ready to lie, destroy documents and cover up a range of covert activities that violated the law.

Contragate, in short, created fertile ground for the October Surprise theory. Reporting in November 1987, the joint investigating committee created by the House and Senate relegated the October Surprise rumors to a footnote. "There have been allegations that officials of the 1980 Reagan campaign—in order to prevent a pre-election announcement by President Carter (an 'October Surprise')—met with Iranian emissaries and agreed to ship arms to Iran in exchange for a post-election release of hostages," the report stated. "Reagan campaign aides were, in fact, approached by individuals who claimed to be Iranian emissaries about potential release of hostages, as were other campaign staffs. The committee was told that the approaches were rejected and found no credible evidence to suggest that any discussions were held or arrangements reached on delaying release of hostages or arranging an early arms-for-hostages deal."

It is likely that the October Surprise would have died somewhere in late 1987, except for the appearance of a group of apparently knowledgeable, conspiracy-minded "super-sources." Journalists are vulnerable to the lure of a super-source—another Deep Throat, someone who knows all and pieces everything together in a nice, neat package. In the October Surprise case, there are four would-be Deep Throats: Barbara Honegger, Richard Brenneke, Jamshid Hashemi and Ari Ben-Menashe. At some point each has claimed first-person knowledge of the conspiracy. The stories they told overlapped in broad outline—and in some cases, they compared stories, swapped details and helped each other become more convincing. Journalists committed to the notion of the October Surprise often acted as a conduit between them.

Barbara Honegger: Honegger was a researcher in Reagan's 1980 campaign and worked at the White House and the Justice Department until 1983. In summer of 1987, Honegger claimed that in late October 1980, in the Reagan campaign headquarters in the Washington suburb of Arlington, she had heard a jubilant staffer say, "We don't have to worry about an October Surprise. Dick cut a deal." Dick, presumably, was Richard Allen, the Reagan campaign's top foreign-policy adviser and subsequently Reagan's first national-security adviser. It was the first confirmation from inside—a bull's-eye for the conspiracy theorists and the journalists who were following their trail.

But there were several problems. The most basic was that Honegger was never able to identify this alleged staffer or say whether she had any reason to believe the staffer knew what he was talking about. The second was that Honegger, who published a book, "October Surprise," in 1989, herself seemed to have some difficulty in separating fact from fiction. Even Christopher Hitchins, a columnist for The Nation magazine and a sometime proponent of the October Surprise theory, said her exposé was "diffused and naive."

Richard Brenneke: A businessman from Portland, Ore., Brenneke claims to have worked for the CIA for 18 years as a contract operative. He met Honegger in August 1988 in Washington, where she told him about her theories on the October Surprise. Brenneke, astonishingly enough, claimed he had been present when the deal was done. He said the meeting had taken place in Paris, at the Hotel Raphael, on Oct. 19, 1980. And Brenneke confirmed what Honegger already thought: William Casey, then Reagan's campaign manager and later CIA director during Iran-contra, had represented the Reagan-Bush campaign. Donald Gregg, then a member of Jimmy Carter's National Security Council staff and later a national-security adviser for Vice President Bush, had been there, too. The Iranians were two arms dealers, Manucher Ghorbanifar and Cyrus Hasehmi.

Then, two weeks later, Bani Sadr expanded his previous story. In Playboy magazine, Bani Sadr made the most surprising charge so far—George Bush was also present in Paris. (In a scathing story on the October Surprise, The New Republic reported last week that Bani Sadr has now retracted his claim that Bush was present.) Brenneke said he, too, could confirm that Bush was in Paris—and he said so, under oath, in Denver on Sept. 23, 1988.

Brenneke was testifying on behalf of Heinrich Rupp, 58, a pilot and gold dealer who had been convicted of bank fraud. Rupp was an old friend, Brenneke said, the two had been involved in covert ops for the CIA. Brenneke gave sensational testimony. He said he had worked for the CIA for 18 years, until 1985. He said that on Oct. 19, 1980, Rupp had flown "Mr. Bush, Mr. Casey and a number of other people to Paris, France, from the United States for a meeting with Iranian representatives." Brenneke said he had been directly involved in one of what he said were three meetings with the Iranians. He listed the Americans as Bush, Casey, Donald Gregg and Richard Allen. He said the Iranians included Hashemi Rafsanjani, who was then speaker of the Iranian Parliament and now president of Iran, and Cyrus Hashemi.

Brenneke's testimony made news—and among those who read it, with mounting fury, was the investigator from Sen. John Kerry's subcommittee, Jack Blum. Blum has spent thousands of hours checking what Brenneke had told him and had begun to believe that Brenneke was a fraud. The final proof, for Blum, came when be read Brenneke's assurance to the judge in Denver. "I will say, your honor, I have made these statements to Senator Kerry's committee and the United States Senate—again, under oath. * * *" Blum knew that was not true: Brenneke had never mentioned any involvement in the October Surprise. Blum pressed the U.S. attorney's office in Denver to file perjury charges, and Brenneke was indicted in May 1989.

The trial, in April 1990, pitted Brenneke against the U.S. government—and the government lost. Donald Gregg, now U.S. ambassador to South Korea, testified he had not been in Paris on Oct. 19 or 20, 1980. Two of Casey's former secretaries said he had not been out of the country at that time. Two Secret Service agents said they were guarding Bush on the campaign trail when the meetings allegedly took place. A CIA records specialist said there was no trace that Brenneke had ever worked for the agency. But the government's case was sloppy, and Brenneke's lawyers played on the jury's doubts so skillfully that Brenneke was acquitted. In the process, he said he never meant to testify that he had actually seen Bush in Paris—only that he had been told Bush was there.

Ari Ben-Menashe: Ben-Menashe first surfaced as an October Surprise source in 1990, while he was being held in a federal prison in New York City on charges of attempting to sell U.S.-made military transport planes to Iran. Tried in October, he was acquitted after maintaining he had the secret approval of both the Bush administration and the Israeli government. Although Israeli officials deny it, Ben-Menashe claims he was an Israeli intelligence agent and an adviser to Prime Minister Yitzhak Shamir.

Like Richard Brenneke, Ben-Menashe has been interviewed many times by journalists looking into the October Surprise (Newsweek, Nov. 4). Ben-Menashe says he, too, was in Paris on Oct. 19-20, 1980, as a member of a six-person Israeli team that helped set up the meeting. He says he saw Bush and Casey there, and that they were accompanied by Robert Gates, who is now George Bush's nominee as CIA director. He says the Iranian delegation was led by the Ayatollah Mehdi Karrubi, not Cyrus Hashemi and Manucher Ghorbanifar. He told Newsweek that the meeting took place at the Hotel Ritz, not the Raphael or Crillon as Richard Brenneke claims; he also told another investigator, Israeli author Shmuel Segev, that the meeting was held at the Hotel George V. ABC News gave Ben-Menashe a lie-detector test in November 1990; according to Christopher Isham, an ABC producer, Ben-Menashe failed it.

Jamshid Hashemi: Jamshid Hashemi is a younger brother of Cyrus Hashemi, an Iranian arms dealer who died in London in 1986. Jamshid has been a source for ABC News and for "Frontline," the PBS documentary program. He claims that he, his brother Cyrus and Karrubi met William Casey in a hotel in Madrid in July 1980, to begin negotiating a secret deal with the Reagan-Bush campaign. There is at least some corroborating evidence for this claim. For one thing, knowledgeable officials agree that Cyrus Hashemi played a minor role during the hostage crisis—offering to help establish communications between the Carter White House and Iranian leaders. For another, as ABC–News reported, the register at the Madrid Plaza Hotel actually shows that "A. Hashemi" and "Jamshid Halaj" were registered as guests at the time in question, late July 1980.

MEETINGS AND MIXED MESSAGES

There are, of course, myriad further details to these shifting and mutually contradictory allegations. But the essentials are clear. There were two sets of meetings, the first between Karrubi, the Hashemi brothers and William Casey in Madrid, and the other in Paris in October. The second meeting involved either Casey and Gregg—or Casey, Bush and Gates—on the American side. On the Iranian side, depending on which "witness" is believed, it involved either Cyrus Hashemi and Manucher Ghorbanifar or the Ayatollah Karrubi. Bush, Gates and Gregg have all denied that they were in Paris on those dates, and that they ever tried to arrange a deal with any Iranian leaders. Casey is of course dead. So is Cyrus Hashemi. Ayatollah Karrubi has denied ever visiting Madrid.

A team of Newsweek correspondents has spent much of the past eight weeks exploring the evidence for these allegations. The Newsweek team believes that:

Casey did not go to Madrid: Jamshid Hashemi told his story at length to PBS's "Frontline" series in April and to ABC's "Nightline" in June. He would not appear on camera for either program, and he did not reply to Newsweek's requests for an interview. He alleges that in March or April 1980, Casey made contact with Cyrus and himself while the pair were on a visit to Washington. Casey, he says, wanted to establish contact with an Iranian who was close to Ayatollah Khomeini. The brothers agreed to act as go-betweens. The meeting took time to set up, but in July, Cyrus asked Jamshid to bring the Ayatollah Karrubi from Teheran to Madrid to meet with Casey. According to Jamshid, Mehdi Karrubi arrived with his brother Hassan.

They talked with Casey over two consecutive days, Jamshid says—two morning sessions of some three hours apiece. Then in August, Jamshid says, there was a second meeting between Casey and Karrubi, also in Madrid. After an exhaustive search of press reports, of Casey's diaries and of the diaries of his colleagues, ABC's "Nightline" reported that there was a three-day window—July 27, 28 and 29—during which Casey's whereabouts were unknown. On the 30th, ABC reported, Casey was being interviewed by an ABC correspondent at Reagan campaign headquarters and dined that night with Bush in Washington.

But Casey's whereabouts during the July "window" are convincingly established by contemporary records at the Imperial War Museum in London. Casey, it turns out, took a three-day breather from the campaign to participate in the Anglo-American Conference on the History of the Second World War. As a veteran of the Office of Strategic Services—the forerunner of the CIA—Casey delivered a paper on OSS operations in Europe during the war. He went to a reception for conference participants on the evening of July 28, and he was photographed there. He delivered his paper on the morning of July 29.

ABC News acknowledged these facts in an update later in June—but still maintained that Casey had enough time on July 27 and 28 to fly to Madrid to meet with the Iranians. A close examination of the conference records by Newsweek, however, demonstrates that Casey in fact was present at the conference sessions in London on July 28. Historian Jonathan Chadwick, who organized the conference, kept a precise, day-by-day and session-by-session record of who was present and who was not. According to Chadwick's records, Casey was present at 9:30 a.m. on the 28th, stayed for the second morning session, leaving after lunch and returning at 4 p.m. He was also present, of course, on the 29th, when he delivered his paper. "I was very excited that such a big man was coming, but it turned out to be a disappointment," Chadwick said. "He just talked it through in a very gravelly voice. He came over as a very tough sort."

There are records showing where Casey slept and ate as well—at the Royal Army Medical College, close to the Imperial War Museum. Officials there say they have a bill in the name of "W. Casey" charging him for a room on the nights of July 27 and 28, and for "messing"(eating a meal) on the 28th and 29th. There is, in short, no possibility that Casey could have held meetings with anyone on two successive days in Madrid.

Finally, there are large questions about Jamshid's story. He told ABC's Ted Koppel, for instance, that he and Cyrus made big profits in the arms trade as a direct result of the meeting in Madrid. But there is little evidence that the Hashemis had much money to spare. Elliott Richardson, who was Cyrus Hashemi's attorney in a 1984 arms-smuggling case, said that Cyrus seemed to be dealing in a "remarkably petty" quantity of arms.

The Paris meeting did not occur: The vast discrepancies between Ben-Menashe's account and Brenneke's account show, at the very least, that one of the two men is lying. But the weight of evidence suggests that both versions are false.

Ben-Menashe has changed his story repeatedly: did it happen at the Ritz, as he told Newsweek, or at the Hotel George V, as he told Shmuel Segev? He is also confused about the dates. In an interview with Newsweek, Ben-Menashe said he was sure it was Oct. 19 or Oct. 20 because it was close to the Jewish festival of Sukkot. Sukkot, a movable feast, occurred on Sept. 25 in 1980.

There is reason to believe, meanwhile, that Brenneke was nowhere near Paris on Oct. 19–20, 1980. The evidence consists of Brenneke's own credit-card receipts and desk diary for that period of time. According to a recent story in New York's Village Voice newspaper by Frank Snepp, a former CIA agent who is now a freelance journalist and investigator, Brenneke's credit-card receipts show that he stayed at a motel in Seattle, Wash., from Oct. 17 to Oct. 19. His desk calendar, Snepp also reported, showed that he was home in Portland on Oct. 20. These records, Snepp said, were shown to him by Peggy Adler Robohm, a writer who at first admired and wholly believed Brenneke's stories. Robohm got the records from Brenneke himself, during a short-lived collaboration on his autobiography. Fearful of being caught in a literary fraud, Robohm ended their collaboration last summer.

(Brenneke did not return repeated calls from Newsweek. But one of his lawyers, Mike Scott, said Snepp's story was false.)

There is, finally, solid evidence that George Bush did not go to Paris on Oct. 19–20, 1980—the U.S. Secret Service logs recorded where candidate Bush was on those days. Those logs show that Bush campaigned in New Jersey and Pennsylvania on Oct. 17, and that he went to the Chevy Chase Country Club, outside Washington, during the day on Oct. 19. They also show that he delivered a campaign speech before the Zionist Organization of America at a Washington hotel that night. The logs show that he returned to his home at about 9:30 on the night of the 19th. The next day, Oct. 20, the Secret Service logs and press reports both record that Bush was back on the campaign trail in New Haven, Conn. Given the travel time involved, there is no reasonable possibility that he could have flown to Paris, met the Iranians and returned to the United States in that time period.

These details may or may not convince conspiracy theorists who cling to the October Surprise—just as the Warren Commission report failed to convince a whole generation of would-be investigators that Lee Harvey Oswald, acting alone, killed John F. Kennedy. But the evidence on Bush and Casey's whereabouts—and on the bona fides of their accusers—must also be considered against the broad history of U.S.-Iran relations in the 1980s. Indeed, the October Surprise theory rests on two broad-brush assumptions that are highly suspect.

One is the notion that Iran must have gotten U.S. weapons from the Reagan administration in return for delaying the hostages' release. Despite the record of the Iran-contra scandal, however, there is oddly little evidence of any substantial weapons "payoff" to Iran. An authoritative analysis by the Stockholm International Peace Research Institute shows that Iran spent approximately $5 billion on arms between 1980 and 1983—and $3 billion of that total went for military equipment from communist-bloc countries. It is true, apparently, that Israel supplied Iran with $50 million worth of spare parts for U.S.-built F–4 Phantom jets in the spring of 1980. But $50 million is chicken feed for swinging a U.S. presidential election. And Iran never got spare parts for its more potent F–14s, which rarely flew during the Iran-Iraq War but which could well have deterred Iraqi air attacks on Teheran and other cities. Only the United States could have provided the parts. Arms dealer Ian Smalley, who made a fortune selling weapons to Iran, says he does not believe that the Reagan administration cut a deal. "If the U.S. had been in the market, we would have been out of business," Smalley said.

A second pivotal notion is that secret negotiations on the hostage issue between the Carter administration and the Iranian government inexplicable broke down during October 1980. (Gary Sick, among others, places great emphasis on this fact.) But Iranian leaders were arguably distracted by the outbreak of the Iran-Iraq War, which began on September 22. In a report for the Council on Foreign Relations, former Carter administration official Harold Saunders argues that the war "diverted and absorbed the attention of Iran's leaders"—and Saunders said that only "skillful management" by Rafsanjani got the Iranian Parliament to resolve its disagreements on the hostage issue. If, as some October Surprise proponents have claimed, Rafsanjani participated in the alleged secret deal with the Reagan campaign, why did he try to resolve the hostage impasse while Carter was still in power? Then, too, many Iranians hated Jimmy Carter. Eric Rouleau, who is now France's ambassador to Turkey, was a journalist in Teheran at the time. Rouleau, who knew many Iranian leaders personally, says he heard no gossip about any pending deal with the Reagan campaign. But the Iranians were well aware that releasing the hostages could help Carter win the election—and Rouleau says there was "a lot of discussion, lots of declarations, to the effect that the Iranians would never give any kind of 'gift' to President Carter."

There is, finally, one tantalizing coincidence in the secret record of the hostage crisis. On July 1, or July 2, 1980, Cyrus Hashemi met with a member of the Iranian leadership at the Ritz Hotel in Madrid. He was, apparently, acting as a go-between for the Carter administration, which by then was desperately seeking some new avenue to reopen the hostage negotiations. (That meeting, Newsweek sources say, led to a last-ditch diplomatic initiative by Secretary of State Edmund Muskie in September.) Within a week, according to Bani Sadr's diaries, Bani Sadr was told by the Ayatollah Khomeini's nephew that Iran had been approached by Reagan's men with a proposition on the hostages. The meeting site—Spain—was mentioned. Could it be that the Ayatollah's nephew confused Reagan with Carter—and that the whole notion of the October Surprise stems from that simple mistake?

NO MFN TO U.S.S.R. UNLESS IT CUTS AID TO CUBA

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. SMITH of Florida. Mr. Speaker, the United States must effectively use both carrot and stick to help the U.S.S.R. to institutionalize democracy and to establish a free market economy.

Soviet Union citizens and American taxpayers would certainly agree that annual Soviet subsidies to Castro's Cuba could be put to better use in the Soviet Union. An overwhelming majority of Soviet citizens favor terminating their Government's generous support for Castro's brutal regime.

In my recent trip to Moscow, officials at the highest levels assured me that they were very eager to soon halt their country's preferential treatment of Castro.

I am extremely gratified that on October 28, Russian President Boris Yeltsin announced that the Russian Republic would cease all aid to Cuba, military and economic. If the other republics follow suit, this will soon be a national Soviet policy. I hope they do act soon.

But we must hold the Soviets to their word. That is why I am glad to join my friend from New Jersey, Mr. GUARINI, as an original cosponsor of this bill to withhold MFN from the U.S.S.R. unless it terminates all direct military and economic aid to Castro's regime.

This bill makes good, common sense. It provides the necessary reward or carrot of MFN to the Soviets if they live up to their promise. It denies them MFN if they don't live up to their promise.

Mr. Speaker, let me suggest to my colleagues, that if you want to help the Soviet people, to help to promote democracy in Cuba, and to get the respect of the American taxpayer, then support this bill.

"A HUNDRED YEARS AGO, THE BUFFALO SOLDIER REVISITED"

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. COLEMAN of Texas. Mr. Speaker, I rise today to invite my colleagues to view a special art exhibition commemorating the 9th and 101st Cavalry Units of the U.S. Army, also known as the Buffalo Soldiers. The artist, Bob Snead, is a resident of El Paso, in the 16th Congressional District of Texas.

Mr. Snead's exhibition notes describe the units "being formed under the congressional directive which stated: 'The units will be manned by negro enlisted men and white officers.'

"From the staked plains of Texas to the jagged mountain peaks of Arizona, and from the muddy waters of the Rio Grande to the northern wilderness of the Canadian border, the men of the cavalry patrolled, campaigned, fought, and died. Their missions were as varied and numerous as the locations and terrain they encountered. They built forts across the frontier and escorted the wagon trains that brought the pioneers to them. Railroad construction crews and telegraph linemen appreciated their presence, a feeling that was not shared by cattle thieves and illegal traders who supplied Indians with guns and whiskey.

"The name 'Buffalo Soldiers' originated with the Native Americans because these soldiers resembled the great Buffalo of the Plains, with their black skin and short curly hair. The record of the Buffalo Soldiers still stands as the greatest collective Black military contribution to the United States and the freedom for which it stands."

Mr. Speaker, the Buffalo Soldiers are remembered through the artistry of Mr. Snead. In addition to his accomplishments as an artist and cartoonist, Mr. Snead has taken the story of the Buffalo Soldiers to the stage. His one-man play "Held in Trust" depicts the life and times of Lt. Henry Ossian Flipper, the first black graduate of the West Point Military Academy. The play highlights Flipper's unjust dismissal from the Army and his lifelong quest to regain his good name and place in history, and the U.S. Army.

Mr. Speaker, on behalf of the residents of the 16th Congressional District of Texas, and the Members of the U.S. House of Representatives, I would like to welcome Mr. Snead, and his remembrances of the Buffalo Soldiers, to these halls.

TRIBUTE TO STEVE ENDEAN

HON. MARTIN OLAV SABO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, November 4, 1991

Mr. SABO. Mr. Speaker, I wish today to honor one of the leaders in the fight for fairness for lesbian, gay, and bisexual Americans—Steve Endean. Steve Endean became a gay activist in my home State of Minnesota more than 20 years ago, when the organized movement for gay civil rights was in its infancy. Steve was the first lobbyist for lesbian, gay, and bisexual civil rights at the Minnesota State Capitol in St. Paul, when I was Speaker of the Minnesota House, and he was a leader in efforts to pass the Minneapolis city ordinance on gay rights.

In 1978, after working at the local level for several years, Steve Endean moved to Washington, DC and founded the Gay Rights National Lobby, one of the first national political organizations in Washington working to outlaw discrimination on the basis of sexual orientation.

Steve Endean was a founder of the Human Rights Campaign Fund. Later he became the field director of the expanded Human Rights Campaign Fund and helped build its renowned grassroots network. Today, thanks largely to Steve Endean, the Human Rights Campaign Fund is the Nation's largest lesbian, gay and bisexual civil rights organization and one of the country's largest political action committees.

Steve Endean left the Human Rights Campaign Fund last Friday, but that will not stop his work for equal opportunity for all Americans regardless of their sexual orientation. "A lot of elected officials, even if they don't oppose fairness for lesbians and gay men, choose to duck the issue," said Endean recently to the Minnesota Star Tribune. "They are misjudging the prevailing winds." He cited a 1991 Penn and Schoen poll that showed over 75 percent of the respondents supported protection from job discrimination for lesbian, gay, and bisexual Americans.

Never one to rest, Steve Endean has embarked on a new campaign to ask prominent Minnesotans to support laws barring discrimination against gays, lesbians, and bisexuals. The first leaders to take this stand include: Joan Mondale, wife of the former vice president; Alan Page, an attorney and former Vikings football player; Wheelock Whitney, a former Republican gubernatorial candidate, and Beverly McKinnell, president of the League of Women Voters of Minnesota.

Steve Endean has been a pioneer in the movement to provide fair treatment for all people regardless of their sexual orientation. I am proud to recognize him today and thank him for all the good work he has done.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, November 5, 1991, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

NOVEMBER 6

9:00 a.m.

Labor and Human Resources

Business meeting, to mark up the proposed "Health Professions and Nurses Education Act," the proposed "Health Promotion and Disease Prevention Act," and to consider pending nominations.

SD-430

9:30 a.m.

Governmental Affairs

Permanent Subcommittee on Investigations

To continue hearings to examine organized crime activities in Asian communities.

SD-342

10:00 a.m.

Banking, Housing, and Urban Affairs

Business meeting, to consider the nominations of Robert L. Clarke, of Texas, to be Comptroller of the Currency, Department of the Treasury, Susan M. Phillips, of Iowa, to be a Member of the Board of Governors of the Federal Reserve System, and David F. Bradford, of New Jersey, and Paul Wonnacott, of Maryland, each to be a Member of the Council of Economic Advisers.

SD-538

Foreign Relations

To hold hearings to examine relations in a multipolar world after the Cold War.

SD-419

Select on POW/MIA Affairs

To continue hearings to examine the process of investigation of POW/MIA's currently in place, and to determine whether or not live Americans are being held against their will in Southeast Asia.

SH-216

2:15 p.m.

Foreign Relations

African Affairs Subcommittee

To hold hearings to examine the current political situation in Zaire.

SD-419

3:00 p.m.

Conferees on H.R. 707, to improve the regulation of futures trading and authorize appropriations for the Commodity Futures Trading Commission.

1100 Longworth Building

NOVEMBER 7

9:00 a.m.

Governmental Affairs

Government Information and Regulation Subcommittee

To hold hearings on adjusting censal estimates of the Bureau of the Census, Department of Commerce.

SD-342

9:30 a.m.

Energy and Natural Resources

Public Lands, National Parks and Forests Subcommittee

To hold hearings on S. 461, designating segments of the Lamprey River in New Hampshire for potential addition to the National Wild and Scenic Rivers System, S. 606, designating segments of the Allegheny River in Pennsylvania as a component of the National Wild and Scenic Rivers System, S. 1230 and H.R. 990, to authorize additional funds for land acquisition at Monocacy National Battlefield, Maryland, S. 1552, designating the White Clay Creek in Delaware and Pennsylvania for potential addition to the National Wild and Scenic Rivers System, S. 1660, to authorize funds for implementation of the development plan for a segment of Pennsylvania Avenue in the District of Columbia, S. 1772 and H.R. 2370, to alter the boundaries of the Stones River National Battlefield, Tennessee, and S. 1770, to convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center.

SD-366

Small Business

Competitiveness and Economic Opportunity Subcommittee

To hold oversight hearings to examine how product liability affects small business, focusing on innovation and competitiveness.

SR-428A

Select on POW/MIA Affairs

To continue hearings to examine the process of investigation of POW/MIA's currently in place, and to determine whether or not live Americans are being held against their will in Southeast Asia.

SH-216

10:00 a.m.

Commerce, Science, and Transportation

Foreign Commerce and Tourism Subcommittee

To hold hearings to examine U.S. trade with eastern Europe and the Soviet Union.

SR-253

Foreign Relations

To hold hearings to review the President's unilateral nuclear arms reduction initiative, the response of President Gorbachev, and the recent meeting in Madrid.

SD-419

2:00 p.m.

Small Business

To hold hearings on the nomination of Paul H. Cooksey, of Virginia, to be Deputy Administrator of the Small Business Administration.

SR-428A

NOVEMBER 8

9:30 a.m.

Governmental Affairs

Oversight of Government Management Subcommittee

To hold hearings to examine whether the Federal Government's purchasing practices are environmentally conscious.

SD-342

10:00 a.m.

Foreign Relations

To resume hearings to examine relations in a multipolar world after the Cold War.

SD-419

NOVEMBER 12

10:00 a.m.

Commerce, Science, and Transportation

To hold hearings to examine competitiveness in the U.S. computer software industry.

SR-253

NOVEMBER 14

9:30 a.m.

Governmental Affairs

Oversight of Government Management Subcommittee

To hold hearings to examine the Federal Government role in promoting children's health through the national school system.

SD-342

NOVEMBER 15

9:30 a.m.

Commerce, Science, and Transportation

To hold hearings to examine global change research, focusing on ozone depletion and its impact on the environment.

SR-253

Select on Indian Affairs

To hold hearings on S. 1607, to provide for the settlement of the water rights claims of the Northern Cheyenne Tribe.

SR-485

NOVEMBER 19

10:00 a.m.

Commerce, Science, and Transportation

To hold oversight hearings on title 5 of Public Law 100-418, authorizing the President to conduct a study on the effect of foreign mergers, acquisitions, and takeovers on U.S. national security.

SR-253

NOVEMBER 20

10:00 a.m.

Select on Indian Affairs

To hold oversight hearings on Federal court review of tribal court rulings in actions arising under the Indian Civil Rights Act.

SR-485

CANCELLATIONS

NOVEMBER 12

10:00 a.m.

Select on Indian Affairs

To hold hearings on S. 538, to restore Federal recognition of, and assistance to, the Miami Nation of Indiana.

SR-485

POSTPONEMENTS

NOVEMBER 6

10:00 a.m.

Select on Indian Affairs

To hold hearings on S. 538, to restore Federal recognition of, and assistance to, the Miami Nation of Indiana.

SR-485

HOUSE OF REPRESENTATIVES—*Tuesday, November 5, 1991*

The House met at 12 noon and was called to order by the Speaker pro tempore (Mr. GEPHARDT).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 4, 1991.

I hereby designate the Honorable RICHARD A. GEPHARDT to act as Speaker pro tempore on Tuesday, November 5, 1991.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We are grateful, O God, for those who devote themselves to public service and see in that vocation the opportunity to serve the needs of people. In this our prayer, we remember those who use their abilities to build stronger communities and who are good stewards of the resources of the Nation. On this day we are specially conscious of the long service of our friend and colleague, JAMIE WHITTEN, and his commitment to this institution and to the people of his district. May Your blessing, O gracious God, be with him and with each of us that we will be the people You would have us be and do those good things that honor You and serve people everywhere. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceeding and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Wyoming [Mr. THOMAS] please come forward and lead the House in the Pledge of Allegiance?

Mr. THOMAS of Wyoming led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed a joint resolution of the following title, in which the concurrence of the House is requested:

S.J. Res. 207. Joint resolution to designate the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, each as "National Adoption Week."

TODAY JAMIE WHITTEN MARKS HIS 50TH ANNIVERSARY OF SERVICE IN THIS CHAMBER

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, I rise to pay tribute to the dean of the House of Representatives and the dean of the Mississippi delegation. Congressman JAMIE WHITTEN today, November 5, 1991, marks his 50th anniversary of service in this Chamber. Congratulations, Mr. WHITTEN, for what you have done.

On this day in 1941, a young district attorney from Tallahatchie County, MS, was first elected to the House of Representatives, which was in the 77th Congress. From then, right on through to this 102d Congress, JAMIE WHITTEN has been on the job for our State and for this great country. JAMIE once said, "It's not how long you serve, but how well." He has been successful on both of those counts.

He has served with 10 Presidents and they have all sought his advice, and rightly so. He has played a key role in shaping agricultural policy ever since taking over the Appropriations Subcommittee on Agriculture and Rural Development in 1946. And for the past 12 years, he has been one of the best chairmen the full Appropriations Committee has ever had.

The late Congressman Carl Vinson of Georgia holds the record for the longest term of service in the House—50 years, 2 months, and 13 days. On January 6, 1992, Mr. WHITTEN will break that record and become the longest serving American in the history of the House of Representatives.

We take the well today to salute JAMIE for his lifetime of dedicated service to this House and this country.

JAMIE WHITTEN'S OUTSTANDING PUBLIC SERVICE TO MISSISSIPPI AND AMERICA

(Mr. ESPY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ESPY. Mr. Speaker, I have been given 1 minute to express appreciation for the distinguished career of one who has rendered 26,297,280 minutes of outstanding public service to Mississippi and America.

During those millions of minutes from 1941 to 1991, he has had but one concern—zealous and effective representation for Mississippi and the Nation.

Who in this body has seen more change and helped the United States confront more challenges than has JAMIE WHITTEN?

On November 5, 1941, the day he was first elected:

President Roosevelt spoke at Hyde Park to prepare our country for our entry to the Second World War; and

That same day the Nazis announced the capture of the southern coast of Crimea.

Through war, drought, floods, disturbances and recessions, he has represented those American values which we all revere: staunch but not inflexible; traditional but innovative; and he speaks but also listens.

He is chairman of the most powerful committee in the most powerful House in the most powerful country in the world.

But down home in Corinth and Cascilla he is just plain JAMIE.

We applaud his service and wish him many millions minutes more.

HON. JAMIE WHITTEN'S 50TH YEAR IN CONGRESS

(Mr. Parker asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PARKER. Mr. Speaker, when I first came to Congress, the first time I came onto the floor of this Chamber as a Member of this body, Mr. WHITTEN came up to me, put his arm around me, and asked, "Do you remember President Roosevelt's 'Day of Infamy' speech"? I replied, "I've heard about it." He pointed to a seat, and said, "I was sitting right over there when he gave that speech." That was December 8, 1941—50 years ago. That anecdote, more than anything that I know of, emphasizes what we in Mississippi have long known about Congress—we realize the importance of seniority. As the senior Member of this body, as the dean of the House of Representatives, Mr. JAMIE WHITTEN is the embodiment of the seniority system.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Mississippians recognize that the only way a small State like ours can compete with the larger States—Illinois, Florida, California, Texas—is through the seniority system. The fact is, our forefathers recognized that such a system was the only way to protect the small States from domination by the larger States within this Chamber. Seniority is an integral part of our system of Government.

No one exemplifies that fact better than Mr. WHITTEN. He provides those of us from Mississippi with the opportunity to stand at least eye to eye with anyone in the Capitol. He represents the principle of equality under which we operate. Mississippi, through Mr. WHITTEN's commitment, is clearly an example of how a small State can stand up and compete with any State in this Nation. It is extremely difficult for a 5-member delegation to retain a competitive edge against a 52-member delegation, which California will have next term. Mr. WHITTEN is our edge. The seniority system that he represents is our method.

The people of Mississippi love Mr. WHITTEN. They appreciate his hard work and dedication from which we have benefited for the last 50 years—one-fourth of the life of the Congress. As a Member of this body, I revere him and I thank him for the affect he has had on our State and our Nation.

□ 1210

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MONTGOMERY). Before recognizing the gentleman from Mississippi [Mr. TAYLOR], the Chair would like to thank the other Members on both sides of the aisle for letting the Chair recognize Members from Mississippi, and after the gentleman from Kentucky [Mr. NATCHER] has made his remarks, the Chair will then be going from one side of the aisle to the othere side of the aisle.

The Chair recognizes the gentleman from Mississippi [Mr. TAYLOR].

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. TAYLOR of Mississippi asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TAYLOR of Mississippi. Mr. Speaker, 50 years ago today a young man from Cascilla, MS, was elected to serve the people of Mississippi. He came, by his own admission, to serve his Nation for 3 and maybe 4 years, but found at the end of that fourth year that his Nation was in the midst of World War II. So by his decision at that time, serving on the War Committee on Naval Appropriations, he decided to stick around a little longer because he felt like his State and his Nation needed him.

Mr. WHITTEN, I can tell you that 50 years later your State and your Nation still need you, and for what you have done and what I am sure you will still do for your State and your Nation, I want to thank you on behalf of a very, very grateful Mississippi. And for those people who seem to be advocates of term limitations, who say that people lose their touch with reality, lose their touch with their constituents, I can offer no greater example of someone who has come and stayed and served every day for 50 years in the best interests of the people of this Nation than Chairman JAMIE WHITTEN.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Before recognizing the gentleman from Kentucky [Mr. NATCHER], the Chair would like to say that there are two Members from the other body. They will not have the privilege of speaking, but they are certainly welcome here, and they are from Mississippi.

The Chair recognizes the gentleman from Kentucky [Mr. NATCHER].

THE HONORABLE JAMIE L. WHITTEN

(Mr. NATCHER asked and was given permission to address the House for 1 minute.)

Mr. NATCHER. Mr. Speaker, our friend JAMIE L. WHITTEN of Mississippi is one of the outstanding Members of the House of Representatives. He has completed 50 years of service as a Member of the House and in January 1992 will then have the all-time record for the House of Representatives by serving 50 years and 5 months.

Carl Vinson of Georgia served in the House from November 3, 1914, through January 3, 1965, which makes a total of 50 years, 2 months and 13 days. Only one Member of Congress has served for a longer period of time up to this date, and that was Carl T. Hayden of Arizona, who served in both the House and the Senate for 56 years, 10 months, and 28 days. JAMIE WHITTEN today is No. 2 in his service in the House and now goes ahead of Emanuel Celler of New York, who served for 49 years, 10 months, and 13 days. He also goes ahead of Sam T. Rayburn of Texas, who served for 48 years, 8 months, and 25 days. Wright Patman of Texas was another Member of the House, who served for 47 years and 15 days. Joseph G. Cannon of Illinois served for 46 years and 10 days in the House of Representatives. Next, we have Adolph J. Sabath of Illinois, who served for 45 years, 8 months, and 14 days. George H. Mahon of Texas served for 44 years and 11 days. Melvin Price of Illinois served for 43 years and 4 months. John W. McCormack of Massachusetts served for 42 years, 2 months, and 9 days.

Just to show you where some of us stand on the seniority list, I am now No. 26 in the House of Representatives beginning on March 4, 1953, and my tenure at this time is 38 years, 3 months, and 5 days. Since the first Congress convened on March 4, 1789, some 11,235 men and women have served in the Congress of the United States. About 599 of them served in both the House and the Senate.

It is a distinct honor and a privilege to serve with my friend JAMIE WHITTEN in the House of Representatives. We now have on our Committee on Appropriations 59 members, and after 37 years, I am No. 2 and sit next to my chairman, JAMIE L. WHITTEN. Mr. Speaker, you will be interested to know that on a number of occasions each year, I inquire as to how my chairman feels. He says I should inquire every 2 or 3 weeks, not every day.

JAMIE WHITTEN loves the House of Representatives, and I hope, Mr. Speaker, that he serves for many, many more years, and he will then establish a record that will never be surpassed in the history of our country.

FAIRNESS IN THE HOUSE RULES

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, I pledge not to talk about term limitations.

Mr. Speaker, a few weeks ago we were engaged in a heated debate on unemployment compensation on this very floor. I remember very well that the Republicans were complaining about the parameters of the Democratic program for unemployment compensation. One Member from the Democratic side stood up and said, "Well, if you do not like it, why don't you offer your own proposal?" That was the stentorian remark made by the Member of the Democratic side. And the response came back very plausibly, "You never gave us a chance to do that."

Why? Because the Democrats, in ruling by majority in the Rules Committee, decided that there would not be allowed a Republican alternative under the rule. This is what is wrong with our system. That is why a Republican Congress, when it comes to be, and I will vote if I am here, whether I am here by term limitation or not, I will vote to allow the Rules Committee to give full sway to the Democratic minority that will be in office at that time. The Rules Committee has to be the bulwark of fairness and democratic action, with a small "d," and today it is not. A Republican Congress would assure that.

TRIBUTE TO THE HONORABLE JAMIE WHITTEN FOR 50 YEARS OF PUBLIC SERVICE

(Ms. KAPTUR asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, it gives me great pleasure to rise today to pay tribute to Chairman JAMIE LLOYD WHITTEN, the respected gentleman from Charleston, MS, dean of this House of Representatives, master of rules, chairman of Appropriations, stalwart but of good humor, engaged, rugged. May I say, he is the definer of the philosophy that investing in America creates the distinction between real wealth and money; displaying at each juncture American tenacity with southern charm, embodying small town values with national vision, a man whose mission for half a century has been investing in America's vitality and her future.

We thank you, Mr. Chairman, for every farm, for every hill, for every hollow, for every neighborhood, for every main street, and for every back street, the people of America thank you, as do, I am sure, your constituents in Choctaw, Tallahatchie, Panola, Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Montgomery, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union, Webster, and Yalobusha. And God bless you.

WHAT'S WRONG WITH THIS PICTURE?

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, what's wrong with this picture?

The Democrat-controlled Congress is exempt from the:

Social Security Act;
National Labor Relations Act;
Equal Pay Act;
Civil Rights Act;
Freedom of Information Act;
Age Discrimination Act;
Occupational Safety and Health Act;
Equal Employment Opportunity Act;
Title IX of the Higher Education Act;
Privacy Act;
Ethics in Government Act; and
Civil Rights Restoration Act.

Does this sound wrong?

I'll tell you what's wrong, Mr. Speaker: The Democrats in Congress are more interested in giving themselves a free ride than they are in stepping up to the plate with the rest of America.

If Republicans controlled Congress, we would be in the batter's box with the rest of America.

JAMIE WHITTEN'S 50TH YEAR IN CONGRESS

(Mr. BEVILL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEVILL. Mr. Speaker, I rise today to pay tribute to my good friend and colleague, JAMIE WHITTEN, as he completes his 50th year of continuous service to the people of Mississippi and to our great Nation. Only two other Members of Congress have ever served as long as JAMIE has. And, as we all know, on January 6, Jamie will break the record set by the late Congressman Carl Vinson. On that date, JAMIE will be the longest-serving congressman in history.

He still has to break the record of Carl Hayden, who served in the House and in the Senate. But I am confident that JAMIE will break all records.

I have enjoyed knowing JAMIE and working with him through the years on the House Appropriations Committee. As chairman, he has been a very fine leader who is highly dedicated to his work.

JAMIE has been a most outstanding Member of Congress. His fine record in the Congress will long be remembered as one that is unique and excellent.

JAMIE, I hope you serve another 50 years in the Congress.

□ 1220

THE PEOPLE'S BODY?

(Mr. HANCOCK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HANCOCK. Mr. Speaker, if Republicans were in control of this House—the people's body—the first thing we would do is try and restore the people's trust in it. Public trust in this Democrat-controlled Congress is at an all-time low, and for good reason.

In recent years, the American people have seen a Democrat Speaker and whip resign under a storm of ethics questions, and, in case of the Speaker, clear ethics violations. In recent weeks, the American people have seen both check bouncing and free lunch scandals further tarnish the image of the people's body and the Democrats who run it. And in recent days, a new scandal has been brought to light by the news media and by some of our more courageous colleagues. That new scandal is called "congressional coverage." But what it amounts to is a Democrat-controlled Congress granting itself special treatment under the laws that apply to every other American.

The Democrats in this House may talk a good game on fairness, but they don't practice what they preach. Just look at the Shaw amendment in 1987, which would have included Members of Congress as potential subjects of independent counsel investigations: 232 Democrats voted against this amendment, only 11 Democrats voted for it; Republicans overwhelmingly supported the amendment.

Mr. Speaker, if Republicans were in control of this House, we would eliminate this special treatment under the law. How can it be defended? It's self-interest at its worst.

If we believe that governments derive their power from the consent of governed, then this practice of special treatment for elected officials threatens to undermine that consent.

It's no wonder why the term limitation movement is so popular, Mr. Speaker.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Ms. PELOSI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PELOSI. Mr. Speaker, today I join my colleagues in honoring Chairman JAMIE WHITTEN, in celebration of the 50th anniversary of his distinguished service in Congress.

It is a personal pleasure for me to honor Mr. WHITTEN, because he served with my father Thomas D'Alesandro those 50 years ago, both in the House and on the Committee on Appropriations. So every time JAMIE walks into the House, I see not only the power of his office as the chair of the Committee on Appropriations, or the strength of his personality as a great leader in this body, but also the memory of what it must have been like in those days when so many great decisions for our country were made.

On behalf of my entire family, I want to extend congratulations to you, Mr. Chairman. I am so glad that you are here.

I also want to extend again the thanks every chance I get of my constituents for all you have done for us, and particularly your quick response to our needs at the time of the Loma Prieta earthquake.

Mr. Speaker, everybody knows that Mr. WHITTEN has had an illustrious career, both in terms of length of service and achievements during his years in the House. Not only has he skillfully used his time and talents to help the people of Mississippi, but Mr. WHITTEN has also been dedicated to helping Americans throughout the Nation.

While today's historic celebration to honor Chairman WHITTEN on his 50 years of service to his constituents and this body signifies quite an achievement, it is only one milestone we will commemorate. Indeed, I anticipate we will be here next January 6 to honor the chairman as the longest serving Member of the House of Representatives, and many honors more to come.

Again, I join my colleagues in wishing Chairman WHITTEN a very happy golden anniversary.

Thank you, Mr. Chairman, for all you have done.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. MYERS of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MYERS of Indiana. Mr. Speaker, it is an honor today to join the friends and colleagues of JAMIE WHITTEN to honor 50 years of service. Fifty years is a long time to stay in one job. Very few people in this country spend 50 years in one job, let alone a job that has the rigors that all of us know this job places, especially having to face the electorate every 2 years. But it has been an honor to serve those years. I regret I have only had an opportunity to serve half of the 50 years, 25 with the chairman.

But as a freshman many years ago, and all of us have been freshmen, we kind of pick people out that we will respect and accept their judgment and kind of follow the pattern that they set.

Very early, as a Republican primarily looking at the Republican side, but JAMIE was a person I identified as a person I wanted to follow, a person whose judgment I wanted to respect. There is no one serving in either body, either the Senate or the House, more knowledgeable on agriculture nor has served agriculture and farmers of America more than JAMIE has.

Mr. Speaker, it is a pleasure to say that we have known JAMIE these years, and it is going to be even more of a pleasure to serve another 50 years.

JAMIE, I hope we are both here another 50 years from now serving, although I would not wish that on anyone.

But in any event, Mr. Chairman, we thank you very much for the service you have given the Congress and especially this country, and thank the good people of the First District of Mississippi who have had the good judgment of returning you every 2 years. We hope they will continue to return you many years.

We thank them, and Rebecca, Mrs. Whitten, for sharing you with us and the Nation.

TRIBUTE TO THE DEAN OF THE HOUSE

(Mr. STOKES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STOKES. Mr. Speaker, I join with my colleagues here today in paying tribute to the dean of the House. One of the great thrills about serving in this House is that on occasions you are given the opportunity to be present when history occurs.

This is another historic occasion when we celebrate with Chairman JAMIE WHITTEN his completion of 50 years of service in this body. With the present clamor of term limitations taking place around the Nation, it is interesting to note the good sense of the people in the State of Mississippi. Recently I heard Chairman WHITTEN say that it is not how long you have served—it's the quality of your service. The good sense of the people of Mississippi in keeping him in office has inured to the benefit of the entire Nation.

Those of us who serve on the Appropriations Committee under his chairmanship are proud of his legislative skills and leadership.

We look forward to January when we will share with him his next milestone of becoming the longest serving Member in the history of the House. Chairman WHITTEN epitomizes both longevity and quality of service.

BANKING BILL NECESSARY TO STIMULATE ECONOMY

(Mr. THOMAS of Wyoming asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMAS of Wyoming. Mr. Speaker, the banking bill went down the tubes last night. I cannot say that I am sorry. It turned out to be a camel, when what we really needed was a horse.

Mr. Speaker, there are no doubt many different reasons why different people voted against the bill. Some thought it had too many controls and restrictions, and some thought it did not have enough. Some thought it had become a social service bill, and some thought it needed more social services.

Mr. Speaker, the point is we do need a banking bill. This country is frustrated and in a bad mood. I am persuaded it is mostly because of the uncertainty of the economy. People feel frustrated when jobs are not certain. We feel frustrated when the economy is growing slowly. When the economy is uncertain, we all feel frustrated.

That frustration takes place in lots of ways. We talk about all kinds of things and we get angry with the Government. Mostly, however, it is because the economy is not doing well, and we cannot move the economy without a banking system.

Mr. Speaker, let us decide what we want in banking before we start to write the words and make the amendments. I think we need to protect the taxpayers as they commit themselves to deposit insurance and we need to allow the banks to operate as businesses, to operate competitively and fairly, and we should not overburden them with restrictions. But most of all, Mr. Speaker, we need to move to have a banking bill to kick this economy.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. LEHMAN of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEHMAN of Florida. Mr. Speaker, it is an honor and a pleasure for me to be among the Members of the House honoring our most distinguished dean, the gentleman from Mississippi [Mr. WHITTEN], on his completion today of 50 years' service in this body. As remarkable as this achievement is, I must say this commemoration is only a dry run for the real celebration, on January 6, 1992, when Jamie breaks the all-time record for length of service in the House.

Consider the changes—both at home and abroad—that JAMIE WHITTEN has seen in 50 years in the House. Consider the great leaders who have come and gone; the current events that now are history; the triumphs, and the tragedies. Consider the technological advances that have altered virtually every aspect of our lives, from the creation of our Interstate Highway System and our national air travel network, to the revolution in telecommunications, even the lowly but essential fax.

Through all these years and all these changes, and particularly as chairman of the Committee on Appropriations since 1978, JAMIE has remained dedicated to a basic belief—that the real wealth of America is America itself and that the best investments we can make are in our country itself: our forests and farms, our harbors and airports, our roads and bridges, our reservoirs and waterways, our schools and public buildings.

JAMIE WHITTEN stands after 50 years in the House as proof that a person with character and vision need not be a television regular to have a most productive and successful career in public life.

Mr. Speaker, I congratulate our dean on his service and look forward to sharing in the further celebrations of his career, in January 1992, and again in October 1998, when JAMIE breaks the last record left for him, for total service in Congress.

□ 1230

THE DEMOCRAT-CONTROLLED CONGRESS

(Mr. BLILEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BLILEY. Mr. Speaker, the problem is not the Congress. It is the Democrat-controlled Congress.

We hear talk from their side of the aisle that the President lacks a domestic agenda. The President sent up an energy bill earlier this spring and what has happened? The other body killed it the other night without even debating it. We have not acted on it.

The President sent up an education proposal that calls for choice for parents in education. Apparently that is unacceptable to their party as well because we have not seen it on the floor. Likewise the President sent up a crime bill and what did we get? A quota on the death penalty.

Mr. Speaker, the problem is not the Congress. It is the Democrat-controlled Congress. If the Republicans were in charge, the balanced budget amendment would be out there for the States to ratify and likewise the line item veto amendment.

Mr. Speaker, let us allow the President to dip down into the appropriations bills and scoop out that odiferous pork and send it back. No, Mr. Speaker, the problem is not the Congress. It is the Democrat-controlled Congress.

SALUTE TO JAMIE WHITTEN

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. President, I rise today to salute the chairman of the Committee on Appropriations, JAMIE WHITTEN, on the occasion of his 50th anniversary of service in Congress. It has been my pleasure for 7 years now to not only serve with Mr. WHITTEN on the Committee on Appropriations but also on his Subcommittee on Rural Development, Agriculture and Related Agencies.

I can tell those who have come to our subcommittee hearings that many new members of the Agriculture Department have been shocked to learn that when they presented a new idea to the chairman of the committee, they had been reminded that that idea has been tried before. Mr. WHITTEN's encyclopedic knowledge of agricultural policy is not only a benefit to our committee but it is to the Nation.

Let me also add that there are several enduring qualities as far as Mr. WHITTEN is concerned in his political philosophy. The first is his rock-solid belief in the value of the rancher and the plowman for the economy and growth of America.

Second, his belief in the power of government as an engine of growth for our country. Mr. WHITTEN brings those beliefs to all of his debates and to all of his work in Congress.

I might close by saying that it is ironic that we would celebrate this 50th anniversary on a day when most of America is discussing term limitations. I might close by saying this: For a bad Congressman, one term is too many. For a good, effective Congressman, who represents his district and serves his Nation, 25 terms are not nearly enough.

Congratulations, Mr. WHITTEN.

LEAVE POLICIES SHOULD BE NEGOTIATED, NOT MANDATED

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, I think it's quite ironic that labor unions recently have been running television ads listing the benefits they have secured for their members. Family leave is right at the top of their list of hard-won benefits.

And yet, they now want to turn over their proper role as negotiator of these benefits to the U.S. Congress. So what's next if the family and medical leave bill becomes law?

Unions will not have to negotiate for family leave any longer if it has been required by law. So it will not count anymore as a benefit for bargaining purposes. Unions will get to start fresh with new demands. Family leave policies simply will not count at the bargaining table.

Those of us who believe that employers and employees should be free to negotiate leave policies and other benefits will vote against the bill.

I would urge my colleagues who may be planning to vote the other way to remember that it's easy to say that you're all for small business. But it's how you vote that really counts.

IN HONOR OF JAMIE WHITTEN'S 50 YEARS OF SERVICE

(Mr. MCHUGH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCHUGH. Mr. Speaker, today we celebrate a great milestone in the House of Representatives, the 50th anniversary of JAMIE WHITTEN's first day in Congress. Many Members have served during the intervening years, but none with more distinction and effect than JAMIE WHITTEN.

His distinction is not founded solely or even primarily on his length of service, as impressive as that is. It is based on his genuine belief that government must respond to people's fundamental needs, and on his leadership in seeing that it does. JAMIE has lived through the human suffering of economic hard times, the heroism and pain of war, and the profound shifts of social change. He has brought the breadth of this experience to bear on his work here, and it has made a positive difference.

It has made a difference for the people of his district and State of Mississippi; and it has made a difference for the people of this Nation. This is especially true for those who live and work on the land, and for the rest of us who benefit from their toil. Jamie has been a leader in agriculture and rural development since the day he arrived, but particularly since he became chairman of the Agriculture Subcommittee of Appropriations in 1949. I was only 10 years old then. Fortunately, in more recent years I have had the privilege to serve on that subcommittee and to benefit from his experience and leadership.

I join today with JAMIE's many other friends and admirers in congratulating him on his years of service and in thanking him for the many ways he has contributed to this House and this Nation.

DO YOU WANT TO BE SICK IN CANADA

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, there are a few good things about the Canadian health system, but suppose a person has a chest pain and they go to their cardiac surgeon in Toronto. He says, "You urgently need surgery," but he already has 54 patients in line for a cardiac bypass. So that person enters the hospital to wait their turn, and it may take 2 weeks before their urgent heart condition is addressed. They will not get a bill for their stay, but what price are they paying for the wait? If their case is not considered urgent, they might wait 3 to 7 months for heart surgery.

Inevitably, some have died waiting in that line. Is it worth it?

Here in the United States we know we need to expand access to health care. It is a major problem we are working on. We can do it by expanding the small business insurance market, by reforming malpractice laws, and by offering long-term health care alternatives.

Before we embrace a single-payer system, let us ask ourselves, do we really want to get sick in Canada? If we think the answer is an automatic yes, then perhaps the next question might be, why do we think so many Canadians seek American health care for major medical problems?

IN HONOR OF JAMIE WHITTEN

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, I join my colleagues to offer my congratulations to my friend and neighbor, JAMIE WHITTEN of Mississippi, on the occasion of the 50th anniversary of his service to the Nation in the U.S. House of Representatives.

As a neighbor to Chairman WHITTEN, I hear voices from across the river explaining that the people of Mississippi have continued to reelect Mr. WHITTEN because he is responsive to their needs and fully shares their dreams and aspirations for the State of Mississippi.

I might also add that his service here is a testament to the political wisdom of the people of Mississippi. They know and understand that through seniority the voices of a poor, small State can be heard in Washington and, that through the continuing service of their representatives in Washington, that that small State can effectively compete with the power and wealth of the large populous States of our Nation.

As a colleague in the House of Representatives and a Member of this body, I want to thank Mr. WHITTEN for his service to our Nation. He has contributed more to the future and well-being of the Nation's farmers, as well as residents of small towns and rural areas, than any other Member of the House of Representatives.

Mr. WHITTEN, I offer to you my heartfelt thanks for your continuing service here.

□ 1240

COMMENDING DAVID AND CHARLES KOCH

(Mr. INHOFE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. INHOFE. Mr. Speaker, a company and its owners, with whom I am personally familiar, were subjected to extreme, unfair, and inaccurate criticism recently by a Member from Washington State. I can't let this injustice go unchallenged.

Because he doesn't like term limitation—an idea which is not very popular in this body, but is supported by 70 percent of the American people—my colleague singled out two of its supporters, David and Charles Koch, owners of Koch Industries. He strongly implied that they are less than the responsible, upstanding citizens that I know them to be.

What's more, during the mid 1980's, when the Southwest was being hit hard by a slump in the energy and agriculture businesses, Koch Industries was busy creating jobs. In my district alone they have created jobs for over 1,000 new people. Koch Industries has been the kind of company the current economic recession is in dire need of. Unfortunately, some incumbents in Congress who are out of touch with the realities of creating jobs, would rather impose new burdensome regulations, thereby prolonging the current economic downturn.

The attack brought on by my colleague from Washington was a clear attempt to avoid discussing the message by trying to smear the messenger. Maybe my colleague forgot that it is a fundamental right of every American citizen to support causes they believe in, and they should be able to do it without having their character attacked on the House floor.

As one Member of Congress, I have supported term limitation since 1976. I believe that if we in Congress knew that some day we would have to go out and make a living under the laws we passed, we would behave differently.

I commend the Kochs for being part of the minority of Americans who are willing to put their time and money where their mouths are. They deserve praise for their contributions, not the shrill and unfounded criticism they received.

Good job, Kochs.

TRIBUTE TO THE HONORABLE JAMIE WHITTEN

(Mr. BROOKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, it is a distinct honor to recognize our distinguished colleague, and my good friend for almost 40 years, the able chairman of the Committee on Appropriations, JAMIE WHITTEN, who today marks 50 years of public service in the United States House of Representatives.

Mr. Speaker, along with CHARLIE BENNETT of Florida, BILL NATCHER of Kentucky, I served with JAMIE WHITTEN in the memorable 83d Congress, which was run by Republicans, and I promise you it was memorable. We will never forget it. It hope we never have to experience it again.

I am delighted, I am delighted that Chairman WHITTEN has now surpassed Carl Vinson's record of tenure. He was fondly known as Admiral Vinson, never having served in the Navy, however.

Now, there is just one to go: Carl Hayden. I hope he will be here in 1998 to break that one.

Mr. Speaker, JAMIE WHITTEN is an able, active, dedicated American who has served his home State of Mississippi for one-half a century. It is a tribute to his district which has wisely elected him all of these years. I hope that his fine constituents will continue to do so in the years to come.

Our country needs him.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ESPY). The Chair would like to interrupt the progression of 1-minute statements in order to invite the dean of the House, Chairman JAMIE WHITTEN, to make comments before the House, without objection, for 1 minute.

There was no objection.

REMARKS OF THE HONORABLE JAMIE WHITTEN ON HIS 50TH ANNIVERSARY IN CONGRESS

(Mr. WHITTEN asked and was given permission to address the House for 1 minute.)

Mr. WHITTEN. Mr. Speaker, needless to say, I greatly appreciate the statements that have been made, and I particularly wish to thank my colleagues from Mississippi for organizing these statements and all of you with whom I serve.

Recently I had occasion to handle a supplemental bill. At that time I said that it is time we looked at the economic situation we face today and quit fussing about who caused it and start doing something about it.

In 1981 we made a mistake in the tax bill, and it lost us more than $2.4 trillion income since enactment. In 1983 I was called on, as chairman of the Committee on Appropriations to come up with a jobs bill to offset the effects of the recession created by the rescission of $16 billion. I stayed here during the Easter recess, and I took all the requests that had been made to the Appropriations Committee that were not funded, as a start, and we developed the jobs bill, which was investment spending where we had something to show for the money we spent. I think we are in a situation today where we need to turn to another jobs bill to pull us out of this recession.

Mr. Speaker, I wish to thank all of you. Indeed, I have been most fortunate. While you can say nice things about my length of service, personally, I believe it is how well you serve and not how long.

I do, if I may say so, have an unusual record. Each time I ran for the State legislature, or for the district attorney with a circuit of eight courts or for Congress, there was a vacancy. Never have I had to run against anyone, although, as I have said, I have had some nice people run against me.

You know, there is an advantage of being Dean. If I date it just right, I can tell you anything and get by with it.

About a year ago, a lady in Richmond, VA, whom I did not know, wrote me and said, "From reading about what they say about public officials, how in the world do you stand being in Congress so long?" I thought about it a little bit, and I wrote her back, and I said, "I enjoy it." So I have enjoyed every bit of the service here.

I came here after I had been district attorney for 8 years and 4 months. I had tried one lawsuit after the other, so I had some experience when I came here.

I want to point out here that I got on the Committee on Appropriations after 14 months in Congress. We had a Mississippian on Ways and Means who was defeated; we had another who was defeated who had been on Appropriations. I wanted to replace the one on Appropriations. I was the ninth out of nine vacancies that got on the committee at that time.

Mr. Clarence Cannon of Missouri was chairman then. He appointed members to subcommittees at that time, and he would not give you anything you wanted, because he was afraid you would have an ax to grind. So I did not ask for anything, and he put me on the Naval Appropriations Subcommittee.

I went to the White House, and met with President Roosevelt. One of the things I might tell you is that Mr. Roosevelt was elected on a platform to cut everything 25 percent but soon found that did not end the Depression, and he had to go in the other direction.

But, I went down to the White House a number of times because of his physical situation. He briefed you at the White House, and took charge of the conversation. If he did not want to bother with your matter, he just entertained you until your time was up.

Another thing true about him was that if you were in his Cabinet or on his staff and got your name in the paper before his or in larger type than his, he cut your job in half. But, for the times he was what we needed. I have been of the opinion that he was not so determined or so fixed in anything but that he couldn't switch direction. If you study history, he and Lincoln were experienced politicians when they came here. But Roosevelt came along at a time when the country needed to try anything, and he was ready to try anything and did a great job.

When you go back to that time in 1934 when we started meeting local problems with national programs, our wealth has increased 41 times. Since I came here, it has increased 36 times.

Anyway, I sat on the Defense Subcommittee since 1943, on the Public Works Subcommittee, and now I am serving my 13th year as chairman of the full committee, thanks to the support of my friends here.

I have tried to be fair, whether it is the jobs bill or whether it is bailing out New York City or Chrysler; whether it is the Northeast, the Northwest, the Southeast or the Southwest and I believe we can prove that our subcommittee still acts that way.

Mr. Speaker, may I say this, and I want you to know, and I repeat it every chance I have, I am proud to say that our committee has held the total of appropriation bills $180,800,000,000 below the recommendations of Presidents since 1945. They passed entitlements, binding contracts which they have to pay and that is where your money has gone. It is entitlements and so forth.

And may I say this, and think about this: We owe $4 trillion. Three-fourths of it has happened since 1981—10 years ago. We have guaranteed another $5 trillion in loan and deposit guarantees. Tell me how in the world you can ever handle that debt and possible debt by cutting back on domestic programs? You are going to have to move forward. You are going to have to produce. You are going to have to spend some money for another jobs bill just as certain as I stand here.

I truly believe we face a need for a jobs bill to restore our economy similar to the one the Committee on Appropriations handled in 1983. We did it.

We have a great country. Let us save it.

Again, I thank my colleagues, particularly from Mississippi, and others.

I cannot let this go without saying something about my friend, BILL NATCHER. We have been friends for a long time. You know, BILL has been here and never missed a rollcall in over 17,000 votes, and if you look at his card, he has got a little number on it. I asked him if that is the number of times voted right. He never has answered.

I close this by saying thank you all. You have been so wonderful and so nice to me. I came here to stay 3 years, but I got on the Committee on Appropriations, and I haven't gotten the job done yet.

But we keep trying. We try to be fair, and I do not talk a whole lot, I hope, and I do not try to talk unless I think I know the subject.

So thank you all from a grateful heart. You have been so very, very nice to me. I do enjoy it. That is the reason I am here.

□ 1250

SOVIET MFN SHOULD BE APPROVED BEFORE CONGRESSIONAL ADJOURNMENT

(Mr. LEACH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEACH. Mr. Speaker, to the gentleman from Mississippi [Mr. WHITTEN], the distinguished dean of this House whom we all honor today, and all the Members, let me say that every Member of this body has come to understand the gravity of the historical circumstances confronting the peoples of the Soviet Union and its emerging democratic republics.

The challenge for this Congress is to craft techniques that advance democratic values and retard the prospect of regression to police state controls on the Eurasian land mass.

While Americans may differ on the role and composition of foreign aid, consensus should be obtainable on the notion that progressive change can most likely be institutionalized through development of trade ties, not simply aid relationships.

Here, the Bush administration has wisely urged the Congress to proceed expeditiously to approve legislation granting nondiscriminatory trade status to the Soviet Union. By itself the measure cannot be expected to stabilize Soviet politics or turn around the Soviet economy; nor does it undercut the appropriateness of granting MFN status to the emerging democratic republics. But at a time when so much progress has been made on the emigration issue, when so much is at stake geopolitically, this Congress has an obligation, before we recess, to pass a trade bill to facilitate ongoing Soviet economic reforms. Congress shirks its duty if it continues to dither.

TRIBUTE TO THE HONORABLE JAMIE WHITTEN

(Mr. OBEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OBEY. Mr. Speaker, I, too, want to rise today to congratulate JAMIE WHITTEN on the celebration of his 50 years of service to the people of the State of Mississippi. I think that is truly an amazing record and I doubt very seriously that it will ever again be repeated in our country's history.

I think it is all the more remarkable that when you consider the enormous pressures that have been brought to bear on this job over the last 10 to 15 years and when you also consider that there is so much turnover in the overall House with almost two-thirds of this House being new since the day that Ronald Reagan walked into the White House. All institutions need new blood, but they also need people who can bring to us a longer view, a view which comes from a historical perspective. We need the wisdom that comes from that service, and I think we all recognize we have it in the gentleman from Mississippi.

I want to congratulate the people of the State of Mississippi for sending such a fine, decent human being, to this institution. I think they indicate by their reelection of JAMIE WHITTEN time and time again that they recognize that the question is not how long you have served here, the question is whose side are you on.

I think the people of Mississippi recognize that JAMIE WHITTEN is on the side of the average American who counts on Government to put his interests first, and I think the chairman has done that very well for the past 50 years and I congratulate him.

FAILED BUDGET ANNIVERSARY, TUESDAY, NOVEMBER 5, 1991

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, I hate to be the grinch who stole Christmas, but today I rise to commemorate an anniversary, an anniversary of one of the more shameful accords ever to be enacted by this House. I speak of the notorious 1990 budget summit agreement.

A year ago today, with great fanfare, the American people were told that because of this agreement, the deficit would be reduced. The proponents said, just allow us to raise taxes $164 billion and we would reduce the deficit $500 billion over the next 5 years. Yet sadly, just 1 year later, I do not stand to triumphantly proclaim that we have succeeded, rather I rise to report that you have utterly and tragically failed.

Today our national debt has now reached $3.8 trillion, that is $16,000 for every man, woman and child in the United States. This year alone the deficit is expected to total over $350 billion—nearly $1 billion per day of new debt.

A recent ABC poll said that 63 percent of the American people blame the Democratic Congress for the economic woes of this country. Additionally, a recent U.S. Chamber of Commerce poll shows that 83 percent of its business members blame Congress for the lack of economic growth. This recession is not due to forces beyond our control—it is a direct result of the Government's massive interference in the economy.

Today I rise to challenge Members of this body to undo the budget fiasco of 1990. It is time to commit to an economic course which will put Americans back to work. It is time to reduce the taxes of the American family. It is time to cut spending—across the board.

It is time for this body to quit lying to the American people. Today, we must pledge to keep our word and reduce the deficit.

TRIBUTE TO THE HONORABLE JAMIE WHITTEN

(Mr. YATES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YATES. Mr. Speaker, I join all my other colleagues who have risen today to pay tribute to the chairman of our Appropriations Committee, the Honorable JAMIE WHITTEN.

When I was first elected to the House in 1948, JAMIE WHITTEN was already an experienced and productive Member of the body. At that time I remember he was on the Agriculture Appropriations Subcommittee and he was on the Military Subcommittee and he has maintained his membership on those subcommittees through all the years, although I think he surrendered his membership on the Military Subcommittee when he became chairman of that committee.

Through all these years, this most capable and distinguished gentleman from Mississippi has served his district well and served the country well. All of us have benefited from his knowledge, his experience, his leadership and his wit.

JAMIE is a great storyteller and one of those that I used to listen to that I admired most was his story about Pvt. Johnny Allen. Pvt. Johnny Allen was a Member of this body from Mississippi. He had participated in the Civil War. One of the reasons I think JAMIE has been elected so much is because he followed the pattern of Johnny Allen in his campaigns.

JAMIE told the story about Johnny Allen serving as a private in the Confederate Army. When he ran for office against a very distinguished man in the district, Johnny Allen got up in a debate with that gentleman and said:

> That is true. I was in the war with that gentleman there. I was a private. He was a general. One day it was pouring rain and that gentleman was up on the hill in his tent as a general and I was down below in the mud and in the rain.

He said:

> Now, I want all you people who are privates like Johnny Allen to vote for me. Those people who are generals, you vote for the general.

Mr. Chairman, I salute the gentleman from Mississippi [Mr. WHITTEN] and I extend best warm wishes to the gentleman and to his beloved Rebecca.

INVESTIGATE THE MANAGUA SURPRISE

(Mr. LIVINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Speaker, I, too, want to commend our outstanding chairman for his wonderful 50 years of service.

But I have to tell you a secret, Mr. Speaker. There is hypocrisy on the other side of the aisle. Now, that is nothing new, of course; but what is new is the heights, or perhaps depths might be a more appropriate word, to which some Members might have gone in their defense of their collaboration of the Communist Sandinista Government of Nicaragua.

These same guardians of the Constitution have demanded a full-scale investigation of former President Reagan and the October surprise, all based on the testimony of a disgruntled former aide to Jimmy Carter, and all found totally groundless by this week's New Republic and Newsweek Magazine.

Mr. Speaker, I believe that those Members owe the American people an apology for that one; but now there is growing evidence suggesting links between several Members and staffers of the Democratic Party and the Sandinista government during its reign of terror in Nicaragua.

Was any classified information passed along? Was there a conspiracy to undermine the President? We do not know and we will not know unless there is an investigation.

I call on you, Mr. Speaker. There is far more evidence here in this item than there is in the so-called October surprise. It is time to let the American people in on the facts. It is time for a worthy investigation.

CONGRATULATIONS TO THE HONORABLE JAMIE WHITTEN

(Mr. THORNTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THORNTON. Mr. Speaker, in today's fast-moving world we should celebrate those few things which remain constant in a changing world.

Mr. Speaker, I have been a freshman twice. Nearly 19 years ago, I was a freshman and my neighbor, the gentleman from Mississippi [JAMIE WHITTEN] was a powerful and respected leader.

□ 1300

Now, Mr. Speaker, I am a freshman again, and I can report to you that the gentleman from Mississippi [Mr. WHITTEN] remains constant in a world of change. The passage of time has only added luster to his leadership and vision.

Mr. Speaker, we celebrate his 50 years of service, and I can tell my colleagues personally that the privilege of working with giants like JAMIE WHITTEN is one of the greatest rewards of service in this House. But the greatest reward from his service has been that flowing to the people of his district and throughout our Nation.

So, I say, "Congratulations to all of us."

THE BUDGET: HOW IT FAILED

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker let me echo my congratulations to the gentleman from Mississippi [Mr. WHITTEN] for a distinguished career.

Mr. Speaker, how many ways has the budget agreement failed? Let me count the ways.

First, the main purpose of the budget agreement was to reduce the size of the Federal deficit. Well, from 1986 to 1990 the Federal budget deficit declined each year. In the last year, it has nearly doubled.

Second, raising taxes was supposed to raise revenue, instead Congress drove the economy into recession and has hurled countless men and women out of work. Funny how today, many of the tax and spend crowd finally are discovering the necessity of cutting taxes to stimulate the economy.

Third, the budget agreement was supposed to control spending. If you believe that, I've got bike paths in Michigan and scholarships for students in Cyprus to show you to prove otherwise.

Fourth, the budget agreement was supposed to return sanity to our process. Well, not many of my constituents believe it is sane for Congress to not be able to cut into foreign aid money to help people in this country.

Let's get back to basics. Stimulate growth by lowering taxes and encouraging growth. Make real spending cuts. The rest of America has been tightening their belts for over a year, but Congress won't even set hard limits on the size of growth in expenditures. Since all the gimmicks have failed, let us try something new: Common sense. We must set hard deficit targets with a constitutionally mandated balanced budget within a reasonable time period.

TRIBUTE TO JAMIE L. WHITTEN

(Mr. DINGELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, like all of my other colleagues, I have enormous respect for my dear friend and colleague, the gentleman from Mississippi [Mr. WHITTEN]. He serves the country and his district well. He marks 50 years of distinguished service to the people of Mississippi's First District. For all of the wisdom the gentleman from Mississippi has displayed during his tenure in the House, his constituents have shown even more wisdom in returning him to the Congress 25 times.

Mr. Speaker, I first met the distinguished gentleman from the First District of Mississippi when I was a page boy in the House and when he was first elected. I have since had the privilege of serving with him a second time, for 36 of his 50 years in the Congress. I will tell my colleagues that he is one of the few giants who remembers, not only the great Presidents, like Roosevelt and Truman, but who has consistently and faithfully served his people and every Congress since those times.

I will say that I am like most of his other colleagues, compelled to say that on many occasions I have not understood a word that he has said to me, and I sometimes wonder whether he likes it that way.

Mr. Speaker, the service of the gentleman from Mississippi [Mr. WHITTEN] in the House is precedent setting, and with only a few brief exceptions he has served the Appropriations Agriculture Subcommittee since 1949, and in the history of this House no Member has, not only given longer service, but has given more continuous and distinguished service as a subcommittee chairman. With his appointment to the full Committee on Appropriations chairmanship 13 years ago he can claim over 40 years of experience as chairman of a House committee or subcommittee. This is an extraordinary accomplishment, and not only one which ranks high in terms of time, but which ranks extraordinarily high in terms of quality.

Mr. Speaker, I say to my colleagues, "We are proud of JAMIE. We are proud of his service to the institution, and it is important that we note the skill and the dedication which he has brought and the way that he has proven the worth to this country of experienced leaders."

Mr. Speaker, I ask my colleagues to join me in congratulating the gentleman from Mississippi [Mr. WHITTEN], and I wish him many more happy, healthy, and successful years of service in the House and to the people of Mississippi who properly love this distinguished American. I thank him for his service.

GAO'S ESTIMATE FOR A NATIONAL HEALTH CARE SYSTEM DESERVES SCRUTINY

(Mrs. JOHNSON of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. JOHNSON of Connecticut. Mr. Speaker, I, too, would like to congratulate the chairman, the gentleman from Mississippi [Mr. WHITTEN], for his enormous contribution to this House and on this day that marks a milestone in his life and in the history of this House. I, too, have appreciated his fairness.

On another subject, Mr. Speaker, health care in America: Canada is a great nation and a great neighbor. Some say, if we adopted Canada's national health care system, we could do so with no new taxes. In fact, they cite the GAO study to support their claim. What they do not cite is the GAO conditions on which the GAO estimates rest. They forget to say, as the GAO says, that their estimates are only true if the system is not modified, if America's system is not modified, to meet the expectations of the U.S. population.

Mr. Speaker, if indeed the system is modified to meet our expectations, then their cost estimates would change significantly.

Mr. Speaker, what modifications does the GAO mean?

Canada has 15 MRI's. We have 2,000. Is GAO suggesting that we dump, scrap, do away with, hundreds and hundreds of MRI's. Does GAO not care that if somebody's kid gets hit by a car and gets a head injury that that child has a much better chance of surviving without brain damage if an MRI is nearby? Is the GAO suggesting that my State of Connecticut scrap 9 of their 11 CAT scans because all of Western Canada has 2 CAT scans and Connecticut has 11?

Mr. Speaker, look behind those GAO estimates that are being used to justify a national health care system that would promise everything at no new cost. We are the leaders of the greatest free Nation of the world, and we must be truthful.

JAMIE WHITTEN—A TRUE SOUTHERN GENTLEMAN

(Mr. EARLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EARLY. Mr. Speaker, I want to join my colleagues in acknowledging the gentleman from Mississippi [Mr. WHITTEN] and his 50 years of outstanding service to the United States. The gentleman from Mississippi is truly a gentleman, truly a gentleman, and he has served this country so well, has done a great job for Mississippi and probably has served his district better, better, than any other Member that ever served in this House.

Speaker John McCormack, my friend, who had a great love for this institution and loved its individual Members, 17 years ago, when I came here, used to speak to me at great length about the individual Members and about the institution. But he had a special fondness for southern gentlemen. He told me, "The southerners, JOE, are the most loyal, the most dedicated, the most committed. They are really outstanding Representatives."

Mr. Speaker, I say to the gentleman from Mississippi, "You, JAMIE WHITTEN, have all those characteristics, every one of them. It's been an honor for me to serve with you because you have served exceedingly well."

JAMIE WHITTEN'S GREAT LEGACY

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PANETTA. Mr. Speaker, I, too rise to pay honor to our esteemed colleague, the gentleman from Mississippi [Mr. WHITTEN], on the occasion of his 50th anniversary in the U.S. House of Representatives.

As chairman of the Committee on Appropriations, there is no question that the gentleman from Mississippi is one of the great leaders in the House of Representatives, but I wanted to refer to two attributes that are not often discussed when it comes to Mr. WHITTEN.

First is his great sense of compassion, because the reality is that, whether it is earthquake victims in California, or whether it is those who suffer from drought in Texas, or whether it is fiscal problems in New York City, or whatever the region, the chairman has always been compassionate in those issues that impact on people, and he has always been willing on the Committee on Appropriations to try to assist in addressing those problems.

There is a second attribute, and I think that ultimately his greatest legacy in this institution will be the fact that he has always been the guardian of the constitutional powers of the House of Representatives.

□ 1310

I have been in a number of economic summits with the gentleman from Mississippi, and he has hated being at every one of them, but the reality is that in those few minutes there is always the temptation of Presidents and Members to undercut the delicate balance of power between the Congress and the President. Every time, Chairman WHITTEN has been a stalwart for protecting the powers of the Congress and for protecting its institutional prerogatives under the Constitution, and I think ultimately, JAMIE, you will be remembered for your protection of the institution.

Congratulations on your 50th anniversary.

Mr. Speaker, I rise today to honor my esteemed colleague, Representative JAMIE WHITTEN, on the occasion of his 50th anniversary in the U.S. House of Representatives.

Chairman WHITTEN is a great leader in the House of Representatives. I know that many of my colleagues share my gratitude for the tremendous assistance he has offered Members and their constituents in his role as chairman of the House Appropriations Committee. Californians, in particular, will always be grateful for his help in obtaining desperately needed disaster relief funds after the tragic Loma Prieta earthquake devastated much of the State in 1989.

What the chairman has done for California, he has done for the Nation. It is hard to conceive all of which he has accomplished for this Nation in his 50 years in office, as it is hard to imagine this body without him. Perhaps the chairman's greatest legacy will be the role he has played as guardian of the Congress' constitutional powers and responsibilities. Chairman WHITTEN has been a stalwart protector of Congress' power of the purse and its institutional prerogatives under the Constitution. In this role he has exhibited great leadership and a vision for protecting the long-term interests of this body and the Nation as a whole.

Mr. Speaker, the chairman has served his constituents and this Nation well. I commend him on his 50 years of service in the Congress and look forward to working with him for many years to come.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. SMITH of Iowa asked and was given permission to address the House for 1 minute.)

Mr. SMITH of Iowa. Mr. Speaker, I join especially Chairman PANETTA in the comments he made. Some of them were the same ones I was going to make.

I have been here 33 years. When I came here, I was lucky enough to be No. 1 in a class of 88 in drawing offices, so I happened to get the office next to JAMIE WHITTEN. So I have known him since the day I took office. That is two-thirds of the time that he has been here, and I have been fond of every day. I don't believe any other Member will ever serve 50 years in our lifetime.

I would often go to his office next door as a freshman and seek some advice. At that time he was known as the permanent Secretary of Agriculture, and still is, and he has earned it. He has been a person that, like Chairman PANETTA said, is not parochial at all in his attitudes. He looks at and represents the whole country, and I think that he is ahead of the curve a good share of the time in anticipating the changes that are taking place in this country, as he has been in the last 2 years or more when he has been talking about unemployment and jobs.

So I think that it is a great honor, really, to have served with JAMIE WHITTEN. While he has served his district well, I think that his district has served the country well by sending him to Congress, and I am sure that they would not pay any attention to the arguments for term limitations. They are too smart for that. He has not only served his district well, but his district has served the country well by sending JAMIE WHITTEN here for 50 years. Bea and I extend hearty congratulations to JAMIE WHITTEN and his wife, Rebecca, on this important anniversary.

AMERICAN VALUES

(Mr. DOWNEY asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. DOWNEY. Mr. Speaker, I want to add my congratulations to those who have gone before me about Chairman WHITTEN. I cannot imagine this institution without him. I cannot imagine what it would be like not to have senior Members whose repository of institutional knowledge is a wealth that is very rare and sacred to us all.

Mr. Speaker, in E.J. Dionne's book "Why Americans Hate Politics," he says that "polls show that Americans' cultural values are a mix of liberal instincts and conservative values, but the obvious preferences of Americans don't get expressed in our politics. There are more ideas that unite us than divide us, but politics doesn't reflect that."

This is especially true of the debate about American poverty. Recently the House Wednesday Group produced an important document, "Moving Ahead—Initiatives for Expanding Opportunity in America." While I disagree with most of the analysis of the recent historical role of government and its effects on poverty, the fine reasoning in the sections on the family and young males should convince even the most skeptical liberal that our friends on the right, in this document at least, are interested in thoughtfully addressing serious social problems. I want to work with them.

Toward that end, and because of this work, I will schedule a series of hearings on the oversight of the Jobs Program and on some of the innovative approaches to ending poverty that have been conceived by Representatives HALL on our side and GRANDY on the Republican side.

Americans may come to understand politics as a result of our efforts, if not love it, provided we work together to solve our national problems.

AMERICANS WANT FINANCIAL RESPONSIBILITY, NOT NEW VISITOR CENTER

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Speaker, as someone who cares about agriculture, I know of no man who has cared more and done more for the farmer in America than JAMIE WHITTEN, a man who knows that real wealth comes from the soil. I compliment him and applaud him, and am delighted to have the opportunity to serve with him.

I want to talk for a moment about an expenditure of Federal dollars which I think is extravagant and is something that we can stop. I fear one day I will wake up to see the following headline: "Congress Spends $71 Million on Movie Theaters, Museums, and Restaurants at the Capitol."

People are genuinely angry with government. We are in the middle of a devastating recession, folks are hurting financially and are angry with how the Government spends their tax dollars. Given this mood, I am astounded that we are about to build a $71 million visitors' center here at the Capitol when most people cannot even afford to visit Washington.

Our constituents, our visitors, are not asking for this. In fact, I bet each of the 107 million taxpayers in the United States would rather receive a U.S. Treasury check for 75 cents than see us fund the proposal; or better yet, they would like to see the deficit reduced by $71 million.

This is a perfect example of the type of project that never gets authorized, never gets debated, and all of a sudden Members find themselves up against a wall, having to pay for something that is so far along in the process that we cannot even stop it. Already the Senate Committee on Rules and Administration has approved funding for it. I hope this visitors' center is not a fait accompli. I hope Congress can have an opportunity to deal with it. The project is a bad idea, fiscally and politically, so let us nip it in the bud right now.

I ask my colleagues to join me in signing a letter to Majority Leader MITCHELL and Speaker FOLEY, requesting that they stop the funding process for the visitors' center. Let us concentrate instead on spending tax dollars prudently, and finding ways to relieve the financial pressure on middle-income Americans.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. FAZIO asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. FAZIO. Mr. Speaker, many people who follow popular music have heard about the Tallahatchie Bridge, but not very many people know that the pride of Tallahatchie County is the 25th chairman of the Committee on Appropriations, JAMIE WHITTEN. Mr. WHITTEN has spent his career in public service. He was a school principal and a district attorney and a member of the State house of representatives before he came to Washington to serve us for 50 years in the pursuit of goals that really appeal to all Americans, not just to people of north Mississippi.

He has lived through many changes in American life and life in his native State. He is just as popular today as he was in 1941 when he was elected, having lived through the civil rights revolution and many economic changes that would have destabilized many other political careers. He understood that investing in America, as he says it, was not only a good ticket to election in 1941, but he understands it is a good ticket to reelection through and until 1991. It continues to be good policy and good politics.

As a member of the Committee on Agriculture, he worked to invest in research and development to make our farmers more productive and effective. As a member of the Committee on Public Works, he invested in infrastructure, and he did it, as was indicated just a few minutes ago, by always, without exception, bringing budgets to the Congress that were less than those requested by the executive branch.

His programs for investment in America have always been fiscally prudent, and for his leadership we, all of us, not just the people of his district in Mississippi but all those many, many people, the thousands who serve with him, thank him very much.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. EDWARDS of California asked and was given permission to address the House for 1 minute.)

Mr. EDWARDS of California. Mr. Speaker, in 1941 when JAMIE WHITTEN was elected to Congress from Mississippi, I was an FBI agent, just 50 years ago. Little did I know that after World War II, in 1963 when I came here, that I would have the good fortune to have an office right across the aisle from Chairman WHITTEN and would have the pleasure of seeing him on a daily basis and communicating with him as the chairman of the California Democratic delegation regarding the many problems of the largest State in the Union and also the State that is the largest in agriculture. Mr. WHITTEN has always understood the problems of California and our complicated, sophisticated agricultural system and has helped us. His door has always been open to any of us who want to go in and tell JAMIE, as we are pleased to call him, of our problems back home and how he might be able to help. He has always been most generous and receptive.

Lastly, Mr. Speaker, Chairman WHITTEN must be a nice person because he has such a nice staff. All of the men and women there work with us and with the other members of the staff in the Rayburn House Office Building in the most cooperative way.

□ 1320

I think that is a good indication of how Chairman WHITTEN treats them on a day-to-day basis.

Mr. Speaker, it has been a privilege of mine to be here and to be his friend, and really his constituent in so many ways, for nearly three decades. Today I join my colleagues in saluting 50 years of glorious service to America.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. EMERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMERSON. Mr. Speaker, I rise today to pay a very special word of tribute to our mutual friend and colleague, the gentleman from Mississippi [Mr. WHITTEN]. I was 4 years old when he began his service here. I first got to know the gentleman from Mississippi a little bit when I arrived in January 1953 as a page, when he was already a very senior Member of Congress.

While I have been through several different careers in the meantime, the gentleman from Mississippi has remained constant, serving here, serving the people of his district, his State and this country so well for so long.

My official contacts with the gentleman come into play most often in matters of agriculture and flood control, and of those interests he is indeed a true friend.

Mr. Speaker, it is an honor and a privilege to be here on this occasion when we pay tribute to the gentleman from Mississippi [Mr. WHITTEN] for 50 years of outstanding, dedicated, loyal service to this country.

Godspeed, Mr. WHITTEN. God bless you, and may you serve for many years to come.

ENSURE CIVIL RIGHTS FOR WARD'S COVE WORKERS

(Mr. ABERCROMBIE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ABERCROMBIE. Mr. Speaker, the great gratitude of the people of Hawaii for the 50 years of service of Mr. WHITTEN are best expressed by the gift that he will find on his desk when he returns today.

Mr. Speaker, the President has finally decided to support a civil rights bill.

His opposition to date has given us grand dragons and minifuehrers as major candidates.

But civil rights at this late date is better than no civil rights at all.

What is not better is the exclusion of 2,000 Wards Cove cannery workers from a civil rights bill. These workers are Asian-Americans, Filipino-Americans for the most part, and Alaskan Native Americans.

Are these workers to pay the price of a deal cut in the dark? What kind of civil rights bill is this? Civil rights for everyone except Filipino-Americans and Native Americans who work for Wards Cove?

Instead of being so concerned about obscenity in art, maybe we ought to be concerned with the obscenity of 2,000 people getting muscled out of their civil rights.

I hope, Mr. Speaker, that when we do our work, we will reject this obscenity. That we will affirm our commitment to civil rights for all, including the Wards Cove cannery workers.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. PICKLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PICKLE. Mr. Speaker, I salute my dear friend, Mr. WHITTEN from Mississippi, for his 50 years of service. The Members on the floor take great pleasure sometimes in teasing our chairman about length of time that he has been here. One of the favorite stories that we tell on Chairman WHITTEN is that one day on the floor the chairman was very exasperated about one of our Presidents. He said:

> Mr. Speaker, I do declare, let me say, I do declare that I believe President so and so is the worst President I have served under since U.S. Grant.

That is another way of saying, of course, that Chairman WHITTEN has been here for half a century, and for a long, long time. The fact of the matter is that he is in a position to judge who is among the best or worst Presidents we have had, as well as a lot of other of our governmental leaders.

In all these years though, Mr. Speaker, Chairman WHITTEN has never had anyone doubt his integrity. He has always been a leader and impeccable in his character and fierce in his defense of the Constitution and this Congress.

So we salute him. He is our leader and we are proud of him.

A TRIBUTE TO CHAIRMAN JAMIE WHITTEN

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUBBARD. Mr. Speaker, it is a special joy to join other House colleagues in paying tribute to the Honorable JAMIE WHITTEN upon his 50th anniversary as a Member of the U.S. House of Representatives.

Chairman WHITTEN, the dean of the House and chairman of the Appropriations Committee, was first elected to Congress in a special election 1 month before Pearl Harbor.

Since 1949—except for 1953-55, when Republicans controlled the House and its committees—JAMIE WHITTEN has chaired the Agriculture Subcommittee of Appropriations. He has the longest service of any House subcommittee chairman in history.

I remember my predecessors in the House from Kentucky's First District speaking fondly of the Congressman from Mississippi's First District. Yes, both former Kentucky U.S. Representatives Noble Gregory of Mayfield and Frank Albert Stubblefield of Murray were admirers of JAMIE WHITTEN.

Chairman WHITTEN has been helpful to western Kentucky's farmers and coal industry.

Western Kentuckians realize Chairman WHITTEN has been very helpful to our area because of his longtime support of the Tennessee Valley Authority and the construction of the Tennessee Tombigbee Waterway. The Tennessee Tombigbee Waterway begins at Paducah, KY, and extends southward to the Gulf of Mexico.

Congratulations, Chairman WHITTEN, upon 50 successful years as a Member of the U.S. House of Representatives.

May God continue to use and bless your life. I hope you enjoy many more years of service here in Congress.

TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Ms. NORTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. NORTON. Mr. Speaker, I rise to speak from my heart this afternoon in celebration of the 50 years of Mr. JAMIE WHITTEN in the House of Representatives. I speak in two capacities, first as an old civil rights worker in Mississippi in the early 1960's and second, in behalf of the people of the Nation's Capitol.

I rise in praise of the chairman for the extraordinary way he has lived through the old Mississippi into a new day in the new Mississippi, responsive to this people, to the new trends and needs of the country, and to equality in America. I rise to celebrate and to thank Mr. WHITTEN for that.

I rise also to put on the RECORD the thanks of the people of the District of Columbia for the way in which Mr. WHITTEN this very year has seen the District through a revision of its own government with an appropriation that has allowed the District to proceed toward reform.

I rise to celebrate the 50 years of Mr. WHITTEN'S service to his district and to his country even as the District of Columbia is celebrating its birth as a city 200 years ago.

FOREIGN COMPETITION SHOULD BE FAIR TO AMERICAN BUSINESS

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. WHITTEN, congratulations. You are a man of the people.

Mr. Speaker, this afternoon I want to talk about a problem that very much affects the people of this country. I was in Mt. Clemens, MI, yesterday and talked to the owner of a small company that has been trying to do business with foreign transplants. Here is what he says. "I can't get in the door to show how good we are. I think we ought to say deal evenly, or not at all."

He says, "Our government is so stupid that it lets them get away with it."

This is the owner of Colonial Mold. He has sent his brochure and tried to communicate with foreign transplant companies. None of them from Europe or Asia answered him, except he did receive one from a Japanese company. They simply sent back his brochure saying thanks, but no thanks. The letter was signed by a claims analyst within the Legal Department.

Mr. Speaker, that is why the gentleman from Missouri [Mr. GEPHARDT] and I have introduced a bill yesterday to extend Super 301, to tell our foreign competitors let us in as we let you in, or we will treat you like you treat us. Perhaps the President should be going as he is to Rome, but it is also time that he pay more attention to problems here at home.

□1330

IN TRIBUTE TO THE HONORABLE JAMIE L. WHITTEN

(Mr. DARDEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DARDEN. Mr. Speaker, I join my colleagues in congratulating our wonderful colleague on his 50th anniversary.

Mr. Speaker I rise, as do so many of my colleagues, to pay tribute to a living legend. Many men and women have passed through these Halls of the House, and though some have been his equal, none have had a greater influence than Chairman JAMIE WHITTEN.

Similar to Chairman WHITTEN, I was elected in a special election. I came into Congress in the middle of a session and my first day was filled with controversial and difficult votes. I wondered how anyone could last 1 term, let alone 25 terms—50 years—as the chairman has done so successfully.

Mr. Speaker, we all have priorities and criteria and agendas. We all sought this office because we believed we had something to offer our districts, our States, and our country.

We all know why JAMIE WHITTEN is here. It is obvious what his priorities are. He came here because he believed this was his best opportunity to help people. He started his public service during an economic crisis—the Great Depression. He realized that public service could end misery and suffering.

Chairman WHITTEN has overseen the appropriation of trillions of dollars during his tenure as chairman of the Appropriations Committee. It is evident to me and many others that, in his heart, he believes every dollar he has ever appropriated was spent on a worthy cause—to help someone who is down on his luck, to help a community grow, to help a university educate our young people, to ensure that a small child has enough to eat.

Mr. Speaker. I say to the gentleman from Mississippi, "Mr. Chairman, we are lucky to have you and we appreciate you."

Mr. DE LA GARZA. Mr. Speaker, as we gather today to pay tribute to the chairman of the House Appropriations Committee on the occasion of his golden jubilee, I would like to take this opportunity to join with my fellow colleagues in saying congratulations to JAMIE WHITTEN. There is no question this is quite an accomplishment and that yours is a record of which to be extremely proud.

For five decades you have served in this body with distinction and pride. You have always been a legislator of integrity and style. Your work on fiscal and economic issues has been crucial to our Nation. Your service has been incomparable.

You deserve the respect and admiration of all of us for the outstanding job you have done and the contributions you have made to this body. It has always been a privilege to serve alongside you, and I have to say that in my mind there is no question that you've certainly set the standard in terms of dedication to high performance for the rest of us to strive to follow.

On this occasion let me say you are indeed one of the great Congressmen of your generation and one of the great Americans of all times. I salute you and wish you all the best in the future.

Mr. BROOMFIELD. Mr. Speaker, for the first 48 weeks or so, 1941 wasn't a bad year for most Americans. Ted Williams hit a record .406; penicillin was developed; the national debt was only $64 billion; and JAMIE WHITTEN won his first election to Congress.

JAMIE will soon become the longest serving Member of the U.S. House of Representatives. There is a virtue in longevity. Among other things, those who serve for many years bring a sense of steadiness and continuity to the legislative process.

JAMIE WHITTEN brings much more. He has been a model legislator and a role model for hundreds of newly elected Members who want to leave their mark on American history.

During the past 200 years there have been a few legislative giants who have shaped the history of the U.S. Congress. JAMIE WHITTEN is most certainly one of them.

JAMIE, you are a wonderful friend, a great American statesman, and a credit to the State of Mississippi.

Mr. BENNETT. Mr. Speaker, the man who we honor today for his long and faithful service in Congress is extraordinary not only for his years of service but, in fact, primarily because of the high quality of his service. He has to have a knowledge of the broad sweep of our governmental concerns but also of the details of the many things that require his attention. In my service with him he has always been not only fair and considerate but also quick to be helpful in whatever the problem of Government may be. My wife and I have often commented on the team of JAMIE WHITTEN and his lovely wife, who have set for all of us a perfect example of Christian living and of dedicated public service. We are glad to pay him this well deserved honor and hope that he will stay with us for many, many years in the future.

Mr. ANNUNZIO. Mr. Speaker, as Congressman JAMIE WHITTEN celebrates his golden anniversary as a Member of the House of Representatives, we should reflect on his efforts to improve the lives of people throughout the United States of America.

Mr. WHITTEN came to the House in 1941, a month before the tragedy at Pearl Harbor. Since 1978, Mr. WHITTEN has served ably and honorably as chairman of the Committee on Appropriations. Throughout his career, he has kept alive the spirit of President Franklin Roosevelt, who understood that government must play a role in encouraging economic growth.

Mr. WHITTEN has consistently followed through with this philosophy. He has never backed away from a battle over spending priorities with House colleagues, Senate conferees, or the 10 Presidents who have worked with him.

The results of his commitment are visible across this great country, from rural electrification programs in Mississippi to flood control projects in Chicago. Mr. Speaker, in light of these and many other accomplishments, I offer my congratulations to Chairman WHITTEN on the 50th anniversary of his service as a Member of the House of Representatives.

Mr. HUGHES. Mr. Speaker, today I join with my colleagues in congratulating JAMIE WHITTEN, who celebrates his 50th year of service in the U.S. House of Representatives.

I am honored to call JAMIE WHITTEN my colleague. As chairman of the Appropriations Committee, the longest serving subcommittee chairman in history, JAMIE has truly earned his place in the history books of Congress. However, it is not simply his record number of terms we celebrate here today. Rather, my colleagues and I salute the many accomplishments, and contributions JAMIE has made to the House, his home State of Mississippi, and the American people.

I have no doubt that this is a record which will stand for many years to come, and I look forward to the continuing service of the very honorable and distinguished JAMIE WHITTEN.

Mr. VISCLOSKY. Mr. Speaker, I rise today to pay tribute to our colleague, Chairman JAMIE WHITTEN, as he celebrates the 50th anniversary of his election to the House of Representatives.

I feel particularly privileged, as the newest member of the Appropriations Committee, to be able to learn from Chairman WHITTEN and draw upon the wealth of his knowledge and experience. His mastery of the appropriations process and understanding of the workings of Agriculture Department programs are legendary. In fact, as chairman of the Rural Development, Agriculture, and Related Agencies Subcommittee, he already holds the record for length of service as a House subcommittee chairman. I look forward to congratulating him on the day next year when he breaks Carl Vinson's record for service in the House.

The people of the First Congressional District in Mississippi are fortunate, indeed, to have such a champion fighting to meet their needs. I hope that with his help and guidance I will be able to better serve my constituents in the First Congressional District of Indiana.

Mr. COLEMAN of Texas. Mr. Speaker, I rise today to join with my colleagues in honoring Chairman JAMIE WHITTEN on this, the 50th anniversary of his service to this House. Chairman WHITTEN attains this milestone reached only by two other Americans during the history of this Congress.

While this is an important milestone, I expect to again join with my colleagues in honoring the chairman of the Appropriations Committee in January when he becomes the longest serving Member of the House of Representatives.

Chairman WHITTEN began his service to the people of Mississippi at the age of 21, when he won his first seat as a member of the Mississippi House of Representatives. On November 4, 1941 he was elected to the 77th Congress during a special election and has served his State, and the Nation, well.

Serving under 10 Presidents, beginning with Franklin D. Roosevelt, Chairman WHITTEN has also served under 7 House Speakers.

Chairman WHITTEN has sat on each of the 13 subcommittees of the full Appropriations Committee and has demonstrated his concern for the well-being of our Nation. Chairman WHITTEN has served as an inspiration not only to me, but to all the members of the Appropriations Committee and the House of Representatives.

Mr. Speaker, I would like to take this opportunity to commemorate Chairman WHITTEN'S golden anniversary of service to the State of Mississippi and to the United States.

Mr. KOLTER. Mr. Speaker, I am pleased to join my colleagues in paying special tribute to the gentleman from Mississippi, Congressman JAMIE L. WHITTEN, in celebration of his golden anniversary of service to this great country of ours.

JAMIE WHITTEN has enthusiastically supported the programs authorized by the Appalachian Regional Development Act and the Public Works and Economic Development Act throughout his tenure on the Appropriations Committee. As chairman of that committee he has been instrumental in preserving both the Appalachian Regional Commission and the Economic Development Administration in spite of efforts to terminate them. His concern for the economic welfare of this Nation and its people is evident in his strong support of legislation designed to create jobs and to help areas of high unemployment as well as the antirecession local public works programs of the 1970's. With his help, these people-oriented initiatives have provided much needed relief for the economically distressed.

As chairman of the Subcommittee on Economic Development of the Public Works and Transportation Committee, I want to thank Mr. WHITTEN for his continued support of these important programs. It is his type of concern and legislative strength and leadership which has prompted the voters of the First District of Mississippi to send him back to Congress 26 times.

To JAMIE WHITTEN, I would say: Your constituents recognize your dedication and efforts to improve their quality of life. Your colleagues recognize your value in making wise decisions for the benefit of our Nation. We congratulate you on this milestone of 50 years as a Member of this great body and we wish you the very best. May your future years be as productive and rewarding as the past 50 years have been.

Mr. PAYNE of New Jersey. Mr. Speaker, I join in offering warmest congratulations to Congressman JAMIE WHITTEN, a person for whom I hold great respect and admiration, as he celebrates 50 years of distinguished service in the House of Representatives.

As chairman of the House Appropriations Committee, Mr. WHITTEN has been sensitive to the needs of all regions of the country. Although I represent an urban district in New Jersey, a long way from his rural Mississippi district, I have always found Chairman WHITTEN to be responsive to the unique needs of America's cities.

It is indeed an honor to serve with a person of JAMIE WHITTEN's stature and I wish him the very best in his continued years of public service.

Mr. MCDADE. Mr. Speaker, I want to add my voice to those of my colleagues to celebrate a half-century of service by JAMIE WHITTEN in the U.S. House of Representatives. This is a milestone worthy of the highest commemoration.

As chairman of the House Appropriations Committee, JAMIE holds an incredible position of power in the Congress. It has been my privilege to watch JAMIE firsthand as a member of the committee as he uses that power for the betterment of our country and the benefit of the people.

I remember a time years ago when JAMIE successfully led an effort in the committee to rename a fish hatchery in Tupelo after Pvt. John Allen, a Congressman from Mississippi who served from 1885 to 1901. Private Allen faced opposition in his first campaign against a general who thought that people should vote for him because of his higher rank. Private Allen said something to the effect that there is some merit to the argument, and urged all the people who were generals to vote for his opponent and all of the people who were privates to vote for him. Needless to say, Private Allen won.

This story comes to mind because JAMIE WHITTEN, despite the incredible power he wields in Washington, is like Private Allen in that he chooses to identify with the people. He has never forgotten that his first duty is to the citizens of Mississippi and this great Nation.

Chairman WHITTEN holds a place of high esteem in the history of the House. His half century of service to the people of Mississippi, his dozen years of leadership as chairman of the Appropriations Committee, and his magnificent contribution to rural America as chairman of the Rural Development and Agriculture Subcommittee make him a living legend here in the House.

I am honored to serve with JAMIE WHITTEN, and I look forward to working with him in the years ahead.

Mr. MAVROULES. Mr. Speaker, I rise today to acknowledge the accomplishments of a great American and a distinguished legislator from the State of Mississippi, Congressman JAMIE L. WHITTEN. For half a century JAMIE has faithfully served the people of his district.

As chairman of the powerful Appropriations Committee for the 12th year, Congressman WHITTEN has unequivocally committed himself to the people of this Nation. He has never hesitated to devote the time and patience necessary to develop responsible legislation timely. Always willing to listen and reason, he has allowed junior members of his committee the opportunity to play an integral role in the appropriations process. Mr. WHITTEN has been in anchor for all of us as we continue the ever changing challenge of funding Federal programs, policies and initiatives. Now serving under his seventh administration, the Congressman has represented the Democratic party's policy and agenda with the highest honor.

Once again I would like to voice the admiration that I feel toward Congressman WHITTEN and hope for his continued success.

Mr. RAHALL. Mr. Speaker, today I join my colleagues in saluting a man who is a good friend, who is the distinguished chairman of the House Appropriations Committee, and who is a most able public servant for his own constituency in Mississippi and for this great Nation.

The most honorable JAMIE WHITTEN today has completed his 50th year in this House, a feat achieved by only two other Members in the entire history of Congress. In another 63 days, Chairman WHITTEN will break the record held by the late Carl Vinson of Georgia to become the longest serving Member of the House of Representatives—ever.

JAMIE WHITTEN came to Congress as a young man of 31, just days before the onset of World War II, and he has lived and served through a number of wars since then—from Korea to Vietnam, from Grenada to Panama—and more recently through the mother of them all—Desert Storm.

Ah, but the battles that truly engaged JAMIE WHITTEN were those on the homefront, to assure funding for the war on poverty at home, for a fair deal, for the new frontier and the great society, and even for a kinder and gentler society. Those battles have been every bit as hard-fought and hard-won as those on battlefields abroad.

And win them he did.

JAMIE WHITTEN is proud to be able to say that while funding urgently important programs—whether they were for domestic purposes or defense or foreign affairs—he has been ever mindful that Federal dollars come out of the purses of all our constituents, and he has responded well by never sending any President as much money as requested in their annual budgets.

He is 81 years young, and he defies the fact of those years with his tireless energy, his endless days—a man who never rests on his laurels, for he believes none of us can stand and do nothing. Certainly JAMIE WHITTEN's energy, talent, and compassion for others has never permitted him to stand and do nothing.

He works in the sunshine, never in the shadows of ideology or fear. If something can be done to help, JAMIE WHITTEN is there to help. And his help has come to all of us throughout the years, and it has come with care and understanding of our needs. JAMIE WHITTEN's work on behalf of Americans is always accompanied by the facts he gleans from his own efforts on every subject he ever embraced or fought for.

He is greeted always with fondness, for he greets us with understanding. His dealings with us are tempered with justice and mercy, for nearly every one of us sometimes needs just a few more dollars to tide us over back home, and if he must say no, he does so with gentleness and charm. He lends us dignity and honor as we work together always for the betterment of the Nation he has served for a half-century of his life, and for that we are eternally grateful.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ESPY). Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Wednesday, November 6, 1991.

PROVIDING APPROPRIATE PROCEDURES FOR APPOINTMENT OF CHAIRMAN OF U.S. INTERNATIONAL TRADE COMMISSION

Mr. ROSTENKOWSKI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3624) to amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the U.S. International Trade Commission.

The Clerk read as follows:

H.R. 3624

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHAIRMAN OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION.

(a) MODIFICATIONS OF RESTRICTIONS ON JUNIOR MEMBERS SERVING AS CHAIRMAN.—

(1) MODIFICATIONS OF RESTRICTIONS.—

(A) IN GENERAL.—Paragraph (3)(A) of section 330(c) of the Tariff Act of 1930 (19 U.S.C. 1330(c)(3)(A)) is amended to read as follows:

"(3)(A) The President may not designate as the chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.".

(B) CONFORMING AMENDMENT.—Paragraph (3)(C) of section 330(c) of such Act (19 U.S.C. 1330(c)(3)(C)) is amended by striking the last sentence.

(2) ONE YEAR OF SERVICE REQUIRED.—

(A) IN GENERAL.—Paragraph (3)(A) of section 330(c) of such Act (19 U.S.C. 1330(c)(3)(A)), as amended by paragraph (1), is amended by inserting ", or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made" before the period.

(B) CONFORMING AMENDMENT.—Section 330(c)(3)(C) of such Act (19 U.S.C. 1330(c)(3)(C)) is amended by adding at the end thereof the following new sentence: "Designation of a chairman under this subparagraph may be made without regard to the 1-year continuous service requirement under subparagraph (A).".

(3) EFFECTIVE DATES.—

(A) MODIFICATION.—The amendments made by paragraph (1) shall apply to terms beginning on and after June 17, 1990.

(B) 1-YEAR REQUIREMENT.—The amendments made by paragraph (2) shall apply to terms beginning on and after June 17, 1996.

(b) APPOINTMENT OF CHAIRMAN IN 1992.—In the case of the term of the chairman of the United States International Trade Commission beginning June 17, 1992—

(1) section 330(c)(3)(A) of the Tariff Act of 1930 shall not apply, and

(2) the President shall designate as chairman a Commissioner who is a member of the same political party as the chairman of the Commission serving on June 16, 1986.

(c) PROCEDURE WHERE NO CHAIRMAN DESIGNATED.—

(1) IN GENERAL.—Section 330(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1330(c)(1)) is amended by adding at the end thereof the following sentence: "If, as of the date on which a term begins under paragraph (2), the President has not designated the chairman of the Commission for such term, the Commissioner who, as of such date—

"(A) is a member of a different political party than the chairman of the Commission for the immediately preceding term, and.

"(B) has the longest period of continuous service as a commissioner,

Trans shall serve as chairman of the Commission for the portion of such term preceding the date on which an individual designated by the President takes office as chairman.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the 10th day following the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. CRANE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois [Mr. ROSTENKOWSKI].

GENERAL LEAVE

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the pending bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Speaker, George Bush went to Rome and all I got was this lousy recession.

When my 5-week-old granddaughter, Kendra wants me to tell her what this country was like when she was born, I will point to this T-shirt I am giving her and explain that our President cared more about foreign problems than her future.

I will tell my granddaughter that while a recession raged and millions of Americans were out of work, our President was out globetrotting on his "anywhere but America" tour.

How can the President see the pain in the face of a father who cannot find work when he finds so much time required to be overseas? How can he find solutions to the problems of America's children in Rome?

The unemployment rate went up again last week, job growth remains stalled, and more than 2 million Americans have exhausted their benefits this year.

Mr. Speaker, the President should be in Rome—Rome, MS, where the unemployment rate stands over 11 percent.

Please, Mr. President, concentrate on our problems here.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 3624, a bill to improve the procedures for appointing the Chairman of the U.S. International Trade Commission. The bill would give greater flexibility to the President in selecting a Chairman since it would remove the existing restriction against appointing either of the two most recently appointed Commissioners as Chairman. It would replace that rule with a requirement that any Commissioner appointed to be Chairman must have served on the Commission for at least 1 year.

The bill also would ensure that the rotation of chairmen between parties provided for under current law would take place. In the event that the President does not appoint a Chairman, as has been the case since June 1990, H.R. 3624 would require that the most senior Commissioner of a different political party than the preceding Chairman would automatically become Chairman until the President actually makes an appointment.

Mr. Speaker, from time to time the Committee on Ways and Means, based on its ongoing oversight of the activities, budget, and structure of the ITC, reports legislation to improve the functioning of that institution. H.R. 3624 is such a bill.

This bill was developed in a bipartisan manner in full consultation with the other body and with the administration, and I know of no opposition to it. I believe that this bill will strengthen the operations of the Commission, and I urge my colleagues to join me in supporting it.

Mr. Speaker, I reserve the balance of my time.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3624, a bill making modest but important changes to the procedures by which the President selects a Chairman for the International Trade Commission [ITC]. This legislation is designed to give the President more flexibility in making the appointment, yet ensure that prospective heads of the Commission have some service record and experience in dealing with complex ITC issues.

The bill emerged as part of an agreement between the White House and the bipartisan leadership on the Finance and Ways and Means Committees. Currently, two nominations for Commissioner are pending in the Senate—that of Carol Crawford and Janet Nuzum.

With the passage of this bill, and the expeditious confirmation of these two nominees, the ITC will once again be at the full complement of six Commissioners and will have an effective procedure for the immediate selection of an experienced Chairman.

H.R. 3624 would replace the rule that the two most junior Commissioners cannot be named chair with a new requirement that Commissioners serve 1 year before being eligible to head the Commission.

In addition, the bill provides that the most senior Commissioner shall serve as the interim Chairman if the President fails to make the appointment by the beginning date of each new term.

Finally, the bill provides that a Democrat serve as chair for the remainder of the current term, which expires on June 16, 1992, and for the subsequent 2-year term.

Thus, a Democratic Chairman will succeed one Republican, one Independent, and one Republican interim Chairman who served as chair during the prior three terms.

Mr. Speaker, H.R. 3624 will improve the stature and effectiveness of the ITC and I urge my colleagues to support this legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. McGRATH].

Mr. McGRATH. Mr. Speaker, I rise in support of H.R. 3624, a bill that will improve the efficiency and productivity of the International Trade Commission. This bill will clarify the procedures by which a new Chairman may be selected, and insure that this Chairman has the requisite experience to deal with the complexities of the matters before the ITC.

This bill allows for the streamlining of operations of the ITC by ensuring the continuity of leadership in a truly bipartisan manner.

I applaud the Chairman in creating an agreement between the Whitehouse and leadership of the Finance and Ways and Means Committees on both sides of the aisle.

This bill will enable the Senate to fill two pending Commissioner positions on the ITC. Carol Crawford and Janet Nuzum have been nominated and I believe that they are truly qualified and their appointments should be expedited.

Mr. Speaker, I urge my colleagues to support H.R. 3624.

Mr. CRANE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois [Mr. ROSTENKOWSKI] that the House suspend the rules and pass the bill, H.R. 3624.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, was passed.

A motion to reconsider was laid on the table.

U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill H.R. 3350.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991".

SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c) is amended by adding at the end of the following: "The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act, $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office.".

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1991" and inserting "1994".

SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975(c), 1975a (a), (d), and (f), and 1975d(f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from Wisconsin [Mr. SENSENBRENNER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, I rise in support of H.R. 3350, the Civil Rights Commission Reauthorization Act of 1991. This legislation was adopted under suspension of the rules on October 1, and has returned in a form recently enacted by the Senate, after negotiations between the two bodies.

As amended, H.R. 3350 reauthorizes the U.S. Commission on Civil Rights for 3 years, through 1994, with a fiscal year 1992 authorization of $7,159,000—slightly above the fiscal year 1991 appropriation and the same amount that was appropriated by the House for 1992. An additional $1.2 million is provided to pay for the agency's move to new quarters later in this fiscal year, as required by the General Services Administration.

While this authorization does not require the agency to cut programs or staff, it prevents the Commission from expanding without first fulfilling its statutory mission to investigate discrimination. In addition, the legislation now requires the Commission to submit at least one report each year detailing Federal civil rights enforcement efforts. These provisions oblige the agency to allocate its resources wisely and, I trust, will secure the Commission's rerun to its factfinding mission.

Under this legislation, the agency must come back to this body next year, and the year after, for a new authorization. This requirement—which was a common practice prior to the 1983 reauthorization—will ensure closer congressional oversight of the Commission's activities.

Once again, I wish to compliment the gentleman from California, [Mr. EDWARDS], the chairman of the Civil and Constitutional Rights Subcomittee, for his excellent work on this important piece of legislation. I also commend the ranking minority member of the subcommittee, Mr. HYDE, for his leadership on this issue. Mr. Speaker, this legislation keeps alive the U.S. Commission on Civil Rights, as well as our determination that it can turn itself around before the next reauthorization. I urge the Members' support.

☐ 1340

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the time has come to put the Civil Rights Commission out of its misery. The gentleman from Texas [Mr. BROOKS], I think, hit the nail on the head when he has demonstrated very eloquently that this Commission has been nonproductive during the last 22-month authorization.

The bickering and squabbling that marked previous commissions has continued, and it seems to me that the only thing that this Commission has been able to do is to set forth a case for its reauthorization and the authorization of more of the taxpayers' scarce dollars to keep it in business until the end of fiscal year 1994.

I do not think that this Congress should buy the notion that if a commission does a bad job it ought to be reauthorized and it ought to be given a raise, and yet that is exactly what this particular piece of legislation does.

When this bill left the House on September 30, it contained an authorization of $6 million. Now, the authorization is $7.159 million for each of the next 3 years, and in addition, there is $1.2 million for relocation expenses of the Commission's central office as well as the eastern regional office. That includes money for new carpeting, money for new furnishings, money for furniture, and money for a new phone system.

When is this going to end? Certainly, if there ever was a case of putting a commission out of business, now is the time given the nonproductivity during the last 22-month authorization period.

When the Commission was reauthorized 2 years ago, it was put on strict probation. And if any criminal spent his probationary period like this Commission spent their probationary period, the probation officer would revoke the probation, and that would be the end of the matter.

Now, at the full committee markup on September 24, the chairman of the subcommittee, the gentleman from California [Mr. EDWARDS], pointed out during the last 2 years the Commission has issued only one report and has had no hearings and consultations. The Commission is attempting to take credit for the work of its State advisory committees, not the Commission itself, but the advisory committees that function in each of the 50 States, for a lot of its work product, and, frankly, that is shameful. Because that, in my opinion, is taking credit for work which they have not done at all.

I would hope that the Congress today would look very closely at this Commission to reject the motion to suspend the rules to increase the authorization that was approved by the House from the $6 million a year for 2 years to $7.159 million for the next 3 years as well as all of their office relocation expenses and then maybe we can start over from scratch and set up a commission that is really relevant that all of us are proud of.

The chairman of the committee, the gentleman from Texas [Mr. BROOKS], is correct in saying that this Commission is in an elliptical orbit. It has been at the low end of the orbit for a long period of time. The question is whether we continue paying for it to be at the low end of the orbit.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I am happy to yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, it is on the end of the orbit; you know, it goes pretty close at times, when it goes like this, but when it is at the far end, that is where they have been.

What I was going to ask about really to my friend, the gentleman from Wisconsin [Mr. SENSENBRENNER], is: Does the gentleman not think we might talk to the Committee on Appropriations and maybe, in their wisdom, they would cut that extra $1.1 million out of their appropriation and maybe the $1.2 million and let them take their new housing out of their $6 million? And they could just cut back a little bit like everybody else is having to do in my district.

Mr. SENSENBRENNER. Reclaiming my time, when I get back to my office, I will have a joint letter to the Committee on Appropriations typed up, and I hope that the gentleman would honor me by signing the letter, because I think it would have much more clout then.

Mr. BROOKS. If the gentleman will yield further, I think I will maybe just talk to them, but we will look at it.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, I thank the chairman and the gentleman from Wisconsin [Mr. SENSENBRENNER] for their remarks, because I think they are very valuable.

This is an important subject. The Civil Rights Commission has a long and honorable history. It was established by President Eisenhower in the Civil Rights Act of 1957. And for many years it was the eyes and ears of the Nation in identifying problems in the enforcement of the various civil rights laws and reporting their findings to the Congress and to the President and they did a splendid job. It was a necessary institution that earned its appropriation.

Now, this year, the Civil Rights Commission asked for a 10-year authorization and a $10 million appropriation for fiscal year 1992. The subcommittee held a hearing on this authorization request and after examining the Commission's work, we decided that $10 million was entirely too much. We concluded a 2-year extension and a $6 million authorization for fiscal year 1992 would give the Commission sufficient time and resources to carry out this statutory mandate. We believed they should postpone adding four new regional offices.

We thought that they ought to earn those new offices with good work. They showed us that changes have been made. There is a new Chairman of the Commission, Mr. Fletcher, who has a distinguished history in civil rights, and a new staff director. They claim they are new brooms, and that they are going to sweep the place out and go back to the factfinding and reporting mandated by their charter.

The Senate wanted to give them more money than the $6 million that the House authorized. We worked with the Senate, and finally came upon the figure of $7.159 million—the same amount designated by the Congress in the State, Justice appropriations bill.

□ 1350

This amount allows them to maintain their staff and their work at current levels. They are on probation, Mr. Speaker. They have been warned, but the subcommittee felt that it was not in the best interests of the civil rights movement or the great civil rights laws that have meant so much to this country and have been the envy of the world. We are, after all, a society of diverse people and different cultures, colors, and religions.

We have difficult problems ahead. We need institutions like a Civil Rights Commission to help tackle these problems. But we need a Civil Rights Commission that is back in the factfinding business.

So they are on probation. They are going to have enough money to continue at present levels.

We are going to monitor them very carefully over the 3 years. We are not giving them the carte blanche they wanted.

Mr. Speaker, I support the Senate amendment to H.R. 3350, the U.S. Commission on Civil Rights Reauthorization Act of 1991.

The amendment extends the Commission's life for a reasonable period, provides for an annual authorization of appropriations, directs at least one annual report monitoring Federal civil rights enforcement, and substitutes, "chairperson" for "chairman" throughout the statute.

Mr. Speaker, the current reauthorization debate is not about whether the Nation needs a Federal civil rights factfinding agency. We do. The Debate is whether the U.S. Commission on Civil Rights is the right agency for that job.

For 25 years, the bipartisan, independent Commission was the premier Federal civil rights factfinding agency. It abandoned that mission in the 1980's, becoming nothing more than a platform for divisive rhetoric by Commission members.

During the 1989 reauthorization, Congress took a gamble that with new membership, leadership, and management, it would get back to its mandate. To the Commission's credit, the divisive rhetoric is gone and fiscal management has improved. But virtually no factfinding has been done in the past 2 years—no hearings, no consultations and only one report—on work already in progress before the 1989 reauthorization.

Congress has rejected the Commission's appeal for a 10-year reauthorization and unlimited funds.

H.R. 3350, as passed by the House, continues the agency for 2 years and provides $6 million in appropriations for each fiscal year.

The Senate's bill extends the Commission's life for 4 years, authorizes unlimited funds for each fiscal year, directs publication of at least one annual report on the status of civil rights in the United States, and substitutes "chair" for "chairman" wherever it appears in the statute.

Today, we consider the compromise amendment negotiated with Senate sponsors which I support. This compromise extends the Commission's life for 3 years, provides $7,159,000 in appropriations for fiscal year 1992—future authorizations of appropriations will be required annually—directs publication of at least one annual report monitoring Federal civil rights enforcement, and substitutes "chairperson" for "chairman" wherever it appears in the underlying statute.

The Senate amendment's reauthorization and appropriation provisions give the Commission sufficient time and resources to demonstrate it is again meeting its factfinding mandate. A review of agency submissions and Commissioner meetings over the past 2 years shows it has been groping to find a focus for this factfinding mandate. The Congress believes a part of that mandate should include resumption of the enforcement series. Flexibility and discretion is given to the Commission to elect the topic and agency or departments for review, but Congress is guaranteed at least one annual report which monitors executive branch enforcement of Federal civil rights laws.

Mr. Speaker, although it is not obligated to issue more than one monitoring report annually, the Commission would be wise to do more, that is, to hold hearings, conduct consultations, and issues reports. After abandoning its factfinding responsibilities for almost a decade, the Commission must affirmatively convince the 103d Congress that it should be reauthorized beyond fiscal year 1994. If it fails to do so, then it should be prepared for that Congress to find some other entity to carry out this function.

The Commission planned to augment its regional office structure by adding four more offices in fiscal year 1992. It will not be able to do so under this appropriation. The $7,159,000 authorized for the current fiscal year maintains the agency at current levels—no cuts in staff and programs will result—but plans to establish additional offices must be postponed until Congress is convinced the Commission is back in business.

The Committee on the Judiciary will also be required to authorize the Commission's request for authorization of appropriations for fiscal years 1993 and 1994. This represents resumption of congressional review and action of the Commission's request for appropriations by both the authorization and appropriation committees to insure that the House and Senate have enacted an authorization of appropriations at the appropriate level.

Annual reviews of this type were a common practice in previous authorizing legislation. It assures annual congressional oversight of the agency's budget, programs, and accomplishments. If the Commission can demonstrate it is meeting its statutory mandate, the Congress may decide it is time to expand the agency's resources and programs.

Mr. Speaker, this is a good compromise, and I hope that the Commission appreciates it is time to produce a tangible record of civil rights factfinding over the next 3 years. I urge you to adopt H.R. 3350 as amended.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, the Senate amendment to H.R. 3350 is evidence of the bipartisan consensus that the work of the Civil Rights Commission is needed. The compromise reauthorizes the Commission for 3 years, provides for an increased appropriation of $7,159,000 for the current fiscal year and requires the Commission to publish at least one annual report monitoring Federal civil rights enforcement.

Mr. Speaker, I think it is clear there exists serious political controversy over this Commission, so I think we do need to stress that the issue before us is really not one of ideology, but management.

During the last 22-month reauthorization period, the Commission has held one briefing and no hearings. Although there have been 17 reports issued by the State advisory committees, the Commission itself issued no reports within its statutory mandate and on the whole has produced very little in the way of performing its factfinding duties.

The Commission has, however, done a great deal to rehabilitate its reputation and to reestablish its network of regional offices which had been closed during cutbacks in the 1980's. It is struggling to reestablish its factfinding focus and carefully utilize its resources. We support this effort.

This Nation needs a bipartisan, objective, and informed voice on the sensitive issues of civil rights. The majority in Congress still believe that the U.S. Commission on Civil Rights is the best entity to perform this function and so I urge my colleagues to accept the Senate amendment to H.R. 3350.

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to make the point that we are reauthorizing the Commission until 1994, but we are just authorizing money for 1 year. So they will have to come back next year and get an authorization for any money that they are going to get. The same would be for the year after that. if they do not do better than they have been doing, they are going to be wasting a lot of their time as well as our money.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, one of the features in the Senate amendment that we are debating today amends the current law that says at present the Commission cannot function without authorization. In other words, it is a mandatory sunset and it requires the Congress to reauthorize the Commission in order for it to continue in existence.

Under the Senate amendment, the Commission can stay on forever without affirmative legislation, under continuing resolutions.

I believe that takes away the club of this Congress over the Commission to start spending the taxpayers' money wisely and to start producing something for the over $7 million that is being authorized in this bill.

Now, with the Senate amendment, should it be enacted into law, it will mean that this Commission can keep on rolling like Old Man River, not functioning at all unless and until the Congress passes an affirmative law abolishing the Commission. I think that is wrong.

I think given the fact that none of the speakers today who have the most familiarity with this Commission have given it a glowing endorsement, every one of the speakers on the floor has said that the Commission has got its problems, every one of them says that the Commission is on probation.

I disagree with my friend, the gentleman from Texas [Mr. BROOKS] that the broom is new, because Mr. Fletcher has been the chairman of the Commission for 1½ years, and we have not seen this Commission turn around since he took over the chairmanship.

The time I believe has come to reject concurring in the Senate amendment.

Now, that does not necessarily kill the Commission. That means we can set up a conference with the other body and perhaps change this feature that allows the Commission to continue so that we can have them on a short chain should we decide to reauthorize it. Failing that, I believe the Senate amendment should be rejected and we can continue with the procedure.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, I want to say to my friend that it is my conviction that this reauthorizes the Commission only until 1994. The language in our bill has every intent of doing just that and that only.

But I would say that we are certainly going to take a very hard look at it again next year. I anticipate that both the gentleman and I will be on that same committee evaluating their efforts with that new, old, or used broom that they have.

Mr. SENSENBRENNER. Mr. Speaker, I thank the gentleman from Texas, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ESPY). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3350.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

REVISION OF TITLE 49, UNITED STATES CODE

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1537) to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code, as amended.

The Clerk read as follows:

H.R. 1537

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SUBTITLES II, III, AND V-X OF TITLE 49, UNITED STATES CODE

SECTION 1. (a) Certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted by subsections (c)-(e) of this section without substantive change as subtitles II, III, and V-X of title 49, United States Code, "Transportation". Those laws may be cited as "49 U.S.C. ——".

(b) Title 49, United States Code, is amended by striking the table of subtitles at the beginning of the title and substituting the following new table of subtitles:

"SUBTITLE	*Sec.*
I. DEPARTMENT OF TRANSPORTATION	*101*
II. OTHER GOVERNMENT AGENCIES	*1101*
III. GENERAL AND INTERMODAL PROGRAMS	*5101*
IV. INTERSTATE COMMERCE	*10101*
V. RAIL PROGRAMS	*20101*
VI. MOTOR VEHICLE AND DRIVER PROGRAMS	*30101*
VII. AVIATION PROGRAMS	*40101*
VIII. PIPELINES	*60101*
IX. COMMERCIAL SPACE TRANSPORTATION	*70101*
X. MISCELLANEOUS	*80101".*

(c) Title 49, United States Code, is amended by striking subtitle II, except that chapter 31 (comprising sections 3101-3104) of subtitle II is redesignated and restated as chapter 315 (comprising sections 31501-31504) of subtitle VI of title 49, as enacted by subsection (e) of this section.

(d) Title 49, United States Code, is amended by adding the following immediately after subtitle I:

SUBTITLE II—OTHER GOVERNMENT AGENCIES

CHAPTER	*Sec.*
11. NATIONAL TRANSPORTATION SAFETY BOARD	*1101*

CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER I–GENERAL

Sec.
1101. Definitions.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

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1131. General authority.
1132. Civil aircraft accident investigations.
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1134. Inspections and autopsies.
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1151. Aviation enforcement.
1152. Joinder and intervention in aviation proceedings.
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1155. Aviation penalties.

SUBCHAPTER I—GENERAL

§1101. Definitions

Section 40102(a) of this title applies to this chapter.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

§1111. General organization

(a) ORGANIZATION.—The National Transportation Safety Board is an independent establishment of the United States Government.

(b) APPOINTMENT OF MEMBERS.—The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

(c) TERMS OF OFFICE AND REMOVAL.—The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(d) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2

years. When the Chairman is absent or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) DUTIES AND POWERS OF CHAIRMAN.—The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall—

(1) appoint, supervise, and fix the pay of officers and employees necessary to carry out this chapter;

(2) distribute business among the officers, employees, and administrative units of the Board; and

(3) supervise the expenditures of the Board.

(f) QUORUM.—Three members of the Board are a quorum in carrying out duties and powers of the Board.

(g) OFFICES, BUREAUS, AND DIVISIONS.—The Board shall establish offices necessary to carry out this chapter, including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

(1) aviation.

(2) highway and motor vehicle.

(3) rail and tracked vehicle.

(4) pipeline.

(h) SEAL.—The Board shall have a seal that shall be judicially recognized.

§1112. Special boards of inquiry on air transportation safety

(a) ESTABLISHMENT.—If an accident involves a substantial question about public safety in air transportation, the National Transportation Safety Board may establish a special board of inquiry composed of—

(1) one member of the Board acting as chairman; and

(2) 2 members representing the public, appointed by the President on notification of the establishment of the special board of inquiry.

(b) QUALIFICATIONS AND CONFLICTS OF INTEREST.—The public members of a special board of inquiry must be qualified by training and experience to participate in the inquiry and may not have a pecuniary interest in an aviation enterprise involved in the accident to be investigated.

(c) AUTHORITY.—A special board of inquiry has the same authority that the Board has under this chapter.

§1113. Administrative

(a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board, and when authorized by it, a member of the Board, an administrative law judge employed by or assigned to the Board, or an officer or employee designated by the Chairman of the Board, may conduct hearings to carry out this chapter, administer oaths, and require, by subpena or otherwise, necessary witnesses and evidence.

(2) A witness or evidence in a hearing under paragraph (1) of this subsection may be summoned or required to be produced from any place in the United States to the designated place of the hearing. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A subpena shall be issued under the signature of the Chairman or the Chairman's delegate but may be served by any person designated by the Chairman.

(4) If a person disobeys a subpena, order, or inspection notice of the Board, the Board may bring a civil action in a district court of the United States to enforce the subpena, order, or notice. An action under this paragraph may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court may punish a failure to obey an order of the court to comply with the subpena, order, or notice as a contempt of court.

(b) ADDITIONAL POWERS.—(1) The Board may—

(A) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(B) make agreements and other transactions necessary to carry out this chapter without regard to section 3709 of the Revised Statutes (41 U.S.C. 5);

(C) use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(D) confer with employees and use services, records, and facilities of State and local governmental authorities;

(E) appoint advisory committees composed of qualified private citizens and officials of the Government and State and local governments as appropriate;

(F) accept voluntary and uncompensated services notwithstanding another law;

(G) accept gifts of money and other property;

(H) make contracts with nonprofit entities to carry out studies related to duties and powers of the Board; and

(I) require that the departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries provide appropriate consideration for the reasonable costs of goods and services supplied by the Board.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1)(I) of this subsection to be credited to the appropriation of the Board.

(c) SUBMISSION OF CERTAIN COPIES TO CONGRESS.—When the Board submits to the President or the Director of the Office of Management and Budget a budget estimate, budget request, supplemental budget estimate, other budget information, a legislative recommendation, prepared testimony for congressional hearings, or comments on legislation, the Board must submit a copy to Congress at the same time. An officer, department, agency, or instrumentality of the Government may not require the Board to submit the estimate, request, information, recommendation, testimony, or comments to another officer, department, agency, or instrumentality of the Government for approval, comment, or review before being submitted to Congress.

(d) LIAISON COMMITTEES.—The Chairman may determine the number of committees that are appropriate to maintain effective liaison with other departments, agencies, and instrumentalities of the Government, State and local governmental authorities, and independent standard-setting authorities that carry out programs and activities related to transportation safety. The Board may designate representatives to serve on or assist those committees.

(e) INQUIRIES.—The Board, or an officer or employee of the Board designated by the Chairman, may conduct an inquiry to obtain information related to transportation safety after publishing notice of the inquiry in the Federal Register. The Board or designated officer or employee may require by order a department, agency, or instrumentality of the Government, a State or local governmental authority, or a person transporting individuals or property in commerce to submit to the Board a written report and answers to requests and questions related to a duty or power of the Board. The Board may prescribe the time within which the report and answers must be given to the Board or to the designated officer or employee. Copies of the report and answers shall be made available for public inspection.

(f) REGULATIONS.—The Board may prescribe regulations to carry out this chapter.

§1114. Disclosure, availability, and use of information

(a) GENERAL.—Except as provided in subsections (b) and (c) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.

(b) TRADE SECRETS.—(1) The Board may disclose information related to a trade secret referred to in section 1905 of title 18 only—

(A) to another department, agency, or instrumentality of the United States Government when requested for official use;

(B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;

(C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

(D) to the public to protect health and safety after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.

(2) Information disclosed under paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.

(c) COCKPIT VOICE RECORDINGS AND TRANSCRIPTS.—(1) The Board may not disclose publicly any part of a cockpit voice recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board. However, the Board shall make public any part of a transcript the Board decides is relevant to the accident or incident—

(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident or incident are placed in the public docket.

(2) This subsection does not prevent the Board from referring at any time to cockpit voice recorder information in making safety recommendations.

(d) DRUG TESTS.—(1) Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:

(A) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.

(B) any laboratory record documenting that the test is confirmed positive.

(2) Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section 552(b)(3) of title 5—

(A) a laboratory record provided the Board under paragraph (1) of this subsection that re-

veals medical use of a drug allowed under applicable regulations; and

(B) medical information provided by the tested officer or employee related to the test or a review of the test.

(3) The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—

(A) the fitness of the tested officer or employee is at issue in the investigation; and

(B) the use of that record is necessary to develop the evidentiary record.

§1115. Training

(a) DEFINITION.—In this section, "Institute" means the Transportation Safety Institute of the Department of Transportation and any successor organization of the Institute.

(b) USE OF INSTITUTE SERVICES.—The National Transportation Safety Board may use, on a reimbursable basis, the services of the Institute. The Secretary of Transportation shall make the Institute available to—

(1) the Board for safety training of employees of the Board in carrying out their duties and powers; and

(2) other safety personnel of the United States Government, State and local governments, governments of foreign countries, interstate authorities, and private organizations the Board designates in consultation with the Secretary.

(c) FEES.—(1) Training at the Institute for safety personnel (except employees of the Government) shall be provided at a reasonable fee established periodically by the Board in consultation with the Secretary. The fee shall be paid directly to the Secretary, and the Secretary shall deposit the fee in the Treasury. The amount of the fee—

(A) shall be credited to the appropriate appropriation (subject to the requirements of any annual appropriation); and

(B) is an offset against any annual reimbursement agreement between the Board and the Secretary to cover all reasonable costs of providing training under this subsection that the Secretary incurs in operating the Institute.

(2) The Board shall maintain an annual record of offsets under paragraph (1)(B) of this subsection.

§1116. Reports and studies

(a) PERIODIC REPORTS.—The National Transportation Safety Board shall report periodically to Congress, departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities concerned with transportation safety, and other interested persons. The report shall—

(1) advocate meaningful responses to reduce the likelihood of transportation accidents similar to those investigated by the Board; and

(2) propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents.

(b) STUDIES, INVESTIGATIONS, AND OTHER REPORTS.—The Board also shall—

(1) carry out special studies and investigations about transportation safety, including avoiding personal injury;

(2) examine techniques and methods of accident investigation and periodically publish recommended procedures for accident investigations;

(3) prescribe requirements for persons reporting accidents and aviation incidents that—

(A) may be investigated by the Board under this chapter; or

(B) involve public aircraft (except aircraft of the armed forces and the intelligence agencies);

(4) evaluate, examine the effectiveness of, and publish the findings of the Board about the transportation safety consciousness of other departments, agencies, and instrumentalities of the Government and their effectiveness in preventing accidents; and

(5) evaluate the adequacy of safeguards and procedures for the transportation of hazardous material and the performance of other departments, agencies, and instrumentalities of the Government responsible for the safe transportation of that material.

§1117. Annual report

The National Transportation Safety Board shall submit a report to Congress on July 1 of each year. The report shall include—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the prior calendar year;

(2) a survey and summary of the recommendations made by the Board to reduce the likelihood of recurrence of those accidents together with the observed response to each recommendation;

(3) a detailed appraisal of the accident investigation and accident prevention activities of other departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities having responsibility for those activities under a law of the United States or a State; and

(4) an evaluation conducted every 2 years of transportation safety and recommendations for legislative and administrative action and change.

§1118. Authorization of appropriations

(a) GENERAL.—Not more than the following amounts may be appropriated to the National Transportation Safety Board to carry out this chapter:

(1) $38,600,000 for the fiscal year ending September 30, 1992.

(2) $38,800,000 for the fiscal year ending September 30, 1993.

(b) EMERGENCY FUND.—The Board has an emergency fund of $1,000,000 available for necessary expenses of the Board, not otherwise provided for, for accident investigations. The following amounts may be appropriated to the fund:

(1) $1,000,000 to establish the fund.

(2) amounts equal to amounts expended annually out of the fund.

(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

SUBCHAPTER III—AUTHORITY

§1131. General authority

(a) GENERAL.—(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title;

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;

(D) a pipeline accident in which there is a fatality or substantial property damage;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on the navigable waters or territorial sea of the United States, or involving a vessel of the United States, under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and

(F) any other accident related to the transportation of individuals or property when the Board decides—

(i) the accident is catastrophic;

(ii) the accident involves problems of a recurring character; or

(iii) the investigation of the accident would carry out this chapter.

(2) An investigation by the Board under paragraph (1)(A)-(D) or (F) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation. However, those departments, agencies, or instrumentalities may not participate in the decision of the Board about the probable cause of the accident.

(3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)-(e) of this title do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about the accident is exchanged in a timely manner.

(b) ACCIDENTS INVOLVING PUBLIC VESSELS.—(1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.

(2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.

(c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.—(1) When asked by the Board, the Secretary of Transportation may—

(A) investigate an accident described under subsection (a) or (b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and

(B) report the facts and circumstances of the accident to the Board.

(2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.

(d) ACCIDENT REPORTS.—The Board shall report on the facts and circumstances of each accident investigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.

§1132. Civil aircraft accident investigations

(a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board shall investigate—

(A) each accident involving civil aircraft; and

(B) with the participation of appropriate military authorities, each accident involving both military and civil aircraft.

(2) A person employed under section 1113(b)(1) of this title that is conducting an investigation or hearing about an aircraft accident has the same authority to conduct the investigation or hearing as the Board.

(b) NOTIFICATION AND REPORTING.—The Board shall prescribe regulations governing the notification and reporting of accidents involving civil aircraft.

(c) PARTICIPATION OF SECRETARY.—The Board shall provide for the participation of the Secretary of Transportation in the investigation of an aircraft accident under this chapter when participation is necessary to carry out the duties and powers of the Secretary. However, the Secretary may not participate in establishing probable cause.

(d) ACCIDENTS INVOLVING ONLY MILITARY AIRCRAFT.—If an accident involves only mili-

tary aircraft and a duty of the Secretary is or may be involved, the military authorities shall provide for the participation of the Secretary. In any other accident involving only military aircraft, the military authorities shall give the Board or Secretary information the military authorities decide would contribute to the promotion of air safety.

§1133. Review of other agency action

The National Transportation Safety Board shall review on appeal—

(1) the denial, amendment, modification, suspension, or revocation of a certificate issued by the Secretary of Transportation under section 44703, 44709, or 44710 of this title;

(2) the revocation of a certificate of registration under section 44106 of this title; and

(3) a decision of the head of the department in which the Coast Guard is operating on an appeal from the decision of an administrative law judge denying, revoking, or suspending a license, certificate, document, or register in a proceeding under section 6101, 6301, or 7503, chapter 77, or section 9303 of title 46.

§1134. Inspections and autopsies

(a) ENTRY AND INSPECTION.—An officer or employee designated by the National Transportation Safety Board—

(1) on display of appropriate credentials and written notice of inspection authority, may enter property where a transportation accident has occurred or wreckage from the accident is located and do anything necessary to conduct an investigation; and

(2) during reasonable hours, may inspect any record, process, control, or facility related to an accident investigation under this chapter.

(b) INSPECTION, TESTING, PRESERVATION, AND MOVING OF AIRCRAFT AND PARTS.—(1) In investigating an aircraft accident under this chapter, the Board may inspect and test, to the extent necessary, any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce.

(2) Any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce shall be preserved, and may be moved, only as provided by regulations of the Board.

(c) AVOIDING UNNECESSARY INTERFERENCE AND PRESERVING EVIDENCE.—In carrying out subsection (a)(1) of this section, an officer or employee may examine or test any vehicle, vessel, rolling stock, track, or pipeline component. The examination or test shall be conducted in a way that—

(1) does not interfere unnecessarily with transportation services provided by the owner or operator of the vehicle, vessel, rolling stock, track, or pipeline component; and

(2) to the maximum extent feasible, preserves evidence related to the accident, consistent with the needs of the investigation and with the cooperation of that owner or operator.

(d) EXCLUSIVE AUTHORITY OF BOARD.—Only the Board has the authority to decide on the way in which testing under this section will be conducted, including decisions on the person that will conduct the test, the type of test that will be conducted, and any individual who will witness the test. The Board shall make any of those decisions based on the needs of the investigation being conducted and, when applicable, this subsection and subsections (a), (c), and (e) of this section.

(e) PROMPTNESS OF TESTS AND AVAILABILITY OF RESULTS.—An inspection, examination, or test under subsection (a) or (c) of this section shall be started and completed promptly, and the results shall be made available.

(f) AUTOPSIES.—(1) The Board may order an autopsy to be performed and have other tests made when necessary to investigate an accident under this chapter. However, local law protecting religious beliefs related to autopsies shall be observed to the extent consistent with the needs of the accident investigation.

(2) With or without reimbursement, the Board may obtain a copy of an autopsy report performed by a State or local official on an individual who died because of a transportation accident investigated by the Board under this chapter.

§1135. Secretary of Transportation's responses to safety recommendations

(a) GENERAL.—When the National Transportation Safety Board submits a recommendation about transportation safety to the Secretary of Transportation, the Secretary shall give a formal written response to each recommendation not later than 90 days after receiving the recommendation. The response shall indicate whether the Secretary intends—

(1) to carry out procedures to adopt the complete recommendation;

(2) to carry out procedures to adopt a part of the recommendation; or

(3) to refuse to carry out procedures to adopt the recommendation.

(b) TIMETABLE FOR COMPLETING PROCEDURES AND REASONS FOR REFUSALS.—A response under subsection (a) (1) or (2) of this section shall include a copy of a proposed timetable for completing the procedures. A response under subsection (a)(2) of this section shall detail the reasons for the refusal to carry out procedures on the remainder of the recommendation. A response under subsection (a)(3) of this section shall detail the reasons for the refusal to carry out procedures.

(c) PUBLIC AVAILABILITY.—The Board shall make a copy of each recommendation and response available to the public at reasonable cost.

(d) REPORTS TO CONGRESS.—The Secretary shall submit to Congress on January 1 of each year a report containing each recommendation on transportation safety made by the Board to the Secretary during the prior year and a copy of the Secretary's response to each recommendation.

SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

§1151. Aviation enforcement

(a) CIVIL ACTIONS BY BOARD.—The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS BY ATTORNEY GENERAL.—On request of the Board, the Attorney General may bring a civil action—

(1) to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and

(2) to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) PARTICIPATION OF BOARD.—On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title.

§1152. Joinder and intervention in aviation proceedings

A person interested in or affected by a matter under consideration in a proceeding or a civil action to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title, or a regulation prescribed or order issued under any of those sections, may be joined as a party or permitted to intervene in the proceeding or civil action.

§1153. Judicial review

(a) GENERAL.—The appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit may review a final order of the National Transportation Safety Board under this chapter. A person disclosing a substantial interest in the order may apply for review by filing a petition not later than 60 days after the order of the Board is issued.

(b) AVIATION MATTERS.—(1) A person disclosing a substantial interest in an order related to an aviation matter issued by the Board under this chapter may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60 days only if there was a reasonable ground for not filing within that 60-day period.

(2) When a petition is filed under paragraph (1) of this subsection, the clerk of the court immediately shall send a copy of the petition to the Board. The Board shall file with the court a record of the proceeding in which the order was issued.

(3) When the petition is sent to the Board, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Board to conduct further proceedings. After reasonable notice to the Board, the court may grant interim relief by staying the order or taking other appropriate action when cause for its action exists. Findings of fact by the Board, if supported by substantial evidence, are conclusive.

(4) In reviewing an order under this subsection, the court may consider an objection to an order of the Board only if the objection was made in the proceeding conducted by the Board or if there was a reasonable ground for not making the objection in the proceeding.

(5) A decision by a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

§1154. Discovery and use of cockpit voice and other material

(a) TRANSCRIPTS AND RECORDINGS.—(1) Except as provided by this subsection, a party in a judicial proceeding may not use discovery to obtain—

(A) any part of a cockpit voice recorder transcript that the National Transportation Safety Board has not made available to the public under section 1114(c) of this title; and

(B) a cockpit voice recorder recording.

(2)(A) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit voice recorder transcript if, after an in camera review of the transcript, the court decides that—

(i) the part of the transcript made available to the public under section 1114(c) of this title does not provide the party with sufficient information for the party to receive a fair trial; and

(ii) discovery of additional parts of the transcript is necessary to provide the party with sufficient information for the party to receive a fair trial.

(B) A court may allow discovery, or require production for an in camera review, of a cockpit voice recorder transcript that the Board has not made available under section 1114(c) of this title only if the cockpit voice recorder recording is not available.

(3) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit voice recorder recording if, after an in camera review of the recording, the court decides that—

(A) the parts of the transcript made available to the public under section 1114(c) of this title and to the party through discovery under paragraph (2) of this subsection do not provide the party with sufficient information for the party to receive a fair trial; and

(B) discovery of the cockpit voice recorder recording is necessary to provide the party with sufficient information for the party to receive a fair trial.

(4)(A) When a court allows discovery in a judicial proceeding of a part of a cockpit voice recorder transcript not made available to the public under section 1114(c) of this title or a cockpit voice recorder recording, the court shall issue a protective order—

(i) to limit the use of the part of the transcript or the recording to the judicial proceeding; and

(ii) to prohibit dissemination of the part of the transcript or the recording to any person that does not need access to the part of the transcript or the recording for the proceeding.

(B) A court may allow a part of a cockpit voice recorder transcript not made available to the public under section 1114(c) of this title or a cockpit voice recorder recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.

(5) This subsection does not prevent the Board from referring at any time to cockpit voice recorder information in making safety recommendations.

(b) REPORTS.—No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

§1155. Aviation penalties

(a) CIVIL PENALTY.—(1) A person violating section 1132 or 1134(b) or (f)(1) of this title or a regulation prescribed or order issued under either of those sections is liable to the United States Government for a civil penalty of not more than $1,000. A separate violation occurs for each day a violation continues.

(2) This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.

(3) The Board may compromise the amount of a civil penalty imposed under this subsection.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) A civil penalty under this subsection may be collected by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.

(b) CRIMINAL PENALTY.—A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

CHAPTER Sec.
51. TRANSPORTATION OF HAZARDOUS MATERIAL 5101
53. URBAN MASS TRANSPORTATION 5301
55. INTERMODAL TRANSPORTATION TERMINALS 5501
57. SANITARY FOOD TRANSPORTATION 5701

CHAPTER 51—TRANSPORTATION OF HAZARDOUS MATERIAL

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§5101. Purpose

The purpose of this chapter is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.

§5102. Definitions

In this chapter—

(1) "commerce" means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State; or

(B) that affects trade or transportation between a place in a State and a place outside of the State.

(2) "hazardous material" means a substance or material the Secretary of Transportation designates under section 5103(a) of this title.

(3) "hazmat employee"—

(A) means an individual—

(i) employed by a hazmat employer; and

(ii) who during the course of employment directly affects hazardous material transportation safety as the Secretary decides by regulation;

(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and

(C) includes an individual, employed by a hazmat employer, who during the course of employment—

(i) loads, unloads, or handles hazardous material;

(ii) reconditions or tests containers, drums, and packages represented for use in transporting hazardous material;

(iii) prepares hazardous material for transportation;

(iv) is responsible for the safety of transporting hazardous material; or

(v) operates a vehicle used to transport hazardous material.

(4) "hazmat employer"—

(A) means a person using at least one employee of that person in connection with—

(i) transporting hazardous material in commerce;

(ii) causing hazardous material to be transported in commerce; or

(iii) reconditioning or testing containers, drums, and packages represented for use in transporting hazardous material;

(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and

(C) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in subclause (A)(i), (ii), or (iii) of this clause (4).

(5) "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(6) "Indian tribe" has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(7) "motor carrier" means a motor common carrier, motor contract carrier, motor private carrier, and freight forwarder as those terms are defined in section 10102 of this title.

(8) "national response team" means the national response team established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

(9) "person", in addition to its meaning under section 1 of title 1—

(A) includes a government, Indian tribe, or authority of a government or tribe offering hazardous material for transportation in commerce or transporting hazardous material to further a commercial enterprise; but

(B) does not include—

(i) the United States Postal Service; and

(ii) in sections 5123 and 5124 of this title, a department, agency, or instrumentality of the Government.

(10) "public sector employee"—

(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;

(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and

(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) "State" means—

(A) except in section 5119 of this title, a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and

(B) in section 5119 of this title, a State of the United States and the District of Columbia.

(12) "transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

(13) "United States" means all of the States.

§5103. General regulatory authority

(a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary of Transportation shall designate material (including an explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary decides that transporting the material in

commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) Regulations for Safe Transportation.—(1) The Secretary shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. The regulations—

(A) apply to a person—

(i) transporting hazardous material in commerce;

(ii) causing hazardous material to be transported in commerce; or

(iii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; and

(B) shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate.

(2) A proceeding to prescribe the regulations must include an opportunity for informal oral presentations.

§5104. Representation and tampering

(a) Representation.—A person may represent, by marking or otherwise, that—

(1) a container or package for transporting hazardous material is safe, certified, or complies with this chapter only if the container or package meets the requirements of each regulation prescribed under this chapter; or

(2) hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel only if the material is present.

(b) Tampering.—A person may not alter, remove, destroy, or otherwise tamper unlawfully with—

(1) a marking, label, placard, or description on a document required under this chapter or a regulation prescribed under this chapter; or

(2) a package, container, motor vehicle, rail freight car, aircraft, or vessel used to transport hazardous material.

§5105. Transporting certain highly radioactive material

(a) Definition.—In this section, "high-level radioactive waste" and "spent nuclear fuel" have the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(b) Transportation Safety Study.—In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the Secretary of Transportation shall conduct a study comparing the safety of using trains operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary of Transportation shall submit to Congress not later than November 16, 1991, a report on the results of the study.

(c) Safe Rail Transportation Regulations.—Not later than November 16, 1992, after considering the results of the study conducted under subsection (b) of this section, the Secretary of Transportation shall prescribe amendments to existing regulations that the Secretary considers appropriate to provide for the safe rail transportation of high-level radioactive waste and spent nuclear fuel, including trains operated only for transporting high-level radioactive waste and spent nuclear fuel.

(d) Routes and Modes Study.—Not later than November 16, 1991, the Secretary of Transportation shall conduct a study to decide which factors, if any, shippers and carriers should consider when selecting routes and modes that would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. The study shall include—

(1) notice and opportunity for public comment; and

(2) an assessment of the degree to which at least the following affect the overall public safety of the transportation:

(A) population densities.

(B) types and conditions of modal infrastructures (including highways, railbeds, and waterways).

(C) quantities of high-level radioactive waste and spent nuclear fuel.

(D) emergency response capabilities.

(E) exposure and other risk factors.

(F) terrain considerations.

(G) continuity of routes.

(H) available alternative routes.

(I) environmental impact factors.

(e) Inspections of Motor Vehicles Transporting Certain Material.—(1) Not later than November 16, 1991, the Secretary of Transportation shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations. The Secretary may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures.

(2) The Secretary of Transportation may allow a person, transporting or causing to be transported a highway-route-controlled quantity of radioactive material, to inspect the motor vehicle used to transport the material and to certify that the vehicle complies with this chapter. The inspector qualification requirements the Secretary prescribes for an individual inspecting a motor vehicle apply to an individual conducting an inspection under this paragraph.

§5106. Handling criteria

The Secretary of Transportation may prescribe criteria for handling hazardous material, including—

(1) a minimum number of personnel;

(2) minimum levels of training and qualifications for personnel;

(3) the kind and frequency of inspections;

(4) equipment for detecting, warning of, and controlling risks posed by the hazardous material;

(5) specifications for the use of equipment and facilities used in handling and transporting the hazardous material; and

(6) a system of monitoring safety procedures for transporting the hazardous material.

§5107. Hazmat employee training requirements and grants

(a) Training Requirements.—Not later than May 16, 1992, the Secretary of Transportation shall prescribe by regulation requirements for training that a hazmat employer must give hazmat employees of the employer on the safe loading, unloading, handling, storing, and transporting of hazardous material and emergency preparedness for responding to an accident or incident involving the transportation of hazardous material. The regulations—

(1) shall establish the date, as provided by subsection (b) of this section, by which the training shall be completed; and

(2) may provide for different training for different classes or categories of hazardous material and hazmat employees.

(b) Beginning and Completing Training.—A hazmat employer shall begin the training of hazmat employees of the employer not later than 6 months after the Secretary of Transportation prescribes the regulations under subsection (a) of this section. The training shall be completed within a reasonable period of time after—

(1) 6 months after the regulations are prescribed; or

(2) the date on which an individual is to begin carrying out a duty or power of a hazmat employee if the individual is employed as a hazmat employee after the 6-month period.

(c) Certification of Training.—After completing the training, each hazmat employer shall certify, with documentation the Secretary of Transportation may require by regulation, that the hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility, including at least one of the following:

(1) recognizing and understanding the Department of Transportation hazardous material classification system.

(2) the use and limitations of the Department hazardous material placarding, labeling, and marking systems.

(3) general handling procedures, loading and unloading techniques, and strategies to reduce the probability of release or damage during or incidental to transporting hazardous material.

(4) health, safety, and risk factors associated with hazardous material and the transportation of hazardous material.

(5) appropriate emergency response and communication procedures for dealing with an accident or incident involving hazardous material transportation.

(6) the use of the Department Emergency Response Guidebook and recognition of its limitations or the use of equivalent documents and recognition of the limitations of those documents.

(7) applicable hazardous material transportation regulations.

(8) personal protection techniques.

(9) preparing a shipping document for transporting hazardous material.

(d) Coordination of Training Requirements.—In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary of Transportation shall ensure that the training requirements prescribed under this section do not conflict with—

(1) the requirements of regulations the Secretary of Labor prescribes related to hazardous waste operations and emergency response that are contained in part 1910 of title 29, Code of Federal Regulations; and

(2) the regulations the Agency prescribes related to worker protection standards for hazardous waste operations that are contained in part 311 of title 40, Code of Federal Regulations.

(e) Training Grants.—In consultation with the Secretaries of Transportation and Labor and the Administrator, the Director of the National Institute of Environmental Health Sciences may make grants to train hazmat employees under this section. A grant under this subsection shall be made to a nonprofit organization that demonstrates—

(1) expertise in conducting a training program for hazmat employees; and

(2) the ability to reach and involve in a training program a target population of hazmat employees.

(f) Relationship to Other Laws.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)–(d) of this section.

(2) An action of the Secretary of Transportation under subsections (a)–(d) of this section and sections 5106, 5108(a)–(g)(1) and (h), and 5109 of this title is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory au-

thority to prescribe or enforce standards or regulations affecting occupational safety or health.

§5108. Registration

(a) PERSONS REQUIRED TO FILE.—(1) A person shall file a registration statement with the Secretary of Transportation under this subsection if the person is transporting or causing to be transported in commerce any of the following:

(A) a highway-route-controlled quantity of radioactive material.

(B) more than 25 kilograms of a class A or B explosive in a motor vehicle, rail car, or transport container.

(C) more than one liter in each package of a hazardous material the Secretary designates as extremely toxic by inhalation.

(D) hazardous material in a bulk package, container, or tank, as defined by the Secretary, if the package, container, or tank has a capacity of at least 3,500 gallons or more than 468 cubic feet.

(E) a shipment of at least 5,000 pounds of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required under regulations prescribed under this chapter.

(2) The Secretary of Transportation may require any of the following persons to file a registration statement with the Secretary under this subsection:

(A) a person transporting or causing to be transported hazardous material in commerce and not required to file a registration statement under paragraph (1) of this subsection.

(B) a person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks, certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.

(3) A person required to file a registration statement under this subsection may transport or cause to be transported, or manufacture, fabricate, mark, maintain, recondition, repair, or test a package or container for use in transporting, hazardous material, only if the person has a statement on file as required by this subsection.

(b) FORM, CONTENTS, AND LIMITATION ON FILINGS.—(1) A registration statement under subsection (a) of this section shall be in the form and contain information the Secretary of Transportation requires by regulation. The Secretary may use existing forms of the Department of Transportation and the Environmental Protection Agency to carry out this subsection. The statement shall include—

(A) the name and principal place of business of the registrant;

(B) a description of each activity the registrant carries out for which filing a statement under subsection (a) of this section is required; and

(C) each State in which the person carries out the activity.

(2) A person carrying out more than one activity for which filing is required only has to file one registration statement to comply with subsection (a) of this section.

(c) FILING DEADLINES AND AMENDMENTS.—(1) Each person required to file a registration statement under this subsection (a) of section must file the first statement not later than March 31, 1992. The Secretary of Transportation may extend that date to September 30, 1992, for activities referred to in subsection (a)(1) of this section. A person shall renew the statement periodically consistent with regulations the Secretary prescribes, but not more than once each year and not less than once every 5 years.

(2) The Secretary of Transportation shall decide by regulation when and under what circumstances a registration statement must be amended and the procedures to follow in amending the statement.

(d) SIMPLIFYING THE REGISTRATION PROCESS.—The Secretary of Transportation may take necessary action to simplify the registration process under subsections (a)–(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) COOPERATION WITH ADMINISTRATOR.—The Administrator of the Environmental Protection Agency shall assist the Secretary of Transportation in carrying out subsections (a)–(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)–(g)(1) and (h).

(f) AVAILABILITY OF STATEMENTS.—The Secretary of Transportation shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 552(f) of title 5 or otherwise protected by law from disclosure to the public.

(g) FEES.—(1) The Secretary of Transportation may establish, impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2)(A) In addition to a fee established under paragraph (1) of this subsection, not later than September 30, 1992, the Secretary of Transportation shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least $250 but not more than $5,000 from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

(i) gross revenue from transporting hazardous material.

(ii) the type of hazardous material transported or caused to be transported.

(iii) the amount of hazardous material transported or caused to be transported.

(iv) the number of shipments of hazardous material.

(v) the number of activities that the person carries out for which filing a registration statement is required under this section.

(vi) the threat to property, individuals, and the environment from an accident or incident involving the hazardous material transported or caused to be transported.

(vii) the percentage of gross revenue derived from transporting hazardous material.

(viii) the amount to be made available to carry out sections 5107(e), 5108(g)(2), 5115, and 5116 of this title.

(ix) other factors the Secretary considers appropriate.

(B) The Secretary of Transportation shall adjust the amount being collected under this paragraph to reflect any unexpended balance in the account established under section 5116(i) of this title. However, the Secretary is not required to refund any fee collected under this paragraph.

(C) The Secretary of Transportation shall transfer to the Secretary of the Treasury amounts the Secretary of Transportation collects under this paragraph for deposit in the account the Secretary of the Treasury establishes under section 5116(i) of this title.

(h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.—The Secretary of Transportation may prescribe regulations requiring a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)–(g)(1) and (h) of this section.

(2)(A) This section does not apply to an employee of a hazmat employer.

(B) Subsections (a)–(h) of this section do not apply to a department, agency, or instrumentality of the United States Government, an authority of a State or political subdivision of a State, or an employee of a department, agency, instrumentality, or authority carrying out official duties.

(j) AUTHORIZATION TO REQUIRE REGISTRATION.—(1) The Secretary of Transportation may require a person transporting or causing to be transported hazardous material in commerce, or that manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container that is represented, marked, certified, or sold by that person for use in transporting hazardous material in commerce, to file a registration statement with the Secretary not more than once every 2 years. The statement shall include—

(A) the name and principal place of business of the person;

(B) the location of each place at which hazardous material is handled;

(C) a list of the hazardous material handled; and

(D) a declaration that the person is complying with criteria prescribed under section 5106 of this title.

(2) A person required to file a registration statement under this subsection may transport or cause to be transported hazardous material, and may manufacture, fabricate, mark, maintain, recondition, repair, or test a package or container for use in transporting hazardous material, only if the person has filed the statement.

(3) Any individual may inspect a registration statement filed under this subsection without charge. This paragraph does not require the release of information protected by law from public disclosure.

§5109. Motor carrier safety permits

(a) REQUIREMENT.—A motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit the Secretary of Transportation issues under this section authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able—

(1) to provide the transportation to be authorized by the permit;

(2) to comply with this chapter and regulations the Secretary prescribes to carry out this chapter; and

(3) to comply with applicable United States motor carrier safety laws and regulations and applicable minimum financial responsibility laws and regulations.

(b) APPLICABLE TRANSPORTATION.—The Secretary shall prescribe by regulation the hazardous material and amounts of hazardous material to which this section applies. However, this section shall apply at least to all transportation by a motor carrier of—

(1) a class A or B explosive;

(2) liquefied natural gas;

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

(c) APPLICATIONS.—A motor carrier shall file an application with the Secretary for a safety permit to provide transportation under this section. The Secretary may approve any part of the application or deny the application. The application shall be under oath and contain information the Secretary requires by regulation.

(d) AMENDMENTS, SUSPENSIONS, AND REVOCATIONS.—(1) After notice and an opportunity for *a hearing, the Secretary may amend, suspend, or revoke a safety permit, as provided by procedures prescribed under subsection (e) of this section, when the Secretary decides the motor carrier is not complying with a requirement of this chapter, a regulation prescribed under this chapter, or an applicable United States motor carrier safety law or regulation or minimum financial responsibility law or regulation.*

(2) If the Secretary decides an imminent hazard exists, the Secretary may amend, suspend, or revoke a permit before scheduling a hearing.

(e) PROCEDURES.—The Secretary shall prescribe by regulation—

(1) application procedures, including form, content, and fees necessary to recover the complete cost of carrying out this section;

(2) standards for deciding the duration, terms, and limitations of a safety permit;

(3) procedures to amend, suspend, or revoke a permit; and

(4) other procedures the Secretary considers appropriate to carry out this section.

(f) SHIPPER REQUIREMENT.—A person offering hazardous material for motor vehicle transportation in commerce may offer the material to a motor carrier only if the carrier has a safety permit issued under this section authorizing the transportation.

(g) CONDITIONS.—A motor carrier may provide transportation under a safety permit issued under this section only if the carrier complies with conditions the Secretary finds are required to protect public safety.

(h) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section not later than November 16, 1991.

§5110. Shipping papers and disclosure

(a) PROVIDING SHIPPING PAPERS.—Each person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary of Transportation apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes under subsection (b) of this section.

(b) CONSIDERATIONS AND REQUIREMENTS.—In carrying out subsection (a) of this section, the Secretary shall consider and may require—

(1) a description of the hazardous material, including the proper shipping name;

(2) the hazard class of the hazardous material;

(3) the identification number (UN/NA) of the hazardous material;

(4) immediate first action emergency response information or a way for appropriate reference to the information (that must be available immediately); and

(5) a telephone number for obtaining more specific handling and mitigation information about the hazardous material at any time during which the material is transported.

(c) KEEPING SHIPPING PAPERS ON THE VEHICLE.—(1) A motor carrier, and the person offering the hazardous material for transportation if a private motor carrier, shall keep the shipping paper on the vehicle transporting the material.

(2) Except as provided in paragraph (1) of this subsection, the shipping paper shall be kept in a location the Secretary specifies in a motor vehicle, train, vessel, aircraft, or facility until—

(A) the hazardous material no longer is in transportation; or

(B) the documents are made available to a representative of a department, agency, or instrumentality of the United States Government or a State or local authority responding to an accident or incident involving the motor vehicle, train, vessel, aircraft, or facility.

(d) DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES.—When an incident involving hazardous material being transported in commerce occurs, the person transporting the material, immediately on request of appropriate emergency response authorities, shall disclose to the authorities information about the material.

§5111. Rail tank cars

After July 1, 1991, a rail tank car built before January 1, 1971, may be used to transport hazardous material in commerce only if the air brake equipment support attachments of the car comply with the standards for attachments contained in parts 179.100-16 and 179.200-19 of title 49, Code of Federal Regulations, in effect on November 16, 1990.

§5112. Highway routing of hazardous material

(a) APPLICATION.—(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter. However, the Secretary of Transportation by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to—

(A) any use of a vehicle under this paragraph to transport any hazardous material in commerce; and

(B) any motor vehicle used to transport hazardous material in commerce.

(2) Except as provided by subsection (d) of this section and section 5125(c) of this title, each State and Indian tribe may establish, maintain, and enforce—

(A) designations of specific highway routes over which hazardous material may and may not be transported by motor vehicle; and

(B) limitations and requirements related to highway routing.

(b) STANDARDS FOR STATES AND INDIAN TRIBES.—(1) Not later than May 16, 1992, the Secretary, in consultation with the States, shall prescribe by regulation standards for States and Indian tribes to use in carrying out subsection (a) of this section. The standards shall include—

(A) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;

(B) minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;

(C) a requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of that State or tribe establishing the designation, limitation, or requirement and with affected industries;

(D) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;

(E) a requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or tribe may be established, maintained, and enforced by the State or tribe establishing the designation, limitation, or requirement only if—

(i) the designation, limitation, or requirement is agreed to by the other State or tribe within a reasonable period or is approved by the Secretary under subsection (d) of this section; and

(ii) the designation, limitation, or requirement is not an unreasonable burden on commerce;

(F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely way;

(G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;

(H) a requirement that a State be responsible—

(i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that, in carrying out subsection (a) of this section, a State or Indian tribe shall consider—

(i) population densities;

(ii) the types of highways;

(iii) the types and amounts of hazardous material;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain considerations;

(viii) the continuity of routes;

(ix) alternative routes;

(x) the effects on commerce;

(xi) delays in transportation; and

(xii) other factors the Secretary considers appropriate.

(2) The Secretary may not assign a specific weight that a State or Indian tribe shall use when considering the factors under paragraph (1)(I) of this subsection.

(c) LIST OF ROUTE DESIGNATIONS.—In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(d) RESOLVING DISPUTES.—(1) Not later than May 16, 1992, the Secretary shall prescribe regulations for resolving a dispute related to through highway routing or to an agreement with a proposed highway route designation, limitation, or requirement between or among States, political subdivisions of different States, or Indian tribes.

(2) A State or Indian tribe involved in a dispute under this subsection may petition the Secretary to resolve the dispute. The Secretary shall resolve the dispute not later than one year after receiving the petition. The resolution shall provide the greatest level of highway safety without being an unreasonable burden on commerce and shall ensure compliance with standards prescribed under subsection (b) of this section.

(3)(A) After a petition is filed under this subsection, an action about the subject matter of the dispute may be brought in a court only after the earlier of—

(i) the day the Secretary issues a final decision; or

(ii) the last day of the one-year period beginning on the day the Secretary receives the petition.

(B) A State or Indian tribe adversely affected by a decision of the Secretary under this subsection may bring a civil action for judicial review of the decision not later than 89 days after the day the decision becomes final.

(e) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect sections 31111 and 31112 of this title or section 127 of title 23.

(f) EXISTING REGULATIONS.—The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and may

not be transported by motor vehicles, and limitations and requirements related to the routing, that the Secretary prescribed before November 16, 1990, and that are in effect on November 16, 1990.

§5113. Unsatisfactory safety rating

(a) PROHIBITED TRANSPORTATION.—A motor carrier receiving an unsatisfactory safety rating from the Secretary of Transportation has 45 days to improve the rating to conditional or satisfactory. Beginning on the 46th day and until the motor carrier receives a conditional or satisfactory rating, a motor carrier not having received a conditional or satisfactory rating during the 45-day period may not operate a commercial motor vehicle (as defined in section 31132 of this title)—

(1) to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under this chapter; or

(2) to transport more than 15 individuals.

(b) RATING REVIEW.—The Secretary shall review the factors that resulted in a motor carrier receiving an unsatisfactory rating not later than 30 days after the motor carrier requests a review.

(c) PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use a motor carrier that has an unsatisfactory rating from the Secretary—

(1) to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under this chapter; or

(2) to transport more than 15 individuals.

(d) PUBLIC AVAILABILITY AND UPDATING OF RATINGS.—Not later than November 3, 1991, the Secretary, in consultation with the Interstate Commerce Commission, shall prescribe regulations amending the motor carrier safety regulations in subchapter B of chapter III of title 49, Code of Federal Regulations, to establish a system to make readily available to the public, and update periodically, the safety ratings of motor carriers that have unsatisfactory ratings from the Secretary.

§5114. Air transportation of ionizing radiation material

(a) TRANSPORTING IN AIR COMMERCE.—Material that emits ionizing radiation spontaneously may be transported on a passenger-carrying aircraft in air commerce (as defined in section 40102(a) of this title) only if the material is intended for a use in, or incident to, research or medical diagnosis or treatment and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation.

(b) PROCEDURES.—The Secretary of Transportation shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

(c) NONAPPLICATION.—This section does not apply to material the Secretary decides does not pose a significant hazard to health or safety when transported because of its low order of radioactivity.

§5115. Training curriculum for the public sector

(a) DEVELOPMENT AND UPDATING.—Not later than November 16, 1992, in coordination with the Director of the Federal Emergency Management Agency, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, Secretaries of Labor, Energy, and Health and Human Services, and Director of the National Institute of Environmental Health Sciences, and using the existing coordinating mechanisms of the national response team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall develop and update periodically a curriculum consisting of a list of courses necessary to train public sector emergency response and preparedness teams. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) REQUIREMENTS.—The curriculum developed under subsection (a) of this section—

(1) shall include—

(A) a recommended course of study to train public sector employees to respond to an accident or incident involving the transportation of hazardous material and to plan for those responses;

(B) recommended basic courses and minimum number of hours of instruction necessary for public sector employees to be able to respond safely and efficiently to an accident or incident involving the transportation of hazardous material and to plan those responses; and

(C) appropriate emergency response training and planning programs for public sector employees developed under other United States Government grant programs, including those developed with grants made under section 126 of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

(2) may include recommendations on material appropriate for use in a recommended basic course described in clause (1)(B) of this subsection.

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

(1) regulations related to hazardous waste operations and emergency response contained in part 1910 of title 29, Code of Federal Regulations, prescribed by the Secretary of Labor;

(2) regulations related to worker protection standards for hazardous waste operations contained in part 311 of title 40, Code of Federal Regulations, prescribed by the Administrator; and

(3) standards related to emergency response training prescribed by the National Fire Protection Association.

(d) DISTRIBUTION AND PUBLICATION.—With the national response team—

(1) the Director of the Federal Emergency Management Agency shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary of Transportation may publish a list of programs that uses a course developed under this section for training public sector employees to respond to an accident or incident involving the transportation of hazardous material.

§5116. Planning and training grants, monitoring, and review

(a) PLANNING GRANTS.—(1) The Secretary of Transportation shall make grants to States—

(A) to develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous material in a State and between States; and

(B) to decide on the need for a regional hazardous material emergency response team.

(2) The Secretary of Transportation may make a grant to a State under paragraph (1) of this subsection in a fiscal year only if the State—

(A) certifies that the total amount the State expends (except amounts of the United States Government) to develop, improve, and carry out emergency plans under the Act will at least equal the average level of expenditure for the last 2 fiscal years; and

(B) agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year to local emergency planning committees established under section 301(c) of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the Act.

(b) TRAINING GRANTS.—(1) The Secretary of Transportation shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material.

(2) The Secretary of Transportation may make a grant under paragraph (1) of this subsection in a fiscal year—

(A) to a State or Indian tribe only if the State or tribe certifies that the total amount the State or tribe expends (except amounts of the Government) to train public sector employees to respond to an accident or incident involving hazardous material will at least equal the average level of expenditure for the last 2 fiscal years;

(B) to a State or Indian tribe only if the State or tribe makes an agreement with the Secretary that the State or tribe will use in that fiscal year, for training public sector employees to respond to an accident or incident involving hazardous material—

(i) a course developed or identified under section 5115 of this title; or

(ii) another course the Secretary decides is consistent with the objectives of this section; and

(C) to a State only if the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year for training public sector employees a political subdivision of the State employs or uses.

(3) A grant under this subsection may be used—

(A) to pay—

(i) the tuition costs of public sector employees being trained;

(ii) travel expenses of those employees to and from the training facility;

(iii) room and board of those employees when at the training facility; and

(iv) travel expenses of individuals providing the training;

(B) by the State, political subdivision, or Indian tribe to provide the training; and

(C) to make an agreement the Secretary of Transportation approves authorizing a person (including an authority of a State or political subdivision of a State or Indian tribe) to provide the training—

(i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and

(ii) if the State or tribe conducts at least one on-site observation of the training each year.

(4) The Secretary of Transportation shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider—

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the tribe;

(B) the types and amounts of hazardous material transported in the State or on that land;

(C) whether the State or tribe imposes and collects a fee on transporting hazardous material;

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; and

(E) other factors the Secretary decides are appropriate to carry out this subsection.

(c) COMPLIANCE WITH CERTAIN LAW.—The Secretary of Transportation may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary of Transportation. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of the State or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part of the non-Government share under this subsection.

(f) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the Director of the Federal Emergency Management Agency shall monitor public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the Secretaries, Administrator, and Directors each shall provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the existing coordinating mechanisms of the national response team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(g) DELEGATION OF AUTHORITY.—To minimize administrative costs and to coordinate Government grant programs for emergency response training and planning, the Secretary of Transportation may delegate to the Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

(1) authority to receive applications for grants under this section.

(2) authority to review applications for technical compliance with this section.

(3) authority to review applications to recommend approval or disapproval.

(4) any other ministerial duty associated with grants under this section.

(h) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Secretaries of Transportation, Labor, and Energy, Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(i) ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—The Secretary of the Treasury shall establish an account in the Treasury into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation collects under section 5108(g)(2)(A) of this title and transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title. Without further appropriation, amounts in the account are available—

(1) to make grants under this section and section 5107(e) of this title;

(2) to monitor and provide technical assistance under subsection (f) of this section; and

(3) to pay administrative costs of carrying out this section and sections 5107(e), 5108(g)(2), and 5115 of this title, except that not more than 10 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

§5117. Exemptions and exclusions

(a) AUTHORITY TO EXEMPT.—(1) As provided under procedures prescribed by regulation, the Secretary of Transportation may issue an exemption from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level—

(A) at least equal to the safety level required under this chapter; or

(B) consistent with the public interest and this chapter, if a required safety level does not exist.

(2) An exemption under this subsection is effective for not more than 2 years and may be renewed on application to the Secretary.

(b) APPLICATIONS.—When applying for an exemption or renewal of an exemption under this section, the person must provide a safety analysis prescribed by the Secretary that justifies the exemption. The Secretary shall publish in the Federal Register notice that an application for an exemption has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. This subsection does not require the release of information protected by law from public disclosure.

(c) EXCLUSIONS.—(1) The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter—

(A) a public vessel (as defined in section 2101 of title 46);

(B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46; and

(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

(2) This chapter and regulations prescribed under this chapter do not prohibit—

(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

(B) transportation of a firearm or ammunition in commerce.

(d) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an emergency exists, an exemption or renewal granted under this section is the only way a person subject to this chapter may be exempt from this chapter.

§5118. Inspectors

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall maintain the employment of 30 hazardous material safety inspectors more than the total number of safety inspectors authorized for the fiscal year that ended September 30, 1990, for the Federal Railroad Administration, the Federal Highway Administration, and the Research and Special Programs Administration.

(b) ALLOCATION TO PROMOTE SAFETY IN TRANSPORTING RADIOACTIVE MATERIAL.—(1) The Secretary shall ensure that 10 of the 30 additional inspectors focus on promoting safety in transporting radioactive material, as defined by the Secretary, including inspecting—

(A) at the place of origin, shipments of high-level radioactive waste or nuclear spent material (as those terms are defined in section 5105(a) of this title); and

(B) to the maximum extent practicable shipments of radioactive material that are not high-level radioactive waste or nuclear spent material.

(2) In carrying out their duties, those 10 additional inspectors shall cooperate to the greatest extent possible with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.

(3) Those 10 additional inspectors shall be allocated as follows:

(A) one to the Research and Special Programs Administration.

(B) 3 to the Federal Railroad Administration.

(C) 3 to the Federal Highway Administration.

(D) the other 3 among the administrations referred to in clauses (A)–(C) of this paragraph as the Secretary decides.

(c) ALLOCATION OF OTHER INSPECTORS.—The Secretary shall allocate, as the Secretary decides, the 20 additional inspectors authorized under this section and not allocated under subsection (b) of this section among the administrations referred to in subsection (b)(3)(A)–(C) of this section.

§5119. Uniform forms and procedures

(a) WORKING GROUP.—The Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislatures. The purposes of the working group are—

(1) to establish uniform forms and procedures for States that register persons that transport or cause to be transported hazardous material by motor vehicle; and

(2) to decide whether to limit the filing of any State registration form and collection of filing fees to the State in which the person resides or has its principal place of business.

(b) CONSULTATION AND REPORTING.—The working group—

(1) shall consult with persons subject to registration requirements described in subsection (a) of this section; and

(2) not later than November 16, 1993, shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a final report that contains—

(A) a detailed statement of its findings and conclusions; and

(B) its joint recommendations on the matters referred to in subsection (a) of this section.

(c) REGULATIONS ON RECOMMENDATIONS.—(1) The Secretary shall prescribe regulations to carry out the recommendations contained in the report submitted under subsection (b) of this section with which the Secretary agrees. The regulations shall be prescribed by the later of the last day of the 3-year period beginning on the date the working group submitted its report or the last day of the 90-day period beginning on the date on which at least 26 States adopt all of the recommendations of the report. A regulation prescribed under this subsection may not define or limit the amount of a fee a State may impose or collect.

(2) A regulation prescribed under this subsection takes effect one year after it is pre-

scribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation.

(3) In consultation with the working group, the Secretary shall develop a procedure to eliminate differences in how States carry out a regulation prescribed under this subsection.

(d) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.

§5120. International uniformity of standards and requirements

(a) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and direction from the Secretary of State, the Secretary of Transportation shall participate in international forums that establish or recommend mandatory standards and requirements for transporting hazardous material in international commerce.

(b) CONSULTATION.—The Secretary of Transportation may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this title are consistent with standards related to transporting hazardous material that international authorities adopt.

(c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS.—This section—

(1) does not require the Secretary of Transportation to prescribe a standard identical to a standard adopted by an international authority if the Secretary decides the standard is unnecessary or unsafe; and

(2) does not prohibit the Secretary from prescribing a safety requirement more stringent than a requirement included in a standard adopted by an international authority if the Secretary decides the requirement is necessary in the public interest.

§5121. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may investigate, make reports, issue subpenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. After notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—A person subject to this chapter shall—

(1) maintain records, make reports, and provide information the Secretary by regulation or order requires; and

(2) make the records, reports, and information available when the Secretary requests.

(c) INSPECTION.—(1) The Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property related to—

(A) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a package or container for use by a person in transporting hazardous material in commerce; or

(B) the transportation of hazardous material in commerce.

(2) An officer, employee, or agent under this subsection shall display proper credentials when requested.

(d) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—(1) The Secretary shall—

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous;

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material; and

(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(e) ANNUAL REPORT.—The Secretary shall submit to the President, for submission to Congress, not later than June 15th of each year, a report about the transportation of hazardous material during the prior calendar year. The report shall include—

(1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;

(2) a list and summary of applicable Government regulations, criteria, orders, and exemptions;

(3) a summary of the basis for each exemption;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with regulations;

(5) a summary of outstanding problems in carrying out this chapter in order of priority; and

(6) recommendations for appropriate legislation.

§5122. Enforcement

(a) GENERAL.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.

(b) IMMINENT HAZARDS.—(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action—

(A) to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

(B) to eliminate or ameliorate the hazard.

(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.

§5123. Civil penalty

(a) PENALTY.—(1) A person that knowingly violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of at least $250 but not more than $25,000 for each violation. A person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) HEARING REQUIREMENT.—The Secretary of Transportation may find that a person has violated this chapter or a regulation prescribed under this chapter only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

(c) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) other matters that justice requires.

(d) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(e) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(f) DEPOSITING AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

§5124. Criminal penalty

A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

§5125. Preemption

(a) GENERAL.—Except as provided in subsections (b), (c), and (e) of this section, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation prescribed under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

(b) SUBSTANTIVE DIFFERENCES.—(1) Except as provided in subsection (c) of this section, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

(2) If the Secretary of Transportation prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard about any of those subjects that the Secretary prescribes after November 16, 1990. However, the effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2-year period beginning on the date the Secretary prescribes the regulation or standard.

(3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

(c) COMPLIANCE WITH SECTION 5112(b) REGULATIONS.—(1) Except as provided in paragraph (2) of this subsection, after the last day of the 2-year period beginning on the date a regulation is prescribed under section 5112(b) of this title, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).

(2)(A) A highway routing designation, limitation, or requirement established before the date a regulation is prescribed under section 5112(b) of this title does not have to comply with section 5112(b)(1) (B), (C), and (F).

(B) This subsection and section 5112 of this title do not require a State or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing designation, limitation, or requirement was established before November 16, 1990.

(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this title.

(d) DECISIONS ON PREEMPTION.—(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a), (b)(1), or (c) of this section. The Secretary shall publish notice of the application in the Federal Register. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.

(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court instead of applying to the Secretary under paragraph (1) of this subsection.

(e) WAIVER OF PREEMPTION.—A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section. Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(f) JUDICIAL REVIEW.—A party to a proceeding under subsection (d) or (e) of this section may bring a civil action for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.

(g) FEES.—A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

§5126. Relationship to other laws

(a) CONTRACTS.—A person under contract with a department, agency, or instrumentality of the United States Government that transports or causes to be transported hazardous material, or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container that the person represents, marks, certifies, or sells as qualified for use in transporting hazardous material must comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION.—This chapter does not apply to—

(1) a pipeline subject to regulation under chapter 601 of this title; or

(2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39.

§5127. Authorization of appropriations

(a) GENERAL.—Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter (except sections 5108(g)(2), 5115, 5116, and 5119):

(1) $16,000,000 for the fiscal year ending September 30, 1992.

(2) $18,000,000 for the fiscal year ending September 30, 1993.

(b) HAZMAT EMPLOYEE TRAINING.—Not more than $250,000 is available to the Director of the National Institute of Environmental Health Sciences from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5107(e) of this title.

(c) TRAINING CURRICULUM.—(1) Not more than $1,000,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1992, to carry out section 5115 of this title.

(2) Not more than $1,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5115 of this title.

(3) The Secretary of Transportation may transfer to the Director of the Federal Emergency Management Agency from amounts available under this subsection amounts necessary to carry out section 5115(d)(1) of this title.

(d) PLANNING AND TRAINING.—(1) Not more than $5,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(a) of this title.

(2) Not more than $7,800,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(b) of this title.

(3) Not more than the following amounts are available from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(f) of this title:

(A) $750,000 each to the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the Federal Emergency Management Agency.

(B) $200,000 to the Director of the National Institute of Environmental Health Sciences.

(e) UNIFORM FORMS AND PROCEDURES.—Not more than $400,000 may be appropriated to the Secretary of Transportation for each of the fiscal years ending September 30, 1992, and 1993, to carry out section 5119 of this title.

(f) CREDITS TO APPROPRIATIONS.—The Secretary of Transportation may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

(g) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (c)–(e) of this section remain available until expended.

CHAPTER 53—URBAN MASS TRANSPORTATION

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§5301. Policies, findings, and purposes

(a) DEVELOPMENT OF TRANSPORTATION SYSTEMS.—It is in the interest of the United States to encourage and promote the development of transportation systems that embrace various modes of transportation and serve States and local communities efficiently and effectively.

(b) GENERAL FINDINGS.—Congress finds that—

(1) more than 70 percent of the population of the United States is located in rapidly expanding urban areas that generally cross the boundary lines of local jurisdictions and often extend into at least 2 States;

(2) the welfare and vitality of urban areas, the satisfactory movement of people and goods within those areas, and the effectiveness of programs aided by the United States Government are jeopardized by deteriorating or inadequate urban transportation service and facilities, the intensification of traffic congestion, and the lack of coordinated, comprehensive, and continuing development planning;

(3) transportation is the lifeblood of an urbanized society, and the health and welfare of an urbanized society depend on providing efficient, economical, and convenient transportation in and between urban areas;

(4) for many years the mass transportation industry capably and profitably satisfied the transportation needs of the urban areas of the United States but in the early 1970's continuing even minimal mass transportation service in urban areas was threatened because maintaining that transportation service was financially burdensome;

(5) ending that transportation, or the continued increase in its cost to the user, is undesir-

able and may affect seriously and adversely the welfare of a substantial number of lower income individuals;

(6) some urban areas were developing preliminary plans for, or carrying out, projects in the early 1970's to revitalize their mass transportation operations;

(7) financial assistance by the Government to develop efficient and coordinated mass transportation systems is essential to solve the urban transportation problems referred to in clause (2) of this subsection; and

(8) immediate substantial assistance by the Government is needed to enable mass transportation systems to continue providing vital transportation service.

(c) RAPID URBANIZATION AND CONTINUING POPULATION DISPERSAL.—Rapid urbanization and continuing dispersal of the population and activities in urban areas have made the ability of all citizens to move quickly and at a reasonable cost an urgent problem of the Government.

(d) ELDERLY AND HANDICAPPED.—It is the policy of the Government that elderly and handicapped individuals have the same right as other individuals to use mass transportation service and facilities. Special efforts shall be made in planning and designing mass transportation service and facilities to ensure that mass transportation can be used by elderly and handicapped individuals. All programs of the Government assisting mass transportation shall carry out this policy.

(e) PRESERVING THE ENVIRONMENT.—It is the policy of the Government that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets when planning, designing, and carrying out an urban mass transportation capital project with assistance from the Government under sections 5306 and 5307 of this title.

(f) GENERAL PURPOSES.—The purposes of this chapter are—

(1) to assist in developing improved mass transportation equipment, facilities, techniques, and methods with the cooperation of public and private mass transportation companies;

(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development with the cooperation of public and private mass transportation companies;

(3) to assist States and political subdivisions of States in financing areawide urban mass transportation systems that are to be operated by public or private mass transportation companies as decided by local needs; and

(4) to establish a partnership that allows a community, with financial assistance from the Government, to satisfy its urban mass transportation requirements.

§5302. Definitions

(a) GENERAL.—In this chapter—

(1) "capital project" means a project for—

(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in mass transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights of way), relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(B) rehabilitating a bus that extends the economic life of a bus for at least 5 years;

(C) remanufacturing a bus that extends the economic life of a bus for at least 8 years; or

(D) overhauling rail rolling stock.

(2) "chief executive officer of a State" includes the designee of the chief executive officer.

(3) "emergency regulation" means a regulation—

(A) that is effective temporarily before the expiration of the otherwise specified periods of time for public notice and comment under section 5322(b) of this title; and

(B) prescribed by the Secretary of Transportation as the result of a finding that a delay in the effective date of the regulation—

(i) would injure seriously an important public interest;

(ii) would frustrate substantially legislative policy and intent; or

(iii) would damage seriously a person or class without serving an important public interest.

(4) "fixed guideway" means a mass transportation facility—

(A) using and occupying a separate right of way or rail for the exclusive use of mass transportation and other high occupancy vehicles; or

(B) using a fixed catenary system and a right of way usable by other forms of transportation.

(5) "handicapped individual" means an individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semiambulatory capability), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility.

(6) "local governmental authority" includes—

(A) a political subdivision of a State;

(B) an authority of at least one State or political subdivision of a State;

(C) an Indian tribe; and

(D) a public corporation, board, or commission established under the laws of a State.

(7) "mass transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or sightseeing transportation.

(8) "net property cost" means the part of a project that reasonably cannot be financed from revenues.

(9) "new bus model" means a bus model—

(A) that has not been used in mass transportation in the United States before the date of production of the model; or

(B) used in mass transportation in the United States but being produced with a major change in configuration or components.

(10) "regulation" means any part of a statement of general or particular applicability of the Secretary of Transportation designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

(11) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(12) "urban area" means an area that includes a municipality or other built-up place that the Secretary of Transportation, after considering local patterns and trends of urban growth, decides is appropriate for a local mass transportation system to serve individuals in the locality.

(13) "urbanized area" means an area—

(A) encompassing at least an urbanized area within a State that the Secretary of Commerce designates; and

(B) designated an urbanized area within boundaries fixed by State and local officials and approved by the Secretary of Transportation.

(b) AUTHORITY TO MODIFY "HANDICAPPED INDIVIDUAL".—The Secretary of Transportation by regulation may modify the definition of subsection (a)(5) of this section as it applies to section 5304(d)(1)(D) of this title.

§5303. Planning and technical studies

(a) COOPERATION IN DEVELOPING TRANSPORTATION PLANS AND PROGRAMS.—To carry out section 5301(a) of this title, the Secretary of Transportation shall cooperate with State and local officials in developing transportation plans and programs. The plans and programs shall be based on transportation needs, considering long-range land use plans, development objectives, overall social, economic, environmental, system performance, and energy conservation goals and objectives, and the probable effect of transportation plans and programs on the future development of an urban area with a population of more than 50,000.

(b) PLANNING REQUIREMENTS.—(1) Planning shall—

(A) be continuing, cooperative, and comprehensive, based on the complexity of transportation problems;

(B) consider all modes of transportation;

(C) analyze alternative transportation system management and investment strategies to make more efficient use of existing transportation facilities; and

(D) develop long-term financial plans for regional urban mass transportation improvements and revenues available from current and potential sources to carry out the improvements.

(2) Urbanized area planning shall be conducted by local officials acting through a metropolitan planning organization in cooperation with the State. The chief executive officer of a State and the units of general local government shall designate the metropolitan planning organization.

(c) APPROVAL OF PROGRAM OF PROJECTS.—A program of projects eligible for assistance under this chapter shall be submitted to the Secretary for approval. The Secretary may approve any part of the program for an urbanized area only if the Secretary finds that the planning on which the program is based is consistent with section 5301(a) of this title.

(d) CONTRACT AUTHORITY.—Consistent with criteria the Secretary establishes, the Secretary may make a contract for, and a grant to a State or a local governmental authority for—

(1) the planning, engineering, designing, and evaluation of a mass transportation project;

(2) the study of the management, operations, capital requirements, and economic feasibility of a project;

(3) the preparation of engineering and architectural surveys, plans, and specifications;

(4) the evaluation of previously financed projects;

(5) another similar or related activity preliminary to, or in preparation of, a capital project for, or acquiring or improving the operation of, a mass transportation system, equipment, or facility; and

(6) other technical studies.

(e) PRIVATE ENTERPRISE PARTICIPATION.—A plan or program required by subsection (a) of this section shall encourage to the maximum extent feasible the participation of private enterprise. A program shall provide that equipment or a facility already being used in mass transportation in an urban area be improved so that it will better serve the transportation needs of the area if it is to be acquired under this chapter.

§5304. Block grants

(a) DEFINITIONS.—In this section—

(1) "associated capital maintenance items" means equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.

(2) "designated recipient" means—

(A) a person designated, as provided by the planning process required under section 5303 of this title, by the chief executive officer of a State, responsible local officials, and publicly owned operators of mass transportation to receive and apportion amounts under section 5324 of this title that are attributable to urbanized areas with a population of at least 200,000;

(B) a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing mass transportation; or

(C) a recipient designated under section 5(b)(1) of the Urban Mass Transportation Act of 1964 not later than January 5, 1983.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants under this section for capital projects and to finance the planning, improvement, and operating costs of equipment, facilities, and associated capital maintenance items for use in mass transportation, including the renovation and improvement of historic transportation facilities with related private investment.

(2) A grant for a capital project under this section also is available to finance the leasing of equipment and facilities for use in mass transportation, subject to regulations the Secretary prescribes limiting the grant to leasing arrangements that are more cost effective than acquisition or construction. The Secretary shall prescribe those regulations not later than November 28, 1988.

(3) A project for the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used, is a capital project for an associated capital maintenance item under this section.

(c) PUBLIC PARTICIPATION REQUIREMENTS.—Each recipient of a grant shall—

(1) make available to the public information on amounts available to the recipient under this section and the program of projects the recipient proposes to undertake;

(2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;

(3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;

(4) provide an opportunity for a public hearing in which to obtain the views of citizens on the proposed program of projects;

(5) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and

(6) make the final program of projects available to the public.

(d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a chief executive officer of a State under this section)—

(A) has or will have the legal, financial, and technical capacity to carry out the program;

(B) has or will have satisfactory continuing control over the use of equipment and facilities;

(C) will maintain equipment and facilities;

(D) will ensure that elderly and handicapped individuals, or an individual presenting a medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq., 1395 et seq.), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed under this chapter not more than 50 percent of the peak hour fare;

(E) in carrying out a procurement under this section—

(i) will use competitive procurement (as defined or approved by the Secretary);

(ii) will not use a procurement that uses exclusionary or discriminatory specifications; and

(iii) will comply with applicable Buy-American laws in carrying out a procurement;

(F) has complied with subsection (c) of this section;

(G) has available and will provide the required amounts as provided by subsection (e) of this section;

(H) will comply with sections 5301 (a) and (d), 5303, and 5307(a)–(d) of this title; and

(I) has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation; and

(2) the Secretary accepts the certification.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant of the United States Government for a capital project (including associated capital maintenance items) under this section is for 80 percent of the net project cost of the project. A recipient may provide additional local matching amounts. A grant for operating expenses may not be more than 50 percent of the net project cost of the project. The remainder of the net project cost shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation (excluding revenues derived from the sale of advertising and concessions that are more than the amount of those revenues in the fiscal year that ended September 30, 1985). Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(f) STATEWIDE OPERATING ASSISTANCE.—(1) A State authority that is a designated recipient and providing mass transportation in at least 2 urbanized areas may apply for operating assistance in an amount not more than the amount for all urbanized areas in which it provides transportation.

(2) When approving an application under paragraph (1) of this subsection, the Secretary may not reduce the amount of operating assistance approved for another State or a local transportation authority within the affected urbanized areas.

(g) UNDERTAKING PROJECTS IN ADVANCE.—(1) When a recipient obligates all amounts apportioned to it under section 5324 of this title and then carries out a part of a project described in this section (except a project for operating expenses) without amounts of the Government and according to all applicable procedures and requirements (except to the extent the procedures and requirements limit a State to carrying out a project with amounts of the Government previously apportioned to it), the Secretary may pay to the recipient the Government's share of the cost of carrying out that part when additional amounts are apportioned to the recipient under section 5324 if—

(A) the recipient applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out that part, the Secretary approves the plans and specifications for the part in the same way as for other projects under this section.

(2) The Secretary may approve an application under paragraph (1) of this subsection only if an authorization for this section is in effect for the fiscal year to which the application applies. The Secretary may not approve an application if the payment will be more than—

(A) the recipient's expected apportionment under section 5324 of this title if the total amount authorized to be appropriated for the fiscal year to carry out this section is appropriated; less

(B) the maximum amount of the apportionment that may be made available for projects for operating expenses under this section.

(3) The cost of carrying out that part of a project includes the amount of interest earned and payable on bonds issued by the recipient to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest allowed under this paragraph may not be more than the amount by which the estimated cost of carrying out the part (if it would be carried out at the time the part is converted to a regularly financed project) exceeds the actual cost (except interest) of carrying out the part.

(4) The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (3) of this subsection.

(h) REVIEWS, AUDITS, AND EVALUATIONS.—(1)(A) At least annually, the Secretary shall carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

(i) the activities proposed under subsection (d) of this section in a timely and effective way and can continue to do so; and

(ii) those activities and its certifications and has used amounts of the Government in the way required by law.

(B) An audit of the use of amounts of the Government shall comply with the auditing procedures of the Comptroller General.

(2) At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed under subsection (d) of this section and the planning process required under section 5303 of this title.

(3) The Secretary may take appropriate action consistent with a review, audit, and evaluation under this subsection, including making an appropriate adjustment in the amount of a grant or withdrawing the grant.

(i) REPORTS.—A recipient (including a person receiving amounts from a chief executive officer of a State under this section) shall submit annually to the Secretary a report on the revenues the recipient derives from the sale of advertising and concessions.

(j) PROCUREMENT SYSTEM APPROVAL.—A recipient may request the Secretary to approve its procurement system. The Secretary shall approve the system for use for procurements financed under section 5324 of this title if, after consulting with the Administrator for Federal Procurement Policy, the Secretary decides the system provides for competitive procurement. Approval of a system under this subsection does not relieve a recipient of the duty to certify under subsection (d)(1)(E) of this section.

(k) RELATIONSHIP TO OTHER LAWS.—(1) Section 1001 of title 18 applies to a certificate or submission under this section. The Secretary may end a grant under this section and seek reimbursement, directly or by offsetting amounts available under section 5324 of this title, when a false or fraudulent statement or related act within the meaning of section 1001 is made in connection with a certification or submission.

(2) Sections 5302, 5311, 5315 (a)(1), (d), and (f), 5320, 5321, and 5322(e) of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

§5305. Mass Transit Account block grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to be used only for capital projects (including capital maintenance items).

(b) APPLICATION OF OTHER SECTIONS.—(1) Sections 5304 (a)–(d) and (h)–(k) and 5324 (a)–(c),

(f), (g), and (i) of this title apply to amounts made available under section 5325 (a)(2) and (c)(2) of this title to carry out this section.

(2) Sections 5304(e) and 5324(d) of this title apply to grants under this section.

§5306. Discretionary grants and loans

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants and loans under this section to assist State and local governmental authorities in financing—

(1) capital projects for new fixed guideway systems, and extensions to existing fixed guideway systems, including the acquisition of real property, the initial acquisition of rolling stock for the systems, alternative analyses related to the development of the systems, and the acquisition of rights of way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternative analyses or preliminary engineering;

(2) capital projects, including property and improvements (except public highways other than fixed guideway facilities), needed for an efficient and coordinated mass transportation system;

(3) the capital costs of coordinating mass transportation with other transportation;

(4) the introduction of new technology, through innovative and improved products, into mass transportation;

(5) transportation projects that enhance urban economic development or incorporate private investment, including commercial and residential development, because the projects—

(A) enhance the effectiveness of a mass transportation project and are related physically or functionally to that mass transportation project; or

(B) establish new or enhanced coordination between mass transportation and other transportation; and

(6) alterations in equipment and fixed facilities (except stations) that the Secretary decides are necessary to avoid an adverse effect resulting from the Northeast Corridor improvement program under chapter 249 of this title.

(b) LOANS FOR REAL PROPERTY INTERESTS.—(1) The Secretary of Transportation may make loans under this section to State and local governmental authorities to acquire interests in real property for use on urban mass transportation systems as rights of way, station sites, and related purposes, including reconstruction, renovation, the net cost of property management, and relocation payments made under section 5316(a) of this title.

(2) The Secretary of Transportation may make a loan under paragraph (1) of this subsection for an approved project only after finding that the property reasonably is expected to be required for a mass transportation system and that it will be used for that system within a reasonable time.

(3) An applicant for a loan under this subsection shall provide a copy of the application to the planning agency for the community affected by the project at the same time the application is submitted to the Secretary of Transportation. If the planning agency submits comments to the Secretary not later than 30 days after the application is submitted, or, if the agency requests more time within those 30 days, within a period the Secretary establishes, the Secretary shall consider those comments before taking final action on the application.

(4) A loan agreement under this subsection shall provide that a capital project on the property will be started not later than 10 years after the fiscal year in which the agreement is made. If an interest in property acquired under this subsection is not used for the purpose for which it was acquired, an appraisal of the current value of the property or interest shall be made when a decision is made about the use. The decision shall be made within the 10-year period. Two-thirds of the increase in value shall be paid to the Secretary of Transportation for deposit in the Treasury as miscellaneous receipts.

(5) A loan under this subsection must be repaid not later than 10 years after the date of the loan agreement or on the date a grant agreement for a capital project on the property is made, whichever is earlier. Payments made to repay the loan shall be deposited in the Treasury as miscellaneous receipts.

(c) CONSIDERATION OF DECREASED COMMUTER RAIL TRANSPORTATION.—The Secretary of Transportation shall consider the adverse effect of decreased commuter rail transportation when deciding whether to approve a grant or loan under this section to acquire a rail line and all related facilities—

(1) owned by a rail carrier subject to reorganization under title 11; and

(2) used to provide commuter rail transportation.

(d) PROJECT AS PART OF APPROVED PROGRAM OF PROJECTS.—(1) Except as provided in paragraph (2) of this subsection and subsection (b)(2) of this section, the Secretary of Transportation may approve a grant or loan for a project under this section only after finding that the project is part of the approved program of projects required under section 5303 of this title and that an applicant—

(A) has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of equipment or facilities, and the capability to maintain the equipment or facilities; and

(B) will maintain the equipment or facilities.

(2)(A) The Secretary of Transportation may approve a grant or loan under this section for a capital project for a new fixed guideway system or extension of an existing fixed guideway system only after deciding the proposed project is—

(i) based on the results of alternative analyses and preliminary engineering;

(ii) cost effective; and

(iii) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension.

(B) The Secretary of Transportation also may consider other appropriate factors.

(C) The Secretary of Transportation shall prescribe guidelines on how the Secretary will evaluate cost effectiveness, results of alternative analyses, and the degree of local financial commitment.

(D) Subparagraph (A)–(C) of this paragraph apply to a project—

(i) for which a letter of intent or contract for the complete amount is issued under subsection (e) of this section after April 1, 1987; or

(ii) not in the preliminary engineering, final design, or construction stage on January 1, 1987.

(3) Each grant or loan under subsection (a)(5) of this section shall require that a person making an agreement to occupy space in a facility pay a reasonable share of the costs of the facility through rental payments and other means.

(4) Eligible costs for a project under subsection (a)(5) of this section—

(A) include property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; but

(B) do not include construction of a commercial revenue-producing facility or a part of a public facility not related to mass transportation.

(e) LETTERS OF INTENT TO OBLIGATE.—(1) The Secretary of Transportation may issue a letter of intent to an applicant announcing an intention to obligate, for a project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. The amount shall be sufficient to complete an operable segment when a letter is issued for a fixed guideway project.

(2) At least 30 days before issuing a letter under paragraph (1) of this subsection, the Secretary of Transportation shall notify in writing the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the proposed issuance of the letter.

(3) The issuance of a letter is deemed not an obligation under sections 1108(c) and (d), 1501, and 1502(a) of title 31 or an administrative commitment.

(4) An obligation or administrative commitment may be made only when amounts are appropriated. The total estimated amount of future obligations of the United States Government covered by all outstanding letters of intent may be not more than the amount authorized under section 5325(a) of this title to carry out this section, less an amount the Secretary of Transportation reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters may be not more than a limitation specified in law.

(f) GOVERNMENT'S SHARE OF NET PROJECT COST.—(1) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary of Transportation shall estimate the net project cost. Except as provided in paragraph (2) of this subsection, a grant for the project is for 75 percent of the net project cost. The remainder shall be provided in cash from a source other than amounts of the Government. Transit system amounts that make up the remainder must be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(2) A grant for a project under subsection (a)(6) of this section may be for all of the net project cost.

(g) LOAN TERM REQUIREMENTS.—Except for a loan under subsection (b) of this section, a loan, including a renewal or extension of the loan, may be made, and a security or obligation may be bought, only if it has a maturity date of not more than 40 years. Interest on a loan may not be less than—

(1) a rate the Secretary of the Treasury establishes, considering the current average yield on outstanding marketable obligations of the Government that have remaining periods of maturity comparable to the average maturity of the loan, adjusted to the nearest .125 percent; plus

(2) an allowance the Secretary of Transportation considers adequate to cover administrative costs and probable losses.

(h) LOAN PAYMENT FORGIVENESS.—A grant agreement for a capital project may forgive repaying the loan and interest in place of a cash grant for the amount forgiven. The amount is part of the grant and part of the contribution of the Government to the cost of the project.

(i) LIMITATION ON MAKING LOANS AND GRANTS FOR PROJECTS.—The Secretary of Transportation may not make a loan under this section for a project for which a grant (except a relocation payment grant) is made under this section. However, the Secretary may make a project grant even though real property for the project has been or will be acquired through a loan under subsection (b) of this section.

(j) ALLOCATING AMOUNTS.—(1) Of the amounts available for grants and loans under this section for the fiscal year ending September 30, 19____—

(A) ____ percent is available for rail modernization;

(B) ____ percent is available for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems;

(C) ____ percent is available to replace, rehabilitate, and buy buses and related equipment and to construct bus-related facilities; and

(D) ____ percent is available for purposes described in clauses (A)–(C) of this subsection, as the Secretary of Transportation decides.

(2) Not later than January 20 of each year, the Secretary of Transportation shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

(A) a proposal on the total amount that should be made available under paragraph (1)(D) of this subsection in the next fiscal year for each of the purposes described in paragraph (1) (A)–(C) of this subsection; and

(B) a proposal on the allocation of amounts to be made available to finance grants and loans for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems among applicants for those amounts.

(3) A person applying for, or receiving, assistance for a project described in paragraph (1) (A), (B), or (C) of this subsection may receive assistance for a project described in another of those clauses.

(k) UNDERTAKING PROJECTS IN ADVANCE.—(1) The Secretary of Transportation may pay the Government's share of the net project cost to a State or local governmental authority that carries out any part of a project described in this section or a substitute transit project described in section 103(e)(4) of title 23 without the aid of amounts of the Government and according to all applicable procedures and requirements if—

(A) the State or local governmental authority applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section or section 103(e)(4) of title 23.

(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the amount by which the estimated cost of carrying out the part (if it would be carried out at the time the part is converted to a regularly financed project) exceeds the actual cost (except interest) of carrying out the part.

(3) The Secretary of Transportation shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

§5307. Grants and loans for special needs of the elderly and handicapped

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants and loans to—

(1) State and local governmental authorities to help them provide mass transportation service planned, designed, and carried out to meet the special needs of elderly and handicapped individuals; and

(2) private nonprofit corporations and associations to help them provide that transportation service when the transportation service provided under clause (1) of this subsection is unavailable, insufficient, or inappropriate.

(b) APPLICATION OF SECTION 5306.—(1) A grant or loan under subsection (a)(1) of this section is subject to all requirements of a grant or loan under section 5306 of this title, and is deemed to have been made under section 5306.

(2) A grant or loan under subsection (a)(2) of this section is subject to requirements similar to those under paragraph (1) of this subsection to the extent the Secretary considers appropriate.

(c) MINIMUM REQUIREMENTS AND PROCEDURES FOR RECIPIENTS.—In carrying out section 5301(d) of this title, section 165(b) of the Federal-Aid Highway Act of 1973 (Public Law 93–87, 87 Stat. 282), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (consistent with United States Government-wide standards to carry out section 504), the Secretary shall prescribe regulations establishing minimum criteria a recipient of Government financial assistance under this chapter or a law referred to in section 165(b) shall comply with in providing mass transportation service to elderly and handicapped individuals and procedures for the Secretary to monitor compliance with the criteria. The regulations shall include provisions for ensuring that organizations and groups representing elderly and handicapped individuals are given adequate notice of, and an opportunity to comment on, the proposed activity of a recipient to achieve compliance with the regulations.

(d) INCREASED GOVERNMENT SHARE FOR NONREQUIRED PROJECTS.—A grant of the Government under section 5304, 5306, or 5308 of this title for a capital improvement project that enhances the accessibility for elderly and handicapped individuals to mass transportation service and that is not required by a law of the United States is for 95 percent of the cost of the project.

(e) FARES NOT REQUIRED.—This chapter does not require that elderly and handicapped individuals be charged a fare.

§5308. Financial assistance for other than urbanized areas

(a) DEFINITION.—In this section, "recipient" includes a State authority, a local governmental authority, a nonprofit organization, and an operator of mass transportation service.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants for transportation projects that are included in a State program of mass transportation service projects (including service agreements with private providers of mass transportation service) for areas other than urbanized areas. The program shall be submitted annually to the Secretary. The Secretary may approve the program only if the Secretary finds that the program provides a fair distribution of amounts in the State, including Indian reservations, and the maximum feasible coordination of mass transportation service assisted under this section with transportation service assisted by other United States Government sources.

(2) The Secretary of Transportation shall carry out a rural transportation assistance program in nonurbanized areas. In carrying out this paragraph, the Secretary may make grants and contracts for transportation research, technical assistance, training, and related support services in nonurbanized areas.

(c) APPORTIONING AMOUNTS.—The Secretary of Transportation shall apportion amounts made available under section 5325(b)(1) of this title so that the chief executive officer of each State receives an amount equal to the total amount apportioned multiplied by a ratio equal to the population of areas other than urbanized areas in a State divided by the population of all areas other than urbanized areas in the United States, as shown by the latest Government census. The amount may be obligated by the chief executive officer for 2 years after the fiscal year in which the amount is apportioned. An amount that is not obligated at the end of that period shall be reapportioned among the States for the next fiscal year.

(d) USE FOR LOCAL TRANSPORTATION SERVICE.—A State may use an amount apportioned under this section for a project included in a program under subsection (b) of this section and eligible for assistance under this chapter if the project will provide local transportation service, as defined by the Secretary of Transportation, in an area other than an urbanized area.

(e) USE FOR ADMINISTRATION AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation may allow a State to use not more than 15 percent of the amount apportioned under this section to administer this section and provide technical assistance to a recipient, including project planning, program and management development, coordination of mass transportation programs, and research the State considers appropriate to promote effective delivery of mass transportation to an area other than an urbanized area.

(2) Except as provided in this section, a State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

(f) GOVERNMENT'S SHARE OF COSTS.—(1) In this subsection, "amounts of the Government or revenues" do not include amounts received under a service agreement with a State or local social service agency or a private social service organization.

(2) A grant of the Government for a capital project under this section may not be more than 80 percent of the net cost of the project, as determined by the Secretary of Transportation. A grant to pay a subsidy for operating expenses may not be more than 50 percent of the net cost of the operating expense project. At least 50 percent of the remainder shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation. Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(g) RELATIONSHIP TO OTHER LAWS.—(1) Sections 5315(a)(1)(D) and 5321(b) of this title apply to this section but the Secretary of Labor may waive the application of section 5321(b).

(2) This subsection does not affect or discharge a responsibility of the Secretary of Transportation under a law of the United States.

§5309. Research, development, demonstration, and training projects

(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5322(h) of this title) may undertake, or make grants or contracts (including agreements with departments, agencies, and instrumentalities of the United States Government) for, research, development, and demonstration projects related to urban mass transportation that the Secretary decides will help reduce urban transportation needs, improve mass transportation service, or help mass transportation service meet the total urban transportation needs at a minimum cost. The Secretary may request and receive appropriate information from any source. This subsection does not limit the authority of the Secretary under another law.

(b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5322(h) of this title) may make grants to nonprofit institutions of higher learning—

(A) to conduct competent research and investigations into the theoretical or practical problems of urban transportation; and

(B) to train individuals to conduct further research or obtain employment in an organization *that plans, builds, operates, or manages an urban transportation system.*

(2) Research and investigations under this subsection include—

(A) the design and use of urban mass transportation systems and urban roads and highways;

(B) the interrelationship between various modes of urban and interurban transportation;

(C) the role of transportation planning in overall urban planning;

(D) public preferences in transportation;

(E) the economic allocation of transportation resources; and

(F) the legal, financial, engineering, and esthetic aspects of urban transportation.

(3) When making a grant under this subsection, the appropriate Secretary shall give preference to an institution that brings together knowledge and expertise in the various social science and technical disciplines related to urban transportation problems.

(c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METHODS.—(1) The Secretary of Transportation may make grants to States, local governmental authorities, and operators of mass transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the mass transportation field.

(2) The Secretary of Transportation may make grants to State and local governmental authorities for projects that will use innovative techniques and methods in managing and providing mass transportation.

(3) A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the mass transportation industry. The recipient of the grant shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient mass transportation operation. A grant for a fellowship may not be more than the lesser of $24,000 or 75 percent of—

(A) tuition and other charges to the fellowship recipient;

(B) additional costs incurred by the training institution and billed to the grant recipient; and

(C) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.

§5310. National advisory council and transportation centers

(a) NATIONAL ADVISORY COUNCIL.—(1) The Department of Transportation has a national advisory council. The council shall—

(A) coordinate the research and training to be carried out by grant recipients under this section;

(B) disseminate the results of the research;

(C) act as a clearinghouse between university transportation centers and the transportation industry; and

(D) review and evaluate programs the centers carry out.

(2) The council is composed of the following individuals:

(A) the directors of the regional transportation centers established under subsection (b) of this section.

(B) 19 individuals appointed by the Secretary of Transportation as follows:

(i) 6 officers of the Department, one representing each of the Office of the Secretary, the Federal Highway Administration, the Urban Mass Transportation Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration, and the Federal Railroad Administration.

(ii) 5 representatives of State and local governments.

(iii) 8 representatives of the transportation industry, including private providers of mass transportation services, and organizations of employees in the transportation industry.

(3) A vacancy on the council is filled in the same way as the original selection.

(4)(A) The Secretary of Transportation shall designate the chairman of the council.

(B) The members of the council appointed by the Secretary of Transportation serve without pay.

(5) The council shall meet at least once each year and at other times the chairman designates.

(6) The council may obtain information necessary to carry out this section directly from a department, agency, or instrumentality of the United States Government. On request of the chairman of the council, the head of the department, agency, or instrumentality shall give the council the information.

(7) Section 14 of the Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the council.

(b) GRANTS FOR REGIONAL TRANSPORTATION CENTERS.—The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5322(h) of this title) shall make grants to nonprofit institutions of higher learning to establish and operate regional transportation centers in each of the 10 Government regions that comprise the Standard Federal Regional Boundary System.

(c) APPLICATIONS.—A nonprofit institution of higher learning interested in receiving a grant under this section shall submit an application to the appropriate Secretary in the way and containing the information the Secretary prescribes. The Secretary shall select each recipient on the basis of the following:

(1) the regional transportation center is located in a State that is representative of the needs of the Government region for improved transportation and facilities.

(2) the demonstrated research and extension resources available to the recipient to carry out this section.

(3) the capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

(4) the recipient has an established transportation program encompassing several modes of transportation.

(5) the recipient has a demonstrated commitment of at least $200,000 in regularly budgeted institutional amounts each year to support ongoing transportation research programs.

(6) the recipient has a demonstrated ability to disseminate results of transportation research and educational programs through a statewide or regionwide continuing educational program.

(7) the projects the recipient proposes to carry out under the grant.

(d) DUTIES.—(1) At each regional transportation center, the following shall be carried out:

(A) infrastructure research on transportation.

(B) research and training on the transportation of passengers and property and the interpretation, publication, and dissemination of the results of the research.

(2) Each transportation center—

(A) should carry out research on more than one mode of transportation; and

(B) should consider the proportion of amounts for this section from amounts available to carry out urban mass transportation projects under this chapter and from the Highway Trust Fund.

(3) At one of the transportation centers, research may be carried out on the testing of new bus models.

(e) MAINTENANCE OF EXPENDITURES.—Before making a grant under this section, the appropriate Secretary may require the recipient to make an agreement with the Secretary to ensure that the recipient will maintain total expenditures from all other sources to establish and operate a regional transportation center and related research activities at a level at least equal to the average level of those expenditures in its 2 fiscal years prior to April 2, 1987.

(f) GOVERNMENT'S SHARE OF COSTS.—(1) A grant under this section is for 50 percent of the cost of establishing and operating the regional transportation center and related research activities the recipient carries out.

(2) At least 5 percent of the amounts made available to carry out this section in a fiscal year are available to carry out technology transfer activities.

(3) The appropriate Secretary shall allocate amounts available to carry out this section equitably among the Government regions.

(g) CARRYING OUT SECTION THROUGH OFFICE OF SECRETARY.—The appropriate Secretary shall carry out this section through the Office of that Secretary.

§5311. Bus testing facility

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish one facility for testing a new bus model for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. The facility shall be established by renovating a facility built with assistance of the United States Government to train rail personnel.

(b) OPERATION AND MAINTENANCE.—The Secretary shall make a contract with a qualified person to operate and maintain the facility. The contract may provide for the testing of rail cars and other vehicles at the facility.

(c) FEES.—The person operating and maintaining the facility shall establish and collect fees for the testing of vehicles at the facility. The Secretary must approve the fees.

§5312. Bicycle facilities

A project to provide access for bicycles to mass transportation facilities, to provide shelters and parking facilities for bicycles in or around mass transportation facilities, or to install equipment for transporting bicycles on mass transportation vehicles is a capital project eligible for assistance under sections 5304, 5306, and 5308 of this title. Notwithstanding sections 5304(e), 5306(f)(1), and 5308(f) of this title, a grant of the United States Government under this chapter for a project under this section is for 90 percent of the cost of the project.

§5313. Crime prevention and security

The Secretary of Transportation may make capital grants from amounts available under section 5325 of this title to mass transportation systems for crime prevention and security. This chapter does not prevent the financing of a project under this section when a local governmental authority other than the grant applicant has law enforcement responsibilities.

§5314. Human resource programs

The Secretary of Transportation may undertake, or make grants and contracts for, programs that address human resource needs as they apply to mass transportation activities. A program may include—

(1) an employment training program;

(2) an outreach program to increase minority and female employment in mass transportation activities;

(3) research on mass transportation personnel and training needs; and

(4) training and assistance for minority business opportunities.

§5315. General limitations on assistance

(a) INTERESTS IN PROPERTY.—(1) Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or buy property of, a private mass transportation company, for a capital project for property acquired from a private

mass transportation company after July 9, 1964, or to operate mass transportation equipment or a mass transportation facility in competition with, or in addition to, transportation service provided by an existing mass transportation company, only if—

(A) the Secretary of Transportation finds the assistance is essential to a program of projects required under section 5303 of this title;

(B) the Secretary of Transportation finds that the program, to the maximum extent feasible, provides for the participation of private mass transportation companies;

(C) just compensation under State or local law will be paid to the company for its franchise or property; and

(D) the Secretary of Labor certifies that the assistance complies with section 5321(b) of this title.

(2) A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in mass transportation from another governmental authority in the same geographic area.

(b) NOTICE AND PUBLIC HEARING.—(1) An application for a grant or loan under this chapter (except section 5304) for a capital project that will affect substantially a community, or the mass transportation service of a community, must include a certificate of the applicant that the applicant has—

(A) provided an adequate opportunity for a public hearing with adequate prior notice;

(B) held that hearing unless no one with a significant economic, social, or environmental interest requested one;

(C) considered the economic, social, and environmental effects of the project; and

(D) found that the project is consistent with official plans for developing the urban area.

(2) Notice of a hearing under this subsection shall include a concise description of the proposed project and shall be published in a newspaper of general circulation in the geographic area the project will serve. If a hearing is held, a copy of the transcript of the hearing shall be submitted with the application.

(c) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter (except section 5304) after September 30, 1989, may be obligated or expended to acquire a new bus model only if a bus of the model has been tested at the facility established under section 5311 of this title.

(d) BUYING AND OPERATING BUSES.—(1) Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of mass transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled mass transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

(2) On receiving a complaint about a violation of an agreement, the Secretary of Transportation shall investigate and decide whether a violation has occurred. If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement. In addition to a remedy specified in the agreement, the Secretary may bar a recipient under this subsection or an operator from receiving further assistance when the Secretary finds a continuing pattern of violations of the agreement.

(e) BUS PASSENGER SEAT FUNCTIONAL SPECIFICATIONS.—The initial advertising by a State or local governmental authority for bids to acquire buses using financial assistance under this chapter (except section 5304) may include passenger seat functional specifications that are at least equal to performance specifications the Secretary of Transportation prescribes. The specifications shall be based on a finding by the State or local governmental authority of local requirements for safety, comfort, maintenance, and life cycle costs.

(f) SCHOOLBUS TRANSPORTATION.—(1) Financial assistance under this chapter may be used for a capital project, or to operate mass transportation equipment or a mass transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system;

(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates; and

(C) to a State or local governmental authority if it or a direct predecessor in interest from which it acquired the duty of transporting school children and personnel, and facilities to transport them, provided schoolbus transportation at any time after November 25, 1973, but before November 26, 1974.

(2) An applicant violating an agreement under this subsection may not receive other financial assistance under this chapter.

(g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections 103(e)(4) and 142 (a) or (c) of title 23. However, subsection (f)(1)(C) of this section applies to sections 103(e)(4) and 142 (a) or (c) only if schoolbus transportation was provided at any time after August 12, 1972, but before August 13, 1973.

(h) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used to—

(1) pay ordinary governmental or nonproject operating expenses; or

(2) support a procurement that uses an exclusionary or discriminatory specification.

§5316. Limitations on discretionary and special needs grants and loans

(a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may be provided under section 5306 of this title only if the Secretary of Transportation decides that—

(1) an adequate relocation program is being carried out for families displaced by a project; and

(2) an equal number of decent, safe, and sanitary dwellings are being, or will be, provided to those families in the same area or in another area generally not less desirable for public utilities and public and commercial facilities, at rents or prices within the financial means of those families, and with reasonable access to their places of employment.

(b) ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—(1) In carrying out section 5301(e) of this title, the Secretary of Transportation shall cooperate and consult with the Secretaries of Agriculture, Health and Human Services, Housing and Urban Development, and the Interior and the Council on Environmental Quality on each project that may have a substantial impact on the environment.

(2) In carrying out section 5306 of this title, the Secretary of Transportation shall review each transcript of a hearing submitted under section 5315(b) of this title to establish that an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest and that the project application includes a statement on—

(A) the environmental impact of the proposal;

(B) adverse environmental effects that cannot be avoided;

(C) alternatives to the proposal; and

(D) irreversible and irretrievable impacts on the environment.

(3)(A) The Secretary of Transportation may approve an application for financial assistance under section 5306 of this title only if the Secretary makes written findings, after reviewing the application and any hearings held before a State or local governmental authority under section 5315(b) of this title, that—

(i) an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest;

(ii) the preservation and enhancement of the environment, and the interest of the community in which a project is located, were considered; and

(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

(B) If a hearing has not been conducted or the Secretary of Transportation decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

(C) A finding of the Secretary of Transportation under subparagraph (A) of this paragraph shall be made a matter of public record.

(c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—The Secretary of Transportation may not regulate the operation of a mass transportation system for which a grant is made under section 5306 of this title and, after a grant is made, may not regulate any charge for the system. However, the Secretary may require the local governmental authority, corporation, or association to comply with any undertaking provided by it related to its grant application.

§5317. Contract requirements

(a) NONCOMPETITIVE BIDDING.—A capital project or improvement contract for which a grant or loan is made under this chapter, if the contract is not made through competitive bidding, shall provide that records related to the contract shall be made available to the Secretary of Transportation and the Comptroller General, or an officer or employee of the Secretary or Comptroller General, when conducting an audit and inspection.

(b) ACQUIRING ROLLING STOCK.—A recipient of financial assistance of the United States Government under this chapter may make a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(c) PROCURING ASSOCIATED CAPITAL MAINTENANCE ITEMS.—A recipient of a grant under section 5304 of this title procuring an associated capital maintenance item under section 5304(b) may make a contract directly with the original manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

(1) the manufacturer or supplier is the only source for the item; and

(2) the price of the item is no more than the price similar customers pay for the item.

(d) MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS.—A contract for program management, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which a grant or loan is made under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

§5318. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts; and

(12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month.

(b) PLAN APPROVAL.—(1) The Secretary shall approve a plan not later than 60 days after it is submitted. If the approval cannot be completed within 60 days, the Secretary shall notify the recipient, explain the reasons for the delay, and estimate the additional time that will be required.

(2) The Secretary shall inform the recipient of the reasons when a plan is disapproved.

(c) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—(1) The Secretary may use not more than .5 percent of amounts made available for a fiscal year under—

(A) section 5325(b)(1) of this title to make a contract to oversee the construction of a major project under section 5304 or 5308 of this title;

(B) section 5325(c)(2) of this title to carry out section 5306 of this title to make a contract to oversee the construction of a major project under section 5306;

(C) section 4(g) of the Urban Mass Transportation Act of 1964 to make a contract to oversee the construction of a major mass transportation project substituted for an Interstate segment withdrawn under section 103(e)(4) of title 23; and

(D) section 14(b) of the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), as added by section 2 of the National Capital Transportation Amendments of 1979 (Public Law 96–184, 93 Stat. 1320), to make a contract to oversee the construction of a major project under the Act.

(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1). Subsections (a), (b), and (e) of this section do not apply to contracts under this paragraph.

(3) The Government shall pay the entire cost of carrying out a contract under this subsection.

(d) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter or section 14(b) of the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), as added by section 2 of the National Capital Transportation Amendments of 1979 (Public Law 96–184, 93 Stat. 1320), shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall include—

(1) a definition of "major capital project" for subsection (c) of this section that excludes a project to acquire rolling stock or to maintain or rehabilitate a vehicle; and

(2) a requirement that oversight begin during the preliminary engineering stage of a project, unless the Secretary finds it more appropriate to begin the oversight during another stage of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

§5319. Investigation of safety hazards

The Secretary of Transportation may investigate a condition in equipment, a facility, or an operation financed under this chapter that the Secretary believes causes a serious hazard of death or injury to establish the nature and extent of the condition and how to eliminate or correct it. If the Secretary establishes that a condition causes a hazard, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for correcting it. The Secretary may withhold further financial assistance under this chapter until a plan is approved and carried out.

§5320. Nondiscrimination

(a) DEFINITION.—In this section, "person" includes a governmental authority, political subdivision, authority, legal representative, trust, unincorporated organization, trustee, trustee in bankruptcy, and receiver.

(b) PROHIBITIONS.—A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under this chapter because of race, color, creed, national origin, sex, or age.

(c) COMPLIANCE.—(1) The Secretary of Transportation shall take affirmative action to ensure compliance with subsection (b) of this section.

(2) When the Secretary decides that a person receiving financial assistance under this chapter is not complying with subsection (b) of this section, a civil rights law of the United States, or a regulation or order under that law, the Secretary shall notify the person of the decision and require action be taken to ensure compliance with subsection (b).

(d) AUTHORITY OF SECRETARY FOR NONCOMPLIANCE.—If a person does not comply with subsection (b) of this section within a reasonable time after receiving notice, the Secretary shall—

(1) direct that no further financial assistance of the United States Government under this chapter be provided to the person;

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought;

(3) proceed under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

(4) take any other action provided by law.

(e) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action for appropriate relief when—

(1) a matter is referred to the Attorney General under subsection (d)(2) of this section; or

(2) the Attorney General believes a person is engaged in a pattern or practice in violation of this section.

(f) APPLICATION AND RELATIONSHIP TO OTHER LAWS.—This section applies to an employment or business opportunity and is in addition to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

§5321. Labor standards

(a) PREVAILING WAGES REQUIREMENT.—The Secretary of Transportation shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed with a grant or loan under this chapter be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a–276a-5). The Secretary of Transportation may approve a grant or loan only after being assured that required labor standards will be maintained on the construction work. For a labor standard under this subsection, the Secretary of Labor has the same duties and powers stated in Reorganization Plan No. 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(b) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1) As a condition of financial assistance under sections 5304–5309 of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5304–5309 shall specify the arrangements.

(2) Arrangements under this subsection shall include—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

§5322. Administrative

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) prescribe terms for a project under sections 5304 and 5306–5308 of this title (except terms the Secretary of Labor prescribes under section 5321(b) of this title);

(2) sue and be sued;

(3) foreclose on property or bring a civil action to protect or enforce a right conferred on the Secretary of Transportation by law or agreement;

(4) buy property related to a loan under this chapter;

(5) agree to pay an annual amount in place of a State or local tax on real property acquired or owned under this chapter;

(6) sell, exchange, or lease property, a security, or an obligation;

(7) obtain loss insurance for property and assets the Secretary of Transportation holds;

(8) consent to a modification in an agreement under this chapter; and

(9) include in an agreement or instrument under this chapter a covenant or term the Secretary of Transportation considers necessary to carry out this chapter.

(b) PROCEDURES FOR PRESCRIBING REGULATIONS.—(1) The Secretary of Transportation shall prepare an agenda listing all areas in which the Secretary intends to propose regulations governing activities under this chapter within the following 12 months. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary's semiannual regulatory agenda that lists regulatory activities of the Urban Mass Transportation Administration. The Secretary shall submit the agenda to the Committees on Public Works and Transportation and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate on the day the agenda is published.

(2) Except for emergency regulations, the Secretary of Transportation shall give interested parties at least 60 days to participate in a regulatory proceeding under this chapter by submitting written information, views, or arguments, with or without an oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary because of the routine nature or insignificant impact of the regulation or that an emergency regulation should be issued. The Secretary may extend the 60-day period if the Secretary decides the period is insufficient to allow diligent individuals to prepare comments or that other circumstances justify an extension.

(3) An emergency regulation ends 120 days after it is issued.

(c) BUDGET PROGRAM AND SET OF ACCOUNTS.—The Secretary of Transportation shall—

(1) submit each year a budget program as provided in section 9103 of title 31; and

(2) maintain a set of accounts the Comptroller General shall audit under chapter 35 of title 31.

(d) DEPOSITORY AND AVAILABILITY OF AMOUNTS.—The Secretary of Transportation shall deposit amounts made available to the Secretary under this chapter in a checking account in the Treasury. Receipts, assets, and amounts obtained or held by the Secretary to carry out this chapter are available for administrative expenses to carry out this chapter.

(e) ADVANCE AND PROGRESS PAYMENTS.—Notwithstanding section 3324(a) and (b) of title 31, the Secretary of Transportation may make an advance or progress payment on a grant or contract made under this chapter.

(f) BINDING EFFECT OF FINANCIAL TRANSACTION.—A financial transaction of the Secretary of Transportation under this chapter and a related voucher are binding on all officers and employees of the United States Government.

(g) DEALING WITH ACQUIRED PROPERTY.—Notwithstanding another law related to the Government acquiring, using, or disposing of real property, the Secretary of Transportation may deal with property acquired under subsection (a)(3) or (4) of this section in any way. However, this subsection does not—

(1) deprive a State or political subdivision of a State of jurisdiction of the property; or

(2) impair the civil rights, under the laws of a State or political subdivision of a State, of an inhabitant of the property.

(h) AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development shall—

(1) carry out sections 5309(a) and (b)(1) and 5310 of this title related to—

(A) urban transportation systems and planned development of urban areas; and

(B) the role of transportation planning in overall urban planning; and

(2) advise and assist the Secretary of Transportation in making findings under section 5315(a)(1)(A) of this title.

(i) RELATIONSHIP TO OTHER LAWS.—(1) Section 9107(a) of title 31 applies to the Secretary of Transportation under this chapter.

(2) Section 3709 of the Revised Statutes (41 U.S.C. 5) applies to a contract for more than $1,000 for services or supplies related to property acquired under this chapter.

§5323. Reports and audits

(a) REPORTING SYSTEM AND UNIFORM SYSTEM OF ACCOUNTS AND RECORDS.—(1) To help meet the needs of individual mass transportation systems, the United States Government, States, political subdivisions of States, and the public for information on which to base mass transportation service planning, the Secretary of Transportation shall maintain a reporting system, by uniform categories, to accumulate mass transportation financial and operating information and a uniform system of accounts and records. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.

(2) The Secretary may make a grant under section 5304 of this title only if the applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.

(b) REPORTS.—Not later than 30 days after the last day of each calendar quarter, the Secretary shall submit to the Committees on Public Works and Transportation and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate a report on—

(1) obligations by State, designated recipient, and applicant made under this chapter during the quarter;

(2) the balance of unobligated apportionments under this chapter on the last day of the quarter;

(3) the balance of unobligated amounts under this chapter on the last day of the quarter that the Secretary may expend;

(4) letters of intent issued during the quarter;

(5) letters of intent outstanding on the last day of the quarter; and

(6) grant contracts executed and reimbursement authority established for amounts obligated for each State, designated recipient, and applicant.

§5324. Apportionment of appropriations for block grants

(a) BASED ON URBANIZED AREA POPULATION.—Of the amount appropriated under section 5325(b)(1) of this title—

(1) 8.64 percent shall be apportioned each fiscal year only in urbanized areas with a population of less than 200,000 so that each of those areas is entitled to receive an amount equal to—

(A) 50 percent of the total amount apportioned multiplied by a ratio equal to the population of the area divided by the total population of all urbanized areas with populations of less than 200,000 as shown in the latest United States Government census; and

(B) 50 percent of the total amount apportioned multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile; and

(2) 88.43 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section.

(b) BASED ON FIXED GUIDEWAY REVENUE VEHICLE-MILES, ROUTE-MILES, AND PASSENGER-MILES.—(1) In this subsection, "fixed guideway revenue vehicle-miles" and "fixed guideway route-miles" include ferry boat operations directly or under contract by the designated recipient.

(2) Of the amount apportioned under subsection (a)(2) of this section, 33.29 percent shall be apportioned as follows:

(A) 95.61 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) 60 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway revenue vehicle-miles attributable to the area, as established by the Secretary of Transportation, divided by the total number of all fixed guideway revenue vehicle-miles attributable to all areas; and

(ii) 40 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway route-miles attributable to the area, established by the Secretary, divided by the total number of all fixed guideway route-miles attributable to all areas.

(B) 4.39 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) the number of fixed guideway vehicle passenger-miles traveled multiplied by the number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in an area; divided by

(ii) the total number of fixed guideway vehicle passenger-miles traveled multiplied by the total number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in all areas.

(C) An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subsection.

(D) Under subparagraph (A) of this paragraph, fixed guideway revenue vehicle- or route-miles, and passengers served on those miles, in an urbanized area with a population of less than 200,000, where the miles and passengers served otherwise would be attributable to an urbanized area with a population of at least 1,000,000 in an adjacent State, are attributable to the governmental authority in the State in which the urbanized area with a population of less than 200,000 is located. The authority is deemed an urbanized area with a population of at least 200,000 if the authority makes a contract for the service.

(c) BASED ON BUS REVENUE VEHICLE-MILES AND PASSENGER-MILES.—Of the amount apportioned under subsection (a)(2) of this section, 66.71 percent shall be apportioned as follows:

(1) 90.8 percent of the total amount apportioned under this subsection shall be apportioned as follows:

(A) 73.39 percent of the 90.8 percent apportioned under this paragraph shall be appor-

tioned so that each urbanized area with a population of at least 1,000,000 is entitled to receive an amount equal to—

(i) 50 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas;

(ii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and

(iii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(B) 26.61 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 200,000 but not more than 999,999 is entitled to receive an amount equal to—

(i) 50 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas;

(ii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and

(iii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(2) 9.2 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(A) the number of bus passenger-miles traveled multiplied by the number of bus passenger-miles traveled for each dollar of operating cost in an area; divided by

(B) the total number of bus passenger-miles traveled multiplied by the total number of bus passenger-miles traveled for each dollar of operating cost in all areas.

(d) OPERATING ASSISTANCE.—(1) The total amount apportioned under this section that may be used for operating assistance may not be more than—

(A) 80 percent of the total amount apportioned in the fiscal year ending September 30, 1982, under section 5(a) (1)(A), (2)(A), and (3)(A) of the Urban Mass Transportation Act of 1964 to urbanized areas with populations of at least 1,000,000;

(B) 90 percent of the total amount apportioned in that year under section 5(a) (1)(A), (2)(A), and (3)(A) to urbanized areas with populations of at least 200,000 but not more than 999,999;

(C) 95 percent of the total amount apportioned in that year under section 5(a) (1)(A), (2)(A), and (3)(A) to urbanized areas with populations of less than 200,000; or

(D) two-thirds of the total amount apportioned under this section during the first complete year an urbanized area received amounts under this section if the area first became an urbanized area under the 1980 Government census or later.

(2) Amounts apportioned under paragraph (1)(C) of this subsection shall be increased on October 1 of each year by an amount equal to the amount applicable to each urbanized area under paragraph (1)(C) (except increases under this paragraph), multiplied by the percentage increase in the Consumer Price Index for all-urban consumers published by the Secretary of Labor during the most recent calendar year.

(e) DATE OF APPORTIONMENT.—The Secretary of Transportation shall—

(1) apportion amounts appropriated under section 5325(b)(1) of this title to carry out section 5304 of this title not later than the 10th day after the date the amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later; and

(2) publish apportionments of the amounts, including amounts attributable to each urbanized area with a population of more than 50,000 and amounts attributable to each State of a multistate urbanized area, on the apportionment date.

(f) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The chief executive officer of a State may expend in an urbanized area with a population of less than 200,000 an amount apportioned under this section that is not apportioned to a designated recipient as defined in section 5304(a) of this title.

(g) TRANSFERS OF APPORTIONMENTS.—(1) The chief executive officer of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement amounts apportioned to the State under section 5308(c) of this title or amounts apportioned to urbanized areas under this subsection. The chief executive officer may make a transfer only after consulting with responsible local officials and publicly owned operators of mass transportation in each area for which the amount originally was apportioned under this section.

(2) The chief executive officer of a State may transfer any part of the State's apportionment under section 5308(c) of this title to supplement amounts apportioned to the State under subsection (a)(1) of this section.

(3) The chief executive officer of a State may use throughout the State amounts of a State's apportionment remaining available for obligation at the beginning of the 90-day period before the period of the availability of the amounts expires.

(4) A designated recipient for an urbanized area with a population of at least 200,000 may transfer a part of its apportionment under this section to the chief executive officer of a State. The chief executive officer shall distribute the transferred amounts to urbanized areas under this section.

(5) Capital and operating assistance limitations applicable to the original apportionment apply to amounts transferred under this subsection.

(h) PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned under this section may be obligated by the recipient for 3 years after the fiscal year in which the amount is apportioned. Not later than 30 days after the end of the 3-year period, an amount that is not obligated at the end of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

(i) APPLICATION OF OTHER SECTIONS.—Sections 5302, 5311, 5315(a)(1), (d), and (f), 5320, 5321, and 5322(e) of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

§5325. Authorizations

(a) FOR SECTIONS 5303, 5306, 5307, 5309(c)(2), AND 5310.—(1)(A) Not more than $__________ is available from the Mass Transit Account of the Highway Trust Fund for the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out sections 5303, 5306, 5307, 5309(c)(2), and 5310 of this title.

(B) Of the amount available under subparagraph (A) of this paragraph, not more than $__________ is available to carry out sections 5307 and 5309(c)(2) of this title.

(C)(i) Of the amount available under subparagraph (A) of this paragraph, not more than $__________ is available to carry out section 5310 of this title.

(ii) Not more than $__________ is available from the Fund (except the Account) for the Secretary for the fiscal year ending September 30, 19__, to carry out section 5310 of this title.

(2) In addition to amounts available under paragraph (1)(A) of this subsection, not more than the following amounts are available from the Account for the Secretary to carry out sections 5305 and 5306 of this title:

(A) $250,000,000 for the fiscal year ending September 30, 1989.

(B) $300,000,000 for the fiscal year ending September 30, 1990.

(C) $400,000,000 for the fiscal year ending September 30, 1991.

(b) FOR SECTIONS 5304 AND 5308.—(1) Not more than $__________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out sections 5304 and 5308 of this title.

(2)(A) Not more than $__________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out sections 5308(b)(2), 5309(a)–(c)(1), 5314, and 5322(a), (c), (d), (f), (g), and (i) of this title.

(B) ____ percent of the amount appropriated under subparagraph (A) of this paragraph is available only to carry out section 5308(b)(2) of this title.

(3) Not more than $__________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out mass transportation projects substituted for Interstate segments withdrawn under section 103(e)(4) of title 23.

(c) LIMITATIONS.—Of the amounts available—

(1) under subsection (a)(1)(A) of this section—

(A) not more than $__________ may be used to carry out section 5303 of this title; and

(B) ____ percent is available to finance programs and activities, including administrative costs, under section 5307 of this title;

(2) under subsection (a)(2) of this section, ____ percent is available for grants under section 5305 of this title and ____ percent is available for capital grants under section 5306 of this title;

(3) ____ percent of the amounts available to finance research, development, and demonstration projects under section 5309(a) of this title is available to increase the information and technology available to provide mass transportation service and facilities planned and designed to meet the special needs of elderly and handicapped individuals;

(4) ____ percent is available for grants to a State under section 5309(c)(2) of this title; and

(5) ____ percent of the total amount available to carry out sections 5304, 5305, and 5308 of this title under subsections (a)(2) and (b)(1) of this section is available from amounts appropriated under subsection (b)(1) of this section to carry out section 5308 of this title.

(d) ADDITIONAL AMOUNTS FOR PLANNING PURPOSES.—Additional amounts available under subsection (c)(1) of this section may be used for planning purposes.

(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—A grant of amounts available under subsection (a) of this section that is approved by the Secretary is a contractual obligation of the United States Government to pay the Government's share of the cost of the project.

(f) EARLY APPROPRIATIONS AND AVAILABILITY OF AMOUNTS.—(1) Amounts appropriated under subsection (b) of this section to carry out section 5308 of this title may be appropriated in the fis-

cal year before the fiscal year in which the appropriation is available for obligation.

(2) Amounts appropriated under subsections (a) and (b)(1) of this section, and subsection (b)(2) of this section to finance a project under section 5309(a) of this title, remain available until expended.

(3) An obligation ceiling for a fiscal year that is less than the total new budget authority authorized under subsection (a)(1)(A) and (2) of this section first shall be applied to the budget authority authorized under subsection (a)(2).

(4) Amounts appropriated under subsection (a)(2) of this section to carry out section 5305 of this title—

(A) remain available for 3 years after the fiscal year in which the amount is appropriated; and

(B) that are unobligated at the end of the 3-year period shall be added to the amount available for apportionment for the next fiscal year not later than 30 days after the end of the 3-year period.

CHAPTER 55—INTERMODAL TRANSPORTATION TERMINALS

Sec.
5501. Definition.
5502. Assistance projects.
5503. Conversion of certain rail passenger terminals.
5504. Interim preservation of certain rail passenger terminals.
5505. Encouraging the development of plans for converting rail passenger terminals.
5506. Records and audits.
5507. Preference for preserving buildings of historic or architectural significance.
5508. Authorization of appropriations.

§5501. Definition

In this chapter, "civic and cultural activities" includes libraries, musical and dramatic presentations, art exhibits, adult education programs, public meeting places, and other facilities for carrying on an activity any part of which is supported under a law of the United States.

§5502. Assistance projects

(a) REQUIREMENTS TO PROVIDE ASSISTANCE.—The Secretary of Transportation shall provide financial, technical, and advisory assistance under this chapter to—

(1) promote, on a feasibility demonstration basis, the conversion of at least 3 rail passenger terminals into intermodal transportation terminals;

(2) preserve rail passenger terminals that reasonably are likely to be converted or maintained pending preparation of plans for their reuse;

(3) acquire and use space in suitable buildings of historic or architectural significance but only if use of the space is feasible and prudent when compared to available alternatives; and

(4) encourage State and local governments, local and regional transportation authorities, common carriers, philanthropic organizations, and other responsible persons to develop plans to convert rail passenger terminals into intermodal transportation terminals and civic and cultural activity centers.

(b) EFFECT ON ELIGIBILITY.—This chapter does not affect the eligibility of any rail passenger terminal for preservation or reuse assistance under another program or law.

(c) ACQUIRING SPACE.—The Secretary may acquire space under subsection (a)(3) of this section only after consulting with the Advisory Council on Historic Preservation and the Chairman of the National Endowment for the Arts.

§5503. Conversion of certain rail passenger terminals

(a) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of Transportation may provide financial assistance to convert a rail passenger terminal to an intermodal transportation terminal under section 5502(a)(1) of this title only if—

(1) the terminal can be converted to accommodate other modes of transportation the Secretary of Transportation decides are appropriate, including—

(A) motorbus transportation;

(B) mass transit (rail or rubber tire); and

(C) airline ticket offices and passenger terminals providing direct transportation to area airports;

(2) the terminal is listed on the National Register of Historic Places maintained by the Secretary of the Interior;

(3) the architectural integrity of the terminal will be preserved;

(4) to the extent practicable, the use of the terminal facilities for transportation may be combined with use of those facilities for other civic and cultural activities, especially when another activity is recommended by—

(A) the Advisory Council on Historic Preservation;

(B) the Chairman of the National Endowment for the Arts; or

(C) consultants retained under subsection (b) of this section; and

(5) the terminal and the conversion project meet other criteria prescribed by the Secretary of Transportation after consultation with the Council and Chairman.

(b) ARCHITECTURAL INTEGRITY.—The Secretary of Transportation must employ consultants on whether the architectural integrity of the rail passenger terminal will be preserved under subsection (a)(3) of this section. The Secretary may decide that the architectural integrity will be preserved only if the consultants concur. The Council and Chairman shall recommend consultants to be employed by the Secretary. The consultants also may make recommendations referred to in subsection (a)(4) of this section.

(c) GOVERNMENT'S SHARE OF COSTS.—The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of converting a rail passenger terminal into an intermodal transportation terminal.

§5504. Interim preservation of certain rail passenger terminals

(a) GENERAL GRANT AUTHORITY.—Subject to subsection (b) of this section, the Secretary of Transportation may make a grant of financial assistance to a responsible person (including a governmental authority) to preserve a rail passenger terminal under section 5502(a)(2) of this title. To receive assistance under this section, the person must be qualified, prepared, committed, and authorized by law to maintain (and prevent the demolition, dismantling, or further deterioration of) the terminal until plans for its reuse are prepared.

(b) GRANT REQUIREMENTS.—The Secretary of Transportation may make a grant of financial assistance under this section only if—

(1) the Secretary decides the rail passenger terminal has a reasonable likelihood of being converted to, or conditioned for reuse as, an intermodal transportation terminal, a civic or cultural activities center, or both; and

(2) planning activity directed toward conversion or reuse has begun and is proceeding in a competent way.

(c) MAXIMIZING PRESERVATION OF TERMINALS.—(1) Amounts appropriated to carry out this section and section 5502(a)(2) of this title shall be expended in the way most likely to maximize the preservation of rail passenger terminals that are—

(A) reasonably capable of conversion to intermodal transportation terminals;

(B) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(C) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of maintaining the terminal for an interim period of not more than 5 years.

§5505. Encouraging the development of plans for converting rail passenger terminals

(a) GENERAL GRANT AUTHORITY.—The Secretary of Transportation may make a grant of financial assistance to a qualified person (including a governmental authority) to encourage the development of plans for converting a rail passenger terminal under section 5502(a)(4) of this title. To receive assistance under this section, the person must—

(1) be prepared to develop practicable plans that meet zoning, land use, and other requirements of the applicable State and local jurisdictions in which the terminal is located;

(2) incorporate into the designs and plans proposed for converting the terminal, features that reasonably appear likely to attract private investors willing to carry out the planned conversion and its subsequent maintenance and operation; and

(3) complete the designs and plans for the conversion within the period of time prescribed by the Secretary.

(b) PREFERENCE.—In making a grant under this section, the Secretary of Transportation shall give preferential consideration to an applicant whose completed designs and plans will be carried out within 3 years after their completion.

(c) MAXIMIZING CONVERSION AND CONTINUED PUBLIC USE.—(1) Amounts appropriated to carry out this section and section 5502(a)(4) of this title shall be expended in the way most likely to maximize the conversion and continued public use of rail passenger terminals that are—

(A) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(B) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of the project for which the financial assistance is provided.

§5506. Records and audits

(a) RECORD REQUIREMENTS.—Each recipient of financial assistance under this chapter shall keep records required by the Secretary of Transportation. The records shall disclose—

(1) the amount, and disposition by the recipient, of the proceeds of the assistance;

(2) the total cost of the project for which the assistance was given or used;

(3) the amount of that part of the cost of the project supplied by other sources; and

(4) any other records that will make an effective audit easier.

(b) AUDITS AND INSPECTIONS.—For 3 years after a project is completed, the Secretary and the Comptroller General may audit and inspect records of a recipient that the Secretary or Comptroller General decides may be related or pertinent to the financial assistance.

§5507. Preference for preserving buildings of historic or architectural significance

Amtrak shall give preference to the use of rail passenger terminal facilities that will preserve buildings of historic or architectural significance.

§5508. Authorization of appropriations

(a) GENERAL.—The following amounts may be appropriated to the Secretary of Transportation:

(1) not more than $15,000,000 to carry out section 5502(a) (1) and (3) of this title.

(2) not more than $2,500,000 to carry out section 5502(a)(2) of this title.

(3) not more than $2,500,000 to carry out section 5502(a)(4) of this title.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated to carry out this chapter remain available until expended.

CHAPTER 57—SANITARY FOOD TRANSPORTATION

Sec.

5701. Findings.
5702. Definitions.
5703. General regulation.
5704. Tank trucks, rail tank cars, and cargo tanks.
5705. Motor and rail transportation of nonfood products.
5706. Dedicated vehicles.
5707. Waiver authority.
5708. Food transportation inspections.
5709. Consultation.
5710. Administrative.
5711. Enforcement and penalties.
5712. Relationship to other laws.
5713. Application of sections 5711 and 5712.
5714. Coordination procedures.

§5701. Findings

Congress finds that—

(1) the United States public is entitled to receive food and other consumer products that are not made unsafe because of certain transportation practices;

(2) the United States public is threatened by the transportation of products potentially harmful to consumers in motor vehicles and rail vehicles that are used to transport food and other consumer products; and

(3) the risks to consumers by those transportation practices are unnecessary and those practices must be ended.

§5702. Definitions

In this chapter—

(1) "cosmetic", "device", "drug", "food", and "food additive" have the same meanings given those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(2) "nonfood product" means (individually or by class) a material, substance, or product that is not a cosmetic, device, drug, food, or food additive, or is deemea a nonfood product under section 5703(a)(2) of this title, including refuse and solid waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(3) "refuse" means discarded material that is, or is required by law, to be transported to or disposed of in a landfill or incinerator.

(4) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States.

(5) "transports" and "transportation" mean any movement of property in commerce (including intrastate commerce) by motor vehicle or rail vehicle.

(6) "United States" means all of the States.

§5703. General regulation

(a) GENERAL REQUIREMENTS.—(1) Not later than July 31, 1991, the Secretary of Transportation, after consultation required by section 5709 of this title, shall prescribe regulations on the transportation of cosmetics, devices, drugs, food, and food additives in motor vehicles and rail vehicles that are used to transport nonfood products that would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

(2) The Secretary shall deem a cosmetic, device, or drug to be a nonfood product if—

(A) the cosmetic, device, or drug is transported in a motor vehicle or rail vehicle before, or at the same time as, a food or food additive; and

(B) transportation of the cosmetic, device, or drug would make the food or food additive unsafe to humans or animals.

(b) SPECIAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall establish requirements for appropriate—

(1) recordkeeping, identification, marking, certification, or other means of verification to comply with sections 5704–5706 of this title;

(2) decontamination, removal, disposal, and isolation to comply with regulations carrying out sections 5704 and 5705 of this title; and

(3) material for the construction of tank trucks, rail tank cars, cargo tanks, and accessory equipment to comply with regulations carrying out section 5704 of this title.

(c) CONSIDERATIONS AND ADDITIONAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall consider, and may establish requirements related to, each of the following:

(1) the extent to which packaging or similar means of protecting and isolating commodities are adequate to eliminate or ameliorate the potential risks of transporting cosmetics, devices, drugs, food, or food additives in motor vehicles or rail vehicles used to transport nonfood products.

(2) appropriate compliance and enforcement measures to carry out this chapter.

(3) appropriate minimum insurance or other liability requirements for a person to whom this chapter applies.

(d) PACKAGES MEETING PACKAGING STANDARDS.—If the Secretary finds packaging standards to be adequate, regulations under subsection (a)(1) of this section may not apply to cosmetics, devices, drugs, food, food additives, or nonfood products packaged in packages that meet the standards.

§5704. Tank trucks, rail tank cars, and cargo tanks

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from—

(1) using, offering for use, or arranging for the use of a tank truck, rail tank car, or cargo tank used in motor vehicle or rail transportation of cosmetics, devices, drugs, food, or food additives if the tank truck, rail tank car, or cargo tank is used to transport a nonfood product, except a nonfood product included in a list published under subsection (b) of this section;

(2) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of cosmetics, devices, drugs, food, food additives, or nonfood products included in the list published under subsection (b) of this section unless the tank truck or cargo tank is identified, by a permanent marking on the tank truck or cargo tank, as transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list;

(3) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of a nonfood product that is not included in the list published under subsection (b) of this section if the tank truck or cargo tank is identified, as provided in clause (2) of this subsection, as a tank truck or cargo tank transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list; or

(4) receiving, except for lawful disposal purposes, any cosmetic, device, drug, food, food additive, or nonfood product that has been transported in a tank truck or cargo tank in violation of clause (2) or (3) of this subsection.

(b) LIST OF NONFOOD PRODUCTS NOT UNSAFE.—After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides do not make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a tank truck, rail tank car, or cargo tank used to transport cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

(c) DISCLOSURE.—A person that arranges for the use of a tank truck or cargo tank used in motor vehicle transportation for the transportation of a cosmetic, device, drug, food, food additive, or nonfood product shall disclose to the motor carrier or other appropriate person if the cosmetic, device, drug, food, food additive, or nonfood product being transported is to be used—

(1) as, or in the preparation of, a food or food additive; or

(2) as a nonfood product included in the list published under subsection (b) of this section.

§5705. Motor and rail transportation of nonfood products

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle (except a tank truck, rail tank car, or cargo tank described in section 5704 of this title) to transport cosmetics, devices, drugs, food, or food additives if the vehicle is used to transport nonfood products included in a list published under subsection (b) of this section.

(b) LIST OF UNSAFE NONFOOD PRODUCTS.—(1) After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides would make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

(2) The list published under paragraph (1) of this subsection may not include cardboard, pallets, beverage containers, and other food packaging except to the extent the Secretary decides that the transportation of cardboard, pallets, beverage containers, or other food packaging in a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs, food, or food additives would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

§5706. Dedicated vehicles

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle to transport asbestos, in forms or quantities the Secretary of Transportation decides are necessary, or products that present an extreme danger to humans or animals, despite any decontamination, removal, disposal, packaging, or other isolation procedures, unless the motor vehicle or rail vehicle is used only to transport one or more of the following: asbestos, those extremely dangerous products, or refuse.

(b) LIST OF APPLICABLE PRODUCTS.—After consultation required by section 5709 of this title, the Secretary shall publish in the Federal Register a list of the products to which this section applies. The Secretary may amend the list periodically by publication in the Federal Register.

§5707. Waiver authority

(a) GENERAL AUTHORITY.—After consultation required by section 5709 of this title, the Sec-

retary of Transportation may waive any part of this chapter or regulations prescribed under this chapter for a class of persons, motor vehicles, rail vehicles, cosmetics, devices, drugs, food, food additives, or nonfood products, if the Secretary decides that the waiver—

(1) would not result in the transportation of cosmetics, devices, drugs, food, or food additives that would be unsafe to humans or animals; and

(2) would not be contrary to the public interest and this chapter.

(b) PUBLICATION OF WAIVERS.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

§5708. Food transportation inspections

(a) GENERAL AUTHORITY.—For commercial motor vehicles, the Secretary of Transportation may carry out this chapter and assist in carrying out compatible State laws and regulations through means that include inspections conducted by State employees that are paid for with money authorized under subchapter I of chapter 311 of this title, if the recipient State agrees to assist in the enforcement of this chapter or is enforcing compatible State laws and regulations.

(b) PROVIDING ASSISTANCE.—On the request of the Secretary of Transportation, the Secretaries of Agriculture and Health and Human Services, the Administrator of the Environmental Protection Agency, and the heads of other appropriate departments, agencies, and instrumentalities of the United States Government shall provide assistance, to the extent available, to the Secretary of Transportation to carry out this chapter, including assistance in the training of personnel under a program established under subsection (c) of this section.

(c) TRAINING PROGRAM.—After consultation required by section 5709 of this title and consultation with the heads of appropriate State transportation and food safety authorities, the Secretary of Transportation shall develop and carry out a training program for inspectors to conduct vigorous enforcement of this chapter and regulations prescribed under this chapter or compatible State laws and regulations. As part of the training program, the inspectors, including State inspectors or personnel paid with money authorized under subchapter I of chapter 311 of this title, shall be trained in the recognition of adulteration problems associated with the transportation of cosmetics, devices, drugs, food, and food additives and in the procedures for obtaining assistance of the appropriate departments, agencies, and instrumentalities of the Government and State authorities to support the enforcement.

§5709. Consultation

As provided by sections 5703–5708 of this title, the Secretary of Transportation shall consult with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency.

§5710. Administrative

The Secretary of Transportation has the same duties and powers in regulating transportation under this chapter as the Secretary has under section 5121 (a)–(c) (except subsection (c)(1)(A)) of this title in regulating transportation under chapter 51 of this title.

§5711. Enforcement and penalties

(a) ACTIONS.—The Secretary of Transportation shall request that a civil action be brought and take action to eliminate or ameliorate an imminent hazard related to a violation of a regulation prescribed or order issued under this chapter in the same way and to the same extent as authorized by section 5122 of this title.

(b) APPLICABLE PENALTIES AND PROCEDURES.—The penalties and procedures in sections 5123 and 5124 of this title apply to a violation of a regulation prescribed or order issued under this chapter.

§5712. Relationship to other laws

Section 5125 of this title applies to the relationship between this chapter and a requirement of a State, a political subdivision of a State, or an Indian tribe.

§5713. Application of sections 5711 and 5712

Sections 5711 and 5712 of this title apply only to transportation occurring on or after the date that regulations prescribed under section 5703(a)(1) of this title are effective.

§5714. Coordination procedures

Not later than November 3, 1991, the Secretary of Transportation, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the departments, agencies, and instrumentalities of the United States Government and State authorities with regulatory authority over motor carrier safety and railroad safety in carrying out and enforcing this chapter.

(e) Title 49, United States Code, is amended by adding the following immediately after subtitle IV:

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

CHAPTER Sec.
201. GENERAL 20101
203. SAFETY APPLIANCES 20301
205. SIGNAL SYSTEMS 20501
207. LOCOMOTIVES 20701
209. ACCIDENTS AND INCIDENTS 20901
211. HOURS OF SERVICE 21101
213. PENALTIES 21301

PART B—ASSISTANCE

221. LOCAL RAIL FREIGHT ASSISTANCE . 22101

PART C—PASSENGER TRANSPORTATION

241. GENERAL 24101
243. AMTRAK 24301
245. AMTRAK COMMUTER 24501
247. AMTRAK ROUTE SYSTEM 24701
249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM 24901

PART D—MISCELLANEOUS

261. LAW ENFORCEMENT 26101

PART A—SAFETY

CHAPTER 201—GENERAL

SUBCHAPTER I—GENERAL

Sec.
20101. Purpose.
20102. Definitions.
20103. General authority.
20104. Emergency authority.
20105. State participation.
20106. National uniformity of regulation.
20107. Inspection and investigation.
20108. Research, development, and testing.
20109. Employee protections.
20110. Effect on employee qualifications and collective bargaining.
20111. Enforcement by the Secretary of Transportation.
20112. Enforcement by the Attorney General.
20113. Enforcement by the States.
20114. Judicial procedures.
20115. User fees.
20116. Annual report.
20117. Authorization of appropriations.

SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

20131. Restricted access to rolling equipment.
20132. Visible markers for rear cars.
20133. Passenger equipment.
20134. Grade crossings and railroad rights of way.
20135. Licensing or certification of locomotive operators.
20136. Automatic train control and related systems.
20137. Event recorders.
20138. Tampering with safety and operational monitoring devices.
20139. Maintenance-of-way operations.

SUBCHAPTER I—GENERAL

§20101. Purpose

The purpose of this chapter is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.

§20102. Definitions

In this part—

(1) "railroad"—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(2) "railroad carrier" means a person providing railroad transportation.

§20103. General authority

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

§20104. Emergency authority

(a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through testing, inspection, investigation, or research carried out under this chapter, the Secretary of Transportation decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury, the Secretary immediately may order restrictions and prohibitions, without regard to section 20103(e) of this title, that may be necessary to abate the situation.

(2) The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. This paragraph

does not affect the Secretary's discretion under this section to maintain the order in effect for as long as the emergency situation exists.

(b) REVIEW OF ORDERS.—After issuing an order under this section, the Secretary shall provide an opportunity for review of the order under section 554 of title 5. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

(c) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a railroad carrier engaged in interstate or foreign commerce who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an order under subsection (a) of this section, or the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which that employing carrier has its principal executive office, or for the District of Columbia. The Secretary's failure to issue an order under subsection (a) of this section may be reviewed only under section 706 of title 5.

§20105. State participation

(a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary of Transportation may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary that apply to railroad equipment, facilities, rolling stock, and operations in a State. The State may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the State are regulated by a State authority and the authority submits to the Secretary an annual certification as provided in subsection (b) of this section.

(b) ANNUAL CERTIFICATION.—(1) A State authority's annual certification must include—

(A) a certification that the authority—

(i) has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the State;

(ii) was given a copy of each safety regulation prescribed and order issued by the Secretary, that applies to the equipment, facilities, rolling stock, or operations, as of the date of certification; and

(iii) is conducting the investigative and surveillance activities prescribed by the Secretary under subsection (a) of this section; and

(B) a report, in the form the Secretary prescribes by regulation, that includes—

(i) the name and address of each railroad carrier subject to the safety jurisdiction of the authority;

(ii) each accident or incident reported during the prior 12 months by a railroad carrier involving a fatality, personal injury requiring hospitalization, or property damage of more than $750 (or a higher amount prescribed by the Secretary), and a summary of the authority's investigation of the cause and circumstances surrounding the accident or incident;

(iii) the record maintenance, reporting, and inspection practices conducted by the authority to aid the Secretary in enforcing railroad safety regulations prescribed and orders issued by the Secretary, including the number of inspections made of railroad equipment, facilities, rolling stock, and operations by the authority during the prior 12 months; and

(iv) other information the Secretary requires.

(2) An annual certification applies to a safety regulation prescribed or order issued after the date of the certification only if the State authority submits an appropriate certification to provide the necessary investigative and surveillance activities.

(3) If, after receipt of an annual certification, the Secretary decides the State authority is not complying satisfactorily with the investigative and surveillance activities prescribed under subsection (a) of this section, the Secretary may reject any part of the certification or take other appropriate action to achieve adequate enforcement. The Secretary must give the authority notice and an opportunity for a hearing before taking action under this paragraph. When the Secretary gives notice, the burden of proof is on the authority to show that it is complying satisfactorily with the investigative and surveillance activities prescribed by the Secretary.

(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Secretary does not receive an annual certification under subsection (a) of this section related to any railroad equipment, facility, rolling stock, or operation, the Secretary may make an agreement with a State authority for the authority to provide any part of the investigative and surveillance activities prescribed by the Secretary as necessary to enforce the safety regulations and orders applicable to the equipment, facility, rolling stock, or operation.

(2) The Secretary may terminate any part of an agreement made under this subsection on finding that the authority has not provided every part of the investigative and surveillance activities to which the agreement relates. The Secretary must give the authority notice and an opportunity for a hearing before making such a finding. The finding and termination shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

(d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—In addition to providing for State participation under this section, the Secretary may make an agreement with a State to provide investigative and surveillance activities related to the Secretary's duties under chapters 203–213 of this title.

(e) PAYMENT.—On application by a State authority that has submitted a certification under subsections (a) and (b) of this section or made an agreement under subsection (c) or (d) of this section, the Secretary shall pay not more than 50 percent of the cost of the personnel, equipment, and activities of the authority needed, during the next fiscal year, to carry out a safety program under the certification or agreement. However, the Secretary may pay an authority only when the authority assures the Secretary that it will provide the remaining cost of the safety program and that the total State money expended for the safety program, excluding grants of the United States Government, will be at least as much as the average amount expended for the fiscal years that ended June 30, 1969, and June 30, 1970.

(f) MONITORING.—The Secretary may monitor State investigative and surveillance practices and carry out other inspections and investigations necessary to help enforce this chapter.

§20106. National uniformity of regulation

Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order—

(1) is necessary to eliminate or reduce an essentially local safety hazard;

(2) is not incompatible with a law, regulation, or order of the United States Government; and

(3) does not unreasonably burden interstate commerce.

§20107. Inspection and investigation

(a) GENERAL.—To carry out this part, the Secretary of Transportation may take actions the Secretary considers necessary, including—

(1) conduct investigations, make reports, issue subpoenas, require the production of documents, take depositions, and prescribe recordkeeping and reporting requirements; and

(2) delegate to a public entity or qualified person the inspection, examination, and testing of railroad equipment, facilities, rolling stock, operations, and persons.

(b) ENTRY AND INSPECTION.—In carrying out this part, an officer, employee, or agent of the Secretary, at reasonable times and in a reasonable way, may enter and inspect railroad equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or agent shall display proper credentials. During an inspection, the officer, employee, or agent is an employee of the United States Government under chapter 171 of title 28.

§20108. Research, development, and testing

(a) GENERAL.—The Secretary of Transportation shall carry out, as necessary, research, development, testing, evaluation, and training for every area of railroad safety.

(b) CONTRACTS.—To carry out this part, the Secretary may make contracts for, and carry out, research, development, testing, evaluation, and training (particularly for those areas of railroad safety found to need prompt attention).

§20109. Employee protections

(a) FILING COMPLAINTS AND TESTIFYING.—A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or as a representative, has—

(1) filed a complaint or brought or caused to be brought a proceeding related to the enforcement of this part or chapter 51 of this title; or

(2) testified or will testify in that proceeding.

(b) REFUSING TO WORK BECAUSE OF HAZARDOUS CONDITIONS.—(1) A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if—

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger through regular statutory means; and

(C) the employee, where possible, has notified the carrier of the hazardous condition and the intention not to perform further work unless the condition is corrected immediately.

(2) This subsection does not apply to security personnel employed by a carrier to protect individuals and property transported by railroad.

(c) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim, the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affect-

ing pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than $20,000.

(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

(e) DISCLOSURE OF IDENTITY.—(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part, chapter 51 of this title, or a regulation prescribed or order issued under this part or chapter 51.

(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.

§20110. Effect on employee qualifications and collective bargaining

This chapter does not—

(1) authorize the Secretary of Transportation to prescribe regulations and issue orders related to qualifications of employees, except qualifications specifically related to safety; or

(2) prohibit the bargaining representatives of railroad carriers and their employees from making collective bargaining agreements under the Railway Labor Act (45 U.S.C. 151 et seq.), including agreements related to qualifications of employees, that are not inconsistent with regulations prescribed and orders issued under this chapter.

§20111. Enforcement by the Secretary of Transportation

(a) EXCLUSIVE AUTHORITY.—The Secretary of Transportation has exclusive authority—

(1) to impose and compromise a civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary;

(2) except as provided in section 20113 of this title, to request an injunction for a violation of a railroad safety regulation prescribed or order issued by the Secretary; and

(3) to recommend appropriate action be taken under section 20112(a) of this title.

(b) COMPLIANCE ORDERS.—The Secretary may issue an order directing compliance with this part or with a railroad safety regulation prescribed or order issued under this part.

(c) ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS.—If an individual's violation of a regulation prescribed or order issued by the Secretary under this chapter is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after notice and opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met. This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.

§20112. Enforcement by the Attorney General

(a) CIVIL ACTIONS.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in a district court of the United States—

(1) to enjoin a violation of, or to enforce, a railroad safety regulation prescribed or order issued by the Secretary;

(2) to collect a civil penalty imposed or an amount agreed on in compromise under section 21301 of this title; or

(3) to enforce a subpoena issued by the Secretary under this chapter.

(b) VENUE.—(1) Except as provided in paragraph (2) of this subsection, a civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If an action to collect a penalty is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action to enforce a subpoena issued by the Secretary or a compliance order issued under section 20111(b) of this title may be brought in the judicial district in which the defendant resides, does business, or is found.

§20113. Enforcement by the States

(a) INJUNCTIVE RELIEF.—If the Secretary of Transportation does not begin a civil action under section 20112 of this title to enjoin the violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 15 days after the date the Secretary receives notice of the violation and a request from a State authority participating in investigative and surveillance activities under section 20105 of this title that the action be brought, the authority may bring a civil action in the district court to enjoin the violation. This subsection does not apply if the Secretary makes an affirmative written finding that the violation did not occur or that the action is not necessary because of other enforcement action taken by the Secretary related to the violation.

(b) IMPOSITION AND COLLECTION OF CIVIL PENALTIES.—If the Secretary does not impose the applicable civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 60 days after the date of receiving notice from a State authority participating in investigative and surveillance activities under section 20105 of this title, the authority may bring a civil action in a district court to impose and collect the penalty. This paragraph does not apply if the Secretary makes an affirmative written finding that the violation did not occur.

(c) VENUE.—A civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. However, a State authority may not bring an action under this section outside the State.

§20114. Judicial procedures

(a) CRIMINAL CONTEMPT.—In a trial for criminal contempt for violating an injunction or restraining order issued under this chapter, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(b) SUBPOENAS FOR WITNESSES.—A subpoena for a witness required to attend a district court in an action brought under this chapter may be served in any judicial district.

§20115. User fees

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe by regulation a schedule of fees for railroad carriers subject to this chapter. The fees—

(1) shall cover the costs of carrying out this chapter (except section 20108(a));

(2) shall be imposed fairly on the railroad carriers, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors; and

(3) may not be based on that part of industry revenues attributable to a railroad carrier or class of railroad carriers.

(b) COLLECTION PROCEDURES.—The Secretary shall prescribe procedures to collect the fees. The Secretary may use the services of a department, agency, or instrumentality of the United States Government or of a State or local authority to collect the fees, and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(c) COLLECTION, DEPOSIT, AND USE.—(1) The Secretary shall impose and collect fees under this section for each fiscal year before the end of the fiscal year.

(2) Fees collected under this section shall be deposited in the general fund of the Treasury as offsetting receipts. The fees may be used, to the extent provided in advance in an appropriation law, only to carry out this chapter.

(3) Fees prescribed under this section shall be imposed in an amount sufficient to pay for the costs of activities under this chapter beginning on March 1, 1991. However, the total fees received for a fiscal year may not be more than 105 percent of the total amount of the appropriations for the fiscal year for activities to be financed by the fees.

(d) ANNUAL REPORT.—(1) Not later than 90 days after the end of each fiscal year in which fees are collected under this section, the Secretary shall report to Congress on—

(A) the amount of fees collected during that fiscal year;

(B) the impact of the fees on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and

(C) the total cost of Government safety activities for each other competing mode of transportation, including any part of that total cost defrayed by Government user fees.

(2) Not later than 90 days after submitting a report for a fiscal year, the Secretary shall submit to Congress recommendations for corrective legislation if the report includes a finding that—

(A) there has been an impact from the fees on the financial health of the railroad industry or its competitive position relative to each competing mode of transportation; or

(B) there is a significant difference in the burden of Government user fees on the railroad industry and other competing modes of transportation.

(e) EXPIRATION.—This section expires on September 30, 1995.

§20116. Annual report

The Secretary of Transportation shall submit to the President for submission to Congress not later than July 1 of each year a report on carrying out this chapter for the prior calendar year. The report shall include the following information about the prior year:

(1) a thorough statistical compilation of railroad accidents, incidents, and casualties by cause;

(2) a list of railroad safety regulations and orders prescribed, issued, or in effect under this chapter;

(3) a summary of the reasons for each waiver granted under section 20103(d) of this title;

(4) an evaluation of the degree of compliance with railroad safety regulations prescribed and orders issued under this chapter;

(5) a summary of outstanding problems in carrying out railroad safety regulations prescribed and orders issued under this chapter, in order of priority;

(6) an analysis and evaluation of research and related activities completed, including their policy implications, and technological progress achieved;

(7) a list, with a brief statement of the issues, of completed or pending civil actions to enforce railroad safety regulations prescribed and orders issued under this chapter;

(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of certifications filed under section 20105(a) of this title that were—

(A) in effect; or

(B) rejected in any part by the Secretary, and a summary of the reasons for each rejection;

(10) a compilation of agreements made under section 20105(c) of this title that were—

(A) in effect; or

(B) terminated in any part by the Secretary, and a summary of the reasons for each termination;

(11) recommendations for legislation the Secretary considers necessary to strengthen the national railroad safety program.

§20117. Authorization of appropriations

(a) IN GENERAL.—(1) Not more than $_________ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out this chapter.

(2) Not more than $5,000,000 may be appropriated to the Secretary for each of the fiscal years ending September 30, 1992, and 1993, to carry out section 20105 of this title.

(b) GRADE CROSSING SAFETY.—Not more than $1,000,000 may be appropriated to the Secretary for improvements in grade crossing safety, except demonstration projects under section 20134(c) of this title. Amounts appropriated under this subsection remain available until expended.

(c) RESEARCH AND DEVELOPMENT, AUTOMATED TRACK INSPECTION, AND STATE PARTICIPATION GRANTS.—Amounts appropriated under this section for research and development, automated track inspection, and grants under section 20105(e) of this title remain available until expended.

(d) MINIMUM AVAILABLE FOR CERTAIN PURPOSES.—At least 50 percent of the amounts appropriated to the Secretary for a fiscal year to carry out railroad research and development programs under this chapter or another law shall be available for safety research, improved track inspection and information acquisition technology, improved railroad freight transportation, and improved railroad passenger systems.

SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

§20131. Restricted access to rolling equipment

The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that when railroad carrier employees (except train or yard crews) assigned to inspect, test, repair, or service rolling equipment have to work on, under, or between that equipment, every manually operated switch, including each crossover switch, providing access to the track on which the equipment is located is lined against movement to that track and secured by an effective locking device that can be removed only by the class or craft of employees performing the inspection, testing, repair, or service.

§20132. Visible markers for rear cars

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that—

(1) the rear car of each passenger and commuter train has at least one highly visible marker that is lighted during darkness and when weather conditions restrict clear visibility; and

(2) the rear car of each freight train has highly visible markers during darkness and when weather conditions restrict clear visibility.

(b) PREEMPTION.—Notwithstanding section 20106 of this title, subsection (a) of this section does not prohibit a State from continuing in force a law, regulation, or order in effect on July 8, 1976, related to lighted markers on the rear car of a freight train except to the extent it would cause the car to be in violation of this section.

§20133. Passenger equipment

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to ensure that the construction, maintenance, and operation of railroad equipment used to transport railroad passengers, whether in commuter or intercity service, maximize the safety of those passengers. The Secretary periodically shall review the regulations and orders and make amendments that may be necessary.

(b) CONSIDERATIONS AND AREAS OF CONCENTRATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary shall—

(1) consider comparable regulations and procedures of the United States Government that apply to other modes of transportation, especially those regulations and procedures carried out by the Administrator of the Federal Aviation Administration;

(2) consider relevant differences between commuter and intercity passenger service;

(3) concentrate on those areas that the Secretary believes present the greatest opportunity for enhancing the safety of the equipment; and

(4) give significant weight to the expenditures that would be necessary to retrofit existing equipment and to change specifications for equipment on order.

(c) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 App. U.S.C.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

§20134. Grade crossings and railroad rights of way

(a) GENERAL.—To the extent practicable, the Secretary of Transportation shall maintain a coordinated effort to develop and carry out solutions to the railroad grade crossing problem and measures to protect pedestrians in densely populated areas along railroad rights of way. To carry out this subsection, the Secretary may use the authority of the Secretary under this chapter and over highway, traffic, and motor vehicle safety and over highway construction.

(b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22, 1989, the Secretary shall prescribe regulations and issue orders that may be necessary to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings.

(c) DEMONSTRATION PROJECTS.—(1) The Secretary shall establish demonstration projects to evaluate whether accidents and incidents involving trains would be reduced by—

(A) reflective markers installed on the road surface or on a signal post at railroad grade crossings;

(B) stop signs or yield signs installed at grade crossings; and

(C) speed bumps or rumble strips installed on the road surfaces at the approaches to grade crossings.

(2) Not later than June 22, 1990, the Secretary shall submit a report on the results of the demonstration projects to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

§20135. Licensing or certification of locomotive operators

(a) GENERAL.—Not later than June 22, 1989, the Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to establish a program requiring the licensing or certification, after one year after the program is established, of any operator of a locomotive.

(b) PROGRAM REQUIREMENTS.—The program established under subsection (a) of this section—

(1) shall be carried out through review and approval of each railroad carrier's operator qualification standards;

(2) shall provide minimum training requirements;

(3) shall require comprehensive knowledge of applicable railroad carrier operating practices and rules;

(4) except as provided in subsection (c)(1) of this section, shall require consideration, to the extent the information is available, of the motor vehicle driving record of each individual seeking licensing or certification, including—

(A) any denial, cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the prior 5 years; and

(B) any conviction within the prior 5 years of an offense described in section 30304(a)(3) (A) or (B) of this title;

(5) may require, based on the individual's driving record, disqualification or the granting of a license or certification conditioned on requirements the Secretary prescribes; and

(6) shall require an individual seeking a license or certification—

(A) to request the chief driver licensing official of each State in which the individual has held a motor vehicle operator's license within the prior 5 years to provide information about the individual's driving record to the individual's employer, prospective employer, or the Secretary, as the Secretary requires; and

(B) to make the request provided for in section 30305(b)(4) of this title for information to be sent to the individual's employer, prospective employer, or the Secretary, as the Secretary requires.

(c) WAIVERS.—(1) The Secretary shall prescribe standards and establish procedures for waiving subsection (b)(4) of this section for an individual or class of individuals who the Secretary decides are not currently unfit to operate a locomotive. However, the Secretary may waive subsection (b)(4) for an individual or class of individuals with a conviction, cancellation, revocation, or suspension described in paragraph (2) (A) or (B) of this subsection only if the individual or class, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary.

(2) If an individual, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary, the individual may not be denied a license or certification under subsection (b)(4) of this section because of—

(A) a conviction for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance; or

(B) the cancellation, revocation, or suspension of the individual's motor vehicle operator's license for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(d) OPPORTUNITY FOR HEARING.—An individual denied a license or certification or whose license or certification is conditioned on requirements prescribed under subsection (b)(4) of this section shall be entitled to a hearing under section 20103(e) of this title to decide whether the license has been properly denied or conditioned.

(e) OPPORTUNITY TO EXAMINE AND COMMENT ON INFORMATION.—The Secretary, employer, or prospective employer, as appropriate, shall make information obtained under subsection (b)(6) of this section available to the individual. The individual shall be given an opportunity to comment in writing about the information. Any

comment shall be included in any record or file maintained by the Secretary, employer, or prospective employer that contains information to which the comment is related.

§20136. Automatic train control and related systems

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that—

(1) an individual performing a test of an automatic train stop, train control, or cab signal apparatus required by the Secretary to be performed before entering territory where the apparatus will be used shall certify in writing that the test was performed properly; and

(2) the certification required under clause (1) of this subsection shall be maintained in the same way and place as the daily inspection report for the locomotive.

(b) STUDY AND REPORT.—(1) In consultation with Amtrak, freight carriers, commuter agencies, employee representatives, railroad passengers, and railroad equipment manufacturers, the Secretary shall study the advisability and feasibility of requiring automatic train control systems, including systems using advanced technology, such as transponder and satellite relay systems, on each railroad corridor on which passengers or hazardous material are carried. The study shall include—

(A) a specific assessment of the dangers of not requiring automatic train control systems on each corridor, based on analysis of the number of passenger trains, individuals, and freight trains traveling on the corridor daily, the frequency of train movements, mileage traveled, and the accident and incident history on the corridor;

(B) an analysis of the cost of requiring the systems to be installed on each corridor; and

(C) an investigation of alternative means of achieving the same safety objectives that would be achieved by requiring automatic train control systems to be installed.

(2) The Secretary shall submit to Congress not later than April 1, 1990, a report detailing the results of the study.

§20137. Event recorders

(a) DEFINITION.—In this section, "event recorder" means a device that—

(1) records train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary of Transportation considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

(2) is designed to resist tampering.

(b) REGULATIONS AND ORDERS.—Not later than December 22, 1989, the Secretary shall prescribe regulations and issue orders that may be necessary to enhance safety by requiring that a train be equipped with an event recorder not later than one year after the regulations are prescribed and the orders are issued. However, if the Secretary finds it is impracticable to equip trains within that one-year period, the Secretary may extend the period to a date that is not later than 18 months after the regulations are prescribed and the orders are issued.

§20138. Tampering with safety and operational monitoring devices

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to prohibit the willful tampering with, or disabling of, any specified railroad safety or operational monitoring device.

(b) PENALTIES.—(1) A railroad carrier operating a train on which a safety or operational monitoring device is tampered with or disabled in violation of a regulation prescribed or order issued under subsection (a) of this section is liable to the United States Government for a civil penalty under section 21301 of this title.

(2) An individual tampering with or disabling a safety or operational monitoring device in violation of a regulation prescribed or order issued under subsection (a) of this section, or knowingly operating or allowing to be operated a train on which such a device has been tampered with or disabled, is liable for penalties established by the Secretary. The penalties may include—

(A) a civil penalty under section 21301 of this title;

(B) suspension from work; and

(C) suspension or loss of a license or certification issued under section 20135 of this title.

§20139. Maintenance-of-way operations

(a) GENERAL.—Not later than June 22, 1989, the Secretary of Transportation shall prescribe regulations and issue orders that may be necessary for the safety of maintenance-of-way employees, including standards for bridge safety equipment, such as nets, walkways, handrails, and safety lines, and requirements related to instances when vessels shall be used.

(b) BLUE SIGNAL PROTECTION.—The Secretary shall prescribe regulations applying blue signal protection to on-track vehicles where rest is provided.

CHAPTER 203—SAFETY APPLIANCES

Sec.

20301. Definition and nonapplication.
20302. General requirements.
20303. Exemption for moving defective and insecure vehicles needing repairs.
20304. Assumption of risk by employees.
20305. Inspection of mail cars.

§20301. Definition and nonapplication

(a) DEFINITION.—In this chapter, "vehicle" means a car, locomotive, tender, or similar vehicle.

(b) NONAPPLICATION.—This chapter does not apply to the following:

(1) a train of 4-wheel coal cars.

(2) a train of 8-wheel standard logging cars if the height of each car from the top of the rail to the center of the coupling is not more than 25 inches.

(3) a locomotive used in hauling a train referred to in clause (2) of this subsection when the locomotive and cars of the train are used only to transport logs.

§20302. General requirements

(a) GENERAL.—Except as provided in subsection (c) of this section and section 20303 of this title, a railroad carrier may use or allow to be used on any of its railroad lines—

(1) a vehicle only if it is equipped with—

(A) couplers coupling automatically by impact, and capable of being uncoupled, without the necessity of individuals going between the ends of the vehicles;

(B) secure sill steps and efficient hand brakes; and

(C) secure ladders and running boards when required by the Secretary of Transportation, and, if ladders are required, secure handholds or grab irons on its roof at the top of each ladder;

(2) except as otherwise ordered by the Secretary, a vehicle only if it is equipped with secure grab irons or handholds on its ends and sides for greater security to individuals in coupling and uncoupling vehicles;

(3) a vehicle only if it complies with the standard height of drawbars required by regulations prescribed by the Secretary;

(4) a locomotive only if it is equipped with a power-driving wheel brake and appliances for operating the train-brake system; and

(5) a train only if—

(A) enough of the vehicles in the train are equipped with power or train brakes so that the engineer on the locomotive hauling the train can control the train's speed without the necessity of brake operators using the common hand brakes for that purpose; and

(B) at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in the train.

(b) REFUSAL TO RECEIVE VEHICLES NOT PROPERLY EQUIPPED.—A railroad carrier complying with subsection (a)(5)(A) of this section may refuse to receive from a railroad line of a connecting railroad carrier or a shipper a vehicle that is not equipped with power or train brakes that will work and readily interchange with the power or train brakes in use on the vehicles of the complying railroad carrier.

(c) COMBINED VEHICLES LOADING AND HAULING LONG COMMODITIES.—Notwithstanding subsection (a)(1)(B) of this section, when vehicles are combined to load and haul long commodities, only one of the vehicles must have hand brakes during the loading and hauling.

(d) AUTHORITY TO CHANGE REQUIREMENTS.—The Secretary may—

(1) change the number, dimensions, locations, and manner of application prescribed by the Secretary for safety appliances required by subsection (a)(1) (B) and (C) and (2) of this section only for good cause and after providing an opportunity for a full hearing;

(2) amend regulations for installing, inspecting, maintaining, and repairing power and train brakes only for the purpose of achieving safety; and

(3) increase, after an opportunity for a full hearing, the minimum percentage of vehicles in a train that are required by subsection (a)(5)(B) of this section to be equipped and used with power or train brakes.

(e) SERVICES OF ASSOCIATION OF AMERICAN RAILROADS.—In carrying out subsection (d)(2) and (3) of this section, the Secretary may use the services of the Association of American Railroads.

§20303. Exemption for moving defective and insecure vehicles needing repairs

(a) GENERAL.—A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure, nevertheless may be moved when necessary to make repairs, without a penalty being imposed under section 20306 of this title, from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made—

(1) on the railroad line on which the defect or insecurity was discovered; or

(2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not farther than the place of repair described in clause (1) of this subsection.

(b) USE OF CHAINS INSTEAD OF DRAWBARS.—A vehicle in a revenue train or in association with commercially-used vehicles may be moved under this section with chains instead of drawbars only when the vehicle contains livestock or perishable freight.

(c) LIABILITY.—The movement of a vehicle under this section is at the risk only of the railroad carrier doing the moving. This section does not relieve a carrier from liability in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of a vehicle with equipment that is defective, insecure, or not maintained in compliance with this chapter.

§20304. Assumption of risk by employees

An employee of a railroad carrier injured by a vehicle or train used in violation of section 20302(a)(1)(A), (2), (4), or (5)(A) of this title does not assume the risk of injury resulting from the *violation, even if the employee continues to be employed by the carrier after learning of the violation.*

§20305. Inspection of mail cars

The Secretary of Transportation shall inspect the construction, adaptability, design, and condition of mail cars used on railroads in the United States. The Secretary shall make a report on the inspection and submit a copy of the report to the United States Postal Service.

CHAPTER 205—SIGNAL SYSTEMS

Sec.

20501. Definition.
20502. Requirements for installation and use.
20503. Amending regulations and changing requirements.
20504. Inspection, testing, and investigation.
20505. Reports of malfunctions and accidents.

§20501. Definition

In this chapter, "signal system" means a block signal system, an interlocking, automatic train stop, train control, or cab-signal device, or a similar appliance, method, device, or system intended to promote safety in railroad operations.

§20502. Requirements for installation and use

(a) INSTALLATION.—(1) When the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install, on any part of its railroad line, a signal system that complies with requirements of the Secretary. The order must allow the carrier a reasonable time to complete the installation. A carrier may discontinue or materially alter a signal system required under this paragraph only with the approval of the Secretary.

(2) A railroad carrier ordered under paragraph (1) of this subsection to install a signal system on one part of its railroad line may not be held negligent for not installing the system on any part of its line that was not included in the order. If an accident or incident occurs on a part of the line on which the signal system was not required to be installed and was not installed, the use of the system on another part of the line may not be considered in a civil action brought because of the accident or incident.

(b) USE.—A railroad carrier may allow a signal system to be used on its railroad line only when the system, including its controlling and operating appurtenances—

(1) may be operated safely without unnecessary risk of personal injury; and

(2) has been inspected and can meet any test prescribed under this chapter.

§20503. Amending regulations and changing requirements

The Secretary of Transportation may amend a regulation or change a requirement applicable to a railroad carrier for installing, maintaining, inspecting, or repairing a signal system under this chapter—

(1) when the carrier files with the Secretary a request for the amendment or change and the Secretary approves the request; or

(2) on the Secretary's own initiative for good cause shown.

§20504. Inspection, testing, and investigation

(a) SYSTEMS IN USE.—(1) The Secretary of Transportation may—

(A) inspect and test a signal system used by a railroad carrier; and

(B) decide whether the system is in safe operating condition.

(2) In carrying out this subsection, the Secretary may employ only an individual who—

(A) has no interest in a patented article required to be used on or with a signal system; and

(B) has no financial interest in a railroad carrier or in a concern dealing in railroad supplies.

(b) SYSTEMS SUBMITTED FOR INVESTIGATION AND TESTING.—The Secretary may investigate, test, and report on the use of and need for a signal system, without cost to the United States Government, when the system is submitted in completed shape for investigation and testing.

§20505. Reports of malfunctions and accidents

In the way and to the extent required by the Secretary of Transportation, a railroad carrier shall report to the Secretary a failure of a signal system to function as intended. If the failure results in an accident or incident causing injury to an individual or property that is required to be reported under regulations prescribed by the Secretary, the carrier owning or maintaining the signal system shall report to the Secretary immediately in writing the fact of the accident or incident.

CHAPTER 207—LOCOMOTIVES

Sec.

20701. Requirements for use.
20702. Inspections, repairs, and inspection and repair reports.
20703. Accident reports and investigations.

§20701. Requirements for use

A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—

(1) are in proper condition and safe to operate without unnecessary danger of personal injury;

(2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and

(3) can withstand every test prescribed by the Secretary under this chapter.

§20702. Inspections, repairs, and inspection and repair reports

(a) GENERAL.—The Secretary of Transportation shall—

(1) become familiar, so far as practicable, with the condition of every locomotive and tender and its parts and appurtenances;

(2) inspect every locomotive and tender and its parts and appurtenances as necessary to carry out this chapter, but not necessarily at stated times or at regular intervals; and

(3) ensure that every railroad carrier makes inspections of locomotives and tenders and their parts and appurtenances as required by regulations prescribed by the Secretary and repairs every defect that is disclosed by an inspection before a defective locomotive, tender, part, or appurtenance is used again.

(b) NONCOMPLYING LOCOMOTIVES, TENDERS, AND PARTS.—(1) When the Secretary finds that a locomotive, tender, or locomotive or tender part or appurtenance owned or operated by a railroad carrier does not comply with this chapter or a regulation prescribed under this chapter, the Secretary shall give the carrier written notice describing any defect resulting in noncompliance. Not later than 5 days after receiving the notice of noncompliance, the carrier may submit a written request for a reinspection. On receiving the request, the Secretary shall provide for the reinspection by an officer or employee of the Department of Transportation who did not make the original inspection. The reinspection shall be made not later than 15 days after the date the Secretary gives the notice of noncompliance.

(2) Immediately after the reinspection is completed, the Secretary shall give written notice to the railroad carrier stating whether the locomotive, tender, part, or appurtenance is in compliance. If the original finding of noncompliance is sustained, the carrier has 30 days after receipt of the notice to file an appeal with the Secretary. If the carrier files an appeal, the Secretary, after providing an opportunity for a proceeding, may revise or set aside the finding of noncompliance.

(3) A locomotive, tender, part, or appurtenance found not in compliance under this subsection may be used only after it is—

(A) repaired to comply with this chapter and regulations prescribed under this chapter; or

(B) found on reinspection or appeal to be in compliance.

(c) REPORTS.—A railroad carrier shall make and keep, in the way the Secretary prescribes by regulation, a report of every—

(1) inspection made under regulations prescribed by the Secretary; and

(2) repair made of a defect disclosed by such an inspection.

(d) CHANGES IN INSPECTION PROCEDURES.—A railroad carrier may change a rule or instruction of the carrier governing the inspection by the carrier of the locomotives and tenders and locomotive and tender parts and appurtenances of the carrier when the Secretary approves a request filed by the carrier to make the change.

§20703. Accident reports and investigations

(a) ACCIDENT REPORTS AND SCENE PRESERVATION.—When the failure of a locomotive, tender, or locomotive or tender part or appurtenance results in an accident or incident causing serious personal injury or death, the railroad carrier owning or operating the locomotive or tender—

(1) immediately shall file with the Secretary of Transportation a written statement of the fact of the accident or incident; and

(2) when the locomotive is disabled to the extent it cannot be operated under its own power, shall preserve intact all parts affected by the accident or incident, if possible without interfering with traffic, until an investigation of the accident or incident is completed.

(b) INVESTIGATIONS.—The Secretary shall—

(1) investigate each accident and incident reported under subsection (a) of this section;

(2) inspect each part affected by the accident or incident; and

(3) make a complete and detailed report on the cause of the accident or incident.

(c) PUBLICATION AND USE OF INVESTIGATION REPORTS.—When the Secretary considers publication to be in the public interest, the Secretary may publish a report of an investigation made under this section, stating the cause of the accident or incident and making appropriate recommendations. No part of a report may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

CHAPTER 209—ACCIDENTS AND INCIDENTS

Sec.

20901. Reports.
20902. Investigations.
20903. Reports not evidence in civil actions for damages.

§20901. Reports

Not later than 30 days after the end of each month, a railroad carrier shall file a report with the Secretary of Transportation on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month. The report shall be under oath and shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.

§20902. Investigations

(a) GENERAL AUTHORITY.—The Secretary of Transportation, or an impartial investigator authorized by the Secretary, may investigate—

(1) an accident or incident resulting in serious injury to an individual or to railroad property, occurring on the railroad line of a railroad carrier; and

(2) an accident or incident reported under section 20505 of this title.

(b) OTHER DUTIES AND POWERS.—In carrying out an investigation, the Secretary or authorized investigator may subpena witnesses, require the production of records, exhibits, and other evidence, administer oaths, and take testimony. If the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation. The railroad carrier on whose railroad line the accident or incident occurred shall provide reasonable facilities to the Secretary for the investigation.

(c) REPORTS.—When in the public interest, the Secretary shall make a report of the investigation, stating the cause of the accident or incident and making recommendations the Secretary considers appropriate. The Secretary shall publish the report in a way the Secretary considers appropriate.

§20903. Reports not evidence in civil actions for damages

No part of an accident or incident report filed by a railroad carrier under section 20901 of this title or made by the Secretary of Transportation under section 20902 of this title may be used in a civil action for damages resulting from a matter mentioned in the report.

CHAPTER 211—HOURS OF SERVICE

Sec.
21101. Definitions.
21102. Nonapplication and exemption.
21103. Limitations on duty hours of train employees.
21104. Limitations on duty hours of signal employees.
21105. Limitations on duty hours of dispatching service employees.
21106. Limitations on employee sleeping quarters.
21107. Maximum duty hours and subjects of collective bargaining.

§21101. Definitions

In this chapter—

(1) "designated terminal" means the home or away-from-home terminal for the assignment of a particular crew.

(2) "dispatching service employee" means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

(3) "employee" means a dispatching service employee, a signal employee, or a train employee.

(4) "signal employee" means an individual employed by a railroad carrier who is engaged in installing, repairing, or maintaining signal systems.

(5) "train employee" means an individual engaged in or connected with the movement of a train, including a hostler.

§21102. Nonapplication and exemption

(a) GENERAL.—This chapter does not apply to a situation involving any of the following:

(1) a casualty.

(2) an unavoidable accident.

(3) an act of God.

(4) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(b) EXEMPTION.—The Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by this chapter from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

§21103. Limitations on duty hours of train employees

(a) GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—

(1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or

(2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time the employee is engaged in or connected with the movement of a train is time on duty.

(3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.

(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.

(5) An interim period available for rest at a place other than a designated terminal is time on duty.

(6) An interim period available for less than 4 hours rest at a designated terminal is time on duty.

(7) An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

(A) a casualty.

(B) a track obstruction.

(C) an act of God.

(D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) EMERGENCIES.—A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

§21104. Limitations on duty hours of signal employees

(a) GENERAL.—(1) In paragraph (2)(C) of this subsection, "24-hour period" means the period beginning when a signal employee reports for duty immediately after 8 consecutive hours off duty or, when required under paragraph (2)(B) of this subsection, after 10 consecutive hours off duty.

(2) Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a signal employee to remain or go on duty—

(A) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours;

(B) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

(C) after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters, is neither time on duty nor time off duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee's headquarters or directly to the employee's residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee's headquarters or directly to the employee's residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (3)–(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release period of more than one hour is time off duty and does break the continuity of service.

(c) EMERGENCIES.—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service.

§21105. Limitations on duty hours of dispatching service employees

(a) APPLICATION.—This section applies, rather than section 21103 or 21104 of this title, to a train employee or signal employee during any period of time the employee is performing duties of a dispatching service employee.

(b) GENERAL.—Except as provided in subsection (d) of this section, a dispatching service employee may not be required or allowed to remain or go on duty for more than—

(1) a total of 9 hours during a 24-hour period in a tower, office, station, or place at which at least 2 shifts are employed; or

(2) a total of 12 hours during a 24-hour period in a tower, office, station, or place at which only one shift is employed.

(c) DETERMINING TIME ON DUTY.—Under subsection (b) of this section, time spent performing any other service for the railroad carrier during

a 24-hour period in which the employee is on duty in a tower, office, station, or other place is time on duty in that tower, office, station, or place.

(d) EMERGENCIES.—When an emergency exists, a dispatching service employee may be allowed to remain or go on duty for not more than 4 additional hours during a period of 24 consecutive hours for not more than 3 days during a period of 7 consecutive days.

§21106. Limitations on employee sleeping quarters

A railroad carrier and its officers and agents—

(1) may provide sleeping quarters (including crew quarters, camp or bunk cars, and trailers) for employees, and any individuals employed to maintain the right of way of a railroad carrier, only if the sleeping quarters are clean, safe, and sanitary and give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier; and

(2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters referred to in clause (1) of this section in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

§21107. Maximum duty hours and subjects of collective bargaining

The number of hours established by this chapter that an employee may be required or allowed to be on duty is the maximum number of hours consistent with safety. Shorter hours of service and time on duty of an employee are proper subjects for collective bargaining between a railroad carrier and its employees.

CHAPTER 213—PENALTIES

SUBCHAPTER I—CIVIL PENALTIES

Sec.
21301. Chapter 201 general violations.
21302. Chapter 201 accident and incident violations and chapter 203–209 violations.
21303. Chapter 211 violations.
21304. Willfulness requirement for penalties against individuals.

SUBCHAPTER II—CRIMINAL PENALTIES

21311. Records and reports.

SUBCHAPTER I—CIVIL PENALTIES

§21301. Chapter 201 general violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. The amount of the penalty shall be at least $250 but not more than $10,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $20,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than $250 before referral to the Attorney General.

(b) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

§21302. Chapter 201 accident and incident violations and chapter 203–209 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203–209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least $250 but not more than $10,000. However when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $20,000.

(3) If the Secretary does not compromise the amount of a civil penalty under section 3711 of title 31, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—The Attorney General shall bring a civil action to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

§21303. Chapter 211 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty may be not more than $1,000.

(3) If the Secretary does not compromise the amount of a civil penalty under section 3711 of title 31, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring a civil action to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

§21304. Willfulness requirement for penalties against individuals

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

SUBCHAPTER II—CRIMINAL PENALTIES

§21311. Records and reports

(a) RECORDS AND REPORTS UNDER CHAPTER 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;

(2) destroys, mutilates, changes, or by another means falsifies such a record or report;

(3) does not enter required specified facts and transactions in such a record or report;

(4) makes or preserves such a record or report in violation of a regulation prescribed or order issued under chapter 201 of this title; or

(5) files a false record or report with the Secretary of Transportation.

(b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing the report required by section 20901 of this title shall be fined not more than $100 for each violation and not more than $100 for each day during which the report is overdue.

PART B—ASSISTANCE

CHAPTER 221—LOCAL RAIL FREIGHT ASSISTANCE

Sec.
22101. Financial assistance for State projects.
22102. Eligibility.
22103. Applications.
22104. State rail plan financing.
22105. Sharing project costs.
22106. Limitations on financial assistance.
22107. Records, audits, and information.
22108. Authorization of appropriations.

§22101. Financial assistance for State projects

(a) GENERAL.—The Secretary of Transportation shall provide financial assistance to a State, as provided under this chapter, for a rail freight assistance project of the State when a rail carrier subject to subchapter I of chapter 105 of this title maintains a rail line in the State. The assistance is for the cost of—

(1) acquiring, in any way the State considers appropriate, an interest in a rail line or rail property to maintain existing, or to provide future, rail freight transportation, but only if the Interstate Commerce Commission has authorized, or exempted from the requirements of that authorization, the abandonment of, or the discontinuance of rail transportation on, the rail line related to the project;

(2) improving and rehabilitating rail property on a rail line to the extent necessary to allow adequate and efficient rail freight transportation on the line, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year; and

(3) building rail or rail-related facilities (including new connections between at least 2 existing rail lines, intermodal freight terminals, sidings, bridges, and relocation of existing lines) to improve the quality and efficiency of the rail freight transportation, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

(b) CALCULATING COST-BENEFIT RATIO.—The Secretary shall establish a methodology for calculating the ratio of benefits to costs of projects proposed under this chapter. In establishing the methodology, the Secretary shall consider the need for equitable treatment of different regions

of the United States and different commodities transported by rail. The establishment of the methodology is committed to the discretion of the Secretary.

(c) CONDITIONS.—(1) Assistance for a project shall be provided under this chapter only if—

(A) a rail carrier certifies that the rail line related to the project carried more than 20 carloads a mile during the most recent year during which transportation was provided by the carrier on the line; and

(B) the ratio of benefits to costs for the project, as calculated using the methodology established under subsection (b) of this section, is more than 1.0.

(2) If the rail carrier that provided the transportation on the rail line is no longer in existence, the applicant for the project shall provide the information required by the certification under paragraph (1)(A) of this subsection in the way the Secretary prescribes.

(3) The Secretary may waive the requirement of paragraph (1)(A) or (2) of this subsection if the Secretary—

(A) decides that the rail line has contractual guarantees of at least 40 carloads a mile for each of the first 2 years of operation of the proposed project; and

(B) finds that there is a reasonable expectation that the contractual guarantees will be fulfilled.

(d) LIMITATIONS ON AMOUNTS.—A State may not receive more than 15 percent of the amounts provided in a fiscal year under this chapter. Not more than 20 percent of the amounts available under this chapter may be provided in a fiscal year for any one project.

§22102. Eligibility

A State is eligible to receive financial assistance under this chapter only when the State complies with regulations the Secretary of Transportation prescribes under this chapter and the Secretary decides that—

(1) the State has an adequate plan for rail transportation in the State and a suitable process for updating, revising, and modifying the plan;

(2) the State plan is administered or coordinated by a designated State authority and provides for a fair distribution of resources;

(3) the State authority—

(A) is authorized to develop, promote, supervise, and support safe, adequate, and efficient rail transportation;

(B) employs or will employ sufficient qualified and trained personnel;

(C) maintains or will maintain adequate programs of investigation, research, promotion, and development with opportunity for public participation; and

(D) is designated and directed to take all practicable steps (by itself or with other State authorities) to improve rail transportation safety and reduce energy use and pollution related to transportation; and

(4) the State has ensured that it maintains or will maintain adequate procedures for financial control, accounting, and performance evaluation for the proper use of assistance provided by the United States Government.

§22103. Applications

(a) FILING.—A State must file an application with the Secretary of Transportation for financial assistance for a project described under section 22101(a) of this title not later than January 1 of the fiscal year for which amounts have been appropriated. However, for a fiscal year for which the authorization of appropriations for assistance under this chapter has not been enacted by the first day of the fiscal year, the State must file the application not later than 90 days after the date of enactment of a law authorizing the appropriations for that fiscal year. The Secretary shall prescribe the form of the application.

(b) CONSIDERATIONS.—In considering an application under this subsection, the Secretary shall consider the following:

(1) the percentage of rail lines that rail carriers have identified to the Interstate Commerce Commission for abandonment or potential abandonment in the State.

(2) the likelihood of future abandonments in the State.

(3) the ratio of benefits to costs for a proposed project calculated using the methodology established under section 22101(b) of this title.

(4) the likelihood that the rail line will continue operating with assistance.

(5) the impact of rail bankruptcies, rail restructuring, and rail mergers on the State.

§22104. State rail plan financing

(a) ENTITLEMENT AND USES.—On the first day of each fiscal year, each State is entitled to $36,000 of the amounts made available under section 22108 of this title during that fiscal year to be used—

(1) to establish, update, revise, and modify the State plan required by section 22102 of this title; or

(2) to carry out projects described in section 22101(a)(1), (2), or (3) of this title, as designated by the State, if those projects meet the requirements of section 22101(c)(1)(B) of this title.

(b) APPLICATIONS.—Each State must apply for amounts under this section not later than the first day of the fiscal year for which the amounts are available. However, for any fiscal year for which the authorization of appropriations for financial assistance under this chapter has not been enacted by the first day of the fiscal year, the State must apply for amounts under this section not later than 60 days after the date of enactment of a law authorizing the appropriations for that fiscal year. Not later than 60 days after receiving an application, the Secretary of Transportation shall consider the application and notify the State of the approval or disapproval of the application.

(c) AVAILABILITY OF AMOUNTS.—Amounts provided under this section remain available to a State for obligation for the first 3 months after the end of the fiscal year for which the amounts were made available. Amounts not applied for under this section or that remain unobligated after the first 3 months after the end of the fiscal year for which the amounts were made available are available to the Secretary for projects meeting the requirements of this chapter.

§22105. Sharing project costs

(a) GENERAL.—(1) The United States Government's share of the costs of financial assistance for a project under this chapter is 50 percent, except that for assistance provided under section 22101(a)(2) of this title, the Government's share is 70 percent. The State may pay its share of the costs in cash or through the following benefits, to the extent that the benefits otherwise would not be provided:

(A) forgiveness of taxes imposed on a rail carrier or its property.

(B) real and tangible personal property (provided by the State or a person for the State) necessary for the safe and efficient operation of rail freight transportation.

(C) track rights secured by the State for a rail carrier.

(D) the cash equivalent of State salaries for State employees working on the State project, except overhead and general administrative costs.

(2) A State may pay more than its required percentage share of the costs of a project under this chapter. When a State, or a person acting for a State, pays more than the State share of the costs of its projects during a fiscal year, the excess amount shall be applied to the State share for the costs of the State projects for later fiscal years.

(b) AGREEMENTS TO COMBINE AMOUNTS.—States may agree to combine any part of the amounts made available under this chapter to carry out a project that is eligible for assistance under this chapter when—

(1) the project will benefit each State making the agreement; and

(2) the agreement is not a violation of State law.

§22106. Limitations on financial assistance

(a) GRANTS AND LOANS.—A State shall use financial assistance for projects under this chapter to make a grant or lend money to the owner of rail property, or a rail carrier providing rail transportation, related to a project being assisted. The State shall decide on the financial terms of the grant or loan, except that the time for making grant advances shall comply with regulations of the Secretary of the Treasury.

(b) HOLDING AND USE OF GOVERNMENT'S SHARE.—The State shall place the United States Government's share of money that is repaid in an interest-bearing account. However, the Secretary of Transportation may allow a borrower to place that money, for the benefit of the State, in a bank designated by the Secretary of the Treasury under section 10 of the Act of June 11, 1942 (12 U.S.C. 265). The State shall use the money and accumulated interest to make other grants and loans under this chapter.

(c) PAYMENT OF UNUSED MONEY AND ACCUMULATED INTEREST.—The State may pay the Secretary of Transportation the Government's share of unused money and accumulated interest at any time. However, the State must pay the unused money and accumulated interest to the Secretary when the State ends its participation under this chapter.

(d) ENCOURAGING PARTICIPATION.—To the maximum extent possible, the State shall encourage the participation of shippers, rail carriers, and local communities in paying the State share of assistance costs.

(e) RETENTION OF CONTINGENT INTEREST.—Each State shall retain a contingent interest (redeemable preference shares) for the Government's share of amounts in a rail line receiving assistance under this chapter. The State may collect its share of the amounts used for the rail line if—

(1) an application for abandonment of the rail line is filed under chapter 109 of this title; or

(2) the rail line is sold or disposed of after it has received assistance under this chapter.

§22107. Records, audits, and information

(a) RECORDS.—Each recipient of financial assistance through an arrangement under this chapter shall keep records required by the Secretary of Transportation. The records shall be kept for 3 years after a project is completed and shall disclose—

(1) the amount of, and disposition by the recipient, of the assistance;

(2) the total costs of the project for which the assistance was given or used;

(3) the amount of that part of the costs of the project paid by other sources; and

(4) any other records that will make an effective audit easier.

(b) AUDITS.—The Secretary and the Comptroller General shall make regular financial and performance audits, as provided under chapter 75 of title 31, of activities and transactions assisted under this chapter.

(c) INFORMATION.—The Interstate Commerce Commission shall provide the Secretary with information the Secretary requests to assist in carrying out this chapter. The Commission shall provide the information not later than 30 days after receiving a request from the Secretary.

(d) LIST OF RAIL LINES.—Not later than August 1 of each year, each rail carrier subject to subchapter I of chapter 105 of this title shall submit to the Secretary a list of the rail lines of the carrier that carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

§22108. Authorization of appropriations

(a) GENERAL.—No amount may be appropriated to the Secretary of Transportation for any period after September 30, 1991, to carry out this chapter.

(b) DISTRIBUTION OF AMOUNTS.—The Secretary shall establish procedures necessary to ensure that amounts available to the Secretary for projects under this chapter are distributed not later than April 1 of the fiscal year for which the amounts are appropriated. If any amounts are not distributed by April 1, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of those amounts and the reasons for the delay in distribution.

(c) AVAILABILITY OF OTHER AMOUNTS.—Amounts appropriated to carry out section 5(i) of the Department of Transportation Act for fiscal year 1990 that are not applied for or that remain unobligated on January 1, 1991, are available to the Secretary for projects under this chapter.

PART C—PASSENGER TRANSPORTATION

CHAPTER 241—GENERAL

Sec.

24101. Findings, purpose, and goals.
24102. Definitions.
24103. Loan guarantees.
24104. Enforcement.
24105. Authorization of appropriations.

§24101. Findings, purpose, and goals

(a) FINDINGS.—(1) Public convenience and necessity require that Amtrak, to the extent its budget allows, provide modern, cost-efficient, and energy-efficient intercity rail passenger transportation between crowded urban areas and in other areas of the United States.

(2) Rail passenger transportation can help alleviate overcrowding of airways and airports and on highways.

(3) A traveler in the United States should have the greatest possible choice of transportation most convenient to the needs of the traveler.

(4) A greater degree of cooperation is necessary among Amtrak, other rail carriers, State, regional, and local governments, the private sector, labor organizations, and suppliers of services and equipment to Amtrak to achieve a performance level sufficient to justify expending public money.

(5) Modern and efficient commuter rail passenger transportation is important to the viability and well-being of major urban areas and to the energy conservation and self-sufficiency goals of the United States.

(6) As a rail passenger transportation entity, Amtrak should be available to operate commuter rail passenger transportation through its subsidiary, Amtrak Commuter, under contract with commuter authorities that do not provide the transportation themselves as part of the governmental function of the State.

(7) The Northeast Corridor is a valuable resource of the United States used by intercity and commuter rail passenger transportation and freight transportation.

(8) Greater coordination between intercity and commuter rail passenger transportation is required.

(b) PURPOSE.—By using innovative operating and marketing concepts, Amtrak shall provide intercity and commuter rail passenger transportation that completely develops the potential of modern rail transportation to meet the intercity and commuter passenger transportation needs of the United States.

(c) GOALS.—Amtrak shall—

(1) use its best business judgment in acting to minimize United States Government subsidies, including—

(A) increasing fares;

(B) increasing revenue from the transportation of mail and express;

(C) reducing losses on food service;

(D) improving its contracts with operating rail carriers;

(E) reducing management costs; and

(F) increasing employee productivity;

(2) minimize Government subsidies by encouraging State, regional, and local governments and the private sector to share the cost of providing rail passenger transportation, including the cost of operating facilities;

(3) carry out strategies to achieve immediately maximum productivity and efficiency consistent with safe and efficient transportation;

(4) operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables;

(5) develop transportation on rail corridors subsidized by States and private parties;

(6) implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort;

(7) encourage rail carriers to assist in improving intercity rail passenger transportation;

(8) improve generally the performance of Amtrak through comprehensive and systematic operational programs and employee incentives;

(9) carry out policies that ensure equitable access to the Northeast Corridor by intercity and commuter rail passenger transportation;

(10) coordinate the uses of the Northeast Corridor, particularly intercity and commuter rail passenger transportation; and

(11) maximize the use of its resources, including the most cost-effective use of employees, facilities, and real property.

(d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out subsection (c)(11) of this section, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize Government subsidies.

§24102. Definitions

In this part—

(1) "auto-ferry transportation" means intercity rail passenger transportation—

(A) of automobiles or recreational vehicles and their occupants; and

(B) when space is available, of used unoccupied vehicles.

(2) "avoidable loss" means the avoidable costs of providing rail passenger transportation, less revenue attributable to the transportation, as determined by the Interstate Commerce Commission under section 553 of title 5.

(3) "basic system" means the system of intercity rail passenger transportation designated by the Secretary of Transportation under section 4 of the Amtrak Improvement Act of 1978 and approved by Congress, and transportation required to be provided under section 24705(a) of this title and section 4(g) of the Act, including changes in the system or transportation that Amtrak makes using the route and service criteria.

(4) "commuter authority" means a State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation.

(5) "commuter rail passenger transportation" means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.

(6) "intercity rail passenger transportation" means rail passenger transportation, except commuter rail passenger transportation.

(7) "rail carrier" means a person providing rail transportation for compensation.

(8) "rate" means a rate, fare, or charge for rail transportation.

(9) "regional transportation authority" means an entity established to provide passenger transportation in a region.

(10) "route and service criteria" means the criteria and procedures for making route and service decisions established under section 404(c)(1)-(3)(A) of the Rail Passenger Service Act.

§24103. Loan guarantees

(a) GENERAL AUTHORITY.—With the approval of the Secretary of the Treasury and on terms the Secretary of Transportation may prescribe, the Secretary of Transportation may guarantee a lender or lessor against loss of principal and interest or other contractual commitments on securities, obligations, leases, loans (or the refinancing of loans) issued to finance—

(1) the upgrading of roadbeds; and

(2) the purchase or lease by Amtrak or a regional transportation authority of capital equipment and facilities necessary to improve rail passenger transportation.

(b) MAXIMUM PERIOD OF GUARANTEE.—The maturity date or term of securities, obligations, leases, or loans, including extensions and renewals, guaranteed under this section may not be more than 20 years from the date of issuance.

(c) EFFECT OF GUARANTEE.—A guarantee under this section—

(1) is a general obligation of the United States Government;

(2) is backed by the full faith and credit of the Government;

(3) may not be revoked;

(4) is conclusive evidence—

(A) that the guarantee complies fully with this part; and

(B) of the approval and legality of all terms of the security, obligation, lease, or loan and of the guarantee; and

(5) is valid and incontestable in the hands of a holder of a guaranteed security, obligation, lease, or loan, except for fraud or material misrepresentation by the holder.

(d) MAXIMUM OUTSTANDING AMOUNT.—The total amount of the unpaid principal of the securities, obligations, leases, and loans outstanding at one time and guaranteed under this section may not be more than $930,000,000. That amount is reduced by the amount of securities, obligations, and loans paid by Amtrak under section 601(a)(3) or (b)(1)(E) of the Rail Passenger Service Act.

(e) ISSUANCE OF OBLIGATIONS.—(1) If the money available to the Secretary of Transportation is insufficient to enable the Secretary of Transportation to discharge the Secretary of Transportation's responsibilities under guarantees issued under subsection (a) of this section, the Secretary of Transportation shall issue obligations to the Secretary of the Treasury. The Secretary of the Treasury shall prescribe the terms of the obligations. When determining the interest rate for the obligations, the Secretary of the Treasury shall consider the current average market yield on outstanding marketable obligations of the Government of comparable maturities during the month before obligations are issued.

(2) The Secretary of the Treasury shall buy obligations issued under this subsection. To buy the obligations, the Secretary may use as a public debt transaction proceeds from the sale of securities issued under chapter 31 of title 31. Securities may be issued under chapter 31 to buy the obligations.

(3) The Secretary of the Treasury may sell obligations bought under this subsection. A redemption, purchase, or sale by the Secretary is a public debt transaction of the Government.

(4) The Secretary of Transportation shall redeem obligations referred to in this subsection from appropriations available under subsection (g) of this section.

(f) LIMITATION.—A security, obligation, lease, or loan may not be guaranteed if the income from the security, obligation, lease, or loan is not gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(g) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary for the Secretary of Transportation to carry out this section may be appropriated to the Secretary. The amounts remain available until expended.

§24104. Enforcement

(a) GENERAL.—(1) Except as provided in paragraph (2) of this subsection, only the Attorney General may bring a civil action when Amtrak or a rail carrier—

(A) engages in or adheres to an action, practice, or policy inconsistent with this part;

(B) obstructs or interferes with an activity authorized under this part;

(C) refuses, fails, or neglects to discharge its duties and responsibilities under this part; or

(D) threatens—

(i) to engage in or adhere to an action, practice, or policy inconsistent with this part;

(ii) to obstruct or interfere with an activity authorized by this part; or

(iii) to refuse, fail, or neglect to discharge its duties and responsibilities under this part.

(2) An employee affected by any conduct or threat referred to in paragraph (1) of this subsection, or an authorized employee representative, may bring the civil action if the conduct or threat involves a labor agreement.

(b) REVIEW OF DISCONTINUANCE OR REDUCTION.—A discontinuance of a route, a train, or transportation, or a reduction in the frequency of transportation, by Amtrak is reviewable only in a civil action brought by the Attorney General.

(c) VENUE.—Except as otherwise prohibited by law, a civil action under this section may be brought in the district court of the United States for a judicial district in which Amtrak or the rail carrier resides or is found.

§24105. Authorization of appropriations

(a) GENERAL.—Not more than $712,000,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1992, for the benefit of Amtrak.

(b) PAYMENT TO AMTRAK.—Amounts appropriated under this section shall be paid to Amtrak under the budget request of the Secretary as approved or modified by Congress when the amounts are appropriated. A payment may not be made more frequently than once every 90 days, unless Amtrak, for good cause, requests more frequent payment before a 90-day period ends.

(c) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—(1) Amounts appropriated under this section remain available until expended.

(2) Amounts for capital acquisitions and improvements may be appropriated in a fiscal year before the fiscal year in which the amounts will be obligated.

(d) LIMITATIONS ON USE.—Amounts appropriated under this section—

(1) for operating and capital expenses of intercity rail passenger transportation may not be used for commuter rail passenger transportation provided by Amtrak Commuter; and

(2) may not be used to subsidize operating losses of commuter rail passenger or rail freight transportation.

CHAPTER 243—AMTRAK

Sec.
24301. Status and applicable laws.
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§24301. Status and applicable laws

(a) STATUS.—Amtrak—

(1) is a rail carrier under section 10102 of this title;

(2) shall be operated and managed as a for-profit corporation; and

(3) is not a department, agency, or instrumentality of the United States Government.

(b) PRINCIPAL OFFICE AND PLACE OF BUSINESS.—The principal office and place of business of Amtrak are in the District of Columbia. Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business. Amtrak is a citizen only of the District of Columbia when deciding original jurisdiction of the district courts of the United States in a civil action.

(c) APPLICATION OF SUBTITLE IV.—(1) Subtitle IV of this title applies to Amtrak, except for provisions related to the—

(A) regulation of rates;

(B) abandonment or extension of rail lines used only for passenger transportation and the abandonment or extension of operations over those lines;

(C) regulation of routes and service;

(D) discontinuance or change of rail passenger transportation operations; and

(E) issuance of securities or the assumption of an obligation or liability related to the securities of others.

(2) Notwithstanding this subsection—

(A) sections 10721–10724 of this title apply to Amtrak;

(B) in markets in which transportation provided by Amtrak is competitive with other carriers on fares and total trip times, the Administrator of General Services shall include Amtrak in the contract air program of the Administrator; and

(C) on application of an adversely affected motor carrier, the Interstate Commerce Commission under any provision of subtitle IV of this title applicable to a carrier subject to subchapter I of chapter 105 of this title may hear a complaint about an unfair or predatory rate or marketing practice of Amtrak for a route or service operating at a loss.

(d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—Laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a common carrier subject to subchapter I of chapter 105 of this title apply to Amtrak.

(e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—Section 552 of title 5, this part, and, to the extent consistent with this part, the District of Columbia Business Corporation Act (ch. 269, 68 Stat. 177) apply to Amtrak.

(f) LAWS GOVERNING LEASES AND CONTRACTS.—The laws of the District of Columbia govern leases and contracts of Amtrak, regardless of where they are executed.

(g) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State or other law related to rates, routes, or service does not apply to Amtrak in connection with rail passenger transportation.

(h) NONAPPLICATION OF PAY PERIOD LAWS.—A State or local law related to pay periods or days for payment of employees does not apply to Amtrak. Except when otherwise provided under a collective bargaining agreement, an employee of Amtrak shall be paid at least as frequently as the employee was paid on October 1, 1979.

(i) NONAPPLICATION OF LAWS ON JOINT USE OR OPERATION OF FACILITIES AND EQUIPMENT.—Prohibitions of law applicable to an agreement for the joint use or operation of facilities and equipment necessary to provide quick and efficient rail passenger transportation do not apply to a person making an agreement with Amtrak to the extent necessary to allow the person to make and carry out obligations under the agreement.

(j) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection, "additional tax" means a tax or fee—

(A) on the acquisition, improvement, or ownership of personal property by Amtrak; and

(B) on real property, except a tax or fee on the acquisition of real property or on the value of real property not attributable to improvements made by Amtrak.

(2) Amtrak is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or structures used to provide rail passenger transportation.

(k) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—(1) Amtrak or a rail carrier subsidiary of Amtrak is exempt from a tax or fee imposed by a State, a political subdivision of a State, or a local taxing authority and levied on it after September 30, 1981. However, Amtrak is not exempt from a tax or fee that it was required to pay as of September 10, 1982.

(2) The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this subsection and may grant equitable or declaratory relief requested by Amtrak.

(l) WASTE DISPOSAL.—(1) An intercity rail passenger car manufactured after October 14, 1990, shall be built to provide for the discharge of human waste only at a servicing facility. Amtrak shall retrofit each of its intercity rail passenger cars that was manufactured after May 1, 1971, and before October 15, 1990, with a human waste disposal system that provides for the discharge of human waste only at a servicing facility. Subject to appropriations—

(A) the retrofit program shall be completed not later than October 15, 1996; and

(B) a car that does not provide for the discharge of human waste only at a servicing facility shall be removed from service after that date.

(2) Section 361 of the Public Health Service Act (42 U.S.C. 264) and other laws of the United States, States, and local governments do not apply to waste disposal from rail carrier vehicles operated in intercity rail passenger transportation. The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this paragraph and may grant equitable or declaratory relief requested by Amtrak.

§24302. Board of directors

(a) COMPOSITION AND TERMS.—(1) The board of directors of Amtrak is composed of the following 9 directors, each of whom must be a citizen of the United States:

(A) the Secretary of Transportation.

(B) the President of Amtrak.

(C) 3 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, as follows:

(i) one individual selected from a list of 3 qualified individuals submitted by the Railway Labor Executives Association.

(ii) one chief executive officer of a State selected from among the chief executive officers of States with an interest in rail transportation. The chief executive officer may select an individual to act as the officer's representative at board meetings.

(iii) one individual selected as a representative of business with an interest in rail transportation.

(D) 2 individuals selected by the President of the United States from a list of names consisting of one individual nominated by each commuter authority for which Amtrak Commuter provides commuter rail passenger transportation under section 24505 of this title and one individual nominated by each commuter authority in the region (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) that provides its own commuter rail passenger transportation or makes a contract with an operator (except Amtrak Commuter), except that—

(i) one of the individuals selected must have been nominated by a commuter authority for which Amtrak Commuter provides commuter rail transportation; or

(ii) if Amtrak Commuter does not provide commuter rail passenger transportation for any authority, the 2 individuals shall be selected from a list of 5 individuals submitted by commuter authorities providing transportation over rail property of Amtrak.

(E) 2 individuals selected by the holders of the preferred stock of Amtrak.

(2) An individual appointed under paragraph (1)(C) of this subsection serves for 4 years or until the individual's successor is appointed and qualified. Not more than 2 individuals appointed under paragraph (1)(C) may be members of the same political party.

(3) An individual selected under paragraph (1)(D) of this subsection serves for 2 years or until the individual's successor is selected.

(4) An individual selected under paragraph (1)(E) of this subsection serves for one year or until the individual's successor is selected.

(5) The President of Amtrak serves as Chairman of the Board.

(6) The Secretary may be represented at a meeting of the board only by the Deputy Secretary of Transportation, the Administrator of the Federal Railroad Administration, or the General Counsel of the Department of Transportation.

(b) CUMULATIVE VOTING.—The articles of incorporation of Amtrak shall provide for cumulative voting for all stockholders.

(c) CONFLICTS OF INTEREST.—When serving on the board, a director appointed by the President of the United States may not have—

(1) a financial or employment relationship with a rail carrier; and

(2) a significant financial relationship or an employment relationship with a person competing with Amtrak in providing passenger transportation.

(d) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to $300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

(f) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.

§24303. Officers

(a) APPOINTMENT AND TERMS.—Amtrak has a President and other officers that are named and appointed by the board of directors of Amtrak. An officer of Amtrak must be a citizen of the United States. Officers of Amtrak serve at the pleasure of the board.

(b) PAY.—The board may fix the pay of the officers of Amtrak. An officer may not be paid more than the general level of pay for officers of rail carriers with comparable responsibility.

(c) CONFLICTS OF INTEREST.—When employed by Amtrak, an officer may not have a financial or employment relationship with another rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a complete public disclosure of the holdings and does not participate in any decision directly affecting the rail carrier.

§24304. Capitalization

(a) STOCK.—Amtrak may have outstanding one issue of common stock and one issue of preferred stock. Each type of stock is eligible for a dividend. The articles of incorporation of Amtrak shall provide that—

(1) each type of stock must be fully paid and nonassessable;

(2) common stock has a par value of $10 a share; and

(3) preferred stock has a par value of $100 a share.

(b) LIMITATIONS ON OWNERSHIP AND VOTING.—(1) A rail carrier or person controlling a rail carrier—

(A) may not hold preferred stock of Amtrak; and

(B) may vote not more than one-third of the total number of shares of outstanding common stock of Amtrak.

(2) Additional common stock owned by a rail carrier or person controlling a rail carrier is deemed to be not outstanding for voting and quorum purposes.

(c) PREFERRED STOCK DIVIDENDS AND LIQUIDATION PREFERENCES.—The articles of incorporation of Amtrak shall provide that—

(1) its preferred stock has a cumulative dividend of at least 6 percent a year;

(2) if a dividend on the preferred stock is not declared and paid or set aside for payment, the deficiency shall be declared and paid or set aside for payment before a dividend or other distribution is made on its common stock;

(3) the preferred stock has a liquidation preference over the common stock entitling holders of preferred stock to receive a liquidation payment of at least par value plus all accrued unpaid dividends before a liquidation payment is made to holders of common stock; and

(4) the preferred stock may be converted to common stock.

(d) ISSUANCE OF PREFERRED STOCK TO SECRETARY.—(1) Not later than 30 days after the close of each fiscal quarter, Amtrak shall issue to the Secretary of Transportation preferred stock equal, to the nearest whole share, to the amount paid to Amtrak under section 24105 of this title during the quarter.

(2) Preferred stock issued under this subsection or section 304(c)(1) of the Rail Passenger Service Act is deemed to be issued on the date Amtrak receives the amounts for which the stock is issued.

(e) TAXES AND FEES ON PREFERRED STOCK.—A tax or fee applies to preferred stock issued under this section only if specifically prescribed by Congress.

(f) NONVOTING CERTIFICATES OF INDEBTEDNESS.—Amtrak may issue nonvoting certificates of indebtedness, except that an obligation with a liquidation interest superior to preferred stock issued to the Secretary or secured by a lien on property of Amtrak may be incurred when preferred stock issued to the Secretary is outstanding only if the Secretary consents.

(g) INSPECTION RIGHTS.—Stockholders of Amtrak have the rights of inspecting and copying set forth in section 45(b) of the District of Columbia Business Corporation Act (ch. 269, 68 Stat. 197) regardless of the amount of stock they hold.

§24305. General authority

(a) ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.—(1) Amtrak may acquire, operate, maintain, and make contracts for the operation and maintenance of equipment and facilities necessary for intercity and commuter rail passenger transportation, the transportation of mail and express, and auto-ferry transportation.

(2) Amtrak shall operate and control directly, to the extent practicable, all aspects of the rail passenger transportation it provides.

(b) MAINTENANCE AND REHABILITATION.—Amtrak may maintain and rehabilitate rail passenger equipment and shall maintain a regional maintenance plan that includes—

(1) a review panel at the principal office of Amtrak consisting of members the President of Amtrak designates;

(2) a systemwide inventory of spare equipment parts in each operational region;

(3) enough maintenance employees for cars and locomotives in each region;

(4) a systematic preventive maintenance program;

(5) periodic evaluations of maintenance costs, time lags, and parts shortages and corrective actions; and

(6) other elements or activities Amtrak considers appropriate.

(c) MISCELLANEOUS AUTHORITY.—Amtrak may—

(1) make and carry out appropriate agreements;

(2) transport mail and express and shall use all feasible methods to obtain the bulk mail business of the United States Postal Service;

(3) improve its reservation system and advertising;

(4) provide food and beverage services on its trains only if revenues from the services each year at least equal the cost of providing the services;

(5) conduct research, development, and demonstration programs related to the mission of Amtrak; and

(6) buy or lease rail rolling stock and develop and demonstrate improved rolling stock.

(d) THROUGH ROUTES AND JOINT FARES.—(1) Establishing through routes and joint fares between Amtrak and other intercity rail passenger carriers and motor carriers of passengers is consistent with the public interest and the transportation policy of the United States. Congress encourages establishing those routes and fares.

(2) Amtrak may establish through routes and joint fares with any domestic or international motor carrier, air carrier, or water carrier.

(e) RAIL POLICE.—Amtrak may employ rail police to provide security for rail passengers and property of Amtrak. Rail police employed by Amtrak who have complied with a State law establishing requirements applicable to rail police or individuals employed in a similar position

may be employed without regard to the law of another State containing those requirements.

(f) DOMESTIC BUYING PREFERENCES.—(1) In this subsection, "United States" means the States, territories, and possessions of the United States and the District of Columbia.

(2) Amtrak shall buy only—

(A) unmanufactured articles, material, and supplies mined or produced in the United States; or

(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.

(3) Paragraph (2) of this subsection applies only when the cost of those articles, material, or supplies bought is at least $1,000,000.

(4) On application of Amtrak, the Secretary of Transportation may exempt Amtrak from this subsection if the Secretary decides that—

(A) for particular articles, material, or supplies—

(i) the requirements of paragraph (2) of this subsection are inconsistent with the public interest;

(ii) the cost of imposing those requirements is unreasonable; or

(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or

(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.

§24306. Mail, express, and auto-ferry transportation

(a) ACTIONS TO INCREASE REVENUES.—Amtrak shall take necessary action to increase its revenues from the transportation of mail and express. To increase its revenues, Amtrak may provide auto-ferry transportation as part of the basic passenger transportation authorized by this part. When requested by Amtrak, a department, agency, or instrumentality of the United States Government shall assist in carrying out this section.

(b) AUTHORITY OF OTHERS TO PROVIDE AUTO-FERRY TRANSPORTATION.—(1) A person primarily providing auto-ferry transportation and any other person not a rail carrier may provide auto-ferry transportation over any route under a certificate issued by the Interstate Commerce Commission if the Commission finds that the auto-ferry transportation—

(A) will not impair the ability of Amtrak to reduce its losses or increase its revenues; and

(B) is required to meet the public demand.

(2) A rail carrier that has not made a contract with Amtrak to provide rail passenger transportation may provide auto-ferry transportation over its own rail lines.

(3) State and local laws and regulations that impair the provision of auto-ferry transportation do not apply to Amtrak or a rail carrier providing auto-ferry transportation. A rail carrier may not refuse to participate with Amtrak in providing auto-ferry transportation because a State or local law or regulation makes the transportation unlawful.

§24307. Special transportation

(a) REDUCED FARE PROGRAM.—Amtrak shall maintain a reduced fare program for the following:

(1) individuals at least 65 years of age.

(2) individuals (except alcoholics and drug abusers) who—

(A) have a physical or mental impairment that substantially limits a major life activity of the individual;

(B) have a record of an impairment; or

(C) are regarded as having an impairment.

(b) ACTIONS TO ENSURE ACCESS.—Amtrak may act to ensure access to intercity transportation for elderly or handicapped individuals on passenger trains operated by or for Amtrak. That action may include—

(1) acquiring special equipment;

(2) conducting special training for employees;

(3) designing and acquiring new equipment and facilities;

(4) eliminating barriers in existing equipment and facilities to comply with the highest standards of design, construction, and alteration of property to accommodate elderly and handicapped individuals; and

(5) providing special assistance to elderly and handicapped individuals when getting on and off trains and in terminal areas.

(c) EMPLOYEE TRANSPORTATION.—(1) In this subsection, "rail carrier employee" means—

(A) an active full-time employee of a rail carrier or terminal company and includes an employee on furlough or leave of absence;

(B) a retired employee of a rail carrier or terminal company; and

(C) a dependent of an employee referred to in clause (A) or (B) of this paragraph.

(2) Amtrak shall ensure that a rail carrier employee eligible for free or reduced-rate rail transportation on April 30, 1971, under an agreement in effect on that date is eligible, to the greatest extent practicable, for free or reduced-rate intercity rail passenger transportation provided by Amtrak under this part, if space is available, on terms similar to those available on that date under the agreement. However, Amtrak may apply to all rail carrier employees eligible to receive free or reduced-rate transportation under any agreement a single systemwide schedule of terms that Amtrak decides applied to a majority of employees on that date under all those agreements. Unless Amtrak and a rail carrier make a different agreement, the carrier shall reimburse Amtrak at the rate of 25 percent of the systemwide average monthly yield of each revenue passenger-mile. The reimbursement is in place of costs Amtrak incurs related to free or reduced-rate transportation, including liability related to travel of a rail carrier employee eligible for free or reduced-rate transportation.

(3) This subsection does not prohibit the Interstate Commerce Commission from ordering retroactive relief in a proceeding begun or reopened after October 1, 1981.

§24308. Use of facilities and providing services to Amtrak

(a) GENERAL AUTHORITY.—(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2)(A) If the parties cannot agree and if the Interstate Commerce Commission finds it necessary to carry out this part, the Commission shall—

(i) order that the facilities be made available and the services provided to Amtrak; and

(ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Commission shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.

(C) The Commission shall decide the dispute not later than 90 days after Amtrak submits the dispute to the Commission.

(3) Amtrak's right to use the facilities or have the services provided is conditioned on payment of the compensation. If the compensation is not paid promptly, the rail carrier or authority entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) OPERATING DURING EMERGENCIES.—To facilitate operation by Amtrak during an emergency, the Commission, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Commission then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) PREFERENCE OVER FREIGHT TRANSPORTATION.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Secretary of Transportation orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Secretary for relief. If the Secretary, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Secretary shall establish the rights of the carrier and Amtrak on reasonable terms.

(d) ACCELERATED SPEEDS.—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Secretary for an order requiring the carrier to allow the accelerated speeds. The Secretary shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the Secretary shall establish the maximum allowable speeds of Amtrak trains on terms the Secretary decides are reasonable.

(e) ADDITIONAL TRAINS.—(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Secretary for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the record, the Secretary may order the carrier, within 60 days, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times. However, if the Secretary decides not to hold a hearing, the Secretary, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The Secretary shall consider—

(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and

(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the Commission shall decide the dispute under subsection (a) of this section.

§24309. Retaining and maintaining facilities

(a) DEFINITIONS.—In this section—

(1) "facility" means a rail line, right of way, fixed equipment, facility, or real property related to a rail line, right of way, fixed equipment, or facility, including a signal system, passenger station and repair tracks, a station building, a platform, and a related facility, including a water, fuel, steam, electric, and air line.

(2) downgrading a facility means reducing a track classification as specified in the Federal Railroad Administration track safety standards or altering a facility so that the time required for rail passenger transportation to be provided over the route on which a facility is located may be increased.

(b) APPROVAL REQUIRED FOR DOWNGRADING OR DISPOSAL.—A facility of a rail carrier or regional transportation authority that Amtrak used to provide rail passenger transportation on February 1, 1979, may be downgraded or disposed of only after approval by the Secretary of Transportation under this section.

(c) NOTIFICATION AND ANALYSIS.—(1) A rail carrier intending to downgrade or dispose of a facility Amtrak currently is not using to provide transportation shall notify Amtrak of its intention. If, not later than 60 days after Amtrak receives the notice, Amtrak and the carrier do not agree to retain or maintain the facility or to convey an interest in the facility to Amtrak, the carrier may apply to the Secretary for approval to downgrade or dispose of the facility.

(2) After a rail carrier notifies Amtrak of its intention to downgrade or dispose of a facility, Amtrak shall survey population centers with rail passenger transportation facilities to assist in preparing a valid and timely analysis of the need for the facility and shall update the survey as appropriate. Amtrak also shall maintain a system for collecting information gathered in the survey. The system shall collect the information based on geographic regions and on whether the facility would be part of a short haul or long haul route. The survey should facilitate an analysis of—

(A) ridership potential by ascertaining existing and changing travel patterns that would provide maximum efficient rail passenger transportation;

(B) the quality of transportation of competitors or likely competitors;

(C) the likelihood of Amtrak offering transportation at a competitive fare;

(D) opportunities to target advertising and fares to potential classes of riders;

(E) economic characteristics of rail passenger transportation related to the facility and the extent to which the characteristics are consistent with sound economic principles of short haul or long haul rail transportation; and

(F) the feasibility of applying effective internal cost controls to the facility and route served by the facility to improve the ratio of passenger revenue to transportation expenses (excluding maintenance of tracks, structures, and equipment and depreciation).

(d) APPROVAL OF APPLICATION AND PAYMENT OF AVOIDABLE COSTS.—(1) If Amtrak does not object to an application not later than 30 days after it is submitted, the Secretary shall approve the application promptly.

(2) If Amtrak objects to an application, the Secretary shall decide by not later than 180 days after the objection those costs the rail carrier may avoid if it does not have to retain or maintain a facility in the condition Amtrak requests. If Amtrak does not agree by not later than 60 days after the decision to pay the carrier these avoidable costs, the Secretary shall approve the application. When deciding whether to pay a carrier the avoidable costs of retaining or maintaining a facility, Amtrak shall consider—

(A) the potential importance of restoring rail passenger transportation on the route on which the facility is located;

(B) the market potential of the route;

(C) the availability, adequacy, and energy efficiency of an alternate rail line or alternate mode of transportation to provide passenger transportation to or near the places that would be served by the route;

(D) the extent to which major population centers would be served by the route;

(E) the extent to which providing transportation over the route would encourage the expansion of an intercity rail passenger system in the United States; and

(F) the possibility of increased ridership on a rail line that connects with the route.

(e) COMPLIANCE WITH OTHER OBLIGATIONS.—Downgrading or disposing of a facility under this section does not relieve a rail carrier from complying with its other common carrier or legal obligations related to the facility.

§24310. Assistance for upgrading facilities

(a) TO CORRECT DANGEROUS CONDITIONS.—(1) Amtrak or the owner of a facility presenting a danger to the employees, passengers, or property of Amtrak may petition the Secretary of Transportation for assistance to the owner for relocation or other measures undertaken after December 31, 1977, to minimize or eliminate the danger.

(2) The Secretary shall recommend to Congress that Congress authorize amounts for the relocation or other measures if the Secretary decides that—

(A) the facility presents a danger of death or serious injury to an employee or passenger or of serious damage to that property; and

(B) the owner should not be expected to bear the cost of that relocation or other measures.

(b) TO CORRECT STATE AND LOCAL VIOLATIONS.—(1) Amtrak, by itself or jointly with an owner or operator of a rail station Amtrak uses to provide rail passenger transportation, may apply to the Secretary for amounts that may be appropriated under paragraph (2) of this subsection to pay or reimburse expenses incurred after October 1, 1987, related to the station complying with an official notice received before October 1, 1987, from a State or local authority stating that the station violates or allegedly violates the building, construction, fire, electric, sanitation, mechanical, or plumbing code.

(2) Not more than $1,000,000, may be appropriated to the Secretary to carry out paragraph (1) of this subsection. Amounts appropriated under this paragraph remain available until expended.

§24311. Acquiring interests in property by eminent domain

(a) GENERAL AUTHORITY.—(1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property—

(A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or

(B) requested by the Secretary of Transportation in carrying out the Secretary's duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.

(2) Amtrak may exercise the power of eminent domain only if it cannot—

(A) acquire the interest in the property by contract; or

(B) agree with the owner on the purchase price for the interest.

(b) CIVIL ACTIONS.—(1) A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought in the district court of the United States for the judicial district in which the property is located or, if a single piece of property is located in more than one judicial district, in any judicial district in which any piece of the property is located. An interest is condemned and taken by Amtrak for its use when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation for the interest is deposited in the court. The declaration may be filed with the complaint in the action or at any time before judgment. The declaration must contain or be accompanied by—

(A) a statement of the public use for which the interest is taken;

(B) a description of the property sufficient to identify it;

(C) a statement of the interest in the property taken;

(D) a plan showing the interest taken; and

(E) a statement of the amount of money Amtrak estimates is just compensation for the interest.

(2) When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide—

(A) the time by which, and the terms under which, possession of the property is given to Amtrak; and

(B) the disposition of outstanding charges related to the property.

(3) After a hearing, the court shall make a finding on the amount that is just compensation for the interest in the property and enter judgment awarding that amount and interest on it. The rate of interest is 6 percent a year and is computed on the amount of the award less the amount deposited in the court from the date of taking to the date of payment.

(4) On application of a party, the court may order immediate payment of any part of the amount deposited in the court for the compensation to be awarded. If the award is more than the amount received, the court shall enter judgment against Amtrak for the deficiency.

(c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—(1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the Interstate Commerce Commission for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the Commission, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the Commission decides that—

(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.

(2) If the amount of compensation is not determined by the date of the Commission's order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.

(3) Amtrak subsequently may reconvey to a third party an interest conveyed to Amtrak under this subsection or prior comparable provision of law if the Commission decides that the reconveyance will carry out the purposes of this part, regardless of when the proceeding was brought (including a proceeding pending before a United States court on November 28, 1990).

§24312. Labor standards

(a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—(1) Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under section 24308(a), 24701(a), or 24704(c)(2) of this title will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). Amtrak may make such an agreement only after being assured that required labor standards will be maintained on the construction work. Health and safety standards prescribed by the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) apply to all construction work performed under such an agreement, except for construction work performed by a rail carrier.

(2) Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5).

(b) CONTRACTING OUT.—(1) Amtrak may not contract out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak or a rail carrier that provided intercity rail passenger transportation on October 30, 1970, if contracting out results in the layoff of an employee in the bargaining unit.

(2) This subsection does not apply to food and beverage services provided on trains of Amtrak.

§24313. Rail safety system program

In consultation with rail labor organizations, Amtrak shall maintain a rail safety system program for employees working on property owned by Amtrak. The program shall be a model for other rail carriers to use in developing safety programs. The program shall include—

(1) periodic analyses of accident information, including primary and secondary causes;

(2) periodic evaluations of the activities of the program, particularly specific steps taken in response to an accident;

(3) periodic reports on amounts spent for occupational health and safety activities of the program;

(4) periodic reports on reduced costs and personal injuries because of accident prevention activities of the program;

(5) periodic reports on direct accident costs, including claims related to accidents; and

(6) reports and evaluations of other information Amtrak considers appropriate.

§24314. Reports and audits

(a) AMTRAK ANNUAL OPERATIONS REPORT.—Not later than February 15 of each year, Amtrak shall submit to Congress a report that—

(1) for each route on which Amtrak provided intercity rail passenger transportation during the prior fiscal year, includes information on—

(A) ridership;

(B) passenger-miles;

(C) the short-term avoidable profit or loss for each passenger-mile;

(D) the revenue-to-cost ratio;

(E) revenues;

(F) the United States Government subsidy;

(G) the non-Government subsidy; and

(H) on-time performance;

(2) provides relevant information about a decision to pay an officer of Amtrak more than the rate for level I of the Executive Schedule under section 5312 of title 5; and

(3) specifies—

(A) significant operational problems Amtrak identifies; and

(B) proposals by Amtrak to solve those problems.

(b) AMTRAK GENERAL ANNUAL REPORT.—(1) Not later than February 15 of each year, Amtrak shall submit to the President and Congress a complete report of its operations, activities, and accomplishments, including a statement of revenues and expenditures for the prior fiscal year. The report—

(A) shall include a discussion and accounting of Amtrak's success in meeting the goal of section 24902(b) of this title; and

(B) may include recommendations for legislation, including the amount of financial assistance needed for operations and capital improvements, the method of computing the assistance, and the sources of the assistance.

(2) Amtrak may submit reports to the President and Congress at other times Amtrak considers desirable.

(c) SECRETARY'S REPORT ON EFFECTIVENESS OF THIS PART.—The Secretary of Transportation shall prepare a report on the effectiveness of this part in meeting the requirements for a balanced transportation system in the United States. The report may include recommendations for legislation. The Secretary shall include this report as part of the annual report the Secretary submits under section 308(a) of this title.

(d) INDEPENDENT AUDITS.—An independent certified public accountant shall audit the financial statements of Amtrak each year. The audit shall be carried out at the place at which the financial statements normally are kept and under generally accepted auditing standards. A report of the audit shall be included in the report required by subsection (a) of this section.

(e) COMPTROLLER GENERAL AUDITS.—The Comptroller General may conduct performance audits of the activities and transactions of Amtrak. Each audit shall be conducted at the place at which the Comptroller General decides and under generally accepted management principles. The Comptroller General may prescribe regulations governing the audit.

(f) AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL CARRIERS.—Amtrak and, if required by the Comptroller General, a rail carrier with which Amtrak has made a contract for intercity rail passenger transportation shall make available for an audit under subsection (d) or (e) of this section all records and property of, or used by, Amtrak or the carrier that are necessary for the audit. Amtrak and the carrier shall provide facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Amtrak and the carrier may keep all reports and property.

(g) COMPTROLLER GENERAL'S REPORT TO CONGRESS.—The Comptroller General shall submit to Congress a report on each audit, giving comments and information necessary to inform Congress on the financial operations and condition of Amtrak and recommendations related to those operations and conditions. The report also shall specify any financial transaction or undertaking the Comptroller General considers is carried out without authority of law. When the Comptroller General submits a report to Congress, the Comptroller General shall submit a copy of it to the President, the Secretary, and Amtrak at the same time.

CHAPTER 245—AMTRAK COMMUTER

Sec.
24501. Status and applicable laws.
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24506. Certain duties and powers unaffected.

§24501. Status and applicable laws

(a) STATUS.—Amtrak Commuter—

(1) is a wholly-owned subsidiary of Amtrak;

(2) provides by contract commuter rail passenger transportation for a commuter authority with which Amtrak Commuter makes a contract to provide the transportation under this chapter;

(3) has no common carrier obligations to provide rail passenger or rail freight transportation; and

(4) is not a department, agency, or instrumentality of the United States Government.

(b) APPLICATION OF CHAPTERS 105 AND SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—Chapter 105 of this title does not apply to Amtrak Commuter. However, laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a rail carrier providing transportation subject to subchapter I of chapter 105 apply to Amtrak Commuter.

(c) APPLICATION OF CERTAIN ADDITIONAL LAWS.—This part and, to the extent consistent with this part, the District of Columbia Business Corporation Act (ch. 269, 68 Stat. 177) apply to Amtrak Commuter.

(d) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State or other law related to rates, routes, or service in connection with rail passenger transportation does not apply to Amtrak Commuter.

(e) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection, "additional tax" means a tax or fee—

(A) on the acquisition, improvement, or ownership of personal property by Amtrak Commuter; and

(B) on real property, except a tax or fee on the acquisition of real property or on the value of real property not attributable to improvements made by Amtrak Commuter.

(2) Amtrak Commuter is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or structures used to provide rail passenger transportation.

(f) TAX EXEMPTION FOR CERTAIN COMMUTER AUTHORITIES.—A commuter authority with which Amtrak Commuter could have made a contract to provide commuter rail passenger transportation under this chapter but which decided to provide its own rail passenger transportation beginning on January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.

(g) NONAPPLICATION OF AGREEMENTS FOR FINANCIAL SUPPORT AND TRACKAGE RIGHTS.—An agreement under which financial support was provided on January 2, 1974, to a commuter authority to continue rail passenger transportation does not apply to Amtrak Commuter. However, Amtrak and the Consolidated Rail Corporation retain appropriate trackage rights over rail property owned or leased by the authority. Compensation for the rights shall be reasonable.

§24502. Board of directors

(a) COMPOSITION.—The board of directors of Amtrak Commuter is composed of the following directors:

(1) the President of Amtrak Commuter.

(2) one individual from the board of directors of Amtrak selected as a representative of commuter authorities that make contracts with Amtrak Commuter for the operation of commuter rail passenger transportation.

(3) 2 individuals selected by the board of directors of Amtrak.

(4) 2 individuals selected by commuter authorities for which Amtrak Commuter provides commuter rail transportation under this chapter. However, only one individual shall be selected under this clause if Amtrak Commuter provides the transportation for only one authority.

(b) TERMS.—Except as otherwise provided in this section, individuals shall serve for 2 years.

(c) CHAIRMAN.—The board shall select annually one of its members to serve as Chairman.

(d) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to $300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection.

(f) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak Commuter. The bylaws shall be consistent with this part and the articles of incorporation.

§24503. Officers

(a) APPOINTMENT AND TERMS.—Amtrak Commuter has a President and other officers that are named and appointed by the board of directors of Amtrak Commuter. An officer of Amtrak Commuter must be a citizen of the United States. Officers of Amtrak Commuter serve at the pleasure of the board.

(b) PAY.—The board may fix the pay of the officers of Amtrak Commuter. An officer may be paid not more than the general level of pay for officers of rail carriers with comparable responsibility.

(c) CONFLICTS OF INTEREST.—When employed by Amtrak Commuter, an officer may not have a financial or employment relationship with a rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a complete public disclosure of the holdings and does not participate in any decision directly affecting the rail carrier.

§24504. General authority

(a) GENERAL.—Amtrak Commuter may—

(1) acquire, operate, maintain, and make contracts for the operation of equipment and facilities necessary for commuter rail passenger transportation;

(2) conduct research and development related to the mission of Amtrak Commuter; and

(3) issue common stock to Amtrak.

(b) OPERATION AND CONTROL.—To the extent consistent with this part and with an agreement with a commuter authority, Amtrak Commuter shall operate and control all aspects of the commuter rail passenger transportation it provides.

(c) AGREEMENT TO AVOID DUPLICATING EMPLOYEE FUNCTIONS.—To the maximum extent practicable, Amtrak Commuter and Amtrak shall make an agreement that avoids duplicating employee functions and voluntarily establishes a consolidated work force.

§24505. Commuter rail passenger transportation

(a) GENERAL AUTHORITY.—Amtrak Commuter—

(1) shall provide commuter rail passenger transportation that the Consolidated Rail Corporation was obligated to provide on August 13, 1981, under section 303(b)(2) or 304(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(2), 744(e)); and

(2) may provide other commuter rail passenger transportation if the commuter authority for which the transportation will be provided offers to provide a commuter rail passenger transportation payment equal to the—

(A) avoidable costs of providing the transportation (including the avoidable cost of necessary capital improvements) and a reasonable return on the value; less

(B) revenue attributable to the transportation.

(b) OFFER REQUIREMENTS.—(1) A commuter authority making an offer under subsection (a)(2) of this section shall—

(A) show that it has obtained access to all rail property necessary to provide the additional commuter rail passenger transportation; and

(B) make the offer according to regulations the Rail Services Planning Office prescribes under section 10362(b)(5)(A) and (6) of this title.

(2) The Office may revise and update the regulations when necessary to carry out this section.

(c) ADDITIONAL EMPLOYEE REQUIREMENTS.—Additional employee requirements shall be met through existing seniority arrangements agreed to in the implementing agreement negotiated under section 508 of the Rail Passenger Service Act.

(d) WHEN OBLIGATION DOES NOT APPLY.—Amtrak Commuter is not obligated to provide commuter rail passenger transportation if a commuter authority provides the transportation or makes a contract under which a person, except Amtrak Commuter, will provide the transportation. When appropriate, Amtrak Commuter shall give the authority or person access to the rail property needed to provide the transportation.

(e) DISCONTINUANCE OF COMMUTER RAIL PASSENGER TRANSPORTATION.—(1) Amtrak Commuter may discontinue commuter rail passenger transportation provided under this section on 60 days' notice if—

(A) a commuter authority does not offer a commuter rail passenger transportation payment under subsection (a)(2) of this section; or

(B) a payment is not paid when due.

(2) The Office shall prescribe regulations on the necessary contents of the notice required under this subsection.

(f) COMPENSATION FOR RIGHT-OF-WAY RELATED COSTS.—Compensation by a commuter authority to Amtrak or Amtrak Commuter for right-of-way related costs for transportation over property Amtrak owns shall be determined under a method the Interstate Commerce Commission establishes under section 1163 of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1111) or to which the parties agree.

(g) APPLICATION OF OTHER LAWS.—All laws related to commuter rail passenger transportation apply to a commuter authority providing commuter rail passenger transportation under this section.

§24506. Certain duties and powers unaffected

This chapter does not affect a duty or power of the Consolidated Rail Corporation or its successor and any bi-state commuter authority under an agreement, lease, or contract under which property was conveyed to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

CHAPTER 247—AMTRAK ROUTE SYSTEM

Sec.
24701. Operation of basic system.
24702. Improving rail passenger transportation.
24703. Route and service criteria.
24704. Transportation requested by States, authorities, and other persons.
24705. Additional qualifying routes.
24706. Discontinuance of transportation.
24707. Cost and performance review.
24708. Special commuter transportation.
24709. International transportation.

§24701. Operation of basic system

(a) BY AMTRAK.—Amtrak shall provide intercity rail passenger transportation within the basic system unless the transportation is provided by—

(1) a rail carrier with which Amtrak did not make a contract under section 401(a) of the Rail Passenger Service Act; or

(2) a regional transportation authority under contract with Amtrak.

(b) BY OTHERS WITH CONSENT OF AMTRAK.—Except as provided in section 24306 of this title, a person may provide intercity rail passenger transportation over a route over which Amtrak provides scheduled intercity rail passenger transportation under a contract under this section or section 401(a) of the Act only with the consent of Amtrak.

§24702. Improving rail passenger transportation

(a) PLAN TO IMPROVE TRANSPORTATION.—Amtrak shall continue to carry out its plan, submitted under section 305(f) of the Rail Passenger Service Act, to improve intercity rail passenger transportation provided in the basic system. The plan shall include—

(1) a zero-based assessment of all operating practices;

(2) changes to achieve the minimum use of employees consistent with safe operations and adequate transportation;

(3) a systematic program for achieving the greatest ratio of train size to passenger demand;

(4) a systematic program to reduce trip time in the basic system;

(5) establishing training programs to achieve on-time departures;

(6) establishing priorities for passenger trains over freight trains;

(7) adjusting the buying and pricing of food and beverages so that food and beverage services ultimately will be profitable;

(8) cooperative marketing opportunities between Amtrak and governmental authorities that have intercity rail passenger transportation; and

(9) cooperative marketing campaigns sponsored by Amtrak and the Secretary of Energy, the Administrator of the Federal Highway Administration, and the Administrator of the Environmental Protection Agency.

(b) STATE AND LOCAL SPEED RESTRICTIONS.—Amtrak shall—

(1) identify any speed restriction a State or local government imposes on a train of Amtrak that Amtrak decides impedes Amtrak from achieving high-speed intercity rail passenger transportation; and

(2) consult with that State or local government—

(A) to evaluate alternatives to the speed restriction, considering the local safety hazard that is the basis for the restriction; and

(B) to consider modifying or eliminating the restriction to allow safe operation at higher speeds.

(c) ROUTES CONNECTING CORRIDORS.—Amtrak shall begin or improve appropriate rail passenger transportation on a route between corridors that Amtrak decides is justified because it will increase ridership on trains of Amtrak on the route and in the connecting corridors.

§24703. Route and service criteria

(a) ROUTE DISCONTINUANCES AND ADDITIONS.—Except as provided in this part, route discontinuances and route additions shall comply with the route and service criteria.

(b) CONGRESSIONAL REVIEW OF CRITERIA AMENDMENTS.—(1) Amtrak shall submit to Congress a draft of an amendment to the route and service criteria when Amtrak decides an amendment is appropriate. The amendment is effective at the end of the first period of 120 calendar days of continuous session of Congress after it is submitted unless there is enacted into law during the period a joint resolution stating Congress does not approve the amendment.

(2) In this subsection—

(A) a continuous session of Congress is broken only by an adjournment sine die; and

(B) the 120-day period does not include days on which either House is not in session because of adjournment of more than 3 days to a day certain.

(c) NONAPPLICATION.—The route and service criteria do not apply to—

(1) increasing or, because of construction schedules or other temporary disruptive facts or seasonal fluctuations in ridership, decreasing the number of trains on an existing route or a part of an existing route or on a route on which additional trains are being tested;

(2) carrying out the recommendations developed under section 4 of the Amtrak Improvement Act of 1978;

(3) rerouting transportation between major population centers on an existing route; or

(4)(A) modifying transportation operations under section 24707(a) of this title; and

(B) modifying the route system or discontinuing transportation under section 24707(b) of this title.

§24704. Transportation requested by States, authorities, and other persons

(a) APPLICATIONS TO BEGIN OR KEEP TRANSPORTATION.—(1) A State, a regional or local authority, or another person may apply to Amtrak and request Amtrak to provide rail passenger transportation or keep any part of a route, a train, or transportation that Amtrak intends to discontinue under section 24706(a) or (b) or 24707(a) or (b) of this title. An application shall—

(A) assure Amtrak that the State, authority, or person has sufficient resources to meet its share of the cost of the transportation for the time the transportation will be provided;

(B) contain a market analysis acceptable to Amtrak to ensure that there is adequate demand for the transportation; and

(C) commit the State, authority, or person to provide at least 45 percent of the short term avoidable loss of providing the transportation the first year the transportation is provided and at least 65 percent of the short term avoidable loss each of the following years, and at least 50 percent of associated capital costs each year the transportation is provided.

(2) An application submitted by more than one State shall be considered in the same way as an application submitted by one State, without it being necessary for each State to comply with paragraph (1) of this subsection.

(b) ACTIONS ON APPLICATIONS.—(1) Amtrak shall review each application submitted under subsection (a) of this section to decide whether—

(A) the application complies with subsection (a); and

(B) there is a reasonable probability that Amtrak can provide the transportation from available resources.

(2) Amtrak may make an agreement with an applicant under this section to begin or keep the transportation if Amtrak decides that the transportation can be provided with resources available to Amtrak. An agreement may be renewed for additional periods of not more than 2 years each.

(c) SELECTING AMONG COMPETING APPLICATIONS.—If more than one application is made for transportation consistent with the requirements of subsection (a) of this section, but all the transportation applied for cannot be provided with the available resources of Amtrak, the board of directors of Amtrak shall select the transportation that best serves the public interest and can be provided with the available resources of Amtrak.

(d) FARE INCREASES.—(1) Before increasing a fare applicable to transportation provided under subsection (b)(2) of this section by more than 5 percent during a 6-month period, Amtrak shall consult with officials of each State affected by the increase and explain why the increase is necessary.

(2) Except as provided in paragraph (3) of this subsection, a fare increase described in paragraph (1) of this subsection takes effect 90 days after Amtrak first consults with the affected States. However, not later than 30 days after the first consultation, a State may submit proposals to Amtrak for reducing costs and increasing revenues of the transportation. Amtrak shall consider the proposals in deciding how much of the proposed increase shall go into effect.

(3)(A) Amtrak may increase a fare without regard to the restrictions of this subsection during—

(i) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; or

(ii) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(B) Amtrak shall notify each affected State of an increase under subparagraph (A) of this paragraph as soon as possible after Amtrak decides to increase a fare.

(e) DETERMINING LOSS, COSTS, AND REVENUES.—After consulting with officials of each State contributing to providing transportation under subsection (b)(2) of this section, the board shall establish the basis for determining short term avoidable loss and associated capital costs of, and revenues from, the transportation. Amtrak shall give State officials the basis for determining the loss, cost, and revenue for each route on which transportation is provided under subsection (b)(2).

(f) AVAILABILITY OF AMOUNTS.—Amounts provided by Amtrak under an agreement with an applicant under subsection (b)(2) of this section that are allocated for associated capital costs remain available until expended.

(g) ADVERTISING AND PROMOTION.—At least 2 percent but not more than 5 percent of the revenue generated by transportation provided under subsection (b)(2) of this section shall be used for advertising and promotion at the local level.

§24705. Additional qualifying routes

(a) ROUTES RECOMMENDED FOR DISCONTINUANCE.—(1) To maintain a national intercity rail passenger system in the United States and if a reduction in operating expenses can be achieved, Amtrak shall provide rail passenger transportation over each route the Secretary of Transportation recommended be discontinued under section 4 of the Amtrak Improvement Act of 1978 and may restructure a route to serve a major population center as an ending place or principal intermediate place. Transportation over a long distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger-mile on the route was not more than 7 cents. Transportation over a short distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger-mile on the route was not more than 9 cents.

(2) For all routes, Amtrak shall calculate short term avoidable loss for each passenger-mile based on consistently defined factors. Calculations shall be based on the most recent available statistics for a 90-day period, except that Amtrak may use historical information adjusted to reflect the most recent available statistics.

(b) DEFERRAL OF SECRETARY'S RECOMMENDATIONS.—(1) To provide equivalent or improved transportation consistent with the goals of section 4(a) of the Act, Amtrak may defer carrying out a recommendation of the Secretary under section 4 of the Act that requires providing transportation over a rail line not used in intercity rail passenger transportation on May 24, 1979, requires using a new facility, or requires making a new labor agreement, until any necessary capital improvements are made in the line or facility or the agreement is made.

(2) Notwithstanding another law and the route and service criteria, during the period a decision of the Secretary under section 4 of the Act is deferred, Amtrak shall provide substitute transportation over existing routes recommended for restructuring and over other existing feasible routes. Except for transportation concentrating on commuter ridership over a short haul route, transportation provided under this paragraph may be provided only if the route complies with subsection (a) of this section, adjusted to reflect constant 1979 dollars.

(c) SHORT HAUL DEMONSTRATION ROUTES.—Notwithstanding this part, Amtrak may provide short haul trains on additional routes totaling not more than 200 miles that link at least 2 major metropolitan areas—

(1) on a demonstration basis to establish the feasibility and benefits of the transportation; and

(2) to the extent available resources allow.

(d) ROUTES DISCONTINUED BY RAIL CARRIERS.—Amtrak may undertake to provide rail passenger transportation between places served by a rail carrier filing a notice of discontinuance under section 10908 or 10909 of this title.

§24706. Discontinuance of transportation

(a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at least 90 days before transportation is discontinued under section 24704(b) or 24707(a) or (b) of this title, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share the cost of any part of the train, route, or transportation to be discontinued.

(2) Notice of the discontinuance of transportation under section 24704(b) or 24707(a) or (b) of this title shall be posted in all stations served by the train to be discontinued at least 14 days before the discontinuance.

(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may discontinue transportation under section 24704(b) or 24707(a) or (b) of this title during—

(A) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; and

(B) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(2) Amtrak shall notify each affected State or regional or local transportation authority of a discontinuance under this subsection as soon as possible after Amtrak decides to discontinue the transportation.

(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1)(A) In this subsection, "discontinuance of intercity rail passenger transportation" includes—

(i) a discontinuance of services provided by a rail carrier under a facility or service agreement under section 24308(a) of this title because of a modification or ending of the agreement or because Amtrak begins providing those services; and

(ii) an adjustment in frequency, or seasonal suspension of intercity rail passenger trains that causes a temporary suspension of transportation, only if the adjustment or suspension reduces passenger train operations on a particular route to fewer than 3 round trips a week at any time during a calendar year.

(B) Paragraph (1)(A)(ii) of this subsection applies only to an agreement to carry out this subsection involving Amtrak and its employees.

(2) Amtrak or a rail carrier (including a terminal company) shall provide fair and equitable arrangements to protect the interests of its employees affected by a discontinuance of intercity rail passenger transportation. Arrangements shall include—

(A) the preservation of rights, privileges, and benefits (including continuation of pension

rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of employees against a worsening of their positions related to employment;

(D) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(E) paid training and retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

(4) A contract under this chapter shall specify the terms of protective arrangements.

(5) This subsection does not impose on Amtrak an obligation of a rail carrier related to a right, privilege, or benefit earned by an employee because of previous service performed for the carrier.

(6) This subsection does not apply to Amtrak Commuter.

§24707. Cost and performance review

(a) ROUTE REVIEWS.—Amtrak shall review annually each route in the basic system to decide if the route meets the long distance or short distance route criterion, as appropriate, under section 24705(a)(1) of this title, adjusted to reflect constant 1979 dollars. The review shall include an evaluation of the potential market demand for, and the cost of providing transportation on, a part of the route and an alternative route. Amtrak shall submit the results of the review to the House of Representatives, the Senate, and the Secretary of Transportation. If Amtrak decides that a route will not meet the criterion under section 24705(a)(1), as adjusted, Amtrak shall modify or discontinue rail passenger transportation operations on the route so that it will meet the criterion.

(b) FINANCIAL REQUIREMENTS AND PERFORMANCE STANDARDS.—Not later than 30 days after the beginning of each fiscal year, Amtrak shall evaluate the financial requirements for operating the basic system and the progress in achieving the system-wide performance standards prescribed under this part during the fiscal year. If Amtrak decides amounts available for the fiscal year are not enough to meet estimated operating costs, or if Amtrak estimates it cannot meet the performance standards, Amtrak shall act to reduce costs and improve performance. Action under this subsection shall be designed to continue the maximum level of transportation practicable, including—

(1) changing the frequency of transportation;

(2) increasing fares;

(3) reducing the cost of sleeper car and dining car service on certain routes;

(4) increasing the passenger capacity of cars used on certain routes; and

(5) modifying the route system or discontinuing transportation over routes, considering short term avoidable loss and the number of passengers served on those routes.

(c) COST LIMITATIONS AND REVENUE GOALS.—Annual costs of Amtrak may not be more than amounts, including grants made under section 24105 of this title, contributions of States, regional and local authorities, and other persons, and revenues, available to Amtrak in the fiscal year. Amtrak annually shall set a goal of recovering an amount so that its revenues, including contributions, is at least 61 percent of its costs, except capital costs.

(d) CONDUCTOR REPORTS.—To assess the operational performance of trains, the President of Amtrak may direct the conductor on any train of Amtrak to report to Amtrak any inadequacy of train operation. The report shall be signed by the conductor, contain sufficient information to locate equipment or personnel failures, and be submitted promptly to Amtrak.

§24708. Special commuter transportation

Amtrak shall continue to provide rail passenger transportation provided under section 403(d) of the Rail Passenger Service Act before October 1, 1981, if, after considering estimated fare increases and State and local contributions to the transportation, the transportation meets the short distance route criterion under section 24705(a)(1) of this title, as adjusted. Transportation continued under this section shall be financed consistent with the method of financing in effect on September 30, 1981. If the transportation is not estimated to meet the criterion, as adjusted, Amtrak may modify or discontinue the transportation so that the criterion is met.

§24709. International transportation

Amtrak may develop and operate international intercity rail passenger transportation between the United States and Canada and between the United States and Mexico. The Secretary of the Treasury and the Attorney General, in cooperation with Amtrak, shall maintain, consistent with the effective enforcement of the immigration and customs laws, en route customs inspection and immigration procedures for international intercity rail passenger transportation that will—

(1) be convenient for passengers; and

(2) result in the quickest possible international intercity rail passenger transportation.

CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

Sec.

24901. Definitions.
24902. Goals and requirements.
24903. General authority.
24904. Northeast Corridor Coordination Board.
24905. Note and mortgage.
24906. Transfer taxes and levies and recording charges.
24907. Authorization of appropriations.

§24901. Definitions

In this chapter—

(1) "final system plan" means the final system plan (including additions) adopted by the United States Railway Association under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(2) "Northeast Corridor" means Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island.

(3) "rail carrier" means an express carrier and a rail carrier as defined in section 10102 of this title, including Amtrak.

§24902. Goals and requirements

(a) NORTHEAST CORRIDOR IMPROVEMENT PLAN.—To the extent of amounts appropriated under section 24907 of this title, Amtrak shall carry out a Northeast Corridor improvement program to achieve the following goals:

(1) establish not later than September 30, 1985, regularly scheduled and dependable intercity rail passenger transportation between—

(A) Boston, Massachusetts, and New York, New York, in not more than 3 hours and 40 minutes, including intermediate stops; and

(B) New York, New York, and the District of Columbia, in not more than 2 hours and 40 minutes, including intermediate stops;

(2) improve facilities, under route criteria approved by Congress, on routes to Harrisburg, Pennsylvania, Albany, New York, and Atlantic City, New Jersey, from the Northeast Corridor main line, and to Boston, Massachusetts, and New Haven, Connecticut, from Springfield, Massachusetts, to make those facilities more compatible with improved high-speed transportation provided on the Northeast Corridor main line;

(3) improve nonoperational parts of stations, related facilities, and fencing used in intercity rail passenger transportation;

(4) facilitate improvements in, and usage of, commuter rail passenger, rail rapid transit, and local public transportation, to the extent compatible with clauses (1)-(3) of this subsection and subsections (f) and (h) of this section;

(5) maintain and improve rail freight transportation in or adjacent to the Northeast Corridor and through-freight transportation in the Northeast Corridor, to the extent compatible with clauses (1)-(4) of this subsection and subsections (f) and (h) of this section;

(6) continue and improve passenger radio mobile telephone service on high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, to the extent compatible with clauses (1)-(3) of this subsection and subsections (f) and (h) of this section; and

(7) eliminate to the maximum extent practicable congestion in rail freight and rail passenger transportation at the Baltimore and Potomac Tunnel in Baltimore, Maryland, by rehabilitating and improving the tunnel and the rail lines approaching the tunnel.

(b) MANAGING COSTS AND REVENUES.—Amtrak shall manage its operating costs, pricing policies, and other factors with the goal of having revenues derived each fiscal year from providing intercity rail passenger transportation over the Northeast Corridor route between the District of Columbia and Boston, Massachusetts, equal at least the operating costs of providing that transportation in that fiscal year.

(c) COST SHARING FOR NONOPERATIONAL FACILITIES.—(1) Fifty percent of the cost of improvements under subsection (a)(3) of this section shall be paid by a State, local or regional transportation authority or other responsible party. However, Amtrak may finance entirely a safety-related improvement.

(2) When a part of the cost of improvements under subsection (a)(3) of this section will be paid by a responsible party under paragraph (1) of this subsection, Amtrak may make an agreement with the party under which Amtrak—

(A) shall carry out the improvements with amounts appropriated under section 24907 of this title and the party shall reimburse Amtrak; and

(B) to the extent provided in an appropriation law, may incur obligations for contracts to carry out the improvements in anticipation of reimbursement.

(3) Amounts reimbursed to Amtrak under paragraph (2) of this subsection shall be credited to the appropriation originally charged for the cost of the improvements and are available for further obligation.

(d) PASSENGER RADIO MOBILE TELEPHONE SERVICE.—The President and departments, agencies, and instrumentalities of the United States Government shall assist Amtrak under subsection (a)(6) of this section, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and radio services standards, when the Federal Communications Commission decides the assistance is in the public interest, convenience, and necessity.

(e) PRIORITIES IN SELECTING AND SCHEDULING PROJECTS.—When selecting and scheduling specific projects, Amtrak shall apply the following considerations, in the following order of priority:

(1) Safety-related items should be completed before other items because the safety of the passengers and users of the Northeast Corridor is paramount.

(2) Activities that benefit the greatest number of passengers should be completed before activities involving fewer passengers.

(3) Reliability of intercity rail passenger transportation must be emphasized.

(4) Trip-time requirements of this section must be achieved to the extent compatible with the

priorities referred to in paragraphs (1)-(3) of this subsection.

(5) Improvements that will pay for the investment by achieving lower operating or maintenance costs should be carried out before other improvements.

(6) Construction operations should be scheduled so that the fewest possible passengers are inconvenienced, transportation is maintained, and the on-time performance of Northeast Corridor commuter rail passenger and rail freight transportation is optimized.

(7) Planning should focus on completing activities that will provide immediate benefits to users of the Northeast Corridor.

(f) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.—Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

(g) AUTOMATIC TRAIN CONTROL SYSTEMS.—A train operating on the Northeast Corridor main line or between the main line and Atlantic City shall be equipped with an automatic train control system designed to slow or stop the train in response to an external signal.

(h) HIGH-SPEED TRANSPORTATION.—If practicable, Amtrak shall establish intercity rail passenger transportation in the Northeast Corridor that carries out section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 121).

(i) EQUIPMENT DEVELOPMENT.—Amtrak shall develop economical and reliable equipment compatible with track, operating, and marketing characteristics of the Northeast Corridor, including the capability to meet reliable trip times under section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 121) in regularly scheduled revenue transportation in the Corridor, when the Northeast Corridor improvement program is completed. Amtrak must decide that equipment complies with this subsection before buying equipment with financial assistance of the Government. Amtrak shall submit a request for an authorization of appropriations for production of the equipment.

(j) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT TRANSPORTATION.—(1) Amtrak may make an agreement with a rail freight carrier or a regional transportation authority under which the carrier will carry out an alternate off-corridor routing of rail freight transportation over rail lines in the Northeast Corridor between the District of Columbia and New York metropolitan areas, including intermediate points. The agreement shall be for at least 5 years.

(2) Amtrak shall apply to the Interstate Commerce Commission for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the Commission finds that approval is necessary to carry out this chapter, the Commission shall approve the application and related agreements not later than 90 days after receiving the application.

(3) If an agreement is not made under paragraph (1) of this subsection, Amtrak, with the consent of the other parties, may apply to the Interstate Commerce Commission. Not later than 90 days after the application, the Commission shall decide on the terms of an agreement if it decides that doing so is necessary to carry out this chapter. The decision of the Commission is binding on the other parties.

(k) COORDINATION.—(1) The Secretary of Transportation shall coordinate—

(A) transportation programs related to the Northeast Corridor to ensure that the programs are integrated and consistent with the Northeast Corridor improvement program; and

(B) amounts from departments, agencies, and instrumentalities of the Government to achieve urban redevelopment and revitalization in the vicinity of urban rail stations in the Northeast Corridor served by intercity and commuter rail passenger transportation.

(2) If the Secretary finds significant noncompliance with this section, the Secretary may deny financing to a noncomplying program until the noncompliance is corrected.

(l) COMPLETION.—Amtrak shall give the highest priority to completing the program.

§24903. General authority

(a) GENERAL.—To carry out this part and the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—

(1) acquire, maintain, and dispose of any interest in property used to provide improved high-speed rail transportation under section 24902 of this title;

(2) provide for rail freight, intercity rail passenger, and commuter rail passenger transportation over property acquired under this section;

(3) improve rail rights of way between Boston, Massachusetts, and the District of Columbia (including the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to achieve the goals of section 24902 of this title of providing improved high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, and intermediate intercity markets;

(4) acquire, build, improve, and install passenger stations, communications and electric power facilities and equipment, public and private highway and pedestrian crossings, and other facilities and equipment necessary to provide improved high-speed rail passenger transportation over rights of way improved under clause (3) of this subsection;

(5) make agreements with other carriers and commuter authorities to grant, acquire, or make arrangements for rail freight or commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.);

(6) appoint a general manager of the Northeast Corridor improvement program; and

(7) make agreements with telecommunications common carriers, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), to continue existing, and establish new and improved, passenger radio mobile telephone service in the high-speed rail passenger transportation area specified in section 24902(a) (1) and (2) of this title.

(b) COMPENSATORY AGREEMENTS.—Rail freight and commuter rail passenger transportation provided under subsection (a)(2) of this section shall be provided under compensatory agreements with the responsible carriers.

(c) COMPENSATION FOR TRANSPORTATION OVER CERTAIN RIGHTS OF WAY AND FACILITIES.—(1) An agreement under subsection (a)(5) of this section shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties do not agree, the Interstate Commerce Commission shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The Commission shall assign to a rail freight carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

(3) This subsection does not prevent the parties from making an agreement under subsection (a)(5) of this section after the Commission makes a decision under this subsection.

§24904. Northeast Corridor Coordination Board

(a) COMPOSITION.—The Northeast Corridor Coordination Board is composed of the following members:

(1) one individual from each commuter authority (as defined in section 1135(a)(3) of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1104(3))) that provides or makes a contract to provide commuter rail passenger transportation over the main line of the Northeast Corridor.

(2) 2 individuals selected by Amtrak.

(3) one individual selected by the Consolidated Rail Corporation.

(b) POLICY RECOMMENDATIONS.—The Board shall recommend to Amtrak—

(1) policies that ensure equitable access to the Northeast Corridor, considering the need for equitable access by commuter and intercity rail passenger transportation and the requirements of section 24308(c) of this title; and

(2) equitable policies for the Northeast Corridor related to—

(A) dispatching;

(B) public information;

(C) maintaining equipment and facilities;

(D) major capital facility investments; and

(E) harmonizing equipment acquisitions, rates, and schedules.

(c) RECOMMENDATIONS FOR ACTION.—The Board may recommend to the board of directors and President of Amtrak action necessary to resolve differences on providing transportation, except for facilities and transportation matters under section 24308(a) or 24903(a)(5) and (c) of this title.

§24905. Note and mortgage

(a) GENERAL AUTHORITY.—To secure amounts expended by the United States Government to acquire and improve rail property designated under section 206(c)(1) (C) and (D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1) (C) and (D)), the Secretary of Transportation may obtain a note of indebtedness from, and make a mortgage agreement with, Amtrak to establish a mortgage lien on the property for the Government. The note and mortgage may not supersede section 24903 of this title.

(b) EXEMPTIONS FROM LAWS AND REGULATIONS.—The note and agreement under subsection (a) of this section, and a transaction related to the note or agreement, are exempt from any United States, State, or local law or regulation that regulates securities or the issuance of securities. The note, agreement, or transaction under this section has the same immunities from other laws that section 601 of the Act (45 U.S.C. 791) gives to transactions that comply with or carry out the final system plan. The transfer of rail property because of the note, agreement, or transaction has the same exemptions, privileges, and immunities that the Act (45 U.S.C. 701 et seq.) gives to a transfer ordered or approved by the special court under section 303(b) of the Act (45 U.S.C. 743(b)).

(c) IMMUNITY FROM LIABILITY AND INDEMNIFICATION.—Amtrak, its board of directors, and its individual directors are not liable because

Amtrak has given or issued the note or agreement to the Government under subsection (a) of this section. Immunity granted under this subsection also applies to a transaction related to the note or agreement. The Government shall indemnify Amtrak, its board, and individual directors against costs and expenses actually and reasonably incurred in defending a civil action testing the validity of the note, agreement, or transaction.

§24906. Transfer taxes and levies and recording charges

A transfer of an interest in rail property under this chapter is exempt from a tax or levy related to the transfer that is imposed by the United States Government, a State, or a political subdivision of a State. On payment of the appropriate and generally applicable charge for the service performed, a transferee or transferor may record an instrument and, consistent with the final system plan, the release or removal of a pre-existing lien or encumbrance of record related to the interest transferred.

§24907. Authorization of appropriations

(a) GENERAL.—(1) Not more than $2,313,000,000 may be appropriated to the Secretary of Transportation to achieve the goals of section 24902(a)(1) of this title. From this amount, the following amounts shall be expended by Amtrak:

(A) at least $27,000,000 for equipment modification and replacement that a State or a local or regional transportation authority must bear because of the electrification conversion system of the Northeast Corridor under this chapter.

(B) $30,000,000—

(i) to improve the main line track between the main line and Atlantic City to ensure that the track, consistent with a plan New Jersey developed in consultation with Amtrak to provide rail passenger transportation between the Northeast Corridor main line and Atlantic City, New Jersey, would be of sufficient quality to allow safe rail passenger transportation at a minimum of 79 miles an hour not later than September 30, 1985; and

(ii) to promote rail passenger use of the track.

(C) necessary amounts to—

(i) develop Union Station in the District of Columbia;

(ii) install 189 track-miles, and renew 133 track-miles, of concrete ties with continuously welded rail between the District of Columbia and New York, New York;

(iii) install reverse signaling between Philadelphia, Pennsylvania, and Morrisville, Pennsylvania, on numbers 2 and 3 track;

(iv) restore ditch drainage in concrete tie locations between the District of Columbia and New York, New York;

(v) undercut 83 track-miles between the District of Columbia and New York, New York;

(vi) rehabilitate bridges between the District of Columbia and New York, New York (including Hi line);

(vii) develop a maintenance of way equipment repair facility between the District of Columbia and New York, New York, and build maintenance of way bases at Philadelphia, Pennsylvania, Sunnyside, New York, and Cedar Hill, Connecticut;

(viii) stabilize the roadbed between the District of Columbia and New York, New York;

(ix) automate the Bush River Drawbridge at milepost 72.14;

(x) improve the New York Service Facility to develop rolling stock repair capability;

(xi) install a rail car washer facility at Philadelphia, Pennsylvania;

(xii) restore storage tracks and buildings at the Washington Service Facility;

(xiii) install centralized traffic control from Landlith, Delaware, to Philadelphia, Pennsylvania;

(xiv) improve track, including high speed surfacing, ballast cleaning, and associated equipment repair and material distribution;

(xv) rehabilitate interlockings between the District of Columbia and New York, New York;

(xvi) paint the Connecticut River, Groton, and Pelham Bay bridges;

(xvii) provide additional catenary renewal and power supply upgrading between the District of Columbia and New York, New York;

(xviii) rehabilitate structural, electrical, and mechanical systems at the 30th Street Station in Philadelphia, Pennsylvania;

(xix) install evacuation and fire protection facilities in tunnels in New York, New York;

(xx) improve the communication and signal systems between Wilmington, Delaware, and Boston, Massachusetts, on the Northeast Corridor main line, and between Philadelphia, Pennsylvania, and Harrisburg, Pennsylvania, on the Harrisburg Line;

(xxi) improve the electric traction systems between Wilmington, Delaware, and Newark, New Jersey;

(xxii) install baggage rack restraints, seat back guards, and seat lock devices on 348 passenger cars operating in the Northeast Corridor;

(xxiii) install 44 event recorders and 10 electronic warning devices on locomotives operating within the Northeast Corridor; and

(xxiv) acquire cab signal test boxes and install 9 wayside loop code transmitters for use within the Northeast Corridor.

(2) The following additional amounts may be appropriated to the Secretary for expenditure by Amtrak:

(A) not more than $150,000,000 to achieve the goal of section 24902(a)(3) of this title.

(B) not more than $120,000,000 to acquire interests in property in the Northeast Corridor.

(C) not more than $650,000 to develop and use mobile radio frequencies for passenger radio mobile telephone service on high-speed rail passenger transportation.

(D) not more than $20,000,000 to acquire and improve interests in rail property designated under section 206(c)(1)(D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

(E) not more than $37,000,000 to carry out section 24902(a)(7) and (j) of this title.

(b) EMERGENCY MAINTENANCE.—Not more than $25,000,000 of the amount appropriated under the Act of February 28, 1975 (Public Law 94-6, 89 Stat. 11), may be used by Amtrak for emergency maintenance on rail property designated under section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716 (c)(1)(C)).

(c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated under subsection (a)(2)(B) and (D) of this section shall be used first to repay, with interest, obligations guaranteed under section 24103 of this title, if the proceeds of those obligations were used to pay the expenses of acquiring interests in property referred to in subsection (a)(2)(B) and (D).

(d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING LOSSES.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail or rail freight transportation.

(e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A project for which amounts are authorized under subsection (a)(1)(C) of this section is a part of the Northeast Corridor improvement program and is not a substitute for improvements specified in the document "Corridor Master Plan II, NECIP Restructured Program" of January, 1982. However, Amtrak may defer the project to carry out the improvement and rehabilitation for which amounts are authorized under subsection (a)(1)(B) of this section. The total cost of the project that Amtrak defers may not be substantially more than the amount Amtrak is required to expend or reserve under subsection (a)(1)(B).

(2) Section 24902 of this title is deemed not to be fulfilled until the projects under subsection (a)(1)(C) of this section are completed.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a)(1) and (2)(A) and (C)-(E) of this section remain available until expended.

(g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—An amount greater than that authorized for a fiscal year may be appropriated to the extent that the amount appropriated for any prior fiscal year is less than the amount authorized for that year.

PART D—MISCELLANEOUS

CHAPTER 261—LAW ENFORCEMENT

Sec.
26101. Rail police officers.
26102. Limit on certain accident or incident liability.

§26101. Rail police officers

Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which the rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—

(1) employees, passengers, or patrons of the rail carrier;

(2) property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

§26102. Limit on certain accident or incident liability

(a) GENERAL.—When a publicly financed commuter transportation authority established under Virginia law makes a contract to indemnify Amtrak for liability for operations conducted by or for the authority or to indemnify a rail carrier over whose tracks those operations are conducted, liability against Amtrak, the authority, or the carrier for all claims (including punitive damages) arising from an accident or incident in the District of Columbia related to those operations may not be more than the limits of the liability coverage the authority maintains to indemnify Amtrak or the carrier.

(b) MINIMUM REQUIRED LIABILITY COVERAGE.—A publicly financed commuter transportation authority referred to in subsection (a) of this section must maintain a total minimum liability coverage of at least $200,000,000.

(c) EFFECTIVENESS.—This section is effective only after Amtrak or a rail carrier seeking an indemnification contract under this section makes an operating agreement with a publicly financed commuter transportation authority established under Virginia law to provide access to its property for revenue transportation related to the operations of the authority.

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

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PART A—GENERAL

CHAPTER 301—MOTOR VEHICLE SAFETY

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SUBCHAPTER I—GENERAL

§30101. Purpose and policy

The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—

(1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and

(2) to carry out needed safety research and development.

§30102. Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

(1) "dealer" means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

(2) "defect" includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.

(3) "distributor" means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

(4) "interstate commerce" means commerce between a place in a State and a place in another State or between places in the same State through another State.

(5) "manufacturer" means a person—

(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(7) "motor vehicle equipment" means—

(A) any system, part, or component of a motor vehicle as originally manufactured;

(B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or

(C) any device or an article or apparel (except medicine or eyeglasses prescribed by a licensed practitioner) that is not a system, part, or component of a motor vehicle and is manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.

(8) "motor vehicle safety" means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes non-operational safety of a motor vehicle.

(9) "motor vehicle safety standard" means a minimum standard for motor vehicle or motor vehicle equipment performance.

(10) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(11) "United States district court" means a district court of the United States, a United States court for Guam, the Virgin Islands, and American Samoa, and the district court for the Northern Mariana Islands.

(b) LIMITED DEFINITIONS.—(1) In sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) "adequate repair" does not include repair resulting in substantially impaired operation of a motor vehicle or motor vehicle equipment;

(B) "first purchaser" means the first purchaser of a motor vehicle or motor vehicle equipment other than for resale;

(C) "original equipment" means motor vehicle equipment (including a tire) installed in or on a motor vehicle at the time of delivery to the first purchaser;

(D) "replacement equipment" means motor vehicle equipment (including a tire) that is not original equipment;

(E) a brand name owner of a tire marketed under a brand name not owned by the manufacturer of the tire is deemed to be the manufacturer of the tire;

(F) a defect in original equipment, or noncompliance of original equipment with a motor vehicle safety standard prescribed under this chapter, is deemed to be a defect or noncompliance of the motor vehicle in or on which the equipment was installed at the time of delivery to the first purchaser;

(G) a manufacturer of a motor vehicle in or on which original equipment was installed when delivered to the first purchaser is deemed to be the manufacturer of the equipment; and

(H) a retreader of a tire is deemed to be the manufacturer of the tire.

(2) The Secretary of Transportation may prescribe regulations amending paragraph (1) (C), (D), (F), or (G) of this subsection.

§30103. Relationship to other laws

(a) UNIFORMITY OF REGULATIONS.—The Secretary of Transportation may not prescribe a safety regulation related to a motor vehicle subject to subchapter II of chapter 105 of this title that differs from a motor vehicle safety standard prescribed under this chapter. However, the Secretary may prescribe, for a motor vehicle operated by a carrier subject to subchapter II of chapter 105, a safety regulation that imposes a higher standard of performance after manufacture than that required by an applicable standard in effect at the time of manufacture.

(b) PREEMPTION.—(1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. However, the United States Government, a State, or a political subdivision of a State may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.

(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.

(c) ANTITRUST LAWS.—This chapter does not—

(1) exempt from the antitrust laws conduct that is unlawful under those laws; or

(2) prohibit under the antitrust laws conduct that is lawful under those laws.

(d) WARRANTY OBLIGATIONS AND ADDITIONAL LEGAL RIGHTS AND REMEDIES.—Sections 30117(b), 30118–30121, 30166(f), and 30167 (a) and (b) of this title do not establish or affect a warranty obligation under a law of the United States or a State. A remedy under those sections and sections 30161 and 30162 of this title is in addition to other rights and remedies under other laws of the United States or a State.

(e) COMMON LAW LIABILITY.—Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

§30111. Standards

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85–684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

(c) COOPERATION.—The Secretary may advise, assist, and cooperate with departments, agencies, and instrumentalities of the United States Government, States, and other public and private agencies in developing motor vehicle safety standards.

(d) EFFECTIVE DATES OF STANDARDS.—The Secretary shall specify the effective date of a motor vehicle safety standard prescribed under this chapter in the order prescribing the standard. A standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed. However, the Secretary may prescribe a different effective date after finding, for good cause shown, that a different effective date is in the public interest and publishing the reasons for the finding.

§30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment

(a) GENERAL.—Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(b) NONAPPLICATION.—This section does not apply to—

(1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a motor vehicle or motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale;

(2) a person—

(A) establishing that the person had no reason to know, despite exercising reasonable care, that a motor vehicle or motor vehicle equipment does not comply with applicable motor vehicle safety standards prescribed under this chapter; or

(B) holding, without knowing about the noncompliance and before the vehicle or equipment is first purchased in good faith other than for resale, a certificate issued by a manufacturer or importer stating the vehicle or equipment complies with applicable standards prescribed under this chapter;

(3) a motor vehicle or motor vehicle equipment intended only for export, labeled for export on the vehicle or equipment and on the outside of any container of the vehicle or equipment, and exported;

(4) a motor vehicle the Secretary of Transportation decides under section 30141 of this title is capable of complying with applicable standards prescribed under this chapter;

(5) a motor vehicle imported for personal use by an individual who receives an exemption under section 30142 of this title;

(6) a motor vehicle under section 30143 of this title imported by an individual employed outside the United States;

(7) a motor vehicle under section 30144 of this title imported on a temporary basis;

(8) a motor vehicle or item of motor vehicle equipment under section 30145 of this title requiring further manufacturing; or

(9) a motor vehicle that is at least 25 years old.

§30113. General exemptions

(a) DEFINITION.—In this section, "low-emission motor vehicle" means a motor vehicle meeting the standards for new motor vehicles applicable to the vehicle under section 202 of the Clean Air Act (42 U.S.C. 7521) when the vehicle is manufactured and emitting an air pollutant in an amount significantly below one of those standards.

(b) AUTHORITY TO EXEMPT AND PROCEDURES.—(1) The Secretary of Transportation may exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard prescribed under this chapter on terms the Secretary considers appropriate. An exemption may be renewed. A renewal may be granted only on reapplication and must conform to the requirements of this subsection.

(2) The Secretary may begin a proceeding under this subsection when a manufacturer applies for an exemption or a renewal of an exemption. The Secretary shall publish notice of the application and provide an opportunity to comment. An application for an exemption or for a renewal of an exemption shall be filed at a time and in the way, and contain information, this section and the Secretary require.

(3) The Secretary may act under this subsection on finding that—

(A) an exemption is consistent with the public interest and this chapter; and

(B)(i) compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

(c) CONTENTS OF APPLICATIONS.—A manufacturer applying for an exemption under subsection (b) of this section shall include the following information in the application:

(1) if the application is made under subsection (b)(3)(B)(i) of this section, a complete financial statement describing the economic hardship and a complete description of the manufacturer's good faith effort to comply with each motor vehicle safety standard prescribed under this chapter from which the manufacturer is requesting an exemption.

(2) if the application is made under subsection (b)(3)(B)(ii) of this section, a record of the research, development, and testing establishing the innovative nature of the safety feature and a detailed analysis establishing that the safety level of the feature at least equals the safety level of the standard.

(3) if the application is made under subsection (b)(3)(B)(iii) of this section, a record of the research, development, and testing establishing that the motor vehicle is a low-emission motor vehicle and that the safety level of the vehicle is not lowered unreasonably by exemption from the standard.

(4) if the application is made under subsection (b)(3)(B)(iv) of this section, a detailed analysis showing how the vehicle provides an overall safety level at least equal to the overall safety level of nonexempt vehicles.

(d) ELIGIBILITY.—A manufacturer is eligible for an exemption under subsection (b)(3)(B)(i) of this section only if the Secretary determines that the manufacturer's total motor vehicle production in the most recent year of production is not more than 10,000. A manufacturer is eligible for an exemption under subsection (b)(3)(B) (ii), (iii), or (iv) of this section only if the Secretary determines the exemption is for not more than 2,500 vehicles to be sold in the United States in any 12-month period.

(e) MAXIMUM PERIOD.—An exemption or renewal under subsection (b)(3)(B)(i) of this section may be granted for not more than 3 years. An exemption or renewal under subsection (b)(3)(B) (ii), (iii), or (iv) of this section may be granted for not more than 2 years.

(f) DISCLOSURE.—The Secretary may make public, by the 10th day after an application is filed, information contained in the application or relevant to the application unless the information concerns or is related to a trade secret or other confidential information not relevant to the application.

(g) NOTICE OF DECISION.—The Secretary shall publish in the Federal Register a notice of each decision granting an exemption under this section and the reasons for granting it.

(h) PERMANENT LABEL REQUIREMENT.—The Secretary shall require a permanent label to be fixed to a motor vehicle granted an exemption under this section. The label shall either name or describe each motor vehicle safety standard prescribed under this chapter from which the vehicle is exempt. The Secretary may require that written notice of an exemption be delivered by appropriate means to the dealer and the first purchaser of the vehicle other than for resale.

§30114. Special exemptions

The Secretary of Transportation may exempt a motor vehicle or item of motor vehicle equipment from section 30112(a) of this title on terms the Secretary decides are necessary for research, investigations, demonstrations, training, or competitive racing events.

§30115. Certification of compliance

A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle. Certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered.

§30116. Defects and noncompliance found before sale to purchaser

(a) ACTIONS REQUIRED OF MANUFACTURERS AND DISTRIBUTORS.—If, after a manufacturer or distributor sells a motor vehicle or motor vehicle equipment to a distributor or dealer and before the distributor or dealer sells the vehicle or equipment, it is decided that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with applicable motor vehicle safety standards prescribed under this chapter—

(1) the manufacturer or distributor immediately shall repurchase the vehicle or equipment at the price paid by the distributor or dealer, plus transportation charges and reasonable reimbursement of at least one percent a month of the price paid prorated from the date of notice of noncompliance or defect to the date of repurchase; or

(2) if a vehicle, the manufacturer or distributor immediately shall give to the distributor or dealer at the manufacturer's or distributor's own expense, the part or equipment needed to make the vehicle comply with the standards or correct the defect.

(b) DISTRIBUTOR OR DEALER INSTALLATION.—The distributor or dealer shall install the part or equipment referred to in subsection (a)(2) of this section. If the distributor or dealer installs the part or equipment with reasonable diligence after it is received, the manufacturer shall reimburse the distributor or dealer for the reasonable value of the installation and a reasonable reimbursement of at least one percent a month of the manufacturer's or distributor's selling price pro-

rated from the date of notice of noncompliance or defect to the date the motor vehicle complies with applicable motor vehicle safety standards prescribed under this chapter or the defect is corrected.

(c) ESTABLISHING AMOUNT DUE AND CIVIL ACTIONS.—The parties shall establish the value of installation and the amount of reimbursement under this section. If the parties do not agree, or if a manufacturer or distributor refuses to comply with subsection (a) or (b) of this section, the distributor or dealer purchasing the motor vehicle or motor vehicle equipment may bring a civil action. The action may be brought in the United States district court for the judicial district in which the manufacturer or distributor resides, is found, or has an agent, to recover damages, court costs, and a reasonable attorney's fee. An action under this section must be brought not later than 3 years after the claim accrues.

§30117. Providing information to, and maintaining records on, purchasers

(a) PROVIDING INFORMATION AND NOTICE.—The Secretary of Transportation may require that each manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety required to carry out this chapter. The Secretary may require the manufacturer to give the following notice of that information when the Secretary decides it is necessary:

(1) to each prospective purchaser of a vehicle or equipment before the first sale other than for resale at each location at which the vehicle or equipment is offered for sale by a person having a legal relationship with the manufacturer, in a way the Secretary decides is appropriate.

(2) to the first purchaser of a vehicle or equipment other than for resale when the vehicle or equipment is bought, in printed matter placed in the vehicle or attached to or accompanying the equipment.

(b) MAINTAINING PURCHASER RECORDS AND PROCEDURES.—(1) A manufacturer of a motor vehicle or tire (except a retreaded tire) shall maintain a record of the name and address of the first purchaser of each vehicle or tire it produces and, to the extent prescribed by regulations of the Secretary, shall maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. The Secretary may prescribe by regulation the records to be maintained and reasonable procedures for maintaining the records under this subsection, including procedures to be followed by distributors and dealers to assist the manufacturer. A procedure shall be reasonable for the type of vehicle or tire involved, and shall provide reasonable assurance that a customer list of a distributor or dealer, or similar information, will be made available to a person (except the distributor or dealer) only when necessary to carry out this subsection and sections 30118–30121, 30166(f), and 30167 (a) and (b) of this title. Availability of assistance from a distributor or dealer does not affect an obligation of a manufacturer under this subsection.

(2)(A) Except as provided in paragraph (3) of this subsection, the Secretary may require a distributor or dealer to maintain a record under paragraph (1) of this subsection only if the business of the distributor or dealer is owned or controlled by a manufacturer of tires.

(B) The Secretary shall require each distributor and dealer whose business is not owned or controlled by a manufacturer of tires to give a registration form (containing the tire identification number) to the first purchaser of a tire. The Secretary shall prescribe the form, which shall be standardized for all tires and designed to allow the purchaser to complete and return it directly to the manufacturer of the tire. The manufacturer shall give sufficient copies of forms to distributors and dealers.

(3)(A) The Secretary shall evaluate from time to time how successful the procedures in paragraph (2) of this subsection have been in helping to maintain records about first purchasers of tires. After each evaluation, the Secretary shall decide—

(i) the extent to which distributors and dealers have complied with the procedures;

(ii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires; and

(iii) whether to prescribe for manufacturers, distributors, or dealers other requirements that the Secretary decides will increase significantly the percentage of first purchasers of tires about whom records are maintained.

(B) The Secretary may prescribe a requirement under subparagraph (A) of this paragraph only if the Secretary decides it is necessary to reduce the risk to motor vehicle safety, after considering—

(i) the cost of the requirement to manufacturers and the burden of the requirement on distributors and dealers, compared to the increase in the percentage of first purchasers of tires about whom records would be maintained as a result of the requirement;

(ii) the extent to which distributors and dealers have complied with the procedures in paragraph (2) of this subsection; and

(iii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires.

(C) A manufacturer of tires shall reimburse distributors and dealers of that manufacturer's tires for all reasonable costs incurred by the distributors and dealers in complying with a requirement prescribed by the Secretary under subparagraph (A) of this paragraph.

(D) After making a decision under subparagraph (A) of this paragraph, the Secretary shall submit to each House of Congress a report containing a detailed statement of the decision and an explanation of the reasons for the decision.

§30118. Notification of defects and noncompliance

(a) NOTIFICATION BY SECRETARY.—The Secretary of Transportation shall notify the manufacturer of a motor vehicle or replacement equipment immediately after making an initial decision that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter. The notification shall include the information on which the decision is based. The Secretary shall publish a notice of each decision under this subsection in the Federal Register. Subject to section 30167(a) of this title, the notification and information are available to any interested person.

(b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—(1) The Secretary may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter only after giving the manufacturer an opportunity to present information, views, and arguments showing that there is no defect or noncompliance or that the defect does not affect motor vehicle safety. Any interested person also shall be given an opportunity to present information, views, and arguments.

(2) If the Secretary decides under paragraph (1) of this subsection the vehicle or equipment contains the defect or does not comply, the Secretary shall order the manufacturer to—

(A) give notification under section 30119 of this title to the owners, purchasers, and dealers of the vehicle or equipment of the defect or noncompliance; and

(B) remedy the defect or noncompliance under section 30120 of this title.

(c) NOTIFICATION BY MANUFACTURER.—A manufacturer of a motor vehicle or replacement equipment shall notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer—

(1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or

(2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(d) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(e) HEARINGS ABOUT MEETING NOTIFICATION REQUIREMENTS.—On the motion of the Secretary or on petition of any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the notification requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the notification requirements. If the Secretary decides that the manufacturer has not reasonably met the notification requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

§30119. Notification procedures

(a) CONTENTS OF NOTIFICATION.—Notification by a manufacturer required under section 30118 of this title of a defect or noncompliance shall contain—

(1) a clear description of the defect or noncompliance;

(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;

(3) the measures to be taken to obtain a remedy of the defect or noncompliance;

(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title;

(5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title;

(6) the procedure the recipient of a notice is to follow to inform the Secretary of Transportation when a manufacturer, distributor, or dealer does not remedy the defect or noncompliance without charge under section 30120 of this title; and

(7) other information the Secretary prescribes by regulation.

(b) EARLIEST REMEDY DATE.—The date specified by a manufacturer in a notification under subsection (a)(5) of this section or section 30121(c) of this title is the earliest date that parts and facilities reasonably can be expected to be available to remedy the defect or noncompliance. The Secretary may disapprove the date.

(c) TIME FOR NOTIFICATION.—Notification required under section 30118 of this title shall be given within a reasonable time—

(1) prescribed by the Secretary, after the manufacturer receives notice of a final decision under section 30118(b) of this title; or

(2) after the manufacturer first decides that a safety-related defect or noncompliance exists under section 30118(c) of this title.

(d) MEANS OF PROVIDING NOTIFICATION.—(1) Notification required under section 30118 of this

title about a motor vehicle shall be sent by first class mail—

(A) to each person registered under State law as the owner and whose name and address are reasonably ascertainable by the manufacturer through State records or other available sources; or

(B) if a registered owner is not notified under clause (A) of this paragraph, to the most recent purchaser known to the manufacturer.

(2) Notification required under section 30118 of this title about replacement equipment (except a tire) shall be sent by first class mail to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer.

(3) Notification required under section 30118 of this title about a tire shall be sent by first class mail (or, if the manufacturer prefers, by certified mail) to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer. In deciding whether public notice is required, the Secretary shall consider—

(A) the magnitude of the risk to motor vehicle safety caused by the defect or noncompliance; and

(B) the cost of public notice compared to the additional number of owners the notice may reach.

(4) A dealer to whom a motor vehicle or replacement equipment was delivered shall be notified by certified mail or quicker means if available.

§30120. Remedies for defects and noncompliance

(a) WAYS TO REMEDY.—(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118 (b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to impose conditions on the replacement of a motor vehicle or refund of its price.

(b) TIRE REMEDIES.—(1) A manufacturer of a tire, including an original equipment tire, shall remedy a defective or noncomplying tire if the owner or purchaser presents the tire for remedy not later than 60 days after the later of—

(A) the day the owner or purchaser receives notification under section 30119 of this title; or

(B) if the manufacturer decides to replace the tire, the day the owner or purchaser receives notification that a replacement is available.

(2) If the manufacturer decides to replace the tire and the replacement is not available during the 60-day period, the owner or purchaser must present the tire for remedy during a subsequent 60-day period only after receiving notification of availability during the subsequent period. If tires are available during the subsequent period, only a tire presented for remedy during that period must be remedied.

(c) ADEQUACY OF REPAIRS.—(1) If a manufacturer decides to repair a motor vehicle or replacement equipment and the repair is not done adequately within a reasonable time, the manufacturer shall—

(A) replace the vehicle or equipment with an identical or reasonably equivalent vehicle or equipment; or

(B) for a vehicle, refund the purchase price, less a reasonable allowance for depreciation.

(2) Failure to repair a motor vehicle or replacement equipment adequately not later than 60 days after its presentation is prima facie evidence of failure to repair within a reasonable time. However, the Secretary may extend, by order, the 60-day period if good cause for an extension is shown and the reason is published in the Federal Register before the period ends. Presentation of a vehicle or equipment for repair before the date specified by a manufacturer in a notice under section 30119(a)(5) or 30121(c) of this title is not a presentation under this subsection.

(d) FILING MANUFACTURER'S REMEDY PROGRAM.—A manufacturer shall file with the Secretary a copy of the manufacturer's program under this section for remedying a defect or noncompliance. The Secretary shall make the program available to the public and publish a notice of availability in the Federal Register.

(e) HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.—On the motion of the Secretary or on application by any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the remedy requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the remedy requirements. If the Secretary decides a manufacturer has not reasonably met the remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

(f) FAIR REIMBURSEMENT TO DEALERS.—A manufacturer shall pay fair reimbursement to a dealer providing a remedy without charge under this section.

(g) NONAPPLICATION.—(1) The requirement that a remedy be provided without charge does not apply if the motor vehicle or replacement equipment was bought by the first purchaser more than 8 calendar years, or the tire, including an original equipment tire, was bought by the first purchaser more than 3 calendar years, before notice is given under section 30118(c) of this title or an order is issued under section 30118(b) of this title, whichever is earlier.

(2) This section does not apply during any period in which enforcement of an order under section 30118(b) of this title is restrained or is set aside in a civil action under section 30121(d) of this title.

(h) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

§30121. Provisional notification and civil actions to enforce

(a) PROVISIONAL NOTIFICATION.—(1) The Secretary of Transportation may order a manufacturer to issue a provisional notification if a civil action about an order issued under section 30118(b) of this title has been brought under section 30163 of this title. The provisional notification shall contain—

(A) a statement that the Secretary has decided that a defect related to motor vehicle safety or noncompliance with a motor vehicle safety standard prescribed under this chapter exists and that the manufacturer is contesting the decision in a civil action in a United States district court;

(B) a clear description of the Secretary's stated basis for the decision;

(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;

(D) measures the Secretary considers necessary to avoid an unreasonable risk to motor vehicle safety resulting from the defect or noncompliance;

(E) a statement that the manufacturer will remedy the defect or noncompliance without charge under section 30120 of this title, but that the requirement to remedy without charge is conditioned on the outcome of the civil action; and

(F) other information the Secretary prescribes by regulation or includes in the order requiring the notice.

(2) A notification under this subsection does not relieve a manufacturer of liability for not giving notification required by an order under section 30118(b) of this title.

(b) CIVIL ACTIONS FOR NOT NOTIFYING.—(1) A manufacturer that does not notify owners and purchasers under section 30119 (c) and (d) of this title is liable to the United States Government for a civil penalty, unless the manufacturer prevails in a civil action referred to in subsection (a) of this section or the court in that action enjoins enforcement of the order. Enforcement may be enjoined only if the court decides that the failure to notify is reasonable and that the manufacturer has demonstrated the likelihood of prevailing on the merits. If enforcement is enjoined, the manufacturer is not liable during the time the order is stayed.

(2) A manufacturer that does not notify owners and purchasers as required under subsection (a) of this section is liable for a civil penalty regardless of whether the manufacturer prevails in an action on the validity of the order issued under section 30118(b) of this title.

(c) ORDERS TO MANUFACTURERS.—If the Secretary prevails in a civil action referred to in subsection (a) of this section, the Secretary shall order the manufacturer—

(1) to notify each owner, purchaser, and dealer described in section 30119(d) of this title of the outcome of the action and other information the Secretary requires, and notification under this clause may be combined with notification required under section 30118(b) of this title;

(2) to specify the earliest date under section 30119(b) of this title on which the defect or noncompliance will be remedied without charge under section 30120 of this title; and

(3) if notification was required under subsection (a) of this section, to reimburse an owner or purchaser for reasonable and necessary expenses (in an amount that is not more than the amount specified in the order of the Secretary under subsection (a)) incurred for repairing the defect or noncompliance during the period beginning on the date that notification was required to be issued and ending on the date the owner or purchaser receives the notification under this subsection.

(d) VENUE.—Notwithstanding section 30163(c) of this title, a civil action about an order issued under section 30118(b) of this title must be brought in the United States district court for a judicial district in the State in which the manufacturer is incorporated or the District of Columbia. On motion of a party, the court may transfer the action to another district court if good cause is shown. All actions related to the same order under section 30118(b) of this title

shall be consolidated in an action in one judicial district under an order of the court in which the first action was brought. If the first action is transferred to another court, that court shall issue the consolidation order.

§30122. Making safety devices and elements inoperative

(a) DEFINITION.—In this section, "motor vehicle repair business" means a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.

(b) PROHIBITION.—A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.

(c) REGULATIONS.—The Secretary of Transportation may prescribe regulations—

(1) to exempt a person from this section if the Secretary decides the exemption is consistent with motor vehicle safety and section 30101 of this title; and

(2) to define "make inoperative".

(d) NONAPPLICATION.—This section does not apply to a safety belt interlock or buzzer designed to indicate a safety belt is not in use as described in section 30124 of this title.

§30123. Tires

(a) LABELING REQUIREMENT.—The Secretary of Transportation shall require that a pneumatic tire subject to a motor vehicle safety standard prescribed under this chapter be labeled permanently and conspicuously with safety information the Secretary decides is necessary to carry out section 30101 of this title.

(b) CONTENTS OF LABEL.—Labeling required on a tire under subsection (a) of this section shall include—

(1)(A) identification of the manufacturer;

(B) for a retreaded tire, identification of the retreader; or

(C) for a tire containing a brand name (except the name of the manufacturer), a code mark allowing a seller to identify the manufacturer to the purchaser;

(2) the composition of material used in the ply of the tire;

(3) the number of plies in the tire;

(4) the maximum allowable load for the tire; and

(5)(A) a statement that the tire complies with minimum safe performance standards prescribed under this chapter; or

(B) a mark or symbol the Secretary prescribes for use by a manufacturer or retreader complying with those standards.

(c) ADDITIONAL INFORMATION.—The Secretary may require that additional safety information be disclosed to a purchaser when a tire is sold.

(d) REGROOVED TIRE LIMITATIONS.—(1) In this subsection, "regrooved tire" means a tire with a new tread produced by cutting into the tread of a worn tire.

(2) The Secretary may authorize the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of a regrooved tire or a motor vehicle equipped with regrooved tires if the Secretary decides the tires are designed and made in a way consistent with section 30101 of this title. A person may not sell, offer for sale, introduce for sale, or deliver for introduction in interstate commerce, a regrooved tire or a vehicle equipped with regrooved tires unless authorized by the Secretary.

(e) UNIFORM QUALITY GRADING SYSTEM, NOMENCLATURE, AND MARKETING PRACTICES.—The Secretary shall prescribe through standards a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires. The Secretary also shall cooperate with industry and the Federal Trade Commission to the greatest extent practicable to eliminate deceptive and confusing tire nomenclature and marketing practices. A tire standard or regulation prescribed under this chapter supersedes an order or administrative interpretation of the Commission.

(f) MAXIMUM LOAD STANDARDS.—The Secretary shall require a motor vehicle to be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry. The vehicle shall be equipped with those tires by the manufacturer or by the first purchaser when the vehicle is first bought in good faith other than for resale.

§30124. Occupant restraint systems

A motor vehicle safety standard prescribed under this chapter may not require or allow a manufacturer to comply with the standard by using a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a safety belt or a buzzer designed to indicate a safety belt is not in use, except a buzzer that operates only during the 8-second period after the ignition is turned to the "start" or "on" position.

§30125. Schoolbuses and schoolbus equipment

(a) DEFINITIONS.—In this section—

(1) "schoolbus" means a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school.

(2) "schoolbus equipment" means equipment designed primarily for a schoolbus or manufactured or sold to replace or improve a system, part, or component of a schoolbus or as an accessory or addition to a schoolbus.

(b) STANDARDS.—The Secretary shall prescribe motor vehicle safety standards for schoolbuses and schoolbus equipment manufactured in, or imported into, the United States. Standards shall include minimum performance requirements for—

(1) emergency exits;

(2) interior protection for occupants;

(3) floor strength;

(4) seating systems;

(5) crashworthiness of body and frame (including protection against rollover hazards);

(6) vehicle operating systems;

(7) windows and windshields; and

(8) fuel systems.

(c) TEST DRIVING BY MANUFACTURERS.—The Secretary may require by regulation a schoolbus to be test-driven by a manufacturer before introduction in commerce.

§30126. Used motor vehicles

To ensure a continuing and effective national safety program, it is the policy of the United States Government to encourage and strengthen State inspection of used motor vehicles. Therefore, the Secretary of Transportation shall prescribe uniform motor vehicle safety standards for all used motor vehicles. The standards shall be stated in terms of motor vehicle safety performance.

SUBCHAPTER III—IMPORTING NONCOMPLYING MOTOR VEHICLES AND EQUIPMENT

§30141. Importing motor vehicles capable of complying with standards

(a) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle if—

(1) on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under subsection (c) of this section, the Secretary decides—

(A) the vehicle is—

(i) substantially similar to a motor vehicle originally manufactured for import into and sale in the United States;

(ii) certified under section 30115 of this title;

(iii) the same model year (as defined under regulations of the Secretary of Transportation) as the model of the motor vehicle it is being compared to; and

(iv) capable of being readily altered to comply with applicable motor vehicle safety standards prescribed under this chapter; or

(B) if there is no substantially similar United States motor vehicle, the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence the Secretary of Transportation decides is adequate;

(2) the vehicle is imported by a registered importer; and

(3) the registered importer pays the annual fee the Secretary of Transportation establishes under subsection (e) of this section to pay for the costs of carrying out the registration program for importers under subsection (c) of this section and any other fees the Secretary of Transportation establishes to pay for the costs of—

(A) processing bonds provided to the Secretary of the Treasury under subsection (d) of this section; and

(B) making the decisions under this subchapter.

(b) PROCEDURES ON DECIDING ON MOTOR VEHICLE CAPABILITY.—(1) The Secretary of Transportation shall establish by regulation procedures for making a decision under subsection (a)(1) of this section and the information a petitioner must provide to show clearly that the motor vehicle is capable of being brought into compliance with applicable motor vehicle safety standards prescribed under this chapter. In establishing the procedures, the Secretary shall provide for a minimum period of public notice and written comment consistent with ensuring expeditious, but complete, consideration and avoiding delay by any person. In making a decision under those procedures, the Secretary shall consider test information and other information available to the Secretary, including any information provided by the manufacturer. If the Secretary makes a negative decision, the Secretary may not make another decision for the same model until at least 3 calendar months have elapsed after the negative decision.

(2) The Secretary of Transportation shall publish each year in the Federal Register a list of all decisions made under subsection (a)(1) of this section. Each published decision applies to the model of the motor vehicle for which the decision was made. A positive decision permits another importer registered under subsection (c) of this section to import a vehicle of the same model under this section if the importer complies with all the terms of the decision.

(c) REGISTRATION.—(1) The Secretary of Transportation shall establish procedures for registering a person who complies with requirements prescribed by the Secretary by regulation, including—

(A) recordkeeping requirements;

(B) inspection of records and facilities related to motor vehicles the person has imported, altered, or both; and

(C) requirements that ensure that the importer (or a successor in interest) will be able technically and financially to carry out responsibilities under sections 30117(b), 30118–30121, and 30166(f) of this title.

(2) The Secretary of Transportation shall deny registration to a person whose registration is revoked under paragraph (4) of this subsection.

(3) The Secretary of Transportation may deny registration to a person that is or was owned or controlled by, or under common ownership or control with, a person whose registration was revoked under paragraph (4) of this subsection.

(4) The Secretary of Transportation shall establish procedures for—

(A) revoking or suspending a registration issued under paragraph (1) of this subsection for not complying with a requirement of this subchapter or section 30112, 30115, 30117–30122, 30125(c), or 30166 of this title or regulations prescribed under this subchapter or those sections;

(B) automatically suspending a registration for not paying a fee under subsection (a)(3) of this section in a timely manner or for knowingly filing a false or misleading certification under section 30146 of this title; and

(C) reinstating suspended registrations.

(d) BONDS.—(1) A person importing a motor vehicle under this section shall provide a bond to the Secretary of the Treasury (acting for the Secretary of Transportation) and comply with the terms the Secretary of Transportation decides are appropriate to ensure that the vehicle—

(A) will comply with applicable motor vehicle safety standards prescribed under this chapter within a reasonable time (specified by the Secretary of Transportation) after the vehicle is imported; or

(B) will be exported (at no cost to the United States Government) by the Secretary of the Treasury or abandoned to the Government.

(2) The amount of the bond provided under this subsection shall be at least equal to the dutiable value of the motor vehicle (as determined by the Secretary of the Treasury) but not more than 150 percent of that value.

(e) FEE REVIEW, ADJUSTMENT, AND USE.—The Secretary of Transportation shall review and make appropriate adjustments at least every 2 years in the amounts of the fees required to be paid under subsection (a)(3) of this section. The Secretary of Transportation shall establish the fees for each fiscal year before the beginning of that year. All fees collected remain available until expended without fiscal year limit to the extent provided in advance by appropriation laws. The amounts are only for use by the Secretary of Transportation—

(1) in carrying out this section and sections 30146(a)–(c)(1), (d), and (e) and 30147(b) of this title; and

(2) in advancing to the Secretary of the Treasury amounts for costs incurred under this section and section 30146 of this title to reimburse the Secretary of the Treasury for those costs.

§30142. Importing motor vehicles for personal use

(a) GENERAL.—Section 30112(a) of this title does not apply to an imported motor vehicle if—

(1) the vehicle is imported for personal use, and not for resale, by an individual (except an individual described in sections 30143 and 30144 of this title);

(2) the vehicle is imported after the effective date that regulations are first prescribed under section 2(e)(1)(B) of the Imported Vehicle Safety Compliance Act of 1988; and

(3) the individual takes the actions required under subsection (b) of this section to receive an exemption.

(b) EXEMPTIONS.—(1) To receive an exemption under subsection (a) of this section, an individual must—

(A) provide the Secretary of the Treasury (acting for the Secretary of Transportation) with—

(i) an appropriate bond in an amount determined under section 30141(d) of this title;

(ii) a copy of an agreement with an importer registered under section 30141(c) of this title for bringing the motor vehicle into compliance with applicable motor vehicle safety standards prescribed under this chapter; and

(iii) a certification that the vehicle meets the requirement of section 30141(a)(1)(A) or (B) of this title; and

(B) comply with appropriate terms the Secretary of Transportation imposes to ensure that the vehicle—

(i) will be brought into compliance with those standards within a reasonable time (specified by the Secretary of Transportation) after the vehicle is imported; or

(ii) will be exported (at no cost to the United States Government) by the Secretary of the Treasury or abandoned to the Government.

(2) For good cause shown, the Secretary of Transportation may allow an individual additional time, but not more than 30 days after the day on which the motor vehicle is offered for import, to comply with paragraph (1)(A)(ii) of this subsection.

§30143. Motor vehicles imported by individuals employed outside the United States

(a) DEFINITION.—In this section, "assigned place of employment" means—

(1) the principal location at which an individual is permanently or indefinitely assigned to work; and

(2) for a member of the uniformed services, the individual's permanent duty station.

(b) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle imported for personal use, and not for resale, by an individual—

(1) whose assigned place of employment was outside the United States as of October 31, 1988, and who has not had an assigned place of employment in the United States from that date through the date the vehicle is imported into the United States;

(2) who previously had not imported a motor vehicle into the United States under this section or section 108(g)(2) of the National Traffic and Motor Vehicle Safety Act of 1966 or, before October 31, 1988, under section 108(b)(3) of the Act;

(3) who acquired, or made a binding contract to acquire, the vehicle before October 31, 1988;

(4) who imports the vehicle into the United States not later than October 31, 1992; and

(5) who satisfies section 108(b)(3) of the Act as in effect on October 30, 1988.

(c) CERTIFICATION.—Subsection (b) of this section is carried out by certification in the form the Secretary of Transportation or the Secretary of the Treasury may prescribe.

§30144. Importing motor vehicles on a temporary basis

(a) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle imported on a temporary basis for personal use by an individual who is a member of—

(1)(A) the personnel of the government of a foreign country on assignment in the United States or a member of the Secretariat of a public international organization designated under the International Organization Immunities Act (22 U.S.C. 288 et seq.); and

(B) the class of individuals for whom the Secretary of State has authorized free importation of motor vehicles; or

(2) the armed forces of a foreign country on assignment in the United States.

(b) VERIFICATION.—The Secretary of Transportation or the Secretary of the Treasury may require verification, that the Secretary of Transportation considers appropriate, that an individual is a member described under subsection (a) of this section. The Secretary of Transportation shall ensure that a motor vehicle imported under this section will be exported (at no cost to the United States Government) or abandoned to the Government when the individual no longer—

(1) resides in the United States; and

(2) is a member described under subsection (a) of this section.

(c) SALE IN THE UNITED STATES.—A motor vehicle imported under this section may not be sold when in the United States.

§30145. Importing motor vehicles or equipment requiring further manufacturing

Section 30112(a) of this title does not apply to a motor vehicle or motor vehicle equipment if the vehicle or equipment—

(1) requires further manufacturing to perform its intended function as decided under regulations prescribed by the Secretary of Transportation; and

(2) is accompanied at the time of importation by a written statement issued by the manufacturer indicating the applicable motor vehicle safety standard prescribed under this chapter with which it does not comply.

§30146. Release of motor vehicles and bonds

(a) COMPLIANCE CERTIFICATION AND BOND.—(1) Except as provided in subsections (c) and (d) of this section, an importer registered under section 30141(c) of this title may license or register an imported motor vehicle for use on public streets, roads, or highways, or release custody of a motor vehicle imported by the registered importer or imported by an individual under section 30142 of this title and altered by the registered importer to meet applicable motor vehicle safety standards prescribed under this chapter to a person for license or registration for use on public streets, roads, or highways, only after 30 days after the registered importer certifies to the Secretary of Transportation, in the way the Secretary prescribes, that the motor vehicle complies with each standard prescribed in the year the vehicle was manufactured. A vehicle may not be released if the Secretary gives written notice before the end of the 30-day period that the Secretary will inspect the vehicle under subsection (c) of this section.

(2) The Secretaries of Transportation and the Treasury shall prescribe regulations—

(A) ensuring the release of a motor vehicle and bond required under section 30141(d) of this title at the end of the 30-day period, unless the Secretary of Transportation issues a notice of an inspection under subsection (c) of this section; and

(B) providing that the Secretary of Transportation shall release the vehicle and bond promptly after an inspection under subsection (c) of this section showing compliance with the standards applicable to the vehicle.

(3) Each registered importer shall include on each motor vehicle released under this subsection a label prescribed by the Secretary of Transportation identifying the importer and stating that the vehicle has been altered by the importer to comply with the standards applicable to the vehicle.

(b) RELIANCE ON MANUFACTURER'S CERTIFICATION.—In making a certification under subsection (a)(1) of this section, the registered importer may rely on the manufacturer's certification for the model to which the motor vehicle involved is substantially similar if the importer certifies that any alteration made by the importer did not affect the compliance of the safety features of the vehicle and the importer keeps records verifying the certification for the period the Secretary of Transportation prescribes.

(c) EVIDENCE OF COMPLIANCE.—(1) The Secretary of Transportation may require that the certification under subsection (a)(1) of this section be accompanied by evidence of compliance the Secretary considers appropriate or may inspect the certified motor vehicle, or both. If the

Secretary gives notice of an inspection, an importer may release the vehicle only after an inspection showing the motor vehicle complies with applicable vehicle safety standards prescribed under this chapter for which the inspection was made and release of the vehicle by the Secretary.

(2) The Secretary of Transportation shall inspect periodically a representative number of motor vehicles for which certifications have been filed under subsection (a)(1) of this section. In carrying out a motor vehicle testing program under this chapter, the Secretary shall include a representative number of motor vehicles for which certifications have been filed under subsection (a)(1).

(d) CHALLENGING THE CERTIFICATION.—A motor vehicle or bond may not be released under subsection (a) of this section if the Secretary of Transportation, not later than 30 days after receiving a certification under subsection (a)(1) of this section, gives written notice that the Secretary believes or has reason to believe that the certification is false or contains a mispresentation. The vehicle and bond may be released only after the Secretary is satisfied with the certification and any modification of the certification.

(e) BOND RELEASE.—A release of a bond required under section 30141(d) of this title is deemed an acceptance of a certification or completion of an inspection under this section but is not a decision by the Secretary of Transportation under section 30118(a) or (b) of this title of compliance with applicable motor vehicle safety standards prescribed under this chapter.

§30147. Responsibility for defects and noncompliance

(a) DEEMING DEFECT OR NONCOMPLIANCE TO CERTAIN VEHICLES AND IMPORTER AS MANUFACTURER.—(1) In carrying out sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) for a defect or noncompliance with an applicable motor vehicle safety standard prescribed under this chapter for a motor vehicle originally manufactured for import into the United States, an imported motor vehicle having a valid certification under section 30146(a)(1) of this title and decided to be substantially similar to that motor vehicle shall be deemed as having the same defect or as not complying with the same standard unless the manufacturer or importer registered under section 30141(c) of this title demonstrates otherwise to the Secretary of Transportation; and

(B) the registered importer shall be deemed to be the manufacturer of any motor vehicle that the importer imports or brings into compliance with the standards for an individual under section 30142 of this title.

(2) The Secretary shall publish in the Federal Register notice of any defect or noncompliance under paragraph (1)(A) of this subsection.

(b) FINANCIAL RESPONSIBILITY REQUIREMENT.—The Secretary shall require by regulation each registered importer (including any successor in interest) to provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under sections 30117(b), 30118–30121, and 30166(f) of this title.

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

§30161. Judicial review of standards

(a) FILING AND VENUE.—A person adversely affected by an order prescribing a motor vehicle safety standard under this chapter may apply for review of the order by filing a petition for review in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 59 days after the order is issued.

(b) NOTIFYING SECRETARY.—The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the order was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence in rebuttal if the court is satisfied that the additional evidence is material and there were reasonable grounds for not presenting the evidence in the proceeding before the Secretary.

(2) The Secretary may modify findings of fact or make new findings because of the additional evidence presented. The Secretary shall file a modified or new finding, a recommendation to modify or set aside the order, and the additional evidence with the court.

(d) CERTIFIED COPIES OF RECORDS OF PROCEEDINGS.—The Secretary shall give any interested person a certified copy of the transcript of the record in a proceeding under this section on request and payment of costs. A certified copy of the record of the proceeding is admissible in a proceeding arising out of a matter under this chapter, regardless of whether the proceeding under this section has begun or becomes final.

(e) FINALITY OF JUDGMENT AND SUPREME COURT REVIEW.—A judgment of a court under this section is final and may be reviewed only by the Supreme Court under section 1254 of title 28.

§30162. Petitions by interested persons for standards and enforcement

(a) FILING.—Any interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding—

(1) to prescribe a motor vehicle safety standard under this chapter; or

(2) to decide whether to issue an order under section 30118(b) of this title.

(b) STATEMENT OF FACTS.—The petition must state facts that the person claims establish that a motor vehicle safety standard or order referred to in subsection (a) of this section is necessary and briefly describe the order the Secretary should issue.

(c) PROCEEDINGS.—The Secretary may hold a public hearing or conduct an investigation or proceeding to decide whether to grant the petition.

(d) ACTIONS OF SECRETARY.—The Secretary shall grant or deny a petition not later than 120 days after the petition is filed. If a petition is granted, the Secretary shall begin the proceeding promptly. If a petition is denied, the Secretary shall publish the reasons for the denial in the Federal Register.

§30163. Actions by the Attorney General

(a) CIVIL ACTIONS TO ENFORCE.—The Attorney General may bring a civil action to enjoin—

(1) a violation of this chapter or a regulation prescribed or order issued under this chapter; and

(2) the sale, offer for sale, or introduction or delivery for introduction, in interstate commerce, or the importation into the United States, of a motor vehicle or motor vehicle equipment for which it is decided, before the first purchase in good faith other than for resale, that the vehicle or equipment—

(A) contains a defect related to motor vehicle safety about which notice was given under section 30118(c) of this title or an order was issued under section 30118(b) of this title; or

(B) does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(b) PRIOR NOTICE.—When practicable, the Secretary of Transportation shall notify a person against whom a civil action under subsection (a) of this section is planned, give the person an opportunity to present that person's views, and, except for a knowing and willful violation of this chapter, give the person a reasonable opportunity to remedy the defect or comply with the applicable motor vehicle safety standard prescribed under this chapter. Failure to give notice and an opportunity to remedy the defect or comply with the applicable motor vehicle safety standard prescribed under this chapter does not prevent a court from granting appropriate relief.

(c) VENUE.—Except as provided in section 30121(d) of this title, a civil action under this section or section 30165(a) of this title may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found.

(d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (a) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpena for a witness may be served in any judicial district.

§30164. Service of process

(a) DESIGNATING AGENTS.—A manufacturer offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made. The designation shall be in writing and filed with the Secretary of Transportation. The designation may be changed in the same way as originally made.

(b) SERVICE.—An agent may be served at the agent's office or usual place of residence. Service on the agent is deemed to be service on the manufacturer. If a manufacturer does not designate an agent, service may be made by posting the notice or process in the office of the Secretary.

§30165. Civil penalty

(a) PENALTY.—A person that violates section 30112, 30115, 30117–30122, 30123(d), 30125(c), 30141–30147, or 30166 of this title or a regulation prescribed under those sections is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by those sections. The maximum penalty under this subsection for a related series of violations is $800,000.

(b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CONSIDERATIONS.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(d) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpena for a witness may be served in any judicial district.

§30166. Inspections, investigations, and records

(a) DEFINITION.—In this section, "motor vehicle accident" means an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.

(b) AUTHORITY TO INSPECT AND INVESTIGATE.—(1) The Secretary of Transportation may conduct an inspection or investigation—

(A) that may be necessary to enforce this chapter or a regulation prescribed or order issued under this chapter; or

(B) related to a motor vehicle accident and designed to carry out this chapter.

(2) The Secretary of Transportation shall cooperate with State and local officials to the greatest extent possible in an inspection or investigation under paragraph (1)(B) of this subsection.

(c) MATTERS THAT CAN BE INSPECTED AND IMPOUNDMENT.—In carrying out this chapter, an officer or employee designated by the Secretary of Transportation—

(1) at reasonable times, may inspect and copy any record related to this chapter;

(2) on request, may inspect records of a manufacturer, distributor, or dealer to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter; and

(3) at reasonable times, in a reasonable way, and on display of proper credentials and written notice to an owner, operator, or agent in charge, may—

(A) enter and inspect with reasonable promptness premises in which a motor vehicle or motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce;

(B) enter and inspect with reasonable promptness premises at which a vehicle or equipment involved in a motor vehicle accident is located;

(C) inspect with reasonable promptness that vehicle or equipment; and

(D) impound for not more than 72 hours a vehicle or equipment involved in a motor vehicle accident.

(d) REASONABLE COMPENSATION.—When a motor vehicle (except a vehicle subject to subchapter II of chapter 105 of this title) or motor vehicle equipment is inspected or temporarily impounded under subsection (c)(3) of this section, the Secretary of Transportation shall pay reasonable compensation to the owner of the vehicle if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle.

(e) RECORDS AND MAKING REPORTS.—The Secretary of Transportation reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable the Secretary to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter. This subsection does not impose a recordkeeping requirement on a distributor or dealer in addition to those imposed under subsection (f) of this section and section 30117(b) of this title or a regulation prescribed or order issued under subsection (f) or section 30117(b).

(f) PROVIDING COPIES OF COMMUNICATIONS ABOUT DEFECTS AND NONCOMPLIANCE.—A manufacturer shall give the Secretary of Transportation a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced.

(g) ADMINISTRATIVE AUTHORITY ON REPORTS, ANSWERS, AND HEARINGS.—(1) In carrying out this chapter, the Secretary of Transportation may—

(A) require, by general or special order, any person to file reports or answers to specific questions, including reports or answers under oath; and

(B) conduct hearings, administer oaths, take testimony, and require (by subpena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(h) CIVIL ACTIONS TO ENFORCE AND VENUE.—A civil action to enforce a subpena or order under subsection (g) of this section may be brought in the United States district court for the judicial district in which the proceeding is conducted. The court may punish a failure to obey an order of the court to comply with a subpena or order as a contempt of court.

(i) GOVERNMENTAL COOPERATION.—The Secretary of Transportation may request a department, agency, or instrumentality of the United States Government to provide records the Secretary considers necessary to carry out this chapter. The head of the department, agency, or instrumentality shall provide the record on request, may detail personnel on a reimbursable basis, and otherwise shall cooperate with the Secretary. This subsection does not affect a law limiting the authority of a department, agency, or instrumentality to provide information to another department, agency, or instrumentality.

(j) COOPERATION OF SECRETARY.—The Secretary of Transportation may advise, assist, and cooperate with departments, agencies, and instrumentalities of the Government, States, and other public and private agencies in developing a method for inspecting and testing to determine compliance with a motor vehicle safety standard.

(k) PROVIDING INFORMATION.—The Secretary of Transportation shall provide the Attorney General and, when appropriate, the Secretary of the Treasury, information obtained that indicates a violation of this chapter or a regulation prescribed or order issued under this chapter.

§30167. Disclosure of information by the Secretary of Transportation

(a) CONFIDENTIALITY OF INFORMATION.—Information obtained under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only in the following ways:

(1) to other officers and employees carrying out this chapter.

(2) when relevant to a proceeding under this chapter.

(3) to the public if the confidentiality of the information is preserved.

(4) to the public when the Secretary of Transportation decides that disclosure is necessary to carry out section 30101 of this title.

(b) DEFECT AND NONCOMPLIANCE INFORMATION.—Subject to subsection (a) of this section, the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118–30121 of this title or that is required to be disclosed under section 30118(a) of this title. A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5.

(c) INFORMATION ABOUT MANUFACTURER'S INCREASED COSTS.—A manufacturer opposing an action of the Secretary under this chapter because of increased cost shall submit to the Secretary information about the increased cost, including the manufacturer's cost and the cost to retail purchasers, that allows the public and the Secretary to evaluate the manufacturer's statement. The Secretary shall evaluate the information promptly and, subject to subsection (a) of this section, shall make the information and evaluation available to the public. The Secretary shall publish a notice in the Federal Register that the information is available.

(d) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§30168. Research, testing, development, and training

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation shall conduct research, testing, development, and training necessary to carry out this chapter. The research, development, testing, and training shall include—

(A) collecting information to determine the relationship between motor vehicle or motor vehicle equipment performance characteristics and—

(i) accidents involving motor vehicles; and

(ii) the occurrence of death or personal injury resulting from those accidents;

(B) obtaining experimental and other motor vehicles and motor vehicle equipment for research or testing; and

(C) disposing of test motor vehicles and motor vehicle equipment and crediting the proceeds to current appropriations available to carry out this chapter.

(2) The Secretary may carry out this subsection through grants to States, interstate authorities, and nonprofit institutions.

(b) USE OF PUBLIC AGENCIES.—In carrying out this chapter, the Secretary shall use the services, research, and testing facilities of public agencies to the maximum extent practicable to avoid duplication.

(c) FACILITIES.—The Secretary may plan, design, and build a new facility or modify an existing facility to conduct research, development, and testing in traffic safety, highway safety, and motor vehicle safety. An expenditure of more than $100,000 for planning, design, or construction may be made only if the planning, design, or construction is approved by substantially similar resolutions by the Committees on Energy and Commerce and Public Works and Transportation of the House of Representatives and the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate. To obtain that approval, the Secretary shall submit to Congress a prospectus on the proposed facility. The prospectus shall include—

(1) a brief description of the facility being planned, designed, or built;

(2) the location of the facility;

(3) an estimate of the maximum cost of the facility;

(4) a statement identifying private and public agencies that will use the facility and the contribution each agency will make to the cost of the facility; and

(5) a justification of the need for the facility.

(d) INCREASING COSTS OF APPROVED FACILITIES.—The estimated maximum cost of a facility approved under subsection (c) of this section may be increased by an amount equal to the percentage increase in construction costs from the date the prospectus is submitted to Congress. However, the increase in the cost of the facility may not be more than 10 percent of the estimated maximum cost included in the prospectus. The Secretary shall decide what increase in construction costs has occurred.

(e) AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.—When the United States Government makes more than a minimal contribution to a research or development activity under this chapter, the Secretary shall include in the arrangement for the activity a provision to ensure that all information, patents, and developments related to the activity are available to the public. However, the owner of a background patent may not be deprived of a right under the patent.

§30169. Annual reports

(a) GENERAL REPORT.—The Secretary of Transportation shall submit to the President to submit to Congress on July 1 of each year a report on the administration of this chapter for the prior calendar year. The report shall include—

(1) a thorough statistical compilation of accidents and injuries;

(2) motor vehicle safety standards in effect or prescribed under this chapter;

(3) the degree of observance of the standards;

(4) a summary of current research grants and contracts and a description of the problems to be considered under those grants and contracts;

(5) an analysis and evaluation of research activities completed and technological progress achieved;

(6) enforcement actions;

(7) the extent to which technical information was given the scientific community and consumer-oriented information was made available to the public; and

(8) recommendations for legislation needed to promote cooperation among the States in improving traffic safety and strengthening the national traffic safety program.

(b) REPORT ON IMPORTING MOTOR VEHICLES.—Not later than 18 months after regulations are first prescribed under section 2(e)(1)(B) of the Imported Vehicle Safety Compliance Act of 1988, the Secretary shall submit to Congress a report of the actions taken to carry out subchapter III of this chapter and the effectiveness of those actions, including any testing by the Secretary under section 30146(c)(2) of this title. After the first report, the Secretary shall submit a report to Congress under this subsection not later than July 31 of each year.

CHAPTER 303—NATIONAL DRIVER REGISTER

Sec.

30301. Definitions.
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30303. State participation.
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30305. Access to Register information.
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30307. Criminal penalties.
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§30301. Definitions

In this chapter—

(1) "alcohol" has the same meaning given that term in regulations prescribed by the Secretary of Transportation.

(2) "chief driver licensing official" means the official in a State who is authorized to—

(A) maintain a record about a motor vehicle operator's license issued by the State; and

(B) issue, deny, revoke, suspend, or cancel a motor vehicle operator's license issued by the State.

(3) "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(4) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle operated only on a rail line.

(5) "motor vehicle operator's license" means a license issued by a State authorizing an individual to operate a motor vehicle on public streets, roads, or highways.

(6) "participating State" means a State that has notified the Secretary under section 30303 of this title of its participation in the National Driver Register.

(7) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(8) "State of record" means a State that has given the Secretary a report under section 30304 of this title about an individual who is the subject of a request for information made under section 30305 of this title.

§30302. National Driver Register

(a) ESTABLISHMENT AND CONTENTS.—The Secretary of Transportation shall establish as soon as practicable and maintain a National Driver Register to assist chief driver licensing officials of participating States in exchanging information about the motor vehicle driving records of individuals. The Register shall contain an index of the information reported to the Secretary under section 30304 of this title. The Register shall enable the Secretary (electronically or, until all States can participate electronically, by United States mail)—

(1) to receive information submitted under section 30304 of this title by the chief driver licensing official of a State of record;

(2) to receive a request for information made by the chief driver licensing official of a participating State under section 30305 of this title;

(3) to refer the request to the chief driver licensing official of a State of record; and

(4) in response to the request, to relay information provided by a chief driver licensing official of a State of record to the chief driver licensing official of a participating State, without interception of the information.

(b) ACCURACY OF INFORMATION.—The Secretary is not responsible for the accuracy of information relayed to the chief driver licensing official of a participating State. However, the Secretary shall maintain the Register in a way that ensures against inadvertent alteration of information during a relay.

(c) TRANSITION FROM PRIOR REGISTER.—(1) The Secretary shall provide by regulation for the orderly transition from the register maintained under the Act of July 14, 1960, as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), to the Register maintained under this chapter.

(2)(A) The Secretary shall delete from the Register a report or information that was compiled under the Act of July 14, 1960, as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), and transferred to the Register, after the earlier of—

(i) the date the State of record removes it from the State's file;

(ii) 7 years after the date the report or information is entered in the Register; or

(iii) the date a fully electronic Register system is established.

(B) The report or information shall be disposed of under chapter 33 of title 44.

(3) If the chief driver licensing official of a participating State finds that information provided for inclusion in the Register is erroneous or is related to a conviction of a traffic offense that subsequently is reversed, the official immediately shall notify the Secretary. The Secretary shall provide for the immediate deletion of the information from the Register.

(d) ASSIGNMENT OF PERSONNEL.—In carrying out this chapter, the Secretary shall assign personnel necessary to ensure the effective operation of the Register.

§30303. State participation

(a) NOTIFICATION.—A State may become a participating State under this chapter by notifying the Secretary of Transportation of its intention to be bound by section 30304 of this title.

(b) WITHDRAWAL.—A participating State may end its status as a participating State by notifying the Secretary of its withdrawal from participation in the National Driver Register.

(c) FORM AND WAY OF NOTIFICATION.—Notification by a State under this section shall be made in the form and way the Secretary prescribes by regulation.

§30304. Reports by chief driver licensing officials

(a) INDIVIDUALS COVERED.—As soon as practicable, the chief driver licensing official of each participating State shall submit to the Secretary of Transportation a report containing the information specified by subsection (b) of this section for each individual—

(1) who is denied a motor vehicle operator's license by that State for cause;

(2) whose motor vehicle operator's license is revoked, suspended, or canceled by that State for cause; or

(3) who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses:

(A) operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

(C) failing to give aid or provide identification when involved in an accident resulting in death or personal injury.

(D) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle.

(b) CONTENTS.—(1) Except as provided in paragraph (2) of this subsection, a report under subsection (a) of this section shall contain—

(A) the individual's legal name, date of birth, sex, and, at the Secretary's discretion, height, weight, and eye and hair color;

(B) the name of the State providing the information; and

(C) the social security account number if used by the State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number if different from the social security account number.

(2) A report under subsection (a) of this section about an event that occurs during the 2-year period before the State becomes a participating State is sufficient if the report contains all of the information that is available to the chief driver licensing official when the State becomes a participating State.

(c) TIME FOR FILING.—If a report under subsection (a) of this section is about an event that occurs—

(1) during the 2-year period before the State becomes a participating State, the report shall be submitted not later than 6 months after the State becomes a participating State; or

(2) after the State becomes a participating State, the report shall be submitted not later than 31 days after the motor vehicle department of the State receives any information specified in subsection (b)(1) of this section that is the subject of the report.

(d) EVENTS OCCURRING BEFORE PARTICIPATION.—This section does not require a State to report information about an event that occurs before the 2-year period before the State becomes a participating State.

§30305. Access to Register information

(a) REFERRALS OF INFORMATION REQUESTS.—(1) To carry out duties related to driver licensing, driver improvement, or transportation safety, the chief driver licensing official of a participating State may request the Secretary of Transportation to refer, electronically or by United States mail, a request for information about the motor vehicle driving record of an individual to the chief driver licensing official of a State of record.

(2) The Secretary of Transportation shall relay, electronically or by United States mail, information received from the chief driver licensing official of a State of record in response to a request under paragraph (1) of this subsection to the chief driver licensing official of the participating State requesting the information. However, the Secretary may refuse to relay information to the chief driver licensing official of a participating State that does not comply with section 30304 of this title.

(b) REQUESTS TO OBTAIN INFORMATION.—(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration may request the chief driver licensing official of a State to obtain information under subsection (a) of this section about an individual who is the subject of an accident investigation conducted by the Board or the Administrator. The Chairman and the Administrator may receive the information.

(2) An individual who is employed, or is seeking employment, as a driver of a motor vehicle may request the chief driver licensing official of the State in which the individual is employed or seeks employment to provide information under subsection (a) of this section to the individual's employer or prospective employer. An employer or prospective employer may receive the information and shall make the information available to the individual. Information may not be obtained from the National Driver Register under this paragraph if the information was entered in the Register more than 3 years before the request.

(3) An individual who has received, or is applying for, an airman's certificate may request the chief driver licensing official of a State to provide information under subsection (a) of this section about the individual to the Administrator of the Federal Aviation Administration. The Administrator may receive the information and shall make the information available to the individual for review and written comment. The Administrator may use the information to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether the airman meets the minimum standards prescribed by the Administrator to be issued an airman medical certificate. The Administrator may not otherwise divulge or use the information. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(4) An individual who is employed, or is seeking employment, by a rail carrier as an operator of a locomotive may request the chief driver licensing official of a State to provide information under subsection (a) of this section to the individual's employer or prospective employer or to the Secretary of Transportation. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(5) An individual who holds, or is applying for, a license or certificate of registry under section 7101 of title 46, or a merchant mariner's document under section 7302 of title 46, may request the chief driver licensing official of a State to provide information under subsection (a) of this section about the individual to the Secretary of the department in which the Coast Guard is operating. The Secretary may receive the information and shall make the information available to the individual for review and written comment before denying, suspending, or revoking the license, certificate, or document of the individual based on the information and before using the information in an action taken under chapter 77 of title 46. The Secretary may not otherwise divulge or use the information, except for purposes of section 7101, 7302, or 7703 of title 46. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(6) An individual may request the chief driver licensing official of a State to obtain information about the individual under subsection (a) of this section—

(A) to learn whether information about the individual is being provided;

(B) to verify the accuracy of the information; or

(C) to obtain a certified copy of the information.

(7) A request under this subsection shall be made in the form and way the Secretary of Transportation prescribes by regulation.

(c) RELATIONSHIP TO OTHER LAWS.—A request for, or receipt of, information from the Register is subject to sections 552 and 552a of title 5, and other applicable laws of the United States or a State, except that—

(1) the Secretary of Transportation may not relay or otherwise provide information specified in section 30304(b)(1)(A) or (C) of this title to a person not authorized by this section to receive the information;

(2) a request for, or receipt of, information by a chief driver licensing official, or by a person authorized by subsection (b) of this section to request and receive the information, is deemed to be a routine use under section 552a(b) of title 5; and

(3) receipt of information by a person authorized by this section to receive the information is deemed to be a disclosure under section 552a(c) of title 5, except that the Secretary of Transportation is not required to retain the accounting made under section 552a(c)(1) for more than 7 years after the disclosure.

(d) AVAILABILITY OF INFORMATION PROVIDED UNDER PRIOR LAW.—Information provided by a State under the Act of July 14, 1960, as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), and under this chapter, shall be available under this section during the transition from the register maintained under that Act to the Register maintained under this chapter.

§30306. National Driver Register Advisory Committee

(a) ORGANIZATION.—There is a National Driver Register Advisory Committee.

(b) DUTIES.—The Committee shall advise the Secretary of Transportation on—

(1) the efficiency of the maintenance and operation of the National Driver Register; and

(2) the effectiveness of the Register in assisting States in exchanging information about motor vehicle driving records.

(c) COMPOSITION AND APPOINTMENT.—The Committee is composed of 15 members appointed by the Secretary as follows:

(1) 3 members appointed from among individuals who are specially qualified to serve on the Committee because of their education, training, or experience, and who are not officers or employees of the United States Government or a State.

(2) 3 members appointed from among groups outside the Government that represent the interests of bus and trucking organizations, enforcement officials, labor, or safety organizations.

(3) 9 members, geographically representative of the participating States, appointed from among individuals who are chief driver licensing officials of participating States.

(d) TERMS.—(1) Except as provided in paragraph (2) of this subsection, the term of each member is 3 years.

(2) A vacancy on the Committee shall be filled in the same way as an original appointment. A member appointed to fill a vacancy serves for the remainder of the term of that member's predecessor. After a member's term ends, the member may continue to serve until the successor takes office.

(e) COMPENSATION AND EXPENSES.—Members of the Committee serve without compensation. However, the Secretary may reimburse a member for reasonable travel expenses incurred by the member in attending meetings of the Committee.

(f) MEETINGS, CHAIRMAN, VICE CHAIRMAN, AND QUORUM.—(1) The Committee shall meet at least once a year.

(2) The Committee shall elect a Chairman and a Vice Chairman from among its members.

(3) Eight members are a quorum.

(4) The Committee shall meet at the call of the Chairman or a majority of the members.

(g) PERSONNEL AND SERVICES.—The Secretary may provide the Committee with personnel, penalty mail privileges, and similar services the Secretary considers necessary to assist the Committee in carrying out its duties and powers under this section.

(h) REPORTS.—At least once a year, the Committee shall submit to the Secretary a report on the matters specified in subsection (b) of this section. The report shall include any recommendations of the Committee for changes in the Register.

(i) RELATIONSHIP TO OTHER LAWS.—The Committee is exempt from sections 10(e) and (f) and 14 of the Federal Advisory Committee Act (5 App. U.S.C.).

§30307. Criminal penalties

(a) GENERAL PENALTY.—A person (except an individual described in section 30305(b)(6) of this title) shall be fined under title 18, imprisoned for not more than one year, or both, if—

(1) the person receives under section 30305 of this title information specified in section 30304(b)(1)(A) or (C) of this title;

(2) disclosure of the information is not authorized by section 30305 of this title; and

(3) the person willfully discloses the information knowing that disclosure is not authorized.

(b) INFORMATION PENALTY.—A person knowingly and willfully requesting, or under false pretenses obtaining, information specified in section 30304(b)(1)(A) or (C) of this title from a person receiving the information under section 30305 of this title shall be fined under title 18, imprisoned for not more than one year, or both.

§30308. Authorization of appropriations

(a) GENERAL.—Not more than $______ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out this chapter.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

PART B—COMMERCIAL

CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

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SUBCHAPTER I—STATE GRANTS

§31101. Definitions

In this subchapter—

(1) "commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle—

(A) has a gross vehicle weight rating of at least 10,000 pounds;

(B) is designed to transport more than 10 passengers including the driver; or

(C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title.

(2) "employee" means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment by a commercial motor carrier; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.

(3) "employer"—

(A) means a person engaged in a business affecting commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate the vehicle in commerce; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

§31102. Grants to States

(a) GENERAL AUTHORITY.—Subject to this section and the availability of amounts, the Secretary of Transportation may make grants to States for the development or implementation of programs for the enforcement of regulations, standards, and orders of the United States Government on commercial motor vehicle safety and compatible State regulations, standards, and orders.

(b) STATE PLAN PROCEDURES AND CONTENTS.—(1) The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to adopt and assume responsibility for enforcing regulations, standards, and orders of the Government on commercial motor vehicle safety or compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan—

(A) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances the agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

(C) contains satisfactory assurances the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

(D) provides that the total expenditure of amounts of the State and its political subdivisions (not including amounts of the Government) for commercial motor vehicle safety programs will be maintained at a level at least equal to the average level of that expenditure for its last 2 full fiscal years before January 6, 1983;

(E) provides a right of entry and inspection sufficient to enforce the regulations, standards, and orders;

(F) provides that all reports required under this section be submitted to the agency and that the agency will make the reports available to the Secretary on request;

(G) provides that the agency will adopt the reporting requirements and use the forms for recordkeeping, inspections, and investigations the Secretary prescribes; and

(H) requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable safety regulations, standards, and orders of the Government and the State.

(2) If the Secretary disapproves a plan under this subsection, the Secretary shall give the State a written explanation and allow the State to modify and resubmit the plan for approval.

(c) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports submitted by a State motor vehicle safety agency of a State with a plan approved under this section and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

§31103. United States Government's share of costs

The Secretary of Transportation shall reimburse a State, from a grant made under this subchapter, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in developing and implementing programs to enforce commercial motor vehicle regulations, standards, or orders adopted under this subchapter or subchapter II of this chapter. Amounts of the State and its political subdivisions required to be expended under section 31102(b)(1)(D) of this title may not be included as part of the share not provided by the United States Government. The Secretary may allocate among the States whose applications for grants have been approved those amounts appropriated for grants to support those programs, under criteria that may be established.

§31104. Availability of amounts

(a) GENERAL.—Subject to section 9503(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(1)), not more than $60,000,000 is available from the Highway Trust Fund (except the Mass Transit Account) for each of the fiscal years ending September 30, 1989–1991, for the Secretary of Transportation to incur obligations to carry out section 31102 of this title.

(b) ONE FISCAL YEAR LIMITATION.—A grant made under this subchapter shall be for not more than one fiscal year.

(c) REIMBURSEMENT FOR GOVERNMENT'S SHARE OF COSTS.—Amounts made available under this section shall be used to reimburse States pro rata for the United States Government's share of costs incurred.

(d) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under section 31102 of this title is a contractual obligation of the Government for payment of the Government's share of costs incurred by the State in developing, implementing, or developing and implementing programs to enforce commercial motor vehicle regulations, standards, and orders.

(e) PERIOD OF AVAILABILITY.—Amounts made available under this section for a fiscal year remain available for obligation by the Secretary for that fiscal year and for the next 3 fiscal years.

(f) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year, the Secretary may deduct, from amounts made available under this section for that fiscal year, not more than .5 percent of those amounts for administrative expenses in carrying out section 31102 of this title in that fiscal year.

§31105. Employee protections

(a) PROHIBITIONS.—(1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because—

(A) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding; or

(B) the employee refuses to operate a vehicle because—

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health; or

(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition.

(2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) FILING COMPLAINTS AND PROCEDURES.—(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred. On receiving the complaint, the Secretary shall notify the person alleged to have committed the violation of the filing of the complaint.

(2)(A) Not later than 60 days after receiving a complaint, the Secretary shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify the complainant and the person alleged to have committed the violation of the findings. If the Secretary decides it is reasonable to believe a *violation occurred, the Secretary shall include with the decision findings and a preliminary order for the relief provided under paragraph (3) of this subsection.*

(B) Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.

(C) A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.

(3)(A) If the Secretary decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary shall order the person to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

(iii) pay compensatory damages, including back pay.

(B) If the Secretary issues an order under subparagraph (A) of this paragraph and the complainant requests, the Secretary may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint. The Secretary shall determine the costs that reasonably were incurred.

(c) JUDICIAL REVIEW AND VENUE.—A person adversely affected by an order issued after a hearing under subsection (b) of this section may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. The review shall be heard and decided expeditiously. An order of the Secretary subject to review under this subsection is not subject to judicial review in a criminal or other civil proceeding.

(d) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order issued under subsection (b) of this section, the Secretary shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

§31111. Length limitations

(a) DEFINITIONS.—In this section—

(1) "maxi-cube vehicle" means a truck tractor combined with a semitrailer and a separable property-carrying unit designed to be loaded and unloaded through the semitrailer, with the length of the separable property-carrying unit being not more than 34 feet and the length of the vehicle combination being not more than 65 feet.

(2) "truck tractor" means—

(A) a non-property-carrying power unit that operates in combination with a semitrailer or trailer; or

(B) a power unit that carries as property only motor vehicles when operating in combination with a semitrailer in transporting motor vehicles.

(b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that—

(A) imposes a vehicle length limitation of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination, or of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under subsection (e) of this section;

(B) imposes an overall length limitation on a commercial motor vehicle operating in a truck tractor-semitrailer or truck tractor-semitrailer-trailer combination;

(C) has the effect of prohibiting the use of a semitrailer or trailer of the same dimensions as those that were in actual and lawful use in that State on December 1, 1982; or

(D) has the effect of prohibiting the use of an existing semitrailer or trailer, of not more than 28.5 feet in length, in a truck tractor-semitrailer-trailer combination if the semitrailer or trailer was operating lawfully on December 1, 1982, within a 65-foot overall length limit in any State.

(2) A length limitation prescribed or enforced by a State under paragraph (1)(A) of this subsection applies only to a semitrailer or trailer and not to a truck tractor.

(c) MAXI-CUBE AND VEHICLE COMBINATION LIMITATIONS.—A State may not prohibit a maxi-cube vehicle or a commercial motor vehicle combination consisting of a truck tractor and 2 trailing units on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary under subsection (e) of this section.

(d) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Length calculated under this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle. However, such a device may not have by its design or use the ability to carry cargo.

(e) QUALIFYING HIGHWAYS.—The Secretary by regulation shall designate as qualifying Federal-aid Primary System highways those Primary System highways that can accommodate safely the applicable vehicle lengths provided in this section.

(f) EXEMPTIONS.—(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from either or both provisions.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section.

(3) A chief executive officer's notification under this subsection must include specific evidence of safety problems supporting the officer's decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary's own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the Secretary shall exempt the segment from either or both of those provisions. Before making a decision under this paragraph, the Secretary shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection before the final regulations under subsection (e) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.

(g) ACCOMMODATING SPECIALIZED EQUIPMENT.—In prescribing regulations to carry out this section, the Secretary may make decisions necessary to accommodate specialized equipment, including automobile and vessel transporters and maxi-cube vehicles.

§31112. Width limitations

(a) GENERAL LIMITATIONS.—(1) Except as provided in subsection (e) of this section, a State (except Hawaii) may not prescribe or enforce a regulation of commerce that imposes a vehicle width limitation of more or less than 102 inches on a commercial motor vehicle operating on—

(A) a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (e) of this section);

(B) a qualifying Federal-aid highway designated by the Secretary of Transportation, with traffic lanes designed to be at least 12 feet wide; or

(C) a qualifying Federal-aid Primary System highway designated by the Secretary if the Secretary decides the designation is consistent with highway safety.

(2) Notwithstanding paragraph (1) of this subsection, a State may continue to enforce a regulation of commerce in effect on April 6, 1983, that applies to a commercial motor vehicle of more than 102 inches in width, until the date on which the State prescribes a regulation of commerce that complies with this subsection.

(3) A Federal-aid highway (except an interstate highway) not designated under this subsection on June 5, 1984, may be designated under this subsection only with the agreement of the chief executive officer of the State in which the highway is located.

(b) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Width calculated under this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle.

(c) SPECIAL USE PERMITS.—A State may grant a special use permit to a commercial motor vehicle that is more than 102 inches in width.

(d) STATE ENFORCEMENT.—Consistent with this section, a State may enforce a commercial motor vehicle width limitation of 102 inches on a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (e) of this section) or other qualifying Federal-aid highway designated by the Secretary.

(e) EXEMPTIONS.—(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having the width provided in subsection (a) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having the width provided for in subsection (a) of this section.

(3) A chief executive officer's notification under this subsection must include specific evidence of safety problems supporting the officer's decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary's own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a width provided in subsection (a) of this section, the Secretary shall exempt the segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment. Before making a decision under this paragraph, the Secretary shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection before the final regulations under subsection (a) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.

§31113. Access to the Interstate System

(a) PROHIBITION ON DENYING ACCESS.—A State may not enact or enforce a law denying to a commercial motor vehicle subject to this subchapter or subchapter I of this chapter reasonable access between—

(1) the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under section 31111(f) or 31112(e) of this title) and other qualifying Federal-aid Primary System highways designated by the Secretary of Transportation; and

(2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers or any truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

(b) EXCEPTION.—This section does not prevent a State or local government from imposing reasonable restrictions, based on safety considerations, on a truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

§31114. Enforcement

On the request of the Secretary of Transportation, the Attorney General shall bring a civil action for appropriate injunctive relief to ensure compliance with this subchapter or subchapter I of this chapter. The action may be brought in a district court of the United States in any State in which the relief is required. On a proper showing, the court shall issue a temporary restraining order or preliminary or permanent injunction. An injunction under this section may order a State or person to comply with this subchapter, subchapter I, or a regulation prescribed under this subchapter or subchapter I.

SUBCHAPTER III—SAFETY REGULATION

§31131. Purposes and findings

(a) PURPOSES.—The purposes of this subchapter are—

(1) to promote the safe operation of commercial motor vehicles;

(2) to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety; and

(3) to ensure increased compliance with traffic laws and with the commercial motor vehicle safety and health regulations and standards prescribed and orders issued under this chapter.

(b) FINDINGS.—Congress finds—

(1) it is in the public interest to enhance commercial motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage;

(2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;

(3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and

(4) interested State governments can provide valuable assistance to the United States Government in ensuring that commercial motor vehicle operations are conducted safely and healthfully.

§31132. Definitions

In this subchapter—

(1) "commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating of at least 10,001 pounds;

(B) is designed to transport more than 15 passengers including the driver; or

(C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) "employee" means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, a State, or a political subdivision of a State.

(3) "employer"—

(A) means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) "interstate commerce" means trade, traffic, or transportation in the United States between a place in a State and—

(A) a place outside that State (including a place outside the United States); or

(B) another place in the same State through another State or through a place outside the United States.

(5) "intrastate commerce" means trade, traffic, or transportation in a State that is not interstate commerce.

(6) "regulation" includes a standard or order.

(7) "State" means a State of the United States, the District of Columbia, and, in sections 31136 and 31140–31142 of this title, a political subdivision of a State.

(8) "State law" includes a law enacted by a political subdivision of a State.

(9) "State regulation" includes a regulation prescribed by a political subdivision of a State.

(10) "United States" means the States of the United States and the District of Columbia.

§31133. General powers of the Secretary of Transportation

(a) GENERAL.—In carrying out this subchapter and regulations prescribed under section 31102 of this title, the Secretary of Transportation may—

(1) conduct inspections and investigations;

(2) compile statistics;

(3) make reports;

(4) issue subpenas;

(5) require production of records and property;

(6) take depositions;

(7) hold hearings;

(8) prescribe recordkeeping and reporting requirements;

(9) conduct or make contracts for studies, development, testing, evaluation, and training; and

(10) perform other acts the Secretary considers appropriate.

(b) CONSULTATION.—In conducting inspections and investigations under subsection (a) of this section, the Secretary shall consult, as appropriate, with employers and employees and their authorized representatives and offer them a right of accompaniment.

(c) DELEGATION.—The Secretary may delegate to a State receiving a grant under section 31102 of this title those duties and powers related to enforcement (including conducting investigations) of this subchapter and regulations prescribed under this subchapter that the Secretary considers appropriate.

§31134. Commercial Motor Vehicle Safety Regulatory Review Panel

(a) ESTABLISHMENT AND GENERAL DUTY.—The Secretary of Transportation shall establish the Commercial Motor Vehicle Safety Regulatory

Review Panel. The Panel shall analyze and review State laws and regulations under sections 31140 and 31141 of this title.

(b) SPECIFIC DUTIES.—The Panel shall—

(1) carry out those duties and powers designated to be carried out by the Panel under sections 31140 and 31141 of this title;

(2) conduct a study to—

(A) evaluate the need, if any, for additional assistance from the United States Government to the States to enable them to enforce the regulations prescribed by the Secretary under section 31136 of this title; and

(B) decide on other methods of furthering the purposes of this subchapter; and

(3) make recommendations to the Secretary based on the results of the study conducted under clause (2) of this subsection.

(c) COMPOSITION, APPOINTMENT, AND TERMS.—(1) The Panel shall be composed of 15 members as follows:

(A) the Secretary or the Secretary's delegate.

(B) 7 individuals appointed by the Secretary from among individuals who represent the interests of States and political subdivisions of States and whose names have been submitted to the Secretary by the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Public Works and Transportation of the House of Representatives.

(C) 7 individuals appointed by the Secretary from among individuals who represent the interests of business, consumer, labor, and safety groups and whose names have been submitted to the Secretary by the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Public Works and Transportation of the House of Representatives.

(2) The Secretary shall select the individuals to be appointed under this subsection on the basis of their knowledge, expertise, or experience related to commercial motor vehicle safety. Half of the appointments shall be made from names submitted by the Committee on Commerce, Science, and Transportation of the Senate, and the other half from names submitted by the Committee on Public Works and Transportation of the House of Representatives. Each of these committees shall submit to the Secretary the names of 20 individuals qualified to serve on the Panel.

(3) The term of each member of the Panel appointed under paragraph (1) (B) and (C) of this subsection is 7 years.

(4) A vacancy on the Panel shall be filled in the way the original appointment was made. The vacancy does not affect the Panel's powers.

(d) CHAIRMAN, QUORUM, MEETINGS, AND PAY.—(1) The Secretary is the Chairman of the Panel.

(2) Eight members of the Panel are a quorum, but the Panel may establish a lesser number as a quorum to hold hearings, take testimony, and receive evidence.

(3) The Panel shall meet at the call of the Chairman or a majority of its members.

(4) Members of the Panel shall serve without pay, except that they shall receive per diem and travel expenses under section 5703 of title 5.

(e) PERSONNEL, OFFICE SPACE, AND SUPPORT SERVICES.—On request of the Panel, the Secretary shall—

(1) detail personnel of the Department of Transportation to the Panel as necessary to assist the Panel in carrying out its duties and powers; and

(2) provide office space, supplies, equipment, and other support services to the Panel as necessary for the Panel to carry out its duties and powers.

(f) HEARINGS AND OTHER ACTIONS.—To carry out the duties and powers of the Panel under this subchapter, the Panel or any member authorized by the Panel may hold hearings, sit and act at times and places, take testimony, and take other actions the Panel or the member considers advisable. A member of the Panel may administer oaths to witnesses appearing before the Panel or the member.

(g) TEMPORARY AND INTERMITTENT SERVICES.—Subject to regulations the Panel may prescribe, the Chairman may procure the temporary or intermittent services of experts or consultants under section 3109 of title 5.

§31135. Duties of employers and employees

Each employer and employee shall comply with regulations on commercial motor vehicle safety prescribed by the Secretary of Transportation under this subchapter that apply to the employer's or employee's conduct.

§31136. United States Government regulations

(a) MINIMUM SAFETY STANDARDS.—Subject to section 30103(a) of this title, the Secretary of Transportation shall prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—

(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;

(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

(b) ELIMINATING AND AMENDING EXISTING REGULATIONS.—The Secretary may not eliminate or amend an existing motor carrier safety regulation related only to the maintenance, equipment, loading, or operation (including routing) of vehicles carrying material found to be hazardous under section 5103 of this title until an equivalent or more stringent regulation has been prescribed under section 5103.

(c) PROCEDURES AND CONSIDERATIONS.—(1) A regulation under this section shall be prescribed under section 553 of title 5 (without regard to sections 556 and 557 of title 5).

(2) Before prescribing regulations under this section, the Secretary shall consider, to the extent practicable and consistent with the purposes of this chapter—

(A) costs and benefits; and

(B) State laws and regulations on commercial motor vehicle safety, to minimize their unnecessary preemption.

(d) EFFECT OF EXISTING REGULATIONS.—If the Secretary does not prescribe regulations on commercial motor vehicle safety under this section, regulations on commercial motor vehicle safety prescribed by the Secretary before October 30, 1984, and in effect on October 30, 1984, shall be deemed in this subchapter to be regulations prescribed by the Secretary under this section.

(e) WAIVERS.—After notice and an opportunity for comment, the Secretary may waive any part of a regulation prescribed under this section as it applies to a person or class of persons, if the Secretary decides that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles. Under this subsection, the Secretary shall waive the regulations prescribed under this section as they apply to schoolbuses (as defined in section 30125(a) of this title) unless the Secretary decides that making the regulations applicable to schoolbuses is necessary for public safety, considering all laws of the United States and States applicable to schoolbuses. A waiver under this subsection shall be published in the Federal Register, with the reasons for the waiver.

(f) LIMITATIONS ON MUNICIPALITY AND COMMERCIAL ZONE EXEMPTIONS AND WAIVERS.—(1) The Secretary may not—

(A) exempt a person or commercial motor vehicle from a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality; or

(B) waive application to a person or commercial motor vehicle of a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality.

(2) If a person was authorized to operate a commercial motor vehicle in a municipality or commercial zone of a municipality in the United States for the entire period from November 19, 1987, through November 18, 1988, and if the person is otherwise qualified to operate a commercial motor vehicle, the person may operate a commercial motor vehicle entirely in a municipality or commercial zone of a municipality notwithstanding—

(A) paragraph (1) of this subsection;

(B) a minimum age requirement of the United States Government for operation of the vehicle; and

(C) a medical or physical condition that—

(i) would prevent an operator from operating a commercial motor vehicle under the commercial motor vehicle safety regulations in title 49, Code of Federal Regulations;

(ii) existed cn July 1, 1988;

(iii) has not substantially worsened; and

(iv) does not involve alcohol or drug abuse.

(3) This subsection does not affect a State commercial motor vehicle safety law applicable to intrastate commerce.

§31137. Monitoring device and brake maintenance regulations

(a) USE OF MONITORING DEVICES.—If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

(b) BRAKES AND BRAKE SYSTEMS MAINTENANCE REGULATIONS.—Not later than December 31, 1990, the Secretary shall prescribe regulations on improved standards or methods to ensure that brakes and brake systems of commercial motor vehicles are maintained properly and inspected by appropriate employees. At a minimum, the regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting the brakes and brake systems.

§31138. Minimum financial responsibility for transporting passengers

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in the United States between a place in a State and—

(1) a place in another State;

(2) another place in the same State through a place outside of that State; or

(3) a place outside the United States.

(b) MINIMUM AMOUNTS.—The level of financial responsibility established under subsection (a) of this section for a motor vehicle with a seating capacity of—

(1) at least 16 passengers shall be at least $5,000,000; and

(2) not more than 15 passengers shall be at least $1,500,000.

(c) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by

evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance, including high self-retention.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(d) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in the appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(e) NONAPPLICATION.—This section does not apply to a motor vehicle—

(1) transporting only school children and teachers to or from school;

(2) providing taxicab service, having a seating capacity of not more than 6 passengers, and not being operated on a regular route or between specified places; or

(3) carrying not more than 15 individuals in a single, daily round trip to and from work.

§31139. Minimum financial responsibility for transporting property

(a) DEFINITIONS.—In this section—

(1) "farm vehicle" means a vehicle—

(A) designed or adapted and used only for agriculture;

(B) operated by a motor private carrier (as defined in section 10102 of this title); and

(C) operated only incidentally on highways.

(2) "interstate commerce" includes transportation between a place in a State and a place outside the United States, to the extent the transportation is in the United States.

(3) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) GENERAL REQUIREMENT AND MINIMUM AMOUNT.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property for compensation by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(2) The level of financial responsibility established under paragraph (1) of this subsection shall be at least $750,000.

(c) REQUIREMENTS FOR HAZARDOUS MATTER AND OIL.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation by motor vehicle in interstate or intrastate commerce of—

(A) hazardous material (as defined by the Secretary);

(B) oil or hazardous substances (as defined by the Administrator of the Environmental Protection Agency); or

(C) hazardous wastes (as defined by the Administrator).

(2)(A) Except as provided in subparagraph (B) of this paragraph, the level of financial responsibility established under paragraph (1) of this subsection shall be at least $5,000,000 for the transportation—

(i) of hazardous substances (as defined by the Administrator) in cargo tanks, portable tanks, or hopper-type vehicles, with capacities of more than 3,500 water gallons;

(ii) in bulk of class A explosives, poison gas, liquefied gas, or compressed gas; or

(iii) of large quantities of radioactive material.

(B) The Secretary of Transportation by regulation may reduce the minimum level in subparagraph (A) of this paragraph (to an amount not less than $1,000,000) for transportation described in subparagraph (A) in any of the territories of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands if—

(i) th chief executive officer of the territory requests the reduction;

(ii) the reduction will prevent a serious disruption in transportation service and will not adversely affect public safety; and

(iii) insurance of $5,000,000 is not readily available.

(3) The level of financial responsibility established under paragraph (1) of this subsection for the transportation of a material, oil, substance, or waste not subject to paragraph (2) of this subsection shall be at least $1,000,000. However, if the Secretary of Transportation finds it will not adversely affect public safety, the Secretary by regulation may reduce the amount for—

(A) a class of vehicles transporting such a material, oil, substance, or waste in intrastate commerce (except in bulk); and

(B) a farm vehicle transporting such a material or substance in interstate commerce (except in bulk).

(d) FOREIGN MOTOR CARRIERS AND PRIVATE CARRIERS.—Regulations prescribed under this section may allow foreign motor carriers and foreign motor private carriers (as those terms are defined in section 10530 of this title) providing transportation of property under a certificate of registration issued under section 10530 to meet the minimum levels of financial responsibility under this section only when those carriers are providing transportation for property in the United States.

(e) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(D) qualification as a self-insurer.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(f) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in the appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(g) NONAPPLICATION.—This section does not apply to a motor vehicle having a gross vehicle weight rating of less than 10,000 pounds if the vehicle is not used to transport in interstate or foreign commerce—

(1) class A or B explosives;

(2) poison gas; or

(3) a large quantity of radioactive material.

§31140. Submission of State laws and regulations for review

(a) LAWS AND REGULATIONS IN EFFECT BEFORE APRIL 29, 1986.—A State that had in effect a State law or regulation on commercial motor vehicle safety before April 29, 1986, and wants to enforce the law or regulation after October 29, 1989, shall submit a copy of the law or regulation to the Secretary of Transportation and the Commercial Motor Vehicle Safety Regulatory Review Panel.

(b) LAWS ENACTED AND REGULATIONS ISSUED AFTER APRIL 29, 1986.—A State that enacts a State law or issues a regulation on commercial motor vehicle safety after April 29, 1986, shall submit a copy of the law or regulation to the Secretary and the Panel immediately after the enactment or issuance.

(c) INITIAL GUIDELINES.—The Secretary shall prescribe initial guidelines to assist the States in compiling and submitting State laws and regulations and other information under this section.

(d) ADDITIONAL INFORMATION.—As soon as practicable but not later than a date the Panel may establish, a State that submits a State law or regulation under this section to the Panel shall—

(1) indicate in writing to the Panel whether the law or regulation—

(A) has the same effect as a regulation prescribed by the Secretary under section 31136 of this title;

(B) is less stringent than that regulation; or

(C) is additional to or more stringent than that regulation; and

(2) submit to the Panel other information the Panel or the Secretary may require to carry out this subchapter.

§31141. Review and preemption of State laws and regulations

(a) PREEMPTION AFTER DECISION.—After October 29, 1989, a State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced.

(b) ANALYSIS AND DECISIONS BY THE PANEL.—(1) The Commercial Motor Vehicle Safety Regulatory Review Panel annually shall analyze State laws and regulations and decide which of those laws and regulations are related to commercial motor vehicle safety.

(2) Not later than one year after the date the Secretary prescribes a regulation under section 31136 of this title or one year after the date the Panel decides under paragraph (1) of this subsection that a State law or regulation is related to commercial motor vehicle safety, whichever is later, the Panel shall—

(A) decide whether the State law or regulation—

(i) has the same effect as the regulation prescribed by the Secretary;

(ii) is less stringent than that regulation; or

(iii) is additional to or more stringent than that regulation;

(B) decide, for each State law or regulation that the Panel decides is additional to or more stringent than the regulation prescribed by the Secretary, whether—

(i) the State law or regulation has no safety benefit;

(ii) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(iii) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce; and

(C) notify the Secretary of the Panel's decisions under this subsection.

(c) REVIEW AND DECISIONS BY SECRETARY.—(1) The Secretary shall review each State law and regulation on commercial motor vehicle safety. Not later than 18 months after the date the Panel notifies the Secretary of a decision under subsection (b) of this section, the Secretary shall—

(A) conduct a regulatory proceeding to decide under this subsection whether the State law or regulation may be enforced; and

(B) prescribe a final regulation.

(2) If the Secretary decides a State law or regulation has the same effect as a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced after October 29, 1989.

(3) If the Secretary decides a State law or regulation is less stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may not be enforced after October 29, 1989.

(4) If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced after October 29, 1989, unless the Secretary also decides that—

(A) the State law or regulation has no safety benefit;

(B) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(C) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce.

(5)(A) In deciding about a State law or regulation under this subsection, the Secretary shall give great weight to the corresponding decision made by the Panel about that law or regulation under subsection (b) of this section.

(B) In deciding under paragraph (4) of this subsection whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States.

(d) WAIVERS.—(1) A person (including a State) may petition the Secretary for a waiver of a decision of the Secretary that a State law or regulation may not be enforced under this section. The Secretary shall grant the waiver, as expeditiously as possible, if the person demonstrates to the satisfaction of the Secretary that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

(2) Before deciding whether to grant or deny a petition for a waiver under this subsection, the Secretary shall give the petitioner an opportunity for a hearing on the record.

(e) CONSOLIDATING PROCEEDINGS.—The Secretary may consolidate regulatory proceedings under this section if the Secretary decides that the consolidation will not adversely affect a party to a proceeding.

(f) WRITTEN NOTICE OF DECISIONS.—Not later than 10 days after making a decision under subsection (c) of this section that a State law or regulation may not be enforced, the Secretary shall give written notice to the State of that decision.

(g) JUDICIAL REVIEW AND VENUE.—(1) Not later than 60 days after the Secretary makes a decision under subsection (c) of this section, or grants or denies a petition for a waiver under subsection (d) of this section, a person (including a State) adversely affected by the decision, grant, or denial may file a petition for judicial review. The petition may be filed in the court of appeals of the United States for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(2) The court has jurisdiction to review the decision, grant, or denial and to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5.

(3) A judgment of a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

(4) The remedies provided for in this subsection are in addition to other remedies provided by law.

(h) EXTENSIONS OF DEADLINE.—(1) The Secretary may extend, for a period of not more than 12 months, the deadline of October 29, 1989, referred to in subsections (a) and (c) of this section and section 31140(a) of this title. On request of a State that is considering enacting a State law or prescribing a State regulation that may be enforced under this section, the Secretary—

(A) shall extend the deadline for that State for the period the State requests (but not more than 12 months); and

(B) may extend the deadline for that State, in addition to the extension under clause (A) of this paragraph, for a period of not more than 12 more months if the additional extension is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles.

(2) The total periods of extensions under this subsection for a State may not be more than 24 months.

(i) INITIATING REVIEW PROCEEDINGS.—To review a State law or regulation on commercial motor vehicle safety under this section, the Secretary may initiate a regulatory proceeding on the Secretary's own initiative or on petition of an interested person (including a State).

§31142. Inspection of vehicles

(a) INSPECTION OF SAFETY EQUIPMENT.—On the instruction of an authorized enforcement official of a State or of the United States Government, a commercial motor vehicle is required to pass an inspection of all safety equipment required under part 393 of title 49, Code of Federal Regulations.

(b) INSPECTION OF VEHICLES AND RECORD RETENTION.—The Secretary of Transportation shall prescribe regulations on Government standards for inspection of commercial motor vehicles and retention by employers of records of an inspection. The standards shall provide for annual or more frequent inspections of a commercial motor vehicle unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. Regulations prescribed under this subsection are deemed to be regulations prescribed under section 31136 of this title.

(c) PREEMPTION.—(1) Except as provided in paragraph (2) of this subsection, this subchapter and section 31102 of this title do not—

(A) prevent a State or voluntary group of States from imposing more stringent standards for use in their own periodic roadside inspection programs of commercial motor vehicles;

(B) prevent a State from enforcing a program for inspection of commercial motor vehicles that the Secretary decides is as effective as the Government standards prescribed under subsection (b) of this section;

(C) prevent a State from enforcing a program for inspection of commercial motor vehicles that meets the requirements for membership in the Commercial Vehicle Safety Alliance, as those requirements were in effect on October 30, 1984; or

(D) require a State that is enforcing a program described in clause (B) or (C) of this paragraph to enforce a Government standard prescribed under subsection (b) of this section or to adopt a provision on inspection of commercial motor vehicles in addition to that program to comply with the Government standards.

(2) The Government standards prescribed under subsection (b) of this section shall preempt a program of a State described in paragraph (1)(C) of this subsection as the program applies to the inspection of commercial motor vehicles in that State. The State may not enforce the program if the Secretary—

(A) decides, after notice and an opportunity for a hearing, that the State is not enforcing the program in a way that achieves the objectives of this section; and

(B) after making a decision under clause (A) of this paragraph, provides the State with a 6-month period to improve the enforcement of the program to achieve the objectives of this section.

(d) INSPECTION TO BE ACCEPTED AS ADEQUATE IN ALL STATES.—A periodic inspection of a commercial motor vehicle under the Government standards prescribed under subsection (b) of this section or a program described in subsection (c)(1)(B) or (C) of this section that is being enforced shall be recognized as adequate in every State for the period of the inspection. This subsection does not prohibit a State from making random inspections of commercial motor vehicles.

(e) EFFECT OF GOVERNMENT STANDARDS.—The Government standards prescribed under sub-

section (b) of this section may not be enforced as the standards apply to the inspection of commercial motor vehicles in a State enforcing a program described in subsection (c)(1)(B) or (C) of this section if the Secretary decides that it is in the public interest and consistent with public safety for the Government standards not to be enforced as they apply to that inspection.

(f) APPLICATION OF STATE REGULATIONS TO GOVERNMENT-LEASED VEHICLES AND OPERATORS.—A State receiving financial assistance under section 31102 of this title in a fiscal year may enforce in that fiscal year a regulation on commercial motor vehicle safety adopted by the State as the regulation applies to commercial motor vehicles and operators leased to the Government.

§31143. Investigating complaints and protecting complainants

(a) INVESTIGATING COMPLAINTS.—The Secretary of Transportation shall conduct a timely investigation of a nonfrivolous written complaint alleging that a substantial violation of a regulation prescribed under this subchapter is occurring or has occurred within the prior 60 days. The Secretary shall give the complainant timely notice of the findings of the investigation. The Secretary is not required to conduct separate investigations of duplicative complaints.

(b) PROTECTING COMPLAINANTS.—Notwithstanding section 552 of title 5, the Secretary may disclose the identity of a complainant only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every practical means within the Secretary's authority to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure.

§31144. Safety fitness of owners and operators

(a) PROCEDURE.—(1) In cooperation with the Interstate Commerce Commission, the Secretary of Transportation shall prescribe regulations establishing a procedure to decide on the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers under sections 10922 and 10923 of this title. The procedure shall include—

(A) specific initial and continuing requirements to be met by the owners, operators, and persons to prove safety fitness;

(B) a means of deciding whether the owners, operators, and persons meet the safety fitness requirements under clause (A) of this paragraph; and

(C) specific time deadlines for action by the Secretary and the Commission in making fitness decisions.

(2) Regulations prescribed under this subsection supersede all regulations of the United States Government on safety fitness and safety rating of motor carriers in effect on October 30, 1984.

(b) FINDINGS AND ACTION ON APPLICATIONS.—The Commission shall—

(1) find an applicant for authority to operate as a motor carrier unfit if the applicant does not meet the safety fitness requirements established under subsection (a) of this section; and

(2) deny the application.

§31145. Coordination of Governmental activities and paperwork

The Secretary of Transportation shall coordinate the activities of departments, agencies, and instrumentalities of the United States Government to ensure adequate protection of the safety and health of operators of commercial motor vehicles. The Secretary shall attempt to minimize paperwork burdens to ensure maximum coordination and to avoid overlap and the imposition of unreasonable burdens on persons subject to regulations under this subchapter.

§31146. Relationship to other laws

Except as provided in section 31136(b) of this title, this subchapter and the regulations prescribed under this subchapter do not affect chapter 51 of this title or a regulation prescribed under chapter 51.

§31147. Limitations on authority

(a) TRAFFIC REGULATIONS.—This subchapter does not authorize the Secretary of Transportation to prescribe traffic safety regulations or preempt State traffic regulations. However, the Secretary may prescribe traffic regulations to the extent their subject matter was regulated under parts 390–399 of title 49, Code of Federal Regulations, on October 30, 1984.

(b) REGULATING THE MANUFACTURING OF VEHICLES.—This subchapter does not authorize the Secretary to regulate the manufacture of commercial motor vehicles for any purpose, including fuel economy, safety, or emission control.

SUBCHAPTER IV—MISCELLANEOUS

§31161. Procedures to ensure timely correction of safety violations

(a) DEFINITION.—Section 31132(1) of this title applies to this section.

(b) GENERAL.—Not later than August 3, 1991, the Secretary of Transportation shall prescribe regulations establishing procedures to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection carried out with money authorized under subchapter I of this chapter.

(c) VERIFICATION PROGRAM.—The regulations shall establish a verification program for United States Government inspectors and States participating under subchapter I of this chapter to ensure that commercial motor vehicles and their operators found in violation of safety requirements have been brought into compliance with those requirements. The regulations shall include—

(1) a nationwide system for random reinspection of the commercial motor vehicles and their operators that have been declared out-of-service because of those safety violations, with the main purpose of the system being to verify that the violations have been corrected on a timely basis;

(2) a program of accountability for correcting all safety violations that shall provide that—

(A) the operator of a commercial motor vehicle for which a safety violation has been noted shall be issued a form prescribed by the Secretary;

(B) the person making the repairs necessary to correct the violation shall certify on the form the making of repairs and the date, location, and time of the repairs;

(C) the motor carrier responsible for the commercial motor vehicle or operator shall certify on the form that, based on the carrier's knowledge, the repairs necessary to correct the violation have been made; and

(D) appropriate State penalties shall be imposed for a false statement on the form or a failure to return the form to the appropriate State entity; and

(3) a system for ensuring that appropriate State penalties are imposed for failure to correct any of those safety violations.

CHAPTER 313—COMMERCIAL MOTOR VEHICLE OPERATORS

Sec.
31301. Definitions.
31302. Limitation on the number of driver's licenses.
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§31301. Definitions

In this chapter—

(1) "alcohol" has the same meaning given the term "alcoholic beverage" in section 158(c) of title 23.

(2) "commerce" means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(3) "commercial driver's license" means a license issued by a State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(4) "commercial motor vehicle" means a motor vehicle used in commerce to transport passengers or property that—

(A) has a gross vehicle weight rating of at least 26,001 pounds or a lesser gross vehicle weight rating the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds;

(B) is designed to transport at least 16 passengers including the driver; or

(C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except a vehicle—

(i) not satisfying the weight requirements of subclause (A) of this clause;

(ii) transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and not otherwise regulated by the Secretary or transporting a consumer commodity or limited quantity of hazardous material as defined in section 171.8 of title 49, Code of Federal Regulations; and

(iii) not given a waiver of this exception (individually or as part of a class of motor vehicles) by the Secretary in the interest of safety.

(5) "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(6) "driver's license" means a license issued by a State to an individual authorizing the individual to operate a motor vehicle on highways.

(7) "employee" means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle) who is employed by an employer.

(8) "employer" means a person (including the United States Government, a State, or a political subdivision of a State) that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

(9) "felony" means an offense under a law of the United States or a State that is punishable by death or imprisonment for more than one year.

(10) "hazardous material" has the same meaning given that term in section 5102 of this title.

(11) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated only on a rail line.

(12) "serious traffic violation" means—

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law;

(C) a violation of a State or local law on motor vehicle traffic control (except a parking violation) and involving a fatality; and

(D) any other similar violation of a State or local law on motor vehicle traffic control (except a parking violation) that the Secretary designates by regulation as serious.

(13) "State" means a State of the United States and the District of Columbia.

(14) "United States" means the States of the United States and the District of Columbia.

§31302. Limitation on the number of driver's licenses

An individual operating a commercial motor vehicle may have only one driver's license at any time, except during the 10-day period beginning on the date the individual is issued a driver's license.

§31303. Notification requirements

(a) VIOLATIONS.—An individual operating a commercial motor vehicle, having a driver's license issued by a State, and violating a State or local law on motor vehicle traffic control (except a parking violation) shall notify the individual's employer of the violation. If the violation occurred in a State other than the issuing State, the individual also shall notify a State official designated by the issuing State. The notifications required by this subsection shall be made not later than 30 days after the date the individual is found to have committed the violation.

(b) REVOCATIONS, SUSPENSIONS, AND CANCELLATIONS.—An employee who has a driver's license revoked, suspended, or canceled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify the employee's employer of the action not later than 30 days after the date of the action.

(c) PREVIOUS EMPLOYMENT.—(1) Subject to paragraph (2) of this subsection, an individual applying for employment as an operator of a commercial motor vehicle shall notify the prospective employer, at the time of the application, of any previous employment as an operator of a commercial motor vehicle.

(2) The Secretary of Transportation shall prescribe by regulation the period for which notice of previous employment must be given under paragraph (1) of this subsection. However, the period may not be less than the 10-year period ending on the date of the application.

§31304. Employer responsibilities

An employer may not knowingly allow an employee to operate a commercial motor vehicle in the United States during a period in which the employee—

(1) has a driver's license revoked, suspended, or canceled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) has more than one driver's license (except as allowed under section 31302 of this title).

§31305. Testing of operators

(a) MINIMUM STANDARDS FOR TESTING AND FITNESS.—The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

(1) shall prescribe minimum standards for written and driving tests of an individual operating a commercial motor vehicle;

(2) shall require an individual who operates or will operate a commercial motor vehicle to take a driving test in a vehicle representative of the type of vehicle the individual operates or will operate;

(3) shall prescribe minimum testing standards for the operation of a commercial motor vehicle and may prescribe different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that an individual taking the tests has a working knowledge of—

(A) regulations on the safe operation of a commercial motor vehicle prescribed by the Secretary and contained in title 49, Code of Federal Regulations; and

(B) safety systems of the vehicle;

(5) shall ensure that an individual who operates or will operate a commercial motor vehicle carrying a hazardous material—

(A) is qualified to operate the vehicle under regulations on motor vehicle transportation of hazardous material prescribed under chapter 51 of this title; and

(B) has a working knowledge of—

(i) those regulations;

(ii) the handling of hazardous material;

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of hazardous material; and

(iv) appropriate response procedures to follow in those emergencies;

(6) shall establish minimum scores for passing the tests;

(7) shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, to the extent the regulations apply to the individual; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to an individual passing the tests; and

(B) the individual to have a copy of the certification in the individual's possession when the individual is operating a commercial motor vehicle.

(b) REQUIREMENTS FOR OPERATING VEHICLES.—(1) Except as provided in paragraph (2) of this subsection, an individual may operate a commercial motor vehicle only if the individual has passed written and driving tests to operate the vehicle that meet the minimum standards prescribed by the Secretary under subsection (a) of this section.

(2) The Secretary may prescribe regulations providing that an individual may operate a commercial motor vehicle for not more than 90 days if the individual—

(A) passes a driving test for operating a commercial motor vehicle that meets the minimum standards prescribed under subsection (a) of this section; and

(B) has a driver's license that is not suspended, revoked, or canceled.

(3) Paragraph (1) of this subsection becomes effective on the date the Secretary shall establish by regulation. The date shall be as soon as practicable but not later than April 1, 1992.

§31306. Commercial driver's license

After consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses by the States and for information to be contained on each of the licenses. The standards shall require at a minimum that—

(1) an individual issued a commercial driver's license pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(2) the license be tamperproof to the maximum extent practicable; and

(3) the license contain—

(A) the name and address of the individual issued the license and a physical description of the individual;

(B) the social security account number or other number or information the Secretary decides is appropriate to identify the individual;

(C) the class or type of commercial motor vehicle the individual is authorized to operate under the license;

(D) the name of the State that issued the license; and

(E) the dates between which the license is valid.

§31307. Commercial driver's license information system

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall make an agreement under subsection (b) of this section for the operation of, or establish under subsection (c) of this section, an information system that will serve as a clearinghouse and depository of information about the licensing, identification, and disqualification of operators of commercial motor vehicles. The Secretary shall consult with the States in carrying out this section.

(b) STATE AGREEMENTS.—If the Secretary decides that an information system used by a State or States about the driving status of operators of motor vehicles or another State-operated information system could be used to carry out this section, and the State or States agree to the use of the system for carrying out this section, the Secretary may make an agreement with the State or States to use the system as provided in this section and section 31309(c) of this title. An agreement made under this subsection shall contain terms the Secretary considers necessary to carry out this chapter.

(c) ESTABLISHMENT BY SECRETARY.—If the Secretary does not make an agreement under subsection (b) of this section, the Secretary shall establish an information system about the driving status and licensing of operators of commercial motor vehicles as provided in this section.

(d) CONTENTS.—(1) At a minimum, the information system under this section shall include for each operator of a commercial motor vehicle—

(A) information the Secretary considers appropriate to ensure identification of the operator;

(B) the name, address, and physical description of the operator;

(C) the social security account number of the operator or other number or information the Secretary considers appropriate to identify the operator;

(D) the name of the State that issued the license to the operator;

(E) the dates between which the license is valid; and

(F) whether the operator had a commercial motor vehicle driver's license revoked, suspended, or canceled by a State, lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(2) Not later than December 31, 1990, the Secretary shall prescribe regulations on minimum uniform standards for a biometric identification system to ensure the identification of operators of commercial motor vehicles.

(e) AVAILABILITY OF INFORMATION.—(1) On request of a State, the Secretary or the operator of the information system, as the case may be, may make available to the State information in the information system under this section.

(2) On request of an employee, the Secretary or the operator of the information system, as the case may be, may make available to the employee information in the information system about the employee.

(3) On request of an employer or prospective employer of an employee and after notification to the employee, the Secretary or the operator of

the information system, as the case may be, may make available to the employer or prospective employer information in the information system about the employee.

(4) On the request of the Secretary, the operator of the information system shall make available to the Secretary information about the driving status and licensing of operators of commercial motor vehicles (including information required by subsection (d)(1) of this section).

(f) FEE SYSTEM.—If the Secretary establishes an information system under this section, the Secretary shall establish a fee system for using the information system. Fees collected under this subsection in a fiscal year shall equal as nearly as possible the costs of operating the information system in that fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (except the Mass Transit Account).

§31308. Disqualifications

(a) BLOOD ALCOHOL CONCENTRATION LEVEL.—In this section, the blood alcohol concentration level at or above which an individual when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol is .04 percent.

(b) FIRST VIOLATION OR COMMITTING FELONY.—(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the Secretary of Transportation shall disqualify from operating a commercial motor vehicle for at least one year an individual—

(A) committing a first violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing a first violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual; or

(C) using a commercial motor vehicle in committing a felony (except a felony described in subsection (d) of this section).

(2) If the vehicle involved in a violation referred to in paragraph (1) of this subsection is transporting hazardous material required to be placarded under section 5103 of this title, the Secretary shall disqualify the individual for at least 3 years.

(c) SECOND AND MULTIPLE VIOLATIONS.—(1) Subject to paragraph (2) of this subsection, the Secretary shall disqualify from operating a commercial motor vehicle for life an individual—

(A) committing more than one violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing more than one felony arising out of different criminal episodes; or

(D) committing any combination of single violations or use described in clauses (A)–(C) of this paragraph.

(2) The Secretary may prescribe regulations establishing guidelines (including conditions) under which a disqualification for life under paragraph (1) of this subsection may be reduced to a period of not less than 10 years.

(d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall disqualify from operating a commercial motor vehicle for life an individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) SERIOUS TRAFFIC VIOLATIONS.—(1) The Secretary shall disqualify from operating a commercial motor vehicle for at least 60 days an individual who, in a 3-year period, commits 2 serious traffic violations involving a commercial motor vehicle operated by the individual.

(2) The Secretary shall disqualify from operating a commercial motor vehicle for at least 120 days an individual who, in a 3-year period, commits 3 serious traffic violations involving a commercial motor vehicle operated by the individual.

(f) STATE DISQUALIFICATION.—Notwithstanding subsections (b)–(e) of this section, the Secretary does not have to disqualify an individual from operating a commercial motor vehicle if the State that issued the individual a license authorizing the operation has disqualified the individual from operating a commercial motor vehicle under subsections (b)–(e). Revocation, suspension, or cancellation of the license is deemed to be disqualification under this subsection.

(g) OUT-OF-SERVICE ORDERS.—(1) To enforce section 392.5 of title 49, Code of Federal Regulations, the Secretary shall prescribe regulations establishing and enforcing an out-of-service period of 24 hours for an individual who violates section 392.5. An individual may not violate an out-of-service order issued under this paragraph.

(2) The Secretary shall prescribe regulations establishing and enforcing requirements for reporting out-of-service orders issued under regulations prescribed under paragraph (1) of this subsection. Regulations prescribed under this paragraph shall require, at a minimum, an operator of a commercial motor vehicle who is issued an out-of-service order to report the issuance to the individual's employer and to the State that issued the operator a driver's license.

§31309. Requirements for State participation

(a) GENERAL.—To avoid having amounts withheld from apportionment under section 31312 of this title, a State shall comply with the following requirements:

(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title.

(2) The State may issue a commercial driver's license to an individual only if the individual passes written and driving tests for the operation of a commercial motor vehicle that complies with the minimum standards.

(3) The State shall have in effect and enforce a law providing that an individual with a blood alcohol concentration level at or above the level established by section 31308(a) of this title when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(4) The State shall authorize an individual to operate a commercial motor vehicle only by issuing a commercial driver's license containing the information described in section 31306(3) of this title.

(5) At least 60 days before issuing a commercial driver's license (or a shorter period the Secretary prescribes by regulation), the State shall notify the Secretary or the operator of the information system under section 31307 of this title, as the case may be, of the proposed issuance of the license and other information the Secretary may require to ensure identification of the individual applying for the license.

(6) Before issuing a commercial driver's license to an individual, the State shall request from any other State that has issued a commercial driver's license to the individual all information about the driving record of the individual.

(7) Not later than 30 days after issuing a commercial driver's license, the State shall notify the Secretary or the operator of the information system under section 31307 of this title, as the case may be, of the issuance.

(8) Not later than 10 days after disqualifying the holder of a commercial driver's license from operating a commercial motor vehicle (or after revoking, suspending, or canceling the license) for at least 60 days, the State shall notify the Secretary or the operator of the information system under section 31307 of this title, as the case may be, and the State that issued the license, of the disqualification, revocation, suspension, or cancellation.

(9) If an individual operating a commercial motor vehicle violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual has a driver's license issued by another State, the State in which the violation occurred shall notify a State official designated by the issuing State of the violation not later than 10 days after the date the individual is found to have committed the violation.

(10) The State may not issue a commercial driver's license to an individual during a period in which the individual is disqualified from operating a commercial motor vehicle or the individual's driver's license is revoked, suspended, or canceled.

(11) The State may issue a commercial driver's license to an individual who has a commercial driver's license issued by another State only if the individual first returns the driver's license issued by the other State.

(12) The State may issue a commercial driver's license only to an individual who operates or will operate a commercial motor vehicle and is domiciled in the State, except that, under regulations the Secretary shall prescribe, the State may issue a commercial driver's license to an individual who operates or will operate a commercial motor vehicle and is not domiciled in a State that issues commercial drivers' licenses.

(13) The State shall impose penalties the State considers appropriate and the Secretary approves for an individual operating a commercial motor vehicle when the individual—

(A) does not have a commercial driver's license;

(B) has a driver's license revoked, suspended, or canceled; or

(C) is disqualified from operating a commercial motor vehicle.

(14) The State shall allow an individual to operate a commercial motor vehicle in the State if—

(A) the individual has a commercial driver's license issued by another State under the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(B) the license is not revoked, suspended, or canceled; and

(C) the individual is not disqualified from operating a commercial motor vehicle.

(15) The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time periods for which the Secretary shall disqualify the individual under section 31308(b)–(e) of this title.

(16)(A) Before issuing a commercial driver's license to an individual, the State shall request the Secretary for information from the National Driver Register maintained under chapter 303 of this title (after the Secretary decides the Register is operational) on whether the individual—

(i) has been disqualified from operating a motor vehicle (except a commercial motor vehicle);

(ii) has had a license (except a license authorizing the individual to operate a commercial motor vehicle) revoked, suspended, or canceled for cause in the 3-year period ending on the date of application for the commercial driver's license; or

(iii) has been convicted of an offense specified in section 30304(a)(3) of this title.

(B) The State shall give full weight and consideration to that information in deciding whether to issue the individual a commercial driver's license.

(17) The State shall adopt and enforce regulations prescribed by the Secretary under section 31308(g)(1) of this title.

(b) STATE SATISFACTION OF REQUIREMENTS.—A State may satisfy the requirements of subsection (a) of this section that the State disqualify an individual from operating a commercial motor vehicle by revoking, suspending, or canceling the driver's license issued to the individual.

(c) NOTIFICATION.—Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to an individual, the Secretary or the operator of the information system under section 31307 of this title, as the case may be, shall notify the State whether the individual has a commercial driver's license issued by another State or has been disqualified from operating a commercial motor vehicle by another State or the Secretary.

§31310. Grants for testing and ensuring the fitness of operators of commercial motor vehicles

(a) BASIC GRANTS.—(1) The Secretary of Transportation may make a grant to a State under this subsection if the State—

(A) makes an agreement with the Secretary—

(i) to adopt and carry out in the fiscal year in which the grant is made a program for testing and ensuring the fitness of individuals who operate commercial motor vehicles under the minimum standards prescribed by the Secretary under section 31305(a) of this title; and

(ii) to require that operators of commercial motor vehicles have passed written and driving tests that meet the minimum standards; and

(B) has in effect and enforces in that fiscal year a law providing that an individual with a blood alcohol concentration of at least .10 percent when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(2) A State may—

(A) administer driving tests referred to in paragraph (1) of this subsection and section 31309(a) of this title; or

(B) make an agreement, approved by the Secretary, for the tests to be administered by a person (including a department, agency, or instrumentality of a local government) that meets minimum standards the Secretary prescribes by regulation if—

(i) the agreement allows the Secretary and the State each to conduct random examinations, inspections, and audits of the testing without prior notification; and

(ii) the State annually conducts at least one onsite inspection of the testing.

(3) The Secretary shall decide on the amount of a grant in a fiscal year to be made under this subsection to a State eligible to receive the grant in the fiscal year. However—

(A) a grant to a State under this subsection shall be at least $100,000 in a fiscal year; and

(B) to the extent each State grant under this subsection is more than $100,000 in a fiscal year, the Secretary shall ensure that those States are treated equitably.

(4) A State receiving a grant under this subsection may use the amounts provided under the grant only to test operators of commercial motor vehicles.

(5) There is available to the Secretary to carry out this subsection $________ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19__.

(b) SUPPLEMENTAL GRANTS.—(1) The Secretary may make a grant under this subsection in a fiscal year to a State eligible to receive a grant under subsection (a) of this section in that fiscal year. A grant made under this subsection shall be used for testing operators of commercial motor vehicles.

(2) Amounts of grants under this subsection shall be distributed among the States eligible to receive grants under subsection (a) of this section in the fiscal year on the basis of the number of written and driving tests administered, and the number of drivers' licenses for the operation of commercial motor vehicles issued, in the prior fiscal year.

(3) There is available to the Secretary to carry out this subsection $________ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19__.

(c) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for testing operators of commercial motor vehicles will be maintained at a level at least equal to the average level of that expenditure for its last 2 fiscal years before October 27, 1986.

(d) AVAILABILITY OF AMOUNTS.—(1) Amounts made available to a State under this section remain available for obligation by the State for the fiscal year for which the amounts are made available. Any of those amounts not obligated before the last day of that fiscal year are no longer available for obligation by the State and are available to the Secretary to carry out this chapter.

(2) Amounts made available to the Secretary under this section remain available until expended.

(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under this section is a contractual obligation of the Government for payment of the amount of the grant.

(f) TESTING AND FITNESS PROGRAM STUDIES.—In this section, development of a program for testing and ensuring the fitness of individuals who operate commercial motor vehicles includes studies of—

(1) the number of vehicles that will need to be tested under the program in a calendar year;

(2) facilities at which testing of those individuals could be conducted; and

(3) additional resources (including personnel) that will be necessary to conduct the testing.

§31311. Grants for issuing commercial drivers' licenses and complying with State participation requirements

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant under this section to a State in a fiscal year if the State makes an agreement with the Secretary to participate in that fiscal year in the commercial driver's license program established by this chapter and the information system required by this chapter and to comply with the requirements of section 31309(a) of this title.

(b) AMOUNTS OF GRANTS.—The Secretary shall decide on the amount of a grant in a fiscal year to be made under this section to a State eligible to receive the grant in the fiscal year. However—

(1) a grant to a State under this section shall be at least $100,000 in a fiscal year; and

(2) to the extent each State grant under this section is more than $100,000 in a fiscal year, the Secretary shall ensure that those States are treated equitably.

(c) LIMITATION ON USE.—A State receiving a grant under this section may use the amounts provided under the grant only for issuing commercial drivers' licenses and complying with the requirements of section 31309(a) of this title.

(d) AVAILABILITY OF AMOUNTS.—(1) Amounts made available to a State under this section remain available for obligation by the State for the fiscal year for which the amounts are made available. Any of those amounts not obligated before the last day of that fiscal year are no longer available for obligation by the State and are available to the Secretary to carry out this chapter.

(2) Amounts made available to the Secretary under this section remain available until expended.

(e) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under this section is a contractual obligation of the United States Government for payment of the amount of the grant.

(f) AUTHORIZATION.—There is available to the Secretary to carry out this section $________ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19__.

§31312. Withholding amounts for State noncompliance

(a) FIRST FISCAL YEAR.—The Secretary of Transportation shall withhold 5 percent of the amount required to be apportioned to a State under section 104(b)(1), (2), (5), and (6) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31309(a) of this title.

(b) SECOND FISCAL YEAR.—The Secretary shall withhold 10 percent of the amount required to be apportioned to a State under section 104(b)(1), (2), (5), and (6) of title 23 on the first day of each fiscal year after the 2d fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31309(a) of this title.

(c) AVAILABILITY FOR APPORTIONMENT.—(1) Amounts withheld under this section from apportionment to a State before October 1, 1995, remain available for apportionment to the State as follows:

(A) If the amounts would have been apportioned under section 104(b)(5)(B) of title 23 but for this section, the amounts remain available until the end of the 2d fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

(B) If the amounts would have been apportioned under section 104(b)(1), (2), or (6) of title 23 but for this section, the amounts remain available until the end of the 3d fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

(2) Amounts withheld under this section from apportionment to a State after September 30, 1995, are not available for apportionment to the State.

(d) APPORTIONMENT AFTER COMPLIANCE.—(1) If, before the last day of the period for which amounts withheld under this section from apportionment are to remain available for apportionment to a State under subsection (c)(1) of this section, the State substantially complies with all of the requirements of section 31309(a) of this title for a period of 365 days, the Secretary, on the day following the last day of that period, shall apportion to the State the withheld amounts remaining available for apportionment to that State.

(2) Amounts apportioned under paragraph (1) of this subsection remain available for expenditure until the end of the 3d fiscal year following the fiscal year in which the amounts are apportioned. Amounts not obligated at the end of that period lapse or, for amounts apportioned under section 104(b)(5) of title 23, lapse and are available for projects under section 118(b) of title 23.

(e) LAPSE.—If, at the end of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31309(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.

§31313. Waiver authority

After notice and an opportunity for comment, the Secretary of Transportation may waive any *part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the Federal Register with reasons for the waiver.*

§31314. Limitation on statutory construction

This chapter does not affect the authority of the Secretary of Transportation to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,001 pounds or a lesser gross vehicle weight rating the Secretary decides is appropriate under section 31301(4)(A) of this title.

§31315. Procedure for prescribing regulations

Regulations prescribed by the Secretary of Transportation to carry out this chapter shall be prescribed under section 553 of title 5 without regard to sections 556 and 557 of title 5.

CHAPTER 315—MOTOR CARRIER SAFETY

Sec.
31501. Definitions.
31502. Requirements for qualifications, hours of service, safety, and equipment standards.
31503. Research, investigation, and testing.
31504. Identification of motor vehicles.

§31501. Definitions

In this chapter—

(1) "migrant worker" means an individual going to or from employment in agriculture as provided under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)) or section 203(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)).

(2) "motor carrier", "motor common carrier", "motor private carrier", "motor vehicle", and "United States" have the same meanings given those terms in section 10102 of this title.

(3) "motor carrier of migrant workers"—

(A) means a person (except a motor common carrier) providing transportation referred to in section 10521(a) of this title by a motor vehicle (except a passenger automobile or station wagon) for at least 3 migrant workers at a time to or from their employment; but

(B) does not include a migrant worker providing transportation for migrant workers and their immediate families.

§31502. Requirements for qualifications, hours of service, safety, and equipment standards

(a) APPLICATION.—This section applies to transportation—

(1) described in sections 10521 and 10522 of this title; and

(2) to the extent the transportation is in the United States and is between places in a foreign country, or between a place in a foreign country and a place in another foreign country.

(b) MOTOR CARRIER AND PRIVATE MOTOR CARRIER REQUIREMENTS.—The Secretary of Transportation may prescribe requirements for—

(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

(c) MIGRANT WORKER MOTOR CARRIER REQUIREMENTS.—The Secretary may prescribe requirements for the comfort of passengers, qualifications and maximum hours of service of operators, and safety of operation and equipment of a motor carrier of migrant workers. The requirements only apply to a carrier transporting a migrant worker—

(1) at least 75 miles; and

(2) across the boundary of a State, territory, or possession of the United States.

(d) CONSIDERATIONS.—Before prescribing or revising any requirement under this section, the Secretary shall consider the costs and benefits of the requirement.

§31503. Research, investigation, and testing

(a) GENERAL AUTHORITY.—The Secretary of Transportation may investigate and report on the need for regulation by the United States Government of sizes, weight, and combinations of motor vehicles and qualifications and maximum hours of service of employees of a motor carrier subject to subchapter II of chapter 105 of this title and a motor private carrier. The Secretary shall use the services of each department, agency, or instrumentality of the Government and each organization of motor carriers having special knowledge of a matter being investigated.

(b) USE OF SERVICES.—In carrying out this chapter, the Secretary may use the services of a department, agency, or instrumentality of the Government having special knowledge about safety, to conduct scientific and technical research, investigation, and testing when necessary to promote safety of operation and equipment of motor vehicles. The Secretary may reimburse the department, agency, or instrumentality for the services provided.

§31504. Identification of motor vehicles

(a) GENERAL AUTHORITY.—The Secretary of Transportation may—

(1) issue and require the display of an identification plate on a motor vehicle used in transportation provided by a motor private carrier and a motor carrier of migrant workers subject to section 31502(c) of this title, except a motor contract carrier; and

(2) require each of those motor private carriers and motor carriers of migrant workers to pay the reasonable cost of the plate.

(b) LIMITATION.—A motor private carrier or a motor carrier of migrant workers may use an identification plate only as authorized by the Secretary.

PART C—INFORMATION, STANDARDS, AND REQUIREMENTS

CHAPTER 321—GENERAL

Sec.
32101. Definitions.

§32101. Definitions

In this part (except chapter 329)—

(1) "bumper standard" means a minimum performance standard that substantially reduces—

(A) the damage to the front or rear end of a passenger motor vehicle from a low-speed collision (including a collision with a fixed barrier) or from towing the vehicle; or

(B) the cost of repairing the damage.

(2) "insurer" means a person in the business of issuing, or reinsuring any part of, a passenger motor vehicle insurance policy.

(3) "interstate commerce" means commerce between a place in a State and—

(A) a place in another State; or

(B) another place in the same State through another State.

(4) "make", when describing a passenger motor vehicle, means the trade name of the manufacturer of the vehicle.

(5) "manufacturer" means a person—

(A) manufacturing or assembling passenger motor vehicles or passenger motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) "model", when describing a passenger motor vehicle, means a category of passenger motor vehicles based on the size, style, and type of a make of vehicle.

(7) "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line;

(8) "motor vehicle accident" means an accident resulting from the maintenance or operation of a passenger motor vehicle or passenger motor vehicle equipment;

(9) "multipurpose passenger vehicle" means a passenger motor vehicle constructed on a truck chassis or with special features for occasional off-road operation;

(10) "passenger motor vehicle" means a motor vehicle designed to carry not more than 12 individuals, but does not include—

(A) a motorcycle; or

(B) a truck not designed primarily to carry its operator or passengers.

(11) "passenger motor vehicle equipment" means—

(A) a system, part, or component of a passenger motor vehicle as originally made;

(B) a similar part or component made or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a passenger motor vehicle; or

(C) a device made or sold for use in towing a passenger motor vehicle.

(12) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(13) "United States district court" means a district court of the United States, a United States court for Guam, the Virgin Islands, and American Samoa, and the district court for the Northern Mariana Islands.

CHAPTER 323—CONSUMER INFORMATION

Sec.
32301. Definitions.
32302. Passenger motor vehicle information.
32303. Insurance information.
32304. Information and assistance from other departments, agencies, and instrumentalities.
32305. Personnel.
32306. Investigative powers.
32307. Prohibitions, penalty, and enforcement.

§32301. Definitions

In this chapter—

(1) "crashworthiness" means the protection a passenger motor vehicle gives its passengers against personal injury or death from a motor vehicle accident;

(2) "damage susceptibility" means the susceptibility of a passenger motor vehicle to damage in a motor vehicle accident.

§32302. Passenger motor vehicle information

(a) INFORMATION PROGRAM.—The Secretary of Transportation shall maintain a program for developing the following information on passenger motor vehicles:

(1) crashworthiness;

(2) damage susceptibility.

(3) the degree of difficulty of diagnosis and repair of damage to, or failure of, mechanical and electrical systems;

(4) vehicle operating costs dependent on the characteristics referred to in clauses (1)–(3) of this subsection, including insurance information obtained under section 32303 of this title.

(b) DISTRIBUTION BY SECRETARY.—To assist a consumer in buying a passenger motor vehicle, the Secretary shall distribute to the public information developed under subsection (a) of this section. The information shall be in a simple and understandable form that allows comparison of the characteristics referred to in subsection (a)(1)–(3) of this section among the makes and models of passenger motor vehicles. The Secretary may require passenger motor vehicle dealers to distribute the information to prospective buyers.

(c) DISTRIBUTION BY DEALERS.—The Secretary shall prescribe regulations that require dealers

to distribute to prospective buyers information the Secretary develops and provides to the dealers that compares insurance costs for different makes and models of passenger motor vehicles based on crashworthiness and damage susceptibility.

§32303. Insurance information

(a) GENERAL REPORTS AND INFORMATION REQUIREMENTS.—(1) In carrying out this chapter, the Secretary of Transportation may require an insurer, or a designated agent of the insurer, to make reports and provide the Secretary with information. The reports and information may include accident claim information by make, model, and model year of passenger motor vehicle about the kind and extent of—

(A) physical damage and repair costs; and

(B) personal injury.

(2) In deciding which reports and information are to be provided under this subsection, the Secretary shall—

(A) consider the cost of preparing and providing the reports and information;

(B) consider the extent to which the reports and information will contribute to carrying out this chapter; and

(C) consult with State authorities and public and private agencies the Secretary considers appropriate.

(3) To the extent possible, the Secretary shall obtain reports and information under this subsection on a voluntary basis.

(b) REQUESTED INFORMATION ON CRASHWORTHINESS, DAMAGE SUSCEPTIBILITY, AND REPAIR AND PERSONAL INJURY COST.—When requested by the Secretary, an insurer shall give the Secretary information—

(1) about the extent to which the insurance premiums charged by the insurer are affected by crashworthiness, damage susceptibility, and the cost of repair and personal injury, for each make and model of passenger motor vehicle; and

(2) available to the insurer about the effect of crashworthiness, damage susceptibility, and the cost of repair and personal injury for each make and model of passenger motor vehicle on the risk incurred by the insurer in insuring that make and model.

(c) DISCLOSURE.—In distributing information received under this section, the Secretary may disclose identifying information about a person that may be an insured, a claimant, a passenger, an owner, a witness, or an individual involved in a motor vehicle accident, only with the consent of the person.

§32304. Information and assistance from other departments, agencies, and instrumentalities

(a) AUTHORITY TO REQUEST.—The Secretary of Transportation may request information necessary to carry out this chapter from a department, agency, or instrumentality of the United States Government. The head of the department, agency, or instrumentality shall provide the information.

(b) DETAILING PERSONNEL.—The head of a department, agency, or instrumentality may detail, on a reimbursable basis, personnel to assist the Secretary in carrying out this chapter.

§32305. Personnel

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) appoint and fix the pay of employees without regard to the provisions of title 5 governing appointment in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5; and

(2) make contracts with persons for research and preparation of reports.

(b) STATUS OF ADVISORY COMMITTEE MEMBERS.—A member of an advisory committee appointed under section 325 of this title to carry out this chapter is a special United States Government employee under chapter 11 of title 18.

§32306. Investigative powers

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) inspect and copy records of any person at reasonable times;

(2) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(3) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(b) WITNESS FEES AND MILEAGE.—A witness summoned under subsection (a) of this section is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(c) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpoena or order of the Secretary under subsection (a) of this section may be brought in the United States district court for the judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(d) CONFIDENTIALITY OF INFORMATION.—Information obtained by the Secretary under this section related to a confidential matter referred to in section 1905 of title 18 may be disclosed only to another officer or employee of the United States Government for use in carrying out this chapter. This subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

§32307. Prohibitions, penalty, and enforcement

(a) PROHIBITIONS.—A person may not—

(1) fail to provide the Secretary of Transportation with information requested by the Secretary in carrying out this chapter; or

(2) fail to comply with applicable regulations prescribed by the Secretary in carrying out this chapter.

(b) CIVIL PENALTY.—(1) A person that violates subsection (a) of this section is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. Each failure to provide information or comply with a regulation in violation of subsection (a) is a separate violation. The maximum penalty under this subsection for a related series of violations is $400,000.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section.

(3) In determining the amount of a penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring a civil action to enjoin a violation of subsection (a) of this section.

(2) When practicable, the Secretary shall—

(A) notify a person against whom an action under this subsection is planned;

(B) give the person an opportunity to present that person's views; and

(C) give the person a reasonable opportunity to comply.

(3) The failure of the Secretary to comply with paragraph (2) of this subsection does not prevent a court from granting appropriate relief.

(d) VENUE AND SERVICE.—A civil action under this section may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

CHAPTER 325—BUMPER STANDARDS

Sec.
32501. Purpose.
32502. Bumper standards.
32503. Judicial review of bumper standards.
32504. Certificates of compliance.
32505. Information and compliance requirements.
32506. Prohibited acts.
32507. Penalties and enforcement.
32508. Civil actions by owners of passenger motor vehicles.
32509. Information and assistance from other departments, agencies, and instrumentalities.
32510. Annual report.
32511. Relationship to other motor vehicle standards.

§32501. Purpose

The purpose of this chapter is to reduce economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents by providing for the maintenance and enforcement of bumper standards.

§32502. Bumper standards

(a) GENERAL REQUIREMENTS AND NONAPPLICATION.—The Secretary of Transportation shall prescribe by regulation bumper standards for passenger motor vehicles and may prescribe by regulation bumper standards for passenger motor vehicle equipment manufactured in, or imported into, the United States. A standard does not apply to a passenger motor vehicle or passenger motor vehicle equipment—

(1) intended only for export;

(2) labeled for export on the vehicle or equipment and the outside of any container of the vehicle or equipment; and

(3) exported.

(b) LIMITATIONS.—A standard under this section—

(1) may not conflict with a motor vehicle safety standard prescribed under chapter 301 of this title;

(2) may not specify a dollar amount for the cost of repairing damage to a passenger motor vehicle; and

(3) to the greatest practicable extent, may not preclude the attachment of a detachable hitch.

(c) EXEMPTIONS.—For good cause, the Secretary may exempt from any part of a standard—

(1) a multipurpose passenger vehicle; or

(2) a make, model, or class of a passenger motor vehicle manufactured for a special use, if the standard would interfere unreasonably with the special use of the vehicle.

(d) COST REDUCTION AND CONSIDERATIONS.—When prescribing a standard under this section, the Secretary shall design the standard to obtain the maximum feasible reduction of costs to the public, considering—

(1) the costs and benefits of carrying out the standard;

(2) the effect of the standard on insurance costs and legal fees and costs;

(3) savings in consumer time and inconvenience; and

(4) health and safety, including emission standards.

(e) PROCEDURES.—Section 553 of title 5 applies to a standard prescribed under this section. However, the Secretary shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments. A transcript of each oral presentation *shall be kept. Under conditions prescribed by the Secretary, the Secretary may conduct a hearing to resolve an issue of fact material to a standard.*

(f) EFFECTIVE DATE.—The Secretary shall prescribe an effective date for a standard under this section. That date may not be earlier than the date the standard is prescribed nor later than 18 months after the date the standard is prescribed. However, the Secretary may prescribe a later date when the Secretary submits to Congress and publishes the reasons for the later date. A standard only applies to a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the effective date.

(g) RESEARCH.—The Secretary shall conduct research necessary to carry out this chapter.

§32503. Judicial review of bumper standards

(a) FILING AND VENUE.—A person that may be adversely affected by a standard prescribed under section 32502 of this title may apply for review of the standard by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 59 days after the standard is prescribed.

(b) NOTIFYING SECRETARY.—The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the standard was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence in rebuttal if the court is satisfied the additional evidence is material and there were reasonable grounds for not presenting the evidence in the proceeding before the Secretary.

(2) The Secretary may modify findings of fact or make new findings because of the additional evidence presented. The Secretary shall file a modified or new finding, a recommendation to modify or set aside a standard, and the additional evidence with the court.

(d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judgment of a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under this section is in addition to any other remedies provided by law.

§32504. Certificates of compliance

Under regulations prescribed by the Secretary of Transportation, a manufacturer or distributor of a passenger motor vehicle or passenger motor vehicle equipment subject to a standard prescribed under section 32502 this title shall give the distributor or dealer at the time of delivery a certificate that the vehicle or equipment complies with the standard.

§32505. Information and compliance requirements

(a) GENERAL AUTHORITY.—(1) To enable the Secretary of Transportation to decide whether a manufacturer of passenger motor vehicles or passenger motor vehicle equipment is complying with this chapter and standards prescribed under this chapter, the Secretary may require the manufacturer to—

(A) keep records;

(B) make reports;

(C) provide items and information, including vehicles and equipment for testing at a negotiated price not more than the manufacturer's cost; and

(D) allow an officer or employee designated by the Secretary to inspect vehicles and relevant records of the manufacturer.

(2) To enforce this chapter, an officer or employee designated by the Secretary, on presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may inspect a facility in which passenger motor vehicles or passenger motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce. An inspection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness.

(b) POWERS OF SECRETARY AND CIVIL ACTIONS TO ENFORCE.—(1) In carrying out this chapter, the Secretary may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A civil action to enforce a subpoena or order of the Secretary under this subsection may be brought in the United States district court for the judicial district in which the proceeding by the Secretary was conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(c) CONFIDENTIALITY OF INFORMATION.—(1) Information obtained by the Secretary under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(A) to another officer or employee of the United States Government for use in carrying out this chapter; or

(B) in a proceeding under this chapter.

(2) This subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) Subject to paragraph (1) of this subsection, the Secretary, on request, shall make available to the public at cost information the Secretary submits or receives in carrying out this chapter.

§32506. Prohibited acts

(a) GENERAL.—Except as provided in this section, a person may not—

(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date an applicable standard under section 32502 of this title takes effect, unless it conforms to the standard;

(2) fail to comply with an applicable regulation prescribed by the Secretary of Transportation under this chapter;

(3) fail to keep records, refuse access to or copying of records, fail to make reports or provide items or information, or fail or refuse to allow entry or inspection, as required by this chapter or a regulation prescribed under this chapter; or

(4) fail to provide the certificate required by section 32504 of this title, or provide a certificate that the person knows, or in the exercise of reasonable care has reason to know, is false or misleading in a material respect.

(b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to—

(1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a passenger motor vehicle or passenger motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale (but this clause does not prohibit a standard from requiring that a vehicle or equipment be manufactured to comply with the standard over a specified period of operation or use); or

(2) a person—

(A) establishing that the person had no reason to know, by exercising reasonable care, that the vehicle or equipment does not comply with the standard; or

(B) holding, without knowing about a noncompliance and before that first purchase, a certificate issued under section 32504 of this title stating that the vehicle or equipment complies with the standard.

(c) IMPORTING NONCOMPLYING VEHICLES AND EQUIPMENT.—(1) The Secretaries of Transportation and the Treasury may prescribe joint regulations authorizing a passenger motor vehicle or passenger motor vehicle equipment not complying with a standard prescribed under section 32502 of this title to be imported into the United States subject to conditions (including providing a bond) the Secretaries consider appropriate to ensure that the vehicle or equipment will—

(A) comply, after importation, with the standards prescribed under section 32502 of this title;

(B) be exported; or

(C) be abandoned to the United States Government.

(2) The Secretaries may prescribe joint regulations that allow a passenger motor vehicle or passenger motor vehicle equipment to be imported into the United States after the first purchase in good faith other than for resale.

(d) LIABILITY UNDER OTHER LAW.—Compliance with a standard under this chapter does not exempt a person from liability provided by law.

§32507. Penalties and enforcement

(a) CIVIL PENALTY.—(1) A person that violates section 32506(a) of this title is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of section 32506(a)(1) or (4) of this title—

(A) that does not comply with a standard prescribed under section 32502 of this title; or

(B) for which a certificate is not provided, or for which a false or misleading certificate is provided, under section 32504 of this title.

(2) The maximum civil penalty under this subsection for a related series of violations is $800,000.

(3) The Secretary of Transportation imposes a civil penalty under this subsection. The Attorney General or the Secretary, with the concurrence of the Attorney General, shall bring a civil action to collect the penalty.

(b) CRIMINAL PENALTY.—A person knowingly and willfully violating section 32506(a)(1) of this title after receiving a notice of noncompliance from the Secretary shall be fined under title 18, imprisoned for not more than one year, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of the corporation who, with knowledge of the Secretary's notice, knowingly and willfully authorizes, orders, or performs an act that is any part of the violation.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Secretary or the Attorney General may bring a civil action to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of a passenger motor vehicle or passenger motor vehicle equipment that is found, before the first purchase in good faith other than for resale, not to comply with a standard prescribed under section 32502 of this title.

(2) When practicable, the Secretary shall—

(A) notify a person against whom an action under this subsection is planned;

(B) give the person an opportunity to present that person's views; and

(C) except for a knowing and willful violation, give the person a reasonable opportunity to comply.

(3) The failure of the Secretary to comply with paragraph (2) of this subsection does not prevent a court from granting appropriate relief.

(d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (c) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) VENUE.—A civil action under subsection (a) or (c) of this section may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

§32508. Civil actions by owners of passenger motor vehicles

When an owner of a passenger motor vehicle sustains damages as a result of a motor vehicle accident because the vehicle did not comply with a standard prescribed under section 32502 of this title, the owner may bring a civil action against the manufacturer to recover the damages. The action may be brought in the United States District Court for the District of Columbia or in the district court for the judicial district in which the owner resides. The action must be brought not later than 3 years after the date of the accident. The court shall award costs and a reasonable attorney's fee to the owner when a judgment is entered for the owner.

§32509. Information and assistance from other departments, agencies, and instrumentalities

(a) GENERAL AUTHORITY.—The Secretary of Transportation may request information necessary to carry out this chapter from a department, agency, or instrumentality of the United States Government. The head of the department, agency, or instrumentality shall provide the information.

(b) DETAILING PERSONNEL.—The head of a department, agency, or instrumentality may detail, on a reimbursable basis, personnel to assist the Secretary in carrying out this chapter.

§32510. Annual report

Not later than March 31 of each year, the Secretary of Transportation shall submit to Congress and the President a report on the progress in carrying out section 32501 of this title. The report shall include—

(1) a statement of the cost savings resulting from carrying out this chapter; and

(2) recommendations for legislative or other action the Secretary decides may be appropriate.

§32511. Relationship to other motor vehicle standards

(a) PREEMPTION.—Except as provided in this section, a State or a political subdivision of a State may prescribe or enforce a bumper standard for a passenger motor vehicle or passenger motor vehicle equipment only if the standard is identical to a standard prescribed under section 32502 of this title.

(b) ENFORCEMENT.—This chapter and chapter 301 of this title do not affect the authority of a State to enforce a bumper standard about an aspect of performance of a passenger motor vehicle or passenger motor vehicle equipment not covered by a standard prescribed under section 32502 of this title if the State bumper standard—

(1) does not conflict with a standard prescribed under chapter 301 of this title; and

(2) was in effect or prescribed by the State on October 20, 1972.

(c) ADDITIONAL AND HIGHER STANDARDS OF PERFORMANCE.—The United States Government, a State, or a political subdivision of a State may prescribe a bumper standard for a passenger motor vehicle or passenger motor vehicle equipment obtained for its own use that imposes additional or higher standards of performance than a standard prescribed under section 32502 of this title.

CHAPTER 327—ODOMETERS

Sec.
32701. Findings and purposes.
32702. Definitions.
32703. Preventing tampering.
32704. Service, repair, and replacement.
32705. Disclosure requirements on transfer of motor vehicles.
32706. Inspections, investigations, and records.
32707. Administrative warrants.
32708. Confidentiality of information.
32709. Penalties and enforcement.
32710. Civil actions by private persons.
32711. Relationship to State law.

§32701. Findings and purposes

(a) FINDINGS.—Congress finds that—

(1) buyers of motor vehicles rely heavily on the odometer reading as an index of the condition and value of a vehicle;

(2) buyers are entitled to rely on the odometer reading as an accurate indication of the mileage of the vehicle;

(3) an accurate indication of the mileage assists a buyer in deciding on the safety and reliability of the vehicle; and

(4) motor vehicles move in, or affect, interstate and foreign commerce.

(b) PURPOSES.—The purposes of this chapter are—

(1) to prohibit tampering with motor vehicle odometers; and

(2) to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers.

§32702. Definitions

In this chapter—

(1) "auction company" means a person taking possession of a motor vehicle owned by another to sell at an auction.

(2) "dealer" means a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale.

(3) "distributor" means a person that sold at least 5 motor vehicles during the prior 12 months for resale.

(4) "leased motor vehicle" means a motor vehicle leased to a person for at least 4 months by a lessor that leased at least 5 vehicles during the prior 12 months.

(5) "odometer" means an instrument for measuring and recording the distance a motor vehicle is driven, but does not include an auxiliary instrument designed to be reset by the operator of the vehicle to record mileage of a trip.

(6) "repair" and "replace" mean to restore to a sound working condition by replacing any part of an odometer or by correcting any inoperative part of an odometer.

(7) "title" means the certificate of title or other document issued by the State indicating ownership.

(8) "transfer" means to change ownership by sale, gift, or other means.

§32703. Preventing tampering

A person may not—

(1) advertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;

(2) disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer;

(3) with intent to defraud, operate a motor vehicle on a public street, road, or highway if the person knows that the odometer of the vehicle is disconnected or not operating; or

(4) conspire to violate this section or section 32704 or 32705 of this title.

§32704. Service, repair, and replacement

(a) ADJUSTING MILEAGE.—A person may service, repair, or replace an odometer of a motor vehicle if the mileage registered by the odometer remains the same as before the service, repair, or replacement. If the mileage cannot remain the same—

(1) the person shall adjust the odometer to read zero; and

(2) the owner of the vehicle or agent of the owner shall attach a written notice to the left door frame of the vehicle specifying the mileage before the service, repair, or replacement and the date of the service, repair, or replacement.

(b) REMOVING OR ALTERING NOTICE.—A person may not, with intent to defraud, remove or alter a notice attached to a motor vehicle as required by this section.

§32705. Disclosure requirements on transfer of motor vehicles

(a) WRITTEN DISCLOSURE REQUIREMENTS.—(1) Under regulations prescribed by the Secretary of Transportation, a person transferring ownership of a motor vehicle shall give the transferee a written disclosure—

(A) of the cumulative mileage registered by the odometer; or

(B) that the mileage is unknown if the transferor knows that the mileage registered by the odometer is incorrect.

(2) A person making a written disclosure required by a regulation prescribed under paragraph (1) of this subsection may not make a false statement in the disclosure.

(3) A person acquiring a motor vehicle for resale may accept a disclosure under this section only if it is complete.

(4) The regulations prescribed by the Secretary shall provide the way in which information is disclosed and retained under this section.

(b) MILEAGE STATEMENT REQUIREMENT FOR LICENSING.—(1) A motor vehicle the ownership of which is transferred may not be licensed for use in a State unless the transferee, in submitting an application to a State for the title on which the license will be issued, includes with the application the transferor's title and, if that title contains the space referred to in paragraph (3)(A)(iii) of this subsection, a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a) of this section. This paragraph does not apply to a transfer of ownership of a motor vehicle that has not been licensed before the transfer.

(2)(A) Under regulations prescribed by the Secretary, if the title to a motor vehicle issued to a transferor by a State is in the possession of a lienholder when the transferor transfers ownership of the vehicle, the transferor may use a written power of attorney (if allowed by State law) in making the mileage disclosure required under subsection (a) of this section. Regulations prescribed under this paragraph—

(i) shall prescribe the form of the power of attorney;

(ii) shall provide that the form be printed by means of a secure printing process (or other secure process);

(iii) shall provide that the State issue the form to the transferee;

(iv) shall provide that the person exercising the power of attorney retain a copy and submit the original to the State with a copy of the title showing the restatement of the mileage;

(v) may require that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with section 32701(b) of this title, after considering the costs to the State;

(vi) shall ensure that the mileage at the time of transfer be disclosed on the power of attorney document;

(vii) shall ensure that the mileage be restated exactly by the person exercising the power of attorney in the space referred to in paragraph (3)(A)(iii) of this subsection;

(viii) may not require that a motor vehicle be titled in the State in which the power of attorney was issued;

(ix) shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles; and

(x) shall provide other conditions the Secretary considers appropriate.

(B) Section 32709(a) and (b) applies to a person granting or granted a power of attorney under this paragraph.

(3)(A) A motor vehicle the ownership of which is transferred may be licensed for use in a State only if the title issued by the State to the transferee—

(i) is produced by means of a secure printing process (or other secure process);

(ii) indicates the mileage disclosure required to be made under subsection (a) of this section; and

(iii) contains a space for the transferee to disclose the mileage at the time of a future transfer and to sign and date the disclosure.

(B) Subparagraph (A) of this paragraph does not require a State to verify, or preclude a State from verifying, the mileage information contained in the title.

(c) LEASED VEHICLES.—(1) For a leased vehicle, the regulations prescribed under subsection (a) of this section shall require written disclosure about mileage to be made by the lessee to the lessor when the lessor transfers ownership of the leased vehicle.

(2) Under those regulations, the lessor shall provide written notice to the lessee of—

(A) the mileage disclosure requirements of subsection (a) of this section; and

(B) the penalties for failure to comply with those requirements.

(3) The lessor shall retain the disclosures made by a lessee under paragraph (1) of this subsection for at least 4 years following the date the lessor transfers the vehicle.

(4) If the lessor transfers ownership of a leased vehicle without obtaining possession of the vehicle, the lessor, in making the disclosure required by subsection (a) of this section, may indicate on the title the mileage disclosed by the lessee under paragraph (1) of this subsection unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(d) STATE ALTERNATE VEHICLE MILEAGE DISCLOSURE REQUIREMENTS.—The requirements of subsections (b) and (c)(1) of this section on the disclosure of motor vehicle mileage when motor vehicles are transferred or leased apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary decides that the requirements are not consistent with the purpose of the disclosure required by subsection (b) or (c), as the case may be.

(e) AUCTION SALES.—If a motor vehicle is sold at an auction, the auction company conducting the auction shall maintain the following records for at least 4 years after the date of the sale:

(1) the name of the most recent owner of the motor vehicle (except the auction company) and the name of the buyer of the motor vehicle.

(2) the vehicle identification number required under chapter 301 or 331 of this title.

(3) the odometer reading on the date the auction company took possession of the motor vehicle.

(f) APPLICATION AND REVISION OF STATE LAW.—(1) Except as provided in paragraph (2) of this subsection, subsections (b)–(e) of this section apply to the transfer of a motor vehicle after April 28, 1989.

(2) If a State requests, the Secretary shall assist the State in revising its laws to comply with subsection (b) of this section. If a State requires time beyond April 28, 1989, to revise its laws to achieve compliance, the Secretary, on request of the State, may grant additional time that the Secretary considers reasonable by publishing a notice in the Federal Register. The notice shall include the reasons for granting the additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve compliance.

§32706. Inspections, investigations, and records

(a) AUTHORITY TO INSPECT AND INVESTIGATE.—Subject to section 32707 of this title, the Secretary of Transportation may conduct an inspection or investigation necessary to carry out this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall cooperate with State and local officials to the greatest extent possible in conducting an inspection or investigation. The Secretary may give the Attorney General information about a violation of this chapter or a regulation prescribed or order issued under this chapter.

(b) ENTRY, INSPECTION, AND IMPOUNDMENT.—(1) In carrying out subsection (a) of this section, an officer or employee designated by the Secretary, on display of proper credentials and written notice to the owner, operator, or agent in charge, may—

(A) enter and inspect commercial premises in which a motor vehicle or motor vehicle equipment is manufactured, held for shipment or sale, maintained, or repaired;

(B) enter and inspect noncommercial premises in which the Secretary reasonably believes there is a vehicle or equipment involved in a violation of this chapter;

(C) inspect that vehicle or equipment; and

(D) impound for not more than 72 hours for inspection a vehicle or equipment that the Secretary reasonably believes is involved in a violation of this chapter.

(2) An inspection or impoundment under this subsection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness. The written notice may consist of a warrant issued under section 32707 of this title.

(c) REASONABLE COMPENSATION.—When the Secretary impounds for inspection a motor vehicle (except a vehicle subject to subchapter II of chapter 105 of this title) or motor vehicle equipment under subsection (b)(1)(D) of this section, the Secretary shall pay reasonable compensation to the owner of the vehicle or equipment if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle or equipment.

(d) RECORDS AND INFORMATION REQUIREMENTS.—(1) To enable the Secretary to decide whether a dealer or distributor is complying with this chapter and regulations prescribed and orders issued under this chapter, the Secretary may require the dealer or distributor—

(A) to keep records;

(B) to provide information from those records if the Secretary states the purpose for requiring the information and identifies the information to the fullest extent practicable; and

(C) to allow an officer or employee designated by the Secretary to inspect relevant records of the dealer or distributor.

(2) This subsection and subsection (e)(1)(B) of this section do not authorize the Secretary to require a dealer or distributor to provide information on a regular periodic basis.

(e) ADMINISTRATIVE AUTHORITY AND CIVIL ACTIONS TO ENFORCE.—(1) In carrying out this chapter, the Secretary may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A civil action to enforce a subpoena or order of the Secretary under this subsection may be brought in the United States district court for the judicial district in which the proceeding by the Secretary was conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(f) PROHIBITIONS.—A person may not fail to keep records, refuse access to or copying of records, fail to make reports or provide information, fail to allow entry or inspection, or fail to permit impoundment, as required under this section.

§32707. Administrative warrants

(a) DEFINITION.—In this section, "probable cause" means a valid public interest in the effective enforcement of this chapter or a regulation prescribed under this chapter sufficient to justify the inspection or impoundment in the circumstances stated in an application for a warrant under this section.

(b) WARRANT REQUIREMENT AND ISSUANCE.—(1) Except as provided in paragraph (4) of this subsection, an inspection or impoundment under section 32706 of this title may be carried out only after a warrant is obtained.

(2) A judge of a court of the United States or a State court of record or a United States magistrate may issue a warrant for an inspection or impoundment under section 32706 of this title within the territorial jurisdiction of the court or magistrate. The warrant must be based on an affidavit that—

(A) establishes probable cause to issue the warrant; and

(B) is sworn to before the judge or magistrate by an officer or employee who knows the facts alleged in the affidavit.

(3) The judge or magistrate shall issue the warrant when the judge or magistrate decides there is a reasonable basis for believing that probable cause exists to issue the warrant. The warrant must—

(A) identify the premises, property, or motor vehicle to be inspected and the items or type of property to be impounded;

(B) state the purpose of the inspection, the basis for issuing the warrant, and the name of the affiant;

(C) direct an individual authorized under section 32706 of this title to inspect the premises, property, or vehicle for the purpose stated in the warrant and, when appropriate, to impound the property specified in the warrant;

(D) direct that the warrant be served during the hours specified in the warrant; and

(E) name the judge or magistrate with whom proof of service is to be filed.

(4) A warrant under this section is not required when—

(A) the owner, operator, or agent in charge of the premises consents;

(B) it is reasonable to believe that the mobility of the motor vehicle to be inspected makes it impractical to obtain a warrant;

(C) an application for a warrant cannot be made because of an emergency;

(D) records are to be inspected and copied under section 32706(e)(1)(A) of this title; or

(E) a warrant is not constitutionally required.

(c) SERVICE AND IMPOUNDMENT OF PROPERTY.—(1) A warrant issued under this section must be served and proof of service filed not later than 10 days after its issuance date. The judge or magistrate may allow additional time in the warrant if the Secretary of Transportation demonstrates a need for additional time. Proof of service must be filed promptly with a written inventory of the property impounded under the warrant. The inventory shall be made in the presence of the individual serving the warrant and the individual from whose possession or premises the property was impounded, or if that individual is not present, a credible individual except the individual making the inventory. The individual serving the warrant shall verify the inventory. On request, the judge or magistrate shall send a copy of the inventory to the individual from whose possession or premises the property was impounded and to the applicant for the warrant.

(2) When property is impounded under a warrant, the individual serving the warrant shall—

(A) give the person from whose possession or premises the property was impounded a copy of the warrant and a receipt for the property; or

(B) leave the copy and receipt at the place from which the property was impounded.

(3) The judge or magistrate shall file the warrant, proof of service, and all documents filed about the warrant with the clerk of the district court of the United States for the judicial district in which the inspection is made.

§32708. Confidentiality of information

(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(1) to another officer or employee of the United States Government for use in carrying out this chapter; or

(2) in a proceeding under this chapter.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§32709. Penalties and enforcement

(a) CIVIL PENALTY.—(1) A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than $2,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is $100,000.

(2) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.

(3) In determining the amount of a civil penalty under this subsection, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) CRIMINAL PENALTY.—A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter.

(c) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) CIVIL ACTIONS BY STATES.—(1) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action—

(A) to enjoin the violation; or

(B) to recover amounts for which the person is liable under section 32710 of this title for each person on whose behalf the action is brought.

(2) An action under this subsection may be brought in an appropriate district court of the United States or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.

§32710. Civil actions by private persons

(a) VIOLATION AND AMOUNT OF DAMAGES.—A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or $1,500, whichever is greater.

(b) CIVIL ACTIONS.—A person may bring a civil action to enforce a claim under this section in an appropriate district court of the United States or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

§32711. Relationship to State law

Except to the extent that State law is inconsistent with this chapter, this chapter does not—

(1) affect a State law on disconnecting, altering, or tampering with an odometer with intent to defraud; or

(2) exempt a person from complying with that law.

CHAPTER 329—AUTOMOBILE FUEL ECONOMY

Sec.

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§32901. Definitions

(a) GENERAL.—In this chapter—

(1) "alcohol" means a mixture containing 85 percent or more methanol, ethanol, or other alcohols by volume, in any combination.

(2) "alcohol powered automobile" means an automobile designed to operate only on alcohol.

(3) except as provided in section 32908 of this title, "automobile" means a 4-wheeled vehicle that is propelled by fuel, or by alcohol or natural gas, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at—

(A) not more than 6,000 pounds gross vehicle weight; or

(B) more than 6,000, but less than 10,000, pounds gross vehicle weight, if the Secretary of Transportation decides by regulation that—

(i) an average fuel economy standard under this chapter for the vehicle is feasible; and

(ii) an average fuel economy standard under this chapter for the vehicle will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6,000 pounds gross vehicle weight.

(4) "automobile manufactured by a manufacturer" includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person in a model year that is exported not later than 30 days after the end of that model year.

(5) "average fuel economy" means average fuel economy determined under section 32904 of this title.

(6) "average fuel economy standard" means a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.

(7) "dual energy automobile" means an automobile that—

(A) is capable of operating on alcohol and gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alcohol as when operating on gasoline or diesel fuel;

(C) for model years 1993–1995, and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alcohol and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and

(D) for a passenger automobile, meets the minimum driving range prescribed under subsection (b) of this section.

(8) "fuel" means—

(A) gasoline;

(B) diesel oil; or

(C) other liquid or gaseous fuel that the Secretary decides by regulation to include in this definition as consistent with the need of the United States to conserve energy.

(9) "fuel economy" means the average number of miles traveled by an automobile for each gal-

lon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator under section 32904(c) of this title.

(10) "import" means to import into the customs territory of the United States.

(11) "manufacture" (except under section 32902(d) of this title) means to produce or assemble in the customs territory of the United States or to import.

(12) "manufacturer" means—

(A) a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary; and

(B) if more than one person is the manufacturer of an automobile, the person specified under regulations prescribed by the Secretary.

(13) "model" means a class of automobiles as decided by regulation by the Administrator after consulting and coordinating with the Secretary.

(14) "model year", when referring to a specific calendar year, means—

(A) the annual production period of a manufacturer as decided by the Administrator, including January 1 of that calendar year; or

(B) that calendar year if the manufacturer does not have an annual production period.

(15) "natural gas dual energy automobile" means an automobile that—

(A) is capable of operating on natural gas and on gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on natural gas as when operating on gasoline or diesel fuel; and

(C) for a passenger automobile, meets the minimum driving range prescribed under subsection (b) of this section.

(16) "natural gas powered automobile" means an automobile designed to operate only on natural gas.

(17) "passenger automobile" means an automobile that the Secretary decides by regulation is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that the Secretary decides by regulation—

(A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and

(B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.

(b) MINIMUM DRIVING RANGES FOR DUAL ENERGY PASSENGER AUTOMOBILES.—(1) Not later than April 14, 1990, the Secretary shall prescribe by regulation the minimum driving range that dual energy automobiles that are passenger automobiles must meet when operating on alcohol, and that natural gas dual energy automobiles that are passenger automobiles must meet when operating on natural gas, to be dual energy automobiles or natural gas dual energy automobiles under sections 32905 and 32906 of this title. A determination whether a dual energy automobile or natural gas dual energy automobile meets the minimum driving range requirement under this paragraph shall be based on the combined Environmental Protection Agency city/highway fuel economy as determined for average fuel economy purposes for those automobiles.

(2)(A) The Secretary may prescribe a lower range for a specific model than that prescribed under paragraph (1) of this subsection. A manufacturer may petition for a lower range than that prescribed under paragraph (1) for a specific model.

(B) If the Secretary prescribes a minimum driving range of 200 miles for dual energy automobiles under paragraph (1) of this subsection, subparagraph (A) of this paragraph does not apply to dual energy automobiles.

(C) The minimum driving range prescribed for dual energy automobiles under subparagraph (A) of this paragraph or paragraph (1) of this subsection must be at least 200 miles.

(3) In prescribing a minimum driving range under paragraph (1) of this subsection and in taking an action under paragraph (2) of this subsection, the Secretary shall consider the purpose of section 3 of the Alternative Motor Fuels Act of 1988 (Public Law 100–494, 102 Stat. 2442), consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other factors the Secretary considers relevant.

§32902. Average fuel economy standards

(a) NON-PASSENGER AUTOMOBILES.—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles (except passenger automobiles) manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. The Secretary may prescribe separate standards for different classes of automobiles.

(b) PASSENGER AUTOMOBILES.—Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year 1984 shall be 27.5 miles a gallon.

(c) AMENDING PASSENGER AUTOMOBILE STANDARDS.—(1) Subject to paragraph (2) of this subsection, the Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. Section 553 of title 5 applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.

(2) If an amendment increases the standard above 27.5 miles a gallon or decreases the standard below 26.0 miles a gallon, the Secretary of Transportation shall submit the amendment to Congress. The procedures of section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply to an amendment, except that the 15 calendar days referred to in section 551 (c) and (d) of the Act (42 U.S.C. 6421 (c), (d)) are deemed to be 60 calendar days, and the 5 calendar days referred to in section 551(f)(4)(A) of the Act (42 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days. If either House of Congress disapproves the amendment under those procedures, the amendment does not take effect.

(d) EXEMPTIONS.—(1) Except as provided in paragraph (2) of this subsection, on application of a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary—

(A) finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

(B) prescribes by regulation an alternative average fuel economy standard for the passenger automobiles manufactured by the exempted manufacturer that the Secretary decides is the maximum feasible average fuel economy level for the manufacturers to which the standard applies.

(2) Notwithstanding paragraph (1) of this subsection, an importer registered under section 30141(c) of this title may not be exempted as a manufacturer under paragraph (1) for a motor vehicle that the importer—

(A) imports; or

(B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an individual under section 30142 of this title.

(3) The Secretary of Transportation may prescribe an alternative average fuel economy standard applicable to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of passenger automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.

(4) The Secretary of Transportation may prescribe the contents of an application for an exemption.

(e) EMERGENCY VEHICLES.—(1) In this subsection, "emergency vehicle" means an automobile manufactured primarily for use—

(A) as an ambulance or combination ambulance-hearse;

(B) by the United States Government or a State or local government for law enforcement; or

(C) for other emergency uses prescribed by regulation by the Secretary of Transportation.

(2) A manufacturer may elect to have the fuel economy of an emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.

(f) CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.

(g) REQUIREMENTS FOR OTHER AMENDMENTS.—(1) The Secretary of Transportation may prescribe regulations amending an average fuel economy standard prescribed under subsection (a) or (d) of this section if the amended standard meets the requirements of subsection (a) or (d), as appropriate.

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment (and submit the amendment to Congress when required under subsection (c)(2) of this section) at least 18 months before the beginning of the model year to which the amendment applies.

(h) LIMITATIONS.—In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—

(1) may not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles; and

(2) shall consider dual energy automobiles and natural gas dual energy automobiles to be operated only on gasoline or diesel fuel.

(i) SECRETARY OF ENERGY COMMENTS.—(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a) or (c) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Sec-

retary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and provide the Secretary of Energy a reasonable time to comment.

(j) CONSULTATION.—The Secretary of Transportation shall consult with the Secretary of Energy in carrying out this section and section 32903 of this title.

§32903. Credits for exceeding average fuel economy standards

(a) EARNING AND PERIOD FOR APPLYING CREDITS.—When the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard under section 32902(b)–(d) of this title (determined by the Secretary of Transportation without regard to credits under this section), the manufacturer earns credits. The credits may be applied to—

(1) any of the 3 consecutive model years immediately before the model year for which the credits are earned; and

(2) to the extent not used under clause (1) of this subsection, any of the 3 consecutive model years immediately after the model year for which the credits are earned.

(b) PERIOD OF AVAILABILITY AND PLAN FOR FUTURE CREDITS.—(1) Except as provided in paragraph (2) of this subsection, credits under this section are available to a manufacturer at the end of the model year in which earned.

(2)(A) Before the end of a model year, if a manufacturer has reason to believe that its average fuel economy for passenger automobiles will be less than the applicable standard for that model year, the manufacturer may submit a plan to the Secretary of Transportation demonstrating that the manufacturer will earn sufficient credits under this section within the next 3 model years to allow the manufacturer to meet that standard for the model year involved. Unless the Secretary finds that the manufacturer is unlikely to earn sufficient credits under the plan, the Secretary shall approve the plan. Those credits are available for the model year involved if—

(i) the Secretary approves the plan; and

(ii) the manufacturer earns those credits as provided by the plan.

(B) If the average fuel economy of a manufacturer is less than the applicable standard under section 32902(b)–(d) of this title after applying credits under subsection (a)(1) of this section, the Secretary of Transportation shall notify the manufacturer and give the manufacturer a reasonable time (of at least 60 days) to submit a plan.

(c) DETERMINING NUMBER OF CREDITS.—The number of credits a manufacturer earns under this section equals the product of—

(1) the number of tenths of a mile a gallon by which the average fuel economy of the passenger automobiles manufactured by the manufacturer in the model year in which the credits are earned exceeds the applicable average fuel economy standard under section 32902(b)–(d) of this title; times

(2) the number of passenger automobiles manufactured by the manufacturer during that model year.

(d) APPLYING CREDITS FOR PASSENGER AUTOMOBILES.—The Secretary of Transportation shall apply credits to a model year on the basis of the number of tenths of a mile a gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the number of passenger automobiles manufactured that model year by the manufacturer. Credits applied to a model year are no longer available for another model year. Before applying credits, the Secretary shall give the manufacturer written notice and reasonable opportunity to comment.

(e) APPLYING CREDITS FOR NON-PASSENGER AUTOMOBILES.—Credits for a manufacturer of automobiles that are not passenger automobiles are earned and applied to a model year in which the average fuel economy of that class of automobiles is below the applicable average fuel economy standard under section 32902(a) of this title, to the same extent and in the same way as provided in this section for passenger automobiles.

(f) REFUND OF COLLECTED PENALTY.—When a civil penalty has been collected under this chapter from a manufacturer that has earned credits under this section, the Secretary of the Treasury shall refund to the manufacturer the amount of the penalty to the extent the penalty is attributable to credits available under this section.

§32904. Calculation of average fuel economy

(a) METHOD OF CALCULATION.—(1) The Administrator of the Environmental Protection Agency shall calculate the average fuel economy of a manufacturer subject to—

(A) section 32902(a) of this title in a way prescribed by the Administrator; and

(B) section 32902(b)–(d) of this title by dividing—

(i) the number of passenger automobiles manufactured by the manufacturer in a model year; by

(ii) the sum of the fractions obtained by dividing the number of passenger automobiles of each model manufactured by the manufacturer in that model year by the fuel economy measured for that model.

(2)(A) In this paragraph, "electric vehicle" means a vehicle powered primarily by an electric motor drawing electrical current from a portable source.

(B) If a manufacturer manufactures an electric vehicle, the Administrator shall include in the calculation of average fuel economy under paragraph (1) of this subsection equivalent petroleum based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. The Secretary shall review those values each year and determine and propose necessary revisions based on the following factors:

(i) the approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.

(ii) the national average electrical generation and transmission efficiencies.

(iii) the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) the specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

(b) SEPARATE CALCULATIONS FOR PASSENGER AUTOMOBILES MANUFACTURED DOMESTICALLY AND NOT DOMESTICALLY.—(1) In this subsection—

(A) a passenger automobile is deemed to be manufactured domestically in a model year if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly of the automobile is completed in Canada and the automobile is imported into the United States more than 30 days after the end of the model year; and

(B) the fuel economy of a passenger automobile that is not manufactured domestically is deemed to be equal to the average fuel economy of all passenger automobiles that are not manufactured domestically.

(2)(A) Except as provided in paragraphs (4) and (5) of this subsection, the Administrator shall make separate calculations under subsection (a)(1)(B) of this section for—

(i) passenger automobiles manufactured domestically by a manufacturer (or included in this category under paragraph (3) of this subsection); and

(ii) passenger automobiles not manufactured domestically by that manufacturer (or excluded from this category under paragraph (3) of this subsection).

(B) Passenger automobiles described in subparagraph (A) (i) and (ii) of this paragraph are deemed to be manufactured by separate manufacturers under this chapter.

(3)(A) A manufacturer may submit to the Secretary of Transportation for approval a plan, including supporting material, stating the actions and the dates when the actions will be taken, that will ensure that the automobile type or types referred to in subparagraph (B) of this paragraph will be manufactured domestically before the end of the 4th model year covered by the plan. The Secretary promptly shall consider and act on the plan. The Secretary shall approve the plan unless—

(i) the Secretary finds that the plan is inadequate to meet the requirements of this paragraph; or

(ii) the manufacturer previously has submitted a plan approved by the Secretary under this paragraph.

(B) If the plan is approved, the Administrator shall include under paragraph (2)(A)(i) and exclude under paragraph (2)(A)(ii) of this subsection, for each of the 4 model years covered by the plan, not more than 150,000 passenger automobiles manufactured by that manufacturer but not qualifying as domestically manufactured if—

(i) the model type or types involved previously have not been manufactured domestically;

(ii) at least 50 percent of the cost to the manufacturer of each of the automobiles is attributable to value added in the United States or Canada;

(iii) the automobiles, if their assembly was completed in Canada, are imported into the United States not later than 30 days after the end of the model year; and

(iv) the automobile model type or types are manufactured domestically before the end of the 4th model year covered by the plan.

(4)(A) A manufacturer may file with the Secretary of Transportation a petition for an exemption from the requirement of separate calculations under paragraph (2)(A) of this subsection if the manufacturer began automobile production or assembly in the United States—

(i) after December 22, 1975, and before May 1, 1980; or

(ii) after April 30, 1980, if the manufacturer has engaged in the production or assembly in the United States for at least one model year ending before January 1, 1986.

(B) The Secretary of Transportation shall grant the exemption unless the Secretary finds that the exemption would result in reduced employment in the United States related to motor vehicle manufacturing during the period of the exemption. An exemption under this paragraph is effective for 5 model years or, if requested by the manufacturer, a longer period provided by the Secretary in the order granting the exemption. The exemption applies to passenger automobiles manufactured by that manufacturer during the period of the exemption.

(C) Before granting an exemption, the Secretary of Transportation shall provide notice of, and reasonable opportunity for, written or oral comment about the petition. The period for comment shall end not later than 60 days after the petition is filed, except that the Secretary may

extend the period for not more than another 30 days. The Secretary shall decide whether to grant or deny the exemption, and publish notice of the decision in the Federal Register, not later than 90 days after the petition is filed, except that the Secretary may extend the time for decision to a later date (not later than 150 days after the petition is filed) if the Secretary publishes notice of, and reasons for, the extension in the Federal Register. If the Secretary does not make a decision within the time provided in this subparagraph, the petition is deemed to have been granted. Not later than 30 days after the end of the decision period, the Secretary shall submit a written statement of the reasons for not making a decision to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(5)(A) A person adversely affected by a decision of the Secretary of Transportation granting or denying an exemption may file, not later than 30 days after publication of the notice of the decision, a petition for review in the United States Court of Appeals for the District of Columbia Circuit. That court has exclusive jurisdiction to review the decision and to affirm, remand, or set aside the decision under section 706(2)(A)–(D) of title 5.

(B) A judgment of the court under this subparagraph may be reviewed by the Supreme Court under section 1254 of title 28. Application for review by the Supreme Court must be made not later than 30 days after entry of the court's judgment.

(C) A decision of the Secretary of Transportation on a petition for an exemption under this paragraph may be reviewed administratively or judicially only as provided in this paragraph.

(6) Notwithstanding section 32903 of this title, during a model year when an exemption under this paragraph is effective for a manufacturer—

(A) credit may not be earned under section 32903(a) of this title by the manufacturer; and

(B) credit may not be made available under section 32903(b)(2) of this title for the manufacturer.

(c) TESTING AND CALCULATION PROCEDURES.—The Administrator shall measure fuel economy for each model and calculate average fuel economy for a manufacturer under testing and calculation procedures prescribed by the Administrator. However, except under section 32908 of this title, the Administrator shall use the same procedures for passenger automobiles the Administrator used for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle), or procedures that give comparable results. A measurement of fuel economy or a calculation of average fuel economy (except under section 32908) shall be rounded off to the nearest .1 of a mile a gallon. The Administrator shall decide on the quantity of other fuel that is equivalent to one gallon of gasoline. To the extent practicable, a fuel economy test shall be carried out with emissions tests under section 206 of the Clean Air Act (42 U.S.C. 7525).

(d) EFFECTIVE DATE OF PROCEDURE OR AMENDMENT.—The Administrator shall prescribe a procedure under this section, or an amendment (except a technical or clerical amendment) in a procedure, at least 12 months before the beginning of the model year to which the procedure or amendment applies.

(e) REPORTS AND CONSULTATION.—The Administrator shall report measurements and calculations under this section to the Secretary of Transportation and shall consult and coordinate with the Secretary in carrying out this section.

§32905. Manufacturing incentives for alternative fuel automobiles

(a) ALCOHOL POWERED AUTOMOBILES.—For any model of alcohol powered automobile manufactured by a manufacturer after model year 1992, the fuel economy measured for that model shall be based on the fuel content of the alcohol used to operate the automobile. A gallon of alcohol used to operate an alcohol powered automobile is deemed to contain .15 gallon of fuel.

(b) DUAL ENERGY AUTOMOBILES.—For any model of dual energy automobile manufactured by a manufacturer in model years 1993–2004, the Administrator of the Environmental Protection Agency shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and

(2) .5 divided by the fuel economy measured under subsection (a) of this section when operating the model on alcohol.

(c) NATURAL GAS POWERED AUTOMOBILES.—For any model of natural gas powered automobile manufactured by a manufacturer after model year 1992, the Administrator shall measure the fuel economy for that model based on the fuel content of the natural gas used to operate the automobile. One hundred cubic feet of natural gas is deemed to contain .823 gallon equivalent of natural gas. A gallon equivalent of natural gas is deemed to have a fuel content of .15 gallon of fuel.

(d) NATURAL GAS DUAL ENERGY AUTOMOBILES.—For any model of natural gas dual energy automobile manufactured by a manufacturer in model years 1993–2004, the Administrator shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and

(2) .5 divided by the fuel economy measured under subsection (c) of this section when operating the model on natural gas.

(e) FUEL ECONOMY CALCULATIONS.—The Administrator shall calculate the manufacturer's average fuel economy under section 32904(a)(1) of this title for each model described under subsections (a)–(d) of this section by using as the denominator the fuel economy measured for each model under subsections (a)–(d).

(f) EXTENDING APPLICATION OF SUBSECTIONS (b) AND (d).—Not later than December 31, 2001, the Secretary of Transportation shall—

(1) extend by regulation the application of subsections (b) and (d) of this section for not more than 4 consecutive model years immediately after model year 2004 and explain the basis on which the extension is granted; or

(2) publish a notice explaining the reasons for not extending the application of subsections (b) and (d) of this section.

(g) STUDY AND REPORT.—Not later than September 30, 2000, the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator, shall complete a study of the success of the policy of subsections (b) and (d) of this title, and submit to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of the study, including preliminary conclusions on whether the application of subsections (b) and (d) should be extended for up to 4 more model years. The study and conclusions shall consider—

(1) the availability to the public of alcohol powered automobiles, natural gas powered automobiles, and alternative fuels;

(2) energy conservation and security;

(3) environmental considerations; and

(4) other relevant factors.

§32906. Maximum fuel economy increase for alternative fuel automobiles

(a) MAXIMUM INCREASES.—(1)(A) For each of the model years 1993–2004 for each category of automobile, the maximum increase in average fuel economy for a manufacturer attributable to dual energy automobiles and natural gas dual energy automobiles is 1.2 miles a gallon.

(B) If the application of section 32905(b) and (d) of this title is extended under section 32905(f) of this title, for each category of automobile the maximum increase in average fuel economy for a manufacturer for each of the model years 2005–2008 attributable to dual energy automobiles and natural gas dual energy automobiles is .9 mile a gallon.

(2) In applying paragraph (1) of this subsection, the Administrator of the Environmental Protection Agency shall determine the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under section 32905(e) of this title the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 32904(a)(1) of this title by including as the denominator for each model of dual energy automobile or natural gas dual energy automobile the fuel economy when the automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described—

(A) in paragraph (1)(A) of this subsection is more than 1.2 miles a gallon, the limitation in paragraph (1)(A) applies; and

(B) in paragraph (1)(B) of this subsection is more than .9 mile a gallon, the limitation in paragraph (1)(B) applies.

(b) OFFSETS.—Nothwithstanding this section and sections 32901(b) and 32905 of this title, if the Secretary of Transportation reduces the average fuel economy standard for passenger automobiles for any model year below 27.5 miles a gallon, an increase in average fuel economy for passenger automobiles of more than .7 mile a gallon to which a manufacturer of dual energy automobiles or natural gas dual energy automobiles would otherwise be entitled is reduced by an amount equal to the amount of the reduction in the standard. However, the increase may not be reduced to less than .7 mile a gallon.

§32907. Reports and tests of manufacturers

(a) MANUFACTURER REPORTS.—(1) A manufacturer shall report to the Secretary of Transportation on—

(A) whether the manufacturer will comply with an applicable average fuel economy standard under section 32902 of this title for the model year for which the report is made;

(B) the actions the manufacturer has taken or intends to take to comply with the standard; and

(C) other information the Secretary requires by regulation.

(2) A manufacturer shall submit a report under paragraph (1) of this subsection during the 30 days—

(A) before the beginning of each model year; and

(B) beginning on the 180th day of the model year.

(3) When a manufacturer decides that actions reported under paragraph (1)(B) of this subsection are not sufficient to ensure compliance with that standard, the manufacturer shall report to the Secretary additional actions the manufacturer intends to take to comply with the standard and include a statement that those actions are sufficient to ensure compliance.

(4) This subsection does not apply to a manufacturer for a model year for which the manufacturer is subject to an alternative average fuel economy standard under section 32902(d) of this title.

(b) RECORDS, REPORTS, TESTS, INFORMATION, AND INSPECTION.—(1) Under regulations pre-

scribed by the Secretary or the Administrator of the Environmental Protection Agency to carry out this chapter, a manufacturer shall keep records, make reports, conduct tests, and provide items and information. On request and display of proper credentials, an officer or employee designated by the Secretary or Administrator may inspect automobiles and records of the manufacturer. An inspection shall be made at a reasonable time and in a reasonable way.

(2) The district courts of the United States may—

(A) issue an order enforcing a requirement or request under paragraph (1) of this subsection; and

(B) punish a failure to obey the order as a contempt of court.

§32908. Fuel economy information

(a) DEFINITIONS.—In this section—

(1) "automobile" includes an automobile rated at not more than 8,500 pounds gross vehicle weight regardless of whether the Secretary of Transportation has applied this chapter to the automobile under section 32901(a)(3)(B) of this title.

(2) "dealer" means a person residing or located in a State, the District of Columbia, or a territory or possession of the United States, and engaged in the sale or distribution of new automobiles to the first person (except a dealer buying as a dealer) that buys the automobile in good faith other than for resale.

(b) LABELING REQUIREMENTS AND CONTENTS.—(1) Under regulations of the Administrator of the Environmental Protection Agency, a manufacturer of automobiles shall attach a label to a prominent place on each automobile manufactured in a model year. The dealer shall maintain the label. The label shall contain the following information:

(A) the fuel economy of the automobile.

(B) the estimated annual fuel cost of operating the automobile.

(C) the range of fuel economy of comparable automobiles of all manufacturers.

(D) a statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year.

(E) the amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064).

(F) other information required or authorized by the Administrator that is related to the information required by clauses (A)–(D) of this paragraph.

(2) The Administrator may allow a manufacturer to comply with this subsection by—

(A) disclosing the information on the label required under section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

(B) including the statement required by paragraph (1)(E) of this subsection at a time and in a way that takes into account special circumstances or characteristics.

(3) For alcohol powered automobiles and natural gas powered automobiles manufactured after model year 1992, the fuel economy of those automobiles under paragraph (1)(A) of this subsection is the fuel economy for those automobiles when operated on alcohol or natural gas, as the case may be, measured under section 32905(a) or (c) of this title, multiplied by .15. Each label required under paragraph (1) of this subsection for those dual energy automobiles or natural gas dual energy automobiles shall—

(A) indicate the fuel economy of the automobile when operated on gasoline or diesel fuel;

(B) clearly identify the automobile as a dual energy automobile or natural gas dual energy automobile;

(C) clearly identify the fuels on which the automobile may be operated; and

(D) contain a statement informing the consumer that the additional information required by subsection (c)(2) of this section is published and distributed by the Secretary of Energy.

(c) FUEL ECONOMY INFORMATION BOOKLET.—(1) The Administrator shall prepare the booklet referred to in subsection (b)(1)(D) of this section. The booklet—

(A) shall be simple and readily understandable;

(B) shall contain information on fuel economy and estimated annual fuel costs of operating automobiles manufactured in each model year; and

(C) may contain information on geographical or other differences in estimated annual fuel costs.

(2)(A) For dual energy automobiles and natural gas dual energy automobiles manufactured after model year 1992, the booklet published under paragraph (1) shall contain additional information on—

(i) the energy efficiency and cost of operation of those automobiles when operated on gasoline or diesel fuel as compared to those automobiles when operated on alcohol or natural gas, as the case may be; and

(ii) the driving range of those automobiles when operated on gasoline or diesel fuel as compared to those automobiles when operated on alcohol or natural gas, as the case may be.

(B) For dual energy automobiles, the booklet published under paragraph (1) also shall contain—

(i) information on the miles a gallon achieved by the automobiles when operated on alcohol; and

(ii) a statement explaining how the information made available under this paragraph can be expected to change when the automobile is operated on mixtures of alcohol and gasoline or diesel fuel.

(3) The Secretary of Energy shall publish and distribute the booklet. The Administrator shall prescribe regulations requiring dealers to make the booklet available to prospective buyers.

(d) DISCLOSURE.—A disclosure about fuel economy or estimated annual fuel costs under this section does not establish a warranty under a law of the United States or a State.

(e) VIOLATIONS.—A violation of subsection (b) of this section is—

(1) a violation of section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

(2) an unfair or deceptive act or practice in or affecting commerce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), except sections 5(m) and 18 (15 U.S.C. 45(m), 57a).

(f) CONSULTATION.—The Administrator shall consult with the Federal Trade Commission and the Secretaries of Transportation and Energy in carrying out this section.

§32909. Judicial review of regulations

(a) FILING AND VENUE.—(1) A person that may be adversely affected by a regulation prescribed in carrying out section 32901–32904 or 32908 of this title may apply for review of the regulation by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(2) A person adversely affected by a regulation prescribed under section 32912(c)(1) of this title may apply for review of the regulation by filing a petition for review in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(b) TIME FOR FILING AND JUDICIAL PROCEDURES.—The petition must be filed not later than 59 days after the regulation is prescribed, except that a petition for review of a regulation prescribing an amendment of a standard submitted to Congress under section 32902(c)(2) of this title must be filed not later than 59 days after the end of the 60-day period referred to in section 32902(c)(2). The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation or the Administrator of the Environmental Protection Agency, whoever prescribed the regulation. The Secretary or the Administrator shall file with the court a record of the proceeding in which the regulation was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) When reviewing a regulation under subsection (a)(1) of this section, the court, on request of the petitioner, may order the Secretary or the Administrator to receive additional submissions if the court is satisfied the additional submissions are material and there were reasonable grounds for not presenting the submissions in the proceeding before the Secretary or Administrator.

(2) The Secretary or the Administrator may amend or set aside the regulation, or prescribe a new regulation because of the additional submissions presented. The Secretary or Administrator shall file an amended or new regulation and the additional submissions with the court. The court shall review a changed or new regulation.

(d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judgment of a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under subsections (a)(1) and (c) of this section is in addition to any other remedies provided by law.

§32910. Administrative

(a) GENERAL POWERS.—(1) In carrying out this chapter, the Secretary of Transportation or the Administrator of the Environmental Protection Agency may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and subpoena witnesses and records the Secretary or Administrator considers advisable.

(2) A witness summoned under paragraph (1)(C) of this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(b) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpoena or order of the Secretary or Administrator under subsection (a) of this section may be brought in the United States district court for the judicial district in which the proceeding by the Secretary or Administrator was conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary or Administrator as a contempt of court.

(c) DISCLOSURE OF INFORMATION.—The Secretary and the Administrator shall disclose information obtained under this chapter (except information obtained under section 32904(c) of this title) under section 552 of title 5. However, the Secretary or Administrator may withhold information under section 552(b)(4) only if the Secretary or Administrator decides that disclosure of the information would cause significant competitive damage. A matter referred to in section 552(b)(4) and relevant to an administrative or judicial proceeding under this chapter may be disclosed in that proceeding. A measurement or calculation under section 32904(c) of this title shall be disclosed under section 552 of title 5 without regard to section 552(b).

(d) REGULATIONS.—The Administrator may prescribe regulations to carry out duties of the Administrator under this chapter.

§32911. Compliance

(a) GENERAL.—A person commits a violation if the person fails to comply with this chapter and regulations and standards prescribed and orders issued under this chapter (except sections 32902, 32903, 32908(b), and 32917(b) and regulations and standards prescribed and orders issued under those sections). The Secretary of Transportation shall conduct a proceeding, with an opportunity for a hearing on the record, to decide whether a person has committed a violation. Any interested person may participate in a proceeding under this subsection.

(b) AUTOMOBILE MANUFACTURERS.—A manufacturer of automobiles commits a violation if the manufacturer fails to comply with an applicable average fuel economy standard under section 32902 of this title. Compliance is determined after considering credits available to the manufacturer under section 32903 of this title. If average fuel economy calculations under section 32904(c) of this title indicate that a manufacturer has violated this subsection, the Secretary shall conduct a proceeding, with an opportunity for a hearing on the record, to decide whether a violation has been committed. The Secretary may not conduct the proceeding if further measurements of fuel economy, further calculations of average fuel economy, or other information indicates a violation has not been committed. The results of the measurements and calculations and the information shall be published in the Federal Register. Any interested person may participate in a proceeding under this subsection.

§32912. Civil penalties

(a) GENERAL PENALTY.—A person that violates section 32911(a) of this title is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(b) PENALTY FOR MANUFACTURER VIOLATIONS OF FUEL ECONOMY STANDARDS.—Except as provided in subsection (c) of this section, a manufacturer that violates a standard prescribed for a model year under section 32902 of this title is liable to the Government for a civil penalty of $5 multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average fuel economy—

(1)(A) calculated under section 32904(a)(1)(A) of this title for automobiles to which the standard applies manufactured by the manufacturer during the model year;

(B) multiplied by the number of those automobiles; and

(C) reduced by the credits available to the manufacturer under section 32903 of this title for the model year; and

(2)(A) calculated under section 32904(a)(1)(B) of this title for passenger automobiles manufactured by the manufacturer during the model year;

(B) multiplied by the number of those automobiles; and

(C) reduced by the credits available to the manufacturer under section 32903 of this title for the model year.

(c) HIGHER PENALTY AMOUNTS.—(1)(A) The Secretary of Transportation shall prescribe by regulation a higher amount for each .1 of a mile a gallon to be used in calculating a civil penalty under subsection (b) of this section, if the Secretary decides that the increase in the penalty—

(i) will result in, or substantially further, substantial energy conservation for automobiles in model years in which the increased penalty may be imposed; and

(ii) will not have a substantial deleterious impact on the economy of the United States, a State, or a region of a State.

(B) The amount prescribed under subparagraph (A) of this paragraph may not be more than $10 for each .1 of a mile a gallon.

(C) The Secretary may make a decision under subparagraph (A)(ii) of this paragraph only when the Secretary decides that it is likely that the increase in the penalty will not—

(i) cause a significant increase in unemployment in a State or a region of a State;

(ii) adversely affect competition; or

(iii) cause a significant increase in automobile imports.

(D) A higher amount prescribed under subparagraph (A) of this paragraph is effective for the model year beginning at least 18 months after the regulation stating the higher amount becomes final.

(2) The Secretary shall publish in the Federal Register a proposed regulation under this subsection and a statement of the basis for the regulation and provide each manufacturer of automobiles a copy of the proposed regulation and the statement. The Secretary shall provide a period of at least 45 days for written public comments on the proposed regulation. The Secretary shall submit a copy of the proposed regulation to the Federal Trade Commission and request the Commission to comment on the proposed regulation within that period. After that period, the Secretary shall give interested persons and the Commission an opportunity at a public hearing to present oral information, views, and arguments and to direct questions about disputed issues of material fact to—

(A) other interested persons making oral presentations;

(B) employees and contractors of the Government that made written comments or an oral presentation or participated in the development or consideration of the proposed regulation; and

(C) experts and consultants that provided information to a person that the person includes, or refers to, in an oral presentation.

(3) The Secretary may restrict the questions of an interested person and the Commission when the Secretary decides that the questions are duplicative or not likely to result in a timely and effective resolution of the issues. A transcript shall be kept of a public hearing under this subsection. A copy of the transcript and written comments shall be available to the public at the cost of reproduction.

(4) The Secretary shall publish a regulation prescribed under this subsection in the Federal Register with the decisions required under paragraph (1) of this subsection.

(5) An officer or employee of a department, agency, or instrumentality of the Government violates section 1905 of title 18 by disclosing, except in an in camera proceeding by the Secretary or a court, information—

(A) provided to the Secretary or the court during consideration or review of a regulation prescribed under this subsection; and

(B) decided by the Secretary to be confidential under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796(d)).

(d) WRITTEN NOTICE REQUIREMENT.—The Secretary shall impose a penalty under this section by written notice.

§32913. Compromising and remitting civil penalties

(a) GENERAL AUTHORITY AND LIMITATIONS.—The Secretary of Transportation may compromise or remit the amount of a civil penalty imposed under section 32912 (a) or (b) of this title. However, the amount of a penalty imposed under section 32912(b) may be compromised or remitted only to the extent—

(1) necessary to prevent the insolvency or bankruptcy of the manufacturer of automobiles;

(2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire; or

(3) the Federal Trade Commission certifies under subsection (b)(1) of this section that a reduction in the penalty is necessary to prevent a substantial lessening of competition.

(b) PENALTY REDUCTION BY COMMISSION.—(1) A manufacturer liable for a civil penalty under section 32912(b) of this title may apply to the Commission for a certification that the penalty should be reduced to prevent a substantial lessening of competition in the segment of the motor vehicle industry subject to the standard that was violated. The Commission shall make the certification when it finds that reduction is necessary to prevent the lessening. The Commission shall state in the certification the maximum amount by which the penalty may be reduced.

(2) An application under this subsection must be made not later than 30 days after the Secretary decides that the manufacturer has violated section 32911(b) of this title. To the maximum extent practicable, the Commission shall make a decision on an application by the 90th day after the application is filed. A proceeding under this subsection may not delay the manufacturer's liability for the penalty for more than 90 days after the application is filed.

(3) When a civil penalty is collected in a civil action under this chapter before a decision of the Commission under this subsection is final, the payment shall be paid to the court in which the action was brought. The court shall deposit the payment in the general fund of the Treasury on the 90th day after the decision of the Commission becomes final. When the court is holding payment of a penalty reduced under subsection (a)(3) of this section, the Secretary shall direct the court to remit the appropriate amount of the penalty to the manufacturer.

§32914. Collecting civil penalties

(a) CIVIL ACTIONS.—If a person does not pay a civil penalty after it becomes a final order of the Secretary of Transportation or a judgment of a court of appeals of the United States for a circuit, the Attorney General shall bring a civil action in the appropriate district court of the United States to collect the penalty. The validity and appropriateness of the final order imposing the penalty is not reviewable in the action.

(b) PRIORITY OF CLAIMS.—A claim of a creditor against a bankrupt or insolvent manufacturer of automobiles has priority over a claim of the United States Government against the manufacturer for a civil penalty under section 32912(b) of this title when the creditor's claim is for credit extended before a final judgment (without regard to section 32913(b) (1) and (2) of this title) in an action to collect under subsection (a) of this section.

§32915. Appealing civil penalties

Any interested person may appeal a decision of the Secretary of Transportation to impose a civil penalty under section 32912 (a) or (b) of this title, or of the Federal Trade Commission under section 32913(b)(1) of this title, in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. A person appealing a decision must file a notice of appeal with the court not later than 30 days after the decision and, at the same time, send a copy of the notice by certified mail to the Secretary or the Commission. The Secretary or the Commission promptly shall file with the court a certified copy of the record of the proceeding in which the decision was made.

§32916. Reports to Congress

(a) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary of Transportation shall submit to each House of Congress, and publish in the Federal Register, a report on the review by the Secretary of average fuel economy standards prescribed under this chapter.

(b) JOINT EXAMINATIONS AFTER GRANTING EXEMPTIONS.—(1) After an exemption has been granted under section 32904(b)(4) of this title, the Secretaries of Transportation and Labor shall conduct annually a joint examination of the extent to which section 32904(b)(4)—

(A) achieves the purposes of this chapter;

(B) improves fuel efficiency (thereby facilitating conservation of petroleum and reducing petroleum imports);

(C) has promoted employment in the United States related to automobile manufacturing;

(D) has not caused unreasonable harm to the automobile manufacturing sector in the United States; and

(E) has permitted manufacturers that have assembled passenger automobiles deemed domestically manufactured under section 32904(b)(1)(A) of this title thereafter to assemble in the United States passenger automobiles of the same model that have less than 75 percent of their value added in the United States or Canada, together with the reasons.

(2) The Secretary of Transportation shall include the results of the examination under paragraph (1) of this subsection in each report submitted under subsection (a) of this section more than 180 days after an exemption has been granted under section 32904(b)(4) of this title, or submit the results of the examination directly to Congress before the report is submitted when circumstances warrant.

§32917. Standards for executive agency automobiles

(a) DEFINITION.—In this section, "executive agency" has the same meaning given that term in section 105 of title 5.

(b) FLEET AVERAGE FUEL ECONOMY.—(1) The President shall prescribe regulations that require passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year to achieve a fleet average fuel economy (determined under paragraph (2) of this subsection) for that year of at least the greater of—

(A) 18 miles a gallon; or

(B) the applicable average fuel economy standard under section 32902 (b) or (c) of this title for the model year that includes January 1 of that fiscal year.

(2) Fleet average fuel economy is—

(A) the total number of passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year (except automobiles designed for combat-related missions, law enforcement work, or emergency rescue work); divided by

(B) the sum of the fractions obtained by dividing the number of automobiles of each model leased or bought by the fuel economy of that model.

§32918. Preemption

(a) GENERAL.—When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation on fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.

(b) REQUIREMENTS MUST BE IDENTICAL.—When a requirement under section 32908 of this title is in effect, a State or a political subdivision of a State may adopt or enforce a law or regulation on disclosure of fuel economy or fuel operating costs for an automobile covered by section 32908 only if the law or regulation is identical to that requirement.

(c) STATE AND POLITICAL SUBDIVISION AUTOMOBILES.—A State or a political subdivision of a State may prescribe requirements for fuel economy for automobiles obtained for its own use.

CHAPTER 331—THEFT PREVENTION

Sec.

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§33101. Definitions

In this chapter—

(1) "covered major part" means a major part selected under sections 33102(d)(1)(B) and 33103 of this title for coverage by the vehicle theft prevention standard prescribed under section 33102.

(2) "existing line" means a line introduced into commerce before January 1, 1983.

(3) "first purchaser" means the person making the first purchase other than for resale.

(4) "line" means a name that a manufacturer of motor vehicles applies to a group of motor vehicle models of the same make that have the same body or chassis, or otherwise are similar in construction or design.

(5) "major part" means—

(A) the engine;

(B) the transmission;

(C) each door to the passenger compartment;

(D) the hood;

(E) the grille;

(F) each bumper;

(G) each front fender;

(H) the deck lid, tailgate, or hatchback;

(I) each rear quarter panel;

(J) the trunk floor pan;

(K) the frame or, for a unitized body, the supporting structure serving as the frame; and

(L) any other part of a passenger motor vehicle that the Secretary of Transportation by regulation specifies as comparable in design or function to any of the parts listed in subclauses (A)–(K) of this clause.

(6) "major replacement part" means a major part—

(A) not installed in or on a motor vehicle at the time of its delivery to the first purchaser; and

(B) the equitable or legal title to which has not been transferred to a first purchaser.

(7) "model year" has the same meaning given that term in section 32901(a)(14) of this title.

(8) "new line" means a line introduced into commerce after December 31, 1982.

(9) "passenger motor vehicle" does not include a multipurpose passenger vehicle (including a vehicle commonly known as a "passenger van").

(10) "vehicle theft prevention standard" means a minimum performance standard for identifying major parts of new motor vehicles and major replacement parts by inscribing or affixing numbers or symbols on those parts.

§33102. Theft prevention standard

(a) GENERAL.—The Secretary of Transportation by regulation shall prescribe a vehicle theft prevention standard that conforms to the requirements of this chapter.

(b) APPLICATION.—(1) The standard shall apply to—

(A) the covered major parts that manufacturers install in passenger motor vehicles in lines designated under section 33103 of this title as high theft lines; and

(B) the major replacement parts for the major parts described in clause (A) of this paragraph.

(2) The standard may apply only to—

(A) major parts that manufacturers install in passenger motor vehicles having a model year designation later than the calendar year in which the standard takes effect; and

(B) major replacement parts manufactured after the standard takes effect.

(c) STANDARD REQUIREMENTS.—The standard shall be practicable and provide relevant objective criteria.

(d) LIMITATIONS ON MAJOR PART AND REPLACEMENT PART STANDARDS.—(1) For a major part installed by the manufacturer of the motor vehicle, the standard may not require—

(A) a part to have more than one identification; or

(B) a motor vehicle to have identification of more than 14 of its major parts.

(2) For a major replacement part, the standard may not require—

(A) identification of a part not designed as a replacement for a major part required to be identified under the standard; or

(B) the inscribing or affixing of identification except a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part.

(e) RECORDS AND REPORTS.—This chapter does not authorize the Secretary to require a person to keep records or make reports, except as provided in sections 33103(c), 33105(c), 33106(a), and 33112 of this title.

§33103. Designation of high theft vehicle lines and parts

(a) DESIGNATION, NONAPPLICATION, SELECTION, AND PROCEDURES.—(1) For purposes of the standard under section 33102 of this title, the following are high theft lines:

(A) a passenger motor vehicle line determined under subsection (b) of this section to have had a new passenger motor vehicle theft rate in the 2-year period covering calendar years 1983 and 1984 greater than the median theft rate for all new passenger motor vehicles in that 2-year period.

(B) a passenger motor vehicle line initially introduced into commerce in the United States after December 31, 1982, that is selected under paragraph (3) of this subsection as likely to have a theft rate greater than the median theft rate referred to in clause (A) of this paragraph.

(C) subject to paragraph (2) of this subsection, a passenger motor vehicle line having (for existing lines) or likely to have (for new lines) a theft rate below the median theft rate referred to in clause (A) of this paragraph, if the major parts in the vehicles are selected under paragraph (3) of this subsection as interchangeable with the majority of the major parts that are subject to the standard and are contained in the motor vehicles of a line described in clause (A) or (B) of this paragraph.

(2) The standard may not apply to any major part of a line described in paragraph (1)(C) of this subsection if all the passenger motor vehicles of lines that are, or are likely to be, below the median theft rate, and that contain parts interchangeable with the major parts of the line involved, account (for existing lines), or the Secretary of Transportation determines they are likely to account (for new lines), for more than 90 percent of the total annual production of all lines of that manufacturer containing those interchangeable parts.

(3) The lines, and the major parts of the passenger motor vehicles in those lines, that are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary. If the manufacturer and the Secretary disagree on the selection, the Secretary shall select the lines and parts, after notice to the manufacturer and opportunity for written comment, and subject to the confidentiality requirements of this chapter.

(4) To the maximum extent practicable, the Secretary shall prescribe reasonable procedures

designed to ensure that a selection under paragraph (3) of this subsection is made at least 6 months before the first applicable model year beginning after the selection.

(5) A manufacturer may not be required to comply with the standard under a selection under paragraph (3) of this subsection for a model year beginning earlier than 6 months after the date of the selection.

(b) Determining Theft Rate for Passenger Vehicles.—(1) In this subsection, "new passenger motor vehicle thefts", when used in reference to a calendar year, means thefts in the United States in that year of passenger motor vehicles with the same model-year designation as that calendar year.

(2) Under subsection (a) of this section, the theft rate for passenger motor vehicles of a line shall be determined by a fraction—

(A) the numerator of which is the number of new passenger motor vehicle thefts for that line during the 2-year period referred to in subsection (a)(1)(A) of this section; and

(B) the denominator of which is the sum of the respective production volumes of all passenger motor vehicles of that line (as reported to the Administrator of the Environmental Protection Agency under chapter 329 of this title) that are of model years 1983 and 1984 and are distributed for sale in commerce in the United States.

(3) Under subsection (a) of this section, the median theft rate for all new passenger motor vehicle thefts during that 2-year period is the theft rate midway between the highest and the lowest theft rates determined under paragraph (2) of this subsection. If there is an even number of theft rates determined under paragraph (2), the median theft rate is the arithmetic average of the 2 adjoining theft rates midway between the highest and the lowest of those theft rates.

(4) In consultation with the Director of the Federal Bureau of Investigation, the Secretary periodically shall obtain from the most reliable source accurate and timely theft and recovery information and publish the information for review and comment. To the greatest extent possible, the Secretary shall use theft information reported by United States Government, State, and local police. After publication and opportunity for comment, the Secretary shall use the theft information to determine the median theft rate under this subsection. The Secretary and the Director shall take any necessary actions to improve the accuracy, reliability, and timeliness of the information, including ensuring that vehicles represented as stolen are really stolen.

(5) In calculating the median theft rate, the Secretary shall include the theft rates of lines exempted from the initial selection of high theft lines required to have been made not later than October 25, 1985, under section 603(a)(3) of the Motor Vehicle Information and Cost Savings Act (Public Law 92–513, 86 Stat. 947), as added by section 101(a) of the Motor Vehicle Theft Law Enforcement Act of 1984 (Public Law 98–547, 98 Stat. 2757).

(c) Providing Information.—The Secretary by regulation shall require each manufacturer to provide information necessary to select under subsection (a)(3) of this section the high theft lines and the major parts to be subject to the standard.

(d) Application.—Except as provided in section 33105 of this title, the Secretary may not make the standard inapplicable to a line that has been subject to the standard.

§33104. Cost limitations

(a) Maximum Manufacturer Costs.—The standard under section 33102 of this title may not impose—

(1) on a manufacturer of motor vehicles, compliance costs of more than $15 a motor vehicle; or

(2) on a manufacturer of major replacement parts, compliance costs for each part of more than the reasonable amount (but less than $15) that the Secretary of Transportation specifies in the standard.

(b) Costs Involved in Engines and Transmissions.—For a manufacturer engaged in identifying engines or transmissions on October 25, 1984, in a way that substantially complies with the standard—

(1) the costs of identifying engines and transmissions may not be considered in calculating the manufacturer's costs under subsection (a) of this section; and

(2) the manufacturer may not be required under the standard to conform to any identification system for engines and transmissions that imposes greater costs on the manufacturer than are incurred under the identification system used by the manufacturer on October 25, 1984.

(c) Cost Adjustments.—(1) In this subsection—

(A) "base period" means calendar year 1984.

(B) "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Secretary of Labor.

(2) At the beginning of each calendar year, as necessary data become available from the Bureau of Labor Statistics, the Secretary of Labor shall certify to the Secretary of Transportation and publish in the Federal Register the percentage difference between the price index for the 12 months before the beginning of the calendar year and the price index for the base period. For model years beginning in that calendar year, the amounts specified in subsection (a) of this section shall be adjusted by the percentage difference.

§33105. Exemption for passenger motor vehicles equipped with anti-theft devices

(a) Definitions.—In this section—

(1) "anti-theft device" means a device to reduce or deter theft that—

(A) is in addition to the theft-deterrent devices required by motor vehicle safety standard numbered 114 in section 571.114 of title 49, Code of Federal Regulations;

(B) the manufacturer believes will be effective in reducing or deterring theft of motor vehicles; and

(C) does not use a signaling device reserved by State law for use on police, emergency, or official vehicles, or on schoolbuses.

(2) "standard equipment" means equipment already installed in a motor vehicle when it is delivered from the manufacturer and not an accessory or other item that the first purchaser customarily has the option to have installed.

(b) Granting Exemptions and Limitations.—(1) A manufacturer may petition the Secretary of Transportation for an exemption from a requirement of a standard prescribed under section 33102 of this title for a line of passenger motor vehicles equipped as standard equipment with an anti-theft device that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as a device required by the standard.

(2) For model year 1987, the Secretary may grant an exemption for not more than 2 lines of a manufacturer. For each subsequent model year, the Secretary may grant an exemption for not more than 2 additional lines of a manufacturer. An additional exemption does not affect an exemption previously granted.

(c) Petitioning Procedure.—A petition must be filed not later than 8 months before the start of production for the first model year covered by the petition. The petition must include—

(1) a detailed description of the device;

(2) the reasons for the manufacturer's conclusion that the device will be effective in reducing and deterring theft of motor vehicles; and

(3) additional information the Secretary reasonably may require to make the decision described in subsection (b)(1) of this section.

(d) Decisions and Approvals.—The Secretary shall make a decision about a petition filed under this section not later than 120 days after the date the petition is filed. A decision approving a petition must be based on substantial evidence. The Secretary may approve a petition in whole or in part. If the Secretary does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.

(e) Rescissions.—The Secretary may rescind an exemption if the Secretary decides that the anti-theft device has not been as effective in reducing and deterring motor vehicle theft as compliance with the standard. A rescission may be effective only—

(1) for a model year after the model year in which the rescission occurs; and

(2) at least 6 months after the manufacturer receives written notice of the rescission from the Secretary.

§33106. Monitoring compliance of manufacturers

(a) Records, Reports, Information, and Inspection.—To enable the Secretary of Transportation to decide whether a manufacturer of motor vehicles containing a part subject to a standard prescribed under section 33102 of this title, or a manufacturer of major replacement parts subject to the standard, is complying with this chapter and the standard, the Secretary may require the manufacturer to—

(1) keep records;

(2) make reports;

(3) provide items and information; and

(4) allow an officer or employee designated by the Secretary to inspect the vehicles and parts and relevant records of the manufacturer.

(b) Entry and Inspection.—To enforce this chapter, an officer or employee designated by the Secretary, on presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may inspect a facility in which motor vehicles containing major parts subject to the standard, or major replacement parts subject to the standard, are manufactured, held for introduction into interstate commerce, or held for sale after introduction into interstate commerce. An inspection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness.

(c) Certification of Compliance.—(1) A manufacturer of a motor vehicle subject to the standard, and a manufacturer of a major replacement part subject to the standard, shall provide at the time of delivery of the vehicle or part a certification that the vehicle or part conforms to the applicable motor vehicle theft prevention standard. The certification shall accompany the vehicle or part until its delivery to the first purchaser. The Secretary by regulation may prescribe the type and form of the certification.

(2) This subsection does not apply to a motor vehicle or major replacement part that is—

(A) intended only for export;

(B) labeled only for export on the vehicle or replacement part and the outside of any container until exported; and

(C) exported.

(d) Notification of Error.—A manufacturer shall notify the Secretary if the manufacturer discovers that—

(1) there is an error in the identification (required by the standard) applied to a major part installed by the manufacturer in a motor vehicle during its assembly, or to a major replacement part manufactured by the manufacturer; and

(2) the motor vehicle or major replacement part has entered interstate commerce.

§33107. Prohibited acts

(a) General.—A person may not—

(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a motor vehicle or major replacement part subject to a standard prescribed under section 33102 of this title, unless it conforms to the standard;

(2) fail to comply with a regulation prescribed by the Secretary of Transportation under this chapter;

(3) fail to keep specified records, refuse access to or copying of records, fail to make reports or provide items or information, or fail or refuse to allow entry or inspection, as required by this chapter; or

(4) fail to provide the certification required by section 33106(c) of this title, or provide a certification that the person knows, or in the exercise of reasonable care has reason to know, is false or misleading in a material respect.

(b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to a person establishing that in the exercise of reasonable care the person did not have reason to know that the motor vehicle or major replacement part was not in conformity with the standard.

§33108. Civil penalty and enforcement

(a) PENALTY AND CIVIL ACTIONS TO COLLECT.—(1) A person that violates section 33107 of this title is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under section 33102 of this title is only a single violation. The maximum penalty under this subsection for a related series of violations is $250,000.

(2) The Secretary of Transportation imposes a civil penalty under this section. The Secretary may compromise the amount of a penalty.

(3) In determining the amount of a civil penalty or compromise, the Secretary shall consider the size of the person's business and the gravity of the violation.

(4) The Attorney General shall bring a civil action to collect a civil penalty imposed under this section.

(5) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(b) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring a civil action to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of a passenger motor vehicle containing a major part, or of a major replacement part, that is subject to the standard and is determined before the sale of the vehicle or part to a first purchaser not to conform to the standard.

(2)(A) When practicable, the Secretary—

(i) shall notify a person against whom an action under this subsection is planned;

(ii) shall give the person an opportunity to present that person's views; and

(iii) except for a knowing and willful violation, shall give the person a reasonable opportunity to comply.

(B) The failure of the Secretary to comply with subparagraph (A) of this paragraph does not prevent a court from granting appropriate relief.

(c) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (b) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(d) VENUE.—A civil action under subsection (a) or (b) of this section may be brought in the United States district court for the judicial district in which the violation occurred or the defendant resides, is found, or transacts business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

§33109. Confidentiality of information

(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(1) to another officer or employee of the United States Government for use in carrying out this chapter; or

(2) in a proceeding under this chapter (except a proceeding under section 33103(a)(3)).

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§33110. Judicial review

A person that may be adversely affected by a regulation prescribed under this chapter may obtain judicial review of the regulation under section 32909 of this title. A remedy under this section is in addition to any other remedies provided by law.

§33111. Preemption of State and local law

When a motor vehicle theft prevention standard prescribed under section 33102 of this title is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part.

§33112. Insurance reports and information

(a) PURPOSES.—The purposes of this section are—

(1) to prevent or discourage the theft of motor vehicles, particularly those stolen for the removal of certain parts;

(2) to prevent or discourage the sale and distribution in interstate commerce of used parts that are removed from those vehicles; and

(3) to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

(b) DEFINITIONS.—In this section—

(1) "insurer" includes a person (except a governmental authority) having a fleet of at least 20 motor vehicles that are used primarily for rental and are not covered by a theft insurance policy issued by an insurer of passenger motor vehicles.

(2) "motor vehicle" includes a truck, a multipurpose passenger vehicle, and a motorcycle.

(c) ANNUAL INFORMATION REQUIREMENT.—(1) An insurer providing comprehensive coverage for motor vehicles shall provide annually to the Secretary of Transportation information on—

(A) the thefts and recoveries (in any part) of motor vehicles;

(B) the number of vehicles that have been recovered intact;

(C) the rating rules and plans, such as loss information and rating characteristics, used by the insurer to establish premiums for comprehensive coverage, including the basis for the premiums, and premium penalties for motor vehicles considered by the insurer as more likely to be stolen;

(D) the actions taken by the insurer to reduce the premiums, including changing rate levels for comprehensive coverage because of a reduction in thefts of motor vehicles;

(E) the actions taken by the insurer to assist in deterring or reducing thefts of motor vehicles; and

(F) other information the Secretary requires to carry out this chapter and to make the report and findings required by this chapter.

(2) The information on thefts and recoveries shall include an explanation on how the information is obtained, the accuracy and timeliness of the information, and the use made of the information, including the extent and frequency of reporting the information to national, public, and private entities such as the Federal Bureau of Investigation and State and local police.

(d) REPORTS ON REDUCED CLAIMS PAYMENTS.—An insurer shall report promptly in writing to the Secretary if the insurer, in paying a claim under an adjustment or negotiation between the insurer and the insured for a stolen motor vehicle—

(1) reduces the payment to the insured by the amount of the value, salvage or otherwise, of a recovered part subject to a standard prescribed under section 33102 of this title; and

(2) the reduction is not made at the express election of the insured.

(e) GENERAL EXEMPTIONS.—The Secretary shall exempt from this section, for one or more years, an insurer that the Secretary decides should be exempted because—

(1) the cost of preparing and providing the information is excessive in relation to the size of the insurer's business; and

(2) the information from that insurer will not contribute significantly to carrying out this chapter.

(f) SMALL INSURER EXEMPTIONS.—(1) In this subsection, "small insurer" means an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including a pooling arrangement established under State law or regulation for the issuance of motor vehicle insurance, account for—

(A) less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers in the United States; and

(B) less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers in any State.

(2) The Secretary shall exempt by regulation a small insurer from this section if the Secretary finds that the exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, nationally or State-by-State. However, the Secretary may not exempt an insurer under this paragraph that is considered an insurer only because of subsection (b)(1) of this section.

(3) Regulations under this subsection shall provide that eligibility as a small insurer shall be based on the most recent calendar year for which adequate information is available, and that, once attained, the eligibility shall continue without further demonstration of eligibility for one or more years, as the Secretary considers appropriate.

(g) PRESCRIBED FORM.—Information required by this section shall be provided in the form the Secretary prescribes.

(h) PERIODIC COMPILATIONS.—Subject to section 552 of title 5, the Secretary periodically shall compile and publish information obtained by the Secretary under this section, in a form that will be helpful to the public, the police, and Congress.

(i) CONSULTATION.—In carrying out this section, the Secretary shall consult with public and private agencies and associations the Secretary considers appropriate.

§33113. Voluntary vehicle identification standards

(a) ELECTION TO INSCRIBE OR AFFIX IDENTIFYING MARKS.—The Secretary of Transportation by regulation may prescribe a vehicle theft prevention standard under which a person may elect to inscribe or affix an identifying number or symbol on major parts of a motor vehicle manufactured or owned by the person for purposes of section 511 of title 18 and related provisions. The standard may include provisions for registration of the identification with the Secretary or a person designated by the Secretary.

(b) STANDARD REQUIREMENTS.—The standard under this section shall be practicable and provide relevant objective criteria.

(c) VOLUNTARY COMPLIANCE.—Compliance with the standard under this section is voluntary. Failure to comply does not subject a person to a penalty or enforcement under this chapter.

(d) COMPLIANCE WITH OTHER STANDARDS.—Compliance with the standard under this section does not relieve a manufacturer from a requirement of a standard prescribed under section 33102 of this title.

SUBTITLE VII—AVIATION PROGRAMS

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§40101. Policy

(a) ECONOMIC REGULATION.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity:

(1) assigning and maintaining safety as the highest priority in air commerce.

(2) before authorizing new air transportation services, evaluating the safety implications of those services.

(3) preventing deterioration in established safety procedures in air transportation and air commerce.

(4) the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices.

(5) coordinating transportation by, and improving relations among, air carriers, and encouraging fair wages and working conditions.

(6) placing maximum reliance on competitive market forces and on actual and potential competition—

(A) to provide the needed air transportation system; and

(B) to encourage efficient and well-managed air carriers to earn adequate profits and attract capital, considering material differences between interstate air transportation and foreign air transportation.

(7) developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of—

(A) the commerce of the United States;

(B) the United States Postal Service; and

(C) the national defense.

(8) encouraging air transportation at major urban areas through secondary or satellite airports if consistent with regional airport plans of regional and local authorities, and if endorsed by appropriate State authorities—

(A) encouraging the transportation by air carriers that provide, in a specific market, transportation exclusively at those airports; and

(B) fostering an environment that allows those carriers to establish themselves and develop secondary or satellite airport services.

(9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that may allow at least one air carrier or foreign air carrier unreasonably to increase rates, reduce services, or exclude competition in air transportation.

(11) maintaining a complete and convenient system of continuous scheduled interstate air transportation for small communities and isolated areas with direct financial assistance from the United States Government when appropriate.

(12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition—

(A) to provide efficiency, innovation, and low rates; and

(B) to establish the variety and quality of, and rates for, air transportation services.

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

(14) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(15) strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers, including giving air carriers the opportunity to maintain and increase their profitability in foreign air transportation.

(b) ALL-CARGO AIR TRANSPORTATION CONSIDERATIONS.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others and in addition to the matters referred to in subsection (a) of this section, as being in the public interest for all-cargo air transportation:

(1) encouraging and developing an expedited all-cargo air transportation system provided by private enterprise and responsive to—

(A) the present and future needs of shippers;

(B) the commerce of the United States; and

(C) the national defense.

(2) encouraging and developing an integrated transportation system relying on competitive market forces to decide the extent, variety, quality, and price of services provided.

(3) providing services without unreasonable discrimination, unfair or deceptive practices, or predatory pricing.

(c) GENERAL SAFETY CONSIDERATIONS.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator of the Federal Aviation Administration shall consider the following matters:

(1) the requirements of national defense and commercial and general aviation.

(2) the public right of freedom of transit through the navigable airspace.

(d) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator shall consider the following matters, among others, as being in the public interest:

(1) regulating air commerce in a way that best promotes its development and safety and fulfills national defense requirements.

(2) promoting, encouraging, and developing civil aeronautics.

(3) controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations.

(4) consolidating research and development for air navigation facilities and the installation and operation of those facilities.

(5) developing and operating a common system of air traffic control and navigation for military and civil aircraft.

(6) providing assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

(e) INTERNATIONAL AIR TRANSPORTATION.—In formulating United States international air transportation policy, the Secretaries of State and Transportation shall develop a negotiating policy emphasizing the greatest degree of competition compatible with a well-functioning international air transportation system, including the following:

(1) strengthening the competitive position of air carriers to ensure at least equality with foreign air carriers, including giving air carriers the opportunity to maintain and increase their profitability in foreign air transportation.

(2) freedom of air carriers and foreign air carriers to offer rates that correspond to consumer demand.

(3) the fewest possible restrictions on charter air transportation.

(4) the maximum degree of multiple and permissive international authority for air carriers so that they will be able to respond quickly to a shift in market demand.

(5) eliminating operational and marketing restrictions to the greatest extent possible.

(6) integrating domestic and international air transportation.

(7) increasing the number of nonstop United States gateway cities.

(8) opportunities for carriers of foreign countries to increase their access to places in the United States if exchanged for benefits of similar magnitude for air carriers or the traveling public with permanent linkage between rights granted and rights given away.

(9) eliminating discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including—

(A) excessive landing and user fees;

(B) unreasonable ground handling requirements;

(C) unreasonable restrictions on operations;

(D) prohibitions against change of gauge; and

(E) similar restrictive practices.

(10) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

§40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

(1) "aeronautics" means the science and art of flight.

(2) "air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

(3) "air commerce" means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

(4) "air navigation facility" means a facility used, available for use, or designed for use, in aid of air navigation, including—

(A) a landing area;

(B) a light;

(C) apparatus or equipment for distributing weather information, signaling, radio-directional finding, or radio or other electromagnetic communication; and

(D) another structure or mechanism for guiding or controlling flight in the air or the landing and takeoff of aircraft.

(5) "air transportation" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

(6) "aircraft" means any contrivance invented, used, or designed to navigate, or fly in, the air.

(7) "aircraft engine" means an engine used, or intended to be used, to propel an aircraft, including a part, appurtenance, and accessory of the engine, except a propeller.

(8) "airman" means an individual—

(A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way;

(B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or

(C) who serves as an aircraft dispatcher or air traffic control-tower operator.

(9) "airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "all-cargo air transportation" means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(11) "appliance" means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.

(12) "cargo" means property, mail, or both.

(13) "charter air carrier" means an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation.

(14) "charter air transportation" means charter trips in air transportation authorized under this part.

(15) "citizen of the United States" means—

(A) an individual who is a citizen of the United States;

(B) a partnership each of whose partners is an individual who is a citizen of the United States; or

(C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(16) "civil aircraft" means an aircraft except a public aircraft.

(17) "civil aircraft of the United States" means an aircraft registered under chapter 441 of this title.

(18) "conditional sales contract" means a contract—

(A) for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part, under which the buyer takes possession of the property but title to the property vests in the buyer at a later time on—

(i) paying any part of the purchase price;

(ii) performing another condition; or

(iii) the happening of a contingency; or

(B) to bail or lease an aircraft, aircraft engine, propeller, appliance, or spare part, under which the bailee or lessee—

(i) agrees to pay an amount substantially equal to the value of the property; and

(ii) is to become, or has the option of becoming, the owner of the property on complying with the contract.

(19) "conveyance" means an instrument, including a conditional sales contract, affecting title to, or an interest in, property.

(20) "Federal airway" means a part of the navigable airspace that the Administrator designates as a Federal airway.

(21) "foreign air carrier" means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

(22) "foreign air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation, between a place in the United States and a place outside the United States when any part of the transportation or operation is by aircraft.

(23) "foreign air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

(24) "interstate air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) a State and another place in the same State through the airspace over a place outside the State;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation or operation is by aircraft.

(25) "interstate air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation is by aircraft.

(26) "intrastate air carrier" means a citizen of the United States undertaking by any means to provide only intrastate air transportation.

(27) "intrastate air transportation" means the transportation by a common carrier of passengers or property for compensation, entirely in the same State, by turbojet-powered aircraft capable of carrying at least 30 passengers.

(28) "landing area" means a place on land or water, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo.

(29) "mail" means United States mail and foreign transit mail.

(30) "navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations under subparts I and III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft.

(31) "navigate aircraft" and "navigation of aircraft" include piloting aircraft.

(32) "operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

(B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.

(33) "person", in addition to its meaning under section 1 of title 1, includes a body politic and a trustee, receiver, assignee, and other similar representative.

(34) "predatory" means a practice that violates the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

(35) "propeller" includes a part, appurtenance, and accessory of a propeller.

(36) "public aircraft"—

(A) means an aircraft—

(i) used only for the United States Government; or

(ii) owned and operated (except for commercial purposes), or exclusively leased for at least 90 continuous days, by a government (except the United States Government), including a State, the District of Columbia, or a territory or possession of the United States, or political subdivision of that government; but

(B) does not include a government-owned aircraft transporting passengers or property for commercial purposes.

(37) "rate" means a rate, fare, or charge for air transportation.

(38) "spare part" means an accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance.

(39) "State authority" means an authority of a State designated under State law—

(A) to receive notice required to be given a State authority under subpart II of this part; or

(B) as the representative of the State before the Secretary of Transportation in any matter about which the Secretary is required to consult with or consider the views of a State authority under subpart II of this part.

(40) "territory or possession of the United States" means—

(A) the Canal Zone, but this definition does not affect the jurisdiction of the President over air navigation in the Canal Zone; and

(B) any other territory or possession of the United States.

(41) "ticket agent" means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.

(42) "United States" means the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

(b) LIMITED DEFINITION.—In subpart II of this part, "control" means control by any means.

§40103. Sovereignty and use of airspace

(a) SOVEREIGNTY AND PUBLIC RIGHT OF TRANSIT.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) USE OF AIRSPACE.—(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) FOREIGN AIRCRAFT.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) AIRCRAFT OF ARMED FORCES OF FOREIGN COUNTRIES.—Aircraft of the armed forces of a foreign country may be navigated in the United States, including the Canal Zone, only when authorized by the Secretary of State.

(e) NO EXCLUSIVE RIGHTS AT CERTAIN FACILITIES.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

§40104. Promotion of civil aeronautics and air commerce

The Administrator of the Federal Aviation Administration shall encourage the development of civil aeronautics and air commerce in and outside the United States. In carrying out this section, the Administrator shall take action that the Administrator considers necessary to establish, within available resources, a program to distribute civil aviation information in each region served by the Administration. The program shall provide, on request, informational material and expertise on civil aviation to State and local school administrators, college and university officials, and officers of other interested organizations.

§40105. International negotiations, agreements, and obligations

(a) ADVICE AND CONSULTATION.—The Secretary of State shall advise the Administrator of the Federal Aviation Administration and the Secretaries of Transportation and Commerce, and consult with them as appropriate, about negotiations for an agreement with a government of a foreign country to establish or develop air navigation, including air routes and services. The Secretary of Transportation shall consult with the Secretary of State in carrying out this part to the extent this part is related to foreign air transportation.

(b) ACTIONS OF SECRETARY AND ADMINISTRATOR.—(1) In carrying out this part, the Secretary of Transportation and the Administrator—

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation disapproves the agreement because it is not in the public interest. Section 40106(b)(2) of this title applies to this subsection.

(c) CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.—In carrying out section 40101(e) of this title, the Secretaries of State and Transportation, to the maximum extent practicable, shall consult on broad policy goals and individual negotiations with—

(1) the Secretaries of Commerce and Defense;
(2) airport operators;
(3) scheduled air carriers;
(4) charter air carriers;
(5) airline labor;
(6) consumer interest groups;
(7) travel agents and tour organizers; and
(8) other groups, institutions, and governmental authorities affected by international aviation policy.

(d) CONGRESSIONAL OBSERVERS AT INTERNATIONAL AVIATION NEGOTIATIONS.—The President shall grant to at least one representative of each House of Congress the privilege of attending international aviation negotiations as an observer if the privilege is requested in advance in writing.

§40106. Emergency powers

(a) DEVIATIONS FROM REGULATIONS.—Appropriate military authority may authorize aircraft of the armed forces of the United States to deviate from air traffic regulations prescribed under section 40103(b)(1) and (2) of this title when the authority decides the deviation is essential to the national defense because of a military emergency or urgent military necessity. The authority shall—

(1) give the Administrator of the Federal Aviation Administration prior notice of the deviation at the earliest practicable time; and

(2) to the extent time and circumstances allow, make every reasonable effort to consult with the Administrator and arrange for the deviation in advance on a mutually agreeable basis.

(b) SUSPENSION OF AUTHORITY.—(1) When the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of—

(A) an air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

(B) a person to operate aircraft in foreign air commerce to and from that foreign country;

(C) a foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

(D) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

(2) The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. Notwithstanding section 40105(b) of this title, the authority of the President to suspend rights under this subsection is a condition to a certificate of public convenience and necessity, air carrier operating certificate, foreign air carrier or foreign aircraft permit, or foreign air carrier operating specification issued by the Secretary of Transportation under this part.

(3) An air carrier or foreign air carrier may not provide foreign air transportation, and a person may not operate aircraft in foreign air commerce, in violation of a suspension of authority under this subsection.

§40107. Presidential transfers

(a) GENERAL AUTHORITY.—The President may transfer to the Administrator of the Federal

Aviation Administration a duty, power, activity, or facility of a department, agency, or instrumentality of the executive branch of the United States Government, or an officer or unit of a department, agency, or instrumentality of the executive branch, related primarily to selecting, developing, testing, evaluating, establishing, operating, or maintaining a system, procedure, facility, or device for safe and efficient air navigation and air traffic control. In making a transfer, the President may transfer records and property and make officers and employees from the department, agency, instrumentality, or unit available to the Administrator.

(b) DURING WAR.—If war occurs, the President by executive order may transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.

§40108. Training schools

(a) AUTHORITY TO OPERATE.—The Administrator of the Federal Aviation Administration may operate schools to train officers and employees of the Administration to carry out duties, powers, and activities of the Administrator.

(b) ATTENDANCE.—The Administrator may authorize officers and employees of other departments, agencies, or instrumentalities of the United States Government, officers and employees of governments of foreign countries, and individuals from the aeronautics industry to attend those schools. However, if the attendance of any of those officers, employees, or individuals increases the cost of operating the schools, the Administrator may require the payment or transfer of amounts or other consideration to offset the additional cost. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

§40109. Authority to exempt

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS NOT ENGAGED DIRECTLY IN OPERATING AIRCRAFT.—(1) The Secretary of Transportation may exempt from subpart II of this part—

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(b) SAFETY REGULATION.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections 40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935–44937 of this title when the Administrator decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, sections 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) LABOR REQUIREMENTS.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary may exempt from section 42112(b) (1) and (2) an air carrier not providing scheduled air transportation, and the operations conducted during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b) (1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) MAXIMUM FLYING HOURS.—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) SMALLER AIRCRAFT.—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

(C) review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.

(3) The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.

(h) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.

§40110. General procurement authority

(a) GENERAL.—In carrying out this part, the Administrator of the Federal Aviation Administration may—

(1) acquire, to the extent that amounts are available for obligation, services or an interest in property, including an interest in airspace immediately adjacent to and needed for airports and other air navigation facilities owned by the United States Government and operated by the Administrator;

(2) dispose of an interest in property for adequate compensation; and

(3) construct and improve laboratories and other test facilities.

(b) DUTIES AND POWERS.—When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration—

(1) is the senior procurement executive referred to in section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) for approving the justification for using procedures other than competitive procedures, as required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)); and

(2) may—

(A) lease an interest in property for not more than 20 years;

(B) consider the reasonable probable future use of the underlying land in making an award for a condemnation of an interest in airspace;

(C) construct, or acquire an interest in, a public building (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)) only under a delegation of authority from the Administrator of General Services;

(D) use procedures other than competitive procedures, as provided under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)); and

(E) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

§40111. Multiyear procurement contracts for services and related items

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31, the Administrator of the Federal Aviation Administration may make a contract of not more than 5 years for the following types of services and items of supply related to those services for which amounts otherwise would be available for obligation only in the fiscal year for which appropriated:

(1) operation, maintenance, and support of facilities and installations.

(2) operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment.

(3) specialized training requiring high quality instructor skills, including training of pilots and aircrew members and foreign language training.

(4) base services, including ground maintenance, aircraft refueling, bus transportation, and refuse collection and disposal.

(b) REQUIRED FINDINGS.—The Administrator may make a contract under this section only if the Administrator finds that—

(1) there will be a continuing requirement for the service consistent with current plans for the proposed contract period;

(2) providing the service will require a substantial initial investment in plant or equipment, or will incur a substantial contingent liability for assembling, training, or transporting a specialized workforce; and

(3) the contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(c) CONSIDERATIONS.—When making a contract under this section, the Administrator shall be guided by the following:

(1) The part of the cost of a plant or equipment amortized as a cost of contract performance may not be more than the ratio between the period of contract performance and the anticipated useful commercial life (instead of physical life) of the plant or equipment, considering the location and specialized nature of the plant or equipment, obsolescence, and other similar factors.

(2) The Administrator shall consider the desirability of—

(A) obtaining an option to renew the contract for a reasonable period of not more than 3 years, at a price that does not include charges for nonrecurring costs already amortized; and

(B) reserving in the Administrator the right, on payment of the unamortized part of the cost of the plant or equipment, to take title to the plant or equipment under appropriate circumstances.

(d) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of service concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.

§40112. Multiyear procurement contracts for property

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31 and to the extent that amounts otherwise are available for obligation, the Administrator of the Federal Aviation Administration may make a contract of more than one but not more than 5 fiscal years to purchase property, except a contract to construct, alter, or make a major repair or improvement to real property or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

(b) REQUIRED FINDINGS.—The Administrator may make a contract under this section if the Administrator finds that—

(1) the contract will promote the safety or efficiency of the national airspace system and will result in reduced total contract costs;

(2) the minimum need for the property to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, procurement rate, and total quantities;

(3) there is a reasonable expectation that throughout the proposed contract period the Administrator will request appropriations for the contract at the level required to avoid cancellation;

(4) there is a stable design for the property to be acquired and the technical risks associated with the property are not excessive; and

(5) the estimates of the contract costs and the anticipated savings from the contract are realistic.

(c) REGULATIONS.—The Administrator shall prescribe regulations for acquiring property under this section to promote the use of contracts under this section in a way that will allow the most efficient use of those contracts. The regulations may provide for a cancellation provision in the contract to the extent the provision is necessary and in the best interest of the United States. The provision may include consideration of recurring and nonrecurring costs of the contractor associated with producing the item to be delivered under the contract. The regulations shall provide that, to the extent practicable—

(1) to broaden the aviation industrial base—

(A) a contract under this section shall be used to seek, retain, and promote the use under that contract of subcontractors, vendors, or suppliers; and

(B) on accrual of a payment or other benefit accruing on a contract under this section to a subcontractor, vendor, or supplier participating in the contract, the payment or benefit shall be delivered in the most expeditious way practicable; and

(2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the Administrator to provide for—

(A) competition in producing items to be delivered under a contract under this section; or

(B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

(d) CONTRACT PROVISIONS.—(1) A contract under this section may—

(A) be used for the advance procurement of components, parts, and material necessary to manufacture equipment to be used in the national airspace system;

(B) provide that performance under the contract after the first year is subject to amounts being appropriated; and

(C) contain a negotiated priced option for varying the number of end items to be procured over the period of the contract.

(2) If feasible and practicable, an advance procurement contract may be made to achieve economic-lot purchases and more efficient production rates.

(e) CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.—(1) If a contract under this section provides that performance is subject to an appropriation being made, it also may provide for a cancellation payment to be made to the contractor if the appropriation is not made.

(2) Before awarding a contract under this section containing a cancellation ceiling of more than $100,000,000, the Administrator shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

(f) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of property concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.

§40113. Administrative

(a) GENERAL AUTHORITY.—The Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may take action the Secretary or Administrator, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

(b) HAZARDOUS MATERIAL.—In carrying out this part, the Secretary has the same authority to regulate the transportation of hazardous material by air that the Secretary has under section 5103 of this title. However, this subsection does not prohibit or regulate the transportation of a firearm (as defined in section 232 of title 18) or ammunition for a firearm, when transported by an individual for personal use.

(c) GOVERNMENTAL ASSISTANCE.—The Secretary (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may use the assistance of the Administrator of the National Aeronautics and Space Administration and any research or technical department, agency, or instrumentality of the United States Government on matters related to aircraft fuel and oil, and to the design, material, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each department, agency, and instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary or Administrator of the Federal Aviation Administration in carrying out this part. This part does not authorize duplicating laboratory research activities of a department, agency, or instrumentality.

(d) INDEMNIFICATION.—The Administrator of the Federal Aviation Administration may indemnify an officer or employee of the Administration against a claim or judgment arising out of an act that the Administrator decides was committed within the scope of the official duties of the officer or employee.

§40114. Reports and records

(a) WRITTEN REPORTS.—(1) Except as provided in this part, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) shall make a written report of each proceeding and investigation under this part in which a formal hearing was held and shall provide a copy to each party to the proceeding or investigation. The report shall include the decision, conclusions, order, and requirements of the Secretary or Administrator as appropriate.

(2) The Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) shall have all reports, orders, decisions, and regulations the Secretary or Administrator, as appropriate, issues or prescribes published in the form and way best adapted for public use. A publication of the Secretary or Administrator is competent evidence of its contents.

(b) PUBLIC RECORDS.—Except as provided in subpart II of this part, copies of tariffs and arrangements filed with the Secretary under subpart II, and the statistics, tables, and figures contained in reports made to the Secretary under subpart II, are public records. The Secretary is the custodian of those records. A public record, or a copy or extract of it, certified by the Secretary under the seal of the Department of

Transportation is competent evidence in an investigation by the Secretary and in a judicial proceeding.

§40115. Withholding information

(a) OBJECTIONS TO DISCLOSURE.—(1) A person may object to the public disclosure of information—

(A) in a record filed under this part; or

(B) obtained under this part by the Secretary of Transportation or State or the United States Postal Service.

(2) An objection must be in writing and must state the reasons for the objection. The Secretary of Transportation or State or the Postal Service shall order the information withheld from public disclosure when the appropriate Secretary or the Postal Service decides that disclosure of the information would—

(A) prejudice the United States Government in preparing and presenting its position in international negotiations; or

(B) have an adverse effect on the competitive position of an air carrier in foreign air transportation.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§40116. State taxation

(a) DEFINITION.—In this section, "State" includes the District of Columbia, a territory or possession of the United States, and a political authority of at least 2 States.

(b) PROHIBITIONS.—Except as provided in subsection (c) of this section and section 40117 of this title, a State or political subdivision of a State may not levy or collect a tax, fee, head charge, or other charge on—

(1) an individual traveling in air commerce;

(2) the transportation of an individual traveling in air commerce;

(3) the sale of air transportation; or

(4) the gross receipts from that air commerce or transportation.

(c) AIRCRAFT TAKING OFF OR LANDING IN STATE.—A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

(d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.—(1) In this subsection—

(A) "air carrier transportation property" means property (as defined by the Secretary of Transportation) that an air carrier providing air transportation owns or uses.

(B) "assessment" means valuation for a property tax levied by a taxing district.

(C) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(D) "commercial and industrial property" means property (except transportation property and land used primarily for agriculture or timber growing) devoted to a commercial or industrial use and subject to a property tax levy.

(2)(A) A State, political subdivision of a State, or authority acting for a State or political subdivision may not do any of the following acts because those acts unreasonably burden and discriminate against interstate commerce:

(i) assess air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(ii) levy or collect a tax on an assessment that may not be made under clause (i) of this subparagraph.

(iii) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate greater than the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(B) Subparagraph (A) of this paragraph does not apply to an in lieu tax completely used for airport and aeronautical purposes.

(e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in subsection (d) of this section, a State or political subdivision of a State may levy or collect—

(1) taxes (except those taxes enumerated in subsection (b) of this section), including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and

(2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.

(f) PAY OF AIR CARRIER EMPLOYEES.—(1) In this subsection—

(A) "pay" means money received by an employee for services.

(B) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(C) an employee is deemed to have earned 50 percent of the employee's pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

§40117. Passenger facility fees

(a) DEFINITIONS.—In this section—

(1) "airport", "commercial service airport", and "public agency" have the same meanings given those terms in section 47102 of this title.

(2) "eligible agency" means a public agency that controls a commercial service airport.

(3) "eligible airport-related project" means a project—

(A) for airport development or airport planning under subchapter I of chapter 471 of this title;

(B) for terminal development described in section 47109(d) of this title;

(C) for airport noise capability planning under section 47505 of this title;

(D) to carry out noise compatibility measures eligible for assistance under section 47504 of this title, whether or not a program for those measures has been approved under section 47504; and

(E) for constructing gates and related areas at which passengers board or exit aircraft.

(4) "passenger facility fee" means a fee imposed under this section.

(5) "passenger facility revenue" means revenue derived from a passenger facility fee.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may authorize under this section an eligible agency to impose a passenger facility fee of $1, $2, or $3 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, to be carried out in connection with the airport or any other airport the agency controls.

(2) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not regulate or prohibit the imposition or collection of a passenger facility fee or the use of the passenger facility revenue.

(3) A passenger facility fee may be imposed on a passenger of an air carrier or foreign air carrier originating or connecting at the commercial service airport that the agency controls.

(c) APPLICATIONS.—(1) An eligible agency must submit to the Secretary an application for authority to impose a passenger facility fee. The application shall contain information and be in the form that the Secretary may require by regulation.

(2) Before submitting an application, the eligible agency must provide reasonable notice to, and an opportunity for consultation with, air carriers and foreign air carriers operating at the airport. The Secretary shall prescribe regulations that define reasonable notice and contain at least the following requirements:

(A) The agency must provide written notice of individual projects being considered for financing by a passenger facility fee and the date and location of a meeting to present the projects to air carriers and foreign air carriers operating at the airport.

(B) Not later than 30 days after written notice is provided under subparagraph (A) of this paragraph, each air carrier and foreign air carrier operating at the airport must provide to the agency written notice of receipt of the notice. Failure of a carrier to provide the notice may be deemed certification of agreement with the project by the carrier under subparagraph (D) of this paragraph.

(C) Not later than 45 days after written notice is provided under subparagraph (A) of this paragraph, the agency must conduct a meeting to provide air carriers and foreign air carriers with descriptions of projects and justifications and a detailed financial plan for projects.

(D) Not later than 30 days after the meeting, each air carrier and foreign air carrier must provide to the agency certification of agreement or disagreement with projects (or total plan for the projects). Failure to provide the certification is deemed certification of agreement with the project by the carrier. A certification of disagreement is void if it does not contain the reasons for the disagreement.

(3) After receiving an application, the Secretary shall provide notice and an opportunity to air carriers, foreign air carriers, and other interested persons to comment on the application. The Secretary shall make a final decision on the application not later than 120 days after receiving it.

(d) LIMITATIONS ON APPROVING APPLICATIONS.—The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility fee will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project; and

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

(C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers.

(e) LIMITATIONS ON IMPOSING FEES.—(1) An eligible agency may impose a passenger facility fee only—

(A) if the Secretary approves an application that the agency has submitted under subsection (c) of this section; and

(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility fee may not be collected from a passenger—

(A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;

(B) for the boarding to an eligible place under subchapter II of chapter 417 of this title for which essential air service compensation is paid under subchapter II; and

(C) for a project the Secretary does not approve under this section before October 1, 1992, if—

(i) during the fiscal years ending September 30, 1991, and 1992, the total amount available for obligation under section 48103 of this title is less than $3,700,000,000;

(ii) during the fiscal year ending September 30, 1991, the total amount available for obligation under subchapter II of chapter 417 of this title is less than $26,600,000; or

(iii) during the fiscal year ending September 30, 1992, the total amount available for obligation under subchapter II of chapter 417 of this title is less than $38,600,000.

(f) LIMITATIONS ON CONTRACTS, LEASES, AND USE AGREEMENTS.—(1) A contract between an air carrier or foreign air carrier and an eligible agency made at any time may not impair the authority of the agency to impose a passenger facility fee or to use the passenger facility revenue as provided in this section.

(2) A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary.

(3) A lease or use agreement of an air carrier or foreign air carrier related to a project whose construction or expansion was financed with a passenger facility fee may not restrict the eligible agency from financing, developing, or assigning new capacity at the airport with passenger facility revenue.

(g) TREATMENT OF REVENUE.—(1) Passenger facility revenue is not airport revenue for purposes of establishing a rate, fee, or charge under a contract between an eligible agency and an air carrier or foreign air carrier.

(2) An eligible agency may not include in its rate base the part of the capital costs of a project paid for by using passenger facility revenue to establish a rate, fee, or charge under a contract between the agency and an air carrier or foreign air carrier.

(3) For a project for terminal development, gates and related areas, or a facility occupied or used by at least one air carrier or foreign air carrier on an exclusive or preferential basis, a rate, fee, or charge payable by an air carrier or foreign air carrier using the facilities must at least equal the rate, fee, or charge paid by an air carrier or foreign air carrier using a similar facility at the airport that was not financed with passenger facility revenue.

(h) COMPLIANCE.—(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring recordkeeping and auditing of accounts maintained by an air carrier or foreign air carrier and its agent collecting a passenger facility fee and by the eligible agency imposing the fee.

(2) The Secretary periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the Secretary may end any part of the authority of the agency to impose a passenger facility fee to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility fee is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility fee takes effect; and

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility fee that an eligible agency imposes under this section;

(B) establish procedures for handling and remitting money collected;

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected; and

(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation.

§40118. Government-financed air transportation

(a) TRANSPORTATION BY AIR CARRIERS HOLDING CERTIFICATES.—A department, agency, or instrumentality of the United States Government shall take necessary steps to ensure that the transportation of passengers and property by air is provided by an air carrier holding a certificate under section 41102 of this title if—

(1) the department, agency, or instrumentality—

(A) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government; or

(B) provides the transportation to or for a foreign country or international or other organization without reimbursement;

(2) the transportation is authorized by the certificate or by regulation or exemption of the Secretary of Transportation; and

(3) the air carrier is—

(A) available, if the transportation is between a place in the United States and a place outside the United States; or

(B) reasonably available, if the transportation is between 2 places outside the United States.

(b) TRANSPORTATION BY FOREIGN AIR CARRIERS.—This section does not preclude the transportation of passengers and property by a foreign air carrier if the transportation is provided under a bilateral or multilateral air transportation agreement to which the Government and the government of a foreign country are parties if the agreement—

(1) is consistent with the goals for international aviation policy of section 40101(e) of this title; and

(2) provides for the exchange of rights or benefits of similar magnitude.

(c) PROOF.—The Comptroller General shall allow the expenditure of an appropriation for transportation in violation of this section only when satisfactory proof is presented showing the necessity for the transportation.

(d) TRANSPORTATION BY FOREIGN AIR CARRIERS.—Notwithstanding subsections (a) and (c) of this section, any amount appropriated to the Secretary of State, the Director of the United States Information Agency, the Director of the United States International Development Cooperation Agency, or the Director of the Arms Control and Disarmament Agency may be used to pay for the transportation of an officer or employee of the Department of State or one of those agencies, a dependent of the officer or employee, and accompanying baggage, by a foreign air carrier when the transportation is between 2 places outside the United States.

(e) RELATIONSHIP TO OTHER LAWS.—This section does not affect the application of the antidiscrimination provisions of this part.

§40119. Security and research and development activities

(a) GENERAL REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall conduct research (including behavioral research) and development appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence and aircraft piracy.

(b) DISCLOSURE.—(1) Notwithstanding section 552 of title 5, the Administrator shall prescribe regulations prohibiting disclosure of information obtained or developed in carrying out security or research and development activities under section 44501(a) or (d), 44502(a)(1) or (3), (b), or (c), 44504, 44505, 44507, 44508, 44511, 44512, 44513, 44901, 44903(a), (b), (c), or (e), 44905, 44912, 44935, 44936, or 44938(a) or (b) of this title if the Administrator decides disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the safety of passengers in air transportation.

(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the Administrator may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.

§40120. Relationship to other laws

(a) NONAPPLICATION.—Except as provided in the International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.), the navigation and shipping laws of the United States and the rules for the prevention of collisions do not apply to aircraft or to the navigation of vessels related to those aircraft.

(b) EXTENDING APPLICATION OUTSIDE UNITED STATES.—The President may extend (in the way and for periods the President considers necessary) the application of this part to outside the United States when—

(1) an international arrangement gives the United States Government authority to make the extension; and

(2) the President decides the extension is in the national interest.

(c) ADDITIONAL REMEDIES.—A remedy under this part is in addition to any other remedies provided by law.

SUBPART II—ECONOMIC REGULATION

CHAPTER 411—AIR CARRIER CERTIFICATES

Sec.
41101. Requirement for a certificate.
41102. General, temporary, and charter air transportation certificates of air carriers.
41103. All-cargo air transportation certificates of air carriers.
41104. Additional limitations and requirements of charter air carriers.
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41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates.
41112. Liability insurance and financial responsibility.

§41101. Requirement for a certificate

(a) GENERAL.—Except as provided in this chapter or another law—

(1) an air carrier may provide air transportation only if the air carrier holds a certificate issued under this chapter authorizing the air transportation;

(2) a charter air carrier may provide charter air transportation only if the charter air carrier holds a certificate issued under this chapter authorizing the charter air transportation; and

(3) an air carrier may provide all-cargo air transportation only if the air carrier holds a certificate issued under this chapter authorizing the all-cargo air transportation.

(b) THROUGH SERVICE AND JOINT TRANSPORTATION.—A citizen of the United States providing transportation in a State of passengers or property as a common carrier for compensation with aircraft capable of carrying at least 30 passengers, under authority granted by the appropriate State authority—

(1) may provide transportation for passengers and property that includes through service by the citizen over its routes in the State and in air transportation by an air carrier or foreign air carrier; and

(2) subject to sections 41309 and 42111 of this title, may make an agreement with an air carrier or foreign air carrier to provide the joint transportation.

(c) PROPRIETARY OR EXCLUSIVE RIGHT NOT CONFERRED.—A certificate issued under this chapter does not confer a proprietary or exclusive right to use airspace, an airway of the United States, or an air navigation facility.

§41102. General, temporary, and charter air transportation certificates of air carriers

(a) ISSUANCE.—The Secretary of Transportation may issue a certificate of public convenience and necessity to a citizen of the United States authorizing the citizen to provide any part of the following air transportation the citizen has applied for under section 41108 of this title:

(1) air transportation as an air carrier.

(2) temporary air transportation as an air carrier for a limited period.

(3) charter air transportation as a charter air carrier.

(b) FINDINGS REQUIRED FOR ISSUANCE.—(1) Before issuing a certificate under subsection (a) of this section, the Secretary must find that the citizen is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this part and regulations of the Secretary.

(2) In addition to the findings under paragraph (1) of this subsection, the Secretary, before issuing a certificate under subsection (a) of this section for foreign air transportation, must find that the transportation is consistent with the public convenience and necessity.

(c) TEMPORARY CERTIFICATES.—The Secretary may issue a certificate under subsection (a) of this section for interstate air transportation (except the transportation of passengers) or foreign air transportation for a temporary period of time (whether the application is for permanent or temporary authority) when the Secretary decides that a test period is desirable—

(1) to decide if the projected services, efficiencies, methods, and rates and the projected results will materialize and remain for a sustained period of time; or

(2) to evaluate the new transportation.

(d) FOREIGN AIR TRANSPORTATION.—The Secretary shall submit each decision authorizing the provision of foreign air transportation to the President under section 41307 of this title.

§41103. All-cargo air transportation certificates of air carriers

(a) APPLICATIONS.—A citizen of the United States may apply to the Secretary of Transportation for a certificate authorizing the citizen to provide all-property air transportation. The application must contain information and be in the form the Secretary by regulation requires.

(b) ISSUANCE.—Not later than 180 days after an application for a certificate is filed under this section, the Secretary shall issue the certificate to a citizen of the United States authorizing the citizen, as an air carrier, to provide any part of the all-cargo air transportation applied for unless the Secretary finds that the citizen is not fit, willing, and able to provide the all-cargo air transportation to be authorized by the certificate and to comply with regulations of the Secretary.

(c) TERMS.—The Secretary may impose terms the Secretary considers necessary when issuing a certificate under this section. However, the Secretary may not impose terms that restrict the places served or rates charged by the holder of the certificate.

(d) EXEMPTIONS AND STATUS.—A citizen issued a certificate under this section—

(1) is exempt in providing the transportation under the certificate from the requirements of—

(A) section 41101(a)(1) of this title and regulations or procedures prescribed under section 41101(a)(1); and

(B) other provisions of this part and regulations or procedures prescribed under those provisions when the Secretary finds under regulations of the Secretary that the exemption is appropriate; and

(2) is an air carrier under this part except to the extent the carrier is exempt under this section from a requirement of this part.

§41104. Additional limitations and requirements of charter air carriers

(a) RESTRICTIONS.—The Secretary of Transportation may prescribe a regulation or issue an order restricting the marketability, flexibility, accessibility, or variety of charter air transportation provided under a certificate issued under section 41102 of this title only to the extent required by the public interest. A regulation prescribed or order issued under this subsection may not be more restrictive than a regulation related to charter air transportation that was in effect on October 1, 1978.

(b) ALASKA.—An air carrier holding a certificate issued under section 41102 of this title may provide charter air transportation between places in Alaska only to the extent the Secretary decides the transportation is required by public convenience and necessity. The Secretary may make that decision when issuing, amending, or modifying the certificate. This subsection does not apply to a certificate issued under section 41102 to a citizen of the United States who, before July 1, 1977—

(1) maintained a principal place of business in Alaska; and

(2) conducted air transport operations between places in Alaska with aircraft with a certificate for gross takeoff weight of more than 40,000 pounds.

(c) SUSPENSIONS.—(1) The Secretary shall suspend for not more than 30 days any part of the certificate of a charter air carrier if the Secretary decides that the failure of the carrier to comply with the requirements described in sections 41110(e) and 41112 of this title, or a regulation or order of the Secretary under section 41110(e) or 41112, requires immediate suspension in the interest of the rights, welfare, or safety of the public. The Secretary may act under this paragraph without notice or a hearing.

(2) The Secretary shall begin immediately a hearing to decide if the certificate referred to in paragraph (1) of this subsection should be amended, modified, suspended, or revoked. Until the hearing is completed, the Secretary may suspend the certificate for additional periods totaling not more than 60 days. If the Secretary decides that the carrier is complying with the requirements described in sections 41110(e) and 41112 of this title and regulations and orders under sections 41110(e) and 41112, the Secretary immediately may end the suspension period and proceeding begun under this subsection. However, the Secretary is not prevented from imposing a civil penalty on the carrier for violating the requirements described in section 41110(e) or 41112 or a regulation or order under section 41110(e) or 41112.

§41105. Transfers of certificates

(a) GENERAL.—A certificate issued under section 41102 of this title may be transferred only when the Secretary of Transportation approves the transfer as being consistent with the public interest.

(b) CERTIFICATION TO CONGRESS.—When a certificate is transferred, the Secretary shall certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest. The Secretary shall include with the certification a report analyzing the effects of the transfer on—

(1) the viability of each carrier involved in the transfer;

(2) competition in the domestic airline industry; and

(3) the trade position of the United States in the international air transportation market.

§41106. Airlift service

(a) GENERAL.—(1) Except as provided in subsection (b) of this section, the transportation of passengers or property by transport category aircraft in interstate air transportation obtained by the Secretary of Defense or the Secretary of a military department through a contract of at least 31 days for airlift service in the United States may be provided only by an air carrier that—

(A) has aircraft in the civil reserve air fleet or offers to place the aircraft in that fleet; and

(B) holds a certificate issued under section 41102 of this title.

(2) The Secretary of Transportation shall act as expeditiously as possible on an application for a certificate under section 41102 of this title to provide airlift service.

(b) EXCEPTION.—When the Secretary of Defense decides that no air carrier holding a certificate under section 41102 is capable of providing, and willing to provide, the airlift service, the Secretary of Defense may make a contract to provide the service with an air carrier not having a certificate.

§41107. Transportation of mail

When the United States Postal Service finds that the needs of the Postal Service require the transportation of mail by aircraft in foreign air transportation or between places in Alaska, in addition to the transportation of mail authorized under certificates in effect, the Postal Service shall certify that finding to the Secretary of Transportation with a statement about the additional transportation and facilities necessary to provide the additional transportation. A copy of each certification and statement shall be posted for at least 20 days in the office of the Secretary. After notice and an opportunity for a hearing, the Secretary shall issue a new certificate under section 41102 of this title, or amend or modify an existing certificate under section 41110(a)(2)(A) of this title, to provide the additional transportation and facilities if the Secretary finds the additional transportation is required by the public convenience and necessity.

§41108. Applications for certificates

(a) FORM, CONTENTS, AND PROOF OF SERVICE.—To be issued a certificate of public convenience and necessity under section 41102 of this title, a citizen of the United States must apply to the Secretary of Transportation. The application must—

(1) be in the form and contain information required by regulations of the Secretary; and

(2) be accompanied by proof of service on interested persons as required by regulations of the Secretary and on each community that may be affected by the issuance of the certificate.

(b) NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the certificate. Not later than 90 days after the application is filed, the Secretary shall—

(A) provide an opportunity for a public hearing on the application;

(B) begin the procedure under section 41111 of this title; or

(C) dismiss the application on its merits.

(2) An order of dismissal issued by the Secretary under paragraph (1)(C) of this subsection is a final order and may be reviewed judicially under section 46110 of this title.

(3) If the Secretary provides an opportunity for a hearing under paragraph (1)(A) of this subsection, an initial or recommended decision shall be issued not later than 150 days after the date the Secretary provides the opportunity. The Secretary shall issue a final order on the application not later than 90 days after the decision is issued. However, if the Secretary does not act within the 90-day period, the initial or recommended decision on an application to provide—

(A) interstate air transportation is a final order and may be reviewed judicially under section 46110 of this title; and

(B) foreign air transportation shall be submitted to the President under section 41307 of this title.

(4) If the Secretary acts under paragraph (1)(B) of this subsection, the Secretary shall issue a final order on the application not later than 180 days after beginning the procedure on the application.

(5) If a citizen applying for a certificate does not meet the procedural schedule adopted by the Secretary in a proceeding, the Secretary may extend the period for acting under paragraphs (3) and (4) of this subsection by a period equal to the period of delay caused by the citizen. In addition to an extension under this paragraph, an initial or recommended decision under paragraph (3) of this subsection may be delayed for not more than 30 days in extraordinary circumstances.

(c) PROOF REQUIREMENTS.—(1) A citizen applying for a certificate must prove that the citizen is fit, willing, and able to provide the transportation referred to in section 41102 of this title and to comply with this part.

(2) A person opposing a citizen applying for a certificate must prove that the transportation referred to in section 41102(b)(2) of this title is not consistent with the public convenience and necessity. The transportation is deemed to be consistent with the public convenience and necessity unless the Secretary finds, by a preponderance of the evidence, that the transportation is not consistent with the public convenience and necessity.

§41109. Terms of certificates

(a) GENERAL.—(1) Each certificate issued under section 41102 of this title shall specify the type of transportation to be provided.

(2) The Secretary of Transportation—

(A) may prescribe terms for providing air transportation under the certificate that the Secretary finds may be required in the public interest; but

(B) may not prescribe a term preventing an air carrier from adding or changing schedules, equipment, accommodations, and facilities for providing the authorized transportation to satisfy business development and public demand.

(3) A certificate issued under section 41102 of this title to provide foreign air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each general route to be followed. The Secretary shall authorize an air carrier holding a certificate to provide foreign air transportation to handle and transport mail of countries other than the United States.

(4) A certificate issued under section 41102 of this title to provide foreign charter air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each geographical area in which, or between which, the transportation may be provided.

(b) MODIFYING TERMS.—(1) An air carrier may file with the Secretary an application to modify any term of its certificate issued under section 41102 of this title to provide interstate or foreign air transportation. Not later than 60 days after an application is filed, the Secretary shall—

(A) provide the carrier an opportunity for an oral evidentiary hearing on the record; or

(B) begin to consider the application under section 41111 of this title.

(2) The Secretary shall modify each term the Secretary finds to be inconsistent with the criteria under section 40101(a) and (b) of this title.

(3) An application under this subsection may not be dismissed under section 41108(b)(1)(C) of this title.

§41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates

(a) GENERAL.—(1) Each certificate issued under section 41102 of this title is effective from the date specified in it and remains in effect until—

(A) the Secretary of Transportation suspends or revokes the certificate under this section;

(B) the end of the period the Secretary specifies for an air carrier having a certificate of temporary authority issued under section 41102(a)(2) of this title; or

(C) the Secretary certifies that transportation is no longer being provided under a certificate.

(2) On application or on the initiative of the Secretary and after notice and an opportunity for a hearing or, except as provided in paragraph (4) of this subsection, under section 41111 of this title, the Secretary may—

(A) amend, modify, or suspend any part of a certificate if the Secretary finds the public convenience and necessity require amendment, modification, or suspension; and

(B) revoke any part of a certificate if the Secretary finds that the holder of the certificate intentionally does not comply with this chapter, sections 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, a regulation or order of the Secretary under any of those provisions, or a term of its certificate.

(3) The Secretary may revoke a certificate under paragraph (2)(B) of this subsection only if the holder of the certificate does not comply, within a reasonable time the Secretary specifies, with an order to the holder requiring compliance.

(4) A certificate to provide foreign air transportation may not be amended, modified, suspended, or revoked under section 41111 of this title if the holder of the certificate requests an oral evidentiary hearing or the Secretary finds, under all the facts and circumstances, that the hearing is required in the public interest.

(b) ALL-CARGO AIR TRANSPORTATION.—The Secretary may order that a certificate issued under section 41103 of this title authorizing all-cargo air transportation is ineffective if, after notice and an opportunity for a hearing, the Secretary finds that the transportation is not provided to the minimum extent specified by the Secretary.

(c) FOREIGN AIR TRANSPORTATION.—(1) Notwithstanding subsection (a)(2)–(4) of this section, after notice and a reasonable opportunity for the affected air carrier to present its views, but without a hearing, the Secretary may suspend or revoke the authority of an air carrier to provide foreign air transportation to a place under a certificate issued under section 41102 of this title if the carrier—

(A) notifies the Secretary, under section 41734(a) of this title or a regulation of the Secretary, that it intends to suspend all transportation to that place; or

(B) does not provide regularly scheduled transportation to the place for 90 days immediately before the date the Secretary notifies the carrier of the action the Secretary proposes.

(2) Paragraph (1)(B) of this subsection does not apply to a place provided seasonal transportation comparable to the transportation provided during the prior year.

(d) TEMPORARY CERTIFICATES.—On application or on the initiative of the Secretary, the Secretary may—

(1) review the performance of an air carrier issued a certificate under section 41102(c) of this title on the basis that the air carrier will provide innovative or low-priced air transportation under the certificate; and

(2) amend, modify, suspend, or revoke the certificate or authority under subsection (a)(2) or (c) of this section if the air carrier has not provided, or is not providing, the transportation.

(e) CONTINUING REQUIREMENTS.—After notice and an opportunity for a hearing, the Secretary shall amend, modify, suspend, or revoke any part of a certificate issued under section 41102 of this title if the Secretary finds that the air carrier—

(1) is not fit, willing, and able to continue to provide the transportation authorized by the certificate and to comply with this part and regulations of the Secretary; or

(2) does not file reports necessary for the Secretary to decide if the carrier is complying with the requirements of clause (1) of this subsection.

(f) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Secretary—

(1) in consultation with appropriate departments, agencies, and instrumentalities of the United States Government, shall reexamine immediately the fitness of an air carrier that—

(A) violates the laws and regulations of the United States related to the illegal importation of a controlled substance; or

(B) does not adopt available measures to prevent the illegal importation of a controlled substance into the United States on its aircraft; and

(2) when appropriate, shall amend, modify, suspend, or revoke the certificate of the carrier issued under this chapter.

(g) RESPONSES.—An interested person may file a response with the Secretary opposing or sup-

porting the amendment, modification, suspension, or revocation of a certificate under subsection (a) of this section.

§41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates

(a) GENERAL REQUIREMENTS.—(1) The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(A) acting on an application for a certificate to provide air transportation under section 41102 of this title; and

(B) amending, modifying, suspending, or transferring any part of that certificate under section 41105 or 41110 (a) or (c) of this title.

(2) Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.

(b) WHEN SIMPLIFIED PROCEDURE USED.—The Secretary may use the simplified procedure to act on an application for a certificate to provide air transportation under section 41102 of this title, or to amend, modify, suspend, or transfer any part of that certificate under section 41105 or 41110 (a) or (c) of this title, when the Secretary decides the use of the procedure is in the public interest.

(c) CONTENTS.—(1) To the extent the Secretary finds practicable, regulations under this section shall include each standard the Secretary will apply when—

(A) deciding whether to use the simplified procedure; and

(B) making a decision on an action in which the procedure is used.

(2) The regulations may provide that written evidence and argument may be filed under section 41108(b) of this title as a part of a response opposing or supporting the issuance of a certificate.

§41112. Liability insurance and financial responsibility

(a) LIABILITY INSURANCE.—The Secretary of Transportation may issue a certificate to a citizen of the United States to provide air transportation as an air carrier under section 41102 of this title only if the citizen complies with regulations and orders of the Secretary governing the filing of an insurance policy or self-insurance plan approved by the Secretary. The policy or plan must be sufficient to pay, not more than the amount of the insurance, for bodily injury to, or death of, an individual or for loss of, or damage to, property of others, resulting from the operation or maintenance of the aircraft under the certificate. A certificate does not remain in effect unless the carrier complies with this subsection.

(b) FINANCIAL RESPONSIBILITY.—To protect passengers and shippers using an aircraft operated by an air carrier issued a certificate under section 41102 of this title, the Secretary may require the carrier to file a performance bond or equivalent security in the amount and on terms the Secretary prescribes. The bond or security must be sufficient to ensure the carrier adequately will pay the passengers and shippers when the transportation the carrier agrees to provide is not provided. The Secretary shall prescribe the amounts to be paid under this subsection.

CHAPTER 413—FOREIGN AIR TRANSPORTATION

Sec.

41301. Requirement for a permit.
41302. Permits of foreign air carriers.
41303. Transfers of permits.
41304. Effective periods and amendments, modifications, suspensions, and revocations of permits.
41305. Applications for permits.
41306. Simplified procedure to apply for, amend, modify, and suspend permits.
41307. Presidential review of actions about foreign air transportation.
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41309. Cooperative agreements and requests.
41310. Discriminatory practices.

§41301. Requirement for a permit

A foreign air carrier may provide foreign air transportation only if the foreign air carrier holds a permit issued under this chapter authorizing the foreign air transportation.

§41302. Permits of foreign air carriers

The Secretary of Transportation may issue a permit to a person (except a citizen of the United States) authorizing the person to provide foreign air transportation as a foreign air carrier if the Secretary finds that—

(1) the person is fit, willing, and able to provide the foreign air transportation to be authorized by the permit and to comply with this part and regulations of the Secretary; and

(2)(A) the person is qualified, and has been designated by the government of its country, to provide the foreign air transportation under an agreement with the United States Government; or

(B) the foreign air transportation to be provided under the permit will be in the public interest.

§41303. Transfers of permits

A permit issued under section 41302 of this title may be transferred only when the Secretary of Transportation approves the transfer because the transfer is in the public interest.

§41304. Effective periods and amendments, modifications, suspensions, and revocations of permits

(a) GENERAL.—The Secretary of Transportation may prescribe the period during which a permit issued under section 41302 of this title is in effect. After notice and an opportunity for a hearing, the Secretary may amend, modify, suspend, or revoke the permit if the Secretary finds that action to be in the public interest.

(b) SUSPENSIONS AND RESTRICTIONS.—Without a hearing, but subject to the approval of the President, the Secretary—

(1) may suspend summarily the permits of foreign air carriers of a foreign country, or amend, modify, or limit the operations of the foreign air carriers under the permits, when the Secretary finds—

(A) the action is in the public interest; and

(B) the government, an aeronautical authority, or a foreign air carrier of the foreign country, over the objection of the United States Government, has—

(i) limited or denied the operating rights of an air carrier; or

(ii) engaged in unfair, discriminatory, or restrictive practices that have a substantial adverse competitive impact on an air carrier related to air transportation to, from, through, or over the territory of the foreign country; and

(2) to make this subsection effective, may restrict operations between the United States and the foreign country by a foreign air carrier of a third country.

(c) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Secretary—

(1) in consultation with appropriate departments, agencies, and instrumentalities of the Government, shall reexamine immediately the fitness of a foreign air carrier that—

(A) violates the laws and regulations of the United States related to the illegal importation of a controlled substance; or

(B) does not adopt available measures to prevent the illegal importation of a controlled substance into the United States on its aircraft; and

(2) when appropriate, shall amend, modify, suspend, or revoke the permit of the carrier issued under this chapter.

(d) RESPONSES.—An interested person may file a response with the Secretary opposing or supporting the amendment, modification, suspension, or revocation of a permit under subsection (a) of this section.

§41305. Applications for permits

(a) FORM, CONTENTS, NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) A person must apply in writing to the Secretary of Transportation to be issued a permit under section 41302 of this title. The Secretary shall prescribe regulations to require that the application be—

(A) verified;

(B) in a certain form and contain certain information;

(C) served on interested persons; and

(D) accompanied by proof of service on those persons.

(2) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the permit. The Secretary shall act on an application as expeditiously as possible.

(b) TERMS.—The Secretary may impose terms for providing foreign air transportation under the permit that the Secretary finds may be required in the public interest.

§41306. Simplified procedure to apply for, amend, modify, and suspend permits

(a) REGULATIONS.—The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(1) acting on an application for a permit to provide foreign air transportation under section 41302 of this title; and

(2) amending, modifying, or suspending any part of that permit under section 41304(a) or (b) of this title.

(b) NOTICE AND OPPORTUNITY TO RESPOND.—Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.

§41307. Presidential review of actions about foreign air transportation

The Secretary of Transportation shall submit to the President for review each decision of the Secretary to issue, deny, amend, modify, suspend, revoke, or transfer a certificate issued under section 41102 of this title authorizing an air carrier, or a permit issued under section 41302 of this title authorizing a foreign air carrier, to provide foreign air transportation. The President may disapprove the decision of the Secretary only if the reason for disapproval is based on foreign relations or national defense considerations that are under the jurisdiction of the President. The President may not disapprove a decision of the Secretary if the reason is economic or related to carrier selection. A decision of the Secretary—

(1) is void if the President disapproves the decision and publishes the reasons (to the extent allowed by national security) for disapproval not later than 60 days after it is submitted to the President; or

(2)(A) takes effect as a decision of the Secretary if the President does not disapprove the decision not later than 60 days after the decision is submitted to the President; and

(B) when effective, may be reviewed judicially under section 46110 of this title.

§41308. Exemption from the antitrust laws

(a) DEFINITION.—In this section, "antitrust laws" has the same meaning given that term in

the first section of the Clayton Act (15 U.S.C. 12).

(b) EXEMPTION AUTHORIZED.—When the Secretary of Transportation decides it is required by the public interest, the Secretary, as part of an order under section 41309 or 42111 of this title, may exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

(c) EXEMPTION REQUIRED.—In an order under section 41309 of this title approving an agreement, request, modification, or cancellation, the Secretary, on the basis of the findings required under section 41309(b)(1), shall exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

§41309. Cooperative agreements and requests

(a) FILING.—An air carrier or foreign air carrier may file with the Secretary of Transportation a true copy of or, if oral, a true and complete memorandum of, an agreement (except an agreement related to interstate air transportation), or a request for authority to discuss cooperative arrangements (except arrangements related to interstate air transportation), and any modification or cancellation of an agreement, between the air carrier or foreign air carrier and another air carrier, a foreign carrier, or another carrier.

(b) APPROVAL.—The Secretary of Transportation shall approve an agreement, request, modification, or cancellation referred to in subsection (a) of this section when the Secretary finds it is not adverse to the public interest and is not in violation of this part. However, the Secretary shall disapprove—

(1) or, after periodic review, end approval of, an agreement, request, modification, or cancellation, that substantially reduces or eliminates competition unless the Secretary finds that—

(A) the agreement, request, modification, or cancellation is necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations); and

(B) the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive; or

(2) an agreement that—

(A) is between an air carrier not directly operating aircraft in foreign air transportation and a common carrier subject to subtitle IV of this title; and

(B) governs the compensation the common carrier may receive for the transportation.

(c) NOTICE AND OPPORTUNITY TO RESPOND OR FOR HEARING.—(1) When an agreement, request, modification, or cancellation is filed, the Secretary of Transportation shall give the Attorney General and the Secretary of State written notice of, and an opportunity to submit written comments about, the filing. On the initiative of the Secretary of Transportation or on request of the Attorney General or Secretary of State, the Secretary of Transportation may conduct a hearing to decide whether an agreement, request, modification, or cancellation is consistent with this part whether or not it was approved previously.

(2) In a proceeding before the Secretary of Transportation applying standards under subsection (b)(1) of this section, a party opposing an agreement, request, modification, or cancellation has the burden of proving that it substantially reduces or eliminates competition and that less anticompetitive alternatives are available. The party defending the agreement, request, modification, or cancellation has the burden of proving the transportation need or public benefits.

(3) The Secretary of Transportation shall include the findings required by subsection (b)(1) of this section in an order of the Secretary approving or disapproving an agreement, request, modification, or cancellation.

§41310. Discriminatory practices

(a) PROHIBITION.—An air carrier or foreign air carrier may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.

(b) REVIEW AND NEGOTIATION OF DISCRIMINATORY FOREIGN CHARGES.—(1) The Secretary of Transportation shall survey charges imposed on an air carrier by the government of a foreign country or another foreign entity for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation decides that a charge is discriminatory, the Secretary promptly shall report the decision to the Secretary of State. The Secretaries of State and Transportation promptly shall begin negotiations with the appropriate government to end the discrimination. If the discrimination is not ended in a reasonable time through negotiation, the Secretary of Transportation shall establish a compensating charge equal to the discriminatory charge. With the approval of the Secretary of State, the Secretary of the Treasury shall impose the compensating charge on a foreign air carrier of that country as a condition to accepting the general declaration of the aircraft of the foreign air carrier when it lands or takes off.

(2) The Secretary of the Treasury shall maintain an account to credit money collected under paragraph (1) of this subsection. An air carrier shall be paid from the account an amount certified by the Secretary of Transportation to compensate the air carrier for the discriminatory charge paid to the government.

(c) ACTIONS AGAINST DISCRIMINATORY ACTIVITY.—(1) The Secretary of Transportation may take actions the Secretary considers are in the public interest to eliminate an activity of a government of a foreign country or another foreign entity, including a foreign air carrier, when the Secretary, on the initiative of the Secretary or on complaint, decides that the activity—

(A) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against an air carrier; or

(B) imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market.

(2) The Secretary of Transportation may deny, amend, modify, suspend, revoke, or transfer under paragraph (1) of this subsection a foreign air carrier permit or tariff under section 41302, 41303, 41304(a), 41504(c), 41507, or 41509 of this title.

(d) FILING OF, AND ACTING ON, COMPLAINTS.—(1) An air carrier or a department, agency, or instrumentality of the United States Government may file a complaint under subsection (c) of this section with the Secretary of Transportation. The Secretary shall approve, deny, or dismiss the complaint, set the complaint for a hearing or investigation, or begin another proceeding proposing remedial action not later than 60 days after receiving the complaint. The Secretary may extend the period for acting for additional periods totaling not more than 30 days if the Secretary decides that with additional time it is likely that a complaint can be resolved satisfactorily through negotiations with the government of the foreign country or foreign entity. The Secretary must act not later than 90 days after receiving the complaint. However, the Secretary may extend this 90-day period for not more than an additional 90 days if, on the last day of the initial 90-day period, the Secretary finds that—

(A) negotiations with the government have progressed to a point that a satisfactory resolution of the complaint appears imminent;

(B) an air carrier has not been subjected to economic injury by the government or entity as a result of filing the complaint; and

(C) the public interest requires additional time before the Secretary acts on the complaint.

(2) In carrying out paragraph (1) of this subsection and subsection (c) of this section, the Secretary of Transportation shall—

(A) solicit the views of the Secretaries of Commerce and State and the United States Trade Representative;

(B) give an affected air carrier or foreign air carrier reasonable notice and an opportunity to submit written evidence and arguments within the time limits of this subsection; and

(C) submit to the President under section 41307 or 41509(f) of this title actions proposed by the Secretary of Transportation.

(e) REVIEW.—(1) The Secretaries of State, the Treasury, and Transportation and the heads of other departments, agencies, and instrumentalities of the Government shall keep under review, to the extent of each of their jurisdictions, each form of discrimination or unfair competitive practice to which an air carrier is subject when providing foreign air transportation. Each Secretary and head shall—

(A) take appropriate action to eliminate any discrimination or unfair competitive practice found to exist; and

(B) request Congress to enact legislation when the authority to eliminate the discrimination or unfair practice is inadequate.

(2) The Secretary of Transportation shall report to Congress annually on each action taken under paragraph (1) of this subsection and on the continuing program to eliminate discrimination and unfair competitive practices. The Secretaries of State and the Treasury each shall give the Secretary of Transportation information necessary to prepare the report.

(f) REPORTS.—Not later than 30 days after acting on a complaint under this section, the Secretary of Transportation shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on action taken under this section on the complaint.

CHAPTER 415—RATES

Sec.

41501. Establishing reasonable rates, classifications, rules, practices, and divisions of joint rates for foreign air transportation.
41502. Establishing joint rates for through routes with other common carriers.
41503. Establishing joint rates for through routes provided by State authorized carriers.
41504. Tariffs for foreign air transportation.
41505. Uniform methods for establishing joint rates, and divisions of joint rates, applicable to commuter air carriers.
41506. Rate division filing requirements for foreign air transportation.
41507. Authority of the Secretary of Transportation to change rates, classifications, rules, and practices for foreign air transportation.
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41509. Authority of the Secretary of Transportation to suspend, cancel, and reject tariffs for foreign air transportation.

41510. Required adherence to foreign air transportation tariffs.
41511. Special fares for foreign air transportation.

§41501. Establishing reasonable rates, classifications, rules, practices, and divisions of joint rates for foreign air transportation

Every air carrier and foreign air carrier shall establish, comply with, and enforce—

(1) reasonable rates, classifications, rules, and practices related to foreign air transportation; and

(2) for joint rates established for foreign air transportation, reasonable divisions of those rates among the participating air carriers or foreign air carriers without unreasonably discriminating against any of those carriers.

§41502. Establishing joint rates for through routes with other common carriers

(a) JOINT RATES.—An air carrier may establish reasonable joint rates with another common carrier for through service provided under section 41101(b) of this title. However, an air carrier not directly operating aircraft in air transportation (except an air express company) may not establish under this section a joint rate for the transportation of property with a common carrier subject to subtitle IV of this title.

(b) RATES, CLASSIFICATIONS, RULES, AND PRACTICES AND DIVISIONS OF JOINT RATES.—For through service by an air carrier and a common carrier subject to subtitle IV of this title, the participating carriers shall establish—

(1) reasonable rates and reasonable classifications, rules, and practices affecting those rates or the value of the transportation provided under those rates; and

(2) for joint rates established for the through service, reasonable divisions of those joint rates among the participating carriers.

(c) STATEMENTS INCLUDED IN TARIFFS.—An air carrier and a common carrier subject to subtitle IV of this title that are participating in through service and joint rates shall include in their tariffs, filed with the Secretary of Transportation, a statement showing the through service and joint rates.

§41503. Establishing joint rates for through routes provided by State authorized carriers

Subject to sections 41309 and 42111 of this title, a citizen of the United States providing transportation under section 41101(b) of this title may make an agreement with an air carrier or foreign air carrier for joint rates for that transportation. The joint rates agreed to must be the lowest of—

(1) the sum of the applicable rates for—

(A) the part of the transportation provided in the State and approved by the appropriate State authority; and

(B) the part of the transportation provided by the air carrier or foreign air carrier;

(2) a joint rate established and filed under section 41504 of this title; or

(3) a joint rate prescribed by the Secretary of Transportation under section 41507 of this title.

§41504. Tariffs for foreign air transportation

(a) FILING AND CONTENTS.—In the way prescribed by regulation by the Secretary of Transportation, every air carrier and foreign air carrier shall file with the Secretary, publish, and keep open to public inspection, tariffs showing the rates for the foreign air transportation provided between places served by the carrier and provided between places served by the carrier and places served by another air carrier or foreign air carrier with which through service and joint rates have been established. A tariff—

(1) shall contain—

(A) to the extent the Secretary requires by regulation, a description of the classifications, rules, and practices related to the foreign air transportation;

(B) a statement of the rates in money of the United States; and

(C) other information the Secretary requires by regulation; and

(2) may contain—

(A) a statement of the rates in money that is not money of the United States; and

(B) information that is required under the laws of a foreign country in or to which the air carrier or foreign air carrier is authorized to operate.

(b) CHANGES.—(1) Except as provided in paragraph (2) of this subsection, an air carrier or foreign air carrier may change a rate or a classification, rule, or practice affecting that rate or the value of the transportation provided under that rate, specified in a tariff of the carrier for foreign air transportation only after 30 days after the carrier has filed, published, and posted notice of the proposed change in the same way as required for a tariff under subsection (a) of this section. However, the Secretary may prescribe an alternative notice requirement, of at least 25 days, to allow an air carrier or foreign air carrier to match a proposed change in a passenger rate or a charge of another air carrier or foreign air carrier. A notice under this paragraph must state plainly the change proposed and when the change will take effect.

(2) If the effect of a proposed change would be to begin a passenger rate that is outside of, or not covered by, the range of passenger rates specified under section 41509(e)(2)–(4) of this title, the proposed change may be put into effect only on the expiration of 60 days after the notice is filed under regulations prescribed by the Secretary.

(c) REJECTION OF CHANGES.—The Secretary may reject a tariff or tariff change that is not consistent with this section and regulations prescribed by the Secretary. A tariff or change that is rejected is void.

§41505. Uniform methods for establishing joint rates, and divisions of joint rates, applicable to commuter air carriers

(a) DEFINITION.—In this section, "commuter air carrier" means an air carrier providing transportation under section 40109(f) of this title that provides at least 5 scheduled roundtrips a week between the same 2 places.

(b) GENERAL.—Except as provided in subsection (c) of this section, when the Secretary of Transportation prescribes under section 41508 or 41509 of this title a uniform method generally applicable to establishing joint rates and divisions of joint rates for and between air carriers holding certificates issued under section 41102 of this title, the Secretary shall make that uniform method apply to establishing joint rates and divisions of joint rates for and between air carriers and commuter air carriers.

(c) NOTICE REQUIRED BEFORE MODIFYING, SUSPENDING, OR ENDING TRANSPORTATION.—A commuter air carrier that has an agreement with an air carrier to provide transportation for passengers and property that includes through service by the commuter air carrier over the commuter air carrier's routes and air transportation provided by the air carrier shall give the air carrier and the Secretary at least 90 days' notice before modifying, suspending, or ending the transportation. If the commuter air carrier does not give that notice, the uniform method of establishing joint rates and divisions of joint rates referred to in subsection (b) of this section does not apply to the commuter air carrier.

§41506. Rate division filing requirements for foreign air transportation

Every air carrier and foreign air carrier shall keep currently on file with the Secretary of Transportation, if the Secretary requires, the established divisions of all joint rates for foreign air transportation in which the carrier participates.

§41507. Authority of the Secretary of Transportation to change rates, classifications, rules, and practices for foreign air transportation

(a) GENERAL.—When the Secretary of Transportation decides that a rate charged or received by an air carrier or foreign air carrier for foreign air transportation, or a classification, rule, or practice affecting that rate or the value of the transportation provided under that rate, is or will be unreasonably discriminatory, the Secretary may—

(1) change the rate, classification, rule, or practice as necessary to correct the discrimination; and

(2) order the air carrier or foreign air carrier to stop charging or collecting the discriminatory rate or carrying out the discriminatory classification, rule, or practice.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary's own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.

§41508. Authority of the Secretary of Transportation to adjust divisions of joint rates for foreign air transportation

(a) GENERAL.—When the Secretary of Transportation decides that a division between air carriers, foreign air carriers, or both, of a joint rate for foreign air transportation is or will be unreasonable or unreasonably discriminatory against any of those carriers, the Secretary shall prescribe a reasonable division of the joint rate among those carriers. The Secretary may order the adjustment in the division of the joint rate to be made retroactively to the date the complaint was filed, the date the order for an investigation was made, or a later date the Secretary decides is reasonable.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary's own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.

§ 41509. Authority of the Secretary of Transportation to suspend, cancel, and reject tariffs for foreign air transportation

(a) CANCELLATION AND REJECTION.—(1) On the initiative of the Secretary of Transportation or on a complaint filed with the Secretary, the Secretary may conduct a hearing to decide whether a rate for foreign air transportation contained in an existing or newly filed tariff of an air carrier or foreign air carrier, a classification, rule, or practice affecting that rate, or the value of the transportation provided under that rate, is lawful. The Secretary may begin the hearing at once and without an answer or another formal pleading by the air carrier or foreign air carrier, but only after reasonable notice. If, after the hearing, the Secretary decides that the rate, classification, rule, or practice is or will be unreasonable or unreasonably discriminatory, the Secretary may cancel or reject the tariff and prevent the use of the rate, classification, rule, or practice.

(2) With or without a hearing, the Secretary may cancel or reject an existing or newly filed tariff of a foreign air carrier and prevent the use of a rate, classification, rule, or practice when the Secretary decides that the cancellation or rejection is in the public interest.

(3) In deciding whether to cancel or reject a tariff of an air carrier or foreign air carrier under this subsection, the Secretary shall consider—

(A) the effect of the rate on the movement of traffic;

(B) the need in the public interest of adequate and efficient transportation by air carriers and foreign air carriers at the lowest cost consistent with providing the transportation;

(C) the standards prescribed under law related to the character and quality of transportation to be provided by air carriers and foreign air carriers;

(D) the inherent advantages of transportation by aircraft;

(E) the need of the air carrier and foreign air carrier for revenue sufficient to enable the air carrier and foreign air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier and foreign air carrier transportation;

(F) whether the rate will be predatory or tend to monopolize competition among air carriers and foreign air carriers in foreign air transportation;

(G) reasonably estimated or foreseeable future costs and revenues for the air carrier or foreign air carrier for a reasonably limited future period during which the rate would be in effect; and

(H) other factors.

(b) SUSPENSION.—(1)(A) Pending a decision under subsection (a)(1) of this section, the Secretary may suspend a tariff and the use of a rate contained in the tariff or a classification, rule, or practice affecting that rate.

(B) The Secretary may suspend a tariff of a foreign air carrier and the use of a rate, classification, rule, or practice when the suspension is in the public interest.

(2) A suspension becomes effective when the Secretary files with the tariff and delivers to the air carrier or foreign air carrier affected by the suspension a written statement of the reasons for the suspension. To suspend a tariff, reasonable notice of the suspension must be given to the affected carrier.

(3) The suspension of a newly filed tariff may be for periods totaling not more than 365 days after the date the tariff otherwise would go into effect. The suspension of an existing tariff may be for periods totaling not more than 365 days after the effective date of the suspension. The Secretary may rescind at any time the suspension of a newly filed tariff and allow the rate, classification, rule, or practice to go into effect.

(c) EFFECTIVE TARIFFS AND RATES WHEN TARIFF IS SUSPENDED, CANCELED, OR REJECTED.—(1) If a tariff is suspended pending the outcome of a proceeding under subsection (a) of this section and the Secretary does not take final action in the proceeding during the suspension period, the tariff goes into effect at the end of that period subject to cancellation when the proceeding is concluded.

(2)(A) During the period of suspension, or after the cancellation or rejection, of a newly filed tariff (including a tariff that has gone into effect provisionally), the affected air carrier or foreign air carrier shall maintain in effect and use—

(i) the corresponding seasonal rates, or the classifications, rules, and practices affecting those rates or the value of transportation provided under those rates, that were in effect for the carrier immediately before the new tariff was filed; or

(ii) another rate provided for under an applicable intergovernmental agreement or understanding.

(B) If the suspended, canceled, or rejected tariff is the first tariff of the carrier for the covered transportation, the carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a rate or another classification, rule, or practice affecting the rate, or the value of the transportation provided under the rate, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(3) If an existing tariff is suspended or canceled, the affected air carrier or foreign air carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a rate or another classification, rule, or practice affecting the rate, or the value of the transportation provided under the rate, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(d) RESPONSE TO REFUSAL OF FOREIGN COUNTRY TO ALLOW AIR CARRIER TO CHARGE A RATE.—When the Secretary finds that the government or an aeronautical authority of a foreign country has refused to allow an air carrier to charge a rate contained in a tariff filed and published under section 41504 of this title for foreign air transportation to the foreign country—

(1) the Secretary, without a hearing—

(A) may suspend any existing tariff of a foreign air carrier providing transportation between the United States and the foreign country for periods totaling not more than 365 days after the date of the suspension; and

(B) may order the foreign air carrier to charge, during the suspension periods, rates that are the same as those contained in a tariff (designated by the Secretary) of an air carrier filed and published under section 41504 of this title for foreign air transportation to the foreign country; and

(2) a foreign air carrier may continue to provide foreign air transportation to the foreign country only if the government or aeronautical authority of the foreign country allows an air carrier to start or continue foreign air transportation to the foreign country at the rates designated by the Secretary.

(e) STANDARD FOREIGN FARE LEVEL.—(1)(A) In this subsection, "standard foreign fare level" means—

(i) for a class of fares existing on October 1, 1979, the fare between 2 places (as adjusted under subparagraph (B) of this paragraph) filed for and allowed by the Civil Aeronautics Board to go into effect after September 30, 1979, and before August 13, 1980 (with seasonal fares adjusted by the percentage difference that prevailed between seasons in 1978), or the fare established under section 1002(j)(8) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), as added by section 24(a) of the International Air Transportation Competition Act of 1979 (Public Law 96–192, 94 Stat. 46); or

(ii) for a class of fares established after October 1, 1979, the fare between 2 places in effect on the effective date of the establishment of the new class.

(B) At least once every 60 days for fuel costs, and at least once every 180 days for other costs, the Secretary shall adjust the standard foreign fare level for the particular foreign air transportation to which the standard foreign fare level applies by increasing or decreasing that level by the percentage change from the last previous period in the actual operating cost for each available seat-mile. In adjusting a standard foreign fare level, the Secretary may not make an adjustment to costs actually incurred. In establishing a standard foreign fare level and making adjustments in the level under this paragraph, the Secretary may use all relevant or appropriate information reasonably available to the Secretary.

(2) The Secretary may not decide that a proposed fare for foreign air transportation is unreasonable on the basis that the fare is too low or too high if the proposed fare is neither more than 5 percent higher nor 50 percent lower than the standard foreign fare level for the same or essentially similar class of transportation. The Secretary by regulation may increase the 50 percent specified in this paragraph.

(3) Paragraph (2) of this subsection does not apply to a proposed fare that is not more than—

(A) 5 percent higher than the standard foreign fare level when the Secretary decides that the proposed fare may be unreasonably discriminatory or that suspension of the fare is in the public interest because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier; or

(B) 50 percent lower than the standard foreign fare level when the Secretary decides that the proposed fare may be predatory or discriminatory or that suspension of the fare is required because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier.

(f) SUBMISSION OF ORDERS TO PRESIDENT.—The Secretary shall submit to the President an order made under this section suspending, canceling, or rejecting a rate for foreign air transportation, and an order rescinding the effectiveness of such an order, before publishing the order. Not later than 10 days after its submission, the President may disapprove the order on finding disapproval is necessary for United States foreign policy or national defense reasons.

(g) COMPLIANCE AS CONDITION OF CERTIFICATE OR PERMIT.—This section and compliance with an order of the Secretary under this section are conditions to any certificate or permit held by an air carrier or foreign air carrier. An air carrier or foreign air carrier may provide foreign air transportation only as long as the carrier maintains rates for that transportation that comply with this section and orders of the Secretary under this section.

§41510. Required adherence to foreign air transportation tariffs

(a) PROHIBITED ACTIONS BY AIR CARRIERS, FOREIGN AIR CARRIERS, AND TICKET AGENTS.—An air carrier, foreign air carrier, or ticket agent may not—

(1) charge or receive compensation for foreign air transportation that is different from the rate specified in the tariff of the carrier that is in effect for that transportation;

(2) refund or remit any part of the rate specified in the tariff; or

(3) extend to any person a privilege or facility, related to a matter required by the Secretary of Transportation to be specified in a tariff for foreign air transportation, except as specified in the tariff.

(b) PROHIBITED ACTIONS BY ANY PERSON.—A person may not knowingly—

(1) pay compensation for foreign air transportation of property that is different from the rate specified in the tariff in effect for that transportation; or

(2) solicit, accept, or receive—

(A) a refund or remittance of any part of the rate specified in the tariff; or

(B) a privilege or facility, related to a matter required by the Secretary to be specified in a tariff for foreign air transportation of property, except as specified in the tariff.

§41511. Special fares for foreign air transportation

(a) FREE AND REDUCED FARES.—This chapter does not prohibit an air carrier or foreign air carrier, under terms the Secretary of Transportation prescribes, from issuing or interchanging tickets or passes for free or reduced-fare foreign air transportation to or for the following:

(1) a director, officer, or employee of the carrier (including a retired director, officer, or employee who is receiving retirement benefits from an air carrier or foreign air carrier).

(2) a parent or the immediate family of such an officer or employee or the immediate family of such a director.

(3) a widow, widower, or minor child of an employee of the carrier who died as a direct result of a personal injury sustained when performing a duty in the service of the carrier.

(4) a witness or attorney attending a legal investigation in which the air carrier is interested.

(5) an individual injured in an aircraft accident and a physician or nurse attending the individual.

(6) a parent or the immediate family of an individual injured or killed in an aircraft accident when the transportation is related to the accident.

(7) an individual or property to provide relief in a general epidemic, pestilence, or other emergency.

(8) other individuals under other circumstances the Secretary prescribes by regulation.

(b) SPACE-AVAILABLE BASIS.—Under terms the Secretary prescribes, an air carrier or foreign air carrier may grant reduced-fare foreign air transportation on a space-available basis to the following:

(1) a minister of religion.

(2) an individual who is at least 60 years of age and no longer gainfully employed.

(3) an individual who is at least 65 years of age.

(4) an individual who has severely impaired vision or hearing or another physical or mental handicap and an accompanying attendant needed by that individual.

CHAPTER 417—OPERATIONS OF CARRIERS

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SUBCHAPTER I—REQUIREMENTS

§41701. Classification of air carriers

The Secretary of Transportation may establish—

(1) reasonable classifications for air carriers when required because of the nature of the transportation provided by them; and

(2) reasonable requirements for each class when the Secretary decides those requirements are necessary in the public interest.

§41702. Interstate air transportation

An air carrier shall provide safe and adequate interstate air transportation.

§41703. Navigation of foreign civil aircraft

(a) PERMITTED NAVIGATION.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States only—

(1) if the country of registry grants a similar privilege to aircraft of the United States;

(2) by an airman holding a certificate or license issued or made valid by the United States Government or the country of registry;

(3) if the Secretary of Transportation authorizes the navigation; and

(4) if the navigation is consistent with terms the Secretary may prescribe.

(b) REQUIREMENTS FOR AUTHORIZING NAVIGATION.—The Secretary may authorize navigation under this section only if the Secretary decides the authorization is—

(1) in the public interest; and

(2) consistent with any agreement between the Government and the government of a foreign country.

(c) PROVIDING AIR COMMERCE.—The Secretary may authorize an aircraft permitted to navigate in the United States under this section to provide air commerce in the United States. However, the aircraft may take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if—

(1) specifically authorized under section 40109(g) of this title; or

(2) under regulations the Secretary prescribes authorizing air carriers to provide otherwise authorized air transportation with foreign registered aircraft under lease or charter to them without crew.

(d) PERMIT REQUIREMENTS NOT AFFECTED.—This section does not affect section 41301 or 41302 of this title. However, a foreign air carrier holding a permit under section 41302 does not need to obtain additional authorization under this section for an operation authorized by the permit.

§41704. Transporting property not to be transported in aircraft cabins

Under regulations or orders of the Secretary of Transportation, an air carrier shall transport as baggage the property of a passenger traveling in air transportation that may not be carried in an aircraft cabin because of a law or regulation of the United States. The carrier is liable to pay an amount not more than the amount declared to the carrier by that passenger for actual loss of, or damage to, the property caused by the carrier. The carrier may impose reasonable charges and conditions for its liability.

§41705. Discrimination against handicapped individuals

In providing air transportation, an air carrier may not discriminate against an otherwise qualified individual on the following grounds:

(1) the individual has a physical or mental impairment that substantially limits one or more major life activities.

(2) the individual has a record of such an impairment.

(3) the individual is regarded as having such an impairment.

§41706. Prohibitions against smoking on scheduled flights

(a) GENERAL.—An individual may not smoke in the passenger cabin or lavatory of an aircraft on a scheduled airline flight segment in air transportation or intrastate air transportation that is—

(1) between places in a State of the United States, the District of Columbia, Puerto Rico, or the Virgin Islands;

(2) between a place in any jurisdiction referred to in clause (1) of this subsection (except Alaska and Hawaii) and a place in any other of those jurisdictions; or

(3)(A) scheduled for not more than 6 hours' duration; and

(B)(i) between a place referred to in clause (1) of this subsection (except Alaska and Hawaii) and Alaska or Hawaii; or

(ii) between Alaska and Hawaii.

(b) REGULATIONS.—The Secretary of Transportation shall prescribe regulations necessary to carry out this section.

§41707. Incorporating contract terms into written instrument

To the extent the Secretary of Transportation prescribes by regulation, an air carrier may incorporate by reference in a ticket or written instrument any term of the contract for providing interstate air transportation.

§41708. Reports

(a) APPLICATION.—To the extent the Secretary of Transportation finds necessary to carry out this subpart, this section and section 41709 of this title apply to a person controlling an air carrier or affiliated (within the meaning of section 11343(c) of this title) with a carrier.

(b) REQUIREMENTS.—The Secretary may require an air carrier or foreign air carrier—

(1)(A) to file annual, monthly, periodical, and special reports with the Secretary in the form and way prescribed by the Secretary; and

(B) to file the reports under oath;

(2) to provide specific answers to questions on which the Secretary considers information to be necessary; and

(3) to file with the Secretary a copy of each agreement, arrangement, contract, or understanding between the carrier and another carrier or person related to transportation affected by this subpart.

§41709. Records of air carriers

(a) REQUIREMENTS.—The Secretary of Transportation shall prescribe the form of records to be kept by an air carrier, including records on the movement of traffic, receipts and expenditures of money, and the time period during which the records shall be kept. A carrier may keep only records prescribed or approved by the Secretary. However, a carrier may keep additional records if the additional records do not impair the integrity of the records prescribed or approved by the Secretary and are not an unreasonable financial burden on the carrier.

(b) INSPECTION.—(1) The Secretary at any time may—

(A) inspect the land, buildings, and equipment of an air carrier or foreign air carrier when necessary to decide under subchapter II of this chapter or section 41102, 41103, or 41302 of this title whether a carrier is fit, willing, and able; and

(B) inspect records kept or required to be kept by an air carrier, foreign air carrier, or ticket agent.

(2) The Secretary may employ special agents or auditors to carry out this subsection.

§41710. Time requirements

When a matter requiring action of the Secretary of Transportation is submitted under section 40109(a) or (c)–(h), 41309, or 42111 of this title and an evidentiary hearing—

(1) is ordered, the Secretary shall make a final decision on the matter not later than the last day of the 12th month that begins after the date the matter is submitted; or

(2) is not ordered, the Secretary shall make a final decision on the matter not later than the last day of the 6th month that begins after the date the matter is submitted.

§41711. Air carrier management inquiry and cooperation with other authorities

In carrying out this subpart, the Secretary of Transportation may—

(1) inquire into the management of the business of an air carrier and obtain from the air carrier, and a person controlling, controlled by, or under common control with the carrier, information the Secretary decides reasonably is necessary to carry out the inquiry;

(2) confer and hold a joint hearing with a State authority; and

(3) exchange information related to aeronautics with a government of a foreign country through appropriate departments, agencies, and instrumentalities of the United States Government.

§41712. Unfair and deceptive practices and unfair methods of competition

On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

§41713. Preemption of authority over rates, routes, and service

(a) DEFINITION.—In this section, "State" means a State, the District of Columbia, and a territory or possession of the United States.

(b) PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law or regulation related to a rate, route, or service of an air carrier that may provide air transportation under this subpart.

(2) Paragraph (1) of this subsection does not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

§41731. Definitions

(a) GENERAL.—In this subchapter—

(1) "eligible place" means a place in the United States that—

(A) was an eligible point under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;

(B) received scheduled air transportation at any time after January 1, 1990; and

(C) is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under this subchapter.

(2) "enhanced essential air service" means scheduled air transportation to an eligible place of a higher level or quality than basic essential air service described in section 41732 of this title.

(3) "hub airport" means an airport that each year has at least .25 percent of the total annual boardings in the United States.

(4) "nonhub airport" means an airport that each year has less than .05 percent of the total annual boardings in the United States.

(5) "small hub airport" means an airport that each year has at least .05 percent, but less than .25 percent, of the total annual boardings in the United States.

(b) LIMITATION ON AUTHORITY TO DECIDE A PLACE NOT AN ELIGIBLE PLACE.—The Secretary of Transportation may not decide that a place described in subsection (a)(1) of this section is not an eligible place on the basis of a passenger subsidy at that place or on another basis that is not specifically stated in this subchapter.

§41732. Basic essential air service

(a) GENERAL.—Basic essential air service provided under section 41733 of this title is scheduled air transportation of passengers and cargo—

(1) to a hub airport that has convenient connecting or single-plane air service to a substantial number of destinations beyond that airport; or

(2) to a small hub or nonhub airport, when in Alaska or when the nearest hub airport is more than 400 miles from an eligible place.

(b) MINIMUM REQUIREMENTS.—Basic essential air service shall include at least the following:

(1)(A) for a place not in Alaska, 2 daily round trips 6 days a week, with not more than one intermediate stop on each flight; or

(B) for a place in Alaska, a level of service at least equal to that provided in 1976 or 2 round trips a week, whichever is greater, except that the Secretary of Transportation and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(2) flights at reasonable times considering the needs of passengers with connecting flights at the airport and at rates that are not excessive compared to the generally prevailing rates of other air carriers for like service between similar places.

(3) for a place not in Alaska, service provided in an aircraft with an effective capacity of at least 15 passengers if the average daily boardings at the place in any calendar year from 1976–1986 were more than 11 passengers unless—

(A) that level-of-service requirement would require paying compensation in a fiscal year under section 41733(d) or 41734 (d) or (e) of this title for the place when compensation otherwise would not have been paid for that place in that year; or

(B) the affected community agrees with the Secretary in writing to the use of smaller aircraft to provide service to the place.

(4) service accommodating the estimated passenger and property traffic at an average load factor, for each class of traffic considering seasonal demands for the service, of not more than—

(A) 50 percent; or

(B) 60 percent when service is provided by aircraft with more than 14 passenger seats.

(5) service provided in aircraft with at least 2 engines and using 2 pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least 2 engines and using 2 pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(6) service provided by pressurized aircraft when the service is provided by aircraft that regularly fly above 8,000 feet in altitude.

§41733. Level of basic essential air service

(a) DECISIONS MADE BEFORE OCTOBER 1, 1988.—For each eligible place for which a decision was made before October 1, 1988, under section 419 of the Federal Aviation Act of 1958, establishing the level of essential air transportation, the level of basic essential air service for that place shall be the level established by the Secretary of Transportation for that place by not later than December 29, 1988.

(b) DECISIONS NOT MADE BEFORE OCTOBER 1, 1988.—(1) The Secretary shall decide on the level of basic essential air service for each eligible place for which a decision was not made before October 1, 1988, establishing the level of essential air transportation, when the Secretary receives notice that service to that place will be provided by only one air carrier. The Secretary shall make the decision by the last day of the 6-month period beginning on the date the Secretary receives the notice. The Secretary may impose notice requirements necessary to carry out this subsection. Before making a decision, the Secretary shall consider the views of any interested community and the appropriate State authority of the State in which the community is located.

(2) Until the Secretary has made a decision on a level of basic essential air service for an eligible place under this subsection, the Secretary, on petition by an appropriate representative of the place, shall prohibit an air carrier from ending, suspending, or reducing air transportation to that place that appears to deprive the place of basic essential air service.

(c) AVAILABILITY OF COMPENSATION.—(1) If the Secretary decides that basic essential air service will not be provided to an eligible place without compensation, the Secretary shall provide notice that an air carrier may apply to provide basic essential air service to the place for compensation under this section. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the demonstrated reliability of the applicant in providing scheduled air service;

(B) the contractual and marketing arrangements the applicant has made with a larger carrier to ensure service beyond the hub airport;

(C) the interline arrangements that the applicant has made with a larger carrier to allow passengers and cargo of the applicant at the hub airport to be transported by the larger carrier through one reservation, ticket, and baggage check-in;

(D) the preferences of the actual and potential users of air transportation at the eligible place, giving substantial weight to the views of the elected officials representing the users; and

(E) for an eligible place in Alaska, the experience of the applicant in providing, in Alaska, scheduled air service, or significant patterns of non-scheduled air service under an exemption granted under section 40109(a) and (c)–(h) of this title.

(2) Under guidelines prescribed under section 41737(a) of this title, the Secretary shall pay the rate of compensation for providing basic essential air service under this section and section 41734 of this title.

(d) COMPENSATION PAYMENTS.—The Secretary shall pay compensation under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation to an air carrier for providing basic essential air service to an eligible place when the Secretary decides the compensation is no longer necessary to maintain basic essential air service to the place.

(e) REVIEW.—The Secretary shall review periodically the level of basic essential air service for each eligible place. Based on the review and consultations with an interested community and the appropriate State authority of the State in which the community is located, the Secretary may make appropriate adjustments in the level of service.

§41734. Ending, suspending, and reducing basic essential air service

(a) NOTICE REQUIRED.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of basic essential air service established for that place under section 41733 of this title only after giving the Secretary of Transportation, the appropriate State authority, and the affected communities at least 90 days' notice before ending, suspending, or reducing that transportation.

(b) CONTINUATION OF SERVICE FOR 30 DAYS AFTER NOTICE PERIOD.—If at the end of the notice period under subsection (a) of this section the Secretary has not found another air carrier to provide basic essential air service to the eligible place, the Secretary shall require the carrier providing notice to continue to provide basic essential air service to the place for an additional

30-day period or until another carrier begins to provide basic essential air service to the place, whichever occurs first.

(c) CONTINUATION OF SERVICE FOR ADDITIONAL 30-DAY PERIODS.—If at the end of the 30-day period under subsection (b) of this section the Secretary decides another air carrier will not provide basic essential air service to the place on a continuing basis, the Secretary shall require the carrier providing service to continue to provide service for additional 30-day periods until another carrier begins providing service on a continuing basis. At the end of each 30-day period, the Secretary shall decide if another carrier will provide service on a continuing basis.

(d) CONTINUATION OF COMPENSATION AFTER NOTICE PERIOD.—If an air carrier receiving compensation under section 41733 of this title for providing basic essential air service to an eligible place is required to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section, the Secretary shall continue to pay that compensation after the last day of that period. The Secretary shall pay the compensation until the Secretary finds another carrier to provide the service to the place or the 90th day after the end of that notice period, whichever is earlier. If, after the 90th day after the end of the 90-day notice period, the Secretary has not found another carrier to provide the service, the carrier required to continue to provide that service shall receive compensation sufficient—

(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and

(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(e) COMPENSATION TO AIR CARRIERS ORIGINALLY PROVIDING SERVICE WITHOUT COMPENSATION.—If the Secretary requires an air carrier providing basic essential air service to an eligible place without compensation under section 41733 of this title to continue providing that service after the 90-day notice period required by subsection (a) of this section, the Secretary shall provide the carrier with compensation after the end of the 90-day notice period that is sufficient—

(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and

(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(f) FINDING REPLACEMENT CARRIERS.—When the Secretary requires an air carrier to continue to provide basic essential air service to an eligible place, the Secretary shall continue to make every effort to find another carrier to provide at least that basic essential air service to the place on a continuing basis.

(g) TRANSFER OF AUTHORITY.—If an air carrier, providing basic essential air service under section 41733 of this title between an eligible place and an airport at which the Administrator of the Federal Aviation Administration limits the number of instrument flight rule takeoffs and landings of aircraft, provides notice under subsection (a) of this section of an intention to end, suspend, or reduce that service and another carrier is found to provide the service, the Secretary shall require the carrier providing notice to transfer any operational authority the carrier has to land or take off at that airport related to the service to the eligible place to the carrier that will provide the service, if—

(1) the carrier that will provide the service needs the authority; and

(2) the authority to be transferred is being used only to provide air service to the eligible place.

§41735. Enhanced essential air service

(a) PROPOSALS.—(1) A State or local government may submit a proposal to the Secretary of Transportation for enhanced essential air service to an eligible place for which basic essential air service is being provided under section 41733 of this title. The proposal shall—

(A) specify the level and type of enhanced essential air service the State or local government considers appropriate; and

(B) include an agreement related to compensation required for the proposed service.

(2) The agreement submitted under paragraph (1)(B) of this subsection shall provide that—

(A) the State or local government or a person pay 50 percent of the compensation required for the proposed service and the United States Government pay the remaining 50 percent; or

(B)(i) the Government pay 100 percent of the compensation; and

(ii) if the proposed service is not successful for at least a 2-year period under the criteria prescribed by the Secretary under paragraph (3) of this subsection, the eligible place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(3) The Secretary shall prescribe by regulation objective criteria for deciding whether enhanced essential air service to an eligible place under this section is successful in terms of—

(A) increasing passenger usage of the airport facilities at the place; and

(B) reducing the amount of compensation provided by the Secretary under this subchapter for that service.

(b) DECISIONS.—Not later than 90 days after receiving a proposal under subsection (a) of this section, the Secretary shall—

(1) approve the proposal if the Secretary decides the proposal is reasonable; or

(2) if the Secretary decides the proposal is not reasonable, disapprove the proposal and notify the State or local government of the disapproval and the reasons for the disapproval.

(c) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. Compensation for enhanced essential air service under this section may be paid only for the costs incurred in providing air service to an eligible place that are in addition to the costs incurred in providing basic essential air service to the place under section 41733 of this title. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of enhanced essential air service;

(B) the State or local government or person agreeing to pay compensation under this section continues to pay the compensation; and

(C) the Secretary decides the compensation is necessary to maintain the service to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(d) REVIEW.—(1) The Secretary shall review periodically the enhanced essential air service provided to each eligible place under this section.

(2) For service for which the Government pays 50 percent of the compensation, based on the review and consultation with the affected community and the State or local government or person paying the remaining 50 percent of the compensation, the Secretary shall make appropriate adjustments in the type and level of service to the place.

(3) For service for which the Government pays 100 percent of the compensation, based on the review and consultation with the State or local government submitting the proposal, the Secretary shall decide whether the service has succeeded for at least a 2-year period under the criteria prescribed under subsection (a)(3) of this section. If unsuccessful, the place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(e) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of enhanced essential air service established for that place by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation for that service at least 30 days' notice before ending, suspending, or reducing the service. This subsection does not relieve the carrier of an obligation under section 41734 of this title.

§41736. Air transportation to noneligible places

(a) PROPOSALS AND DECISIONS.—(1) A State or local government may propose to the Secretary of Transportation that the Secretary provide compensation to an air carrier to provide air transportation to a place that is not an eligible place under this subchapter. Not later than 90 days after receiving a proposal under this section, the Secretary shall—

(A) decide whether to designate the place as eligible to receive compensation under this section; and

(B)(i) approve the proposal if the State or local government or a person is willing and able to pay 50 percent of the compensation for providing the transportation, and notify the State or local government of the approval; or

(ii) disapprove the proposal if the Secretary decides the proposal is not reasonable under paragraph (2) of this subsection, and notify the State or local government of the disapproval and the reasons for the disapproval.

(2) In deciding whether a proposal is reasonable, the Secretary shall consider, among other factors—

(A) the traffic-generating potential of the place;

(B) the cost to the United States Government of providing the proposed transportation; and

(C) the distance of the place from the closest hub airport.

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—

(1) at any time before October 23, 1978, the place was served by a carrier holding a certificate under section 401 of the Federal Aviation Act of 1958;

(2) the place is more than 50 miles from the nearest small hub airport or an eligible place;

(3) the place is more than 150 miles from the nearest hub airport; and

(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

(c) LEVEL OF AIR TRANSPORTATION.—(1) If the Secretary designates a place under subsection (a)(1) of this section as eligible for compensation under this section, the Secretary shall decide, not later than 6 months after the date of the designation, on the level of air transportation to be provided under this section. Before making a decision, the Secretary shall consider the views of any interested community, the appropriate State authority of the State in which the place is located, and the State or local government or person agreeing to pay compensation for the transportation under subsection (b)(4) of this section.

(2) After making the decision under paragraph (1) of this subsection, the Secretary shall provide notice that any air carrier that is willing to provide the level of air transportation established under paragraph (1) for a place may submit an application to provide the transportation. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the factors listed in section 41733(c)(1) of this title; and

(B) the views of the State or local government or person agreeing to pay compensation for the transportation.

(d) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of air transportation established by the Secretary under subsection (c)(1) of this section;

(B) the State or local government or person agreeing to pay compensation for transportation under this section continues to pay that compensation; and

(C) the Secretary decides the compensation is necessary to maintain the transportation to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(e) REVIEW.—The Secretary shall review periodically the level of air transportation provided under this section. Based on the review and consultation with any interested community, the appropriate State authority of the State in which the community is located, and the State or local government or person paying compensation under this section, the Secretary may make appropriate adjustments in the level of transportation.

(f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing notice and an opportunity for interested persons to comment, the Secretary may withdraw the designation of a place under subsection (a)(1) of this section as eligible to receive compensation under this section if the place has received air transportation under this section for at least 2 years and the Secretary decides the withdrawal would be in the public interest. The Secretary by regulation shall prescribe standards for deciding whether the withdrawal of a designation under this subsection is in the public interest. The standards shall include the factors listed in subsection (a)(2) of this section.

(g) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier providing air transportation for compensation under this section may end, suspend, or reduce that transportation below the level of transportation established by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation under this section at least 30 days' notice before ending, suspending, or reducing the transportation.

§41737. Compensation guidelines, limitations, and claims

(a) COMPENSATION GUIDELINES.—(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter. The guidelines shall—

(A) provide for a reduction in compensation when an air carrier does not provide service or transportation agreed to be provided;

(B) consider amounts needed by an air carrier to promote public use of the service or transportation for which compensation is being paid; and

(C) include expense elements based on representative costs of air carriers providing scheduled air transportation of passengers, property, and mail on aircraft of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter.

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter, the Secretary shall—

(1) pay or deny the United States Government's share of a claim; and

(2) if denying the claim, notify the carrier of the denial and the reasons for the denial.

(d) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.—(1) The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter. An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

(2) Not more than $38,600,000 is available to the Secretary out of the Fund for each of the fiscal years ending September 30, 1992–1998, to incur obligations under this section. Amounts made available under this section remain available until expended.

§41738. Fitness of air carriers

Notwithstanding section 40109 (a) and (c)–(h) of this title, an air carrier may provide air service to an eligible place or air transportation to a place designated under section 41736 of this title only when the Secretary of Transportation decides that—

(1) the carrier is fit, willing, and able to perform the service or transportation; and

(2) aircraft used to provide the service or transportation, and operations related to the service or transportation, conform to the safety standards prescribed by the Administrator of the Federal Aviation Administration.

§41739. Air carrier obligations

If at least 2 air carriers make an agreement to operate under or use a single carrier designator code to provide air transportation, the carrier whose code is being used shares responsibility with the other carriers for the quality of transportation provided the public under the code by the other carriers.

§41740. Joint proposals

The Secretary of Transportation shall encourage the submission of joint proposals by 2 or more air carriers for providing air service or air transportation under this subchapter through arrangements that maximize the service or transportation to and from major destinations beyond the hub.

§41741. Insurance

The Secretary of Transportation may pay an air carrier compensation under this subchapter only when the carrier files with the Secretary an insurance policy or self-insurance plan approved by the Secretary. The policy or plan must be sufficient to pay for bodily injury to, or death of, an individual, or for loss of or damage to property of others, resulting from the operation of aircraft, but not more than the amount of the policy or plan limits.

§41742. Ending effective date

This subchapter is not effective after September 30, 1998.

CHAPTER 419—TRANSPORTATION OF MAIL

Sec.
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41903. Duty to provide certain transportation of mail.
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41905. Regulating air carrier transportation of foreign mail.
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41910. Weighing mail.
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§41901. General authority

(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in interstate air transportation under section 5402 (d) and (f) of title 39.

(b) AUTHORITY TO PRESCRIBE RATES.—Except as provided in section 5402 of title 39, on the initiative of the Secretary of Transportation or on petition by the Postal Service or an air carrier, the Secretary shall prescribe and publish—

(1) after notice and an opportunity for a hearing on the record, reasonable rates of compensation to be paid by the Postal Service for the transportation of mail by aircraft in foreign air transportation or between places in Alaska, the facilities used in and useful for the transportation of mail, and the services related to the transportation of mail for each carrier holding a certificate that authorizes that transportation;

(2) the methods used, whether by aircraft-mile, pound-mile, weight, space, or a combination of those or other methods, to determine the rates of compensation for each air carrier or class of air carriers; and

(3) the effective date of the rates.

(c) OTHER TRANSPORTATION.—In prescribing rates under subsection (b) of this section, the Secretary may include transportation other than by aircraft that is incidental to transportation of mail by aircraft or necessary because of emergency conditions related to aircraft operations.

(d) AUTHORITY TO PRESCRIBE DIFFERENT RATES.—Considering conditions peculiar to transportation by aircraft and to particular air carriers or classes of air carriers, the Secretary may prescribe different rates under this section for different air carriers or classes of air carriers and for different classes of service. In prescribing a rate for a carrier under this section, the Secretary shall consider, among other factors, the following:

(1) the condition that the carrier may hold and operate under a certificate authorizing the

transportation of mail only by providing necessary and adequate facilities and service for the transportation of mail.

(2) standards related to the character and quality of service to be provided that are prescribed by or under law.

(e) STATEMENTS ON RATES.—A petition for prescribing a reasonable rate of compensation under this section must include a statement of the rate the petitioner believes is reasonable.

(f) STATEMENTS ON REQUIRED SERVICES.—The Postal Service shall introduce as part of the record in every proceeding under this section a comprehensive statement of the services to be required of the air carrier and other information the Postal Service has that the Secretary considers material to the proceeding.

(g) EXPIRATION DATE.—The authority of the Secretary under this part and section 5402 of title 39 providing for the transportation of mail by aircraft between places in Alaska expires on the date specified in section 5402(f) of title 39.

§41902. Schedules for certain transportation of mail

(a) REQUIREMENT.—Except as provided in section 41906 of this title and section 5402 of title 39, an air carrier may transport mail by aircraft in foreign air transportation or between places in Alaska only under a schedule designated or required to be established under subsection (c) of this section for the transportation of mail.

(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

(1) the places between which the carrier is authorized to provide foreign air transportation;

(2) the places between which the carrier is authorized to transport mail entirely in one State;

(3) the places between which the carrier is authorized to transport mail in Alaska;

(4) every schedule of aircraft regularly operated by the carrier between places described in clauses (1)-(3) of this subsection and every change in each schedule; and

(5) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.

(c) DESIGNATING AND ADDITIONAL SCHEDULES.—The Postal Service may—

(1) designate any schedule of an air carrier filed under subsection (b)(4) of this section for the transportation of mail between the places between which the carrier is authorized by its certificate to transport mail; and

(2) require the carrier to establish additional schedules for the transportation of mail between those places.

(d) CHANGING SCHEDULES.—A schedule designated or required to be established for the transportation of mail under subsection (c) of this section may be changed only after 10 days' notice of the change is filed as provided in subsection (b)(4) of this section. The Postal Service may disapprove a proposed change in a schedule or amend or modify the schedule or proposed change.

(e) ORDERS.—An order of the Postal Service under this section may become effective only after 10 days after the order is issued. A person adversely affected by the order may appeal the order to the Secretary before the end of the 10-day period under regulations the Secretary prescribes. If the public convenience and necessity require, the Secretary may amend, modify, suspend, or cancel the order. Pending a decision about the order, the Secretary may postpone the effective date of the order.

(f) PROCEEDINGS PREFERENCES.—The Secretary shall give preference to a proceeding under this section over all other proceedings before the Secretary under this subpart.

§41903. Duty to provide certain transportation of mail

(a) AIR CARRIERS.—Subject to subsection (b) of this section, an air carrier authorized by its certificate to transport mail by aircraft in foreign air transportation or between places in Alaska shall—

(1) provide facilities and services necessary and adequate to provide that transportation; and

(2) transport mail between the places authorized in the certificate for transportation of mail when required, and under regulations prescribed, by the United States Postal Service.

(b) MAXIMUM MAIL LOAD.—The Secretary of Transportation may prescribe the maximum mail load for a schedule or for an aircraft or type of aircraft for the transportation of mail by aircraft in foreign air transportation or between places in Alaska. If the Postal Service tenders to an air carrier mail exceeding the maximum load for transportation by the carrier under a schedule designated or required to be established for the transportation of mail under section 41902(c) of this title, the carrier, as nearly in accordance with the schedule as the Secretary decides is possible, shall—

(1) provide facilities sufficient to transport the mail to the extent the Secretary decides the carrier reasonably is able to do so; and

(2) transport that mail.

§41904. Noncitizens transporting mail to or in foreign countries

When the United States Postal Service decides that it may be necessary to have a person not a citizen of the United States transport mail by aircraft to or in a foreign country, the Postal Service may make an arrangement with the person, without advertising, to provide the transportation.

§41905. Regulating air carrier transportation of foreign mail

An air carrier holding a certificate that authorizes foreign air transportation and transporting mail of a foreign country shall transport that mail under the control of, and subject to regulation by, the United States Government.

§41906. Emergency mail transportation

(a) CONTRACT AUTHORITY.—In an emergency caused by a flood, fire, or other disaster, the United States Postal Service may make a contract without advertising to transport mail by aircraft to or from a locality affected by the emergency when the available facilities of persons authorized to transport mail to or from the locality are inadequate to meet the requirements of the Postal Service during the emergency. The contract may be only for periods necessary to maintain mail service because of the inadequacy of the facilities. Payment for transportation provided under the contract shall be made at rates provided in the contract.

(b) TRANSPORTATION NOT AIR TRANSPORTATION.—Transportation provided under a contract made under subsection (a) of this section is not air transportation within the meaning of this part.

§41907. Rates for foreign transportation of mail

(a) LIMITATIONS.—When air transportation is provided between the United States and a foreign country both by aircraft owned or operated by an air carrier holding a certificate under chapter 411 of this title and by aircraft owned or operated by a foreign air carrier, the United States Postal Service may not pay to or for the account of the foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and the foreign country that the Postal Service believes will result (over a reasonable period determined by the Postal Service considering exchange fluctuations and other factors) in the foreign air carrier receiving a rate of compensation for transporting the mail that is higher than the rate—

(1) the foreign country pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and the United States; or

(2) determined by the Postal Service to be comparable to the rate the foreign country pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and an intermediate country on the route of the air carrier between the foreign country and the United States.

(b) CHANGES.—The Secretary of Transportation shall act expeditiously on proposed changes in rates for transporting mail by aircraft in foreign air transportation. When prescribing those rates, the Secretary shall consider—

(1) the rates paid for transportation of mail under the Universal Postal Union Convention as ratified by the United States Government;

(2) the rate-making elements used by the Universal Postal Union in prescribing its airmail rates; and

(3) the competitive disadvantage to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for transporting United States mail and national origin mail of their own countries.

§41908. Rates for transporting mail of foreign countries

(a) RATE DETERMINATIONS.—The United States Postal Service shall determine the rates that an air carrier holding a certificate that authorizes foreign air transportation must charge a foreign country for transporting mail of the foreign country. The Postal Service shall put those rates into effect under the postal convention regulating postal relations between the United States and the foreign country or as provided under this section.

(b) CHANGES.—The Postal Service may authorize an air carrier holding a certificate that authorizes foreign air transportation, under limitations the Postal Service prescribes, to change the rates the carrier charges a foreign country for transporting mail of the foreign country in the foreign country or between the foreign country and another foreign country.

(c) COLLECTING COMPENSATION.—(1) When an air carrier holding a certificate that authorizes foreign air transportation transports mail of a foreign country—

(A) under an arrangement with the foreign country made or approved under this section, the carrier must collect its compensation for the transportation from the foreign country under the arrangement; and

(B) without having an arrangement with the foreign country consistent with this section, the compensation collected by the United States Government for the transportation shall be for the account of the air carrier.

(2) An air carrier holding a certificate that authorizes foreign air transportation is not entitled to receive compensation from both a foreign country and the Government for transporting the same mail of the foreign country.

§41909. Duty to oppose unreasonable Universal Postal Union rates

The Secretary of State and the United States Postal Service shall—

(1) take appropriate action to ensure that the rates paid for transporting mail under the Universal Postal Union Convention are not higher than reasonable rates for transporting mail; and

(2) oppose any existing or proposed Universal Postal Union rate that is higher than a reasonable rate for transporting mail.

§41910. Weighing mail

The United States Postal Service may weigh mail transported by aircraft and make statistical *and administrative computations necessary in the interest of mail service. When the Secretary of Transportation decides that additional or more frequent weighings of mail are advisable or necessary to carry out this part, the Postal Service shall provide the weighings, but it is not required to provide them for continuous periods of more than 30 days.*

§41911. Evidence of providing mail service

When and in the form required by the United States Postal Service, an air carrier transporting or handling—

(1) United States mail shall submit evidence, signed by an authorized official, that the transportation or handling has been provided; and

(2) mail of a foreign country shall submit evidence, signed by an authorized official, of the amount of mail transported or handled and the compensation payable and received for that transportation or handling.

§41912. Effect on foreign postal arrangements

This part does not—

(1) affect an arrangement made by the United States Government with the postal administration of a foreign country related to the transportation of mail by aircraft; or

(2) impair the authority of the United States Postal Service to make such an arrangement.

CHAPTER 421—LABOR-MANAGEMENT PROVISIONS

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SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

§42101. Definitions

(a) GENERAL.—In this subchapter—

(1) "eligible protected employee" means a protected employee who is deprived of employment, or whose compensation is reduced, because of a qualifying dislocation.

(2) "major contraction" means a reduction (except as provided in subsection (b) of this section) of at least 7.5 percent in the number of full-time employees of an air carrier within a 12-month period, except for employees deprived of employment because of a strike or whose employment is ended for cause.

(3) "protected employee" means an individual who on October 24, 1978, was employed for at least 4 years by an air carrier holding a certificate under section 41102 of this title, but does not include a director or officer of a corporation.

(4) "qualifying dislocation" means a bankruptcy or major contraction of an air carrier holding a certificate under section 41102 of this title when the Secretary of Transportation finds the bankruptcy or contraction occurred after December 31, 1978, and before January 1, 1989, the major cause of which was the change in regulatory structure provided by the Airline Deregulation Act of 1978.

(b) MAJOR CONTRACTION.—The Secretary may find a reduction of less than 7.5 percent of the number of full-time employees is part of a major contraction if the Secretary decides another reduction is likely to occur within a 12-month period that, when included with the first reduction, will result in a total reduction of more than 7.5 percent.

§42102. Payments to eligible protected employees

(a) AUTHORITY TO PAY AND APPLICATIONS FOR PAYMENTS.—Subject to amounts provided in an appropriation law, the Secretary of Labor shall make monthly assistance payments, moving expense payments, and reimbursement payments as provided under this section to an eligible protected employee whose employment is not ended for cause. The employee must apply to receive the payments and cooperate with the Secretary in finding other employment.

(b) NUMBER AND AMOUNT OF PAYMENTS.—(1) Subject to amounts provided in an appropriation law, an eligible protected employee shall receive 72 monthly assistance payments. However, an eligible protected employee deprived of employment may not receive a payment after obtaining other employment. For each class or craft of protected employees, the Secretary of Labor, after consulting with the Secretary of Transportation, shall prescribe by regulation guidelines for computing the amount of each monthly assistance payment to be made to a member of the class or craft and what percentage of salary that payment represents.

(2) The amount of a monthly payment payable under paragraph (1) of this subsection to an eligible protected employee shall be reduced—

(A) by unemployment compensation the employee receives; or

(B) if the employee does not accept reasonably comparable employment, to an amount the employee would be entitled to receive if the employee had accepted the employment.

(3) If accepting comparable employment to avoid a reduction in the monthly assistance payment under paragraph (2) of this subsection would force an eligible protected employee to relocate, the employee may decide not to relocate. Instead of the payments provided under this section, the employee may receive the lesser of 3 payments or the maximum number of payments that remain to be paid under paragraph (1) of this subsection.

(c) MOVING EXPENSES AND REIMBURSEMENTS.—(1) Subject to amounts provided in an appropriation law, an eligible protected employee who relocates shall receive—

(A) reasonable moving expense payments to move the employee and the employee's immediate family; and

(B) reimbursement payments for a loss incurred in selling the employee's principal place of residence for less than fair market value or in cancelling a lease on, or contract to buy, the residence.

(2) The Secretary of Labor shall decide on the amount of the moving expenses and the fair market value of the residence.

§42103. Duty to hire protected employees

(a) REHIRING PROTECTED EMPLOYEES.—A protected employee of an air carrier regulated by the Secretary of Transportation who was furloughed or whose employment was ended by the carrier (except for cause) before October 23, 1988, is entitled to be the first employed in the occupational specialty of the employee, regardless of the employee's age, by any other air carrier holding a certificate under section 41102 of this title before October 24, 1978. However, the air carrier may recall its furloughed employees before hiring a protected employee of another air carrier regulated by the Secretary who was furloughed or whose employment was ended by the other carrier (except for cause) before October 23, 1988. An employee hired by an air carrier under this section retains seniority and recall rights with the air carrier that furloughed or ended the employment of the employee.

(b) DUTIES OF SECRETARY OF LABOR.—The Secretary of Labor—

(1) shall establish and publish periodically a list of jobs available with an air carrier holding a certificate under section 41102 of this title that includes necessary information and detail;

(2) shall assist eligible protected employees to find other employment;

(3) shall encourage negotiations between air carriers and representatives of employees on rehiring practices and seniority; and

(4) may require an air carrier to file with the Secretary information necessary to carry out this section.

§42104. Congressional review of regulations

(a) DEFINITION.—In this section, "legislative day" means a calendar day on which both Houses of Congress are in session.

(b) SUBMISSION TO CONGRESS.—The Secretary of Labor may not prescribe a regulation under this subchapter until 30 legislative days after the regulation is submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(c) EFFECTIVENESS OF REGULATIONS.—A proposed regulation under this subchapter shall be submitted to Congress and becomes effective only if, during the period of 60 legislative days after the regulation is submitted to Congress, either House does not pass a resolution disapproving the regulation. However, if Congress adopts a resolution approving the regulation during the 60-day period, the regulation is effective on that date.

§42105. Airline Employees Protective Account

The Department of Labor has an Airline Employees Protective Account consisting of amounts appropriated to it. An amount necessary to carry out this subchapter, including administrative expenses, may be appropriated to the Account annually.

§42106. Ending effective date

This subchapter is not effective after the last day the Secretary of Labor must make a payment under this subchapter.

SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS

§42111. Mutual aid agreements

An air carrier that will receive payments from another air carrier under an agreement between the air carriers for the time the one air carrier is not providing foreign air transportation, or is providing reduced levels of foreign air transportation, because of a labor strike must file a true copy of the agreement with the Secretary of Transportation and have it approved by the Secretary under section 41309 of this title. Notwithstanding section 41309, the Secretary shall approve the agreement only if it provides that—

(1) the air carrier will receive payments of not more than 60 percent of direct operating expenses, including interest expenses, but not depreciation or amortization expenses;

(2) benefits may be paid for not more than 8 weeks, and may not be for losses incurred during the first 30 days of a strike; and

(3) on request of the striking employees, the dispute will be submitted to binding arbitration under the Railway Labor Act (45 U.S.C. 151 et seq.).

§42112. Labor requirements of air carriers

(a) DEFINITIONS.—In this section—

(1) "copilot" means an employee whose duties include assisting or relieving the pilot in manipulating an aircraft and who is qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a copilot.

(2) "pilot" means an employee who is—

(A) responsible for manipulating or who manipulates the flight controls of an aircraft when

under way, including the landing and takeoff of an aircraft; and

(B) qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a pilot.

(b) DUTIES OF AIR CARRIERS.—An air carrier shall—

(1) maintain rates of compensation, maximum hours, and other working conditions and relations for its pilots and copilots who are providing interstate air transportation in the 48 contiguous States and the District of Columbia to conform with decision number 83, May 10, 1934, National Labor Board, notwithstanding any limitation in that decision on the period of its effectiveness;

(2) maintain rates of compensation for its pilots and copilots who are providing foreign air transportation or air transportation only in one territory or possession of the United States; and

(3) comply with title II of the Railway Labor Act (45 U.S.C. 181 et seq.) as long as it holds its certificate.

(c) MINIMUM ANNUAL RATE OF COMPENSATION.—A minimum annual rate under subsection (b)(2) of this section may not be less than the annual rate required to be paid for comparable service to a pilot or copilot under subsection (b)(1) of this section.

(d) COLLECTIVE BARGAINING.—This section does not prevent pilots or copilots of an air carrier from obtaining by collective bargaining higher rates of compensation or more favorable working conditions or relations.

SUBPART III—SAFETY

CHAPTER 441—REGISTRATION AND RECORDATION OF AIRCRAFT

Sec.
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44102. Registration requirements.
44103. Registration of aircraft.
44104. Registration of aircraft components and dealers' certificates of registration.
44105. Suspension and revocation of aircraft certificates.
44106. Revocation of aircraft certificates for controlled substance violations.
44107. Recordation of conveyances, leases, and security instruments.
44108. Validity of conveyances, leases, and security instruments.
44109. Reporting transfer of ownership.
44110. Information about aircraft ownership and rights.
44111. Modifications in registration and recordation system for aircraft not providing air transportation.
44112. Limitation of liability.

§44101. Operation of aircraft

(a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b) of this section, a person may operate an aircraft only when the aircraft is registered under section 44103 of this title.

(b) EXCEPTIONS.—A person may operate an aircraft in the United States that is not registered—

(1) when authorized under section 40103(d) or 41703 of this title;

(2) when it is an aircraft of the national defense forces of the United States and is identified in a way satisfactory to the Administrator of the Federal Aviation Administration; and

(3) for a reasonable period of time after a transfer of ownership, under regulations prescribed by the Administrator.

§44102. Registration requirements

(a) ELIGIBILITY.—An aircraft may be registered under section 44103 of this title only when the aircraft is—

(1) not registered under the laws of a foreign country and is owned by—

(A) a citizen of the United States;

(B) an individual citizen of a foreign country lawfully admitted for permanent residence in the United States; or

(C) a corporation not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a State, and the aircraft is based and primarily used in the United States; or

(2) an aircraft of—

(A) the United States Government; or

(B) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of a State, territory, or possession.

(b) DUTY TO DEFINE CERTAIN TERM.—In carrying out subsection (a)(1)(C) of this section, the Secretary of Transportation shall define "based and primarily used in the United States".

§44103. Registration of aircraft

(a) GENERAL.—(1) On application of the owner of an aircraft that meets the requirements of section 44102 of this title, the Administrator of the Federal Aviation Administration shall—

(A) register the aircraft; and

(B) issue a certificate of registration to its owner.

(2) The Administrator may prescribe the extent to which an aircraft owned by the holder of a dealer's certificate of registration issued under section 44104(2) of this title also is registered under this section.

(b) CONTROLLED SUBSTANCE VIOLATIONS.—(1) The Administrator may not issue an owner's certificate of registration under subsection (a)(1) of this section to a person whose certificate is revoked under section 44106 of this title during the 5-year period beginning on the date of the revocation, except—

(A) as provided in section 44106(e)(2) of this title; or

(B) that the Administrator may issue the certificate to the person after the one-year period beginning on the date of the revocation if the Administrator decides that the aircraft otherwise meets the requirements of section 44102 of this title and that denial of a certificate for the 5-year period—

(i) would be excessive considering the nature of the offense or the act committed and the burden the denial places on the person; or

(ii) would not be in the public interest.

(2) A decision of the Administrator under paragraph (1)(B)(i) or (ii) of this subsection is within the discretion of the Administrator. That decision or failure to make a decision is not subject to administrative or judicial review.

(c) CERTIFICATES AS EVIDENCE.—A certificate of registration issued under this section is—

(1) conclusive evidence of the nationality of an aircraft for international purposes, but not conclusive evidence in a proceeding under the laws of the United States; and

(2) not evidence of ownership of an aircraft in a proceeding in which ownership is or may be in issue.

(d) CERTIFICATES AVAILABLE FOR INSPECTION.—An operator of an aircraft shall make available for inspection a certificate of registration for the aircraft when requested by a United States Government, State, or local law enforcement officer.

§44104. Registration of aircraft components and dealers' certificates of registration

The Administrator of the Federal Aviation Administration may prescribe regulations—

(1) in the interest of safety for registering and identifying an aircraft engine, propeller, or appliance; and

(2) in the public interest for issuing, suspending, and revoking a dealer's certificate of registration under this chapter and for its use by a person manufacturing, distributing, or selling aircraft.

§44105. Suspension and revocation of aircraft certificates

The Administrator of the Federal Aviation Administration may suspend or revoke a certificate of registration issued under section 44103 of this title when the aircraft no longer meets the requirements of section 44102 of this title.

§44106. Revocation of aircraft certificates for controlled substance violations

(a) DEFINITION.—In this section, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATIONS.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking the certificate of registration for an aircraft issued to an owner under section 44103 of this title and any other certificate of registration that the owner of the aircraft holds under section 44103, if the Administrator finds that—

(A) the aircraft was used to carry out, or facilitate, an activity that is punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance); and

(B) the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in clause (A) of this paragraph.

(2) An aircraft owner that is not an individual is deemed to have permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A) of this subsection only if a majority of the individuals who control the owner of the aircraft or who are involved in forming the major policy of the owner permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A).

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator shall—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator bases the proposed action; and

(2) provide the holder of the certificate an opportunity to answer the charges and state why the certificate should not be revoked.

(d) APPEALS.—(1) A person whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and a hearing on the record. In conducting the hearing, the Board is not bound by the findings of fact of the Administrator.

(2) When a person files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall dispose of the appeal not later than 60 days after notification by the Administrator under this paragraph.

(3) A person substantially affected by an order of the Board under this subsection may seek judicial review of the order under section 46110 of this title. The Administrator shall be made a party to that judicial proceeding.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a revocation of, a certificate of registration under this section on the basis of an activity described in subsection (b)(1)(A) of this section if the holder of the certificate is acquitted of all charges related to a controlled substance in an

indictment or information arising from the activity.

(2) If the Administrator has revoked a certificate of registration of a person under this section because of an activity described in subsection (b)(1)(A) of this section, the Administrator shall reissue a certificate to the person if the person—

(A) subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; and

(B) otherwise meets the requirements of section 44102 of this title.

§44107. Recordation of conveyances, leases, and security instruments

(a) ESTABLISHMENT OF SYSTEM.—The Administrator of the Federal Aviation Administration shall establish a system for recording—

(1) conveyances that affect an interest in civil aircraft of the United States;

(2) leases and instruments executed for security purposes, including conditional sales contracts, assignments, and amendments, that affect an interest in—

(A) a specifically identified aircraft engine having at least 750 rated takeoff horsepower or its equivalent;

(B) a specifically identified aircraft propeller capable of absorbing at least 750 rated takeoff shaft horsepower;

(C) an aircraft engine, propeller, or appliance maintained for installation or use in an aircraft, aircraft engine, or propeller, by or for an air carrier holding a certificate issued under section 44705 of this title; and

(D) spare parts maintained by or for an air carrier holding a certificate issued under section 44705 of this title; and

(3) releases, cancellations, discharges, and satisfactions related to a conveyance, lease, or instrument recorded under clause (1) or (2) of this subsection.

(b) GENERAL DESCRIPTION REQUIRED.—A lease or instrument recorded under subsection (a)(2)(C) or (D) of this section only has to describe generally the engine, propeller, appliance, or spare part by type and designate its location.

(c) ACKNOWLEDGMENT.—Except as the Administrator otherwise may provide, a conveyance, lease, or instrument may be recorded under subsection (a) of this section only after it has been acknowledged before—

(1) a notary public; or

(2) another officer authorized under the laws of the United States, a State, the District of Columbia, or a territory or possession of the United States to acknowledge deeds.

(d) RECORDS AND INDEXES.—The Administrator shall—

(1) keep a record of the time and date that each conveyance, lease, and instrument is filed and recorded with the Administrator; and

(2) record each conveyance, lease, and instrument filed with the Administrator, in the order of their receipt, and index them by—

(A) the identifying description of the aircraft, aircraft engine, or propeller, or location specified in a lease or instrument recorded under subsection (a)(2)(C) or (D) of this section; and

(B) the names of the parties to each conveyance, lease, and instrument.

§44108. Validity of conveyances, leases, and security instruments

(a) VALIDITY BEFORE FILING.—Until a conveyance, lease, or instrument executed for security purposes that may be recorded under section 44107(a)(1) or (2) of this title is filed for recording, the conveyance, lease, or instrument is valid only against—

(1) the person making the conveyance, lease, or instrument;

(2) that person's heirs and devisees; and

(3) a person having actual notice of the conveyance, lease, or instrument.

(b) PERIOD OF VALIDITY.—When a conveyance, lease, or instrument is recorded under section 44107 of this title, the conveyance, lease, or instrument is valid from the date of filing against all persons, without other recordation, except that—

(1) a lease or instrument recorded under section 44107(a)(2) (A) or (B) of this title is valid for a specifically identified engine or propeller without regard to a lease or instrument previously or subsequently recorded under section 44107(a)(2) (C) or (D); and

(2) a lease or instrument recorded under section 44107(a)(2) (C) or (D) of this title is valid only for items at the location designated in the lease or instrument.

(c) APPLICABLE LAWS.—(1) The validity of a conveyance, lease, or instrument that may be recorded under section 44107 of this title is subject to the laws of the State, the District of Columbia, or the territory or possession of the United States at which the conveyance, lease, or instrument is delivered, regardless of the place at which the subject of the conveyance, lease, or instrument is located or delivered. If the conveyance, lease, or instrument specifies the place at which delivery is intended, it is presumed that the conveyance, lease, or instrument was delivered at the specified place.

(2) This subsection does not take precedence over the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830).

(d) NONAPPLICATION.—This section does not apply to—

(1) a conveyance described in section 44107(a)(1) of this title that was made before August 22, 1938; or

(2) a lease or instrument described in section 44107(a)(2) of this title that was made before June 20, 1948.

§44109. Reporting transfer of ownership

(a) FILING NOTICES.—A person having an ownership interest in an aircraft for which a certificate of registration was issued under section 44103 of this title shall file a notice with the Secretary of the Treasury that the Secretary requires by regulation, not later than 15 days after a sale, conditional sale, transfer, or conveyance of the interest.

(b) EXEMPTIONS.—The Secretary—

(1) shall prescribe regulations that establish guidelines for exempting a person or class from subsection (a) of this section; and

(2) may exempt a person or class under the regulations.

§44110. Information about aircraft ownership and rights

The Administrator of the Federal Aviation Administration may provide by regulation for—

(1) endorsing information on each certificate of registration issued under section 44103 of this title and each certificate issued under section 44704 of this title about ownership of the aircraft for which each certificate is issued; and

(2) recording transactions affecting an interest in, and for other records, proceedings, and details necessary to decide the rights of a party related to, a civil aircraft of the United States, aircraft engine, propeller, appliance, or spare part.

§44111. Modifications in registration and recordation system for aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) AUTHORITY TO MAKE MODIFICATIONS.—The Administrator of the Federal Aviation Administration shall make modifications in the system for registering and recording aircraft necessary to make the system more effective in serving the needs of—

(1) buyers and sellers of aircraft;

(2) officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)); and

(3) other users of the system.

(c) NATURE OF MODIFICATIONS.—Modifications made under subsection (b) of this section—

(1) may include a system of titling aircraft or registering all aircraft, even aircraft not operated;

(2) shall ensure positive, verifiable, and timely identification of the true owner; and

(3) shall address at least each of the following deficiencies in and abuses of the existing system:

(A) the registration of aircraft to fictitious persons.

(B) the use of false or nonexistent addresses by persons registering aircraft.

(C) the use by a person registering an aircraft of a post office box or "mail drop" as a return address to evade identification of the person's address.

(D) the registration of aircraft to entities established to facilitate unlawful activities.

(E) the submission of names of individuals on applications for registration of aircraft that are not identifiable.

(F) the ability to make frequent legal changes in the registration markings assigned to aircraft.

(G) the use of false registration markings on aircraft.

(H) the illegal use of "reserved" registration markings on aircraft.

(I) the large number of aircraft classified as being in "self-reported status".

(J) the lack of a system to ensure timely and adequate notice of the transfer of ownership of aircraft.

(K) the practice of allowing temporary operation and navigation of aircraft without the issuance of a certificate of registration.

(d) REGULATIONS.—(1) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out this section and provide a written explanation of how the regulations address each of the deficiencies and abuses described in subsection (c) of this section. In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(2) Regulations prescribed under this subsection shall require that—

(A) each individual listed in an application for registration of an aircraft provide with the application the individual's driver's license number; and

(B) each person (not an individual) listed in an application for registration of an aircraft provide with the application the person's taxpayer identifying number.

§44112. Limitation of liability

(a) DEFINITIONS.—In this section—

(1) "lessor" means a person leasing for at least 30 days a civil aircraft, aircraft engine, or propeller.

(2) "owner" means a person that owns a civil aircraft, aircraft engine, or propeller.

(3) "secured party" means a person having a security interest in, or security title to, a civil aircraft, aircraft engine, or propeller under a conditional sales contract, equipment trust contract, chattel or corporate mortgage, or similar instrument.

(b) LIABILITY.—A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the

lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of—

(1) the aircraft, engine, or propeller; or

(2) the flight of, or an object falling from, the aircraft, engine, or propeller.

CHAPTER 443—INSURANCE

Sec.

44301. Definitions.
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44305. Insuring United States Government property.
44306. Premiums and limitations on coverage and claims.
44307. Revolving fund.
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§44301. Definitions

In this chapter—

(1) "American aircraft" means—

(A) a civil aircraft of the United States; and

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or

(ii) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of the State, territory, or possession.

(2) "insurance carrier" means a person authorized to do aviation insurance business in a State, including a mutual or stock insurance company and a reciprocal insurance association.

§44302. General authority

(a) INSURANCE AND REINSURANCE.—(1) Subject to subsection (b) of this section, the Secretary of Transportation may provide insurance and reinsurance against loss or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft—

(A) in foreign air commerce; or

(B) between at least 2 places, all of which are outside the United States.

(2) An aircraft may be insured or reinsured for not more than its reasonable value as determined by the Secretary. Insurance or reinsurance may be provided only when the Secretary decides that the insurance cannot be obtained on reasonable terms from an insurance carrier.

(b) PRESIDENTIAL APPROVAL.—The Secretary may provide insurance or reinsurance under subsection (a) of this section only with the approval of the President. The President may approve the insurance or reinsurance only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(c) CONSULTATION.—The President may require the Secretary to consult with interested departments, agencies, and instrumentalities of the Government before providing insurance or reinsurance under this chapter.

(d) ADDITIONAL INSURANCE.—With the approval of the Secretary, a person having an insurable interest in an aircraft may insure with other underwriters in an amount that is more than the amount insured with the Secretary. However, the Secretary may not benefit from the additional insurance. This subsection does not prevent the Secretary from making contracts of coinsurance.

§44303. Coverage

The Secretary of Transportation may provide insurance and reinsurance authorized under section 44302 of this title for the following:

(1) an American aircraft or foreign-flag aircraft engaged in aircraft operations the President decides are necessary to carry out the foreign policy of the United States Government.

(2) property transported or to be transported on aircraft referred to in clause (1) of this section, including—

(A) shipments by express or registered mail;

(B) property owned by citizens or residents of the United States;

(C) property—

(i) imported to, or exported from, the United States; and

(ii) bought or sold by a citizen or resident of the United States under a contract putting the risk of loss or obligation to provide insurance against risk of loss on the citizen or resident; and

(D) property transported between—

(i) a place in a State or the District of Columbia and a place in a territory or possession of the United States;

(ii) a place in a territory or possession of the United States and a place in another territory or possession of the United States; or

(iii) 2 places in the same territory or possession of the United States.

(3) the personal effects and baggage of officers and members of the crew of an aircraft referred to in clause (1) of this section and of other individuals employed or transported on that aircraft.

(4) officers and members of the crew of an aircraft referred to in clause (1) of this section and other individuals employed or transported on that aircraft against loss of life, injury, or detention.

(5) statutory or contractual obligations or other liabilities, customarily covered by insurance, of an aircraft referred to in clause (1) of this section or of the owner or operator of that aircraft.

§44304. Reinsurance

(a) GENERAL AUTHORITY.—To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may reinsure any part of the insurance provided by an insurance carrier. The Secretary may reinsure with, transfer to, or transfer back to, the carrier any insurance or reinsurance provided by the Secretary under this chapter.

(b) PREMIUM LEVELS.—The Secretary may provide reinsurance at premiums not less than, or obtain reinsurance at premiums not higher than, the premiums the Secretary establishes on similar risks or the premiums the insurance carrier charges for the insurance to be reinsured by the Secretary, whichever is most advantageous to the Secretary. However, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practice, except for payments by the carrier for the stimulation or solicitation of insurance business.

§44305. Insuring United States Government property

With the approval of the President, a department, agency, or instrumentality of the United States Government may obtain insurance under this chapter, except for insurance on valuables subject to sections 1 and 2 of the Government Losses in Shipment Act (40 U.S.C. 721, 722). With that approval, the Secretary of Transportation may provide the insurance without premium at the request of the Secretary of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or the designated head agrees to indemnify the Secretary of Transportation against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the Secretary of Transportation under this section.

§44306. Premiums and limitations on coverage and claims

(a) PREMIUMS BASED ON RISK.—To the extent practical, the premium charged for insurance or reinsurance under this chapter shall be based on consideration of the risk involved.

(b) TIME LIMITS.—The Secretary of Transportation may provide insurance and reinsurance under this chapter for a period of not more than 60 days. The period may be extended for additional periods of not more than 60 days each only if the President decides, before each additional period, that the continued operation of the aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(c) MAXIMUM INSURED AMOUNT.—The insurance policy on an aircraft insured or reinsured under this chapter shall specify a stated amount that is not more than the value of the aircraft, as determined by the Secretary. A claim under the policy may not be paid for more than that stated amount.

§44307. Revolving fund

(a) EXISTENCE, DISBURSEMENTS, APPROPRIATIONS, AND DEPOSITS.—(1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.

(b) INVESTMENT.—On request of the Secretary of Transportation, the Secretary of the Treasury may invest any part of the amounts in the revolving fund in interest-bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, the securities shall be deposited in the fund.

(c) EXCESS AMOUNTS.—The balance in the revolving fund in excess of an amount the Secretary of Transportation determines is necessary for the requirements of the fund and for reasonable reserves to maintain the solvency of the fund shall be deposited at least annually in the Treasury as miscellaneous receipts.

(d) EXPENSES.—The Secretary of Transportation shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the Secretary of Transportation uses appropriated amounts in carrying out this chapter. The deposited amount shall equal an amount determined by multiplying the average monthly balance of appropriated amounts retained in the revolving fund by a percentage that is at least the current average rate payable on marketable obligations of the Government. The Secretary of the Treasury shall determine annually in advance the percentage applied.

§44308. Administrative

(a) COMMERCIAL PRACTICES.—The Secretary of Transportation may carry out this chapter consistent with commercial practices of the aviation insurance business.

(b) ISSUANCE OF POLICIES AND DISPOSITION OF CLAIMS.—(1) The Secretary may issue insurance policies to carry out this chapter. The Secretary may prescribe the forms, amounts insured under the policies, and premiums charged. The Secretary may change an amount of insurance or a premium for an existing policy only with the consent of the insured.

(2) For a claim under insurance authorized by this chapter, the Secretary may—

(A) settle and pay the claim made for or against the United States Government; and

(B) pay the amount of a judgment entered against the Government.

(c) UNDERWRITING AGENT.—(1) The Secretary may, and when practical shall, employ an in-

surance carrier or group of insurance carriers to act as an underwriting agent. The Secretary may use the agent to adjust claims under this chapter, but claims may be paid only when approved by the Secretary.

(2) The Secretary may pay reasonable compensation to an underwriting agent for servicing insurance the agent writes for the Secretary. Compensation may include payment for reasonable expenses incurred by the agent but may not include a payment by the agent for stimulation or solicitation of insurance business.

(3) Except as provided by this subsection, the Secretary may not pay an insurance broker or other person acting in a similar capacity any consideration for arranging insurance when the Secretary directly insures any part of the risk.

(d) BUDGET.—The Secretary shall submit annually a budget program for carrying out this chapter as provided for wholly owned Government corporations under chapter 91 of title 31.

(e) ACCOUNTS.—The Secretary shall maintain a set of accounts. The Comptroller General shall audit those accounts under chapter 35 of title 31. Notwithstanding chapter 35, the Comptroller General shall allow credit for expenditures under this chapter made consistent with commercial practices in the aviation insurance business when shown to be necessary because of the business activities authorized by this chapter.

§44309. Civil actions

(a) DISPUTED LOSSES.—A person may bring a civil action against the United States Government when a loss insured under this chapter is in dispute. A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter. To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28 applies to an action under this subsection.

(b) VENUE AND JOINDER.—(1) A civil action under subsection (a) of this section may be brought in the United States District Court for the District of Columbia or in the district court of the United States for the judicial district in which the plaintiff or the agent of the plaintiff resides if the plaintiff resides in the United States. If the plaintiff does not reside in the United States, the action may be brought in the United States District Court for the District of Columbia or in the district court of the United States for the judicial district in which the Attorney General agrees to accept service.

(2) An interested person may be joined as a party to a civil action brought under subsection (a) of this section initially or on motion of either party to the action.

(c) TIME REQUIREMENTS.—When an insurance claim is made under this chapter, the period during which, under section 2401 of title 28, a civil action must be brought under subsection (a) of this section is suspended until 60 days after the Secretary of Transportation denies the claim. The claim is deemed to be administratively denied if the Secretary does not act on the claim not later than 6 months after filing, unless the Secretary makes a different agreement with the claimant when there is good cause for an agreement.

(d) INTERPLEADER.—(1) If the Secretary admits the Government owes money under an insurance claim under this chapter and there is a dispute about the person that is entitled to payment, the Government may bring a civil action of interpleader against the persons that may be entitled to payment. The action may be brought in the United States District Court for the District of Columbia or in the district court of the United States for the judicial district in which any party resides.

(2) The district court may order a party not residing or found in the judicial district in which the action is brought to appear in a civil action under this subsection. The order shall be served in a reasonable manner decided by the district court. If the court decides an unknown person might assert a claim under the insurance that is the subject of the action, the court may order service on that person by publication in the Federal Register.

(3) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.

§44310. Ending effective date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after September 30, 1992.

CHAPTER 445—AVIATION FACILITIES AND RESEARCH

Sec.

44501. Plans and policy.
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§44501. Plans and policy

(a) LONG RANGE PLANS AND POLICY REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall make long range plans and policy for the orderly development and use of the navigable airspace, and the orderly development and location of air navigation facilities, that will best meet the needs of, and serve the interests of, civil aeronautics and the national defense, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern.

(b) AIRWAY CAPITAL INVESTMENT PLAN.—The Administrator of the Federal Aviation Administration shall review, revise, and publish a national airways system plan, known as the Airway Capital Investment Plan, before the beginning of each fiscal year. The plan shall set forth—

(1) for a 10-year period, the research, engineering, and development programs and the facilities and equipment that the Administrator considers necessary for a system of airways, air traffic services, and navigation aids that will—

(A) meet the forecasted needs of civil aeronautics;

(B) meet the requirements that the Secretary of Defense establishes for the support of the national defense; and

(C) provide the highest degree of safety in air commerce;

(2) for the first and 2d years of the plan, detailed annual estimates of—

(A) the number, type, location, and cost of acquiring, operating, and maintaining required facilities and services;

(B) the cost of research, engineering, and development required to improve safety, system capacity, and efficiency; and

(C) personnel levels required for the activities described in subclauses (A) and (B) of this clause;

(3) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major program for the 3-year period, and additional major research programs, acquisition of systems and facilities, and changes in personnel levels that may be required to meet long range objectives and that may have significant impact on future funding requirements; and

(4) a 10-year investment plan that considers long range objectives that the Administrator considers necessary to—

(A) ensure that safety is given the highest priority in providing for a safe and efficient airway system; and

(B) meet the current and projected growth of aviation and the requirements of interstate commerce, the United States Postal Service, and the national defense.

(c) ANNUAL REPORT.—Not later than April 1 of each year, the Secretary of Transportation shall report to Congress on the operations of the national airways system during the prior fiscal year. The report shall include a review of the operations of the Federal Aviation Administration, including—

(1) a detailed report on programs intended to improve the safety of flight operations and the capacity and efficiency of the national airways system;

(2) significant problems encountered in the programs;

(3) a summary of amounts committed in each major program area; and

(4) a report on amounts appropriated but not expended for the programs.

(d) NATIONAL AVIATION RESEARCH PLAN.—(1) The Administrator of the Federal Aviation Administration shall prepare and publish annually a national aviation research plan and submit the plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The plan shall be submitted not later than the date of submission of the President's budget to Congress.

(2)(A) The plan shall describe, for a 15-year period, the research, engineering, and development that the Administrator of the Federal Aviation Administration considers necessary—

(i) to ensure the continued capacity, safety, and efficiency of aviation in the United States, considering emerging technologies and forecasted needs of civil aeronautics; and

(ii) to provide the highest degree of safety in air travel.

(B) The plan shall cover all research conducted under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title and shall identify complementary and coordinated research efforts that the Administrator of the National Aeronautics and Space Administration conducts with amounts specifically appropriated to the Administration. For projects for which the Administrator of the Federal Aviation Administration anticipates requesting an appropriation, the plan shall include—

(i) for the first 2 years of the plan, detailed annual estimates of the schedule, cost, and work-force levels for each research project, including a description of the scope and content of each major contract, grant, or interagency agreement;

(ii) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major project and any additional major research projects that may be required to meet long-term objectives and that may have significant impact on future appropriations requirements;

(iii) for the 6th and subsequent years of the plan, the long-term objectives the Administrator of the Federal Aviation Administration considers necessary to ensure that aviation safety will be given the highest priority; and

(iv) details of a program to disseminate to the private sector the results of aviation research

conducted by the Administrator of the Federal Aviation Administration, including any new technologies developed.

(3) Subject to section 40119(b) of this title and regulations prescribed under section 40119(b), the Administrator of the Federal Aviation Administration shall submit to the committees named in paragraph (1) of this subsection an annual report on the accomplishments of the research completed during the prior fiscal year. The report shall be submitted with the plan required under paragraph (1) and be organized to allow comparison with the plan in effect for the prior fiscal year.

§44502. Air navigation facilities

(a) GENERAL AUTHORITY.—(1) The Administrator of the Federal Aviation Administration may—

(A) acquire, establish, improve, operate, and maintain air navigation facilities; and

(B) provide facilities and personnel to regulate and protect air traffic.

(2) The cost of site preparation work associated with acquiring, establishing, or improving an air navigation facility under paragraph (1)(A) of this subsection shall be charged to amounts available for that purpose appropriated under section 48101(a) of this title. The Secretary of Transportation may make an agreement with an airport owner or sponsor (as defined in section 47102 of this title) so that the owner or sponsor will provide the work and be paid or reimbursed by the Secretary from the appropriated amounts.

(3) The Secretary of Transportation may authorize a department, agency, or instrumentality of the United States Government to carry out any duty or power under this subsection with the consent of the head of the department, agency, or instrumentality.

(b) CERTIFICATION OF NECESSITY.—Except for Government money expended under this part or for a military purpose, money may be expended to acquire, establish, build, operate, repair, alter, or maintain an air navigation facility only if the Administrator of the Federal Aviation Administration certifies in writing that the facility is reasonably necessary for use in air commerce or for the national defense. An interested person may apply for a certificate for a facility to be acquired, established, built, operated, repaired, altered, or maintained by or for the person.

(c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—(1) To ensure that conformity with plans and policies for, and allocation of, airspace by the Administrator of the Federal Aviation Administration under section 40103(b)(1) of this title, a military airport, military landing area, or missile or rocket site may be acquired, established, or built, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator may advise the appropriate committees of Congress and interested departments, agencies, and instrumentalities of the Government on the effect of the acquisition, establishment, building, or alteration on the use of airspace by aircraft. A disagreement between the Administrator of the Federal Aviation Administration and the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration may be appealed to the President for a final decision.

(2) To ensure conformity, an airport or landing area not involving the expenditure of Government money may be established or built, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator may provide advice on the effects of the establishment, building, or alteration on the use of airspace by aircraft.

(d) PUBLIC USE AND EMERGENCY ASSISTANCE.—(1) The head of a department, agency, or instrumentality of the Government having jurisdiction over an air navigation facility owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for public use of the facility.

(2) The head of a department, agency, or instrumentality of the Government having jurisdiction over an airport or emergency landing field owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for assistance, and the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when necessary, because of an emergency, to allow the aircraft to continue to the nearest airport operated by private enterprise. The head of the department, agency, or instrumentality shall provide for the assistance and sale at the prevailing local fair market value as determined by the head of the department, agency, or instrumentality. An amount that the head decides is equal to the cost of the assistance provided and the fuel, oil, equipment, and supplies sold shall be credited to the appropriation from which the cost was paid. The balance shall be credited to miscellaneous receipts.

(e) CONSENT OF CONGRESS.—Congress consents to a State making an agreement, not in conflict with a law of the United States, with another State to develop or operate an airport facility.

(f) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—An airport may transfer, without consideration, to the Administrator of the Federal Aviation Administration an instrument landing system (and associated approach lighting equipment and runway visual range equipment) if a Government airport aid program, airport development aid program, or airport improvement project grant was used to assist in purchasing the system. The Administrator shall accept the system and operate and maintain it under criteria of the Administrator.

§44503. Reducing nonessential expenditures

The Secretary of Transportation shall attempt to reduce the capital, operating, maintenance, and administrative costs of the national airport and airway system to the maximum extent practicable consistent with the highest degree of aviation safety. At least annually, the Secretary shall consult with and consider the recommendations of users of the system on ways to reduce nonessential expenditures of the United States Government for aviation. The Secretary shall give particular attention to a recommendation that may reduce, with no adverse effect on safety, future personnel requirements and costs to the Government required to be recovered from user charges.

§44504. Improved aircraft, aircraft engines, propellers, and appliances

(a) DEVELOPMENTAL WORK AND SERVICE TESTING.—The Administrator of the Federal Aviation Administration may conduct or supervise developmental work and service testing to improve aircraft, aircraft engines, propellers, and appliances.

(b) RESEARCH.—The Administrator shall conduct or supervise research—

(1) to develop technologies and analyze information to predict the effects of aircraft design, maintenance, testing, wear, and fatigue on the life of aircraft and air safety;

(2) to develop methods of analyzing and improving aircraft maintenance technology and practices, including nondestructive evaluation of aircraft structures;

(3) to assess the fire and smoke resistance of aircraft material;

(4) to develop improved fire and smoke resistant material for aircraft interiors;

(5) to develop and improve fire and smoke containment systems for inflight aircraft fires;

(6) to develop advanced aircraft fuels with low flammability and technologies that will contain aircraft fuels to minimize post-crash fire hazards; and

(7) to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft.

(c) AUTHORITY TO BUY ITEMS OFFERING SPECIAL ADVANTAGES.—In carrying out this section, the Administrator, by negotiation or otherwise, may buy or exchange experimental aircraft, aircraft engines, propellers, and appliances that the Administrator decides may offer special advantages to aeronautics.

§44505. Systems, procedures, facilities, and devices

(a) GENERAL REQUIREMENTS.—(1) The Administrator of the Federal Aviation Administration shall—

(A) develop, alter, test, and evaluate systems, procedures, facilities, and devices, and define their performance characteristics, to meet the needs for safe and efficient navigation and traffic control of civil and military aviation, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern; and

(B) select systems, procedures, facilities, and devices that will best serve those needs and promote maximum coordination of air traffic control and air defense systems.

(2) The Administrator may make contracts to carry out this subsection without regard to section 3324 (a) and (b) of title 31.

(3) When a substantial question exists under paragraph (1) of this subsection about whether a matter is of primary concern to the armed forces, the Administrator shall decide whether the Administrator or the Secretary of the appropriate military department has responsibility. The Administrator shall be given technical information related to each research and development project of the armed forces that potentially applies to, or potentially conflicts with, the common system to ensure that potential application to the common system is considered properly and that potential conflicts with the system are eliminated.

(b) RESEARCH ON HUMAN FACTORS AND SIMULATION MODELS.—The Administrator shall conduct or supervise research—

(1) to develop a better understanding of the relationship between human factors and aviation accidents and between human factors and air safety;

(2) to enhance air traffic controller, mechanic, and flight crew performance;

(3) to develop a human-factor analysis of the hazards associated with new technologies to be used by air traffic controllers, mechanics, and flight crews;

(4) to identify innovative and effective corrective measures for human errors that adversely affect air safety; and

(5) to develop dynamic simulation models of the air traffic control system and airport design and operating procedures that will provide analytical technology—

(A) to predict airport and air traffic control safety and capacity problems;

(B) to evaluate planned research projects; and

(C) to test proposed revisions in airport and air traffic control operations programs.

(c) RESEARCH ON DEVELOPING AND MAINTAINING A SAFE AND EFFICIENT SYSTEM.—The Administrator shall conduct or supervise research on—

(1) airspace and airport planning and design;

(2) airport capacity enhancement techniques;

(3) human performance in the air transportation environment;

(4) aviation safety and security;

(5) the supply of trained air transportation personnel, including pilots and mechanics; and

(6) other aviation issues related to developing and maintaining a safe and efficient air transportation system.

§44506. Air traffic controller performance research

(a) RESEARCH ON EFFECT OF AUTOMATION ON PERFORMANCE.—To develop the means necessary to establish appropriate selection criteria and training methodologies for the next generation of air traffic controllers, the Administrator of the Federal Aviation Administration shall conduct research to study the effect of automation on the performance of the next generation of air traffic controllers and the air traffic control system. The research shall include investigating—

(1) methods for improving and accelerating future air traffic controller training through the application of advanced training techniques, including the use of simulation technology;

(2) the role of automation in the air traffic control system and its physical and psychological effects on air traffic controllers;

(3) the attributes and aptitudes needed to function well in a highly automated air traffic control system and the development of appropriate testing methods for identifying individuals with those attributes and aptitudes;

(4) innovative methods for training potential air traffic controllers to enhance the benefits of automation and maximize the effectiveness of the air traffic control system; and

(5) new technologies and procedures for exploiting automated communication systems, including Mode S Transponders, to improve information transfers between air traffic controllers and aircraft pilots.

(b) RESEARCH ON HUMAN FACTOR ASPECTS OF AUTOMATION.—The Administrators of the Federal Aviation Administration and National Aeronautics and Space Administration may make an agreement for the use of the National Aeronautics and Space Administration's unique human factor facilities and expertise in conducting research activities to study the human factor aspects of the highly automated environment for the next generation of air traffic controllers. The research activities shall include investigating—

(1) human perceptual capabilities and the effect of computer-aided decision making on the workload and performance of air traffic controllers;

(2) information management techniques for advanced air traffic control display systems; and

(3) air traffic controller workload and performance measures, including the development of predictive models.

§44507. Civil aeromedical research

The Civil Aeromedical Institute established by section 106(j) of this title may—

(1) conduct civil aeromedical research, including research related to—

(A) the protection and survival of aircraft occupants;

(B) medical accident investigation and airman medical certification;

(C) toxicology and the effects of drugs on human performance;

(D) the impact of disease and disability on human performance;

(E) vision and its relationship to human performance and equipment design;

(F) human factors of flight crews, air traffic controllers, mechanics, inspectors, airway facility technicians, and other individuals involved in operating and maintaining aircraft and air traffic control equipment; and

(G) agency work force optimization, including training, equipment design, reduction of errors, and identification of candidate tasks for automation;

(2) make comments to the Administrator of the Federal Aviation Administration on human factors aspects of proposed air safety regulations;

(3) make comments to the Administrator on human factors aspects of proposed training programs, equipment requirements, standards, and procedures for aviation personnel;

(4) advise, assist, and represent the Federal Aviation Administration in the human factors aspects of joint projects between the Administration and the National Aeronautics and Space Administration, other departments, agencies, and instrumentalities of the United States Government, industry, and governments of foreign countries; and

(5) provide medical consultation services to the Administrator about medical certification of airmen.

§44508. Research advisory committee

(a) ESTABLISHMENT AND DUTIES.—(1) There is a research advisory committee in the Federal Aviation Administration. The committee shall—

(A) provide advice and recommendations to the Administrator of the Federal Aviation Administration about needs, objectives, plans, approaches, content, and accomplishments of the aviation research program carried out under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title;

(B) assist in ensuring that the research is coordinated with similar research being conducted outside the Administration; and

(C) review the operations of the regional centers of air transportation excellence established under section 44513 of this title.

(2) The Administrator may establish subordinate committees to provide advice on specific areas of research conducted under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title.

(b) MEMBERS, CHAIRMAN, PAY, AND EXPENSES.—(1) The committee is composed of not more than 30 members appointed by the Administrator from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. In appointing members of the committee, the Administrator shall ensure that the regional centers of air transportation excellence, universities, corporations, associations, consumers, and other departments, agencies, and instrumentalities of the United States Government are represented.

(2) The Administrator shall designate the chairman of the committee.

(3) A member of the committee serves without pay. However, the Administrator may allow a member, when attending meetings of the committee or a subordinate committee, travel or transportation expenses as authorized under section 5703 of title 5.

(c) SUPPORT STAFF, INFORMATION, AND SERVICES.—The Administrator shall provide support staff for the committee. On request of the committee, the Administrator shall provide information, administrative services, and supplies that the Administrator considers necessary for the committee to carry out its duties and powers.

(d) NONAPPLICATION.—Section 14 of the Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the committee.

(e) USE AND LIMITATION OF AMOUNTS.—(1) Not more than .1 percent of the amounts made available to conduct research under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title may be used by the Administrator to carry out this section.

(2) A limitation on amounts available for obligation by or for the committee does not apply to amounts made available to carry out this section.

§44509. Demonstration projects

The Secretary of Transportation may carry out under this chapter demonstration projects that the Secretary considers necessary for research and development activities under this chapter.

§44510. Airway science curriculum grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make competitive grant agreements with institutions of higher education having airway science curricula for the United States Government's share of the allowable direct costs of the following categories of items to the extent that the items are in support of airway science curricula:

(1) the construction, purchase, or lease with an option to purchase, of buildings and associated facilities.

(2) instructional material and equipment.

(b) COST GUIDELINES.—The Administrator shall establish guidelines to determine the direct costs allowable under a grant to be made under this section. The Government's share of the allowable cost of a project assisted by a grant under this section may not be more than 50 percent.

§44511. Aviation research grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations to conduct aviation research in areas the Administrator considers necessary for the long-term growth of civil aviation.

(b) APPLICATIONS.—An institution of higher education or nonprofit research organization interested in receiving a grant under this section may submit an application to the Administrator. The application must be in the form and contain the information the Administrator requires.

(c) SOLICITATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, review, and evaluation process that ensures—

(1) providing grants under this section for proposals having adequate merit and relevancy to the mission of the Administration;

(2) a fair geographical distribution of grants under this section; and

(3) the inclusion of historically black institutions of higher education and other minority nonprofit research organizations for grant consideration under this section.

(d) RECORDS.—Each person receiving a grant under this section shall maintain records that the Administrator requires as being necessary to facilitate an effective audit and evaluation of the use of money provided under the grant.

(e) ANNUAL REPORT.—The Administrator shall submit an annual report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on carrying out this section.

§44512. Catastrophic failure prevention research grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations—

(1) to conduct aviation research related to the development of technologies and methods to assess the risk of, and prevent, defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft; and

(2) to establish centers of excellence for continuing the research.

(b) SOLICITATION, APPLICATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, application, review, and evaluation process that ensures providing grants under this section for proposals having adequate merit and relevancy to the research described in subsection (a) of this section.

§44513. Regional centers of air transportation excellence

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education to establish and operate regional centers of air transportation excellence. The locations shall be distributed in a geographically fair way.

(b) RESPONSIBILITIES.—(1) The responsibilities of each center established under this section shall include—

(A) conducting research on—

(i) airspace and airport planning and design;

(ii) airport capacity enhancement techniques;

(iii) human performance in the air transportation environment;

(iv) aviation safety and security;

(v) the supply of trained air transportation personnel, including pilots and mechanics; and

(vi) other aviation issues related to developing and maintaining a safe and efficient air transportation system; and

(B) interpreting, publishing, and disseminating the results of the research.

(2) In conducting research described in paragraph (1)(A) of this subsection, each center may make contracts with nonprofit research organizations and other appropriate persons.

(c) APPLICATIONS.—An institution of higher education interested in receiving a grant under this section may submit an application to the Administrator. The application must be in the form and contain the information that the Administrator requires by regulation.

(d) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this section on the basis of the following criteria:

(1) the extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

(2) the demonstrated research and extension resources available to the applicant to carry out this section.

(3) the ability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

(4) the extent to which the applicant has an established air transportation program.

(5) the demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

(6) the projects the applicant proposes to carry out under the grant.

(e) EXPENDITURE AGREEMENTS.—A grant may be made under this section in a fiscal year only if the recipient makes an agreement with the Administrator that the Administrator requires to ensure that the recipient will maintain its total expenditures from all other sources for establishing and operating the center and related research activities at a level at least equal to the average level of those expenditures in the 2 fiscal years of the recipient occurring immediately before November 5, 1990.

(f) GOVERNMENT'S SHARE OF COSTS.—The United States Government's share of a grant under this section is 50 percent of the costs of establishing and operating the center and related research activities that the grant recipient carries out.

(g) ALLOCATING AMOUNTS.—The Administrator shall allocate amounts made available to carry out this section in a geographically fair way.

§44514. Flight service stations

(a) HOURS OF OPERATION.—(1) The Secretary of Transportation may close, or reduce the hours of operation of, a flight service station in an area only if the service provided in the area after the closing or during the hours the station is not in operation is provided by an automated flight service station with at least model 1 equipment.

(2) The Secretary shall reopen a flight service station closed after March 24, 1987, but before July 15, 1987, as soon as practicable if the service in the area in which the station is located has not been provided since the closing by an automatic flight service station with at least model 1 equipment. The hours of operation for the reopened station shall be the same as were the hours of operation for the station on March 25, 1987. After reopening the station, the Secretary may close, or reduce the hours of operation of, the station only as provided in paragraph (1) of this subsection.

(b) MANNED AUXILIARY STATIONS.—(1) The Secretary and the Administrator of the Federal Aviation Administration shall establish a system of manned auxiliary flight service stations. The manned auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. A manned auxiliary flight service station shall be located in an area of unique weather or operational conditions that are critical to the safety of flight.

(2) Not later than May 4, 1991, the Secretary and the Administrator shall submit to Congress a report on the plan and schedule for carrying out this subsection.

CHAPTER 447—SAFETY REGULATION

Sec.
44701. General requirements.
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44703. Airman certificates.
44704. Type certificates, production certificates, and airworthiness certificates.
44705. Air carrier operating certificates.
44706. Airport operating certificates.
44707. Examining and rating air agencies.
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44709. Amendments, modifications, suspensions, and revocations of certificates.
44710. Revocations of airman certificates for controlled substance violations.
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44720. Aeronautical maps and charts.
44721. Annual report.

§44701. General requirements

(a) PROMOTING SAFETY.—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

(b) PRESCRIBING MINIMUM SAFETY STANDARDS.—The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) REDUCING AND ELIMINATING ACCIDENTS.—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STANDARDS.—When prescribing a regulation or standard under subsection (a) or (b) of this section or section 44702–44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) EXEMPTIONS.—The Administrator may grant an exemption from a requirement of a regulation prescribed under subsection (a) or (b) of this section or section 44702–44716 of this title if the Administrator finds the exemption is in the public interest.

§44702. Issuance of certificates

(a) GENERAL AUTHORITY AND APPLICATIONS.—The Administrator of the Federal Aviation Administration may issue airman certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates under this chapter. An application for a certificate must—

(1) be under oath when the Administrator requires; and

(2) be in the form, contain information, and be filed and served in the way the Administrator prescribes.

(b) CONSIDERATIONS.—When issuing a certificate under this chapter, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a certificate according to the differences between air transportation and other air commerce.

(c) PRIOR CERTIFICATION.—The Administrator may authorize an aircraft, aircraft engine, propeller, or appliance for which a certificate has been issued authorizing the use of the aircraft, aircraft engine, propeller, or appliance in air transportation to be used in air commerce without another certificate being issued.

(d) DELEGATION.—(1) Subject to regulations, supervision, and review the Administrator may prescribe, the Administrator may delegate to a qualified private person, or to an employee under the supervision of that person, a matter related to—

(A) the examination, testing, and inspection necessary to issue a certificate under this chapter; and

(B) issuing the certificate.

(2) The Administrator may rescind a delegation under this subsection at any time for any reason the Administrator considers appropriate.

(3) A person affected by an action of a private person under this subsection may apply for reconsideration of the action by the Administrator. On the Administrator's own initiative, the Administrator may reconsider the action of a private person at any time. If the Administrator decides on reconsideration that the action is unreasonable or unwarranted, the Administrator shall change, modify, or reverse the action. If the Administrator decides the action is warranted, the Administrator shall affirm the action.

§44703. Airman certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airman certificate to an individual when the Administrator finds, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position to be authorized by the certificate.

(b) CONTENTS.—(1) An airman certificate shall—

(A) be numbered and recorded by the Administrator of the Federal Aviation Administration;

(B) contain the name, address, and description of the individual to whom the certificate is issued;

(C) contain terms the Administrator decides are necessary to ensure safety in air commerce, including terms on the duration of the certificate, periodic or special examinations, and tests of physical fitness;

(D) specify the capacity in which the holder of the certificate may serve as an airman with respect to an aircraft; and

(E) designate the class the certificate covers.

(2) A certificate issued to a pilot serving in scheduled air transportation shall have the designation "airline transport pilot" of the appropriate class.

(c) APPEALS.—(1) An individual whose application for the issuance or renewal of an airman certificate has been denied may appeal the denial to the National Transportation Safety Board, except if the individual holds a certificate that—

(A) is suspended at the time of denial; or

(B) was revoked within one year from the date of the denial.

(2) The Board shall conduct a hearing on the appeal at a place convenient to the place of residence or employment of the applicant. The Board is not bound by findings of fact of the Administrator of the Federal Aviation Administration. At the end of the hearing, the Board shall decide whether the individual meets the applicable regulations and standards. The Administrator is bound by that decision.

(d) RESTRICTIONS AND PROHIBITIONS.—The Administrator of the Federal Aviation Administration may—

(1) restrict or prohibit issuing an airman certificate to an alien; or

(2) make issuing the certificate to an alien dependent on a reciprocal agreement with the government of a foreign country.

(e) CONTROLLED SUBSTANCE VIOLATIONS.—The Administrator of the Federal Aviation Administration may not issue an airman certificate to an individual whose certificate is revoked under section 44710 of this title except—

(1) when the Administrator decides that issuing the certificate will facilitate law enforcement efforts; and

(2) as provided in section 44710(e)(2) of this title.

(f) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for issuing airman certificates necessary to make the system more effective in serving the needs of pilots and officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall ensure positive and verifiable identification of each individual applying for or holding a certificate and shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the use of fictitious names and addresses by applicants for those certificates.

(B) the use of stolen or fraudulent identification in applying for those certificates.

(C) the use by an applicant of a post office box or "mail drop" as a return address to evade identification of the applicant's address.

(D) the use of counterfeit and stolen airman certificates by pilots.

(E) the absence of information about physical characteristics of holders of those certificates.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

§44704. Type certificates, production certificates, and airworthiness certificates

(a) TYPE CERTIFICATES.—(1) The Administrator of the Federal Aviation Administration shall issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection when the Administrator finds that the aircraft, aircraft engine, propeller, or appliance is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a) of this title. On receiving an application for a type certificate, the Administrator shall investigate the application and may conduct a hearing. The Administrator shall make, or require the applicant to make, tests the Administrator considers necessary in the interest of safety.

(2) The Administrator may—

(A) specify in regulations those appliances that reasonably require a type certificate in the interest of safety;

(B) include in a type certificate terms required in the interest of safety; and

(C) record on the certificate a numerical specification of the essential factors related to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

(b) PRODUCTION CERTIFICATES.—The Administrator shall issue a production certificate authorizing the production of a duplicate of an aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing of, a duplicate to ensure that it conforms to the requirements of the certificate. The Administrator may include in a production certificate terms required in the interest of safety.

(c) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an aircraft may apply to the Administrator for an airworthiness certificate for the aircraft. The Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation. The Administrator shall register each airworthiness certificate and may include appropriate information in the certificate. The certificate number or other individual designation the Administrator requires shall be displayed on the aircraft. The Administrator may include in an airworthiness certificate terms required in the interest of safety.

(2) A person applying for the issuance or renewal of an airworthiness certificate for an aircraft for which ownership has not been recorded under section 44107 or 44110 of this title must submit with the application information related to the ownership of the aircraft the Administrator decides is necessary to identify each person having a property interest in the aircraft and the kind and extent of the interest.

§44705. Air carrier operating certificates

The Administrator of the Federal Aviation Administration shall issue an air carrier operating certificate to a person desiring to operate as an air carrier when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part. An air carrier operating certificate shall—

(1) contain terms necessary to ensure safety in air transportation; and

(2) specify the places to and from which, and the airways of the United States over which, a person may operate as an air carrier.

§44706. Airport operating certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport—

(1) that serves an air carrier operating aircraft designed for at least 31 passenger seats;

(2) that the Administrator requires to have a certificate; and

(3) when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part.

(b) TERMS.—An airport operating certificate issued under this section shall contain terms necessary to ensure safety in air transportation. Unless the Administrator decides that it is not in the public interest, the terms shall include conditions related to—

(1) operating and maintaining adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any part of the airport used for landing, takeoff, or surface maneuvering of an aircraft; and

(2) friction treatment for primary and secondary runways that the Secretary of Transportation decides is necessary.

(c) EXEMPTIONS.—The Administrator may exempt from the requirements of this section, related to firefighting and rescue equipment, an operator of an airport described in subsection (a) of this section having less than .25 percent of the total number of passenger boardings each

year at all airports described in subsection (a) when the Administrator decides that the requirements are or would be unreasonably costly, burdensome, or impractical.

§44707. Examining and rating air agencies

The Administrator of the Federal Aviation Administration may examine and rate the following air agencies:

(1) civilian schools giving instruction in flying or repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors.

(2) repair stations and shops that repair, alter, and maintain aircraft, aircraft engines, propellers, and appliances, on the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair and overhaul, and the competency of the individuals doing the work or giving instruction in the work.

(3) other air agencies the Administrator decides are necessary in the public interest.

§44708. Inspecting and rating air navigation facilities

The Administrator of the Federal Aviation Administration may inspect, classify, and rate an air navigation facility available for the use of civil aircraft on the suitability of the facility for that use.

§44709. Amendments, modifications, suspensions, and revocations of certificates

(a) REINSPECTION AND REEXAMINATION.—The Administrator of the Federal Aviation Administration may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under section 44703 of this title.

(b) ACTIONS OF THE ADMINISTRATOR.—The Administrator may issue an order amending, modifying, suspending, or revoking—

(1) any part of a certificate issued under this chapter if—

(A) the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action; or

(B) the holder of the certificate has violated an aircraft noise or sonic boom standard or regulation prescribed under section 44715(a) of this title; and

(2) an airman certificate when the holder of the certificate is convicted of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(a)).

(c) ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO ANSWER.—Before acting under subsection (b) of this section, the Administrator shall advise the holder of the certificate of the charges or other reasons on which the Administrator relies for the proposed action. Except in an emergency, the Administrator shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.

(d) APPEALS.—(1) A person adversely affected by an order of the Administrator under this section may appeal the order to the National Transportation Safety Board. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order when the Board finds—

(A) if the order was issued under subsection (b)(1)(A) of this section, that safety in air commerce or air transportation and the public interest do not require affirmation of the order; or

(B) if the order was issued under subsection (b)(1)(B) of this section—

(i) that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require affirmation of the order; or

(ii) the order, as it is related to a violation of aircraft noise or sonic boom standards and regulations, is not consistent with safety in air commerce or air transportation.

(2) In conducting the hearing, the Board is not bound by findings of fact of the Administrator.

(e) EFFECTIVENESS OF ORDERS PENDING APPEAL.—When a person files an appeal with the Board under subsection (d) of the section, the order of the Administrator is stayed. However, if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately—

(1) the order is effective; and

(2) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(f) JUDICIAL REVIEW.—A person substantially affected by an order of the Board under this section may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to that judicial proceeding.

§44710. Revocations of airman certificates for controlled substance violations

(a) DEFINITION.—In this section, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATION.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense; and

(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(2) The Administrator shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the Administrator finds that—

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(3) The Administrator has no authority under paragraph (1) of this subsection to review whether an airman violated a law of the United States or a State related to a controlled substance.

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator must—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator relies for the proposed revocation; and

(2) provide the holder of the certificate an opportunity to answer the charges and be heard why the certificate should not be revoked.

(d) APPEALS.—(1) An individual whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and an opportunity for a hearing on the record. In conducting the hearing, the Board is not bound by findings of fact of the Administrator.

(2) When an individual files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to that judicial proceeding.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a revocation of, an airman certificate under subsection (b)(2) of this section on the basis of an activity described in subsection (b)(2)(A) if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked an airman certificate under this section because of an activity described in subsection (b)(2)(A) of this section, the Administrator shall reissue a certificate to the individual if—

(A) the individual otherwise satisfies the requirements for a certificate under section 44703 of this title; and

(B)(i) the individual subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; or

(ii) the conviction on which a revocation under subsection (b)(1) of this section is based is reversed.

(f) WAIVERS.—The Administrator may waive the requirement of subsection (b) of this section that an airman certificate of an individual be revoked if—

(1) a law enforcement official of the United States Government or of a State requests a waiver; and

(2) the Administrator decides that the waiver will facilitate law enforcement efforts.

§44711. Prohibitions and exemption

(a) PROHIBITIONS.—A person may not—

(1) operate a civil aircraft in air commerce without an airworthiness certificate in effect or in violation of a term of the certificate;

(2) serve in any capacity as an airman with respect to a civil aircraft, aircraft engine, propeller, or appliance used, or intended for use, in air commerce—

(A) without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued; or

(B) in violation of a term of the certificate or a regulation prescribed or order issued under section 44701(a) or (b) or 44702–44716 of this title;

(3) employ for service related to civil aircraft used in air commerce an airman who does not have an airman certificate authorizing the airman to serve in the capacity for which the airman is employed;

(4) operate as an air carrier without an air carrier operating certificate or in violation of a term of the certificate;

(5) operate aircraft in air commerce in violation of a regulation prescribed or certificate issued under section 44701(a) or (b) or 44702–44716 of this title;

(6) operate a seaplane or other aircraft of United States registry on the high seas in violation of a regulation under section 3 of the International Navigational Rules Act of 1977 (33 U.S.C. 1602);

(7) violate a term of an air agency or production certificate or a regulation prescribed or order issued under section 44701(a) or (b) or 44702–44716 of this title related to the holder of the certificate;

(8) operate an airport without an airport operating certificate required under section 44706 of this title or in violation of a term of the certificate; or

(9) manufacture, deliver, sell, or offer for sale any aviation fuel or additive in violation of a regulation prescribed under section 44714 of this title.

(b) EXEMPTION.—On terms the Administrator of the Federal Aviation Administration prescribes as being in the public interest, the Administrator may exempt a foreign aircraft and airmen serving on the aircraft from subsection (a) of this section. However, an exemption from observing air traffic regulations may not be granted.

§44712. Emergency locator transmitters

(a) INSTALLATION.—An emergency locator transmitter must be installed on a fixed-wing powered civil aircraft for use in air commerce.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to—

(1) turbojet-powered aircraft;

(2) aircraft when used in scheduled flights by scheduled air carriers holding certificates issued by the Secretary of Transportation under subpart II of this part;

(3) aircraft when used in training operations conducted entirely within a 50 mile radius of the airport from which the training operations begin;

(4) aircraft when used in flight operations related to design and testing, the manufacture, preparation, and delivery of the aircraft, or the aerial application of a substance for an agricultural purpose;

(5) aircraft holding certificates from the Administrator of the Federal Aviation Administration for research and development;

(6) aircraft when used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys; and

(7) aircraft equipped to carry only one individual.

(c) REMOVAL.—The Administrator shall prescribe regulations specifying the conditions under which an aircraft subject to subsection (a) of this section may operate when its emergency locator transmitter has been removed for inspection, repair, alteration, or replacement.

§44713. Inspection and maintenance

(a) GENERAL EQUIPMENT REQUIREMENTS.—An air carrier shall make, or cause to be made, any inspection, repair, or maintenance of equipment used in air transportation as required by this part or regulations prescribed or orders issued by the Administrator of the Federal Aviation Administration under this part. A person operating, inspecting, repairing, or maintaining the equipment shall comply with those requirements, regulations, and orders.

(b) DUTIES OF INSPECTORS.—The Administrator of the Federal Aviation Administration shall employ inspectors who shall—

(1) inspect aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture and when in use by an air carrier in air transportation, to enable the Administrator to decide whether the aircraft, aircraft engines, propellers, or appliances are in safe condition and maintained properly; and

(2) advise and cooperate with the air carrier during that inspection and maintenance.

(c) UNSAFE AIRCRAFT, ENGINES, PROPELLERS, AND APPLIANCES.—When an inspector decides that an aircraft, aircraft engine, propeller, or appliance is not in condition for safe operation, the inspector shall notify the air carrier in the form and way prescribed by the Administrator of the Federal Aviation Administration. For 5 days after the carrier is notified, the aircraft, engine, propeller, or appliance may not be used in air transportation or in a way that endangers air transportation unless the Administrator or the inspector decides the aircraft, engine, propeller, or appliance is in condition for safe operation.

(d) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for processing forms for major repairs or alterations to fuel tanks and fuel systems of aircraft not used to provide air transportation that are necessary to make the system more effective in serving the needs of users of the system, including officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the lack of a special identification feature to allow the forms to be distinguished easily from other major repair and alteration forms.

(B) the excessive period of time required to receive the forms at the Airmen and Aircraft Registry of the Administration.

(C) the backlog of forms waiting for processing at the Registry.

(D) the lack of ready access by law enforcement officials to information contained on the forms.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

§44714. Aviation fuel standards

The Administrator of the Federal Aviation Administration shall prescribe—

(1) standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions the Administrator of the Environmental Protection Agency decides under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the public health or welfare; and

(2) regulations providing for carrying out and enforcing those standards.

§44715. Controlling aircraft noise and sonic boom

(a) STANDARDS AND REGULATIONS.—(1) To relieve and protect the public health and welfare from aircraft noise and sonic boom, the Administrator of the Federal Aviation Administration shall prescribe—

(A) standards to measure aircraft noise and sonic boom; and

(B) regulations to control and abate aircraft noise and sonic boom.

(2) The Administrator of the Federal Aviation Administration may prescribe standards and regulations under this subsection only after consulting with the Administrator of the Environmental Protection Agency. The standards and regulations shall be applied when issuing, amending, modifying, suspending, or revoking a certificate authorized under this chapter.

(3) An original type certificate may be issued under section 44704(a) of this title for an aircraft for which substantial noise abatement can be achieved only after the Administrator of the Federal Aviation Administration prescribes standards and regulations under this section that apply to that aircraft.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a standard or regulation under this section, the Administrator of the Federal Aviation Administration shall—

(1) consider relevant information related to aircraft noise and sonic boom;

(2) consult with appropriate departments, agencies, and instrumentalities of the United States Government and State and interstate authorities;

(3) consider whether the standard or regulation is consistent with the highest degree of safety in air transportation or air commerce in the public interest;

(4) consider whether the standard or regulation is economically reasonable, technologically practicable, and appropriate for the applicable aircraft, aircraft engine, appliance, or certificate; and

(5) consider the extent to which the standard or regulation will carry out the purposes of this section.

(c) PROPOSED REGULATIONS OF ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency shall submit to the Administrator of the Federal Aviation Administration proposed regulations to control and abate aircraft noise and sonic boom (including control and abatement through the use of the authority of the Administrator of the Federal Aviation Administration) that the Administrator of the Environmental Protection Agency considers necessary to protect the public health and welfare. The Administrator of the Federal Aviation Administration shall consider those proposed regulations and shall publish them in a notice of proposed regulations not later than 30 days after they are received. Not later than 60 days after publication, the Administrator of the Federal Aviation Administration shall begin a hearing at which interested persons are given an opportunity for oral and written presentations. Not later than 90 days after the hearing is completed and after consulting with the Administrator of the Environmental Protection Agency, the Administrator of the Federal Aviation Administration shall—

(1) prescribe regulations as provided by this section—

(A) substantially the same as the proposed regulations submitted by the Administrator of the Environmental Protection Agency; or

(B) that amend the proposed regulations; or

(2) publish in the Federal Register—

(A) a notice that no regulation is being prescribed in response to the proposed regulations of the Administrator of the Environmental Protection Agency;

(B) a detailed analysis of, and response to, all information the Administrator of the Environmental Protection Agency submitted with the proposed regulations; and

(C) a detailed explanation of why no regulation is being prescribed.

(d) CONSULTATION AND REPORTS.—(1) If the Administrator of the Environmental Protection Agency believes that the action of the Administrator of the Federal Aviation Administration under subsection (c)(1)(B) or (2) of this section does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations in subsection (b) of this section, the Administrator of the Environmental Protection Agency shall consult with the Administrator of the Federal Aviation Administration and may request a report on the advisabil-

ity of prescribing the regulation as originally proposed. The request, including a detailed statement of the information on which the request is based, shall be published in the Federal Register.

(2) The Administrator of the Federal Aviation Administration shall report to the Administrator of the Environmental Protection Agency within the time, if any, specified in the request. However, the time specified must be at least 90 days after the date of the request. The report shall—

(A) be accompanied by a detailed statement of the findings of the Administrator of the Federal Aviation Administration and the reasons for the findings;

(B) identify any statement related to an action under subsection (c) of this section filed under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(C) specify whether and where that statement is available for public inspection; and

(D) be published in the Federal Register unless the request proposes specific action by the Administrator of the Federal Aviation Administration and the report indicates that action will be taken.

(e) SUPPLEMENTAL REPORTS.—The Administrator of the Environmental Protection Agency may request the Administrator of the Federal Aviation Administration to file a supplemental report if the report under subsection (d) of this section indicates that the proposed regulations under subsection (c) of this section, for which a statement under section 102(2)(C) of the Act (42 U.S.C. 4332(2)(C)) is not required, should not be prescribed. The supplemental report shall be published in the Federal Register within the time the Administrator of the Environmental Protection Agency specifies. However, the time specified must be at least 90 days after the date of the request. The supplemental report shall contain a comparison of the environmental effects, including those that cannot be avoided, of the action of the Administrator of the Federal Aviation Administration and the proposed regulations of the Administrator of the Environmental Protection Agency.

(f) EXEMPTIONS.—An exemption from a standard or regulation prescribed under this section may be granted only if, before granting the exemption, the Administrator of the Federal Aviation Administration consults with the Administrator of the Environmental Protection Agency. However, if the Administrator of the Federal Aviation Administration finds that safety in air transportation or air commerce requires an exemption before the Administrator of the Environmental Protection Agency can be consulted, the exemption may be granted. The Administrator of the Federal Aviation Administration shall consult with the Administrator of the Environmental Protection Agency as soon as practicable after the exemption is granted.

§44716. Collision avoidance systems

(a) DEVELOPMENT AND CERTIFICATION.—The Administrator of the Federal Aviation Administration shall—

(1) complete the development of the collision avoidance system known as TCAS–II so that TCAS–II can operate under visual and instrument flight rules and can be upgraded to the performance standards applicable to the collision avoidance system known as TCAS–III;

(2) develop and carry out a schedule for developing and certifying TCAS–II that will result in certification not later than June 30, 1989; and

(3) submit to Congress monthly reports on the progress being made in developing and certifying TCAS–II.

(b) INSTALLATION AND OPERATION.—The Administrator shall require by regulation that, not later than 30 months after the date certification is made under subsection (a)(2) of this section, TCAS–II be installed and operated on each civil aircraft that has a maximum passenger capacity of at least 31 seats and is used to provide air transportation of passengers, including intrastate air transportation of passengers. The Administrator may extend the deadline in this subsection for not more than 2 years if the Administrator finds the extension is necessary to promote—

(1) a safe and orderly transition to the operation of a fleet of civil aircraft described in this subsection equipped with TCAS–II; or

(2) other safety objectives.

(c) OPERATIONAL EVALUATION.—Not later than December 30, 1990, the Administrator shall establish a one-year program to collect and assess safety and operational information from civil aircraft equipped with TCAS–II for the operational evaluation of TCAS–II. The Administrator shall encourage foreign air carriers that operate civil aircraft equipped with TCAS–II to participate in the program.

(d) AMENDING SCHEDULE FOR WINDSHEAR EQUIPMENT.—The Administrator shall consider the feasibility and desirability of amending the schedule for installing airborne low-altitude windshear equipment to make the schedule compatible with the schedule for installing TCAS–II.

(e) DEADLINE FOR DEVELOPMENT AND CERTIFICATION.—(1) The Administrator shall complete developing and certifying TCAS–III as soon as possible.

(2) Necessary amounts may be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out this subsection.

(f) INSTALLING AND USING TRANSPONDERS.—The Administrator shall prescribe regulations requiring that, not later than December 30, 1990, operating transponders with automatic altitude reporting capability be installed and used for aircraft operating in designated terminal airspace where radar service is provided for separation of aircraft. The Administrator may provide for access to that airspace (except terminal control areas and airport radar service areas) by nonequipped aircraft if the Administrator finds the access will not interfere with the normal traffic flow.

§44717. Structures interfering with air commerce

(a) NOTICE.—By regulation or by order when necessary, the Secretary of Transportation shall require a person to give adequate public notice, in the form and way the Secretary prescribes, about building or altering a structure, or proposing to build or alter a structure, when the notice will promote—

(1) safety in air commerce; and

(2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports.

(b) STUDIES.—(1) Under regulations prescribed by the Secretary, if the Secretary decides that building or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace, the Secretary shall conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment. In conducting the study, the Secretary shall consider factors relevant to the efficient and effective use of the navigable airspace, including—

(A) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(B) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(C) the impact on existing public-use airports and aeronautical facilities;

(D) the impact on planned public-use airports and aeronautical facilities; and

(E) the cumulative impact resulting from the proposed building or alteration of a structure when combined with the impact of other existing or proposed structures.

(2) On completing the study, the Secretary shall issue a report disclosing completely the extent of the adverse impact on the safe and efficient use of the navigable airspace that the Secretary finds will result from building or altering the structure.

(c) BROADCAST APPLICATIONS AND TOWER STUDIES.—In carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the Administrator of the Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—

(1) the receipt and consideration of, and action on, the application; and

(2) the completion of any associated aeronautical study.

§44718. Standards for navigational aids

The Secretary of Transportation shall prescribe regulations on standards for installing navigational aids, including airport control towers. For each type of facility, the regulations shall consider at a minimum traffic density (number of aircraft operations without consideration of aircraft size), terrain and other obstacles to navigation, weather characteristics, passengers served, and potential aircraft operating efficiencies.

§44719. Meteorological services

(a) RECOMMENDATIONS.—The Administrator of the Federal Aviation Administration shall make recommendations to the Secretary of Commerce on providing meteorological services necessary for the safe and efficient movement of aircraft in air commerce. In providing the services, the Secretary shall cooperate with the Administrator and give complete consideration to those recommendations.

(b) PROMOTING SAFETY AND EFFICIENCY.—To promote safety and efficiency in air navigation to the highest possible degree, the Secretary shall—

(1) observe, measure, investigate, and study atmospheric phenomena, and maintain meteorological stations and offices, that are necessary or best suited for finding out in advance information about probable weather conditions;

(2) provide reports to the Administrator to persons engaged in civil aeronautics that are designated by the Administrator and to other persons designated by the Secretary in a way and with a frequency that best will result in safety in, and facilitating, air navigation;

(3) cooperate with persons engaged in air commerce in meteorological services, maintain reciprocal arrangements with those persons in carrying out this clause, and collect and distribute weather reports available from aircraft in flight;

(4) maintain and coordinate international exchanges of meteorological information required for the safety and efficiency of air navigation;

(5) in cooperation with other departments, agencies, and instrumentalities of the United States Government, meteorological services of foreign countries, and persons engaged in air commerce, participate in developing an international basic meteorological reporting network, including the establishment, operation, and maintenance of reporting stations on the high seas, in polar regions, and in foreign countries;

(6) coordinate meteorological requirements in the United States to maintain standard observations, to promote efficient use of facilities, and to avoid duplication of services unless the duplication tends to promote the safety and efficiency of air navigation; and

(7) promote and develop meteorological science and foster and support research projects in meteorology through the use of private and governmental research facilities and provide for publishing the results of the projects unless publication would not be in the public interest.

§44720. Aeronautical maps and charts

(a) PUBLICATION.—The Administrator of the Federal Aviation Administration may arrange for the publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in air navigation, using the facilities and assistance of departments, agencies, and instrumentalities of the United States Government as far as practicable.

(b) INDEMNIFICATION.—The Government shall make an agreement to indemnify any person that publishes a map or chart for use in aeronautics from any part of a claim arising out of the depiction by the person on the map or chart of a defective or deficient flight procedure or airway if the flight procedure or airway was—

(1) prescribed by the Administrator;

(2) depicted accurately on the map or chart; and

(3) not obviously defective or deficient.

§44721. Annual report

Not later than January 1 of each year, the Secretary of Transportation shall submit to Congress a comprehensive report on the safety enforcement activities of the Federal Aviation Administration during the fiscal year ending the prior September 30th. The report shall include—

(1) a comparison of end-of-year staffing levels by operations, maintenance, and avionics inspector categories to staffing goals and a statement on how staffing standards were applied to make allocations between air carrier and general aviation operations, maintenance, and avionics inspectors;

(2) schedules showing the range of inspector experience by various inspector work force categories, and the number of inspectors in each of the categories who are considered fully qualified;

(3) schedules showing the number and percentage of inspectors who have received mandatory training by individual course, and the number of inspectors by work force categories, who have received all mandatory training;

(4) a description of the criteria used to set annual work programs, an explanation of how these criteria differ from criteria used in the prior fiscal year and how the annual work programs ensure compliance with appropriate regulations and safe operating practices;

(5) a comparison of actual inspections performed during the fiscal year to the annual work programs by field location and, for any field location completing less than 80 percent of its planned number of inspections, an explanation of why annual work program plans were not met;

(6) a statement of the adequacy of Administration internal management controls available to ensure that field managers comply with Administration policies and procedures, including those on inspector priorities, district office coordination, minimum inspection standards, and inspection followup;

(7) the status of efforts made by the Administration to update inspector guidance documents and regulations to include technological, management, and structural changes taking place in the aviation industry, including a listing of the backlog of all proposed regulatory amendments;

(8) a list of the specific operational measures of effectiveness used to evaluate—

(A) the progress in meeting program objectives;

(B) the quality of program delivery; and

(C) the nature of emerging safety problems;

(9) a schedule showing the number of civil penalty cases closed during the 2 prior fiscal years, including the total initial and final penalties imposed, the total number of dollars collected, the range of dollar amounts collected, the average case processing time, and the range of case processing time;

(10) a schedule showing the number of enforcement actions taken (except civil penalties) during the 2 prior fiscal years, including the total number of violations cited, and the number of cited violation cases closed by certificate suspensions, certificate revocations, warnings, and no action taken; and

(11) schedules showing the safety record of the aviation industry during the fiscal year for air carriers and general aviation, including—

(A) the number of inspections performed when deficiencies were identified compared with inspections when no deficiencies were found;

(B) the frequency of safety deficiencies for each air carrier; and

(C) an analysis based on data of the general status of air carrier and general aviation compliance with aviation regulations.

CHAPTER 449—SECURITY

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SUBCHAPTER I—REQUIREMENTS

§44901. Screening passengers and property

(a) GENERAL REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier.

(b) AMENDING REGULATIONS.—Notwithstanding subsection (a) of this section, the Administrator may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation.

(c) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Administrator—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Administrator decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

§44902. Refusal to transport passengers and property

(a) MANDATORY REFUSAL.—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

(b) PERMISSIVE REFUSAL.—Subject to regulations of the Administrator, an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.

(c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry passengers or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier is deemed to include an agreement that the passenger or property will not be carried if consent to search the passenger or property for a purpose referred to in this section is not given.

§44903. Air transportation security

(a) DEFINITION.—In this section, "law enforcement personnel" means individuals—

(1) authorized to carry and use firearms;

(2) vested with the degree of the police power of arrest the Administrator of the Federal Aviation Administration considers necessary to carry out this section; and

(3) identifiable by appropriate indicia of authority.

(b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Administrator shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy. When prescribing a regulation under this subsection, the Administrator shall—

(1) consult with the Secretary of Transportation, the Attorney General, the heads of other departments, agencies, and instrumentalities of the United States Government, and State and local authorities;

(2) consider whether a proposed regulation is consistent with—

(A) protecting passengers; and

(B) the public interest in promoting air transportation and intrastate air transportation;

(3) to the maximum extent practicable, require a uniform procedure for searching and detaining passengers and property to ensure—

(A) their safety; and

(B) courteous and efficient treatment by an air carrier, an agent or employee of an air carrier, and Government, State, and local law enforcement personnel carrying out this section; and

(4) consider the extent to which a proposed regulation will carry out this section.

(c) SECURITY PROGRAMS.—(1) The Administrator shall prescribe regulations under subsection (b) of this section that require each operator of an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers. The regulations shall authorize the operator to use the services of qualified State, local, and private law enforcement personnel. When the Administrator decides, after being notified by an operator in the form the Administrator prescribes, that not enough qualified State, local, and private law enforcement personnel are available to carry out subsection (b), the Administrator may authorize the operator to use, on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel. When deciding whether additional personnel are needed, the Administrator shall consider the number of passengers boarded at the airport, the extent of anticipated risk of criminal violence or aircraft piracy at the airport or to the air carrier aircraft operations at the airport, and the availability of qualified State or local law enforcement personnel at the airport.

(2)(A) The Administrator may approve a security program of an airport operator, or an amendment in an existing program, that incorporates a security program of an airport tenant (except an air carrier separately complying with part 108 or 129 of title 14, Code of Federal Regulations) having access to a secured area of the airport, if the program or amendment incorporates—

(i) the measures the tenant will use, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, to carry out the security requirements imposed by the Administrator on the airport operator under the access control system requirements of section 107.14 of title 14, Code of Federal Regulations, or under other requirements of part 107 of title 14; and

(ii) the methods the airport operator will use to monitor and audit the tenant's compliance with the security requirements and provides that the tenant will be required to pay monetary penalties to the airport operator if the tenant fails to carry out a security requirement under a contractual provision or requirement imposed by the airport operator.

(B) If the Administrator approves a program or amendment described in subparagraph (A) of this paragraph, the airport operator may not be found to be in violation of a requirement of this subsection or subsection (b) of this section when the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for the violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE ARRESTS.—With the approval of the Attorney General and the Secretary of State, the Secretary of Transportation may authorize an individual who carries out air transportation security duties—

(1) to carry firearms; and

(2) to make arrests without warrant for an offense against the United States committed in the presence of the individual or for a felony under the laws of the United States, if the individual reasonably believes the individual to be arrested has committed or is committing a felony.

(e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Administrator has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under section 46502 of this title from the moment all external doors of the aircraft are closed following boarding until those doors are opened to allow passengers to leave the aircraft. When requested by the Administrator, other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection.

§44904. Domestic air transportation system security

(a) ASSESSING THREATS.—The Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation jointly shall assess current and potential threats to the domestic air transportation system. The assessment shall include consideration of the extent to which there are individuals with the capability and intent to carry out terrorist or related unlawful acts against that system and the ways in which those individuals might carry out those acts. The Administrator and the Director jointly shall decide on and carry out the most effective method for continuous analysis and monitoring of security threats to that system.

(b) ASSESSING SECURITY.—In coordination with the Director, the Administrator shall carry out periodic threat and vulnerability assessments on security at each airport that is part of the domestic air transportation system. Each assessment shall include consideration of—

(1) the adequacy of security procedures related to the handling and transportation of checked baggage and cargo;

(2) space requirements for security personnel and equipment;

(3) separation of screened and unscreened passengers, baggage, and cargo;

(4) separation of the controlled and uncontrolled areas of airport facilities; and

(5) coordination of the activities of security personnel of the Administration, the United States Customs Service, the Immigration and Naturalization Service, and air carriers, and of other law enforcement personnel.

(c) IMPROVING SECURITY.—The Administrator shall take necessary actions to improve domestic air transportation security by correcting any deficiencies in that security discovered in the assessments, analyses, and monitoring carried out under this section.

§44905. Information about threats to civil aviation

(a) PROVIDING INFORMATION.—Under guidelines the Secretary of Transportation prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the Secretary.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew of a particular flight or series of flights, the Administrator of the Federal Aviation Administration shall cancel the flight or series of flights.

(c) GUIDELINES ON PUBLIC NOTICE.—(1) Not later than May 15, 1991, the President shall develop guidelines for ensuring that public notice is provided in appropriate cases about threats to civil aviation. The guidelines shall identify officials responsible for—

(A) deciding, on a case-by-case basis, if public notice of a threat is in the best interest of the United States and the traveling public;

(B) ensuring that public notice is provided in a timely and effective way, including the use of a toll-free telephone number; and

(C) canceling the departure of a flight or series of flights under subsection (b) of this section.

(2) The guidelines shall provide for consideration of—

(A) the specificity of the threat;

(B) the credibility of intelligence information related to the threat;

(C) the ability to counter the threat effectively;

(D) the protection of intelligence information sources and methods;

(E) cancellation, by an air carrier or the Administrator, of a flight or series of flights instead of public notice;

(F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and

(G) other factors the Administrator considers appropriate.

(d) GUIDELINES ON NOTICE TO CREWS.—Not later than May 15, 1991, the Administrator shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

(e) LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a threat to civil aviation may be provided to selective potential travelers only if the threat applies only to those travelers.

(f) RESTRICTING ACCESS TO INFORMATION.—In cooperation with the departments, agencies, and instrumentalities of the Government that collect, receive, and analyze intelligence information related to aviation security, the Administrator shall develop procedures to minimize the number of individuals who have access to information about threats. However, a restriction on access to that information may be imposed only if the restriction does not diminish the ability of the Government to carry out its duties and powers related to aviation security effectively, including providing notice to the public and flight and cabin crews under this section.

(g) DISTRIBUTION OF GUIDELINES.—The guidelines developed under this section shall be distributed for use by appropriate officials of the Department of Transportation, the Department of State, the Department of Justice, and air carriers.

§44906. Foreign air carrier security programs

(a) GENERAL.—(1) The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator may approve a security program of a foreign air carrier under section 129.25 only if the Administrator decides the security program provides passengers of the foreign air carrier a level of protection similar to the level those passengers would receive under the security programs of air carriers serving the same airport. The Administrator shall require a foreign air carrier to use procedures equivalent to those required of air carriers serving the same airport if the Administrator decides that the procedures are necessary to provide a level of protection similar to that provided passengers of the air carriers serving the same airport.

(2) Not later than May 15, 1991, the Administrator shall prescribe regulations to carry out paragraph (1) of this subsection.

(b) ENSURING COMPLIANCE.—Not later than November 16, 1991, the Administrator shall ensure that a security program of a foreign air carrier approved by the Administrator before November 16, 1990, meets the requirements of subsection (a) of this section.

§44907. Security standards at foreign airports

(a) ASSESSMENT.—(1) At intervals the Secretary of Transportation considers necessary,

the Secretary shall assess the effectiveness of the security measures maintained at—

(A) a foreign airport—

(i) served by an air carrier;

(ii) from which a foreign air carrier serves the United States; or

(iii) that poses a high risk of introducing danger to international air travel; and

(B) other foreign airports the Secretary considers appropriate.

(2) The Secretary of Transportation shall conduct an assessment under paragraph (1) of this subsection—

(A) in consultation with appropriate aeronautic authorities of the government of a foreign country concerned and each air carrier serving the foreign airport for which the Secretary is conducting the assessment;

(B) to establish the extent to which a foreign airport effectively maintains and carries out security measures; and

(C) by using a standard that will result in an analysis of the security measures at the airport based at least on the standards and appropriate recommended practices contained in Annex 17 to the Convention on International Civil Aviation in effect on the date of the assessment.

(3) Each report to Congress required under section 44938(b) of this title shall contain a summary of the assessments conducted under this subsection.

(b) CONSULTATION.—In carrying out subsection (a) of this section, the Secretary of Transportation shall consult with the Secretary of State—

(1) on the terrorist threat that exists in each country; and

(2) to establish which foreign airports are not under the de facto control of the government of the foreign country in which they are located and pose a high risk of introducing danger to international air travel.

(c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary of Transportation, after conducting an assessment under subsection (a) of this section, decides that an airport does not maintain and carry out effective security measures, the Secretary of Transportation, after advising the Secretary of State, shall notify the appropriate authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures in use at the airport up to the standard used by the Secretary of Transportation in making the assessment.

(d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT EFFECTIVE SECURITY MEASURES.—(1) When the Secretary of Transportation decides under this section that an airport does not maintain and carry out effective security measures—

(A) the Secretary of Transportation shall—

(i) publish the identity of the airport in the Federal Register;

(ii) have the identity of the airport posted and displayed prominently at all United States airports at which scheduled air carrier operations are provided regularly; and

(iii) notify the news media of the identity of the airport;

(B) each air carrier and foreign air carrier providing transportation between the United States and the airport shall provide written notice of the decision, on or with the ticket, to each passenger buying a ticket for transportation between the United States and the airport;

(C) notwithstanding section 40105(b) of this title, the Secretary of Transportation, after consulting with the appropriate aeronautic authorities of the government of the foreign country concerned and each air carrier serving the airport and with the approval of the Secretary of State, may withhold, revoke, or prescribe conditions on the operating authority of an air carrier or foreign air carrier that uses that airport to provide foreign air transportation; and

(D) the President may prohibit an air carrier or foreign air carrier from providing transportation between the United States and any other foreign airport that is served by aircraft flying to or from the airport with respect to which a decision is made under this section.

(2)(A) Paragraph (1) of this subsection becomes effective—

(i) 90 days after the government of a foreign country is notified under subsection (c) of this section if the Secretary of Transportation finds that the government has not brought the security measures at the airport up to the standard the Secretary used in making an assessment under subsection (a) of this section; or

(ii) immediately on the decision of the Secretary of Transportation under subsection (c) of this section if the Secretary of Transportation decides, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from the airport.

(B) The Secretary of Transportation immediately shall notify the Secretary of State of a decision under subparagraph (A)(ii) of this paragraph so that the Secretary of State may issue a travel advisory required under section 44908(a) of this title.

(3) The Secretary of Transportation promptly shall submit to Congress a report (and classified annex if necessary) on action taken under paragraph (1) or (2) of this subsection, including information on attempts made to obtain the cooperation of the government of a foreign country in meeting the standard the Secretary used in assessing the airport under subsection (a) of this section.

(4) An action required under paragraph (1)(A) and (B) of this subsection is no longer required only if the Secretary of Transportation, in consultation with the Secretary of State, decides that effective security measures are maintained and carried out at the airport. The Secretary of Transportation shall notify Congress when the action is no longer required to be taken.

(e) SUSPENSIONS.—Notwithstanding sections 40105(b) and 40106(b) of this title, the Secretary of Transportation, with the approval of the Secretary of State and without notice or a hearing, shall suspend the right of an air carrier or foreign air carrier to provide foreign air transportation, and the right of a person to operate aircraft in foreign air commerce, to or from a foreign airport when the Secretary of Transportation decides that—

(1) a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from that airport; and

(2) the public interest requires an immediate suspension of transportation between the United States and that airport.

(f) CONDITION OF CARRIER AUTHORITY.—This section is a condition to authority the Secretary of Transportation grants under this part to an air carrier or foreign air carrier.

§44908. Travel advisory and suspension of foreign assistance

(a) TRAVEL ADVISORIES.—On being notified by the Secretary of Transportation that the Secretary of Transportation has decided under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from a foreign airport that the Secretary of Transportation has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

(1) immediately shall issue a travel advisory for that airport;

(2) shall publish the advisory in the Federal Register; and

(3) shall publicize the advisory widely.

(b) SUSPENDING ASSISTANCE.—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) ACTIONS NO LONGER REQUIRED.—An action required under this section is no longer required only if the Secretary of Transportation has made a decision as provided under section 44907(d)(4) of this title. The Secretary shall notify Congress when the action is no longer required to be taken.

§44909. Passenger manifests

(a) AIR CARRIER REQUIREMENTS.—(1) Not later than March 16, 1991, the Secretary of Transportation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest shall include the following information:

(A) the full name of each passenger.

(B) the passport number of each passenger, if required for travel.

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a)(1) and (2) of this section.

§44910. Agreements on aircraft sabotage, aircraft hijacking, and airport security

The Secretary of State shall seek multilateral and bilateral agreement on strengthening enforcement measures and standards for compliance related to aircraft sabotage, aircraft hijacking, and airport security.

§44911. Intelligence

(a) DEFINITION.—In this section, "intelligence community" means the intelligence and intelligence-related activities of the following units of the United States Government:

(1) the Department of State.

(2) the Department of Defense.

(3) the Department of the Treasury.

(4) the Department of Energy.

(5) the Departments of the Army, Navy, and Air Force.

(6) the Central Intelligence Agency.

(7) the National Security Agency.

(8) the Defense Intelligence Agency.

(9) the Federal Bureau of Investigation.

(10) the Drug Enforcement Administration.

(b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—Not later than May 15, 1991, the head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about international terrorism are made available, as appropriate, to the heads of other units in the intelligence commu-

nity, the Secretary of Transportation, and the Administrator of the Federal Aviation Administration.

(c) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the units in the intelligence community shall consider placing greater emphasis on strategic intelligence efforts by establishing a unit for strategic planning on terrorism.

(d) DESIGNATION OF INTELLIGENCE OFFICER.—At the request of the Secretary, the Director of Central Intelligence shall designate at least one intelligence officer of the Central Intelligence Agency to serve in a senior position in the Office of the Secretary.

(e) WRITTEN WORKING AGREEMENTS.—Not later than May 15, 1991, the heads of units in the intelligence community, the Secretary, and the Administrator shall review and, as appropriate, revise written working agreements between the intelligence community and the Administrator.

§44912. Research and development

(a) PROGRAM REQUIREMENT.—(1) The Administrator of the Federal Aviation Administration shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. The program shall provide for developing and having in place, not later than November 16, 1993, new equipment and procedures necessary to meet the technological challenges presented by terrorism. The program shall include research on, and development of, technological improvements and ways to enhance human performance.

(2) In designing and carrying out the program established under this subsection, the Administrator shall—

(A) consult and coordinate activities with other departments, agencies, and instrumentalities of the United States Government doing similar research;

(B) identify departments, agencies, and instrumentalities that would benefit from that research; and

(C) seek cost-sharing agreements with those departments, agencies, and instrumentalities.

(3) In carrying out the program established under this subsection, the Administrator shall review and consider the annual reports the Secretary of Transportation submits to Congress on transportation security and intelligence.

(4) The Administrator may—

(A) make grants to institutions of higher learning and other appropriate research facilities with demonstrated ability to carry out research described in paragraph (1) of this subsection, and fix the amounts and terms of the grants; and

(B) make cooperative agreements with governmental authorities the Administrator decides are appropriate.

(b) REVIEW OF THREATS.—(1) Not later than May 15, 1991, the Administrator shall complete an intensive review of threats to civil aviation, with particular focus on—

(A) explosive material that presents the most significant threat to civil aircraft;

(B) the minimum amounts, configurations, and types of explosive material that can cause, or would reasonably be expected to cause, catastrophic damage to commercial aircraft in service and expected to be in service in the 10-year period beginning on November, 16, 1990;

(C) the amounts, configurations, and types of explosive material that can be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(D) the feasibility of using various ways to minimize damage caused by explosive material that cannot be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(E) the ability to screen passengers, carry-on baggage, checked baggage, and cargo; and

(F) the technologies that might be used in the future to attempt to destroy or otherwise threaten commercial aircraft and the way in which those technologies can be countered effectively.

(2) The Administrator shall use the results of the review under this subsection to develop the focus and priorities of the program established under subsection (a) of this section.

(c) SCIENTIFIC ADVISORY PANEL.—The Administrator shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering and Development Advisory Committee, to review, comment on, advise on the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft by the next generation of terrorist weapons. The panel shall consist of individuals with scientific and technical expertise in—

(1) the development and testing of effective explosive detection systems;

(2) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective technology must be capable of detecting;

(3) technologies involved in minimizing airframe damage to aircraft from explosives; and

(4) other scientific and technical areas the Administrator considers appropriate.

§44913. Explosive detection

(a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—(1) A deployment or purchase of explosive detection equipment under section 108.7(b)(8) or 108.20 of title 14, Code of Federal Regulations, or similar regulation is required only if the Administrator of the Federal Aviation Administration certifies that the equipment alone, or as part of an integrated system, can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall base the certification on the results of tests conducted under protocols developed in consultation with expert scientists outside of the Administration. Those tests shall be completed not later than April 16, 1992.

(2) Before completion of the tests described in paragraph (1) of this subsection, but not later than April 16, 1992, the Administrator may require deployment of explosive detection equipment described in paragraph (1) if the Administrator decides that deployment will enhance aviation security significantly. In making that decision, the Administrator shall consider factors such as the ability of the equipment alone, or as part of an integrated system, to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives of a deployment decision made under this paragraph.

(3) This subsection does not prohibit the Administrator from purchasing or deploying explosive detection equipment described in paragraph (1) of this subsection.

(b) GRANTS.—The Secretary of Transportation may provide grants to continue the Explosive Detection K-9 Team Training Program to detect explosives at airports and on aircraft.

§44914. Airport construction guidelines

In consultation with air carriers, airport authorities, and others the Administrator of the Federal Aviation Administration considers appropriate, the Administrator shall develop guidelines for airport design and construction to allow for maximum security enhancement. In developing the guidelines, the Administrator shall consider the results of the assessment carried out under section 44904(a) of this title.

§44915. Exemptions

The Administrator of the Federal Aviation Administration may exempt from sections 44901, 44903(a)-(c) and (e), 44906, 44935, and 44936 of this title airports in Alaska served only by air carriers that—

(1) hold certificates issued under section 41102 of this title;

(2) operate aircraft with certificates for a maximum gross takeoff weight of less than 12,500 pounds; and

(3) board passengers, or load property intended to be carried in an aircraft cabin, that will be screened under section 44901 of this title at another airport in Alaska before the passengers board, or the property is loaded on, an aircraft for a place outside Alaska.

SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

§44931. Director of Intelligence and Security

(a) ORGANIZATION.—There is in the Office of the Secretary of Transportation a Director of Intelligence and Security. The Director reports directly to the Secretary.

(b) DUTIES AND POWERS.—The Director shall—

(1) receive, assess, and distribute intelligence information related to long-term transportation security;

(2) develop policies, strategies, and plans for dealing with threats to transportation security;

(3) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(4) serve as the primary liaison of the Secretary to the intelligence and law enforcement communities; and

(5) carry out other duties and powers the Secretary decides are necessary to ensure, to the extent possible, the security of the traveling public.

§44932. Assistant Administrator for Civil Aviation Security

(a) ORGANIZATION.—There is an Assistant Administrator for Civil Aviation Security. The Assistant Administrator reports directly to the Administrator of the Federal Aviation Administration and is subject to the authority of the Administrator.

(b) DUTIES AND POWERS.—The Assistant Administrator shall—

(1) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933 of this title;

(2) enforce security-related requirements;

(3) identify the research and development requirements of security-related activities;

(4) inspect security systems;

(5) report information to the Director of Intelligence and Security that may be necessary to allow the Director to carry out assigned duties and powers;

(6) assess threats to civil aviation; and

(7) carry out other duties and powers the Administrator considers appropriate.

(c) REVIEW AND DEVELOPMENT OF WAYS TO STRENGTHEN SECURITY.—The Assistant Administrator shall review and, as necessary, develop ways to strengthen air transportation security, including ways—

(1) to strengthen controls over checked baggage in air transportation, including ways to ensure baggage reconciliation and inspection of

items in passenger baggage that could potentially contain explosive devices;

(2) to strengthen control over individuals having access to aircraft;

(3) to improve testing of security systems;

(4) to ensure the use of the best available x-ray equipment for air transportation security purposes; and

(5) to strengthen preflight screening of passengers.

§44933. Federal Security Managers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—(1) The Administrator of the Federal Aviation Administration shall establish the position of Federal Security Manager at each airport in the United States at which the Administrator decides a Manager is necessary for air transportation security. The Administrator shall designate individuals as Managers for, and station those Managers at, those airports. The Administrator may designate a current field employee of the Administration as a Manager. A Manager reports directly to the Assistant Administrator for Civil Aviation Security.

(2) Not later than November 16, 1991, the Administrator shall station an individual as Manager at each airport in the United States that the Secretary of Transportation designates as a category X airport.

(b) DUTIES AND POWERS.—The Manager at each airport shall—

(1) receive intelligence information related to aviation security;

(2) ensure, and assist in, the development of a comprehensive security plan for the airport that—

(A) establishes the responsibilities of each air carrier and airport operator for air transportation security at the airport; and

(B) includes measures to be taken during periods of normal airport operations and during periods when the Manager decides that there is a need for additional airport security, and identifies the individuals responsible for carrying out those measures;

(3) oversee and enforce the carrying out by air carriers and airport operators of United States Government security requirements, including the security plan under clause (2) of this subsection;

(4) serve as the on-site coordinator of the Administrator's response to terrorist incidents and threats at the airport;

(5) coordinate the day-to-day Government aviation security activities at the airport;

(6) coordinate efforts related to aviation security with local law enforcement; and

(7) coordinate activities with other Managers.

(c) LIMITATION.—A Civil Aviation Security Field Officer may not be assigned security duties and powers at an airport having a Manager.

§44934. Foreign Security Liaison Officers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—(1) The Administrator of the Federal Aviation Administration shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Administrator decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the Administrator shall designate an Officer for each of those airports.

(2) Not later than November 16, 1992, and in coordination with the Secretary, the Administrator shall designate an Officer for each of those airports where extraordinary security measures are in place. The Secretary shall give high priority to stationing those Officers.

(b) DUTIES AND POWERS.—An Officer reports directly to the Assistant Administrator for Civil Aviation Security. The Officer at each airport shall—

(1) serve as the liaison of the Assistant Administrator to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and

(2) to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.

(c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of the Secretary and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

§44935. Employment standards and training

(a) EMPLOYMENT STANDARDS.—Not later than August 13, 1991, the Administrator of the Federal Aviation Administration shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and

(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the Administrator shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the Administrator shall recommend guidelines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—The Administrator—

(1) may train individuals employed to carry out a security program under section 44903(c) of this title; and

(2) shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) Not later than May 15, 1991, the Administrator shall prescribe standards for educating and training—

(A) ground security coordinators;

(B) security supervisory personnel; and

(C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

§44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1) The Administrator of the Federal Aviation Administration shall require by regulation that an employment investigation, including a criminal history record check, shall be conducted, as the Administrator decides is necessary to ensure air transportation security, of each individual employed in, or applying for, a position in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

(A) aircraft of an air carrier or foreign air carrier; or

(B) a secured area of an airport in the United States the Administrator designates that serves an air carrier or foreign air carrier.

(2) An air carrier, foreign air carrier, or airport operator that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the Administrator requires is conducted.

(b) PROHIBITED EMPLOYMENT.—(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, or airport operator may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed robbery;

(xii) distribution of, or intent to distribute, a controlled substance; or

(xiii) conspiracy to commit any of the acts referred to in clauses (i)–(xii) of this paragraph.

(2) The Administrator may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

(3) An air carrier, foreign air carrier, or airport operator may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the Administrator approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—(1) If the Administrator requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Administrator shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the Administrator designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the Administrator shall consult with the Attorney General.

(2) The Administrator shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

(d) FEES AND CHARGES.—The Administrator and the Attorney General shall establish reasonable fees and charges to pay expenses incurred in carrying out this section. The employer of the individual being investigated shall pay the costs of a record check of the individual. Money collected under this section shall be credited to the account in the Treasury from which the expenses were incurred and are available to the Administrator and the Attorney General for those expenses.

(e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.

§44937. Prohibition on transferring duties and powers

Except as specifically provided by law, the Administrator of the Federal Aviation Administration may not transfer a duty or power under section 44903 (a), (b), (c), or (e), 44906(a)(1) or (b), 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.

§44938. Reports

(a) TRANSPORTATION SECURITY.—Not later than December 31 of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the annual report the Administrator of the Federal Aviation Administration submits under subsection (b) of this section, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

(1) an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;

(2) an evaluation of deployment of explosive detection devices;

(3) recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(d) of this title;

(4) identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;

(5) an evaluation of cooperation with foreign transportation and security authorities;

(6) the status of the extent to which the recommendations of the President's Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;

(7) a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of the report;

(8) financial and staffing requirements of the Director;

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the Administrator related to security; and

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The Administrator shall submit annually to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a) (1) and (2) of this title; and

(3) that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the Administrator decides that Foreign Security Liaison Officers are necessary for air transportation security; and

(B) for which extraordinary security measures are in place.

(c) DOMESTIC AIR TRANSPORTATION SYSTEM SECURITY.—The Administrator shall submit to Congress an annual report for each of the calendar years 1991 and 1992 on the progress being made, and the problems occurring, in carrying out section 44904 of this title. The report shall include recommendations for improving domestic air transportation security.

(d) PLAN ON SECURITY MANAGERS AND LIAISON OFFICERS.—Not later than May 15, 1991, the Administrator shall submit to Congress a plan to carry out the requirements of sections 44933 and 44934 of this title. The plan shall include a schedule for carrying out and assessing personnel and financial needs.

CHAPTER 451—FEES

Sec.
45101. Authority to impose fees.
45102. Fees involving aircraft not providing air transportation.
45103. Maximum fees for private person services.

§45101. Authority to impose fees

(a) GENERAL AUTHORITY.—The Secretary of Transportation may impose a fee for an approval, test, authorization, certificate, permit, registration, transfer, or rating related to aviation that has not been approved by Congress only when the fee—

(1)(A) was in effect on January 1, 1973; and

(B) is not more than the fee in effect on January 1, 1973, adjusted in proportion to changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor between January 1, 1973, and the date the fee is imposed; or

(2) is imposed under section 45102 of this title.

(b) NONAPPLICATION.—This section does not apply to a fee for a test, authorization, certificate, permit, or rating related to an airman or repair station administered or issued outside the United States.

§45102. Fees involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL AUTHORITY AND MAXIMUM FEES.—The Administrator of the Federal Aviation Administration may impose fees to pay for the costs of issuing airman certificates to pilots and certificates of registration of aircraft and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The following fees may not be more than the amounts specified:

(1) $12 for issuing an airman's certificate to a pilot.

(2) $25 for registering an aircraft after the transfer of ownership.

(3) $15 for renewing an aircraft registration.

(4) $7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

(c) ADJUSTMENTS.—The Administrator shall adjust the maximum fees established by subsection (b) of this section for changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees imposed under this section shall be credited to the account in the Treasury from which the Administrator incurs expenses in carrying out chapter 441 and sections 44701–44716 of this title (except sections 44701(c), 44703(f)(2), and 44713(d)(2)). The money is available to the Administrator to pay expenses for which the fees are collected.

§45103. Maximum fees for private person services

The Administrator of the Federal Aviation Administration may establish maximum fees that private persons may charge for services performed under a delegation to the person under section 44702(d) of this title.

SUBPART IV—ENFORCEMENT AND PENALTIES

CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS

Sec.
46101. Complaints and investigations.
46102. Proceedings.
46103. Service of notice, process, and actions.
46104. Evidence.
46105. Regulations and orders.
46106. Enforcement by the Secretary of Transportation and Administrator of the Federal Aviation Administration.
46107. Enforcement by the Attorney General.
46108. Enforcement of certificate requirements by interested persons.
46109. Joinder and intervention.
46110. Judicial review.

§46101. Complaints and investigations

(a) GENERAL.—(1) A person may file a complaint in writing with the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) about a person violating this part or a requirement prescribed under this part. Except as provided in subsection (b) of this section, the Secretary or Administrator shall investigate the complaint if a reasonable ground appears to the Secretary or Administrator for the investigation.

(2) On the initiative of the Secretary of Transportation or the Administrator, as appropriate, the Secretary or Administrator may conduct an investigation, if a reasonable ground appears to the Secretary or Administrator for the investigation, about—

(A) a person violating this part or a requirement prescribed under this part; or

(B) any question that may arise under this part.

(3) The Secretary of Transportation or Administrator may dismiss a complaint without a hearing when the Secretary or Administrator is of the opinion that the complaint does not state facts that warrant an investigation or action.

(4) After notice and an opportunity for a hearing and subject to section 40105(b) of this title, the Secretary of Transportation or Administrator shall issue an order to compel compliance with this part if the Secretary or Administrator finds in an investigation under this subsection that a person is violating this part.

(b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Secretary of Transportation or Administrator shall refer a complaint against a member of the armed forces of the United States performing official duties to the Secretary of the Department concerned for action. Not later than 90 days after receiving the complaint, the Secretary of that Department shall inform the Secretary of Transportation or Administrator of the action taken on the complaint, including any corrective or disciplinary action taken.

§46102. Proceedings

(a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5 of title 5, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may conduct proceedings in a way conducive to justice and the proper dispatch of business.

(b) APPEARANCE.—A person may appear and be heard before the Secretary and the Administrator in person or by an attorney. The Secretary may appear and participate as an interested party in a proceeding the Administrator conducts under section 40113(a) of this title.

(c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Secretary and Administrator under this part shall be recorded. Proceedings before the Secretary and Administrator shall be open to the public on the request of an interested party unless the Secretary or Administrator decides that secrecy is required because of national defense.

(d) CONFLICTS OF INTEREST.—The Secretary, the Administrator, or an officer or employee of the Administration may not participate in a proceeding referred to in subsection (a) of this section in which the individual has a pecuniary interest.

§46103. Service of notice, process, and actions

(a) DESIGNATING AGENTS.—(1) Each air carrier and foreign air carrier shall designate an agent on whom service of notice and process in a proceeding before, and an action of, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may be made.

(2) The designation—

(A) shall be in writing and filed with the Secretary or Administrator; and

(B) may be changed in the same way as originally made.

(b) SERVICE.—(1) Service may be made—

(A) by personal service;

(B) on a designated agent; or

(C) by certified or registered mail to the person to be served or the designated agent of the person.

(2) The date of service made by certified or registered mail is the date of mailing.

(c) SERVING AGENTS.—Service on an agent designated under this section shall be made at the office or usual place of residence of the agent. If an air carrier or foreign air carrier does not have a designated agent, service may be made by posting the notice, process, or action in the office of the Secretary or Administrator.

§46104. Evidence

(a) GENERAL.—In conducting a hearing or investigation under this part, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may—

(1) subpena witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation;

(2) administer oaths;

(3) examine witnesses; and

(4) receive evidence at a place in the United States the Secretary or Administrator designates.

(b) COMPLIANCE WITH SUBPENAS.—If a person disobeys a subpena, the Secretary, the Administrator or a party to a proceeding before the Secretary or Administrator may petition a court of the United States to enforce the subpena. A judicial proceeding to enforce a subpena under this section may be brought in the jurisdiction in which the proceeding or investigation is conducted. The court may punish a failure to obey an order of the court to comply with the subpena as a contempt of court.

(c) DEPOSITIONS.—(1) In a proceeding or investigation, the Secretary or Administrator may order a person to give testimony by deposition and to produce records. If a person fails to be deposed or to produce records, the order may be enforced in the same way a subpena may be enforced under subsection (b) of this section.

(2) A deposition may be taken before an individual designated by the Secretary or Administrator and having the power to administer oaths.

(3) Before taking a deposition, the party or the attorney of the party proposing to take the deposition must give reasonable notice in writing to the opposing party or the attorney of record of that party. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Secretary or Administrator.

(5) If the laws of a foreign country allow, the testimony of a witness in that country may be taken by deposition—

(A) by a consular officer or an individual commissioned by the Secretary or Administrator or agreed on by the parties by written stipulation filed with the Secretary or Administrator; or

(B) under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary or Administrator.

(d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EXPENSES.—A witness summoned before the Secretary or Administrator or whose deposition is taken under this section and the individual taking the deposition are each entitled to the same fee and mileage that the witness and individual would have been paid for those services in a court of the United States. Under regulations of the Secretary or Administrator, the Secretary or Administrator shall pay the necessary expenses incident to executing, in another country, a commission or letter rogatory issued at the initiative of the Secretary or Administrator.

(e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When designated by the Secretary or Administrator, an employee appointed under section 3105 of title 5 may conduct a hearing, subpena witnesses, administer oaths, examine witnesses, and receive evidence at a place in the United States the Secretary or Administrator designates. On request of a party, the Secretary or Administrator shall hear or receive argument.

§46105. Regulations and orders

(a) EFFECTIVENESS OF ORDERS.—Except as provided in this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) takes effect within a reasonable time prescribed by the Secretary or Administrator. The regulation or order remains in effect under its own terms or until superseded. Except as provided in this part, the Secretary or Administrator may amend, modify, or suspend an order in the way, and by giving the notice, the Secretary or Administrator decides.

(b) CONTENTS AND SERVICE OF ORDERS.—An order of the Secretary or Administrator shall include the findings of fact on which the order is based and shall be served on the parties to the proceeding and the persons affected by the order.

(c) EMERGENCIES.—When the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to this part and subchapter II of chapter 5 of title 5. The Administrator shall begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.

§46106. Enforcement by the Secretary of Transportation and Administrator of the Federal Aviation Administration

The Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may bring a civil action against a person to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part. The action may be brought in the district court of the United States for the judicial district in which the person does business or the violation occurred.

§46107. Enforcement by the Attorney General

(a) CIVIL ACTIONS TO ENFORCE SECTION 40106(b).—The Attorney General may bring a civil action against a person to enforce section 40106(b) of this title. The action may be brought in the district court of the United States for the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS TO ENFORCE THIS PART.—(1) On request of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator), the Attorney General may bring a civil action—

(A) to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part; and

(B) to prosecute a person violating this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

(2) The costs and expenses of a civil action shall be paid out of the appropriations for the expenses of the courts of the United States.

(c) PARTICIPATION OF SECRETARY OR ADMINISTRATOR.—On request of the Attorney General, the Secretary or Administrator, as appropriate, may participate in a civil action under this part.

§46108. Enforcement of certificate requirements by interested persons

An interested person may bring a civil action against a person to enforce section 41101(a)(1) of this title. The action may be brought in the district court of the United States for the judicial district in which the defendant does business or the violation occurred.

§46109. Joinder and intervention

A person interested in or affected by a matter under consideration in a proceeding before the Secretary of Transportation or civil action to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part may be joined as a party or permitted to intervene in the proceeding or civil action.

§46110. Judicial review

(a) FILING AND VENUE.—Except for an order related to a foreign air carrier subject to disapproval by the President under section 41307 or 41509(f) of this title, a person disclosing a substantial interest in an order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) Judicial Procedures.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary or Administrator, as appropriate. The Secretary or Administrator shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.

(c) Authority of Court.—When the petition is sent to the Secretary or Administrator, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary or Administrator to conduct further proceedings. After reasonable notice to the Secretary or Administrator, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary or Administrator, if supported by substantial evidence, are conclusive.

(d) Requirement for Prior Objection.—In reviewing an order under this section, the court may consider an objection to an order of the Secretary or Administrator only if the objection was made in the proceeding conducted by the Secretary or Administrator or if there was a reasonable ground for not making the objection in the proceeding.

(e) Supreme Court Review.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

CHAPTER 463—PENALTIES

Sec.	
46301.	Civil penalties.
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46303.	Carrying a weapon.
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46316.	General criminal penalty when specific penalty not provided.
46317.	Civil penalty assessment demonstration project.

§46301. Civil penalties

(a) General Penalty.—(1) A person is liable to the United States Government for a civil penalty of not more than $1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, section 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742, chapter 419, subchapter II of chapter 421, chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44909(a), 44912–44915, or 44932–44938 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than $10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117) or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44912–44915, or 44932–44938 of this title; or

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(3) A civil penalty of not more than $10,000 may be imposed for each violation under paragraph (1) of this subsection related to—

(A) the transportation of hazardous material; or

(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation.

(4) A separate violation occurs under this subsection for each day the violation continues or, if applicable, for each flight involving the violation.

(b) Smoke Alarm Device Penalty.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than $2,000.

(c) Procedural Requirements.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, section 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742, chapter 419, or subchapter II of chapter 421 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) Registration and Recordation Penalties.—(1) After notice and an opportunity for a hearing, the Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 441 of this title (except section 44109), or a regulation prescribed or order issued under chapter 441 (except section 44109), if the violation is related to the registration or recordation of an aircraft not used to provide air transportation. The Administrator shall give written notice of the finding of a violation and the penalty.

(2) The maximum civil penalty the Administrator may impose under this subsection in any case is $50,000.

(3) In a civil action to collect a civil penalty imposed under this subsection, the issues of liability and amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (1) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action the Administrator brings for a civil penalty if—

(A) the amount in controversy is more than $50,000;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5) This subsection applies only to a civil penalty initiated after November 18, 1988.

(e) Penalty Considerations.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) Compromise and Setoff.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, or 44932–44938 of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) Judicial Review.—An order of the Secretary imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) Nonapplication.—(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

§46302. False information

(a) Civil Penalty.—A person that, knowing the information to be false, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title, is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(b) Compromise and Setoff.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

§46303. Carrying a weapon

(a) Civil Penalty.—An individual who, when on, or attempting to board, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(b) Compromise and Setoff.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the individual liable for the penalty.

(c) NONAPPLICATION.—This section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the Government, authorized to carry arms in an official capacity; or

(2) another individual the Administrator of the Federal Aviation Administration by regulation authorizes to carry arms in an official capacity.

§46304. Liens on aircraft

(a) AIRCRAFT SUBJECT TO LIENS.—When an aircraft is involved in a violation referred to in section 46301(a)(1)(A)-(C), (2), or (3) of this title and the violation is by the owner of, or individual commanding, the aircraft, the aircraft is subject to a lien for the civil penalty.

(b) SEIZURE.—An aircraft subject to a lien under this section may be seized summarily and placed in the custody of a person authorized to take custody of it under regulations of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator). A report on the seizure shall be submitted to the Attorney General. The Attorney General promptly shall bring a civil action in rem to enforce the lien or notify the Secretary or Administrator that the action will not be brought.

(c) RELEASE.—An aircraft seized under subsection (b) of this section shall be released from custody when—

(1) the civil penalty is paid;

(2) a compromise amount agreed on is paid;

(3) the aircraft is seized under a civil action in rem to enforce the lien;

(4) the Attorney General gives notice that a civil action will not be brought under subsection (b) of this section; or

(5) a bond (in an amount and with a surety the Secretary or Administrator prescribes), conditioned on payment of the penalty or compromise, is deposited with the Secretary or Administrator.

§46305. Actions to recover civil penalties

A civil penalty under this chapter may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a jury trial of an issue of fact in an action involving a civil penalty under this chapter (except a penalty imposed by the Secretary of Transportation that formerly was imposed by the Civil Aeronautics Board) if the value of the matter in controversy is more than $20. Issues of fact tried by a jury may be reexamined only under common law rules.

§46306. Registration violations involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL CRIMINAL PENALTY.—Except as provided by subsection (c) of this section, a person shall be fined under title 18, imprisoned for not more than 3 years, or both, if the person—

(1) knowingly and willfully forges or alters a certificate authorized to be issued under this part;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, such a certificate;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft;

(4) obtains a certificate authorized to be issued under this part by knowingly and willfully falsifying or concealing a material fact, making a false, fictitious, or fraudulent statement, or making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry;

(5) owns an aircraft eligible for registration under section 44102 of this title and knowingly and willfully operates, attempts to operate, or allows another person to operate the aircraft when—

(A) the aircraft is not registered under section 44103 of this title or the certificate of registration is suspended or revoked; or

(B) the owner knows or has reason to know that the other person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

(6) knowingly and willfully operates or attempts to operate an aircraft eligible for registration under section 44102 of this title knowing that—

(A) the aircraft is not registered under section 44103 of this title;

(B) the certificate of registration is suspended or revoked; or

(C) the person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

(7) knowingly and willfully serves or attempts to serve in any capacity as an airman without an airman's certificate authorizing the individual to serve in that capacity;

(8) knowingly and willfully employs for service or uses in any capacity as an airman an individual who does not have an airman's certificate authorizing the individual to serve in that capacity; or

(9) operates an aircraft with a fuel tank or fuel system that has been installed or modified knowing that the tank, system, installation, or modification does not comply with regulations and requirements of the Administrator of the Federal Aviation Administration.

(c) CONTROLLED SUBSTANCE CRIMINAL PENALTY.—(1) In this subsection, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(2) A person violating subsection (b) of this section shall be fined under title 18, imprisoned for not more than 5 years, or both, if the violation is related to transporting a controlled substance by aircraft or aiding or facilitating a controlled substance violation and the transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment of more than one year under a law of the United States or a State; or

(B) provided is related to an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).

(3) A term of imprisonment imposed under paragraph (2) of this subsection shall be served in addition to, and not concurrently with, any other term of imprisonment imposed on the individual.

(d) SEIZURE AND FORFEITURE.—(1) The Administrator of Drug Enforcement or the Commissioner of Customs may seize and forfeit under the customs laws an aircraft whose use is related to a violation of subsection (b) of this section, or to aid or facilitate a violation, regardless of whether a person is charged with the violation.

(2) An aircraft's use is presumed to have been related to a violation of, or to aid or facilitate a violation of—

(A) subsection (b)(1) of this section if the aircraft certificate of registration has been forged or altered;

(B) subsection (b)(3) of this section if there is an external display of false or misleading registration numbers or country of registration;

(C) subsection (b)(4) of this section if—

(i) the aircraft is registered to a false or fictitious person; or

(ii) the application form used to obtain the aircraft certificate of registration contains a material false statement;

(D) subsection (b)(5) of this section if the aircraft was operated when it was not registered under section 44103 of this title; or

(E) subsection (b)(9) of this section if the aircraft has a fuel tank or fuel system that was installed or altered—

(i) in violation of a regulation or requirement of the Administrator of the Federal Aviation Administration; or

(ii) if a certificate required to be issued for the installation or alteration is not carried on the aircraft.

(3) The Administrator of the Federal Aviation Administration, the Administrator of Drug Enforcement, and the Commissioner shall agree to a memorandum of understanding to establish procedures to carry out this subsection.

(e) RELATIONSHIP TO STATE LAWS.—This part does not prevent a State from establishing a criminal penalty, including providing for forfeiture and seizure of aircraft, for a person that—

(1) knowingly and willfully forges or alters an aircraft certificate of registration;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, a fraudulent aircraft certificate of registration;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft; or

(4) obtains an aircraft certificate of registration from the Administrator of the Federal Aviation Administration by—

(A) knowingly and willfully falsifying or concealing a material fact;

(B) making a false, fictitious, or fraudulent statement; or

(C) making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry.

§46307. Violation of national defense airspace

A person that knowingly or willfully violates section 40103(b)(3) of this title or a regulation prescribed or order issued under section 40103(b)(3) shall be fined under title 18, imprisoned for not more than one year, or both.

§46308. Interference with air navigation

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) with intent to interfere with air navigation in the United States, exhibits in the United States a light or signal at a place or in a way likely to be mistaken for a true light or signal established under this part or for a true light or signal used at an air navigation facility;

(2) after a warning from the Administrator of the Federal Aviation Administration, continues to maintain a misleading light or signal; or

(3) knowingly interferes with the operation of a true light or signal.

§46309. Concession and rate violations

(a) CRIMINAL PENALTY FOR OFFERING, GRANTING, GIVING, OR HELPING TO OBTAIN CONCESSIONS AND LOWER RATES.—An air carrier, foreign air carrier, ticket agent, or officer, agent, or employee of an air carrier, foreign air carrier, or ticket agent shall be fined under title 18 if the air carrier, foreign air carrier, ticket agent, officer, agent, or employee—

(1) knowingly and willfully offers, grants, or gives, or causes to be offered, granted, or given, a rebate or other concession in violation of this part; or

(2) by any means knowingly and willfully assists, or willingly allows, a person to obtain transportation or services subject to this part at less than the rate lawfully in effect.

(b) CRIMINAL PENALTY FOR RECEIVING REBATES, PRIVILEGES, AND FACILITIES.—A person shall be fined under title 18 if the person by any means—

(1) knowingly and willfully solicits, accepts, or receives a rebate of a part of a rate lawfully in effect for the foreign air transportation of property, or a service related to the foreign air transportation; or

(2) knowingly solicits, accepts, or receives a privilege or facility related to a matter the Secretary of Transportation requires be specified in a currently effective tariff applicable to the foreign air transportation of property.

§46310. Reporting and recordkeeping violations

(a) GENERAL CRIMINAL PENALTY.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18 for intentionally—

(1) failing to make a report or keep a record under this part;

(2) falsifying, mutilating, or altering a report or record under this part; or

(3) filing a false report or record under this part.

(b) SAFETY REGULATION CRIMINAL PENALTY.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18, imprisoned for not more than 5 years, or both, for intentionally falsifying or concealing a material fact, or inducing reliance on a false statement of material fact, in a report or record under section 44701 (a) or (b) or 44702–44716 of this title.

§46311. Unlawful disclosure of information

(a) CRIMINAL PENALTY.—The Secretary of Transportation, the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator, or an officer or employee of the Secretary or Administrator shall be fined under title 18, imprisoned for not more than 2 years, or both, if the Secretary, Administrator, officer, or employee knowingly and willfully discloses information that—

(1) the Secretary, Administrator, officer, or employee acquires when inspecting the records of an air carrier; or

(2) is withheld from public disclosure under section 40115 of this title.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

(1) the officer or employee is directed by the Secretary or Administrator to disclose information that the Secretary or Administrator had ordered withheld; or

(2) the Secretary, Administrator, officer, or employee is directed by a court of competent jurisdiction to disclose the information.

(c) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize the Secretary or Administrator to withhold information from a committee of Congress authorized to have the information.

§46312. Transporting hazardous material

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, in violation of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary of Transportation under this part—

(1) willfully delivers, or causes to be delivered, property containing hazardous material to an air carrier or to an operator of a civil aircraft for transportation in air commerce; or

(2) recklessly causes the transportation in air commerce of the property.

§46313. Refusing to appear or produce records

A person not obeying a subpena or requirement of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) to appear and testify or produce records shall be fined under title 18, imprisoned for not more than one year, or both.

§46314. Entering aircraft or airport area in violation of security requirements

(a) PROHIBITION.—A person may not knowingly and willfully enter, in violation of security requirements prescribed under section 44901, 44903 (b) or (c), or 44906 of this title, an aircraft or an airport area that serves an air carrier or foreign air carrier.

(b) CRIMINAL PENALTY.—(1) A person violating subsection (a) of this section shall be fined under title 18, imprisoned for not more than one year, or both.

(2) A person violating subsection (a) of this section with intent to commit, in the aircraft or airport area, a felony under a law of the United States or a State shall be fined under title 18, imprisoned for not more than 10 years, or both.

§46315. Lighting violations involving transporting controlled substances by aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) CRIMINAL PENALTY.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if—

(1) the person knowingly and willfully operates an aircraft in violation of a regulation or requirement of the Administrator of the Federal Aviation Administration related to the display of navigation or anticollision lights;

(2) the person is knowingly transporting a controlled substance by aircraft or aiding or facilitating a controlled substance offense; and

(3) the transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment for more than one year under a law of the United States or a State; or

(B) is provided in connection with an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).

§46316. General criminal penalty when specific penalty not provided

(a) CRIMINAL PENALTY.—Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part, or any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), chapter 445, and sections 44701(a) and (b), 44702–44716, 44901, 44903(b) and (c), 44905, 44906, 44912–44915, and 44932–44938 of this title.

§46317. Civil penalty assessment demonstration project

(a) IMPOSITION OF CIVIL PENALTY.—(1) After notice and an opportunity for a hearing on the record, the Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of subpart III of this part or a regulation prescribed or order issued under subpart III. The Administrator shall give written notice of the finding of a violation and the penalty.

(2) The maximum penalty the Administrator may impose under this subsection in any case is $50,000.

(b) JUDICIAL REEXAMINATION OF LIABILITY AND AMOUNT.—In a civil action to collect a penalty imposed under subsection (a) of this section, the issues of liability and amount of the penalty may not be reexamined.

(c) EXCLUSIVE JURISDICTION OF DISTRICT COURTS.—Notwithstanding subsection (a)(1) of this section, the district courts of the United States have exclusive jurisdiction of a civil action the Administrator brings for a civil penalty if—

(1) the amount in controversy is more than $50,000;

(2) the action is in rem or another action in rem based on the same violation has been brought;

(3) the action involves an aircraft subject to a lien that has been seized by the United States Government; or

(4) another action has been brought for an injunction based on the same violation.

(d) APPLICATION AND EFFECTIVE DATE.—This section—

(1) applies only to a civil penalty initiated after December 30, 1987; and

(2) is effective only through August 1, 1992.

CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

Sec.
46501. Definitions.
46502. Aircraft piracy.
46503. Death penalty sentencing procedure for aircraft piracy.
46504. Interference with flight crew members and attendants.
46505. Carrying a weapon or explosive on an aircraft.
46506. Application of certain criminal laws to acts on aircraft.
46507. False information and threats.

§46501. Definitions

In this chapter—

(1) "aircraft in flight" means an aircraft from the moment all external doors are closed following boarding—

(A) through the moment when one external door is opened to allow passengers to leave the aircraft; or

(B) until, if a forced landing, competent authorities take over responsibility for the aircraft and individuals and property on the aircraft.

(2) "special aircraft jurisdiction of the United States" includes any of the following aircraft in flight:

(A) a civil aircraft of the United States.

(B) an aircraft of the armed forces of the United States.

(C) another aircraft in the United States.

(D) another aircraft outside the United States—

(i) that has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States;

(ii) on which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the United States with the individual still on the aircraft; or

(iii) against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the Unit-

ed States with the individual still on the aircraft.

(E) any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States.

(3) an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) when the individual, when on an aircraft in flight—

(A) by any form of intimidation, unlawfully seizes, exercises control of, or attempts to seize or exercise control of, the aircraft; or

(B) is an accomplice of an individual referred to in subclause (A) of this clause.

§46502. Aircraft piracy

(a) In Special Aircraft Jurisdiction.—(1) In this subsection—

(A) "aircraft piracy" means seizing or exercising control of an aircraft in the special aircraft jurisdiction of the United States by force, violence, threat of force or violence, or any form of intimidation, and with wrongful intent.

(B) an attempt to commit aircraft piracy is in the special aircraft jurisdiction of the United States although the aircraft is not in flight at the time of the attempt if the aircraft would have been in the special aircraft jurisdiction of the United States had the aircraft piracy been completed.

(2) An individual committing or attempting to commit aircraft piracy—

(A) shall be imprisoned for at least 20 years; or

(B) if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.

(b) Outside Special Aircraft Jurisdiction.—(1) An individual committing an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) on an aircraft in flight outside the special aircraft jurisdiction of the United States and later found in the United States—

(A) shall be imprisoned for at least 20 years; or

(B) if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.

(2) This subsection applies only if the place of takeoff or landing of the aircraft on which the individual commits the offense is located outside the territory of the country of registration of the aircraft.

§46503. Death penalty sentencing procedure for aircraft piracy

(a) Government Stipulations.—An individual convicted of violating section 46502 of this title may not be sentenced to death if the United States Government stipulates that at least one of the mitigating factors specified in subsection (c)(1) of this section exists or none of the aggravating factors specified in subsection (c)(2) of this section exists. If the Government does not stipulate, the judge presiding at the trial or accepting the guilty plea of the individual shall hold a separate hearing to decide on the punishment to be imposed.

(b) Punishment Hearings.—(1) The hearing under this section shall be conducted—

(A) before the jury that found the defendant guilty;

(B) before a jury impaneled for the hearing when—

(i) the defendant was convicted by a guilty plea;

(ii) the defendant was convicted by a judge without a jury; or

(iii) the jury finding the defendant guilty was discharged by the judge for good cause; or

(C) before the judge, on motion of the defendant and with the approval of the judge and the Government.

(2) At the hearing, the judge shall disclose to the defendant or counsel for the defendant all material contained in any presentence report, except material the judge decides is required to be withheld to protect human life or national security. Presentence information withheld from the defendant may not be considered in deciding whether the factors specified in subsection (c) of this section exist.

(3) Information relevant to the mitigating factors specified in subsection (c)(1) of this section may be presented by the Government or the defendant without regard to the rules governing the admissibility of evidence at criminal trials. The burden of establishing the existence of a mitigating factor specified in subsection (c)(1) is on the defendant.

(4) Information relevant to the aggravating factors specified in subsection (c)(2) of this section is admissible only under rules governing the admissibility of evidence at criminal trials. The burden of establishing the existence of an aggravating factor specified in subsection (c)(2) is on the Government.

(5) The Government and the defendant may rebut information presented at the hearing. They shall be given an opportunity to present arguments on the adequacy of the information to establish the existence of the factors specified in subsection (c) of this section.

(c) Mitigating and Aggravating Factors.—(1) The judge may not impose the death penalty on a defendant if the jury or, if there is no jury, the judge finds under this section that at the time of the violation of section 46502 of this title—

(A) the defendant was not yet 18 years of age;

(B) the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired significantly, but the capacity was not impaired sufficiently to be a defense to prosecution;

(C) the defendant was under unusual and substantial duress, but the duress was not sufficient to be a defense to prosecution;

(D) the defendant was a principal (as defined in section 2(a) of title 18) in a violation committed by another individual, but the participation of the defendant was relatively minor, although not sufficiently minor to be a defense to prosecution; or

(E) the defendant reasonably could not have foreseen that the conduct of the defendant in the violation would cause or create a grave risk of causing death to another individual.

(2) If none of the factors specified in paragraph (1) of this subsection exists, the judge shall impose the death penalty on the defendant if the jury or, if there is no jury, the judge finds under this section that—

(A) the death of another individual resulted from the violation after the defendant had seized or exercised control of the aircraft; or

(B) the death of another individual resulted from the violation and—

(i) the defendant has been convicted of another United States or State offense (committed before or at the time of the violation) for which punishment of life imprisonment or death could be imposed;

(ii) the defendant has been convicted of at least 2 United States or State offenses with a penalty of more than one year of imprisonment (committed on different occasions before the time of the violation) that involved inflicting serious bodily injury on another individual;

(iii) in committing the violation, the defendant knowingly created a grave risk of death to an individual in addition to the individual whose death resulted from the violation; or

(iv) the defendant committed the violation in an especially heinous, cruel, or depraved manner.

(d) Death Penalty Requirements.—(1) If the jury or, if there is no jury, the judge finds by a preponderance of the information that none of the mitigating factors specified in subsection (c)(1) of this section exists and that at least one of the aggravating factors specified in subsection (c)(2) of this section exists, the judge shall impose the death penalty on the defendant. If the jury or judge finds that at least one of the mitigating factors specified in subsection (c)(1) exists, or that none of the aggravating factors specified in subsection (c)(2) exists, the judge may not impose the death penalty on the defendant but shall impose another penalty provided for the defendant's violation of section 46502 of this title.

(2) The jury or, if there is no jury, the judge shall return a special verdict containing findings on whether each of the factors specified in subsection (c) of this section exists.

§46504. Interference with flight crew members and attendants

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life.

§46505. Carrying a weapon or explosive on an aircraft

(a) Definition.—In this section, "loaded firearm" means a starter gun or a weapon designed or converted to expel a projectile through an explosive, that has a cartridge, a detonator, or powder in the chamber, magazine, cylinder, or clip.

(b) General Criminal Penalty.—An individual shall be fined under title 18, imprisoned for not more than one year, or both, if the individual—

(1) when on, or attempting to get on, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight;

(2) has placed, attempted to place, or attempted to have placed a loaded firearm on that aircraft in property not accessible to passengers in flight; or

(3) has on or about the individual, or has placed, attempted to place, or attempted to have placed on that aircraft, an explosive or incendiary device.

(c) Criminal Penalty Involving Disregard for Human Life.—An individual who willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, violates subsection (b) of this section, shall be fined under title 18, imprisoned for not more than 5 years, or both.

(d) Nonapplication.—Subsection (b)(1) of this section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the United States Government, authorized to carry arms in an official capacity;

(2) another individual the Administrator of the Federal Aviation Administration by regulation authorizes to carry a dangerous weapon in air transportation or intrastate air transportation; or

(3) an individual transporting a weapon (except a loaded firearm) in baggage not accessible to a passenger in flight if the air carrier was informed of the presence of the weapon.

§46506. Application of certain criminal laws to acts on aircraft

An individual on an aircraft in the special aircraft jurisdiction of the United States who commits an act that—

(1) if committed in the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18) would violate section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter 109A of title 18, shall be fined under title 18, imprisoned under that section or chapter, or both; or

(2) if committed in the District of Columbia would violate section 9 of the Act of July 29, 1892 (D.C. Code §22-1112), shall be fined under title 18, imprisoned under section 9 of the Act, or both.

§46507. False information and threats

An individual shall be fined under title 18, imprisoned for not more than 5 years, or both, if the individual—

(1) knowing the information to be false, willfully and maliciously or with reckless disregard for the safety of human life, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title; or

(2)(A) threatens to violate section 46502(a), 46504, 46505, or 46506 of this title, or causes a threat to violate any of those sections to be made; and

(B) appears ready and willing to carry out the threat.

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

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SUBCHAPTER I—AIRPORT IMPROVEMENT

§47101. Policies

(a) GENERAL.—It is the policy of the United States Government—

(1) that the safe operation of the airport and airway system is the highest aviation priority;

(2) that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities;

(3) to give special emphasis to developing reliever airports;

(4) that appropriate provisions should be made to make the development and enhancement of cargo hub airports easier;

(5) to encourage the development of transportation systems that use various modes of transportation in a way that will serve the States and local communities efficiently and effectively;

(6) that airport development projects under this subchapter provide for the protection and enhancement of natural resources and the quality of the environment of the United States;

(7) that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease;

(8) to ensure that nonaviation usage of the navigable airspace be accommodated but not allowed to decrease the safety and capacity of the airspace and airport system;

(9) that artificial restrictions on airport capacity—

(A) are not in the public interest;

(B) should be imposed to alleviate air traffic delays only after other reasonably available and less burdensome alternatives have been tried; and

(C) should not discriminate unjustly between categories and classes of aircraft; and

(10) that special emphasis should be placed on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities.

(b) CONSISTENCY WITH AIR COMMERCE AND SAFETY POLICIES.—Each airport and airway program should be carried out consistently with section 40101(a), (b), and (d) of this title to foster competition, prevent unfair methods of competition in air transportation, maintain essential air transportation, and prevent unjust and discriminatory practices, including as the practices may be applied between categories and classes of aircraft.

(c) ADEQUACY OF NAVIGATION AIDS AND AIRPORT FACILITIES.—This subchapter should be carried out to provide adequate navigation aids and airport facilities for places at which scheduled commercial air service is provided. The facilities provided may include—

(1) reliever airports; and

(2) heliports designated by the Secretary of Transportation to relieve congestion at commercial service airports by diverting aircraft passengers from fixed-wing aircraft to helicopter carriers.

(d) MAXIMUM USE OF SAFETY FACILITIES.—This subchapter should be carried out consistently with a comprehensive airspace system plan, giving highest priority to commercial service airports, to maximize the use of safety facilities, including installing, operating, and maintaining, to the extent possible with available money and considering other safety needs—

(1) electronic or visual vertical guidance on each runway;

(2) grooving or friction treatment of each primary and secondary runway;

(3) distance-to-go signs for each primary and secondary runway;

(4) a precision approach system, a vertical visual guidance system, and a full approach light system for each primary runway;

(5) a nonprecision instrument approach for each secondary runway;

(6) runway end identifier lights on each runway that does not have an approach light system;

(7) a surface movement radar system at each category III airport;

(8) a taxiway lighting and sign system;

(9) runway edge lighting and marking; and

(10) radar approach coverage for each airport terminal area.

(e) COOPERATION.—To carry out the policy of subsection (a)(5) of this section, the Secretary of Transportation shall cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs. The airport plans and programs shall be developed in coordination with other transportation planning and considering comprehensive long-range land-use plans and overall social, economic, environmental, system performance, and energy conservation objectives. The process of developing airport plans and programs shall be continuing, cooperative, and comprehensive to the degree appropriate to the complexity of the transportation problems.

(f) CONSULTATION.—To carry out the policy of subsection (a)(6) of this section, the Secretary of Transportation shall consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency about any project included in a project grant application involving the location of an airport or runway, or a major runway extension, that may have a significant effect on—

(1) natural resources, including fish and wildlife;

(2) natural, scenic, and recreation assets;

(3) water and air quality; or

(4) another factor affecting the environment.

§47102. Definitions

In this subchapter—

(1) "air carrier airport" means a public airport regularly served by—

(A) an air carrier certificated by the Secretary of Transportation under section 41102 of this title (except a charter air carrier); or

(B) at least one air carrier—

(i) operating under an exemption from section 41101(a)(1) of this title that the Secretary grants; and

(ii) having at least 2,500 passenger boardings at the airport during the prior calendar year.

(2) "airport"—

(A) means—

(i) an area of land or water used or intended to be used for the landing and taking off of aircraft;

(ii) an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; and

(iii) airport buildings and facilities located in any of those areas; and

(B) includes a heliport.

(3) "airport development" means the following activities, if undertaken by the sponsor, owner, or operator of a public-use airport:

(A) constructing, repairing, or improving a public-use airport, including—

(i) removing, lowering, relocating, marking, and lighting an airport hazard; and

(ii) preparing a plan or specification, including carrying out a field investigation.

(B) acquiring for, or installing at, a public-use airport—

(i) a navigation aid or another aid (including a precision approach system) used by aircraft *for landing at or taking off from the airport, including preparing the site as required by the acquisition or installation;*

(ii) safety or security equipment the Secretary requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport;

(iii) equipment to remove snow, to measure runway surface friction, or for aviation-related weather reporting; and

(iv) firefighting and rescue equipment at an airport that serves scheduled passenger operations of air carrier aircraft designed for more than 20 passenger seats.

(C) acquiring an interest in land or airspace, including land for future airport development, that is needed—

(i) to carry out airport development described in subclause (A) or (B) of this clause; or

(ii) to remove or mitigate an existing airport hazard or prevent or limit the creation of a new airport hazard.

(D) acquiring land for, or constructing, a burn area training structure on or off the airport to provide live fire drill training for aircraft rescue and firefighting personnel required to receive the training under regulations the Secretary prescribes, including basic equipment and minimum structures to support the training under standards the Administrator of the Federal Aviation Administration prescribes.

(4) "airport hazard" means a structure or object of natural growth located on or near a public-use airport, or a use of land near the airport, that obstructs or otherwise is hazardous to the landing or taking off of aircraft at or from the airport.

(5) "airport planning" means planning as defined by regulations the Secretary prescribes and includes integrated airport system planning.

(6) "amount made available under section 48103 of this title" means the amount authorized for grants under section 48103 of this title as reduced by any law enacted after September 3, 1982.

(7) "commercial service airport" means a public airport in a State that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.

(8) "integrated airport system planning" means developing for planning purposes information and guidance to decide the extent, kind, location, and timing of airport development needed in a specific area to establish a viable, balanced, and integrated system of public-use airports, including—

(A) identifying system needs;

(B) developing an estimate of systemwide development costs;

(C) conducting studies, surveys, and other planning actions, including those related to airport access, needed to decide which aeronautical needs should be met by a system of airports; and

(D) standards prescribed by a State, except standards for safety of approaches, for airport development at nonprimary public-use airports.

(9) "landed weight" means the weight of aircraft transporting only cargo in intrastate, interstate, and foreign air transportation, as the Secretary determines under regulations the Secretary prescribes.

(10) "passenger boardings"—

(A) means revenue passenger boardings on an aircraft in service in air commerce as the Secretary determines under regulations the Secretary prescribes; and

(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States for a nontraffic purpose.

(11) "primary airport" means a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year.

(12) "project" means a project, separate projects included in one project grant application, or all projects to be undertaken at an airport in a fiscal year, to achieve airport development or airport planning.

(13) "project cost" means a cost involved in carrying out a project.

(14) "project grant" means a grant of money the Secretary makes to a sponsor to carry out at least one project.

(15) "public agency" means—

(A) a State or political subdivision of a State;

(B) a tax-supported organization; or

(C) an Indian tribe or pueblo.

(16) "public airport" means an airport used or intended to be used for public purposes—

(A) that is under the control of a public agency; and

(B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned.

(17) "public-use airport" means—

(A) a public airport; or

(B) a privately-owned airport used or intended to be used for public purposes that is—

(i) a reliever airport; or

(ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.

(18) "reliever airport" means an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.

(19) "sponsor" means—

(A) a public agency that submits to the Secretary under this subchapter an application for financial assistance; and

(B) a private owner of a public-use airport that submits to the Secretary under this subchapter an application for financial assistance for the airport.

(20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

§47103. National plan of integrated airport systems

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—The Secretary of Transportation shall maintain the plan for developing public-use airports in the United States, named "the national plan of integrated airport systems". The plan shall include the kind and estimated cost of eligible airport development the Secretary of Transportation considers necessary to provide a safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service. Airport development included in the plan may not be limited to meeting the needs of any particular classes or categories of public-use airports. In maintaining the plan, the Secretary of Transportation shall consider the needs of each segment of civil aviation and the relationship of each airport to—

(1) the rest of the transportation system in the particular area;

(2) forecasted technological developments in aeronautics; and

(3) forecasted developments in other modes of intercity transportation.

(b) SPECIFIC REQUIREMENTS.—In maintaining the plan, the Secretary of Transportation shall—

(1) to the extent possible and as appropriate, consult with departments, agencies, and instrumentalities of the United States Government, with public agencies, and with the aviation community;

(2) consider tall structures that reduce safety or airport capacity; and

(3) make every reasonable effort to address the needs of air cargo operations, Short Takeoff and Landing/Very Short Takeoff and Landing aircraft operations, and rotary wing aircraft operations.

(c) AVAILABILITY OF DOMESTIC MILITARY AIRPORTS AND AIRPORT FACILITIES.—To the extent possible, the Secretary of Defense shall make domestic military airports and airport facilities available for civil use. In advising the Secretary of Transportation under subsection (a) of this section, the Secretary of Defense shall indicate the extent to which domestic military airports and airport facilities are available for civil use.

(d) PUBLICATION.—The Secretary of Transportation shall publish the status of the plan every 2 years.

§47104. Project grant authority

(a) GENERAL AUTHORITY.—To maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics, the Secretary of Transportation may make project grants under this subchapter from the Airport and Airway Trust Fund.

(b) INCURRING OBLIGATIONS.—The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title as soon as the amounts are apportioned under section 47114(c) and (d)(2) of this title.

(c) EXPIRATION OF AUTHORITY.—After September 30, 1992, the Secretary may not incur obligations under subsection (b) of this section, except for obligations of amounts remaining available after that date under section 47117(b) of this title.

§47105. Project grant applications

(a) SUBMISSION AND CONSULTATION.—(1) An application for a project grant under this subchapter may be submitted to the Secretary of Transportation by—

(A) a sponsor; or

(B) a State, as the only sponsor, for an airport development project benefitting at least 2 airports in the State or for airport planning for similar projects for at least 2 airports in the State if—

(i) the sponsor of each airport gives written consent that the State be the applicant;

(ii) the Secretary is satisfied there is administrative merit and aeronautical benefit in the State being the sponsor; and

(iii) an acceptable agreement exists that ensures that the State will comply with appropriate grant conditions and other assurances the Secretary requires.

(2) Before deciding to undertake an airport development project at an airport under this subchapter, a sponsor shall consult with the airport users that will be affected by the project.

(3) This subsection does not authorize a public agency that is subject to the laws of a State to apply for a project grant in violation of a law of the State.

(b) CONTENTS AND FORM.—An application for a project grant under this subchapter—

(1) shall describe the project proposed to be undertaken;

(2) may propose a project only for a public-use airport included in the current national plan of integrated airport systems;

(3) may propose airport development only if the development complies with standards the Secretary prescribes or approves, including standards for site location, airport layout, site preparation, paving, lighting, and safety of approaches; and

(4) shall be in the form and contain other information the Secretary prescribes.

(c) STATE STANDARDS FOR AIRPORT DEVELOPMENT.—The Secretary may approve standards (except standards for safety of approaches) that

a State prescribes for airport development at nonprimary public-use airports in the State. On approval under this subsection, a State's standards apply to the nonprimary public-use airports in the State instead of the comparable standards prescribed by the Secretary under subsection (b)(3) of this section. The Secretary, or the State with the approval of the Secretary, may revise standards approved under this subsection.

(d) CERTIFICATION OF COMPLIANCE.—The Secretary may require a sponsor to certify that the sponsor will comply with this subchapter in carrying out the project. The Secretary may rescind the acceptance of a certification at any time. This subsection does not affect an obligation or responsibility of the Secretary under another law of the United States.

(e) NOTIFICATION.—The sponsor of an airport for which an amount is apportioned under section 47114(c) of this title shall notify the Secretary of the fiscal year in which the sponsor intends to submit a project grant application for the apportioned amount. The notification shall be given by the time and contain the information the Secretary prescribes.

§47106. Project grant application approval conditioned on satisfaction of project requirements

(a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

(2) the project will contribute to carrying out this subchapter;

(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;

(4) the project will be completed without unreasonable delay; and

(5) the sponsor has authority to carry out the project as proposed.

(b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary is satisfied that—

(1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;

(2) the interests of the community in or near which the project may be located have been given fair consideration; and

(3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the Secretary, considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) ENVIRONMENTAL REQUIREMENTS.—(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the Secretary that an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location's consistency with the objectives of any planning that the community has carried out;

(B) only if the chief executive officer of the State in which the project will be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air and water quality standards, except that the Administrator of the Environmental Protection Agency shall make the certification instead of the chief executive officer if—

(i) the State has not approved any applicable State or local standards; and

(ii) the Administrator has prescribed applicable standards; and

(C) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The Secretary may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for "stage 2" aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the Secretary's request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4)(A) Notice of certification or of refusal to certify under paragraph (1)(B) of this subsection shall be provided to the Secretary not later than 60 days after the Secretary receives the application.

(B) The Secretary shall condition approval of the application on compliance with the applicable standards during construction and operation.

(5) The Secretary may make a finding under paragraph (1)(C) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

(d) GENERAL AVIATION AIRPORT PROJECT GRANT APPLICATION APPROVAL.—(1) In this subsection, "general aviation airport" means a public airport that is not an air carrier airport.

(2) The Secretary may approve an application under this subchapter for an airport development project included in a project grant application involving the construction or extension of a runway at a general aviation airport located on both sides of a boundary line separating 2 counties within a State only if, before the application is submitted to the Secretary, the project is approved by the governing body of each village incorporated under the laws of the State and located entirely within 5 miles of the nearest boundary of the airport.

(e) WITHHOLDING APPROVAL.—(1) The Secretary may withhold approval of an application under this subchapter for amounts apportioned under section 47114(c) and (e) of this title for violating an assurance or requirement of this subchapter only if—

(A) the Secretary provides the sponsor an opportunity for a hearing; and

(B) not later than 180 days after the later of the date of the application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding approval may obtain review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The action must be brought not later than 60 days after the order is served on the petitioner.

§47107. Project grant application approval conditioned on assurances about airport operations

(a) GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges—

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between—

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;

(11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share,

proportionate to the use, of the cost of operating and maintaining the facility used;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport—

(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made;

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based requirement prescribed for or by the sponsor; and

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request.

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

(A)(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project; or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to the Secretary, in another eligible airport development project the Secretary approves under this subchapter or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title).

(f) AVAILABILITY OF AMOUNTS.—An amount deposited in the Airport and Airway Trust Fund under—

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary—

(A) to make a grant for a purpose described in section 47115(b) of this title; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section, the Secretary of Transportation—

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—Before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(1) publish notice of the proposed modification in the Federal Register; and

(2) provide an opportunity for comment on the proposal.

(i) Relief From Obligation To Provide Free Space.—When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) Use of Revenue in Hawaii.—(1) In this subsection—

(A) "duty-free merchandise" and "duty-free sales enterprise" have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) "highway" and "Federal-aid system" have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is $250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115.

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

§47108. Project grant agreements

(a) Offer and Acceptance.—On approving a project grant application under this subchapter, the Secretary of Transportation shall offer the sponsor a grant to pay the United States Government's share of the project costs allowable under section 47110 of this title. The Secretary may impose terms on the offer that the Secretary considers necessary to carry out this subchapter and regulations prescribed under this subchapter. An offer shall state the obligations to be assumed by the sponsor and the maximum amount the Government will pay for the project from the amounts authorized under chapter 481 of this title (except sections 48102(e), 48106, and 48107). At the request of the sponsor, an offer of a grant for a project that will not be completed in one fiscal year shall provide for the obligation of amounts apportioned or to be apportioned to a sponsor under section 47114(c) of this title for the fiscal years necessary to pay the Government's share of the cost of the project. An offer that is accepted in writing by the sponsor is an agreement binding on the Government and the sponsor. The Government may pay or be obligated to pay a project cost only after a grant agreement for the project is signed.

(b) Increasing Government's Share Under This Subchapter or Chapter 475.—(1) Except as provided in paragraph (2) of this subsection, when an offer has been accepted, the amount stated in the offer as the maximum amount the Government will pay for an airport development project receiving assistance under a grant approved under this subchapter or chapter 475 of this title may be increased by not more than 15 percent.

(2)(A) For a project receiving assistance under a grant approved under this subchapter before October 1, 1987, the amount may be increased by not more than—

(i) 10 percent for an airport development project, except a project for acquiring an interest in land; and

(ii) 50 percent of the total increase in allowable project costs attributable to acquiring an interest in land, based on current creditable appraisals.

(B) An increase under subparagraph (A) of this paragraph may be paid only from amounts the Government recovers from other grants made under this subchapter.

(c) Increasing Government's Share Under Airport and Airway Development Act of 1970.—For a project receiving assistance under a grant made under the Airport and Airway Development Act of 1970, the maximum amount the Government will pay may be increased by not more than 10 percent. An increase under this subsection may be paid only from amounts the Government recovers from other grants made under the Act.

(d) Changing Workscope.—With the consent of the sponsor, the Secretary may amend a grant agreement made under this subchapter to change the workscope of a project financed under the grant if the amendment does not result in an increase in the maximum amount the Government may pay under subsection (b) of this section.

§47109. United States Government's share of project costs

(a) General.—Except as provided in subsections (b) and (c) of this section, the United States Government's share of allowable project costs is—

(1) 75 percent for a project at a primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports; and

(2) 90 percent for a project at any other airport.

(b) Increased Government Share.—If, under subsection (a) of this section, the Government's share of allowable costs of a project in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970, the Government's share under subsection (a) of this section shall be increased by the lesser of—

(1) 25 percent;

(2) one-half of the percentage that the area of unappropriated and unreserved public lands and nontaxable Indian lands in the State is of the total area of the State; or

(3) the percentage necessary to increase the Government's share to the percentage that applied on June 30, 1975, under section 17(b) of the Act.

(c) Limitation.—Notwithstanding subsections (a) and (b) of this section, the Government's share of project costs allowable under section 47110(d) of this title may not be more than 75 percent.

§47110. Allowable project costs

(a) General Authority.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) Allowable Cost Standards.—A project cost is allowable—

(1) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121(b) or (d) of this title;

(2) if the cost is incurred—

(A) after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed; or

(B) after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatibility program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;

(3) to the extent the cost is reasonable in amount;

(4) if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted; and

(5) if the total costs allowed for the project are not more than the amount stated in the grant agreement as the maximum the Government will pay (except as provided in section 47108(b) of this title).

(c) Certain Prior Costs as Allowable Costs.—The Secretary may decide that a project cost under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—

(1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and administration or other incidental items that would not have been incurred except for the project; or

(2) necessarily and directly incurred in developing the work scope of an airport planning project.

(d) Terminal Development Costs.—The Secretary may decide that the cost of terminal development (including multi-modal terminal development) in a nonrevenue-producing public-use area of a commercial service airport is allowable for an airport development project at the airport—

(1) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(A) all the safety equipment required for certification of the airport under section 44706 of this title;

(B) all the security equipment required by regulation; and

(C) provided for access, to the area of the airport for passengers for boarding or exiting aircraft, to those passengers boarding or exiting aircraft, except air carrier aircraft;

(2) if the cost is directly related to moving passengers and baggage in air commerce within the airport, including vehicles for moving passengers between terminal facilities and between terminal facilities and aircraft; and

(3) under terms necessary to protect the interests of the Government.

(e) Letters of Intent.—(1) The Secretary may issue a letter of intent to the sponsor stating an intention to obligate from future budget authority an amount, not more than the Government's share of allowable project costs, for an airport development project (including costs of formulating the project) at a primary or reliever airport. The letter shall establish a schedule under which the Secretary will reimburse the sponsor for the Government's share of allowable project costs, as amounts become available, if the sponsor, after the Secretary issues the letter, carries out the project without receiving amounts under this subchapter.

(2) Paragraph (1) of this subsection applies to a project—

(A) about which the sponsor notifies the Secretary, before the project begins, of the sponsor's intent to carry out the project;

(B) that will comply with all statutory and administrative requirements that would apply to the project if it were carried out with amounts made available under this subchapter; and

(C) the Secretary decides will enhance system-wide airport capacity significantly and meets the criteria of section 47115(d) of this title.

(3) Issuance of a letter under paragraph (1) of this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriation laws.

(4) The total estimated amount of future Government obligations covered by all outstanding letters of intent under paragraph (1) of this subsection may not be more than the amount authorized to carry out section 48103 of this title, less an amount reasonably estimated by the Secretary to be needed for grants under section 48103 that are not covered by a letter.

(f) Nonallowable Costs.—Except as provided in subsection (d) of this section, a cost is not an allowable airport development project cost if it is for—

(1) constructing a public parking facility for passenger automobiles;

(2) constructing, altering, or repairing part of an airport building, except to the extent the building will be used for facilities or activities directly related to the safety of individuals at the airport;

(3) decorative landscaping; or

(4) providing or installing sculpture or art works.

§47111. Payments under project grant agreements

(a) General Authority.—After making a project grant agreement under this subchapter and consulting with the sponsor, the Secretary of Transportation may decide when and in what amounts payments under the agreement will be made. Payments totaling not more than 90 percent of the United States Government's share of the project's estimated allowable costs may be made before the project is completed if the sponsor certifies to the Secretary that the total amount expended from the advance payments at any time will not be more than the cost of the airport development work completed on the project at that time.

(b) Recovering Payments.—If the Secretary determines that the total amount of payments made under a grant agreement under this subchapter is more than the Government's share of the total allowable project costs, the Government may recover the excess amount. If the Secretary finds that a project for which an advance payment was made has not been completed within a reasonable time, the Government may recover any part of the advance payment for which the Government received no benefit.

(c) Payment Deposits.—A payment under a project grant agreement under this subchapter may be made only to an official or depository designated by the sponsor and authorized by law to receive public money.

(d) Withholding Payments.—(1) The Secretary may withhold a payment under a grant agreement under this subchapter for more than 180 days after the payment is due only if the Secretary—

(A) notifies the sponsor and provides an opportunity for a hearing; and

(B) finds that the sponsor has violated the agreement.

(2) The 180-day period may be extended by—

(A) agreement of the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding a payment may apply for review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The petition must be filed not later than 60 days after the order is served on the petitioner.

§47112. Carrying out airport development projects

(a) Construction Work.—The Secretary of Transportation may inspect and approve construction work for an airport development project carried out under a grant agreement under this subchapter. The construction work must be carried out in compliance with regulations the Secretary prescribes. The regulations shall require the sponsor to make necessary cost and progress reports on the project. The regulations may amend or modify a contract related to the project only if the contract was made with actual notice of the regulations.

(b) Prevailing Wages.—A contract for more than $2,000 involving labor for an airport development project carried out under a grant agreement under this subchapter must require contractors to pay labor minimum wage rates as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The minimum rates must be included in the bids for the work and in the invitation for those bids.

(c) Veterans' Preference.—(1) In this subsection—

(A) "disabled veteran" has the same meaning given that term in section 2108 of title 5.

(B) "Vietnam-era veteran" means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces for more than 180 consecutive days, any part of which occurred after August 4, 1964, and before May 8, 1975, and who was separated from the armed forces under honorable conditions.

(2) A contract involving labor for carrying out an airport development project under a grant agreement under this subchapter must require that preference in the employment of labor (except in executive, administrative, and supervisory positions) be given to Vietnam-era veterans and disabled veterans when they are available and qualified for the employment.

§47113. Minority and disadvantaged business participation

(a) Definitions.—In this section—

(1) "small business concern"—

(A) has the same meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632); but

(B) does not include a concern, or group of concerns controlled by the same socially and economically disadvantaged individual, that has average annual gross receipts over the prior 3 fiscal years of more than $14,000,000, as adjusted by the Secretary of Transportation for inflation.

(2) "socially and economically disadvantaged individual" has the same meaning given that term in section 8(d) of the Act (15 U.S.C. 637(d)) and relevant subcontracting regulations prescribed under section 8(d), except that women are presumed to be socially and economically disadvantaged.

(b) General Requirement.—Except to the extent the Secretary decides otherwise, at least 10 percent of amounts available in a fiscal year under section 48103 of this title shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(c) Uniform Criteria.—The Secretary shall establish minimum uniform criteria for State governments and airport sponsors to use in certifying whether a small business concern qualifies under this section. The criteria shall include on-site visits, personal interviews, licenses, analyses of stock ownership and bonding capacity, listings of equipment and work completed, resumes of principal owners, financial capacity, and type of work preferred.

(d) Surveys and Lists.—Each State or airport sponsor annually shall survey and compile a list of small business concerns referred to in subsection (b) of this section and the location of each concern in the State.

§47114. Apportionments

(a) Definition.—In this section, "amount subject to apportionment" means the amount newly made available under section 48103 of this title for a fiscal year.

(b) Apportionment Date.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) Amounts Apportioned to Sponsors.—(1)(A) The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) $7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) $5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) $2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year; and

(iv) $.65 for each additional passenger boarding at the airport during the prior calendar year.

(B) Not less than $300,000 nor more than $16,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.

(2)(A) The Secretary shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3 percent of the amount subject to apportionment each year (but not more than $50,000,000), allocated among those airports in the proportion that the total annual landed weight of those aircraft landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports. However, not more than 8 percent of the amount apportioned under this paragraph may be apportioned for any one airport.

(B) Landed weight under subparagraph (A) of this paragraph is the landed weight of aircraft landing at each of those airports and all those airports during the prior calendar year.

(3) The total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 49.5 percent of the amount subject to apportionment for a fiscal year. If this paragraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 49.5 percent limit is achieved.

(d) AMOUNTS APPORTIONED TO STATES.—(1) In this subsection—

(A) "area" includes land and water.

(B) "population" means the population stated in the latest decennial census of the United States.

(2) The Secretary shall apportion to the States 12 percent of the amount subject to apportionment for each fiscal year as follows:

(A) one percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(B) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the population of each of those States bears to the total population of all of those States.

(C) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the area of each of those States bears to the total area of all of those States.

(3) An amount apportioned under paragraph (2) of this subsection for an airport in—

(A) Alaska may be made available by the Secretary for a public airport described in section 47117(e)(1)(C)(ii) of this title to which section 15(a)(3)(A)(II) of the Airport and Airway Development Act of 1970 applied during the fiscal year that ended September 30, 1981; and

(B) Puerto Rico may be made available by the Secretary for a primary airport and an airport described in section 47117(e)(1)(C) of this title.

(e) ALTERNATIVE APPORTIONMENT FOR ALASKA.—(1) Instead of apportioning amounts for airports in Alaska under subsections (c) and (d) of this section, the Secretary may apportion amounts for those airports in the way in which amounts were apportioned in fiscal year 1980 under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the Secretary shall apportion—

(A) for each primary airport at least as much as would be apportioned for the airport under subsection (c)(1) of this section; and

(B) a total amount at least equal to the minimum amount required to be apportioned to airports in Alaska in fiscal year 1980 under section 15(a)(3)(A) of the Act.

(2) This subsection does not prohibit the Secretary from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(f) REDUCING APPORTIONMENTS.—An amount that would be apportioned under this section (except subsection (c)(2)) in a fiscal year to the sponsor of an airport having at least .25 percent of the total number of boardings each year in the United States and for which a fee is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section.

§47115. Discretionary fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a discretionary fund. The fund consists of—

(1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)–(e) of this title; and

(2) 25 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter. However, 50 percent of amounts not apportioned under section 47114 of this title because of section 47114(f) and added to the fund is available for making grants for projects at small hub airports (as defined in section 41731 of this title).

(c) MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.—At least 75 percent of the amount in the fund and distributed by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) CONSIDERATIONS.—In selecting a project for a grant to preserve and enhance capacity as described in subsection (c)(1) of this section, the Secretary shall consider—

(1) the effect the project will have on the overall national air transportation system capacity;

(2) the project benefit and cost; and

(3) the financial commitment from non-United States Government sources to preserve or enhance airport capacity.

(e) WAIVING PERCENTAGE REQUIREMENT.—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are insufficient qualified grant applications to meet that percentage, the amount the Secretary determines will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

§47116. Small airport fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a small airport fund. The fund consists of 75 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) DISTRIBUTION OF AMOUNTS.—The Secretary may distribute amounts in the fund in each fiscal year for any purpose for which amounts are made available under section 48103 of this title as follows:

(1) one-third for grants to sponsors of public-use airports (except commercial service airports).

(2) two-thirds for grants to sponsors of each commercial service airport that each year has less than .05 percent of the total boardings in the United States in that year.

(c) AUTHORITY TO RECEIVE GRANT NOT DEPENDENT ON PARTICIPATION IN BLOCK GRANT PILOT PROGRAM.—An airport in a State participating in the State block grant pilot program under section 47128 of this title may receive a grant under this section to the same extent the airport may receive a grant if the State were not participating in the program.

§47117. Use of apportioned amounts

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114(c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year. If the amount is not obligated under the apportionment within that time, it shall be added to the discretionary fund.

(c) PRIMARY AIRPORTS.—(1) An amount apportioned to a sponsor of a primary airport under section 47114(c)(1) of this title is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

(2) A sponsor of a primary airport may make an agreement with the Secretary of Transportation waiving any part of the amount apportioned for the airport under section 47114(c)(1) of this title if the Secretary makes the waived amount available for a grant for another public-use airport in the same State or geographical area as the primary airport.

(d) STATE USE.—An amount apportioned to a State under—

(1) section 47114(d)(2)(A) of this title is available for grants for airports located in the State; and

(2) section 47114(d)(2)(B) or (C) of this title is available for grants for airports described in section 47114(d)(2)(B) or (C) and located in the State.

(e) SPECIAL APPORTIONMENT CATEGORIES.—(1) The Secretary shall use amounts made available under section 48103 of this title for each fiscal year as follows:

(A) at least 10 percent for grants for reliever airports.

(B) at least 10 percent for grants for airport noise compatibility planning under section 47505(a)(2) of this title and for carrying out noise compatibility programs under section 47504(c)(1) of this title.

(C) at least 2.5 percent for grants for—

(i) nonprimary commercial service airports; and

(ii) public airports (except commercial service airports) that were eligible for United States Government assistance from amounts apportioned under section 15(a)(3) of the Airport and Airway Development Act of 1970, and to which section 15(a)(3)(A)(I) or (II) of the Act applied during the fiscal year that ended September 30, 1981.

(D) at least .5 percent for integrated airport system planning grants to planning agencies designated by the Secretary and authorized by the laws of a State or political subdivision of a State to do planning for an area of the State or subdivision in which a grant under this chapter is to be used.

(E) at least 1.5 percent for the fiscal year ending September 30, 1992, to sponsors of current or

former military airports designated by the Secretary under section 47118(a) of this title for grants for developing current and former military airports to improve the capacity of the national air transportation system.

(2) A grant from the amount apportioned under section 47114(e) of this title may not be included as part of the 2.5 percent required to be used for grants under paragraph (1)(C) of this subsection.

(3) If the Secretary decides that an amount required to be used for grants under paragraph (1) of this subsection cannot be used for a fiscal year because there are insufficient qualified grant applications, the amount the Secretary determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(f) LIMITATION FOR COMMERCIAL SERVICE AIRPORT IN ALASKA.—The Secretary may not make a grant for a commercial service airport in Alaska of more than 110 percent of the amount apportioned for the airport for a fiscal year under section 47114(e) of this title.

(g) DISCRETIONARY USE OF APPORTIONMENTS.—(1) Subject to paragraph (2) of this subsection, if the Secretary finds, based on the notices the Secretary receives under section 47105(e) of this title or otherwise, that an amount apportioned under section 47114 of this title will not be used for grants during a fiscal year, the Secretary may use an equal amount for grants during that fiscal year for any of the purposes for which amounts are authorized for grants under section 48103 of this title.

(2) The Secretary may make a grant under paragraph (1) of this subsection only if the Secretary decides that—

(A) the total amount used for grants for the fiscal year under section 48103 of this title will not be more than the amount made available under section 48103 for that fiscal year; and

(B) the amounts authorized for grants under section 48103 of this title for later fiscal years are sufficient for grants of the apportioned amounts that were not used for grants under the apportionment during the fiscal year and that remain available under subsection (b) of this section.

(h) LIMITING AUTHORITY OF SECRETARY.—The authority of the Secretary to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

§47118. Designating current and former military airports

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall designate not more than 8 current or former military airports for which grants may be made under section 47117(e)(1)(E) of this title. The Secretary shall designate at least 2 of the airports not later than May 5, 1991, and shall designate the remaining airports not later than September 30, 1992.

(b) SURVEY.—Not later than September 30, 1991, the Secretary shall complete a survey of current and former military airports to identify which airports have the greatest potential to improve the capacity of the national air transportation system. The survey shall identify the capital development needs of those airports to make them part of the system and which of those qualify for grants under section 47104 of this title.

(c) CONSIDERATIONS.—In carrying out this section, the Secretary shall consider only current or former military airports that, when at least partly converted to civilian commercial or reliever airports as part of the national air transportation system, will enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

(d) GRANTS.—Grants under section 47117(e)(1)(E) of this title may be made for an airport designated under subsection (a) of this section for the 5 fiscal years following the designation. If an airport does not have a level of passengers getting on aircraft during that 5-year period that qualifies the airport as a small hub airport (as defined on January 1, 1990) or reliever airport, the Secretary may redesignate the airport for grants for additional fiscal years that the Secretary decides.

(e) TERMINAL BUILDING FACILITIES.—Notwithstanding section 47109(c) of this title, not more than $5,000,000 for each airport from amounts the Secretary distributes under section 47115 of this title for a fiscal year is available to the sponsor of a current or former military airport the Secretary designates under this section to construct, improve, or repair a terminal building facility, including terminal gates used for revenue passengers getting on or off aircraft. A gate constructed, improved, or repaired under this subsection—

(1) may not be leased for more than 10 years; and

(2) is not subject to majority in interest clauses.

§47119. Terminal development costs

(a) REPAYING BORROWED MONEY.—An amount apportioned under section 47114 of this title and made available to the sponsor of an air carrier airport at which terminal development was carried out after June 30, 1970, and before July 12, 1976, is available to repay immediately money borrowed and used to pay the costs for terminal development at the airport, if those costs would be allowable project costs under section 47110(d) of this title if they had been incurred after September 3, 1982. An amount is available for a grant under this subsection—

(1) only if—

(A) the sponsor submits the certification required under section 47110(d) of this title;

(B) the Secretary of Transportation decides that using the amount to repay the borrowed money will not defer an airport development project outside the terminal area at that airport; and

(C) amounts available for airport development under this subchapter will not be used for additional terminal development projects at the airport for at least 3 years beginning on the date the grant is used to repay the borrowed money; and

(2) subject to the limitations in subsection (b)(1) and (2) of this section.

(b) AVAILABILITY OF AMOUNTS.—In a fiscal year, the Secretary may make available—

(1) to a sponsor of a primary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(c)(1) of this title to pay project costs allowable under section 47110(d) of this title;

(2) to a sponsor of a nonprimary commercial service airport, not more than $200,000 of the amount that may be distributed for the fiscal year from the discretionary fund to pay project costs allowable under section 47110(d) of this title; or

(3) not more than $25,000,000 to pay project costs allowable for the fiscal year under section 47110(d) of this title for projects at commercial service airports that were not eligible for assistance for terminal development during the fiscal year ending September 30, 1980, under section 20(b) of the Airport and Airway Development Act of 1970.

§47120. Grant priority

In making a grant under this subchapter, the Secretary of Transportation may give priority to a project that is consistent with an integrated airport system plan.

§47121. Records and audits

(a) RECORDS.—A sponsor shall keep the records the Secretary of Transportation requires. The Secretary may require records—

(1) that disclose—

(A) the amount and disposition by the sponsor of the proceeds of the grant;

(B) the total cost of the plan or program for which the grant is given or used; and

(C) the amounts and kinds of costs of the plan or program provided by other sources; and

(2) that make it easier to carry out an audit.

(b) AUDITS AND EXAMINATIONS.—The Secretary and the Comptroller General may audit and examine records of a sponsor that are related to a grant made under this subchapter.

(c) AUTHORITY OF COMPTROLLER GENERAL.—When an independent audit is made of the accounts of a sponsor under this subchapter related to the disposition of the proceeds of the grant or related to the plan or program for which the grant was given or used, the sponsor shall submit a certified copy of the audit to the Comptroller General not more than 6 months after the end of the fiscal year for which the audit was made. Not later than April 15 of each year, the Comptroller General shall report to Congress describing the results of each audit conducted or reviewed by the Comptroller General under this section during the prior fiscal year. The Comptroller General shall prescribe regulations necessary to carry out this subsection.

(d) AUDIT REQUIREMENT.—The Secretary may require a sponsor to conduct an appropriate audit as a condition for receiving a grant under this subchapter.

(e) ANNUAL REVIEW.—The Secretary shall review annually the recordkeeping and reporting requirements under this subchapter to ensure that they are the minimum necessary to carry out this subchapter.

(f) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize the Secretary or the Comptroller General to withhold information from a committee of Congress authorized to have the information.

§47122. Administrative

(a) GENERAL.—The Secretary of Transportation may take action the Secretary considers necessary to carry out this subchapter, including conducting investigations and public hearings, prescribing regulations and procedures, and issuing orders.

(b) CONDUCTING INVESTIGATIONS AND PUBLIC HEARINGS.—In conducting an investigation or public hearing under this subchapter, the Secretary has the same authority the Secretary has under section 46104 of this title. An action of the Secretary in exercising that authority is governed by the procedures specified in section 46104 and shall be enforced as provided in section 46104.

§47123. Nondiscrimination

The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act.

§47124. Agreements for State and local operation of airport facilities

(a) GOVERNMENT RELIEF FROM LIABILITY.—The Secretary of Transportation shall ensure that an agreement under this subchapter with a State or a political subdivision of a State to

allow the State or subdivision to operate an airport facility in the State or subdivision relieves the United States Government from any liability arising out of, or related to, acts or omissions of employees of the State or subdivision in operating the airport facility.

(b) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—The Secretary shall—

(1) continue, for contract towers existing on December 30, 1987, the low activity (Visual Flight Rules) level I air traffic control contract program established under subsection (a) of this section; and

(2) extend the program to other towers as practicable.

§47125. Conveyances of United States Government land

(a) CONVEYANCES TO PUBLIC AGENCIES.—Except as provided in subsection (b) of this section, the Secretary of Transportation shall request the head of the department, agency, or instrumentality of the United States Government owning or controlling land or airspace to convey a property interest in the land or airspace to the public agency sponsoring the project or owning or controlling the airport when necessary to carry out a project under this subchapter at a public airport, to operate a public airport, or for the future development of an airport under the national plan of integrated airport systems. The head of the department, agency, or instrumentality shall decide whether the requested conveyance is consistent with the needs of the department, agency, or instrumentality and shall notify the Secretary of that decision not later than 4 months after receiving the request. If the head of the department, agency, or instrumentality decides that the requested conveyance is consistent with its needs, the head of the department, agency, or instrumentality, with the approval of the Attorney General and without cost to the Government, shall make the conveyance. A conveyance may be made only on the condition that the property interest conveyed reverts to the Government, at the option of the Secretary, to the extent it is not developed for an airport purpose or used consistently with the conveyance.

(b) NONAPPLICATION.—Except as specifically provided by law, subsection (a) of this section does not apply to land or airspace owned or controlled by the Government within—

(1) a national park, national monument, national recreation area, or similar area under the administration of the National Park Service;

(2) a unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; or

(3) a national forest or Indian reservation.

§47126. Criminal penalties for false statements

A person (including an officer, agent, or employee of the United States Government or a public agency) shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, with intent to defraud the Government, knowingly makes—

(1) a false statement about the kind, quantity, quality, or cost of the material used or to be used, or the quantity, quality, or cost of work performed or to be performed, in connection with the submission of a plan, map, specification, contract, or estimate of project cost for a project included in a grant application submitted to the Secretary of Transportation for approval under this subchapter;

(2) a false statement or claim for work or material for a project included in a grant application approved by the Secretary under this subchapter; or

(3) a false statement in a report or certification required under this subchapter.

§47127. Ground transportation demonstration projects

(a) GENERAL AUTHORITY.—To improve the airport and airway system of the United States consistent with regional airport system plans financed under section 13(b) of the Airport and Airway Development Act of 1970, the Secretary of Transportation may carry out ground transportation demonstration projects to improve ground access to air carrier airport terminals. The Secretary may carry out a demonstration project independently or by grant or contract, including an agreement with another department, agency, or instrumentality of the United States Government.

(b) PRIORITY.—In carrying out this section, the Secretary shall give priority to a demonstration project that—

(1) affects an airport in an area with an operating regional rapid transit system with existing facilities reasonably near the airport;

(2) includes connection of the airport terminal to that system;

(3) is consistent with and supports a regional airport system plan adopted by the planning agency for the region and submitted to the Secretary; and

(4) improves access to air transportation for individuals residing or working in the region by encouraging the optimal balance of use of airports in the region.

§47128. State block grant pilot program

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations to carry out a State block grant pilot program. The regulations shall provide that the Secretary may designate not more than 3 qualified States to assume administrative responsibility for all airport grant amounts available under this subchapter, except for amounts designated for use at primary airports.

(b) APPLICATIONS AND SELECTION.—A State wishing to participate in the program must submit an application to the Secretary. The Secretary shall select a State on the basis of its application only after—

(1) deciding the State has an organization capable of effectively administering a block grant made under this section;

(2) deciding the State uses a satisfactory airport system planning process;

(3) deciding the State uses a programming process acceptable to the Secretary;

(4) finding that the State has agreed to comply with United States Government standard requirements for administering the block grant; and

(5) finding that the State has agreed to provide the Secretary with program information the Secretary requires.

(c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before deciding whether a planning process is satisfactory or a programming process is acceptable under subsection (b)(2) or (3) of this section, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government.

(d) ENDING EFFECTIVE DATE AND REPORT.—(1) This section is effective only through September 30, 1992.

(2) The Secretary shall conduct an on-going review of the program and not later than January 31, 1992, shall submit to Congress a report on the results of the review and recommendations for further action.

§47129. Annual report

Not later than April 1 of each year, the Secretary of Transportation shall submit to Congress a report on activities carried out under this subchapter during the prior fiscal year. The report shall include—

(1) a detailed statement of airport development completed;

(2) the status of each project undertaken;

(3) the allocation of appropriations; and

(4) an itemized statement of expenditures and receipts.

SUBCHAPTER II—SURPLUS PROPERTY FOR PUBLIC AIRPORTS

§47151. Authority to transfer an interest in surplus property

(a) GENERAL AUTHORITY.—Subject to sections 47152 and 47153 of this title, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may give a State, political subdivision of a State, or tax-supported organization any interest in surplus property—

(1) that the Secretary of Transportation decides is—

(A) desirable for developing, improving, operating, or maintaining a public airport (as defined in section 47102 of this title);

(B) reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport; or

(C) needed for developing sources of revenue from nonaviation businesses at a public airport; and

(2) if the Administrator of General Services approves the gift and decides the interest is not best suited for industrial use.

(b) ENSURING COMPLIANCE.—Only the Secretary may ensure compliance with an instrument giving an interest in surplus property under this subchapter. The Secretary may amend the instrument to correct the instrument or to make the gift comply with law.

(c) DISPOSING OF INTERESTS NOT GIVEN UNDER THIS SUBCHAPTER.—An interest in surplus property that could be used at a public airport but that is not given under this subchapter shall be disposed of under other applicable law.

§47152. Terms of gifts

Except as provided in section 47153 of this title, the following terms apply to a gift of an interest in surplus property under this subchapter:

(1) A State, political subdivision of a State, or tax-supported organization receiving the interest may use, lease, salvage, or dispose of the interest for other than airport purposes only after the Secretary of Transportation gives written consent that the interest can be used, leased, salvaged, or disposed of without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which the property is located.

(2) The interest shall be used and maintained for public use and benefit without unreasonable discrimination.

(3) A right may not be vested in a person, excluding others in the same class from using the airport at which the property is located—

(A) to conduct an aeronautical activity requiring the operation of aircraft; or

(B) to engage in selling or supplying aircraft, aircraft accessories, equipment, or supplies (except gasoline and oil), or aircraft services necessary to operate aircraft (including maintaining and repairing aircraft, aircraft engines, propellers, and appliances).

(4) The State, political subdivision, or tax-supported organization accepting the interest shall clear and protect the aerial approaches to the airport by mitigating existing, and preventing future, airport hazards.

(5) During a national emergency declared by the President or Congress, the United States Government is entitled to use, control, or pos-

sess, without charge, any part of the public airport at which the property is located. However, the Government shall—

(A) pay the entire cost of maintaining the part of the airport it exclusively uses, controls, or possesses during the emergency;

(B) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining the property it uses nonexclusively, or over which the Government has nonexclusive control or possession, during the emergency; and

(C) pay a fair rental for use, control, or possession of improvements to the airport made without Government assistance.

(6) The Government is entitled to the nonexclusive use, without charge, of the landing area of an airport at which the property is located. The Secretary may limit the use of the landing area if necessary to prevent unreasonable interference with use by other authorized aircraft. However, the Government shall—

(A) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining and operating the landing area; and

(B) pay for damages caused by its use of the landing area if its use of the landing area is substantial.

(7) The State, political subdivision, or tax-supported organization accepting the interest shall release the Government from all liability for damages arising under an agreement that provides for Government use of any part of an airport owned, controlled, or operated by the State, political subdivision, or tax-supported organization on which, adjacent to which, or in connection with which, the property is located.

(8) When a term under this section is not satisfied, any part of the interest in the property reverts to the Government, at the option of the Government, as the property then exists.

§47153. Waiving and adding terms

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation may waive, without charge, a term of a gift of an interest in property under this subchapter if the Secretary decides that—

(A) the property no longer serves the purpose for which it was given; or

(B) the waiver will not prevent carrying out the purpose for which the gift was made and is necessary to advance the civil aviation interests of the United States.

(2) The Secretary of Transportation shall waive a term under paragraph (1) of this subsection on terms the Secretary considers necessary to protect or advance the civil aviation interests of the United States.

(b) WAIVERS AND INCLUSION OF ADDITIONAL TERMS ON REQUEST.—On request of the Secretary of Transportation or the Secretary of a military department, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may waive a term required by section 47152 of this title or add another term if the appropriate Secretary decides it is necessary to protect or advance the interests of the United States in civil aviation or for national defense.

CHAPTER 473—INTERNATIONAL AIRPORT FACILITIES

Sec.

47301. Definitions.
47302. Providing airport and airway property in foreign territories.
47303. Training foreign citizens.
47304. Transfer of airport and airway property.
47305. Administrative.
47306. Criminal penalty.

§47301. Definitions

In this chapter—

(1) "airport property" means an interest in property used or useful in operating and maintaining an airport.

(2) "airway property" means an interest in property used or useful in operating and maintaining a ground installation, facility, or equipment desirable for the orderly and safe operation of air traffic, including air navigation, air traffic control, airway communication, and meteorological facilities.

(3) "foreign territory" means an area—

(A) over which no government or a government of a foreign country has sovereignty;

(B) temporarily under military occupation by the United States Government; or

(C) occupied or administered by the Government or a government of a foreign country under an international agreement.

(4) "territory outside the continental United States" means territory outside the 48 contiguous States and the District of Columbia.

§47302. Providing airport and airway property in foreign territories

(a) GENERAL AUTHORITY.—Subject to the concurrence of the Secretary of State and the consideration of objectives of the International Civil Aviation Organization—

(1) the Secretary of Transportation may acquire, establish, and construct airport property and airway property (except meteorological facilities) in foreign territory; and

(2) the Secretary of Commerce may acquire, establish, and construct meteorological facilities in foreign territory.

(b) SPECIFIC APPROPRIATIONS REQUIRED.—Except for airport property transferred under section 47304(b) of this title, an airport (as defined in section 40102(a) of this title) may be acquired, established, or constructed under subsection (a) of this section only if amounts have been appropriated specifically for the airport.

(c) ACCEPTING FOREIGN PAYMENTS.—The Secretary of Transportation or Commerce, as appropriate, may accept payment from a government of a foreign country or international organization for facilities or services sold or provided the government or organization under this chapter. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

§47303. Training foreign citizens

Subject to the concurrence of the Secretary of State, the Secretary of Transportation or Commerce, as appropriate, may train a foreign citizen in a subject related to aeronautics and essential to the orderly and safe operation of civil aircraft. The training may be provided—

(1) directly by the appropriate Secretary or jointly with another department, agency, or instrumentality of the United States Government;

(2) through a public or private agency of the United States (including a State or municipal educational institution); or

(3) through an international organization.

§47304. Transfer of airport and airway property

(a) GENERAL AUTHORITY.—When requested by the government of a foreign country or an international organization, the Secretary of Transportation or Commerce, as appropriate, may transfer to the government or organization airport property and airway property operated and maintained under this chapter by the appropriate Secretary in foreign territory. The transfer shall be on terms the appropriate Secretary considers proper, including consideration agreed on through negotiations with the government or organization.

(b) PROPERTY INSTALLED OR CONTROLLED BY MILITARY.—Subject to terms to which the parties agree, the Secretary of a military department may transfer without charge to the Secretary of Transportation airport property and airway property (except meteorological facilities), and to the Secretary of Commerce meteorological facilities, that the Secretary of the military department installed or controls in territory outside the continental United States. The transfer may be made if consistent with the needs of national defense and—

(1) the Secretary of the military department finds that the property or facility is no longer required exclusively for military purposes; and

(2) the Secretary of Transportation or Commerce, as appropriate, decides that the transfer is or may be necessary to carry out this chapter.

(c) CANAL ZONE AND REPUBLIC OF PANAMA.—(1) The Secretary of Transportation may provide, operate, and maintain facilities and services for air navigation, airway communications, and air traffic control in the Canal Zone and the Republic of Panama subject to—

(A) the approval of the Secretary of Defense; and

(B) each obligation assumed by the United States Government under an agreement between the Government and the Republic of Panama.

(2) The Secretary of a military department may transfer without charge to the Secretary of Transportation property located in the Canal Zone or the Republic of Panama when the Secretary of Transportation decides that the transfer may be useful in carrying out this chapter.

(3) Subsection (b) of this section (related to the Secretary of Transportation) and section 47302(a) and (b) of this title do not apply in carrying out this subsection.

(d) RETAKING PROPERTY FOR MILITARY REQUIREMENT.—(1) When necessary for a military requirement, the Secretary of a military department immediately may retake property (with any improvements to it) transferred by the Secretary under subsection (b) or (c) of this section. The Secretary shall pay reasonable compensation to each person (or its successor in interest) that made an improvement to the property that was not made at the expense of the Government. The Secretary or a delegate of the Secretary shall decide on the amount of compensation.

(2) On the recommendation of the Secretary of Transportation or Commerce, as appropriate, the Secretary of a military department may decide not to act under paragraph (1) of this subsection.

§47305. Administrative

(a) GENERAL AUTHORITY.—The Secretary of Transportation shall consolidate, operate, protect, maintain, and improve airport property and airway property (except meteorological facilities), and the Secretary of Commerce may consolidate, operate, protect, maintain, and improve meteorological facilities, that the appropriate Secretary has acquired and that are located in territory outside the continental United States. In carrying out this section, the appropriate Secretary may—

(1) adapt the property or facility to the needs of civil aeronautics;

(2) lease the property or facility for not more than 20 years;

(3) make a contract, or provide directly, for facilities and services;

(4) make reasonable charges for aeronautical services; and

(5) acquire an interest in property.

(b) CREDITING APPROPRIATIONS.—Money received from the direct sale or charge that the Secretary of Transportation or Commerce, as appropriate, decides is equivalent to the cost of facilities and services sold or provided under subsection (a)(3) and (4) of this section is credited to the appropriation from which the cost was paid. The balance shall be deposited in the Treasury as miscellaneous receipts.

(c) USING OTHER GOVERNMENT FACILITIES AND SERVICES.—To carry out this chapter and to use personnel and facilities of the United States Government most advantageously and without unnecessary duplication, the Secretary of

Transportation or Commerce, as appropriate, shall request, when practicable, to use a facility or service of an appropriate department, agency, or instrumentality of the Government on a reimbursable basis. A department, agency, or instrumentality receiving a request under this section may provide the facility or service.

(d) ADVERTISING NOT REQUIRED.—Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply to a lease or contract made by the Secretary of Transportation or Commerce under this chapter.

§47306. Criminal penalty

A person that knowingly and willfully violates a regulation prescribed by the Secretary of Transportation to carry out this chapter shall be fined under title 18, imprisoned for not more than 6 months, or both.

CHAPTER 475—NOISE

SUBCHAPTER I—NOISE ABATEMENT

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47505. Airport noise compatibility planning grants.
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SUBCHAPTER I—NOISE ABATEMENT

§47501. Definitions

In this subchapter—

(1) "airport" means a public-use airport as defined in section 47102 of this title.

(2) "airport operator" means—

(A) for an airport serving air carriers that have certificates from the Secretary of Transportation, any person holding an airport operating certificate issued under section 44706 of this title; and

(B) for any other airport, the person operating the airport.

§47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure

After consultation with the Administrator of the Environmental Protection Agency and United States Government, State, and interstate agencies that the Secretary of Transportation considers appropriate, the Secretary shall by regulation—

(1) establish a single system of measuring noise that—

(A) has a highly reliable relationship between projected noise exposure and surveyed reactions of individuals to noise; and

(B) is applied uniformly in measuring noise at airports and the surrounding area;

(2) establish a single system for determining the exposure of individuals to noise resulting from airport operations, including noise intensity, duration, frequency, and time of occurrence; and

(3) identify land uses normally compatible with various exposures of individuals to noise.

§47503. Noise exposure maps

(a) SUBMISSION AND PREPARATION.—An airport operator may submit to the Secretary of Transportation a noise exposure map showing the noncompatible uses in each area of the map on the date the map is submitted, a description of estimated aircraft operations during 1985, and how those operations will affect the map. The map shall—

(1) be prepared in consultation with public agencies and planning authorities in the area surrounding the airport; and

(2) comply with regulations prescribed under section 47502 of this title.

(b) REVISED MAPS.—If a change in the operation of an airport will establish a substantial new noncompatible use in an area surrounding the airport, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use.

§47504. Noise compatibility programs

(a) SUBMISSIONS.—(1) An airport operator that submitted a noise exposure map and related information under section 47503(a) of this title may submit a noise compatibility program to the Secretary of Transportation after—

(A) consulting with public agencies and planning authorities in the area surrounding the airport, United States Government officials having local responsibility for the airport, and air carriers using the airport; and

(B) notice and an opportunity for a public hearing.

(2) A program submitted under paragraph (1) of this subsection shall state the measures the operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the map. The measures may include—

(A) establishing a preferential runway system;

(B) restricting the use of the airport by a type or class of aircraft because of the noise characteristics of the aircraft;

(C) constructing barriers and acoustical shielding and soundproofing public buildings;

(D) using flight procedures to control the operation of aircraft to reduce exposure of individuals to noise in the area surrounding the airport; and

(E) acquiring land, air rights, easements, development rights, and other interests to ensure that the property will be used in ways compatible with airport operations.

(b) APPROVALS.—(1) The Secretary shall approve or disapprove a program submitted under subsection (a) of this section (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) not later than 180 days after receiving it. The Secretary shall approve the program (except as the program is related to flight procedures referred to in subsection (a)(2)(D)) if the program—

(A) does not place an unreasonable burden on interstate or foreign commerce;

(B) is reasonably consistent with achieving the goal of reducing noncompatible uses and preventing the introduction of additional noncompatible uses; and

(C) provides for necessary revisions because of a revised map submitted under section 47503(b) of this title.

(2) A program (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) is deemed to be approved if the Secretary does not act within the 180-day period.

(3) The Secretary shall submit any part of a program related to flight procedures referred to in subsection (a)(2)(D) of this section to the Administrator of the Federal Aviation Administration. The Administrator shall approve or disapprove that part of the program.

(c) GRANTS.—(1) The Secretary may incur obligations to make grants from amounts available under section 48103 of this title to carry out a project under a part of a noise compatibility program approved under subsection (b) of this section. A grant may be made to—

(A) an airport operator submitting the program;

(B) a unit of local government in the area surrounding the airport, if the Secretary decides the unit is able to carry out the project;

(C) an airport operator or unit of local government referred to in clause (A) or (B) of this paragraph to carry out any part of a program developed before February 18, 1980, or before implementing regulations were prescribed, if the Secretary decides the program is substantially consistent with reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses and the purposes of this chapter will be furthered by promptly carrying out the program; and

(D) an airport operator or unit of local government referred to in clause (A) or (B) of this paragraph to soundproof a public building in the noise impact area surrounding the airport that is used primarily for educational or medical purposes and that the Secretary decides is adversely affected by airport noise.

(2) An airport operator may agree to make a grant made under paragraph (1)(A) of this subsection available to a public agency in the area surrounding the airport if the Secretary decides the agency is able to carry out the project.

(3) The Government's share of a project for which a grant is made under paragraph (1) of this subsection is the greater of—

(A) 80 percent of the cost of the project; or

(B) the Government's share that would apply if the amounts available for the project were made available under subchapter I of chapter 471 of this title for a project at the airport.

(4) The provisions of subchapter I of chapter 471 of this title related to grants apply to a grant made under this chapter, except—

(A) section 47109 (a) and (b) of this title; and

(B) any provision that the Secretary decides is inconsistent with, or unnecessary to carry out, this chapter.

(d) GOVERNMENT RELIEF FROM LIABILITY.—The Government is not liable for damages from aviation noise because of action taken under this section.

§47505. Airport noise compatibility planning grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant to a sponsor of an airport to develop, for planning purposes, information necessary to prepare and submit—

(1) a noise exposure map and related information under section 47503 of this title, including the cost of obtaining the information; or

(2) a noise compatibility program under section 47504 of this title.

(b) AVAILABILITY OF AMOUNTS AND GOVERNMENT'S SHARE OF COSTS.—A grant under subsection (a) of this section may be made from amounts available under section 48103 of this

title. The United States Government's share of the grant is the percent for which a project for airport development at an airport would be eligible under section 47109 (a) and (b) of this title.

§47506. Limitations on recovering damages for noise

(a) GENERAL LIMITATIONS.—A person acquiring an interest in property after February 18, 1980, in an area surrounding an airport for which a noise exposure map has been submitted under section 47503 of this title and having actual or constructive knowledge of the existence of the map may recover damages, for noise attributable to the airport only if, in addition to any other elements for recovery of damages, the person shows that—

(1) after acquiring the interest, there was a significant—

(A) change in the type or frequency of aircraft operations at the airport;

(B) change in the airport layout;

(C) change in flight patterns; or

(D) increase in nighttime operations; and

(2) the damages resulted from the change or increase.

(b) CONSTRUCTIVE KNOWLEDGE.—Constructive knowledge of the existence of a map under subsection (a) of this section shall be imputed, at a minimum, to a person if—

(1) before the person acquired the interest, notice of the existence of the map was published at least 3 times in a newspaper of general circulation in the county in which the property is located; or

(2) the person is given a copy of the map when acquiring the interest.

§47507. Nonadmissibility of noise exposure map and related information as evidence

No part of a noise exposure map or related information described in section 47503 of this title that is submitted to, or prepared by, the Secretary of Transportation and no part of a list of land uses the Secretary identifies as normally compatible with various exposures of individuals to noise may be admitted into evidence or used for any other purpose in a civil action asking for relief for noise resulting from the operation of an airport.

§47508. Noise standards for air carriers and foreign air carriers providing foreign air transportation

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall require each air carrier and foreign air carrier providing foreign air transportation to comply with noise standards—

(1) the Secretary prescribes for new subsonic aircraft under regulations of the Secretary in effect on January 1, 1977; or

(2) of the International Civil Aviation Organization that are substantially compatible with standards of the Secretary for new subsonic aircraft under regulations of the Secretary at parts 36 and 91 of title 14, Code of Federal Regulations, prescribed between January 2, 1977, and January 1, 1982.

(b) COMPLIANCE AT PHASED RATE.—The Secretary shall require each air carrier and foreign air carrier providing foreign air transportation to comply with the noise standards at a phased rate similar to the rate for aircraft registered in the United States.

(c) NONDISCRIMINATION.—The requirement for air carriers providing foreign air transportation may not be more stringent than the requirement for foreign air carriers.

SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY

§47521. Findings

Congress finds that—

(1) aviation noise management is crucial to the continued increase in airport capacity;

(2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system;

(3) a noise policy must be carried out at the national level;

(4) local interest in aviation noise management shall be considered in determining the national interest;

(5) community concerns can be alleviated through the use of new technology aircraft and the use of revenues, including those available from passenger facility fees, for noise management;

(6) revenues controlled by the United States Government can help resolve noise problems and carry with them a responsibility to the national airport system;

(7) revenues derived from a passenger facility fee may be applied to noise management and increased airport capacity; and

(8) a precondition to the establishment and collection of a passenger facility fee is the prescribing by the Secretary of Transportation of a regulation establishing procedures for reviewing airport noise and access restrictions on operations of stage 2 and stage 3 aircraft.

§47522. Definitions

In this subchapter—

(1) "air carrier", "air transportation", and "United States" have the same meanings given those terms in section 40102(a) of this title.

(2) "stage 3 noise levels" means the stage 3 noise levels in part 36 of title 14, Code of Federal Regulations, in effect on November 5, 1990.

§47523. National aviation noise policy

(a) GENERAL REQUIREMENTS.—Not later than July 1, 1991, the Secretary of Transportation shall establish by regulation a national aviation noise policy that considers this subchapter, including the phaseout and nonaddition of stage 2 aircraft as provided in this subchapter and dates for carrying out that policy and reporting requirements consistent with this subchapter and law existing as of November 5, 1990.

(b) DETAILED ECONOMIC ANALYSIS.—The policy shall be based on a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(1) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(2) the impact of competition in the airline and air cargo industries;

(3) the impact on nonhub and small community air service; and

(4) the impact on new entry into the airline industry.

(c) RECOMMENDATIONS TO CONGRESS.—Not later than July 1, 1991, the Secretary shall submit to Congress recommendations on—

(1) the need for changes in the standards and procedures governing the rights of State and local governments, including airport authorities, to restrict aircraft operations to limit aircraft noise;

(2) the need for changes in the standards and procedures governing civil actions by persons adversely affected by aircraft noise;

(3) the need for changes in the standards and procedures for United States Government regulation of airspace (including the pattern of operations for the air traffic control system) to take better account of environmental effects;

(4) the need for changes in the Government program providing assistance for noise abatement planning and programs, including the need for greater incentives or mandatory requirements for local restrictions on the use of land affected by aircraft noise;

(5) whether any changes in policy recommended in clauses (1)–(4) of this subsection should be carried out through regulatory, administrative, or legislative action; and

(6) specific legislative proposals necessary to carry out the national aviation noise policy.

§47524. Airport noise and access restriction review program

(a) GENERAL REQUIREMENTS.—The national aviation noise policy established under section 47523 of this title shall provide for establishing by regulation a national program for reviewing airport noise and access restrictions on the operation of stage 2 and stage 3 aircraft. The program shall provide for adequate public notice and opportunity for comment on the restrictions.

(b) STAGE 2 AIRCRAFT.—Except as provided in subsection (d) of this section, an airport noise or access restriction may include a restriction on the operation of stage 2 aircraft proposed after October 1, 1990, only if the airport operator publishes the proposed restriction and prepares and makes available for public comment at least 180 days before the effective date of the proposed restriction—

(1) an analysis of the anticipated or actual costs and benefits of the existing or proposed restriction;

(2) a description of alternative restrictions;

(3) a description of the alternative measures considered that do not involve aircraft restrictions; and

(4) a comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction.

(c) STAGE 3 AIRCRAFT.—(1) Except as provided in subsection (d) of this section, an airport noise or access restriction on the operation of stage 3 aircraft not in effect on October 1, 1990, may become effective only if the restriction has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary of Transportation after an airport or aircraft operator's request for approval as provided by the program established under this section. Restrictions to which this paragraph applies include—

(A) a restriction on noise levels generated on either a single event or cumulative basis;

(B) a restriction on the total number of stage 3 aircraft operations;

(C) a noise budget or noise allocation program that would include stage 3 aircraft;

(D) a restriction on hours of operations; and

(E) any other restriction on stage 3 aircraft.

(2) Not later than 180 days after the Secretary receives an airport or aircraft operator's request for approval of an airport noise or access restriction on the operation of a stage 3 aircraft, the Secretary shall approve or disapprove the restriction. The Secretary may approve the restriction only if the Secretary finds on the basis of substantial evidence that—

(A) the restriction is reasonable, nonarbitrary, and nondiscriminatory;

(B) the restriction does not create an unreasonable burden on interstate or foreign commerce;

(C) the restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace;

(D) the restriction does not conflict with a law or regulation of the United States;

(E) an adequate opportunity has been provided for public comment on the restriction; and

(F) the restriction does not create an unreasonable burden on the national aviation system.

(3) Paragraphs (1) and (2) of this subsection do not apply if the Administrator of the Federal Aviation Administration, before November 5, 1990, has formed a working group (outside the process established by part 150 of title 14, Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes at the airport. If an agreement on noise reductions at that airport is made between the airport proprietor and an air

carrier or air carriers that are a majority of the air carriers using the airport, this subsection applies only to a local action to enforce the agreement.

(4) The Secretary may reevaluate an airport noise or access restriction previously agreed to or approved under this subsection on request of an aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport that justifies a reevaluation. The Secretary shall establish by regulation procedures for conducting a reevaluation. A reevaluation—

(A) shall be based on the criteria in paragraph (2) of this subsection; and

(B) may be conducted only after 2 years after a decision under paragraph (2) of this subsection has been made.

(d) NONAPPLICATION.—Subsections (b) and (c) of this section do not apply to—

(1) a local action to enforce a negotiated or executed airport noise or access agreement between the airport operator and the aircraft operators in effect on November 5, 1990;

(2) a local action to enforce a negotiated or executed airport noise or access restriction agreed to by the airport operator and the aircraft operators before November 5, 1990;

(3) an intergovernmental agreement including an airport noise or access restriction in effect on November 5, 1990;

(4) a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety;

(5)(A) an airport noise or access restriction adopted by an airport operator not later than October 1, 1990, and stayed as of October 1, 1990, by a court order or as a result of litigation, if any part of the restriction is subsequently allowed by a court to take effect; or

(B) a new restriction imposed by an airport operator to replace any part of a restriction described in subclause (A) of this clause that is disallowed by a court, if the new restriction would not prohibit aircraft operations in effect on November 5, 1990; or

(6) a local action that represents the adoption of the final part of a program of a staged airport noise or access restriction if the initial part of the program was adopted during 1988 and was in effect on November 5, 1990.

(e) GRANT LIMITATIONS.—Beginning on the 91st day after the Secretary prescribes a regulation under subsection (a) of this section, a sponsor of a facility operating under an airport noise or access restriction on the operation of stage 3 aircraft that first became effective after October 1, 1990, is eligible for a grant under section 47104 of this title and is eligible to impose a passenger facility fee under section 40117 of this title only if the restriction has been—

(1) agreed to by the airport proprietor and aircraft operators;

(2) approved by the Secretary as required by subsection (c)(1) of this section; or

(3) rescinded.

§47525. Decision about airport noise and access restrictions on certain stage 2 aircraft

The Secretary of Transportation shall conduct a study and decide on the application of section 47524(a)–(d) of this title to airport noise and access restrictions on the operation of stage 2 aircraft with a maximum weight of not more than 75,000 pounds. In making the decision, the Secretary shall consider—

(1) noise levels produced by those aircraft relative to other aircraft;

(2) the benefits to general aviation and the need for efficiency in the national air transportation system;

(3) the differences in the nature of operations at airports and the areas immediately surrounding the airports;

(4) international standards and agreements on aircraft noise; and

(5) other factors the Secretary considers necessary.

§47526. Limitations for noncomplying airport noise and access restrictions

Unless the Secretary of Transportation is satisfied that an airport is not imposing an airport noise or access restriction not in compliance with this subchapter, the airport may not—

(1) receive money under subchapter I of chapter 471 of this title; or

(2) impose a passenger facility fee under section 40117 of this title.

§47527. Liability of the United States Government for noise damages

When a proposed airport noise or access restriction is disapproved under this subchapter, the United States Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of the disapproval. The United States Claims Court has exclusive jurisdiction of a civil action under this section.

§47528. Prohibition on operating certain aircraft not complying with stage 3 noise levels

(a) PROHIBITION.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate after December 31, 1999, a civil subsonic turbojet with a maximum weight of more than 75,000 pounds to or from an airport in the United States only if the Secretary of Transportation finds that the aircraft complies with the stage 3 noise levels.

(b) WAIVERS.—(1) If, not later than July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the stage 3 noise levels, the carrier may apply for a waiver of subsection (a) of this section for the remaining aircraft used by the carrier to provide air transportation. The application must be filed with the Secretary not later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the carrier to provide air transportation comply with the noise levels not later than December 31, 2003.

(2) The Secretary may grant a waiver under this subsection if the Secretary finds it would be in the public interest. In making the finding, the Secretary shall consider the effect of granting the waiver on competition in the air carrier industry and on small community air service.

(3) A waiver granted under this subsection may not permit the operation of stage 2 aircraft in the United States after December 31, 2003.

(c) SCHEDULE FOR PHASED-IN COMPLIANCE.—The Secretary shall establish by regulation a schedule for phased-in compliance with subsection (a) of this section. The phase-in period shall begin on November 5, 1990, and end before December 31, 1999. The regulations shall establish interim compliance dates. The schedule for phased-in compliance shall be based on—

(1) a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(A) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(B) the impact of competition in the airline and air cargo industries;

(C) the impact on nonhub and small community air service; and

(D) the impact on new entry into the airline industry; and

(2) an analysis of the impact of aircraft noise on individuals residing near airports.

(d) ANNUAL REPORT.—Beginning with calendar year 1992—

(1) each air carrier shall submit to the Secretary an annual report on the progress the carrier is making toward complying with the requirements of this section and regulations prescribed under this section; and

(2) the Secretary shall submit to Congress an annual report on the progress being made toward that compliance.

§47529. Nonaddition rule

(a) GENERAL LIMITATIONS.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into the United States after November 4, 1990, only if the aircraft—

(1) complies with the stage 3 noise levels; or

(2) was purchased by the person importing the aircraft into the United States under a written contract made before November 5, 1990.

(b) EXEMPTIONS.—The Secretary of Transportation may provide an exemption from subsection (a) of this section to permit a person to obtain modifications to an aircraft to meet the stage 3 noise levels.

(c) AIRCRAFT DEEMED NOT IMPORTED.—In this section, an aircraft is deemed not to have been imported into the United States if the aircraft—

(1) was owned on November 5, 1990, by—

(A) a corporation, trust, or partnership organized under the laws of the United States or a State (including the District of Columbia);

(B) an individual who is a citizen of the United States; or

(C) an entity that is owned or controlled by a corporation, trust, partnership, or individual described in subclause (A) or (B) of this clause; and

(2) enters the United States not later than 6 months after the expiration of a lease agreement (including any extension) between an owner described in clause (1) of this subsection and a foreign air carrier.

§47530. Nonapplication of sections 47528 and 47529 to aircraft outside the 48 contiguous States

Sections 47528 and 47529 of this title do not apply to aircraft used only to provide air transportation outside the 48 contiguous States. A civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into a noncontiguous State or a territory or possession of the United States after November 4, 1990, may be used to provide air transportation in the 48 contiguous States only if the aircraft complies with the stage 3 noise levels.

§47531. Penalties for violating sections 47528–47530

A person violating sections 47528, 47529, or 47530 of this title or a regulation prescribed under those sections is subject to the same civil penalties and procedures under chapter 463 of this title as a person violating section 44701 (a) or (b) or 44702–44716 of this title.

§47532. Judicial review

An action taken by the Secretary of Transportation under section 47528–47531 of this title is subject to judicial review as provided under section 46110 of this title.

§47533. Relationship to other laws

Except as provided by section 47524 of this title, this subchapter does not affect—

(1) law in effect on November 5, 1990, on airport noise or access restrictions by local authorities;

(2) any proposed airport noise or access restriction at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process before October 2, 1990; or

(3) the authority of the Secretary of Transportation to seek and obtain legal remedies the Secretary considers appropriate, including injunctive relief.

PART C—FINANCING

CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

Sec.
48101. Air navigation facilities.
48102. Research and development.
48103. Airport planning and development and noise compatibility planning and programs.
48104. Certain direct costs and joint air navigation services.
48105. Weather reporting services.
48106. Airway science curriculum grants.
48107. Civil aviation security research and development.
48108. Availability and uses of amounts.
48109. Submission of budget information and legislative recommendations and comments.

§48101. Air navigation facilities

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of $5,500,000,000 may be appropriated to the Secretary of Transportation for the fiscal years ending September 30, 1991, and 1992, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

§48102. Research and development

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1992, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out sections 44504, 44505, 44507, 44509, and 44511–44513 of this title:

(1) $135,800,000 for air traffic control projects and activities;

(2) $19,100,000 for air traffic control advanced computer projects and activities;

(3) $3,400,000 for navigation projects and activities;

(4) $9,700,000 for aviation weather projects and activities;

(5) $16,500,000 for aviation medicine projects and activities;

(6) $70,100,000 for aircraft safety projects and activities; and

(7) $5,400,000 for environmental projects and activities.

(b) AVAILABILITY FOR AVIATION RESEARCH GRANTS.—At least 3 percent of the amounts made available under subsection (a) of this section for a fiscal year shall be available to the Administrator of the Federal Aviation Administration to make grants under section 44511 of this title.

(c) TRANSFERS BETWEEN CATEGORIES.—(1) Not more than 10 percent of the net amount authorized for a category of projects and activities in a fiscal year under subsection (a) of this section may be transferred to or from that category in that fiscal year.

(2) The Secretary may transfer more than 10 percent of an authorized amount to or from a category only after—

(A) submitting a written explanation of the proposed transfer to the Committees on Science, Space, and Technology and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

(B) 30 days have passed after the explanation is submitted or each Committee notifies the Secretary in writing that it does not object to the proposed transfer.

(d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the amounts made available under subsection (a) of this section, at least $25,000,000 may be appropriated each fiscal year for research and development under section 44505 (a) and (c) of this title on preserving and enhancing airport capacity, including research and development on improvements to airport design standards, maintenance, safety, operations, and environmental concerns.

(2) The Secretary shall submit to the Committees on Science, Space, and Technology and Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made under paragraph (1) of this subsection for each fiscal year. The report shall be submitted not later than 60 days after the end of the fiscal year.

(e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary amounts may be appropriated to the Secretary out of amounts in the Fund available for research and development to conduct research under section 44506 of this title.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

§48103. Airport planning and development and noise compatibility planning and programs

Not more than a total of $13,916,700,000 is available to the Secretary of Transportation for the fiscal years ending September 30, 1982–1992, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for airport planning and airport development under section 47104 of this title, airport noise compatibility planning under section 47505(a)(2) of this title, and carrying out noise compatibility programs under section 47504(c) of this title.

§48104. Certain direct costs and joint air navigation services

(a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this section, the balance of the money available in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) may be appropriated out of the Fund for—

(1) direct costs the Secretary of Transportation incurs to flight check, operate, and maintain air navigation facilities referred to in section 44502(a)(1)(A) of this title safely and efficiently; and

(2) the costs of services provided under international agreements related to the joint financing of air navigation services assessed against the United States Government.

(b) LIMITATION.—The amount that may be appropriated out of the Fund for the fiscal year ending September 30, 1992, may not be more than an amount equal to—

(1) 75 percent of the amount made available under sections 106(k) and 48101–48103 of this title for that fiscal year; less

(2) the amount made available under sections 48101–48103 of this title for that fiscal year.

§48105. Weather reporting services

The Secretary of Transportation may expend from amounts available under section 48104 of this title not more than $35,389,000 for the fiscal year ending September 30, 1992, to reimburse the Secretary of Commerce for the cost of providing weather reporting services.

§48106. Airway science curriculum grants

Amounts are available from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out section 44510 of this title. The amounts remain available until expended as provided by law.

§48107. Civil aviation security research and development

After the review under section 44912(b) of this title is completed, necessary amounts may be appropriated to the Administrator of the Federal Aviation Administration out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants under section 44912(a)(4)(A).

§48108. Availability and uses of amounts

(a) AVAILABILITY OF AMOUNTS.—Amounts equal to the amounts authorized under sections 48101–48105 of this title remain in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) until appropriated for the purposes of sections 48101–48105.

(b) LIMITATIONS ON USES.—(1) Amounts in the Fund may be appropriated only to carry out a program or activity referred to in this chapter.

(2) Amounts in the Fund may be appropriated for administrative expenses of the Department of Transportation or a component of the Department only to the extent authorized by section 48104 of this title.

(c) LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.—In a fiscal year beginning after September 30, 1992, the Secretary of Transportation may obligate or expend an amount appropriated out of the Fund under section 48104 of this title only if a law expressly amends section 48104.

§48109. Submission of budget information and legislative recommendations and comments

When the Administrator of the Federal Aviation Administration submits to the Secretary of Transportation, the President, or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or 48102 of this title, the Administrator concurrently shall submit a copy of the information, recommendation, or comment to the Speaker of the House of Representatives, the Committees on Public Works and Transportation and Appropriations of the House, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

PART D—MISCELLANEOUS

CHAPTER 491—BUY-AMERICAN PREFERENCES

Sec.
49101. Buying goods produced in the United States.
49102. Restricting contract awards because of discrimination against United States goods or services.
49103. Contract preference for domestic firms.
49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities.
49105. Fraudulent use of "Made in America" label.

§49101. Buying goods produced in the United States

(a) PREFERENCE.—The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(g) and 47127), or chapter 493 (except sections 49302(e), 49306, and 49307) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) for a project only if steel and manufactured goods used in the project are produced in the United States.

(b) NONAPPLICATION.—(1) Subsection (a) of this section does not apply if the Secretary finds that—

(A) applying subsection (a) would be inconsistent with the public interest;

(B) the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(C) when procuring a facility or equipment under subchapter I of chapter 471 (except sections 47106(g) and 47127) or chapter 493 (except sections 49302(e), 49306, and 49307) of this title—

(i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(ii) final assembly of the facility or equipment has occurred in the United States; or

(D) including domestic material will increase the cost of the overall project by more than 25 percent.

(2) In paragraph (1)(C)(i) of this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

§49102. Restricting contract awards because of discrimination against United States goods or services

A person or enterprise domiciled or operating under the laws of a foreign country may not make a contract or subcontract under subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) if the government of that country unfairly maintains, in government procurement, a significant and persistent pattern of discrimination against United States goods or services that results in identifiable harm to United States businesses, that the President identifies under section 305(g)(1)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)).

§49103. Contract preference for domestic firms

(a) DEFINITIONS.—In this section—

(1) "domestic firm" means a business entity incorporated, and conducting business, in the United States.

(2) "foreign firm" means a business entity not described in clause (1) of this subsection.

(b) PREFERENCE.—Subject to subsections (c) and (d) of this section, the Administrator of the Federal Aviation Administration may make, with a domestic firm, a contract related to a grant made under section 44511, 44512, or 44513 of this title that, under competitive procedures, would be made with a foreign firm, if—

(1) the Administrator decides, and the Secretary of Commerce and the United States Trade Representative concur, that the public interest requires making the contract with the domestic firm, considering United States international obligations and trade relations;

(2) the difference between the bids submitted by the foreign firm and the domestic firm is not more than 6 percent;

(3) the final product of the domestic firm will be assembled completely in the United States; and

(4) at least 51 percent of the final product of the domestic firm will be produced in the United States.

(c) NONAPPLICATION.—Subsection (b) of this section does not apply if—

(1) compelling national security considerations require that subsection (b) of this section not apply; or

(2) the Trade Representative decides that making the contract would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(d) APPLICATION TO CERTAIN GRANTS.—This section applies only to a contract related to a grant made under section 44511, 44512, or 44513 of this title for which—

(1) an amount is authorized by section 47702(a), (b), or (d) of this title to be made available; and

(2) a solicitation for bid is issued after November 5, 1990.

(e) REPORT.—The Administrator shall submit a report to Congress on—

(1) contracts to which this section applies that are made with foreign firms in the fiscal years ending September 30, 1991, and 1992;

(2) the number of contracts that meet the requirements of subsection (b) of this section, but that the Trade Representative decides would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party; and

(3) the number of contracts made under this section.

§49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities

(a) DEFINITION AND RULES FOR CONSTRUING SECTION.—In this section—

(1) "project" has the same meaning given that term in section 47102 of this title.

(2) each foreign instrumentality and each territory and possession of a foreign country administered separately for customs purposes is a separate foreign country.

(3) an article substantially produced or manufactured in a foreign country is a product of the country.

(4) a service provided by a person that is a national of a foreign country or that is controlled by a national of a foreign country is a service of the country.

(b) LIMITATION ON USE OF AVAILABLE AMOUNTS.—(1) An amount made available under subchapter I of chapter 471 of this title (except sections 47106(g) and 47127) may not be used for a project that uses a product or service of a foreign country during any period the country is on the list maintained by the United States Trade Representative under subsection (d)(1) of this section.

(2) Paragraph (1) of this subsection does not apply when the Secretary of Transportation decides that—

(A) applying paragraph (1) to the product, service, or project is not in the public interest;

(B) a product or service of the same class or type and of satisfactory quality is not produced or offered in the United States, or in a foreign country not listed under subsection (d)(1) of this section, in a sufficient and reasonably available amount; and

(C) the project cost will increase by more than 20 percent if the product or service is excluded.

(c) DECISIONS ON DENIAL OF FAIR MARKET OPPORTUNITIES.—Not later than 30 days after a report is submitted to Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the Trade Representative, for a construction project of more than $500,000 for which the government of a foreign country supplies any part of the amount, shall decide whether the foreign country denies fair market opportunities for products and suppliers of the United States in procurement or for United States bidders. In making the decision, the Trade Representative shall consider information obtained in preparing the report and other information the Trade Representative considers relevant.

(d) LIST OF COUNTRIES DENYING FAIR MARKET OPPORTUNITIES.—(1) The Trade Representative shall maintain a list of each foreign country the Trade Representative finds under subsection (c) of this section is denying fair market opportunities. The country shall remain on the list until the Trade Representative decides the country provides fair market opportunities.

(2) The Trade Representative shall publish in the Federal Register—

(A) annually the list required under paragraph (1) of this subsection; and

(B) any modification of the list made before the next list is published.

§49105. Fraudulent use of "Made in America" label

If the Secretary of Transportation decides that a person intentionally affixed a "Made in America" label to goods sold in or shipped to the United States that are not made in the United States, the Secretary shall declare the person ineligible to receive a contract or grant from the United States Government related to a contract made under subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) for not less than 3 nor more than 5 years. The Secretary may bring a civil action to enforce this section in any district court of the United States.

SUBTITLE VIII—PIPELINES

CHAPTER *Sec.*
601. SAFETY 60101
603. USER FEES 60301
605. INTERSTATE COMMERCE REGULATION 60501

CHAPTER 601—SAFETY

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§60101. Definitions

In this chapter—

(1) "existing liquefied natural gas facility"—

(A) means a liquefied natural gas facility for which an application to approve the site, construction, or operation of the facility was filed before March 1, 1978, with—

(i) the Federal Energy Regulatory Commission (or any predecessor); or

(ii) the appropriate State or local authority, if the facility is not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a facility on which construction is begun after November 29, 1979, without the approval.

(2) "gas" means natural gas, flammable gas, or toxic or corrosive gas.

(3) "gas pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation.

(4) "hazardous liquid" means—

(A) petroleum or a petroleum product; and

(B) a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas).

(5) "hazardous liquid pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid.

(6) "interstate gas pipeline facility"—

(A) means a gas pipeline facility—

(i) used to transport gas; and

(ii) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption.

(7) "interstate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce.

(8) "interstate or foreign commerce"—

(A) related to gas, means commerce—

(i) between a place in a State and a place outside that State; or

(ii) that affects any commerce described in subclause (A)(i) of this clause; and

(B) related to hazardous liquid, means commerce between—

(i) a place in a State and a place outside that State; or

(ii) places in the same State through a place outside the State.

(9) "intrastate gas pipeline facility" means—

(A) a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); and

(B) a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption.

(10) "intrastate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility that is not an interstate hazardous liquid pipeline facility.

(11) "liquefied natural gas" means natural gas in a liquid or semisolid state.

(12) "liquefied natural gas accident" means a release, burning, or explosion of liquefied natural gas from any cause, except a release, burning, or explosion that, under regulations prescribed by the Secretary, does not pose a threat to public health or safety, property, or the environment.

(13) "liquefied natural gas conversion" means conversion of natural gas into liquefied natural gas or conversion of liquefied natural gas into natural gas.

(14) "liquefied natural gas pipeline facility"—

(A) means a gas pipeline facility used for transporting or storing liquefied natural gas, or for liquefied natural gas conversion, in interstate or foreign commerce; but

(B) does not include any part of a structure or equipment located in navigable waters (as defined in section 3 of the Federal Power Act (16 U.S.C. 796)).

(15) "municipality" means a political subdivision of a State.

(16) "new liquefied natural gas pipeline facility" means a liquefied natural gas pipeline facility except an existing liquefied natural gas pipeline facility.

(17) "person", in addition to its meaning under section 1 of title 1 (except as to societies), includes a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person.

(18) "pipeline facility" means a gas pipeline facility and a hazardous liquid pipeline facility.

(19) "pipeline transportation" means transporting gas and transporting hazardous liquid.

(20) "State" means a State of the United States, the District of Columbia, and Puerto Rico.

(21) "transporting gas"—

(A) means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce; but

(B) does not include gathering gas in a rural area outside a populated area designated by the Secretary as a nonrural area.

(22) "transporting hazardous liquid"—

(A) means the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce; but

(B) does not include moving hazardous liquid through—

(i) gathering lines in a rural area;

(ii) onshore production, refining, or manufacturing facilities; or

(iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities.

§60102. General authority

(a) MINIMUM SAFETY STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(1) apply to transporters of gas and hazardous liquid and to owners and operators of pipeline facilities;

(2) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

(3) may include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to operate and maintain those facilities.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—A standard prescribed under subsection (a) of this section shall be practicable and designed to meet the need for gas pipeline safety and for safely transporting hazardous liquid. Except as provided in section 60103 of this title, when prescribing the standard the Secretary shall consider—

(1) relevant available—

(A) gas pipeline safety information; or

(B) hazardous liquid pipeline information;

(2) the appropriateness of the standard for the particular type of pipeline transportation or facility;

(3) the reasonableness of the standard; and

(4) the extent to which the standard will contribute to public safety.

(c) PUBLIC SAFETY PROGRAM REQUIREMENTS.—(1) The Secretary shall include in the standards prescribed under subsection (a) of this section a requirement that an operator of a gas pipeline facility participate in a public safety program that—

(A) notifies an operator of proposed demolition, excavation, tunneling, or construction near or affecting the facility;

(B) requires an operator to identify a pipeline facility that may be affected by the proposed demolition, excavation, tunneling, or construction, to prevent damaging the facility; and

(C) the Secretary decides will protect a facility adequately against a hazard caused by demolition, excavation, tunneling, or construction.

(2) To the extent a public safety program referred to in paragraph (1) of this subsection is not available, the Secretary shall prescribe standards requiring an operator to take action the Secretary prescribes to provide services comparable to services that would be available under a public safety program.

(3) The Secretary may include in the standards prescribed under subsection (a) of this section a requirement that an operator of a hazardous liquid pipeline facility participate in a public safety program meeting the requirements of paragraph (1) of this subsection or maintain and carry out a damage prevention program that provides services comparable to services that would be available under a public safety program.

(d) FACILITY OPERATION INFORMATION STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility to which this chapter applies to maintain, to the extent practicable, information related to operating the facility and, when requested, to provide the information to the Secretary and an appropriate State official. The information shall include—

(1) the business name, address, and telephone number, including an operations emergency telephone number, of the operator;

(2) accurate maps and a supplementary geographic description that show the location in the State of—

(A) major gas pipeline facilities of the operator, including transmission lines and significant distribution lines; and

(B) major hazardous liquid pipeline facilities of the operator;

(3) a description of—

(A) the characteristics of the operator's pipelines in the State; and

(B) products transported through the operator's pipelines in the State;

(4) the manual that governs operating and maintaining pipeline facilities in the State;

(5) an emergency response plan describing the operator's procedures for responding to and containing releases, including—

(A) identifying specific action the operator will take on discovering a release;

(B) liaison procedures with State and local authorities for emergency response; and

(C) communication and alert procedures for immediately notifying State and local officials at the time of a release; and

(6) other information the Secretary considers useful to inform a State of the presence of pipeline facilities and operations in the State.

(e) PIPE INVENTORY STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility to which this chapter applies to maintain for the Secretary, to the extent practicable, an inventory with appropriate information about the types of pipe used for the transmission of gas or hazardous liquid, as appropriate, in the operator's system and additional information, including the material's history and the leak history of the pipe. The inventory—

(1) for a gas pipeline facility, shall exclude equipment used with the compression of gas; and

(2) for a hazardous liquid pipeline facility, shall exclude equipment associated only with the pipeline pumps or storage facilities.

(f) STANDARDS AS ACCOMMODATING "SMART PIGS".—The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas pipeline transmission facility or hazardous liquid pipeline facility, and the required replacement of an existing gas pipeline transmission facility, hazardous liquid pipeline facility, or equipment, be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a "smart pig").

(g) EFFECTIVE DATES.—A standard prescribed under this section is effective on the 30th day after the Secretary prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(h) SAFETY CONDITION REPORTS.—(1) The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter) to submit to the Secretary a written report on any—

(A) condition that is a hazard to life or property; and

(B) safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility.

(2) The Secretary must receive the report not later than 5 working days after a representative of a person to which this section applies first establishes that the condition exists. Notice of the condition shall be given concurrently to appropriate State authorities.

(i) CARBON DIOXIDE REGULATION.—The Secretary shall regulate carbon dioxide transported by a hazardous liquid pipeline facility. The Secretary shall prescribe regulations related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.

§60103. Standards for liquefied natural gas pipeline facilities

(a) LOCATION STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for deciding on the location of a new liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider the—

(1) kind and use of the facility;

(2) existing and projected population and demographic characteristics of the location;

(3) existing and proposed land use near the location;

(4) natural physical aspects of the location;

(5) medical, law enforcement, and fire prevention capabilities near the location that can cope with a risk caused by the facility; and

(6) need to encourage remote siting.

(b) DESIGN, INSTALLATION, CONSTRUCTION, INSPECTION, AND TESTING STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for designing, installing, constructing, initially inspecting, and initially testing a new liquefied natural gas pipeline facility. When prescribing a standard, the Secretary shall consider—

(1) the characteristics of material to be used in constructing the facility and of alternative material;

(2) design factors;

(3) the characteristics of the liquefied natural gas to be stored or converted at, or transported by, the facility; and

(4) the public safety factors of the design and of alternative designs, particularly the ability to prevent and contain a liquefied natural gas spill.

(c) NONAPPLICATION.—(1) Except as provided in paragraph (2) of this subsection, a design, location, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, does not apply to an existing liquefied natural gas pipeline facility if the standard is to be applied because of authority given—

(A) under this chapter; or

(B) under another law, and the standard is not prescribed at the time the authority is applied.

(2)(A) Any design, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, may provide that the standard applies to any part of a replacement component of a liquefied natural gas pipeline facility if the component or part is placed in service after the standard is prescribed and application of the standard—

(i) does not make the component or part incompatible with other components or parts; or

(ii) is not impracticable otherwise.

(B) Any location standard prescribed under this chapter after March 1, 1978, does not apply to any part of a replacement component of an existing liquefied natural gas pipeline facility.

(3) A design, installation, construction, initial inspection, or initial testing standard does not apply to a liquefied natural gas pipeline facility existing when the standard is adopted.

(d) OPERATION AND MAINTENANCE STANDARDS.—The Secretary of Transportation shall prescribe minimum operating and maintenance standards for a liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider—

(1) the conditions, features, and type of equipment and structures that make up or are used in connection with the facility;

(2) the fire prevention and containment equipment at the facility;

(3) security measures to prevent an intentional act that could cause a liquefied natural gas accident;

(4) maintenance procedures and equipment;

(5) the training of personnel in matters specified by this subsection; and

(6) other factors and conditions related to the safe handling of liquefied natural gas.

(e) EFFECTIVE DATES.—A standard prescribed under this section is effective on the 30th day after the Secretary of Transportation prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(f) CONTINGENCY PLANS.—A new liquefied natural gas pipeline facility may be operated only after the operator submits an adequate contingency plan that states the action to be taken if a liquefied natural gas accident occurs. The Secretary of Energy or appropriate State or local authority shall decide if the plan is adequate.

(g) EFFECT ON OTHER STANDARDS.—This section does not preclude applying a standard prescribed under section 60102 of this title to a gas pipeline facility (except a liquefied natural gas pipeline facility) associated with a liquefied natural gas pipeline facility.

§60104. Requirements and limitations

(a) OPPORTUNITY TO PRESENT VIEWS.—The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) NONAPPLICATION.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

(c) PREEMPTION.—A State authority may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.

(d) CONSULTATION.—(1) When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the Commission or State authority has a reasonable opportunity to grant an authorization it considers necessary.

(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C. 717b or 717f), each applicant for authority to import natural gas or to establish, construct, operate, or extend a gas pipeline facility subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain a gas pipeline facility under those standards and plans for inspection and maintenance under section 60108 of this title. The certification is binding on the Secretary of Energy and the Commission except when an appropriate enforcement agency has given timely written notice to the Commission that the applicant has violated a standard prescribed under this chapter.

(e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.

§60105. State certifications

(a) GENERAL REQUIREMENTS AND SUBMISSION.—Except as provided in this section and sections 60111 and 60118 of this title, the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation if the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation), and the authority submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

(b) CONTENTS.—Each certification submitted under subsection (a) of this section shall state that the State authority—

(1) has regulatory jurisdiction over the standards and practices to which the certification applies;

(2) has adopted, by the date of certification, each applicable standard prescribed under this chapter or, if a standard under this chapter was prescribed not later than 120 days before certification, is taking steps to adopt that standard;

(3) is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of this title;

(4) is encouraging and promoting programs designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies;

(5) may require record maintenance, reporting, and inspection substantially the same as provided under section 60114 of this title;

(6) may require that plans for inspection and maintenance under section 60108 (a) and (b) of this title be filed for approval; and

(7) may enforce safety standards of the authority under a law of the State by injunctive relief and civil penalties substantially the same as provided under sections 60117 and 60119(a)(1) and (b)–(f) of this title.

(c) REPORTS.—(1) Each certification submitted under subsection (a) of this section shall include a report that contains—

(A) the name and address of each person to whom the certification applies that is subject to the safety jurisdiction of the State authority;

(B) each accident or incident reported during the prior 12 months by that person involving a fatality, personal injury requiring hospitalization, or property damage or loss of more than $5,000 (even if the person sustaining the fatality, personal injury, or property damage or loss is not subject to the safety jurisdiction of the authority), any other accident the authority considers significant, and a summary of the investigation by the authority of the cause and circumstances surrounding the accident or incident;

(C) the record maintenance, reporting, and inspection practices conducted by the authority to enforce compliance with safety standards prescribed under this chapter to which the certification applies, including the number of inspections of pipeline facilities the authority made during the prior 12 months; and

(D) any other information the Secretary requires.

(2) The report included in the first certification submitted under subsection (a) of this

section is only required to state information available at the time of certification.

(d) APPLICATION.—A certification in effect under this section does not apply to safety standards prescribed under this chapter after the date of certification. This chapter applies to each applicable safety standard prescribed after the date of certification until the State authority adopts the standard and submits the appropriate certification to the Secretary under subsection (a) of this section.

(e) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.

(f) REJECTIONS OF CERTIFICATION.—If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards.

§60106. State agreements

(a) GENERAL AUTHORITY.—If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action. Each agreement shall—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with applicable safety standards prescribed under this chapter; and

(2) prescribe procedures for approval of plans of inspection and maintenance substantially the same as required under section 60108(a) and (b) of this title.

(b) NOTIFICATION.—Each agreement shall require the State authority to notify the Secretary promptly of a violation or probable violation of an applicable safety standard discovered as a result of action taken in carrying out an agreement under this section.

(c) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the agreement. A State authority shall cooperate with the Secretary under this subsection.

(d) ENDING AGREEMENTS.—The Secretary may end an agreement made under this section when the Secretary finds that the State authority has not complied with any provision of the agreement. The Secretary shall give the authority notice and an opportunity for a hearing before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

§60107. State grants

(a) GENERAL AUTHORITY.—If a State authority files an application not later than September 30 of a calendar year, the Secretary of Transportation shall pay not more than 50 percent of the cost of the personnel, equipment, and activities the authority reasonably requires during the next calendar year—

(1) to carry out a safety program under a certification under section 60105 of this title or an agreement under section 60106 of this title; or

(2) to act as an agent of the Secretary on interstate gas pipeline transmission facilities or interstate hazardous liquid pipeline facilities.

(b) PAYMENTS.—After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent—

(1) for a gas safety program, for the fiscal years that ended June 30, 1967, and June 30, 1968; and

(2) for a hazardous liquid safety program, for the fiscal years that ended September 30, 1978, and September 30, 1979.

(c) APPORTIONMENT AND METHOD OF PAYMENT.—The Secretary shall apportion the amount appropriated to carry out this section among the States. A payment may be made under this section in installments, in advance, or on a reimbursable basis.

(d) ADDITIONAL AUTHORITY AND CONSIDERATIONS.—(1) The Secretary may prescribe—

(A) the form of, and way of filing, an application under this section;

(B) reporting and fiscal procedures the Secretary considers necessary to ensure the proper accounting of money of the Government; and

(C) qualifications for a State to meet to receive a payment under this section, including qualifications for State employees who perform inspection activities under section 60105 or 60106 of this title.

(2) The qualifications prescribed under paragraph (1)(C) of this subsection may—

(A) consider the experience and training of the employee;

(B) order training or other requirements; and

(C) provide for approval of qualifications on a conditional basis until specified requirements are met.

§60108. Inspection and maintenance

(a) PLANS.—(1) Each person transporting gas or hazardous liquid or owning or operating an intrastate gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person transporting gas or hazardous liquid or owning or operating a pipeline facility to which this chapter applies to file a plan for inspection and maintenance for approval.

(2) If the Secretary or a State authority responsible for enforcing standards prescribed under this chapter decides that a plan required under paragraph (1) of this subsection is inadequate for safe operation, the Secretary or authority shall require the person to revise the plan. Revision may be required only after giving notice and an opportunity for a hearing. A plan required under paragraph (1) must be practicable and designed to meet the need for pipeline safety and must include terms designed to enhance the ability to discover safety-related conditions described in section 60102(h)(1) of this title. In deciding on the adequacy of a plan, the Secretary or authority shall consider—

(A) relevant available pipeline safety information;

(B) the appropriateness of the plan for the particular kind of pipeline transportation or facility;

(C) the reasonableness of the plan; and

(D) the extent to which the plan will contribute to public safety.

(3) A plan required under this subsection shall be made available to the Secretary or State authority on request under section 60114 of this title.

(b) INSPECTION AND TESTING.—(1) The Secretary shall inspect and require appropriate testing of a pipeline facility to which this chapter applies that is not covered by a certification under section 60105 of this title or an agreement under section 60106 of this title. The Secretary shall decide on the frequency and type of inspection and testing under this subsection on a case-by-case basis after considering the following:

(A) the location of the pipeline facility.

(B) the type, size, age, manufacturer, method of construction, and condition of the facility.

(C) the nature and volume of material transported through the facility.

(D) the pressure at which that material is transported.

(E) climatic, geologic, and seismic characteristics (including soil characteristics) and conditions of the area in which the facility is located.

(F) existing and projected population and demographic characteristics of the area in which the facility is located.

(G) the frequency of leaks.

(H) other factors the Secretary decides are relevant to the safety of pipeline facilities.

(2) To the extent and in amounts provided in advance in an appropriation law, the Secretary shall decide on the frequency of inspection under paragraph (1) of this subsection. However, an inspection must occur at least once every 2 years. The Secretary may reduce the frequency of an inspection of a master meter system.

(3) Testing under this subsection shall use the most appropriate technology practicable.

(c) OFFSHORE PIPELINE FACILITIES IN GULF OF MEXICO.—(1)(A) Not later than one year after the Secretary establishes standards under subparagraph (C) of this paragraph, or May 16, 1992, whichever occurs first, the operator of each offshore pipeline facility (except hazardous liquid gathering lines of not more than 4-inch nominal diameter) in the Gulf of Mexico and its inlets shall inspect the facility and report to the Secretary on any part of the facility that is exposed or is a hazard to navigation. This subparagraph applies only to a facility that is between the mean high water mark and the point at which the subsurface is under 15 feet of water, as measured from mean low water. An inspection that occurred after October 3, 1989, may be used for compliance with this subparagraph if the inspection conforms to the requirements of this subparagraph.

(B) The Secretary may extend the time period specified in subparagraph (A) of this paragraph if the operator of a facility satisfies the Secretary that the operator has made a good faith effort, with reasonable diligence, but has been unable to comply by the end of that period. The maximum extension is—

(i) 6 months for an offshore natural gas pipeline facility; and

(ii) one year for an offshore hazardous liquid pipeline facility.

(C) Not later than May 16, 1991, the Secretary shall establish standards on what is an exposed offshore pipeline facility and what is a hazard to navigation under this subsection.

(2)(A) The Secretary shall establish by regulation a program requiring an offshore pipeline facility operator described in paragraph (1)(A) of this subsection to report a potential or existing navigational hazard involving that pipeline facility to the Secretary through the appropriate Coast Guard office.

(B) The operator of an offshore pipeline facility described in paragraph (1)(A) of this subsection that discovers any part of the pipeline facility that is a hazard to navigation shall mark the location of the hazardous part with a

Coast-Guard-approved marine buoy or marker and immediately shall notify the Secretary as provided by the Secretary under subparagraph (A) of this paragraph. A marine buoy or marker used under this subparagraph is deemed a pipeline sign or right-of-way marker under section 60120(c) of this title.

(3) Not later than May 16, 1993, on the basis of experience with the inspections under paragraph (1) of this subsection and any other information available to the Secretary, the Secretary shall establish a mandatory, systematic, and, where appropriate, periodic inspection program of offshore pipeline facilities in the Gulf of Mexico and its inlets.

(4) The Secretary shall require by regulation that each offshore pipeline facility that is subject to inspection under paragraph (1) of this subsection and is exposed, and each pipeline facility that is a hazard to navigation, is buried not later than 6 months after the date the condition of the facility is reported to the Secretary. The Secretary may extend that 6-month period for a reasonable period to ensure compliance with this paragraph.

§60109. Financial responsibility for liquefied natural gas facilities

(a) NOTICE.—When the Secretary of Transportation believes that an operator of a liquefied natural gas facility does not have adequate financial responsibility for the facility, the Secretary may issue a notice to the operator about the inadequacy and the amount of financial responsibility the Secretary considers adequate.

(b) HEARINGS.—An operator receiving a notice under subsection (a) of this section may have a hearing on the record not later than 30 days after receiving the notice. The operator may show why the Secretary should not issue an order requiring the operator to demonstrate and maintain financial responsibility in at least the amount the Secretary considers adequate.

(c) ORDERS.—After an opportunity for a hearing on the record, the Secretary may issue the order if the Secretary decides it is justified in the public interest.

§60110. Pipeline facilities hazardous to life and property

(a) GENERAL AUTHORITY.—After notice and an opportunity for a hearing, the Secretary of Transportation may decide a pipeline facility is hazardous if the Secretary decides the facility is—

(1) hazardous to life or property; or

(2) constructed or operated, or a component of the facility is constructed or operated, with equipment, material, or a technique the Secretary decides is hazardous to life or property.

(b) CONSIDERATIONS.—In making a decision under subsection (a) of this section, the Secretary shall consider, if relevant—

(1) the characteristics of the pipe and other equipment used in the facility, including the age, manufacture, physical properties, and method of manufacturing, constructing, or assembling the equipment;

(2) the nature of the material the facility transports, the corrosive and deteriorative qualities of the material, the sequence in which the material are transported, and the pressure required for transporting the material;

(3) the aspects of the area in which the facility is located, including climatic and geologic conditions and soil characteristics;

(4) the population density and population and growth patterns of the area;

(5) any recommendation of the National Transportation Safety Board made under another law; and

(6) other factors the Secretary considers appropriate.

(c) CORRECTIVE ACTION ORDERS.—If the Secretary decides under subsection (a) of this section that a pipeline facility is hazardous, the Secretary shall order the operator of the facility to take necessary corrective action.

(d) WAIVER OF NOTICE AND HEARING IN EMERGENCY.—The Secretary may waive the requirements for notice and an opportunity for a hearing under this section and issue expeditiously an order under this section if the Secretary decides failure to issue the order expeditiously will result in likely serious harm to life or property. An order under this subsection shall provide an opportunity for a hearing as soon as practicable after the order is issued.

§60111. One-call notification systems

(a) MINIMUM REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations providing minimum requirements for establishing and operating a one-call notification system for a State to adopt that will notify an operator of a pipeline facility of activity in the vicinity of the facility that could threaten the safety of the facility. The regulations shall include the following:

(1) a requirement that the system apply to all areas of the State containing underground pipeline facilities.

(2) a requirement that a person intending to engage in an activity the Secretary decides could cause physical damage to an underground facility must contact the appropriate system to establish if there are underground facilities present in the area of the intended activity.

(3) a requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

(4) qualifications for an operator of a facility, a private contractor, or a State or local authority to operate a system.

(5) procedures for advertisement and notice of the availability of a system.

(6) a requirement about the information to be provided by a person contacting the system under clause (2) of this subsection.

(7) a requirement for the response of the operator of the system and of the facility after they are contacted by an individual under this subsection.

(8) a requirement that each State decide whether the system will be toll free.

(9) a requirement for sanctions substantially the same as provided under sections 60117, 60119, and 60120 of this title.

(b) GRANTS.—The Secretary may make a grant to a State under this section to develop and establish a one-call notification system consistent with subsection (a) of this section.

(c) APPORTIONMENT.—When apportioning the amount appropriated to carry out section 60107 of this title among the States, the Secretary—

(1) shall consider whether a State has adopted or is seeking adoption of a one-call notification system under this section; and

(2) shall withhold part of a payment under section 60107 of this title when the Secretary decides a State has not adopted, or is not seeking adoption of, a one-call notification system.

(d) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect the liability established under a law of the United States or a State for damage caused by an activity described in subsection (a)(2) of this section.

§60112. Technical safety standards committees

(a) ORGANIZATION.—The Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee are committees in the Department of Transportation.

(b) COMPOSITION AND APPOINTMENT.—(1) The Technical Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary of Transportation after consulting with public and private agencies concerned with the technical aspect of transporting gas or operating a gas pipeline facility. Each member must be experienced in the safety regulation of transporting gas and of gas pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting gas or operating a gas pipeline facility, to evaluate gas pipeline safety standards.

(2) The Technical Hazardous Liquid Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary after consulting with public and private agencies concerned with the technical aspect of transporting hazardous liquid or operating a hazardous liquid pipeline facility. Each member must be experienced in the safety regulation of transporting hazardous liquid and of hazardous liquid pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting hazardous liquid or operating a hazardous liquid pipeline facility, to evaluate hazardous liquid pipeline safety standards.

(3) The members of each committee are appointed as follows:

(A) 5 individuals selected from departments, agencies, and instrumentalities of the United States Government and of the States.

(B) 4 individuals selected from the natural gas or hazardous liquid industry, as appropriate, after consulting with industry representatives, at least 3 of whom must be currently in the active operation of natural gas pipelines or hazardous liquid pipeline facilities, as appropriate.

(C) 6 individuals selected from the general public.

(4) Two of the individuals selected for each committee under paragraph (1)(A) of this subsection must be State commissioners. The Secretary shall consult with the national organization of State commissions (referred to in section 10344(f) of this title) before selecting those 2 individuals.

(c) COMMITTEE REPORTS ON PROPOSED STANDARDS.—(1) The Secretary shall give to—

(A) the Technical Pipeline Safety Standards Committee each standard proposed under this chapter for transporting gas and for gas pipeline facilities; and

(B) the Technical Hazardous Liquid Pipeline Safety Standards Committee each standard proposed under this chapter for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(2) Not later than 90 days after receiving the proposed standard, the appropriate committee shall prepare a report on the technical feasibility, reasonableness, and practicability of the proposed standard. The Secretary shall publish each report, including minority views. The report if timely made is part of the proceeding for prescribing the standard. The Secretary is not bound by the conclusions of the committee. However, if the Secretary rejects the conclusions of the committee, the Secretary shall publish the reasons.

(3) The Secretary may prescribe a standard after the end of the 90-day period.

(d) PROPOSED COMMITTEE STANDARDS.—The Technical Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting gas and for gas pipeline facilities. The Technical Hazardous Liquid Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(e) MEETINGS.—Each committee shall meet with the Secretary at least twice annually. Each committee proceeding shall be recorded. The record of the proceeding shall be available to the public.

(f) Pay and Expenses.—The Secretary may establish the pay for each member of a committee when performing duties of the committee. However, a member may not be paid more than the daily equivalent of the rate for GS-18. A member is entitled to reimbursement for expenses under section 5703 of title 5. This subsection does not apply to members regularly employed by the Government. A payment under this subsection does not make a member an officer or employee of the Government.

§60113. Public education programs

Under regulations the Secretary of Transportation prescribes, each person transporting gas shall carry out a program to educate the public on the possible hazards associated with gas leaks and the importance of reporting gas odors and leaks to the appropriate authority. The Secretary may develop material suitable for use in the program.

§60114. Administrative

(a) General Authority.—To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpenas, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter.

(b) Records, Reports, and Information.—To enable the Secretary to decide whether a person transporting gas or hazardous liquid or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person shall—

(1) maintain records, make reports, and provide information the Secretary requires; and

(2) make the records, reports, and information available when the Secretary requests.

(c) Entry and Inspection.—An officer, employee, or agent of the Secretary, on display of proper credentials to the individual in charge, may enter premises to inspect the records and property of a person at a reasonable time and in a reasonable way to decide whether a person is complying with this chapter and standards prescribed or orders issued under this chapter.

(d) Confidentiality of Information.—Information related to a confidential matter referred to in section 1905 of title 18 that is obtained by the Secretary or an officer, employee, or agent of the Secretary in carrying out this section may be disclosed only to another officer or employee concerned with carrying out this chapter or in a proceeding under this chapter.

(e) Use of Accident Reports.—(1) Each accident report made by an officer, employee, or agent of the Secretary may be used in a judicial proceeding resulting from the accident. The officer, employee, or agent may be required to testify in the proceeding about the facts developed in investigating the accident. The report shall be made available to the public in a way that does not identify an individual.

(2) Each report related to research and demonstration projects and related activities is public information.

(f) Testing Facilities Involved in Accidents.—The Secretary may require testing of a part of a pipeline facility subject to this chapter that has been involved in or affected by an accident only after—

(1) notifying the appropriate State official in the State in which the facility is located; and

(2) attempting to negotiate a mutually acceptable plan for testing with the owner of the facility and, when the Secretary considers appropriate, the National Transportation Safety Board.

(g) Providing Safety Information.—On request, the Secretary shall provide the Federal Energy Regulatory Commission or appropriate State authority with information the Secretary has on the safety of material, operations, devices, or processes related to pipeline transportation or operating a pipeline facility.

(h) Cooperation.—The Secretary may—

(1) advise, assist, and cooperate with other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons in planning and developing safety standards and ways to inspect and test to decide whether those standards have been complied with;

(2) consult with and make recommendations to other departments, agencies, and instrumentalities of the Government, State and local governments, and public and private agencies and persons to develop and encourage activities, including the enactment of legislation, that will assist in carrying out this chapter and improve State and local pipeline safety programs; and

(3) participate in a proceeding involving safety requirements related to a liquefied natural gas facility before the Commission or a State authority.

(i) Promoting Coordination.—After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective coordination between departments, agencies, and instrumentalities of the Government and State authorities with regulatory authority over pipeline facilities about responses to a pipeline accident.

(j) Withholding Information From Congress.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§60115. Compliance and waivers

(a) General Requirements.—A person transporting gas or hazardous liquid or owning or operating a pipeline facility shall—

(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section;

(2) prepare and carry out a plan for inspection and maintenance required under section 60108(a) and (b) of this title; and

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60114(a)–(d) of this title.

(b) Compliance Orders.—The Secretary of Transportation may issue orders directing compliance with this chapter or a regulation prescribed under this chapter. An order shall state clearly the action a person must take to comply.

(c) Waivers by Secretary.—On application of a person transporting gas or hazardous liquid or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state the reasons for granting a waiver under this subsection. The Secretary may act on a waiver only after notice and an opportunity for a hearing.

(d) Waivers by State Authorities.—If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

§60116. Judicial review

(a) Review of Regulations and Waiver Orders.—(1) Except as provided in subsection (b) of this section, a person adversely affected by a regulation prescribed under this chapter or an order issued about an application for a waiver under section 60115(c) or (d) of this title may apply for review of the regulation or order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under paragraph (1) is in addition to any other remedies provided by law.

(b) Review of Financial Responsibility Orders.—(1) A person adversely affected by an order issued under section 60109 of this title may apply for review of the order by filing a petition for review in the appropriate court of appeals of the United States. The petition must be filed not later than 60 days after the order is issued. Findings of fact the Secretary makes are conclusive if supported by substantial evidence.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254(1) of title 28.

§60117. Enforcement

(a) Civil Actions.—On the request of the Secretary of Transportation, the Attorney General may bring a civil action to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.

(b) Jury Trial Demand.—In a trial for criminal contempt for violating an injunction issued under this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(c) Effect on Tort Liability.—This chapter does not affect the tort liability of any person.

§60118. Actions by private persons

(a) General Authority.—(1) A person may bring a civil action for an injunction against another person (including the United States Government and other governmental authorities to the extent permitted under the 11th amendment to the Constitution) for a violation of this chapter or a regulation prescribed or order issued under this chapter. However, the person—

(A) may bring the action only after 60 days after the person has given notice of the violation to the Secretary of Transportation or to the appropriate State authority (when the violation is alleged to have occurred in a State certified under section 60105 of this title) and to the person alleged to have committed the violation;

(B) may not bring the action if the Secretary or authority has begun and diligently is pursuing an administrative proceeding for the violation; and

(C) may not bring the action if the Attorney General of the United States, or the chief law enforcement officer of a State, has begun and diligently is pursuing a judicial proceeding for the violation.

(2) The Secretary shall prescribe the way in which notice is given under this subsection.

(3) The Secretary, with the approval of the Attorney General, or the Attorney General may intervene in an action under paragraph (1) of this subsection.

(b) Costs and Fees.—The court may award costs, reasonable expert witness fees, and a rea-

sonable attorney's fee to a prevailing plaintiff in a civil action under this section. The court may award costs to a prevailing defendant when the action is unreasonable, frivolous, or meritless. In this subsection, a reasonable attorney's fee is a fee—

(1) based on the actual time spent and the reasonable expenses of the attorney for legal services provided to a person under this section; and

(2) computed at the rate prevailing for providing similar services for actions brought in the court awarding the fee.

(c) STATE VIOLATIONS AS VIOLATIONS OF THIS CHAPTER.—In this section, a violation of a safety standard or practice of a State is deemed to be a violation of this chapter or a regulation prescribed or order issued under this chapter only to the extent the standard or practice is not more stringent than a comparable minimum safety standard prescribed under this chapter.

(d) ADDITIONAL REMEDIES.—A remedy under this section is in addition to any other remedies provided by law. This section does not restrict a right to relief that a person or a class of persons may have under another law or at common law.

§60119. Civil penalties

(a) GENERAL PENALTIES.—(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60115(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is $500,000.

(2) A person violating a standard or order under section 60103 or 60109 of this title is liable to the Government for a civil penalty of not more than $50,000 for each violation. A penalty under this paragraph may be imposed in addition to penalties imposed under paragraph (1) of this subsection.

(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business;

(3) good faith in attempting to comply; and

(4) other matters that justice requires.

(c) COLLECTION AND COMPROMISE.—(1) The Secretary may request the Attorney General to bring a civil action to collect a civil penalty imposed under this section.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) DEPOSIT IN TREASURY.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(f) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60110 or 60115(b) of this title may not be imposed under this chapter if both violations are based on the same act.

§60120. Criminal penalties

(a) GENERAL PENALTY.—A person willfully and knowingly violating section 60115(a) of this title or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) PENALTY FOR DAMAGING OR DESTROYING FACILITY.—A person willfully and knowingly damaging or destroying, or attempting to damage or destroy, an interstate transmission facility or interstate hazardous liquid pipeline facility shall be fined under title 18, imprisoned for not more than 15 years, or both.

(c) PENALTY FOR DAMAGING OR DESTROYING SIGN.—A person willfully and knowingly defacing, damaging, removing, or destroying a pipeline sign or right-of-way marker required by a law or regulation of the United States shall be fined under title 18, imprisoned for not more than one year, or both.

§60121. Annual reports

(a) SUBMISSION AND CONTENTS.—The Secretary of Transportation shall submit to Congress not later than April 15 of each year a report on carrying out this chapter for the prior calendar year for gas and a report on carrying out this chapter for the prior calendar year for hazardous liquid. Each report shall include the following information about the prior year for gas or hazardous liquid, as appropriate:

(1) a thorough compilation of the leak repairs, accidents, and casualties and a statement of cause when investigated and established by the National Transportation Safety Board.

(2) a list of applicable pipeline safety standards prescribed under this chapter including identification of standards prescribed during the year.

(3) a summary of the reasons for each waiver granted under section 60115(c) and (d) of this title.

(4) an evaluation of the degree of compliance with applicable safety standards, including a list of enforcement actions and compromises of alleged violations by location and company name.

(5) a summary of outstanding problems in carrying out this chapter, in order of priority.

(6) an analysis and evaluation of—

(A) research activities, including their policy implications, completed as a result of the United States Government and private sponsorship; and

(B) technological progress in safety achieved.

(7) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter.

(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.

(9) a compilation of certifications filed under section 60105 of this title that were—

(A) in effect; or

(B) rejected in any part by the Secretary and a summary of the reasons for each rejection.

(10) a compilation of agreements made under section 60106 of this title that were—

(A) in effect; or

(B) ended in any part by the Secretary and a summary of the reasons for ending each agreement.

(11) a description of the number and qualifications of State pipeline safety inspectors in each State for which a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect and the number and qualifications of inspectors the Secretary recommends for that State.

(12) recommendations for legislation the Secretary considers necessary—

(A) to promote cooperation among the States in improving—

(i) gas pipeline safety; or

(ii) hazardous liquid pipeline safety programs; and

(B) to strengthen the national gas pipeline safety program.

(b) SUBMISSION OF ONE REPORT.—The Secretary may submit one report to carry out subsection (a) of this section.

§60122. Authorization of appropriations

(a) GAS.—Not more than $_________ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out this chapter (except sections 60107, 60108(b), and 60111(b)) related to gas.

(b) HAZARDOUS LIQUID.—Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out this chapter (except sections 60107, 60108(b), and 60111(b)) related to hazardous liquid.

(c) STATE GRANTS.—(1) Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out section 60107 of this title.

(2) At least 5 percent of amounts appropriated to carry out United States Government grants-in-aid programs for a fiscal year are available only to carry out section 60107 of this title related to hazardous liquid.

(3) Not more than 20 percent of a pipeline safety program grant under section 60107 of this title may be allocated to indirect expenses.

(d) INSPECTORS.—Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to retain the 16 additional inspectors and necessary support staff hired in the fiscal years ending September 30, 1989, and 1990, to carry out inspections under section 60108(b) of this title.

(e) GRANTS FOR ONE-CALL NOTIFICATION SYSTEMS.—Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out section 60111(b) of this title. Amounts under this subsection remain available until expended.

(f) CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.—The Secretary may credit to an appropriation authorized under subsection (a) or (b) of this section amounts received from sources other than the Government for reimbursement for expenses incurred by the Secretary in providing training.

(g) AVAILABILITY OF UNUSED AMOUNTS FOR GRANTS.—(1) The Secretary shall make available for grants to States amounts appropriated for each of the fiscal years that ended September 30, 1986, and 1987, that have not been expended in making grants under section 60107 of this title.

(2) A grant under this subsection is available to a State that after December 31, 1987—

(A) undertakes a new responsibility under section 60105 of this title; or

(B) implements a one-call damage prevention program established under State law.

(3) This subsection does not authorize a State to receive more than 50 percent of its allowable pipeline safety costs from a grant under this chapter.

(4) A State may receive not more than $75,000 under this subsection.

(5) Amounts under this subsection remain available until expended.

CHAPTER 603—USER FEES

Sec.
60301. User fees.

§60301. User fees

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe a schedule of fees for all natural gas and hazardous liquids transported by pipelines subject to chapter 601 of this title. The fees shall be based on usage (in reasonable relationship to volume-miles, miles, revenues, or a combination of volume-miles, miles, and revenues) of the pipelines. The Secretary shall consider the allocation of resources of the Department of Transportation when establishing the schedule.

(b) IMPOSITION AND TIME OF COLLECTION.—A fee shall be imposed on each person operating a gas pipeline transmission facility, a liquefied natural gas pipeline facility, or a hazardous liq-

uid pipeline facility to which chapter 601 of this title applies. The fee shall be collected before the end of the fiscal year to which it applies.

(c) MEANS OF COLLECTION.—The Secretary shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(d) USE OF FEES.—A fee collected under this section—

(1)(A) related to a gas pipeline facility may be used only for an activity related to gas under chapter 601 of this title; and

(B) related to a hazardous liquid pipeline facility may be used only for an activity related to hazardous liquid under chapter 601 of this title; and

(2) may be used only to the extent provided in advance in an appropriation law.

(e) LIMITATIONS.—Fees prescribed under subsection (a) of this section shall be sufficient to pay for the costs of activities described in subsection (d) of this section. However, the total amount collected for a fiscal year may not be more than 105 percent of the total amount of the appropriations made for the fiscal year for activities to be financed by the fees.

CHAPTER 605—INTERSTATE COMMERCE REGULATION

Sec.
60501. Secretary of Energy.
60502. Federal Energy Regulatory Commission.
60503. Effect of enactment.

§60501. Secretary of Energy

Except as provided in section 60502 of this title, the Secretary of Energy has the duties and powers related to the transportation of oil by pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or the chairman or a member of the Commission.

§60502. Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission has the duties and powers related to the establishment of a rate or charge for the transportation of oil by pipeline or the valuation of that pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or an officer or component of the Interstate Commerce Commission.

§60503. Effect of enactment

The enactment of the Act of October 17, 1978 (Public Law 95-473, 92 Stat. 1337), the Act of January 12, 1983 (Public Law 97-449, 96 Stat. 2413), and the Act enacting this section does not repeal, and has no substantive effect on, any right, obligation, liability, or remedy of an oil pipeline, including a right, obligation, liability, or remedy arising under the Interstate Commerce Act or the Act of August 29, 1916 (known as the Pomerene Bills of Lading Act), before any department, agency, or instrumentality of the United States Government, an officer or employee of the Government, or a court of competent jurisdiction.

SUBTITLE IX—COMMERCIAL SPACE TRANSPORTATION

CHAPTER Sec.
701. COMMERCIAL SPACE LAUNCH ACTIVITIES 70101

CHAPTER 701—COMMERCIAL SPACE LAUNCH ACTIVITIES

Sec.
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§70101. Findings and purposes

(a) FINDINGS.—Congress finds that—

(1) the peaceful uses of outer space continue to be of great value and to offer benefits to all mankind;

(2) private applications of space technology have achieved a significant level of commercial and economic activity and offer the potential for growth in the future, particularly in the United States;

(3) new and innovative equipment and services are being sought, produced, and offered by entrepreneurs in telecommunications, information services, and remote sensing technologies;

(4) the private sector in the United States has the capability of developing and providing private satellite launching and associated services that would complement the launching and associated services now available from the United States Government;

(5) the development of commercial launch vehicles and associated services would enable the United States to retain its competitive position internationally, contributing to the national interest and economic well-being of the United States;

(6) providing launch services by the private sector is consistent with the national security and foreign policy interests of the United States and would be facilitated by stable, minimal, and appropriate regulatory guidelines that are fairly and expeditiously applied;

(7) the United States should encourage private sector launches and associated services and, only to the extent necessary, regulate those launches and services to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States;

(8) space transportation, including the establishment and operation of launch sites and complementary facilities, the providing of launch services, the establishment of support facilities, and the providing of support services, is an important element of the transportation system of the United States, and in connection with the commerce of the United States there is a need to develop a strong space transportation infrastructure with significant private sector involvement; and

(9) the participation of State governments in encouraging and facilitating private sector involvement in space-related activity, particularly through the establishment of a space transportation-related infrastructure, including launch sites, complementary facilities, and launch site support facilities, is in the national interest and is of significant public benefit.

(b) PURPOSES.—The purposes of this chapter are—

(1) to promote economic growth and entrepreneurial activity through use of the space environment for peaceful purposes;

(2) to encourage the United States private sector to provide launch vehicles and associated services by—

(A) simplifying and expediting the issuance and transfer of commercial launch licenses; and

(B) facilitating and encouraging the use of Government-developed space technology;

(3) to provide that the Secretary of Transportation is to oversee and coordinate the conduct of commercial launch operations, issue and transfer commercial launch licenses authorizing those operations, and protect the public health and safety, safety of property, and national security and foreign policy interests of the United States; and

(4) to facilitate the strengthening and expansion of the United States space transportation infrastructure, including the enhancement of United States launch sites and launch-site support facilities, with Government, State, and private sector involvement, to support the full range of United States space-related activities.

§70102. Definitions

In this chapter—

(1) "citizen of the United States" means—

(A) an individual who is a citizen of the United States;

(B) an entity organized or existing under the laws of the United States or a State; or

(C) an entity organized or existing under the laws of a foreign country if the controlling interest (as defined by the Secretary of Transportation) is held by an individual or entity described in subclause (A) or (B) of this clause.

(2) "executive agency" has the same meaning given that term in section 105 of title 5.

(3) "launch" means to place or try to place a launch vehicle and any payload—

(A) in a suborbital trajectory;

(B) in Earth orbit in outer space; or

(C) otherwise in outer space.

(4) "launch property" means an item built for, or used in, the launch preparation or launch of a launch vehicle.

(5) "launch services" means—

(A) activities involved in the preparation of a launch vehicle and payload for launch; and

(B) the conduct of a launch.

(6) "launch site" means the location on Earth from which a launch takes place (as defined in a license the Secretary issues or transfers under this chapter) and necessary facilities.

(7) "launch vehicle" means—

(A) a vehicle built to operate in, or place a payload in, outer space; and

(B) a suborbital rocket.

(8) "payload" means an object that a person undertakes to place in outer space by means of a launch vehicle, including components of the vehicle specifically designed or adapted for that object.

(9) "person" means an individual and an entity organized or existing under the laws of a State or country.

(10) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(11) "third party" means a person except—

(A) the United States Government or the Government's contractors or subcontractors involved in launch services;

(B) a licensee or transferee under this chapter;

(C) a licensee's or transferee's contractors, subcontractors, or customers involved in launch services; or

(D) the customer's contractors or subcontractors involved in launch services.

(12) "United States" means the States of the United States, the District of Columbia, and the territories and possessions of the United States.

§70103. General authority

(a) GENERAL.—The Secretary of Transportation shall carry out this chapter.

(b) FACILITATING COMMERCIAL LAUNCHES.—In carrying out this chapter, the Secretary shall—

(1) encourage, facilitate, and promote commercial space launches by the private sector; and

(2) take actions to facilitate private sector involvement in commercial space transportation activity, and to promote public-private partnerships involving the United States Government, State governments, and the private sector to build, expand, modernize, or operate a space launch infrastructure.

(c) EXECUTIVE AGENCY ASSISTANCE.—When necessary, the head of an executive agency shall assist the Secretary in carrying out this chapter.

§70104. Restrictions on launches and operations

(a) LICENSE REQUIREMENT.—A license issued or transferred under this chapter is required for the following:

(1) for a person to launch a launch vehicle or to operate a launch site in the United States.

(2) for a citizen of the United States (as defined in section 70102 (1)(A) or (B) of this title) to launch a launch vehicle or to operate a launch site outside the United States.

(3) for a citizen of the United States (as defined in section 70102(1)(C) of this title) to launch a launch vehicle or to operate a launch site outside the United States and outside the territory of a foreign country unless there is an agreement between the United States Government and the government of the foreign country providing that the government of the foreign country has jurisdiction over the launch or operation.

(4) for a citizen of the United States (as defined in section 70102(1)(C) of this title) to launch a launch vehicle or to operate a launch site in the territory of a foreign country if there is an agreement between the United States Government and the government of the foreign country providing that the United States Government has jurisdiction over the launch or operation.

(b) COMPLIANCE WITH PAYLOAD REQUIREMENTS.—The holder of a launch license under this chapter may launch a payload only if the payload complies with all requirements of the laws of the United States related to launching a payload.

(c) PREVENTING LAUNCHES.—The Secretary of Transportation shall establish whether all required licenses, authorizations, and permits required for a payload have been obtained. If no license, authorization, or permit is required, the Secretary may prevent the launch if the Secretary decides the launch would jeopardize the public health and safety, safety of property, or national security or foreign policy interest of the United States.

§70105. License applications and requirements

(a) APPLICATIONS.—A person may apply to the Secretary of Transportation for a license or transfer of a license under this chapter in the form and way the Secretary prescribes. Consistent with the public health and safety, safety of property, and national security and foreign policy interests of the United States, the Secretary, not later than 180 days after receiving an application, shall issue or transfer a license if the Secretary decides in writing that the applicant complies, and will continue to comply, with this chapter and regulations prescribed under this chapter. The Secretary shall inform the applicant of any pending issue and action required to resolve the issue if the Secretary has not made a decision not later than 120 days after receiving an application.

(b) REQUIREMENTS.—(1) Except as provided in this subsection, all requirements of the laws of the United States applicable to the launch of a launch vehicle or the operation of a launch site are requirements for a license under this chapter.

(2) The Secretary may prescribe—

(A) any term necessary to ensure compliance with this chapter, including on-site verification that a launch or operation complies with representations stated in the application;

(B) an additional requirement necessary to protect the public health and safety, safety of property, national security interests, and foreign policy interests of the United States; and

(C) by regulation that a requirement of a law of the United States not be a requirement for a license if the Secretary, after consulting with the head of the appropriate executive agency, decides that the requirement is not necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(3) The Secretary may waive a requirement for an individual applicant if the Secretary decides that the waiver is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(c) PROCEDURES AND TIMETABLES.—The Secretary shall establish procedures and timetables that expedite review of a license application and reduce the regulatory burden for an applicant.

§70106. Monitoring activities

(a) GENERAL REQUIREMENTS.—A licensee under this chapter must allow the Secretary of Transportation to place an officer or employee of the United States Government or another individual as an observer at a launch site the licensee uses, at a production facility or assembly site a contractor of the licensee uses to produce or assemble a launch vehicle, or at a site at which a payload is integrated with a launch vehicle. The observer will monitor the activity of the licensee or contractor at the time and to the extent the Secretary considers reasonable to ensure compliance with the license or to carry out the duties of the Secretary under section 70104(c) of this title. A licensee must cooperate with an observer carrying out this subsection.

(b) CONTRACTS.—To the extent provided in advance in an appropriation law, the Secretary may make a contract with a person to carry out subsection (a) of this section.

§70107. Effective periods, and modifications, suspensions, and revocations, of licenses

(a) EFFECTIVE PERIODS OF LICENSES.—The Secretary of Transportation shall specify the period for which a license issued or transferred under this chapter is in effect.

(b) MODIFICATIONS.—On the initiative of the Secretary or on application of the licensee, the Secretary may modify a license issued or transferred under this chapter if the Secretary decides the modification will comply with this chapter.

(c) SUSPENSIONS AND REVOCATIONS.—The Secretary may suspend or revoke a license if the Secretary decides that—

(1) the licensee has not complied substantially with a requirement of this chapter or a regulation prescribed under this chapter; or

(2) the suspension or revocation is necessary to protect the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(d) EFFECTIVE PERIODS OF MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS.—Unless the Secretary specifies otherwise, a modification, suspension, or revocation under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

(e) NOTIFICATION.—The Secretary shall notify the licensee in writing of the decision of the Secretary under this section and any action the Secretary takes or proposes to take based on the decision.

§70108. Prohibition, suspension, and end of launches and operation of launch sites

(a) GENERAL AUTHORITY.—The Secretary of Transportation may prohibit, suspend, or end immediately the launch of a launch vehicle or the operation of a launch site licensed under this chapter if the Secretary decides the launch or operation is detrimental to the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(b) EFFECTIVE PERIODS OF ORDERS.—An order under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

§70109. Preemption of scheduled launches

(a) GENERAL.—With the cooperation of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation shall act to ensure that a launch of a payload is not preempted from access to a United States Government launch site or launch property, except for imperative national need, when a launch date commitment from the Government has been obtained for a launch licensed under this chapter. A licensee or transferee preempted from access to a launch site or launch property does not have to pay the Government any amount for launch services attributable only to the scheduled launch prevented by the preemption.

(b) IMPERATIVE NATIONAL NEED DECISIONS.—In consultation with the Secretary of Transportation, the Secretary of Defense or the Administrator shall decide when an imperative national need requires preemption under subsection (a) of this section. That decision may not be delegated.

(c) REPORTS.—In cooperation with the Secretary of Transportation, the Secretary of Defense or the Administrator, as appropriate, shall submit to Congress not later than 7 days after a decision to preempt under subsection (a) of this section, a report that includes an explanation of the circumstances justifying the decision and a schedule for ensuring the prompt launching of a preempted payload.

§70110. Administrative hearings and judicial review

(a) ADMINISTRATIVE HEARINGS.—The Secretary of Transportation shall provide an opportunity for a hearing on the record to—

(1) an applicant under this chapter, for a decision of the Secretary under section 70105(a) of this title to issue or transfer a license with terms or deny the issuance or transfer of a license;

(2) an owner or operator of a payload under this chapter, for a decision of the Secretary under section 70104(c) of this title to prevent the launch of the payload; and

(3) a licensee under this chapter, for a decision of the Secretary under—

(A) section 70107 (b) or (c) of this title to modify, suspend, or revoke a license; or

(B) section 70108(a) of this title to prohibit, suspend, or end a launch or operation of a launch site licensed by the Secretary.

(b) JUDICIAL REVIEW.—A final action of the Secretary under this chapter is subject to judicial review as provided in chapter 7 of title 5.

§70111. Acquiring United States Government property and services

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—(1) The Secretary of Transportation shall facilitate and encourage the acquisition by the private sector and State governments of—

(A) launch property of the United States Government that is excess or otherwise is not needed for public use; and

(B) launch services, including utilities, of the Government otherwise not needed for public use.

(2) In acting under paragraph (1) of this subsection, the Secretary shall consider the commercial availability on reasonable terms of sub-

stantially equivalent launch property or launch services from a domestic source.

(b) PRICE.—(1) In this subsection, "direct costs" means the actual costs that—

(A) can be associated unambiguously with a commercial launch effort; and

(B) the Government would not incur if there were no commercial launch effort.

(2) In consultation with the Secretary, the head of the executive agency providing the property or service under subsection (a) of this section shall establish the price for the property or service. The price for—

(A) acquiring launch property by sale or transaction instead of sale is the fair market value;

(B) acquiring launch property (except by sale or transaction instead of sale) is an amount equal to the direct costs, including specific wear and tear and property damage, the Government incurred because of acquisition of the property; and

(C) launch services is an amount equal to the direct costs, including the basic pay of Government civilian and contractor personnel, the Government incurred because of acquisition of the services.

(c) COLLECTION BY SECRETARY.—The Secretary may collect a payment under this section with the consent of the head of the executive agency establishing the price. Amounts collected under this subsection shall be deposited in the Treasury. Amounts (except for excess launch property) shall be credited to the appropriation from which the cost of providing the property or services was paid.

(d) COLLECTION BY OTHER GOVERNMENTAL HEADS.—The head of a department, agency, or instrumentality of the Government may collect a payment for an activity involved in producing a launch vehicle or its payload for launch if the activity was agreed to by the owner or manufacturer of the launch vehicle or payload.

§70112. Liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—(1) When a license is issued or transferred under this chapter, the licensee or transferee shall obtain liability insurance or demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(A) a third party for death, bodily injury, or property damage or loss resulting from an activity carried out under the license; and

(B) the United States Government against a person for damage or loss to Government property resulting from an activity carried out under the license.

(2) The Secretary of Transportation shall determine the amounts required under paragraph (1)(A) and (B) of this subsection, after consulting with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate executive agencies.

(3) For the total claims related to one launch, a licensee or transferee is not required to obtain insurance or demonstrate financial responsibility of more than—

(A)(i) $500,000,000 under paragraph (1)(A) of this subsection; or

(ii) $100,000,000 under paragraph (1)(B) of this subsection; or

(B) the maximum liability insurance available on the world market at reasonable cost if the amount is less than the applicable amount in clause (A) of this paragraph.

(4) An insurance policy or demonstration of financial responsibility under this subsection shall protect the following, to the extent of their potential liability for involvement in launch services, at no cost to the Government:

(A) the Government.

(B) executive agencies and personnel, contractors, and subcontractors of the Government.

(C) contractors, subcontractors, and customers of the licensee or transferee.

(D) contractors and subcontractors of the customer.

(b) RECIPROCAL WAIVER OF CLAIMS.—(1) A license issued or transferred under this chapter shall contain a provision requiring the licensee or transferee to make a reciprocal waiver of claims with its contractors, subcontractors, and customers, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license.

(2) The Secretary of Transportation shall make, for the Government, executive agencies of the Government involved in launch services, and contractors and subcontractors involved in launch services, a reciprocal waiver of claims with the licensee or transferee, contractors, subcontractors, and customers of the licensee or transferee, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license. The waiver applies only to the extent that claims are more than the amount of insurance or demonstration of financial responsibility required under subsection (a)(1)(B) of this section. After consulting with the Administrator and the Secretary of the Air Force, the Secretary of Transportation may waive, for the Government and a department, agency, and instrumentality of the Government, the right to recover damages for damage or loss to Government property to the extent insurance is not available because of a policy exclusion the Secretary of Transportation decides is usual for the type of insurance involved.

(c) DETERMINATION OF MAXIMUM PROBABLE LOSSES.—The Secretary of Transportation shall determine the maximum probable losses under subsection (a)(1) (A) and (B) of this section associated with an activity under a license not later than 90 days after a licensee or transferee requires a determination and submits all information the Secretary requires. The Secretary shall amend the determination as warranted by new information.

(d) ANNUAL REPORT.—(1) Not later than November 15 of each year, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on current determinations made under subsection (c) of this section related to all issued licenses and the reasons for the determinations.

(2) Not later than May 15 of each year, the Secretary of Transportation shall review the amounts specified in subsection (a)(3)(A) of this section and submit a report to Congress that contains proposed adjustments in the amounts to conform with changed liability expectations and availability of insurance on the world market. The proposed adjustment takes effect 30 days after a report is submitted.

(e) LAUNCHES INVOLVING GOVERNMENT FACILITIES AND PERSONNEL.—The Secretary of Transportation shall establish requirements consistent with this chapter for proof of financial responsibility and other assurances necessary to protect the Government and its executive agencies and personnel from liability, death, bodily injury, or property damage or loss as a result of a launch or operation of a launch site involving a facility or personnel of the Government. The Secretary may not relieve the Government of liability under this subsection for death, bodily injury, or property damage or loss resulting from the willful misconduct of the Government or its agents.

(f) COLLECTION AND CREDITING PAYMENTS.—The head of a department, agency, or instrumentality of the Government shall collect a payment owed for damage or loss to Government property under its jurisdiction or control resulting from an activity carried out under a license issued or transferred under this chapter. The payment shall be credited to the current applicable appropriation, fund, or account of the department, agency, or instrumentality.

§70113. Paying claims exceeding liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a licensee or transferee under this chapter, a contractor, subcontractor, or customer of the licensee or transferee, or a contractor or subcontractor of a customer, resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one launch—

(A) is more than the amount of insurance or demonstration of financial responsibility required under section 70112(a)(1)(A) of this title; and

(B) is not more than $1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The Secretary may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 70112(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an insurance policy exclusion the Secretary decides is usual for the type of insurance involved, the Secretary may provide for paying the excluded claims without regard to the limitation contained in section 70112(a)(1).

(b) NOTICE, PARTICIPATION, AND APPROVAL.—Before a payment under subsection (a) of this section is made—

(1) notice must be given to the Government of a claim, or a civil action related to the claim, against a party described in subsection (a)(1) of this section for death, bodily injury, or property damage or loss;

(2) the Government must be given an opportunity to participate or assist in the defense of the claim or action; and

(3) the Secretary must approve any part of a settlement to be paid out of appropriations of the Government.

(c) WITHHOLDING PAYMENTS.—The Secretary may withhold a payment under subsection (a) of this section if the Secretary certifies that the amount is not reasonable. However, the Secretary shall deem to be reasonable the amount of a claim finally decided by a court of competent jurisdiction.

(d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—(1) If as a result of an activity carried out under a license issued or transferred under this chapter the total of claims related to one launch is likely to be more than the amount of

required insurance or demonstration of financial responsibility, the Secretary shall—

(A) survey the causes and extent of damage; and

(B) submit expeditiously to Congress a report on the results of the survey.

(2) Not later than 90 days after a court determination indicates that the liability for the total of claims related to one launch may be more than the required amount of insurance or demonstration of financial responsibility, the President, on the recommendation of the Secretary, shall submit to Congress a compensation plan that—

(A) outlines the total dollar value of the claims;

(B) recommends sources of amounts to pay for the claims;

(C) includes legislative language required to carry out the plan if additional legislative authority is required; and

(D) for a single event or incident, may not be for more than $1,500,000,000.

(3) A compensation plan submitted to Congress under paragraph (2) of this subsection shall—

(A) have an identification number; and

(B) be submitted to the Senate and the House of Representatives on the same day and when the Senate and House are in session.

(e) CONGRESSIONAL RESOLUTIONS.—(1) In this subsection, "resolution"—

(A) means a joint resolution of Congress the matter after the resolving clause of which is as follows: "That the Congress approves the compensation plan numbered ________ submitted to the Congress on ________, 19___.", with the blank spaces being filled appropriately; but

(B) does not include a resolution that includes more than one compensation plan.

(2) The Senate shall consider under this subsection a compensation plan requiring additional appropriations or legislative authority not later than 60 calendar days of continuous session of Congress after the date on which the plan is submitted to Congress.

(3) A resolution introduced in the Senate shall be referred immediately to a committee by the President of the Senate. All resolutions related to the same plan shall be referred to the same committee.

(4)(A) If the committee of the Senate to which a resolution has been referred does not report the resolution within 20 calendar days after it is referred, a motion is in order to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of the plan.

(B) A motion to discharge may be made only by an individual favoring the resolution and is highly privileged (except that the motion may not be made after the committee has reported a resolution on the plan). Debate on the motion is limited to one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed and another motion to discharge the committee from another resolution on the same plan may not be made.

(5)(A) After a committee of the Senate reports, or is discharged from further consideration of, a resolution, a motion to proceed to the consideration of the resolution is in order at any time, even though a similar previous motion has been disagreed to. The motion is highly privileged and is not debatable. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph is limited to not more than 10 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(6) The following shall be decided in the Senate without debate:

(A) a motion to postpone related to the discharge from committee.

(B) a motion to postpone consideration of a resolution.

(C) a motion to proceed to the consideration of other business.

(D) an appeal from a decision of the chair related to the application of the rules of the Senate to the procedures related to resolution.

(f) APPLICATION.—This section applies to a license issued or transferred under this chapter for which the Secretary receives a complete and valid application not later than November 15, 1993.

§70114. Disclosing information

The Secretary of Transportation, an officer or employee of the United States Government, or a person making a contract with the Secretary under section 70106(b) of this title may disclose information under this chapter that qualifies for an exemption under section 552(b)(4) of title 5 or is designated as confidential by the person or head of the executive agency providing the information only if the Secretary decides withholding the information is contrary to the public or national interest.

§70115. Enforcement and penalty

(a) PROHIBITIONS.—A person may not violate this chapter, a regulation prescribed under this chapter, or any term of a license issued or transferred under this chapter.

(b) GENERAL AUTHORITY.—(1) In carrying out this chapter, the Secretary of Transportation may—

(A) conduct investigations and inquiries;

(B) administer oaths;

(C) take affidavits; and

(D) under lawful process—

(i) enter at a reasonable time a launch site, production facility, assembly site of a launch vehicle, or site at which a payload is integrated with a launch vehicle to inspect an object to which this chapter applies or a record or report the Secretary requires be made or kept under this chapter; and

(ii) seize the object, record, or report when there is probable cause to believe the object, record, or report was used, is being used, or likely will be used in violation of this chapter.

(2) The Secretary may delegate a duty or power under this chapter related to enforcement to an officer or employee of another executive agency with the consent of the head of the agency.

(c) CIVIL PENALTY.—(1) After notice and an opportunity for a hearing on the record, a person the Secretary finds to have violated subsection (a) of this section is liable to the United States Government for a civil penalty of not more than $100,000. A separate violation occurs for each day the violation continues.

(2) In conducting a hearing under paragraph (1) of this subsection, the Secretary may—

(A) subpena witnesses and records; and

(B) enforce a subpena in the appropriate district court of the United States.

(3) The Secretary shall impose the civil penalty by written notice. The Secretary may compromise or remit a penalty imposed, or that may be imposed, under this section.

(4) The Secretary shall recover a civil penalty not paid after the penalty is final or after a court enters a final judgment for the Secretary.

§70116. Consultation

(a) MATTERS AFFECTING NATIONAL SECURITY.—The Secretary of Transportation shall consult with the Secretary of Defense on a matter under this chapter affecting national security. The Secretary of Defense shall identify and notify the Secretary of Transportation of a national security interest relevant to an activity under this chapter.

(b) MATTERS AFFECTING FOREIGN POLICY.—The Secretary of Transportation shall consult with the Secretary of State on a matter under this chapter affecting foreign policy. The Secretary of State shall identify and notify the Secretary of Transportation of a foreign policy interest or obligation relevant to an activity under this chapter.

(c) OTHER MATTERS.—In carrying out this chapter, the Secretary of Transportation shall consult with the head of another executive agency—

(1) to provide consistent application of licensing requirements under this chapter;

(2) to ensure fair treatment for all license applicants; and

(3) when appropriate.

§70117. Relationship to other executive agencies, laws, and international obligations

(a) EXECUTIVE AGENCIES.—Except as provided in this chapter, a person is not required to obtain from an executive agency a license, approval, waiver, or exemption to launch a launch vehicle or operate a launch site.

(b) FEDERAL COMMUNICATIONS COMMISSION AND SECRETARY OF COMMERCE.—This chapter does not affect the authority of—

(1) the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(2) the Secretary of Commerce under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.).

(c) STATES AND POLITICAL SUBDIVISIONS.—A State or political subdivision of a State—

(1) may not adopt or have in effect a law, regulation, standard, or order inconsistent with this chapter; but

(2) may adopt or have in effect a law, regulation, standard, or order consistent with this chapter that is in addition to or more stringent than a requirement of, or regulation prescribed under, this chapter.

(d) CONSULTATION.—The Secretary of Transportation is encouraged to consult with a State to simplify and expedite the approval of a space launch activity.

(e) FOREIGN COUNTRIES.—The Secretary of Transportation shall—

(1) carry out this chapter consistent with an obligation the United States Government assumes in a treaty, convention, or agreement in force between the Government and the government of a foreign country; and

(2) consider applicable laws and requirements of a foreign country when carrying out this chapter.

(f) LAUNCH NOT AN EXPORT.—A launch vehicle or payload that is launched is not, because of the launch, an export for purposes of a law controlling exports.

(g) NONAPPLICATION.—This chapter does not apply to—

(1) a launch, operation of a launch vehicle or launch site, or other space activity the Government carries out for the Government; or

(2) planning or policies related to the launch, operation, or activity.

§70118. Authorization of appropriations

Not more than $________ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out this chapter.

SUBTITLE X—MISCELLANEOUS

CHAPTER *Sec.*

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CHAPTER 801—BILLS OF LADING

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§80101. Definitions

In this chapter—

(1) "consignee" means the person named in a bill of lading as the person to whom the goods are to be delivered.

(2) "consignor" means the person named in a bill of lading as the person from whom the goods have been received for shipment.

(3) "goods" means merchandise or personal property that has been, is being, or will be transported.

(4) "holder" means a person having possession of, and a property right in, a bill of lading.

(5) "order" means an order by indorsement on a bill of lading.

(6) "purchase" includes taking by mortgage or pledge.

(7) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

§80102. Application

This chapter applies to a bill of lading when the bill is issued by a common carrier for the transportation of goods—

(1) between a place in the District of Columbia and another place in the District of Columbia;

(2) between a place in a territory or possession of the United States and another place in the same territory or possession;

(3) between a place in a State and a place in another State;

(4) between a place in a State and a place in the same State through another State or a foreign country; or

(5) from a place in a State to a place in a foreign country.

§80103. Negotiable and nonnegotiable bills

(a) NEGOTIABLE BILLS.—(1) A bill of lading is negotiable if the bill—

(A) states that the goods are to be delivered to the order of a consignee; and

(B) does not contain on its face an agreement with the shipper that the bill is not negotiable.

(2) Inserting in a negotiable bill of lading the name of a person to be notified of the arrival of the goods—

(A) does not limit its negotiability; and

(B) is not notice to the purchaser of the goods of a right the named person has to the goods.

(b) NONNEGOTIABLE BILLS.—(1) A bill of lading is nonnegotiable if the bill states that the goods are to be delivered to a consignee. The indorsement of a nonnegotiable bill does not—

(A) make the bill negotiable; or

(B) give the transferee any additional right.

(2) A common carrier issuing a nonnegotiable bill of lading must put "nonnegotiable" or "not negotiable" on the bill. This paragraph does not apply to an informal memorandum or acknowledgment.

§80104. Form and requirements for negotiation

(a) GENERAL RULES.—(1) A negotiable bill of lading may be negotiated by indorsement. An indorsement may be made in blank or to a specified person. If the goods are deliverable to the order of a specified person, then the bill must be indorsed by that person.

(2) A negotiable bill of lading may be negotiated by delivery when the common carrier, under the terms of the bill, undertakes to deliver the goods to the order of a specified person and that person or a subsequent indorsee has indorsed the bill in blank.

(3) A negotiable bill of lading may be negotiated by a person possessing the bill, regardless of the way in which the person got possession, if—

(A) a common carrier, under the terms of the bill, undertakes to deliver the goods to that person; or

(B) when the bill is negotiated, it is in a form that allows it to be negotiated by delivery.

(b) VALIDITY NOT AFFECTED.—The validity of a negotiation of a bill of lading is not affected by the negotiation having been a breach of duty by the person making the negotiation, or by the owner of the bill having been deprived of possession by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill is negotiated, or the person to whom the bill is subsequently negotiated, gives value for the bill in good faith and without notice of the breach of duty, fraud, accident, mistake, duress, loss, theft, or conversion.

(c) NEGOTIATION BY SELLER, MORTGAGOR, OR PLEDGOR TO PERSON WITHOUT NOTICE.—When goods for which a negotiable bill of lading has been issued are in a common carrier's possession, and the person to whom the bill has been issued retains possession of the bill after selling, mortgaging, or pledging the goods or bill, the subsequent negotiation of the bill by that person to another person receiving the bill for value, in good faith, and without notice of the prior sale, mortgage, or pledge has the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

§80105. Title and rights affected by negotiation

(a) TITLE.—When a negotiable bill of lading is negotiated—

(1) the person to whom it is negotiated acquires the title to the goods that—

(A) the person negotiating the bill had the ability to convey to a purchaser in good faith for value; and

(B) the consignor and consignee had the ability to convey to such a purchaser; and

(2) the common carrier issuing the bill becomes obligated directly to the person to whom the bill is negotiated to hold possession of the goods under the terms of the bill the same as if the carrier had issued the bill to that person.

(b) SUPERIORITY OF RIGHTS.—When a negotiable bill of lading is negotiated to a person for value in good faith, that person's right to the goods for which the bill was issued is superior to a seller's lien or to a right to stop the transportation of the goods. This subsection applies whether the negotiation is made before or after the common carrier issuing the bill receives notice of the seller's claim. The carrier may deliver the goods to an unpaid seller only if the bill first is surrendered for cancellation.

(c) MORTGAGEE AND LIEN HOLDER RIGHTS NOT AFFECTED.—Except as provided in subsection (b) of this section, this chapter does not limit a right of a mortgagee or lien holder having a mortgage or lien on goods against a person that purchased for value in good faith from the owner, and got possession of the goods immediately before delivery to the common carrier.

§80106. Transfer without negotiation

(a) DELIVERY AND AGREEMENT.—The holder of a bill of lading may transfer the bill without negotiating it by delivery and agreement to transfer title to the bill or to the goods represented by it. Subject to the agreement, the person to whom the bill is transferred has title to the goods against the transferor.

(b) COMPELLING INDORSEMENT.—When a negotiable bill of lading is transferred for value by delivery without being negotiated and indorsement of the transferor is essential for negotiation, the transferee may compel the transferor to indorse the bill unless a contrary intention appears. The negotiation is effective when the indorsement is made.

(c) EFFECT OF NOTIFICATION.—(1) When a transferee notifies the common carrier that a nonnegotiable bill of lading has been transferred under subsection (a) of this section, the carrier is obligated directly to the transferee for any obligations the carrier owed to the transferor immediately before the notification. However, before the carrier is notified, the transferee's title to the goods and right to acquire the obligations of the carrier may be defeated by—

(A) garnishment, attachment, or execution on the goods by a creditor of the transferor; or

(B) notice to the carrier by the transferor or a purchaser from the transferor of a later purchase of the goods from the transferor.

(2) A common carrier has been notified under this subsection only if—

(A) an officer or agent of the carrier, whose actual or apparent authority includes acting on the notification, has been notified; and

(B) the officer or agent has had time, exercising reasonable diligence, to communicate with the agent having possession or control of the goods.

§80107. Warranties and liability

(a) GENERAL RULE.—Unless a contrary intention appears, a person negotiating or transferring a bill of lading for value warrants that—

(1) the bill is genuine;

(2) the person has the right to transfer the bill and the title to the goods described in the bill;

(3) the person does not know of a fact that would affect the validity or worth of the bill; and

(4) the goods are merchantable or fit for a particular purpose when merchantability or fitness would have been implied if the agreement of the parties had been to transfer the goods without a bill of lading.

(b) SECURITY FOR DEBT.—A person holding a bill of lading as security for a debt and in good faith demanding or receiving payment of the debt from another person does not warrant by the demand or receipt—

(1) the genuineness of the bill; or

(2) the quantity or quality of the goods described in the bill.

(c) DUPLICATES.—A common carrier issuing a bill of lading, on the face of which is the word "duplicate" or another word indicating that the bill is not an original bill, is liable the same as a person that represents and warrants that the bill is an accurate copy of an original bill properly issued. The carrier is not otherwise liable under the bill.

(d) INDORSER LIABILITY.—Indorsement of a bill of lading does not make the indorser liable for failure of the common carrier or a previous indorser to fulfill its obligations.

§80108. Alterations and additions

An alteration or addition to a bill of lading after its issuance by a common carrier, without authorization from the carrier in writing or noted on the bill, is void. However, the original terms of the bill are enforceable.

§80109. Liens of common carriers

A common carrier issuing a negotiable bill of lading has a lien on the goods covered by the bill for—

(1) charges for storage, transportation, and delivery (including demurrage and terminal charges), and expenses necessary to preserve the goods or incidental to transporting the goods after the date of the bill; and

(2) other charges for which the bill expressly specifies a lien is claimed to the extent the charges are allowed by law and the agreement between the consignor and carrier.

§80110. Duty to deliver goods

(a) GENERAL RULES.—Except to the extent a common carrier establishes an excuse provided by law, the carrier must deliver goods covered by a bill of lading on demand of the consignee named in a nonnegotiable bill or the holder of a negotiable bill for the goods when the consignee or holder—

(1) offers in good faith to satisfy the lien of the carrier on the goods;

(2) has possession of the bill and, if a negotiable bill, offers to indorse and give the bill to the carrier; and

(3) agrees to sign, on delivery of the goods, a receipt for delivery if requested by the carrier.

(b) PERSONS TO WHOM GOODS MAY BE DELIVERED.—Subject to section 80111 of this title, a common carrier may deliver the goods covered by a bill of lading to—

(1) a person entitled to their possession;

(2) the consignee named in a nonnegotiable bill; or

(3) a person in possession of a negotiable bill if—

(A) the goods are deliverable to the order of that person; or

(B) the bill has been indorsed to that person or in blank by the consignee or another indorsee.

(c) COMMON CARRIER CLAIMS OF TITLE AND POSSESSION.—A claim by a common carrier that the carrier has title to goods or right to their possession is an excuse for nondelivery of the goods only if the title or right is derived from—

(1) a transfer made by the consignor or consignee after the shipment; or

(2) the carrier's lien.

(d) ADVERSE CLAIMS.—If a person other than the consignee or the person in possession of a bill of lading claims title to or possession of goods and the common carrier knows of the claim, the carrier is not required to deliver the goods to any claimant until the carrier has had a reasonable time to decide the validity of the adverse claim or to bring a civil action to require all claimants to interplead.

(e) INTERPLEADER.—If at least 2 persons claim title to or possession of the goods, the common carrier may—

(1) bring a civil action to interplead all known claimants to the goods; or

(2) require those claimants to interplead as a defense in an action brought against the carrier for nondelivery.

(f) THIRD PERSON CLAIMS NOT A DEFENSE.—Except as provided in subsections (b), (d), and (e) of this section, title or a right of a third person is not a defense to an action brought by the consignee of a nonnegotiable bill of lading or by the holder of a negotiable bill against the common carrier for failure to deliver the goods on demand unless enforced by legal process.

§80111. Liability for delivery of goods

(a) GENERAL RULES.—A common carrier is liable for damages to a person having title to, or right to possession of, goods when—

(1) the carrier delivers the goods to a person not entitled to their possession unless the delivery is authorized under section 80110(b)(2) or (3) of this title;

(2) the carrier makes a delivery under section 80110(b)(2) or (3) of this title after being requested by or for a person having title to, or right to possession of, the goods not to make the delivery; or

(3) at the time of delivery under section 80110(b)(2) or (3) of this title, the carrier has information it is delivering the goods to a person not entitled to their possession.

(b) EFFECTIVENESS OF REQUEST OR INFORMATION.—A request or information is effective under subsection (a)(2) or (3) of this section only if—

(1) an officer or agent of the carrier, whose actual or apparent authority includes acting on the request or information, has been given the request or information; and

(2) the officer or agent has had time, exercising reasonable diligence, to stop delivery of the goods.

(c) FAILURE TO TAKE AND CANCEL BILLS.—Except as provided in subsection (d) of this section, if a common carrier delivers goods for which a negotiable bill of lading has been issued without taking and canceling the bill, the carrier is liable for damages for failure to deliver the goods to a person purchasing the bill for value in good faith whether the purchase was before or after delivery and even when delivery was made to the person entitled to the goods. The carrier also is liable under this paragraph if part of the goods are delivered without taking and canceling the bill or plainly noting on the bill that a partial delivery was made and generally describing the goods or the remaining goods kept by the carrier.

(d) EXCEPTIONS TO LIABILITY.—A common carrier is not liable for failure to deliver goods to the consignee or owner of the goods or a holder of the bill if—

(1) a delivery described in subsection (c) of this section was compelled by legal process;

(2) the goods have been sold lawfuly to satisfy the carrier's lien;

(3) the goods have not been claimed; or

(4) the goods are perishable or hazardous.

§80112. Liability under negotiable bills issued in parts, sets, or duplicates

(a) PARTS AND SETS.—A negotiable bill of lading issued in a State for the transportation of goods to a place in the 48 contiguous States or the District of Columbia may not be issued in parts or sets. A common carrier issuing a bill in violation of this subsection is liable for damages for failure to deliver the goods to a purchaser of one part for value in good faith even though the purchase occurred after the carrier delivered the goods to a holder of one of the other parts.

(b) DUPLICATES.—When at least 2 negotiable bills of lading are issued in a State for the same goods to be transported to a place in the 48 contiguous States or the District of Columbia, the word "duplicate" or another word indicating that the bill is not an original must be put plainly on the face of each bill except the original. A common carrier violating this subsection is liable for damages caused by the violation to a purchaser of the bill for value in good faith as an original bill even though the purchase occurred after the carrier delivered the goods to the holder of the original bill.

§80113. Liability for nonreceipt, misdescription, and improper loading

(a) LIABILITY FOR NONRECEIPT AND MISDESCRIPTION.—Except as provided in this section, a common carrier issuing a bill of lading is liable for damages caused by nonreceipt by the carrier of any part of the goods by the date shown in the bill or by failure of the goods to correspond with the description contained in the bill. The carrier is liable to the owner of goods transported under a nonnegotiable bill (subject to the right of stoppage in transit) or to the holder of a negotiable bill if the owner or holder gave value in good faith relying on the description of the goods in the bill or on the shipment being made on the date shown in the bill.

(b) NONLIABILITY OF CARRIERS.—A common carrier issuing a bill of lading is not liable under subsection (a) of this section—

(1) when the goods are loaded by the shipper;

(2) when the bill—

(A) describes the goods in terms of marks or labels, or in a statement about kind, quantity, or condition; or

(B) is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of the same meaning; and

(3) to the extent the carrier does not know whether any part of the goods were received or conform to the description.

(c) LIABILITY FOR IMPROPER LOADING.—A common carrier issuing a bill of lading is not liable for damages caused by improper loading if—

(1) the shipper loads the goods; and

(2) the bill contains the words "shipper's weight, load, and count", or words of the same meaning indicating the shipper loaded the goods.

(d) CARRIER'S DUTY TO DETERMINE KIND, QUANTITY, AND NUMBER.—(1) When bulk freight is loaded by a shipper that makes available to the common carrier adequate facilities for weighing the freight, the carrier must determine the kind and quantity of the freight within a reasonable time after receiving the written request of the shipper to make the determination. In that situation, inserting the words "shipper's weight" or words of the same meaning in the bill of lading has no effect.

(2) When goods are loaded by a common carrier, the carrier must count the packages of goods, if package freight, and determine the kind and quantity, if bulk freight. In that situation, inserting in the bill of lading or in a notice, receipt, contract, rule, or tariff, the words "shipper's weight, load, and count" or words indicating that the shipper described and loaded the goods, has no effect except for freight concealed by packages.

§80114. Lost, stolen, and destroyed negotiable bills

(a) DELIVERY ON COURT ORDER AND SURETY BOND.—If a negotiable bill of lading is lost, stolen, or destroyed, a court may order the common carrier to deliver the goods if the person claiming the goods gives a surety bond, in an amount approved by the court, to indemnify the carrier or a person injured by delivery against liability under the outstanding original bill. The court also may order payment of reasonable costs and attorney's fees to the carrier. A voluntary surety bond, without court order, is binding on the parties to the bond.

(b) LIABILITY TO HOLDER.—Delivery of goods under a court order under subsection (a) of this section does not relieve a common carrier from liability to a person to whom the negotiable bill has been or is negotiated for value without notice of the court proceeding or of the delivery of the goods.

§80115. Limitation on use of judicial process to obtain possession of goods from common carriers

(a) ATTACHMENT AND LEVY.—Except when a negotiable bill of lading was issued originally on delivery of goods by a person that did not have the power to dispose of the goods, goods in the possession of a common carrier for which a negotiable bill has been issued may be attached through judicial process or levied on in execution of a judgment only if the bill is surrendered to the carrier or its negotiation is enjoined.

(b) DELIVERY.—A common carrier may be compelled by judicial process to deliver goods under

subsection (a) of this section only when the bill is surrendered to the carrier or impounded by the court.

§80116. Criminal penalty

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) violates this chapter with intent to defraud; or

(2) knowingly or with intent to defraud—

(A) falsely makes, alters, or copies a bill of lading subject to this chapter;

(B) utters, publishes, or issues a falsely made, altered, or copied bill subject to this chapter; or

(C) negotiates or transfers for value a bill containing a false statement.

CHAPTER 803—CONTRABAND

Sec.

80301. Definitions.
80302. Prohibitions.
80303. Seizure and forfeiture.
80304. Administrative.
80305. Availability of certain appropriations.
80306. Relationship to other laws.

§80301. Definitions

In this chapter—

(1) "aircraft" means a contrivance used, or capable of being used, for transportation in the air.

(2) "vehicle" means a contrivance used, or capable of being used, for transportation on, below, or above land, but does not include aircraft.

(3) "vessel" means a contrivance used, or capable of being used, for transportation in water, but does not include aircraft.

§80302. Prohibitions

(a) DEFINITION.—In this section, "contraband" means—

(1) a narcotic drug (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802), including marihuana (as defined in section 102 of that Act (21 U.S.C. 802)), that—

(A) is possessed with intent to sell or offer for sale in violation of the laws and regulations of the United States;

(B) is acquired, possessed, sold, transferred, or offered for sale in violation of those laws;

(C) is acquired by theft, robbery, or burglary and transported—

(i) in the District of Columbia or a territory or possession of the United States; or

(ii) from a place in a State, the District of Columbia, a territory or possession of the United States, or the Canal Zone, to a place in another State, the District of Columbia, a territory or possession, or the Canal Zone; or

(D) does not bear tax-paid internal revenue stamps required by those laws or regulations;

(2) a firearm involved in a violation of chapter 53 of the Internal Revenue Code of 1986 (26 U.S.C. 5801 et seq.);

(3) a forged, altered, or counterfeit—

(A) coin or an obligation or other security of the United States Government (as defined in section 8 of title 18); or

(B) coin, obligation, or other security of the government of a foreign country;

(4) material or equipment used, or intended to be used, in making a coin, obligation, or other security referred to in clause (3) of this subsection; or

(5) a cigarette involved in a violation of chapter 114 of title 18 or a regulation prescribed under chapter 114.

(b) PROHIBITIONS.—A person may not—

(1) transport contraband in an aircraft, vehicle, or vessel;

(2) conceal or possess contraband on an aircraft, vehicle, or vessel; or

(3) use an aircraft, vehicle, or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.

§80303. Seizure and forfeiture

The Secretary of the Treasury or the Governor of Guam or of the Northern Mariana Islands as provided in section 80304 of this title, or a person authorized by another law to enforce section 80302 of this title, shall seize an aircraft, vehicle, or vessel involved in a violation of section 80302 and place it in the custody of a person designated by the Secretary or appropriate Governor, as the case may be. The seized aircraft, vehicle, or vessel shall be forfeited, except when the owner establishes that a person except the owner committed the violation when the aircraft, vehicle, or vessel was in the possession of a person who got possession by violating a criminal law of the United States or a State. However, an aircraft, vehicle, or vessel used by a common carrier to provide transportation for compensation may be forfeited only when—

(1) the owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs;

(2) the owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs; or

(3) the master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.

§80304. Administrative

(a) GENERAL.—Except as provided in subsections (b) and (c) of this section, the Secretary of the Treasury—

(1) may designate officers, employees, agents, or other persons to carry out this chapter; and

(2) shall prescribe regulations to carry out this chapter.

(b) IN GUAM.—The Governor of Guam—

(1) or officers of the government of Guam designated by the Governor shall carry out this chapter in Guam;

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in Guam; and

(3) may prescribe regulations to carry out this chapter in Guam.

(c) IN NORTHERN MARIANA ISLANDS.—The Governor of the Northern Mariana Islands—

(1) or officers of the government of the Northern Mariana Islands designated by the Governor shall carry out this chapter in the Northern Mariana Islands;

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in the Northern Mariana Islands; and

(3) may prescribe regulations to carry out this chapter in the Northern Mariana Islands.

(d) CUSTOMS LAWS ON SEIZURE AND FORFEITURE.—The Secretary, or the Governor of Guam or of the Northern Mariana Islands as provided in subsections (b) and (c) of this section, shall carry out the customs laws on the seizure and forfeiture of aircraft, vehicles, and vessels under this chapter.

§80305. Availability of certain appropriations

Appropriations for enforcing customs, narcotics, counterfeiting, or internal revenue laws are available to carry out this chapter.

§80306. Relationship to other laws

(a) CHAPTER AS ADDITIONAL LAW.—This chapter is in addition to another law—

(1) imposing, or authorizing the compromise of, fines, penalties, or forfeitures; or

(2) providing for seizure, condemnation, or disposition of forfeited property, or the proceeds from the property.

(b) LAWS APPLICABLE TO SEIZURES AND FORFEITURES.—To the extent applicable and consistent with this chapter, the following apply to a seizure or forfeiture under this chapter:

(1) provisions of law related to the seizure, forfeiture, and condemnation of vehicles and vessels violating the customs laws.

(2) provisions of law related to the disposition of those vehicles or vessels or the proceeds from the sale of those vehicles or vessels.

(3) provisions of law related to the compromise of those forfeitures or claims related to those forfeitures.

(4) provisions of law related to the award of compensation to an informer about those forfeitures.

CHAPTER 805—MISCELLANEOUS

Sec.

80501. Damage to transported property.
80502. Transportation of animals.
80503. Payments for inspection and quarantine services.
80504. Medals of honor.

§80501. Damage to transported property

(a) CRIMINAL PENALTY.—A person willfully damaging, or attempting to damage, property in the possession of an air carrier, motor carrier, or rail carrier and being transported in interstate or foreign commerce, shall be fined under title 18, imprisoned for not more than 10 years, or both. In a criminal proceeding under this section, a shipping document for the property is prima facie evidence of the places to which and from which the property was being transported.

(b) PROHIBITION AGAINST MULTIPLE PROSECUTIONS FOR SAME ACT.—A person may not be prosecuted for an act under this section when the person has been convicted or acquitted on the merits for the same act under the laws of a State, the District of Columbia, or a territory or possession of the United States.

§80502. Transportation of animals

(a) CONFINEMENT.—(1) Except as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

(2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for—

(A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and

(B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours.

(3) Time spent in loading and unloading animals is not included as part of a period of confinement under this subsection.

(b) UNLOADING, FEEDING, WATERING, AND REST.—Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours. The owner or person having custody of the animals shall feed and water the animals. When the animals are not fed and watered by the owner or person having custody, the rail carrier, express carrier, or common carrier (except by air or water), the receiver, trustee, or lessee of one of those carriers, or the owner or master of a vessel transporting the animals—

(1) shall feed and water the animals at the reasonable expense of the owner or person hav-

ing custody, except that the owner or shipper may provide food;

(2) has a lien on the animals for providing food, care, and custody that may be collected at the destination in the same way that a transportation charge is collected; and

(3) is not liable for detaining the animals for a reasonable period to comply with subsection (a) of this section.

(c) NONAPPLICATION.—This section does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest.

(d) CIVIL PENALTY.—A rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that knowingly and willfully violates this section is liable to the United States Government for a civil penalty of at least $100 but not more than $500 for each violation. On learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court for the judicial district in which the violation occurred or the defendant resides or does business.

§80503. Payments for inspection and quarantine services

(a) GENERAL.—(1) In this subsection—

(A) "private aircraft" means a civilian aircraft not being used to transport passengers or property for compensation.

(B) "private vessel" means a civilian vessel not being used—

(i) to transport passengers or property for compensation; or

(ii) in fishing or fish processing operations.

(2) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the owner, operator, or agent of a private aircraft or private vessel may pay not more than $25 for the services of an officer or employee of the Department of Agriculture, the Customs Service, the Immigration and Naturalization Service, or the Public Health Service (including an independent contractor performing an inspection service for the Public Health Service) when the services are performed on a Sunday, holiday, or from 5 p.m. through 8 a.m. on a weekday, and are related to the aircraft's or vessel's arrival in, or departure from, the United States. However, the owner, operator, or agent does not have to pay for the services from 5 p.m. through 8 a.m. on a weekday when an officer or employee on regular duty is available at the place of arrival or departure to perform services.

(3) The head of a department, agency, or instrumentality of the United States Government providing services under paragraph (2) of this subsection shall collect the amount paid for the services and deposit the amount in the Treasury. The amount shall be credited to the appropriation of the department, agency, or instrumentality against which the expense of those services was charged.

(b) LIMITATIONS ON REIMBURSEMENT.—(1) An owner or operator of an aircraft is required to reimburse the head of a department, agency, or instrumentality of the Government for the expenses of performing an inspection or quarantine service related to the aircraft at a place of inspection during regular service hours on a Sunday or holiday only to the same extent that an owner or operator makes reimbursement for the service during regular service hours on a weekday. The head of the department, agency, or instrumentality may not assess an owner or operator of an aircraft for administrative overhead expenses for inspection or quarantine service provided by the department, agency, or instrumentality at an entry airport.

(2) This subsection does not require reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)).

§80504. Medals of honor

(a) MEDALS.—The President may prepare and give a bronze medal of honor with emblematic devices to an individual who by extreme daring endangers that individual's life in trying to prevent, or save the life of another in, a grave accident in the United States involving a rail carrier providing transportation in interstate commerce or involving a motor vehicle on the public streets, roads, or highways. The President may give a medal only when sufficient evidence that the individual deserves the medal has been filed under regulations prescribed by the President.

(b) RIBBONS, KNOTS, AND ROSETTES.—The President may give an individual who receives a medal a ribbon to be worn with the medal and a knot or rosette to be worn in place of the medal. The President shall prescribe the design for the ribbon, knot, and rosette. If the ribbon is lost, destroyed, or made unfit for use and the individual receiving the medal is not negligent, the President shall issue a new ribbon without charge to the individual.

(c) AVAILABILITY OF APPROPRIATIONS.—Appropriations made to the Secretary of Transportation are available to carry out this section.

PORTS OF ENTRY

Sec. 2. (a) The definitions in section 40102(a) of title 49, United States Code, apply to this section.

(b)(1) The Secretary of the Treasury may—

(A) designate ports of entry in the United States for civil aircraft arriving in the United States from a place outside the United States and property transported on that aircraft;

(B) detail to ports of entry officers and employees of the United States Customs Service the Secretary considers necessary;

(C) give an officer or employee of the United States Government stationed at a port of entry (with the consent of the head of the department, agency, or instrumentality of the Government with jurisdiction over the officer or employee) duties and powers of officers or employees of the Customs Service;

(D) by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions the Secretary considers necessary; and

(E) by regulation, apply to civil aircraft the laws and regulations on entry and clearance of vessels, to the extent and under conditions the Secretary considers necessary.

(2) A person violating a customs regulation prescribed under paragraph (1)(A)–(D) of this subsection or a public health or customs law or regulation made applicable to aircraft by a regulation under paragraph (1)(A)–(D) is liable to the Government for a civil penalty of $5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws. The Secretary of the Treasury may remit or mitigate a penalty and forfeiture under this paragraph.

(3) A person violating a regulation made applicable under paragraph (1)(E) of this subsection or an immigration regulation prescribed under paragraph (1)(E) is liable to the Government for a civil penalty of $5,000 for each violation. The Secretary of the Treasury or the Attorney General may remit or mitigate a penalty under this paragraph.

(4) In addition to any other penalty, when a controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on, or to have been unloaded from, an aircraft to which this subsection applies, the owner of, or individual commanding, the aircraft is liable to the Government for the penalties provided in section 584 for each violation unless the owner or individual, by a preponderance of the evidence, demonstrates that the owner or individual did not know, and by exercising the highest degree of care and diligence, could not have known, that a controlled substance was on the aircraft.

(5) If a violation under this subsection is by the owner or operator of, or individual commanding, the aircraft, the aircraft is subject to a lien for the penalty.

(c)(1) The Secretary of Agriculture by regulation may apply laws and regulations on animal and plant quarantine (including laws and regulations on importing, exporting, transporting, and quarantining animals, plants, animal and plant products, insects, bacterial and fungus cultures, viruses, and serums) to civil air navigation to the extent and under conditions the Secretary considers necessary.

(2) A person violating a law or regulation made applicable under paragraph (1) of this subsection is liable for the penalties provided under that law or regulation.

(d) A decision to remit or mitigate a civil penalty under this section is final. When libel proceedings are pending during a proceeding to remit or mitigate a penalty, the appropriate Secretary shall notify the Attorney General of the remission or mitigation proceeding.

(e)(1) An aircraft subject to a lien under this section may be seized summarily by and placed in the custody of a person authorized by regulations of the appropriate Secretary or the Attorney General. A report of the case shall be sent to the Attorney General. The Attorney General shall bring promptly a civil action in rem to enforce the lien or notify the appropriate Secretary that the action will not be brought.

(2) An aircraft seized under this section shall be released from custody when—

(A) the civil penalty or amount not remitted or mitigated is paid;

(B) the aircraft is seized under process of a court in a civil action in rem to enforce the lien;

(C) the Attorney General gives notice that a civil action will not be brought under paragraph (1) of this subsection; or

(D) a bond is deposited with the appropriate Secretary or the Attorney General in an amount and with a surety the appropriate Secretary or the Attorney General prescribes, conditioned on payment of the penalty or amount not remitted or mitigated.

(f) A civil penalty under this section may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a trial by jury of an issue of fact if the value of the matter in controversy is more than $20. An issue of fact tried by jury may be reexamined only under common law rules.

(g) Necessary amounts may be appropriated to allow the head of a department, agency, or instrumentality of the Government to acquire space at a public airport (as defined in section 47102 of title 49) when the head decides the space is necessary to carry out inspections, clearance, collection of taxes or duties, or a similar responsibility of the head, related to transporting passengers or property in air commerce. The head must consult with the Secretary of Transportation before making a decision on space.

MASS TRANSPORTATION EXEMPTION

Sec. 3. Chapter 105 of title 49, United States Code, is amended as follows:

(1) Insert immediately after section 10530 the following new section:

"§10531. Mass transportation exemption

"(a) DEFINITIONS.—The definitions in section 5302 of this title apply to this section.

"(b) PETITION FOR GRANTING EXEMPTIONS.—A State or local governmental authority may petition the Interstate Commerce Commission for an exemption from the jurisdiction of the Commission under this subchapter for mass transportation the authority provides or has provided to it by contract. Not later than 180 days after the Commission receives a petition and after notice and a reasonable opportunity for a proceeding, the Commission shall exempt the State, local governmental authority, or contractor unless the Commission finds that—

"(1) the public interest would not be served by an exemption;

"(2) the exemption would result in an unreasonable burden on interstate or foreign commerce; or

"(3) a State or local governmental authority may not regulate the mass transportation to be exempt under this section.

"(c) APPLICATION OF OTHER LAWS.—All applicable laws of the United States related to safety and to representation of employees for collective bargaining purposes, retirement, annuities, and unemployment systems, and all other laws related to employee-employer relations, apply to a State or local governmental authority that was granted, or whose contractor was granted, an exemption under this section.

"(d) CHANGING AND REVOKING EXEMPTIONS.—The Commission may change or revoke an exemption if it finds that new evidence, material error, or changed circumstances exist that materially affect the original order. The Commission may act on its own initiative or on application of an interested party.".

(2) Insert immediately below item 10530 in the analysis of the chapter the following new item:

"10531. Mass transportation exemption.".

CONFORMING PROVISIONS

SEC. 4. (a) The Union Pacific Railroad Company may make a dividend only from its net earnings.

(b) Section 401 of the Federal Election Campaign Act of 1971 (2 U.S.C. 451) is amended by striking "Civil Aeronautics Board" and "Board or Commission" and substituting "Secretary of Transportation" and "Secretary under subpart II of part A of subtitle VII of title 49, United States Code, or such Commission,", respectively.

(c) Title 5, United States Code, is amended as follows:

(1) In section 5109, add at the end of the section the following new subsection:

"(c)(1) The position held by a fully experienced and qualified railroad safety inspector of the Department of Transportation shall be classified in accordance with this chapter, but not lower than GS-12.

"(2) The position held by a railroad safety specialist of the Department shall be classified in accordance with this chapter, but not lower than GS-13.".

(2) In section 8172, strike "Secretary of the Treasury" and substitute "Secretary of Transportation".

(d) Section 6001(1) of title 18, United States Code, is amended by striking "the Civil Aeronautics Board,".

(e) Chapter 33 of title 28, United States Code, is amended as follows:

(1) Insert immediately after section 537 the following new section:

"§538. Investigation of aircraft piracy and related violations

"The Federal Bureau of Investigation shall investigate any violation of section 46314 or chapter 465 of title 49.".

(2) In the analysis, insert immediately after item 537 the following new item:

"538. Investigation of aircraft piracy and related violations.".

(f) Title 31, United States Code, is amended as follows:

(1) Subtitle V is amended by adding at the end of the subtitle the following new chapter:

"CHAPTER 77—LOAN REQUIREMENTS

"Sec.
"7701. Taxpayer identifying number.

"§7701. Taxpayer identifying number

"(a) In this section—

"(1) 'included Federal loan program' has the same meaning given that term in section 6103(l)(3)(C) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(3)(C)).

"(2) 'taxpayer identifying number' means the identifying number required under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

"(b) The head of an agency administering an included Federal loan program shall require a person applying for a loan under the program to provide that person's taxpayer identifying number.".

(2) The analysis of subtitle V is amended by adding immediately after item 75 the following new item:

"77. Loan Requirements .... 7701".

(g) Title 39, United States Code, is amended as follows:

(1) In section 5007—

(A) insert the subsection designation "(a)" at the beginning of the text of the section; and

(B) add at the end of the section the following new subsection:

"(b)(1) In this subsection, 'air carrier' and 'aircraft' have the same meanings given those terms in section 40102(a) of title 49.

"(2) An air carrier engaged in transporting mail shall carry without charge on any plane it operates those agents and officers of the Postal Service traveling on official business related to transporting mail by aircraft, as prescribed by regulations of the Secretary of Transportation, on exhibiting credentials.".

(2) Amend section 5402 as follows:

(A) In subsection (a), strike "section 1302" and substitute "section 40101(a)".

(B) In subsection (b), strike "sections 1371(k) and 1386(b)", "sections 1301-1542", and "sections 1371-1386" and substitute "sections 40109(a) and (c)-(h) and 42112", "part A of subtitle VII", and "chapters 411 and 413", respectively.

(C) In subsection (d)—

(i) insert "determine rates and" after "may"; and

(ii) strike "and overseas".

(D) In subsection (e)—

(i) strike "'overseas air transportation',"; and

(ii) strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and substitute "section 40102(a) of title 49".

(h) Section 382 of the Energy Policy and Conservation Act (42 U.S.C. 6362) is amended as follows:

(1) Strike subsection (a) and substitute the following:

"(a) In this section, 'agency' means—

"(1) the Department of Transportation with respect to part A of subtitle VII of title 49, United States Code;

"(2) the Interstate Commerce Commission;

"(3) the Federal Maritime Commission; and

"(4) the Federal Power Commission.".

(2) In subsection (b), strike "subsection (a)(1)" and substitute "subsection (a)".

(i) The Act of April 22, 1908 (45 U.S.C. 51 et seq.), is amended by inserting immediately after section 4 the following new section:

"SEC. 4A. A regulation, standard, or requirement in force, or prescribed by the Secretary of Transportation under chapter 201 of title 49, United States Code, or by a State agency that is participating in investigative and surveillance activities under section 20105 of title 49, is deemed to be a statute under sections 3 and 4 of this Act.".

(j) Title 49, United States Code, is amended as follows:

(1) In section 102, redesignate subsection (e), as enacted by section 1(b) of the Act of January 12, 1983 (Public Law 97-449, 96 Stat. 2414), as subsection (f).

(2) Amend section 106 as follows:

(A) In subsection (f), strike "Secretary shall" and substitute "Secretary of Transportation shall".

(B) Subsection (g) is amended to read as follows:

"(g) DUTIES AND POWERS OF ADMINISTRATOR.—(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

"(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), (c), and (d), 40114(a), 40119, 44501(a), (b), and (d), 44502(a)(1), (b), and (c), 44504-44508, 44511-44513, 44701(a), (b), and (d)-(f), 44702-44716, 44717(c), 44720(a), 44901, 44902, 44903(a)-(c) and (e), 44906, 44912, 44935-44937, 44938(a) and (b), 45102, 45103, 46104, 46301, 46303(c), 46304-46308, 46310, 46311, and 46313-46317, chapter 465, and sections 47504(b)(related to flight procedures), 47506(a), 48102(d)(2), and 48107 of this title; and

"(B) additional duties and powers prescribed by the Secretary of Transportation.

"(2) In carrying out sections 40119, 44901, 44903(a)-(c) and (e), 44906, 44912, 44935-44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.".

(C) In subsection (k), insert "to the Secretary of Transportation" immediately after "appropriated".

(3) In section 108(a)—

(A) strike—

"(a) Except when operating as a service in the Navy, the"

and substitute—

"(a)(1) The"; and

(B) add at the end of subsection (a) the following new paragraph:

"(2) Notwithstanding paragraph (1) of this subsection, the Coast Guard, together with the duties and powers of the Coast Guard, shall operate as a service in the Navy as provided under section 3 of title 14.".

(4)(A) Chapter 3 is amended by inserting immediately after section 303 the following new section:

"§303a. Development of water transportation

"(a) POLICY.—It is the policy of Congress—

"(1) to promote, encourage, and develop water transportation, service, and facilities for the commerce of the United States; and

"(2) to foster and preserve rail and water transportation.

"(b) DEFINITION.—In this section, 'inland waterway' includes the Great Lakes.

"(c) REQUIREMENTS.—The Secretary of Transportation shall—

"(1) investigate the types of vessels suitable for different classes of inland waterways to promote, encourage, and develop inland waterway transportation facilities for the commerce of the United States;

"(2) investigate water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, and equipment, and investigate railroad spurs and switches connecting with those water terminals, to develop the types most appropriate for different locations and for transferring passengers or property between water carriers and rail carriers more expeditiously and economically;

"(3) consult with communities, cities, and towns about the location of water terminals, and cooperate with them in preparing plans for terminal facilities;

"(4) investigate the existing status of water transportation on the different inland waterways of the United States to learn the extent to which—

"(A) the waterways are being used to their capacity and are meeting the demands of traffic; and

"(B) water carriers using those waterways are interchanging traffic with rail carriers;

"(5) investigate other matters that may promote and encourage inland water transportation; and

"(6) compile, publish, and distribute information about transportation on inland waterways that the Secretary considers useful to the commercial interests of the United States.".

(B) The analysis of chapter 3 is amended by inserting immediately after item 303 the following new item:

"303a. Development of water transportation.".

(5) Amend section 329 as follows:

(A) In subsection (b)(1)—

(i) strike "title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.)" and substitute "chapter 11 of this title";

(ii) strike "and overseas" and "or overseas" wherever it appears; and

(iii) strike "section 419 of the Federal Aviation Act of 1958" and substitute "subchapter II of chapter 417 of this title".

(B) In subsection (d), strike "the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)" and substitute "part A of subtitle VII of this title".

(6)(A) Sections 334 and 335 are repealed.

(B) Items 334 and 335 in the analysis of chapter 3 are repealed.

(7)(A) Chapter 3 is amended by adding immediately after section 336 the following:

"§337. Budget request for the Director of Intelligence and Security

"The annual budget the Secretary of Transportation submits shall include a specific request for the Office of the Director of Intelligence and Security. In deciding on the budget request for the Office, the Secretary shall consider recommendations in the annual report submitted under section 44938(a) of this title.

"SUBCHAPTER III—MISCELLANEOUS

"§351. Judicial review of actions in carrying out certain transferred duties and powers

"(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670, 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, the Federal Highway Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.

"(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory requirement related to notice, an opportunity for a hearing, action on the record, or administrative review that applied to a duty or power transferred by the Act applies to the Secretary or Administrator when carrying out the duty or power.

"(c) NONAPPLICATION.—This section does not apply to a duty or power transferred from the Interstate Commerce Commission to the Secretary under section 6(e)(1)–(4) and (6)(A) of the Act.

"§352. Authority to carry out certain transferred duties and powers

"In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670, 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Highway Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.

"§353. Toxicological testing of officers and employees

"(a) COLLECTING SPECIMENS.—When the Secretary of Transportation or the head of a component of the Department of Transportation conducts post-accident or post-incident toxicological testing of an officer or employee of the Department, the Secretary or head shall collect the specimen from the officer or employee as soon as practicable after the accident or incident. The Secretary or head shall try to collect the specimen not later than 4 hours after the accident or incident.

"(b) REPORTS.—The head of each component shall submit a report to the Secretary on the circumstances about the amount of time required to collect the specimen for a toxicological test conducted on an officer or employee who is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the National Transportation Safety Board.

"(c) NONCOMPLIANCE NOT A DEFENSE.—An officer or employee required to submit to toxicological testing may not assert failure to comply with this section as a claim, cause of action, or defense in an administrative or judicial proceeding.".

(B) The analysis of chapter 3 is amended by adding immediately after item 336 the following:

"337. Budget request for the Director of Intelligence and Security.

"SUBCHAPTER III—MISCELLANEOUS

"351. Judicial review of actions in carrying out certain transferred duties and powers.
"352. Authority to carry out certain transferred duties and powers.
"353. Toxicological testing of officers and employees.".

(8) Section 10362(b)(5) is amended to read as follows:

"(5) prescribe regulations that contain standards for the computation of subsidies for rail passenger transportation (except passenger transportation compensation disputes subject to the jurisdiction of the Commission under sections 24308(a) and 24903(c)(2) of this title) that are consistent with the compensation principles described in the final system plan established under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and that avoid cross-subsidization among commuter, intercity, and freight rail transportation;".

(9) In section 10501(d)—

(A) strike "procedures of this title" and substitute "procedures of this subtitle"; and

(B) strike "provided in this title" and substitute "provided in this subtitle".

(10) In section 10504—

(A) strike "local public body" wherever it appears and substitute "local governmental authority";

(B) strike "rail mass transportation" wherever it appears and substitute "mass transportation";

(C) in subsection (a)(1)(A), strike "section 1608(c)(2)" and substitute "section 5302(a)"; and

(D) in subsection (a)(2), strike "section 1608(c)(5)" and substitute "section 5302(a)".

(11) In section 10526(a)—

(A) in clause (8)(B), strike "Civil Aeronautics Board or its successor agency" and substitute "Secretary of Transportation";

(B) in clause (10), strike "work." and substitute "work;";

(C) in clause (13), strike "or"; and

(D) in clause (14), strike "title." and substitute "title; or".

(12) In section 10701a(b)(3), strike "policy of this title" and substitute "policy of this subtitle".

(13) In section 10705a(g)(3)—

(A) before clause (A), strike "provision of this title" and substitute "provision of this subtitle"; and

(B) in clause (A), strike "service over any rate" and substitute "service over any route".

(14) In section 10707(d)—

(A) in paragraph (2), strike "under this title" and substitute "under this subtitle"; and

(B) in paragraph (3), strike "title" wherever it appears and substitute "subtitle".

(15) In section 10707a(b)(1), strike "paragraph (2)" and substitute "paragraph (3)".

(16) In section 10731(e), strike "provision of this title" and substitute "provision of this subtitle".

(17) In section 10749(b)(2), strike "Civil Aeronautics Board under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)" and substitute "Secretary of Transportation under part A of subtitle VII of this title".

(18) In section 10751(b), strike "purposes of this title" and substitute "purposes of this subtitle".

(19) In section 10905 (d)(1) and (e), strike "government authority" and substitute "governmental authority".

(20) In section 10910—

(A) in subsection (a)(1), strike "government authority" and substitute "governmental authority"; and

(B) in subsection (g)(1), strike "provisions of this title" and substitute "provisions of this subtitle".

(21) In section 10924(e), insert "of" after "protection".

(22) In the analysis of chapter 111—

(A) in item 11128, strike "Water" and substitute "War"; and

(B) in item 11142, strike "systems" and substitute "system".

(23) In section 11162(a), strike "proceedings under this title" and substitute "proceedings under this subtitle".

(24) In section 11163, strike "purposes of this title" and substitute "purposes of this subtitle".

(25) In section 11166(a), strike "pursuant to this title" and substitute "under this subtitle".

(26) In section 11167, strike "under this title" and substitute "under this subtitle".

(27) In section 11501(b)(3)(A), strike "title" and substitute "subtitle".

(28) In section 11909(b), strike "1966,," and substitute "1966,".

(k) The following sections of title 49, United States Code, as enacted by section 1 of this Act, are amended as follows:

(1) Effective March 31, 1992, section 5108(j) is repealed.

(2) Effective January 1, 1999—

(A) in sections 41107, 41901(b)(1), 41902(a), and 41903, strike "transportation or between places in Alaska" wherever it appears and substitute "transportation";

(B) strike section 41901(g); and

(C) in section 41902(b)—

(i) strike clause (3); and

(ii) in clause (4), strike "clauses (1)–(3)" and substitute "clauses (1) and (2)".

(l) Section 5109 of title 49, United States Code, as enacted by section 1 of this Act, is effective November 16, 1992.

(m) The Act of June 29, 1940 (ch. 444, 54 Stat. 686), is amended as follows:

(1) Except as provided in paragraphs (2) and (3) of this subsection, strike "Administrator" wherever it appears and substitute "Secretary".

(2) In subsection (a) of the first section, strike "'Administrator' means the Administrator of the Federal Aviation Agency" and substitute "'Secretary' means the Secretary of Transportation".

(3) In section 4(a), strike "Administrator, and any Federal Aviation Agency" and substitute "Secretary, and any Department of Transportation".

(n) The Act of September 7, 1950 (ch. 905, 64 Stat. 770), is amended as follows:

(1) Except as provided in paragraph (2) of this subsection, strike "Administrator" wherever it appears and substitute "Secretary".

(2) In the first section, strike "Administrator of the Federal Aviation Agency" and "'Administrator'" and substitute "Secretary of Transportation" and "'Secretary'", respectively.

(3) In sections 4 and 8(a), strike "Federal Aviation Agency" and substitute "Department of Transportation".

(o) Section 101 (1st complete par. on p. 646) of the Act of August 30, 1964 (Public Law 88–507, 78 Stat. 646), is amended by striking "Administrator of the Federal Aviation Agency" and substituting "Secretary of Transportation".

(p) Section 9111 of the Anti-Drug Abuse Act of 1988 (Public Law 100–690, 102 Stat. 4531) is amended as follows:

(1) In the introductory language of subsection (b)(1), strike "Subsection (b) of section 10530 of such title is amended by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:" and substitute "Subsection (b)(1) of section 10530 of title 49 is amended to read as follows:".

(2) In subsection (b)(2), strike "Such subsection" and substitute "Subsection (b) of section 10530".

(3) In the introductory language of subsection (f)(1), strike "Subsection (g) of such section is amended by striking out paragraph (1) and inserting in lieu thereof the following:" and substitute "Subsection (g)(1) of section 10530 of title 49 is amended to read as follows:".

(4) In subsection (f)(2), strike "Such subsection" and substitute "Subsection (g) of section 10530".

(q) The revision of regulations, referred to in section 32705(b)(2)(A) of title 49, United States Code, as enacted by section 1 of this Act, that is required by section 7 of the Independent Safety Board Act Amendments of 1990 (Public Law 101–641, 104 Stat. 4657) shall be prescribed not later than May 28, 1991.

CONFORMING CROSS-REFERENCES

Sec. 5. (a) Sections 551(1)(H) and 701(b)(1)(H) of title 5, United States Code, are amended by striking "or sections 1622," and substituting "subchapter II of chapter 471 of title 49; or sections".

(b) Title 10, United States Code, is amended as follows:

(1) In section 2640—

(A) in subsections (a)(1)(A) and (d)(1)(B)(i), strike "title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)" and substitute "chapter 447 of title 49"; and

(B) in subsection (i), strike "sections 101(3), 101(5), 101(10), and 101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))" and substitute "section 40102(a) of title 49".

(2) In section 9511(1), strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and substitute "section 40102(a) of title 49".

(3) In section 9512(b)(4), strike "section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401)" and substitute "section 44103 of title 49".

(c) Section 1110(a) of title 11, United States Code, is amended by striking "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)", "subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))", and "Civil Aeronautics Board" and substituting "section 40102(a) of title 49", "section 30101 of title 46", and "Secretary of Transportation", respectively.

(d) The last sentence of section 82 of title 14, United States Code, is amended to read as follows: "Nothing in this title shall be deemed to limit the authority granted by chapter 167 of title 10 or part A of subtitle VII of title 49.".

(e) Title 18, United States Code, is amended as follows:

(1) In section 31, strike "the Federal Aviation Act of 1958, as amended" and substitute "sections 40102(a) and 46501 of title 49".

(2) In the last sentence of sections 112(e), 878(d), 1116(c), and 1201(e), strike "section" and all that follows and substitute "section 46501(2) of title 49.".

(3) In section 511(c)—

(A) in clause (1), strike "the National Traffic and Motor Vehicle Safety Act of 1966, or the Motor Vehicle Information and Cost Savings Act" and substitute "chapter 301 and part C of subtitle VI of title 49"; and

(B) in clause (2), strike "section 2 of the Motor Vehicle Information and Cost Savings Act" and substitute "section 32101 of title 49".

(4) In section 512(a)(2)(A), strike "the National Traffic and Motor Vehicle Safety Act of 1966" and substitute "chapter 301 of title 49".

(5) In section 553(c)—

(A) in clause (1), strike "section 2 of the Motor Vehicle Information and Cost Savings Act" and substitute "section 32101 of title 49"; and

(B) in clause (4), strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)" and substitute "section 40102(a) of title 49".

(6) In section 831(c)(1), strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and substitute "section 46501 of title 49".

(7) In section 844(g)(2)(B), strike "the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.)" and substitute "chapter 51 of title 49".

(8) In section 1201(a)(3), strike "section" and all that follows and substitute "section 46501 of title 49;".

(9) In section 1366(c), strike "interstate transmission facilities, as defined in section 2 of the Natural Gas Pipeline Safety Act of 1968" and substitute "an interstate gas pipeline facility as defined in section 60101 of title 49".

(10) In section 2318(c)(1), strike "section 101 of the Federal Aviation Act of 1958" and substitute "section 46501 of title 49".

(11) In section 2516(1)(j), strike "section" and all that follows and substitute "section 60120(b) (relating to destruction of a natural gas pipeline) or 46502 (relating to aircraft piracy) of title 49;".

(12) In section 3663(a)(1), strike "under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472)" and substitute "section 46312, 46502, or 46504 of title 49".

(f) Title 23, United State Code, is amended as follows:

(1) In section 103(e)(4)(L)—

(A) in clause (i), strike "the Urban Mass Transportation Act of 1964" and substitute "chapter 53 of title 49"; and

(B) in clause (ii), strike "section 3(e)(4) of the Urban Mass Transportation Act of 1964" and substitute "section 5315(a)(1)(D) of title 49".

(2) In section 142—

(A) in subsection (i), strike "the Urban Mass Transportation Act of 1964, as amended" and substitute "chapter 53 of title 49"; and

(B) in subsection (j), strike "section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended," and substitute "section 5315(a)(1)(D) of title 49".

(3) In section 157(a)(2) and (3)(A), strike "section 404 of the Surface Transportation Assistance Act of 1982" and substitute "section 31104 of title 49".

(g) The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended as follows:

(1) In section 4064(b)(1)(B), strike "section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001)" and substitute "section 32901 of title 49, United States Code,".

(2) In section 4261(e) and (f)(2), strike "the Airport and Airway Improvement Act of 1982" and substitute "section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code,".

(3) In section 9502(d)(1)(B), strike "the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.)," and substitute "part A of subtitle VII of title 49, United States Code,".

(4) In section 9503(e)(3), strike "section 21(a)(2) of the Urban Mass Transportation Act of 1964" and substitute "section 5325(a)(1)(A) of title 49, United States Code".

(h) Title 31, United States Code, is amended as follows:

(1) In section 3711(c)(2), strike "section 6 of the Act of March 2, 1893 (45 U.S.C. 6), section 4 of the Act of April 14, 1910 (45 U.S.C. 13), section 9 of the Act of February 17, 1911 (45 U.S.C. 34), and section 25(h) of the Interstate Commerce Act (49 App. U.S.C. 26(h))" and substitute "section 21302 of title 49 for a violation of chapter 203, 205, or 207 of title 49 or a regulation or requirement prescribed or order issued under any of those chapters".

(2) In section 3726(b)(1), strike "the Federal Aviation Act of 1958" and substitute "section 40102(a) of title 49".

(i) Section 210(a)(4) of title 35, United States Code, is amended by striking "section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721)" and substituting "section 30168(e) of title 49".

(j) Title 39, United States Code, is amended as follows:

(1) In section 3401(b) and (c), strike "section 1376" and substitute "section 41901".

(2) In section 5005(b)(3), strike "section 101 of the Federal Aviation Act of 1958" and substitute "section 40102(a) of title 49".

(3) In section 5401(b), strike "sections 1301–1542" and substitute "part A of subtitle VII".

(k) Section 2101(14)(C) of title 46, United States Code, is amended by striking "section 104 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1803)" and substituting "section 5103(a) of title 49".

(l) Title 49, United States Code, is amended as follows:

(1) In section 103(c)(1), strike "section 6(e)(1), (2), and (6)(A) of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A))" and substitute "section 20134(c) and chapters 203–211 of this title, and chapter 213 of this title in carrying out chapters 203–211".

(2) In section 104(c)(2), strike "31" and substitute "315".

(3) In section 105(d), strike "the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.)" and substitute "chapter 301 of this title".

(4) In section 106—

(A) in subsection (h), strike "Section 103 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1303)" and substitute "Section 40101(d) of this title"; and

(B) in subsection (j), strike "section 312(e) of the Federal Aviation Act of 1958" and substitute "section 44507 of this title".

(5) In section 109(a) and (b), insert "App." immediately after "(46".

(6) In section 302(b), strike "Subtitle I and chapter 31 of subtitle II of this title and the Department of Transportation Act (49 App. U.S.C. 1651 et seq.)" and substitute "This subtitle and chapters 221 and 315 of this title".

(7) In section 306(b), strike "section 332 or 333 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), title V or VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq., 851 et seq.), or section 4(i) or 5 of the Department of Transportation Act (49 App. U.S.C. 1653(i), 1654)" and substitute "section 332 or 333 or chapter 221 or 249 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.)".

(8) In section 321, strike "section 101(2), (4), and (8) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(2), (4), (8))" and substitute "section 40102(a) of this title".

(9) In section 501—

(A) in subsection (a)(2), strike "section 3101" and substitute "section 31501";

(B) in subsection (a)(3), strike "section 3102(c)" and substitute "section 31502(c)"; and

(C) strike subsection (b) and substitute the following:

"(b) APPLICATION.—This chapter only applies in carrying out sections 20302(a)(1)(B) and (C), (2), and (3), (c), and (d)(1) and 20303 and chapters 205 (except section 20504(b)), 211, 213 (in carrying out those sections and chapters), and 315 of this title.".

(10) In section 507(c), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984" and "such section or Act" and substitute "subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title" and "any of those provisions", respectively.

(11) In section 521(b)—

(A) in paragraph (1)(A), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" and "such sections or Act" and substitute "a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31308(g)(1), or 31502 of this title" and "any of those provisions", respectively;

(B) in paragraph (2)(A), strike "pursuant to section 3102 of this title or the Motor Carrier Safety Act of 1984" and substitute "under subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title";

(C) in paragraph (2)(B), strike "section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" and substitute "section 31302, 31303, 31304, 31305(b), or 31308(g)(1) of this title";

(D) in paragraph (3), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" and substitute "subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title";

(E) in paragraph (5)(A), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" and "such sections or Act" and substitute "a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title" and "any of those provisions", respectively;

(F) in paragraph (6)(A), strike "section 3102 of this title, the Motor Carrier Safety Act of 1984", "such section or Act", and "liable" and substitute "subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title", "any of those provisions", and "subject", respectively;

(G) in paragraph (6)(B)(i), strike "section 12002, 12003(b), 12003(c), 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" and substitute "section 31302, 31303(b) or (c), 31304, 31305(b), or 31308(g)(1) of this title";

(H) in paragraph (6)(B)(ii), strike "section 12019 of such Act", "section 12003(a) of such Act", and "such section 12003(a)" and substitute "section 31301 of this title", "section 31303(a) of this title", and "section 31303(a)", respectively;

(I) in paragraph (12), strike "any provision of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1812)" and "such Act" and substitute "chapter 51 of this title" and "chapter 51", respectively; and

(J) in paragraph (13), strike "section 204 of the Motor Carrier Safety Act of 1984" and substitute "section 31132 of this title".

(12) In section 526, strike "this chapter, section 3102 of this title, or the Motor Carrier Safety Act of 1984, a person that knowingly and willfully violates a provision of this chapter or such section or Act, or a regulation or order of the Secretary of Transportation under this chapter or such section or Act" and substitute "a provision of this chapter, subchapter III of chapter 311 (except sections 31138 and 31139), or section 31502 of this title, a person that knowingly and willfully violates any of those provisions or a regulation or order of the Secretary of Transportation under any of those provisions".

(13) In section 10102(9), strike "the Federal Aviation Act of 1958" and substitute "part A of subtitle VII of this title".

(14) In section 10322(a), strike "subtitle" wherever it appears and substitute "title".

(15) In sections 10364(a) and 10385(a), strike "section 5 of title 41" and substitute "section 3709 of the Revised Statutes (41 U.S.C. 5)".

(16) In sections 10527(a), strike "subchapter" and substitute "title".

(17) In section 10528, strike "subchapter" and "subtitle" wherever either word appears and substitute "title".

(18) In section 10529(a), strike "(12 U.S.C. 1141j(a))" and substitute "(12 U.S.C. 1141j(a)))".

(19) In sections 10542(a)(2) and 10544(d)(1)(B), insert "App." immediately after "(46" wherever it appears.

(20) In section 10561(b)(1), strike "chapter 20" and substitute "part A of subtitle VII".

(21) In section 10703(a)(4)—

(A) in paragraph (D)(ii), insert "App." immediately after "(46" wherever it appears; and

(B) in paragraph (E), strike "(46 U.S.C. 801 et seq.)" and "(46 U.S.C. 843–848)" and substitute "(46 App. U.S.C. 801 et seq.)" and "(46 App. U.S.C. 843 et seq.)", respectively.

(22) In section 10721(a)(1), strike "Section 5 of title 41" and substitute "Section 3709 of the Revised Statutes (41 U.S.C. 5)".

(23) In section 10735(b)(1), strike "under this title" and substitute "under this subtitle".

(24) In section 10903(b)(2), strike "section 11347 of this title and section 405(b) of the Rail Passenger Service Act (45 U.S.C. 565(b))" and substitute "sections 11347 and 24706(c) of this title".

(25) In section 10922—

(A) in subsection (c)(1)(E), strike "provisions of section 12(f) of the Urban Mass Transportation Act of 1964" and substitute "section 10531 of this title";

(B) in subsection (c)(2)(D), strike "subtitle" wherever it appears and substitute "title";

(C) in subsection (c)(4)(C) and (j)(1), strike "subchapter" wherever it appears and substitute "title"; and

(D) in subsection (j)(2)(C), strike "subtitle" and substitute "title".

(26) In section 10927(a)(1), insert "section" before "10923".

(27) In section 10935(a) and (e)(3), strike "subchapter" and substitute "title".

(28) In section 11125(b)(2)(A), strike "the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.)" and substitute "chapter 201 of this title".

(29) In section 11126(a), strike "11501(c)" and substitute "11501(f)".

(30) In section 11303(a), strike "the Ship Mortgage Act, 1920" wherever it appears and substitute "chapter 313 of title 46".

(31) In section 11347, strike "section 405 of the Rail Passenger Service Act (45 U.S.C. 565)" and substitute "sections 24307(c), 24312, and 24706(c) of this title".

(32) In section 11348(a), strike "section 504(f)," and substitute "sections 504(f) and".

(33) In section 11504(b)(2), strike "204 of the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2503)" and substitute "31132 of this title".

(34) In section 11701(a), strike "section 10530 of this subtitle" and substitute "section 10530 of this title".

LEGISLATIVE PURPOSE AND CONSTRUCTION

Sec. 6. (a) Sections 1–4 of this Act restate, without substantive change, laws enacted before October 1, 1991, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after September 30, 1991, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) A reference to a law replaced by sections 1–4 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) An order, rule, or regulation in effect under a law replaced by sections 1–4 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by sections 1–4 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of a caption or catch line of the provision.

(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS

Sec. 7. (a) The repeal of a law by this Act may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Statutes at Large

Date	*Chapter or Public Law*	*Section*	*Statutes at Large*		*U.S. Code*	
			Volume	*Page*	*Title*	*Section*
1864 *July 2*	*216*	*15*	*13*	*362*	*45*	*83*
1873 *Mar. 3*	*226*	*2(words after 2d semicolon)*	*17*	*508*		
1874 *June 20*	*331*		*18*	*111*	*45*	*83*
June 22	*414*		*18*	*200*	*45*	*89*
1879 *Mar. 3*	*183*	*1(4th par. on p. 420)*	*20*	*420*	*45*	*90*
1887 *Feb. 4*	*104*		*24*	*379*	*49 App.*	*1–25(as 1–25 relate to oil pipelines), 26, 26a–27(as 26a–27 relate to oil pipelines), 901–923(as 901–923 relate to oil pipelines)*
Mar. 3	*345*		*24*	*488*	*45*	*94, 95*
1893 *Feb. 11*	*83*		*27*	*443*	*49 App.*	*46(related to oil pipelines)*
Mar. 2	*196*		*27*	*531*	*45*	*1–7*
1896 *Apr. 1*	*87*		*29*	*85*	*45*	*6*
1897 *Mar. 3*	*386*	*(proviso under heading "Transportation and Recruiting, Marine Corps").*	*29*	*663*	*45*	*91*
1901 *Mar. 3*	*831*	*(last proviso of last par. under heading "Pay Department")*	*31*	*1023*	*45*	*92*
1903 *Feb. 19*	*708*		*32*	*847*	*49 App.*	*41–43(as 41–43 relate to oil pipelines)*
Mar. 2	*976*		*32*	*943*	*45*	*10*
1905 *Feb. 23*	*744*		*33*	*743*	*49 App.*	*1201–1203*
1906 *June 29*	*3594*		*34*	*607*	*45*	*71–74*
June 30	*P.R. 46*		*34*	*838*	*45*	*35*
1907 *Mar. 4*	*2939*		*34*	*1415*	*45*	*61–64b*
1908 *May 27*	*200*	*1(6th par. last sentence under heading "Interstate Commerce Commission", 1st complete par. on p. 325).*	*35*	*325*	*45*	*36, 37*
1909 *Mar. 4*	*299*	*1(6th par. last sentence under heading "Interstate Commerce Commission").*	*35*	*965*	*45*	*37*
1910 *Apr. 14*	*160*		*36*	*298*	*45*	*11–16*
May 6	*208*		*36*	*350*	*45*	*38–43*
June 18	*309*		*36*	*544*	*49 App.*	*50(related to oil pipelines)*
1911 *Feb. 17*	*103*		*36*	*913*	*45*	*22–29, 31–34*
1912 *Aug. 24*	*390*	*11(last par.)*	*37*	*568*	*49 App.*	*51(related to oil pipelines)*

Schedule of Laws Repealed—Continued

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1914						
Aug. 1	223	1(5th complete par. on p. 627)	38	627	49 App.	52(related to oil pipelines)
1915						
Mar. 4	169		38	1192	45	23, 30
1916						
May 4	109		39	61	45	63
Aug. 29	415		39	538	49 App.	81–124
1920						
Feb. 28	91	441, 500	41	498, 499	49 App.	26, 142
1921						
Mar. 4	161	1(last proviso in par. under heading "Transportation Facilities on Inland and Coastal Waterways").	41	1392	49 App.	141
Dec. 15	1	1(last par. under heading "Board of Mediation and Conciliation").	42	328	45	126
1924						
June 7	355		43	659	45	22, 23, 25, 27
1927						
Mar. 4	510		44	1446	49 App.	102
1929						
Feb. 28	369		45	1404	49 App.	173
1931						
Feb. 14	189		46	1162	49 App.	231
1934						
June 13	498		48	954	49 App.	264
June 19	654		48	1113	49 App.	171–173a, 175, 179–184
	656	2	48	1116	49 App.	181
1935						
Aug. 7	455		49	540	49 App.	231
1937						
Aug. 26	818		50	835	49 App.	26
1939						
June 27	244		53	855	49 App.	751–757
Aug. 9	618		53	1291	49 App.	781–789
	633	1(1st. par. under heading "Civil Aeronautics Authority.") ...	53	1302	49 App.	682
1940						
Apr. 22	124		54	148	45	24–34
July 2	526		54	735	49 App.	485
Sept. 18	722	14(b), 321	54	919, 954	49 App.	26, 65(related to oil pipelines)
1941						
June 28	258	201(last par. under heading "Civil Aeronautics Board")	55	282	49 App.	422a
1942						
July 24	522		56	704	49 App.	752
1943						
May 7	94	(par. under heading "Office of Administrator of Civil Aeronautics").	57	80	49 App.	758
June 10	121		57	150	49 App.	752

Schedule of Laws Repealed—Continued

Statutes at Large

Date	*Chapter or Public Law*	*Section*	*Statutes at Large*		*U.S. Code*	
			Volume	*Page*	*Title*	*Section*
1944						
June 30	*333*		*58*	*648*	*49 App.*	*757*
July 1	*373*	*813(5th, 6th complete pars. on p. 718)*	*58*	*718*	*49 App.*	*177, 181*
Oct. 3	*479*	*13(g)*			*50 App.*	*1622*
1945						
Dec. 12	*573*		*59*	*606*	*49 App.*	*65, 65a(as 65, 65a relate to oil pipelines)*
1946						
Aug. 8	*911*		*60*	*944*	*49 App.*	*603*
1947						
May 27	*85*		*61*	*120*	*45*	*24–26*
July 30	*404*	*2*	*61*	*678*	*50 App.*	*1622*
Aug. 4	*471*		*61*	*743*	*49 App.*	*643*
1948						
Apr. 17	*192*		*62*	*173*	*49 App.*	*1101, 1102, 1106, 1108, 1109*
June 16	*473*		*62*	*450*	*49 App.*	*1151, 1151(note), 1152–1159a, 1160*
	482		*62*	*470*	*49 App.*	*524*
June 19	*523*		*62*	*493*	*49 App.*	*401, 523*
June 25	*646*	*4*	*62*	*986*	*45*	*87*
June 29	*713*		*62*	*1093*	*49 App.*	*452*
	738		*62*	*1111*	*49 App.*	*1116*
July 1	*792*		*62*	*1216*	*49 App.*	*452, 459, 551*
1949						
July 25	*359*		*63*	*478*	*49 App.*	*1111*
July 26	*362*		*63*	*480*	*49 App.*	*622*
	363		*63*	*480*	*49 App.*	*1114*
Aug. 12	*423*		*63*	*603*	*49 App.*	*1113*
Aug. 15	*426*		*63*	*605*	*49 App.*	*1109*
Aug. 30	*520*		*63*	*678*	*49 App.*	*427*
Oct. 1	*589*		*63*	*700*	*50 App.*	*1622–1622c*
Oct. 25	*724*		*63*	*903*	*49 App.*	*1105*
Oct. 26	*751*		*63*	*925*	*49 App.*	*1104*
1950						
Feb. 9	*5*		*64*	*4*	*49 App.*	*1107*
Mar. 18	*72*	*6, 7*	*64*	*28*	*49 App.*	*1102, 1108*
Aug. 3	*517*		*64*	*395*	*49 App.*	*622*
Aug. 5	*591*		*64*	*414*	*49 App.*	*177, 181*
Aug. 8	*643*		*64*	*417*	*49 App.*	*457*
Aug. 9	*655*		*64*	*427*	*49 App.*	*781*
Sept. 9	*938*		*64*	*825*	*49 App.*	*701–705*
Sept. 27	*1055*		*64*	*1071*	*49 App.*	*1104*
Sept. 29	*1107*		*64*	*1079*	*49 App.*	*460*
Sept. 30	*1117*		*64*	*1090*	*49 App.*	*1181–1185*

Schedule of Laws Repealed—Continued

Statutes at Large

Date	*Chapter or Public Law*	*Section*	*Statutes at Large*		*U.S. Code*	
			Volume	*Page*	*Title*	*Section*
1951 *Jan. 9*	*1214*		*64*	*1237*	*49 App.*	*1109*
June 14	*123*		*65*	*65*	*49 App.*	*401, 711–722*
Oct. 11	*495*	*3, 4*	*65*	*407*	*49 App.*	*177, 560*
Oct. 31	*655*	*55(b)*	*65*	*729*	*49 App.*	*787*
1952 *June 28*	*485*	*1(5)*	*66*	*286*	*49 App.*	*485*
July 14	*740*		*66*	*628*	*49 App.*	*401, 491, 622*
1953 *July 8*	*181*		*67*	*140*	*49 App.*	*1116*
Aug. 8	*379*		*67*	*489*	*49 App.*	*176*
1955 *May 19*	*41*		*69*	*49*	*49 App.*	*481*
Aug. 3	*494*		*69*	*441*	*49 App.*	*1101–1103, 1104, 1105, 1107, 1108, 1111*
1956 *July 20*	*650*		*70*	*591*	*49 App.*	*481*
	655		*70*	*594*	*49 App.*	*722*
Aug. 1	*816*		*70*	*784*	*49 App.*	*483*
	852	*22*	*70*	*911*	*49 App.*	*789*
1957 *June 13*	*85–50*		*71*	*69*	*49 App.*	*1201–1203*
Aug. 14	*85–135*		*71*	*352*	*45*	*6, 13, 34, 63*
Aug. 26	*85–166*		*71*	*415*	*49 App.*	*481*
Sept. 7	*85–307*		*71*	*629*	*49 App.*	*1324(note)*
1958 *Apr. 9*	*85–373*		*72*	*84*	*49 App.*	*486*
Apr. 11	*85–375*		*72*	*86*	*45*	*9*
July 7	*85–507*	*21(b)(3), (c)*	*72*	*337, 338*	*49 App.*	*457, 603*
Aug. 23	*85–726*	*(less 613(a), (b), 1402(a), (e)–(g), 1404, 1406, 1411)*	*72*	*731*	*49 App.*	*1301–1308, 1321–1325, 1341–1346, 1347–1356, 1357–1359, 1371, 1372–1376, 1377–1389, 1401–1406, 1421–1433, 1441–1443, 1461–1463, 1471–1474, 1481, 1482, 1483–1490, 1501–1515, 1516–1518, 1531–1542, 1551*
1959 *Mar. 18*	*86–3*	*21*	*73*	*13*	*49 App.*	*1324(note)*
June 25	*86–70*	*39*	*73*	*150*	*49 App.*	*1324(note)*
June 29	*86–72*		*73*	*155*	*49 App.*	*1101, 1102, 1104, 1106, 1108, 1109, 1112*
July 8	*86–81*		*73*	*180*	*49 App.*	*1403, 1404*

Schedule of Laws Repealed—Continued

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Aug. 11	86–154		73	333	49 App.	1743
Aug. 25	86–199		73	427	49 App.	1485
Sept. 21	86–295		73	572	49 App.	1105
1960 June 29	86–546	1	74	255	49 App.	1486
July 12	86–624	37	74	421	49 App.	1324(note)
	86–627		74	445	49 App.	1373
July 14	86–661		74	527		
Sept. 13	86–758		74	901	49 App.	1378, 1378(note)
	86–762		74	903	45	38, 42, 43
1961 July 20	87–89		75	210	49 App.	1542
Sept. 5	87–197		75	466	49 App.	1301, 1472, 1511
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Dec. 30	100–223	101, 102(a)–(c), 103–105(g), 106–116, 201–207, 301–306, 308–311, 315.	101	1487, 1488, 1494, 1526, 1532.	23	401(note)
					49	334
					49 App.	1301, 1348(notes), 1354, 1389, 1389(note), 1421, 1421(notes), 1471, 1472, 1475, 1475(note), 1501, 1903, 1903(note), 2104, 2104(note), 2201–2203, 2203(note), 2204, 2204(note), 2205, 2205(note), 2206–2208, 2210–2212, 2218, 2222(note), 2224–2227

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					49 App.	*26*
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					49	*101(note prec.)*
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	100–562	*(less 2(e)(1)(B), (C), (3))*	*102*	*2818*	*15*	*1381(note), 1397, 1397(note)*
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The SPEAKER pro tempore (Mr. ESPY]. Pursuant to the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, H.R. 1537 is a bill prepared by the Office of the Law Revision Counsel that codifies into positive law the balance of title 49, dealing with transportation. The purpose of the bill is to restate in comprehensive form, without substantive change, certain general and permanent laws related to transportation. This bill is a part of the program of that office, as required by 2 U.S.C. 285B, to prepare and submit to this committee bills to enact various titles of the code into positive law.

As the result of comments received from various departments and agencies concerned with transportation, several congressional committees, and interested private parties, the office of law revision counsel has prepared an amendment in the nature of a substitute to reflect changes resulting from the comments. The law revision counsel is satisfied that the substitute is an accurate restatement of existing law without substantive change. I urge approval of this bill.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1537, a bill to codify without substantive change certain statutes relating to railroads, motor vehicles, aviation, pipelines, and other transportation matters. In this process, simple language has been substituted for awkward and obsolete terminology, and superseded, executed, and obsolete laws have been eliminated.

H.R. 1537 is part of a continuing program by the Office of the Law Revision Counsel which is designed to enhance the availability and utility of our statutory law. Without this process, it would be considerably more difficult to interpret, apply, enforce and amend our laws. To date, the law revision counsel has completed the codification of approximately half of the titles in the United States Code. Enactment of H.R. 1537 will complete the codification of title 49, Transportation.

In draft form, this bill was circulated for comment to the Department of Transportation and its affected components, such as the Federal Aviation Administration, as well as to congressional committees with jurisdiction over the subject matter and to interested private parties. When there were conflicts, the law revision counsel worked until agreement was reached which avoided substantive change. Remaining stylistic differences not affecting substance were resolved in favor of existing codification conventions.

The administration has stated that it supports enactment of this bill.

Mr. Speaker, the Office of the Law Revision Counsel was established in 1975 as a separate office of the House of Representatives after being part of the Committee on the Judiciary for a number of years previously. It generally performs its important work behind the scenes, emerging into general notice only when all or part of another title of the code is ready for enactment into positive law. From my own observation, it has carried out its functions of law revision and codification in an altogether exemplary manner. The painstaking attention to detail and the consequent integrity of its work product are highly commendable. I would suggest that the Congress and the people of this country owe a good deal to the quiet work so diligently performed by Edward F. Willett, Jr., the law revision counsel, by Lawrence A. Monaco, his deputy, and by the others on their staff.

Mr. Speaker, I urge the swift enactment of H.R. 1537.

□ 1400

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ESPY). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 1537, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS ACT OF 1991

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3298) to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, as amended.

The Clerk read as follows:

H.R. 3298

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Farm Credit Banks and Associations Safety and Soundness Act of 1991".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. References to the Farm Credit Act of 1971.

TITLE I—FARM CREDIT SYSTEM INSURANCE CORPORATION

Sec. 101. Statutory successor to Assistance Board agreements.

TITLE II—REMOVAL OF HINDRANCE TO MERGERS

Sec. 201. Sectional representation on boards of directors.

TITLE III—CLARIFICATION OF OBLIGATION OF FARM CREDIT BANKS FOR REPAYMENT OF DEBT ISSUED BY FARM CREDIT SYSTEM ASSISTANCE CORPORATION

Sec. 301. Capital preservation.
Sec. 302. Preferred stock.
Sec. 303. Sytstemwide repayment obligation.
Sec. 304. Repayment of Treasury-paid interest.
Sec. 305. Transfer of obligations from associations to banks, and other matters.
Sec. 306. Defaults.
Sec. 307. Authority of Financial Assistance Corporation.

TITLE IV—FEDERAL INTERMEDIATE CREDIT BANKS

Sec. 401. Authority regarding remaining Federal intermediate credit banks.

SEC. 2. REFERENCES TO THE FARM CREDIT ACT OF 1971.

Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), except to the extent otherwise provided.

TITLE I—FARM CREDIT SYSTEM INSURANCE CORPORATION

SEC. 101. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.

(a) IN GENERAL.—Section 5.58(2) (12 U.S.C. 2277a–7(2)) is amended by adding at the end thereof the following: "The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions that certify such institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.".

(b) CONFORMING AMENDMENTS.—Section 5.35(4) (12 U.S.C. 2271(4)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.".

TITLE II—REMOVAL OF HINDRANCE TO MERGERS

SEC. 201. SECTIONAL REPRESENTATION ON BOARDS OF DIRECTORS.

Section 4.15 (12 U.S.C. 2203) is amended—

(1) by amending the section heading to read as follows:

"NOMINATION AND ELECTION OF BANK AND ASSOCIATION DIRECTORS.—";

(2) by inserting, before the text thereof, the following:

"(a) NOMINATION OF DIRECTORS.—"; and

(3) by adding at the end thereof the following new subsection:

"(b) SECTIONAL REPRESENTATION ON BANK AND ASSOCIATION BOARDS.—

"(1) IN GENERAL.—To ensure representation of geographical sections within the territory served by a bank or association of the Farm Credit System, each such bank (other than the National Bank for Cooperatives) or association may include in its bylaws governing the election of its board of directors provisions for the election of some or all of its members of the board to be elected by the stockholders:

"(A) at large;

"(B) from designated geographical sections of the territory served by the bank or association; or

"(C) as provided in both subparagraphs (A) and (B).

"(2) PROPORTIONALITY.—If members of the board of directors are elected by stockholders from designated geographical sections, the membership on the board elected from each section should reflect proportionately—

"(A) in the case of an association, the same number of stockholders; or

"(B) in the case of a bank, the same number of stockholder-borrowers of associations that accept, make, or otherwise provide loans in the designated sections of the bank's territory and that hold voting stock in the bank.

"(3) EXAMINATION OF SECTIONS.—The boundaries of the designated geographical sections shall be examined by the bank or association, as appropriate, at least once every three years and shall be readjusted, as necessary, to ensure such proportional representation of membership on the board.".

TITLE III—CLARIFICATION OF OBLIGATION OF FARM CREDIT BANKS FOR REPAYMENT OF DEBT ISSUED BY FARM CREDIT SYSTEM ASSISTANCE CORPORATION.

SEC. 301. CAPITAL PRESERVATION.

Section 6.9(e)(3) (12 U.S.C. 2278a–9(e)(3)), is amended—

(1) by adding at the end of subparagraph (C) the following: "Any bank leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of such future payment had the bank remained in the System. With respect to any bank undergoing liquidation under this Act, a liability to the Financial Assistance Corporation in said amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of such bank. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments received by the Financial Assistance Corporation under this subparagraph and subparagraph (D) prior to the recovery, or, if such recoveries exceed the payments theretofore received from the other banks, shall apply the excess, and all earnings thereon, to reduce the other banks' subsequent payment obligations proportionately.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by adding a new subparagraph (D) as follows:

"(D)(i) In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 1991 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case such bank shall begin making such payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings thereon, to 90% of the bank's ultimate obligation, and the Financial Assistance Corporation will partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings thereon as earned.

"(ii) Such agreement shall not require payments to be made to the extent that making a particular payment or part thereof would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

"(iii) The funds received by the Financial Assistance Corporation pursuant to such agreements shall be invested in eligible investments as defined in Section 6.25(a)(1) of this Act, and such funds and the earnings thereon shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection."; and

(4) by adding before the period at the end of subparagraph (E), as redesignated by paragraph (2) of this section, the following: ", nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank".

SEC. 302. PREFERRED STOCK.

Section 6.26(d)(1)(B) (12 U.S.C. 2278b–6(d)(1)(B)), is amended by adding at the end thereof the following: "Each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership) shall appropriate from its earnings in the prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

"(i) the greater of—

"(I) such amount as the institution may be required to appropriate under any assistance agreement it has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

"(II) the amount that, if appropriated to such account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in such account to equal the par value of the preferred stock issued by such institution with respect to such obligation; plus

"(ii) any amount that had been appropriated to said account in a previous year but had thereafter been offset by losses;

"Provided, However, that an annual appropriation shall not be made to the extent that it would exceed the institution's net income (as determined pursuant to generally accepted accountion principles) in that year or to the extent that it would cause the institution's preferred stock to be impaired. The amount in such appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates, and said account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses. Such appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements."

SEC. 303. SYSTEMWIDE REPAYMENT OBLIGATION.

Section 6.26(d)(1)(C) (12 U.S.C. 2278b–6(d)(1)(C)), is amended by adding at the end thereof the following: "The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation hereunder shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank. A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of such payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, but the bank shall remain primarily liable for such amount. Any bank leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of such future payment had the bank remained in the System, and a liability to the Financial Assistance Corporation in said amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply such recoveries, and all earnings thereon, to reduce the other banks' payment obligations, or, to the extent such recoveries are received after the other banks have made their payments, shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments. Any association leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of such future payment, and a liability to the bank in said amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation."

SEC. 304. REPAYMENT OF TREASURY-PAID INTEREST

(a) CONFORMING AMENDMENT.—Section 6.26(c)(5) (12 U.S.C. 2278b–6(c)(5)), is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a) of this section, the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on such debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on such payments.

"(B) ASSESSMENT.—In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank on or about July 1 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual amount equal to .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year, subject to—

"(i) upward or downward adjustment, as appropriate, by the Financial Assistance Corporation during each of the last five years prior to the date the Financial Assistance Corporation is obligated to make such repayment, in order to ensure that the Financial Assistance Corporation will have the amount of funds needed to make the repayment on the due date; and

"(ii) reduction or termination in any year when the funds paid to the Financial Assistance Corporation, including any anticipated future earnings thereon, are sufficient to make such repayment on the due date.

"(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from such investment in eligible investments as defined in section 6.25(a)(1) of this Act, and such funds and the earnings thereon shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

"(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of such assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for such amounts.

"(E) LIABILITY.—

"(i) BANKS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any bank terminating System status pursuant to Section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System, and a liability to the Financial Assistance Corporation in such amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

"(ii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipating of any such recoveries from banks leaving the System or in liquidation.

"(iii) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall refund recoveries under this subparagraph, when received, to the other banks in proportion to the other banks' payments received by the Financial Assistance Corporation under this subparagraph prior to the recovery, or, if such recoveries exceed the payments theretofore received from the other banks, shall apply the excess, and all earnings thereon, to reduce the other banks' subsequent payment obligations proportionately.

"(F) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association terminating System status pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank, and a liability to the bank in said amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

"(G) CAPITAL REQUIREMENTS.—

"(i) IN GENERAL.—Until the date that is five years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

"(ii) DURING THE FINAL FIVE YEARS PRIOR TO REPAYMENT.—During the period beginning on the date that is—

"(I) five years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), ninety percent;

"(II) four years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), seventy percent;

"(III) three years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), fifty percent;

"(IV) two years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), thirty percent; and

"(V) one year prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), ten percent;

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.".

(b) CONFORMING AMENDMENT.—Section 6.28 of the Farm Credit Act of 1971 (12 U.S.C. 2278b–8) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

SEC. 305. TRANSFER OF OBLIGATIONS FROM ASSOCIATIONS TO BANKS, AND OTHER MATTERS.

Section 6.26 (12 U.S.C. 2278b–6), is amended—

(1) in subsection (c)—

(A) by striking "INSTITUTIONS" in the heading of paragraph (2)(B) and inserting "BANKS";

(B) by striking the word "institutions" each time it appears in paragraphs (2)(B), (3) and (4) and inserting in lieu thereof the word "banks";

(C) by amending paragraph (2)(C) to read as follows:

"(C) ALLOCATION.—During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

"(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

"(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year."; and

(D) by striking paragraph (2)(D);

(2) in subsection (d)—

(A) in paragraph (1)(C)—

(i) by striking the word "institution" the first time it appears and inserting in lieu thereof the word "bank";

(ii) by striking "under section 6.7(a)" and inserting in lieu thereof "or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively,";

(iii) by adding after "proportion" the following ", as calculated by the Financial Assistance Corporation,";

(iv) by amending clauses (i) and (ii) to read as follows:

"(i) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

"(ii) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.";

(B) by striking paragraph (1)(D); and

(C) by redesignating paragraph (1)(E) as paragraph (1)(D); and

(3) by adding at the end thereof the following new subsections:

"(e) ADMINISTRATION.—

"(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan vol-

ume' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

"(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

"(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the enactment of this subsection.".

SEC. 306. DEFAULTS.

Section 6.26(d) (12 U.S.C. 2278b–6(d)), is amended—

(1) by amending the heading of paragraph (3)(A) to read as follows: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(2) in paragraph (3)(A)(i)—

(A) by striking "subsection (a)," and inserting the following: "subsection (a) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C) of this section, or on the payment of an assessment due under subsection (c)(5)(B) of this section,";

(B) by striking "of the interest" in the two places it appears; and

(C) by striking "institution" wherever it appears, and inserting in lieu thereof "bank";

(3) in paragraph (3)(A)(ii)—

(A) by striking "of interest";

(B) by striking "institution" and inserting in lieu thereof "bank"; and

(C) by striking "such uncollected interest", and inserting in lieu thereof "any uncollected amount";

(4) in paragraph (3)(A)(iii), by striking "added" and all that follows through the period at the end and inserting "allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.";

(5) by amending the heading of subparagraph (B) of paragraph (3) to read as follows: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—";

(6) in paragraph (3)(C)—

(A) by striking "INSTITUTIONS" in the heading to paragraph (3)(C) and inserting "BANKS";

(B) by striking "institution" and inserting "bank";

(C) by striking "institutions" both places it appears and inserting "banks"; and

(D) by striking "the amount of any interest", and inserting in lieu thereof "any amounts";

(7) in paragraph (4)(A), by adding after "subsection (a)" "of this section or section 6.9(e)(3)(A)";

(8) in paragraph (4)(B)(i)—

(A) by amending the clause heading to read as follows: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(B) by striking "subsection (c)," and inserting "subsection (c) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C) of this subsection, or on the payment of an assessment due under subsection (c)(5)(B) of this section,"; and

(C) by striking "institution" wherever it appears, and inserting in lieu thereof "bank"; and

(9) in paragraph (4)(B)(ii), by amending the clause heading to read as follows: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK—.".

SEC. 307. AUTHORITY OF FINANCIAL ASSISTANCE CORPORATION.

(a) PURPOSE.—Section 6.21 (12 U.S.C. 2278b–1) is amended by adding before the period at the end thereof: "and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions of those who provided funds in connection with such program".

(b) Section 6.31(a) (12 U.S.C. 2278b–11(a)) is amended by adding striking "terminate on" and inserting the following: "terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under Section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than two years following".

TITLE IV—FEDERAL INTERMEDIATE CREDIT BANKS

SEC. 401. CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANKS.

Section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) is amended by adding at the end the following new subsection:

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANKS.—

"(1) WRITTEN ORDER AUTHORITY.—

"(A) IN GENERAL.—Notwithstanding any other provision of this Act, within 60 days after the date of the enactment of this section, the Farm Credit Administration shall issue a written order which—

"(i) directs any Federal intermediate credit bank, whether or not in receivership, which has not merged with the Federal land bank in its farm credit district pursuant to this section, to merge with the Farm Credit Bank specified in the written order before the end of the one year period beginning on the date such order is issued;

"(ii) specifies a period (which shall end not less than 6 months nor more than 9 months after the date the written order is issued) within which the stockholders of each of the banks to be merged are to adopt a plan of merger as provided in paragraph (3)(A); and

"(iii) provides for the establishment of the committee described in paragraph (5).

"(B) RECONSIDERATION.—The defeat of a proposed plan of merger by a vote of the stockholders under paragraph (3)(A) shall not preclude the reconsideration of the plan or the consideration of another plan during the period prescribed under subparagraph (A)(ii).

"(2) CONSIDERATIONS.—In issuing any written order under paragraph (1), the Farm Credit Administration shall take into account, as appropriate—

"(A) the cooperative nature of Farm Credit System institutions;

"(B) the potential outlays of financial assistance by the Farm Credit System Assistance Board or the Farm Credit System Insurance Fund, as appropriate;

"(C) the joint and several liability obligation shared among Farm Credit System institutions;

"(D) the specialized lending purposes of Farm Credit System institutions;

"(E) the availability and cost of credit to borrowers;

"(F) the need to provide for the greatest opportunity for the efficient delivery of credit to farmer-borrowers in the farm credit district of the Federal intermediate credit bank; and

"(G) the willingness of the Farm Credit Bank to facilitate the provision of short- and intermediate-term credit to the farmer-borrowers in the farm credit district of the Federal intermediate credit bank.

"(3) CAPITAL STOCK.—The number of shares of capital stock issued by the Farm Credit Bank specified in the order under paragraph (1)(A)(i) to the stockholders and other owners of the Federal intermediate credit bank involved in the merger, and the rights and privileges of such shares (including voting power, redemption rights, preferences on liquidation, and the right to dividends) shall—

"(A) be determined by a plan of merger adopted by majority vote of—

"(i) the stockholders of the Federal intermediate credit bank; and

"(ii) the stockholders of the Farm Credit Bank specified in the order under paragraph (1)(A)(i), in accordance with the respective bylaws of the banks; or

"(B) if the stockholders of any of such banks fail to approve a plan of merger within the period specified therefor in the written order, be determined by a plan of merger which—

"(i) is prescribed by the Farm Credit Administration by an amendment to the written order within 60 days after the end of such specified period; and

"(ii) specifies the initial board of directors of the Farm Credit Bank resulting from the merger, the membership of which shall—

"(I) reflect an equitable representation of stockholder-borrowers in the territory served by the resulting Farm Credit Bank, in light of the number of stockholder-borrowers served and their loan volume; and

"(II) serve for the period specified in the amendment to the written order under this paragraph, after which the board shall be elected and shall serve in accordance with section 1.4 of the Farm Credit Act of 1971; and

"(C) be consistent with section 4.3A of the Farm Credit Act of 1971, and the regulations issued by the Farm Credit Administration, except as otherwise provided in this subsection.

"(4) AUTHORITY TO AMEND WRITTEN ORDERS.—The Farm Credit Administration may amend any written order issued under paragraph (1) as may be necessary and appropriate to implement the merger that is the subject of the written order.

"(5) INSTITUTION STRUCTURE AND STOCKHOLDER VOTE.—

"(A) ESTABLISHMENT OF COMMITTEE.—The Farm Credit Administration shall provide in the order under paragraph (1) for the establishment of a committee to develop a proposal regarding the structure of the Federal land bank associations, production credit associations, Federal land credit associations, agricultural credit associations, and other Farm Credit System associations within the geographic area of the farm credit district of any Federal intermediate credit bank described under this section.

"(B) MEMBERSHIP.—The committee established pursuant to subparagraph (A) shall be composed of equal numbers of stockholder-borrowers representing—

"(i) the production credit associations within the geographic area described in subparagraph (A); and

"(ii) the Federal land bank associations within the geographic area described in subparagraph (A).

"(C) PURPOSE.—The committee established pursuant to subparagraph (1) shall develop a proposal for consideration by the stockholder-borrowers within the geographic area of the farm credit district of the Federal intermediate credit bank described under this section. Such proposal, upon a majority vote—

"(i) of the members of the committee representing production credit associations within the geographic area described in subparagraph (A); and

"(ii) of the members of the committee representing Federal land bank associations within the geographic area described in subparagraph (A), shall be presented to such stockholder-borrowers for a vote in accordance with subparagraph (E). Such proposal shall provide for a comprehensive plan for the structure of the lending associations within the geographic area described in subparagraph (A).

"(D) STOCKHOLDER VOTE.—Not later than 90 days after the effective date of the merger required by this section, the proposal approved by the committee in accordance with subparagraph (C) shall be presented to the stockholder-borrowers for a vote. The comprehensive plan in the proposal shall take effect not later than 90 days after the date on which the proposal is approved by a majority vote of—

"(i) the stockholder-borrowers of the production credit associations within the geographic area described in subparagraph (A); and

"(ii) the stockholder-borrowers of the Federal land bank associations within the geographic area described in subparagraph (A).

"(E) IMPLEMENTATION.—Upon the completion of the merger required by this section, the Farm Credit Administration and the Farm Credit Bank that merges with the Federal intermediate credit bank shall take all appropriate actions to implement the comprehensive plan described in subparagraph (C) if such a plan is approved by the stockholder-borrowers.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. DE LA GARZA] will be recognized for 20 minutes, and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the Committee on Agriculture brings to the floor H.R. 3298, legislation designed to ensure the continued safety and soundness of the Farm Credit System.

The health of the Nation's agricultural economy is very dependent on the availability of affordable credit to finance the production of crops and livestock. The cooperatively owned institutions of the Farm Credit System provide lending and related services for a significant percentage of our Nation's farmers and agricultural cooperatives, as well as rural homeowners, certain farm-related businesses, and rural utilities.

The Omnibus Budget Reconciliation Act of 1990 [OBRA] required the appropriate committees of jurisdiction to report back to the House of Representatives legislation designed to ensure the financial soundness of Government-sponsored enterprises and to minimize the possibility that a GSE might require assistance from the Government.

The Committee on Agriculture has jurisdiction over two so-called GSE's. The Farm Credit System, the oldest GSE, was established in 1916. The Federal Agricultural Mortgage Corp. was authorized in 1987.

The bill, H.R. 3298, has been drafted to meet the Committee on Agriculture's obligation under OBRA to provide for the enhanced safety and soundness of the Farm Credit System.

The collapse of the agricultural economy during the first half of the 1980's forced Congress to review and restructure much of the Farm Credit System's operations during the mid-1980's. Needless to say, it was a painful experience for many at the time.

The good news in 1991 is that as a result of our previous actions, the Congressional Budget Office, the Department of the Treasury, and the General Accounting Office all agree that the Farm Credit Administration today possesses adequate regulatory powers to provide for the effective financial oversight of the banks and associations of the Farm Credit System.

The effective regulatory structure for the Farm Credit Administration establish by the 1985 and 1986 legislation, coupled with the System restructuring and financial assistance provisions mandated by the Agricultural Credit Act of 1987, continue to serve the best interests of the System, the taxpayer, and American farmers.

The success of the 1987 act is evidenced by the fact that the Farm Credit System posted net income of $423 million for the first 6 months of 1991. The importance of this fact is placed in context by the staggering System losses mounting to $1.9 billion as recently as 1986.

Currently, all 15 of the System banks have met the capital requirements set by the Farm Credit Administration. Twelve banks have exceeded the 7-percent-of-assets minimum permanent capital standard. Most of the institutions of the Farm Credit System are to be commended for their hard work and dedication to fulfilling the goals and purposes of the Agricultural Credit Act of 1987.

Mr. Speaker, the congressional review of GSE's gave the Committee on Agriculture an opportunity to do a little finetuning to better ensure the continued soundness of the Farm Credit System operations.

Briefly, here is what H.R. 3298 does:

The bill ensures that the Farm Credit System will repay the debt resulting from the financial assistance provided by the Federal Government under the 1987 act. It does so by establishing a system by which System banks will make annual payments to the Farm Credit System Financial Assistance Corporation.

The bill also requires that the four institutions that received assistance under the 1987 act make annual payments from their earnings into a special account. This special account will ensure that sufficient funds are available to fund the retirement of the preferred stock purchased from the banks by FAC when the bonds issued to fund the stock purchases mature in 2003 and 2005.

H.R. 3298 requires each System bank to record as an expense the annual accrual of their obligation to pay the bonds issued by FAC to finance the retirement of protected borrower stock and the expenses of the Farm Credit System Assistance Board.

The bill also requires System banks to make annual payments toward the repayment of the interest on FAC debt paid by the Treasury and continues to ensure that the entire amount of Treasury interest will be repaid by the System. While imposing this requirement, the bill also recognizes the need to not make these requirements so stringent that they might force System institutions into insolvency at the taxpayers' expense.

The bill provides that System banks will be liable for all obligations of the System to repay the principal of bonds issued by FAC and the interest paid by the Treasury, including repayment obligations placed on System associations by current law. The banks will be required to pass obligations on to their affiliated associations as necessary to ensure that the obligations are fully discharged.

H.R. 3298 clarifies that the Farm Credit System Insurance Corporation will serve as the statutory successor to agreements between Farm Credit System institutions and the Farm Credit System Assistance Board following the termination of the Assistance Board. The bill also authorizes the representation of stockholders on association and bank boards based on election from specific geographic areas.

H.R. 3298 also clarifies the authority of the Farm Credit Administration to require the merger of any remaining Federal intermediate credit banks that were not merged pursuant to section 410 of the Agricultural Credit Act of 1987, consistent with Congress' determination that such banks should be eliminated through merger. This provision will allow borrowers of the remaining Federal intermediate credit bank to reap the benefit of the reduced overhead costs and enhanced safety and soundness resulting from the merger, as the rest of the System has experienced since the other section 410 mergers were completed in 1988.

On he whole, the bill represents a delicate balancing of the interests of the System, its farmer-borrowers, and the taxpayer. It requires System banks to repay the Treasury for assistance provided under the 1987 act in a manner that does not force the weaker banks to seek further Government assistance.

Mr. Speaker, this bill requires the repayment of every dollar of Federal assistance to the System. At the same time, it recognizes the cooperative interests of the System and ensures that affordable credit from the System remains available to the American farmer for years to come.

Mr. Speaker, as is often the case with legislation, this bill is not perfect. A few Members may still have problems with a single provision here or there. However, within the art of the possible, we believe that the bill enhances the safety and soundness of the System within the framework of the very successful 1987 act. I urge my colleagues to support this legislation that was drafted pursuant to OBRA's requirements, and with the valuable input from the CBO, the Treasury, the GAO, and the Farm Credit Administration.

Mr. Speaker, I reserve the balance of my time.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3298 and urge its adoption by the House.

As one Member who has been involved in the evolution of the Farm Credit Administration's regulatory programs and activities during the past 10 years, I can tell you the Congress has essentially rewritten the regulation of System institutions. When troubles began in the farm economy in the early 1980's, it became clear that the Farm Credit Administration was not up to its task. The FCA has come a long way since those days.

The Treasury Department, General Accounting Office and the Congressional Budget Office have officially reported on just how far the Farm Credit Administration has come in being an effective arm's length regulator. As the three reports noted, the 1985 and 1987 amendments to the Farm Credit Act of 1971 dealt with the concerns outlined in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA]: what is the safety and soundness of Government-sponsored enterprises' activities and how can the potential financial exposure of the Government be minimized?

The Treasury report suggested several principles that all GSE regulators should conform their policies so that a basic regulatory structure could be formed. These were: Financial safety and soundness should be the primary policy consideration; the regulator should have sufficient stature so as not to be captured by special interests or the GSE; private markets can help the regulator assess financial safety and soundness; and finally, the basic statutory authorities for financial safety and soundness regulation should be consistent across GSE's.

As the committee report notes, Treasury's best GSE regulator scheme should provide for risk-based capital standards, require financial disclosure, prescribe adequate standards for books, records, and other internal controls, conduct examinations, and enforce compliance with the appropriate regulatory rules and standards.

Following assessment of the FCA regulatory structure that was in place, the Treasury Department concluded that the FCA has the necessary authority and stature to be an effective regulator.

Indeed, Mr. Speaker, having worked over the years on the legislation which has made FCA an effective regulator and has restored the Farm Credit System to a modicum of health, I believe the FCA is an effective regulator.

Mr. Speaker, let me make a couple of additional points.

First, with this bill, the Farm Credit System institutions are committing themselves to begin to pay back the assistance they have received since enactment of the Agricultural Credit Act of 1987. That statute set the parameters for financial assistance to System institutions whose capital became impaired. Thus far, four farm credit banks—Spokane, St. Paul, Louisville, and Omaha—have received assistance in the amount of $419 million.

An additional $388 million has been received by the Jackson Federal Intermediate Credit Bank and the Federal Land Bank of Jackson, which is in receivership.

Another $417 million in debt were issued to maintain the System's capital preservation agreement, and $37 million in bonds were issued to finance the retirement of borrower stock protected under the 1987 act. These arrangements total $1.261 billion, an amount of debt issued to date and which must be paid off in 2003 and 2005.

To me, this legislation means that the System is standing up to its responsibility and its obligation to pay its tab. This bill puts the pay off squarely on the System and clarifies some problems in the 1987 act that have been identified relative to the requirement to pay. Unfortunately, these statutory provisions will not work without allowing for regulatory accounting to remain in effect. Without them, System institutions would be put in jeopardy.

Second, I want to emphasize that the 1987 act has worked. FCA has an effective regulatory program in place; three Government reports verify the success of that legislation and the 1985 act.

System institutions are beginning the slow road to health, and the Congress must recognize it is a long road to full recovery.

The first bank merger, between St. Louis and St. Paul, should be final some time in late spring next year. That will mean a new district that will be larger, more geographically diverse with the portfolio that should be more sound because of its diversity.

In short, the 1985 and 1987 acts have set the stage for the Farm Credit System to be a competitive lender for U.S. agriculture into the next century.

Mr. Speaker, I reserve the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma [Mr. ENGLISH], the chairman of the Subcommittee on Conservation, Credit and Rural Development of the Committee on Agriculture, who has done diligent work in finalizing this bill.

Mr. Speaker, I might add this bill has the approval of not only the Treasury but the OMB also.

Mr. ENGLISH. I thank the gentleman for yielding and appreciate his comments.

Mr. Speaker, I want to rise in support of H.R. 3298 to say that this particular piece of legislation, I think as far as GSE's are concerned, its somewhat unique and unusual in that the reports that we received back from the Office of Management and Budget, the Congressional Budget Office as well as the General Accounting Office; all three pointed to the fact that the Committee on Agriculture had done all of its work back in the 1987 credit legislation that passed.

We recognized at that particular point that changes, reforms needed to take place, and as a matter of fact we were successful in carrying that out.

Also, I would say that as my colleague from Missouri just made the point of, that this legislation, of course, does set up a mechanism to make sure that the loans are repaid. $1.3 billion, I believe, is the amount that is involved at this point. It also makes mergers easier.

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So, it is an outstanding piece of legislation. It is one that certainly, I think, protects the taxpayers. It is one that certainly should pass unanimously.

But gain I just wanted to make the point that I think the Committee on Agriculture, as the GAO, and OMB, and CBO have indicated; we did our work back in 1987, we are delighted to say.

Mr. COLEMAN of Missouri. Mr. President, I yield 5 minutes to the gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Speaker, I oppose the passage of H.R. 3298 under suspension of the rules for many reasons. First, the subject matter of this bill is far too important not to be debated fully on the floor. Second, I have been approached by several Members who would like to see the bill amended before passage. In particular the ranking Republican from the Budget Committee, the gentleman from Ohio [Mr. GRADISON] intends to offer an amendment if this bill comes to the floor with a rule. I believe this amendment would significantly strengthen the accounting practices of the Farm Credit System. While I may not support all of the amendments which might be offered, I do believe their authors should have the opportunity of debate and a vote.

In addition, I do not believe that this bill accomplishes what it sets out to do, that is, to improve the regulatory framework within which the Farm Credit System operates so as to minimize the chances of any future taxpayer bailout. For all these reasons, I oppose passage of the bill in this form and in this manner.

Last fall's budget agreement required the relevant committees of jurisdiction to report legislation ensuring the soundness of their Government-sponsored enterprises [GSEs] and minimizing the possibility of any future taxpayer bailout. This bill makes some progress in that direction, but it is not enough. Instead of protecting the taxpayer, this bill seems more concerned with protecting the parochial interests of the System itself.

The Farm Credit System has already had one bailout. In 1987 the Government authorized up to $4 billion in Federal guarantees to help failing institutions. Over $1.3 billion has already been spent. With interest, the System is required to repay the Government more than $3.1 billion over the next several years.

This bill should be primarily concerned with making sure that these taxpayer funds are repaid. To do that it should insist that the System make annual payments into a sinking fund, to be held until repayment is required. It should also give these repayments equal priority with other obligations of the banks. Finally, the bill should require the System's institutions to use generally accepted accounting principles recognizing these obligations.

The bill accomplishes none of these objectives. It does require that each of remaining district banks enter into a repayment agreement to make annual payments. However, not all of these funds go into a trust account. At least one fund that is to be used to repay the Government for the interest it has paid on bonds in support of the Banks, remains with the institutions where it could be used in very different, and inappropriate ways if the banks suffers losses.

Furthermore, the bill places the taxpayer behind a long line of other creditors. System banks do not have to make repayments if they are barely meeting their capital standards or if their income in a single year is less than their scheduled payment. In addition, if a bank leaves the System and repays the Government all that it owes, the Government does not get to keep this money. Instead, it must refund the money to all of the remaining banks. These banks should be required to plan in advance to ensure that they have sufficient resources to make these payments. On any other loan, these institutions would be required to make scheduled repayments or suffer a formal default. Once again, however, the taxpayer gets the short end of the stick.

Finally, the bill allows the System to use regulatory accounting principles. These standards allow the banks to appear far more profitable than they really are. We should have learned from past experience that regulatory accounting principles do not make weak financial instruments strong. They merely hide their weakness and delay the regulator from taking action.

If this bill is defeated under suspension the gentleman from Ohio [Mr. GRADISON], the ranking minority member of the Budget Committee, will offer an amendment which I believe will substantially correct these deficiencies. The net effect of the Gradison amendment will be to significantly strengthen the probability that the System will repay all of the obligations arising from the 1987 bailout.

In order for the House to consider this amendment, however, this bill must be defeated under suspension. I ask my colleagues to vote no on H.R. 3298 in order to accomplish this.

Mr. DE LA GARZA. Mr. Speaker, will the gentleman yield?

Mr. KOLBE. Mr. Speaker, I yield what time may be remaining under my time to the gentleman from Texas.

Mr. DE LA GARZA. Mr. Speaker, I just want to verify. I thank my distinguished colleague, the gentleman from Arizona [Mr. KOLBE] for yielding.

Mr. Speaker, the gentleman was reading a statement for the gentleman from Ohio [Mr. GRADISON].

Mr. KOLBE. No, the statement is my statement, but many of the concerns that I expressed in here have come from the ranking member of the Committee on the Budget.

Mr. DE LA GARZA. Mr. Speaker, I have some questions of the statement made by the gentleman from Arizona and some rebuttal that would negate some of the accusations. But I was not going to do it if the gentleman was only speaking on behalf of the gentleman from Ohio [Mr. GRADISON].

Mr. KOLBE. Mr. Speaker, I appreciate the comments of the gentleman from Texas [Mr. DE LA GARZA].

Mr. Speaker, I concede that I am not the expert on this bill, having just gotten into it at the behest of the gentleman from Ohio [Mr. GRADISON] yesterday when he said he was not going to be here.

Mr. DE LA GARZA. Mr. Speaker, if the gentleman would continue to yield, I will not pursue this at this time with the gentleman.

Mr. Speaker, I yield 3 minutes to the gentleman from Mississippi [Mr. ESPY].

Mr. ESPY. Mr. Speaker, I indeed thank the gentleman from Texas [Mr. DE LA GARZA] for yielding this time to me.

Mr. Speaker, I really thank the chairman for yielding to me, and I respect him, but I have to say that I have some problems with this particular bill being passed at this time and in this manner, and it is unrelated to the objections as announced by the gentleman from Arizona [Mr. KOLBE], my friend. I object to the treatment of the Federal Intermediate Credit Bank in Jackson under section 410 of this bill which in effect allows the Farm Credit Administration to mandate them to merge with another unspecified bank in another district. This matter is very contentious. This matter has been litigated ad infinitum, and, as for this Member's consideration, I do not think that the subcommittee on which I sit or the full committee on which I sit has adequately considered this very, very litigious and this very, very difficult, very, very technical matter. It is germane to this particular bill, but I do not think it is appropriate to bring it up at this time.

Mr. Speaker, with so little time I cannot get into a lot of the technicalities of it. There are a lot of acronyms floating around, but please remember this could be called the heck-no-we-won't-go bill. We have farmer borrowers and rancher borrowers in the Jackson bank which covers territories of Mississippi, Alabama, and Louisiana. They do not want to be merged with another bank. The bank there in Jackson is very solvent. None of the funds there are in any type of jeopardy, and perhaps we could have more time to consider this bill in subcommittee or in full committee, particularly since there has been some objection registered in the other body as to this particular section, namely section 410.

I really object also, Mr. Speaker, to the fact that, when the FCA mandates the merger partner, the vote of these particular rancher and farmer borrowers can only go to the merger terms and not to the merger partner. I think that is not really a meaningful vote, so I thank the gentleman from Texas [Mr. DE LA GARZA], and I want to say that we are now recognizing the movement to democracy of people in the Soviet Union. We are Americanizing the movement to democracy to those in the form of Warsaw Pact nations. They have risen. They want the right to vote, and I think that we can give the rancher borrowers and the farmer borrowers of Mississippi, Alabama, and Louisiana no less consideration.

INTRODUCTION

The 1980's saw widespread misuse of the Farm Credit System. Farmers and ranchers were encouraged to buy more land, plant more acreage, and buy bigger and better equipment, and to pay their loans by borrowing more and more money. It resulted in a farm crisis that we continue to battle today. In an effort the curb these unsound financial practices, the Congress in 1987, passed the Agricultural Credit Act of 1987. One of the predominant emphasis of this bill was to reduce the overhead costs and strengthen the long-term financial viability of the Farm Credit System by consolidating the Federal Intermediate Credit Banks and the Federal Land Banks in each district.

BACKGROUND

Section 410 of the Agricultural Credit Act of 1987, mandated the merger of the Federal Intermediate Credit Bank [FICB] and Federal Land Bank [FLB] in each of the 12 Farm Credit Districts throughout the United States. The mergers were to take place within 6 months after the enactment of the law, July 6, 1988. The banks created by section 410 mergers are called Farm Credit Banks [FCB's] and handle both short-term and long-term lending to farmers and ranchers within the Farm Credit System.

The 1987 act did not include the mandated consolidation of the 12 Farm Credit Districts called for in the earlier House version of the legislation. However, the Act does provide the framework by which inter-districts mergers should occur. The whole issue of local control and consolidation of districts was a contentious matter during the 1987 congressional debate; and the middle ground position reached by Congress was a finely balanced compromise.

In 11 of the 12 Farm Credit Districts, the merger/creation of FCBs under section 410 of the 1987 act took place on schedule. However, the Farm Credit Administration [FCA] failed to charter and FCB in the Jackson District because the Farm Credit Assistance Board had decided to place the Jackson FLB into receivership. According to a report of the General Accounting Office, this decision was based on "unsupported or inappropriate economic assumptions." The result of this premature decision caused an anomaly that has yet to be resolved.

The Jackson FICB, nonetheless, tried to remedy the situation during 1988 and 1989 by looking for a FCB to be a voluntary merger partner. Meanwhile, early in 1989, the FCA approved a sale of a number of long-term loans of the Jackson FICB in receivership to the Texas FCB, at the same time amending the Texas bank's charter to permit it to make new long-term loans in the Jackson District. In issuing that charter extension, the FCA split the long-term and short-term lending authority in a Farm Credit District between banks based in different districts.

Then, in the Spring of 1989, FCA interrupted the Jackson FICB's voluntary merger process by instructing it to merge with the Texas FCB under section 410 of the 1987 act using the legal theory that the Texas bank was the functional equivalent of a FLB in the Jackson District. The FICB successfully appealed this FCA edict to the courts. In February 1991, the U.S. Court of Appeals for the Fourth Circuit ruled definitively that section 410 of the 1987 act did not give FCA authority to force the merger and consolidation of two separate Farm Credit Districts.

H.R. 3298, SECTION 401

In an effort, to correct the anomaly, the House Agriculture Committee has included in H.R. 3298, a section of language mandating the merger of the remaining FICB. The staff explanation of section 401 as currently drafted, states that section 401 is intended to complete the process of merging all FICBs and FLB's into FCB's mandated under section 410 of the 1987 act. Since the Jackson District is the only district currently without a section 410 FCB, it is clear that the H.R. 3298 provision is addressed solely to the Jackson situation.

Section 401 would accomplish its objective by requiring the FCA, within 1 year after enactment, to order the merger of the Jackson FICB with an FCB located in one of the other 11 Farm Credit Districts. The clear effect of the bill is to mandate the consolidation of two Farm Credit districts. In 1987, Congress rejected mandatory inter-district mergers and forced consolidation of districts and in 1991, the Fourth Circuit Court of Appeals did the same.

Under H.R. 3298, the farmer-borrowers of the two banks named in FCA's order can have input into the term of the merger, but if they cannot agree on the terms, then FCA would design the merger plan, as well. While the staff explanation indicates that the provision for direct farmer-borrower input is necessary to the effective and fair completion of the section 410 process, a proposition with which I heartily agree, under the terms of the bill if borrowers in the two districts do not agree on the terms of the merger plan, their input can be ignored completely.

Over the last 2½ years, the farmer-borrowers of both the Jackson FICB and the Texas FCB have paid colossal amounts for lawsuits, lawyers, and lobbyists in an effort to make sure that their rights under the law are secured. Section 401 of the bill overturns the court of appeals ruling that a forced inter-district merger is illegal. For this reason, I do believe that section 401 upholds the rights of the farmer-borrowers of Farm Credit Institutions in the States of Alabama, Louisiana, and Mississippi.

ALTERNATIVE TO SECTION 401

The borrowers of the FICB of Jackson and its associations deserve a resolution that has had the benefit of full discussion, consideration, and debate. However, hearings on this issue have never been held and solutions never discussed in an appropriate committee hearing. I believe that the farmer-borrowers of the effected institutions are entitled to a meaningful stockholder vote both on the identity of a merger partner and on the terms of a merger plan.

As a result, I have drafted my own alternative resolution to section 401. The alternative would more fairly and responsibly apply section 410 of the 1987 Act to the Federal Intermediate Credit Bank of Jackson.

It would apply section 410 to Jackson by chartering the only Jackson District bank still in operation, the FICBJ, as the twelfth FCB under section 410—the FCB of Jackson. This will establish the last of the 12 Farm Credit Banks called for in the 1987 legislation, and will retain the essential element of Congress's agreement in 1987—that further consolidation of the 12 Farm Credit districts be done on a strictly consensual basis, only after a binding stockholder vote.

The alternative protects the FCB of Texas by limiting the FCB of Jackson to short-term lending authority only. The new FCB could only handle short- and intermediate-term lending in the Jackson District, the same sort of authority it has had in the past, and continues to have now, as an FICB. Conversely, the FCB of Texas would retain its long-term lending authority and be limited to that lending authority in the Jackson District.

I would note that the resulting situation is not without precedent. Currently in the State of New Mexico, the FCB of Texas provides short- and intermediate-term lending services and the Wichita FCB provides the long-term lending.

Additionally under the alternative, action on district consolidation on merger of the short-term FCB of Jackson with another FCB, would be left to the stockholder-borrowers.

Within 6 months after the FICB of Jackson is rechartered as a short-term FCB, the FCA will conduct a referendum of all the stockholder-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi, to determine whether they favor consolidation of the Jackson and Texas districts and the merger of the FCBs of Jackson and Texas.

If the proposition is approved both by the PCA stockholders and by the FLBA stockholders, the same referendum will be held within 3 months among the stockholder-borrowers of the FCB located in the Texas District.

If the referendum carries in Texas also, then the boards of directors and management of the banks involved must develop, as soon as practicable, a plan for consolidation of the Jackson and Texas Districts and the merger of the two FCBs. The plan would have to include a provision for equal representation of the Jackson and Texas Districts on the board of directors of the merged bank for at least 6 years following the merger, along with other provisions to ensure efficient and effective delivery of credit and to promote the financial strength of the institutions in the consolidated district.

This alternative would complete the section 410 process in a neutral fashion putting an end to the need for further litigation or action by Congress on what has turned out to be a locally contentious matter.

At the least, it is an alternative that will allow the farmer-borrowers to decide which solution is in their best interest—a proposition which I believe to be the only fair solution.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to clarify the record, and the gentleman from Arizona [Mr. KOLBE] indicated that the gentleman from Ohio [Mr. GRADISON], who is the ranking member of the Committee on the Budget, has problems with the bill, and I want my colleagues to know that this bill was passed out of the committee on September 12, and we first got an indication from the gentleman from Ohio that he had any problems on last Friday, and so we are kind of caught in this situation where people are trying to defeat the bill for purposes of amendment, but at the same time have not really come to us to see if we could even look at, or accept, or even offer an amendment here today.

□ 1420

So it kind of puts the committee in a little bit of a bind when we operate in the narrow timeframe. I am not blaming anybody except that the Suspension Calendar is obviously reserved for those bills that are thought to be not controversial. At the 11th hour and 59 minutes, when some Member has an amendment to a bill that has already been scheduled, it puts all of us in a very difficult position.

Mr. KOLBE. Mr. Speaker, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Arizona.

Mr. KOLBE. Mr. Speaker, I thank the gentleman for yielding.

Again, speaking with somewhat of a difficulty here, since the gentleman from Ohio [Mr. GRADISON], who is necessarily in Ohio today because of the election, is not here to speak for himself, by my discussion with him yesterday his reasons that he had not been in touch with the gentleman or with the committee chairman were, I believe, his belief that because of the controversial nature of this and the difficult nature of this bill, it would not be brought up under suspension. He did not realize that his legislation would come up under the suspension route.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 3 minutes to the gentleman from Iowa [Mr. LEACH].

Mr. LEACH. Mr. Speaker, I thank the gentleman for yielding time to me.

Let me also apologize to the ranking member and also to the distinguished chairman of the committee. I had not looked at this bill prior to this point, and I take that as my personal responsibility and my own fault. But there are a number of provisions in this bill that are a bit controversial, and I would just like to mention several from an accounting perspective. I stress accounting because accounting has everything to do with safety and soundness, as well as potential management. But it is my understanding that currently this bill forbids banks from recognizing capital preservation assistance as a liability in their books. Currently the bill allows banks to count as part of the regulatory capital funds placed into the sinking fund used to repay the Government's interest payments. Currently the bill provides that when an extinct bank prepays its debt as a condition of leaving, these prepayments go back to the remaining banks, not to the Government. Currently the bill, as I understand it, excuses a bank from making payments on its CPA debt if doing so would cause it to fall below its capital standards, and currently the bill, as I understand it, excuses a bank from making payments on its preferred stock assistance whenever such payments exceeded its net income for the year.

I raise these points of fact because if they are the case I think it is the type of circumstance that the Congress as a whole might want to look at from an amendment perspective. My own sense is this is the kind of bill that deserves to be passed, but there may be some subtleties from the financial perspective that ought to be looked at a little more closely, with greater scrutiny.

I apologize for not raising any of these issues to the chairman of the committee before this moment, or to the ranking member, but I do think it would be helpful if we could bring this back in such a way as the bill might be amended.

Mr. DE LA GARZA. Mr. Speaker, will the gentleman yield?

Mr. LEACH. Mr. Speaker, I am happy to yield to the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, there is no apology needed from my distinguished colleague, and my concern is that I am sorry that the gentleman from Ohio [Mr. GRADISON] does not agree, and that our distinguished friend, the gentleman from Iowa, does not agree, but the Treasury agrees with it, and we would not be here if the Treasury had had any objection. OMB agrees with it, also.

I am sorry that my distinguished friend and the gentleman from Ohio [Mr. GRADISON] are not in sync with OMB and with the Treasury.

Mr. LEACH. Mr. Speaker, I appreciate those comments. I think they are valid and fair. I have the highest regard for the U.S. Presidency, and decreasingly high regard for the Treasury in recent weeks, but I think the gentleman makes a very good point.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it has been mentioned several times that there is no sinking fund to pay back, and that point was made earlier. Then the gentleman from Iowa [Mr. LEACH] says there was a sinking fund but it is based upon some principles that he does not like.

Let me point out what the bill says on page 3, under title III. The suggestion was made if a bank were to go out of business or default that they could walk away from their obligation. Nothing could be further from the truth, because it says, "Any bank leaving the Farm Credit System pursuant to section 7.10 of this act shall be required under regulations of the Farm Credit Administration to pay to the Financial Assistance Corporation the estimated present value of such future payment had the bank remained insistent."

The reason why we are doing regulatory accounting is because we are afraid some of these banks may indeed not only leave the system but go into receivership, or go where one goes, goes to the window to borrow more money, in some of these cases. And that is the reason we are trying to provide this option to them.

So again, it is a technical matter. Some of us are getting into it at a late date, but I was trying to keep the record somewhat clear. I would also want to point out that, without batting an eye, we give hundreds of billions of dollars to the savings and loan so-called bailout around here, some of which was brought on by fraud and criminal activity.

There is no obligation whatsoever that any of the borrowing of the 2.61, not 1.3 or more than 1.3, it is $1.26 billion has been borrowed so far as a result of any wrongdoing. We simply have a system which is based upon one industry or one commercial venture, and that is American farming. Everybody here knows that American farming has gone through significant problems, and the borrowing and debt that occurred with that and associated with that, some of it has gone sour. That is what these borrowings are all about.

So again, I want my colleagues to know there is nobody to be enriched unjustly by this bill. There has been no wrongdoing. There is in fact no bailout. We settled this back in 1987, with this very appropriate procedure which we have in place under current law. This just beefs it up.

The Treasury likes this. I understand OMB likes it, too, but I am not saying that yet until I see it in writing. So let us kind of give it a chance to work. That is why I rise in support of this bill today.

Mr. Speaker, I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield 1 minute to the gentleman from Alabama [Mr. HARRIS].

Mr. HARRIS. Mr. Speaker, I thank the gentleman for yielding time to me. This is something that is very hard for me to do, to oppose my chairman, who I served with for 4 years. I have the utmost respect for Chairman DE LA GARZA and the gentleman from Missouri [Mr. COLEMAN] and the gentleman from Oklahoma [Mr. ENGLISH].

I have no problem with this bill except for one part, and that is the part dealing with the FICB in Jackson. We have a lot of farmer borrowers in my district that are very concerned about this. They are very concerned about a forced merger. They would like a vote on it, and I think that I am going to have to certainly agree with them that they are entitled to a vote. I would ask the Members to look very carefully at this and to vote against the bill on suspension.

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman for his comments and just briefly in closing say that the $1.26 is under GAP accounting procedure. On the concerns of the gentleman from Mississippi, this was done in 1987. They are treated no differently than everyone else was treated in 1987. Further, lest there be a misconception, the concerns regarding two banks, there are stockholders in Mississippi, in Alabama, and in Louisiana that favor this legislation and that are supporting this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. TAYLOR of Mississippi. Mr. Speaker, I rise to support the position of my fellow Mississippians, MIKE ESPY, MIKE PARKER, JAMIE WHITTEN, and SONNY MONTGOMERY. For many months now, all of us have been struggling to find a fair solution to a very complicated problem: how to best ensure that farmer borrowers in our area are well served by their local farm credit lending institutions.

Mr. Speaker, like my colleagues, I have serious concerns with the solution proposed in section 401 of this bill. It appears the result would be to force a merger of the financially strong Federal Intermediate Credit Bank of Jackson without giving its stockholders a real voice in that decision. Indeed, the stockholders vote called for under the bill is for all practical purposes meaningless, since the regulator could still dictate a merger regardless of what the farmers say they want and it is the farmers-owners whose considerable assets are at stake.

Mr. GRADISON. Mr. Speaker, I rise in opposition to the passage of H.R. 3298. The Omnibus Budget Reconciliation Act of 1990 contained an important provision relating to Government-sponsored enterprises [GSE's]. In effect, Congress committed itself to ensuring that these huge quasi-governmental entities, with their enormous contingent taxpayer liabilities, be operated in a safe and sound manner. Making important progress toward this goal, the House recently passed legislation for Fannie Mae and Freddie Mac. At the same time, the Banking Committee has substantially improved the legislation affecting Farmer Mac.

Not so with respect to the Farm Credit System. The House Agriculture Committee, which has sole legislative jurisdiction over the FCS, has reported a bill, H.R. 3298 (The Farm Credit Banks and Association Safety and Soundness Act of 1991), which fails to accomplish the minimum reforms needed to ensure that the Farm Credit System repay the Treasury $3.1 billion in principal and interest. I would like to offer an amendment when H.R. 3298 reaches the floor. In order to do this, however, the bill must first be defeated under suspension.

The Farm Credit System [FCS] is a government-sponsored enterprise which includes 12 regional banks (Banks). These Banks in turn supervise rural lending associations. The obligations of the FCS are implicitly backed by the Government. The Treasury, GAO, and CBO have all concluded that the FCS is the weakest of all GSE's. Without the implicit Government guarantee the FCS would probably not qualify for an investment grade rating on its bonds.

The Federal Government has already had to bail out the FCS once. In 1987, Congress passed legislation authorizing the Federal Government to guarantee up to $4 billion in loans to help failing FCS institutions. Roughly $1.3 billion in guarantees have already been made. Under the terms of the bailout legislation, the FCS will repay the bonds when they become due. It must also pay all of the interest. These payments are estimated to total over $3.1 billion.

The current law governing the FCS contains two major deficiencies. First, there is no requirement that the FCS establish a sinking fund to repay the Government. Yet, unless the FCS begins to set aside funds now, it is unlikely to be able to repay the bonds when they become due. Second, current law weakens the accounting standards which apply to the FCS. Specifically, the FCS may not recognize its repayment obligation as a liability on its books. Past experience has shown us that hokey accounting standards do not help weak financial institutions and only serve to put taxpayers at increased risk. So-called regulatory accounting practices do not strengthen weak financial institutions, they only hide their weakened condition.

Mr. Speaker, H.R. 3298 fails to correct either of these problems. Although the bill would require banks to set up a sinking fund, repayments would not be required if they should cause a bank to fall below its capital requirements or if the repayments exceeded the bank's profits. By maintaining low capital levels and passing all profits through to its owners, a bank could thus avoid making any payments to the sinking fund.

The second major deficiency of H.R. 3298 is that it continues to forbid the FCS's regulator from considering the repayment obligation as a liability. Worse, it allows banks to count some sinking fund payments as capital, in spite of the fact that the funds must be used to repay the Government and thus they are clearly not available to cover future losses of the bank. It is true that banks must write off this capital over the final 5 years. However, unless the banks can find new funds to replace this capital, they will fall below their minimum capital standard. Thus the bill makes it likely that the Government will be faced with the choice of placing banks in receivership or forgiving some of the debt, that is, a bailout.

Mr. Speaker, my amendment to H.R. 3298 would cure these problems. Its purpose is simple. It merely forces the Farm Credit System to use the same GAAP standards that any other business uses. My amendment even includes a provision that prohibits the FCS's regulator from taking action against a bank if it falls below its capital standard as a result of the proper recognition of this debt.

In order for the House to consider my amendment, therefore, H.R. 3298 must either be removed from suspension or defeated under suspension.

The Suspension Calendar is a valuable parliamentary tool which allows for the speedy consideration of noncontroversial bills. It should not be used to push through complex legislation which could determine whether the Government is repaid billions of dollars owed to it.

I ask my colleagues for their support in defeating H.R. 3298.

The SPEAKER pro tempore (Mr. LEHMAN of California). The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA] that the House suspend the rules and passed the bill, H.R. 3298, as amended.

The question was taken.

Mr. KOLBE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries.

SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE AT ST. CROIX, VIRGIN ISLANDS, ACT OF 1991

Mr. VENTO. Mr. Speaker, I move that the House suspend the rules and pass the bill (H.R. 2927) to provide for the establishment of the St. Croix, VI, Historical Park and Ecological Preserve, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2927

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that the Salt River Bay area of the north central coast of St. Croix, United States Virgin Islands—

(1) has been inhabited, possibly as far back as 2000 BC, and encompasses all major cultural periods in the United States Virgin Islands;

(2) contains the only ceremonial ball court ever discovered in the Lesser Antilles, village middens, and burial grounds which can provide evidence for the interpretation of Caribbean life prior to Columbus;

(3) is the only known site where members of the Columbus expeditions set foot on what is now United States territory;

(4) was a focal point of various European attempts to colonize the area during the post-Columbian period and contains sites of Spanish, French, Dutch, English, and Danish settlements, including Fort Sale, one of the few remaining earthwork fortifications in the Western Hemisphere;

(5) presents an outstanding opportunity to preserve and interpret Caribbean history and culture, including the impact of European exploration and settlement;

(6) has been a national natural landmark since February 1980 and has been nominated for acquisition as a nationally significant wildlife habitat;

(7) contains the largest remaining mangrove forest in the United States Virgin Islands and a variety of tropical marine and terrestrial ecosystems which should be preserved and kept unimpaired for the benefit of present and future generations; and

(8) is worthy of a comprehensive preservation effort that should be carried out in partnership between the Federal Government and the Government of the United States Virgin Islands.

SEC. 3. SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE AT ST. CROIX, VIRGIN ISLANDS.

(a) ESTABLISHMENT.—In order to preserve, protect, and interpret for the benefit of present and future generations certain nationally significant historical, cultural, and natural sites and resources in the Virgin Islands, there is established the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands (hereafter in this Act referred to as the "park").

(b) AREA INCLUDED.—The park shall consist of approximately 1,046 acres of land, waters, and interests therein within the area generally depicted on the map entitled "St. Croix, Virgin Islands Historical Park and Ecological Preserve", numbered NA-SCHP-80,001, and dated July 1991. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior, and the Offices of the Lieutenant Governor on St. Thomas and St. Croix, Virgin Islands.

SEC. 4. ACQUISITION OF LAND.

(a) GENERAL AUTHORITY.—The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") may acquire land and interests in land within the boundaries of the park only by donation, purchase with donated or appropriated funds, or exchange. Nothing in this section shall be construed to prohibit the Government of the Virgin Islands from acquiring land or interest in land within the boundaries of the park.

(b) LIMITATIONS ON AUTHORITY.—Lands, and interests in lands, within the boundaries of the park which are owned by the Virgin Islands, or any political subdivision thereof, may be acquired only by donation or exchange. No lands, or interests therein, containing dwellings lying within the park boundary as of July 1, 1991, may be acquired without the consent of the owner, unless the Secretary determines, after consultation with the Government of the Virgin Islands, that the land is being developed or proposed to be developed in a manner which is detrimental to the natural, scenic, historic, and other values for which the park was established.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—The park shall be administered in accordance with this Act and with the provisions of law generally applicable to units of the national park system, including, but not limited to, the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1–4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–467). In the case of any conflict between the provisions of this Act and such generally applicable provisions of law, the provisions of this Act shall govern.

(b) COOPERATIVE AGREEMENTS WITH UNITED STATES VIRGIN ISLANDS.—The Secretary, after consulting with the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Commission (hereafter in this Act referred to as the "Commission") established by section 6, is authorized to enter into cooperative agreements with the United States Virgin Islands, or any political subdivision thereof, for the management of the park and for other purposes.

(c) GENERAL MANAGEMENT PLAN.—(1) Not later than 3 years after the date of enactment of this Act, the Secretary, in consultation with the Commission, and with public involvement, shall develop and submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a general management plan for the park. The general management plan shall describe the appropriate protection, management, uses, and development of the park consistent with the purposes of this Act.

(2) The general management plan shall include, but not be limited to, the following:

(A) Plans for implementation of a continuing program of interpretation and visitor education about the resources and values of the park.

(B) Proposals for visitor use facilities to be developed for the park.

(C) Plans for management of the natural and cultural resources of the park, with particular emphasis on the preservation of both the cultural and natural resources and long-term scientific study of terrestrial, marine, and archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) and the National Historic Preservation Act (16 U.S.C. 470 et seq.) within the park. The natural and cultural resources management plans shall be prepared in consultation with the Virgin Islands Division of Archeology and Historic Preservation.

(D) Proposals for assessing the potential operation and supply of park concessions by qualified Virgin Islands-owned businesses.

(E) Plans for the training of personnel in accordance with subsection (e).

(d) INTERIM PROTECTION.—Prior to the adoption of the park's general management plan, the Secretary, the Governor, and the Commission shall monitor all land and water use activities within the area to ensure that such activities are in keeping with the purposes of this Act and shall advise and cooperate with the appropriate Federal, territorial, and local governmental entities to minimize adverse impacts on the values for which the park is established.

(e) ASSISTANCE TO PROMOTE A VIRGIN ISLANDS TERRITORIAL PARK SYSTEM.—During the 10-year period beginning on the date of enactment of this Act, the Secretary shall provide the funds for the employees of the Government of the Virgin Islands directly engaged in the joint management of the park and shall implement, in consultation with the Government of the Virgin Islands, a program under which Virgin Islands citizens may be trained in all phases of park operations and management. A primary objective of such program shall be to train employees in the skills necessary for operating and managing a Virgin Islands Territorial Park System.

SEC. 6. SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE AT ST. CROIX, VIRGIN ISLANDS, COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Commission.

(b) DUTIES.—The Commission shall—

(1) make recommendations on how all lands and waters within the boundaries of the park can be jointly managed by the governments of the Virgin Islands and the United States in accordance with this Act;

(2) consult with the Secretary on the development of the general management plan required by section 5; and

(3) provide advice and recommendations to the Government of the Virgin Islands, upon request of the Government of the Virgin Islands.

(c) MEMBERSHIP.—The Commission shall be composed of 10 members, as follows:

(1) The Governor of the Virgin Islands, or the designee of the Governor.

(2) The Secretary, or the designee of the Secretary.

(3) Four members appointed by the Secretary.

(4) Four members appointed by the Secretary from a list provided by the Governor of the Virgin Islands, at least one of whom shall be a member of the Legislature of the Virgin Islands.

Initial appointments made under this subsection shall be made within 120 days after the date of enactment of this Act, except that the appointments made under paragraph (4) shall be made within 120 days after the date on which the Secretary receives such list.

(d) TERMS.—The members appointed under paragraphs (3) and (4) shall be appointed for terms of 4 years. A member of the Commission appointed for a definite term may serve after the expiration of the member's term until a successor is appointed. A vacancy in the Commission shall be filled in the same manner in which the original appointment was made and shall be filled within 60 days after the expiration of the term.

(e) CHAIR.—The Chair of the Commission shall alternate annually between the Secretary and the Governor of the Virgin Islands. All other officers of the Commission shall be elected by a majority of the members of the Commission to serve for terms established by the Commission.

(f) MEETINGS.—The Commission shall meet on a regular basis or at the call of the Chair. Notice of meetings and agenda shall be published in the Federal Register and local newspapers having a distribution that generally covers the United States Virgin Islands. Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.

(g) EXPENSES.—Members of the Commission shall serve without compensation as such, but the Secretary may pay each member of the Commission travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code. Members of the Commission who are full-time officers or employees of the United States or the Virgin Islands Government may not receive additional pay, allowances, or benefits by reason of their services on the Commission. The Secretary shall provide the Commission with a budget for travel expenses and staff, and guidelines by which expenditures shall be accounted for.

(g) EXPENSES.—Members of the Commission shall serve without compensation as such, but the Secretary may pay each member of the Commission travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5, United States Code. Members of the Commission who are full-time officers or employees of the United States or the Virgin Islands Government may not receive additional pay, allowances, or benefits by reason of their service on the Commission. The Secretary shall provide the Commission with a budget for travel expenses and staff, and guidelines by which expenditures shall be accounted for.

(h) FEDERAL ADVISORY COMMITTEE ACT.—Except with respect to the provisions of section 14(b) of the Federal Advisory Committee Act, and except as otherwise provided in this Act, the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Commission.

(i) TERMINATION.—The Commission shall terminate 10 years after the date of enactment of this Act unless the Secretary determines that it is necessary to continue consulting with the Commission in carrying out the purposes of this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes, and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2927.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

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Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2927 was introduced by Representative RON DE LUGO and as amended would establish the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, VI. Congressman DE LUGO has done a masterful job in working with the Department of Interior and representing the Virgin Islands interests. It has been good to work with him on this significant new policy.

H.R. 2927 would provide for a new National Park System unit consisting of approximately 1,000 acres located at Salt River Bay on the Island of St. Croix. This area has long been recognized for its unique combination of cultural and natural features. These features include archeological remains indicating over 2,000 years of continuous human occupation and natural features including the largest remaining mangrove forest in the U.S. Virgin Islands, a large tropical reef system, and a submarine canyon.

Salt River Bay is also the only known site where Christopher Columbus landed on what was to become U.S. territory. In 1493, on his second of four voyages to the New World, Columbus anchored his 17 ships outside the reef and sent his soldiers to investigate an Indian village on the western side of the bay.

The establishment of a National Park System unit at Slat River Bay is a high priority of the Secretary of the Interior. Secretary Lujan visited the site personally and worked with Mr. DE LUGO on drafting the bill. The Secretary testified in strong support of the bill at the subcommittee hearing on this matter in late September, as did the Governor of the U.S. Virgin Islands, the President of the Virgin Islands Senate, and representatives from several national and local environmental and cultural resource preservation organizations.

H.R. 2927 is intended to create a partnership between the National Government and the Government of the Virgin Islands in the management of the park. This measure was carefully drafted to address the unique needs of these entities and the amendment in the nature of a substitute adopted by the Interior Committee that is before the House today strengthens this partnership approach. Cooperation between the Virgin Islands Government and the National Park Service in the management of this unit will be essential, because it is a relatively small area and over half of the acreage of the park is owned by the Virgin Islands Government. I believe the safeguards built into the bill and cooperative spirit which has been the hallmark of this project so far will ensure that management issues will be addressed in a cooperative fashion and that the park will be managed according to standards of other units of the National Park System.

As I mentioned, the Interior Committee made several changes to the bill as introduced. These changes included clarifying that the area is to be a unit of the National Park System and administered according to laws generally applicable to units of the National Park System, improving the bill's ability to address adverse impacts from development within park boundaries and providing a directive on the interim protection for the park's fragile natural, cultural, and archeological resources for the period before the general management plan is in place.

Mr. Speaker, this legislation is a significant natural and cultural resource protection initiative which has strong bipartisan support. It is also one of the most appropriate ways our Nation can commemorate the 500th anniversary of the voyages of Christopher Columbus. Not only will this park preserve a nationally significant natural and historical site, it will provide an excellent opportunity to interpret the diverse native cultures which existed prior to the arrival of Columbus and the impact that Columbus and other European explorers had on Caribbean culture and history. The bill has the strong support of the Secretary of the Interior as well as the Governor and the Delegate from the Virgin Islands. It is supported by a large majority of the members of the Interior Committee on a bipartisan basis. I urge Members to support this measure.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. R. 2927, a bill to authorize establishment of Salt River Bay National Historical Park at St. Croix, VI. As an original cosponsor, I support the concept of establishing a Federal park unit at the only known site on American soil where Columbus' men are believed to have landed. I also support the concept of requiring the National Park Service to provide training and technical assistance to the Virgin Islands Government for the purpose of development of their own territorial park system.

Certainly, the leadership of Mr. DE LUGO in the development of this bill deserves strong recognition by all Members of this body. He has been working on this proposal for a number of years, with both the Virgin Islands Government, the National Park Service, and, importantly, the Secretary of the Interior. Without his efforts, not only would we not be here today passing this bill on the eve of the historic celebration of Columbus' landing, but we may well have suffered irreversible damage of resource values at the site of this historic event.

However, I could not say that there is total agreement on this side of the aisle with respect to this bill. A majority of Republican Interior Committee members have signed dissenting views on this measure. While, as I say I support this bill, I share the concerns raised in those views. The three primary areas of concern with respect to this measure are: the extent of park lands within the overall park boundary, requiring the Federal Government to fund all costs associated with acquisition, development, and operation of the park, and questions about park management framework. I must say, however, that our former colleague, the Secretary of the Interior, Manuel Lujan, supports the bill as written.

The issue which drew the most concern from Members on this side of the aisle is the proposal to include all lands within the viewshed of the landing site within the park boundary. This resulted in a park size much larger than the minimum area studied by the National Park Service.

While I would agree that protecting the historic scene is an important aspect of ensuring a quality visitor experience at all national historical parks, I do not agree that necessarily means eliminating every visible modern intrusion. If we embark on this course of action here, there is no reason not to do so at Lexington and Concord, Gettysburg, the Franklin Roosevelt home, or the hundreds of other historic and prehistoric sites currently in the park system. This boundary establishment approach is an unnecessary, purist approach which this country cannot afford.

With respect to the management provisions of this bill, we believe that the committee should have gone further to clarify the respective rules of the United States and Virgin Islands Governments. While the report authored by the chairman is an excellent one, on which I commend him, I'm not convinced that Congress has done all it can in the actual bill language to ensure protection of critical park values.

I support this bill before us today, but I hope that the Senate will address these important concerns prior to final action on this measure.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as I gave my opening statement I recognized the significant, important work that the gentleman from the Virgin Islands [Mr. DE LUGO] had done on this measure for the last several years. I had the pleasure of visiting this site several years ago. The gentleman from the Virgin Islands [Mr. DE LUGO] and the Governor greeted me and guided me to these sites and to other important Park Service sites that we have in this part of the world. It was a good trip, one that I will long remember. We came away with a lot of information that obviously has propelled us today into the work on the floor dealing with the designation of this unit.

Mr. Speaker, I am very pleased with the work of the gentleman from the Virgin Islands [Mr. DE LUGO] and craftsmanship in working on this legislation with the Secretary of the Interior.

Mr. Speaker, I yield such time as he may consume to the gentleman from the Virgin Islands [Mr. DE LUGO].

Mr. DE LUGO. Mr. Speaker, I rise in support of H.R. 2927 to establish the Salt River National Historical Park and Ecological Preserve, at St. Croix, VI.

The legislation before us, Mr. Speaker, marks the culmination of years of effort to save Salt River Bay, beginning in 1958, when the Virgin Islands Legislature voted to purchase 50 acres of the area, including the 5 acres of beach where Admiral Christopher Columbus—on his second voyage to the New World—anchored his 17 ships and sent some of his men to investigate an Indian village that was visible on the western side of the bay.

I was a member of the Virgin Islands in 1958, Mr. Speaker, and was proud to cosponsor the original legislation that began the process to save the area.

The Columbus Landing at Salt River, Mr. Speaker, is the only place—on what was to later become United States Territory—where Columbus' party is known to have set foot. There is no disputing that the fleet, after leaving Salt River, passed by St. Thomas and possibly the British Virgin Islands, and that they eventually stopped in Puerto Rico, but exactly where is not known.

The other interesting historical feature of Salt River is that it is a microcosm of the entire history of early European colonization of the Caribbean. The Spanish, British, French, Dutch, and the Knights of Malta all had settlements there. And, indeed, the success and failure of each of these settlements mirrored the turbulence of the wars and conflicts that swept across Europe at the time. As a result, you had the Spanish in 1650, attacking and driving out the English who had established a settlement at Salt River in 1647, and who where, themselves, attacked and driven out by the French later that same year.

In addition to its rich historical and cultural resources, Salt River also has a wealth of natural and environmental treasures. These include the largest remaining mangrove forest in the Virgin Islands and a variety of tropical marine and terrestrial ecosystems. This will truly be a remarkable park, Mr. Speaker, for it will combine an ecological treasure chest with a window on human history that may go back as far as 2000 BC, or even earlier.

No less important to passage of this bill, Mr. Speaker, is the intent for there to be an unprecedented degree of Federal and local cooperation in the preservation and management of the site. To that end, I have included in the legislation a provision to establish a 10-member advisory commission to make recommendations on how all the lands within the park will be jointly managed, and to also in the development of the general management plan.

There are three other national park units already in the Virgin Islands, Mr. Speaker, and it saddens me to say that the Park Service has sought little input—if any—from the people of the Virgin Islands in the management of those other units. This bill will establish a new relationship, a thoroughly reasoned attempt to not repeat the mistakes of the past.

Mr. Speaker, on the question of returning the boundaries to the alternative C boundary, it is our former colleague, the Secretary of the Interior, the Honorable Manuel Lujan, who after visiting Salt River, recommended that we increase the boundary of the park to what is in the bill before us.

One of the most important reasons for including this additional acreage within the boundary is so that the Park Service can offer tax incentives to the owners of these dwellings, as inducements of them to donate their property to the park. These incentives, Mr. Speaker, would not be available if the property were not within the boundary of the park.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. DE LUGO. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I also want to clarify that it is my understanding there is some suggestion that the park or boundary adjustments were somehow to deal with the entire viewshed of the area. It is my understanding that the addition of this 140 or so acres is principally for administrative purposes, principally to try to limit the development to what it is today.

Very likely what would happen in this instance is a scenic easement would be purchased and/or, as the gentleman has said, there may even be a donation of some of the easements, or the entire property for the benefit of some sort of tax adjustment, which is the current law.

So we are not changing any of that. That at least would be the preferred alternative. I guess under some scenarios you could see a circumstance where there would be a willing seller and a willing buyer and the Park Service may buy almost all of this. I do not anticipate that to be the case. But it is not, I might say, for viewshed. It is principally, as I understand it, because of the administrative boundaries and, of course, to prevent the construction of something that would be adverse and would adversely impact in terms of these areas.

Mr. DE LUGO. Mr. Speaker, in addition, it is not the intent of anyone, especially the Secretary of the Interior, to condemn these homes and acquire them all immediately. Should these dwellings have to be acquired, they will be acquired over time, and in most cases, it is expected that the Park Service will acquire less than fee interest in the dwellings such as conservation or scenic easements to prevent incompatible development. The bill also includes language which prohibits condemnation of private dwellings without the owners consent.

As for the Virgin Islands contribution to the management of the park, the Virgin Islands Government will contribute over half of the acreage in the boundary to the park. This includes all 600 acres of the water within the 1,046 acre park, and 65 acres of land. And most importantly Mr. Speaker, we will be contributing the crown jewel of the park, the five-acre Columbus landing site.

As for training of local employees in park management, those who are complaining without even checking the figures, should know it provides for training of only four staff persons a year at $99,300—a paltry sum of pay for a magnificant park and a true partnership.

This legislation Mr. Speaker, has been a bipartisan effort from the very beginning. Our former colleague, the Honorable Manuel Lujan, Secretary of the Interior, has been a strong supporter of the bill from the outset. He and his staff have worked closely with me and my staff in drafting the bill. To further demonstrate his support for the bill the Secretary took the unusual step of personally testifying in favor of the bill before the Subcommittee on Parks and Public Lands here in the House. I would like to express my sincerest thanks and appreciation to Secretary Lujan for all his help and support in getting the legislation to where it is today.

I would also like to thank all those who have supported H.R. 2927, especially for their testimony in support of the legislation during the subcommittee hearings. First, the person I wish to thank is the Governor of the Virgin Islands, the Honorable Alexander Farrelly. Governor Farrelly personally traveled to Washington when hearings were held on the bill to testify in support of the legislation. I would also add that this legislation would not have been possible without Governor Farrelly's endorsement.

Second, I wish to thank as well the three Senators from the Virgin Islands, Senators Virdin Brown, Malcolm Callender, and Holland Redfield, who also testified in support of the bill in committee. In particular, Senate President Brown, whose leadership on behalf of the legislation on the local level was a key ingredient in laying the groundwork for local support.

Finally, I wish to thank all those who also testified in person or submitted a statement in support of the bill. They include: Brad Northrup, vice president of the Nature Conservancy; Paul Pritchard, president of the National Parks and Conservation Association; Michael Walsh, president of the St. Croix Environmental Association; William F. Cissel, president, Society of the Virgin Islands Historians; Lilliana Belardo de O'Neal, senator 19th Legislature of the U.S. Virgin Islands; Austin Reid, president, National Association for U.S. Virgin Islands Affairs; Fred Sladen; Roland Wauer; Jessie Thompson, president, Christopher Columbus Jubilee Committee; Rudy G. O'Reilly, Jr., now studying for his master of science in botany at UPR; Liz Wilson and Helen Gjessing, V.I. League of Women Voters; Barbara Hagan-Smith, executive director, St. Croix Landmarks Society; Sandi Savage, Ken Jones, and Margaret Hayes, St. George Village Botanical Garden of St. Croix; James Savage, president St. Croix Chamber of Commerce; and Orville Kean, Ph.D., President, University of the Virgin Islands.

I also want to especially thank my administrative assistant Sheila Ross, my former legislative assistant Brian Modeste, and to Sam Bough, my district supervisor for their tireless work in getting the legislation to where it is today. My thanks also goes to the staff of the Subcommittee on Parks and Public Lands, notably Sandy Scott and Staff Director Rick Healy for their efforts in working on the legislation as well.

In conclusion Mr. Speaker, I wish to thank the chairman of the full Interior Committee, the gentleman from California [Mr. MILLER], and also the chairman of the Subcommittee on Parks and Public Lands, the gentleman from Minnesota [Mr. VENTO] for their hard work and assistance in bringing the legislation to the floor. My thanks also to the distinguished gentleman from California [Mr. LAGOMARSINO] for his support of the legislation as well. Thank you, Mr. Speaker, for allowing me to speak in support of the bill, and I urge my colleagues to vote in favor of passage of H.R. 2927.

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Mr. LAGOMARSINO. Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

I asked the staff of the gentleman from the Virgin Islands [Mr. DE LUGO] about the size of the island. I know that these islands are very small and this island is probably a little over 100,000 acres of land in the Virgin Islands.

As indicated, it is donating a significant amount of land.

He commented that one of the Virgin Islands, St. John's, two-thirds of the land is park now. And on St. John's Island, which is one of the Virgin Islands that the gentleman from the Virgin Islands [Mr. DE LUGO] represents, that Members would be well-advised to pay special attention to the concerns and impact that we have here in terms of these issues.

No Member is more sensitive, I might say, to that than the gentleman from the Virgin Islands [Mr. DE LUGO] in terms of his conversations and advocacy here in terms of what we are doing. So I very much appreciate his work in this instance. I think we have come up.

Really, I feel today ought to be a day that we should be celebrating the establishment and the designation of this new national park, not just because of the quincentennial, but because of the other resources and the long history that these Virgin Islands represent as part of our country and as part of our Nation.

I am very proud that it has been worked out and that is a really good measure. I hope that Members would support it strongly.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LEHMAN of California). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the bill, H.R. 2927, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

AUTHORIZING THE DEVELOPMENT PLAN FOR PENNSYLVANIA AVENUE

Mr. KOSTMAYER. Mr. Speaker, I move that the House suspend the rules and pass the bill (H.R. 3387) to amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3387

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled,

SECTION 1. PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION.

Section 17(a) of the Pennsylvania Avenue Development Corporation Act of 1972 (86 Stat. 1266, 40 U.S.C. 885(a)) is amended by striking out all that follows "1991;" and inserting in lieu thereof the following: "and $2,807,000 for the fiscal year 1992.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania [Mr. KOSTMAYER] will be recognized for 20 minutes, and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. KOSTMAYER].

GENERAL LEAVE

Mr. KOSTMAYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. KOSTMAYER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the House consider H.R. 3387, a bill to reauthorize the Pennsylvania Avenue Development Corporation [PADC]. Since it was created by Congress in 1972, the PADC has achieved great success in transforming America's Main Street. In the words of a Presidential committee formed in the late 1960's to study the condition of the avenue, Pennsylvania has changed from "a scene of desolation" into a great boulevard worthy of its role in America's history and its place in the center of the Nation's capital.

A master plan, approved by Congress in 1975, has guided work on the public areas and 21 square blocks within the Corporation's territory. With appropriations from Congress, PADC has undertaken a program of extensive public improvements that includes landscaping, lighting, paving of new sidewalks and roadways, installing of street furniture, planting of new trees, and restoring landmark structures. Six parks and plazas have been created or refurbished, and work to restore a seventh public open space will being shortly.

PADC has borrowed almost $100 million for acquisition from the Treasury. All of that will be paid back with interest by the year 2031. Almost $85 million of that has already, in fact, been returned to the Treasury. Congress additionally appropriated $131 million for public improvements and staffing. This public investment has generated more than $1.5 billion in private commitments to date, demonstrating an outstanding example of the private-public partnership concept. As of this year, annual taxes generated for the District of Columbia in the Pennsylvania Avenue district were more than $69 million.

On September 24, 1991, I introduced H.R. 3387 a bill to extend the PADC's authorization for 3 years. The Subcommittee on Energy and Environment, after conducting a hearing on the bill, amended H.R. 3387 on October 22 to provide for a 1-year reauthorization. The subcommittee hopes to examine in detail early next year what entity will succeed the PADC and will move ahead with another reauthorization bill at that time. The bill was approved by the House Interior Committee on October 30, with bipartisan support.

All Americans can take enormous pride in Pennsylvania Avenue and in the renewal of the Pennsylvania Avenue area that, when complete, will portray the best of American planning, design, and development—a successful model for other areas of Washington and for cities throughout the world.

PADC has proven that a partnership between the public and private sectors can work. Moreover, it has proven that function and beauty are compatible in America's great cities. Mr. Speaker, I urge passage of H.R. 3387.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from the District of Columbia [Ms. NORTON].

Ms. NORTON. Mr. Speaker, I rise in strong support of the authorization for the important work of the Pennsylvania Avenue Development Corporation. Last week I was pleased to join the gentleman from Pennsylvania [Mr. KOSTMAYER] and other members of the Subcommittee on Energy and the Environment to evaluate the performance of the Pennsylvania Avenue Development Corporation.

In that hearing, PADC provided insight concerning how it has shepherded one of the most ambitious and visible redevelopment efforts in the history of this Nation, and I might add has done so with the complete cooperation and efforts of the people of the District of Columbia and their elected officials.

I am proud to say that President Kennedy's original vision of a main street worthy of the Nation has nearly been met, with strong bipartisan support from the Congress. Moreover, economic developments since the New Frontier have moved the Nation's Capital to the front ranks of the world's international cities. These developments also have moved the PADC to an expanded vision that now includes an International Trade and Cultural Center, the largest complex in this region since the Pentagon.

□ 1450

Pennsylvania Avenue is truly emerging as a Fifth Avenue and a Champs Elysee.

As I noted in that hearing, PADC still has unfinished business and unmet challenges to ensure successful completion of the ICTC complex, by far the most important project in its entire 20-year history. Unfortunately, PADC has not submitted an acceptable housing plan of the kind specifically prescribed by Congress. Instead, GSA is trying to treat the ICTC as an ordinary piece of real estate to house the EPA.

I know that in a time of the tightest budget in memory, the Congress will not allow a $700 million prize-winning architectural wonder prescribed by Congress as a multipurpose international complex to become a boondoggle to house one Federal agency whose space could be built for 20 percent of that amount.

As PADC continues its wonderfully successful work on Pennsylvania Avenue, I encourage the Corporation to move on to other important projects, to upgrade the Nation's Capital, but also to fulfill its commitment emphasized last week to cultivate an even closer working relationship with the District of Columbia during this post-home-rule era, a status the District did not have when PADC was created.

I also want to encourage PADC to continue to build upon its record of extending procurement opportunities to minorities and women in its development activities.

PADC has done its work economically and well. It deserves the continuing support of this body.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am very pleased to rise in support of H.R. 3387 and to urge my colleagues to lend their support to a 1-year reauthorization of the Pennsylvania Avenue Development Corporation.

This enterprise is one of the most outstanding examples not just here in this area but in the country of the successful public-private partnership.

One need only traverse the length of Pennsylvania Avenue to observe the White House, the Capitol, the Old Post Office Pavilion, the Canadian Embassy, the Willard Hotel, the J. Willard Marriott Hotel, and other projects that have been developed along Pennsylvania Avenue as a result of the work and the activities of PADC to realize the extent to which this enterprise has, in fact, been a tremendous success. We are now approaching the end of its authorized life. It is to expire under existing law in 1994 or 1995. There is talk of extending both the life and the functions of the PADC; hence, the 1-year reauthorization contained in this act.

The 1-year reauthorization is for the purpose of giving the PADC the opportunity to develop plans for its future and to return to the Congress next year to report to the Congress on what activities, beyond 1994, it might wish to undertake and how that would fit in either with its existing charter or with a potentially expanded charter.

Therefore, I am pleased to rise in support of the 1-year reauthorization and to join my colleagues in applauding the work so far that this excellent private-public partnership has undertaken.

I urge my colleagues to support the bill before us.

Mr. RHODES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KOSTMAYER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LEHMAN of California). The question is on the motion offered by the gentleman from Pennsylvania [Mr. KOSTMAYER] that the House suspend the rules and pass the bill, H.R. 3387, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

NATIONAL SEA GRANT COLLEGE PROGRAM AUTHORIZATION ACT OF 1991

Mr. HERTEL. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1563) to authorize appropriations to carry out the National Sea Grant College Program Act, and for other purposes, as amended.

The Clerk read as follows:

S. 1563

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Sea Grant College Program Authorization Act of 1991".

SEC. 2. NATIONAL SEA GRANT OFFICE.

(a) MAINTENANCE OF OFFICE.—Section 204(a) of the National Sea Grant College Program Act (33 U.S.C. 1123(a)) is amended to read as follows:

"(a) The Secretary shall maintain, within the Administration, a program to be known as the National Sea Grant College Program. The National Sea Grant College Program shall consist of the financial assistance and other activities provided for in this Act, and shall be administered by a National Sea Grant Office within the Administration. The Secretary shall establish long-range planning guidelines and priorities for, and adequately evaluate, this program.".

(b) OVERSIGHT.—Section 204(c) of the National Sea Grant College Program Act (33 U.S.C. 1123(c)) is amended—

(1) in paragraph (6), by striking "; and" and inserting a semicolon;

(2) in paragraph (7), by striking the period and inserting "; and", and

(3) by adding at the end the following:

"(8) oversee the operation of the National Sea Grant Office established under subsection (a) of this section,".

(c) POWERS OF SECRETARY.—Section 204(d)(6) of the National Sea Grant College Program Act (33 U.S.C. 1123(d)(6)) is amended by inserting "and add to" after "pay for".

SEC. 3. AUTHORIZATION.

Subsections (a) through (c) of section 212 of the National Sea Grant College Program Act (33 U.S.C. 1131(a)–(c)) are amended to read as follows:

"(a) There is authorized to be appropriated to carry out the provisions of sections 205 and 208 of this Act, and section 3 of the Sea Grant program Improvement Act of 1976 (33 U.S.C. 1124a), an amount—

"(1) for fiscal year 1991, not to exceed $44,398,000;

"(2) for fiscal year 1992, not to exceed $46,014,000;

"(3) for fiscal year 1993, not to exceed $47,695,000;

"(4) for fiscal year 1994, not to exceed $49,443,000; and

"(5) for fiscal year 1995, not to exceed $51,261,000.

"(b)(1) There is authorized to be appropriated for administration of this Act, including section 209, by the National Sea Grant Office and the Administration, an amount—

"(A) for fiscal year 1991, not to exceed $2,500,000;

"(B) for fiscal year 1992, not to exceed $2,600,000;

"(C) for fiscal year 1993, not to exceed $2,700,000;

"(D) for fiscal year 1994, not to exceed $2,800,000; and

"(E) for fiscal year 1995, not to exceed $2,900,000.

"(2) Sums appropriated under the authority of subsections (a) and (c) shall not be available for administration of this Act by the National Sea Grant Office, or for Administration program or administrative expenses.

"(c) In addition to sums authorized under subsection (a), there is authorized to be appropriated for priority oyster disease research under section 205 of this Act, and amount—

"(1) for fiscal year 1992, not to exceed $1,400,000;

"(2) for fiscal year 1993, not to exceed $3,000,000;

"(3) for fiscal year 1994, not to exceed $3,000,000;

"(4) for fiscal year 1995, not to exceed $3,000,000;

SEC. 4. REPEAL OF STRATEGIC MARINE RESEARCH PROGRAM.

(A) REPEAL.—Section 206 of the National Sea Grant College Program Act (33 U.S.C. 1125) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) the National Sea Grant College Program Act (33 U.S.C. 1121 et seq.) is amended—

(A) in section 204(c)(3) by striking "sections 205 and 206" and inserting "section 205";

(B) in section 205(b)(3) by striking " or section 206 of this title";

(C) in section 208(c)(5) by inserting "and" after the semicolon;

(D) by striking section 208(c)(6) and redesignating the subsequent paragraph accordingly:

(E) in section 209(b)(1) by striking "sections 205 and 206" and inserting "section 205"; and

(F) in section 209(c)(1) by striking "or 206".

(2) Section 1301(b)(4)(A) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4741(b)(4)(A)) is amended to read as follows:

"(A) $3,375,000 to fund grants under the National Sea Grant College Program Act (33 U.S.C. 1121 et seq.), and of this amount, $2,500,000 to fund grants in the Great Lakes region; and".

SEC. 5. REPEAL OF MARINE AFFAIRS AND RESOURCE MANAGEMENT IMPROVEMENT GRANTS.

(a) REPEAL.—Section 211 of the National Sea Grant College Program Act (33 U.S.C. 1130) is repealed.

(b) CONFORMING AMENDMENTS.—The National Sea Grant College Program Act (33 U.S.C. 1121 et seq.) is amended—

(1) in section 203(4) by inserting "marine affairs and resource management," after "education,"; and

(2) in section 209(c)(1) by inserting "marine affairs and resource management," after "education," in the fourth sentence.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. HERTEL] will be recognized for 20 minutes, and the gentleman from Virginia [Mr. BATEMAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. HERTEL].

Mr. HERTEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are considering S. 1563, the Senate version of the National Sea Grant College Program Authorization Act of 1991.

The Committee on Merchant Marine and Fisheries considered and reported similar legislation, H.R. 1370, which was passed by the House under suspension of the rules on May 14, 1991. The Senate bill before us today incorporates the text of H.R. 1370, with some slight modifications which I will explain.

The first modification is the addition of a two-word change to section 204 which will enable sea grant institutions to receive passthrough funds from Federal agencies, including the National Oceanic and Atmospheric Administration, without incurring the burden of additional administrative expenses for handling these funds. In essence, this change gives Sea Grant Colleges the flexibility to merge Federal funds from various sources without requiring separate grant applications.

The second modification adjusts the definition section of the bill in section 203, to include "marine affairs and resource management" to the disciplines eligible for funding under the Sea Grant College Program. This change is intended to acknowledge Congress' continuing commitment to marine affairs and resource management.

Other than these two changes, the text of S. 1563 is the same as H.R. 1370 as passed by the House.

As you may recall, Mr. Speaker, the National Sea Grant College Program was established in 1966 to provide for higher education and research in coastal, ocean, and lakes resources. Today, the program is an active network of 29 institutions encompassing more than 300 colleges and research facilities. The merits of sea grant's research in coastal and marine science are widely acclaimed. They include wide-ranging activities, including the development of new technologies for fisheries, control of aquatic nuisances, eradication of disease, and pollution prevention.

In order to continue the activities of the Sea Grant College Program, S. 1563 must be enacted into law. This authorization provides the following amounts: $50,014,000 in fiscal year 1992; $53,395,000 in fiscal year 1993; $55,243,000 in fiscal year 1994; and $57,161,000 in fiscal year 1995.

Mr. Speaker, this is an example of what we need more of in this country, that is, government and educational institutions working together. It is a partnership that has worked well for our country, and it has saved hundreds of millions of taxpayers' dollars and funds.

Mr. Speaker, I ask that the House support final approval of S. 1563.

Mr. Speaker, I reserve the balance of my time.

Mr. BATEMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support bringing S. 1563 to the floor, amended by inserting the text of H.R. 1370, as passed by the Merchant Marine and Fisheries Committee. The bill reauthorizes the National Sea Grant College Program for 5 years beginning in fiscal year 1991.

The bill before us basically follows the text of the bill that was authored by Chairman DENNIS HERTEL of the Oceanography, Great Lakes and Outer Continental Shelf Subcommittee, and cosponsored by me, and passed by the House on May 14. The bill makes minor changes in the existing authority for the Sea Grant Program by codifying the existing National Sea Grant Office within the National Oceanic and Atmospheric Administration. It increases by a modest amount each year the core Sea Grant programs, including basic research grants to Sea Grant universities, and the Marine Advisory Service. The bill also limits the amount which can be spent on administration of the program, guaranteeing that every dollar possible goes to maritime and coastal research. The bill provides for continuing priority oyster disease research in the Chesapeake Bay. Finally, the bill eliminates two programs which were added in 1987, but were never funded.

Since its establishment in 1966, the National Sea Grant Program has greatly increased our understanding of the Nation's ocean, coastal, and Great Lakes resources. More than 300 colleges and research facilities participate in the program, conducting a variety of research, and providing advisory and educational services that contribute to the wise use of these resources.

The Sea Grant Program deserves our support. I encourage all of my colleagues in the House to vote in favor of S. 1563. It is a sound investment in our critical coastal areas.

Mr. Speaker, I reserve the balance of my time.

Mr. HERTEL. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina [Mr. JONES], the distinguished chairman of the Committee on Merchant Marine and Fisheries.

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Mr. JONES of North Carolina. Mr. Speaker, S. 1563, is the Senate version of the National Sea Grant College Program Authorization Act of 1991. The committee amendment offered by subcommittee Chairman HERTEL strikes all of the Senate language and inserts the text of H.R. 1370 with a few slight modifications. H.R. 1370 is the Sea Grant authorization bill reported by the Merchant Marine and Fisheries Committee and passed by the House under suspension of the rules on May 14, 1991.

The committee amendment authorizes appropriations for the Sea Grant College Program for fiscal years 1991 through 1995. The authorization levels will allow Sea Grant to make up for losses the program experienced during the Reagan administration and will also allow for a modest expansion of the program. This program is administered by the National Oceanic and Atmospheric Administration [NOAA] in the Department of Commerce.

The amendment also authorizes a National Sea Grant office and appropriations for that office. These changes are intended to improve the flow of grant money to State Sea Grant Programs by ensuring that moneys appropriated for the core grant program cannot be used for administering the program. The amendment also repeals sections 206 and 211 of the National Sea Grant College Program Act. Section 206, the Strategic Marine Research Program, has never been funded and Sea Grant is conducting research of national strategic importance through its core grant program.

Similarly, section 211, the Marine Affairs and Resource Management Grant Program, has never been funded since it was enacted in 1988. The repeal of this section should not be interpreted as a diminution of Congress' support for Marine Affairs and Resource Management Programs, but rather as a reaffirmation that these programs are best conducted under the auspices of the core grant program. The bill emphasizes this commitment by adding the words "Marine Affairs and Resource Management" to the definition of the term "field related to ocean, coastal, and Great Lakes resources" and to section establishing the qualifications for membership on the Sea Grant review panel. The committee urges NOAA to pay greater attention to the social and policy sciences in its award of research grants in the field of marine affairs.

The bill also contains a change to the Sea Grant Act which is intended to minimize the administrative burden placed on State Sea Grant Programs. Currently, grants from some Federal agencies (e.g. the Navy) for marine research are administered by the relevant State Sea Grant Program. Unfortunately, the NOAA grants office has recently started to require State Sea Grant Programs to submit a separate grant application for this so-called pass-through money. This has created an administrative burden for the State Sea Grant Programs because they have to submit two grant applications. This bill will allow State Sea Grant Programs to include an application for pass-through money with their core grant application when it is reasonable to do so. This will minimize the administrative burden on the grantee institutions and still allow for adequate government oversight.

The Sea Grant College Program has a long history of promoting better understanding and utilization of our ocean, coastal, and Great Lakes resources. The program accomplishes this through a network of 29 Sea Grant institutions covering more than 300 colleges and research institutions which conduct a wide variety of research, advisory, and education activities in coastal and marine science. S. 1563, as amended by the committee amendment, will ensure that these important activities continue for another 5 years.

I urge my colleagues to support S. 1563.

Mr. HERTEL. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Speaker, I would like to engage in a colloquy with the distinguished gentleman from Michigan, the chairman of the Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf.

I would first like to commend the gentleman for bringing this legislation reauthorizing the Sea Grant College Program to the floor. I am a strong supporter of this program and have worked with NOAA personnel—in particular on the zebra mussel issue. As I am sure the gentleman from Michigan is aware, the Ohio State University is the designated Ohio Sea Grant College. Ohio State University has done extensive research on the zebra mussel issue.

The University of Toledo in my own home community has also been heavily involved in research on the zebra mussel and I must commend the researchers at the University of Toledo for their efforts. The zebra mussel has more than invaded the western basin of Lake Erie, home to the University of Toledo. The university and the city of Toledo have been working since 1989 to eliminate the zebra mussel in the city's water intake system. They have been quite successful with just that portion of it. Because of the University of Toledo's research strength and its proximity to Lake Erie—one of the major areas affected by the infiltration of the zebra mussel—I would like to encourage Ohio State University, which is not a lake front university, to work more forthrightly with the University of Toledo.

Mr. HERTEL. Mr. Speaker, if the gentlewoman will yield, I want to thank the gentlewoman for the work she has done in this area.

The gentlewoman from Ohio can be assured that I recognize the research abilities of the University of Toledo and also encourage Ohio State University to work together closely with sea grant activities. I would also like to point out that there is a specific line item now in law to provide for zebra mussel activities and strengthening language in the NOAA authorization to be considered on the floor right now. A number of university research institutions are involved in zebra mussel activities, including the University of Michigan, University of Wisconsin, and the State University of New York at Buffalo.

So Mr. Speaker, I thank the gentlewoman very much. We can work very well together when we take up the NOAA bill later this week to work on those specific references to the zebra mussel activities.

Ms. KAPTUR. Mr. Speaker, I thank the chairman very much for his assistance and I commend the gentleman for his efforts on the bill and for his leadership on Great Lakes issues, and I also thank the gentleman from Virginia [Mr. BATEMAN].

Mr. CUNNINGHAM. Mr. Speaker, I rise in strong support of S. 1563, the National Sea Grant College Program Authorization Act of 1991.

The California Sea Grant College Program is the largest State program in the Nation. Its responsibilities include the study of marine related problems and opportunities for over 1,100 miles of California coastline.

Since the onset of the California Sea Grant Program in 1968, it has become a leader in marine biology and the development of new products, pioneering research in the area of marine pharmacology, aquaculture, fisheries, water quality, coastal habitat, and ocean engineering.

Over the years, the program has supported more than 500 graduate student trainees, who are today making major contributions in science, business, education, and government.

Almost everyone living in southern California is affected by the use and the management of the ocean for jobs, recreation and goods and services. Consequently, we must realize the importance of the ocean and its resources. It is not only important to those who live in California, but the Nation as a whole.

We in San Diego are particularly proud of the work done at the Scripps Institute of Oceanography, part of the University of California at San Diego. Scripps has achieved global recognition for its pioneering work in oceanography, in no small part due to the Sea Grant Program.

Mr. Speaker it is a privilege to be able to speak on behalf of the California Sea Grant Program. It is so important that the work being produced at such institutions continue. I would only hope that the authorized amount of money allocated in each fiscal year be appropriated due to the importance of the sea grant programs.

Mr. HUGHES. Mr. Speaker, I rise today in support of the National Sea Grant College Program authorization bill. The Sea Grant Program has been very successful to date, generating critical information about the marine environment and transferring technologies to coastal and Great Lakes industries and decisiosmakers around the Nation.

I am pleased that the National Sea Grant College Program is being authorized at $47 million for fiscal year 1992 and increasing to $57 million by fiscal year 1995. Sea grant benefits a network of 29 designated colleges and institutions conducting programs in coastal and marine science. In addition, there are more than 300 other colleges and research facilities encompassed within the sea grant network.

Of particular importance, is the Marine Advisory Service, which functions as the extension arm of sea grant. It provides ocean and coastal resource users and managers with current information, recent research findings, and practical advice. It is an essential link between public and scientific sectors and I am pleased that the authorization bill retains this most essential component of the program.

Sea grant research focuses on development and understanding of coastal and ocean environments and the resolution of issues relating to activities in aquatic environments. The program bridges the crucial gap between examining fundamental questions in marine science and application of scientific and technical knowledge to solve specific resource problems.

Sea Grant Programs are of immense importance to New Jersey's coastal economy and the health of New Jersey's marine ecosystem. Some of the areas in which sea grant has been involved in New Jersey include aquaculture, marine technology research and development, coastal zone management, ecosystem research, education, and advisory services.

The National Sea Grant College Program is a very important component in the study, preservation, and development of our coastal resources and I urge my colleagues' support for this very important program.

Mr. DAVIS. Mr. Speaker, no one appreciates the Sea Grant Marine Extension Service more than I do. During the Great Lakes' critically high water level period in the mid-1980's, it was the sea grant extension agents who helped shoreline property owners protect their investments from erosion and flooding dangers. Today, these same agents are spreading the word to boaters about the perils of zebra mussel infestation in hopes of containing their range in the Great Lakes. Therefore, I did not support the President's 1992 budget request for the National Sea Grant College Program which sought to eliminate this vital component of the Sea Grant Program, and am pleased that the Appropriations Committees continued to fully fund sea grant.

The Michigan Sea Grant Program is one of the best in the country. Receiving over $2.2 million this year, the program will finance crucial research into the effects of Great Lakes level fluctuations on the evolution of the shoreline; identify environmental cues that stimulate zebra mussel spawning; analyze the effect of ballast water exchange on vessel safety; and study the life histories of Great Lakes fish. The information supplied by these studies will have a profound impact on the Great Lakes community and may well have application across the country.

The bill before us basically follows the text of H.R. 1370, authored by Chairman DENNIS HERTEL of the Oceanography, Great Lakes, and Outer Continental Shelf Subcommittee, and already passed by the House on May 15. The bill makes minor changes in the existing authority for the Sea Grant Program by codifying the existing National Sea Grant Office within the National Oceanic and Atmospheric Administration. It also limits the amounts which can be spent on administration of the program, guaranteeing that every dollar possible goes to marine and coastal research. The bill also eliminates two programs which were added in 1987, but were never funded.

Finally, the bill reauthorizes the Sea Grant Program through fiscal year 1995, with a very modest increase to correct the general fiscal erosion the program has suffered since the 1980's. An economic study of 57 projects funded by sea grant in 1981 showed that the total economic effect on industry, business and commerce totaled almost $230 million in 1 year—more than five times the appropriation for the program. This is a sound investment in our critical coastal areas and I urge my colleagues to support Chairman DENNIS HERTEL and Ranking Minority Member HERBERT BATEMAN and vote for this bill.

Mr. BATEMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HERTEL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LEHMAN of California). The question is on the motion offered by the gentleman from Michigan [Mr. HERTEL] that the House suspend the rules and pass the Senate bill, S. 1563, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HERTEL. Mr. Speaker, I ask unanimous consent that all Members may have five legislative days within which to revise and extend their remarks, and include therein extraneous material, on S. 1563, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

LIMITED PARTNERSHIP ROLLUP REFORM ACT OF 1991

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1885) to amend the Securities Exchange Act of 1934 to protect investors in limited partnerships in rollup transactions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1885

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Limited Partnership Rollup Reform Act of 1991".

SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH RESPECT TO PARTNERSHIP ROLLUP TRANSACTIONS.

(a) AMENDMENT.—Section 14 of the Securities and Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end thereof the following new subsection:

"(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH PARTNERSHIP ROLLUPS.—

"(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization in connection with a partnership rollup transaction, or to make any tender offer in furtherance of a partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under the authority of this section in accordance with the requirements of this subsection. Such rules shall—

"(A) permit holders of any security that is the subject of the proposed partnership rollup transaction to engage in preliminary communications for the purposes of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed transaction, without being required to file soliciting material with the Commission prior to making that determination, but nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title;

"(B) prohibit compensating any person soliciting proxies, consents, or authorizations concerning such a transaction—

"(i) on the basis of whether the solicited proxies, consents, or authorizations either approve or disapprove the proposed transaction; or

"(ii) contingent on the transaction's approval, disapproval, or completion;

"(C) require the issuer to provide to any holder of the securities that are the subject of the transaction a list of the holders of record of such securities in such form and subject to such terms and conditions as the Commission may determine, except that the Commission may provide, by rule or order, for (i) deletions from such list as necessary to protect legitimate holder requests for confidentiality, and (ii) for forwarding communications to such holders (requesting confidentiality) and to the beneficial owners of securities held in street name;

"(D) provide that any soliciting materials distributed in connection with a partnership rollup transaction—

"(i) be clear, concise, and understandable, and contain appropriate captions or headings; and

"(ii) contain a clear, concise, and understandable summary of—

"(I) the proposed transaction and its effects;

"(II) any conflicts of interest required to be disclosed in the soliciting material;

"(III) management's evaluation of alternatives to the rollup transaction, including liquidation and continuation of the existing form of organization;

"(IV) whether the management has concluded that the proposed rollup transaction is fair to each class of security holders, and a discussion of the bases for that conclusion;

"(V) any changes in voting rights that will result from the transaction;

"(VI) any changes in the form of ownership interest or management compensation and their consequences;

"(VII) any provisions for dissenting shareholders to exercise appraisal or other rights; and

"(VIII) such other matters or risks as the Commission determines, by rule, to be necessary or appropriate to facilitate informed consideration of partnership rollup transactions;

"(E) provide that such soliciting materials contain or be accompanied by an opinion on the fairness of the proposed transaction to holders of each security which is subject to the proposed transaction that—

"(i) includes such information, representations, and undertakings with respect to the analysis of the transaction, scope of review, preparation of the opinion, and basis for and methods of arriving at conclusions as the Commission may require in such rules; and

"(ii) is prepared by a person—

"(I) who does not receive any compensation that is contingent on the transaction's approval or completion;

"(II) who meets such additional standards of independence from the person or persons proposing the rollup transaction as shall be required in the rules prescribed by the Commission;

"(III) who has been given access by the issuer to its personnel and premises and relevant books and records; and

"(IV) who has represented to have undertaken an independent analysis of the fairness of the proposed rollup transaction to holders based upon the information obtained through such access and upon other independently obtained information; and

"(F) provide that any solicitation or offering period with respect to any proxy solicitation or tender offer in a partnership rollup transaction shall be for not less than 60 days or such longer period as the Commission may prescribe; and

"(G) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in partnership rollup transactions.

"(2) EXEMPTIONS.—The Commission may, at any time after the date of enactment of this subsection, consistent with the public interest and the protection of investors, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to this subsection.

"(3) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection shall be construed to alter or limit in any way the authority of the Commission under subsection (a) or (d) of this section or any other provision of this title or to preclude the Commission from imposing, under either such subsection or any other such provision, a remedy or procedure required to be imposed under this subsection.

"(4) DEFINITIONS.—As used in this subsection—

"(A) The term 'partnership rollup transaction' means a transaction involving the combination or reorganization of one or more partnerships, either directly or indirectly whereby investors in the original partnership or partnerships receive new securities or securities of another entity in exchange for their partnership interests. Such term does not include a transaction—

"(i) involving one or more partnerships all of the securities of which are, prior to the transaction, securities for which transactions are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A of this title;

"(ii) involving only those issuers not required to register or report under section 12 of this title where the resulting issuer is also not required to register or report under section 12;

"(iii) involving the reorganization to corporate, trust, or association form or restructuring of a single partnership if, as a consequence of the proposed transaction, there will be no significant, adverse change in any of the following: voting rights, the term of existence of the entity, management compensation, or investment objectives;

"(iv) involving the reorganization to corporate, trust, or association form or restructuring of a single partnership if each investor is provided an option to retain a security under substantially the same terms and conditions as the original issue; or

"(v) involving the reorganization to corporate, trust, or association form or restructuring of a single partnership if transactions in the security issued as a result of the reorganization or restructuring are not reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under section 11A of this title.

"(B) The term 'partnership' includes such other entity having a substantially economically equivalent form of ownership instrument as the Commission determines, by rule consistent with the purposes of this subsection, to include within this definition.".

(b) SCHEDULE FOR RULES.—The Securities and Exchange Commission shall, within 9 months after the date of enactment of this Act, publish proposed rules, and, within 18 months after such date of enactment, prescribe final rules, to implement the requirements of the amendment made by subsection (a) of this section.

(c) IMPLEMENTING CHANGES IN '33 ACT RULES.—The Commission shall, within 9 months after the date of enactment of this Act, commence rulemaking proceedings under the Securities Act of 1933 to implement the requirements of section 14(h) of the Securities Exchange Act of 1934 with respect to the registration under the Securities Act of 1933 of securities issued in a partnership rollup transaction (as that term is defined in paragraph (4) of such section 14(h)).

SEC. 3. DISSENTERS' RIGHTS IN ROLLUP TRANSACTIONS.

(a) REGISTERED SECURITIES ASSOCIATION RULES.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(b)) is amended by adding at the end thereof the following new paragraph:

"(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6) of this subsection, include rules to prevent members of the association from participating in any partnership rollup transaction that is subject to the requirements of section 14(h) of this title, unless such transaction includes provisions designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to the following (as determined by such rules): (i) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or (ii) if the association finds that granting rights under clause (i) of this subparagraph would be infeasible or not in the financial interest of the dissenting limited partners, other comparable rights designed to protect limited partners, which may include the rights set forth in subparagraph (B);

"(B) when the association determines it to be necessary to the protection of such rights, the use of an independent committee of persons not affiliated with the general partner or sponsor which would have the authority to protect the interest of limited partners, including (but not limited to) the authority (but not the obligation) to hire independent advisors to represent all limited partners at the partnership's expense, to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction, but not the authority to provide consents or authorizations to the proposed transaction on behalf of limited partners;

"(C) the right not to have their voting power unfairly reduced or abridged;

"(D) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(E) restrictions on the conversion of management profit-sharing interests and incentive fees into asset-based management fees.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a partnership rollup transaction who casts a vote against the transaction, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the association during the period in which the offer is outstanding.".

(b) LISTING STANDARDS OF NATIONAL SECURITIES EXCHANGES.—Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end thereof the following:

"(9) The rules of the exchange prohibit the approval of an application for listing of any security resulting from a partnership rollup transaction that is subject to the requirements of section 14(h) of this title, unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to the following (as determined by such rules): (i) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or (ii) if the exchange finds that granting rights under clause (i) of this subparagraph would be infeasible or not in the financial interest of the dissenting limited partners, other comparable rights designed to protect limited partners, which may include the rights set forth in subparagraph (B);

"(B) when the exchange determines it to be necessary to the protection of such rights, the use of an independent committee of persons not affiliated with the general partner or sponsor which would have the authority to protect the interest of limited partners, including (but not limited to) the authority (but not the obligation) to hire independent advisors to represent all limited partners at the partnership's expense, to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction, but not the authority to provide consents or authorizations to the proposed transaction on behalf of limited partners;

"(C) the right not to have their voting power unfairly reduced or abridged;

"(D) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(E) restrictions on the conversion of management profit-sharing interests and incentive fees into asset-based management fees.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a partnership transaction who casts a vote against the transaction, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the exchange during the period in which the offer is outstanding.".

(c) STANDARDS FOR AUTOMATED QUOTATION SYSTEMS.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(b)) is

amended by adding at the end thereof the following new paragraph:

"(13) The rules of the association prohibit the authorization for quotation on an automated quotation system sponsored by the association that was established and in operation before January 1, 1990, of any security resulting from a partnership rollup transaction that is subject to the requirements of section 14(h) of this title, unless such partnership rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to the following (as determined by such rules): (i) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or (ii) if the association finds that granting rights under clause (i) of this subparagraph would be infeasible or not in the financial interest of the dissenting limited partners, other comparable rights designed to protect limited partners, which may include the rights set forth in subparagraph (B);

"(B) when the association determines it to be necessary to the protection of such rights, the use of an independent committee of persons not affiliated with the general partner or sponsor which would have the authority to protect the interest of limited partners, including (but not limited to) the authority (but not the obligation) to hire independent advisors to represent all limited partners at the partnership's expense, to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction, but not the authority to provide consents or authorizations to the proposed transaction on behalf of limited partners;

"(C) the right not to have their voting power unfairly reduced or abridged;

"(D) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(E) restrictions on the conversion of management profit-sharing interests and incentive fees into asset-based management fee.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a partnership transaction who casts a vote against the transaction, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the association during the period in which the offer is outstanding.".

(d) EFFECT ON EXISTING AUTHORITY.—The amendments made by this section shall not be construed to limit the authority of the Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934 or to preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act and shall apply to any security resulting from a partnership rollup transaction (as such term is defined in section 14(h)(4) of the Securities Exchange Act of 1934) that is issued on or after the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from Virginia [Mr. BLILEY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I rise in support of H.R. 1885, the Limited Partnership Rollup Reform Act of 1991. This legislation represents a bipartisan effort to provide protections to investors involved in limited partnership rollup transactions.

Since 1980, approximately $150 billion has been invested in limited partnerships. The bulk of these investments have been in real estate or oil and gas limited partnerships. These limited partnerships enable large numbers of small investors to participate in the purchase of commercial office buildings, residential apartment buildings, shopping malls, or oil and gas extraction. Limited partnerships are frequently sold by broker-dealers or financial advisers, usually with the understanding that they are long-term, illiquid investments which would be expected to provide regular cash distributions during the 5- to 10-year intended holding period of the assets, at which time the underlying assets of the partnership would be then liquidated and the proceeds are distributed to the limited partners.

In recent years, however, a growing number of limited partnerships have been reorganized, or rolledup into new business entities, often with very different investment objectives and characteristics, and almost always leading to very substantial losses in investor equity. Provided that a majority of the limited partners vote to approve the rollup, 100 percent are forced to accept securities in the successor entity—a phenomenon known as a cram down, since it crams often worthless securities down on many unwilling investors.

A year and a half ago, Representative MIKE SYNAR and I wrote the SEC with a series of questions regarding the fairness and current regulatory treatment of limited partnership rollups. Since that time, we have heard from literally hundreds of investors from all over the country who have suddenly found themselves faced with the prospect of a rollup of their limited partnership.

Today, there are an estimated 8 million limited partners who are at risk of being subjected to abusive rollups. In Massachusetts alone, there are an estimated 275,000 limited partners who have either been rolled up already or who are in danger of being rolled up in the future. Earlier this year the subcommittee heard testimony from one of these investors, Steven Santoro of Tewksbury, MA. Mr. Santoro lost over 65 percent of his original $25,000 investment when his limited partnership was rolledup last year. He testified that:

> This rollup was advantageous to no one other than the General Partner. All the terms under which we investors made our original investment have changed, from being favorable to us to being favorable to the Corporation. The proxy materials were difficult, even for me to understand sufficiently to make an informed choice on the rollup. For most elderly investors I suspect it was gibberish . . . . Management's compensation has dramatically increased, and it escapes me how you can lose large amounts of your investor's money and then raise your compensation as a reward. Much of the investor's priority was wiped out. This type of rollup can not be allowed to go on any longer.

Small investors like Mr. Santoro desperately need our help, so that they will not continue to be victimized by unscrupulous fast-buck artists who use rollups to enrich themselves at the expense of the limited partners and in violation of the most basic principles of fiduciary responsibility.

During the course of the subcommittee's rollup investigation, we uncovered evidence of numerous abuses similar to those that Mr. Santoro described. When such rollups hit the securities markets, Wall Street immediately shatters whatever illusions middle-class Main Street investors may have had regarding the purported benefits of the rollup. With few buyers interested in purchasing the rollup security, the price drops like a rock. The general partners may end up profiting from the transaction, but the limited partners get rolled.

Currently, limited partners have few protections. Because there are few internal checks and balances to prevent the general partners from putting their narrow self-interest above those of the limited partners, many of these transactions are blatantly unfair. Unlike the corporate setting, there are no independent directors charged with the duty of assuring that management's self-interest doesn't eclipse fulfillment of the duties owed to the investors. Similarly, limited partners don't have the option available to most corporate shareholders of immediately selling their partnership interests into a liquid market when confronted with a management proposal they don't like.

Indeed, when confronted with a proposed rollup, limited partners are often helpless and confused. They are daunted by lengthy and complex rollup disclosure documents and worthless fairness opinions from investment banks that may have a financial stake in approval of the deal. They are inundated with slick promotional pitches from the rollup sponsors urging them to approve the transaction, and when they have turned to the broker-dealer who sold them the partnership for advice, they have been unaware that these same broker-dealer may be receiving compensation from the rollup sponsor for every "yes" vote they deliver. Those few determined investors who seek to organize opposition to a proposed rollup may find themselves hamstrung by SEC proxy rules that impair their ability to communicate with their fellow limited partners regarding the rollup, and proxy rules that allow rollup sponsors to prevent the limited partners from exercising their rights to obtain access to investor lists.

After an abusive rollup is approved, the limited partners could theoretically sue for violations of fiduciary duties or violations of Federal disclosure rules, but in practice litigation has not proven to be an effective means of protecting the limited partners rights. For most limited partners, legal costs would far exceed the value of their original investment, and many limited partners lack the necessary degree of financial and legal sophistication to determine unassisted their rights under existing case law.

In order to provide effective protections for the 8 million limited partners who are today at risk of having their lifesavings devastated by an abusive rollup, H.R. 1885 provides for a balanced and narrowly targeted package of reforms.

The bill would:

Allow certain preliminary communications among investors regarding the proposed transaction to be exempted from requirements to file soliciting materials with the Commission;

Prohibit the payment of any contingent or differential compensation for soliciting proxies or consents in conjunction with the rollup transaction;

Require investors to be provided with access to lists of holders of the securities that are the subject of the transaction;

Establish requirements aimed at ensuring that rollup soliciting materials are clear, concise, and understandable and include important information regarding the transaction and its effects;

Require rollup soliciting materials to include an independent fairness opinion;

Establish a minimum solicitation or offering period of 60 days; and,

Contain such other provisions as the Commission deems necessary for the protection of investors.

In addition, the bill provides a dissenters' rights package that would assure:

The right of dissenting limited partners to an alternative to the rollup in the form of an appraisal and compensation, retention of the original security, or other comparable rights;

The use of an independent committee under certain circumstances to protect the interests of limited partners;

The right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

Restrictions on the conversion of management profit-sharing interests and incentive fees into asset-based management fees.

Last week, the Securities and Exchange Commission approved rule changes affecting limited partnership rollup disclosure documents and minimum solicitation periods. Although the changes approved by the SEC—which are in fact largely derived from provisions contained in this legislation—are a good first step, they are not enough to provide real protection for the 8 million limited partners who are today at risk of being subjected to abusive rollups. If we are to assure that these small investors get the protections they need, we need to go further than the SEC has gone using its current legal authority.

H.R. 1885 would provide the protections these investors need. It would assure that limited partners have not only better disclosure and more time to review a rollup proposal, but assure that there are truly independent fairness opinions, guaranteed access to shareholder lists, a greater ability to communicate with one another regarding the rollup, and a strong dissenters' rights package that assures limited partners a financial alternative to the rollup and other vital protections for limited partners.

□ 1510

Mr. Speaker, I reserve the balance of my time.

Mr. BLILEY. Mr. Speaker, I rise in support of the Limited Partnership Rollup Reform Act of 1991, H.R. 1885.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. RINALDO], the ranking member of the Subcommittee on Telecommunications and Finance of the Committee on Energy and Power.

Mr. RINALDO. I thank the gentleman for yielding.

Mr. Speaker, I rise today in support of the Limited Partnership Rollup Reform Act of 1991, H.R. 1885.

I am pleased to be an original sponsor of this legislation along with my friends, the chairman of the Subcommittee on Telecommunications and Finance, EDWARD MARKEY, and the chairman of the Energy and Commerce Committee, JOHN DINGELL.

It is true that there is nothing inherently wrong with rolling up individual limited partnerships into master limited partnerships, real estate investment trusts or corporations. It is equally clear, however, that at least as they are currently conducted, rollup transactions are often structured in a way that makes them unfair. The inequities that exist are, more often than not, the result of unequal bargaining positions between the general and limited partners. It is this element of rollup transactions that requires legislative and regulatory attention.

During the committee's investigation, we uncovered a variety of abuses in roll up transactions. These abuses threaten to make a mockery of the current system of securities regulation. We saw evidence of deliberately unfair proxy practices like general partners providing 700-page obtuse and burdensome proxy documents. We saw deliberate refusals of some companies to turn over shareholder lists, even though the partnership agreement offered them as a matter of right.

How can we depend upon regulation based on disclosure, if we turn our backs on evidence of shareholder harassment and threats of lawsuits being used to prevent limited partners from communicating with each other.

H.R. 1885 outlines what changes must be made to the Federal securities laws to ensure that in rollup transactions adequate disclosure is made. It also insures that conflicts of interest and self-dealing are minimized and that dissenters' rights are adequately protected.

Just as important, the rights of legitimate businessmen are maintained as well. The regulatory structure of H.R. 1885 uses securities industry self-regulation as the first line of defense for investors. This is joined with a statements of congressional direction to the Securities and Exchange Commission to oversee the improvement of securities regulation occurring at the NASD and Stock Exchange level.

By pursuing this avenue of regulation, the industry's considerable expertise is brought to bear on its own problems, and the solutions, carefully overseen by the Government's own securities regulator, will be in the best interest of all those who are involved in these transactions.

All of the members of the Energy and Commerce Committee share the desire to insure that H.R. 1885 focuses only on the abuses in these transactions. It does not interfere with legitimate business done by reputable firms. I believe that with the majority we have achieved this goal admirably.

So, Mr. Speaker, I join with the distinguished chairman of the subcommittee, the gentleman from Massachusetts [Mr. MARKEY], and the distinguished chairman of the full Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], in urging my colleagues to cast a vote in favor of this legislation.

Mr. Speaker, as the gentleman from Massachusetts [Mr. MARKEY] very appropriately stated, it was a bill that, once again, on which we worked together, the majority and the minority, and it is a bill where there was unanimous agreement on the part of both the majority and the minority, and certainly it is a bill in the best interests of all of those involved in rollup transactions in the United States.

So, Mr. Speaker, I urge a "yes" vote.

Mr. MARKEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. MOAKLEY] the chairman of the Committee on Rules.

(By unanimous consent, Mr. MOAKLEY was allowed to speak out of order.)

NOTIFICATION OF AMENDMENT PROCEDURES RECOMMENDED BY COMMITTEE ON RULES

Mr. MOAKLEY. Mr. Speaker, I have some good news and some bad news.

The good news is that, even in light of the defeat of the banking bill last evening, it is looking more likely that the House can complete its work and adjourn this session by Thanksgiving.

The bad news is that floor time between now and then is very limited. This is election day, and it appears that next Monday and next Friday we might not have votes.

If we are in session every other day, including at least one weekend, there are fewer than 14 days left. We must finish the conference reports on the remaining appropriation bills and on other major issues like crime, defense, and highways, and we must consider RTC funding, and revisit the banking bill.

Any other legislation we take up in the rush will have to be considered under structured rules, or else we give up any hope of making the target adjournment date. As consequence, the Rules Committee will be asking Members to submit amendments in advance of our meetings.

The only fair and orderly way the committee can structure rules is with the cooperation of the membership, by submitting amendments in advance. This is a general notice.

I will be back on each bill to announce our intention to meet, and to request that amendments to the specific bill we plan to consider, be submitted by a date certain.

Mr. Speaker, along those lines, the committee plans to take up the NOAA Authorization Act of 1991, H.R. 2130.

The Rules Committee plans to meet Thursday, November 7, to continue consideration of the bill.

The committee is considering a rule which may structure the offering of amendments, and permit only those amendments designated in the rule to be offered.

In order to ensure Members's rights to offer amendments under this structure they should submit 55 copies of their amendment, together with a brief explanation of the amendment, to the committee office located in H-312 of the Capitol no later than 5 p.m. on Wednesday, November 6.

These amendments should be drafted to the joint committee substitute, H.R. 3704, introduced yesterday by Mr. HERTEL of the Merchant Marine and Fisheries Committee. Copies of this bill will be available today in the committee offices of both the Merchant Marine and Fisheries Committee, and the Science, Space, and Technology Committee.

I have sent a "Dear Colleague" letter to all Member and committee offices which explains this procedure further.

We appreciate the cooperation of all members in our effort to be fair and orderly in granting a rule.

Mr. BLILEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from Alabama [Mr. HARRIS].

Mr. HARRIS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to take this opportunity to express my strong support for H.R. 1885. After the testimony which I heard during the oversight hearings on this issue before the Finance Subcommittee, I am convinced that the current law is inadequate to address some of the abusive practices which occur in these rollups and that investors need the protections offered by this bill.

In fact, I concluded that the only people who really benefited were the brokers, lawyers, and general partners who put these deals together and made money hand over fist.

We found that there were a number of abusive practices which unfairly skewed the process so that an investor could not make an informed judgment on the benefits or drawbacks of the deal: Incomprehensible disclosures, few dissenter's rights, differential compensation for brokers, hidden and exorbitant costs, just to name a few.

H.R. 1885 addresses each of these problems directly and gives the regulators sufficient flexibility to deal with innovations. I might add that Robert Rash, director of the Alabama Securities Commission, reviewed this legislation at my request and commented that "the bill would be very beneficial to security holders and partnerships that are subjected to unconscionable roll-up practices." Certainly, this bill ensures that in the future, limited partnership investors will be able to make investment decisions based on all the facts.

I commend the leadership of Chairman MARKEY and Mr. RINALDO in this area and the hard work of the subcommittee staff and urge passage of this legislation.

☐ 1520

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank the gentleman from Alabama [Mr. HARRIS] for his leadership on this issue. From the top down, working with the chairman of the full committee, the gentleman from Michigan [Mr. DINGELL] and his staff, the gentleman from Oklahoma [Mr. SYNAR], who gave leadership in bringing this issue to our attention and helping to shape the context in which we would debate the issue, the gentleman from Maryland [Mr. MCMILLEN], who was very instrumental in helping to focus greater attention upon real estate valuations as a part of rollup disclosure documents, the gentleman from Louisiana [Mr. TAUZIN] working in the oil and gas area, the gentleman from Alabama [Mr. HARRIS] giving us a general oversight from his experience in terms of how we should shape the legislation. We tried to put together a good bill for the House. The gentleman from New Jersey [Mr. RINALDO] and, as usual, his staff, Steve Blumenthal working with Jeff Duncan on my staff have, I think, once again produced a bill which is worthy of support by the full House, and I hope that it would be accepted.

Mr. Speaker, I yield back the balance of my time.

Mr. McMILLEN of Maryland. Mr. Speaker, I have been very supportive of the Telecommunications and Finance Subcommittee's efforts to protect the investors in limited partnership rollups, and commend Chairman MARKEY and his staff for their efforts and leadership on this legislation. The use and abuse of rollups is well documented, and is an area of necessary reform.

As I stated in the hearings before the subcommittee on this legislation, the underlying issue is investor confidence. Anything which undermines this confidence threatens a crucial dimension of our economic system: Capital formation.

To insure investor confidence, the investing public must know that the information provided is accurate, truthful and—just as important—understandable. As the chairman pointing out in last year's hearing, the disclosure documents for rollups have "become so complex and convoluted that they are incomprehensive to all but the most sophisticated investors." This problem, along with other unsound or abusive practices, have undermined the limited partner's autonomy in dealing with rollups, and has led to many bad investment decisions.

The legislation before us today address these issues in relation to rollups, and draws a fine line between protecting investors and maintaining a minimum of regulation in complex financial transactions.

Specifically, the requirement for an independent fairness opinion is a crucial step to ameliorate the conflicts that are present in many current transactions. Second, providing for a more meaningful disclosure of the terms of the transaction, including an executive summary, facilitates a better understanding among the limited partners. Other provisions, such as the prohibition on differential compensation, requiring sponsors to pay costs of the transaction and other such reforms, are all steps towards reinfusing investor confidence in these transactions.

As with any bill, there were questions raised about specific provisions—particularly regarding dissenters' rights and the precedent which it might set—which we have spent some time looking at.

I would note that, in regard to the dissenters' rights provisions, this is new ground we are covering, and the subcommittee has been careful in how it moved in this area. The legislation provides regulators needed flexibility in implementing the provisions, and provides dissenter rights only in instances where the limited partners' deal was significantly altered. It is not and has not, been the intention of the committee to have the dissenters' rights extend beyond these circumstances, and I can say categorically that this bill does not apply to publicly traded partnerships.

I would again like to commend the subcommittee, as well as the full committee, for their work in this area, and urge adoption of this bill.

Mr. STARK. Mr. Speaker, today I rise in support of H.R. 1885, the Limited Partnership Rollup Reform Act. This bill addresses a concern of mine that certain financial restructuring arrangements have been made for the benefit of the general partners and investment bankers and at the expense of the average investor.

I have heard from hundreds of my constituents who invested their retirement savings in partnerships that were supposed to be conservative investments only to have their investments made worthless after being rolled up with partnerships of poor investment quality. The cost of the rollup—fees paid to investment bankers, appraisers, accountants, lawyers, and brokers as well as increased fees to general partners—significantly reduced the investment.

According to the Securities and Exchange Commission, the price of securities resulting from rollups declined an average of 24 percent during the first year of trading. Unfortunately, averages mask the loss suffered by those involved in investments made virtually worthless after the rollup.

The bill before us today curbs abusive practices and seeks to provide enhanced protections to investors affected by rollup transactions. It allows investors to share information with other investors to evaluate the merits of a proposed rollup without violating SEC laws, prohibits broker-dealers from having a financial incentive for approval of the transaction, requires that limited partners affected by a proposed rollup will have access to the names of all other investors affected by the proposed transaction, requires that the prospectus be written in a clear manner and provides discussion of alternatives to the rollup, requires that the fairness opinion be prepared by an independent expert and establishes a minimum period of 60 days for investors to approve or disapprove the transaction. Most important, the bill provides protections for dissenting limited partners in rollup transactions.

Mr. Speaker, I endorse these efforts to curb abusive practices and provide alternate options for those who choose not to keep their money in the newly formed investment.

The SPEAKER pro tempore. (Mr. Lehman of California). The question is on the motion offered by the gentleman from Massachusetts [Mr. Markey] that the House suspend the rules and pass the bill H.R. 1885, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1330

Mr. RAMSTAD. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor H.R. 1330.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

HEALTH INFORMATION, HEALTH PROMOTION, AND VACCINE INJURY COMPENSATION AMENDMENTS OF 1991

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3402) to amend the Public Health Service Act to revise and extend certain programs regarding health information and health promotion, as amended.

The Clerk read as follows:

H.R. 3402

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Health Information, Health Promotion, and Vaccine Injury Compensation Amendments of 1991".

TITLE I—HEALTH INFORMATION AND HEALTH PROMOTION

SEC. 101. AUTHORIZATION OF APPROPRIATIONS FOR GENERAL AUTHORITY.

Section 1701(b) of the Public Health Service Act (42 U.S.C. 300u(b)) is amended to read as follows:

"(b) For the purpose of carrying out this section and sections 1702 through 1705, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

SEC. 102. CENTERS FOR RESEARCH AND DEMONSTRATION OF HEALTH PROMOTION AND DISEASE PREVENTION.

(a) Authorization of Appropriations.—Section 1706(e) of the Public Health Service Act (42 U.S.C. 300u-5(e)) is amended to read as follows:

"(e) For the purpose of carrying out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

(b) Technical Amendment.—Section 1706(c) of the Public Health Service Act (42 U.S.C. 300u-5(c)) is amended—

(1) by striking "(c)(1) During fiscal year 1985" and all that follows through "(2)(A) In making grants" and inserting the following: "(c)(1) In making grants"; and

(2) by striking "(B) The Secretary" and inserting "(2) The Secretary".

TITLE II—VACCINE INJURY COMPENSATION

SEC. 201. VACCINE INJURY COMPENSATION.

(a) Provision Regarding National Childhood Vaccine Injury Act of 1986.—Section 323 of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa-1 note) is amended by striking out "(a) General Rule.—" and subsection (b).

(b) Evaluation.—Section 6601(t) of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 300aa-1(t) note) is amended by striking out "1992" and inserting in lieu thereof "1993".

(c) Suspension of Petition Proceedings.—Section 2112(d)(3)(D) of the Public Health Service Act (42 U.S.C. 300aa-12(d)(3)(D)) is amended by striking out "180 days" and inserting in lieu thereof "540 days".

(d) Actions by Petitioner.—

(1) Section 2112(g) of the Public Health Service Act (42 U.S.C. 300aa-12(g)) is amended by striking out "and the petition will be considered withdrawn under such section if the petitioner, the special master, or the court do not take certain actions" and inserting in lieu thereof "or the petitioner may choose under section 2121(b) to have the petition remain before the special master or court, as the case may be".

(2) Section 2116(c) of the Public Health Service Act (42 U.S.C. 300aa-16(c)) is amended by striking out ", (2)" and inserting in lieu thereof " or (2)" and by striking out ", or (3)" and all that remains in such section and inserting in lieu thereof a period.

(3) Section 2121(b) of the Public Health Service Act (42 U.S.C. 300aa-21(b)) is amended—

(A) in paragraph (1), by striking out "a notice in writing withdrawing the petition" and inserting in lieu thereof "a notice in writing choosing to continue or to withdraw the petition" and by striking out the last sentence,

(B) by striking out paragraph (2),

(C) by striking out "(1)" and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and by running the text of paragraph (1) into the subsection heading and making the margin of the text full measure, and

(D) by amending the subsection heading to read "Continuance or Withdrawal of Petition".

(e) Payment of Compensation.—

(1) Section 2115(f)(4) of the Public Health Service Act (42 U.S.C. 300aa-(f)(4)) is amended—

(A) in subparagraph (A), by striking out "of the proceeds", and

(B) in subparagraph (B), by striking out "paid in 4 equal installments of which all or portion of the proceeds" and inserting in lieu thereof "shall be paid from appropriations made available under subsection (j) in a lump sum of which all or a portion".

(2) Section 2115(f)(4)(A) of the Public Health Service Act (42 U.S.C. 300aa-(f)(4)(A) is amended by striking "trust fund" and inserting the following: "Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986".

(f) Annuity.—Section 2115(f)(4) of the Public Health Service Act (42 U.S.C. 300aa-(f)(4)) is amended by adding at the end the following new subparagraph:

"(C) In purchasing an annuity under paragraph (A) or (B), the Secretary may purchase a guarantee for the annuity, may enter into agreements regarding the purchase price for and rate of return of the annuity, and may take such other actions as may be necessary to safeguard the financial interests of the United States regarding the annuity. Any payment received by the Secretary pursuant to the preceding sentence shall be paid to the Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986, or to the appropriations account from which the funds were derived to purchase the annuity, whichever is appropriate.".

(g) Advisory Commission.—Section 2119(c) of the Public Health Service Act (42 U.S.C.

300aa–19(c)) is amended by inserting before the period at the end of the section "present at the meeting".

(h) TECHNICALS.—Title XXI of the Public Health Service Act is amended as follows:

(1) The margins for clauses (i) and (ii) of section 2111(a)(2)(A) (42 U.S.C. 300aa–11(a)(2)(A)) are indented one em.

(2) The margin of subparagraph (D) of section 2112(d)(3) (42 U.S.C. 300aa–12(d)(3)) is intended to align with the margin of subparagraph (C).—

(3) Section 2112(g) (42 U.S.C. 300aa–12(g)) is amended by striking out "NOTICE.—If" and inserting in lieu thereof "NOTICE.—If".

(i) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsections (d) and (f) shall take effect as if the amendments had been in effect on and after October 1, 1988.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Virginia [Mr. BLILEY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I move that the House suspend the rules and pass the bill H.R. 3402 with an amendment.

This legislation reauthorizes the programs of health information and health promotion as well as the Centers for Research and Demonstration of Health Promotion. In addition the legislation makes needed changes in the National Vaccine Injury Compensation Program.

Established in 1976, Title XVII: Health Information and Health Promotion, of the Public Health Service Act, provides authority for a number of Federal programs concerning health information and health promotion, including preventive medicine, health education, and health information for consumers. It also authorizes support for community health promotion and disease prevention programs and for centers for research and demonstration. In addition, title XVII establishes the Office of Disease Prevention and Health Promotion [ODPHP] in the Office of the Assistant Secretary for Health, to coordinate the prevention-related activities of the Department of Health and Human Services [HHS], to serve as a liaison with the private sector, and to operate a national health information clearinghouse.

Through ODPHP, three major reports have been issued that now serve as the framework for much of the Department's preventive health efforts. A comparison between ODPHP's 1980 and 1990 reports demonstrates that although many improvements in the Nation's health have been attained during the previous decade, much work remains to be done during the next.

A number of the programs supported through ODPHP will help achieve these important public health goals. Collaborative programs have been established, for example, among ODPHP, other Public Health Service agencies, and organizations such as the American Association of Retired Persons [AARP], the Boys Clubs of America, the Health Insurance Association of America, the National Coalition of Hispanic Health and Social Service Organizations [COSSMHO], and the Washington Business Group on Health to develop and disseminate information and materials designed to address various health problems which affect their membership.

Moreover, the Office operates a national health information clearinghouse which responds to approximately 3,000 requests for information a month. The ODPHP Health Information Center assists inquirers by identifying information resources, referring them to such resources, and developing and disseminating publications containing information not readily available elsewhere. These activities serve to educate the public about specific medical problems and health care issues and to promote the importance of healthy lifestyles. Without such efforts, many Americans would remain uninformed about the steps they can take to improve their own health status, and in turn, the health status of the Nation.

In addition to ODPHP, the Centers for Disease Control [CDC]—the lead agency of the Public Health Service for disease prevention and health promotion efforts—administer and conduct several programs designed to advance the goals of the title XVII authority. Among these is the PATCH—Planned Approach to Community Health—Program which provides funds for community-based efforts that evolve within a community itself and involve key local institutions such as schools and businesses. CDC works in cooperation with the local project to address specific health priorities and often provides technical assistance to the program sponsor to help plan, operate, and evaluate the project. Some 25 PATCH programs now exist in 13 States across the country.

CDC has also developed and implemented behavioral risk factor surveillance procedures to monitor important personal health behaviors such as smoking, exercise, diet, and alcohol use. Based upon this work, 34 States are monitoring these key health indicators today. In addition, health education efforts, including those developed to address the AIDS epidemic, remain a top priority for CDC. These public education and information ventures have been most effective in educating Americans about various health problems and in motivating them to make appropriate lifestyle changes to meet these concerns.

CDC administers the Centers for Research and Demonstration of Health Promotion and Disease Prevention established in title XVII. Funding for these prevention centers has been made available since 1986 to support research and demonstration projects on issues relating to health promotion and disease prevention. Seven such centers have been created to date. Each has supported important work that will lead to a better understanding of the relationship between individual lifestyles and disease and the effects of various health hazards. Moreover, each has supported innovative efforts to help individuals and communities put this new understanding into everyday practice and to help ensure a healthier America.

Finally, this legislation includes amendments to the National Vaccine Injury Compensation Program. That program has been in effect since 1988 and is widely credited with stabilizing vaccine prices, encouraging innovation in the vaccine industry, and compensating children who are injured by routine pediatric vaccines. Working with the administration, both the majority and the minority have arrived at these provisions as readily agreeable and necessary for efficient operation of the program.

Knowing of the importance of these issues, I would like to give a brief explanation of the terms of title II, related to vaccine injury. This explanation represents the views of the majority and minority of the subcommittee.

SECTION 201—SUBSECTION (A)

Subsection (a) repeals subsection (b) of section 323 of the National Childhood Vaccine Injury Act of 1986—Public Law 99–660. Under the terms of the Vaccine Compensation Program—the program—claims for compensation for injuries associated with vaccines administered before the effective date of the program—preenactment cases—are treated differently from claims for compensation for injuries associated with vaccines administered after the effective date of the program—post-enactment cases. Among other differences, awards for preenactment cases are paid from general revenues; awards for post-enactment cases are paid from the vaccine injury compensation trust fund.

Section 323(b) of the 1986 act provides for the termination of the program for both preenactment cases and post-enactment cases if either source of funding is insufficient to pay awards. Thus, although the trust fund for post-enactment cases is solvent and projected to remain so, a failure to make payments for preenactment cases could result in the closure of the program.

Section 2134 of the Public Health Service Act provides for a review and reporting method to ensure that the post-enactment system remains adequate and to suspend the program if a schedule of awards is exceeded. This provision remains in place. The process for termination of the program for preenactment cases, if necessary, is not resolved by this legislation. The managers of the legislation are, however, aware of proposals for increased appropriations as well as arguments that the United States remains liable for claims regardless of the availability of sufficient specific appropriations.

SUBSECTION (B)

Subsection (b) changes the date of the required evaluation of the program, requiring that the evaluation be submitted in 1993 rather than 1992.

SUBSECTION (C)

Under the program, in reviewing proceedings on preenactment cases, the chief special master may suspend proceedings on any petition for up to 180 days. Subsection (c) extends that period to 540 days.

SUBSECTION (D)

Under the program as currently in force, if a special master or the court does not enter a decision on a petition for compensation within specified time limits, the master or the court no longer has jurisdiction to continue consideration of the petition. Subsection (c) eliminates the provisions automatically withdrawing jurisdiction and, instead, allows the petitioner to elect to continue or withdraw the petition.

SUBSECTION (E)

Under the statutory provisions of the program, payments for compensation for preenactment cases are to be made in four equal installments. The administration of the program has, however, required that all funds sufficient to pay the full award be reserved, even if the petitioner receives only one-quarter of these funds at a time. The result has been administratively cumbersome and expensive for both the program and petitioners, with no cash-flow advantages for the program. Subsection (e) allows for such compensation to be paid in one lump-sum.

SUBSECTION (F)

Under current law, an annuity may be purchased to provide all or part of compensation received under the program. Subsection (f) allows the Secretary to take such additional actions as may be necessary to safeguard the interests of the program in these annuities, such as the purchase of a guarantee—under which, if an annuitant dies, all or part of the value of the annuity is repaid to the program—or the lock-in of rates or purchase prices for the annuity. Subsection (f) provides that any funds recouped under this provision are to be paid to the program—the trust fund or the appropriations account, as appropriate—for use by the program.

SUBSECTION (G)

Subsection (g) allows the Advisory Commission on Childhood Vaccines to make decisions by a majority of the voting members present at a meeting.

SUBSECTION (H)

Subsection (h) makes technical changes in the act.

SUBSECTION (I)

Subsection (i) provides effective dates of the amendments made by this section. In the case of subsections (d) and (f), the amendments made by this section are to be applied as if they were in force on October 1, 1988.

Mr. Speaker, I yield back the balance of my time.

Mr. BLILEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3402, the Health Information and Health Promotion Amendments of 1991. This bill is a simple reauthorization of two existing programs that enjoy bipartisan support.

The bill renews authority for the Office of Disease Prevention and Health Promotion which is the principal office on prevention in the Public Health Service. This office coordinates the policies and programs in health promotion and disease prevention within the Public Health Service.

In addition, the bill renews the Prevention Centers Program which funds the development of academic-based centers for research and demonstrations in disease prevention and health promotion. These centers serve as demonstration sites for the use of new and innovative research in public health techniques to prevent disease. Results of this research will have an impact on the health of children and adolescents, the elderly, minorities, and adults with risk factors for cancer and cardiovascular disease.

Finally, the amendments to the bill make a number of changes to the Vaccine Compensation Program at the request of the administration. This program was established in 1986, to create a new system to compensate children who are injured by reactions to routine pediatric vaccinations. These amendments are technical in nature and are necessary to correct a number of flaws in the program.

I urge my colleagues to join me in supporting this bill.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr.. WAXMAN] that the House suspend the rules and pass the bill, H.R. 3402, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend the Public Health Service Act to revise and extend certain programs regarding health information, health promotion, and vaccine injury compensation."

A motion to reconsider was laid on the table.

ANNUAL REGULATORY PROGRAM OF THE U.S. GOVERNMENT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Government Operations:

(For message, see proceedings of the Senate of today, Tuesday, November 5, 1991.)

GENERAL LEAVE

Mr. McDERMOTT. Mr. Speaker, I ask unanimous consent that all Members be permitted to extend their remarks and to include therein extraneous material on the subject of the 1-minute speech today by the gentleman from Georgia [Mr. DARDEN].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

TIME TO INVESTIGATE THE MANAGUA SURPRISE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana [Mr. LIVINGSTON] is recognized for 5 minutes.

Mr. LIVINGSTON. Mr. Speaker, as my colleagues know, 31 years ago today, on election day in 1960, Chicago Mayor Richard Daley withheld scores of Cook County precincts until he knew just how many votes were needed to deliver Illinois to John Kennedy for the President of the United States. Combined with the known vote fraud in Texas, that was enough to throw the election from Richard Nixon to Jack Kennedy.

☐ 1530

Mr. Speaker, there is a lot of hard evidence that this occurred, but do the Democrats urge an investigation? No. But when a disgruntled former aide to President Carter spends 3 years peddling the October Surprise story that Reagan aides dealt with Iran to hold hostages until after the 1980 election, and he finally gets an article in the New York Times, suddenly the Democrats act as if we have another Teapot Dome affair.

Of course, they make no mention of the many discredited stories panhandled by this same partisan staffer.

They do not admit that he at one time had unequivocally proclaimed that Bush was in Paris secretly meeting with the Iranians at a time when Secret Service logs clearly showed that George Bush was in Washington. Nor do they mention that several of the corroborating linchpins in the October surprise allegations, including Iranian Bani-Sadr, have each frequently been caught in half truths, distortions, and outright lies, as now acknowledged by the New Republic and Newsweek magazines of this week, appearing in yesterday's CONGRESSIONAL RECORD in a special order taken out by me.

The fact is, Mr. Speaker, that the Democrats have a very selective moral indignation. They gave a wink and a nod to the vote fraud of 1960. They act unconcerned that President Lyndon Johnson, who was born in near poverty and who spent a career in public service, somehow managed to retire as a multimillionaire—this from the same group that was so fixated on Ed Meese's cufflinks.

We hear no cries of investigation of such things as I have just mentioned, or for investigations into the relationship, for example, between ex-President Jimmy Carter and his pal, Bert Lance, and BCCI, the Bank of Crooks and Criminals. Interestingly enough, but hardly surprising, we do not hear a peep of interest from them over possibly illicit contacts between Democratic Members of this Chamber and the Communist Sandinista Government of Nicaragua.

Mr. Speaker, several current and former Members of this body held private talks with high-ranking Sandinista officials, both in Nicaragua and here in Washington and over the phone between them. These same Sandinista officials were at the time receiving some $500 million in weaponry each year from the Soviet Union, the old Soviet Union. There were some men in communist control over that country, and they were systematically and brutally stamping out all forms of dissent, political, ethnic, and even religious, in their own country, and training and arming communist terrorists and subversives to take over their neighbors.

Just what did these Democratic Members discuss with the Sandinistas in those meetings? Just what did they discuss during all those private phone calls to the Nicaraguan Embassy? What information did their staffs convey in other private communications? Well, we do not know. Suddenly these self-same paragons of open government have grown silent, and they have refused to allow the transcripts of their conversations to be made public. Yet the evidence is trickling out that some may have engaged in some truly outrageous and possibly even criminal acts.

There are serious allegations that they disclosed classified information to a Communist country or the leaders of a Communist country, and that is an outrage and worse. There are allegations they may have coerced other Central American governments into supporting the Sandinistas by threatening them with cutting off their U.S. foreign assistance if they did not cooperate. Then there is even a credible allegation that a Democratic staffer deliberately advised the Sandinistas to temporarily relax their serious human rights abuses for the sole purpose of avoiding congressional action in favor of the Contras.

Yet, they have the audacity to claim that their rights were violated by CIA agents who monitored their contacts. Now, let us be clear, Mr. Speaker. The U.S. Government did not violate anybody's rights in obtaining this information. In fact, our intelligence agencies were monitoring the Sandinistas' cables, not those of Americans. If some people got caught under those circumstances, well, I say good.

Mr. Speaker, their protests will not wash. The facts do not add up. There is something rotten in Nicaragua and its trail leads all the way into this Chamber. That is why we need an investigation into these contacts, not as revenge for the October surprise investigation, which has been proven bogus by the New Republic and Newsweek magazines. No, it is not that easy. We need this investigation because questions have been raised, serious questions, about the integrity of certain Members and their conduct while on official business. It is time to answer those questions and to set the record straight. It is time to investigate the Managua surprise.

DEMOCRATIC POLICIES AT FAULT FOR RECESSION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. HANCOCK] is recognized for 5 minutes.

Mr. HANCOCK. Mr. Speaker, last week, 1,500 workers at the Zenith Television Manufacturing Plant in Springfield, MO, were notified that they will be losing their jobs this spring.

The recession is still with us—and it is hurting real people—in real numbers. The folks at the Zenith plant in Springfield are only some of its victims.

All Congress seems interested in doing though is blaming the recession on the President.

But it is the Congress—controlled for the last 50 years by the liberal Democrats—that is standing in the way of the policies that can turn this economy around.

President Bush has done a great job with foreign policy.

If we can just get Congress out of the way on the domestic scene, his program for economic recovery will work.

The problem is getting Congress out of the way.

The Democrats, however, seem intent on blocking any attempt by President Bush and the Republicans to pass a progrowth package of tax cuts and savings incentives that will start this economic recovery.

We remember that it was the progrowth, low tax policies of the Reagan administration that restored America's economy in the 1980's and led to an unprecedented recovery.

The Congress—in the firm control of the liberal Democrats—has finally succeeded in sabotaging that recovery and producing a recession which they seem to be doing everything in their power to prolong.

That is how we got into this recession. Let there be no mistake about it. The blame belongs right here—with the Democrat-controlled Congress.

Just look at the policies Congress has imposed on the Nation.

Last year, this Democrat majority in Congress passed the second largest tax increase in history—supported by the President only against his better judgment in exchange for spending cuts.

Of course, Congress—true to form—is still spending out of control and is racking up a record budget deficit this year of almost $400 billion. And now Congress also wants to extend the Federal gas tax 11.6 cents a gallon. This spending and borrowing deprives the economy of precious capital resources to create jobs and expand business.

With a host of good sounding, liberal legislation, regulations, liabilities, and mandates the Congress is slowly but surely crippling the ability of American business and industry to compete abroad.

With the 1986 tax bill, Congress altered depreciation schedules and virtually stopped business investment.

By keeping capital gains tax rates high, Congress has done its part to depress the real estate market and worsen the crisis in our Nation's financial community.

By eliminating IRA's and tax-free savings plans, Congress has discouraged savings and investment, depriving the economy of the essential capital necessary to start and expand businesses and create jobs.

By passing the ill-conceived luxury tax, Congress threw shipyard workers, auto salesmen, and aircraft workers in the unemployment line.

Is it any wonder Japan and Germany are outcompeting American companies when we put so many burdens on our business community and our economy?

There is, however, an alternative.

The President and Republicans in Congress have proposed—for some time now—a number of progrowth tax cuts and savings incentives that are designed to generate economic activity and job creation.

It is the height of hypocrisy for Congress to accuse the President of not having a domestic agenda when it is the leadership of this Congress that is deliberately blocking that agenda at every turn.

The time has come for serious, growth-oriented, job-creating tax cuts and savings incentives.

Indeed, progrowth tax cuts will also lead to greater revenues for Government as the economy expands and more Americans go back to work—earning paychecks and paying taxes.

There are a number of solid packages being promoted by Republicans in Congress. All of them contain several key elements:

We must cut the tax on capital gains which has shut down the real estate market and hampered economic activity. Republican proposals would not benefit the so-called superwealthy. It would overwhelmingly help farmers, small businessmen, senior citizens, blue collar workers—union and nonunion—single people, and middle-class families who want to plan for their future.

And, in the long run, it would help the entire Nation through the economic activity it promotes.

The American people want Congress to reinstate tax-free savings plans so they can save for their retirement. They want to be able to save for their children's education and to buy a home. Such savings will boost the supply of vital capital needed for investing in American industry and creating real jobs in the private sector.

This is a commonsense agenda to turn America's economy around and end this recession. These proposals, along with others, will empower the American people to take control over their own destiny—to provide for themselves and their families—to save for their future and their families.

The only thing standing in the way is the Democrat-controlled Congress which seems intent on playing politics and blaming the President for its own inaction.

Is winning the White House so important to some people in Congress that forcing this country into a depression is an end that justifies the means? It could be the end of the greatest economy the world has ever seen.

The people are waiting to see what Congress will do.

The people, the American economy, and the world will not wait much longer.

□ 1540

READING OF CARL SANDBERG'S 1959 TRIBUTE TO ABRAHAM LINCOLN

The SPEAKER pro tempore (Mr. LEHMAN of California.) Under a previous order of the House, the gentleman from Indiana [Mr. JACOBS] is recognized for 60 minutes.

Mr. JACOBS. Mr. Speaker, several weeks ago it occurred to me that people following the proceedings of the House of Representatives are so accustomed to invective back-and-forth unkind words usually between the two political parties, what Wendell Willkie called campaign oratory, that it might be refreshing to recall for our country other moments in this Chamber when there was less truculence, less anger.

One such moment was on Lincoln Day in 1959, February 12, 1959, when the great Carl Sandberg came here to give a talk on Abraham Lincoln. It was a short address, and I will do my best to quote it on this occasion.

Mr. Sandberg was introduced by the Speaker of the House, Sam Rayburn, who praised him highly. Mr. Sandberg cleared his throat and said:

> Before beginning this prepared address, I must make the remark that this introduction, this reception here, calls for humility rather than pride. I am well aware of that.

Then he began his quote on Abraham Lincoln

> Not often in the story of mankind does a man arrive on earth who is both steel and velvet, who is as hard as rock and soft as drifting fog, who holds in his heart and mind the paradox of terrible storm and peace unspeakable and perfect. Here and there across centuries come reports of men alleged to have these contrasts. And the incomparable Abraham Lincoln, born 1809, is an approach if not a perfect realization of this character. In the time of the April lilacs in the year 1865, on his death, the casket with his body was carried north and west a thousand miles; and the American people wept as never before; bells sobbed, cities wore crepe; people stood in tears and with hats off as the railroad burial car paused in the leading cities of seven States ending its journey at Springfield, Illinois, the hometown. During the 4 years he was President he at times, especially in the first 3 months, took to himself the powers of a dictator; he commanded the most powerful armies till then assembled in modern warfare; he enforced conscription of soldiers for the first time in American history; under imperative necessity he abolished the right of habeas corpus; he directed politically and spiritually the wild, massive turbulent forces let loose in civil war; he argued and pleaded for compensated emancipation of the slaves. Failing to get action on compensated emancipation, as a Chief Executive having war powers he issued the paper by which he declared the slaves to be free under military necessity.
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> In the month the war began he told his secretary, John Hay:
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> "My policy is to have no policy."
>
> Three years later in a letter to a Kentucky friend made public, he confessed plainly:
>
> "I have been controlled by events."
>
> His words at Gettysburg were sacred, yet strange with a color of the familiar:
>
> "We cannot consecreate—we cannot hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far beyond our poor power to add or detract."
>
> He could have said "The brave Union men." Did he have a purpose in omitting the word "Union?" Was he keeping himself and his utterance clear of the passion that would not be good to look back on when the time came for peace and reconciliation? Did he mean to leave an implication that there were brave Union men and brave Confederate men, living and dead, who had struggled there? We do not know, of a certainty. Was he thinking of the Kentucky father whose two sons died in battle, one in Union blue, the other in Confederate gray, the father inscribing on the stone over their double grave. "God knows which was right"? We do not know. His changing policies from time to time aimed at saving the Union. In the end his armies won and his Nation became a world power. In August of 1864 he wrote a memorandum that he expected in view of the national situation, he expected to lose the next November election. That month of August was so dark. Sudden military victory brought the tide his way; the vote was 2,200,000 for him and 1,800,000 against him. Among his bitter opponents were such figures as Samuel F.B. Morse, inventor of the telegraph, and Cyrus H. McCormick, inventor of the farm reaper. In all its essential propositions the southern Confederacy had the moral support of powerful, respectable elements throughout the North, probably more than a million voters believing in the justice of the southern cause. While the war winds howled he insisted that the Mississippi was one river meant to belong to one country, that railroad connection from coast to coast must be pushed through and the Union Pacific railroad made a reality. While the luck of war wavered and broke and came again, as generals failed and campaigns were lost, he held enough forces of the North together to raise new armies and supply them, until generals were found who made war a victorious war has always been made, with terror, frightfulness, destruction, and on both sides, North and South, valor and sacrifice past words of man to tell. In the mixed shame and blame of the immense wrongs of two crashing civilizations, often with nothing to say, he said nothing, slept not at all, and on occasions he was seen to weep in a way that made weeping appropriate, decent, even you might say, majestic. As he rode alone on horseback near Soldiers Home on the edge of Washington one night his hat was shot off; a son he loved died as he watched at the bed; his wife was accused of betraying information to the enemy, until denials from him were necessary. An Indiana man at the White House heard him say, "Voorhees, don't it seem strange to you that I, who could never so much as cut off the head of a chicken, should be elected, or selected, into the midst of all this blood?" He tried to guide General Nathaniel Prentiss Banks, a Democrat, three times Governor of Massachusetts, in the governing of some 17 of the 48 parishes of Louisiana controlled by the Union armies, an area holding a fourth of the slaves of Louisiana. He would like to see the State recognize the emancipation proclamation:
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> "And while she is at it, I think it would not be objectionable for her to adopt some practical system by which the two races could gradually live themselves out of their old relation to each other, and both come out better prepared for the new. Education for the young blacks should be included in the plan."
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> To Gov. Michel Hahn, elected in 1864 by a majority of the 11,000 white male voters who had taken the oath of allegiance to the Union, Lincoln wrote:
>
> "Now you are about to have a convention which, among other things, will probably define the elective franchise, I barely suggest for your private consideration, whether some of the colored people may not be let in—as

for instance the very intelligent and especially those who have fought gallantly in our ranks."

Among the million words in the Lincoln utterance record, he interprets himself with a more keen precision than someone else offering to explain him. His simple opening of the "house divided" speech in 1858 serves for today:

"If we could first know where we are, and whither we are tending we could better judge what to do, and how to do it."

To his Kentucky friend, Joshua F. Speed, he wrote in 1855:

"Our progress in degeneracy appears to me to be pretty rapid. As a Nation we began by declaring that "all men are created equal, except Negroes." When the know-nothings get control, it will read "all men are created equal except Negroes and foreigners and Catholics." When it comes to this, I shall prefer emigrating to some country where they make no pretense of loving liberty."

Infinitely tender was his word from a White House balcony to a crowd on the White House lawn:

"I have not willingly planted a thorn in any man's bosom."

Or to a military Governor:

"I shall do nothing through malice; what I deal with is too vast for malice."

He wrote for Congress to read on December 1, 1862:

"In times like the present men should utter nothing for which they would not willingly be responsible through time and eternity."

Like an ancient psalmist he warned Congress:

Fellow citizens, we cannot escape history. We will be remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trial through which we pass will light us down in honor or dishonor to the latest generation.

Wanting Congress to break and forget past traditions his words came keen and flashing:

"The dogmas of the quiet past are inadequate for the stormy present. We must think anew, we must act anew, we must disenthrall ourselves."

They are the sort of words that actuated the mind and will of the men who created and navigated that marvel of the sea, *the Nautilus*, and her voyage from Pearl Harbor and under the North Pole icecap.

The people of many other countries take Lincoln now for their own. He belongs to them. He stands for decency, honest dealing, plain talk, and funny stories. "Look where he came from—don't he know all us strugglers and wasn't he a kind of tough struggler all his life right up to the finish?" something like that you can hear in any nearby neighborhood and across the seas. Millions there are who take him as a personal treasure. He had something they would like to see spread everywhere over the world.

Democracy? We cannot say exactly what it is, but he had it. In his blood and bones he carried it. In the breath of his speeches and writings it is there. Popular government? Republican institutions? Government where the people have the say-so, one way or another telling their elected leaders what they want? He had the idea. It is there in the lights and shadows of his personality, a mystery that can be lived but never fully spoken in words.

Our good friend, the poet and playwright Mark Van Doren, tells us:

"To me, Lincoln seems, in some ways, the most interesting man who ever lived.

He was gentle but this gentleness was combined with a terrific toughness, an iron strength."

And how did Lincoln say he would like to be remembered? Something of it is in this present occasion, the atmosphere of this room. His beloved friend, Representative Owen Lovejoy, of Illinois, had died in May of 1864, and friends wrote to Lincoln and he replied that the pressure of duties kept him from joining them in efforts for a marble monument to Lovejoy, the last sentence of Lincoln's letter, saying:

"Let him have the marble monument along with the well-assured and more enduring one in the hearts of those who love liberty, unselfishly, for all men."

Today we may say, perhaps, that the well-assured and most enduring memorial to Lincoln is invisibly there, today, tomorrow, and for a long time yet to come. It is there in the hearts of lovers of liberty, men and women—this country as always had them in crisis—men and women who understand that wherever there is freedom there have been those who fought, toiled, and sacrificed for it.

I thank you. (Applause, the Members rising.)

Today we may say perhaps that the well-assured and most enduring memorial to Lincoln is invisibly there. Today, tomorrow, and for yet a long time to come.

It is there in the hearts of lovers of liberty, men and women. This country has always had them in crisis, men and women who understand that wherever there is freedom there have been those who fought, toiled, and sacrificed for it.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 932, AROOSTOOK BAND OF MICMACS SETTLEMENT ACT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 102–288) on the resolution (H. Res. 269) providing for the consideration of the bill (H.R. 932) to settle all claims of the Aroostook Band of Micmacs resulting from the band's omission from the Maine Indian Claims Act of 1980, and for other purposes, which was referred to the House Calendar and ordered to be printed.

IMPORTANT ISSUES OF WOMEN'S HEALTH CARE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon [Mr. WYDEN] is recognized for 60 minutes.

Mr. WYDEN. Mr. Speaker, I have taken out this special order with our distinguished colleague, the gentlewoman from Maryland [Mrs. MORELLA], to discuss the important issues of women's health care. I also want to thank the gentleman from Texas [Mr. DELAY] for his patience and graciousness, because he has been waiting as well.

Mr. Speaker, the reason that the gentlewoman from Maryland [Mrs. MORELLA] and I have taken out this special order today is that all of our colleagues know that tomorrow the Members will be debating the important Labor, HHS appropriations bill, and there is going to be a relatively short time for debate. The gentlewoman from Maryland [Mrs. MORELLA] and I think that it is especially important that a few minutes of time be taken tonight on the eve of this debate to discuss in particular the especially important provisions in this legislation as it relates to health care for women.

Mr. Speaker and colleagues, now, let me say that the 1980's were literally the Dark Ages for women's health care. During the last decade, inattention and occasionally outright antagonism toward women's health care issues have had catastrophic consequences for millions of women who suffer from cancer, reproductive health disorders.

The last 10 years was a decade of death for tens of thousands of women who lost their lives to breast, ovarian, and cervical cancer. Last year, for example, 150,000 women were told in this country that they had breast cancer, and more than 40,000 died from it. Last year over 33,000 women were diagnosed with ovarian or cervical cancer, and over 18,000 women died as a result.

Yet, again and again in the last decade, the Federal Government has put these dread diseases on the back burner.

Tomorrow as a result of the Labor and HHS legislation, very thoughtfully and well developed by the chairman, the gentleman from Kentucky [Mr. NATCHER], we will have a chance to do something about it.

There are just a couple of other problems that I would like to highlight, and then I will yield to the gentlewoman from Maryland to go through some of the provisions of the Labor and HHS bill.

As we have found in our hearings on the Health Committee that women have specifically been excluded from health care studies funded in part by their tax dollars. Cardiovascular illness is the No. 1 cause of death and disability for women in this country, but when a massive research project on heart ailments was developed, the multiple-risk-factor intervention trials, the population included 15,000 men and, incredibly, not even 1 woman. The famous study that found that taking an aspirin a day could help prevent heart attacks included 22,000 male physicians, but no women. A landmark 1984 study by the National Institute of Aging entitle "Normal Human Aging" included on information on women despite the fact that women make up an increasingly large percentage of the aging population.

The Federal Government spends over $8 billion annually on health research. Yet, again, obstetric or gynecological research at NIH have gotten short shrift.

Now, as the Congressional Caucus for Women's Issues has documented so well, and this is a bipartisan organization, women's health research would receive a significant boost under the Labor, HHS conference report that we will be voting on tomorrow.

Our colleague, the gentlewoman from Maryland [Mrs. MORELLA], has done outstanding work for so many years on women's health issues and many other areas of human services, and I just wanted to yield to her to outline some of those provisions and other issues that I know she feels very strongly about.

Mrs. MORELLA. Mr. Speaker, I thank the gentleman for yielding and I thank him for taking out this special order with me. I also want to add my commendation to the gentleman from Texas [Mr. DELAY] and the gentleman from North Carolina [Mr. BALLENGER], who have allowed us to come on first with this special order. We appreciate that very much.

Mrs. MORELLA. Mr. Speaker, I am pleased to join my colleague from Oregon in this special order. I share his strong support for the women's health provisions of the Labor-Health and Human Services-Education appropriations bill which will come to a vote in the House tomorrow. Passage of this legislation is critical to women—after many years of neglect, it finally recognizes and begins to address the gap in research on women's health.

The conference report provides funding for a number of provisions of the Women's Health Equity Act, the comprehensive health package developed by the Congressional Caucus for Women's Issues. The Office for Research on Women's Health at the National Institutes of Health receives $10.3 million, a substantial increase from the $2 million appropriated for the Office this year. In the first year $25 million funding is provided to the new women's health initiative, the historic long-term study on women's health proposed by NIH Director, Dr. Bernadine Healy. Funding is also provided for the establishment of a gynecological and obstetrical research program at the National Institute of Child Health and Human Development.

The agreement directs the National Cancer Institute [NCI] to fund breast, cervical, and ovarian cancer research at levels similar to those specified in the House and Senate committee reports, and it increases funding to NCI by $275 million. The National Cancer Institute has indicated that it will increase research funding by $42 million for breast cancer, an increase of 46 percent over current funding levels. NCI will spend an additional $8 million for ovarian cancer research, an increase of 67 percent, and will increase funding for cervical cancer by $8.6 million, a 37-percent increase.

Several important women's health programs will be expanded as well. The Breast and Cervical Cancer Mortality Prevention Program will receive full funding at $50 million, thereby funding mammography and Pap smear screening programs for low-income women in eight States. The Centers for Disease Control's sexually transmitted disease program will also receive an additional $2 million to begin a national screening program for Chlamydia in women and their partners. The conferees also agreed to an increase in funding for the title X family planning program.

Mr. Speaker, it is clear that the vote tomorrow will be a critical vote for women's health. The facts speak for themselves:

One in nine women can expect to develop breast cancer in their lifetimes, up from 1 in 14 women in 1960. The death rate from breast cancer increased 24 percent between 1979 and 1986. Researchers have no explanation for this increase.

Women are the fastest growing group of persons with AIDS. Yet, there is little research devoted to HIV/AIDS in women, despite anecdotal evidence that HIV manifests itself differently in women and that outcomes in women may differ from their male counterparts.

Women are twice as likely to suffer from depression as men. And yet, women have often been excluded from participation in early phases of testing for new drugs and from clinical treatment trials.

Despite these and other similar statistics, women's health research has received inadequate funding—the National Institutes of Health spends only about 13 percent of its budget on women's health.

I have been greatly encouraged by the new commitment to women's health demonstrated by Dr. Bernadine Healy since she became the Director of NIH. I am also pleased by the efforts of Dr. Ruth Kirschstein, who served as Acting Director of the New Office for Research on Women's Health over the past year, and the tremendous potential of the new Director, Dr. Vivian Pinn-Wiggins. I urge them to continue to work to close the gap in women's health research, and I, along with other Members of the Congressional Caucus for Women's Issues, will continue our efforts as well.

Tomorrow, the Members of this House will have the opportunity to demonstrate their commitment to women's health by voting for the Labor-HHS-Education appropriations conference report. I urge my colleagues to express their support for this desperately needed funding—vote "yes" on the conference report.

□ 1610

Mr. WYDEN. Mr. Speaker, I thank my colleague, the gentlewoman from Maryland. She has summed it up very well.

I would just say in conclusion, Mr. Speaker, that the problems that have been highlighted by the gentlewoman from Maryland seem to me to be of extraordinary importance. I am particularly concerned because several of our colleagues, the gentlewoman from Ohio [Ms. OAKAR], for example, has continually shown solid and substantial evidence that the mortality rate and the incidence rate for breast cancer in this country continues to rise.

The fact of the matter is that the bill of the chairman, the gentleman from Kentucky [Mr. NATCHER] that we will be voting on tomorrow is finally the beginning of an aggressive attack against these serious and devastating illnesses.

We all know there is a great deal more to do. The gentlewoman from Maryland and I share a great interest in contraceptive research. The fact is that in some Third World countries women have more alternatives and options for contraceptive services than they do in this country, according to some experts; so there is a lot more to do, but this legislation it seems to me is a beginning. It is a strong start.

Mr. Speaker, I am happy to yield further to the gentlewoman from Maryland for any concluding remarks she would like to give, but as she has said, I hope that our colleagues when they come to the floor tomorrow to listen to the debate on the Labor-HHS legislation will see that these provisions that relate to expanded services to attack the illnesses facing women in this country, that they will support the legislation. That is why we have joined forces on a bipartisan basis.

Mrs. MORELLA. Mr. Speaker, if the gentleman will yield further, I thank the gentleman for his very eloquent and appropriate statement.

I just wanted to mention that this has been long in coming, Mr. Speaker, because it was back in 1985 when the Public Health Service Task Force on Women's Health Issues issued a report on the status of the health of American women, and for the first time both academics and government policymakers agreed that women were disadvantaged in health care.

Then the National Institutes of Health in 1987 came up with their new policy to encourage the inclusion of women and then in 1989 at the end of the year some of our colleagues asked for GAO reports to see how they were progressing and found out there was very little progress that had been made because there was in fact no system in effect to monitor the effectiveness of the policy. Women were not brought in to clinical trials, and involving protocols and ultimately that led to Members of this House, particularly the Congressional Caucus for Women's Issues, meeting with the acting director at that time and directors of the various institutes at NIH to get the Office of Women's Health Research established. This is a result of that.

Also, the gentleman from Kentucky [Mr. NATCHER] has demonstrated his commitment to health for all Americans and has realized there has been a gender gap in terms of health for women.

Today it is significant that we do this special order because it is the 50th anniversary of the gentleman from Mississippi, Mr. JAMIE WHITTEN, who chairs the Appropriations Committee from whence this bill has come.

So again I use this as a way of strong encouragement that we come out with a very strong vote tomorrow on this bill.

Mr. WYDEN. Mr. Speaker, I thank my colleague, and will just wrap up by saying that we all know about appropriation bills and examining them with charts and graphs and figures and lots of small print and cold type, but I have always felt that what budgets really are all about is an expression of the values and the priorities we have in our country.

If the Members vote yes tomorrow on the Labor-HHS legislation we will have a chance to make a new priority for health services and health research for women.

Mr. Speaker, I want to thank my colleague, the gentlewoman from Maryland, for her excellent testimony and for the years of advocacy that she has put in on this important issue, and again thank our colleague, the gentleman from Texas, for letting us go out of order.

FIRST ANNIVERSARY OF FAILED BUDGET AGREEMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. DELAY] is recognized for 60 minutes.

Mr. DELAY. Mr. Speaker, I come to this well this evening with a rather heavy heart because I come to this well mourning an anniversary. I say mourning an anniversary because today is the anniversary of the signing of the budget agreement of last year. On November 5, 1990, the President of the United States signed the budget agreement of last year. We have had a year to look at this budget agreement. Most of us have seen the problems created by it. I just want to take a few minutes to hopefully bring this House up to date, because this House seems to have a very short memory. It cannot think, number one, long term except in terms of 2 years. That is long term for his body, and usually memory gets even shorter because no one seems to talk about the budget agreement of last year on that side of the aisle. We all seem to have forgotten, but I am here to try to remind the House that it happened. It was devastating to our economy, and more important than anything, it has cost Americans their jobs.

To refresh the memory of my colleagues, Mr. Speaker, I just want to point out why we had the budget agreement. We have the budget agreement because in 1985 we passed spending discipline in this Congress called Gramm-Rudman-Hollings. It was not perfect. It had its flaws, but by and large it brought discipline to this House. In fact, as a percent of the gross national product, the deficit fell to 3 percent of GNP by 1989, which is rather unfortunate because now at this time of the year because of the budget agreement, the deficit as a percent of GNP went up 2 percentage points in 1 year to 5 percent of GNP; but Gramm-Rudman brought some discipline.

Now, granted this House and the other body over the period of 4 years since 1985 tried to circumvent Gramm-Rudman, the discipline and the hard decisions that had to be made to cut spending brought on by Gramm-Rudman. They tried to circumvent it by coming up with real cute litle designs, but by and large it held spending in check, but come the spring of 1990, all of a sudden because of these little shenanigans that were going on trying to circumvent Gramm-Rudman, we found ourselves faced with a $100 billion sequester in spending facing us for the year 1991. In other words, we would have to make massive hard decisions to come up with the hundred billion dollars in less than one year; something that many of us were looking forward to because that kind of process, making those kinds of priorities were things that we had been calling for, or I had been calling for ever since I came to this House, Mr. Speaker; but the Congress and the President were faced with a hundred billion dollar cut in spending. They want to try to avoid that, so they called for a budget summit.

Now, in order to get the President of the United States to the table, the Democrats insisted that he lay taxes on the table, which caused a lot of problems later, but the point being that, first calling the budget summit together was a way of circumventing, once again, the hard choices that we should have made in coming up with the hundred billion dollars in spending cuts; and second, the most important part of this, is that in order for a summit to happen, the President of the United States had to lay increasing taxes on the table as a discussion item.

□ 1620

I and some of my colleagues, some of them here on the floor today, decided that this was a potential disaster for this country, that we could see in the future higher taxes, higher spending and higher deficits because we know from history—and we will point this our later—we know from history that no budget summit, no budget summit has given us lower deficits. There have been many budget summits.

Indeed, every budget summit that we have had since 1980 has increased spending, increased taxes and increased the deficit. So we knew what the history was, that this budget summit of 1990 was very dangerous. We went right to work and we had a methodical process of trying to fight, especially, increasing taxes and trying to come up with a budget that lowered spending without raising taxes, thereby truly lowering the deficit.

We created an organization under the Republican Study Committee called the Republican Study Committee Action Team, just six Members of Congress working day in and day out, plodding along, being persistent, opposing this budget agreement that was ultimately signed a year ago today.

I just want to remind my colleagues of some of the things that my colleagues and I pointed out during the debate, once the budget agreement came to the floor of this House.

I remember very distinctly—and in order to make sure I remembered distinctly, I went back to the CONGRESSIONAL RECORD of October 3, 1990, where, in my speech on the floor, I tried to convince my colleagues that this agreement would impose economically destructive, newer and higher taxes at a time when the economy was slipping into a recession.

I quoted the U.S. Chamber of Commerce at the time that the summit agreement would cost 200,000 jobs in 1991 and reduce employment by 400,000 jobs in 1995. I also reminded my colleagues at the time that, if we raised taxes, increased spending and increased the deficit in the face of a recession, the recession would be deeper and longer than we expected.

Well, I was wrong, I was wrong because I was being very optimistic. Instead of costing the economy 200,000 jobs in 1991, let me quote the Department of Labor:

> At the time I made that statement, there were 119,484,000 Americans employed in the United States. One year later there are 118,789,000 Americans employed in the United States. The budget summit did not kill 200,000 jobs, it has killed almost 700,000 jobs so far.

We said that the recession would go, if we did this, the recession would be longer and deeper. Not only were we wrong there because we were a little optimistic, thinking that the recession would bottom out in the summer and start back; we were told at the time, I remember distinctly, that the director of the Office of Management and Budget told me, "Oh, listen, recessions only average 11 months, and this recession won't go past 11 months."

Well, if I am adding correctly, we are in the 15th month of this recession, the 15th month of slow or no growth; people are losing their jobs and the economy does not look like it is going to climb out with any strength whatsoever. In fact, there are people suggesting that we would come out of the recession for a quarter or two and be right back into one or, at the very best, the economy would be anemic.

I hate to be the one to say "I told you so," but I told you so.

We came to this floor time and time again, trying to convince our colleagues, Mr. Speaker, that you just do not raise taxes in the face of a recession, that this agreement was not a 5-year agreement; that this was instead a 1-year agreement because this body only thinks of long term as 2 years.

We were proven pretty right on that score, too, because the first vote taken in this House in January, when we all came back and were sworn in, the very first vote busted the budget agreement because we changed the procedure where the OMB would be the scorekeeper on the budget, we changed it back to CBO.

Mr. Speaker, I yield to the gentleman from Missouri [Mr. HANCOCK].

Mr. HANCOCK. I thank the gentleman for yielding.

Mr. Speaker is the gentleman telling me, do I understand that right after we went back into session, that we undid everything that we had attempted to do with the budget summit by changing the way the expenses are scored? Is that what we did?

Mr. DELAY. That is exactly what we did. I do not know that you could stretch it to say we undid everything, because the spending caps—and we will get to that in a minute—are still in place. But we did bust the budget agreement on the first vote that this House took.

Mr. HANCOCK. We took the scoring away from the Office of Management and Budget and put it back into the Congress, and actually the negotiation was that the scoring would be done by the administration, am I correct?

Mr. DELAY. The gentleman is correct, absolutely; that is absolutely correct, thereby busting the budget agreement.

Mr. HANCOCK. And if I recall, that happened the day that they swore in the new Congress?

Mr. DELAY. When they swore in the new Congress, that is right.

Mr. HANCOCK. And then the next vote was to undo one of the key parts that the President, when he supported a tax increase to be able to get the budget summit——

Mr. DELAY. That is exactly right.

Mr. HANCOCK. It seems odd, the fact that that could happen and there was not more turmoil or more news media coverage back in January to stress that fact, to kind of cover at least—at least give a little bit of coverage to that. I remember talking about it, but the news media did not even talk about it, as I recall. Does the gentleman recall?

Mr. DELAY. I do not think the Nation was rightly informed by the news media that the budget agreement that we fought on for over 6 months was violated on the first vote taken by this body.

Mr. HANCOCK. I thank the gentleman.

Mr. DELAY. I thank the gentleman for his questions.

Mr. Speaker, the gentleman just emphasizes what we are talking about, this budget agreement is not a long-term agreement, it is not a 5-year agreement. We have already busted it several times.

Mr. Speaker, I have to give credit to the other side of the aisle when they criticized the President for busting the agreement—I should not use the term "busting the agreement"—busting the spending caps because of emergencies, and there were emergencies that the President felt were important to pay for and he asked for changing the spending caps because of those emergencies. But the point is that the appetite of this Democrat-controlled Congress has been whetted at all, it has not been diminished or decreased at all.

Bill after bill after bill has been introduced in this House and brought to this floor that bust the budget agreement, that increase spending, and the appetite is still there.

Mr. Speaker, I yield to my good friend, the gentleman from North Carolina.

Mr. BALLENGER. Mr. Speaker, I would just like to advise that the speakers that we had just previous to this special order spoke of a very good idea of trying to help women's issues and so forth. We are going to vote tomorrow on the Labor/HHS budget.

I think everybody recognizes that women's health issues are very important and so forth. But what was not mentioned in the discussion that they had and which fits perfectly with what the gentleman from Texas just said is that this Labor/HHS budget that is coming up tomorrow is $21 million more than the budget was last year, a 12-percent increase in one part of our budget. Can you imagine what this great and wonderful body here is doing about worrying about the caps and so forth? I think once we pass all of this, I think we are going to find that we have blown it everywhere, even in areas—it reminds me a little bit of, and I am sure the gentleman must have worked on United Fund back home, when everybody would come up and say, "We have this wonderful idea for the Girl Scouts, Boy Scouts, Red Cross," and each one of them wants a 50-percent increase. Then you sat down, as a very serious person, and said, "We will allow you 2 percent or 3 percent."

Mr. Speaker, if I am not mistaken, it was the group of the gentleman from Texas [Mr. DELAY] who said if we could hold our expenditures to 4-percent growth, that we did not need the budget summit agreement, we could actually work around with a 4-percent growth, holding everything to 4 percent and make it go.

☐ 1630

But this body does not know how not to spend. It is just that I think we would call it—alcoholism is for people that are addicted to alcohol. I do not know what it is called when someone is addicted to spending money. But I just wanted to add that we are continuing to do it, and we will continue to do it again tomorrow.

Mr. DELAY. Spendoholism I think is the term the gentleman is looking for, and I appreciate the gentleman pointing that out because he brings up a very real point that most Americans are not aware of and have yet to understand, that we do not control this body. The Democrats control this body, and they control it in such a heavy-handed way that they have shut down, virtually shut down, any opportunity to Republicans to offer substitutes and offer amendments.

Indeed the gentleman reminded me, and I am glad he did, that we have a budget; we had several budgets. The Republican Study Committee has a budget that was called the 4-percent solution, which was, I thought, rather unique and not so drastic as Members seemed to think. It simply said, "You could increase spending by 4 percent, but no more, no more than the increase in inflation."

In fact, we went back to the drawing board, spent many, many hours working with our Republican colleagues and came up with a substitute that missed the mark of a $500 billion reduction in deficits by, I believe, only $50 billion, and we had a budget that we wanted to bring to the floor that would have given us over a 5-year period a $450 billion reduction in the deficit and not raise one dime of taxes to do it. Yet the Democrats would not allow us to bring it to the floor.

Mr. BALLENGER. Mr. Speaker, is the gentleman saying basically that we had a good budget package that we could prove worked, and this body, which is run by Democrat leadership; they tell us what we can vote on, which bills can come up and so forth; is the gentleman saying that we never even had a chance to vote on that budget?

Mr. DELAY. The Committee on Rules forbade us from bringing our Republican alternative to the floor, our Republican alternative to the budget agreement to the floor for a vote, would not even allow us a vote on an alternative way of reducing the deficit by cutting spending and not—not even cutting spending, cutting the growth.

Mr. BALLENGER. Exactly.

Mr. DELAY. Cutting the increase in spending, but would give us a $450 billion deficit reduction over 5 years without raising a dime in taxes.

Mr. BALLENGER. If I may just interrupt the gentleman for just a second?

I wrote about the budget to the news media. Of course we do not seem to get very good coverage, and they came up with the Ballenger budget. It was not mine, it was yours; in fact, ours together. But when I sat down and explained it to them, they actually did an op-ed on the front page of the Charlotte Observer—not front page, editorial page, and, when it was all through, being the good news media that they are, they said, "Well, where did you get your budget projections from?," and, when I said we were using the same projections that the Democrats had used, they said, "Well, obviously it's rosy, and you can't count on it," and so forth and so on. But when the Democrats used those same projections, nobody got hurt at all.

It is kind of strange.

Mr. DELAY. I think it is very strange, and it is really unfortunate, but I think the American people, Mr. Speaker, need to understand that there are alternatives, there are amendments, that we propose on a regular basis but are not allowed to bring them to the floor of this House because of the party in control of this House, Mr. Speaker.

But I just want to quickly point out the results of this budget agreement that are now coming in and have been coming in since the beginning of the summer, and I think some of them are very poignant.

In fact, just today the Tax Foundation released an issue brief that I think really cuts to the point of this issue. First off, this is an issue brief dated November 1991 entitled "Budget Deal Perpetuates Fiscal Failure," by Paul G. Mersky, who is director of fiscal affairs at the Tax Foundation, and basically what this issue brief is about is it compares all the budget summits since 1982, and the results of those summits, and I referred to this issue brief earlier when I said no budget summit, no budget summit, has reduced spending or reduced the deficit. Indeed every budget summit has increased taxes above that projected, has increased spending above the projected spending reductions, and indeed every budget summit has increased the deficit targets by more than projected.

But they make a very interesting point, if my colleagues will just bear with me just for a minute. It makes a very poignant, a very poignant, look back at OBRA 1990, which is the Omnibus Reconciliation Act of 1990. The budget agreement is what we are talking about, and it says, and I quote:

> The product of intense and prolonged budget summitry between President Bush and congressional leaders, the Omnibus Reconciliation Act of 1990, OBRA, promised $500 billion in deficit reduction over 5 years, but, after only 1 of those 5 years, has passed.

After only 1 of those 5 years has passed.

> It is already clear the United States is in store for the three largest annual deficits in history. For the entire 5-year period, governed by the agreement, an estimated $1.08 trillion will be added to the national debt. Last year's agreement contained a little-known provision that boosted the Federal debt limit more than a trillion dollars, to $4.145 trillion, but at our current pace of deficit spending the debt ceiling will be surpassed before 1993, forcing the statutory debt limit to be increased once again.

Mr. HANCOCK. Mr. Speaker, will the gentleman yield?

As my colleagues know, there is another item that is not calculated or is not included in the gentleman's calculation, and that is the contingent liabilities which the American public, really the majority of them, are not told about. They are not informed about it.

Now for instance, when President Bush was sworn in 3 years ago, his State of the Union Message, he did not recognize at that time that he was going to pick up a potential $500 billion on the savings and loan. Now we are looking at other contingent liabilities, like, for instance, a lot of the SBA loans, guaranteed loans, FmHA, all of these, the veterans loans, that may come back. The contingent liabilities of the civil service retirement programs. Even the congressional retirement programs are pretty substantially contingent liabilities. That has been estimated, as the gentleman mentioned, at a figure of 4.145 I believe, or 125?

Mr. DELAY. That is correct.

Mr. HANCOCK. That has been estimated by a Tax Foundation as being close to four times as much money that could come home to haunt us at any time.

Mr. Speaker, it is time that we address that, and it is going to have to be done by a Congress that recognizes that we cannot continue to budget backwards, and by budgeting backwards what I mean is we decide in the Congress what we are going to spend. Then we decide who is going to pay for it. We have to start budgeting like anybody else has to budget, except an organization that has the power of the printing press, and that is to decide where the money is going to come from, and then determine how do we live within that amount of money.

So, backward budgeting is part of our biggest problem.

Mr. BALLENGER. I would like to just bring up kind of an aside. The gentleman was a businessman before he came, the other gentleman was a businessman before he came, I was a businessman before the gentleman came. Now suppose the gentleman had 435 employees that went out and were going to do a job for him, and they sold and made all the arrangements, and they made a $1 trillion mistake, like the numbers that were just mentioned. What in the world would the economic system—the gentleman, as a businessman, what would he do with those 435 employees? Not all of them participated in this terrible disaster that we created here, but say the majority of them. I know it had to be a majority, or we would not be in this situation.

I ask, "What would you, as the stockholders of our great business here, namely the U.S. Government, the United States of America, stockholders, being the voters, if you were to find out as a voter that I had a group of people that really messed up the future as far as my grandchildren and my great-grandchildren to come by a trillion dollars?"

Mr. Speaker, it seems to me I would get rid of the management, and, unless I am mistaken, the management is not us Republicans, the majority of whom voted against this bill.

□ 1640

Mr. DELAY. The vast majority, over two-thirds of the Republicans, voted against these agreements.

Mr. HANCOCK. It seems that somewhere in the back of my mind, I, as an American voter, would do my best to replace the Members that did this deal, and I hope the American people, some of them, are watching and might decide that that is a good idea.

Mr. DELAY. I think they really have to understand what is going on here and who is responsible and take action against them. You are absolutely right. If it were my business, I would fire any of those that made that kind of mistake if I could last long enough and recover my company in order to stay afloat by firing them.

Mr. DUNCAN. Mr. Speaker, will the gentleman yield?

Mr. DELAY. I am happy to yield to the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I had not intended to speak on this special order, but I just want to commend the gentleman from Texas [Mr. DELAY] for taking this special order to point out what has become a very, very serious problem in this Nation, and that is that the so-called deficit reduction package of last year was indeed not a deficit reduction package at all. In fact, I think, as you have previously mentioned, the deficit is going up and going in the opposite direction. The Office of Management and Budget, OMB, recently had to revise its estimate for the 1992 deficit upward to $348 billion. The Congressional Budget Office has estimated an even higher deficit, $375 billion. This comes on top of a national debt that, as the gentleman has pointed out, is now over $4 trillion. It just boggles my mind. It is hard for me or any of my constituents to understand a figure like $4 trillion, but we can understand or possibly understand that this fiscal year the Federal Government will lose approximately $1 billion a day, losses of a billion a day.

These are figures that would have shocked people like John Kennedy and Lyndon Johnson, who were considered very, very liberal for their time, and yet we are still spending like there is no tomorrow. Senator ERNEST HOLLINGS, a very respected Member of the other body and a respected member of the other party, said in regard to an appropriations bill recently, "Some day we have to wake up around here and realize that we are in deep trouble financially in this country."

Yet, just for one small example, one of my committees is the Committee on Interior and Insular Affairs. Every week we approve new studies and new buildings and new parks and new visitors centers that involve millions and millions of dollars. A couple of weeks ago we went in for a hearing and they wanted $450,000 to do a new study of an Indian artifact center in Oklahoma City. I know what will happen in a few months. That study will come back and they will ask for a $50 million or $60 million center to house these Indian artifacts.

I asked the question at that point. I said, "If this center is so needed, why can the State of Oklahoma not pay for it?" I said, "I know what the answer will be. The answer will be that the State is strapped for funds." That is true. All States are strapped for funds, but there is no State that is in as bad a financial shape as is our Federal Government. So one of the reasons for this Indian artifacts museum was, they said, it would improve tourism in Oklahoma City. I said, "If that is the cause, why cannot the city of Oklahoma City pay for it?" I know what the answer will be, that the city is strapped for funds. I know that is true, but there is no city, with possibly one or two exceptions, which is in worse financial shape than is our Federal Government.

If the people of this country do not wake up and realize what is going on, we are going to cause a crash like this country has never seen before, or at least a very severe economic problem. Frankly, as the gentleman from North Carolina [Mr. BALLENGER] pointed out a while ago, there will be no significant changes in the spending and the direction that this Congress is taking this country unless and until more conservatives are elected to Congress. This Congress today is the most liberal Congress that has ever been in the history of this country. There is little disagreement about that. Some people think it is good, and some people think it is bad, but without any question it is the most liberal Congress this country has ever had.

I simply wanted to commend the gentleman from Texas [Mr. DELAY] for taking this time to point out what has become a very, very serious problem in this Nation.

Mr. DELAY. I thank the gentleman from Tennessee.

Let me just make one quick point, because the gentleman has raised it. It is very difficult for the American people to understand $1 billion, or even $1 million, and put it in perspective. Let me just try and put it in quick perspective.

Because of this debt that we are running up, over $4 trillion, the net interest payments, just the interest payments on this debt, not talking about the contingency liabilities that the gentleman from Missouri [Mr. HANCOCK] brought out but just the interest on our stated debt, will cost over $200 billion in 1992. This amounts to 15 cents of every taxpayer dollar sent to Washington, DC will go to the interest, to pay the interest, and will cost the typical family of four $2,238 in 1992; $2,238 for every family of four, just to pay the interest, that is just the interest, on the debt.

Mr. DUNCAN. Mr. Speaker, I would like to make one other point before I sit down. Some people are criticizing the taxpayers for being stingy or whatever. Almost 47 percent, over 47 percent of the average person's income now is going to pay his or her State, Federal, and local taxes. The families of America have been pushed to the limit. They are paying all this money in taxes. They have very little left over to buy food and housing and so forth, and all the necessities of life.

William Murchison, a syndicated columnist, said not long ago, "There is no shortage of Government revenues. There is a surplus of Government expenditures." What is often left out of the debate in these questions is the fact that Government spending at all levels has gone up about three times the rate of inflation over the past 10 years. We have got to curb this excessive, greedy appetite of government and let the people have control of their money once again.

Senator PHIL GRAMM, the Senator from Texas, spoke in my State of Tennessee a few weeks ago. He said something that impressed me very much. He said, "The Democrats believe that we should have more spending on education, housing, nutrition, medical care." He said,

> You know what, I agree with them. But the difference is, who do you trust to do that spending? Do you trust the Congress and the bureaucrats to do that spending, or do you trust the families of America to do that spending? If we leave more money in private hands and in the hands of the families of America, do you know what they will spend it on? They will spend it on better housing, better education, better medical care, better nutrition. That is the secret to turning this economy around, getting more money into the private sector and into the hands of American families, and especially the middle income families.

Mr. HANCOCK. Mr. Speaker, will the gentleman from Texas [Mr. DELAY] yield to me to ask a question of the gentleman from Tennessee?

Mr. DELAY. I am happy to yield to the gentleman from Missouri.

Mr. HANCOCK. The gentleman from Tennessee mentioned in his statement having to do with the appropriations on the Committee on Interior and Insular Affairs. I wonder if it could be explained to me how we can appropriate $12 billion for the International Monetary Fund and not spend any money? I have not got that one figured out yet. I keep hearing that we can appropriate $12 billion and not spend any money. Could that be explained to me?

Mr. DUNCAN. I thank the gentleman from Missouri for raising that point. As the gentleman knows, that has been sort of a pet peeve of mine or something that I have spoken about on the floor several times, because that is not some minor appropriation, that is $12 billion, a $12 billion increase in the U.S. share or U.S. contribution to the International Monetary Fund, and that happens to come through another committee on which I serve, the House Committee on Banking, Finance and Urban Affairs.

E.J. Cutler, the main foreign affairs columnist for the Scripps-Howard newspaper chain, said in a column on September 23, "The plan is that this money will be used for humanitarian reasons to aid starving Russians," but he said, "Actually none of this money will go to feed starving Russians. Instead, this money will be used to bail out big banks in Tokyo, Paris, London, Frankfurt, and other places around the world."

□ 1650

What I have said repeatedly in here is my people do not mind helping people. We do not want to see people go hungry. But my people do not want the United States to spend $12 billion to increase our share of the U.S. contribution to the International Monetary Fund to bail out big banks in Tokyo, Paris, London, and places like that.

Now, you raise the point how can we say it is not an appropriation? Those who have supported this, which unfortunately include the administration, say that it has no budgetary impact. The way they say that is because we get back PDR's, preferred drawing rights, on the International Monetary Fund.

But these are loans made to Third World, severely depressed, underdeveloped countries. These are loans that could not be repaid if times got hard. These are assets that no country would buy if we got in financial trouble in our own country and needed to sell them.

So this is a very, very bad investment for the American taxpayer. It is just typical of the kind of investments that this Congress has made. It was part of a $37 billion foreign aid authorization bill that we fortunately and surprisingly voted down in the House last week, and that was probably the most pleasant surprise I have had since I have been serving in Congress.

Mr. HANCOCK. In other words, you are saying that these preferred rights would be similar to trying to collect a note from somebody that is bankrupt.

Mr. DUNCAN. It would be trying to collect a note from somebody who just could not pay. That is correct.

Mr. HANCOCK. In other words, we are going to appropriate, and this is part of the whole process we are into here, and exactly what this is all about. We are going to loan $12 billion to a bank that is not solid at all. In other words, it is money that disappears, and with a promise they are going to pay us back, which they cannot pay.

Mr. DUNCAN. That is correct. Syndicated columnist Pat Buchanan has pointed out several times that the World Bank and International Monetary Fund have been severely criticized for excessive salaries and benefits for their employees, which include membership in a private country club, their own country club in Montgomery County, MD, called Bretton Woods.

Mr. DELAY. It is not membership, they own the club.

Mr. DUNCAN. They give each of their employees $5,240 a year to send their children to private schools, all kinds of excessive benefits. The feeble excuse we give for having to do this is that we only have 20 percent or one-fifth of the membership of the Board of the World Bank and International Monetary Fund. So we vote against these things, the United States does, but we are always outvoted by other countries.

Mr. HANCOCK. Since we are looking at congressional perks, maybe we ought to look at those perks.

Mr. BALLENGER. One of the things lacking is the American people's ability to see what is going on up here. Like you and I are wearing a black arm band, or we were. I think yours is off now. We are both wearing dark suits, which is a little bit like the way Congress covers up what goes on up here. As long as you wear dark suits and dark arm bands, few people can notice what is going on.

If I might, one thing I would like to bring up, especially since the gentleman from Texas had a special order concerning one of the great arrangements in that fabulous budget process that we had, that we signed, and that was the area of one of the major things that the Democratic leadership got out of this whole thing, was we have to soak the rich. We have got to do something. If we are going to pass tax increases, we have to soak the rich.

So a big deal was to slap a luxury tax on. Remember what we went through explaining to the American people that here we put in this fabulous luxury tax to soak the rich?

Being the practical body that this place is, they did not have the slightest idea that the rich would not be hurt by this at all. In fact, we put a tax on yachts, obviously, yachts, planes, jewelry, furs.

What happened? The rich did not get soaked at all. The rich are intelligent people. They did not get rich by throwing money away.

What they did was they quit buying. The fabulous tax it was going to produce, I think $20 million and so forth, has turned out to be a complete negative. Just in the yachts alone, over 19,000 people have lost their jobs because the rich decided not to buy.

You can still go buy a yacht in Japan or Europe, but nobody is going to buy a yacht in this country. So in my little State of North Carolina, over 10,000 lost their jobs, manufacturing yachts for these rich folks that we were going to soak.

Now we have got 10,000 people that are not only not paying any income tax, but not paying any Social Security tax. Half of them might be on welfare. This was one of the genius ideas in that great budget package that a group of us fought.

Mr. DELAY. The gentleman is so right in talking about losing jobs. I did it in a general way. The 10,000 that the gentleman lost, the 10,000 jobs that the gentleman lost in North Carolina is only 10,000 out of over 700,000 jobs that have been lost this year as a result of this budget agreement because we are in a recession and there were other items.

Some Members say you cannot blame it on the budget agreement because we have the S&L deposit insurance protection of depositors and we had Desert Storm. But the S&L was the result of the same sort of economics.

The S&L problem was the same sort of economics that we are talking about here. The reason we are in the recession, and I reject the notion you cannot have continuous growth and sooner or later you are going to have a dip in the economy, I reject that notion. You will have a dip in the economy when external forces force people to make decisions that stop them from buying, stop them from investing, stop them from expanding their business, stop them from creating jobs.

When you have external forces, the Government in this case, just absolutely screwing down, screwing down on the thumbs of American businesspeople, entrepreneurs, then you are going to have these recessions.

Then while you are screwing down on the thumb, you take a big hatchet and chop off the thumb at the same time as we did with the budget agreement of last year, and you get the results we have. By the way, there has been a study that suggests that we would be better off with a recession like we had in 1982, because at least at the end of that recession we had a big rebound in growth in the economy. We are not going to have the rebound, when and if we get a rebound in this recession, that we had in 1982. In fact, they call that the growth cap. That is going to cost almost $3,000 in the standard of living for a family of four. Three thousand dollars lost in the standard of living for a family of four because we are not doing anything to allow us to rebound into the area of around 5-percent growth.

Mr. BALLENGER. What really bugs me, and I have said it before on this floor, is when I came here the greatest thing we were supposed to do was make our businesses in this country more competitive. We have to do everything we can to make us more competitive, to create new jobs, and so forth.

The first 3 or 4 years actually was that way. Then the people that controlled this place decided, you know, it was about time that businesses had too much freedom. Maybe they had some money that was misspent. But we have to restrict what they are doing.

Ever since I have been here, the last 3 or 4 years, the basic idea here is we have got to put more restrictions on business, we have got to put more costs on business. Forget about whether we are competitive with the Japanese, and so forth.

A real example I think explains it best, is when all those people lost their jobs in the yacht business, one of the yacht companies had a plant in Jacksonville, FL. So what did they do? They went bankrupt and they closed the plant. Immediately the Japanese came in and they bought that plant. What are they doing? Manufacturing boats to ship to Japan.

We were far and away the leaders in the technology of building the best yachts in the world. We had a plus on our foreign exchange in everything. It was one of the best things we had where we were competitive throughout the world.

We in Congress, actually destroyed that business, and we have been trying for the last year at least, at least most of last year, trying to persuade this body that if you take that tax off, it is not going to cost you anything. The tax is not producing any money, so why not give these people a chance to go back to work?

Well, Congress does not want it that way.

Mr. DELAY. I appreciate the gentleman bringing up the point, because I want to expand on the point and get down to the bottom, and that is the American family. The gentleman from Tennessee mentioned earlier that 47 percent of the American family's income goes to pay State, local, and Federal taxes. That is very true.

But what he did not mention was what the gentleman was just mentioning, is what does regulation cost the American family? It is hard to estimate, because all these regulations that the gentleman was talking about, including the luxury tax that maybe you and I do not pay directly, but we pay indirectly, we have import quotas on certain imports that raise the cost of goods. We have environmental regulations. Maybe they are good, maybe they are not.

□ 1700

You have to look at them as a cost of living that we have environmental regulations on automobiles, for instance, that have raised the cost of automobiles at least $1,500 more than if we did not have those regulations on the automobiles. We just go down the line. That is the Federal level.

If we go to the State level, there is licensing regulations that raises the cost of doing business. If we get to the local level, we have zoning regulations, maybe good, maybe bad, but they are a cost to the American family.

In fact, I have seen estimates as high as 60 percent of a family's income goes to government costs directly or indirectly. I have seen estimates as low as 52 percent of a family's income goes to government costs directly or indirectly. Even if it is the lowest estimate, 52 percent, that is an incredible notion to think about. And the American family, Mr. Speaker, ought to think about it.

Over 50 percent of a family's income goes to government in one way or another. You would think, you would think that if you had an item that was taking over 50 percent of your income, you would pay attention to that item, that you would be involved in watching how and hopefully keeping the costs down as much as possible. You would think you would spend a little time each week watching how these costs are put on you and how it takes more of your income. Yet the family, the American family does not see it that way, unfortunately, because if they did see it that way, and they would only spend an hour a week, just an hour a week being involved in one way or another in politics, one way or another, they would see a much different world. We would see a much different country.

Mr. BALLENGER. There is a point that the gentleman was leading up to in his statistical analysis that of all the budget agreements that have come along, we have never reduced the spending. We have increased taxes and increased spending. Unless I am mistaken, when Ronald Reagan first tried in 1982, he was trying to work out something, this great and wonderful body here in Congress promised him a certain amount of cuts in operating, in government itself. But they never produced. Congress itself does not know how. It has never learned how to cut anything.

Mr. DELAY. That is a great point because every budget agreement, as pointed out in this study by the Tax Foundation, shows that every budget agreement had tax increases in it but they were always linked to pledged spending reductions in future years. In other words, every time taxes went up, unfortunately our President, and I love him to death, Ronald Reagan would give in to taxes because the Democrats promised spending reductions. Every one of them that he was for, the Democrats promised a spending reduction that never materialized.

Now, there were reductions in the increase in spending, but real spending reductions never materialized. Therefore, we had this huge increase. There is an old saying, taxes are forever, but spending cuts seems to be put off year after year after year. So we have had a huge influx of revenues. Revenues over the 10 years of the 1980's went up 78 percent, yet spending doubled, went up 100 percent. Spending went up 100 percent.

Mr. BALLENGER. There is a statistic that I have used elsewhere where after the arrangements were made in 1982, the income of the Federal Government increased at an average of $80 billion a year. Suppose that you have cost-of-living increases for Social Security and Medicare and Medicaid and suppose that uses up $40 billion of that $80 billion in additional income, you still have $40 billion left. If somebody knew how to manage a budget and they figured that out, had 6 years to go at $40 billion, that is $240 billion that could have been applied to the deficit. But we never got there. Just like the gentleman says, over and over again, we continue to overspend. This body does not know how to not overspend.

Mr. DELAY. If I may expand on that, I think it is a very viable point and it is a point about the budget agreement of last year and what the results were.

I have two studies that point out the results of the budget agreement, what happened. And what happened was, increased taxes. We increased for the first time in the history of this country taxes as a percent. And the only way you can judge these things and compare apples to apples is usually done by a percent of the gross national product, a percent of our production in this country.

For the first time in the history of this country, we are now paying Federal taxes to the tune of 20 percent of GNP, our gross national product. And we will be 20 percent plus every year hereafter unless we do something about it. That is the first time in the history of this country.

We normally run an average somewhere between 15 to 17 percent of GNP. We are now at 20 percent of GNP. By this budget agreement spending was allowed to increase, under this discipline everybody seems to tout around here. We have these spending caps and spending disciplines.

Well, spending discipline allows you to increase spending 10 percent, almost twice the inflation rate. That is not spending discipline to me. And that is only on discretionary spending, defense, international spending. We did not do anything to entitlement spending, did not have any discipline on entitlement spending.

In fact, entitlement spending and net interest payments, which we did not put a cap on either, on the debt, comprised nearly 65 percent of our total outlays. Yet they are completely exempt from any spending caps.

This is mandatory spending, which will be allowed to climb an average of over 8 percent annually through 1996, more than double the projected rate of inflation during the same period.

So we did not put any discipline on entitlement spending, spending such as Medicaid, debt interest, unemployment compensation, food stamps and those kinds of things. There is no discipline on those areas. Yet Members on that side of the aisle run around and tout what these great spending restraints we put on the budget are. So we have raised the taxes. We have increased spending.

The deficit is going through the roof. We have got about 10 minutes left here. I just want to point out this study, but it is an excellent study that shows basically that the tax deficit relationship has remained fairly constant in recent years, with no evidence that the tendency of new taxes to stimulate new spending has decreased.

If anything, the data of this study suggest a slight increase so that for every dollar of new taxes, we will have $1.59 of new spending, which is the total reason why the deficits are going through the roof.

The paper by Mr. Mersky makes an interesting point. Every budget summit, including the one that culminated in the budget agreement of last year, as I said earlier, has led to, it is a vicious circle that we are in. And we have got to break the circle. These budget summits lead to higher taxes, higher spending, higher deficits that run us higher in debt and give us higher interest rates, that forces us to raise taxes, that allows higher spending, higher deficits, higher debt, higher interest rates that forces us into higher taxes. And it is a downward spiral that we have to break.

I want to finish with this, and my colleagues can jump in any time they want. I just want to finish very quickly with this: We are not Johnny-come-lately's because every Member that has spoken on this floor during this special order, and many others, over 130 of them on our side of the aisle, understood at this time last year that we were headed for disaster with this budget agreement and we told everybody that this was so. And we just did not sit back and say, "It is sad, it is sad."

We had alternatives. We mentioned earlier that we had an alternative to the budget agreement that the Democrats would not allow us to bring to the floor for a vote. We have alternatives this year. There are several pro-growth packages, tax cuts that have been introduced as early as January of this year that have been pushed by Members of our side of the aisle, several packages, very well thought out, very strong packages that are based on strong economics.

□ 1710

Not only that, but there is an effort, as we speak, to design a budget for next year that is real spending, real reductions in spending, real disciplines on this body and no tax increases. Yet, it takes breaking the budget agreement. So that we do have alternatives.

Hopefully someday we will have either a fair majority party that will allow us to bring our philosophies to the floor and present to the American people for a vote. I mean, this is the party of fairness, the party of fairness that will not allow open debate, will not allow alternatives to their position to be brought to the floor of this House for a vote, will not even allow small amendments, in some cases amendments that have very little impact on the bills that are brought here. We do not have opportunities, because we are not the majority party.

Mr. Speaker, we have the ideas. We have the economics. We understand what is important to the economy of this country. We have exhibited that time and time again, and hopefully someday the American people will hear it.

Mr. BALLENGER. If the gentleman will yield further, you know, the gentleman mentioned that because of the budget agreement and because of the recession and so forth that over 700,000 people have lost their jobs this year. But one of the things that I noticed in that budget agreement that we had, and generally speaking when you are trying to produce discipline in an operation and so forth, the first thing you try to do is see if you are overstaffed, and in that particular budget agreement, and I made the statement over and over again, and nobody has told me that I am wrong, nobody was allowed as far as I was concerned, nobody in Washington, DC, lost their job; 700,000 workers in the rest of the country did, but the Government workers here in Washington, DC, were well taken care of.

I would just like to say that somewhere along the line this body has got to recognize that we are overstaffed in Congress, we have got too much money involved and everything we seem to do is just spend more and more and tax more.

Mr. DELAY. The gentleman is so right. I greatly appreciate the gentleman from North Carolina, who is a stalwart, a real persistent Member of this body, that sometimes along with this Member from Texas gets very frustrated, but he is always there always pitching, he is always expressing the views of his constituents, and I appreciate his participation, just as I appreciate the participation of the gentleman from Tennessee.

Mr. DUNCAN. If the gentleman will yield further, I know time is short, but I just want to take another moment to comment on some things that the gentleman said. The gentleman mentioned the 100-percent increase in Federal spending.

The first Reagan budget was $581 billion. The first Bush budget was $1,160 trillion. The next Bush budget was $1,230 trillion. Now we are talking about approximately $1,500 trillion worth of Federal spending, an almost tripling in the short time since President Reagan first went in until now.

I used to get so aggravated when I would read, especially during President Reagan's term in office, "such-and-such budget cut," and when you would read below the headlines you would find there was no cut at all. It was some agency that got $2 billion last year, and they requested $3 billion for the next year, and Reagan cut them back to $2.5 billion, but that actually was a 25-percent increase over what they got the year before.

Federal spending has gone up by leaps and bounds. It has gone up, as the gentleman has pointed out, well over 100 percent in the last 10 years. It has been about three times inflation, and as I mentioned a minute ago, the quote from William Murchison, when he said that there is no shortage of Government revenues, there is a surplus of Government expenditures.

Edward Rendell, who is the current liberal Democrat nominee for mayor of Philadelphia, said in a hearing a couple of months ago, he said, "Government does not work because it was not designed to. There is no incentive for people to work hard, so many do not. There is no incentive to save money, so much of it is squandered." That is the problem today. The American taxpayers are very angry, and resentful, toward Government, because they feel it is not responsive to them.

But, more importantly than that, they feel they are not getting their money's worth from Government, and in many ways they are right, and so I just want to once again commend the gentleman from Texas for taking this special order.

Mr. DELAY. I think we are out of time, and I could not have concluded better than the gentleman from Tennessee and the way he presented it. The gentleman is another one of those stalwarts who are trying to defend the American family from having its income ripped away from them and spent on things that they either have no use for or do not want it spent on and, therefore, we find ourselves in the mess that we are in.

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BUDGET DEAL PERPETUATES FISCAL FAILURE

(By Paul G. Merski)

(Figures referred to in the article are not reproducible in the RECORD.)

When fiscal year 1991 closed on September 30th with a deficit $60 billion higher than last year's, American taxpayers had learned another hard lesson from the budget summiteers. As a result of last fall's budget deal signed into law by President Bush on November 5, 1990, $164 billion in new taxes were raised and promises of spending restraint made, but instead of spending restraint, taxpayers are stuck with higher spending, record deficits and a national debt of heroic proportions. Put simply, last year's budget "deal of the century" was not a good deal for the American taxpayer because it perpetuated the vicious cycle of higher expenditures, taxes, deficits, debt, and interest costs.

LOOK BACK AT OBRA'90

The product of intense and prolonged budget summitry between President Bush and congressional leaders, the Omnibus Budget Reconciliation Act of 1990 OBRA '90) promised $500 billion in deficit reduction over five years. But after only one of those five years has passed, it is already clear the U.S. is in store for the three largest annual deficits in history (see table 1 and figure 1). For the entire five-year period governed by the agreement, an estimated $1.08 trillion will be added to the national debt (see table 2). Last year's agreement contained a little-noticed provision that boosted the federal debt limit more than a trillion dollars to $4.145 trillion. But at our current pace of deficit spending, the debt ceiling will be surpassed before FY'93 forcing the statutory debt limit to be increased once again (see table 3 and figure 2).

TABLE 1.—FAILED BUDGET DEALS: NEGOTIATED DEFICIT TARGETS VERSUS ACTUAL DEFICITS—1982–90

[Dollars in billions]

Negotiation year	Fiscal year	Negotiation's target	Actual deficit
1982	FY83	−$104	−$208
1984	FY85	−181	−212
1985	FY86	−150	−221
1987[1]	FY88	−144	−155
	FY89	−136	−153
1989	FY90	−100	−220
1990[2]	Deficit targets eliminated		
	FY91[3]	....	−282
	FY92[3]	....	−342
	FY93[3]	....	−245

[1] 2-year agreement.
[2] 5-year agreement.
[3] OMB 1991 Mid-Session review estimates.

TABLE 2.—BUDGET SUMMARY—FISCAL YEARS 1980–96

[Dollars in billions]

Fiscal year	Receipts	Outlays	Deficit	Deficit as percent of GNP
1980	$517.1	$590.9	−$73.8	−2.8
1981	599.3	678.2	−78.9	−2.6
1982	617.8	745.7	−127.9	−4.1
1983	600.6	808.3	−207.7	−6.3
1984	666.5	851.8	−185.3	−5.0
1985	734.1	946.3	−212.2	−5.4
1986	769.1	990.3	−221.2	−5.3
1987	854.1	1,003.8	−149.7	−3.4
1988	909.0	1,064.1	−155.1	−3.2
1989	990.7	1,144.1	−153.4	−3.0
1990	1,031.3	1,251.7	−220.4	−4.1
1991	1,068.7	1,350.9	−282.2	−5.0
1992	1,145.5	1,493.8	−348.3	−5.9

TABLE 2.—BUDGET SUMMARY—FISCAL YEARS 1980–96—Continued

[Dollars in billions]

Fiscal year	Receipts	Outlays	Deficit	Deficit as percent of GNP
1993	1,233.3	1,478.9	−245.6	−3.9
1994	1,334.3	1,466.4	−132.1	−2.0
1995	1,427.1	1,500.7	−73.6	−1.0
1996	1,517.0	1,572.5	−55.5	−.7

Source: Office of Management and Budget; Congressional Budget Office; and Tax Foundation computations.

TABLE 3.—GROSS FEDERAL DEBT, PUBLIC DEBT, AND INTEREST PAYMENTS—FISCAL YEARS 1980–92

[Dollars in billions]

Fiscal year	Public debt	Gross Federal debt	Federal net interest payments
1980	$709.3	$908.5	$52.5
1981	784.8	994.3	68.7
1982	919.2	1,136.8	85.0
1983	1,131.0	1,371.2	89.8
1984	1,300.0	1,564.1	111.1
1985	1,499.4	1,817.0	129.4
1986	1,736.2	2,120.1	136.0
1987	1,888.1	2,345.6	138.6
1988	2,050.3	2,600.8	151.7
1989	2,190.3	2,867.5	169.2
1990	2,410.4	3,206.3	184.2
1991	2,717.6	3,617.8	197.0
1992	2,995.4	4,021.1	206.3

Source: Office of Management and Budget.

The rapidly rising net interest payments on this debt are reaching staggering proportions. In FY '92 alone, net interest on the debt will cost over $200 billion (see figure 3). This amounts to 15 cents of every tax dollar sent to Washington and will cost the typical family of four $2,238 in taxes. These interest costs keep taxpayers spinning in the vicious cycle of higher taxes, higher spending, higher deficits, higher debt, and higher interest payments—leading back to higher taxes.

OBRA '90 dismissed deficit targets as a budgeting tool, replacing them with fixed annual spending caps on defense, international and domestic discretionary spending. But despite these much-vaunted spending caps, federal spending will consume a peacetime record 24.9 percent of the gross national product (GNP) in FY 1991. The associated flow of deficit red ink will reach a staggering 5.9 percent of GNP, a level exceeded only once since World War II, in 1983.

The latest Office of Management and Budget figures show that the cumulative deficit for fiscal years 1991–1995 will be $555 billion higher than promised last September. This failure is largely due to the absence of anything in last year's budget agreement that will restrain the largest and fastest growing components of the federal budget. Entitlement spending and net interest payments on the debt comprise nearly 65 percent of total outlays, yet they are completely exempt from any spending caps. This "mandatory" spending will be allowed to climb an average of over 8 percent annually through 1996, more than double the projected rate of inflation during the same period.

Clearly there is no hope of reducing the deficit when 65 percent of spending is left unchecked. This is evident in the $252 billion re-estimate of deficit projections since the February 1992 Federal Budget release (see table 4 and figure 4). These higher deficits were primarily fueled by additional five-year cumulative spending increases of $64 billion in Medicaid, $39.2 billion in debt interest, and $11.7 billion in unemployment and food stamps.

TABLE 4.—FEBRUARY DEFICIT ESTIMATES VERSUS MID-SESSION REVIEW ESTIMATES—FISCAL YEAR 1991–96

[Dollars in billions]

	February estimates	Mid-session review	Difference
1991	$318.1	$282.2	−$35.90
1992	280.9	348.3	67.4
1993	201.5	245.7	44.2
1994	61.8	132.1	70.3
1995	2.9	73.6	70.7
1996	19.9	55.5	35.6
Total	885.1	1,137.4	252.3

ASource: OMB.

WHY BUDGET DEALS HAVE FAILED

The failure of last year's budget deal to control Uncle Sam's spendthrift ways comes as no surprise to experienced observers of budget summitry. Budget deals in 1982, 1984, 1985, 1987, and 1989 all fell far short of their stated goals. OBRA '90 may be a different approach to deficit reduction, but its results have been the same: higher taxes, higher spending and higher deficits.

Ironically, fiscal years not preceded by budget summits actually produced the most real deficit reduction. In FY'84, the deficit dropped $23 billion when spending growth was held to 5.4 percent—half the rate of revenue growth, and in FY'87, spending grew only 1.4 percent, enabling the budget deficit to fall a record $71.5 billion (see figure 5).

Although each budget summit had its own dynamic, three reasons for their poor performance emerge:

When the deficit reduction gets tough, the "tough" change the rules. Frustration with persistent budget deficits had provoked the passage of the original Gramm-Rudman-Hollings law (GRH–I) that promised a balanced budget by 1991, but when the time came for the promised spending cuts, lawmakers avoided any tough choices by raising taxes, rewriting GRH–I, and promising a balanced budget two years down the road in 1993 under GRH–II. When the bite in GRH–II would have forced spending restraint, it was time to rewrite the rules again, and the promised balanced budget was pushed back to 1996 (See table 5).

TABLE 5.—ORIGINAL AND REVISED DEFICIT TARGETS—1987–96

[Dollars in billions]

	GRHI 1985 law	GRH II 1987 law	OBRA 1990[1]
1987	144		
1988	108	144	
1989	72	136	
1990	36	100	
1991	0	64	327
1992		28	317
1993		0	236
1994			102
1995			83
1996			0

[1] The deficit targets are subject to revisions in future years under procedures established by the Budget Enforcement Act of 1990.

Source: Office of Management and Budget.

Tax increases which take effect immediately are paired with pledged spending reductions in future years. Every budget summit deal has included significant tax increases, and last fall's $164 billion in additional revenues over five years was the second largest tax increase in history. This was "balanced" with large amounts of projected government scrimping and saving, but unlike new taxes which are collected as soon as they're enacted, long-term spending cuts demand constant discipline that has not been witnessed over the past decade. The only spending cuts that can be counted on are cuts in the current fiscal year, not promised future cuts from built-in spending increases.

Government spending has outpaced both revenues and inflation. Between FY'81 and FY'91, revenues have grown a hefty 78.3 percent, but spending levels doubled, rising 22 percentage points faster than revenues. Spending growth averaged 7.9 percent annually, a full 3.2 percentage points higher than needed to keep pace with the decade's 4,7 percent average inflation rate. Clearly, the deficit cannot be reduced if spending is allowed to outpace the growth in revenues and inflation.

OUTLOOK

Only ten of the last 63 budgets have paid their own way without deficit spending, and it has been 23 years since the last balanced budget. As the vicious cycle of higher spending, higher taxes, and higher deficits leads to higher debt and higher interest costs, the American taxpayer can only look back ruefully at the $164 billion "budget deal of the century."

1982 Summit at a glance

	Billions
FY 1982 deficit	$128
1982 Summit agreement (3-year plan):	
Revenue increases	98
Spending reductions	31
FY 1983 deficit target	104
Actual FY 1983 deficit	208

1984 Summit at a glance

	Billions
FY 1984 deficit	$185
1984 Summit agreement (3-year plan):	
Revenue increases	49
Spending reductions	110
FY 1985 deficit target	181
Actual FY 1985 deficit	212

1985 Summit at a glance

	Billions
FY 1985 deficit	$212
1985 Summit agreement:	
Spending restraint	52
FY 1986 deficit target	150
Actual FY 1986 deficit	221

1987 Summit at a glance

	Billions
FY 1987 deficit	$150
1987 Summit agreement (2-year plan)	:
Revenue increases	28
Spending reductions	49
FY 1988 deficit target	144
FY 1989 deficit target	136
Actual FY 1988 deficit	155
Actual FY 1989 deficit	152

1989 Summit at a glance

	Billions
FY 1989 deficit	$152
1989 Summit agreement:	
Revenue increases	14.2
Spending reductions	13.8
FY 1990 deficit target	100
Actual FY 1990 deficit	220

1990 Summit at a glance

	Billions
FY 1990 deficit	$220
1990 Original Summit agreement (5-year plan):	
Revenue increases	164
Spending reductions	336
FY 1991–95 promised cummulative deficit	527
FY 1991 deficit	[1]282
FY 1991–95 cummulative deficits	[1]1,082

TAXES AND DEFICITS: NEW EVIDENCE ("THE $1.59 STUDY")

(By Richard Vedder, Lowell Gallaway, and Christopher Frenze[1])

EXECUTIVE SUMMARY

In recent years higher taxes have been repeatedly justified to reduce the Federal

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Footnotes at end of article.

budget deficit. This strategy has been based on a self-styled "pragmatic" approach, pragmatism being defined as what works. Concern about the effect of new taxes on the economy, or on the spending habits of public officials, was given short shrift by pragmatism. The crowning triumph of this strategy was the 1990 budget agreement, which raised taxes $160 billion, supposedly to reduce the deficit. However, the facts contained in this study and elsewhere show that Federal spending actually accelerated after the 1990 tax increases were enacted, and budget deficits have hit record levels. The only problem with this fiscal pragmatism is that it doesn't work.

This stimulation of higher deficits by tax increases is not surprising. An earlier study by the same authors on the postwar years 1947–86 found that every $1.00 in new taxes generated $1.58 in new spending. Other research as well as practical knowledge about how Congress operates suggests the same general conclusion: new revenues will be spent on more or bigger programs rather than deficit reduction. The hemorrhaging of spending under the 1990 budget summit was predictable and in fact predicted by its Congressional opponents. The only mystery is how anyone could believe that Congress would not spend all of the new taxes, and then some.

This new study reaches several conclusions about the relationship between taxes and spending, based on an analysis of 1947–90 data, and more recent budget information:

The tax-deficit relationship has remained fairly constant in recent years with no evidence that the tendency of new taxes to stimulate new spending has decreased. If anything, the new data suggests a slight increase so that $1.00 of new taxes would be expected to generate $1.59 of new spending.

Over the history of the United States, the tendency of Congress to spend additional taxes rather than devote them to deficit reduction has climbed to an all time high. In the first decades of our fiscal history, tax increases were associated with declines in Federal deficits. Currently, increases in taxes have resulted in sharply higher deficits.

The budget "deficit reduction" agreement is a dismal failure which has pushed taxes and budget deficits higher than ever before.

The tax-deficit data at the state level do not show that tax increases spur higher deficits. This suggests that institutional constraints such as constitutional restrictions on deficit spending, and line item veto power of governors, may be useful tools in controlling the spending habits of legislators.

WILLIAM V. ROTH, Jr.,
Senior Republican Senator,
Joint Economic Committee.

In a study prepared in 1987 for the Ranking Republican Senator of the Joint Economic Committee, we argued that the econometric evidence for the 1947–86 period suggested that every $1.00 of new Federal tax and nontax revenues was associated with $1.58 in new Federal spending, implying that budget deficits rose with increases in the aggregate Federal tax rate.[2] This new follow-up study reaches six conclusions:

First, the tax-deficit relationship observed in 1987 has been maintained with little change with the passage of four more years of American Federal fiscal history. In other words, the 1987 to 1990 experience suggests that there has been no evidence of any diminution in the high Federal marginal propensity to spend new tax revenues; if anything, that propensity to spend has risen.

Second, the evidence suggests that tax increases have been associated with dramatic increases in expenditures for income transfers of various kinds, but with actual decreases in purchases of defense-related goods and services. Non-defense service spending is not affected by changing tax revenues. Thus new tax initiatives seem to be closely tied to efforts to redistribute income rather than offer new governmental services; clearly those initiatives have tendered to increase, not reduce, budget deficits.

Third, the historical evidence from the first administration of President George Washington to the present shows that the Federal propensity to spend new tax revenues has grown consistently over time, as the political advantages of new spending have increased. At one time, new taxes were associated with very significant deficit reduction, but not in recent decades. Furthermore, the 1990 budget deals, which resulted in the largest tax increase in U.S. history, also generated the largest deficits on record.

Fourth, the findings are better understood by use of a simple cost-benefit theoretical framework of fiscal behavior developed by Dwight Lee of the University of Georgia and Richard Vedder of Ohio University, that draws on the laws of demand and supply. In the context of the findings reported here, the framework reveals that in the postwar era there has been a pronounced increase in the marginal political benefits to spend; put differently, "the political demand for spending his increased."

Fifth, the positive relationship between taxation and deficits observed at the Federal level is not obtained at the state and local level, suggesting that different institutional arrangements, have a real impact on political and thus fiscal behavior. This suggests that those interested in constraining the amount of spending growth to or below the growth in revenues might learn from the experience of the states.

Sixth, a variety of other studies tend to confirm the findings reported here. Thus our confidence in the basic findings has been strengthened, not diminished, since the initial 1987 study.

I. THE TAX, SPENDING AND DEFICIT RELATIONSHIP, 1947–90

Taking data on Federal expenditures and Federal revenues from the national income accounts for the calendar years 1947 through 1990 we regressed Federal tax (revenue) levels against Federal spending levels.[3] The statistical results indicate that each $1.00 in tax revenues was associated with $1.59 in expenditures, with the result highly significant statistically.[4]

In 1987, we argued that additional variables might affect receipts and expenditures and thus should be incorporated into the analysis for control purposes. For example, receipts and expenditures of the Federal government vary with the business cycle. We accordingly introduced a variable measuring real economic growth, Growth, and the rate of joblessness, Unemployment.[5] Similarly, military spending presumably grows with major threats to national security as reflected in wars. Accordingly, we introduced a "war dummy" variable, War.[6] Finally, we introduced a variable for unanticipated inflation, Inflate, defined as inflation in the year in question minus the average of the previous three year's inflation rate.[7] Introducing all of these additional variables makes a negligible difference in the reported tax-spend relationship:

Spending=14.453 (3.442) + 1.587 taxes (6.383) + 0.0806 unemployment (4.087).

−0.044 growth (0.525) + 0.480 war (0.833) − 0.128 inflate, (1.496).

$\bar{R}^2$=.782, D−W=2.033, F−statistic=22.972, where the numbers in parentheses are t−statistics. Excepting the unemployment variable, all the control variables are statistically not significant.

The model explains well over three-fourths of the variation in spending over time, compared with about two-thirds in the similar model reported four years ago. The tax-spend relationship has actually strengthened slightly, suggesting the propensity to spend out of tax revenues has, if anything, increased with time.[8]

In this regard, in 1987 we stated "perhaps the changing institutional framework (e.g., the Gramm-Rudman budget law) has changed sufficiently so that the historical experience is not valid, although we are highly skeptical of that perspective given the growing indications the Gramm-Rudman limits are not going to be met in 1987."[9] It appears our skepticism was justified, that the changes in effect in the late 1980s made no discernible impact on improving the budget deficit by constraining spending.

II. DISAGGREGATING THE TAX-SPENDING RELATIONSHIP

Using alternative versions of the model (including, even, somewhat different time periods), the evidence is extremely consistent with the view that increases in tax revenues are associated with even bigger changes in Federal spending. Nonetheless, it is possible that the infusion of Federal revenues has a differential impact on spending. Have all forms of spending been equally enhanced by increases in tax revenue?

Following standard Federal classifications, we divided spending into six categories: purchase of defense goods and services; purchases of non-defense goods and services; transfer payments; grants-in-aid to state and local governments; net interest payments; and "other," category that primarily includes subsidies to government-owned business enterprises. Using regression analysis, we then looked at the relationship between Federal tax (and nontax) receipts and expenditures in each of these categories over the 1947–90 period. In doing so, we used fiscal year data (because the detailed expenditures were more easily available on that basis) rather than calendar year data as in the 1987 study.[10] We also dispensed with inclusion of control variables in the regressions, mainly because they seem to make no difference in the results relating to the tax-spend relationship, but also because of data difficulties on a fiscal year basis.

Using the fiscal year data, we observe that each $1.00 in new revenues is associated with $1.57 in new spending, as opposed to $1.59 obtained using the calendar year data. Table 1 indicates the tax-spending relationship for each of the six categories of spending outlined above.

TABLE 1.—ESTIMATED IMPACT OF $1 INCREASE IN TAXES, 1947–90

Spending category	Impact of $1 increases in Federal tax revenues	Statistical significance
Transfer payments	+$1.15	1 percent.[1]
State and local grants-in-aid	+.48	1 percent.[1]
Net interest payment	+.31	1 percent.[1]
"Other payments (mostly subsidies to Government enterprises).	+.03	5 percent.[1]
Defense goods and services	−.39	1 percent.[1]
Non-defense goods and services		Insignificant.
All spending	1.57	1 percent.[1]

[1] Probability that the observed positive or negative relationship could have occurred by chance—that is, the observed relationship is spurious.

Source: See text.

There is a very strong positive relationship between tax revenues and transfer payments.

Indeed, spending on transfers alone changed more than $1.00 for each dollar of tax revenues. Similarly, there are important increases in grants-in-aid and interest payments associated with new taxes, and a minor one between taxes and "other" expenditures. The interest-tax relationship is interesting. It implies that: one, increased taxes increased deficits and the interest payments on the national debt; two, increased taxes served to increase interest rates on government securities (perhaps because higher nominal interest rates are necessary after taxes rise to obtain any given after-tax return), or, three, both of the above factors.

Transfer payments, grants in aid, interest payments and "other" all involve the redistribution of income. Money received from taxpayers and, through borrowing, from new bondholders, is distributed to individuals, governments, old bondholders, and government enterprises. Together, each $1.00 in new taxes is estimated to be associated with nearly $1.97 in income transfers in one form or the other.

By contrast, new tax revenues are associated with reductions in government purchases of goods and services. There is no relationship between non-defense purchases and taxation. Regarding defense spending, a dollar in new tax revenues is estimated to be associated with a 39-cent reduction in defense spending.

These results suggest that new tax monies are associated not only with greater deficits but with reductions in traditionally provided government services. The results lend support to those who argue that tax increases promote income redistribution, or what some economists call "rent-seeking," the use of political power by special interest groups to obtain added income without a corresponding provision of added labor or capital services.

III. SOME HISTORICAL EVIDENCE

The tax-spend-deficit relationship has changed drastically over time. We used regression techniques similar to those used initially to estimate the relationship between spending and taxation for four fairly lengthy (at least 35 years), predominantly peacetime periods in American history: 1791–1825, 1826–1860, 1867–1913, and 1947–1990. Other control variables, shown unimportant above, are excluded mainly because of data limitations.

The results are summarized in Graph 1. In the earliest years of the Republic, revenue increases were not associated with spending increases; indeed spending fell slightly (the type of change envisioned in the 1990 budget agreement). Even as late as 1867 to 1913, tax increases seem to induce some spending increases, but also some deficit reduction (if spending rises 72 cents per dollar of new taxes, then the other 28 cents of that dollar goes for deficit reduction).

Over time, the Federal government's "marginal propensity to consume" has risen consistently. The political benefits of spending are on the rise. Whereas, in an earlier era, shifts in the deficit or tax supply curve raised the possibility that a tax increase could lead to some deficit reduction, that has not been the case since World War II (and was becoming less the case even before then).

[Graphs not reproducible in the Record].

Fiscal outlook under the 1990 budget agreement

All of the data needed to empirically measure the fiscal results of the 1990 budget agreement are not yet available. However, currently available information does indicate the general direction of tax and spending trends under this agreement, and their conformity to the model presented earlier. A review of the facts shows that the analytical framework presented in 1987 and in this paper is more than adequate to explain the increases in Federal spending and deficits after adoption of the 1990 tax increases.

On the basis of the public choice assumptions presented in our 1987 paper, several results of the 1990 budget agreement were predictable. These result follow from the notion of "fiscal illusion," a distortion of the cost-benefit calculus by the way publicly provided goods and services are financed. Fiscal illusion explains how the actual results of policymakers' decisions can contradict the expressed aims of the policymakers.

One form of fiscal illusion, "entails justifying additional taxation for a relatively popular purpose, though revenues will actually be diverted by government to other uses deemed less popular. For example, tax increases may be justified to the public as a means of deficit reduction, whereas the actual result will be to stimulate additional spending on programs favored by influential special interest groups. This 'bait and switch' tactic would be all the more effective under complex or incoherent budget processes which make taxpayer oversight almost impossible.'"[11]

Screened from the public by an increasingly complicated and arcane budget process, policymakers in 1990 could have been expected to justify the largest tax increase in U.S. history by claiming it was needed to produce the largest deficit reduction ever. However, the tax model used here predicts that the actual result of the large tax increase would be to spur higher, not lower, Federal spending. As a result, Federal deficits would be expected to rise to record levels. Unfortunately, this is precisely what has transpired under the 1990 budget agreement.

The budget agreement initially was presented as a cumulative reduction of nearly $500 billion in the deficit over a five-year period. About $160 billion in projected new revenues were raised, $18 billion in the first year and over $30 billion annually in each of the next four years. Around $120 billion was supposedly cut from hypothetical increases in domestic program spending over the same period, while debt service savings amounted to $59 billion. Projected defense spending was trimmed $91 billion.

It was claimed that $2 in spending "cuts" were provided for every $1 in tax increases.[12] Of course, virtually all of the spending "cuts," aside from those in defense, were from projected "baseline levels" which assume ever higher spending levels. Unfortunately, an examination of actual Federal outlays shows no evidence of actual spending control.

It will be recalled that the 1990 budget agreement was justified as a draconian measure to address the urgent "crisis" caused by deficit spending. Nonetheless, a review of budget data after the agreement reveals the unsurprising fact that Congressional spending is rising briskly. Under current circumstances, one of the best tests of the restraint imposed by the agreement is the trend in domestic discretionary spending, annually appropriated expenditures directly under Congressional control. A serious spending control measure to reduce the deficit would at least be expected to restrain this category of spending.

However, as Table 2 shows, domestic discretionary spending under Congressional control has actually accelerated under the budget agreement. Between fiscal 1990 and 1991, domestic discretionary spending jumped from $182.5 billion to $199.8 billion, an increase of $17.3 billion, or 9.5 percent. In fiscal 1992, congressional spending in this category is projected to increase at least another $12.2 billion. Over the two fiscal years 1991–92, domestic discretionary spending will increase 12 percent, one of its fastest growth rates on record.

TABLE 2.—SELECTED OUTLAYS BY BUDGET ENFORCEMENT ACT CATEGORIES

[In billions of dollars]

	Domestic discretionary	Defense discretionary	Mandatory[1]
1985	145.4	253.1	436.4
1986	147.4	273.8	448.3
1987	147.0	282.5	460.3
1988	158.2	290.9	482.2
1989	169.0	304.0	507.5
1990	182.5	298.5	546.8
1991[2]	199.8	307.8	614.4
1992[2]	212.0	300.4	659.0
1993[3]	223.2	293.3	702.5

[1] Total mandatory spending less deposit insurance outlays.

[2] Estimate under Budget Act assuming discretionary caps.

Source: Office of Management and Budget.

Mandatory outlays growth will also be strong under the budget deal. Taken as a whole, there is no evidence of restraint. The 1991 increase in this category amounts to $67.6 billion, a rise of 12.4 percent. Less than one year into the budget agreement, intense pressure was rising for expanded outlays in unemployment insurance and for other social spending. A review of the data on domestic discretionary and entitlement spending makes it difficult to avoid the conclusion that Federal spending remains out of control.

The direction of discretionary defense spending under the budget agreement can also be seen in Table 2. The downward trend is clear, even as expressed in nominal terms. While the trend in real defense spending will obviously depend on the future inflation rate, it is evident that defense spending will probably fall at least 3 percent a year in real terms after fiscal 1991. Given recent international developments and the likely response of Congress to the changed military situation, defense spending will come under even more severe pressure in coming years. Despite an historic opportunity to reduce the burden of taxes and spending on the U.S. economy, Congress seems more disposed to change the composition of this burden than to remove it.

Of course, the Congressional Budget Office (CBO) and Office of Management and Budget, both promoters of the agreement, project declining deficits several years into the future, even as they revise the near-term deficit figures upward. According to the CBO, in the first year of the "deficit reduction" agreement the deficit soared from $220 billion in 1990 to $279 billion in 1991. In 1992, the deficit will shoot up again to a level of $362 billion. Whatever else may be said about the consequences of the 1990 budget "enforcement" act, under its provisions the budget deficit has increased to record levels. In the face of these historically unprecedented deficits, the response of Congress has been to pass measures to increase deficit spending even further.

Of course, the picture is clouded somewhat by outlays to cover deposit insurance obligations. In the near term, outlays for this purpose are substantial, while the presumed sales value of assets in the out-years are projected to reduce the deficit in 1995 and 1996. However, once the fluctuating deposit insurance outlays are exluded, even the rosy CBO budget agreement projections show virtually no change in the deficit between 1991 and 1996, even assuming the so-called deficit reduction provisions remain in place and are not modified or violated. Table 3 below shows that deficits will actually be higher under the agreement than before.

TABLE 3.—DEFICIT SPENDING REMAINS HIGH

[In billions of dollars]

	Revenues	Outlays	Deficit
1990	1,031	1,194	162
1991	1,058	1,260	202
1992	1,141	1,389	248
1993	1,223	1,443	220
1994	1,299	1,502	203
1995	1,377	1,566	189
1996	1,449	1,649	200

[1] Assumes discretionary caps.

Source: CBO.

Despite the claims made for the "deficit reduction" agreement by its proponents, the budget data show that the deficit will soar to a new high in 1992. In retrospect, it appears that the tax increase was large enough not only to stimulate new spending in 1991, but also to encourage additional domestic spending in future years. This demand for new spending now threatens to unravel even the weak spending constraint established by the budget pact.

Since enactment of the 1990 tax increase there has been a profund change in the substance of congressional debate on fiscal issues. There has been virtually no public discussion of the need for deficit reduction, but instead repeated calls for expanded social spending. The extent the budget agreement hinders this policy direction, spending advocates have recommended involving the budget law's emergency provisions, or repealing the spending restraints altogether. Needless to say, the Members of Congress who have urged that the budget deal be junked to accommodate new spending have not called for a rollback of taxes equivalent to those raised last year.

In promoting the alleged success of the "deficit reduction agreement," CBO has claimed that "the longer-run picture has improved."[13] However, even newly available CBO data show that the budget deficit in the long term will grow to a level of $313 billion by 2001, assuming the spending caps work as intended.

In addition, given the current make up of Congress, there are clear signs that defense spending may not be used in coming years to rebate the peace dividend to the taxpayers or to reduce the deficit, but to finance even more domestic spending.

IV. EXPLAINING THE RESULTS: A COST-BENEFIT APPROACH

Spending and tax changes do not occur by chance out of the blue. Governmental decisionmakers are responsible for changes in taxation, spending and, residually, the Federal budget deficit. Although there are many participants in the decisionmaking process, including the President, bureaucrats in the Executive Branch, and possibly even the Federal judiciary, the prime decisionmakers are the Members of Congress who must approve the spending and tax plans of the Nation.

Dwight Lee and Richard Vedder have devised a model which is expositionally useful in explaining the proximate causes of the observed tax-spending relationship noted above.[14] They assume that politicians, like other citizens, try to maximize their "utility" or satisfaction in life. While utility maximization involves behavior that enhances income and power, a prime consideration to lawmakers is job security. Therefore, a given tax or spending change is evaluated in part on its impact on voters and electoral prospects.

It is assumed that increased Federal spending confers what Lee and Vedder term "marginal political benefits" on legislators.[15] While the total benefits increase as spending increases, the extra or marginal benefits from, say, another billion dollars in spending diminishes because of what is often called "the law of diminishing returns" (the first billion dollars in farm subsidies, for example, wins more added votes than the 21st billion dollars in spending).

Added spending *must* be financed, however, and taxation and borrowing, the two viable alternatives, both impose political costs on lawmakers. The greater the amount of taxation or deficit financing, the greater those marginal political costs become. This is often called the "law of increasing costs" by economists.

The Lee-Vedder model is shown in Graph 2. The MB line represents the marginal political benefits of spending, and can be called the "spending demand curve." The D line represents the marginal political costs of deficit spending, while the T line represents the marginal political costs of taxation. The D line lies above the T line since throughout history politicians have mainly resorted to taxation in Federal finance, suggesting the marginal political costs of financing a given level of spending, at least until recent decades, is higher by borrowing than by taxing. The growth of Federal spending to new highs, however, suggests that the optimal tax-deficit mix has moved toward borrowing as resistance to ever higher taxation has intensified.

The D and T lines can be added together horizontally to obtain the total marginal political cost of financing government, which is denoted as the MC (marginal cost) curve, but which can be viewed as the "revenue supply curve," just as its components D and T can be viewed as the "deficit supply curve" and the "tax supply curve" respectively. All the variables in Graph 2 are expressed as a percent of national income (or GNP), to abstract from shifts in the curves reflecting simple growth in income or output over time.

The intersection of the political demand curve MB and the revenue supply curve determines the equilibrium or stable level of spending, taxation and deficits. As drawn, total spending will be G*, deficits will equal G_d, and taxes will equal G_t. At any other combination of taxes and deficits equal to G*, politicians can increase their net benefits (utility) by moving the combination indicated in Graph 2.

Suppose that the marginal political benefits of spending any given proportion of the national income grows over time. The MB curve will move to MB+, equilibrium spending will rise to G+, deficits will grow to G_d,+ and taxes will rise to G_t+. In other words, an increase in the marginal political benefits from spending Federal funds leads to higher levels of spending, higher levels of taxation, and higher levels of deficits—exactly the experience of the postwar era.

Thus, if this model approximates reality, the proximate cause of rising levels of spending, taxation and deficits has been the increased political benefits of spending funds. Despite rhetoric about deficit reduction, the propelling factor in fiscal finance has been the growing political gains from spending over time.

By contrast, suppose the D curve had shifted to the left, meaning the marginal political costs of deficit spending had risen. That would lead to a corresponding shift to the left in the MC curve, and a new equilibrium situation where spending and deficits would fall, but taxes would rise. This is the stated objective of the 1990 budget agreement, yet that agreement was not signed in an environment in which the marginal political costs of deficits was rising. Indeed, contemporary history suggests the motivating factor in fiscal changes has come form the changing benefits of spending, not changing sensitivity to budget deficits. Unless the underlying political costs change, agreements such as the 1990 one are not sustainable over any long-run time horizon.

The evidence that defense spending falls with tax increases may seem hard to relate to the theoretical approach here, particularly since other forms of spending tend to rise considerably. This would suggest that the marginal political benefits of spending varies significantly with the type of spending. For many constituencies, higher defense spending represents a cost, not a benefit. It probably serves the rhetoric surrounding tax increases (usually couched in deficit reduction terms) to push for real, tangible defense cuts (which are often politically popular), while giving only lip service to politically unpopular (with some interest groups, at least) transfer payment cuts (which are often even explicitly ruled out of discussion in budget negotiations).

V. THE STATE AND LOCAL GOVERNMENTAL EXPERIENCE, 1947–90

While the postwar Federal experience has been characterized by increases in spending, taxation *and deficits*, how does that compare with the experience of state and local governments? Has a dollar in new revenue been associated with more than a dollar in new spending (meaning larger budget deficits), or less than a dollar (meaning smaller budget deficits)?

Using the same simple regression procedures as before, and the same control variables for comparison purposes, we regressed state and local spending against state and local revenues for the calendar years 1947–90.[16] the results are:

Spending equals 17.463 (3.126) plus 0.927 tax (182.871) minus 1.328 growth (3.273).

Plus 1.697 war (0.645) minus 2.053 unemployment (2.259).

Plus 0.189 inflate (0.607), R^2 equals .999, D–W equals 1.903, R-statistic equals 8523.35, where again numbers in parentheses are t-values.[17]

The results, which are extremely robust statistically, suggest that each $1.00 in new state and local revenues (primarily taxes) was associated with 93 cents in new state and local spending. Unlike with the Federal government, spending rose less rapidly than tax revenues, and tax increases improved, rather than worsened, the cash position of government.

Why the difference in results between the Federal, state and local governments? While a full discussion of this is beyond the scope of this paper, we would suggest that there are major differences in institutional budgetary constraints.[18] State and local governments, excepting the state of Vermont, are subject to state-balanced budget amendments. While those amendments do not always include all forms of spending (e.g., capital expenditures), they do impose some constitutional constraints on spending. Accordingly, state and local politicians are typically constitutionally mandated to finance new expenditures immediately by spending reductions in other areas or by a tax increase, imposing political costs not generally observed at the Federal level. Other tax or spending limitations (e.g., California's Proposition 13) also exist. In addition, in most states governors posses line-item veto power.

The difference in results are significantly striking to suggest that perhaps the Federal authorities could learn a lesson from the state and local governmental components of the Union. While other differences may exist, the variation in constitutional frameworks is particularly striking and worthy of study.

VI. OTHER PERSPECTIVES ON THE ISSUE

One major potential criticism of the analysis above relates to causality. Demonstrating that taxes and spending are positively related does not "prove" that higher taxes "cause" higher spending. It is possible that higher spending induces higher taxes, rather than the other way around.

The theoretical analysis above, however, suggests that the tax-spend relationship's causality really is best evaluated in terms of the underlying motivations for observed changes. The Lee-Vedder theoretical approach is highly consistent both with traditional microeconomic approaches to human behavior and the empirical evidence. It suggests that taxes and spending simultaneously increase because of inexorable pressures on politicians to increase spending that arise from the political benefits that spending confers The genesis of the pressures seems to come from what Mancur Olson terms "distributional coalitions" who want funds not to enhance governmental services, but to increase incomes or what is termed by economists as "economic rent." If this view is correct, attempts to reduce the budget deficit will be futile until the "rules of the game" change in a manner that alters the political incentive structure, raising the political costs of deficits, lowering the political benefits of spending, lowering the political costs of taxation, or a combination of the three.

With that very major caveat in mind, it is possible by looking at lagged relationships between taxation and spending to draw inferences about causation. Our own limited efforts in this area, not reported here, are far more consistent with the view that tax changes induce spending changes. Others, however, have observed the opposite.[19] There has been even a larger body of evidence, however, in support of the view that taxation causes spending changes rather than the other way around, at least at the Federal level.

Manage and Marlow used causality testing of the Granger variety to conclude that taxes promote spending.[20] Rati Ram, investigating the contradictory Manage-Marlow and Anderson-Wallace-Warner findings, concludes that Manage and Marlow are correct at the Federal level, namely that revenue changes induce expenditure change.[21] In this regard, Ram also agrees with the econometric evidence presented by Paul Blackley on the American Federal experience.[22] Interestingly recent evidence for Canada supports the hypothesis that causation goes from taxation to expenditures rather than the other way around.[23]

Concluding, a majority of the evidence supports the "tax and spend" hypothesis over the "spend and tax" one. Yet we wish to remind the reader that if the political benefits from spending are positive and continue to grow over time, often being greater than the political costs associated with financing that spending, the deficit problem cannot and will not be resolved through tax measures.

VII. CONCLUSIONS

Increases in Federal tax revenues continue to be associated with greater increases in Federal expenditures, leading us to conclude that tax increases do not reduce budget deficits. The historical experience under the Gramm-Rudman era (1987–90) was little different than in the decades preceding that experience. The evidence suggests that higher tax revenues are associated with massive increases in income redistribution activity of various forms, especially transfer payments. Indeed, redistributionist activities seem to have crowded out some traditional expenditures of government services, particularly defense.

The cause of the deficit problem does not appear to be inadequate taxes (which now are at a near record level in relation to total output) but rather the political gains from spending, gains that are rising over time, particularly to finance redistributionist activity. Historically, there was a time when tax increases meant deficit reduction, but that time passed in the early part of this century. State and local governments still are able to constrain spending increases to levels equal to or less than the taxes raised. Why? We would tentatively suggest that the answer may lie in different institutional constraints, such as balanced budget amendments, spending limitation amendments, line-item vetoes, etc., measures that lower the marginal political benefits of new spending to political decisionmakers. In any case, the Federal fiscal problem is not likely to be solved without significant behavioral change on the part of those decisionmakers, and those changes are not likely given the current system of political rewards and costs.

FOOTNOTES

[1] Richard Vedder and Lowell Gallaway are both Distinguished Professors of Economics and Faculty Associates of the Contemporary History Institute of Ohio University. Christopher Frenze is a Republican staff economist with the Joint Economic Committee of Congress. The support of the Earhart Foundation for Professor Vedder was instrumental in developing some of the findings.

[2] "Federal Tax Increases and the Budget Deficit, 1947–1986: Some Empirical Evidence," Congressional Record, April 30, 1987, pp. S 5754–5755.

[3] The basic data were mostly taken from the 1991 "Economic Report of the President," especially p. 381, and from U.S. Bureau of the Census, "The National Income and Product Accounts of the United States, 1929–76" (Washington, D.C.: Government Printing Office, 1981), pp. 122–123.

[4] In the actual statistical estimation, both variables were divided by GNP. Estimating absolute dollar amounts would not change the estimated coefficients, although it would impact on the constant term in the regression equation, an irrelevant consideration here. The obtained result is (ignoring an autoregressive adjustment term introduced to deal with serial correlation): Spending equal −9.914 (2.115) plus 1.586 taxes (6.424), R^2 equal .601, D-W equal 1.971, where the numbers in parentheses are t-values.

[5] We used the growth in real GNP as our measure of growth, and the unemployment rate for civilian workers; both indicators are found in the 1991 Economic Report of the President.

[6] The variable took the value of one for the years 1950–53 and 1965–72, and the value of zero for all other years.

[7] The annual CPI value for all urban consumers was used in calculating price changes; in the 1987 study, calculations were based on December-to-December price changes.

[8] In 1987, we reported a $1.58 coefficient on the tax variable. Incorporating some data revisions to some variables, we now obtain a coefficient of $1.50 using the 1947–86 period, but the reported $1.59 using the 1947–90 period, suggesting the additional years strengthened the positive tax-spend deficit relationship.

[9] op. cit., Congressional Record, p. S 5755.

[10] Ibid., pg. S 5755.

[11] Ibid., pg. S 5755.

[12] Floor statement by Representative Paul E. Kanjorski (PA), "Congressional Record," October 26, 1990, pg. H 13078.

[13] "The 1990 Budget Agreement: An Interim Assessment, "CBO Papers," Congressional Budget Office, December 1990, pg. 5.

[14] "Friedman Tax Cuts Vs. Buchanan Deficit Reduction As the Best Way of Constraining Government," unpublished paper (under editorial consideration by a professional economic journal) available from the authors upon request.

[15] This assumption is commonly made by many economists, including some Nobel laureates. See, for example, Milton Friedman and Rose Friedman, "Tyranny of the Status Quo" (San Diego: Harcourt Brace Jovanovich, 1983), and James M. Buchanan and Richard E. Wagner, "Democracy in Deficit: The Political Legacy of Lord Keynes" (New York: Academic Press, 1977).

[16] The basic data are found in the 1991 "Economic Report of the President," p. 382.

[17] The tax and spending variables were not related to GNP as in the federal tax-spend equation, a factor that has no impact on any of the results except regarding the constant term.

[18] Rati Ram has observed interesting international differences in the tax and spend relationship. See his, "A Multicountry Perspective on Casuality Between Government Revenue and Government Expenditures," "Public Finance," 1988, No. 2, pp. 261–270.

[19] George von Furstenberg, Jeffrey Green, and Jin-Ho Jeong, "Tax and Spend, or Spend and Tax?" "Review of Economics and Statistics," May 1986, pp. 179–188, and William Anderson, Myles Wallace and John Warner, "Government Spending and Taxation: What Causes What?" "Southern Economic Journal," January 1986, pp. 630–639.

[20] Manage, Neela and Michael L. Marlow, "The Causal Relation Between Federal Expenditures and Receipts," "Southern Economic Journal," January 1986, pp. 616–629.

[21] "Additional Evidence on Causality Between Government Revenue and Government Expenditure," "Southern Economic Journal," January 1988, pp. 763–769.

[22] Blackley, Paul R., "Causality Between Revenues and Expenditures and the Size of the Federal Budget," "Public Finance Quarterly," April 1986, 139–156.

[23] Ahiakpor, James C.W. and Saleh Amirkhalkhali, "On the Difficulty of Eliminating deficits with Higher Taxes: Some Canadian Evidence," "Southern Economic Journal," July 1989, pp. 24–31.

THE CRISIS OF PUBLIC CONFIDENCE FACING GOVERNMENT AND THE CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. OBEY] is recognized for 60 minutes.

Mr. OBEY. Mr. Speaker, I am here tonight to discuss the crisis of public confidence facing the American Government and the U.S. Congress.

Mr. Speaker, I ran for Congress in the first place because I had been inspired by the idealism of John F. Kennedy's 1960 campaign. He advised Americans everywhere to "Ask not what your country can do for you, but what you can do for your country," and I really believed that government could be used to give all Americans a chance at a better life. I wanted to be part of the fight to bring that about.

Because the executive branch of government is today in the hands of people who share the values and the outlook of the established economic elite in this country, the Congress for good or ill is the only hope of working people. But it cannot effectively provide that hope if the American public does not trust this institution and if they do not have faith in its basic integrity and its sensitivity to their basic needs.

That is why I have been such a critic of certain congressional practices throughout the years and why I have been at the center of virtually every major effort to reform the Congress since the day I was elected in 1974. I led the vote that blew up the arbitrary and unresponsive concentration of power in the hands of a few old bulls who ran the Appropriations Committee like their own private plantation. I was one of the leaders of the revolution which took out the establishment and removed three out-of-touch committee chairmen in 1975. We tried, but failed, to remove a fourth with disastrous results a few years later.

I was one of five people who organized an effort to do the same thing with two committee chairmen this year.

The only major campaign finance reform legislation in 15 years to pass the House until last year was my bill, and I have introduced new legislation on campaign finance reform this year. I also chaired the reform commission which rewrote the House code of ethics after the Hays affair.

Under that code, the House ethics committee has undertaken 37 investigations of alleged misconduct by Members of this body, and as a result, 14 Members were punished, 13 resigned before punishment, and before punishment was likely to be imposed, and 6 voluntarily corrected their behavior to the satisfaction of the bipartisan committee.

The reforms which my commission wrote required public disclosure of the financial affairs of Members of Congress so that their constituents would have some way to tell whether they had a financial conflict of interest or not. Those reforms placed limits on the income a Member could receive outside of his or her congressional salary, and we severely limited the ability of Members of Congress to earn income through practices which represented in our views conflicts of interest.

Those actions cost me a number of friendships in this institution, because, frankly, they cost a number of Members a lot of money, some more than $100,000 a year from the loss of that income, outside income, that was forbidden under the new rules.

When we were pushing those outside-income limitations, including limiting the source of income that lawyer-Members of the House could receive, I recall one lawyer-Member coming to me and saying, "OBEY, you do not understand. My law practice does not take any time away from my job. It is just that as we rise in seniority, lobby groups might decide to toss more business our way, and we get a cut of the action." That Member later went to jail. But his comments indicated why it was necessary for us to do what we did.

Again, last year, I was a member of the bipartisan task force which further strengthened the code of ethics which governs the House.

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We took some tough actions that were unpopular in the institution and out. They were essential to protect the integrity of the legislative process; so I think my record in pursuing the highest standards of this institution is clear.

I am proud of the steady progress we have made in making this institution more responsive, more open, and a more honorable place in which to conduct the public's business.

But having said all that, Mr. Speaker, it is clear that despite that progress, the American public is angry about their government and angry about their Congress.

Now, I believe the main reason for that is that people believe that government is simply not dealing with their basic problems and has been making decisions that are in the interests of a select few and not the overall general public, and unfortunately they are right. All too often in the eighties the Congress rolled over and supported decision after decision of the executive branch of government that quadrupled deficits, tripled our national debt, rewarded the rich, squeezed the middle class, wasted billions of dollars, and crippled the ability of this economy to grow fast enough to provide a decent standard of living for millions of Americans.

My record on those actions is pretty clear. I offered the major public interest alternative to both the Republican and Democratic budget and tax packages in 1981, packages which kicked off the waste and greed binge of the eighties. A majority of Democrats in this institution supported both my amendments, but we got run over by the White House and their allies.

Throughout the decade we have continued the fight, but because of the power of the Presidency and the many special interest allies that it has served, we have been on the defensive. I believe the public will not truly regain its confidence in its politicians until those politicians finally get back to the business of supporting policies that reward hard work for everybody, not just the wealthy, cut wasteful spending both military and domestic, defend America's legitimate interests on the trade front, reform the tax structure so that it quits squeezing the working middle class and pampering the rich, attacks runaway health costs, and make the right investments in our economy. But I believe the ability of this Congress to attack those problems will be unnecessarily crippled if we do not also deal with some of the shortcomings that the public sees in the way the Congress does its business.

In dealing with these issues, I think three things are important.

First, to correct some false statements that have been made about congressional perks or practices; second, to make changes that are legitimately expected of us; and third, to ask that the press address these issues in an accurate and fair way in order to give the American public an accurate and fair and balanced understanding of the facts.

So let me first correct some of the so-called facts about Congress that just ain't so.

Fiction No. 1. Congress gets free health insurance.

Fact: That is absolute nonsense. Members of Congress pay into the same health plans shared by other Federal employees. I pay into a Blue Cross-Blue Shield Program just like everybody else. If the assertion of some editorial writers that Members of Congress get free health insurance is correct, then why is it that I paid almost $2,000 for a 2½-day hospitalization 2 years ago?

Fiction No. 2. The families of Members of Congress get free medical health care at the Walter Reed Army Medical Center.

Fact: That is baloney. My family would not be eligible for care at that or any other Government hospital even if they were at death's door. My family gets their medical care from private physicians and hospitals, just like everybody else. I can show you the check stubs to prove it and so can every other Member of Congress.

Fiction No. 3. The House restaurant system runs in the red.

Not true. The Senate restaurant system runs a substantial deficit, I am told, but I am told that the food delivery services on the House side of Capitol Hill have been in the black for 5 years. Until recently, they have been run by a private corporation under a contract which requires 1 percent of the profits to go directly into the Federal Treasury. I am informed over the past 5 years the House Food Services System has deposited $200,000 into the Federal Treasury.

Fiction No. 4, and now we are really getting to the big stuff. Cigarettes for sales to Members of Congress are subsidized.

Fact: Not in the House. Prices charged for cigarettes on the Senate side of the Capitol Hill, I am told, are somewhat lower than normal prices because evidently the Senate purchases them without tax in the same manner as defense installations purchase cigarettes without tax, but on the House side of the Capitol cigarettes are purchased on the open market on bids. The full taxes are paid so there are no subsidized cigarettes for Members of the House. Besides, 92 percent of the Members of Congress do not smoke.

Fiction No. 5. Members of Congress get free gasoline and chauffeured cars.

Fact: No Member of the House of Representatives has a chauffeured car, except for the Speaker, the Republican leader, the Democratic leader, and each of the chief assistants, two of them. If you want to make a Federal case of that, so be it, but no other Member of the House has either chauffeurs or free gas privileges. The President of the United States does not pay for the gasoline for his own auto when he is on official business and neither does the Speaker, just as no corporate officer in America pays for his own official travel costs out of his own pocket.

Fiction No. 6. Members of Congress get free retirement income.

Fact: Nonsense. If we receive free retirement, why am I paying $11,600 into my retirement system this year?

Fiction No. 7. Members of Congress pay no taxes.

Mr. Speaker, as you and everyone else knows, that is absolute baloney. Last year, I paid $22,177 in Federal taxes and $7,389 in State taxes.

Fiction No. 8. Congress is not governed by minimum wage and overtime rules.

What is the fact, Mr. Speaker, minimum wage and overtime regulations do apply in the House to nonprofessional personnel.

Mr. Speaker, minimum wage and overtime legislation do not apply to higher paid professional personnel for the same two reasons that they do not apply to corporate officers or executives.

First, their wages exceed minimum wage requirements, and second, professional staff is paid higher than nonprofessional staff, but with that higher pay comes certain obligations including the willingness to spend whatever time is necessary to get the job done without asking the taxpayer for more pay for their services.

One charge which is partially true is that Congress is exempt from labor unions and collective bargaining by employees. There are very good reasons for that. Congress has tried to avoid this problem by contracting out to private firms for a number of services, so that some workers performing their duties on Capitol Hill could have the opportunity if they chose to join a union, but there are two good reasons why many persons who work directly for the Congress do not belong to a union.

First of all, conducting the public's business cannot be made subordinate to the needs and convenience of either Members of Congress or those we hire to help carry out our constitutional duties. Our responsibilities require us to avoid any interference with our ability to work outside of normal working hours, to work on weekends, or to respond to emergencies whenever necessary. Conditions of employment for Members of Congress and other congressional employees are dictated by public need. They ought to remain that way.

Second, if Congress were to engage in direct collective bargaining with any specific union, it could in fact create a direct conflict-of-interest situation when we consider general labor legislation because it would make us an employer with an employer's self-interest, and because Congress is often required to vote or otherwise act on issues related to labor unions, it has been felt through the years that any action by a union representing employees of the Congress might also unfairly influence the ability of Congress to legislatively deal with those issues in an unbiased manner.

Fiction No. 9. Congress is exempt from standards regarding discrimination of age, race, sex, disability, equal pay for equal work, or sexual harassment.

Fact: Baloney. House rule 51, known as the Fair Employment Practices Resolution, applies to all Members, officers, and employees of the House. In comprehensive terms, it declares:

> Personnel actions affecting employment positions in the House of Representatives shall be made free from discrimination based on race, color, national origin, religion, sex, including marital or parental status, handicap or age. Interpretation shall reflect the principles of current law.

It would have also included the Civil Rights Act of 1990 and the Family Medical Leave Act if President Bush had not vetoed both. Included in this rule are standards and objectives of the Americans With Disabilities Act of 1990, the Civil Rights Act of 1964, title VII, the Age Discrimination In Employment Act of 1967, the Rehabilitation Act of 1973, the Equal Opportunity Act of 1972, Minimum Wage Fair Labor Standards of 1972 for Equal Pay.

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Now, what is different from the private sector is that the procedure for consideration of alleged violations is somewhat different. In the House all allegations are enforced by the Fair Employment Practices Commission, which seems to have worked reasonably well.

Now, why is it handled through that Commission? Because our Founding Fathers established in the Constitution the principle of separation of powers. They did so because British history had shown them what could happen when an all-powerful or corrupt executive branch used its law enforcement powers to corruptly intimidate the British Parliament.

That is why enforcement of those provisions within the Congress is handled through the Commission to assure that Congress could never be subjected to intimidation on policy by a corrupt attorney general or a corrupt administration such as we had during the Nixon era, when the administration tried to use FBI, the IRS, and the Justice Department to intimidate its political enemies.

Now, the purpose of that separation of powers is not to protect the Congress; the purpose is to protect the American people whose interests demand an independent Congress as well as an independent judiciary.

Now, one can legitimately argue whether the enforcement mechanism employed by the House is the correct mechanism. But the press, which is the beneficiary, itself, of special constitutional protection under the first amendment because our Founding Fathers recognized the importance to freedom of an independent press and an independent Congress, has a special obligation to at least make clear that this is not a mere question of congressional convenience. It is a basic question of how the legislative branch of Government can best apply requirements to itself in a way that protects its constitutionally mandated independence, an independence which we took an oath to uphold.

Fiction No. 10. Congress is exempt from workplace health and safety requirements.

Now, what is the fact? If that means that Congress is not covered by OSHA regulations, that is only technically correct. Most of the objectives of the OSHA rules are being met through the responsibilities assigned to the Architect of the Capitol, who is charged with the operation of the physical plant of Congress, and it is my understanding these officers follow virtually all of OSHA's rules.

I should point out, however, that from the standpoint of convenience of Members of Congress, it would be very much to our personal benefit if we were covered by all OSHA regulations, because one of those regulations includes minimum space requirements. If Congress were required to provide such minimum space requirements to our employees, we would probably have to build a new office building to give our staff more room to work.

Now, we might like that from a personal standpoint, but I doubt very much that the taxpayers would be very happy.

I should also point out that it is my understanding that the OSHA reform bill is likely to be considered next year by the Congress, and at that time the Committee on Education and Labor will consider all OSHA-related issues which relate to Congress.

Fiction No. 11. Congress is exempt from conflict-of-interest requirements barring officials from the matters in which they have a financial interest.

The fact is that there is absolutely no truth to that charge. From the very first Rules of the House, established in 1789, to current criminal penalty statutes, the House has clearly prohibited Members and employees from taking any action that would be a conflict of interest.

Rule No. 8 of the House, adopted in 1789, states:

> Every Member shall be present within the Halls of the House during its sittings unless excused or necessarily prevented, and shall vote on each question put unless he has a direct personal or pecuniary interest in the event of such question.

Now, in 1968, Congress included in its rules a specific code of conduct embodied in rule 43, section 3, which states:

> A Member, officer or employee of the House of Representatives shall receive no compensation, nor shall he permit any compensation to accrue to his beneficial interest from any source the receipt of which would occur by virtue of influence improperly exerted by his position in the Congress.

Rule 44 of the House limits outside income for Members and senior staff by banning virtually all compensated service, with the exception of bona fide teaching, and restricts even that narrow activity to no more than 5 percent of salary level.

It also bans honoraria and sets rules for charitable giving, which exclude a personal financial interest.

In 1989, as part of the Ethics Reform Act, Members of Congress were prohibited from lobbying their colleagues or, in the case of senior staff, the committee or Members' offices which employed them for 1 year after they leave congressional employment. This requirement is similar to the 1-year no-contact ban which applies to executive branch officials.

I find it ironic, however, to note that the President of the United States sent his legal counsel, C. Boyden Gray, down to Capitol Hill to insist that President Bush and Vice President QUAYLE be exempted from those anti-revolving door provisions, and they won.

Fiction No. 12. Congress is exempt from requirements to protect privacy by guarding against the release of personal information.

The fact is that Congress does not maintain personal or medical files similar to those kept by businesses, State and local governments, and most other public sector organizations.

By tradition, records of constituent contacts, correspondence and casework are held to be private and confidential to assure that constituents may contact their Representative for help.

It is interesting to note, however, that a number of representatives of the news media have on occasion tried to obtain access to congressional casework files, including some of those in my own office. It is ironic that the press, which has so often demanded that we violate privacy rights, now argues that we do not do enough to secure such privacy.

Fiction No. 13, and it is a whopper, is that Congress is exempt from sunshine requirements to conduct our business in public. What absolute nonsense. Congress is by far the most open branch of the American Government. Congressional sessions not only are open to the public, but are broadcast every day on live television.

Now, on some occasions congressional committees may be able to close their sessions, but that is done to prevent the release of information that might endanger national security or defame, degrade, or incriminate an individual. It is also done, on some occasions, in order to keep lobbyists out of the room so that committees may make important decisions without pressure from special interest groups. But the results of those meetings are all made public except in case of national security or personnel.

Since 1830, the House of Representatives has conducted only four closed sessions, the last being July 1983, when national security issues relating to our war with Nicaragua were discussed.

The contrast in practices of the legislative and executive branches of Government are so stark that this charge is absolutely ludicrous, especially coming, as it does, from some of the very same press sources who are tut-tutting because they feel the Thomas-Hill allegation of sexual harassment should have been held in private, closed-door meetings.

Can you imagine the outcry from the press if they had been?

Mr. Speaker, when is the last time that you saw an important White House meeting open to the public, let alone broadcast on C-SPAN?

The courts function largely behind closed doors; they ask questions in public, but they make choices in private; they are designed by our Founding Fathers to be insulated and unresponsive to public pressures. There is plenty of insulation on their political wiring. The courts and the Presidency are by design, much more remote and insulated from daily grassroots contact than is the Congress. If you doubt that, compare the visitors in President Bush's office each day with the visitors in mine. The Congress has no such political insulation. We were designed by our Founding Fathers not to. We cannot put a top-secret classification on our mistakes; we make our mistakes on C-SPAN in full public view. We do not work in the bowels of the Executive Office Building or in the almost cloistered chambers of the Supreme Court; we work in an open room with the public looking right down on us through the press gallery and the television camera, and our adversaries seated 10 feet away.

□ 1740

Certainly our decisionmaking process is far more open and subject to public examination than that of any editorial board in the country, and we are immersed in public opinion every weekend when we go home to our districts. Any Member of Congress who is insulated from either public opinion or from his constituents after all of that would have to be pretty stupid.

Mr. Speaker, there have also been published stories in publications such as Newsweek which reveal in shocking tones the fact that Members of Congress actually have offices, and desks, and typewriters, and telephones, and parking spaces and staffs. Well, what is shocking about that? I ask, Do you know of any business executive who does not consider that a normal part of doing business?

Mr. Speaker, I vote hundreds of times a year. I receive 50,000 letters from home each year. Guess what? People who write those letters seem to have the notion that the votes I cast ought to be well thought out, and they expect me to answer their letters. Occasionally they even expect a thoughtful response. If staff is a perk, rather than a business necessity, I ask, "Why can't magazines and newspapers put out their publications without the benefit of the helping hand from their Washington reporters?"

I represent 530,000 people. How many members of the Washington press corps represent that many people? How many of them would pay the personal price? How many of them could do it as well? How many of them have to deal day in and day out with members of another profession who are, as often as not, looking for ways to hype, to excite, and to tear down? News about good government and honorable people does not sell many newspapers; does it? And the press often tries to have it both ways.

For instance, in an article about a year ago Newsweek revealed the shocking news that Senate and House Members get an allowance for, quote, sojourns back home to mix with constituents on 4-day weekends. Sounds like a cocktail party; does it not? Well, that shocking revelation appeared one sentence before the comment that those same Members, quote, life in an essentially insular world.

Mr. Speaker, I have a question. How can we live in an insular world when constituents lobby us in our offices every day and when we return to our districts every other weekend? That was not quite explained. It is those very trips that guarantee that Members of Congress will live in a far less insular world than a lot of members of the press corps who spend most of their lives within the jaded and cynical confines of Washington, DC.

Now some members of the press object because our trips back to our district are aided by our ability to race to the airport after the last day's vote on Friday, park our cars, if space is available, in a 120-car lot, which is also available to 9 Supreme Court Justices, 394 foreign diplomats, 100 Members of the Senate and 434 other Members of the House, and catch the last plane to our district. The press does not seem to be as offended by the almost-100 parking spaces made available to them at the Capitol for them to do their job, and, by the way, any member of the press who thinks that those 4-day weekends back to our districts are vacations is hereby invited to travel with me to my district the next time I go home.

Mr. Speaker, I should not have to say this, but I will. Those trips back home are a necessary part of staying in touch, of maintaining an awareness in the districts we represent. That is a lot of weekends to deny our wives and our kids. I do not make those trips because I love traveling around airports missing connections. I do it because it is the price the public expects us to pay to stay in touch, and I make absolutely no apology for it, except to my family for the loss of the shared experience of birthdays, baseball games, and piano recitals that in the end make life special.

So, Mr. Speaker, many of these so-called facts about Congress that have been fed to the public are fiction or half-truths. We deserve to have them reported accurately, and so does the public.

But, Mr. Speaker, having said all that, let me say what is already known, that there are some irritating symbols of privilege left over from an earlier era which ought to be examined. They may not amount to much, but their existence costs this institution far more than they are worth.

Some examples: cut-rate haircuts. It is silly for Congress to keep prices such as those. Those prices are left over from another age. They should have been increased a long time ago to reflect reality.

Fixing tickets: I never avail myself of that privilege. In fact, if my colleagues check with the D.C. Department of Motor Vehicles, they will find that I have overpaid. That is because several years ago I received a parking ticket when my family and I were parked next to Holy Trinity Church in Georgetown for midnight mass on Christmas Eve. I came out to find a $10 parking ticket. I sent them a check for $15 along with a letter observing that any city that was so cheap that it would ticket a car parked outside a church on Christmas for midnight mass was absolutely so hard-up that they needed a few extra bucks. Now, to be perfectly honest, I did not send that extra $5 for any reason other than I hoped it would screw up their computer, but, Mr. Speaker, the House should not be in the business of fixing parking tickets, and I am glad you eliminated that practice.

Let me now refer to the so-called free House gym, Mr. Speaker. As my colleagues know, the gym is not free, and neither is it new. It was built in 1954, and frankly the YMCA in my hometown is a whole lot nicer and a whole lot more up to date. Unfortunately I have not used the House gym for a number of years because I simply have not had the time, but the low fees are not worth the criticism that they bring on this institution, and they ought to be raised to a reasonable level.

There are others, Mr. Speaker. Without going down the list of irritants, let me simply say that the proper distinction for both the House and the press to draw is between so-called perquisites, which legitimately enable a Member of Congress to do his or her job more efficiently, and those which are simply available for ego or personal convenience. We ought to make no apology for the former, and the latter ought to be corrected or abolished, and I do believe that we ought to do one other thing.

Mr. Speaker, I am glad that you made the decision to close the bank, and I am glad that you have ended some of the unnecessary perks which are not necessary for a Member of Congress to do his job. I know you intend to end others, and I applaud you for it.

I have tried to lay out in this statement what ought to be the guiding principles as those decisions are made, but I think there is one additional step which I would like to see taken to assure systemic reform.

As my colleagues know, in 1975, the House adopted the ethics reform package which my reform commission recommended. But later in the year my commission produced a second set of administrative reform recommendations which were defeated by the House. The vote was 160 to 252. Democrats voting for the package, 160, to 113 Republicans, who unanimously voted against it. I do not say that to start a partisan argument. I simply say it to state a fact.

Now one of those key recommendations was the establishment of a professional administrator to coordinate the administration of the service agencies of the House. Now I cannot prove it, but it is my strong suspicion that, if such a professional with administrative management experiences had been appointed, he would have prevented the casual administrative practices which have caused the House so much embarrassment in enterprises such as the restaurant or the bank.

There are those who believe that another commission ought to be established to recommend changes such as those that we recommended that the House failed to pass in the late 1970's. I do not agree with that because I believe that the appointment of such a commission would delay needed actions and would be likely to experience the same partisanship that plagued our efforts during that time.

We know what needs to be done. Let us do it, and then let us see to it that these nuisance benefits are not allowed to develop again to cause any further embarrassment to an institution that is precious to American democracy. In my view a good way to do that is to appoint a professional administrator for the service agency at the House who would operate under the policy direction of the Speaker and the House Administration Committee, and then let us get back to the real job before us, to attack the economic budget, taxes, and health care problems that are threatening the security of every American family.

Now let me make a few observations on the press. I have immense respect for the press as an institution and profound respect, and even affection, for some of its many reporters, and, yes, even many of its editorial writers.

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They have a tough job. It is sometimes very hard for a Member of Congress to know when we are getting the truth and when we are not. I am sure it is the same for the press. Without an aggressive, independent press, this society will not work, and the public will not have the information it needs to make informed choices in a democratic system.

The Congress is guaranteed many freedoms by the Constitution in the interests of preserving democracy. With those same freedoms, however, comes responsibility, and the same is true of the press. I am a fierce defender of first amendment rights of the press. It is important that the press be free, but it is also important that they be fair and that they be right. Of course, the press and editorial writers are right when they say there must be a higher standard for those of us in public service than there is for other sectors of society. That is why Members of Congress voted to ban outside income from speaking fees, even though those who report our actions in the press—shaping public opinion in the process—continue the practice themselves, disregarding Adlai Stevenson's warning that "Those who corrupt the public mind may do evil just as great as those who steal the public purse."

I do not object to tough press coverage of the Congress as an institution. I welcome it. What I object to are the inaccuracies, the half-truths, the twisting of facts, and the sometimes downright cynicism and mean-mindedness that creeps into so much of their coverage of the Congress as an institution. I respect skeptics. I do not respect cynics.

I remember complaining to one network news reporter about the unfairness of a piece his network did on the Congress, and being told, "OBEY, you do not understand. My editor in New York has told me, 'If you have a story on Congress with a positive spin, do not bother to send it.'"

Now, I do not expect any favors from the press, but I do expect a sense of balance, a sense of fairness, and a sense of context. By all means, go after those who abuse the public trust, but have the sense of fairness and balance to distinguish between the small number who do that and a large majority in both parties who, day in and day out, try to do their duty just as Americans in every walk of life try to do theirs.

The democratic process needs to have tough coverage of politicians in order to keep them on their toes, to keep them honest, to keep them focused on the things that matter to the people who elect us. I believe all political institutions must continue to try to raise the ethical standards which guide us as we go about the Nation's business. I think my whole career demonstrates that belief, but I also believe that our Government cannot function unless there is a cooperative—as well as a confrontational—relationship between key institutions in and out of Government which help the society to function.

By all means, the press must continue to try to ferret out corruption and a lack of ethical behavior, but it must be done in a way which strengthens rather than cripples the ability of all of our institutions to do a better job in confronting the questions that beset us.

Mr. Speaker, the public official for whom I have more respect than any other in the world is a man by the name of John Hume, who is the leader of Catholic forces in Northern Ireland, who has been struggling since the late 1960's to bring justice and peace to his country.

In those years he began peaceful marches to try to correct the fact that while Catholics in Northern Ireland made up 70 percent of the population, they had no power and few decent jobs worthy of the name. In Londonderry it was the norm for many Catholic males not to have jobs. The women often did, but the men were systematically denied decent employment opportunities, and that created a time bomb.

John Hume led peaceful demonstrations to try to change that, and he was brutally beaten a number of times. At the same time, the Irish Republican Army tried seven times to kill him, including twice fire-bombing his home, because he believed that change must be nonviolent.

He was in my office last week and he said to me this. He said, "DAVE, I have been watching what is happening to the politics of your country. Don't people understand that there is an alternative to politics and politicians? It is called civil war and neofascist dictatorship. If people don't understand how easy it is to cross the line, just tell them to take a look at my country. For God's sake, don't let them trivialize politics. It is too important to your country's well-being."

Well, Mr. Speaker, I think that was good advice. I do not think that our society will go the way of Northern Ireland, but I do know that if the public loses confidence in its political institutions and in its politicians, what will come next will not be a pretty sight. That creates special obligations for both politicians and the press. These are perilous times. We have already seen firebombings in some of our urban cities. We have seen the election victories of six racists, such as David Duke. If this gets worse, we could see a lot of people in the streets.

Our political institutions need the confidence of the public in order to prevent those developments. They need to be criticized when that criticism is genuine and fair. But when critics are careless with the facts, when they tar all for the transgressions of the few, they risk permanently undermining the ability of that institution to do its job in holding this country together.

When that is forgotten, it is not the Congress which is the long-term loser, it is the country. So Mr. Speaker, my message to the press is, "By all means, swing away, but be accurate with your punches." My message to press and politician alike is to listen to John Hume. Do not further trivialize what today passes as political dialog in this country, and do not forget that real ethical questions are far broader than simple questions of personal or financial behavior, as important as those may be.

Public bodies should also be evaluated ethically in terms of whether their decisions produce ethical results. In judging the application of ethical standards, it might be useful to take note of the testimony of former Congressman Otis Pike before a congressional committee 2 years ago. This is what he said at that time, and I quote:

> Ethics is not as great a problem with Congress as is courage. This Nation was built by a man who couldn't and wouldn't have lived by your rules,

meaning the rules of the House.

> They were terrible men who drank, caroused, and gambled, some kept mistresses, some were worse. They connived and made deals and some grew rich in office.

Then he went on to say:

> You can talk about ethics forever and pass more rules and reveal yourselves until all of your and your spouse's finances, food, drinks, sex, religion, clothing, vacations, and the hours and minutes and places of your arriving and retiring are all in the public record. But you will never be held in high regard or deemed ethical while you say you cannot balance a budget unless a constitutional amendment makes you, while you accept gloriously optimistic economic projections rather than deal with real ones, while you write a Gramm-Rudman bill and then spend days finding ways to get around it, and while you let one man make $550 million a year while thousands sleep in the streets.

Mr. Speaker, again I think Otis Pike was correct. Two years ago, just about the time Otis said that, as I was walking down Connecticut Avenue toward ABC News for an interview on the Wright and Tower affairs, I passed a number of homeless men. I could not help but think at the time that the ethical failure of Government to provide decent shelter for those poor souls was monstrously larger than the ethical failings we were about to discuss in the Tower and Wright cases.

When I first unpacked my bag of Wisconsin progressive values 20 years ago, as an idealistic 30-year-old newcomer to Congress, I had the idea that public decisions which denied shelter to today's poor and steal from the living standards of tomorrow's families in order to continue the fiction that wealthy people are over-taxed, are at least as unethical as, say, Judge Ginsburg's smoking a marijuana cigarette or a Cabinet nominee's feeling a female knee in public. So is lying to Congress about financing an illegal war.

So, Mr. Speaker, let us do what is necessary to impose professional management practices which will enable this institution to avoid the embarrassment which we have experienced over the past few weeks, and then let us get about the business of attacking the economic and social problems which are threatening the living standards and the security of every American family. It is only that which will dispel the public disillusion which we simply cannot afford in a democratic society.

□ 1800

Mr. GLICKMAN. Mr. Speaker, if the gentleman will yield, first of all I wish the place had been filled to hear one of the most profound speeches that I have heard about the role of government, the role of Congress, accuracy in terms of criticism, unfounded criticism, and proper criticism. The balance in your statement is so important for the American people to hear.

Not that we are perfect, not that we are holy, not that we have not made mistakes, but that the whole episode of our existence needs to be viewed in the context of our job and our relationship with the American people. I thought your statement was profound.

There is one point I would like to add to your statement, because it is an idea that you came up with about 15 years ago, an idea that I think is very important, and that is that I think it is time to recognize that we work in a city without a city manager. You made this point in terms of management of the House of Representatives.

There is no one professional administrator overseeing the running of an enterprise with about 25,000 employees and a budget of almost $1.8 billion. That is the House of Representatives. That number is just the cost of running the House and related operations, including the Library of Congress, the Congressional Budget Office, the General Accounting Office, and support institutions; it does not include the Senate. While I am sure we could function with fewer employees and a smaller budget, the fact remains that Congress is a large and complicated institution.

Put in perspective, I thought about this related to my own city, my own town. Wichita, KS, is the largest city in Kansas. It has 3,000 employees and a budget of $210 million.

There is an elected mayor and a city council, but there is also a professional city manager who oversees, and is accountable for running the city on a day-to-day basis. The budget of the House and number of employees are almost 10 times that of Wichita here in this Congress, but I cannot point to one person who is accountable for the operations of the House.

So it causes me to question from my own perspective, as a Member of this body who loves it, who runs the show?

We have various offices and committees, headed by people elected either by their constituents or the Members of the House, but there is no one administrator hired for his or her expertise in finance, management, and personnel looking to see whether the House of Representatives is run in an efficient, sound manner.

The House of Representatives that you so wonderfully talked about has changed a great deal in 200 years, but how we actually run it has not changed. The Capitol complex has become a huge operation. We are a city within a city.

We have dozens of buildings, a police force, restaurants, shops, mass transit system, library and research service, television station, post office, first aid stations, doctor's office, ambulance service, barber, hair salon, credit union, printer, paint shop, furniture factory, telephone systems, moving company, and more.

To run it the way we ran it in the 1820's, to run it in a very loose way, is not the way of sound management.

Without modern management controls, the House could be spending tens of millions of dollars unnecessarily. The current system is accountable to no one, yet, every one of us is held accountable when something goes wrong.

Another thing that has changed is the level of public scrutiny focused on the House of Representatives. We are the most scrutinized institution in the world. Our floor debate is televised, our committee meetings are public, our buildings are open, and our bills and reports are readily available for anyone to read. Virtually everything we do is public and open to criticism, but everyone here is caught by surprise when the public reacts badly to practices to which we have become accustomed.

Each of us is held accountable for how we run the House because our jobs are full-time now. It used to be that Members of the House were citizen legislators, carrying on lives and professions apart from their functions in the legislature. They could not be expected to know the nuts and bolts of the Capitol complex. But now, this is our full-time job. We are limited in outside income we are responsible for how taxpayer dollars are spent. We are held personally accountable for any aspect of this operation that does not pass the test of public scrutiny.

I know I cannot oversee every detail of the running of the House, so I want someone in charge who will. I want someone with proven experience to ensure that the management practices here make sense in 1991, and are not simply holdovers from another era. As my friend from Wisconsin has said, "We don't need another commission to recommend how to do this."

We can simply amend the House rules to create the position of House manager or executive administrator, appointed by the Speaker, with appropriate approval of the Members of the House, to work with the Speaker and Committee on House Administration to run this place the way it should be run—ethically, effectively, and with as little waste as possible.

I intend to make this proposal in a letter to the Speaker, the chairman of the Committee on Rules, and the chairman of the Subcommittee on Rules of the House.

I hope that the rest of this body will join us in trying to bring into the late part of the 20th century management practices of this place.

We should recognize the current means of running the House is whimsical and costly at a time when voters are not given to waste or whimsy. And we have the power to change it.

We need to realize the public views how we run the House as a microcosm of the whole country. If we can't run well a $2 billion entity over which we have direct control, the public will have reduced confidence in our ability to make decisions for a 3-trillion-dollar entity, the U.S. Government. It is clear we need to modernize and improve our internal management practices as we begin to tackle the daunting societal problems that face us. Let's act and not wait for the next shoe to drop which will further damage the reputation of this institution.

My comments are not meant to be critical of any existing officers of the House, from the Speaker down, the Doorkeeper, the Sergeant at Arms, from the Clerk, from the Postmaster. They all do fine jobs. My comments are meant to be constructive. The way we run this place is not the way you run a $2 billion operation.

Mr. Speaker, I associate myself with the remarks of the gentleman from Wisconsin [Mr. OBEY]. My remarks are meant to be constructive so that we can perform our jobs on policy, unencumbered by a lot of the problems that we have faced on procedure and operation.

Mr. OBEY. Mr. Speaker, I thank the gentleman for his comments. Let me simply say that I am glad that he supports the idea of a professional manager for the administrative services of the House.

I want to make it clear, I am not suggesting that we have someone who is going to be looking over the shoulders of each and every committee that runs their legislative business. For instance, House Administration can handle that without any interference from anybody.

But what we do need to do is in my view have a professional coordinator to overview or oversee the administration of all of the ancillary services around here, services that provide as much service to our constituents as they do to us. I think if we do, we will have a situation which stands the House in good stead and which avoids some of the embarrassments which we have incurred over the past months.

THE ECONOMY AND HOW IT IMPACTS THE NATION

The SPEAKER pro tempore (Mr. LEHMAN of California). Under a previous order of the House, the gentleman from Virginia [Mr. PICKETT] is recognized for 60 minutes.

Mr. PICKETT. Mr. Speaker, I come here this evening because of my increasing concern about the economy of our Nation and how it is impacting on our people, our businesses, and our communities.

Mr. Speaker, I was going through some publications this past weekend and happened upon this book that was written some 5 years ago by Dr. Ravi Batra called "The Great Depression of 1990." I read it several years ago myself and put it aside with the hope that what Dr. Batra predicted would never come to pass. But the more I see events unfold here in the early 1990's, the more I am persuaded that his thesis and his theory about what is happening in our Nation are correct.

It is not that everything he says has necessarily come to pass at this point, but certainly he has raised red flags about what is likely to happen in our Nation if corrective measures are not taken to bolster our economy and to bring about a change in economic activity.

☐ 1810

Mr. Speaker, we know that the economy of this Nation is weak and it continues to get weaker. We are looking at the possibility of gross national product growth in the fourth quarter of 1991 of zero or perhaps even less. We are looking at homes sales that are declining. We are looking at housing starts declining.

We are looking at automobile sales that are in a decline. Other durable goods orders are down, and no new jobs are being created.

This is a situation, Mr. Speaker, that is leading to what I think is intolerable condition for our country. One of the things that I hear more about perhaps than any other in my community is about what is happening with the credit supply. We know that overall the money supply in our Nation is contracting, but how does that translate into the impact on families and businesses in the community? Let me quote just a couple of examples that I have heard in the last few days.

A friend of mine told me that he had a loan at a bank that was secured by real estate on which he had promptly and timely paid the interest on every occasion that the interest was due. He was suddenly told by his banker that was not good enough, "You have got to start making some substantial reduction in your principal."

So he told his banker that, "Yes, I will agree to make some principal reductions on a regular schedule," and he started out along that path.

Then just a few months later, when the banking institution that he had been doing business with was taken over by another bank with a different lending policy, he was told that "Real estate is no longer any good as collateral for a loan. You are either going to have to come up with marketable securities in order to collateralize your loan or, if you don't we are going to call the loan."

This type of incident is occurring over and over again in our economy. This is what is driving local business people to the wall.

Mr. Speaker, it is time that we recognize that there is a depression in the real estate industry in our Nation. I think at the very least we need to promptly eliminate the passive loss rules that were adopted in the 1986 tax bill and to reinstate the installment sales provisions for the sale of real estate.

Small businesses have been impacted more by the change in credit practices of our banks than any other segment of our economic community. But even more than bank credit, the persistent increase in government regulation, and here I am not talking about just Federal regulators but about State and local regulators as well who interfere with and make demands upon small business concerns that unreasonably intrude upon the way they conduct their business. They tell me time and time again that they have got it right up to here. Any more regulation, any more requirements, anything else that they have to do, any more overhead, and they are going to go out of business. They are going to close down. They are going to lock the door.

I believe the developing problems are more severe, perhaps than the administration has perceived and reacted to at this time. I hope, Mr. Speaker, that we do not go the route that has been depicted in this book, "The Great Depression of 1990." I hope that we have the courage and the initiative to take those steps that are necessary now to make our economy sounder, to make our banks sound, to bring about a recovery in the economy and to get our Nation moving again.

For my part, I am going to be supportive of the administration and I am going to be supportive of the leadership in this Congress to get our country moving again because none of us want to see the reality of the title of this book come to pass.

TERM LIMITATIONS

The SPEAKER pro tempore (Mr. LEHMAN of California). Under a previous order of the House, the gentleman from Tennessee [Mr. DUNCAN] is recognized for 30 minutes.

Mr. DUNCAN. Mr. Speaker, the surest way to make our already unresponsive government even less responsive and less subject to the will of the people is to enact term limits for elected officials.

As anyone knows who looks at voting records, I am one of the more conservative Members of this body.

Unfortunately, it is many of my fellow conservatives who are pushing the hardest for term limitations. Yet I believe, also unfortunately, it will be conservatives who will be the most disappointed, the most frustrated, by the results of term limitations.

Make no mistake about it—there is nothing conservative about term limits. In fact, it is a radical departure from the elected form of government set up by our Founding Fathers.

Conservatives have been the first to defend—and throughout history the strongest of—our Constitution.

Conservatives have always been proud of the great heritage we have in this Nation. Part of that rich heritage—a very important part—has been that this country was the most democratic nation on the face of this Earth—the very cradle of democracy.

Yet it is very undemocratic—it strikes at the heart of democracy—to not allow the people of this Nation to elect whomever they wish to public office. To say that a person has to leave office after 6, or 8, or 12 years, no matter how hard he or she has worked, no matter how good a job was done, is undemocratic and unfair, and thus, I believe, un-American, in the best sense of that term.

Yet, term limits will apparently achieve an overwhelming victory in the State of Washington tonight, and there is very strong support for limits throughout the Nation.

The reason, I believe, is that people are angry, fed up, and resentful toward government—and I don't blame them. In fact, I agree with them.

Government has grown more and more dictatorial with each passing year. It has grown more and more greedy and wasteful, less and less responsive. The real reason for this, however, lies primarily with a civil service system that protects employees even when they do not do a good job—unfortunately, even when they are rude to the people they are supposed to be serving.

Our government today—particularly at the Federal level—has become one that is of, by, and for the bureaucrats instead of one that is of, by, and for the people.

We have been sold a bill of goods in this Nation by liberal elitists who are always saying take the politics out. Well, the politics have been taken out of almost everything today. As a result, people have less control over their own government—and they are angry—and I don't blame them.

This is why, I believe, that so few people vote today. They see politicians as increasingly irrelevant and powerless. It is actually becoming less and less important who is in elected office.

The real power of government today is in the bureaucracy. At the Federal level, there is now a fourth branch of government never envisioned by our Founding Fathers, and that is our unelected, elitist, Federal bureaucracy—and today it is the most powerful branch of all.

Shortly after Lamar Alexander became Secretary of Education, someone asked me if I thought he would make big changes in the Department. I said, no, not really because even though it is in his nature to try to change things—I said he would meet great resistance from a cumbersome, gigantic, and entrenched bureaucracy.

I admire Secretary Alexander very much, and I know he will make many good changes. However, my point was that he will not be able to do anywhere close to what he wants to because of the bureaucratic footdragging found in the Department of Education and every other Department.

Surprisingly to me, even liberal Democrats are now recognizing this problem. Edward Rendell, the Democratic nominee for mayor of Philadelphia, said not long ago:

> Government does not work, because it was not designed to. There is no incentive to work hard, so many do not. There is no incentive to save money, so much of it is squandered.

What does all this have to do with term limits? Well, if the people shorten the terms of Members of Congress and other elected officials, it will weaken the Congress and strengthen the bureaucracy even more. Our Government will become more bureaucratic.

There are other reasons term limits should not be forced on the people. First and foremost, it corrects a problem that does not exist. Approximately two-thirds of the House is new since 1980. More retirements than ever before are expected by 1992. Five Members have announced their retirements in the last 3 weeks, including one 41-year-old Member who said he was tired of the money chase, the constant requirement to raise campaign funds.

The people will have almost a totally new House between 1980 and 1992, without term limits.

Second, the best and fairest term limits are already in place—elections. Members of the House get very short contracts—2 year terms. We face the voters every other year.

If I don't respond to the wishes of my constituents—if I don't do a good job—then my people can get rid of me very easily.

□ 1820

Once again, this shows the benefit of politics over lifetime, unelected, guaranteed jobs.

Elected officials work nights, weekends, all hours meeting with, talking to, and helping people with their problems. Very few civil servants work nights or weekends. In fact it is hard to find some of them after 4:30 p.m.

I do not have a private phone number. My number is published in the Knoxville phone book. People call me very late at night and very early in the morning. People stop me at ballgames or in the drugstore to make requests or give me their opinions. I do not mind this at all, because I want to be as accessible to and responsive to my people as I possibly can be.

This does not make me unique or special. I realize the Members of Congress are held in very low esteem today, and certainly there are bad apples in any group.

Yet most Members of Congress are working 70, or 80, or 90 hours a week—long hours here in Washington and on the weekends—trying to serve our people. You are never off duty in this job, and most of us would have it no other way.

I would like to stop here for just a moment and commend the gentleman from Wisconsin [Mr. OBEY] for his excellent statement that he just made a few minutes ago during this special order, because as I have just pointed out, I think most Members of Congress put in extremely long hours, and most, almost all, Members of Congress from either party, while they may disagree at times, but they, most, almost all the Members here, are extremely hard-working, dedicated, patriotic citizens trying their best to serve their country and the people they represent.

But, my point is that when government is responsive today, it is primarily because of elected officials and political appointees, and so the real reforms are needed more in our Civil Service System than in our political system.

Third, term limits would greatly increase the power of large States and decrease the power of smaller States, like my own State of Tennessee.

California will have 52 Members of Congress after 1992; Tennessee will have 9, Kentucky 6, Mississippi 5. The larger States haven't been able to dominate the Congress primarily because of the seniority system. Many Members from small States have been able to achieve powerful chairmanships or other positions of leadership, but with term limits this wouldn't be nearly as common. Sheer numbers would be much more important.

Fourth, many of our best Members—many of our most honored and respected Members—are the ones who have been here the longest.

Term limits would have eliminated Senator Everett Dirksen during his greatest years of service to this Nation—during the prime of his career.

Term limits would have knocked out Senator Howard Baker during his years as majority leader—his greatest service to the Senate and this Nation.

Term limits would have prevented my own father from becoming the ranking member of the House Ways and Means Committee—the years he was probably most effective for his district.

Term limits would eliminate, right now, the top three leaders of both parties in the House—men who frequently disagree, but men nonetheless who are admired and respected on both sides of the aisle.

Fifth, term limits will weaken and possibly even destroy our system of checks and balances—the equality among the branches of our Federal Government. The only way to avoid this would be to impose term limits on everyone, if term limits are imposed on Congress and other elected officials.

If term limits are imposed on Members of Congress—the ones most accountable to the public—then we should impose term limits on bureaucrats and judges. We should do away with appointed, guaranteed, lifetime jobs. We should say that no one can draw a Federal paycheck for more than 6, or 8, or 12 years.

I am not advocating this—I am simply saying this would be the only way to equalize the branches and preserve our checks and balances. What is fair for one branch of Government should be fair for all including the most powerful branch—the Federal bureaucracy.

Sixth, term limits imposed on a State-by-State basis would result in a crazy quilt pattern of service in the Congress. Some States would impose 6-year limit, some 12-year limits, some, perhaps, no limits at all.

The result would be confusing and chaotic. Some States would be harmed, some would be helped. A Member from a State with a 6-year limit might not be given as good a committee assignment as one from a State without limits.

As I said before, I can understand this drive toward term limits. I sympathize with the goals of those who are its strongest advocates. Yet, I believe they are aiming at the wrong people. I can understand that in their anger and frustration they want to lash out, and their elected officials are the only ones they can get.

Our whole system of government needs reform and change—not just the Congress and other elected bodies. If the people of this Nation really want to change, they need to elect more conservatives to Congress.

Term limits will not accomplish the desired goals. After all, what change have you brought about if you replace a liberal with another liberal. There is little disagreement that today we have the most liberal Congress in the history of this Nation. Some think this is good, and some think this is bad.

But, I will say again, the only real way to reform and change the Congress is to elect more conservatives.

Real change, real reform, will not be accomplished by an arbitrary, artificial, quick-fix solution like term limits, which is really no solution at all.

Actually, my term is already limited. It is limited to the 2 years to which I was elected in November 1990. I consider it a great privilege to serve in Congress, and I am very grateful to the people of my district for allowing me to do so.

I hope that I will be allowed to serve for at least a few more years. Yet, I know that is up to the people, and that is the way it should be.

Actually, due to the great pressure and demands of the job today, very few Members are staying long in Congress anyway. Most stay 8 or 10 years, and then move on to other jobs or run for other offices.

The cost of campaigns eliminates many. It is almost impossible to raise the big money necessary to run year after year. In addition, because our Nation is becoming increasingly polarized and divided and more people are becoming one-issue voters, in the future it will become harder and harder for incumbents to be reelected. Thus, once again, term limits will become less and less necessary.

It takes away just a little bit more of the peoples' freedom if they cannot elect the person they really want to serve in Congress because of some type of arbitrary limit.

The best limits, as I said before, are elections. The best reform we could make to the political process would be to make our elections more competitive. The best way to do that would be to place very strict and low limits on campaign contributions.

We need to also place strict limits on the amount a person can spend of his or her own money to be elected to office. A person should not be allowed to get around campaign spending laws just because he or she is wealthy. Public office in this Nation should not be limited to multimillionaires, but should be open to all. People should not be able to buy seats in the Congress of this United States.

Mr. Speaker, term limits may be inevitable, but I hope people will take a very long look before they take this very great leap.

□ 1830

AMERICA AT THE CROSSROADS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I appreciate the opportunity to speak tonight.

I am going to talk about the crossroads we have reached and how we can work our way out of the mess we are in. I feel moved to take some time this evening to talk about this, because I am I guess as frustrated as anybody else in this country about the quality of politics and the confusion of the city of Washington and sort of the general mess in which we find ourselves.

I say this on a nonpartisan basis. I came to Congress in 1978. I ran twice and lost and finally won my third race. I came here hoping to see us really do some dramatic things, and there was a brief period when we did. After the Carter administration collapsed and what I thought was a very frightening 2 years when I served in 1979 and 1980, and then President Reagan was elected and there was a bold period of dramatic change and we rebuilt the American military and we found ourselves in a position to cut taxes over a 3-year period, to create entrepreneurial growth, to stimulate the economy. We cut spending for the only time in the last 30 years with the Gramm-Latta bill. We reestablished American morale, and there was a feeling that you could get things done.

Since then, slowly and steadily, almost like the process that in science is called entropy, we seem to be losing energy and losing direction and losing dynamics.

Now we are coming to the end of a congressional session, which I think has been very frustrating for all of us where we spent most of the year fighting in a partisan way, really failing the people of the United States, failing to talk and think through the kind of reforms we need, failing to reach out for new ideas and new creativity and new solutions, failing to have a real dialog, and instead we just are mired down in sort of a partisan mess. We failed to pass unemployment compensation at a reasonable level for people who genuinely have pain and genuinely need help. We failed to pass an economic growth package to get the economy started again. We failed to overhaul the Resolution Trust Corporation.

We failed to reform our Government or the legal system, and unless something is done to change it, 1992 is going to be more of the same.

I want to suggest where we are at is in a way very sad for every American. Here you have the greatest political system in the world, an extraordinary continent-wide free society that has become a beacon of hope, whether it is Boris Yeltsin in Russia or Vaclav Havel in Czechoslovakia or Violeta Chamorro in Nicaragua, everywhere you turn on the planet there are people who talk about freedom and who look to America for leadership.

Probably more people in the last 3 years have adopted American ideas and the American solution around the world than at any time in history, and yet here at home we have a Capitol which is under a cloud with all sorts of ethics scandals. We have a system which seems deadlocked between the Democratic leadership that controls the Congress and the Republican President. We have a political system which has degenerated into 30-second commercials that distort, that attack, that defame, and we have a country whose citizens are worried about the economy, frightened by the cost of health care, angry about government that fails and enraged at politicians who they see in many cases legitimately as out of touch and as uncaring.

I was led to talk tonight about the crossroads we are at by a conversation with a friend of mine, Jeff Eisenock, who is a very bright young economist who made the comment the other day that we are really teetering, that we have not quite decided which way we are going, but over the next few years we are either going to accept socialism and accept national bureaucracies and at some point, 50 percent of our gross national product will be controlled by the Federal Government, or we are going to really overhaul the whole system and we are going to re-establish free enterprise. We are going to re-establish the rights of State and local governments. We are going to re-establish the American tradition of voluntarism and we are going to end up back at 15 or 17 percent of our gross national product in the Federal Government.

The more I thought about it, the more I decided that he is right, that the crossroads we are at is very simple. The reason we are in a mess is that we do not know how to talk about it. We do not know how to explain it. We do not have words to describe where we are at, so it is easier to fall back into the language and the politics and the attacks of 10 or 15 years ago than it is to try to invent the language and the solutions and the approaches that are necessary in the 1990's, and yet I think all of us in public life have an absolute obligation to recognize that this is a country which by overwhelming margins is now telling all of us, Democrat or Republican, that we are on the wrong track, that they are not comfortable with where America is going, that they are worried, that they want leadership.

Let me suggest from my standpoint that those of us who are Republicans have a tremendous obligation to come up with more solutions, to be tougher in our critique of the Government, to recognize that we do not, despite having had the White House for 11 years, we still do not have a grip on the Government, that because of the power of the Democrats in the Congress, we have really not changed the bureaucracies. I do not think of the Department of Education in its current form as a Department that I am proud of. I think of the tremendous work of Lamar Alexander and David Kearns and many individuals are doing as the right direction, but underneath them there is a huge unending bureaucracy churning away, creating redtape the way it always has.

I regard the Resolution Trust Corporation as a nightmare, a disaster, something which is destructive of America's future. The notion that the Government would now be the largest single property manager in the United States should be appalling to every conservative and to every Republican.

I do not regard what is being done in our large cities as something we ought to spend more money for at the present time, because I think we need to reform and overhaul and rethink every major city in America.

Finally, I certainly think that here in the Congress, although I have belonged to this institution for 13 years, we need a thorough overhaul of the way the Congress works, the ground rules that Congress functions by, and the way in which we deal with the Congress. The people have every right to be outraged at our processes, our procedures, and the standards we accept. So I think we have a lot of work to do.

I think there are certain standards we need to apply. I think we need to be tough minded about those standards. We need to be prepared to fight for those standards.

Let me give you a couple examples. I think that it is outrageous that the Democrates have proposed in the Defense authorization bill to have $1 billion set aside to help the Russians. I am not opposed under the right circumstances at the right time in the right way to helping the people of Russia. I think if we could find a way to help them get to true democracy, to help them create free enterprise, to help them become prosperous, that that in fact would be good; but the idea that in the Defense bill, without any hearings, without any contact with the Foreign Affairs Committee, without any discussions with the Foreign Operations Subcommittee on Appropriations, without any effort to set up conditions, that we would just cheerfully late at night based on the actions of the Democratic leaders of that committee adopt a specific amendment to set aside $1 billion to help Russia. I think that is exactly the madness that leads the average American to despair of the city of Washington.

In the first place, if we do not need to spend the money on defense, let us keep it here at home. Let us either reduce the deficit, let us cut taxes, let us do something rational with it if we do not need it for defense.

In the second place, if we are going to have any kind of aid to Russia, let us handle it through the committees that are supposed to handle it, and let us look carefully at what the conditions are.

I do not want to give a blank check to the Soviet Union. I do not want to give a blank check to the dictatorship that is still there, and while Yeltsin may have temporarily have won an election, we had recent evidence in August that that whole regime was very, very shaky, that you could easily have a collapse of the Soviet system and you could easily have a whole series of military dictatorships, and the idea that unconditionally, without fault, without structure, without organization, without supervision, we are just going to write a billion-dollar blank check to the Soviets, I think is madness. If you are the average American, you think your taxes are too high, your health care is too expensive, you are very worried about having a critical illness in your family that you might not have insurance for, you think that your neighborhood schools need a little more money and that your local highway has not been repaved recently and that you need to make sure we do something about the toxic waste dumped down the road, and now you hear that the Congress at 10 o'clock at night decided in the backroom to write $1 billion for the Soviets, it is little wonder people want term limitations when they watch this kind of behavior.

I am certainly going to do everything I can to defeat the Defense authorization bill when it comes to the floor.

But what is wrong here is deeper. It is not the specific issue. It is the process. It is the fact that you can produce a bill where two men go off in a corner, they write what they want, they bring it in at the last minute without any hearings, without any markup, without any structure, they put it in and now we have invented a whole new system to spend money on the Russians and nobody has ever looked at it in a serious, methodical way.

□ 1840

We saw the same thing happen the other day on the banking bill. Two men went off with their staffs, wrote their version of a very key section of the banking bill and, in effect, they killed the entire bill because there had not been any hearings, there had been no chance to offer amendments, there had been no chance to criticize it. The public had not had a chance to review it. Instead, there was an effort to throw it on there.

Now we are going to come up with the Resolution Trust Corporation in the future. I must say I am extremely concerned about the Resolution Trust Corporation. I am concerned at two levels. I want to commend my colleagues, the gentleman from Florida [Mr. McCOLLUM], because he brought to my attention a Wall Street Journal article, "The Appalling Cost of the RTC's Haste," by C. Daniel Clemente, which is, I think, a very profound example of everything I am talking about. Let me make two points about the Resolution Trust Corporation.

First of all, the No. 1 problem we have is not the savings and loan industry; the No. 1 problem we have is a long-term deflation and a change in the Tax Code which is crushing real estate and construction and development in America and which, if it continues, is going to lead to a bank collapse following on top of the savings and loan collapse and then to an insurance company collapse falling on top of the bank collapse.

So, the first problem we face is a genuine deep deflation. I am going to talk in more length about that because I think unless we turn that deflation around, we are headed toward an economic disaster of the first order.

The second problem we have is the fact that the Resolution Trust Corporation is just about exactly what a traditional Republican would have suggested; it is a large bureaucratic socialist Government agency trying to run real estate, and it is doing it badly.

Now, you have two counts here: Count No. 1 is that the real problem is not the Resolution Trust Corporation, the real problem is deflation and the Tax Code and what we are doing to real estate in general. The symptom of that is the costs we are having to pay for the Resolution Trust Corporation.

The second is that the Resolution Trust Corporation itself is a classic Government bureaucracy, and every concern in the country ought to be mad about it and every practical, commensense citizen ought to be mad about it, and in fact that is what is happening.

People are just infuriated.

Now, let me start with the RTC itself. I want to read Mr. Clemente's article, "The Appalling Cost of the RTC's Haste," from the Wall Street Journal of November 4, because it captures what is going on and what we have to deal with.

The Resolution Trust Corp's liquidation of the property of failed savings and loans is turning into the greatest peaceful redistribution of wealth in modern times. But the redistribution is not going from the wealthy to the middle class, or even from the middle class to the wealthy, but rather from the middle class and the wealthy to the superrich and to big business.

The RTC understands its mandate to be rapid liquidation of the real estate that has come into the government's hand. In order to sell fast, it has taken to selling its commercial real estate in bulk. But this decision has social consequences—especially since there is no financing available today for those willing to speculate on the purchase, development and improvement of real estate. When you offer property for sale in packages of $300 million, cash only, who do you suppose the buyers will be?

CONTROL OF REAL ESTATE

Real estate values and the real estate industry have been among the prime victims of this unintended social revolution, for two reasons: First, the RTC's huge financial needs have made credit unavailable to the industry as a whole. Second, it has taken control of the nation's largest group of real estate transactions out of the hands of the private sector and turned it over to a bureaucracy.

From my personal experience, this bureaucracy has been predominantly staffed by individuals whose professional background has either been in the Division of Liquidation of the Federal Deposit Insurance Corp., or in failed savings and loan associations. Individuals with those backgrounds maybe have great experience in the mechanics of acquiring and disposing of real estate. But the heart of the industry, the essence of the value of real estate, lies in the entrepreneurial developer's unique understanding of a particular piece of property and, most important, his understanding of the marketplace where the real estate is located, together with the laws, ordinances and regulations peculiar to its jurisdiction.

This crucial perspective is nowhere to be found at the RTC. The result is that the cost to the taxpayers of the S&L liquidation far exceeds what it would have been if management and control of the operation had been entrusted to people trained and motivated to realize the highest utility and value of property.

A developer wants to maximize the utility of a piece of property in as short a period of time as possible. A liquidator wants to dispose of the property as quickly as possible. But disposing of property as quickly as possible simply is not compatible with maximizing value, or even with minimizing loss.

To see these tendencies at work, look at the case of one specific project. Potomac Crossing, a planned unit development in the town of Leesburg, Va.

The property was purchased in late 1986 by a Virginia developer whose plan include design and construction of all necessary streets, sewer lines, water service, curbs and gutters and electrical service. Work was begun in the fall of 1987 and was to be accomplished in three phases. The original developer was able to complete phase one. Today, approximately 318 families live in Potomac Crossing. The total value of the homes sold in phase one exceeded $45 million.

In April 1990, United States Bank of Vienna, Va., acquired the uncompleted portion of the project, and brougt in my firm as consultants to review the project and create a business plan. We determined that to maximize the return on the sale of the land, it would be prudent to complete the engineering work. This would enable us to obtain a final site plan approval of the subdivision of all land in phases two and three into building lots. Because the engineering design work takes many months and because the approval process is so lengthy, taking property through the process to final approval adds great value to the property. We also advised the United Savings Bank to commit the funds necessary to complete construction of the sewer line that would serve phases two and three.

Then, in August 1990, United States Bank was placed in conservatorship. The RTC became the owner of the property. It elected not to proceed with any further work on the land. Today, the RTC is holding 213 acres of ground that has no access to sewer lines and on which essentially no engineering work has been performed for more than a year. If we assume that it would take 60 days to complete the engineering drawings for those 213 acres, it is my estimate that it would take a total of at least 11 months to complete all the engineering work. In the year that has elapsed since it took it over, the RTC could have completed all the engineering work on the property.

Instead, it appears that this property will be sold by the RTC without any further engineering work being done, and without the sewer being bonded because of the uncertainty created by the RTC. The town of Leesburg insists that no additional lots can be recorded in Potomac Crossing until bonds have posted to guarantee sewer construction. That means the property will have to be sold as acreage rather than as lots, and as acreage with no present access to sewer services.

In the meantime, the preliminary plan approval granted by the town is about to expire. Since the original preliminary plan was approved, the town has altered its design standards for public facilities. Engineering to meet the new design standards will cost an extra $440,600—money that could have been saved had the RTC finished the job bank in 1990.

Further, by interrupting construction of the sewer, the RTC has voided agreements with 11 neighboring property owners and the town to contribute to the cost of the Potomac Crossing sewer system. Had the sewer been built promptly, it could have cost as little as $768,998, to a new owner of Potomac Crossing, the cost could be as high as $3.5 million.

The property is being offered for sale by the RTC at $8 million. It will likely bring less than half that amount, between $3 million and $4 million—on a property that was carrying $16 million in debt when it was taken over.

If, on the other hand, it had been held and managed with an eye toward maximizing the value and utility of the property without taking any risk of development, and if about $1.5 million in engineering fees, review fews and sewer construction had been spent, today the property would reasonably be expected to yield in excess of $22 million.

In general, the RTC acts as best it can given its understanding of its mandate. But Congress must recognize that this mess cannot be brought to an even partially successful conclusion by mandating rapid liquidation. If we continue on the present course, the downward spiral in the value of real estate will accelerate, precipitating the collapse of commercial banks by undermining the value of property held as collateral, and eroding the principal element of every American family's net worth; the equity in their home.

The long-term economic value of real estate is a substantial portion of the nation's net worth, and as long as the RTC is poised to dump properties on the market, nobody knows how much farther prices will fall. If the roughly $300 billion in real estate loans due over the next two years cannot be refinanced at present loan amounts because of a decline of as much as 40% in real estate values, then we are headed for a new problem at least as big as the one we've watched grow for the past two years.

Here's what must be done.

The RTC should abandon the policy of liquidation as soon as possible.

Congress must recognize that as the owner of more than 61,000 parcels of real estate, the government, like it or not, is in the real estate business and must act prudently so as not to destroy the value of real property all across the country.

Private sector individuals and companies with real estate experience must be brought into the process early to aid in the management of real estate assets.

PARTICIPATION BY THE LITTLE GUY

A tax incentive to make it possible for the little guy to participate in the purchase of real estate and other assets from RTC must be enacted. For example, Congress could allow a deduction of $2,500 for investment in a publicly held entity that would buy assets from the RTC, the FDIC, Freddie Mac, Fannie Mae and other federally insured financial institutions.

Bank regulators must be prevented from forcing banks to write down assets that have real long-term value to their artificially low present values.

The FDIC must stop closing banks and thrift institutions where there is no evidence of fraud and self-dealing.

If Congress will not take such steps, there is no doubt in my mind that no one else can estimate the ultimate cost facing this nation. The only thing I can say with absolute certainty is that it will far exceed anyone's worst fears.

□ 1850

Now this article by Daniel Clemente, who is a consultant who works in this field of dealing with real estate, says a couple of things. He says a couple of core things.

First, the way the Resolution Trust Corporation is currently managing the liquidation of properties held by the Government favors large corporations and the super rich and discriminates against the normally wealthy, the middle class, the average worker, the small business man and those aspects of real estate and development that historically have made this country a very dynamic country.

Second, because of the way the bureaucracy is handling the properties, it is maximizing the cost to the taxpayer. My colleagues will notice the example of Potomac Crossing, the way in which on this one piece of property the Resolution Trust Corporation took what might have been a $22 million project and has reduced it now to about a $4 million value. That is an $18 million loss on one project. Eighteen million dollars.

Now let me suggest where I think we are at, and I have been very intrigued with the lessons to be learned from Eastern Europe and the fact that we keep telling the Russians and others that they cannot have semisocialism, they cannot have half communism, they cannot have partially free enterprise. They have got to go one way or the other.

George Will, the columnist, had a wonderful phrase when he said that the Russians are faced with the problem one would be faced with if everybody was driving on the left side of the road and decided to change the rules so they would start driving on the right side. One either makes an entire change, or they get caught up in a total mess in which people collide. We cannot have half the cars make the change and the other half of the cars stay to the old path, or we will just have total collisions.

Well, let me suggest that we are faced with the same problem here at home. America works when it works by combining essentially three strong assets. It combines decentralization, the idea that lots and lots of decisions, the vast majority of decisions in America, are not made by Washington. They are made locally, and ideally they are made as locally as possible.

Second is the concept of free enterprise, the idea of what truly makes America dynamic, people who go out and who seek to make a better future, to create jobs, to get wealthier, to do things because they have an incentive to improve their life, and in the process, in order to improve their life, they offer a product, or a good or a service which improves other people's lives, which is why they pay for it.

Third, there is an entrepreneurial dynamic opportunity oriented psychology which is strongly American where we encourage risk taking. We encourage people, whether it is the mayor of a small town trying to attract a new business, or it is a local developer trying to figure out how to have a very successful development, or somebody who thinks they have invented the next computer system, or the next television system, or the next breakthrough in automobiles. But the combination, the psychology of being an entrepreneurial opportunity-oriented dynamic personality, the incentives, and the drive, and the decentralization of free enterprise, and the fact that it is a continentwide nation, we have deliberately decentralized power down so that small towns, and counties and local communities have an enormous ability on zoning, on regulations, on all sorts of things to have an impact.

Now the Resolution Trust Corporation is a perfect example of why the large centralized Washington bureaucracy is disintegrating. It is antidecentralization. It is a relatively small bureaucracy so people will never know, to take again the example of Potomac Crossing, the objective fact is, that people at the RTC could not possibly know what the town of Leesburg's local regulations are. It is impossible for any central bureaucracy to keep up with the rate of decisionmaking in 3,300 counties and in 20 or 30,000 towns in America. So, the minute we centralize, we either crush decentralization, which is what makes America so dynamic and creative, or we have a centralized bureaucracy, which is incredibly out of touch with reality.

Second, by definition a bureaucracy like the Resolution Trust Corporation is antifree enterprise. Why do they want to package the $300 million cash on delivery kind of package which favors the super rich and favors the big corporations? Because it is easier for them to deal with, the same reason that at every level in every government bureaucracy they like dealing with big companies and big unions, because a big business bureaucracy finds a sense of certainty in sitting down and working with a big business or a big union, but, if they have got to go out and deal with 500,000 entrepreneurs, it is impossible. They cannot do it. So, by definition the Resolution Trust Corporation is antifree enterprise.

Third, the very rhythm and psychology of a Federal bureaucracy, particularly in the 1990's, threatened, as they are, by congressional hearings, and congressional attacks and the sense of being investigated by everybody and possibly taken to court; the whole style of American bureaucracy, as it has evolved, is antirisk taking, cover you rear end, make sure you do not make a mistake, avoid any kind of incentive, do not do anything out of the ordinary, do not have any kind of creativity because, if someone makes a mistake, first one of the newspapers is going to cover it, and then the television station is going to cover it. Then they are going to be called up in front of three congressional hearings, and then they may get an independent counsel to come and investigate them, and then they may spend 5 years of their life having to fight a lawsuit or being threatened with going to jail. So, faced with what is a risk aversive, micromanagement, antiopportunity, antichange, antiresponsibility kind of Congress and the psychology of the modern news media, the average bureaucrat says, "Not me. I don't get paid enough to take a big risk, and I'm not going to do anything out of the ordinary, and I'm going to follow the paperwork," and what is the result?

The result is a credit crunch which I believe is threatening to put us into a depression. The result is a deflation and a centralized bureaucracy at the Resolution Trust Corporation, which is a nightmare, and I think the challenge to the Bush administration, and the challenge to House and Senate Republicans and the challenge, frankly, to our Democratic friends across the way is to recognize that we have to make a decision. If we want America to be decentralized, if we want free enterprise to create jobs and opportunity, if we want to encourage an entrepreneurial, dynamic, creative-oriented type of psychology, then we have got to radically, thoroughly change the Resolution Trust Corporation because otherwise what we are going to have is a huge, massive, expensive bureaucracy which favors the super rich and favors big corporations, which runs up enormous bills for the taxpayers and which, in fact, is a minor disaster. But it is not there by itself.

Let me give my colleagues a couple more examples. Every practical, commonsense American knows that big cities in America right now are not working very well, that we need real changes, that when we go through area by area and State by State, it is appalling how often we find scandal, after scandal, after scandal, and we find that whether it is in New York, or it is in Washington, or it is in Chicago, or it is in Philadelphia, that there is just a process of local scandals that is appalling.

We recently had a list compiled just from the Chicago Tribune of people in the last few years who have been found guilty of accepting bribes or who have been involved in fraud. Let me just give my colleagues the Chicago list.

August 31, 1986, the Department of Consumer Affairs inspector, Eugene Szczeblowsky, plead guilty to two counts of accepting bribes at his arraignment. Szczeblowsky had the power to issue tickets to businesses and withhold licenses, and he was charged with taking money from two businesses. The bribes ranged from $10 to $2,500.

December 2, 1986, Carmen Aiello, a former deputy water commissioner for the city of Chicago, entered a guilty plea to two counts of extortion.

□ 1900

Aiello acknowledged he accepted a $1,000 bribe on two occasions in 1985, from Michael Raymond, a swindler who worked undercover as an informant for Federal authorities. November 1987, the former owner of Consumers Tire and Supply Co., accused of paying thousands of dollars of bribes to employees of the city of Chicago and other public agencies in Chicago in return for millions of dollars of business, agreed to plead guilty and testify for the prosecution.

October 1988, a Cook County circuit court judge was convicted on Federal bribery charges. Associate Judge Daniel Glazier was convicted on one count of conspiracy for paying bribes as a defense lawyer and taking bribes as a judge while sitting on the circuit court, Southwest Suburban Fifth Municipal District. Accused of fixing cases and steering unrepresented defendants to a network of corrupt attorneys between 1980 and 1983, he faced a maximum sentence of 20 years in prison.

July 1991, Nick Labue, the former finance commissioner of Chicago Heights, was sentenced in Federal court to 20 months in prison for extorting hundreds of thousands of dollars in his city post. In his plea agreement, Labue admitted taking more than $50,000 in bribes from Albert Ceasar Tacco, the south suburban mob boss now in prison after Tacco took over the city's garbage hauling contract in 1984. That is just Chicago, and it is just a sample of recent convictions.

The point is this: When you build a large bureaucratized, heavily regulated city government, you are building opportunities for bribery. When you centralize the flow of cash through city employees, you encourage setting up a system of bribery. There is a fabulous book on New York called City for Sale, which walks through case-by-case in the last decade the examples of corruption in New York City and how the process worked, and the fact that if you were honest, you were at a net disadvantage in trying to do business with the city.

Now the reason I am going into this is that when we come to the issue of aid to the cities, and we have had a number of recent arguments by various mayors that the problem with the cities is to be found in Washington, I want to argue that in fact the problem of the cities is at the core of how cities are currently organized and of what is now happening in the major cities.

The reason is very simple. The structure of large centralized bureaucracies, the way in which the system operates, is in fact almost designed to guarantee that the city will not work. The fact is that when you look at the process of the way large cities operate in America today, it is almost impossible to get things done.

Let me just cite to you a recent study. This was in the New York Daily News. This is October 26, 1989. This is an article entitled "Mockery of an Educator."

> Local school superintendent Colman Genn, whose whistle-blowing led to the suspension of the District 27 board, broke down in tears yesterday as he told the Gill Commission "The board made a mockery of my existence."
>
> Genn, a career educator who had taped conversations with local board members accused of pressuring him to give jobs to cronies, said, "Patronage cost the Queens District more than $1.3 million in unnecessary payroll expenses and denied the district's children 20 teachers. Instead of hiring the 20 teachers, the district hired 45 paraprofessionals who do no teaching, paying each one $14,000 a year."
>
> Genn said, "This was a waste of money, in my judgment. Education has been my life." Nonetheless, he said, concluding his testimony, "The people I identified today made a mockery of my existence and beliefs, and because of their actions are destructive to children."

> As Genn left the hearing room of the New York County Bar Association in lower Manhattan, members of the audience, many of whom were parents in the district, applauded. Some had tears in their eyes, too.
>
> James Gill, chairman of the Joint Commission on Integrity in the public schools, called Genn a "bloody hero."
>
> Genn's disclosures come at a very critical time, just two months before reform-minded new schools chancellor Joseph Fernandez takes over. Genn said he never has spoken to Fernandez, but he expects to.
>
> Genn began testimony before the commission on Monday, following months in which he secretly taped conversations between himself and members of the district's board.
>
> Dangling his reappointment in front of him as a trade-off, at least six members of the board and one teacher wanted him to hire certain people with political or ethnic connections and to punish, transfer or demote others without those connections, Genn said.

Now, the essence of this is real simple. We are faced with the reality that in district after district, in area after area, people are engaged at the local level in messing up the use of resources of help children, the use of resources to help environment, the use of resources to help people in the way they are supposed to.

Again, from the same report,

> Two troubled city school districts rang up nearly $90,000—18 times the cost of educating a child for one year—in dial-a-porn and other unauthorized phone calls over the last 21 months, Gill Commission probers charged yesterday.
>
> About 13 percent of all calls in the two districts—District 4 in East Harlem and District 9 in the Bronx—were made to hear whispered pornography, get horoscopes, make blind dates, play trivia games, get lucky numbers, dial 411 for information or call out-of-state and overseas.
>
> Favorites of the callers, none of whom have been caught, ranged from Dial-A-Hunk to Erotic Fantasies, from Jean Simpson's Hot Numbers to UDA Rock Rapp, according to field audits released by investigators.

Now, my point here is to simply suggest that when the mayors of some of our largest cities talk about the need to get help from Washington, I think they ought to start by getting help at home. When the mayors of some of our largest cities say they want to raise taxes on working Americans in order to send more cash to their city, I think they first have an obligation to overhaul and reform their city. We in the Congress have an obligation to those hardworking taxpayers here back at home to not automatically send more money.

Let me go back and summarize, because I think that the American people have every right to be mad at Congress, and I think the American people have every right to demand real change. I think either the President and his Republican congressional allies are going to communicate a very clear message in 1992, or we are going to continue to muddle through and we are going to continue, frankly, to have people increasingly alienated and increasingly unhappy and increasingly dissatisfied with their Government because the reasons are simple. You can hardly expect the Democratic leadership to change the system they own.

The Democratic leadership has run the House since 1954. They are not going to change. They do not want to change. It has been a good system for them. It has kept them in power. We have one committee chairman who joined his committee the year I was born, 1943, who became a chairman in 1949. I cannot imagine a man whose first chairmanship was in 1949, who is still serving in the Congress, significantly changing his ways. It is not going to happen. So it is not fair to expect the Democrats to change. They are not going to.

Furthermore, they are legitimately and naturally the party of big government, the party of the welfare state, and the party of Washington. So from their standpoint, the Resolution Trust Corporation sort of makes sense. It is their kind of bureaucracy. From their standpoint it makes perfect sense to ignore the levels of political corruption, the levels of legal corruption, the kind of problems we face around the country, because after all, those are their big city machines, and why should they worry about raising the taxes on people in the rest of the country as long as the money goes to the Democratic machines in the big cities.

But those of us who are Republican I think frankly had better tighten our belts and get to work, because I believe we have not done the job right. I believe we have a lot to answer for. I think when you look at the Resolution Trust Corporation we have to, first, answer for reforming the bureaucracy, and we have to, second, answer for the deflation. We have an obligation to change the tax code to encourage people to get back into real estate. We have an obligation to change the tax code to encourage people to save and invest. We have an obligation to change the tax code to encourage people to be able to go out and start small businesses and to create real estate opportunities, and we need to change the tax code to have a tax credit for young people and young couples who want to buy their first home.

Every one of those steps would increase the value of real estate, and would help people go out and buy property and would raise the value of the property the U.S. Government owns, and would make it easier for the U.S. Government to sell those properties and would save the taxpayers money.

But let me suggest, as an example of how ineffective and almost self-destructive the congressional system is, the No. 1 advantage we would get from those tax changes would be the amount of money we would save on the Resolution Trust Corporation.

□ 1910

The fact is, if we pass the changes I talked about, and many of them are contained in the Gramm-Gingrich tax bill, the Economic Growth Act of 1991, if those changes were passed we would save billions of dollars in money we would not have to spend bailing out properties because of the deflation that is currently underway in real estate. We would not have people going bankrupt who are otherwise going to go bankrupt. We would not have people laid off and becoming unemployed.

We would in fact improve the economy, increase the number of jobs, increase the value of real estate, and save the taxpayers money.

But under the congressional system that the Democrats have, the Joint Committee on Taxation is not going to score any of that money. In other words, when we go in and say how much are we going to save if we can raise the value of property in America, under the way the liberal Democrats score things in the Congress we will not get a dime of savings counted, even though at a common sense, practical level every American knows that if we were to pass the tax changes, if we were to pass the passive loss provision to get more people back into real estate, if we were to pass a tax credit for young people and couples to be able to buy their first homes, if we were able to pass a provision to allow people to use their IRA's and loan them to their children and grandchildren to buy their first home, if we were to pass a provision that provided for capital gains so that people could have an incentive to save and to invest and to buy property, those provisions would in fact save billions of dollars in the cost to the Resolution Trust Corporation bailout.

But not a penny of it will be scored in our favor by the liberals who control the Joint Committee on Taxation. So they will come down here with some totally false, totally inaccurate, totally unrealistic fantasy projection, and they will argue that that is what we should count on the floor of the House.

It is like having a department of aviation which only believes in railroad trains and which says you cannot put wings on an airplane because then you could not get them through a tunnel to get them through the mountains. You try to explain that we fly over the mountain, that is why it is called an airplane. They do not believe it, they cannot measure it, and cannot score it.

Then we are trapped on the wrong playing field. But it goes further. We also have an obligation to cut spending. I believe if the Federal Reserve Board knew that we were prepared in the next budget to substantially cut spending, I would say at least $30 or $40 billion below the current amount, to have a genuine cut in the amount of money we were going to be spending in the Government itself, I believe at that point the Federal Reserve Board would believe that the right signal was being sent to not have inflation, the right signal is being sent to bring down interest rates, and you would see interest rates come down even more dramatically.

You can imagine that if the President and the Republicans in the Congress were to join together and commit themselves to fight for a budget in 1992, which actually came in below the current projections by $30 or $40 billion, and to fight for that all summer, and to veto appropriations bills and sustain the vetoes and to genuinely shrink the spending by the Federal Government, that that would in fact make the job of the Federal Reserve Board so dramatically easier that at that point Alan Greenspan, the Chairman of the Federal Reserve Board, could help bring down interest rates I believe by potentially as much as 2 full percentage points. That should be our goal.

Our goal should be to have low inflation, to have low interest rates, to keep taxes as low as possible, and to reduce the deficit by controlling and cutting spending.

Now, that is a policy I believe that 60 to 65 percent of the American people will buy.

When you look at just the stories I told earlier, and over the next few days I am going to come back with more of them, when you look at the RTC wasting potentially as much as $18 million on one project, when you look at the school system throwing away $1,300,000 in patronage in one district alone which could have provided for 20 teachers, it seems to me you clearly can find enough examples of real change, enough examples of real waste, enough examples of setting priorities, that you could bring spending down.

So let me summarize. First, we need to rethink every large centralized bureaucratic structure and recognize they do not work. That is the 21st century, you need to decentralize, you need to free up the system, you need to liberate people because information is going to flow everywhere. If major corporations can downsize its middle management, and we are seeing a dramatic shrinkage in the amount of bureaucracy in IBM, in General Motors, and in other corporations, should we not see the same shrinkage in New York City government, in New York State government, and in the Federal Government, and should that not be part of a program for the 1990's, to have fewer bureaucrats with less paper, because computers allow us to dramatically downsize, just as they do in the private sector?

Third, we have to adopt the right tax policies. We have to be committed to economic growth. We have to be committed to increasing investment in real estate, committed to increasing savings and investment in factories, committed to creating more jobs, and committed to increasing the value of real estate and real property, so that we are in a position to not have another cycle of bankruptcies.

Fourth, we have to be committed to a process by which the Federal Reserve Board and investors in U.S. bonds can realize that we are opposed to inflation, so they can invest in U.S. savings bonds at a reasonable rate, knowing that they are not going to have their savings eaten up by inflation. At that point we are going to get much lower rates.

If we got down to where the 30-year Treasury note was only paying 5 percent, instead of about 8 percent which it pays now, then you would see short-term rates at around 3 percent, and you would see a real economic boom in 1992. But that will not happen as long as the investors in long-term bonds are concerned that this Congress is going to spend so much money that inflation is going to be inevitable if we continue to spend more and more and more, because then they are going to insist on getting extra interest just to be able to protect themselves against inflation.

So if we could agree not to have that kind of spending, not to have those rising deficits, but instead to form a pro-growth, pro-lower interest rate, pro-savings coalition, I believe you would see a dramatic boom.

Last, the American people have every right to expect their Congress to follow decent, reasonable procedures. When we see a major part of a banking bill being written by two men, when we see a committee that has no jurisdiction over foreign aid writing $1 billion of aid to the Russians, when we have a conference committee which has never had hearings, never had public testimony, never had amendments offered in public, we know that the process of Congress is wrong.

When we see an unemployment bill held up by the Democratic leadership, when we know that there are millions of people out there who ought to be getting extended unemployment, that we are getting close to the Christmas season and those families are going to be blocked from having any kind of a decent Christmas because the Democratic leadership refuses to bring to the floor and make in order a signable unemployment bill that could get the checks going out, we know there is something wrong with the process.

But I think the challenge to those of us in the Republican Party who work with President Bush is even greater than the challenge to the Democrats. All the Democrats have to do is block everything the President wants, preside over the welfare state they believe in, allow the economy to decay, and then blame President Bush for the pain they cause. That is a fairly simple job, and they are working at it every day.

We have a tougher job. We have to rethink all these large systems of Government. We have to establish the psychology of entrepreneurial opportunity. We have to change the tax system so people have an incentive to save and invest and create jobs. We have to go back to a process of renewing the value of real estate to create a rebirth of real estate markets in America. We have to oversee the Resolution Trust Corporation, and we have to insist on cleaning up the Congress and establishing a Congress you can be proud of.

I think in the next 12 months we in the Republican Party have our work cut out for us. I think we had better roll up our sleeves and get to work. I think we had better recognize only by a consistent, courageous, determined, persistent effort are we going to be able to do things we need to do to get America growing again.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. LIVINGSTON) to revise and extend his remarks and include extraneous material:)

Mr. DUNCAN, for 30 minutes, today.

(The following Members (at the request of Mr. MCDERMOTT) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. WYDEN, for 60 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LIVINGSTON) and to include extraneous matter:)

Mr. COUGHLIN.
Mr. MACHTLEY.
Mr. CRANE in two instances.
Mr. GALLEGLY.
Mr. BROOMFIELD.
Mr. MCEWEN.
Mr. GEKAS.
Ms. ROS-LEHTINEN in three instances.
Mr. BILIRAKIS.
Mr. FISH.
Mr. SMITH of New Jersey.

(The following Members (at the request of Mr. MCDERMOTT) and to include extraneous matter:)

Mr. LANTOS.
Mr. DINGELL.
Mr. TAYLOR of Mississippi.
Mr. TALLON.
Mr. MATSUI.
Mr. DURBIN.
Mr. KILDEE.
Mr. EDWARDS of California.

SENATE JOINT RESOLUTION REFERRED

A joint resolution of the Senate of the following title was taken from the

Speaker's table and, under the rule, referred as follows:

S.J. Res. 207. Joint resolution to designate the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, each as "National Adoption Week", to the Committee on Post Office and Civil Service.

A BILL AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. ROSE, from the Committee on House Administration, reported that that committee did on the following date present to the President, for his approval, a bill and joint resolutions of the House of the following titles:

On November 4, 1991:

H.R. 1046. An act to amend title 38, United States Code, to increase, effective as of December 1, 1991, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans.

H.J. Res. 282. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria;

H.J. Res. 281. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic; and

H.R. 2686. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes.

ADJOURNMENT

Mr. GINGRICH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 19 minutes p.m.) the House adjourned until tomorrow, Wednesday, November 6, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2303. A letter from the Director, Office of Thrift Supervision, transmitting the Office's 1990 annual report on the Implementation of the Community Reinvestment Act, purusant to 12 U.S.C. 2904; to the Committee on Banking, Finance and Urban Affairs.

2304. A letter from the President, Oversight Board and Chief Executive Officer, Resolution Trust Corporation, transmitting the semiannual report of the Resolution Trust Corporation and the Oversight Board, October 31, 1991; to the Committee on Banking, Finance and Urban Affairs.

2305. A letter from the Secretary of Health and Human Services, transmitting the report on Federal programs providing funds or services to prevent homelessness among families with at-risk children; to the Committee on Education and Labor.

2306. A letter from the Chairman, Consumer Product Safety Commission, transmitting the Commission's study of aversive agents, pursuant to Public Law 101-608, section 204 (104 Stat. 3124); to the Committee on Energy and Commerce.

2307. A letter from the Inspector General, Environmental Protection Agency, transmitting EPA's annual Superfund report to the Congress for fiscal year 1990; to the Committee on Energy and Commerce.

2308. A letter from the Secretary of Energy, transmitting the 15th report on enforcement actions and comprehensive status of Exxon and Stripper Well oil overcharge funds; to the Committee on Energy and Commerce.

2309. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the report of major defense equipment sold commercially to Egypt (Transmittal No. DTC-44-91), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

2310. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment sold commercially to Saudi Arabia (Transmittal No. DTC-41-91), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

2311. A letter from the Director, Office of Management and Budget, transmitting OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from passage of H.R. 2519, H.R. 2608, H.R. 2622, H.R. 2698, H.R. 2942, and H.J. Res. 360, pursuant to Public Law 101-508, section 13101(a) (104 Stat. 1388-582); to the Committee on Government Operations.

2312. A letter from the Assistant Secretary for Finance and Administration, Smithsonian Institution, transmitting a copy of the Smithsonian Institution, the Woodrow Wilson International Center for Scholars, and Reading Is Fundamental annual pension reports, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

2313. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2314. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2315. A letter from the Assistant Attorney General of the United States, transmitting a draft of proposed legislation to make technical amendments to the False Claims Act; to the Committee on the Judiciary.

2316. A letter from the Chairman, U.S. International Trade Commission, transmitting the Commission's 67th quarterly report on trade between the United States and the nonmarket economy countries, pursuant to 19 U.S.C. 2441(c); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 2927. A bill to provide for the establishment of the St. Croix, VI, Historical Park and Ecological Preserve, and for other purposes; with an amendment (Rept. 102-285). Referred to the Committee of the Whole House on the State of the Union.

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 3387. A bill to amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes; with an amendment (Rept. 102-286). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 3049. A bill to amend the Immigration and Nationality Act to restore authority in courts to naturalize persons as citizens; with amendments (Rept. 102-287). Referred to the Committee of the Whole House on the State of the Union.

Mr. GORDON: Committee on Rules. House Resolution 269. Resolution providing for the consideration of H.R. 932, a bill to settle all claims of the Aroostook Band of Micmacs resulting from the band's omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes (Rept. 102-288). Referred to the House Calendar.

SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

H.R. 2929. Committee on Merchant Marine and Fisheries discharged from further consideration of H.R. 2929; H.R. 2929 referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DELLUMS (for himself and Ms. NORTON):

H.R. 3709. A bill to waive the period of congressional review for certain District of Columbia acts and to permit the council of the District of Columbia to enact laws relating to attorneys and the representation of indigents in criminal cases; to the Committee on the District of Columbia.

By Mr. DURBIN (for himself and Mrs. SCHROEDER):

H.R. 3710. A bill to establish an Office of Noise Abatement and Control in the Environmental Protection Agency; to the Committee on Energy and Commerce.

By Mr. KILDEE (for himself, Mr. FORD of Michigan, and Mr. GOODLING):

H.R. 3711. A bill to authorize grants to be made to State programs designed to provide resources to persons who are nutritionally at risk in the form of fresh nutritious unprepared foods, and for other purposes; to the Committee on Education and Labor.

By Mr. ROHRABACHER (for himself and Mr. COMBEST):

H.R. 3712. A bill to repeal the law of the District of Columbia known as the Assault Weapon Manufacturing Strict Liability Act of 1990; to the Committee on the District of Columbia.

By Mr. SKELTON (for himself, Mr. MAVROULES, Mr. KASICH, and Mr. BLAZ):

H.R. 3713. A bill to amend title 10, United States Code, to designate the Vice Chairman of the Joint Chiefs of Staff as a member of the Joint Chiefs of Staff; to the Committee on Armed Services.

By Mr. SYNAR (for himself, Mr. SCHEUER, Mr. DEFAZIO, and Mr. OLVER):

H.R. 3714. A bill to transfer Federal financial assistance currently used to develop herbicide resistant plants to nonchemical weed control systems, and for other purposes; to the Committee on Agriculture.

By Mr. ABERCROMBIE (for himself and Mrs. MINK):

H.J. Res. 368. Joint resolution to recognize contributions made by Federal civilian employees during the attack on Pearl Harbor and during World War II; to the Committee on Post Office and Civil Service.

By Mr. DYMALLY:

H. Con. Res. 231. Concurrent resolution relating to peace in the Middle East in the aftermath of the Madrid Peace Conference; to the Committee on Foreign Affairs.

By Mr. HOYER (for himself, Mr. RITTER, Mr. MARKEY, Mr. FEIGHAN, Mr. SMITH of New Jersey, Mr. PORTER, Mr. WOLF, and Mr. RICHARDSON):

H. Con. Res. 232. Concurrent resolution calling for acceptance and implementation by certain republics of the commitments on human rights, fundamental freedoms, and humanitarian cooperation contained in the Helsinki Final Act and other documents of the Conference on Security and Cooperation in Europe; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII.

313. The SPEAKER presented a memorial of the Senate of the Commonwealth of Pennsylvania, relative to the sister city-State concept; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

[Omitted from the Record of November 1, 1991]

H.J. Res. 201: Mr. STARK, Mr. BEREUTER, Mr. SCHEUER, Mr. HOYER, Mr. ECKART, Mr. SYNAR, and Mr. DELLUMS.

[Submitted November 5, 1991]

H.R. 103: Mr. KOPETSKI and Mr. MCCOLLUM.

H.R. 104: Mr. TORRES.

H.R. 722: Ms. NORTON.

H.R. 784: Mr. GOODLING and Mr. SARPALIUS.

H.R. 842: Mr. GILCHREST.

H.R. 962: Mr. FOGLIETTA and Mr. ANDREWS of New Jersey.

H.R. 1087: Mr. OLVER.

H.R. 1130: Mr. DUNCAN.

H.R. 1326: Mr. FRANK of Massachusetts.

H.R. 1414: Mr. BREWSTER.

H.R. 1473: Mrs. MORELLA.

H.R. 1554: Mr. KOSTMAYER.

H.R. 2144: Mr. DOOLITTLE.

H.R. 2258: Mr. FEIGHAN and Mr. SPRATT.

H.R. 2361: Mr. LEVINE of California, Mr. DOOLITTLE, and Mr. EWING.

H.R. 2840: Mr. MCNULTY.

H.R. 2872: Mr. DELAY, Mr. CARPER, Mr. FROST, and Mr. CONYERS.

H.R. 2891: Mr. FISH.

H.R. 2915: Mr. TRAFICANT.

H.R. 2929: Mr. MARKEY, Mr. ATKINS, and Mr. FOGLIETTA.

H.R. 3026: Mr. LEVINE of California, Mr. OWENS of Utah, and Mr. KLECZKA.

H.R. 3185: Mr. DARDEN.

H.R. 3369: Mr. DWYER of New Jersey.

H.R. 3373: Mr. MCNULTY, Mr. YATES, Mr. YATRON, Mr. HUTTO, Mr. BRUCE, Mr. MCCLOSKEY, and Mr. OBERSTAR.

H.R. 3432: Mr. MCCLOSKEY.

H.R. 3450: Mr. BEREUTER, Mrs. COLLINS of Illinois, and Mr. SUNDQUIST.

H.R. 3451: Mr. EMERSON.

H.R. 3578: Mr. ANDERSON, Mr. ANDREWS of New Jersey, Mr. ATKINS, Mr. BEILENSON, Mr. BERMAN, Mr. CONYERS, Mr. DELLUMS, Mr. DWYER of New Jersey, Mr. GEREN of Texas, Mr. GILCHREST, Mr. GREEN of New York, Ms. HORN, Mr. HUGHES, Mr. JONTZ, Mr. KOLTER, Mr. KOSTMAYER, Mr. MCDERMOTT, Mr. MILLER of California, Mr. OLVER, Mr. ROE, Mr. SAXTON, Mr. SIKORSKI, and Mr. SMITH of Florida.

H.R. 3585: Mr. CAMPBELL of Colorado, Mr. LEWIS of California, Mr. MARLENEE, Mr. TALLON, Mr. HUNTER, Mr. LAGOMARSINO, Mr. YOUNG of Alaska, Mr. JOHNSON of South Dakota, Mr. GALLEGLY, Mr. HUGHES, Mr. SENSENBRENNER, Mr. KOPETSKI, Mr. GUNDERSON, and Mrs. VUCANOVICH.

H.J. Res. 107: Mr. VANDER JAGT, Mr. STARK, and Mr. EVANS.

H.J. Res. 125: Mr. WYDEN.

H.J. Res. 364: Mr. BATEMAN, Mr. BILBRAY, Mr. CHANDLER, Mr. CHAPMAN, Mr. COYNE, Mr. DE LUGO, Mr. DOOLITTLE, Mr. DWYER of New Jersey, Mr. EWING, Mr. GALLEGLY, Mr. GEREN of Texas, Mr. HUGHES, Mr. LANCASTER, Mr. MANTON, Mr. MARTINEZ, Mr. MCCLOSKEY, Mr. MCNULTY, Mrs. MINK, Mr. MOLLOHAN, Ms. OAKAR, Mr. OWENS of Utah, Mr. POSHARD, Mr. SANGMEISTER, Mr. SCHIFF, Mr. SPRATT, Mr. UPTON, Mr. WOLF, and Mr. YATES.

H. Con. Res. 180: Mr. KOPETSKI and Mr. MRAZEK.

H. Con. Res. 200: Mr. PORTER, Mr. OBERSTAR, Mr. DANNEMEYER, Mr. ECKART, Mr. HENRY, Mr. GALLEGLY, Mr. WILSON, Mr. LAGOMARSINO, Mr. KOLTER, Mr. FAWELL, Mr. PAXON, Mr. SCHEUER, Mr. JEFFERSON, Mr. DORNAN of California, Mr. LEHMAN of Florida, Mr. LIPINSKI, Mr. BUSTAMANTE, and Mr. SENSENBRENNER.

H. Con. Res. 208: Mr. DWYER of New Jersey.

H. Res. 115: Mr. RIGGS, Mr. TRAFICANT, Mr. MORAN, Mr. KLUG, Mr. VENTO, and Mr. TORRICELLI.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1330: Mr. RAMSTAD.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

H.R. 1330. Mr. RAMSTAD.

130. By the SPEAKER: Petition of the city of Hollywood, FL, relative to the Cable Communications Act of 1984; to the Committee on Energy and Commerce.

131. Also, petition of Virginia Council of Chapters, the Retired Officers Association, Virginia Beach, VA, relative to MIA's remaining in Southeast Asia; to the Committee on Foreign Affairs.

SENATE—*Tuesday, November 5, 1991*

(Legislative day of Tuesday, October 29, 1991)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii.

PRAYER

The chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

* * * *happy is that people whose God is the Lord.*—Psalm 144:15.

God of the nations, Lord of all people, how easily we forget that our Founding Fathers gave us a political system in which the people are sovereign. They gave us a government whose "just powers are secured by the consent of the governors." Exercise of that responsibility is as crucial to our system as is the exercise of responsibility on the part of the elected officials. Neglect of that obligation is a severe breakdown of the system. One may think his one vote is of little consequence, but certainly his not voting is of far greater consequence and multiplied by millions of nonvoters means total collapse of the political equation conceived by our forebears.

Mighty Ruler of the universe, awaken the people to their obligation as well as privilege of voting. Help them see that every excuse for not voting is a strong argument to vote. Forgive us for our negligence at the polls, and move us to take personal responsibility for our part in the greatest form of government history has ever known.

In the name of the Lord of history. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 5, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. AKAKA thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein and with the time to be controlled by the majority leader or his designee.

In my capacity as a Senator from the State of Hawaii, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

CORRESPONDENCE FROM SECRETARY OF TRANSPORTATION AND OTHERS CONCERNING MONTREAL PROTOCOLS AND QUESTION OF STATUTORY AUTHORIZATION

Mr. MITCHELL. Mr. President, on August 1, 1991, I submitted for the CONGRESSIONAL RECORD a copy of an opinion by the American Law Division [ALD] of the Congressional Research Service concerning the Montreal protocols. I also submitted a copy of a letter I wrote on that date to the Secretary of Transportation, Samuel Skinner. These documents supplemented earlier correspondence on the issue which was entered in the RECORD on June 28, 1991.

I wish to enter into the RECORD today a copy of the reply that I received from the Secretary of Transportation on September 17, 1991. I also received a letter dated September 6, 1991, with relevant opinion from the Air Transport Association of America and the International Air Transport Association [ATA/IOTA]. Those letters were circulated among interested parties on the issue. In response, I have received relevant comments from the American Association for Families of KAL 007 Victims and the Association of Trial Lawyers of America [ATLA]. For the benefit of my colleagues, I wish to enter a copy of those letters into the RECORD as well, immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MITCHELL. My most recent correspondence with the Secretary of Transportation has concerned the supplemental compensation plan [SCP] proposed as a condition of ratification of the protocols, which otherwise limit international airline liability. In my August letter to Secretary Skinner, I expressed concern over the unprecedented nature of the SCP and the implications of a choice by the Senate not to rely on implementing legislation to establish the supplemental compensation system. I especially was concerned about the risk of an absolute limitation on recoveries being created if the SCP is overturned in a legal challenge. I asked Secretary Skinner for the administration's suggestions for mitigations of concerns or risks with regard to the SCP.

The Secretary of Transportation's letter and that of IOTA/ATA, go beyond the ALD opinion and point to analogous precedents for relying on agency implementation instead of requiring enabling legislation. They also explain that judicial review of the SCP would be available under the Federal Aviation Act before the protocols become effective. In accordance with this view, the risk of any potential gap in coverage would be negligible.

The ATLA letter maintains that the assurance offered in the Secretary of Transportation's letter "betrays an uncertainty." What might happen in the event of a legal challenge to the SCP is largely hypothetical; however, my own view is that any uncertainty in this area can be removed. I will want to discuss with the administration and the Senate Foreign Relations Committee a possible amendment to the resolution of ratification to provide, in effect, that the protocols shall have no force or effect during any period when for any reason a supplemental compensation plan is not in operation. Such an amendment would remove any risk of a potential gap in coverage for airline passengers.

There is a more fundamental concern also expressed in the ATLA letter. Although enabling legislation may not be absolutely necessary for the SCP, ATLA raises the distinct question of whether or not it is appropriate or desirable. The ATLA letter quotes a section from the ALD opinion of July 8, 1991, which offers an argument for enabling legislation. That is one option.

The other option is to rely on administrative implementation as proposed

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

by the administration and recommended by the Senate Foreign Relations Committee. The ALD opinion provides the reassurance that "Congress in the present circumstances seems free to choose between either approach without doing manifest violence to the separation of powers."

Whether or not enabling legislation is appropriate, beyond whether or not it is necessary, is perhaps a subjective issue, but I believe it is a fair one. It is a question which all of my colleagues should consider carefully. I also note that it is distinct from the more fundamental question of whether the Senate should consent at all to ratification of the protocols. That is the threshold issue. The secondary issue is whether ratification should be conditioned on a supplemental compensation plan enacted either through agency action or through enabling legislation.

I ask my colleagues to consider these issues carefully. I look forward to continuing discussions about them with the administration.

EXHIBIT 1

THE SECRETARY OF TRANSPORTATION,
Washington, DC, September 17, 1991.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: Thank you for your thoughtful letter of August 1, 1991, raising certain issues with respect to the Montreal Protocols and the Supplemental Compensation Plan. We welcome the opportunity to address these serious issues with you as the Senate considers these treaties.

Specifically, we share your concerns that there be no gap during which the Protocols might be in effect without a functioning Plan. It is the firm position of the Executive that the establishment of the Supplemental Compensation Plan is a necessary precondition to ratification of the Protocols by the United States. We have made that position clear to the Senate, foreign governments, the airline industry and consumer groups. There will be no change in the position.

In response to your concern about the possibility of the Plan being overturned in a legal challenge, the Administration has carefully re-examined this question. Our review has reinforced our judgment that there is no basis for a successful challenge to the Plan in the courts. This Department has ample statutory authority to implement the Plan, and there are established precedents for relying upon existing authority to implement provisions of a treaty.

More importantly, I want to assure you and the Senate that the Administration is committed to implementing this treaty in a manner that will ensure that American travellers are protected from any potential gap in the coverage of the Plan, even in the unlikely event of a successful judicial challenge to the Plan.

In addition to reiterating the Administration's long-standing commitment that the U.S. would not remain party to the Protocols without a satisfactory and properly functioning Plan, I want to give you the following specific assurances:

The Plan will be open for public comment before it is approved by this Department.

The instruments of ratification will not be deposited until after those persons have had the opportunity to obtain judicial review of this Department's approval of the Plan under the provisions of the Federal Aviation Act, which gives any person disclosing a substantial interest in the Plan standing to obtain such judicial review.

The U.S. will promptly respond to any legal challenge to the Plan and, if necessary, pursue any adverse decision aggressively through the judicial process.

In the extraordinary event a legal defect is revealed in the Plan after the Protocols come into force and effect, the Administration will take immediate action to remedy the defect, or if necessary propose amendments to the Federal Aviation Act.

If appropriate remedies cannot be found promptly, then the United States would denounce the Protocols, and take all feasible measures to preserve the benefits of the Plan for the six month period pending the effectiveness of that action.

In this regard, we would like to emphasize our conclusion that the Federal Aviation Act contains ample statutory authority for implementing the Supplemental Compensation Plan. It has been used since its enactment to implement a wide variety of international agreements between the United States and foreign governments regulating virtually every aspect of international air transportation. Section 1102 of that Act specifically envisions that the powers and duties of the Secretary of Transportation under the Act be exercised in the implementation of any "obligation assumed by the United States in any treaty, convention or agreement that may be in force." In this regard, the Act has provided authority to implement and make mandatory a voluntary intercarrier agreement to augment the compensation payable under provisions of the 1929 Warsaw Convention. That agreement, which first become effective in 1966, remains in operation today.

I have been advised by the Department of State that it is not unprecedented for the Executive to propose ratification of a treaty without requesting further implementing legislation where, as here, existing statutes give the President or his Executive agencies sufficient authority to implement the obligations of the treaty. In such cases the President or the Secretary of State may indicate, in the documentation transmitting the treaty to the Senate, the authorities that will be relied on in carrying out U.S. obligations thereunder. Thus, for example, in submitting the Montreal Protocol on Substances that Deplete the Ozone Layer to the President in 1987, the Secretary of State noted that:

"The obligations the United States would assume under the Protocol will require implementing regulations. . . . Section 157 of the Clean Air Act grants the Administrator of the Environmental Protection Agency authority to regulate substances, practices, procedures, or activities which he finds may reasonably be anticipated to affect the stratosphere, if such effect may reasonably be anticipated to endanger public health or welfare. This broad authority provides the statutory basis for implementing the Protocol, including its trade provisions."

Treaty Doc. 101–19, 101st Cong. 2d Sess., at VIII. A similar statement accompanies the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, now pending advice and consent to ratification. See Treaty Doc. 102–4, 102d Cong., 1st Sess., at VII. Additional recent examples include the Treaty with Belgium on Mutual Legal Assistance in Criminal Matters, Treaty Doc. 100–16, 100th Cong., 2d Sess., at V ("The Treaty will not require implementing legislation and will utilize the existing authority of the Federal courts, particularly 28 U.S.C. 1782.")

We are aware of no instance in which reliance on existing statutory authority for the performance of obligations under a treaty has been successfully challenged on the ground that the treaty in question should have been implemented only by after enacted legislation specifically addressed to that treaty. Finally, as previously noted, I have complete confidence that the Department of Transportation has adequate authority to implement the provisions of new Article 35A of the Convention and establish the Supplemental Compensation Plan.

Thank you again for your interest in the Protocols, and for the attention you have given to their implementation. As I have stated before, ratification of the Montreal Protocols is a high priority for the Administration. With your help in scheduling the Protocols for Senate consideration this session, the United States will be able to bring into force and effect a legal regime that will demonstrate its leadership and commitment to protecting American citizens using international air service worldwide.

Sincerely,

SAMUEL K. SKINNER.

SEPTEMBER 6, 1991.

Re Montreal Protocol No. 3 and the Supplemental Compensation Plan.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: On behalf of the Air Transport Association of America and the International Air Transport Association, whose members include the international airlines serving the United States, we would like to take this opportunity to address the concerns that you have raised with respect to the proposed ratification of the Montreal Protocols (the "Protocols") and the adoption of a Supplemental Compensation Plan ("SCP" or the "Plan").

As you know, the existing liability regime applicable to international aviation—established by the Warsaw Convention of 1929 (the "Convention")—limits compensation for passenger death or injury to an unreasonably low amount by American standards. The Montreal Protocols update the Convention (1) by mandating absolute, but limited, liability for airlines in this regard and (2) by permitting signatory countries to establish and maintain a system to supplement that compensation. The U.S. Supplemental Compensation Plan will cover economic and noneconomic losses in excess of the treaty liability limit up to at least $500 million per aircraft per incident, an amount more than adequate to provide full compensation to crash victims.

It has been clear to all airlines since the negotiation of the Protocols in 1975 that the United States would require that a permanent Supplemental Compensation Plan be in force as a condition of its eventual ratification of the Protocols. We support such a Plan and have worked with the Department of Transportation, the Senate Foreign Relations Committee and other interested parties to draft a satisfactory SCP. Further, the Foreign Relations Committee has proposed to require a satisfactory SCP in two provisos to the Senate's consent to the Protocols. The provisos state that ratification of the Protocols by the President is dependent upon having a satisfactory SCP and that the President is obligated to denounce the Protocols if he determines that a satisfactory SCP is not in operation.[1]

You have raised concerns about whether implementing legislation for the SCP would be appropriate or advisable. On July 8 the Congressional Research Service responded to your concerns in a memorandum that addressed these issues in general terms, but did not analyze the existing statutory framework established by the Federal Aviation Act of 1958, as amended (the "Act").[2] By letter dated August 1, 1991 to Secretary of Transportation Skinner, you indicated that you remained concerned over the choice not to rely upon implementing legislation, and that Americans may be limited to the $130,000 strict liability amount if the SCP is, for some reason, invalidated and the Protocols are not denounced by the President as required by the Senate provisos.

We share your concern that full compensatory damages be assured for the victims of international airline tragedies, no matter what the cause of that tragedy may be. We also share your concern that there be adequate statutory authority for implementing the SCP and that there be no gaps in its coverage. In fact, the Convention as modified by the Protocols contemplates that result. We believe that the following analysis of the existing statutory regime governing international air transportation may resolve your concerns.

IS THE SUPPLEMENTAL COMPENSATION PLAN UNPRECEDENTED

The proposed SCP is unprecedented in that it would provide, within a treaty framework, certain recovery for death or injury without individual limitation. The concept of a plan to supplement benefits provided by the Warsaw Convention, however, is not unprecedented. Since 1965, all carriers serving the United States have been required to adhere to a carrier plan (the Montreal Agreement) to supplement the liability and compensation payable under the original Warsaw Convention.[3] The Montreal Agreement was conceived as a voluntary intercarrier agreement, and it was then made mandatory by DOT for all carriers under the Federal Aviation Act, whether or not they were party to the original Agreement.[4] The Agreement has been relied upon by the judiciary as governing carrier liability in countless decisions in both state and federal courts, including the Supreme Court of the United States.[5] The principal difference between the Montreal Agreement and the SCP is that the Agreement was not specifically authorized by the treaty, and it lacked the comprehensive protections and benefits provided by the SCP and contemplated by the Protocols.[6]

The history of the Montreal Agreement is instructive. Dissatisfied with the Warsaw Convention's limitation of liability of approximately $8,000, the United States gave notice of its intention to denounce the Convention on November 15, 1965, to be effective in six months pursuant to Article 39 of the Convention. At the same time, the United States made clear that it would rescind the notice of denunciation if the contracting nations appeared likely to agree to increase the liability limit to approximately $100,000, and the carriers agreed, in the interim, to increase the liability limit to $75,000. The United States withdrew its denunciation just before the expiration of the six-month period in light of that agreement, embodied in the Montreal Agreement.[7] The "purpose of . . . [the Montreal Agreement] was to provide a basis upon which the United States could withdraw its notice of denunciation."[8]

See footnotes at end of article.

The United States Government thus relied upon its existing statutory authority to require all carriers to participate in a plan to supplement the compensation payable under the Warsaw Convention as a condition of its continued participation in the treaty. This system has operated without successful legal challenge for over 25 years. The proposed resolution of advice and consent to ratification explicitly confirms a similar result for the SCP in relation to Montreal Protocol No. 3. The principal difference is that the treaty itself has been changed to sanction such action by the United States. Article 35A of the Convention as amended by the Protocols specifically authorizes the United States to require all carriers to participate in the Plan and gives the government the explicit right to establish its features.

The SCP will be implemented in this well-established context, and the likelihood of a judicial order overturning the SCP altogether would appear to be exceedingly remote. Nevertheless, the existing statutory framework for implementing the SCP set forth in the Federal Aviation Act does provide safeguards to ensure that consumers would not be disadvantaged by such a challenge.

IS IMPLEMENTING LEGISLATION NECESSARY OR DESIRABLE

The Federal Aviation Act already provides a carefully-crafted and well-understood legislative framework for implementing the SCP. It has been used since 1965 to require all carriers to adhere to the Montreal Agreement to supplement the liability and compensation payable under the original Warsaw Convention. The process is as follows:

Section 401 of the Act requires all U.S. carriers to operate consistently with conditions imposed by the Department of Transportation on their certificates.[9] Failure to comply with a condition subjects the carrier to severe penalties and/or termination of its operations. It is a current condition of all carriers' operating certificates established by regulation[10] that they comply with the requirements of the Montreal Agreement, and that condition will be amended to substitute the Plan once the Protocols are ratified.

Section 402 of the Act contains identical authority and conditions for foreign air carriers, and for all relevant purposes it operates in an identical fashion.[11]

Section 403 of the Act requires all carriers (U.S. and foreign) engaged in foreign air transportation to file and adhere to their tariffs.[12] Liability rules such as those established by the Protocol/SCP system, including the nature and level of the fee collected under the SCP, must be filed with and approved by DOT. Tariffs filed with DOT have the force and effect of law in that they are binding upon the carriers and their passengers, and carriers may not operate in a manner inconsistent with the applicable tariffs.[13] The liability rules established by the current Warsaw Convention and the Montreal Agreement are and must be specified in the carriers' tariffs.[14]

Sections 412 and 414 of the Act establish a procedure to obtain DOT approval, subject to public comment, of the SCP.[15] DOT review and approval is required prior to the implementation of the SCP, as it was for the Montreal Agreement.

In carrying out these and other responsibilities, DOT (i) is subject to the requirements of the Administrative Procedure Act, and (ii) must act consistently with the international obligations of the United States as required by section 1102 of the Act.[16] Furthermore, its orders are subject to judicial review under section 1006 of the Act.[17]

If the Executive Branch were to attempt to abandon the SCP under Montreal Protocol No. 3, or for that matter the Montreal Agreement under the Warsaw Convention, it would have to follow the procedures described below, regardless of whether the airlines supported or opposed such action.

First, DOT would be required to issue a show cause order under sections 401 and 402 of the Act to amend the certificates and permits of all carriers to allow them to operate without providing the protections of the SCP.[18] That order would then be subject to public comment. DOT would then have to finalize its order over certain public opposition. The final order would be subject to disapproval by the President on the basis of foreign policy or national security considerations under section 801 of the Act,[19] and several Federal agencies have to submit comments to the President.[20] DOT could also proceed by rulemaking, after notice and public comment, subject to Presidential oversight.[21]

Second, the order (or final rule), if not disapproved, is subject to judicial review in the courts of appeals of the United States, including the United States Court of Appeals for the District of Columbia Circuit. Anyone disclosing a substantial interest in the DOT order has standing to obtain such judicial review under section 1006 of the Act,[22] which without question includes consumer and passenger groups and representatives. Thus, passengers and other parties would be able to seek judicial review to ensure the preservation of the benefits of the SCP consistent with the intent of the Senate that it be available to all passengers as provided in Montreal Protocol No. 3.

Other organizations and agencies would also have strong incentives to oppose any attempt to abandon the Plan. The abandonment of the SCP would generate substantially-increased claims against airframe and engine manufacturers under product liability laws, as well as against the United States under the Federal Tort Claims Act, as passengers look to recover uncompensated damages from other potential defendants. Thus, abandonment of the SCP would in all probability be strongly opposed by the Department of Justice, the Treasury Department and OMB, as well as by the major airframe and engine manufacturers.

There are significant procedural impediments to any decision to abandon the SCP after the entry into force of Montreal Protocol No. 3, including the availability of judicial review of such action. Furthermore, the Federal Aviation Act gives consumers and other interested persons ample opportunity to participate in the approval of the Plan, including the opportunity to challenge the Plan before it becomes effective.

As noted, the airlines must submit the basic SCP to DOT for public comment, review and approval under sections 412 and 414 of the Act before the Plan can be implemented.[23] Further, prior DOT approval of the fee for the SCP is also required *before* it can be incorporated into the carrier's tariffs and included in the advertised price of the ticket. Any persons disclosing a substantial interest in the Plan (*e.g.*, consumer and passenger groups) have the right to participate in the DOT proceeding and obtain prompt judicial review of a DOT order approving the SCP in the courts of appeal under section 1006 of the Act.[24] Therefore, judicial review of the SCP will be available *before* (as well as after) the Protocols enter into effect and even before the instrument of ratification is deposited.

A judicial decision overturning the SCP would result from judicial review under section 1006 of the initial DOT approval of the Plan, or from review of any subsequent and periodic DOT approvals. The jurisdiction of the courts of appeals is exclusive.[25] District courts generally lack jurisdiction to entertain collateral attack upon a DOT order approving the SCP.[26] An adverse decision would in all probability result in a remand to DOT to take action consistent with the court's decision.

As mentioned, the United States took a leadership role in the events that led to the successful negotiation of the Montreal Protocols in 1975. The Protocols (and hence the SCP) cannot by their own terms come into effect for the United States until 90 days after thirty nations, including the United States, have deposited their instruments of ratification.[27] To date, 20 nations have ratified Montreal Protocol No. 3 and a host of other nations are waiting for the U.S. decision before acting. As a practical matter, the Plan will not come into effect for at least a year after Senate advice and consent. Until that time, the current Warsaw regime will prevail for international air passengers world-wide. Since the United States will not deposit its instrument of ratification until after the basic SCP is approved by order of the Secretary of Transportation, there will be more than enough time to obtain judicial review of the plan prior to entry into force of Montreal Protocol No. 3 for the United States.

It is unlikely that a successful legal challenge to the basic Supplement Compensation Plan would occur after Montreal Protocol No. 3 came into force and effect for the United States. In the event of such a challenge, however, the court in all probability would give DOT the opportunity to cure the deficiencies in the Plan or allow the President to denounce the Protocols before enforcing a mandate overturning the Plan altogether. Otherwise, DOT would also have to take action to amend carrier permits and certificates under the procedures described previously. In this regard, Montreal Protocol No. 3 provides that a notice of denunciation takes effect six months after it is made.[28] We are prepared to draft an amendment to the Plan to ensure that its benefits would not terminate under these circumstances until the effective date of a notice of denunciation. This amendment would make explicit our conclusion that the benefits of the Plan would be preserved pending correction of any deficiency of the Plan or until Montreal Protocol No. 3 ceased to be in force for the United States, whichever the case may be. Thus, district courts and other trial courts would continue to award damages under the Plan and Montreal Protocol No. 3 for the benefit of all American passengers in international transportation so long as the treaty remains in effect for the United States.

Whether the legislative framework described above could be improved upon is uncertain at best. It has worked without flaw in implementing the Montreal Agreement for 25 years. If the economic features of the Plan were incorporated into implementing legislation, it would deprive all parties of the administrative flexibility they will require to ensure that its benefits match changing economic conditions and consumer expectations. Finally, we note that Congress can always act as a whole to amend the Federal Aviation Act to effectuate a change in, or exercise oversight over, the President's administration of the Protocols and the SCP.[29] Consequently, Congress always has the ability to correct any substantial Presidential misstep.

WHAT IS THE LEGAL EFFECT OF THE SENATE'S CONDITIONS ON ITS ADVICE AND CONSENT TO RATIFICATION?

As conditions of its advice and consent to ratification of the Protocols, the Senate will require that a "satisfactory" SCP be in operation. As the Foreign Relations Committee noted, such provisos "would have the same force and effect as any other condition included by the Senate. . . . [T]he President can proceed to ratify the Protocols only by accepting the conditions placed upon U.S. ratification by the Senate."[30] There is more than adequate support for the Committee's statement. First, it is a logical and necessary corollary of the Senate's constitutional power that if it consents with conditions and the President ratifies a treaty on the basis of that consent, then he is bound by the conditions. "Since the President can make a treaty only with the advice and consent of the Senate, he must give effect to conditions imposed by the Senate on its consent."[31]

You have raised the question whether this obligation to give effect to the Senate's conditions may be enforced judicially and if so, who has standing to do so.[32] We believe that courts do have the power to enforce the Senate's conditions, and that consumers and other interested parties have standing to obtain such enforcement. However, we view the question not in terms of whether a court would or could seek to compel the President to denounce the Convention as amended by the Protocols in the absence of a satisfactory SCP. Rather, the question is whether the courts have the authority to require the maintenance of a satisfactory SCP while the Protocols remain in effect, *i.e.*, until a notice of denunciation by the President becomes effective. As stated, the Federal Aviation Act authorizes DOT to require carriers to adhere to the SCP and any decision by DOT in the exercise of that authority—including a decision to abandon the SCP—is subject to judicial review under the Act, upon petition filed by any person disclosing a substantial interest in the DOT decision.[33] The court of appeals is specifically given the power to affirm, modify, or set aside such action; and may order further proceedings and provide interlocutory relief by stay of the DOT action or such mandatory or other relief as may be appropriate.[34] The decision of the court of appeals is subject to review by the Supreme Court.[35]

The remaining aspect of this question, then, is whether the failure of the Department of Transportation to act in a manner consistent with the Senate's conditions would be set aside by the court of appeals as unlawful.[36] If the conditions comprise part of the treaty, then they become the law of the United States and are enforceable as such; and, in addition, they are specifically made binding upon the Secretary of Transportation in the exercise of his responsibilities under the Federal Aviation Act by section 1102 of that Act.[37]

In the words of Justice Scalia, the Senate "may, in the form of a resolution, give its consent on the basis of conditions. If these are agreed to by the President and accepted by the other contracting parties, they become part of the treaty and the law of the United States."[38] Here, there is no question that the conditions will be accepted by the contracting parties. They are obligated to do so by Article 35A of the Convention, added by the Protocols (Art. XIV), and the mandated participation of all foreign carriers in the SCP will be reflected in filings submitted to both the U.S. and foreign governments under governing bilateral air services agreements.[39] Other authority support the conclusion that the Senate's conditions become part of the treaty and hence the law of the United States, particularly where, as here, they constitute a part of the international obligations or rights of the United States.[40]

The Convention itself supports this result. Article 35A of the Convention explicitly permits signatory states to establish SCPs and, even more importantly, sets forth various conditions that must be satisfied when such plans are implemented. Those conditions are clearly treaty obligations since they must be complied with by any state wishing to establish a plan. Therefore, since the SCP forms a part of the implementation of the treaty and ratification by the President gives the treaty the force and effect of law, the Senate's proviso concerning the SCP shall also have the force and effect of law.[41]

There is additional authority to the effect that the President would be obligated, as a matter of constitutional law, to obey the provisos once he ratifies the Protocols on that basis. For example, the Restatement of Foreign Relations Law provides that [t]he effectiveness of . . . a Senate proviso, however does not depend on its becoming law of the land as part of the treaty. Such a proviso is an expression of the Senate's constitutional authority to grant or withhold consent to a treaty, which includes authority to grant consent subject to a condition. The authority to impose the condition implies that it must be given effect in the constitutional system.[42]

Similarly, it has been argued that "[i]f the Senate conditioned its advice and consent to the treaty upon inclusion of the language in question and upon its being given an operative effect . . . then regardless of what the language in question is called it must be given effect."[43]

In the final analysis, it is certainly in the "public interest" to give effect to the Senate's conditions, which are intended to ensure passengers the benefit of the protections afforded by the SCP; and that is the judicially reviewable standard for DOT action under sections 401, 402 and 412 of the Federal Aviation Act. We conclude therefore that the Senate conditions are enforceable judicially and any person disclosing a substantial interest has standing to do so. The Congressional Research Services' analysis apparently failed to reach this same conclusion, because it did not address two fundamental points. First, it did not asses the adequacy of existing authorizing legislation for the SCP set forth in the Federal Aviation Act and its provisions for judicial review. Second, it did not consider whether the Senate's provisos would have the force and effect of law as part of the treaty and how a court would enforce that law under the Act.

DOES THE CONVENTION ITSELF ENSURE THE BENEFITS OF THE PLAN

Article 35A(d) of the Convention as amended by the Protocols requires that all passengers who contribute to the Plan be entitled to the benefits of the Plan. Since tickets are sold in many cases months in advance, and since Article 35A has the force and effect of law after ratification of the Protocols, it does not appear that a court would overturn the SCP in a manner that would leave passengers holding a right to compensation unprotected so long as the treaty remained in force for the United States. Given the number of Americans travelling internationally at any given time, it is difficult to envision an enforceable court order that would not allow an orderly transition to a revised SCP or a legal regime not governed by Montreal Protocol No. 3.

In conclusion, any attempt to abandon the SCP while the treaty remains in force and effect for the United States would create very serious legal risks and uncertainties for airlines attempting to operate in international air transportation. It is in fact not entirely whether the airlines would be entitled to operate under Montreal Protocol No. 3 if an SCP were not in effect, given the conditions in the Senate's resolution of advice and consent to ratification, the provisions of the treaty itself, and the framework of the Federal Aviation Act. Accordingly, the airlines would take all necessary measures to preserve the operation of the SCP for foreign air transportation while Montreal Protocol No. 3 is in operation for the United States, as required by DOT regulations and subject to the approval of the Secretary of Transportation. As stated, we are prepared to draft an amendment to the Plan for review by the Department of Transportation that would make it clear that, even in the face of a preemptive act by a competent court or any other governmental entity, the benefits of the SCP would be preserved until a notice of denunciation of the treaty by the United States becomes effective.

Thank you for your consideration of these important matters. Please let us know if we can be of any further assistance to you or your staff with respect to the Montreal Protocols and the Supplemental Compensation Plan.

Sincerely,

WARREN L. DEAN,
Dyer, Ellis, Joseph & Mills, Counsel to the International Air Transport Association.
JAMES E. LANDRY,
Senior Vice President and General Counsel, Air Transport Association of America.

FOOTNOTES

[1] *Montreal Aviation Protocols 3 and 4*, S. Exec. Rep. No. 1, 102nd Cong., 1st Sess. 10 (Feb. 5, 1991).

[2] Congressional Research Service, *The Montreal Aviation Protocol No. 3 and the Supplemental Compensation Plan* 4-6 (July 8, 1991).

[3] Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol, C.A.B. Agreement, 18,900, *reprinted in* 49 U.S.C. app. §1502 Note and U.S.C.S. *Conventions*, "Warsaw Convention." The Agreement was approved in C.A.B. Order E-23680, 31 Fed. Reg. 7302 (May 13, 1966).

[4] 14 C.F.R. Part 203. *See generally* Lowenfeld & Mendelsohn, *The United States and the Warsaw Convention*, 80 Harv. L. Rev. 497 (1967).

[5] *E.g. Eastern Airlines, Inc. v. Floyd*, 499 U.S. —, 111 S.Ct. —, 113 L.Ed.2d 569 (1991); *Chan v. Korean Air Lines, Ltd.*, 490 U.S. 122 (1989); *Air France v. Saks*, 470 U.S. 392 (1985); *In re Korean Air Lines Disaster of Sept. 1, 1983*, 932 F.2d 1475 (D.C. Cir. 1991); *Maugnie v. Compagnie Nationale Air France*, 549 F.2d 1256 (9th Cir. 1977); *Evangelinos v. Trans World Airlines, Inc.*, 550 F.2d 152 (3rd Cir. 1977); *Day v. Trans World Airlines, Inc.*, 528 F.2d 31 (2nd Cir. 1975); *Duff v. Trans World Airlines, Inc.*, 173 Ill. App. 3d 266, 527 N.E.2d 498 (1988); *Manion v. Pan American World Airways, Inc.*, 80 A.D.2d 303, 439 N.Y.S.2d 6 (1981); *Kalish v. Trans World Airlines, Inc.*, 390 N.Y.S.2d 1007 (1977); *Herman v. Trans World Airlines, Inc.*, 330 N.Y.S. 2d 829 (1972); *Cruz v. Dominicana de Aviacion*, U.S. Dist. LEXIS 14544 (S.D.N.Y. 1989); *Sweis v. Trans World Airlines, Inc.*, 681 F. Supp. 501 (N.D. Ill. 1988); *In re Air Crash in Bali, Indonesia*, 462 F. Supp. 1114 (C.D. Cal. 1978); *Karfunkel v. Compagnie Nationale Air France*, 427 F. Supp. 971 (S.D.N.Y. 1977).

[6] Under the Montreal Agreement, virtually all air carriers conducting international flights into or out of the United States agreed to include in their tariffs a special contract under which the liability limit for death or bodily injury would be raised voluntarily to $75,000. The carriers also agreed to waive their right under Article 20(1) of the Convention to assert as a defense to liability that all necessary and possible measures had been taken to avoid the damage. Further, the carriers agreed that their tickets should contain a notice of the Convention's liability limits.

[7] See Lowenfeld & Mendelsohn, *supra* note 4, 80 Harv. L. Rev. at 586-596.

[8] C.A.B. Order E-2360, *supra* note 3.

[9] 49 U.S.C. app. §1371.

[10] 14 C.F.R. Part 203.

[11] 49 U.S.C. app. §1372.

[12] 49 U.S.C. app. §1373.

[13] *Cf. Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. —, 111 L.Ed. 2d 94 (1990).

[14] 14 C.F.R. §§221.38(f), 221.175.

[15] 49 U.S.C. app. §§1382 and 1384.

[16] 49 U.S.C. app. §1502.

[17] 49 U.S.C. app. §1486.

[18] DOT could proceed temporarily under the exemption authority set forth in section 416 of the Act, but those procedures do not differ substantially from those under sections 401 and 402.

[19] 49 U.S.C. app. §1461.

[20] *See* Exec. Order No. 12,597 (May 13, 1987).

[21] Exec. Order No. 12,291, 3 C.F.R. Part 127.

[22] 49 U.S.C. app. §1486.

[23] 49 U.S.C. app. §§1382 and 1384.

[24] 49 U.S.C. app. §1486.

[25] *E.g. Suburban O'Hare Comm'n v. Dole*, 787 F.2d 186, 192 (7th Cir.), *cert. denied*, 479 U.S. 847 (1986); *City of Rochester v. Bond*, 603 F.2d 927, 934-35 (D.C. Cir. 1979).

[26] *E.g., Casey v. O'Donnell*, 506 F.2d 107 (D.C. Cir. 1974).

[27] Montreal Protocol No. 3, Article VIII. See S. Exec. Rep. *supra, note* 1, at 19.

[28] Montreal Protocol No. 3 Article X.

[29] Congressional Research Service, *supra* note 2, at 4-6.

[30] *Id.* at 11.

[31] *Restatement (Third) of the Foreign Relations Law of the United States* §314 comment b.

[32] Letter to Richard C. Ehlke, Chief, American Law Division, Congressional Research Service (June 24, 1991).

[33] 49 U.S.C. app. §1468(a).

[34] 49 U.S.C. app. §1468(d).

[35] 49 U.S.C. app. §1468(f).

[36] Whether or not the Foreign Relations Committee's proposed conditions could be improved in light of this analysis is beyond the scope of this letter. For these purposes, we interpret the conditions as implementing Article 35A of the Convention, as amended by Montreal Protocol No. 3, which authorizes the United States to "establish and operate" a SCP and to require all carriers to participate in the Plan.

[37] 49 U.S.C. §1502.

[38] *United States v. Stuart*, 489 U.S. 353, 374-375 (1989) (Scalia, J. dissenting on other grounds).

[39] *See, e.g.*, Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, Article 12, 28 U.S.T. 5367, T.I.A.S. 8641 (1977).

[40] *Power Authority of New York v. Federal Power Comm'n* 247 F.2d 538, 542-44 (D.C. Cir. 1957), *vacated and remanded with instructions to dismiss as moot*, 355 U.S. 64 (1957); *see also* Iwasawa, *The Doctrine of Self—Executing Treaties in the United States: A Critical Analysis*, Va. J. Int'l L. 627. 670 (1986); Glennon. *The Senate Role In Treaty Ratification*, 77 Am. J. Int'l L. 257 (1983); Henkin, *Foreign Affairs and the Constitution* 55-56 (1972).

[41] Further, a district court in any personal injury or wrongful death action could have the power to declare that the Protocols, and their limitation on liability, no longer have the force and effect of domestic law if the Senate's provisos are found to have been violated by reason of the abandonment of the SCP. *Cf. In re Aircrash in Bali, Indonesia*, 684 F.2d 1301, 1308-09 (9th Cir. 1982).

[42] §303 note 4.

[43] *Power Authority*, 247 F.2d at 546 (Bastian, J., dissenting). We also note that the Congress in its consideration and approval of trade agreements does approve statements of administrative action by the executive "to implement" the agreement, including proposed regulatory initiatives to be completed after Congressional action. *See, e.g.*, Section 101 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851, 1852. While the "fast track" procedure for approving trade agreements and accompanying statement of administrative action (if any) requires legislation under the provisions of the Trade Act of 1974, the ratification of a self-executing treaty, such as Montreal Protocol No. 3, with an implementing condition would appear to have force and effect of law in the United States that is similar to the approval of implementing Executive action in the context of the Trade Act's procedures.

THE AMERICAN ASSOCIATION FOR
FAMILIES OF KAL 007 VICTIMS,
New York, NY, October 21, 1991.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: On August 1, 1991 we wrote you regarding the Montreal Aviation Protocols that are now pending before the Senate for its Advice and Consent. On the same day you wrote a letter to the Secretary of Transportation, Samuel K. Skinner, expressing your interest, and concern: That there be full statutory authority for implementing the Supplemental Compensation Plan, and that full compensatory damages be assured for victims of international air tragedies.

In his reply to your letter of August 1, 1991, Secretary Skinner explained that the Department of Transportation has long standing statutory powers under the "Federal Aviation Act", to implement the provisions of international treaties. Most specifically, the Department of Transportation has supervised and guided the interairline agreement of 1966, updating the liability limits of the original Warsaw Convention of 1929, without challenge. As to the proposed Supplemental Compensation Plan to the Montreal Aviation Protocols, Secretary Skinner has outlined the procedures his Department will follow to implement the Treaty. This would include the participation of the public, before the Supplemental Compensation Plan is approved and a judicial review, before the Plan becomes effective.

Since the Department of Transportation has successfully managed the existing liability agreement under its present authority for twenty-five years, without judicial challenge it has proven that its present authority is sufficient and effective, that it works, and that no further legislative action is needed.

As to the assurance of full compensation for victims families of international air tragedies, articles 41 and 42 of the Montreal Aviation Protocols specifically provide the opportunity to improve the Treaty in the future, if and when this becomes necessary. Those articles also address the needs to update periodically the liability of the Treaty, to account for any increase in the cost of living.

The Foreign Relations Committee of the Senate addressed the need of the updating of the liability in item three of the proposed ratification resolution. We suggest that the language of that article three of the resolution be strengthened, to specify that the liability be increased to the level of the cost of living prevailing at the time when the international conference, required to update the compensation, convenes, and that the Secretary of State report to the Senate, periodically on his progress to convene such international conference.

We recognise your interest, as well as the time you and your staff are devoting to clarify all the questions relating to the Montreal Aviation Protocols and to the Supplemental Compensation Plan. Your efforts to establish a historical track, for future generations to understand better the issues under discussion, now, and the positions taken by various interested parties, are appreciated.

Considering that some time will pass between the ratification vote by the Senate, and the Montreal Aviation Protocols with the Supplemental Compensation Plan actually coming into force, we would urge you to schedule the full Senate's vote on the Treaty, at an early date. The American Public, engaging in international air travel, needs better protection most urgently. In case of fatal accidents their families cannot afford to wait nine years, or longer to be compensated, as is now the case.

Please be assured that we shall be happy to assist you and your staff in any ways you may deem to be appropriate.

Thank you for your concerns.

Respectfully yours,

HANS EPHRAIMSON-ABT,
Chairman.

ASSOCIATION OF TRIAL
LAWYERS OF AMERICA,
Washington, DC, October 29, 1991.

Hon. GEORGE MITCHELL,
Senate Russell Office Building,
Washington, DC.

DEAR MR. MAJORITY LEADER: Thank you for sharing with us Secretary of Transportation Skinnner's letter of September 17 regarding the Montreal Protocols, as well as the correspondence from Messrs. Dean and Landry on behalf of the International Air Transportation Association and the Air Transport Association of America. As always, ATLA deeply appreciates your interest in our views and we are grateful for the opportunity you have afforded us to participate in this discussion.

Frankly, we find both letters to be thoughtful and constructive. Yet in the final analysis neither letter alleviates the most telling concerns. The Secretary, as well as Messrs. Landry and Dean, tackle head-on difficult questions regarding the legal status of an administratively implemented Supplemental Compensation Plan, the precedents for such a Plan, and such a Plan's ability to withstand legal challenge. In short, there is much attention in the letters paid to the question of whether implementing legislation is necessary. There is, however, very little attention, if any, given to whether legislation would be desirable and would afford the best guarantee of protection for American passengers.

In our letter of April 24, 1991, we expressed uncertainty but no firm opinion regarding the view that there presently exists clear and ample statutory authority for the Department of Transportation to implement the proposed Supplemental Compensation Plan. Although we continue to maintain no firm position regarding that issue, we do not believe the Senate can take comfort in the most recent response of the Secretary, or in the views expressed in the Landry/Dean correspondence. While both Secretary Skinner and the industry spokesmen remain staunch in the view that a successful legal challenge to the Plan is not likely, both letters make assertions that give us pause.

The Secretary writes that in the "event a defect is revealed in the Plan after the Protocols come into force and effect, the Administration will take immediate action to remedy the defect, or if necessary propose amendments to the Federal Aviation Act." Simply stated, that very assurance by the Secretary betrays an uncertainty. And even the smallest window of exposure is too great. The Senate should not ratify a treaty that depends upon the sufficiency of a Supplemental Plan when the proponents of that Plan conclude that it very probably will withstand a legal challenge, but imply that there is a small chance it will not. And what if it does not? The disturbing response is: Well don't worry, we'll fix it later.

The same concern arises from the Landry/Dean correspondence which asserts that it is—

"... unlikely that a successful legal challenge to the basic Supplemental Compensation Plan would occur after Montreal Protocol No. 3 came into force and effect for the United States. In the event of such a challenge, however, the court in all probability would give DOT the opportunity to cure the deficiencies in the Plan or allow the President to denounce the Protocols before enforcing a mandate overturning the Plan altogether."

Speculation about what a court might or might not do "in all probability" is not good enough. Moreover, we find that same "probability" standard also used by the industry to reject concerns regarding any judicial review that might occur before the Protocols enter into effect: "An adverse decision," according to Messrs. Landry and Dean "would in all probability result in a remand to DOT to take action consistent with the court's decision." In fact, though, it is not possible to know with certainty what such a decision might entail. The court would be faced with an unprecedented mandatory insurance plan to be funded, without choice, by passengers confronted with an administratively imposed surcharge neither levied nor even authorized by explicit enabling legislation. The currently operative Montreal Agreement, an intercarrier agreement to supplement compensation which has been in existence since 1966, is cited as precedent for the SCP envisioned here. That Agreement, however, does not impose upon consumers a mandatory insurance surcharge, let alone one approved only by an executive branch department.

Still, with all of that, we reiterate the view that we expressed in our letter of April 24, specifically that "even if there in fact exists an adequate existing delegation which would allow D.O.T. to implement the Plan without additional authority, we do not believe it would be prudent to permit that result. The issue must not be solely: is statutory authorization necessary; it also must be: is statutory authorization wise and prudent and in the best interests of the American traveling public."

We expressed that view not solely because of potential uncertainty regarding the legal status of any Plan in the absence of congressional action. Our principal concern was (and is) that this treaty proposes to limit the rights of American citizens and in the face of that limitation to provide compensation that is universally viewed—by all parties—as insufficient. Even the Secretary of Transportation believes that the Montreal Protocols should not become operative, even if ratified by the Senate, unless a Supplemental Compensation Plan is in place and in force. As it considers whether to consent to a treaty that restricts the rights of American passengers, who should the Senate charge with the responsibility of ensuring that it is a satisfactory Plan that gets implemented? And who should be the guarantor that such a Plan in fact provides, and continues in the future to provide, a sufficient level of compensation at a reasonable cost? Is mere reliance on the good faith and good will of the commercial airline industry enough? We do not believe so; nor do we believe that that would be a justifiable delegation of the Senate's responsibility to the flying public. Alternatively, may the Senate comfortably delegate to the Secretary of Transportation its own clear authority in this matter to provide for and ensure the best interests of American passengers? Is a period during which the Plan will be open for public comment, as in any ordinary administrative rulemaking process, somehow a responsible substitute for consideration of these vital issues by the representative legislature?

No.

Instead, we are left with the conclusion that if it is to ratify the Montreal Protocols, the Senate should insist as a condition for depositing the instruments of ratification that a Supplemental Compensation Plan must first be enacted statutorily.

We have seen the most recent version of the Plan being circulated by the carriers but that Plan is nothing more than a proposed voluntary agreement. We appreciate that in its letter to you, Mr. Majority Leader, the industry states: "(W)e share your concern that full compensatory damages be assured for the victims of international airline tragedies." If that in fact is also your goal and the goal of the Senate, then it is the Senate that can best achieve it. There is nothing in the Plan as proposed that guarantees its future level of covered damages. While the Resolution of Ratification would call upon the President to denounce the Protocols if at any time he determines that a satisfactory Plan is no longer in force, that same Resolution of Ratification would permit the Secretary of Transportation to review the Plan at any time "in light of new economic or other relevant circumstances." The Secretary is already on record as having stated earlier this year that "it is not possible to predict with accuracy" the future cost of the Plan to the travelling public. It cannot be enough for the Senate now to allow the President and the airlines simply to say: Trust us.

We believe the most recent version of the proposed Supplemental Plan is improved over the Plan that was proposed when the Senate last considered the Protocols in 1983. We do not believe it is nearly satisfactory, however. There are a number of loose ends that need to be addressed and several provisions that we believe need to be modified in order to ensure full protection. What ATLA believes, though, is not the issue. It is: what does the Senate believe? And the Senate cannot best answer that question by simply letting the airlines write their own Plan—especially when any such Plan may be changed in the future without the approval of the Senate.

While these are concerns we have raised before, and feel compelled to raise again, they are also issued that were raised prominently by the American Law Division in response to your inquiry. It is disheartening that neither the September letter from the Secretary of Transportation, or that from Messrs. Landry and Dean, respond to these concerns.

Among a number of what the American Law Division argued were "advantages" to proceeding with a statutorily implemented Plan were these:

"It would enable the Congress to tailor the statutory underpinnings of the SCP to the specific needs and requirements of passenger liability under Protocol Number 3 rather than leaving it to administrative discretion. . . . It would allow Congress to consider the advisability of affording the Secretary of Transportation a largely unbridled opportunity to unilaterally revise the surcharge in light of new economic conditions and other relevant circumstance. In the view of some persons this authority borders on the power to tax since it gives the Secretary effective, if not technically accurate, indefinite revenue enhancing power. . . . It would enable the Congress to consider the advisability of abandoning fault as the standard of liability, an arguably radical departure from the traditional basis of tort liability."

While we do not rely on this response as legal authority, we do believe the concerns raised are very substantial. We do not find in either letter a response, much less an effective rebuttal.

Finally, it would not be fair of us to leave with you the impression that our sole concern regarding the Protocols relates to the content and implementation of the Supplemental Compensation Plan. As you know, we have expressed larger concerns that relate to the principle that people and institutions in this country are individually accountable and responsible for their behavior and for the harm they cause. That notion, as we wrote earlier, is not only a bulwark principle of our jurisprudence, it is a hallmark of our free society. It concerns us, therefore, that not only would the Protocols relieve the airlines of responsibility and liability, they would at the same time impose upon the flying public the cost of funding that special relief. Still, if the Senate were to ratify the Protocols subject to the statutory enactment of a Supplemental Plan, we would be pleased to work constructively with you and with the Senate and, indeed, with the airlines in order to best ensure the full protection of all Americans. We believe that such a result is surely attainable.

With best wishes,

Sincerely yours,

BOB GIBBINS.

ASSISTING RUSSIAN JUSTICE

Mr. KENNEDY. Mr. President, as Congress debates how best to assist the former Soviet Union, it is important not to neglect one area of urgent need, the judicial system. Throughout the harsh years of communism in the Soviet Union, the judicial system was not worthy of its name. The Communist Party controlled the process, from the prosecutors to the police, and ensured that the system worked in its favor, not in the interest of impartial justice.

The new Russian leadership has now moved to recognize the need for judicial reform. At a gathering of 535 judges in Moscow last month, President Boris Yeltsin announced his desire to restructure the Russian legal system. He has called for the creation of an independent judiciary, a process in which judges would take control of the criminal process, and the formation of a constitutional court, similar to our own Supreme Court.

The conference was attended by a distinguished American jurist, Judge Stephen G. Breyer who traveled to Moscow at the invitation of the Russian Minister of Justice. Judge Breyer is one of the country's foremost experts on administrative law and the law of industrial organization. He is chief judge of the U.S. Court of Appeals for the First Circuit and a professor of law at Harvard Law School specializing in antitrust, administrative law, and economic regulation.

Many of us in the Senate have known Judge Breyer well since his service in the 1970's as chief counsel on the Senate Judiciary Committee and I am pleased to call the attention of my colleagues to his insightful recent article in the New York Times on this important conference on Russian legal reform.

In the article, Judge Breyer notes the array of assistance that the United States can offer to the Russian Republic as it undertakes this critical aspect of reform. He suggests that we offer our experience and expertise in helping them to establish an independent judiciary, and he urges that we follow the lead of France and Germany and provide opportunities for the members of the Russian judiciary to study our legal system. As he rightly points out: A "coequal judicial branch and a system of constitutional review, which lie at the heart of the proposed Russian reforms, are central to our own system of government. For this reason alone, Americans bear a special responsibility to join the efforts to help create an independent, nonpolitical judiciary in Russia."

I urge my colleagues to consider Judge Breyer's thoughtful and worthwhile proposal, and I ask unanimous consent that his article may be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 30, 1991]

RUSSIAN JUDGES WANT REAL JUSTICE

(By Stephen Breyer)

BOSTON.—Twelve days before he called for sweeping economic changes, Boris Yeltsin addressed the first congress of Russian judges in Moscow. At the gathering of 535 judges, the President of the Russian republic declared his desire to restructure its legal system.

The gap between these hopes and reality was painfully clear. As the judges confirmed, they have been seen as little more than low-level servants of the Communist Party. The success of Mr. Yeltsin's programs will require a drastic transformation in judicial temperament and in public perception of the judiciary.

The West can help. We can offer experience and expertise in the ways of an independent judiciary. France and Germany have already agreed to provide opportunities for the Russian judiciary to study their legal systems. The U.S., with the help of its bar associations, foundations and law schools, should do the same.

The judges discussed how Russia has been a society without law. The party, the prosecutors and the police, not the judges, controlled the criminal process. The police and prosecutors could arrest suspects and hold them in detention without trial for months, even years. When a case did go to court, the prosecutors had the upper hand.

Armed with the power to appeal and the greater prestige of their jobs, prosecutors could remind judges that judges and prosecutors were on the same side, representing the "state" or the "people." Guilt or innocence sometimes depended on what the judges called the "telephone connection"—the call from the local party official dictating the case's outcome.

Judges complied largely because they needed the party for food, housing and their children's educations. Paid less than a third the salary of unskilled laborers, the judges had no real independence. As one judge put it, judges cannot be independent "if we have to ask the local bosses for each brick, for each can of paint, for each rusty nail." Another judge said that recent polls showed that the judiciary has the confidence of only 10 percent of the public.

Mr. Yeltsin offered three specific changes that would bring the rule of law back to the Russian state. He called for an independent judiciary that would be an equal third branch of government. The judiciary would be strengthened by immediate salary increases and by lengthy terms of office with safeguards against removal. Mr. Yeltsin had already turned Communist Party buildings in Russia over to the judiciary for use as courts.

Mr. Yeltsin also urged that judges, not prosecutors take control of the criminal process. Judges would oversee the legality of arrests and exclude illegally obtained evidence from trials. Judges would review the legality of any confinement. Defendants would also gain the right to meaningful representation by counsel, to trial by a Western-style jury and to an appeal of a conviction.

Finally, Mr. Yeltsin proposed the formation of a constitutional court, something like our Supreme Court. The judges appointed for life, would have the power to hold statutes unconstitutional.

Can these proposals succeed? The Russian Parliament has not yet enacted the reforms. Some are tentative; some are simply nonspecific goals. Many cost money, which is scarce in this time of budget deficits and inflation in Russia.

The reforms may also meet local resistance; in fact, one judge said that when she asked local party officials for use of the party building, they not only refused but locked her out of her old courthouse as well.

The reformers seemed to recognize the obstacles they face. Yet they will make the effort. Explaining why judicial reform is as important as economic reform, Minister of Justice Nikolai Fyodorov said, "If Russia has to choose between a constitution and sturgeon with horseradish, she must choose the constitution. Besides, it will make a very fine wrapping for the sturgeon with horseradish."

We should do our part to aid the Russians in creating a new judiciary. We should bring them here to study. Soon, Russia would have several hundred officials, each with an understanding of a Western system.

A co-equal judicial branch and a system of constitutional review, which lie at the heart of the proposed Russian reforms, are central to our own system of government. For this reason alone, Americans bear a special responsibility to join in the efforts to help create an independent, nonpolitical judiciary in Russia.

ROBERT MAXWELL

Mr. MOYNIHAN. Mr. President, few New Yorkers of my generation will ever forget the headline on the front page of the Daily News on the occasion of President Roosevelt's funeral in 1945 and his burial at Hyde Park: "Home Is the Sailor."

The words are from Robert Louis Stevenson's "Requiem":

This is the verse you grave for me:
"Here he lies where he longed to be;
Home is the sailor, home from sea,

And the hunter home from the hill."

Shall we not say as much of Sir Robert Maxwell, whose body has now been recovered from the ocean off the Canary Islands? His passing comes much too soon, especially for New Yorkers. We were just getting to know him and how we liked him. And how he liked that.

It happens that Elizabeth and I have known the family for years and years. It would be a quarter century ago we first began having Sunday lunch together. And so we may miss him even more than most.

He left the News vibrant and profitable. May it prosper and flourish as he intended it should. Not least in testament to that fierce and jovial conviction.

REPUBLICANS COULD GOVERN

Mr. KASTEN. Mr. President, in a recent article, columnist David Broder reported on the efforts of the Senate Republican Conference Task Force on Economic Growth and Job Creation and the House Wednesday Group to develop new strategies to cure poverty and recession.

Contrary to conventional wisdom, Republicans are not the party of the status quo—we are the party of progress and change. We believe that the power of incentives, free enterprise, and voluntarism can be harnessed to solve some of America's most difficult economic and social problems.

I highly recommend Mr. Broder's article, entitled "Republicans Could Govern," to the Senate, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 27, 1991]

REPUBLICANS COULD GOVERN

(By David S. Broder)

Unless you are of a certain age and were really tuned into politics in the early '50s, the possibility of a Republican Congress is as unfamiliar to you as a balanced budget. The last time there really was a Republican Congress was back in 1953–54. Democrats yielded the Senate majority to the GOP briefly between 1981 and 1987, but they have held control of the House of Representatives ever since 1955.

Anyone under 50 can be forgiven for thinking that the only thing Republicans can do in the legislative branch is oppose Democratic initiatives, support presidential vetos and defend administration officials and appointees before congressional committees. That's all they've ever seen.

The Republicans are type-cast as naysayers, obstructionists and lackeys of the White House. No wonder, then, that the voters' reflex is to keep electing Democrats to the House and Senate.

For a few hours the other morning, however, it was possible to glimpse what life might be like in a Republican Congress. It was nothing like the stereotype.

Over in a Senate committee room, the Republican Conference Task Force on Economic Growth and Job Creation was holding a mock hearing on tax proposals to stimulate the lethargic economy and ward off an early return to recession.

In a small office in the Capitol, the House Wednesday Group, an informal caucus of issue-oriented Republicans, was holding a press briefing on a report embodying two years of their work on new approaches to cracking the problem of persistent poverty.

My purpose is not to ballyhoo their specific proposals, although many of them make sense. Any open-minded person who was in either of those rooms would come away knowing that he had been listening to intelligent, serious people actively engaged in figuring out answers to major problems—not throwing sand in the gears of government.

The two Republican congressmen who presented the anti-poverty initiative were Reps. Vin Weber of Minnesota and Bill Gradison of Ohio. Their colleagues and congressional reporters know them to be among the brightest and most hard-working members of the House. But after 26 years of combined service, they are virtually unknown to the country, because neither has ever chaired a committee hearing, managed a major piece of legislation on the House floor or directed an investigation. Those are the perks of the majority party, and for 37 years, the voters have denied those opportunities and responsibilities to the Republicans.

The key figures in the Senate mock-hearing were somewhat more familiar; Sens. Phil Gramm of Texas and Bob Kasten of Wisconsin, both key players in the Reaganomics revolution of the early '80s; House Minority Whip Newt Gingrich of Georgia, a star of C-SPAN; and Secretary of Housing and Urban Development Jack Kemp, their ally inside the Bush administration.

Yet for these folks, too, there is immense frustration in the fact that when domestic policy is set, the action flows between the White House and the congressional Democrats. Congressional Republicans and their ideas are often left on the sideline.

Divided government has many costs, ranging from the protracted impasse of last year's budget summit to the ugly spectacle of the recent Clarence Thomas hearings. But the largest cost is that the country never gets to have more than a fraction of the intellectual and political resources of either political party applied to the problems of the nation.

An important objective of both the Wednesday Group and the Senate GOP Task Force was to persuade the Bush White House to take a look at new approaches to the stubborn problems of poverty and the sluggish economy. Were President Bush dealing with a Republican Congress, he would have no choice but to consider such views—and every incentive to weigh seriously what congressional Republicans were suggesting.

For these would be the people who would finally shape whatever legislation was passed. And as his ticket mates in the next election, they would share a common interest in seeing that the nation's problems were solved.

None of that is true when Republicans are in the minority and Democrats control Congress. The president need not heed advice from congressional Republicans, because they cannot pass any bills. The Democrats can pass bills, but they have no motivation to help make the president a success.

So the system ends up frustrating everyone in it—and serving the country badly. That's why the most critical question for 1992 is not whether the Democrats regain the White House or the Republicans win Congress. The critical objective is to see one party or the other do both—and give this country a government again, not just another set of warring politicians.

Democrats could provide that government if they produce a credible replacement for Bush from their field of presidential candidates. But what I saw on Capitol Hill suggests that Republicans are ready to govern—if given the chance.

REPORT OF THE INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON "YOUTH AND ALCOHOL; CONTROLLING ALCOHOL ADVERTISING THAT APPEALS TO YOUTH"

Mr. THURMOND. Mr. President, yesterday, Surgeon General Antonia Novello held a press conference to announce the results of an inspector general report entitled "Youth and Alcohol: Controlling Alcohol Advertising That Appeals to Youth." Some of the findings include: First, Federal regulations do not specifically prohibit alcohol advertisements that appeal to youth; second, States have difficult adopting legislation to control alcohol advertising, and State regulations are limited to their application; third, alcohol industry standards do not effectively restrict advertisements that appeal to youth; and fourth, regulations and standards have not deterred advertisers from using advertisements that appeal to youth.

Mr. President, the report and findings are very telling. They show us that the American people are concerned about alcohol advertising which appeals to our youth. The report notes that in a recent public opinion poll conducted on behalf of the Century Council, an alcohol industry-supported organization, the Wirthlin Group found that 73 percent of respondents believe that alcohol advertising is a major contributor to underage drinking. In addition, in a separate opinion poll conducted for the Bureau of Alcohol, Tobacco and Firearms, more than 80 percent of the respondents believe that alcohol advertising influences youth to drink alcoholic beverages.

Mr. President, this report provides further evidence that there is an alcohol advertising problem. The question is what do we do about it. I have introduced legislation, S. 664, the Alcoholic Beverage Advertising Act of 1991, which addresses this problem by requiring health warning messages in alcohol advertisements. Although my bill is not directly targeted to youth, it would require that a series of five rotating health messages appear in alcoholic beverage advertisements. It does not ban advertising. It simply requires that when you advertise, you must inform consumers of the potential health hazards of consumption. I believe it is a reasonable approach to the problem, and I urge my colleagues to consider the merits of the bill for themselves.

Mr. President, I further ask unanimous consent that an article which appeared in the Washington Post describing the inspector general report and the briefing conducted by the Surgeon General appear in the RECORD immediately following my remarks.

There being no objection, the article was order to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 5, 1991]

NOVELLO URGES TOUGH CURBS ON LIQUOR ADS

(By Paul Farhi)

In a stinging attack on the alcoholic beverage industry, Surgeon General Antonia C. Novello yesterday said beer, wine and liquor companies are "unabashedly" targeting teenagers and other young people in their television commercials and print ads.

Decrying the use of sexual imagery, cartoons, rock and rap music and other pitches that appeal to people below the minimum drinking age, Novello called on the alcohol industry to voluntarily end such ads. She stopped short of calling for a federal ban on alcohol ads on TV similar to the one now imposed on cigarettes, but said "that does not mean this is the [last] step."

Representatives of alcoholic beverage companies disputed the notion that their ads are aimed at youthful consumers, and said the pitches would continue. Such TV spots as a Miller Genuine Draft commercial featuring a race car driver named Rusty Wallace roaring through a town are aimed at those above the legal drinking age, they said.

Novello's criticism amounted to a sweeping indictment of much of the $2 billion worth of alcohol-related advertising that appears each year on cable and broadcast television, and in newspapers and magazines. Her comments were made at a press conference in Washington following the release of a report by the Department of Health and Human Services' inspector general that was critical of federal, state and private-sector efforts to control alcohol ads that may be wooing young people.

Among the ads that Novello singled out were some of the most popular running, including Budweiser's "Bud Man" TV spots, and others for Bud Light and Bud Dry beer, Coors Light, Miller Genuine Draft, Old Milwaukee beer and Seagram's Tropical Selection wine cooler. Most of the ads show bikini-clad women and athletic men frolicking on beaches or playing sports.

Novello said the ads prey on young people's insecurities by associating drinking with a carefree, happy lifestyle; by suggesting that drinking beer or liquor makes a person more attractive to the opposite sex; by using sports figures who are attractive to young people; and by showing drinking in conjunction with "risky" activities, such as waterskiing or surfing.

"The ads have youth believing that instead of getting up early, exercising, going to school, playing a sport . . . all they have to do to fit in is learn to drink the right alcoholic beverage," said Novello. The surgeon general has previously attacked Halloween-themed alcohol ads and alcohol promotions that target students during spring break. She has also criticized the marketing of two potent alcoholic beverages called Cisco and PowerMaster.

Novello suggested yesterday that alcohol marketers' advertising played a role in the deaths of young people in traffic accidents, drownings, suicides and falls, as well as other problems associated with alcohol consumption. Novello said she would meet with the chief executives of 14 major beer, wine and liquor companies next month to discuss the problem.

The inspector general's report, which Novello requested as part of a campaign against underage drinking, found that efforts to regulate appeals to young people in alcohol ads are fragmented among several federal agencies and that state laws and enforcement procedures vary widely.

It also found that voluntary advertising codes adopted by various industry trade groups are usually "unenforceable" and don't effectively restrict ads that may appeal to underage consumers. And it said that TV broadcasters, which receive more than $700 million a year from beer and wine advertisers, are gradually loosening their standards for what constitutes "responsible" advertising. ABC, CBS and NBC declined comment.

Novello offered no scientific evidence to support her contention that young people were drinking as a result of advertising, a fact seized on by marketers to defend their ads.

"In our industry, the strongest influence on consumption is peer pressure, not the tone of an ad," said Fred Meister, president of the Distilled Spirits Council of the U.S., a liquor industry group.

"I would say the posse is out looking to do something about a problem, but they've got the noose around an innocent victim," said Joseph Castellano, vice president of Anheuser Busch Cos., the nation's largest brewer. "There's nothing in the research to suggest advertising is the problem."

Criticism of the surgeon general's call for a voluntary ban on youth-oriented alcohol ads came from some of those seeking tougher regulation of industry marketing practices.

"Many people for many years have asked the alcohol industry to clean up their act and there's very little to show for it," said Pat Taylor of the Center for Science in the Public Interest, one of several public-interest groups that participated in the inspector general's research. "This industry has been on notice for years and they haven't done anything."

Former surgeon general C. Everett Koop, in a speech following his departure from office last year, called for a complete ban on beer and wine advertising on radio and TV to prevent underage abuse. Koop also was critical of the industry during his time in office.

Rep. Joseph P. Kennedy II (D-Mass.), who is sponsoring a bill to require health warnings on all alcohol-product ads and promotions, said Novello's recommendations "are disappointing and fall far short of solving the problem."

CHICAGO TRIBUNE ARTICLE—"HOOKED, PREGNANT: NOW WHAT?"

Mr. DIXON. Mr. President, the November 3, 1991, Chicago Tribune published an excellent piece by Monica Copeland on the struggle of Mary Watson of Chicago to overcome her 6-year addiction to cocaine, an addiction that not only affected Mary, but two of her five children, who tested positive for cocaine upon their birth.

The Tribune article brings home the complex problems facing those who are addicted to chemical substances such as cocaine, as well as the enormous burden placed on social service agencies in attempting to heal lives scarred and broken by the destructive power of drugs. Finally, the article raises questions about the type of response needed to combat the vicious cycle of addicts giving birth to addicted babies.

Mary has broken the cycle—some would say downward spiral—of her addiction and pregnancies. To support her $1,500 a week cocaine habit, Mary lied, cheated, stole, and prostituted herself for the money. While 3 months pregnant with her fifth child, she could not resist the temptation to rush off to a crack house and smoke crack. She did not consider the effects of her smoking on her fetus. She did not think about the consequences of her actions. Her only thought was to get some more cocaine in her system.

Mary's story graphically illustrates the stranglehold cocaine and other chemical substances have on people across this country. Once caught in the grip of addiction, it is incredibly difficult to extricate oneself from it. Add the factors of being a minority, female, pregnant, and poor, and the odds against staying drug free are enormous.

Mary succeeded in her initial struggle. I say initial struggle, Mr. President, because to remain drug free is a day-to-day struggle Mary must face for the rest of her life.

Mary succeeded through the program at Haymarket House, the only free inpatient drug-treatment center for pregnant women in the Chicago area. The maternal addiction center at Haymarket House has 22 beds, which are always full. There is currently a waiting list of over 70 people for one of these coveted spots.

Mr. President, the administration and Congress have talked and talked about the need for more treatment beds, and greater availability of programs, in order to combat drug addiction. The story of Mary Watson presents a strong case for increasing the number of treatment beds, and expanding the scope of current programs. If Mary's story does not make the case for spending some money now, in order to prevent spending enormous sums of money later, to deal with the effects of cocaine and crack babies, nothing will.

I applaud Mary Watson for having the strength and will to choose a drug free path, and hope that she remains on that course for the rest of her life. I also applaud Haymarket House, and its founder and director, Father Ignatius "Mac" McDermott, for providing such needed services to a population in great need of them.

I ask unanimous consent to insert the article I cited from the Chicago Tribune at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Nov. 3, 1991]

HOOKED, PREGNANT: NOW WHAT?

(By Monica Copeland)

The minutes dragged by as Mary Watson waited in a South Side clinic last April with $200 in her pocket and a desire to end her three-month pregnancy.

She waited 20 minutes. Thirty. Then the urge to smoke cocaine took over.

She had to decide. The longer she waited to terminate the pregnancy, the more expensive and dangerous it would become. And she didn't want another child, because her world was not a healthy one for children. A cocaine addict with a $1,500-a-week habit, Watson could barely take care of herself, much less her four children. Three of them already lived with Watson's 58-year-old mother. The youngest stayed with her at her sister's home.

Mary Watson didn't know when she would have $200 again. Money usually slipped through her fingers fast. If she didn't hand over part of her welfare check immediately to her sister for food and diapers, she'd spend it all on cocaine.

After about an hour, she left the clinic. Within minutes she was smoking in a nearby crack house.

She didn't think about the baby. She didn't think about the brain damage or the painful withdrawal symptoms the baby would suffer if born addicted. She didn't think about how jittery and irritable it would be, how withdrawn, unresponsive. Or how the baby's crying would be so inconsolable that it would hardly be able to find the breath to eat.

"I couldn't even wait an hour," recalled Watson, 31, a soft-spoken woman with a nervous laugh and a habit of tucking her chin toward her chest when she talked. "I went to the drug house and smoked it up."

Two of Mary Watson's children—Johnny, 2½, and Jeffrey, 1—tested positive for cocaine at birth. Johnny's development was slow, and he seldom spoke, common signs in cocaine babies.

Now cocaine had made another decision for Watson: She would have her fifth child.

But this time there would be a difference.

This is the story of Mary Watson's struggle to kick her drug habit and have a healthy baby.

It is not a clear or simple tale, since much of it was lived in a drug-addled haze. She lied, cheated, stole from her family, and worked as a prostitute to get drug money. Her boyfriend, who introduced her to cocaine in 1985, was in prison for selling drugs.

Watson had gone through drug rehab programs twice before. It worked for a while, but before long she would be back on the streets.

The moment an addict finally decides to try to get off drugs is personal and complex. It is not a bolt of revelation and not something that happens overnight.

Looking back, Watson could not say exactly how she decided, except that it involved a chance encounter with a stranger named John who encouraged her over several days to get off drugs. At the same time, her social worker at the state Department of Children and Family Services told her about a new drug treatment program. And Watson worried—when she wasn't high—not only about having another baby damaged by cocaine, but also about the possibility of being prosecuted for it.

"When I came down and was sober, then, I would look at what I did and feel bad," she said. "Most of the time the cocaine would medicate all the bad thoughts and feelings."

One night last April, Watson left her sister's house to turn tricks as a prostitute. She met an older man named John, a customer who paid her $15 not for sex, but to talk. She told him she needed the money "to buy Pampers and milk for my baby." Only later did she tell him she was a drug addict.

With his encouragement, Watson entered the Maternal Addiction Center—known as the MAC unit—at Haymarket House on the Near West Side.

The 22-bed MAC unit, the only free inpatient drug-treatment center for pregnant women in the Chicago area, has been filled since it opened in March 1990. In September, 70 women were on the waiting list.

Almost all of the women at Haymarket were minorities—more than 8 in 10 black, most of the rest Hispanic. They came to the center by choice or by referral of former clients or social service agencies.

Monsignor Ignatius McDermott—affectionately referred to as "Father Mac"—founded Haymarket House 16 years ago. In 1986, McDermott, 81, known as "the priest of Skid Row," moved Haymarket to a block-long, six-story warehouse at 120 N. Sangamon St.

For Mary Watson, the first 14 days at Haymarket were tough.

She had no contact with the outside world. She was not allowed to make phone calls or have visitors. She shared a dormitory-style bathroom with 21 other pregnant women.

As she came off drugs, she slept much of the time in a pink walled room she shared with another recovering addict. After that, she was allowed to call out on the pay phone, but was restricted to no more than six minutes. The staff eavesdropped to make sure none of the expectant mothers were trying to make drug deals.

In other units where she'd been treated, visitors—and drugs—had come in unrestricted. At Haymarket, visits were restricted to family, and they were monitored.

Every week the women went to Cook County Hospital for physicals in the morning. They would wait up to 12 hours to see a doctor. Watson sat patiently, smoking cigarettes or doing needlepoint.

By Aug. 4, Watson had been drug free 110 days. She weighed 158 pounds, 30 more than when she came to the MAC unit in April. In the first week at Haymarket she had gained seven pounds.

"When I came here, I looked like a toothpick," Watson said. "I wasn't taking vitamins or none of that stuff. I had the prescription but I never went and got it filled. I was still using, and I thought that was taking up too much of my time."

In the MAC unit, Watson awoke at 6 a.m. with the other pregnant recovering addicts, called "peers." Their schedule was strict, the discipline military-style. There was no room for breaking rules.

The women were expected to shower, dress, clean their rooms and have their vital signs taken by 7. Aerobics and meditation at 7:30. Breakfast at 8. Clean the unit at 8:30. Lecture at 9. Community meeting to discuss chores at 10. Therapy group at 11. Lunch at noon. Rest at 12:45.

The women were allowed five cigarette breaks a day. "If you strip them of everything, it's hard to find a reason to stay," said Bettie Foley, the center's director. "Our goal is to show them they need structure."

In the evenings there was a homework that focused on nutrition, budgeting, and parenting skills. There were art classes and plays in which the women acted out scenes showing how drugs ruined their lives.

Watson usually played the drug dealer. They would create bags of cocaine from paper, or fashion spitballs to resemble crack. Dressed in old clothes, the women weaved and bobbed, acting like they had in real life not so long ago.

It was lights out at 11 p.m.

When the women finally could leave the unit on 3-hour "business" passes, they faced the same temptations in neighborhoods where drugs flowed freely. Many asked for a peer to accompany them; Watson was often the one requested.

On her weekly three-hour pass, Watson would go to her mother's two-level, two-bedroom apartment in the LeClaire Courts public housing complex. Space was scarce there. A mattress lay at the bottom of the staircase for Watson's daughter Citrus, 4. A couch was covered with a sheet. The kitchen had a table and lawn chairs. A pillow case covered the front door window; and a disheveled assortment of children's shoes was stored under an old wooden table next to the TV. The once-white concrete walls were smudged with children's handprints.

At the apartment, the children would mob her, Citrus sitting close by and Johnny and Jeffrey climbing on her lap, pulling on her earrings or mussing her hair.

She would take them to the park to play, bathe and feed them.

"I felt like a mother again," Watson said after one visit. "I was able to do it by myself."

She even began to think of regaining custody of her children.

Graduation Day. Sept. 17, 1991. Pink and green streamers and balloons decorated the brick walls of the MAC unit community room. In the middle of the room stood a table with punch, potato chips and salads. At one end of the table, white-haired Father Mac reclined in a chair. Nearby were the two graduates—Mary Watson and Barbara.

The ceremony was simple.

A "peer" read a poem: "We're sad to see you leave. Excuse us if we decide to grieve . . . we're glad it's graduation, not drugs making us part."

Watson had been drug-free 154 days. She was a high school dropout, and this was her first graduation. Her valedictory speech was short.

"I want to thank Father Mac, Bettie Foley, Cheryl. When I first came in there was a lot of denial. I didn't know if I was going to make it. I really don't want to go, but I have to go."

Watson covered her face to hide the tears.

"I'm going to miss you," another client told her.

After graduation, the pregnant women awkwardly maneuvered their bodes so they could hug each other.

The official party was over. The cigarettes came out. From the radio, the rapper Heavy D asked, "Now that we found love, what are we going to do with it?"

The room filled with smoke as five expectant mothers did the "electric slide," bulging bellies bumping to the beat.

"Look at all them humpties up there," one expectant mother said with a laugh.

At midnight, Watson woke up. The contractions were three minutes apart. Within four hours, Chris Lemond Watson was born. The last 45 minutes were the hardest.

"I thought he was going to tear me in half," she said.

The deliveries of her previous two children were much easier. The cocaine masked the pain of contractions and labor was brief. Cocaine can cause premature labor or one that takes place so quickly and violently that the baby's brain is damaged.

At 6 pounds. 1½ ounces, Chris was the largest baby Watson had ever had.

A boy born later the same day, about a week early like Chris, weighed 3 pounds 12½ ounces. That baby tested positive for cocaine.

Chris slept in the maternity ward of Cook County Hospital, snugly nestled in a blue blanket.

Unlike some 180,000 other babies in the United States, Chris Watson had beaten the odds. He was born drug-free.

Watson smiled when she looked through the window at Chris. She had accomplished her goal, but she had little time to bask in the glory.

Watson's mother was in the hospital again, and the children were living with her sister for now. Watson was not even sure where she would go when she left the hospital.

Two days later, Watson and Chris made their new home, at least temporarily, at Haymarket Maryville, the postpartum program for the MAC unit. On the sixth floor of the former Cunco Hospital on West Montrose Avenue, babies crawled and played as their mothers downstairs continued their treatment in a program that opened last June.

"I didn't have time to prepare myself," Watson said of leaving the MAC unit. "Boom. You're out of here. It's like growing up and leaving home."

The 16 beds on the sixth floor at Haymarket Maryville were reserved for mothers who have gone through treatment at the MAC unit and have had drug-free babies. The 34 beds on the fifth floor were for the women did not go through any treatment and whose babies have tested positive for illegal drugs. Those women could visit their children, who were in the state's custody, but they could not stay with them.

In Watson's room, Chris, 8 days old, slept. He had inherited his mother's flat, broad nose.

A bed, desk and two cribs furnished her new room. On the bed, Watson browsed through old photographs as she held Chris.

The last picture was one of Watson when she was using drugs last November. It was a wedding reception for her boyfriend's sister at the sister's house. Watson wore a pink silky short sleeve dress with a sweater. She sat on a chair, drink in hand. She said she tried to dress up for the occasion because "I didn't want to look like I was using." But the makeup and dress could not cover the distant look or the bags under her bloodshot eyes.

Watson now sat on her bed talking and laughing. Her eyes were clear and her skin was smooth.

"I'm surprised at myself that I got out of that vicious cycle. It's crazy now that I look at it. I look back and say 'damn.'"

Still, her life was uncertain. Would she regain custody of her other three children? Where would she live? Could she make it on her own with five children and no job?

Even though she wanted to be, she could not be certain she had won her battle with cocaine. And she could not be sure that the cocaine she took early in the pregnancy would have no lasting effect on Chris.

"I feel like I would never turn back to it, but I was told never to say never, because anything can happen," Watson said.

"But as far as I can help it, I'm going to give it a real tough fight to keep myself up because I know how I looked before I started using drugs. I try not to think negative. I try to think positive most of the time., but I have to look at the negative, too, because if something negative happens in my life I have to deal with it.

She looked down at Chris.

"I look at his beautiful face and say 'How could I have?'" Watson said of her drug usage early in the pregnancy. "He's so adorable. He was worth it."

The baby slept peacefully.

PASSAGE OF KENTUCKY BICENTENNIAL DAY

Mr. FORD. Mr. President, it gives me great pleasure to thank my colleagues for their help in passing Senate Joint Resolution 61, which designates June 1, 1992 as "Kentucky Bicentennial Day"—honoring the day in which Kentucky became the 56th State of the Union nearly 200 years ago. I would like to take this opportunity to extend a special word of thanks to Chairman BIDEN and the Judiciary Committee as well as the 31 Democratic and 20 Republican colleagues for their assistance in passing this resolution.

Mr. President, as a former Governor of Kentucky, I take a special interest and pride in recognizing our great State as her bicentennial approaches. Kentucky's rich history of outstanding accomplishments and hospitality is attributable to the past contributions of such prominent Kentuckians as Henry Clay and to the continued dedication of hard-working families and individuals today.

As the Kentucky bicentennial celebration spreads its enthusiasm across the State, I would like to encourage all Americans to take the opportunity to visit Kentucky. The Kentucky Bicentennial Commission has worked tirelessly planning a yearlong celebration and has been instrumental in spreading energy and excitement across the State. From the smallest town to the largest cities, the people are pausing to look back to the accomplishments of the past as they prepare for the bright and promising future.

TRIBUTE TO REPRESENTATIVE JAMIE L. WHITTEN

Mr. THURMOND. Mr. President, I rise today to offer warm congratulations to my good friend Representative JAMIE WHITTEN of Mississippi, who celebrates his 50th year as a Member of the House of Representatives today. Representative WHITTEN is a man of character, courage, and compassion, and he has served this Nation and the State of Mississippi with dedication and integrity.

Congressman WHITTEN has devoted himself to public service since his youth. He was only 21 when he was selected to the Mississippi House of Representatives, and 23 when he became district attorney of Mississippi's 17th District. In both these positions, he established his reputation as a keen and committed servant of the people, and at 31 he was elected to the House seat he holds today.

Congressman WHITTEN's longevity as a legislator is testament to the fine service he has rendered to his home State. He is well known for his unwavering devotion to the welfare of his constituents and for his support for America's farmers. He is a valued and sought-after ally and a respected opponent, and his word is his bond.

Congressman WHITTEN has been chairman of the powerful House Appropriations Committee since 1978, and of the Rural Development, Agriculture and Related Agencies Subcommittee since 1949, with the exception of a 2-year period in the 1950's. In both these important positions, he has earned the respect of his colleagues on both sides of the aisle.

Mr. President, JAMIE WHITTEN is a man of whom we can all be proud. I would like to take this opportunity to commend him for his tireless service to our Nation, and to offer my best wishes to him and his lovely wife, Rebecca, on his golden anniversary in the House.

I ask unanimous consent that an article from the November 4 issue of Roll Call newspaper be printed in the RECORD following my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

REP. JAMIE WHITTEN COMPLETES 50TH YEAR IN HOUSE TOMORROW, TO SET RECORD JAN. 6

(By Craig Winneker)

While most of the nation debates the red hot issue of restricting the tenure of Members of Congress, one politician in the House of Representatives will soon celebrate a milestone that probably won't be equaled in the future—even if term limits are never imposed.

Tomorrow, Rep. Jamie Whitten (D-Miss), chairman of the House Appropriations Committee, will complete his 50th year in the House of Representatives—a length of service attained by just two other Members in the entire history of Congress.

And Whitten Golden Jubilee is only a prelude to a more important date, Jan. 6, 1992, when he will break the record held by the late Rep. Carl Vinson (D-Ga) to become the longest-serving House Member ever.

Vinson served in the House from Nov. 3, 1914, to Jan 3, 1965—50 years, 2 months, and 13 days. The longest-serving Member of Congress in history is Carl Hayden (D-Ariz), who was a Representative from Feb. 19, 1912, to March 3, 1927, and a Senator from March 4, 1927, to Jan 3, 1969—for a total of 56 years, ten months, and 28 days.

To break Hayden's impressive record, Whitten will have to remain in office until Oct. 2, 1998, when he'll be 88 years old; he's currently 81 and going strong.

For now the Congressman is looking to January for his place in the record books. Press secretary Steve Burtt said Whitten is planning a big party that month, and other Members are sure to host events in his honor. This week, Whitten is being honored in Knoxville, Tenn., by the Appalachian Regional Commission.

Members of the Mississippi delegation will honor Whitten's 50th anniversary in one-minute speeches Tuesday afternoon.

Whitten, who had previously been elected to the Mississippi House at the age of 21 and became district attorney of the 17th district of Mississippi at 23, won a special election in November 1941 and moved to Washington immediately—just a month before Pearl Harbor. He was 31.

Whitten succeeded Rep. Wall Doxey (D-Miss.), who resigned his seat to fill the Senate seat of Pat Harrison. (Doxey was defeated for renomination in 1942 and was elected Senate Sergeant at Arms in 1943, a post he held until 1947).

During his 26 terms in Congress, Whitten has faced opposition just 11 times, and has never received less than 63 percent of the vote (he received that figure in the Reagan-coattail year of 1980).

Whitten, who represents Mississippi's 1st district (the northeast part of the state, including Tupelo and some Memphis suburbs), has served on the Appropriations Committee since his first term, and has chaired the Appropriations rural development, agriculture, and related agencies subcommittee since 1949 (except for 1953–55, when Republicans controlled the House)—a record for the longest continuous service as the head of a subcommittee in Hill history.

Whitten has been the chairman of the full Appropriations Committee since 1978, when he took over the reins from Rep. George Mahon (D-Texas). If Whitten stays in Congress and remains chairman of Appropriations until August 1993, he will break Mahon's record for the longest continuous chairmanship of that committee.

Whitten is one of only four current Members of the House who saw service during a time when the GOP was the majority party. The other Members are Democrats as well: Rep. Charles Bennett (Fla.), who was first elected in 1948; Rep. Jack Brooks (Texas), elected in 1952; and Rep. Bill Natcher (Ky.), elected in 1953.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,425th day that Terry Anderson has been held captive in Lebanon.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF ROBERT M. GATES, OF VIRGINIA, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

The Senate resumed consideration of the nomination.

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, the Senate will go into executive session to resume consideration of the nomination of Robert Gates, of Virginia, to be Director of the Central Intelligence Agency. The time is equally divided, under the control of the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey.

The Chair recognizes the Senator from Oklahoma.

Mr. BOREN. Mr. President, how much time is allocated to each side under the order?

The PRESIDING OFFICER. The vote is ordered to occur by 6 p.m. The time between now and 6 p.m. will be equally allocated between both sides. The time between 12:30 and 2:15 will be a time for recess.

Mr. GORTON. I ask the Senator for 15 minutes.

Mr. BOREN. I am happy to yield 15 minutes to the Senator from Washington.

Mr. GORTON. Mr. President, the world is an especially fluid and challenging place today. Yesterday's status quo is history today and an anachronism tomorrow. Five years ago who would have predicted that communism would end so abruptly? Or that the Soviet Union could fracture into a dozen or more independent nations? But the triumph of the United States in the cold war, and of democracy and free markets as a way of life to be sought everywhere, simply present us with new challenges and problems which have never before been more varied and complex.

Intelligence will play a central role in addressing successfully the many riddles facing the United States. In battle, intelligence is called a "force multiplier." It is the equalizer for the overmatched; the insurance for the strong. Today we face many challenges and need as never before a force multiplier. Even with the experience, knowledge, vision, and leadership we currently possess, accurate information will be the key to success. That is the role of intelligence, to be the stars for the sailor and to assist the leaders of our Nation in navigating treacherous seas.

The intelligence community will face innumerable challenges during the next decade. The Soviet threat has receded, but has been succeeded by more numerous concerns. More nations are capable of building and delivering nuclear, biological and chemical weapons today than ever before. The threat of international conflicts has diminished, but the potential for domestic unrest and internal conflict in the second and third worlds has sharply increased. Narcotics continue to plague societies throughout the world, destroying lives and controlling governments. Terrorism is a constant menace. And finally, economic espionage is becoming a more common topic of concern within and among governments. To meet all these perils, the intelligence community must adapt.

But the reality of changes at home is even more likely profoundly to alter our intelligence gathering network. A shrinking budget necessitates change, and with fewer dollars our next DCI will be expected to do more. At the same time, a cumbersome intelligence organization must reorganize and restructure to become a more efficient, streamlined machine.

Finally, our intelligence must be more focused and responsive to the needs of its consumers: military, political, and otherwise.

Never before has the United States and the intelligence community encountered the array and complexity of concerns with which we are faced today. These demands will surely test our next Director of Central Intelligence.

Mr. President, though the future is uncertain, the past of Bob Gates is clear. Bob Gates not only has the qualifications required of a DCI, he sets a new standard for a DCI. Engraved on the National Archives Building is a quote from Shakespeare's, The Tempest. It says: "What's past is prologue." If true, then the record of Bob Gates portends a bright future for the intelligence community under his leadership.

Out of often tedious hearings littered with attempts by critics to rewrite history, to generate evidence of wrongdoing, and to stretch honest disagreements into widespread uprisings, emerged a portrait of a man who is smart, experienced, innovative, and committed to the congressional oversight process: just the right person, in my opinion, to lead the intelligence community into unstable and extremely challenging times.

Bob Gates has had a long and distinguished career in the field of intelligence. During 25 years of public service, he has worked in a variety of sensitive assignments in the administrations of five Presidents, Republican and Democratic alike. Of his many strengths, one is having worked as both a producer of intelligence, and as a consumer of analyses. This unique experience has made him aware of what policymakers want from intelligence, and how the community can deliver it.

At every level, Bob Gates has attempted to make the intelligence community a stronger, more efficient and more relevant organization. He is not hesitant to effect change. During the 1970's as a junior analyst, unsolicited, Bob Gates authored an internal working paper highly critical of the analytical product emanating from the CIA. Though Mr. Gates had no authority to implement them, this paper proposed reforms to a system from which not only he was benefiting, but also his superiors. He wanted to make the system better.

In the early 1980's he was tapped by Bill Casey and Adm. Bobby Inman to be the Chief of Staff at the CIA, and in testimony Admiral Inman confirmed the quality of work Bob Gates performed. Only a short time later, Mr. Gates was installed as Deputy Director of Intelligence, charged with executing a reorganization of the directorate.

These assignments have given Bob Gates a unique perspective for understanding the intelligence community. Such knowledge and experience is essential for the individual who must design and implement the most sweeping set of changes ever in the intelligence community. Time for on the job training does not exist.

Though cloaked in a world of secrecy, the intelligence community does not function most effectively in the dark. Congressional oversight is an essential component of a capable and active intelligence community. In the past when oversight has not been respected, the Nation has suffered. Bob Gates has a demonstrated record of openness and sincerity with the Congress. No one nominated for this position understands better than Bob Gates the important relationship of trust and confidence that must exist between Congress and the CIA. In recognition of this relationship, Bob Gates has pledged to resign rather than ever to jeopardize that association.

Last, Bob Gates has proven his intellectual toughness. He is considered one of the great analysts of his time. Judgments he made years ago have been justified by events. His public prediction in 1983 of the weakness of the Soviet economy and Soviet vulnerability in Eastern Europe put him on the cutting edge of Sovietologists reading the pre-Gorbachev Soviet Union correctly. In 1988 Gates correctly hypothesized about the future dissolution of the Soviet Union.

These two examples of judgment swiftly dispel two myths about Bob Gates' intellectual vigor. These predictions reflect independence and objectivity of thought, not an individual who has mentally sold out to his superiors. And, second, they establish that he did not miss the single, biggest question in the intelligence world of the last 40 years. Indeed, Bob Gates was a lot closer to the mark on the Soviet Union than were many of his present critics.

Two issues dominated the confirmation proceedings, the Iran-Contra affair, and allegations of politicization. Upon close examination, I believe a silver lining exists in both for Bob Gates.

In the first case, we learned once again that Bob Gates had no role in or knowledge of the Iran-Contra affair. What was not stressed, however, was the fact that having a DCI who lived through this debacle could be a real benefit.

The hearings showed that Bob Gates has been immeasurably marked and influenced by the Iran-Contra affair. By his own admission he made mistakes during this difficult period. Perhaps he should have taken more seriously the possibility of impropriety and pursued more aggressively speculation of wrongdoing. The weight of this affair will forever burden Bob Gates. It is clear, however, that this incident educated and matured Bob Gates and made him more sensitive to the lessons of that time.

The second charge, also shown to be unfounded, was that Bob Gates personally and systematically politicized the analytical process. The basis for this charge stems from a widespread reorganization of the Intelligence Directorate while Gates was DDI. In fact, the reorganization was undertaken to make analysts' products more pertinent for policymakers. It was not perceived that way by some analysts, even though I can think of nothing more important for morale than for employees to know their work means something and is relevant to the consumer. Perhaps Gates' approach was too bureaucratic and impersonal, but his intentions were strictly human.

Though this confirmation is a symbolic step, it is obviously anything but a token gesture. Bob Gates would be the first Director with intelligence experience to come from the analytical section of the agency. His confirmation would reflect the true heart of the agency and the reason for its existence. Moreover, it would underscore the importance analysis will play in a post-cold-war world where information is readily available.

The Bob Gates we are confirming today is a much different Bob Gates than the person who withdrew his nomination in 1987. He is wiser, more experienced, tested, and proven, more mature and more understanding. Like all human beings, he has learned from his mistakes and grown with experience.

Some believe that President Bush took a gamble when he nominated Bob Gates. The real gamble, however, would have been to nominate a less controversial, less experienced and less qualified individual. That would have guaranteed confirmation, but not a promising future for the Nation's intelligence community.

Mr. President, I warmly support this nomination and urge the confirmation of Bob Gates.

The PRESIDING OFFICER. Who yields time?

Mr. BOREN. Mr. President, I see the distinguished Senator from New Jersey is off the floor. He has indicated to me he wished to yield time to the Senator from Illinois in opposition to the nomination.

How much time does the Senator from Illinois desire?

Mr. SIMON. Five minutes.

Mr. BOREN. Mr. President, I ask unanimous consent on behalf of Senator BRADLEY I might yield 5 minutes from the time in opposition to the Senator from Illinois.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Mr. President, I thank my colleagues from Oklahoma. Let me thank him not just for the courtesy right now, but also for the extent of the hearings that were held and for one other thing that, frankly, we need more of in this body, and that is the real bipartisan working together in the Intelligence Committee that has taken place under Senator BOREN's leadership. I think, frankly, we need to be reaching out to each other more than we have been on these things.

I am going to vote in the negative on the approval of Mr. Gates for Director of the CIA. I have every reason to believe I would vote for him for almost any other position other than Director of the CIA.

I think there are three positions in the Federal Government—perhaps others could be added—but three at least where it is very key that they have the full confidence of this body and of the American public. One is the Director of the FBI, the second is a drug czar, and the third is the Director of the CIA. In each of these positions the potential for abuse is very, very great, particularly when you operate under the cloak of secrecy.

It is extremely important that whoever heads that operation has the full confidence of this body and of the American public. Judge Sessions, as head of the FBI, has that confidence. I have great respect for him.

The reality is that Mr. Gates is a person of great ability, but there are people who are thoughtful Members of this body, such as Senator BRADLEY, who have serious concerns whether he is the right person to head the Agency. There has been a lot of talk about the Iran-Contra problems.

Let me mention another area that also concerns me and that is a memorandum of December 14, 1984, from Mr. Gates to Bill Casey, and in that memorandum, first of all, he talks about maintaining the fig leaf of curtailing the arms sale to Salvador, and second, he talks about taking certain actions that are clearly acts of war.

My idea of what the Central Intelligence Agency ought to be doing is that it ought to be gathering intelligence, period, and then, if there are military decisions that should be made, the military should be involved in that.

I happen to have served in the Army in something that few people will even recall existed anymore, I know it has not existed for several years, called the counterintelligence corps. I am very much interested in this whole process of sound intelligence gathering, and that is what the CIA ought to be about. They ought to be gathering intelligence, period. And then, if they want to make recommendations to other agencies to take other kinds of covert or overt action, that should be done.

And I think there are plenty of people who are competent, who are knowledgeable. Let me just mention two, and I have no idea whether they would even consider it. I recognize the Gates nomination probably is going to be approved. But Admiral Crowe or Gen. David Jones, both retired, both former Chairmen of the Joint Chiefs of Staff, have great respect in this body. I would without hesitation vote for either as head of the CIA. And I would have full confidence that they have the sense of balance to do the right kind of a job.

I have an uneasy feeling about Mr. Gates, and I do not think we ought to have that uneasy feeling about whoever heads the CIA.

So, Mr. President, my vote will not be for Mr. Gates as head of the CIA. I think we can do better in this country. I think we can find someone who would have the unanimous support of this body.

Mr. President, I yield back whatever time may remain.

Mr. BOREN. Mr. President, I yield to myself as much time as I might require.

Mr. President, I thank my colleague for his kind comments about my leadership on the Intelligence Committee, and I appreciate the contribution which he makes to not only national security but foreign policy of this country. We have worked together on many occasions and in many different areas of policy. I know that he will understand that on this occasion I respectfully do disagree with my good friend and colleague from Illinois.

I think at a time of immense change at the Central Intelligence Agency—and it will be a time of sweeping change—we only have to reflect upon the fact that perhaps half of the the multi-billion-dollar-a-year budget is directly or indirectly focused upon the Soviet military target-Eastern bloc military target.

This means that there will be large changes dictated, hopefully some budgetary savings at the bottom line can be achieved, some significant savings, and at the same time certainly a reordering of priorities. When we undertake this kind of change it means to me that the last thing we want is to have someone at the helm of an agency who really does not have experience in that field, someone who needs on-the-job training. Instead we need someone who can hit the ground running, who has background and experience and understands the present program, and that is a necessary beginning before we can decide how to change it.

I sometimes worry that we are moving in this country toward a basic principle that to be appointed to a position and have an easy time in a confirmation process one really needs to be without experience or background in that field. That seems to be more and more true in a number of areas. We have a person who has been a legal scholar who has writings, who perhaps has been an academic in the field of law, who has vast judicial experience with a number of cases decided one way or another. That experience can be used against a person, especially if we want the standard of perfection, especially if we have a standard that a person has to always be right in every decision that he has made. To have that standard applied makes it impossible to find anyone with experience.

If we are never going to have anyone who made mistakes, never made a wrong decision, never written an article, never taken a controversial stand, never taken a risk, that is really not what we want in positions of responsibility in our Government. So I worry sometimes that we are moving down a path, not just in the debate on this nomination or on Supreme Court Justices, but in many other realms as well, that people with experience in a particular field are disqualified because they have made decisions, because they do have a track record.

I would say to my good friend and colleague that certainly Mr. Gates has a track record. I myself have said that these are parts of that track record that do not please me. I wish he had been more aggressive in terms of getting to the bottom of the Iran-Contra affair. I wish he had had more of a whistleblower's mentality.

While I do not think the record substantiates on balance a finding that there was a systematic politicization of intelligence analysis at the agency when Mr. Gates was responsible for that analysis, there are a lot of things in the record that show much independence on the part of analysis during that period of time. Analysis, for example, that was very much opposed by the administration, stating that the Soviets were not likely to use chemical weapons at a time when the administration was trying to get chemical weapons production approved in this country; analysis that said Soviet defense spending was going to go down at a time when we were debating the Reagan defense buildup.

There is a lot in the record on what he said on that matter, but I wish he would have been more sensitive to at least the perception by some of the analysts and understood that perception, that there was an implied pressure from time to time.

There were things that I wish he had done differently. But there are also real strengths in that record.

As I shared with my colleagues yesterday, it is not just a matter of taking Mr. Gates at his word when he says he would have done things differently, when he said he learned from the Iran-Contra affair. I would not be prepared to just take him at his word because he said it to us in the opening of our confirmation hearings.

He indeed has proven himself, I believe, by his actions since late 1986 and through the years 1987 and since then, that he has learned lessons from the Iran-Contra affair, that he has been a vigorous supporter, not just rhetorically, but he has really weighed in at crucial times during the debate to allow the Congress to have greater oversight powers. And this is very important in terms of protecting the interests of the American people.

Mr. Gates weighed in to allow our audit units full access to the records of the most secret bank accounts of the CIA without advance notification, that we would go in and find wrongdoing, whether it existed. And we found wrongdoings in certain cases that I did not discuss on the floor and we shut down certain programs. Without his assistance as Acting Director and Deputy Director we would never have had that kind of access because there were those in the community that did not want us to have that ability to go in and to look at those accounts. And so the record is filled in support for the independent inspector general when that legislation was pending, and the President was threatening to veto it is another example.

The weekly briefings we had, Senator COHEN and myself, as chairman and vice chairman of the committee when he was deputy director and when he was acting director of CIA again indicates a record of real candor, of sensitive information shared with us that we could never have found without his telling us about it. And so he really ushered in a new relationship of trust that had not existed previously between the committee and the CIA, a new policy of being forthcoming on the part of the agency, instead of engaging in bureaucratic stonewalling and insisting that we had to ask the right questions to get the answers or to get the information. So there have been many changes.

I want to comment just on the last point that the Senator from Illinois made. And I understand why that memorandum was disturbing to the Senator from Illinois if read only on its face. I think we also have to analyze it on the basis of what Mr. Gates believes about the uses of covert actions.

In this case, I think the views of Mr. Gates, expressed during our hearings on when covert action is appropriate and when it is not, would be very much endorsed by the Senator from Illinois. Mr. Gates, during the course of our hearings took two positions that certainly coincide with my own view.

One, I supported the Metzenbaum amendment which would make public the bottom line spending for the intelligence community. I think that is a step in the right direction. It is a figure we cannot mention on this floor, but it is a very large figure. The press has indicated they believed that figure is somewhere between $25 and $30 billion a year, if we take into account both military and civilian intelligence.

Without commenting on the accuracy of that figure, let me just say that the actual figure is a very large figure. It is a lot of the taxpayers' money. I think Mr. Gates, in supporting openness about the appropriations process to the degree that we can without endangering the secrecy of certain programs, is taking a step in the right direction of greater accountability of how money is spent, how the taxpayers' money is spent in the intelligence field.

Second, he has also taken the position that I have taken on many occasions, and that is that it is not appropriate to use covert action as a substitute for opening derived foreign policy decisions involving the American people. If we are going to make fundamental decisions about doing something in the foreign policy realm, we should not use the secrecy of a covert action program to take action where the public themselves would really not be in support of it, where we cannot build a consensus in this Congress.

I think everyone knows the position that I took on aid to the Contras in Nicaragua. I happen to believe that that was a program that was important and I personally believed that the ultimate victory of Mrs. Chamorro and those who were working for democracy in Nicaragua sustains that point. But, the American people were deeply divided in that issue. It was impossible to have a consensus in the Congress on that issue. I think we had nine different votes on that issue in which we reversed fields nine different times—giving the aid, taking it away, giving it again. That shows there was not a consensus.

I personally feel when you have a situation like that we should not be using covert action to make policy. It ought to be in open debate with open programs. If you cannot have a consensus, it is something that should not be done. I think it was a mistake to have started that particular program because we could not sustain it. We were back and forth divided as a American people.

So I think the adage that you should not start something unless there is a public support to continue it and complete it is a very wise thing. Mr. Gates argued that forcefully in our hearings. He said he did not believe the covert actions should be used as a substitute for openly derived foreign policy decisions on that which a consensus should exist.

I think what he was saying in that memorandum—that is the way I read it—is that, well, we ought to either get in or get out in Nicaragua, and we should not do it on a secret program. We ought to go public. If there is the support there from the American people to go forward and go all out with every resource of the Government, as we did in the cast of the invasion of Kuwait for example, go ahead and do it. But if there is not the support there to do it, do not start it at all. I think that is really what he was saying. It was a way of saying it to Mr. Casey, because Mr. Casey obviously so strongly supported getting rid of that regime in Nicaragua. I think what he was really saying is, you know we should not even be having these covert action programs at all. You ought to either try to sell the American people of going all out or you ought to stop. That is the way I read it. Now it can be read both ways. That is certainly the way I believe.

We had a program related to Cambodia. In the Intelligence Committee, I took the positon—I think it is the first time in the history of the Intelligence Committee that the committee has taken this action—that we refuse jurisdiction.

We said this is not a matter that should be decided in secrecy in the Intelligence Committee, to have a covert action program in relationship to Cambodia. This ought to be a matter for the Foreign Relations Committee and for the whole Senate of the United States and for the American people to decide in public whether or not there is a consensus of how to act on this matter. And that is the position that I took.

I think from the hearing testimony that is the kind of position that Mr. Gates would take as Director of the Central Intelligence. I think he would be very cautious about beginning new covert programs of a paramilitary type; that he would urge instead that we look to see whether or not there is a broad public consensus.

So I do have some honest disagreement. Perhaps it is based upon my own experience in listening to Mr. Gates and his philosophy and what he said in our hearings. I think it is perfectly reasonable to read the memorandum as the Senator from Illinois has read it. If I read it and interpreted it the same way he did I would draw the same conclusions, because I think they, in a sense, advocate some extreme actions I would not favor.

I think they were a ploy, if I might say to my friend from Illinois, a way of trying to make a point to Mr. Casey about when it is proper to use covert action and when it is not.

Mr. SIMON. Will my colleague yield for just a minute?

Mr. BOREN. I will be happy to yield.

Mr. SIMON. On one point. The point you make, and earlier in your comments, that we may be approaching the point where we cannot get anyone with any experience. I think you have to recognize there are two totally different kinds of Government leadership post.

If we have a Secretary of Transportation who makes a mistake in the State of Oklahoma or the State of Illinois we are all going to know about it. And it is going to be very public.

When the director of the CIA does it, it is a very different thing. It is secret action. And, so, I think there is a higher standard that we must demand.

Obviously, you and I differ on the nominee. And I hope my colleague from Oklahoma is correct, because in all likelihood the nominee is going to be approved. But I think that the Senator from Oklahoma and I and the other Members of the Senate who are on the floor right now, we could probably find 10 people with experience in intelligence who could be approved unanimously by this body. I think there are people with that kind of background. And I would feel more comfortable if we had a consensus candidate, rather than someone where there are serious doubts on one side or the other. But I thank my colleague.

Mr. BOREN. Mr. President, I thank my colleague from Illinois.

I understand exactly what he is saying. I am not so sure I agree with him we could find 10 who could get unanimous approval in this field, especially if they have been working at CIA for the past 15 or 20 years, unless we got someone who was a bureaucrat's bureaucrat. If we got someone who was not a boat rocker at all he might be embraced by the bureaucracy there. There are certainly some others.

I have people, for example Admiral Inman, who could perhaps command almost unanimous support. I would certainly be in support of someone like him, were he nominated as well.

I would point out, by the way, that many of these people, for whom we have such universal respect like Mr. Inman, like Mr. McMahon, like some of the previous Directors—Mr. Colby, Mr. Schlesinger, Judge Webster, like Mr. Stolz, the former Director of Operations who resigned as a matter of principle when Mr. Hugel was brought in by Director Casey, like Admiral Burkhalter who I quoted yesterday and others, former Congressman Boland of Massachusetts who was the chairman, distinguished chairman of the House Intelligence Committee and who wrote the Boland amendment, who also supports Mr. Gates. All of these people have been supporting him.

Let me say to my friend from Illinois one last word—I know at this point in time when decisions are made, we are not going to change anyone's mind—but one of the reasons, again, why I do support Mr. Gates. Like anyone else, I could be mistaken in my judgments. One of the things I have said is I take him at his word. If he ever did enter into activities which caused him to lose the confidence of the oversight committee he said he would submit his resignation. I would not only expect him to do that, I would demand that he do that if I were still the chairman of the Intelligence Committee. And having taken the position I have taken on this nomination, I can assure you I would probably be the first person to demand such action if he did not continue to merit the confidence which I and others have expressed in him yesterday—also by Senator BENTSEN, the distinguished chairman of the Finance Committee who was the ranking member of our committee for 4 years; by

Chairman PELL of the Foreign Relations Committee yesterday, and by others who will be speaking in the course of today.

But one of the reasons why I do support him is the very reason that has been focused upon lastly by the Senator from Illinois. The Secretary of Transportation, as I said, his mistakes are public. There is much more of a public debate about them. The actions of the Director of the CIA are in secret. That is why I believe it is absolutely essential that we have a Director who not only gives in to the letter of the law, goes as far as the law makes him go in terms of congressional oversight so that we really know what is going on—I think it is absolutely imperative that we have some-one who truly believes in congressional oversight to the point of following the spirit of the relationship as well as the letter of the law, who tells us more than we have a right to know under the law, who really is forthcoming with the committee.

I can just say to my colleague from Illinois, I think that Senator COHEN and I, and in the last year Senator MURKOWSKI and I, because of our responsibilities—not because we have any particular insights—but because of our responsibilities as chairman and vice chairman of the committee, meeting with the Director on a weekly basis on behalf of the committee, I think we are in a position to understand that Mr. Gates is the kind of person who really does share that information, including the mistakes—including the bad news—with the oversight committee.

He has done that consistently, and he has not just done that. He has supported greater authority—greater authority for the Congress. I want to make it clear I am not just saying for the Congress, I am saying for the American people. Because it is through us being able to look at, audit, and examine what the CIA is doing through its secret programs we are sure that there are not actions taken which are illegal or which violate the intentions of the American people.

And he has supported greater legal authorities. In my opinion, after all the arguing I did with the President of the United States on this question—and he started out firmly against the idea of an independent inspector general for the CIA, confirmed by us, reporting to us any disagreements with the Director of the CIA so we would know if anything was going wrong out there, I argued with him, Senator COHEN argued with him, other members of our committee argued with him. We made some headway but we did not change his mind. I am convinced it was not until Mr. Gates weighed into the debates in behalf of having an independent statutory inspector general that the President finally relented and agreed not to veto that bill.

So I would say that is one of the things that does give me some level of assurance about Mr. Gates, and that is that he has been such a strong supporter of the oversight process. I know I am not going to change the mind of my colleague from Illinois but I do want him to know that if Mr. Gates goes to the directorship or if someone else goes to the directorship, that this Senator will certainly be doing everything that he can to make sure that that oversight process works, that there is a high level of accountability, not only to our committee but to the American people for the actions that are taken there.

Mr. President, I want to just make one additional point before I yield the floor. Yesterday on the floor I read into the RECORD a letter from Vice Adm. E.A. Burkhalter, former Director of the Intelligence Community Staff, in support of Mr. Gates' nomination. It expressed Mr. Burkhalter's view that one of Mr. Gates' critics at our hearings, Mr. Hal Ford, had not held intelligence analysis positions as high as some of the other analysts who testified supported Mr. Gates.

I do want to make it clear for the record that Mr. Ford's position was Deputy Chairman and Acting Chairman of the National Intelligence Council in the mideighties. Dr. Gates at that time wore two hats, that of CIA Deputy Director for Intelligence and Chairman of the DCI's interagency National Intelligence Council. And he selected Mr. Ford as his deputy at the NIC, and Mr. Ford became the Acting Chairman when Mr. Gates moved up to become the Deputy DCI. The committee solicited Mr. Ford's advice in considering this nomination.

While I do not find myself in agreement with the conclusions of Mr. Ford, though I will point out he testified that in his own experience as chairman of the NIC that his professional relationship with Mr. Gates was very good and that he was never urged by Mr. Gates to do anything improper in terms of slanting intelligence, he came to a conclusion of being opposed to the nomination mainly because based upon the feeling that it could have a bad impact on morale because of his discussion with some other people.

I do not agree with his conclusion. I agree with what he said about his own personal experience, but I do want the record to reflect that he did have a position of high responsibility, in fact, selected by Dr. Gates, in the intelligence community's analytical work. It is work for which I have immense admiration and respect, and I do want to make that clear.

I am sure that Admiral Burkhalter was in no way expressing a lack of respect for the work of Mr. Ford. I think he said that, indeed, explicitly in his letter, but I also wanted the record to reflect the full range of positions which Mr. Ford has held.

It is my hope that if Mr. Gates becomes the Director of Central Intelligence—and we will determine that fact as the Senate deliberates later this afternoon—that he will reach out and seek the advice of those who have had honestly different views and perceptions of his performance in the past. I think that will happen, and I think that will be valuable. I think that is another reason, as I said, why I think the confirmation process works, why it is a good thing that we have a process like this, and it will make, I think, the nominee, any nominee, particularly this one, more sensitive to some of the concerns that have been raised.

Mr. President, I yield the floor and reserve the remainder of my time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BOREN. The Senator from New Jersey is absent from the floor. I know he was expecting the Senator from Massachusetts.

How much time does the Senator need?

Mr. KENNEDY. Ten minutes.

Mr. BOREN. Mr. President, I ask unanimous consent that I yield 10 minutes on behalf of the Senator from New Jersey to the Senator from Massachusetts.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I join in commending the chairman of the Intelligence Committee, Senator BOREN, for the fair and thorough manner in which he conducted the hearings on the nomination. The testimony of the nominee, current and former CIA officials, and former government officials, as well as the thousands of documents reviewed and the hundreds of witnesses interviewed have given the Senate a thorough record on which to make its judgment.

In reviewing that record, however, there are too many unanswered questions, too many forgotten meetings, too many attempts to slant intelligence. I intend to vote "no" on this nomination and urge my colleagues to do the same.

During the 1980's the intelligence community suffered severe damage to its credibility, morale, and ability to fulfill its mandate because of ideological interference, flagrant efforts to circumvent the law and deceive Congress, and the devastating effect of the Iran-Contra scandal.

The Nation needs a CIA Director who can make a clean break with this distressing and controversial past—a Director who can reshape the intelligence community in the post-Soviet world, who can understand the emerging political and economic forces that will challenge the United States, and who has an impressive vision of this evolving role for our intelligence community.

Mr. Gates' record raises serious doubts that he will be able to leave his cold war views behind, lead the intelligence community in a nonpartisan manner, and ensure intellectual freedom and adequate attention to dissenting views.

The next head of the CIA must take the lead in finding a new mission for the intelligence community. That individual must have a talent for understanding forces of change and a skill for ensuring that the Nation is prepared to meet the challenges of the post-cold-war era.

Yet Mr. Gates' record is one of a cold warrior who skewed intelligence to fit his or his superiors' view of the world. He ignored the biggest scandal of the decade, intimidated those who disagreed with his views, and ignored the crumbling of the Soviet Union long after it began.

Mr. Gates has promised to keep Congress fully informed. And yet time and again during his tenure at the CIA, Congress was misinformed, deceived, denied timely notifications, and kept illegally out of the loop. We have heard that promise before. In 1986, he pledged to Congress that "this unique relationship between us depends on mutual trust, candor, and respect and I assure you I intend to conduct myself with this in mind." At best, Mr. Gates stood by and let these deceptions happen. At worst, he was part of in the effort to circumvent the will of the American people, the authority of Congress and the laws of the land.

The record shows that Mr. Gates knew about both Oliver North's illegal Contra resupply network and the illegal sale of weapons to Iran but never acted to alert Congress or stop the illegal activity.

The record also shows that he was integrally involved with the secret sharing of intelligence to Iraq and our sharp tilt toward Iraq in its war with Iran. But Mr. Gates hid that action from Congress, too. It is important to keep in mind that this shift toward Iraq in its war with Iran began our ill-fated cozy relationship with Saddam Hussein.

Mr. Gates now promises to resign if the White House interferes with intelligence assessments or if the White House refuses to put an end to illegal activities. And yet, when he had the chance to do so under similar circumstances, he failed to act.

Mr. Gates promises to make intelligence more useful in informing the policymaker and to ensure that minority views are heard. And yet, his record is one of an official who suppressed dissenting views and who knowingly passed on misleading information to his superiors.

He suppressed analysts' reports in 1982 and 1985 which correctly projected a slowdown of Soviet activities in the Third World. He quashed dissenting views and helped craft an inaccurate 1985 intelligence estimate that Soviet influence in Iran could soon grow and that urged the United States to deal with Iranian moderates. He personally insisted that State Department officials drop footnotes from the report which did not support his viewpoint. These actions had consequences far beyond mere intellectual debates. In recommending that United States allies be permitted to sell arms to Iran, the report helped lay the foundation for the ill-fated arms for hostages deal in Iran.

Similar actions took place on other intelligence estimates throughout his tenure at the CIA. He dismissed dissenting views doubting possible Soviet complicity in the assassination attempt on the Pope, and misrepresented a report implicating the Soviets in that action as more authoritative than it was. His view of the Soviet Union led him to miss the impact of glasnost on Soviet society. He dismissed the Soviet reformers and clung to the evil empire theory, long after it was clear to the rest of the world that the Soviet Union was changing under Gorbachev. Even as late as 1989, he failed to see the likelihood of any fundamental political reforms in the Soviet Union.

Mr. Gates repeatedly gave public speeches that demonstrated a preoccupation with the Soviet menace, while ignoring much of the evidence undermining his point of view. His public speeches actively promoted the Reagan doctrine and exaggerated Soviet advances in ground-based laser ABM systems as he pushed for SDI. Within the intelligence community, he even advocated air strikes against the Sandinistas in Nicaragua. Rather than an objective professional dedicated to ensuring that the President receives the best intelligence possible, he became an enthusiastic promoter of President Reagan's policies.

We need a good manager at the CIA, one who can direct the agency, its people and its programs through the coming years of change. Yet Mr. Gates has a long record of intimidating analysts who differ with him, suppressing dissenting views, ignoring minority opinions, and demoralizing analysts. He made a practice of personally editing all analysis going to senior government officials, and thus made himself the final arbiter of good analysis. He eased out midlevel Soviet analysts with whom he disagreed and created a damaging politicized environment at the CIA. Now, at a time of great need for wise direction in the intelligence community, we cannot afford a manager with such a record.

One of the most troubling aspects of Mr. Gates' testimony is his changing account of his involvement with the Contras in Nicaragua. He testified to Congress five times before his confirmation hearing. He claimed to have only very limited knowledge of the Iran-Contra scandal unfolding under his nose. He said that he had virtually no knowledge of the Contra aid program—legal or illegal.

He became more forthcoming only when his former colleague, Alan Fiers, pleaded guilty to withholding information from Congress and acknowledged greater CIA involvement in the scandal than had previously been known. That revelation forced Mr. Gates finally to admit that he, in fact, was responsible for supervising the legal resumption of the Contra aid network in 1986. Had Mr. Fiers not spilled the beans, there is no evidence that Mr. Gates would have owned up to his much more extensive role in the Contra aid network.

He spent a great deal of time before the Intelligence Committee responding to questions about the Iran-Contra scandal. He provided written answers to many more questions. And yet, it is still not clear what Mr. Gates knew.

He is well known for his prodigious memory and his ability to recall minute details with pinpoint accuracy. And yet he draws a blank on all aspects of the Iran-Contra scandal. The question for the Senate is whether his memory on this issue is a blank slate or a black box.

He claims not to recall that Deputy Director for Intelligence, Richard Kerr, told him in late August 1986 of a possible diversion of funds.

On September 9, 1986, a senior CIA analyst, Charles Allen, wrote a memo on the arms sales to Iran, a copy of which went to Mr. Gates. He also claims to have talked to Mr. Gates regarding shipments of arms to Iran. Mr. Gates cannot recall the conversation or receiving the memo.

A September 8, 1986, entry in Oliver North's notebook on the proceeds from the arms sales to Iran includes a notation "Gates supportive." Another entry on September 30 includes the entry "Call Charlie [Allen] Re: letter to Gates." Mr. Gates claims he does not know the meaning of these notes.

As Deputy DCI since April 1986 Mr. Gates was an authorized recipient of all the intelligence on the Iran initiative. He admits he may have scanned the relevant memos, but claims he did not bother to try and understand the codes.

Allen has testified that when he met with Mr. Gates on October 1, 1986, Mr. Gates appeared to already have some general awareness of pricing problems with the sale of weapons to Iran. According to Allen, "Mr. Gates captured the central message that I had brought to him, that there was possibly a diversion occurring and this was a matter of serious concern." Mr. Gates disputes that assertion.

In addition, Mr. Gates reviewed drafts of the misleading testimony of November 21, 1986, by William Casey to the Congressional Intelligence Committees. He changed not a word and made no effort to correct the false impression that Casey's testimony left with the committee.

In spite of all this, Mr. Gates continues to insist that he was out of the loop, out of the room, or simply cannot recall. He looked the other way and failed to take action when it was most needed.

For the Senate to confirm Mr. Gates with so many reservations and outstanding questions would be a mistake. It would also send the wrong message to the able and dedicated men and women at the Agency—to get ahead, make sure your analysis fits your superiors' political agenda.

At this critical juncture in our Nation's history, we need a Director of the CIA whose objectivity and fairness, are beyond question. I urge the Senate to reject this nomination.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. Mr. President, I yield such time as the distinguished Senator from South Carolina needs.

Mr. HOLLINGS. I thank the distinguished Senator from New Jersey.

Mr. President, I will try to be brief. Right to the point, Mr. President. Let us, like others, express our gratitude to our distinguished chairman. Senator BOREN really brought a higher level, frankly, of the chairmanship to this committee. We were disturbed by leaks, and the distinguished chairman, along with the Senator from Maine [Mr. COHEN] really got onto our entire operation, in my opinion, and did an outstanding job and have done an outstanding job, up until this particular nomination.

I have been an adherent of Senator BOREN. He and I are the only two Senators, I believe, on this side of the aisle who voted for Robert Bork, and I am still very proud of that vote. And we have seen things alike.

Let me at the same time, though, commend the Senator from New Jersey for taking on this task of leadership on this side in that it has been a very difficult one.

Bob Gates is known to most of the committee members, but we did not know him until we really had this hearing. I am one of them. I saw a smart fellow, brilliant fellow that he is. I see him as responsive, as he is. I was prepared to go along. I indicated that to Mr. Gates and to Chairman BOREN. But I see now that our troubles are really greater out at the Central Intelligence Agency.

I really commend Senator BRADLEY of New Jersey for coming in—in detail with staff, working around the clock, making the record for us in this regard because it is a record of nonconfirmation. There is no doubt about it, in my mind.

I speak advisedly, Mr. President. I like the CIA. I know it. I know it from 35 years ago. President Herbert Hoover appointed this particular individual—of course, not a Senator in those days—as a member of the Hoover Commission task force investigating the intelligence activities. Those were the McCarthy days. They had a Doolittle report under President Eisenhower. It was not accepted. The Congress rejected it out of hand. And then the President and the White House got together; under President Hoover, doing the work with his credibility, we had no trouble at all, and I was honored to be able to serve on what we called the Clark Task Force on Intelligence Activities. Gen. Mark Clark was the chairman of it, and the members included Capt. Eddie Rickenbacker, Richard Lansing Conolly, Henry Cearns of California, and Donald Stuart Russell, who is now a chief judge over in the Fourth Judicial Circuit. We went very thoroughly into this agency and all intelligence agencies. So, based on that background, I have taken the task and assignment on intelligence and on the Intelligence Committee in a serious fashion.

But at this time of the year, as chairman of the Commerce Committee, trying to get our end-year markups, as a member of the Appropriations Committee on the various conferences that have been ongoing, I just, frankly, could not give the time, and I really commend the Senator from New Jersey on giving the time and giving the leadership.

Let me say a word, though, about the hearing, because somewhere, somehow, the record is going to be made. No one wants to offend, and certainly it is not this Senator's intention to offend our distinguished chairman or anybody on this committee. But it was not necessarily just a regular hearing in the context of trying to find the truth about the situation in the sense that we were investigating this skewing of intelligence in order to conform to policy. And, ironically, we ended up as a Committee on Intelligence trying to skew the confirmation in accordance with the preconceived confirming of Mr. Gates.

I noted this when I came to an early hearing and they veritably had a solid front, so to speak, on the other side of the aisle with their trial lawyer, the distinguished Senator from Maine [Mr. COHEN] whom we all respect and who knows far more about intelligence than this particular Senator. I respect him and I do not say that casually. I knew when they brought Senator COHEN in and he was sitting in there that it seemed more like a trial than a hearing—in fact, I was called to comment at one time, when they were shouting at the witnesses and shouting at the Senators that this was not a murder trial. We were trying to get a feel as to whether or not this gentleman ought to be confirmed, was it in the best interests of our Central Intelligence Agency that Gates become the Director.

I was not going to go through all of the little tidbits of "what did you say and why did you not remember and what about that and do you not remember this." I was trying to get a feel of the man himself, looking, of course, at the general track record.

Now, the chairman, of course, was with Mr. Gates. I use as my text on this particular score, so he will not think I am just talking out of the whole cloth, the article in the New York Times on October 5 where Mr. BOREN—

> * * * Supported Mr. Gates' nomination to the same job in 1987 and was disappointed when Mr. Gates had to withdraw his nomination because of unanswered questions about the Iran-Contra affair.
>
> After that, said David Holliday, Mr. Boren's former special assistant on the committee, "He took Gates as a sort of reclamation project, helping him to get invited to some of the best tables in Washington."

So we had the very unique situation of a chairman saying, "I have not made up my mind" at the same time he is testifying for the gentleman—a very interesting judge and jury situation.

But, in any event, we started off, and that is exactly what happened. Before the very first witness could testify, they had lawyer COHEN, the distinguished Senator from Maine, get a midnight letter from Arthur Liman, the lawyer from Iran-Contra, to contradict the witness before he could even testify. Arthur Liman, Mr. President, is the gentleman who could not find out that President Ronald Reagan knew about Iran-Contra. Even Colonel North says the President knew it all along.

We knew it. I do not know where they get the idea that we did not know it, and that the President did not know it. It was a cat and mouse game between the Congress and the President. We had four Boland amendments. We did not know about Iran, but we knew the aid was getting down there to the Contras. That was why the Boland amendments had come along. I happened to have wanted that aid to go down to the Contras.

We were sitting down there on the Defense Appropriations Committee, and we said: We cannot accept these restrictions on aid to the Contras. And they were nudging us on the shoulder: Do not worry about it; the White House is not worried. Let it go. This is just an appropriation bill, a little restriction on spending. Translation: They are going to get the aid down there anyway.

The Congress tried to catch them and say that the CIA directly should not send any. Then when the aid kept going, they said, well, anything connected with intelligence or involved with intelligence, they knew whether it was Defense or National Security Council or CIA. And the reports would come, and the New York Times knew all about the aid going there. Everybody knew about it. And we had a big formal hearing around here to determine that nobody knew anything about it, particularly the President of the United States, which is total nonsense.

But, in any event, we had quite a time with this confirmation hearing, and the Senators were running around like lawyers for the defense trying to bolster the nominee—talking about his retention and experience. The difficulty here, Mr. President, of course, is they are trying to make Bob Gates the smartest and the dumbest all at once. I do not know how they are going to do it. They are trying, but they have not succeeded.

There is no question in my mind, if I had to vote, my vote comes down on the side of Gates being the smartest. He is a Ph.D. graduate. He has worked with the Director over there. He has a photographic memory. There is no question in this Senator's mind that he is the smartest, and that is disturbing.

They talk about the experience. Let us look at his experience. His Director knew—Casey. The man immediately underneath him who tried to get these people in place—it was Clair George—knew. Alan Fiers, below him, knew. The two Latin American chiefs down there knew. George Cave knew. Everybody around him knew, but he did not know. That is why we ought to confirm him.

You cannot make him the smartest and the dumbest all at the same time, and so when you come in—and Charlie Allen, for example, comes in and tells him that they violated the Boland amendment, and things are going out, he does not remember that. I know about the thousands of things that go through the mind, but when the man comes in and tells us that he does not even remember the conversation, I still think he is the smartest.

That raised a question in my mind, and then the testimony added to it. The distinguished chairman just read into the RECORD about Harold Ford. When this old-time analyst, who won every award out there with the CIA, who had worked with Sherman Kent, who this Senator had worked with back in 1954 and 1955, when he testified, I began to take note and began to listen. And you did not have to listen to much before you really realized, yes, there was a definite perception in the Agency that you had to conform the intelligence to the policy.

Well, I could go into that in detail. I promised to be brief. There were 20-some allegations of politicization that I have here, if you read this record, and this has been a very good committee report. I commend the staff of the Intelligence Committee in preparing this report and, as I said, our distinguished chairman, in giving balance to the report. Nothing is left out that any Senator wanted in here. We got our individual views and everything else. And you read that report. You will see more than 20 times in which analysts perceived politicization.

Well, Senator COHEN says in the article here earlier this week in the Washington Post:

> Of the roughly 2,500 intelligence estimates produced during Bob Gates' tenure, a handful were presented to the committee as evidence that Gates sacrificed his integrity for political expediency.

It is not the proof that counts here; it is the perception. You get a handful—and he is giving us the old Mel Belli, so many dollars per hour of pain. I have tried those kinds of cases. Now we are told there were 2,500 reports during Gates' tenure, such a big volume coming through, that Gates could not really do it. The truth is, he did.

He transmitted through the agency what was characterized as a perception of politicization. Let me quote from Jennifer Glaudemans' testimony:

> The means by which politicization occurred is not readily documented. There is little paper to evidence, the continual and subtle pressures applied to analysts to make them comply, because it is virtually impossible to collect the paper trail, evidence quickly becomes one person's word against another's. But let me suggest to you that politicization is like fog. Though you cannot hold it in your hand or nail it to the wall, it is real. It does exist, and it does affect people's behavior.

There is no question that it affected some who were in the Agency who got moved on out when they did not come in with the right report. Then the word went around: If you go to the cafeteria for lunch today, you will find out what the word is. And, of course, there was a veritable paranoia on the part of Casey about the Soviets, which caused us—here is the end instance that has to be emphasized—which caused us to flunk the course in Afghanistan, in Iran, in Iraq, in Ethiopia, in Angola, with the fall of the Wall, and the demise of the Soviet Union itself. Even in Desert Storm, the commanding general had to come and say: "Look, the rounded edges and the smoothed corners on the intelligence were of no assistance to me. I got the feeling that they were really given to protect the Intelligence Agency itself, rather than to inform the commander in the field." He called it "mush."

If we do not think we have a problem out at CIA, and our distinguished chairman talks about experience, do not give me anybody with this experience. That is the objection of the Senator from South Carolina—Gates' experience—because his experience is one of pleasing the boss. And, again, the Senator from Oklahoma says that is why we ought to put him on, because he is going to please the Congress.

That in and of itself is not going to be difficult. On the one hand, you can give us Senators little tidbits, a little here and yonder from a tremendous volume of intelligence activity, and we go smiling knowingly down the hall, thinking that we know way more than the next Senator. You are pleased, and we do not say anything to anybody, and that is the end of that.

But worst of all, when you go to pleasing, you risk weakening the CIA. You put in such things as Presidentially appointed, senatorially confirmed inspector general. You cannot operate an intelligence activity with an independent inspector general running around and over you on each little item. In intelligence, I do not know a batting average. I guess in baseball .300 is good; .500 is good in this thing. You are supposed to give the facts, the cold hard facts. In many instances it might not come out.

But, there is no doubt that pleasing the boss is exactly this brilliant man Gates' weakness. He could please Brzezinski, he could please us, he could please anybody along the line, and that was his downfall—he pleased Casey to the point where outstanding intelligence veterans like Hal Ford sensed the imbalance. The Senator from Oklahoma just read it in the RECORD, Hal Ford, the best of intelligence we had, first was listed in our committee records as a witness for Mr. Gates, in turn was a witness against Mr. Gates. Why? Because there is a morale problem out there.

Now you have a volume problem at CIA, I can tell you that. You have over a hundred Senators, a hundred supergrade Senators, analysts falling out over each other. We can save billions of dollars, not only in the CIA, in defense, and elsewhere. When you are talking about wasting money, we ought to cut out that waste. It is just a matter of policy on the one hand, but then you also have a morale problem with a fellow who is always going to please the boss.

And in his zeal to please he rode herd over the CIA, and there was a definite perception you come out with. For example, the burden was on the analysts studying the attempted assassination of the Pope, to blame it on the Soviets. You come out with this or that, you either do that or we go higher. And if you do not write the right report, we will go out and hire somebody who will bring in the right report.

This turned this Senator totally around from support to opposing.

Those that Mr. Gates has pleased have recommended him highly. And it is a sad scene to finally bring the distinguished gentleman up for his confirmation when we have the chairman promising that he is going to have oversight, he is going to watch him, and he is going to have special oversight over the morale at the CIA. You almost get the message, if you are listening impartially, here is a big mistake about to be made and we are going to have to have a lot of oversight. And then the man himself comes up, and he promises to resign if anything untoward comes across his desk. He is going in on one promise, that he is going to resign if anything comes across his desk, and generally expecting his supporters to say, well, yes, he might not have been assiduous enough and diligent enough and the should have used better judgment, but he has matured now and he has grown into the truth. He has grown into the truth. The sole purpose for intelligence is to determine the truth. And that is all we need, the true facts, and let the others make their judgments as they will.

I have additional comments, Mr. President, but I see my distinguished colleague from Arizona on the floor here, who wanted to get in his comments before we break for lunch. So let me yield the floor at this particular time.

The PRESIDING OFFICER. Who yields time?

Mr. BOREN. Mr. President, the Senator from South Carolina did not know it, but the Senator from Connecticut has been waiting on the floor. Also we are alternating back and forth. If it is all right with the Senator from Arizona, I think the Senator from Connecticut has only brief remarks to make.

Mr. DECONCINI. No problem.

Mr. BOREN. Mr. President, before I yield to the Senator from Connecticut, I would like to yield to myself 3 minutes.

Mr. President, I was somewhat surprised by some of the comments made by the distinguished Senator from South Carolina. Perhaps he is unaware of the facts, because I understand he quoted a newspaper article in support of a couple of comments which he made. But I do want the record to be clear so that he hears it from me and not on the basis of some anonymous newspaper reporting. It is not the fact—and he should know this—that in 1987 I was going to vote for the confirmation of Mr. Gates. As I have stated on the floor several times, and I will state it in the committee, I felt that at that time Mr. Gates was not equipped to be the Director of Central Intelligence. I said so. I said so to him. And I felt at that time it was best for the country that the nomination be withdrawn. That was my position. I want him to know that is my position, and whatever newspaper reported that is reporting it incorrectly.

I also want to state to the Senator from South Carolina that it is not my responsibility to enter into reclamation projects for anyone, and the meetings that I have had with Mr. Gates, or that Mr. COHEN had with Mr. Gates, were in our capacity as chairman and vice chairman of the committee. I would have been derelict had I not had those meetings. I continue to have those same meetings with Judge Webster and Mr. Kerr, and I am not undertaking any kind of rehabilitation project for them either. We simply meet on a professional basis, on a weekly basis, on a biweekly basis with the Director, the Acting Director, and the Deputy Director of the Agency. And I think that is as we should because we have business to do.

That is not a social occasion, I can assure you, and, as I have indicated, my relationship with Mr. Gates and with Judge Webster, for that matter, as well and with Mr. Kerr as well, is purely professional. I have not been at social gatherings, small social gatherings of less than 50 or 100 people with any of those individuals. That does not mean I have animosity to them or I would not be pleased to spend time with them but my workload makes it pretty well impossible for me to spend that kind of time. And the time we have spent has been as professional components of our committee.

Let me say, in the course of those meetings over the last several years, not so much since Mr. Gates has been at the National Security Council—I have not seen him systematically since then except when we had matters of policy to discuss—but I think I did get, and I think Senator COHEN did get, a very good insight into how this person would operate. When you sit down on a weekly basis or biweekly basis and you try to get information from the CIA and are able to get it and able to get it without even having to ask the right question and when sensitive information is given to you, I think that that is something that includes the politicization of the Agency; I think that that is something that has bearing on the qualifications of this nominee.

So I simply say to my good friend and colleague from South Carolina, and he is my friend and I appreciate what he said about our process, our process speaks for itself in the Intelligence Committee. The Senator did not try to keep any witnesses from coming. Quite the contrary, this Senator had a steering committee of 15 members, including members of the staff of the Senator from South Carolina, the Senator from New Jersey, the Senator from Arizona, the Senator from Alaska, and all of those on both sides of the aisle. Witnesses that were desired were brought. And they certainly were not all complimentary to the nominee by any stretch of the imagination.

The Senator from South Carolina reads the record of the committee to support his view. I read the record of the committee to support my view. I think it shows we developed a very thorough and objective record, hearing both sides, on which honest people can disagree on their conclusions.

I do want to simply correct any impression that the Senator from South Carolina has from reading the newspaper story that that was my point of view about Mr. Gates in 1987. It was not, and as I have said on the floor, the mere statement on his part that he would do things differently is not something I take at face value or am prepared to accept just because he said it. I am more prepared to accept it because I have had this experience of information forthcoming. I have known his support, and our committee received the benefit of his support of our independent audit unit, of our inspector general, of writing into the law the lessons of Iran-Contra and giving our committee more power and jurisdiction. It is on that basis—and I do not quarrel with my good friend from South Carolina. I never quarrel with him. He is a valued Member of the Senate. We have stood together, as he said, sometimes on very unpopular causes, sometimes when we were a very small minority in taking a position we have. I do want him to know that in terms of where I stood and where I stand now, and I just do want the record to reflect that.

I am happy to yield to the Senator from Connecticut as much time as he might desire.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I thank the Chair, and I thank my colleague and friend from Oklahoma.

I join in the chorus of praise for the chairman of the Intelligence Committee for the extraordinarily fair and comprehensive job he has done on this nomination. I say that with a certain degree of personal pride since our friendship goes back to our days in college together.

I am pleased to say that I not only praise him for the process that he has conducted but I join in him in the results of that process, the confirmation of Bob Gates as the Director of the Central Intelligence Agency.

Mr. President, the beginning point for me in consideration of this nomination is the fact that President Bush has nominated Bob Gates to be his Director of Central Intelligence. He wants Bob Gates to oversee the intelligence function for him and for the U.S. Government.

I think that when the American people elected George Bush President in November 1988 and made him, by that act, our Commander in Chief, we gave him the right to surround himself in these critical national security positions—Director of Defense, Director of the Central Intelligence Agency, head of the National Security Council—with the people he wants there.

The question before us, therefore, in my opinion, is not whether Bob Gates is the best qualified person in America to hold this job, now whether he is the person each of us would want to hold this job, the question is, the President having nominated him, whether he, in our opinion, is qualified to hold this job. And in my opinion he more than passes that test.

Mr. President, we have come a long way, as has been indicated in this debate, in the involvement of Congress in the intelligence function. We brought it out of the darkness, probably not fully into the sunlight, but at least into the shadows. A lot of that progress is due to the work of the chairman of the Senate Intelligence Committee and others who have worked before him. But it seems to me that we have to acknowledge that the greater role still lies with the President and that our role is not coequal to his. And therefore the beginning and influential point in this discussion is again that President Bush wants Bob Gates to be his DCI.

But let us go beyond that. Why do I think he passes the test of qualification as everybody has spoken of it? Bob Gates has an extraordinary personal record, personal capability.

Let me just speak for a moment about the fact that this is a man who chose, right after college, to devote himself to public service. There is a certain tendency that we in Government often succumb to, to take somebody from outside with no experience in Government, a CEO of a large business, and make that person a head of an agency like the CIA.

But let us give a little bit of credit and tribute to somebody who, as a young man, a gifted young man, turned away from fields in which I am sure he would have been much better remunerated and devoted himself to a career of service in the interest of our national security. He served the last five Presidents of the United States. Those five Presidents gathered yesterday at the dedication of the Reagan Library. All have been served by Bob Gates, as Director of Intelligence from 1982 to 1987 and from 1987 to 1989 as Deputy Director of the CIA.

This is somebody who knows this agency and knows it well. Even his sternest critics in this confirmation process have said that he is a person of extraordinary intelligence and I think unquestioned character. Some have questioned his judgment in particular cases, but I do not think anybody is questioning his character here.

Now there are two questions that have been raised about his performance over the last decade at the CIA that I found disquieting and I think need to be dealt with. Those are his behavior in the Iran-Contra case and the general allegation that he has been involved in a political manipulation of intelligence information.

Before I deal specifically with those two charges, I would like to make just a few points here. The first goes back to something I said a few moments ago. We cannot run a system here where we are either punishing those who have the guts to even get involved in the fray and therefore are going to be tarnished because they are human, as opposed to those who have not been in the fray.

Let us give some credit here and understanding to the fact that the intelligence function is a risk-taking function. It is a function in which we want people who can analyze facts but also who have opinions.

As the chairman of the Intelligence Committee said before—and I want to reemphasize it very briefly—I hope we are not getting to a point where we are not only going to punish somebody who has made the laudable commitment to enter public service early in his career, that we are going to punish people who have the guts to take stands, to articulate opinions, to get into the battle instead of standing timidly by. I would rather have someone who has that kind of strength in a position like this, and honor, than someone who does not.

Mr. President, it seems to me that the critics of Bob Gates are saying inconsistent things along the way here. One, that he is a patsy for those he works for and yet also seems, in that sense, timid and also seems to be strong and insensitive, a bully to those who work with him.

Let us agree here that in the accusations that have been made against him about the political slanting of intelligence facts, that we have to understand, as I understand it, what this intelligence business is all about. We are not dealing here with a scientist who does a laboratory experiment and then has data that he conceals or misuses or misstates. We are dealing here with some facts that are then sifted through somebody's mind, somebody's analytical capability, and there can be differences of opinion and different conclusions.

This really is a question of whether the glass is half empty or half full, not whether there is a glass there at all. I do not think anyone is saying that Bob Gates has been deceitful. I think they are disagreeing with his conclusions and saying that his opinions often guide his interpretation of the facts.

My own reading of the record corresponds with what was suggested by the Senator from Oklahoma and the Senator from Maine: numbers are important here when you are dealing with analysis, and Bob Gates was in charge of more than 2,500 intelligence estimates. These are not just casual notes to a coworker. These are formal statements of opinion which have some weight to them. Those that have been questioned are a handful, as I hear it, less than 10, single digits. The basis of the questioning to me seems to be judgmental. Some could agree, some could disagree.

I do not read in them the kind of hard evidence that says that Bob Gates was deceitful. I see in him a lot of personal impressions, which I can understand and respect. And I see in the record a man who is accused of doing whatever his superiors would have him do, whatever he thought his superiors wanted him to do. I see in the record that I have read a series of examples where he took on his superiors. They have been testified to before.

Let me just mention a few others that I am aware of. He concluded and reported during the 1980's that President Reagan's economic sanctions against Western European countries, that were engaged in building a gas pipeline between Europe and the Soviet Union, would not work. He said that Defense Secretary Weinberger was incorrect in his belief that Soviet military spending was not on a decline. He said that Secretary of State Shultz' attempts to shore up the Lebanese Government through the presence of United States troops there would fail. And, more recently, he questioned the views of Secretary of State Baker when he warned—that is, Bob Gates warned—about the continued existence of hardline forces within the Soviet Union opposed to President Gorbachev. That warning came in 1990, long before the events that we saw in 1991 that proved the truthfulness of that estimate.

On the question of Iran-Contra, I think what the chairman of the Intelligence Committee has said has been dispositive. Hindsight is always clearer than foresight. I think we have to judge Mr. Gates' behavior with a certain degree of empathy and mercy and hold ourselves to the same high standard we would hold him to in this case.

Yes, by his own testimony he missed or did not adequately respond to some references to Iran-Contra that I would describe as suggestive but not clear. When the clear and definitive statements were made to him, in October 1986, I think the record shows that he responded quite aggressively and specifically to find out what was going on and to try to clarify the role of the CIA.

So, on balance, I think the case against Bob Gates on the standard that I have mentioned, that I believe is the definitive one, at least for me, which is not whether he is the best person in the world to fill this job but, having been nominated by the President, is he qualified to fill this job—and I say that he is more than qualified.

I think he is more than qualified by virtue of experience and by virtue of this confirmation process. I know, people can disparage the lessons that were learned, the clear statements that he made in the committee—the self-criticism that in some cases I think was even a little bit harsh toward himself—perhaps to satisfy those on the committee who he worried would be his critics. But I cannot imagine that any previous Director of the CIA has come to that office, not only with the record of experience, but with the clear record of intention not to repeat some of the mistakes of the past, to work with Congress, to recognize the oversight function of Congress. He will need all of that experience and all of that commitment to meet the challenges ahead.

A lot has been said about the new age at the CIA. It will be a new age. A lot has changed in the world but a lot has not changed. It is not quite time to dismantle this agency or the critical intelligence function that it plays for us. Yes, the Soviet Union as we knew it no longer exists. That does not mean that there is a shortage of threats to America's national security in the world today or that there is an end to the need for good intelligence.

You do not have to find a new mission for the CIA. In my opinion the mission is out there—unfortunately. Take a look at the Soviet Union. Clearly it is not what it was but it still possesses enormous, terrifying nuclear firepower. And add to that an obviously unstable political situation.

Look at the Middle East, an area of continuing critical strategic interest to the United States, where small countries, unstable countries, dictatorial countries, gain great wealth and use that wealth increasingly to buy weapons of mass destruction.

Look at the colossus of Asia, China, almost a billion people; look at India nearing that same mark itself—one a democracy, the other a brutal dictatorship. Each in its way will play a critical role in the future of world security and, therefore, of American security.

So there is a lot to do. Yes, there may be a need to reorganize. Sure, there is a need to turn the boat around from its exclusive or predominant focus on the Soviet Union toward some of the other problems that exist. Yes, there are tough personal decisions to make.

I must say in some sense I hope some of the testimony that has been given about Bob Gates' insensitivity is true. Because I think he is going to have to be insensitive to make some of the changes in personnel and direction that will be necessary at the CIA in the years ahead because of the changed direction and because of the need and opportunity to cut Federal spending.

I hope he will be cautious, and I believe he will, because of his background, about rushing into some of the new areas that are being advocated for the CIA. I have heard some people say there may be a role for the CIA in environmental work internationally. Some have suggested that the CIA should have a role in economic espionage. Again, I hope we proceed cautiously and that any of these new doors not just be embraced as a way, frankly, to save jobs that exist there today.

I have concluded, for the reasons I have stated, that the President's nominee, Bob Gates, is uniquely qualified at this moment in our history, by experience, by background, by the statements he has made in his confirmation hearings, to accept the leadership of our intelligence operation in the years ahead. He is uniquely qualified to give us what we are going to need, which is a newly directed lean, mean intelligence machine.

He has the President's confidence. I think he more than passes fair standards of qualification that the Senate should impose on him. I am proud to vote for him. I wish him good luck and Godspeed in the important work that he will now undertake. I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from New Jersey.

Mr. BRADLEY. I yield such time as the Senator from Arizona needs.

Mr. DECONCINI. I thank the Senator from New Jersey.

Mr. President, my colleagues, and those who may be listening to this debate, I think we have a difficult decision before us, but I am not so naive as to think that there are not sufficient votes for this nomination.

There is no more important appointment made by the President of the United States, in my judgment, than the Director of the Central Intelligence Agency. Perhaps only appointments to the Court that are lifetime appointments surpass it. But this Agency, though not a Cabinet agency, is truly one that affects not just the CIA but affects the people who work in other Cabinet positions. And it affects the Congress of the United States that has the responsibility of authorizing and appropriating funds for intelligence activities. And it affects not only the lives and the quality of lives of CIA employees, but also the security of the people of the United States.

Let me begin by saying I join with other Members here to express my thanks, appreciation, and praise to Chairman BOREN for the way he has conducted these hearings. During the time that I was at those hearings he always gave me the maximum amount of leeway to ask my questions, and to raise them with the particular witnesses in whom I might be interested. Indeed, I have no quarrel with Chairman BOREN whatsoever about the process.

And my praise extends to the staff as well, both those who work for the majority and minority, and both those who work for us who oppose Gates and those who work for Members who support Gates. They were extremely helpful. They went out of their way and did a great deal of work, particularly Tim Carlsgaard, my designee on the committee—and I thank him. But I urge my colleagues to read the committee report. You can read it and I guess you can draw any conclusion you want. But I think the staff has done a very, very fair, balanced job of reporting, so that it is hard to come to any conclusion, without some question marks about Mr. Gates.

Before Senators cast their votes I think they should ask themselves: Does Robert Gates possess the qualities that are necessary to be the Director of the Central Intelligence Agency? Does he have a distinguished character? Does he have the qualities, and the reputation, of making good, sound judgments? Does he possess a sharp and brilliant mind? Does he have superior management skills, and the ability to operate under pressure, under fire? Can he do something about the budget of the CIA? Does he have the ability to command loyalty and to receive it? Does he have foresight, the ability to recognize the complexity of a rapidly changing world? And, does he have the ability to say "no" to his superiors, to the President of the United States?

(Mr. BINGAMAN assumed the chair.)

Mr. DECONCINI. Mr. President, can he muster up enough strength to provide all the intelligence that has been gathered by the agencies when he is briefing the President or the White House staff? I have concluded that those questions cannot all be answered in the affirmative. These are skills that are essential, in my judgment, to be the Director of the Central Intelligence Agency.

Three weeks of hearings have produced a lengthy record. Mr. Gates has positive attributes, and I heard many of them enunciated here today. I have also heard almost everyone who has spoken in favor of him—somewhat apologeticly—say that Mr. Gates has changed; that he is now ready for the job; that after the many mistakes he has made and admitted to, he can come back and really lead.

He is close to the President. There is no question about it. And I think that is an important factor here. But we would expect nothing more, would we? Would we expect a nominee to come up here totally divorced from his close relationship with the President? I doubt it.

He has served President Bush well as Deputy National Security Adviser under General Scowcroft. He worked closely with Stansfield Turner, Bobby Inman, and John McMahon. He has had a distinguished career with the Agency, serving there close to 25 years. Nonetheless, he does have a credibility problem.

This is not a problem that is manufactured by those of us who feel that he is not the best qualified person for this position. He really had a very close relationship with William Casey. We do not need to go into Casey. Perhaps it is unfair that he cannot respond to all the charges against him, but we cannot ignore the fact that Bill Casey appointed Gates to be his executive assistant in 1981 and in 1986 elevated him to be Deputy Director of the CIA. He elevated him over hundreds of other senior qualified people. Obviously, he was a chosen designee of Mr. Casey—to be his man, to respond to him. I think he expected a lot from his nominee, Mr. Gates, and, believe me, he got it. He got his money's worth when he put Gates there, because Gates did what he was told to do.

The committee has learned much over the past 5 months. Much of what we learned occurred while Mr. Gates was part of senior management. The committee found the CIA still has not learned the real definition of oversight. For example, Congress was badly misinformed on the intelligence-sharing relationship between the United States and Iraq during the Iran-Iraq war. The following is a classic example of Mr. Gates promising the committee something and then failing to follow through.

When Mr. Gates was nominated in April of 1986 to be the Deputy Director of Central Intelligence, he responded in writing to the committee's question on what he believed to be the obligations of the Director and the Deputy Director with regard to oversight by the Congress.

He said—and I would like to quote one statement he made—"to keep the two Intelligence Committees fully and currently informed of all intelligence activities"; and, "I believe it is appropriate, however, for intelligence agencies to go beyond the letter of the obligation cited in the law. We should deal candidly and straightforwardly with the committees".

Nevertheless, consider the following: Although Acting Director Richard Kerr said in a recent letter that Bob Gates as DDI, DDCI, and the DCI, a period of time that goes back to 1982, was, and this is Mr. Kerr's quote, "aware of the general level of intelligence provided to Iraq," the Senate Intelligence Committee did not learn of this significant intelligence-sharing relationship until Bob Woodward disclosed it in the Washington Post in December 1986.

Let me reiterate, Mr. Gates was in charge of the Directorate of the Agency that prepared the intelligence passed on to Iraq. What happened to Robert Gates' congressional oversight committee he made to the committee in April 1986? Will Congress be forced to rely on the Washington Post to carry out the Agency's oversight responsibility if Mr. Gates is confirmed? God, I hope not. I hope we can get the information that we are entitled to. That is a responsibility of the Director or the Acting Director or the Deputy Director, or whomever is charged to come up to the committee in the oversight process.

In addition, 5 years after the fact, we learned the intimate details of how William Casey disseminated information and used information on Members of Congress and their staffs with regard to Nicaragua. What a disgrace.

The Iran-Contra scandal: After the 1986 Senate Intelligence Committee's investigation, the Tower Board investigation, the Iran-Contra Committee investigation and, of course, the independent counsel's investigation, new details continuously emerged.

I know people are tired of the Iran-Contra affair. The press no longer wants to write about it and no longer has that zeal to pursue it if nobody is going to bleed and really suffer. But it is an interesting part of history. New details keep emerging and many of them have come out in the confirmation process of Mr. Gates.

It troubles this Senator that every time Robert Gates testified, we had new details in that area. Will we ever really know what happened? It is difficult to have confidence in any explanation, in my opinion. New revelations keep coming forward.

Let me cite a couple. From Charlie Allen's testimony: He was the national intelligence officer for counterterrorism. He was attached and assigned to work with Oliver North from 1985 until the end of that scandal. Allen told Gates on October 1, 1986, of Oliver North's reference to a reserve fund from the Iran arms sale. Mr. Gates says he does not recall.

But the lack of recall continues.

A discussion with Robert Gates about a November 7, 1986, memo on Allen's meeting with Roy Furmark regarding the possible diversion—a memo that Tom Twetten, who was Near East Division head at the time, called dynamite. Mr. Gates had discussed this with Mr. Allen, according to Allen. Mr. Gates says, I do not recall; I do not remember.

How about Richard Kerr's testimony? Certainly a very powerful individual who supports Mr. Gates. After Kerr met with Charlie Allen in August 1986, Kerr then spoke with Gates and he said he told him about the possible involvement of Oliver North in the diversion. Mr. Gates could not remember. He said I do not recall. He could not recall this conversation with Richard Kerr, one of his closest associates.

What about Messrs. Casey and Gates' calendars obtained by the committee? There are numerous meetings between the two of these individuals that never had been disclosed regarding Casey's November 21, 1986 testimony before Congress. Gates cannot recall what was discussed in any of these meetings. How can you have any credibility if you are meeting with your boss, your superior, the person who appointed you, the person who had confidence in you, the person who gave you specific jobs to do and you did them and then you cannot remember meeting with that particular person? Gates' calendar shows a previous undisclosed meeting on July 29, 1986, between Gates and North. When Gates was asked about this, he gave his familiar answer: I do not recall.

How about Alan Fiers' testimony? Fiers had a very close working relationship with Robert Gates—Gates does not dispute that—in the summer of 1986. According to Fiers, Mr. Gates was deeply involved in the restart of Contra support. In June and July 1986, Gates participated in at least a half a dozen meetings on that restart effort. On October 9, 1986, the day Fiers and Clair George allegedly agreed to withhold information from Congress, they also met with Robert Gates.

That is not in dispute. Except Mr. Gates says, "I don't recall that meeting." Here he is involved, according to Fiers, with the restartup of the Contra effort, and he cannot recall it. According to Fiers, Robert Gates specifically asked him why the agency could not buy the private benefactor's assets, in this case aircraft, which had been used to support the Contras. When Mr. Gates was asked, "Do you know anything about that," you can imagine what he said: "I don't recall."

From George Cave's written response—very interesting. Here is a retired CIA senior official who was brought back into service. He worked with Allen to give support to North at the White House. Oliver North was allowed to write an intelligence report that was incorporated into an intelligence memorandum that was sent to the White House as if it came from the CIA. The CIA Inspector General is investigating that right now. It will be interesting to see whether or not they can substantiate what I just said. I believe they will.

Although Cave did not write an article for the President's daily brief, as alleged in the hearings and reiterated by Robert Gates, an intelligence memorandum based on Cave's reporting was sent with that daily brief, and I do not believe there is any dispute there. These reports were based on the contacts with the so-called Iranian moderates of really unknown reliability.

George Cave briefed the NSC staff on his Iranian contacts.

Additional credibility problems associated with Mr. Gates continued to be brought up. These are just a few that I looked over carefully. Other Members who oppose Mr. Gates will, I am sure, go into others.

Another area of great concern to me are allegations of the slanting of intelligence and the suppression of alternative views. These are serious charges and are perhaps impossible to prove with a smoking gun. But these charges are devastating, nevertheless, in the perception they create of Mr. Gates when he was a senior official at the CIA.

Who stepped forward to testify against Mr. Gates? Not limited just the three or four who came and spoke.

There were many who wrote, some anonymously, some not; many who called and talked to me and expressed their views, and still others who provided sworn statements to the committee. They left strong impressions with this Senator that something was wrong with this nominee.

Jennifer Glandemanns: She was a low-level analyst perhaps but with high ideals. She was a mother of two children who was attending law school whom the committee asked to testify. She did not come forward on her own. What motivation would she have had other than tell us what was going on in the CIA when Mr. Gates was in charge? Critics said it was because she had worked for another witness who testified against Mr. Gates or that she was upset that her work product was not adopted and/or praised by Mr. Gates.

Do not believe it. Do not believe it. I do not. She worked for Mel Goodman for only 2½ months. And I cannot find a motivation for her testimony other than wanting to bring to the committee her feeling of a problem with Mr. Gates' operation of that Agency.

And Harold Ford; Mr. Ford had 40 years' experience as an intelligence officer and analyst. Mr. Ford is an author and lecturer on intelligence analysis. He is the recipient, as a matter of fact, from William Casey and Robert Gates, of the National Intelligence Distinguished Service Medal. Yet he was ridiculed and accused of McCarthyism. There was an attempt to discredit him by some of my colleagues. They said he had no firsthand knowledge, that his testimony was based entirely on hearsay, and misrepresented and distorted what Mr. Ford said.

That is an old one; is it not? They tried to discredit the man's efforts. This man is truly a professional. He is an expert with 40 years' experience. Nobody would say that Mr. Ford was not an expert able to give an opinion as an expert, whether in a court of law or before the committee.

Expert testimony is not hearsay. It is admissible. It is important. And this man had a lot of it, a lot of firsthand experience. He read and heard and watched Gates' testimony. He saw and read documents that have been declassified as part of this process. He talked to individuals who came to him, and he went to them about the problems within the Agency—of more than 20, he said. So truly this man is qualified to be taken seriously and not ridiculed as he was.

Gates' response to these allegations of politicization was a forceful 20-point rebuttal. However, the responses are limited to allegations of only one witness. Mr. Gates was evasive and did not provide the complete picture.

For example, Robert Gates ordered a paper in 1986 on the papal assassination attempt. Gates specifically directed analysts to make the case for Soviet involvement. He sent the paper to top policymakers, including then Vice President Bush with a misleading cover letter stating this paper was comprehensive. The letter said the CIA had confidence in this paper.

A later review of that papal assassination report, however, by the CIA, for which Mr. Gates now takes credit is extremely critical of the report. Let me read just a few things from the so-called Cowey report. I will quote just a couple of the key findings: "Alternative explanations were not adequately examined."

Another example of the key findings:

> The two longer assessments produced by the Directorate are impressive efforts to sort out the case, but type suffered from inadequate coordination, poor sourcing, and lack of balance.

Another quote from that finding:

> In the absence of evidence, production was hamstrung, mindsets replaced evidence, and the issues became increasingly polarized.

There were additional comments. Let me quote one more.

> They refer to analysts and the officers involved in collecting and producing intelligence on this topic—

Of the papal analysis—

> thought that calling the paper the case for Soviet involvement and marshalling evidence only for that side stacked the deck in favor of that argument and ran the risk of appearing biased. This impression was further reinforced, they thought, by the unbalanced treatment of counterarguments in the text.

I do not know what else could be more condemning than to have someone in charge of the CIA who first sends off a report saying it is credible, saying it is comprehensive and we stand behind it, and then deciding to have somebody review that report, then having these statements come back with the review of the report. And what did he do with that report, the second report, and the analysis and the criticism of the report that he had already sent? He did not think it was necessary to send it and update the people who had received the first report.

Is that responsible leadership? Or did he choose not to send the second report because it would have discredited the objective which was to involve the Soviet Union in the papal attempted assassination, regardless of the facts—regardless.

In the opinion of the reviewers, the paper was deliberately skewed to make the case for Soviet complicity look more solid for their involvement. They thought the authors had indeed been manipulated. Indeed they had been, as we all know now.

Analysts coordinating in the DI would also have preferred more qualifiers in the key judgments, along with more time. It was a 97-page draft, and most of them had less than 1 working day to review it. They wondered why a paper dealing with such sensitive and complex subjects had to be rushed through.

We know now why it had to be rushed through. Because the White House, Mr. Casey, and Mr. Gates, wanted to implicate the Soviet Union. They wanted a report they could rely on, and they wanted it one-sided, one that did not take the other side.

We know what happens to intelligence reports. They are not made public. It is not necessary for a President, or any policymaker who has these reports, to accept them and say: I am going to follow it. They are to educate the person, and if that person, be it the President or anybody else, decides he does not want to follow it, that is their prerogative. Should they not have all the information? I submit they should, and that they did not.

Mr. Gates told me he did not think it was necessary to inform the Vice President of the review.

Another example of politicization is found in Mr. Gates' 1987 testimony to the Senate Foreign Relations Committee. Ms. Glaudemanns prepared a briefing paper for Gates' testimony, which pointed out that two agency reports produced after the controversial 1985 Iran estimate rejected the idea of the Soviets making inroads into Iran.

Mr. Gates ignored her memo, she said, and instead testified that the Soviet threat in Iran in 1987 was as great as the threat as in 1985. Mr. Gates told the committee that he emphasized the Soviet threat in 1987 because it was the administration policy. I understand what administration policy is. We all do. But this is unacceptable from someone who is going to be the head of the CIA.

Consider the impact on analysts as a result of Mr. Gates' decision to ignore hard evidence in 1987. He could have presented the whole case to the Senate Foreign Relations Committee, and he could have said the administration's policy is this. He just conveniently left it out.

Most important, Mr. Gates was wrong on the Soviet Union. Mr. Gates struck out on understanding the weakness of the Soviet economy; struck out on the strong desire in the Soviet Union for democracy; and struck out on the strength of Gorbachev himself. According to a sworn statement by Wayne Limberg, a respected State Department employee and former CIA analyst himself, Gates rejected a 1986 report that he requested on the Soviet aid to the Third World. The report concluded that Soviet assistance was declining. Gates said he never wanted this to happen again, and the paper was never published.

Robert Gates did have time in 1986, however, though he did not publish papers, to deliver speeches providing his personal view of Soviet intentions. Mr. Gates listed targets in the Soviet

Union's global strategy: The Panama Canal, the strategic mineral wealth of southern Africa, and the oil fields of the Middle East. He portrayed these as targets of the Soviet Union, when there is no evidence that that was the case. Why? Because the administration wanted it.

Finally, allegations were made that Gates said no to dissent on any CIA estimates by forbidding footnotes. Gates' rebuttal: There were 16 footnotes. The facts: There was not a single footnote or dissent on estimates dealing with Soviet politics or actions around the world. Jennifer Glaudemanns testified that the footnote restriction was less a formal constraint than perceived pressure. She added:

> That a footnote was never seen as a realistic option, I believe, confirms the atmosphere of intimidation.

This is from a former employee. I wish time permitted me to go into other examples.

Mr. President, Mr. Gates is not the right person to head the CIA at this time. The mere fact that he has the confidence of the President is not enough to confirm him. I think we can do better. I think the President can do better, I think he will do better if, indeed, we had someone who was not part of the inside track, who was not one of the old boys' club, who was not prepared to do whatever the White House told him to do.

Mr. Gates is not the type of individual we need to head the CIA at this very important time.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Chair advises the Senator that, under a unanimous-consent request, the Senate has been scheduled to recess at 12:30, and it will take unanimous consent to proceed beyond that time.

Mr. HEFLIN. Mr. President, I ask unanimous consent that we proceed further until my conclusion, which I anticipate to be about 6 or 7 minutes.

The PRESIDING OFFICER. (Mr. DECONCINI). Without objection, it is so ordered.

The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, I rise today to discuss the nomination of Robert Gates to the position of Director of Central Intelligence.

Four years ago, I had the duty of being a member of the U.S. Senate Select Committee on the Secret Military Assistance to Iran and the Nicaraguan Opposition. At the start of the Iran-Contra hearings, I stated that we were beginning a process of investigation, affirmation, and restoration. I believe we were successful in investigating and determining the essential details of the Iran-Contra operation. I believe that the committee's public hearings reaffirmed, to ourselves and to the world, that the United States is a nation of laws, and that no official of our Government will be permitted to act above or outside the law. But, Mr. President, the Robert Gates hearings show that we still have a ways to go before we restore the trust in the relationship between the executive and legislative branches.

Though busy with another nominee, I have followed the Gates hearings with interest. My good friend Senator BOREN from Oklahoma did an excellent job chairing the hearings, and keeping partisan politics to a minimum. Since the select committee first began investigating Mr. Gates' background, I don't believe I have heard anyone challenge his qualifications. From the standpoints of experience, knowledge, and intelligence, Robert Gates is perhaps the most qualified candidate ever nominated for the position of Director of Central Intelligence. I have worked with him in the past and I know him to be a man of sound judgment. A career intelligence officer, over the last 25 years Mr. Gates has served under both Republican and Democratic Presidents. His assignments have included national Intelligence Officer for the Soviet Union, Deputy Director for Intelligence, and Deputy for National Security Affairs. He has risen through the ranks of the Agency, and the knowledge he has gained will prove invaluable during the transitional years to come.

So the question is not one of qualifications, but one of trust. As opposed to judicial appointments, executive agency appointments are usually with us for the term of the President, or for a period of time which the President chooses. Within reason, we hold the President answerable for his agency appointments. They run his agencies, not Congress.

Should Robert Gates be named as Director of Central Intelligence, he will be directly responsible to the President. Mr. Gates will be accountable to the Constitution and the laws of the United States, as we all are, but the relationship of trust is primarily between the President and his agent. The intelligence President Bush receives from his appointee will directly effect the President's judgments as Commander in Chief and help shape his foreign policy. Viewed in this light, there should be a certain deference to, and trust in, the President's choices for executive branch appointments. Once these appointees are in office, it is then the duty of Congress to safeguard this trust through the vigilant use of our oversight powers.

Mr. President, trust is a fragile thing, and few things are broken as easily as one man's trust in another. There is an old saying that you can place blind trust in God, but with men, keep one eye open. During the Iran-Contra hearings, our trust was shaken. I hope President Bush, and the Presidents to come, will remember the lessons of the Iran-Contra Affair. The President must serve as the primary safeguard against the privatization of U.S. foreign policy, yet to carry out his duties he must delegate much of his power to others. To this end, he must have a man whose judgment he can trust at the head of the Central Intelligence Agency.

For its part, Congress requires the appointee to be eminently qualified, someone who will exercise independent judgment and not mold intelligence reports to fit policy. Most important, the American people demand that their country be well served, and that the interests of the Nation be put before personal ambition or loyalty to any one person. In sum, the President, the Congress, and the American people place a heavy burden of trust on the Director of the CIA, and there may be times that the guidance he receives from these groups may well seem contrary. I hope the President's choice for this position will always put the interest of his country foremost.

Mr. President, I will vote for the confirmation of Robert Gates, but I trust President Bush, and Congress, to keep one eye open.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I ask unanimous-consent to proceed for 5 minutes on behalf of the proponents for the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Missouri.

Mr. DANFORTH. Mr. President, there are two basic arguments that are made against the Gates nomination. The first argument is that Mr. Gates was somehow implicated in the Iran-Contra affair. I would only say in answer to that that, with the possible exception of Watergate, no matter, to my knowledge, has ever been as closely and as carefully investigated as Iran-Contra. During that investigation nothing has come up, nothing to indicate that anything improper or illegal was done by Mr. Gates.

Iran-Contra was investigated by both the House and the Senate. Depositions were taken of some 250 individuals. A special prosecutor has been working, at the cost of several million dollars, for a period of over 5 years investigating Iran-Contra. The Senate Intelligence Committee, in connection with this confirmation, interviewed some 20 witnesses. Nothing has come up which has implicated Robert Gates with Iran-Contra.

As a matter of fact, when he was the Acting Director and he picked up hearsay information with respect to the possible improper sale of arms and diversion of proceeds to the Contras, Robert Gates directed that the Attorney General, the Secretary of State, the Secretary of Defense, and the two oversight committees all be briefed by the CIA on the matter.

The second charge that is made is that somehow Robert Gates has politicized the CIA, namely, that he has "cooked the books" or he has skewed the intelligence analysis to reflect some bias of his own. The evidence of this was, to say the least, very shaky as it was presented to the committee.

For example, one of the key witnesses stating that there was bias and politicization was one Jennifer Glaudemanns and when asked to spell out exactly what the basis of her charge was, it turned out that there were two reasons for her comment about politicization.

One was what she called a general attitude, a kind of an atmosphere of politicization which she could not pin down, she could not touch. She said it was sort of like fog, it was there but you really could not pin down what it was. The second and more specific charge was that Mr. Gates testified before the Foreign Relations Committee of the Senate and he did not rely on briefing material that she had prepared for him. That was the basis of the charge for politicization.

Rather than somebody who politicized or somebody who skews information to achieve some result, in fact, Mr. Gates has been a highly independent person. He is a person who has not been hesitant at all in crossing swords with the highest officials of the executive branch. For example, he estimated that the Soviet Union was leveling off in its military spending, much to the consternation of the Secretary of Defense at the time, Caspar Weinberger. Similarly, with respect to his analysis of reform in the Philippines, under Mrs. Aquino, he was in direct contradiction to the position taken by then-Secretary of State Shultz.

So, the fact of the matter is here is a person who has strong ideas, who does think for himself and is not unwilling to say what he thinks. He is a tough taskmaster, no doubt about it, and tough taskmasters can be very tough sometime in dealing with people who work with them. I do not think that that disqualifies Robert Gates from being Director of Central Intelligence.

Finally, Mr. President, Robert Gates is the choice of President Bush. Now, a lot of people have criticized President Bush for spending too much time on foreign policy. He is too much of a foreign policy President, it is said. I would argue that foreign policy has been in more flux, has been undergoing more momentous change in the past 2 years than at any other time in my lifetime. President Bush knows the requirements of the intelligence community. He served, himself, as the Director of Central Intelligence. He knows the requirements of planning and intelligence in making a policy in foreign affairs. And George Bush wants Robert Gates for this job.

I believe that Mr. Gates is the best qualified person for this job. He has the confidence of the President. He should be confirmed by the Senate.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent to continue beyond the hour of 12:30 on two matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 1916 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

NOMINATION OF ROBERT M. GATES, OF VIRGINIA, TO BE DIRECTOR, CENTRAL INTELLIGENCE

The Senate continued with the consideration of the nomination.

Mr. LEAHY. Mr. President, let me speak on the subject that drew me to the floor, and that is the debate on the confirmation of Robert Gates to be Director of Central Intelligence. In this regard, I do this under the unanimous-consent request that I entered into earlier.

Mr. President, there has been a great deal of discussion on this. I have spent an awful lot of time on this nomination.

The PRESIDING OFFICER. The Chair would inquire of the Senator from Vermont, is the Senator from Vermont speaking in favor or in opposition? We need to know who to charge the time to.

Mr. LEAHY. Mr. President, I will vote today for the confirmation of Robert Gates to be Director of Central Intelligence.

The PRESIDING OFFICER. Would the Senator then ask unanimous consent that the time be charged on that side, please?

Mr. LEAHY. I ask that the time be charged on that side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I might state, I appreciate the Chair's request. I might say, under the earlier unanimous-consent request entered into, I would advise the Parliamentarian, I would have been able to speak.

The PRESIDING OFFICER. For the information of the Senator from Vermont, the Chair asked the question because the Parliamentarian asked him to do so.

Mr. LEAHY. I understand. We entered into a unanimous-consent agreement that I would have been able to speak.

To get back at the subject at hand.

This was a difficult decision. It came after extensive meetings with Mr. Gates, Senator BOREN, the chairman of the Intelligence Committee whom I respect greatly and other members of the Intelligence Committee, including some of those who voted against Mr. Gates in the committee—for whom I have great respect—discussions by my staff with committee staff on the hearings, and a careful review of the lengthy committee report.

The decision was a close call. Mr. Gates who I expect will be confirmed easily, carries a heavy load on his shoulders. There remain concerns about his passivity during the Iran-Contra fiasco, and widespread charges about his willingness to tell those above him what they want to hear rather than what they need to hear. Fairly or not, he bears the legacy of the Casey years, when deceit, misinformation, illegal operations and, to put it charitably, misleading of the oversight committees and Congress were the norm.

Most troubling of all, there is a deeply disturbing pattern of allegations from past and present analysts in the CIA that Mr. Gates, from time to time, committed the cardinal sin against objective intelligence analysis—that he slanted key intelligence judgments to suit the policy proclivities of William Casey and the Reagan White House.

Based on my detailed discussions with Mr. Gates, with Senator BOREN, current and former leaders of the intelligence community, and my reading of the record, I cannot find any smoking gun on any of these allegations. None of the evidence unambiguously points to mistakes or activities by Mr. Gates that clearly disqualify him for the post of Director of Central Intelligence.

In reaching this decision to vote for Robert Gates, I gave great weight to several arguments in his favor.

First, there is my own long association with Mr. Gates, first in my capacity as vice chairman of the Intelligence Committee, and since in my capacity as chairman of the Foreign Operations Subcommittee and member of the Defense Subcommittee especially in dealing with appropriations for intelligence matters. In all these positions, when I have had to deal with Mr. Gates, at times on quite sensitive intelligence or foreign policy matters, I have found him to be forthcoming, cooperative, and candid. Of the many senior intelligence or White House policy officials with whom I have dealt during the Reagan and Bush administrations, Mr. Gates has struck me as one of the few who actually understands and acts on the validity of and need for congressional oversight. I have had briefings from him straight through this year and I found him to be candid in those briefings.

Whether this cooperation reflects genuine conviction that oversight is a vital protection against abuse, or merely a realistic acceptance of the power and authority of Congress is irrelevant. The fact is that in all my dealings with him, so far as I can tell, Mr. Gates has never held back sharing sensitive and highly classified intelligence and other information from me. Leaders of the Intelligence Committee tell me they have had the same experience.

Then, there are Mr. Gates' personal qualifications. He is extraordinarily experienced in intelligence, with over 25 years in the field. The intelligence community, including the CIA, is going to pass through one of the most turbulent periods in its history over the next 3 or 4 years. Profound adjustments to the ending of the cold war will be necessary. The intelligence budget, which has grown for a decade, is now going to shrink and perhaps substantially. There will be reductions in personnel and resources. There will be major redefinitions of missions and roles. U.S. intelligence will look a lot different 3 or 4 years from now.

A strong, experienced hand is needed to guide U.S. intelligence through this period of restructuring and readjustment. Mr. Gates is highly qualified to provide the leadership the intelligence community needs.

Third, to be blunt, Mr. President, Mr. Gates, with all his flaws and with all the clouds hanging over him, is surely far more qualified for this important position than anyone the White House is likely to put forward if he is not confirmed. One of the most troubling failures of the Bush White House is the recent pattern of mediocre, politically motivated appointments to key positions. I dread to think what kind of "no record, no opinions, no ideas" cipher the White House handlers would find if Mr. Gates is rejected.

It would probably be someone picked more for his or her lack of any controversial views or experience than a person the President believes is best suited to head U.S. intelligence in what is certain to be a very rough period.

Mr. President, I will vote for Mr. Gates. But in doing so, I want to send him a message. The following words are directed to him.

Mr. Gates, insofar as I can do so as one Senator, I will strongly react to any credible information that indicates you or your aides are politicizing intelligence analysis to suit your personal views or the ideological or policy desires of the White House. I will do so through my work on the intelligence budget in the Defense Subcommittee, through discussions with the Intelligence Committee leadership, and, if necessary, by going to the Senate leadership.

Furthermore, if it ever comes to my attention that any of the current or former CIA analysts who came forward to offer information or views about your record or your suitability to be Director of Central Intelligence are being punished, harassed or otherwise penalized, I will go immediately to the Intelligence Committee to ask for decisive action against you. I welcome the strong statement the present chairman of the committee has made in this regard, and having served with Senator BOREN on that committee, I know, when Senator BOREN makes a statement of that nature, he will carry it out.

And, finally, if it ever comes out that despite your statements to the contrary, you knew of or were involved in the abuses of the Casey era, including the diversion of money to the Contras from the Iran arms for hostages deals, I will urge your removal from office. Knowing me as you do, you would not expect anything else.

Mr. President, let me say in the positive area, Mr. Gates will have a superb opportunity to overcome the doubts and reservations of many during the coming years. I hope I have occasion in the future to commend him for his leadership. On balance, I expect that to be the case.

There is a difficult time ahead for the intelligence community in this country. It is not amateur hour, nor should it be. At the same time, if this country ever needed an intelligence community that could give straightforward, honest, objective analysis devoid of trying to twist it for policy considerations, that time is now. And so, with an act of faith that we will get that from the new Director, I will vote for Robert Gates.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until 2:15 p.m.

Thereupon, at 12:49 p.m., the Senate, recessed until 2:15 p.m; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ADAMS).

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. BOREN. Mr. President, in discussing this with the Parliamentarian, I understand it would simplify matters, since we have roughly the same amount of time give or take 2 or 3 or 4 minutes on each side between now and the hour of 6—since we went somewhat past the normal recess time of 12:30, the time has been slightly thrown off—it will be easier, I think, in order to keep track of it from now on, that we give a slight disadvantage to this side, I think of 6 or 7 minutes, if we simply entered into an agreement by unanimous consent to divide the time evenly between now and the hour of 6 p.m., at which time the vote should occur; no later than 6 p.m.

So I ask unanimous consent that the time of proponents and opponents be divided equally between this time and the hour of 6 p.m.

The PRESIDING OFFICER. Is there objection? The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, there would be a capacity, however, should nobody come to the floor and there be no further discussion, I assume, that the time could be yielded back?

Mr. BOREN. Yes.

Mr. CHAFEE. In other words, my colleague is not asking unanimous consent that the vote occur at 6?

Mr. BOREN. Mr. President, that is correct. If the two sides decided to yield back the time, if there were no other speakers and we reached that point earlier than 6 p.m., the time could be yielded back by both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oklahoma.

Mr. BOREN. I yield 4 minutes to my distinguished colleague from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise to express my support for the President's nominee to be the next Director of the Central Intelligence Agency, Mr. Robert M. Gates.

However, before discussing the Gates nomination, I would like to thank both Senator BOREN and Senator MURKOWSKI, the chairman and vice chairman of the Select Committee on Intelligence, for the exceptional manner in which the committee dealt with this controversial nomination. I am especially appreciative that the committee provided me with a copy of the report on the nomination well in advance of this confirmation debate. With the help of this comprehensive report, the Senate can make a reasoned judgment on Mr. Gates' qualifications to lead the Central Intelligence Agency during this period of global political and military transition.

Mr. President, as we end the confrontation between the two superpowers, our intelligence community, headed by the Central Intelligence Agency, must adapt to a new operational climate. Mr. Gershwin, a CIA official who testified before the Intelligence Committee, gave us a preview of the difficulties of this transition when he stated:

> I think we are entering an era in the 1990's when life is going to be very uncomfortable for all of us intelligence analysts. It is very uncomfortable for me. * * * I do not know where we are heading, but I know that my job in the future is going to be real different from what it was in the past.

Mr. Gershwin goes on to say:

> And frankly, I think with a man like Mr. Gates there (at the CIA), I think he is going to shake us all up in a big-time way and it is going to be very valuable for all of us.

Mr. President, I believe Mr. Bob Gates is the man who can shake up the CIA. He has been in the intelligence business since 1966, when he joined the CIA as an analyst. Since that time, he has held positions of trust in both Republican and Democratic administrations. Inevitably, an individual in sensitive and challenging positions is involved in controversy and becomes the subject of allegations. Mr. Gates is not unique in this aspect. He was saddled with allegations regarding his involvement in the Iran-Contra affair and charges that he politicized the intelligence process.

Mr. President, in my judgment the Intelligence Committee thoroughly investigated these allegations and found no smoking gun. Rather, it found a man that one Senator described in the report, who "is smart, experienced, innovative, and a tough taskmaster; just the right man to lead the CIA into uncertain and extremely challenging times."

I join in that assessment and support the President's judgment in nominating Mr. Gates for this exceptionally challenging position. I will vote in favor of the confirmation and urge my colleagues to do so as well.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator has yielded the time. Who yields time?

Mr. BOREN. I yield 10 minutes to my colleague from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized for 10 minutes.

Mr. COHEN. Mr. President, earlier today, one of my colleagues took the floor and suggested that Republican members of the Intelligence Committee secured the services of their trial lawyer. I must say that I was flattered with the notion that somehow the Intelligence Committee would consider me to be their trial lawyer, particularly when they have such distinguished members on that committee as Senator RUDMAN, Senator DANFORTH, Senator GORTON, three former attorneys general of their States, distinguished, experienced trial lawyers. They surely did not need the services of this former trial lawyer.

I might say, Mr. President, that I came to the confirmation hearing on the first day—I had just returned from Maine. I came to the hearing and I sat in the very rear of the hearing room, the last chair available in the very rear of the room. I was quite content to simply sit there and listen to the evidence. I was curious about it. I had spent 8 years on the committee, 4 years as vice chairman of the Intelligence Committee. I was curious as to how the hearings would unfold, what the testimony might reveal, and I wanted to see how they would progress. No one invited me. The White House did not call me. I went there simply of my own volition.

As I was sitting at the rear of the hearing room one of my colleagues from the Intelligence Committee, Senator METZENBAUM, suggested to the chairman that I be invited up as a courtesy to sit behind the dais. I was again thankful that Chairman BOREN extended that courtesy to me. It came without any prompting on my part, and I was pleased to be of service.

One of the reasons I was pleased to be helpful to my colleagues, as I indicated before, is because I spent 8 years on the committee; I was quite familiar with the so-called Iran-Contra scandal. I was one of those who helped to conduct, and indeed even write, the initial report of the preliminary inquiry into the sale of weapons to Iran and their diversion to the Nicaraguan Contras.

Some of my colleagues may recall that there was tremendous pressure being generated by the White House at that time. President Reagan wanted the intelligence oversight committee to tell him what he allegedly did not know and to file this report as quickly as possible. Frankly, I objected. I was even out of town at the time. It was planned to turn this document in as a final report, and I objected. Many of the witnesses' testimony had not even been transcribed, and I felt we could not present a complete enough picture and an accurate enough picture to our colleagues, and so I said, no. I must say, I took considerable criticism from many of my colleagues for failing and refusing to sign that report at the time.

I was also appointed to serve on the Iran-Contra Committee, and at the end of that investigation I coauthored with my distinguished colleague, the majority leader, Senator MITCHELL, a book called "Men of Zeal," describing what lessons we learned from that experience. So those were the qualifications I brought to the hearing, to my colleagues on the committee, who may not have had as much familiarity with the background that I had about the Iran-Contra matter.

Again, early this morning it was suggested that before the very first witness could even testify, the Republican committee members had lawyer Cohen get a midnight letter from Arthur Liman. Let me just set the record straight. Lawyer Cohen was not sent to get a letter from Arthur Liman. I had read Mr. Polgar's op-ed piece in one of the major papers, and, indeed, I had seen a preliminary statement that he was going to give to the committee. Frankly, I was troubled by it. I have enormous respect for Mr. Polgar. I had worked with him when he was a staff member of the Iran-Contra Committee. As I read the op-ed piece and I read his testimony, I found them indeed quite troubling because, in essence, he was accusing Bob Gates of not only deception, but I believe conduct that would justify, if it were true, the independent counsel taking action against Robert Gates because Mr. Polgar, in essence, accused him of misleading Congress, preparing misleading testimony, and indeed accused him of being part of the coverup of the Iran-Contra scandal, including the diversion of funds.

For that reason, I took it upon myself to call Arthur Liman, who had just returned from celebrating the Jewish holidays. I spoke with him by phone. We talked about it, and indeed he did dictate a letter to me which I offered or proffered, I should say to be technical about it, to the committee the following day. And that was to put in perspective not only Mr. Polgar's role but, indeed, the fact that, to my knowledge and to Mr. Liman's knowledge, Mr. Polgar never indicated to any member of the Iran-Contra Committee, not to the counsel of the committee, that he believed or had evidence that Mr. Gates in any way obstructed justice or committed perjury or lied or misled the committee because, if he did have such evidence, I am sure it would have worked its way in one fashion or another into Judge Walsh's hands.

I thought I would take a few moments, Mr. President, to explain my own interest in the case, in the hearings, and my own role during the course of those hearings. I did not seek to have an opportunity to question any of the witnesses. I did not want to break or set any precedents. I felt I was entitled, much as the former vice chairman of the committee, Senator MOYNIHAN was, to make a statement, and, indeed, that is what I did, pertaining to the allegations that Robert Gates had engaged in conduct which would have certainly disqualified him from being confirmed as Director of the CIA were the allegations true.

Mr. President, I would like to offer a few general comments, if I might. The ancients observed, "Whom the gods would destroy, they first make euphoric." I think they might well have had the current situation in mind as we approach the end of the second millenium. Two years ago, heady with newfound power, Polish voters threw out every Communist that they were allowed to pass judgment on. They replaced them with Solidarity-aligned democrats. Last week or 10 days ago, disillusioned and resentful about the state of their lives, most Poles did not even bother to vote and those who did cast their ballots to a diffuse mix of democrats and demagogs, nationalists, regionalists, and Communists.

Two months ago, Russians who had mounted the ramparts to successfully defend their democratically elected President and Parliament, celebrated their dramatic victory. Just weeks later with President Boris Yeltsin off writing his memoirs, the bickering Parliament took on an eerie quality reminiscent of what occurred right after the 1917 democratic revolution. While Yeltsin's announcement this week of his plans for drastic economic reforms offers some reason for hope, the transition to a market economy is going to be even more difficult for Russia than it is for Poland, and there is no certainty at all that the Russian democrats can hold power long enough to see a new economic dawn break above the horizon.

Without taking time now, I call my colleagues' attention to an article that appeared in this week's U.S. News & World Report, the November 11 issue, pages 48 and 49. They will indeed find some very discouraging descriptions about the mood and the sentiment and the prospects for the new Russia because behind the face of the new Russia, one may very well find the face of the old Russia.

Reading from the article:

> Ironically, it is the democrats—not the many reactionaries who have survived the coup attempt—who are ushering in the new authoritarianism, on grounds that democracy cannot flourish amid political and economic chaos. Unable to cope with a disintegrating economy, increasing shortages and a growing threat to public order, reform leaders—who received power almost overnight—increasingly favor strengthening executive powers in order to make quicker economic decisions and to demonstrate to a weary population that someone is in charge. Democracy, says one Soviet politician ruefully, may prove to have been nothing more than a transition from totalitarianism to authoritarianism.

Even Mayor Popov, who many of us have had a chance to meet here in Washington, is said to be "battling a feisty city council." [He] "declared flatly that the democratic experiment has failed: 'In a word, democracy cannot find a basis in this country.'"

So I think it is important that we keep this in mind; that those Members who have come to the floor to criticize Mr. Gates, the Reagan-Bush administration, and others, keep some perspective of exactly what is taking place in the world today.

I mention this because some have accused the Bush administration through its release of certain declassified CIA documents of trying to rewrite history. And the charge is that the CIA missed the collapse of the Soviet Union, the Soviet empire; that it misread Soviet economic indicators; that it misunderstood who Mikhail Gorbachev was, and thereby allowed Ronald Reagan to spend billions of dollars on arms that we had no need for whatsoever.

Not one of Bob Gates' critics mentioned Andre Sakharov's exile to Gorky. Not one of the critics spoke of the grand deception at Krasnoyarsk. I did not hear a word mentioned by anybody about the CIA pinpointing Krasnoyarsk as a violation of the ABM Treaty, which was denied year after year after year until finally Shevardnadze reversed his public position and said yes, it is a violation. Not one spoke of the atrocities committed by Soviet soldiers in Afghanistan, manufacturing——

The PRESIDING OFFICER. Ten minutes have expired.

Mr. COHEN. I ask that I be allowed to continue for an additional 5 minutes.

The PRESIDING OFFICER. Is there objection? The Senator is recognized for an additional 5 minutes.

Mr. COHEN. No one mentioned those fancy little weapons that the Soviets had designed to look like toys, so that children in Afghanistan would pick them up and blow their limbs off and their parents would have to cry and weep knowing they could not get medical treatment for them. Their goal was to kill the morale of the freedom fighters.

No one referred to the challenge posed by the Soviet deployment of SS-20's toward Western Europe and the attempt to drive a stake into the heart of NATO.

No one mentioned that Ronald Reagan got the INF treaty, that he said he would get if we did what? Not if we adopted a nuclear freeze but if we deployed the Pershing II and the ground-launched cruise missile over great political opposition in Europe. Nonetheless, they deployed it and we got the treaty.

No one mentioned that Mikhail Gorbachev allowed Black Berets to commit brutal acts in the Baltics or use chemical agents in Georgia to put down protests.

No one mentioned the forward-looking reformers like KGB head Vladimir Kryuchkov and Prime Minister Valentin Pavlov were among those who engineered the failed coup in August.

No one mentioned that Gorbachev was seen as being resistant to true reform by such intellectuals as Alexi Arbatov, Nicolai Smeloff. No one mentioned that.

The whole Reagan Presidency is discredited by saying that we missed the chance to do business with Gorbachev, and then the Bush administration including Bob Gates is discredited by saying now it is too committed to Gorbachev; we should be doing business with Boris Yeltsin and others; the President and Gates are too tied to the center now.

So first we miss Gorbachev and now when we are dealing with Gorbachev, they insist we should be dealing with Yeltsin even when there are signs that Mr. Yeltsin may be evolving toward something other than a great democratic reformer. He sounds very authoritarian in some of the statements he is making. He seems to be demanding more and more power. And so there are fears that we may see the rise of Russian nationalism. But the critics of Bob Gates say we missed Gorbachev and now we are missing Yeltsin and so he is damned on the one hand and damned on the other.

Well, apparently the critics know so much more than the European leaders like Vaclav Havel, who came to the joint session of Congress and he said what? He said thank you, thank you for standing up to your responsibilities, and he thanked us for the sacrifices that the American people have made over the years so that his country and others in Eastern Europe would have the chance to know freedom.

Mr. President, Robert Gates, we have to remind ourselves, serves at the pleasure of the President of the United States. I might say that if we applied the same standards to our own conduct that we insist upon applying to his, I doubt very much whether many could pass that test. If we were to hold up our own record for the past decade, not to mention Bob Gates' two decades, and ask the American people, what do you think about our role in the S&L crisis? How did that happen on our watch? What about the collapse of the economy, and the soaring deficits?

We are the ones who appropriate the funds, not the President. How about the loss of public confidence? Sixty-three percent of the American people think that we are corrupt. All of us.

Now, that is the perception, Mr. President. Is it fair? Is it right? Is each one of us in this Chamber to be disqualified from trying to come to grips with the domestic, the foreign, the fiscal problems of this country because of our record during the past decade? I submit to you if the standard that we are applying to Bob Gates were applied to us, very few would be left standing in this Chamber.

So, Mr. President, I support Bob Gates for the position of Director of Central Intelligence. I think he is tough minded. I think he is bright. I think he has made some mistakes. I think he stepped on some toes. But I think he learned from his mistakes. I saw evidence of that. I worked with him for several years, and I believe he does possess the capability to deal with the new challenges of the future. I believe he is in a better position to understand the complexities of that vast bureaucracy, and the personalities within it. And I believe that he has gained from what he has gone through for the past several years and certainly during his confirmation proceedings.

So I hope my colleagues will take a very close look at the record and listen to people, in addition to those who testified, listen to some of the people like Bobby Inman, John McMahon, people who everyone says they have the utmost respect for and confidence in. I think if you look at the record and listen to some of the people who have worked closely with and know Bob Gates best you will agree that he should be confirmed for that position.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. BOREN. Mr. President, I yield to the Senator from Rhode Island as much time as he may require.

Mr. CHAFEE. I thank the distinguished floor manager. I thank the distinguished Senator from Maine for the comments he made, and particularly for the point he stressed, how many of us could stand scrutiny of our records for the past 20 years?

I have been in the Senate now for 16 years, and most of the other Senators I see have been here 10 years or more. How many of us could stand up to scrutiny on what happened in the S&L crisis and what did we do about it? Or the national deficits or a whole series of other programs? Suppose we were held liable for every one of those?

So I think the points the Senator from Maine made were excellent, as always. He is very perceptive and contributes continually in this body to a whole series of efforts we are making.

Mr. President, I would like to begin by thanking the chairman and ranking member of the Intelligence Committee for the manner in which they have led the committee during this difficult nomination process. I think they have done an outstanding job of ensuring that the process has been both thorough and fair. It was not always easy to balance the strongly held views of the members of our committee or the witnesses that have appeared, and I want to commend our leaders for minimizing the friction involved and keeping the important issues in focus.

This was not expected to be a difficult or contentious process when President Bush nominated Robert Gates in June. But, as we all know, shortly after the nomination was received by the Senate, former CIA official Alan Fiers unexpectedly pled guilty to withholding information about the Iran-Contra affair from Congress. Immediately, many leapt to the conclusion that if Mr. Fiers had lied to Congress, then his superior Mr. Gates probably had as well. Matters were further complicated a few weeks later when some network TV shows began to carry segments featuring convicted felons, in some cases interviewed from their jail cells, who had wild tales to tell regarding their alleged involvement with Mr. Gates in undertaking illegal covert activities. Some of these tales were more elaborate and intriguing than a Robert Ludlum spy novel. Then, just when I thought I had seen everything, the BCCI scandal hit the airwaves and print media with the force of a hurricane arriving at high tide with a full Moon. Finally, and also unexpectedly, a former CIA official approached the committee and alleged that Mr. Gates had been guilty of slanting intelligence estimates to ingratiate himself with Bill Casey and senior officials of the Reagan administration. What had been expected to be a fairly routine nomination had become a sensationalized and highly contentious one.

There has never been any serious doubt about Mr. Gates' aptitude or expertise. He has served this country with distinction for over 20 years in a variety of sensitive assignments. He was an Air Force officer. A CIA analyst and manager, and served in the National Security Council under both Republican and Democratic administrations. He was promoted and rose quickly through the ranks because of his performance and effectiveness in the eyes of men such as Zbigniew Brzezinski, Stansfield Turner, and Adm. Bobby Inman. By all accounts, Mr. Gates functioned very effectively as Deputy National Security Adviser during the gulf war with Iraq and during Operation Just Cause in Panama. So the key questions regarding Mr. Gates are not about his competence but his integrity. Has he been truthful about his role in the Iran-Contra affair? Did he politicize estimates in order to ingratiate himself with his superiors? Did he smother evidence about illegal BCCI activities in order to protect CIA operations?

I am satisfied that Mr. Gates has been forthcoming regarding the Iran-Contra affair. The Iran-Contra committees of the House and Senate interviewed over 500 witnesses and reviewed 300,000 documents pertaining to this matter. As Senators BOREN, NUNN, and RUDMAN, who served on that committee know, this extensive and unprecedented investigation did not produce any evidence of impropriety on the part of Mr. Gates. Since that time, the independent prosecutor, Judge Walsh, has spent over 4 years and $25 million probing the Iran-Contra affair, and he has publicly acknowledged that Mr. Gates is not a target of his investigation. The record has long shown that Mr. Gates was not involved in the diversion of funds to the Contras and that he raised the issue with his superiors when he was informed by Charles Allen that such activities might be occurring. Our own independent investigation, which has included the testimony of individuals such as Alan Fiers and Charles Allen, confirms these facts.

The other allegations against Bob Gates have also been thoroughly investigated and found to be lacking. The documents obtained by staff demonstrate that the CIA appropriately disseminated the information it had regarding BCCI to the Treasury Department and other Federal agencies.

The allegations of politicization, however, have been more difficult to contend with. As one senior intelligence official said to the committee:

> Its right out of Franz Kafka. Because once you are accused, the inspector general will never come back and say you are absolved. They will say: "We found no evidence to substantiate it."

It is in fact impossible for Mr. Gates, or anyone else, to prove the negative. I would therefore suggest that instead of asking the impossible we examine the facts.

Of the roughly 2,500 intelligence estimates produced during Bob Gates' tenure, only a handful are in dispute. In those instances, after extensive hearings, interviews, and a review of well over 1,000 documents, the allegations remain unsubstantiated. No analyst has come forward and said, "Bob Gates asked me to take a dive." At the same time, it has been indisputably demonstrated that Bob Gates disseminated numerous reports contradicting the policies of the Reagan administration on such contentious issues as chemical weapons, Lebanon, the Soviet pipeline, and Soviet defense spending.

It is not surprising that Bob Gates stands accused of politicizing intelligence estimates. Such allegations have also been made against William Colby, Bill Casey, Judge Webster, and many other senior intelligence officials. In every large Federal bureaucracy, there are factions and disputes, winners and losers. In this instance, the strongest allegations against Mr. Gates come from an individual who is himself accused of politicization and who has testified that he believes he was demoted by Mr. Gates. But those allegations, for example that Bob Gates pressured analysts to produce a report implicating the Soviet Union in the attempted assassination of the Pope, are simply not supported by either the documentary evidence or the testimony of the analysts who have submitted affidavits to the committee.

In fact, as John McMahon has pointed out, it is difficult to understand how Bob Gates could have manipulated CIA analysts even if he had wanted to. The directorate of intelligence is simply not a bureaucracy composed of 2,000 spineless wimps.

After listening to the witnesses on both sides of this issue, I have concluded that there is nevertheless a genuine perception of politicization on the part of some analysts. These perceptions appear to have preceded Mr. Gates and have continued since he left. I think the perception of politicization is attributable to a number of factors:

First, a sometimes suffocating bureaucracy that has not permitted adequate communication between senior management and analysts.

Second, the desire by some midlevel managers and some analysts to achieve promotion by responding to the perceived views of their superiors. This is a problem that was clearly identified in the internal CIA review of the now celebrated assessment on the attempted assassination of the Pope. I think it is perhaps worth briefly quoting from this document, known as the Cowey report:

> So, despite the DDI's best efforts—

And Mr. Gates was the DDI at the time—

> there was a perception of upper-level direction. * * * In the event, however, our interviews suggested that it was not so much DCI or DDI direction as it was an effort on the part of some managers at the next one or

two layers down to be responsive to perceived DCI and DDI desires.

In short, people wanted to please their boss. This is a natural instinct and a problem inherent to the analytic process.

Third, and finally, Bob Gates was prone to toughening estimates on the Soviet Union. Because of the Reagan administration's hard-line views on the U.S.S.R., this on some occasions led to the perception of politicization. But the fact is, Mr. Gates himself was a hard-liner on the Soviet Union with a Ph.D. in Soviet studies to back it up. Consequently, when he changed an estimate to be more critical of Soviet behavior, it only reflected his own sincere views, but because the Reagan administration shared similar views, he was subject to the allegation of politicization.

In sum, I do not believe that the allegations that Mr. Gates politicized intelligence are valid. At the same time, I have concluded that there are some organizational problems in the directorate of intelligence that warrant further attention and I welcome Mr. Gates' eight suggestions for improving intelligence analysis.

As we all know, it is difficult if not impossible to accomplish anything in Washington without antagonizing someone. There is an old Russian adage that expresses the problem well. "When you chop wood, chips fly."

I do not think there is any doubt that Mr. Gates has sent some chips flying over the years. He has not been afraid to make tough decisions or undertake new initiatives. He has done a tremendous amount of good work in behalf of this country, and he has done so under very difficult circumstances. If we want individuals with extensive experience in the CIA, who are willing to take risks, who have taken controversial positions and stood their ground, we are inevitably going to find disaffected bureaucrats among their former colleagues.

I believe that this is a time when it is essential to have a DCI who does not need on-the-job training. We need a DCI who can manage the intelligence community during a period of profound change, minimizing the impact of budget reductions, while ensuring appropriate oversight by this committee. If our only concern were to avoid controversy in the nomination process, then I would say do not vote for this nomination. But I believe that this is an extremely able, experienced, honest, and patriotic individual who will be an effective Director of Central Intelligence. I hope that he will soon be confirmed so that we can concentrate on the reorganization of the intelligence community, to whatever degree is required, in response to the dramatic changes underway in the world around us.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. I yield as much time as the majority leader may use.

The PRESIDING OFFICER. The majority leader is recognized

Mr. MITCHELL. Mr. President, I will vote against the nomination of Robert M. Gates to be Director of Central Intelligence.

I did not easily reach this conclusion. I believe that, in general, Presidents should be able to select the officials of their choice to serve in key administration positions. As a matter of policy, every President should be free to name qualified individuals who share his views and goals.

It is clear that President Bush knows this nominee well and has confidence in his abilities.

However, the Director of Central Intelligence [DCI] is a position unique in our Government.

The Director is a trustee, the custodian of the Nation's secrets, the executive officer responsible for activities known to few if any other officials. With respect to the critical intelligence analysis provided to the President and other key Government officials, he is the umpire and the protector of objectivity. This very objectivity and the quality of this intelligence is the foundation upon which is built much of our Nation's foreign policy, national security, and military strategy. Critical decisions which affect the Nation's most profound interests, sometimes for years, decades, are made on the basis of such intelligence judgments.

The hearings held by the Intelligence Committee on this nomination highlighted for the American people several such decisions—decisions involving the Soviet Union's intentions in the Third World and elsewhere, Iran and Iraq, and policy in Central America to name a few.

The trust and confidence placed in the Director will be even more important in the years ahead than it has been in past years. With the collapse of communism, with the profound changes around the globe which have followed, the CIA will need to respond to a new set of challenges. America will face new circumstances—new allies, perhaps new enemies—and certainly new competition created by the global marketplace.

The CIA will have a role to play in assuring that the Nation's leaders have the information needed to best protect the Nation's security. The intelligence community will need a Director who not only understands these new realities, but who has the leadership and credibility to lead these organizations in new directions.

These are additional important factors which must be considered as the Senate discharges its constitutional duty in evaluating those nominated to serve in high Government offices.

Among them are the nominee's credibility and judgment.

In my view, too many unanswered questions remain about this nominee's credibility and this nominee's judgment.

I am troubled by the conflicts in the testimony of Mr. Gates and others. I am further troubled by the many memory failures of the nominee. I am disturbed that even after the Intelligence Committee raised questions arising from Lt. Col. Oliver North's diaries, the nominee declined to read and address those entries.

I will not attempt here to detail each of the conflicts in testimony and troubling aspects of Mr. Gates' own testimony. The committee report which is before each Senator does an admirable job of that.

However, I do wish to recall for the record the testimony of Charles Allen, the National Intelligence Officer for Counterterrorism, who met with Mr. Gates on October 1, 1986, and informed him of Allen's suspicions that funds generated by the covert sale of arms to Iran were being diverted to covertly fund the Contras in Nicaragua.

Mr. Allen testified, and I quote his testimony at some length:

> I recall discussing the Iranian initiative with Mr. Gates on 1 October 1986 and expressing deep concern over this White House-directed effort. I had been deeply troubled since mid-August over a number of aspects of the initiative and conveyed these concerns in some detail to Mr. Gates during the * * * meeting. Specifically I recall * * *:
>
> a. Describing the impasse over the pricing and [the first channel to the Iranians] refusal to pay Mr. Ghorbanifar the price asked for the Hawk spare parts because the price asked for the Hawk spare parts was "five or six times" the actual cost of the parts.
>
> b. Noting the desperate financial straits of Manucher Ghorbanifar and his "frantic" call to me in August 1986 in which he provided details on specific costs of certain Hawk missile spare parts, and in which he claimed that his markup on the price of the spare parts averaged only about 40 percent.
>
> c. Mentioning Lt. Col. North's reference to 'the reserve' in his conversation with me on 9 September 1986 in which he stated that Vice Admiral Poindexter had formally approved the second channel and that the Ghorbanifar channel would be shut down.
>
> d. Informing Mr. Gates of Mr. Aviram Nir's [the Israeli Prime Minister's representative in the Iran arms sales matters] statements in support of Mr. Ghorbanifar's assertions that the latter as the middleman in the transaction was substantially over-charged.
>
> e. Detailing Mr. Nir's fears that the operational security of the initiative was rapidly eroding and that the immediate action was needed to shore up its security.
>
> The facts among others were repeated in a meeting with Mr. Casey on 7 October 1986 in which Mr. Gates was present.

Mr. Gates' testimony was that he was "startled" and that he was "disturbed by the threat to the security of the operation, as well as the speculation," which in his 1987 testimony to the Intelligence Committee he described as flimsy. At that time he testified:

> Again, we had on the one hand reports of cheating and overcharging that we had been

> seeing for months, and that are not abnormal in the international arms market, and on the other hand he simply called attention to the circumstantial fact that some of the same people were involved in the Iran affair and the contra thing.

Mr. President, I feel that the statement by Mr. Allen was far more detailed and far more significant than this characterization of it by Mr. Gates.

Mr. Allen also testified that in the context of this October 1 meeting he "distinctly recalls" Mr. Gates telling him that "in the past he had admired Colonel North because of his work in crisis management and things of this nature, but that this was going too far, and asked that I see the Director." Allen went on to state that Gates: "said this with deep concern that Colonel North, whatever qualities he may have had in the past in performing services to the United States, that this was a very questionable activity at best." According to Mr. Allen's testimony Mr. Gates repeated this statement regarding Lieutenant Colonel North in the October 7 meeting in Director Casey's office.

Mr. Gates testified that he has "no recollection" of making these statements and further that Mr. Allen "didn't have any indication of any U.S. Government role or anything. I think it was just the mere fact of Secord's presence in both of these activities that, I think is just the best way to put it, raised this concern."

Mr. President, I have reviewed the testimony of Robert Gates and others on this particular matter very carefully. I find it very hard to see how the Deputy Director of Central Intelligence could take this matter so lightly.

However, to give him the benefit of the doubt, put aside, for the moment, Mr. Allen's speculation about a diversion of funds. Further put aside Acting CIA Director Kerr's testimony that he had in August told Mr. Gates about Mr. Allen's conclusions—and that is another statement on the matter which Mr. Gates cannot remember. Accept Mr. Gates' statement that this seemed flimsy and "had little sense of urgency about it." Accept all of that. Give him all of the benefit of the doubt. What troubles me most is that an analyst of Mr. Gates' background and experience should not have recognized that the exorbitant overcharging of the Iranians for the missile parts they were receiving in the Iran arms sales, a covert program he knew to have the President's approval, represented an extreme risk to the lives of the very hostages for which weapons were being traded.

Let me repeat that. The exorbitant overcharging of the Iranians for the missile parts, in a covert program which he knew had the President's approval, represented an extreme risk to the lives of the very hostages for which weapons were being traded. That alone, it seems to me, should have been reason enough for the Deputy Director of Central Intelligence, then Mr. Gates, to raise red flags and blow whistles with Director Casey, Admiral Poindexter, and ultimately the President himself.

While the testimony does not fully remove my doubts regarding what Mr. Gates learned regarding Iran-Contra and what he did or failed to do with that knowledge, I make no accusation. In fact, in the whole matter, in my judgment, Mr. Gates' own testimony is sufficient criticism of his actions.

By his own testimony, his response to information which he learned regarding the Iran-Contra affair was inadequate. Mr. Gates himself testified:

> I should have taken more seriously * * * the possibility of impropriety or even wrongdoing in the Government, and pursued this possibility more aggressively. I should have pressed the issue of a possible diversion more strenuously with Director Casey and with Admiral Poindexter. * * * I should have been more skeptical about what I was told. I should have asked more questions, and I should have been less satisfied with the answers I received, especially from Director Casey. * * *

Those are Mr. Gates' own words.

While I respect his admission of shortcomings and accept that he has learned from the experience and matured in subsequent offices, nonetheless his performance in this area falls short of the standards of behavior which I believe necessary for a position requiring the unique sensitivities, responsibilities, and trustworthiness as does the Director of Central Intelligence.

Additional charges have been made that Mr. Gates played a role in efforts to shape intelligence estimates to conform to the policy directions of the Reagan administration during the period that he served both as Deputy Director for Intelligence and as Deputy Director of Central Intelligence.

Mr. Gates was given the opportunity to and did address many of these specific charges. Some were not fully or adequately addressed. But, more than any accusation that Robert Gates, by his own hand, skewed any intelligence assessment, I am concerned by the perception that politicization was carried out by the leadership of the CIA during the 1980's. What should not be a political agency was made into a political agency. Many past and current CIA employees share this view.

Indeed, the Iran-Contra Committee concluded in its final report;

> * * * there is evidence that Director Casey misrepresented or selectively used available intelligence to support the policy he was promoting, particularly in Central America.

I am not here arguing guilt by association. I am asserting that the signal sent to the CIA and others in the intelligence community at the beginning of a new era in intelligence gathering, but reaching back into the Casey era and selecting as the new Director the man who was Casey's own Deputy, is precisely the wrong signal to be sending.

Proponents of this nomination have argued that Mr. Gates' experience in the Agency, the very fact that he has risen from among the ranks of the analysts, and the fact that he experienced the painful episode associated with Iran-Contra make him the ideal candidate to lead the intelligence community through the period of change ahead. I believe that this is exactly wrong.

While I believe that the public airing of the ferment at the CIA will be positive for that Agency in the long run, and was certainly educational for the American people, I believe that it will further undermine Mr. Gates' ability to serve as a strong leader for the CIA. His every move and his motives will be scrutinized for political spin and for retaliation against personnel.

Even while supporting this nomination, the chairman of the Intelligence Committee felt it necessary to add the following in his statement. And this is Senator BOREN's statement.

Might I say I have the greatest respect and admiration for Senator BOREN. And if, as we all expect, Mr. Gates is going to be confirmed, he will owe that confirmation to one person and one person alone, and that is Senator BOREN.

Senator BOREN said this with respect to the Gates nomination;

> Let me say a few words about the courageous people-analysts, young and old, who came forward to cooperate with the committee during the confirmation process. They have my commitment, indeed the commitment of this committee, that no untoward action will be taken against them, and their careers will not be disrupted. If Bob Gates is confirmed, I intend to hold him accountable and carefully scrutinize his decisions and actions to ensure that needed changes are made. This committee will pay increased attention to the less glamorous but important issues of the morale and well-being of the men and women of the Central Intelligence Agency. I have given my personal assurances to at least two individuals that for my remaining 5 years in the Senate, long after I have left this committee, I will intervene on their behalf at the slightest hint of retribution.

That is the end of the quotation from Senator BOREN. He then went on at a later point to say:

> And I say openly to the men and women at CIA, that I believe that Bob Gates will live up to the demands of decency and fairness required. But if he does not, I will be the first to take action, whether I serve on this committee or not. This is my personal commitment to the men and women at the CIA.

I want to add my assurances and my support for those made by the distinguished chairman of the Intelligence Committee. Senator BOREN makes those assurances because he is a fair, decent, and compassionate man who understands how difficult it had been for these employees to step forward. I commend him for that.

But, Mr. President, and Members of the Senate, my point is that the need for the chairman of the Intelligence Committee to make such a statement is so remarkable, and so extraordinary, that it speaks for itself. It simply should not be necessary for such a commitment to be made, to have to say to everybody at the CIA, all of the employees: "Do not worry if the Director takes retribution on you, we will be there to intervene." Even though all of them must know with however good our intentions and however energetic we are in trying to ensure that commitment, there is literally no way that this kind of oversight can prevent the kind of retaliation or retribution that could take place. It is truly extraordinary that everybody at the CIA must be told this—must be warned with respect to this nominee.

I want to commend the chairman of the Intelligence Committee, the distinguished senior Senator from Oklahoma [Mr. BOREN] and the vice chairman, the junior Senator from Alaska [Mr. MURKOWSKI] for the comprehensive, fair, bipartisan, and educational process by which the nomination was considered. All of the members of the committee and the staff should be commended as well. Hundreds of witnesses were interviewed and thousands of documents collected in an exhaustive effort to seek the necessary information for the Senate to make its judgment on this nomination. The committee's process has served the Senate and the American people well.

The role of the Director of Central Intelligence is too important to gamble on a nominee who, by his own admission, has demonstrated poor judgment and who represents precisely the wrong signal to so many at the CIA and elsewhere. Robert Gates has served the President and General Scowcroft well in his current position. He is a strong and effective policy advocate. However, given the enormous challenges facing the CIA for a transition to a new role, facing a new world order, and requiring a newly invigorated workforce at CIA and elsewhere in the intelligence community, I have concluded that Robert Gates is the wrong man at the wrong time for this position.

The PRESIDING OFFICER (Mr. ROBB). Who yields time? The Senator from Alaska [Mr. MURKOWSKI].

Mr. MURKOWSKI. Mr. President, may I ask the remaining time on the two sides?

The PRESIDING OFFICER. The Senator controls 1 hour and 15 minutes; on the time controlled by the Senator from New Jersey there remains 1 hour and 32 minutes.

Mr. MURKOWSKI. I thank the Chair. I defer to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized.

Mr. SPECTER. Mr. President, after considerable deliberation, I have decided to support the nomination of Mr. Gates. I had some reservations in 1987 when Mr. Gates was last considered for this position because of questions on his role in helping to prepare Director Casey's testimony which misled the Congress, and because of questions about Mr. Gates' knowledge on the diversion of funds from the diversion of arms sales to the Contras.

To the extent that Mr. Gates has made mistakes, it is my conclusion that he has learned from them. I believe that as a matter of his personal qualifications he is an astute, experienced intelligence officer who has the confidence of the President. I believe that the time has come, really past time, to move on with vital U.S. intelligence collection and analysis worldwide. And further, at this date in 1991 it is my conclusion that Mr. Gates is ready, willing and able to work with the Congress, allowing the Congress its appropriate oversight capacity.

Without detailing the 1987 confirmation hearing record—and I repeat that I had many reservations about that reach—suffice it to say that the loyalty of a Government subordinate is owed to the truth and to the American people, rather than to the next higher individual in the chain of command. Too much occurs in this town—really everywhere—where people go along to get along. And I think the experience that Mr. Gates had in 1987 and what has occurred since, and the very incisive investigation and hearings conducted by the Intelligence Committee, are a very, very sharp statement of the kind of scrutiny that will be undertaken and the kind of risks which are involved. But, with the lapse of 4 years and with Mr. Gates' very good record since that time, which record I have observed to some extent and been informed about by Mr. Scowcroft and by the President, I believe that it is appropriate at this time to move forward with his confirmation.

The critical question in my mind today is how well will Mr. Gates perform as Director of Central Intelligence? That is the dominant question, as opposed to what he may have done in the past. A man's record, of course, is a very, very significant indicator as to how he is going to perform in the future. But whatever Robert Gates' mistakes were of the past, it is my judgment, as I say, after considerable reflection, that he is more than a reasonable risk to undertake this job in the future. Those considerations are weighted against his tremendous experience, his obvious intelligence, and his capacity to perform in a very, very important job and with the President's complete confidence.

When you talk about the mistakes that Mr. Gates has made in the past, I think that the distinguished Senator from Rhode Island [Mr. CHAFEE] characterized them very well. Mistakes in judgment, in predicting what will be, or in evaluating a complex set of facts that are very, very difficult to come by, should not be disqualifiers.

In terms of the critical oversight function of the Congress, that is a question which is very much on my mind. I have heard the chairman and the vice chairman speak in complimentary terms on Robert Gates, on his willingness to work with the Intelligence Committees. My own dealings with Mr. Gates since 1987 give me a sense of confidence that, to the extent he made mistakes in not recognizing congressional oversight, he has learned a valuable lesson from such mistakes.

When legislation was considered on the independent inspector general for CIA, Mr. Gates was a proponent of that proposal. And I think that speaks very well for him. That is the only remedial legislation to come out of the Iran-Contra hearings, but in my judgment, it is not sufficient. I am still concerned that we ought to have a statutory time limit—whether it is 24 hours, as in legislation I proposed, or 48 hours as others have proposed. There ought to be such a statutory requirement for the disclosure of covert activity to at least a key group of congressional leaders, even if it be limited only to four of the highest-ranking congressional officials.

But, it is apparent, after efforts to get that legislation that, it simply is not going to be—at least at the present. It may be that the best way to work through that concern is through confidence-building measures—and the Intelligence Committees are doing a better job than in the past—and to build a tradition where the executive branch will make appropriate disclosures of covert activities to the Congress, as contrasted with the statutory requirement.

When members of the executive branch, or anyone, make misstatements of fact intentionally before the Intelligence Committee or any committees of Congress, I think that it is a very, very grave and serious problem. That is why the legislation which I proposed adds a mandatory minimum sentence of 1 year for anyone who was determined to have committed perjury from the executive branch to the intelligence committees. Maybe it ought to be broader. But that was the place where I started after the experience of the Iran-Contra affair.

That legislation was not favorably received by my colleagues and has not been enacted. It was not a move forward. There is a problem in terms of plea bargaining, as we have had some experience recently, but I make reference to that to underscore the very deep personal concern which I have about executive branch officials, especially members of the intelligence community, who appear before the legislative branch committees and do not tell the truth intentionally and knowingly.

I think there is another factor that requires a moment or two, Mr. President. It has already been touched upon by others. I do think we have to establish realistic standards for the confirmation of nominees. There may not be enough perfect people inside the beltway to fill the Cabinet and there may not be enough people outside the beltway either. It is much tougher to sit in confirmation hearings at the witness table than in the Senators' swivel chairs. That is something we have to take into account.

Senators' questions and characterizations and conclusions may go a bit too far at times. If we have a man who has the innate intelligence and capability of a Robert Gates, who has served in the highest levels of Government and who went through a period where serious questions were raised about his assistance to Director Casey in the preparation of Director Casey's misleading testimony to the Congress about the diversion of funds, but since has performed in an exemplary fashion in a very high-level job, then I think that the preferable course, considering his capability, is to move ahead with his confirmation.

On a slightly lighter side, I can personally attest to Robert Gates' good educational background. He and I went to the same elementary school in Wichita, KS.

I think it is time, Mr. President, to move on, to look to the future. It would also be my hope that there will be serious consideration and the enactment of legislation which will move to correct the risk of politicization of intelligence information. It has been apparent for the better part of two decades that there are strong reasons to revise the legislation enacted in 1947 by separating out the functions of the Director of Central Intelligence from the Director of the Central Intelligence Agency. Those conclusions came forth during the Church committee hearings of the midseventies. Those conclusions were articulated by Secretary of State George Schultz when he testified during the Iran-Contra hearings about the cooking of intelligence information. I think that it is a subject which will likely engage Robert Gates if and when he is confirmed.

During the Iran-Contra hearings, and my time on the Senate Intelligence Committee in 1986 and 1987, it seemed to me that that legislative change in the structure of intelligence was very important.

I introduced legislation on October 27, 1987, Senate bill 1820 in the 100th Congress, to separate out the job of the Director of Central Intelligence from the day-to-day management of the Central Intelligence Agency. That legislation was reintroduced in the 101st Congress, Senate bill 175 on January 25, 1989, and the 102d Congress, Senate bill 421 on February 9 of this year. There have been efforts made by the chairman of the Intelligence Committee to move forward with the schedule of hearings on reorganization, but because of a very, very crowded agenda, that has not occurred. It is my hope that this legislation, S. 421, will be taken up very promptly.

I commend the distinguished chairman of the committee and the distinguished vice chairmen for their laborious efforts, and the entire Intelligence Committee for undertaking a very, very difficult and excellent job.

For the reasons I have outlined, Mr. President, I intend to vote later this afternoon for the confirmation of Robert Gates. I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the quorum call be assessed to each side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BRADLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, I yield 10 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland [Mr. SARBANES] is recognized for up to 10 minutes.

Mr. SARBANES. Mr. President, on September 29, the Baltimore Sun ran an editorial headed "Regarding Robert Gates: No" in which were raised the following questions:

> How credible is the nominee when he claims he cannot remember conversations about the Iran-Contra affair that are specifically recalled by close associates at the Central Intelligence Agency?
>
> How good is his judgment in light of this admitted failure to perceive weakness in the Soviet Union, his supposed area of expertise, and the way his anti-communist zeal resulted in positions that were more advocacy than analysis?
>
> What about the integrity of the advice he gives the government when one considers the allegations of CIA insiders that during his tenure as deputy CIA Director he slanted reports and analysis to conform to the political views of President Reagan and the late CIA chief, William J. Casey?
>
> What management skills will he bring to the huge $25-billion-a-year agency if there is any truth to charges that he damaged morale and created turmoil in the intelligence sector?

Those are all very central and troubling questions about the nominee and have been addressed in varying detail by many of my colleagues who have spoken on the floor and also in the report from the Select Committee on Intelligence.

This editorial was written as the committee reopened its hearing on the nomination of Robert Gates as Director of Central Intelligence. In raising the questions cited above, the editorial writers had made, it appears, their judgment about Robert Gates because later the editorial concludes, "What the Senate must decide is whether he is the right man to protect this country. We think not."

Furthermore, they came back on November 5 after the Intelligence committee completed action and reaffirmed, in the light of the hearings, their judgment in an editorial headed: "Gates: Less than the CIA Deserves."

And they conclude that second editorial by saying, "We have said before the CIA deserves better than Robert Gates." And in the course of reaching that conclusion, the editorial points, again to the very questions which they raised earlier—his knowledge about the Iran-Contra scandal, the slanting of intelligence analysis to please his superiors, the undermining of the morale of subordinates.

Now, Mr. President, in a like vein, the New York Times has commented about Mr. Gates, first on October 18, 1991, when they said, and I quote them:

> These have not been steller years for the Central Intelligence Agency. Even with the distinguished outsider Judge William Webster in charge, the once proud agency has, at least to public perception, flunked. Who there anticipated the fall of the Berlin Wall, the aggression of Saddam Hussein, the implosion of the Soviet Union?
>
> Nevertheless, President Bush contends he needs an experienced insider and has nominated Robert Gates to be Director of Central Intelligence.
>
> Mr. Gates has done his best to dispel the doubts that forced him to withdraw when he was first nominated in 1987. He has seemed contrite and open-minded and cites his broad experience and future vision. But Senators would do well to consider at least three criteria:
>
> Whether his past performance shows him to warrant their trust * * * whether he has earned the confidence of agency employees * * * and above all, whether he, an insider, is the right person to lead the agency into uncertain times. On each count, Mr. Gates falls short.

Just recently, on November 4, the Times in an editorial entitled "Mr. Gates's Past the CIA's Future" repeated its reservations about Mr. Gates:

> All three reservations about Mr. Gates—his denying knowledge of Iran-Contra, slanting intelligence and winking at reporting re-

quirements—suggest that he is a man used to doing business the old way. Yet a new era requires new ways. The Senate would mortgage the CIA's future to its past and deny Congress's constitutional role of oversight if it confirmed Mr. Gates as CIA Director.

Now, Mr. President, why do we find ourselves having this debate over one of the most sensitive positions in Government. Obviously, one would like to have a nominee to be the Director of the Central Intelligence Agency who was so clearly an outstanding choice that there was virtually no debate and that it went through with the unanimous approval of the Members of the Senate. Instead, we find ourselves wrestling with a nominee whose record raises very serious questions and, in my opinion, reasonable and justifiable doubts.

I wish to address, for just a moment, the standard we ought to be applying to nominees especially to highly sensitive and important positions. One of the assertions made is that nominees to the executive branch are there to assist the President in carrying out his responsibilities for that branch of the national Government, the branch for which he is directly responsible, and therefore the President is entitled to his person unless the Senate finds that person to be disqualified. In other words, under this approach the presumption is with the nominee and the burden is upon the Senate to disqualify the nominee. That approach leads the Senate into a very intense exchange about whether individuals are being treated fairly and justly on a personal level when in my opinion the personal considerations in the sense of someone having to be disqualified in order not to vote for him ought not to be the standard.

Now, that is particularly true when we talk about a critical position such as the Director of the Central Intelligence Agency. With respect to other executive branch appointees, Assistant Secretaries in a department for example perhaps more can be made of the argument that the President ought to have the person he wants to help him run the administration, although I must say, Mr. President, even there it is my view that the standard for passing on nominees has deteriorated badly. It has almost reached the point that unless the nominee is mentally certifiable or criminally indictable there is the presumption that we are supposed to confirm and support the President's nominees.

That is not my view. I think nominees for high public office must make the case as to why they should be confirmed. The burden is upon those advancing and supporting the nominee to show why the nominee ought to gain the consent of the Senate to hold the position. The President's selection of the person is not determinative and it does not shift the responsibility on to the Members of the Senate to demonstrate what is wrong with the nominee. The burden is on those making the nomination to demonstrate what is right. There is not an entitlement to high public office.

I can quite easily take the view that someone is a perfectly fine person, that he has significant abilities, but is not the person for the particular job at the particular time, that he has not carried the burden of demonstrating why he should obtain the affirmative approval of the Members of the Senate.

Will the Senator yield me 2 more minutes, please.

Mr. BRADLEY. I yield 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. SARBANES. I think in this instance, Mr. President, there are sufficient questions about Mr. Gates' past performance, sufficient doubts about his conduct at the CIA that he ought not to be confirmed by the Senate.

I note that he left the CIA in January 1989 and went to a policy position at the National Security Council as Deputy Assistant to the President for National Security Affairs. So he has been very much involved in policymaking and has, in a sense, a vested interest in the policies that have been adopted in the course of his tenure at the National Security Council, a position that he went to from being the Deputy Director of the CIA.

It is not as though he had been at the agency continuously and was now being moved up from the deputy directorship. He has been a major policy player since the beginning of this administration at the National Security Council. This, of course, will only raise again the question that was raised by some of the CIA people at the hearings about his earlier performance in shading intelligence reports, in effect politicizing the agency.

There has been a rebuttal to these charges. I know those supporting him do not agree with the charges, but I do not know that they have yet asserted that the doubts raised by such charges are utterly beyond the framework where reasonable people may draw a different conclusion.

In other words, while people may draw different conclusions from this set of facts, the questions and doubts raised about Gates have a factual basis—they are not being constructed out of whole cloth. There is substance upon which to premise these serious questions that I quoted from the newspaper editorials, which are being raised about the nominee.

Clearly, there is a factual basis for those serious questions. People may draw different conclusions. My own conclusion is that it raises sufficient doubt and questions about that this nominee, particularly given the sensitive nature of the position, that Robert Gates ought not to be confirmed.

Therefore, I will oppose the nomination.

Mr. President, I ask unanimous consent to have the editorials from the Baltimore Sun and the New York Times previously referred to printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Baltimore Sun, Sept. 29, 1991]

REGARDING ROBERT GATES: NO

As Senate hearings reopen this week on the nomination of Robert M. Gates as Director of Central Intelligence, troubling questions continue:

How credible is the nominee when he claims he cannot remember conversations about the Iran-contra affair that are specifically recalled by close associates at the Central Intelligence Agency?

How good is his judgment in light of his admitted failure to perceive weakness in the Soviet Union, his supposed area of expertise, and the way his anti-Communist zeal resulted in positions that were more advocacy than analysis?

What about the integrity of the advice he gives the government when one considers the allegations of CIA insiders that during his tenure as deputy CIA director he slanted reports and analyses to conform to the political views of President Reagan and the late CIA chief, William J. Casey?

What management skills will be bring to the huge $25-billion-a-year agency if there is any truth to charges that he damaged morale and created turmoil in the intelligence sector?

That Mr. Gates carries a lot of baggage in these four important categories—credibility, judgment, integrity and management—is hardly news to the White House or to members of the Senate Intelligence Committee. When he was first nominated as DCI in 1987, his convenient bouts of amnesia about Iran-contra led to his withdrawal. Questions were also raised about the reliability and objectivity of the views he would advance at the highest level.

Yet George Bush, the ex-CIA director-turned president, has chosen Mr. Gates to head his old agency. The question is why? And the answer may lie in the description of Mr. Gates as the "quintessential staff person" by Intelligence Committee chairman David Boren, a Gates backer. For the past three years, Mr. Gates has been on the White House staff as assistant national security adviser. Obviously, the president is comfortable with him.

Perhaps Mr. Bush wants a "quintessential staff person" at the CIA so he can be sure his views for reshaping the post-Cold War agency to emphasize intelligence-gathering rather than operations will be obediently enforced.

Or perhaps, more unkindly, the president likes to stick it to Senate Democrats by offering top-level nominees who are hard to swallow. [Note continuing upset over the nomination of Judge Clarence Thomas to the Supreme Court.]

We have no doubt that Mr. Gates is a thoroughly trained professional who knows the ways of Washington and can be counted upon to protect himself, his agency and the White House.

What the Senate must decide is whether he is the right man to protect this country. We think not. With the collapse of Soviet power, the CIA can no longer trot out the Soviet bogyman on any occasion to justify dubious convert operations or imprudent uses of U.S. resources and prestige. It needs leadership in which intellectual depth, vision and honesty are beyond question.

[From the Baltimore Sun, Nov. 5, 1991]

Gates: Less Than the CIA Deserves

Now that the Senate Intelligence Committee has voted 11-4 to confirm Robert M. Gates as head of the Central Intelligence Agency, it seems likely the full Senate will concur today. If Mr. Gates knew more about the Iran-contra scandal than he confessed, if he slanted intelligence analysis to please his bosses in the Reagan administration, if he browbeat subordinates and undermined morale, apparently more senators don't want to know. They are learning the uses of "deniability," a field in which Mr. Gates is an expert.

One of the key votes in the Senate will be cast by Georgia's Sam Nunn, an influential member of the intelligence panel. In voting tentatively to confirm at committee level, Mr. Nunn came up with this Delphic utterance: "I have serious reservations, primarily about the signal being sent to the men and women in the intelligence community about how you get to the top in this town."

What "signal" did Senator Nunn have in mind? Is it a career-climber's willingness to kowtow to his superiors? That is an instinct hardly confined to the executive branch. Or is it something more specific—Mr. Gates' success in cultivating key members of Congress, especially Sen. David Boren, chairman of the Senate Intelligence Committee?

It is no secret that Senator Boren worked hard to rehabilitate Mr. Gates after he chose to withdraw his first nomination to head the CIA four years ago because of unanswered questions about Iran-contra. The Oklahoma Democrat reportedly made sure Mr. Gates was included in select gatherings and met the best people. One of the reasons, aside from personal chemistry, may have been Mr. Gates' assiduity in briefing Senate and House intelligence panels on CIA activities. Mr. Boren felt he was being leveled with—and said so. Four years ago, Mr. Gates described these efforts and commented that "Congress may actually have more influence today over the CIA's priorities and its allocation of resources than the executive branch."

Oh? That happended to be the time the late CIA chief William Casey and his sidekick, Oliver North, were misusing the CIA in the secret and illegal Iran-contra operation while Mr. Gates made it his business not to know—and, consequently, not to have to inform Congress.

We have said before the CIA deserves better than Robert Gates. If that is not to be, we hope he proves our misgivings misplaced and provides his troubled agency with needed direction. Senator Boren maintains this will require "the most sweeping changes in the intelligence community since the CIA was created almost half-century ago."

[From the New York Times, Oct. 18, 1991]

The Once and Future CIA

These have not been stellar years for the Central Intelligence Agency. Even with the distinguished outsider Judge William Webster in charge, the once-proud agency has, at least to public perception, flunked. Who there anticipated the fall of the Berlin wall, the aggression of Saddam Hussein, the implosion of the Soviet Union?

Nevertheless, President Bush contends he needs an experienced insider and has nominated Robert Gates to be Director of Central Intelligence, a choice the Senate Intelligence Committee votes on today. There are strong reasons to vote no.

Mr. Gates has done his best to dispel the doubts that forced him to withdraw when he was first nominated in 1987. He has seemed contrite and open-minded and cites his broad experience and future vision. But senators would do well to consider at least three criteria:

Whether his past performance shows him to warrant their trust * * * whether he has earned the confidence of agency employees * * * and above all, whether he, an insider, is the right person to lead the agency into uncertain times. On each count, Mr. Gates falls short.

David Boren, the committee chairman, commends Mr. Gates for forthrightness. Yet he overlooks occasions when Mr. Gates helped skew intelligence assessments and was demonstrably blind to illegality. The illegality concerned the Iran-contra scandal. Mr. Gates contends he was "out of the loop" on decisions about what to tell Congress. And he defends his professed ignorance on grounds of deniability—that he was shielding the C.I.A. from involvement. These contentions defy belief.

The testimony of others puts Mr. Gates, on at least two occasions, very much in the loop. He supervised preparation of Director William Casey's deceitful testimony to Congress about the scandal. And one C.I.A. analyst, Charles Allen, says he informed Mr. Gates, before it came to light, of three unforgettable details: Oliver North's involvement, the markup of prices of arms sold surreptitiously to Iran, and diversion of the proceeds into a fund for covert operations. In a telling lapse of his reputedly formidable memory, Mr. Gates could not recall the details when Congress asked two months later.

The second criterion concerns intelligence estimates. Incorrect forecasting should not be disqualifying; estimates can be wrong for the right reasons. But when they're wrong for reasons of political expediency, that's "cooking the books."

The hearings have documented at least three cases of such slanting: a May 1985 estimate on Iran, estimates of Soviet influence in the third world, and assessment of Soviet complicity in the assassination attempt on Pope John Paul II. Mr. Gates has responded to their testimony but not refuted it. He evidently went to great lengths to manipulate the process, because highly reticent career officials testified against him in public. That electrifying development demonstrates how little confidence Mr. Gates enjoys in the agency.

It can be argued that his experience makes him well suited to lead the C.I.A. into the future. As a former Deputy Director and deputy national security adviser, he knows how intelligence assessments are put together and what policy makers need. And he knows the U.S. will not keep spending $30 billion a year on intelligence.

But it is more reasonable to think the agency would be better off with a director unbound by William Casey's dark legacy—the conviction that the agency knows best, a barely concealer contempt for Congress and a belief that anything goes, including evading he law. Reshaping the agency wisely depends on casting off that legacy.

Thomas Polgar, a C.I.A. veteran, urged the committee to consider the message that confirmation would send. Would officials wonder whether it was wise for outspoken witnesses to risk their careers by testifying? Would they say to themselves, "Serve faithfully the boss of the moment; never mind integrity? Feel free to mislead the Senate—senators forget easily?"

By voting no, senators will vote to remember.

[From the New York Times, Nov. 4, 1991]

Mr. Gates' Past, The C.I.A.'s Future

When the Senate votes tomorrow on the nomination of Robert Gates, it will be judging more than his fitness to lead the Central Intelligence Agency out of the past. It will be judging its own fitness to oversee intelligence.

The confirmation hearings did little to dispel doubts that Mr. Gates misled Congress during the Iran-contra scandal. They reinforced suspicions that he tailored intelligence estimates to please his superiors. And they raised questions about his role during the Iran-Iraq war.

Even so, the Senate Intelligence Committee chose to give Mr. Gates the benefit of the doubt, voting 11 to 4 in favor of confirmation. That vote sends and unfortunate message: Instead of overseeing intelligence, the Committee chose to look the other way. Now it's up to the Senate to confront Mr. Gates's past and say he's not fit to lead the C.I.A. into the future.

The Iran-contra question is simple. Did Mr. Gates know about the illegal diversion of proceeds from arms sales to Iran to the Nicaraguan contras? In 1985 and again in 1987, he told Congress he knew nothing about it. He clings to his story—despite evidence that he was warned about it in some detail by subordinates.

Charges that Mr. Gates slanted intelligence assessments, leaving Congress in the dark and more amenable to Administration policy, stand unrefuted. He now acknowledges suppressing dissent to a 1985 intelligence estimate justifying the covert sale of arms to Iran.

Then, when he was accused of "killing" estimates that showed waning Soviet activity in the third world, he obliquely acknowledged that he "may have found a specific paper inadequate."

Further, Mr. Gates distributed an assessment making the case for Soviet complicity in the attempted assassination of Pope John Paul II and endorsed it, enthusiastically, as "the C.I.A.'s first comprehensive examination" of the issue. A C.I.A. post-mortem found that "no one at the working level other than the two primary authors of the paper * * * agreed with [its] thrust."

The hearings left another question dangling: did Mr. Gates play a role in suspected intelligence-sharing and arms transfers with Iraq? The C.I.A., the committee concludes, shared vital intelligence with Iraq during the Iran-Iraq war and failed to report it to Congressional intelligence committees, as required by law.

A related question, let unanswered and still troubling to some senators, was whether the C.I.A., which is supposed to monitor suspicious arms deals, looked the other way while U.S. companies unlawfully armed Iraq as well as Iran.

All three reservations about Mr. Gates—his denying knowledge of Iran-contra, slanting intelligence and winking at reporting requirements—suggest that he is a man used to doing business the old way. Yet a new era requires new ways. The Senate would mortgage the C.I.A.'s future to its past and deny Congress's constitutional role of oversight if it confirmed Mr. Gates as C.I.A. director.

Mr. BOREN. Mr. President, I yield 15 minutes to my colleague from New Hampshire, Senator RUDMAN.

Mr. RUDMAN. Mr. President——

Mr. COHEN. Will the Senator yield for a question or two?

Mr. RUDMAN. I am pleased to yield to my colleague from Maine.

Mr. COHEN. Mr. President, earlier, a suggestion was made that Mr. Charles Allen had presented some detailed references to conversations he had with Mr. Gates, and Mr. Gates did not recall in great detail all of those particular references.

I notice in the committee report at the top of page 14, there is listed the items that Mr. Allen alleges he told Mr. Gates in their October 1, 1986 meeting. It is my understanding of the evidence that Mr. Allen presented some testimony on prior occasions back in 1986 and 1987, and in those prior statements, he neglected to mention the items marked letters C, D, and E in the committee report.

On the bottom of page 14, Mr. Allen, when asked about these disparities, said he had more "time to reflect and think clearly" about this meeting.

My question to the Senator from New Hampshire, who had vast experience in trying many, many law cases: Does he not find that one's memory tends to be fresher closer to the events, rather than 5 years after the events?

Mr. RUDMAN. Mr. President, I think that is absolutely correct. But what this particular hearing demonstrated to me was that when you expose potential witnesses to an incredible amount of data, some of which they were unaware of at the time of the event they being questioned about, they have marvelous recollection.

There is a problem in determining what they really knew at the time, which I do not think we were able to find out from Mr. Allen.

Mr. COHEN. I thank the Senator.

One more point. Again, reference was made to the fact that Mr. Gates did not look at Colonel North's notes or diary. The Senator from New Hampshire had occasion to serve on the Iran-Contra Committee, as several of us had that opportunity. Did he not find that those notations would not have carried very much relevance in terms of the inquiry, because they found that the notes were embellished from time to time on the part of Colonel North?

Mr. RUDMAN. I do not think there is any question but that the only person who could understand precisely what the diaries meant was Colonel North himself.

Mr. President, I want to start out by saying that this hearing took place virtually contemporaneously with the Thomas hearing before the Senate Judiciary Committee. The events were taking place virtually simultaneously. And for that reason, there was not as much public attention on the Gates hearing that I think we would have seen otherwise.

But there is no question in my mind that several important things came out of that hearing—and it was run remarkably well, efficiently, and in an extraordinarily bipartisan manner. People were courteous on both sides and tried to get the truth. One important thing that came out of that hearing is this: It is probably impossible to serve this Government in major positions over a period of 20 to 25 years and be able to come before a Senate committee for confirmation to a Cabinet-level post with clean hands.

I also have come to the conclusion that if one serves here in this body for 12 years—in the atmosphere in which we are operating, no matter how extraordinary and exemplary that record might have been over those 12 or more years—it would be virtually impossible to run in a political campaign in the atmosphere that we now run in a hearing. If we did, much of your constituency would think that you probably did a majority of very bad things during your 12-year period.

The fact is that these hearings have become a forum not only for examinations of policy and of background, but to a large extent, an excruciatingly painful examination of what you remember and when you remembered it. It is governed to some extent by guilt by association, and to a large extent an impugning of one's integrity and character, based on only a microcosm of the service you have rendered your country. To some extent, I think that is what happened in these hearings.

I am not going to take a lot of time today to go over all of the evidence. I think people have heard it, and people will be able to make up their minds. I simply say this. On the Iran-Contra affair, which has been the subject of comments of at least eight Members of the Senate in relation to this nomination, I want to make clear on the floor what I made clear at the hearing: there are two separate events—the sale of arms to Iran, and the illegal diversion of funds to the Contras.

The former, although incredibly ill-timed, and incredibly stupid, was legal. It was the subject of a finding of the President of the United States, and the CIA was directed to carry out whatever portion of those duties it had to carry out, as was DOD.

But during these hearings, people attempted to charge Bob Gates with knowledge of that, as if there was something improper about him having knowledge about the sale of arms. Of course, he had knowledge of that affair. He was in a position of importance at the CIA. Part of the time he was Director of Intelligence; and part of the time he was Deputy Director of the Central Intelligence Agency. He had great knowledge of that, and vehemently disagreed with the policy.

The second part of Iran-Contra which would be the smoking gun, concerns knowledge of the diversion of funds to the Contras. I was glad to hear the majority leader say that he did not draw a definite conclusion from the evidence that we had, nor was he in fact attempting to have a guilt-by-association factor. I know the majority leader to mean what he said. That is a fair conclusion.

But others have indicated that, because he was informed about the diversion on the first of October 1986, roughly 47 days, I believe, before it became public to the world, that somehow this brought Mr. Gates into the clan, if you will, of the Contra part of the Iran-Contra affair.

That is ludicrous. What did Bob Gates do at the time? I think he did what most deputies would do. He told Mr. Allen to prepare some information. By Allen's own testimony, he delayed that 7 or 8 days. When it was completed, he said: "We will take it to Director Casey, and then we will take it to the General Counsel." What else was he supposed to do? Some suggested he should have gone to the President of the United States.

I have to say, Mr. President, that I do not know too many deputies of agencies in this city discovering information, short of treason, that would go to the President of the United States and say: Mr. President, I have something I want to tell you.

There may be a few, but that is not the real world. To accuse Bob Gates of not going to the President is grossly unfair. I want to leave these charges about Iran-Contra, what he knew and what he forgot and move on to other areas.

Incidentally, he was charged by some in our committee of not having perfect recollection of things that happens 5 years before, and in his previous testimony in 1987, events that were 18 months before. I defy any of my colleagues to do an experiment with me. Take your calendar not from 5 years ago or 18 months ago; I want you to take it from 2 weeks ago. Take one appointment on your calendar with someone of significance, and you tell me what happened in that meeting. I guarantee you from my own experience that when you go to the person who was there, one of you will leave something out or have a different interpretation of the meeting.

But our committees demand instant, perfect recollection from all witnesses. If you don't have it, you are either lying or you are holding back. It is not fair.

Let me talk briefly about this whole issue of politicization.

I thought the most remarkable part of those hearings was the closed session we had, I believe it was on a Wednesday evening, in which we heard the most damaging testimony from one witness in particular. The other two witnesses were interesting, but I did not find their testimony particularly probative because in neither instance was it first hand. But as to this one witness, it was first-hand testimony.

We all became alarmed by that testimony. There was unanimity amongst Republicans and Democrats that this testimony was so important that we must make it public because it was not classified. The portion of it that was, classified we would get sanitized.

The following Monday or Tuesday—I forget the date—we had an open session. Remarkably the witness that had given the most damaging testimony against Mr. Gates in closed session, never expecting that testimony to see the light of day—and that is very, very important—this individual went before this committee in a closed session and no one had reason to believe that testimony ever would become public. And it did go public and guess what? The testimony changed. Some of the most serious charges were left out.

I will not detail all of it, but let me just give you one example. In respect to the witness, I will not use names. Senators, who will vote today, know who I am talking about. The witness made an accusation in the closed session that William Webster, one of the men with the greatest amount of integrity that I know in this city—a man who is unchallenged by anyone as to his integrity and the verity of what he says—did not trust Bob Gates and was having investigations done. The witness testified to Bob Gates' politicization of the agency, and that Judge Webster was working around Gates. He was insulating Gates from certain information. The witness made the flat-out statement that Judge Webster gave instructions that Gates was not to be told about an investigation on politicization.

I will tell you, Mr. President, when I heard that, as I sat at the hearings, my hair kind of stood up a little bit and I felt a little tingle. I said if that is true, this nominee has a big problem because Bill Webster knows something we do not know, we have to call him as a public witness. I called the former Director the next morning, and this was his first day in private life, and said, "Bill, a witness has said 'thus and so.' I have no idea, anything about it, but it is important that you respond to it. I am having delivered to you a transcript of that portion that was unclassified, a portion of that statement that he gave that relates to you. I do not care what you do, but please check it out, write back to me, and I will share it with the committee." And he did.

And the bottom line was that there was not a shred of truth to what this witness had said.

I read it to the witness at that hearing, and asked him if he would like to correct the record, because Mr. Webster has now said that that is not true. And, by the way, the witness' statement was that it was based on hearsay; he did not know of that of his own knowledge. He refused to correct the record. He said, "I have my opinions," to which I simply responded that he was entitled to his own opinions but not to his own facts.

I make that one point for this reason: There was something fundamentally wrong with some of the testimony that we listened to on such an important matter. It threatened the integrity, the basic honesty of this public servant. It was based on hearsay, based on innuendo, based on rumor. This was the panel that could have been the killer panel to the Gates' nomination. Had we not been fortunate enough to do some scrambling the next several days and found out that what many of the witnesses had said was just basically either not so, or subject to different interpretation or rebuttable, then we might not be on this floor today.

Bob Gates has made some mistakes in his life, mistakes of judgment, not mistakes out of malice, or being devious. He has made mistakes which all of us make in life, and I would call these, mistakes of nonfeasance. But one must remember with respect to William Casey, who is now deceased, Bob Gates was in fact his deputy during much of this period. There is no question in my mind that that had to be one of the most difficult assignments of any deputy to any Cabinet level officer in this town. Nonetheless, to charge Bob Gates with anything that Bill Casey may have done is grossly unfair.

Mr. President, there is a lot more I could say about the activities of some of the people within the agency both for and against Bob Gates.

First, I do not believe people who work in a Government agency ought to try to influence the outcome of a nominee who would be their boss. I think that is incorrect and I will talk about that at some other time.

Second, I want to say that there is no question in my mind that there is no one I know—other than Admiral Inman, who has not been nominated—who has the capacity to do what must be done at the CIA over the next several years. As the defense budget falls—and it will fall precipitously in my view—so will the CIA budget fall, particularly in the area of covert operations. We will need a careful reorganization by someone who understands it, who has spent a lifetime there and has the confidence of most of the people there. And I must say that in conversations I have had with many people, I believe Bob Gates has the confidence of the majority of people who work in the Agency.

More importantly he has the confidence of the President of the United States who feels that Bob Gates has told it to him as it is, not as Bob Gates would like it to be. He is a man with a distinguished career of public service who has served his country well.

Many of us know him and have worked with him. I also rely on the opinions of the chairman and on Senator COHEN, who was then the vice chairman. There was a refreshing new relationship they had with the CIA during the period that Bob Gates was the Acting Director.

Mr. President, I am pleased and proud to stand up for this man who I think has been unfairly and unjustly accused, and I will vote to confirm Robert Gates to be the new Director of Central Intelligence.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New Jersey controls 1 hour and 18 minutes.

Mr. BRADLEY. I yield 5 minutes to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington, Mr. ADAMS, is recognized for up to 5 minutes.

Mr. ADAMS. I thank the Senator from New Jersey.

Mr. President, I rise today in opposition to the confirmation of Robert Gates to be Director of Central Intelligence.

I have reviewed the testimony before the Senate Intelligence Committee. I have reviewed the record of the Iran-Contra hearings, and in particular I have reviewed the findings of Senator KERRY's 1988 subcommittee investigation into drug trafficking, law enforcement, and U.S. foreign policy, a committee in which I took part and an investigation in which I was deeply involved.

Even after the Iran-Contra investigation and the lengthy confirmation hearings, there still is a lot we do not know about Mr. Gates. And I am troubled at what I have learned during the course of the hearings that Senator KERRY and I and others were conducting on drug trafficking in Central America, and the involvement and the lack of information that moved on what the CIA knew and was doing and was not prevented during the tenure of Mr. Gates.

The extensive record that we have here raises some serious questions which have been gone into in great length by others on this floor, but I wish to mention them once again to indicate the concern that I have and why I oppose Mr. Gates.

Questions about Robert Gates' knowledge of Oliver North's secret supply network to funnel Iranian arms sale profits to the Contras. Questions about why Mr. Gates now admits that he should have examined more closely the privatization of U.S. covert activity. Questions about his judgment regarding Soviet military power. Questions about his ability to recognize the new, emerging threats to U.S. security. Questions about the spin he sought to impose on intelligence analyses.

I am especially troubled by Mr. Gates' apparent forgetfulness during his testimony because of the evident depth of his memory in other areas. He is obviously an extremely bright and meticulous man. Retired CIA analyst Harold Ford has testified that he knew Gates to have an almost photographic memory. Yet, Mr. Gates testified that it is not unreasonable for someone to forget events that were not written down. That seems entirely too convenient to me. Or, as Mr. Ford terms it, too clever.

It appears Mr. Gates' cleverness led him to slant intelligence information in order to conform to the particular policy agendas of his boss and mentor, William Casey.

I have heard stated on the floor today, as I was listening to this debate, that he believed the same thing about the Soviet Union. Well, if this was the point that was trying to be made, that he was the same as Mr. Casey, and they therefore, gave us a false impression of the Soviet Union and its power, then it is just another reason that he should not be leading the Central Intelligence Agency during this period of change.

Because such actions are a direct threat to U.S. national security. They place in danger the lives of millions of American men and women who serve our country in the military, foreign service, and other official capacities overseas.

The Senate Intelligence Committee chose to investigate four instances of such alleged slanting. These are a 1985 intelligence estimate maintaining that the Soviet Union was gaining influence in Iran; a 1985 memorandum arguing that the Soviets were behind the attempted assassination of the Pope in 1981; a 1986 speech by Mr. Gates which advanced the case for the strategic defense initiative; and a series of Inspector General reports exploring charges of politicization in the Agency's Soviet division.

The hearing record in all four areas—and those four areas are by no means inclusive—points to a dangerous melding of intelligence and policymaking under Robert Gates' watch.

In the Iran memo, Mr. Gates squelched the differing views espoused by the State Department in order to reverse United States policy and send arms to so-called Iranian moderates.

Gates himself now admits the memo about Soviet complicity in the attack on the Pope was based on flimsy evidence. Yet, Mr. Gates' cover memo forwarding it to the President stated that the intelligence review had been comprehensive. In fact, an internal review denounced the report as being skewed some months after Gates sent it to the President. It did, however, support William Casey's theory that the Soviet Union was the cause of most United States foreign policy conflicts—and that seemed to be enough for Mr. Gates.

Mr. Gates also now admits that public speeches by the Director of Intelligence or other senior intelligence officials—such as the one he made supporting the need for SDI—are probably unwise because they give the impression of advocating specific policies. He has vowed not to make any speeches if confirmed. I hope this is true.

The charges of politicization, intimidation, and demoralization among analysts—particularly in the Soviet field—are compelling. After all, even Mr. Gates has expressed worries about politicization. I believe the testimony heard by the committee and the comments by Gates himself give credence to the accusation.

Although charges of politicization are difficult to prove, intimidation and demoralization are not, and they can lead to the same ends: Skewed intelligence assessments. The ideological climate that Casey and Gates created led analysts to change their assessments before they were even submitted. Knowing what was expected of them and afraid to challenge their superiors, analysts changed their reports to conform to the team position.

This activity is the most threatening to U.S. national security. Robert Gates was in large part responsible, in his capacity as Deputy Director of Central Intelligence and head of the Agency's Intelligence Analysis Division. A man with such a record would hardly seem to be an appropriate choice to lead the CIA. This is particularly true in view of the dramatic reforms that must soon be undertaken in our intelligence system.

I am concerned that an intelligence community led by Robert Gates might miss the new threats that are challenging our security. The early identification and analysis of these threats and the reorganization of our intelligence agencies to counter them will be the primary challenge of post-cold-war intelligence.

Mr. Gates' record in this area is not impressive. One of the most important emerging threats to our security and, indeed, to the security of our hemisphere is the growth of drug trafficking and the accompanying spread of narcoterrorism. Yet, the Kerry subcommittee investigation discovered that during William Casey's tenure—when Robert Gates was a senior intelligence officer and even Casey's executive assistant—U.S. intelligence systematically turned to blind eye to drug trafficking being carried out through the CIA covert supply networks and by those on the CIA payroll. The administration's overriding and exaggerated concern over the potential spread of communism in Central America led U.S. intelligence, in turn, to downplay other threats to our security from the region.

A similar charge can be made about the portrayal of the Soviet threat under Gates' watch. In 1983, when Gates was Deputy Director for Intelligence, he testified before a congressional panel that CIA analysts had overestimated Soviet military spending. According to Raymond Garthoff, a friend of Gates', Gates told him that he had presented his analysis without checking with his superiors. Yet, this was precisely the time when the Reagan administration was hyping the Soviet threat. And when Gates became Deputy Director of Central Intelligence, he gave great emphasis to Soviet space capabilities, while downplaying intelligence that ran counter to that assertion.

Robert Gates is not the right candidate for the vital reform of U.S. intelligence agencies that will be required in the coming years. The entire focus and mission of U.S. intelligence has shifted. No one has yet articulated what that shift will mean in terms of the operational and philosophical role of the CIA. That job waits for the new Director of Intelligence. It is a task of enormous significance and importance for our country.

Robert Gates is a Casey man. He represents the traditional intelligence mentality, forged in the cold war climate of the postwar period. He is a conservative ideologically and he is a conservative professionally—the consummate good bureaucrat.

Robert Gates has testified that, when he began to have serious concerns about the manner in which the Agency was approaching the Soviet Union—when he began to question whether in fact the Agency might be missing major political and economic developments within that country—he wrote a memo. However, he went no further in pressing his views because he was fearful he might step on someone else's toes.

President Bush has placed great emphasis on the fact that Robert Gates is a career intelligence analyst. He apparently believes this is sufficient to qualify him to lead the CIA into the post-cold-war era. On the contrary, Mr. Gates is too closely associated with the mistakes and the politics of the past. What is more, I am concerned that, just as he slanted intelligence estimates to meet Casey's policy standards, he is now saying what he thinks the Senate wants to hear. U.S. security and intelligence deserve a strong, new voice. A voice that can both assess accurately the incredible changes that are sweeping the globe and fashion an intelligence system that will serve adequately U.S. interests in this post-Communist age.

For those reasons, I will vote against the confirmation of Robert Gates to be Director of Central Intelligence.

The PRESIDING OFFICER (Ms. MIKULSKI). Who yields time?

Mr. SIMPSON. Madam President, I yield myself 10 minutes from the proponents.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator may proceed.

Mr. SIMPSON. I thank the Presiding Officer.

Madam President, I wish to speak in support of the nomination of Robert Gates to be the Director of the Central Intelligence Agency.

President Bush has nominated Robert Gates because he believes deeply in his abilities to lead the CIA. The confirmation hearings conducted by the Intelligence Committee have dealt effectively with every single issue raised by his opponents.

And I want to acknowledge the chairman and the ranking member of the committee. They have done a superb job, in a very fine bipartisan way, to present this issue before the Senate. I commend Senator BOREN, Senator MURKOWSKI, and the members of the committee in doing that in a very able way.

In the final analysis, the hearings have proven that Robert Gates is a sound, sensible, reasonable, and competent nominee.

Over the past 2 years, the world has been rapidly changing. We need someone like Robert Gates at the helm of the CIA in order that the intelligence community can adapt swiftly to those changing circumstances.

It has been my personal privilege to come to know Robert Gates. I met him many years ago. He and his very lovely wife, Rebecca, and mutual friends joined us together in several social activities and I came to know the essence of the man.

He is a delightful gentleman, a man who listens, a man who will share with us the information, all of the information he can, as he takes on this role of critical importance. And he does it all with great good grace and humility and a very delightful sense of humor, a twinkle in the eye, if you may refer to it.

I particularly recall an evening when he was telling me about the fact that he was telling a neighbor, whom he was speaking with—his wife was working in the District of Columbia schools and he had a cover in the Agency, of the CIA, and his cover was that he was in the Naval Munitions Operation. He went to a reception where his wife was teaching at one of the district schools in Washington, and a fellow in the course of the evening said, "Well, what do you do?"

Bob Gates said, "I work for the Naval Munitions Operation."

The fellow said, "Well, so do I. Isn't that something?"

Then the fellow said, "What is your office number?"

"Well," he said, "my office is 242 in Building A-H."

The fellow then said, "Well, for heaven's sakes, they tore that wing down."

Then Bob was quite nonplussed and he said, "Well, I really don't get to the office too often."

So anyone with that view of his cover and the world perhaps can bring a dimension.

The Soviet Union is obviously no longer the military threat that it was. However, the Soviets continue to step up their efforts with regard to industrial espionage and the gathering of technical secrets.

That is disturbing to many of us as we wish them well as they go about their reconstruction and rehabilitation and renewal.

We also need good intelligence regarding rapidly changing events in the Soviet Union. The political situation is evolving rapidly and there is a great deal of instability with regard to the relationship, obviously, between the central government and the Republics. Robert Gates is just the man that can pull together the accurate and firm information we need about the Soviet Union.

We also need good intelligence about China. China continues to disappoint us—to sell arms to radical Third World governments. We need to know if the Chinese are passing on secrets about nuclear weapons programs and we need to know what is happening in China. Here again Robert Gates will be a very credible leader in providing intelligence about these events.

Some of Mr. Gates critics have tried to indicate that he was involved in the Iran-Contra affair. We now know that he was not deeply involved in helping to conceal that diversion. Mr. Gates admits that he should have taken more aggressive action in investigating this matter, but he has always fully cooperated with Congress with regard to all affairs relating to the intelligence community.

Some of his critics have insisted that he politicized intelligence reports and only reported what the President wanted to hear. I believe what really occurred was a simple difference in opinion on the part of CIA analysts and Mr. Gates. The confirmation hearing process made it clear that what was involved were personalities, philosophies, and individual biases. Not the slanting of intelligence.

Other critics of Gates have tried to indicate that he was involved in preparing false testimony before Congress for Bill Casey, the former Director. However, the facts clearly indicate that Robert Gates has not engaged in misleading Congress by preparing misleading or false testimony.

It is so very important that any CIA Director be independent and objective and that he have a good grasp of the technical minutiae involved in intelligence reports. I believe Robert Gates has all of these remarkable attributes and would be an outstanding CIA Director.

President Bush has previously directed the CIA and, indeed, did a marvelous job of that in another role in Government. He fully understands the intelligence-gathering process. And he fully understands the necessity for this Director to fully communicate with the Congress.

So I think the President's selection of Robert Gates to be the new CIA Director is based upon a good understanding of what is expected of this man by those of us in Congress, those on the Intelligence Committee, those within this Nation and internationally. For all of these reasons and many, many more, I believe we should certainly support this nomination. And I am very certain that we will not be disappointed.

The PRESIDENT OFFICER. Who yields time?

Mr. BRADLEY. I yield 15 minutes to the distinguished Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. FOWLER. I thank the Senator from New Jersey and my colleagues.

Madam President, I rise in opposition to the nomination of Mr. Robert Gates as CIA Director. I was a charter member of the Intelligence Committee in the House of Representatives and served for 8 years in that capacity, most of which time I was the chairman of the Subcommittee on Oversight. And based on that experience, I absolutely believe that a strong and effective intelligence community is essential to our national security.

In fact, a first-rate, or crack intelligence corps is our first and most effective line of defense, in my opinion. All the missiles and military capability in the world do not do us a bit of good if we are not prepared for the specific threats that we face. What good is a 600-ship Navy if we cannot get the right ship to the right place at the right time? How can we make the right decisions about fighting terrorism or combating nuclear weapon proliferation without timely and accurate intelligence information?

During my years in the Congress in both bodies, I have voted for the highest feasible funding of our intelligence operations, simply because they are so crucial to our country. And two of my most treasured awards—though undeserved, I might add—are from my years serving and working with the Intelligence Committee, those awards received from the Central Intelligence Agency, and the National Security Agency.

Thus, it is with some degree of reluctance that I rise to oppose the nomination of Mr. Gates to be the Director of Central Intelligence. But it is precisely because of the importance I attach to our intelligence operations that I oppose his nomination. The reason, in short, is my belief that he is the wrong man to lead our intelligence community at the present time.

It seems to me, at a time when the world is rapidly changing, requiring creativity and the challenging of previous assumptions, we need a Director of Central Intelligence who will foster and support such a creative approach within our intelligence agencies. In such a time, loyalty to the truth is far more important than loyalty to the President.

The Iran-Contra hearings exposed the worst that can happen when our intelligence system is compromised by political shenanigans. The agencies charged with gathering intelligence cannot and should not create policy. The President and the Congress share the responsibility for the foreign policy of the United States. And we must not allow the intelligence community to serve as agents of collection or of corroboration of the policies of any administration. Again, loyalty to the truth is more important than loyalty to the President, any and all Presidents.

I hope we never again have to sit and listen, as we did during the Iran-Contra hearings, to an intelligence official totally misrepresenting the strategic facts of the Iran-Iraq war in order to excuse a policy of arms sales to Iran for which there was no justification.

Though this was done in full support of the official administration position, the results were tragic, as we have seen, for everyone.

When our intelligence is compromised in this fashion, we not only fool ourselves, we hurt ourselves. We also hurt our allies who depend on us. And most important, we compromise our own decisionmaking process, cheating the American public in the process.

Intelligence reports skewed to the predispositions of our political leaders can serve to advance careers and build up loyalty from those leaders. And sometimes a proverbial "kick in the pants" of any bureaucracy, including that of the intelligence community, in the form of a challenge to conventional wisdom, seems to me to be a good thing.

But developing a climate where the conclusions come first and the evidence is then collected to support those conclusions is assuredly not a good thing; it is indeed a dangerous thing when the stakes involve the fate of nations.

Such a climate leads to tilting to Iraq or then to Iran in a war that should have had no favorites from an American perspective. It leads to overestimating the strength of both the Nicaraguan Sandinistas well as their Contra opponents and underestimating the threat from terrorists in Beirut and from Saddam Hussein.

By and large, thankfully, our country's overall intelligence capabilities are impressive. We do have a dedicated, professional, and competent intelligence community. Our technological sophistication is unmatched and, on the whole, our human intelligence network is adequate. We do have analysts who are capable of great insight.

But we also have experienced, in recent times, several significant intelligence failures spoken to in great detail and with great authority by the Senator from New York [Mr. MOYNIHAN], and the Senator from New Jersey [Mr. BRADLEY], as well as a general decline in morale among our intelligence personnel. When one adds to this the unprecedented challenge to American intelligence posed by the dramatic and rapid change in the world order, it is clearly a time when the American intelligence community needs the very best leadership possible.

I served on the Intelligence Committee, as I mentioned before, Madam President, during the months that Mr. Gates was Deputy Director of the CIA. I do not think it is overall helpful to try to cite chapter and verse my experience with the stress in that high capacity for many reasons, not the least of which most of what was done involves classified information. But I can tell you that after a review of my notes, my own recollections, and a review of the record made in the exhaustive hearings by the Senate Intelligence Committee under the capable leadership of Senator BOREN, I simply do not find Mr. Gates' testimony credible in many regards.

The Robert Gates I remember prided himself on an extraordinary memory. The Robert Gates that I remember made us all believers in his extraordinary memory. To use only the examples listed by the majority leader earlier today where that memory now finds itself faulty is beyond this Senator's credulity.

I have the greatest confidence that our intelligence agencies will be able to rise to the challenge that now faces us in an extraordinarily changing world. We need a Director who is not part of the policy of the past, who is not challenged on his role in policies of the past, and who will provide the kind of leadership that is so desperately needed on behalf of our intelligence community and on behalf of our Nation.

I do not believe Mr. Gates is the man for that job. It is on that basis that I oppose the nomination. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. Madam President, I yield 15 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio may proceed for 15 minutes.

Mr. METZENBAUM. Madam President, yesterday I spoke to the deficiencies in the record of Robert Gates.

I believe that those deficiencies warrant the Senate's rejection of his nomination to be Director of Central Intelligence.

Near the end of that statement, I said that "The CIA needs a leader now who can take it from turmoil to triumph," and that "I think Mr. Gates is the wrong person to whom to give that task." Today, I want to discuss the CIA's turmoil and the path that U.S. intelligence must take if it is to meet the challenges of tomorrow.

The future is never fully predictable, and the recent past has been filled with surprising events. But some trends for the future of U.S. intelligence seem clear.

First, the end of the cold war brings a need for major revisions in intelligence priorities. Too many intelligence resources, both human and technical, are devoted to the Soviet military.

Second, the end of the cold war brings a need for greater adaptability in U.S. intelligence. For a generation and a half, the threat of nuclear war held countries back from the brink and fostered an ordered world with rigid alliances. Today, countries' alliances are based more on what each has done for the other lately. There will be more crises and more surprises in the future, and we must reorient U.S. intelligence to deal with them.

Third, U.S. intelligence must adjust to these changing times with lower budgets. Mr. Gates agreed with the committee that intelligence budget cuts are inevitable, whether he wants them or not.

For the next Director of Central Intelligence, then, the challenge will be to do more with less. In human terms, the challenge will be to take an institution that has grown and prospered with a clear mission in an ordered world, and reorient it to a new world disorder.

How shall this be done? And who shall do it? Basically, Madam President, there are two approaches one can take. One is a top-down approach, in which the leader lays down the law.

Robert Gates ruled in the top-down style as Deputy Director for Intelligence between 1982 and 1986. He berated his analysts for "analysis that was irrelevant or untimely or unfocused or all three;" He berated them for "closed-minded, smug, arrogant responses to legitimate questions and constructive criticism;" and he berated them for "flabby, complacent thinking and questionable assumptions."

I can hardly believe that a person who has used such language with respect to his subordinates can expect to bring the team together and mould that new operation. Those are not the kind of words a leader uses when he is trying to really bring about an esprit de corps.

But that is not Mr. Gates's only problem as a leader. Mr. Gates set himself up as the personal editor of all analyses that went to high-level policymakers and he rejected analyses as much on substantive grounds as on grounds relating to their rigor or their presentation. And no matter how you slice it, no matter who the individual is, you cannot have a one-man team heading up the CIA.

Not only did Mr. Gates have problems as far as the work of his analysts was concerned, he also had a role in easing out several midlevel managers who opposed his views. He placed like-minded analysts in managerial positions within the intelligence directorate. And when existing institutions could not do all that he wanted, he supported the creation of new ones—new offices within the intelligence directorate, new managerial levels within existing offices, and new centers to focus on topics of particular concern.

Mr. Gates' impact has been mixed. Many current or former analysts have told the Intelligence Committee that his efforts led to self-censorship and intelligence failures. Internal CIA investigations cited his multilayered analytic bureaucracy for imposing much of that self-censorship, whether Mr. Gates intended it or not. And new centers, even if they do good work, can conflict with missions performed by regular analytic and operational offices.

Centralized top-down leadership produces as many problems as it solves. We may beat swords into plowshares, but people are flesh and blood and emotion, not iron or steel. Beat them into submission and they will only become sullen and fearful, neither enlightened nor enlivened.

Yet, Madam President, there is another way and we may call it humane management. By this I mean leadership whose goal is to bring people together rather than to kick them along. This approach to management is especially useful when people must be retrained or reoriented to handle new challenges, as they must today.

Change is never easy. Our intelligence officers grew up, were educated, and began their careers in the cold war. For them, as for many of us, the new world disorder will be profoundly unsettling and confusing. They will suffer crises of confidence as they learn new skills and apply themselves to new subjects.

In the new world disorder, U.S. intelligence needs leadership, not authoritarianism. We need a new intelligence system based on a corps of self-confident officers with the flexibility to adjust to changing conditions. They must handle new topics and bring more substantive expertise to their work. They must get out of the diplomatic cocktail parties and into the real world.

We must liberate intelligence analysts from multilayered bureaucracy that stifles their creativity. They need a much more flexible work environment. they need cross-training, so they can move readily from routine assignments to special ones in a crisis. They need broader competence and broader responsibilities. Frankly, we can cut the layers of bureaucracy, reduce the number of analysts and get better analysis for less money, if the CIA has the right leader.

Can we do that with Mr. Gates' management style? He cited his tutelage under Judge Webster, who emphasized allowing those affected by change to help design the new approaches. That was a side to Mr. Gates which I was pleased to observe.

But when we asked Mr. Gates about his past actions as a manager of intelligence analysis, he reverted to his old form. He denied any errors in his past. He repeated his negative characterizations of dissenting analysts.

I do not doubt that Robert Gates will try to administer the CIA and the rest of the U.S. intelligence community in new ways. Can he do that? I do not know. But I am concerned that his old ways are too ingrained to be that readily changed.

I also believe that Mr. Gates has antagonized and frightened too many intelligence professionals to regain their trust and active support. And it is precisely in this time of wrenching change that people's confidence must be built up, rather than beaten down. We need a leader who can motivate his team to pull together.

If we look at great business successes, both in America and throughout the world, they were not obtained by orders from above. Those successes came through creating a supportive environment in which new ideas were encouraged and professionals were given the leeway to work on them, even though some of those ideas would fail.

What we need today is a leader for U.S. intelligence who will not just make the tough decisions, but also encourage other intelligence officers to pursue their ideas—rigorously and subject to peer review, but also with the sale-confidence that comes from knowing their boss will stick with them.

I ask my colleagues to think hard about what sort of intelligence community they want in the coming years, and I ask them to consider not just Mr. Gates's experience, but the character of that experience. Will that experience lead to creative leadership, or will it be baggage that weighs him down as he strives to refocus U.S. intelligence?

I am intelligent enough to know that Mr. Gates is going to be confirmed this afternoon. He will be confirmed by a rather substantial margin. I wish him well in his new responsibilities. But I hope that he will take stock of some of the problems he has had in the past. He is intelligent enough to understand himself and his past role at the CIA. I hope he will become the kind of leader that will make all of us proud to have him at the head of the CIA. I wish him well. I sincerely hope he succeeds.

My vote will be not to confirm him; but notwithstanding that, I know he will be confirmed. And I am hopeful he will become the great CIA leader that I know everyone in this body, whether they vote for him or not, wishes him to be.

Mr. President, I yield the floor.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BOREN Madam President, I yield 8 minutes to the distinguished vice chairman Senator MURKOWSKI.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Senator.

Madam President, I think it is interesting to reflect, as we wind up the debate on the Gates nomination, that we have within the Intelligence Committee a 15-man committee made up of 7 members of the minority and 8 members of the majority. It is also interesting to note, Madam President, that the vote out of the committee was a resounding 11 to 4. That was made up specifically of seven Republicans and four Democrats.

A particular note of gratitude must be passed to the chairman, Senator BOREN. I have enjoyed working with him throughout the year, and I think all Members have indicated in their recitations that the hearings have been fair, the hearings have been bipartisan, the hearings have been comprehensive, enlightening and, I might add, somewhat exhausting.

I commend Senator BOREN for his leadership and his vision. I commend the professional staff, which has worked so hard on both sides, for their diligence and thoroughness.

Madam President, my closing statement is going to be brief. We have heard some claims that Mr. Gates should not be confirmed because he imposed his personal views on the CIA and then he represented them as the views of the institution and its analysts.

As former Deputy Director John McMahon told the committee, if Mr. Gates or anyone else actually tried to impose his personal views over the objections of most analysts. There would be a revolt among the analysts, who are indeed a strong-minded group who are not going to be trampled on by Mr. Gates or for that matter, anyone else. I believe we diminish the independence and the intellectual integrity of this group of professionals if we argue otherwise.

Other have said that we should not confirm Robert Gates because the CIA was wrong about the Soviet Union, and that Mr. Gates was somehow to blame. In fact, the record shows that Robert Gates and others at the CIA, as early as 1981, outlined the inherent instability and potential implosion of the Soviet economy.

Others claim that Mr. Gates should not be confirmed because he is somehow a symbol of old cold war thinking and a dated foreign policy that is out of step with the needs and requirements of the new world order.

Well, I believe as most Americans believe, that George Bush has a keen grasp of foreign affairs. His success rate is pretty obvious. He has shown his good judgment again and again, and it is the President's judgment that Robert Gates is the man best equipped to lead the CIA in changing and challenging times. I Do not believe the opponents of Mr. Gates have made a case that calls the President's judgment into question. I think it is fair to say that we all hold the President responsible under our system for those that he chooses on his team.

Some opposing Mr. Gates have resurrected Iran-Contra—referred to it time and time again—and argue that Gates' failure to successfully persuade President Reagan, Director Casey, and Oliver North on the need to inform Congress about the Iranian arms sales—sales that Gates himself opposed—is cause to oppose confirmation. Others claim, by the benefit of all-knowing hindsight—that is cheap around here—that Robert Gates should have known more and done more about the diversion of funds to the Contras once he learned what Ollie North was doing over at the NSC.

Madam President, there was one charge made yesterday on the floor by the Senator from Ohio, Mr. Metzenbaum, that I cannot allow to go unchallenged. The Senator from Ohio, speaking about Colonel North's diversion of funds from the Iran arms sales, said the following:

> Mr. Fiers told the committee that he never specifically told Mr. Gates what was going on. But he added that everybody knew what Colonel North was doing, and he believed Mr. Gates must have known as well, at least in general terms. (CONGRESSIONAL RECORD, Nov. 4, 1991 S-15848.)

That statement might lead one to erroneously conclude that Gates must have known about the illegal diversion. But that is not what Mr. Fiers said. What Mr. Fiers really said was this:

> A broad array of people had an understanding of what was happening. Not the diversion, not the sales of weapons to Iran, but that a private benefactor support network for * * * the Contras * * * had been established and was being quarterbacked by Ollie North." (Hearing record, Sept. 19, 1991, page 70.)

In other words, the Senator from Ohio extended Mr. Fiers' characterization of a general knowledge of the private benefactor program to include a general knowledge of the illegal diversion. Such is not the case, that is not what Mr. Fiers said, and I wanted to correct any misconceptions on that point for the record.

Indeed, our committee has a solid institutional knowledge of Iran-Contra. Three members of our committee, including the chairman, were members of the Select Iran-Contra Committee investigating these matters. It is noteworthy that all three former members of the Iran-Contra Committee who serve on our committee—one on the Republican side and two on the Democratic side—voted to recommend the confirmation of Robert Gates. I think that is most important.

While I am on the subject of remarks made during yesterday's debate, I must comment on a remark made about Cuba by the distinguished Senator from New York [Mr. MOYNIHAN]. Robert Gates, in a 1984 memo to Director Casey, asks the question: "Can the United States stand a second Cuba in the Western, Hemisphere? One need only look at the difficulty Cuba has caused over the past 25 years to answer that question."

Senator MOYNIHAN points to that statement and contends that Cuba really has not caused us any difficulties for the past 25 years except that "it has been difficult to come by a genuine Monte Cristo cigar."

Well, Madam President, I have the highest regard for Senator MOYNIHAN and his capabilities as an astute observer of world events. In this instance I must assume that he was trying to liven up our debate with a little humor.

My own view of Cuba during the last 25 years is that of a nation determined to ferment and export revolution and disruption at every turn. I believe that events in Angola, Granada, El Salvador, and Nicaragua bear this out.

Indeed, has Cuba ever caused us difficulties? Recall the instance when, in a particularly cynical episode, Castro emptied his jails of hardened criminals and sent them to Florida in the 1979 Mariel boat lift. Ask either of our Senate colleagues from Florida, Senators GRAHAM and MACK, if Cuba has caused us any difficulties.

I contrast my view with that of the good Senator from New York, not to engage in a debate about Cuba, but to point out how reasonable people can come to different interpretations of the facts. I have one view about Cuba, and Senator MOYNIHAN has another.

The same concept is found throughout the debate in our committee on whether Bob Gates' view of certain events was or was not supportable either by facts, or by a persuasive marshaling of facts and history.

When Robert Gates headed the analysis side of the CIA, I believe he had a realistic and solid grasp of what was happening in the world, and what role the Soviet Union was playing or was trying to play. He was also aware that some leaders rule with an absolute and ruthless disregard for human rights.

In short, Bob Gates, although he was raised in Kansas, possessed the healthy skepticism of someone raised in Missouri.

I am certain that he does not share the same view of Cuba as that shared by the Senator from New York. But that fact does not disqualify him to be the next Director of Central Intelligence—indeed, in my view it makes him more qualified.

Madam President, I have known and worked with Robert Gates for several years. I believe he will make an exceptional Director.

Others whose judgment I respect greatly, including former Directors Webster, Colby, Helms, former Deputy Director Admiral Bobby Inman, have all expressed their support of Mr. Gates' confirmation.

I support Robert Gates because he will demand accountability in the intelligence process. He will not tolerate analytical mush. He knows what the policymaker needs in an intelligence product. He understands and supports the importance of active congressional oversight. He has the confidence and respect of the President.

I urge my colleagues to consider those factors in their analysis, and vote to confirm Robert Gates.

Thank you, Madam President.

The PRESIDING OFFICER. The distinguished minority leader is recognized.

Mr. DOLE. Madam President, I wonder if I might have 5 minutes. I know there are other speakers seeking recognition.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Madam President, we have finally reached the time to vote on the Gates nomination.

It has been a long process—by my count, 135 days. It took us longer to investigate Bob Gates than to defeat Saddam Hussein.

It has been a very, very thorough process. The nominee testified in open and closed sessions for 4 full days, responding to about a thousand different questions. The committee reviewed thousands of documents, and interviewed hundreds of witnesses, many of whom gave formal testimony.

The committee's report totals up to 245 single-spaced pages—and that without the section on "additional views." If staff were getting paid by the word for their drafting, we would need a dire emergency supplemental to pay the bill.

And every time it seemed we were near closure on this long and thorough process, somebody managed to come up with a new allegation or question—sometimes, seemingly, out of left field. Each of those allegations and questions was examined carefully and comprehensively.

The committee's report lists four major areas which it examined: The Iran-Contra affair; the allegations of politicization of intelligence; charges or rumors of participation in intelligence activities illegal under our laws; and Bob Gates' views of and capacity to perform the role of DCI.

The committee—by a strong 11-to-4 vote—cleared Bob Gates of any wrongdoing in any of the first three areas; and gave him a strong endorsement in the fourth.

Certainly, the distinguished chairman of the committee, Senator BOREN, and the distinguished vice chairman, Senator MURKOWSKI, have done everything they could to make this process both thorough and fair. They deserve the thanks of all Senators for their diligent work.

And now, after all of this work—after all of the delays, and allegations and rumors and questions, after everyone has had his or her say, and every Senator has had the chance to read the committee's report and consider our own positions—we have gotten to the bottom line. The committee's work is done, and the ball is in our court. It is our responsibility—the responsibility of the full Senate—to make the final decision.

The distinguished chairman of the committee, Senator BOREN—who probably knows Bob Gates better than any of us, the distinguished vice chairman, Senator MURKOWSKI, and nine other members of the committee have indicated that they support the nominee. The Senate should, too.

Bob Gates deserves our vote. He earned it the old-fashioned way—by a career of hard and honorable work, and by 135 days of full, candid, and patient cooperation with this process.

When I introduced Bob Gates at his first hearing, I noted that he was a great Kansan—and that alone was a strong point in favor of his confirmation.

But, as the committee and the American people have learned, Bob Gates is not only a great Kansan, but an outstanding American. His career—from his early days as a junior analyst at CIA, until these past months, standing at the President's side through some of the most important events of the century—has uniquely prepared him for the role of DCI. Put simply, he is the best nominee for this critical job.

Bob Gates has the President's complete confidence.

He has unmatched experience.

He has uncompromised integrity.

He has great talent.

He has a strong record of cooperation with the Congress and its intelligence committees.

He is the right nominee, for the right job, at the right time.

The President wants—the intelligence community needs—and the Nation deserves to have this nominee confirmed, now, and overwhelmingly.

I urge all Senators to vote to confirm Bob Gates as Director of Central Intelligence.

I yield the floor.

Mr. BRADLEY. Madam President, I yield 7 minutes to my distinguished colleague, Senator LAUTENBERG.

Mr. WARNER. Madam President, if the Senator will yield for an inquiry, may I ask the manager if I might share a 5-minute colloquy with the distinguished Senator from New York [Mr. MOYNIHAN] at a convenient time?

Mr. MURKOWSKI. I would assume that the Senator would like to share the time, since Senator MOYNIHAN will undoubtedly be speaking on the other side of the issue.

Mr. WARNER. I would.

Mr. MURKOWSKI. Would there be any objection to sharing the time as proposed by Senator WARNER, the time being about 5 minutes with Senators WARNER and MOYNIHAN in a colloquy?

Mr. BRADLEY. I have no objection, if there is sufficient time remaining after all other Senators that have asked to speak during that time are taken care of.

The PRESIDING OFFICER. Will the Senator withhold?

Mr. MURKOWSKI. I would defer half of that time to the Senator from Virginia, and I would like the Senator's side to address their time.

The PRESIDING OFFICER. Will the Senator withhold?

Mr. MURKOWSKI. Madam President, I might ask how much time is remaining?

The PRESIDING OFFICER. The Chair wanted to check with the Parliamentarian to make sure we were allocating time. The Senator was just checking. He was not making a unanimous-consent request; is that correct?

Mr. MURKOWSKI. That is correct.

The PRESIDING OFFICER. The Senator has a question?

Mr. MURKOWSKI. The Senator would like to inquire of the remaining time.

The PRESIDING OFFICER. The proponents have 21 minutes, 42 seconds. The opponents of the Gates nomination have 46 minutes, 25 seconds. The current parliamentary situation is that the manager of the proponents, Mr. BRADLEY, has yielded 7 minutes to the other Senator from New Jersey.

Mr. LAUTENBERG. Madam President, I rise now to announce that I am going to vote against the confirmation of Robert M. Gates as the next Director of Central Intelligence.

It is obvious to all that it has been a long, arduous effort. All of us understand that the process has been perhaps detailed beyond almost any other example that we have seen. But the fact of the matter is that after all of that testimony and thousands of pages recorded, as I look at that testimony from the Senate Intelligence Committee hearings, and after considerable deliberation, I cannot, in good conscience, vote to give Mr. Gates the job of Director of Central Intelligence. He has not, in my mind, lived up to the high standards we would expect for promotion to this sensitive and difficult position.

Madam President, the Director of the Central Intelligence Agency [DCI] is no small job. The individual serves as the President's primary adviser on intelligence matters. He not only heads the CIA, he is the leader of the entire U.S. foreign intelligence community.

The Director and his organization play a key role in the development of our nation's foreign policy by providing the information on which foreign policy decisions are based.

Do we have the military capability to defeat Iraq swiftly and with minimal loss of life? Is the Soviet Union on the verge of disintegration? How close is the Middle East to another war? It is the CIA's job to answer such questions, and do so in an objective, timely, and accurate manner.

The price of having faulty or untimely intelligence is unacceptably high. It can cause billions of tax dollars to be spent on a misguided defense or foreign policy. And it can cost precious American lives.

Just consider what would have happened in the Gulf War if our intelligence community had grossly underestimated Iraq's military power? If we continued to plan military strategy to fight a nuclear war with the Soviet Union while ignoring the growth of the nuclear threat throughout the world? These are only a few of the circumstances where faulty intelligence would cost America dearly.

In my judgment, a successful nominee to head the CIA must possess unassailable integrity and judgment, superior and objective analytical skills, and a track record of successful intelligence analysis. Mr. Gates does not, in my mind, meet these criteria.

First, I am deeply troubled about Mr. Gates conduct in the Iran-Contra affair, which suggests at best a lack of judgment and at worst a lack of candor. These persistent, nagging concerns are what led him to withdraw his name from consideration after nomination by President Reagan for the DCI job in 1987.

Reagan administration officials have testified that Gates attended meetings in which the diversion of funds to the Contras were discussed, and that these meetings occurred weeks before the events became public.

Yet, asked in the hearings what he knew of the Iran-Contra events, and when he knew about them, Gates frequent response was "I don't remember." Harold Ford, a retired intelligence officer who worked for Gates for years, but decided to speak out against his nomination, noted that "the forgetfulness of this brilliant officer, gifted with a photographic memory, does not instill confidence."

It was as if Mr. Gates lived by the maxim, "Hear no evil, see no evil, speak no evil" when he occupied the No. 2 spot at the CIA. While such lapses of memory and failure to pursue indications of wrongdoing may be acceptable mistakes for the average citizen, Robert Gates must meet a higher standard to become the guardian of our Nation's intelligence network. Given his track record in this major Government scandal, I cannot put my confidence in Robert Gates to lead our foremost intelligence gathering and analytical agency into the next century.

Second, I have serious doubts about Robert Gates' essential objectivity as an intelligence officer. The Central Intelligence Agency's mission is to provide independent and objective analysis of intelligence information, not to shape intelligence to support individuals' views or administration policy. Yet, the testimony of past and current intelligence analysts suggests that Mr. Gates slanted his intelligence assessments to conform to administration policy and to his personal world outlook, particularly in the areas of the Soviet Union and the Sandinista government in Nicaragua.

Several intelligence analysts suggested, for example, that Mr. Gates knowingly used outdated analysis in congressional testimony because it supported administration policy. Intentional skewing of intelligence is unacceptable and dangerous behavior for any intelligence officer, much less one who seeks the highest position in the Central Intelligence Agency.

(Mr. CONRAD assumed the chair.)

Mr. LAUTENBERG. Mr. President, even if Robert Gates' intelligence assessments were not intentionally skewed, I have nagging doubts about whether Mr. Gates' view of the world—and particularly the Soviet Union—enables him to provide objective intelligence analysis.

Robert Gates was a classic cold warrior. In the not-so-distant past, his view of the world was driven by a belief that communism and the Soviet Union were the persistent menace threatening the United States. He seems to have changed this outlook only reluctantly, and only as required by events.

A compelling case has been made by my friend and colleague, Senator BRADLEY, and some others on the Intelligence Committee, that during the 1980's Gates' intellectual tunnel vision on the Soviet Union kept him from recognizing early on the breakup of the Soviet Union and the emerging threat posed by Iraq. A compelling case has been made that Robert Gates ignored and suppressed signs of a declining Soviet Strategic threat, in part, because he was unable to shed his cold war orientation.

It has been said that these views, prevented Robert Gates—despite the receipt of new and contrary intelligence—from recognizing the extent and pace, and consequently the significance, of developments in the Soviet Union. It was these views that likely contributed to the failure of the CIA to accurately forecast the dissolution of the Soviet Union.

That CIA failure hurt the United States. And we cannot afford many more such miscalculations.

This Nation needs a Director of Central Intelligence open to new information, not one who is reluctant to shed outdated beliefs. We need a DCE with the foresight to lead the intelligence community through the difficult and uncertain international political environment of the 1990's.

Mr. President, I do not dispute that Mr. Gates has some impressive qualifications and talents. He has worked at the CIA or with the National Security Council since 1966, giving him 25 years experience in the intelligence community. He rose through the ranks to become Deputy Director for Intelligence and later, Deputy Director of the CIA. Along the way, Mr. Gates earned his PhD. in Russian and Soviet History.

Yet despite these qualifications and experiences, I do not believe that he has demonstrated that he is the best person to be our Nation's next Director of Central Intelligence. For these reasons, I will vote against his confirmation. This job is simply too critical to our Nation's security to entrust it to someone about whom I have such grave reservations.

The PRESIDING OFFICER. Who yields time?

Mr. BOREN. Mr. President, I yield 2 minutes to the Senator from Mississippi [Mr. COCHRAN].

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 2 minutes.

Mr. COCHRAN. Mr. President, I thank the distinguished manager for yielding me this time.

Mr. President, the selection of Robert Gates to be Director of the Central Intelligence Agency should be approved by the Senate.

Chairman BOREN and Vice Chairman MURKOWSKI worked very hard to ensure that Robert Gates' qualifications were carefully and fairly reviewed by the Intelligence Committee. I applaud them for the efforts they made to address all the important questions that were raised about this nomination.

They have examined intelligence management, and its decisionmaking process, under a microscope, and in addition to making a decision that the candidate is eminently suitable, they have made determinations about the managerial responsibilities of the Director of Central Intelligence which will help make the service of this Director more effective as well as compatible with the responsibility of cooperating with the Congress as it exercises its oversight duties.

A strong vote in favor of this nominee will also be evidence of the willingness of this Senate to cooperate with the administration in the development of an intelligence-gathering policy that serves our Nation's security interests.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. Mr. President, I yield 10 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 10 minutes.

Mr. DODD. I thank you, Mr. President, and let me thank our colleague from New Jersey, as well.

Mr. President, let me begin by expressing my admiration for Senator BOREN and the members of the Intelligence Committee for the tremendous amount of time and effort they have spent in reviewing this nominee.

In fact, I believe that the report they have prepared, containing some 225 pages, Mr. President, stands as a tribute to the thorough job done by the Intelligence Committee in examining this nomination. Its 225 pages certainly serve to catalog and review the charges and countercharges associated with the nomination of Robert Gates. Together with the committee's hearing record, it is hard to believe that any stone has been left unturned. Indeed, Chairman BOREN and the members of the Senate Intelligence Committee ought to be commended, as I said a moment ago, on a job well done, especially so given the contentious and controversial nature of this nomination.

So, the committee report provides us with the road map, a direction finder, if you will, to help ferret out the facts. It is certainly not an easy task, to be sure. And that is the second reason, I suppose, for asking my colleagues to consider the committee report. It is really, in a sense, the other side of the coin, or flip-side of a thorough and complete investigation.

Here is how the committee report described the effort:

> By any standards, the consideration of this nomination was the most thorough and comprehensive of any nomination ever received by the committee. Thousands of documents were reviewed; hundreds of witnesses were interviewed. The nominee testified for 4 full days in open and closed session, responding to almost 900 questions. Written responses were submitted to almost 100 additional questions.

Mr. President, the obvious question for this Senate, and I believe for this body, is why was it necessary, in fact, to conduct such a comprehensive investigation? Why was it necessary, in fact, to review thousands of documents and interview hundreds of witnesses? Why was it necessary to raise so many questions and to follow up with so many additional questions? Why was it necessary to pursue, in fact, a process that was largely unprecedented in the annals of the Intelligence Committee?

Mr. President, I believe that the short answer is baggage, in the sense the Gates nomination carries with it a great deal of that baggage. All in all, there were more than 200 pages' worth just in the report alone. Shifting through it is not an easy task, nor a pleasant one.

After reviewing the material and talking to members of the committee and my colleagues, I am drawn to the conclusion, Mr. President, that we can and must do better.

Perhaps for the very reason that others have found Mr. Gates to be the right man in the right place at the right time, I am convinced, certainly at this point anyway, that Mr. Gates is the wrong man in the wrong place at the wrong time. I admit, Mr. President, this is a pretty harsh judgment. But anything less, in my view, would be shadowboxing with the truth.

As we look at this nomination, honesty requires us to say that Mr. Gates appears to fall short of the mark. Or at a minimum, in different areas, there are sufficient areas of doubt to suggest that confirmation in this case would raise unnecessary risks.

First, Mr. President, there is the ever-present taint of the Iran-Contra affair, and the issue of whether or not Mr. Gates knew or did not know about the sales of arms to Iran and diversion of funds to the Contras. As more and more information has come out, Mr. President, particularly in recent months, and particularly with respect to the CIA's involvement, I find it very difficult to believe—very difficult to believe—that Mr. Gates was uninformed about this matter, and that he subsequently did not mislead the Congress on it.

Second, Mr. President, there are a host of serious questions about Mr. Gates' willingness to slant the Agency's findings for the purpose of playing to the ideological proclivities of his superiors, while at the same time serving to advance his own career goals. The charges and allegations that have been made by any number of intelligence analysts cannot be dismissed simply as sour grapes or office politics. I am familiar with both, as I think most of my colleagues are. What we saw before the Intelligence Committee goes far beyond the petty differences that occur daily in any large organization.

Third, there are interrelated issues of poor judgment, policymaking, and political bias. In the not-too-distant past, Mr. President, Mr. Gates unfortunately engaged in all three. Claims that the Soviets were targeting the Panama Canal, a clear case of poor judgment. Calls for direct United States military action against the Sandinista government in Nicaragua, a clear case of policymaking. And denials until the very end about major changes taking place in the Soviet Union and throughout Eastern Europe, a clear case, Mr. President, of political bias.

While all of these matters are troublesome, I want to underscore my concerns about Mr. Gates' willingness, if not eagerness, to play the role of policymaker and policy advocate. To my mind, nothing in the record provides stronger evidence of this than the Gates memo on Nicaragua of December 14, 1984, to William Casey. I ask unanimous consent that a copy of this memo be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DODD. Mr. President, keep in mind that the CIA's mandate does not extend to the policymaking area.

In fact, in testimony before the Intelligence Committee, Mr. Gates said:

> I believe the Director of Central Intelligence should stay out of policy matters. * * * And I think he should keep his hands clean in terms of making policy recommendations or getting deeply engaged in policy discussions. * * * His role in those meetings should be to make sure that the information they are discussing is as accurate as we can make it.

Mr. President, this memo, dated December 1984, was written at a time when Mr. Gates was Deputy Director of Intelligence. The Deputy Director of Intelligence is the head of analysis and production, a person who collects facts and presents them to his superiors. This memo hardly includes any facts at all. Basically, it is a campaign speech that was given at that time. And, frankly, there are some chilling recommendations that, had they been followed, Mr. President, I think the picture that we see in Central America today would be vastly different and devastating one.

This memorandum recommended direct United States air strikes against Nicaragua only 2 months after this Congress had passed the so-called Boland II amendment which expressly prohibited the use of United States moneys for the purpose of supporting military or paramilitary operations against Nicaragua. The American people had spoken. The statutes, the laws were there, and here we have a recommendation for direct air strikes. Had that occurred, today the possibilities of democracy throughout Central America would not be on the horizon. In fact, I do not think you would have had a free and fair election in Nicaragua at all.

It was, in my view, a very illogical recommendation, a very ideological speech and, frankly, recommendations that I think could have been devastating for this country had they been followed.

The main responsibility, as we all know or should know in this body, of the Director of Central Intelligence is to fulfill the Agency's mandate and remain above interagency policy battles. Perhaps former CIA Director Richard Helms said it best, "The Director of the CIA is supposed to keep the game honest."

I agree with the Helms view. And because I to, I have strong differences with Mr. Gates about the Agency's proper role in the bureaucracy. This is why I ask my colleagues to examine carefully the December 1984 memo. Clearly, it is not a balanced, dispassionate, and well-honed analytical piece. On the contrary. It is a highly partisan assessment, with startling United States policy recommendations, with respect to Nicaragua. At the same time, much of the language and phraseology used by Mr. Gates suggest that one of his primary purposes was to play to the ideological fantasies of Mr. Casey.

But perhaps the most disquieting aspect of this memo is its call to arms. Mr. Gates argues for direct United States military involvement, beginning with air strikes on selected Nicaraguan military targets. Additionally, he recommends increased military support for the Contra forces and other forms of assistance for a Nicaraguan Government in exile.

Had those recommendations been followed, as I said a moment ago, Central America today would be inflamed, absolutely inflamed.

What makes all this so disturbing and disquieting is these recommendations were made, as I said, 2 months after the law of this land said that there should be no United States moneys spent in support of military activities against Nicaragua. And yet this memo does not even point out to the Director of the Central Intelligence that such a law was on the books, and that it would prohibit the very policy direction he was proposing.

I find that deeply disturbing, Mr. President.

Mr. President, any administration is only as good as the people who are employed by it, particularly the high-level managers, administrators, and directors. They set the tone and drift, regardless of the agency or the organization. It goes without saying, the quality of the product depends on the quality of the people.

This country is extremely fortunate; our people are a national treasure. The gifted and talented swell our ranks. Individuals of national stature, with sound and secure reputations, are available for public service. The CIA deserves such a person. It deserves the very best. So too does the American public, the people who pay the bill.

For these reasons, Mr. President, I believe the United States Senate should reject the nomination of Mr. Robert M. Gates to be Director of Central Intelligence.

EXHIBIT 1

DECEMBER 14, 1984.

Memorandum for: Director of Central Intelligence.
From: Deputy Director for Intelligence.
Subject: Nicaragua.

1. It is time to talk absolutely straight about Nicaragua. To recap where we are:

Based on all the assessments we have done, the Contras, even with American support, cannot overthrow the Sandinista regime. Whatever small chance they had to do that has been further diminished by the new weaponry being provided by the Soviets and Cubans.

The Soviets and Cubans are turning Nicaragua into an armed camp with military forces far beyond its defensive needs and in a position to intimidate and coerce its neighbors.

The Nicaraguan regime is steadily moving toward consolidation of a Marxist-Leninist government and the establishment of a permanent and well armed ally of the Soviet Union and Cuba on the mainland of the Western Hemisphere. Its avowed aim is to spread further revolution in the Americas.

The FDN has been denied American assistance. Without further assistance by February, all the information we have suggests the Contras are going to begin heading into Honduras. The Hondurans will then be faced with some 12,500 armed fighters (whom the Hondurans see as closely allied with Alvarez, thereby potentially unsettling Honduras itself).

Flight of the Contras into Honduras will be followed not only by their families but presumably by a second wave of refugees and others who, seeing abandonment of American efforts to force the Sandinistas to alter their regime, will see the handwriting on the wall, determine that their personal futures are in peril and leave the country. It is altogether conceivable that we could be looking at an initial refugee wave from Nicaragua over the first year of 150,000 to 200,000 people (the families of the Contras alone could account for 50,000).

Failure of the United States to provide further assistance to the resistance and collapse of the Contra movement would force Honduras to accommodate to the Nicaraguan regime. One result of this would be the complete reopening of the channels of arms support to the Salvadoran insurgency, thereby reversing the progress made in recent months.

These unsettled political and military circumstances in Central America would undoubtedly result in renewed capital flight from Honduras and Guatemala and result in both new hardship and political instability throughout the region.

2. These are strong assertions but our research as well as the reports of our people on the spot (for example our GOS in Honduras) make it possible to substantiate each of the above points.

3. What is happening in Central America in many ways vividly calls to mind the old saw that those who forget the past are condemned to repeat it.

In 1958–60 we thought that we could reach some sort of an accommodation with Castro that would encourage him to build a pluralistic government in Cuba. We have been trying to do the same thing with the Nicaraguans, with the same success.

In Vietnam, our strategy consisted of a series of measures applied very gradually and over a long period of time. With each step of new US involvement the gradual approach enabled the enemy to adjust to each new turn of the screw so that by the end of the war, even in the face of the most severe bombing, the Vietnamese had developed enormous tolerance. Half measures, half-heartedly applied, will have the same result in Nicaragua.

In 1975, the United States President announced that American assistance to UNITA in Angola was in the national interest of the United States and strongly urged the Congress to support military assistance to that group. The Congress turned it down, thereby not only proving that the United States would not involve itself in any significant way in the Third World to combat the Soviet subversion and activity but, moreover, that the Congress could effectively block any moves the President did wish to make. The Boland Amendment and the cutoff of aid to the Contras is having the same effect again, showing the Soviets and our Third World friends how little has changed in nine years, even with a President like Ronald Reagan.

In a variety of places, including Vietnam, negotiations in effect became a cover for the consolidation and further expansion of Communist control. While they might observe whatever agreements were reached for the first weeks or as long as American attention (particularly media attention) was focused on the situation, they knew they could outlast our attention span. Usually within a relatively short period of time they were openly violating whatever agreements had been achieved.

4. The truth of the matter is that our policy has been to muddle along in Nicaragua with an essentially half-hearted policy substantially because there is no agreement within the Administration or with the Congress on our real objectives. We started out justifying the program on the basis of curtailing the flow of weapons to El Salvador. Laudable though that objective might have been, it was attacking a symptom of a large problem in Central America and not the problem itself.

5. It seems to me that the only way that we can prevent disaster in Central America is to acknowledge openly what some have argued privately: that the existence of a Marxist-Leninist regime in Nicaragua closely allied with the Soviet Union and Cuba is unacceptable to the United States and that the United States will do everything in its power short of invasion to put that regime out. Hopes of causing the regime to reform itself for a more pluralistic government are essentially silly and hopeless. Moreover, few believe that all those weapons and the more to come are only for defense purposes. Only when we acknowledge what the objective is in Central America, can we begin to have any kind of rational discussion on how to achieve it. As long as one maintains the fig leaf of curtailing the flow of arms to El Salvador, all other efforts can easily be politically dismissed.

6. Once you accept that ridding that Continent of this regime is important to our national interest and must be our primary objective, the issue then becomes a stark one. You either acknowledge that you are willing to take all necessary measures (short of military invasion) to bring down that regime or you admit that you do not have the will to do anything about the problem and you make the best deal you can. Casting aside all fictions, it is the latter course we are on. Even new funding for the Contras, particularly in light of the new Soviet weaponry, is an inadequate answer to this problem. The Contras will be able to sustain an insurgency for a time but the cost and the pain will become very high and the resistance eventually will wither. Any negotiated agreement simply will offer a cover for the consolidation of the regime and two or three years from now we will be in considerably worse shape than we are now.

WHAT TO DO

7. The alternative to our present policy—which I predict ultimately and inevitably is leading to the consolidation of the Nicaraguan regime and our facing a second Cuba in Central America—is overtly to try to bring down the regime. This involves a mustering of political force and will, first of all within the Administration, and second with the Congress, that we have not seen on any foreign policy issue (apart from our defense rearmament) in many years. It seems to me that this effort would draw upon the following measures:

Withdrawal of diplomatic recognition of the regime in Managua and the recognition of a government in exile.

Overt provision to the government in exile of military assistance, funds, propaganda support and so forth including major efforts to gain additional support in international community, including real pressure.

Economic sanctions against Nicaragua, perhaps even including a quarantine. These sanctions would affect both exports and imports and would be combined with internal measures by the resistance to maximize the economic dislocation to the regime.

Politically most difficult of all, the use of air strikes to destroy a considerable portion of Nicaragua's military buildup (focusing particularly on the tanks and the helicopters). This would be accompanied by an announcement that the United States did not intend to invade Nicaragua but that no more arms deliveries of such weapons would be permitted.

8. These are hard measures. They probably are politically unacceptable. But it is time to stop fooling ourselves about what is going to happen in Central America. Putting our heads in the sand will not prevent the events that I outlined at the beginning of this note. Can the United States stand a second Cuba in the Western Hemisphere? One need only look at the difficulty that Cuba has caused this country over the past 25 years to answer that question.

9. The fact is that the Western Hemisphere is the sphere of influence of the United States. If we have decided totally to abandon the Monroe Doctrine, if in the 1980's taking strong actions to protect our interests despite the hail of criticisms is too difficult, then we ought to save political capital in Washington, acknowledge our helplessness and stop wasting everybody's time.

10. Without a comprehensive campaign openly aimed at bringing down the regime, at best we somewhat delay the inevitable. Without US funding for the Contras, the resistance essentially will collapse over the next year or two. While seeking funding from other countries to the Contras could help for a time, it is essential to recognize that almost as important as the money is the fact of the United States support both from an economic and political standpoint. Somehow, knowing that Taiwan, South Korea and Singapore are behind you does not carry the same weight. Economic sanctions surely would have a significant impact in the initial months, but unless accompanied by a broad range of other actions this impact will diminish over time and we will find ourselves with a Nicaragua even more closely attached to the Soviet Union and Cuba than we have now.

11. All this may be politically out of the question. Probably. But all the cards ought to be on the table and people should understand the consequences of what we do and do not do in Nicaragua. Half measures will not even produce half successes. The course we have been on (even before the funding cutoff)—as the last two years suggest—will result in further strengthening of the regime and a Communist Nicaragua which, allied

with its Soviet and Cuban friends, will serve as the engine for the destabilization of Central America. Even a well funded Contra movement cannot prevent this; indeed, relying on and supporting the Contras as our only action may actually hasten the ultimate, unfortunate outcome.

ROBERT M. GATES.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MURKOWSKI. Mr. President, I yield 2 minutes to the Senator from Virginia.

Mr. WARNER. I thank the distinguished manager. Could he give me 3½ minutes?

Mr. MURKOWSKI. I yield 3½ minutes to the Senator.

The PRESIDING OFFICER. The Senator is recognized for 3½ minutes.

Mr. NUNN. Mr. President, would the Senator yield me about 3½ minutes?

Mr. MURKOWSKI. I am happy to yield to my friend from Georgia 3½ minutes.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 3½ minutes.

Mr. WARNER. Mr. President, I spoke on the Senate floor yesterday in strong support of this nomination. Today I rise to include in the RECORD a chapter of history, a chapter which covers the turning point in the relations between the CIA and the Congress.

This chapter of history was prepared by our colleague, Mr. MOYNIHAN, who at the time covered by this particular documentation was the vice chairman of the Senate Select Committee on Intelligence, and our distinguished former colleague, Senator Goldwater, was the committee chairman. The history was carefully prepared by Mr. MOYNIHAN drawing on his memory of the facts at that time, and indeed by a number of relevant documents which will be brought to light for the first time.

In looking at the role of the Director of the CIA in dealing with the Congress, Mr. MOYNIHAN addresses the issue of the mining of certain Nicaraguan harbors and the subsequent protests in April 1984 by then Chairman Goldwater that the Intelligence Subcommittee had not, I repeat not, been properly and fully informed of the action. Senator Goldwater's steadfast diligence throughout this period was critical in keeping the Congress informed.

I feel Senator MOYNIHAN's comments and accompanying documents go a long way in outlining the decisive role that our former colleague, the distinguished Senator from Arizona, played, and that it was also the turning point in the relationship between the Congress and the CIA.

This morning's Washington Post contained an editorial that carried the following quote: "Unquestionably," relating to Gates, "he has the knowledge of the machinery and the confidence of the President to do that job."

I addressed that point yesterday in some detail, Mr. President. The editorial further provides:

> He also promises to be faithful to the imperatives of honest consultation with the Congress. Such consultation is designed precisely to diminish the chances that abuses of secret power, in operations or analysis, could recur.

That is the essence of this very important chapter of history prepared by Mr. MOYNIHAN, which he disclosed to our committee during the course of the Gates hearing, and it is my privilege to point it out on behalf of Mr. MOYNIHAN and our former colleague, Senator Goldwater.

I ask unanimous consent that the full text of Senator MOYNIHAN's memorandum be printed in the RECORD and, further, that the full text of the editorial of today's Washington Post also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 1, 1991.

MEMORANDUM FOR SENATOR WARNER

At the opening day of the Gates hearings I was allowed to make a brief statement regarding the insensate overestimate, as I see it, of the size of the Soviet economy which the C.I.A. turned out year after year for a generation and more. One consequence, again as I see it, of overestimating the size of the Soviet economy by a factor of three or thereabouts is that we overestimated their global reach and the attraction of marxist ideology. (Recall that as late as 1986 the Agency was reporting that per capita GNP in East Germany was higher than in West Germany. If only the East Berliners had known!)

At the close of my statement Senator Bradley asked if I would recall for the Committee the events surrounding Senator Goldwater's protest in April 1984 that the Senate Select Committee on Intelligence had not been informed of the mining of certain Nicaraguan harbors in the manner prescribed by the Intelligence Oversight Act of 1980.

I responded in summary detail—the Committee was waiting to hear Mr. Gates—but made one point which clearly caught your attention. Senator Goldwater, I said, had been subjected to a disinformation campaign by the Central Intelligence Agency. Later you asked if I would provide you with more details that you might place in the hearing record.

First, a word about the term itself: disinformation. You will not find it in the Webster's Third New International Dictionary. Nor Safire's. It is a term of tradecraft. I fathom it from experience in the field; you from experience of command. And yet it is not easy to explain. I think of the Hebrew phrase "ha mayvin yavin:" those who understand, understand. The essence of disinformation is not mere lying. Disinformation is designed to confuse; to muddle. Understandably, it will be found in the most authoritative Russian language dictionary, that of the Soviet Academy of Sciences, which defines dezinformatsiya as "a false, inaccurate announcement with the aim of confusing someone." Disinformation distracts. If for example you wish to conceal one set of facts; you try to get a big argument going about a wholly different set of facts.

A final introductory note. The term disinformation as applied to the mining of the Nicaraguan harbors was first proposed to me in a 1988 letter (attached as Appendix 1) from Robert R. Simmons, who, at the time of these events, had been Majority Staff Director of the SSCI. He wrote:

". . . in 1984 the Agency engaged in what can only be called a domestic disinformation campaign against the U.S. Congress in which they alleged that the SSCI and the HPSCI has been fully briefed on the harbor mining program. This campaign has resulted in widely held misconceptions about these events—misconceptions that have grown over time to the point of being accepted as the truth. For example, Scott Breckinridge' book titled "The CIA and the U.S. Intelligence System" states "the fact is the members were told, and only one of them seems to have reached to the point." To hear, now, that the Agency claims the President did not know of these events before the fact does not surprise me. Sometimes I wonder if even they know what the truth of the matter was."

Now to the facts, which are really quite simple and are fully set forth in Senator Goldwater's 1988 autobiography.

The essence of the various statutes concerning congressional oversight of intelligence as regards important covert activities is that the intelligence committees be informed in advance. The Intelligence Oversight Act of 1980 states the Committees will be kept "fully and currently informed" of all intelligence activities including any "significant anticipated intelligence activity." Each covert operation was to be considered per se a "significant anticipated intelligence activity." There were to be exceptions in cases of the utmost sensitivity, as, for example, the attempted rescue of our hostages in Iran in 1980, but these were well understood.

By the early 1980s the arrangement was working well. Senator Goldwater was then Chairman of the Committee; I was Vice Chairman. We spent an ungodly amount of time being briefed, but had no complaints. Then in early April 1984 Senator Goldwater learned from the Wall Street Journal that in early January the C.I.A. had been directly involved with the mining of certain Nicaraguan harbors. He was thunderstruck. Try to be clear at this point. It was never any secret that Nicaraguan harbors were being mined. For all I know the fact was published in Notice to Mariners, or whatever it was we used to call that bulletin. But the assumption was that the contras had done, were doing it. In Senator Goldwater's view, as he would shortly state in a letter to William J. Casey, this was an "act of war", an act "violating international law". By any understanding this qualified as a "significant anticipated intelligence activity"! And we had not been told in advance. Senator Goldwater was over his disbelief; he was now, as he wrote to Casey, plain "pissed off".

The letter (attached as Appendix 2) leaked to the Washington Post. Whereupon the disinformation campaign began. The essence of the campaign was to establish that the Committees had been briefed. After the mining had occurred. True enough. Senator Goldwater wrote to Casey on April 9, the Post printed the letter April 11. On April 12 in an address at the Naval Academy, Robert McFarlane stated that "every important detail" of the mining operation "was shared in full with the proper Congressional oversight committees." On April 13 Casey (with advance notice to selected journalists) circulated, over his own signature, a memorandum to CIA employees which concluded:

"We have fully met all statutory requirements for notifying our intelligence oversight committees of the covert action program in Nicaragua. This agency has not only complied with the letter of the law, but with the spirit of the law as well."

A spring recess had begun, and Senator Goldwater had left the country to visit Taiwan. As Vice Chairman, I had the deck, as you would say. (The Senate Select Committee on Intelligence is singularly bipartisan. In the absence of the Chairman, for example, the Vice Chairman presides at Committee meetings.) I learned of Mr. McFarlane's speech the next day, April 13. In a taped interview with John Martin of ABC television I announced that I would resign as Vice Chairman. This interview was shown on "This Week With David Brinkley" that Sunday, April 15.

The week that followed was not one I would wish to live through again. The best journalists were skeptical, the hardest editorialists were derisive. The news was filled with details of the Agency briefings—post-mining briefings—and of individual members of the Congress who had energetically informed themselves of all the details, even as the Chairman and Vice Chairman had unaccountably, or perhaps predictably, failed in their elemental duty.

Senator Goldwater return; adamant. The CIA, having won the public debate, now decided to close the matter with a private apology. On April 25 Director Casey sent a handwritten note of apology to Senator Goldwater. The next day, April 26, he appeared before the committee in the dome and apologized, you might say, in secret. After this meeting the Committee had to issue its own statement which said:

"[T]he Committee agreed that it was not adequately informed in a timely manner of certain significant intelligence activity in such a manner as to permit the Committee to carry out its oversight function. The Director of Central Intelligence concurred in that assessment."

The Committee's report on this matter is attached as Appendix 3.) Soon an apology arrived from McFarlane on White House stationary stamped Confidential.

But where were we to go to get our reputations back? Nowhere. The press was tired of the subject. No one—no one—ever got our point that the issue was that we had not been informed in advance. No one ever figured out that Senator Goldwater would have told the Agency that they could not mine the harbors of a nation with which we had an extant Treaty of Friendship, Commerce and Navigation. He did not have the authority to stop them, but he could have picked up the telephone and asked for President Reagan.

Robert McFarlane subsequently testified before the Iran-Contra Committee on May 12, 1987 as follows:

Mr. SARBANES. Did you know about the mining of the Nicaraguan harbor?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. Did you think that should have been consulted with the Intelligence Committees?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. It wasn't done.

Mr. MCFARLANE. No, sir.

Senator Goldwater was not intimidated; he is of a different stuff from most. But the Senate was at very least silenced. The power of the Agency is pervasive in this town. Consider the number of news stories that begin: "Intelligence sources say. . . ." Guess which "Intelligence sources". The debts too numerous; the compromises just possibly compiled, computerized.

And so, there was no Senate motion of censure. No news analysis, editorial asking: "Hey, what does it mean that the D.C.I. "apologized profoundly" to the Senate Intelligence Committee—in secret? Had he misinformed—disinformed—the rest of us but is keeping that a secret? Nothing. Silence.

One last detail. Iran-Contra started here. Money for the insurrection was cut off; had to be got elsewhere. The rest is a well enough known history. But how well absorbed? I leave you with the judgement of Theodore Draper, who has outlined this matter in "A Very Thin Line: The Iran-Contra Affairs." In 1987 he wrote in the New York Review of Books:

"If ever the constitutional democracy of the United States is overthrown, we now have a better idea of how this is likely to be done."

Respectfully,

DANIEL MOYNIHAN.

STONINGTON, CT,
October 13, 1988.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate, Washington, DC.

DEAR SENATOR MOYNIHAN: Thank you for your note of October 3, 1988. I agree with you that Senator Goldwater has written a "wonderful book" and I have enjoyed reading it very much.

Regarding Chapter 10—Spies, Secret and National Security, I have several thoughts on the two questions you posed.

I did not think the famous "pissed off" letter to Casey was "public from the first." My recollection is that it was to be closely held for the obvious political reasons. In particular, I remember that Judy Eisenhower, Senator Goldwater's Administrative Assistant, did not want me to have a copy down at the Committee because she saw it as a political bombshell. So I never had a final copy. In fact, I relied for many months afterward on what was printed in *The Washington Post* to answer questions about the letter. This is not to say that the letter was classified—clearly it was not. But my impression was that it was to be closely held, at least at the staff level.

Regarding the issue of the President's knowledge, I remember that John McMahon told me the President authorized the harbor minings sometime in the fall of 1983. This was one of the reasons that we were so upset over these events—they had been going on for six months without our knowledge, and they had been authorized *by the President!* This was particularly galling to Senator Goldwater because he had been so much a part of President Reagan's political career. He felt that an important element of trust had been violated, and without good cause. His descripton of these events in the book is very touching, and tracks completely with what I remember of those days.

I am interested that the Agency maintains the President did not know of the mining before it took place. Logically, this does not make sense to me. After all, the official Agency position is that they briefed the Committee in March of 1984. If you accept this position, which I do not, why would they have briefed the Committees on so sensitive a covert action without receiving prior presidential approval in the form of a finding. Do they mean to say they engaged in these activities without prior presidential approval? If so, this seems to me to be a very serious matter. It raises issues of "rogue elephants."

Also, on this subject, I have a vague recollection that the harbor mining operation was instigated in September 1983 following a briefing at which the President expressed his concern over the import of certain weapons and equipment to Nicaragua. The idea was that if fuel supplies were disrupted and shipping was scared away, no more equipment would be landed and the vehicles already in place would not run very far. In short, an expression of presidential concern resulted in the proposal. Now, the President may not have known when each particular operation was to take place. But I certainly concur with Senator Goldwater that the President knew about the mining before it took place. He approved it in advance.

As you recall, in 1984 the Agency engaged in what can only be called a domestic disinformation campaign against the U.S. Congress in which they alleged that the SSCI and the HPSCI had been fully briefed on the harbor mining program. This campaign has resulted in widely held misconceptions about these events—misconceptions that have grown over time to the point of being accepted as the truth. For example, the enclosed excerpt from Scott Breckinridge's book titled *The CIA and the U.S. Intelligence System* states "the fact is the members were told, and only one of them seems to have reacted to the point." To hear, now, that the Agency claims the President did not know of these events before the fact does not surprise me. Sometimes I wonder if even they know what the truth of the matter was.

Regarding local news, I have now completed three years of teaching my seminar at Yale, and I have been asked to return in the spring of 1989. My course, titled "Congress and the U.S. Intelligence Community," has been oversubscribed each time it was offered and the students have been very flattering in their acceptance of me, my thoughts and my teaching style. While I find teaching at Yale to be very stimulating and lots of fun, I do not have a Ph.D. which means I will not be able to make much of a career of it. On this basis, I have applied to the Ph.D. Program in Political Science at the University of Connecticut. I expect that I will complete my course work over the next 18 months, and then I'll write a dissertation. I have already started classes, and it is great fun.

Thanks again for your note. It was great to hear from you. All the best.

Sincerely,

ROBERT R. SIMMONS.

THE CIA AND THE U.S. INTELLIGENCE SYSTEM

(By Scott D. Breckinridge)

One recent example of a breakdown in communications involved the mining operations of Nicaraguan ports in early 1984. The Congress was aware of a program to interdict the movement of arms from the Sandinista government in Nicaragua to the insurgents in El Salvador. The general U.S. program of opposing the communist campaign had been made controversial by those opposing the Salvadoran regime. The role given to CIA—to support the anti-Sandinista group (the "Contras")—was judged by some to be a form of illegal intervention, whereas those approving of the concept considered it to be support for the non-Marxist forces as well as a chance to strengthen democratic forms in the area. Early in 1984 CIA was to brief the oversight committees in both houses on the entire program. The House committee was briefed in detail. Delays and postponements of the Senate briefing held up that presentation to the end of the first quarter of the year. From one point of view it was, from all reports, a typical detailed review of what was happening, where and when and how. After the mining became controversial some senators disclaimed any knowledge of it; what developed, in fact, was that it had been reported.[1] Then followed complaints that the mining aspect of the briefing was but a small part of an indigestible whole. Perhaps the same could have been said about each segment of the briefing, but the real problem is that this particular part flared into an issue.

In retrospect, there is an explanation of why the senators felt they had not been told. First, they knew of the general program to interdict the movement of war materials from Nicaragua to the insurgents in El Salvador. It is likely that when they were told of the mining of the harbors from which arms were shipped to the insurgents in El Salvador, the mining seemed a logical part of what had been approved. Only one senator reacted to the point and requested additional briefing. Others, when approached by the media with the challenging question about violation of international law—an arguable point in any event—were startled and claimed that they knew about nothing that would violate international law.

The way in which committee hearings are often conducted further explains the confusion. Those who have appeared before committees have observed the occasional preoccupation of committee members with such matters as draft legislation, correspondence to constituents, and discussions with their staff assistants who come to consult with them. A fragmented attention span can produce blank spaces in the consciousness of the committee members. The fact is that the members were told, and only one of them seems to have reacted to the point. Members of Congress are not known for acknowledging error; the initial reactions to the news of the mining were never corrected.

As such problems will not simply go away, the Congress must realize that a great care should be made to understand what it is told; intelligence people, for their part, must speak as clearly as possible to those who are unlikely to understand some nuances. The fact remains that congressional oversight is essential to effective operation of our governmental system. It is a responsibility of both Executive and Legislative branches to make it work as well as possible, especially in relation to intelligence.

APRIL 9, 1984.

Hon. WILLIAM J. CASEY,
Director of Central Intelligence,
Central Intelligence Agency, Washington, DC.

DEAR BILL: All this past weekend, I've been trying to figure out how I can most easily tell you my feelings about the discovery of the President having approved mining some of the harbors of Central America.

It gets down to one, little, simple phrase: I am pissed off!

I understand you had briefed the House on this matter. I've heard that. Now, during the important debate we had all last week and the week before, on whether we would increase funds for the Nicaragua program, we were doing all right, until a Member of the Committee charged that the President had approved the mining. I strongly denied that because I had never heard of it. I found out the next day that the CIA had, with the written approval of the President, engaged in such mining, and the approval came in February!

Bill, this is no way to run a railroad and I find myself in a hell of a quandary. I am forced to apologize to the Members of the Intelligence Committee because I did not know the facts on this. At the same time, my counterpart in the House did know.

The President has asked us to back his foreign policy. Bill, how can we back his foreign policy when we don't know what the hell he is doing? Lebanon, yes, we all knew that he sent troops over there. But mine the harbors in Nicaragua? This is an act violating international law. It is an act of war. For the life of me, I don't see how we are going to explain it.

My simple guess is that the House is going to defeat this supplemental and we will not be in any position to put up much of an argument after we were not given the information we were entitled to receive; particularly, if my memory serves me correctly, when you briefed us on Central America just a couple of weeks ago. And the order was signed before that.

I don't like this. I don't like it one bit from the President or from you. I don't think we need a lot of lengthy explanations. The deed has been done and, in the future, if anything like this happens, I'm going to raise one hell of a lot of fuss about it in public.

Sincerely,

BARRY GOLDWATER,
Chairman.

(Reprinted in Daniel Patrick Moynihan's "Came the Revolution" (Harcourt, Brace, Jovanovich, 1988. pp. 178–9))

[Excerpt from Senate Report 98–665, Oct. 10, 1984]

REPORT TO SENATE ON SELECT COMMITTEE ON INTELLIGENCE

Mr. Goldwater, from the Committee on Intelligence, submitted the following report:

On April 10, 1984, in a closed session, with most of the Members of the Senate in attendance, the DCI made his first formal presentation to the Committee of the details of the mining operations and the decision-making process which led to it. Following this briefing, the Senate, by a vote of 84–12, passed a sense of the Congress resolution that:

"No funds heretofore or hereafter appropriated in any Act of Congress shall be obligated or expended for the purpose of planning, directing, or supporting the mining of the ports or territorial waters of Nicaragua."

On the same day, the Chairman of the Committee, Senator Goldwater, issued a statement which stated, among other things:

". . . [The] Intelligence Community did not fully inform . . . [the] Committee concerning mining of harbors in Nicaragua despite the fact that they had a legal obligation to do so.

"[The] Intelligence Authorization Act [for Fiscal Year 1981] amended the Foreign Assistance Act of 1961 to require that each operation conducted by or on behalf of the Central Intelligence Agency in a foreign country, other than activities intended solely for obtaining necessary intelligence, shall be considered a significant anticipated intelligence activity for the purpose of Section 501 of the National Security Act of 1947 [popularly referred to as the Intelligence Oversight Act of 1980].

"Because the legal requirement of the law was not followed in this case by not briefing our Committee, I therefore, wrote a strong letter to Director Casey expressing my extreme displeasure. In the letter, I explained to Director Casey that we in Congress had been debating for almost two weeks whether we would increase funds for the Nicaraguan program. Since neither the Committee nor my staff were briefed on the substance of the program, I had to engage in repeated debate on the Senate Floor. Having discovered the truth of the matter, I was then placed in the position of having to apologize to Members of the Committee and the Senate.

"I told Mr. Casey that this is no way to run a railroad and that it is indefensible on the part of the Administration to ask us to back its foreign policy when we don't even know what is going on because we were not briefed pursuant to the legal requirements. The Committee and Congress were left holding the bag in this instance. And, if we are to support the foreign policies of this Administration then, the President and his spokesman should let Congress and the American people know what is going on.

"In effect, what I told Director Casey was that if plain old fashion common sense had been used, the type of problem we face today would have never happened."

The Chairman's statement concluded by saying that:

"The issues being raised now by me will have to be resolved to the satisfaction of my Committee and the Congress. Until that is done, I would hope and suggest that the debate be put on hold."

Public debate, however, continued. On April 12, 1984, DCI Casey issued an "Employee Bulletin" in which he asserted that the CIA had "fully met all statutory requirements for notifying our Intelligence Oversight Committees of the covert action program in Nicaragua . . . [and] complied with the letter of the law in our briefings . . . [and] with the spirit as well." On the same day, according to a press report, the President's National Security Advisor, Robert McFarlane, told the Naval Academy Foreign Affairs Conference, that:

"Every important detail [of the mining] was shared in full by the proper Congressional Oversight Committees."

The report said Mr. McFarlane went on to say that "disclosure of secret plans to specified Congressional Committees 'as . . . provided by law,' was 'faithfully' accomplished."

On April 15, 1984, Senator Moynihan announced his intent to resign as Vice Chairman of the Committee, stating:

"This appears to me the most emphatic way I can express my view that the Senate Committee was not properly briefed on the mining of Nicaraguan harbors with American mines from an American ship under American command.

"An employee bulletin of the Central Intelligence Agency issued April 12 states that the House Committee was first briefed on 31 January, but the Senate Committee not until March 8. Even, then, as Senator Goldwater has stated, nothing occurred which could be called a briefing. The reference is to a single sentence in a two-hour Committee meeting, and a singularly obscure sentence at that.

"This sentence was substantially repeated in a meeting on March 13. In no event was the briefing "full," "current," or "prior" as required by the Intelligence Oversight Act of 1980—a measure I helped write. If this action was important enough for the President to have approved it . . . it was important enough for the Committee to have been informed . . . [before implementation].

"In the public hearing on the confirmation of John J. McMahon as Deputy Director of Central Intelligence, I remarked that with respect to intelligence matters the "oversight function necessarily involves a trust relationship between the Committee and the Community because we cannot know what we are not told and therefore must trust the leaders of the Community to inform us."

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[1] New York Times column, by William Safire, May 28, 1984.

"I had thought this relationship of trust was securely in place. Certainly the career service gave every such indication. Even so, something went wrong, and the seriousness of this must be expressed."

On April 26, the Committee held a closed meeting with DCI Casey at which he "apologize[d] profoundly." Following the meeting, the Committee issued the following statement:

"The Senate Select Committee on Intelligence met on April 26 to review the events that let to the mining of Nicaraguan harbors and attacks on Nicaraguan ports. At the conclusion of this review, the Committee agreed that it was not adequately informed in a timely manner of certain significant intelligence activity in such a manner as to permit the Committee to carry out its oversight function. The Director of Central Intelligence concurred in that assessment."

[From the Washington Post, Nov. 5, 1991]

THE GATES CONFIRMATION

It is hard to recall a presidential nominee of any sort whose work performance and style was ever dissected so closely as Robert Gates's—and this in a supposedly secret agency. Yet it seems unfair to judge him strictly on the basis that he acted wisely in one instance, unwisely in another. Whose work product could stand up under that sort of scrutiny? Once demystified, as Sen William Cohen observed on the op-ed page yesterday, intelligence analysis turns out to be not nearly so much a quest for absolute truth as a struggle to prevail within a thoroughly human, bureaucratic and, yes, necessarily political environment. The CIA itself turns out to be much more a part of Washington and the larger political society than many understood.

In a thousand battles, sometimes Mr. Gates showed good sense and maturity and sometimes not. There is no question but that, promoted early, he often stepped on toes. The latter-day politicization sometimes less of analysis than of the analysis of analysis complicates scoring. But our judgment is that he was battling and learning at the same time. In his several White House assignments, he was learning some more.

Even those who feel he did not learn enough, however, have tended to move to a second front. Do not the scars that Mr. Gates inflicted and incurred at CIA disable him from leading American intelligence into a new era? Attentive outsiders and some brave insiders who took their careers into their hands testified that in this crucial category of leadership he falls short.

It seems to us, however, that the scars are a mark not only of a formidable experience but of a visible chastening. Mr. Gates is now publicly committed to reform. He means to manage the CIA to meet the changing requirements of the post-Cold War era. Unquestionably he has the knowledge of the machinery and the confidence of the president to do that job. He also promises to be faithful to the imperatives of honest consultation with Congress. Such consultation is designed precisely to diminish the chances that abuses of secret power, in operations or analysis, could recur.

Grave questions have been raised about Mr. Gates. He has made his own confessions of error and misjudgment. But these do not amount in our view to a showing that he is unqualified. On the contrary, there is much evidence that—as an analyst, as a manager, as one who knows the ways of the consumers of intelligence as well as the producers—he is qualified. He seems to us a reasonable choice to be George Bush's director of intelligence.

Mr. MOYNIHAN. I simply want to say to my friend from Virginia, that it was characteristically gallant of him to want to make part of this debate the record of a hugely unfortunate set of events in the early spring of 1984 when Barry Goldwater, then chairman of the Select Committee, stated that the committee had not been informed of the agency's participation in the mining of Nicaraguan harbors. He said this was an act of war, a violation of international law.

There followed, as I suggested to the committee on the occasion of the opening day of the nomination hearings in response to a question from the Senator from New Jersey, that what followed was a disinformation campaign directed against Barry Goldwater. I was vice chairman at the time. It was said all over this town that he had indeed been informed, but had forgotten. The suggestions, the insinuations, attained the level of viciousness. They worked in the press, and they would have worked in the Senate had it been a lesser man than Barry Goldwater, who was not about to be lied about.

And the day came when the Director, in a closed meeting in the Dome, apologized. The day came when the National Security Adviser, who had been duped, I think, into participating in this campaign against Senator Goldwater, sent a letter of apology, marked "Confidential."

But the matter is not over. An employee bulletin which impugned Barry Goldwater's name, given out to all the members of the agency at the time, has never been retracted. It falsely stated that the committee had been fully briefed and that the agency had complied with the letter and the spirit of the law. The Director acknowledged privately this was not true, but the bulletin was not retracted.

The agency employees are owed an apology. They were told something not so about the Senate. And I am happy that I can report to the Senate that Mr. Gates came to see me on the 7th of October and said that if confirmed he would look into this matter, an important fact. An injustice to the Senate and to a great man that needs to be put straight will be put behind us.

Mr. WARNER. Mr. President, if I might just acknowledge again my pleasure in associating myself with the distinguished Senator from New York, at long last making public this vital part of the record in the history of the CIA and one of our distinguished colleagues.

Mr. NUNN. Mr. President, during the Intelligence Committee's deliberation of this nomination, I indicated that I had reservations about it. I noted my concern about the signal it would send to the men and women in the intelligence community about how one gets to the top in this town. Mr. President, I still have some of these reservations. I also noted my concern over the CIA's inadequate response to questions I had submitted. The latter concern has been eased, although not completely and the CIA has now made a reasonable effort to reply to my inquiries, and they are continuing to endeavor to do that.

I believe that there are four issues that have to be considered in this nomination: First, Mr. Gates' relationship to the Iran-Contra operation; second, the charge of politicization in the management of intelligence analysis; third, Congressional oversight; and Fourth, the proper way to address the future of the CIA in a changed world, the latter being the strongest consideration, in my view.

The Intelligence Committee carefully examined the available evidence regarding Mr. Gates' relationship to the Iran-Contra operation. There are grounds for concern over Mr. Gates' inability to recall warnings of possible diversion of funds and over his lack of aggressiveness in following up various indications of impropriety.

Nonetheless, on the basis of the evidence before the committee, he does not appear to have been aware of any CIA impropriety or of the diversion of profits from arms sales to aid the Contras. Moreover, in his opening testimony before the committee, he acknowledged that he should have taken more seriously the possibility of impropriety or wrongdoing and should have pursued this possibility more aggressively.

Before looking at the management of intelligence analysis, I believe it is important to note that allegations of politicization are not new. They have plagued the CIA for several decades. Examples of controversy regarding the use of intelligence include estimates of Vietcong strength prior to the Tet offensive in 1968; estimates of Soviet strategic capabilities in 1969; and estimates regarding cross-border activities in Cambodia in 1970.

This helps to understand the controversy surrounding the CIA in the 1980's, particularly during the period from 1981 through 1986, when William Casey was the Director of Central Intelligence and Robert Gates occupied key positions at the CIA.

As we look back on this period, I believe there is little doubt that Mr. Casey has a policy agenda for combatting the global Soviet threat, as he understood it. I also believe there can be little doubt that Mr. Casey slanted intelligence to serve his policy agenda. For example, the report of the congressional committees investigating the Iran-Contra affair concluded the following:

> The democratic processes are subverted when intelligence is manipulated to affect decisions by elected officials and the public.

This danger is magnified when a director of Central Intelligence, like Casey, becomes a single-minded advocate of policy. Although Deputy Director of Central Intelligence, John McMahon, testified that no such intelligence manipulation took place, there is evidence that Director Casey misrepresented or selectively used available intelligence to support the policy he was promoting, particularly in Central America. Misrepresentation of intelligence also occurred in the Iran initiative.

It is also worth recalling the testimony of then Secretary of State George Shultz before the Iran-Contra committees:

> * * * I hate to say it, but I believe that one of the reasons the President was given what I regard as wrong information, for example, about Iran and terrorism, was that the agency or the people in the CIA were too involved in this. So that is one point. And I feel very clear in my mind about this point. And I know that long before all this emerged, I had come to have great doubts about the objectivity and reliability of some of the intelligence I was getting, because I had a sense of this.

Mr. President, the available evidence regarding allegations of politicization is detailed in the committee report, and I will not attempt to review it here. I believe it is clear that the most dramatic allegations are not borne out by the facts as we know them. I also believe that the evidence, while inconclusive as to the nominee's deliberately slanting intelligence, is clear as to the widespread perception of politicization of CIA analysis.

It is clear to me that Mr. Gates was not sufficiently sensitive to these perceptions during that timeframe. I believe, however, that this confirmation process and his experience since this period of time has made an impression on him. I also believe that he will take aggressive action to protect the independence and objectivity of the analytical process throughout the intelligence community and that he will be properly attentive to the morale and well-being of the men and women in the community. Those of us on the committee will be watching this very carefully, if he is confirmed.

I was pleased with Mr. Gates' responses to me and to Chairman BOREN regarding congressional oversight and reporting indications of wrongdoing. I was also impressed by Chairman BOREN's comments as to Mr. Gates' support for the role of Congress during his service as the Deputy National Security Adviser. Chairman BOREN's strong support for Mr. Gates is an important factor in my affirmative vote today.

The most important challenge that will face the next Director of Central Intelligence is the need to restructure the CIA to adjust to a new world. I found the floor speech of Senator MOYNIHAN about the failure of the CIA to chart the course of Soviet and East European economic affairs to be on point. I believe that the CIA in the next months and years to come must make significant changes and must do so soon. It has come to rely too much on technical means and not enough on human intelligence to fulfill the intelligence requirements of the United States. Technical means alone will not tell us what is going on in the Third World, which will be a likely source of challenge to U.S. interests in the future. Nor will technical means give us a clear reading of likely future developments in the Soviet Republics or in Eastern Europe.

We also need a new approach to the analytical process. We have to get away from the lowest common denominator and, when analysts disagree, move to an approach in which differing views are clearly set forth for policy makers.

We need the A views, the B views, and the C views if necessary. We need to challenge analyzers to make conclusions, and we need to form competing teams of analysts to take on competing visions.

Mr. President, in effect the CIA needs some ventilation. They need to have opposing views. They need to have fresh air. They need to have competing teams. They need to give policymakers more than one view on a number of subjects that at best have to be speculation.

I think those changes are long overdue.

Mr. President, I will support the nomination of Mr. Gates to head the CIA and the intelligence community based upon his extensive experience in intelligence analysis, as well as his appreciation with his background that he now has, his keen appreciation of the type of intelligence policymakers need and must have.

I have dealt personally with him over the years and have been impressed repeatedly with his intellect and his dedication. But most importantly, I believe that he possesses the background and experience that will enable him to reorient and revitalize the CIA to meet the challenges of the future. I rely on his pledges that he will do so.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. I yield 8 minutes to the distinguished Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I have never met Mr. Gates, but I am probably one of the few people here who actually read the committee report. I want to give him the benefit of every doubt. But when I read the report, I concluded that I could not support him to be Director of the CIA.

I read the day before yesterday some newspaper where people said they were tired of Iran-Contra.

I think that is true. I am too. But this debate is not about Iran-Contra. It is about Congress being misled. It is about Congress being deceived and lied to. It is about our intelligence community missing the demise of the U.S.S.R. It is about how on Earth are you going to cut funding for intelligence at a time when it can certainly be cut, with a cold war warrior as the Director of CIA?

And, Mr. President, the most dangerous thing of all, is the politicization of the intelligence community.

On October 7, Elliott Abrams pled guilty to lying to Congress. Everybody knows that story.

Bill Casey, head of the CIA all the years under Ronald Reagan until his death, lied to Congress.

Ollie North lied to Congress.

John Poindexter lied to the U.S. Congress.

And when the intelligence community withholds information from Congress, misleads, deceives, shaves, and hedges on information to Congress—Mr. President, the United States can wind up in a war and never know how it got there. It is the most dangerous thing that can happen to this country, when people in position to know who, know that we are depending on them for information to make decisions, and lie to us, or mislead us.

Robert Gates said that politics never entered into his decision, his analyses.

Draw your own conclusions. In 1984, he said air strikes would be necessary to defeat the Sandinistas, and he went on in a memo to Bill Casey in 1984 and said: "Hopes for a more pluralistic government are essentially silly and hopeless," referring to Nicaragua.

Does that sound like somebody giving you intelligence, or does that sound like somebody running for office on an anti-Communist platform? That is advocacy, pure and simple.

Further on Nicaragua he said, "Any negotiated agreement will simply offer a cover for the consolidation of the Sandinista regime."

And then he said: "It is time to stop fooling ourselves about what is going to happen in Nicaragua."

He was right, but he was the one who was fooled.

And on SDI, Mr. President, does this sound like somebody who is a gatherer of intelligence, giving us information on which to base our decisions by recommending the "astrodome defense" concept which even DAN QUAYLE called political jargon? It was not even a serious program goal, and he went on to say, in a public speech, that for the United States to give up on defense and rely just on offensive forces, the strategy that served the United States well for over 35 years, "would be a key indicator of a loss of U.S. will to compete militarily." And even worse, "Failure to proceed with an American strategic defense would hand the Soviets a unilateral military advantage of historic consequence—with awesomely negative implications for strategic stability and peace." Does that sound like an intelligence analyst, or does that sound like a speech from the White House?

The memo he wrote to Bill Casey in 1984—and I do not have time to read all of it—is nothing more or less than an ideological presentation; virtually no intelligence in it.

Mr. President, at a time when the U.S.S.R. was collapsing, as it had been for years, I never heard a peep out of the CIA to indicate that some of our defense expenditures were bloated and unnecessary.

I got to where I would not go up to room S-407 for CIA briefings because every time an issue was raised on the floor about what the Soviet Union was up to, if the proponents wanted the B-2 or, SDI, whatever they wanted, to counter something in the Soviet Union, just go up to S-407 and hear what the CIA had to say about it. I knew what the CIA was going to say before I went. They were going to say exactly what the President of the United States and the Pentagon told them to say. And I cannot remember one single piece of intelligence from the CIA, before or during Desert Storm that turned out to be accurate.

Mr. President, we are spending, so I read in the Times, $30 billion a year on intelligence—over half of which is directed at the Soviet Union. And the number one problem that is going to cause the collapse of this country is not the Soviet Union, but the United States deficit. When we finally get serious around here about the enormity of our deficit, intelligence is going to have to take a cut along with everyone else. Tell me, do you expect Robert Gates, based on what you know about him right now, to come in here and tell you where we can save maybe $10 billion in intelligence? The answer is in the question.

I believe that intelligence in the past 10 years has been woefully inept, wrong, and outrageously politicized. These are things that are not just from this Senator. These are things that were said by higher ranking people in the CIA who testified before the committee, and they have not been discredited.

Finally the CIA said the Soviet Union was a part of the conspiracy to assassinate the Pope, I must tell you I was traumatized. The Soviets may be dumb but they are not stupid. Fifty million or more Catholics in this country. Maybe a billion or more around the world. What a scam the CIA pulled on that one. We now know there was not one shred of evidence, to justify such a report, and yet this body and the American people were misled into believing that.

Mr. President, much has been made here about the CIA needing an insider. I submit if there was ever a time that the intelligence community, and especially the CIA, needed an outsider, it is now.

I thank the Senator from New Jersey for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New Jersey controls 15 minutes.

Mr. BRADLEY. I yield 4 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, yesterday I had said in this body, "Mr. Fiers told the committee that he never specifically told Mr. Gates what was going on. But he added that everybody knew what Colonel North was doing and he believed Mr. Gates must have known as well, at least in general terms."

My colleague from Alaska took the floor a few minutes ago to say, "that statement might lead one to erroneously conclude that Gates must have known about the illegal diversion. But that is not what Mr. Fiers said. What Mr. Fiers really said was this: 'A broad array of people had an understanding of what was happening. Not the diversion, not the sales of weapons to Iran, but that a private benefactor support network for * * * the Contras * * * had been established and was being quarterbacked by Ollie North.'"

My colleague from Alaska fails to add what Mr. Fiers went on to say: "I think in my own mind"—this is according to Fiers—"that Bob Gates was in that universe."

My colleague also fails to include the balance of the statement of Mr. Fiers, who goes on to say: "But within that [universe], I have serious reason to doubt that Bob Gates had extensive detail. He was late to the game. It was not something that was talked about openly. At that point, there were more understandings between people and I think he got glimpses and snatches into it, enough so that he knew that it was a problem. Someplace—there were shoals out there the Agency had to stay away from and * * * as best I understand it, that was his intent."

I believe that suffices, Mr. President, to indicate that Bob Gates knew what was going on. The exact details, no, probably not; but certainly he knew what was going on, and Mr. Fiers so testified. I say to my colleague from Alaska, I think the record speaks in support of the position and the statement that the Senator from Ohio made yesterday.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BRADLEY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, first, I would like to express my appreciation to the chairman for his fairness and thoroughness throughout this whole process that is about to come to an end. I think there will be a lot of relieved staff members as soon as it is concluded, as well as some of us who worked in the committee for months on this nomination.

Mr. President, I ask unanimous consent that my opening and closing statements in the hearings be printed in the RECORD, along with the testimony of Mr. Tom Polgar and Mr. Hal Ford.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OPENING STATEMENT BY SENATOR BILL BRADLEY ON THE NOMINATION OF ROBERT GATES AS DIRECTOR OF THE CIA, SEPTEMBER 16, 1991

Mr. Chairman, these hearings are not just an occasion to reexamine, yet again, Robert Gates' role in the Iran-Contra scandal, in other words, what he knew when, why he did not find out more sooner, what he did or did not do sooner, and what he did or did not do as a result. These hearings are an opportunity to open a new debate on the future of the role of intelligence in protecting not just American interests against foreign dangers but also U.S. taxpayers against unneeded defense spending.

The U.S. Intelligence Community annually spends many billions of dollars and employs tens of thousands of people to avoid the costs of false alarms while keeping alert to real dangers. The DCI leads the Intelligence Community, manages its vast resources, and advises the President and the Congress on critical issues.

That is why we must appraise Mr. Gates' past record (as the CIA's former Deputy Director for Intelligence, a former Chairman of the National Intelligence Council, a former Deputy and Acting DCI, and as the current Deputy Assistant to the President) to ensure that he meets high standards of integrity, judgment, and leadership. In addition to Iran-Contra, we must evaluate his performance on the two issues that have been central to American security in recent years: the Soviet Union and Iraq.

Based on our past investigations, the Iran-Contra scandal began with an error of judgment. In 1985, the National Intelligence Council, which Mr. Gates headed, produced a badly flawed estimate that overestimated Iranian vulnerability and provided the Administration with a strategic rationale to help Iran get arms. A few months later, the CIA gave unauthorized support to covert Israeli shipments of U.S. arms to Iran. When Mr. Gates found out about them afterwards, he not only failed to object but also neither reviewed nor disclosed them to the Congressional oversight committees for a year. Moreover, during the summer of 1986, he ignored growing signs that profits from selling arms to Iran were being diverted to the Nicaraguan contras, contrary to law. Despite his promises to supervise and report all covert activities, he was instrumental in misinforming the Senate Committee about the CIA's role in this scandal.

The Committee will have to decide whether these lapses of judgment were isolated mistakes or part of a pattern in which Mr. Gates tailored intelligence to suit policymakers or his own biases; failed to prevent, protest, or at least warn of improperly authorized activities; or even suppressed damaging information.

The reason these questions—was it isolated incidents or a pattern—is important is because upon confirmation, the DCI disappears behind a veil of secrecy, accountable to the public only through the Congressional oversight Committee. If we confirm someone whose past lack of candor has hidden poor judgment and his own failure to exercise leadership, how can we be confident that the CIA will do a good job under his direction in the future? That is a basic question in these hearings.

Assuming Mr. Gates satisfies the Committee on Iran-Contra, I think he must still explain his persistent overstatement of Soviet strength and insufficient attention to Iraqi threats. His weak record on these crucial issues raises questions about his strategic judgment.

First, the Soviet Union, Mr. Gates' slowness to recognize the powerful movements toward democratic and nationalist revolutions in the former Soviet Union is cause for concern—especially in view of the data and insights he was getting from intelligence analysts. While he might be excused for belittling the fundamental changes taking place as early as 1986, it is hard to excuse his blindly fatalistic view in 1988 that "the dictatorship of the Communist party remains untouched and untouchable" or that "a long competition and struggle with the Soviet Union lie before us." Today, both the Communist Party and the former USSR are rapidly fading into history. There is no question that Mr. Gates got it dead wrong. The question is why.

The Committee must decide whether such mistakes were truly impartial errors of judgment or the result of systematic biases to support the bloated defense budgets of the 1980s.

For instance, in November 1986, he publicized highly alarming estimates of Soviet strategic laser developments and warned that "Failure to proceed with an American strategic defense would hand the Soviets a unilateral military advantage of historic consequences—with awesomely negative implications for strategic stability and peace."

This was simply a false alarm. Yet, it supported a costly and fruitless quest for wonder weapons and squandered resources that would have been better spent, for example, on ensuring that Patriot missiles were improved to knock out all Scud warheads in case of conflict in the Persian Gulf. These and other alarmist messages about the Soviet Union that Mr. Gates publicized during the 1980s were embodied in intelligence estimates that he provided to policy-makers serving two administrations.

Now, lets turn to Iraq. In the mid-80s even as the Iran-Contra operation was playing out, the U.S. tilted more and more forcefully toward Iraq. The following are things that are publicly known: First, the Reagan and Bush Administrations approved export licenses for $1.5 billion worth of dual-use items—i.e. items that had a military application such as helicopters (not very much unlike the ones used in the invasion of Kuwait) and equipment that could help the Iraqi nuclear program.

Second, they muffled criticism of Iraqi's gassing of Kurds;

Third, they extended hundreds of millions of dollars in Ex-Im and agricultural loan guarantees; and

Fourth, in 1989, the Bush Administration opposed naming Iraq a terrorist state and when Congress did so anyhow, the President waived it's restrictions on agriculture and Ex-Im credits to Iraq.

In this atmosphere of cozying up to Iraq and remaining fixated by the Soviet specter, Mr. Gates did not refocus sufficient intelligence resources on the emerging Iraqi threat. Specifically, after Iraq routed Iran unexpectedly in 1988, it clearly increased its military advantage over all its neighbors and intensified its pursuit of technology for strategic and nuclear weapons. Notwithstanding these danger signs, Mr. Gates did far too little to ensure that U.S. policy would be well informed of Iraqi strategic activities, including ballistic missiles and weapons of mass destruction.

As a result, when Saddam Hussein began making more belligerent and specific threats against Kuwait in 1990, the Administration had no good alternative to the unreliable reassurances of Arab officials whose interests differed from ours. Fortunately, this failure of intelligence was not catastrophic for the U.S., but only because Saddam had provoked the U.S. prematurely, before he had acquired an effective chemical or nuclear deterrent. Enemy stupidity is not a reliable substitute for astute guidance.

In addition to Mr. Gates' role in the Iran-Contra scandal and in failing to refocus U.S. intelligence resources on the emerging Iraqi threat, his involvement generally in U.S. ties with Iraq since 1985 needs to be examined critically. These ties include not just direct official relationships between governments but also connections that were the responsibility of the CIA to monitor or to maintain. Indeed, unless all his activities in this regard were authorized under law, I would seriously question his candor and commitment to upholding the law, and therefore his fitness to serve.

We have been pleasantly surprised by the early endings of the Cold War and the Persian Gulf War, but more diverse challenges to our security and new opportunities to support democratic change in the world lie on the horizon. Does Robert Gates have the record, the vision, and the independence needed to revamp the Intelligence Community to address these new questions? Only Mr. Gates can answer these questions by what he does or does not say during these hearings. The floor will be Mr. Gates'; he will either answer those questions to the satisfaction of the Committee and the American public, or he won't.

STATEMENT BY SENATOR BILL BRADLEY ON THE NOMINATION OF ROBERT GATES AS DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY, OCTOBER 18, 1991

Mr. Chairman, the inquiries and hearings conducted by this Committee over the last few months have been fair and thorough. The hearings have answered many important questions about the public record of the President's nominee to be the Director of Central Intelligence. They have also raised many questions about the judgment and personal qualities needed in the next Director. I have concluded that despite his ability, success, and dedication as an intelligence officer, Bob Gates cannot provide the fresh leadership and good judgment that the United States needs at the top of its intelligence community in the post-Soviet world.

The record shows that Mr. Gates is a man of the past. While he has great expertise on the former Soviet Union and its armed forces, much of his knowledge was made obsolete by the communists' loss of power in August.

Mr. Gates was exceptionally slow to recognize the build-up of powerful, non-military forces that finally swept away the old Soviet order.

At the same time, Mr. Gates was insensitive to early signs of threats to U.S. interests in Iraq in the period after it routed Iran in 1988.

And his past management of the CIA's analysts left a legacy of doubt that would be difficult to overcome—especially since he often turned out to be wrong when he substituted his own judgment for the analysts'. He did this by predicting early Soviet inroads in Iran, tests of Soviet laser defenses against ballistic missiles, and Soviet moves against Panama and South Africa.

The person who leads the CIA into the new era I think has got to have, above all, sound judgment. But as these hearings revealed, Mr. Gates has a record dotted with serious errors of judgment:

He erred in late 1984 when he advised the DCI that air strikes would be needed to beat the Sandinistas.

He erred when he failed to insist that CIA analysts take advantage of offers of assistance from Soviet emigre economists who were correctly interpreting the early signs of Soviet economic collapse.

He also erred in managing a CIA assessment in 1985 of the Soviet role in Agca's hapless effort to shoot the Pope John Paul II. The assessment was not a study of all possibilities. Yet, Mr. Gates' cover letter and the key judgments of the study suggested it was. He thus misrepresented its meaning to policy makers, and after an internal review showed him that the process by which the study was conducted had been flawed, he failed to correct misimpressions it may have created in policy makers' minds. Only after he was pressed in these hearings did Mr. Gates finally concede that he overstated the basis for confidence in the case that the Soviets had any role whatsoever.

He erred again in 1986 when he ignored the impact of glasnost on Soviet foreign policy in his speeches—one of which, "War by Another Name," blatantly promoted the Reagan doctrine.

He erred repeatedly in other speeches between 1985 and 1990 in portraying Soviet reformers as at first unreal and, when that was no longer credible, as losers.

As the Deputy DCI and later as Deputy National Security Adviser, Mr. Gates should be held accountable for shortcomings of intelligence we have experienced in even more recent years. Just in the past few months we have learned how badly the intelligence community missed the vast bulk of Iraq's nuclear weapons programs. Mr. Gates' misjudgments were critical in diverting the attention of the intelligence community away from Iraq in late 1988 and early 1989, just when Iraq began to show signs of strategic activities that could threaten U.S. interests in the Persian Gulf. He opted instead for monitoring Soviet military power more closely, just as the Soviet Union was being squeezed by a shrinking economy and a decaying political system.

The complex challenges of the post-Soviet world call for a Director of Central Intelligence who understands the needs of that changing world. American interests will be affected increasingly by developments in Asia and Latin America, by the spread of nuclear and other dangerous technologies in the Third World, and by widespread religious, racial, and ethnic strife. At the same time there will be these changing needs, the budgets for U.S. intelligence will decline.

That is why the next DCI must lead the intelligence community with sound strategic judgment. He must refocus the policy makers' attention on the new issues, anticipate threats before they become unmanageable, and question conventional wisdom of superiors as well as subordinates. Mr. Gates has the record of a man who has not been up to these three tasks.

Quite apart from his misjudgments of Iraq and the Soviet Union, Mr. Gates also has a creditability problem of his own. When he has been candid, he has admitted many mistakes. For example, publicly advocating SDI and other controversial policies, predicting the revival of Soviet power, and slighting alternative views.

Yet, his candor has varied from time to time and issue to issue. He apologized for some of the mistakes that he has not been able to deny, for example, having failed to find out more, sooner, and done more about the Iran-Contra scandal.

In other cases, he did not recall his mistakes until confronted with undeniable evidence. For example, only in the last few weeks, when the evidence was finally made public, did he admit that he had mistakenly quelled dissent on the special national intelligence estimates in 1985 that provided the anti-Soviet rationale for easing the arms embargo on Iran.

Finally, after months of classified inquiries, only last week did he finally admit that he had been personally involved in a major change of policy toward intelligence liaison with Iraq in October 1986. Yet, just six months earlier, he had promised under oath and was required by law to keep the Committee fully and currently informed of all significant anticipated intelligence activities. Moreover, there are still important and unanswered questions about his management and supervision of the undisclosed ties between Iraq and the United States—ties that may even have encouraged Saddam to miscalculate about U.S. willingness to resist his aggression.

These hearings have given us a revealing picture of Mr. Gates—he is a man who apologizes for undeniable mistakes, admits newly confirmed mistakes, recalls possible mistakes only when questioned repeatedly in public, refuses to recall or forgets unproven mistakes, and promises to prevent any more serious mistakes.

Mr. Chairman, these actions do not inspire confidence. How are we to believe that Mr. Gates has been fully candid in the past, that he is speaking with complete candor even now, or that he can recover his credibility in the future? Confirming him would send the intelligence community the wrong message. It would send the message that we would only promote an adept bureaucrat and deny our policy makers the fresh leadership we so desperately need.

HAROLD P. FORD, STATEMENT TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE, 1 OCTOBER 1991, CONCERNING THE CONFIRMATION OF ROBERT GATES AS DIRECTOR OF CENTRAL INTELLIGENCE

Thank you, Mr. Chairman. I have some very difficult things to say today, but I feel I must say them. In brief, my message is that I think Robert Gates should not be confirmed as Director of Central Intelligence. This is a difficult task for me, in part because though semi-retired I am still an employee of the CIA, on part-time contract. This is also a very painful task for me. It is painful to be negative about someone who has been my colleague, a relationship that was cooperative throughout and where there was no bad blood whatsoever between us. Moreover, as my supervisor, Bob Gates was good to me, and awarded me increased responsibilities. Furthermore, he is extremely able, and has clearly had unique experience in both the production of intelligence and its use by the country's top decisionmakers. For me, this is a case of conflicting loyalties. As an indebted colleague, I should loyally support Bob Gates' candidacy. But I also have loyalties to the Agency and to our country's need to have DCIs of the finest makeup possible.

First, a word about where I'm coming from, and about my knowledge of Bob Gates. Following service as a naval officer in World War II and a freshly-won PhD, I joined the CIA in 1950. I served in operations, including a tour of duty as a CIA Chief of Station abroad. I was also an analyst of intelligence for some years, then a manager of intelligence for many years. I have also been a critic of intelligence—including four years duty with this Committee, at which time I was the senior staffer concentrating on intelligence analysis. I served four years in CIA's Directorate of Operations (DO) and four years in CIA's Directorate of Intelligence (DI), but most of my Agency duty concerned the National Intelligence Estimates business. First, with the old Office of National Estimates, where I was the Chief of its Staff; and later with that office's successor, the present National Intelligence Council (the NIC or the Nick), where I was a National Intelligence Officer, later the NIC's Vice Chairman, and then its Acting Chairman, from which post I retired from CIA on 3 September 1986, for matters of health. Since then I have been a lecturer at the Defense Intelligence College, and an historian with the CIA, part-time. I am an author and lecturer on intelligence analysis, including a national prize-winning monograph on National Intelligence Estimating.

Discerning what is the skewing of intelligence and what is not is a tricky business, but from my four decades of experience in and around intelligence I think I can help the Committee thread its way through the differing kinds of pressure which Bob Gates did or did not bring on intelligence analysis. It is my view, in short, that some of his pressures were justified, as he sought to sharpen analysis and its usefulness to decisionmakers. Secondly, that some of the pressures he brought on analysis simply reflected differing professional judgments, and that some of the allegations that he skewed intelligence doubtless have arisen from analysts whose pride was damaged by his revisions. Thirdly, however, as I am prepared to discuss at greater length, it is my view, based chiefly on the confidences of CIA officers whose abilities and character I respect, that other of Bob Gates' pressures have clearly gone beyond professional bounds and do constitute a skewing of intelligence—not in the fields of military and strategic issues, but concerning Soviet political questions, and developments concerning the Soviets and the Third World.

I first met Bob Gates in 1980, when I returned to the CIA from duty with this Committee. I then had some contact with him, off and on, for some three years. Then considerably more contact with him after he became Chairman of the NIC in 1983—at which time I was one of his National Intelligence Officers, and NIO/At Large, seized mostly with global issues. I had still more contact with Bob Gates from January to September 1986: first, as his senior deputy on the NIC; and then, after he became the Deputy Director of Central Intelligence in April, when I succeeded him as Chairman of the NIC, in an Acting capacity. During those months of 1986 we saw quite a bit of one another, on questions of personnel, procedure, and substance. In many of our meetings Director Casey was also present; many other of my meetings with Bob Gates were one-on-one. As I have mentioned, our relationship was cooperative throughout, and I admired his efforts to make intelligence estimates shorter, sharper, and more relevant to the needs of our policymaking consumers.

During those eight months of 1986 I recall no instance where he tried to skew the NIC's intelligence analysis in any way. Regarding pre-1986 months in the NIC, however, I have learned that Bob Gates did lean heavily on an Iran-Iraq estimate in 1985, insisting on his own views and discouraging dissent. I have some knowledge of that skewed estimate, and of subsequent—and more correct—estimates produced in 1986. I also have some first-hand knowledge clarifying and correcting some of the testimony this Committee has previously received concerning the famous—or infamous—National Intelligence Estimates on Mexico (of 1984) and on the Soviets and International Terrorism (of 1981). It is my understanding that Bob Gates brought considerably more pressure to bear on intelligence analysis in the Directorate of Intelligence than he did with the NIC. This is probably because it is harder to skew a broad National Intelligence Estimate than it is the narrower questions more often addressed in the DDI; and, secondly, because the DDI's analysts are mostly younger, more junior officers than the NIC's tough veterans.

I know I am not as well known as the witnesses who have urged this Committee to confirm Bob Gates. But I do bring certain credentials to my testimony. As someone still in the intelligence analysis business who's been there longer than any other officer I know. Someone who has had the pleasure of knowing and working for DCIs of stature: General Bedell Smith, Allen Dulles, John McCone, Dick Helms, Bill Colby. Someone who has held senior CIA positions in both operations and analysis. Someone to whom Director Casey and Bob Gates gave several awards, including the National Intelligence Distinguished Service Medal. Someone who has been rewarded with respect within the CIA, within this Committee years ago, and in the outside world of scholarship in the fields of international affairs, of intelligence, and of ethnics and public affairs.

Now the key question: why do I take the painful step of urging that Bob Gates not be confirmed? Several reasons:

First, my views on the nomination have become more critical since the confirmation hearings began. I have become more critical because of the depositions, the documents, and the testimonies that have come to light—including that of Tom Polgar, whose detailed knowledge of the Iran-Contra record deserves respect and careful examination, even if the Iran-Contra Committee did not happen to formally pursue those questions at the time.

Secondly, I have become more critical because of the testimony of Bob Gates, himself. I'm sorry to say it, but the word that captures his testimony, for me, is—clever. The forgetfulness of this brilliant officer—gifted with photographic memory—does not, to me, wholly instill confidence.

Thirdly, to develop the finest US intelligence possible, a DCI Gates would have to attract and recruit the best brains in the country. I fear he would have some difficulty doing so, because many would shy away from serving a DCI about whom some serious questions have been raised.

Fourthly, there should also be reservations about Bob Gates' analytical style and judgment. Over the years the best analytical results in US intelligence have occurred when the DCI attracted the best analytical talent he could find, then listened to their judgments, ground in his own, and then presented their collective views to the senior policymakers. Many will share my view that Bob Gates has often depended too much on his own individual analytic judgments, and has ignored or scorned the views of others whose assessments did not accord with his own. This would be OK if he were uniquely all-seeing. He has not been. Most importantly, he has been wrong on the central analytic target of the past few years: the probable fortunes of the USSR and the Soviet European bloc. He was wrong concerning the Soviet threat to Iran in 1985. Overly certain that the Soviets ran international terrorism. Overly certain that the sky would fall if we didn't bomb Nicaragua—to say nothing of the wisdom of such a recommended course of action. The USA deserves a DCI whose analytic batting average is better than that—especially if that DCI tends to force his views on the CIA and the Intelligence Community, and especially at a time when US intelligence and US policy face a far more complex world than the one we have known.

Lastly, I have some hesitancy concerning Bob Gates' determination to be a fiercely independent voice of intelligence. I agree with Admiral Inman's testimony that there will not necessarily be dancing in the streets in the CIA if Bob Gates becomes DCI. I do feel, however, that Admiral Inman may have left a mistaken impression with this Committee that the reason CIA's senior officers might not wholly welcome a DCI Gates is because they're simply set in their ways and wouldn't want to have to change. I would stress that there is another element present among them which deserves emphasis. And that is the strong tradition among older CIA officers, one of stress upon the need for integrity of judgment and action, a generation of officers raised on the need for strict independence of judgment, of a premium on telling it like it is, of going where the evidence takes one and then candidly so telling the senior policymakers, whether they find such judgments congenial or not—the aim being to enlighten them about the true shape of the world, not to please them or to cater to their preconceptions.

I do not see Bob Gates a strong exemplar of that tradition. For US intelligence to be worth its keep, worth all the money, talent, and effort involved, we citizens must be confident that a DCI will independently and fiercely stand his ground with his boss, the President of the United States, in cases where their views may differ concerning a particular intelligence judgment at hand. In my view—which I am sure many senior CIA officers share—there would not be such confidence concerning the Bob Gates who served DCI Casey in the CIA. And it seems to me it would be even more difficult for Bob Gates to develop such fierce, independent integrity of judgment and action with the President now, after having been a close, key member of his policymaking team for some years.

Thank you, Mr. Chairman, for permitting me to comment on the nomination.

TESTIMONY OF TOM POLGAR

SUMMARY OF EXPERIENCE

Born in Budapest, Hungary in 1922. Academic gymnasium in Budapest, Gaines College for Business Administration in New York City. Yale University international studies (while in U.S. Army).

On active duty U.S. Army January 1943–May 1946. 2d Lieutenant Military Intelligence. Assigned to OSS, (World War Two predecessor of CIA) in 1944. Accepted civilian intelligence employment with interim agency Strategic Services Unit on discharge from Army and entered on duty with CIA when it was formed in 1947. Career intelligence officer for next 34 years, holding staff and command positions with steadily increasing responsibilities in Europe, Latin America, Vietnam and CIA Headquarters.

Noteworthy assignments included Chief of Base Frankfurt, Chief of Base Hamburg, Deputy Chief of Station Vienna, Austria; Chief of Station in Argentina, Mexico, Vietnam and Germany. In CIA Headquarters served as Chief Intelligence Collection Staff Eastern Europe and for Latin America. Chief of Personnel Management, Operations Directorate.

Held "supergrade" rank for 18 years, including GS 18 and Executive Level Four for ten years.

Decorations include two Distinguished Service Medals—Intelligence Star and Department of State Award for Valor.

Retired from CIA in December 1981. Subsequently served as consultant to Defense Intelligence Agency 1982–1985 and on staff of U.S. Senate Select Committee on Iran/Contra.

Consultant to private business in United States and in Germany, but never in areas related to defense or intelligence.

Lectured on intelligence topics at Tufts University, John F. Kennedy School of Government, Harvard University; Smithsonian Institute's Campus on the Mall and Central Florida University.

Author of numerous articles on intelligence and international affairs published in such papers as Miami Herald, Washington Post, Orlando Sentinel, Boston Globe, American Legion Magazine, International Journal of Intelligence and German "Welt am Sonnta" (Sunday World).

STATEMENT TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE

My name is Tom Polgar. I appear today in response to the Committee's invitation.

I feel qualified to testify based on some 40 years' involvement with American intelligence, starting with OSS in World War Two. During 34 years with the Central Intelligence Agency I held a dozen or so senior staff and command positions. I was chief of station in Argentina, Vietnam, Mexico and Germany. In 1987 I served as investigator on the staff of the Senate Select Committee on Iran/Contra.

I come today to oppose the nomination of Robert Gates because of information and conclusions developed from the Iran/Contra chain of events.

This is the first time I have taken a public position on a presidential appointment.

At the outset, let me counter the claim that Robert Gates as Deputy Director of Central Intelligence was "out of the loop"—that Gates was not told about the events now known as Iran/Contra. I intend to show by documentation and testimony that Gates was fully in the loop, in the management pattern set by his predecessor John McMahon.

No one then serving in CIA could have had any doubts that McMahon was a Deputy Director fully involved in CIA's management, exactly as was intended by Congress when the appointment of the Deputy Director of Central Intelligence was made subject to Senate confirmation.

McMahon was Director Casey's loyal deputy and strong right hand. For example, when President Reagan called a meeting for Saturday, December 7, 1985 to discuss the Iran initiative, McMahon was there for CIA, along with other top advisors of the President.

A few days earlier, in the Director's absence, McMahon showed strong leadership, taking the initiative to right a wrong, trying to construct a legal defense by means of a Presidential Finding for the CIA's role in the November 1985 HAWK missiles for hostages deal.

Mr. Gates succeeded McMahon as Deputy Director for Intelligence in 1982 and as Deputy Director Central Intelligence in 1986. It is not conceivable to me that McMahon would have failed to explain to Gates how the shop was being run and what were the major and controversial operations then handled by the Agency.

In any case, after several years in top management jobs, Gates should have known well how the CIA functioned and what were the primary interests of Director Casey.

The CIA's own records show that Gates followed McMahon's pattern. He was acting Director in Casey's absence; he dealt personally with the White House, accompanying the Director or on his own; he was in and out of the Director's office at his own volition; he needed no invitation to join Casey when Oliver North came to lunch. This was in accordance with the statement made by Mr. Gates to the Senate Intelligence Committee in April 1986 that the Director and he, Gates, agreed to merge the offices of DCI and DDCI into a single entity.

By early 1986, in my opinion, it would have been impossible for any senior CIA officer, let alone the Deputy Director, not to know that CIA was involved in support to the Contras. The mining of the Nicaraguan ports, for example, which resulted in sharp controversy between Director Casey and the then Senate Intelligence Committee chairmen Goldwater and Moynihan, the arguments around the Boland Amendment and CIA's own intelligence reporting reflected the developments. It is hard to imagine that the Deputy Director of CIA did not know what was behind the newspaper reporting and why Congress was becoming agitated.

It has been suggested that Gates did not know about Iran/Contra and the diversion of funds because he was "compartmented out".

This is not true and, indeed, would not have been possible. People who make such claims do not understand how CIA functions.

The truth is that certainly from the time he succeeded John McMahon as Deputy Director for Intelligence, Gates was a key member of CIA's top management team. He was not only well aware of Iran/Contra development but had direct involvement with them already as Deputy Director for Intelligence, as shown by CIA documents, testimony, depositions and White House papers.

Intelligence Directorate participation, under Gates, in the formulation of the Agency's role in support of the Contras is reflected, for example, in a December 1985 memorandum "Crucial Decisions on Central America" and in a January 1986 "NSC prebrief" meeting in which participants were instructed that Director Casey wanted to make the insurgency choice stark:—either we go all out in support of the Contras or they will go down the drain.

As for Iran, a CIA memorandum for the record indicates that on December 5, 1985 then Deputy Director John McMahon convened a meeting of top CIA officials, including Robert Gates, to advise them that he would be meeting with the President on December 7 to take stock of U.S. efforts to free hostages and expand ties with Iran. McMahon reviewed what had already happened, including the 24 November HAWK shipment, the first Iran Funding and the planning for more weapons shipments.

This meeting and the subsequent CIA memorandum for the record are of crucial importance because they indicate the falsehood of later statements of Robert Gates and other CIA witnesses.

Gates' early involvement with the Iran operations is also shown by his testimony (SSCI) that he was in a meeting on January 25, 1986 at the CIA to discuss preparation of intelligence to be passed to the Iranians, as part of the arrangements developed by the National Security Council staff with the Ayatollah Khomeini's regime.

According to a document found in Oliver North's files, titled "DCI, Talking Points, February 27, 1986" (Tower Commission) "the people who know" included Robert Gates.

In March 1986 then Deputy Director for Intelligence Gates asked his analysts to prepare briefing material for Robert McFarlane in order for him to impress the Iranians with the gravity of the Soviet threat to Iran. A week later the analysts met with Gates to discuss how to respond to Iranian intelligence requirements on Iraq.

CIA documents show that in the spring of 1986 Gates was among the small group of senior officers who received sensitive intelligence from the National Security Agency that the Iranians were paying exorbitant prices for spare parts and radar equipment.

An internal White House electronic message dated April 16, 1986 from North to Admiral Poindexter stated "Chief NE and Gates have urged Cave and North to proceed tomorrow with the Iranians in Frankfurt."

North's message indicated that Gates was not only aware of but took an active part in the management of the Iran operation. Far from being compartmented out of Iran/Contra, even as Deputy Director Gates was an important member in CIA's top management team. I suggest that he must have done well in that capacity to warrant Mr. Casey's choosing him to be his deputy.

In July 1986 Admiral Poindexter sent an electronic message to North on the latter's proposal to sell General Second's Central American enterprise to the CIA. Poindexter explained that he had alread told Robert Gates that the private effort should be phased out. Would a careful man like Poindexter talk with Gates of the private effort unless he knew for certain that Gates was among the people at CIA who knew about the private effort? And if Gates did not know, would it not have been his duty to find out what it was the National Security Adviser wanted?

The record shows that Gates had continuing contact with Poindexter. Often he accompanied Casey to the scheduled weekly meetings, at times he saw the National Security Adviser alone.

According to a memorandum for the record by Gates, he, Casey, Poindexter and North met at the White House on October 2, 1986. (Tower Commission).

Records made available to the Iran/Contra Committee show that after the shooting down of the Hasenfus plane over Nicaragua there were frequent contacts in person and by telephone between CIA's top management and Admiral Poindexter. Grave problems emerged with the Contra and with the Iran aspects. Gates was in Poindexter's office on the 2nd, 15th and 24th October. On the latter date, according to testimony of CIA senior analyst Charles Allen to the Tower Commission, Gates had given a lot of warning to the Admiral that the Iranian operation was spinning out of control.

How could Gates have given such warning if he were compartmented out and did not know what was happening?

On October 9, 1986, according to the record, Gates invited himself to Casey's lunch with Oliver North to hear North's report on his meeting in Frankfurt with a new Iranian channel, along with General Secord and CIA's George Cave. During the lunch North made, what Gates called a cryptic reference to a Swiss account and money for the Contras. Gates said in testimony (SSCI) that he and Casey did not pursue North's remark; that after lunch he and Casey discussed it and agreed that they did not understand North's comments.

It would seem that the two top Central Intelligence officers failed to ask North what he intended to convey by reference to such interesting subjects as Swiss accounts and money to the Contras.

Casey and Gates met again with Poindexter on November 6th, 1986 when—as Gates testified (SSCI)—Casey recommended that Poindexter bring in the White House legal counsel. Gates also said that he learned at that meeting that Casey had a prior discussion with Poindexter in which the Director recommended that North obtain legal counsel. Certainly at this point Gates had good reason to assume that something illegal might have taken place. A lawyer with Casey's experience would not recommend that a White House staffer retain legal counsel, unless he had reason to assume that actions took place for which legal defense would be required.

The CIA's Inspector General testified that Casey and Gates met again with Poindexter on November 14, 1986 to discuss suspected diversion of money to Central America. The Inspector General said that by early November CIA had fairly significant evidence that some diversion might have taken place. (SSCI)

The Comptroller of CIA testified that he learned of possible diversion to the Contras on November 18 or 19, 1986, when CIA operations officers speculated about the diversion as they were pulling together information for Casey's November 21 testimony on the Hill. The Comptroller said he shared this information with Casey and was told by Casey that he and Gates had already in October expressed to Poindexter their concern about a possible diversion.

The records available to this Committee show that Casey and Gates knew about the diversion well before the CIA Inspector General and the Comptroller raised the subject with them.

Sensitive NSA reporting about inflated prices being charged to the Iranians was disseminated to key CIA personnel, including Casey and Gates. This information caused two senior officers directly involved, Charles Allen and George Cave, to grow suspicious. In August 1986 Allen reported the possibility of money diversion to the Contras to his immediate superior, the Deputy Director for Intelligence, Richard Kerr, who had by then succeeded Gates. Kerr told Senate Committee staff that he related Allen's diversion account to Gates, but Gates subsequently told the CIA Inspector General that he could not recall the discussion with Kerr.

That Gates could not remember a conversation with his former deputy and successor when the subject was the possibility that CIA and NSC staffers were involved in an ongoing felony strains credulity.

Allen testified that on 1 October he took his worries directly to Gates, reporting that the Iran project was going to be exposed and that money generated by the project may have been diverted to the Contras. According to Allen's testimony (Tower) Gates appeared deeply disturbed by the report; he said that he did not want to hear any more, that he did not want to know about such rumors. Allen insisted that he was not talking rumors but was conveying analytical judgment based on intelligence. Gates then asked Allen to brief the Director. When Allen briefed Casey on October 7, he found that Roy Furmark—a business associate of Saudi businessman Adnan Khashoggi's and former client of Casey's—had been there before him. Oliver North testified that Furmark told Casey in early October about the speculation surrounding the diversion to the Contras and that it was the meeting with Furmark that triggered Casey to advise North that things ought to be cleaned up.

Thus Allen's report to Casey that the money might have gone to the Contras came as no surprise. The Director told Allen to put it all on paper.

In his written report Allen repeated his conclusions and included Manucher Ghorbanifar's statement that "some of the profits were redistributed to other projects of the U.S. and Israel."

On October 15 Casey and Gates met with Admiral Poindexter and gave him a copy of Allen's memorandum.

CIA officials Allen and Cave met again with Furmark on 16 and 22 October 1986, after which Allen and Cave jointly prepared a new memorandum for Casey to send to Poindexter. This memorandum referred to Ghorbanifar's accusation, which Furmark had repeated, that some of the "bulk of the original $15 million price tag was earmarked for Central America." The memorandum, Allen testified "laid out starkly . . . that Ghorbanifar had made allegations of diversion of funds to the Contras." (Allen at Tower, JC Chapter 15, page 274).

Allen testified (Tower) that Casey talked with Poindexter on a secure telephone about the October 22 meeting with Furmark but the letter containing the diversion information was not sent to Poindexter. CIA claimed that it fell into the wrong box and was not discovered until the Attorney General's press conference on November 25, 1986.

It seems strange that an important letter was mishandled in the Director's office and that none of the sharp people around Casey, including Gates, saw to it that what Casey wanted to send to Poindexter actually got there.

It is more likely that Casey did not send the letter because he and Poindexter wanted no paper to exist in the White House which would have documented early awareness of the diversion.

This lost letter may then have been one of the early moves in what was to become a campaign of concealment and obstruction, as reported in Chapter 19 of the Congressional Committee's majority report on Iran/Contra.

I contend that in this concealment Gates played a key role. I also note that Gates testified at his February 17, 1987 confirmation hearings that he did not inform Congress of possible diversion of funds to the Contras, because "while the evidence he had was worrisome, it was also extraordinarily flimsy." Yet the Director and Deputy Director Gates repeatedly took this so-called flimsy evidence to the National Security Adviser. When I was in the CIA, it was not the practice to bother the National Security Adviser with matters the CIA front office considered flimsy.

PREPARING FOR CONGRESS

On Sunday, November 16, 1986 Casey flew to Central America. Gates assumed duties as Acting Director. According to unchallenged testimony from officials in CIA, National Security Council Staff, State Department and Justice Department, the NSC staff was coordinating testimony to be given by Admiral Poindexter and Director Casey to congressional committees on November 21. There was a problem: The CIA chronology—with the title "Newest—11 hours, 19 November" was an honest, factual account of what happened in November 1985. I quote: "In late November 1985 the NSC and CIA for the name of a discreet, reliable airline which could assist the Israelis in transporting a planeload of Israeli-owned HAWK missiles to Iran. . . . The airline was in fact hired to transport a Boeing 707 load of weapons from Tel Aviv to Tehran. When senior CIA management learned that this had occurred, it was decided that a Finding would be necessary before the Agency could provide any future support of this type."

This CIA chronology also reported the provision of intelligence to Iran, the Iranian promise to provide some U.S.-supplied weapons to the Mujahedin in Afghanistan and that the McFarlane team had left Tehran without making any progress.

All this contradicted previous statements of President Reagan and Admiral Poindexter.

On November 20, 1986 a meeting was held at the White House to coordinate Casey's proposed testimony with the White House version of events. In this meeting Gates participated along with Director Casey. The CIA chronology was altered in substance. HAWK missiles became "bulky cargo", mention of the Israeli connection was dropped, Tehran became "an unspecified location in the Middle East", the paragraph about CIA management having decided that a Finding was necessary was dropped, as were the paragraphs on providing intelligence to Iran, Iranian assistance to the Mujahedin and on the lack of progress of the McFarlane mission.

It was after this meeting that Assistant Attorney General Charles Cooper and State Department Legal Advisor Abraham Sofaer agreed that the new CIA/White House chronology did not correspond with Secretary Schultz's recollection nor with a contemporaneous note written by Charles Hill, Shultz's Executive Assistant, in November 1985. This was stated in deposition by Judge Sofaer and confirmed in sworn testimony by Assistant Attorney General Cooper.

Cooper testified that after the November 20 meeting at the White House, Judge Sofaer said that if Casey's testimony were to be given in the form developed at that meeting, he—Sofaer—would leave government, to which Cooper replied "we may all have to."

No such sounds were coming from Gates. The record shows that he went along with the falsification of the chronology. He neither insisted that the testimony about to be given should be truthful, nor did he inform the Senate Intelligence Committee that it was about to be misled, despite his pre-confirmation commitment that he would report false or misleading testimony.

In the event, Casey's November 21st testimony was false and misleading. Gates was an active and leading participant in preparing the testimony.

Gates himself gave false and misleading testimony to the Senate Intelligence Committee. For example in December 1986 he testified that "Agency people . . . from the Director on down, actively shunned information. We did not want to know how the Contras were being funded. . . . we actively discouraged people from telling us things. We did not pursue lines of questioning."

These sentences—if they were true—amount to a terrible self-indictment by an intelligence officer. But in fact Gates was not telling the truth. CIA personnel in the field were ordered by their Headquarters to report on the Contras. The requirements were spelled out in a January 26, 1986 message from Alan Fiers, Chief Central American Task Force, to the Chief of Station Honduras:

"As we are all painfully aware, this project in all of its various incarnations is far and away the most controversial undertaking by CIA . . . It is now incumbent on us to expend a strong influence on the resistance forces . . . the field managers must have their finger on everything the resistance forces are doing . . ."

The Chief of Station in Honduras testified that he was required to report receipt of supplies by the Contras and to assist in obtaining flight clearances. This inevitably led to continuing contact with the people handling the supplies and with those controlling the air movements. How were clearances to be obtained without knowing specifics?

The Station Chief in Costa Rica testified that he advised CIA Headquarters of every flight expected to bring supplies from the so-called private benefactors and that he asked CIA for flight support information, including risk from hostile forces and their radar coverage and, he testified, "Headquarters sent it to me not once but several times.

Contrary to the Gates statement, the CIA stations thus responded to Headquarters requirements by collecting and reporting all relevant information.

Gates also mislead Congress on December 4, 1986 when Senator Eagleton asked Gates about his knowledge of General Secord's activities. Gates replied:

"I can't place it exactly but I would say a number of months ago one of the rumors we heard in terms of funding for the Contras was that he was involved with the private benefactors in some way and it was no more specific than that."

Another look at the record: In 1981, when Gates was Special Assistant to Casey, one of the Director's objectives was to provide AWACS planes to Saudi Arabia. General Secord, then in the Defense Department as a Deputy Assistant Secretary, handled the project for the Pentagon. Previously Secord worked with CIA during the Vietnam war. Secord was Casey's type of man and it was Casey who recommended him to North.

The record further shows that Secord became a key player in the Iran and Central America projects, attended meetings with senior CIA personnel in the White House and in CIA Headquarters, arranged the flight which took McFarlane and North to Tehran and participated in the Frankfurt meeting on which North reported to Casey and Gates at the lunch on October 9, 1986. And the Deputy Director of CIA could not place him exactly?

In August 1987 Clair George, then the CIA Deputy Director for Operations testified about Secord as follows:

". . . There is a world of ours in which are people we do not deal with and Secord is one of them."

Senator COHEN: This world of yours . . . is it fair to say that people at your level, and I am certainly talking McMahon, Casey, yourself, Clarridge, would have knowledge of Secord's activities?"

GEORGE: Absolutely.

Senator COHEN: His name is one that certainly would pop up on the same mental screen?

GEORGE: I don't see how you can be in this business and not know the name of General Secord."

Gates, however, said in sworn testimony that he could not exactly place the name of Secord.

Other examples of what I would characterize as Gates' reserved attitude toward the truth came during his confirmation hearings on February 17, 1987. Gates said that Joseph Fernandez, the Station Chief in Costa Rica was a renegade officer who acted on his own.

The record shows that Fernandez acted in compliance with instructions he received from Headquarters and had reported on his activities, including his secure electronic system of communications with Oliver North. Fernandez was never told to cease and desist. He may have been misguided and he may have been a willing victim of circumstances but in my view he was never a renegade who acted on his own.

Gates also said, as previously mentioned, that he did not inform Congress of possible diversion of funds to aid the Contras because while the evidence he had was "worrisome" it was also "extraordinarily flimsy".

The record shows that the information was based on professional analysis of sensitive and reliable electronic intelligence reports from the National Security Agency. The analyst responsible for the conclusions was Charles Allen, one of CIA's top-ranking analysts, specifically designated to handle the Ghorbanifar aspects.

When an officer of Allen's status reported information that Gates called "worrisome" but which actually indicated the possibility of a continuing felony perpetrated with the knowledge of White House officials, it should not have been dismissed as "flimsy". Indeed, Gates' own actions contradicted the statements he gave to the Senators. When Charles Allen and George Cave prepared their memorandum which "laid out starkly the allegations of the diversion to the Contras" on October 22, 1986, Casey relayed the substance to Admiral Poindexter by secure telephone and on the 24th of October Gates discussed these new problems personally with Poindexter.

I would like to point out also that the CIA Inspector General testified that Casey and Gates met with Poindexter on November 14 to discuss the suspected diversion and that by early November the CIA had fairly significant evidence that some diversion might have taken place.

In sum, was the evidence fairly significant as claimed by the Inspector General and as reflected in communications between Casey and Gates on the one hand and Poindexter on the other or was it so flimsy, as claimed in testimony by Gates, that it was not worth mentioning it to the Tower Commission or to the Senators?

THE MORAL ISSUE

In the foregoing I have emphasized my negative views, supported by evidence from the record, of Gates' veracity and judgment in the management of CIA and its relations with Congress.

His proposed appointment as Director also raises moral issues. What kind of signal does his renomination send to the troops? Live long enough, your sins will be forgotten? Serve faithfully the boss of the moment, never mind integrity? Feel free to mislead the Senate—Senators forget easily? Keep your mouth shut—if the Special Counsel does not catch you, promotion will come your way?

These are wrong messages and they bode ill for the future of our intelligence service.

Temptation to engage in illegal or immoral acts is inherent in the shadowy business of secret operations. Lack of integrity at the top will be reflected down the chain of command, as we have seen in the Iran/Contra and Watergate scandals. Most importantly, the intelligence agencies in this democracy must not have an adversary relationship with the Congress.

One need not go beyond the headlines of today to realize that there will be continuing requirements for intelligence collection and analysis, but they may well take CIA into uncharted waters. National priorities and resources will have to be reconsidered. Recent testimony to the Senate Armed Services Committee by General Norman Schwarzkopf and statements by Admiral Frank B. Kelso, II, Chief of Naval Operations indicate that there are problems with the quality and timeliness of American intelligence. Inspired and imaginative leadership will be needed for correcting current shortcomings, for defining and attaining new goals and to attract the type of personnel they will require.

In Robert Gates I see an official closely associated with the errors and misjudgments of the past. I also see a man who has failed to live up to the solemn commitments he made when he was confirmed as Deputy Director of Central Intelligence in April 1986, who participated in the concealment and cover-up during the Iran/Contra investigation and who has misled the Senate Intelligence Committee.

It is up to you, Senators, to decide what kind of message you will send to American intelligence.

Mr. BRADLEY. Mr. President, I would also like to make a few comments about the so-called Iraqi liaison relationship for the RECORD. Section 501 of the National Security Act states that the executive shall provide advance notice of significant intelligence activities.

In the confirmation hearings in 1986 of Mr. Gates for the Deputy DCI, he answered a question by saying that he thought intelligence agencies should go beyond the letters of obligation cited in the law—go beyond the law.

The committee report that is before the Senate states in one paragraph that the liaison relationship with Iraq on two occasions may have exceeded the scope of the sharing arrangement authorized. Mr. Gates himself says that what was done then, if it was done now, should have been and would be reported to the Congress.

During the question and answer session in one of the committees, I asked him: "Did you take care to ensure CIA's compliance with constraints of the NSC?" His response: "I think it was judged not to fall within the rubric of significant intelligence activity that would be reportable." To which my question is: "Judged by whom?" There is no indication on the public record that Mr. Gates asked anyone.

Yet I think at another moment in the committee deliberations, in answer to a question by Senator METZENBAUM, there is a clue. Senator METZENBAUM is asking: "Why did you not hear Mr. Allen when he was telling you about diversion and when he also mentioned Oliver North?" And Mr. Gates responds: "You know, a lot of things were going on at that time. A major change in Iraqi policy, in policy toward Iraqi liaison."

So, Mr. President, a major change, but not a significant activity? Frankly, given the fact that he says it would now be reportable, that he said then it was a major change, given the fact that he said 6 months earlier to the committee that he would go beyond the letter of obligation cited in the law, it should have been reported at that time.

Let me also say that in the discussions there was some misunderstanding. I think people did not say, certainly I did not, that Mr. Gates never disagreed with his superiors. I simply said that he did not disagree with Mr. Casey, on Casey's areas that he cared about, in particular Soviet activity in the Third World. How else do we account for his speech on November 25 and his op-ed article in which he said the Soviets are targeting Panama? And when asked if he had any intelligence activity to back it up, he said, "No." And when asked why, he said, "Poetic license."

Why else would—and this is a very important point that is hidden in the report of the committee—there have not been footnotes to estimates taken on Soviet activity in the Third World? Indeed, Mr. Gates, in answering the question, said that there were 16 footnotes. But all of those footnotes argued that the threats in the NIE's were greater—or not as great. All of the footnotes said there was a greater threat, my point being that he clearly, in these activities, was acting, in my view, to protect the interests of Mr. Casey.

On another point—and this will be a continuing story—in the early eighties we had $1.5 billion of export licenses on dual-use technology to Iraq. Some were sent; some were used. We do not have all the information now, but with the United Nations uncovering more and more every day, I believe this will be a continuing story.

Let me sum up, as I began, by saying that I think the next Director of CIA should have bold conceptual ability, strong managerial skills, and not be tied to the controversies of the next decade. In my view, Mr. Gates fails on all of these points.

As has been stated and restated with regard to Iran-Contra, he has admitted significant failures. He said he should have taken more seriously the possibility of impropriety and wrongdoing; pressed the issue of the possible diversion with Casey and Poindexter; done more; not been content simply to take the information to Casey and Poindexter; been more skeptical; asked more questions; been less satisfied with answers that Casey gave.

He also, as has been pointed out, did not recall a number of areas that Kerr told him of the diversion in August; that in October, Allen mentioned Oliver North; that he did not remember that he, Gates, himself, said that North had gone too far, questionable activity. October 27, Poindexter meeting: Had no recollection of the special Iranian project. October 7, that Casey-Gates-Allen meeting: Does not recall that Allen mentioned North again.

So, Mr. President, there is no question that there were ties, and my question is basically, Why do we want a Director who has to carry the burden of suspicion of those Casey years? I do not think we should have a Director who has to carry the burden of suspicion of those years in terms of managerial skills and conceptual ability. I think that case was made at length yesterday in statements. I want to point out on the managerial skills, when something of grave importance was brought to him with regard to a new way to look at the Soviet economy, the record shows he did not push the bureaucracy to take it into account; that he said it was very difficult to change the analytical model; he was not prepared to push the system; and that he did not make headway and did not succeed.

Mr. President, I also, as I have said, believe that his comments about Panama showed either that he was seeking favor of a superior or that he was an ideologue, both of which raise questions. In my mind, if the question is asked, will he, on every occasion, provide judgments without personal bias, and will he never hesitate to challenge policymakers' assumptions? I have very serious doubts.

So, Mr. President, I would argue that, finally, Mr. Gates is a part of the policymaking process with vested interests in ongoing policy, not only in Iraq but in the Soviet Union and elsewhere, and that it is not in our interest at this time to have someone with vested interests in existing policy going to head the Central Intelligence Agency, which above all should simply tell us the unvarnished truth without consideration for policy. It is difficult for me to imagine how someone who is as intensely committed to policy positions as Mr. Gates is to suddenly turn the switch off and not have any interest in policy and provide the unvarnished truth.

So, Mr. President, my conclusion is that he is not the pathfinding leader needed to refocus the CIA. We are entering a time when we have to have a total picture of the world and a total picture of what is happening in the various parts of the world, and the threats that are on the horizon to our interests. In my view, that leadership cannot be and will not be provided by Mr. Gates.

I hope that when he is confirmed—and there is no doubt that he will be—I will be proven wrong. But I felt my obligation to the Senate is to share with it my view on this issue, and that I have done.

The PRESIDING OFFICER. Who yields time?

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, how much time is remaining to this side?

The PRESIDING OFFICER. The Senator from Oklahoma controls 10 minutes, 23 seconds.

Mr. BOREN. Mr. President, I yield to myself the remaining time on this side.

Mr. President, first of all, I thank the many people on our committee who labored long hours to make sure that our confirmation process was a very thorough process and, as I have said, also to make sure it was a fair process. I thank again the members of the committee on both sides of the aisle, and those who have opinions both for and against this nominee as we complete our work. They have conducted themselves again with fairness and with diligence.

This is a record about which honest people can disagree in terms of their conclusions. At the outset, we struggled to find a way in which all points of view would be heard. We had the staff members, as I indicated in my opening remarks, of all 15 members of the committee, Democratic and Republican, individuals selected by those members who stood in and acted as a steering committee to select the witnesses and the documents and the issues that would be considered during the confirmation process. Over 800 questions were asked of the nominee under oath; hundreds of witnesses were interviewed; thousands of pages of documents were studied; thousands of pages of documents were declassified and released to the American public. It has been the most comprehensive series of confirmation hearings ever conducted for a Director of Central Intelligence, and it has also been the most public confirmation process ever conducted, giving the American people the greatest look, the greatest understanding they have been able to ever have of the way that the intelligence community operates.

That is as it should be. It is the tax dollars of the American people that fund this agency. It is the values of the American people that should guide and direct the secret policies of our Government as well as the public policies of our Government, and it is to that cause that we in the intelligence community, on both sides of the aisle and both sides of this issue, have dedicated ourselves to act as trustees for the American people, to act as watchdogs to make sure that the money is appropriately spent, that the programs are carried out in the accordance with the law and carried out in accordance with the bedrock values of the American people.

I want to especially thank also the members of our staff. I cannot possibly name all of them, but I want to name some of them that have worked particularly hard to prepare the information and the material necessary in such a voluminous undertaking.

I want to thank first our staff director, George Tenet, and the minority staff director, John Moseman, who spent long hours in preparing our committee for this confirmation process; Mr. Britt Snider, our general counsel, who I might say serves both the majority and the minority on our committee. Except for the majority and minority staff directors of our committee, he is very unique. We do not have a staff that is otherwise divided among Democrats and Republicans. We have an American staff. If perhaps we could get that sort of precedent going across the board in this Congress, to grapple in a bipartisan way with the problems that confront us, we could do a better job of preparing this country for the next century.

In addition to Britt Snider, I want to mention others that have really been of great help and put in particularly long hours: Pat Hanback, Dave Garman, Jim Wolf, Andre Pearson, Claudia Daly, Marvin Ott, Rose Floorgang, Mary Sturdeman, Jim Van Cook, and, as I say, there are many others that I could mention on the staff of the Intelligence Committee who have assisted us in this undertaking.

Mr. President, I think that we have heard all the arguments at this point. I am sure there are not many votes left to be swayed by our deliberations, but I do simply want to sum up from the point of view of this Senator, why I have decided to vote in favor of the confirmation of Mr. Gates to be the next Director of Central Intelligence and to review some of the arguments that have been made.

The distinguished majority leader certainly emphasized that I had issued a personal guarantee to witnesses who came before our committee who criticized Mr. Gates, those still serving in the CIA and in the intelligence community; made a pledge to them to be watchful to make sure their careers did not suffer because they had taken a controversial position or positions as witnesses before our committee.

I want to stress that I made that commitment not because of any feeling that Mr. Gates would in any way try to take any kind of retribution against any of those who testified. I do not believe that he will. Having had conversations with him, and having thought about the fact that he has dedicated virtually his entire adult life to this institution and to the intelligence community, I believe him when he says he wants to rebuild the sense of family at the CIA, that he wants to heal the wounds of the past and get on with meeting the challenges of the future.

I made those assurances because I think individuals in any organization are nervous when they come forward to take controversial positions, positions that are not always accepted by their coworkers and by those in any kind of institution. I wanted to say to them very clearly that I regarded their participation in the process, just as I regarded the participation of those who appeared in favor of the nominee, to be an important contribution to this country.

I sincerely mean that. I have the utmost respect for all of the witnesses who appeared before us, for their abilities, for the contribution that they made to this country. I wanted that to be made clear.

I also wanted to signal that whether it is Mr. Gates or some other Director that ultimately comes to lead the Central Intelligence Agency, that as long as I am a member of the oversight committee, particularly as long as I am chairman of the oversight committee, that the morale and the working conditions of those who try to serve their country in the intelligence community will be of paramount importance to me. I will be mindful of those kinds of challenges that they meet every day in their work environment.

I want to also indicate that I think that as we look back over the record there is not, I think, a substantial basis for believing there has been systematic intelligence slanting at the CIA. I do not believe the record will bear that out.

While I think there have been some instances in which greater sensitivity should have been given to the perception of some in the Agency, that perhaps there were incorrect pressures being exerted, I think that on the whole the record establishes, especially as it relates to Mr. Gates, that he was independent in his judgments.

If he had desired to slant intelligence, for example, to please policymakers, would he have approved the issue of that intelligence estimate which said it was very unlikely that the Soviet Union would use chemical weapons; that at a time in which the administration was seeking more funding for the chemical weapons programs of the United States.

If he was anxious to always please his superiors, would he have supported the release of those estimates which indicated that the Soviet Union was going to have to reduce its defense spending because of problems with their economy at the very time that we are debating on the floor of the Senate defense buildups that were recommended by the Reagan administration?

So I do not think the record would substantiate the view that there was systematic intelligence slanting, nor do I believe that it would substantiate the view that Mr. Gates in any way sought to keep information from the Senate Intelligence Committee about the Iraqi relationship and intelligence-sharing relationship during the Iran-Iraq war.

In fact, it was Mr. Gates who argued on the side of the committee for expanding the definition of significant intelligence activities so that we would learn more, not less, about what was going on in the Central Intelligence Agency.

He has good ideas for the future, and finally he is a strong supporter for the oversight process. I would say to my colleagues again the best protection we have for the American people is a strong oversight process, one that has instruments that can really determine how the money is being spent and the programs are being run.

We would not have the capability we now have to go in with our own independent audit unit to look at the secret bank accounts of programs all around the world without advance notice had it not been for the support of Mr. Gates.

We would not have the statutory independent inspector general system passed into law by this Senate, requiring our confirmation of an inspector general responsible to us and not responsible to the Director of the Central Intelligence Agency, had it not been for the support, the vocal support of Mr. Gates, who talked to the President, at least in part played a large role in talking the President out of vetoing that legislation and allowing it to become law.

Yes, Mr. Gates has made some mistakes. So has anyone else with experience in a certain field. As I said in the beginning, the only way we can assure that we could nominate someone to this position who has not made mistakes is to find someone totally without experience or someone who has never taken any risks or someone who has never made any decisions.

Mr. President, with all the changes that must be made in the intelligence community, the savings that should be made in the budget, I happen to be one that agrees with the Senator from Arkansas, substantial savings can be made and must be made, a reordering of the priorities and the missions of the intelligence community, more emphasis on human intelligence, educating and training people to increase the pool of qualified people should be undertaken, more emphasis on stopping the proliferation of nuclear, chemical weapons, and more emphasis on economic intelligence. These are the kinds of important decisions that must be made. They must be made with someone with experience, who does not require on-the-job training at this critical moment in which we are on the brink of making sweeping changes in the intelligence community.

I would submit that sometimes we begin to move in the confirmation process toward the general principle that we should find someone without experience, without a track record. That way we could find someone who has not made mistakes. That way we would also find people that are not qualified to do the job at hand.

Again I thank my colleagues and I again conclude with my own personal judgment, a judgment that I intend to back up with vigorous oversight whether it is Mr. Gates or someone else who occupies that position, that he should be given a chance to lead the Central Intelligence Agency at this time.

Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER (Mr. KOHL). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. Mr. President, today, the Senate will vote on President Bush's nomination of Robert Gates to be the next Director of the Central Intelligence Agency, probably one of the most important issues confronting U.S. national security in recent times. The next DCI will be responsible not only for leading America's primary source of intelligence collection and analysis, but for restructuring the institution in an unknown world where threats other than the Soviet-United States rivalry dominate security concerns.

After reviewing thousands of documents, interviewing hundreds of witnesses, and listening to 4 full days of testimony by the nominee, who answered more than 1,000 questions, the Senate Intelligence Committee has recognized Bob Gates' brilliance and professionalism, and has easily approved his nomination.

Robert Gates joined the CIA in 1966 after completing his masters. Eight years later, while an intelligence adviser to the SALT negotiations, Bob Gates earned his doctorate in Soviet studies from Georgetown University. In 1982, he became Deputy Director for Intelligence, and 4 years later became Deputy Director of the CIA. The President has obviously nominated a career analyst, instead of a politician.

Many of the witnesses testified to his long career of providing cold, unbiased interpretations of world events. He has made incorrect analyses, but he has made many correct analysis, too. Unlike those who oppose Dr. Gates because he made a supposedly wrong prediction about the Soviet Union, he is not perfect—although the attempted Communist coup has proved him correct.

His career as an intelligence analyst, plus his experience on the National Security Council, provides him with vast knowledge of the workings of the intelligence process. Such ability is extremely important at a time when political relations are undergoing fundamental changes. The United States cannot wait for the President to nominate and for the Senate to confirm another DCI, and then wait for that Director to become familiar with the intelligence process. As last year's events showed, threats to this Nation can come suddenly from anywhere, anytime.

During his confirmation process, Dr. Gates addressed the Intelligence Committee candidly and honestly, admitting the mistakes he made at the agency. Does such modesty not show his maturity, his open-mindedness? One of the major criticisms against him was the politicization of CIA analysis. Would a person who skewed global interpretations admit to giving wrong analysis? This Senator doubts it, and many current and former CIA analysts agree and testified he did no such thing. According to one CIA analyst, Elizabeth Steeger, Bob Gates flatly rejected the idea that the title of her work on the 1981 attempted assassination of the Pope be changed to imply Soviet complicity.

Many also questioned Dr. Gates's role in Iran-Contra and his respect for the law. By honestly admitting to vaguely knowing something about plans to free hostages in the Middle East, and acknowledging he should have investigated this matter more thoroughly, Bob Gates not only risked his nomination to head the CIA, but demonstrated his respect for the congressional oversight process.

Knowing the mudslinging and politicking that occurs when the President nominates a person for high office, Bob Gate's actions demonstrate an unheard-of bravery. In this era, when men and women come to testify before this institution, it is rare that a person admits fault or states a provocative opinion. Some of the members may interpret his courage and honesty before the Senate as naive stupidity, but I see it as proof of Dr. Gates' personal integrity, his strength to openly present unpopular views, and proof that he will act within the bounds established by the Constitution.

That is why I agree with the Intelligence Committee and strongly support the nomination of Robert Gates to be the Director of the Central Intelligence Agency.

Mr. LEVIN. Mr. President, I have given a great deal of thought to this nomination of Robert Gates to be the next Director of Central Intelligence. This has not been an easy decision for me. I have been particularly impressed by the fact that so many people I deeply regard and trust, including the chairman of the Senate Intelligence Committee, have so much confidence in the nominee.

Nevertheless, I am left with the feeling that Robert Gates has not been fully forthcoming with the Senate as to his recollections of the events of the Iran-Contra affair.

Here are some examples:

First, Mr. Gates did not remember being at a September 1985 meeting that Clair George testified that Mr. Gates attended.

Clair George said he and Mr. Casey, Mr. McMahon, and Mr. Gates met in Mr. Casey's office about the Iran project in September 1985.

In June 1991, Mr. Gates said "I do not recall this meeting."

Second, Mr. Gates did not recall a conversation with Admiral Poindexter concerning having the CIA buy the assets of the private logistics operation.

In both testimony before the Iran-Contra hearing, and an earlier deposition, Admiral Poindexter discussed conversations he recalled with Mr. Gates about Poindexter's efforts to have the CIA buy the private assets of the private logistics operation.

In June 1991, Mr. Gates said, "I do not recall this conversation."

Third, Mr. Gates did not remember as of June 1991 Richard Kerr telling Mr. Gates in August-September 1986 of Charles Allen's concern about a possible diversion.

Mr. Kerr told the Iran-Contra Committee that he told Mr. Gates of Mr. Allen's diversion speculation in August-September 1986, and Mr. Gates said he wanted to be kept informed. In March 1987, Mr. Gates said, "I simply have no recollection of any conversation with Kerr regarding the kind of speculation and concern I remember first hearing from Allen on 1 October 1986."

In June 1991, Mr. Gates stated, "I have had no subsequent recollection of this conversation that Mr. Kerr recalls took place in the August-September 1986 time period."

Fourth, Mr. Gates did not remember as of June 1991 receiving a September 1986 Charles Allen memo about Lieutenant Colonel North and Mr. Ghorbanifar.

Mr. Allen stated in his Iran-Contra deposition that he sent a copy of his memo to Mr. Casey and Mr. Gates. Lieutenant Colonel North told Mr. Allen he might have to pay Mr. Ghorbanifar "Out of the reserve."

In June 1991, Mr. Gates stated, "I have no recollection of receiving or reading this memorandum at the time. * * * I do not recall reading this memorandum."

Fifth, Mr. Gates did not remember saying the things that Mr. Allen testified Mr. Gates said about Lieutenant Colonel North on October 1, 1986.

Mr. Allen stated in his Iran-Contra deposition that Mr. Gates expressed admiration for Lieutenant Colonel North's abilities, but this time he was going too far, and Mr. Gates wanted Mr. Allen to speak to Mr. Casey about it.

In June 1991, Mr. Gates stated, "I do not recall making these remarks about Lieutenant Colonel North. * * * Although I have been reminded of Mr. Allen's recollections in the committee's interrogatories, I have no recollection of making these statements."

Sixth, Mr. Gates did not remember a memo he initialed, nor does he remember why he wanted what the memo requested.

An October 3, 1986, CIA memo that Mr. Gates initialed indicated that Mr. Gates met with Admiral Poindexter on October 2, 1986. The memo states, "There was discussion of a special Iranian project. Have Tom Twetten and Charlie Allen call me."

In 1987, Mr. Gates wrote to the Intelligence Committee and said he had "no recollection of the specifics of this discussion. * * *" In June 1991, Mr. Gates stated, "I do not recall why I wanted Mr. Twetten and Mr. Allen to call me."

Then, when asked what Mr. Gates subsequently conveyed to Mr. Twetten or Mr. Allen, Gates said, "I do not remember what I conveyed to Mr. Twetten or Mr. Allen."

Seventh, Mr. Gates did not remember making comments to CIA general counsel David Doherty that Mr. Doherty testified Mr. Gates made.

Mr. Doherty stated in an Iran-Contra deposition that on October 15, 1986, Mr. Gates, in discussing a possible diversion to Central America, discussed with Mr. Doherty "speculation on contributions from other countries as well."

In June 1991, Mr. Gates stated, "No, I do not recall making the additional statement to Mr. Doherty about contributions from other countries."

Mr. President, I have remaining doubts about Mr. Gates' candor with the Senate. I cannot vote to confirm him.

Mr. BAUCUS. Mr. President, one of the Senate's most important functions is the confirmation of executive appointments. Today we are considering the confirmation to one of the most critical positions in our Government—the Director of the Central Intelligence Agency.

The Intelligence Committee hearings in connection with Mr. Gates' nomination have been illuminating in several regards. We have gained important insights to the secretive world of intelligence gathering; we have been sensitized to the need for objective, nonpolitical intelligence; and we have seen the importance of congressional oversight driven home. I commend the distinguished chairman and the entire committee for their leadership in these hearings.

After carefully evaluating the findings from the confirmation hearings, I have decided to vote against Mr. Gates' nomination.

I am particularly concerned about allegations from former colleagues of Mr. Gates concerning the politicization of the intelligence. Such action is patently unacceptable.

In an era of unprecedented international change, we must place an extremely high premium on accurate information. Congress has no analogy to the CIA. Our ability to make responsible policy often turns upon CIA assessments of the world situation. We cannot afford to gamble on whether a CIA report reflects reality—or the President's political agenda.

We have come to realize that national security contains an economic component—a component of at least equal importance to military considerations. Most Americans now believe that Japan is a greater threat to the United States than the Soviet Union. If the United States is to remain a great power, we need an intelligence community that understands the changed nature of the environment we face.

While the world has entered a new era, I fear that Mr. Gates remains trapped in the mindset of yesterday. He has made a career of fighting the cold war, and I admire his sense of service. But times have changed. I do not believe Mr. Gates is the right person to lead today's CIA.

Mr. SHELBY. Mr. President, I want to thank the distinguished chairman of the Select Committee on Intelligence for yielding me time to speak on this important nomination.

Mr. President, the intelligence community, like the defense community, is at a crossroads. The focus of its activities since the Central Intelligence Agency was established in 1947, has been the Soviet Union. Now that threat has been significantly diminished. In its place are wide-ranging concerns. The Middle East, Narco-terrorism, economic espionage and the threat of the proliferation of nuclear, biological, and chemical weapons, just to name a few.

Added to this equation is the fact that funding for the Central Intelligence Agency, like the Department of Defense, will certainly decline. The need to eliminate budget deficits and the end of the cold war have forced cutbacks in spending on intelligence activities. Shortages of funding will require innovative approaches to intelligence.

To make the transition that lies ahead for the Central Intelligence Agency requires the appointment of a new director that has the experience, qualifications, and trust of the intelligence community. Robert Gates, a career intelligence officer who has served five Presidents, is uniquely qualified to serve in this capacity.

The fact that Mr. Gates is superbly qualified does not automatically ensure that he should be supported for confirmation. It is the duty of the U.S. Senate to thoroughly investigate the background and the conduct of each nominee. I believe that the Select Committee on Intelligence, under the direction of Chairman BOREN and Vice Chairman MURKOWSKI, have provided the Senate with an extensive, bipartisan nomination process. It held 10 days of hearings, with the nominee giving 4 days of testimony, in open and closed session.

Two serious charges were leveled at Mr. Gates during the hearings. The first charge concerned Robert Gates' conduct during the Iran-Contra Affair, and the second allegation related to possible distortion of intelligence estimates for political purposes by Mr. Gates while serving in various capacities at the CIA.

I have read the committee report on the nomination hearings and have come to the conclusion that Mr. Gates did not have any involvement in, or prior knowledge of, the Iran-Contra Affair. As to the charges of politicalization of intelligence estimates, I concluded from my study of the materials provided, that there is no evidence that Robert Gates deliberately slanted intelligence estimates.

What this process did find is that Robert Gates is a man of strong personal conviction who is not afraid to make his views known. He is an expert in his field, with a brilliant mind and 25 years of experience in intelligence. He is the type of man to lead the CIA through the challenging times ahead.

Mr. President, I intend to vote in favor of the nomination of Robert M. Gates to be Director of Central Intelligence and urge my colleagues to support his confirmation.

Mr. JEFFORDS. Mr. President, I believe my colleagues are aware of my basic philosophy on nominations by the President to administration posts. In my view, the President's choice for his top officials should be respected unless there is clear evidence that the individual is unfit or unqualified for the job.

Robert Gates is being nominated to head the CIA, not for a seat on the Supreme Court. The Director of Central Intelligence [DCI], unlike a Supreme Court Justice, can be removed by the President at any time and is subject to the ultimate authority of the President at all times. And conversely, the President himself is ultimately responsible for the policies of the members of his administration. Mr. Gates has been selected by President Bush to run the CIA at this particular time in history. This does not preclude his selection of another individual to take Mr. Gates' place should the President feel that an individual with different skills or qualifications becomes necessary. And another President should enjoy the same prerogative in naming a replacement for Mr. Gates should he or she so choose.

Just as the Senate Judiciary Committee was faced with the controversial nomination of Judge Clarence Thomas to be a Supreme Court Justice, the Select Committee on Intelligence was also faced with a controversial nominee. Over the course of several months, including almost a month of public hearings, the committee exhaustively examined charges of Mr. Gates' involvement in the Iran-Contra Affair, charges that he stifled debate within the intelligence community and allegations that on certain occasions he skewed intelligence reporting to conform with the opinions of then-DCI, William Casey.

Mr. Gates testified before the committee on all of these matters, and in some cases, admitted that he had made some mistakes and had not been sufficiently vigilant in ferreting out the truth. Many of his colleagues and subordinates at the agency came before the panel to share their opinion of Mr. Gates and his performance at the CIA. I am concerned by testimony from some career CIA analysts that Mr. Gates, in their view, slanted intelligence findings and politicized analysis in key reports. Many of the concerns raised during his confirmation hearings echoed misgivings of mine. However, in the end, the members of the Intelligence Committee, by a vote of 11 to 4, decided that there was insufficient evidence to deny President Bush his choice for DCI. I agree with the committee's assessment.

Robert Gates is no stranger to the Select Committee on Intelligence. As Deputy Director of the CIA from 1986 to 1989, including 5 months as acting director, and then in his position as Deputy Assistant to the President for National Security Affairs, the committee has had frequent contact with Mr. Gates. This association has given the committee insight into how Mr. Gates would relate to Congress as DCI.

And President Bush is no stranger to the CIA. As a former DCI himself, I am pleased that he saw the wisdom in appointing a career CIA analyst to head the agency. As we head into a period of reorientation and redefinition for the Agency, it is critical that the director have a thorough understanding of all aspects of the agency, and have the credibility that comes from career service.

The world is changing rapidly, and with it that segment of the international relations of greatest concern to the CIA. Just as the primary military threats to our Nation are shifting, the types of intelligence activities and data collection required for national security must be redefined. The war against Iraq pointed out the danger of a Soviet-centric intelligence operation. Today, the threats to America come from many different quarters, and in many instances, the intelligence community still views the world through the prism of the East-West confrontation. Threats to America's security in the coming decade are more likely to be economic than military, regional rather than East-West and fueled by deprivation rather than ideological fervor.

I envision substantial changes in the role of the CIA in the new world order. While the world is no less scary, the traditional international espionage will be less likely to influence world events. Just as the size of the military budget is declining rapidly, the need for international covert operations is also reduced. Mr. Gates has indicated that he is cognizant of this evolution and has supported recent attempts to allow greater congressional scrutiny of the CIA's operations. To a small degree, the Gates hearings themselves provided an unprecedented public glimpse into the private world of the CIA and the human disagreements that exists within any institution, but that seem foreign to our perception of the CIA. Could glasnost finally be coming to the CIA?

The new DCI will be required to think creatively and act boldly in reorienting the agency. Here, Mr. Gates' intimate understanding of the CIA and the intelligence needs of the President put him in a unique position to lead such a reform movement, should he choose to do so. If he does not so choose, then the duty will fall to Congress.

It is always tempting to ask whether a President's nominee is the best possible person for the job. I do not see that as the correct question for the Senate to ask. While we are obligated to reject any nominee who is unfit or unqualified, the choice of administration officials is not ours. We must respect the wishes of the person who has been given the mandate by the American people to form his or her own team. Robert Gates would not be my choice, but he is President Bush's choice and I see no compelling reason to oppose the nomination.

Mr. DASCHLE. Mr. President, I rise today to express my serious reservations as we debate the confirmation of Robert Gates to be the next Director of Central Intelligence. Since Robert Gates was first named Deputy Director for Intelligence in 1982, and later confirmed as Deputy Director of Central Intelligence in 1986, the key events have ushered in an era of remarkable change. We have witnessed not only the collapse of the Berlin Wall and the unification of Germany, but also the demise of the Warsaw Pact and the failure of communism. The end of the cold war has not only diminished the likelihood of a confrontation between the Soviet Union and the United States, but also increased the possibility of a world filled with hope, peace, and prosperity.

As the global situation continues to evolve, the United States must respond accordingly. The changes especially in the Soviet Union, demand that we develop new ways to adjust both economically and militarily. The Department of Defense, for example, intends to cut its overseas bases by one-third and expects to reduce its U.S. military personnel based in Europe by almost 50 percent by mid-decade. As the threat of a Soviet conventional attack subsides in Europe, it is obvious that the need for United States intelligence to counter the KGB will decline as well. If we can no longer afford to maintain our United States forces based overseas at cold war levels, we can no longer afford a CIA that concentrates half of its assets on the Soviet military target.

Some in this body have proposed that all functions and powers of the CIA be transferred to the State Department. Most will agree that the priorities of the CIA need to be re-evaluated. Even Robert Gates remarked in his opening statement, that the "CIA and U.S. intelligence must change—and be seen to change—or confront irrelevance and growing sentiment for their dismantlement."

The chairman of the Intelligence Committee, Senator BOREN, has stated that whoever is the next Director of Central Intelligence, "is going to preside over the most sweeping changes in the history of the intelligence community." Clearly, change in U.S. intelligence is inevitable. It is the responsibility of this body to determine if the President's nominee to head the CIA is capable of propelling U.S. intelligence into the 21st century.

As I mentioned at the beginning of my statement, I have serious reservations regarding the confirmation of Robert Gates to be the next Director of Central Intelligence. I have several concerns regarding his tenure at the CIA, and I have several questions regarding how his nomination will affect the future of U.S. intelligence.

My first major concern is whether or not Robert Gates played an active role in the Iran-Contra Affair. Robert Gates was first nominated by President Ronald Reagan in 1987 to be Director of Central Intelligence, but was forced to withdraw his nomination because of the controversy surrounding the Iran-Contra scandal. Despite the passage of 5 years and 3 weeks of hearings, the controversy surrounding the Iran-Contra scandal has not subsided. Mr. President, the testimony of Robert Gates during these hearings failed to resolve the questions I have regarding the role that Gates played in the Iran-Contra Affair.

In 1987, Robert Gates testified that Director Casey kept him in the dark about the secret arms sales to Iran and the transfer of profits from those sales to support the Nicaraguan Contra rebels. Several witnesses have also speculated that it was possible that Casey left Gates "out of the loop" to protect him from potential fallout.

Thomas Polgar, a former CIA official and a policy analyst for the Senate Select Committee on the Iran-Contra Affair, testified during the confirmation hearings that Gates was not out of the loop. Polgar stated that those who have suggested Gates did not know about Iran-Contra and the diversion of funds because he was compartmented out, do not understand how the CIA functions. Polgar explained that, as Director Casey's hand-picked Deputy Director for Intelligence, Gates was a key member of the CIA's top management team. Polgar believes that Gates "was not only aware of Iran-Contra developments but had direct involvement with them already as Deputy Director for Intelligence. * * *" By early 1986, Polgar claims, "* * * it would have been impossible for any senior CIA officer, let alone the Deputy Director, not to know that the CIA was involved in support for the Contras."

Robert Gates testified in 1987, however, that the first time he heard rumors of the diversion of funds to the Contras was on October 1, 1986, in a meeting with Charles Allen. At the time, Allen was a CIA analyst who was involved with the arms transfers to Iran. Gates has testified that he was startled by what Allen told him, but categorized the evidence as extremely flimsy. Gates also testified that Allen gave him no indication that the National Security Council or anyone from the U.S. Government was involved.

During the 1991 confirmation hearings, however, Allen stated that he discussed with Gates the possibility of diversion of Iran arms sale profits to the Contras. Allen testified that he and Gates discussed Lt. Col. Oliver North during the October 1, 1986 meeting. Allen said he distinctly recalled Gates saying to him that "* * * Colonel North, whatever qualities he may have had in the past in performing services to the United States, [had become involved in] a very questionable activity at best." Allen also testified that Gates reiterated this statement in a meeting with Director Casey 6 days later.

Gates tesified during the confirmation hearings that he has no recollection of making these statements regarding North. Gates also testified that he has no recollection of either discussing Lieutenant Colonel North or the diversion of funds to the Contras with Richard Kerr in August 1986.

Richard Kerr, who is now acting Director of the CIA, testified during the confirmation hearings that he first told Robert Gates of a possible diversion in late August 1986. Kerr testified that Charles Allen came to him in late August and said that the United States arms were being sold to Iran at inflated prices and that there was reason to believe the money was being used to support the Contras. Kerr thought the issue was important enough to discuss with Gates, which he testified he did on that or the following day. According to Kerr, he told Gates that "Ollie was involved" and Gates indicated that he had heard rumors of the Contra connection before.

Allen and Kerr are by no means the only persons who have testified that they discussed with Gates, North's role in the diversion of funds to the contras before it was announced by the White House on November 25, 1986. There are also sworn statements from Adm. John Poindexter, then-CIA Near East Division Chief Tom Twetten, and CIA General Counsel Dave Doherty, regarding conversations with Gates that Gates said he does not recall.

Throughout his career Gates has demonstrated intellectual brilliance and an excellent memory. I find it somewhat intriguing and very disheartening that Gates is so forgetful on topics relating to the dramatic events in the fall of 1986. I also find it extremely disturbing that Gates responded to the committee's written questions with the written answer, "I don't recall," some 33 times and with "I didn't know" more than 40 times.

If members of this body, despite the testimony of numerous witnesses and despite the evidence provided in numerous documents still believe that Gates did not know of the diversion as he has testified, the question remains, "Why didn't he know?"

In his opening statement before the Intelligence Committee on September 16, Gates said he made a number of mistakes by not pursuing the "possibility of impropriety or even wrongdoing in the Government." Gates acknowledged that he should have "pursued this possibility more aggressively." Gates has admitted that, "[he] should have been more skeptical of what [he] was told. [He] should have asked more questions and [he] should have been less satisfied with the answers [he] received, especially from Director Casey."

But contrast this to statements that Gates made in 1987, when he testified on numerous occasions that the CIA actively avoided information concerning the diversion of funds to the Contras. According to Gates, "Agency people * * * from the Director on down, actively shunned information. We did not want to know how the Contras were being funded * * * we actively discouraged people from telling us things. We did not pursue lines of questioning."

Even Lt. Col. Oliver North recently stated that, "For someone [like Gates, who was then Deputy CIA Director] not to have known that I was involved in all manner of things [with the Contras] had to be an almost conscious act of 'I didn't know.'"

Mr. President, my questions regarding the role that Robert Gates played in the Iran-Contra affair culminate in my deep concern about what we can expect from Robert Gates if he is confirmed as the next Director of Central Intelligence.

As Senators, we are responsible for providing advice and consent regarding the President's nominee to be the Director of Central Intelligence. I trust that each of us has carefully weighed the evidence regarding the role that Gates played in the Iran-Contra Affair.

But, I ask each of my colleagues, if Robert Gates played a more active role in the Iran-Contra scandal than he has admitted before Congress, can we safely say that Robert Gates will be committed to the oversight of intelligence in the future? My answer is, "No, we cannot."

Furthermore, I ask my colleagues, if Robert Gates was involved in the Iran-Contra scandal when he was Deputy Director of Central Intelligence, can we entrust in him the responsibilities required of the Director of Central Intelligence? Again, My answer is, "No, we cannot."

If, on the other hand, one honestly believes that Robert Gates was "left out of the loop" as he and others have claimed, then, will Robert Gates, as Director of Central Intelligence, likely refer to speculation of CIA analysts as flimsy evidence and conveniently brush it aside when it is politically expedient? My answer is, "We cannot afford to take that chance."

I ask my colleagues, who will be voting on the confirmation of Robert Gates, if under either possibility, the strained relationship that currently exist between Congress and the CIA will continue to suffer? Again, my answer is, "We cannot afford to take that chance."

Mr. President, my second major concern is whether or not Robert Gates politicized the intelligence process while serving as Deputy Director for Intelligence in 1982, and Deputy Director of Central Intelligence in 1986.

Gates has emphatically denied charges that he slanted intelligence reports and said he was always "open to different interpretations" and willing to have "all points of views presented to policymakers." Gates and other witnesses claimed charges of politicization were mere perceptions that stemmed largely from analysts whose work had been rejected.

Jennifer L. Glaudemans, a former Soviet affairs analyst, found this explanation simplistic and patronizing, warning that it is too easy to dismiss charges of politicization by rationalizing that analysts are "too finicky, too egocentric, too whiney, or too academic."

Glaudemans and other witnesses have come forward and testified before the Intelligence Committee that this was not the case. They have cited numerous examples where William Casey and Robert Gates manipulated the system for analyzing intelligence and cooked the books to advocate the ideological position of the administration. Melvin Goodman, a division chief in Soviet affairs at the CIA when Gates was the CIA's Deputy Director for Intelligence, testified that the "politicization of intelligence was institutionalized" during the Casey-Gates era.

Goodman described "two primary targets for politicization." The first target included "nearly all intelligence issues connected to covert action," such as CIA activities in Iran, Nicaragua, and Afghanistan. The other target was Casey's "conviction that the Soviet Union was intent on destroying the West and was responsible for most of the world's problems."

Goodman testified that both Casey and Gates "overemphasized the Soviet threat, ignored Soviet vulnerabilities and weaknesses, and failed to recognize the pluralistic political culture that Gorbachev developed. * * *" Goodman went so far as to conclude that the Casey-Gates approach led to the CIA's failure to predict the collapse of communism in the Soviet Union, a failure that may well have delayed the end of the cold war and cost U.S. taxpayers billions of dollars.

Again, my questions regarding whether or not Robert Gates participated in the politicization of intelligence culminate in my deep concern about what we can expect from Robert Gates if he is confirmed as the next Director of Central Intelligence.

Again, I ask my colleagues, if Robert Gates cooked the books to advocate the ideological position of the administration while serving as Deputy Director for Intelligence and Deputy Director of Central Intelligence, is it possible that U.S. intelligence under his guidance will continue to politicize intelligence? My answer is, "We cannot afford to take that chance."

Because of the concerns I have regarding the tenure of Robert Gates at the CIA, and because of the questions I have regarding how his nomination will affect the future of U.S. intelligence, I cannot support the confirmation of Robert Gates to be the next Director of Central Intelligence.

Finally, Mr. President, although I have decided not to support this nomination, I would like to commend the chairman of the Intelligence Committee, Senator BOREN, for conducting hearings that were fair, thorough, and nonpartisan, especially at a time when the entire nomination process was in question. I put a great deal of weight behind the recommendation of the chairman, but I am constantly reminded of his own statement that the next Director of Central Intelligence, "is going to preside over the most sweeping changes in the history of the intelligence community." While the strong conviction of the chairman weighs in his favor, I remain unconvinced that Robert Gates is capable of propelling the CIA into the 21st century.

Mr. McCAIN. Mr. President, in nominating Robert Gates to be Director of Central Intelligence, President Bush has chosen a man well qualified to meet the demanding challenges that a vastly changed and changing world poses for the U.S. intelligence community today.

For 25 years, Bob Gates has dedicated his formidable intellect and analytical skills and his enormous capacity for hard work to the welfare of our country. In various intelligence and national security posts, he has served five Presidents with distinction. Even his harshest critics have attested to his extraordinary brilliance, dedication and competence. In short, he has proven himself to be a public servant of uncommon ability. He is, in my opinion, eminently well-suited to perform the task for which the President now calls him.

Bob Gates' critics allege that he is tainted by the stain of the Iran-Contra Affair. Yet the Tower Commission, two congressional committees, and an internal CIA investigation, have all absolved him of any wrongdoing or knowledge of wrongdoing. Even Judge Walsh, as relentless an investigator as has ever served as a special prosecutor, has not discovered evidence that would make Mr. Gates a deserving subject for investigation. In its exhaustive review of this nomination, the Select Committee on Intelligence has not found anything that would add or subtract from the judgment that Bob Gates was not involved in the design or conduct of Iran-Contra policies.

In the course of debate on this nomination we have heard frequent reference to Mr. Gates' politicization of intelligence. That is, indeed, a serious charge. but as we have seen in his own forceful rebuttal of that charge, and in the testimony of supporting witnesses, politicization is, in the words of my good friend from Maine, Senator COHEN, "in the eyes of the beholder."

Make no mistake, Bob Gates has served five Presidents well. He has served his superiors at the CIA well, men as diverse in their thinking as Stansfield Turner and Bob Casey. But the uniformly high opinion that his superiors hold of Bob Gates does not suggest that he cooks intelligence to suit the taste of his various customers. Their high opinion rests on their confidence that Gates' commitment to sober, dispassionate analysis, and his firm regard for the highest ethic of public service, renders him incapable of professional dishonesty.

Gates' critics further allege that he should be disqualified because he failed to predict the rapidity and extent of Soviet collapse. Yet, I have not met anyone in or out of the intelligence community possessed of the almost divine prescience necessary to have predicted the speed and full dimensions of Soviet decline.

What Bob Gates brought to these historic years, was a caution that befits an able intelligence officer, and a knowledge of the subject unsurpassed by his peers. He provided his superiors with analyses that was untainted by wishful thinking, and he offered judgments that were informed by fact, not fancy.

In the tumultuous days ahead, in the chaos that has beset the Soviet empire, and the turmoil that will result from the continued disintegration of that empire, this Nation will be well served by an experienced and talented analyst of Soviet affairs of the caliber of Mr. Gates.

We know that Bob Gates has the full confidence of the President. By his sterling record of cooperation with Congress, his manifest respect for our oversight responsibilities, he has earned ours. I will cast my vote to confirm Robert Gates as Director of Central Intelligence. I urge my colleagues to do likewise.

Mr. BINGAMAN. Mr. President, I will vote against confirmation of Robert Gates to be the Director of Central Intelligence for two basic reasons:

First, the dramatic changes in the world require us to rethink the role of the CIA and put that organization on a new and different course. I believe that this job can best be done by someone who approaches the position of Director with a fresh perspective; someone whose view of the role of the CIA has not been determined by its previous obsessions.

Second, the CIA has been rightly criticized for involvements in a variety of activities in the last decade. Mr. Gates has held positions of influence in the Agency during much of this time. It is essential that we close the book on those events and in order to do so we need a Director who has not been tainted by what has occured.

I realize the votes are here to confirm Mr. Gates. Since I disagree with the President's decision, my vote will not be one of those. I hope my concerns are proven to be unfounded. I wish Mr. Gates well in his new position.

ROBERT GATES IS THE WRONG MAN FOR THE JOB

Mr. WELLSTONE. Mr. President, I speak today in opposition to Robert Gates' nomination to be Director of the Central Intelligence Agency.

Under ideal circumstances, individuals charged with making decisions about U.S. foreign policy should have the benefit of reliable, accurate intelligence about world developments. The intelligence analysts should be completely removed from policy making and be neutral on specific policy matters. The Director of Central Intelligence, in particular, should not skew the data to please the President or to cater to his preconceptions. Nor should his or her own political views get in the way of an ability to analyze world developments objectively, and to tell it to policymakers—in the executive branch as well as the legislative branch—like it really is.

Of course, reality often falls short of our ideals. The CIA, in particular, has amassed a four decade-long record of politically and ideologically driven intelligence. Some of it has been very distorted, such as data on Soviet defense spending and capabilities, some of it just plain wrong, such as predictions about developments in Iran and Afghanistan in the 1970's and Iraq and the Soviet Union in the late 1980's and 1990's. On the operational end, the CIA has been involved in many enterprises that violate or skirt United States law—as recently as last decade in connection with the Iran-Contra scandal.

Mr. President, just because the CIA has not always lived up to our ideals, we should not abandon those ideals. If the Senate confirms Robert Gates to be the Director of the CIA, we will be abandoning the ideal of providing policymakers with unbiased, accurate intelligence. Indeed, we will be flagrantly flouting this ideal.

Robert Gates became the Deputy Director of the CIA in April, 1986, after a meteoric rise in the Agency. His confirmation hearings provided ample and credible evidence that, as the Deputy Director, he repeatedly skewed intelligence to promote the world view of his mentor and his boss, William Casey. Analysts specializing in the Soviet Union, Latin America, Africa, and scientific affairs, came forward—some at risk to their careers in the agency—to provide examples. The record further strongly suggests that Robert Gates supported—passively or actively—terribly misguided or illegal covert operations, including the diversion of funds to the Nicaraguan Contras obtained through the sale of arms to Iran. He also had a hand in hiding some of the details of these covert operations from Congress. Lastly, the record showed that Robert Gates crossed the line from independent intelligence-gathering into high-profile policymaking when he gave speeches advocating an unyielding line toward the Soviet Union and deployment of a star wars missile defense system.

Mr. President, I won't retell the testimony of the many former and current employees of the CIA before the Intelligence Committee who questioned Mr. Gates' fitness to be DCI. Each Senator should review that record for him or herself before casting a vote. I do want, however, to highlight some of the principal charges made against Mr. Gates which remain troublesome or unrefuted by Mr. Gates.

Before the hearings began, the chief question concerned Mr. Gates' involvement in, and knowledge of, the Iran-Contra scandal. Mr. Gates testified that he was unaware of the scandal. He conceded that he should have pursued hints of impropriety and should have been more skeptical of the reassuring information he received from Director Casey and others.

I cannot know for certain what Robert Gates knew and when he knew it. However, I do know that four CIA officials swear they warned him about the illegal activities. I know that his immediate boss, William Casey, and his immediate subordinate, Claire George, were deeply involved in the affair. According to Oliver North, the only way Gates would not know of his activities is by a conscious act of not wanting to know. In my opinion, at the very best, Gates' role in this affair adds up a troubling picture of a top-level official willfully ignoring illegal activities in order to shield himself from political responsibility.

Once the hearings began, another equally important charge was investigated. Did Robert Gates participate in efforts to slant or distort intelligence analysis to conform to a preconceived political agenda or position?

Former and current intelligence officers cited several examples when Gates improperly slanted intelligence assessments. Robert Gates rebutted many of the specific charges of bias leveled against him, but he did not convincingly refute several principal charges. I will mention just two of these charges.

A senior intelligence analyst prepared a national intelligence estimate in 1982 that suggested that Soviet influence in the Third World was waning. Gates attached a damning cover memorandum to the report, thereby nullifying the report. The report's conclusion would have undercut Mr. Casey's advocacy of covert operations in response to a supposed increase in Soviet adventurism in the Third World.

Mr. Gates participated in an effort to produce a report which gave undue credence to the case for Soviet involvement in the attempted assassination of Pope John Paul II in 1981. It was well known that Director Casey was convinced of Soviet involvement in the assassination attempt.

Lastly, Mr. Gates' past behavior demonstrates that he does not observe the line between policy advocacy and intelligence gathering. In October 1988, Gates made a speech in which he argued that Mr. Gorbachev had not really changed the Soviet Union. Then Secretary of State George Shultz was so irritated by the negative tone of the speech that he reprimanded Mr. Gates. A year later, when Mr. Gates was preparing a speech on the same topic, Secretary of State James Baker ordered Gates to cancel his appearance.

In another speech given in November 1986, Mr. Gates issued alarming, and exaggerated, estimates of Soviet laser developments. The Deputy Director of the CIA followed this so-called intelligence with his personal opinion about a controversial policy. Mr. Gates opined that American failure to proceed with SDI would have "awesomely negative implications for strategic stability and peace."

For much of the CIA's history, the Director's job was a policy appointment, and the agency was the preserve of the executive branch. Fortunately, this is no longer true. Following the Church committee hearings on CIA abuses in the early 1970's, Congress has provided increasing oversight of the agency. As congressional involvement in foreign policy has increased, so has its need for good solid intelligence.

The post-cold-war world is at least as complicated as in earlier times. There is no doubt that the United States still needs intelligence. The Congress and the executive branch should be able to count on the Chief Intelligence Officer of the country for an independent, rigorous, and neutral assessment of world events. Mr. President, given Robert Gates' record, I believe that he is the wrong man for the job.

Mr. ROCKEFELLER. Mr. President, I will vote against Robert M. Gates to be Director of Central Intelligence.

It was my hope, at the outset of this nomination, to be able to support Bob Gates for this sensitive and critical post. It is clear that he is a dedicated and talented man, a gifted intelligence officer who has devoted his entire professional career to the agency he clearly loves. His entire career has placed him on course to assume this position.

But I have concluded that it would be a mistake, in light of what we have learned through the exhaustive confirmation hearings held by the Senate Intelligence Committee, to put this man in this post at this time.

The key question I have weighed is not merely whether Bob Gates is qualified to be Director of Central Intelligence—he clearly is, if the only criterion is one of experience. He is arguably the most experienced senior intelligence officer in our country. He has served not only at the CIA, but with the National Security Council. He has been involved in virtually every aspect of intelligence and foreign policy over the past three decades—and at the highest levels of government deliberations over the past 10 years. But the decision before the Senate should not, and must not, rest on Bob Gates' résumé alone.

My judgment that Bob Gates should be rejected by the Senate rests on the record and quality of his experience.

Unfortunately, when the entire record of Bob Gates' tenure at CIA and the National Security Council is taken into account, one cannot but conclude that what is needed—now more than ever before—is a leader for the intelligence community who can effectively guide the CIA in the new era governing U.S. foreign policy.

And one cannot but conclude that Bob Gates is wholly identified with, and represents, the policies and practices of the past. Bob Gates does not stand for, and cannot guide the intelligence community into, the immense challenges and opportunities of the future.

The hearing record—which focused on the Iran-Contra scandal, the issues of intelligence analysis accuracy and politicization, particularly with respect to the Soviet Union—demonstrates convincingly that Bob Gates is fully associated with intelligence policies and practices that consistently failed the national interest. Even if Bob Gates is given every benefit of the doubt in each key area of inquiry, the fact remains that he guided the intelligence community through an era that is fundamentally out of step with today's imperatives.

Some have focused their attention on the question of whether Bob Gates was involved in the Iran-Contra affair. One can make the case that he was cut out from knowledge and involvement in what were ultimately criminal activities that reached to the integrity of the constitutional processes of government itself.

We may never know the entire truth of what happened and the role of the principals involved, including President Reagan, former CIA Director William Casey, and Bob Gates. I believe it's fair to expect that, regardless of whether Gates knew of what was occurring, he should have made it his business, as the second in command, not only to be informed about, but to try to stop, activities that were illegal and which contravened the express prohibition of the Congress. Gates testified before the Intelligence Committee in the present confirmation hearings that he knew Director Casey crossed the bright line between intelligence and policy, particularly with respect to Iran-Contra, but that he never took his concerns on this most important issue to the President. Gates preferred to look the other way, and as a result of that, one of the worst scandals in American foreign policy erupted—with consequences that are still unfolding.

The confirmation hearings also dealt extensively with the issue of the politicization of intelligence analysis. The Intelligence Committee received directly conflicting testimony on this key issue, and again, it may never be possible to ascertain the truth of these allegations. It is nevertheless unprecedented for so many ranking intelligence officers to come forward, in such detail, to make a case that decisive intelligence judgments were directly overturned because of the political and policy views held by Bob Gates. One has to wonder whether what was gripping the agency over the past decade was nothing less than political correctness over intelligence—that if you, as an analyst, were not politically correct in your thinking as to the Soviet threat, the Soviet role in world terrorism, Soviet influence in Iran, or the Soviet role in the assassination attempt against the Pope, you were effectively silenced by the leadership at Central Intelligence.

Those who decry political correctness on our campuses would be hypocritical if they won't recognize the same syndrome in our intelligence agencies. What is clear—regardless of the ultimate truth behind this debate, which may never be adequately resolved—is that a tremdndous amount of demoralization has occurred throughout the professional ranks of the analytical side of the agency, and that Bob Gates played a major role in permitting it to grow. The cost involved goes not only to the loss of very talented people from the agency's ranks, but extends also to a more rounded and vibrant analysis of intelligence inside the Agency and in the White House.

Others have raised serious questions as to whether there was a crossover between intelligence and policy—the bright line that all recognize as essential to the integrity of intelligence itself. It is evident, however, that the imposition of politically correct views on intelligence analysis inevitably leads to mistaken intelligence conclusions which in turn lead to intelligence failures. This is not a theoretical concern—this country has suffered a long series of intelligence failures throughout Bob Gates' career in the Agency and the White House.

Bob Gates himself, in testimony before the Intelligence Committee, catalogued several such failures over the past several years, particularly with respect to the nature of the Soviet threat. What is especially disturbing, however, is that the intelligence community continued to misread the most critical events we have confronted, as recently as the past year.

In questioning by Senator NUNN, Bob Gates described two recent intelligence failures, and I quote:

> I think among the failures would be most recently the failure to anticipate Saddam Hussein's invasion of Kuwait. It would be the Soviet recognition that they could no longer sustain the level of defense spending that they had with the economic troubles that they had.

To be certain, the agency and the NSC under Bob Gates' leadership did enjoy several successes, including accurate analysis of the revolution in Eastern Europe and the tracking of perestroika in the Soviet Union.

But on the fundamental crisis issues affecting the United States and its national security over the past decade—and extending to last year's invasion of Kuwait and this year's overthrow of communism in the Soviet Union, including the coup against Gorbachev which the CIA missed entirely—it is fair to conclude that something is profoundly wrong at the CIA, for the simple reason that the CIA has successively failed at performing its job of giving the President, and the Congress, accurate intelligence.

My decision to oppose the nomination of Robert Gates is therefore based on the judgment that we cannot afford to reward with promotion the single individual most associated with the course of the agency and the intelligence community over the past decade—a course marked by successive failure in the most critical areas.

We are in a new era in foreign policy. The cold war is over, and we have won. The Soviet Union is collapsing, and we are the remaining superpower. Geopolitical challenges are taking on new dimensions: nationalistic, economic, technological, and regional. The policies and outlook of the past are inappropriate, even dangerous, to today's profoundly different structure of international relations and our intelligence needs in this new era. Bob Gates, as both a product and practitioner of the past, as someone who embodies U.S. intelligence policies over the past two decades, is not the person to lead the intelligence community into the future.

It is not enough simply to defer to the President on his nominee. The constitutional requirement that we exercise both advice and consent on nominations is hardly consistent with out ratifying a nominee simply on the basis that the President believes he is best qualified.

Certainly the President deserves a person he can trust in this most critical of positions. But the American people also need and deserve, now more than ever, a Director of Central Intelligence they can trust, and in whom they can have confidence. Bob Gates does not meet those criteria.

My decision to oppose Robert Gates is therefore based on my judgment that it is imperative the United States have a new Director of Central Intelligence who is well qualified to manage the intelligence community in the new era that is upon us in international relations. We need a new DCI who both understands the challenges that we face and who has the strength to lead the intelligence community with force and vision to better meet these challenges.

It was my inclination, when Robert Gates was nominated for a second time to this position, to support him if at all possible. But I cannot do so in light of the record of the hearings held by the Intelligence Committee. They have revealed continuing, serious doubts about the Iran-Contra affair; a pattern of apparent politicization of intelligence analysis; and a crossing of the line between intelligence and policy. Most importantly, the hearings have documented—Bob Gates himself has documented—successive intelligence failures at CIA. And Bob Gates has been on the point at the agency throughout this period.

There is no question that Robert Gates is a dedicated public servant. He has the intellectual capacity to understand what must be done to improve intelligence analysis and operations, particularly with respect to the Soviet Union. But he has, nevertheless, been unable to implement the very prescriptions he himself believes are critical to the agency's viability and success.

I therefore will cast my vote against the nomination of Robert Gates to be Director of Central Intelligence.

Mr. KASTEN. Mr. President, one of the most important responsibilities of a U.S. Senator is to exercise vigilance over the quality of appointments to Federal agencies. I am proud to announce that in carrying out this duty I have determined that Bob Gates is eminently qualified to serve as Director of the Central Intelligence Agency.

The background of Bob Gates has made him an ideal candidate for service to the Agency. He has the intellect and varied experience that will serve him well as Director of the CIA.

The CIA is at a crossroads. The tremendous shift in the world balance of power requires America's intelligence community to redefine its mission in the new world order. Changing global realities resulting from the collapse of communism and our victory over tyranny in the gulf require innovative approaches to intelligence. Bob's vast knowledge of the intelligence community, gained from working in the CIA and the NSC respectively, makes him the best choice to lead this transformation of mission.

Bob Gates is uniquely qualified to serve as Director of Central Intelligence. A career intelligence officer, he has served five Presidents with distinction in a variety of intelligence and national security capacities. In the 40-year history of the CIA, Bob's outstanding qualifications to lead the intelligence community are unparalleled by virtue of his superb academic training and broad political experience.

Bob's ethic of public service is displayed by a 25-year career of implementing the policies of both Republican and Democratic Presidents. The sheer merit of Bob's service is borne out by the fact that he is the first DCI-designate to be chosen from the ranks of career intelligence officer corps.

As President Bush stated in July, Bob Gates is "a man of total honor, and he should be confirmed as Director of Central Intelligence."

The full Senate will soon decide whether to offer its advice and consent to the nomination of Bob Gates to the Director of the CIA. After studying his record, and the testimony before the Senate Select Committee on Intelligence, I am convinced that he will do honor to the Agency—and I will vote to confirm his nomination.

• Mr. WIRTH. Mr. President, the memorial service in Denver today of a very dear and long-time family friend will prevent me from being present in the Senate for the rollcall vote on the nomination of Robert Gates to be Director of Central Intelligence. I wish to indicate that I would have voted to confirm Mr. Gates.

I followed Mr. Gates' confirmation hearings with great interest and some concern. The charges that were raised in the hearings and have been raised in this debate are serious and legitimate concerns: Mr. Gates' involvement in the Iran-Contra scandal; his alleged role in preparing misleading testimony to the Congress; the politicization of intelligence.

These allegations have been debated at length in the Senate. There are arguments on both sides, but few hard facts. Mr. Gates has denied most of these charges. He has admitted poor judgment in not pursuing the issue of the diverted Iranian arms proceeds to the Contras more aggressively. He has made mistakes. On balance, I concur with Senator BOREN that Mr. Gates has learned from these experiences and that he will be better able to lead the CIA as a result of having confronted these issues openly and candidly in the nomination process.

My overriding concern, however, is whether Mr. Gates is capable of bringing the right kind of leadership to the CIA at this juncture in its history. I must admit that I had serious doubts about Mr. Gates' qualifications to engage in the "new thinking" on substance and on process I believe the CIA desperately needs in the post-cold-war world. Mr. Gates' history is, after all, that of a "cold warrior." His educational background and his entire professional career have been almost exclusively focused on understanding, analyzing, and quantifying the threat posed by the Soviet Union.

Understanding the dynamics of change in the former Soviet Union will, of course, continue to be vitally important for United States policymakers. Increasingly, however, our security and our role in the world will be defined by nontraditional kinds of threats—resource scarcity, overpopulation, global climate change. These nonmilitary phenomena will increasingly come to shape the dynamics of global politics as we cope with environmental refugees in the millions, with political instability spawned by scarce water supplies, by mass starvation caused by decertification.

These are the forces which will define the kind of world in which we, our children, and our grandchildren will live. We desperately need to better understand these phenomena and the political forces they give rise to.

The end of the cold war demands, therefore, a redefinition of intelligence to reflect less emphasis on the military dimension of security—and much greater focus on the demographic and resource conflicts which will increasingly define the dynamics of international relations in the 1990's and beyond.

Forty-four years ago at the dawn of the nuclear age, Albert Einstein observed that "everything has changed except our way of thinking." Rising to meet the challenges of that new world, an extraordinary group of wise men fashioned a policy to provide peace and stability in the international system. That effort has succeeded. But it no longer is sufficient to meet the emerging and daunting challenges we face in the international system as we enter the 21st century.

Today, we must create a new order—new assumptions, paradigms, institutions—to cope with the daunting global challenges we face. We will need all the creativity and wisdom that guided us through the immediate postwar years.

In a meeting with Mr. Gates on October 23, I raised these issues. He responded positively at that meeting and followed up the next day with a letter to me outlining his understanding and support for this nontraditional intelligence agenda.

Mr. Gates had already demonstrated to me his interest in environmental matters and his willingness and efficacy in dealing with them. In 1989, Senator John Heinz and I met with Mr. Gates, then Deputy National Security Adviser at the White House, to raise our concerns with a Japanese-funded highway aimed at opening the Amazon to the Pacific market, a clear threat to the fragile rainforest on which we depend. Mr. Gates listened carefully to our concerns and promised to assist. Within months, the project was stopped.

In his letter to me dated October 24, Mr. Gates noted that his first order of business if confirmed as Director of the CIA would be to review intelligence missions in the wake of the end of the cold war and the collapse of the Soviet Union. He went on to say that:

> This review, in my opinion, should address the issues you and I discussed * * *, including international problems relating to the environment, energy, natural resources, and some aspects of global demographics * * * I believe these are appropriate areas for the application of unique intelligence capabilities both in collecting information (especially from space) and analysis. As we look into the future, U.S. Intelligence will need to focus more intensively on a broad range of non-Soviet international problems and issues than heretofore. This includes the environment, energy, natural resources, population issues. * * * If, as I would hope, the users of intelligence agree, I would be committed to institutionalizing and expanding the Intelligence Community's work on these important issues in those areas where we could make a unique contribution.

Mr. President, I believe that Mr. Gates possesses an awareness of and a willingness to pursue the kind of new thinking on issues which we will need in this decade and in the next century. Adm. Bobby Inman, with whom I also met to discuss this important nomination, raised similar concerns and stated that he had also discussed these issues with Mr. Gates.

I have great respect for Bobby Inman. He made a persuasive case that Mr. Gates, as an insider, would have the greatest ability to reshape the CIA to meet these new challenges. The same argument has been forcefully made by the distinguished chairman of the Senate Select Committee on Intelligence, Senator BOREN. These arguments weighed heavily in my decision to support the nomination.

I will look to Mr. Gates to use his influence within the intelligence community and at the White House to effect fundamental changes in the nature and process of intelligence work. We need a new agenda to meet the new challenges we face, but we also need a new code of conduct. I am convinced that Mr. Gates will respect the vital role of Congress in providing oversight of the CIA and hope that he will press for even further process changes.

Mr. Gates alone, however, cannot effect new thinking or institutionalize a new agenda at the CIA without strong leadership from the President. The CIA, like other Federal agencies, reports to the President and his administration. Unless President Bush infuses his touted new world order with real policy substance and direction, fundamental change will not occur at the CIA or elsewhere in the Federal Government.

To date, we have not seen that kind of leadership from President Bush. In fact, we have seen retrograde motion on intelligence matters under the current administration. The end of the cold war allows us to rid ourselves of the excesses which that era gave rise to, including obsessive secrecy and lack of effective oversight. The demise of the Communist system should now permit us to bring greater accountability and greater relative openness in the conduct of American intelligence.

The Bush administration, however, has done just the opposite. President Bush has significantly narrowed the charter of his own intelligence oversight board—the President's Foreign Intelligence Advisory Board. Under previous administrations, this Board had a much broader oversight charter and more influential membership. Now that the cold war is over, the Bush administration is restricting—rather than strengthening—oversight.

Similarly, President Bush and his administration have refused to embrace timely oversight of covert operations by the Select Committees on Intelligence of the House and Senate. The law requires the President to report Presidential findings on covert operations to the Congress in a timely fashion. We learned during the Reagan years, however, that the Executive interpreted this requirement in a very broad manner.

Congress has subsequently sought to refine the legislative intent of this provision to require congressional notification of covert actions within 48 hours. But the Bush administration has refused to accept this formulation. Here again, we see a predilection to retain the culture of secrecy and lack of accountability which characterized the cold war years and which have done such a disservice to the intelligence community and the Nation.

Mr. President, I have confidence that Mr. Gates understands the need to provide new direction for the CIA. It will not be an easy task, but there is great support in Congress for reshaping intelligence priorities and for bringing greater oversight and openness to the process.

I regret that I am unable to be here for the vote on Mr. Gates' nomination, and wish to be recorded as having announced myself in favor of the nomination. I hope that Mr. Gates is confirmed and look forward to working with him and the distinguished members of the Senate Select Committee on Intelligence in engaging the intelligence community in the vitally important areas I have addressed today.

I ask unanimous consent that a copy of the letter Mr. Gates sent to me on October 24, 1991, appear in the RECORD immediately following my remarks.

There being no objection, the letter was ordered to be printed in the RECORD as follows:

THE WHITE HOUSE,
Washington, October 24, 1991.

Hon. TIMOTHY E. WIRTH,
U.S. Senate,
Washington, DC.

DEAR SENATOR WIRTH: I want to follow up on our conversation yesterday.

As I said in my hearings, if I am confirmed as Director of Central Intelligence, my first order of business would be a top-to-bottom review of intelligence missions and priorities in the wake of the end of the Cold War and the collapse of the Soviet Union. In my view, this reexamination should be directed by the President and carried out by the users of intelligence, looking to the future and how best we can exploit the extraordinary capabilities of our Intelligence Community. This review, in my opinion, should address the issues you and I discussed yesterday, including international problems relating to the environment, energy, natural resources, and some aspects of global demographics.

Fortunately, should the policymakers and the Congress determine that Intelligence should in fact address these issues, there is a base at CIA on which to build. During the years I was CIA's Deputy Director for Intelligence, I expanded agency collection and analytical efforts in nontraditional areas. CIA has long committed substantial resources to international energy issues. The Agency from time to time has used its unique assets to address environmental issues as, for example, monitoring the effects of the Kuwaiti oil fires and the Iraqis' deliberate oil spillage in the Persian Gulf. There has been intelligence work in the past on global health issues such as the political, social and economic consequences of the AIDS pandemic in Africa. Analysis has also been done on changing patterns in world weather and on natural resources related issues, including potential conflicts over water resources. CIA has devoted considerable effort over the years monitoring world food supplies.

As we look to the future, US Intelligence will need to focus more intensively on a broad range of non-Soviet international problems and issues than heretofore. This includes the environment, energy, natural resources, population issues, and other issues already noted.

I believe these are appropriate areas for the application of unique intelligence capabilities both in collecting information (especially from space) and analysis. If, as I would hope, the users of intelligence agree, I would be committed to institutionalizing and expanding the Intelligence Community's work on these important issues in those areas where we could make a unique contribution.

I enjoyed our meeting and would very much appreciate your support.

Sincerely,

ROBERT M. GATES.

Mr. ROBB. Mr. President, I rise to address the nomination of Robert M. Gates to be Director of Central Intelligence.

The nomination of a new Director of Central Intelligence is no small matter to my State. Virginians take great pride in the fact that the Central Intelligence Agency headquarters is located in our Commonwealth, and that many of those who serve professionally in that organization live in Virginia. I count the Agency as a near neighbor. As a matter of fact, almost 20 years ago, when we were completing our current house, we lived literally on the perimeter wire of the CIA. So issues concerning the Agency are of great interest to me and to many Virginians.

Robert M. Gates is acknowledged by supporters and opponents alike to be one of the most highly qualified individuals ever nominated for the post. I also find it very important—and Chairman BOREN will bear me out on this—that he is as strong an advocate of legislative oversight as the community has seen in a long time. In his hearings and in face-to-face meetings, Mr. Gates made plain that he understands that the difference between the CIA and its foreign foes is that our Agency operates under a democracy, and it must be accountable for its actions.

My judgment of Mr. Gates has been borne out by a long-time friend, Adm. Bobby Inman, who is probably the most highly regarded person in the intelligence community today, and who strongly supports Mr. Gates. In our meetings, Admiral Inman admitted that Mr. Gates is not without shortcomings, but that in the new world, "We don't need spies in the classic sense, we need keen observers. People who understand the world. That's Bob Gates." When I asked him to address concerns which had been expressed about Mr. Gates' record as an analyst, Admiral Inman replied that in the intelligence business, nobody bats a thousand—and Bob Gates has a better percentage than he did.

I withheld final judgment on Mr. Gates until the confirmation hearings had been completed and the committee had acted. Based on the best information available, I will vote to confirm Robert Gates.

To a certain extent, confirmation comes down to one's judgment of the individual. I have known Bob Gates for many years, and my conclusion is that he is highly qualified to serve as Director of Central Intelligence.

Mr. CONRAD. Mr. President, I must rise today to add my voice to those opposing the nomination of Robert Gates to head the Central Intelligence Agency. While Mr. Gates is clearly a very talented and capable person, he is not the right person for this job.

We have learned a great deal about Robert Gates in the last 2 months. The hearings on the Gates nomination were thorough and detailed, producing thousands of pages of documents and testimony. Dozens of charges were investigated. Hundreds of witnesses testified or were interviewed. Mr. Gates himself was on the stand for 4 days. However, after weeks of seeking to find the truth about Mr. Gates, questions and concerns about his nomination remain strong in my mind.

In the 1980's, Robert Gates served as a high ranking CIA officer under Director William Casey, a man whose strong ideological views affected both Agency analysis and U.S. policy. Many of Mr. Casey's actions at the CIA were questionable at best. Under William Casey, the CIA mined Nicaraguan harbors, secretly sold arms to Iran, and diverted the profits from these sales to illegally support the Nicaraguan Contras. Bob Gates was an integral part of the CIA while all of these events were occurring.

I find it hard to believe that a man as intelligent, as thorough, and as driven as Robert Gates would not have known about the Iran-Contra activities. Mr. Gates claims that he did not hear of the illegal diversion of weapons profits to the Contras until late in 1986, after it had been publicly disclosed. However, he admits that he was aware of the weapons sales to Iran, and Charles Allen, a retired CIA officer who was involved with the weapons sales, told Gates numerous times of his suspicions about profits diversions. Mr. Gates claims that he only vaguely recalls being told of Allen's suspicions. In addition, rumors about Oliver North's activities in Central America were well known in the intelligence community. Did Robert Gates, the No. 2 intelligence officer in the Nation, not hear them? If he did, why did he not investigate them?

It is strange that a man who rose quickly through the ranks of the intelligence community, a man who had a reputation for being tough and aggressive, would not pursue this matter.

Robert Gates is a man who was able to provide, overnight, a 20-point rebuttal to some of the charges brought against him by former CIA analysts. Yet, he could not put two and two together on Iran-Contra. He is said to have a photographic memory, and there were many instances during the hearings when Mr. Gates recalled his actions or conversations in great detail. But, he could not recall many key conversations and remarks regarding his knowledge of Iran-Contra. This memory lapse is disquieting.

Another charge brought against Robert Gates during the confirmation hearings was that he slanted intelligence. We heard testimony from several former CIA analysts making this allegation. Some will argue whether or not the charge was conclusively proven, but it cannot be denied that Robert Gates had strong ideological views on the Soviet Union. These views were very much in line with those of Mr. Casey, and it appears to me that there was a great deal of pressure at the CIA to provide analysis that supported this ideological stance. This pressure for analysis to be in line with the subjective views of the Director and the administration did serious damage to the morale of the CIA, and more importantly, provided our policymakers with misleading intelligence. Mr. President, intelligence must be objective and thorough if it is to be of any use to our policymakers.

Finally, Mr. President, let me say that I believe it is time for a change in the Central Intelligence Agency. Even if I had no doubts about Mr. Gates, I would still be hesitant to vote for someone who is a product of the old system. Just in the past few years, the CIA has seriously failed to foresee the Iraqi invasion of Kuwait and the collapse of the Soviet Union. The two most important foreign policy occurrences of the last decade caught our country by surprise. In addition, the CIA secretly shared intelligence with Iraq during its war with Iran, and we now learn that this intelligence may have helped Saddam Hussein to successfully hide his nuclear weapons program from the West. The list of intelligence failures does not stop there: Central America in the 1980's and Iran in the late 1970's come to mind. Robert Gates was a part of the system that produced these failures; I do not believe he should be the one put in charge of fixing it.

The world has undergone radical changes in the past few years, and the United States must change its policies in response. The end of the cold war does not diminish the need for intelligence, but it requires a very different approach to intelligence policy. It is time to make a fresh start and select as head of the CIA someone who will bring unquestionable integrity, new ideas, and innovative thinking to the system.

Mr. President, this is not the stance that I would like to be taking on a nominee to a position of such great importance at such a critical time. However, I do not believe that Robert Gates would be good for the CIA or good for the country, and I will therefore vote against his confirmation today.

Mr. KOHL. Mr. President, I reluctantly intend to vote to confirm Robert Gates as Director of the Central Intelligence Agency. Mr. Gates would not have been my choice to head the CIA. I am disturbed by his involvement in questionable activities related to the Iran-Contra affair and the slanting of intelligence information. I am troubled by charges related to his management style. And I am distressed by the fact that in this time of radical change, we have turned to a product of past ideological battles and out of date ideological views. He is clearly not the person I would have nominated to serve as the Director of the CIA.

But I am not in a position to nominate anyone. I am in the position of passing judgment on the President's choice. And in this case, there is a presumption in favor of the President. Unlike a Supreme Court nominee, the Director of the CIA is part of the President's administration. I have always believed that, absent compelling evidence to the contrary, a President is entitled to have his own people serve in his own administration. I have examined the record carefully and while I find areas of doubt and concern, I do not find compelling evidence to overcome the presumption that rightfully rests with the President's nominee.

Accordingly, I shall vote for him. But the vote should not be seen as an endorsement of his record; rather it is a recognition of the President's prerogatives in the area of nominating people to serve in the executive branch. Given the questions that were raised at the confirmation hearings, I expect and trust that the members of the Intelligence Committees in the House and Senate will engage in extensive oversight of Mr. Gates and the Agency he heads.

Mrs. KASSEBAUM. Mr. President, I rise to support the nomination of Robert Gates to be Director of the Central Intelligence Agency.

As I noted in my remarks before the Intelligence Committee, the demands on the next director of the CIA will be perhaps the most challenging in the history of the agency. The collapse of communism will have a profound impact on our intelligence operations, priorities and budget. Currently, over 50 percent of our intelligence budget is directed against the Soviet Union and the Warsaw Pact.

Over the next several years, the CIA will have to be redirected from the bottom up, in order to make our intelligence analysis and operations relevant to a rapidly changing world and rapidly changing threats. The principal question before us is what type of individual can best provide this leadership. I believe it is clear that Robert Gates' extensive experience in the intelligence community and full understanding of its institutions are the main strengths he will bring to the job.

I also believe that the next Director will need the respect and confidence of the President in order to effectively plan and carry out a major review and overhaul of our intelligence policies. Once again, Robert Gates will come to his job secure in his relationship with the President.

Both the Intelligence Committee hearings and the floor debate on this nomination have been vigorous, comprehensive and thoughtful. The record clearly reflects the strengths Robert Gates will bring to this position during these very demanding times. I urge my colleagues to join me in supporting his nomination for CIA Director.

Mr. SYMMS. Mr. President, the Senate Select Committee on Intelligence has been tasked with the long process of confirmation for the nomination of Robert M. Gates, as the Director of Central Intelligence Agency. Since June 24, 1991, Mr. Gates has been questioned by the Intelligence Committee about his management skills, his past judgments, and even his principles, yet in this Senator's opinion, he has passed the test with flying colors.

What other possible nominee would have a comparable level of experience within the intelligence community? With over 25 years of hands-on experience including positions such as Deputy Assistant to the President for National Security Affairs and Deputy Director of Central Intelligence, Gates holds the confidence of a President who once held the position of DCI himself.

The changing nature of the intelligence community also requires a nominee who will be able to carry out the necessary modifications brought about by the recent geopolitical changes worldwide. The new Director will have to refocus and reprioritize the former objectives of Central Intelligence. This could not be effectively accomplished by an unseasoned nominee.

Gates himself has stated:

> Change is inevitable. It must come and come quickly. It must be constructive and informed by broadly agreed missions and priorities for U.S. intelligence. * * * The new Director and his senior managers must assure that those most affected by change are well treated and have the assurance of fairness and sympathy, and new personal opportunities. * * *

Gates has been called into question regarding his awareness of the Iran-Contra affair. It is common knowledge that the Central Intelligence Agency is extremely compartmentalized in its information dissemination, operating strictly on a need-to-know basis. Robert Gates has established that he had limited knowledge of the covert operation, and has already explained that in retrospect he would have handled specific situations differently.

But hindsight is always 20-20. We cannot expect perfection, but we can expect Robert Gates to have learned from past mistakes.

I believe that Robert Gates has matured greatly from the experience and, if anything, it has made him increasingly aware of comparable situations that could arise in the future. We need Robert Gates' experience to shape the intelligence community to suit the needs of tomorrow, and that is why I will support his nomination.

Mr. D'AMATO. Mr. President, I rise today to express my strong support for the confirmation of Robert M. Gates as Director of Central Intelligence. I believe he is fully qualified for the position and will perform superbly as Director of Central Intelligence.

Having listened to the floor debate on this nomination both yesterday and today, I am moved to return to the basis for this body's judgment. On this point, I want to restate my views from the beginning of the Intelligence Committee's hearings on Bob Gates:

> As Senators, we again face the question of what standard to employ to decide whether or not a President deserves confirmation of his nominee to a very important post in his Administration. In my view, the proper standard is that a nominee should be confirmed if he or she is qualified for the position for which he or she is nominated. The question of qualification should be decided upon the basis of the nominee's character, integrity, experience, education, and past performance. A nominee should not be confirmed if substantial, credible disqualifying information is found.
>
> What does this mean? Disqualifying information is not proof that the nominee holds policy or ideological positions contrary to mine. Neither is it evidence of small errors of judgment in personal or professional matters. It certainly is not evidence that a nominee took controversial positions in good faith on certain issues.
>
> Disqualifying information is negative information that bears upon a nominee's character, integrity, or competence so strongly that, when weighed against the totality of the nominee's personality, career, and accomplishments, it casts serious doubt on the nominee's ability successfully to perform the duties of the office to which he has been nominated.

This is the standard I applied to the information the committee developed before, during, and after the hearings. I believe it is the correct standard to apply to any Presidential nomination.

So far in the debate on this nomination on the floor, I have heard many colleagues in opposition to Mr. Gates' confirmation implicitly put themselves in President Bush's shoes. With all due respect to my colleagues and friends who oppose this nomination, none of them are the President of the United States.

Article II, clause 2 of the United States Constitution provides that the President "* * * shall nominate, and by and with the Advice and Consent of the Senate, shall appoint * * * Officers of the United States. * * * The scope of the Senate's role has been clear since the early years of the Republic.

An 1837 opinion of the Attorney General states that "[t]he Senate cannot originate an appointment. Its constitutional action is confined to the simple affirmation or rejection of the President's nomination, and such nominations fail whenever it rejects them." (3 Opps. Atty. Gen. 188)

My colleagues who oppose Bob Gates are free, and are entirely within their rights, to vote to reject him. However, when they advance arguments against him that, when reduced to their essential elements, consist of a personal or political judgment that they would not chose him to be DCI, they have crossed the line and usurped a role that the Constitution reserves to the President.

Mr. President, I believe that fairly applying the proper test leads to the clear conclusion that Bob Gates deserves the full support of this body. I call upon my colleagues to give Mr. Gates that support.

Now, I want to turn to one part of the controversy surrounding Mr. Gates' nomination on which I have special experience and expertise. That is the question of whether or not Bob Gates slanted the intelligence assessments concerning the May 1981 attempt by Mehmet Ali Agca to kill Pope John Paul II.

The question presented to the committee was not who was behind Agca's attempt to kill the Pope. The question was much more narrow: what involvement did Bob Gates have in the production of the 1983 and 1985 intelligence assessments?

On the broader, fundamental question, I remain convinced that Bulgaria ran the operation and that the Soviet Union provided, at the minimum, the instigation for the attack on the Pope. I came to that conclusion after personally traveling to Italy on several occasions and meeting with people who were at the forefront of the working investigations into the assassination attempt.

In February 1983 I traveled to Rome and met in person with the investigating magistrate, Ilario Martella. To my knowledge, no other U.S. official had such a meeting before me. I met with an Italian counterpart of mine who served on the parliamentary committee charged with oversight of the Italian intelligence services. I also met with a large number of other investigating magistrates, senior Italian officials, and United States officials at the Embassy in Rome.

I came away from this trip and my previous trips convinced that the CIA was officially ignoring, to a very large extent, the attempt on the Pope's life. Indeed, various CIA officers were telling the United States and international press that Agca was a crazed, lone gunman, or an enforcer for drug runners, or an assassin for the Turkish Grey Wolves, but that there was no evidence that he was working for the Bulgarians, much less the Soviets.

The Italian authorities asked me why the CIA was "beclouding" their investigation. That is the term they used, "beclouding," and they meant that the CIA was casting doubt on the integrity, seriousness, and purpose of their efforts to get to the bottom of the issue.

I developed a number of hypotheses as to why this was happening, but until Mel Goodman testified, I did not fully appreciate the will to disbelieve evidence of Bulgarian and Soviet involvement that existed in the Directorate of Intelligence at the CIA. Mel Goodman came forward and charged Bob Gates with slanting intelligence on the papal assassination attempt. What he showed me, through his testimony and his responses to the testimony of persons who were actually involved in the production of the 1985 assessment, is that he represented a rock-hard core of people in the Directorate of Intelligence who refused to consider evidence that was contrary to their personal perspective on the Soviet Union.

Mr. President, at this point I ask unanimous consent that an op-ed by Claire Sterling that was published on page A18 in the Tuesday, November 5, 1991, edition of the Wall Street Journal, entitled "At CIA, Nobody Cares Who Shot the Pope," be printed in the RECORD. This op-ed succinctly recounts the outside picture of the CIA's approach to the papal assassination attempt as seen by the person who is generally recognized as the preeminent scholar on this subject.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Nov. 5, 1991]

AT THE CIA, NOBODY CARES WHO SHOT THE POPE

(By Claire Sterling)

Before voting to confirm him as head of the Central Intelligence Agency, the Senate Intelligence Committee aired charges that Robert Gates forced the CIA to investigate allegations that the Soviet Union was responsible for the shooting of Pope John Paul II in 1981. I can reassure the committee that, if he tried, Mr. Gates was entirely unsuccessful.

Three Italian courts have expressed their moral conviction that Bulgaria's secret service was behind the Papal shooting: the Rome Court of Assizes in 1986, the Court of Appeals in 1987, and the Court of Cassation—Italy's Supreme Court—in 1988. The courts did not pronounce the three Bulgarian defendants guilty, but would not pronounce them innocent either. (They were acquitted "for insufficient evidence," meaning anything but innocence in Italy. Whether through indifference or contempt, the CIA showed no interest in these proceedings from the start.)

The agency did not bother to get a copy of Mehmet Ali Agca's earliest confession (as its Rome station chief told Sen. Alfonse D'Amato, R., N.Y., in 1982). It did not try to obtain a later confession leading to the arrest of three Bulgarians. It did not call on investigating magistrate Ilario Martella to ask for or volunteer information of any sort. Nor, to my personal knowledge, did it rush to get a copy of the Italian prosecutor's report on Judge Martella's 20-month investigation—the first official document to reveal what the judge had found.

Well over a year before the Martella report appeared in 1984, the CIA had produced what purported to be a careful study of the case, concluding that there was no reason to believe the Russians were involved.

Its next careful study, in 1985, concluded that the Russians were involved after all, through their Bulgarian surrogates. But that had nothing to do with Judge Martella's lengthy indictment, or testimony in the spectacular trial getting under way by then. The grounds were said to be new information from a secret Italian agent, contradicting old information from a secret Bulgarian agent who had said the Bulgarians didn't do it.

The CIA's performance throughout the case was bewildering. Officially, the CIA wanted no part of it. The papal shooting was "an Italian matter, and it would be inappropriate for the United States to interfere," a senior intelligence officer told the New York Times in February 1983. But the CIA did interfere, with repeated and distinctly inappropriate efforts to get Bulgaria off the hook.

Its leaks to the press from Washington and Rome began just weeks after the three Bulgarians' arrest. "On the basis of the evidence, the Bulgarian-Soviet link (to Agca) cannot be proved," an unnamed intelligence analyst told the New York Times in December 1982, when nobody knew what the evidence was. Efforts to exonerate Bulgaria and the Russian followed in rapid succession, approaching the preposterous.

Unnamed intelligence analysts suggested that "the Bulgarian secret service hired [Agca] as an assassin or drug-trade enforcer, in an arrangement that had nothing to do with the pope or the Soviet Union." Later, this suggestion ran, "when Mr. Agca found himself in Rome on a mission for the Bulgarian secret service, he independently plotted to kill the pope, without the support or knowledge of the Bulgarian authorities."

An alternative theory, offered straightfaced to the Los Angeles Times, conceded on the CIA's behalf that the three Bulgarians were "known intelligence agents," and that "officials of the Bulgarian government had advance knowledge of the assassination attempt." While this was "a 99% certainty," however, "the CIA is also convinced that neither the Bulgarians nor the Soviet Union instigated the attack," the sources said

What seems to have stumped CIA analysts in all these years was an inability to comprehend why the Russians would want the pope dead. One faction apparently could think of no plausible motive (1983), while the possible motive finally offered in a revised policy paper (1985) strains belief. "The Soviets were reluctant to invade Poland" in 1981, "so they decided to demoralize [the Polish} opposition by killing the Polish pope," was how it read.

Any Pole in Warsaw or Cracow could do better than that—and not just a Pole. The Kremlin's urgent need to be rid of this pope was unmistakenly clear by the time Agca set out from Bulgaria on his mission. He left Sofia on Aug. 31, 1981: the day Poland's communist rulers signed a formal contract with Solidarity in Gdansk. It was the first agreement in the history of worldwide communism to legitimize a free trade union and, seen in retrospect, the beginning of the dissolution of the Soviet empire.

There was no mistaking who was held responsible by the Kremlin. The pope had been a menace since his first visit to Poland in 1979, when he told a delirious crowd of 6 million that "No country should ever develop at the cost of enslavement, conquest, outrage, exploitation and death." Solidarity was born in the Gdansk shipyards that winter, just six months after John Paul's unforgettable visit.

The Vatican was committing "innumerable acts of ideological sabotage"; was "training and sending propaganda specialists. . . and smuggling subversive literature" into socialist countries on a "vast scale"; had "inspired subversive activities in Poland" and furthered "the aggressive aims of imperialism" declared the Soviet review Polititcheskoye Samboobrazovanie. "Solidarity was not born of the disorders in the summer of 1980, but in the lap of the Church," said the Soviet news agency Tass.

Discrening a motive here, so difficult for the CIA, was no problem for Italian judges in three successive courts. Though obliged to acquit "for lack of sufficient evidence," the Appeals Court noted in its 150-page sentence "the fears induced by the election of a Slavic Pope; the social tensions in his native country; the recognition—for the first time in the contemporary history of the East European states—of a free Solidarity. . . . How can we rule out that [such factors] would induce certain forces to maintain that the assassination of His Holiness could block a political situation in evident, dreaded evolution?"

Upholding that sentence, Italy's supreme court said bluntly that the shooting was "planned for political ends by the Bulgarian secret services."

It is probably too late for some senator to ask why Mr. Gates didn't mention this verdict in his own defense.

Mr. D'AMATO. Now, I want to take a few minutes to go through the charges against Mr. Gates concerning the papal assassination attempt intelligence assessments on a point-by-point basis. I hope this will assist my colleagues in understanding how thoroughly the attacks on Mr. Gates on this subject have been refuted.

Let me begin by refreshing everyone's recollection about the background of this issue:

[The following material was prepared by the committee's staff, whom I want to recognize for their tremendous efforts on this nomination:]

As DDI, Bob Gates approved the dissemination of an assessment in 1983 which concluded that attempt on the Pope's life "was probably not at the direct behest or with the foreknowledge of either the Soviets or Bulgarians."

In December 1984, the CIA published another assessment related to this issue. The so-called "Cowey Report," which is one of the "in-house" studies Mr. Goodman refers to states:

"Everyone involved in producing the third paper, 'Bulgaria: Coping with the Papal Assassination Scandal' recalls that the explicit marching orders from the Office and DI level were to remain strictly neutral on the question of whether or not the Soviets or Bulgarians were involved. The paper does this scrupulously, dealing only with how the controversy is likely to affect Sophia's relations with the West and Moscow."

By 1985 a variety of new information had come to light. A decision was therefore made to examine the hypothesis of Soviet involvement. The question which was then asked, quite legitimately, was "How plausible is the case for Soviet involvement in light of this new information?" That is the question the analysts were asked to examine in 1985 and that is the message explicitly conveyed in the title of the report "Agca's attempt to kill the Pope: The Case for Soviet Involvement."

To the extent that there were any legitimate problems with this assessment, the blame is far more plausibly placed at the feet of Bill Casey. Bill Casey often spoke with the analysts involved; he reviewed drafts and commented on them. It was no secret that he was obsessed with the issue.

Mr. Goodman was not involved in the preparation of this assessment, so the only basis for his allegations is hearsay.

Now, let us go through the allegations, one by one:

(1) The assessment was "abominable."

(−) "The assessment was abominable. The scenario that the drafters came up with was absurd."

(+) The Cowey report states:

"The 1985 IA, a joint effort by OGI and SOVA, is the Agency's most comprehensive look at the case to date. By any standard, it is an impressive compilation of the facts and marshaling of the evidence and reasoning for Soviet involvement."

(2) Gates pressured the analysts to implicate the Soviets

(−) "But I'll say one thing for the analysts. They did not give Bob Gates everything he wanted. In fact one of the three writers on this particular paper once said I tried my hardest to give Gates what he wanted and it still wasn't enough . . ."

(+) All of the individuals involved have submitted sworn statements indicating that Mr. Gates did not try to manipulate or pressure them in any way. For example on pg 112 of the report, Elizabeth Seeger, the principal author of the assessment, who is now a homemaker in Virginia, states:

"Mr. Gates never attempted to manipulate me or my analysis on the Papal case. He never told me what or how to investigate the case, nor did he tell me what to write or what conclusions to reach. He never expressed or even hinted at his own personal view on the question of alleged Soviet involvement, frequently characterizing himself as 'agnostic' on the case . . . I can recall instances when Mr. Gates made specific efforts to ensure that the analysis was not misrepresented in any way. Prior to publication, for example, an individual on the seventh floor urged that the paper's title be altered to strengthen the link between the assassination attempt and the Kremlin. Mr. Gates refused to change it. He clearly did not want the title to go beyond what the paper could honestly say."

(3) The assessment was prepared in secret

(−) "But they were told to prepare this study in camera. In other words, this was secret analysis in the CIA."

(+) Relevant excerpts from sworn statements in the Committee report refute this allegation:

David Cohen (pg 114): "It was not prepared in secret—or in camera—as alleged in earlier testimony . . . Normal procedures for review and coordination were observed."

Kay Oliver (pg 113): "I would point out that it is not unusual for a paper dealing with sensitive reporting to be held closely."

Elizabeth Seeger (pg 113): "Assertions by Mr. Goodman to the contrary, the study was not prepared secretly."

Bob Gates (pg 113 of the transcript of Oct. 3, in response to a question on this issue from Senator Deconcini):

"I put a limit on the number of people that should be involved. I just told MacEachin to handle it on a close-hold basis. And that didn't indicate that people who should be involved should be excluded in any way, and those who were directly involved in the process have testified . . . that they went through the regular process of coordination."

In addition, during his testimony Doug MacEachin identified valid reasons for trying to handle the issue discreetly: a) the human source reporting was extremely sensitive; and b) the US government wanted to avoid the appearance of trying to influence Agca's ongoing trial in Italy.

(4) Gates rewrote the key judgments and summary

(−) "So what did Bob Gates do? Bob Gates rewrote the key judgments. Bob Gates rewrote the summary."

(+) Excerpts from sworn statements in the report:

Lance Haus (page 114):

". . . Mr. Gates made no changes to the draft submitted to him other than fairly minor editorial ones. Indeed, I believe he also added a few additional caveats. His concern, if I remember correctly, was that we not go beyond where the intelligence information would carry us . . . Mr. Gates did not draft or redraft the key judgments—I did with help from Beth Seeger and Kay Oliver."

Dave Cohen (page 114): "It has also been alleged that Mr. Gates rewrote the key judgments, rewrote the summary, and added his own cover not that no one saw. All of these allegations are false."

(5) Gates dropped the scope note

(−) "Bob Gates dropped a very interesting scope note that said, in trying to explain the methodology, that we only looked at the case for involvement. We didn't look at any of the evidence—and I might add very good evidence from very sensitive sources—that would have explained the Soviets were not involved. He dropped that scope note."

(+) Sworn statements in the Committee report refute the allegation:

Dave Cohen (pg 114): "The so-called scope note was an introductory paragraph appended to the SOVA contribution to the paper. Ms. Oliver for SOVA and Mr. Haus for OGI agreed between themselves that a scope note was not needed given the title of the paper."

Lance Haus (pg 114): "Mr. Gates did not drop any scope note—I doubt he ever saw the prefatory paragraph eliminated after consultation with Kay Oliver, during my first review of the paper . . ."

(6) Gates falsely portrayed the study as "comprehensive"

(−) "The cover note, signed by Gates, termed the paper 'comprehensive' but there was no reference in the cover note, the key judgments, or the summary that there were inconsistencies or anomalies in the argument."

(+) The Cowey report states:

"The 1985 IA, a joint effort by OGI and SOVA, is the Agency's most comprehensive look at the case to date."

Further, Kay Oliver points out in her rebuttal to the Hibbits report that the key judgments and summary do identify anomalies and "puzzling" questions:

"Key Judgments, p. iv: 'Some elements of Agca's own testimony, Martella's evidence, and information provided by [deleted] remain inconsistent and open to alternative interpretations, and many questions may never be conclusively resolved."

"Summary, p. viii: 'A variety of gaps and inconsistencies in the available data remain, and some important pieces of information remain open to more than one interpretation.'"

"This observation is preceded in the summary by a brief discussion of the Orlandi kidnaping and Agca's recantations—two of the anomalies that appear in the main test (see pages 20–21)."

Finally, it should be noted that Mr. Gates did not draft the cover note—although he did sign it. Lance Haus' statement acknowledging his authorship of the cover appears on pg 114 of the Committee report:

"Mr. Gates did not draft the transmittal notes—although he certainly reviewed them. Again, I did."

(7) The Cowey report says Gates "manipulated" the analysts

(−) "Fortunately, two in-house studies were done . . . It concluded that the analysts were manipulated by Bob Gates."

(+) Nowhere does the Cowey report (or any other report) accuse Mr. Gates of manipulating analysts or the process. There is a reference to the perception on the part of some in the DO that the authors were manipulated, but the validity of that allegation is not established and Bob Gates is not alleged to have been the culprit. In fact, the Cowey report says on pg 19:

". . . despite the DDI's best efforts, there was a perception among analysts of upper level direction, which became more pronounced after the new evidence of Soviet complicity was acquired. In the event, however our interviews suggested that it was not so much DCI or DDI direction as it was an effort on the part of some DI managers at the next one or two layers down to be responsive to perceived DCI and DDI desires."

(8) Gates added a misleading cover note

(−) "And what did he do. He added his own cover note that no on saw . . . This note said, and I quote, 'this is the best balanced and most comprehensive work we have ever done on this subject.'"

(+) The committee has obtained two copies of the cover memo, one addressed to Anne Armstrong of the PFIAB, and another addressed to the Vice President. The language is identical in both and the sentence quoted by Mr. Goodman is not present.

(9) Gates must have had a guilty conscience regarding the paper since within a few weeks of its dissemination he asked Mr. MacEachin to prepare a rebuttal and then subsequently established the Cowey panel to review the process.

(−) "Also, his motivation for an in-house study only several weeks after releasing the paper to the president (sic), vice president (sic), secretary of state (sic), secretary of defense (sic), and national security adviser (sic) remains open to questioning. Was Gates trying to prevent Casey from releasing the paper to others? Did Gates realize he was vulnerable about releasing such a polemical work? . . . Finally, why in the world would a controversial assessment that Gates had problems with be sent to such an influential audience?"

(+) It is important to note that the Cowey report was not an examination of the 1985 assessment—it was an examination of the entire analytical and reporting process from 1981 to 1985. This included an examination of two hardcover publications as well as the articles on the subject that appeared in serial publications.

In response to a question from Senator DeConcini pg 118 of the transcript of Oct. 3, Gates states:

"My problem was more on the overall agency handling of the attempted assassination and that's why the Cowey report really addressed, to a considerable extent, all of the work the Agency had done since 1981."

Gates also said on pg 116 of the Oct. 3 hearing:

"And also I think I had probably picked up some of the unhappiness that there had been about some of the aspects of the coordination of the paper. So I asked them to go back and take a look at the whole thing and our whole treatment of the issue."

It is much to Mr. Gates credit that he choose to confront and investigate these perceptions.

We do not know why Mr. Gates asked for the critique produced by Mr. Hibbits. It may have been because he heard some rumblings about the paper due to the polarization within the agency on this issue.

(10) The paper was improperly coordinated.

(−) The Cowey report strongly criticizes the 1985 assessment and states on page 14:

"As it turns out, the coordination process was essentially circumvented—in both the DI and the DO—by either the press of time or by actual circumvention of the chain of command. (In the case of the DO, the paper ended up being coordinated with the DDO [Clair George], and the SOVA analysts who reviewed the draft saw only the SOV input."

(+) It may well be true that there were irregularities in the coordination process. There is no reason to conclude, however, that Gates was aware of these problems at the time the report was disseminated, however. In response to a question by Senator Boren, Gates says on page 76 of the transcript of Oct. 3:

"* * * I would add to that that when the paper came to me it was certainly represented as being fully coordinated within the Agency. So it would have represented the Agency's best view. Coordinated with the Directorate of Operations, coordinated with other offices in the Directorate of Intelligence. So when the paper came to me I was told that it was coordinated, I had every reason to believe that it did in fact represent the corporate view of the Agency."

In addition, in their sworn statements, those most directly involved in the assessment dispute the Cowey report and maintain that the paper was properly coordinated. The following excerpts appear in the Committee report beginning on pg 113:

Beth Seeger: "No relevant offices or analysts were excluded from participating in the examination of the case or in the preparation of the final report * * *."

Kay Oliver: "I can assure the Committee that the paper was coordinated by the Chief of the Regional Issue Group on OVA, and I believe by the Third World Division. Contrary to his claim, I do not believe that Mel Goodman himself was in a job that would have made him a natural person with whom to coordinate."

Lance Haus: "* * * the paper was fully coordinated."

(11) Gates should have sent the Cowey report to recipients of the 1985 assessment on the Pope.

(−) Opponents have suggested that after receiving the Cowey report, which was in some respects highly critical of the 1985 assessment on the attempt on the Pope's life, Gates should have either sent a copy of this document or some sort of disclaimer to those who had received the assessment on Soviet involvement in the attempt on the Pope's life.

(+) Gates makes clear in his responses to questions from Senator DeConcini, pages 116–131 of the transcript of Oct. 3, that he thought the 1985 assessment was a good report but that he was troubled by the process that had been in place for handling the issue since 1981. Hence, since he thought it was a solid report (which many others involved did as well—and do to this day) he had no reason to try to contact the recipients. At the same time, because of his concerns regarding the procedural problems highlighted in the Cowey report, Mr. Gates sent a copy of the report to the office directors involved and asked for their comments.

Q. "And then a month later [after dissemination] you decided you don't have that confidence I guess?"

Gates: "I had concerns about the process Senator." (e.g. not the quality of the product)

Gates (also pg 121/Oct. 3): "I sent it to the office directors of the offices that had been involved in the preparation of the paper. I asked for their comments on it. And we addressed the problems of process that had been identified as being deficient. But the Cowey report also said, as I recall, that it was the most comprehensive effort on the problem yet done."

McLaughlin (member of Cowey panel/from affidavit/pg 3):

"4. We gave our study to Mr. Gates on 12 July. He thanked us and praised the effort after reading it. I did not speak to Mr. Gates personally about the report, but one of my colleagues recalls him registering some shock at the extent of the problems we reported."

"5. Mr. Gates sent the report to the three relevant Office Directors for comment. He also forwarded it to Mr. Casey and, I believe, to the Chairman of the President's Foreign Intelligence Advisory Board."

Seeger (pg 112 of the report): "The final report was a thorough and honest treatment of the subject. Indeed, even critics agreed it was well-done and comprehensive."

Cohen (affidavit/pg 5): "The analysts were asked to assess the evidence of Soviet involvement in the assassination attempt and they did a terrific job."

Haus (affidavit/pg 6): "Third, the analysis was balanced and sound, in my judgment, and anchored in the full body of information available on the case. The report we drafted accurately reflected Beth Seeger and Kay Oliver's best assessment of the facts and informed commentary by earlier analysts of the case . . . Indeed, I found the paper to be true to the information and convincing in its argument."

(12) The paper did not examine alternative scenarios

(−) The assessment has been criticized for not examining alternative scenarios.

(+) Gates has acknowledged in retrospect that it probably should have. At the same time, the paper was deliberately and legitimately seeking an answer to a specific question: How plausible is the case for Soviet involvement? Based on the new evidence emerging in late 1984, there were compelling reasons to examine this hypothesis.

Cohen (affidavit/pgs 2-3):

"Directly or indirectly the study was initiated as a result of new information that was coming to us in late 1984 and early 1985, including information involving possible foreign involvement in the assassination attempt . . . the cumulative effect of the additional information meant we needed to take stock of what we knew regarding these possibilities."

"There was a solid consensus among the senior managers as well as first line officers and analysts that the report should examine the plausibility of Soviet involvement in the assassination attempt . . . We agreed not to try to prove or disprove Soviet responsibility; the paper that emerged instead weighed the case for their involvement—what did we know or infer that pointed to their involvement. From my perspective as one of the senior managers in the Directorate of Intelligence responsible at that time for the Agency's analytic work on terrorism, this was a legitimate and responsible question to pursue. The Committee should be aware that at no time in the discussion did I or anyone above my level encourage or pressure anyone implicitly or explicitly to ignore any evidence regarding any aspects of the case."

(13) Contrary evidence was suppressed

(−) "I might add that we did have evidence that the Soviets were not involved."

(+) The Committee has never received any information from Mr. Goodman to substantiate this allegation. Further, as the comments from Ms. Seeger and others involved in the process make clear, they were given free rein to examine DO reporting and other sensitive material.

Seeger (Pg 112 of the report): "I wrote the assessment—with contributions from two SOVA analysts—after having examined all of the available evidence, and after levying requirements on the DO for additional information on the case . . ."

Haus (affidavit/pg): "She [Seeger] had access to all the information available in the Agency."

(14) The assessment did not accurately reflect the views of those in either the DI or the DO

(−) The Cowey report states:

". . . we found no one at the working level in either the DI or the DO—other than the two primary authors of the paper—who agreed with the thrust of the IA."

(+)(a) There were very few people with access to the sensitive clandestine reporting that was the basis for the new assessment regarding Soviet complicity in the attempt on the Pope's life;

(b) There were few who had spent much time, as Beth Seeger, Kay Oliver, and Lance Haus had, carefully examining the issue. In fact, Beth Seeger was the official expert in the agency on this issue. She had the account.

(c) The Cowey report indicates that there were many on the other side of the issue who were not adequately willing to consider the possibility of Soviet involvement. Page 16 of the Cowey report states:

"With mindsets playing such a strong if not determining role in people's approach to this problem, we found that few minds changed as new evidence was obtained . . . Although we found no evidence in the DI of a conscious effort to excuse the Soviets or let them 'off the hook' in this case, some of those interviewed perceived a reluctance to look at the 'seamy underbelly of the (Soviet) beast,"

(d) As noted above at allegation #10, the paper was presented to Bob Gates as having been fully and properly coordinated. It should have reflected a consensus opinion. If it didn't, it at least accurately reflected the views of the Agency's dedicated analyst on the issue.

At this point, I want to turn to the issue of how the CIA will treat those who came forward, either in person or through written statements, on either side of this nomination. I said at the closing session of this hearing that it should be very clear that the intelligence community will oversee how these people are treated in the future. For our oversight process to be effective, people must not be subject to retribution—or reward—for the positions they took on this nomination. By coming forward, past and current CIA employees have aided us immeasurably in our work and made possible the full and thorough hearing process that we conducted.

Mr. President, I want to close by again expressing my enthusiastic support for the nominee and by urging my colleagues to give their advice and consent to his nomination.

I yield the floor.

Mr. GORE. Mr. President, this is not an easy or clear decision. At issue is a judgment call involving a talented public servant.

There has been an extended effort, employing the full resources of the Intelligence Committee, to establish whether Mr. Gates was involved in any wrongdoing: notably in connection with Irangate but also relating to claims that he skewed intelligence reporting to suit what the Reagan administration wanted to hear.

A fair reading of the outcome of that process is that Mr. Gates emerged culpable of no more than he has admitted: not having pursued hints of Irangate vigorously to their ultimate conclusion, and not having been sufficiently sensitive to the concerns of subordinates. Meanwhile, we also have the record of an individual whose knowledge of the intelligence community and competence to lead it through a major transition, are clear. This is also a person who has the support of persons in whose integrity and judgment I place a great deal of stock: Admiral Inman, for example, and Senators BOREN and COHEN.

However, another reading is possible. Namely, that Mr. Gates had reason to suspect the outlines of what became Irangate, that his reaction to those suspicions amounted to a major test of perspicacity and character. One could also conclude that Mr. Gates did not weather this test well: we may either believe that he failed to grasp the significance of these early rumors, or that recognizing them full well, he avoided that which it could be dangerous to know.

As one reads the record of Mr. Gates' testimony and that of others, it becomes clear to this Senator, at least, that no one in the upper management of the CIA ever demanded to know the full facts in time. Rather, Mr. Gates' reaction was like that of several of his peers: he asked to be "Kept informed;" he did not demand knowledge; he did not confront those who could answer these questions at any point; he and others were circumspect because, in my opinion, he and they understood quite well that the Reagan White House and the late DCI, William Casey, functioned according to their own rules.

That kind of caution is perhaps understandable. Who, having dedicated a life to the pursuit of service in a career as specialized as intelligence, would lightly risk that or even bring it to an end, rather than continue to remain in ignorance? But the position of DCI is singular: it carries immense responsibility, and it exposes those who hold it to constant moral choice—made all the sharper perhaps because these decisions may have to be made in secrecy, with no guide except what comes from within. And so, what is acceptable for everyone in general, may not be acceptable on the part of one who fills this post.

I respect Mr. Gates' talents and accomplishments. But I believe that radically changed circumstances in the world lead us to the need for a new chapter in the history of American intelligence work. And I believe that this new chapter requires management that is divorced from, rather than a product of the institutional culture that gave us Irangate. I hope and trust that Mr. Gates, if confirmed, will rise to the potential his supporters see in him, and that having erred on the side of excess caution once, he would be the better able to avoid that mistake again when it presents itself, as it assuredly will in some form or other. But for me, this vote has become an obligation to record my view that we do need profound change if we are to have a new beginning. Therefore, I shall vote against Mr. Gates' confirmation.

Mr. BIDEN. Mr. President, I believe it is time for us to look forward. I have been disappointed in the past in Mr. Gates' analytical skills, especially in regard to the Soviet Union. Although this was a close call for me because the nominee enjoys the support of people I respect a great deal, such as Chairman BOREN and Adm. Bobby Ray Inman, the person I respect more than anyone else I have worked with outside the Senate, I have chosen to err on the side of new thinking. Therefore, I will vote against the nomination of Robert Gates to be Director of Central Intelligence. I wish him well in his new position.

Mr. RIEGLE. Mr. President, the Director of the Central Intelligence Agency holds one of the most influential positions in the U.S. intelligence community.

Among other responsibilities, the DCI is the primary advisor to the President and the National Security Council on all national foreign intelligence matters. In this vitally important role, it is essential that we have the most qualified and competent person as Director.

I intend to vote against confirming Robert Gates to be Director of Central Intelligence because, very simply, I do not believe he is the right person to lead the U.S. intelligence community at this historic time.

While Mr. Gates is an unquestionably intelligent and highly experienced individual, a number of other factors have convinced me that a no vote in this case is the correct one.

Mr. President, the Nation's senior intelligence officer must fearlessly safeguard the independence and integrity of the intelligence process by providing only objective intelligence analysis to the President.

However, testimony provided to the Intelligence Committee by former and current CIA intelligence officers alleging the skewing of intelligence to please policymakers, have raised serious questions in my mind about the nominee's objectivity.

In addition, I am concerned about the nominee's commitment to safeguard his independence as an intelligence officer. For example, I was troubled by Mr. Gates' strong public advocacy of the strategic defense initiative.

I believe that SDI is perhaps the most politicized defense program of our time. Since President Reagan first announced the program over 8 years ago, support for SDI has become the preeminent national defense litmus test for the Reagan and Bush administrations. Mr. Gates publicly endorsed the SDI Program while serving at the CIA.

While I do not doubt that Mr. Gates' view on the issue are honestly held, I believe that such public policy advocacy by a senior intelligence official compromises the integrity of the intelligence process.

Furthermore, I believe that it will be particularly difficult for Mr. Gates to have the necessary independence from the Chief Executive that a DCI must have, after having served as such a close and integral part of President Bush's senior national security policymaking team for the last several years.

I agree with Mr. Hal Ford, who stated in his testimony before the Intelligence Committee, that "to develop the finest U.S. intelligence possible, a DCI Gates would have to attract and recruit the best brains in the country."

I have serious reservations about whether Mr. Gates will be able to attract such talent, considering the perception that he was involved in cooking the books of U.S. intelligence, and considering that he has seemed to depend too much on his own individual judgment at the expense of other intelligence analysts who did not share his strongly held views.

I can not help but wonder what returning Mr. Gates to the CIA will do to the morale of the thousands of men and women who work there.

Finally, I believe that it is difficult to overestimate the negative impact of the Iran-Contra affair on the CIA.

The errors and misjudgments made by senior officials at the CIA during the Iran-Contra affair were deeply damaging to the Agency's credibility, Morale, and overall effectiveness. And I am firmly convinced that the CIA will be unable to fully restore its credibility and effectiveness until it is able to successfully place Iran-Contra in the past, once and for all.

Recent indictments, and the ongoing investigation of the special prosecutor raise continuing uncertainties about what senior agency officials knew, and did not know, about the Iran-Contra affair. These uncertainties could remain for quite some time.

Mr. President, I simply do not believe that Mr. Gates is the right person to place Iran-Contra firmly in the Agency's past, so that it can deal effectively with the challenges of today.

For these reasons, I will vote to oppose the nomination of Robert Gates to be the next Director of Central Intelligence.

Mr. BRADLEY. Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The time for debate has expired.

The question is, Will the Senate advise and consent to the nomination of Robert M. Gates, of Virginia, to be Director of Central Intelligence?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON], the Senator from Nebraska [Mr. KERREY], the Senator from Colorado [Mr. WIRTH], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

I further announce that, if present and voting, the Senator from Colorado [Mr. WIRTH] would vote "aye."

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH] is absent due to a death in the family.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 64, nays 31, as follows:

[Rollcall Vote No. 243 Ex.]

YEAS—64

Akaka
Bentsen
Bond
Boren
Breaux
Brown
Bryan
Burns
Byrd
Chafee
Coats
Cochran
Cohen
Craig
D'Amato
Danforth
Dole
Domenici
Durenberger
Ford
Garn
Glenn
Gorton
Graham
Gramm
Grassley
Hatfield
Heflin
Helms
Inouye
Jeffords
Johnston
Kassebaum
Kasten
Kohl
Leahy
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Mikulski
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Reid
Robb
Roth
Rudman
Sanford
Seymour
Shelby
Simpson
Smith
Specter
Stevens
Symms
Thurmond
Wallop
Warner

NAYS—31

Adams
Baucus
Biden
Bingaman
Bradley
Bumpers
Burdick
Conrad
Daschle
DeConcini
Dixon
Dodd
Exon
Fowler
Gore
Harkin
Hollings
Kennedy
Kerry
Lautenberg
Levin
Metzenbaum
Mitchell
Moynihan
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Wellstone

NOT VOTING—5

Cranston
Hatch
Kerrey
Wirth
Wofford

So the nomination was confirmed.

Mr. BOREN. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. RUDMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOREN. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

Mr. MITCHELL. Mr. President, if I may have the attention of the Members of the Senate, please.

The PRESIDING OFFICER. The Senate will be in order, please.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, as the Members of the Senate know, there will now occur a period of 30 minutes of debate on Senate Resolution 214, intended to correct the engrossment of S. 1745, the Civil Rights Act. Under a separate prior order, that was to be followed by a cloture vote on the motion to proceed to S. 543, the banking bill.

Following consultation with the distinguished Republican leader and the chairman of the Banking Committee, I am now momentarily going to propose that we vitiate the vote on the motion to proceed to the banking bill. That would merely withhold any action with respect to that measure at this time.

VITIATION OF CLOTURE VOTE ON MOTION TO PROCEED TO S. 543

Mr. MITCHELL. Mr. President, accordingly, I ask unanimous consent that the cloture vote on the motion to proceed to S. 543 be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. MITCHELL. Mr. President, with respect to the other matter, under the prior agreement, I was to be recognized and have been recognized for the purpose of seeking unanimous consent to correct the engrossment of S. 1745, the Civil Rights Act. If an objection is raised to that request, the Senate would then proceed to the immediate consideration of Senate Resolution 214 to correct that engrossment. This was done with the understanding and expectation that the distinguished Senator from Washington would object to the unanimous-consent request, following which the resolution would be debated for 30 minutes, with the time controlled between Senator DOLE and Senator ADAMS.

Accordingly, Mr. President, in accordance with that understanding and in accordance with the prior order, I now ask unanimous consent to correct the engrossment of S. 1745.

The PRESIDING OFFICER. Is there objection?

Mr. ADAMS. I object.

The PRESIDING OFFICER. Objection is heard.

CORRECTING THE ENGROSSMENT OF S. 1745

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate Resolution 214, under which there is 30 minutes of debate equally divided and controlled by the Senator from Washington [Mr. ADAMS] and the Senator from Kansas [Mr. DOLE].

The clerk will report the resolution.

The bill clerk read as follows:

A resolution (S. Res. 214) to correct the engrossment of S. 1745.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Who yields time?

Mr. ADAMS. Mr. President, I ask to be notified when I have used 6 minutes, because there are other Senators who wish to be heard. And then I ask the Chair further to notify me when I have 3 minutes remaining.

The PRESIDING OFFICER. The Senator will be so notified.

Mr. ADAMS. Mr. President, this is not a technical amendment that we are debating, because it contains a very deep and substantive issue that goes to the heart of this bill. That is why I have objected, and that is why I have contacted all of my colleagues.

Mr. President, I rise in strong opposition to the Republican leader's effort to revive a special exemption from the Civil Rights Act of 1991 for Wards Cove Packing Co.

Mr. President, Wards Cove Packing Co. was one of the five Supreme Court decisions that we were trying to correct by this bill. And to my shock and amazement, I found at the end of the negotiations—and I am not critical of the negotiations, and I am not going to criticize any Senator or any person by name—but I found at the end of those negotiations, slipped into the bill—and I found this only by receiving calls and letters from home—that there was a special section put in that took out the plaintiffs of the Wards Cove case, an incredible piece of special-interest legislation.

It is like a technical foul for the workers who work in those canneries and who brought this case 17 years ago. For all of its flaws, S. 1745 was on its way to the engrossing clerk without that amendment. Now there is an attempt to slip it back in as a technical correction.

And I want to thank the Republican leader, who may have done the right thing by accident, but he did the right thing because he took out this piece of special-interest legislation.

It does not matter to me, Mr. President, whether it was an oversight, a burst of public interest, or divine intervention that caused the Senator from Kansas to offer the amendment to strike the Wards Cove clause from this bill, which we then passed by a unanimous vote. It was on its way to the engrossing clerk, and probably to the President, without this piece of special-interest legislation which now is attempted to be put back into the bill by this amendment. That is why I objected. It is very substantive. And we as an institution and as a Nation and as people should not do this to these people who are mainly Alaskan Natives, Japanese-American, Samoans, and Filipino people who work in Alaska.

I want to tell you exactly what happened, because I know it sounds confusing, but it really is not. Last week, we agreed to amendment No. 1278, offered by the Senator from Kansas, and it said very specifically, and I quote:

On page 29, strike lines 1 through 16 and insert the following new title.

You can find that amendment on page S15326 of last week's CONGRESSIONAL RECORD.

Mr. President, lines 12 through 16 of the Republican leader's amendment contained the following:

Certain Disparate Impact Cases. Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

I wonder how many cases can be affected by this curious language, this curious bit of legislative mischief. Only one case, Mr. President, one case involving one company—Wards Cove Packing Co. Wards Cove Packing Co. was being taken out of the case.

Both Wards Cove Packing Co. and many of the plaintiffs are from Seattle, and I have constituents on both sides of the case of Wards Cove Packing Co. versus Atonio. And I expect I may be the only current Member of this body who ever worked under this system in an Alaska canning factory, but I did. I know and I respect the family that owns the company. And I consider the Federal district judge who heard the case an able jurist and a personal friend. And after 17 years I share the hope that this case can be brought to a just and fair conclusion.

Last year, I indicated my belief that this case should be settled in the district court before Judge Quackenbush, under the standards enunciated in the Griggs case. What this amendment would do would prevent that. It would prevent that.

The PRESIDING OFFICER. The Senator's 6 minutes are up.

Mr. ADAMS. At this point I will take an opportunity and let some of my other colleagues comment on this.

I yield at this time, 2 minutes to the Senator from Hawaii [Mr. AKAKA].

The PRESIDING OFFICER. The Senator from Hawaii is recognized for 2 minutes.

Mr. AKAKA. Mr. President, I rise in strong opposition to Senate Resolution 214 which would exempt the Wards Cove Packing Co. from the antidiscrimination provisions contained in S. 1745, the Civil Rights Act of 1991. I thank my friend, the senior Senator from Washington [Mr. ADAMS], and commend his effort to call attention to this inequity.

Mr. President, today the Senate has an opportunity to prevent the execution of an October surprise against thousands of cannery workers at Wards Cove. For 17 years, these workers, primarily low-paid, seasonal employees of Asian and Pacific-American descent, have fought to have their racial discrimination complaints heard by the courts under the Griggs standard. Yet, if the Senate passes the resolution under consideration, we effectively deny these workers the right to legal redress that this bill now extends to all other victims of racial discrimination in employment.

It is an extremely cruel irony that the plaintiffs in Wards Cove versus Atonio, the very case which we seek to overturn in this Act, would be the only American workers deprived of having their merits of their claim considered under the Griggs standard.

The specific complaints and judicial history of the case are well-documented, and I will not go into them at this time. I ask unanimous consent to include two factsheets about the Wards

Cove case, and other correspondence I have received on this matter, in the RECORD immediately following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. AKAKA. Mr. President, last week, the Senate spent days debating the best way to assure coverage of Senate and executive branch employees under this bill. Now, we are asked to exempt a select group of migrant, seasonal workers from equal protection under the law. Where is the guarantee of fairness and equal protection for these Asian-Pacific Americans? What justification can be given for depriving these Wards Cove workers equal justice? I cannot think of a single one. I urge my colleagues to oppose this resolution.

EXHIBIT 1

FACTS ABOUT THE WARDS COVE CASE

WHAT IS THE CASE ABOUT?

It is a challenge to the employment practices at several Alaska salmon canneries operated by Seattle-based Wards Cove Packing Company, Inc., and Castle & Cooke, Inc. The canneries operate during each summer's salmon run.

The plaintiffs in this case are about 2,000 past and present cannery workers, primarily of Filipino, Samoan, Chinese, Japanese, and Alaska Native descent, who held low-paying seasonal jobs on the cannery line but could not obtain higher-paying non-cannery jobs with the company.

Virtually all cannery workers were minorities, and most non-cannery employees were white. The two types of jobs were filled through separate hiring channels. Recruitment for cannery jobs was through a union hiring hall in Seattle, and directly from Native villages near the canneries. Recruitment for non-cannery jobs was primarily by word of mouth: there was extensive hiring of employee relatives, there were few objective qualifications for non-cannery jobs, and openings were not announced to cannery workers. Cannery and non-cannery workers were housed in separate bunkhouses and fed in separate dining halls.

WHAT IS THE HISTORY OF THE WORDS COVE CASE?

There have been nine court rulings entered at different levels in the 17 years since the case was filed in March of 1974. Despite one trial on the facts in 1982, the case has never been fully decided by the District Court on the *Griggs* standard. When the *Griggs* standard was applied by the 9th Circuit Court of Appeals, the plaintiff cannery workers prevailed. Rather than have the case heard on the merits, under the *Griggs* standard, Wards Cove appealed to the Supreme Court. That decision set off the chain of events leading to the Civil Rights Act of 1991.

A brief description of the nine court rulings follows:

(1) Shortly after filing, the U.S. District Court for Western Washington dismissed the complaint for failure of plaintiffs to properly identify defendant companies.

(2) The 9th Circuit Court of Appeals reversed the dismissal as to Wards Cove Packing Co., finding that it had been adequately identified.

(3) Following a 12 day trail in 1982, the District Court found for the employer, after declining to apply the disparate impact analysis required under *Griggs* v. *Duke Power* to the company's so-called "subjective" practices.

(4) A 3-judge Court of Appeals panel affirmed the District Court judgment in 1987, but this opinion was withdrawn because of conflicting opinions within the 9th Circuit on the applicability of the *Griggs* analysis to "subjective" practices. The case was presented for review to the full Court of Appeals.

(5) The full Court of Appeals held that *Griggs* applied to all employment practices, and returned the case to its panel.

(6) The Court of Appeals panel held that the plaintiffs had made a prima facie case of disparate impact in hiring, housing, and messing, and remanded to the District Court to allow the employer to show whether any disparate impact was justified by business necessity under the *Griggs* standard.

(7) Instead of offering proof of business necessity under *Griggs*, and allowing the trail court to apply the law to the facts, Wards Cove Packing Company appealed the 9th Circuit decision to the United States Supreme Court. This resulted in the Supreme Court decision of June 5, 1989 which altered the existing standards for disparate impact cases, and is precisely what the Senate purports to be reversing with the Civil Rights Act of 1991. The Supreme Court remanded to the Court of Appeals for further proceedings.

(8) The Court of Appeals remanded to the District Court for application of the new *Wards Cove* standard.

(9) Applying the new standard, the District Court again found for the employer in June 1991.

The cannery workers have appealed that most recent ruling to the Court of Appeals on several grounds. If the Civil Rights Act of 1991 contains special relief for Wards Cove Packing Company, the Alaska cannery workers will never have the facts of their case fully reviewed under the Griggs standard, because Wards Cove Packing Company will have been relieved of the obligation for showing, for the first time, the business necessity of all practices which have a discriminatory impact on minorities. The Wards Cove Amendment is designed to deny the cannery workers an opportunity to obtain the judicial remedies the Act seeks to make available to every other American.

QUESTIONS AND ANSWERS ON THE WARDS COVE AMENDMENT

Assertion: Wards Cove's lobbyist has written, "No court has ever found Wards Cove guilty", and "Wards Cove was tried and found innocent under the very *Griggs* v. *Duke Power Company* standard the legislation seeks to restore." (letter to Senate staff 9/24/91)

Facts: For nearly two years, the company lobbyist has repeatedly utilized the language of criminal proceedings ("found innocent" and "found not guilty") in trying to gain sympathy for the notion that Wards Cove should be granted special relief. The only court to evaluate Wards Cove's subjective practices under the *Griggs* standard was the 9th Circuit Court of Appeals. It reversed the trial court's dismissal of the case. And it found Wards Cove's justification for segregated housing and messing inadequate under Griggs.

Question: If Wards Cove is covered under the Civil Rights Act of 1991, will its 1971 conduct be measured by 1991 standards, as the Wards Cove lobbyist claims?

Answer: No. The Civil Rights Act of 1991 reinstates *Griggs*, which was decided in 1971. Section 3(2) says the purpose of the Act is "to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in *Griggs* . . ."

Question: Has Wards Cove really been found "innocent" in eight separate court decisions?

Answer: No. The case was tried on the facts and merits only once, in 1982. Just before the company chose to take the case to the Supreme Court, the 9th Circuit Court of Appeals ruled for the plaintiff cannery workers in a strongly worded opinion.

Question: Have judges who heard the case really found Wards Cove "innocent" or "not guilty" as the company's lobbyist repeatedly asserts?

Answer: No. The only judge who ever supported outright dismissal of the case was the district court judge. Not one of the twelve Court of Appeals judges or eleven Supreme Court justices to hear the case ultimately voted to dismiss, even though Wards Cove sought dismissal at every juncture.

Question: What would rejection of the Wards Cove amendment mean for the Civil Rights Act of 1991?

Answer: Nothing. There is no indication that denial of Wards Cove's special relief would be a "deal breaker" causing the President to veto the bill. A Republican drafted section-by-section analysis of the bill inserted in the Congressional Record (S 15478) states "At the request of the Senators from Alaska, section 22(b) specifically points out that nothing in the Act will apply retroactively to the Wards Cove Packing Company, an Alaska company that spent 24 years defending against a disparate impact challenge." (Note: The case was actually filed 17 years ago in March!)

Question: What happened to Section 22(b) during the course of debate and amendment of the underlying Danforth-Kennedy substitute?

Answer: The special relief for one corporate defendant slipped out as quietly as it was slipped into the bill. On October 29th, Republican Leader Dole offered two amendments, one described as "technical" and "the other a glass ceiling amendment." The technical amendment was accepted by voice vote, and the glass ceiling amendment (amendment No. 1278, Congressional Record page S15326) included language stating "On page 29, strike lines 1 through 16 and insert the following new titles:" That section contained the Wards Cove exception, and was unanimously accepted on a roll call vote (CR page 15329).

Question: Is Republican Leader Dole's effort really just a "technical" amendment, and should Democrats be bound by whatever "deal" was made to take care of Wards Cove?

Answer: Revisiting the Civil Rights Act of 1991 to include special relief to one corporate party represents special interest legislation at its worst. Wards Cove should play by the same rules as every other litigant. The company's more than $175,000 investment in lobbying for special relief should give some indication why it frantically seeks to avoid being measured by the *Griggs* standard. As Justice Stevens noted, "Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along ethnic and racial lines—bear an unsettling resemblance to aspects of a plantation economy." Justice Blackmun added, "This industry long has been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there."

The mistake was not made by leaving the Wards Cove exemption out of the Act: the mistake was ever considering putting it in. The Senate negotiators, the White House staff, the Alaska senators all had a chance to be heard, and to make their deals. Who spoke for the cannery workers?

ORGANIZATION OF
CHINESE AMERICANS, INC.,
Washington, DC, November 5, 1991.

DEAR SENATOR: The Organization of Chinese Americans (OCA), a national civil rights group, strongly urges you to oppose Senator Murkowski's proposed amendment to insert Section 22B into S. 1745, the Civil Rights Act of 1991. Section 22B would unfairly single out and exempt the Wards Cove Packing Company from the entire jurisdiction of the Civil Rights Act of 1991.

To the Chinese American and the Asian Pacific Islander community, overturning the 1989 Supreme Court decision on the *Wards Cove Packing Company* vs. *Atonio* case is of the utmost concern. The *Wards Cove Packing Company* vs. *Atonio* case directly impacts the Asian Pacific Islander community as the plaintiffs in the case are over 2,000 former and present cannery workers, primarily of Chinese, Filipino, Samoan, and Alaskan Native descent, who have been seeking job discrimination restitution for the past 12 years.

OCA opposes the proposed amendment to S. 1745, to insert Section 22B which results in the contradiction of enacting a civil rights bill which aims to protect the employment rights of all Americans. It is highly ironic that the very Supreme Court case, *Wards Cove Packing Company vs. Atonio*, that in part gave rise to the Civil Rights Act of 1991, is now being excluded from protection of the legislation. Passage of Section 22B would be an affront to Asian Pacific Islanders and minority workers in denying them equality and fairness accorded to all Americans.

OCA strongly urges you to oppose the insertion of Section 22B into the Civil Rights Act of 1991. Thank you very much for your consideration.

Sincerely,

DAPHNE KWOK,
Executive Director.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, DC, November 4, 1991.

DEAR SENATOR: The Japanese American Citizens League (JACL) is the oldest and largest Asian American organization dedicated to the civil rights interests of Japanese Americans and all Asian Pacific Americans. For the past two years, the JACL has been actively involved in supporting the passage of a civil rights bill which would restore long-standing legal rights for minorities and women curtailed by several Supreme Court decisions.

However, it is with a sense of urgency that I am writing to request your opposition to a proposed amendment to the recently passed Civil Rights Act of 1991. This Amendment, Section 22(b), would exempt one employer, Wards Cove Packing Co., from having to comply with the Civil Rights Act. I understand a vote on this matter is scheduled for this week.

Section 22(b) says that "Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

Senator Frank Murkowski, who is offering the amendment, explained in a "Dear Colleague" letter that the only legal case to which this exemption applies is the now famous *Wards Cove Packing Co.* v. *Atonio*. the first of the Supreme Court decisions which lead to the passage of this Civil Rights Act. The effect of this amendment would be to permit the continued systematic racial segregation of the Asian Pacific Americans from whites in the Wards Cove cannery workforce.

The employees of the Wards Cove cannery in Alaska are Americans of Filipino, Chinese, Japanese, and Samoan decent, as well as Native Alaskans. The appalling nature of the discrimination which pervades the cannery's work conditions were graphically described by Justice Stevens in the Wards Cove case:

"Some characteristics of the Alaskan salmon industry described in this litigation in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines bear an unsettling resemblance to aspects of a plantation economy. *Wards Cove Packing* v. *Atonio* 490 U.S. 664 N.4 (1989)

Justice Blackmun in the same case stated that the conditions at Wards Cove "take us back to a kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation . . ." *Id.* at 662

Further, in a written statement by the 9th Circuit Court of Appeals, Judge Tang took special note of the "race labelling . . . pervasive at the salmon canneries where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouse'." *Atonio v. Wards Cove Packing Co.*, 827 F.2d 439, 447 (9th Circuit 1987)

These employment practices, reminiscent of the late 19th rather than 20th Century, would be challengeable under the provisions of the recently passed Civil Rights Act. Yet, because of what the Washington Post reported to be a very expensive lobbying effort, one employer is going to be allowed to stand above the law.

The JACL does not believe that any company or employer should be allowed to treat Asian Pacific Americans as second class citizens. We strongly urge you to vote against Section 22(b).

Sincerely,

DENNIS HAYASHI,
National Director.

NATIONAL ASIAN PACIFIC
AMERICAN BAR ASSOCIATION,
Seattle, WA, November 1, 1991.

DEAR SENATOR: The National Asian Pacific American Bar Association ("NAPABA") is the national organization of Asian Pacific American lawyers and local Asian Pacific American bar associations. On behalf of NAPABA, I am writing to ask that you oppose the proposed amendment to the Civil Rights Act of 1991 ("CRA 1991") which would give preferential treatment to Wards Cove Packing Co.

I am referring to efforts to insert a proposed §22(b) to CRA 1991, which reads as follows:

"Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

As Senator Murkowski, the author of the proposed amendment, has acknowledged, this lanugage appears to apply to only one case, *Wards Cove Packing Co. v. Atonio*. We are particularly concerned because the workforce of the Wards Cove Packing Co. factory consists primarily of low income Asian Pacific Americans.

NAPABA vigorously objects to the proposed amendment, which undercuts the principles of fairness that CRA 1991 is designed to restore. To pass the amendment would say once again to the voters of this country that a company that can afford to mount an expensive lobbying campaign will successfully obtain special favorable treatment exempting it from the laws of this country.

NAPABA cannot see any legitimate basis for a special exemption to CRA 1991 and Wards Cove Packing Co. is a particularly poor candidate to be the beneficiary of a special rule. That Wards Cove Packing Co.'s conduct in this case was particularly egregious and offensive is demonstrated by observations by Justice Stevens, Justice Blackmun and Judge Tang.

Justice Stevens, writing for the four dissenting justices in *Wards Cove Packing Co. v. Atonio*, stated: "Some characteristics of the Alaska salmon industry described in this litigation—in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines—bear an unsettling resemblance to aspects of a plantation economy." *Wards Cove Packing Co. v. Atonio*, 490 U.S. 664 n. 4 (1989).

Justice Blackmun, speaking for three of the dissenters, added: "The salmon industry as described by this record takes us back to the kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation. * * * This industry has long been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there." *Id.* at 662.

Additionally, Judge Tang, writing for the 9th Circuit, stated: "Race labeling is pervasive at the salmon canneries, where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouse.'" *Atonio v. Wards Cove Packing Co.*, 827 F.2d 439, 447 (9th Cir. 1987).

As noted above, the primary victims of Wards Cove Packing Co.'s egregious discriminatory practices were Asian Pacific Americans and Alaskan natives. Thus, if Congress acts to exempt Wards Cove Packing Co. from the reach of CRA 1991, the primary victims of the unfair preferential treatment will be Asian Pacific Americans and Alaskan natives.

Concerned about the blatant unfairness of the exemption, the Board of Governors of NAPABA unanimously voted at its October 31, 1991 board meeting to urge Congress to oppose the amendment to CRA 1991 that would exclude Wards Cove Packing Co. I am confident that the outrage felt by the NAPABA Board of Governors at its recent meeting, and by the NAPABA members present at its annual convention the next day, will be shared by many other Asian Pacific Americans, irrespective of party identification and political philosophy, as we make them aware of the unfairness of the proposed exemption to Asian Pacific Americans.

I strongly urge you to vote against any efforts to insert §22(b) to CRA 1991.

Sincerely,

PEGGY NAGAE LUM,
President.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ADAMS. Mr. President, I assume the other side may want to use some time at this point.

The PRESIDING OFFICER. The Chair recognizes Senator DOLE.

Mr. DOLE. Mr. President, I hope we do not use all the time. Let me just say this is a technical amendment; it is a correction to the civil rights bill.

The Senate, when it approved the civil rights bill on Wednesday, left out a significant section of the bill and this afternoon will be voting on a technical correction.

Language exempting the Wards Cove Packing Co., a Seattle cannery whose employment practices gave rise to one of the central disputes in the bill, was inadvertently left out of the final version of the legislation.

This was due to an amendment I proposed dealing with the issue of the glass ceiling.

I guess we should have caught it, but the amendment was drafted by legislative counsel. They serve the Senate, they do great work. Now and then they sometimes make mistakes, but it is a technical mistake.

The company has spent $2 million defending itself against the lawsuit. It has been found not liable under the law as it existed before the 1989 Wards Cove Packing Co. versus Atonio decision by the Supreme Court as well as after it.

We attempted last week to correct the mistake—which was made through a drafting error when the bill was being amended on the Senate floor. We were unable to clear the request and therefore we are back here today.

The bill's prime sponsors, Senators JOHN C. DANFORTH and EDWARD M. KENNEDY have pledged to support me in this endeavor.

I am going to yield most of my time to the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Massachusetts [Mr. KENNEDY].

I must say, if we cannot make technical corrections around this place after somebody has made an agreement, we are never going to get anything done. There are mistakes made, I would guess, in almost every big piece of legislation. So if we want to bring this place to a standstill, the Senator from Washington could have moved to strike out anything he wanted to strike out. He did not do that. He waits until it is all over, after the fact, and then complains about mistakes.

I hope we do not set a precedent here that, oh, well, if somebody makes an innocent mistake, a mistake is made, we are not going to correct it. Then I think we are off on a whole new course.

Mr. President, I ask unanimous consent to have a document entitled "Legislative History, Technical Corrections" printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEGISLATIVE HISTORY, TECHNICAL CORRECTIONS

Section 402 of the Act, and this amendment to section 402, specify that the Act and the amendments made by the Act take effect on the date of enactment. Accordingly they will not apply to cases arising before the effective date of the Act. See *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988); *cf. Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 110 S. Ct. 1570 (1990) (declining to resolve conflict between *Georgetown University Hospital* and *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974)). This amendment specifically points out that nothing in the Act will apply retroactively to the well known case involving the Wards Cove Packing Company, an Alaska company that spent 24 years defending against a disparate impact challenge.

Absolutely no inference is intended or should be drawn from the language of this amendment to section 402 that the provisions of the Act or the amendments it makes may otherwise apply retroactively to conduct occurring before the date of enactment of this Act. Such retroactive application of the Act and its amendments is not intended; on the contrary, the intention of this amendment to section 402 is simply to honor a commitment to eliminate every shadow of a doubt as to any possibility of retroactive application to the case involving the Wards Cove Company.

Not only would retroactive application of the Act and its amendments to conduct occurring before the date of enactment be contrary to the language of section 402 and this amendment, but it would be extremely unfair. For example, defendants in pending litigation should not be made subject to awards of money damages of a kind and an amount that they could not possibly have anticipated prior to the time suit was brought against them.

This interpretation of section 402 of the Act, and this amendment to section 402 of the Act, is confirmed by the Interpretive Memorandum (137 Cong. Rec. S 15472) (October 30, 1991), submitted by Senator Dole and others, and the Interpretive Memorandum (137 Cong. Rec. S 15483) (October 30, 1991), submitted by Senator Danforth and others. Thus, it is not "up to the courts to determine the extent to which the bill will apply to cases and claims that are pending on the date of enactment.", (137 Cong. Rec. S 15485) (Oct. 30, 1991). The language of section 402, and this amendment to section 402, is designed to make certain that the courts not apply the provisions of the Act or its amendments to conduct occurring before the date of enactment.

Mr. MURKOWSKI. Mr. President, what we are doing is seeking a purely technical correction to address a drafting error. The Senator from Washington referred to being the only one who ever worked in a cannery in Alaska. I would have to take issue with that.

Mr. President, the history of this amendment is very clear. The amendment was not included in the bill in the middle of the night, so to speak, as some have indicated. I sent two "Dear Colleague" letters. I ask unanimous consent they and memoranda of law, be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MURKOWSKI. The first on July 11, 1990, and the second October 15, 1991, the letters contained copies of the amendment and clearly outline my intentions.

There was further discussion on the amendments on the Senate floor with Senator KENNEDY, on July 18, 1990, in relationship to last year's civil rights legislation, S. 2104. Senator STEVENS also spoke in favor of the amendment. The amendment was adopted on compromise negotiation on Senate bill 1745. The White House, Senator DANFORTH, and the managers of the bill, Senator HATCH and Senator KENNEDY, all agreed to the amendment.

Mr. President, the amendment has merit. The reason the amendment was adopted was because of the merit. It addresses simply the issues of fairness. Retroactive application of a new standard of law is unfair and perhaps unconstitutional. It is like Congress going back and changing the speed limit to 45 miles an hour and going back and prosecuting everybody that drove 55 miles an hour last year.

In eight separate court decisions, over a 20-year period, no court has ever found the company guilty of discrimination. The case was tried and they were found innocent under the *Griggs* standard. It is unfair for Congress to change the rules at this time and apply the case to that that arose in 1971.

Mr. President, the Senator from Washington has had ample opportunity to oppose the amendment over the last 15 months, yet he chose to do nothing. The Senator from Washington was given notice of the amendment and the sponsor's intention through two separate "Dear Colleague" letters and debate on the Senator floor. Yet, again, he did nothing. The Senator from Washington had 4 days to offer amendments to strike provisions from the Danforth compromise. Yet, he did nothing.

Mr. President, in conclusion, nothing less than the integrity of the Senate as a whole is at issue here.

I thank the Chair and yield the remainder of my time.

EXHIBIT 1

U.S. SENATE,
Washington, DC, July 11, 1990.

DEAR COLLEAGUE: During Senate consideration of S. 2104, the Civil Rights Act of 1990, I intend to offer an amendment that will inject a much needed element of fairness into the bill.

As presently drafted, Section 15 of S. 2104 would apply retroactively to all cases pending on June 5, 1990, regardless of the age of the case. My amendment will limit the retroactive application of S. 2104 to disparate impact cases for which a complaint was filed after March 1, 1975.

To the best of my knowledge, *Wards Cove Packing* v. *Atonio* is the only case that falls within this classification. Wards Cove Packing, a substantial employer in Alaska, has spent 19 years and almost $2 million proving itself innocent of employment discrimination. In six separate recorded decisions, no court has ever found Wards Cove guilty of discriminatory hiring practices. My amendment will prevent the needless relitigation of this case under the new standards proposed in S. 2104.

While I support the goals and purposes of the Civil Rights Act of 1990, it is inherently unfair to subject Wards Cove to countless more years of litigation under the new rules that would be established under S. 2104. Twenty years of litigation is enough for one company—and the rules of the game should not be changed on anyone after they have repeatedly proven themselves innocent of the underlying charge.

My amendment is very limited in scope, and will provide a much needed element of fairness. If you have any questions, or wish to be added as a cosponsor of this amendment, please have your staff contact Blair Thomas at 4-9319.

Sincerely,

FRANK H. MURKOWSKI,
U.S. Senator.

U.S. SENATE,
Washington, DC, October 15, 1991.

DEAR COLLEAGUE: During Senate consideration of S. 1745, the Civil Rights Act of 1991, I intend to offer an amendment that will inject a much needed element of fairness into the bill.

As presently drafted, Section 22 of S. 1745 would apply retroactively to all cases pending on the date of enactment, regardless of the age of the case. My amendment will limit the retroactive application of S. 1745 with regard to disparate impact cases for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983.

To the best of my knowledge, Wards Cove Packing v. Atonio is the only case that falls within this classification. Wards Cove Packing a substantial employer in Alaska, has spent 20 years and $2 million proving itself innocent of employment discrimination. In eight separate decisions, no court has ever found Wards Cove guilty of discriminatory hiring practices. My amendment will prevent the needless relitigation of a case previously decided under the very same standard of law outlined in Griggs v. Duke Power Company that proponents of S. 1745 purport to restore.

While I support the goals and purposes of the Civil Rights Act of 1991, it is inherently unfair to subject Wards Cove to countless more years of litigation under the new rules that would be established under S. 1745. Twenty years of litigation is enough for one company—and the rules of the game should not be changed on anyone after they have repeatedly proven themselves innocent of the underlying charge.

My amendment is very limited in scope, and will provide a much needed element of fairness. If you have any questions about this amendment please have your staff contact Blair Thomas at 4-6665.

Sincerely,

FRANK H. MURKOWSKI,
U.S. Senator.

MEMORANDUM—CASE LAW ON THE CONSTITUTIONALITY OF RETROACTIVE LEGISLATION

I. INTRODUCTION

In *Wards Cove Packing Co. v. Atonio*, 109 S. Ct. 2115 (June 5, 1989) ("*Wards Cove*"), the Supreme Court set out a number of procedural and substantive standards applicable to discrimination claims brought on a disparate impact theory. In so doing, the Court clarified the relative proof burdens to be borne by the parties in disparate impact suits. *See id.* at 2121-25. The Court also clarified certain substantive standards to be met by employers attempting to defend against such claims. *See id.* at 2125-27. The Court remanded the case to the district court for further proceedings consistent with its opinion. *See. id.* at 2127.

Congress' proposed amendments ("Act") to the Civil Rights Act of 1964 would reverse several of the procedural and substantive standards established by the Supreme Court in *Wards Cove. See* S. 2104, 101st Cong., 2d Sess. §§3 & 4 (1990); H.R. 4000, 101st Cong., 2d Sess. §§3 & 4 (1990). The Act's new standards would apply to all proceedings pending on or commenced after June 5, 1989, the date of the *Wards Cove.* decision. *See* S. 2104 at §15 (a)(1); H.R. 4000 at §15(a)(1). The Act also would require the courts to vacate any orders entered Between June 5, 1989 and the date of the Act's enactment if either party affected by the order were to request such relief within one year of the Act's passage. *See* S. 2104 at §15(b); H.R. 4000 at §15(b).

Litigants affected by the Act's retroactive application would include: (1) litigants, including Wards Cove Packing Co. and Castle & Cooke, Inc., with cases pending on remand form the Supreme Court or the appellate courts at the time of the Act's passage; (2) litigants with cases that were pending on June 5, 1989 but that reached final judgment prior to the Act's passage; and (3) litigants that adopted hiring or promotion practices prior to the Act's passage but within the relevant statute-of-limitations period (and possibly even before June 5, 1989). This memorandum evaluates the current retroactivity case law that these three groups of litigants might bring to bear in a challenge to the constitutionality of the Act.

II. SUMMARY OF DISCUSSION

Litigants could challenge the constitutionality of the Act's retroactive application on three different grounds. They could argue (1) that the Act violates the Constitution's separation of powers principles; (2) that the Act violates the Due Process Clause of the Fifth Amendment; or (3) that the Act violates the Constitution's proscription against bills of attainder. Although all three arguments find some support in current case law, it appears that only claims based on separation of powers or due process principles would have any real chance of persuading a court to strike down the Act. In addition, only the first two groups of litigants—litigants with cases pending on remand from the Supreme Court or the appellate courts, and litigants with cases that were pending on June 5, 1989 but that reached final judgment prior to the Act's passage—have particularly inviting claims—at least based on current case law.

Both groups of litigants could argue that the Act violates the separation of powers doctrine. Litigants with cases pending on remand could argue that the Act's requirement that the lower courts follow its instructions rather than the Supreme Court's or the appellate courts' remand instructions unconstitutionally interferes with the judicial decisionmaking process. Moreover, both groups could argue that the Act's reversal of the Supreme Court's decision in *Wards Cove* and vacation of final judgments rendered by the lower courts in light of that decision is an unconstitutional modification of judicial decisions by the legislative branch. Neither argument finds definitive support in the case law. But, because the separation of powers doctrine is relatively undeveloped in this area, the courts may be receptive to well-reasoned challenges to the Act on separation of powers grounds.

Both groups of litigants also could challenge the Act's retroactivity under the "vested rights" doctrine of the Due Process Clause. Litigants with cases that reach final judgment prior to the Act's passage could bring claims, fairly grounded in the case law, that the Act unconstitutionally deprives them of their vested rights in final judicial judgments. Litigants with cases on remand similarly could argue that the Act deprives them of their vested rights in the applicable standards decided by the Supreme Court or appellate courts prior to remand. The latter claim would be an extension of current case law, however, and thus would lack persuasive weight unless it could be supported by strong theoretical underpinnings.

All other challenges to the Act's retroactivity would find less support in current case law. The courts are reluctant to rely on the Due Process Clause to strike down retroactive civil legislation that does not threaten vested rights. The courts are even more reluctant to rely on the Bill of Attainder Clause to invalidate any type of legislation. Of the two kinds of claims, however, the due process claim is clearly the stronger one in terms of current case law.

In all events, a court would be reluctant to strike down the Act on any grounds that were not supported by a coherent underlying theoretical rationale; indeed, since the invalidation of this Act would undoubtedly require Supreme Court approval, a theoretical rationale for the decision is ultimately much more important than doctrinal support. Although we have identified potentially powerful challenges to the Act on particular separation of powers and due process theories, we are concerned that the strength of these theories is not self-evident from the cases discussing retroactive legislation. Instead, because the courts generally uphold retroactive statues, they usually mention potential limitations on this retroactivity in passing, if at all. The cases thus do not provide the requisite theoretical framework for litigants wishing to have the Court strike down retroactive legislation such as the Act.

Accordingly, a litigant challenging the Act would have to look beyond the retroactivity case law to develop a persuasive separation of powers or due process argument. Armed with an underlying theory, a litigant would be far more likely to convince courts at every level of review, including the Supreme Court, to strike down the Act's retroactive application.

III. DISCUSSION

A. Separation of Powers

Litigants with cases pending on remand from the Supreme Court at the time of the Act's passage and litigants with cases that were pending as of June 5, 1989 but that reached final judgments prior to the Act's passage have substantial case law support for an argument that the Act's retroactive application to their cases would violate separation of powers principles. The Constitution states that "[t]he judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, §1. Inherent in the judicial power is the right to decide cases and controversies free from domination by other branches of government. *See* U.S. Const. art. III, §2; *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 58 (1982). Judicial independence is thus a core separation of powers concept. *See id.*

The Act's application to all cases pending on June 5, 1989 arguably contravenes the Constitution's requirement of judicial independence in at least two ways: First, because the Act requires lower courts to try cases on remand from the Supreme Court or appellate courts under the Act's rather than under the courts' standards, it may constitute an impermissible legislative intrusion into the judicial decisionmaking process in those particular cases (hereinafter "the interference rationale"); second, because the Act attempts to reverse the Supreme Court's decision in *Wards Cove* (and thus, by implication, cases remanded in light of *Wards Cove*) and to reopen lower courts' judgments rendered in accordance with *Wards Cove*'s standards, the Act may constitute an impermissible legislative modification of final judicial decisions (hereinafter "the finality rationale"). Although the case law does not ensure that a court would strike down the Act under either rationale, the case law does provide some support for such a result.

Only two Supreme Court decisions analyze, to any significant extent, the constitutionality of retractive legislation under separation of powers principles. In the earlier case, *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871), the Court struck down a retroactive congressional enactment primarily on the basis of the interference rationale. In the more recent case, *United States* v. *Sioux Nation of Indians*, 448 U.S. 371 (1980), the Court upheld retroactive legislation despite its potential constitutional infirmity under both the finality and interference rationales. A court thus would have to extrapolate and reconcile principles from both cases in determining whether the Act unconstitutionally infringes on judicial independence.

1. Interference Rationale

In *United States* v. *Klein*, 80 U.S. (13 Wall.) 128, the Supreme Court struck down legislation because it unconstitutionally interfered with the judicial function. In so doing, the Court recited a litany of reasons why the congressional interference may have been unlawful without ever identifying the reasons that were critical to its final holding. Thus, the case is open to a number of interpretations, some of which may be helpful to litigants attacking the Act.

In *Klein*, plaintiff, the administrator for a deceased owner of property sold by government agents during the Civil War, sued to recover the sale proceeds under legislation according this right of recovery to property owners who could prove their loyalty—i.e., that they "ha[d] never given any aid or comfort to the [Civil War] rebellion" (*id.* at 131). Although decedent had, in fact, "given aid and comfort" (id. at 132) to the rebellion, he had subsequently received a presidential pardon for his disloyalty. Relying on a prior Supreme Court opinion holding that one who, like the decedent, had received a presidential pardon must be treated as loyal, the Court of Claims awarded recovery to the plaintiff.

The United States appealed from the judgment. While the case was pending in the Supreme Court, Congress passed an Act providing generally (1) that no pardon should be admissible as proof of loyalty; (2) that acceptance of a pardon, without written protest or disclaimer, reciting that the claimant took part in or supported the rebellion, should be conclusive evidence of the claimant's disloyalty; and (3) that the Court of Claims and the Supreme Court must dismiss for want of jurisdiction any pending claims based on a pardon. *See id.* at 133-34. The Supreme Court struck down the legislation on the ground that it violated the separation of powers doctrine. *See id.* at 147-148.

Klein arguably stands for a number of narrow legal propositions that may not be helpful to litigants challenging the Act. First, as the Supreme Court has noted, the legislation in *Klein* may have been held unconstitutional on the ground that it "impair[ed] the effect of a pardon, and thus infring[ed] the constitutional power of the Executive." *United States* v. *Sioux Nation of Indians*, 448 U.S. at 404-405. Second, the legislation in *Klein* may have been held unconstitutional on the ground that, by mandating that no pardon should be proof of loyalty, the legislation required the courts to decide cases with an "unconstitutional rule of decision."[1] The legislation also may have been held unconstitutional on the ground that it represented an attempt by Congress—a party to the lawsuit—to determine the outcome in a particular case in its own favor.[2] Finally, the legislation may have been held unconstitutional on the ground that it prescribed an "outcome-determinative" rule—*i.e.*, a rule of decision that would determine the outcome in particular cases.[3]

Litigants probably could not convince a court to strike down the Act on the basis of these propositions. The Act does not require the lower courts to reach an unconstitutional result *per se*. Nor does the Act overtly require the lower courts to decide cases in accordance with an unconstitutional rule of decision.[4] The Act does not literally prescribe the outcome of any case in favor of the government. Finally, the Act does not appear to be "outcome determinative" in any particular case.[5]

Although a number of courts, including the Supreme Court, appear to have limited *Klein*'s holding to one or more of the above propositions,[6] language in and principles underlying the *Klein* decision suggest that the opinion may sweep more broadly. In parts of the decision, the Court appears to recognize the constitutional right of a successful litigant to retain the judgment of a federal constitutional court as long as that judgment was not erroneous when entered.[7] At another point in the opinion, the Court appears to view the legislation as an unconstitutional interference with the judicial fact-finding process.[8] Both propositions, taken literally and in isolation, may not withstand judicial scrutiny.[9] But the Court's sprinkling of such broad language throughout the opinion suggests that the Court did not intend that its holding be read restrictively.

Although the Court could have limited the holding in *Klein* to a number of narrow legal principles, it chose not to do so. The *Klein* Court arguably did not select any particular rationale that was critical to its decision because it chose to focus on a broader evil—Congress' intentional interference with the decisionmaking process and outcome in a particular case or set of cases.[10]

Litigants with cases on remand thus could ask a court to apply the broad principle underlying *Klein*—that Congress cannot focus legislation on the decisionmaking process or outcome in any particular case or set of cases—to the Act's intentional assault on *Wards Cove*. Under *Klein*'s broad holding, a court might find that the Act's explicit substitution of its instructions for the Supreme Court's or an appellate court's remand instructions to the lower courts unconstitutionally interferes with the judicial decisionmaking process in two respects: (1) it deprives the Supreme Court and appellate courts of the right to dictate binding instructions to the lower courts; and (2) it deprives lower courts of the right to decide cases under the standards mandated by their reviewing courts.

This finding would not require that the "binding instructions" be "outcome determinative," as suggested by some of *Klein's* narrower language (*see* discussion, *supra* pp. 10-11). Instead, under this broad reading of *Klein*, a court could find that the legislature's substitution of any type of decisional or evidentiary rules that contradicted the reviewing courts' remand instructions constituted an unconstitutional interference with the judicial function.

A court could also take a more intermediate stand on the proper interpretation of *Klein*. Rather than interpreting *Klein* to mean that the legislature can never alter a court's remand instructions, a court might hold that the legislature can change these instructions only if the change is procedural. This holding would not only preclude Congress from substituting its own "outcome determinative" rules for the courts' remand instructions, it also would prevent Congress from substituting substantive rules of decision—*i.e.*, rules such as the standard for business necessity in the Act—for the courts' substantive standards in individual cases (*see* discussion, *infra* pp. 48-53). Notably, this procedural/substantive distinction does find some support in the separation of powers cases, although not necessarily in the context of the interference rationale.[11]

2. Finality Rationale

Litigants with cases pending on remand at the time of the Act's enactment and litigants with cases that proceed to final judgment prior to the Act's passage also could bring a separation of powers argument under a finality rationale. Although the arguments would differ slightly for both groups, both could bring claims grounded in Supreme Court and lower court precedent.

In United States v. *O'Grady*, 89 U.S. (13 Wall.) 641, 647 (1874), the Court noted that "it is quite clear that Congress cannot subject the judgments of the Supreme Court to the re-examination and revision of any other tribunal or any other department of the government." *Cf. Cerro Metal Prod.* v. *Marshall*, 467 F. Supp. 869, 877 (E.D. Pa. 1979), *aff'd*, 620 F.2d 964 (3d Cir. 1980) (refusing to allow the Secretary of Labor to be a reviser of Supreme Court doctrine). The Court further held that the same rule applies to final judgments of the lower courts. *See id.* at 648; *cf. Cerro Metal Prod.* v. *Marshall*, 464 F. Supp. at 878 ("the separation of powers principles which preclude Congress, or the executive, from overruling judgments of the Supreme Court have equal applicability for the judgments of the lowliest of Article III courts").[12]

The Court's more recent decision in *United States* v. *Sioux Nation of Indians*, 448 U.S. 371, however, casts some doubt on the persuasiveness of the finality rationale. In that case, the Court upheld a statute that waived the res judicata effect of a prior judicial decision rendered in favor of the United States government.[13] More specifically, the statute, which Congress passed in 1978, directed the Court of Claims (1) to grant a forum for a Fifth Amendment takings claim brought by the Sioux Indians;[14] (2) to give no authoritative weight to its 1942 decision in the government's favor on the same claim; and (3) to disregard its 1975 decision that the 1942 decision precluded any reexamination of the takings claim. *See id.* at 391. The Supreme Court upheld the statute as consistent with separation of powers principles.

The Court offered two reasons why the statute did not unconstitutionally disturb

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the finality of the Court of Claims' 1942 and 1975 judicial decrees.[15] The Court first emphasized that, by passing the legislation at issue, Congress was essentially waiving its own rights; as a defendant, the Court noted, Congress had every right to waive its res judicata defense in a new claim brought by the Sioux Indians. *See id.* at 398 (*quoting Nock* v. *United States*, 2 Ct. Cl. 451, 457–58 (1867) ("Congress are here to all intents and purposes the defendants")). The court also pointed out that the statute did not disturb the finality of the Court of Claims' prior judgments, but instead "impos[ed] on the Government a new obligation where there had been none before" ("*id.* at 401, (*quoting Pope* v. *United States*, 323 U.S. at 9–10). The Court thus concluded that "Congress had not 'reversed' the Court of Claims" (*id.* at 407), because, "[a]s Congress explicitly recognized, it only was providing a forum so that a new judicial review of the [takings] claim could take place (*id.*)."[16]

Sioux Nation, on its facts, would not control a litigant's challenge to the Act. A litigant could argue persuasively that a case involving the government's right to waive its own res judicata defense has nothing to do with lawsuits between private parties. Thus, a litigant could contend that, notwithstanding *Sioux Nation*, both the Supreme Court's decision in *Wards Cove* and final lower court judgments remain protected under the finality rationale.

Moreover, a litigant could argue that, even if *Sioux Nation* applies to private cases, the decision buttresses rather than undermines the finality rationale. First, a litigant could point to the majority opinion's repeated protestations that the decision did not disturb the finality of the Court of Claims' prior decrees as compelling evidence of the finality rationale's continued vitality. Second, litigants could point to Justice Rehnquist's dissenting opinion, in which he stated that: "[a]lthough the Court refrains from so boldly characterizing its action, it is obvious from these facts that Congress has reviewed the decisions of the Court of Claims, set aside the judgment that no taking of the Black Hills occurred, set aside the judgment that there is no cognizable reason for relitigating this claim, and ordered a new trial. I am convinced that this is nothing other than an exercise of judicial power reserved to Art. III courts that may not be performed by the Legislative Branch under its Art. I authority. *Id.* at 427 (Rehnquist, J., dissenting)."

Thus, litigants could conclude that, although the Justices in *Sioux Nation* disagreed about the constitutionality of Congress' actions in that case, they were in fundamental agreement that Congress cannot constitutionally reverse a final judicial judgment.

The Supreme Court's "new obligation" language in *Sioux Nation*, however, could impede litigants' challenges to the Act. A court could extrapolate from the analysis in that case and conclude that the Act neither unconstitutionally reverses the Supreme Court's decision in *Wards Cove* and like cases nor unconstitutionally reopens judgments rendered in the lower courts. Instead, a court might reason that the Act merely directs the lower courts to try their cases on remand or to reopen their judgments in light of "new obligations" established by Congress. Taken to its logical extreme, therefore, the "new obligation" theory would render the finality rationale moribund.

The reasoning in one lower court case, if applied by other courts, also would set back challenges to the Act's retroactivity. In *Banco Nacional de Cuba* v. *Farr*, 383 F.2d 166, the district court applied a newly-enacted statute to a case on remand form the Supreme Court notwithstanding that the statute directly contradicted the Supreme Court's remand instructions. The Supreme Court had held that the act of state doctrine applied to that case (which concerned the Cuban government's expropriation of sugar from a United States corporation) and thus prevented the Lower courts from examining the acts of the Cuban government under international law. While the case was on remand, Congress passed the Hickenlooper Amendment, which required the courts to presume that the act of state doctrine did not apply to cases involving confiscations by foreign states. The district court applied the Hickenlooper Amendment's presumption to the pending case.[17]

The Second Circuit agreed with the district court that the Hickenlooper Amendment applied to the case on remand and that that application did not violate the separation of powers doctrine.[18] In so concluding, the Second Circuit appeared to find it critical that the Supreme Court had not based its decision that the act of state doctrine applied to that case on an absolute constitutional requirement. Rather, the Second Circuit noted, "the Court must have exercised its discretion . . . to choose from among a number of constitutionally permissible alternative rules" (*id.* at 181). Therefore, the court concluded, "the political branches of our national government should be able to modify the Court's decision, choosing another constitutionally permissible alternative" (*id.*).

Banco Nacional de Cuba is the only case that we have found that discusses a lower court's choice between applying the Supreme Court's remand instructions or subsequently passed congressional legislation to the case pending before it. The case is damaging to litigants' challenges to the Act, in that it suggests that Congress can modify a Supreme Court or appellate court decision's binding effect on a lower court as long as that decision is not constitutionally based. *Cf. Resident Advisory Board* v. *Rizzo*, 463 F. Supp. 694, 700 (E.D. Pa.) *aff'd*, 595 F.2d 1211 (3d Cir.), *cert. denied*, 442 U.S. 947 (1979) ("It is beyond question that legislation action cannot negate a Constitutionally based judicial decision"). The decision is also unique, however, because the act of state doctrine is a doctrine that limits judicial power. Thus, a decision by another branch to remove the doctrine's applicability actually enhances rather than diminishes judicial power. Moreover, as the Second Circuit noted, the necessity for the act of state doctrine "is admittedly more within the competence of the political branches of the Government than the competence of the Court" (*Banco Nacional de Cuba* v. *Farr*, 383 F.2d at 181.) Thus, litigants wielding a strong separation of powers argument could possibly overcome whatever persuasive weight *Banco de Cuba* might have.

3. Summary of Separation of Powers Issues

In sum, litigants with cases pending on remand and litigants with cases that have reached final judgment at the time of the Act's passage may be able to develop a strong separation of powers attack on the Act. Litigants could take advantage of the *Klein* Court's decision to challenge the Act's substitution of its instructions for the Supreme Court's or appellate courts' remand instructions under an interference rationale. Likewise, litigants could challenge the Act's retroactivity on principles underlying the finality rationale. In so doing, litigants would have to convince a court that the "new obligation" language in the Supreme Court's decision in *Sioux Nation* should not apply to cases between private parties. Finally, litigants might argue that the strength of the "interference" and "finality" rationales for invalidating retroactive legislation varies according to whether the retroactive statute at issue is procedural or substantive legislation; this argument would allow litigants to distinguish some of the cases arguably undermining the interference and finality rationales from the Act because the cases implicate only procedural or remedial rights.

Notably, the case law neither definitively supports nor precludes arguments under either the interference or finality rationale. Courts often cite *Klein* for narrow propositions. They do-so, however, in an apparently superficial and haphazard manner. Similarly, cases usually mention principles underlying the finality rationale only to demonstrate that the legislation at issue does not violate basic finality principles. Even the majority opinion in *Sioux Nation* failed to identify critical "finality" principles that might render retroactive legislation unconstitutional.

Of course, courts would not strike down congressional legislation on the basis of a smattering of constitutional objections to the statute's retroactivity that were not linked by any unifying theory. Thus, litigants could not take advantage of the uncertainty in the separation of powers cases unless they could successfully develop a coherent theoretical framework that reconciled the current case law with their constitutional attacks on the Act.

B. Due Process

Litigants also could argue that the Act's retroactive application violates their constitutional rights under the Due Process Clause.[19] They could claim that the Act impinges on Fifth Amendment property rights (1) by disturbing litigants' "vested rights" in final judgments rendered under the *Wards Cove* standards; (2) by declaring unlawful certain business practices that were perfectly lawful when adopted; and (3) by depriving litigants of the right to try their cases under the evidentiary rules in effect at the commencement of their lawsuits. Although all three theories are plausible, only the first two theories find much support in the case law. Of those two theories, the "vested rights" doctrine appears to provide the most promising legal and theoretical basis for invalidating the Act on due process grounds.[20]

1. Vested Rights Doctrine

The vested rights doctrine protects final judicial judgments from legislative intrusion. Accordingly, litigants with cases that were pending as of June 5, 1989 but that proceeded to final judgment prior to the Act's enactment may be able to convince a court that the doctrine prevents the Act from constitutionally reopening these judgments. A second group of litigants, including Wards Cove Packing Co. and Castle & Cooke, Inc., and other litigants with cases pending on remand from the Supreme Court or other appellate courts, similarly might rely on the vested rights doctrine to challenge the Act's retroactive application. The second group's challenge, however, would be an expansion of the current case law discussing the doctrine and thus would be less likely to be accepted by the courts.

The Supreme Court has long held that the vested rights doctrine generally prevents retroactive legislation from disturbing final adjudications.[21] At least two constitutionally-based rationales exist for the Court's maintenance of the doctrine: First, the doctrine recognizes that a final judgment fixes property rights, which a legislature has no more power to alter than any other property right (*see Georgia Ass'n of Retarded Citizens v. McDaniel*, 855 F.2d 805, 810 (11th Cir. 1988), *cert. denied*, 109 S. Ct. 2431 (1989) (*citing Tonya K. v. Chicago Board of Education*, 847 F.2d 1243, 1247 (7th Cir. 1988))); and second, the doctrine protects judicial action from superior legislative review, consistent with the Constitution's separation of powers concerns. *See id.* (*citing Daylo v. Administrator of Veterans' Affairs*, 501 F.2d 811, 816 (D.C. Cir. 1977)).[22]

The courts of appeals have recently assessed the doctrine's continued applicability to retroactive legislation.[23] In *Georgia Ass'n of Retarded Citizens v. McDaniel*, 855 F.2d 805, for example, the Eleventh Circuit refused to apply a statute retroactively to disrupt a final, unappealed district court judgment. In that case, the district court, relying on a June 4, 1984 Supreme Court opinion, refused to grant a prevailing plaintiff's motion for attorneys' fees under the Education of the Handicapped Act ("EHA"). Congress thereafter passed amendments to the Act ("Amendments") making those fees available in all cases pending on or after June 4, 1984. The Eleventh Circuit declined to grant the plaintiff's new motion for fees after the Amendment's passage, however, holding that "the class of cases 'pending' on July 4, 1984 does not include a case in which a final judgment as to attorney's fees was rendered and became unappealable before [the statute's enactment]." *Id.* at 809; *cf. Daylo v. Administrator of Veterans' Affairs*, 501 F.2d at 823 (refusing to construe an amendment passed in 1970 that explicitly applied to matters arising on or after 1940 to void a final judgment rendered prior to the amendment's passage).

An opinion of the United States District Court for the District of Columbia and a number of appellate decisions, however, cast doubt on the principle that litigants armed with final adjudications are protected against future legislative intervention. In *Capello v. D.C. Board of Education*, 669 F. Supp. 14, the district court considered the same Amendments to the EHA that were at issue in *Georgia Ass'n of Retarded Citizens v. McDaniel*. Prior to the Amendments' passage, the United States Court of Appeals for the District of Columbia Circuit had vacated a fee award granted by the district court. The district court reinstated its decision after the Amendments went into effect, however, explaining that "[d]ecisions which *relieve* the government from paying fees are not affirmative judgments which constitute benefits protected by the Due Process Clause." *Id.* at 19 (emphasis in original); *cf. Max M. v. New Trier High School, Dist. 203*, 859 F.2d 1297, 1299 (7th Cir. 1988) (allowing plaintiffs' new motion for fees after amendments' passage because the court had previously "stepp[ed] past the issue in silence"); *Tonya K. v. Board of Education*, 847 F.2d at 1248 (holding that, although plaintiffs had withdrawn their request for fees under a consent decree entered into in order to settle an action under the EHA, the district court properly reactivated their request after Congress passed the Amendments).

The conflicting lower court decisions demonstrate that the courts do not always accord great deference to the vested rights doctrine. Much of the doctrine's continued vitality, moreover, may depend on the reach of the Supreme Court's decision in *United States v. Sioux Nation of Indians*, 448 U.S. 371.

If *Sioux Nation* stands for the narrow proposition that Congress may waive the government's right to raise as a litigation defense the preclusive effect of a prior judgment in the government's favor (*see Georgia Ass'n of Retarded Citizens v. McDaniel*, 855 F.2d at 811–12), then the opinion would have little bearing on the vested rights of private parties affected by the Act.[24] If, however, *Sioux Nation* stands for the broad proposition that Congress can compel a court to reconsider its prior judgment in any type of case (*cf. Tonya K. v. Chicago Board of Education*, 847 F.2d at 1247), then the opinion may severely curtail the ability of litigants to challenge the Act under the vested rights doctrine.[25] Under this latter scenario, a court might justify Congress' wholesale reopening of past judgments rendered in accordance with the standards set out in *Wards Cove* on the basis that the Act does not disturb a vested right, but instead merely tells the courts to reconsider their past decisions in light of the newly-enacted substantive and procedural rights.

Because *Sioux Nation* and *Capello* can be limited to their distinctive facts, however, litigants with cases that reach final judgment prior to the Act's passage should wield a strong "vested rights" attack on the Act's retroactivity. The enormous number of Supreme Court decisions endorsing the "vested rights" doctrine—and that would implicitly be overruled by a contrary result—certainly reinforces this prospect. The more interesting question, therefore, is whether litigants with cases on remand from the Supreme Court can also claim the protection of the vested rights doctrine.

This second group of litigants would argue that the Supreme Court's holding in *Wards Cove* (and other cases remanded from either the Supreme Court or the appellate courts in light of *Wards Cove*) is the equivalent of a "final judgment" with respect to certain issues—merely, the substantive and procedural standards that the Act purports to reverse. *Cf. Nabors v. Manglona*, 829 F.2d 902, 906 n.5 (9th Cir. 1987) (noting that a judgment is not final for purposes of applying statutes retroactively until the appellate process has been exhausted); *In re Lara*, 731 F.2d 1455, 1459 n.5 (9th Cir. 1984) (same). The litigants thus would contend that they have a vested right in the Supreme Court's or appellate courts' disposition of those standards that cannot be disrupted by legislative fiat.

The courts do not appear to have applied the vested rights doctrine to final partial judgments (or final decisions of law composing parts of the final judgments). The second group of litigants therefore would have to look to other areas of the law to buttress their theory.

They first could have to argue that, as a practical and legal matter, courts can render judgments in parts. Litigants could point to *Tonya K. v. Chicago Board of Education*, 847 F.2d 1243, and *Max M. v. New Trier High School, Dist. 203*, 859 F.2d 1297, as examples where courts entered the substantive judgments at one time, but then determined the attorney's fee issue in the case at a later date. They also could point to the law of the case doctrine, which provides that a final decision of law (as opposed to an entire judgment) by a federal appellate court establishes the law binding further action in the litigation by another body subject to its authority. *See City of Cleveland, v. FPC*, 561 F.2d 344, 346 (D.C. Cir. 1977). Finally, litigants could contend that, because the failure to appeal an aspect of an adverse judgment renders the judgment final in that aspect, an appeal on that aspect arguably becomes final on that aspect when ruled on by the highest available appellate court; indeed, litigants could look to the "collateral order" doctrine and similar rules concerning judgments and appealability to further support a "vested rights" claim.

Of course, in looking to these other areas, litigants could try to extrapolate from separation of powers "finality" principles to demonstrate why their expectations in the Supreme Court's or highest available appellate court's "final" decision should have the status of a vested right. The strength of this argument, therefore, may depend on the vitality of the finality rationale in the separation of powers context. In all events, the ultimate resolution of this line of argument requires further research and inquiry.

2. Traditional Due Process Analysis

Litigants also might argue that the Act is unconstitutional because it renders unlawful past acts that were lawful when performed. Specifically, the Act declares unlawful business practices with a disparate impact that "serve[], in a significant way, the legitimate employment goals of the employer" (109 S. Ct. at 2125–26) (hereinafter "significant business practices"), as required by *Wards Cove*, but that are not "essential to effective job performance" (S. 2104 at §§3(o) & 4(k); H.R. 4000 at §§3(o) & 4(k)) (hereinafter "non-essential business practices"), as required by the Act. The Act also declares unlawful a non-essential business practice that "contribute[s] to the disparate impact" caused by a group of employment practices even if the individual practice does not itself have a disparate impact. *See* S. 2104 at §4(k)(1)(B); H.R. 4000 at §4(k)(1)(B). Unfortunately, although the Act thus arguably upsets reasonable (even if not settled) expectations based on *Wards Cove* or prior Supreme Court precedents, a court might well be reluctant to invalidate the legislation under the Due Process Clause.[26]

a. General Standards

The Supreme Court's opinion in *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976), establishes the framework for evaluating the constitutionality of retroactive civil legislation under the Due Process Clause. In that case, the Supreme Court rejected a constitutional challenge to the Federal Coal Mine Health and Safety Act of 1969, which required coal mine operators to compensate former employees disabled by pneumoconiosis even though those employees had terminated their work in the industry before the statute's enactment. In upholding the legislation, the Court first emphasized that "legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality . . . . [T]he burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Id.* at 15. The Court further noted that retroactive civil "legislation . . . is not unlawful solely because it upsets otherwise settled expectations. This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." *Id.* at 16 (citations omitted). After explaining that "[i]t does not follow . . . that what Congress can legislate prospectively it can legislate retrospectively (*id.* at 16)," the Court upheld the statute as "a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor—the operators and the coal consumers" (*id.* at 18).

Footnotes at end of article

The Supreme Court elaborated on the "strong deference accorded legislation in the field of national economic policy" in *PBGC v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1982). There, the Court upheld the Multiemployer Pension Plan Amendments Act of 1980 (IMPPAA), which retroactively applied its new withdrawal liability provisions to employers who withdrew from multiemployer pension plans in the five month period preceding the statute's enactment. Consistent with its prior opinion in *Turner Elkhorn*, the Court first noted that, if "the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, [then] judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Id.* at 729. The Court then clarified its statement in *Turner Elkhorn* that "retroactive legislation [has] to meet a burden not met by legislation that as only future effects" (*id.* at 730 (*quoting Usery v. Turner Elkhorn Mining Co.*, 428 U.S. at 16)), explaining that "that burden is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose" (*id.*).[27] The Court concluded that Congress' "retroactive application of the statute to prevent employers from withdrawing while Congress debated necessary revisions in the statute" was "eminently rational." *Id.* at 730–31.

The Court's analyses in *Turner Elkhorn* and *PBGV v. R. A. Gray & Co.* represented a significant departure from the court's analysis of retroactive legislation in *Railroad Retirement Board v. Alton Railroad Co.*, 295 U.S. 330 (1935). In the latter case, the Court declared to be unconstitutional a statute that required employers to finance pensions for all former employees who worked for the employer in the year before the statute's enactment. In striking down the statute, the Court emphasized that: "[t]he statute would take from the railroads' future earnings amounts to be paid for services fully compensated when rendered in accordance with contract, with no thought on the part of either employer or employee that further sums must be provided by the carrier." *Id.* at 349.

Despite its seemingly inconsistent analyses, however, the Court carefully distinguished *Alton* on its facts in both *Turner Elkhorn* (428 U.S. at 19) and *PBGC v. R. A. Gray & Co.* (467 U.S. at 733–34). Thus, although lower courts have suggested that current retroactivity analysis renders *Alton* close to a dead letter (*see, e.g., A-T-O v. PBGC*, 634 F.2d 1013, 1025 n. 13 (6th Cir. 1980); *S & M Paving, Inc. v. Construction Laborers Pension Trust*, 539 F. Supp. 867, 874–75 (C.D. Cal. 1982); *PBGC v. Ouimet Corp.*, 470 F. Supp. 945, 955 (D. Mass. 1979), *aff'd*, 630 F.2d 4 (1st Cir. 1980), *cert. denied*, 450 U.S. 914 (1981)), *Alton* remains good law until overruled by the Supreme Court.

A third recent Supreme Court case, *United States v. Sperry Corp.*, 110 S. Ct. 387 (1989), however, adhered to the modern *Turner Elkhorn* and *Gray* analyses in upholding the retroactive application of a fee to be paid to the United States from amounts recovered by American claimants before the Iran-United States Claims Tribunal. The Court justified the statute's retroactivity as a rational way to prevent claimants who obtained awards from the tribunal prior to the enactment of the statute from obtaining a windfall by avoiding contribution. *Id.* at 396.

As the three recent Supreme Court opinions demonstrate, civil legislation must have a rational basis for its retroactive application. *Cf. Maine Central R.R. Co. v. Bhd. of Maintenance of Way Employees*, 835 F.2d 368, 372 (1st Cir. 1987), *cert. denied*, 486 U.S. 1042 (1988).[28] Although the Supreme Court did not define "rational purposes" in those three opinions, it did find that three distinct legislative goals—deterrence of undesirable preenactment conduct, allocation of costs, and prevention of "windfalls" to certain persons—satisfied the due process standard. A court's analysis of the Act, therefore, might start with these "rational" goals.

b. Rational Purposes

The lower courts have not hesitated to uphold retroactive legislation designed to deter undesirable preenactment behavior.[29] A court, however, probably would not uphold the Act on this ground. Most of the conduct rendered unlawful by the Act occurred long before Congress began to consider the legislation. Wards Cove Packing Co., for example, adopted its allegedly unlawful hiring/promotion practices at least sixteen years before the Act was introduced. In addition, employers would not rush out to adopt soon-to-be unlawful business practices in the months preceding the Act's passage because those employers could be subject to a disparate impact claim long after the Act goes into effect.

A court might consider upholding the retroactive application of the Act as a cost-allocation measure analogous to that at issue in *Turner Elkhorn*. According to this theory, the Act would be a rational means of imposing on employers, who arguably contributed to the unequal status of minorities by adopting business practices with a cumulative disparate impact, some of the costs associated with making whole the alleged victims of these past practices. The courts frequently have upheld arguably analogous cost-spreading schemes, although in quite different contexts.[30] A litigant could argue persuasively, however, that the Act is not at all like the cost-allocation scheme in *Turner Elkhorn*. They could point out that, in *Turner Elkhorn*, Congress was setting up an independent insurance scheme to pay for the treatment of death benefits of coal miners who had contracted pneumoconiosis. The sole question in *Turner Elkhorn*, therefore, arguably was who was going to pay for that insurance scheme. The Act, by contrast, arguably redistributes income and employment opportunities from employers (and some employees) to minorities in order to redress some perceived past harm. No insurance scheme, as in *Turner Elkhorn*, or clean-up scheme, as in the CERCLA cases, exists apart from this redistribution.

A court might also consider upholding the Act on the basis that it will prevent certain litigants from enjoying a windfall from the Supreme Court's decision in *Wards Cove*. Congress has, in the past, passed legislation aimed at overturning a Supreme Court decision. The courts have upheld the legislation's retroactive application to the time of the decision.

In *Battaglia v. General Motors Corp.*, 169 F.2d 254, for example, the Second Circuit considered the constitutionality of the Portal-to-Portal Act, which applied to all pending cases as of the date of its enactment and thus retroactively deprived courts of jurisdiction to hear certain claims for overtime pay. Congress passed the Act in response to Supreme Court decisions that had granted to employees the right to bring these overtime suits. In upholding the Act, the court noted that "Congress ha[d] found in section 1(a) of the Portal-to-Portal Act that the liabilities created by the Supreme Court decisions . . . were 'wholly unexpected' and that under those decisions the 'employees would receive windfall payments.' " *Id.* at 258; *see also Fisch v. General Motors Corp.*, 169 F.2d 266, 271–272 (6th Cir. 1948), *cert. denied*, 335 U.S. 902 (1949); *Moss v. Hawaiian Dredging Co.*, 187 F.2d at 445–47 (similarly upholding Congress's right to pass retroactive legislation under the labor laws to negate the effects of prior Supreme Court decisions).

More recently, the Third Circuit examined legislation that Congress passed in 1984 to preclude all suits for tax refunds brought on the basis of the Supreme Court's decision in *Rowan Co. v. United States*, 452 U.S. 247 (1981). In *Rowan*, the Court had declared unlawful, and thus refundable, certain FICA taxes paid in conformance with a 1965 revenue ruling. In upholding the 1984 legislation, the Third Circuit noted that: "Congress believed that the broad holding of *Rowan* contravened the policies and principles underlying the statutory schema and philosophy of our social security and Medicare systems . . . The 1984 Act, as demonstrated by its legislative history, merely averts the potentially disruptive effect of the *Rowan* decision on the multitude of transactions properly reported by taxpayers in accordance with the applicable rule of law at the time."

Temple University v. United States, 769 F.2d at 135; *see also Canisius College v. United States*, 799 F.2d at 25; *College v. United States*, 11 Cl. Ct. at 553–54; *Michael Reese Hosp. & Medical Center v. United States*, 6584 F. Sup. at 988–90 (upholding retroactive overturning of *Rowan* decision).

Finally, in *Counsel v. Dow*, 849 F.2d 731 (2d Cir.), *cert. denied sub nom., Connecticut v. Counsel*, 109 S. Ct. 391 (1988), the Second Circuit upheld a provision of the Handicapped Children's Protection Act ("HCPA"), that allowed the award of attorneys' fees to prevailing parties. The Act applied retroactively to any action or proceeding either pending on or brought after July 4, 1984, the day before the date of a Supreme Court decision that denied successful litigants the right to such fees. In sustaining the Act against a due process challenge, the Second Circuit noted that "one of the goals of the HCPA was to overrule [the Supreme Court decision] legislatively and thus to ensure that parents who brought EHA suits while [the decision] was still the law 'may be awarded fees on the same grounds as parents whose action or proceeding [was] brought after the enactment of the [the HCPA]' " (*id.* at 738); *see also Capello v. D.C. Board of Education*, 669 F. Supp. at 18 (similarly noting that Congress' rational purpose in enacting HCPA was "to overturn the impact of [the Supreme Court decision]").

Congress is apparently trying to justify the Act's retroactive application to the time of the *Wards Cove* decision on the basis of the above "windfall" analyses. *See* 136 Cong. Rec. S1018, S1021 (daily ed. Feb. 7, 1990) (statement of Senator Kennedy); *id.* at S1024 (statement of Senator Simon). Congress has attempted to term the Act as "restorative" legislation—i.e., legislation that is designed to restore the civil rights laws existing prior to the Supreme Court's recent decisions. *See* 136 cong. Rec. at S1018; S. 2104; H.R. 4000.[31] A litigant could point out to a court, however, that, contrary to Congress' representations, the *Wards Cove* opinion was not a windfall at all. Rather, the decision merely resolved the confusion among the federal circuits as to the appropriate burdens of proof and substantive standards in disparate impact cases. Thus, litigants have a powerful argument that the windfall analysis is pretexual and unfounded in this context, and should not control a court's review of the Act.

Litigants could further rebut Congress' attempted guidance by directing a court to recent Supreme Court decisions indicating that a later Congress' views of the enacting Congress' intent are entitled to little deference. *See United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 34 (1982); *International Bhd. of Teamsters v. United States*. 431 U.S. 324, 354 n.39 (1977); *see also United Airlines, Inc. v. McMann*, 434 U.S. 192, 200 n.7 ("[l]egislative observations 10 years after passage of the Act are in no sense part of the legislative history"). Moreover, a litigant could note that Congress could not possibly be restoring its own law because the disparate impact doctrine was judicially-created.

Some courts have suggested that Congress should be given deference when it passes "curative legislation," which is legislation designed to cure what Congress perceived as a defect in prior law. *See Counsel v. Dow*, 849 F.2d at 738-39; *see also Temple University v. United States*, 764 F.2d at 134. Although the courts' definition of "curative" implies that Congress should be given deference when Congress passes legislation designed to remedy its own prior legislative mistakes, neither *Counsel v. Dow* nor *Temple University v. United States* stands for that proposition. Rather, in both cases, Congress was attempting to "cure" a congressional perception that the Supreme Court had engaged in "defective" adjudication. Accordingly, in those cases, "curative" legislation appears to be the same as "restorative" legislation and thus should be analyzed under the windfall analyses discussed above.

Notably, however, if a court could find any "plausible" reason for Congress' enactment of the Act's retroactive sections, the legislation would withstand due process scrutiny. *See, e.g., Hammond v. United States*, 786 F.2d 8, 14 (1st Cir. 1986) ("Even if we question the extent and effect of this public embarrassment it is not for us to reevaluate it. It is a plausible reason for Congress' action"); *In re Consolidated United States Atmospheric Testing Litigation*, 820 F.2d at 991 (same). Thus, litigants could not confine a court's search for the Act's "rational" purpose to the three "rational" justifications discussed above.

Although litigants could distinguish the majority of adverse due process decisions, however, they still may have difficulty convincing a court that the Act is unconstitutional solely because it retroactively outlaws "non-essential" business practices that either have a disparate impact or contribute to a group of practices with a disparate impact. The Supreme Court established deferential standards for retroactive civil legislation in *Usery v. Turner Elkhorn Mining Co.* and *PBGC v. R.A. Gray & Co.* And the courts have upheld a number of arguably analogous legislative purposes under the due process "rationality" standard. Thus, litigants hoping to strike down the Act under the Due Process Clause would have to sustain the difficult burden of demonstrating that the Act's retroactivity is uniquely irrational.

3. Due Process Analysis of Retroactive Procedural Legislation

Finally, aggrieved litigants could argue that the bill violates their due process rights by changing the relevant evidentiary burdens to be borne by both parties during a litigation's pendency. Implicit in this argument is the notion that litigants have a constitutionally-protected property right in the evidentiary rules in effect at the commencement of a civil action. The courts, however, are far less likely to strike down a statute, or a portion of a statute, that merely applies new evidentiary rules to pending litigation than a statute that disturbs vested rights or that imposes retroactive liability on past conduct.[32]

The Supreme Court has espoused the principle that "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice." *Bradley v. Richmond School Board*, 416 U.S. 696, 711 (1974). Courts generally will not find "manifest injustice" where "there [is] no change in the substantive obligation of the parties." *Id.* at 721; *see also Hallowell v. Commons*, 239 U.S. 506, 508 (1916). Therefore, as a matter of statutory construction, courts distinguish between statutes that affect only procedures and remedies, which presumptively apply to pending litigation, and statutes that affect substantive rights, which do not enjoy a presumption of retroactivity.[33]

"The purpose behind this rule of construction is clear. [Although] [n]on-retrospective application of a statute 'prevents the assigning of a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed,' [t]his danger is not present where statutes merely affect remedies or procedures." *Friel v. Cessna Aircraft Co.*, 751 F.2d at 1039 (citations omitted).[34]

Indeed, the Supreme Court has demonstrated its reluctance to scrutinize statutes affecting procedural rights under the Due Process Clause. The Court has held that "forms of procedure in the state courts are not controlled by the Fourteenth Amendment, provided the fundamental rights secured by the amendment are not denied." *Louisville & Nashville R.R. Co. v. Schmidt*, 177 U.S. 230, 238 (1900). Thus, with respect to procedural matters, the courts are concerned primarily with ensuring that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *see also In re Consolidated United States Atmospheric Testing Litigation*, 820 F.2d at 989. Absent an arbitrary deprivation of this notice and opportunity (*see, e.g., Logan v. Zimmerman Brush*, 455 U.S. 422, 437-38 (1982)), courts generally will permit legislatures to regulate procedural issues without judicial interference.

"The burden of proof relates not to duties or obligations . . . but is a part of the law of evidence which determines how those duties and obligations may be enforced." *Amoco Prod. Co.* v. *Douglas Energy Co.*, 613 F. Supp. at 737; *see also Smith* v. *Freedman*, 167 N.E. 335, 336-37 (Mass. 1929) (noting that a burden of proof statute "is one relating solely to evidence and the conduct of trials in court"). Thus, the Supreme Court held in *Easterling Lumber Co.* v. *Pierce*, 235 U.S. 380, 382 (1914), that it is "conclusively settled" that "a statute [that] cut[s] off no substantive defense but simply provide[s] a rule of evidence controlling the burden of proof . . . does not violate the Fourteenth Amendment to the Constitution of the United States." Lower federal and state courts are in accord.[35]

Thus, a burden of proof shift probably would not implicate due process concerns unless it deprived litigants of their notice and opportunity to be heard or if it were unconstitutional on some other ground. A court, therefore, likely would not strike down the Act on those grounds.

C. Bill of Attainder

Finally, litigants might argue that the Act violates the Constitution's proscription against bills of attainder. *See* U.S. Const. art. I, §9, cl. 3.[36] "A bill of attainder is a legislative act which inflicts punishment without a judicial trial.'" *United States* v. *Lovett*, 328 U.S. 303, 315 (1946) (*quoting Cummings* v. *Missouri*, 71 (4 Wall.) 277, 323 (1867)). The Bill of Attainder Clause rests on separation of powers concerns. The Clause reflects the Framers' belief that the legislature should only "prescribe general rules for the government of society." *United States* v. *Brown*, 381 U.S. 437, 446 (1965). Because "trial by a legislature lacks the safeguards necessary to prevent the abuse of power" (*INS* v. *Chadha*, 462 U.S. 919, 962 (1983) (Powell, J., concurring); *see also United States* v. *Lovett*, 328 U.S. at 317), the Framers recognized, the judiciary is better suited to the "task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons" (*United States* v. *Brown*, 381 U.S. at 445). As Justice Stevens recently explained: "Legislatures are primarily policy-making bodies that promulgate rules to govern future conduct. The constitutional protections against the enactment of *ex post facto* laws and bills of attainder reflect a valid concern about the use of the political process to punish or characterize past conduct of private citizens. It is the judicial system, rather than the legislative process, that is best equipped to identify past wrongdoers and to fashion remedies that will create the conditions that presumably would have existed had no wrong been committed."

City of Richmond v. *J.A. Croson Co.*, 109 S. Ct. 706 (1989) (Stevens, J., concurring).

Thus, the courts will strike down legislation as a bill of attainder if it satisfies three elements—i.e., specification of the affected persons, punishment, and lack of a judicial trial. *See Selective Service System* v. *Minnesota Public Interest Research Group*, 468 U.S. 841, 847 (1984). They have, however, found few congressional statutes to meet all three requirements. The Act likely would not be an exception.[37]

1. Specification

Legislation meets the specification requirements for bills of attainder if it identifies individuals or groups by name. *See United States* v. *Lovett*, 328 U.S. at 315 (Congress directed legislation against certain named individuals); *see also United States* v. *Brown*, 381 U.S. at 438 (Congress singled out members of the Communist party for punitive measures). Congress' identification of individuals or groups does not always offend the Bill of Attainder Clause, however, if unique circumstances exist and Congress' legitimate regulatory goals warrant such specificity.[38]

Legislation that does not list individuals or groups by name may also be unlawfully specific if it applies to "easily ascertainable members of a group." *United States* v. *Lovett*, 328 U.S. at 315. A statute may improperly target "easily ascertainable members of a group" if it freezes people into a group on the basis of their past conduct.[39] If individuals can exit the group after the legislation's passage, however, then the legislation likely does not satisfy the specification element.[40]

Litigants could argue plausibly that the Act is directed at "easily ascertainable members of a group." On its face, the Act applies to all litigants with cases pending as of June 5, 1989. That group is identifiable and fixed at the date of the Act's passage.[41]

2. Punishment

A litigant challenging the Act on bill of attainder grounds also would have to convince a court, however, that the Act's provisions for injunctive and monetary relief are punitive by nature.[42] The Supreme Court has developed a three-pronged inquiry to determine whether a statute inflicts forbidden punishment: "(1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute 'viewed in terms of the type and severity of the burdens imposed, reasonably can be said to further nonpunitive legislative purposes'; and (3) whether the legislative record 'evinces a congressional intent to punish.'" *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. at 852 (*quoting Nixon v. Administrator of General Services*, 433 U.S. at 473, 475–76, 478). We have not found any case indicating whether monetary sanctions typically are or historically were considered to be punitive. *But cf. Cummings v. Missouri*, 71 U.S. at 321 (quotation omitted) ("Some punishments . . . extend to confiscation by forfeiture of lands or movables, or both, or of the profits of lands for life"). Accordingly, absent conclusive precedent, a court likely would evaluate monetary sanctions in light of the second two factors in the Supreme Court's test.[43]

The courts generally will not strike down a statute, on bill of attainder grounds, that reasonably can be said to further nonpunitive purposes. The courts have construed a broad array of legislative purposes to be reasonable.[44]

If a statute is retroactive, however, it is less likely to be reasonable in the eyes of the courts.[45] Accordingly, because the Act arguably punishes acts that were lawful when committed (*see* discussion, *supra* at pp. 31–32), a court might find, under this prong, that the Act is unreasonably punitive.

The third prong of the Supreme Court's test requires a court to look at a statute's legislative history to see whether it evinces a congressional intent to punish. In *United States v. Lovett*, 328 U.S. at 309, for example, the legislative history was replete with punitive references. Although the Act's legislative history thus far does not use punitive language, the Act's proponents make it quite clear that they intend to deprive specific employers of the "windfall" that they would gain from the *Wards Cove* decision (*see* discussion, *supra* pp. 43–47). Because these employers would gain a windfall from the decision only if they won their cases, Congress arguably must intend that these same employers lose under the Act's new standards. Litigants thus could rely on the Act's legislative history to buttress this punitive theory.

3. Judicial Trial

Even if litigants could convince a court that the Act singles out employers with pending cases as of June 5, 1989 for punishment, they probably could not demonstrate that the employers lack the benefit of a judicial trial. The courts do not find that legislation is a bill of attainder when judicial procedures intervene between passage of the statute and punishment of particular individuals. For example, in *Communist Party v. Subversive Activities Control Board*, 367 U.S. at 87, the Court noted that the Act at issue did not require registration with the Attorney General by an entity alleged to be a "Communist-action organization" until a "finding [was] made after full administrative hearing, subject to judicial review." Thus, the Court concluded, "[p]resent activity constitutes an operative element to which the statute attaches legal consequences, not merely a point of reference for the ascertainment of particular persons ineluctably designated by the legislature." *Id.*[46]

Like the registration "punishment" in *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1, the Act's monetary and injunctive sanctions cannot take effect until after a judicial trial. Similarly, an employer's "guilt" under the Act's new standards—i.e., the enhanced burden of proof and the more rigorous "essential" requirement for business practices with a disparate impact—can only be determined at trial. Thus, because the judiciary would be so extensively involved in applying the Act to specific individuals, a court would, in all probability, be extremely reluctant to strike down the Act on bill of attainder grounds.

IV. CONCLUSION—POTENTIAL AREAS FOR FURTHER RESEARCH

As we have noted, we have not found much support in the case law for challenges to the Act on a bill of attainder theory. We have found some support for a due process attack on the Act, and substantial grounds for a separation of powers challenge to the Act.

The separation of powers and due process cases, however, lack a coherent underlying rationale. The courts appear to reach results without engaging in analysis; they justify their results with conclusory language from controlling opinions or with brief analyses buried in dicta. Thus, although we have broken down the separation of powers cases into decisions that support either the interference rationale or the finality rationale, the courts do not necessarily analyze or conceptualize the cases in this manner. Likewise, although we have broken down the due process cases into categories of rational purposes, the courts neither define "rationality" nor overtly categorize statutes that meet the rationality test.

A district court probably would not strike down the Act on the basis of a piecemeal theory gleaned from the current retroactivity case law. The Supreme Court almost certainly would not invalidate congressional legislation absent a compelling theoretical rationale. Accordingly, we believe that research in a number of different areas is necessary if a successful constitutional attack on the Act's retroactivity is to be obtained.

As an initial matter, we note that courts construe statutes so as to avoid serious doubts as to their constitutionality. Thus, any case law supporting the argument that the word "pending" does not include a particular litigant or group of litigants would help at least some litigants to escape the Act's retroactive application. Notably, the Supreme Court has explained that "[p]ending is simply not a term of art that unambiguously carries with it [any one] meaning." *International Union of Elec. Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 243 (1976). And at least one court has used the term's flexibility to confine the reach of retroactive legislation. *See Georgia Ass'n of Retarded Citizens v. McDaniel*, 855 F.2d at 809.

Further research in the due process area probably should focus primarily on Congress' statements in the Act's developing legislative history. Any evidence gleaned from the legislative history that Congress did not view the Supreme Court's decision in *Wards Cove* to be a windfall; that Congress conceded that the Act dramatically changed disparate impact law; or that Congress had invidious rather than legitimate, rational reasons for making the Act retroactive would buttress any potential due process challenge to the Act's retroactivity. In addition, the arguments advanced by the Act's proponents in favor of retroactivity need to be catalogued, dissected, and, if possible, debunked.

Further research in the due process area also might include a search for case law supporting the notion that a final judgment includes unappealed decisions of law made by the lower courts and, correlatively, decisions of law made by the highest judicial body ruling on a particular case. Any case law support for this theory could expand the reach of the vested rights doctrine to a whole new class of litigants.

We believe that further research probably would be the most fruitful, however, in the separation of powers area. Further research might support a broad interpretation of the interference rationale in *United States v. Klein*. A review of early documents could help determine what activities the Framers of the Constitution believed to be within the exclusive province of the judiciary; it might also establish the purposes that the Framers intended the separation of powers to serve. If we were to conduct this review, we could look for principles in those early documents that might support either some of the broader holdings in or a broad reading of *United States v. Klein*. We also could focus on whether the Constitution's requirement of judicial independence encompasses systemic values. In so doing, we could try to develop support for the notion that the Supreme Court, or any appellate court, has a constitutional right to mandate that a lower court follow its remand instructions rather than the subsequent instructions of another branch of government. Scholarly commentary might help in this respect.

We could also canvass the separation of powers case law in the years surrounding the court's decision in *United States v. Klein*. The case law from that time period might support our theory that *Klein* rests on a broad interference rationale.

Further research might also bolster the finality rationale for attacking the Act. Again, a review of early documents might reveal the importance the Framers placed on shielding final judicial decisions from modification by other branches. As part of this review, we could analyze the principles underlying the Constitution's textual distinction between the Supreme Court and the lower courts (*see* U.S. Const. Art. III, §1 & §2, cl. 2) to determine whether the Framers accorded less importance to final decisions of the lower courts than to the decisions of the Supreme Court. Of course, case law discussing the differences between the various courts would also be relevant to this latter inquiry.

Along those same lines, additional research might include an analysis of the principles underlying the cases construing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), which established the principle of judicial review. *See id.* at 177–78 ("It is, emphatically, the province and duty of the judicial department, to say what the law is"). In conducting that research, we could analyze why the *Marbury* Court believed that judicial review is so essential to this nation's constitutional structure and what congressional acts would threaten this essential constitutional power. Correlatively, we could examine the principles explaining why the judicial power is limited to "case" and "controversies." This research also might follow up on Justice Rehnquist's dissenting statement in *United States* v. *Sioux Nation of Indians*, 448 U.S. at 427, regarding the limitations on Congress' Article I power to engage in Article III judicial activities.

Research on the principles underlying the finality rationale also would involve a search for analogous principles underlying the vested rights doctrine in the due process context. Any principle that would support the notion that a litigant has a vested right in a final ruling on any part of a case, of course, would bolster the persuasive weight of a constitutional attack on the Act.

Finally, and perhaps most importantly, additional support for both the finality and interference rationales might exist in a number of recent separation of powers decisions in areas outside of retroactive legislation, and in scholarly commentary on those cases. For example, in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982), the Supreme Court struck down the Bankruptcy Act on the ground that the Act unconstitutionally conferred Article III judicial power upon judges who lacked Article III protections. Conversely, the Court upheld the constitutionality of the United States Sentencing Commission despite the fact that Article III judges performed nonjudicial roles on the Commission and could be removed by the President. *Mistretta* v. *U.S.*, 109 S. Ct. 647 (1989). A review of these decisions and a number of other recent separation of powers cases (*see, e.q.*, *Buckley* v. *Valeo*, 424 U.S. 1 (1976); *INS* v. *Chadha*, 462 U.S. 919) would provide insight into the Supreme Court's current view of the appropriate interrelatedness of the government's various branches. It might also provide a theory for the results in the "interference" and "finality" cases, including a rationale for why those results may vary for retroactive substantive or procedural legislation.—Glen D. Nager, Laurie W. Finneran, Jones, Day, Reavis & Pogue.

WASHINGTON, DC, *May 1, 1990*.

FOOTNOTES

[1] *See United States* v. *Klein*, 80 U.S. (13 Wall.) at 145 ("But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court had adjudged them to have"); *see also* P. Bator, P. Mishkin, D. Meltzer, & D. Shapiro, *Hart & Wechsler's The Federal Courts and the Federal System*, 369 n.4 (3d ed. 1988) (hereinafter "*Hart & Wechsler*") (noting that the rule of decision prescribed in *Klein* was itself unconstitutional as an invasion of executive power); Young, *Congressional Regulation of Federal Courts' Jurisdiction And Processes: United States* v. *Klein Revisited*, 1981 Wis. L. Rev. 1189, 1193–94 (hereinafter "*Klein Revisited*").

[2] *See United States* v. *Klein*, 80 U.S. (13 Wall.) at 146 ("Can we do so without allowing one party to the controversy to decide it in its own favor?"); *United States* v. *Sioux Nation of Indians*, 448 U.S. at 405 ("of obvious importance to the *Klein* holding was the fact that Congress was attempting to decide the controversy at issue in the Government's own favor"). This interpretation assumes that, for these purposes, the Executive Branch is acting on behalf of Congress. The Supreme Court's decision in *United States* v. *Sioux Nation of Indians*, 448 U.S. at 404–405 (*see infra* pp. 16–17), provides support for this assumption.

[3] In the *Klein* case, for example, the legislation would have required the Supreme Court to dismiss the case for want of jurisdiction and thus to deny plaintiff his right, as adjudicated by the Court of Claims, to recover the proceeds. *See United States* v. *Klein*, 80 U.S. (13 Wall.) at 146 ("What is this but 'to prescribe a rule for the decision of a cause in a particular way?'"); *United States* v. *Sioux Nation of Indians*, 448 U.S. at 405 (citation omitted) ("Second, and even more important, the proviso at issue in *Klein* had attempted to prescribe a rule for the decision of a cause in a particular way"); *see also College* v. *United States*, 11 Cl. Ct. 546, 553 (1987); *In re Consolidated United States Atmospheric Testing Litigation*, 820 F.2d at 992; *Capello* v. *D.C. Board of Education;* 669 F. Supp. 14, 18 (D.D.C. 1987).

[4] The Act does violate the law of the case doctrine by substituting Congress' instructions for the Supreme Court's instructions to the lower courts on remand. That doctrine holds generally that "a lower court with jurisdiction over a case on remand under [an appellate court's] mandate is foreclosed from reconsidering matters decided by the Supreme Court." *Banco Nacional de Cuba v. Farr*, 383 F.2d 166, 177 (2d Cir. 1967), *cert. denied*, 390 U.S. 956 (1968). Although the doctrine may provide support for a separation of powers attack on the Act, past court decisions suggest that the "doctrine is not based on any constitutional authority but is only a doctrine of judicial administration." *Id.* at 178 (*citing Messenger v. Anderson*, 225 U.S. 436, 444 (1912); *King v. West Virginia, 216 U.S. 92, 100–101 (1910))*.

[5] Even though the Act does not appear to be "outcome determinative," in that it does not overtly mandate a result in a particular case, litigants might be able to persuade a court that the Act prescribes rules of decision that tilt the balance in disparate impact cases so dramatically in favor of employees that the Act's effect is to decide all such cases against employers. A court probably would strike down the Act under this theory, however, only if it believed that Congress understood that employees would lose virtually all disparate impact cases under the Act's standards.

[6] *See United States v. Sioux Nation of Indians*, 448 U.S. at 404–405 (noting that the legislation in *Klein* was unconstitutional because it impaired the effect of an executive pardon and it prescribed a rule of decision in a pending case that required the courts to decide in the government's favor); *In re Consolidated United States Atmospheric Testing Litigation*, 820 F.2d at 992 ("Since the Act neither directs the court to make a certain finding of fact nor requires them to apply an unconstitutional law, the separation of powers doctrine is not offended"); *United States v. Brainer*, 691 F.2d 691, 695 (4th Cir. 1982) (citations omitted) ("the better reading of Klein is quite narrow and construes the case as holding only that Congress violates the separation of powers when it presumes to dictate 'how the Court should decide an issue of fact (under threat of loss of jurisdiction)' and purports 'to bind the Court to decide a case in accordance with a rule of law independently unconstitutional on other grounds'"; *Battaglia v. General Motors Corp.*, 169 F.2d at 262 (noting that the statute did not impose upon the courts "any rule of decision not in conformity with basic legal concepts" as in *Klein*); *College v. United States*, 11 Cl. Ct. at 553 (noting that the Supreme Court struck down the statute in *Klein* because it "would have directed the outcome of a pending case").

[7] *See United States v. Klein*, 80 U.S. (13 Wall.) at 146 ("[T]he denial of jurisdiction . . . if founded solely on the application of a rule of decision, in causes pending, prescribed by Congress . . . Can we [uphold the statute] without allowing that the legislature may prescribe rules of decision to the Judicial Department of the government in cases pending before it?").

[8] *See id.* at 147 ('the court is forbidden to give the effect to evidence which , in its own judgment, such evidence should have, and is directed to give it an effect precisely contrary"); *cf. United States v. Butenko*, 494 F.2d 593, 614 (3d Cir. 1974) (concurring opinion).

[9] For example, the authors of *Hart & Wechsler*, *supra* note 1, at 369 n.4 expressed some skepticism that the *Klein* decision "cast[s] doubt on the ancient principle . . . that the courts are obligated to apply law (otherwise valid) as they find it at the time of their decision, including when a case is on review, the time of the appellate judgment." *See id.* at 369 n.4 (*citing United States v. Schooner Peggy*, 1 Cranch 103 (U.S. 1801)). The authors are correct that the courts have relied on the *Schooner Peggy* principle to apply newly-enacted procedural legislation to pending cases even when the lower court rendered a judgment under different procedures. *See Bradley v. Richmond School Board*, 416 U.S. 696 (1974). Thus, at least in this narrow circumstance, litigants probably do not have a constitutional right to retain a prior judgment that was not erroneous when entered if the outcome of that judgment resulted from procedures that were subsequently changed by new legislation.

In addition, the author of *Klein Revisited*, *supra* note 1, at 1236, notes that *Klein* did not have a holding regarding Congress' right to interfere with judicial fact-finding because none of the crucial facts was disputed in that case. As a general matter, moreover, "Congress has power to prescribe what evidence is to be received in the courts of the United States." *United States v. Brainer*, 691 F.2d at 695 n.7 (*quoting Tot v. United States*, 319 U.S. 463, 467 (1943)).

[10] *Cf. Michael Reese Hosp. & Medical Center v. United States*, 684 F. Sup. 986, 990 (N.D. Ill. 1988) (holding that, because the statute was not directed against any cases, it could not interfere with the judicial function); *College v. United States*, 11 Cl. Ct. at 553 (same).

[11] *See, e.g., United States v. Sioux Nation of Indians*, 448 U.S. at 407 (noting that Congress had merely waived its res judicata defense to suit); *Banco Nacional de Cuba v. Farr*, 383 F.2d at 181 (noting that "[t]he Hickenlooper Amendment only modifie[d] the act of state doctrine by effecting a 'reversal of presumptions'"); *In re Consolidated United States Atmospheric Testing Litigation*, 820 F.2d at 992 (noting that the statute merely "substitute[d] remedies"); *Max M. v. Illinois State Bd. of Education*, 684 F. Supp. at 521 (noting that the retroactive statute "d[id] not reverse any decision on the merits"); *Prince William County School Board v. Malone*, 662 F. Supp. 999, 1000 (E.D. Va. 1987) (noting that the retroactive statute "d[id] not affect the decision on the merits").

[12] A number of courts have confirmed—albeit by negative implication—the general principles underlying *O'Grady. See United States v. Sioux Nation of Indians*, 448 U.S. at 406 (noting that the amendment at issue did not bring into question the finality of the Court's earlier judgments); *Pope v. United States*, 323 U.S. 1, 9 (1944) ("we do not construe the Special Act as requiring the Court of Claims to set aside the judgment in a case already decided"); *Battaglia v. General Motors Corp.*, 169 F.2d at 262 ("[t]he regulatory legislation did not attempt to change those decisions in any way"); *Moss v. Hawaiian Dredging Co.* 187 F.2d at 444 n.2 (*quoting Seese v. Bethlehem Steel Co.*, 168 F.2d 58, 62 (4th Cir. 1948)) ("'This does not in any manner affect adjudications already made'"); *Max M. v. Illinois State Board of Education*, 684 F. Supp. 514, 521 (N.D. Ill. 1988) ("In the present case, retrospective application of the HCPA does not reverse any decision on the merits").

[13] "Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979).

[14] The Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V.

[15] Although the Court explained its reasons for upholding this aspect of the statute, the Court also noted that it had already decided in an earlier case that Congress can waive the res judicata effect of a prior judgment entered in the government's favor. *See id.* at 397 (*citing Cherokee Nation v. United States*, 270 U.S. 476 (1926)).

[16] The Court also refused to strike down the statute under the interference rationale. The Court noted that even though Congress had removed one issue from the Court of Claims' review—the question whether res judicata or collateral estoppel barred the Sioux' claim—the Court of Claims was "free to decide the merits of the takings claim in accordance with the evidence it found and applicable rules of law" (*id.* at 392). Thus, because Congress in no way attempted "to prescribe the outcome of the Court of Claims' new review of the merits" (*id.* at 407), the Court held that Congress did not interfere with that court's judicial function (*id.* at 406). The Supreme Court's holding on this issue thus adopts a narrow construction of its prior opinion in *United States v. Klein*, 80 U.S. (13 Wall.) 128. *See* discussion, *supra*. pp. 9–10.

[17] Notably, legislative history to the Hickenlooper Amendment revealed Congress' intent to reverse the Supreme Court decision in that case. *See id.* at 174 ("The amendment is intended to reverse in part the recent decision of the Supreme Court . . . The effect of the amendment is to achieve a reversal of presumptions").

[18] The Second Circuit also found that the Hickenlooper Amendment, as applied, was consistent with due process and law of the case principles.

[19] The Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V.

[20] We have not found any support for the proposition that the Act may deprive litigants' due process rights because the Act is underinclusive—i.e., because it exempts Congress from its requirements. The case law generally does not support the notion that the due process principle of "fundamental fairness," which protects an individual's property or liberty interests, varies according to the government's treatment of other individuals with similar property and liberty interests.

[21] *See McCullough v. Virginia*, 172 U.S. 102, 123 (1898) ("[i]t is not within the power of a legislature to take away rights which have been once vested by a judgment"); *Hodges v. Snyder*, 261 U.S. 600, 603 (1922) ("the private rights of parties which have been vested by the judgment of a court cannot be taken away by subsequent legislation"); *see also Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421, 431 (1855); *The Clinton Bridge*, 77 U.S. 454, 462–63 (1870); *cf. United States v. O'Grady*, 89 U.S. at 647 ("judgments of this court . . . are beyond all doubt the final determination of the matter in controversy").

[22] In its early cases, the Supreme Court distinguished between "private rights," which are protected by the vested rights doctrine, and "public rights," which "may be annulled by subsequent legislation." *Hodges v. Snyder*, 261 U.S. at 603; *see also Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. at 431–32; *The Clinton Bridge*, 77 U.S. at 463. Because the Act clearly would affect only the private rights of parties to individual lawsuits, the public/private rights distinction has little bearing on the constitutionality of the Act's retroactive application.

[23] *See Georgia Ass'n of Retarded Citizens v. McDaniel*, 855 F.2d at 810; *Tonya K. v. Chicago Board of Education*, 847 F.2d at 1248; *Taxpayers for Animas-La Plata Referendum v. Animas-La Plata Water Conservancy Dist.*, 739 F.2d 1472, 1477 (10th Cir. 1984); *Daylo v. Administrator of Veterans' Affairs*, 501 F.2d at 818.

[24] In fact, under this narrow construction, *Sioux Nation* would have almost no persuasive weight in the due process context. The United States government is probably not a "person" within the meaning of the Fifth Amendment (*cf. South Carolina v. Katzenbach*, 383 U.S. 301, 323–24 (1966) (state is not a "person" protected by the Due Process Clause)), and thus does not enjoy due process protection. Accordingly, Congress' waiver of the government's "vested rights" in a prior judgment would not even implicate the concerns of the Due Process Clause. Notably, *Capello v. D.C. Board of Education*, 669 F. Supp. 14, may also be inapplicable to private cases for the same reason.

[25] Notably, Congress could invite courts to reconsider past judgments without implicating constitutional concerns. Under Rule 60(b) of the Federal Rules of Civil Procedure, courts may reopen past judgments for "any . . . reason justifying relief from operation of the judgment"; *see also Fern v. United States*, 15 Cl. Ct. 580, 587–88 (1988) (upholding a statute that, by retroactively removing bar of federal preemption, led state courts to reopen divorce decrees and reallocate assets on the basis of state standards).

[26] In this context, the Act would upset the expectations of two classes of litigants. The first class would be composed of employers who developed their business practices on or after June 5, 1989 in reliance on the standards set out by the *Wards Cove* decision. A second class would include employers, such as Wards Cove Packing Co., who developed their business practices in reliance on the relevant case law long before the *Wards Cove* decision. Although the two classes' expectations may not be equally justifiable, both groups probably would have to meet similar burdens successfully to challenge the Act of due process grounds.

[27] The Court also reconciled prior cases where it had held that retrospective civil legislation may offend due process if it is particularly "harsh and oppressive." *See Welch v. Henry*, 305 U.S. 134, 147 (1938); *see also United States Trust Co. v. New Jersey*, 431 U.S. 1, 17 n.13; *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 315–15 (1945). The Court noted that the "harsh and oppressive" standard "does not differ from the prohibition against arbitrary and irrational legislation that [it] clearly enunciated in *Turner Elkhorn*." *PBGC v. R.A. Gray & Co.*, 467 U.S. at 733.

[28] Prior to the Supreme Court's opinion in *PBGC v. R.A. Gray & Co.*, 467 U.S. 717, the lower courts disagreed over the level of scrutiny required to determine whether retroactive legislation is "rational" as required by the Due Process Clause. The Seventh Circuit developed a four factor test for rationality, which included: (1) the reliance interests of the parties affected; (2) whether the impairment of the private interest is effected in an area previously subjected to regulatory control; (3) the equities of imposing the legislative burdens, and (4) the inclusion of statutory provisions designed to limit and moderate the impact of the burdens. *Nachman Corp. v. PBGC*, 592 F.2d 947, 960 (7th Cir. 1979), *aff'd on statutory grounds*, 446 U.S. 359 (1980); *see also Shelter Framing Corp. v. PBGC*, 705 F.2d 1502 (9th Cir. 1983), *rev'd sub nom., PBGC, v. R.A. Gray & Co.*, 467 U.S. 717 (relying on *Nachman* test); *but see Washington Star Co. v. International Typographical Union Negotiated Pension Plan*, 729 F.2d 1502, 1508 (D.C. Cir. 1984) (rejecting the *Nachman* test, in large part, because the "courts are not free [when reviewing economic legislation] to engage in searching scrutiny of Congress' balancing of * * * interests"). In *PBGC v. R.A. Gray & Co.*, 467 U.S. at 727 n.6., the Supreme Court rejected the "constitutional underpinnings" of the analysis in *Nachman*, noting that it had "no occasion to consider whether the factors mentioned [in *Nachman*] might in some circumstances be relevant in determining whether retroactive legislation is rational."

The tax cases, however, remain somewhat of an anomaly. In *Welch v. Henry*, 305 U.S. 134, the Supreme Court upheld against due process challenge a tax statute enacted in 1935 taxing 1933 dividend income. In upholding the statute, the Court emphasized that, unlike past statutes that it had invalidated, the statute did not impose taxes on voluntary acts by taxpayers relying on the current state of the law. *Id.* at 147. Moreover, the Court noted, the tax's retroactive effect only reached back one year. *Id.* at 148–151.

Although the Supreme Court apparently tried to subsume the "reliance" and "length of retroactivity" principles in *Welch v. Henry* into its more flexible rationality analyses in *Turner Elkhorn* (*see* 428 U.S. at 17 n.16) and *Gray* (*see* 467 U.S. at 733), some lower courts have not paid heed to this attempt. Thus, some lower courts continue to analyze tax legislation under a multi-pronged test, which includes (1) the taxpayer's reliance on prior law and (2) the length of the period affected by the legislation as two explicit factors. *See Canisius College v. United States*, 799 F.2d 18, 25–26 (2d Cir. 1986), *cert. denied*, 481 U.S. 1014 (1987); *Michael Reese Hosp. & Medical Center v. United States*, 684 F. Supp. at 989; *but cf. Temple University v. United States*, 769 F.2d 126, 135 (3d Cir. 1985), *cert. denied*, 476 U.S. 1182 (1986); *College v. United States*, 11 Cl. Ct. at 553–54 (relying on more flexible criteria).

[29] *See, e.g., Peick v. PBGC*, 724 F.2d 1247, 1269 (7th Cir. 1983) (upholding the retroactive application of the MPPA's withdrawal liability provisions to prevent employers from withdrawing from pension funds while the legislation was under consideration); *Purvis v. United States*, 501 F.2d 311, 312–313 (9th Cir. 1974), *cert. denied*, 420 U.S. 947 (1975) (upholding a retroactive tax statute to prevent a rash of preenactment capital outflows from the United States); *Orrego v. United States*, 701 F. Supp. 1384, 1397 (N.D. Ill. 1988) (upholding the retroactive application of the Emergency Low Income Housing Preservation Act to prevent building owners from prepaying mortgages in order to avoid post-enactment restrictions on such prepayments).

[30] *See, e.g., United States v. Monsanto Co.*, 858 F.2d 160, 174 (4th Cir. 1988), *cert. denied*, 109 S. Ct. 3156 (1989) (upholding retroactivity of CERCLA as a means of spreading the clean-up costs of prior improper waste disposal among all parties that played a role in creating the hazardous conditions); *United States v. Northeastern Pharmaceutical & Chemical Co.*, 810 F.2d 726, 734 (8th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987) (same); *Todd Shipyards Corp. v. Witthuhn*, 596 F.2d 899, 903 (9th Cir. 1979) (upholding cost-spreading justification for a statute that required employers to pay death benefits to employees who incurred disabling injuries prior to the statute's date but died thereafter); *S & M Paving, Inc. v. Construction Laborers Pension Trust*, 539 F. Supp. at 874 (upholding retroactive application of statute's withdrawal liability provisions as a rational means of spreading the cost of providing for vested pension benefits evenly among employers); *cf. Welch v. Henry*, 305 U.S. at 146 (nothing that retroactive taxation may be an appropriate way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens).

[31] *Cf. Leake v. Long Island Jewish Medical Center*, 695 F. Supp. 1 14, 1417 (E.D.N.Y. 1988), *aff'd*, 869 F.2d 130 (2d. Cir. 1989) (In upholding retroactive legislation, court noted that the use of the terms "restore" and "clarify" indicate that Congress did not intend to change the statute but instead intended to reject the Supreme Court's interpretation); *United States v. California Medical Review, Inc.*, 723 F. Supp. 1363, 1370 (N.D. Cal. 1989) (In upholding retroactive statute, court noted that Congress had merely clarified what had been the proper standard under the old act).

[32] This discussion applies only to suits that are still pending on the date of the statutes's enactment. The "vested rights" cases, of course, may include final judgments rendered on procedural issues. *See* discussion on vested rights, *supra* pp. 26–34.

[33] *Compare Friel v. Cessna Aircraft Co.*, 751 F.2d at 1037, 1039 (9th Cir. 1985); *Mahroom v. Hook*, 563 F.2d 1369, 1373 (9th Cir. 1977), *cert. denied*, 436 U.S. 904 (1978); *Bush v. State Indus., Inc.*, 599 F.2d 780, 786 n.9 (6th Cir. 1979); *United States v. Blue Sea Line*, 553 F.2d 445, 448 (5th Cir. 1977); *Federal Insurance Co. v. Piper Aircraft Corp.*, 341 F. Supp. 855, 857 (W.D.N.C. 1972), *aff'd*, 473 F.2d 909 (4th Cir. 1973); *Jefferson Disposal Co. v. Jefferson Parish*, 603 F. Supp. 1125, 1136 (E.D. La. 1985); *Amoco Prod. Co. v. Douglas Energy Co.*, 613 F. Supp. 730, 737 (D. Kansas 1985) *with Bennett v. New Jersey*, 470 U.S. 632, 639 (1985); *Griffon v. United States*, 802 F.2d 146, 147 (5th Cir. 1986); *Ralis v. RFE/RL, Inc.*, 770 F.2d 1121, 1126 (D.C. Cir. 1985).

Notably, Justice Scalia expressed his disapproval of the substantive/procedural distinction in his concurrence to the Supreme Court's recent decision in *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, Nos. 88–1595 & 88–1771, slip op. at 14 (April 17, 1990) ("I suppose it would be possible to distinguish between statutes that 'alter substantive rights and liabilities' directly, and those that do so only by retroactively adding a procedural requirement . . . but I fail to see the sense in such a distinction").

[34] *Bradley v. Richmond School Board* and its progeny only provide rules of statutory construction in cases, unlike here, where congressional intent as to a statute's retroactivity is not clear. Those cases thus would not control a court's interpretation of the Act. Because courts construe statutes so as to avoid serious doubts as to their constitutionality (*see Communications Workers v. Beck*, 108 S. Ct. 2641, 2657 (1988); *United States v. Thirty-seven Photographs*, 402 U.S. 363, 369 (1971)), however, the courts' reliance on a presumption that procedural statutes are immediately applicable indicates that such statutes do not implicate important due process values.

[35] *See United States v. Blue Sea Line*, 553 F.2d at 450; *Sampson v. Channell*, 110 F.2d 754, 756 (1st Cir.), *cert. denied*, 310 U.S. 650 (1940); *Estate of Duhme*, 267 N.W.2d 688, 691 (Iowa 1978); *Davis v. United Parcel Serv., Inc.*, 427 So.2d 921, 924 (La. Ct. App. 1983), *cert. denied*, 433 S.2d 1053 (La. 1983); *United Sec. Corp. v. Bruton*, 213 A.2d 892, 893–94 (D.C. Ct. App. 1965).

[36] The Ex Post Facto Clause, which is contiguous to the Bill of Attainder Clause in the Constitution, is inapplicable because it applies only to criminal statutes. *Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952).

[37] In fact, the Court's decision in *United States v. Brown*, 381 U.S. 437, represents the last time that the Supreme Court has struck down legislation on those grounds. In addition, our research conducted to date has produced only one recent lower court decision that deems a legislative act to be a bill of attainder. *See Crain v. City of Mountain Home*, 611 F.2d 726, 729 (8th Cir. 1979) (holding that "the dual proscription of limiting the city attorney's salary to $1.00 per annum when in fact [plaintiff] was uncontested in his bid for election [to that position], passed simultaneously with an ordinance removing [plaintiff] from office on the eve of the election" were unconstitutional as bills of attainder).

[38] *See Nixon v. Administrator of General Services*, 433 U.S. 425, 472 (1977) (Supreme Court held that a statute that ordered the Administrator of General Services to deprive President Nixon of custody of his presidential papers was not an unlawful specification because the President "constituted a legitimate class of one"); *cf. Collin v. Smith*, 447 F. Supp. 676, 682 n.4 (N.D. Ill. 1978), *aff'd*, 578 F.2d 1197 (7th Cir.), *cert. denied*, 439 U.S. 916 (1978) (noting that "[a] law of general applicability is not unconstitutional merely because its enactment was inspired by a specific example of the evil which it seeks to suppress").

[39] *See Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. at 847 (noting that the "singling out of an individual for legislatively prescribed punishment constitutes an attainder" when the legislation targets conduct "which, because it is past conduct, operates only as a designation of particular persons"); *United States v. Brown*, 381 U.S. at 458 (statute was directed at anyone who had been a member of the Communist Party for the past five years); *Cummings v. Missouri*, 71 U.S. (4 Walls.) at 324–25 (statute conditioning individuals' rights to practice in the priesthood on their willingness to take an oath that they had never participated in the Civil War rebellion).

[40] *See Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. at 850 (noting that statute that made financial assistance contingent on registration for the draft was "clearly distinguishable from the provisions struck down in *Cummings* and *Garland*" "[b]ecause it allows late registration"); *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1, 86 (1961) (upholding statute that "require[d] the registration only of organizations which, after the date of the Act, [we]re found to be under the direction * * * of certain foreign powers").

[41] Of course, an Act is not a bill of attainder unless it singles out "ascertainable members of a group" for punishment. Accordingly, for purposes of demonstrating punishment, litigants would have to refine their definition of the applicable group to include only employers who are unable to meet the more difficult proof burdens imposed by the Act at

trial or who have adopted business practices that are significant but that are "non-essential." Assuming that the attributes of the refined group are determinable based on the employer's past practices and by evidence already existing at the time of the legislation's passage—rather than by clever lawyering at trial—this subgroup likely is appropriately specific for bill of attainder purposes.

[42] The Act itself does not contain any additional damages or injunctive provisions. However, because it merely amends the existing law, it incorporates the preexisting sanctions in that law.

[43] As the Supreme Court's balancing test recognizes, "[t]he severity of a sanction is not determinative of its character as punishment." *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. at 831; *compare Cummings v. Missouri*, 71 U.S. at 324–25; *Ex Parte Garland*, 71 U.S. 333, 377 (1867) (holding that statutes that disqualified people from practicing certain professions were punitive) *and United States v. Brown*, 381 U.S. at 458) (holding that statute that prohibited members of the Communist Party from serving as Officers of labor unions was punitive) *with Linnas v. INS*, 790 F.2d 1024, 1030 (2d Cir.), *cert. denied*, 479 U.S. 995 (1986); *Artukovic v. INS*, 693 F.2d 894, 897 (9th Cir. 1982) (holding that statutes that deported noncitizens were not punitive). Thus, a court's determination that the Act's damages and injunctive provisions are not oppressive would not necessarily preclude the court from finding that the Act is punitive legislation.

[44] *See Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. at 854 (holding that statute that denied federal financial assistance to males who failed to register for the draft furthered reasonable purpose of encouraging those who were required to register to do so); *American Communications Ass'n v. Douds*, 339 U.S. 382, 393 (1950) (holding that statute that in effect precluded Communists from holding offices in labor union furthered reasonable legislative purpose of preventing the continuing threat of disruptive political strikes); *Nixon v. Administration of General Services*, 433 U.S. at 477 (holding that statute that ordered the Administrator to take custody of President Nixon's papers further reasonable legislative purposes of preserving materials of general historical significance); *Linnas v. INS*, 790 F.2d at 1030 (holding that statute deporting Nazi furthered reasonable legislative purpose of protecting citizenry from persons harmful to the public good).

[45] *See Ex Parte Garland*, 71 U.S. at 377 ("exclusion from any of the professions . . . for past conduct can be regarded in no other light than as punishment for such conduct"); *Cummings v. Missouri*, 71 U.S. at 319 ("under the form of creating a qualification or attaching a condition, the States can[not] in effect inflict a punishment for a past act which was not punishable at the time it was committed"); *American Communications Ass'n v. Douds*, 339 U.S. at 413 (distinguishing between bills of attainder that punish individuals for past actions and lawful statutes that impose deprivations on individuals to prevent future actions).

[46] *See also United States v. Van Horn*, 798 F.2d 1166, 1168 (8th Cir. 1986) (noting that statute, which fixed punishment terms for convicted individuals who knowingly failed to surrender for service of sentence pursuant to a court order, "simply specified the punishment . . . that is to be imposed by courts after a judicial finding of guilt"); *Korte v. Office of Personnel Management*, 797 F.2d 967, 972 (Fed. Cir. 1986) (noting that plaintiff was not permanently debarred from employment until his "guilt" was determined after a full adjudicative process, which was subject to judicial review).

RETROACTIVITY AMENDMENT

On January 29, 1991, the District Court issued the eighth decision in the now famous *Wards Cove* case finding "the defendants hired individuals for the at-issue jobs based upon their qualifications, and not upon their race. . . . [T]he plaintiffs have failed to establish disparate impact in any of the defendants' hiring practices . . . and have also failed to establish that the defendants' housing and messing practices have a disparate impact."

The *Wards Cove* case, which began in 1971, was first decided under the *Griggs v. Duke Power Company* standard. When the District Court and the 9th Circuit Court of Appeals first decided the case, the prevailing law was *Griggs*. Neither court found Wards Cove guilty. The District Court concluded: "Defendants have not discriminated on the basis of race in the allocation of . . . jobs. In addition, defendants did not discriminate in the hiring, firing, promoting, or paying. . . . Similarly, defendants have not discriminated on the basis of race in housing its employees or in feeding these employees."

When deciding the case under *Griggs*, both the District Court and the Ninth Circuit said Wards Cove had the full burden of proof. Even with the complete burden of proof, Wards Cove was found innocent.

Wards Cove has been litigating this case for almost a generation, having spent 20 years and almost $2 million to prove itself innocent. Although there have been eight court decisions and no court has found Wards Cove guilty of employment discrimination, the plaintiffs' attorney has now filed yet another appeal seeking his ninth decision. The plaintiffs attorney is arguing that Congress is changing the law and the case should be relitigated. After being found innocent under both the *Griggs* standard and on remand from the Supreme Court decision, Wards Cove would like to decline the honor of being the first case to litigate whether Congress has changed the law.

If the court finds Congress has actually changed the legal standards, it is fundamentally unfair to judge 1971 employment practices by standards first created in 1991.

And if Wards Cove is found guilty under the new standards, it would find itself in the curious position of being innocent under the *Griggs* standard but being guilty under the new standard the court says Congress actually enacted.

Mr. DOLE. Mr. President, I yield 5 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I support the pending resolution to make certain technical corrections in the Civil Rights Act of 1991 passed by the Senate last week. With one exception, all of these corrections are totally noncontroversial.

I ask unanimous consent that a detailed explanation of the technical amendments be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KENNEDY. Mr. President, the remaining change restores the language of an amendment by Senator MURKOWSKI, which provides in essence that the bill should not apply to the Wards Cove case itself.

That case will continue to be litigated under the rules set down by the Supreme Court in that case.

The Murkowski amendment was part of the overall compromise in the negotiations between the Senate and the administration, and it was inadvertently omitted from the final act approved by the Senate.

Many Senate Republicans and the administration favored including language stating that the bill applied to no pending cases. Instead, the Senate accepted Senator MURKOWSKI's amendment, which only keeps the bill from applying to the parties in the Wards Cove case itself, which had already been litigated through the Supreme Court.

Section 402 of the bill states that—

> [e]xcept as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

With the exception of the Murkowski amendment, this language will leave it to the courts to determine the extent to which the bill will apply to cases and claims that are pending on the date of enactment.

There is disagreement among the supporters of the bill regarding this issue. Courts frequently apply newly enacted procedures and remedies to pending cases. That was the Supreme Court's holding in *Bradley* v. *Richmond School Bd.*, 416 U.S. 696 (1974), and *Thorpe* v. *Housing Authority*, 393 U.S. 268 (1969), in which the Court stated: "The general rule * * * is that an appellate court must apply the law in effect at the time it renders its decision."

And where a new rule is merely a restoration of a prior rule that had been changed by the courts, the newly restored rule is often applied retroactively, as was the case with the Civil Rights Restoration Act of 1988.

Many of the provisions of the Civil Rights Act of 1991 are intended to correct erroneous Supreme Court decisions and to restore the law to where it was prior to those decisions. In my view, these restorations apply to pending cases, which is why the supporters of the Murkowski amendment sought specific language to prevent the restorations from applying to that particular case. In fact, the adoption of the Murkowski amendment makes it more likely that the restorations in the act will apply to all cases except the Wards Cove case itself. Ironically, the defeat of the Murkowski amendment would make it more likely the courts would not apply the restorations to any pending cases, including the Wards Cove case.

Murkowski amendment was omitted from the final version of the Civil Rights Act because of a clerical error, and it would be a serious mistake for the Senate to go back on a compromise that was accepted in good faith.

All of us, on both sides of the aisle, are well aware of the numerous tradeoffs involved in enacting this complex but extremely important compromise.

Drafting mistakes occasionally happen, but that does not mean it is right to take advantage of them. I urge the Senate to approve the Dole resolution.

EXHIBIT 1

CHANGES TO S. 1745 BY SENATE RESOLUTION 214

During the debate on S. 1745, the Senate considered and adopted a number of amendments. Some of these amendments contained technical errors. Senate Resolution 214 corrects these errors by making the following changes to S. 1745.

1. TO CONFORM THE DEFINITION OF "COMPLAINING PARTY" TO PERMIT FEDERAL GOVERNMENT EMPLOYEES TO OBTAIN DAMAGES FOR INTENTIONAL DISCRIMINATION BASED ON DISABILITY

Section 102 of the Civil Rights Act of 1991 adds a new section 1977A to the Revised Statutes, which enables a "complaining party" to recover damages for intentional discrimination in cases brought under Title VII and the Americans with Disabilities Act. The Warner-Mikulski-Wirth amendment to S. 1745 confirmed that federal employees who suffer intentional discrimination in violation of these statutes or the Rehabilitation Act of 1973 can recover compensatory damages.

But while the amendment added to §1977A(a)(1) and (2) the statutory provisions which federal employees use to bring intentional discrimination claims, it did not make the corresponding change to the definition of "complaining party" in §1977A(d)(1). As a result, the definition of "complaining party" did not include persons who bring an action under section 505(a)(1) of the Rehabilitation Act, the provision federal employees use to bring disability discrimination claims. S. Res. 214 corrects that oversight by making the following change to the definition of "complaining party":

"In section 102, in section (d)(1)(B) of proposed section 1977A, insert 'a person who may bring an action or proceeding under section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)),' before 'or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)'."

2. TO CONFORM THE DEFINITION OF "DISCRIMINATORY PRACTICE"

Section 102 permits complaining parties to obtain damages for intentional discrimination in violation of title VII or the Americans with Disabilities Act. While the bill generally uses the term "intentional discrimination" to refer to the kind of discrimination for which damages may be sought, in one instance it uses the term "disparate treatment." S. Res. 214 replaces the single reference to "disparate treatment" with a reference to "intentional discrimination."

3. AGREED CHANGES TO GLASS CEILING AMENDMENT

The Dole Glass Ceiling amendment incorporated in title II of the bill was modeled after a proposal introduced by Senator Dole, S. 1711. It was modified, however, to reflect certain changes that the House of Representatives made to the Glass Ceiling provision in H.R. 1, and to incorporate suggestions made during recent hearings on the Glass Ceiling issue.

One such change was to strike the finding regarding quotas. As President Bush has made clear, S. 1745 is not a "quota" bill. Language regarding quotas is therefore unnecessary and not germane to the bill.

Through an oversight, the Dole Glass Ceiling amendment included the language regarding quotas. S. Res. 214 corrects this oversight by striking the language.

4. TO RESTORE THE MURKOWSKI AMENDMENT

The Danforth-Kennedy substitute contained a provision (sec. 22(b)) stating that the amendments made by the Civil Rights Act of 1991 shall not apply to the currently-pending Wards Cove case. During the amendment process, however, this provision was inadvertently struck from the bill by the Dole Glass Ceiling Amendment. S. Res. 214 corrects this error by re-inserting in the "effective date" provision (Section 402) the language contained in the Danforth-Kennedy substitute:

SEC. 402. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

(b) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983.

5. TO CORRECT A TECHNICAL ERROR IN SECTION 109(B)

Section 109(b) currently contains a reference to a "joint management committee." This reference should be to a "joint labor-management committee," the term used elsewhere in title VII. S. Res. 214 corrects this error.

6. TO CORRECT TECHNICAL ERRORS IN SECTION 103

Section 103 amends the Revised Statutes by adding the new damages section, section 1977A, to the list of actions in which attorney's fees are available.

The new section 1977A of the Revised Statutes will be codified at 42 U.S.C. §1981A, just as section 1977 of the Revised Statutes is codified at 42 U.S.C. §1981.

Because section 103 modifies the Revised Statutes, it should refer to "Section 1977A" (not "Section 1981A") and to "Section 1977" (not "Section 1981"). S. Res. 214 makes these changes.

PENDING DISPARATE IMPACT CASES

There are currently more than 100—and perhaps as many as 200—disparate impact cases pending in court.

One case alone affects 2,000 workers. Together, the cases affect many thousands of workers.

The Murkowski amendment makes clear that these workers will be protected by the Civil Rights Act, and that they will be able to demand that their employers justify the challenged practices under the stricter "business necessity" test restored by the legislation.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President. I will momentarily send to the desk an amendment to Senate Resolution 214. First, I ask unanimous consent that the time I use be from my leader time and not be counted against the time of either party.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, there are three technical corrections that have been cleared on the Republican side, the Senator from Washington, the Senator from Massachusetts, and the White House. I will explain them just briefly and then seek to add them to this resolution.

The first conforms the statute of limitations in the bill. Under the bill, the statute of limitations for the Senate staffers is 180 days. Inadvertently, a comparable provision was not included for White House and State and local employees. So this would make the statute of limitations uniform for all those covered under the bill.

The second would conform coverage as between the newly covered State and local employees with the coverage given to some State and local employees under current law. Under current law, some State and local employees have it. The bill adds others. This would conform the treatment of both and make them the same in that category.

And finally, the third is in the personal liability section. It changes the words "unfair employment practice" to "violation" because the laws being referenced involve violations of rights, not unfair employment practices.

AMENDMENT NO. 1305

(Purpose: To provide additional technical amendments)

Mr. MITCHELL. Accordingly, Mr. President, with the understanding that this matter has been cleared by all concerned, I send an amendment to Senate Resolution 214 to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to considering the amendment? If not, the clerk will report.

The bill clerk read as follows:

The Senator from Maine [Mr. MITCHELL] proposes an amendment numbered 1305.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the resolution, add the following new paragraphs:

(7) In section 320(a)(2), insert ", not later than 180 days after the occurrence of the alleged violation," after "file a complaint alleging a violation".

(8) In section 321(b)—

(A) strike "Any" and insert the following: "(1) IN GENERAL.—Any";

(B) in paragraph (1), as designated by subparagraph (A) of this paragraph, insert ", not later than 180 days after the occurrence of the alleged violation," after "file a complaint alleging a violation"; and

(C) add at the end the following new paragraph:

"(2) REFERRAL TO STATE AND LOCAL AUTHORITIES.—

"(A) APPLICATION.—Section 706(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(d) shall apply with respect to any proceeding under this section.

"(B) DEFINITION.—For purposes of the application described in subparagraph (A), the term 'any charge filed by a member of the Commission alleging an unlawful employment practice' means a complaint filed under this section.".

(9) In section 323, strike "an unfair employment practice judgment" and insert "a violation."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1305) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Will the Senator yield at this point?

Mr. MITCHELL. Certainly.

Mr. STEVENS. Mr. President, I want to thank the leader for his fairness in addressing this issue. This is a balanced technical correction, and I think it is well done.

Mr. MITCHELL. I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I yield myself 2 minutes. I want to at this point answer two of the questions that have been raised by the two speakers before me and quote from the Supreme Court decision in this case.

First, Wards Cove is still pending. The reason Wards Cove went to the Supreme Court is because the Wards Cove Co. decided it did not want to go back to the district court level and try the case. Instead, it appealed it to the Supreme Court and it is still pending in the ninth circuit at the present time.

If we have a decision that is not a legislative decision, it will go under *Griggs* and it will be tried as it should be.

In answer to the second question, all of the various pending cases I think should be tried under *Griggs*. That is the whole purpose of this legislation, and I hope it will be.

I want to state further that this is something that everybody should understand. This is what the Supreme Court said about this case. Justice Stevens in his dissent said: The company's practices "bear an unsettling resemblance to aspects of a plantation economy."

Justice Blackmun said:

> The salmon industry as described by this record takes us back to the kind of overt and institutionalized discrimination we have not dealt with in years, a total residential and work environment organized on principles of racial stratification and segregation.

Mr. President, a mistake was not made by leaving the Wards Cove exemption out of the act. The mistake will be made if we put it back in tonight. It is not necessary to settle the disputes of this act. This was not a quota matter. This was a matter that was completely settled otherwise and should not be put back in tonight.

We are being asked to rescue ourselves from our own good fortune.

The Wards Cove legal bailout is being brought back to life as an allegedly technical amendment.

I thought the Senate had sent negotiators to work with the White House to get the best possible civil rights bill we could get.

I realize that in trying to work with a President who voted against the original Civil Rights Act of 1964, and who spent the last 2 years shouting "quota, quota, quota" every time we tried to move this debate forward, negotiations had to include compromise.

So I was unhappy with the damage caps that were negotiated, but we took them and promised to fight that battle later.

But we should reject the resolution as currently drafted which is trying to be inserted because it contains a dead skunk of an amendment that represents special interest legislating at its worst.

Reviving the Wards Cove provision would put the U.S. Senate on record in support of high-priced lobbying tactics over fairness and equity.

It would reward a corporate litigant who fears the consequences of a full hearing on the merits at the trial level where its practices could be weighed against the Griggs standard.

I reserve the remainder of my time.

Mr. President, I yield 1 minute to the Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. Mr. President, I understand why we are here and that is because a deal was made, a compromise was made and then supposedly a drafting error occurred. In fact, it is more than a drafting error. I really hesitate to know what other changes there are in the amendment before us.

Let me just point out one that my staff uncovered. The present Dole minority leadership amendment that is in the bill now that we are proposing to amend under the title II glass ceiling, as it is called, says "the findings and purposes." And it says Congress shall find that. Let me just read this to you, No. 8 says:

> Employment quotas based on race, sex, national origin, religious belief, or disability—A, are antithetical to the historical commitment of the Nation to the principle of equality of opportunity; and, B, do not serve any legitimate business or social purpose.

The PRESIDING OFFICER. The Senator has used his minute.

Mr. ADAMS. I yield 30 seconds.

Mr. DECONCINI. Mr. President, this says we have a policy which was a good amendment from the minority leader saying that quotas are not a national policy. That is gone from the amendment that is before us. So this is more than a technical amendment. My colleagues ought to take some time and look at it and I will bet there are other changes as well, but I know this change takes away the public policy that is that quotas will not be a public policy.

Mr. COATS. Will the Senator from Washington yield me some time?

Mr. ADAMS. I yield 2 minutes to the Senator from Indiana.

Mr. COATS. Mr. President, I thank my colleague from Arizona for pointing out a point I was on the floor ready to raise. It is difficult for me to understand why, as I listen to dozens of Senators come down to this floor stating this is not a quota bill, that a portion of the bill just read by the Senator from Arizona that he states that is now being removed in this so-called technical corrections resolution—if this is not a quota bill, what is wrong with the language that Congress finds that employment quotas based on race, sex, national origin, religious belief, or disability are antithetical to our historical commitment of the Nation to the principle equality of opportunity; and do not serve any legitimate business or social purpose.

I am wondering, if someone, maybe the Senator from Massachusetts, can answer me why that is the case.

Mr. DOLE. Will the Senator yield?

Mr. COATS. I do not know if I have the time to yield.

Mr. DOLE. It is part of the glass ceiling amendment which this Senator offered. We were in negotiations with the House side, with people all around the Capitol. I must say this particular provision is not in the civil rights bill; it is in the glass ceiling section. I like it. It is only a finding, it is not binding.

My statement made it clear this is not a quota bill; it is not a quota section of any bill. The Democrats want a minority of the commission, too, on glass ceiling. We did not want that. We bargained that; we gave away something. By mistake it was not stricken out earlier and it is now being stricken out by technical amendment.

We made an arrangement to get in the glass ceiling title. I think it is important. It is good legislation even without that section, though my statement in support of that section makes it very clear that it is not a quota. We are not suggesting quotas in any glass ceiling study or commission.

Mr. COATS. I am wondering if I might ask the majority leader, why did the Democrats want it out if it is not a problem?

Mr. DOLE. I think there are some who still believe in quotas. I am not one of those.

Mr. COATS. Apparently there were some on the floor who believed it is a quota bill and wanted to remove this language to remove any doubt about Congress' findings, or perhaps any court interpretation later on that Congress would find that it is a quota bill, or excuse me, Congress' intent that it would not be a quota bill.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Mr. DOLE. We worked very closely with a lot of people on this, including lawyers at the White House, the Justice Department, and everything else. We are satisfied it is not a quota bill, that the elimination of this little finding here in another section of the bill, in the glass ceiling section, has absolutely no impact on the bill itself. I preferred leaving it there but in trying to get a majority on the commission which would be Republican we had to give up something.

Mr. COATS. I would prefer it not be a quota bill. My constituents would prefer it not be a quota bill. I do not understand why there would be objection to remove language saying it is not a quota bill if it is not a quota bill.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Washington has 39 seconds.

Mr. ADAMS. Mr. President, last Saturday I was in Seattle and I visited local 37 of the cannery workers' union. Frank Atonio and I shared a few thoughts about how long this road has been for those workers who work the hardest and get paid the least during the Alaska salmon season. Frank and other plaintiffs are from the new generation of cannery workers. I worked in the Alaska canneries with their fathers and uncles during the summers of my youth. Friendships forged in those days endure to the present. I believe in their struggle, and I am honored to carry their fight for justice and fairness on the floor of the Senate today.

The PRESIDING OFFICER. The Senator's time has expired.

The Republican leader has 6 minutes remaining.

Mr. DOLE. I yield back my time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GORTON. Mr. President, after a year and a half of highly contentious negotiations and debates, the leaders of the civil rights community led by the Senator from Massachusetts [Mr. KENNEDY] reached an agreement with the administration over civil rights legislation. This historic compromise was achieved largely through the heroic efforts of my good friend, Senator DANFORTH from Missouri.

As with any good compromise on a topic as important as civil rights, many of the key provisions were neither as favorable as any individual Senator wanted nor as unfavorable as any individual Senator feared. As such, the compromise was extremely fragile; the loss of any piece might well have shattered it. All in all, the compromise was a remarkable package which enjoyed the overwhelming support of this body.

As proposed by Senator DANFORTH and accepted by the civil rights community and the administration, the compromise package contained provisions directing that the amendments would be applied only prospectively, and in particular, that the disparate impact provisions would not affect the 17 years of litigation brought by Frank Atonio Peters against the Wards Cove Packing Co. It was no secret that the compromise would contain these provisions.

Although the provision directed at the Wards Cove litigation was highlighted by my colleague from Washington, Senator ADAMS, no amendment was offered to strike the offending provision as was the absolute right of each Member of this body during the debate. It is the impression of this Senator that each Member of this body who voted on the civil rights compromise fully believed the Wards Cove language to be in the bill, if he thought about it at all.

As we all know by now, these particular provisions inadvertently were dropped from the bill during the amending process. Efforts to restore the terms of the carefully constructed compromise have been blocked, thus necessitating a rollcall vote on this particular matter.

Mr. President, in the view of this Senator, a deal is a deal. I think it is just plain wrong to take advantage of the twist of fate now that the rest of the compromise effectively cannot be undone. Although this Senator took no part in drafting or advocating the controversial provisions in the compromise package—that was negotiated and agreed to by the principal managers of the bill and the administration—I will vote to affirm the exact terms of the bargain.

I would add that, in my view, the language in question does no more than reaffirm for one specific case the more general mandate of the bill that the civil rights amendments will be applied prospectively. Had the civil rights legislation been applicable on a retroactive basis and allowed the wholesale reopening of hundreds of cases, this Senator would not have supported it.

Mr. President, it is the firm view of this Senator that the current civil rights legislation does not change the fundamental principles or approach underlying the 1964 Civil Rights Act. In 1964, Congress entrusted the Supreme Court with the authority and flexibility to determine how those principles should apply to a changing society.

Congress has followed the same approach in 1991, especially with the provisions concerning disparate impact cases. Rather than limiting the flexibility of the Supreme Court by promulgating hard and fast rules to replace court constructs, Congress has wisely left the task of further refining this area of the law to the Supreme Court. Congress has directed the allocation of burden of proof between the parties in disparate impact cases, but has left the Supreme Court free to determine the proper standards for business necessity, guided principally by the string of congressionally ratified Supreme Court cases which immediately preceded Wards Cove versus Atonio. In fact, the Court may, and probably will, reaffirm Ward's Cove at its earliest opportunity.

Thus, in my view, this bill's fate will have no impact on the interpretation of the new Civil Rights Act. But its passage will keep a commitment made by the bill's sponsors, and thus ought to be passed.

Mr. DURENBERGER. Mr. President, I will vote in favor of the Dole civil rights resolution. This resolution restores the civil rights bill to its original form, and therefore the vote on these technical amendments should be the same as it was last week on final passage, 93 to 5.

When the Senate voted to amend the civil rights bill by adding the glass ceiling initiative, we mistakenly removed a provision regarding the effective date for disparate impact cases. That provision stated that "nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983." Today, we are voting to place this provision back into the civil rights bill.

I want to be clear that this vote does not change my view that the bill is completely prospective. In the original cosponsors' interpretive memorandum, which appears in the CONGRESSIONAL RECORD on October 30, 1991, we made clear that the bill takes effect "upon enactment" and "does not apply retroactively." I am pleased that the distinguished Republican leader has made clear his view that the civil rights legislation is to be applied prospectively.

When I voted for the civil rights bill last week, I believed that the bill applied prospectively. My vote in favor of this resolution does not alter that interpretation. Some may attempt to argue at a later date that a special exemption for cases filed before March 1, 1975, and adjudicated after October 1983, creates an inference that the bill, in general, is retroactive.

Mr. President, that is the wrong conclusion to draw from this resolution. This resolution, in my view, is really not necessary. We all know that the bill applies prospectively, because that is what the plain language of the civil rights bill states. Therefore, the resolution adds nothing new.

However, there was some concern that an employer such as Wards Cove should not be required to litigate the fact that the civil rights bill applied prospectively. Therefore, the Senate included a provision that made explicit with respect to Wards Cove what was explicit regarding the rest of the bill: that it is not retroactive in application. Thus, the general clause that states that the bill is prospective is simply reinforced by this amendment that provides merely one example where the bill is prospective.

Mr. President, in my view, aside from the other technical changes, the "effective date" language in this resolution is not necessary. I am voting for it simply because it was included in the original bill, and because it does not modify the meaning of the civil rights initiative.

Mr. SIMPSON. Mr. President, I wish to clarify my intent in my reluctant vote in favor of this resolution.

By adopting this resolution, the Senate is merely enforcing the terms of the agreement reached in the last week of October regarding the compromise civil rights bill.

By including specific language to make it clear that the Wards Cove Co. will not be treated retroactively, I in no way am implying that all other companies with litigation pending on the date of enactment should be treated retroactively. To the contrary, I read section 402 of S. 1745 to apply the bill prospectively to all parties, so that no one with litigation pending on the date of enactment would have the rules changed on them.

By deleting "anti-quota" language from Senator DOLE's glass ceiling section in S. 1745, we are simply taking out language that Senator KENNEDY found unacceptable. Personally, I strongly believe in the antiquota language from Senator DOLE's bill. Since it is in the "Congressional Findings" section of the bill, it has no legal effect. However, I find it very ironic that Senator KENNEDY claims to oppose quotas, yet wishes to have antiquota language deleted from the bill. I continue to oppose quotas in all forms. However, I will not object to the deletion of this antiquota language since it is in a nonbinding section of the legislation. Had the language in question been in a different section of the substance of the bill I would strongly object to its deletion.

Mr. SIMON. Mr. President, I wish to join my friend from the State of Washington, Senator ADAMS, and express my serious concern about this provision to add back into the civil rights bill an exemption for one company. I am aware that we are addressing this issue today primarily because of a clerical error in passing S. 1745 last week. But more fundamentally, we would not have undertaken the 2-year effort to pass a civil rights bill were it not for the original Wards Cove decision by the U.S. Supreme Court.

The Wards Cove decision was the engine not only to overturn other decisions by the U.S. Supreme Court that unwisely narrowed the historic antidiscrimination laws but also to redress other wrongs. Last week, we extended civil rights protections to the greatest extent ever before to our own employees here in the Senate.

Senator after Senator spoke about the intensity of feeling among their constituents against Congress passing laws and then conveniently exempting itself. Last week, the Senate made clear that it would not exempt itself from coverage. And, here, today, we are asked to exempt the one company involved in the 17-year-old suit that brought us to this day.

I cannot believe that the same administration that fought this bill for almost 2 years and took to the national networks to speak out against the exemptions from the civil rights laws that Congress had would threaten to jeopardize this civil rights bill for an exception for one company.

According to the dissenting opinions by Justice Stevens and Justice Blackmun in the case, the Wards Cove Co. maintained segregated housing and dining facilities for Frank Atonio and his mainly Filipino and Alaska Native coworkers. These cannery workers were hired during salmon season in unskilled jobs and assigned separate housing and separate eating facilities from the mainly white, noncannery, higher paid, skilled workers for Wards Cove.

This arrangement exacerbated the discriminatory hiring practices and procedures conducted by the company. According to lower court fact findings in this case, for noncannery workers, Wards Cove practiced nepotism, had an English language requirement, gave a preference to rehiring workers already in the noncannery section, and did not publicly post job openings. Job information was passed along by word of mouth, making the housing and eating segregation all that much more significant and damaging to the employment opportunities of the minority workers there.

Mr. President, the Wards Cove case has taken on extreme importance to the Asian-American community nationwide. As a Senator from the State of Illinois, I represent the fifth largest Asian-American population in the United States. Too often, Asian-Americans have had to stay quiet in the face of discriminatory conditions like those described in the ninth circuit opinion in the Wards Cove case. As Judge Tang wrote, "Race labeling is pervasive at the salmon canneries, where 'Filipinos' work with the 'Iron Chink' before retiring to their 'Flip bunkhouse.'" (*Atonio* v. *Wards Cove Packing Co.*, 827 F.2d 439, 447)

The National Asian Pacific American Bar Association with close to 100 members in my home State has written me about this provision. I ask unanimous consent that a letter from the bar association's president, Peggy Nagae Lum, on behalf of the association be printed immediately following my remarks.

Once again, I want to thank our colleague, Senator ADAMS, for providing this opportunity for the full Senate to vote on this matter.

NATIONAL ASIAN PACIFIC
AMERICAN BAR ASSOCIATION,
Seattle, WA, November 1, 1991.

Re opposition of National Asian Pacific American Bar Association to exemption for Wards Cove Packing Co. to the Civil Rights Act of 1991

DEAR SENATOR: The National Asian Pacific American Bar Association ("NAPABA") is the national organization of Asian Pacific American lawyers and local Asian Pacific American bar associations. On behalf of NAPABA, I am writing to ask that you oppose the proposed amendment to the Civil Rights Act of 1991 ("CRA 1991") which would give preferential treatment to Wards Cove Packing Co.

I am referring to efforts to insert a proposed §22(b) to CRA 1991, which reads as follows:

"Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975 and for which an initial decision was rendered after October 30, 1983."

As Senator Murkowski, the author of the proposed amendment, has acknowledged, this language appears to apply to only one case, *Wards Cove Packing Co.* v. *Atonio*. We are particularly concerned because the workforce of the Wards Cove Packing Co. factory consists primarily of low income Asian Pacific Americans.

NAPABA vigorously objects to the proposed amendment, which undercuts the principles of fairness that CRA 1991 is designed to restore. To pass the amendment would say once again to the voters of this country that a company that can afford to mount an expensive lobbying campaign will successfully obtain special favorable treatment exempting it from the laws of this country.

NAPABA cannot see any legitimate basis for a special exemption to CRA 1991 and Wards Cove Packing Co. is a particularly poor candidate to be the beneficiary of a special rule. That Wards Cove Packing Co.'s conduct in this case was particularly egregious and offensive is demonstrated by observations by Justice Stevens, Justice Blackmun and Judge Tang.

Justice Stevens, writing for the four dissenting justices in *Wards Cove Packing Co. v. Atonio*, stated:

"Some characteristics of the Alaska salmon industry described in this litigation-in particular, the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines-bear an unsettling resemblance to aspects of a plantation economy." *Wards Cove Packing Co. v. Atonio*, 490 U.S. 664 n. 4 (1989).

Justice Blackmun, speaking for three of the dissenters, added:

"The salmon industry as described by this record takes us back to the kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation. * * * This industry has long been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest-level positions, on the condition that they stay there." *Id.* at 662.

Additionally, Judge Tang, writing for the 9th Circuit, stated:

"Race labeling is pervasive at the salmon canneries, where "Filipinos" work with the 'Iron Chink' before retiring to their 'Flip bunkhouse'." *Atonio v. Wards Cove Packing Co.*, 827 F.2d 439, 447 (9th Cir.1987).

As noted above, the primary victims of Wards Cove Packing Co.'s egregious discriminatory practices were Asian Pacific Americans and Alaskan natives. Thus, if Congress acts to exempt Wards Cove Packing Co. from the reach of CRA 1991, the primary victims of the unfair preferential treatment will be Asian Pacific Americans and Alaskan natives.

Concerned about the blatant unfairness of the exemption, the Board of Governors of NAPABA unanimously voted at its October 31, 1991 board meeting to urge Congress to oppose the amendment to CRA 1991 that would exclude Wards Cove Packing Co. I am confident that the outrage felt by the NAPABA Board of Governors at its recent meeting, and by the NAPABA members present at its annual convention the next day, will be shared by many other Asian Pacific Americans, irrespective of party identification and political philosophy, as we make them aware of the unfairness of the proposed exemption to Asian Pacific Americans.

I strongly urge you to vote against any efforts to insert §22(b) to CRA 1991.

PEGGY NAGAE LUM,
President.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the resolution. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON], the Senator from Nebraska [Mr. KERREY], the Senator from Colorado [Mr. WIRTH] and the Senator from Pennsylvania [Mr. WOFFORD], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH], is absent due to a death in the family.

The PRESIDING OFFICER [Mr. BRYAN]. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 73, nays 22, as follows:

[Rollcall Vote No. 244 Leg.]

YEAS—73

Baucus
Bentsen
Biden
Bond
Boren
Breaux
Bryan
Bumpers
Burns
Byrd
Chafee
Cochran
Cohen
Craig
D'Amato
Danforth
Daschle
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Gorton
Graham
Gramm
Grassley
Hatfield
Heflin
Helms
Hollings
Jeffords
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Kohl
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Metzenbaum
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sasser
Seymour
Shelby
Simpson
Specter
Stevens
Symms
Thurmond
Wallop
Warner

NAYS—22

Adams
Akaka
Bingaman
Bradley
Brown
Burdick
Coats
Conrad
DeConcini
Dixon
Harkin
Inouye
Lautenberg
Leahy
Mikulski
Nickles
Robb
Sanford
Sarbanes
Simon
Smith
Wellstone

NOT VOTING—5

Cranston
Hatch
Kerrey
Wirth
Wofford

So the resolution (S. Res. 214) as amended, was agreed to.

[The resolution will appear in a subsequent issue of the RECORD.]

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senator from Kansas be recognized to address the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered. If the Senator will suspend for a moment, the Senate is out of order.

The Senator from Kansas is recognized.

ZAMBIA AND ZAIRE

Mrs. KASSEBAUM. Mr. President, last week was a historic week on the African continent.

On Thursday, the people of Zambia went to the polls and elected Mr. Frederick Chiluba as president. In doing so, Zambians removed an icon of African politics, Mr. Kenneth Kaunda, who ruled the country since independence in 1964.

The defeat of Mr. Kaunda symbolizes the dramatic political changes taking place in Africa today. From Benin to the Congo, Cape Verde to Mozambique, Africans are demanding that their Governments be accountable to their citizens. They want free speech, press that tells the whole story, elections with real choices.

Zambia's dramatic election also illustrates the sweeping rejection of statist economic policies in Africa. Due to mismanagement and falling copper prices, Zambia's economy has slid into deep decline. Inflation is skyrocketing, the infrastructure is largely beyond repair, and price subsidies have removed incentives for domestic food production.

Indeed, President Chiluba has a difficult road ahead. I believe it is important that the West give what support is possible as Zambia tries to emerge from its challenging situation.

Mr. President, I commend the people of Zambia for their courageous and determined effort to bring democracy to their nation. Their peaceful struggle offers hope to people all over the African Continent who desire democratic governments and efficient economies.

I also would like to recognize President Kaunda's, I believe, really very courageous position as he graciously stepped down and conceded the loss of power.

Sometimes volumes are spoken in the way one can leave, as well as the way one can lead.

Over the past 27 years, the world has grown to respect the man who led Zambia to independence. He led the struggle for the independence of Zimbabwe and the abolition of apartheid in South Africa. He has continually pressed efforts to resolve Africa's conflicts through dialog—not fighting.

Mr. President, President Kaunda has proven this week to be a true statesman. By leading Zambians to the ballot boxes and by respecting the results of the election, President Kaunda respected the wishes of his people. He saw what is best for his nation and followed this path, despite the loss of personal power.

While Zambians peacefully voted for a new democratic government, to the north in Zaire, the regime of President Mobutu stubbornly resists any form of democratic change.

Two weeks ago, I expressed my deep concern about the deteriorating situation in Zaire. A that time, I urged the United States administration to send a strong signal to President Mobutu that unless he stopped resisting democracy all cooperation with Zaire would cease.

Over the past 2 weeks, President Mobutu's intransigence has only increased. He has resisted movement toward democracy at every turn. He has suppressed the voice of the people at every opportunity.

Two weeks ago, President Mobutu appointed an interim coalition Government, sharing power with opposition leaders. Faced with the possibility of losing absolute control, President Mobutu quickly sacked this Government. He has since appointed a new interim regime, but he continues to control the major ministries. Most analysts believe this Government is a sham.

The economy of Zaire is nearing total collapse. Inflation is skyrocketing, with an annual rate of over 3,000 percent. The infrastructure is largely destroyed. Food shortages are increasing.

It is now clear to all that the regime of President Mobutu no longer has any legitimacy within Zaire.

Mr. President, I believe the situation in Zaire has reached a precipice: Either democracy is given a chance—as it was in Zambia—or the country deteriorates into civil war and anarchy.

In this situation, the message from the United States to President Mobutu should be firm and unambiguous: Having subverted the democratic process, we can no longer support your administration.

Mr. President, some argue that the departure of President Mobutu would raise uncertainties about the future of Zaire. Who would make up the new leadership? What would they be like? What action would the military, particularly the special forces, take if President Mobutu leaves?

I do not have answers to these questions. No one does. But what is clear is that the continued subversion of the democratic forces in Zaire will lead to the political and economic deterioration of the country. Time is of the essence.

Mr. President, President Kaunda's care for his people—care for the future of his nation—led him to respect the democratic wishes of the Zambian people. I would hope that President Mobutu would demonstrate the same concern for the people of Zaire. And I would hope that the United States would strongly support democracy in Zaire.

I yield the floor and I thank the majority leader.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and withdrawals which were referred to the appropriate committees.

(The nominations and withdrawals received today are printed at the end of the Senate proceedings.)

REGULATORY PROGRAM OF THE U.S. GOVERNMENT—MESSAGE FROM THE PRESIDENT—PM-93

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

This annual *Regulatory Program of the United States Government*, created pursuant to Executive Order No. 12498, sets forth my Administration's regulatory policies, goals, and objectives for the coming year. This *Regulatory Program*, containing submissions of the most significant regulatory activities planned for the year, increases agency accountability for regulatory actions, facilitates coordinated Federal regulatory policy, helps reduce unjustifiable regulatory burdens, and provides the public and the Congress with better access to the regulatory plans of the executive branch.

Federal regulations to implement the laws that protect Americans' health and safety, environment, and economic system are crucial to the public welfare. But these regulations must be efficient and cost effective. We cannot afford for them to be otherwise.

Americans spend billions of hours and billions of dollars each year dealing with Federal regulations and paperwork. With over 100 agencies implementing thousands of regulations, the Federal Government affects nearly every facet of American life. Although intended to benefit and protect the American public, Government regulations may—through faulty design or clumsy implementation—have an opposite, even harmful, effect. When Federal regulations impose costs that exceed benefits, taxpayers, consumers, and businesses alike are adversely affected—paying both higher prices and higher taxes.

That is why we are committed to regulatory reform and paperwork reduction. This Nation must devote its maximum energies and capital to growth and prosperity, consistent with protection of health and safety and the environment.

To reduce unnecessary regulatory burdens, I have asked the Council on Competitiveness, chaired by Vice President Quayle, in conjunction with the Office of Management and Budget's Office of Information and Regulatory Affairs, to ensure agency adherence to the cost-benefit principles and the regulatory review process outlined in Executive Order No. 12291. At a recent meeting of the Council, the Vice President reaffirmed the Administration's commitment to remove excessive regulatory burdens, and regulatory agencies renewed their commitment, consistent with law, to reduce the amount of regulation and ensure that rules clearly maximize benefits and minimize costs.

By assuring implementation of the basic principles set forth in Executive Order No. 12291, I believe this country can achieve a more rational, more reasonable regulatory policy that both protects health and safety and the environment and benefits American consumers as well as our global competitiveness.

GEORGE BUSH.

THE WHITE HOUSE, *November 5, 1991*.

MESSAGES FROM THE HOUSE

At 7:18 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House had passed the bill (S. 1848) to restore the authority of the Secretary of Education to make certain preliminary payments to local educational agencies, and for other purposes, without amendment.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2091. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, a report concerning the transfers of funds; to the Committee on Appropriations.

EC-2092. A communication from the President of the Oversight Board and from the Chief Executive Officer of the Resolution Trust Corporation, transmitting jointly, pursuant to law, a report on the activities and efforts of the RTC, the Federal Deposit Insurance Corporation, and the Oversight Board; to the Committee on Banking, Housing and Urban Affairs.

EC-2093. A communication from the Secretary of the Department of Housing and Urban Development, transmitting, pursuant to law, a report on the Rental Rehabilitation Program for fiscal year 1991; to the Committee on Banking, Housing and Urban Affairs.

EC-2094. A communication from the Secretary of the Department of Housing and Urban Development, transmitting, pursuant to law, a report on the strategy and action plan developed to assist in the disposition of foreclosed properties; to the Committee on Banking, Housing and Urban Affairs.

EC-2095. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report containing a description of any progress achieved in negotiations concerning international arrangements restricting the use of tied and partially untied aid credits for commercial purposes, and details on the specific tied aid credit transactions authorized by Export-Import Bank of the United States; to the Committee on Banking, Housing and Urban Affairs.

EC-2096. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on H.R. 2426, the Military Construction Appropriations Act for FY 1992 (P.L. 102-136); to the Committee on the Budget.

EC-2097. A communication from the Secretary of Energy, transmitting, pursuant to law, a report on enforcement actions and comprehensive status of Exxon and stripper well oil overcharge funds; to the Committee on Energy and Natural Resources.

EC-2098. A communication from the Acting Deputy Associate Director for Collection and Disbursement, Minerals Management Service, United States Department of the Interior, transmitting, pursuant to law, a report on certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2099. A communication from the Acting Deputy Associate Director for Collection and Disbursement, Minerals Management Service, United States Department of the Interior, transmitting, pursuant to law, a report on certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2100. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report on federal onshore oil and gas management; to the Committee on Energy and Natural Resources.

EC-2101. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report on the activities of the Economic Development Administration for fiscal year 1990; to the Committee on Environment and Public Works.

EC-2102. A communication from the Assistant Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report on the administration of Title 1 of the Marine Protection, Research, and Sanctuaries Act of 1972 (P.L. 92-532); to the Committee on Environment and Public Works.

EC-2103. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a report of the building project survey for Kansas City, Missouri, and a prospectus for the design of the White House Remote Delivery Site and U.S. Secret Service Vehicle Facility in Washington, D.C.; to the Committee on Environment and Public Works.

EC-2104. A communication from the Environmental Protection Agency, transmitting, pursuant to law, a report on the progress and accomplishments of the Superfund Innovative Technology Evaluation Program for fiscal year 1990; to the Committee on Environment and Public Works.

EC–2105. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report on the nondisclosure of Safeguards Information for the quarter ending September 30, 1991; to the Committee on Environment and Public Works.

EC–2106. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report on abnormal occurrences at licensed facilities for the second calendar quarter of 1991; to the Committee on Environment and Public Works.

EC–2107. A communication from the Board Members of the Railroad Retirement Board, transmitting, pursuant to law, a report concerning referrals by the investigating official to the reviewing official, matters transmitted to the Attorney General, hearings conducted by the presiding officers, and actions to collect civil penalties or assessments during fiscal year 1991; to the Committee on Governmental Affairs.

EC–2108. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, a report on Minority Small Business and Capital Ownership Development; to the Committee on the Small Business.

EC–2109. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on Convention No. 171, Recommendation No. 178, Protocol of 1990, and a letter from the Department of Labor; to the Committee on Foreign Relations.

EC–2110. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on Convention No. 170, Recommendation No. 177, and a letter from the Department of Labor; to the Committee on Foreign Relations.

EC–2111. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to October 24, 1991; to the Committee on Foreign Relations.

EC–2112. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–93 adopted by the Council on October 1, 1991; to the Committee on Governmental Affairs.

EC–2113. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–94 adopted by the Council on October 1, 1991; to the Committee on Governmental Affairs.

EC–2114. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–96 as adopted by the Council on October 1, 1991; to the Committee on Governmental Affairs.

EC–2115. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–95 as adopted by the Council on October 1, 1991; to the Committee on Governmental Affairs.

EC–2116. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–90 as adopted by the Council on October 1, 1991; to the Committee on Governmental Affairs.

EC–2117. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–89 as adopted by the Council on October 1, 1991; to the Committee on Governmental Affairs.

EC–2118. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–88 as adopted by the Council on October 1, 1991; to the Committee on Governmental Affairs.

EC–2119. A communication from the Assistant Secretary of Indian Affairs, Department of the Interior, transmitting, pursuant to law, a report containing recommendations for amendments to Federal laws; to the Select Committee on Indian Affairs.

EC–2120. A communication from the National Safety Council, Office of the President, transmitting, pursuant to law, a report of the audit of the financial transactions of the National Safety Council and Foundation for Safety and Health for the fiscal years ended June 30, 1991 and 1990; to the Council of the Judiciary.

EC–2121. A communication from the Secretary of Education, transmitting, pursuant to law, a report transmitted to the Federal Register for scheduled publication; to the Committee on Labor and Human Resources.

EC–2122. A communication from the Chairman of the Jacob K. Javits Board, transmitting, pursuant to law, a report of the Jacob K. Javits Fellowship Board; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

S. 1915. An original bill to amend the Higher Education Act of 1965 to provide for the financial security of the Student Loan Marketing Association, and for other purposes (Rept. No. 102–202).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1256. A bill to direct the Secretary of Health and Human Services to develop and implement an information gathering system to permit the measurement, analysis, and reporting of welfare dependency.

By Mr. BIDEN, from the Committee on the Judiciary, with amendments:

S. 1505. A bill to amend the law relating to the Martin Luther King, Jr. Federal Holiday Commission.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. KENNEDY:

S. 1915. An original bill to amend the Higher Education Act of 1965 to provide for the financial security of the Student Loan Marketing Association, and for other purposes; from the Committee on Labor and Human Resources; placed on the calendar.

By Mr. LEAHY (for himself and Mr. GORE):

S. 1916. A bill to transfer Federal financial assistance currently used to develop herbicide resistant plants to nonchemical weed control systems, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BROWN (for himself, Mr. KOHL, Mr. STEVENS, Mr. LOTT, Mr. GARN, Mr. WALLOP, Mr. BURNS, Mr. SMITH and Mr. JEFFORDS):

S. 1917. A bill to amend the Internal Revenue Code of 1986 to provide for the indexing of certain assets; to the Committee on Finance.

By Mr. SIMON:

S. 1918. A bill to amend the Internal Revenue Code of 1986 to provide for the designation on income tax forms of tax overpayments and contributions to retire the public debt to be deposited in an account designated in title 31, United States Code; to the Committee on Finance.

By Mr. COATS (for himself and Mr. LUGAR):

S. 1919. A bill to modify the boundaries of the Indiana Dunes National Lakeshore, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KENNEDY (for himself, Mr. CRANSTON, Mrs. KASSEBAUM and Mr. SIMON):

S. Con. Res. 73. A concurrent resolution expressing the sense of the Congress with respect to the implementation of the United Nations peace plan for the Western Sahara; to the Committee on Foreign Relations.

By Mr. DECONCINI (for himself, Mr. D'AMATO, Mr. FOWLER, Mr. WALLOP and Mr. CRAIG):

S. Con. Res. 74. A concurrent resolution calling for acceptance and implementation by certain republics of the commitments on human rights, fundamental freedoms, and humanitarian cooperation contained in the Helsinki Final Act and other documents of the Conference on Security and Cooperation in Europe; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself and Mr. GORE):

S. 1916. A bill to transfer Federal financial assistance currently used to develop herbicide resistant plants to nonchemical weed control systems, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

HERBICIDE REDUCTION ACT OF 1991

Mr. LEAHY. Mr. President, I am concerned about the Department of Agriculture's continued funding of herbicide resistant plant development and research. I should tell you, Mr. President, I feel the Department of Agriculture should help farmers develop safer growing techniques instead of helping chemical companies sell more pesticides. The funding of herbicide resistant plant research is a short-sighted, misguided policy.

The reason chemical companies like herbicide resistant plants is clear: Once commercially licensed, these plants will encourage greater pesticides use, not less. This is not what the public nor farmers want.

The American public is demanding safer food and groundwater. Farmers are worried about prolonged exposure to pesticides that place them and their families at risk. A poll of Iowa farmers showed that 78 percent of Iowa farmers believe that modern farming relies too heavily on pesticides.

The United States is the world leader in biotechnology research and should continue to be, but leadership means funding the right projects in the right areas; herbicide resistant plants are neither.

Instead of herbicide resistant plants, we should be looking at disease, drought, or frost resistant plants.

The United States' food supply is one of the safest in the world. At a time when we are toughening food safety and environmental standards, it makes no sense for the administration to be funding research that will encourage greater chemical herbicide use.

USDA is not the only one developing herbicide resistant plants. The chemical industry is spending millions of dollars on similar research. The companies will not disclose how much they are spending on their research, but their motives are clear. Once approved for commercial use, the annual U.S. market for these plants is estimated to exceed $300 million by the year 2000. The world market will be even larger.

The administration should not be spending precious tax dollars on research that primarily benefits the profit margins of the chemical industry.

The primary beneficiaries of this research are not farmers or consumers, but rather the large chemical companies getting the benefits at the American taxpayers' expense.

I support continued research in biotechnology. And despite the protests from the chemical industry, this legislation is neither antitechnology nor anitbiotechnology. USDA research funding would not be reduced. Instead, Federal funds spent on developing herbicide resistance plants would be shifted to other biotechnology and sustainable weed control research.

Biotechnology should, and will, play a significant role in agriculture. But as with any other technology, there are appropriate and inappropriate uses. An application that will increase the use of chemical herbicides is inappropriate.

Because of USDA bookkeeping procedures, no one knows for sure the exact amount the administration spends on herbicide resistant plant research. The Senate Agriculture Committee has uncovered at least $8.4 million in spending. Two examples of federally funded herbicide resistant plant research include:

USDA is spending $103,000 on developing plants resistant to 2,4-D, a known carcinogen that is a close relative of the defoliant agent orange. A study of Kansas farmers showed that farmers exposed to 2,4-D as few as 20 days had a six times greater chances of developing non-Hodgkins lymphoma. In addition, the Food and Drug Administration found increased incidence of malignant tumors, breast tumors, and malignant blood cell tumors in laboratory animals.

USDA is also spending $705,000 on developing plants resistant to atrazine, a pesticide labeled by the Environmental Protection Agency as a class C possible carcinogen. Atrazine also contaminates groundwater. A 1989 U.S. Geological Survey study found atrazine in 98 percent of the examined streams, 56 percent of which had levels higher than the EPA's health advisory level. Atrazine is currently undergoing a second review by EPA because of serious "potential oncogenic risk * * * and concern about widespread contamination of ground water."

Groundwater contamination is a threat nationwide. Over 95 percent of rural America relies on this same groundwater for drinking water.

Herbicide resistant plants will not solve the problem of reducing chemicals in our farming systems. They will not protect the American farmer and farmworker. They will not maintain the highest possible standards of food quality. They will not preserve our precious groundwater supplies. They will not protect our beleaguered natural resources.

We must stop funding herbicide resistant plant research and start funding research that will help ensure the continued preeminence of American agricultural products in a global marketplace that is becoming more and more environmentally conscious. Now is the time to act.

By Mr. BROWN (for himself, Mr. KOHL, Mr. STEVENS, Mr. LOTT, Mr. GARN, Mr. WALLOP, Mr. BURNS, Mr. SMITH, and Mr. JEFFORDS):

S. 1917. A bill to amend the Internal Revenue Code of 1986 to provide for the indexing of certain assets; to the Committee on Finance.

ASSET INDEXING ACT OF 1991

• Mr. BROWN. Mr. President, today we are introducing legislation that will help bring fairness to our tax laws and provide an incentive to hold long-term investments.

It's unfair to tax Americans on the sale of an asset when there is no real gain. Current tax laws does just that because it fails to adjust the basis of an asset for inflation.

Our legislation would index the basis of tangible property and stock in a corporation that have held for at least 3 years. Assets that would not be indexed are creditor's interest, options, net lease property, preferred stock, stock in a subchapter S corporation, stock in a personal holding company, and stock in a foreign corporation.

Under our bill, the eligible basis of assets will be indexed beginning January 1, 1992, and will apply to assets sold after January 1, 1999.

The Congressional Budget Office [CBO] reported in an August 1990 report that, "more assets would be sold under indexing or an exclusion than would be under present law." The Joint Committee on Taxation [JCT] has calculated that our legislation will have a negligible effect on our current budget estimates.

Indexing for such longer term investments, held for at least 3 years, would benefit all individual investors no matter how large or small. Suppose you bought a small store at the beginning of next year on January 1, 1992, for $100,000, operated it for 7 years—and thus, qualified for the 3-year holding period—and sold it on January 1, 1991, for $200,000. If the statutory tax rate was 28 percent, the previous owner would be taxed $28,0000 on the $100,000 nominal capital gain. But, if the inflation rate averaged 4.5 percent over the course of those 7 years, about $36,000 of the $100,000 in gain would be the result of inflation. The real capital gain would only be a little over $64,000, resulting in a tax of $18,000, rather than $28,000 had the asset not been indexed for inflation. This frees up an additional $10,000 for savings and investment.

There have been numerous capital gains proposals with many different rate reductions and holding periods to encourage long-term investment. Ours would reward longer term investments with indexing. Ours would be available to all investors no matter how large or small. Ours would have a negligible effect on our current budget estimates.

Hopefully, indexing assets is something we can all agree upon this session of the 102d Congress.

I ask unanimous consent that the full text of our bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Asset Indexing Act of 1991".

SEC. 2. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

(a) IN GENERAL.—Part II of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

"SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Except as provided in paragraph (2), if an indexed asset which has been held for more than 3 years is sold or otherwise disposed of, for purposes of this title the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deduction for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) stock in a corporation, and

"(B) tangible property (or any interest therein), which is a capital asset of property used in the trade or business (as defined in section 1231(b)).

"(2) CERTAIN PROPERTY EXCLUDED.—For purposes of this section, the term 'indexed asset' does not include—

"(A) CREDITOR'S INTEREST.—Any interest in property which is in the nature of a creditor's interest.

"(B) OPTIONS.—Any option or other right to acquire an interest in property.

"(C) NET LEASE PROPERTY.—In the case of a lessor, net lease property (within the meaning of subsection (h)(1)).

"(D) CERTAIN PREFERRED STOCK.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(E) STOCK IN CERTAIN CORPORATIONS.—Stock in—

"(i) a personal holding company (as defined in section 542), and

"(ii) a foreign corporation.

"(3) EXCEPTION FOR STOCK IN FOREIGN CORPORATION WHICH IS REGULARLY TRADED ON NATIONAL OR REGIONAL EXCHANGE.—Clause (ii) of paragraph (2)(E) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, or any domestic regional exchange for which quotations are published on a regular basis other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)), and

"(B) stock in a foreign corporation held by a United States person who meets the requirements of section 1248 (a)(2).

(c) INDEXED BASIS.—For purposes of this section—

"(1) INDEXED BASIS.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) APPLICABLE INFLATION RATIO.—The applicable inflation ratio for any asset is the percentage arrived at by dividing—

"(A) the gross national product deflator for the calendar quarter in which the disposition takes place, by

"(B) the gross national product deflator for the calendar quarter ending December 31, 1992 (or, if later, the calendar quarter in which the asset was acquired by the taxpayer).

The applicable inflation ratio shall not be taken into account unless it is greater than 1. The applicable inflation ratio for any asset shall be rounded to the nearest one-tenth of 1 percent.

"(3) GROSS NATIONAL PRODUCT DEFLATOR.—The gross national product deflator for any calendar quarter is the implicit price deflator for the gross national product for such quarter (as shown in the first revision thereof).

"(d) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

"(A) a substantial improvement to property,

"(B) in the case of stock of a corporation, a substantial contribution to capital, and

"(C) any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—

"(A) IN GENERAL.—The applicable inflation ratio shall be appropriately reduced for calendar months at any time during which the asset was not an indexed asset.

"(B) CERTAIN SHORT SALES.—For purposes of applying subparagraph (A), an asset shall be treated as not an indexed asset for any short sale period during which the taxpayer or the taxpayer's spouse sells short property substantially identical to the asset. For purposes of the preceding sentence, the short sale period begins on the day after the substantially identical property is sold and ends on the closing date for the sale.

"(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(4) SECTION CANNOT INCREASE ORDINARY LOSS.—To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

"(5) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

"(6) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

"(e) CERTAIN CONDUIT ENTITIES.—

"(1) REGULATED INVESTMENT COMPANIES; REAL ESTATE INVESTMENT TRUSTS; COMMON TRUST FUNDS.—

"(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

"(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

"(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

"(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

"(E) QUALIFIED INVESTMENT ENTITY.—For purposes of this paragraph, the term 'qualified investment entity' means—

"(i) a regulated investment company (within the meaning of section 851),

"(ii) a real estate investment trust (within the meaning of section 856), and

"(iii) a common trust fund (within the meaning of section 584).

"(2) PARTNERSHIPS.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(3) SUBCHAPTER S CORPORATIONS.—In the case of an electing small business corporation, the adjustment under subsection (a) at the corporate level shall be passed through to the shareholders.

"(f) DISPOSITIONS BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employer under subsection (b) or (c) of section 414.

"(g) TRANSFERS TO INCREASE INDEXING ADJUSTMENT OR DEPRECIATION ALLOWANCE.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is—

"(1) to secure or increase an adjustment under subsection (a), or

"(2) to increase (by reason of an adjustment under subsection (a)) a deduction for depreciation, depletion, or amortization,

the Secretary may disallow part or all of such adjustment or increase.

"(h) DEFINITIONS.—For purposes of this section—

"(1) NET LEASE PROPERTY DEFINED.—The term 'net lease property' means leased real property where—

"(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

"(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property.

"(2) STOCK INCLUDES INTEREST IN COMMON TRUST FUND.—The term 'stock in a corporation' includes any interest in a common trust fund (as defined in section 584(a)).

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of such chapter 1 of such Code is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of certain assets for purposes of determining gain or loss."

(c) ADJUSTMENT TO APPLY FOR PURPOSES OF DETERMINING EARNINGS AND PROFITS.—Subsection (f) of section 312 of such Code (relating to effect on earnings and profits of gain or loss and of receipt of tax-free distributions) is amended by adding at the end thereof the following new paragraph:

"(3) EFFECT ON EARNINGS AND PROFITS OF INDEXED BASIS.—For substitution of indexed basis for adjusted basis in the case of the disposition of certain assets after December 31, 1996 see section 1022(a)(1)."

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 shall apply to dispositions after December 31, 1996, in taxable years ending after such date.•

By Mr. COATS (for himself and Mr. LUGAR):

S. 1919. A bill to modify the boundaries of the Indiana Dunes National Lakeshore, and for other purposes; to the Committee on Energy and Natural Resources.

INDIANA DUNES NATIONAL LAKESHORE ACCESS AND ENHANCEMENT ACT

• Mr. COATS. Mr. President, I am pleased today to introduce a bill, on behalf of Senator LUGAR and myself, to enhance and expand the Indiana Dunes National Lakeshore. Today is a special day for Hoosiers as it marks the 25th anniversary of the dunes.

The sandy beaches of the Indiana Dunes stretch 50 miles along Lake Michigan, and the park is within 100 miles of 10 million people. From the steel plants of Gary, to the Michigan City powerplant, the dunes is the epitome of an urban park—host to almost 2 million visitors annually.

The legislation we introduce today is the result of a careful review of all the parcels at the Dunes which have been suggested for inclusion in the National Lakeshore. In crafting this bill, Senator LUGAR and I have done our best to listen to all sides with equal sympathy and understanding. We look forward to passing this bill into law.

As the poet Carl Sandburg once wrote, "[the Dunes] are to the Midwest what the Grand Canyon is to Arizona and the Yosemite to California. They constitute a signature of time and eternity; once lost, the loss would be irrevocable." On this 25th anniversary of the Dunes, we reaffirm our commitment to the protection of this important national treasure.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1919

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indiana Dunes National Lakeshore Access and Enhancement Act".

SEC. 2. DEFINITION.

For the purposes of this Act, the term "the Act" means the Act entitled "An Act to provide for the establishment of the Indiana Dunes National Lakeshore, and for other purposes", approved November 5, 1966 (6 U.S.C. 460u et seq.).

SEC. 3. BOUNDARIES.

(a) IN GENERAL.—The first section of the Act (16 U.S.C. 460u) is amended by striking "October 1986, and numbered 626-80, 033-B" and inserting "September 1991, and numbered 626-80, 039-A".

(b) CRESCENT DUNE.—Section 12 of the Act (16 U.S.C. 460u-12) is repealed.

SEC. 4. IMPROVED PROPERTY; RETENTION OF RIGHTS.

(a) ADDITIONAL AREAS.—The table in section 4 of the Act (16 U.S.C. 460u-3) is amended to read as follows:

"Property within boundaries of map	Construction began before
Dated October 1, 1991	October 1, 1991
Dated October 1986, No 626–80, 033–B	February 1, 1986
Dated December 1980, No. 626–91014	January 1, 1981
Dated September 1976, No. 626–91007	February 1, 1973
Dated September 1966, No. LNPNE–1008–ID	January 4, 1965".

(b) RETENTION OF RIGHTS.—Section 5(a) of the Act (16 U.S.C. 460u-5(a)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) In the case of improved property included within the boundaries of the lakeshore after October 1, 1991, that was not included within the boundaries before that date, an individual who is an owner of record of such property as of that date may retain a right of use and occupancy of such improved property for noncommercial residential purposes for a term ending at either of the following:

"(i) A fixed term not to extend beyond October 1, 2020, or such lesser fixed term as the owner may elect at the time of acquisition.

"(ii) A term ending at the death of the owner or the owner's spouse, whichever occurs later.

The owner or owners shall elect the term to be reserved.

"(B) Subparagraph (A) shall apply only to improved property owned by an individual who—

"(i) was an owner of record of the property as of October 1, 1991;

"(ii) had attained the age of majority as of that date; and

"(iii) made a bona fide written offer not later than October 1, 1997, to sell the property to the Secretary.".

(c) Extension of Leases.—Section 5 of the Act (16 U.S.C. 460u-5) is amended by adding at the end thereof the following new subsection:

"(d)(1) With respect to an improved property acquired prior to the date of enactment of this subsection upon which a valid existing right of use and occupancy has been reserved for a term not more than 29 years, the Secretary may renegotiate the term of the retained right to a term for a period of not more than 29 years from the commencement date of the existing right, not to extend beyond September 30, 2010.

"(2) In order to obtain a lease extension under this subsection, the holder of a reserved right shall make application to the Secretary and elect an extended lease term not later than one year after the date of enactment of this subsection.

"(3)(A) A lease extension under this subsection—

"(i) shall be conditioned on payment of an annual rental at the commencement of each calendar year of the lease term and shall commence in the calendar year during which the original right of use and occupancy would have terminated; and

"(ii) shall be subject to such terms and conditions as the Secretary deems appropriate to ensure the use of the property is consistent with the purposes of this Act.

"(B) The holder of the lease whose term is extended may elect to terminate the lease prior to the expiration of the extended term.

"(C) Upon the Secretary's determination that the property, or any portion thereof, has ceased to be in accordance with the applicable terms and conditions of a lease, the Secretary may terminate the lease.

"(D) If the Secretary terminates a lease under this subsection, the Secretary shall refund to the lessee an amount equivalent to the remaining portion of the prepaid rental.

"(4) By acceptance of a lease extension under this subsection, the holder of a lease waives any benefits to which the holder may be entitled under the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

"(5) The amount of the annual lease payment required under this subsection shall be based on a pro rata share of the amount discounted from the purchase price paid by the Secretary under the terms of the original sale adjusted by a general index adopted by the Secretary reflecting overall value trends within the Indiana Dunes National Lakeshore between the time of the original sale to the United States and the time of the commencement of the annual lease payment of the renegotiated retained right offered by this subsection.".

(d) CLERICAL AMENDMENT.—Section 5(a)(1) of the Act (16 U.S.C. 460u-5(a)(1)) is amended by striking the period after "626-91014" the first place it appears and inserting a comma.

SEC. 5. COOPERATIVE AGREEMENT.

The Act is amended by adding at the end thereof the following new section:

"SEC. 25. In furtherance of the purposes of this Act, the Secretary may enter into a cooperative agreement with the city of Gary, Indiana, pursuant to which the Secretary may provide technical assistance in interpretation, planning, and resource management for programs and developments in the city of Gary's Marquette Park and Lake Street Beach.".

SEC. 6. GREENBELT.

Section 18 of the Act (16 U.S.C. 460u-18) is amended—

(1) by inserting "(a)" after "SEC. 18."; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) The Secretary shall enter into a memorandum of agreement with the Northern Indiana Public Service Company (referred to as 'NIPSCO') that shall provide for the following with respect to the area referred to as Unit II-A on the map described in the first section of this Act (referred to as the "Greenbelt"):

"(A) NIPSCO shall provide the National Park Service with access for resource management and interpretation through the Greenbelt and across the dike for purposes of a public hiking trail.

"(B) The National Park Service shall have rights of access for resource management, and interpretation of the Greenbelt area.

"(C) NIPSCO shall preserve the Greenbelt in its natural state. If NIPSCO utilizes the Greenbelt temporarily for a project involving pollution mitigation or construction on its adjacent facilities, it shall restore the project area to its natural state.

"(D) If NIPSCO proposes a different use for the Greenbelt, NIPSCO shall notify the National Park Service, the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and make no change in the use of the property until 3 years after the date notice is given.

"(2) If a memorandum of agreement is entered into pursuant to paragraph (1), so long as the memorandum of agreement is in effect and is being performed, the Secretary may not acquire lands or interests in land in the Greenbelt belonging to NIPSCO.".

SEC. 7. VISITOR CENTER.

In order to commemorate the vision, dedication, and work of Dorothy Buell in saving the Indiana Dunes, the National Park Service visitor center at the Indiana Dunes National Lakeshore is designated as the "Dorothy Buell Memorial Visitor Center".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 9 of the Act (16 U.S.C. 460u-9) is amended—

(1) by inserting "(a)" after "SEC. 9.";

(2) in the first sentence of Secretary (a), as designated by paragraph (1), by striking "20,000,000" and inserting "27,500,000"; and

(3) by adding at the end thereof the following new Secretary:

"(b) Subject to the limitations provided in subsection (a) for development, there are authorized to be appropriated such sums as are necessary to carry out this Act.".●

ADDITIONAL COSPONSORS

S. 25

At the request of Mr. CRANSTON, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 25, a bill to protect the reproductive rights of women, and for other purposes.

S. 140

At the request of Mr. WIRTH, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 140, a bill to increase Federal payments in lieu of taxes to units of general local government, and for other purposes.

S. 474

At the request of Mr. DECONCINI, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 474, a bill to prohibit sports gambling under State law.

S. 651

At the request of Mr. GARN, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 651, a bill to improve the administration of the Federal Deposit Insurance Corporation, and to make technical amendments to the Federal Deposit Insurance Act, the Federal Home Loan Bank Act, and the National Bank Act.

S. 684

At the request of Mr. FOWLER, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 684, a bill to amend the National Historic Preservation Act and the National Historic Preservation Act Amendments of 1980 to strengthen the preservation of our historic heritage and resources, and for other purposes.

S. 878

At the request of Mr. DODD, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 878, a bill to assist in implementing the Plan of Action adopted by the World Summit for Children, and for other purposes.

S. 1175

At the request of Mr. KERRY, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1175, a bill to make eligibility standards for the award of the Purple Heart currently in effect applicable to members of the Armed Forces of the United States who were taken prisoners or taken captive by a hostile foreign government or its agents or a hostile force before April 25, 1962, and for other purpose.

S. 1505

At the request of Mr. DECONCINI, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 1505, a bill to amend the law relating to the Martin Luther King, Jr. Federal Holiday Commission.

S. 1599

At the request of Mr. BRADLEY, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1599, a bill to extend nondiscriminatory (most-favored-nation) treatment to Estonia, Latvia, and Lithuania.

S. 1627

At the request of Mr. FORD, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1627, a bill to amend section 615 of title 38, United States Code, to require the Secretary of Veterans Affairs to permit persons who receive care at medical facilities of the Department of Veterans Affairs to have access to and to consume tobacco products.

S. 1770

At the request of Mr. DASCHLE, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1770, a bill to convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes.

S. 1806

At the request of Mr. WIRTH, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1806, a bill to amend the Federal Water Project Recreation Act and to authorize the Secretary of the Interior to manage the land resources of Federal reclamation projects and for other purposes.

S. 1810

At the request of Mr. ROCKEFELLER, the names of the Senator from Nebraska [Mr. KERREY], the Senator from Hawaii [Mr. INOUYE], the Senator from Nevada [Mr. BRYAN], and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the medicare program, and for other purposes.

At the request of Mr. DURENBERGER, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1810, supra.

S. 1836

At the request of Mr. DURENBERGER, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1836, a bill to provide economic incentives through Medicaid bonus funds to promote State alternative dispute resolution systems, to assist States in the creation and evaluation of alternative dispute resolution systems, to encourage State-based quality improvement programs, and to provide comprehensive reform of State tort law to curb excesses in the current liability system, and for other purposes.

S. 1884

At the request of Mr. D'AMATO, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 1884, a bill to require the Secretary of Agriculture to conduct inspections of garbage from Canada and to assess fees for such inspections.

SENATE JOINT RESOLUTION 198

At the request of Mr. AKAKA, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from Nebraska [Mr. EXON], the Senator from South Carolina [Mr. THURMOND], the Senator from Washington [Mr. ADAMS], the Senator from North Dakota [Mr. BURDICK], the Senator from Alabama [Mr. HEFLIN], the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of Senate Joint Resolution 198, a joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

SENATE JOINT RESOLUTION 211

At the request of Mr. D'AMATO, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of Senate Joint Resolution 211, a joint resolution designating October 1991 as "Italian-American Heritage and Culture Month."

SENATE CONCURRENT RESOLUTION 69

At the request of Mr. CRANSTON, the names of the Senator from Iowa [Mr. GRASSLEY] and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Concurrent Resolution 69, a concurrent resolution concerning freedom of emigration and travel for Syrian Jews.

SENATE RESOLUTION 211

At the request of Mr. SASSER, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Resolution 211, a resolution expressing the sense of the Senate regarding human rights abuses in China against writers and journalists.

SENATE CONCURRENT RESOLUTION 73—RELATIVE TO THE UNITED NATIONS PEACE PLAN FOR THE WESTERN SAHARA

Mr. KENNEDY (for himself, Mr. CRANSTON, Mrs. KASSEBAUM, and Mr. SIMON) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 73

Whereas on April 19, 1991, the United Nations adopted a peace plan calling for a free and fair referendum for self-determination in the Western Sahara;

Whereas it was also determined that a United Nations mission (MINURSO) should be established to organize and supervise the United Nations peace plan in the Western Sahara;

Whereas on September 6, 1991, a cease-fire was entered into between Morocco and the Polisario Front, marking the first phase of the implementation of the peace plan;

Whereas the United States is playing an integral role in this peace process by participating in the United Nations peacekeeping forces in the Western Sahara and by contributing financially to this undertaking; and

Whereas a referendum conducted in accordance with the terms of the United Nations peace plan will reinforce the stability of the region as well as strengthen democratization efforts in Africa: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(a) commends the President and other executive branch officials for their involvement in key diplomatic initiatives within the United Nations relating to the Western Sahara and for their commitment, in carrying out the bilateral relations of the United States, to a free and fair referendum on self-determination in the Western Sahara;

(2) recognizes United Nations Secretary General Javier Perez de Cuellar's tireless efforts in negotiating the terms of the peace plan adopted by the United Nations relating to the Western Sahara;

(3) calls upon Morocco and the Polisario Front to comply with the terms of the peace plan as endorsed by the United Nations Security Council; and

(4) calls upon the President—

(A) to continue the current United States policy of strong advocacy, within the United Nations and bilateral relationships, on behalf of the peace plan;

(B) to ensure that independent international observers be allowed to monitor the referendum until its results have been published; and

(C) to take appropriate steps to ensure that the United Nations Security Council takes firm action in the event of any failure to comply with, or attempt to delay, the peace plan.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

Mr. KENNEDY. Mr. President, Senators CRANSTON, KASSEBAUM, and SIMON and I are introducing today a resolution to support the people of the Western Sahara in their long struggle for self-determination.

Over the past five decades the world has witnessed the decolonization of every colonized country and territory in Africa except the western Sahara. Twenty-six years after the United Nations first called for the decolonization of this territory, the indigenous Sahrawi people are still waiting to exercise their fundamental right to self-determination.

The United Nations hopes to conduct a referendum in the western Sahara early next year to determine whether the Sahrawi will choose integration with Morocco or independence. Unfortunately, after originally agreeing to support this referendum as part of a larger U.N.-sponsored peace process, the Government of Morocco is now seeking to undermine the plebiscite.

At this critical juncture in the history of the Sahrawi, it is imperative that the United States take a strong stand supporting the right to these long-oppressed peoples to a free, fair, and peaceful referendum to determine their own future.

The resolution we are introducing recognizes this right and calls upon the Bush administration to expand its support for the United Nations plebiscite and peace plan.

A similar version of this resolution, House Concurrent Resolution 214, was recently introduced in the House by Congressman DYMALLY.

The U.N. Decolonization Committee has called for the decolonization of the western Sahara since 1966. In 1973, the U.N. General Assembly called for a referendum by the indigenous people of the area. The following year, Spain, the colonial power, agreed to hold a referendum and made a preparatory census to provide a voting list. Before a referendum could be held, however, Spain turned over the administration or the territory to Morocco and Mauritania.

Claims by these countries led the International Court of Justice to issue an advisory opinion on the sovereignty of the western Sahara. The Court noted the historical ties between Morocco and Mauritania and the Western Sahara, but found these ties insufficient for a claim of territorial sovereignty, and ruled that the Sahrawi people had an overriding right to self-determination.

Nonetheless, in 1975 Morocco invaded and annexed the territory. The Polisario Front, a Sahrawi resistance group, has battled Moroccan forces since the invasion, but neither side has been victorious on the battlefield. Since the invasion, Morocco has sent nearly 150,000 Moroccan soldiers and 350,000 Moroccan settlers into the western Sahara and built fortifications that control most of the territory and seal off economic and population centers.

The international community has overwhelmingly condemned Morocco's policy in the western Sahara. Seventy-four nations have formally recognized the indigenous Western Sahara government, including 27 African countries and 14 Latin American countries.

On April 19, 1991, Morocco and the Polisario agreed to a U.N.-sponsored peace plan for the territory. Under this plan, the U.N. will deploy 2,700 military and civilian personnel, at a cost of $180 million, to organize and supervise a referendum on self-determination. The 75,000 residents of the Western Sahara, identified under the Spanish census, are to participate in the referendum.

On September 6, both sides entered into a cease-fire. Shortly afterward, however, Moroccan forces launched a military offensive into Polisario-controlled territory, and Morocco's King Hassan II took steps to scuttle the peace plan.

King Hassan now insists that 120,000 Moroccan settlers be added to the voter rolls for the referendum. In addition, he has placed roadblocks before U.N. personnel attempting to gain administrative control of the territory and is refusing to allow the media and foreign delegations to observe the voting.

There are currently 1,700 U.N. forces in the western Sahara and 150,000 Moroccan troops—although under the peace agreement Morocco was to have reduced its troops to 65,000. King Hassan is continuing to send additional troops and settlers into the territory, and has made several shows of force by flying military planes at low levels over the cities.

The Bush administration has made several important contributions to the peace process. The United States will be donating $55 million to the process, and contributing ground personnel to the peacekeeping forces. In addition, the administration raised the issue of the Western Sahara conflict during King Hassan's most recent visit to Washington.

In other respects, however, the administration appears to be quietly supporting Morocco. The United States, alone among the five permanent U.N. Security Council members, did not publicly condemn Morocco's recent military offensive. The administration has done little to urge King Hassan to abide by the plan, and maintains only minimal and low level communications with the Polisario.

Unless the administration makes clear that it stands for a free and fair referendum, and that the mandate of the United Nations must be upheld, the likelihood is high for widespread fraud and intimidation during the referendum, or even its outright cancellation.

The resolution we are introducing today would:

First, commend the U.N. Secretary General for his efforts in negotiating the peace plan and referendum for self-determination and commend the Bush administration for its support;

(2) Call upon Morocco and the Polisario to comply with the terms of the peace plan; and

(3) Call upon President Bush to take steps to:

Ensure that the United States continue to support the United Nations peace plan;

Ensure that international observers are permitted to monitor the referendum; and

Ensure that the Security Council takes action in the event of any failure to comply with the peace plan.

Congress and the administration must take a stronger stand against the repression of the indigenous peoples of the western Sahara and the denial of their fundamental rights.

The United States should be in the forefront of supporting the Sahrawi people in their struggle for self-determination. I urge my colleagues to join me in supporting this important resolution.

SENATE CONCURRENT RESOLUTION 74—RELATIVE TO HUMAN RIGHTS IN THE REPUBLICS OF THE FORMER SOVIET UNION

Mr. DECONCINI (for himself, Mr. D'AMATO, Mr. FOWLER, Mr. WALLOP, and Mr. CRAIG) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 74

Whereas the Helsinki Final Act and other documents of the Conference on Security and Cooperation in Europe, including the Moscow Conference on the Human Dimension (CDH) document, have established recognized standards for the promotion and protection of human rights, democracy, and the rule of law;

Whereas Principle VII of the Final Act sets forth specific commitments concerning respect for human rights and fundamental freedoms, including freedom of thought, conscience, religion, or belief.

Whereas the Charter of Paris for a New Europe states that "human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law," and further provides that "Democratic government is based on the will of the people, expressed regularly through free and fair elections" and is the "best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person";

Whereas the Copenhagen Conference on the Human Dimension (CDH) document declares that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government;

Whereas the Conference on Security and Cooperation in Europe is committed to protecting the right of persons belonging to national minorities to freely express, preserve, and develop their identity without any discrimination and in full equality before the law;

Whereas Armenia, Georgia, Ukraine, Byelorussia, Moldova, Azerbaijan, Uzebekistan, Kyrgyzstan, Tajikistan and Turkmenistan have declared independence, and Russia and Kazahstan have declared sovereignty; and

Whereas human rights abuses have been reported in a number of these republics, while others appear to be taking steps to promote and protect the rights of individuals within their territory: Now, therefore be it

Resolved by the United States Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the leaders of Armenia, Azerbaijan, Byelorussia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzebekistan should accept and implement all commitments on human rights, fundamental freedoms, and humanitarian cooperation (including those on monitoring activities) contained in the Helsinki Final Act, the Charter of Paris for a New Europe, or any other document of the Conference on Security and Cooperation in Europe;

(2) the parliamentary leadership of each of these republics should consider the establishment, within their respective parliaments, of appropriate mechanisms for the promotion and protection of human rights and fundamental freedom;

(3) the President should convey to the leaders of these republics that respect for human rights and fundamental freedoms, as expressed in the Helsinki Final Act, the Charter of Paris for a New Europe, and other documents of the Conference on Security and Cooperation in Europe, is a vital element in achieving genuine security and cooperation in Europe; and

(4) the President should keep the Congress informed of status of human rights and fundamental freedoms in each of these republics.

● Mr. DECONCINI. Mr. President, I rise today to introduce a resolution calling upon the leaders of the Republics of the former Soviet Union to accept and implement international human rights standards. My fellow CSCE Commissioners, Senators D'AMATO, FOWLER, WALLOP and CRAIG are original cosponsors of this timely resolution. Commission Chairman STENY HOYER has introduced an identical version in the House of Representatives.

Mr. President, the move towards independence and sovereignty in the Republics was given new impetus with the failed August coup. In all, 11 have declared independence and two have declared sovereignty. The Republics have and will continue to play an increasingly important role as their people seek to determine their own future. During this period of transition, it is essential to ensure that the human rights and fundamental freedoms of those living in the Republics are protected.

The Helsinki Final Act and other documents of the Conference on Security and Cooperation in Europe [CSCE], including the Moscow CDH document, have established recognized standards for the promotion and protection of human rights, democracy, and rule of law.

I am particularly concerned over reported human rights abuses in a number of these Republics. It is essential that the rights of all individuals, including members of national minorities, be protected at the Republic level.

The resolution I introduce today calls upon the leaders of these Republics to accept and implement all CSCE commitments on human rights and humanitarian cooperation, including provisions regarding monitoring activities. In addition, it urges the parliamentary leaders of each of the Republics to consider the establishment, within their respective parliaments, of appropriate mechanisms for the promotion and protection of human rights and fundamental freedoms. Finally, the President is requested to keep the Congress informed of the status of human rights in each of the Republics.

I urge my colleagues to support this resolution which seeks to send a strong and clear signal of the importance the American people and the Congress attach the protection and promotion of human rights.●

AMENDMENTS SUBMITTED

CORRECTIONS IN THE ENGROSSMENT OF THE BILL S. 1745

MITCHELL AMENDMENT NO. 1305

Mr. MITCHELL proposed an amendment to the resolution (S. Res. 214) to correct the engrossment of S. 1745, as follows:

At the end of the resolution, add the following new paragraphs;

(7) In section 320(a)(2), insert ", not later than 180 days after the occurrence of the alleged violation," after "file a complaint alleging a violation".

(8) In section 321(b)—

(A) strike "Any" and insert the following: "(1) IN GENERAL.—Any";

(B) in paragraph (1), as designated by subparagraph (A) of this paragraph, insert ", not later than 180 days after the occurrence of the alleged violation," after "file a complaint alleging a violation"; and

(C) add at the end the following new paragraph:

"(2) REFERRAL TO STATE AND LOCAL AUTHORITIES.—

"(A) APPLICATION.—Section 706(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(d)) shall apply with respect to any proceeding under this section.

"(B) DEFINITION.—For purposes of the application described in subparagraph (A), the term 'any charge filed by a member of the Commission alleging an unlawful employment practice' means a complaint filed under this section.".

(9) In section 323, strike "an unfair employment practice judgment" and insert "a violation".

WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT

JOHNSTON AMENDMENT NO. 1306

Mr. MITCHELL (for Mr. JOHNSTON) proposed an amendment to the bill (S. 1671) to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, NM, and for other purposes, as follows:

On page 77, line 21, strike the words "the mine at".

On page 77, line 22, strike the word "other".

On page 77, line 25, after the word "shall". insert "make the results of such inspections publicly available and shall".

On page 78, line 5, after the word "Mines", insert "of the Department of the Interior".

On page 78, line 6, strike the words "the mine at".

On page 85, at the end of the bill, insert the following new section:

SEC. 19. PUBLIC LAW 96-164.

This Act amends section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96-164; 93 Stat. 1265).

On page 85, after line 2, insert the following new section:

SEC. 18. TECHNOLOGY STUDY.

Within one year of the date of enactment of this Act, the Secretary shall submit to Congress a study reviewing the technologies that are available and that are being developed for the processing or redeuction of volumes of radioactive wastes. This study shall include an identification of technologies involving the use of chemical, physical, and thermal (including plasma) processing techniques.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, November 5, 1991, at 9 a.m., to hold a nomination hearing for Paul Matia, for U.S. district judge for the Northern District of Ohio, David R. Hansen, of Iowa, judge, Northern District of Florida, Wayne R. Anderson, judge, Northern District of Illinois, and Sue L. Robinson, judge, District of Delaware.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON POW/MIA AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate Select Committee on POW/MIA Affairs to meet today, November 5, 1991, at 9 a.m. in 705 Senate Hart Office Building, to examine the process of investigation of POW/MIAs currently in place, and to determine whether or not live Americans are being held against their will in Southeast Asia.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on November 5, 1991, beginning at 2:30 p.m., in 485 Russell Senate Office Building, to consider for report to the Senate, S. 1595, Alaska Native Languages Preservation and Enhancement Act of 1991.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Tuesday, November 5, 1991, to hold a hearing on Asian organized crime: Part II.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON LABOR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Labor of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, November 5, 1991, at 9:30 a.m., for a hearing on "OSHA Reform: Fulfilling the Promise of a Safe and Healthy Workplace."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on November 5, 1991, at 10 a.m. on barter and countertrade.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

NO NEW NUCLEAR TESTING

• Mr. SIMON. Mr. President, a remarkable op-ed was published the other day in the Washington Post by Sam Cohen, the father of the neutron bomb, who is not noted for dovish positions on nuclear weapons or national security. His article called for an end to nuclear testing now.

He makes the point that whether it is for the development of new warheads for strategic weapons, tactical weapons or missile defense, we do not need new nuclear weapons designs. And he makes the case that ending nuclear testing now would be a great boon to the cause of nuclear nonproliferation.

I hope that our colleagues in the defense authorization conference committee will read Dr. Cohen's article. The Soviet and republic leaders have suspended nuclear testing. President Yeltsin just the other day renewed his call for a 1-year moratorium in the Russian Republic, and President Nazarbayev, the Kazakh leader, has already canceled testing at his site at Semipalatinsk. We really ought to respond by stopping our own testing program right now, while we negotiate a binding agreement to end nuclear testing once and for all.

Mr. President, I ask that Sam Cohen's article, "End Nuclear Testing Now," be printed in the RECORD in full.

The article follows:

END NUCLEAR TESTING NOW

In no area of nuclear arms control have the Soviets more egregiously violated agreements than on limiting nuclear testing, the worst violation being their resumption of testing after a three-year moratorium (1958-1961) involving the most massively contaminating series of tests in history. With such a record it would seem downright hypocritical for Mikhail Gorbachev to declare a one-year moratorium on Soviet underground testing and invite the rest of the world to join him.

So what should the U.S. response be? To answer this question, consider the most pertinent areas of nuclear application and how vital the need for testing in these areas may be.

STRATEGIC WARFARE

For decades the United States has sought to develop a doctrine for actually fighting, not just deterring, a nuclear war. It has failed abysmally. The best it can do today, as at the beginning, is to threaten such a terrible reprisal that the Soviets never would dare attack. In the areas that truly count for nuclear war-fighting, our shortcomings have been deplorable—in intelligence, targeting, force survivability, etc. Least important in this bizarre business is nuclear warhead technology, which is almost irrelevant to the central issue. Add to this President Bush's plans for reducing strategic armaments and discontinuing some of our major weapon programs, plus Gorbachev's declaration to go him even one step farther, there seems no need for continuing to test strategic nuclear warheads.

TACTICAL WARFARE

There have been tactical nuclear weapons in our arsenal for close to 40 years. Never, however, has there been a coherent doctrine for their use on the battlefield. Technical progress in this area has not reflected itself in truly improved military capabilities or the resolve to use them. And now that both Bush and Gorbachev plan to eliminate practically all of them, it seems almost ludicrous to argue for improving these warheads through testing. The realities of tactical nuclear politics have prevailed over the fantasies of nuclear planners and technologists, and they should accept this fact.

MISSILE DEFENSE

For the United States, nothing should be more important than protecting itself from nuclear attack, which would be catastrophic at almost any level. President Bush agrees with this view, and apparently so does President Gorbachev. Accordingly, both have left anti-missile developments off their weapon hit lists. Yet, even though the threat is nuclear, on the U.S. side it has become clear that only non-nuclear defenses are under serious consideration. Moreover, the Soviets now seem willing to amend the ABM treaty of 1972, prohibiting such defenses, to allow both countries to deploy a limited non-nuclear anti-ballistic missile system. As promising as certain nuclear defensive technologies may be, the political realities governing the Strategic Defense Initiative program do not justify the need for nuclear testing in this area.

In view of these considerations, President Bush would be well advised to go Gorbachev one dramatic step better and order the immediate indefinite cessation of nuclear testing. No serious security risk seems at stake here, and a great deal could be gained politically if such action, accompanied by a strong plea, persuades other nations to discontinue their nuclear warhead development programs.

The nonproliferation of nuclear weapons always has been a major U.S. policy objective. In particular, were the president to take such bold action, it could provide him with strong moral authority and support from most of the world should he decide to renew military operations against Iraq to terminate its nuclear program.

However one assesses our present nuclear stockpile and what will remain of it after Bush's new directive has been implemented, it seems to have been mainly responsible for keeping us and our allies out of nuclear war. If it ain't broke don't fix it, and perhaps we should stick with what we have for a while, cease nuclear testing and hope that most of the world follows suit, which could make much of the world a safer place than it is now.●

S. 1793, RESTRICTING U.S. TRADE WITH SERBIA

● Mr. McCAIN. Mr. President, I rise today to support S. 1793, a bill to restrict United States trade with, and assistance to, Serbia.

The world is changing. It is changing so quickly that at times it is difficult to understand and adapt to the emerging realities. I have come to this floor many times in the past to speak of the changes now sweeping the world and emphasize what they mean for our Nation's defense.

Today, I take the floor to emphasize what the end of the cold war and the emergence of a new era of international cooperation means to diplomacy. Competent, energetic diplomacy will be an absolute necessity in the new era, both in issues of war and peace and in trade. However, to stop here is a disservice to our American heritage.

American diplomacy must serve the ends for which our Nation was created. Through all the years of the cold war, what kept us alive as a nation and permitted us to maintain our strength and perseverance was our commitment to an ideal. Like all veterans of our past wars, those of us who fought the North Vietnamese fought for an ideal. Throughout my service in Vietnam, I never doubted that I was fighting to preserve the freedom of South Vietnam.

Throughout the cold war, we perservered in the hope that once the Communist menace had faded from history, we could get on with the business of peace and freedom, as only Americans can.

As I speak, freedom is under seige in Yugoslavia. In May of 1990 the Croatian people freely elected their Government. On June 25, 1991, Croatia issued its Declaration of Independence from the Yugoslavian Federal Government. The events since then are almost too terrible to recount.

In its attempt to construct a greater Serbia, the Federal Yugoslav Government has waged a war of aggression against Croatia. Over one third of Croatia has now been taken by Serbian forces.

The ambitions of Federal Yugoslav forces are purchased at an enormous human cost. There are currently 400,000 refugees in Croatia. At least 1,675 Croatians have been killed and 5,554 wounded. More than half of these casualties have been among civilians. Hospitals have been damaged and destroyed, raising the risk to civilians of infectious diseases.

The beautiful and ancient city of Dubrovnik has been reduced to an empty shell, its people having fled in terror. The city of Vukovar has been besieged for 72 days. This city on the Danube has been all but reduced to ruble. According to the Government of Croatia, 400 houses of worship and historical monuments have been destroyed in Croatia.

All attempts by the European Community to reach a cease-fire have failed. The first international peace conference on the Yugoslavian civil war began on September 7, 1991. The EC brokered agreement now awaiting Serbian approval calls for a loose confederation of Yugoslav republics, guarantees for minority rights, and the maintenance of current internal borders. So far the Serbian controlled government has rejected the peace proposal and is continuing to resort to force of arms.

As the world sits by and waits for the Europeans to offer real leadership in Yugoslavia, the Croatian people are being besieged. As Americans, our heritage demands that we take forceful action to halt the destruction perpetrated by the Communists of the central Yugoslav Government.

At the height of the cold war, we did not have the opportunity to promote democracy in Yugoslavia. A strong Yugoslavia served as a bulwark against a demonstrably expansionist Soviet Union. For many, the evil of Soviet expansionism outweighed the evil of tyranny in Yugoslavia. With the end of the cold war, however, the equation has changed and an opportunity for freedom has emerged. We must seize the opportunity and support the independent Republic of Croatia against aggression.

Current concerns over the destabilizing effect of the disintegration of Yugoslavia are well founded. I also understand Serbian claims in the current conflict. However, good government and the resolution of historical disputes cannot be gained by force of arms. I am supporting Senator D'AMATO's legislation because I believe the people of Yugoslavia, like all people, deserve to decide for themselves who their rulers should be. They deserve to solve ancient disputes free of coercion and in direct consultation with their elected representatives.

The Republic of Dubrovnik was the first sovereign state to recognize American independence. I think it is time to return the gesture offered by Dubrovnik 200 years ago and to use the force of the American economy to reinforce our solidarity. We are not a people with one distinct ethnic background. We are not a people who lay claim to a single motherland as the fountain of our civilization. We are a people united by one thing, our commitment to democracy and the freedoms first established by our Founding Fathers. American diplomacy in the post cold war world must continue to take account of this unique historical mission and exploit the emerging opportunities for freedom.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Andrew W. Johnson, a member of the staff of Senator EXON, to participate in a program in Germany sponsored by the Konrad Adenauer Foundation on November 9–16, 1991.

The committee has determined that participation by Mr. Johnson in this program, at the expense of the Konrad Adenauer Foundation is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Eric Scheinkopf, a member of the staff of Senator INOUYE, to participate in a program in Germany sponsored by the Konrad Adenauer Foundation on November 9–16, 1991.

The Committee has determined that participation by Mr. Scheinkopf in this program, at the expense of the Konrad Adenauer Foundation is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Michelle Maynard to participate in a program in Belgium and the Czech and Slovak Republic sponsored by the Information Directorate of the North Atlantic Treaty Organization [NATO] on December 7–14, 1991.

The Committee has determined that participation by Ms. Maynard in this program, at the expense of the Information Directorate of NATO is in the interest of the Senate and the United States.●

ENERGY POLICY

● Mr. HARKIN. Mr. President, I was deeply disturbed earlier this year when President Bush unveiled his long awaited National Energy Strategy. It was essentially a business-as-usual, fossil-fuel production plan with little regard for preserving, let alone cleaning up our environment. It would not only continue, but increase our dependence on imported oil.

According to the Department of Energy, the United States has proven oil reserves of 26.5 billion barrels of oil. That sounds like a lot of oil, but it is dwarfed by the 660 billion barrels in the Middle East. Furthermore, we are consuming almost 6 billion barrels each year here in the United States. Without imports, today's proven reserves of U.S. oil would run dry in less than 5 years. Since we are now importing half of our oil, we could extend our own oil resources for another decade or more by increasing our imports. We may find more domestic oil, but we cannot continue indefinitely down this path of over-consumption.

The National Energy Strategy is typical of the Bush administration: no vision. Do not rock the boat. Do not prepare for the future. Consume for today, and forget about our children and grandchildren.

We just went to war to protect our access to cheap Middle East oil. Saddam Hussein reminded us in graphic terms that energy is a national security issue. Our society must have energy to grow food, power our factories, homes and motor vehicles.

We have two broad options for our energy policies: We can continue on as we are, drilling oil and mining coal as if there were no tomorrow, and the future be damned. Or we can begin now to prepare for a clean energy future based primarily on domestic sources of energy. Unfortunately, President Bush has chosen the short-sighted, live-for-today path.

I have a different vision for our future. By investing now in energy efficiency and innovative renewable energy technology, we can provide our children and grandchildren with a clean environment and a secure source of energy to power a modern society. Yes, we will need oil and coal and natural gas for many decades, if not centuries. But we can and must stretch out these finite resources while reducing environmental degradation.

Any energy plan must incorporate two major components:

In the short term, we must reduce our consumption of fossil fuels, to cut foreign dependence, to retard environmental damage, and to preserve enough fossil fuels for future generations for nonenergy uses of hydrocarbon fuels.

In the long term, we must develop alternative sources of energy that are renewable, produced entirely within the United States, and have little or no adverse impact on the environment.

The President's plan fails on both counts.

The President calls for more production of fossil fuels, which only exacerbates emissions of global warming greenhouse gases, smog, acid rain, and other air pollution. He calls on drilling in the coastal plain of the Arctic National Wildlife refuge, disturbing a fragile ecological area which might, just might, provide another 200 days of oil at current U.S. consumption rates. He refuses to mandate improved motor vehicle efficiency, the most effective route to reduced oil consumption and reduced air pollution.

The President's energy plan has no long term vision. It continues support for advanced nuclear fission reactors, but, without a solution to the disposal of radioactive waste, and without citizen acceptance of the safety risks, nuclear fission power is dead in the water. It also funds the fusion research programs at high levels, but we have no assurance that fusion will ever be a practical source of power.

I had hoped that the Senate's energy bill, S. 1220, would correct these and other deficiencies of the president's energy plan. Unfortunately, it is not much better. There are some improvements in energy efficiency, but nothing like the major sea change needed to put this Nation on a sane and safe energy path for the 21st century.

There are still no improved CAFE—corporate average fuel economy—standards for motor vehicle efficiency. Instead, this bill leaves it up to the administration to decide if there should be any increase in automobile efficiency.

I know that the chairman of the Energy Committee attempted to attach slightly higher CAFE standards in committee, but even this minimal effort was defeated.

The Senate energy bill still calls for drilling in the Arctic National Wildlife Refuge. It is still a production first, environment last bill. The coastal plain of ANWR is a pristine area, home or nesting area for 160 animal species, including 135 species of birds. The coastal plain of ANWR is the main calving ground for 185,000 caribou of the Porcupine herd. The Department of Interior estimates that drilling in ANWR would result in a population decline and change in distribution of 20 to 40 percent of the Porcupine caribou. The Department also estimates that 25 to 50 percent of muskoxen and 50 percent of the wolverine population would be disrupted by drilling.

Drilling in ANWR would bring in vast quantities of chemicals, wastewater and other hazardous wastes. Current developments in near-by Prudhoe Bay have generated 100 million gallons of hazardous liquid wastes each year. This hazardous waste is exempted from RCRA—the Resource Conservation and Recovery Act. The EPA has stated that there is no adequate disposal system for so much waste on the North Slope.

In addition to devastating the environment, oil production in ANWR would violate several international treaties signed by the United States. In 1986, the United States and Canada signed as agreement to preserve North American waterfowl and "the protection, restoration and management of habitat." In 1987, the United States and Canada signed an agreement to conserve the Porcupine caribou herd and its habitat. Over the years, the United States has signed treaties with Canada (1916), Mexico (1936) and the Soviet Union (1976) to protect and conserve migratory birds. And in 1973, the United States signed a treaty to protect polar bears with Canada, Denmark, Norway and the Soviet Union. All four of these treaties would be jeopardized by oil exploration in the Arctic National Wildlife Refuge.

Finally, we should note that the development of ANWR is now the subject of a challenge in U.S. district court. Judge Green has found that the Department of Interior failed to take into account potential environmental effects when it issued oil and gas reserve estimates. The final ruling in this court challenge to drilling in ANWR is expected in early 1992.

This energy bill also weakens provisions of last year's Clean Air Act amendments. It opens up loopholes in sulfur dioxide emission limits for utilities that refurbish old power plants, before the ink is even dry on the Clean Air Act amendments.

The energy bill gives lip service to energy efficiency, the most cost effective method available to stretch out our finite fossil fuel supplies while alternative renewable energy resources are developed. Studies and case histories have shown that investments to improve energy efficiency cost 5 to 10 times less than costs to build more power plants.

In my State of Iowa, one man, Wes Birdsall, demonstrated the value of energy efficiency. Wes, the manager of the Osage Municipal Utility in Iowa, began energy conservation programs in 1979. Over the years, he spent about $250,000 to install water heater blankets and high efficiency light bulbs. He offered free energy audits and reduced energy rates to superinsulated homes. He planted shade trees and induced 96 percent of the homeowners in Osage, IA—population 4,000—to put their air-conditioners under partial utility control. The compressor (but not the circulating fan) for each air-conditioner can be shut off for up to 7.5 minutes per hour. Homeowners can rarely detect any difference, but the utility can manage the peak load on hot summer afternoons, eliminating the need for new power plants.

These energy efficiency projects have paid off for Osage. Today, 12 years after these investments in energy efficiency began, the citizens of Osage save $1.2 million per year on their energy bills, or the equivalent of $300 for each person. Every year, the citizens of Osage, IA save four times the total utility investment in energy efficiency projects through lower energy bills.

Just think what could happen if these simple measures were adopted across the Nation. Imagine what could happen with a coordinated national effort to promote energy efficiency.

Just think what would happen with visionary leadership in the White House, encouraging energy efficiency projects through utility rate structures that reward utilities for reducing demand. Through tax incentives or "feebates" that reward consumers for buying energy efficient cars, appliances and homes. Through tax policies, regulations and utility rates that reward industries that install energy efficient machinery.

This is a national problem, a national security problem, that requires visionary, dynamic leadership in the White House. Not business-as-usual. Not drill more for today and forget tomorrow.

This bill, S. 1220 does include some modest energy efficiency measures, thanks to the efforts of the Senator from Colorado, Mr. WIRTH, who was able to include a small portion of the energy efficiency provisions of his bill, S. 742. The watered down energy efficiency sections of S. 1220 sets energy efficiency standards for Federal buildings, but DOE can impose these standards now. It does set efficiency standards for lights, showerheads and transformers, but offers no standards for electric motors which consume most of our electrical energy.

It does call for testing and labeling of window heat losses, but we must do much more than label the energy consumption. We must reduce energy consumption, not just inform Americans how much their windows leak. We must conserve energy, not by turning off lights, but by installing high efficiency light bulbs. Not by turning down the thermostat, but by installing superinsulation in our homes and buildings. Not by driving less, but by building more energy efficient cars and trucks.

By investing in new energy efficient technology and products, by investing in equipment and technology to improve the environment, we will create thousands of new jobs for Americans. Ten years ago, the United States was the leader in photovoltaic panels that produce electricity directly from sunlight without any moving parts. But after a decade of neglect by the Reagan and Bush administrations, including 90 percent cuts in solar energy research, the lead in photovoltaic technology has moved to Japan and Europe. We must reverse this trend, investing in American technology to create American jobs and American export products in clean, environmentally sound renewable energy and energy efficiency products.

The modest energy efficiency measures in this bill could still save up to 1.4 quads of energy by 2000, or 1.8 percent of current consumption. By 2010, this bill might save 3.4 quads, or 4 percent of current consumption. But aggressive energy efficiency measures such as those in Senator WIRTH'S S. 742, including new CAFE standards, could save 14.6 quads or more by 2010, or four times the savings in S. 1220. We can do much better.

For the long term, the bill breaks no new ground. There is no push to bring safe, home-grown renewable energy options to the commercial stage on any significant scale. Joint venture projects are authorized for several interesting technologies, such as photovoltaics, wind, biomass and fuel cells. But the funding levels, $3 million each, are insignificant compared to the need and the potential for these renewable resources.

Mr. President, we are spending over $1 billion each year on nuclear energy research and development, including fission, fusion and waste disposal research. We are spending over $1 billion on various projects to extract more fossil fuels. Why is it that we cannot afford more than $3 million for renewable energy joint venture projects?

The bill ignores one long-term option that I consider a major potential source of clean energy for the 21st century: Renewable hydrogen. In a renewable hydrogen energy system, hydrogen gas would be produced from renewable sources such as solar thermal, photovoltaics, wind, geothermal, biomass or hydroelectric energy. The hydrogen would than be stored or shipped in natural gas pipelines for later use in homes, factories and motor vehicles.

Hydrogen is the ideal environmental fuel. Burning hydrogen produces pure, clean water. There is no acid rain, no global warming greenhouse gases, no ozone depleting chemicals, no urban smog, and no radioactive waste.

Hydrogen can be burned like natural gas in home furnaces and stoves. Hydrogen can produce electricity directly without any moving parts in a battery-like fuel cell. A fuel cell car powered by hydrogen derived form renewable sources would produce no air pollution of any type in either production or use of the hydrogen fuel.

The renewable hydrogen energy system is one example of the long term, visionary programs that we must initiate to prepare our Nation for the 21st century. This year, the hydrogen research budget was cut from $2.6 million to $1.3 million.

The Department of Energy has a budget of $18 billion, and we cannot afford more than $1.3 million or 0.007 percent for a project that could provide a domestic energy source with no environmental degradation. Where are our priorities?

How long must we devote $11 billion of the $18 billion DOE budget on building nuclear weapons?

In short, the Senate energy bill, S. 1220, fails the twin goals of short term reductions in fossil fuel consumption, and long-term development of energy options that will simultaneously free us from foreign oil domination, environmental disasters-in-waiting, and economic chaos. For these reasons, I voted against brining up this flawed bill on the Senate floor. We must have an effective national energy policy, but S. 1220, as reported, is not the appropriate vehicle to lead us into the 21st century.●

NOVEMBER IS NATIONAL HOSPICE MONTH

● Mr. D'AMATO. Mr. President, I rise today to proclaim the month of November 1991 as "National Hospice Month." I can think of no better month to pay tribute to the people who give a special kind of caring than November. To proclaim November as "National Hospice Month" is of particular significance to Lourdes Hospital in Binghamton, NY. Lourdes Hospital serves as the regional cancer center for the whole southern tier of New York.

Lourdes Hospice Program was established in 1980. Since then, the staff and volunteers have served patients and their families throughout the region. Lourdes boasts a volunteer team of 100 caring persons. The volunteers assist with shopping, personal care, household chores, and personal presence to share fears and victories.

On Sunday, November 3, 1991, Lourdes Hospital held its annual prayer service and tree lighting ceremony, followed by a reception. The tree is a 50-foot pine tree that stands in front of the hospital. The tree lighting ceremony serves as a memorial service for people to gather to remember those who have died and to revitalize hope and encouragement for the coming years. Volunteers, patients, and their families, hospital staff, and members of the hospital neighborhood come together to celebrate as family.

I stand today to congratulate the Lourdes Hospice Program on their extraordinary efforts in enrolling over 100 volunteers at a time when the demands on volunteer time is so extensive. I salute each and every volunteer who gives himself or herself to bring comfort and peace to patients who need their special caring.●

SEI IS OUR ROADMAP FOR SPACE

● Mr. FOWLER. Mr. President, as I noted yesterday, October 29, 1991, was a day of remarkable firsts for our Nation's program of space exploration. Two of NASA's robotic planetary explorers accomplished feats which would have been hard to imagine only few decades ago. The first global maps of Venus, created from images gathered by the spacecraft *Magellan* orbiting the planet, were released by the Jet Propulsion Laboratory. According to *Magellan* project scientists, we now have a better global map of Venus than of Earth.

The *Galileo* spacecraft, on its way to Jupiter, became the first spacecraft to observe an asteroid closeup. *Galileo* passed within 1,000 miles of the asteroid Gaspra, moving at a relative velocity of 17,900 miles per hour. *Galileo's* encounter with Gaspra took place almost 225 million miles from Earth, and 205 million miles from the Sun; amazingly, the spacecraft arrived within 1½ seconds of the expected time and only about 3 miles from where scientists and engineers expected it to be. Given the overall harshness of the space environment and the phenomenal distances and travel times involved, this is a remarkable accomplishment. NASA and the team from the Jet Propulsion Laboratory deserve the highest of praise for these two space firsts carried out so brilliantly.

These are not the first brilliant accomplishments of our planetary exploration program. Our exploration of the solar system by spacecraft has now spanned more than three decades and produced an avalanche of exciting discoveries and a wealth of data. Dozens of unpiloted spacecraft have transformed our views of the planets from blurred, telescopic images to crisp, global pictures. Volcanoes on Io, filigree rings around Saturn, red deserts, vast canyons, and ice caps on Mars—these are images as compelling as any our civilization has produced in recent decades. But these new worlds not only amaze us with their beauty and majestic landscapes, they also provide us with insight into the powerful and complex forces which shape planets, and our own Earth.

Many of my colleagues know that I place a high value on the importance of space science and planetary exploration. Essential elements of NASA's charter, these programs have provided us with a rcord of stunning success.

We live in a golden age, when the nations of the Earth are reaching out for the first time, using the full power of science and technology to explore the cosmos and discover its secrets. The major goal of our program of planetary exploration is to determine the origin and evolution of the solar system, including how life relates to the chemical history of the solar system. The quest for answers to such questions may well ultimately lead us to colonize the planetary bodies of the inner solar system and certainly to utilize their natural resources. Many people, laymen and scientists alike, are bound together by this dream of the ultimate destiny of the human race.

As a nation, we have never been reluctant to explore new frontiers; in large part, this effort has driven our technology base, and we have played a pivotal leadership role in science and technology. Our record of success has been envied by the world community of nations. One of the reasons for our success has been our ability for rapid achievement, for seizing opportunities and turning them to our quick advantage.

Even as we celebrate the end of the cold war and its military challenge, the world of the 21st century will present us with monumental challenges to our leadership role. For the first time in recent history, the United States finds itself in a world where competition with other nations and cultures is no longer one sided. Today, we are competing not only for a global market share of technology and products, but also for our share of ideas, cultural patterns, and most importantly, of their legacies to our descendants.

One of the greatest challenges facing our space program as we prepare for this new century is to expand our time horizons and develop strategies which focus on longer term advancement, instead of concentrating solely on shorter term objectives. This challenge will become critical in the years ahead as Federal dollars become even more scarce and NASA's budget becomes even tighter.

Just as space science is definitely a long-term investment and one which we must make for the sake of generations to come, so too is human exploration of the solar system.

As many of you recall, 30 years ago, President Kennedy challenged the Nation to land a man on the surface of the Moon, return him to Earth safely and to do so within a decade. As a nation, we rose to the challenge and President Kennedy's goal was met ahead of schedule. Our success bestowed on us unprecedented and unquestioned preeminence in space, and we reaped the benefits of exploration economically, technologically, and politically. Kennedy rightly viewed space as the new arena in which the United States, if it was to remain a great nation, must dominate. I'd like to take a moment to quote from a speech he made on September 12, 1962, at Rice University in Houston, TX. He said:

> We set sail on this new sea because there is new knowledge to be gained, and new rights to be won, and they must be won and used for the progress of all people.* * *
>
> * * * Only if the United States occupies a position of preeminence can we help decide whether this new ocean will be a sea of peace, or a terrifying theater of war.* * *
>
> * * * Our leadership in science and in industry, our hopes for peace and security, our obligations to ourselves as well as others, all require us to make this effort, to solve these mysteries, to solve them for the good of all men, and to become the world's leading spacefaring nation.

Dr. Michael Griffin, NASA's new Associate Administrator for Exploration has said of Kennedy's remarks:

> One cannot find a clearer or more suitable objective for U.S. space policies and programs, then or now. The very phrases, "this new ocean," and "spacefaring nation" recall the analogy to first Portugal's, then Spain's, and finally Britain's dominance of the high seas. Beginning in the fifteenth century and continuing up to World War II, the willingness and capability to master the seas defined the world's great nations. No lesser purpose than mastery and control of space can justify the enormous investment required to achieve it, and no greater purpose is needed. Success in this enterprise will define the next century's great nations.

President Kennedy was right. And Dr. Griffin is right. The question now before us is: What are we as a nation going to do about the challenge before us? Do we have the technology, the science and engineering capability necessary to be a great and spacefaring nation? The answer is, unquestionably, yes. Do we have the funds? I believe the answer is yes, but, if, and only if, we establish by consensus, a set of overarching, long term national space goals, accompanied by a realistic strategic plan to achieve them. Budget priorities must clearly reflect our national space goals, and must be consistent from year to year.

As the National Academies of Sciences and Engineering have pointed out, the United States has lost its national consensus on space goals in the post-Apollo years. Our space technology base has eroded because in recent years, technical and budget resources available for space have not matched program commitments we made. According to a recent Academy report:

> Long term, durable, and widely accepted goals for the nation in space are essential, both to sort out priorities within the space program, and also to match the pace and direction of the space program with the larger set of national priorities.

And there lies the real crux of the issue. Do we, as a nation, have the will and the vision to develop and implement a strategic plan to sail forth on this new ocean?

Unfortunately, the answer to this question is not clear. In fact, if I had to give you an answer today, I would be forced to say no. And I would say no because as far as our space agenda is concerned, I think we have confused our tools with our missions, our enabling technologies with our goals, and our hardware and infrastructure with our vision.

There can be no question that we need space hardware and infrastructure. However, hardware is hardware. Hardware needs to be harnessed to a long-range vision and a comprehensive and consistent strategy. Common sense only reinforces the notion that space stations, shuttles and expendable launch vehicles are not ends themselves. They are some of the tools which we can use to achieve our Nation's space goals and policies. If, as a matter of national policy, we shared a long range strategic plan for the exploration, development, and use of space, it would be crystal clear that the space station, for example, is part of the infrastructure contained in our long range vision, and not the vision itself.

Over the past few years, there have been many vision documents and reports produced in an effort to arrive at a consensus of what America's long term space goals should be. In May, 1986, the Paine Commission produced "Pioneering the Space Frontier;" in 1987 the Ride report, "Leadership and America's Future in Space," was issued; 1990 saw the release of the Augustine report, "Report of the Advisory Committee on the Future of the U.S. Space Program;" and finally, in May of this year the Synthesis Group's "America at the Threshold; America's Space Exploration Initiative." To date, none has been adopted, much less implemented, as a consensual national space strategy.

The Synthesis report, detailing the rationale, scope, architectures and technologies for the space exploration initiative, offers this Nation a comprehensive strategy for the exploration and development of space. It represents a vital element of a balanced plan of exploration, future acquisition of scientific knowledge and future space leadership. It represents a balanced and carefully planned approach to national space goals, and would, if embraced by the Congress and NASA, provide a mechanism for cooperation, rather than competition, among NASA programs.

According to Dr. Griffin, NASA's Associate Administrator for Exploration:

> We have today a situation wherein a multitude of projects—new launch vehicles, a space station, communications, weather, and Earth resources platforms, space science and planetary exploration, astronomical observatories, military reconnaissance, and many others—compete for attention and funding priority. If it were the goal of the United States to be the dominant spacefaring nation, the sponsors of these efforts would be allies rather than competitors. The space exploration initiative provides the necessary linkage for these disparate efforts.

I would welcome a national space strategy which brings to a halt the conflict and competition for funding among NASA programs, for more often than not, these internal squabbles are counterproductive. The space exploration initiative, as set forth in the Synthesis report, provides a sharp focus for a broad space strategy, and if adopted in incremental steps over decades, would surely restore to NASA the clear vision and goals our space agency so badly needs. Six basic principles guide and direct the space exploration initiative, often referred to as the SEI.

Knowledge of our universe: SEI is an integrated program of missions by humans and robots to explore, to understand and to gain knowledge of the universe and our place in it.

Advancement in science and engineering: SEI will motivate and inspire the new generations on which our future as a nation depends.

U.S. leadership: SEI provides us with an opportunity to reestablish and maintain American preeminence in technological innovation and space leadership.

Technologies for Earth: SEI provides focused goals to effect practical and beneficial technological changes.

Commercialization of space: SEI will facilitate further commercialization of space as reliable and routine access to space is available.

Strengthened U.S. economy: SEI directly stimulates America's scientific and technical employment bases, and is an investment in the future of America.

No one I know disagrees with the basic premises and goals of the SEI.

We agree that expanding human presence and activity beyond Earth orbit into the solar system is an important goal. We agree that as a nation we will reap significant technological and economic benefits by pursuing SEI. And, we agree that by offering clear direction and purpose, the SEI will rejuvenate our technology base, our sense of challenge and competitiveness and our national pride. We agree that SEI is worth doing.

The contentious debate on SEI springs from the issue of how we are going to fund this long-term program to return to the Moon and send humans to Mars in the current and projected budget climate. If we view the SEI, as some do, as an Apollo-like program, then we are doomed to failure; clearly the days of Apollo-style megaprojects are over.

If, however, we view the SEI as a clearly articulated national strategy and vision essential to the exploration and development of space, the key to a successful funding strategy is to break the initiative into a series of short term, realistically priced projects. Each project will build upon the results of preceding projects, but also stand alone, contributing immediate results of importance to the space program.

What it boils down to is this: Contrary to popular opinion, SEI is not a budget buster. I believe that it is wrong to summarily dismiss SEI as an Apollo-like project we can't afford. SEI is not, as some may claim, a $400 billion, 30-year Apollo-like, budget-busting project. SEI is not a project at all. SEI is a vision and a unifying strategy which will bring focus to a program of near term achievements and lead to the accomplishment of long-term goals.

Designed to be executed on a go-as-you-pay basis, SEI is programmed to proceed on a schedule consistent with available funding. SEI will provide us with a strong, stable and diverse national space research and technology base. SEI will unify a wide variety of technologies—existing, developing and potential—in pursuit of a long term commitment to space exploration as the single unifying focus for America's space program. A single unifying focus for America's space program is clearly what we need. And we need it now.

In my opinion, if we are to be a spacefaring nation, if we actually want to leave a legacy of leadership and accomplishments to our children and to their children, then we must methodically and consistently pursue the space exploration initiative, in incremental steps consistent with budget realities. SEI is the roadmap to our long-term future in space.•

TRIBUTE TO JEAN BAPTISTE "ILLINOIS" JACQUET

• Mr. KERRY. Mr. President, today I want to specially recognize one of the greatest talents of the jazz world, Jean Baptiste "Illinois" Jacquet, who on November 22 will honor our State by celebrating the 50th anniversary of his acclaimed recording career with a performance in North Andover.

Considered to be the last great swing saxophonist, Illinois Jacquet, through his music, has endeared himself to the people of Massachusetts. The affection is mutual, for it was in Boston that this acclaimed artist delivered many of his soaring performances in such famous venues as the Tic Toc, High Hat, and Symphony Hall. During the early 1980's Jacquet enhanced the Boston music community by serving at Harvard University as its Kayden Artist in Residence. It was this rewarding tenure at Harvard which inspired him to assemble his most recent big band. The people of Massachusetts heartily welcome him back to the Bay State.•

NEW YORK CITY ZEBRA MUSSEL MONITORING ACT OF 1991

• Mr. D'AMATO. Mr. President, I rise today as a cosponsor to the New York City Zebra Mussel Monitoring Act of 1991, introduced by my friend, the senior Senator from New York, Senator MOYNIHAN.

The zebra mussel has been a plague to New York State's water system for years. Now it may claim a new victim, the New York City reservoir system.

The zebra mussel is believed to have arrived in North America in the ballast water of a European freighter in the summer of 1986, and escaped as larvae in discharged ballast water into Lake St. Clair or the St. Clair River. Since then the problem has grown in magnitude spreading to Lake Erie, Lake Ontario, Green Bay, off of Lake Michigan, and also downstream in the St. Lawrence River.

Recently, sitings of the mussel have occurred in Binghamton, NY, in the Erie Canal, the Hudson, and other waters near the city's reservoir system.

The mussel is attracted to municipal water intakes, clogging the systems and forcing expensive repairs just to keep water flowing from the taps of homes and businesses. The three upstate reservoirs provide water for over 9 million people. Any disruption in the water supply can have a devastating affect on the New York City citizens and its economy.

This legislation establishes a program to address the impending threat to New York's water supply system. It establishes a monitoring program and a program to develop technologies to prevent zebra mussel infestation in the New York City water system. Additionally, it requires a combined Federal-State-local effort to develop new technologies to remove zebra mussels if infestation has already occurred.

The magnitude of the zebra mussel problem has made it clear that we must act now to prevent this crisis before it occurs. I urge my colleagues to support this legislation.•

REMARKS OF MR. RALPH BECKER

• Mr. CRAIG. Mr. President, the story of the Eisenhower administration and its involvement in the National Cultural Center—the Kennedy Center—is an exciting and historic one. I would like to ask that Mr. Ralph Becker's remarks from his address, "Contributions of President Eisenhower to Our Cultural Legacy," which he gave in October of last year at "The Eisenhower Centennial Celebration, a Retrospective View," be inserted into the RECORD.

Mr. Becker is uniquely qualified to comment on President Eisenhower and his strong support of the arts as an instrument of peace among nations. Mr. Becker served as trustee and general counsel for the Kennedy Center from 1958 until 1976, when President Ford appointed him Ambassador to Honduras. He currently serves as an honorary trustee, though his level of service is far from that usually associated with an honorary title. He worked with the Eisenhower White House and congressional leadership on the authorizing legislation for the National Cultural Center, and is the author of "Miracle on the Potomac—The Kennedy Center From the Beginning," which was published last year.

Eisenhower's dedication to the use of culture as a tool for international peace was a mark of the man. I believe we could all profit from a more intensive review of that concept, and I recommend to my colleagues both Mr. Becker's remarks and his book.

The remarks follow:

CONTRIBUTIONS OF PRESIDENT EISENHOWER TO OUR CULTURAL HERITAGE

(By Ralph E. Becker)

An accurate portrait of President Dwight David Eisenhower, whose eight years in office brought peace and prosperity, would not be complete without his cultural achievements being fully recognized. His contributions to our cultural history, all too often overlooked, were significant and lasting.

In his 1960 "Goals for Americans," a part of the report of the President's Commission on National Goals, he wrote:

"In the eyes of posterity the success of the United States will be judged by the creative activities of its citizens in the arts, architecture, literature, music and the sciences."

He was by no means the first President to embrace this philosophy. George Washington, in his first State of the Union address to Congress in 1790, said:

"You will agree * * * that there is nothing which can better deserve our patronage than the promotion of science and literature * * * the arts and sciences are essential to the prosperity of the state and to the ornament and happiness of human life."

Ten years later, in 1800, President John Adams again emphasized the concept when he mandated that the new City of Washington should become "the capital of a great nation, advancing with unexampled rapidity in arts, in commerce, in wealth and in population."

In a letter to his wife Abigail, Adams wrote:

"I must study politics and was so that my sons may have liberty—liberty to study mathematics and philosophy, geography, naval history, navigation, commerce and agriculture; in order to give their children a right to study painting, poetry, music, architecture."

A century and a half later John Adams' dream for a cultural capital city became reality. It was Eisenhower who answered the call. He espoused that early philosophy and added his own to it in an essay "The Creative Purpose" for the book Creative America, published for the benefit of the National Cultural Center:

"The founding fathers' dream of a new society in a new world included beauty widely enjoyed as well as wealth widely shared. They dreamed of a nation adept at the arts of humanism, as well as at the works of industry. They strove for cultural growth as well as for economic increase. Artists fully aware of and dedicated to their responsibility strengthen our national spirit. Their new place in American life should, I think, inspire new and finer accomplishments—in all hearts. It is my hope that they, in turn, will inspire us with new pride in the concepts of mind and heart that have made our country great."

As President, he championed the concept of a National Cultural Center, strongly endorsing the legislation creating it, and signing the Act into law on September 2, 1958. After he left office, it was still a priority with him. On a national fundraising telecast on November 29, 1962, "An American Pageant on the Arts," he reaffirmed his dedication to "an American center of culture in Washington to which all artists of the United States could repair . . . and where people would come to see what America was capable of . . . in the arts and all that is spiritually aesthetic to the senses of man."

Eisenhower's goals in the arts were broad and far-reaching but they have been obscured for the past 30 years, as precious few facts have received public notice regarding his humanistic commitment. As biographer William Bragg Eward put it, paraphrasing Carl Sandberg: "Ike was steel and velvet . . . as hard as rock and soft as drifting fog, one who held in his heart and mind the paradox of terrible storm and peace unspeakable and perfect." It is undoubtedly from these overlooked qualities—the "velvet" and the "heart" in him—that Eisenhower's commitment to the arts derived. For him, the arts were part of a much larger quest for better understanding among the peoples of the world.

The chance for enduring peace could be aided, he felt, through the cultural arts and an increased awareness and understanding worldwide. In 1956, when launching the People-to-People program, he affirmed that its "objective is for people to get together and to leap governments—if necessary to evade governments—to work out not one method but thousands of methods by which people can gradually learn a bit more of each other. This way, I believe, is the truest path to peace." Prophetic words, given what has been happening since 1989 in the USSR, Eastern Europe,and elsewhere in the world!

His commitment became record in 1955 in his second State of the Union message: ". . . the federal government should do more to give official recognition to the importance of the arts and other cultural activities. I shall recommend the establishment of a Federal Advisory Council on the Arts . . . to advise the federal government on ways to encourage artistic endeavor and appreciation." His foresight paved the way for the eventual establishment of the National Endowments for the Arts and Humanities.

On May 14, 1959, when he broke ground in New York City for the Lincoln Center, Ike observed that it was "a great cultural adventure" and that Lincoln Center was destined to become "a mighty influence for peace and understanding throughout the world."

Most historians have focused, with good reason, on Eisenhower's accomplishments as soldier and statesman, but his actions in pursuit of culture add a new dimension to his statute as President. He never wavered in his quest for peace through the arts.

WASHINGTON, DC, *October 14, 1990*.•

COMMENDING DR. EDWARD L. BERNAYS

• Mr. KERRY. Mr. President, I rise to honor a pioneer in social communication, Dr. Edward L. Bernays, who this month will be celebrating his 100th birthday.

Dr. Bernays was called by Life magazine and PBS one of the most influential people of this century—and for good reason, as he is widely regarded as the father of modern public relations. In the 1920's, at New York University, he taught the first-ever public relations course and later authored one of that field's most influential works entitled "Crystallizing Public Opinion." His theories and techniques pertaining to social engineering served to revolutionize the fields of public relations, advertising, and publicity.

In addition to his professional and academic achievements, Dr. Bernays successfully used his ideas and talents to further many of this Nation's progressive causes, including the civil rights and feminist movements. In our State, he was influential in the passage of legislation to end mandatory retirement.

By saluting Dr. Bernays on his centennial, I wish to extend my appreciation to him for his lifelong commitment to improving human communications and improving our society.●

EXTENSION OF INDUSTRIAL DEVELOPMENT BOND PROGRAM

● Mr. D'AMATO. Mr. President, I rise to announce my support for S. 1357, the permanent extension of the Small Issue Industrial Development Bond [IDB] Program.

I have supported extension of this financing source for small manufacturers since I came to the Senate. Industrial development bond financing allows eligible companies to reduce interest rates on debt taken on to expand production and modernize plants. The result has been increased U.S. economic competitiveness and the promotion of new jobs.

As proof of this, consider the history of the New York City Industrial Development Agency. Since its inception 16 years ago, the agency has been involved in 639 tax-exempt bond financings, with a total of over $2 billion in debt issued. Of this total, $810 million in financings were small issue industrial development bonds.

An analysis of these small issue details demonstrates that the program has promoted tens of thousands of jobs for New Yorkers. Predominately, these jobs were created by providing capital to the companies most in need of funding—small- and medium-sized businesses. For example, in the period from 1987 to 1990, the average financing size for the 43 small issue bond financings completed by the New York City IDA was less than $2.4 million. Finally, these projects have had an extremely low default rate. At the beginning of 1990, the agency indicates that losses in the program over the previous 15-year period were less than $1 million. Compared to the $800 million issued, this is a loss rate of around .125 percent.

Over the last 10 years, Congress has taken a number of steps to rein in the use of tax-exempt bond financing in general, and industrial development bonds in particular. Eligibility for IDB's is now targeted and subject to volume caps. As a result, the current program represents a well-thought-out effort to maximize job creation with a minimum of tax incentives.

Unfortunately, without congressional action, this program will die a quiet death at the end of this year. It would be one thing if Congress debated this at length and voted to eliminate the program, based on an affirmative vote. Like many other extenders, however, good policies seem to be held hostage to political budget and tax considerations and may die without even a vote.

Therefore, I urge my colleagues to take action to keep this program alive.●

The PRESIDING OFFICER. The majority leader is recognized.

EXTENSION OF THE OLDER AMERICANS ACT OF 1965

Mr. MITCHELL. Mr. President, I ask unanimous consent that the majority leader may turn to the consideration of Calendar No. 225, S. 243, a bill to revise and extend the Older Americans Act of 1965, during the week of Tuesday, November 12.

The PRESIDING OFFICER. Without objection, it is so ordered.

WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 281, S. 1671, relating to the waste isolation pilot plant.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1671) to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, New Mexico, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Waste Isolation Pilot Plant Land Withdrawal Act of 1991".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) AGREEMENT.—The term "Agreement" means the Agreement for Consultation and Cooperation Between the State of New Mexico and the United States Department of Energy entered into on July 1, 1981, as amended, authorized by section 213(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265).

(3) ATOMIC ENERGY DEFENSE ACTIVITY.—The term "atomic energy defense activity" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(4) CONTACT-HANDLED TRANSURANIC WASTE.—The term "contact-handled transuranic waste" means waste from atomic energy defense activities with a specific activity greater than 100 nanocuries per gram of waste and a surface dose rate of less than 200 millirems per hour.

(5) DISPOSAL REGULATIONS.—The term "disposal regulations" means the regulations issued by the Environmental Protection Agency establishing the generally applicable environmental standards for the disposal of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in subpart B of part 191 of title 40, Code of Federal Regulations.

(6) EEG.—The term "EEG" means the Environmental Evaluation Group for the WIPP referred to in section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

(7) GOVERNOR.—The term "Governor" means the Governor of the State of New Mexico.

(8) HIGH-LEVEL RADIOACTIVE WASTE.—The term "high-level radioactive waste" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(9) MANAGEMENT AND STORAGE REGULATIONS.—The term "management and storage regulations" means the regulations issued by the Environmental Protection Agency establishing the generally applicable environmental standards for the management and storage of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in subpart A of part 191 of title 40, Code of Federal Regulations.

(10) NO-MIGRATION DETERMINATION.—The term "No-Migration Determination" means the Final Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant published by the Environmental Protection Agency on November 14, 1990 (55 FR 47700).

(11) PERFORMANCE ASSESSMENT REPORT.—The term "performance assessment report" means the documented analysis of the long-term performance of the WIPP that is published annually by the Department of Energy.

(12) REMOTE-HANDLED TRANSURANIC WASTE.—The term "remote-handled transuranic waste" means transuranic waste from atomic energy defense activities with a surface dose rate between 200 millirems per hour and 1,000 rems per hour.

(13) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(14) SPENT NUCLEAR FUEL.—The term "spent nuclear fuel" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(15) THE STATE.—The term "the State" means the State of New Mexico.

(16) TRANSURANIC WASTE.—The term "transuranic waste" has the same meaning as is provided for "transuranic radioactive waste" in part 191 of title 40, Code of Federal Regulations. The term includes such waste that is also mixed with waste regulated as hazardous waste under the Solid Waste Disposal Act.

(17) WIPP.—The term "WIPP" means the Waste Isolation Pilot Plant authorized under section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265).

(18) WIPP SITE.—The term "WIPP site" means the lands and resources withdrawn and reserved by this Act and described in section 3(c).

SEC. 3. LAND WITHDRAWAL AND RESERVATION FOR THE WIPP.

(a) WITHDRAWAL, JURISDICTION, AND RESERVATION.—

(1) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this Act, the WIPP site described pursuant to subsection (c) is withdrawn from entry, sale, or other disposition under the public land laws, from all forms of appropriation under the mining laws, and from operation of the mineral leasing laws and the geothermal leasing laws.

(2) JURISDICTION.—Except as otherwise provided in section 6(d), jurisdiction over the WIPP site is transferred from the Secretary of the Interior to the Secretary of Energy.

(3) RESERVATION.—

(A) IN GENERAL.—The WIPP site is reserved for the use of the Secretary of Energy for the construction, experimentation, operation, repair and maintenance, disposal, shutdown, monitoring, decommissioning, and other authorized activities associated with the purposes of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265), and this Act.

(B) WATER RIGHTS.—Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the WIPP site. Nothing in this Act shall be construed as authorizing the appropriation of water on the WIPP site by the United States after the date of enactment of this Act, except in accordance with the law of the State. This subparagraph shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

(b) REVOCATION OF PUBLIC LAND ORDERS.—Public Land Order 6403, of June 29, 1983, Public Land Order 6826, of January 28, 1991, and the memorandum of understanding referenced in each of the orders are hereby revoked.

(c) LAND DESCRIPTION.—

(1) IN GENERAL.—The boundaries depicted on the map issued by the Bureau of Land Management of the Department of the Interior, entitled "WIPP Withdrawal Site Map", and dated October 9, 1990, are established as the boundaries of the WIPP site.

(2) LEGAL DESCRIPTION AND MAP.—Not later than thirty days after the date of enactment of this Act, the Secretary of the Interior shall—

(A) publish in the Federal Register a notice containing a legal description of the WIPP site; and

(B) file copies of the legal description of the WIPP site, and the map described in paragraph (1), with

(i) the Committee on Energy and Natural Resources of the United States Senate;

(ii) the Committee on Interior and Insular Affairs of the United States House of Representatives;

(iii) the Secretary; and

(iv) the State.

(d) TECHNICAL CORRECTIONS.—The legal description and map shall have the same force and effect as if they were included in this Act, except that the Secretary of the Interior may correct clerical and typographical errors.

SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(a) GENERAL AUTHORITY.—The Secretary shall—

(1) have responsibility for the management of the WIPP site;

(2) consult and cooperate with the State under the terms of the Agreement in discharging the responsibilities required by this Act; and

(3) consult and cooperate with the EEG under the terms of Contract No. DE-AC04-89AL58309 in the performance of its responsibility to conduct an independent technical review and evaluation of the WIPP pursuant to section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary, in consultation with the State and the Department of the Interior, shall develop a management plan for the WIPP site.

(2) ACTIVITIES NOT ASSOCIATED WITH THE WIPP.—

(A) IN GENERAL.—Any use of the lands for activities not associated with the WIPP shall be subject to such conditions and restrictions as are necessary to permit the use of the lands for WIPP activities, as determined by the Secretary, and subject to the purposes of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265), and this Act.

(B) SPECIFIC ACTIVITIES.—In addition to other activities, the management plan shall provide for domestic livestock grazing, hunting and trapping, wildlife habitat, the disposal of salt tailings remaining on the surface, and mining, as follows:

(i) GRAZING.—Subject to such regulations, policies, and practices as the Secretary determines are necessary or appropriate, the Secretary shall permit grazing to continue where established prior to the date of enactment of this Act. The grazing shall be conducted consistent with—

(I) title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.);

(II) the Act entitled "An Act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes", approved June 28, 1934 (43 U.S.C. 315 et seq.) (commonly known as the "Taylor Grazing Act");

(III) Public Rangelands Improvement Act of 1978 (43 U.S.C. 1902 et seq.); and

(IV) Executive Order 12548 (51 Federal Register 5985).

(ii) HUNTING AND TRAPPING.—

(I) IN GENERAL.—The Secretary shall permit hunting and trapping within the WIPP site in accordance with applicable laws and regulations of the United States and the State.

(II) RESTRICTIONS.—The Secretary, after consultation with the New Mexico Department of Game and Fish, may issue regulations designating zones where, and establishing periods when, no hunting or trapping is permitted for reasons of administration or public safety.

(iii) WILDLIFE HABITAT.—The Secretary shall manage the WIPP site in a manner to maintain and preserve the wildlife habitat of the WIPP site.

(iv) SALT TAILINGS.—The Secretary shall dispose of salt tailings that are not needed for backfill at the WIPP site. Disposition shall be made in accordance with sections 2 and 3 of the Act entitled "An Act to provide for the disposal of materials on the public lands of the United States", approved July 31, 1947 (30 U.S.C. 602 and 603) (commonly known as the "Materials Act of 1947").

(v) MINING.—

(I) IN GENERAL.—Except as otherwise provided in subclause (II), no surface or subsurface mining unrelated to the WIPP, including slant drilling under the site from within or without the site, shall be permitted on or under the WIPP site, including after decommissioning.

(II) EXISTING OIL AND GAS LEASES.—The Secretary of the Interior, in consultation with the Secretary, shall undertake a study to determine the effects, if any, of Federal Oil and Gas Leases No. NMNM 02953 and 02953C on activities to be conducted at the WIPP site. The study shall include recommendations as to the advisability of negotiating an exchange of the leases for other Federal oil and gas leases outside the WIPP site or canceling the leases. The Secretary of the Interior shall submit his recommendations to the Secretary and the State prior to the conclusion of the experimental program provided for in section 5 of this Act. Any activities undertaken on the leases shall be subject to such reasonable restrictions as the State, the Secretary of the Interior, and the Secretary may prescribe taking into consideration the purposes for which the land is withdrawn under this Act.

(c) SUBMISSION OF PLAN TO CONGRESS AND THE STATE.—The Secretary shall submit the management plan developed pursuant to subsection (b) to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, and the State. Any amendments to such plan shall be submitted promptly to such Committees and the State.

(d) CLOSURE TO THE PUBLIC.—If the Secretary determines that the health and safety of the public or the common defense and security require the closure to public use of a road, trail, or other portion of the WIPP site, the Secretary may take such action as the Secretary considers necessary or desirable to effect and maintain the closure.

(e) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements—

(1) with the Secretary of the Interior and the State for the administration of grazing within the WIPP site;

(2) with the State for the maintenance of the wildlife habitat of the WIPP site; and

(3) with the Department of the Interior or the State, or both, to enforce the prohibition on mining within the WIPP site.

SEC. 5. EXPERIMENTAL PROGRAM.

(a) AUTHORIZATION.—The Secretary may implement an experimental program at the WIPP as described in subsection (b), subject to the review and evaluation process under subsection (c) and completion of conflict resolution, if any, under subsection (d); or subject to the requirements of subsection (f). No transuranic waste shall be received at the WIPP, after the date of enactment of this Act, until the Secretary has fulfilled the requirements of this section.

(b) EXPERIMENTAL PROGRAM PROPOSAL.—

(1) IN GENERAL.—Except as provided in subsection (f), not later than ninety days after the date of enactment of this Act, the Secretary (in consultation with the State, the Administrator, the National Academy of Sciences, and the EEG) shall prepare a proposal for an experimental program involving transuranic waste at the WIPP. The Secretary shall give notice in the Federal Register of the availability of the experimental program proposal and shall provide an opportunity for public access to these documents.

(2) MODIFICATIONS.—The Secretary shall also prepare a proposal for any modification to the experimental program that involves any material change in the nature of the experiments involving transuranic waste at the WIPP or any change in the total amount of waste to be employed in experiments at the WIPP. Such amounts shall in no event exceed the amounts set forth in section 7 of this Act.

(3) EXPERIMENTS.—The proposal or any proposed modification shall include detailed information on the following experiments—

(A) experiments to determine the rate of gas generation and waste solubility at the WIPP and to evaluate the impact of gas generation and waste solubility on the WIPP;

(B) experiments to aid in the assessment of compliance with the disposal regulations; and

(C) such other experiments as are determined by the Secretary, after consultation with the State, the Administrator, the National Academy of Sciences, and the EEG, to be necessary to ensure the protection of the public health and safety and the environment.

(4) WRITTEN PLANS TO BE INCLUDED IN PROPOSAL.—The experimental program proposal, or any proposed modification to the experimental program, shall also include detailed information describing the proposed purposes of the experiments, how the data from the experiments will be used, the amount of transuranic waste required for the experiments, and the time schedule for the experiments.

(5) ADDITIONAL INFORMATION TO BE INCLUDED IN THE PROPOSAL.—The proposal, or any proposed modification, shall also include the following—

(A) a determination by the Secretary that there are preestablished plans and procedures for the retrieval of the transuranic waste as required by section 8 of this Act;

(B) a summary of the preliminary performance assessment calculations available to guide the experiments;

(C) a determination by the Secretary that the proposed experiments pose no undue risk to the

public health and safety or to the environment; and

(D) a determination by the Secretary that the proposed experiments will provide relevant and useful data in a timely manner for making the Secretary's determination of compliance with the disposal regulations, or for confirming such compliance, and for the Administrator's certification of compliance.

(6) SUBMISSION OF PROPOSAL.—The Secretary shall submit the experimental program proposal, or any proposed modification, and supporting documentation, to the State, the Administrator, the National Academy of Sciences, and the EEG.

(c) REVIEW OF PROPOSAL OR PROPOSED MODIFICATION.—

(1) REVIEW AND COMMENT.—Not later than thirty days after the submission of the proposal, or any proposed modification, the State, the Administrator, the National Academy of Sciences, and the EEG shall review the proposal, or proposed modification, and supporting documentation, and provide their comments to the Secretary. The comments shall include an evaluation of whether the proposed experiment will provide relevant and useful data in a timely manner for determining compliance with the disposal regulations, or for confirming such compliance.

(2) RESPONSES BY THE SECRETARY.—Not later than thirty days after the receipt of comments under paragraph (1), the Secretary shall—

(A) prepare written responses to the comments received;

(B) submit the responses to the State, the Administrator, the National Academy of Sciences, and the EEG; and

(C) publish a final experimental program plan in the Federal Register.

(3) FINAL EVALUATION.—Within thirty days after the Secretary completes the requirements of paragraph (2), the State, the Administrator, the National Academy of Sciences, and the EEG shall—

(A) complete a final evaluation of the proposed experimental program;

(B) set forth the factual basis upon which the evaluation is made; and

(C) provide the evaluation to the Secretary, who shall give notice of receipt in the Federal Register and provide an opportunity for public access to these documents.

(d) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's final experimental program plan published under subsection (c)(2), the State may invoke the conflict resolution provisions of the Agreement.

(e) MODIFICATIONS TO THE EXPERIMENTAL PLAN AFFECTING THE LIMITATION ON VOLUME.—

(1) APPROVAL BY THE ADMINISTRATOR.—In addition to the requirements of subsections (b) and (c) of this section, if a proposed modification to the experimental program plan calls for the amount of transuranic waste emplaced at the WIPP to exceed 0.5 percent by volume, the Administrator must concur with the proposed modification and approve the increase in the volume of transuranic waste, consistent with the Administrator's review and evaluation under subsection (c) and consistent with section 7(a)(2)(C), prior to receipt at the WIPP of any amount of waste exceeding 0.5 percent by volume.

(2) CONFLICT RESOLUTION.—If the State disagrees with the increase in the volume of transuranic waste, the State may invoke the conflict resolution provisions of the Agreement.

(f) PROCESS FOR PRIOR REVIEW OF EXPERIMENTAL PROGRAM.—

(1) PRIOR REVIEW.—If the Secretary has provided an opportunity for review of, comment on, and evaluation of the elements of the experimental program proposal required in this section prior to the enactment of this Act, the provisions of this subsection shall apply.

(2) SUBMISSION OF DOCUMENTATION TO CONGRESS.—The Secretary may submit documentation of the review, comment, and evaluation process within forty five days of the enactment of this Act, as well as the comments and evaluations provided by the State, the Administrator, the National Academy of Sciences, and the EEG, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. These submissions shall constitute compliance with the requirements of subsections (b) and (c) of this section. If the Secretary has requested and not received final evaluations from the State, the Administrator, the National Academy of Sciences, and the EEG within thirty days of the enactment of this Act, the Secretary's submission of documentation of the review, comment, and evaluation process shall constitute compliance with the requirements of subsections (b) and (c) of this section.

(g) ACCESS TO INFORMATION.—The Secretary shall provide the State and the EEG such data and other information relevant to health, safety or environmental issues pertaining to the WIPP in a timely manner to enable the State and the EEG to discharge their responsibilities.

(h) ANALYSES OF PERFORMANCE ASSESSMENT REPORT.—

(1) IN GENERAL.—Within one hundred and twenty days of the annual publication of the Secretary's performance assessment report, the State, the Administrator, and the EEG shall evaluate and publish analyses of that report.

(2) RESPONSES BY SECRETARY.—Within one hundred and twenty days of the publication of analyses pursuant to paragraph (1), the Secretary shall submit written responses to the State, the Administrator, and the EEG, and to other appropriate entities or persons after consultation with the State.

(i) OPERATIONAL DEMONSTRATION WITH TRANSURANIC WASTE.—No transuranic waste may be received at the WIPP for operational demonstration of the WIPP before—

(1) the Secretary's determination of compliance with the disposal regulations; and

(2) the Administrator's certification to Congress that the Secretary has complied with the disposal regulations.

(j) EXISTING OBLIGATIONS AND AUTHORITIES.—Nothing in this section shall be construed to limit or in any manner affect the Administrator's authority to enforce and the Secretary's obligation to comply with all terms and conditions of the No-Migration Determination.

SEC. 6. COMPLIANCE WITH EPA REGULATIONS AND INCLUSION OF ENGINEERED BARRIERS.

(a) ISSUANCE OF EPA DISPOSAL REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than one hundred and eighty days after the date of enactment of this Act, the Administrator shall publish in the Federal Register proposed disposal regulations.

(2) FINAL REGULATIONS.—Not later than two years after the date of enactment of this Act, the Administrator shall publish in the Federal Register final disposal regulations.

(b) ISSUANCE OF EPA CRITERIA FOR DETERMINATION OF COMPLIANCE WITH DISPOSAL REGULATIONS.—

(1) PROPOSED CRITERIA.—Not later than one hundred and eighty days after the date of enactment of this Act, the Administrator shall publish in the Federal Register proposed criteria for the Secretary's determination of compliance with the disposal regulations.

(2) FINAL CRITERIA.—Not later than two years after the date of enactment of this Act, the Administrator shall publish in the Federal Register final criteria for the Secretary's determination of compliance with the disposal regulations.

(c) COMPLIANCE WITH EPA REGULATIONS.—

(1) MANAGEMENT AND STORAGE REGULATIONS.—Beginning on the date of enactment of this Act, the Secretary shall comply with the management and storage regulations at the WIPP.

(2) DISPOSAL REGULATIONS.—

(A)(i) IN GENERAL.—The Secretary shall comply with the disposal regulations at the WIPP. Except as provided in subsection (d), not later than six years after the date of enactment of this Act, the Secretary shall make a determination of compliance with the disposal regulations and submit his determination to the Administrator. In making the determination required by this subsection, the Secretary shall utilize the criteria published by the Administrator under subsection (b) to demonstrate that there is a reasonable expectation that long-term compliance with the disposal regulations will be achieved.

(ii) CERTIFICATION.—The Administrator shall certify to Congress whether the Secretary has complied with the disposal regulations at the WIPP within one year of receipt of the Secretary's determination of compliance.

(iii) JUDICIAL REVIEW.—The certification by the Administrator shall be judicially reviewable in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 701 et seq.), and such review shall not be restricted by the provisions of section 2271(c) of title 42, United States Code.

(B) INJUNCTION BY A COURT.—If a court of competent jurisdiction orders the Administrator to reissue the regulations issued pursuant to subsection (a) or prevents the Administrator from giving the regulations full force and effect, the Secretary shall base his determination of compliance on the regulations issued pursuant to subsection (a), unless the court order expressly finds and orders that its injunction relates to substantive environmental, public health, or public safety aspects of the regulations directly applicable to the WIPP.

(C) FAILURE TO PUBLISH.—If the Administrator fails to publish in the Federal Register proposed or final disposal regulations pursuant to subsection (a), the Secretary shall base his determination of compliance on the disposal regulations as in effect on November 18, 1985.

(d) FAILURE TO COMPLY.—

(1) IN GENERAL.—If the Secretary has not submitted to the Administrator a determination of compliance with the disposal regulations within six years after the date of enactment of this Act, or the Administrator has certified that the Secretary has not complied with the disposal regulations—

(A) the Secretary shall ensure that the waste is removed within one year thereafter; and

(B) no permit or variance pursuant to section 3004 of the Solid Waste Disposal Act, or other applicable hazardous waste laws, with respect to the WIPP, shall remain in effect later than one year thereafter.

(2) EFFECT OF REMOVAL.—When all transuranic waste has been removed, the WIPP shall be decommissioned. Following the decommissioning, the land withdrawal provided by this Act shall terminate, and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(3) EXTENSION OF DEADLINE.—The deadline for submission of the Secretary's determination to the Administrator referred to in paragraph (1) may be extended for a period of no more than two years at the discretion of the Administrator if—

(A) the Secretary determines that the disposal regulations cannot be complied with by the date referred to in paragraph (1);

(B) the Secretary notifies the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, the State, the Administrator, and the EEG that additional time is needed to comply with the disposal regulations; and

(C) the Administrator determines that additional time would provide relevant and useful data in a timely manner for determining or certifying compliance with the disposal regulations, or for confirming such compliance.

(e) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's determination of compliance with the disposal regulations, the State may invoke the conflict resolution provisions of the Agreement.

(f) ENGINEERED BARRIERS.—

(1) IN GENERAL.—The WIPP shall use engineered barriers as well as natural barriers to isolate the transuranic waste after disposal to the extent required by the applicable regulations of the Environmental Protection Agency. For purposes of this subsection, "engineered barriers" means any backfill, room seals, and other man-made barrier components required by the Administrator.

(2) WASTE FORM MODIFICATIONS.—If appropriate to determine compliance with the disposal regulations, the Secretary shall also include transuranic waste form modifications in the WIPP.

SEC. 7. RESTRICTIONS.

(a) TRANSURANIC WASTE.—

(1) IN GENERAL.—

(A) REM LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE.—

(i) 1,000 REMS PER HOUR.—No transuranic waste received at the WIPP may have a surface dose rate in excess of 1,000 rems per hour.

(ii) 100 REMS PER HOUR.—No more than 5 percent by volume of the remote-handled transuranic waste received at the WIPP may have a surface dose rate in excess of 100 rems per hour.

(B) CURIE LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE.—

(i) CURIES PER LITER.—Remote-handled transuranic waste received at the WIPP shall not exceed 23 curies per liter maximum activity level (averaged over the volume of the canister).

(ii) TOTAL CURIES.—The total curies of the remote-handled transuranic waste received at the WIPP shall not exceed 5,100,000 curies.

(C) CAPACITY OF THE WIPP.—The total capacity of the WIPP by volume is 6.2 million cubic feet of transuranic waste.

(2) EXPERIMENTAL PROGRAM.—

(A) BAN ON REMOTE-HANDLED TRANSURANIC WASTE.—No remote-handled transuranic waste may be received at the WIPP until the Administrator has certified to the Congress that the Secretary has complied with the disposal regulations.

(B) LIMITATION.—Before the Secretary has made a determination of compliance with the disposal regulations and the Administrator has certified the compliance to the Congress, only so much transuranic waste as is needed for the experimental program implemented pursuant to section 5, and not to exceed 0.5 percent by volume of the capacity of the WIPP, may be received at the WIPP.

(C) MODIFICATION OF LIMITATION.—The limitation contained in subparagraph (B) may only be modified if the Administrator determines that such a modification will provide relevant and useful data in a timely manner for determining or certifying compliance with the disposal regulations, or for confirming such compliance. In no event may the limit exceed the limitation on volume contained in the No-Migration Determination, or 1.0 percent by volume of the capacity of the WIPP.

(b) HIGH-LEVEL RADIOACTIVE WASTE.—No spent nuclear fuel or high-level radioactive waste may be received at the WIPP.

SEC. 8. RETRIEVABILITY.

(a) REQUIREMENT OF RETRIEVABILITY.—

(1) IN GENERAL.—Transuranic waste emplaced in the WIPP for purposes of the experimental program under section 5 shall be retrievable during the experimental program and for a period of time subsequent to the program needed to provide for its retrieval in the event that—

(A) the Secretary determines or the Administrator certifies that the WIPP does not comply with the disposal regulations;

(B) the transuranic waste needs to be retrieved for engineering modification or for repackaging for permanent disposal; or

(C) such retrieval is necessary to protect the public health and safety and the environment.

(2) ANNUAL DETERMINATION OF RETRIEVABILITY.—The Secretary shall make an annual determination, taking into account the evaluation under section 10(b), of whether all transuranic waste is retrievable and can remain retrievable.

(3) ANNUAL DEMONSTRATION OF RETRIEVABILITY.—The Secretary shall demonstrate, on an annual basis, in conjunction with the determination required in paragraph (2), that a sample of transuranic waste is retrievable.

(b) RETRIEVAL PLAN.—

(1) PREPARATION AND SUBMISSION.—Sixty days after the enactment of this Act, the Secretary shall submit to the Administrator and the State a retrieval plan that provides for the retrieval of transuranic waste from the WIPP should retrieval be required. The retrieval plan shall include contingency plans for—

(A) transport of transuranic waste to any storage facility designated by the Secretary, which is permitted for storage of such waste under the Solid Waste Disposal Act, or other applicable hazardous waste law, and which is located outside of the State, except as provided in subsection (c)(2); and

(B) temporary storage subject to the limitations contained in subsection (c).

(2) IMPLEMENTATION.—The Secretary shall implement the plan or take corrective action to ensure the retrievability of transuranic waste in the event that a determination is made under subsection (a)(2) that the waste is not or will not otherwise remain retrievable.

(c) TEMPORARY OR INTERIM STORAGE OF RETRIEVED TRANSURANIC WASTE.—

(1) Transuranic waste retrieved from the WIPP may be temporarily stored above ground at the WIPP site for a period of up to ninety days if the Secretary determines that retrieval and temporary storage is necessary and that the waste will be managed and returned to the WIPP in accordance with the requirements of this Act. This period may be extended by the State or the Administrator, consistent with the requirements of the Solid Waste Disposal Act, or other applicable hazardous waste law, and if the State or the Administrator determines an extension is consistent with the protection of human health and the environment.

(2) If all or part of the WIPP site is designated as an interim storage facility for transuranic waste, the Secretary must obtain approval from the State or the Administrator in accordance with the Solid Waste Disposal Act, or other applicable hazardous waste law, before any transuranic waste retrieved from the WIPP may be stored at such interim storage facility.

(d) CONFLICT RESOLUTION.—The State may invoke the conflict resolution provisions of the Agreement if it determines that either—

(1) the retrieval plan would not provide for satisfactory retrieval of all transuranic waste from the WIPP should retrieval of such waste be required;

(2) the annual determination of retrievability is incorrect; or

(3) the demonstration of retrievability does not ensure that transuranic waste will be retrievable.

(e) EXISTING AUTHORITY OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE STATE.—

(1) Nothing in this section shall be construed to limit or in any manner affect the Administrator's or the State's authority to enforce, and the Secretary's obligation to comply with, all applicable provisions of the Solid Waste Disposal Act, or other applicable hazardous waste law, and all terms and conditions of the No-Migration Determination.

(2) Upon a determination by the Secretary that transuranic waste cannot remain retrievable, and that corrective action is not possible, the Administrator and the State shall, pursuant to the authorities provided in the Solid Waste Disposal Act, or other applicable hazardous waste law, take action to ensure the retrieval or removal of all transuranic waste in the WIPP.

SEC. 9. TRANSPORTATION.

(a) SHIPPING CONTAINERS.—No transuranic waste may be transported by or for the Secretary to or from the WIPP except in packages—

(1) the design of which has been certified for the transportation of transuranic waste by the Nuclear Regulatory Commission; and

(2) that have been fabricated under a Quality Assurance Program approved by the Nuclear Regulatory Commission.

(b) NOTIFICATION.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, prior to any transportation of transuranic waste by or for the Secretary to or from the WIPP, the Secretary shall provide advance notification to States and Indian tribes through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP.

(c) ACCIDENT PREVENTION AND EMERGENCY PREPAREDNESS.—

(1) TRAINING.—

(A) IN GENERAL.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the Secretary shall ensure that technical assistance and funds are provided for the purpose of training public safety officials, and other emergency responders as defined by 29 C.F.R. 1910.120, in any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP. Within thirty days of enactment of this Act, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and the State on the training provided through fiscal year 1991.

(B) ONGOING TRAINING.—If determined by the Secretary, in consultation with affected States and Indian tribes, to be necessary and appropriate, the training shall continue after the date of enactment of this Act until the transuranic waste shipments to or from the WIPP have been terminated.

(C) REVIEW OF TRAINING.—The Secretary shall review the training, in consultation with affected States and Indian tribes. The training shall also be reviewed by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health for compliance with 29 C.F.R. 1910.120.

(D) COMPONENTS OF TRAINING.—The training shall cover procedures required for the safe routine transportation of transuranic waste, as well as procedures for dealing with emergency response situations, including—

(i) instruction of government officials and public safety officers in procedures for the command and control of the response to any incident involving the waste;

(ii) instruction of emergency response personnel in procedures for the initial response to an

incident involving transuranic waste being transported to or from the WIPP;

(iii) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving transuranic waste being transported to or from the WIPP; and

(iv) a public awareness campaign to provide information to the public about the transportation of transuranic waste to or from the WIPP.

(2) EQUIPMENT.—The Secretary shall enter into agreements to assist, through monetary grants or contributions in-kind, States in acquiring equipment for response to an incident involving transuranic waste transported to or from the WIPP.

(d) TRANSPORTATION SAFETY PROGRAMS.—The Secretary shall provide in-kind, financial, technical, and other appropriate assistance to any State or Indian tribe, through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP, for the purposes of WIPP-specific transportation safety programs not otherwise addressed in this section. These programs shall be developed with, and monitored by, the Secretary.

(e) SANTA FE BYPASS.—No transuranic waste may be transported from the Los Alamos National Laboratory to the WIPP until—

(1) an amount of funds sufficient to construct the Santa Fe bypass has been made available to the State;

(2) the Santa Fe bypass has been completed; or

(3) the Administrator has made the certification required under section 6.

(f) STATE ADVISORY GROUP ON EMERGENCY RESPONSE MEDICAL TRAINING.—

(1) The Governor shall appoint an advisory group of health professionals and other experts in the field to review emergency response medical training programs for the transportation of transuranic waste.

(2) Within ninety days of the date of enactment of this Act, and periodically thereafter, the advisory group shall review the Department of Energy's emergency response medical training programs and report its findings to the State and the Secretary.

(3) The Secretary shall review the findings of the advisory group and, if the Secretary determines that emergency response medical training is inadequate, the Secretary shall take immediate action to correct the inadequacies and, if necessary, suspend transportation of transuranic waste.

(g) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's determination under subsection (f)(3), the State may invoke the conflict resolution provisions of the Agreement.

SEC. 10. MINE SAFETY.

(a) MINE SAFETY AND HEALTH ADMINISTRATION.—The Mine Safety and Health Administration of the Department of Labor shall inspect the mine at the WIPP as frequently, and in the same manner as it evaluates other mine sites under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) and shall provide the results of its inspections to the Secretary. The Secretary shall take necessary actions to assure the prompt and effective correction of any deficiency, including suspending specific activities as necessary to address identified health and safety deficiencies.

(b) BUREAU OF MINES.—The Bureau of Mines shall prepare an annual evaluation of the safety of the mine at the WIPP.

SEC. 11. ECONOMIC ASSISTANCE.

(a) PAYMENTS TO THE STATE.—

(1) PAYMENTS FOR OPERATION AND DECOMMISSIONING.—

(A) OPERATION.—The Secretary shall, to such extent and for such amounts as are provided in advance in appropriations Act, make payments to the State in the amount of $20,000,000 per year—

(i) beginning with the fiscal year in which transuranic waste shipments to the WIPP are initiated; and

(ii) ending with the fiscal year in which decommissioning activities at the WIPP are initiated.

(B) DECOMMISSIONING.—The Secretary shall, to such extent and for such amounts as are provided in advance in appropriations Acts, make payments to the State in the amount of $13,000,000 per year—

(i) beginning with the first fiscal year after the year in which decommissioning activities are initiated; and

(ii) ending with the fiscal year in which the WIPP becomes fully decommissioned.

(C) PAYMENTS TO UNITS OF LOCAL GOVERNMENT.—A portion of the payments under this subsection shall be made available to units of local government in Lea and Eddy counties.

(2) PAYMENTS EQUIVALENT TO TAXES.—There is authorized to be appropriated to the Secretary such sums as are necessary to provide a payment each fiscal year to the State and each unit of local government in which the WIPP site is located. A payment under this subsection shall be determined by—

(A) calculating the amount the State and the unit of local government would receive were they authorized to tax the development and operation of the WIPP in the same manner as the State and the unit of local government tax the other comparable real property and industrial activities occurring within the State and the unit of local government;

(B) calculating the amount paid in the most recent fiscal year by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State and any of its local governments for contractor and subcontractor activities attributable to the WIPP;

(C) calculating the actual amount paid in fiscal year 1990 by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State and any of its local governments for contractor and subcontractor activities attributable to the WIPP. This amount shall be adjusted to reflect the aggregate percentage change in the Consumer Price Index for consumers published by the Secretary of Labor;

(D) subtracting the amount calculated under subparagraph (C) from the amount calculated under subparagraph (B); and

(E) subtracting the amount calculated under subparagraph (D) from the amount calculated under subparagraph (A).

Payments under this paragraph shall continue until all activities related to the development and operation of the WIPP are terminated at the WIPP site.

(b) WIPP-RELATED BUSINESS AND EMPLOYMENT OPPORTUNITIES.—

(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall continue to encourage business and employment opportunities related to the WIPP that are appropriate for the State, and in particular, for Lea and Eddy counties.

(2) REPORT.—The Secretary shall report annually to the State on the activities conducted pursuant to paragraph (1).

(c) ENVIRONMENTAL MONITORING RESEARCH CENTER.—There is authorized to be appropriated to the Secretary such sums as are necessary to provide funding for the purpose of building, establishing, and operating the Carlsbad Environmental Monitoring Research Center Program, within the Waste Management Education and Research Consortium, to provide independent WIPP environmental assessment and monitoring capabilities in the Carlsbad, New Mexico area.

SEC. 12. ECONOMIC IMPACT MONITORING.

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall make annual payments to the State for the purpose of establishing and maintaining an Impact Assessment Group within the Waste Management Education and Research Consortium, or any other group or institution the State considers appropriate, to prepare annual reports on the economic impact of the activities at the WIPP.

(b) AUTHORIZATION.—

(1) From amounts appropriated in fiscal year 1992, the Secretary shall pay $1,000,000 to the State to establish the Group and to perform a review.

(2) In each subsequent fiscal year after the date of enactment of this Act, the Secretary shall pay $750,000, to such extent and for much amounts as are provided in advance in appropriations Acts, to the State to perform the annual reviews.

(c) ANNUAL REPORTS.—

(1) IN GENERAL.—Annual reports prepared under subsection (a) shall be submitted to the Governor, the Secretary, and affected units of local government.

(2) CONTENTS.—The reports shall quantify the impacts of the WIPP, including those impacts on the State and affected units of local government.

SEC. 13. DECOMMISSIONING OF THE WIPP.

(a) PLAN FOR ENVIRONMENTAL CONTROLS AFTER DECOMMISSIONING.—

(1) IN GENERAL.—Not later than three years after the date of enactment of this Act, the Secretary shall submit a preliminary plan for active and passive institutional controls for managing the WIPP after decommissioning to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, the State, and the EEG. The plan shall be updated as the Secretary determines necessary.

(2) CONSISTENCY WITH DISPOSAL REGULATIONS.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the plan shall be consistent with the disposal regulations.

(3) CONFLICT RESOLUTION.—If the State disagrees with the adequacy of the Secretary's plan under this subsection, the State may invoke the conflict resolution provisions of the Agreement.

(b) MANAGEMENT PLAN FOR THE WIPP SITE AFTER DECOMMISSIONING.—Not later than two years after the date of enactment of this Act, the Secretary shall publish in the Federal Register a preliminary plan for the management and use of the WIPP site following the decommissioning of the WIPP. The plan shall be updated as the Secretary determines necessary.

SEC. 14. OIL AND GAS LEASES.

There are authorized to be appropriated to the Secretary such sums as are necessary to provide compensation for the cancellation of the Federal Oil and Gas Leases No. NMNM 02953 and 02953C.

SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

SEC. 16. CONSULTATION AND COOPERATION AGREEMENT.

Nothing in this Act shall affect the Agreement between the State and the United States Department of Energy except as explicitly stated herein.

SEC. 17. REDRESS OF ADMINISTRATIVE WITHDRAWAL.

Transuranic waste introduced at the WIPP site prior to the enactment of this Act shall—

(1) immediately be removed from the WIPP site if it is not being used to carry out the experimental program at the time the program is implemented under section 5;

(2) be removed promptly from the WIPP site in the event that the requirements of section 7 are not complied with; and

(3) be subject to the requirements for retrievability under section 8 of this Act.

Mr. JOHNSTON. Mr. President, today the Senate is considering S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act of 1991. This legislation would permanently withdraw the public land surrounding the Waste Isolation Pilot Plant [WIPP] facility in Carlsbad, NM, and would establish certain conditions and limitations on the operation of WIPP. This legislation is an important milestone in the Department of Energy's efforts to open the WIPP facility for initiation of the experimental program.

The Waste Isolation Pilot Plant is a research and development facility of the Department of Energy that was authorized by Public Law 96-164 for the purpose of demonstrating the safe disposal of radioactive waste generated by DOE's nuclear weapons production activities. The WIPP facility, built 2,150 feet below the surface in the Delaware salt basin in New Mexico, has been under construction since 1981. The facility is now ready to open to begin the experimental program. During that program, DOE will conduct a series of experiments to evaluate the facility's ability to comply with the environmental laws governing the safe storage and disposal of nuclear waste.

The WIPP site consists of 10,240 acres in Eddy County, NM, all of which is public land administered by the Bureau of Land Management. Currently, the land is utilized under an administrative land withdrawal issued by the Department of the Interior in January 1991. This administrative withdrawal expires in June 1997 and is limited for purposes of the experimental program. A notice to proceed was issued by the Department of the Interior on October 3, 1991, thereby authorizing DOE to receive transuranic waste at WIPP for purposes of the experimental program.

The Department could proceed with its experimental program at WIPP under the existing land order. However, both DOE and the State of New Mexico have indicated a preference to withdraw the land permanently through legislation. The State is seeking the legislation because it would codify in law a number of limitations and conditions on the operation of WIPP. Many of these limitations and conditions have already been agreed to by DOE through formal written agreements with the State.

DOE is seeking a permanent land withdrawal for several reasons. The disposal regulations of the Environmental Protection Agency [EPA] published in 1985 require that DOE exercise active institutional control over the disposal site for up to 100 years and passive control thereafter. The disposal regulations are now back before EPA on remand, but it is likely that they will contain similar requirements when repromulgated. Since DOE has statutory responsibility for managing radioactive waste, the agency should have permanent jurisdiction and control over the site. In addition, because the period of active use and institutional controls will exceed the normal 20-year period for administrative land withdrawals, a statutory, permanent land withdrawal is desirable.

The legislation before the Senate today represents a compromise reached among those parties affected by the opening of WIPP—the State of New Mexico, the administration, and interested Members of the Senate. If enacted into law, I believe that this legislation will provide the proper balance between the need to provide sufficient flexibility to the scientific program at WIPP and the need to ensure there are adequate safeguards for the operation of WIPP.

During the consideration of this legislation by the Committee on Energy and Natural Resources, many compromises were reached to balance the interests of the administration with the interests of the State of New Mexico. Some of these compromises addressed issues of high visibility, such as the limitation on the amount of waste to be allowed at WIPP during the experimental program; others of these compromises addressed far more subtle issues.

The issues involved in any legislation dealing with nuclear waste disposal are contentious ones. Both sides have to give a little if agreement is to be reached on a piece of legislation that can be passed by the Congress and signed by the President. I think we have successfully reached that point of compromise in this bill. But it is also important to note that I consider the compromises of this legislation to be the bottom line. Additional limitations and restrictions on the opening of WIPP—beyond those included in S. 1671—will not serve the public health and safety. Rather, additional limitations and restrictions will produce a piece of legislation that may never be enacted into law.

The transuranic waste that will be emplaced at WIPP results primarily from plutonium reprocessing and fabrication, as well as from research and developing activities at various DOE facilities. Transuranic waste exists in a variety of physical forms ranging from unprocessed laboratory trash—such as absorbent papers, tools, glassware, protective clothing, and gloves—to solidified sludges from waste water treatment. About 60 percent of this transuranic waste is mixed with hazardous waste components. The major chemical component in this mixed waste is metallic lead, which exists primarily in the form of glovebox parts and lead-lined gloves and aprons. Some mixed waste also contains traces of organic cleaning solvents such as methylene chloride and carbon tetrachloride.

During the experimental program at WIPP, experiments will be conducted with this waste to reduce uncertainties associated with the prediction of natural processes that might affect the long-term performance of WIPP. Results of these experiments will be used to determine whether transuranic waste can be permanently disposed of in WIPP in compliance with the EPA disposal regulations. Under the provisions of S. 1671, if EPA certifies that WIPP can comply with the disposal regulations, DOE can then begin operation of WIPP as a permanent disposal facility.

The Committee on Energy and Natural Resources has been monitoring the progress of the WIPP facility for several years now. I am pleased that we have now reached the point that this important facility is ready to open. This is a major milestone in the Department's efforts to demonstrate that we have the technology necessary to store and dispose safely the byproducts of our Nation's nuclear weapons.

It is important to note that DOE is authorized to receive transuranic waste at WIPP for purposes of the experimental program under the authority of the existing administrative land order. I understand that Secretary Watkins has agreed to continue to hold off on shipments of waste to WIPP temporarily pending further action on land withdrawal legislation during this session of Congress.

I am pleased to see Secretary Watkins take this action to withhold the shipments of waste temporarily. I hope that we in Congress will do our part and move quickly on the land withdrawal legislation that is now before the Senate. It is important that we work quickly on this legislation so that the opening of this facility will not be delayed by the failure of the Congress to enact legislation.

I want to thank my colleagues from New Mexico, Senator BINGAMAN and Senator DOMENICI, as well as the ranking Republican member of the committee, Senator WALLOP, for their help in crafting the compromises embodied in this legislation.

Mr. DOMENICI. Mr. President, today the Senate considers a bill to provide for the withdrawal of lands from the Department of the Interior for the Department of Energy [DOE] to conduct a test program with low level defense nuclear waste at the waste isolation pilot plant—what is most commonly called WIPP.

Few issues are as controversial as the disposal of nuclear waste. However, Senator BINGAMAN and I, along with the assistance of the leadership of the

Energy Committee, have produced a bill that is also supported by Governor King of New Mexico and the Secretary of Energy.

This is not a new issue for Congress. In 1979, Congress authorized this project to allow the DOE to characterize and test a site for the disposal of transuranic waste. In order to operate on the site, DOE has to have the land, which was largely owned by the Federal Government, withdrawn from general use and reserved for the WIPP.

The Department of the Interior's initial action was to withdraw these lands administratively, but place restrictions on this withdrawal. The most significant one was that DOE could not bring nuclear waste on site during the withdrawal. The intent of the Departments of the Interior and Energy was that before any nuclear waste was to come to the site, the land ought to be withdrawn by a legislative action.

Due to concerns that a legislative land withdrawal would not be enacted, DOE asked the Department of the Interior earlier this year to give them an administrative withdrawal that would allow DOE to bring waste to the site.

Senator BINGAMAN and I acted 3 months ago to introduce S. 1671, the Waste Isolation Pilot Plant Withdrawal Act. This bill was drafted in consultation with the State of New Mexico and with the State's independent monitoring agency, the environmental evaluation group.

Over the past 3 months, we have worked with the leadership of the Energy Committee, the Department of Energy, and others to fashion a bill. On September 21, we held a field hearing on Albuquerque, NM to receive testimony from DOE, the Environmental Protection Agency [EPA] the Governor's office, the attorney general of New Mexico, and a number of interest groups concerned with WIPP.

This legislation attempts to respond to questions raised at this hearing and to address the concerns of all the parties involved. On October 16, the Energy Committee voted 19–0 to report a substitute to the bill as introduced. I ask unanimous consent that a letter sent by Senator BINGAMAN and I to all Members of the Senate regarding the reported bill be incorporated in the RECORD.

The reported bill provides a number of statutory guarantees for the safe transportation of waste and operation of the WIPP facility. These guarantees include:

EPA, not DOE, must certify compliance with its regulations.

Test plan must be reviewed by four oversight agencies—the State, EPA, environmental evaluation group [EEG], and the National Academy of Sciences [NAS].

Test phase is limited to 6 years—2-year extension with EPA approval.

An 0.5 percent—4,250 barrels—limit on volume of waste during test phase—can be increased to no higher than 1 percent after DOE justifies, four oversight agencies review, and EPA approve.

If test phase fails, all waste must be retrieved and shipped outside of the State.

Mine Safety and Health Administration [MSHA] and Bureau of Mines must evaluate and inspect safety of WIPP facility.

Provides transportation assistance, requires Occupational Safety and Health Administration [OSHA] and National Institute for Occupational Safety and Health [NOSH] review of transportation safety programs, and establishes a State-appointed advisory board for review of the adequacy of emergency response medical training programs.

Provides New Mexico with a total of $600 million in entitled financial compensation.

I cannot overemphasize the importance of this legislation and the need to move it expeditiously. If Congress does not act, the administration has demonstrated that they will move unilaterally. On October 3, the Department of Energy acted unilaterally to withdraw lands at the waste isolation pilot plant [WIPP] site so that they could begin WIPP operations. Six days later the State attorney general filed suit and DOE has agreed not to ship waste and begin operations at WIPP until at least November 15.

For those that argue that this legislation is not needed, an administrative land withdrawal is simply not acceptable. Congress forfeits its responsibility by not acting on withdrawal legislation. Moreover, the entire New Mexico delegation and the Governor are united in their opposition and the attorney general of New Mexico has filed suit to block this action.

Instead of allowing DOE to proceed unilaterally, this bill provides for the proper withdrawal of these lands and a number of guarantees for the safe transportation of waste and the safe operation of the facility.

For those that are criticizing the bill as being inadequate, they are just plain wrong. The bill before us follows the bill Senator BINGAMAN and I introduced. We worked off of our bill and not DOE's legislation.

I have identified at least 30 individual provisions that DOE did not ask for in this legislation. Besides the prominent role of EPA in the bill, there are 10 other oversight or regulatory agencies that must review WIPP operations—everything from the Bureau of Mines to OSHA. Over the course of the experimental program, DOE must prepare and complete at least 10 separate plans, reviews, or determinations.

If this legislation is not acceptable, let us debate an alternative. However, do not leave New Mexico with an administrative withdrawal.

Mr. President, there are a couple of technical amendments that we will ask the Senate to adopt. I insisted on one of these amendments. To clear up any confusion, the amendment would require the Secretary of Energy to make the results of the Mine Safety and Health Administration's [MSHA] inspections of the WIPP site available to the public. I believe DOE will move quickly to correct any deficiencies identified by MSHA. This amendment assures that the results of these inspects will see the full light of day.

Mr. President, I thank the chairman and ranking member of the committee for all their hard work and urge my colleagues to support the bill.

AMENDMENT NO. 1306

(Purpose: To make technical amendments)

Mr. MITCHELL. Mr. President, I ask unanimous consent that it be in order to consider three technical amendments en bloc, which I send to the desk on behalf of Senator JOHNSTON; that the amendments be agreed to en bloc; and the motion to reconsider be laid upon the table en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the amendment (No. 1306) was agreed to, as follows:

On page 77, line 21, strike the words "the mine at".

On page 77, line 22, strike the word "other".

On page 77, line 25, after the word "shall", insert "make the results of such inspections publicly available and shall".

On page 78, line 5, after the word "Mines", insert "of the Department of the Interior".

On page 78, line 6, strike the words "the mine at".

On page 85, at the end of the bill, insert the following new section:

SEC. 19. PUBLIC LAW 96–164.

This Act amends section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96–164; 93 Stat. 1265).

On page 85, after line 2, insert the following new section:

SEC. 18. TECHNOLOGY STUDY.

Within one year of the date of enactment of this Act, the Secretary shall submit to Congress a study reviewing the technologies that are available and that are being developed for the processing or reduction of volumes of radioactive wastes. This study shall include an identification of technologies involving the use of chemical, physical, and thermal (including plasma) processing techniques.

The PRESIDING OFFICER. Without objection, the substitute, as amended, is agreed to.

The committee amendment, as amended, was agreed to.

The bill is deemed read three times and passed.

So, the bill (S. 1671), as amended, was deemed read a third time and passed, as follows:

S. 1671

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Waste Isolation Pilot Plant Land Withdrawal Act of 1991".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) AGREEMENT.—The term "Agreement" means the Agreement for Consultation and Cooperation Between the State of New Mexico and the United States Department of Energy entered into on July 1, 1981, as amended, authorized by section 213(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265).

(3) ATOMIC ENERGY DEFENSE ACTIVITY.—The term "atomic energy defense activity" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(4) CONTACT-HANDLED TRANSURANIC WASTE.—The term "contact-handled transuranic waste" means waste from atomic energy defense activities with a specific activity greater than 100 nanocuries per gram of waste and a surface dose rate of less than 200 millirems per hour.

(5) DISPOSAL REGULATIONS.—The term "disposal regulations" means the regulations issued by the Environmental Protection Agency establishing the generally applicable environmental standards for the disposal of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in subpart B of part 191 of title 40, Code of Federal Regulations.

(6) EEG.—The term "EEG" means the Environmental Evaluation Group for the WIPP referred to in section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

(7) GOVERNOR.—The term "Governor" means the Governor of the State of New Mexico.

(8) HIGH-LEVEL RADIOACTIVE WASTE.—The term "high-level radioactive waste" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(9) MANAGEMENT AND STORAGE REGULATIONS.—The term "management and storage regulations" means the regulations issued by the Environmental Protection Agency establishing the generally applicable environmental standards for the management and storage of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in subpart A of part 191 of title 40, Code of Federal Regulations.

(10) NO-MIGRATION DETERMINATION.—The term "No-Migration Determination" means the Final Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant published by the Environmental Protection Agency on November 14, 1990 (55 FR 47700).

(11) PERFORMANCE ASSESSMENT REPORT.—The term "performance assessment report" means the documented analysis of the long-term performance of the WIPP that is published annually by the Department of Energy.

(12) REMOTE-HANDLED TRANSURANIC WASTE.—The term "remote-handled transuranic waste" means transuranic waste from atomic energy defense activities with a surface dose rate between 200 millirems per hour and 1,000 rems per hour.

(13) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(14) SPENT NUCLEAR FUEL.—The term "spent nuclear fuel" has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(15) THE STATE.—The term "the State" means the State of New Mexico.

(16) TRANSURANIC WASTE.—The term "transuranic waste" has the same meaning as is provided for "transuranic radioactive waste" in part 191 of title 40, Code of Federal Regulations. The term includes such waste that is also mixed with waste regulated as hazardous waste under the Solid Waste Disposal Act.

(17) WIPP.—The term "WIPP" means the Waste Isolation Pilot Plant authorized under section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265).

(18) WIPP SITE.—The term "WIPP site" means the lands and resources withdrawn and reserved by this Act and described in section 3(c).

SEC. 3. LAND WITHDRAWAL AND RESERVATION FOR THE WIPP.

(a) WITHDRAWAL, JURISDICTION, AND RESERVATION.—

(1) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this Act, the WIPP site described pursuant to subsection (c) is withdrawn from entry, sale, or other disposition under the public land laws, from all forms of appropriation under the mining laws, and from operation of the mineral leasing laws and the geothermal leasing laws.

(2) JURISDICTION.—Except as otherwise provided in section 6(d), jurisdiction over the WIPP site is transferred from the Secretary of the Interior to the Secretary of Energy.

(3) RESERVATION.—

(A) IN GENERAL.—The WIPP site is reserved for the use of the Secretary of Energy for the construction, experimentation, operation, repair and maintenance, disposal, shutdown, monitoring, decommissioning, and other authorized activities associated with the purposes of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265), and this Act.

(B) WATER RIGHTS.—Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the WIPP site. Nothing in this Act shall be construed as authorizing the appropriation of water on the WIPP site by the United States after the date of enactment of this Act, except in accordance with the law of the State. This subparagraph shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

(b) REVOCATION OF PUBLIC LAND ORDERS.—Public Land Order 6403, of June 29, 1983, Public Land Order 6826, of January 28, 1991, and the memorandum of understanding referenced in each of the orders are hereby revoked.

(c) LAND DESCRIPTION.—

(1) IN GENERAL.—The boundaries depicted on the map issued by the Bureau of Land Management of the Department of the Interior, entitled "WIPP Withdrawal Site Map", and dated October 9, 1990, are established as the boundaries of the WIPP site.

(2) LEGAL DESCRIPTION AND MAP.—Not later than thirty days after the date of enactment of this Act, the Secretary of the Interior shall—

(A) publish in the Federal Register a notice containing a legal description of the WIPP site; and

(B) file copies of the legal description of the WIPP site, and the map described in paragraph (1), with

(i) the Committee on Energy and Natural Resources of the United States Senate;

(ii) the Committee on Interior and Insular Affairs of the United States House of Representatives;

(iii) the Secretary; and

(iv) the State.

(d) TECHNICAL CORRECTIONS.—The legal description and map shall have the same force and effect as if they were included in this Act, except that the Secretary of the Interior may correct clerical and typographical errors.

SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(a) GENERAL AUTHORITY.—The Secretary shall—

(1) have responsibility for the management of the WIPP site;

(2) consult and cooperate with the State under the terms of the Agreement in discharging the responsibilities required by this Act; and

(3) consult and cooperate with the EEG under the terms of Contract No. DE-AC04-89AL58309 in the performance of its responsibility to conduct an independent technical review and evaluation of the WIPP pursuant to section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary, in consultation with the State and the Department of the Interior, shall develop a management plan for the WIPP site.

(2) ACTIVITIES NOT ASSOCIATED WITH THE WIPP.—

(A) IN GENERAL.—Any use of the lands for activities not associated with the WIPP shall be subject to such conditions and restrictions as are necessary to permit the use of the lands for WIPP activities, as determined by the Secretary, and subject to the purposes of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (93 Stat. 1265), and this Act.

(B) SPECIFIC ACTIVITIES.—In addition to other activities, the management plan shall provide for domestic livestock grazing, hunting and trapping, wildlife habitat, the disposal of salt tailings remaining on the surface, and mining, as follows:

(i) GRAZING.—Subject to such regulations, policies, and practices as the Secretary determines are necessary or appropriate, the Secretary shall permit grazing to continue where established prior to the date of enactment of this Act. The grazing shall be conducted consistent with—

(I) title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.);

(II) the Act entitled "An Act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes", approved June 28, 1934 (43 U.S.C. 315 et seq.) (commonly known as the "Taylor Grazing Act");

(III) Public Rangelands Improvement Act of 1978 (43 U.S.C. 1902 et seq.); and

(IV) Executive Order 12548 (51 Federal Register 5985).

(ii) HUNTING AND TRAPPING.—

(I) IN GENERAL.—The Secretary shall permit hunting and trapping within the WIPP site in accordance with applicable laws and regulations of the United States and the State.

(II) RESTRICTIONS.—The Secretary, after consultation with the New Mexico Department of Game and Fish, may issue regulations designating zones where, and establishing periods when, no hunting or trapping is permitted for reasons of administration or public safety.

(iii) WILDLIFE HABITAT.—The Secretary shall manage the WIPP site in a manner to maintain and preserve the wildlife habitat of the WIPP site.

(iv) SALT TAILINGS.—The Secretary shall dispose of salt tailings that are not needed for backfill at the WIPP site. Disposition shall be made in accordance with sections 2 and 3 of the Act entitled "An Act to provide for the disposal of materials on the public lands of the United States", approved July 31, 1947 (30 U.S.C. 602 and 603) (commonly known as the "Materials Act of 1947").

(v) MINING.—

(I) IN GENERAL.—Except as otherwise provided in subclause (II), no surface or subsurface mining unrelated to the WIPP, including slant drilling under the site from within or without the site, shall be permitted on or under the WIPP site, including after decommissioning.

(II) EXISTING OIL AND GAS LEASES.—The Secretary of the Interior, in consultation with the Secretary, shall undertake a study to determine the effects, if any, of Federal Oil and Gas Leases No. NMNM 02953 and 02953C on activities to be conducted at the WIPP site. The study shall include recommendations as to the advisability of negotiating an exchange of the leases for other Federal oil and gas leases outside the WIPP site or canceling the leases. The Secretary of the Interior shall submit his recommendations to the Secretary and the State prior to the conclusion of the experimental program provided for in section 5 of this Act. Any activities undertaken on the leases shall be subject to such reasonable restrictions as the State, the Secretary of the Interior, and the Secretary may prescribe taking into consideration the purposes for which the land is withdrawn under this Act.

(c) SUBMISSION OF PLAN TO CONGRESS AND THE STATE.—The Secretary shall submit the management plan developed pursuant to subsection (b) to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, and the State. Any amendments to such plan shall be submitted promptly to such Committees and the State.

(d) CLOSURE TO THE PUBLIC.—If the Secretary determines that the health and safety of the public or the common defense and security require the closure to public use of a road, trail, or other portion of the WIPP site, the Secretary may take such action as the Secretary considers necessary or desirable to effect and maintain the closure.

(e) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements—

(1) with the Secretary of the Interior and the State for the administration of grazing within the WIPP site;

(2) with the State for the maintenance of the wildlife habitat of the WIPP site; and

(3) with the Department of the Interior or the State, or both, to enforce the prohibition on mining within the WIPP site.

SEC. 5. EXPERIMENTAL PROGRAM.

(a) AUTHORIZATION.—The Secretary may implement an experimental program at the WIPP as described in subsection (b), subject to the review and evaluation process under subsection (c) and completion of conflict resolution, if any, under subsection (d); or subject to the requirements of subsection (f). No transuranic waste shall be received at the WIPP, after the date of enactment of this Act, until the Secretary has fulfilled the requirements of this section.

(b) EXPERIMENTAL PROGRAM PROPOSAL.—

(1) IN GENERAL.—Except as provided in subsection (f), not later than ninety days after the date of enactment of this Act, the Secretary (in consultation with the State, the Administrator, the National Academy of Sciences, and the EEG) shall prepare a proposal for an experimental program involving transuranic waste at the WIPP. The Secretary shall give notice in the Federal Register of the availability of the experimental program proposal and shall provide an opportunity for public access to these documents.

(2) MODIFICATIONS.—The Secretary shall also prepare a proposal for any modification to the experimental program that involves any material change in the nature of the experiments involving transuranic waste at the WIPP or any change in the total amount of waste to be employed in experiments at the WIPP. Such amounts shall in no event exceed the amounts set forth in section 7 of this Act.

(3) EXPERIMENTS.—The proposal or any proposed modification shall include detailed information on the following experiments—

(A) experiments to determine the rate of gas generation and waste solubility at the WIPP and to evaluate the impact of gas generation and waste solubility on the WIPP;

(B) experiments to aid in the assessment of compliance with the disposal regulations; and

(C) such other experiments as are determined by the Secretary, after consultation with the State, the Administrator, the National Academy of Sciences, and the EEG, to be necessary to ensure the protection of the public health and safety and the environment.

(4) WRITTEN PLANS TO BE INCLUDED IN PROPOSAL.—The experimental program proposal, or any proposed modification to the experimental program, shall also include detailed information describing the proposed purposes of the experiments, how the data from the experiments will be used, the amount of transuranic waste required for the experiments, and the time schedule for the experiments.

(5) ADDITIONAL INFORMATION TO BE INCLUDED IN THE PROPOSAL.—The proposal, or any proposed modification, shall also include the following—

(A) a determination by the Secretary that there are preestablished plans and procedures for the retrieval of the transuranic waste as required by section 8 of this Act;

(B) a summary of the preliminary performance assessment calculations available to guide the experiments;

(C) a determination by the Secretary that the proposed experiments pose no undue risk to the public health and safety or to the environment; and

(D) a determination by the Secretary that the proposed experiments will provide relevant and useful data in a timely manner for making the Secretary's determination of compliance with the disposal regulations, or for confirming such compliance, and for the Administrator's certification of compliance.

(6) SUBMISSION OF PROPOSAL.—The Secretary shall submit the experimental program proposal, or any proposed modification, and supporting documentation, to the State, the Administrator, the National Academy of Sciences, and the EEG.

(c) REVIEW OF PROPOSAL OR PROPOSED MODIFICATION.—

(1) REVIEW AND COMMENT.—Not later than thirty days after the submission of the proposal, or any proposed modification, the State, the Administrator, the National Academy of Sciences, and the EEG shall review the proposal, or proposed modification, and supporting documentation, and provide their comments to the Secretary. The comments shall include an evaluation of whether the proposed experiment will provide relevant and useful data in a timely manner for determining compliance with the disposal regulations, or for confirming such compliance.

(2) RESPONSES BY THE SECRETARY.—Not later than thirty days after the receipt of comments under paragraph (1), the Secretary shall—

(A) prepare written responses to the comments received;

(B) submit the responses to the State, the Administrator, the National Academy of Sciences, and the EEG; and

(C) publish a final experimental program plan in the Federal Register.

(3) FINAL EVALUATION.—Within thirty days after the Secretary completes the requirements of paragraph (2), the State, the Administrator, the National Academy of Sciences, and the EEG shall—

(A) complete a final evaluation of the proposed experimental program;

(B) set forth the factual basis upon which the evaluation is made; and

(C) provide the evaluation to the Secretary, who shall give notice of receipt in the Federal Register and provide an opportunity for public access to these documents.

(d) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's final experimental program plan published under subsection (c)(2), the State may invoke the conflict resolution provisions of the Agreement.

(e) MODIFICATIONS TO THE EXPERIMENTAL PLAN AFFECTING THE LIMITATION ON VOLUME.—

(1) APPROVAL BY THE ADMINISTRATOR.—In addition to the requirements of subsections (b) and (c) of this section, if a proposed modification to the experimental program plan calls for the amount of transuranic waste emplaced at the WIPP to exceed 0.5 percent by volume, the Administrator must concur with the proposed modification and approve the increase in the volume of transuranic waste, consistent with the Administrator's review and evaluation under subsection (c) and consistent with section 7(a)(2)(C), prior to receipt at the WIPP of any amount of waste exceeding 0.5 percent by volume.

(2) CONFLICT RESOLUTION.—If the State disagrees with the increase in the volume of transuranic waste, the State may invoke the conflict resolution provisions of the Agreement.

(f) PROCESS FOR PRIOR REVIEW OF EXPERIMENTAL PROGRAM.—

(1) PRIOR REVIEW.—If the Secretary has provided an opportunity for review of, comment on, and evaluation of the elements of the experimental program proposal required in this section prior to the enactment of this Act, the provisions of this subsection shall apply.

(2) SUBMISSION OF DOCUMENTATION TO CONGRESS.—The Secretary may submit documentation of the review, comment, and evaluation process within forty five days of the enactment of this Act, as well as the comments and evaluations provided by the

State, the Administrator, the National Academy of Sciences, and the EEG, to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. These submissions shall constitute compliance with the requirements of subsections (b) and (c) of this section. If the Secretary has requested and not received final evaluations from the State, the Administrator, the National Academy of Sciences, and the EEG within thirty days of the enactment of this Act, the Secretary's submission of documentation of the review, comment, and evaluation process shall constitute compliance with the requirements of subsections (b) and (c) of this section.

(g) ACCESS TO INFORMATION.—The Secretary shall provide the State and the EEG such data and other information relevant to health, safety or environmental issues pertaining to the WIPP in a timely manner to enable the State and the EEG to discharge their responsibilities.

(h) ANALYSES OF PERFORMANCE ASSESSMENT REPORT.—

(1) IN GENERAL.—Within one hundred and twenty days of the annual publication of the Secretary's performance assessment report, the State, the Administrator, and the EEG shall evaluate and publish analyses of that report.

(2) RESPONSES BY SECRETARY.—Within one hundred and twenty days of the publication of analyses pursuant to paragraph (1), the Secretary shall submit written responses to the State, the Administrator, and the EEG, and to other appropriate entities or persons after consultation with the State.

(i) OPERATIONAL DEMONSTRATION WITH TRANSURANIC WASTE.—No transuranic waste may be received at the WIPP for operational demonstration of the WIPP before—

(1) the Secretary's determination of compliance with the disposal regulations; and

(2) the Administrator's certification to Congress that the Secretary has complied with the disposal regulations.

(j) EXISTING OBLIGATIONS AND AUTHORITIES.—Nothing in this section shall be construed to limit or in any manner affect the Administrator's authority to enforce and the Secretary's obligation to comply with all terms and conditions of the No-Migration Determination.

SEC. 6. COMPLIANCE WITH EPA REGULATIONS AND INCLUSION OF ENGINEERED BARRIERS.

(a) ISSUANCE OF EPA DISPOSAL REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than one hundred and eighty days after the date of enactment of this Act, the Administrator shall publish in the Federal Register proposed disposal regulations.

(2) FINAL REGULATIONS.—Not later than two years after the date of enactment of this Act, the Administrator shall publish in the Federal Register final disposal regulations.

(b) ISSUANCE OF EPA CRITERIA FOR DETERMINATION OF COMPLIANCE WITH DISPOSAL REGULATIONS.—

(1) PROPOSED CRITERIA.—Not later than one hundred and eighty days after the date of enactment of this Act, the Administrator shall publish in the Federal Register proposed criteria for the Secretary's determination of compliance with the disposal regulations.

(2) FINAL CRITERIA.—Not later than two years after the date of enactment of this Act, the Administrator shall publish in the Federal Register final criteria for the Secretary's determination of compliance with the disposal regulations.

(c) COMPLIANCE WITH EPA REGULATIONS.—

(1) MANAGEMENT AND STORAGE REGULATIONS.—Beginning on the date of enactment of this Act, the Secretary shall comply with the management and storage regulations at the WIPP.

(2) DISPOSAL REGULATIONS.—

(A)(i) IN GENERAL.—The Secretary shall comply with the disposal regulations at the WIPP. Except as provided in subsection (d), not later than six years after the date of enactment of this Act, the Secretary shall make a determination of compliance with the disposal regulations and submit his determination to the Administrator. In making the determination required by this subsection, the Secretary shall utilize the criteria published by the Administrator under subsection (b) to demonstrate that there is a reasonable expectation that long-term compliance with the disposal regulations will be achieved.

(ii) CERTIFICATION.—The Administrator shall certify to Congress whether the Secretary has complied with the disposal regulations at the WIPP within one year of receipt of the Secretary's determination of compliance.

(iii) JUDICIAL REVIEW.—The certification by the Administrator shall be judicially reviewable in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 701 et seq.), and such review shall not be restricted by the provisions of section 2271(c) of title 42, United States Code.

(B) INJUNCTION BY A COURT.—If a court of competent jurisdiction orders the Administrator to reissue the regulations issued pursuant to subsection (a) or prevents the Administrator from giving the regulations full force and effect, the Secretary shall base his determination of compliance on the regulations issued pursuant to subsection (a), unless the court order expressly finds and orders that its injunction relates to substantive environmental, public health, or public safety aspects of the regulations directly applicable to the WIPP.

(C) FAILURE TO PUBLISH.—If the Administrator fails to publish in the Federal Register proposed or final disposal regulations pursuant to subsection (a), the Secretary shall base his determination of compliance on the disposal regulations as in effect on November 18, 1985.

(d) FAILURE TO COMPLY.—

(1) IN GENERAL.—If the Secretary has not submitted to the Administrator a determination of compliance with the disposal regulations within six years after the date of enactment of this Act, or the Administrator has certified that the Secretary has not complied with the disposal regulations—

(A) the Secretary shall ensure that the waste is removed within one year thereafter; and

(B) no permit or variance pursuant to section 3004 of the Solid Waste Disposal Act, or other applicable hazardous waste laws, with respect to the WIPP, shall remain in effect later than one year thereafter.

(2) EFFECT OF REMOVAL.—When all transuranic waste has been removed, the WIPP shall be decommissioned. Following the decommissioning, the land withdrawal provided by this Act shall terminate, and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(3) EXTENSION OF DEADLINE.—The deadline for submission of the Secretary's determination to the Administrator referred to in paragraph (1) may be extended for a period of no more than two years at the discretion of the Administrator if—

(A) the Secretary determines that the disposal regulations cannot be complied with by the date referred to in paragraph (1);

(B) the Secretary notifies the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, the State, the Administrator, and the EEG that additional time is needed to comply with the disposal regulations; and

(C) the Administrator determines that additional time would provide relevant and useful data in a timely manner for determining or certifying compliance with the disposal regulations, or for confirming such compliance.

(e) CONFLICT RESOLUTION.—If the State disagrees with the Secretary's determination of compliance with the disposal regulations, the State may invoke the conflict resolution provisions of the Agreement.

(f) ENGINEERED BARRIERS.—

(1) IN GENERAL.—The WIPP shall use engineered barriers as well as natural barriers to isolate the transuranic waste after disposal to the extent required by the applicable regulations of the Environmental Protection Agency. For purposes of this subsection, "engineered barriers" means any backfill, room seals, and other man-made barrier components required by the Administrator.

(2) WASTE FORM MODIFICATIONS.—If appropriate to determine compliance with the disposal regulations, the Secretary shall also include transuranic waste form modifications in the WIPP.

SEC. 7. RESTRICTIONS.

(a) TRANSURANIC WASTE.—

(1) IN GENERAL.—

(A) REM LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE.—

(i) 1,000 REMS PER HOUR.—No transuranic waste received at the WIPP may have a surface dose rate in excess of 1,000 rems per hour.

(ii) 100 REMS PER HOUR.—No more than 5 percent by volume of the remote-handled transuranic waste received at the WIPP may have a surface dose rate in excess of 100 rems per hour.

(B) CURIE LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE.—

(i) CURIES PER LITER.—Remote-handled transuranic waste received at the WIPP shall not exceed 23 curies per liter maximum activity level (averaged over the volume of the canister).

(ii) TOTAL CURIES.—The total curies of the remote-handled transuranic waste received at the WIPP shall not exceed 5,100,000 curies.

(C) CAPACITY OF THE WIPP.—The total capacity of the WIPP by volume is 6.2 million cubic feet of transuranic waste.

(2) EXPERIMENTAL PROGRAM.—

(A) BAN ON REMOTE-HANDLED TRANSURANIC WASTE.—No remote-handled transuranic waste may be received at the WIPP until the Administrator has certified to the Congress that the Secretary has complied with the disposal regulations.

(B) LIMITATION.—Before the Secretary has made a determination of compliance with the disposal regulations and the Administrator has certified the compliance to the Congress, only so much transuranic waste as is needed for the experimental program implemented pursuant to section 5, and not to exceed 0.5 percent by volume of the capacity of the WIPP, may be received at the WIPP.

(C) MODIFICATION OF LIMITATION.—The limitation contained in subparagraph (B) may only be modified if the Administrator determines that such a modification will provide relevant and useful data in a timely manner for determining or certifying compliance with the disposal regulations, or for confirming such compliance. In no event may the limit exceed the limitation on volume contained in the No-Migration Determination, or 1.0 percent by volume of the capacity of the WIPP.

(b) High-Level Radioactive Waste.—No spent nuclear fuel or high-level radioactive waste may be received at the WIPP.

SEC. 8. RETRIEVABILITY.

(a) Requirement of Retrievability.—

(1) In general.—Transuranic waste emplaced in the WIPP for purposes of the experimental program under section 5 shall be retrievable during the experimental program and for a period of time subsequent to the program needed to provide for its retrieval in the event that—

(A) the Secretary determines or the Administrator certifies that the WIPP does not comply with the disposal regulations;

(B) the transuranic waste needs to be retrieved for engineering modification or for repackaging for permanent disposal; or

(C) such retrieval is necessary to protect the public health and safety and the environment.

(2) Annual determination of retrievability.—The Secretary shall make an annual determination, taking into account the evaluation under section 10(b), of whether all transuranic waste is retrievable and can remain retrievable.

(3) Annual demonstration of retrievability.—The Secretary shall demonstrate, on an annual basis, in conjunction with the determination required in paragraph (2), that a sample of transuranic waste is retrievable.

(b) Retrieval Plan.—

(1) Preparation and submission.—Sixty days after the enactment of this Act, the Secretary shall submit to the Administrator and the State a retrieval plan that provides for the retrieval of transuranic waste from the WIPP should retrieval be required. The retrieval plan shall include contingency plans for—

(A) transport of transuranic waste to any storage facility designated by the Secretary, which is permitted for storage of such waste under the Solid Waste Disposal Act, or other applicable hazardous waste law, and which is located outside of the State, except as provided in subsection (c)(2); and

(B) temporary storage subject to the limitations contained in subsection (c).

(2) Implementation.—The Secretary shall implement the plan or take corrective action to ensure the retrievability of transuranic waste in the event that a determination is made under subsection (a)(2) that the waste is not or will not otherwise remain retrievable.

(c) Temporary or Interim Storage of Retrieved Transuranic Waste.—

(1) Transuranic waste retrieved from the WIPP may be temporarily stored above ground at the WIPP site for a period of up to ninety days if the Secretary determines that retrieval and temporary storage is necessary and that the waste will be managed and returned to the WIPP in accordance with the requirements of this Act. This period may be extended by the State or the Administrator, consistent with the requirements of the Solid Waste Disposal Act, or other applicable hazardous waste law, and if the State or the Administrator determines an extension is consistent with the protection of human health and the environment.

(2) If all or part of the WIPP site is designated as an interim storage facility for transuranic waste, the Secretary must obtain approval from the State or the Administrator in accordance with the Solid Waste Disposal Act, or other applicable hazardous waste law, before any transuranic waste retrieved from the WIPP may be stored at such interim storage facility.

(d) Conflict Resolution.—The State may invoke the conflict resolution provisions of the Agreement if it determines that either—

(1) the retrieval plan would not provide for satisfactory retrieval of all transuranic waste from the WIPP should retrieval of such waste be required;

(2) the annual determination of retrievability is incorrect; or

(3) the demonstration of retrievability does not ensure that transuranic waste will be retrievable.

(e) Existing Authority of the Environmental Protection Agency and the State.—

(1) Nothing in this section shall be construed to limit or in any manner affect the Administrator's or the State's authority to enforce, and the Secretary's obligation to comply with, all applicable provisions of the Solid Waste Disposal Act, or other applicable hazardous waste law, and all terms and conditions of the No-Migration Determination.

(2) Upon a determination by the Secretary that transuranic waste cannot remain retrievable, and that corrective action is not possible, the Administrator and the State shall, pursuant to the authorities provided in the Solid Waste Disposal Act, or other applicable hazardous waste law, take action to ensure the retrieval or removal of all transuranic waste in the WIPP.

SEC. 9. TRANSPORTATION.

(a) Shipping Containers.—No transuranic waste may be transported by or for the Secretary to or from the WIPP except in packages—

(1) the design of which has been certified for the transportation of transuranic waste by the Nuclear Regulatory Commission; and

(2) that have been fabricated under a Quality Assurance Program approved by the Nuclear Regulatory Commission.

(b) Notification.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, prior to any transportation of transuranic waste by or for the Secretary to or from the WIPP, the Secretary shall provide advance notification to States and Indian tribes through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP.

(c) Accident Prevention and Emergency Preparedness.—

(1) Training.—

(A) In general.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the Secretary shall ensure that technical assistance and funds are provided for the purpose of training public safety officials, and other emergency responders as defined by 29 C.F.R. 1910.120, in any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP. Within thirty days of enactment of this Act, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and the State on the training provided through fiscal year 1991.

(B) Ongoing training.—If determined by the Secretary, in consultation with affected States and Indian tribes, to be necessary and appropriate, the training shall continue after the date of enactment of this Act until the transuranic waste shipments to or from the WIPP have been terminated.

(C) Review of training.—The Secretary shall review the training, in consultation with affected States and Indian tribes. The training shall also be reviewed by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health for compliance with 29 C.F.R. 1910.120.

(D) Components of training.—The training shall cover procedures required for the safe routine transportation of transuranic waste, as well as procedures for dealing with emergency response situations, including—

(i) instruction of government officials and public safety officers in procedures for the command and control of the response to any incident involving the waste;

(ii) instruction of emergency response personnel in procedures for the initial response to an incident involving transuranic waste being transported to or from the WIPP;

(iii) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving transuranic waste being transported to or from the WIPP; and

(iv) a public awareness campaign to provide information to the public about the transportation of transuranic waste to or from the WIPP.

(2) Equipment.—The Secretary shall enter into agreements to assist, through monetary grants or contributions in-kind, States in acquiring equipment for response to an incident involving transuranic waste transported to or from the WIPP.

(d) Transportation Safety Programs.—The Secretary shall provide in-kind, financial, technical, and other appropriate assistance to any State or Indian tribe, through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP, for the purposes of WIPP-specific transportation safety programs not otherwise addressed in this section. These programs shall be developed with, and monitored by, the Secretary.

(e) Santa Fe Bypass.—No transuranic waste may be transported from the Los Alamos National Laboratory to the WIPP until—

(1) an amount of funds sufficient to construct the Santa Fe bypass has been made available to the State;

(2) the Santa Fe bypass has been completed; or

(3) the Administrator has made the certification required under section 6.

(f) State Advisory Group on Emergency Response Medical Training.—

(1) The Governor shall appoint an advisory group of health professionals and other experts in the field to review emergency response medical training programs for the transportation of transuranic waste.

(2) Within ninety days of the date of enactment of this Act, and periodically thereafter, the advisory group shall review the Department of Energy's emergency response medical training programs and report its findings to the State and the Secretary.

(3) The Secretary shall review the findings of the advisory group and, if the Secretary determines that emergency response medical training is inadequate, the Secretary shall take immediate action to correct the inadequacies and, if necessary, suspend transportation of transuranic waste.

(g) Conflict Resolution.—If the State disagrees with the Secretary's determination under subsection (f)(3), the State may invoke the conflict resolution provisions of the Agreement.

SEC. 10. MINE SAFETY.

(a) MINE SAFETY AND HEALTH ADMINISTRATION.—The Mine Safety and Health Administration of the Department of Labor shall inspect the WIPP as frequently, and in the same manner as it evaluates mine sites under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) and shall provide the results of its inspections to the Secretary. The Secretary shall make the results of such inspections publicly available and shall take necessary actions to assure the prompt and effective correction of any deficiency, including suspending specific activities as necessary to address identified health and safety deficiencies.

(b) BUREAU OF MINES.—The Bureau of Mines of the Department of the Interior shall prepare an annual evaluation of the safety of the WIPP.

SEC. 11. ECONOMIC ASSISTANCE.

(a) PAYMENTS TO THE STATE.—

(1) PAYMENTS FOR OPERATION AND DECOMMISSIONING.—

(A) OPERATION.—The Secretary shall, to such extent and for such amounts as are provided in advance in appropriations Act, make payments to the State in the amount of $20,000,000 per year—

(i) beginning with the fiscal year in which transuranic waste shipments to the WIPP are initiated; and

(ii) ending with the fiscal year in which decommissioning activities at the WIPP are initiated.

(B) DECOMMISSIONING.—The Secretary shall, to such extent and for such amounts as are provided in advance in appropriations Acts, make payments to the State in the amount of $13,000,000 per year—

(i) beginning with the first fiscal year after the year in which decommissioning activities are initiated; and

(ii) ending with the fiscal year in which the WIPP becomes fully decommissioned.

(C) PAYMENTS TO UNITS OF LOCAL GOVERNMENT.—A portion of the payments under this subsection shall be made available to units of local government in Lea and Eddy counties.

(2) PAYMENTS EQUIVALENT TO TAXES.—There is authorized to be appropriated to the Secretary such sums as are necessary to provide a payment each fiscal year to the State and each unit of local government in which the WIPP site is located. A payment under this subsection shall be determined by—

(A) calculating the amount the State and the unit of local government would receive were they authorized to tax the development and operation of the WIPP in the same manner as the State and the unit of local government tax the other comparable real property and industrial activities occurring within the State and the unit of local government;

(B) calculating the amount paid in the most recent fiscal year by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State and any of its local governments for contractor and subcontractor activities attributable to the WIPP;

(C) calculating the actual amount paid in fiscal year 1990 by the Department of Energy to reimburse WIPP contractors and subcontractors for taxes, fees, or other payments assessed by the State and any of its local governments for contractor and subcontractor activities attributable to the WIPP. This amount shall be adjusted to reflect the aggregate percentage change in the Consumer Price Index for consumers published by the Secretary of Labor;

(D) subtracting the amount calculated under subparagraph (C) from the amount calculated under subparagraph (B); and

(E) subtracting the amount calculated under subparagraph (D) from the amount calculated under subparagraph (A).

Payments under this paragraph shall continue until all activities related to the development and operation of the WIPP are terminated at the WIPP site.

(b) WIPP-RELATED BUSINESS AND EMPLOYMENT OPPORTUNITIES.—

(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall continue to encourage business and employment opportunities related to the WIPP that are appropriate for the State, and in particular, for Lea and Eddy counties.

(2) REPORT.—The Secretary shall report annually to the State on the activities conducted pursuant to paragraph (1).

(c) ENVIRONMENTAL MONITORING RESEARCH CENTER.—There is authorized to be appropriated to the Secretary such sums as are necessary to provide funding for the purpose of building, establishing, and operating the Carlsbad Environmental Monitoring Research Center Program, within the Waste Management Education and Research Consortium, to provide independent WIPP environmental assessment and monitoring capabilities in the Carlsbad, New Mexico area.

SEC. 12. ECONOMIC IMPACT MONITORING.

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall make annual payments to the State for the purpose of establishing and maintaining an Impact Assessment Group within the Waste Management Education and Research Consortium, or any other group or institution the State considers appropriate, to prepare annual reports on the economic impact of the activities at the WIPP.

(b) AUTHORIZATION.—

(1) From amounts appropriated in fiscal year 1992, the Secretary shall pay $1,000,000 to the State to establish the Group and to perform a review.

(2) In each subsequent fiscal year after the date of enactment of this Act, the Secretary shall pay $750,000, to such extent and for much amounts as are provided in advance in appropriations Acts, to the State to perform the annual reviews.

(c) ANNUAL REPORTS.—

(1) IN GENERAL.—Annual reports prepared under subsection (a) shall be submitted to the Governor, the Secretary, and affected units of local government.

(2) CONTENTS.—The reports shall quantify the impacts of the WIPP, including those impacts on the State and affected units of local government.

SEC. 13. DECOMMISSIONING OF THE WIPP.

(a) PLAN FOR ENVIRONMENTAL CONTROLS AFTER DECOMMISSIONING.—

(1) IN GENERAL.—Not later than three years after the date of enactment of this Act, the Secretary shall submit a preliminary plan for active and passive institutional controls for managing the WIPP after decommissioning to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Interior and Insular Affairs of the United States House of Representatives, the State, and the EEG. The plan shall be updated as the Secretary determines necessary.

(2) CONSISTENCY WITH DISPOSAL REGULATIONS.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the plan shall be consistent with the disposal regulations.

(3) CONFLICT RESOLUTION.—If the State disagrees with the adequacy of the Secretary's plan under this subsection, the State may invoke the conflict resolution provisions of the Agreement.

(b) MANAGEMENT PLAN FOR THE WIPP SITE AFTER DECOMMISSIONING.—Not later than two years after the date of enactment of this Act, the Secretary shall publish in the Federal Register a preliminary plan for the management and use of the WIPP site following the decommissioning of the WIPP. The plan shall be updated as the Secretary determines necessary.

SEC. 14. OIL AND GAS LEASES.

There are authorized to be appropriated to the Secretary such sums as are necessary to provide compensation for the cancellation of the Federal Oil and Gas Leases No. NMNM 02953 and 02953C.

SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

SEC. 16. CONSULTATION AND COOPERATION AGREEMENT.

Nothing in this Act shall affect the Agreement between the State and the United States Department of Energy except as explicitly stated herein.

SEC. 17. REDRESS OF ADMINISTRATIVE WITHDRAWAL.

Transuranic waste introduced at the WIPP site prior to the enactment of this Act shall—

(1) immediately be removed from the WIPP site if it is not being used to carry out the experimental program at the time the program is implemented under section 5;

(2) be removed promptly from the WIPP site in the event that the requirements of section 7 are not complied with; and

(3) be subject to the requirements for retrievability under section 8 of this Act.

SEC. 18. TECHNOLOGY STUDY.

Within one year of the date of enactment of this Act, the Secretary shall submit to Congress a study reviewing the technologies that are available and that are being developed for the processing or reduction of volumes of radioactive wastes. This study shall include an identification of technologies involving the use of chemical, physical, and thermal (including plasma) processing techniques.

SEC. 19. PUBLIC LAW 96-164.

This Act amends section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96-164; 93 Stat. 1265).

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, this is indeed an evening that has been a long time coming. It has been in excess of 12 years that the Senator from New Mexico has been working on this project. Tonight we are going to send to the House a bill that has the support of the administration—Senator BINGAMAN supports it, the Democratic Governor of the State of New Mexico, Gov. Bruce King, supports it—and it will go there with the hope that before we adjourn this year the U.S. House will pass a companion bill, if not close enough to it, such that it will be signed and will clear up once and for all many matters relating to a waste isolation pilot project in New Mexico.

If this all comes into fruition, then New Mexico will be a site for 5 to 6 years of reserve for low-level transuranic waste with reference to whether or not it can be put in a repository in the salt of New Mexico. If that can be done such that it will be safe, then that site will become a permanent repository.

The legislation we are going to send to the House tonight is a long time in coming. And let me suggest that tonight I sent every Senator, in behalf of myself and Senator BINGAMAN, a letter about this legislation.

I ask unanimous consent that that letter and two enclosures be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 28, 1991.

DEAR COLLEAGUE: On October 16, the Senate Energy and Natural Resources Committee reported S. 1671, the Waste Isolated Pilot Plant Withdrawal (WIPP) Act of 1991, by a vote of 19-0. This legislation also is supported by the Department of Energy and the Governor of New Mexico. The bill and report have been filed and we hope to gain its passage without objection in the Senate. It is of the utmost urgency to get this bill passed and over to the House. Otherwise, the bill could languish in this session of Congress and the Department of Energy will proceed with WIPP without full Congressional approval.

The reported bill provides for the permanent withdrawal of the WIPP site from the Department of the Interior so that the Department of Energy can conduct a test program to determine whether WIPP can meet Environmental Protection Agency (EPA) regulations and serve as a disposal facility for defense transuranic waste. The reported bill also provides financial assistance to the State of New Mexico and a number of other statutory guarantees for the safe transportation and management of this waste.

If we do not pass and gain enactment of permanent withdrawal legislation, the Secretary of Energy will proceed with WIPP under an administrative withdrawal. This withdrawal is not permanent, is opposed by the New Mexico Congressional delegation and the Governor, and is currently under court challenge by New Mexico's Attorney General. Instead of relying on the uncertainties of administrative withdrawal, we urge you to support the bill as reported by the committee. It will provide for a proper land withdrawal and an orderly and scientific process for determining whether this site should serve as a waste repository for transuranic waste.

Should you have any concerns about the bill, please contact us. Should you need a copy of the bill or report or have any questions about the bill, please contact Austin Smythe (Senator DOMENICI's staff—4-0539) or Mitch Foushee (Senator BINGAMAN's staff—4-5521).

With warm regards,

Sincerely,

JEFF BINGAMAN,
U.S. Senator.
PETE V. DOMENICI,
U.S. Senator.

COMPARISON OF WIPP ADMINISTRATIVE AND LEGISLATIVE WITHDRAWALS

Administrative	Domenici-Bingaman (S.1671)	Reported Bill (S.1671)
DOE self-certifies compliance with EPA standards	EPA, not DOE, certifies compliance	Same.
Negotiating impact aid with State	$20 million annually ($13 million annually for decommissioning)	Same.
No required independent review of test plan	Plan must be reviewed by the State, EPA, EEG, and NAS.	Same.
No limit on waste during test phase	0.5 percent of volume limit (4,250 drums).	Same. Only allows increase to 1 percent after DOE justifies, 4 oversight agencies review, and EPA approves.
No time limit on test phase	6 years with 1 year extension if DOE approves	6 years with up to a 2-year extension if EPA approves.
No requirement on return of retrieved waste	Retrieved waste returned to point of origin or interim storage facility besides WIPP.	Retrieved waste goes to storage facility outside State (exception for WIPP if State approves).
No required independent mine safety inspections	MSHA and Bureau of Mines review and inspection of WIPP	Same.
No transportation assistance required	Requires DOE to provide training and equipment	Requires DOE to provide training equipment; OSHA and NIOSH must review training; establishes an advisory group with recourse for the State if training inadequate.
All requirements are based on agreements, not law	All provisions have the force of law	Same.

PRINCIPAL FEATURES OF S. 1671 (AS REPORTED)

EXPERIMENTAL PROGRAM

1. Establishes following limits for transuranic waste (TRU) for experiments before meeting EPA disposal standards:

Data must be relevant and timely for determining compliance with EPA regulations;

Radiation dose rate limits;

Time to demonstrate compliance—6 years (2 year extension available if EPA approves), and

No remote-handled TRU and no TRU for operational demonstration.

2. Requires EPA, State, NAS and EEG to evaluate experimental program plan and establishes a system for the State to address any concerns.

3. Establishes a 0.5% waste limit that can only be modified to 1.0% if following conditions are met:

Justification.—DOE modifies the experimental program justifying the increase;

Evaluation and Review.—The four oversight agencies review the modification;

Approval.—EPA approves both the modified plan and the increase and State has legal right to invoke conflict resolution if it disagrees.

PAYMENTS

1. Requires payments to New Mexico of $20 million per year during the experimental and disposal phases and $13 million per year during the decommissioning phase.

2. Payments equivalent to taxes.

3. Establishes and funds an Economic Impact Monitoring Group and an Environmental Monitoring Research Center.

WASTE DISPOSAL STANDARDS

1. Requires EPA to issue draft disposal standards in six months and final standards in 2 years.

2. Requires EPA to also issue regulations for the certification process of compliance.

3. Requires EPA as well as DOE to make determination of compliance with the disposal standards.

FAILURE TO COMPLY

1. If WIPP fails to meet disposal standards, DOE is required to remove radioactive waste within one year.

2. If DOE fails to remove radioactive waste, all permits are terminated and EPA and/or the State must invoke a procedure to remove waste.

TRANSPORTATON

1. Requires all shipments to be made in containers certified by NRC and an NRC approved quality assurance program.

2. Provides training and equipment appropriate for state public safety officials to deal with transportation problems and requires OSHA/NIOSH review of training programs.

3. Establishes a State oversight group to review emergency response medical training programs. If DOE's training is insufficient, State can invoke conflict resolution process.

OTHER

1. Clarifies the right of New Mexico to invoke conflict resolution in matters relating to the experimental plan, retrieval plan and the decommissioning plan.

2. Requires DOE to work out a system with the State and EEG to make information available in a timely manner and requires DOE to consult and cooperate with State and EEG.

3. Bans any High Level Waste.

4. Prohibits surface or subsurface mining under the WIPP site.

5. Requires DOE to clean up any salt tailings after completion of project.

6. Requires all waste to be retrievable during the test phase, as documented in a retrieval plan.

Mr. DOMENICI. Actually it was to inquire of Senators if they had any objection to the passage of this bill this evening. There was not one objection made, so it seems to me I can say to New Mexicans that the Senate decided, without objection, that this was good legislation and sent it to the House.

Mr. President, essentially what this bill does, it creates a body of law that centers around and surrounds this repository site. If we can make this law, then all of these agreements will become a part of the statute law of the United States.

Essentially, the statute law will say that the Environmental Protection Agency, not the Department of Energy, must certify compliance with its regulations. The test plan, which can go on for a number of years prior to determination of whether or not this can become a repository site, will be reviewed by four oversight agencies: the State, EPA, the National Academy of Science, and the EEG, an entity in our State that watches over these activities in behalf of the people of New Mexico.

The test phase is limited by statute law and if the test phase fails, then all waste must be retrieved and moved out of the State of New Mexico unless New Mexico agrees to leave it there on a temporary basis.

In addition, about $600 million will be paid over time to the State of New Mexico, and passage of this bill will make it statute law such that the United States of America is legally bound to this obligation.

There are many other provisions which we think makes this a very strong bill in favor of the health and safety of New Mexico and New Mexico's residents. New Mexico is given a great deal of power, a great deal of regulatory authority, and so are those agencies of the U.S. Government aside and apart from the Department of Energy, who are charged with regulating mining activities, environmental activities and the like.

So, after all these years, if one can make a good thing out of a situation like this, we certainly have worked diligently to put a bipartisan bill together, a bill that the Governor of New Mexico can support. And we do, tonight, urge that the U.S. House give early and quick consideration so that we can get a bill to the President of the United States and regularize, in a legal way, the commitments that the U.S. Government has made to the State and the people of the State of New Mexico.

Mr. WALLOP. Mr. President, our passage of S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act of 1991, marks the conclusion of years of tireless effort by Senators DOMENICI and BINGAMAN to craft a permanent land withdrawal bill that will permit the testing of this facility to proceed while ensuring that the State's concerns about health, safety, and impact assistance are adequately addressed. The opening of WIPP for the experimental program is an important milestone in the Department of Energy's program to manage and dispose of the volumes of waste accumulated over the past 50 years in carrying out the Department's mission in defense programs.

The construction of this facility was finished over 3 years ago and the Department has now completed all of the prerequisites for beginning the experimental phase of the program at the site. However, it is no secret that the Department and the State have had serious disagreements about the extent of the experimental program and transportation and safety issues associated with operating the facility. I commend the two New Mexico Senators and the Department of Energy for their ability to arrive at an acceptable balance between the State's interests and the goal of the Department to establish the suitability of WIPP for the disposal of transuranic waste.

BUREAU OF LAND MANAGEMENT FOUNDATION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 267, S. 1117, establishing a Bureau of Land Management Foundation.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1117) to establish the Bureau of Land Management Foundation.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bureau of Land Management Foundation Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the Bureau of Land Management Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of **[**Columbia.**]** *Columbia, which shall not be an agency or establishment of the United States.*

(b) PURPOSES.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money and real and personal property for the benefit of, or in connection with, the activities and services of the Bureau of Land Management of the Department of Interior;

(2) undertake and conduct activities that further the purposes of the Bureau of Land Management;

(3) undertake, conduct, and encourage educational, technical, and other assistance, and other activities that support the programs, functions, and activities administered by the Bureau of Land Management; and

(4) promote cooperation among the Bureau of Land Management, the private sector, and other governmental and educational agencies and institutions.

(c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of a director, officer, or employee; or

(B) the interests of any corporation, partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be **[**knowledgeable regarding**]** *educated or have actual experience in* natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to public land management and natural and cultural resource issues. The Director of the Bureau of Land Management shall be an ex officio nonvoting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this Act, the Secretary of Interior (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his or her tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The Board may complete the organization of the Foundation by appointing officers and employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this Act, and undertaking other such activities as may be necessary to function and to carry out the provisions of this Act.

(h) OFFICERS AND EMPLOYEES.—(1) Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. No individual so appointed may receive pay in excess of the rate of basic pay payable for level IV of the Executive Schedule for Federal employees.

(2) The Board shall appoint a chief executive officer who shall serve at the direction of the Board and who shall have demonstrated knowledge and experience in matters relating to natural and cultural resource conservation, land management, law, or research.

SEC. 4. CORPORATE POWERS AND OBLIGATIONS.

(a) In General.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries commensurate with and in support of international activities which the Secretary is authorized to carry out pursuant to other laws;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) Notice and Service of Process.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) Seal.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) Powers.—To carry out its purposes under section 2, the Foundation shall have, in addition to powers otherwise authorized under this Act, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase, or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof;

(7) lease space for the conduct of its activities in the District of Columbia or elsewhere; and

(8) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(e) Property.—(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase, or exchange. For the purposes of this Act, an interest in real property shall include mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(3) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

SEC. 5. ADMINISTRATIVE SERVICES AND SUPPORT.

[(a) Startup Funds.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative and other startup expenses, the Secretary is authorized to provide the Foundation $500,000, from funds appropriated pursuant to section 10(a), per year for the two years following the date of enactment of this Act.]

(a) Start-Up Funds.—The Secretary is authorized to provide funding to the Foundation for purposes of assisting the Foundation in establishing an office and meeting initial and other start-up expenses.

(b) Matching Funds.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this Act, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section 10 of this Act including reimbursement of expenses under section 3, not to exceed then current Federal Government per diem rates.

(c) Administrative Expenses.—At any time, the Secretary may provide the Foundation use of Department of Interior personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish.

SEC. 6. VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer.

SEC. 7. AUDITS AND REPORT REQUIREMENTS.

(a) Audits.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88–504) the Foundation shall be treated as a private corporation established under Federal law.

(b) Annual Reports.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. 8. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation. The Foundation is not an agency or establishment of the United States.

SEC. 9. AMENDMENT AND REPEAL.

The Congress expressly reserves the right to repeal or amend this Act at any time.

[SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) Start-Up Funds.—For the purposes of section 5(a) of this Act, there are authorized to be appropriated $1,000,000.

(b) Matching Funds.—For the purposes of section 5(b) of this Act, during the five-year period following enactment of this Act, there are authorized to be appropriated $1,000,000 annually to the Secretary of Interior to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.]

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) Start-Up Funds.—For the purposes of section 5(a) of this Act, there are authorized to be appropriated such sums not to exceed $500,000 per year for the two years following the date of enactment of this Act.

(b) Matching Funds.—For the purposes of section 5(b) of this Act, there are authorized to appropriated such sums not to exceed $1,000,000 for the five years following the date of enactment of this Act.

The PRESIDING OFFICER. If there is no objection, the committee amendments are considered en bloc and agreed to.

So, the committee amendments were agreed to, en bloc.

The PRESIDING OFFICER. The bill, as amended, is deemed read three times and passed.

So, the bill (S. 1117), as amended, was deemed read a third time and passed, as follows:

S. 1117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bureau of Land Management Foundation Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) Establishment.—There is established the Bureau of Land Management Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia, which shall not be an agency or establishment of the United States.

(b) Purposes.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money and real and personal property for the benefit of, or in connection with, the activities and services of the Bureau of Land Management of the Department of Interior;

(2) undertake and conduct activities that further the purposes of the Bureau of Land Management;

(3) undertake, conduct, and encourage educational, technical, and other assistance, and other activities that support the programs, functions, and activities administered by the Bureau of Land Management; and

(4) promote cooperation among the Bureau of Land Management, the private sector, and other governmental and educational agencies and institutions.

(c) Limitation and Conflicts of Interests.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of a director, officer, or employee; or

(B) the interests of any corporation, partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) Establishment and Membership.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to public land management and natural and cultural resource issues. The Director of the Bureau of Land Management shall be an ex officio nonvoting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this Act, the Secretary of Interior (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his or her tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The Board may complete the organization of the Foundation by appointing officers and employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this Act, and undertaking other such activities as may be necessary to function and to carry out the provisions of this Act.

(h) OFFICERS AND EMPLOYEES.—(1) Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. No individual so appointed may receive pay in excess of the rate of basic pay payable for level IV of the Executive Schedule for Federal employees.

(2) The Board shall appoint a chief executive officer who shall serve at the direction of the Board and who shall have demonstrated knowledge and experience in matters relating to natural and cultural resource conservation, land management, law, or research.

SEC. 4. CORPORATE POWERS AND OBLIGATIONS.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries commensurate with and in support of international activities which the Secretary is authorized to carry out pursuant to other laws;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) POWERS.—To carry out its purposes under section 2, the Foundation shall have, in addition to powers otherwise authorized under this Act, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase, or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof;

(7) lease space for the conduct of its activities in the District of Columbia or elsewhere; and

(8) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(e) PROPERTY.—(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase, or exchange. For the purposes of this Act, an interest in real property shall include mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(3) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

SEC. 5. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) START-UP FUNDS.—The Secretary is authorized to provide funding to the Foundation for purposes of assisting the Foundation in establishing an office and meeting initial and other start-up expenses.

(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this Act, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section 10 of this Act including reimbursement of expenses under section 3, not to exceed then current Federal Government per diem rates.

(c) ADMINISTRATIVE EXPENSES.—At any time, the Secretary may provide the Foundation use of Department of Interior personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish.

SEC. 6. VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer.

SEC. 7. AUDITS AND REPORT REQUIREMENTS.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) ANNUAL REPORTS.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. 8. UNITEC STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation. The Foundation is not an agency or establishment of the United States.

SEC. 9. AMENDMENT AND REPEAL.

The Congress expressly reserves the right to repeal or amend this Act at any time.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section 5(a) of this Act, there are authorized to be appropriated such sums not to exceed $500,000 per year for the two years following the date of enactment of this Act.

(b) MATCHING FUNDS.—For the purposes of section 5(b) of this Act, there are authorized to be appropriated such sums not to exceed $1,000,000 for the five years following the date of enactment of this Act.

Mr. MITCHELL. I move to reconsider the vote by which the bill was passed.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10:30 a.m. on Wednesday, November 6; that following the prayer, the Journal of Proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business, not to extend beyond 1 p.m. with Senators permitted to speak therein, with the time from 10:30 a.m. to 11:30 a.m. under the control of the majority leader or his designee; and that at 1 p.m. the Senate begin consideration of Calendar No. 254, S. 455, the indoor air bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I now ask unanimous consent that Senator DOMENICI be recognized to address the Senate, and that upon the completion of his remarks, the Senate stand in recess as previously ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico [Mr. DOMENICI] is recognized.

Mr. DOMENICI. I thank the majority leader, and I will not be long.

(By unanimous consent, the remarks of Mr. DOMENICI appear in the RECORD during the consideration of S. 1671.)

RECESS UNTIL TOMORROW AT 10:30 A.M.

The PRESIDING OFFICER. Pursuant to the previous order the Senate will stand in recess until the hour of 10:30 a.m. on Wednesday, November 6, 1991.

Thereupon, the Senate, at 7:28 p.m., recessed until Wednesday, November 6, 1991 at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 5, 1991:

THE JUDICIARY

J. CURTIS JOYNER, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

RODERICK R. MCKELVIE, OF DELAWARE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE VICE MURRAY M. SCHWARTZ, RETIRED.

JOHN R. PADOVA, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

JIMM LARRY HENDREN, OF ARKANSAS, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS, VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

DEPARTMENT OF DEFENSE

JAMES RODERICK LILLEY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE HENRY S. ROWEN, RESIGNED.

CONFIRMATION

Executive nomination confirmed by the Senate November 5, 1991:

CENTRAL INTELLIGENCE

ROBERT M. GATES, OF VIRGINIA, TO BE DIRECTOR OF CENTRAL INTELLIGENCE.

WITHDRAWALS

Executive messages transmitted by the President to the Senate on November 5, 1991, withdrawing from further Senate consideration the following nominations:

THE JUDICIARY

JIMM LARRY HENDREN, OF ARKANSAS, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS VICE G. THOMAS EISELE, RETIRED, WHICH WAS SENT TO THE SENATE ON OCTOBER 24, 1991.

U.S. ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF BRIGADIER GENERAL, WHICH WAS SENT TO THE SENATE ON JUNE 19, 1991:

To be brigadier general

COL. JAMES J. STEELE, [redacted] U.S. ARMY

EXTENSIONS OF REMARKS

REMARKS BY DR. MICHAEL BISHOP BEFORE THE CONGRESSIONAL BIOMEDICAL RESEARCH CAUCUS

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. GEKAS. Mr. Speaker, I would like to share with my colleagues some remarks made by Dr. Michael Bishop before the Congressional Biomedical Research Caucus on Monday, October 28, 1991. But first I would like to say a few words about our Dr. Bishop.

Dr. Michael Bishop is a 1989 winner of the Nobel Prize in Medicine for his work on oncogenes, along with Dr. Harold Varmus, our first caucus speaker and, who served over the past year as a program advisor to the caucus. Dr. Bishop teaches and studies microbiology at the University of California, San Francisco and is internationally recognized as an authority on viruses that cause cancer. He was born and raised in rural Pennsylvania, and graduated from Gettysburg College as valedictorian. He earned his medical degree at Harvard and launched his biomedical research career at NIH's Research Associated Program. The title of Dr. Bishop's talk is "Genes: The Answer to Cancer?" The text of his remarks follows:

REMARKS BY DR. MICHAEL BISHOP

I am Professor of Microbiology, Immunology, Biochemistry and Biophysics, and Director of the G.W. Hooper Research Foundation at the University of California, San Francisco (UCSF), where I teach and do research with equal pleasure. I am honored by the opportunity to address this group. More to the point. I am grateful.

From the moment I first decided to devote myself to biomedical research, every step of the way to this podium has been paved with federal funds: I withdrew from medical school for one year in order to get my first taste of the laboratory, supported by a fellowship from NIH; after finishing my training in Internal Medicine. I did my formal apprenticeship in research at the NIH in Bethesda, as a member of the Research Associates program that has supplied U.S. medical schools with many of its most distinguished faculty, throughout my career as an independent scientists at UCSF, I have been supported primarily by grants from the NIH, support that provided not only the ingredients and equipment for our work, but the talented personnel without whom I would have nothing much to report and even vital portions of my own salary.

Whatever I may have accomplished as a scientists I owe to the enlighten altruism with which the US public, through Congress, has supported education and research during the past decades. I am grateful beyond measure and that is one of the reasons I am eager to tell my tale to you.

But there is another and more important reason. Over the past decade, one of the great and most recalcitrant nemesis of human health has been brought to bay. We have found a new way to think about cancer, a way that should lead eventually to decisive control over this dread disease. It is important that you know about this remarkable progress—the hope it offers and the hard work that still needs to be done.

In August, this group heard Dr. Mary-Clair King describe how the fruits of genetic research are being used to attack the baleful problem of breast cancer. Today, Dr. Bert Vogelstein and I will expand the scope of the story to include all cancer, in the hope that you can see why excitement continues to mount in cancer research. My task is to explain how basic research sowed the seeds of the fruit. Dr. Vogelstein will then tell you how that fruit is being taken to the bedside of the cancer patient.

One person in every four among us here will develop cancer, one in every five will die of the disease. These are tragic dimensions, but they are no larger than the intellectual challenge cancer presents. Every second, twenty five million cells reproduce themselves in our bodies. Each of these reproductions carries the inherent risk of cancer: if the reproductions are not properly controlled, cancer may arise.

How are the reproductions controlled? Why do the controls sometimes fail? What hope do we have of penetrating the complexities of the cancer cell?

These questions have been before the human mind for a very long time, and until recently, the answers had seemed distant indeed. But over the past decade, a great change has occurred in how we think about cancer. Where once we viewed cancer as a bewildering variety of diseases with causes too numerous to count, now we are on the track of a single unifying explanation for how most or all cancers might arise, an explanation that lays open new paths to diagnosis, prognosis, therapy and prevention. The explanation came from attention to genes.

Genes are the chemical vocabulary of the instructions that direct the lives of our cells, carried by that remarkable molecule known as DNA. Several yards of DNA are crammed into each human cell: how the cramming is accomplished remains a great mystery. It now appears that cancer results from mistakes in the instructions carried by DNA, mistakes that originate from damage to genes. We first uncovered those mistakes by using viruses.

Viruses are tiny packages of genes that must enter living cells in order to reproduce. We have known for more than fifty years that some viruses can cause cancer in birds and animals; now we know that they do this by using genes.

The story began in 1910, when a chicken farmer in upstate New York discovered a tumor on the breast of a prized Plymouth Rock hen. Determined to save the hen, the farmer took it to the Rockefeller Institute in New York City (then the center for medical knowledge in the U.S.; the center has since moved West, to San Francisco). There he asked for a cancer researcher and was referred to a young scientist named Peyton Rous.

After what I imagine must have been some fast talking, Rous killed the hen, removed the tumor and performed a landmark experiment that was to bring him great grief and lasting fame. He mashed the cells of the tumor so that they were broken open, passed the extract through a filter to remove debris and still living cells, and then found that injection of the filtered extract into chicken elicited tumors exactly like those in the hen from upstate New York.

Rous immediately and correctly concluded that he had discovered a virus that could cause cancer. For this remarkable discovery, Rous was for many years criticized and disparaged: his finding was beyond the ken of most scientists of this time. Fifty five years later, when Rous was more than eighty years of age, he received the Nobel Prize for his historic discovery. The rest of the scientific community had finally caught up with him.

We now know that the virus discovered by Rous exemplifies a group of distinctive creatures known as retroviruses (among which is HIV, the cause of AIDS); that it does indeed cause cancer; and that it contains but four genes, arrayed along a single molecule. Three of these genes are used to reproduce the virus, but the fourth causes cancer—it is an "oncogene" (tumor gene). We call this oncogene src because of the cancers it induces: sarcomas.

Here you see dramatized the value of viruses to the experimentalist. In studying the cancer caused by the virus of Peyton Rous, we need explain the action of only a single gene in order to get a view of how a cancer cell can arise. The same soon proved true of many other cancer viruses: they too have oncogenes.

The discovery that many viruses use genes to elicit cancer brought new clarity to cancer research. There had been hints before that the elemental secrets of cancer might lay hidden in the genetic dowry of cells. But in cancer viruses we found the first explicit examples of genes that can switch a cell from normal to cancerous growth.

Might the cell itself have such genes? Can the complexities of human cancer be reduced to the chemical vocabulary of DNA? The answer came from asking yet another question, based on the logic of evolution. The oncogene src serves no obvious purpose for Peyton Rous' virus: it contributes nothing to the growth or survival of the virus. Why then is it there?

When that question was asked, it led to a penetrating discovery. Src is present in the virus of Peyton Rous because of an accident of nature. The gene was acquired from the cells in which the virus grows, in an elaborate molecular ballet that copies a normal cellular gene into the genetic apparatus of the virus. The virus is a pirate; the booty is a cellular gene with the potential to become a cancer gene.

Soon it became apparent that src was not alone. The DNA of vertebrates like ourselves and the chicken of Peyton Rous contains many genes that can become cancer genes when pirated into viruses. Of course, these genes were not put there by evolution to cause cancer. Normally, they play vital roles in the lives of our cells. But the pirating into viruses damages the genes, and as a result, they become cancer genes. We call these cellular genes proto-oncogenes because each has the potential to become a cancer gene in a virus.

These discoveries also allowed us to reason backwards, to deduce that the same genes might contribute to cancer while in the cell from which they come. Our reasoning was successful beyond all hope. We now know that among the 100,000 or more genes in our cells, there are a few dozen whose abnormalities underlie most if not all human cancers. Among these genes are several of the proto-oncogenes first discovered in viruses as oncogenes. Consider, then, what retroviruses have done for us. Piracy of proto-oncogenes by retroviruses is an accident of nature, serving no purpose for the virus. But the event has profound implications for cancer research. In an extraordinary act of benevolence, retroviruses have brought to view cellular genes whose activities may be vital to many forms of carcinogenesis. It might have required many decades more to find these genes by other means amongst the morass of human DNA. Instead, we have the genes made manifest in retroviruses, excerpted from amidst the morass and made available for our closest scrutiny.

The discovery and exploration of proto-oncogenes provided a new view of the cancer cell. But there is another set of genes that are equally important in the genesis of cancer whose time has now come. Their story goes as follows.

Geneticists call us diploid organisms because our cells possess two copies of most of our genes. The oncogenes we have discussed until now are functionally dominant: their abnormalities are felt even when a normal copy of the same gene is also present in the cell: evil overrides good, to use an image I find useful for medical students, physicists, perhaps even members of Congress.

But it now appears that most or all human tumors also bear genetic lesions that make their presence known only when both copies of a gene have been lost or inactivated. These lesions we call recessive. The possibility that recessive mutations, that the loss or inactivation of genes, might contribute to cancer emerged in two ways.

First, it is possible to induce the fusion of two different cells and thus to cause the intermingling of their genetic endowments in a single progeny. Experimental fusion of normal and cancer cells often suppresses the abnormalities of the cancer cell: the hybrid cells grow normally rather than as cancer cells. The cancer cells therefore appear to be defective in functions that are required for the regulation of cellular proliferation and other behavior. Fusion with a normal cell restores the necessary functions and, thus, suppresses cancerous growth. The responsible genes are now known as "tumor suppressor genes" and their defectiveness in cancer cells represents an example of recessive genetic damage.

Second, the cells of some human cancers contain chromosomes that have lost part of their DNA, a lesion that we call deletion and that is sometimes visible through a microscope. The loss of genes is a recessive lesion, of the sort imagined from the experiments with cell fusion.

SLIDE It has required several decades for these findings to have an impact, but now that impact is being felt in spades. Evidence has been obtained for recessive genetic lesions in most if not all forms of human cancer. At least six of the affected genes have been identified directly by the use of recombinant DNA, including genes involved in retinoblastoma; cancers of the breast, bowel, bladder and kidney; and tumors of the nervous system.

There are probably many more of these genes: I expect that they will eventually equal proto-oncogenes in their numbers. It is worth noting that even the earliest anticipated fruits of the often maligned human genome project would make tumor suppressor genes easier to find.

Moreover, the identification of lesions in tumor suppressor genes has added another dimension to the molecular genetics of cancer, because some of these lesions account for inherited predispositions to specific cancers. This is the topic about which Dr. King spoke to you in August. Like her, I emphasize that inherited cancer seems to be the exception, not the rule. Most cancer genes arise in cells other than the sperm or the egg and, thus, affect only a single individual.

In summary, two sorts of genetic damage figure in the genesis of human cancer: dominant—with targets known as proto-oncogenes; and recessive—with targets known most commonly as tumor suppressor genes. The proto-oncogene causes trouble only if it is goaded to an excess of action, whereas the recessive tumor suppressor gene causes trouble only when it is defective or lost.

These are diametrically opposite maladies, yet they both play on the cell to give an identical outcome: cancer. How does this happen?

The proliferation of cells is driven by an internal engine that is governed in at least two ways. First, multiple accelerators activate the engine when it has been idling and keep it running as long as cell division is required. Proto-oncogenes exemplify these accelerators. Damage to a proto-oncogene jams the accelerator and drives the cell to relentless proliferation.

Second, multiple brakes retard or arrest the engine when the cell should cease proliferation. Tumor suppressor genes exemplify the brakes. Remove a brake, and the cell is unleashed to relentless reproduction.

So the story of cancer reduces to these fundamentals: dominant and recessive genetic lesions: diametrically opposite maladies that combine to maim and kill. This is a powerful view of cancer. The seemingly countless causes of cancer—cigarette smoke, sunlight, asbestos, chemicals, viruses, and many others—all these may work in a single way, by playing on a genetic keyboard, by damaging a few of the genes in our DNA. An enemy has been found and we are beginning to understand its lines of attack.

It has already been possible to apply these findings in the diagnosis and prognosis of cancer. And when we understand how cancer genes work, we will be able to put that knowledge to work in the treatment of cancer; we will be able to aim our therapeutic weapons at the real malady in the cancer cell, not at a black box as we do now.

I believe that these visions may be realized quickly. The pace of discovery and application has been dizzying. I question the commonplace criticism that biomedical research in the U.S. lags in technology transfer: I have seen otherwise in my work-a-day world. The proto-oncogene src was discovered in chickens just 15 years ago, yet now we can paint at least partial genetic portraits of many human cancers and we are beginning to convert those portraits into applications at the bedside.

The story of cancer research in our time embodies a great truth about scientific discovery that I want to emphasize. We cannot prejudge the utility of scholarship, we can only ask that it be sound. The Golden Fleece Award was a misbegotten gesture.

Remember that Peyton Rous isolated his virus from chickens, beasts not renowned for glamour—witness this quote from the German film director, Werner Herzog: "Stupidity is the devil. Look in the eye of a chicken and you will know. It's the most horrifying, cannabalistic and nightmarish creature in this world."

The chicken virus discovered by Peyton Rous seventy years ago was the first cancer virus to be isolated. Decades later, the src gene of the virus became the first oncogene to be identified; the action of the src gene, the first biochemical mechanism implicated in cancerous growth; and the discovery of src in normal cells, the first sighting of potential cancer genes in our cells.

Here is a familiar but oft-neglected lesson: the proper conduct of science lies in the pursuit of nature's puzzles, wherever they may lead. We cannot always assault the great problems of biology at will; we must remain alert to nature's clues and seize on them whenever and wherever they may appear, even if it be in a chicken.

In the words of H.G. Wells: "* * * the motive that will conquer cancer will not be pity nor horror; it will be curiosity to know how and why * * * Pity never made a good doctor, love never made a good poet. Desire for service never made a discovery."

These words exemplify the spirit in which the members of Congress and the U.S. public have supported fundamental research. I have been a scientist for 25 years and I have never doubted that most members of Congress understand the unpredictability of science, the creative power of the unfettered imagination, the need for unencumbered support, the truth in the words of Alfred Nobel when he said that he wanted "to help dreamers, as they find it difficult to get on in life".

But the dreamers in American science are finding it increasingly difficult to get on: they must eat before they can dream, they must have viable laboratories before they can discover. Leon Laderman, a great American physicist and Nobel Laureate framed the issue well with these recent words: "* * * something very dark and dramatic is taking place in our universities, a deep sense of discouragement, despair, frustration, resignation, a quenching of the traditional optimism of research scientists."

Make no mistake: this is NOT hyperbole: I have seen and felt the mood of which Laderman spoke.

The seat of the problem is known to you all, although I realize that some of you may not accept its validity: inadequate money for our spectacularly successful and still burgeoning community of scientists. Even those of us in the highly visible and financially favored microcosm of cancer research are gripped by the vice of fiscal constraint. I must renew my NIH grant this coming year: I am wracked with doubt that I will succeed.

As a citizen and taxpayer, I do not believe that these dark clouds are necessary. If we as a nation can find a trillion dollars to rescue dubious financial institutions, if we can find a billion dollars a day to fight an unexpected war, surely we can find the far more modest sums required to sustain and enhance the vibrancy of our research enterprise, to save our dreamers.

Double the budgets of NIH and NSF by the year 2000, as others have suggested before, and you will see wonders beyond imagining. Do less, and you may foreclose our ability to set the international pace in fundamental research.

From the American essayist, Annie Dillard:

"[Who can read] what the wind-blown sand writes on the desert rock? I read there that all things live by a generous power and dance to a mighty tune; or I read * * * that all things are scattered and hurled."

Will we live by a generous power and dance to a mighty tune, or will we be scattered and hurled? The answer must come from this hill.

SEDANO'S SUPERMARKETS HONORED AS 1 TOP 10 HISPANIC BUSINESSES

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it is my great pleasure to recognize Sedano's Supermarkets which was recently selected as 1 of the 10 most important Hispanic businesses in Dade County by the Greater Miami Chamber of Commerce and the Hispanic Heritage Council.

Along with the other businesses, Sedano's Supermarkets was presented with this award at the Omni International Hotel at a luncheon honoring these distinguished firms. The businesses were selected from a list of the 100 most important Hispanic firms in the United States which was published in Hispanic Business magazine.

Greater Miami Chamber of Commerce President-Elect Carlos Arboleya said that these firms were selected for their efforts for the Hispanic community and for their contribution to the economic development of Dade County.

Accepting the award for Sedano's Supermarkets was vice president of publicity Jorge Guerra. He credited the loyalty of his firm's customers for the selection of his company.

I would like to take this opportunity to thank Sedano's Supermarkets for the contributions it has made to the economy of south Florida, providing economic opportunity, economic development and employment for the people of the Miami area.

UNDER ASSAD'S THUMB

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. CRANE. Mr. Speaker, for nearly 6 months Secretary Baker worked tirelessly to bring the leaders of the Middle East together to negotiate a regional peace settlement. This week we are witnessing the culmination of those efforts.

I admire and share the administration's strong desire to bring peace and stability to the Middle East. However, despite this worthy goal, I do not approve of Mr. Baker's apparent willingness to accommodate the whims of such notorious terrorists as Syria's Hafez Assad. To my mind, the ends do not justify the means. However, now that the parties have come to the table, I hope that we will witness a return to the same ideals which made Americans so proud during the war in the Persian Gulf.

I found the following article, which appeared in the Wall Street Journal on October 25, particularly troubling in that it cites several examples in which the administration seems to have compromised itself for the sake of a peace settlement. I commend it to my colleagues' attention.

[From the Wall Street Journal, Oct. 25, 1991]

UNDER ASSAD'S THUMB

(By Steve Emerson)

JERUSALEM.—Editorialists across the U.S. are lauding Secretary of State James Baker for his "tenacity" in arranging the Middle East conference that will convene in Madrid next week. But documents and letters sent by Mr. Baker to both Israel and Syria over the past five months paint a less flattering portrait of Mr. Baker's diplomacy.

As the Bush administration began laying the groundwork last spring for a Middle East peace conference, the State Department provided both the Arab states and Israel with confidential statements spelling out clearly the basis for the proposed talks. The statements, which became the basis for the letters of invitation issued to the conference, form an explicit definition of the Bush administration's view of the peace process.

DIRECT TALKS

In the statement received by Israel, dated May 16, the State Department promised a "dual track process . . . [that will include] bilateral and multilateral negotiations" between Israel and Syria, Lebanon, Jordan and the Palestinians. In Israel, the fact that Syria had apparently agreed to direct bilateral talks with Israel was perceived as a major step forward by Damascus toward an acceptance of the legitimacy of the Jewish state.

But bilateral talks by themselves were not enough to demonstrate a genuine intention in Syria or any other Arab state to live in peace with Israel. Only through multilateral talks with all of its neighbors—on issues such as arms control, missile proliferation, water rights, etc.—could Israel be assured that its neighbors had finally come to terms with its existence. The U.S. accepted the logic of Israel's position, and promised in its May 16 statement that "multilateral negotiations will be launched within two weeks [of the bilateral talks] to address regionwide issues."

It was Syria's apparent acceptance of this commitment to multilateral talks that prompted Israeli Prime Minister Yitzhak Shamir to hail "revolutionary change" in the Syrian attitude, and to accept in principle the administration's plans for an international peace conference—a negotiating format that Israel had long opposed for fear that it was a device by the Arab states to avoid direct negotiations. If Syrian leader Hafez Assad were prepared to talk about all areas of concern to Israel, then it meant that he was not interested solely in regaining the Golan Heights at the bargaining table, but in real peace.

But something happened on the way to the peace conference. According to American diplomats, almost as soon as Mr. Baker began his shuttle diplomacy between Jerusalem and Damascus to nail down the specifics of the conference, Mr. Assad began to retreat from his commitment to participate in multilateral talks with Israel. Without multilateral talks there would be no discussion of arms control—a matter of some importance to Israel in light of the massive purchase by Syria of Scud-C missiles and other weapons in the months following the Gulf War.

At the same time, Saudi Arabia was also backing away from its implied promise to participate in multilateral talks with Israel. Instead of standing firm and cashing in the IOUs earned during the American-led war against Saddam Hussein, the U.S. began to waver. In discussions with Arab officials, according to a senior American diplomat involved in the negotiations, "after discovering the vehemence of the Arab reaction [against multilateral talks] we decided not to try breaking down the brick wall."

The State Department notified Israel and the Arab states in November that "multilateral talks will still be launched within two weeks" of the bilateral talks—but only "to organize discussions on regional issues." (Emphasis added.) In other words, the U.S. was promising to have the conference participants meet to discuss having discussions.

Having won one concession from Mr. Baker, Mr. Assad tried for—and obtained—another. In early October, the U.S. informed Israel that participation in the multilateral talks would be purely voluntary: "Those parties who wish to attend multilateral negotiations will convene two weeks after the opening" of the bilateral talks. Syria was a party that plainly, did not wish to. When an Israeli negotiator questioned a State Department official as to the utility of multilateral talks in the absence of Syria, the official responded with the good news that Mauritania and Morocco would be attending.

Nor was this the end to Mr. Baker's acquiescence to Syrian demands. Originally, the U.S. had said the objective of the conference was "peace treaties" between the quarreling states of the Middle East. But the term "peace treaties" was unacceptable to Mr. Assad, and so was deleted.

Likewise, the choice of Madrid as the site of the talks was a concession to Syrian pressure. The State Department says that Madrid was chosen for reasons of "security." The 1992 Olympics are to be held in Barcelona, and so—State Department officials have told reporters—Spanish authorities have made elaborate preparations to secure their country from terrorist attack.

But Israeli officials say—and this is confirmed by American diplomats based in Israel—that they had been led to believe that the negotiations, like those conducted in the past with Egypt and Lebanon, would be held in Israel and the Arab countries. The Camp David accords, for example, were first negotiated at alternating sites in Israel and Egypt and only wrapped up at Camp David. Syria's willingness to allow Israeli negotiators onto its territory and to send its negotiators to Israel would have confirmed the peaceful intentions of its Arab leader and helped to prepare the Arab populations for a real peace.

But Syria refused to consider on-site talks and the U.S. backed down. The U.S.'s second offer was to hold the talks in Europe, and it specifically suggested the Hague—a popular venue for peace talks for nearly a hundred years—as an appropriate location. Damascus again said no. The Hague is the capital of the Netherlands, a country that, the Syrians complained, was "too pro-Israeli." Syria—not the U.S.—then proposed Madrid, the capital of a country that has tilted toward the Arab side of the Middle East dispute and that hosts the largest Palestine Liberation Organization embassy in Europe.

ATTACK AMERICAN TARGETS

American indulgence has emboldened Syria to go even further. This past week, Iran hosted a conference of Muslim fundamentalists at which participants vowed to destroy Israel and attack "American targets around the world." Among those attending—and with the loudest voices—were two Palestinian terrorist leaders who are headquartered in and trained, financed and supported by Damascus: Ahmed Jabril, head of the Popular Front for the Liberation of Palestine-General Command, who carried out the bombing of Pan American Flight 103 over Lockerbie, Scotland, and Col. Abu Mousa, head of Fatah-Uprising. Both men vowed to kill anyone who attended the peace talks in Madrid. When the Tehran conference ended, Abu Mousa returned to his headquarters in Damascus, located on a Syrian military base.

In the end, the credibility of America's assurances to Israel that its Arab neighbors truly desire peace will be the determining factor in any decision by Israel to make tangible concessions in exchange for Arab leaders' intangible promises. And only if the Arab leaders prepare their population for the reality of peace with Israel—by their declared willingness to sign peace treaties with Israel and meet face to face with Israelis on home territory—will peace ever come. The track record of the U.S. and Syria over the past five months suggests that neither condition will be met.

NORTH ATLANTIC ASSEMBLY HOLDS ANNUAL SESSION

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. FASCELL. Mr. Speaker, on October 18 a delegation of Members of the House attended the annual session of the North Atlantic Assembly which was held in Madrid, Spain. The Assembly met in committee sessions on October 18 and 19 and in plenary session on October 21.

The North Atlantic Assembly is the interparliamentary body of the member countries of the North Atlantic Alliance and periodically brings together members from all the NATO countries to discuss alliance issues.

This year's meeting took place at a critical period in Western history. It was fitting that the meeting took place in Madrid, a city which had placed its stamp on the evolution of new institutions of Europe such as the Conference on Security and Cooperation in Europe, and which served as host to the Middle East Peace Conference.

The issues confronting the Western Alliance are increasingly complex within Europe. During 4 days of meetings, members of the Assembly wrestled with questions ranging from nuclear arms control, immigration, to the disastrous environmental pollution in the former Warsaw Pact countries. In a development which has proven increasingly useful in this forum, these issues are now discussed with those same countries—Poland, Hungary, the Czech and Slovak Republics, the Soviet Union, Bulgaria, and Romania—which were formerly considered enemies of the West, but which now have been accepted as associate members of the Assembly. To these additional participants were recently added the newly independent Baltic States of Estonia, Latvia and Lithuania and, on an observer basis, the Russian Republic.

Against this multinational background, presentations were heard on politico-military affairs from the Chief of the Soviet General Staff, General Vladimir Lobov, and the Supreme Allied Commander in Europe, U.S. General John Galvin, as well as from the Secretary General of NATO, Manfred Woerner.

Issues discussed included the future of the armed forces on both sides of the former division of Europe, security of Soviet nuclear weapons, confidence-building and arms control measures agreed and contemplated between the two sides, the future role for United States forces in Europe, and the European commitment to its own defense.

In the economic arena, members were brought up to date on the latest prospects for economic reform in Eastern Europe and the Uruguay round of trade talks.

In the area of human rights, much attention was given to the continuing civil war in Yugoslavia and attempts at its mediation, as well as to the question of minority rights, in the newly emerging democracies in Eastern Europe.

Finally, in the area of science and technology, discussions were held on combined responses to the problems of climate change and the political and environmental aspects of chemical weapons in Europe. Each of these subject areas was covered by a separate committee of the Assembly for half the session, and it is impossible to convey the depth and range of issues discussed in a brief statement. I do believe, however, that the experience was most useful for the U.S. Members in attendance as well as their European counterparts.

A unique characteristic of these meetings has been the experience of discussing this variety of issues with members of the newly democratic parliaments of Eastern Europe and the Soviet Union. It is my sincere hope that their exposure to the ingrained traditions of free and open political disclosure will help these new parliamentarians in their search for the routes to a more pluralistic and open political system, one in which their countries' citizens are fully represented, rather than repressed, in the governmental processes which so affect their lives. In fact, an underlying sentiment in every meeting was the desire to extend a friendly hand to the East.

House Members played a key role in both the committee meetings and the plenary session. In the Political Committee Representative GERALD SOLOMON was elected Vice Chairman of the Political Committee. Representative LARRY SMITH was reelected Chairman of the Subcommittee on the Southern Region. Both participated actively in the drafting and amendments of the resolutions discussed in the committee.

In the Defense and Security Committee Representatives BILL RICHARDSON and NORM SISISKY led the debate for the House delegation. Representative RICHARDSON was reelected Co-Rapporteur of the Subcommittee on Defense Cooperation between Europe and North America. He was also elected Vice Chairman of the Special Committee on Restructuring the Alliance. Representative DOUG BEREUTER presented the report of the Special Committee and was reelected Co-Rapporteur.

Representative ALEX MCMILLAN was reelected Vice Chairman of the Economic Committee. In the Economic Committee there were extensive discussions of the issues relating to the economies in Eastern Europe and conversion to a civilian economy and East-West trade.

Representative CARDISS COLLINS was reelected Vice Chair of the Civilian Affairs Committee although illness prevented her participation. In her absence Representative NANCY PELOSI played a key role in the debate on immigration and human rights issues.

Representative TOM LEWIS presented an important report on hypersonic and supersonic transportation which was well received by the Scientific and Technical Committee. Representative RICHARD RAY made an important intervention on environmental pollution caused by military forces in Europe. At the conclusion of the meeting Representative SHERRY BOEHLERT, who was unable to participate for family reasons, was reelected Vice-Chairman.

The debate theme for the session was entitled "NATO After the Soviet Union". Thirty-one amendments were introduced and debated and voted on during the plenary session on Monday. Representative LARRY SMITH played a major role in debating and voting on these resolutions.

The meetings were long and arduous and I want to thank all of the Members of the delegation for their faithful participation in the work of the Assembly. Because of their hard work the United States was represented on all the issues that were discussed.

I don't want to let the opportunity pass to commend the work of our staff who prepared background papers, briefing notes, speeches, and recommendations on amendments in addition to the administrative work that goes into a North Atlantic Assembly session. Peter Abbruzzese, the Delegation Secretary, organized a bipartisan staff team which, in addition to providing support at the meetings, worked late in the evenings and over the weekend to ensure that the delegation was prepared for each session. I would like particularly to mention Arch Roberts, Mike Ennis, and Ron Bartek who provided staff assistance and recommendations on the debate theme.

At this point I would like to include in the RECORD a list of Members of the delegation and staff.

Finally Mr. Speaker, I am pleased to report that Representative CHARLIE ROSE was reelected president of the Assembly. He has been an outstanding president and had led the assembly in pioneering a new and stable relationship with our allies and our new friends to the East. He made an outstanding speech at the Plenary session and I insert it in the RECORD at this point:

U.S. HOUSE DELEGATION TO THE NORTH ATLANTIC ASSEMBLY

Hon. Dante Fascell.
Hon. Jack Brooks.
Hon. Charlie Rose.
Hon. Larry Smith.
Hon. Bill Richardson.
Hon. Ron Coleman.
Hon. Nancy Pelosi.
Hon. David Price.

Hon. Ben Nighthorse Campbell.
Hon. Eni Faleomavaega.
Hon. Norman Sisisky.
Hon. Richard Ray.
Hon. James Bilbray.
Hon. Gerald Solomon.
Hon. J. Alex McMillan.
Hon. Doug Bereuter.
Hon. Thomas Bliley.
Hon. Tom Lewis.
Hon. Marge Roukema.
Hon. Floyd Spence.
Hon. Joel Hefley.
Hon. Herb Bateman.
John J. Brady, Jr., Chief of Staff.
R. Spencer Oliver, Chief Counsel, CSCE issues.
Peter Abbruzzese, Delegation Secretary.
Arch W. Roberts, Jr., Economic Committee, Plenary resolution.
Mike Ennis, Special Committee, Plenary resolution.
Jo Weber, Administrative and clerical support.
Dara Schlieker, Administrative and clerical support.
Nancy Bloomer, Administrative and clerical support.
Sharon Matts, Administrative and clerical support.
Ron Lasch, Scientific and Technical Committee.
Maryanne Murray, Political Committee.
Dean Curran, Civilian Affairs Committee.
Bob Shea, Liaison with NAA leadership.
Ron Bartek, Defense and Security Committee.
Georgia Osterman, Defense and Security Committee.
Evelyn Mackrella, Defense and Security Committee.

ADDRESS BY CHARLIE ROSE, PRESIDENT OF THE NORTH ATLANTIC ASSEMBLY

President Gonzalez, Secretary General Wörner, Foreign Minister Jeszensky, honourable colleagues, and distinguished guests.

It is my great pleasure to open the 37th Annual Session of the North Atlantic Assembly here in Madrid. This is the first occasion on which the Assembly has held its Annual Session in Spain—a country which offers a glowing example to all nations that the transition from authoritarianism to democracy, political stability, and economic prosperity can be forged. At the international level, this transformation is particularly visible in Spain's active and constructive membership of the Atlantic Alliance, the NATO Defense Planning Committee, Western European Union, and the European Communities.

Our Assembly meets during a period of immense significance. The decisions taken over the next several weeks and months—in Rome, Maastricht, Helsinki, and the capitals of the Soviet republics—will affect the future course of security and stability in Europe in fundamental and perhaps irreversible ways.

We have all welcomed the great changes taking place in Europe and the steady consolidation of freedom and democracy.

First, we welcome the regained independence of Estonia, Latvia and Lithuania, and are honoured by the presence of deputies from the three Baltic nations. Your achievement demonstrates to the whole world that legitimacy can only flow from the will of the people.

And, second, we salute the courageous and historic action by the leadership of the Russian Federation during those three days in August—three days that shook the world and ushered in yet another watershed on the road toward democracy and respect for the principles of Helsinki. We look forward to working with the deputies of the Russian Federation to further enhance mutual knowledge and co-operation in constructing a new system of collective security. And I am pleased to see them here with us today.

May I also point out, colleagues, that it is a testament to our pioneering efforts that joining our deliberations, as he has since 1989, is General Vladimir Lobov, today the Chief of the General Staff of the Soviet Armed Forces as well as a Deputy of the Supreme Soviet and Leader of his delegation. His presence is surely a sign of the times, and I thank him for being able to attend despite his enormous responsibilities back home.

But we also know that the abortive coup in August was a clear indication of the dangers that lie ahead, of the sources of turbulence yet to be extinguished.

The road to political and economic stability in Central and Eastern Europe is going to be longer and more difficult than most of us initially thought. Frustrated expectations, social unrest, ethnic and national rivalries, and territorial disputes are surfacing with worrying rapidity and intensity. The European geopolitical landscape has many profoundly troubling features, of which the present civil war in Yugoslavia is the most extreme, frustrating, and tragic illustration thus far.

Our discussions here in Madrid will form a prelude to the forthcoming NATO Summit in Rome, the European Community Summit in Maastricht, and the next meeting of the CSCE Foreign Ministers in Prague. In view of current conditions these will be vitally important meetings, particularly in terms of defining the relationships and respective competence of the various institutions involved in European security.

Each has a valid role and each a special contribution to make. However, it is important to ensure that complementarity does not become duplication, and that duplication does not lead to crippling paralysis of action. Therefore, we need to identify more clearly than before where certain organizations are better suited to fulfill certain roles than others. We should look for a division of labour among these organizations that makes the most effective use of the collective potential available.

But in such a division of labour, NATO must remain the custodian of our collective security.

I know that I reflect the vast majority of Congressional opinion when I say that the United States will remain fully engaged in Europe, for a long as our European partners, including our partners in Central and Eastern Europe, welcome that engagement. For us NATO continues to be the primary transatlantic forum for Allied consultation and co-operation on any issues that affect our vital interests.

Indeed, it is no accident that during the attempted coup in Moscow, it was to NATO that the Central and Eastern European nations, as well as President Yeltsin, looked for reassurance that nothing less than restoration of the Soviet constitutional order would suffice. And that reassurance was provided, immediately, and in no uncertain terms.

To sustain its primacy the Alliance will have to adjust and adapt to the new conditions. It is in the process of doing so. We recognize and welcome these changes. Of course, important questions remain to be answered—most notably the institutional division of labour to which I referred earlier. These questions will be addressed at the forthcoming NATO Summit in Rome. Perhaps, in his presentation, Manfred Wöner will give us some indication of what will be decided in Rome.

But our message to the Rome Summit is clear. The leaders of the Alliance must seize the opportunity offered by the new conditions to ensure that NATO remains the central organization in preserving stability and security in Europe. We all know that Rome will not provide the final chapter in this debate—but it should make sure that we know how that chapter will read.

NATO's future role and relevance and the issue of institutional competence will be central to our Plenary Debate today. I hope the theme "NATO after the Soviet Union" will facilitate a free and frank discussion. I am grateful to the Gentral Rapporteur and former Chairman of the Political Committee, Mr. Bruce George for accepting my invitation to introduce this debate.

We, parliamentarians, also have an important role to play during this transitional era. In the countries of Central and Eastern Europe, democratic institutions are still in their infancy. They need our assistance. This assistance can take many forms. At one level, it is the practical experience we can share with our new colleagues in achieving transparency and accountability in government. At another, it is the psychological element of demonstrating co-operation and partnership. By providing a forum for dialogue, we are building understanding and confidence and contributing a much needed element of reassurance.

Most important, our actions constitute a model which our governments could well follow as they design relations between NATO and the new democracies. We have responded imaginatively and flexibly to the requirements of the countries of Eastern Europe—by, for example, establishing the status of associate delegations and by tailoring much of our work to their needs.

In this respect, I am pleased to see that proposals made by Foreign Minister Genscher and Secretary of State Baker reflect some of our ideas, namely more formal diplomatic consultations between the North Atlantic Council and the new democracies.

Some delegates have asked: Where are we going with these contacts? Where will they lead to? My answer is that this is one area where vision should, for a brief moment, take a back seat to pragmatism. Let us concentrate on the urgent needs of the moment. Common sense will inform us when we have reached the limits of our effectiveness. But let me add, where would our new colleagues be now if we had not responded, if we had just sat still? And what sort of group would we be if we talked only to ourselves—comfortable, yes, but less and less relevant.

As an Assembly, we have already achieved a great deal and with the help of the initiative that Senator Roth and I have launched, I hope we will go even further. This initiative is well under way and will result in a number of activities and projects during the coming year geared specifically to the requirements of our associate delegates.

I know I can count on the moral, political and practical support of all delegations in pursuing this initiative, and sharing parliamentary experience on critical issues of mutual interest, such as: building firm foundations for parliamentary democracy; controlling defence expenditure; assuring civilian control of military and security forces; converting defence-oriented industries for the service of all citizens; and respecting human rights and those of national minorities.

As the face of Europe changes, our responsibility for pursuing dialogue and co-operation among parliamentarians will also expand. I am confident that we are up to the task. And that our work will contribute to building the understanding, experience and confidence which we know is essential for our common security.

Finally, I should also mention today one new development in the search for peace and stability in the world. The announcement by Secretary of State James Baker and his Soviet opposite number of a Middle East Peace Conference, to be held here in Madrid at the end of this month, is a major step forward. We in the Assembly wish the conference well in its endeavors.

Ladies and Gentlemen,

In closing let me express my sincere gratitude to those who put in the long hours to organize this year's Session, including in particular the members of the Spanish delegation and the International Secretariat. A special word of thanks is due to President Gonzalez, who has accepted our invitation to address members here today. I am certain that his remarks will offer an excellent reminder to us of the opportunity and challenges confronting this Alliance and our Assembly.

AMERICA SAYS NO TO MARIJUANA USE

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. COUGHLIN. Mr. Speaker, the war against drugs is a difficult fight. There is much we have yet to accomplish. However, there are times when it is appropriate to examine the progress we have made to date, as we continue to work toward total victory. I am pleased to report that in our effort to reduce domestic demand for illicit narcotics, indications that we are headed in the right direction.

Numerous drug consumption surveys have indicated that use of all types of deadly drugs is on the decline. Equally important, people's attitude toward narcotics have also changed. Where once drug consumption was viewed by many as a harmless pleasure, it is now recognized as a dangerous and risky activity that jeopardizes one's health, as well as one's career.

There are many reasons for this change in behavior. They include strong law enforcement programs on the Federal, State, and local level, as well as widespread education campaigns, especially the creative advertising initiatives of the Partnership for a Drug-Free America. Strong leadership from President Bush, and drug czars Bill Bennett and Bob Martinez, have ensured that initiatives to combat drugs gained the attention and resources they required to have positive impact.

An excellent illustration of the progress we have made can be found in a front page story in The New York Times of October 29, 1991. The story discusses how and why Americans are now rejecting marijuana consumption. I strongly recommend that my colleagues review this article and am inserting the full text of the article at this point in the RECORD.

[From the New York Times, Oct. 29, 1991]

COSTLY AND SCARCE, MARIJUANA IS A HIGH MORE ARE REJECTING

(By Joseph B. Treaster)

Not long ago, hosts at some Upper East Side dinner parties would set out little silver bowls of home-rolled marijuana cigarettes along with the after-dinner drinks. Rock concerts unfolded under canopies of marijuana smoke, and the drug's syrupy aroma drifted across schoolyards and campuses, construction sites and corporate offices, public parks and private patios.

But as quietly and gradually as the widening of a waistline, America's infatuation with the herb of many names—grass, pot, dope, weed, ganja, sess, sens, smoke, skunk and, quaintly, in the long ago, Mary Jane—has been fading.

In New York and throughout the country, lighting up is no longer hip, not in high school, not at college, not at most social events and, with the advent of widespread random drug testing, certainly not on the job.

"IT'S NOT COOL ANYMORE"

The great marijuana cloud has grown wispy as rebellion and the quest for nirvana have yielded to conformity and the struggle for survival, as health concerns and a vague fear of getting into trouble have risen above the desire to get giddy.

Part of the shift, undoubtedly, has also been because of relentless police pressure that has transformed an abundant drug once available for $20 or $30 an ounce into a scarce commodity selling in some quarters in New York for $800 an ounce, more than twice the price of gold.

"It's not cool anymore," said a high school senior in Manhattan, capturing the mood of the 90's with the language of the 60's.

Although the glory days of the Beatles are generally remembered as the peak of the marijuana craze, the popularity of the drug gathered momentum through the 70's and stayed relatively strong until the late 80's.

Advocates insist that marijuana—the mildest and by far the most widely tried illegal drug in America—is no more harmful than alcohol, not even the latest strains, which are 10 times more potent than the grass of the flower children. Still, it has been as much a target of the national antidrug campaign as cocaine, heroin, LSD and barbiturates, and many people have clearly taken the warnings and prohibitions to heart.

Nonconclusive medical evidence on the long-term effects of marijuana has been developed. But Federal officials contend it is a steppingstone to other drugs. Many addicts do report that marijuana was their first drug. But legions of former smokers say they never went on to anything stronger. "Most of us," said one professional woman in her mid-40's, "just dropped out of drugs and called it a day."

Ultimately, it seems, marijuana just does not fit the personal visions of growing numbers of New Yorkers and other Americans. Nor do most other drugs, including cocaine, alcohol and nicotine, all of which are being increasingly rejected.

Some of those most militantly opposed to marijuana and other drugs are schoolchildren who for several years now have been attending antidrug classes and watching antidrug messages on television. One junior high student in Queens said she had no interest in experimenting with marijuana. "It just doesn't seem like it would be fun or anything," she said. "We've heard so much about it, that it's horrible and stuff."

"DOING DRUGS DOESN'T HELP"

And the Manhattan high school senior said that although marijuana was widely accepted as recently as her freshman and sophomore years, she now finds that "everyone is really scared about getting into college and getting good jobs and doing drugs doesn't help." The two young women, like many other people interviewed for this article, spoke on the condition that they not be identified because they were socially uncomfortable about being associated with drugs in any way.

"Using pot," the high school senior said, "is like dropping out of the race"; which, of course, was precisely the attraction for many in her father's generation.

Former pot smokers—or almost former pot smokers—are everywhere. Nathan J., a 20-year-old college sophomore, rarely smokes now because he found he was losing his edge in volleyball and Frisbee games. A 28-year-old dancer who said she smoked heavily in high school takes a drag every couple of years and finds to her disappointment that she becomes paranoid and self-conscious and ends up wondering why she tried it again. Her friend, a graphic artist, said she decided she could not tolerate the loss of hand-eye coordination. A lawyer in her 40's said that while she didn't believe smoking was bad, it began to seem "foolhardy" to risk an arrest that "could wreck your career."

Maijuana smoking reached its peak in 1979, when the National Institute on Drug Abuse estimated, based on its survey, that more than 31.5 million Americans had used the drug at least once during that year. By 1990, when the most recent statistics were compiled, the marijuana-smoking crowd had diminished by more than a third, to 20.5 million.

With the nation's population steadily rising, those smoking marijuana in 1990 represented 10.2 percent of all Americans over the age of 12, compared with 17.8 percent in 1979.

More than 66 million people have tried marijuana at least once, compared with 22.7 million who have sampled cocaine, the National Institute on Drug Abuse says. In 1993, the institute estimated that 10.2 million Americans had used marijuana within the last month, compared with 1.6 million who had used cocaine.

EVEN ROCK FANS LOOK AROUND FIRST

These estimates may understate total marijuana use, many drug experts say, but probably accurately reflect a pronounced decline. Even organizations that advocate making marijuana legal and regulating it like alcohol say there has been a significant decrease.

People still smoke marijuana at rock concerts. But they look around before they pull out a joint and they hold off if they see an usher coming. A New York woman studying at the University of Rhode Island said most of her circle of friends smoked marijuana. "But," she added, "it's become much more of a taboo topic, much less socially acceptable. It's gone under the rug."

Back in 1979, almost all the marijuana smoked in the United States was grown in other countries and it all seemed to have romantic names. There were Thai Sticks, Cambodian Red, Colombian Gold, Panama Red and some from Mexico known simply by place names, Oaxaca and Michoacán. The United States Customs Service seized more than 3.5 million pounds of marijuana in 1979. Last year, Federal agents intercepted 222,274 pounds, or 15 times less.

The great wall of boats, planes and radar thrown up by the Federal Government may not have dented the cocaine trade, but it nearly killed marijuana smuggling. Marijuana is much bulkier and harder to conceal than cocaine and, until recently, it sold for much less.

"We used to call it the Big Green Elephant," said a charter boat captain in Miami. "You could smell it a quarter of a mile away." He, like others with intimate knowledge of the trade, agreed to speak only with the promise of anonymity.

Unable to get through the barriers or unwilling to risk jail for the lower profits from marijuana, some smugglers dropped out; others shifted to cocaine. "For a lot of guys, bringing in a load of marijuana was a form of high adventure," the Miami skipper said. "But it became very dangerous and guys said, 'This is ridiculous.'"

MAUI WOWIE EMBARRASSES BUSH

As recently as 1984, the biggest percentage of America's marijuana was from Colombia. Now Mexico is the main foreign supplier and the most sought-after marijuana is grown in California, Oregon and Hawaii.

The war against domestically grown marijuana accelerated in early 1990, after President Bush was embarrassed at a conference on drugs in Colombia at which Alan García, then president of Peru, suggested that Washington could hardly expect Latin America to stop growing the raw material for cocaine when marijuana farmers flourished in the United States.

Government spray planes wiped out 85 to 90 percent of Hawaii's marijuana, administration officials say. Millions of other marijuana plants were destroyed in national parks and on other public lands that farmers had begun cultivating to avoid the Government seizing private property used for illegal crops. Scores of greenhouses, each containing hundreds of plants, were raided and Federal agents began tracking marijuana farmers through the records of companies that sell nursery supplies.

"You can't wink at marijuana," said Robert C. Bonner, the chief of the Drug Enforcement Administration. "It is not a benign drug. It affects productivity and general alertness. It has a corruptive influence on law enforcement and public officials. And if we want other countries to control cocaine production, we have to lead by example."

Federal spending to fight marijuana at home nearly doubled in the 1991 fiscal year, to $35 million, and the administration requested $87 million for 1992.

After the air raids in Hawaii, the retail price of marijuana there leaped from $2,000 a pound to $6,000, which is $375 an ounce, or $16 more than an ounce of gold.

Prices fluctuate around the country, but in the Northeast these days it is not unusual to pay $280 an ounce. Most sales, the dealers say, are of quarter-ounce packets. Street hustlers still offer plastic sandwich bags of what looks like marijuana for $10. But quite often, experienced smokers say, the hustlers are pedaling diluted marijuana or a jumble of nonintoxicating herbs.

As a hedge against being ripped off, many buyers get friends to refer them to reputable dealers. One New York dealer wears a beeper and promises delivery in midtown within half an hour of receiving a telephone order. Another works out of his tasteful apartment on the Upper West Side of Manhattan, offering three grades of marijuana for as much as $800 an ounce.

Cocaine is currently selling in New York for $800 to $1,200 an ounce. The same amount of heroin is fetching more than $5,000.

The Upper West Side dealer's customers are lawyers, doctors, stockbrokers and other well-paid professionals. To them, price is of little consequence. But it does matter to many people.

"If it goes up anymore, I'm going to stop smoking," said an art major at one Northeastern college.

Some marijuana users have turned to growing their own. One professional, for example, has a small garden in a closet of his home on Staten Island. Hundreds if not thousands of other New Yorkers are growing a few marijuana plants on windowsills.

But the best quality comes from plants that require more attention than most people want to give. So a legion of outlaw horticulturists are developing throughout the country. One of them, a young man who lives in Maryland, told of setting up nurseries in the recreation room and basements of three houses not far from Washington, and of tending marijuana bushes on small plots of Government land in the capital.

"D.C. is an excellent growing environment for marijuana," he said. "With all that concrete, it retains about five degrees more heat than the outlying areas and you get approximately one to two weeks more growing time."

COMPETITION AND SEMATECH

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. PICKLE. Mr. Speaker, in the matter of high-tech industries, the Federal Government ought to adopt a policy to encourage the formation of consortia and joint ventures, both within industry and between industry and Government. Never has there been a more crucial time for Government to show appropriate support for business-Government efforts in the high-tech field.

I call Members' attention to an editorial published by the Washington Post yesterday on Sematech, a Government-business consortium of semiconductor and computer companies in Austin, TX, whose aim is to revive the semiconductor manufacturing equipment industry. The editorial goes to the heart of why we need Sematech, and points out some of the achievements of Sematech.

The editorial, which I commend to all Members, also emphasizes that we must continue Sematech and encourage initiatives like it. Sematech is indeed a new model of Government and business cooperation and the Federal Government ought to build on the successes we have already realized because of Sematech. I submit yesterday's editorial for the RECORD.

COMPETITION AND SEMATECH

Until a decade ago, the United States dominated the market for the highly sophisticated machines that manufacture semiconductors. In 1980 American comp-anies held 75 percent of the worldwide market, and all 10 of the world's largest producers were in this country. But by 1990, American companies held only 45 percent of the market, Japanese companies held 44 percent, and four of the five largest producers were Japanese. The figures come from a study by the U.S. International Trade Commission—a portrait of declining American competitiveness in a key industry.

The industry itself is not large. Its world sales run about $9 billion a year. But it's the base of a tremendous food chain. It supplies the production equipment for the semiconductor manufacturers, whose sales in this country alone are $25 billion a year. They in turn supply the American electronics industry with sales of $226 billion a year.

A vigorous experiment is now underway to rescue the American industry, and it's beginning to show results. The American equipment firms tend to be small and have trouble financing research. Sematech, a consortium of 14 U.S. companies that make semiconductors, is a collaboration in high-powered R&D. Its purpose is to ensure that this country's microchip industry does not become dependent on slightly obsolescent production equipment from foreign firms whose preferred customers might be elsewhere. The idea is to keep a crucial industry alive, not with the usual subsidies or protection from imports, but through engineering skill and manufacturing quality.

Sematech violates some of the hands-off rules of free-market ideology. Half its budget, about $200 million a year, is put up by the companies, but the other half comes from the Defense Department. The consortium represents one kind of industrial policy. It means intervention in the market by public investment. But it's making the market worldwide more competitive. The machines it develops are for sale to anybody anywhere in the world who wants to buy.

It's still much too early for a judgment on Sematech, but there are encouraging signs—such as the highly advanced semiconductor plant that Motorola opened last spring in Austin, Tex., with mostly American production equipment. If its successes continue, Sematech will establish a new model for industrial organization in high technology. It doesn't try to shut off the flow of technology to the rest of the world or to close American markets to anybody. But with a modest amount of federal money, it is beginning to make a large change in the ways firms in this esoteric business work with, and for, each other.

GLORIA ESTEFAN RECEIVES VICTORY AWARD IN WASHINGTON, DC

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, Gloria Estefan, a constituent of my congressional district, will be presented with the Victory Award at the 6th annual celebration on Monday, November 18, 1991, at the John F. Kennedy Center for the Performing Arts in Washington, DC. The Victory Award was established by the National Rehabilitation Hospital in 1986. It honors individuals from across the Nation who exemplify unusual strength and courage in the face of adversity.

Gloria Estefan has managed to overcome not only great obstacles in the musical arena but also in her personal life. After a very serious bus accident where she suffered a serious back injury, her determination in life helped her to succeed and completely recuperate from this tragic injury. She will soon be ending the "Into the Light Tour" which will have been viewed by more than 10 million people across the world. This award truly demonstrates Gloria Estefan's great feats in life.

It is indeed an honor for me to recognize such an outstanding member of our community who is determined to strive for excellence in eveything she sets her mind to accomplish for the betterment of her life as well as her community. I cannot think of anyone who deserves to be a Victory Award honoree more than Gloria Estefan.

She was born in Cuba and raised in the Miami area. After having graduated from the University of Miami, she went on to join Emilio Estefan's "Miami Latin Boys," and thus in 1975 "The Miami Sound Machine" was born. Gloria Estefan is the interpreter of the work of Emilio Estefan, the director, producer, and coordinator of "The Miami Sound Machine." Gloria Estefan helped bring the musical group to its all time height of success.

Gloria Estefan has catapulted to stardom by joining two worlds through her talents of music and writing. She has combined American pop music with her Latin rhythm to create a music all her own, Miami style. Gloria Estefan and Emilio Estefan have promoted their Latin roots through music and have broken barriers across five continents.

Her talents extend beyond musician and writer. Generosity and commitment to community work have made her the perfect role model as a Cuban-American for young adults not only in Miami but for Americans across the country. She has served and been personally involved in many worthwhile causes to help disadvantaged adults and children.

Upon nomination to the Victory Awards, Gloria Estefan would like to say, "It is truly a great honor to receive this Victory Award. I am very proud to be recognized as a Victory Award recipient. Thank you."

PEACE CONFERENCE PUZZLE

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. CRANE. Mr. Speaker, I regret that I am not very confident that there will be a successful conclusion of the Middle East peace conference currently underway in Madrid. So long as the conference remains focused on the Arab-Israeli dispute over the occupied territories, and fails to address the equally important issues such as resolving the struggle for Arab dominance, reducing weapons proliferation, and the cessation of terrorist activities, I fail to see how there can be a conciliation with Israel. Until Israel can be assured that the promise for real peace does indeed exist, she would be foolish to give up her only true bargaining chip.

The following article, which appeared in the Wall Street Journal on October 25, highlights many of the real problems which must be addressed if the peace conference is to be successful. I commend it to my colleagues' attention:

PEACE CONFERENCE PUZZLE

If you've been reading—or trying to read—all the coverage these many weeks about the Middle East peace conference now scheduled for next week in Madrid, and thinking that in the wake of the Iraq war it somehow doesn't all quite add up, here's why:

Geroge Bush and James Baker have untied U.S. Mideast policy from its traditional mooring—Israel and democracy—and set it adrift in neutral waters between Israel and that mythical land, the unified Arab world. It's a strange voyage.

Many of us had thought that one of the primary fruits of the Iraq war would be a reorientation of the Gulf and other Arab states toward the political system that exists in most of the world—that is, away from dictatorships and absolute monarchies and toward a greater degree of popular self-determination. But no.

To soothe Arab sensitivities George Bush decided to spare Saddam Hussein and his dictatorship. Turkey's Turgut Ozal is the first victim of this mistake. When Mr. Bush withdrew, Mr. Ozal was left out on a limb with the Kurdish issue festering on his border. Saddam Hussein has been arming the Kurds to fight for independence from Turkey. Last week Turkish voters took out their frustrations for this mess on Mr. Ozal, who remains in power but with a greatly reduced base of support.

American submissiveness to Arab sensitivities also has scotched U.S. Gulf security plans. According to the Washington Post, the U.S. is withdrawing the weapons stockpile that it had hoped would be part of a postwar security umbrella for the region. The Arab regimes prefer to build up their own armies.

The least attractive shift in U.S. policy has been symbolized by the repeated trips James Baker has made to pay court to Syria's murderous dictator, Hafez Assad, one of next week's Madrid "peace" participants. The State Department apparatus that two years ago sanitized Saddam's crimes is now polishing Assad's image. The U.S. winked at Syria's October 1990 invasion of Lebanon and insists that Lebanon is still independent, though even the Syrian defense minister talks about Syria and Lebanon as "one country."

The U.S. has been unruffled by Assad's $3.5 billion postwar arms buildup (he reportedly spends 60% of his government budget on his army). The Syrian dictator has purchased 150 North Korean Scud Cs, and up to 24 Chinese M-9s. Factories at Damascus and Homs churn out chemical weapons to go in missile warheads. State also avoids mention of Syria's control of the $4 billion drug trade in the Bekaa Valley and Syrian unwillingness to cooperate with American drug-enforcement authorities.

Meanwhile, with the region bristling with dictators, terrorist armies and chemical weapons, Mr. Baker says the biggest obstacles to peace in the Middle East are West Bank Jewish settlements.

Mr. Assad, who's been around the Middle East even longer than Mr. Baker, knows that in reality the Israeli issue is mainly a playground for larger Arab power struggles.

If Mr. Baker looks around the room at the Middle East conference in Madrid next week, he will see the representatives of Syria, which has been at virtual war with the PLO since 1982, culminating in bloody battles last summer between Syrian and Palestinian forces in South Lebanon; Jordan, whose army massacred 8,000 Palestinians in 1970, and whose king continues to deny self-determination to the 70% of his population that is Palestinian; and Saudi Arabia, which demonstrates its concern for the Palestinians by expelling tens of thousands, and which has been trying to destabilize the regime of its Arab brother Jordan.

The Madrid peace conference must contend with not only the usual pit of Arab rivalries, but also a postwar power struggle for dominance in the Arab world among Egypt, Saudi Arabia and Syria. By focusing postwar attention on the Israeli dispute rather than economic development or democratization, the U.S. has ensured that Syria will emerge as the dominant Arab power. Egypt and Saudi Arabia are necessarily peripheral.

Perhaps Mr. Assad sees some further advantage for himself in conciliation with Israel, but more likely he wants to string the process along to keep the world coming to his doorstep. He's probably already spiked the peace process by refusing to take part in Phase III, the nuts and bolts cooperation talks on such things as water rights and arms control. To Israel, peace means cooperation between neighbors. Syria is inviting Israel to give up land without any promise of real peace.

Historians will have to figure out if America's bolstering of Syrian power was intentional or the result of Mideast inexperience. Thus far, it looks as if the central image of the peace process is Mr. Baker laboring among the procedural details, while the larger Arab power struggles play out over his head.

THE DETERIORATING SITUATION IN HAITI

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. OWENS of New York. Mr. Speaker, both the September 30 military coup d'etat that deposed Haiti's first democratically elected President, Jean-Bertrand Aristide, and the ensuing developments in that country, have riveted the attention of many of us. Since the coup, the new military-backed government of Joseph Nerette and Jean-Jacques Honorat has garnered the tacit or overt approval of the Haitian Parliament as well as representatives of the affluent business class, despite the denial or diplomatic recognition by all foreign governments and manifest opposition from the two-thirds of the population that voted overwhelmingly for Aristide in the December 16, 1990 elections. Violent repression of such sentiments have resulted in hundreds of deaths, the flight of thousands more away from cities and towns, and the intimidation of radio and television stations.

Now that the United States has joined the international community in adopting the full economic sanctions recommended by the Organization of American States, with an eye to the reinstatement of President Aristide, pressure is growing on acting Haitian authorities to return the country to its constitutional paths.

Because there are so many contradictions and complexities to the present situation, I recommend that my colleagues read the following insightful article written by Catherine Ross, a research associate at the Council on Hemispheric Affairs, which first appeared as an October 30 research memorandum issued by that organization:

Deteriorating Haitian Situation Punctuated by Washington's Compliance With Economic Sanctions

The Bush administration announced on October 29 a stoppage of all exports and imports to Haiti, excepting only the delivery of basic foodstuffs. At the same time, Haiti's new military-backed government, already literally running out of gas from the effects of an international oil embargo called for in an Oct. 8 resolution of the Organization of American States, has invited a multinational OAS delegation back into the country to discuss the ending of economic sanctions and the normalization of political relations. The invitation, extended to OAS Secretary General Joao Clemente Baena Soares by Haitian Senate president Dejean Belizaire, failed to make clear whether or not the interim government installed after the coup accepted the fact that the reinstatement of President Jean-Bertrand Aristide was a prerequisite for negotiations, or if was operating on the assumption that such talks could take place without the inevitability of Aristide's return. The offer came after Luigi Einaudi, U.S. ambassador to the OAS, announced imminent U.S. plans for more severe economic sanctions.

OTTAWA TO TAKE SIMILAR ACTION

Observers of developments in Haiti in Ottawa indicate that the Canadian government intends to follow Washington's example in implementing the trade embargo. Such measures, anticipated in the next few days, will cut off aid from the acting Haitian military and political authorities, but will continue providing assistance to non-governmental organizations.

OAS delegation leader Augusto Ramirez Ocampo, former Colombian Minister of Foreign Affairs, could take a representative group of inter-American leaders to Haiti as early as Monday, November 4. The new government's willingness to negotiate with the OAS comes in the midst of a rapidly deteriorating internal situation, as military authorities try to shut down all independent sources of public information, and rank-and-file soldiers continue wanton killing sprees, now aimed at educated youth and members of religious bodies.

VIOLENCE CONTINUES UNABATED

Although conditions in Haiti are no longer front-page news, up to a few days ago, returned eye-witnesses reported continued nightly military-sponsored shootings both in Port-au-Prince and the countryside, as well as kidnappings and lootings. Particularly virulent attacks are being carried out against members of youth groups, grassroots organizations, and religious communities. Bishop Willy Romulus of Jeremie is reportedly under house arrest, and an American missionary said he decided to leave after hearing rumors that armed soldiers intended to kidnap him. In many places, local populations are fleeing into the mountains, hoping to escape the wrath of undisciplined soldiers, at the risk of exposure and starvation in the midst of sparse vegetation. An estimated 100,000 people have fled the capital city, either to the interior of the country or points abroad, an unprecedented migration even for this turbulent country. Roving posses of soldiers are terrorizing and intimidating radio stations and other sources of public information, riddling with bullets the equipment of such broadcasting facilities as Radio Haiti and Radio Lumiere, which dared to broadcast news of the military's violent actions, while other stations censor their own emissions to avoid offending touchy military nerves.

In response to warnings issued by Port-au-Prince-based diplomats, foreign nationals as well as many wealthy Haitians are flocking to the airport to pack commercial planes arriving there empty, and Missionary Aviation Fellowship, a U.S.-based Christian group, is sending in small planes to evacuate endangered religious figures. The U.S. Ambassador to Haiti, Alvin Adams, issued a statement recommending the repatriation of U.S. citizens, almost half of whom already had left the country. Only 25 percent of the American embassy staff remains in Port-au-Prince, the United Nations has taken all non-essential personnel to nearby Jamaica, and some Latin American countries have recalled all embassy staff to home soil.

AMBASSADOR'S STATEMENT DECRIES HUMAN RIGHTS ABUSES

The violence has prompted a statement by Ambassador Adams—who has played a key-role as well as displayed considerable personal courage—condemning all human rights violations including killings, lootings, illegal searches, intimidation and coercion of the media, and calling on the de facto authorities to respect both human rights and the Haitian constitution. But by urging those in power to "ensure the safety and well-being of all residents in the country" without at the same time reiterating the previous U.S. proviso that President Jean-Bertrand Aristide must resume power, his words may be misconstrued as implying the possibility that Washington might eventually recognize the authorities now in charge. Adams' latest statement was a far cry both from his admirable series of declarations made shortly after the coup, and from one sent to the Haitian Parliament by a deputy from Jeremie who had fled to Ottawa, that emphasized the absolute illegitimacy of the military junta, declaring that any and all decisions made in collaboration with it are equally illegal, as well as calling for all deputies to boycott parliamentary meetings until Aristide returns to power.

Washington's hesitancy regarding the implementation of the trade embargo called for over two weeks ago by the OAS, as well as its earlier unfounded reservations about Father Aristide's supposedly blemished human rights record, are reasons enough for alarm regarding the future of democratic continuity in the island nation. The Bush administration's seeming retreat from its strong initial pro-Aristide stance, when it announced its intention to put into effect a full trade embargo, was not lost either on the general Haitian population or on the nation's business leaders and military commanders. Just the threat of a cessation of imports and exports from Haiti's largest trading partner had brought about a reversal on the part of the Haitian Alliance of Industrialists, which at first had expressed relief at Aristide's ouster. But after the U.S. declared it would impose a trade embargo, the business group quickly reversed itself and issued a call for his return.

The White House's failure to act promptly on implementing the embargo, along with veiled allegations of human rights abuses under Aristide were immediately picked up by broadcast hourly to crowds on the streets. Washington's words helped to bolster the legitimacy of the military-installed government and to heighten the dismay of the majority of Haitians who support Aristide unflaggingly and who now have almost no sources of reliable information. If the introduction of a regional peace force is to be avoided, then an effective economic quarantine must be put into effect immediately. Up to several days ago when it implemented its embargo, the Bush administration had given no indication that it was prepared to do that expeditiously. The invitation issued by Belizaire to the OAS for renewed talks may be just an indication that the oil embargo alone was seriously hurting the Haitian economy, but rapid progress towards an apparent readiness to negotiate on the part of the acting Haitian government immediately after news broke that Washington's sanctions would become more severe, graphically indicates the influential weight the U.S. carries.

Although no international diplomatic representatives attended the inauguration of the Joseph Nerette—the ailing former Supreme Court Justice chosen to be interim president by Parliament at the behest of gun-waving soldiers, and who has seldom been seen since—Marc Bazin, the U.S. State Department's chosen candidate in last December's presidential election, when Aristide was swept to victory with two thirds of the vote, was in attendance. If Bazin attains a position of influence in the present government, one can expect that the Bush administration will consider finding a way to justify support for the process that swept away Haiti's first democratically-elected administration. As for Bazin, by his presence at the swearing-in ceremony, he has permanently discredited himself as deserving to have a legitimate place in Haiti's political future and is now being seen by many Haitians as just another political opportunist and false prophet who irreversibly has tarnished his democratic credentials.

Washington will have to have firmer grounds for its unjustified concerns about Aristide's human rights' record than the rumor circulating now on the subject, which began to make their rounds shortly after the coup, but not before it. Haitian military representatives and anxious members of the affluent business class have alledged that the firebrand priest commonly incited his followers to mob violence in order to intimidate his political opponents, drawing attention to a speech in which Aristide lauded the practice of "necklacing"—placing a gasoline-soaked tire around a victim's neck and then lighting it. Much more telling, however, are the conditions under which this speech, captured on a murky cassette tape and then copied and eagerly handed out by soldiers to the international press corps, was delivered. The remarks in question were made by President Aristide two days after he returned from a visit to the U.S. Apprised at the airport of a military plot to kill him and overthrow his government, the president zigzagged through dark back roads towards his residence at the national palace, protected by crowds of supporters who enveloped his motorcade. Two days later, he gave his controversial speech, warning that even though the military authorities and police were against him, the people had their own power.

A human rights analysis carried out by the Washington Office on Haiti also helps to dispel the charges made against Aristide. During his presidency, the total number of human rights abuses declined sharply, with 24 violations per month under Aristide compared to 59 under the predecessor Trouillot government and 73 under Gen. Avril, who served before it. Furthermore, under the previous two interim leaders, 18 percent of all human rights violations were attributed to civilians, a figure which fell to 8 percent under Aristide, while the majority of all abuses were known to be committed by the armed forces. In exile, Father Aristide has come out with a strong statement decrying the use of any kind of violence.

Clearly, the Bush administration, which never particularly liked Aristide, would not risk the embarrassment of forthrightly coming out in support of a military regime that had deposed a democratically-elected president from office, killed hundreds of civilians in senseless violence, and now tolerates no expression of dissent. But it is by no means certain that it would not look for some way to accuse the ousted government of constitutional circumventions and human rights abuses in order to eventually and quietly grant recognition to the new authorities somewhere down the road, particularly if Bazin assumes a position of prominence in the government.

DISGRUNTLEMENT UNDER ARISTIDE

The military is hardly the only powerful interest group in Haiti which wanted to see the last of Aristide. Although new on the political ballot, Father Aristide has long been a nationally-known figure whose radical ideas and advocacy for the poor have made him the target of at least thirteen assassination attempts. The military complained that Aristide was acting dictatorially in creating a specially-trained presidential guard which he explained was to uphold democratic values, but which the armed forces saw as being reminiscent of the vigilante group Tonton Macoutes of the Duvalier regime, under which the regular defense force grievously suffered. The military also was resisting at all costs Aristide's attempt to reform its institutional structure, which would most likely have resulted in the curtailing of rampant drug-trafficking and smuggling activities that earn most senior officers healthy supplements to their salaries. Businessmen also had reason to be happy to see Aristide overthrown, as they feared his encouragement of factory assembly workers to demand wage increases, in addition to his sweeping populist rhetoric which frequently accused Haitians with accumulated capital of keeping the lower classes under poverty's crushing weight.

Bureaucrats had an axe to grind as well, because at the suggestion of the IMF, Aristide had streamlined the bloated public sector, whose combined salaries accounted for 90 percent of the national budget by the time that Aristide had arrived in office, by dismissing 8,000 of its 45,000 employees. Since the OAS call for economic sanctions following the coup, a total of $511 million in foreign government and lending agency assistance to Haiti has been suspended.

Aristide's neglect in not courting support from new as well as the traditional nonDuvalierist political parties, including the one which placed him on its ballot late in the election campaign, and his failure to offer them some cabinet seats and ambassadorial appointments, may have been a tactical error which would later result in a dearth of political allies when he would need them. But accusations leveled by legislators, as well as by army commanders, of Aristide's flouting the constitution, are entirely unfounded. Article 295 of the Haitian constitution decrees that the president has the authority to "carry out any reforms deemed necessary in the Government Administration in general and in the Judiciary." The legislature approved the same article once again after Aristide took office, allowing him the freedom to go about trying to create a functioning democracy.

Based on the agreement reached in Santiago in June of this year, which modified the OAS' traditional adherence to the principle of no-intervention, that body had an unprecedented opportunity to enhance its new-found image as an effective organization gained from recent election-monitoring activities, by acting on the suggestion of Argentine Ambassador Guido di Tella to send a multinational peacekeeping force to Haiti. Introduction of the force should be a matter of last resort after peaceful sanctions have failed, and would consist exclusively of Latin American units acting as a defensive military presence in the manner of a U.N. peacekeeping force. Its mission would be to demonstrate the principle that any extra-constitutional overthrow of a democratic government will be met with an immediate and concerted effort by the international community to restore democracy, if need be by force. As most nations in the hemisphere are presently governed by democratic, rather than military governments, now is a crucial time for them to take out some insurance against the possibility that the same fate that toppled Aristide could befall them as well. This is particularly important because any worsening in the condition of their already fragile economies could provide their own military institutions with the justification to stage a coup.

The military-dominated recent history of Latin America ensures the existence of a strong anti-democratic tradition in addition to individual military leaders who remain uncharmed by the prospect of the personal loss of privilege and access to sources of illicit income. Given the right conditions, they could be willing to play for high stakes to again achieve power, cloaking it in patriotic rhetoric. In Argentina, a series of coup attempts were launched against the Menem government last year. In 1989, newly-elected Ecuadorian president Rodrigo Borja suffered a harrowing showdown with his military-backed predecessor, Leon Febres Cordero, after Febres Cordero issued what amounted to a dare against Borja through the press, regarding the merit of his own criminal investigation. During the 1989 presidential elections in Brazil, there was some speculation that military sentiment against the populist candidate, Lula, was strong enough to incite a takeover had he defeated Collor de Mello at the polls.

Nascent civilian governments who see themselves as having to walk a delicate line so as not to arouse the ire of the men with the guns, should be prepared to act collectively when one of their number is challenged by their military. The time has come for the principle of self-determination—the inviolable right of a country's electorate to choose its own leaders through the democratic process—to supersede that of non-intervention, a doctrine which has served largely to protect military regimes that have overthrown constitutional governments, or to wag an ineffectual finger at frequent U.S. interventions in the region.

Charges of constitutional abuses against Aristide, while unfounded, legally-speaking do invite discussion. Unfortunately for Haiti, its governmental institutions and infrastructure do not allow for a smooth and ordered transition to democracy. Before judging him, those who blame Aristide for acting unconstitutionally should take into account not only the fact that he has been demonstrably much fairer to his opponents than any of his predecessors, but also that there is in fact no well-oiled democratic system, or a reliable security force under his control.

Aristide's personal shortcomings are far transcended by the shortcomings of the environment in which he has had to operate, and the cast of self-serving politicians and greedy entrepreneurs with which he has to deal. Aristide's problem has been that he alienated the defenders of the system before he was able to dismantle the anti-democratic infrastructure already in place and replace it with one open to the average Haitian.

(Catherine Ross is a Research Associate at the Council on Hemispheric Affairs.)

TRIBUTE TO GARY H. TATUM

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. FAZIO. Mr. Speaker, I rise today to honor my constituent and friend, Gary H. Tatum, one of Vacaville, CA, most prominent and admired citizens, on the occasion of his retirement from the Vacaville Police Department as chief of police.

Chief Tatum began his lengthy law enforcement career in 1958 as an officer for the city of Palo Alto. During his tenure with the Palo Alto Police Department, he directed the protection efforts for the many dignitaries visiting both Palo Alto and the Stanford University. Some of the visiting dignitaries included former President Gerald Ford, the Prince of Laos, and numerous Presidential candidates. Chief Tatum led the enforcement unit that was responsible for the closure in 1976 of all the massage parlors that plagued the city of Palo Alto. His unit's work resulted in successful prosecutions and the failure of any such establishment to open again in the city.

In 1977, Chief Tatum was selected as Vacaville's Chief of Police. He has been characterized as an innovator and a strong practitioner of the accelerated approach to the implementation of law enforcement services during his leadership in the Vacaville Police Department. Chief Tatum has been the recipient of a number of awards for his work in the youth, domestic violence, and crime prevention area. He is respected by the people he serves and his colleagues. But most importantly, the city of Vacaville experiences one of the lowest crime rates for cities its size throughout the State of California.

A native of New York City, the Borough of Queens, Chief Tatum was graduated from the Bayport High School in Long Island. He then served more than 4 years in the U.S. Navy and attained the rank of first class petty officer. Chief Tatum received his undergraduate degree in history with a minor in political science from the college of Notre Dame. He completed graduate course work in public administration from the University of Virginia and he is a graduate of the 101st session of the Federal Bureau of Investigation.

Chief Tatum's work in law enforcement has gone beyond his service to the Vacaville and Palo Alto Police Departments. His law enforcement memberships and affiliations have been numerous and distinguished. He served as the vice chairperson on inmate population management, the president of the California Police Chiefs Association, and the president of the Police Chiefs Department of the League of California Cities. Chief Tatum is the founding member of both the community advisory committee for the Vacaville Correctional Medical Facility and First Step—a local assistance program for at-risk youth. He continues to serve as member of both groups. Finally, it is important to note Chief Tatum's past services as president of both the Napa/Solano United Way and the Vacaville Rotary Club.

I am honored to have the opportunity to recognize Chief Tatum for his excellence in law enforcement. His work has made Vacaville and Solano County a better place to work and live. I join my colleagues today in wishing Tatum a happy and fulfilling retirement.

RESOLUTION COMMENDING THE PRESIDENT FOR HIS MIDDLE EAST PEACE CONFERENCE AND CALLING FOR A COMPREHENSIVE, JUST, AND LASTING PEACE

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. DYMALLY. Mr. Speaker, the nineties heralded tremendous changes in world affairs. We have seen the Berlin Wall crumble from the weight of the general will of the German people. The end of the cold war. An arms reduction. And more recently, everyone looked at the images on their screens of Palestinians, Arabs, and Israelis meeting to discuss the need for ending their state of war.

As one of many Americans who have been concerned about war in the Middle East and the human toll and suffering that this conflict created for many families—Israeli, Palestinian, or Arab—I am happy to see all sides willing to sit down and iron out their differences.

I am certain many of my colleagues in the House of Representatives will join me in sending a message of support to President Bush and Secretary Baker for organizing this peace conference. We would also commend all the conference participants, including the Palestinians, the Israelis, the Soviets, and the rest of the Arab states. We commend them for initiating this historic process and urge them to expend the greatest possible effort toward accomplishing a just, lasting peaceful resolution to all the regional conflicts.

H. CON. RES. 231

Whereas the President in his March 6, 1991, address to the nation before a joint session of Congress set forth specific goals for peace in the Middle East region, including the creation of shared security arrangements, a halt to proliferation of weapons of mass destruction, a commitment to "do all that we can to close the gap between Israel and the Arab states—and between Israelis and Palestinians", and support for regional economic development; and

Whereas the President declared that any solution must provide for security and recognition for all states in the region, including Israel, and for legitimate political rights of the Palestinian people, thus fulfilling "the twin tests of fairness and security"; and

Whereas on October 18, 1991, Secretary of State James A. Baker III and Soviet Foreign Minister Boris Pankin issued invitations to a Middle East peace conference to begin in Madrid, Spain on October 30, 1991; and

Whereas this conference began on October 30, 1991, and involved the first ever direct bilateral talks between Israel and her Arab neighbors; and

Whereas the objective of this ongoing process is nothing less than a just, lasting and comprehensive settlement of the Arab-Israeli conflict, to be achieved through a two-track approach of continued direct negotiations between Israel and the Arab states and Israel and the Palestinians, based on U.N. Security Council Resolutions 242 and 338: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring). That it is the sense of the Congress that—

(1) The President and Secretary of State should be commended for their efforts in bringing about this historic conference;

(2) Congress urges all participants in this endeavor to expend the greatest possible effort toward the success of this process and achievement of the ultimate objective, the peaceful resolution of all regional disputes including the Arab-Israeli conflict and the Palestinian issue; and

(3) Congress affirms its unwavering support of the peace process and its determination to ensure that the negotiations begun in Madrid will lead to a just, lasting and comprehensive peace in the Middle East.

HENRIETTE HARRIS: LONGTIME BRICKELL RESIDENT RECALLS MIAMI'S HISTORY

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it is my great pleasure to recognize Henriette Harris, a truly remarkable woman who has seen many changes in the 70 years she has lived on Miami's historic Brickell Avenue.

The Brickell Homeowners Association [BHA] newsletter, the BHA News, recently featured Mrs. Harris for becoming the first associate member of the BHA, which until recently accepted only members of condominium associations. The associate member class was established as a non-voting membership for single family homeowners in the area that are not a part of a condominium association.

Mrs. Harris has lived on Brickell Avenue since 1921, which was long before the many condominiums which now dominate the east side of Brickell Avenue were built. When she was 10, her family came from Orlando to live on Brickell Avenue when her father founded Miami National Bank. After 4 years at 1038 Brickell Avenue, the present site of the Dominican Republic Consulate, her family moved into a home on the west side of Brickell Avenue where she has lived ever since.

Until the late 1960's, Mrs. Harris recalls the sprawling estates which occupied the deep lots that now contain the many large condominium buildings. This area on the east, bay side of Brickell Avenue was known as "Millionaire's Row." It was closely knit, very social and a lot of fun, like a small town.

While fondly remembering those days, Mrs. Harris at the same time welcomes the many changes on Brickell Avenue. It has never occurred to her that she would want to live anywhere other than Brickell Avenue.

Mrs. Harris has always been active in the community, and joined the BHA because she "likes to be part of all that's going on, especially on Brickell Avenue". She firmly believes that solutions can be found to Miami's problems, and that "we need to wind our way through life and not run away from" our difficulties.

I would like to take this opportunity to thank Mrs. Harris and the other members of the BHA for their hard work to keep Miami a beautiful place to live. Specifically I would like to mention the members of the BHA Board of Directors who include: President T. Sinclair Jacobs, Vice President Marcus A. Kyle, Treasurer Salvador Bonilla-Mathe, Secretary Veena Panjabi, Chairperson Herbert Bailey, Director Samuel Barr, Director Edgardo Defortuna, Director Garth Green, Jr., Director Peter Isaia, Director Roger Kahn, Director Troy Register, Director Neal Sonnett, Director Candido Viyella, and Director Calvin Zemsky.

EVENTS IN HUNGARY

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. HORTON. Mr. Speaker, on October 23, 1991, a historic event took place here in Washington at the Embassy of the Republic of Hungary. Americans of Hungarian descent and their friends, together with the diplomats of the now free Hungary, celebrated the anniversary day of the Hungarian Revolution of 1956 for the first time. The symbol of that revolution; the Hungarian tricolor of red, white, and green with a hole in the middle—where the red star had been cut out by the Hungarian Freedom Fighters—was proudly displayed in the Embassy. The newly arrived Ambassador of Hungary, His Excellency Pal Tar praised the ideals and remembered the victims of the Hungarian Revolution. Ambassador Tar, himself a participant in the events 35 years ago, delivered an emotionally charged speech filled with references to his personal experiences.

As the chairman of the Committee to Commemorate the 1956 Hungarian Revolution since 1966, I am moved by the fact that God gave us the unique experience to witness this victory of freedom. This is a victory not only for Hungarians but for East-Central Europe and the Soviet Union.

I would like to enclose Ambassador Tar's remarks in the RECORD with the intent to share his solemn, humble, and yet proud and victorious words with colleagues. The significance of the speech and of the place where it was delivered is evident.

REMARKS OF HIS EXCELLENCY PAL TAR, AMBASSADOR OF THE REPUBLIC OF HUNGARY TO THE UNITED STATES

Ladies and Gentlemen, Dear Friends, thirty-five years ago today on October 23, the Hungarian youth initiated the demonstration which, in a few hours, grew into a revolution by the entire Hungarian nation.

Before the eyes of a surprised world, a small nation by the Danube stood up to break the bonds of dictatorship.

The finest of the nation risked their lives in order to attain freedom, independence, and democracy for their country.

And in late October, early November we nearly believed the miracle: the courage of a small nation managed to force the army of a superpower, the representatives of a totalitarian ideology and dictatorship, into retreat.

During those wonderful days, ideas were blossoming that have kept us alive, and have encouraged us, and that have finally allowed today's democratic processes to take place.

And these few days showed the world that the communist regime was not a workers' paradise as promised, but a bloody and murderous dictatorship.

Alas, short-lived was our amazement; short-lived the wonder.

Then came November 4, and the crushing of the revolution began. Flows of refugees set off towards the West.

We realized, because we had to, that Hungary had no place in the game of superpowers.

For some time we thought that all the sacrifices, the many martyrs, were in vain. The country did not regain its independence, the nation did not regain its freedom. In vain did the dead lie on our streets, shrouded by the tricolor of the Hungarian flag.

Let us remember them. Allow me, once, here and now in Washington, to remember those who were closest to me! I recall my classmate Ottó Gal; you were shot down by a AVO bullet in front of the Parliament building. I recall Dénes Kocsis; you were killed in Dunaújváros, so-called Sztálinváros at that time, among Hungarian workers. And I recall you, unknown red cross volunteer; you were murdered by the fire of a Soviet tank in Lónyai utca. In my own arms I carried your body upstairs to your deathbed.

Let us, dear friends, remember all those who gave their lives so that we now may be free.

For this let us all pay homage in silence for a few seconds.

But the sacrifice was not in vain. We knew it already then that communism received such a powerful blow from the Hungarian people that it would not be able ever to recover again. That is why tens of thousands of Hungarians in the free world worked without fatigue for thirty five years for the attainment of freedom in Hungary.

But then again the miracle did happen. Hungary is once again free, independent and democratic. The ideals of the 1956 Revolution have won over dictatorship. The last Soviet troops left the country on June 19. The nation can now breathe freely.

We know, of course, that the road ahead of us will be difficult. We cannot change from one day to the other, the legacy of the past, the foreign debt, the malfunctioning economy, the underdeveloped infrastructure, the lack of housing, the badly equipped, outdated hospitals, the overburdened telephone lines, and I could go on and on.

All this was, of course, not much different in 1956 either. But who ever thought of problems then? We were overwhelmed with joy over the freedom which we, though shabby and poor, attained.

I sincerely hope that the idea of 1956 shall help us in this respect too; they will help us demonstrate to the world what Hungarians are capable of.

I would also like to include in the RECORD the statement by President George Bush commemorating the 35th anniversary of the 1956 Hungarian Revolution. The message was read on November 3, 1991, by my friend, Mr. Istvan Gereben, at a wreath laying ceremony at the memorial honoring fallen victims of the Hungarian Revolution in the park of the Alba Regia Memorial Chapel of Berkeley Springs, WV.

THE WHITE HOUSE,
Washington, October 31, 1991.

I am delighted to send warm greetings to the members of the Hungarian Freedom Fighters Federation and to all those who are observing the 35th Anniversary of the Hungarian Revolution of 1956.

On previous anniversaries of the 1956 Revolution, we commemorated the sacrifices of the Hungarian people in the hope that they might one day enjoy the blessings of freedom and independence. Today, however, we have the opportunity to celebrate the achievement of that noble goal. It is an unusual gift to our generation to have lived to see this day, to be able to celebrate the victory of the ideals of 1956.

While we celebrate the blossoming of freedom throughout central and eastern Europe, we also recognize the challenges the Hungarian people face during this transformation. Establishing a market-oriented economy, as well as stable democratic rule that is based on the principles of political pluralism and tolerance, will require great courage, sacrifice, and patience. The United States will continue to support our brave friends in Hungary as they proceed with the arduous task of rebuilding their country. Through the Hungarian-American Enterprise Fund, the Regional Environmental Center in Budapest, and a number of other initiatives, we will continue to offer help in areas ranging from trade and investment to environmental protection. In so doing, we will help our friends in Hungary to ensure that the hopes of 1956 are now realized.

Barbara joins me in sending best wishes to all Hungarian Americans on this milestone. God bless you.

GEORGE BUSH.

Finally, I would like to add to the CONGRESSIONAL RECORD a copy of the letter I and 19 of my House colleagues recently sent to Soviet President Mikhail Gorbachev. The letter requested that President Gorbachev use the occasion of the 35th anniversary of the Hungarian Revolution to denounce the actions of the Soviet Armed Forces in its suppression. I was pleased to see that the President followed our recommendation. The following is a copy of our letter to President Gorbachev and the text of a statement he released on October 22, 1991, to the Foreign Broadcast Information Service in Budapest.

HOUSE OF REPRESENTATIVES,
Washington, DC, October 16, 1991.

President MIKHAIL GORBACHEV,
The Kremlin,
Moscow, U.S.S.R.

DEAR PRESIDENT GORBACHEV: We congratulate your country on its successful resistance to the coup attempt by reactionary forces in August of 1991. In those difficult days, the people of the Soviet Union completed a revolution against totalitarianism and the abuse of power which your reforms had initiated.

The Supreme Soviet recently took the historic action of condemning the totalitarian methods of the past and declared illegal such actions as the crushing of the Prague reforms of 1968. More recently, these actions were denounced by your government in a bilateral non-aggression pact entered into with Czechoslovakia. Today, we note that, twelve years prior to the crackdown in Prague, in October of 1956, Soviet tanks similarly put down a popular national revolution against totalitarian rule in Hungary.

As the thirty-fifth anniversary of this brutal action approaches, we write to request that you use this occasion to censure the actions of the Soviet government and its military and state security forces in the suppression of the Hungarian Revolution of 1956. By declaring these actions of the Soviet government and its agents in Hungary illegal and indefensible, you will honor the memory of those many thousands of men and women who helped to preserve the ideals of freedom, democracy, justice, and equality through the years of Communist domination of Eastern Europe. Moreover, you will further distance yourself and your government from those who were responsible for the brutal suppression of a people involved in a just struggle for the achievement of these goals.

We suggest that October 23, 1991, the 35th anniversary of the beginning of the Hungarian Revolution, represents an appropriate date for your government to denounce the Soviet actions in Hungary and demonstrate its commitment to freedom, democracy and human rights. We thank you for your consideration of this request and look forward to your response.

Representatives Frank Horton, Steny H. Hoyer, Edward F. Feighan, Wayne Owens, Eliot Engel, Edolphus Towns, William Jefferson, Tom Lantos, Helen Delich Bentley, Christopher C. Cox, Mary Rose Oakar, Don Ritter, Dick Swett, Bill Green, Dante B. Fascell, Robert K. Dornan, James H. Scheuer, Constance A. Morella, William H. Zeliff, Jr., Michael R. McNulty.

GORBACHEV CONDEMNS HUNGARIAN INVASION

(LD2210191491 Budapest Kossuth Radio Network in Hungarian 1500 GMT 22 Oct 91)

[Text] The Soviet head of state and his spokesman said that the Soviet leadership regards the Soviet intervention in Hungary in 1956 as contrary to international law. Zoltan Tamasi reports from Moscow:

[Tamasi] It is absolutely clear and obvious that Gorbachev and the Soviet leadership regard the Soviet intervention in 1956 as a violation of the international legal norms. This is what the Soviet head of state's spokesman told Radio Hungary. Grachev pointed out that no such Soviet steps can be repeated. This is a direct consequence of the new way of thinking that has gained ground in the Soviet Union since 1985. The spokesman did not give details as to since when it has been clear and obvious that Gorbachev condemns the deployment of the Soviet Army in Hungary in 1956, for no official document confirms this as yet. When will it? According to Grachev, it is conceivable that a good opportunity will be provided for this, too, by the signing of the Soviet-Hungarian treaty, expected in the near future—in other words, when we agree on the future, then we can also clarify the past satisfactorily.

HONORING TONY O'BRIEN

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. RICHARDSON. Mr. Speaker, at about this time last year, President Bush announced that our military presence in the Persian Gulf would be doubled, setting the stage for the midwinter conflict. In less than a year's time, the images of fear, loneliness and death have been replaced in the minds of many by the images of tickertape parades and yellow ribbons.

New Mexico photographer Tony O'Brien returned to Santa Fe from Saudi Arabia and Kuwait with images that recall the chilling emotions we all felt before they were swept away in the euphoria of victory. O'Brien's work is currently on exhibition at the College of Sante Fe, and the significance of the images he captured was the subject of an article by Art Market in the Albuquerque Journal.

I would like to call the attention of my colleagues to this article and ask that they consider the importance of remembering the harsh realities of war.

WAR PHOTOGRAPHS STRETCH BEYOND ARTISTIC DEVOTION

(By David Bell)

The American poet Carl Sandburg in 1921 wrote this about the paintings of Santa Fean William Penhallow Henderson: ". . . the spirit of the inevitable sat upon him. That is, he had to do 'em."

It was a deft summary of the sense of necessity, even compulsion, that seems to run through many artists' work and lives. From Goya's painstaking catalog of the horrors of war, through Cezanne's repeated renderings of Mont St. Victoire, to the obsessive multiple art of Andy Warhol, art has often appeared to be as much a master as a medium. It can drive its practitioners to long hours, far places, unrelenting visions.

As overstated as such a theory might seem if applied to every case, it's not a bad starting point in the evaluation of art. Sandburg wasn't the only one to have suggested that a sense of emotional, philosophical or moral imperative—while not sufficient in itself to guarantee worthwhile art—is among the prerequisites for it.

Certainly you can see something of that sort at work in Tony O'Brien's "War in the Persian Gulf: One Photographer's View," an exhibition that opened last weekend at the Garson Communications Center of the College of Santa Fe. The 40 color images made in Saudi Arabia and Kuwait last winter would not in themselves be altogether remarkable were it not for the sense they communicate of the photographer's need to make them, to be there in the first place.

That sense of time, locale and mission is perhaps one of the components of photojournalism that operate to distinguish it from photography as a merely artistic medium—not that any such distinction carries much weight in today's art media world. Nor is O'Brien's work unartistic on account of its currency. One falls back on the maxim that the particular in art becomes universal when it's good enough.

And some of the photographs are. "Iraqi Prisoners," "Thanksgiving Dinner, First Cavalry," "Belongings Dropped by Iraqi Prisoner," and others have the kind of inevitability, bordering on the commonplace, that at once sums up the subject and the artist's need to treat it.

OFFICE OF NOISE ABATEMENT AND CONTROL ESTABLISHMENT ACT OF 1991

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mrs. SCHROEDER. Mr. Speaker, I am pleased to join my colleague, Mr. DURBIN, in introducing the Office of Noise Abatement and Control Establishment Act of 1991 to restore funding for an office of noise abatement and control within the Environmental Protection Agency.

At a hearing of the Select Committee on Children, Youth, and Families this past July, experts testified that we are all at risk of serious damage or loss of our hearing because of repeated exposure to loud sounds. Of the 28 million people in the United States who suffer from hearing loss, more than one third of these impairments are at least partially attributable to damage from exposure to noise.

Although noise-induced hearing loss can occur immediately from powerful blasts of gunshots or firecrackers, more often it develops gradually, caused by the accumulated impact of noise experience in our day-to-day activities. We are painfully aware of noise that hurts and its sources—planes, trains, automobiles, rock concerts, and construction sites. Work environment noise already has evoked concern, and levels above 85 decibels [dB] require protective measures.

Any exposure to a sound level above 85 dB is a threat, and we are surrounded by lesser-known forms of hazardous noise in our leisure environments. Children's toys, lawn mowers, farm equipment, and school buses have been measured at dangerous levels. Even symphony orchestra music sound levels have led to hearing loss among classical musicians. Hearing witnesses identified personal stereos as a particular threat. According to studies, these devices can emit sound levels several times more dangerous than the 85 dB threshold.

Testimony presented at the Select Committee hearing by scientists, educators, and musicians convinced me that children and adults must be protected from unsafe noise. Prior to its virtual shutdown in 1982, the EPA office of noise abatement and control coordinated government research and enforcement activities in noise control. Since the office's closing, regulation of nonwork noise has been virtually nonexistent.

As our environment has become increasingly noisy, the need for noise control has increased. The legislation I am cosponsoring renews the EPA noise office efforts to protect people from serious threats to their hearing.

Mr. Speaker, we should not wait for excessive noise to bring the sound of silence to our ears. Let us respond before this Nation goes deaf.

The following is a fact sheet on noise-induced hearing loss issued at our hearing:

TURN IT DOWN: EFFECTS OF NOISE ON HEARING LOSS IN CHILDREN AND YOUTH

LOUD NOISES SIGNAL DANGER

Decibels (dB)[1]

140 decibels: Firecrackers, gunshot blast, jet engine.

130 decibels: Rock concerts, jack hammer.

120 decibels: Car stereos, band practice, headphones.

110 decibels: Shouting in ear, dance club.

100 decibels: Snowmobile, subway train, woodworking shop.

90 decibels: City traffic, subway, lawn mower, motorcycle.

80 decibels: Alarm clock, hair dryer, factory.

70 decibels: Restaurant, vacuum cleaner, sewing machine.

60 decibels: Conversation, air conditioner.

50 decibels: Average home, refrigerator.

40 decibels: Principal's office.

30 decibels: Quiet library, soft whisper.

MILLIONS ARE HEARING IMPAIRED/NOISE RESPONSIBLE FOR LARGE PERCENTAGE

Over 8% of the U.S. population have a hearing impairment, including 1.6% (1 million) under age 18 and 4.8% for those ages 18–44. Of the 28 million cases of hearing loss in the U.S., over ⅓ (10 million) are partially or fully attributable to noise-induced hearing loss (NIHL). (U.S. Public Health Service, 1989; National Institutes of Health, 1990)

According to the Annual Survey of Hearing Impaired Children and Youth, 50.1% of hearing impairments among students derived from unknown causes. The remaining proportion derived from known causes, including heredity (13.3%), meningitis (9.0%), infection and fever (4.9%), and prematurity (4.7%). (Gallaudet University, 1990)

CHILDREN AND TEENS FREQUENTLY EXPOSED TO HAZARDOUS NOISE LEVELS

A survey of 1500 Ohio high school students found considerable exposure to potentially damaging levels of noise. Respondents reported use of personal stereos with headphones (72 percent), stereos (96 percent), dances (71 percent), rock concerts (43 percent), tractor pulls (27 percent), and firearms (30 percent). (Lewis, 1989)

According to a university-based study, the following toys emitted hazardous noise levels at close range: toy robots and cars (82–100 dB), toy sirens and drills (74–102 dB), squeaky toys (78–108 dB), and firecrackers (126–156 dB). Additional studies found that many toys held directly to the ear can emit up to 120 dB, and that toy pistols can emit in excess of 150 dB. (Axelsson and Jerson, 1985; Fay, 1989; Clark 1991)

The average sound level measured at a New Kids on the Block concert was 98 dB (164 percent of the Occupational Safety and Health Administration allowable dose) and levels routinely rose above 100 dB. Earlier generations of concert amplifiers were in the 20,000 to 30,000 watt range; current large concert speakers are equipped with 100,000 to 500,000 watt amplifiers. (Clark, 1991; Brookhouser, et al., 1991)

A study of noise exposure among players of electronic arcade games found that normal noise settings ranged from 73 to 111 dB. (Plakke, 1983)

LOUD NOISES CAUSE HEARING LOSS AND OTHER PROBLEMS FOR CHILDREN

In a study of 94 diagnosed cases of NIHL in children and adolescents, the following causes were identified: fireworks or firearms (46 percent), live or amplified music (12 percent), power tools (8 percent), and recreational vehicles (4 percent). (Brookhouser, et al., 1991)

In a Connecticut study of 20 adolescents and 7 adults attending a school dance with amplified music, all but two experienced at least a 5 dB temporary hearing loss and all but one reported tinnitus (ringing of the ears). Of those re-tested three days later, two-thirds demonstrated only partial recovery. (Danenberg, et al., 1987)

A study examining children attending elementary schools near a busy metropolitan airport found that children from these noisy schools had higher blood pressure, were more likely to fail on a cognitive task, and were more likely to give up on an assigned task than were children from quiet schools. (Cohen, et al., 1980)

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[1] Sound levels above 85 decibels (dB) are potentially hazardous. Decibel increases are logarithmic, so 90 dB is 10 times as loud as 80 dB, and 110 dB is 20 times as loud as 90 dB.

A study of 538 teenage boys found that they were routinely exposed to hazardous sound levels during daily activities; 15 percent showed hearing loss in high frequencies. (Axelsson, et al., 1981)

A Wisconsin study found that over half of children actively involved in farm work experienced NIHL, twice the rate of their peers not involved in farm work. (Broste, et al., 1989)

PERSONAL STEREO USE POSES SPECIAL HAZARDS TO YOUNG PEOPLE

At least 80 percent of children in middle class elementary school owned or used personal stereos at least occasionally. Other surveys indicate a range from 37 percent of school children ages 11–18 in England to 81 percent of children attending youth clubs in Hong Kong. One study revealed that personal stereo use among young people increased significantly with age—9 to 11 years (10 percent), 13 to 16 years (12 percent), and 18 to 25 years (35 percent). (Clark, 1991; Fearn and Hanson, 1984)

A British study concluded that young people ages 15–23 who regularly use personal stereos and attend concerts suffered hearing loss at twice the rate of young people without such exposure. The study revealed diminished sensitivity to sound and reduced ability to discriminate between pitches. (West and Evans, 1990)

A study of personal stereo use by teenagers asked participants to listen to music at an enjoyable level for one hour; the mean temporary hearing loss was 9 dB with a maximum up to 35 dB. (Hellstrom and Axelsson, 1988)

Maximum output levels of 35 personal stereos were found to range from 115 to 126 dB SPL (sound pressure level). When participants listened to personal stereos at a comfortable volume, levels ranged from 83 to 107 dB SPL. A study of 18 personal stereos found that, at one-half volume, the units emitted an average of 104 dB playing rock music and 102 dB playing easy listening music. (Kileny, unpublished; Rintelmann, unpublished)

In a survey of 89 personal stereo users, 31% reported listening levels which exceeded OSHA risk standards; of this group, half exceeded the Auditory Risk Criteria limit by more than 100%. Another survey of 750 personal stereo users found that one-fifth reported symptoms of tinnitus or dullness of hearing after using their devices. (Catalano and Levin, 1985; Rice, Rossi, and Olina, 1987)

EXERCISE, ALCOHOL, AND SMOKING WORSEN EFFECTS OF NOISE ON HEARING LOSS

Studies suggest that those who listen to loud music while doing aerobic exercises, which increase blood flow to the extremities decrease oxygen around the ear, and increase the flow of adrenalin, may be at additional risk of suffering some hearing loss. (Navarro, 1989)

A 1987 study found that smoking is associated with increased risk of hearing loss in a noise-exposed population. (Barone, et al., 1987)

Alcohol consumption can increase the amount of noise needed to trigger the acoustic reflex (which protects the ear by reducing sound intensity) by 5–13 dB. (Robinette, et al., 1981)

HEARING LOSS PREVENTION SUCCESSFUL, BUT IN SHORT SUPPLY

An education hearing conservation program presented to normal hearing elementary school children improved knowledge about NIHL by an average of 23%. A pre-program survey found that only 6% of the children reported use of ear protection; following the program, 97% intended to use ear protection during noisy activities. (Chermak and Peter-McCarthy, 1991)

Following a high school hearing conservation program in West Virginia, students' correct responses to hearing-related questions improved by nearly one-fifth. (Lass, et al., 1986)

In a survey of Ohio high school students, only 61% of questions regarding hearing loss and protection were answered correctly. In a study of adult hearing health knowledge, participants had correct responses to only 52% of the test items. (Lewis, 1989; Singer and Brownell, 1984)

In a survey of industrial arts teachers, over half reported that they had no background in hearing conservation. Two-thirds felt that they needed more background in this area. (Plakke, 1985)

HONORING THE ACHIEVEMENTS OF NEW LIFE DWELLING PLACE

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. BILIRAKIS. Mr. Speaker, I rise today to honor the work of the New Life Dwelling Place of Thonotosassa, FL. Organized by Sister Claire LeBoeuf and Sister Pam Nolan 5 years ago, the New Life Dwelling Place is a unique residential program serving two generations of the abused, single-parent mother, and her child.

Child abuse is a terrible act of injustice. It can take many forms, from physical and mental abuse to neglect. Furthermore, in nearly 100 percent of child abuse cases, one or both of the abused child's parents were also abused at a very young age.

This devastating cycle of emotional neglect and violence needs to be stopped for the good of families and society as a whole. The New Life Dwelling Place does just that by offering mothers counseling, comfort, and a place to grow. Currently the New Life Dwelling Place can serve 10 families at a time. All participants enter voluntarily seeking an opportunity to salvage or heal the severed bonds of the mother-child relationship that occurs with abuse.

This excellent organization, Mr. Speaker, is an alternative to foster care. It gives the mother and child time to restore bonds. During the approximately 6-month period of the program, the mother-child relationship is strengthened and a more stable family unit is assisted back into the community. The mother and child live in an environment conducive to emotional, intellectual, and spiritual growth.

In a November 5, 1989 feature article in the St. Petersburg Times newspaper, Sister Claire LeBoeuf explained her philosophy that placing a child in a foster home may keep the child safe, but it does very little for the healing of the family unit. A warm, supportive environment and the encouragement of gentle, respectful parent-child interactions aids this healing at the New Life Dwelling Place. Not only is the mother instructed in basic child-caring and homemaking skills at New Life Dwelling Place, she is able to obtain a high school diploma or prepare for vocational training.

Mr. Speaker, New Life Dwelling Place helps give the individual hope and provides society with a more educated and caring person. I strongly believe this organization has succeeded in helping to break the devastating cycle of child abuse. Today, Mr. Speaker, I would like to honor the past efforts of New Life Dwelling Place and pledge my continued support of its approach to healing families. Mr. Speaker, this program is a model well worth duplicating throughout our great Nation.

A TRIBUTE TO THE AMERICAN VETERAN

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. DINGELL. Mr. Speaker, on the eve of the 15th anniversary of the attack on Pearl Harbor, the world experiences momentous changes. As we witness the collapse of Soviet communism, and the democratization of countries throughout Eastern Europe, we pause to remember the events and the people who brought us to this point in history. In their ceaseless protection of America's values and interests, our Nation's veterans are owed an enormous debt of gratitude for helping to secure a measure of peace and hope, not only for our citizens, but for peoples throughout the world.

American national consciousness and thought were irrevocably altered on that fateful December morning, 50 years ago, when our Nation was caught with its guard down. The surprise attack on Pearl Harbor forced America's entry into World War II, and contributed to our Nation's emergence as a world superpower. The fear of being caught off guard again shaped our defense and nuclear strategy for the decades to follow.

Today, as we celebrate the victory of our ideals and the spread of freedom throughout the world, we remember the invaluable contributions made by our veterans. In answering their Nation's call to duty, all of our veterans have made enormous personal sacrifices to protect our vital interests. They have paid the costs which have won us the privileges we enjoy today. Their victory is our victory, and our victory theirs.

Five decades after Pearl Harbor, the rhetoric of America's entrance into World War II has become reality. America's veterans truly have made the world safe for democracy and freedom. There can be no finer tribute.

CONGRESSIONAL SALUTE TO BLANCHE SEAVER

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. GALLEGLY. Mr. Speaker, I am pleased to rise today to honor an outstanding philanthropist, Mrs. Blanche Seaver, who recently celebrated her 100th birthday.

Mrs. Seaver is rightly hailed as one of the greatest supporters of California higher education, and is perhaps best known for establishing Pepperdine University's Frank R. Seaver College, soon to mark its 20th anniversary.

Pepperdine President David Davenport put it best when he said:

> Mrs. Seaver had the foresight to invest in a small campus that has become a notable institution of higher learning—in large part because of her generosity. Her magnanimous support has made our Malibu campus possible. Seaver College is an extraordinary legacy for an extraordinary woman and the husband she cherished.

Indeed, Mr. Speaker, few of us are privileged to begin a college. I can think of no one who began a project of such dimensions at the age of 80.

But then, Mrs. Seaver has always been a can-do person. Born the 10th child of Norwegian immigrants in 1891, she was teaching piano at Chicago's Hull House by age 6 with famed social services leader Jane Addams as her sponsor and mentor.

She graduated from the Chicago Music School in 1911 and moved to Los Angeles 4 years later to work as a teacher and voice coach. Her future husband, then a successful lawyer and author of the Los Angeles County Charter, spotted her while riding a trolley in downtown Los Angeles. After a formal introduction several weeks later and a whirlwind courtship, they married on Sept. 16, 1916.

During her husband's service as a lieutenant commander aboard a Navy vessel during World War I, Mrs. Seaver wrote her most famous song, "Calling Me Back to You," made popular by the well-known Irish tenor John McCormack. In addition, her arrangement of "The Battle Hymn of the Republic" was performed by the Philadelphia Symphony Orchestra under the baton of the legendary Leopold Stokowski in 1919.

Mrs. Seaver's call to philanthropy came during the 1920's, when she and her husband lived in Mexico, where Mr. Seaver was directing drilling operations for oilman Edward L. Doheny. Saddened by the plight of homeless children, she founded an orphanage in Mexico City, and upon her return to Los Angeles, she cofounded the Los Angeles Orphanage Guild in 1931. She also was a founding member of the Social Service Auxiliary and the Board of Directors of Children's Hospital.

In honor of her generosity and leadership on behalf of charitable organizations, she was named Woman of the Year by the Los Angeles Times in 1963 and was presented with the "Sallie" humanitarian service award by the Salvation Army on the organization's 100th anniversary in 1986. Her many other honors include the Religious Heritage of America's Distinguished Patriot Award, the L.A. County Distinguished Americanism Award, the Freedom Foundation's George Washington Award, and being named Republican Citizen of the Year for Los Angeles in 1982.

Mr. Speaker, Mrs. Blanche Seaver truly represents the best of the traditional American values of service to others. Her generosity and her example have helped improve the lives of countless southern California residents, and I ask my colleagues to join me in honoring her for her accomplishments. Truly, one person can make a difference, and Blanche Seaver proves that better than almost anyone else.

WHERE IS THE OUTRAGE?

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. SMITH of New Jersey. Mr. Speaker, the people of Croatia have suffered greatly at the hands of the Federal Yugoslav Army and the decisions of Serbian President Milosevic. With the violence entering its fifth month, thousands have died and been wounded in the armed conflict. By some estimates, the death toll is estimated to be as high as 4,000 dead and hundreds of thousands displaced and homeless.

Many of these casualties are innocent civilians. Churches, museums, schools, hospitals, and other culturally significant buildings have been destroyed—what a tragedy. Sadly, Mr. Chairman, the continued and growing aggression and violence in Yugoslavia is snuffing out lives and destroying livelihoods and historical architecture.

I believe time is running out.

Following the meetings which our colleague, FRANK WOLF, and I had while in Croatia and Serbia in late August and early September, we have discussed our analysis and grave concern about the situation in Yugoslavia with policymakers at all levels, including National Security Advisor Brent Scowcroft.

We and others have felt the frustration of a seeming reluctance on the part of the United States to be outspoken and a desire to relegate the ultimate responsibility of resolving this conflict to the European Community.

The loss of life demands that the Yugoslav conflict not be left on the backburner. Furthermore, the escalation of fighting and aggression has major implications for the entire region. Certainly, the ethnic conflict exacerbates the situation, making peace seems even more elusive.

While the numerous cease-fires in recent months have been fleeting, I am encouraged that the European Community has given an ultimatum to the Yugoslav Federal Government and the Republics. I fear that the Federal Yugoslav Army will again ignore the deadline.

It is my hope that Lord Carrington and the European Community will impose strategic economic sanctions, as announced, if a permanent cease-fire is not agreed upon by today. Furthermore, I trust that the United States would join the EC in applying restrictive measures.

I believe the offending parties must have a clear understanding that continued violence will mean isolation in the international political and economic community. This is certainly the message that we delivered to President Milosevic when we met in early September. When meeting with President Tudjman, Congressman WOLF and I made it clear that he too must guarantee the rights of the Serbian minority.

The poignant message of Anthony Lewis' op-ed in yesterday's New York Times must be heeded. Indeed, "it is time to listen, and to act." The objectives of the aggression are becoming more clear, as Mr. Lewis writes

> The tragedy that has overtaken Yugoslavia is the direct result of the ambitions of the Serbian Communist leader, Slobodan Milosevic. Over the last 4 years he has schemed to impose Serbian domination—and his own—on Federal Yugoslavia * * *. The attacks on Dubrovnik best illustrate the nature of Mr. Milosevic's war: Its punitive nature.

For the benefit of my colleagues, I wish to submit Mr. Lewis' editorial for the RECORD.

[From the New York Times, Monday, Nov. 4, 1991]

(By Anthony Lewis)

WHERE IS THE OUTRAGE?

BOSTON.—Suppose that at this moment Venice where being shelled and bombed in a civil war, its treasured monuments menaced, its population starved. Would the Western world be silent? Of course not. It would react in outrage. It would intervene to stop such a crime against history and humanity.

But across the Adriatic today another historic jewel of a city, Dubrovnik, is being bombed, its population strangled by blockade. And where are the world's protests? Where is any effective action to stop the crime?

George Bush has not been reluctant to condemn aggression in the world, or to play an active peace-making role. But in the Yugoslav conflict the American voice has been muted. Why?

The answer to the puzzle must lie in part, I believe, in memories of what happened in Yugoslavia during World War II and afterward. Political memory has inhibited our recognition of, and willingness to deal with, a new Yugoslav reality.

During the war Tito and his partisans fought courageously against the occupying Nazi armies, while Croatian Fascists set up a pro-Nazi puppet state. Afterward Tito, as President of a Communist Yugoslavia, broke with Stalin; the first such defiance in the Communist world and one that won Yugoslavia much admiration and support in the West.

That past must help to explain the cold shoulder that Croatia and Slovenia got: from the United States and other Western countries when they declared their republics independent earlier this year. Otherwise one would have expected sympathy for democratic movements seeking independence from a Communist-dominated central government.

The tragedy that has overtaken Yugoslavia is the direct result of the ambitions of the Serbian Communist leader, Slobodan Milosevic. Over the last four years he has schemed to impose Serbian domination—and his own—on federal Yugoslavia. When he could, he brutally suppressed opponents, such as the Albanian majority in Serbia's province of Kosovo.

The Milosevic grab for power aroused in other republics opposition that was both ethnic and democratic—anti-Communist—in character. When Croatia declared its independence on June 25, Mr. Milosevic responded with war. His instrument is the federal army whose officers are mostly Serbs.

In the attacks since June 25 the federal army has captured about a third of Croatia's territory. It has used planes to bomb Croatian villages and cities, as well as shells and mortars and infantry attacks.

The attacks on Dubrovnik best illustrate the nature of Mr. Milosevic's war; its punitive nature. Dubrovnik is at the southern end of a thin strip of Croatia running down the Adriatic coast. It does not block the way to anything, and it is hard to see what military value it has as a target. It seems, in fact, to have been targeted for psychological and cultural reasons.

Dubrovnik is a Renaissance port, beautifully preserved, a gem not only of Croatia but of all Europe. The United Nations has declared it a cultural landmark. Right now bombs are falling on the city every day. For nearly a month the federal blockade has cut off regular supplies of food, water and electricity.

The European Community has tried to act diplomatically, appointing Lord Carrington as its crisis representative. He has brokered cease-fire after cease-fire, but Mr. Milosevic pays no attention to them. Lord Carrington, despite his great abilities, is reduced to deploring the attack on Dubrovnik as a "criminal act."

It is a criminal act; but nobody does anything serious about the criminal, Mr. Milosevic. It is true, and understandable, that the United States and its friends are ordinarily reluctant to assist the ethnic breakup of other countries. But we are well past that point now.

There is no Yugoslavia anymore. There are republics as independent in their feelings as Estonia, Latvia and Lithuania. There is an attempt to impose on them by force either Serbian domination or a Greater Serbia enlarged with territory seized from its neighbors. And that use of force may have wide reverberations.

"The danger that is coming from Yugoslavia may be deeper and longer than the international community has realized." President Vaclav Havel of Czechoslovakia said that during his visit to Washington two weeks ago. It is time to listen, and to act.

THE ONLY THREE EXCEPTIONS

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. SAXTON. Mr. Speaker, this week the House will be considering the Labor, HHS, and Education appropriation bill once again. And once again, I am confronted with a frustrating dilemma related to the subject of abortion and abortion funding.

It has been my long-held belief that abortions should be permitted only in the case of a threat to the mother's life, rape, or incest. Unfortunately, in the case of this bill, the conference committee has given us no opportunity to vote to make these exceptions. This is in spite of the fact that the Senate bill provided for these exceptions.

This is a very difficult issue for all of us. There is no other issue that is more personal or emotional than this one. A majority of the American people believe that abortion should be prohibited or restricted. And many believe that abortion should be permitted only when the life of the mother is threatened or in the case of rape or incest. This according to a survey done by the Wirthlin Group released June 19, 1991.

As a result, I urge my colleagues to recognize the importance of this issue and help bring about these three exceptions.

HERBICIDE RESISTANT PLANTS

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. SYNAR. Mr. Speaker, today I am introducing legislation to prohibit Federal funds from being spent on herbicide-resistant plant research. Joining me as cosponsors are Mr. SCHEUER, Mr. DEFAZIO, and Mr. OLVER. Let me be clear: this legislation is not anti-biotechnology or anti-research. I firmly believe that biotechnology will help American agriculture reach even new heights in the ability to supply food to our citizens and others around the world. Herbicide-resistant plants may even play a role in reaching that goal. This legislation simply states that research which will benefit private corporations should be funded by those who stand to benefit from it.

Once licensed, the market for these kinds of plants is estimated to be over $300 million in the United States alone. Worldwide, the market potential is enormous. Sensing such market potential, private multi-national chemical companies are already spending millions to develop such products. There is no need for taxpayer dollars to be spent on this private sector race.

It's difficult to know how much USDA currently spends on this research, but our best guess is that until now, between $8 to 10 million have been spent on this subject. This amount is likely to grow, however, unless we make our research priorities clear. Herbicides, like any pest control measure, have an important role in American agriculture. However, we also need to protect our ground water resources, and we need to develop more sustainable methods of production. Chemical-intensive farming is not always the most economical or ecologically viable approach.

Instead of Federal dollars being spent on herbicide-resistant plants, we need to spend more to help our producers find the best way to maximize profits in environmentally sound ways.

Identical legislation has been introduced today in the Senate by Mr. LEAHY, chairman of the Senate Agriculture Committee, and Mr. GORE, who is a leader on biotechnology issues. I look forward to working with those Members, as well as with my House colleagues, to help foster beneficial biotechnology research, and stop the needless Federal subsidy of research designed to benefit private companies which have sufficient resources to undertake the expense and risk on their own.

TURN THAT DOWN!

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. DURBIN. Mr. Speaker, say what? Excuse me? Could you say that again?

We all know the routine. We ask someone a question and then repeat it, and repeat it, and repeat it.

Is communication no longer possible? Are Americans speaking in a multitude of incomprehensible dialects? Of course not. The problem is not what we're saying—the problem is that we are no longer hearing. Americans are going deaf at an alarming rate and at a younger age.

The cause is not pesticides or the state of our ozone layer. The cause is actually quite simple—the decline in our hearing is directly proportional to the noise we are exposed to.

That jackhammer at the construction site that cause your jawbone to jitter isn't just a temporary inconvenience, it can cause lasting damage to your hearing. Similarly, those incessant noises we tolerate around the house—the whizz of a food blender, the din of an electric can opener, the whirl of a dishwasher—can be physically harmful to one's hearing. For instance, a garbage disposal hits 80 decibels and a lawn mower 90 decibels. Sustained exposure to noise at this level can damage your hearing.

Few of us, though, are exposed to these noises for any length of time, but many of us are exposed at great length to a source of noise that poses a significant risk—the personal headset stereo.

Since Sony introduced the first Walkman in the 1970's, Americans have been in love with personal headset stereos. About 22 million units were sold in this country last year. Clearly, they are enjoyable to wear for such things as jogging, riding the subway to work, or cleaning around the house. But the enjoyment we gain lets us too easily forget the danger of these devices. Personal headset stereos can emit 115 decibels, a sound almost as loud as a thunderclap.

And a reach of 115 decibels is not unique. The headsets sold last year had an average rating of 100 decibels. Any noise above 85 decibels—roughly the sound of a passing subway—can accelerate hearing loss. Even 2 hours of exposure to 100 decibels can be dangerous; with each 5 decibel increase, the "safe time" is cut in half. And different noise sources with the same decibel level cause similar damage. The 100 decibel rattle of a jackhammer is no different than a personal headset stereo at 100 decibels.

The Select Committee on Children, Youth, and Families held a hearing this summer to examine the danger of personal headset stereos. Audiologists, an otolaryngologist, a musician, and other witnesses all testified that the danger from loud noise exposure is real and lasting.

In response to the overwhelming evidence presented at the hearing, I have decided that noise abatement is critical and must once again be placed at the forefront of public policy. Today, PATRICIA SCHROEDER, the chairwoman of the Select Committee on Children, Youth and Families, joins me in introducing legislation to restore funding to the Environmental Protection Agency's Office of Noise Abatement and Control.

Prior to 1982, the EPA Office of Noise Abatement and Control was responsible for coordinating Federal research and activities in noise control, authorizing the establishment of noise emissions standards for products distributed in commerce, and providing information to the public regarding the noise emission and noise reduction characteristics of such products. However, the EPA Office of Noise Abatement and Control has had no funding since 1982. It has a mission, it is statutorily responsible for noise activities, yet it has no funding.

Clearly, the EPA Office of Noise Abatement and Control should be refunded and reinvigorated. The problem of noise induced hearing loss from headphones is just one example of many where this Government has a direct interest in protecting the hearing of consumers and no program with which to do so.

And let me assure my colleagues of one thing: Noise is not disappearing. In fact, our brilliant scientists and engineers are developing more and better amplification devices each year. Our children may be captivated by the latest music craze captured by this technology but the incredible volume can leave its scar. Our children don't realize that only a short time down the road, they'll be the next "Say what?" victims.

When we think of the dangers children face each day—drugs, violence, accidents—it seems odd to add noise to this ever-growing list. Yet, noise induced hearing loss is the most common affliction for Americans. Some 28 million Americans have hearing loss and about 10 million Americans have hearing loss attributable to environmental causes. A growing percentage in this category are children. It's time to reopen the EPA Office of Noise Abatement and Control. The problem of noise is still with us and growing. The goals and mission of the EPA Office of Noise Abatement and Control are still important. Let's not be indifferent to this problem any longer.

As for noise induced hearing loss from headphones, the message is loud and clear: Turn down the volume and protect your hearing.

MRS. ZELLA HILL CELEBRATES 90TH BIRTHDAY

HON. ROBERT W. DAVIS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. DAVIS. Mr. Speaker, it is my distinct pleasure to recognize Mrs. Zella Hill as she celebrates her 90th birthday on November 9. Mrs. Hill has traced her family tree back to the early 1800's when the Hills were one of the first families to settle in Michigan's upper peninsula. She proudly refers to her grandchildren as sixth generation Michiganders.

Mrs. Hill recently challenged her relatives and friends to join her on the 34th annual Mackinaw Bridge walk held each Labor Day. She also participated in a recent reunion of 350 family members in Pickford, MI.

On this occasion, I would like to congratulate Mrs. Hill on her 90th birthday. Her zest for life and enthusiasm are an inspiration to us all.

NOVEMBER 4, 1991: WILLIAM McKINLEY NICHOLAS' 95TH BIRTHDAY

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. McEWEN. Mr. Speaker, 95 years ago, as the bells were ringing in Niles, OH to celebrate the election of native son William McKinley as the 25th President of the United States, a young woman in that city was giving birth to a son, and in honor of the moment he was named William McKinley Nicholas.

After school he attended buisness college, and at age 21 he married a young woman he met there named Helen. They lived in Warren, OH for decades, raised a family, and were active in various community organizations. Helen passed away in 1976, but William has had the good fortune and health to be celebrating his 95th birthday today.

In many ways William's life has not been exceptional. He and his family did the same things and experienced the same highs and lows that many other Americans have known over the past near century. They worked hard, celebrated family events, helped others when they were needed, and adjusted to the advent of cars, airplanes, rockets, modern appliances, and computers as well as the depression and several wars.

But in one way his life has been very special. He, along with his wife, set an example of how to be good people for their children, and then their children's children, and then their children's children's children, and now for even a fourth generation of children, as well as for the many people that have been fortunate enough to know them over the years. Celebrating William's birthday and his life is also a celebration of the best things about our country and all it's people.

In addition to his three sons and two daughters, 17 grandchildren, and 25 great grandchildren, William now has three great great grandchildren. I join with his family and friends in thanking him for the example he has set, and in wishing him many many happy returns.

TRIBUTE TO BILLY CARMICHAEL

HON. ROBIN TALLON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. TALLON. Mr. Speaker, on Sunday, November 10, I am looking forward to taking part in a ceremony in my hometown of Dillon, SC, dedicating our fire station and unveiling a portrait in memory of a legend in that town—Billy Carmichael.

I would probably be underestimating Billy's contributions to Dillon by calling him a legend, though. He personified Dillon. Growing up, I couldn't imagine how this town would survive without Billy at the helm. He was elected mayor of Dillon in 1963 and held that office until his death last September. As a matter of fact, town lore has it that Billy served as mayor longer than anyone else has served any city in this country.

As mayor, Billy was involved in every facet of life in Dillon. Aside from the expected contributions that a responsible public servant would make to his community, Billy made his job as mayor his life—from his involvement in local restoration projects to philanthropic activities to economic development initiatives. Throughout his many years of public service, he was personally involved in the lives of the people in the community—their problems were his problems—and he made it his first priority to make certain that everyone was taken care of.

I hate to believe that the day of public servants like Billy Carmichael may be a thing of the past, but I think generations to come will be hard pressed to find a public servant who would give so unselfishly for so many years to make his community a better place to live.

Throughout my childhood and growing up years, Billy gave me insight and inspiration along my road to public service. I grew up admiring and respecting this man who so ably led my hometown for 17 years. He and his wife, Virginia, were two of my first supporters when I threw my hat in the ring to run for public office more than 10 years ago. Their support meant the world to me then, and his encouragement and wisdom guide me still today.

On Sunday, we will be celebrating the dedication of our town fire station in Billy's memory. Celebrating an event such as this is a very joyous occasion, but this is doubly gratifying because we are saluting someone as well as something. This dedication to this fine man is our way of saying thanks to Billy for a job well done. From now on, every time any of us walk by that building, we'll think fondly of this generous and giving man to whom it is dedicated.

TRIBUTE TO CHUCK PENNONI

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. WELDON. Mr. Speaker, it is with admiration and respect that I rise today to pay tribute to Chuck Pennoni. Chuck has been named president of the American Society of Civil Engineers [ASCE].

Mr. Pennoni presently serves as the founder, president, and chairman of the board of Pennoni Associates, Inc., a 25-year-old Philadelphia-based firm specializing in multidisciplinary consulting engineering.

Chuck Pennoni is a graduate of Drexel University in Philadelphia, PA, with a B.S. and an M.S. in civil engineering. He frequently lectures at the University of Pennsylvania, as well as Swarthmore, Villanova, and Drexel Universities. Chuck also taught structural design and strength of materials at Temple University.

Throughout his career, Mr. Pennoni has had an immense amount of involvement with the ASCE and has served them well. He has been the recipient of numerous awards within his field.

Mr. Speaker, I hope you and the other Members of the House of Representatives will join me in congratulating Mr. Chuck Pennoni on his many accomplishments in the engineering community.

TRIBUTE TO SERGEANT BEDER CLIFTON

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. MATSUI. Mr. Speaker, I rise to pay tribute to Sgt. Beder Clifton who retired from the Sacramento City Police Department on October 26, 1991, after over 30 years of service to the community.

Sergeant Clifton represents the finest traditions of law enforcement and the Sacramento Police Department. His service to the community and to his department is reflected in a career that saw Sergeant Clifton become dean of narcotics enforcement officers in Sacramento County. He was a teacher not only to the officers who served under him, but to all members of law enforcement of the community as well as the prosecutors that worked with him. He was a leader in establishing joint agency task forces to attack the drug problems in Sacramento. Throughout his career, Sergeant Clifton was instrumental in developing many programs that contributed to the efficiency of both his own department and to that of the many allied agencies. Without question, an officer with Sergeant Clifton's skill and leadership will be missed in the Sacramento Police Department.

It is in view of this service that I ask my colleagues to join me in honoring Sergeant Clifton.

INTRODUCTION OF LEGISLATION TO PROMOTE OBSERVANCE OF HUMAN RIGHTS STANDARDS IN FORMER SOVIET REPUBLICS

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. HOYER. Mr. Speaker, I am pleased to introduce a resolution today, on behalf of fellow House Members of the Helsinki Commission, which seeks to promote observance of CSCE human rights standards in former Soviet Republics. The Helsinki Final Act and other documents of the Conference on Security and Cooperation in Europe [CSCE], including the Moscow CDH document, have established recognized standards for the protection and promotion of human rights, democracy, and rule of law.

The dramatic events following the failed Soviet coup highlight the growing importance of these Republics. It is essential to ensure that the human rights and fundamental freedoms of those living in the Republics are protected, particularly during this period of rapid change.

Armenia, Georgia, Ukraine, Byelorussia, Moldova, Azerbaijan, Uzbekistan, Kyrgyzstan, Tajikistan, and Turkmenistan have declared independence; and Russia and Kazakhstan have declared sovereignty. The peoples of these Republics have made clear their strong desire to determine their own future. It is apparent that many of these Republics are taking steps to promote and protect the rights of individuals on their territory, however, human rights abuses have been reported in a number of Republics.

The resolution we are introducing today expresses the sense of Congress that the leaders of each of these Republics should accept and implement all CSCE commitments on human rights and humanitarian cooperation, including provisions regarding monitoring activities.

The resolution urges the parliamentary leaders of each of the Republics to consider the establishment, within their respective parliaments, of appropriate mechanisms for the promotion and protection of human rights and fundamental freedoms. It also requests that the President keep the Congress informed of the status of human rights in each of the Republics.

Mr. Speaker, it is essential to stress the importance of human rights and rule of law to the peoples of these Republics as they seek to assert their independence and sovereignty. The Helsinki process provides excellent standards for the protection and promotion of human rights and fundamental freedoms. My hope is that the leaders of each of these Republics will accept and implement these commitments, including respect for the rights of members of national minorities.

CAMPAIGN REFORM: THE PROPER APPROACH TO BETTER GOVERNMENT

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. ANDERSON. Mr. Speaker, all across the country, Americans are embracing the growing movement to impose term limits on our Nation's elected Federal legislators. Support for term limits is a clear expression of citizens' frustration with a Congress they see as unresponsive to their concerns and so solidly entrenched that reelection is all but assured. Congress has no one to blame for this but itself, because it continues to adhere to a system of financing campaigns which is skewed to perpetuate incumbency. The voters' outrage has lead them to search for a solution. They have found term limits.

Term limits are an undemocratic proposition, and if adopted would do far more harm than good. The central problem with our Government is a faulty election process, not that Members of Congress can serve their community for as many years as the voters want. Fixing what ails Congress should be about bridging the gap that currently exists between the people and their representatives, not about mandating plenty of turnover. Getting rid of big money in elections and giving average citizens a more direct voice in Federal elections will insure a level of turnover determined by the voters and based on the legislator's performance in office, rather than his or her fundraising ability.

One formula that is all too prevalent in today's politics is one that says "dollars equal votes." This axiom can be seen in the staggering amounts of money spent in recent Federal campaigns. In 1976, for example, the average cost for a candidate winning a House seat was $87,000; and for a Senate seat, $609,000. By 1986, the figures were $350,000 and $3,099,554 respectively. And the numbers continue to rise.

To raise these vast sums of money, most candidates are forced to adopt a grueling, year-round fundraising schedule; constantly seeking money as they continue to serve the public. This financial environment allows wealthy individuals and special-interest groups to command much of the time and attention of politicians. Meanwhile, average citizens, unwilling or unable to contribute large amounts, feel their interests are being crowded out or not represented. Campaign finance reform would help reverse that trend, and make candidates more responsible to the majority of their constituents, not a bunch of special interests.

The complexity of current campaign finance regulations demands a comprehensive plan for reform. We must restore the public's trust in its representatives, by curtailing or stopping certain abusive practices, like member PAC's and soft money transfers, and establishing a more even playing field between challenger and incumbent candidates.

A fundamental step in restoring public confidence in Congress is to make incumbent Members and their challengers more reliant on funds raised from small donations rather than large individual or PAC contributions. Establishing voluntary spending limits for election cycles, as well as placing limits on the amount and type of contributions accepted, will substantially increase the financial influence small contributors have with relation to that of PAC's and large contributors. We must establish a system in which candidates will be more reliant, and therefore more beholden to, small individual contributions rather than large, special-interest funding. I do not favor an absolute ban on PAC or large individual contributions. I do strongly believe that we must lower the amount each person or PAC can contribute, and limit the total amount candidates can accept from each category. Charles Keating-type ethical questions too often arise when large contributions are involved. Such scandals have significantly eroded the public's confidence in their elected representatives, and have to be addressed by reform legislation.

We must also limit the dollars candidates can accept from their State and national parties. Known as soft money, these funds get poured into candidates' coffers through loopholes in the current laws. Legislation that limits the acceptance from citizens, and yet fails to address parties' soft money abuses, would do little in the way of actual reform. In fact, a large percentage of the donations collected for presidential races are subsequently funneled by national campaign committees into chosen congressional elections. The campaign finance regulations covering these transfers must be amended to insure that people's donations are used for the purpose the contributor intended.

Reform should also end the practice of representatives contributing money from their own PAC's or campaign funds to those of their colleagues. Money people have donated to help elect one candidate can now be put towards the election of others, usually without the knowledge, or consent, of the contributor. Member-to-Member donations are also being increasingly used to influence the internal power struggles that go on within the House and Senate. Such uses of campaign donations must be stopped. One way to help do so is to establish a method for funding candidates that does not imply a favor or an attempt to influence that candidate. Such a method is public financing.

Public finance, in the form of matching funds, is a vitally important way to take politicians out of the deep pockets of special interests and wealthy individuals. A controversial method of reform, public financing is critical for getting the candidates' focus back on the common people who make up the body of our democratic system. Equally important is the establishment of a method for funding such a financing system. The costs of public financing must not be paid for with tax increases or tacked onto the national deficit. A voluntary, or participation-based, system will provide the needed revenues without further burdening the American taxpayer.

Tying public financing to overall spending caps will encourage candidates to adhere to the limits and place them on equal financial footing with their opponent. Public funding, used to encourage acceptance of small, in-district donations, will turn the candidates attention back to the people he or she hopes to represent. This will lead to a more issue-oriented debate among candidates and give voters a better idea of where the candidates stand. An enhanced public debate will contribute to a more informed and interested electorate.

The goal of campaign finance reform is public involvement in the process of government. Changes are desperately needed to regain the confidence of the voters. We need a comprehensive reform bill that combines spending limits with reductions in special interest contributions, yet creates incentives for public financing and encourages small individual donations. We need to address the abuses and inequities present in our system, and do so in a fair and nonpartisan way. Campaign reform can wait no longer. The American people have made it clear that they want substantive changes, not empty promises. Because Congress is in the unique position of making the laws that governs its actions, Congress has a chance to accomplish true reform and the opportunity to regain the trust of the American voter. This is an opportunity that Congress cannot afford to miss.

HISTORY'S TIDE TURNING TOWARD A UNIFIED CHINA

HON. RICHARD RAY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. RAY. Mr. Speaker, I would like to take this opportunity to insert into the CONGRESSIONAL RECORD a thoughtful piece by Robert Akerman that appeared in the Atlanta Journal on Wednesday, October 9, 1991:

Tomorrow will be "Double Ten"—the tenth day of the tenth month, the anniversary of the founding of the Republic of China. This 80th anniversary comes as we are at a turning of the tide of history.

The emergence of a new China—a unified, democratic and prosperous China—is becoming a real possibility. This was the vision of Dr. Sun Yat-sen when he established the republic; it is the vision that has been kept alive on the land of Taiwan for more than 40 years since the communists completed the conquest of the mainland. It no longer seems to be just a vision for the distant future.

Beginning with the tearing down of the Berlin wall and culminating in the collapse of communist control in the Soviet Union, things have been happening in Europe which have had a deep emotional impact on people of my age, people who were politically conscious when the Cold War began. These are things we had hoped for, and planned for in the sense of supporting policies aimed at defeating communism without having to fight World War Three. I was not sure that victories such as these would happen during my lifetime, but they have come.

But there is also Asia. I was one of those for whom events in China almost a half century ago were as traumatic as those in Europe. The Marxist-Leninist Maoist ideology which was confronted in Asia was basically the same as the totalitarianism which threatened Europe, and even more cruel in its practical application. The communist regime systematically slaughtered its opponents, yet many Westerners were able to ignore the evil of the regime, until it cracked down on university students while Western television cameras were around.

Having studied other cultures enough to teach world history in my days as a college professor, I understood the long perspective that representatives of the Republic of China on Taiwan were taking when they held to the doctrine that one day China would be unified again, and it was their mission to preserve an alternative model for the future. The Chinese tend to take the long view of history: after all, as a people they have the world's longest history. But many Americans scoffed at the idea that tiny Taiwan, even though it has become an economic powerhouse, could even "regain the mainland." It was so "isolated," so "out of step with history."

Because of recent events, now we in America know that even though it may take a long time for the tide of history to turn, it can move fast when it does turn. Germany was reunited in much less time than we expected, and now we have seen the collapse of Soviet communism. The dream of a reunited China now begins to seem less of a dream, and the Republic of China on Taiwan now appears to be very much in step with history.

FIFTY YEARS OF CARING FOR THE DISABLED BY THE EASTER SEAL SOCIETY OF SAN MATEO COUNTY

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. LANTOS. Mr. Speaker, today I rise to call the attention of my colleagues to a very special anniversary. This year, the Easter Seal Society of San Mateo will celebrate 50 years of providing unselfish service to those who need it most. On the occasion of their Golden Jubilee, I ask my colleagues to join me in paying tribute to this valued care provider.

The Easter Seal Society of San Mateo County was founded in the Crippled Children's Society of San Mateo County in January 1941. In 1957, the nationwide organization adopted the familiar Easter lily as its national fundraising logo and included "East Seal" in its name. But whatever its name, for the last 50 years the Easter Seal Society of San Mateo has provided the highest level of caring for the most unfortunate among us.

This renowned organization has helped and motivated thousands of local residents to regain personal pride and confidence as they rebound from serious adversity as a result of affliction and accidental injury. In the end, the people touched by this caring group become more self sufficient members of the community.

The physical and vocational rehabilitation of disabled children and adults by the Easter Seal Society of San Mateo County is provided at two large facilities operated by the organization in Burlingame—a fully equipped, 17,000-square-foot, out-patient rehabilitation center for children and adults; and a 13,000-square-foot work center that provides vocational, educational, and social programs for disabled adults.

In the last decade, the number of individuals helped at these two facilities has tripled. Nearly 7,000 disabled people were either served directly or referred to other care providers in 1989–90. These cases involved such disorders as communication, orthopedic, neurological and neuromuscular, social and pathological, learning and developmental, and such general disorders as heart and circulatory, and accidental injuries.

The Easter Seal Society of San Mateo has evolved locally from its humble beginning in 1941 into one of the largest nonprofit physical and vocational rehabilitative service organizations in San Mateo County due in large part to generous community support. During fiscal 1989–90, that citizen concern was translated into more than $1.5 million in revenues used for program services—a 75 percent increase over the $859,000 program expenditures of 10 years ago.

But clearly the most important people in the local organization's family of friends are the many thousands of courageous disabled citizens who have turned to the Eastern Seal Society of San Mateo County for help in regaining confidence and self-esteem by overcoming physical and emotional hardships.

The local organization's ultimate gratification in serving these patients—indeed the gratification of the entire Easter Seal organization nationwide—is seeing the disabled grasp their future and bravely learn to live life to the fullest.

Mr. Speaker, the Easter Seal Society of San Mateo County is proud of its heritage as "The Easter Seal People" and I am proud to recognize this invaluable organization on the occasion of their 50th anniversary. I am confident that the next half century of service will be provided at an even higher level than in the past. I commend and thank all of those who have made the East Seal Society of San Mateo County what it is today.

TRIBUTE TO ANGELO TSAKOPOULOS

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. FAZIO. Mr. Speaker, I am extremely pleased that Angelo Tsakopoulos, the nationally known developer and philanthropist from Sacramento, CA, will be honored at the 16th annual United Hellenic American Congress [UHAC] Banquet in Chicago, IL, on Saturday, November 9, 1991.

Mr. Tsakopoulos is the founder and president of AKT Development Corp., one of the largest development firms in Sacramento, CA, controlling or developing more than 25,000 acres in the Sacramento metropolitan area.

An emigrant from Greece 40 years ago, Mr. Tsakopoulos has earned tremendous respect throughout his 30 years in business in Sacramento. He is well recognized as a long-time philanthropist and benefactor of the arts. He has made lasting contributions to both the cultural and the educational communities by donating land for schools, art galleries, museums, hospitals and senior citizens' facilities. Examples of his humanitarian efforts including funding for a new wing at the Crocker Art Museum in Sacramento, as well as sponsoring numerous performances of the symphony, ballet, and theatre.

In 1990 Mr. Tsakopoulos was the recipient of the Sacramento Excellence Award. In May 1991, the McGeorge School of Law awarded Mr. Tsakopoulos an honorary doctor of laws degree, citing his work as a "community leader, entrepreneur, and philanthropist."

Mr. Tsakopoulos' is a devout member of the Greek Orthodox Church and a true believer in the values of Hellenism. His commitment to education was the impetus for establishing the Kazantzakis Chair for Modern Greek studies at San Francisco State University. In addition, Mr. Tsakopoulos has funded chairs at the University of California at Berkeley, the University of California at Davis, and Dartmouth College. More recently, he directed the creation of the S.B. Vryonis Center in California for the Study of Hellenism, an academic research center.

With his continued promotion of the just causes of Hellenism in Cyprus, the Aegean, and at the Patriarchate, Mr. Tsakopoulos has become one of the most respected leaders of the Greek-American community. Through his extensive business development and philanthropic efforts, Mr. Tsakopoulos has emerged as one of the most admired, respected, and loved members of the Sacramento community.

Mr. Speaker, I know that you and our colleagues join me in saluting Angelo Tsakopoulos. I am proud to call him a friend and honored to have this opportunity to pay tribute to such a generous and outstanding person.

INTRODUCTION OF WIC SUPPLEMENTAL BENEFITS ACT OF 1991 EXTENSION OF REMARKS

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. KILDEE. Mr. Speaker, today I am introducing legislation to reauthorize a program that provides coupons to recipients of the Special Supplemental Food Program for Women, Infants, and Children [WIC], for the purchase of fresh fruits and vegetables.

WIC was established in 1972 under the Child Nutrition Act. Since that time it has provided supplemental food and nutrition education to low-income pregnant and nursing mothers, and infants and children up to age 5. The benefits and cost effectiveness of this program are well documented and highly praised.

Since 1988, 10 States running demonstration programs have provided additional benefits to WIC recipients in the form of coupons for fresh fruits and vegetables purchased at farmers' markets. The program has served a valuable purpose by giving a nutritionally at-risk population access to fresh fruits and vegetables. This initial introduction to such foods is an important step in establishing healthy eating patterns.

The bill reauthorizes the program for an additional 4 years.

MR. E. RAYMOND BENWAY RECOGNIZED AS VETERAN OF THE YEAR

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize Mr. E. Raymond Benway of Newport, RI. Raymond Benway is the recipient of this year's Veteran of the Year Award presented by the Benevolent and Protective Order of Elks, Newport Lodge No. 104.

The Newport Chapter of the Order of Elks has been a part of the Newport community since 1888. The chapter is involved in many charitable activities. Most notably their charitable contributions go to benefit veterans, children, handicapped, an the sick and aged. Each year the Newport Benevolent and Protective Order of Elks presents the Veteran of the Year Award to a local veteran who has led a long and distinguished career of service to the United States of America.

Raymond Benway's military career began nearly 40 years ago and included almost 30 years of active service. On January 3, 1942, Raymond Benway entered the naval training station in Newport, RI. His first assignment was aboard the *U.S.S. Kearney.* That assignment soon ended after the *U.S.S. Kearney* was torpedoed in the North Atlantic in March 1942. Raymond Benway was then reassigned to the *U.S.S. Birmingham* and engaged in many combat missions in the Pacific, including Marianas, Leyte Gulf, Marshall Islands, New Guinea, and Bougainville, in the Solomon Islands. After 6 years of naval service Raymond Benway was honorably discharged and highly decorated.

During Raymond Benway's distinguished naval career he was awarded many decorations. He was awarded the World War II Victory Medal, National Defense Service Medal with a star, Europe Africa Middle East Campaign with two stars, Asiatic Pacific Campaign Medal with two bronze stars and one silver star, and the American Defense Philippines Liberation Medal.

Raymond Benway's military career did not end with the U.S. Navy. In 1950 Raymond Benway enlisted in the U.S. Coast Guard. He served aboard the Coast Guard Cutters *Casco, Heather,* and *Venturous.* In 1966 Raymond Benway served on a patrol boat based in DaNang, Vietnam. He served in Vietnam for 1 year. In 1973 Raymond Benway retired from the Coast Guard.

Once again Raymond Benway came away highly decorated from the service. He received the Coast Guard Good Conduct Medal with a silver star, the Vietnam National Service Medal with two stars, and the Republic of Vietnam Service Medal with device.

After retiring from military service Raymond Benway became involved in many veterans organizations. He is a member of the Veterans of Foreign Wars, post 4487, in Middletown, RI, and the Fleet Reserve Association, branch 19, of Newport, RI. Chief Benway was the exalted ruler of the Newport Lodge of Elks in 1967–68. Additionally he is the chairman of the Flag Day committee, chairman of the memorial Sunday committee, and member of the veterans committee.

E. Raymond Benway has led a truly distinguished career both in and out of active military duty. He served his country well during times of war and peace. After giving so much to his country, he continues to contribute to his community. It is people like him who have made the United States a great country. I take great pleasure in congratulating E. Raymond Benway as the recipient of the Newport Lodge of Elks Veteran of the Year Award. I extend my best wishes to him for a successful future.

LAW SCHOOL PROFESSORS AND DEANS PROTECT HABEAS CORPUS

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 5, 1991

Mr. EDWARDS of California. Mr. Speaker, I would like to acknowledge and thank a group of over 340 law school deans and professors who worked tremendously hard to successfully protect our Bill of Rights. They joined with scores of other legal scholars who wrote separately. With their help, we were able to defeat the administration's "full and fair adjudication" habeas corpus amendment—the Hyde amendment—to the crime bill, H.R. 3371. I thought that you would be interested in seeing their letter, along with the impressive list of law school deans and professors. I hope that you will join me in applauding their efforts.

BOSTON UNIVERSITY,
SCHOOL OF LAW,
Boston, MA, September 20, 1991.
Hon. JACK BROOKS,
Hon. DON EDWARDS,
Hon. HAMILTON FISH,
Hon. HENRY HYDE.

DEAR MESSRS. BROOKS, EDWARDS, FISH AND HYDE: When the House takes up anti-crime measures this fall, the Bush Administration will propose the adoption of habeas corpus reform legislation similar to that which the Senate adopted this summer. The Administration's plan, formally introduced in the House as Title II of H.R. 1400, would largely eliminate the federal courts' ability to enforce the Bill of Rights by issuing the writ of habeas corpus. Habeas corpus plays a vital role in the machinery of American justice. Any attempt to strip the federal courts of this critical basis of judicial authority should be rejected.

The federal courts' general power to issue the writ of habeas corpus has existed since the original Judiciary Act of 1789; their authority to entertain petitions from applicants complaining of state custody reaches back to 1867. The statutory framework has been modified over the years in order to streamline the processing of cases and to accommodate legitimate state interests. Only a decade ago, special rules of procedure were promulgated to govern habeas corpus proceedings. Pursuant to those rules, habeas corpus is now an important part of the machinery for federal enforcement of the Bill of Rights. Through habeas corpus, Americans receive their due—a fair opportunity to litigate federal claims in a federal forum.

The state courts, too, are charged to enforce federal standards, and we have no doubt that they do so to the best of their ability. Still, all courts make mistakes. Fifty state courts, moreover, inevitably generate conflicting judgments. The Supreme Court is unable to review all state court determinations of federal issues for error or to reconcile conflicting decisions from so many jurisdictions. Accordingly, the Justices must rely upon the lower federal courts as surrogates. Within the current scheme, the Supreme Court maintains accuracy and uniformity in the treatment of Bill of Rights questions by reviewing decisions from the twelve federal circuits.

The Bush Administration proposals to alter this well-established framework include provisions that would bar federal habeas corpus relief with respect to any claim that was "fully and fairly adjudicated" in state court. These are terms of art in the law of federal courts. If they are written into the statutes governing habeas corpus, they will largely abolish the federal courts' current and longstanding authority to enforce the Bill of Rights in this context. For all the reasons just recited, the House should reject this program—just as it has rejected similar programs in the past.

Other proposals for streamlining corpus procedures, particularly in death penalty cases, can and should be considered and evaluated on their own merits. It is essential, however, that the "full and fair adjudication" standard be avoided—in order that there be a habeas corpus jurisdiction left to reform.

In addition, your attention is drawn to a series of recent Supreme Court decisions that, taken literally, promise to do by judicial decision what the President proposes to do by legislation. In *Teague* v. *Lane* and subsequent cases, the Court has largely barred the federal courts from considering constitutional claims resting on "new rules" of law, established after petitioners' sentences are approved on direct review. If *Teague* and its progeny had only to do with the retroactive effect of genuine changes in the law, they would not excite great controversy in the academic community. The Court's definition of a "new rule," however, is so broad as to capture not only claims that depend on genuine changes in the law, but also claims that seek the application of settled principles to different fact patterns. If habeas corpus is to be preserved as the vital remedy it is, the definition of a "new rule" within the meaning of the *Teague* line of cases must be changed legislatively. In the Senate, both Senator Biden's original bill and Senator Graham's proposed amendment contained such a provision. In the House, Mr. Edwards' bill contains similar language. A provision redefining "new rules" is essential in any habeas corpus reform legislation adopted by the House this year.

I am authorized to say that the law professors whose names appear below join me in this letter and these recommendations. Our institutional affiliations are given for identification only.

Very truly yours,
LARRY W. YACKLE,
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Professor Sheldon Krantz.
Professor Jennifer P. Lyman.
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Yale Law School:
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